

The Morning News

Local News for Northwest Arkansas

Print Page

Judge Dismisses Lawsuit Challenging Rogers Hookup Fees

By [Lana F. Flowers](#)

THE MORNING NEWS

BENTONVILLE -- Rogers Water Utilities can continue collecting increased water and sewer hookup fees after a judge dismissed a lawsuit challenging the fees.

Benton County Circuit Judge David Clinger ruled Wednesday morning hearing that Monarch Development, its principal Gene Elsey and Rogers resident William Fairchild did not have standing to complain about the fees.

The two men and the development company filed the lawsuit challenging the hookup fees earlier this spring.

Attorney Alan Wooten, representing Rogers Water Utilities, said none of the plaintiffs paid the hookup fees or were billed for the fees, so they didn't suffer any damages and had no right to sue.

Even if they won the lawsuit, the plaintiffs would not be refunded any money, Wooten said.

"There would be no benefit," Wooten said.

Attorney Jeremy Hutchinson, arguing for Monarch Development, Elsey and Fairchild, contended the law allows a resident to file a lawsuit to protect other inhabitants of an area.

"A citizen does not have to pay for the right to hold his government accountable," Hutchinson said.

The increased hookup fees are paid by new water and sewer customers and the money is used to pay for additional water and sewer facilities to serve new developments.

Monarch, Elsey and Fairchild contend the hookup fees really are impact fees that should have been approved by the Rogers City Council, or are an illegal exaction that should have been approved by voters.

Fairchild, in the lawsuit, claimed because the City Council did not consider the hookup fees, he could not lobby the council regarding the fees and was deprived of his right to due process.

Clinger ruled Fairchild could not have been deprived of his due process rights because he did not pay the hookup fees.

Clinger gave Hutchinson 21 days to file additional motions, briefs or pleadings in the case or perhaps find others who paid the hookup fees to serve as plaintiffs in a new lawsuit.

"If a builder had to pay the fee then didn't build anything as planned or was harmed," it's a whole different situation, Clinger said.

Hutchinson said he does not plan to appeal Clinger's dismissal of the lawsuit but will file additional documents within 21 days.

Wooten said Clinger's ruling means Rogers Water Utilities can continue collecting the water and sewer hookup fees. About \$2.9 million had been collected through March.

At a Glance

Hookup Fees

Rogers Water Utilities charges:

- * Access fees of \$300 for water and \$300 for sewer per living unit or commercial subdivision lot.
- * Water meter hookup fees ranging from \$700 for a 5/8ths-inch meter to \$30,000 for a 6-inch meter.
- * Sewer meter hookup fees ranging from \$2,200 for a 5/8ths-inch meter to \$90,000 for a 6-inch meter.

Source: Staff report.