Legal battle over water means higher fees for rural Eudora customers

Kevin Anderson
October 20, 2010

In eastern Douglas County, a long-simmering water war is starting to produce new levels of pain. Patrons of Rural Water District No. 4 likely will see a jump in water rates in 2011 to help pay for a lawsuit with the city of Eudora that has cost the district about $900,000 in legal fees.

But leaders with the water district — which serves much of southeast Douglas County — are putting Eudora residents on notice that eventually the district expects to get more than $1 million from the city.

“The law says if we win the lawsuit, the city will have to reimburse us for reasonable attorney fees,” said Scott Schultz, the administrator for RWD No. 4. “I expect the legal fees to be over $1 million by the time we’re done with the appeals court. Quite honestly, I have no idea how they are going to find $1 million to pay us back.”

An attorney for the city of Eudora, though, said the water district may not want to hold its breath on that issue.

“I’m going to be very surprised, even if the water district wins the case, that they are going to get anything close to $900,000,” said Curt Tideman, an attorney with Lathrop & Gage. “I would say that $900,000 never should have been spent on this lawsuit, and I would expect a court to find the same thing.”

At the moment, the most certain point seems to be that RWD No. 4 patrons will pay more for their water in 2011. The district’s board is finalizing a new $4 per month “debt service fee” that will be added to the bills of patrons for the next three years.

Schultz said the new fee primarily is to rebuild the district’s cash reserves, which have dwindled as the district has paid the legal fees plus some infrastructure projects that were started before the lawsuit.

Schultz said the district would like to have cash reserves of about $400,000 to cover any emergency infrastructure projects. The reserves currently are about $150,000.

“We still believe we’re going to prevail, but the board has looked at it and believes it may be a couple of years before we get reimbursed,” Schultz said. “We’ve had to bite the bullet and ask our patrons to help out a little bit.”

The lawsuit between the district and Eudora dates to 2007. It centers on a dispute about whether the city has the right to provide water service to newly annexed areas of southern Eudora. The district — which sued the city — has claimed in the lawsuit that Eudora must pay the water district a fair price to give up the territory or else allow the district to sell water to the area even though it is now in the city limits. The two sides were never able to agree on a price for the disputed territory.

The water district has won a ruling in federal district court that has prohibited Eudora from providing the drinking water to a new Lawrence Memorial Hospital medical building that is being built in the disputed area. The city also has been ordered to pay slightly less than $40,000 in damages, Tideman said.

But Eudora is appealing the ruling to the 10th Circuit Court of Appeals in Denver. Oral arguments are set for Nov. 17, and a decision is expected in early 2011.

But a decision on whether Eudora is required to pay any of the district’s legal fees will be decided in a separate hearing.

Despite the costs, Schultz said he believes the case has been worth it. He said the district has three cities — Eudora, Lawrence and Baldwin City — growing into its territory. If the district isn’t fairly compensated for the loss of its territory, Schultz said rates for its remaining customers will have to increase to cover the district’s basic operating costs.

Tideman, and other city officials, were not able to immediately provide information regarding how much the city of Eudora has spent on the lawsuit. Tideman said it was “considerably less” than $900,000 but said the city’s expenses have been “hundreds of thousands of dollars.”
Tideman said the city could not guarantee that city water rates won’t increase as a result of the lawsuit. He said if the city is ordered to pay a substantial amount of the district’s legal fees that a rate increase or issuance of new bonds would be possible ways that the city would cover those costs. “But if the circuit court said we’re wrong on each and every issue in the case, even then we don’t believe we would be ordered to pay $900,000,” Tideman said. “Or at least we would hope not.”

Archive for Thursday, January 14, 2010

Contract with lobbyist renewed

By David Oakes
January 14, 2010

The Eudora City Council on Monday received a Legislative update from lobbyist Kevin Barone. Barone said he hoped to pass a bill that could simplify instances of cities requesting release of land that is served by rural water districts. One feature of the bill would use three appraisals — on by a city, one by a rural water district and one by an independent appraiser — to figure out a fair cost for the land. Barone will lobby on behalf of the city through June at a cost of $250 a month, which is $500 less than the $750 a month he had been receiving.

“I think a lot of the state feels our case (with Douglas County Rural Water District No. 4 is resolved, but it’s not,” Eudora City Councilman Jeff Peterson said to Barone. “I appreciate you keeping track of those issues to try to help the state and other cities down the road.”

The city has retained Barone’s services since 2007 to lobby on its behalf during the state legislative session in order to affect public policy in the context of rural water issues that come into play because of its ongoing lawsuit with Douglas County Rural Water District No. 4.

U.S. District Judge Julie A. Robinson handed down on May 28 a decision that found the city guilty of limiting the district’s ability to serve a plot of 113 acres just south of Kansas Highway 10. The city in recent years had annexed the territory.

The city appealed the verdict and the case likely will be heard in about a year by the U.S. 10th Circuit Court of Appeals in Denver.

In late June, the district filed a motion asking the court to award it $743,904.72 in attorney fees as a result of the lawsuit.

Douglas County Rural Water District No. 4 wins lawsuit against city of Eudora

5/29/2009 State Government, Law
by David Oakes
from the Eudora News www.eudoranews.com

The jury in the case of Douglas County Rural Water District No. 4 versus the city of Eudora has ruled against Eudora.

At a brief hearing Thursday morning, the jury awarded $23,500 to the district to pay for engineering studies. The judge will award costs, including attorney fees, in subsequent motions.

“The district is extremely pleased and gratified with the decision,” said John Nitcher, counsel for the district. “We feel that the actions the district board has taken over the years to protect the financial and territorial interest of the district were vindicated in court.”

Eudora had annexed into the city in recent years 143 acres south of Kansas Highway 10 along Douglas County Road 1061.
However, the water district had acquired a federal loan, which made it illegal for any municipality to annex the land or prevent the district from serving the territory. As a result, the district sued the city in September 2007. U.S. District Judge Julie A. Robinson had noted that a Kansas rural water district couldn't acquire a federal loan just to protect its territory, which RWD No. 4 administrator Scott Schultz had said it had done. However, he said the loan also would help the district maintain its facilities and water system. It's unknown if the city will appeal the decision.

http://www.eudoranews.com/section/letters_to_editor/story/10850

Letters: Water district seeks partnership
THURSDAY, OCTOBER 25, 2007

The Eudora News last week provided thoughtful discussion of Eudora's recent annexation of Rural Water District No. 4's service territory, pointing out that the district, by reason of Federal law, has the exclusive right to provide water inside its territory, even after city annexation occurs. These federal protections prevent cities from taking water district territory that the district already is serving or can serve. These federal laws preserve rural water development; help reduce the cost of water to all served; improve the quality and quantity of water; and ensure repayment of federal loans.

Several years ago RWD4 took steps to ensure that it would have sufficient water for its entire service territory. It made a substantial investment in infrastructure, and it committed to buying water from the city of Olathe. If the district now relinquishes to Eudora the responsibility to serve one of its most potentially densely populated areas, the cost of water may rise fairly dramatically for those who remain in the more remote parts of the district.

Some are concerned that commercial growth in Eudora will be hindered by supplying rural water. In fact, thanks to the efforts of earlier district boards, the district is ready, willing and able to provide service to both residential and commercial areas in newly annexed areas of Eudora, while continuing to provide water to its rural patrons. It has the water; it has the lines. Cities like Spring Hill and Edgerton are expanding their boundaries by utilizing rural water. So can Eudora.

The district's patrons who live farther away from urban areas will not be disadvantaged by district service to city residents, as it is actually more cost-efficient to provide maintenance service to a densely populated area than to remote areas. In addition, further capital expenditures for this area already have been planned for by the district.

In short, the district believes that this is an excellent opportunity for the city and itself to partner together to provide full services to this developing area. Such a partnership benefits all concerned.

Kent Miller, chairman
Rural Water District No. 4

http://www.eudoranews.com/section/opinion/story/10772

Editorial: Compromise best solution in water dispute
THURSDAY, OCTOBER 18, 2007

Last month, the Douglas County Rural Water District No. 4 filed suit in federal court seeking to protect its service boundaries from a growing city of Eudora. At issue, is territory south of Kansas Highway 10 and mostly east of Douglas County Road 1061 that was annexed into the city in the last year.

It is encouraging to hear the two entities will continue talking despite the lawsuit. It would seem best for both parties for the city to take over territory with just compensation to the water district for the loss of current and future tax base needed to pay off federal debt on capital improvements.

That would be best for city water customers. The more water the city sells the cheaper its unit cost to produce water. It's no accident the largest water utility in the area, Johnson Water One, also provides water at the cheapest rate to its costumers. So locking down the growth area could eventually mean less expensive, if not cheaper, water for city of Eudora water costumers.

Of course, it is also in the residents' interest that an area that could provide the commercial growth so lacking in the community not be hampered by inadequate water service. And city officials are justified in thinking that they can best provide comprehensive planning of all utilities in the area.

Nonetheless, the pessimism of city officials' about the water district's ability to meet the needs of the area is probably unjustified. Legally, it would have to if it wants to hang on to the area.

But the question water district residents have to ask is: Why should the district want to? Providing rural water service to the 70-square-mile district is a far different chore than taking on an urban service area.
With the population numbers we've heard suggested for the area south of Eudora, that portion of the water district soon could become the tail wagging the dog, demanding capital improvements and manpower far greater than the larger rural section. It's difficult to think that isn't a formula for resentment and conflict.


City sued over water territory

By Patrick Cady, Reporter
THURSDAY, OCTOBER 4, 2007

Representatives of Douglas County Rural Water District No. 4 filed a lawsuit Thursday in federal district court attempting to protect its boundaries from the city of Eudora.

The suit comes after several meetings between city officials and water district representatives to decide who would provide service to areas south of Kansas Highway 10 and east of Douglas County Road 1061 brought into the city through a series of annexations in the last year.

Steve Harris, lead counsel for the water district, said at issue was the protection federal law provided to those water districts participating in a federal guaranteed loan program. The water district borrowed $227,400 through a federal revolving loan program in 2004 for water line improvements and the installation of a pump station.

Federal law protects water districts taking part in the guaranteed loan program from competition in its service area from cities or other public bodies, he wrote a brief filed Sept. 27 with the Kansas City, Kan., U.S. District Court.

Harris said the water district went to court after city officials threatened legal action against the district if negotiated progress wasn't made.

"That left the water district no choice," he said. "It was clear there was going to be litigation."

Eudora is defending its right to expand, City Attorney Curtis Tideman said.

He maintained the city had a right to negotiate a fair price to provide water to the area as part of a Kansas statute.

The state statutory process requires the city to come to terms with the water district for facilities within the annexed territory. If the two parties can't agree on a price, then each side is required to hire an appraiser. The two appraisers, along with a third outside appraiser, determine a value for the facilities in question.

At least two appraisers must then agree to a set price.

Either the city or district can then challenge the appraisal in state district court.

The water district's suit will cause delays to projects south of K-10, Eudora City Administrator Cheryl Beatty said. Work on the 22-home Fairfield Addition already has ceased because of the dispute, she said.

"It could be extremely harmful to the growth of the Eudora and our ability to serve our customers," Beatty said.

In addition, the suit could delay work on Lawrence Memorial Hospital's planned medical plaza and a possible assisted living community in the area south of the highway, Beatty said.

That shouldn't be the case, water district administrator Scott Schultz said. The water district has plans to serve Eudora's southern growth, he said.

"I think our plan is to serve our territory as development comes in whether they be rural or urban," he said.

The commercial development included in current LMH plans should not be a problem, Schultz said.

"Those look like fairly standard commercial business buildings to me as opposed to say a full-scale hospital," Schultz said. "So that water usage will not be substantially high on a per-meter or a per-unit basis."

The 70 square mile district obtains water from Lawrence, Baldwin and Consolidated Rural Water District No. 6 in Johnson County, Schultz said.

Eudora Mayor Tom Pyle expressed doubts about the water district's plans to serve Eudora.

"They're too far-flung," Pyle said.

The water district provides service to much of rural eastern Douglas County. It extends from the Johnson County line in the east to Douglas County Road 1055 in the west and from K-10 and the Wakarusa River in the north to U.S. Highway 56 in the south, surrounding Baldwin on three sides.

Pyle also questioned the water district's ability to provide adequate water for fire protection in the area.

Both sides indicated they were open to negotiation as the judicial process moves forward.

"Our suggestion to the counsel for Eudora is to encourage the members of the city council to meet face to face with the board of directors at the earliest possible date," Harris said.
Eudora — Representatives of Douglas County Rural Water District No. 4 have filed a lawsuit in federal court in an attempt to protect its boundaries from the city of Eudora.

The suit comes after several meetings between city and water district representatives to discuss water service in areas south of Kansas Highway 10 and east of County Road 1061. The lawsuit follows a series of annexations by Eudora in the last year.

Steve Harris, water district attorney, said at issue was the protection federal law provided those water districts participating in a federal guaranteed loan program. The water district borrowed $227,400 through a federal loan program in 2004 for water line improvements and the installation of a pump station.

Federal law protects water districts taking part in the guaranteed loan program from competition in their service areas from cities or other public bodies, Harris wrote in a brief filed last Thursday in U.S. District Court in Kansas City, Kan.

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In addition, the suit could delay work on Lawrence Memorial Hospital’s planned medical plaza and a possible assisted living community in the area south of the highway, Beatty said.

The ability of the water district to provide service to the area shouldn’t be a concern, water district administrator Scott Schultz said. The water district has plans to serve the Eudora’s southern growth, he said.

“I think our plan is to serve our territory as development comes in whether they be rural or urban,” he said.

The commercial development included in LMH’s plans should not be a problem, Schultz said.

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The district obtains water from Lawrence, Baldwin City and Consolidated Rural Water District No. 6 in Johnson County, Schultz said.

Eudora Mayor Tom Pyle said he wondered whether the large water district could plan for the concentrated growth coming to south Eudora.

“They’re too far-flung,” Pyle said.

The water district provides service to about 70 square miles in rural eastern Douglas County. It extends from the Johnson County line in the east to County Road 1055 in the west and from K-10 and the Wakarusa River in the north to U.S. Highway 56 in the south, surrounding Baldwin City on three sides.

Pyle also questioned the water district’s ability to provide adequate water for fire protection in the area. Both sides indicated they were open to negotiation as the judicial process moves forward.

— Eudora News reporter Patrick Cady can be reached at (785) 542-2747
County OKs annexation for sewer plant
By Mike Belt
September 20, 2007
Douglas County commissioners Wednesday night cleared the way for the city of Lawrence to annex the land it needs for a new sewer treatment plant.
Commissioners adopted a resolution finding that annexation would not “hinder or prevent the proper growth and development of the area.” To be annexed is 536 acres at North 1175 and East 1660 roads southeast of Lawrence.
The Lawrence City Commission still has to take action to annex the land.
The only major concern county commissioners had about annexation and construction of the plant was the effect big trucks will have on roads leading to the plant site.
The city named U.S. Highway 59, Douglas County routes 458 and 1055 as the designated truck routes to the area. To access the construction site, trucks will follow North 1100 Road east to East 1600 Road and then north into the site.
East 1600 Road will be improved by the city to a higher construction standard to accommodate increased truck traffic, city project engineer Mike Lawless said.
County engineer Keith Browning said the county routes are designed for truck traffic but the Wakarusa Township roads are not and could be damaged.
Lawrence City Manager Dave Corliss and Mayor Sue Hack, who were among several city officials at the meeting, assured the county that the city would take care of road damage beyond normal wear and tear.
“We’re committed to leaving the county and township roads in as good a shape as they were before, and hopefully better,” Corliss said.
The city hopes to begin construction of the site in the fall. It is expected to be completed in 2011.
In other business, county commissioners:
• Approved the annexation of eight tracks of land with four owners into Rural Water District No. 4. The land is generally along East 2300 Road between North 500 and 300 roads in the southeastern corner of the county.
• Approved a zoning amendment incorporating the city of Eudora’s water protection zones.
• Approved solicitation of bids for deck resurfacing for bridges on Douglas County Route 442 at the western edge of Stull and on North 1100 Road just east of U.S. Highway 59


County Commission delays water decision
J-W Staff Report
August 30, 2007

A decision to allow property that a church owns outside Eudora to be served by Rural Water District No. 4 was delayed Wednesday night by the Douglas County Commission.
The delay was at the request of representatives of First Southern Baptist Church in Eudora. The church is talking with Eudora city officials about the possibility of connecting the rural property to the city’s water system.
The church wants to explore its legal rights on the issue, church representative Homer Baker said.
The church wants to build a new church along the south side of 1300 Road a half-mile west of Church Street, outside the city limits. The church needs more space than its existing building in the city, Baker said.
Commissioners did approve another request from property owner Dallas Livingood to have 40 acres attached to water district No. 4. The property is a half-mile north of Douglas County Route 458 on 1800 Road.

In other business, commissioners:
- Approved a site plan and conditional-use permit for expansion of a ministorage and outdoor storage facility at the Clinton Cove subdivision, 1415 E. 900 Road.
- Approved a “minimum maintenance” designation for East 700 Road from North 1813 to 2000 roads in Lecompton Township. It is a little-used road that will be minimally maintained and posted “travel at your own risk.”
- Approved acquisition of right-of-way land for replacement of a drainage structure on North 1850 Road at East 1818 Road northwest of Lawrence.