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Miss. River Basin Alliance v. Westphal, 230 F.3d 170 (5th Cir. 2000)

Brian L. Martin

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Miss. River Basin Alliance v. Westphal, 230 F.3d 170 (5th Cir. 2000)

the claims of fraud and breach of contract to the district court, because disputed facts existed concerning when Conoco/Vista discovered or should have discovered the injury.

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Miss. River Basin Alliance v. Westphal, 230 F.3d 170 (5th Cir. 2000) (affirming trial court's grant of summary judgment, and holding the Army Corps of Engineers' Supplemental Environmental Impact Statement for the Mississippi River Mainline Levee Enlargement and Berm Construction Project satisfied NEPA requirements).

Conservation groups brought this appeal to the United States Court of Appeals for the Fifth Circuit after the United States District Court for the Eastern District of Louisiana granted Westphal's motion for summary judgment. At issue was whether the Army Corps of Engineers' ("Corps") Supplemental Environmental Impact Statement ("SEIS") satisfied the National Environmental Policy Act's ("NEPA") requirements for the Mississippi River Mainline Levee Enlargement and Berm Construction Project ("Project"). NEPA required that the SEIS adequately consider cumulative impacts, mitigation issues, and project alternatives. The Fifth Circuit stated it must set aside any action found to be arbitrary, capricious, an abuse of discretion or otherwise not in accordance with the law. The court determined the SEIS did satisfy NEPA.

Under the Project, the Corps was to build and maintain 139 separate flood control measures along the Mississippi River. The project would take thirty-three years to complete. The Corps completed the Project's SEIS in July 1998. The SEIS analyzed four alternatives. The first alternative, the Nonstructural Option, required that the government seek to reduce and reimburse for existing damages. The second alternative, the Landside Borrow Choice, required the Corps use a levees' landside soil for the projects. The third alternative, the Traditional Method, required the Corps use a levees' riverside soil. Finally, the Avoid and Minimize Plan required the Corps to obtain either landside soil from willing sellers or use riverside land if landside soil was not reasonably available. The Corps selected the Avoid and Minimize alternative and further chose not to purchase landside soil, instead using riverside land. A dispute arose because the Mississippi River Basin Alliance and other conservation groups (collectively, "Conservation Groups") believed the Corps should take material from the levees' landside.

The appellate court first reviewed the Corps' cumulative impact analysis to determine if it was arbitrary. The Conservation Groups argued the Corps' analysis was arbitrary in that it directly contradicted relevant evidence. Further, the Conservation Groups claimed the Corps avoided a cumulative impacts analysis by claiming compensatory mitigation resolved the issue. Finally, the Conservation Groups claimed the Corps gave the impression the Project was benign, when it

was not. The court, giving the Corps' decision substantial deference, ruled the cumulative impact analysis was not arbitrary and capricious.

The court of appeals next considered whether the Corps' mitigation analysis was sufficient. The Conservation Groups argued the Corps' mitigation analysis was insufficient. Specifically, the Conservation Groups disputed the Corps' claim that the project's cumulative effect would be nonexistent and all impacts would be fully compensated through mitigation. The Conservation Groups argued the potential impacts, should mitigation fail, were much greater than the Corps conceded. To support their position, the Conservation Groups pointed to mitigation efforts' frequent failure and the Corps' current mitigation backlog. The court agreed that the Conservation Groups made valid points in questioning the probability of mitigation's success. However, the court determined the Corps' evaluation was thorough enough to survive NEPA's process-oriented requirements and survive the arbitrary and capricious review standard.

Finally, the appellate court considered whether the Corps adequately evaluated all alternatives. The Conservation Groups argued the Corps did not. In particular, the Conservation Groups claimed the Corps dismissed the Landside Borrow alternative after only a preliminary screening. Further, the Conservation Groups asserted the Corps' selection was misleading because the stated priority of the Avoid and Minimize alternative was to use landside material. However, the Corps abandoned that option and chose, instead, to use the alternative riverside land for material. The court acknowledged that under NEPA the Corps must rigorously explore and objectively evaluate all reasonable alternatives. The Corps stated it rejected the Landside Borrow alternative because the option conflicted with the Project's purpose—farmland protection. The conflict existed because costs to acquire landside land were excessive, and Project sponsors and residents objected. The court affirmed the district court's summary judgment and held the Corps' analysis was rigorous and thorough, was not arbitrary and capricious, and, thus, did not violate NEPA.

Brian L. Martin

SIXTH CIRCUIT

M/G Transp. Servs., Inc. v. Water Quality Ins. Syndicate, 234 F.3d 974 (6th Cir. 2000) (holding Water Quality Insurance Syndicate's ("WQIS") request for summary judgment should be affirmed because it needed neither to defend nor indemnify M/G Transportation Services, because its underlying insurance claims were based exclusively on the False Claims Act, not the Clean Water Act).

Former employees filed a complaint against M/G Transportation Services ("M/G") alleging M/G (1) knowingly falsified records in