

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

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

**CITY OF WICHITA'S RESPONSES TO EQUUS BEDS GROUNDWATER
MANAGEMENT DISTRICT NUMBER 2 SECOND INTERROGATORIES
TO CITY OF WICHITA, KANSAS**

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.

RESPONSE:

Counsel objects to the Interrogatory as overly broad and unduly burdensome, particularly the portion that seeks particularized attribution of each piece of information in all responses.

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

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

Persons who prepared or assisted in the preparations of the responses include:

Brian McLeod, document preparation; Alan King, document review; Joe Pajor, document review; Don Henry, document review; Scott Macey, document preparation; Brian Meier, document preparation; Don Koci, document review; John Winchester, technical support and document review; Daniel Clement, technical support and document review; Paul McCormick, technical support and document review; Luca DeAngelis, document review; and Nathan Dunahee, document review.

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

RECEIVED

DEC 17 2018

EQUUS BEDS GMD #2

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.

RESPONSE:

Counsel objects to the Interrogatory as overly broad, unduly burdensome, and designed to invade protected work product.

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

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

Explanations for the City's Responses to the Requests for Admissions are provided with the responses. Responses to Requests 1 through 12 should have been ascertainable from the City's proposal, including the portion thereof that discusses annual accounting method for determining accumulation of credits. Responses to Requests 13 and 15 are ascertainable from the statutes and regulations of Kansas. The bases for the objections to Requests 14, 15, 17 and 20 are ascertainable from the forms of the Requests themselves. The response to Request 19 was ascertainable from the proposal. The responses to Requests 13 and 16 were ascertainable from the regulations referenced in those responses. The Response to Request 20 is based in part on the form of the Request itself and in part on public statements of the City, including the City's June 28, 2018 Halstead informational presentation (linked on the DWR "Wichita ASR" website) and Joe Pajor's January 23, 2018 and March 1, 2018 legislative testimony in the Documents subdirectory of the Public Information file in the City's Dropbox repository.

Documents that may "relate to or concern" the City's responses include the City's proposal and referenced statutes and regulations, and may also include (but are not necessarily limited to) those provided by the City in its responses to the District production request.

Persons with knowledge of facts that relate to the responses include:

Brian McLeod; Alan King; Joe Pajor; Don Henry; Scott Macey; Brian Meier; Don Koci; John Winchester; Daniel Clement; Paul McCormick; Luca DeAngelis; Nathan Dunahee; and Tracy Streeter.

Each of the documents (other than statutes and regulations) that relate to the responses are provided as components of the electronic file folders supplied with the Production of Documents, in the directory POD. A full list of documents provided is available as the file POD_Documents.doc. Wherever any of the documents provided or referred to provide reference to other source documents, each such reference shall be considered as presented herewith.

3. Please indicate any and every meeting and communication You have had with the DWR 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.

Counsel objects to the Interrogatory as unduly burdensome. The City has provided in its document production responses all locatable records of its meetings and contacts with DWR, which are also in searchable, electronic format, and the answer to the Interrogatory is as readily ascertainable from such records by the District as by the City.

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

Subject to and without waiving the foregoing objection, applicable communications or correspondence have been provided in electronic form, as the subdirectory Proposal Communications. Additional detail may be available in the subdirectory Electronic Communications. Applicable meetings in which additional pertinent communications may have occurred are listed in the subdirectories DWR Meetings and District Meetings. The City, as its answer to this Interrogatory, refers the District to the referenced records, pursuant to K.S.A. 60-233(d).

4. Please indicate any and every meeting and communication You have had with the DWR 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.

Counsel objects to the Interrogatory as unduly burdensome. The City has provided in its document production responses all locatable records of its meetings and contacts with DWR, which are also in searchable, electronic format, and the answer to the Interrogatory is as readily ascertainable from such records by the District as by the City.

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

Subject to and without waiving the foregoing objection, applicable communications or correspondence have been provided in electronic form, as the subdirectory Proposal Communications. Additional detail may be available in the subdirectory Electronic Communications. Applicable meetings in which additional pertinent communications may have occurred are listed in the subdirectories DWR Meetings and GMD2 Meetings. The City, as its answer to this Interrogatory, refers the District to the referenced records, pursuant to K.S.A. 60-233(d).

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).

RESPONSE:

Counsel objects to the Interrogatory as centrally incorporating a fundamental misunderstanding of annual ASR accounting processes and accrual of credits, which renders the Interrogatory insusceptible to any meaningful response. Also, the Interrogatory is not reasonably calculated to lead to admissible evidence.

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

Subject to and without waiving the foregoing objections, the City responds that the accounting method for physical recharge credits is not proposed to change. The accounting method for AMCs is described in the proposal. Both methods involve accounting exercises performed on an annual basis and a large number of the District's discovery requests evidence a failure on the part of the District and its counsel to read or understand basic elements of the existing and proposed accounting methods.

Please refer to the proposal documents and Proposal Correspondence

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).

RESPONSE:

Counsel objects to the Interrogatory as centrally incorporating a fundamental misunderstanding of annual ASR accounting processes and accrual of credits, which renders the Interrogatory insusceptible to any meaningful response. Also, the Interrogatory is not reasonably calculated to lead to admissible evidence.

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

Subject to and without waiving the foregoing objections, the City responds that the accounting method for physical recharge credits is not proposed to change. The accounting method for AMCs is described in the proposal. Both methods involve accounting exercises performed on an annual basis and a large number of the District's discovery requests evidence a failure on the part of the District and its counsel to read or understand basic elements of the existing and proposed accounting methods.

Please refer to the proposal documents and Proposal Correspondence.

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).

RESPONSE:

Counsel objects to the Interrogatory as centrally incorporating a fundamental misunderstanding of annual ASR accounting processes and accrual of credits, which renders the Interrogatory insusceptible to any meaningful response. Also, the Interrogatory is not reasonably calculated to lead to admissible evidence.

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

Subject to and without waiving the foregoing objections, the City responds that the accounting method for physical recharge credits is not proposed to change. The accounting method for AMCs is described in the proposal. Both methods involve accounting exercises performed on an annual basis and a large number of the District's discovery requests evidence a failure on the part of the District and its counsel to read or understand basic elements of the existing and proposed accounting methods or the existing or proposed accrual of credits. Under the proposal, the Aquifer will continue to be recharged in the same manner it has been in the past, subject to the availability of surface water for such purposes under the terms of the City's applicable permits.

Please refer to the proposal documents and Proposal Correspondence.

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).

RESPONSE:

Counsel objects to the Interrogatory as centrally incorporating a fundamental misunderstanding of annual ASR accounting processes and accrual of credits, which renders the Interrogatory insusceptible to any meaningful response. Also, the Interrogatory is not reasonably calculated to lead to admissible evidence.

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

Subject to and without waiving the foregoing objections, the City responds that both accounting methods described in the proposal involve accounting exercises performed on an annual basis, so that the accumulation of credits is inherently also determined annually, as a part of that process. At various points during the year covered by the accounting exercise and report, water may be taken from the river (if that is what the District means by

“source water”) and treated at the ASR treatment facilities, and either injected in the basin storage area or piped to the City’s distribution system. A large number of the District’s discovery requests evidence a failure on the part of the District to understand basic elements of the existing and proposed accounting methods, or the basis upon which, or time at which, credits are accumulated.

Please refer to the proposal documents and Proposal Correspondence.

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.

RESPONSE:

Counsel objects to the Interrogatory as centrally incorporating a fundamental misunderstanding of annual ASR accounting processes and accrual of credits, which renders the Interrogatory insusceptible to any meaningful response. Also, the Interrogatory is not reasonably calculated to lead to admissible evidence.

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

Subject to and without waiving the foregoing objections, the City responds that the existing accounting method for determining accumulation of Physical Recharge Credits is summarized at Page 4-1 of the proposal. The accounting method operates by retrospectively applying the EBGWM via two runs, one of which incorporates ASR activities and the other of which does not. Comparison of the results of the two model runs determines whether the net impact of ASR activities within the period under analysis supports the accumulation of Physical Recharge Credits.

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

RESPONSE:

Please refer to the proposal documents, particularly page 3-6 of the proposal and Proposal Correspondence for information pertinent to the derivation of the 120,000 acre-feet cap. No express limitation exists on the maximum accumulation of recharge credits under the existing permits, and proposing a new, 120,000 acre-feet cap, where no cap currently exists is “acceptable” because it is inherently impossible for the creation of this cap to be harmful.

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

RESPONSE

Counsel objects to the Interrogatory as invading work product and essentially seeking a legal analysis and opinion from the City's counsel rather than matters of fact calculated to lead to admissible evidence.

/s/ Brian K. McLeod

Brian K. McLeod, SC # 14026

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

The City believes the substantive protections to domestic wells anticipated by the MOU's are present in Proposal and/or can be adequately addressed by actual permit conditions.

12. 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:

Counsel objects to the Interrogatory because the enumerated verb phrases lack a subject (i.e., the question fails to identify who or what should be evaluated as taking or not taking the enumerated actions or causing or not causing the enumerated impacts at the time an AMC is accumulated). Counsel further objects that the use of the phrase "when an AMC is accumulated" centrally incorporates a fundamental misunderstanding of annual ASR accounting processes and accrual of credits, which renders the Interrogatory insusceptible to a meaningful response. Also, the Interrogatory is not reasonably calculated to lead to admissible evidence.

/s/ Brian K. McLeod

Brian K. McLeod, SC # 14026

Subject to and without waiving the foregoing objections, the City further responds as follows: When the City is diverting treated river water to its distribution system so as to potentially lead to the accumulation of an AMC (as opposed to a Physical Recharge Credit), it will be because the aquifer is at near-full conditions; By taking water from the river to use in its distribution system, the City can accrue AMCs without lowering water

levels, and this is not an unreasonable effect on water levels. Subsequent withdrawal of the AMC will result in a water-level change equivalent to recovery of a recharge credit. Use of recharge credits has already been found to not prejudicially or unreasonably affect the public interest. The higher sustained aquifer conditions and proposed accrual limits on both recharge credits and AMC's are considered to provide reasonable protections to aquifer users.

Accumulation of AMC's will be subject to the City's water rights associated with withdrawal of surface water from the Little Arkansas River, which require a minimum streamflow be maintained after the water is pumped. Use of recharge credits or AMC's during drought has been modeled, and review of modeled performance of non-City wells in the vicinity of the Wichita wellfield was undertaken during modeling. Water levels at such wells were evaluated to verify that the wells continued to pump even during periods of modeled low water levels. Impairment was not indicated during the modeled 1% drought with increased pumping associated with recovery of credits, as there were no observed instances where wells were shut down due to low water levels. It can be estimated that impairment is unlikely in non-drought conditions, with normal recharge and pumping.

Accumulation of the AMC is not deemed to allow for an unreasonable raising or lowering of the water level. Long-term higher aquifer conditions will result in increased streamflows caused by loss of water from the aquifer; it is anticipated that the aquifer levels will not increase beyond the pre-development conditions. Use of the AMC's is also not considered to allow for unreasonable raising or lowering of the water level. To the extent that recharge credits or the contemplated AMC's result in higher water levels, use of the credits is reasonable.

Modeling data have been provided in the subdirectory Model in the City of Wichita's Responses to Production Requests of Equus Beds Groundwater Management District No. 2.

The City expects to supplement this response to provide further discussion and additional modeling data to demonstrate that the proposal and its changes are reasonable and will not impair existing rights.

13. Please specify whether any of the following will occur if the minimum index levels are lowered as proposed by the ASR Permit Modification Proposal: 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:

Counsel objects to the Interrogatory because the enumerated verb phrases lack a subject (i.e., the question fails to identify who or what should be evaluated as taking or not taking the enumerated actions or causing or not causing the enumerated impacts if the proposed minimum index levels are adopted).

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

Subject to and without waiving these objections, the City further responds as follows: For information on how the City has addressed these topics to date, please refer to the proposal document and additional supplied information. To the extent that the demonstrations in question are also an object of the public hearing and subsequent administrative proceedings scheduled in this matter (and hence, ongoing), additional information will be made available to the District in the conduct of the administrative proceedings, as and when appropriate in accordance with the Prehearing Order and any subsequent directions of the Chief Engineer.

The proposed lower index levels are not anticipated to prejudicially or unreasonably affect the public interest. Recovery of recharge credits or AMC's will be as a result of the City's long-term effort to inject water to keep the aquifer full, or as results of the City's efforts to accommodate conditions that prevent recharge of water pumped from the river. Recovery of this water during times of need and in a judicious manner is a reasonable accommodation. It is part of the City's Proposal that portions of the Equus Beds aquifer protected via its Phase 1 facilities will remain subject to the unchanged water level restrictions. The City will continue its efforts to slow the advance of the Burrton chloride plume, and has not requested any changes to the water levels in this area. These reasonable protections are a part of our proposal. It is further anticipated that the City will continue its ASR project in the future, and that lowering of the aquifer in the vicinity of the City's central wellfield during drought will allow subsequent injection of water that has been treated to meet drinking-water quality standards.

The proposed minimum index levels were developed to provide a reasonable level of assurance that that the City's public water supply will have access to water represented by the recharge credits accumulated. Use of recharge credits or AMC's during drought has been modeled, and review of modeled performance of non-City wells in the vicinity of the Wichita wellfield was undertaken during modeling. Water levels at such wells were evaluated to verify that the wells continued to pump even during periods of modeled low water levels. Impairment was not indicated during the modeled 1% drought with increased pumping associated with recovery of Credits, as there were no observed instances where wells were shut down due to low water levels. However, it is possible that localized conditions exceeding the modeled drought may occur, and the City may no longer have

access to the water that was recharged by the ASR facility. A reasonable additional contingency was subtracted from the calculated lowest groundwater elevations encountered during the groundwater modeling simulation was included to reflect such conditions.

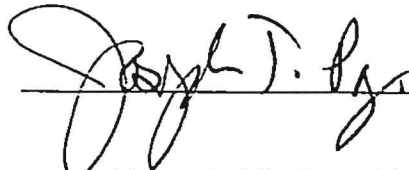
If the minimum index levels are lowered as proposed by the ASR Permit Modification Proposal, the City contends that this does not allow an unreasonable raising or lowering of the water level. The proposed minimum index levels were developed to provide a reasonable level of assurance that that the City's public water supply will have access to water represented by the recharge credits accumulated.

The City expects to supplement this response to provide further discussion and additional modeling data to demonstrate that the proposal and its changes are reasonable and will not impair existing rights.

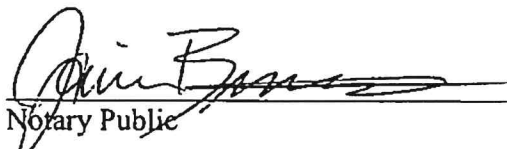
VERIFICATION

STATE OF KANSAS)
) ss.
COUNTY OF SEDGWICK)

Joseph T. Pajor, being of lawful age and being duly sworn upon oath, deposes and states that he is the Deputy Director of Public Works and Utilities for the City of Wichita, Kansas, a party herein; that he has read the above and foregoing interrogatories and responses and that the answers, statements and allegations therein above contained are true and correct to the best of his information, knowledge and belief.



SUBSCRIBED AND SWORN to before me, a Notary Public, in and for the aforesaid state and county, this 18 day of December, 2018.



Notary Public

My Appointment Expires:
12/01/2020



RECEIVED

DEC 17 2018

EQUUS BEDS GMD #2

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he or she served the above and foregoing Responses to Interrogatories upon counsel for the other parties herein by electronic mail, this 18th day of December, 2018, addressed to:

Thomas A. Adrian
David J. Stucky
tom@aplawpa.com
Stucky.dave@gmail.com 313 Spruce
Halstead, Kansas 67056

And

Leland Rolfs
Leland.rolfs@sbcglobal.net
Attorneys for
Equus Beds Groundwater Management District No. 2

Aaron Oleen
Division of Water Resources
Kansas Department of Agriculture
1320 Research Park Drive
Manhattan, Kansas 66502
Aaron.oleen@ks.gov

and

Tessa M. Wendling
1010 Chestnut Street
Halstead, Kansas 67056
twendling@mac.com

/s/ Brian K. McLeod
Brian K. McLeod
Deputy City Attorney
455 N. Main, 13th Floor
Wichita, Kansas 67202
(316) 268-4681
FAX: (316) 268-4335
bmcleod@wichita.gov

RECEIVED

DEC 17 2018

EQUUS BEDS GMD #2

