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Mike Beam, Interim Secretary

Laura Kelly, Governor

March 4, 2019

TIM BOESE
EQUUS BEDS GMD NO. 2
313 SPRUCE ST
HALSTEAD KS 67056-1925

RE: Appropriation Application Processing Suspension Area

Dear Mr. Boese:

We have reviewed your request to extend the suspension on processing new groundwater appropriation applications to allow for the completion of the study on changing the District's safe yield regulation and calculation methods in defined areas from March 1, 2019 to December 31, 2019. The enclosed order applies the suspension on processing new applications to appropriate water filed in defined sections within the boundaries of the Equus Beds Groundwater Management District No. 2. This order will be in effect until December 31, 2019.

Please feel free to contact me if you have any questions.

Sincerely,

A handwritten signature in blue ink that reads "David W. Barfield". The signature is written in a cursive style.

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

Enclosures
pc: Jeff Lanterman

THE STATE OF KANSAS



KANSAS DEPARTMENT OF AGRICULTURE
Mike Beam, Interim Secretary of Agriculture

DIVISION OF WATER RESOURCES
David W. Barfield, Chief Engineer

**FINDINGS AND ORDER
IN THE MATTER OF THE CONTINUED EXTENSION OF
THE TEMPORARY SUSPENSION OF PROCESSING NEW APPROPRIATION
APPLICATIONS
FILED IN SELECT AREAS WITHIN THE BOUNDARY OF
EQUUS BEDS GROUNDWATER MANAGEMENT DISTRICT NO. 2**

COMES NOW, the Chief Engineer, Kansas Department of Agriculture, Division of Water Resources (hereafter referred to as the “Chief Engineer”), who, after due consideration, makes the following Findings and Order:

FINDINGS OF FACT

1. That on November 10, 2015, and December 8, 2015, the Board of Directors (“Board”) of Equus Beds Groundwater Management District No. 2 (“GMD No. 2”) reviewed and ultimately approved a proposal by the Kansas Geological Survey to complete technical work to assist in determining if the safe yield calculations and recharge rates should be revised in GMD No. 2.
2. That on May 16, 2016, Tim Boese, Manager of GMD No. 2, submitted a letter to the Chief Engineer requesting that due to declining trends in groundwater levels “new applications for groundwater appropriation filed on or after May 10, 2016 within the areas defined in the following table be suspended for processing for up to 14 months to allow for further study and possible recommendations by the District, including modifications to the District’s safe yield regulation and calculations. Additionally, any new groundwater appropriation application filed on or after May 10, 2016, would be subject to any changes to the safe yield regulation and calculation.”
3. That in an order regarding the Temporary Suspension of Processing New Applications dated August 10, 2016, the Chief Engineer determined that it was in the public interest to order the suspension of processing for permits to appropriate water for beneficial use in the defined areas within the boundaries of GMD. No. 2, until October 10, 2017, subject to applicable terms and conditions, so that the Board could further consider the matter of safe yield within portions of GMD No. 2. The moratorium applied to the following areas:

Township	Range	Sections	Township	Range	Sections
18 south	4 west	20, 21, 25-29, and 32-36	21 south	1 west	7, 18, 19, 30, and 31
18 south	3 west	28-33	22 south	4 west	1-3, and 10-12
20 south	4 west	13-16, 21-28, and 33-36	22 south	3 west	1-14, 24, and 25
20 south	3 west	15-22, and 27-35	22 south	2 west	1-36
21 south	4 west	1-3, 10-15, 22-27, and 34-36	22 south	1 west	6, 7, 18, 19, 30, and 31
21 south	3 west	2-11, and 13-36	23 south	2 west	2-9
21 south	2 west	12, 13, and 17-36			

4. At the request of the Board at their August 9, 2017 meeting, Tim Boese submitted a request to Chief Engineer dated August 11, 2017, requesting an extension of the previous order until March 1, 2018, to allow time for the Board to complete the safe yield study.
5. That by order dated July 7, 2017, the Chief Engineer, following a petition from GMD No. 2 and subsequent public hearing, ordered the expansion of the boundaries of GMD No. 2 to include additional areas within Reno, McPherson, and Sedgwick counties.
6. Further, in his August 11, 2017 letter, Tim Boese requested that the areas recently added to GMD No. 2 in McPherson County also be included under the moratorium order as that area is “adjacent to the current suspension area and also needs to be studied to determine appropriate safe yield calculations and methods to be consistent with the current suspension area.” This expansion of the moratorium was requested to begin effective on application files dated on or after August 9, 2017 through March 1, 2018 and would include the additional following areas:

Township	Range	Sections
19 south	1 west	19-23, 26-30
19 south	2 west	19-36
19 south	3 west	23-26, 35, 36
20 south	2 west	1-36
20 south	3 west	1, 2, 11-14, 23-26, 36
21 south	2 west	1-11, 14-16
21 south	3 west	1, 12

7. That by order dated October 6, 2017, the Chief Engineer, following petition from Tim Boese, ordered that the processing of new groundwater appropriation applications be suspended within GMD No. 2 to allow the Board to continue studying the appropriate measure of safe yield through March 1, 2018 for the following areas:

Township	Range	Sections	Township	Range	Sections
18 south	4 west	20, 21, 25-29, and 32-36	21 south	2 west	1-36
18 south	3 west	28-33	21 south	3 west	1-36
19 south	1 west	19-23, 26-30	21 south	4 west	1-3, 10-15, 22-27, and 34-36
19 south	2 west	19-36	22 south	1 west	6, 7, 18, 19, 30, and 31
19 south	3 west	23-26, 35, 36	22 south	2 west	1-36
20 south	2 west	1-36	22 south	3 west	1-14, 24, and 25
20 south	3 west	1, 2, 11-36	22 south	4 west	1-3, and 10-12
20 south	4 west	13-16, 21-28, and 33-36	23 south	2 west	2-9
21 south	1 west	7, 18, 19, 30, and 31			

8. At request of the Board at their February 21, 2018 meeting, Tim Boese submitted a request to the Chief Engineer dated February 23, 2018, requesting an additional extension of the previous order until August 1, 2019, to allow time for the District to complete the safe yield study, to allow time for the District’s safe yield regulation to be modified and to allow any other District regulations to be amended or other management alternatives to be adopted, if deemed necessary. The Chief Engineer issued an order granting an extension until March 1, 2019.

9. At the request of the Board at their February 13, 2019 meeting, Tim Boese submitted a request to the Chief Engineer dated February 28, 2019, requesting another extension of the original order until December 31, 2019, to allow time for the District to complete the safe yield study and to allow time for the District's safe yield regulation, K.A.R. 5-22-7, to be modified, and/or any other District regulations to be amended or other management alternative adapted, if deemed necessary.

APPLICABLE LAW

10. K.S.A. 82a-706 requires the Chief Engineer to enforce and administer the laws pertaining to the beneficial use of water and [he] shall control, conserve, regulate, allot and aid in the distribution of water resources of the state for the benefits and beneficial uses of all its inhabitants in accordance with the rights of priority of appropriation.
11. K.A.R. 5-22-7 pertains to safe yield requirements in GMD No. 2 including new applications for approval and defines safe yield as the total quantity of groundwater that can be artificially withdrawn from an aquifer; and naturally discharges to a stream without exceeding the aquifer recharge value for the area of consideration and without impairing the water rights diverting from the aquifer.
12. K.S.A. 82a-708a requires that the Chief Engineer render a decision on a new application within 150 days of receipt of a complete application, except when an application cannot be processed due to the standards set forth in K.A.R. 5-3-4c.
13. K.A.R. 5-3-4c allows the Chief Engineer to hold an application for up to 365 days if their reasonable chance it may be approved in the future.
14. K.A.R. 5-3-1b states that an application is not considered complete until a final recommendation is received from the groundwater management district if necessary.

CONCLUSIONS OF LAW

15. That part of the Chief Engineer's duties includes the enforcement of rules and regulations promulgated by the Chief Engineer on behalf on a groundwater management district.
16. That the safe yield requirements enacted in GMD No. 2 further the Chief Engineers duties to control, conserve, regulate, allot and aid in the distribution of water resources.
17. That a temporary suspension of or a moratorium on processing new water right applications within the requested areas is proper because such water cannot be appropriated as required by the Kansas Water Appropriation Act, and rules and regulations adopted thereunder, without first setting accurate safe yield limits in the described areas.
18. That all pending applications shall not be considered complete until the groundwater management district is able to make a final recommendation regarding such application.

ORDER

NOW THEREFORE, the Chief Engineer hereby orders, as of the date of this Order, that the processing suspension on new groundwater appropriation applications within GMD No. 2 to allow the Board to continue studying the appropriate measure of safe yield shall be extended until December 31, 2019 and shall apply the following areas:

Township	Range	Sections	Township	Range	Sections
18 south	4 west	20, 21, 25-29, and 32-36	21 south	2 west	1-36
18 south	3 west	28-33	21 south	3 west	1-36
19 south	1 west	19-23, 26-30	21 south	4 west	1-3, 10-15, 22-27, and 34-36
19 south	2 west	19-36	22 south	1 west	6, 7, 18, 19, 30, and 31
19 south	3 west	23-26, 35, 36	22 south	2 west	1-36
20 south	2 west	1-36	22 south	3 west	1-14, 24, and 25
20 south	3 west	1, 2, 11-36	22 south	4 west	1-3, and 10-12
20 south	4 west	13-16, 21-28, and 33-36	23 south	2 west	2-9
21 south	1 west	7, 18, 19, 30, and 31			

FURTHERMORE, this Order is subject to the following five (5) terms or conditions:

1. If either K.A.R. 5-22-7 or any other District regulation is amended or another management alternative for the area is proposed by the GMD Board and adopted by the Chief Engineer, then any application to appropriate water for beneficial use which has been held pursuant to this order or the preceding two suspension orders from August 10, 2016 and October 6, 2017, shall then be processed in accordance with the provisions of the amended regulation(s) or adopted management alternative. If K.A.R. 5-22-7 or another District regulation is not amended nor any other management alternative adopted by the Chief Engineer, then any application to appropriate water for beneficial use that has been held or suspended under this order or the preceding two orders from August 10, 2016 and October 6, 2017, shall be processed in accordance with the regulations in effect at the time the application was filed.
2. Applications for the domestic use of water or for temporary permits shall not be subject to this order.
3. Applications for multi-year flex account term permits shall not be subject to this order.
4. For good cause shown, the Chief Engineer may waive this temporary suspension if it is shown to the satisfaction of the Chief Engineer that such waiver will not prejudicially and unreasonably affect the public interest or impair existing water rights.
5. This Order shall be in effect until December 31, 2019, unless extended by the Chief Engineer upon the request of the Board of Directors of GMD No. 2.

IT IS SO ORDERED, this 1st day of March 2019, in Manhattan, Riley County, Kansas.

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