

1-1-2006

Lake Bistineau Pres. Soc'y, Inc. v. Seales, 922 So.2d 768 (La. Ct. App. 2006)

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Roman Ginzburg, Court Report, Lake Bistineau Pres. Soc'y, Inc. v. Seales, 922 So.2d 768 (La. Ct. App. 2006), 9 U. Denv. Water L. Rev. 664 (2006).

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involve over 400,000 acres in the Atchafalaya Basin. The State asserted that numerous trials would be necessary to determine which bodies of water were navigable lakes with banks and bank servitudes, and which bodies of water were non-navigable.

The court found that Schoeffler did not state a cause of action against the State, and did not have standing to compel the State to make such broad declarations. The court noted that a justiciable controversy must involve the legal relations of the parties having adverse interests, which can be determined in a conclusive manner at that stage of the proceedings. The court held that the request for declaratory judgment asked the State to declare rights not yet adjudicated, and since Schoeffler did not have standing to compel such broad declarations, the action against the State must fail.

The court affirmed the trial court's decision that granted the landowners' and lessees' exceptions of no right of action to fix numerous boundaries in the Atchafalaya Basin, granted the State's exceptions to the mandamus action, and dismissed the State from all related demands.

James E. Downing

Lake Bistineau Pres. Soc'y, Inc. v. Seales, 922 So.2d 768 (La. Ct. App. 2006) (affirming the denial of a preliminary injunction to prevent the drawdown and aquatic herbicide spraying of Lake Bistineau because the spraying had already occurred while the appeal was pending).

The Lake Bistineau Preservation Society, Inc. ("Society") and H. F. Anderson brought an action against the Department of Wildlife and Fisheries of the State of Louisiana and three of its officials ("DWF") seeking a preliminary injunction to prevent the second round of herbicide spraying of DWF's Habitat Management Plan ("Plan") for Lake Bistineau. Finding that the herbicide spraying activities, which were the subject of the requested preliminary injunction, already ended, the Court of Appeals of Louisiana for the Second Circuit dismissed the action as moot.

DWF's Plan originally called for three annual drawdowns and herbicide sprayings to kill the excessive aquatic vegetation that had choked Lake Bistineau. The first spraying occurred in 2004. That same year, the court denied the Society's action for a preliminary injunction. In that suit, the Society argued that the drawdown was too economically burdensome on the lake's users.

The present litigation followed in 2005. The Society again asked for a preliminary injunction, this time alleging that the DWF's plan for Lake Bistineau violated the Louisiana Environment Quality Act ("LEQA") and the Louisiana Water Control Laws ("LWCL"). The Society argued that the herbicides the DWF was spraying into the lake,

including 2, 4-Dichlorophenoxyacetic acid ("2, 4-D") and Aqua Kleen, were hazardous to human health and the environment. The Society also contended that the Department of Environmental Quality of the State of Louisiana ("DEQ") required the DWF to obtain a permit before carrying out its spraying activities. Since the DWF did not obtain such a permit, the Society asked for a preliminary injunction to prevent DWF's second scheduled drawdown on July 15, 2005.

In a hearing on the preliminary injunction, a DWF expert testified that 2, 4-D does not negatively impact water quality. Moreover, a representative from the DEQ testified that the application of herbicides to aquatic vegetation did not require a permit. The DEQ adopted this view in February 2005 from an Environmental Protection Agency interpretive statement.

On July 12, 2005, the 26th Judicial District Court, Parish of Bossier, held that the DEQ did not need a spraying permit and denied the preliminary injunction request. The Society immediately appealed but failed to request expedited review of the matter. While the ordinary delays of the appeal process occurred, the DWF completed the second drawdown and spraying. The DWF then indicated that it completed the Plan for Lake Bistineau and canceled the final spraying scheduled for 2006.

The court upheld the decision of the trial court denying the preliminary injunction; however, the court did not rule on the merits of the Society's argument. The court stressed that its holding did not preclude the Society from prosecuting their pending claim for declaratory judgment regarding the application of the LWCL and the LEQA and permanent injunctive relief preventing the application of herbicides into state waters. The court noted that based on evidence presented, the Society failed to prove the presence of a damaging toxins. The court also advised the Society to include the DEQ as a party if seeking to prove a violation of permit compliance, and directed the trial court to note with disfavor a nonjoinder of DEQ.

The court dismissed the Society's preliminary injunction seeking to prevent the herbicide spraying as moot because the DEQ already completed it.

Roman Ginzburg

MINNESOTA

Lake Mary Villas, L.L.C. v. County of Douglas, No. A05-717, 2006 Minn. App. Unpub. LEXIS 96 (Minn. Ct. App. Jan. 24, 2006) (holding that the Board of Commissioners had the proper authority and appropriately imposed a condition prohibiting a dock at a proposed lake-shore development).