

Douglas County RWD 4 wins lawsuit against city of Eudora

A jury in U.S. District Court recently ruled in favor of Douglas RWD 4 against the city of Eudora in a dispute over service territory involving annexations of 113 acres of land inside the RWD boundary immediately adjacent to the south side of Eudora.

The Eudora News reported that the jury awarded \$23,500 to the district to pay for engineering studies and that “the judge will award costs, including attorney fees, in subsequent motions.”

John Nitcher, counsel for the RWD, was quoted: “The district is extremely pleased and gratified with the decision. “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 land into the city the territory that was incorporated inside the RWD boundary. RWD 4

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acquired a federally guaranteed loan in 2004 to make improvements and to expand service. In a previous ruling to the trial, the Court held that guaranteed loans (guaranteed by USDA) qualify for 1926(b) protection. According to experts, this is the first decision that has addressed whether a loan from a private lender that has been guaranteed by USDA provides the same protection of the service area as a direct USDA loan.

Douglas RWD 4 contended that the anticipated future net revenue from water sales to the annexed areas was \$4,900,000 (present value) that would be lost by the RWD if the city provided water service to the 113 acres. There have been no sales of water by the city inside the annexed area. The jury decision however agreed that the city had curtailed service by the district.

In pre-trial motions, U.S. District Judge Julie A. Robinson commented that a Kansas rural water district couldn't acquire a federal loan to protect its territory. Evidence presented at trial indicated that the loan would help the district maintain its facilities and water system.

City to appeal

On June 2, the Eudora City Council decided at a special meeting Tuesday to appeal the jury decision.

Curt Tideman, the city's attorney, was quoted by *The Eudora News*: “The city's appeal would focus on the power of the water district to enter into a loan agreement with the federal government and whether or not the city prevented or limited the district's ability to serve its territory.” He added that both issues were matters of law that were too complicated for a jury to decide and, instead, should have been decided by Judge Robinson.

The appeal likely will be heard by the U.S. 10th Circuit Court of Appeals in Denver.

Tideman estimated that the court likely would hear the case in about one year. The original lawsuit was filed by RWD 4 in September 2007.







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