

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

CITY OF WICHITA'S MOTION TO MODIFY ORDER ON PREHEARING MOTIONS

As had been noted by email of July 10, 2019, on the subject of rescheduling the status conference call originally set for July 22, the City's counsel was scheduled out of the office from July 23 through July 31, 2019. The July 24, 2019 issuance of the Order on Prehearing Motions (the "Order"), with a discovery response deadline of noon on August 2, 2019, afforded the City's counsel only a day and a half to review the lengthy Order and assist the City with its response. One particularly problematic feature of the Order was the inclusion, with respect to Item 13 of the materials sought from the City, of an instruction that the City must disclose the "materials cited by the link."

The link referenced in the email was to a temporary directory, set up to share machine-generated search results from multiple Outlook email accounts, so that the City's counsel and litigation team could review them for relevance, redundancy and privilege. The temporary directory was not preserved after the City removed duplicate and unresponsive files and separated the documents identified for production from those it believed to be privileged or protected work product. The City believes that the contents of the directory can be recreated. However, it respectfully requests reconsideration and modification of the direction to disclose all these materials, for the following reasons:

1. There is no rule of discovery law or practice that mandates disclosure of every document in a directory simply because the location of the directory is shared in an internal email.

2. If the City is required to recreate and disclose contents of the directory, it should be permitted to remove: a) items the Hearing Officer has held not subject to disclosure; b) items logged by the City as protected from disclosure and not challenged by any other party; c) items in the machine-generated results that were not relevant to this case; and, d) redundant copies of email chains with multiple recipients.

Respectfully submitted,

Office of the City Attorney
of the City of Wichita, Kansas

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

CERTIFICATE OF FILING AND SERVICE

The undersigned hereby certifies that he transmitted the above and foregoing Motion by electronic mail on this 2nd day of August 2019, for filing, to ConnieOwen@everestkc.net, Chris.Beightel@ks.gov, David.Barfield@ks.gov and Kenneth.Titus@ks.gov and served the same upon counsel for the other parties herein by electronic mail addressed to:

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