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To: David Barfield, Chief Engineer of the Division of Water Resources
From: Kent Askren, Kansas Farm Bureau
Date: December 11, 2018
Re: Testimony opposing City of Wichita's ASR permit conditions modification

Chief Engineer Barfield, it is with the utmost respect that I appear before you today, on behalf of Kansas Farm Bureau, to try to persuade you to not modify the Aquifer Storage and Recovery (ASR) permit conditions as proposed by the City of Wichita. KFB is the state's largest general farm organization representing more than 30,000 farm and ranch families through our 105 county Farm Bureau associations.

We understand and appreciate the dilemma the City of Wichita finds itself in. Kansas Farm Bureau stands ready to offer any support we can within the constraints of Kansas water law to help our states largest city have an adequate water supply to meet current and future needs.

Heavy investment in ASR has not resulted in helping Wichita meet their self-imposed goal of being drought tolerant during a one percent drought occurrence. But that was not the original objective of ASR nor does it justify or grant authority to create new remedies not supported by Kansas water law. We believe the City of Wichita should consider utilization of the multi-year flex account program, or acquisition of existing water rights through voluntary purchase/lease, each option is presently recognized under the Kansas Water Appropriation Act (KWAA).

It is common knowledge that the Equus Beds Aquifer is either fully or over appropriated in some areas including the Wichita wellfield. Consequently, numerous requests for new appropriation rights have been denied over the years. Under K.S.A. 82a-706 the chief engineer is assigned the duty to enforce and administer the laws pertaining to the beneficial use of water in accordance with the rights of priority of appropriation.

While water right protection in accordance with priority is fundamental to the KWAA, other abiding principles governing water appropriation found in K.S.A. 82a-707 state that such appropriation does not constitute water ownership. It goes on to state that the date of priority, not the purpose of use, dictates the right to divert when supply is insufficient. The proposed ASR amendments would result in practical ownership of groundwater by the City of Wichita, to the disadvantage of other nearby water right holders.

The granting and accumulation of Aquifer Maintenance Credits (AMC), which at several public meetings has been referred to as being a "different source", or a different "color" of water circumvents the clear intent and definitions found within the KWAA and its accompanying rules and regulations. The concept of AMC cannot be defended under current law and definitions.

By definition (KAR 5-1-1 (ii)) water below the surface of the earth is groundwater. There is no "blue or red water" in the Equus Beds, just simply groundwater and every drop near the City of Wichita well field is already fully committed to satisfying existing rights granted by the chief engineer under authority of the KWAA.

It was clearly understood when the chief engineer originally granted the ASR permits that **artificial recharge** (KAR 5-1-1 (g)) of the Equus Beds would help supplement the system, essentially topping off the aquifer so that all users benefited in improved water quantity and quality. The chief engineers August 8, 2005 Findings and Order conclusions (item #3) clearly state that passive recharge credits are not artificial recharge. We contend AMC are identical to passive recharge credits and should not be allowed.

Limitations on recharge credits were imposed that protect existing water rights. No new "conceptual" authority was given to differentiate the water below the ground as being a distinct source of supply. The proposed amendments before us today gives exclusive rights for water to Wichita, and over time allows for the accumulation of recharge credits to preclude natural recharge events from satisfying native water rights previously granted under the KWAA.

Again, by definition, artificial recharge is to "artificially **replenish** the water supply in an **aquifer**". The proposed AMC amendment would allow the creation of "virtual" recharge, where nothing is physically replenished, while Wichita directly pumps surface water to its municipal customers AND at the same time is granted recharge credits. This is a clear violation of the definition of artificial recharge and a clear representation of the "**direct diversion of surface water**" (KAR 5-1-1 (y)). Mixing and matching these definitions to meet an objective to which the statute is completely silent, jeopardizes the integrity of our water laws and creates a disturbing precedent.

With regards to the lowering of the minimum index level within the basin storage area, we must also object. When ASR permits were originally approved, with conditions, the chief engineer determined that it is in the public interest to not allow recharge credits to be withdrawn below a certain level. Without having a clearer understanding of why those limits were put in place to begin with and what they were envisioned to protect, we cannot support altering the index levels.

But one thing is for certain, there were many concerns and objections aired when this project was first considered. There was considerable public dialogue and information sharing that ultimately led to the chief engineer approving ASR permits with conditions addressing these concerns and assurances by the parties involved accepting these conditions. What has changed

since the original approval that would now allow the chief engineer to disregard those concerns and resulting safeguards/conditions?

In closing, as you are aware, no mention of ASR is found in the KWAA. The concepts of ASR are only defined in rules and regulations, under the guise of artificial recharge, one of 14 distinctly defined beneficial uses of water.

Obviously, the authority to issue ASR permits even with carefully considered and crafted permit conditions was, at the least, a stretch of legislative authority. Now, some 20 years later, the proposed amendments go far beyond anything imagined by the legislature or anyone's interpretation of existing law.

Thank you for taking our concerns under advisement as you weigh the evidence in reaching a decision and exercising the authority granted the chief engineer.