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Alliance to Save the Mattaponi v. Virginia, 519 S.E.2d 413 (Va. Ct. App. 1999)

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VIRGINIA

Alliance to Save the Mattaponi v. Virginia, 519 S.E.2d 413 (Va. Ct. App. 1999) (affirming lower court's finding of waiver of sovereign immunity and appellant's lack of standing).

The City of Newport News ("City") applied to the State Water Control Board ("Board") for a Virginia Water Protection Permit ("VWPP") for its King William Reservoir water supply project. The project would develop a regional water supply to meet the projected need for the area through the year 2040. The project involved damming a tributary between the Pamunkey and Mattaponi Rivers. In December 1997, the Board issued the VWPP to the City with specific conditions.

Four environmental organizations and two individuals ("Alliance") appealed the Board's decision to issue the permit to the circuit court. The Board alleged that sovereign immunity barred the appeal of the issuance of the permit and that Alliance lacked standing to appeal its decision. The court concluded that Alliance lacked standing to continue with their suit, but that sovereign immunity did not bar the suit. The circuit court dismissed Alliance's appeal in September 1998. Alliance appealed the dismissal.

On appeal, the Board reiterated its argument presented to the lower court. The Board first contended that the doctrine of sovereign immunity barred the appeal. It relied on state statutes that provide for judicial review of any permits for the alteration of state waters. The Board argued that because the statute does not specify the type of permit that was subject to judicial review, judicial review was not required for a VWPP. The court disagreed with the reasoning of the Board, and relied on a more generalized reading of the statute supported by precedent. The court concluded that, based on a statutory definition, the King William Reservoir water supply project constituted an alteration of state waters and was subject to judicial review, therefore waiving sovereign immunity.

The Board next claimed that Alliance's suit lacked sufficient standing. The court relied on a three-part test for standing: (1) standing was sufficient if the person suffered actual imminent injury, (2) the injury was fairly traceable to the decision of the Board, and (3) the injury was likely to be redressed by a favorable decision of the court. The court determined that in order for the King William Reservoir water supply project to go forward, the City would have to obtain a section 404 permit for discharge into the waters of the United States from the United States Army Corps of Engineers based on provisions of the Clean Water Act. The issuance of the section 404 permit was independent of the Board's decision to issue a VWPP. Therefore, the court concluded that Alliance's injuries were not fairly traceable to the Board's decision and standing was insufficient. The court then affirmed the holding of the lower court and dismissed the appeal.

Sarah E. McCutcheon