Water Law Review

Volume 4 | Issue 2 Article 39

1-1-2001

S.W. Fla. Water Mgmt. Dist. v. Save the Manatee Club, Inc., 773 So. 2d 594 (Fla. Dist. Ct. App. 2000)

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environmentally, and technically feasible" required a site-specific determination and use of professional judgment.

The final appeal the court considered and reversed involved the ALJ's finding that Chapter 373 granted the District authority to issue water use permits only for "consumptive use of water." The District rules required a wholesale public supply customer to obtain a separate permit for quantities beyond amounts used for consumption. The court's determination hinged on the definition of water for consumption. The court affirmed the District's authority to require wholesale public supply customers to obtain a separate permit to effect conservation requirements.

In its cross-appeal, Pinellas challenged the ALJ's failure to invalidate the requirement that water supply utilities adopt a "water-conserving rate structure." Pinellas argued the District lacked statutory authority. The court agreed with the ALJ, finding consideration of a utility's conservation efforts, including rate structure, appropriate in determining water allocations and applying the reasonable-beneficial test. The court held rate autonomy does not imply exemption from permitting requirements under Chapter 373 and affirmed the ALJ's validation of the rule.

Note: The court substituted this January 4, 2001 opinion for its earlier opinion of September 1, 2000. In this later opinion,the court noted two minor points. First, where the court's September 1 opinion held the proposed regulation applied to wholesalers did not intrude into contracts of public supply permittees and wholesale customers, the substituted opinion declined to rule on this issue. Second, the substituted opinion affirmed that where any portion of the Florida Water Act conflicts with any other state law, the Florida Water Act controls and, thus, here section 373.223(1) would control over section 153.11(1)(b).

Christine Ellison

S.W. Fla. Water Mgmt. Dist. v. Save the Manatee Club, Inc., 773 So. 2d 594 (Fla. Dist. Ct. App. 2000) (holding Southwest Florida Water Management District exceeded its authority by promulgating a rule granting certain exemptions from environmental resource permitting requirements).

South Shores Partners, Ltd., ("South Shores") applied to the Southwest Florida Water Management District ("District") for a permit to develop a 720-acre tract of land. The property had an existing canal system adjacent to Tampa Bay ("Bay"). As part of the project, South Shores proposed to build a connecting waterway between the canal system and the Bay. The Save the Manatee Club feared the proposed waterway would cause an increase in powerboat traffic into the Bay, resulting in boat traffic endangering both the manatee and its habitat.

One of the factors that the District considered when deciding to issue a permit was the impact a proposed development would have on wildlife. South Shores argued it was not required to obtain a permit. South Shores based its argument on a Florida Administrative Code provision that exempted projects from applying for permits where they received prior approval.

Save the Manatee Club petitioned the Division of Administrative Hearings to invalidate the rule. The Administrative Law Judge ("ALJ") concluded the relevant sections in the rule neither implemented nor interpreted any specific power granted by the applicable enabling statute. Thus, the ALJ declared the provision was an invalid exercise of legislative power. The District appealed.

The court reviewed the enabling statute to determine whether it granted specific powers or duties to the District that would authorize the rule. The enabling statute granted the District authority to issue environmental resource permits according to the statutory criteria established in the Florida Water Resources Act of 1972. The statute limited exemptions from the permitting requirements to those that did not allow significant adverse impacts on the environment. The court determined the exemption in the regulation was not based on the absence of a potential impact on the environment, but rather was based on prior approval. Because the statute did not provide specific authority for an exemption based on prior approval, the court agreed with the ALJ and held the rule invalid.

Dawn Watts

Wentworth v. Fla. Dep't of Envtl. Prot., 771 So. 2d 1279 (Fla. Dist. Ct. App. 2000) (holding notice must be duly published or otherwise provided to all substantially affected persons before a party can rely on a Department of Environmental Protection permit grant).

Appellant, George Wentworth, appealed an Amended Final Order of the Department of Environmental Protection ("DEP") partially granting his request for permission to build a boat dock over sovereign submerged lands. Wentworth's property bordered the Indian River Lagoon, where he wished to build both a dock and access pier through the lagoon's mangroves. The lagoon was a State Aquatic Preserve, an Outstanding Florida Water, and subject to special water quality protection, permitting requirements, and DEP oversight.

Wentworth applied to DEP for a "noticed general permit" and the agency consent required to build on sovereign submerged lands. The "noticed general permit" was a pre-approved grant of authority, until and unless DEP notified Wentworth otherwise within thirty days. DEP sent Wentworth notice of agency action and consent to use the sovereign submerged lands. However, DEP did not send such notice to Wentworth's neighbors. In its consent letter, DEP notified Wentworth that neighbors or other substantially affected parties may request an administrative hearing contesting the permit within twenty-