



News Around The Water Tower

JANUARY, 2011

Rural Water District No. 2
Miami County, KS
25290 Harmony Road Paola, KS 66071

District Annual Meeting-February 8, 2011

The annual meeting of participating members of Rural Water District No. 2, Miami County, Kansas, will be held on Tuesday, February 8, 2011, 6:00 P.M. at the District Office located at 25290 Harmony Road. The purpose of the meeting is to elect three Directors to terms of three years each and such other business that may properly come before the meeting.

Wayne Knop, Secretary
Board of Directors

A Message From The Board of Directors

Rural Water District 2 recently received a ruling from the Miami County District Court regarding the District's efforts to build a water tower in conjunction with a regional water plan. RWD 2 engineers and staff selected this water tower site years ago as the most effective hydraulic location to provide large quantities of water to northern Miami County. This \$4.5 million project was to be in advance of expected, planned growth along the 223rd Street corridor between US 169 and US 69. The project would have provided water for large developments and provided adequate fire protection for current and future residents of Miami County and extreme southern Johnson County. Perhaps just as important, this project would place RWD 2 near our goal to physically connect to a large water supplier who could provide water to Miami County during an emergency. The project was supported by the Kansas Water Office and by surrounding rural water districts.



In order to apply for a conditional use permit (CUP) to build the water tower, the District was required to obtain the land and necessary easements for the water tower. The District CUP application was thoroughly reviewed by the Miami County Planning Department who are the County's professional staff and who enthusiastically supported the District's application for a permit to build the water tower. The Planning Department and three members of the Miami County Board of County Commissioners voted to approve the permit application which complied with all regulations. (See website for report. ruralwater2mico.com) However, due to a protest petition filed by landowners near the tower site location, a unanimous vote of the Board of County Commissioners was required to approve the application. Commissioner Wobker had to recuse himself because of his affiliation with RWD 2. And thus could not vote on the matter. Commissioner Stiles supported the protesters and voted against the application even though the only reason he gave was that the water tower was not aesthetically pleasing to the protesters. He knew denying the CUP would deny fire protection to RWD patrons in the area. He knew that the water tower was part of a long term effort to assure that emergency supplies of water were available from the Kaw River and that the Kansas Water Office urged the Commission to approve the application. (See website for copy of letter. ruralwater2mico.com) He knew that RWD #2 supplies the cities of

Regular Meeting Date Change

The Board of Directors usually meet the second Monday of each month except for the month of February. The February regular monthly meeting will be held on Tuesday, February 8, 2011, 7:00 p.m. or immediately following the annual meeting. District patrons and the public are always welcome.

Directors Nominated for Reelection

The Rural Water District No. 2, Miami County, Kansas is governed by a Board of Directors. The Board is comprised of nine members. The Directors must be a patron of the District in good standing. Each Director is elected to a three year term. The terms are staggered with three Directors elected each year. Directors up for re-election at the 2011 annual meeting are:

Dr. Art Godfrey Wayne Knop
Lyle Wobker

All three Directors have agreed to run for another three year term. Nominations can also be made from the floor at the District's Annual Meeting.

Spring Hill, Paola and Louisburg in times of emergency water shortages. He knew that it would cost RWD #2 between \$200,000 and perhaps more than \$500,000 to move the location of the water tower. More importantly RWD #2 had shown that moving the location would not allow the water distribution system to function efficiently and economically during its useful life. He knew the application complied with all of the County's regulations.

Because Commissioner Stiles' vote in opposition to the granting the permit seemed so ill advised, the RWD #2 Board unanimously voted to file an appeal with the Miami County District Court in February 2010. The case was assigned to Judge Amy Harth.



The petition requested that Judge Harth enter an order directing the approval of the RWD #2's CUP application. RWD #2 and the County cooperated in submitting the case to Judge Harth. In April the matter was **jointly** submitted to her based upon a set of written stipulated facts that both the County and RWD#2 agreed constituted all of the evidence in the case. Judge Harth signed a pretrial order governing the evidence in the case which specifies that all of the evidence had been submitted. **(See website for copy of the signed pretrial order ruralwater2mico.com)**

Both the County and RWD#2 wanted the matter decided at the earliest time possible. Judge Harth promised a quick decision noting the construction season and the length of time expected to complete construction projects. Neither the County nor RWD # 2 wanted to delay the decision; to have an expensive trial to the court; to use up valuable court time or to make oral arguments. Both wanted the matter determined based upon the evidence stipulation which everyone, including Judge Harth, agreed was all of the evidence.

In a surprising change, Judge Harth insisted upon having oral arguments and set them for July when she said she would rule from the bench. Instead of ruling in July from the bench, Judge Harth remanded the matter to the County and directed Commissioner Stiles to file a written explanation for his

negative vote setting out the reasons for it. The District argued this was unfair and not consistent with the pretrial order. After the Stiles explanation was prepared, the District objected to Judge Harth receiving this document as evidence and Judge Harth overruled this objection. She had the matter under review from February, 2010 until January 5, 2011.

On January 5, 2011, Judge Harth ruled that the objection of Commissioner Stiles based upon the aesthetics was reasonable under the facts of this case noting that the water tower would be built to within 550 ft. of a residence. She did not deny

that the District's CUP application complied with all of the Planning and Zoning requirements for issuing the permit including setbacks. She did not comment on the votes of the three commissioners who supported issuing the permit. Judge Harth denied the District's request to order the issuance of the permit to build the water tower. Her decision is posted on the website. **(See website for copy of the decision. ruralwater2mico.com)**

Why is this decision significant? This type of ruling from a local judge, especially allowing the dissent of one commissioner to prevent a much needed water tower makes planning for water supply increasingly difficult and immensely more expensive for water districts and cities supplying water. Keep in mind that RWD #2 has already spent large sums of money on engineering studies and compliance with county zoning requirements in order to build the water tower on this site. As a result of this decision, RWD #2 expects to lose the USDA loan approved to cover the cost to build the water tower. Decisions like those of Commissioner Stiles and Judge Harth can also be expected to impact water rates. In our opinion, Judge Harth should have supported the three commissioners who voted reasonably for approval of the CUP and who based that

decision on the report of its planning department, the evidence presented to them and the Kansas Water Office endorsement. RWD #2 worked diligently and for a long time to bring this water project on line. Using the criteria Judge Harth applied, no water district can know how to locate water towers in Miami County. Judge Harth's decision, rather than supporting rational water planning, reflects the sentiment expressed by one recently elected commissioner regarding water towers: "If the people are against it, it shouldn't be approved." In this case the "...people..against it.." number less than ten people out of the thousands of citizens who stand to benefit from this needed public water project.

Since it is the job of the Board of Directors of your water district to plan for the future and cooperate in assuring water supplies to rural residents, the Board has decided to pursue its legal remedies by appealing Judge Harth's actions to the Kansas Court of Appeals. The Appeal is estimated to take 18 months. We have presented this information so that patrons who want to talk with their county representatives will have sufficient information to indicate whether they do or do not want water rates to increase in order to address the aesthetic objections of a few.

Please know that the Board of Directors is committed to serving patrons, to assuring the availability of reasonably priced water to rural residents and to being a positive force in our community. The Board is responsible for the fact that there has been no increase in cost to the District's residential customers for over 25 years. RWD 2 patrons have enjoyed the same retail water rate since 1984 and we did not intend to raise rates to help repay the debt associated with the USDA loan to build the water tower. At the time of the Application, the timing was ideal for project bidding due to our economy. RWD 2 Board and staff always strive to make good business decisions regarding the welfare of the water district. This decision denying the CUP application will make future water rates and our planning ability much more uncertain. We hope you will support us.

