



Public Wholesale Water Supply District No. 26 Moves Forward

District Water Supply Uses Water Right Leases

Above shows the currently vacant lot that will be the site of the new wholesale treatment plant.

Public Wholesale Water Supply District No. 26 (PWWS D 26) has been making progress in securing funds and finalizing plans to serve its members. One of the more unique features of this effort includes leasing water rights.

The Kansas Water Appropriation Act (K.S.A. 82a-701, et seq.), in its definition of a water right, states that a water right is a real property right appurtenant to and severable from the land on or in connection with

which the water is used and such water right passes as an appurtenance with a conveyance of the land by deed, lease, mortgage, will, or other disposal, or by inheritance. How water rights are leased will be discussed in greater depth later. The histories of the wholesale district and its members is worth telling first.

The district is composed of the city of Cottonwood Falls, the city of Strong City and Rural Water District No. 1, Chase County. According to the Public Wholesale Water Supply District Act, the purposes of a wholesale district is to secure a source or sources of water on a scale larger than is feasible for individual public water supply systems acting alone, and to sell such water at wholesale to public water supply systems. These public water supply districts can be publicly or privately owned systems. These wholesale districts can also provide services to the publicly owned water systems.

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Chase County was created by an act of the Kansas Territorial Legislature, which was signed by Territorial Governor Samuel Medary on February 11, 1859. The city of Cottonwood Falls was made the temporary county seat at the time the county was established, and a few years later was confirmed by the people to remain the county seat in 1862. A grist mill and dam were built here in 1860, to take advantage of the stable ground adjacent to and the rocky bottom of the Cottonwood River.

When the Santa Fe Railroad was built through Chase County in 1872, the railroad stayed on the north side of the Cottonwood River valley in this area, avoiding the more challenging topography that made Cottonwood Falls a great location for a mill, and missing the county seat by approximately 1½ miles. A station was established to “serve” the county seat which was known as Cottonwood Station. In 1881, the populace of Cottonwood Station voted to change the name of the community to Strong, to “honor” Santa Fe Railroad executive William Barstow Strong. He later became president of the railroad. In 1945, the name was modified to “Strong City”. (The communities of Barstow, California and Stronghurst, Illinois, located on the A.T. & S.F. R.R., are also named after President Strong.)

While Cottonwood Falls held the governmental functions and businesses



Strong City built a softening plant in the late 1970's in, and adjacent to, the east half of the former Strong City High School building. City offices and council chambers are located in the west half of the building, and the former gymnasium, attached to the back of the building now serves as the city shop.

associated with a county seat, Strong City hosted important limestone quarrying and livestock shipping operations. Cottonwood Falls was eventually served by a spur (now abandoned) of the Santa Fe R.R., but for people, horse drawn street cars connected the two towns before automobiles became the preferred choice of personal transportation. Because of the occasionally flooding Cottonwood River, the two communities still are a mile apart, only physically connected by Kansas Highway 177 and its bridge over the

River, and a recently completed walking trail / sidewalk along the highway.

The third member of Public Wholesale Water Supply District No. 26 is Rural Water District No. 1, Chase County, hereafter referred to as Chase RWD 1. It was established in the mid-1970's, and started serving customers in 1979. The city of Strong City has been the source of water for the rural water district since its inception. Chase RWD 1 is located between the City of Strong City and the Chase – Lyon County boundary, primarily north of the Cottonwood River. It also has a water service pipeline that roughly follows the valley of the South Fork of the Cottonwood River from Cottonwood Falls south to near Bazaar. The area within an eighth of a mile or so of the pipeline is also in the district.

Wholesale district identifies needs, solutions

In the last few years, both Strong City and Cottonwood Falls determined that their respective water systems infrastructure were needing



Cottonwood Falls' treatment plant formerly treated surface water, but now it is only used for softening. After construction of the wholesale district plant, it will no longer be used for drinking water production.

upgrades. Cottonwood Falls at one time tried to supplement their groundwater supply by pumping and treating surface water from the Cottonwood River. The operation of their water treatment plant as designed was too expensive for the results that they wanted. Since that time they have relied exclusively on using groundwater, softening and controlling taste and odor. In 1976, Strong City gained possession of the old high school building and used half of it for a new water softening plant. The other half of the building was used for city offices, city council chambers and a workshop. The chemical storage and feeding equipment is quite dated, and the dust in the office side of the building is less than desirable. With both primary water systems at a point in time where upgrades are needed, it became obvious that creating a common wholesale district would allow the three water systems to enjoy higher quality water at a lower total cost.

In June of 2011, the city of Cottonwood Falls, the city of Strong City, the city of Elmdale and Chase RWD 1 entered into a regional water supply planning study. It was determined that the city of Elmdale was not a feasible candidate for inclusion in the wholesale district and in August of 2011, the wholesale district was approved with the current membership. The structure of the district provides for two members on the board from each water system.

At this time, the wholesale district and the three member water systems each have funded projects. Bruce

The modern water tower on the right that has served Cottonwood Falls will be taken down after completion of the wholesale district plant and transmission line construction. It stands within the approach to the Chase County Airport.



Boettcher, P.E., Emporia (Kansas) Branch Manager of BG Consultants, Inc. is the project manager and Brian J. Foster, P.E., in the Manhattan office is project designer. After construction, Public Wholesale Water Supply District No. 26 will hold the responsibility of the raw water delivery, treatment and storage. A new pipeline, of at least a mile in length, will transfer groundwater from the Cottonwood Falls wells to the new treatment plant; that line will cross under the Cottonwood River. A pipeline to deliver raw groundwater from the Strong City wells to the existing treatment plant already exists and will only be modified to connect to the new plant. The new water softening plant will be located just to the west of the existing plant owned by Strong City, in the same city block. New ground storage will be constructed at the site of Strong City's present water storage tank, which will serve all three water systems. The hill on which this

tank will be located is at an elevation greater than 1,350 feet above mean sea level. This is approximately 100 feet higher than the highest parts of Cottonwood Falls. To deliver treated water back to Cottonwood Falls, a new water pipeline from the storage tank will also need to be constructed.

The individual water systems have plans and funding to improve their distribution systems. Cottonwood Falls is replacing the oldest water mains in town and taking down their water tower. Strong City is replacing approximately 23,000 feet of their city's distribution system and will be installing state-of-the-art electronic meters on the wells that should not be affected by mineral deposits, etc. Chase RWD 1 will be replacing approximately 13 miles of the original pipeline in areas where the soils are very rocky and presumably where the majority of their water leaks are located.



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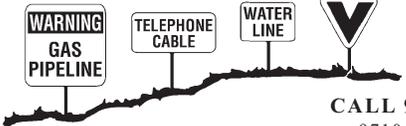
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Water Right leases and changes

One of the more interesting parts of this project to me, as a Water Rights Specialist, is the management of the water rights owned by the two cities. Because the Strong City water rights only authorize the use of water from the Strong City wells to be used within Strong City and Chase RWD 1, and the Cottonwood Falls water rights only authorize the use of water from the Cottonwood Falls wells within Cottonwood Falls, approvals to change the authorized places of use under both city's water rights are necessary from the Chief Engineer of the Division of Water Resources. Applications have been filed and are pending approval to allow water from all of the wells to be used within the boundaries of the three members of Public Wholesale Water Supply District No. 26.

One of the properties of a Kansas water right, as defined by the statute previously quoted, is that a water right is appurtenant to the land on which it is used. From an irrigation perspective, which creates a tremendous bias on Kansas water rights because of the sheer number of irrigation rights and quantities of water authorized, this means that the ownership of the irrigated land determines the ownership of the water right used to provide the irrigation water. The well or surface water pumpsite location has no part in determining ownership. Using this simple logic then could lead a person to believe that each individual customer of a public water system then owns a small, undetermined portion of their public water supply system's municipal water rights. However, K.A.R. 5-5-14(b)(2) states that the ownership of a municipal water right shall be considered to be held by the entity operating and owning the distribution system, removing the individual customers from any claim to any municipal water right.

What happens when a public water supply system agrees to let a wholesale district co-mingle the water from their water rights with the water from another public water supply system's

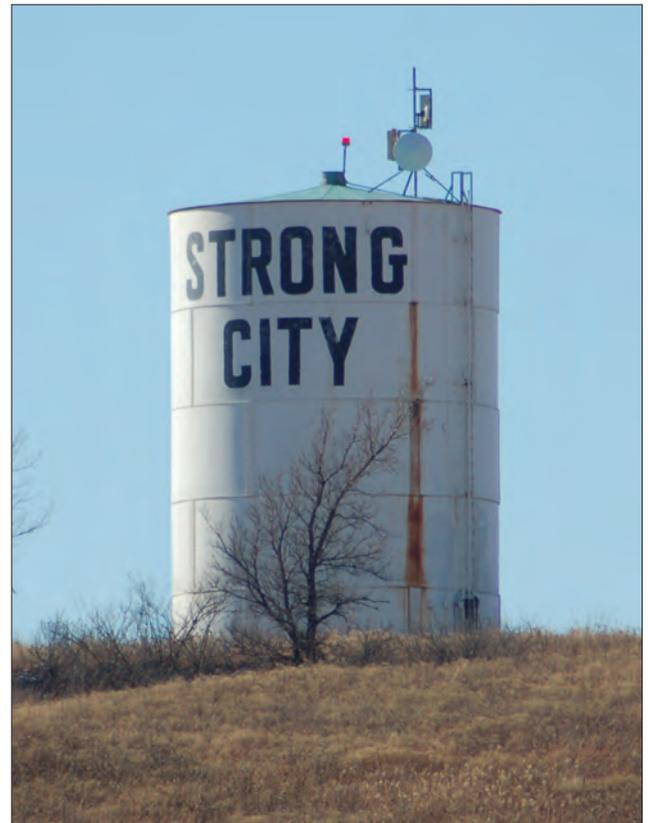
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water rights and redistribute the co-mingled water? Do they become like the individual customers of their own distribution system? It could be easy to say that without documentation, the ownership of the water rights transfers to the wholesale district. Neither Cottonwood Falls nor Strong City was willing to allow this interpretation of the above regulation cloud anyone's understanding of the ownership of their specific water rights. To make the ownership facts perfectly clear, both cities entered into lease agreements with the wholesale district for a period of forty years, which is the life expectancy of the new treatment plant and of the loan received by the wholesale district.

Language in the leases confirms the wells that are subject to the lease and the water rights that authorize those wells, the term of the lease, and the requirement that the wells be operated in compliance with the water rights and

other public water supply system requirements. The leases require the wholesale district to carry liability insurance and state that the cities will be held harmless from all claims and damages from the use of the wells. The wholesale district will be responsible for power costs, maintenance and the costs thereof. The leases contain renewal details and conditions that the leases can be terminated by the cities for failure to provide the annual payment or if a violation of any of the other conditions listed occurs.

Are there other situations where a water right lease is a practical tool for other public water supply systems? I think there probably are. Most of the situations of which I am aware where irrigation water rights were involved were short-term agreements, usually for the remainder of a calendar year. As it becomes more difficult to obtain a permit to develop a new water right, an



The Strong City water storage tank has served as a beacon to westbound travelers on U.S. Highway 50. A new ground storage tank at this same location will replace this tank and serve all members of PWWSD 26.

option could be to offer to lease a water right in lieu of attempting to purchase a water right.

For the same reasons that landowners are unwilling to sell even a small portion of their land for a municipal use water well to a city or rural water district, there may be water right owners who have water rights that they aren't willing to sell, but are willing to lease the water right for a period of time longer than a year.

Under current Kansas water law, an application to change the authorized use made of water of the leased irrigation water right to municipal use would likely require a permanent reduction of the authorized annual quantity to prevent an increase of consumptive use under the water right.

If a public water supply system is able to negotiate a lease agreement with the owner of an irrigation water right, attempting to change this water right might not be a good option for the owner. Under current Kansas water law, an application to change the authorized use made of water of the leased irrigation water right to municipal use would likely require a permanent reduction of the authorized annual quantity to prevent an increase of consumptive use under the water right. Once the quantity is reduced by an approval to change the use made of water, there is no provision to allow the quantity to return to its previously certified irrigation quantity if the water right would be changed back to irrigation.

Irrigation wells are almost never allowed to be used as public water supply wells, as they are usually not constructed to the same standards

required of public water supply wells. If an irrigation water right was leased, a new well that meets these higher standards will be required by the Kansas Department of Health and Environment. It would probably be preferred by the lessee and lessor that the municipal well would be an appropriate distance (not too far, but not too close) from / to the irrigation well and the center of the farming activity. The proposed lease would also include provisions for a location of the new well, if the water system wants to locate the new well on the property of the lessor. If the water system already has a well in the immediate area, or has a lease for a well site on other property, this might not be necessary. Again, while an application for approval to change the point of diversion could be filed to authorize a more convenient location for a new well, there is no guarantee that an application to return to the original irrigation well location will be approved in the future.

Term Permit Option

The alternative to requesting changes to the permanent irrigation right is to file an application for a term permit, which proposes:

1. A well location near the location of the leased water right's well
2. An annual quantity which is not in excess of the calculated annual consumptive use of the irrigation right
3. A rate of diversion not in excess of the authorized rate of diversion of the irrigation right, and
4. A request to acknowledge the proposed lease and acceptance of the suspension of the use of the irrigation water right during the term of the lease, constituting due and sufficient cause for non-use

It appears that the current language in the regulation for Term Permits, K.A.R. 5-9-1b, Approvals and

extensions of term permits, may reduce the potential for water right leases, especially if a new well is required to be drilled. This regulation states that Term Permits have a maximum life-span of five years, unless the use of water is for either contamination remediation use (20-year initial term, 40-year maximum with approved extensions), hydraulic dredging use (10-year initial term, 30-year maximum with extensions) or fire protection use (20-year initial term, 30-year maximum with extensions). If the Division of Water Resources (DWR) can be shown that leasing water rights is a viable alternative to the outright purchase of a water right when there are few willing sellers, it's a possibility that they will support a reasonable modification of the regulation, to allow a longer initial term and total term for municipal use that economically justifies the drilling of a new well. Without a waiver of the regulation, a water system would have to file a new Term Permit application every five years over the life of the lease.

Congratulations should be given to Public Wholesale Water Supply District No. 26 and the individual members of the wholesale district for working together and jointly improving their water systems. They're an example of cooperation – with innovation.

If you or your governing body have any questions about water rights, or source water protection, please remember that Kansas Rural Water Association should be your first stop for unbiased advice. You can reach me at directly at 785/640-4701, or call KRWA at 785-336-3760.

Douglas S. Helmke has been the Water Rights Tech at KRWA since June 2000, and also a Wellhead / Sourcewater Protection Tech since 2003. He holds professional geologist certification in Kansas and Missouri. Doug

received a B.S. degree in geology from Kansas State University.

