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September 18, 2018

Sent Via Email: David.Barfield@ks.gov

David Barfield, PE
Chief Engineer
Division of Water Resources
Kansas Department of Agriculture
1320 Research Park Drive
Manhattan, Kansas 66502-5000

Re: Hays/Russell R9 Ranch Change Applications

Dear David,

We have the August 14, 2018 letter from Orrin Feril transmitting the GMD5 Board's recommendation that you conduct a site-specific net consumptive use analysis. We appreciate the offer to give us additional time to respond but do not believe that will be necessary.

As we pointed out in our August 6, 2018 letter, K.A.R. 5-5-9(c), permits a "site-specific net consumptive use analysis" if the quantity resulting from the normal procedure "appears to be unrealistic *and* could result in impairment of other water rights." (Emphasis added.) The GMD has provided no evidence to support either requirement.

We have previously addressed the arguments raised by Keller, Balleau, and GMD5 but even if Keller's analysis was (a) in accord with the statute and regulations and (b) scientifically accurate, he merely suggests that approving the Change Applications might result in a lower water table elevation. Keller and the GMD ignore the fact that K.S.A. 82a-708b allows changes without losing priority of right. There is no evidence that the proposed changes would impair water rights that are senior to the water rights on the R9 Ranch—nor do Keller or the GMD even suggest that approving the Change Applications could potentially cause impairment. Moreover, direct impairment is very unlikely because the changes will result in fewer well locations, adequate well spacing, and reduced pumping rates.

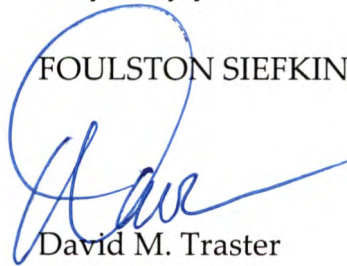
The BMcD model and the extensive analysis of the Change Applications and the DWR files has demonstrated that the changes set out in the current draft of the Master

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Order are in full compliance with the Water Appropriation Act, the Groundwater Management District Act, and DWR's rules and regulations. There is no credible evidence that the changes could result in impairment of water rights that are senior to the water rights on the R9 Ranch and no indication that the changes appear to be unrealistic.

Very truly yours,

FOULSTON SIEFKIN LLP

A handwritten signature in blue ink, appearing to read "D. Traster", is written over the text "FOULSTON SIEFKIN LLP". The signature is fluid and cursive, with a large initial "D" and a long horizontal stroke extending to the right.

David M. Traster

C: Aaron Oleen
Toby Dougherty
Jon Quinday