

9-1-2001

Mississippi Sierra Club, Inc. v. Mississippi Dep't of Env'tl. Quality, No. 1999-SA-02035-SCT, 2001 Miss. LEXIS 97 (Miss. Apr. 19, 2001)

Michael Barry

Follow this and additional works at: <https://digitalcommons.du.edu/wlr>



Part of the [Law Commons](#)

Custom Citation

Michael Barry, Court Report, Mississippi Sierra Club, Inc. v. Mississippi Dep't of Env'tl. Quality, No. 1999-SA-02035-SCT, 2001 Miss. LEXIS 97 (Miss. Apr. 19, 2001), 5 U. Denv. Water L. Rev. 280 (2001).

This Court Report is brought to you for free and open access by the University of Denver Sturm College of Law at Digital Commons @ DU. It has been accepted for inclusion in Water Law Review by an authorized editor of Digital Commons @ DU. For more information, please contact jennifer.cox@du.edu, dig-commons@du.edu.

Mississippi Sierra Club, Inc. v. Mississippi Dep't of Env'tl. Quality, No.
1999-SA-02035-SCT, 2001 Miss. LEXIS 97 (Miss. Apr. 19, 2001)

maintaining a higher water level year-around. The court reasoned that a more appropriate procedure would be one that insured the viewers were well informed by allowing all concerned parties to submit written evidence before the viewers' investigation. This would satisfy the government's interests and increase the accuracy of the report. Thus, the court proposed additional procedural safeguards giving petitioners the opportunity to request a hearing and object to the report before its dismissal. After such a hearing, the viewers could either request that the trial court dismiss the petition, or simply file an amended petition.

Because the Association did not have the opportunity to present evidence in support of its petition, cross-examine adverse witnesses, nor voice its objections before the dismissal of its petition, the appellate court remanded with instructions that the trial court vacate its order of dismissal, allow reasonable time to provide written evidence, and schedule a hearing if the Association desired to voice any objections.

Gloria M. Soto

MISSISSIPPI

Mississippi Sierra Club, Inc. v. Mississippi Dep't of Env'tl. Quality, No. 1999-SA-02035-SCT, 2001 Miss. LEXIS 97 (Miss. Apr. 19, 2001)

(holding that a state agency, when approving a project, must make adequate findings of fact and explain how it evaluated the competing interests before it so as not to usurp courts of their power of review).

The Mississippi Sierra Club and Green Baggett ("Sierra Club") filed this action in the Mississippi Supreme Court to appeal a decision by the Board of Mississippi Levee Commissioners ("Commission") approving the Big Sunflower Maintenance Project.

The Big Sunflower Maintenance Project ("Project") was a channeling project proposed by the Army Corps of Engineers ("Corps") to alleviate seasonal flooding in the Yazoo-Mississippi Delta. The project included the dredging of approximately 104.8 miles of stream, as well as the clearing and snagging of an additional 28.3 miles of the Big Sunflower River and several tributaries and bayous. The project would render approximately 443 acres completely unfit for current use. Further, the project would negatively impact both plant and animal life. The project was expected to cost \$62,485,000 and take between seven and eight years to complete.

When the Corps presented the project to the Commission, the Commission was also reviewing an environmentally friendly alternative. This alternative was non-structural and included the acquisition of flowage easements in combination with the traditional excavation of critical reaches. Several government agencies endorsed the alternative project, including the Environmental Protection

Agency and the Fish and Wildlife Service. The Corps estimated this alternative project would cost approximately \$120 million while the Sierra Club predicted a cost of \$52.5 million.

The Commission chose the Big Sunflower project, stating, "(t)he Corps evaluated the purchase of flowage easements and determined that not only was this alternative cost prohibitive, but also the option would not accomplish the purpose of the project." The Commission did not provide any further reasoning to substantiate its decision between the chosen and the proposed alternative.

In *McGowan v. Mississippi State Oil and Gas Board*, the Mississippi Supreme Court held that if an agency does not disclose the reason upon which its decision is based, the courts would be usurped of their power of review over questions of law. The court also noted that among those questions of law were whether board action was arbitrary and capricious and whether it was supported by substantial evidence.

Since the court was unable to determine if the Commission's decision was arbitrary or capricious, it remanded the case to the Commission for reconsideration and further fact finding and analysis.

Michael Barry

NEW YORK

Town of Bellmont v. New York State Dep't of Env'tl. Conservation, 726 N.Y.S.2d 769 (N.Y. App. Div. 2001) (holding the town of Bellmont failed to prove administrative remedies futile or would have caused irreparable harm).

The Town of Bellmont ("Town") brought this action after the Department of Environmental Conservation ("Department") granted a permit, along with certain conditions, to operate a dam located at the northern end of Mountain View Lake. The Town took title to the dam in 1962, and conducted drawdowns every year to lower the water level of the lake. Recently, the dam fell into disrepair and the Town filed for a permit to repair it in 1998. The Department issued a permit for the repairs and renewed it several times until it expired on June 15, 1999. On August 24 of the same year, the Town applied for renewal of the permit. The Department treated the application as a new application and taking public concerns into consideration, issued a new permit containing certain conditions on its use.

The conditions on the permit caused the Town to file the action against the Department, asking the court to enjoin and prohibit any such enforcement and to remove the conditions from the permit. The Department filed a preanswer motion stating the Town had failed to exhaust its administrative remedies by failing to seek an adjudicatory hearing. The trial court granted the Department's motion and