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In re New Rochelle, Inc. v. New York, 712 N.Y.S.2d 637 (N.Y. App. Div. 2000)

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the APA in order to allow an informed comment and modification period. If the Department chose not to republish, then the Department would be required to deal with FPE's workplan on a case by case basis. The court both reversed the Department's disapproval of FPE's groundwater component in its remedial workplan and remanded the case back to the agency. The court instructed the agency to determine whether it should re-promulgate the groundwater standards or treat the FPE's workplan on a case by case basis.

Jon Hyman

NEW YORK

***In re New Rochelle, Inc. v. New York*, 712 N.Y.S.2d 637 (N.Y. App. Div. 2000)** (holding a stipulation agreement between New York City and United Water New Rochelle ("UWNR") to provide water during a supply system shutdown nullified: (1) UNWR's claim to review the shutdown determination; and (2) New York City's counterclaims both for a declaration of authority to shutdown and for the costs of providing water during the stipulation agreement period).

New York City ("City") owned and operated an aqueduct as part of a water supply system in the State of New York. United Water New Rochelle, Inc. ("UWNR") and the Village of Briarcliff Manor ("Village") acquired water from this aqueduct under City issued permits. On July 1, 1998, based on a determination by the New York Department of Environmental Protection ("DEP"), the City decided the aqueduct and nearby water chlorination facility needed to be shut down for repairs until mid-September and informed UWNR and the Village of the shut down.

UWNR filed a petition in the New York Supreme Court to review DEP's determination and to enjoin the shut down. The Village intervened. The three parties entered into a stipulation agreement in July 1998, whereby the City agreed to provide chlorinated water to both UWNR and the Village during the duration of the proposed shutdown. Pursuant to the stipulation agreement, the City provided UWNR and the Village with water through September 7, 1998. In its petition answer, the City counterclaimed for a declaration that it had the right both to shut down the aqueduct whenever DEP deemed it necessary and to recover the costs of providing water during the stipulation agreement period.

On March 10, 1999, the Supreme Court of Westchester County reviewed the UNWR and the Village petition and determined their permits were unenforceable because of the City's ability to discontinue the delivery of water. Additionally, the court declared the City did not possess a right to shut down the aqueduct whenever DEP deemed it

necessary and denied the City's claim to recover the costs of supplying water under the stipulation agreement. The City appealed the order to the Supreme Court of New York, Appellate Division.

The appellate court stated the UWNR and the Village petition to review the DEP determination should have been dismissed outright because the City continued to operate the aqueduct and chlorination facility during the stipulation agreement period. Further, the appellate court concluded the City's counterclaim for a declaration that they had a right to shut down based on the DEP determination should have been dismissed because continued operation under the stipulation agreement ended the immediate controversy. Lastly, the appellate court upheld the lower court's dismissal of the City's claims for the costs of providing water under the stipulation agreement on different grounds. Based on its interpretation of the City issued permits, the lower court ruled the City was under no obligation to provide water to UWNR and the Village. The appellate court held that, regardless of the permit terms, the City was bound by the stipulation agreement to provide water unless the parties entered into the agreement under fraud, collusion, mistake, or accident. The appellate court found no evidence to support such a claim. Furthermore, the appellate court found no language within the stipulation agreement that obligated either UNWR or the Village to pay the City for any costs associated with providing water.

Matthew J. Costinett

NORTH DAKOTA

Douville v. Pembina County Water Res. Dist., 612 N.W.2d 270 (N.D. 2000) (holding a county water resource district did not misinterpret the law regarding the removal of unauthorized dikes and did not misapply the law regarding prescriptive easements when it ordered the removal of the landowners' dikes).

Thomas Douville and other landowners ("landowners") appealed the Pembina County Water Resource District's ("District") decision to remove dikes from their land. From 1969 to 1974, these landowners built dikes on their land to control flooding from the Pembina River without obtaining permits. In later, high run-off years, these dikes caused flooding of land downstream. In 1996, downstream landowners filed suit with the District. The relevant statute stated no dams, water conservation devices, or flood control regulation devices, be built within any water management district except as stated in the provisions of the chapter. The District found the dikes were illegal and ordered them removed. The district court affirmed. The main issues the district court addressed were whether the District