

Formal Hearing - July 27, 2022

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STATE OF KANSAS  
BEFORE THE DIVISION OF WATER RESOURCES  
KANSAS DEPARTMENT OF AGRICULTURE

In the Matter of the )  
Designation of the )  
Northwest Kansas )  
Groundwater Management )  
District No. 4 Local )  
Enhanced Management Area )  
in Cheyenne, Decatur, )  
Rawlins, Gove, Graham, )  
Logan, Sheridan, Sherman, )  
Thomas, and Wallace )  
Counties in Kansas )  
\_\_\_\_\_)  
Pursuant to K.S.A. 82a-1041,  
K.A.R. 5-19-3, K.A.R. 5-19-5

FORMAL HEARING

This matter came on for Hearing before  
Earl Lewis, Presiding Officer, at the City Limits  
Convention Center, 2227 South Range Avenue, Colby,  
Thomas County, Kansas, commencing at 10:00 a.m.,  
on the 27th day of July, 2022.

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A P P E A R A N C E S

Northwest Kansas Groundwater Management District No. 4 appears by their attorney, Adam Dees, Clinkscales Elder Law Practice, P.A., 1407 Main Street, Suite A, Hays, Kansas 67601. Also present was Shannon Kenyon.

Division of Water Resources appears by their attorneys, Kenneth B. Titus and Stephanie Kramer, Kansas Department of Agriculture, 1320 Research Park Drive, Manhattan Kansas 66502.

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DWR EXHIBITS

EXHIBIT NUMBER	DESCRIPTION	PAGE
Exhibit A	Written Testimony to Hearing Officer, Earl Lewis	10

GMD4 EXHIBITS

EXHIBIT NUMBER	DESCRIPTION	PAGE
Number 2	Testimony of the Northwest Kansas Groundwater Management District No. 4 (GMD4) to Hearing Officer David Barfield, Chief Engineer, Division of Water Resources, Kansas Department of Agriculture	16
Number 4A	GMD4 LEMA Annual Report and Formal Review	14
Number 4B	GMD4 LEMA Annual Report	14
Number 5	KU Kansas Geological Survey Maps	18
Number 6	KU Kansas Geological Survey Maps	19
Number 7	Simulated Water Level Changes	20
Number 8	Kansas Geological Survey Annual Irrigation Water Use, Irrigated Area, Annual Irrigation Water Use Per Irrigated Area, and Spatial Average Radar Precipitation During 2005-2021	23

1 (DWR Exhibit A Marked for  
2 Identification.)

3 THE HEARING OFFICER: Good morning,  
4 we'll go on the record now. My name is  
5 Earl Lewis, I'm the chief engineer of the  
6 Kansas Department of Agriculture, Division  
7 of Water Resources, and I'll be serving as  
8 the hearing officer today. With me today  
9 is Kenny Titus, he's the chief counsel for  
10 Department of Agriculture, and Stephanie  
11 Kramer, a staff attorney with the Kansas  
12 Department of Agriculture, Division of  
13 Water Resources, and they will be assisting  
14 me with the hearing.

15 Today is July 27th, 2022, the time is  
16 10:00 o'clock. We are holding this hearing  
17 in the City Limits Convention Center in  
18 Colby, Kansas. If you have not done so  
19 already, again, I'd like to ask you to sign  
20 in to the sheet by the front door, and,  
21 again, if you want to give testimony today,  
22 please indicate so on the sign-in sheet.

23 First of all, I want to thank each of  
24 you for taking time out of your day to come  
25 in and attend this hearing and provide

1 testimony if you're so inclined. This  
2 hearing is being held pursuant to K.S.A.  
3 82a-1041, K.A.R. 5-19-3, and K.A.R. 5-19-5,  
4 which govern the establishment of and  
5 hearing procedures regarding Local Enhanced  
6 Management Areas, or LEMAs. This hearing  
7 is to consider the renewal of the greater  
8 GMD4 LEMA and, pursuant to K.A.R. 5-19-3,  
9 will consolidate the initial and subsequent  
10 LEMA hearings referenced in K.S.A.  
11 82a-1041.

12 Pursuant to K.S.A. 82a-1041(b), timely  
13 notice of the public hearing was published  
14 in the Colby Free Press on June 22nd, 2022,  
15 in the Goodland Star-News on June 23rd,  
16 2022, and in the Kansas Register on  
17 June 23rd, 2002. In addition, each water  
18 right owner within the boundaries of the  
19 proposed LEMA was mailed an individual  
20 notice of this hearing.

21 The proposed updated management plan for  
22 the greater GMD4 LEMA was previously  
23 submitted to me by GMD4, and I found it to  
24 be acceptable for further consideration.

25 On July 11th, I conducted a prehearing

1 conference to allow for the discussion of  
2 hearing procedures for today. And on  
3 July 18th, I issued a prehearing order to  
4 outline procedures we will use for today's  
5 hearing, and that order has been published  
6 on the Kansas Department of Agriculture's  
7 website.

8 As outlined in the prehearing order,  
9 today's hearing will be divided into two  
10 phases. First, we will hold the formal  
11 phase of the hearing. The formal phase of  
12 the hearing will consist of testimony and  
13 questions presented by the formal parties  
14 to the hearing, GMD4 and the Kansas  
15 Department of Agriculture, Division of  
16 Water Resources. The public will not  
17 participate in the formal portion of the  
18 hearing.

19 During this phase of the hearing, the  
20 parties may present their testimony and  
21 call witnesses to present testimony. The  
22 other participants will be allowed to  
23 conduct cross-examination or ask clarifying  
24 questions of all witnesses once they have  
25 completed their testimony, and I may ask

1 clarifying questions at any time during the  
2 proceedings.

3 While I will not be allowing the public  
4 to participate in the cross-examination of  
5 witnesses, you are free to provide your  
6 comments or questions on the testimony  
7 provided here today in the informal phase  
8 or as written comments provided after the  
9 hearing within the time period allowed.

10 DWR has already filed or pre-filed  
11 written testimony; it is my understanding  
12 DWR does not plan to give additional oral  
13 testimony here today. GMD4 will present  
14 oral testimony during the formal phase of  
15 the hearing, and DWR will have the  
16 opportunity to ask questions.

17 As noted in the prehearing order, I will  
18 not be strictly applying the rules of  
19 evidence in these proceedings, but I expect  
20 all cross-examination to bear some  
21 reasonable relationship to the testimony  
22 presented by each witness. Overall, my  
23 purpose is to ensure that each party has  
24 the fullest opportunity to be heard and  
25 present evidence for the record.

1           During the informal phase of the  
2 hearing, the public will be allowed to  
3 comment on GMD's proposal. Public comments  
4 may be made at any -- by any member of the  
5 public, including water right owners,  
6 businesses, organizations, or anyone else  
7 that wishes to place a comment on the  
8 record.

9           Prior to starting the informal phase of  
10 the hearing, I would again ask that anyone  
11 that wishes to comment would please put  
12 their name and the organization they  
13 represent, if there is one, on the sign-in  
14 sheet located again by the door that you  
15 came in on the table. I will then call for  
16 these comments in the order they appear on  
17 the sign-in sheet.

18           During the informal phase of the  
19 hearing, I may ask clarifying questions of  
20 anyone who provides comments to insure that  
21 we have a complete record. As outlined in  
22 the prehearing order, the parties may also  
23 ask clarifying questions; however, such  
24 questions shall not constitute a formal  
25 cross-examination or an attempt to



1           undermine someone's comments.

2           If any person wishes to respond to a  
3 question in writing following the hearing,  
4 they may be allowed to do so. While you  
5 may not be a party here or represented by  
6 legal counsel, know that each of your  
7 comments will be carefully considered.

8           You may also provide testimony or  
9 comments in written form. They may include  
10 rebuttal testimony based on anything you  
11 hear -- hear today. I will accept written  
12 comments here today, or you can mail your  
13 testimony to Ronda Hutton at Kansas  
14 Department of Agriculture, 1320 Research  
15 Park Drive, Manhattan, Kansas 66502, and  
16 that address and information is also in our  
17 Department of Agriculture website. The  
18 deadline for submitting that testimony is  
19 August 10th, 2022. Written testimony must  
20 be postmarked by that date. Written  
21 comments will become part of the record of  
22 the hearing and will be compiled and posted  
23 on the Kansas Department of Agriculture and  
24 Division of Water Resources' website for  
25 public review.

1 Does anyone have any questions before we  
2 begin? As I mentioned, I received  
3 pre-filed testimony from the Division of  
4 Water Resources which we have posted on  
5 Kansas Department of Agriculture's website.  
6 To the extent that testimony is not  
7 presented here today, it is incorporated  
8 into the record of these proceedings. It  
9 has already been marked by the court  
10 reporter as Exhibit A.

11 I would also like to remind everyone  
12 that this hearing is being transcribed by a  
13 court reporter. If you are giving oral  
14 testimony today, I would ask that you speak  
15 clearly enough so the court reporter can  
16 hear you. Before you make your comments or  
17 give testimony, you will be placed under  
18 oath. Please state your name and address  
19 before testifying and please remember that  
20 only one person at a time should be  
21 speaking. I'd also like to take this  
22 moment to encourage everybody to check  
23 their cell phones and make sure they are in  
24 silent mode or off so that we don't  
25 interrupt those who are testifying.

1           Finally, please remember the primary  
2           purpose of this hearing is to determine  
3           whether the GMD4 LEMA should be renewed as  
4           proposed by GMD4. This decision must be  
5           supported by the record of this proceeding.  
6           It is appropriate to provide testimony  
7           regarding the effectiveness of the current  
8           GMD4 LEMA plan's corrective control  
9           provisions in meeting the plan's stated  
10          goals, groundwater conditions within the  
11          LEMA boundary, the proposed LEMA plan's  
12          sufficiency to deal with the conditions,  
13          and any other topics you believe are  
14          relevant to the criteria set forth in  
15          K.S.A. 82a-1041 or in my ultimate decision  
16          whether to renew the GMD4 LEMA as proposed.

17                 With those preliminaries completed,  
18                 before I commence with the formal phase of  
19                 the hearing, I would like to ask if anyone  
20                 has questions regarding procedures for  
21                 today? If you do, please step forward.  
22                 Seeing none, I will now call upon Adam  
23                 Dees, attorney for GMD4, to call his first  
24                 witness.

25                         MR. DEES: Chief Engineer, my name

1 is Adam Dees, I'm from Clinkscales Elder  
2 Law in Hays, Kansas, I do have one request  
3 before I call my first witness. As you  
4 have stated, this is a reformation or a  
5 renewal of the greater GMD4 LEMA, and we  
6 are going to request that you -- that you  
7 add to the record the evidence presented at  
8 the previous hearings regarding this matter  
9 in 2017.

10 THE HEARING OFFICER: We will grant  
11 that request and include that in the  
12 record.

13 MR. DEES: Thank you. At that  
14 time -- at this time, we'd like to have the  
15 manager of GMD4, Shannon Kenyon, present  
16 testimony.

17 (REPORTER'S NOTE: At this time  
18 SHANNON KENYON was duly sworn.)

19 MS. KENYON: Okay. Can you hear me?  
20 My name is Shannon Kenyon, I am the manager  
21 of the Groundwater Management District  
22 No. 4 in Colby, Kansas, and I am here  
23 testifying on behalf of the Groundwater  
24 Management District -- GMD4 board of  
25 directors.

1           A little bit of background, on June 8,  
2           2017, the Northwest Kansas Groundwater  
3           Management District No. 4 board submitted a  
4           LEMA proposal to reduce decline rates and  
5           thereby extend the life of the aquifer in  
6           northwest Kansas. On June 27th, 2017, the  
7           chief engineer found the LEMA plan  
8           acceptable for consideration and initiated  
9           proceedings. He delegated the initial  
10          hearing to Hearing Officer Constance Owen.

11          On August 23rd, 2017, Constance Owen  
12          conducted the initial hearing, and on  
13          September 23rd, 2017, Ms. Owen issued her  
14          initial order concluding that the proposal  
15          satisfied the three initial requirements  
16          for approval as set forth in K.S.A. --  
17          K.S.A. 82a-1041(b)(1)(3).

18          Chief engineer David Barfield set the  
19          second hearing for the LEMA's consideration  
20          for November 14th, 2017. After  
21          consideration of the extensive record  
22          afforded by the hearings on February 26th,  
23          2018, Chief Engineer Barfield issued his  
24          order of decision regarding the proposed  
25          LEMA plan. On April 13th, 2018, the chief

1 engineer issued his order of designation  
2 approving the modified LEMA plan and  
3 putting it into effect.

4 So with the chief engineer's 2018 order  
5 of designation, the GMD4 worked to  
6 implement the order requirements in  
7 cooperation with the Kansas Department of  
8 Agriculture's Division of Water Resources.  
9 Per the LEMA plan, a GMD4 LEMA advisory  
10 committee was established and met annually  
11 to review LEMA implementation, including  
12 review of available water use data, water  
13 level data, economic data, and to consider  
14 potential future modifications to the LEMA.  
15 Further, the LEMA plan required a formal  
16 review of the LEMA order one and a half  
17 years before its ending date. Exhibits 4A  
18 and 4B provide the advisory committee's  
19 2021 formal review as well as its most  
20 recent 2022 annual review.

21 MR. DEES: If may I approach?

22 THE HEARING OFFICER: Approach.

23 (GMD4 Exhibit Numbers 4A and 4B  
24 Marked for Identification.)

25 THE HEARING OFFICER: Okay. It'll

1 be Exhibits B and C, correct?

2 THE REPORTER: He's got them marked  
3 as 4A and 4B.

4 THE HEARING OFFICER: Okay, Exhibits  
5 4A and 4B.

6 MS. KENYON: With respect to its  
7 2021 formal review, the advisory committee  
8 recommended the LEMA be continued on  
9 essentially the same terms. The GMD4 board  
10 carefully considered the work of its  
11 advisory committee. After discussion, the  
12 GMD4 board developed its revised LEMA plan  
13 included in this request for reformulation  
14 of the LEMA with the following changes from  
15 the 2018 LEMA plan, as revised by the chief  
16 engineer's 2018 order decision: One, it's  
17 going to be effective from years 2023 to  
18 2027; dropping the 25 percent restriction  
19 on reductions from recent average water in  
20 2017 plan. This change affects 16 water  
21 rights, reducing their allocations by an  
22 estimated total of 6,223 acre-feet for the  
23 coming five-year LEMA. These were not in  
24 the initial LEMA because of unintended  
25 economic hardships and is now in there

1 because time to implement management and  
2 bring everyone to the same playing field.  
3 We're also adding a new provision on  
4 conversions from irrigation to other uses.  
5 The converted water right will then have a  
6 LEMA allocation equal to or less than the  
7 irrigated LEMA quantity prior to that  
8 conversion. This is to reduce  
9 unintentional increase in water  
10 consumption.

11 At its board meeting of March 2nd, 2022,  
12 the GMD4 board unanimously voted to send  
13 the reformulated LEMA plan to the chief  
14 engineer for consideration. As a result,  
15 the GMD4 is requesting the chief engineer  
16 accept this reformulation of the GMD4 LEMA  
17 for the years 2023 to 2027.

18 Then we're going to -- another -- okay.  
19 The next exhibit to be presented is the  
20 request for renewal of the GMD4 LEMA  
21 submitted to chief engineer, Kansas  
22 Department of Agriculture, Division of  
23 Water Resources, February 16th, 2022.

24 (GMD4 Exhibit Number 2 Marked for  
25 Identification.)



1 MS. KENYON: So the process for  
2 consideration of the reformulation request,  
3 groundwater levels in the area in question  
4 are declining or have declined excessively,  
5 whether the public interest requires one or  
6 more corrective control provisions be  
7 adopted, and whether the geographic  
8 boundaries are reasonable.

9 Evidence showing the GMD4 LEMA should  
10 continue is the modified LEMA management  
11 plan and putting it into -- into -- putting  
12 it in effect. So with the reformulation  
13 request with the chief engineer's 2018  
14 order of designation, the GMD4 worked to  
15 implement the order's requirement in  
16 cooperation with the Kansas Department of  
17 Agriculture's Division of Water Resources.  
18 Per the LEMA plan, a GMD4 LEMA advisory  
19 committee was established and met annually  
20 to review -- oh, wait, did I already say  
21 all that? Okay.

22 MR. DEES: I'm sorry.

23 MS. KENYON: Hit me. Evidence  
24 showing the GMD4 LEMA should continue, the  
25 current and proposed LEMA are based on

1 addressing the following concerns:  
2 Groundwater levels in the area in question  
3 are declining or have declined excessively,  
4 to supplement the record of the 2017  
5 hearing supporting the existence of these  
6 concerns, and with that are the next  
7 exhibits from the Kansas Geological Survey.

8 (GMD4 Exhibit Numbers 5 and 6  
9 Marked for Identification.)

10 THE HEARING OFFICER: Go ahead.

11 MS. KENYON: I'm good? All right.  
12 And the Exhibit 5 is a map showing the  
13 estimated change in saturated thickness,  
14 predevelopment to average 2020-2022, of the  
15 High Plains Aquifer in Northwest Kansas  
16 GMD4. As you can see in that map, it shows  
17 this -- a small scale, but the blue shows  
18 the areas that have increased, the yellow  
19 is the mild reduction, and then the darker  
20 orange areas is a -- is a much larger --  
21 much larger thickness.

22 On the back side of that is the map  
23 showing the estimated precip change in  
24 saturated thickness, predevelopment to the  
25 average of 2020 to '22 of the High Plains

1 Aquifer in Northwestern Kansas GMD4. It's  
2 pretty much the same data, but it shows the  
3 percents of the aquifer that -- instead of  
4 in feet.

5 And then the third map with this exhibit  
6 is the estimated average 2020 to '22  
7 saturated thickness of the High Plains  
8 Aquifer in Northwest Kansas GMD4. Once  
9 again, they got the yellow, green, purple,  
10 and as it gets -- you can see that it is  
11 much deeper saturated thickness for that  
12 but that is not -- the first ones were from  
13 predevelopment; this is what it is  
14 currently.

15 (GMD4 Exhibit Number 6 Remarkd  
16 for Identification.)

17 MS. KENYON: Exhibit 6 shows the  
18 interpolated water level change in the  
19 Kansas High Plains Aquifer region, average  
20 2011 to 2013 as compared to the average  
21 2020 to 2022. This map is -- shows the  
22 change in feet in all of the High Plains  
23 Aquifer and also notes the changes in feet  
24 within GMD4 with the LEMA areas  
25 highlighted.

1           And then the second one is the  
2           interpolated water level change Kansas High  
3           Plains Aquifer region with an average of  
4           2016 to 2018 as compared to the average of  
5           2020 to 2022, and you can see a more recent  
6           change in that -- in the aquifer with the  
7           two -- with -- it's without the whole  
8           entire High Plains aquifer but this has got  
9           the LEMA area shaded.

10           And then the last map that is in there  
11           is the interpolated change in feet but in  
12           the cooperative water level network that  
13           deals with just the last year, 2021 to  
14           2022. That shows that there is still a  
15           decline within the affected LEMA region.

16           So with that, also the GMD4 groundwater  
17           flow model, the next exhibit provides  
18           excerpts from the full model report  
19           summarizing results from its status quo.

20           MR. DEES: Is that this one?

21           MS. KENYON: That's correct.

22           MR. DEES: Okay. May I approach?

23           THE HEARING OFFICER: Yeah.

24           MR. DEES: This is Exhibit 7.

25                   (GMD4 Exhibit Number 7 Marked for

1 Identification.)

2 MS. KENYON: And it shows the full  
3 model report summarizing results from a  
4 status quo future model run, which  
5 demonstrates the ongoing declines into the  
6 future without reductions in groundwater  
7 pumping, and the second one shows what that  
8 model shows under the current LEMA plan.  
9 In the short-term, there's a huge  
10 difference in the impact that the LEMA has,  
11 but it also shows that more work needs to  
12 be done in future years.

13 Whether the public interest requires one  
14 or more corrective control provisions to be  
15 adopted, that is to extend the life of the  
16 aquifer.

17 Whether the geographic boundaries are  
18 reasonable, we are not changing any  
19 boundaries.

20 The reformulation request continues the  
21 current, well-vetted LEMA provisions. The  
22 current GMD4 LEMA request adopts the goal  
23 statement and its justification from the  
24 2017 LEMA request submitted by the GMD4  
25 board of directors, as well as

1 substantially the same corrective controls  
2 in its 14 implementable elements designed  
3 to achieve that goal, which is 1.7 million  
4 acre-feet over five years.

5 The 2017 LEMA proposal was the product  
6 of a substantial amount of public outreach  
7 and input as is discussed in detail in the  
8 district's 2017 memorandum in support of  
9 the chief engineer approving the  
10 Groundwater Management District No. 4's  
11 proposal as requested to be modified and  
12 designating a Local Enhanced Management  
13 Area.

14 Data evidencing it is premature to  
15 consider changes to the LEMA. The  
16 allocation of the current and proposed  
17 reformulated LEMA are based on rates of  
18 groundwater level decline by township as  
19 presented in the record of the 2017  
20 hearing. At the time the advisory  
21 committee made its formal review and  
22 recommendations regarding reformulation of  
23 the LEMA in May 2021, the principal  
24 available records were water use through  
25 2019 and water level change data through

1 early 2021, which was preliminary. As is  
2 noted above, the advisory committee  
3 believed this additional record was  
4 insufficient to warrant changes in the  
5 township designations and allocations.

6 And the next exhibit, Exhibit 8 --  
7 (GMD4 Exhibit Number 8 Marked for  
8 Identification.)

9 MS. KENYON: -- is the latest  
10 updates to the KGS' ongoing work to  
11 evaluate precipitation, pumping, and water  
12 level change relationships through 2021.  
13 Of note are the following: One slide -- or  
14 one of the graphics shows plots of the 2005  
15 to 2021 irrigation water use, irrigated  
16 area, irrigation depth and irrigation  
17 season precipitation in inches.

18 For 2017 to 2019, the seasonal  
19 precipitation was significantly higher than  
20 average, along with the low pumping values  
21 for the same years. 2020 and 2021  
22 irrigation season precipitation are lower  
23 than average with a significant increase in  
24 pumping.

25 On the back side of that, it shows

1 another look at this same data with years  
2 2017 to 2019 as the extreme values in terms  
3 of precipitation and pumping.

4 So look at the -- the LEMA's corrective  
5 controls are accomplishing the LEMA's goal  
6 and can be expected to do so in the future.  
7 1.7 million acre-feet over the five-year  
8 LEMA period remains unchanged. The total  
9 water used within the LEMA boundary for the  
10 first four years of the LEMA, which is 2018  
11 to 2021, was estimated to be 1 million  
12 acre-feet, 59 percent of the allowable 1.7  
13 million acre-feet for five years, well  
14 below the 80 percent that might be expected  
15 after four years. Even given this current  
16 dry year, there is little doubt the LEMA  
17 will easily meet its goal. The findings  
18 related to the studies of Sheridan 6 LEMA  
19 provide ample evidence the producers can  
20 make the needed adjustments to continue to  
21 irrigate within this LEMA's less  
22 restrictive allocation framework.

23 Yeah, the Golden final report of  
24 November 15th, 2018 supports this statement  
25 with the following amount its conclusions:



1 The economic results are consistent with  
2 Golden and Leatherman in 2017 and suggest  
3 that given the certainty of groundwater use  
4 reductions, producers are able to implement  
5 strategies to maintain returns and apply  
6 less groundwater.

7 On metering and enforcement, the  
8 metering and enforcement policies have  
9 worked very well, and there's no request to  
10 change the enforcement policies. Several  
11 well meters failed, and the water users and  
12 GMD4 worked together under normal  
13 procedures to see that the meters were  
14 replaced and to estimate water use.  
15 Therefore, the policies allowed for a swift  
16 response to meter failures and provide  
17 penalties sufficient to encourage  
18 compliance. Most water users adopted  
19 alternate means to monitor their meters,  
20 and GMD4 has found few problems to date.

21 The advisory committee has worked well,  
22 and it should be continued in its current  
23 form. The advisory committee meets yearly,  
24 has produced yearly reports, and has  
25 encouraged GMD4 and stakeholders to work

1           towards communication regarding the GMD4  
2           LEMA status. The request for reformation  
3           was done at the advisory committee's  
4           request to the GMD4 board of directors. So  
5           if the GMD4 LEMA is approved to be  
6           continued, GMD4 requests DWR again provide  
7           notice to all well owners of their 2023 to  
8           2027 allocation prior to the start of the  
9           2023 pumping season.

10           In conclusion, the GMD4 board offers a  
11           proposal to reformulate the GMD4 LEMA for  
12           2023 to 2022 (sic), which, one, reduces the  
13           historical water use by a significant  
14           amount and will achieve the LEMA goal of no  
15           more than 1.7 million acre-feet pumped for  
16           irrigation use within the LEMA area during  
17           the LEMA period; two, it does not  
18           disadvantage the less used water rights or  
19           benefit the highest used water rights;  
20           three, allows maximum economic use of the  
21           total goal quantity chosen; four, includes  
22           a monitoring and enforcement elephant --  
23           element that is sufficient to thwart  
24           violations; five, is consistent with Kansas  
25           water law; and, lastly, meets all the

1 requirements of K.S.A. 82a-1040.

2 Therefore, this reformation should be  
3 approved and implemented as requested.

4 Thank you.

5 THE HEARING OFFICER: Thank you,  
6 Ms. Kenyon. Adam, do you have -- or,  
7 Mr. Dees, do you have questions?

8 MR. DEES: I do have a few  
9 questions. Very quickly, housekeeping  
10 items, the area, the LEMA area proposed is  
11 wholly within the groundwater management  
12 district; is that correct?

13 MS. KENYON: Yes.

14 MR. DEES: One other question, I  
15 would ask you to expound on how continuing  
16 the LEMA is in the public interest?

17 MS. KENYON: To extend the life of  
18 the aquifer.

19 MR. DEES: Okay. I have no further  
20 questions.

21 THE HEARING OFFICER: DWR have any  
22 questions? Okay. I have just a couple of  
23 quick, clarifying questions. Want to  
24 confirm that groundwater levels continue to  
25 decline even with the LEMA; is that

1 correct?

2 MS. KENYON: Correct.

3 THE HEARING OFFICER: Is it your  
4 belief that groundwater will decline more  
5 without the LEMA than with -- are currently  
6 declining?

7 MS. KENYON: Correct.

8 THE HEARING OFFICER: And then one  
9 other thing, I think in, I think it's  
10 Exhibit 7, when you talked about the GMD4  
11 model, you mentioned that it showed areas  
12 of short-term versus long-term, and I was  
13 wondering if you could explain what that  
14 meant, I couldn't quite understand what you  
15 were suggesting there?

16 MR. DEES: If I may approach to get  
17 those?

18 THE HEARING OFFICER: Please.

19 MS. KENYON: I've got those. Is  
20 that Exhibit 7?

21 THE HEARING OFFICER: I think that's  
22 right.

23 MR. DEES: That's Exhibit 7.

24 MS. KENYON: Okay. Yeah, no, I've  
25 got those right here. Yes, on the first

1 page, you can see the model, this one is  
2 assimilated -- a simulated water level  
3 change in feet for the no change in future  
4 water policy. So prior to the LEMA, if --  
5 per the model, you can see from 2020 to  
6 2023 (sic), everything's kind of green;  
7 2020 to 2040, you see a couple of yellow  
8 areas beginning to show up; and then as we  
9 go all the way to 2080, you can really see  
10 those -- the water level change areas begin  
11 to bloom in certain areas.

12 But on the second page, we have -- this  
13 is with the LEMA and what that would look  
14 like if we kept going. And as you can see  
15 the 2020 to 2030, not a lot of change, but  
16 in that 2020 to 2040, the yellow areas,  
17 even though they begin to pop up, are much  
18 smaller than had they been without the  
19 LEMA.

20 THE HEARING OFFICER: Thank you. Do  
21 you have at your -- not today obviously but  
22 can you follow up with maps that show the  
23 difference between these two, that show the  
24 difference in declines with the present  
25 LEMA versus not having a LEMA in place?

1 MR. DEES: Are you wanting that  
2 extrapolated over the 80-year period?

3 THE HEARING OFFICER: Yeah, I'm  
4 thinking we can get the two different sets  
5 of graphs and what the difference between  
6 them is.

7 MR. DEES: Okay.

8 THE HEARING OFFICER: The difference  
9 in feet per each of them, the graphs.

10 MR. DEES: Yes, we will include that  
11 in the written testimony.

12 THE HEARING OFFICER: Thank you.  
13 Are there any other questions for  
14 Ms. Kenyon? I don't have any more. Again,  
15 thank you for your testimony.

16 That concludes the formal portion of the  
17 hearing. Now is the time for the public to  
18 make comments. If you wish to make  
19 comments, please go to the microphone when  
20 I call your name and state your name and  
21 any entity or organization that you  
22 represent, and you'll have an opportunity  
23 to make comments regarding the greater GMD4  
24 LEMA.

25 I would appreciate if you tell us --

1 tell me a little bit about your interest in  
2 the area, your experience as a water user  
3 or any other special experience you have.  
4 Remember, please speak clearly and one  
5 person at a time so the court reporter can  
6 properly record what is being said.

7 I don't see anybody on the sign-in sheet  
8 that has indicated they want to provide  
9 comments. Is there anybody in the audience  
10 that would like to provide comments at this  
11 time? Please come forward. Is there a  
12 microphone there? Okay. Yeah, if you can  
13 state your name, where you're from. Well,  
14 we need to ...

15 (REPORTER'S NOTE: At this time  
16 JANELLE SHIELDS was duly sworn.)

17 THE REPORTER: May I have you state  
18 your name and address, please.

19 MS. SHIELDS: Janelle Shields, 620  
20 Main, Goodland, Kansas. A couple questions  
21 for actually Shannon about how to, like,  
22 clarify information? You talk about, like,  
23 the advisory committee and that sort of  
24 thing, how do you become a part of that,  
25 how do you become more involved? And my

1 question for that is because some of the  
2 information that has been given out to  
3 producers has been very misleading and  
4 difficult to understand from, like, our  
5 side of it. And so I didn't know how we  
6 could be more involved to make it more  
7 transparent for producers.

8 THE HEARING OFFICER: Okay. First,  
9 can you kind of clarify what you mean by  
10 it's not clear to the producers and what  
11 you're meaning?

12 MS. SHIELDS: When you get on the  
13 groundwater management website to find  
14 things to clarify especially about the  
15 wordage and those sorts of things, there  
16 have been a few things missed that I feel  
17 like maybe a committee that understands the  
18 background of it, you don't realize what  
19 it's reading as from our side as a  
20 producer.

21 It happens a lot, it's like why you have  
22 other things proofread by somebody else.  
23 There have been things that have been  
24 missed by numerous producers in our area  
25 that have caused penalties from the State



1 of Kansas due to a very misleading how  
2 things are written and how the stuff is  
3 updated.

4 We want to be of help, we want to be  
5 involved, so how do you do that? I've read  
6 the groundwater management thing, I don't  
7 understand how to become more involved. I  
8 don't want to be on the board, I think they  
9 do a great job, but the advisory committee,  
10 that sort of thing, how do we become more  
11 involved to give that kind of feedback  
12 before there's problems?

13 THE HEARING OFFICER: Okay. Thank  
14 you and I'll -- if you want to address it  
15 now or if you want to follow up later on,  
16 it's up to you.

17 MR. DEES: Can -- can we follow up  
18 with answers to her questions after the  
19 hearing?

20 THE HEARING OFFICER: We can follow  
21 up after the hearing, yes. Thank you.

22 Is there anyone else that would like to  
23 provide comments or testimony today? Okay.  
24 Seeing none, in a moment I'll close the  
25 opportunity to provide oral testimony. You

1 are again free to provide written testimony  
2 whether you provided oral testimony here or  
3 not. Remember that all written comments  
4 must be submitted and postmarked by  
5 August 10th.

6 Anyone may submit additional written  
7 testimony before this date, and your  
8 written comments will also be made a part  
9 of the record of this hearing. Information  
10 is available on the sheets located, I  
11 think, on the table, again, by the door on  
12 how to provide written testimony or  
13 comment. As we receive written testimony,  
14 it will be posted on the Department of  
15 Agriculture's website. We will also post  
16 this transcript of hearing on our website  
17 when it becomes available.

18 The record will be closed on  
19 August 10th, 2022. After the record is  
20 closed, I will review the record and make a  
21 decision on how to proceed. First,  
22 pursuant to statute, I have 120 days to  
23 issue my order of decision. Regarding this  
24 order, I have the following choices: One,  
25 accept the LEMA plan as proposed; two,

1 reject the LEMA plan as insufficient to  
2 address the conditions; three, return the  
3 plan if it is determined to be deficient  
4 with the reasons and the options for the  
5 GMD to revise and resubmit the plan; or,  
6 four, return the plan with specific  
7 suggestions for improvements which the GMD  
8 can accept or reject.

9 If the order of decision accepts the  
10 LEMA plan, then that order will take the  
11 form of a consolidated order of decision  
12 and order of designation and will designate  
13 the area as a LEMA and ordering the  
14 specific corrective controls within the  
15 plan.

16 Again, I want to say I appreciate you  
17 taking time out of your day to come and  
18 appear and participate in this hearing  
19 today. Before closing the hearing, I will  
20 take one last time to -- if anyone wishes  
21 to offer additional oral comments or  
22 testimony or if anyone has any comments on  
23 the procedure going forward from here?  
24 We've got one in the back, come forward,  
25 please.

1 (REPORTER'S NOTE: At this time  
2 MATT SHIELDS was duly sworn.)

3 THE REPORTER: Would you state your  
4 name and address?

5 MR. SHIELDS: Matt Shields, 6489  
6 Sundance Trail, Goodland, Kansas.

7 THE HEARING OFFICER: Go ahead.

8 MR. SHIELDS: My concern is the  
9 vagueness of how the LEMA worked in the  
10 past as well as I'm sure moving forward.  
11 So we got two letters regarding the LEMA.  
12 I didn't come to any of the earlier water  
13 meetings, so my first letter basically said  
14 the LEMA's in place 2018 through 2022, and  
15 the way I understood the program was we had  
16 this total five-year bank of water to use.  
17 And that letter never said anything about  
18 you are still restricted to pumping your  
19 annual original water right amount.

20 We got a second letter, I think it was  
21 2019 where they just basically update you  
22 on how much water you have left over the  
23 last two years of the program, and that  
24 letter stated, you have this quantity of  
25 water to pump over the next two years.

1           Once again, it never said anything  
2           mentioning you still have to stay within  
3           your annual allocated water right.

4           So I was not aware of that annual  
5           restriction. I don't know if I'm the only  
6           producer who misunderstood the program, I  
7           wouldn't think so, but basically I received  
8           a substantial fine because we did overpump  
9           over the allocation but we did not go over  
10          our -- we overpumped in annual allocation  
11          but we didn't go over our five-year  
12          allocation. So we got a substantial fine,  
13          and they're telling us for next year  
14          basically we have 8 acre-feet to pump,  
15          which is not a substantial amount  
16          obviously.

17          So that is my concern with it, and I  
18          just feel like the program was not  
19          explained well to the producers. Like I  
20          say, just got two letters, neither one of  
21          those letters mentioned anything about the  
22          annual allocation.

23                 THE HEARING OFFICER: Thank you,  
24                 Mr. Shields. And just to clarify, your  
25                 main concern is making sure that it's clear

1           that an annual allocation versus the  
2           five-year allocation is still in place,  
3           correct?

4                   MR. SHIELDS: I guess my main  
5           concern is that I don't feel like the  
6           program was explained clearly enough and  
7           now it's affecting my livelihood because I  
8           pretty much can't use that well at all next  
9           year, so that's my frustration.

10                   THE HEARING OFFICER: Thank you. Is  
11           there any questions for Mr. Shields? Okay.  
12           All right. Thank you for your testimony.

13                   Is there anybody else that would like to  
14           comment or provide testimony today? Come  
15           forward, please.

16                           (REPORTER'S NOTE: At this time  
17                           SPENCER SCHLAPP was duly sworn.)

18                   THE REPORTER: Thank you. State  
19           your name and address, please.

20                   MR. SCHLAPP: My name's Spencer  
21           Schlapp, 1375 Road 2, St. Francis, Kansas.  
22           I guess that's all that.

23                   I'm under the impression the same as the  
24           producer before me. I overpumped a well  
25           but stayed within the LEMA two years ago,

1 and I'm like him, I did not go over my  
2 acre-feet allotted. Yes, I overpumped a  
3 well, and we're already at the end of the  
4 pumping season for that well and I'm  
5 just -- I'm like him, I didn't understand  
6 the rule, it was vague, but I stayed within  
7 my LEMA acre-feet. So I'm just here to say  
8 the same thing as he is so that's all.

9 THE HEARING OFFICER: Thank you,  
10 Mr. Schlapp. Any questions for  
11 Mr. Schlapp? All right. Thank you.

12 Anyone else would like to provide  
13 comments today? All right. Seeing none,  
14 again, thank you everybody for  
15 participating today. The record for the  
16 oral testimony in this matter is now  
17 closed.

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