

SAVE OUR SEBASTICOOK, INC., et al.

v.

DEPARTMENT OF MARINE RESOURCES et al.*

Submitted on Briefs September 16, 2005
Decided October 12, 2005

Panel: SAUFLEY, C.J., and CLIFFORD, ALEXANDER, CALKINS, and
LEVY, JJ.

MEMORANDUM OF DECISION

Save Our Sebasticook, Inc., and its members individually (collectively SOS), appeal from the entry of judgment by the Superior Court (Kennebec County, *Studstrup, J.*) dismissing SOS's complaint as untimely. SOS contends that the Superior Court erred when it (1) held that SOS's declaratory judgment complaint did not state claims upon which relief could be granted and that the action should have been brought as an M.R. Civ. P. 80C complaint; (2) found that SOS's claim was barred by the statute of limitations; (3) refused to consider SOS's claim that

* Where public officials are individually named in complaints challenging only their official actions, we substitute the name of the agency whose action is challenged in the caption of the opinion.

execution of the 1998 KHDG agreement¹ was void *ab initio*; and (4) failed to address SOS's argument that the State's execution of the 1998 KHDG agreement violated constitutional law through an impermissible delegation of the police power.

Assuming, without deciding, that the KHDG agreement, entered as part of a federal dam licensing process, could have been challenged in 1998 as a final agency action pursuant to M.R. Civ. P. 80C, the Superior Court's well reasoned opinion correctly determined that the SOS action was untimely. 5 M.R.S.A. § 11002(3) (2002).

The entry is:

Judgment affirmed.

Attorneys for plaintiff:

Anthony W. Buxton, Esq.
Todd J. Griset, Esq.
Linda S. Lockhart, Esq.
Preti Flaherty Beliveau Pachios & Haley, LLC
P.O. Box 1058
Augusta, ME 04332-1058

¹ The 1998 KHDG agreement was a comprehensive settlement agreement between Central Maine Power Company, the Kennebec Hydro Developers Group, and many federal, state, and local agencies and several private groups with interest in water quality and fisheries. The agreement was intended to govern and fund fisheries restoration and to assist in the removal of the Edwards Dam. It was entered as part of a Federal Energy Regulatory Commission dam relicensing process.

Attorneys for defendants:

G. Steven Rowe, Attorney General
Dennis J. Harnish, Asst. Atty. Gen.
6 State House Station
Augusta, ME 04333-0006

Catherine R. Connors, Esq.
Matthew D. Manahan, Esq.
Pierce Atwood
One Monument Square
Portland, ME 04101
(for FPL Energy Maine Hydro LLC)

William S. Harwood, Esq.
Nora R. Healy, Esq.
Verrill Dana LLP
One Portland Square
Portland, ME 04112-0586
(for American Rivers, Atlantic Salmon Federation, Natural Resources Council of Maine, Trout Unlimited and Kennebec Valley Chapter of Trout Unlimited)