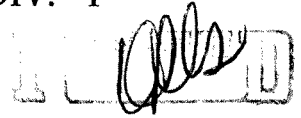


LOUISIANA ENVIRONMENTAL ACTION NETWORK, CITIZENS PROTECTING THE GOOD EARTH, AND TERREBONNE PARISH CONSOLIDATED WATERWORKS NO. 1

NUMBER: 445,019, DIV. "I"



19TH JUDICIAL DISTRICT COURT

VERSUS

WARREN A. FLEET, COMMISSIONER OF CONSERVATION, LOUISIANA DEPARTMENT OF NATURAL RESOURCES, AND GROWTH RESOURCES, INC.

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

JUDGMENT

Pursuant to assignment, this matter came before the Court on Monday, July 10, 2000 for hearing on the Petition for Judicial Review filed by the Plaintiff's, to wit: the Louisiana Environmental Action Network, the Citizens Protecting the Good Earth, and the Terrebonne Parish Consolidated Waterworks Number 1.


Appearances:


Elizabeth E. Teel, Supervising Attorney, and Mark Renken, Student Attorney – for Louisiana Environmental Action Network, Citizen Protecting the Good Earth, and Terrebonne Parish Consolidated Waterworks Number 1

Robert Prejeant – for Terrebonne Parish Consolidated Waterworks Number

R. Joseph Wilson – for Louisiana Department of Natural Resources and the Commissioner of Conservation

Warren E. Byrd – for Growth Resources, Inc.

After reviewing the Petition for Judicial Review, the official Administrative Record of this matter as certified and filed by the Commissioner of Conservation, Louisiana Department of Natural Resources, all of the Memoranda submitted by all of the parties, and after having considered the law and the evidence, and having heard the oral arguments of counsel for all parties, and pursuant to the "Oral Reasons for Judgment" read  and rendered in open court on Monday, July 10, 2000, which are incorporated herein as if set forth herein *in extenso*:

  
AUG 28 2000

IT IS ORDERED, ADJUDGED AND DECREED that Order No. 97-08 CFA, issued on September 22, 1997 by the Commissioner of Conservation, Louisiana Department of Natural Resources, be, and it is hereby, vacated;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this matter is remanded to the Commissioner of Conservation, Louisiana Department of Natural Resources, for further proceedings consistent with these instructions; and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Commissioner of Conservation, Louisiana Department of Natural Resources, and Growth Resources, Inc. shall bear all costs in this matter.

JUDGMENT READ AND RENDERED on Monday, July 10, 2000.

JUDGMENT SIGNED on August 24, 2000, in Baton Rouge,

Louisiana.

I HEREBY CERTIFY THAT ON THIS DAY A COPY OF THE WRITTEN REASONS FOR JUDGMENT / DISMISSAL / ~~JUDGMENT~~ ORDER/ WAS MAILED BY ME, WITH SUFFICIENT POSTAGE AFFIXED TO:

*all parties*  
DONE AND SIGNED ON August 24, 2000

*Jean Dubuc*  
DEPUTY CLERK OF COURT



*R. Michael Caldwell*  
HONORABLE MIKE CALDWELL  
JUDGE, 19<sup>TH</sup> JUDICIAL DISTRICT COURT

CERTIFIED TRUE COPY

APPROVED AS TO FORM:

*Elizabeth Teel*

Elizabeth Teel, Bar Roll No. 21389  
Tulane Environmental Law Clinic  
6329 Freret Street  
New Orleans, LA 70118  
Telephone: (504) 865-5789

JUL 13 2010

BY *William W. Williams*  
DEPUTY CLERK

Attorney for Appellants:  
Louisiana Environmental Action Network, Citizens Protecting the Good Earth, and Terrebonne Parish Consolidated Waterworks No. 1

*R. Joseph Wilson*

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Attorney for Appellee:  
Commissioner of Conservation, Louisiana Department of Natural Resources

*Warren E. Byrd*

Warren E. Byrd, Bar Roll No. 3743  
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Attorney for Appellee:  
Growth Resources, Inc.

FILED

AUG 24 2000

*Jean Dubuc*  
DY Clerk of Court

7180116000

NINETEENTH JUDICIAL DISTRICT COURT  
PARISH OF EAST BATON ROUGE  
STATE OF LOUISIANA  
CIVIL DIVISION "I"

PC  
JUL 10 2000  
*[Signature]*

LOUISIANA ENVIRONMENTAL ACTION NETWORK, ET AL

VS. NO. 445,019

WARREN A. FLEET, ETC.

ORAL REASONS FOR JUDGMENT

MONDAY, JULY 10, 2000

THE HONORABLE R. MICHAEL CALDWELL, JUDGE PRESIDING

|                             |                         |
|-----------------------------|-------------------------|
| APPEARANCES:                | ON BEHALF OF:           |
| ELIZABETH TEEL; MARK RENKEN | PLAINTIFF               |
| ROBERT PREJEAN              | TERREBONNE PARISH, ETC. |
| WARREN BYRD                 | GROWTH RESOURCES        |
| JOSEPH WILSON               | COMM. OF CONSERVATION   |

REPORTED AND TRANSCRIBED BY:

FRANCES SPRUILL, CCR

**CERTIFIED  
TRUE COPY**

JUL 13 2010

BY *Mallory W. Williams*  
DEPUTY CLERK

**FILED**

JUL 11 2000

*Frances Spruill*  
Deputy Clerk

REC'D C.P.

JUL 12 2000

MONDAY, JULY 10, 2000

THE COURT: OKAY. THIS IS SUIT NUMBER 445,019, LOUISIANA ENVIRONMENTAL ACTION NETWORK, ET AL, VERSUS WARREN A. FLEET, ET AL, BEFORE THE COURT ON A JUDICIAL REVIEW OF AN ORDER ISSUED BY THE OFFICE OF CONSERVATION OF THE DEPARTMENT OF NATURAL RESOURCES.

FIRST, LET ME SAY THAT MY AFFINITY FOR BASEBALL MUST HAVE BECOME WIDELY KNOWN THROUGHOUT THE BAR BECAUSE OF THE BASEBALL REFERENCES THAT GET THROWN INTO ORAL ARGUMENTS ALL THE TIME.

I HAVE REVIEWED ALL OF THE BRIEFS AND MEMORANDA THAT WERE FILED, AND I THINK THERE ARE TWO CRUCIAL ISSUES IN THIS CASE.

THE FIRST IS THE DUE PROCESS ARGUMENT, AND THE FACT THAT THE I.T. RESPONSE WAS NOT PART OF THE APPLICATION THAT WAS FILED, AND NOTICE OF ITS SUPPLEMENTATION OF THE APPLICATION BY THE FILING OF THE I.T. RESPONSE WAS NOT GIVEN TO THE PUBLIC OR MADE AVAILABLE TO THE PUBLIC IN TERREBONNE PARISH. WHILE THAT MAY NOT BE A TECHNICAL VIOLATION OF THE STATUTE, I FIND THAT IT VIOLATES THE SPIRIT OF THE DUE PROCESS REQUIREMENT IN THIS CASE.

SECONDLY, AND MORE IMPORTANTLY, I DO NOT FIND THAT THE ORDER ISSUED BY THE COMMISSIONER COMPLIES WITH THE REQUIREMENTS AS SET FORTH IN THE RUBICON CASE BY THE 1ST CIRCUIT IN 1996. THERE THE COURT NOTED THAT IT WAS THE RESPONSIBILITY OF THE REGULATORY DEPARTMENT TO MAKE BASIC FINDINGS SUPPORTED BY EVIDENCE AND ULTIMATE FINDINGS WHICH FLOW RATIONALLY FROM BASIC FINDINGS, AND MUST ARTICULATE RATIONAL CONNECTION BETWEEN FACTS FOUND

AND THE ORDER ISSUED, AND THAT ONLY BY DETAILING ITS REASONING DOES THE DEPARTMENT UPHOLD ITS POSITION AS A PUBLIC TRUSTEE AND JUSTIFY THE DISCRETION WITH WHICH IT IS ENTRUSTED BY THE CONSTITUTIONAL AND STATUTORY AUTHORITY IN A CONTESTED ENVIRONMENTAL MANNER.

AND I FEEL CERTAIN THAT THIS IS A STATE OF THE ART FACILITY. AND I FEEL FAIRLY CERTAIN THAT ONCE THIS MATTER IS REMANDED AND IT GOES THROUGH THE PROCESS, THE OFFICE IS GOING TO ARRIVE AT THE SAME CONCLUSION. BUT THE FACT IS THAT THIS ORDER ISSUED BY THE COMMISSIONER DOES NOT, IN THIS COURT'S OPINION, COMPLY WITH THE REQUIREMENTS OF THE RUBICON CASE. IT GIVES A VERY BOILERPLATE, SIMPLE REFERENCE; IT DOES NOT IN ANY WAY ARTICULATE FOR THE PUBLIC, AS EXPRESSED BY MR. PREJEAN, ANYTHING TO ALLAY ITS FEARS. IT DOES NOT ARTICULATE, TO THIS COURT, DETAILED REASONING WHICH JUSTIFIES THE DISCRETION GIVEN TO THE DEPARTMENT IN THE ISSUANCE OF THIS ORDER.

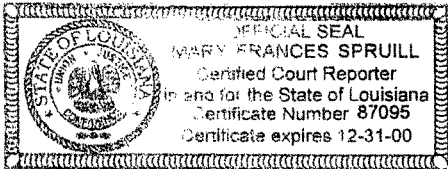
AND FOR THOSE REASONS, I AM GOING TO VACATE THE ORDER AND REMAND THIS MATTER TO THE DEPARTMENT OF NATURAL RESOURCES, OFFICE OF CONSERVATION.

\*\*\*\*\*

CERTIFICATE

I, FRANCES SPRUILL, OFFICIAL COURT REPORTER,  
NINETEENTH JUDICIAL DISTRICT COURT, PARISH OF EAST BATON  
ROUGE, STATE OF LOUISIANA, DO HEREBY CERTIFY THAT THE  
FOREGOING PAGES CONSTITUTE A TRUE AND CORRECT TRANSCRIPT OF  
THE AFORESAID MATTER AS TAKEN BY ME ON THE STENOTYPE MACHINE,  
TO THE BEST OF MY KNOWLEDGE AND ABILITY.

WITNESS MY HAND THIS 11TH DAY OF JULY, 2000.



*Frances Spruill*

FRANCES SPRUILL, CERT. NO. 87095