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Le-Ax Water Dist. v. City of Athens, 346 F. 3d 701 (6th Cir. 2003)

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implicated navigable waters and triggered federal regulatory jurisdiction pursuant to the OPA. Thus, the court overruled the lower courts' findings and remanded for consideration of the Needham's remaining defenses.

Dave M. Shohet

SIXTH CIRCUIT

Le-Ax Water Dist. v. City of Athens, 346 F.3d 701 (6th Cir. 2003)
(holding rural water district could not use federal law—intended to protect rural water associations from local governments taking away customers—to require new customers outside of district's state-established geographic boundaries to use the district's services).

A judicial order created the Le-Ax Water District ("Le-Ax") as a rural water district in 1980 after Le-Ax filed a petition in the Athens County Court of Common Pleas. The order specifically defined Le-Ax's geographical territory. University Estates owned 825 acres located in close proximity to, but not within the geographic boundaries of, Le-Ax and the City of Athens, Ohio ("Athens"). For nearly twenty years, Le-Ax maintained an eight-inch water main adjacent to the University Estates property. After deciding to develop the property into a golf course community, University Estates contracted with Athens instead of Le-Ax for water service. Le-Ax then filed suit against Athens in the United States District Court for the Southern District of Ohio seeking to prevent Athens from supplying water to University Estates. Le-Ax argued the agreement for Athens to supply water to University Estates violated 7 U.S.C. § 1926(b). After both parties moved for summary judgment, the district court denied Athens's motion and granted summary judgment in favor of Le-Ax. Athens appealed the summary judgment rulings to the United States Court of Appeals for the Sixth Circuit.

On appeal, the Sixth Circuit first concluded that Congress enacted section 1926(b) ("statute") as part of the Consolidated Farm and Rural Development Act to protect certain federal loans made to water service associations by preventing competition with the recipients of the loans. The statute prohibits local governments from expanding their water service into a rural water district's territory. To use the statute to prevent Athens from providing water services to University Estates, Le-Ax had to prove it: (1) constituted an association as provided by the statute, (2) carried the federal loans defined in the statute, and (3) provided or made services available to the area in dispute. The court held undisputed evidence showed Le-Ax qualified as an association with the proper federal loans under the statute. Additionally, the court determined Le-Ax provided or made service available to the area in dispute after Le-Ax showed it had the physical ability to provide the

service and it held a legal right to do so. In this case, Le-Ax proved the physical ability to provide water because the eight-inch water main adjacent to the property could supply ample water with minimal additional work. Further, Le-Ax proved the legal right to provide water services to University Estates by pointing to Ohio law which gives water districts the right to supply water inside and outside of the district's geographic boundaries.

Even though the Fifth Circuit held Le-Ax met the usual requirements to file a claim under section 1926(b), the court refused to allow Le-Ax to use the statute in this case. Le-Ax claimed it could use the statute to recruit new customers outside of its geographical boundaries. However, the court determined such a broad interpretation would create a monopoly not intended by Congress. The court turned to the legislative history to determine that rural water districts could only use the statute as a defensive measure to prevent local governments from taking the water district's current customers or customers within the geographic boundaries of the water district. The court held water districts cannot use the statute as an offensive tool to force new clients to use the water district's services. Since University Estates was located outside of Le-Ax's geographic boundaries, the court found Le-Ax could not use the statute to force University Estates to contract only with Le-Ax for water services. Therefore, the court reversed the district court's ruling and remanded the case with instructions to enter judgment in favor of Athens.

One member of the court disagreed with the majority by finding the statute does not limit a water district's protected area to politically defined boundaries. Instead, the dissenting judge felt the statute should protect a water district's service boundary from invasion by competing service providers.

David B. Oakley

SEVENTH CIRCUIT

Highway J Citizens Group v. Mineta, 349 F.3d 938 (7th Cir. 2003) (holding an agency implementing a major federal project must adequately take a hard look at any potential environmental impacts pursuant to the National Environmental Policy Act; an agency must sufficiently consider several reasonable alternatives to the extent necessary to make a fully informed decision; and an agency may not segment two projects for the sole purpose of avoiding an Environmental Impact Statement).

The Highway J Citizens Group ("Highway J") filed an action in the United States District Court for the Eastern District of Wisconsin against Norman Mineta, in his official capacity as Secretary of the United States Department of Transportation ("U.S. DOT"), Frederick