

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

In the Matter of the Designation of the)
Groundwater Management District No. 4 District Wide)
Local Enhanced Management Area in Cheyenne, Decatur,)
Rawlins, Gove, Graham, Logan Sheridan, Thomas, and)
Wallace Counties, Kansas.)
)
Pursuant to K.S.A. 82a-1041.)
_____)

002 – DWR-LEMA – 2017

DECISION TO DENY INTERVENORS’ MOTION FOR RECONSIDERATION

COMES NOW, David W. Barfield, Chief Engineer, Division of Water Resources, Kansas Department of Agriculture, who hereby declines to reconsider the determination that the Northwest Kansas Groundwater Management District No. 4 (“GMD4”) District Wide Local Enhanced Management Area (“LEMA”) Management Plan is consistent with state law.

BACKGROUND

1. K.S.A. 82a-1041 requires that whenever a groundwater management district recommends the approval of a local enhanced management plan, the Chief Engineer shall review such management plan to determine if the management plan is acceptable for consideration and the subsequent initiation of LEMA proceedings.
2. The Chief Engineer’s initial review to determine if the management plan is acceptable considers six elements when reviewing the management plan. One of those elements, K.S.A. 82a-1041(a)(6) asks whether the plan “is consistent with state law,” and the Intervenor’s have challenged whether this element is met by the management plan.
3. By letter dated June 8, 2017, the GMD4 Board of Directors submitted a management plan to the Chief Engineer proposing the creation of a district-wide LEMA.
4. By letter dated June 27, 2017, the Chief Engineer notified GMD4 that the initial review, limited to the six elements set forth in K.S.A. 82a-1041(a) was complete, and that among other things, the proposed management plan was found to be consistent with state law.
5. On October 27, 2017, the Intervenor’s submitted a Motion for Reconsideration of the initial determination by the Chief Engineer that the GMD4 District Wide LEMA Management Plan is consistent with state law.

DECISION

The Intervenor's have set forth several arguments as to why the GMD4 District Wide LEMA Management Plan is not consistent with state law. However, the merits of such arguments will not be considered at this time. The Intervenor's do not have standing to request a review of the Chief Engineer's actions at this stage of the LEMA process.

K.S.A. 82a-1041 specifically provides for review of all actions and decisions made by the Chief Engineer in the LEMA process following the issuance of an Order of Designation. K.S.A. 82a-1041(h). Review of any action or decision prior to an Order of Designation is not explicitly contemplated by the LEMA statute.

K.S.A. 82a-1901 does provide for review by the Secretary of Agriculture of all orders issued pursuant to K.S.A. 82a-1041. Such review shall be done in accordance with secretarial review as provided for in the Kansas Administrative Procedure Act ("KAPA"). KAPA defines an order as a "state agency action of particular applicability that determines the legal rights, duties, privileges, immunities or other legal interest of one or more specific persons." K.S.A. 77-502(d). In this case, the Chief Engineer's initial determination is not one of particular applicability nor does it affect the legal rights, duties, privileges, immunities, or other legal interests of any party. No individual was ordered to take action and no property rights were modified. The Chief Engineer's initial determination simply allows the initiation of the LEMA proceeding. Such proceedings could be terminated following either of the required public hearings, and as such, do not effect any legal rights until an Order of Designation is (if ever) issued. Therefore, no reviewable order has been issued in these proceedings to date.

The LEMA process itself also provides evidence that an action or decision at this stage in the proceedings is not subject to review or reconsideration. Through the statutorily required public hearings, an opportunity to present evidence regarding whether any proposed LEMA is consistent with state law is provided. Such evidence must be addressed by the hearing officer in all such hearings. Further, if an Order of Designation is ultimately issued, the review rights provided by K.S.A. 82a-1901 provide yet another opportunity for review.

THEREFORE, without any explicit authority that the right to request reconsideration exists at this stage of the proceedings and no decision or action constituting an order as contemplated by K.S.A. 82a-1901 and KAPA, finding any such right exists would be duplicative and create unnecessary delay in the ongoing proceedings. Since the Intervenor's lack any statutory or procedural basis upon which to request reconsideration, the Intervenor's Motion for Reconsideration is denied.

**THIS DECISION SHALL BE ENTERED INTO THE RECORD ON THIS 1st
DAY OF NOVEMBER 2017.**



David W. Barfield, P.E.
Chief Engineer, Division of Water Resources
Kansas Department of Agriculture

Prepared by:



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CERTIFICATE OF SERVICE

On this 15th Day of November 2017, I hereby certify that the original of the foregoing Decision was sent by U.S. Mail and a true and correct copy by electronic mail to:

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