

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

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,)Case No. 002-DWR-LEMA-2017
Logan, Sheridan, Sherman, Thomas, and)
Wallace Counties in Kansas.)
_____)

**PETITION FOR REVIEW BY
THE SECRETARY OF AGRICULTURE**

COME NOW, the Intervenors, and pursuant to K.S.A. 82a-1901 (2010) (amended 2017), request that the Secretary of Agriculture review the undated, unsigned DRAFT Order that the Chief Engineer appears to have relied on to set a LEMA hearing for November 14, 2017, and the Chief Engineer’s refusal to consider and rule on the Intervenor’s Motion for Continuance.

In support of said request, the Intervenors assert that:

1. The Northwest Kansas Groundwater Management District No. 4 (“GMD4”) has proposed a district-wide Local Enhanced Management Area (“LEMA”) pursuant to K.S.A. 82a-1041 (the “LEMA statute”).
2. Highly summarized, the plan proposes that the Chief Engineer enter an order reducing all irrigation water rights within each township in GMD4 based on the

extent of the annual decline in the High Plains Aquifer in that township during 2004 to 2015.

3. The plan calls for across-the-board cuts in the quantity of water that can be diverted for irrigation use based on the location of the place of use for each water appropriation right with no consideration of their relative priority in violation of the Kansas Water Appropriation Act, K.S.A. 82a-701, *et seq.*, and the Kansas Groundwater Management District Act, K.S.A. 82a-1021, *et seq.*

4. The Chief Engineer has erroneously determined that the proposed plan complies with state law. *See* the attached Memorandum in Support of the Motion for Reconsideration.

5. In addition, the proposed plan treats irrigation, stockwatering, and other users differently in violation of K.S.A. 82a-707(b) which specifically states that the “date of priority of every water right of every kind, and not the purpose of use, determines the right to divert and use water at any time when the supply is not sufficient to satisfy all water rights.”

6. The GMD4 plan, dated June 8, 2017, was submitted to the Chief Engineer and on June 27, 2017, he entered a finding that the plan meets the threshold requirements set out in K.S.A. 82a-1041(a) and is “acceptable for consideration.”

7. The Chief Engineer appointed Connie Owen to serve as hearing officer for the first hearing required by the LEMA statute. It appears that Ms. Owen may have

prepared an order after that hearing. An unsigned, undated draft order has been placed on the Division of Water Resources (“DWR”) and Groundwater Management District (“GMD”) web sites but there is no indication that the Ms. Owen signed, dated, or issued the order that appears to be a preliminary draft.

8. Because the Order is not dated or signed, and has not been properly served, it is not clear whether the hearing officer has actually issued it as her order.

9. The hearing did not provide affected parties with appropriate due process protections. *See* the attached Memorandum in Support of the Motion to Provide Due Process Protections for Irrigators.

10. Nevertheless, the Chief Engineer has set the second hearing required by the statute for November 14, 2017. On October 10, 2017, counsel for the intervenors entered their appearance in the proceeding and filed a Motion for Continuance.

11. The Chief Engineer has not ruled on this Motion. Instead, on October 11, 2017, counsel for the Chief Engineer responded by electronic mail stating, in part, that:

[N]either the LEMA statute, nor any other statute or regulation applies the procedural requirements of KAPA or K.A.R. 5-14-3a to these hearings. Therefore, the Chief Engineer has determined that these shall be non-adversarial informational proceedings and he will not be entertaining any formal motions.

12. In addition to the issues raised in the attached Motion for Continuance and other Motions, on information and belief, the Intervenors assert that the fall harvest is far behind in Northwest Kansas.

13. According to the National Agricultural Statistics Service, the state-wide average for both the corn and the sorghum harvest are far behind last year and behind the five-year average. The harvest is even farther behind in Northwest Kansas.

NATIONAL AGRICULTURAL STATISTICS SERVICE News Release for the week ending October 22, 2017 (Ex. 1)	Percent Complete NW Kansas	Percent Complete State Wide	Percent Complete Last Year	Five-Year Average
Corn Harvest	36	65	85	82
Sorghum Harvest	10	24	54	45

14. The timing of the hearing could not be worse for the Intervenors and other irrigators with a stake in the outcome of the November 14, 2017, hearing. There is little or no time to aid in the preparation for the hearing and even attendance at the hearing is likely to be a Catch 22.

15. The Intervenors request that the Secretary review the draft Order in light of the Motion for Continuance, the Motion for Reconsideration, and the Motion to Provide Due Process Protections for Irrigators, and the Memoranda in support of said Motions, all of which are attached and incorporated by reference.

16. The LEMA statute and the administrative review provisions permit the Intervenors to request review of any orders issued by the Chief Engineer. K.S.A. 82a-1041 and K.S.A. 82a-1901 (2010) (amended 2017).

17. Such review is to be in accordance with the Kansas Administrative Procedures Act, K.S.A. 77-501, *et seq.* K.S.A. 82a-1901(a) (2010) (amended 2017).

18. The Chief Engineer is treating the unsigned undated draft Order as an Initial Order. K.S.A. 77-526(b).

19. This Petition for Review is timely if it is filed within 15 days after service of that Order. K.S.A. 77-527(b). It is effective 30 days after it is served. K.S.A. 77-530(b)(3).

20. The draft order has not been served as required by K.S.A. 77-531 so the time limit for seeking review has not commenced.

WHEREFORE, the Intervenors request that the Secretary of Agriculture review the draft Order, and the Chief Engineer's decision not to entertain the Motion for Continuance of the November 14, 2017 hearing.

Respectfully submitted,

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ATTORNEY FOR INTERVENORS

CERTIFICATE OF SERVICE

On this 27th day of October 2017, I hereby certify that the original of the foregoing was sent by electronic mail and by U.S. First Class Mail, postage prepaid to:

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and true and correct copies were sent by the same methods to:

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A handwritten signature in blue ink, appearing to read "David M. Traster", is written over a horizontal line.

David M. Traster, #11062



NEWS RELEASE

NATIONAL AGRICULTURAL STATISTICS SERVICE

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FOR IMMEDIATE RELEASE

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KANSAS CROP PROGRESS AND CONDITION

MANHATTAN, Kan. October 23, 2017 – For the week ending October 22, 2017, above normal temperatures continued across the State, according to the USDA's National Agricultural Statistics Service. Rainfall totals of one to two inches were common across many eastern counties, while western and central counties remained mostly dry. There were 6.2 days suitable for fieldwork. Topsoil moisture rated 2 percent very short, 13 short, 78 adequate, and 7 surplus. Subsoil moisture rated 3 percent very short, 17 short, 76 adequate, and 4 surplus.

Field Crops Report: Winter wheat planted was 67 percent, behind 82 last year and 86 for the five-year average. Emerged was 41 percent, well behind 61 last year 63 average.

Corn mature was 95 percent, behind 100 last year, and near 99 average. Harvested was 65 percent, well behind 85 last year, and behind 82 average.

Soybean condition rated 5 percent very poor, 12 poor, 36 fair, 41 good, and 6 excellent. Soybeans dropping leaves was 96 percent, near 94 last year and 95 average. Harvested was 56 percent, ahead of 49 last year, and near 55 average.

Sorghum condition rated 2 percent very poor, 8 poor, 32 fair, 46 good, and 12 excellent. Sorghum mature was 87 percent, behind 94 last year, and near 89 average. Harvested was 24 percent, well behind 54 last year and 45 average.

Cotton condition rated 3 percent very poor, 8 poor, 29 fair, 55 good, and 5 excellent. Cotton bolls opening was 87 percent, ahead of 82 last year, and near 83 average. Harvested was 9 percent, near 8 both last year and average.

Sunflowers condition rated 1 percent very poor, 5 poor, 29 fair, 57 good, and 8 excellent. Sunflowers ray flowers dried was 96 percent. Bracts turning yellow was 91 percent, near 93 last year and 94 average. Bracts turning brown was 81 percent, near 82 last year, and equal to average. Harvested was 17 percent, behind 36 last year and 33 average.

Alfalfa fourth cutting was 94 percent complete.

Pasture and Range Report: Pasture and range conditions rated 4 percent very poor, 14 poor, 35 fair, 44 good, and 3 excellent.

Stock water supplies rated 2 percent very short, 13 short, 84 adequate, and 1 surplus.

EXHIBIT

1

Data for this release were provided at the county level by USDA Farm Service agency and KSU Extension Service.

Access the National publication for Crop Progress and Condition tables at:
<http://usda.mannlib.cornell.edu/usda/nass/CropProg/2010s/2017/CropProg-10-23-2017.pdf>

Access the High Plains Regional Climate Center for Temperature and Precipitation Maps at:
<http://www.hprcc.unl.edu/maps.php?map=ACISClimateMaps>

Access the U.S. Drought Monitor at:
<http://droughtmonitor.unl.edu/CurrentMap/StateDroughtMonitor.aspx?KS>

**Days Suitable, Soil Moisture and Crop Progress by District
 For the Week Ending October 22, 2017**

	NW	WC	SW	NC	C	SC	NE	EC	SE	STATE
Days Suitable for Fieldwork	6.6	6.9	6.8	6.6	6.5	5.8	5.3	4.2	5.1	6.2
Topsoil Moisture	Percent									
Very Short	1	0	1	2	5	1	2	1	5	2
Short	6	13	13	18	13	17	13	6	10	13
Adequate	80	79	85	75	81	82	83	71	75	78
Surplus	13	8	1	5	1	0	2	22	10	7
Subsoil Moisture	Percent									
Very Short	1	0	1	3	8	1	10	1	7	3
Short	11	14	14	20	26	19	31	11	14	17
Adequate	86	82	85	70	64	80	57	75	76	76
Surplus	2	4	0	7	2	0	2	13	3	4
Winter Wheat Planted	82	77	75	59	63	65	59	36	28	67
Winter Wheat Emerged	52	47	51	26	33	44	32	21	19	41
Corn Mature	84	85	98	99	100	99	100	100	100	95
Corn Harvested	36	45	62	52	91	85	68	82	96	65
Sorghum Mature	77	85	95	82	90	88	72	81	97	87
Sorghum Harvested	10	26	26	14	26	33	13	43	67	24

Note: District-level soybean estimates will not be published in 2017 due to lack of external funding.

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