

1 .

2

PUBLIC COMMENT HEARING

3 .

4

RE: PHASE II AQUIFER STORAGE AND RECOVERY PROJECT

5

IN HARVEY AND SEDGWICK COUNTIES, KANSAS

6 .

7 .

8 .

9 .

10

TRANSCRIPT

11

OF

12

PROCEEDINGS

13 .

14

Taken on December 11, 2018, beginning at 9:05 AM,

15

at the American Ag Credit Building, 4105 North

16

Ridge Road, in the City of Wichita, County of

17

Sedgwick, and State of Kansas.

18 .

19 .

20 .

21 .

22 .

23 .

24 .

25 .



1 HEARING OFFICER BARFIELD: Okay. Why
2 don't I ask us to come to order then, please.
3 Appreciate everybody being here. We are now on
4 the record. My name is David Barfield. I'm chief
5 engineer with the division of water resources,
6 Kansas Department of Agriculture, and I will be
7 your hearing officer in this matter both today and
8 in the subsequent proceedings that I'll describe
9 in a couple points here in my introductory
10 remarks.

11 This -- the public comments here that we're
12 seeking today in this hearing are related to
13 proposed modifications requested by the city of
14 Wichita to its aquifer storage and recovery
15 project or ASR project as it is commonly known.
16 This hearing is being held on December 11, 2018,
17 at the American Ag Credit Building, 4105 North
18 Ridge Road, Wichita, Kansas 67201. The time is
19 approximately 9:05.

20 The city of Wichita has the state's only
21 active ASR project developed and approved in two
22 phases within the Equus Beds aquifer. On March
23 12th of this year the city forwarded to the
24 division of water resources a detailed proposal
25 for modifications it's seeking to its ASR



1 projects. There are two principal components the
2 city's request: One is lowering the bottoms of
3 what's called the basin storage area; the second
4 is a new method to accumulate recharge credits
5 during times of limited recharge capacity.

6 There's a handout provided here that
7 summarizes basically the background, the city's
8 proposal, the proposed terms and conditions
9 related to any approval, and a bit of the process
10 here. There's also a website where you can
11 provide -- be provided much more information.
12 Also on this sheet is -- if you want to provide
13 written comments, today or subsequent, while the
14 record is open, there's a way you can forward
15 those to us.

16 This hearing was preceded by an informational
17 meeting held on June 28, 2018, at the Halstead
18 High School auditorium. We provided notice of the
19 hearing in the following publications and dates:
20 The Kansas Register on October 18th, 2018, and
21 November 29, 2018; Newton Now, October 18, 2018
22 and November 29, 2018; the Hutchinson News,
23 October 15, 2018, and November 26, 2018; and the
24 Wichita Eagle on October 15, 2018, and November
25 30, 2018.



1 In addition we sent notice to every water
2 rights owner within the basin storage area
3 notifying them of this hearing. This hearing is
4 being held to K.A.R. 5-12-2.

5 So we have several formal parties with
6 respect to this matter, the city of Wichita, Equus
7 Beds GMD Number 2, the Division of Water
8 Resources, and then a group of intervenors, and
9 I've been working with them through a series of
10 conference calls to work out sort of the hearing
11 procedures. And through that process we've
12 determined there would be two phases to the
13 hearing. Today we're having a public comment
14 phase essentially where after some introductory
15 remarks I will essentially take public comments
16 that will be made part of the record and be
17 reviewed to make a decision on whether one or both
18 of the city's proposals should be approved and
19 under what terms and conditions. So that's the
20 first phase that we'll do today.

21 And then we will do the formal phase at a
22 subsequent time. The parties have -- two of the
23 parties have requested additional time to prepare,
24 and we have not established the date for that
25 hearing yet. Tentatively, it has been set for



1 February 13th, but, again, two of the parties on
2 Friday asked for additional time, and I'll be
3 making a decision on a final hearing date in the
4 near future. That will be announced. You know,
5 we'll put that on our website. I think GMD2 is
6 going to have a newsletter and they'll also notify
7 those that are in -- within the GMD of the hearing
8 date, so we'll widely disseminate that
9 information. That hearing will include
10 presentations by the city of its case for the
11 proposed changes and then opportunity for
12 testimony by the other formal parties, cross-
13 examination, and so forth. More on that at the
14 end, so -- so, again, just to make sure we're
15 covered, we have attendance sheets here. I
16 appreciate you all signing in, and particularly if
17 you're intending to provide testimony today,
18 please indicate the type of testimony, whether
19 oral or written or both, and when the time comes
20 then I'll use these sheets to call you forward.
21 If you're providing written testimony, you can
22 just provide a copy to me and I'll set that today
23 and include that in the record. Otherwise, again,
24 on the information sheet is information as to
25 where you can send your written comments either by



1 post or by email to Rhonda Hutton at the Kansas
2 Department of Agriculture. The deadline for
3 written comments will be 30 days after the formal
4 hearing. So the formal hearing will not be before
5 February 13th; therefore, the hearing record will
6 close not before March 15th. I'm planning on, in
7 addition to the formal hearing, allowing a public
8 comment period associated with the that second
9 hearing, so if you're not able to make comments
10 today, we will seek -- we will provide an
11 opportunity with the second hearing.

12 When I call you forward, I would ask -- to
13 make your statements, I'd ask you to come forward
14 to the lectern here, I'd ask you to use the mic,
15 I'd ask you to speak clearly. Obviously, we want
16 one person speaking at a time here so the court
17 reporter can accept your oral statements. All
18 right.

19 So this hearing is being transcribed by court
20 reporter Ms. Michelle Hancock. And, again, just
21 speak slowly and clearly so she can hear you. So,
22 again, today then is a public comment hearing
23 only. I will take your statements. I'm not here
24 to answer questions about the proposal. We had a
25 public meeting in June for that purpose. If you



1 have questions about the proposal, there's a
2 number of places you can go. Our website has a
3 significant amount of information about the
4 proposal.

5 As I've indicated, the city would be happy to
6 answer your questions. Groundwater management
7 district number two would be happy to provide you
8 with their perspective, I believe. If you'd like
9 to talk to somebody with my staff, Jeff Lanterman
10 here is water commissioner from the Stafford field
11 office that covers this area, just ask him, and he
12 can either answer your questions or connect you
13 with the person with the division of water
14 resources that can answer your question, so....

15 All right. So that concludes my preliminary
16 remarks, so let's turn to the hearing itself. So
17 the purpose of the hearing, the hearings today and
18 the subsequent portions of the hearing is to
19 resolve two questions: First, should the bottoms
20 of the basin storage area of the aquifer storage
21 and recovery project be lowered as proposed by the
22 state; and, second, should the applicable
23 accounting procedures for Phase II of the project
24 be modified to allow the city to develop recharge
25 credits via aquifer maintenance -- via its aquifer



1 maintenance proposal.

2 So those are the questions that we are
3 seeking to resolve and decide through the hearing
4 process. We're creating a record, and based on
5 that record, then, I will decide if one or the
6 other should be approved; and, again, the terms
7 and conditions under which it should be approved
8 if that's found. City of Wichita will have the
9 burden to show that its proposals will not impair
10 neighboring water rights and are in the public
11 interest. They'll present their case at the
12 formal -- at the formal hearing to come.

13 Okay. So at the conclusion, then, I'll
14 provide some additional comments just to make sure
15 you're clear on where we're going from here. So I
16 will pause. Are there any questions about the
17 procedure for today's hearings that you have?

18 All right. If not, so I've got a series of
19 -- let me just explain who's up here. This
20 gentleman is with Iowa Public Television, and
21 Iowans, like Kansans, are very interested in water
22 issues, and he's doing a story related to --
23 related to this proceeding, and actually other
24 matters, so he's just taking --

25 UNIDENTIFIED SPEAKER: Hi, everybody.



1 HEARING OFFICER BARFIELD: That won't be
2 part of the formal record, but, anyway.

3 UNIDENTIFIED SPEAKER: Pass this on to
4 our news.

5 HEARING OFFICER BARFIELD: There's a
6 request to pass it on to the local news here. You
7 know, we're interested in water issues in Kansas
8 for sure. All right. So I will go ahead and
9 start. I'll do my best to pronounce the names
10 properly. Again, I'll go in the sequence of the
11 sign in, and then at the very end, if you're not
12 signed in, I'll just invite anybody who wants to
13 make public comments to do so. So, again, I would
14 ask you to come to the lectern -- lectern to state
15 your name and an address. I'd appreciate it if in
16 your remarks you could just tell me about your
17 interest in this matter, if you're -- if you're an
18 owner of a water right within the basin storage
19 area or the area generally, I -- I certainly
20 appreciate hearing that, and then provide your
21 comments.

22 Okay. So the first -- first person I have to
23 provide oral comments is Kent Askren with the
24 Kansas Farm Bureau, so, Ken.

25 MR. ASKREN: Good morning. My name is



1 Kent Askren. I work for Kansas Farm Bureau. I
2 represent the 30,000 farm and ranch families and
3 105 county farm bureaus of our state, and, Mr.
4 Chief Engineer, we come before you today in
5 opposition to the proposed modification of the ASR
6 permit conditions.

7 We fully understand and appreciate the
8 dilemma that Wichita faces, and we would like to
9 certainly offer any support that we can within the
10 constraints of our Kansas water law to help our
11 state's largest city with an adequate water supply
12 both for current and future needs. Heavy
13 investment in the ASR project has not resulted in
14 helping Wichita meet their self-imposed goal of
15 being drought tolerant during one percent drought
16 occurrence. But that was not the original
17 objective of ASR, nor does it justify or grant
18 authority to create new remedies not supported by
19 Kansas water law. We believe the city of Wichita
20 would be better served to utilize existing
21 authorities such as in the water -- as in the
22 multiyear flex account program or through
23 acquisition of existing water rights or through
24 some sort of a lease program, all supported in the
25 water appropriation act. It's common knowledge



1 that the Equus Bed is either fully or
2 overappropriated in some areas including the
3 Wichita well field. Consequently, numerous
4 requests for new appropriation rights over the
5 years have been denied. As you are aware, under
6 K.S.A. 82a-706, the chief engineer is assigned
7 with the duty to enforce and administer the laws
8 pertaining to beneficial use of water in
9 accordance with the priority system. While water
10 right protection in accordance with priority is
11 fundamental to the water appropriation act, other
12 abiding principles govern water appropriation as
13 well such as those found in K.S.A. 82a-707 which
14 states that any appropriation does not constitute
15 the ownership of water. It goes on to state that
16 the date of priority not the purpose of use
17 dictates the right to divert water when supply is
18 insufficient. The proposed ASR amendments would
19 result in practical ownership of groundwater by
20 Wichita, and this would disadvantage our members
21 and water right holders in the area.

22 The granting and accumulation of AS -- AMC,
23 aquifer maintenance credits, which in several
24 public meetings has been referred to as being a
25 different source or maybe even a different color



1 of water, circumvents the most clear intent and
2 definitions found within the water appropriation
3 act and its accompanying rules and regulation.
4 The concept of AMCs cannot be defended under
5 current law and definitions. By definitions,
6 K.A.R. 511 ii, water below the surface of the
7 earth is considered groundwater. There is no
8 blue. No red. Just water. Equus Beds water.
9 And just simply groundwater and every drop of it
10 near the city of Wichita's well field is already
11 fully committed to satisfying existing rights
12 granted by the chief engineer under the water
13 appropriation act. It was clearly understood when
14 the chief engineer originally granted the ASR
15 permits that artificial recharge of the Equus Beds
16 would help supplement the system, essentially
17 topping off the aquifer so that all users
18 benefitted in improved water quantity and quality.
19 The chief engineer on August 8th, 2005, issued a
20 findings and order and conclusions in item three
21 which clearly stated that passive recharge credits
22 are not artificial recharge. We contend that AMCs
23 are identical to passive recharge credits and
24 therefore should not be allowed. Limitations on
25 recharge credits were imposed to protect existing



1 water rights. No new conceptual authority was
2 given to differentiate the water below the ground
3 as being a distinct source of supply. The
4 proposed amendments before us today give exclusive
5 rights for water to Wichita and over the time --
6 and over time allows for the accumulation of
7 recharge credits to preclude natural recharge
8 events from satisfying native water rights
9 previously granted under the water appropriation
10 act. Again, by definition artificial recharge is
11 to artificially replenish the water supply in an
12 aquifer. The proposed AMC amendment would allow
13 the creation of virtual recharge, where nothing is
14 physically replenished, which Wichita directly
15 pumps surface water to its municipal customers and
16 at the same time is granted recharge credits.
17 This is a clear violation of the definition of
18 artificial recharge and a clear representation of
19 what direct diversion of surface water is, as
20 cited in K.A.R. 511 Y. Mixing and matching these
21 definitions to meet an objective to which the
22 statute is completely silent jeopardizes the
23 integrity of our water laws and creates a
24 disturbing precedent.

25 With regards to lowering the minimum index



1 level within the basin storage area, we must also
2 object. When ASR permits were originally approved
3 with conditions the chief engineer determined that
4 it was in the public interest to not allow
5 recharge credits to be withdrawn below a certain
6 level. Without having a clearer understanding of
7 why those limits were put in place to begin with
8 and what they were envisioned as protecting, we
9 cannot support altering the index levels. But one
10 thing is for certain. There were many concerns
11 and objections, and when this proposal was first
12 considered there was considerable public dialogue
13 and information sharing that ultimately led to the
14 chief engineer approving ASR permits with
15 conditions addressing these concerns and
16 assurances by the parties involved accepting these
17 conditions. What has changed since that original
18 approval that would now allow the chief engineer
19 to disregard those concerns and resulting
20 safeguards and conditions?

21 In closing, as you are aware, no mention of
22 ASR is found in the water appropriation act. The
23 concepts of ASR are only defined in rules and
24 regulations under the guise of artificial
25 recharge, one of the 14 distinctly defined



1 beneficial uses of water. Obviously the authority
2 to issue ASR permits, even with carefully
3 considered and crafted permit conditions, was at
4 the least a stretch of the legislative authority.
5 Now some 20 years later the proposed amendments go
6 far beyond anything imagined by the legislature or
7 anyone's interpretation of existing law.

8 We thank you for taking our concerns under
9 advisement and hope that you will weigh this
10 evidence as you reach your decision. Thank you.

11 HEARING OFFICER BARFIELD: All right.
12 Thank you, Kent. So your oral and written
13 testimony are accepted in the record. Appreciate
14 it. Okay. The next person, Charles Peaster? I
15 believe I've got it right.

16 MR. PEASTER: Believe it or not, you did.

17 HEARING OFFICER BARFIELD: Very good.

18 MR. PEASTER: I don't need that
19 microphone. I've never been accused of not being
20 able to be heard. My name is Charles Peaster, and
21 in 1979 I bought an existing farmhouse that
22 belonged to the Coombs, and the farm behind me was
23 a Coombs poultry farm. Eventually that house was
24 shut down -- or that farm was shut down and the
25 property was subdivided into 18 separate lots. On



1 those 18 separate lots people have moved into.
2 You said people have been notified about this, and
3 I wasn't notified, and I believe I am a water -- I
4 own the property that the well was on when I
5 bought the property therefore makes me an owner.
6 I wasn't notified of these meetings.

7 I've lived there since 1979 when my wife and
8 I bought the property. The city -- the city built
9 the recharge was supposed to put the water back in
10 the Equus Beds with my well that we was on, but
11 when you pump that water to the city of Wichita
12 without going into the Equus Beds, I don't get an
13 advantage to that. And I can almost guarantee you
14 that none of the individual homeowners in the area
15 that the city is affecting were notified about
16 this meeting or the meeting you were talking about
17 previously where you could ask questions to the
18 city about what they were doing. All of a sudden
19 the city needs more water because they sell it.
20 How many other cities are -- or areas do they sell
21 water to? When is that going to be made aware to
22 the every day citizen that's bought houses and put
23 -- and taken in that area, because I didn't get
24 that notice. Have no idea for sure how many
25 different cities the city of Wichita sells water



1 to. I've been to several of the water board
2 meetings, and I haven't been lately. Mistake on
3 my part. I don't need the city going down -- I
4 don't know how deep my well is, because I've never
5 had to replace it. The pump on it, yes; the well
6 itself, no. This is 2018. 1979. That's when I
7 bought my house. Now you want to take my water
8 away from me because if the city lowers it another
9 10 percent of what it was originally set at, what
10 does that do to my well, and I have no idea. Is
11 the city going to replace my well? Can you answer
12 that question for me?

13 HEARING OFFICER BARFIELD: Again, the
14 purpose of today's hearing is not to answer
15 questions.

16 MR. PEASTER: I understand that part,
17 too.

18 HEARING OFFICER BARFIELD: I would -- I
19 would encourage you to look at the handout we
20 provided. There are proposed terms and
21 conditions --

22 MR. PEASTER: I do have that handout, and
23 I haven't had a chance to read it, but I read one
24 previous --

25 HEARING OFFICER BARFIELD: Right.



1 MR. PEASTER: -- to this, and I highlight
2 what I read.

3 HEARING OFFICER BARFIELD: Right.

4 MR. PEASTER: Because there's points on
5 there that I want answered. And up to this point
6 I haven't had them answered, and maybe the city
7 will stick around, which normally they don't,
8 because it seems like any time the city wants to
9 do something -- they let a bid, for instance, on a
10 ballpark, and they set a regulation on what they
11 were going to do, and then they ignore their own
12 criteria for accepting the company that's going to
13 build the stadium. Thank you for a chance to
14 speak.

15 HEARING OFFICER BARFIELD: Thank you.
16 All right. Next is Eddie Weber.

17 MR. WEBER: My name is Eddie Weber. I
18 live at 7 Leslie Lane in Halstead, and I am a
19 permit holder and a farmer in the well field area.

20 I will confine my remarks to generalities.
21 I'm afraid I have more questions than concerns. I
22 will only address my concerns. I have concerns
23 about misleading information put out by the city
24 of Wichita. At this time I would like to add an
25 acronym to the list of ASR, AMC and WSB. The



1 acronym is DGM, which stands for damn good
2 marketing. The Wichita Yes Campaign has said that
3 the ASR project is proven and is working. That is
4 DGM. Data proves otherwise. And the reason we
5 are here today also indicates it's not working.
6 ASR projections were revised by 50 percent due to
7 lack of projected results.

8 An article by the Wichita Eagle in October of
9 2014 when the city was marketing for a one percent
10 sales tax increase said the average base water
11 usage for a resident using 6,000 gallons per month
12 had a bill of \$22.40 in 2014. In this article,
13 the projected amount of a resident's bill by 2018
14 was going to be \$34, about a 52 percent increase,
15 which was projected. As of yesterday, when I
16 checked that projected amount of \$34, it was
17 actually a bill of about 42.50 for the same 6,000
18 gallons per month usage, what turned out to be an
19 increase of about 90 percent from 2014 water bill
20 instead of the projected 52 percent. I guess
21 being off 38 percent isn't too bad in just a four-
22 year projection. Again, some more DGM. I do
23 realize the ASR and those base water charges I was
24 just talking about were just projections, but it
25 is easy to see a trend on how numbers and



1 percentages are being skewed to the benefit of the
2 city of Wichita, trying to deceive the public to
3 accomplish their agenda. Issues like this concern
4 me. If the model and the projections you and I
5 are supposed to trust as accurate have been skewed
6 by hand picking of numbers and hand picking of
7 dates, the model could deceive us to accomplish
8 their agenda.

9 Fast forward. What if this proposal to lower
10 the basin levels below '93 levels and the AMC
11 accounting proposal is passed, what if the numbers
12 and the percentages were skewed? And in a one
13 percent drought, chloride intrusion, which is
14 supposed to be zero percent, is off by 50 percent,
15 similar to the ASR projections? Or just 38
16 percent, which was the percentage the projection
17 was off in the water base charge scenario I
18 mentioned earlier. Now, 38 to 50 percent of the
19 aquifer is contaminated with chlorides that exceed
20 drinking water standards and also irrigation water
21 standards. On top of this, now the well field is
22 contaminated and it will cost water users even
23 more to treat the water that has now been
24 contaminated.

25 Another concern is this. If the city is



1 allowed to generate aquifer maintenance credits
2 and they expand their sale of water to other
3 immediate vicinities, beyond the current 14, and
4 their immediate vicinities, I'm afraid in 20
5 years, every year is going to be a one percent
6 drought scenario for the Equus Beds.

7 Where does the city of Wichita's place of use
8 end? All I see is the "and immediate vicinities"
9 clause, which is very vague. What peace of mind
10 can we possibly have? We have wells from Burrton
11 to Sedgwick, and throughout the Wichita well
12 field, and in 2011 and '12, what was deemed to be
13 just a signif -- just a significant drought, we
14 saw water quality in our wells go down, some to
15 the extent that we had to stop irrigating due to
16 chloride levels. All of our wells showed reduced
17 capacity and were pumping air. These types of
18 issues were already happening in just a
19 significant drought. A significant drought is
20 much less than a one percent drought.

21 On the subject of lowering the storage basin
22 in which credits could be utilized, I'm adamantly
23 opposed to opening the window to below 1993 levels
24 due to what I just stated about our water quality
25 and quantity in 2011 and '12 in just a significant



1 drought.

2 The city of Wichita and the chief engineer in
3 2005 ASR findings ordered that the public interest
4 was protected at the 1993 levels. This should
5 still hold true today. We need to allow for some
6 buffer in case of some unforeseen event such as
7 projections being off or not being able to utilize
8 Cheney Lake Reservoir for an extended period of
9 time. I don't see a problem with using surface
10 water only from the Little Ark to divert water
11 directly to the city after the aquifer is full. I
12 feel that credits should not be generated from
13 this practice.

14 In closing, a wise man once told me, let your
15 conscience be your guide. Mr. Barfield, today I
16 would like to share the same advice with you: Let
17 your conscience be your guide. We trust you will
18 look carefully at the numbers and at the
19 projections, consider the concerns of the farmers
20 and the citizens who are going to be greatly
21 affected by these decisions. Thank you.

22 HEARING OFFICER BARFIELD: Thank you.
23 Can I just ask one question? Again, what part of
24 the basin storage area well field are you in?

25 MR. WEBER: We start at Burrton and send



1 end up at Sedgwick, so throughout the well field.

2 HEARING OFFICER BARFIELD: Okay. All
3 right. Thank you very much.

4 MR. WEBER: Yeah.

5 HEARING OFFICER BARFIELD: Okay. Next is
6 Jim Roberts.

7 MR. ROBERTS: Good morning. My name is
8 Jim Roberts. I'm a resident just south of
9 Bentley, Kansas, and I don't have a nice prepared
10 statement like all you people do. If I had a
11 little more time, I would; but, anyway, I'm a
12 lifelong resident of the area. My entire adult
13 life was spent just south of Bentley, Kansas. I'm
14 a third generation -- go back three generations,
15 we've all lived in the area. We feel like we're
16 blessed with a good water supply. You know, it's
17 there. It's readily available. And we realize
18 that there's areas of the state and on the other
19 side of Wichita, even, that you know, they have to
20 go down 70, 80 feet to get good water. We go down
21 20 foot, and you can hit water. There's a lot of
22 people here that probably don't even know what a
23 sand point is, but, you know, there's a lot of
24 sand points still out in the area.

25 When I first heard about the original ASR, I



1 thought it was the stupidest thing that I'd ever
2 heard of. Because why would you do that? The
3 water is always there and all that stuff. Again,
4 I understand that some areas that, you know, may
5 need water, and I can appreciate that. That's the
6 reason why a lot of people live out in that area,
7 and a lot of people, when they choose to live in
8 other areas, that they have to go down so deep for
9 water that they take that into consideration. It
10 costs them a lot more money for, you know, a good
11 standard of living. And again, we're -- we
12 appreciate that, where we're at.

13 So, anyway, I watched this ASR get built,
14 and, again, like the other guy said, I never got
15 notified. We've never been told anything. But
16 when I started seeing paved roads getting built
17 out there in the country and huge power poles,
18 and, you know, just the demand, I could tell
19 pretty quick we're looking at a multimillion
20 dollar, maybe a billion dollar outfit. Anybody
21 that gets a chance, you ought to drive out there.
22 It is -- it's a magnificent facility. The only
23 problem is, is when I get to understand exactly
24 what they were doing, it's -- it's like this, when
25 we need a little bit of water, we'll just pump it



1 out of the Arkansas and stick it back down in
2 there. Well, that sounds great, except for when
3 we're in a drought, there's no water in the
4 Arkansas to pump in there. And then I found out
5 through my resources that when there's been a lot
6 of rain and the water is -- and the river is
7 flowing and it's full, well, then they can't pump
8 any water in there because the aquifer is full.
9 So I'm sitting there going, okay, so what parts of
10 the year are you able to actually use this -- this
11 equipment? I mean, it's -- and, again, it's a
12 phenomenal piece of equipment. So -- and I wasn't
13 notified when this was coming up, but what I
14 understand is, is that, you know, now, you know,
15 that Wichita needs more water, so now the light
16 bulb starts to come on. All this investment
17 wasn't necessarily just to, you know, help
18 recharge it, it was to use it -- use more of it.
19 And like the other guy said, Bentley buys all
20 their water from Wichita and then turns around and
21 sells it out, whereas they used to just have wells
22 out in that area. So that's kind of the
23 background I've got on that.

24 The point -- another point I have is, is that
25 we have well water. We have great water. We just



1 put down another one, it's been two or three year
2 years ago, 30 feet deep. My concern is, is what
3 happens when it's dry. And I did read your --
4 your handout this morning, and it talks about if
5 you're within 660 feet, but I don't even know
6 where that -- that term would come by, but I would
7 say that if anybody in that area starts having
8 water problems, that that needs to be taken care
9 of, and I can appreciate the -- kind of the
10 suggestions they've got listed here, but that
11 needs to be clarified, if they go forward. And we
12 also realize that sometimes the city and the state
13 just does whatever they want to do without a lot
14 of input from people, and I don't -- I don't stand
15 here and try and represent all the farmers because
16 there's plenty -- there's plenty of them here, but
17 I think my concerns are probably similar to
18 everybody that's in here.

19 Let's see. I'll let -- I'll let other people
20 talk, but back on the -- you know, like if a well
21 goes dry, I think there ought to be, you know, a
22 method to either put down a bigger -- a deeper
23 well, and I know it's outlined here, but there
24 ought to be vouchers for that, there should be
25 credits for that, or if they're nearby to where



1 they could hook up to city water, there needs to
2 be consideration there and discounts, that type of
3 activity, because, like I said, we -- we chose to
4 live where we're at and other people choose where
5 they live at, so there's -- like I said, we're
6 willing to share, but we shouldn't have to foot
7 the bill for that.

8 I'll let somebody else talk.

9 HEARING OFFICER BARFIELD: All right.
10 Thank you very much.

11 MR. WEBER: Thanks.

12 HEARING OFFICER BARFIELD: Next we have
13 David -- is it Carp? I believe?

14 MR. CARP: Good morning, Mr. Barfield.
15 Thank you for the opportunity to speak this
16 morning. My name is David Carp. I am a co-owner
17 with irrigated farmland that lies over the Equus
18 Beds here in Sedgwick County, and simply here to
19 speak briefly this morning about the significant
20 concerns that are presented with the city's
21 request to have a water permit change as relates
22 to the artificial storage and recovery, or the ASR
23 program, which I believe was initiated somewhere
24 in the 2005-2010 period, approximately, and you're
25 aware of the goal of the ASR to remove water from



1 the Little Arkansas River when a high stream flows
2 and to inject into the Equus Beds or to store in
3 that area and have that additional water storage
4 as available for future credits for future use.

5 Unfortunately, it appears the ASR project has
6 not succeeded and did fail to meet its intended
7 goal. It has been stated that maybe over the
8 approximate 10-year period that this has been in
9 operation that only maybe at best 10,000 acre feet
10 have been transferred to the area of the Equus
11 Beds, and much of that that is not injected is
12 stored in large basins, and that is also subject
13 to loss through evaporation.

14 I would say the ASR was a bold and a noble
15 attempt to maximize our water resources through
16 the range of wet years through drought years.
17 Unfortunately, the city is now choosing to move
18 away from noble attempts to manage water to more
19 ignoble attempts to secure water resources through
20 schemes that would purport to be wise management
21 of the resources but are really efforts to
22 challenge the rule of law as pertains to water
23 rights for everyone associated with the use of the
24 Equus Beds. The city of Wichita has approved
25 water rights of approximately 40,000 acre feet



1 annually from the Equus Beds. Other users have
2 rights approximate to 20,000 acre feet annually.
3 The city's request for changes to its permit is to
4 allow to take water direct from the Little
5 Arkansas River, pump it directly to Wichita for
6 its use, but then, to our befuddlement, to then
7 claim that those acre feet sent directly to
8 Wichita could then be counted as a credit for that
9 same amount of water to be pumped from the Equus
10 Beds at a future date above and beyond their
11 permitted acre feet. I understand even on your
12 notes here that they have up to 120,000 acre feet
13 of additional credits that they're requesting
14 above their current 40,000 annual draw from the
15 Equus Beds. They could choose when to pump that
16 water, which would knowingly reduce the levels in
17 the Equus Beds at times of drought, which is also
18 noted that they're wanting to lower the basin
19 level, which would have -- put every irrigator,
20 livestock producer, homeowner or any other user at
21 risk.

22 I would say that we live in a culture that is
23 based on the rule of law. And the laws as pertain
24 to water resources are clear and they've been
25 wisely enforced for many years to protect our



1 important resource in the Equus Beds. I believe
2 to allow the city of Wichita to move forward with
3 their plan, which is couched in pleasant words,
4 but they really go against the established laws of
5 the water permit process.

6 Mr. Barfield, this calls for courage, I think
7 clarity of thinking, and so we urge you and the
8 division of water resources to reject this
9 proposal by the city of Wichita, to courageously
10 defend the existing laws that protect the
11 viability of the Equus Beds for future use. Thank
12 you for your time.

13 HEARING OFFICER BARFIELD: Thank you very
14 much. Next we have Jon Kerschen.

15 MR. KERSCHEN: Yeah, my name is Jon
16 Kerschen, and I am currently serving as the
17 president of Sedgwick County Farm Bureau
18 Agriculture Association. We represent nearly 900
19 farm family members in the county, and I would
20 like to just reiterate the comments made earlier
21 by Kent Askren of Kansas Farm Bureau that we would
22 be as an organization opposed to the proposed
23 changes and will be written -- be submitting a
24 written testimony at a later date. Thank you.

25 HEARING OFFICER BARFIELD: Thank you.



1 All right. That is all the indications of oral
2 comments that are on these sign in sheets. I do
3 have -- a number of you indicated that you'd like
4 to submit written comments, but I guess I'd open
5 it up to anyone who would like to come forward if
6 you still wish to make an oral comment today,
7 please come forward, and you're welcome to make
8 those comments.

9 MS. VANNATTA: Well, I apologize --

10 HEARING OFFICER BARFIELD: Can you --

11 MS. VANNATTA: -- for not signing in to
12 make a comment. That was my oversight.

13 HEARING OFFICER BARFIELD: All right.

14 Yeah, if you could just state your name for the --

15 MS. VANNATTA: I am Beth -- I am Beth
16 Vannatta, rural Halstead, Kansas. Just an
17 individual. I don't own an irrigation system.

18 I am very worried about this attempt to take
19 more -- to drop to a deeper depth. Particularly
20 in drought times it won't just be affecting
21 Wichita, it will affect all of us who live
22 directly over the Equus Beds. But there is a
23 simple, sensible solution to this possible water
24 shortage. El Dorado, the city of El Dorado has
25 offered to sell water from El Dorado Lake to



1 Wichita, just as Wichita sells water to 14 other
2 cities surrounding it. There is a tremendous lot
3 of water in El Dorado Lake. There would be enough
4 water for everybody, and it wouldn't threaten
5 those of us who live directly over the Equus Beds.
6 Thank you.

7 HEARING OFFICER BARFIELD: Would you mind
8 spelling your last name for the record.

9 MS. VANNATTA: Capital V A N N A T T A.

10 HEARING OFFICER BARFIELD: Thank you.

11 MS. VANNATTA: Thank you.

12 MS. EMBREE-MEINDERS: Morning.

13 HEARING OFFICER BARFIELD: Good morning.
14 Again, your name for the record?

15 MS. EMBREE-MEINDERS: Joni Embree-
16 Meinders.

17 HEARING OFFICER BARFIELD: And spell your
18 last name.

19 MS. EMBREE-MEINDERS: E M B R E E M E I
20 N D E R S.

21 HEARING OFFICER BARFIELD: Thank you.

22 MS. EMBREE-MEINDERS: We're farmers with
23 water rights in the GWD2 district --

24 THE REPORTER: I'm sorry?

25 MS. EMBREE-MEINDERS: We're farmers with



1 water rights over the Equus Beds. I'm third
2 generation, and my family's water source at our
3 house comes from those Equus Beds. There's
4 currently an agree -- agreeable permission in
5 place, one that allows for the water needs of the
6 city to be met in excess. Because some areas of
7 the Equus Bed water levels have declined up to 30
8 feet since the '40s, I have concern that lowering
9 the bottom of the basin storage area in the
10 aquifer doesn't solve the problem or create more
11 water in the aquifer. Instead it creates a void
12 and puts the aquifer at a constant deficit. This
13 would take years to recover from. The city has
14 multiple other options for securing water which do
15 not put the natural aquifer in jeopardy. If
16 Wichita is permitted to pump the Equus Beds dry or
17 unnecessarily pump holes or voids in the aquifer,
18 the only chance for recharge will be future
19 rainfall in that the city has not proven an
20 ability to successfully recharge the aquifer.
21 Another concern is that the rainfall necessary to
22 recharge the aquifer will not come at a rate fast
23 enough to prevent the oilfield brine or the
24 chloride plume threat from infecting the entire
25 Equus Bed aquifer. I'm also concerned with the



1 lack of regulation and documentation the proposed
2 changes offer. It is very concerning that simply
3 renaming passive water credits as maintenance
4 credits would create loopholes that would
5 ultimately destroy the Equus Bed aquifer. Water
6 quality is imperative, and it's being directly
7 threatened. Natural water availability is a
8 precious resource, and to destroy that for
9 political or financial gain is unacceptable.

10 Sir, I don't know you, but I believe you're
11 better than this. I believe that you're better
12 than big money or political power, and I believe
13 that you will do the right thing in preserving our
14 aquifer so that it can continue to provide for
15 families. Thank you.

16 HEARING OFFICER BARFIELD: Thank you for
17 your statement. Can I ask, are your -- are your
18 wells within the basin storage area?

19 MS. EMBREE-MEINDERS: They are.

20 HEARING OFFICER BARFIELD: Okay. Thank
21 you very much. Anyone else? Just feel free to
22 step forward.

23 MR. JACKSON: Alan Jackson. My address
24 is 2009 South Hertzler Road, Halstead, Kansas.

25 THE REPORTER: You're going to have to



1 move the microphone closer or speak up or
2 something.

3 MR. JACKSON: Alan Jackson. My address
4 is 2009 South Hertzler Road, Halstead, Kansas, and
5 I'm just across the river north from the basin
6 area. About three years ago me and the neighbors
7 seen a decrease in water quality, nothing to
8 prevent us from drinking it, but the hardness has
9 substantially changed, noticeably, in our
10 households.

11 I'm also an irrigator, and the water levels
12 in the area have been maintained by the Little
13 River recharge.

14 You have two aspects basically on the table.
15 One is pumping directly into Wichita. I am a
16 licensed mechanical engineer. That license has
17 been retired. I looked at all the aspects of your
18 proposal, and I find it difficult to understand
19 how pumping directly into Wichita with water
20 actually stores water for future use. The other
21 aspect I see is lowering the water levels to
22 acceptably pump back in times of drought, even
23 though they're recoverable in the short term as
24 far as water levels, I have some concerns about
25 the salt plume intrusion to the Equus Beds. Thank



1 you.

2 HEARING OFFICER BARFIELD: Thank you.

3 MR. MUELLER: My name is David Mueller.

4 I'm a third generation farmer. I farm with my
5 family north of Halstead. My address is 905 South
6 Mission Road. And I will just -- and I just have
7 a comment about the AMCs that are proposed as part
8 of this. If -- if this were to be approved, would
9 -- would logic not follow that a farmer irrigating
10 would also be entitled to such a maintenance
11 credit? The idea being that by not pumping from
12 the aquifer the amount that they are allotted with
13 their permit that they are somehow generating a
14 credit to use at a later date? Would a farmer who
15 did not use his allotted water rights in a current
16 year not be granted those same maintenance credits
17 to pump at a later date?

18 HEARING OFFICER BARFIELD: Thank you.

19 All right. Anyone else?

20 All right. Seeing none, let me, again, talk
21 about the next steps in this process. Again,
22 today's public comment hearing is just one step in
23 the process. The date of the formal hearing has
24 not been finalized. It was tentatively set for
25 February 13th of 2019. Two of the parties have



1 requested additional time, and so we will resolve
2 that in the near future. The hearing date will be
3 published on our web page, and again we'll seek to
4 do a press release as well, so -- so look to those
5 two sources for information. Again, as I
6 indicated, GMD2 will be putting in their
7 newsletter when the formal hearing date is as
8 well.

9 Again, as I stated earlier, if you want to
10 gather more information and then provide
11 additional comments or comments at that hearing,
12 we will accommodate that. Again, on the handout
13 is your opportunity to provide written comments.
14 Those comments will be received at any time until
15 the close of the record which will be 30 days
16 after the conclusion of the formal hearing.
17 Again, on the handout is where you can send those
18 comments.

19 All right. I guess with that, this morning's
20 public comment hearing will be closed. We
21 appreciate you taking an interest in this matter
22 and participating in this morning's hearing.

23 UNIDENTIFIED SPEAKER: Sir, if you would
24 please notify the Harvey County Independent as
25 well, since it --



1 HEARING OFFICER BARFIELD: Harvey --

2 UNIDENTIFIED SPEAKER: -- hits most of
3 our area.

4 HEARING OFFICER BARFIELD: All right. We
5 certainly will. Thank you for that. We'll
6 consider that. Thank you. This hearing is
7 closed.

8 (Whereupon, at 9:57 a.m. the hearing was
9 concluded.)

10 .
11 .
12 .
13 .
14 .
15 .
16 .
17 .
18 .
19 .
20 .
21 .
22 .
23 .
24 .
25 .



CERTIFICATE

STATE OF KANSAS

SS :

COUNTY OF SHAWNEE

I, Michelle D. Hancock, a Certified Court Reporter, Commissioned as such by the Supreme Court of the State of Kansas, and authorized to take depositions and administer oaths within said State pursuant to K.S.A. 60-228, certify that the foregoing was reported by stenographic means, which matter was held on the date, and the time and place set out on the title page hereof and that the foregoing constitutes a true and accurate transcript of the same.

I further certify that I am not related to any of the parties, nor am I an employee of or related to any of the attorneys representing the parties, and I have no financial interest in the outcome of this matter.

Given under my hand and seal this 26th day of December, 2018.

Michelle D. Hancock

Michelle D. Hancock, C.C.R. No. 0392

