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## Deep River Citizens' Coalition v. Dep't of Env't & Natural Res., 560 S.E.2d 814 (N.C. Ct. App. 2002)

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its standing in this case. In assessing this claim, the court stated it must first determine if any property is riparian in nature, and then determine the extent to which Saunders County demonstrated this right. Based on the evidence, the court concluded at least some of the county's property did have water flowing over or along its borders, and was, therefore, riparian in nature. However, the court then agreed with the NDNR's finding that Saunders County failed to make these riparian rights relevant to the instant case by neglecting to prove any manner in which the District's granted water rights would harm those of the county.

Lastly, Saunders County argued it granted the District a construction permit stipulating the District would supply water to areas of Saunders County on a cost basis, as permitted by law. Again, Saunders County was insufficient in making this fact relevant to the instant case. The court stated the county did not provide any basis for how this contractual clause should warrant standing to challenge the legality of the District's applications for water rights in the county. Once more, the court found the evidence adequately supported NDNR in rejecting Saunders County's argument for standing based upon this construction contract, and was not arbitrary, capricious, or unreasonable.

*Jessica L. Grether*

## NORTH CAROLINA

**Deep River Citizens' Coalition v. Dep't of Env't & Natural Res.**, 560 S.E.2d 814 (N.C. Ct. App. 2002) (holding trial court's failure to state both whether it used a de novo or whole record standard of review, and the extent to which the court applied either standard to each issue raised, precluded appellate review of decision).

Deep River Citizens' Coalition ("DRCC") challenged the Piedmont Triad Regional Water Authority ("Water Authority") petition to the North Carolina Environmental Management Commission ("EMC"). Once EMC issued a final decision, DRCC appealed this final decision to the Wake County Superior Court. The court upheld the agency's final decision. DRCC appealed to the North Carolina Court of Appeals, claiming the trial court erred by not reviewing EMC's decision under a de novo standard of review. The Court of Appeals reversed and remanded the case, ordering the trial court to advance its own characterization of the issues and delineate the standards of review for each issue presented.

For over a decade, the Water Authority sought to build a water supply reservoir on the Deep River, located in eastern North Carolina. In 1988, the Water Authority sought EMC's approval to purchase land

by eminent domain and divert water from the Deep River Basin. Four years after the Water Authority submitted the petition, EMC approved the purchase and diversion. DRCC challenged the approval in Wake County Superior Court.

Although the trial court reversed EMC's approval of the purchase and diversion, the North Carolina Court of Appeals later remanded the case to the North Carolina Office of Administrative Hearings ("OAH"). In the original proceeding, DRCC did not have a contested case hearing. Thus, the appellate court held the trial court was without jurisdiction to review the case, vacated the trial court's decision, and remanded the case to OAH to provide DRCC with a contested case hearing upon which EMC could make a final decision.

After the OAH hearing, EMC granted summary judgment against DRCC on all issues. DRCC appealed EMC's decision to the Superior Court of Wake County, which both affirmed EMC's order and issued a supplemental order concerning the scope of its review. DRCC's appeal of both orders provided the basis for this decision and its second visit to the court of appeals.

In its appeal, DRCC argued the trial court erred because it did not review the record de novo. North Carolina uses a de novo standard of review when an appellant claims an agency made a decision based on an error of law and uses a whole record review when an appellant claims an agency's decision was arbitrary and capricious or not supported by substantial evidence.

DRCC claimed the trial court should have applied a de novo standard of review because the record did not support EMC's conclusions and the Department of Environment and Natural Resources abused its discretion by refusing to hold a public hearing. The court rejected this claim and held that a whole record review was appropriate because DRCC did not assert the trial court made errors of law.

In addition, the court also held it could not properly conduct its review of the trial court's decision because the trial court never explicitly stated whether, or to what extent, it was using a whole record or de novo standard of review. The trial court stated the standards of review but did not outline its application to this particular case. As a result, the court of appeals reversed and remanded the trial court decision and ordered the trial court to advance its own characterization of the issues presented by the petitioners and delineate, clearly, the standards of review used for each issue.

*Merc Pittinos*