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**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    )    Case No. 18 Water 14014  
In Harvey and Sedgwick Counties, Kansas.        )**

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

**MOTION TO ENSURE IMPARTIALITY OF HEARING OFFICER**

COMES NOW Equus Beds Groundwater Management District Number 2 (hereinafter "the District"), by and through counsel Thomas A. Adrian of Adrian & Pankratz, P.A., Leland Rolfs of Leland Rolfs Consulting, and David Stucky, with its Motion to Ensure Impartiality of the Hearing Officer. In support of such Motion, Movant states as follows:

1. The Chief Engineer is obviously the hearing officer in this case.
2. On March 12, 2018, the City submitted to the Chief Engineer of the Division of Water Resources a proposal titled "ASR Permit Modification Proposal Revised Minimum Index Levels & Aquifer Maintenance Credits" (hereinafter "the Proposal").
3. The City has developed a modified USGS Equus Beds Groundwater Flow Model (hereinafter "the Model").
4. The Chief Engineer has been involved in reviewing the Proposal since its inception.
5. The Chief Engineer was part of the team that concluded that the City's Model submitted with the Proposal was "reasonable."

6. The Chief Engineer has been involved in the Division of Water Resource's hearing strategy, as evidenced by the Privilege Log submitted by DWR. The Privilege Log is attached hereto as Exhibit A.
7. As shown through discovery, the Chief Engineer has communicated directly with the City about the Proposal.
8. When asked in his deposition what witnesses from DWR would be testifying at the hearing, Lane Letourneau indicated that he had not yet discussed with the Chief Engineer, and he did not know what the Chief Engineer's plan was for witnesses from DWR, which indicates that the Chief Engineer and Mr. Letourneau would confer regarding DWR's testimony and strategy prior to the hearing regarding DWR's testimony.
9. The Chief Engineer previously sent a letter to the City and the District opining that AMCs are the "functional equivalent" of recharging the Equus Beds Aquifer and physical recharge credits. This letter is attached as Exhibit B.
10. That same letter by the Chief Engineer opined that the proposed accumulation of AMCs described in the City's Proposal should serve the public interest."
11. The Chief Engineer's June 1, 2018 letter indicates that the Chief Engineer has formed opinions and made determinations about the Proposal prior to the receiving all information from the other parties to the Hearing, and prior to the actual Hearing.
12. In his deposition, Mr. Letourneau indicated that it was the Chief Engineer's official decision to adopt the "functional equivalent" concept after the KDA attorney(s) and the City attorney(s) reviewed the ASR laws and regulations.
13. The Chief Engineer has spoken in favor of the Proposal numerous times.

14. An administrative decision maker must not have an “irrevocably closed’ mind on the subject matter under investigation or adjudication.” *McPherson Landfill v. Bd. of County Comm’Rs*, 274 Kan. 303, 318, 49 P.3d 522 (2002). Otherwise, bias or partiality can be demonstrated and the administrative decision maker must be recused. *See id.*

15. Thus, given the Chief Engineer’s intimate involvement in the subject matter of this hearing and his previous ostensible prejudgment in favor of the City’s Proposal, it is fair to ensure that no bias exists.

16. This Motion goes hand-in-hand with the District’s Motion to Compel Against DWR

WHEREFORE, the District is respectfully asking the Chief Engineer to make a determination that he can be fully impartial and demonstrate no bias in reaching his conclusions in this matter and, if this determination cannot be fairly made by the Chief Engineer, that he recuse himself as hearing officer in this matter.

RESPECTFULLY SUBMITTED,



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Attorneys for Equus Beds Groundwater

Management District Number 2

## CERTIFICATE OF FILING AND SERVICE

We, Thomas A. Adrian and David J. Stucky, do hereby certify that a true and correct copy of the above was served by ( ) mail, postage prepaid and properly addressed by depositing the same in the U.S. mail; ( ) fax; (x ) email; and/or ( ) hand delivery on the 11th day of March, 2019, to:

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