

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
In Harvey and Sedgwick Counties, Kansas**

Case No. 18 WATER 14014

Pursuant to K.S.A. 82a-1901 and K.A.R. 5-14-3a.

**THE CITY OF WICHITA'S RESPONSES TO EQUUS BEDS
GROUNDWATER MANAGEMENT DISTRICT NUMBER 2
SECOND REQUEST FOR ADMISSIONS TO CITY OF WICHITA,
KANSAS**

Pursuant to K.S.A. 60-236, request is hereby made upon the City of Wichita, Kansas ("The City") to admit within thirty (30) days from the date of service of this Request for Admissions, the truth of the facts and genuineness of the statements set forth below.

Each matter as to which an admission is requested is admitted, unless within thirty (30) days after service of this Request for Admissions on The City a written objection or answer addressed to this matter, signed by The City or the attorney for said The City, specifically denying the matter or setting forth in detail the reason by The City cannot truthfully admit or deny the matter, is served on Thomas A. Adrian and David J. Stucky, Adrian & Pankratz, PA, 301 North Main, Suite 400, Newton, Kansas 67114.

DEFINITIONS

1. "You" and/or "Your" means the City of Wichita, and any agent, consultant, employee, or manager for the City of Wichita.
2. "The City" shall mean the City of Wichita.

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3. "DWR" means the Division of Water Resources ("DWR"), and any agent, consultant, employee, or manager for DWR.
4. "Chief Engineer" means David Barfield, Chief Engineer, Division of Water Resources, Kansas Department of Agriculture.
5. "The District" shall mean the Equus Beds Groundwater Management District No. 2.
6. "Subject Matter" means the content of this administrative hearing including, but not limited to, AMCs, the ASR Permit Modification Proposal, and all related subject matter.
7. "ASR Permit Modification Proposal" means the proposal dated March 12, 2018, that You submitted to the Chief Engineer, Division of Water Resources, Kansas Department of Agriculture.
8. "AMC Proposal" means the Aquifer Maintenance Credits Proposal submitted as part of the ASR Permit Modification Proposal.
9. "AMC" means Aquifer Maintenance Credit.
10. "Aquifer" shall mean the Equus Beds Aquifer.
11. "ASR" shall mean Aquifer Storage and Recovery
12. "As used herein, the term ""document" means any medium upon which intelligence or information can be recorded or retrieved, and includes, without limitation, the original and each copy, regardless of origin and location, of any book, pamphlet, periodical, letter, memorandum, (including any memorandum or report of a meeting or conversation), contract, agreement, letter, e-mail, facsimile, check, receipt, notice, study, telegram, computer printout, invoice, computer data file, work papers, diary, calendar, transcript, bill, record, photograph, or any other graphic matter, however produced or reproduced, which is or was your possession, custody or control.

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13. As used herein, the term "communication" means any oral or written utterance of any nature including, but not limited to, correspondence, e-mail, facsimile, conversations, discussions, and consultations, between or among two or more persons.
14. As used herein, the terms "identification," "identify," or "identity," when used in reference to (a) a natural individual, require you to state his or her full name, job title, residential and business addresses and home and business phone numbers; (b) a corporation or business, require you to state its full name and any names under which it does business, the address of its principal place of business, and the addresses of all of its offices; (c) a document, requires you to state the number of pages and the nature of the document (e.g., letter or memorandum), its title, its date, the name or names of its authors and recipients, and its present location and custodian; (d) a communication, requires you to identify the document or documents which refer to or evidence the communication; and (e) an oral communication, requires you to identify the persons participating in the communication and to state the date, manner, place and substance of the communication.
15. When a request for admission requires you to "state the basis of a particular claim, defense, contention, or allegation, state in your answer the identity of each and every communication and each and every fact and legal theory that you think supports, refers to, or evidences such claim, defense, contention or allegation.
16. As used herein, the word "or" appearing in a request for admission should not be read so as to eliminate any part of the request for admission, but, whenever applicable, it should have the same meaning as the word "and."

17. As used herein, the words "person" or "entity" mean any natural person, company, business, partnership, corporation, association or other group carrying on a business enterprise.

REQUEST FOR ADMISSIONS

1. Admit or deny that no water will actually physically be injected into the Aquifer when an AMC is accumulated (as opposed to a Physical Recharge Credit).

Counsel objects to the Request as ambiguous and irrelevant due to its use of the phrase "when an AMC is accumulated," as the accounting process is annual, covers activity for an entire year, and may or may not be conducted (and it is immaterial to this matter whether it is being conducted) in any year at a time when treated water is being injected into the Aquifer.

/s/ Brian K. McLeod

Brian K. McLeod SC # 14026

Subject to and without waiving the foregoing objection:

ADMIT

DENY x

The AMC proposal describes the interactive accumulation of physical recharge credits and AMC recharge credits. The City will continue to conduct physical recharge operations based on the condition and capacity of the aquifer to accept physical recharge. During any given year, the City may conduct activity giving rise to both types of credits and during any given year, the City may or may not be physically injecting water into the Aquifer at the time accumulation of credits is calculated and reported.

2. Admit or deny that no source water will enter into the Aquifer through gravity flow when an AMC is accumulated (as opposed to a Physical Recharge Credit).

Counsel objects to the Request as ambiguous and irrelevant due to its use of the term "source water" and the phrase "when an AMC is accumulated," as the accounting process is annual, covers conditions and activity for an entire year, and may or may not be conducted (and it is immaterial to this matter whether it is being conducted) in any year at a time when "source water" (whatever that is) is entering the Aquifer through gravity flow.

/s/ Brian K. McLeod

Brian K. McLeod SC # 14026

Subject to and without waiving the foregoing objection:

ADMIT

DENY x

The AMC proposal describes the interactive accumulation of physical recharge credits and AMC recharge credits. The City will continue to conduct physical recharge operations based on the condition and capacity of the aquifer to accept physical recharge. During any given year, the City may conduct activity giving rise to both types of credits, and during any given year, "source water" (whatever that is)

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may or may not be entering the Aquifer through gravity flow at the time accumulation of credits is calculated and reported.

- 3. Admit or deny that no source water will actually be stored in the Aquifer when an AMC is accumulated (as opposed to a Physical Recharge Credit).

Counsel objects to the Request as ambiguous and irrelevant due to its use of the term "source water" and the phrase "when an AMC is accumulated," as the accounting process is annual, covers conditions and activity for an entire year, and may or may not be conducted (and it is immaterial to this matter whether it is being conducted) in any year at a time when "source water" (whatever that is) is being added to or stored in the Aquifer.

/s/ Brian K. McLeod

Brian K. McLeod SC # 14026

Subject to and without waiving the foregoing objection:

ADMIT _ _ _ _ _

DENY x _ _ _ _ _

The AMC proposal describes the interactive accumulation of physical recharge credits and AMC recharge credits. The City will continue to conduct physical recharge operations based on the condition and capacity of the aquifer to accept physical recharge. During any given year, the City may conduct activity giving rise to both types of credits, and during any given year, it is possible that some amount of "source water" (whatever that is) will be stored in the Aquifer at or as of the time accumulation of credits is calculated and reported.

- 4. Admit or deny that recharge pits will not be used to cause source water to enter the storage volume of the basin storage area when an AMC is accumulated (as opposed to a Physical Recharge Credit).

Counsel objects to the Request as ambiguous and irrelevant due to its use of the term "source water" and the phrase "when an AMC is accumulated," as the accounting process is annual, covers conditions and activity for an entire year, and may or may not be conducted (and it is immaterial to this matter whether it is being conducted) in any year at a time when "source water" (whatever that is) is entering the Aquifer by way of recharge pits.

/s/ Brian K. McLeod

Brian K. McLeod SC # 14026

Subject to and without waiving the foregoing objection:

ADMIT _ _ _ _ _

DENY x _ _ _ _ _

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The AMC proposal describes the interactive accumulation of physical recharge credits and AMC recharge credits. The City will continue to conduct physical recharge operations based on the condition and capacity of the aquifer to accept physical recharge. Recharge pits will continue to be utilized to facilitate recharge activities as appropriate, and during any given year, it is possible that some amount of "source water" (whatever that is) will be entering the basin storage area via recharge pits at or as of the time accumulation of credits is calculated and reported.

5. Admit or deny that recharge trenches will not be used to cause source water to enter the storage volume of the basin storage area when an AMC is accumulated (as opposed to a Physical Recharge Credit).

Counsel objects to the Request as ambiguous and irrelevant due to its use of the term "source water" and the phrase "when an AMC is accumulated," as the accounting process is annual, covers conditions and activity for an entire year, and may or may not be conducted (and it is immaterial to this matter whether it is being conducted) in any year at a time when "source water" (whatever that is) is entering the basin storage area via recharge trenches.

/s/ Brian K. McLeod

Brian K. McLeod SC # 14026

Subject to and without waiving the foregoing objection:

ADMIT _____

DENY x

The AMC proposal describes the interactive accumulation of physical recharge credits and AMC recharge credits. The City will continue to conduct physical recharge operations based on the condition and capacity of the aquifer to accept physical recharge. Recharge trenches are currently not used for physical recharge however it is uncertain if recharge trench technology will be utilized to facilitate recharge in the future. If and when appropriate, trenches could be used to facilitate recharge activities, and during any given year, it is possible that some amount of "source water" (whatever that is) will be entering the basin storage area via recharge trenches at or as of the time accumulation of credits is calculated and reported.

6. Admit or deny that recharge wells will not be used to cause source water to enter the storage volume of the basin storage area when an AMC is accumulated (as opposed to a Physical Recharge Credit).

Counsel objects to the Request as ambiguous and irrelevant due to its use of the term "source water" and the phrase "when an AMC is accumulated," as the accounting process is annual, covers conditions and activity for an entire year, and may or may not be conducted (and it is immaterial to this matter whether it is being conducted) in any year at a time when "source water" (whatever that is) is entering the basin storage area via recharge wells.

/s/ Brian K. McLeod

Brian K. McLeod SC # 14026

Subject to and without waiving the foregoing objection:

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ADMIT _____

DENY X

The AMC proposal describes the interactive accumulation of physical recharge credits and AMC recharge credits. The City will continue to conduct physical recharge operations based on the condition and capacity of the aquifer to accept physical recharge. Recharge wells will continue to be utilized to facilitate recharge activity, and during any given year, it is possible that some amount of "source water" (whatever that is) will be entering the basin storage area via recharge wells at or as of the time accumulation of credits is calculated and reported

- 7. Admit or deny that no artificial recharge system will be used to cause source water to enter into the Aquifer when an AMC is accumulated (as opposed to a Physical Recharge Credit).

Counsel objects to the Request as ambiguous and irrelevant due to its use of the term "source water" and the phrase "when an AMC is accumulated," as the accounting process is annual, covers conditions and activity for an entire year, and may or may not be conducted (and it is immaterial to this matter whether it is being conducted) in any year at a time when "source water" (whatever that is) is entering the basin storage area via an artificial recharge system.

/s/ Brian K. McLeod

Brian K. McLeod SC # 14026

Subject to and without waiving the foregoing objection:

ADMIT

DENY X

The AMC proposal describes the interactive accumulation of physical recharge credits and AMC recharge credits. The City will continue to conduct physical recharge operations based on the condition and capacity of the aquifer to accept physical recharge, and during any given year, it is possible that some amount of "source water" (whatever that is) will be entering the Aquifer via one or more artificial recharge mechanism(s) at or as of the time accumulation of credits is calculated and reported.

- 8. Admit or deny that no artificial recharge of the Aquifer will occur when an AMC is accumulated (as opposed to a Physical Recharge Credit).

Counsel objects to the Request as ambiguous and irrelevant due to its use of the phrase "when an AMC is accumulated," as the accounting process is annual, covers conditions and activity for an entire year, and may or may not be conducted (and it is immaterial to this matter whether it is being conducted) in any year at a time when artificial recharge of the Aquifer is occurring.

/s/ Brian K. McLeod

Brian K. McLeod SC # 14026

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Subject to and without waiving the foregoing objection:

ADMIT _____

DENY x _____

The AMC proposal describes the interactive accumulation of physical recharge credits and AMC recharge credits. The City will continue to conduct physical recharge operations based on the condition

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and capacity of the aquifer to accept physical recharge , and during any given year, it is possible that artificial recharge of the Aquifer will be occurring at the time accumulation of credits is calculated and reported.

- 9. Admit or deny that source water will not be put into the Aquifer by the AMC Proposal subject to later recovery when an AMC is accumulated (as opposed to a Physical Recharge Credit).

Counsel objects to the Request as hopelessly compound, incomprehensible, ambiguous and irrelevant due to its use of the term "source water" and the phrases "by the AMC Proposal" and "subject to later recovery when an AMC is accumulated."

/s/ Brian K. McLeod
Brian K. McLeod SC # 14026

Subject to and without waiving the foregoing objection:

ADMIT _____ DENY x _____

The AMC proposal describes the interactive accumulation of physical recharge credits and AMC recharge credits. The City will continue to conduct physical recharge operations based on the condition and capacity of the aquifer to accept physical recharge. The proposal does not preclude addition of "source water" (whatever that is) to the Aquifer, during the time accumulation of credits is being calculated and reported, or otherwise, and also does not preclude the recovery of water, during the time accumulation of credits is being calculated and reported, or otherwise.

- 10. Admit or deny that there will not be an accounting system in place to account for or quantify the source water actually physically entering and leaving the Aquifer when an AMC is accumulated (as opposed to a Physical Recharge Credit).

Counsel objects to the Request as hopelessly compound, incomprehensible, ambiguous and irrelevant due to its use of the term "source water" and the phrases "account for or quantify," "actually physically entering and leaving" and "when an AMC is accumulated."

/s/ Brian K. McLeod
Brian K. McLeod SC # 14026

Subject to and without waiving the foregoing objection:

ADMIT _____ DENY x _____

The proposal describes the interactive accumulation of physical recharge credits and AMC recharge credits. An annual accounting report will be made and submitted for both physical and AMC recharge credits. The method of accounting for physical recharge credits will continue to quantify water that enters and water that leaves the basin storage area during the accounting period, whether or not AMCs

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were accumulated during that period, and whether or not AMCs are shown and reported at the time of the calculation as having been so accumulated.

11. Admit or deny that the accumulation of an AMC will not artificially replenish the water supply of the Aquifer (as opposed to a Physical Recharge Credit).

Counsel objects to the Request as ambiguous due to its use of the phrases "accumulation of an AMC," which describes an accounting exercise, and "the water supply of the Aquifer (as opposed to a Physical Recharge Credit)."

/s/ Brian K. McLeod

Brian K. McLeod SC # 14026

Subject to and without waiving the foregoing objection, if and solely to the extent the Request is positing that the accounting procedure by which AMCs are calculated will not, in and of itself, replenish the water supply of the Aquifer, the City admits that the accounting procedure by which AMCs are calculated will not, in and of itself, replenish the water supply of the Aquifer. If and to the extent the Request has some other intended by unascertainable meaning, the City is unable to admit or deny it due to its ambiguous and incomprehensible nature.

ADMIT

DENY

The accumulation of credits is determined by an annual accounting exercise, and it is the underlying activities giving rise to the net effects quantified and reported in that exercise that maintain or replenish the water supply of the Aquifer..

12. Admit or deny that when an AMC is accumulated the source water will be pumped directly to the City without any source water directly entering the Aquifer (as opposed to a Physical Recharge Credit).

Counsel objects to the Request as ambiguous due to its use of the term "source water" and the use of the phrases "when an AMC is accumulated," and "water directly entering the Aquifer (as opposed to a Physical Recharge Credit)." The accounting process for accumulation of credits is annual, covers conditions and activity for an entire year, and may or may not be conducted (and it is immaterial to this matter whether it is being conducted) in any year at a time when "source water" (whatever that is) is being pumped directly to the City, or is or is not directly entering the Aquifer.

/s/ Brian K. McLeod

Brian K. McLeod SC # 14026

Subject to and without waiving the foregoing objection:

ADMIT

DENY x

The AMC proposal describes the interactive accumulation of physical recharge credits and AMC recharge credits. The City will continue to conduct physical recharge operations based on the condition

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and capacity of the aquifer to accept physical recharge, and water may or may not be directly entering the Aquifer, and the City may or may not be pumping water directly to the City, at the time accumulation of credits is calculated and reported, or otherwise.

13. Admit or deny that there is no statute or regulation that specifically allows for the accumulation and later withdrawal of AMCs after an AMC is accumulated (as opposed to a Physical Recharge Credit).

Counsel objects to the Request as ambiguous due to the use of the word “specifically.”

/s/ Brian K. McLeod

Brian K. McLeod, SC # 14026

Subject to and without waiving the foregoing objection, if the Request is limited to positing that there is not a statute or regulation stating, “this statute or regulation allows for the accumulation and later withdrawal of AMCs after an AMC is accumulated (as opposed to a Physical Recharge Credit)” the City responds as follows:

ADMIT

DENY

The statutes and regulations do not “specifically” refer to AMCs as such, and the term AMC is not defined by statute or regulation. However, AMCs as proposed constitute an additional method to accumulate and account for recharge credits under the existing regulation definition of recharge credits. Recharge Credit as currently defined means the quantity of water that is stored in the basin storage area and that is available for subsequent appropriation for beneficial use by the operator of the aquifer storage and recovery system.

14. Admit or deny that no documents exist reflecting whether You conducted a thorough legal review to determine if the AMC Proposal is allowed by statute or regulation.

Counsel objects to the Request as argumentative, ambiguous and subjective (due to the use of the phrase “thorough legal review”) as well as intentionally invasive of privileged matters and protected work product, and not reasonably calculated to lead to the discovery of admissible evidence.

/s/ Brian K. McLeod

Brian K. McLeod, SC # 14026

15. Admit or deny that the City's appropriation applications requesting withdrawal of AMCs are subject to the Districts' Safe Yield Regulation K.A.R. 5-22-7 when an AMC is accumulated (as opposed to a Physical Recharge Credit).

Counsel objects to the request on the basis that it appears to speak to applications that have been withdrawn, and is therefore irrelevant and not reasonably calculated to lead to discovery of admissible evidence.

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/s/ Brian K. McLeod
Brian K. McLeod, SC # 14026

16. Admit or deny that the appropriation of groundwater as proposed by the AMC Proposal does not comply with the District's Safe Yield Regulation K.A..R. 5-22-7 when an AMC is accumulated (as opposed to a Physical Recharge Credit).

Counsel objects to the Request as compound and ambiguous, due to the use of the phrases, "appropriation of groundwater as proposed by the AMC proposal" and "when an AMC is accumulated".

/s/ Brian K. McLeod
Brian K. McLeod

Subject to and without waiving the foregoing objection:

ADMIT _____

DENY ~~_____~~

K.A.R. 5-22-7(b)(7) specifically indicates that applications for aquifer storage and recovery are not subject to the District's Safe Yield Regulation.

17. Admit or deny that when the District's Safe Yield Regulation. K.A..R. 5-22-7(b)(7) exemption criteria for an application for aquifer storage and recovery well was drafted and approved, the concept of AMCs was not in existence nor considered.

Counsel objects to the Request as asking the City to speak to matters inherently beyond its knowledge, including the existence or non-existence anywhere in the universe of an intangible concept and the mental state of others (including what they did or did not consider).

/s/ Brian K. McLeod
Brian K. McLeod, SC # 14026

18. Admit or deny that the City and the Chief Engineer have publicly stated that purpose of the ASR project has changed and the primary propose of the ASR project is for drought mitigation and that withdrawal of recharge credits are only needed during drought periods

Counsel objects to the request as overly compound, and ambiguous in the sense of whether it posits separate statements to similar or identical effect as posited, or joint public statements by the City and Chief Engineer to the effect posited. Further, the Request is subjective and unduly burdensome, as the prior public statements of the City and prior public statements of the Chief Engineer are what they are, and are as accessible to GMD2 as to the City for purposes of comparison with the characterization in the Request.

/s/ Brian K. McLeod
Brian K. McLeod, SC # 14026

Subject to and without waiving the foregoing objections:

The City admits it has made public statements to the effect that the primary mission of ASR has become to operate over the long term for provision of water during relatively rare, significant drought events, otherwise:

ADMIT _____

DENY X _____

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The City's long term planning analysis assumes the continued availability and adequacy of water from sources other than recharge credits as projected. In the event of unforeseen and unmodeled catastrophic events impairing the City's access to and use of the projected water sources, it is possible the City might need to withdraw recharge credits for reasons unrelated to significant drought events.

19. Admit or deny that a 1% drought simulation is the foundation of the City's requests to lower the minimum index levels and allow for the accumulation of AMCs as proposed in the City's ASR Permit Modification Proposal.

Counsel objects to the Request as compound and ambiguous, due to the term "foundation" and the relation of the request to both the proposed minimum index levels and accumulation of AMCs

/s/ Brian K. McLeod
Brian K. McLeod, SC # 14026

Subject to and without waiving the foregoing objections:

ADMIT _____ DENY x

The City does not know what the Request means by "foundation." The possibility of a drought equal to or greater in severity than the modeled 1% drought provides an illustration of circumstances in which the City's recharge credits could be unavailable due to the current minimum index levels. The City actually began to study the problem of drought impacts on recovery of credits because of observed water level declines caused by agricultural users during the 2012 drought. The accumulation of AMCs is not based on the threat of drought events, but a rational mechanism by which the City could achieve credits without taking interim steps to pump down the Aquifer in order to create recharge capacity.

ADMIT _____ DENY _____

20. Admit or deny that the accumulation of AMCs will result in an equal reduction of groundwater pumped by the City's existing native groundwater rights in the basin storage area.

Counsel objects to the Request as ambiguous and of uncertain meaning, in that the notion of "equal reduction" is not explained as to either quantity or time period and "existing native groundwater rights" is not defined. Accordingly the City is unable to admit or deny whatever the Request is positing.

/s/ Brian K. McLeod
Brian K. McLeod, SC # 14026

ADMIT _____ DENY _____

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Respectfully Submitted,

/s/ Brian K. McLeod

Brian K. McLeod
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455 N. Main, 13th Floor
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FAX: (316) 268-4335
bmcLeod@wichita.gov

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he served the above and foregoing responses to Requests for Admission by electronic mail on this 17th day of December, 2018, addressed to:

Thomas A. Adrian
David J. Stucky
tom@aplawpa.com
Stucky.dave@gmail.com

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