

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF IOWA  
CENTRAL DIVISION**

---

**AMES MUNICIPAL ELECTRIC  
SYSTEM,**

**Petitioner,**

**vs.**

**IOWA UTILITIES BOARD,**

**Respondent,**

**And**

**UNITED STATES DEPARTMENT OF  
AGRICULTURE,**

**Respondent.**

**CASE NO. 4:20-cv-00073-SMR-SBJ**

**RESPONDENT IOWA UTILITIES  
BOARD'S BRIEF IN SUPPORT OF  
MOTION FOR REMAND**

---

**COMES NOW** Respondent Iowa Utilities Board (“Board”), by and through its undersigned counsel, pursuant to 28 U.S.C. § 1447(c), submits its brief in support of its motion for remand the action back to state court, and respectfully states as follows:

**I. PRELIMINARY STATEMENT**

On or about March 26, 2020, Petitioner Ames Municipal Electric System (“Ames”) filed a Motion For Remand and a supporting brief, arguing that removal under 28 U.S.C. § 1442(a)(1) is improper because the necessary requirements for removal do not exist. (Document Nos.14 and 14-1). First, Ames asserted there is no action “against or directed to” Respondent United States Department of Agriculture (“USDA”). (Document No.14-1, pp.4-8). Second, Ames argued removal is improper because USDA does not invoke federal law or rely on any federal defense. (Document No.14-1, pp. 8-9). Consequently, Ames argues, removal under 28 U.S.C. § 1442(a)(1) is inappropriate. (Document No.14, pp. 1-2).

The Board joins Ames’s well-reasoned and well-articulated Motion for Remand and accompanying brief and incorporates the same herein. The Board further moves for remand on the basis that: (1) the statutory authority under which this action is based provides jurisdiction solely in the Iowa district courts, and (2) the state of Iowa has not consented to suit in federal court.

## II. BACKGROUND.

In addition to the information included in the “Background” section of Ames’s Brief in Support of Motion for Remand, the Board notes the following:

Pursuant to Iowa Code § 474.1(1), the Iowa Legislature created the Iowa Utilities Division as a “division”<sup>1</sup> within the Iowa Department of Commerce. The Legislature further created the Board as the “policymaking body” for the Utilities Division. *Id.* Consequently, the Board is a state of Iowa, executive-branch agency created, existing, and operating under Iowa law. The Board possesses no common law or inherent powers and only possesses “that authority or discretion delegated to or conferred upon [it] by law and [may] not expand or enlarge its authority or discretion beyond the powers delegated to or conferred upon” it. *Brakke v. Iowa Dep’t of Nat. Res.*, 897 N.W.2d 522, 533 (Iowa 2017); Iowa Code § 17A.23 (2020).

Generally, the Board’s jurisdiction is limited to the regulation of rates and services of public utilities. Iowa Code § 476.1(1). Under Iowa law, a “public utility” is defined as any person or entity that furnishes gas (by a piped distribution system), electricity, communications services, water (by a piped distribution system), or sanitary sewage or storm water drainage disposal (by a piped collection system) to the public for compensation. *Id.* at § 476.1(3). The USDA is not a “public utility” and the Board has not exercised any general supervisory

---

1. Pursuant to Iowa Code § 7E.2, the “principal administrative unit of the Iowa executive branch is a ‘department’” and the principal subunit of a “department” is a “division.”

jurisdiction over USDA.

### **III. THIS MATTER SHOULD BE REMANDED TO STATE COURT.**

As noted above, Ames moved for remand on the basis that removal under 28 U.S.C. § 1442(a)(1) is improper and with respect to these arguments, the Board joins Ames's position. **A.**

#### **A. Jurisdiction Solely Rests in the Iowa District Court.**

On February 21, 2020, Ames sought judicial review of a Board decision in the Iowa District Court in and for Story County. As noted in paragraph 1 of the Petition, “[t]his is a proceeding for judicial review of administrative agency action in a contested case, pursuant to Iowa Code § 17A.19 (2020).” (Docket No. 11-1).

The judicial review provisions of chapter 17A were created by the Iowa legislative branch to provide the Iowa judicial branch with authority to review decisions made by the Iowa executive branch and are “the exclusive means by which a person or party is aggrieved or adversely affected by agency action may seek judicial review of such agency action.” Iowa Code § 17A.19. *See also City of Des Moines v. City Development Bd.*, 633 N.W.2d 305, 311 (Iowa 2001) (recognizing § 17A.19 is the exclusive method for judicial review of agency action unless another statute expressly provides otherwise). In exercising its judicial review authority under Iowa Code chapter 17A, “the district court acts in an appellate capacity.” *Hill v. Fleetguard, Inc.*, 705 N.W.2d 665, 669 (Iowa 2005). While not truly an “appeal” and only appellate in nature, an Iowa administrative appeal is a “special proceeding” which requires compliance with certain statutory conditions and procedures in order to properly confer jurisdiction in the district court. *Anderson v. W. Hodgeman & Sons, Inc.*, 524 N.W.2d 418, 421 n.1 (Iowa 1994).

Iowa law dictates the form, scope, and substance of an administrative appeal of a state agency decision. Iowa Code § 17A.19(4) directs the form of a petition for judicial review.

Sections 17A.19(8) and (11) sets forth principles of review applicable to judicial reviews. Section 17A.19(10) provides the standards of review, sets the scope of the district court's review authority, and identifies what actions the district court may take following its review. As most relevant to this matter, § 17A.19(2) provides that “[p]roceedings for judicial review shall be instituted by filing a petition either in Polk County district court or in the district court for the county in which the petitioner resides or has its principal place of business.”

Under the state statutory procedures, jurisdiction lies exclusively in the Iowa state district court. While it is true that the Iowa District Court for Story County granted the USDA's request to intervene and even granted (albeit erroneously) USDA's request to be identified as a “respondent,”<sup>2</sup> judicial review actions are not original actions and cannot be combined with other claims. *Black v. University of Iowa*, 362 N.W.2d 459, 462 (Iowa 1985). “Judicial review proceedings are fundamentally different from original actions commenced in the district court [and] have a different jurisdictional base, proceed in a different manner toward disposition, and provide only those types of relief to the successful petitioner which chapter 17A specifically prescribes.” *Id.* Simply put, the scope of a judicial review proceeding is limited to the appellate review of a state agency decision.

For these reasons, this Court possesses no jurisdiction over this administrative appeal. Pursuant to Iowa Code § 17A.19(2), jurisdiction rests exclusively in the state district court, and therefore, this Court should grant the Motion for Remand,

**B. The State of Iowa has not Consented to Suit in Federal Court.**

The United States Supreme Court has “consistently held that pursuant to the Eleventh

---

2. The state district court granted USDA's requests on the same day USDA made its requests, which deprived the other parties, including the Board, an opportunity to respond. Had the Board been permitted to respond, the Board would have advised the state district court of the Iowa Supreme Court's recognition that non-state agencies cannot be named as respondents in judicial review proceedings. *Iowans for Tax Relief v. Campaign Finance Disclosure Comm'n*, 331 N.W.2d 862, 863 (Iowa 1983).

Amendment an unconsenting State is immune from suits brought in federal courts by her own citizens as well as by citizens of another State [and that absent] waiver, neither a State nor agencies acting under its control may “be subject to suit in federal court.” *Puerto Rico Aqueduct & Sewer Authority v. Metcalf & Eddy, Inc.*, 506 U.S. 139, 144 (1993) (citations omitted). The Board did not waive its immunity or otherwise consent to suit in federal court. To the contrary, Iowa has further limited suits challenging agency action to be brought only pursuant to the provisions of Iowa Code § 17A.19 and only brought in Iowa District Court. Further, Congress has not abrogated a state’s “immunity against state law claims brought in federal court.” *Marshall v. State of Washington*, 89 F. Supp. 2d 4, 12 (D.D.C. 2000) (quoting *Mascheroni v. Board of Regents of University of Calif.*, 28 F.3d 1554, 1560 (10<sup>th</sup> Cir. 1994)).

Section 28 USC 1442(a)(1) provides for removal of a state court action to federal court in cases where a claim is “against or directed to” an agency of the United States government. Here, the USDA initiated these proceedings by filing a complaint with the Board against Ames; Ames sought relief from the Board’s administrative decision by filing a petition for judicial review in state district court against the Board; and the USDA brought this proceeding into federal court through removal. . At no stage of these proceedings has a claim ever been asserted by any party “against or directed to” the USDA. Consequently, USDA is not, and never has been, a “respondent” in this case (despite the state court order to the contrary), *see Iowans for Tax Relief v. Campaign Finance Disclosure Comm’n*, 331 N.W.2d at 863. Because USDA cannot be a respondent in a judicial review proceeding under Iowa Code Chapter 17A and because USDA is not a public utility pursuant to Iowa Code §476.1 over which the Board has jurisdiction, the judicial review was never brought against the United States so as to permit removal under 28 U.S.C. § 1442(a)(1). To the extent that USDA’s Removal has created a new suit separate from the judicial review, such suit is both barred from joinder by *Iowans for Tax*

*Relief v. Campaign Finance Disclosure Comm'n*, 331 N.W.2d and barred from prosecution in the Federal Court without the consent of the State pursuant to the 11<sup>th</sup> Amendment.

In sum, neither the state of Iowa nor the Board consented to the jurisdiction or authority of this Court. The Board respectfully posits that without such consent, the Board should not be subjected to suit before this Court, and this Court should not review the Board's decision in an appellate capacity.

#### IV. CONCLUSION.

For the reasons set forth herein, the Iowa Utilities Board respectfully requests this Court grant its Motion for Remand and enter an order remanding this case back to the Iowa District Court for Story County. Respondent Iowa Utilities Board requests such further relief as may be just and equitable under the circumstances.

Respectfully submitted,

/s/ Jon Tack  
Jon Tack (AT0007738)  
Iowa Utilities Board  
1375 E. Court Avenue  
Des Moines, IA 50319  
Telephone: (515) 725-7333  
E-mail: [jon.tack@iub.iowa.gov](mailto:jon.tack@iub.iowa.gov)

/s/ Matthew Oetker  
Matthew Oetker (AT0005843)  
Iowa Utilities Board  
1375 E. Court Avenue  
Des Moines, IA 50319  
Telephone: (515) 725-7300  
E-mail: [matt.oetker@iub.iowa.gov](mailto:matt.oetker@iub.iowa.gov)

ATTORNEYS FOR RESPONDENT,  
IOWA UTILITIES BOARD