

Paola, Miami RWD 2 territorial agreement – process for the future

In the fall of 2006, KRWA staff members Jim Jackson, Delbert Zerr, Elmer Ronnebaum and I received 32 hours of Alternative Dispute Resolution (ADR) training in water and natural resource disputes from Gary Flory and Kirsten Zerger of the Great Plains Consensus Council, a KIPCOR program at Bethel College in North Newton. Ken Grotewiel, who recently retired as Asst. Director of the Kansas Water Office was also a presenter. We attended the training at Bethel College campus.

This past April, I spent a day in Miami County visiting with the Miami County RWD 2 staff and board of directors, and Paola city staff and elected officials. All were candid and upbeat in discussing past service territory problems,

future plans and the first of its kind for Kansas, their voluntary service territory agreement. The smiles and genuine friendliness in these conversations were all brought about by a six-month-long facilitated dialogue conducted by professional



Dan Knupp
Communications

mediator/facilitator Gary Flory, of the Great Plains Consensus Council, whose services were provided at no cost by the Kansas Water Office through their ADR program.

Background on a building crisis

Miami County, located on the Kansas, Missouri border just south of Kansas City, has for years benefited from a steady influx of people building and buying homes

This is the core underlying interest of the RWD – that of holding on to territory to remain viable as a rural water district well into the future.

in both cities and rural areas of the county. To take care of these new customers, Miami RWD 2 for the last 10 years has invested millions to upgrade infrastructure for a

“In order to pay your debt you are looking at a regular increase in new customers coming into your territory every year. Up until this present economic slow down, we



PHOTOS COURTESY OF BRIAN McCAULEY, MIAMI COUNTY REPUBLIC



Above: The mediation team included L to R: Mediator Gary Flory, Director of the Great Plains Consensus Council, Miami RWD 2 General Manager Jerry Bennett, Paola Mayor Artie Stuteville, RWD 2 Board Chair and Miami County Commissioner Art Godfrey, Former Paola City Councilman and Paola Postmaster Michael Hamilton and Paola City Clerk Dan Droste. Not pictured are RWD Board Member Jim Bracken and Paola City Manager Jay Wieland.
Left: RWD 2 Board Chair (at the time), Alan Hire and Mayor Stuteville turn the agreement pages to affix their official signatures.

district that covers 2/3 of the county with over 650 miles of pipeline. The district’s water plant sits on the southeast side of Hillsdale Lake and produces 3.5 million gallons of water per day with a capability to double that. The district has 3,550 patrons and half-a-dozen wholesale customers, many of which have been with the district since the plant was built in 1985.

were having from 85 to 110 new meters per year,” explained Miami RWD 2 Board Chair Art Godfrey.

To make payments on debt, the RWD needs territory to generate revenue from additional service connections and water sales. This is the core underlying interest of the RWD – that of holding on to territory to remain viable as a rural water district well into the future.

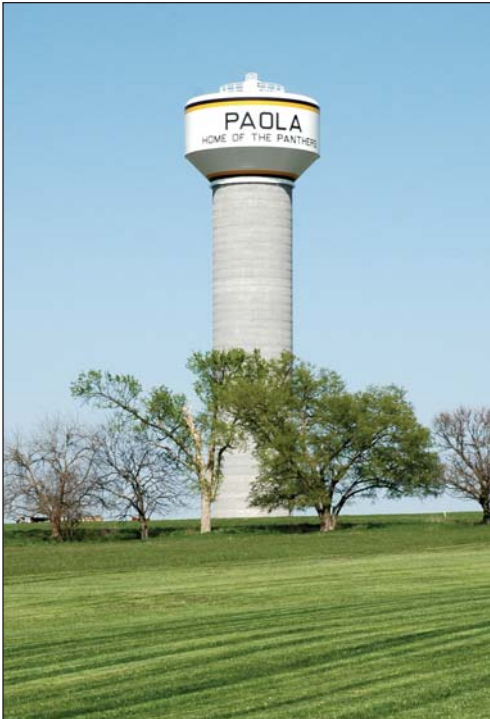
In other words it would be a financial challenge to lose customers and infrastructure in a populated area because then the remaining customers will have to service the debt for the entire district.

Judge Richard Smith recently ruled with a written final judgment upholding an earlier court finding that the RWD would receive far less infrastructure reimbursement money than asked for from the annexed

territory in question. That judgment has been appealed to the Kansas Supreme Court and the court has agreed to hear the case.

Having gone through this litigation process, Miami RWD 2 is

PHOTO COURTESY OF MIAMI RWD 2



Left: The new Paola storage tank located north of town inadvertently was the impetus to get the mediation process going when members decided the interconnect agreement was a priority after looking for a way to fill the tank post construction from RWD lines.

Above: The Miami County RWD 2 water treatment plant and office above is located north of Paola at Hillsdale Lake. The plant built in 1985 currently produces 3.5 million gallons per day (mgd) but could produce 6.6 mgd with no plant changes. The water produced is used by 3,550 patrons and several wholesale customers in the region.

“If we don’t get agreements and stop cities from annexing our territory in 10, 20 or so years, we will not exist. This is because Overland Park is moving south towards Louisburg. Olathe is moving south and Paola is moving north and east. Louisburg is moving north, south and west. We would be faced with surviving on territory that we have now from the plant site here north of Paola and on our territory to the west,” said Miami RWD 2 Manager Jerry Bennett. “We could only stand to lose about 25% of our territory and survive with our present debt and there are no guarantees.”

RWD 2 acts from experience

Two years ago Miami RWD 2 was enjoined in a law suite with Louisburg, Kansas, based on territorial annexation infrastructure reimbursement issues. Chief District

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Two days after the final mediation session, with a completed agreement in hand, mediation group members along with the rest of their boards, councils and family members sat down to a BBQ with all the trimmings. RWD Board Member Jim Bracken was host to the group above, even though having lived in the same rural county, most really didn't know each other. The goal of the get together was to brighten long term agreement prospects for being able to work out future problems by getting to know one another better – by making an effort to grow personal and professional working relationships.

aware of the great expense in time and money for this type of litigation. The district had previously negotiated a territory and wholesale water agreement with the city of Spring Hill but was unable to get Louisburg to do the same. During the litigation Jerry Bennett had inquired with the Kansas Water Office about their new Alternative Dispute Resolution program. Long term RWD board members were enthusiastic about this and for good reason. There was another impending territory problem building with the city of Paola over the same kind of issues present in the Louisburg dispute.

Background on the city side

It was spring 2007 and Paola, with a population of 5,500, had a new mayor, a new interim city manager and rapid growth putting a rush on every city project. A new Miami County partnership, the Public Utility Authority or PUA, had recently embarked on a \$30 million water project to treat water from the Marais des Cygnes River. Partners included Louisburg, Paola

and for a time Miami RWD 2.

“Miami 2 felt the need to work out territories prior to the construction and design of a water plant and the needs of the cities were a little more immediate. With the difference of views between Louisburg and Rural 2 it was very obvious that territorial discussions weren't going anywhere and it was going to hold up the process of designing and building the plant,” noted Paola City Clerk Dan Droste. “Miami 2 ended up not being a part of the PUA. We just had to move on with the project and the two issues became separate at that time.”

The key underlying interest of Paola was to maintain city integrity of funding through providing bundled services to large numbers of concentrated citizens utilizing city billing and other departments. With cities being less eligible for federal loans and grants, they must rely on growth and rate increases to provide services. Cities also have pressure from ratepayers for costs to maintain several sets of infrastructure.

Paola was busy with bond sales to finance the new PUA project. They were also working with partner Louisburg to design and build a water plant and busy getting a storage tank and other water infrastructure in place for their distribution system. And finally they were facing a critical set of acute service territory conflicts with Miami RWD 2 – that would have to be resolved!

With so many irons in the fire and so many expenses for ongoing projects for both the city and RWD, the decision makers came to a realization that paying attorneys huge sums of money all the while eating up the clock on projects to serve patrons and citizens brought a mutual realization that this was not the road to go down. It was reported in the *Miami County Republic* that officials from both entities attended the 2007 KRWA Annual Conference and took territorial dispute session presenter Attorney Elizabeth Dietzman's advice to heart – it was time to talk!

Mediator helps with ground rules

Gary Flory asked mediation members to attend a preliminary meeting to set the ground rules for the regular mediation sessions. The decisions at that meeting included: 1) They chose to meet for three hours at a time from 9 a.m. until noon on Thursdays; 2) The meeting place would be the new Miami County Courthouse in Paola; 3) They agreed to not meet unless everyone could be there; 4) That Flory would get summary notes out to members immediately after each meeting so the group would be on the same page for the next meeting; 5) They agreed that the content of the meetings would be confidential until an agreement was reached, except for agreed upon items that would be reported out to their boards or councils; 6) Agreed that the number of representatives would be seven – three from the RWD and four from the city. This

decision was made to ensure that neither governing board had a constituted quorum at the meeting. "I did not want to get involved in this and later have someone challenge it because of a violation of the Kansas Open Meeting Act," explained Flory.

There was one last rule agreed upon at this meeting and it was a blockbuster. Both sides agreed not to have their attorneys be part of either mediation team.

"We felt that having them there would have allowed some unnecessary posturing and we were about resolving issues instead of bringing up additional ones," Paola Councilman Mike Hamilton said. RWD Board Chairman Art Godfrey agreed saying, "We'd been through this before on some other agreements and if you get lawyers involved early on they come up with too many 'what ifs' before the basics are worked out."

First things first

The thing the group decided to work on first was an interconnect agreement. Paola was building a new storage tank that needed to be filled. With RWD lines being closer than city lines, and as the discussion progressed it begged the question, "What would happen to either of us and our customers if there was an emergency, a system failure, and we don't have an interconnect agreement?" The group decided that this was important enough to make it a stand alone agreement, separating it from the rest of the mediation list.

In the ADR training sessions, we frequently heard, "Find a way to show a success!" The inter-connect agreement was that success. Speaking about the inter-connect agreement Councilman Hamilton reflected, "We took that particular challenge initially and we worked the hardest and the longest and implemented some of Gary's strategies to arrive at an agreement. And that to me was ultimately the

beginning of what was to become the bigger picture, that of a territorial agreement."

Mayor Stuteville added, "I think we had to get some trust built up before we could get through the

community and how much easier it made their lives because it made no sense not to be interconnected, not to have an agreement. Everyone in town agreed with that," noted Flory. "This was

Agreement details

- Both parties will keep the customers currently served but as the city annexes land within RWD 2's territory, they will pay a set amount for new development and will not take RWD infrastructure.
- Paola will pay RWD 2 \$500 for new residential water meters installed, plus \$2 for every 1,000 gal. sold. The same fee applies for new commercial hookups except the price drops to \$1 per 1,000 gal. after volume exceeds 100,000 gal. per month
- Two land tracts currently outside Paola's city limits but inside the city growth area are separately noted in the agreement. They agreed that the tract northwest of Lake Miola would be served by the RWD because of its proximity to a RWD 16-in. main. The other, located on both sides of U.S. Highway 169 and beyond will be served by Paola in the future.

interconnect. We had to get to the point where we could believe them and they could believe us – no ulterior motives. I can't think of a time that we didn't get along excellently with each other. A lot of the success was because of the personalities involved." Many of the group members commented that they had gotten to the point to where they really trusted each other and really enjoyed being there even though they had some differences.

There was a time gap in the mediation process during the summer as the interconnect agreement was worked out and finally drawn up by the attorneys. Although both sides communicated regularly with their attorneys, this direct involvement gave them a measure of confidence in the process.

"After the interconnect, they saw what could be done and how positively it was received by the

As reported by the Miami County Republic

- Rural 2's territory won't be taken without compensation, and that's what we wanted," RWD 2 Jerry Bennett said.
- Paola City Manager Jay Wieland was just as pleased with the agreement, noting that both sides seem to be on the same page, and mutual respect is forming.
- Wieland also said he was pleased that, in the agreement, RWD 2 officials state they do not intend to use federal loans to protect water district territory from being annexed by Paola.
- RWD 2 officials currently are waiting to see if they will be awarded a rural development loan from the U.S. Department of Agriculture to help fund planned infrastructure improvements.

where the members said, "We need to get this done. We don't know what it's going to look like yet, but it's going to work!"

Harder issues tackled

Next the group tackled 10 years worth of cross-territory connections that had been ignored by both RWD and city managers. Mostly, the city had been hooking people up to the city water service in RWD territory. And, there were still several cases where the RWD had hooked up city residents because they were closer to the RWD line than the city line. Then there were the bigger issues, six areas around the city that both entities had infrastructure serving customers. These six designated areas were assigned primarily on how close each was to infrastructure already in place. And, they ended up being traded from one entity to the other

simply because it was more economical to do so because of the infrastructure location. (See the sidebar on page 101.)

“What each side didn’t want to do was something that made

absolutely no sense, and that was ending up building duplicate lines running parallel to each other – wasting money,” explained Flory.

The process was very tricky especially for Paola. With a city’s water service, the sewer service is typically billed along with it. In an agreement if somebody else is going to supply the water, and city lines are already interconnected, how can a formula be structured to get the city’s sewer costs paid? The group discussions soon focused on the franchise feature utilized in the agreement.

There’s an ongoing fee for city customers within the city who are served by the RWD. The RWD helps pay some of those costs that go back to the city for things like sewer. There

is a high degree of interconnectedness between the two entities that is now possible by the creativity in the way the city can be paid for their bundled services.

The city’s core underlying interest is to provide “bundled services,” not just water service. It is not a primary goal for the city to grow the water system. If it is easier to utilize the interconnect because of locations of infrastructure that saves money, it is better for their customers.

The attorneys put the final agreement together

There was a common meeting where the entire negotiating group met jointly with attorneys from the RWD and city, and jointly gave the instructions to the attorneys as to what they wanted included in the final draft.

“When we got down to turning it over to our attorneys, they were just working out technicalities, not principles at that point in time,” Dan Droste said. The attorney’s working on the unique agreement



Work progresses at the PUA water treatment plant site on the Marais des Cygnes River south of Paola. Manhattan, Kansas based Walters Morgan Construction, Inc., employees work with the company’s new crane to ready forms for concrete on the new plant building. The plant is targeted for completion sometime in late 2009.

Just what is a facilitated dialogue?

Gary Flory, Great Plains Consensus Council



Basically, it is an opportunity for people, governmental entities, or other groups to work out differences based on the following underlying principle: Parties to a conflict know better than anyone else (including a judge) just what it will take for the parties to satisfy their needs and move forward. The “facilitated” part means that a trained outside

person with no stake in the conflict assists the parties to structure and carry out the conversations and negotiations.

The facilitator or mediator structures the conversations to include the following:

- develop guidelines to ensure the conversations will be fair, and the forum for the discussions will be safe and conducive to open and honest dialogue,
- focus on underlying interests and needs of the parties, not the solutions they may initially bring to the table,

- work on a consensus basis – any person at the negotiating table is able to block agreement on any issue (so no legal rights are forfeited if the facilitated dialogue doesn’t work), and
- develop trust among the parties that builds confidence they can actually come to an agreement and implement the agreement without outside enforcement.

The Great Plains Consensus Council is increasingly encouraging governmental and other groups to use a consensus process:

- to work on policy planning and development, and
- to work on conflict issues early – before they become deeply entrenched.

Questions? Contact Gary Flory, principle with the Great Plains Consensus Council at: 316-284-5881 or e-mail gflory@bethelks.edu. The Web site can be found at: <http://www.bethelks.edu/kipcor/gpcc>

were City of Paola attorney Lee Tetwiler and Miami RWD 2 attorney Carl Hartley.

“After it was all settled and signed, everybody is very proud of

PHOTO COURTESY OF MIAMI RWD 2



The Paola/RWD 2 interconnect vault above is located north of Paola and just north of the new Paola storage tank on the road to Miami RWD 2's water treatment plant. The vault is nearing completion and the interconnection function should be online later this summer.

what our lawyers have done. We asked them to make sure it was all in order and legally sound – they did just that,” added RWD Board Member Jim Bracken.

Protecting the process

The group members communicated to their extended boards and councils during the eight months of regular meetings, garnering support and helping them in understanding the process with the rest of their respective groups. They were all cognizant of what was being said in the community and many times there was a need to put out a fire here and there.

Brian McCauley, managing editor of the *Miami County Republic*, wrote an article from the initial press release from the group, printed update articles as he received word from the team members, but held off on writing about the process until there was a final agreement. This took pressure off of the group as they went about their business. This was a big help

in letting members finish the mediation process. His articles evoked positive feedback from Miami County residents that also helped a great deal.

Jay Wieland came aboard as Paola city manager in October, about the time the interconnect agreement was signed and in place. He explained, “For the process to continue to work, there are many things that need to be done for the long term. Jerry and I have developed a working relationship as we get together regularly for lunch and we’re also pulling other regional people into that routine. One of those is the new city manager from Louisburg. We have also met with the city

manager from Osawatomie to get all of us who will be working with RWD 2 to know each other a little better. This will continue our mediation relationship and provide a basis for future discussion when needed. I think internally the Paola city staff doesn’t see RWD 2 as an enemy at all, but as a cooperative partner, particularly in our planning department.”

The agreement’s bottom line

Water districts and cities work best when they remember that customers are always better served when they can avoid costly legal battles and instead focus on the mechanics of getting the best water service for the lowest cost to the most customers.

Miami RWD 2 Chairman Art Godfrey, sums it up by saying, “I think that our experience should be encouragement to other water districts and cities to get together and do these mediations and not get mired down in a lot of legal gumbo!”

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