

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

In the Matter of the City of Wichita's)
Phase II Aquifer Storage and Recovery Project) Case No. 18 WATER 14014
In Harvey and Sedgwick Counties, Kansas.)

_____) Pursuant to K.S.A. 82a-1901 and K.A.R. 5-14-3a.

DWR's RESPONSES TO GMD2's FIRST INTERROGATORIES

COMES NOW the Kansas Department of Agriculture, Division of Water Resources, and hereby provides responses to the First Interrogatories propounded on DWR by Equus Beds Groundwater Management District Number 2 ("GMD2").

CERTAIN DEFINITIONS PROVIDED BY GMD2

1. "You" and/or "Your" means the Kansas Department of Agriculture ("KDA") and/or the Division of Water Resources ("DWR"), and any agent, consultant, employee, or manager for KDA and/or DWR.
2. "Chief Engineer" means David Barfield, Chief Engineer, Division of Water Resources, Kansas Department of Agriculture.
3. "The District" shall mean the Equus Beds Groundwater Management District No. 2.
4. "Subject Matter" means the content of this administrative hearing including, but not limited to, AMCs, the ASR Permit Modification Proposal, and all related subject matter.
5. "ASR Permit Modification Proposal" means the proposal dated March 12, 2018, that the City submitted to the Chief Engineer, Division of Water Resources, Kansas Department of Agriculture.
6. "AMC Proposal" means the Aquifer Maintenance Credits Proposal submitted as part of the ASR Permit Modification Proposal.
7. "AMC" means Aquifer Maintenance Credit.
8. "Aquifer" shall mean the Equus Beds Aquifer.

9. "The City" shall mean the City of Wichita.
10. "ASR" shall mean Aquifer Storage and Recovery.
11. As used herein, the term "document" means any medium upon which intelligence or information can be recorded or retrieved, and includes, without limitation, the original and each copy, regardless of origin and location, of any book, pamphlet, periodical, letter, memorandum, (including any memorandum or report of a meeting or conversation), contract, agreement, letter, e-mail, facsimile, check, receipt, notice, study, telegram, computer printout, invoice, computer data file, work papers, diary, calendar, transcript, bill, record, photograph, or any other graphic matter, however produced or reproduced, which is or was in your possession, custody or control.
12. As used herein, the term "communication" means any oral or written utterance of any nature including, but not limited to, correspondence, e-mail, facsimile, conversations, discussions, and consultations, between or among two or more persons.
13. As used herein, the terms "identification," "identify," or "identity," when used in reference to (a) a natural individual, require you to state his or her full name, job title, residential and business addresses and home and business phone numbers; (b) a corporation or business, require you to state its full name and any names under which it does business, the address of its principal place of business, and the addresses of all of its offices; (c) a document, requires you to state the number of pages and the nature of the document (e.g., letter or memorandum), its title, its date, the name or names of its authors and recipients, and its present location and custodian; (d) a communication, requires you to identify the document or documents which refer to or evidence the communication; and (e) an oral communication, requires you to identify the persons participating in the communication and to state the date, manner, place and substance of the communication.
14. As used herein, the word "or" appearing in a request should not be read so as to eliminate any part of the request, but, whenever applicable, it should have the same meaning as the word "and."
15. As used herein, the words "person" or "entity" mean any natural person, company, business, partnership, corporation, association or other group carrying on a business enterprise.

RESPONSES TO INTERROGATORIES

1. **Identify each person who provided information or otherwise prepared or assisted in the preparation of the responses to these Interrogatories and to the Requests for Production of Documents and the Requests for Admissions served simultaneously with these Interrogatories and specify for each such person the information provided.**

OBJECTION: *Specifying each involved person's particular information provided in the course of DWR's responding to extensive written discovery propounded on a large state-agency division is overly broad and unduly burdensome. Subject to and without waiving the foregoing objections, DWR's response follows.*


Aaron B. Oleen, KS Sup. Ct. #23588

RESPONSE: The following persons provided varying levels and types of information in the course of DWR's responding to GMD2 extensive written discovery, with such information ranging from technical responses to confirmation of the dates of DWR's meetings with the City about the City's ASR project, the ASR Permit Modification Proposal, or the AMC Proposal:

- Lane Letourneau, Water Appropriation Program Manager, DWR
- Jeff Lanterman, Stafford Field Office Water Commissioner, DWR
- Doug Schemm, Environmental Scientist, DWR
- Ginger Pugh, Professional Civil Engineer, DWR
- Aaron Oleen, KDA Staff Attorney
- Stephanie Murray, KDA Staff Attorney
- Chris Beightel, Water Management Services Program Manager, DWR
- David Barfield, Chief Engineer, DWR
- Kenneth Titus, KDA Chief Counsel
- Brian McCloud, Deputy City Attorney, City of Wichita

2. Identify all documents that are relevant to the Subject Matter of this administrative hearing or the AMC Proposal.

OBJECTION: *The phrase "that are relevant to" is vague and ambiguous and this interrogatory is overly broad and unduly burdensome. Subject to and without waiving the foregoing objections, DWR's response follows.*


Aaron B. Oleen, KS Sup. Ct. #23588


RESPONSE: See documents produced in conjunction with DWR's responses to the First Request for Production of Documents that GMD2 propounded on DWR.

3. If any of your responses to the District's Requests for Admission are anything other than an unqualified admission, provide a detailed explanation of any and all facts that relate to or concern your responses and identify:

- a. Any and all persons with facts that relate to or concern your responses;
- b. Any and all documents that relate to or concern your responses.

OBJECTION: *This interrogatory's requests to explain in detail and to identify various "any and all" items that "relate to or concern" DWR's responses to GMD2's First Request for*

Admissions are vague and ambiguous, overly broad, and unduly burdensome. Subject to and without waiving the foregoing objections, DWR's response follows.


Aaron B. Oleen, KS Sup. Ct. #23588

RESPONSE: See DWR's responses to GMD2's First Request for Admissions.

- 4. If you have ever had any of the documents that are to be identified pursuant to any of these Interrogatories or are to be produced pursuant to any of the Requests for Production of Documents served simultaneously with these Interrogatories but do not now have such document(s) in your possession, custody, or control, state the following with respect to each such document:**
- a. The present location thereof or all reasons why you cannot or do not know the location thereof.**
 - b. The date each such document left your possession, custody, or control.**
 - c. The reasons each such document is not now in your possession, custody, or control.**
 - d. Identify all persons having knowledge about the matters inquired about in the immediately preceding paragraphs (a) through (c).**

***OBJECTION:** This request, especially in the modern world of e-mails, is overly broad and unduly burdensome. DWR has made reasonable, extensive efforts to locate responsive documents and has produced hundreds of potentially responsive documents in conjunction with DWR's responses to GMD2's First Request for Production of Documents, but this ASR matter goes back several years and DWR cannot know whether all documents subject to GMD2's broad request have been located or retained. Subject to and without waiving the foregoing objections, DWR's response follows.*


Aaron B. Oleen, KS Sup. Ct. #23588

RESPONSE: DWR is reasonably unaware of any particular responsive documents that are subject to this interrogatory.

- 5. If any of the documents that are to be identified pursuant to any of these Interrogatories or are to be produced pursuant to any of the Requests for Production of Documents served on you simultaneously with these Interrogatories are withheld under a claim of privilege, or are not produced for whatever reason:**
- a. State with specificity the claim of privilege or other reason to withhold production.**
 - b. Identify each such document by date, author, and subject matter, without disclosing its contents, in a manner sufficient to allow it to be described to the Hearing Officer for ruling on the privilege or other reason asserted.**
 - c. Produce those portions of any such document that are not subject to a claim of privilege or other reason for non-production by excising or otherwise protecting**

the portions for which a privilege is asserted, if such a technique does to result in disclosing the contents of the portions for which some privilege is asserted.

RESPONSE: See DWR's privilege log produced in conjunction with DWR's responses to GMD2's First Request for Production of Documents.

- 6. Identify any person that has or may have knowledge, other than the general public, of the facts related to the Subject Matter of this administrative hearing or the AMC Proposal.**

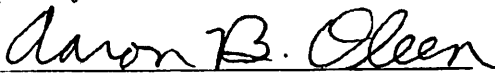
***OBJECTION:** The breadth of this request makes it impossible for DWR to know the answer and respond, and moreover this request is overly broad and unduly burdensome for DWR to attempt to ascertain the answer, when this interrogatory is viewed in light of how long the City's ASR project has been contemplated and in existence, how many people have been involved, and given the fact that DWR is a large state-agency division with many employees (many of whom have retired or taken other jobs since the inception of the ASR project). Subject to and without waiving the foregoing objections, DWR's response follows.*


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RESPONSE: GMD2 is aware of the people with it and with the City that have significant knowledge about this matter. As for the current DWR employees with primary knowledge of the facts related to the Subject Matter of this administrative hearing or the AMC Proposal, see the DWR employees listed in DWR's response to Interrogatory No. 1. In addition, retired DWR employee Jim Bagley, former Section Head with Technical Services with Water Management Services, may have significant knowledge of such facts.

- 7. Please identify all experts you have hired or consulted with regarding the Subject Matter of this administrative hearing or the AMC Proposal, and:**
- a. Identify all documents that have been provided to all such experts;**
 - b. Identify all documents that have been provided to you by such experts;**
 - c. State the subject matter in which each expert was consulted and the substance of their expected testimony at hearing.**

***OBJECTION:** The phrase "consulted with" is vague and ambiguous. Subject to and without waiving the foregoing objections, DWR's response follows.*


Aaron B. Oleen, KS Sup. Ct. #23588

RESPONSE: DWR has not hired or officially sought expert advice regarding the Subject Matter of the administrative hearing or the AMC Proposal, from any experts outside of those who already work for DWR.

8. If you have ever had any of the documents that are to be identified pursuant to any of these Interrogatories or are to be produced pursuant to any of the Requests for Production of Documents served on you simultaneously with these Interrogatories that have been destroyed, describe in detail the circumstances of and all reasons for such destruction and produce all documents that relate to or concern either the circumstances or the reason for such destruction.

OBJECTION: This request, especially in the modern world of e-mails, is overly broad and unduly burdensome. DWR has made reasonable, extensive efforts to locate responsive documents and has produced hundreds of potentially responsive documents in conjunction with DWR's responses to GMD2's First Request for Production of Documents, but this ASR matter goes back several years and DWR cannot know whether all documents subject to GMD2's broad request have been located or retained. Subject to and without waiving the foregoing objections, DWR's response follows.


Aaron B. Oleen, KS Sup. Ct. #23588

RESPONSE: DWR is reasonably unaware of any particular responsive documents that are subject to this interrogatory.

9. Please indicate any and every meeting and communication You have had with the City about the Subject Matter. Please include the date of each meeting and/or communication, the individuals involved in any meeting and/or communication, the subject matter of each communication and/or meeting, and the location of any communication and/or meeting.

OBJECTION: The breadth of this request is overly broad and unduly burdensome, especially in light of the fact that DWR is a large state-agency division with many current and past employees who are/were involved with the Subject Matter, and who attend various water-related conferences and meetings throughout the year; and the fact that it has been many years since the inception of the City's ASR project. Counsel also objects to the extent that this interrogatory requests information about which GMD2 already has knowledge, e.g., meetings and communications to which GMD2 was a party. Subject to and without waiving the foregoing objections, DWR's response follows.


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RESPONSE: Regarding responsive e-mail and other written communications between DWR and the City, see the various documents produced in conjunction with DWR's responses to GMD2's First Request for Production of Documents. Regarding responsive meetings and calls between DWR and the City/its consultants only, see the attached Excel meeting/call-log spreadsheet, which DWR has compiled based on a reasonable review of scheduling records and call logs of the past several years.

10. Please explain in detail the accounting method that will be used to determine water entering and leaving the Aquifer with the AMC Proposal.

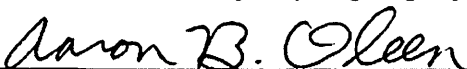
OBJECTION: This interrogatory is more properly directed to and answered by the City, who has submitted the AMC Proposal. Subject to and without waiving the foregoing objections, DWR's response follows.


Aaron B. Oleen, KS Sup. Ct. #23588

RESPONSE: It is DWR's understanding that under the AMC Proposal, the accounting method would not change; rather, if the AMC Proposal is approved, then there will be another type of recharge credit for which there will be an accounting.

11. Please explain in detail how the Aquifer will be artificially recharged through the AMC Proposal.

OBJECTION: This interrogatory is more properly directed to and answered by the City, who has submitted the AMC Proposal. Subject to and without waiving the foregoing objections, DWR's response follows.


Aaron B. Oleen, KS Sup. Ct. #23588

RESPONSE: It is more accurate to say that water artificially recharged under the AMC Proposal will be recharged into the basin storage area that resides in the Aquifer. Under the AMC Proposal, the ASR will artificially recharge the same as it does today—i.e., with physical recharge credits, if there is space in the basin storage area. If there is not space, then under the AMC Proposal, source water will be treated and taken directly to the City. That amount taken to the City would be credited as an AMC.

12. Please explain in detail Your understanding of where source water will be treated and used pursuant to the AMC Proposal.

RESPONSE: It is DWR's understanding that under the AMC Proposal, if the basin storage area is full, then source water will be treated at the existing treatment facility and then taken directly to the City.

13. Please explain in detail Your understanding of how water will be treated pursuant to the AMC Proposal.

RESPONSE: It is DWR's understanding that under the AMC Proposal, water will be treated as it is currently being treated at the City's treatment facility.

14. Please explain the calculation used to arrive at the AMC five percent initial loss and the rationale for that calculation.

OBJECTION: This interrogatory is more properly directed to and answered by the City, who has submitted the AMC Proposal. Subject to and without waiving the foregoing objections, DWR's response follows.

Aaron B. Oleen
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RESPONSE: The City performed such calculation and presented the results to DWR, which results showed the average loss throughout the index cells in the basin storage area. The results seemed reasonable to DWR based on the information presented.

15. Please explain in detail how the proposed AMC gradational annual losses were determined.

OBJECTION: This interrogatory is more properly directed to and answered by the City, who has submitted the AMC Proposal. Subject to and without waiving the foregoing objections, DWR's response follows.

Aaron B. Oleen
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RESPONSE: It is DWR's understanding that the proposed AMC gradational annual losses were based on losses in the index cells and proximity to the Little Arkansas River. The losses are higher closer to the river.

16. Please explain in detail how the physical recharge capacity of the Aquifer was determined.

OBJECTION: GMD2 was intimately involved with determining the physical recharge capacity of the Aquifer, and thus this request is unnecessary and duplicative. Subject to and without waiving the foregoing objections, DWR's response follows.

Aaron B. Oleen
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RESPONSE: The physical recharge capacity of the Aquifer was determined in conjunction with the ASR Phase I and II proceedings and was based on a USGS model paid for by the City and reviewed by GMD2.

17. Please explain in detail whether the water quality of the Aquifer will be impacted by the AMC Proposal and Your rationale.

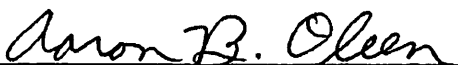
OBJECTION: The phrase "will be impacted" is vague and ambiguous. Subject to and without waiving the foregoing objections, DWR's response follows.

Aaron B. Oleen
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RESPONSE: DWR does not believe that the water quality of the Aquifer will be negatively impacted if the City accumulates AMCs under the AMC Proposal. No groundwater will be pumped in conjunction with the creation of an AMC. The ambient groundwater quality will not be degraded if physical recharge occurs assuming the existence of available space in the basin storage area that resides in the Aquifer, because the source water will be treated before injection.

18. Please explain what infrastructure will be utilized for the AMC Proposal.


***OBJECTION:** This interrogatory is more properly directed to and answered by the City, who has submitted the AMC Proposal. Further, the phrase "infrastructure will be utilized" is vague and ambiguous. Subject to and without waiving the foregoing objections, DWR's response follows.*


Aaron B. Oleen, KS Sup. Ct. #23588

RESPONSE: It is DWR's understanding that the AMC Proposal, if approved, will utilize the City's existing infrastructure, i.e., the City's existing wellfield treatment facility and diversion and distribution system.

19. Please explain in detail the legal review You conducted regarding the AMC Proposal, including all persons who conducted the review, when the review took place, the amount of time the review took, and all applicable statutes and regulations that were considered in the review.

***OBJECTION:** This interrogatory is overly broad and unduly burdensome, and seeks information protected by the attorney-client privilege and as attorney work-product. Subject to and without waiving the foregoing objections, DWR's response follows.*


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RESPONSE: Sometime before September 18, 2017, DWR's attorneys concluded that no statutory or regulatory changes would be necessary to consider and implement the City's anticipated request for changes to ASR conditions. See Chief Engineer's 9/18/17 letter to the City. Further, by June 1, 2018, DWR's attorneys concluded that, as proposed by the City and subject to further consideration as a result of the public process, AMCs appear to be the functional equivalent of existing recharge credits. See Chief Engineer's 6/1/18 letter to GMD2. Such legal reviews were conducted to varying degrees by former KDA chief counsels Robert Large and/or Wendee Grady, and by current KDA chief counsel Kenneth Titus. The reviews involved consulting KAR 5-1-1, 5-12-1 through 5-12-4, and applicable GMD2 regulations, as well as other relevant statutory provisions of the Kansas Water Appropriation Act and regulations promulgated thereunder.

20. Please explain how and when You determined that definitions of AMC and “passive recharge credits” are not needed in regulation.

RESPONSE: See DWR’s response to Interrogatory No. 19, as well as the Chief Engineer’s letter to the City dated September 18, 2017. By that date DWR and its legal counsel had determined that no changes to statute or rules are necessary to consider and implement the City’s anticipated request for changes to ASR conditions, and that AMCs as envisioned by the City are not “passive recharge credits”.

21. Please explain the level of input and assistance You and the Chief Engineer provided to the City in the development of the City’s ASR Permit Modification Proposal and when the assistance occurred.

RESPONSE: As evidenced by the attached meeting/call-log Excel spreadsheet, the Chief Engineer and DWR staff have conferred sporadically with the City and its consultants over the past several years regarding issues concerning the ASR Permit Modification Proposal.

Regarding the City’s proposal to lower the bottoms of the basin storage area (“BSA”):

Beginning in 2013, initial discussions on what became the City’s request to lower the bottoms of the BSA arose from the City’s concerns with increased pumping during 2011-12, DWR’s issuance of drought term permits during this period, and the state legislature’s reform to multi-year flex accounts which provided increased flexibility for pumping in dry years. This led to a review of the data defining the 1993 levels, which review was performed by DWR and GMD2 staff with input from others and very limited review by the Chief Engineer. The Chief Engineer and DWR staff participated in discussions with the City which led to DWR clarifying that the restriction on pumping recharge credits from a cell should be based on whether January water levels of the year, not summer-season pumping levels, were below the 1993 index values.

Even with these clarifications, the City concluded that the bottoms of the BSA were problematic based on the City’s re-purposing of the ASR to drought mitigation. After discussion with the City and DWR staff, the Chief Engineer determined that a rule change should be considered to allow for more flexibility in determining BSA bottoms than the rule provided at that time. KDA informally initiated the rule change in the summer of 2015, the formal process during the winter of 2015-16, and with formal adoption effective April 2016.

Starting in early 2016, the City began technical work to support its request for changes to the bottoms of the BSA. The City shared its draft support work with both DWR and GMD2, and this technical work regularly was on the agenda of DWR’s meetings with the City, which meetings at times included GMD2 as well. The Chief Engineer’s review and feedback to the City was focused on providing input on the overall sufficiency of the modeling work and how to present the data and findings in an understandable way.

Regarding the City’s AMC proposal:

The City has long expressed interest in an alternative method for developing recharge credits in light of the City's shifting its pumping away from its Equus Beds wellfield, but no substantive progress was made in these early discussions.

With the increasing recovery of water levels in the Aquifer, in early 2017 the City and DWR discussed the City's challenges in developing recharge credits under the current permit conditions. This led to the first serious discussions during the spring of 2017 of alternative methods to develop recharge credits. In those discussions, the Chief Engineer and DWR staff explored concepts with the City by which it might obtain recharge credits via its ASR project when recharge capacity was limited. Those discussions included technical work needed to support those concepts, alternative accounting methods, and draft modeling results prepared by the City's consultants to support these discussions.

During the summer of 2017 and thereafter, the Chief Engineer participated in discussions between the City and GMD2 regarding the City's developing AMC proposal. As the City selected and refined its proposal, such parties also discussed terms and conditions that might be necessary to protect the public interest, and DWR assisted the City in developing its outreach program. Finally, the Chief Engineer worked with DWR staff to develop draft, proposed permits, in response to the City's request.

22. Please identify and explain the amount of review You conducted of the model(s) used in the City's ASR Permit Modification Proposal, including the names and titles of those who reviewed the model(s) and when the review took place.


OBJECTION: This interrogatory is overly broad and unduly burdensome for DWR to attempt to ascertain the answer, when this interrogatory is viewed in light of how long the City's ASR project has been contemplated and in existence, and given the fact that DWR is a large state-agency division with many employees (many of whom have retired or taken other jobs since the inception of the ASR project). Subject to and without waiving the foregoing objections, DWR's response follows.


Aaron B. Oleen, KS Sup. Ct. #23588

RESPONSE: The extent of DWR's review of such models principally was to discuss with the City and its consultant, Burns and McDonnell, draft modeling methods and results presented to DWR at meetings with the City, to review draft modeling reports and back-up presented to DWR during the process, and to review data outputs and summaries. Regarding the modeling to support lowering the basin storage area, these reviews occurred in 2016 and 2017; regarding AMCs, this occurred in 2017. Principal reviewers included Jim Bagley, David Barfield, Chris Beightel and Ginger Pugh. The aim of such reviews by DWR was to assist the City and its consultant in determining the overall suitability and sufficiency of the modeling approach and assumptions, to understand the overall results, and to assist the City in how to present the data and findings in an understandable way. DWR did not attempt to independently replicate the modeling work of the City's consultant.

23. Please explain how the proposed recharge credit cap of 120,000 acre-feet was derived.

OBJECTION: This interrogatory is more properly directed to and answered by the City, who has submitted the AMC Proposal. Subject to and without waiving the foregoing objections, DWR's response follows.


Aaron B. Oleen, KS Sup. Ct. #23588

RESPONSE: This number was proposed by the City as part of the AMC Proposal and represents the estimated storage available within the basin storage area in 1993.

24. Specifically identify what information the Chief Engineer relied on to determine that these proposed changes to Wichita's existing aquifer and storage recovery program will not: 1) prejudicially and unreasonably affect the public interest, 2) impair existing water rights, nor 3) allow an unreasonable raising or lowering of the water level. Specifically identify all documents, studies, expert opinions, computer modeling and other information relied on by the Chief Engineer to make that determination.

RESPONSE: The Chief Engineer has not yet made any such determinations.

VERIFICATION FOR ENTITY

STATE OF KANSAS)
COUNTY OF Shawnee) ss.

Lane Letourneau, of lawful age, being duly sworn upon oath, states:

That he is an authorized representative of the Division of Water Resources; that he has read the above and foregoing GMD2's First Interrogatories and that his responses are true and correct to the best of his knowledge, information, and belief.

Division of Water Resources

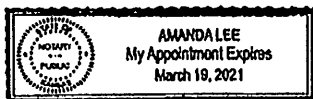
By: Lane Letourneau

Lane Letourneau
Program Manager, Appropriation Program
Division of Water Resources

SWORN TO AND SUBSCRIBED before me, this 30th day of October,
2018 by Lane Letourneau of the Division of Water Resources, a division of the State of
Kansas, Kansas Department of Agriculture, on behalf of the Division of Water Resources.

Amanda Lee
Notary Public

My Commission Expires:




CERTIFICATE OF SERVICE

The undersigned hereby certifies that he served the above and foregoing responses to GMD2's First Interrogatories by electronic mail on this 30th day of October, 2018, addressed to:

Equus Beds Groundwater Management District No. 2
313 Spruce
Halstead, KS 67056
tboese@gmd2.org
tom@aplawpa.com
stucky.dave@gmail.com

City of Wichita
Department of Public Works & Utilities
455 North Main Street
Wichita, KS 67202
jpajor@wichita.gov
bmcleod@wichita.gov



Aaron B. Oleen, S. Ct. #23588

Meetings and conference calls between DWR and the City/City's consultants

<i>Date</i>	<i>Invitee/Attendees</i>	<i>Location</i>	<i>Subject</i>
1/10/2013	David Barfield, Lane Letourneau, Doug Schemm, Jim Bagley, Tara Lanzrath, Jeff Lanterman, Brian Meier & other staff from Burns & McDonnell	DWR Library in Topeka	ASR
6/18/2013	David Barfield, Lane Letourneau, Doug Schemm, Jim Bagley, Jeff Lanterman, Brent Turney, Michael Jacobs, Brian Meier	DWR Library in Topeka	City of Wichita
12/9/2013	Lane Letourneau, Doug Schemm, Brent Turney, David Barfield, Brian Meier, Michael Jacobs & other City staff	DWR Library in Topeka	City of Wichita
6/23/2014	Lane Letourneau, Doug Schemm, Jim Bagley, David Barfield, Brian Meier	Manhattan	ASR
11/17/2014	David Barfield, Lane Letourneau, Jim Bagley, Doug Schemm, Michael Jacobs	Manhattan	Concerning the "basement" for the ASR project and when credits can be recovered
5/11/2015	Susan Metzger, Lane Letourneau, Jackie McClaskey, David Barfield, Jim Bagley, Ken Kopp, Brent Turney, Brian Meier, City of Wichita	Manhattan	Discuss an update on City's water supply needs and issues
6/5/2015	David Barfield, Doug Schemm, Lane Letourneau, Ken Kopp, Susan Metzger, Jim Bagley, Michael Jacobs, Don Henry, Joe Pajor, Paul McCormick, Brian Meier, Daniel Clement	Conference call	City of Wichita
6/30/2015	Susan Metzger, Lane Letourneau, David Barfield, City of Wichita	Conference call	ASR rules, New applications
3/7/2016	David Barfield, City of Wichita	call	ASR and more
3/28/2016	David Barfield, City of Wichita	call	hold applications
1/20/2017	David Barfield, Joe Pajor	call	Wichita ASR, info and discussion
2/27/2017	David Barfield, Lane Letoureau, Jeff Lanterman, City of Wichita	Wichita	ASR
3/28/2017	David Barfield, Lane Letourneau, Jeff Lanterman, City of Wichita	Wichita	ASR
4/21/2017	David Barfield, Scott Macey, Joe Pajor, Alan King, Michael Jacobs, Don Henry, Daniel Clement, Brian Meier	Conference call	ASR Permit / Conservation Credits Proposal

4/28/2017	David Barfield, Lane Letourneau, Jim Bagley, Chris Beightel, Jeff Lanterman, Doug Schemm, Don Henry, Joe Pajor, Scott Macey, Brian Meier, Paul McCormick, Daniel Clement	KWO conf. room in Topeka	Wichita ASR conservation credit accounting discussion
5/12/2017	Chris Beightel, David Barfield, Lane Letourneau, Jeff Lanterman, Jim Bagley, Daniel Clement, Brian Meier, Paul McCormick, Joe Pajor, Don Henry, Scott Macey	KWO conf. room in Topeka	ASR
6/14/2017	David Barfield, Lane Letourneau, Jim Bagley, Daniel Clement, Paul McCormick	Manhattan	ASR and 93 update Aquifer maintenance credits
9/14/2017	David Barfield, Daniel Clement, Paul McCormick	Conference call	ASR 1993 Level Revision Comments
11/21/2017	David Barfield, Joe Pajor	call	ASR in advance of DWR mtg with KFB
1/19/2018	David Barfield, Lane Letourneau, Chris Beightel, Jeff Lanterman, Doug Schemm, Ginger Pugh, Don Henry, Joe Pajor, Scott Macey, Brian Meier, Paul McCormick, Daniel Clement	Wichita	ASR Modified Permit conditions
2/1/2018	David Barfield, Lane Letourneau, Chris Beightel, Ginger Pugh, Jeff Lanterman, Doug Schemm, Joe Pajor, Don Henry, Scott Macey, Brian Meier, Paul McCormick, Daniel Clement	Conference call	ASR Modified Permit proposal
3/7/2018	David Barfield, Lane Letourneau, Jeff Lanterman, Chris Beightel, Doug Schemm, Joe Pajor, Don Henry, Scott Macey, Daniel Clement, Paul McCormick, Brian Meier	Wichita	ASR Index levels and AMC proposal review and discussion
3/21/2018	David Barfield, Joe Pajor	call	ASR
4/13/2018	David Barfield, Joe Pajor	call	coordinate on next week's GMD meeting, discuss Tim Boese's ASR suggestions and questions
5/3/2018	David Barfield, City of Wichita	call	ASR
5/14/2018	David Barfield, Lane Letourneau, Chris Beightel, Joe Pajor, Don Henry, Brian Meier, Daniel Clement	Conference call	ASR permit modifications
5/29/2018	David Barfield, Joe Pajor, Brian Meier	call	talk re finalizing ASR initial review process
6/28/2018	David Barfield, Lane Letourneau, Jeff Lanterman, City of Wichita	Halstead	Informational meeting re ASR

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

**In the Matter of the City of Wichita's)
Phase II Aquifer Storage and Recovery Project) Case No. 18 WATER 14014
In Harvey and Sedgwick Counties, Kansas.)**

Pursuant to K.S.A. 82a-1901 and K.A.R. 5-14-3a.

DWR's RESPONSES TO GMD2's FIRST REQUEST FOR ADMISSIONS

COMES NOW the Kansas Department of Agriculture, Division of Water Resources, and hereby provides responses to the First Request for Admissions propounded on DWR by Equus Beds Groundwater Management District Number 2 ("GMD2").

CERTAIN DEFINITIONS PROVIDED BY GMD2

1. "You" and/or "Your" means the Kansas Department of Agriculture ("KDA") and/or the Division of Water Resources ("DWR"), and any agent, consultant, employee, or manager for KDA and/or DWR.
2. "Chief Engineer" means David Barfield, Chief Engineer, Division of Water Resources, Kansas Department of Agriculture.
3. "The District" shall mean the Equus Beds Groundwater Management District No. 2.
4. "Subject Matter" means the content of this administrative hearing including, but not limited to, AMCs, the ASR Permit Modification Proposal, and all related subject matter.
5. "ASR Permit Modification Proposal" means the proposal dated March 12, 2018, that the City submitted to the Chief Engineer, Division of Water Resources, Kansas Department of Agriculture.
6. "AMC Proposal" means the Aquifer Maintenance Credits Proposal submitted as part of the ASR Permit Modification Proposal.
7. "AMC" means Aquifer Maintenance Credit.
8. "Aquifer" shall mean the Equus Beds Aquifer.

9. "The City" shall mean the City of Wichita.
10. "ASR" shall mean Aquifer Storage and Recovery.
11. As used herein, the term "document" means any medium upon which intelligence or information can be recorded or retrieved, and includes, without limitation, the original and each copy, regardless of origin and location, of any book, pamphlet, periodical, letter, memorandum, (including any memorandum or report of a meeting or conversation), contract, agreement, letter, e-mail, facsimile, check, receipt, notice, study, telegram, computer printout, invoice, computer data file, work papers, diary, calendar, transcript, bill, record, photograph, or any other graphic matter, however produced or reproduced, which is or was in your possession, custody or control.
12. As used herein, the word "or" appearing in a request for admission should not be read so as to eliminate any part of the request for admission, but, whenever applicable, it should have the same meaning as the word "and."

RESPONSES TO REQUESTS FOR ADMISSIONS

- 1. Admit or deny that no water will actually physically be injected into the Aquifer with the AMC Proposal.**

RESPONSE: Denied. It is DWR's current understanding that under the AMC Proposal, the City intends to continue to conduct appropriate physical recharge activities depending on the existence of available space in the basin storage area that resides in the Aquifer.

- 2. Admit or deny that no source water will enter into the Aquifer through gravity flow due to the AMC Proposal.**

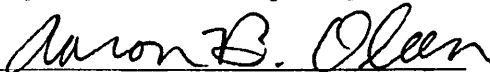
RESPONSE: Partially admitted and partially denied. It is DWR's current understanding that under the AMC Proposal, some source water may, through gravity flow, enter into the basin storage area that resides in the Aquifer, depending on how the City manages the recharge basin.

- 3. Admit or deny that no source water will actually be stored in the Aquifer with the AMC Proposal.**

RESPONSE: Denied. It is DWR's current understanding that under the AMC Proposal, the City intends to continue to conduct appropriate physical recharge activities depending on the existence of available space in the basin storage area that resides in the Aquifer.

- 4. Admit or deny that recharge pits will not be used to cause source water to enter the storage volume of the basin storage area as a part of the AMC Proposal.**

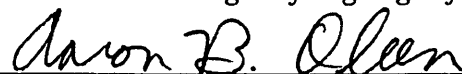
OBJECTION: *The phrase "storage volume of the basin storage area" is vague and ambiguous. Subject to and without waiving the foregoing objections, DWR's response follows.*


Aaron B. Oleen, KS Sup. Ct. #23588

RESPONSE: Neither admitted nor denied, due to DWR's current lack of sufficient knowledge regarding this question. The answer to this question depends on how the City manages the recharge pits/recharge basin.

5. Admit or deny that recharge trenches will not be used to cause source water to enter the storage volume of the basin storage area as a part of the AMC Proposal.

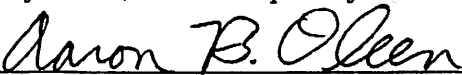
OBJECTION: *The phrases "recharge trenches" and "storage volume of the basin storage area" are vague and ambiguous. Subject to and without waiving the foregoing objections, DWR's response follows.*


Aaron B. Oleen, KS Sup. Ct. #23588

RESPONSE: Neither admitted nor denied, due to DWR's current lack of sufficient knowledge regarding this question. DWR is unaware of any City plans involving recharge trenches.

6. Admit or deny that recharge wells will not be used to cause source water to enter the storage volume of the basin storage area as a part of the AMC Proposal.

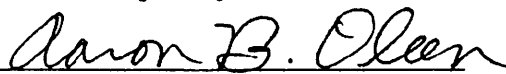
OBJECTION: *The phrase "storage volume of the basin storage area" is vague and ambiguous. Subject to and without waiving the foregoing objections, DWR's response follows.*


Aaron B. Oleen, KS Sup. Ct. #23588

RESPONSE: Denied. It is DWR's current understanding that under the AMC Proposal, the City intends to continue to use recharge wells as it has been using them.

7. Admit or deny that no artificial recharge system will be used to cause source water to enter into the Aquifer through the AMC Proposal.

OBJECTION: *The phrase "artificial recharge system" is vague and ambiguous. Subject to and without waiving the foregoing objections, DWR's response follows.*


Aaron B. Oleen, KS Sup. Ct. #23588

RESPONSE: Denied. It is DWR's current understanding that under the AMC Proposal, the City intends to continue to conduct appropriate physical recharge activities depending on the existence of available space in the basin storage area that resides in the Aquifer.

8. Admit or deny that no artificial recharge of the Aquifer will occur with respect to the AMC Proposal.

RESPONSE: Denied. It is DWR's current understanding that under the AMC Proposal, the City intends to continue to conduct appropriate physical recharge activities depending on the existence of available space in the basin storage area that resides in the Aquifer.

9. Admit or deny that source water will not be put into the Aquifer by the AMC Proposal subject to later recovery through the AMC Proposal.

RESPONSE: Denied. It is DWR's current understanding that under the AMC Proposal, the City intends to continue to conduct appropriate physical recharge activities depending on the existence of available space in the basin storage area that resides in the Aquifer.

10. Admit or deny that there will not be an accounting system in place to account for or quantify the water entering and leaving the Aquifer with the AMC Proposal.


RESPONSE: Denied. It is DWR's current understanding that under the AMC Proposal, the City would maintain their current ASR accounting system, as modified to account for AMCs.

11. Admit or deny that the AMC Proposal will not artificially replenish the water supply of the Aquifer.

RESPONSE: Denied. It is DWR's current understanding that under the AMC Proposal, the City intends to continue to conduct appropriate physical recharge activities depending on the existence of available space in the basin storage area that resides in the Aquifer.

12. Admit or deny that the source water subject to the AMC Proposal will be pumped directly to the City without any source water directly entering the Aquifer.

OBJECTION: *The phrase "source water subject to the AMC Proposal" is vague and ambiguous. Subject to and without waiving the foregoing objections, DWR's response follows.*


Aaron B. Oleen, KS Sup. Ct. #23588

RESPONSE: Partially admitted and partially denied. It is DWR's current understanding that under the AMC Proposal, the City intends to continue to conduct appropriate physical recharge activities depending on the existence of available space in the basin storage area that resides in the Aquifer.

13. Admit or deny that the relative saturated thickness of the Aquifer in a given location will not impact the AMC Proposal in any manner since no source water is actually entering the Aquifer.

RESPONSE: Denied. It is DWR's current understanding that under the AMC Proposal, the City intends to continue to conduct appropriate physical recharge activities depending on the existence of available space in the basin storage area that resides in the Aquifer.

14. Admit or deny that there is not a definition of AMC in statute or regulation.

RESPONSE: Partially admitted and partially denied. Although there is no specific definition of "aquifer maintenance credit" or "AMC" in Kansas statutes or regulations, DWR considers an AMC to be a type of "recharge credit", which is defined by regulation.

15. Admit or deny that there is not a definition of "passive recharge credits" in statute or regulation.

RESPONSE: Admitted that there is no such definition in the Kansas Water Appropriation Act or regulations promulgated thereunder.

16. Admit or deny that there is no statute or regulation that specifically allows for the AMC Proposal.

***OBJECTION:** The phrase "specifically allows" is vague and ambiguous. Subject to and without waiving the foregoing objections, DWR's response follows.*


Aaron B. Oleen, KS Sup. Ct. #23588


RESPONSE: Denied. The Kansas statutes and regulations allow for ASR projects and recharge credits, and DWR considers an AMC to be a type of "recharge credit".

17. Admit or deny that there is no definition of "functional equivalence", "functionally equivalent", and "functional equivalent" in statute or regulation.

RESPONSE: Partially admitted and partially denied. DWR admits that those particular terms are not specifically defined by the Kansas Water Appropriation Act or regulations promulgated thereunder.

18. Admit or deny that the Chief Engineer has publicly touted the ASR Permit Modification Proposal in multiple meetings, settings, and/or documents.

OBJECTION: The phrase "publicly touted" is vague and ambiguous. Subject to and without waiving the foregoing objections, DWR's response follows.


Aaron B. Oleen, KS Sup. Ct. #23588

RESPONSE: Partially admitted and partially denied. In various public settings and documents, the Chief Engineer has made qualified statements regarding the ASR Permit Modification Proposal, to the effect of "Therefore, as proposed, AMCs appear to be the functional equivalent of existing recharge credits and serve the public interest by maintaining a fuller aquifer instead of requiring Wichita to create additional capacity in the aquifer." See Chief Engineer's letter to GMD2's board of directors, dated June 1, 2018.

19. Admit or deny that the Chief Engineer has publicly stated that the ASR Permit Modification Proposal is in the public interest in multiple meetings, settings, and/or documents.

RESPONSE: Denied. DWR is unaware of any such unequivocal decision or statement made by the Chief Engineer. In various public settings and documents, the Chief Engineer has made qualified statements to the effect of "As envisioned, AMCs *should* serve the public interest by facilitating fuller aquifer conditions without allowing the use of new or unappropriated water. . . . [A]s proposed, AMCs *appear* to be the functional equivalent of existing recharge credits and serve the public interest by maintaining a fuller aquifer instead of requiring Wichita to create additional capacity in the aquifer." See Chief Engineer's letter to GMD2's board of directors, dated June 1, 2018 (emphases added).

The Chief Engineer repeatedly has emphasized his commitment to a formal hearing process to allow him to reach decisions based on the record. See also the Chief Engineer's statement from slides presented at the June 28, 2018 public meeting in Halstead: "No decision has been made . . . The formal public hearing process will affirm or deny [whether the proposed approval documents meet statutory and regulatory requirements], including determining whether additional terms and conditions would improve the accounting of AMCs or *other changes will better serve the public's interest.*" (emphasis added)

20. Admit or deny that You did not conduct a thorough legal review to determine if the AMC Proposal is allowed by statute or regulation.

OBJECTION: *The phrase "thorough legal review" is vague and ambiguous. Subject to and without waiving the foregoing objections, DWR's response follows.*


Aaron B. Oleen, KS Sup. Ct. #23588

RESPONSE: Denied. KDA attorneys properly reviewed the applicable laws in conjunction with DWR's review of the AMC Proposal.

21. Admit or deny that You did not seek an independent legal review to determine if the AMC Proposal is allowed by statute or regulation.

RESPONSE: Admitted. As stated in the Chief Engineer's letter to GMD2's board of directors, dated June 1, 2018, "AMCs are simply an additional form of recharge credit. Therefore, I have decided not to seek independent legal review of the matter as you suggested in your comments."

22. Admit or deny that the City's appropriation applications requesting withdrawal of AMCs are subject to the District's Safe Yield Regulation K.A.R. 5-22-7.

RESPONSE: Denied. Pursuant to K.A.R. 5-22-7(b)(7), ASR applications are not subject to GMD2's safe yield requirements.

23. Admit or deny that the appropriation of groundwater as proposed by the AMC Proposal does not comply with the District's Safe Yield Regulation K.A.R. 5-22-7.

RESPONSE: Denied. Pursuant to K.A.R. 5-22-7(b)(7), ASR applications are not subject to GMD2's safe yield requirements.

24. Admit or deny that there is no exception for AMC appropriation applications specified in the District's Safe Yield Regulation, K.A.R. 5-22-7.


RESPONSE: Denied. Pursuant to K.A.R. 5-22-7(b)(7), ASR applications are not subject to GMD2's safe yield requirements.

25. Admit or deny that AMCs represent groundwater not pumped by the City's existing native groundwater rights.

RESPONSE: Denied. AMCs would represent the functional equivalent of existing recharge credits.

26. Admit or deny that the existing and proposed aquifer storage and recovery wells are, or will be, equipped with water meters to accurately and separately record the quantity of water pumped from the native water rights, the physical recharge credits, and the aquifer maintenance credits.

OBJECTION: The phrase "separately record" is vague and ambiguous. Subject to and without waiving the foregoing objections, DWR's response follows.


Aaron B. Oleen, KS Sup. Ct. #23588

RESPONSE: Partially admitted and partially denied. The City's existing recharge recovery wells are equipped with water meters that can measure recharge water going into a well and water diverted from that well. It is DWR's understanding that under the ASR Permit Modification Proposal and the AMC Proposal, the City's accounting would involve categorizing water recovered or produced from each well as a native water right, a physical recharge credit, or an AMC.

27. Admit or deny that the proposed AMCs can only be withdrawn by the City during a 1% drought.

RESPONSE: Denied. Under the AMC Proposal, the withdrawal of AMCs would not specifically be limited to 1% drought situations.

VERIFICATION FOR ENTITY

STATE OF KANSAS)
) ss.
COUNTY OF Shawnee

Lane Letourneau, of lawful age, being duly sworn upon oath, states:

That he is an authorized representative of the Division of Water Resources; that he has read the above and foregoing GMD2's First Request for Admissions and that his responses are true and correct to the best of his knowledge, information, and belief.

Division of Water Resources

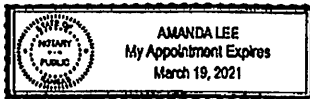
By: Lane Letourneau

Lane Letourneau
Program Manager, Appropriation Program
Division of Water Resources

SWORN TO AND SUBSCRIBED before me, this 30th day of October,
2018 by Lane Letourneau of the Division of Water Resources, a division of the State of
Kansas, Kansas Department of Agriculture, on behalf of the Division of Water Resources.

Amanda Lee
Notary Public

My Commission Expires:



CERTIFICATE OF SERVICE

The undersigned hereby certifies that he served the above and foregoing responses to GMD2's First Request for Admissions by electronic mail on this 30th day of October, 2018, addressed to:

Equus Beds Groundwater Management District No. 2
313 Spruce
Halstead, KS 67056
tboese@gmd2.org
tom@aplawpa.com
stucky.dave@gmail.com

City of Wichita
Department of Public Works & Utilities
455 North Main Street
Wichita, KS 67202
jpajor@wichita.gov
bmcleod@wichita.gov




Aaron B. Oleen, S. Ct. #23588

10. "The City" shall mean the City of Wichita.
11. "ASR" shall mean Aquifer Storage and Recovery.
12. "DWR" means the Division of Water Resources ("DWR") and any agent, consultant, employee, or manager for DWR.
13. As used herein, the term "document" means any medium upon which intelligence or information can be recorded or retrieved, and includes, without limitation, the original and each copy, regardless of origin and location, of any book, pamphlet, periodical, letter, memorandum, (including any memorandum or report of a meeting or conversation), contract, agreement, letter, e-mail, facsimile, check, receipt, notice, study, telegram, computer printout, invoice, computer data file, work papers, diary, calendar, transcript, bill, record, photograph, or any other graphic matter, however produced or reproduced, which is or was in your possession, custody or control.
14. As used herein, the term "communication" means any oral or written utterance of any nature including, but not limited to, correspondence, e-mail, facsimile, conversations, discussions, and consultations, between or among two or more persons.
15. As used herein, the terms "identification," "identify," or "identity," when used in reference to (a) a natural individual, require you to state his or her full name, job title, residential and business addresses and home and business phone numbers; (b) a corporation or business, require you to state its full name and any names under which it does business, the address of its principal place of business, and the addresses of all of its offices; (c) a document, requires you to state the number of pages and the nature of the document (e.g., letter or memorandum), its title, its date, the name or names of its authors and recipients, and its present location and custodian; (d) a communication, requires you to identify the document or documents which refer to or evidence the communication; and (e) an oral communication, requires you to identify the persons participating in the communication and to state the date, manner, place and substance of the communication.
16. As used herein, the word "or" appearing in a request should not be read so as to eliminate any part of the request, but, whenever applicable, it should have the same meaning as the word "and."
17. As used herein, the words "person" or "entity" mean any natural person, company, business, partnership, corporation, association or other group carrying on a business enterprise.

RESPONSES TO INTERROGATORIES

1. Identify each person who provided information or otherwise prepared or assisted in the preparation of the responses to these Second Set of Interrogatories and to the Second Set of the Requests for Admissions served simultaneously with these Interrogatories and specify for each such person the information provided.

OBJECTION: Specifying each involved person's particular information provided in the course of DWR's responding to extensive written discovery propounded on a large state-agency division is overly broad and unduly burdensome. Subject to and without waiving the foregoing objections, DWR's response follows.



Aaron B. Oleen, KS Sup. Ct. #23588

RESPONSE: The following persons provided varying levels and types of information in the course of DWR responding to GMD2's Second Set of Interrogatories:

- Lane Letourneau, Water Appropriation Program Manager, DWR
- Jeff Lanterman, Stafford Field Office Water Commissioner, DWR
- Doug Schemm, Environmental Scientist, DWR
- Ginger Pugh, Professional Civil Engineer, DWR
- Aaron Oleen, KDA Staff Attorney

2. If any of your responses to the Second Set of the District's Requests for Admission are anything other than an unqualified admission, provide a detailed explanation of any and all facts that relate to or concern your responses and identify:
 - a. Any and all persons with facts that relate to or concern your responses;
 - b. Any and all documents that relate to or concern your responses.

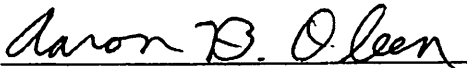
OBJECTION: This interrogatory's requests to explain in detail and to identify various "any and all" items that "relate to or concern" DWR's responses to GMD2's Second Set of Request for Admission are vague and ambiguous, overly broad, and unduly burdensome. Subject to and without waiving the foregoing objections, DWR's response follows.


Aaron B. Oleen, KS Sup. Ct. #23588

RESPONSE: See DWR's responses to GMD2's Second Set of Request for Admissions.

3. Please indicate any and every meeting and communication You have had with the City about the proposed minimum index levels. Please include the date of each meeting and/or communication, the individuals involved in any meeting and/or communication, the subject matter of each communication and/or meeting, and the location of any communication and/or meeting.

OBJECTION: The breadth of this request is overly broad and unduly burdensome, especially in light of the fact that DWR is a large state-agency division with many current and past employees who attend various water-related conferences and meetings throughout the year; and the fact that it has been many years since the inception of the City's ASR project. Counsel also objects to the extent that this interrogatory requests information about which GMD2 already has knowledge, e.g., meetings and communications to which GMD2 was a party. Subject to and without waiving the foregoing objections, DWR's response follows.


Aaron B. Oleen, KS Sup. Ct. #23588

RESPONSE: No new information—see DWR's previous response and related production concerning Interrogatory No. 9 of GMD2's First Interrogatories.

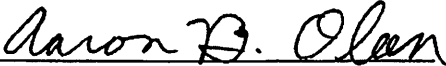
DWR has made a reasonable effort to compile a spreadsheet and produce documents regarding such known meetings and communications between DWR and City officials, based on information compiled after DWR's reasonable searches. As GMD2 knows, the various parties have been frequently discussing issues related to the ASR Permit Modification Proposal for a couple years. Subject to any applicable privilege log, DWR is not knowingly withholding any such known meeting/communication information between DWR and City officials.

4. Please indicate any and every meeting and communication You have had with the City about the AMC Proposal. Please include the date of each meeting and/or communication, the individuals involved in any meeting and/or communication, the subject matter of each communication and/or meeting, and the location of any communication and/or meeting.

RESPONSE: See counsel's objection and DWR's response immediately above.

5. Please explain in detail the accounting method that will be used to determine source water actually physically entering and leaving the Aquifer when an AMC is accumulated or used (as opposed to a Physical Recharge Credit).

***OBJECTION:** This interrogatory is more properly directed to and answered by the City, who has submitted the ASR Permit Modification Proposal. Subject to and without waiving the foregoing objections, DWR's response follows.*


Aaron B. Oleen, KS Sup. Ct. #23588

RESPONSE: It is DWR's understanding that, under the AMC Proposal, the mere accumulation of AMCs would not involve the direct, physical injection of "source water" (as defined by K.A.R. 5-1-1(yyy)) into available space in the Aquifer. The ASR Permit Modification Proposal explains the accounting method for AMCs in Chapter 4.0.

6. Please explain in detail the accounting method that will be used to determine the amount of source water entering and leaving the Aquifer with the AMC Proposal when an AMC is accumulated (as opposed to a Physical Recharge Credit).


***OBJECTION:** This interrogatory is more properly directed to and answered by the City, who has submitted the ASR Permit Modification Proposal. Subject to and without waiving the foregoing objections, DWR's response follows.*


Aaron B. Oleen, KS Sup. Ct. #23588

RESPONSE: GMD2's counsel clarified to DWR's counsel, via e-mail on December 18, 2018, that this interrogatory apparently is inadvertently duplicative of Interrogatory No. 5 above. Accordingly, see DWR's response immediately above.

7. Please explain in detail how the Aquifer will be artificially recharged through the AMC Proposal when an AMC is accumulated (as opposed to a Physical Recharge Credit).


***OBJECTION:** This interrogatory is more properly directed to and answered by the City, who has submitted the ASR Permit Modification Proposal. Subject to and without waiving the foregoing objections, DWR's response follows.*


Aaron B. Oleen, KS Sup. Ct. #23588

RESPONSE: It is DWR's understanding that, under the AMC Proposal, the Aquifer will not be artificially recharged, in the strictest, direct physical sense, as a result of the mere accumulation of an AMC—i.e., the mere accumulation of the AMC will not involve the direct, physical injection of "source water" (as defined by K.A.R. 5-1-1(yyy)) into available space in the Aquifer. Accumulation of the AMC will maintain the Aquifer, however, so that the Aquifer will remain fuller from the outset despite Wichita's use of water, rather than Wichita instead accomplishing the similar result of accumulating a Physical Recharge Credit by first pumping from the Aquifer in order to create space in which to recharge the Aquifer and accrue such a credit.

8. Please explain in detail how and where source water will be treated and used pursuant to the AMC Proposal when an AMC is accumulated (as opposed to a Physical Recharge Credit).

OBJECTION: This interrogatory is more properly directed to and answered by the City, who has submitted the ASR Permit Modification Proposal. Subject to and without waiving the foregoing objections, DWR's response follows.


Aaron B. Oleen, KS Sup. Ct. #23588

RESPONSE: It is DWR's understanding that, under the AMC Proposal, "source water" (as defined by K.A.R. 5-1-1(yyy)) will not be treated and used in the strictest, direct physical sense, as a result of the mere accumulation of an AMC—i.e., the mere accumulation of the AMC will not involve the treatment and then the direct, physical injection of source water into available space in the Aquifer. Source water will be treated and used as part of an AMC's accumulation, however, in the sense that surface water will be diverted from the Little Arkansas River when the ASR flow criteria is met, treated and then taken directly to the City, all of which will result in the Aquifer remaining fuller from the outset despite Wichita's use of water. See DWR's response immediately above.

9. Please explain in detail how You determined when the Aquifer was capable of physical recharge such that a Physical Recharge Credit can be accumulated.

OBJECTION: This interrogatory is more properly directed to and answered by the City, who has submitted the ASR Permit Modification Proposal. Subject to and without waiving the foregoing objections, DWR's response follows.


Aaron B. Oleen, KS Sup. Ct. #23588

RESPONSE: Pursuant to the AMC Proposal, Wichita proposes the "implementation of an annual water level monitoring program in conjunction with a recharge capacity calculation table", to "determine the physical recharge capacity of the ASR recharge well network" and to determine the quantity and eligibility to accumulate AMCs. See Chapter 3.5 of the AMC Proposal, at pages 3-6, 3-7. From a broader perspective, the operation of ASR and the water levels in the basin storage area index cells determine when the Aquifer is capable of physical recharge.

10. Please explain how you determined that the AMC five percent initial loss calculation was "reasonable."

RESPONSE: DWR assumes that this interrogatory is referring to DWR's answer to Interrogatory No. 14 of GMD2's First Interrogatories.

Wichita proposed a 5% initial loss to DWR and stated that this calculation is supported by the historical physical ASR recharge accounting results, by supplemental groundwater modeling, and by the hydrogeologic characteristics of groundwater throughout the basin storage area. DWR Water Management Services staff reviewed such calculation and explanation and, based on staff's training and professional experience, including the experience with Wichita's modelers, concluded that such calculation and explanation seemed reasonable.

11. Please explain in detail if and how you determined that the proposed AMC gradational annual losses were "reasonable."

RESPONSE: The City proposes a gradational recurring loss across the index cells using the same supporting historical physical ASR recharge accounting results, supplemental groundwater modeling, and hydrogeologic characteristics of groundwater throughout the basin storage area. The losses are higher closer to the river and decrease as one moves east away from the river. This appeared reasonable to DWR Water Management Services staff, based on their training and professional experience.

12. Please explain in detail what independent calculations or modeling was performed, if any, regarding the AMC Proposal as it relates to AMCs being accumulated.

RESPONSE: DWR can only speak for itself. DWR did not perform any such independent calculations or modeling. DWR did not believe that such work was reasonably warranted because under the AMC Proposal, AMCs would be accumulated using the same model that previously was approved for the operation and accounting of the ASR project.

13. Please explain in detail what independent calculations or modeling was performed, if any, regarding the proposed lowering of the minimum index levels.

RESPONSE: DWR can only speak for itself. DWR did not perform any such independent calculations or modeling. DWR did not believe that such work was reasonably warranted because under the ASR Permit Modification Proposal, the proposed lowering of the minimum index levels was based on the same model that previously was approved for the operation and accounting of the ASR project. Furthermore, the proposed new levels are not that significant compared to the practical saturated thickness of the Aquifer.

14. Please explain how the proposed recharge credit cap of 120,000 acre-feet was derived and why it is acceptable.

RESPONSE: The USGS provided a report titled “Revised Shallow and Deep Water-Level and Storage-Volume Changes in the Equus Bends Aquifer near Wichita, Predevelopment to 1993”, which report was part of exhibits F-J to the ASR Permit Modification Proposal and is available at the DWR website for this matter. This report was prepared by experienced professionals and their expertise in these matters is reasonably relied upon and acceptable to DWR. That report determined that the difference in storage volume in the central part of the study area is 120,000 AF, i.e., that as of 1993 the water levels in the central part of the study area had dropped 120,000 AF lower from where they were before development.

Currently Wichita’s existing permits regarding Phase II of the ASR project contain no express cap on recharge-credit accumulation. The AMC Proposal, however, would place a 120,000 AF cap on all recharge credits (Physical Recharge Credits and AMCs) that could be accumulated. DWR is not opposed to imposing a cap on recharge-credit accumulation.

15. Please explain how the ASR Permit Modification Proposal is in compliance with the District/City Phase I and Phase II MOUs.

RESPONSE: DWR was not a party to those documents, which DWR understands may no longer be in force. Regardless, at least regarding concerns about any impairment of existing water rights, Wichita has indicated its willingness to have appropriate permit conditions imposed upon its water rights that are subject to the ASR Permit Modification Proposal. See, e.g., DWR’s response to Intervenor’s Interrogatory No. 13.

16. Please specify whether any of the following will occur when an AMC is accumulated (as opposed to a Physical Recharge Credit): 1) prejudicially and unreasonably affect the public interest, 2) impair existing water rights, or 3) allow an unreasonable raising or lowering of the water level? Identify all the facts, studies, expert opinions, computer modeling, and other information relied on by You in making such a determination.

RESPONSE: Regarding the first sub-question: The Presiding Officer ultimately will determine whether or to what extent the issues from the ASR Permit Modification Proposal (including the proposed concept and accumulation of AMCs) negatively affect the public interest, based on all the information presented at the hearings for this matter or otherwise accepted into the record. At this time, DWR has not seen information indicating that allowing the concept of AMCs and allowing them to be accumulated under the AMC Proposal would negatively affect the public interest. Remember that allowing the accumulation of AMCs is the first—but a separate—step in the overall process: accumulation is not the same as withdrawal. If the Chief Engineer approves the concept of AMCs under the AMC Proposal and allows them to be accumulated, then any subsequent requests by Wichita to “cash in” and withdraw any AMCs that might be accumulated would have to be applied for and approved by DWR. And if approved, such withdrawal would be subject to such conditions that the Chief Engineer might impose.

Regarding sub-questions 2 and 3: The mere accumulation of AMCs would not impair any existing water rights or raise or lower the water level. Again, the accumulation of AMCs is a different step in the process from withdrawal. If the Chief Engineer approves the concept of AMCs under the AMC Proposal and allows them to be accumulated, then any subsequent request by Wichita to withdraw accrued AMCs would be reviewed by DWR for its potential to impair existing water rights or unreasonably raise or lower the water level.

17. Please specify whether any of the following will occur if the minimum index levels are lowered as proposed by the ASR Permit Modification Proposal: prejudicially and unreasonably affect the public interest, 2) impair existing water rights, or 3) allow an unreasonable raising or lowering of the water level? Identify all the facts, studies, expert opinions, computer modeling, and other information relied on by You in making such a determination.

RESPONSE: Regarding the first sub-question: The Presiding Officer ultimately will determine whether or to what extent the issues from the ASR Permit Modification Proposal (including the proposed lowering of the minimum index levels) negatively affect the public interest, based on all the information presented at the hearings for this matter or otherwise accepted into the record. At this time, DWR has not seen information indicating that the proposed lowering of the minimum index levels would be unreasonable and would negatively affect the public interest. The proposed new levels are not that significant compared to the practical saturated thickness of the Aquifer.

Regarding sub-question 2: When the aquifer levels were as low as they were in 1993, DWR did not receive any impairment complaints, to its knowledge. Thus at this time DWR does not believe it is likely that the lowering of the minimum index levels under the ASR Permit Modification Proposal would result in the impairment of existing water rights. Furthermore, Wichita has indicated its commitment to protecting existing rights. See DWR's response to No. 15 above. If the Chief Engineer approves lower minimum index levels and then subsequently some owner of a water permit or right claims that Wichita's ASR activity is causing impairment, then DWR will investigate pursuant to its normal procedures and, if DWR determines that such impairment has occurred, then DWR will curtail Wichita's pumping or otherwise act to cure the impairment.

Regarding sub-question 3: Although Wichita proposes to lower the minimum index levels to levels lower than they were in 1993, the proposed new levels are not that significant compared to the practical saturated thickness of the aquifer. Indeed, if as a result of a 1% drought the water levels were to actually drop to the proposed minimum index levels under the ASR Permit Modification Proposal, then according to Wichita's modeling the Aquifer still would be approximately 86% full across the Equus Beds Wellfield and 89% full across the entire project basin storage area. At this time DWR does not think that that lowering would amount to an unreasonable lowering of the water levels.

VERIFICATION FOR ENTITY

STATE OF KANSAS)
) ss.
COUNTY OF Riley)

Lane Letourneau, of lawful age, being duly sworn upon oath, states:

That he is an authorized representative of the Division of Water Resources; that he has read the above and foregoing Second Set of Interrogatories propounded on DWR by GMD2 and that his responses are true and correct to the best of his knowledge, information, and belief.

Division of Water Resources

By: Lane Letourneau

Lane Letourneau
Program Manager, Appropriation Program
Division of Water Resources

SWORN TO AND SUBSCRIBED before me, this 21st day of December,
2018 by Lane Letourneau of the Division of Water Resources, a division of the State of
Kansas, Kansas Department of Agriculture, on behalf of the Division of Water Resources.

Ronda M. Hutton
Notary Public

My Commission Expires:
10-15-2019



CERTIFICATE OF SERVICE

The undersigned hereby certifies that he served the above and foregoing responses to GMD2's Second Set of Request for Admissions by electronic mail on this 21st day of December, 2018, addressed to:

Intervenors


1010 Chestnut
Halstead, KS 67056
twendling@mac.com

Equus Beds Groundwater Management District No. 2

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Halstead, KS 67056
tboese@gmd2.org
tom@aplawpa.com
stucky.dave@gmail.com
leland.rolfs@sbcglobal.net

City of Wichita

Department of Public Works & Utilities
455 North Main Street
Wichita, KS 67202
jpajor@wichita.gov
bmcleod@wichita.gov



Aaron B. Oleen, S. Ct. #23588

10. "The City" shall mean the City of Wichita.
11. "ASR" shall mean Aquifer Storage and Recovery.
12. "DWR" means the Division of Water Resources ("DWR") and any agent, consultant, employee, or manager for DWR.
13. As used herein, the term "document" means any medium upon which intelligence or information can be recorded or retrieved, and includes, without limitation, the original and each copy, regardless of origin and location, of any book, pamphlet, periodical, letter, memorandum, (including any memorandum or report of a meeting or conversation), contract, agreement, letter, e-mail, facsimile, check, receipt, notice, study, telegram, computer printout, invoice, computer data file, work papers, diary, calendar, transcript, bill, record, photograph, or any other graphic matter, however produced or reproduced, which is or was in your possession, custody or control.
14. As used herein, the term "communication" means any oral or written utterance of any nature including, but not limited to, correspondence, e-mail, facsimile, conversations, discussions, and consultations, between or among two or more persons.
15. As used herein, the terms "identification," "identify," or "identity," when used in reference to (a) a natural individual, require you to state his or her full name, job title, residential and business addresses and home and business phone numbers; (b) a corporation or business, require you to state its full name and any names under which it does business, the address of its principal place of business, and the addresses of all of its offices; (c) a document, requires you to state the number of pages and the nature of the document (e.g., letter or memorandum), its title, its date, the name or names of its authors and recipients, and its present location and custodian; (d) a communication, requires you to identify the document or documents which refer to or evidence the communication; and (e) an oral communication, requires you to identify the persons participating in the communication and to state the date, manner, place and substance of the communication.
16. As used herein, the word "or" appearing in a request should not be read so as to eliminate any part of the request, but, whenever applicable, it should have the same meaning as the word "and."
17. As used herein, the words "person" or "entity" mean any natural person, company, business, partnership, corporation, association or other group carrying on a business enterprise.

RESPONSES TO REQUEST FOR ADMISSIONS

1. **Admit or deny that no water will actually physically be injected into the Aquifer when an AMC is accumulated (as opposed to a Physical Recharge Credit).**

RESPONSE: Partially admitted and partially denied. It is DWR's current understanding that, under the ASR Permit Modification Proposal, Wichita could be simultaneously engaging in activity that accumulates AMCs and separate activity that accumulates Physical Recharge Credits. It is DWR's current understanding, however, that under the AMC Proposal, the mere accumulation of AMCs would not involve the direct, physical injection of water into available space in the Aquifer.

2. **Admit or deny that no source water will enter into the Aquifer through gravity flow when an AMC is accumulated (as opposed to a Physical Recharge Credit).**


RESPONSE: Partially admitted and partially denied. It is DWR's current understanding that, under the ASR Permit Modification Proposal, some "source water" (as defined by K.A.R. 5-1-1(yyy)) may still enter, through gravity flow, into the basin storage area that resides in the Aquifer, even when AMCs are accumulated. Wichita cannot prevent gravity's effect on water. DWR admits, however, that the mere accumulation of AMCs would not involve the direct, physical injection of "source water" (as defined by K.A.R. 5-1-1(yyy)) into available space in the Aquifer.

3. **Admit or deny that no source water will actually be stored in the Aquifer when an AMC is accumulated (as opposed to a Physical Recharge Credit).**

RESPONSE: Partially admitted and partially denied. It is DWR's current understanding that, under the ASR Permit Modification Proposal, Wichita could be simultaneously engaging in activity that accumulates AMCs and separate activity that accumulates Physical Recharge Credits. DWR admits, however, that the mere accumulation of AMCs would not involve the direct, physical injection of "source water" (as defined by K.A.R. 5-1-1(yyy)) into available space in the Aquifer.

4. **Admit or deny that recharge pits will not be used to cause source water to enter the storage volume of the basin storage area when an AMC is accumulated (as opposed to a Physical Recharge Credit).**

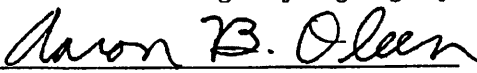
OBJECTION: The phrase "storage volume of the basin storage area" is vague and ambiguous. Subject to and without waiving the foregoing objections, DWR's response follows.


Aaron B. Oleen, KS Sup. Ct. #23588

RESPONSE: Partially admitted and partially denied, due to DWR's current lack of sufficient knowledge regarding this question. The answer to this question depends on how the City manages the recharge pits/recharge basin. DWR admits, however, that the mere accumulation of AMCs would not involve the direct, physical injection of "source water" (as defined by K.A.R. 5-1-1(yyy)) into available space in the Aquifer.

5. Admit or deny that recharge trenches will not be used to cause source water to enter the storage volume of the basin storage area when an AMC is accumulated (as opposed to a Physical Recharge Credit).

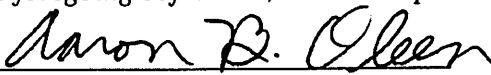
OBJECTION: The phrases "recharge trenches" and "storage volume of the basin storage area" are vague and ambiguous. Subject to and without waiving the foregoing objections, DWR's response follows.


Aaron B. Oleen, KS Sup. Ct. #23588

RESPONSE: Partially admitted and partially denied, due to DWR's current lack of sufficient knowledge regarding this question. DWR is currently unaware of any City plans involving recharge trenches. DWR admits, however, that the mere accumulation of AMCs would not involve the direct, physical injection of "source water" (as defined by K.A.R. 5-1-1(yy)) into available space in the Aquifer.

6. Admit or deny that recharge wells will not be used to cause source water to enter the storage volume of the basin storage area when an AMC is accumulated (as opposed to a Physical Recharge Credit).

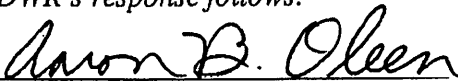
OBJECTION: The phrase "storage volume of the basin storage area" is vague and ambiguous. Subject to and without waiving the foregoing objections, DWR's response follows.


Aaron B. Oleen, KS Sup. Ct. #23588

RESPONSE: Partially admitted and partially denied. It is DWR's current understanding that, under the ASR Permit Modification Proposal, Wichita could be simultaneously engaging in activity that accumulates AMCs and separate activity that accumulates Physical Recharge Credits. DWR admits, however, that the mere accumulation of AMCs would not involve the direct, physical injection of "source water" (as defined by K.A.R. 5-1-1(yy)) into available space in the Aquifer.

7. Admit or deny that no artificial recharge system will be used to cause source water to enter into the Aquifer when an AMC is accumulated (as opposed to a Physical Recharge Credit).

OBJECTION: The phrase "artificial recharge system" is vague and ambiguous. Subject to and without waiving the foregoing objections, DWR's response follows.


Aaron B. Oleen, KS Sup. Ct. #23588

RESPONSE: Partially admitted and partially denied. It is DWR's current understanding that, under the ASR Permit Modification Proposal, Wichita could be simultaneously engaging in activity that accumulates AMCs and separate activity that accumulates Physical Recharge Credits. DWR admits, however, that the mere accumulation of AMCs would not involve the direct, physical injection of "source water" (as defined by K.A.R. 5-1-1(yyy)) into available space in the Aquifer.

8. Admit or deny that no artificial recharge of the Aquifer will occur when an AMC is accumulated (as opposed to a Physical Recharge Credit).

RESPONSE: Partially admitted and partially denied. It is DWR's understanding that, under the AMC Proposal, the Aquifer will not be artificially recharged, in the strictest, direct physical sense, as a result of the mere accumulation of an AMC—i.e., the mere accumulation of the AMC will not involve the direct, physical injection of "source water" (as defined by K.A.R. 5-1-1(yyy)) into available space in the Aquifer. Accumulation of the AMC will maintain the Aquifer, however, so that the Aquifer will remain fuller from the outset despite Wichita's use of water, rather than Wichita instead accomplishing the similar result of accumulating a Physical Recharge Credit by first pumping from the Aquifer in order to create space in which to recharge the Aquifer and accrue such a credit.

9. Admit or deny that source water will not be put into the Aquifer by the AMC Proposal subject to later recovery when an AMC is accumulated (as opposed to a Physical Recharge Credit).

RESPONSE: Partially admitted and partially denied. It is DWR's current understanding that, under the ASR Permit Modification Proposal, Wichita could be simultaneously engaging in activity that accumulates AMCs and separate activity that accumulates Physical Recharge Credits. DWR admits, however, that the mere accumulation of AMCs would not involve the direct, physical injection of "source water" (as defined by K.A.R. 5-1-1(yyy)) into available space in the Aquifer.

10. Admit or deny that there will not be an accounting system in place to account for or quantify the source water actually physically entering and leaving the Aquifer when an AMC is accumulated (as opposed to a Physical Recharge Credit).

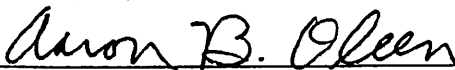
RESPONSE: Partially admitted and partially denied. It is DWR's current understanding that, under the ASR Permit Modification Proposal, Wichita could be simultaneously engaging in activity that accumulates AMCs and separate activity that accumulates Physical Recharge Credits. DWR admits, however, that the mere accumulation of AMCs would not involve the direct, physical injection of "source water" (as defined by K.A.R. 5-1-1(yyy)) into available space in the Aquifer. Wichita has proposed an accounting system that would account for both the accumulation of AMCs and the accumulation of Physical Recharge Credits. See, e.g., Chapter 4.0 of the ASR Permit Modification Proposal.

11. Admit or deny that the accumulation of an AMC will not artificially replenish the water supply of the Aquifer (as opposed to a Physical Recharge Credit).

RESPONSE: Partially admitted and partially denied. It is DWR's understanding that, under the AMC Proposal, the Aquifer will not be artificially replenished, in the strictest, direct physical sense, as a result of the mere accumulation of an AMC—i.e., the mere accumulation of the AMC will not involve the direct, physical injection of "source water" (as defined by K.A.R. 5-1-1(yyy)) into available space in the Aquifer. Accumulation of the AMC will maintain the Aquifer, however, so that the Aquifer will remain fuller from the outset despite Wichita's use of water, rather than Wichita instead accomplishing the similar result of accumulating a Physical Recharge Credit by first pumping from the Aquifer in order to create space in which to replenish the Aquifer and accrue such a credit.

12. Admit or deny that when an AMC is accumulated the source water will be pumped directly to the City without any source water directly entering the Aquifer (as opposed to a Physical Recharge Credit).

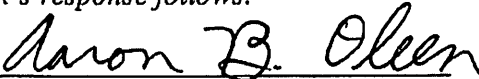
OBJECTION: The phrase "source water subject to the AMC Proposal" is vague and ambiguous. Subject to and without waiving the foregoing objections, DWR's response follows.


Aaron B. Oleen, KS Sup. Ct. #23588

RESPONSE: Partially admitted and partially denied. It is DWR's current understanding that, under the ASR Permit Modification Proposal, Wichita could be simultaneously engaging in activity that accumulates AMCs and separate activity that accumulates Physical Recharge Credits. DWR admits, however, that the mere accumulation of AMCs would not involve the direct, physical injection of "source water" (as defined by K.A.R. 5-1-1(yyy)) into available space in the Aquifer.

13. Admit or deny that there is no statute or regulation that specifically allows for the accumulation and later withdrawal of AMCs after an AMC is accumulated (as opposed to a Physical Recharge Credit).

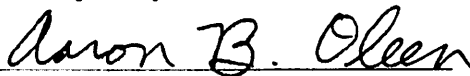
OBJECTION: The phrase "specifically allows" is vague and ambiguous. Subject to and without waiving the foregoing objections, DWR's response follows.


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RESPONSE: Partially admitted and partially denied. DWR admits that no Kansas statute or regulation specifically uses the term "Aquifer Maintenance Credit". The Kansas statutes and regulations allow for ASR projects and recharge credits, however, and DWR considers an AMC to be a type of "recharge credit".

14. Admit or deny that no documents exist reflecting whether You conducted a thorough legal review to determine if the AMC Proposal is allowed by statute or regulation.

OBJECTION: The phrase "thorough legal review" is vague and ambiguous. Subject to and without waiving the foregoing objections, DWR's response follows.


Aaron B. Oleen, KS Sup. Ct. #23588

RESPONSE: Denied. DWR believes that the KDA attorneys properly reviewed the applicable laws in conjunction with DWR's review of the AMC Proposal. Non-privileged, non-protected documents reflecting and/or explaining this legal review and determination either were previously provided by DWR to GMD2 before this formal discovery or were produced as part of this formal discovery.

15. Admit or deny that the City's appropriation applications requesting withdrawal of AMCs are subject to the Districts' Safe Yield Regulation K.A.R. 5-22-7 when an AMC is accumulated (as opposed to a Physical Recharge Credit).

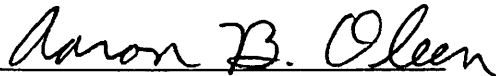
RESPONSE: Denied. Pursuant to K.A.R. 5-22-7(b)(7), ASR applications (including applications requesting withdrawal of AMCs or any other type of recharge credit) are not subject to GMD2's safe yield requirements.

16. Admit or deny that the appropriation of groundwater as proposed by the AMC Proposal does not comply with the District's Safe Yield Regulation K.A.R. 5-22-7 when an AMC is accumulated (as opposed to a Physical Recharge Credit).

RESPONSE: Denied. Pursuant to K.A.R. 5-22-7(b)(7), ASR applications (including applications requesting withdrawal of AMCs or any other type of recharge credit) are not subject to GMD2's safe yield requirements.

17. Admit or deny that when the District's Safe Yield Regulation, K.A.R. 5-22-7(b)(7) exemption criteria for an application for aquifer storage and recovery well was drafted and approved, the concept of AMCs was not in existence nor considered.

OBJECTION: DWR can only speak on behalf of itself and what it knows, and this request asks DWR to admit what others may have known or considered.


Aaron B. Oleen, KS Sup. Ct. #23588

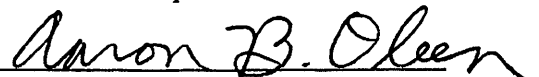
RESPONSE: Partially admitted and partially denied. DWR admits that, to its knowledge, DWR was unaware of the concept of AMCs, as now proposed by Wichita, back when K.A.R. 5-22-7(b)(7) was drafted and approved. DWR does not know what others might have known or considered.

18. Admit or deny that the City and the Chief Engineer have publicly stated that purpose of the ASR project has changed and the primary propose of the ASR project is for drought mitigation and that withdrawal of recharge credits are only needed during drought periods.

RESPONSE: Partially admitted and partially denied. DWR admits that Wichita and the Chief Engineer (based on what Wichita has told him/DWR) have publicly stated that the purpose of the ASR project has changed in Wichita's opinion and that now Wichita's primary purpose for the ASR project is drought mitigation. DWR cannot recall with certainty whether Wichita ever has publicly stated that the withdrawal of recharge credits is only needed during drought periods, and DWR does not believe that the Chief Engineer ever has publicly stated this.

19. Admit or deny that a 1% drought simulation is the foundation of the City's requests to lower the minimum index levels and allow for the accumulation of AMCs as proposed in the City's ASR Permit Modification Proposal.

OBJECTION: DWR can only speak on behalf of itself and what it knows, and this request asks DWR to admit on what basis Wichita has submitted a request to DWR.


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RESPONSE: DWR cannot admit another's basis or "foundation" for doing something, other than to the extent of what DWR is told by that person or entity. Accordingly, DWR denies this request for admission. GMD2 is aware of the reasons that Wichita has given for the AMC Proposal, because they are stated in the ASR Permit Modification Proposal and elsewhere.

All that said, DWR is aware that the 2011/2012 drought resulted in DWR's creation of drought term permits and changes to the multi-year flex account statute, in an effort to allow irrigators to legally pump more water during such drought. As a result of this additional pumping during such drought, the Aquifer was lowered to a level such that Wichita was concerned about its access to its accrued ASR recharge credits. Thus it would make sense for Wichita's request to lower the minimum index levels to be at least partly based on drought concerns. The request to lower the minimum index levels is not necessarily related to the request to recognize and allow the accumulation of AMCs.

20. Admit or deny that the accumulation of AMCs will result in an equal reduction of groundwater pumped by the City's existing native groundwater rights in the basin storage area.

RESPONSE: Denied. Under the ASR Permit Modification Proposal as currently written, the mere accumulation of AMCs would not result in such an equal reduction of groundwater pumped by the City's existing native groundwater rights. Such Proposal states in Chapter 3.3, however, that the "capture and use of transient surface water in the Little Arkansas River directly offsets groundwater that would have been pumped to meet daily demand and to create physical ASR recharge capacity."

VERIFICATION FOR ENTITY

STATE OF KANSAS)
) ss.
COUNTY OF Riley)

Lane Letourneau, of lawful age, being duly sworn upon oath, states:

That he is an authorized representative of the Division of Water Resources; that he has read the above and foregoing GMD2's Second Set of Request for Admissions and that his responses are true and correct to the best of his knowledge, information, and belief.

Division of Water Resources

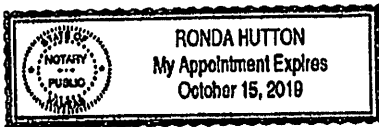
By: Lane Letourneau

Lane Letourneau
Program Manager, Appropriation Program
Division of Water Resources

SWORN TO AND SUBSCRIBED before me, this 21st day of December,
2018 by Lane Letourneau of the Division of Water Resources, a division of the State of
Kansas, Kansas Department of Agriculture, on behalf of the Division of Water Resources.

Ronda M. Hutton
Notary Public

My Commission Expires:
10-15-2019



CERTIFICATE OF SERVICE

The undersigned hereby certifies that he served the above and foregoing responses to GMD2's Second Set of Interrogatories propounded on DWR by electronic mail on this 21st day of December, 2018, addressed to:

Intervenors

1010 Chestnut
Halstead, KS 67056
twendling@mac.com

Equus Beds Groundwater Management District No. 2

313 Spruce
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leland.rolfs@sbcglobal.net

City of Wichita

Department of Public Works & Utilities
455 North Main Street
Wichita, KS 67202
jpajor@wichita.gov
bmcleod@wichita.gov



Aaron B. Oleen, S. Ct. #23588