

## Barfield, David [KDA]

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**From:** Barfield, David [KDA]  
**Sent:** Tuesday, November 19, 2019 10:46 AM  
**To:** 'Mark Rude'; 'Bret Rooney (bret.rooney@yahoo.com)'  
**Cc:** Meyer, Mike [KDA]; Lanterman, Jeff [KDA]; Letourneau, Lane [KDA]; Beightel, Chris [KDA]; Titus, Kenneth [KDA]; Mike Beam [KDA] (Mike.Beam@ks.gov); Kelsey Olson [KDA] (Kelsey.Olson@ks.gov)  
**Subject:** RE: Approval of GMD3 011619 draft management program revision  
**Attachments:** 2019-11-13\_CE\_Formal\_Response\_GMD3\_proposed\_modification\_management\_program.pdf; 2019-11-12\_addl\_handout\_to\_GMD3\_Board\_onGMDAct\_with\_power\_m.pdf; 2019-11-12\_addl\_handouts\_to\_GMD3\_Board\_on\_water\_conservation.pdf

Mark and Board,

Thanks for our significant discussion at last week's Board meeting regarding our consideration of your proposed modification to your management program. Attached is my formal response to your proposed management program modifications, which I provided at the meeting in pieces, all in one document.

Separately, I have also attached the two-page summary of the GMD Act, which I used to start the discussion. Based on our discussion, I have made one change to the document: adding item "m" from the list of enumerated powers of GMDs, namely: *to provide advice and assistance in the management of drainage problems, storage, groundwater recharge, surface water management, and all other appropriate matters of concern to the district.*"

Finally, I have also attached are the two documents I provided at the conclusion of our discussion related to use of the tools provided by recent Legislatures to facilitate groundwater conservation. I am hoping to send a separate letter on this matter in the near future.

These will be posted on the following web page: <https://www.agriculture.ks.gov/gmd3>.

Let me know if you have any questions.

David

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**From:** Mark Rude <mrude@gmd3.org>  
**Sent:** Tuesday, March 12, 2019 11:55 AM  
**To:** Barfield, David [KDA] <David.Barfield@ks.gov>  
**Cc:** Meyer, Mike [KDA] <Mike.Meyer@ks.gov>; Lanterman, Jeff [KDA] <Jeff.Lanterman@ks.gov>; Kirk Heger <kirkheger@gmail.com>; Letourneau, Lane [KDA] <Lane.Letourneau@ks.gov>; Beightel, Chris [KDA] <Chris.Beightel@ks.gov>; Titus, Kenneth [KDA] <Kenneth.Titus@ks.gov>  
**Subject:** RE: Approval of GMD3 011619 draft management program revision

David,

Thank you for the extensive work you have put to the task requested by the GMD3. I for one realize the extent of the GMD3 document review request and the work necessary to accomplish it. I also am aware of your agency struggle in context and application of rights and authorities that harmonize both the GMD Act and Water Appropriation Act for proper water rights and groundwater management actions that play prominent roles in each of the other pressing tasks you are having to address across the state.

In your work on our request, you site an interesting example of your struggle to accept a document statement whereby you are required to consider the GMD3 management program under the WAA. It should be without question that the WAA requires you to consider all matters of public interest relating to Kansas water appropriation (82a-711). The Groundwater management right and powers established in the GMD Act are either a mater of public interest or they are not. If you believe they are not, we have a significant divergence of perspective moving forward. If rights and powers of the GMD Act are maters of public interest, and they were added after the statute listing mandatory considerations under the WAA, then it seems reasonable to say as we have. Your statement of focusing on the GMD Act to be looking in the wrong place, and "inconsistent with law" to be unreasonable. Accordingly, it is not clear how your example can be interpreted as divergent from Kansas law or what mischief may be created in your mind with regard to our document connecting the dots in Kansas water law.

But, we will keep working on considering how statements can be worded to balance purpose and statutory interpretation for your review work.

Again, thank you for your communication prior to our annual meeting and your work on this matter. We look forward to your specific references and possible resolutions.

Best regards,  
Mark

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**From:** Barfield, David [KDA] <[David.Barfield@ks.gov](mailto:David.Barfield@ks.gov)>

**Sent:** Tuesday, March 12, 2019 10:47 AM

**To:** Mark Rude <[mrude@gmd3.org](mailto:mrude@gmd3.org)>

**Cc:** Meyer, Mike [KDA] <[Mike.Meyer@ks.gov](mailto:Mike.Meyer@ks.gov)>; Lanterman, Jeff [KDA] <[Jeff.Lanterman@ks.gov](mailto:Jeff.Lanterman@ks.gov)>; Kirk Heger <[kirkheger@gmail.com](mailto:kirkheger@gmail.com)>; Letourneau, Lane [KDA] <[Lane.Letourneau@ks.gov](mailto:Lane.Letourneau@ks.gov)>; Beightel, Chris [KDA] <[Chris.Beightel@ks.gov](mailto:Chris.Beightel@ks.gov)>; Titus, Kenneth [KDA] <[Kenneth.Titus@ks.gov](mailto:Kenneth.Titus@ks.gov)>

**Subject:** RE: Approval of GMD3 011619 draft management program revision

Mark and Kirk,

On January 17, you emailed to me GMD 3's latest draft its management program document along with a letter asking DWR to study, review and approve it per K.S.A. 82a-1029, or provide the specific citation and explanation of how the document's language conflicts with state law and policy.

We have received your request, but we have been unable to complete our review due to: 1) a significant number of pressing tasks beyond our normal workload (Hays/R9 change applications, Quivira impairment, Wichita ASR, legislative

matters, briefing the new administration on various matters), and 2) the scope and length of your management plan document and its review.

Notwithstanding your statement to the contrary in your transmittal letter, you should not be surprised to learn that we find a number of statements in your latest draft that appear to conflict with state law and policy. Despite almost two years of discussion, we have been unable to reconcile our fundamental disagreement in interpretation of the GMD Act and Kansa Water Appropriation Act. Here is one illustration that, which it could have more than one reading, certainly appears to me to be contrary to state law: *“Thus, the management program and recommendations of the governing body are part of the prescribed necessary considerations of water rights administration in Kansas added by the legislature in the GMD Act.”* While it is not clear what you mean by “water rights administration” here, I find no enumerated power in the GMD Act granting this authority. To the extent GMDs want its recommendations to prescribed as necessary conditions for the Chief Engineer’s consideration, GMDs have the specific power granted in the Act to recommend rules for adoption.

We understand the importance of the issue for you and will complete our review as soon as possible.

David

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**From:** Mark Rude <[mrude@gmd3.org](mailto:mrude@gmd3.org)>  
**Sent:** Thursday, January 17, 2019 4:34 PM  
**To:** Barfield, David [KDA] <[David.Barfield@ks.gov](mailto:David.Barfield@ks.gov)>  
**Cc:** Meyer, Mike [KDA] <[Mike.Meyer@ks.gov](mailto:Mike.Meyer@ks.gov)>; Lanterman, Jeff [KDA] <[Jeff.Lanterman@ks.gov](mailto:Jeff.Lanterman@ks.gov)>  
**Subject:** Approval of GMD3 011619 draft management program revision

Dear David,

Attached please find the revised 01/16/19 draft GMD3 management program adopted by the board yesterday for your approval as per the GMD Act. It is also posted on our web page. The edits and suggestions of our meetings since last June have shaped the format and have been very helpful in clarifying descriptions and policy statements. The history and plain language of the GMD3 and state statutes provide significant basis for the descriptions and opinions contained in this board document for the district. Please let me know ASAP if you encounter anything that you believe diverges significantly from statutory construction or promulgated state policy such that it may create a problem for the implementation of the GMD Act for GMD3.

Thank you for your time and attention in review prior to member hearing,

Mark

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