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## Chance v. Pub. Water Supply Dist., 41 S.W.3d 523 (Mo. Ct. App. 2001)

Willow Morrow

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filed objections to the report. Prior to any hearings on the objections, the United States sold the property by sealed bid auction in 1995 to John and Maeta McCray *without* the appurtenant water rights.

The McCray's took the United States' place in the subcases and filed a motion for summary judgment arguing the property had been irrigated in both 1985 and 1990. On February 27, 1998, a special master appointed by the SRBA District Court, determined the water rights on the eastern portion of the property had been abandoned when Storer filled in the ditches and installed the sprinkler system. The special master also held the water rights for the entire property had been forfeited due to nonuse, but excluded the twenty-five acres irrigated in 1990. Finally, the special master concluded Shane Rosenkrance's use of Alder Creek water on his own property in 1991 and 1992 did not constitute water rights resumption on the Storer property. The special master gave her report to the SRBA District Court Judge, who adopted the recommendations entirely. The McCrays filed their notice of appeal on September 17, 1999.

The McCray's alleged conditions beyond the control of the water right holder caused the abandonment or forfeiture. Wrongful interference with a water right or failure to use the water because of circumstances over which the water right holder has no control is a defense to forfeiture. According to the McCray's, the 1990 irrigator wanted to irrigate more than the twenty-five acres, but could not because of lack of water and the watermaster's wrongful diversion of the water to his own land. The special master concluded that the watermaster's actions did not wrongly interfere with the water rights because the 1990 irrigator failed to call for the water when he discovered Alder Creek water was no longer flowing to his property. In addition, the special master relied on testimony from the 1990 irrigator that the property was not set up for gravity irrigation, and therefore, could not have been irrigated.

The Idaho Supreme Court applied a substantial and competent evidence standard and affirmed the district court's decision that water rights 34-00600 and 34-00606 were abandoned and forfeited to all but twenty-five acres. The court also rejected the McCray's argument that Shane Rosenkrance resumed the water rights because they failed to prove that any water was put to beneficial use anywhere other than on Rosenkrance's property.

*M. Elizabeth Lokey*

## MISSOURI

**Chance v. Pub. Water Supply Dist.**, 41 S.W.3d 523 (Mo. Ct. App. 2001) (holding detachment of property from Public Water Supply District No. 16 ("District") was proper under applicable Missouri statutes, federal statutes were inapplicable, and detachment would not have a significant adverse effect on the remainder of the District).

Scott and Janice Chance decided to divide their property into two lots. Their home was on one lot served by the City of Independence's ("City") water system. Both the City and Public Water Supply District No. 16 ("District") had water mains next to the second lot. Due to the poor condition in which the District left their property after installing a six-inch water line, the Chances decided to seek service for the second lot from the City. The City refused to serve the second lot unless they petitioned for detachment from the District. The District challenged the Circuit Court of Jackson County's order that the Chances' property, located in that county, be detached from the District. The main issues were whether detachment from the District was proper, whether the City could legally supply the water, and whether the detachment would adversely affect the rest of the District.

The Missouri Court of Appeals held the circuit court did not err in detaching the Chances' property from the District, because the federal statute the District relied on did not apply. The District argued a federal statute protected it from detachment because it was a participant or party to a \$5 million loan from the United States Department of Agriculture. The court found the loan was a new project loan that was not made to the District. Therefore, the statute was not applicable and did not protect the District from detachment of the Chances' property. In the absence of that protection, Missouri statutes provide that voters residing in the District's territory may petition the circuit court for detachment. Therefore, the City's supply of water to the property was proper under established statutory interpretation. The court also held the circuit court did not abuse its discretion in finding the detachment did not amount to a significant adverse effect on the remainder of the District.

The District argued it had an exclusive right to supply water to the Chances' second lot. The court disagreed and found that under another Missouri statute, cities may supply water to properties inside a water district's territory. As a result, the District did not have an exclusive right to supply water.

Finally, the District argued the Chances failed to prove detachment would not have an adverse effect on the remainder of the District, as required under relevant Missouri statutes. The court again disagreed, and decided that one residential water connection does not generate enough income to amount to a significant adverse effect on the remainder of the district.

*Willow Morrow*

**Willamette Indus. v. Clean Water Comm'n**, 34 S.W.3d 197 (Mo. Ct. App. 2000) (holding Willamette Industries' petition should be denied, pending exhaustion of administrative remedies, because the permit's special conditions did not constitute rulemaking, and, thus, were not an exception to the Exhaustion of Administrative Remedies Doctrine).