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Dubois v. United States Dep't of Agric., 270 F.3d 77 (1st Cir. 2001)

Michael Barry

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COURT REPORTS

FEDERAL COURTS

UNITED STATES CIRCUIT COURTS

FIRST CIRCUIT

Dubois v. United States Dep't of Agric., 270 F.3d 77 (1st Cir. 2001) (holding the United States Forest Service did not act in bad faith when it authorized an increase in the amount of water that Loon Mountain may draw from Loon Pond each year for snowmaking purposes).

Roland Dubois filed this suit against the United States Forest Service ("Forest Service") alleging violations of the National Environmental Policy Act ("NEPA") and the Clean Water Act ("CWA"). On appeal, the court entered a summary judgment in Dubois' favor. On remand, Dubois sought to compel the Forest Service to reimburse him for attorney's fees and costs.

Loon Mountain Recreation Corporation ("Loon Corp.") operates a ski resort in Lincoln, New Hampshire. Because part of its resort lies within the White Mountain National Forest, Loon Corp. was required to have a special-use permit issued by the Forest Service. In 1986, Loon Corp. applied for an amendment to its permit which would allow it to increase the amount of water it used for snowmaking, from 67 million gallons per year to 138 million gallons. Loon Pond, a rare high-altitude pond within the White Mountain National Forest, is where the Loon Corp. planned to draw the majority of water.

Dubois alleged that the Forest Service violated NEPA by failing to adequately explore reasonable alternatives to using Loon Pond as a primary source of snowmaking water. The Forest Service contended that it did not seriously consider other types of storage ponds because "the sheer enormity of constructing comparable water storage facilities . . . was a practical impossibility." The court of appeals held that the Forest Service violated NEPA because it had failed to adequately consider the possibility of building on-site storage ponds as an alternative to using Loon Pond as a water source for snowmaking.

The rule on fee shifting generally prohibits the prevailing party from collecting attorney's fees from the losing party. One exception, however, allows a district court to award attorney's fees to a prevailing party when the losing party has "acted in bad faith, vexatiously,

wantonly, or for oppressive reasons." Dubois argued that the Forest Service's litigation position in this case was vexatious. Specifically, Dubois noted that the Forest Service claimed artificial storage ponds at Loon Mountain were a "practical impossibility," while at the same time it authorized construction of a similar storage pond nearby.

Dubois claimed the district court erred in its analysis by requiring a finding of subjective bad faith as a necessary precondition to an award of sanctions. The appellate court rejected this argument and concluded that the Forest Service's conduct was not unreasonable. Dubois raised further justifications for attorney's fees that the appellate court refused to hear because Dubois failed to present those same arguments to the trial court. The appellate court therefore denied Dubois motion for attorney's fees, as it could not find any bad faith conduct by the Forest Service.

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United States v. Mass. Water Res. Auth., 256 F.3d 36 (1st Cir. 2001) (holding the district court had discretion to decline injunctive relief to force the Massachusetts Water Resources Authority to install a water filtration system, despite its violation of the Surface Water Treatment Rule promulgated by the United States Environmental Protection Agency under the Safe Drinking Water Act, so long as the court's judgment provided maximum feasible protection of the public health).

The United States Environmental Protection Agency ("EPA") brought an enforcement action against the Massachusetts Water Resources Authority ("MWRA") alleging violations of the Safe Drinking Water Act ("SDWA") and the Surface Water Treatment Rule ("SWTR"). The United States District Court for the District of Massachusetts declined to require installation of a filtration system for past violations, and the EPA appealed. On appeal, the EPA argued that under the SDWA, courts have no discretion to withhold indefinitely a provided-for remedy, such as filtration, if a public water system has violated a substantive requirement of the SDWA.

In 1974, Congress passed the SDWA to protect the purity of the drinking water provided by the nation's public water systems. In 1986, Congress amended the SDWA to require the EPA to develop treatment regimes, and to require that either the states or the EPA prosecute violations of the SDWA and the SWTR. Through these amendments, Congress required that all public water systems, except for systems specifically eligible to receive a variance from the EPA, use disinfection techniques to reduce the live quantities of pathogens in the water supply. Congress also changed the SDWA to provide for filtration of public water systems. Unlike the disinfection mandate, however, Congress did not require all public water systems to employ filtration.