

**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  
In Harvey and Sedgwick Counties, Kansas**

Case No. 18 WATER 14014

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

**THE CITY OF WICHITA'S RESPONSES TO EQUUS BEDS  
GROUNDWATER MANAGEMENT DISTRICT NUMBER 2 FIRST  
REQUEST FOR ADMISSIONS TO CITY OF WICHITA, KANSAS**

Pursuant to K.S.A. 60-236, request is hereby made upon the City of Wichita, Kansas ("The City") to admit within thirty (30) days from the date of service of this Request for Admissions, the truth of the facts and genuineness of the statements set forth below.

Each matter as to which an admission is requested is admitted, unless within thirty (30) days after service of this Request for Admissions on The City a written objection or answer addressed to this matter, signed by The City or the attorney for said The City, specifically denying the matter or setting forth in detail the reason by The City cannot truthfully admit or deny the matter, is served on Thomas A. Adrian and David J. Stucky, Adrian & Pankratz, PA, 301 North Main, Suite 400, Newton, Kansas 67114.

**DEFINITIONS**

1. "You" and/or "Your" means the City of Wichita, and any agent, consultant, employee, or manager for the City of Wichita.
2. "The City" shall mean the City of Wichita

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3. "DWR" means the Division of Water Resources ("DWR"), and any agent, consultant, employee, or manager for DWR.
4. "Chief Engineer" means David Barfield, Chief Engineer, Division of Water Resources, Kansas Department of Agriculture.
5. "The District" shall mean the Equus Beds Groundwater Management District No. 2.
6. "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.
7. "ASR Permit Modification Proposal" means the proposal dated March 12, 2018, that You submitted to the Chief Engineer, Division of Water Resources, Kansas Department of Agriculture.
8. "AMC Proposal" means the Aquifer Maintenance Credits Proposal submitted as part of the ASR Permit Modification Proposal.
9. "AMC" means Aquifer Maintenance Credit.
10. "Aquifer" shall mean the Equus Beds Aquifer.
11. "ASR" shall mean Aquifer Storage and Recovery
12. "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 your possession, custody or control.

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13. 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.
14. 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.
15. When a request for admission requires you to "state the basis of a particular claim, defense, contention, or allegation, state in your answer the identity of each and every communication and each and every fact and legal theory that you think supports, refers to, or evidences such claim, defense, contention or allegation.
16. 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."

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.

**REQUEST FOR ADMISSIONS**

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

ADMIT

DENY

The AMC proposal describes the interactive accumulation of physical recharge credits and AMC recharge credits. The City will continue to conduct physical recharge operations based on the condition and capacity of the aquifer to accept physical recharge.

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

ADMIT

DENY

The AMC proposal describes the interactive accumulation of physical recharge credits and AMC recharge credits. The City will continue to conduct physical recharge operations based on the condition and capacity of the aquifer to accept physical recharge.

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

ADMIT

DENY

The AMC proposal describes the interactive accumulation of physical recharge credits and AMC recharge credits. The City will continue to conduct physical recharge operations based on the condition and capacity of the aquifer to accept physical recharge.

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.

ADMIT

DENY

The AMC proposal describes the interactive accumulation of physical recharge credits and AMC recharge credits. The City will continue to conduct physical recharge operations based on the condition and capacity of the aquifer to accept physical recharge. Recharge pits will continue to be utilized to facilitate recharge activities as appropriate.

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.

ADMIT \_\_\_\_\_ DENY   x  \_\_\_\_\_

The AMC proposal describes the interactive accumulation of physical recharge credits and AMC recharge credits. The City will continue to conduct physical recharge operations based on the condition and capacity of the aquifer to accept physical recharge. Recharge trenches are currently not used for physical recharge however it is uncertain if recharge trench technology will be utilized to facilitate recharge in the future. If and when appropriate, trenches could be used to facilitate recharge activities.

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.

ADMIT \_\_\_\_\_ DENY   x  \_\_\_\_\_

The AMC proposal describes the interactive accumulation of physical recharge credits and AMC recharge credits. The City will continue to conduct physical recharge operations based on the condition and capacity of the aquifer to accept physical recharge. Recharge wells will continue to be utilized to facilitate recharge activity.

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.

ADMIT   x  \_\_\_\_\_ DENY \_\_\_\_\_

The AMC proposal describes the interactive accumulation of physical recharge credits and AMC recharge credits. The City will continue to conduct physical recharge operations based on the condition and capacity of the aquifer to accept physical recharge.

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

Counsel objects that the request is vague, due to the phrase "with respect to."

/s/ Brian K. McLeod

Brian K. McLeod, SC # 14026

Subject to and without waiving the foregoing objection, the City further responds as follows:

ADMIT \_\_\_\_\_ DENY   x  \_\_\_\_\_

The AMC proposal describes the interactive accumulation of physical recharge credits and AMC recharge credits. The City will continue to conduct physical recharge operations based on the condition

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and capacity of the aquifer to accept physical recharge.

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.

ADMIT \_\_\_\_\_ DENY x \_\_\_\_\_

The AMC proposal describes the interactive accumulation of physical recharge credits and AMC recharge credits. The City will continue to conduct physical recharge operations based on the condition and capacity of the aquifer to accept physical recharge.

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.

ADMIT \_ \_ \_ \_ \_ DENY x \_ \_ \_ \_ \_

The proposal describes the interactive accumulation of physical recharge credits and AMC recharge credits. An annual accounting report will be made and submitted for both physical and AMC recharge credits.

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

ADMIT \_ \_ \_ \_ \_ DENY x \_ \_ \_ \_ \_

The AMC proposal describes the interactive accumulation of physical recharge credits and AMC recharge credits. The City will continue to conduct physical recharge operations based on the condition and capacity of the aquifer to accept physical recharge.

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.

Counsel objects that the request is vague, due to the phrase "subject to the AMC proposal."

/s/ Brian K. McLeod  
Brian K. McLeod, SC # 14026

Subject to and without waiving the foregoing objection, the City further responds as follows:

ADMIT \_ \_ \_ \_ \_ DENY x \_\_\_\_\_

The AMC proposal describes the interactive accumulation of physical recharge credits and AMC recharge credits. The City will continue to conduct physical recharge operations based on the condition and capacity of the aquifer to accept physical recharge.

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ADMIT \_\_\_\_\_

DENY \_\_\_\_\_x

State statute allows for the construction and operation of ASR projects. The development of an ASR project may result in the accumulation of recharge credits

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

Counsel objects that the request is vague and incomprehensible.

/s/ Brian K. McLeod

Brian K. McLeod, SC # 14026

Subject to and without waiving the foregoing objection, the City further responds as follows:

ADMIT \_\_\_\_\_

DENY x \_\_\_\_\_

AMCs represent the capture and beneficial use of an intermittently available source of water from the Little Arkansas River. The source water captured would be available for physical recharge if not limited by aquifer conditions as described within the proposal.

18. 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.

Counsel objects that the request is vague and ambiguous, due to the use of the word "separately," and the uncertainty whether it is meant to apply to each well or to what is being pumped.

/s/ Brian K. McLeod

Brian K. McLeod, SC # 14026

Subject to and without waiving the foregoing objection, the City further responds as follows, based on the assumption that "separately" applies to what is being pumped:

ADMIT \_\_\_\_\_

DENY x \_\_\_\_\_

Recharge recovery wells are equipped with meters capable of recording recharge water entering a well and water produced from each well. The water produced or recovered from each well will be categorized as either a native water right, physical recharge credit or AMC. Annual ASR accounting reports specifically detailing recharged and pumped quantities have been developed, reviewed and approved by the Groundwater Management District No. 2 (GMD2) Board and Staff since 2006.

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19. Admit or deny that the models, including all inputs, outputs, calibrations and adjustments, used in the ASR Permit Modification Proposal, have not been professionally peer reviewed.

Counsel objects that the request contains an erroneous assumption that models include all inputs, outputs, calibrations and adjustments.

/s/ Brian K. McLeod

Brian K. McLeod, SC # 14026

Subject to and without waiving the foregoing objection, the City further responds as follows:

ADMIT                    

DENY   x                 

The models utilized in the ASR Permit Modification Proposal have been professionally peer reviewed, and the inputs and outputs of the models which have been reviewed by GMD2 and DWR Staff.

20. Admit or deny that using a 1% drought scenario for water supply planning by a municipality is unusual and that the standard for a Kansas municipality is using a 2% drought.

Counsel objects on the basis of vagueness, in that “unusual” and “standard” are of uncertain meaning as used in the request.

/s/ Brian K. McLeod

Brian K. McLeod, SC # 14026

Subject to and without waiving the foregoing objection, the City further responds as follows:

ADMIT----

DENY                    x   

Drought planning is a local issue centered on defining an acceptable level of risk. It is evident from recent research that what is considered a 1% drought based on a relatively short period of record may be underestimated based on a longer period of record. The general guidance for a Kansas municipality water supply is based on a 2% drought as a minimum standard.

21. Admit or deny that You did not consult with the State of Kansas Climatologist or other State of Kansas weather or climate expert regarding the 1% drought simulation model inputs used in the ASR Permit Modification Proposal.

Counsel objects on the basis of vagueness, in that “other State of Kansas weather or climate expert” is of uncertain meaning as used in the request.

/s/ Brian K. McLeod

Brian K. McLeod, SC # 14026

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Subject to and without waiving the foregoing objection, the City further responds as follows:

ADMIT \_\_\_\_\_ DENY \_\_\_\_\_ x

The City consulted with the State of Kansas Climatologist regarding the planned level of drought mitigation. In addition to consulting with the State of Kansas Climatologist, the City has received professional guidance regarding the 1% drought simulation model inputs.

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

ADMIT \_ \_ \_ \_ \_ DENY x \_\_\_\_\_

K.A.R. 5-22-7(b)(7) specifically indicates that applications for aquifer storage and recovery are not subject to the District's Safe Yield Regulation.

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.

ADMIT \_\_\_\_\_ DENY \_ \_ ~~x~~ \_\_\_\_\_

K.A.R. 5-22-7(b)(7) specifically indicates that applications for aquifer storage and recovery are not subject to the District's Safe Yield Regulation.

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.

ADMIT \_ \_ \_ \_ \_ DENY \_\_\_\_\_ x

K.A.R. 5-22-7(b)(7) specifically indicates that applications for aquifer storage and recovery are not subject to the District's Safe Yield Regulation.

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25. Admit or deny that You have communicated and coordinated directly with the Chief Engineer regarding the ASR Permit Modification Proposal and AMC Proposal.

Counsel objects to the request as vague and indefinite in time.

/s/ Brian K. McLeod  
Brian K. McLeod, SC # 14026

Subject to and without waiving the foregoing objection, the City further responds as follows:

ADMIT   DENY

Communication protocols align with standard application development procedures. There has also been extensive communications and coordination with GMD2 Staff and Board members per standard procedures and at the request of GMD2.

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

ADMIT \_\_\_\_\_ DENY  \_\_\_\_\_

Withdrawal of AMC's are not limited to specific climatic conditions.

Respectfully Submitted,

/s/ Brian K. McLeod  
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455 N. Main, 13<sup>th</sup> Floor  
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that he served the above and foregoing responses to Requests for Admission by electronic mail on this 30<sup>th</sup> day of October, 2018, addressed to:

Thomas A. Adrian  
David J. Stucky  
[tom@aplawpa.com](mailto:tom@aplawpa.com)  
[dave@aplawpa.com](mailto:dave@aplawpa.com)

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/s/ Brian K. McLeod  
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