

Bond Case Briefs

Municipal Finance Law Since 1971

WSJ: Towns Try to Take Back Water Systems.

Water fights are simmering in small towns across the country this summer, as rate increases irk residents and spur local governments to try to take over privately owned water systems.

Municipalities in Massachusetts, California and Texas have recently filed lawsuits or set ballot measures in a bid to gain control of their water systems. Private firms have defended their rate increases, saying they have had to spend money to improve the infrastructure and are entitled to make a profit.

Residents of Ojai, a small town in Southern California, will vote later this month on whether to fund the purchase of the water system serving them. In Blue Mound, Texas, the mayor has vowed to appeal a July court ruling that prevented his town from operating its water system. Also last month, a trial concluded in Superior Court in Worcester, Mass., in a lawsuit filed by Oxford, Mass., over the sale of its water infrastructure. A judge's ruling is pending.

In the 1980s and 1990s, private water companies pushed to buy or manage municipal systems at the same time the costs of maintaining these systems were rising because of age, which made sales attractive to cities, said Tony Arnold, a University of Louisville law professor who has studied water privatization. "In order to make a profit [and] invest in upgrades to the system, the companies [had] to raise water rates substantially and quickly," he said.

Joseph Zeneski, the town manager of Oxford, said he objects to residents having to pay a consolidated water rate that he said Aquarian Water Co. of Bridgeport, Conn., set for several towns. He thinks towns should pay varying rates because their water comes from different sources and that Oxford is unfairly subsidizing a water-treatment plant in another town. "They don't want to give up the Oxford water system," he said of Aquarion.

John Walsh, Aquarion's vice president of operations for Massachusetts and Connecticut, said Oxford's rates have risen only about 3.4% annually since the system was purchased in 2002.

According to a 2012 report by Food and Water Watch, a group that supports public control of water systems, the privatization trend is waning. Using Environmental Protection Agency data, the group estimated that between October 2007 and October 2011 the number of Americans served by privately owned systems fell 16%, while the number served by public ones rose 8%.

"Communities large and small are increasingly seeking to maintain or revert back to public control of their water systems," said Seth Gladstone, spokesman for the group. Privatization raises costs because of the profits companies must make, he said, adding that customers have more oversight of local systems.

Michael Deane, executive director of the National Association of Water Companies, said although some of the towns attempting to take over their water systems have received a lot of attention, other cash-strapped ones are still turning to private companies. Private community water systems served about 42 million Americans in 2012, and public systems served some 300 million, he said.

Municipalities sometimes keep water prices impractically low, Mr. Deane said. "Oftentimes the city council may not be as responsible as [state] public service commissions in making sure the utility has the funds it needs to make improvements," he said.

Public-service commissions generally regulate private companies but not publicly owned systems.

In Blue Mound, a suburb of Fort Worth, Texas, Mayor Alan Hooks said he would appeal a court ruling that prevented his town from gaining control of its system. Mr. Hooks, who wants to use eminent domain to take over the system, said his own water bill has risen fourfold since 1998.

"You could stand on one side of the street and throw a rock to the other side, to where Fort Worth is, and they'll pay four times less," he said. A chart compiled by Blue Mound indicates rates about 3.5 times higher in Blue Mound in 2012 than in Fort Worth.

Chuck Profilet, vice president of SouthWest Water Co., which provides Blue Mound's water, said Blue Mound's rates rose 63% between 2005 and 2013. But, he said, "It is difficult to compare the rates of a municipality with that of an investor-owned utility because private utilities do not receive tax payments, grants, franchise fees or loans at low municipal bond interest rates."

In Ojai, residents are pursuing a public acquisition of their system from Golden State Water Co. of San Dimas, Calif. On Aug. 27, ratepayers will vote on letting the Casitas Municipal Water District issue bonds for the purchase. The utility has indicated it could use eminent domain if purchase negotiations fail.

A takeover won't be easy, though. "We have said repeatedly that the system is not for sale. We are interested in growing our company," said Golden State Chief Executive Robert Sprowls. "Worst case, if we aren't able to keep the system, we are expecting to get fair market value for the assets."