

**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.

**DWR's RESPONSE IN OPPOSITION TO GMD2's RENEWED
MOTION IN LIMINE TO EXCLUDE EXPERT TESTIMONY OF THE CITY**

DWR opposes GMD2's renewed attempt (and any Intervenor support thereof) to exclude written or oral testimony of Wichita's designated experts. Excluding such information would go against the purpose of these proceedings as well as the primary rules governing them; it would also deprive the formal parties, the public, and the Presiding Officer of the opportunity to fully consider Wichita's Proposal at issue.

1. DWR views the public, formal hearing in this matter as part of the fact-finding and fact-determining process regarding Wichita's Proposal. It is DWR's understanding that this was always the view of the Chief Engineer as well, when he decided to hold such a hearing in the first place (even though no law requires that such a hearing be held).

2. Both the Chief Engineer and the current Presiding Officer have ordered that the public, formal hearing in this matter, to the extent reasonable and at his or her discretion, "shall be conducted pursuant to K.A.R. 5-14-3a. The rules of evidence will not be strictly adhered to in the formal phase of the hearing. . . . All rules and procedures shall be applied by [the Chief Engineer/Presiding Officer] to provide all parties to this action a reasonable opportunity to be heard and present evidence." (Pre-Hearing Conference Order issued by the Chief Engineer on

July 23, 2018; Prehearing Order issued by Presiding Officer Owen on May 1, 2019.)


3. K.A.R. 5-14-3a(q)(1)–(2) provide that the presiding officer “shall not be bound by the technical rules of evidence” and “shall give the parties a reasonable opportunity to be heard and to present evidence.”

4. Based on the aforementioned background and primary rules, Wichita’s designated experts should be allowed to provide record testimony regarding the merits of Wichita’s Proposal. GMD2’s citations to and emphases on the rules of civil procedure applicable in district-court actions are misplaced. This is not a typical, adjudicative district-court matter. Instead, it is a more relaxed administrative matter designed to marshal all applicable facts for consideration—consideration which, notably, will include post-hearing written comments by the formal parties and the public and will end with the Presiding Officer’s recommendations to the Chief Engineer. If Wichita is not allowed to fully explain, advocate for, and defend its Proposal as it reasonably sees fit, then DWR’s and the public’s ultimate opinions about the Proposal, and the Presiding Officer’s ultimate recommendations about it, will not be fully informed.

5. Finally, GMD2 has known of Wichita’s designated experts and their general anticipated opinions and testimony since at least mid-February 2019—about 9 months ago. Since then, GMD2 has chosen to engage in intensive motion practice instead of deposing Wichita’s experts. GMD2 has been reasonably apprised of the anticipated opinions and testimony of Wichita’s experts and GMD2 has had a reasonable opportunity to learn more before the hearing. GMD2’s renewed Motion should be denied.

WHEREFORE, DWR requests that the Presiding Officer deny GMD2’s Renewed Motion in Limine to Exclude Expert Testimony of the City; and for such other and further relief as the Presiding Officer deems just and equitable.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I certify that on this 15th day of November, 2019, the above *DWR's Response in Opposition to GMD2's Renewed Motion in Limine to Exclude Expert Testimony of the City* was electronically filed with the Presiding Officer for this matter and that copies were sent via e-mail to the following:

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