



Dead Zones & Drinking Water: Dismissal of the DMWW Lawsuit

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On March 17, 2017, and almost two years to the date from when it was filed, the Federal district court in Iowa dismissed the Des Moines Water Works (DMWW) lawsuit. This article updates the series on this issue with a review of the district court's decision (Memorandum Opinion is available from Iowa State, Center for Agricultural Law and Taxation, [here](#)).

Background

Des Moines Water Works (DMWW) filed suit against three counties in Iowa as trustees for drainage districts. The complaint involved increased levels of nitrates in the Raccoon and Des Moines rivers from which DMWW acquires water. DMWW is required to remove those nitrates from the water at substantial cost in order to supply drinking water to Des Moines rate-paying residents. It alleged violation of the Federal Clean Water Act (CWA) and Iowa state water pollution law, as well as common law tort claims for nuisance, negligence and trespass. DMWW also added Constitutional claims for taking of property without just compensation and violation of due process and equal protection rights.

Because the state law claims involved two state entities, the Federal court certified four questions to the Iowa Supreme Court. The Iowa Supreme Court answered those four questions on January 27, 2017. In summary, the Iowa Supreme Court concluded that the drainage districts were immune from state law claims, especially for damages, because as a state entity it had only limited powers (see, *farmdoc daily*, [February 9, 2017](#)). The case went back to the Federal district court to consider the Federal CWA and constitutional claims.

Discussion

The Federal district court dismissed the lawsuit after granting the drainage districts' request for summary judgment. The basis for summary judgment was that DMWW lacked standing to bring the lawsuit. In short, standing is a threshold matter involving the court's jurisdiction or power to decide on a case (see, *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992)). Standing is a Constitutional matter based on the requirement that Federal courts only have the authority to decide cases or controversies. The Supreme Court has formulated a three-part test to determine if a plaintiff has standing. First, there must be an injury to the plaintiff that is actual, concrete and particularized. Second, that injury must be connected to the defendant's conduct and not, for example, due to the actions of a third party. Third, the injury is likely to be redressed or remedied by a decision in favor of the plaintiff. The Supreme Court has made it clear

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that these matters are “not mere pleading requirements but rather [are] an indispensable part of the plaintiff’s case” (*Lujan*, at 561).

The Iowa Supreme Court, in its answer to the certified questions, reaffirmed that drainage districts possess only limited powers under Iowa law. Specifically, drainage districts have the power only to make improvements to drainage infrastructure, such as restoring, maintaining or increasing the flow of water. The limited powers provided to drainage districts greatly complicated the case for DMWW. The Federal district court judge concluded that because of these limited powers, any decision in favor of DMWW was unlikely to be redressed. Accordingly, DMWW lacked standing to bring the lawsuit.

Effectively, the decision means that DMWW lost on a technicality, albeit one that is fundamental to our system of government. DMWW had claimed that the drainage districts constituted a point source subject to CWA regulation and permitting requirements. The court did not reach a decision on that question but concluded that the districts did not have the power under Iowa law to meet the injunctive relief and civil penalties sought by DMWW. In short, “DMWW may well have suffered an injury, but the drainage districts lack the ability to redress that injury” because any remedy for DMWW would involve “duties and powers that the districts simply do not possess under Iowa law” (Memorandum Opinion, at 12-13).

The only question left for the district court was whether the immunity for drainage districts violated DMWW’s Federal Constitutional rights of Equal Protection and Due Process under the Fourteenth Amendment and a taking of private property without just compensation. The district court concluded that because DMWW is itself a public utility created by the State of Iowa it cannot sue the State under the protections of the Fourteenth Amendment. Moreover, DMWW’s concerns about nitrates in the public water supply did not violate fundamental rights that require equal protection or due process. Finally, the property rights DMWW claims for clean water and to use its facilities without pollution, if they exist as property rights, are public rights under state law and not a private right for DMWW. DMWW as a public entity cannot assert a claim for the taking of private property and certainly cannot assert it against the state. The court added that DMWW’s arguments are policy arguments that are the proper concern of the legislature but not legal arguments for a court of law.

Conclusion

Combined, the Iowa Supreme Court and Federal district court decisions are substantial and definitive victories for the drainage districts. The Iowa Supreme Court reaffirmed the limited, but consequential, immunity granted to drainage districts based upon the very limited powers granted to them by the State. Based on the decisions, that immunity appears to protect them not only from state law claims but also from Federal actions under the Clean Water Act. Farmers and landowners in Iowa, and possibly across the tile-drained Midwest, are able to breathe a sigh of relief due to this outcome. The substantial threat from a negative outcome in this novel litigation has been lifted. This does not, however, bring closure to the issue of nutrient loss and water quality because much of the work remains at the state level in response to water quality impairments including the hypoxic zone in the Gulf of Mexico. The decisions may buy everyone time to find more effective and constructive solutions to the nutrient loss challenge, but the issue itself is not going away anytime soon.

Reference

Center for Agricultural Law and Taxation, Iowa State University. *Memorandum and Order Granting Summary Judgment to Drainage Districts and Dismissing Action*, filed March 17, 2017, accessed April 6, 2017. <http://www.calt.iastate.edu/sites/default/files/files-article/1799434-0--7302%281%29.pdf>

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