

Taleff, et al. v. Department of Fish, Wildlife and Parks
Cause No. DDV-060533, 8th Judicial District, Cascade County
Judge Sandefur

The Department of Fish, Wildlife and Parks (FWP) was gifted 10 acres on Lake Five for a fishing access site (FAS) by a woman in memory of her son. A group of landowners around Lake Five sued the department over the claimed failure of FWP to involve the public in its decision to acquire and develop the FAS on Lake Five. District Court Judge Sandefur issued a preliminary injunction prohibiting the development of the Lake Five FAS pending the outcome of the litigation. In a settlement agreement, FWP agreed to redo the decision process with proper public involvement. After an independent consultant prepared an EA considering all potential sites, FWP made a determination to develop the existing site and the adjoining landowners appealed the decision to the director alleging that FWP did not comply with the Good Neighbor Law, among other things.

MEPA Issues Litigated: MEPA issues are involved, but are not at the heart of the legal issues that are contested.

PRELIMINARY INJUNCTION

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LEGAL UNIT
FISH WILDLIFE & PARKS

MONTANA EIGHTH JUDICIAL DISTRICT COURT, CASCADE COUNTY

SUSAN A. TALEFF, WARD E. TALEFF,
THE LAKE FIVE HOMEOWNERS
ASSOCIATION, an unincorporated
association, JAMES R. WALSH, WALSH
FAMILY TRUST, HAROLD SANDERS,
DONNA SANDERS, GARY McDERMOTT and
VIVIAN McDERMOTT, JAMES SHERWOOD
and KARYN SHERWOOD,

Petitioners,

-vs-

DEPARTMENT OF FISH, WILDLIFE and
PARKS, an agency of the State of
Montana,

Respondents.

Cause No. DDV-06-533

PRELIMINARY INJUNCTION

COPY

The hearing on the Court's *Order to Show Cause* on Petitioners request for a preliminary injunction came before the court on May 24, 2006. Counsel Ward E. Taleff and James R. Walsh appeared for Petitioners. The Department of Fish, Wildlife and Parks was represented by John Lynch and Robert Lane. Also present was agency counsel Martha Williams. James Walsh was sworn and testified. Affidavits and exhibits were filed or introduced and counsel presented argument. The court having considered the evidence and the arguments of counsel, being fully advised in the premises and good cause appearing therefore,

IT IS HEREBY ORDERED THAT Petitioners' request is GRANTED and a

1 preliminary injunction is hereby issued. The Montana Department of Fish, Wildlife and
2 Parks is hereby restrained and enjoined from continuing with construction or development
3 efforts regarding a proposed Fishing Access Site on Lake Five, Flathead County, Montana
4 pending the final resolution of this action and may not issue any notice to proceed, and
5 must advise any agency, contractor or party with whom Fish Wildlife and Parks may have
6 made actual or tentative arrangements for work that, regardless of the provisions of any
7 contract or agreement already in place, no work or development of any kind may take
8 place in connection with the proposed fishing access site at Lake Five, Flathead County,
9 Montana.

10 As and for its reasoning in issuing this preliminary injunction, the Court incorporates
11 herein the bench findings of fact and conclusions of law made and read into the record on
12 May 24, 2006.

13 In view of the apparent mandatory requirements of Section 27-19-306(a), MCA, the
14 court determines security for damages may be required unless waived in the interest of
15 justice pursuant to subsection (1)(b)(ii). Waiver may be by the decision of the court or by
16 consent of the parties. *Stark v. Borner*, 226 Mont. 356, 735 P.2d 314 (1987), affirmed 234
17 Mont. 254, 762 P.2d 857 (1988).

18 Accordingly, in the event the Department of Fish, Wildlife and Parks does not waive
19 the requirement for security or the parties are unable to stipulate to an appropriate bond,
20 either party may request a hearing based upon the procedure in Section 27-19-307, MCA.

21 This preliminary injunction is effective as of May 24, 2006 at 5:45 p.m.

22 Dated this 26 day of May, 2006.

23
24 
25 _____
26 District Judge

27 cc: Ward Taleff
28 James Walsh
John Lynch
Robert Lane

