



Dead Zones & Drinking Water: Update on the DMWW Lawsuit

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On January 27, 2017, the three Iowa drainage districts sued by the Des Moines Water Works (DMWW) over nitrates in the drinking water supply won a significant victory in a decision by the Iowa Supreme Court. This article follows previous discussions about the nutrient loss issues and the DMWW lawsuit with a review of the Iowa Supreme Court's decision. The Major Pleadings, Orders and Decisions can all be found on [Iowa State University's Center for Agricultural Law and Taxation website](#).

Background

On March 16, 2015, DMWW filed suit against three Iowa drainage districts upstream from Des Moines, and their respective county boards of supervisors as trustees. The suit was filed in Federal District Court as a citizen enforcement action under the Federal Clean Water Act (CWA). The lawsuit also included state law claims including common law tort claims for nuisance, trespass and negligence. The DMWW complaint also included a claim that the drainage districts took DMWW property without just compensation. In short, all of the claims involve nitrate levels in the Raccoon River that DMWW must remove before it supplies drinking water to Des Moines residents. DMWW alleges that the nitrates in the river constitute pollution from farming via drainage of farmland by the districts.

The Federal court submitted or "certified" four questions to the Iowa Supreme Court on the Iowa state law issues. This is a process by which the Federal court receives guidance from the Iowa Supreme Court on matters of Iowa law where there appears to be no Iowa legal precedent that controls or determines the issues. The four questions certified to the Iowa Supreme Court were: (1) whether the drainage districts have unqualified immunity from monetary damages; (2) whether that unqualified immunity also applies to equitable remedies, such as an injunction; (3) whether DMWW can assert claims for inalienable rights, due process and equal protection as against the drainage districts under the Iowa Constitution; and (4) whether DMWW has a property interest that may be the subject of a taking's claim under the Iowa Constitution.

Discussion

In short, the Iowa Supreme Court responded that Iowa drainage districts possess immunity from damages claims and immunity from equitable remedies under Iowa law. The Iowa Supreme Court also

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answered that DMWW as one subdivision of state government cannot sue another subdivision of state government claiming protections under the Iowa Constitution, and that this also held true for the claims of a taking of DMWW property. The following briefly summarizes the court's reasoning and decisions.

First, the Iowa Supreme Court found that Iowa precedent is consistent that drainage districts are immune from lawsuits for monetary damages. This immunity is due to the fact that drainage districts are state entities that have only special, limited powers and duties under Iowa law and the State's Constitution. Under Iowa law, drainage districts exist only for the limited purpose of building and maintaining drainage improvements that help provide for the draining and improvement of agricultural and other lands. This limited statutory authority also means that drainage districts can only be sued to compel them to carry out their limited purpose and not for other equitable remedies under state law. The Iowa Supreme Court refused to overturn this longstanding precedent to allow DMWW to seek monetary damages or equitable remedies as against the drainage districts for nitrate removal.

The Iowa Supreme Court also rejected DMWW's takings claims under the Iowa Constitution, finding that DMWW does not possess any private property rights in the case. The court focused on the fact that the dispute was between public governmental subdivisions and did not involve private citizens. In particular, the court noted that the Raccoon River is owned by the State of Iowa in trust for the public and thus the drainage districts have not unconstitutionally taken DMWW's property. The court added that DMWW does not own the water in the river and that the drainage districts did not deny DMWW access to the water. As such, DMWW does not have a valid takings claim under the Iowa Constitution.

Finally, the Iowa Supreme Court also concluded that DMWW as a public entity was not able to sue the drainage districts, another public entity, under the state constitution over the use of public or state-owned assets. As such, the constitutional claims for inalienable rights, due process and equal protection are not available to DMWW as against the drainage districts for nitrate pollution in the public waterway. The provisions are for the protection of private citizens of Iowa, not for political/public entities as against each other. The court noted that it would not make sense for Iowa citizens to have to pay for litigation between Iowa public entities. Moreover, the court pointed out that DMWW was not deprived of any rights to waters in the Raccoon River simply because of the presence of nitrates in those waters.

Conclusion

The Iowa Supreme Court's decision on the four questions certified to it by the Federal District Court was a significant victory for the drainage districts and a setback for DMWW. The conclusions of the court, however, only applied to the state law claims. The court explicitly emphasized that its decision did not relate to the Federal claims under the Clean Water Act. As such, the Iowa Supreme Court's decision was a victory for the drainage districts but not a complete one. It remains to be seen how the Federal court will decide on the CWA claims and DMWW's novel argument that the drainage infrastructure constitutes a point source, removing it from the agricultural storm water exemption in the statute.

Reference

Center for Agricultural Law and Taxation, Iowa State University. *Des Moines Water Works Litigation Resources*. <http://www.calt.iastate.edu/article/des-moines-water-works-litigation-resources>