



Playing Well With Others – or, When Good Intentions Go Bad

If you have read any of my previous articles in *The Kansas Lifeline*, then you will recall that I am a huge proponent of cooperative behavior between small utilities. Personalities and political agendas aside, customers are often better served when small towns and water districts work together in the long term to plan for future growth and infrastructure development and work together in the short term to handle operations and maintenance. You will also recall that I like using real life examples to illustrate these opportunities, because it's easier for people to relate to true stories. And let's face it. Sometimes you just can't make this

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stuff up! However, as much as I promote cooperative efforts, sometimes the best-intentioned joint projects fail during the execution phase, because the small utilities do not have the basic procedures in place. There is no way to foresee every issue that will arise during a joint project, but when problems do arise they can test a board's or council's ability to function effectively and demonstrate the need for the core competencies that I routinely write about. Throw in some state/federal funding agencies with inflexible deadlines and you have a recipe for disaster. On the surface the project that I'm going to discuss had the hallmarks of a true success story. However, as you will see it illustrates many of the hidden weaknesses that exist in some small utilities and the way in which those weaknesses become magnified during a joint project.

This is the story of the prison that almost wasn't. As those of us who live in rural areas know, while we wish we didn't need them, prisons can be a viable form of economic development. They bring state jobs to rural areas and stimulate local businesses as well. They also use lots of water – lots and lots of water! So a small town (less than 1,000 customers) in a rural area without very much economic infrastructure decided to compete for a new maximum security prison. And they were one of the two finalists. In fact they were the better candidate except for one issue – water. When the state officials had initially toured the site, they assumed that the big new water tower near the proposed prison site was going to serve the prison. When the state realized that this was not

the case, it was a big hiccup. The tiny town had just one modest well and the state's Request for Proposal did not allow enough time (nor did the town have the money) to drill a new, high capacity well in order to serve the prison. As is so often the case in rural areas, the boundary lines between the town and the water district had become blurred over time. The water district did not have an up to date system map (red flag #1) and had one field employee, close to retirement age, who had made some handwritten notes on the original wall map of the system, circa 1970, but mostly kept the system map in his head (red flag #2). The town also did not really have a map which delineated all its annexations over time and accurately depicted its water system boundaries (red flag #3). The water district actually owned the well that the prison officials had noticed, and the town was surrounded by water district territory. And no one realized it at first but the proposed prison was going to be situated in water district territory that had been annexed by the city years earlier for an industrial park that never materialized.

In fact, the town had appeared to annex parcels of land around the town as well as the land for the industrial park/prison site and provide water service to homes all around its boundaries without either the water district or the town paying any attention to the territorial encroachments (red flag #4). Some "rural subdivisions" and individual homes had sprung up around the town, and some of the homes were served by the town and some were served by the water district. These were often next door to one another (red flag #5). Utility employees would be able to figure this out on service calls by digging up a line and looking at what kind of pipe was installed or by calling the water district employee and asking him.

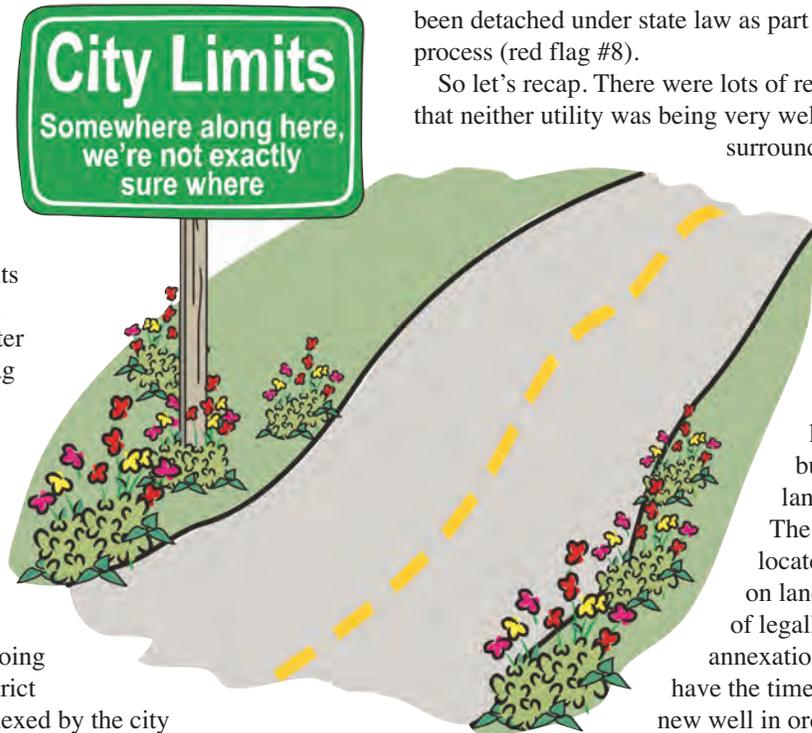
Just to add to the complexity, the water district still had some of its original USDA loans on the books (red flag #6). Using a second USDA loan had also installed the high capacity well next to the industrial park/prison site. Even worse was the fact that the water district's new well turned

out to be located on a parcel of land that the town had annexed years earlier (red flag #7). That annexation had never been reflected on any maps, because, like the water district, the town did not have any up to date maps; the tract had been properly annexed under state law. And just when it doesn't seem like it could become more complicated, it turned out that the prison site was almost entirely inside the water district boundaries because it had been inaccurately described on the annexation ordinance and thus had never been detached under state law as part of the annexation process (red flag #8).

So let's recap. There were lots of red flags that indicated that neither utility was being very well run. The town is surrounded by water district on all sides and there is a muddle of homes being served by both entities in an overlap area around the outside edge of the town. The water district with USDA loans has unknowingly built its new well on land inside city limits. The proposed prison site is located within water district on land that had been subject of legally defective annexation. The town doesn't have the time or money to drill a new well in order to serve the prison.

At this point I don't think anyone would be surprised to hear that the whole mess ended up in court and that lawyers and surveyors built vacation homes off the fees. Surprisingly enough, after the initial shock of realizing how much the boundaries overlapped and how confused service areas had become, and how embarrassing it was for the water

district to have installed its well on land that was outside its boundaries (how that was resolved with the revenue bond issuer is another story entirely), the two entities decided to come together for the greater good of the community. They decided to commit to a joint project under which the water district would basically wholesale water to the town, which would in turn bill the prison. Both sides would make money due to the volume of water being used by the prison. Deceptively simple ordinances/resolutions were quickly passed and presto – problem solved! The state was not ever really privy to the back channel chatter over service areas and was satisfied that adequate water could be provided and the prison project was back on track.



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Unfortunately, because neither system had a solid organizational foundation, i.e., no long-term plans, construction specifications, new customer procedures, updated bylaws, current rate structures, board procedures, etc., the problems had only just begun. The devil is in the details, as they say. And the details came fast and furious. In order to provide service, a large diameter distribution line had to be built from the well to the prison site. This line ran right through the overlap area and opened up the possibility of service to new customers both inside and outside the town boundaries who were on old, private wells; the line also would provide plus better service to some folks who were served by the town's single, small well. Town water customers in this area had long been plagued by low water pressure. As soon as construction started, customers along the transmission line wanted to connect. However, some of them were inside the town and some of them weren't. And the water district had no written connection policy, so no one knew what connect fees to charge in order to build water lines off the new transmission line or how to treat customers who didn't want to connect now but might want to

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connect later. In addition, the district had lower water rates than the town. Until, that is, the district voted in a long overdue rate increase to help cover the cost of the new transmission line and the revenue bonds for the new well. That caused some district customers who found out that they were inside the city limits to petition to connect to the town and leave the district. So now angry, confused citizens, were showing up at town and water district monthly meetings and demanding that THEY be treated differently, and allowed to connect to the district, disconnect from the district, connect to the town, disconnect from the town.

And then there were the easement issues. Those issues alone would have been a challenge for any board. Without accurate maps and policies in place it was next to impossible to determine whether customers were supposed to be town or district customers. But having an accurate map (the town and the district eventually shared the cost of a map which identified, as much as possible where customers were located) did not help matters. The overlap area looked like a checkerboard, or maybe Swiss cheese, and there

was no legal or practical way for the water district to install new service lines without obtaining easements or getting permission to lay their lines alongside existing town water lines inside town easements. And there were huge legal questions about whether or not the town had the legal authority to allow outside utility lines to be installed alongside its lines when some of the easements could not even be located of record. Eventually in order to make it through a single meeting without a riot, both the town and the district declared a joint moratorium on any change in customers. This basically froze the situation in place.

Were there possible solutions? Absolutely. But neither entity had the political will or organizational structure to exercise eminent domain, so the suggestion from the attorneys that a comprehensive eminent domain program combined with a remedial annexation plan be initiated in order to clean the whole area up was rejected as too costly and politically unpopular. Although it would have avoided all the easement issues, the suggestion that the town should build an interconnect line, buy all its water wholesale from the district and let the district bill all

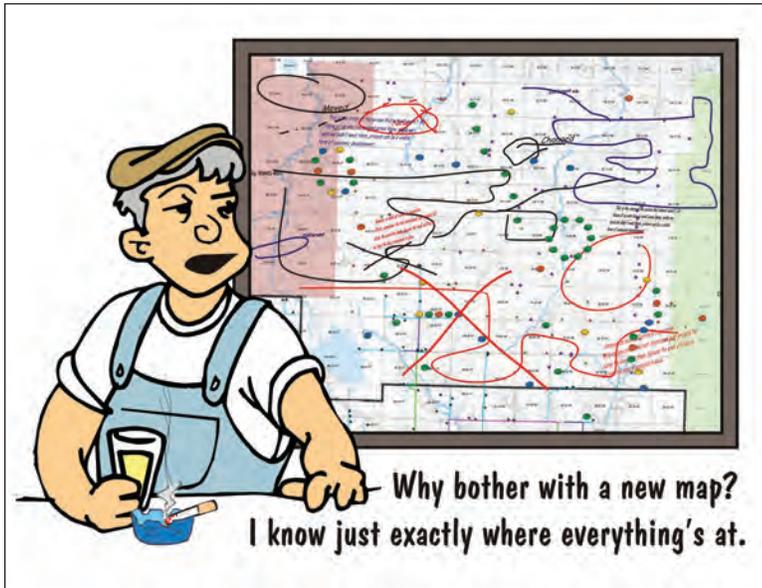
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follow current financial procedures. The end result? The moratorium was left in place indefinitely, so no existing customers who were in the overlap area were allowed to change their service. But new customers were also impacted. Depending on the boundary lines, new construction was required to connect to either the town or the district regardless of which service line was closer or how much it might cost to connect. As confusing as it was, both the town and the water district simply decided that it was easier to continue “as is”, rather than resolve the underlying issues.

I am convinced that if they had the proper organizational structure in place for planning, operations, staffing, communications, and funding, they could have worked together to improve the quality of the services they provided to customers and preserve the environment. It was a great opportunity to serve the public in a truly legitimate manner that was squandered. This is another cautionary tale that illustrates the need for small utilities to operate with the same professional standards as large utilities.

customers would still have meant a rate increase for the town customers; that suggestion got no traction. It should be noted that the town hadn't raised its rates in years either, but a rate increase was not an option. There was no political will for a rate increase. Finally, the attorneys suggested a solution where the district would purchase the entire water system from the town, handle the billing for all residential customers and enter into a revenue sharing agreement under which the town would receive a larger share of the prison revenue until the town water system was paid off. In addition, the water district would cooperate with the town and support the town's expansion of the wastewater service into district territory. (There was tremendous pressure from the state and offers of SRF funds to be used to address wastewater issues in the region. The goal was to create a regional wastewater system under authority of the town and address a host of problems with failing septic systems, groundwater pollution, water quality, etc. etc. In fact, some of the new commercial businesses that were a result of the prison had to build independent wastewater treatment systems due to the lack of public sewer.)

The answer to that idea? It was a resounding NO! That would have required an even bigger political and organizational change in the way that business was conducted by both the town and the district. Frankly, it was probably too difficult to ask them to suddenly adopt good business practices – to rewrite everything from by-laws to city ordinances. It would mean committing to regular rate increases. It would mean upgrading billing systems, and to hire and train more staff. They would have to develop connection policies and

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