

V I R G I N I A :

IN THE CIRCUIT COURT OF HENRICO COUNTY

CURLES NECK FARM & DAIRY, INC.,

Plaintiff,

IN CHANCERY

v.

No. C489000632-20

VIRGINIA MARINE RESOURCES COMMISSION,

Defendant.

CONSENT DECREE

This day came plaintiff, Curles Neck Farm & Dairy, Inc., by counsel, and defendant, Virginia Marine Resources Commission, by counsel, and stipulated and agreed as follows:

WHEREAS, this Court has jurisdiction over the subject matter of this proceeding pursuant to Va. Code Ann. § 8.01-184 et seq. and § 8.01-620 et seq. and the parties consenting to this Decree;

WHEREAS, plaintiff is a corporation duly organized and existing under the laws of the Commonwealth of Virginia, and owns approximately 5000 acres of land bordering on the James River in Henrico County, Virginia, known as Curles Neck Farm;

WHEREAS, defendant is an agency of the Commonwealth of Virginia, and, pursuant to Va. Code Ann. § 62.1-3, has authority over activities encroaching upon or over the beds of any bays, ocean, rivers, streams, or creeks which are the property of the Commonwealth of Virginia;

WHEREAS, in late 1968 or early 1969, plaintiff constructed an earthen levee across Curles Creek, a tidal tributary of the James River (hereinafter "the levee");

WHEREAS, a dispute has arisen between the parties regarding who owns the subaqueous bed of Curles Creek;

WHEREAS, defendant contends that the subaqueous bed upon which the levee sits is the property of the Commonwealth of Virginia, and that the levee is subject to defendant's jurisdiction pursuant to Section 62.1-3 of the Code;

WHEREAS, plaintiff contends that it owns the subaqueous bed upon which the levee sits by virtue of a Crown grant, and that defendant has no jurisdiction over the levee;

WHEREAS, plaintiff has commenced this proceeding seeking injunctive relief and a declaratory judgment that it owns the subaqueous bed of Curles Creek and that defendant does not have jurisdiction over the levee;

WHEREAS, the parties have agreed to resolve the controversy between them upon the following terms and conditions: The defendant agrees to issue and plaintiff agrees to accept the permit attached hereto as Exhibit A. Both parties stipulate and agree that neither defendant's issuance of said permit nor plaintiff's acceptance thereof shall be deemed an admission by plaintiff that the subaqueous bed of Curles Creek is the property of the Commonwealth of Virginia or that defendant has jurisdiction over either the subaqueous bed of Curles Creek or the levee. The parties also stipulate and agree that neither defendant's issuance of the permit nor plaintiff's acceptance

thereof shall be deemed a waiver of plaintiff's right or the right of its successors and assigns to file a lawsuit or otherwise seek judicial review (1) challenging defendant's jurisdiction over the levee and the subaqueous bed of Curles Creek should defendant ever proceed to amend, modify, suspend, terminate, revoke or otherwise alter the permit attached hereto as Exhibit A, or (2) for the purpose of establishing title to the levee and/or the subaqueous bed of Curles Creek.

NOW THEREFORE, before the taking of any testimony, upon the pleadings and without any adjudication of any issue of fact or law in this proceeding, and upon the consent and agreement of the parties to this Decree, it is ORDERED, ADJUDGED and DECREED as follows:

1. Defendant shall issue and plaintiff shall accept the permit attached hereto as Exhibit A.
2. The issuance of the permit is without waiver of petitioner's right or the right of its successors and assigns to file a lawsuit or otherwise seek judicial review (1) challenging defendant's jurisdiction over the levee and subaqueous bed of Curles Creek should defendant ever proceed to amend, modify, suspend, terminate, revoke or otherwise alter the permit attached hereto as Exhibit A, or (2) for the purpose of establishing title to the levee and/or the subaqueous bed of Curles Creek.
3. This proceeding is dismissed without prejudice.

ENTER: 5130 189

[Signature]
Judge

We ask for this:

CURLES NECK FARM & DAIRY, INC.

David A. Smart
David A. Smart
McGuire, Woods, Battle & Boothe
One James Center
Richmond, Virginia 23219
(804) 775-4370

A Copy Teste:
MARGARET B. BAKER, Clerk
Margaret B. Baker
Deputy Clerk

VIRGINIA MARINE RESOURCES COMMISSION

Frederick S. Fisher
Frederick S. Fisher
Office of the Attorney General
Commonwealth of Virginia
101 N. Eighth Street
Richmond, Virginia 23219
(804) 786-4729