



Water district not required to determine if a project is consistent with EPA standards in resolution of necessity

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In 2011, the Swancreek Water District¹ was presented with information that residents in a forthcoming subdivision, Peaceful Valley, would require water service.

Throughout 2011 and 2012, the district also received information that other residents were interested in extending the water main, so they could tie into the district's system. In 2014, the district began plans to loop two water systems and provide water to Peaceful Valley and the other interested residents. The cost of the project was estimated at \$3.56 million. The district would fund the first million through rate increases, fees and other charges, and the remaining \$2.56 million would be financed through the Ohio Water Development Authority with the costs assessed to the affected parcels.

The district deliberated the project in multiple meetings throughout 2014 and 2015. Sharon Niedziewcki and other property owners, who would receive water service and whose properties would be assessed, voiced opposition to the project, arguing that the affected landowners could not afford the assessments. In August 2015, the district passed an ordinance declaring the necessity of the project and, in September 2015, passed an ordinance assessing the affected parcels.



Mark Evans, P.E.

Partner
Cincinnati
513.870.6680
mevans@bricker.com



Sean R. Lehman

Associate
Columbus
614.227.7712
slehman@bricker.com

The opposing landowners subsequently brought suit, seeking to enjoin the project. The challengers raised, among others, two arguments. First, that the board had failed to determine that the project is consistent with Environmental Protection Agency (EPA) standards. And second, that the board failed to make the requisite finding of fact that the project was conducive to public health, safety, convenience or welfare. After extensive briefing and hearings, the trial court agreed with the challengers and found the resolutions to be invalid; the trial court determined that the board had failed to make a finding that the project was consistent with EPA standards and that the board failed to determine that the project was conducive to public health, safety, convenience or welfare.

The district appealed. The court of appeals reversed on both points.

Regarding the board's failure to determine that the project was consistent with EPA standards, the court found that such a determination was not necessary in a resolution of necessity for a project. R.C. 6119.011(G) applies only to resolutions "providing for acquiring, operating, leasing, or constructing" water resource projects. A resolution of necessity declares only that it is necessary to construct a project; a resolution of necessity does not actually provide for the construction of a project. Thus, the determination of consistency with EPA standards was not required here, as "it would be impossible for a board of trustees to find that a project is consistent with environmental protection agency standards when the final plans for the project have not been prepared."

Regarding the board's failure to make a finding of fact that the project was conducive to public health, safety, convenience or welfare, the court held that the district complied with the law. While findings of fact may be "very summary in nature," transcripts of proceedings may not be used as a finding of fact, as the statutes require "separate" findings. However, the court held that the recitals — the "whereas" clauses — in the resolution may properly be construed as a separate finding of fact. Thus, the court held, because the resolution recited that "residents of the area have requested central water services" and "residents ... have requested that the District construct a waterline improvements project to service them," the requisite finding of fact to support the necessity of the project were made.

¹ Niedziewcki v. Swancreek Water Dist., 6th Dist. Fulton No. F-17-004, 2018-Ohio-2865.