

9-1-2002

Zaluckyj v. Rice Creek Watershed Dist., 639 N.W.2d 70 (Minn. Ct. App. 2002)

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Julie S. Hanson, Court Report, Zaluckyj v. Rice Creek Watershed Dist., 639 N.W.2d 70 (Minn. Ct. App. 2002), 6 U. Denv. Water L. Rev. 238 (2002).

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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

allocate the costs among the landowners who benefit from the drainage. Landowners argued this process was not available to them, as a matter of law, because the statute required the costs of repair not exceed the benefits. Landowners also asserted the costs of present-day repairs would exceed the determination of benefits in 1909 and that no redetermination had been calculated. While the court decided this is true under the statute, it also noted an alternate provision under the statute that authorizes repairs if the drainage authority determines the repairs are necessary for the best interests of the property owners. This section did not use a cost-versus-benefit analysis.

The court held the petition for repair of the ditch would not be futile and that the Landowners had failed to show evidence the Watershed District made a policy decision against redetermination, or a final decision on whether to repair the ditch. Landowners may petition for repair of the ditch.

Julie S. Hanson

MONTANA

Bitterroot River Prot. Ass'n v. Bitterroot Conservation Dist., 45 P.3d 24 (Mont. 2002) (holding an authorized conservation district had jurisdiction to determine whether a body of water was a stream entitled to the protections of the Natural Streambed and Land Preservation Act of 1975).

The Bitterroot Conservation District (“BCD”) served as the conservation district for Ravalli County, Montana. Under the Natural Streambed and Land Preservation Act of 1975 (“Streambed Preservation Act”), BCD, as the authorized conservation district, was responsible for issuing permits to anyone who planned to alter or modify a perennial-flowing stream in Ravalli County. The Bitterroot River Protection Association (“BRPA”) was a private conservation group and it filed for a writ of prohibition in Montana’s District Court. BRPA wanted to stop BCD’s determination of whether a slough was a “stream” as defined in the Streambed Preservation Act. The Montana District Court originally heard the case. Upon the district court’s denial of the writ, BRPA filed for a writ of prohibition in the Supreme Court of Montana.

In July 1995, Brian Monta requested a portage permit from BCD for the Mitchell Slough (“slough”). Mr. Monta planned to alter or modify the slough, and he needed a permit because BCD considered the slough a body of water in Ravalli County. However, a question arose as to whether the slough constituted a perennial-flowing stream and thus subject to BCD’s jurisdiction under the Streambed Preservation Act. BCD announced it would determine the slough’s