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## Stennis v. City of Santa Fe, 2008-NMSC-008, 143 N.M. 320, 176 P.ed 309

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Stennis v. City of Santa Fe, 2008-NMSC-008, 143 N.M. 320, 176 P.ed 309

## NEW MEXICO

**Stennis v. City of Santa Fe, 2008-NMSC-008, 143 N.M. 320, 176 P.3d 309** (holding that a state statute did not invalidate a local ordinance restricting the drilling of new domestic wells, and remanding for further findings of fact concerning whether the municipality filed the ordinance in compliance with the statute).

In 1999, the City of Santa Fe (“City”), a home-rule charter municipality, passed an ordinance that regulated the drilling of new domestic wells (“1999 Ordinance”). The 1999 Ordinance prohibited the drilling of domestic wells inside of the City’s municipal water service area if the applicant’s property was within two hundred feet of a water distribution main. Accordingly, any application to the State Engineer for a permit to drill a domestic well would be subject to review by the City for compliance with the 1999 Ordinance. In 2001, the New Mexico Legislature enacted Section 3-35-1.1, which allowed municipalities to restrict the drilling of domestic wells by ordinance if the applicant’s property was within three hundred feet of the municipality’s water distribution lines. Section 3-35-1.1 further stated that the municipality must file its ordinance with the State Engineer. The 1999 Ordinance remained in effect until March 31, 2004.

Maria T. Stennis (“Stennis”) applied for and received a domestic well permit from the State Engineer on September 24, 2003. Because the 1999 Ordinance was still in effect, the State Engineer notified the City that Stennis’ well could be within the City’s boundaries and was therefore, subject to the ordinance. The City notified Stennis that it required her to get the City’s authorization prior to drilling her well. Despite the City’s objections, Stennis drilled, and the City subsequently ordered her to cease operations. Stennis sought a declaratory judgment from the District Court of Santa Fe County stating that the City did not have the authority to prohibit her from drilling. The district court denied Stennis’ motion and the Court of Appeals of New Mexico affirmed. Stennis sought certiorari from the Supreme Court of New Mexico.

The Court founded its decision on its holdings in a prior case, *Smith v. City of Santa Fe*. First, the Court rejected the City’s argument that Stennis did not have standing to bring a declaratory judgment action. It held that Stennis did not need to exhaust administrative remedies in order to establish standing. In *Smith*, the Court held that a declaratory judgment action, challenging the validity of local laws, was appropriate so long as it did not require findings of fact from the administrative agency. Second, the Court cited *Smith* as prior precedent that the 1999 Ordinance was a proper exercise of the City’s home-rule authority to regulate the drilling of domestic wells. Third, the Court found that Section 3-35-1.1 was not in conflict with the 1999 Ordinance

and therefore, did not negate it. The Court rejected Stennis' argument that Section 3-35-1.1 required the City's ordinance to track the language of the statute. Interpreting the plain language of the statute, the Court held that Section 3-35-1.1 allowed municipalities to regulate domestic wells by ordinance, and did not place any further restrictions on the language of those ordinances. Since the 1999 Ordinance was less restrictive than Section 3-35-1.1, the Court held that the City's ordinance remained in effect despite the Legislature's enactment of the statute.

The Court noted, however, that an issue of material fact remained as to whether the City had filed its 1999 Ordinance with the State Engineer, as required by Section 3-35-1.1. If the City had not done so before Stennis filed her application, it would be unable to enforce the ordinance against her. Accordingly, the Court remanded the case to the district court for further fact-finding.

*Ryan Malarky*

## OREGON

**Harrington v. Water Res. Dep't, 171 P.3d 1001 (Or. Ct. App. 2007)** (holding that the state water resources agency did not need to issue a final order denying reconsideration because denial occurred under operation of law, and that a challenge of the state agency action was available only through judicial review, not declaratory judgment).

Gary A. Harrington ("Harrington") owned property within the Big Butte Creek watershed. On his property, he used impoundments to capture diffuse surface waters, which are waters from rain or melting snows flowing over land and not part of a defined watercourse. In 2002, Harrington applied to the Oregon Water Resources Department ("Department") for permits to appropriate the diffuse surface waters running over his property. The three applications concerned permits for two existing impoundments and a planned third. In March 2003, the Department issued final orders approving applications for the two existing impoundments. However, on May 12, 2003, it issued new final orders that denied the applications and withdrew the original orders. The Department concurrently denied and issued a final order on the third application. The Department denied the applications based on a 1925 Oregon statute that authorized only the City of Medford ("City") to use and benefit from waters within Big Butte Creek, subject to pre-existing water rights. According to the Department, diffuse surface waters fell under the purview of the statute.

On June 25, 2003, Harrington timely filed a request for reconsideration with the Department. The Department responded on March 19, 2004, stating that it had not reconsidered the orders. The response letter did not state it was a final order, nor did it mention anything about appeal rights. On May 13, 2004, Harrington sought judicial re-