

9-1-1999

## City of Northwood v. Wood County Reg'l Water & Sewer Dist., 711 N.E. 2d 1003 (Ohio 1999)

Lucinda K. Henriksen

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Lucinda K. Henriksen, Court Report, City of Northwood v. Wood County Reg'l Water & Sewer Dist., 711 N.E. 2d 1003 (Ohio 1999), 3 U. Denv. Water L. Rev. 194 (1999).

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high watermark of a river is determined based upon the current condition of the river.

The supreme court concluded that its opinion coincided with case law from other jurisdictions and public policy concerns. In particular, the supreme court noted that the purpose underlying state ownership of the beds of all its navigable waters is to protect the public's right of navigation. Thus, the court found that any policy other than setting the boundary at the current, post-dam waterline would yield absurd results.

*Vanessa L. Condra*

## OHIO

**City of Northwood v. Wood County Reg'l Water & Sewer Dist., 711 N.E. 2d 1003 (Ohio 1999)** (holding that a municipality may exercise the power of eminent domain over public utility facilities of a regional water and sewer district as long as such taking does not destroy the existing public utility).

In 1992, by petition to the Common Pleas Court, several Ohio municipalities formed the Wood County Regional Water and Sewer District ("District"). The City of Northwood ("City"), however, elected not to join the District as a result of an earlier study concluding the City's best interests to own and operate its own water and sewer system was more beneficial. In the meantime, the City's residents received services from the District and many of the facilities owned and utilized by the District in providing such services were located within the City. In 1995, the City made an offer to purchase the District's facilities located in the City. The District rejected the offer and, as a result, the City announced its intent to appropriate the District's facilities within the City.

The District responded by filing a complaint for declaratory and injunctive relief preventing the City from accessing the District's utility lines without authorization. Soon thereafter, the District filed a second complaint seeking a declaratory judgment rendering the City's proposed appropriation unlawful. In late 1995, the City filed a petition for appropriation. The trial court ruled that the City could appropriate the District's utility lines that served only City residents and that the City had no authority to appropriate the District's main lines passing through the City. Both the City and the District appealed. The appellate court held that the City had neither the constitutional nor statutory authority to appropriate the District's property and that the City did not have the power to appropriate the public utility facilities of another political subdivision.

The court allowed a discretionary appeal to decide the issue of whether a municipality may exercise eminent domain over public

utility facilities owned and operated by a regional water and sewer district. The Utility Clause of the Constitution authorized municipalities to exercise the power of eminent domain to acquire existing public utilities. Thus, the court concluded that the City, in exercising its power of eminent domain over the District's facilities within its boundaries, acted within the intended purpose of the Utility Clause. However, a municipality may not exercise its power of eminent domain over the property of another municipal corporation, if the municipality's actions would either destroy the existing use or interfere, leading to destruction of the use. The court broadly interpreted this limitation making necessary the determination of whether the proposed appropriation would interfere with the District to such an extent that it would effectively lead to the destruction of the District itself.

Although recognizing the existence of substantial evidence regarding the effect of the proposed appropriation, because neither the trial court nor the appellate court considered this issue clearly, the court remanded the case for findings as to the effects of the City's proposed appropriation of the District property. If the proposed appropriation would result in the destruction of an existing public use or the destruction, including economic destruction, of an existing public utility operated by the District, the appropriation was prohibited. If no such destructive effect was found, however, the City would rightfully be exercising its power of eminent domain over an existing public use.

*Lucinda K. Henriksen*

## OREGON

**Kinross Copper Corp. v. State, 981 P.2d 833 (Or. Ct. App. 1999)** (holding that the state's decision to deny plaintiff's NPDES permit application did not effect an uncompensated taking of plaintiff's unpatented mining claims).

In 1975, Amoco Minerals Company ("Amoco") staked unpatented mining claims in the North Santiam River Subbasin in the Willamette National Forest. In 1977, the Oregon Environmental Quality Commission ("EQC") promulgated the Three Basin Rule prohibiting any new or increased waste discharges to the North Santiam River Subbasin.

In 1989, Amoco leased the unpatented mining claims to the plaintiff, Kinross Copper Corporation ("Kinross"). Two years later, Kinross developed a plan of operations for a copper ore mining project. The plan required Kinross to discharge wastewater and groundwater pumped from the mine into the North Santiam Subbasin. The plan included obtaining a National Pollutant Discharge Elimination System ("NPDES") permit under applicable state and federal laws.