

**2015 American Agricultural Law Association
Annual Meeting – Charleston, South Carolina Oct. 22nd**

Water Quality and Agriculture: Issues Raised by the Des Moines Water Works Litigation Against Drainage Districts in Three Iowa Counties

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- 2. Ten New Things to Know About the Des Moines Waterworks Lawsuit – Sept. 2015.**
- 3. “Help Protect Your Freedom to Farm,”** solicitation brochure from the Iowa Corn Growers Association for donations to the Agricultural Legal Defense Fund.
4. Neil D. Hamilton, “Iowa View: Iowa’s clean water debate: What should we believe?” Des Moines Register, May 26, 2015, p. 11A.
- 5. Sixty-day Notice of Intent to Sue** – letter from Des Moines Water Works Board of Trustees to Rick Hecht, Chairperson of the Sac County Board of Supervisors Trustees of Drainage Districts 32, 42, 65, 79, 81, 83 86 and Joint Drainage Districts 2-51, 19-26, and 64-105, et al, Jan. 9, 2015. (exhibits and maps not included).

Other Sources of Possible Interest

- David Osterberg and Aaron Kline, A Threat Unmet: Why Iowa’s Nutrient Strategy Falls Short Against Water Pollution, July 2014, The Iowa Policy Project.
- Craig Cox and Andrew Hug, Murky Waters: farm pollution stalls cleanup of Iowa streams, Environmental Working Group December 2012.
- William Petroski, “Branstad: ‘Des Moines has declared war on rural Iowa’: He says water works erred with plan to sue 3 counties,” Des Moines Register, Jan. 14, 2015, p. 9A.

- Richard Doak, “Our Water: Agricultural drainage districts could be part of solution to pollution in Iowa, Des Moines Register, March 1, 2015, p. 1OP.
- Bill Northey, “Iowa View: Collaboration is the path forward for water quality,” Des Moines Register, March 9, 2015, p. 13A.
- Grahma Gillette, “Iowa View: Let’s stop denying ag pollution and start fixing it,” Des Moines Register, Aug. 2, 2015, p. 3OP
- Annette Sweeney, “Iowa View: Farmers want to do right thing, but lawsuit is barrier,” Des Moines Register, August 7, 2015, p. 23A.
- “Conservation assistance available,” Des Moines Register, Aug. 2, 2015, p. 4D, see also, “Funds are available for Water Quality Practices,” IDLAS, August 2015, www.cleanwateriowa.gov
- Register’s Editorial, “Iowa Waterways are a Disgrace,” Des Moines Register, Aug. 23, 2015, p. 1OP
- Grahma Gillette, “Iowa View: We need real public discussion of water problems,” Des Moines Register, Aug. 25, 2015, p. 15A.
- Scott Faber, Soren Lundquist and Tim Male, Plowed Under: How Crop Subsidies Contribute to Massive Habitat Losses, Environmental Working Group, Feb. 2012.
- Iowa Department of Agriculture and Land Stewardship, Iowa Department of Natural Resources, Iowa State University College of Agriculture and Life Sciences, Iowa nutrient reduction strategy: a science and technology based framework to assess and reduce nutrients to Iowa waters and the Gulf of Mexico, Iowa State University 2013, www.nutrientstrategy.iastate.edu/sites/default/files/documents/NRSfull-130529.pdf
- Craig Cox, Andrew Hug, and Nils Bruzelius, Losing Ground, Environmental Working Group, 2011.
- Soren Lundquist, Craig Cox and Patrick Mason, Iowa’s Low Hanging Fruit: Stream Buffer Rule = Cleaner Water, Little Cost, Environmental Working Group, Feb, 2015.
- Christopher Doering, “Group Touts Buffer Zones to Reduce Pollution, Des Moines Register, Feb. 4, 2015, p. 12A.
- Fisher v. Dallas County, 369 N. W. 2d 426 (Iowa 1985) ruling drainage districts are not a municipality for purposes of tort liability and that they are immune from tort suits for damages.
- Pacific Coast Federation of Fishermen’s Associations v. Glaser, No. CIV S-2:11-2980-KJM-CKD, Order, U.S. Distr. Court, E. Dist. of California, Sept. 16, 2013, involving return irrigation flows under the Clean Water Act.
- Constitution of Iowa, Article I, section 18, concerning the creation of drainage districts, and Iowa Code Chapter 488 relating to the operation of drainage districts.

Ten New Things to Know About the Des Moines Waterworks Lawsuit – Sept. 2015

1. The Waterworks filed the petition in federal court in early March 2015, see, *Board of Water Works Trustees of the City of Des Moines, Iowa v. Sac County Board of Supervisors as Trustees of Drainage Districts 32, 42, 65, 79, 81, 83 and 86, and Calhoun County Board of Supervisors and Sac County Board of Supervisors as Joint Trustees of Drainage Districts 2 and 51 and Buena Vista County Board of Supervisors and Sac County Board of Supervisors as Joint Trustees of Drainage Districts 19 and 26 and Drainage Districts 64 and 105*; No.: 5:15-cv-04020, Complaint, filed in U.S. District Court, Northern District of Iowa, Western Division, March 16, 2015.
2. The 2015 session of the Iowa Legislature ended with no action being taken on proposed legislation to increase the state's sales tax by 3/8¢ as proposed by the Iowa Water Land and Legacy (IWILL) campaign. William Petroski, "Iowa sales tax hike sent to Senate floor," Des Moines Register, May 1, 2015, p. 12A. This legislation is designed to carry out the wishes of Iowa voters, 60+% of who voted in 2010 to amend the Iowa Constitution to add a protected Natural Resources Fund, a significant portion of which will be used for soil and water conservation. The Legislature did not make any additional "extra" appropriations to address water quality issues, with state spending stay relatively flat at below \$10 million.
3. In May 2015 a new group was launched to attack the DMWW lawsuit, the Iowa Partnership for Clean Water. The group is funded largely by the Iowa Farm Bureau Federation and is being fronted by a number of Iowa politicians including the mayor of Cedar Rapids, a Des Moines city council member and a former Iowa Secretary of Agriculture. Its main purpose appears to be to conduct a public relations campaign and run TV ads opposing the lawsuit. This group should not be confused with the Iowa Coalition for Clean Water a group formed in the fall of 2014 by Iowa commodity organizations to promote adoption of water quality initiatives by farmers, or with the Iowa Agriculture Water Alliance, a still different group made up of government, industry and organizations leaders with the goal of accelerating the pace of water quality improvements in Iowa.
4. In July 2015 leaders of Des Moines business community expressed interest in trying to find a way to negotiate a resolution to the litigation, in part due to concerns over the impact it may have on a "rural-urban" divide in Iowa. Donnelle Eller, "Group seeks water deal," Des Moines Register, July 21, 2015, p. 1A.
5. In August the Governor made comments at a press conference to the effect the DMWW needs to "tone down" its criticism of agriculture or risk jeopardizing any state aid to help resolve its situation. See, William Petroski, "D.M Water Works told to 'tone down' ag criticism," Des Moines Register, July 29, 2015, p. 12A. The DMWW has not asked for any state assistance but instead has argued the state needs to provide more money to farmers interested in water quality.

6. Since the filing of the lawsuit, a variety of farm related groups and leaders have conducted what can be seen either as an educational effort or a “misinformation” campaign on the nature of the lawsuit and the issues involved. Most notably it has been described as an effort to repeal the normal farming exemption under the Clean Water Act, to prevent using nitrogen fertilizer on corn, an obstacle to any progress farmers might consider on water quality, and a threat to every farmer in the state. I addressed some of the issues in “Iowa View: Iowa’s clean water debate: What should we believe?” Des Moines Reg., May 26, 2015, p. 11A.
7. In April the insurance company represented the three counties involved in the suit - the Iowa Communities Assurance Pool - informed the insured it would not pay for the costs of the defense. A number of reasons were given for the denial of coverage including the fact the litigation is between governmental entities and the claims involve pollution. See Joe Sutter, “In water lawsuit, insurers draw a line,” Ft. Dodge Messenger, April 23, 2015. It is important to remember the counties have not been sued, instead their boards of supervisors have been sued but only in their capacity as trustees of the drainage districts.
8. The three counties involved in the litigation – and a number of agriculture organizations – have undertaken a fund raising campaign to help pay for the costs of the defense. The counties have written letters to boards of supervisors in a number of other counties asking for commitments of \$5000 a year for three years. Several counties have agreed to the contributions, for example Greene County, and others have voted not to.
9. It is believed a multi-million dollar defense has been raised, with funds from Iowa farm organizations and other interests, to pay the costs of the litigation. In January 2015 the board of the Agribusiness Association of Iowa (AAI) voted to create the Agricultural Legal Defense Fund, which has been formed as a 501c(3). In the brochures and materials soliciting donations for the fund it is noted “all donations are tax deductible and totally confidential” and there are “no restrictions on personal, business, or corporate contributions.” For an example of a fund solicitation, see the brochure from the Iowa Corn Growers Association, http://www.iowacorn.org/documents/filelibrary/water_quality/180000215_ICGA_brochure_FINAL_8715_66AF48053A172.pdf
10. Federal Judge Mark W. Bennett, issued an order setting the date for trial in August 2016, see *Board of Water Works Trustees of the City of Des Moines v. Sac County Board of Supervisors as Trustees of Drainage Districts 32, 42, 65, 79, 81, 83 and 86, et al.*, No. C15-4020-MWB, Order Setting Trial, Final Pretrial Conference, and Requirements for Final Pretrial Order, U.S. District Court, No. District of Iowa, Western Division, Judge Mark W. Bennett, July 7, 2015, see also, Donnelle Eller, “D.M. water quality lawsuit slated for federal trial in ’16,” Des Moines Register, July 16, 2015, p. 11A.