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Mike Beam, Secretary

Laura Kelly, Governor

October 14, 2022

Ms. Shannon Kenyon, Manager
Northwest Kansas Groundwater Management District No. 4
1290 West 4th Street
PO Box 905
Colby, KS 67701-0905

RE: Sheridan 6 Local Enhanced Management Area

Dear Ms. Kenyon,

Attached you will find the Consolidated Order Designating the Sheridan 6 Local Enhanced Management Plan for 2023-2027. The order reestablishes the SD-6 LEMA for another 5 years and adopts the management plan developed and submitted by Northwest Kansas GMD 4.

Thank you and the GMD 4 board for your continued work to conserve and extend the life of the Ogallala Aquifer in your area, and for doing so in a way that protects the local economy. The data that you provided at the hearing, and which was supported by others, clearly shows that the reduction in pumping has resulted in a slowing of the water level decline. The fact that there was no testimony provided in opposition to the continuation of the plan is a testament to the general support of the community for this effort.

I look forward to continuing to work together with GMD 4 on these and other water conservation efforts.

Sincerely,

A handwritten signature in blue ink that reads "Earl D. Lewis, Jr." The signature is written in a cursive style.

Earl D. Lewis, Jr. PE
Chief Engineer

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

In the Matter of the Designation of the)
Sheridan 6 Local Enhanced Management Area)
In Sheridan and Thomas Counties, Kansas.) **22 WATER 17979**
)
Pursuant to K.S.A. 82a-1041 and K.A.R. 5-19-1)
through 5-19-5.)
_____)

**CONSOLIDATED ORDER DESIGNATING THE SHERIDAN 6 LOCAL ENHANCED
MANAGEMENT PLAN FOR 2023-2027**

COMES NOW, Earl D. Lewis, P.E., Chief Engineer, Division of Water Resources, Kansas Department of Agriculture (“Chief Engineer”), who, having conducted a public hearing in Hoxie, Kansas on July 26, 2022, hereby issues the following Consolidated Order Designating the Sheridan 6 Local Enhanced Management Plan for 2023-2027 (“Consolidated Order”) pursuant to K.S.A. 82a-1041 and K.A.R. 5-19-3.

I. PROCEDURAL BACKGROUND

1. On March 4, 2022, the Northwest Kansas Groundwater Management District No. 4 (“GMD4”) submitted to the Chief Engineer a formal request for the renewal of the existing SD-6 Local Enhanced Management Area (“SD-6 LEMA”), including a proposed management plan for the period beginning on January 1, 2023, and ending on December 31, 2027 (“SD-6 LEMA Management Plan”).
2. Prior to the pre-hearing conference in this matter on July 11, 2022, the Chief Engineer reviewed the renewal proposal and found, pursuant to K.S.A. 82a-1041(a), that the SD-6 LEMA Management Plan proposed clear geographic boundaries, pertained to an area wholly within a groundwater management district, proposed appropriate goals and corrective control provisions to meet the stated goals, gave due consideration to existing conservation measures, included a compliance monitoring and enforcement element, and was consistent with state law.
3. Following the initial review of the SD-6 LEMA Management Plan, and after consultation with GMD4, the Chief Engineer determined that the proposed management plan was substantially similar to the existing management plan and that, pursuant to K.A.R. 5-19-3(h), a consolidated hearing process was appropriate.
4. Pursuant to K.S.A. 82a-1041(b), timely notice of the consolidated public hearing was mailed to each water right holder located within the proposed SD-6 LEMA and published in two local newspapers of general circulation and the Kansas Register. The consolidated public hearing was conducted by the Chief Engineer at 2:00 p.m. on July 26, 2022, in

Hoxie, Kansas. Based on all testimony and evidence entered into the record and applicable law, the Chief Engineer considered whether the SD-6 LEMA Management Plan satisfied the three initial requirements as set forth in K.S.A. 82a-1041(b)(1)-(3) and whether the proposed SD-6 LEMA Management Plan was sufficient to address the existing conditions set forth in K.S.A. 82a-1036(a)-(d).

5. Based on all testimony and evidence entered into the record of the consolidated public hearing, the Chief Engineer determined that the proposed SD-6 LEMA Management Plan meets the requirements set forth in K.S.A. 82a-1041(b)(1)-(3) and is sufficient to address the decline in groundwater levels in the area in question, and issues this Consolidated Order in place of a separate Order of Decision and Order of Designation in order to fulfill the requirements K.S.A. 82a-1041(d) and (e).

II. APPLICABLE LAW

1. The formation of a local enhanced management area is governed by K.S.A. 82a-1041 and K.A.R. 5-19-1 through 5-19-5. Pursuant to K.S.A. 82a-1041(a), when the Chief Engineer finds that a local enhanced management plan submitted by a groundwater management district is acceptable for consideration, then the Chief Engineer shall initiate proceedings to designate a local enhanced management area as soon as practicable.
2. Once the proceedings are initiated, pursuant to K.S.A. 82a-1041(b), the Chief Engineer shall hold an initial public hearing to resolve the following:
 - a. Whether one or more of the circumstances specified in K.S.A. 82a-1036(a) through (d), and amendments thereto, exist within the proposed LEMA boundary;
 - b. Whether the public interest of K.S.A. 82a-1020, and amendments thereto, requires that one or more corrective control provisions be adopted to address those circumstances; and
 - c. Whether the geographic boundaries of the proposed LEMA are reasonable.
3. K.S.A. 82a-1041(b) directs the Chief Engineer to conduct a subsequent hearing only if the initial public hearing is favorable on all three issues of fact and the expansion of geographic boundaries is not recommended.
4. K.S.A. 82a-1041(c) limits the subject of the subsequent hearing to the local enhanced management plan that the Chief Engineer previously reviewed and K.S.A. 82a-1041(d) requires the Chief Engineer to, within 120 days of the conclusion of the subsequent public hearing, issue an order of decision:
 - a. Accepting the local enhanced management plan as sufficient to address any of the conditions set forth in K.S.A. 82a-1036(a)-(d);
 - b. Rejecting the local enhanced management plan as insufficient to address any of the conditions set forth in K.S.A. 82a-1036(a)-(d);
 - c. Returning the local enhanced management plan to the groundwater management district, giving reasons for the return and providing the district with the opportunity

- to resubmit a revised plan for public hearing within 90 days of the return of the deficient plan; or
- d. Returning the local enhanced management plan to the groundwater management district and proposing modifications to the plan, based on testimony at the hearing or hearings, that will improve the administration of the plan, but will not impose reductions in groundwater withdrawals that exceed those contained in the plan. If the groundwater management district approves of the modifications proposed by the chief engineer, the district shall notify the Chief Engineer within 90 days of receipt of return of the plan. Upon receipt of the groundwater management district's approval of the modifications, the chief engineer shall accept the modified local management plan. If the groundwater management district does not approve of the modifications proposed by the Chief Engineer, the local management plan shall not be accepted.
5. Pursuant to K.S.A. 82a-1041(e), if the Chief Engineer issues an order of decision, then an order of designation that designates the area in question as a local enhanced management area shall be issued within a reasonable time following issuance of the order of decision.
 6. Pursuant to K.S.A. 82a-1041(f) and (g), the order of designation shall define the boundaries of the local enhanced management area and shall indicate the circumstances upon which the findings of the Chief Engineer are made. The order of designation may include the corrective control provisions set forth in the management plan and shall follow, insofar as may be reasonably done, the geographical boundaries recommended by the local enhanced management plan.
 7. Pursuant to K.A.R. 5-19-3(h) any proposal to adopt or renew a LEMA management plan that is substantially similar to a previously adopted management plan may be approved through a consolidated and simplified hearing schedule so long as all notice requirements of K.S.A. 82a-1041 are met and the proposing groundwater management district does not object to any proposed simplification or consolidation.

III. TESTIMONY

A. Testimony at Hearing

1. All oral testimony offered at the consolidated public hearing and related exhibits are hereby incorporated into this order and made a part thereof, with a summary of such comments provided below.
2. The record of the proceedings regarding the requests for and designation of the 2013-2017 and 2018-2022 SD-6 LEMAs are incorporated into the record for this public hearing. (Transcript, p. 12.)
3. A summary of oral testimony offered at the consolidated public hearing is as follows:

- a. Shannon Kenyon, Colby, Kan., Manager of GMD4 – Ms. Kenyon led the oral testimony in support of the re-designation of the SD-6 LEMA for the period 2023-2027 pursuant to GMD4’s proposed plan. Ms. Kenyon stated that the two previous LEMAs have reduced groundwater decline, but that wells in the SD-6 area also continue to decline, albeit at a slower rate. (Transcript, p. 14.) Reductions in withdrawals appear to have doubled the usable life of the High Plains Aquifer (“aquifer”) within the SD-6 LEMA boundary. (*Id.* at 23.) The management plan under consideration is substantially similar to the existing SD-6 LEMA management plan but adds ability for water rights to be enrolled in a multiyear flex account during the LEMA period. (*Id.* at 14.) The proposed SD-6 management plan is wholly within the boundaries of GMD4, would limit acre-feet pumped within such boundaries to 122,400 acre-feet, provides for corrective controls sufficient to meet that goal in the form water right allocations, is a representation of the desires of the water right owners within the boundaries thereof, and renewal of the management plan was recommended by the SD-6 Advisory Committee. (*Id.*, pp. 18-19.)

Regarding the effectiveness of the existing SD-6 LEMA, Ms. Kenyon testified that from 2008 to 2013, water levels dropped an average of 1.5 feet and from 2013 to 2017 declined by only 0.68 feet. She also discussed a report from the Kansas Geological Survey which examined the relationship between pumping, precipitation, and groundwater declines, noting that declines tend to stabilize when withdrawals are around 15,000 acre-feet per year. (*Id.* at 16). She also noted a report from Dr. Bill Golden of Kansas State University that due to the flexibility of the SD-6 LEMA, producers inside the SD-6 LEMA are more profitable than producers outside the SD-6 LEMA. (*Id.* at 17). Metering and enforcement policies also proved effective and led to the adoption of more accurate monitoring and better maintenance of meters. (*Id.*)

- b. Harold Murphy, Selden, Kan. – Mr. Murphy spoke at length about the history of farming in Northwest Kansas and encouraged renewal of the SD-6 LEMA as a forward-looking step. In addition, Mr. Murphy testified that he would like to see more efficient methods of water use implemented so that Kansas does not end up like California or Colorado. (*Id.*, pp. 24-30.)

B. Written Testimony

4. All written comments timely submitted are hereby incorporated into and made a part of this order with a summary of such comments provided below.
5. Kelly Stewart, Stockton, Kan., Water Commissioner, Division of Water Resources – Mr. Stewart’s testimony cited his extensive service in Northwest Kansas and his involvement in the development of this and prior versions of the SD-6 LEMA. Mr. Stewart recommended renewal of the SD-6 LEMA and provided assurances that the Division of Water Resources is committed to working cooperatively with GMD4 to implement responsible and effective water management practices.

6. Shannon Kenyon, Colby, Kan., Manager of GMD4 – Ms. Kenyon provided a written version of her oral comments (summarized above) at the hearing along with supporting reports and documentation.

IV. DISCUSSION AND CIRCUMSTANCES OF FINDINGS

1. As the SD-6 LEMA now comes before the Chief Engineer for a third time, and a second time for renewal, there is an extensive record in place regarding the need to regulate groundwater use in this area; and, the success of the management plans put in place in 2013 and 2018 are well-documented. The SD-6 LEMA was the pilot project for LEMAs within the state, and the impressive results that have been achieved deserve more credit than can be properly given in a formal order of this nature. The entire records of the first and second SD-6 LEMA hearing proceedings are hereby incorporated into this order as evidence and, combined with the latest testimony, conclusively show that groundwater levels continue to decline or have declined excessively, the public interest requires the adoption of corrective controls to address such declines, and the geographic boundaries continue to be reasonable.
2. After ten years of operation, ample evidence exists to prove that the corrective controls, primarily the allocation of 55 inches over five years, have had an overwhelmingly positive impact on the area included in the SD-6 LEMA. While groundwater declines have continued over the last ten years, they have been significantly slowed. Average declines were measured at 1.5 feet from 2008-2013, 0.68 feet from 2014-2018, and only 0.38 feet in the latest period. This is a particularly notable considering that some areas in the SD-6 LEMA had declined by as much as 70 feet since 1965.
3. It is also important to note that the irrigators within the SD-6 LEMA have been subject to corrective controls similar to those contained in the proposed SD-6 LEMA Management Plan since the 2013 growing season, and no legal challenges have been brought against the SD-6 LEMA in that time. Further, during the present proceedings, no testimony was presented against the boundaries, or the corrective controls contained in the proposed SD-6 LEMA Management Plan or the data that those elements of the management plan are based on the proposed management plan includes provisions for flexibility in moving allocations among different water rights within the LEMA, as the use of such provisions in prior iterations of the SD-6 LEMA did not produce any documented detrimental effects.
4. Based on the evidence, testimony, and all data submitted previously and as a part of the current hearing process, the great weight of the evidence makes it clear that the SD-6 LEMA is supported by those who irrigate within its boundaries and that the corrective controls imposed and the practices necessitated thereby have not created an economic hardship and have assisted in allowing irrigators to make major strides in extending the life of the aquifer.

V. FINDINGS OF FACT

1. The proposed geographical boundaries of the SD-6 LEMA include the following sections in Sheridan and Thomas Counties, Kansas:

Sheridan County

T7S, R28W, Sections 19-21 and 28-33;

T7S, R29W, Sections 4-9 and 16-36;

T7S, R30W, Sections 19-36;

T8S, R29W, Sections 1-18;

T8S, R30W, Sections 1-18.

Thomas County

T8S, R31W, Sections 22-27 and 34-36.

2. The proposed SD-6 LEMA Management Plan proposes clear and reasonable geographic boundaries and is located wholly within GMD4. Such boundaries are based on data shared by the Division of Water Resources, GMD4, and the Kansas Geological Survey concerning the hydrology of the area.
3. Evidence shows there remains a need for corrective control provisions within the proposed SD-6 LEMA boundary and that the corrective controls proposed in the SD-6 LEMA Management Plan have been effective when implemented under previous SD-6 LEMA management plans. Groundwater levels in the areas described above were declining in 2012 and continue to decline; however, the implementation of the SD-6 LEMA has reduced the rate of decline. From 2008 through 2013, observation wells showed an average water table decline of 1.5 feet per year. From 2013 through 2017, declines averaged 0.68 feet per year and, in the most recent period, averaged only 0.38 feet per year. Despite this improvement in the rate of decline, the evidence still conclusively shows that the water table within the SD-6 LEMA boundary continues to decline, and corrective controls are required.
4. The proposed SD-6 LEMA Management Plan will limit groundwater diversions within the SD-6 LEMA to 122,400 acre-feet total for the period between January 1, 2023, and December 31, 2027, plus any allowable carry-over amount from the January 1, 2018, through December 31, 2022, SD-6 LEMA period. This five-year allocation, along with flexibility to move allocations, provide corrective control provisions that help meet the proposed SD-6 LEMA Management Plan's stated goal of reducing use of water while maintaining economic viability.
5. The proposed SD-6 LEMA Management Plan considers existing conservation measures by allocating water by inches per acre and by permitting up to a five-inch carry over allotment, if any such amount remains at the end of the existing SD-6 LEMA, to reward those users who have voluntarily used less water than their full allocation.

6. The supportive testimony (and lack of any testimony in opposition) for another five-year term indicates that the SD-6 LEMA is effective and locally supported and that its continuance is in the public interest.
7. The overall effects of the original SD-6 LEMA provided a significant decrease in the rate of decline of the aquifer, leading to an extension in the life of the aquifer within the LEMA boundaries without causing significant decrease in profitability to irrigators. A second five-year term has apparently doubled the usable life of the aquifer and such evidence supports the continuation of the SD-6 LEMA for another five-year period.

VI. CONCLUSIONS OF LAW

1. Notice of the consolidated public hearing was proper and complied with the requirements of K.S.A 82a-1041(b) and K.A.R. 5-19-3.
2. The initial requirements for the establishment of a LEMA, that one or more of the circumstances in K.S.A. 82a-1036(a) through (d) exist within the boundaries of the proposed LEMA, that the public interest requires corrective controls be adopted to address those circumstances, and that the geographic boundaries of the proposed LEMA are reasonable are met.
3. Corrective controls are required within the SD-6 LEMA in order to address excessive declines in the groundwater level and to address rates of withdrawal that exceed the rate of recharge pursuant to K.S.A. 82a-1036.
4. Pursuant to K.S.A. 82a-1041(d)(1), the proposed SD-6 LEMA Management Plan is sufficient to address declines in groundwater levels and a rate of withdrawal that exceeds the rate of recharge in the area in question.
5. The proposed SD-6 LEMA Management Plan is consistent with the Kansas Water Appropriation Act and other Kansas law.

VII. ORDER OF DECISION AND DESIGNATION

COMES NOW, the Chief Engineer, who, pursuant to K.S.A. 82a-1041(e)-(h) and based upon substantial competent evidence, as provided by testimony and comments offered at or in relation to public hearings held for the purpose of designating the Sheridan 6 Local Enhanced Management Area for 2023-2027, finds that the proposed Sheridan 6 Local Enhanced Management Area 2023-2027 is hereby designated and shall consist of the following recommended boundaries:

Sheridan County
T7S, R28W, Sections 19-21 and 28-33;
T7S, R29W, Sections 4-9 and 16-36;
T7S, R30W, Sections 19-36;
T8S, R29W, Sections 1-18;

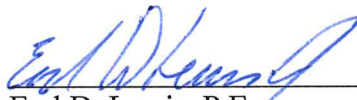
T8S, R30W, Sections 1-18.

Thomas County

T8S, R31W, Sections 22-27 and 34-36.

THEREFORE, the corrective controls and all other necessary elements of administration and management regarding the Sheridan 6 Local Enhanced Management Area contained in the Request for Renewal of Sheridan 6 Local Enhanced Management Area 2023-2027, shall be in place beginning on January 1, 2023 and until December 31, 2027 within the boundaries of the local enhanced management area described above, including the following terms, conditions, and corrective controls contained in **Exhibit A** and subject to the allocations contained in **Exhibit B**.

IT IS SO ORDERED, THIS 14th DAY OF OCTOBER 2022.



Earl D. Lewis, P.E.
Chief Engineer, Division of Water Resources
Kansas Department of Agriculture

Attachments:

- Exhibit A: "Request for Renewal of Sheridan 6 LEMA Submitted To the Chief Engineer, Kansas Department of Agriculture, Division of Water Resources"
- Exhibit B: "Final LEMA Accounting Modified" spreadsheet.

PREPARED BY:



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APPROVED BY:

/s/ Adam C. Dees

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RIGHT TO PETITION FOR ADMINISTRATIVE REVIEW

If you are aggrieved by this Order, then pursuant to K.S.A 82a-1901(c), you may petition for administrative review of the Order by the Secretary of Agriculture. A petition for review shall be in writing and state the basis for requesting administrative review. The request for review may be denied if the request fails to clearly establish factual or legal issues for review. See K.S.A. 77-527.

The petition must be filed within 30 days after service of this Order as provided in K.S.A. 77-531, and be filed with the Secretary of Agriculture, Attn: Legal Division, Kansas Department of Agriculture, 1320 Research Park Drive, Manhattan, Kansas 66502, or by FAX (785) 564-6777.

If no petition for administrative review is filed as set forth above, then this Order shall be effective and become a final agency action as defined in K.S.A. 77-607(b). Failure to timely request administrative review may preclude further judicial review under the Kansas Judicial Review Act.