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## Williamette Indus. v. Clean Water Comm'n, 34 S.W.3d 197 (Mo. Ct. App. 2000)

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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).

Willamette Industries ("Willamette") filed a petition for Declaratory Judgment, Temporary Restraining Order, Preliminary Injunction, and Permanent Injunction against the Missouri Clean Water Commission ("Commission"), the Commission's chairman, the Missouri Department of Natural Resources ("MDNR") and MDNR's director, claiming the new applicable conditions to its storm water permit were illegal and unauthorized. The Cole County Circuit Court issued a Temporary Restraining Order, prompting MDNR and the Commission, among others, to file a motion to dismiss. The motion alleged Willamette failed to exhaust its administrative remedies. The circuit court dismissed Willamette's petition without prejudice, due to Willamette's failure to exhaust the required administrative remedies. The court concluded Willamette was required to exhaust its administrative remedies because no exception to the Exhaustion of Remedies Doctrine covered its petition. Willamette appealed the dismissal.

The Court of Appeals of Missouri, Western District, affirmed the circuit court's dismissal of Willamette's petition for failure to exhaust administrative remedies. However, the court of appeals based its decision upon a different reason. The court recognized that when administrative remedies were available, parties must exhaust such remedies. The court's rationale was that agencies have special expertise and a more fully developed factual record when parties pursue agency channels of relief. The court also noted administrative relief was not required when either the administrative agency lacked authority to grant the relief sought, the agency's relief was inadequate, the issue presented was entirely constitutional, or requiring administrative remedies resulted in either undue prejudice or irreparable harm.

The court of appeals affirmed the dismissal because Willamette's petition did not fall under any statutory exception. The court concluded that all the statutory exceptions to the exhaustion requirement dealt with were actions attacking the validity of rules. The court explained that a rule was a statement of policy of general application and future effect, without regard to specific facts. A rule was not a determination, decision, or order in a proceeding before an agency where legal rights, duties, or privileges were determined after a hearing. Because Willamette's permit was site-specific and of general application, it did not constitute a rule. Since Willamette's conditioned permit was not a rule, the court held none of the exceptions covered the permit and, thus, the Willamette petition was subject to the exhaustion of administrative remedies requirements. Accordingly, the court denied Willamette's petition, pending Willamette's exhaustion of all administrative remedies.

*Kirstin E. McMillan*