

Legally (Relevant



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Do You Need an Injunction?

So much of the law as it relates to the operation of a public water supply system may seem routine, even boring. But sometimes dramatic things can happen, demanding immediate and decisive action. Consider these two examples:

Example 1: Your rural water district buys water from a neighboring city per a wholesale water supply contract. That contract is due to expire in two years. The city recently announced a big rate increase. You've notified the city that the increase is not allowed under the contract and that the district will not pay that rate. A public wholesale district has offered your district a new water supply contract, to

replace the current contract with the city, but your engineer advises that it will take at least six months to design and build the system improvements needed to make that new connection with the wholesale district. On Monday, you receive a letter from the city saying that because the district has refused to pay the new rate demanded by the city, the city has declared default under the contract and will cut off the supply to the district effective midnight on Sunday.

Example 2: You watch as heavy earth moving equipment is unloaded near your city's well field. You learn that the plan is to build a large detention pond near your wells. Neither the dam nor the impoundment will be within 100 feet of any of the city's wells, but part of the 20-foot-high dam will be built on the easement and main water line that transports water from the wells to the city. The city's engineer advises that construction of this dam could damage that main water line, and that once built repair of a leak in that line would be nearly impossible. The site is being staked and construction is set to begin on Monday.

What can you do?

What options do the district and the city have in these two examples? It should go without saying that the first option is to talk – pick up the phone and explain the problem that is being created for the water system, arrange to meet with decision makers as soon as possible and try to find an acceptable resolution. But what if talk doesn't work?

What is an injunction?

An injunction is a court order that restrains a person from doing something that threatens or invades the legal rights of another, or compels another person to do something in order to protect the legal rights of another. It begins by filing a petition in court, specifying the legal rights affected, the threat or damage to be prevented, and asking the court to enjoin the other party to prevent that damage.

Most court actions move slowly – sometimes agonizingly so. This is not necessarily true for a case seeking injunction, due to the availability of a temporary restraining order (TRO). In appropriate circumstances, the court may grant a TRO on an emergency basis, issuing an order restraining the other party before there has been a hearing or even without notice to the other party that the order is being issued. The request needs to be in a very specific form, clearly showing “immediate and irreparable injury, loss or damage” that will result before a hearing can be held.

(KSA § 60-903). The TRO will expire 14 days after it is issued, unless extended. A hearing will be held as soon as possible, when the judge can hear from the parties, including sworn testimony and other evidence, as to why a temporary injunction should remain in place while the case is pending, during which time the case can be developed on a regular schedule toward a final hearing.

How do you get the TRO?

So how would the city or RWD go about getting a TRO/temporary injunction in the two examples mentioned in this article? In the first example, based on legal arguments by

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counsel and the verified petition and affidavits from the district’s engineer and others, the district would explain how terminating the water supply as threatened by the city violates the terms of the contract, and that a replacement supply cannot be secured for at least six months, so that termination would result in depriving the district’s customers of a drinking water supply,

drastically damaging the public health in the process.

In the case of the second example, relying heavily on the professional opinion of the city’s engineer for the harm that would likely result to the city from construction of the pond dam as planned, coupled with counsel’s arguments concerning the city’s rights under its easement, the city would show that damage to the line is likely and that inability to repair a leak to that line following construction could cause a loss of water supply to the city. This would result in severe harm to the public health. Testimony from the fire chief concerning inability to fight fire in the event



of loss of water supply, or even extended delay in repair of that line, would explain how construction of that dam could have dire consequences for the city's safety.

In the appropriate case, like the two examples described above, the water system needs to act fast. Legal counsel needs to be made aware of the threat and possible need for action at the earliest possible time. Counsel needs to be allowed to participate in discussions, interview potential witnesses, review all documents, and otherwise begin making preparations for a possible filing while the situation unfolds.

Going to court is never cheap, and these cases are no exception. It's reasonable to ask for an estimate from counsel concerning likely costs, but this is no time to cut corners. Because of the extraordinary step of obtaining an order without hearing, as with a TRO, or before preparation of the case is complete, as with a temporary injunction, the requirements are very exacting and all necessary resources need to be employed to be successful.

That being said, water systems are more likely than not to succeed with a TRO and temporary injunction in cases like these because of the obvious, severe impact on public health and safety if the public water supply is compromised. Properly presented, the water systems in the two examples are very likely to succeed in their efforts to stop the actions of the adverse parties. Success at the TRO/temporary injunction phases of the case is very likely to cause the parties to renew discussions – discussions that may well result in an agreement that could not have been achieved otherwise.

Conclusion

The decision to go to court should never be taken lightly, and all reasonable efforts to resolve disputes out of court should be exhausted. But, there are some situations that based on their urgency and magnitude may leave a water system with little choice. In certain of these cases, use of the law to obtain an injunction can be a powerful and effective tool.



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