

Testimony offered in opposition of the Proposed Local Enhanced Management Plan by the Northwest Kansas Groundwater Management District No. 4

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by

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I understand this is an Administrative Hearing and as such provides no opportunity for cross examination or response to any of the questions raised. Further, I understand that questions raised are not subject to further investigation. However, I have it on good legal authority that the hearing officer can if he or she chooses may seek to secure answers to questions raised in this hearing. Therefore, I have put portions of my testimony in the form of a question in hopes that as the truth seeking individual I have come to know you as, you'll seek the correct answers to these questions and incorporate them in your decision.

Physical Characteristic of GMD No. 4.

As provided in the initial formation of the District it must be formed over a comprehensive hydrologic unit, subject to common management. Further, it must be of sufficient extent to be financially viable given the funding constraints included in the GMD Act. GMD No. 4 (the District) includes those portions of Northwest Kansas from the Colorado border on the west to the 20-foot saturated thickness of the High Plains Ogallala Aquifer as the norther, southern and eastern most boundaries of the District. The District was formed to secure the benefits of the Ogallala Aquifer for the citizens of Northwest Kansas as provided in the pre-amble of the GMD Act. Given the level of knowledge and scrutiny applied to this definition, it is not surprising that little if any consideration was given to the alluvial aquifers and their connection to the Ogallala within the District.

At the time of the formation of the District in 1976 the Ogallala Formation was already being depleted in many areas of the District. This depletion was also impacting many of the senior water rights diverting water from the hydraulically connected alluvial valley above the Ogallala. Soon after the formation of the District, the Board of the District proposed an "Allowable Depletion" schedule when proposed to allow the Ogallala to be depleted over a period of years. Within that computation the District adopted a recharge rate of ½ inch per acre district wide. This element of the management plan has been in use since the earliest computations to evaluate new appropriations. This may seem a very small matter, but it will serve to illustrate one of the inequalities of this LEMA proposal.

Across the District, most of the appropriations being proposed to be regulated, had their current authorized quantity determined by this recharge of $\frac{1}{2}$ inches per acre. In 1987 the US Geological Survey (USGS) Water Resources Investigations Report 87-4230 (Hansen, 1991) published a summary of recharge rates across Kansas. These recharge rates were used to develop the Safe-Yield regulations implemented in 1992 by the Division of Water Resources. It is at this point the GMD No. 4 regulations became vastly divergent from those established by the USGS and being used by the remainder of the state. The USGS established the diversity of this fundamental element of water appropriations across the District. The western counties were only receiving approximately $\frac{1}{4}$ inch of recharge per acre, while the eastern counties were receiving 1 inch or greater recharge. These values have been constant throughout the life of the District but even upon their discovery no changes were made in the Districts calculations on new appropriations.

Questions:

1. If those water rights established under safe-yield and allowable depletion were afforded excessive recharge in the west, but deprived of the additional recharge in the east, how can the entire District have a declining water table? Either the USGS is wrong in their determinations of recharge or the District is wrong in their assessment of decline.

The distribution of water level measurements is not sufficient to determine with any uniform degree of accuracy declines in the Ogallala aquifer. While Kansas has an unparalleled level of water level data, it is not uniformly collected. Historically, the USGS assembled water level data collected by the DWR and compiled it into an annual report. In the mid-1980s the USGS attempted to collect the water level data in a more uniform hexagonal grid pattern. This was done under the auspices of developing a more uniform and therefore more accurate assessment of the data. These changes in the water level measurement network were more difficult to implement than was expected.

In the 1990s the USGS turned over the water level measurement project to the Kansas Geological Survey (KGS). The KGS began not only assembling the data being collected, but participated in the collection of water level data, and coordinating the timing of the data collection. The result of these coordinated data collection efforts was an annual water level measurement publication. However, the problem of uniformity was not solved. Further, the District did not participate in any portion of the data collection or evaluation process.

Since 1980 DWR has required every well constructed under a new appropriation of water or a change in the point of diversion to install a water level measurement tube. This tube is to be installed and maintained in or near the well for the sole purpose of measuring either the pumping water level or the static water level.

During the development of the High Plains Aquifer Atlas, a map of the basal elevation of the High Plains Aquifer was completed at the section level of accuracy. That mapping was used in development of the High Priority Areas (HPA) by GMD No. 4. Further, it was used effectively in the refinement of the SD6 area LEMA. Further, while in the development of the HPAs, individuals began offering their water level measurements to be added to the water level data base. The District adopted a policy of NOT including this data and officially limiting their database to those wells measured by KGS and DWR.

Questions:

1. What efforts have been made to compile a list of wells in the District that are required to have water level measurement tubes?
2. Has that list been used to improve the water level network?
3. Has the current water level data base been compared to the High Plains basal mapping to determine a level of accuracy for each section or even township?
4. What efforts have been made to incorporate additional wells into the water level measurement network?
5. What efforts have been made to collect or monitor water levels by the District?
6. Is the current water level data network consistent and uniform enough to make decisions regarding changes at every well in the District?

Fiscal Impacts of the proposed LEMA:

During the testimony on the proposed LEMA to date, no mention of the fiscal impact to Northwest Kanas has been raised.

Questions:

1. If land values are based according to productivity, and productivity is based in part on irrigation vs dryland. Does it not stand to reason that lower water available will result in lower land values?
2. Will lower land values result in a loss in the appraised value of the land?
3. Will lower appraised values lead to a lower tax base?
4. Will a lower tax base result in lower revenues to taxing institutions like schools, hospitals, cities, counties and eventually the State of Kansas?
5. Will those lower appraised values result in restructured operating loans to those producers being regulated?

6. How will these lower appraised values, along with lower revenue streams impact those citizens of Northwest Kansas who don't even get to vote at a District election?
7. Has the District sought input from the financial community in Northwest Kansas?

Equity

The proposed LEMA elements do not seem to address all the possible scenarios for water rights in the District. Those rights which are protected either through the Water Rights Conservation Program or under K.S.A. 82a-718(d). Those rights that have not been used during the period 2009 thru 2015 are simply not afforded an allocation. Further, while they are provided an opportunity for appeal, but must justify any allocation.

The proposed LEMA does not provide any limitations real or even suggested for other water use types. The Kansas Water Appropriation Act envisions fair and equitable treatment under the law by priority, regardless of the type of use.

Questions:

1. What consideration is afforded those who have been engaged in water conservation?
2. If K.S.A. 82a-718(d) and (e) hold that a water right is in good standing, does such a water right have all the benefits provided under 82a-708(b)?
3. The only use being regulated is irrigation. What evidence has been provided to demonstrate that such uses are so minimal as to have a negligible impact on the outcome of the LEMA program?
4. What opportunity do those who are not irrigators to speak about the impact of the proposed LEMA?

What (Whose) problem is being solved:

The proposed LEMA identifies area within the District that have a history of water level declines in varying degrees. It then proposes to limit the water use by irrigators to a specified level over the next 5 years. It does not clearly demonstrate that the reductions being made have a positive impact on those areas being regulated. These areas do not prescribe a solution to the HPAs identified earlier and they do not address any specific remedies for those HPAs.

Questions:

1. What computations have been provided illustrating that such actions will stabilize the water tables in those areas?
2. What evidence has been provided that the proposed reductions to even 14.6 inches per year in Sherman County will improve the situation for those who are experiencing declines with pumping at only 10 inches per year?
3. How will those in Sheridan and Graham Counties who have no decline in static water levels benefit from being placed under the shadow of a LEMA?
4. What specific analysis of the established HPAs illustrates that the proposed LEMA will address their problems?

In closing, I'd like to review how the Local Enhanced Management Area statutes were developed. Initially the District had embarked on the challenge set out in the Mac/Tac Reports by the Water Office to establish the High Priority Areas within the District. They accomplished this task and identified 6 areas of high decline within the District. A meeting was held in each area with proposed solutions discussed, but none of them demanded a solution at first.

After the meeting in the Sheridan 6 HPA, Mitch Baalman, the District board member from that area, demanded the District gather those area producers and seek consensus to formulate a solution. Mr. Baalman continued to press the issue through some tense and relatively hostile meetings with his neighbors. Assisted by the District staff, producers began to formulate a plan to discuss reductions in their annual quantities along with other accommodations to provide flexibility. After the group had worked diligently for months to develop a plan they could agree on, they found no legal way to put the plan in practice.

At that time the group through their GMD to proposed changes in the GMD Act and with many more months of work saw the changes in the law that allowed them to implement their consensus plan with the provisions they had proposed.

Most important to recall is that the LEMA process was designed to allow a group of courageous individuals to put in place their own limitations with the goal of saving their way of life.

Question:

1. When did that happen under the proposed LEMA?



