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Alliance to Save the Mattaponi v. Virginia, 621 S.E.2d 78 (Va. 2005)

Roger J. Lucas

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Alliance to Save the Mattaponi v. Virginia, 621 S.E.2d 78 (Va. 2005)

the Act immediately could be implemented and enforced unless and until the supreme court ordered otherwise." As such, the court further held the Authority acted within its authority in promulgating the rule that set the historical use filing deadline on Monday, December 30, 1996, the first working day following six months after the Texas Supreme Court issued the *Barshop* opinion.

Further, the court refused to find that Chemical Lime substantially complied with the December 30 deadline. The court found undisputed evidence that Chemical Lime did not attempt to file its historical use declaration until after the December 30, 1996 deadline. The court stated that, "where the legislature or agency acting within the scope of its delegated powers has properly established a deadline, it is beyond our power to undermine it by applying a substantial-compliance analysis, which appears to be purely a judge-made creation of common law." As such, the court concluded that, as a matter of law, Chemical Lime's noncompliance with the December 30, 1996 deadline was not susceptible to analysis for "substantial compliance," and that the district court could not have submitted a substantial-compliance issue to the jury.

The court felt bound by *Barshop's* holding that the Act's historical use filing deadline was "six months after the Authority becomes effective," and because the Act became enforceable on June 28, 1996, the court reversed the judgment of the district court and rendered judgment that the Authority acted under its statutory authority in setting a deadline for filing declarations of historical use of December 30, 1996. The court also reversed the district court's holding that Chemical Lime substantially complied with the filing deadline.

James E. Downing

VIRGINIA

Alliance to Save the Mattaponi v. Virginia, 621 S.E.2d 78 (Va. 2005)
(holding: (1) an agency's factual findings regarding water rights adjudications are subject to the "substantial evidence" standard of review; and (2) Indian Rights treaties entered into prior to the creation of the United States are not governed by federal law).

This opinion is a consolidated appeal of three cases. The Virginia Supreme Court considered two sets of issues related to a Virginia Water Protection Permit ("Permit") issued by the State Water Control Board ("Board") to the City of Newport News ("City") for the construction of the King William Reservoir. The first set of issues required the court to consider whether the Board's issuance of the City's Permit violated any of its statutory mandates under the State Water Control Law. The second set of issues involved an attack on the Board's actions

based on a 1677 Treaty (“Treaty”) entered into between the Mattaponi Indian Tribe (“Tribe”) and the British Crown.

In 1993, the City filed an application for a permit to build the King William Reservoir Project (“Project”) in compliance with the Water Control Law and the Clean Water Act. The Project’s proponents deemed it necessary in order to meet the increasing water needs of the surrounding areas. Before arriving at its decision, the Board conducted several public hearings, reviewed various environmental impact statements and scientific reports, and received public comments and written recommendations from both state and federal agencies. The Tribe argued that the construction of the Reservoir would encroach upon tribal lands, and would impair the Tribe’s right to hunt, fish, and gather as secured by the 1677 Treaty. The Alliance opposed the issuance of the Permit asserting that the Board based its decision on incomplete scientific data regarding the potential adverse environmental impact on the Mattaponi River and the surrounding areas. Despite opposition from the Tribe and the Alliance to Save the Mattaponi (“Alliance”), the Board issued the Permit in 1997.

The Tribe and the Alliance filed separate petitions for appeal under the Administrative Procedure Act (APA) in the Circuit Court of the City of Newport News. The Commonwealth of Virginia (“Commonwealth”) and the City demurred to both petitions. The Commonwealth and the City both asserted lack of standing and sovereign immunity as defenses. The circuit court rejected the sovereign immunity argument, but dismissed the petitions based on lack of standing. The Virginia Court of Appeals affirmed the circuit court’s decision under the APA, but did not address the Treaty claims. The Virginia Supreme Court reversed the court of appeals decision that both the Tribe and the Alliance lacked standing and remanded the cases for trial in the circuit court. On remand, the Tribe amended its complaint to assert Treaty violations on the part of the United States claiming that the United States was the successor in interest to the British Crown, and was thus obligated to the contractual terms of the Treaty. The Commonwealth and City again filed demurrers and summary judgment motions to all the claims. The circuit court granted the motions for summary judgment, holding that substantial evidence in the administrative record justified the Board’s decision, and found no violations of state or federal law. The circuit court also held that although the separate Treaty claims were a matter of Virginia law, the court did not have jurisdiction to decide the issues under the terms of the Treaty. The court thus dismissed those claims as well. The court of appeals affirmed the circuit court’s decision on the APA claims, holding that the Board acted within its discretion, and transferred the Tribe’s Treaty claims to the Virginia Supreme Court, holding lack of subject matter jurisdiction. The Tribe and Alliance appealed.

In reviewing these cases, the court analyzed the APA claims advanced by both the Alliance and the Tribe. The court, citing *Aegis Waste Solutions, Inc. v. Concerned Taxpayers of Brunswick County*, held that under the “substantial evidence” standard, the reviewing court may reject an agency’s factual findings only when, on consideration of the entire record, a reasonable mind would necessarily reach a different conclusion. The court further rejected the Tribe’s and Alliance’s analysis that the Board’s decision did not adequately protect existing instream beneficial uses. The court found that the Board had adequately balanced the conflicting uses, and properly exercised its judgment before reaching its decision. The court also found that the Virginia Institute of Marine Science (“VIMS”) model was adequate for purposes of determining the potential impact of the project on the environment. The court noted that the Army Corps of Engineers’ Final Environmental Impact study corroborated the VIMS finding that the project would only have minimal impact on existing wetland vegetation and wildlife. In addressing the Tribe’s specific concerns, the court first rejected the Tribe’s assertion that the Board did not consider their rights prior to the issuance of the Permit. The court noted that the Board did consider the cultural impact the project would have on the Tribe, but that the balance weighed in favor of the project.

Finally, the court rejected the Tribe’s argument that the Treaty rights were a matter of federal law, and not state law. The court concluded that the United States Constitution’s Supremacy Clause, relied on by the Tribe, did not apply to the Treaty because the Treaty predates the Constitution by over 100 years. By extension, the Supremacy Clause covers treaties entered into with the United States after its creation, and no earlier than before the Articles of Confederation. Thus, the Treaty rights in question must be resolved under Virginia state law.

The court affirmed the court of appeals decisions regarding all the APA claims, but remanded the Treaty issue to the circuit court, holding that the circuit court has jurisdiction to resolve those claims.

Roger J. Lucas

WASHINGTON

Northlake Marine Works, Inc. v. Wash. Dep’t of Natural Res., 127 P.3d 726 (Wash. App. 2006) (holding that permits for private waterway use waterward of federal pierhead lines issued by the Washington Department of Natural Resources, the City of Seattle, and the Army Corp of Engineers, were in compliance with state law).

The Court of Appeals of Washington, Division One, addressed whether waterway permits issued by the State of Washington Department of Natural Resources (“DNR”), the City of Seattle (“City”), and