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Minn. Ctr. for Envtl. Advocacy v. Big Stone County Bd. of Conm'rs, 638 N.W.2d 198 (Minn. Ct. App. 2002)

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KAK claimed the GDSR set a baseline of one thousand gpm for water inflow after the first operation of mining and lining, while the MWRA claimed the GDSR merely set a goal for water inflow. Each position was ambiguous due to the uncertain language of the DSC when applied to either the baseline or the goal.

The court found merits in both arguments. KAK had to achieve a goal along with a baseline by which that goal could be measured. The court stated the baseline was not significant unless MWRA could prove the reason for the baseline's failure, whether the baseline failed because of a DSC or otherwise. The court noted there was no evidence of water inflow differing from the baseline after the installation of the lining, nor was there evidence the first operation had failed. KAK's motion asked the court to order a partial summary judgment identifying a DSC and stating the contractual post-mining baseline for water inflows to the tunnel was one thousand gpm. The court refused to declare a DSC caused the failure to achieve the post-contractual baseline without further exploration.

The court granted KAK's motion for summary judgment to the limited extent of declaring the contractual post-mining baseline for water inflows into the tunnel was one thousand gpm, however, the court did not recognize the existence of a DSC.

David W. Hall

MINNESOTA

Minn. Ctr. for Envtl. Advocacy v. Big Stone County Bd. of Comm'rs, 638 N.W.2d 198 (Minn. Ct. App. 2002) (holding that ditch repair in protected wetlands required: (1) either Department of Natural Resources permission or a public waters work permit; (2) a mandatory Environmental Impact Statement; and (3) either an approved wetland replacement plan or exemption determination from the local government unit).

County Ditch 2 was an agricultural drainage ditch that passed through a Type-5 protected wetland. In 1998, adjacent landowners petitioned the Big Stone County Board of Commissioners ("Board") to repair the ditch by removing sediment to re-establish its original depth. The Board then commissioned an Environmental Assessment Worksheet ("EAW"), a brief document that determined if an Environmental Impact Statement ("EIS") is necessary. The EAW incorrectly identified the area as a Type-3 wetland, incorrectly found that the repair would not affect wetland status, and concluded that an EIS was unnecessary. The Board additionally determined the project was exempt from the statutory wetland replacement plan requirement, but did not seek an exemption from the local governmental unit prior

to beginning work. The Minnesota Center for Environmental Advocacy (“Center”) sought a declaratory judgment in the Big Stone County District Court to determine which requirements applied to the ditch repair project.

The district court first granted partial summary judgment in favor of the Center requiring the Board to obtain Department of Natural Resources (“DNR”) permission and a public waters work permit to undertake the project. At the conclusion of the trial the district court held the Board was required to have an approved wetland replacement plan or exemption from the local government unit, but was not required to have an EIS. The Board then appealed the district court’s granting of partial summary judgment and its conclusion.

On appeal, the Minnesota Court of Appeals first addressed the Board’s argument the applicable statutes did not require them to obtain either DNR permission or a public waters work permit prior to beginning the project. Section 103E.011(2) of the Minnesota Statutes defined the circumstances requiring permission and a public waters work permit, and section 103G.245(1)(2) identified the exception to the work permit requirement. The court found that if the Board satisfied the statutory permission requirements, then the permit exemption would apply to the ditch repair project. However, since the Board did not get permission from the DNR Commissioner as required by statute, the Board was not entitled to the work permit exemption. The court held the Board must have either DNR permission under section 103E or a public waters work permit to proceed with repairs altering wetland public waters.

Second, the court addressed the district court’s ruling that an exemption to the statutory EIS requirement existed for “routine ditch maintenance or repair within twenty years of major repair.” The court found this exemption to the EIS requirement did not apply, and according to the unambiguous language of section 4410.4600s(20) of the Minnesota Rules, the EIS requirement was mandatory because the ditch repair eliminated a protected water. Since the EIS was mandatory, the court held the Board did not have to prepare a corrected EAW.

Finally, the court addressed the Board’s claim that it was exempt from the statutory wetland replacement plan requirement. The Board relied on section 103G.2241(3)(1) of the Minnesota Statutes, providing an exemption for activities that are exempted from federal regulation under 33 U.S.C. § 1344(f). However, the court relied on section 103G.221, stating a party can not drain public waters wetlands unless they are replaced by wetlands that will have equal or greater public value. The court found the ditch repair did not qualify for the exemption under section 103G.2241 for parties who drain wetlands, and in this case the federally regulated activity was the drainage of wetlands, not the discharge of dredged materials into the ditch. The court held the project required either an approved wetland replacement plan or an exemption determination from the local

government unit in addition to the DNR permission or public waters work permit requirement and mandatory EIS.

Jared B. Briant

Zaluckyj v. Rice Creek Watershed Dist., 639 N.W.2d 70 (Minn. Ct. App. 2002) (requiring landowners to exhaust administrative remedies prior to bringing declaratory judgment and mandamus action and holding landowners were not entitled to a jury trial on issue of exhaustion of administrative remedies).

A district court order dated April 12, 1909, established the Washington County Judicial Ditch No. 2, a thirteen-mile public drainage system. A mixture of private and public holdings, including public wetlands and waters, comprised the land ownership along the ditch. A group of landowners ("Landowners") and the City of Hugo ("City") owned the land on or near the ditch. Rice Creek Watershed District ("Watershed District") was the drainage authority. The landowners petitioned the Watershed District to fix drainage pipes after water overflowing from the ditch flooded their land. In 1995, the City applied to the Watershed District for a permit to lower three culverts. The Watershed District issued a permit in 1998 to lower one of the culverts. The City lowered the culvert then sought determination as to whether to lower the other two culverts, obstructing the flow of the ditch. The Watershed District denied the petition and noted the City may petition the Watershed District to repair the ditch.

The Washington County District Court ruled the landowners failed to exhaust administrative remedies and dismissed the complaint. The City did not petition for repair or seek district court review of the decision on petition. Instead, the City and landowners filed a declaratory judgment complaint and a petition for a writ of mandamus in district court, seeking an order for removal of the obstructions and repair of the ditch.

The Landowners appealed, and the Minnesota Court of Appeals held the Landowners were not entitled to a jury trial on exhaustion of administrative remedies because the petition for repair of the ditch was still an available remedy. The Landowners claimed they were entitled to a jury trial because the issue of exhaustion of administrative remedies involved disputed questions of fact. The court held that facts existed which required resolution by the court, and the issues of exhaustion and futility of administrative remedies are generally legal questions for the court. Having decided the issue was properly within the court's discretion, the court decided whether the Landowners had exhausted their administrative remedies.

The Minnesota legislature created an extensive statutory administrative process for addressing ditch problems that would