Federal Swamp Land Act Held Not to Preempt State Environmental Laws

The Michigan Court of Appeals has held that under the 1850 Swamp Land Act, Congress intended for states to determine the proper management of swamp land, and thus Federal law did not preempt the states's lawsuit against landowners who constructed three drainage ponds against state environmental laws.

Richard and Nancy Delene owned land on which they constructed three large ponds to control water drainage. The Michigan Department of Natural Resources (MDNR) sued the Delenes in November of 1992 alleging a violation of Michigan's Wetland Protection Act for failing to obtain a permit. The MDNR sought civil fines and a court order against the Delenes to restore the land. When the MDNR served the Delenes with a complaint, the Delenes largely ignored the MDNR's action and failed to defend the suit. As a result, the trial court entered a default judgment against the Delenes and ordered fines and restoration activities.

The Delenes entered a motion for the trial court to set aside the judgment and dismiss the MDNR's lawsuit. When the trial court refused, the Delenes appealed the trial court's judgment to the Michigan Court of Appeals, seeking to set the judgment aside and dismiss the suit. The Court of Appeals was unwilling to set aside the default judgment because the Delenes did not file the proper court documents or meritorious arguments in support of their motions at the trial level. The court did consider the Delene's motion to dismiss, however, because their contention that state law is preempted by the federal Swamp Land Act, 43 U.S.C. § 982, if correct, would merit dismissing the case.

The Court of Appeals summarized three forms of federal preemption of state law by a federal statute:

- Express preemption: Where Congress makes an express statement in the language of the statute that state law is to be preempted, the state law in question is expressly preempted.

- Implied field preemption: Where the state law at issue regulates conduct in a field that Congress intended the federal government to occupy exclusively, Congress is said to have impliedly preempted the field; and

- Implied preemption by conflict: Where it is impossible to comply with both federal and state law or where the state law stands as an obstacle to the accomplishment of Congress' objectives, there is said to be a conflict between the federal and state laws, having the effect of preempting state law.

Quoting the Swamp Land Act, the court noted the Act's purpose "to enable the several States . . . to construct the necessary levees and drains, to reclaim the swamp and overflowed lands therein -- the whole of the swamp and overflowed lands, made unfit thereby for cultivation, and remaining unsold on or after the 28th day of September, A.D. 1850." Thus, the court recognized that the Swamp Land Act expressly intended to entrust states with "an active role in

swamp land management while failing to preclude states from enacting laws to further [the Act's] management goals."

In addition, the Swamp Land Act provides for the Secretary of the Interior to convey swamp land to the states to further facilitate reclamation of swamp lands by the states. Thus, the court reasoned, Congress intended to pass control of swamplands completely into the hands of state legislatures. The court concluded that field preemption could not exist if Congress specifically intended not to regulate these swamplands.

Citing two 19th century U.S. Supreme Court Cases, *Wright v. Roseberry* (1887) and *Mills Co. v. Burlington &MRR Co*. (1883), the Court of Appeals observed that Congress intended to facilitate the states' construction of levees and drains in order to take advantage of the extraordinary fertility of reclaimed lands and to prevent breeding of disease-carrying insects. States were then, and still are today, "in the best position to position to act as stewards for these lands, managing them safely and beneficially through locally relevant laws uncluttered by concerns that may exist at the federal level because of broad distinctions between the nature of swamp lands in different corners of the country."

The court concluded that federal preemption did not preclude the State of Michigan from subjecting the Delenes' land to the state's environmental laws. As a result, the Delenes were not entitled to dismissal of their case, and the trial court's ruling against the Delenes was affirmed.

Attorney General v. Delene, (Mich. Ct. App. No. 204086, Nov. 30, 1999).

This article was prepared by Stuart J. Weiss, an associate in our Environmental Department, and previously appeared in the March, 2000 edition of the Michigan Environmental Compliance Update, a monthly newsletter prepared by the Environmental Department and published by M. Lee Smith Publishers.