

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

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.

MOTION FOR CONTINUANCE

COME NOW, Richard Basore, Josh Carmichael, Judy Carmichael, Bill Carp, Carol Denno, Steve Jacob, Terry Jacob, Michael J. McGinn, Bradley Ott, Tracy Pribbenow and David Wendling (“Intervenors”), by and through counsel Tessa M. Wendling, and move the Presiding Officer for an Order continuing the formal hearing in the above-captioned matter. In support of said Motion, the Intervenors assert the following:

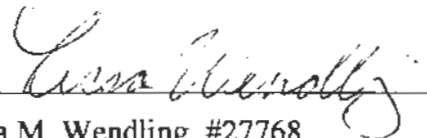
1. The Presiding Officer issued an Order on Prehearing Motions on July 24, 2019 (“Order”) containing the following facts and findings:
 - a. “[T]he Chief Engineer, while in the role of presiding officer, issued an order dated December 21, 2018 that required the parties to submit expert reports by February 15, 2019. Another order issued by the Chief Engineer in the role of presiding officer dated February 15, 2019, extended that deadline to February 18, 2019.
 - b. The initial expert reports filed by the City of Wichita “do not identify the respective observations, opinions or conclusions of any given expert.” The City of Wichita now has until August 23, 2019 at 12:00 p.m. to supplement its expert reports.

- c. The Division of Water Resources did not file any expert reports initially and now has until August 23, 2019 at 12:00 p.m. to submit its expert reports, if desired.
 - d. Kansas regulations provide that “each party shall have a reasonable opportunity to be heard” and “each party shall be given the opportunity to present evidence and argument, conduct cross-examination, and submit rebuttal evidence.” K.A.R. 5-14-3a(m)
2. Adequate time to prepare is essential to a reasonable opportunity to be heard. The currently proposed schedule allows submission of new expert reports and supplementation of expert reports only 30 days prior to the hearing which could disadvantage the Intervenor and significantly limit their ability to prepare for the formal hearing.
 3. The City’s ASR Permit Modification Proposal Revised Minimum Index Levels & Aquifer Maintenance Credits proposal is highly technical and may necessitate the need to engage consultants to assist the Intervenor to review any supplemented and/or new expert reports.
 4. The parties will have had the Intervenor’s expert reports for over six months allowing the parties a full opportunity to thoroughly review the reports, depose the experts and file responsive motions.
 5. A schedule that allows adequate time to review expert reports, coordinate and conduct depositions and prepare for formal hearing will help to avoid “unfair surprise” at the formal hearing.

6. The Intervenors would like to minimize any disadvantage caused by the new or supplemented expert reports and seeks a reasonable opportunity to properly consider the expert reports in preparing for the hearing and conduct depositions, if desired.

WHEREFORE, the Intervenors respectfully ask that the Presiding Officer continue the hearing for at least two months, to give all parties the opportunity to properly review, and if necessary, take depositions after additional or supplemental expert reports are completed, and for any other relief the Presiding Officer deems just and equitable.

Respectfully submitted,

By: 

Tessa M. Wendling, #27768
1010 Chestnut St.
Halstead, KS 67056
(773) 459-8147
twendling@mac.com
Attorney for Intervenors

CERTIFICATE OF FILING AND SERVICE

The undersigned hereby certifies that she transmitted the above and foregoing Motion for Continuance by electronic mail on this 6th day of August, 2019, for filing, to ConnieOwen@everestks.net, [Chris Beightel@ks.gov](mailto:Chris.Beightel@ks.gov), [David Barfield@ks.gov](mailto:David.Barfield@ks.gov) and [Kenneth Titus@ks.gov](mailto:Kenneth.Titus@ks.gov) and served the same upon counsel for the other parties herein by electronic mail addressed to:

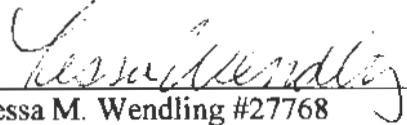
Aaron Oleen
Stephanie Murray
Division of Water Resources
Kansas Department of Agriculture
1320 Research Park Drive
Manhattan, Kansas 66502
Aaron.oleen@ks.gov
Stephanie.Murray@ks.gov

Brian K. McLeod
455 North Main Street
Wichita, Kansas 67202
bmcleod@wichita.gov
Attorney for the City of Wichita, Kansas

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

And

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



Tessa M. Wendling #27768
Attorney for Intervenors