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Jackie McClaskey, Secretary

Governor Sam Brownback

April 6, 2016

David M. Traster  
Daniel J. Buller  
Foulston Siefkin LLP  
1511 N. Waterfront Parkway, Suite 100  
Wichita, KS 67206-4466

RE: Water Right File Nos. 21,729; 21,730; 21,731; 21,732;  
21,733; 21,734; 21,841; 21,842; 22,325; 22,326; 22,327; 22,329;  
22,330; 22,331; 22,332; 22,333; 22,334; 22,335; 22,338; 22,339;  
22,340; 22,341; 22,342; 22,343; 22,345; 22,346; 27,760; 29,816;  
30,083 and 30,084

Gentlemen,

Thank you for meeting with KDA-DWR at our offices in Manhattan on Thursday, March 24 to discuss the City of Hays's (City) pending applications to change the R9 Ranch water rights (Change Applications) to municipal use as part of a project to supply the City of Hays and possibly other municipal users in the region (Project). We found the discussion informative and positive, and we would like to continue the dialogue with the City so that KDA-DWR will have the best information available with which to process and consider the City's Change Applications.

As we noted at the meeting, at this stage, we are evaluating the Change Applications pursuant to applicable statutes and regulations as if the proposed municipal use was occurring at some distance from the existing ranch, but less than 35 miles, i.e. without the additional considerations required by the water transfer act. This includes a review of whether the proposed changes are reasonable and will not impair neighboring water rights over the proposed life of the project.

The following is a summary of the issues that KDA-DWR raised in our letters of January 21 and March 8 of this year, and the statuses of those issues after our meeting with City representatives last week:

**1. Consumptive use analysis (January 21 letter)**

It appears that KDA-DWR has all the necessary information to apply the consumptive use criteria of K.A.R. 5-5-3 and K.A.R. 5-5-9 to the City's Change Applications. It further appears that, after applying the relevant regulations, our consumptive use analysis shows that 7,604 acre-feet of the 7,626 acre-feet requested by the City in its Change Applications is eligible for conversion to

municipal use. KDA-DWR's slightly smaller amount is limited by the amount certified under each right.

## **2. Justification for proposed municipal use, proposed amount, project phasing (January 21 letter)**

We understand from our conversation at the meeting that, if the final amount of water allowed by KDA-DWR to be converted to municipal use is acceptable to the City, then the City intends to construct one pipeline for the Project but develop water production capacity over time, with those water rights not needed in the initial phase of the Project "held in reserve", that is, not used, until needed for municipal use. Thus the City clarified its plan to dry up (stop irrigating) with the R9 water rights once cover crops are established. For the most part, this has already occurred, with remainder to be completed in 2016 and 2017.

KDA-DWR requested that the City provide information towards justifying the total quantity sought in the Change Applications as they will be finalized for municipal use, and how water use would be limited to reasonable municipal use in the future. Specifically, we request that the City provide 50-year projections of population, commercial, and industrial growth anticipated to create demand for the R9 Ranch water for the City of Hays, including the specific quantity justified for Hays with the assumptions relied on to develop the projection. To the extent the City of Russell is committed to the project, their needs can also be included.

At the meeting, the City indicated that it would like to have the approval of the Change Applications for municipal and related uses in the full quantity determined to be approvable as consistent with statute and regulatory requirements, even if the City cannot fully justify this demand at this time. Rather, the City proposes that the approval allow the City to bring wells into production as demand develops, subject to specific criteria and review by the chief engineer (e.g. area served, population projections, industrial demand served, existing water rights, etc.). In addition, the City stated that the Project may have drought mitigation benefits for the region that the City will request be considered in determining what is reasonable. In addition to the information requested in the paragraph above, we request the City provide a specific proposal for how it will justify demand beyond this amount and proposed method for review and approval by the chief engineer.

The City has not proposed a methodology for determining a reasonable cap on the rate of the individual wells in the well field. We request this be provided.

## **3. Water conservation requirements (January 21 letter)**

In our January 21 letter, KDA-DWR stated that "...the sufficiency of proposed water conservation will be evaluated against the regional averages of per capita water usage for comparable cities in your region..." At our March 24 meeting, Mr. Dougherty stated that the City is proud of its water conservation and will continue to conserve water in the future.

Given the City's strong record of conservation, the dedication of City leaders to continue water conservation, and a plan to keep use within reasonable limits as requested above, it appears that

the City's water conservation requirements are on track for favorable consideration by KDA-DWR.

#### **4. Flexibility in locating points of diversion (January 21 letter)**

The City's preliminary design leading to the Change Applications provides planned locations of the consolidated municipal wells meeting the requirements of KDA-DWR rules. The City has requested flexibility to allow the final locations of the points of diversion to vary by up to 1000 feet without requiring a change application. The justification stated at the meeting is that the final design of the Project well field has not been completed, and for at least some of the wells, will not be completed until future project phases. Optimal final locations for the wells will be based on a number of criteria including access, terrain, power transmission lines, etc. The City does not object to an approval with its requested flexibility that includes specific additional criteria that must be met (e.g. half-mile spacing to neighboring point of diversion outside the R9 Ranch boundary, etc.) but wishes to avoid having to go through the water right change process multiple times to optimize the design of the well field.

KDA-DWR is willing to consider this approach for future phases where needed but urges the City to perform such hydrologic testing and design work as needed to tighten up its Change Applications so that the final locations can be known within 300 feet for the initial phase, and provide reasonable justification for those Project well locations for future phases that the City believes may need more than 300 feet of horizontal location flexibility at the time of approval.

#### **5. Long-term sustainability of the project and effects to the area (March 8 letter)**

At the meeting we were informed that the City, through its consultant, Burns & McDonnell, is enhancing the Groundwater Management District #5 (GMD5) hydrologic model (Model) for use in the Project area specifically to determine what the sustainable level of withdrawals over time of the Project is and the effects of this level of withdrawal on the area. We understand that the City and Burns & McDonnell anticipate that the modeling work will not be finished for three to four months.

The City, through its counsel, Mr. Traster, said that sustainability is a water management goal of the Project. The Project's estimated cost is \$76 Million. The City said that the sustainability of the Project will have to be demonstrated to the finance market so that funding to build the Project can be secured.

Should the modeling work demonstrate that the long-term sustainable yield of the Project area is less than otherwise allowed by KDA-DWR rules, the City will amend its Change Applications accordingly. As noted above, the City envisions that it will request the ability to pump at higher rates and quantities in drought periods.

As the modeling work continues, we encourage the City to engage the stakeholders affected by the Project, including GMD5, WaterPACK and KDA-DWR, to allow an understanding of the model enhancements and future scenarios evaluated; any adjustments to the configurations of the well field and operational plans; and impacts on neighboring wells, the stream, water levels in the area,

and on the long-term health of that part of the basin.

**6. Basin stakeholders' desire to have their concerns heard prior to a decision (March 8 letter)**

At the meeting, the City expressed its desire and commitment to keeping the process towards completing the Project as transparent as possible. We discussed the options for public involvement including informational meetings and formal hearings. For the City, Mr. Traster said that, at this time, the City does not intend to request a pre-decision hearing, but it reserves the right to make such a request.

The City did say, however, that if the chief engineer wishes to hold a pre-decision meeting or hearing of his own volition, the City would not object and would participate in such proceeding.

Thank you for your attention to these requests. If you have questions or comments about these requests or the characterizations made herein, please contact me at (785) 564-6670.

Sincerely,

A handwritten signature in blue ink that reads "David W. Barfield". The signature is fluid and cursive, with the first letters of each word being capitalized and prominent.

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