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Des Moines Water Works Case Update – Partial Ruling

By John Shoup

On January 27 the Iowa Supreme Court ruled that under the Iowa Constitution, Des Moines Water Works (DMWW) cannot win damages for alleged nitrate pollution against the drainage districts of three Iowa counties. DMWW sought monetary and injunctive relief from the upstream drainage districts on claims arising from the cost to remove nitrates from drinking water. This case has received national attention and is viewed as potentially having significant impact on agriculture.

The court's decision, however, did not deal with the remaining claims DMWW has brought under the Clean Water Act (CWA) and Iowa Code Chapter 455B. Those claims continue to be considered by the U.S. District Court for the Northern District of Iowa. The court's ultimate resolution of whether discharges containing nitrate pollution from drainage districts are "point sources" triggering a National Pollutant Discharge Elimination System (or "NPDES") permit will be closely followed by INAgLaw.

As a general review of the DMWW matter, on March 16, 2015, DMWW initiated a federal lawsuit in the U.S. District Court under the CWA against 13 drainage districts situated in Buena Vista, Calhoun and Sac counties. The defendant drainage districts are located in the North Raccoon watershed, which leads to the Raccoon River, which is upstream from DMWW.

The suit accuses the drainage districts of threatening the health of central Iowans by discharging measurable amounts of nitrate from drainage ditches into the Raccoon River without a federal permit, in violation of the CWA. DMWW hoped to recover damages to make up for the costs of running its nitrate removal facility. The lawsuit further alleges that "high nitrate concentrations in the Raccoon River watershed are a direct result of nitrate discharged from agricultural drainage district facilities".



The petition asserts claims falling into two broad categories:

(1) Claims under the CWA and Iowa Code Chapter 455B, the principal Iowa statute enacted to protect the quality of the waters of the State of Iowa, alleging that discharges containing nitrate pollution from drainage districts are “point sources” which should trigger a NPDES permit.

(2) Claims seeking monetary damages and injunctive relief under Iowa common law and statutory theories of public nuisance, statutory nuisance, private nuisance, trespass, negligence, taking without just compensation, due process and equal protection.

In early January, the U.S. District Court judge ruled that the Iowa Supreme Court was best positioned to answer the important issues of state law raised by the second category of claims, specifically the issues of drainage district immunity and monetary damages. The district court then certified four questions to the Iowa Supreme Court. The certified questions and Iowa Supreme Court answers are reprinted below.

Question 1: *As a matter of Iowa law, does the doctrine of implied immunity of drainage districts as applied in cases such as Fisher v. Dallas County, 369 N.W.2d 426 (Iowa 1985), grant drainage districts unqualified immunity from all of the damage claims set forth in the complaint?*

Answer: *Yes. As explained below, drainage districts have a limited, targeted role—to facilitate the drainage of farmland in order to make it more productive. Accordingly, Iowa law has immunized drainage districts from damages claims for over a century. This immunity was reaffirmed unanimously by our court just over four years ago.*

Question 2: *As a matter of Iowa law, does the doctrine of implied immunity grant drainage districts unqualified immunity from equitable remedies and claims other than mandamus?*

Answer: *Yes. Again, Iowa precedent, reaffirmed unanimously by our court just four years ago, recognizes that drainage districts are immune from injunctive relief claims other than mandamus.*

Question 3: *As a matter of Iowa law, can the plaintiff assert protections afforded by the Iowa Constitution’s inalienable rights, due process, equal protection, and takings clauses against drainage districts as alleged in the complaint?*



Answer: *No. Although these constitutional clauses are fundamental to our freedom in Iowa, they exist to protect citizens against overreaching government. Generally, one subdivision of state government cannot sue another subdivision of state government under these clauses. And even if they could, an increased need to treat nitrates drawn from river water to meet standards for kitchen tap water would not amount to a constitutional violation.*

Question 4: *As a matter of Iowa law, does the plaintiff have a property interest that may be the subject of a claim under the Iowa Constitution's takings clause as alleged in the complaint?*

Answer: *No, for the reasons discussed in the answer to Question 3.*

This opinion from the Iowa Supreme Court is a significant development; however, the U.S. District Court must still determine whether the drainage districts are “point sources” under the CWA. The district court trial date remains set for June, 2017.

[Iowa Supreme Court Opinion](#)