By Jerry Bennett, Manager, Miami RWD 2

Cooperation between entities

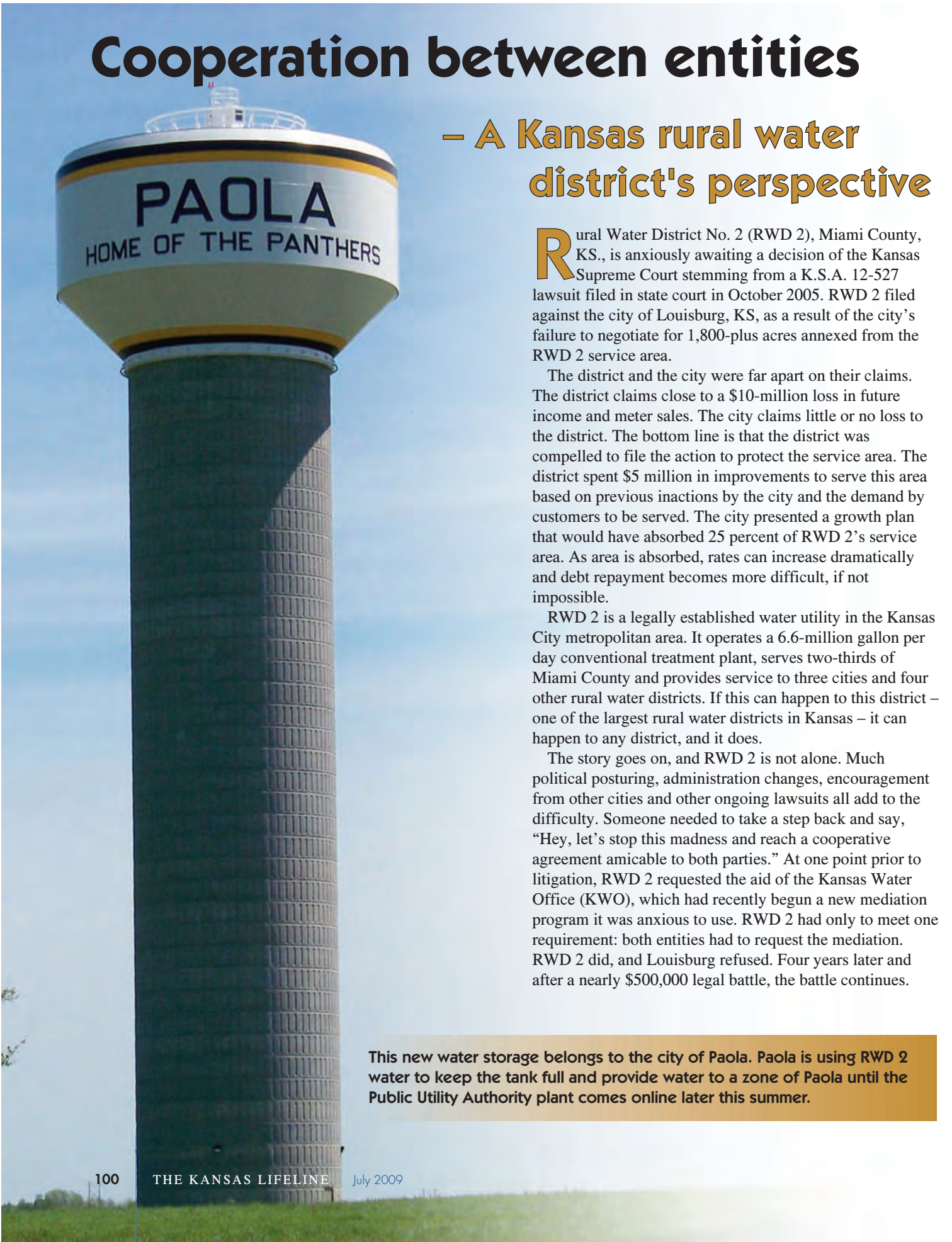
– A Kansas rural water district's perspective

Rural Water District No. 2 (RWD 2), Miami County, KS., is anxiously awaiting a decision of the Kansas Supreme Court stemming from a K.S.A. 12-527 lawsuit filed in state court in October 2005. RWD 2 filed against the city of Louisburg, KS, as a result of the city's failure to negotiate for 1,800-plus acres annexed from the RWD 2 service area.

The district and the city were far apart on their claims. The district claims close to a $10-million loss in future income and meter sales. The city claims little or no loss to the district. The bottom line is that the district was compelled to file the action to protect the service area. The district spent $5 million in improvements to serve this area based on previous inactions by the city and the demand by customers to be served. The city presented a growth plan that would have absorbed 25 percent of RWD 2's service area. As area is absorbed, rates can increase dramatically and debt repayment becomes more difficult, if not impossible.

RWD 2 is a legally established water utility in the Kansas City metropolitan area. It operates a 6.6-million gallon per day conventional treatment plant, serves two-thirds of Miami County and provides service to three cities and four other rural water districts. If this can happen to this district – one of the largest rural water districts in Kansas – it can happen to any district, and it does.

The story goes on, and RWD 2 is not alone. Much political posturing, administration changes, encouragement from other cities and other ongoing lawsuits all add to the difficulty. Someone needed to take a step back and say, "Hey, let's stop this madness and reach a cooperative agreement amicable to both parties." At one point prior to litigation, RWD 2 requested the aid of the Kansas Water Office (KWO), which had recently begun a new mediation program it was anxious to use. RWD 2 had only to meet one requirement: both entities had to request the mediation. RWD 2 did, and Louisburg refused. Four years later and after a nearly $500,000 legal battle, the battle continues.



This new water storage belongs to the city of Paola. Paola is using RWD 2 water to keep the tank full and provide water to a zone of Paola until the Public Utility Authority plant comes online later this summer.

The vault is the new interconnection between RWD 2 and Paola. This was the FIRST thing accomplished in our facilitated dialogue process. The interconnect is reciprocal.

Previous Cooperative Agreement

The district, along with Water District 7 of Johnson County, KS and the city of Spring Hill, KS, prevented such litigation by joining forces and coming to the table to work out a service area agreement. Spring Hill is one of the fastest growing cities in Kansas, and it soon experienced the need to expand its boundaries to accommodate the outgrowth of the Kansas City metro area.

The final agreement included Spring Hill being able to annex without opposition from either water district. Each water district would continue to provide municipal-type service, including fire protection, to the areas of growth. Do not expect agreements like this to come easily; it took several years and went through two city managers before the final draft was signed.

The Third City

As the lawsuit with Louisburg went through its paces, the third city, Paola, KS, was experiencing similar growth pains. It could no longer wait for the outcome of the RWD 2 vs. city of Louisburg case. Paola was motivated by the need to expand. With this expansion came the dilemma of how to annex up to three miles into RWD 2 service area and not face a similar action. To further complicate matters, the district could provide better service and fire protection along the planned annexation from a recently installed 16-in. water main.

With an administration change through an election and a new interim city manager, a new phoenix arose. The two entities continued to talk with less posturing and with the desire to come to terms agreeable to both parties.

Anatomy of an Agreement

Paola and RWD 2 requested assistance through the KWO Alternative Dispute Resolution program. Gary Flory of the Great Plains Consensus Council was selected by the KWO to provide facilitated dialogue assistance to a mediation team selected by each party.

During the first meeting of the team, the following ground rules were established:

- Meetings will last only three hours;
- The meetings will be held at a neutral location;

- No meeting will be held unless all mediation members attend;
- All matters discussed in the meeting are to be confidential until an agreement is reached; and
- Neither party's attorneys would be part of the mediation team.

The group first decided to test the waters by reaching an interconnect agreement. Paola needed water to fill its new storage tank for a couple of years until its new supply system was in place. RWD 2 desired to sell wholesale water to increase production efficiency. Both parties could benefit well into the future from having the reciprocal interconnect in place. This agreement was finalized within a few meetings, and the group celebrated their first success by hosting a barbecue for the mediation team, city council and board of directors.

Terms of Agreement

Six months later, a final agreement was reached. Both parties will keep the customers currently being served due to previous annexations, and each party's infrastructure will remain with the entity that installed it. For every meter installed within the water district's current service area, a fee of $500 will be paid to the district by the city, as well as $2 for every 1,000 gal sold to residents and $1 for every 1,000 gallons sold to a business. A few areas were exchanged for more effective service.

Looking Ahead

Similar cases are becoming more common across Kansas. Unfortunately, if an entity does not have service area protection afforded by the federal government through U.S.C. Section 1926(b), the decision depends on the interpretation of Kansas Statute 12-527. Although the legislature intended the revisions to K.S.A. 12-527 to prevent litigation between cities and water districts regarding compensation due to water districts when an area is absorbed by a city needing to expand, the statute is so vague and subject to multiple interpretations that the statute has actually become a rich source of litigation. Other state statutes are more definitive and facilitate fair compensation without expensive litigation and need to be examined.

In the meantime, entities such as KWO and the Kansas Rural Water Association should be used to provide effective assistance to cities and water districts that are trying to navigate the expansion issues of local governments related to providing quality water service.

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Supreme Court renders decision in Miami RWD 2 vs. City of Louisburg

Counsel Carl Hartley provided this summary of the May 29, 2009 Kansas Supreme Court decision in the RWD 2 vs. City of Louisburg case. The decision holds that K.S.A. 12-527 is "non specific" and makes the following new rulings:

1. The plain language of K.S.A. 12-527 is nonspecific and internally variable. Essentially, the statue is vague and subject to judicial interpretations.
2. The going concern value of a water district is a potential component of "reasonable value" as the term "reasonable value" is used in K.S.A. 12-527 and specifically held: "Going concern value **should** (emphasis added) be considered for inclusion in any appraiser's award and any reconsideration" of the appraiser's award in the district court."
3. Any entity (either RWDs or cities) dissatisfied with the appraisers' determination of the reasonable value of annexed territory, facilities and property has a right to a new trial in the district court. The K.S.A. 12-527 language "institute an action" means: a full-fledged civil action complete with pleadings, motions, discovery, experts, pre trial depositions, trial and appeal rights. Do you get a jury trial? Yes, if you want it.
4. The party challenging the reasonableness of the appraisers' award has the burden of demonstrating the award is unreasonable. This holding confirms generally accepted legal conclusions prior to the ruling.
5. The challenging party must meet this burden by a preponderance of the evidence. Establishing the exact standard of proof required when a challenging party files its action in district court is one of the most valuable clarifications of the opinion.
6. If the challenging party meets this burden, the fact finder in the district court action (be it judge or jury) must determine the correct reasonable value awarded based on all of the evidence presented in the district court proceeding. With this ruling, the Supreme Court settled a long standing discussion concerning whether the district court had authority to establish a new value based upon the evidence presented in the district court.
7. As interpreted in this opinion, K.S.A. 12-527 is constitutional and provides an equivalent to just compensation required under the federal Constitution.