

Blue Mound loses water fight in court

Posted Tuesday, Jun. 25, 2013

BY ELIZABETH CAMPBELL

liz@star-telegram.com

Blue Mound's fight to take control of a privately owned water system dried up in court when a Tarrant County civil court judge ruled that the city lacks the authority to condemn it.

Blue Mound wanted to seize a system owned by Monarch Utilities, a subsidiary of California-based Southwest Water, after struggling with steep rate increases for several years.

State District Judge Dana Womack, however, granted a request for summary judgment by Monarch to dismiss the case.

A week earlier, Blue Mound was dealt another harsh blow when Gov. Rick Perry vetoed legislation that would have allowed the city to get the required state certificate to operate the water system if the court had approved condemnation proceedings.

Chuck Profilet, vice president of Southwest Water, said in a statement that the company is pleased with the judge's ruling.

"We look forward to continuing to provide clean, safe and reliable water and sewer services to our customers in Blue Mound," Profilet said.

But Mayor Alan Hooks said he is prepared to talk to the council about the city's options after the latest setback, including appealing Womack's decision.

"I'm sick to my stomach over this," Hooks said. "I will talk to my council members about" appealing. "This is too big for me to do by myself," he said.

Governor's veto

Perry's veto was mentioned in a letter written by Dan Barrett, the attorney representing Blue Mound. He asked the judge not to let the veto play in to her decision.

State Rep. Charlie Geren, R-Fort Worth, sponsored a bill that would have paved the way for the city to condemn the water system. Under condemnation, the city would have paid Monarch for its property. The bill passed unanimously in the Senate and with one "nay" vote in the House.

Perry vetoed the bill and said in a statement that the legislation allowed a city to condemn a utility's property without making a provision to pay for the value of lost business. The veto also mentioned the pending litigation.

"The fact, however, that the executive, apparently acting on inaccurate information, vetoed the legislation should not overshadow the unmistakable legislative preference illustrated by the margin of passage," Barrett wrote. "Certainly, the stated reason for the veto is simply wrong. Executive error certainly should not serve as the basis for judicial action."

'Slippery slope'

Blue Mound, a small blue-collar community in northwest Tarrant County, took Southwest Water to court in January 2012, hoping to take over the water system after residents complained about water rates that were much higher than those of their neighbors in Saginaw and Fort Worth.

Hooks has said the average Blue Mound customer uses 5,000 gallons a month and pays \$145 a month while Saginaw customers pay around \$45 for the same amount.

In September, three appointed commissioners who would have overseen any condemnation proceedings set the fair market value of the water system that serves Blue Mound at \$2.75 million.

Monarch argued that the general law city doesn't have authority to condemn a private utility.

Stephen Adler, an Austin attorney who represents Monarch, said at the time that “Monarch believes that a government's power is not absolute. If a city is allowed to condemn a private business, then we are all on a slippery slope.”

Elizabeth Campbell, 817-390-7696 Twitter: [@fwstliz](#)

[Looking for comments?](#)