

Legally (Relevant



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Water Service Territory Conflicts Revised (Part II)

This is the second installment of a two-part series in which we revisit the subject of service area between water systems. In Part I (*The Kansas Lifeline*, July 2019, pp 8 – 10) we looked at recent changes in the law, both state and federal, that have occurred in the past few years. Regarding state law, the previous state statute was repealed, replaced by new statutes, K.S.A. § 12-539, 12-540 and 12-541, that completely resets the relationship between a city and a rural water district when a city annexes land within the legal territory of an RWD. Concerning federal law, although no statutory changes were made, recent court cases significantly clarified and refined the rules that apply to water systems that have USDA direct or guaranteed loans. As a result, more than ever before, it is imperative that cities consider the application of

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state and federal law to a proposed annexation of land within an RWD BEFORE acting on a proposed annexation, and for every water system to be aware of how the law may apply to any expansion of service into the legal territory of another system.

There has been a resurgence of residential home development in a number of areas in Kansas after a period of near dormancy following the 2008 recession. When that development occurs on the fringe of a city bordering a RWD, service area conflicts can occur. With this renewed development activity, and considering the recent changes in the law, it's time to reconsider how some of these conflicts can be resolved.

This article will look at some of the possibilities for how cooperation between a city and a RWD (or for that matter, between an RWD and an RWD or between a city and a city) can solve water service challenges, providing the customer the most efficient, cost effective service possible while still meeting the goals of the cities and RWDs involved.



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Consider this example . . .

City has annexed land for a new Industrial Park (IP). RWD has a waterline immediately across the road from the IP tract. The first tenant is set to occupy a site in the IP and needs water service. The closest city water line is more than two miles from the IP. The annexed tract is not in the legal territory of the RWD.

This scenario presents some clear opportunities for cooperative solutions that make sense for all concerned. It is useful at this point to consider some of the differences between cities and RWDs. Cities are general purpose units of government, performing a wide variety of responsibilities and services including streets, parks, law enforcement, land use regulation, economic development – and utilities, including water service. By contrast, RWDs are special purpose units of government, with the purpose being to make drinking water available within the district. Cities have the power to tax. RWDs do not; their sole source of revenue is fees and charges collected for the services they provide.

With these factors in mind, the example above highlights how cooperation can be in everyone's interests. The city has developed the IP to foster business activity and employment opportunities in the city. At this point, getting water to the new IP tenant is not an opportunity for the city's water department – it is a substantial burden, both

financially and operationally. These factors could and probably will change when the IP fills out, especially if future tenants include some high water users.

The new tenant needs a reliable supply as soon as possible. Delay may damage the tenant's business plans.

For the RWD with excess water available for sale, this is an opportunity. So how can this work to everyone's benefit?

A recent court decision makes it clear that state law does not either expressly permit or prohibit a RWD from serving

customers located outside its territory – it just doesn't grant a RWD the right to serve land outside that territory. But RWDs have the right to contract, and this scenario presents a clear opportunity for a contract between the city and the RWD for water service to the IP. Such a contract needs to be carefully written, but it could provide for the RWD to supply water to the IP for a specified period of time, subject to extension as circumstances should dictate. If it is anticipated that at some point the city would take over that service, then provision needs to be made for the infrastructure costs to be paid by the city or for the RWD to be reimbursed for those costs when that transition occurs. Terms of service, minimum service standards (quantity, pressure, etc.) should be considered, along with many other items.

Another option would be to structure this as a wholesale water supply contract for sale of water by the RWD to the city. This would allow the city to own and operate the distribution system from the outset, building only so much of that system as is needed as the IP builds out, while avoiding the upfront cost and problems associated with building two miles of large capacity transmission system. Later, as the IP fills with tenants and as demand for water may dictate, the city could elect to build that transmission line to supplement or replace the RWD wholesale supply. Again, properly structured, such agreement solves

the short to intermediate problems the city would otherwise have in trying to supply the new IP tenant while giving the RWD a new customer for its water.

Yet another option may be worth considering. In some cases, whether due to limited water rights, water supply, treatment capability or otherwise, the RWD may be better equipped to supply the IP than the city is. In that case, it may be most efficient to plan for the RWD to be the permanent source of supply. This could be done through a long-term wholesale agreement (with price escalators and renewal provisions of course), or simply requesting attachment of the IP land to the RWD for the RWD to serve as the permanent retail supplier. If the city is limited in its ability to serve the IP tenants, such limitation may prevent achievement of the real goals for the IP – economic development – goals that the RWD could help the city reach.

Another example . . .

A developer has requested that the city annex a tract of land and has simultaneously filed for a 40-lot subdivision. The land is in the territory of an RWD that has a USDA guaranteed loan.

The first thing the city should do is STOP! Current state law, KSA 12-539, requires that the city give notice to an RWD in whose territory land is located before land is annexed. This requires a careful investigation of the facts. But that same state law requires that notice state the city's intentions for provision of water to the land to be annexed. An informed decision about this requires that the city talk to the RWD to determine, among other things, if the RWD has a USDA loan and the circumstances of that loan, the district's capacity and desire to serve once annexed, and its policies and costs for building distribution system and adding new customers. There are a great many variables to consider – too many for this article to fully explore. Staff and professionals – engineers and attorneys for the city, developer and

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RWD should be involved. In the example above, if the RWD has both the capacity and desire to serve the proposed subdivision, and if the level of service can be at a level equivalent to that available from the city (e.g., fire protection where applicable), the simple answer may be to designate the RWD as the water provider. A

contract to this effect would be important, describing the required level of service, system development, rights-of-way, franchise fees, provision of water use data for wastewater billing, etc.

If the RWD desires to provide water service but cannot provide fire protection (if that is something the city deems vital), the discussion becomes more complicated. If the RWD otherwise satisfies the requirements for service area protection afforded USDA borrowers by federal law, 7 USC 1926(b), the district has considerable leverage over how that water service will be provided. One possibility is an agreement by which the RWD sells that right to serve, to be paid the value of this territory based on net profits it would have realized over a specified period of years as the new subdivision builds out, plus the value of any existing facilities it loses or which are stranded as a result of the annexation. In any event, just plunging ahead with the annexation and subdivision approval, potentially leading to a long and expensive fight in court is almost certainly not the best option.

Conclusion

Renewed home building and development brings the potential for new water service area conflicts. Changes in state and federal law over the past several years have significantly raised the legal bar while helping to make clear how cooperation and agreement can resolve these conflicts. Cities and RWDs should be alert to these situations, and be sure they understand how the law applies to the facts of a given situation. They can then approach them in a creative, problem solving manner in order to produce the best result possible for all concerned.

KRWA Web Site Features "Water Rates" Links

KRWA has launched a new link on its Web site at www.krwa.net under "Online Resources". There are two new links. One is "City Rates", the other is "RWD Rates". The rates are for the typical user in cities and rural water districts.

"KRWA receives many questions concerning average water rates. Many cities and RWDs are interested in knowing what neighboring systems are charging," says Greg Duryea, Assistant General Mgr. at KRWA. "KRWA hopes this new link will answer some of those questions," he says.

The display of the listings can be sorted by system, or by specific system, or by charge for the various categories of usage in either ascending or descending order. Again, the city rates and RWD rates are under separate lines.

A feature about the site also is the update form at the bottom of the page. KRWA encourages anyone who notices that the data is incorrect to submit the correct data to KRWA via the submittal form at the bottom of the page so KRWA can update the rate information for the system.

KANSAS RURAL WATER association

ABOUT ONLINE RESOURCES TECHNICAL ASSISTANCE TRAINING MEMBERSHIP

ONLINE RESOURCES > City Rates

City Rates

Search by System: GO Sort System Name Sort Reverse

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System Name	County	Monthly Minimum Gallons	Monthly Minimum Cost	5,000 Gallons	10,000 Gallons	15,000 Gallons	20,000 Gallons	30,000 Gallons
Abilene	Dickinson	2,250	\$12.75	\$21.82	\$38.81	\$56.90	\$76.70	\$115.90
Admire	Lyon	1,000	\$9.50	\$25.50	\$45.50	\$65.50	\$85.50	\$125.50
Agenda	Republic	2,000	\$10.00	\$17.50	\$30.00	\$42.50	\$55.00	\$80.00
Agra	Phillips	2,000	\$10.00	\$17.50	\$30.00	\$42.50	\$55.00	\$70.00
Alexander	Rush	8,000	\$12.00	\$12.00	\$14.00	\$19.00	\$24.00	\$34.00
Allen	Lyon	1,500	\$17.00	\$45.00	\$80.00	\$115.00	\$150.00	\$220.00
Alma	Wabaunsee		\$6.00	\$21.00	\$36.00	\$51.00	\$66.00	\$96.00
Almena	Norton	3,000	\$20.00	\$32.50	\$42.50	\$52.50	\$65.00	\$105.00
Alta Vista	Wabaunsee	1,000	\$9.25	\$23.25	\$40.75	\$58.25	\$75.75	\$110.75
Altamont	Labette	1,000	\$9.65	\$40.25	\$78.50	\$116.75	\$155.00	\$231.50

Water rates for cities and RWDs are available on KRWA's Web site at www.krwa.net and then under "Online Resources". The rate information can be sorted in a variety of ways by usage or by selected systems.

Anderson Co RWD 3	Anderson	1,000	\$25.00	\$57.00	\$97.00	\$137.00	\$177.00	\$257.00
Anderson Co RWD 1	Anderson		\$15.00	\$55.00	\$95.00	\$135.00	\$175.00	\$255.00
Miami Co RWD 4	Miami	1,000	\$30.00	\$67.50	\$107.00	\$144.50	\$180.00	\$255.00
Wilson Co RWD 5	Wilson	1,000	\$8.50	\$42.50	\$85.00	\$127.50	\$170.00	\$255.00
Greenwood Co RWD 1	Greenwood		\$25.00	\$62.50	\$100.00	\$137.50	\$175.00	\$250.00
Crawford Co RWD 6	Crawford		\$25.50	\$63.16	\$100.82	\$138.32	\$174.16	\$249.16
Ellsworth Co RWD 1	Ellsworth	999	\$34.50	\$74.96	\$115.42	\$155.88	\$196.34	\$248.96
Douglas Co RWD 1	Douglas		\$21.40	\$58.40	\$95.40	\$132.40	\$169.40	\$243.40
Chautauqua Co RWD 4	Chautauqua		\$38.00	\$72.15	\$106.30	\$140.45	\$174.60	\$242.90
Anderson Co RWD 4	Anderson		\$16.00	\$53.50	\$91.00	\$128.50	\$166.00	\$241.00
Sumner Co RWD 4	Sumner		\$14.50	\$57.50	\$99.50	\$132.00	\$174.50	\$239.50
Kingman Co RWD 1	Kingman		\$25.00	\$62.75	\$100.50	\$130.50	\$176.00	\$236.00

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Submit Your Information

Does your system's data need updating? Complete this form and submit to us for review.

System Name*	Contact Name	Email*	Monthly Min Gallons	Monthly Min Cost
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
5,000 Gallons	10,000 Gallons	15,000 Gallons	20,000 Gallons	30,000 Gallons
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

* Required

Water system personnel who find their system rates to not be correct on the site are encouraged to submit updated rate information to KRWA through the online tool that displays on the lower portion of the page.

www.krwa.net