

# Legislature likely to hear Bills to prohibit use of eminent domain to obtain water rights and allow citizens' vote on annexation

An Interim Study Committee for the 2009 Kansas Legislative Session recently advanced two topics that are sure to cause long legislative hearings. The topics are annexation and use of eminent domain to obtain water rights. KRWA has participated in legislative hearings on these topics and will remain engaged. I would like to use this article to explain some of KRWA's concerns about the pending bills.

First, KRWA's legislative committee consists of Sam Atherton, Chairman, Sharon Dwyer, Pat Shaffer, Dennis Schwartz, Allan Soetaert and Elmer Ronnebaum. The Committee had its first meeting on December 9, 2008.

The Committee was reasonably confident that one or more Bills would be introduced in the 2009 Legislature either concerning territorial issues with water districts or annexation. Several hot spots in Kansas continue to be in the news. They are Park City/Sedgwick RWD 2 and Douglas RWD 4/City of Eudora. There have been complaints by developers around Wichita, as well as others. Sure enough, as a result of their November hearing, the Interim Committee voted on December 18 to advance options on two bills. The committee took action directing bills to be introduced regarding annexation. The most significant of these is a bill that would require the vote of all

landowners and residents of an annexed area to approve of the annexation by majority vote. Prior attempts in recent years to pass similar legislation have failed.

The KRWA Legislative Committee has been concerned about the prospect of trying to react to Bills that are likely to target specific situations, but with broad-ranging, and likely adverse effects on water districts generally. It is becoming increasingly frustrating to attempt to explain to legislators, many of whom are sympathetic to one or more of these situations, that the "fix" being proposed to them is useless because the districts they are targeting have USDA loans that enjoy protection under § 1926(b). For example, one of the ideas proposed to the Interim Committee was for a standard formula for computing the cost of buying a district out of territory annexed by the city (perhaps similar to that for electric utilities pursuant to K.S.A 66-1,176b). The area the developer was referring to is currently within the territory of one or another rural water district, each of which have USDA loans. The KRWA legislative committee thinks that proposal would be wholly ineffective to accomplish what he intended, and probably lead to little more than a lengthy and expensive lawsuit to determine the fate of the Bill, as it would apply to that area.

In an effort to help provide a more proactive approach, KRWA has considered legislation that would amend the annexation statute, K.S.A. 12-527. If not pursued this year, it may likely be in 2010. KRWA wishes to have involvement of the League of Municipalities to craft a bill that can be supported by cities and RWDs. The following is a summary of the present thinking of the KRWA Legislative Committee.

Under current law, a city need not give notice of an annexation to a rural water district if it is a consensual annexation, which is by far the most common type. A new section would require notice be given not less than sixty (60) days). The city's ordinance would not be effective unless that notice is timely made.

Another section would clarify



KRWA's Legislative Committee has been discussing territorial and service area disputes between cities and RWDs and other issues of importance to public water supply systems. Members pictured above are Elmer Ronnebaum, Dennis Schwartz, Allan Soetaert, Patricia Shaffer, Sharon Dwyer, Sam Atherton and KRWA Counsel Gary Hanson. The Committee appreciates the hospitality of Shawnee Consolidated RWD 3 for accommodating several recent committee meetings.

current law that a rural water district and the city may agree for the district to continue to be the water supplier to the annexed area following the annexation. Present law just refers to the city negotiating with the RWD to acquire the RWD's facilities.

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There are several lawsuits in progress between cities and RWDs due to territorial disputes. KRWA believes that the majority of the problem cases result from a city not talking to the district about its plans and making commitments that it later finds it cannot keep. By the time the discussions actually occur, they may be on a level that is destined to result in conflict. KRWA has made a real effort to try to educate all of the parties in order for them to be better equipped to deal with these situations, but that approach has its limits. By preventing a forced change in water supplier, until the parties meet and mediate, a new section of law would force these discussions to occur in an effort to try and head off these long running conflicts.

KRWA would also like to see a provision for additional guidance for appraisers and any court on any appeal in setting compensation when a city and RWD do not agree on valuation of assets involved in an annexation.

At their meeting on December 30, 2008, the Legislature's Interim Committee on Use of Eminent Domain Relating to Water Rights and on Annexation held its third and final meeting.

There are currently many state statutes that authorize the use of eminent domain by various governmental entities (legislative staff estimate there may be as many as seventy such statutes). The committee directed that a bill be prepared that would amend the approximate 70 statutes that deal with use of eminent domain by various governmental agencies so that each of these entities essentially have no authority to acquire water rights through the use of eminent domain.

The use of eminent domain to acquire water rights is extremely rare in Kansas. KRWA is aware of only one reported court case in which this was done. However, there is little doubt that the ability to use eminent domain to acquire water rights has helped public water supplies on occasion purchase water rights under reasonable terms. Elimination of the ability to use eminent domain to acquire water rights would remove a valuable check against unreasonable demands, forcing the public in such instances to pay for water rights based on whatever the owner would demand, or the public water supply would have to do without. KRWA is opposed to this provision, as there are many places where all water has been fully, if not over-appropriated.

KRWA will monitor these and other water-related issues as may come up in the 2009 Session. It should be interesting .

I encourage your attendance and participation in the 2009 KRWA conference. KRWA has been very

active over the years in providing sessions and forums at the conference on topics related to service areas, improving negotiation skills and board/council training. This year's conference features preconference sessions, "Resolving Disputes in a Neighborly Way" and "KanCap: Improving Management of Kansas Water Systems". Board/council members who register early for either of those sessions, and then who attend the full day on Tuesday, March 24, will be refunded their \$100 registration fee. I'm proud that KRWA can provide this excellent training – and it's at no charge because of KRWA's commitment to help systems understand and help each other. I look forward to seeing you at the conference. In the meantime, please do not hesitate to share any suggestions or thoughts on the above issues with KRWA.

*Dennis Schwartz is the current President of KRWA and is a member of the Kansas Water Authority. He has been General Manager of Shawnee RWD 8 since 1976. Dennis has also been a director for National Rural Water since 1992, a member of the Water Industry Coordinating Council from 1996-2002 and EPA's National Drinking Water Advisory Council from 1999-2005.*



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