

1-1-2003

## Arkansas Soil & Water Conservation Conn'n v. City of Bentonville, 92 S.W.3d 47 (Ark. 2002)

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Robert Lykos, Court Report, Arkansas Soil & Water Conservation Conn'n v. City of Bentonville, 92 S.W.3d 47 (Ark. 2002), 6 U. Denv. Water L. Rev. 605 (2003).

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## STATE COURTS

## ARKANSAS

**Arkansas Soil & Water Conservation Comm'n v. City of Bentonville, 92 S.W.3d 47 (Ark. 2002)** (holding the Water Commission acted within its statutory authority in approving a city's water distribution project because substantial evidence supported the Commission's approval and the Commission did not materially alter the proposed project).

The City of Bentonville ("Bentonville") brought suit against the Arkansas Soil and Water Conservation Commission ("ASWCC") in Benton County Circuit Court in response to ASWCC's decision approving the City of Centerton's ("Centerton") water distribution project. The circuit court held that ASWCC exceeded its statutory authority by permitting Centerton to provide water service to customers within Bentonville's five-mile extraterritorial planning area. On appeal to the Arkansas Supreme Court, ASWCC argued there was substantial evidence supporting its decision. Bentonville maintained that ASWCC modified Centerton's proposed project and thus based its approval of the plan not only on incorrect procedure, but insufficient evidence as well. The court reversed and remanded with directions to reinstate ASWCC's decision and held that the Arkansas Water Plan ("Water Plan") provided sufficient authority for the approval and that ASWCC showed it considered all relevant evidence. Therefore, ASWCC's decision was not arbitrary.

ASWCC contended that approving Centerton's project was within its authority and was not arbitrary. Though Bentonville claimed exclusive jurisdiction over the extraterritorial area outside its city limits for providing utilities to residents therein, the Water Plan provides ASWCC with the authority to approve any water development project, denying municipalities the right to proceed with such projects until they receive ASWCC approval through Water Plan compliance. This approval did not deny Bentonville the power to provide water to its own residents, but only permitted Centerton to provide water to residents in its surrounding areas, which Bentonville had no plan to do itself. ASWCC's approval was therefore within the Water Plan's statutory authority.

Bentonville based its contention that ASWCC materially modified Centerton's project by excluding certain areas, and by specifying that a certain regional water system provide the water, on the assumption that Bentonville would annex the disputed area. The court found this scenario highly speculative, especially because the regional water system's role was specified early in the planning process, as well as in the adopted Preliminary Engineering Report ("PER"). As such, any change was neither material, nor even apparent. Bentonville's

additional contention that ASWCC's decision was arbitrary because substantial evidence did not support it was likewise unpersuasive because the PER detailed the project's benefits, cost, feasibility, and necessity. ASWCC also weighed all interested parties' testimony, comments and evidence, including that from engineers and residents confirming the existing water's low quality, and the need to implement new-supply delivery in accord with the Water Plan despite some local opposition.

*Robert Lykos*

## CALIFORNIA

**Santa Clarita Org. for Planning the Env't v. County of Los Angeles, 131 Cal. Rptr. 2d 186 (Cal. Ct. App. 2003)** (holding an environmental impact report must include adequate analysis of actual or projected delivery capacity of its water suppliers in order to provide the public and responsible officials information to make educated approval decisions).

Newhall Land and Farming Company and Valencia Corporation ("Newhall") proposed West Creek, a commercial development, in the Santa Clarita Valley of Los Angeles County. The proposal projected West Creek's water demands could be satisfied largely by water entitlements from the State Water Project ("SWP"). In view of such entitlements, the County of Los Angeles ("County") approved the project. Santa Clarity Organization for Planning the Environment and the Friends of the Santa Clarita River ("SCOPE") petitioned the Superior Court for the County of Santa Barbara to vacate the County's approval. SCOPE argued the actual water available was different than the water entitlements provided in West Creek's environmental impact report ("EIR"). The Superior Court denied SCOPE's petition. SCOPE appealed to the Court of Appeal of California, Second Appellate District, Division Six. The appellate court found the water service portion of West Creek's EIR insufficient and held the County erred in approving the project.

On appeal, SCOPE claimed the EIR did not explain the actual amount of water available for West Creek. It also claimed the SWP could not deliver all promised water entitlements. Citing *Dry Creek Citizens Coalition v. County of Tulare*, the court reiterated an EIR must include adequate detail to allow others to "meaningfully" consider the important issues of the project. Here, West Creek's EIR relied primarily on SWP "entitlements" rather than "actual" water supplies. According to the court, such water entitlements did not provide meaningful detail regarding the project's water supply. Moreover, as in *Planning & Conservation League v. Department of Water Resources*, the