

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.

PREHEARING ORDER
ON GMD2'S MOTION FOR RECONSIDERATION AND FOR LEAVE TO HAVE
ADDITIONAL MOTIONS CONSIDERED OUT OF TIME

On October 10, 2019, Equus Beds Groundwater Management District No.2 (GMD2) electronically submitted their Motion for Reconsideration and for Leave to Have Additional Motions Considered Out of Time, and its Renewed Motion in Limine to Exclude Expert Testimony of the City.

On October 29, 2019, the City of Wichita (City) timely filed the City of Wichita's Response to Equus Beds Groundwater Management District No. 2's Motion for Reconsideration and for Leave to Have Additional Motions Considered Out of Time.

On October 30, 2019, GMD2 timely filed its Brief on Motion for Reconsideration and for Leave to Have Additional Motions Considered Out of Time, with attachment.

On October 30, 2019, the Intervenors timely filed Intervenors Brief in Support of the Equus Beds Groundwater Management District No. 2's Motion for Reconsideration and for Leave to Have Additional Motions Considered Out of Time, with attachments.

On October 30, 2019, the Division of Water Resources (DWR) timely filed DWR's Consolidated Response in Opposition to GMD2's and Intervenors' Motion for Reconsideration and for Leave to Have Additional Motions Considered Out of Time, with attachments.

On October 30, 2019, the City timely filed City of Wichita's Response to Intervenors' Brief Supporting Equus Beds Groundwater Management District No.2's Motion for Reconsideration and for Leave to Have Additional Motions Considered Out of Time.

In considering all of the above pleadings, the Presiding Officer is mindful of the following principles, previously cited and briefed: the flexible procedural context of administrative hearings and fundamental fairness, including the need to avoid unfair surprise where possible. The Presiding Officer is also mindful of the proximity of the hearing dates in this case, and the significant public interest in transparency and public participation. Accordingly, the following is ordered.

The district's Motion for Reconsideration of its Revised Motion for Summary Judgment is denied.

The district's Motion for Leave to Have Additional Motions Considered Out of Time is granted only to the extent that the district's Renewed Motion in Limine to Exclude Expert Testimony of the City and the district's accompanying brief, and responses thereto, will be allowed and considered. The Order on Prehearing Motions issued July 24, 2019, denied GMD2's Motion in Limine to Exclude Expert Testimony of the City (wherein the district argued for exclusion of the City's expert reports for deficient content), but that denial was contingent on the City adequately and timely supplementing the reports as described in the order. It is manifestly reasonable to allow the parties to address whether the City's supplementation of expert reports was adequate enough to satisfy that contingency.

Considering the fact that the parties have already extensively briefed the law applicable to admissibility of expert reports and the proximity of the hearing, the following compressed briefing schedule is set for responding to GMD2's Renewed Motion in Limine to Exclude Expert testimony of the City. The City, DWR, and the Intervenors may file their respective responses to said motion no later than midnight on November 15, 2019. No replies subsequent to the responses will be accepted.

No further prehearing motions will be accepted.

IT IS SO ORDERED, THIS 5th DAY OF NOVEMBER, 2019.



Constance C. Owen
Presiding Officer

CERTIFICATE OF SERVICE

On this 5th day of November 2019, I hereby certify that the original of the foregoing Prehearing Order on GMD2'S Motion for Reconsideration and for Leave to Have Additional Motions Considered Out of Time was sent by electronic mail to the following:

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Constance C. Owen
Presiding Officer