LOCAL NEWS

Commonwealth Court judge shelves Chester receiver's effort

Headquarters of the Chester Water Authority. The authority had a victory in a state Commonwealth Court ruling. (DAILY TIMES)

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A Commonwealth Court judge has said Delaware and Chester counties must be involved in the legal actions that could change the composition of the Chester Water Authority board.

In October, Receiver Vijay Kapoor modified the Amended Recovery Plan for Chester as part of its bankruptcy proceedings to remove the Delaware and Chester county board members of the Chester Water Authority and to have the city appoint members to a newly constructed five-member board.

The Chester Water Authority filed an objection to this modification with the Commonwealth Court and Commonwealth Court Judge Matthew S. Wolf sustained their objection on the basis that the indispensable parties of Delaware and Chester counties were not participants.

The receiver was also seeking financial information from the Chester Water Authority in this modification. As a stated goal of moving the city toward financial viability, Kapoor has looked toward monetizing the city's water systems, while keeping them in public hands. The most recent deadline for bids for these systems is Feb. 2.

The authority sent out an email advisory through its Save Chester Water Authority communications that read, "2026 is CWA's Year! Let's do this! Commonwealth Court judge DENIED both of the Receiver's initiatives in his Modification of the Amended Recovery Plan."

The Commonwealth Court judge explained that an indispensable party is "a party is indispensable where his rights are so connected with the claims of the litigants that no decree can be made between them without impairing such rights."

The Pennsylvania Judicial Center, home to the Commonwealth Court, in Harrisburg. (AP Photo/Julio Cortez)

“A decree from this Court concluding CWA is subject to the jurisdiction of the Receiver and reverting its governing board back to a pre-Act 73 structure City would undoubtedly impair the rights of Chester and Delaware counties,” the judge stated.

The issue of who actually owns the assets of the Chester Water Authority remain in the hands of the Pennsylvania Supreme Court.

In May, the state Supreme Court heard the case of whether the city of Chester owns the authority assets or whether they belong to the city, Delaware and Chester counties, whom they serve. A ruling has not yet been issued.

“To ask this Court to issue a decision while that appeal remains pending is precarious,” Commonwealth Court Judge Matthew S. Wolf said in the CWA board composition matter.

The authority also acknowledged that the judge said the proceedings cannot go forward unless Delaware and Chester counties are involved and that the state Supreme Court has not yet ruled on the ownership matter.

The Octoraro Reservoir, which is where the Chester Water Authority's water comes from. (DAILY TIMES)

Through the power of the Municipality Authorities Act, the Chester Water Authority was incorporated in the city in 1939. Up until 2012, the city appointed five board members to the authority.

In 2012, the Pennsylvania General Assembly passed Act 73, which resulted in the change of the Chester Water Authority's board composition. Since then, the nine-member board has consisted of three members from the city, three members from Delaware County municipalities served by the authority outside of the city of Chester and another three by Chester County members, since a portion of Chester County is also served by CWA.

Chester Receiver Vijay Kapoor. (PETE BANNAN-DAILY TIMES)

Wolf did note the receiver can choose to litigate the constitutionality of the section of Act 73 that set up the board outside of Act 47 proceedings. Such an issue, Wolf said, would normally be considered by a panel of judges not just an individual judge.

“The determination of CWA’s future deserves patient, deliberate, and thoughtful consideration, particularly where it is possible reasonable minds may differ on disputes as to the nature of its structure,” the judge wrote.

Receiver’s reaction

At a recent Municipal Financial Recovery Advisory Committee meeting, Kapoor spoke about the judge’s ruling.

“I would essentially call this a kind of status quo situation,” he said. “His reasoning was he believed that both Delaware County and Chester County needed to participate in the matter since they appoint representatives to the board … We obviously respect the court’s opinion. We’ve read the decision and we’re going to take the appropriate action in the future.”

Kapoor said the court didn’t express one way or another a ruling on the merits of what he was seeking but rather there were indispensable parties that were not there and as a result, he did not feel comfortable ruling on the matter.

Chester Mayor Stefan Roots said that the county members should be represented on the board.

“It appears to be implied that if Chester is the one to select board members, it seems to be implied that Chester is only going to select people from Chester,” he said. “And the fact that Chester Water Authority services more of Delaware County and Chester

Chester Mayor Stefan Roots. (PETE BANNAN-DAILY TIMES)

County combined than it does the city of Chester, I would think that, if Chester was the entity that selected the board, that it would be considering representation from Delaware County and Chester County as well.

“That seems to be the fair thing to do,” Roots added.

Kapoor said the parameters as dictated by the Municipality Authorities Act would determine the board composition if a court were to approve the plan modification.

“I don’t know if they have to be residents of the community or just receiving services from the authority,” Kapoor said. “I don’t have an answer on that.”

For him, Kapoor said the issue was that Chester be treated like any other municipality in the commonwealth.

It was not clear whether Delaware and Chester counties had any legal interest in being represented in the receiver’s initiative. They would lose seats in a ruling in Kapoor’s favor.

In July, the Chester County commissioners said they want the authority to remain as is in the face of a potential purchase by Aqua PA that is still on the table.

“CWA is an asset that needs to be protected,” Commissioner Josh Maxwell said. “It’s public resources, both in the form of reliable fairly-priced water, and the recreational activities at the Octorara Reservoir enhance Chester County.

“Our residents deserve exactly what they want: CWA in public hands.”