

ELGIN COURIER

Aqua lawsuits could impact Elgin growth

By **CHARLES WOOD**

Elgin Courier

Litigation by the Aqua Water Supply Corporation against the City of Elgin and other entities might not be as close to being resolved as previous announcements suggested. If the lawsuits go to trial, appeals could delay the final outcome by several years.

With Walmart's recent plans to open a store in Elgin and ongoing construction on the Austin Community College campus, the need to find a quick solution that doesn't put those projects at risk is becoming more urgent for the city.

At issue is ACC's decision to obtain water from the city, rather than Aqua, although the campus was located in Aqua's Certificate of Convenience and Necessity (CCN) territory.

On Oct. 13, Aqua filed a federal lawsuit against the city of Elgin, Austin Community College and the Texas commission on Environmental Quality (TCEQ) to defend its right to supply water to the 98-acre campus. The TCEQ released ACC from the Aqua Water CCN on Oct. 26, allowing it to obtain water from the city.

A new Texas law known as Senate Bill 573 gives landowners with more than 25 acres the right to petition the TCEQ to be let out of its CCN and receive water from another provider. However, Aqua Water contends that the state law will not pass muster with the federal court. Aqua filed a state lawsuit against ACC and the TCEQ seeking to overturn the TCEQ's decision to decertify the campus.

City officials have stated that the city and Aqua had informal agreements in the past and contend that the water supply corporation doesn't have the capacity to supply enough water to the new campus. Aqua contends that it is capable of supplying ACC with some additional construction.

The conflict also extends to neighborhoods in the west part of Elgin that have been supplied by the city since the mid-90s, but are part of Aqua Water's CCN. In a Power Point presentation given to the Aqua board of directors on Aug. 1, Loven estimated that the "city of Elgin owes Aqua in the range of: \$5.6 - \$13 million."

City Manager Greg Vick said the primary risk he sees from the Aqua Water litigation is that "Aqua could shut down economic development on the west side of town." He said he hopes the city can negotiate an agreement with Aqua that will work for both parties, but said, "At this point, Aqua has not shown a very good faith effort to solve the latter."

Elgin City Councilmember Chris Cannon expressed disappointment with the Aqua Water Supply Board. "Aqua was serving the Bastrop area when they went through their growth period," he said. "Now they are doing everything they can to keep us from growing. Elgin is lucky to have three residents on the Aqua board, including the chairman and a past chairman. I would like for the Elgin board members to quit listening to lawyers and do what's right for Elgin. Aqua customers and city customers alike are going to benefit from growth."

Aqua Water General Manager William Loven said he could not comment on the lawsuits on advice from attorneys. He said some legal updates would likely be posted on the Aqua Water Supply Corporation website (www.aquawsc.com) in the near future. Loven said in October that Aqua's main target is the TCEQ, not the city of Elgin. He said federal law protects water supply corporation CCNs from encroachment because it could threaten their ability to repay federal loans.

Phone messages were left with Aqua Water board members who live in Elgin, including Ernest Bracewell, H.C. "Duke" Ducharme and board president Cliff Kessler. Kessler said on Tuesday morning that he could not comment on the advice of attorneys. Messages from the other board members were not returned by press time.

John Burke, who served as General Manager of Aqua Water from 1986 to 2009, said there was a contract at one time, that he thought had probably expired, allowing the city to buy CCN from Aqua Water WSC. Burke said the city and Aqua "had a fairly good working relationship when I was there." Burke would not comment on the ongoing Aqua Water lawsuits.

Aqua Water is being represented by three legal firms. Steve Harris of Oklahoma based Doyle Harris, Davis, Haughey is representing Aqua in the federal lawsuit as is Austin-based firm, Allensworth and Porter. Austin attorney Lloyd Gosselink is representing Aqua in litigation against the TCEQ.

Doyle Harris Davis & Haughey is a firm that specializes in 1926(b) lawsuits, named for a federal law that gives rural water supply corporations exclusive rights to sell water within their CCN service areas.

ACC legal counsel Cobby Caputo said of the lawsuit, "We're in the early stages of litigation and exchanging information with the other parties. More information will be shared as the case develops. Campus construction is under way and on schedule."