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Dayton Prairie Water Ass'n v. Yamhill County, 11 P.3d 671 (Or. Ct. App. 2000)

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OREGON

Dayton Prairie Water Ass'n v. Yamhill County, 11 P.3d 671 (Or. Ct. App. 2000) (holding, for local governments' applications to place a utility facility in exclusive farm use ("EFU") zones: (1) the state statute applies to the need for the facility, not to decisions concerning methods of providing particular public services; (2) a facility may be located on EFU-zoned lands only if there are no feasible sites that are not EFU-zoned; and (3) if the determination is made to place a facility in an EFU zone, the local government is not required to compare alternative EFU-zoned sites and choose the site "least disruptive" to agriculture).

Yamhill County ("County") approved an application by the cities of Dayton and Lafayette to construct water system facilities in an exclusive farm use ("EFU") zone. Dayton Prairie Water Association ("Association") appealed to the Land Use Board of Appeals ("LUBA"). The Association argued the municipalities failed to establish, and the County failed to find, that situating the facilities in an agricultural zone was "necessary." The issue was whether "necessary" in Oregon Revised Statutes section 215.283(1)(d) applied to how local governments addressed identified water shortages, and the extent to which the statute governed decisions about the location of such facilities after need is established.

The Association asserted the statute precluded the use of EFU-zoned land for utility facilities when alternatives exist. The Association stated alternatives included drawing water from a river, implementing water-use efficiencies, and drilling wells outside EFU zones.

LUBA concluded the statute, as construed in case law, was pertinent only to a facility's location once a decision to use a particular facility had been made. LUBA reasoned decisions about the kind of facility appropriate to respond to an identified need may be guided by a number of public policy concerns that have little to do with EFU zoning or policies. LUBA stated, however, that after a decision is made, a utility facility cannot be located on EFU-zoned land unless no feasible sites outside the EFU zones exist. LUBA found the County had not made adequate findings that the reservoir and treatment facility for the project needed to be located on EFU land. LUBA remanded this portion of the decision to the County, and upheld the remainder of the decision.

The Association appealed to the Oregon Court of Appeals the portion of the decision LUBA affirmed. The court acknowledged the statutory language was unclear. The court concurred with LUBA that the Oregon Legislature did not intend to subjugate all other legitimate public policies to the policy favoring agricultural land protection. The

court concluded the statute applied only to the need for the facility itself, but did not apply to the methods of providing particular public services.

Additionally, the court rejected the Association's argument that, in considering an application for a utility facility in an EFU zone, a local government must compare alternative EFU-zoned sites and choose the site that is "least disruptive" to agriculture. The court stated neither the statute nor case law imposes such a requirement on local governments. Therefore, the court held LUBA did not err in affirming the portions of the County's decision related to the intake wells and related facilities.

Note: Through Oregon Laws 1999, chapter 816, section 3, the legislature enacted an extensive provision relating to the general subject of utility facilities in agricultural zones. *See* OR. REV. STAT. § 215.275. The application in this case was filed before that statute took effect.

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UTAH

Longley v. Leucadia Fin. Corp., 9 P.3d 762 (Utah 2000) (mandating strict compliance with statute's public notice requirements where a water right holder's change application had been extended over fourteen years).

Leucadia Financial Corporation ("Leucadia") and Michael Longley ("Longley") held water rights in the Atkinville area, south of the Virgin River. Longley's rights were junior to Leucadia's rights. In 1970, the State Engineer granted Leucadia's change application. Over the next fifteen years, Leucadia received four extensions to effectuate its change. In the fourth extension, the State Engineer cautioned Leucadia that no further extensions would be granted and required proof of appropriation by November 30, 1989. In November 1989, Longley requested notice of any action on Leucadia's application from the State Engineer.

On November 30, 1989, Leucadia filed an unsigned and factually incorrect proof of permanent change. In September 1990, Leucadia simultaneously requested a withdrawal of its false proof, a reinstatement of its original change application, and a fifth extension. The State Engineer's Memorandum Decision rejected the proof of permanent change and declared the change application lapsed.

Upon Leucadia's request for reconsideration, the State Engineer rescinded the Memorandum Decision, reinstated Leucadia's change application, and ordered the fifth extension request reprocessed. After Leucadia refiled its fifth extension request, the State Engineer published notice of the fifth extension with a deadline for filing a