

**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

**CITY OF WICHITA’S PREHEARING MOTION IN LIMINE TO EXCLUDE
“EXPERT REPORTS” OF CARL E. NUZMAN, TIM BOESE AND DAVID POPE**

The City of Wichita, Kansas (the “City”) submits that the above-referenced “expert reports” of Carl E. Nuzman (offered by Interveners) and Tim Boese and David Pope (offered by the Equus Beds Groundwater Management District No. 2) are inadmissible, grossly improper, and should be excluded from the evidentiary record in this matter (as should any similar testimony offered by the authors of such reports).

The author of each of the foregoing reports essentially opines on the meaning and application of select statutes and regulations, and purports to tell the Hearing Officer what the law is. This is manifestly impermissible, as it is black-letter law, long-recognized in Kansas, that “testimony” of this nature is outside the parameters of allowable expert witness testimony.

In *Glassman v. Costello*, 267 Kan. 509, 986 P.2d 1050 (1999), the Kansas Supreme Court stated, in most relevant part: “While witnesses may be permitted, in a proper case, to give an opinion on the ultimate *fact* involved in the case, there is a strong consensus among jurisdictions, amounting to a general rule, that witnesses may not give an opinion on a question of domestic law or on matters which involve questions of law.” *Glassman v. Costello*, 267 Kan. 509, 528 (citing, 31A Am.Jur.2d, Expert and Opinion Evidence, § 136, pp. 143-144).

WHEREFORE, because expert witnesses may not legitimately testify as to matters of

law, the City requests that the above-referenced expert reports and any similar testimony offered by the authors thereof be excluded from the hearing record.

Respectfully submitted,

Office of the City Attorney
of the City of Wichita, Kansas

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

CERTIFICATE OF FILING AND SERVICE

The undersigned hereby certifies that he transmitted the above and foregoing Motion by electronic mail on this 11th day of March 2019, for filing, to David.Barfield@ks.gov and Kenneth.Titus@ks.gov and served the same upon counsel for the other parties herein by electronic mail 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