

DISTRICT COURT OF GOVE COUNTY, KANSAS

JON and ANN FRIESEN; FRIESEN
FARMS, LLC, et. al.,

Plaintiffs,

vs.

Case No. 2018-CV-10

DAVID BARFIELD, P.E., THE CHIEF
ENGINEER OF THE STATE OF
KANSAS, DEPARTMENT OF
AGRICULTURE, DIVISION OF
WATER RESOURCES, in his official
capacity,

Defendant.

Motion to Intervene

On the date and time above, Northwest Kansas Groundwater Management District No. 4 (GMD 4) requests the Court allow it to intervene in this matter. In support of its request, GMD 4 states:

1. K.S.A. 60-224(a) allows anyone to intervene in an action, upon timely application, when a statute confers an unconditional right to intervene, or when the applicant claims an interest relating to the transaction that is the subject of the action and is so situated that the disposition of the action may, as a practical matter, substantially impair or impede the entity's ability to protect that interest, unless the entity's interest is adequately represented by existing parties.

2. Additionally, K.S.A. 60-224(b) allows an entity to intervene, on a timely application, when a statute confers a conditional right to intervene or when an applicant's claim or defense that shares a common question of law or a fact with the main action. In exercising its discretion under K.S.A. 60-224(b), the court must consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

3. K.S.A. 77-614 states that a Petition for Judicial Review shall identify the persons or parties in any adjudicative proceedings that led to agency action.

4. Under K.S.A. 82a-1041, the Local Enhanced Management Area statute, a Groundwater Management District is the only entity that can propose a Local Enhanced Management Area; it is then up to the Chief Engineer to adopt, adopt with modifications, or reject the proposed LEMA.

5. GMD 4 proposed the Local Enhanced Management Area (LEMA) that is the subject matter of this case.

6. GMD 4 was a party to the adjudicative proceedings that led to the Chief Engineer adopting the proposed LEMA and incorporating the modified proposed LEMA within his Order of Designation.

7. GMD 4 is continually monitoring the LEMA that is the subject of this action.

8. Additionally, GMD 4 proposed and the Chief Engineer adopted a Local Enhanced Management Area for Sheridan 6 (SD-6 LEMA). As the plaintiffs argue that the LEMA statute is unconstitutional, the outcome of this case could not only affect the LEMA at hand, but also other existing or anticipated LEMA.

9. Therefore, GMD 4 has an interest relating to the transaction that is the subject of the action and GMD 4's ability to protect that interest would be substantially impaired or impeded if GMD 4 was unable to participate.

10. GMD 4 also has a claim or defense that shares with the main action common questions of law and fact—two of those, among others, being whether the LEMA statute is constitutional and whether the procedure for implementing the LEMA was followed.

11. Allowing GMD 4 to intervene will not prejudice any party. GMD 4 was part of the process throughout the creation of the LEMA and filed extensive briefs as well as presented written and oral evidence at the LEMA hearings. It would come as no surprise to any party that GMD 4 would participate in this matter.

12. Although the parties have filed procedural challenges, the Court has not heard arguments regarding the substantive nature of the matter. It is also becoming clear that the Plaintiffs will be filing some type of amended Petition. Last, the Court has yet to set a briefing schedule but GMD 4 has agreed to file briefs along the same timeline afforded the Kansas Department of Agriculture. Therefore, adding GMD 4 will not cause a delay nor prejudice any party.

Therefore, under K.S.A. 60-224(a) or (b), this court should allow GMD 4 to intervene in this matter and become a party.

RESPECTFULLY SUBMITTED BY:

/s/ Adam C. Dees
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Certificate of Service

I certify that on the date and time above, the above *Motion to Intervene* was electronically filed with the Clerk of the District Court using the Court's electronic filing system, which will send a notice of electronic filing to registered participants and was also sent via email to:

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Honorable Judge Braun
eFlex

Gove County Clerk of the District Court
eFlex

By: _____


Adam C. Dees, # 25017