

KANSAS DEPARTMENT OF AGRICULTURE
BEFORE THE DIVISION OF WATER RESOURCES

In The Matter of the Designation of
the Groundwater Management District
No. 4 District-Wide Local Enhanced
Management Area (LEMA) in Cheyenne,
Decatur, Rawlins, Gove, Graham, Logan,
Sheridan, Sherman, Thomas and Wallace
Counties in Kansas.

PROCEEDINGS had before CONSTANCE C. OWEN,
Hearing Officer, Division of Water Resources, Kansas
Department of Agriculture, in the Cultural Arts Center
at Colby Community College, 1255 S. Range Avenue,
Colby, Kansas on the 23rd day of August, 2017 at 9:00
a.m. and reported by Marilyn F. Bailey, CSR, RMR, CRR,
Colby, Kansas.

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1 HEARING OFFICER OWEN: Good morning.
2 Thank you all for coming this morning. My name is
3 Connie Owen and I'll be serving as the Hearing
4 Officer this morning. I have a few preliminary
5 comments before we will accept information from
6 the agencies and people who are here to make
7 presentations and share their comments today.

8 For the record, this hearing is being
9 conducted for the proposal for a Local Enhanced
10 Management Area District. The title of which is
11 In the Matter of the Designation of the
12 Groundwater Management District Number 4
13 District-wide Local Enhanced Management Area in
14 Cheyenne, Decatur, Rawlins, Gove, Graham, Logan,
15 Sheridan, Sherman, Thomas and Wallace counties in
16 Kansas.

17 We are at the Frahm theatre at the Arts
18 and Cultural Center in Colby, Kansas. Today's
19 date is August 23rd, 2017. This hearing was
20 scheduled to begin at 9:00 a.m. It is now 9:08.

21 We have a court reporter present to record
22 today's proceedings. There are sign-in sheets in
23 the lobby that I think you probably all saw. If
24 you're here to attend and listen, thank you, and I
25 hope you signed in. If you would like to offer

1 public comment a little bit later in the
2 proceeding, I hope you signed in too, because I
3 need a roster of the people that want to comment.

4 If you signed in to comment, and you
5 changed your mind, that's okay too. I'll call out
6 the name later and you can certainly pass if you
7 changed your mind.

8 The sequence of events this morning is
9 first we will hear from the Groundwater Management
10 District and any witnesses or evidence they have.
11 Then we'll hear from the Division of Water
12 Resources, and any other entities that have signed
13 up to speak. And then we'll hear from members of
14 the public. And there's a microphone down here in
15 front of the stage when we get to the members of
16 the public segment of our hearing.

17 People who wish to submit written comments
18 may do so today, or they have -- you have until
19 September 13 to submit written comments. That
20 means the comments need to be received by DWR
21 before the end of the day on September 13. They
22 can be mailed, they can be e-mailed. And there
23 are representatives from DWR here today that can
24 tell you the specifics of that if you need to
25 know. They were also published in the notice of

1 hearing that was published about today's date.

2 After the close of business on September
3 13, there will be no more comments accepted for
4 the purposes of today's hearing. Should the LEMA
5 process continue, there will be opportunity for
6 public comments in the future.

7 Under the LEMA statute, K.S.A.
8 82a-1041(b), this hearing can only address three
9 specific matters of fact. This hearing does not
10 get into whether or not a LEMA should ultimately
11 be approved. This hearing does not address the
12 proposals or corrective controls. The only thing
13 this hearing can address are the three statutory
14 preliminary facts that have to be established for
15 the process to continue.

16 In brief, those three issues of fact are:

17 Whether one or more of the circumstances
18 specified in that (a) through (d) of K.S.A.
19 82a-1036 apply. Basically, is there a need?

20 The second is whether the public
21 interests, as described in K.S.A. 82a-1020,
22 requires that one or more corrective control
23 provisions be applied. In other words, is it in
24 the public interest to have any corrective
25 controls to address the need?

1 And third, whether the geographic
2 boundaries are reasonable.

3 Those are the three things that we cover
4 today, and those are the only three things we
5 cover today.

6 At the beginning of each speaker's time I
7 would like the speakers to identify themselves.
8 If they're representing an agency or an entity,
9 I'd like them to identify that. When members of
10 the public come up I'd like you to please give
11 your name and address and then we'll be happy to
12 hear your comments and your information. The
13 agencies and entities are invited to come up on
14 the stage so that it's easier for the members of
15 the public to hear what they have to say, and for
16 our court reporter to understand what they have to
17 say.

18 So we will begin with Groundwater
19 Management District, so GMD4, you're at the
20 plate.

21 RAY LUHMAN: Okay. My name is Ray Luhman.
22 I'm the manager of Groundwater Management District
23 Number 4 here in Colby. We have provided the
24 Hearing Officer and DWR with our written
25 testimony. I will go over that. I have a little

1 bit to add at the end and then I will stand for
2 questions if you have any.

3 This written testimony is from the
4 Northwest Kansas Groundwater Management District
5 Number 4. It, again, addresses the following
6 questions that you had already noted that you can
7 take into account.

8 Number one, whether one or more of the
9 circumstances specified in section (a) through (d)
10 of 82a-1036 exist. These circumstances are
11 whether the groundwater levels in the area are
12 declining or have declined excessively.

13 The rate of withdrawal of groundwater
14 within the area in question equals or exceeds the
15 rate of recharge.

16 The preventable waste of water is
17 occurring or may occur within the area.

18 And unreasonable deterioration of the
19 quality of water is occurring or may occur.

20 Groundwater levels in GMD4 are declining
21 or have declined excessively. Townships used in
22 those calculations which were based on the KGS
23 section level data have at least 15 foot of
24 saturated thickness in the GMD areas marked as
25 red, yellow or purple. And that would be in the

1 testimony that I had given which is part of the
2 actual proposal. Those are -- there's at least .5
3 percent annual decline in the aquifer over an
4 eleven year period.

5 Therefore, groundwater levels are
6 declining excessively in those areas. Townships
7 exhibiting less than .5 percent decline rate have
8 no restrictions proposed, only additional
9 monitoring criteria.

10 The rate of withdrawal of groundwater
11 within GMD4 equals or exceeds the rate of
12 recharge. Specifically Kansas Geological Survey
13 data estimates the District-wide recharge at
14 126,910 acre foot to 160,320 acre-feet.

15 And again you can see our attachment to
16 our testimony.

17 District-wide water rights have been
18 allocated at approximately 848,500 acre-feet to be
19 allowed to be pumped. District-wide yearly
20 pumpage range from 307,051 acre foot to 539,567
21 acre foot from 2009 through 2015. Therefore,
22 there was an excess of between 688 and 721,000
23 acre foot allocated and recharged. And between
24 146,000 and 412,000 acre foot of water pumped more
25 than recharged in the period 2009 through 2015.

1 The second question is whether or not the
2 public interest of K.S.A. 82a-1020 requires one or
3 more corrective control provisions.

4 The 82a-1020 is the legislative
5 declaration relative to establish the groundwater
6 management districts in Kansas. It declares that
7 in the public interest it is necessary and
8 advisable to permit establishment of GMDs which
9 allow local water users to determine their own
10 destiny with respect to the use of groundwater,
11 insofar as that destiny does not conflict with the
12 basic laws and policies of the state.

13 So long as the LEMA process comes from the
14 local board of directors and whatever corrective
15 control provisions are requested out of that
16 process are consistent with state law, we contend
17 that the public interest of K.S.A. 82a-1020 has
18 been satisfied.

19 With a little bit more detail, the
20 District-wide LEMA process was presented to the
21 public at two different public meetings, multiple
22 GMD4 meetings with many interested people
23 attending between January 15th -- or January, 2015
24 and June, 2017. This represents significant
25 public involvement in the process that resulted in

1 the locally developed and locally requested plan
2 that the chief engineer is hearing today.

3 You know as kind of a side note, this past
4 February we had our annual meeting in Goodland.
5 At that meeting we had three board of directors
6 positions up for election. One seat was
7 unchallenged. The other two seats had
8 challengers. Each seat that had a candidate that
9 supported the District-wide LEMA and one that
10 opposed the District-wide LEMA. The candidates
11 supporting the District-wide LEMA were voted into
12 office in excess of 60 percent of the votes.
13 Again, there's an attachment in the -- in the
14 testimony that we provided.

15 In any event, GMD4 has provided GMD4 water
16 users information very early in the discussion of
17 a District-wide LEMA. The evidence provided the
18 water users showed that adopting and implementing
19 corrective control provisions that would reduce
20 water use and would extend the life of the
21 regional aquifer.

22 Additionally a web page was created to
23 keep the process available to the public and was
24 updated regularly by the GMD4 staff. Beginning in
25 January of '15, the process was covered by at

1 least 28 board meetings.

2 Along that line I have some additional
3 testimony that does not at this time exist in our
4 written testimony we provided. From the
5 Groundwater Management District management plan,
6 there is a section that -- that states that the
7 public interest, or it handled -- or -- or deals
8 with public interest. The Groundwater Management
9 District Act made a state policy that the board,
10 that the local landowners and water users were to
11 determine their own destiny in regard to
12 Groundwater Management District so long as local
13 decisions are consistent with state law.

14 In this spirit the management program is
15 being written to embody the more local definition
16 of public interest which the board believes is the
17 best for the landowners and the water users of
18 this GMD, and hence, best for the state of Kansas.

19 Furthermore, in our management program,
20 one of the policies or programs we have is the
21 direction and influence of existing development.
22 This -- this particular sub problem of depletion
23 may necessitate policies encouraging and mandating
24 higher efficiencies of water use along the efforts
25 that reduce consumptive water use.

1 So we would maintain that it is also in
2 the public interests as per our management program
3 that we propose this District-wide LEMA.

4 Then the final question to be answered was
5 whether or not the geographic boundaries are
6 reasonable.

7 The proposed LEMA has very definite
8 boundaries. Those boundaries being the entire
9 area of Groundwater Management District 4.

10 We kind of go into some detail in the
11 written comments about how the District was formed
12 and that type of thing. Basically, they're not
13 germane to this particular issue. But it does
14 pertain to the entire Groundwater Management
15 District boundaries.

16 Now within these larger boundaries of the
17 District there are sub-boundaries. These
18 boundaries are each township within the District.
19 Each township was analyzed for its respective
20 annual decline rate from 2004 through 2015, using
21 KGS section level data. Based on this decline
22 rate various restrictions in pumping are proposed.

23 These restrictions are based on zone
24 values for the District. The zoned values being
25 based on the Natural Resource Conservation Service

1 Net Irrigation Requirements. And we have cites in
2 the written testimony that direct you to the
3 background information on the development of the
4 Net Irrigation Requirements.

5 The State of Kansas has used these NIR
6 amounts since at least 1994 and referenced the NIR
7 amounts in at least K.A.R. 5-5-9, K.A.R. 5-5-10,
8 K.A.R. 5-5-11 and other regulations. The GMD
9 Board, or 4 Board used the NRCS, Net Irrigation
10 Requirement, for 50 percent and 80 percent values
11 for corn by county. The 50 percent net irrigation
12 represents the net irrigation requirement for corn
13 that would be sufficient in five out of ten years,
14 which is considered to be normal, based on
15 precipitation that would be expected in that five
16 year period.

17 The 80 percent NIR represents the net
18 irrigation requirement for corn, which will be
19 sufficient in eight of ten years, considered to be
20 a dry year number, and that, again, would be based
21 on the precipitation that would be expected in
22 eight out of ten years.

23 These figures were interpolated to derive
24 a value at the western edge of each zone within
25 the District. Townships exhibiting greater than 2

1 percent annual decline rate were assigned the 50
2 percent net irrigation requirement for corn by
3 that zone. Townships exhibiting between 1 and 2
4 percent annual decline rate were assigned the 80
5 percent net irrigation requirement for that zone.
6 Townships exhibiting between .5 and 1 percent
7 annual decline rate were universally assigned an
8 18 inch allocation District-wide. Those townships
9 that are below the .5 percent decline rate will
10 not have restrictions on their diversions imposed.
11 The only provisions of this request that will
12 apply to them are the increased compliance and
13 enforcement.

14 The GMD4 Board determined the townships
15 with less than .5 percent annual decline
16 appropriate, because 75 percent of the saturated
17 thickness in those areas will remain in 50 years.
18 Given the limited five year scope of this
19 proposal, the GMD4 Board deems such decline rates
20 are acceptable for now.

21 In addition, we are currently proposing
22 that stockwater rights be restricted based on
23 their zones. Livestock and poultry use will be
24 restricted to 76 percent of the quantity of water
25 deemed to be reasonable for livestock and poultry

1 in K.A.R. 5-3-22 in townships greater than 2
2 percent average annual decline. By the way, we
3 don't have any facilities in those townships.
4 And 85 percent of that same amount would
5 be the average annual decline -- would be set for
6 the township with average annual decline between 1
7 and 2 percent.

8 And that's based right now on the -- on
9 the permit in effect December 31st, 2015.

10 I think there is a possibility that if
11 this procedure goes forward, that the District may
12 make some testimony at the second hearing
13 requesting some revision in that stockwater use.
14 But that's -- that's kind of an issue for a later
15 date.

16 In sum, we contend that the majority of
17 the invested persons were made aware of the
18 process and invited to participate. That the
19 public had ample time to discuss the issues
20 brought up. That the GMD4 staff appropriately
21 facilitated the meetings and discussion resulting
22 in a LEMA proposal that has been locally crafted
23 and adopted by the board of directors. And that
24 the public interest as envisioned in 82a-1020 will
25 be served by the adoption of these corrective

1 control provisions included in a District-wide
2 LEMA.

3 That concludes my testimony. I will stand
4 for questions.

5 HEARING OFFICER OWEN: I don't believe I
6 have any questions at this time.

7 RAY LUHMAN: Okay.

8 HEARING OFFICER OWEN: Thank you very
9 much.

10 RAY LUHMAN: Okay. If I can get back down
11 the stairs I got her made.

12 HEARING OFFICER OWEN: The next agency
13 that I'll invite to the stage will be Kansas
14 Geological Survey.

15 BROWNIE WILSON: My name is Brownie
16 Wilson. I am the Geographic Information Systems
17 and Support Services Manager for the Geohydrology
18 Section at the Kansas Geological Survey.

19 The KGS is a research and service division
20 under the University of Kansas and has been
21 directed by the Kansas Water Plan to provide
22 technical assistance to the three western
23 Groundwater Management Districts, the Kansas Water
24 Office, and the Kansas Department of Agriculture
25 Division of Water Resources, in the assessment,

1 planning and management of the groundwater
2 resources of western Kansas.

3 At the request of GMD4 in May of 2016 the
4 KGS looked at the changes in the saturated
5 thickness of the Ogallala/High Plains aquifer from
6 2004 to 2015, within the District boundaries.

7 The saturated thickness is defined as the
8 thickness of the aquifer in which the pore stages
9 are saturated with water. For the High Plains
10 aquifer this is the difference in elevation
11 between the underlying bedrock and the water table
12 for a given year.

13 In northwest Kansas the bedrock surface is
14 typically composed of shale layers underlying the
15 unconsolidated aquifer sediments. Because of its
16 impervious nature to groundwater flow, the bedrock
17 represents the bottom of the aquifer. In 2006
18 the KGS reviewed the lithologic descriptions from
19 tens of thousands of driller's logs and published
20 updated maps of the Ogallala bedrock surface
21 across western Kansas. And I have those
22 references at the back of the written testimony.
23 Each year the KGS and the Kansas
24 Department of Agriculture Division of Water
25 Resources measures the depth to water from a

1 network of approximately 1400 water wells across
2 the High Plains Aquifer as part of the state's
3 Cooperative Water Level Program.

4 Customized software developed by the KGS
5 coupled with Global Positioning Systems data is
6 used to make sure the same wells are visited each
7 year. The majority of water level measurements
8 are taken in late December and early January using
9 steel or electric tapes with precisions down to
10 the hundredths of a foot. Measurements are field
11 checked on-site at the time of the visit to ensure
12 locational accuracy and that the current
13 measurement is in --within historical trend -- the
14 historical trend of past measurements. Additional
15 statistical and GIS reviews are conducted later to
16 identify abnormal or anomalous measurements. If
17 deemed necessary well sites will be remeasured the
18 same day or within a month, depending on the
19 circumstances.

20 Collected water levels from the
21 Cooperative Water Level Program, along with
22 additional measurements from local, state and
23 federal sources are stored and served online
24 through the KGS' Water Information Storage and
25 Retrieval Database, called WIZARD. WIZARD evolved

1 from the U.S. Geological Survey's Groundwater Site
2 Inventory in the mid 1990s, and today represents
3 the largest repository of depth-to-water
4 measurements in Kansas.

5 Well site locations in the High Plains
6 Aquifer and their associated water-level
7 measurements were downloaded from WIZZARD to
8 estimate the water table elevations for the 2004,
9 2009, and 2015 calendar years. The well site
10 locations, based on their listed geographic
11 coordinates were spatially mapped into the ArcGIS
12 software platform, a GIS mapping software. Within
13 GMD4 all of the measured well locations used in
14 this project have been surveyed with hand-held GPS
15 units, which typically have horizontal accuracy
16 ranges of 12 to 40 feet.

17 The WIZARD database contains codes
18 indicating the status of the site at the time the
19 water level was measured. Most of the water level
20 measurements across GMD4 were taken in late
21 December and early January and contain blank or
22 null status codes indicating static or near static
23 water level conditions.

24 Past water level measurements that were
25 coded to be anomalous from previous statistical

1 and geostatistical reviews were not included in
2 this project along with measurements taken from
3 locations where the well was obstructed, was
4 pumping at the time of the measurement, had
5 recently been pumped, or had nearby sites that
6 were being pumping -- that were pumping at the
7 time of the measurements.

8 The water level measurements were used to
9 calculate the three year average winter depth to
10 water at each site location -- at each well site,
11 centered on the calendars years of 2004, 2009 and
12 2015.

13 For example, a well's three year average
14 winter depth of water for 2004 are based on
15 measurements taken in the months of December,
16 2002, January, 2003, February, 2003, December,
17 2003, January, 2004, February 2004, December,
18 2004, January 2005 and February of 2005.

19 Given most wells are only measured once a
20 year, most of the well sites averages are based
21 only on three measurements. One for each year in
22 a three year period. Although some could contain
23 over ten additional -- over ten individual
24 measurements depending on the frequency a well is
25 measured. The three year average water table

1 evaluations for 2004, 2009 and 2015 were then
2 computed by subtracting the average depth-to-water
3 values from the land surface elevation listed at
4 each well location.

5 Three year winter averaging of water
6 levels help smooth out single year variations in
7 the water table caused by late or early season
8 pumping, and allows for more well sites to be used
9 for temporal reviews of water levels over decadal
10 periods. For this project, only wells containing
11 a computed three year winter average water level
12 centered on the calendar years of 2004, 2009 and
13 2015 were considered. If a well site was missing
14 a three year average value for one of these target
15 years it was removed from the data set.

16 In addition, only wells in and within 20
17 miles of District boundaries were selected for
18 further analysis. Under these selection criteria,
19 328 well sites were used with 277 of them located
20 within the boundaries of GMD4.

21 To estimate the water table evaluations
22 across GMD4, the well sites and their respective
23 three year winter average values of 2004, 2009 and
24 2015 were interpolated into continuous water table
25 services using ArcGIS's "Topo to Raster"

1 interpolation routine. Topo to Raster is an
2 interpolation method specifically designed to
3 create digital elevation models. For this project
4 the interpolated surfaces were composed of uniform
5 grid cells, 250 by 250 meters in size, each
6 containing the estimates of the water table
7 evaluations for 2004, 2009, 2015.

8 Within ArcGIS a polygon layer representing
9 the Public Lands Survey Systems, PLSS sections,
10 were overlain across the interpolated water table
11 surfaces. The mean interpolated water table
12 elevation, based on the cells occurring within
13 each PLSS section was computed for 2004, 2009, and
14 2015. In a similar manner, each PLSS section had
15 the mean bedrock elevation assigned from
16 interpolated surfaces using published KGS reports
17 along with the land surface evaluations downloaded
18 from the USGS' National Elevation Dataset.

19 GMD4 was provided a Microsoft Excel
20 spreadsheet and GIS files of the PLSS sections
21 within the District, each coded with their average
22 land surface, bedrock 2004, 2009 and 2015 water
23 table elevations. Because the water table
24 elevations are based on interpolated surfaces from
25 wells measured during each time period, the change

1 in the water table between those years and the
2 saturated thickness can readily be computed at the
3 PLSS section level.

4 A review of the data was -- after a review
5 of the data, it was mutually decided by GMD4 and
6 the KGS to remove the well in Township 11 South,
7 Range 27 West, Section 13. This well showed a
8 significant water level decline from 2004 to 2015,
9 not seen in any other well in the region over that
10 same period, and was felt to be biasing the
11 overall section-based estimates in the southeast
12 portions of the District. The well was removed
13 from the dataset and the interpolation process and
14 assignment of mean values for the overlying PLSS
15 sections was repeated.

16 A second review of the data centered on
17 the possible influence of alluvial wells. The
18 Alluvial aquifer systems are associated with
19 stream deposits, are a relatively shallow, close
20 to the land surface, and have highly connected
21 ground and surface-water interactions. In past
22 High Plains Aquifer water level mapping exercises,
23 both alluvial and Ogallala wells were used to
24 estimate water levels as the two systems are in
25 hydrologic connection to each other. However, if

1 the hydrologic connection between the alluvial
2 deposits and the underlying Ogallala aquifer is
3 small or impeded by a low permeable formation
4 between the two systems, the interpolated water
5 table surfaces could be slightly elevated or there
6 could be a more dynamic temporal change in the
7 water table introduced by including shallower
8 depth-to-water measurements associated with
9 alluvial aquifers.

10 To remove this possible influence, well
11 sites coded as being screened solely in alluvial
12 deposits were deleted from the dataset. If the
13 geologic units were unknown or unlisted, wells
14 that were located spatially within the extent of
15 alluvial aquifer deposits or had drill depths less
16 than 80 feet were individually reviewed relative
17 to their surrounding neighboring wells. In these
18 cases the wells were coded as being alluvial if
19 their drill depths and past water level
20 measurements reflected alluvial-type conditions.

21 A total of 60 wells were classified as
22 alluvial with 11 being located within GMD4. All
23 of these wells were found along the northern and
24 eastern edges of the District. With these
25 alluvial wells removed from consideration, the

1 interpolation process and assignment of mean
2 values for the overlying PLSS sections was
3 repeated.

4 Figure 1, which is presented in the
5 written testimony, displays the three year average
6 saturated thickness of the aquifer by PLSS section
7 for 2004 and 2015 calendar years with the alluvial
8 wells excluded. The average saturated thickness
9 for GMD4 was 76 feet in 2004 and 70 feet in 2015.
10 The greatest areas of change in the water table
11 occurred in the southwest portions of Sherman
12 county where the average rate of decline from 2004
13 to 2015 was over 20 feet.

14 Much of Sherman county and portions of
15 Thomas and Sheridan county averaged declines of 12
16 feet. The major driver for these water declines
17 is groundwater pumping as illustrated by published
18 reports which shows statistically significant
19 correlations exists between annual water level
20 change and the annual groundwater use across GMD4.
21 Thank you for your time today and I'd be
22 glad to answer questions or provide additional
23 information.

24 HEARING OFFICER OWEN: Thank you. I don't
25 have any questions at this time.

1 BROWNIE WILSON: Okay. Thank you.

2 HEARING OFFICER OWEN: And our next agency
3 representative will represent the Kansas
4 Department of Agriculture, Division of Water
5 Resources.

6 LANE LETOURNEAU: Thank you. My name is
7 Lane Letourneau. I'm the Water Appropriation
8 Program Manager for the Kansas Department of
9 Agriculture's Division of Water Resources. I'm
10 here today to provide testimony in support of the
11 request by Northwest Kansas Groundwater Management
12 District Number 4 to initiate a full District
13 Local Enhanced Management Area.
14 As Mr. Luhman provided on the record, they
15 provided us a copy of their plan, and after our
16 review, we feel the request to initiate meets the
17 standards established in K.S.A. 82a-1041, to start
18 the hearing process.

19 We also feel the plan in its current form
20 meets the requirements of K.S.A. 82a-1041 and
21 K.S.A. 82a-744 requiring the chief engineer to
22 provide due consideration to water management or
23 conservation measures previously implemented by
24 the water-right holder.

25 Because this plan provides allocations

1 based on inches -- acre inches per acre, and
2 therefore someone who is conserving, and they're
3 already at or below the acre inches per acre, and
4 below that threshold, a pumping reduction is not
5 required. Therefore they're currently meeting the
6 goal.

7 And as the agency that administers the
8 Kansas Water Appropriation Act and other laws
9 applicable to water management, we fully support
10 the local initiative to establish water management
11 goals that conserve and extend the usable life of
12 the Ogallala aquifer. We want to continue working
13 with our stakeholders and be able to provide the
14 conservation tools necessary.

15 And then lastly I want to say that this
16 board needs to be proud of themselves for making
17 the tough decisions now that will benefit future
18 generations in northwest Kansas. Twenty years
19 from now the people out here are going to look
20 back and say, "Who did this for us?" And this
21 board did it.

22 So with that I close.

23 HEARING OFFICER OWEN: Thank you. I have
24 no questions.

25 Are there any other state or federal

1 agencies or entities that are here to speak today?
2 I don't see any on the list.

3 The next entity I see is Scott Ross with
4 the Water Rights Investigational Services.

5 Pardon me, we're adjusting the lights so
6 we can see you.

7 SCOTT ROSS: I'm not much to look at. My
8 name is Scott E. Ross. I'm a principal at Water
9 Rights Investigative Service, LLC at 209 South Ash
10 Street, Stockton, Kansas. But I'm here
11 representing family ag and business interests of
12 northwest Kansas.

13 I just want to very briefly express my
14 concern for the development of this broad-based
15 LEMA. As the name implies, LEMA is more the Local
16 Enhanced Management Area. And I believe the
17 initial development of this, I was involved in
18 from basically the early 1990s through the
19 adoption of the LEMA statutes in 2012, and I think
20 the intent was always to have a smaller, more
21 personalized local group develop processes that it
22 worked so well. As an example of Sheridan 6 where
23 a group of local users got together and formulated
24 their plan and have made a great success.
25 And I believe that example can be used in

1 the future to develop other areas as the aquifer
2 sub units that have already been developed have
3 the potential of seeing that kind of progress. I
4 think the broad-based process of a District-wide
5 LEMA is probably wasting some effort that could be
6 used in a more localized setting.

7 I presented some written testimony, I'll
8 leave that as consideration, and thank you very
9 much for your time.

10 HEARING OFFICER OWEN: Thank you. Now
11 we're ready to go to the roster, members of the
12 public who signed up to speak. Forgive me if I
13 can't read your handwriting, I will read names and
14 you're invited to come to the microphone. If
15 you've changed your mind and you'd would rather
16 pass, that's okay too.

17 Shawn Hendrich? Do I have that right,
18 sir?

19 JOHN HENDRICH: No. John Hendrich,
20 Goodland. And I do not have any testimony to
21 give, I guess I signed the wrong sheet. I might
22 make some comments during the public session but I
23 have no testimony.

24 HEARING OFFICER OWEN: That's fine. And
25 the public comments is what this is for.

1 JOHN HENDRICH: Right. And I guess I want
2 to find out what all the information is provided
3 me before I say much. Thank you.

4 HEARING OFFICER OWEN: All right. Thank
5 you.

6 So just to clarify, the presentations from
7 the governmental entities is over. So now is when
8 it's time for us to hear from members of the
9 public who wish to speak.

10 The next thing on my list is Pat Haffner.
11 Do I have that right?

12 And before you start, sir, please tell us
13 your name and address.

14 PAT HAFFNER: Pat Haffner. I'm from
15 Hoxie. I'm here to voice my concerns about
16 several things. But the main thing is the data
17 that this is being based on, and the boundaries.

18 In my research and some other
19 research, I feel it's incomplete. Not -- there's
20 just not been enough work done to get the
21 boundaries right. I -- I don't know that we meet
22 the criteria for -- for some of these statutes,
23 because of the -- there's -- there's a -- this
24 10 -- let me look at it here. 1036, "Groundwater
25 levels" -- "(a) groundwater levels in the area in

1 question are declining and have declined
2 excessively."

3 Well I don't believe that's, when
4 referring to the District unit, there are areas of
5 decline. But there are some large areas that
6 haven't.

7 HEARING OFFICER OWEN: I'm sorry, sir, I
8 couldn't quite understand what you said regarding
9 that.

10 PAT HAFFNER: Well, I'm reading 1036 --
11 82a-1036, and it's supposed to meet these criteria
12 that "groundwater levels in the area in question
13 are declining or have declined excessively."

14 I agree there are excessive decline in
15 areas, but there's a lot of areas where there
16 isn't. And we're throwing the whole District
17 into, you know, we just put the boundaries around
18 the whole thing. And I believe it needs to be
19 studied quite a lot more to find out where the
20 boundaries really need to be and then we're taking
21 townships instead of -- if we're going to do this
22 right, I think we ought to go a lot more intensive
23 measurements and things like that. I do believe
24 if you go to the eastern part of the District,
25 there's only maybe 16 wells that have ever been

1 monitored in that area. And some of there are
2 alluvial.

3 The other thing here is (b), "The rate of
4 withdrawal and groundwater within the area in
5 question exceeds the rate of recharge."

6 Well, we can go back to some of these same
7 areas, and I don't believe we can support that in
8 some areas.

9 And then we go -- but what I'm -- what I'm
10 trying to get to the point is, I believe we might
11 be pushing this a little fast. I don't believe
12 the data's there to support a lot of what's trying
13 to be pushed through here. And in my opinion we
14 ought to, if we're going to do it, we ought to
15 have it right, we ought to have the boundaries
16 right and we ought to know what we're really doing
17 here. And I don't think we're to that point yet,
18 along with a lot of questions about why and what
19 for on some of this stuff.

20 Other than that -- I'll go through my
21 notes. Well, let's just leave it at that. You
22 know, the question was whether one or more
23 circumstances exist. Well, I think in our area
24 there's not all the area --
25 (reporter asked for clarification)

1 PAT HAFFNER: I think there's areas that
2 you meet criteria in GD4, but there's a lot of
3 areas you don't meet this criteria. And to throw
4 the whole District in, I think we're way off on
5 our boundaries. And that's basically all I need
6 to say today.

7 HEARING OFFICER OWEN: Thank you very
8 much.

9 The next thing on my list is Ron Ball?

10 RON BALL: Pass.

11 HEARING OFFICER OWEN: Pass. The next
12 name is Mike McKenna. Again, please state your
13 name to make sure we have it right and where you
14 live.

15 MIKE MCKENNA: Mike McKenna, Jennings,
16 Kansas.

17 HEARING OFFICER OWEN: Thank you. Please
18 go ahead.

19 MIKE MCKENNA: I'm here representing a
20 property owner in Sheridan county. And I also
21 express concern over item 3, is whether or not the
22 geographical boundaries are reasonable.
23 I don't believe GMD4 has demonstrated the
24 need for the townships that are colored in green
25 and blue to be included in the geographical area

1 of the new proposed LEMA.

2 I believe it will establish an additional
3 level of regulation and bureaucracy that the
4 operators and property owners in that part of
5 Sheridan county will be exposed to.

6 Thank you for allowing me to address you
7 today.

8 HEARING OFFICER OWEN: Thank you very
9 much.

10 The next thing is Lori Wilson. Please
11 state your name and tell us where you live.

12 LORI WILSON: I'm Lori Wilson. And we
13 live Colby, southeast of Colby. Township is
14 actually North Randall.

15 But this isn't really -- I'm not used to
16 doing this kind of a thing, but I have a huge
17 concern, and I know that restrictions are never
18 fun for anyone, and nobody ever, I guess no one
19 desires to be put under more restrictions.
20 But where we live on the -- on the, like,
21 color-coded map that they sent out, like, we're on
22 a, umm, like, where the water has declined quite
23 considerably. And where we live, we can't go any
24 deeper. Like, our home place, we're as deep as we
25 can go for water, and we've drilled two different

1 wells on the place, and then we have access to a
2 windmill south of Colby and access to a windmill
3 that's just east of Colby. Both of them have been
4 dropped 21 feet this year to keep pumping water
5 for the cattle there. And I just think for the
6 generations to come, for the livelihood of this --
7 of this county and just the whole District, we all
8 have to do this for the best interests.

9 HEARING OFFICER OWEN: Okay.

10 LORI WILSON: Thanks.

11 HEARING OFFICER OWEN: Thank you.

12 The next name is Chastity Mader.

13 CHASTITY MADER: Hi, I'm Chastity Mader,
14 and we have ground that is north of Quinter in
15 Sheridan and Gove County, both. My main concern
16 is, I agree that we all need to do our part to
17 conserve the water, because, you know, we live in
18 a section of Kansas where the weather is not
19 reliable to back us up and we need that access to
20 the aquifer.

21 My concern though is what is being done to
22 limit the water by town too? Because maybe I
23 missed it in there, I was trying to re-read all
24 that. But is there any restrictions coming down
25 on the people who live in town too, or is this

1 strictly agricultural related?

2 And if so, you know, from what I've been
3 reading real quick, it doesn't seem like -- and
4 I'm not trying to play, you know, rural versus
5 town, I'm just trying to figure out where we're
6 all standing, because we don't pump a lot of
7 water. We have one circle that we irrigate. And
8 we do our best to rely on the weather and turn it
9 off when it needs to be turned off. We don't run
10 it during the day. We run it at night to conserve
11 evaporation.

12 We also try to -- we run a very small herd
13 of stock cattle, and we're trying to do our best.
14 I don't even water my lawn, it looks like a desert
15 in there, and if it gets too bad, like if we have
16 numerous days of hundred degree weather and we're
17 not getting a storm coming through, that I might
18 run our sprinkler system for our windbreaks, but
19 that's it.

20 So I just kind of want to -- sorry, I'm
21 kind of not used to doing this either. But I'm
22 really concerned about, you know, I see a lot of
23 things being done in certain towns and it seems
24 like we are actually pumping way more water out
25 than what we're doing.

1 And so I just want to know what's being
2 done on that end. Is it strictly rural that's,
3 you know, that you're wanting to re -- how do I
4 say that? Sorry. You know, are we just strictly
5 looking at the rural areas, or are we looking at
6 what our -- the actual town's doing, like the
7 bigger towns, like Hays or some -- I'm not trying
8 to pick on them or anything, but just as an
9 example. That's what I want to know.

10 Oh, sorry. Blind me. There was actually
11 something else.

12 Umm, on -- I don't know if you can answer
13 this or point me in the right direction, but we
14 were grandfathered in. We -- our farm had flood
15 range -- or flooding done first before they
16 switched over to a central pivot, and we were kind
17 of grandfathered in under, you know, I think they
18 had, like, 200 acres? I think we have just kind
19 of right about a little bit under that. Is that
20 going to change, like how much we're able to pump
21 for that next year?

22 HEARING OFFICER OWEN: Actually these are
23 questions I cannot answer.

24 CHASTITY MADER: Okay, well that's fine.
25 And, like, I didn't know, like, if it was in the

1 papers that we can access somewhere?

2 HEARING OFFICER OWEN: I'm sure you can
3 get answers. Check with your Groundwater
4 Management District people because they will be
5 able to answer those for you.

6 CHASTITY MADER: Okay. And you know,
7 just, I totally get the conservation part, I'm not
8 trying to start anything here.

9 Thank you very much.

10 HEARING OFFICER OWEN: Thank you.

11 The next name on the list is Harold
12 Murphy. Will you please tell us your name, sir,
13 and where you live?

14 HAROLD MURPHY: I'm Harold Murphy. I live
15 south of Selden. Of course, I'm in the LEMA.

16 I'm wanting to address a concern dealing
17 with what Ray brought up earlier about the
18 boundaries and livestock operations.

19 I'm only -- the livestock operations I'm
20 kind of lumping in as an example.

21 But Ray brought up about the boundaries
22 being by the township. Now my understanding is,
23 is that where we've already been in the LEMA,
24 that's been factored in, and we'll still have our
25 LEMA.

1 But what I want to point out is, for
2 instance, I live in what's called Parnell
3 Township. Originally that was east and west
4 Parnell. So if you went by the township, it would
5 almost extend across the county.

6 And what I'm wanting to use is this factor
7 of within a couple, two miles, you can have wells
8 pumping, say, 200, 250 gallon, and 500 gallon.

9 And one of the provisions that we've been under,
10 and I gather we'll be in the new one, is us being
11 able to lump wells together as part of management
12 in dry years, and so forth.

13 That can be -- have consequences in the
14 sense that if enough is lumped together, you're
15 literally pumping out from underneath your
16 neighbor.

17 And the reason I bring this up is,
18 something that I have never heard addressed at
19 these meetings, is that when, you know, the public
20 can state here, or holding hearings, in a sense
21 we're having a contract, whether it's oral,
22 written or not. It's implied. And the reason I
23 bring this up is, and I'm going to quit here, I
24 would urge everyone to read the front page of
25 Sunday, August 20th of the Hays paper of what can

1 happen.

2 Going back to the livestock operations.
3 This is what can happen in many instances of what
4 we're trying to deal with. Of special privileges,
5 if you want to say, or exemptions to whether it's
6 livestock, cities, so forth. And that's really
7 all I have to say. Thank you.

8 HEARING OFFICER OWEN: Thank you very
9 much.

10 And the next one is Greg Cure. I see
11 none.

12 Bert Stramel. Do I have that right?

13 BERT STRAMEL: Yep. I'm Bert Stramel. I
14 farm just south of Colby.

15 I've followed this LEMA process pretty
16 intensively for the last year or so. And it's a
17 very complicated issue, and it's very difficult
18 for somebody that hasn't followed it for this
19 period to understand what some of the restrictions
20 and some of the implications that this has.

21 That's why the informational meetings that
22 the Groundwater Management District had before
23 this were so terribly ineffective. There's so
24 many people with so many more questions that
25 nobody is totally familiar with this plan. And

1 we're talking about billions of dollars in the
2 local economy that this could affect.

3 The way the LEMA was started in the
4 beginning, it was not in the spirit of how the
5 LEMA rules were designed. I worked intensively
6 with Farm Bureau to get this LEMA process opened
7 up, and it was meant for locals to submit in a
8 smaller area to the chief engineer through the
9 GMD4, or through a GMD. And this has been more of
10 a GMD designed plan that has been forced upon the
11 irrigators -- or against the water users, I should
12 say.

13 And don't get me wrong, I wholeheartedly
14 believe we need restrictions in the entire
15 District. We've had 30 plus inches of rain this
16 year, and people are still watering. I have
17 neighbors that have never shut a pivot off
18 throughout this whole year. And so if -- if that
19 kind of rain and that kind of moisture doesn't get
20 some people to shut down, I don't know what will.

21 My problem with this is that it also
22 takes, or at least denies access to a private
23 property right. It also goes retroactively and
24 takes away some possibility of wetted acres that
25 were not established before 2015, even though

1 today that is still acceptable under the current
2 rules.

3 Throughout this whole process boundaries
4 were drawn and changed multiple times. Colors
5 were added and subtracted, and the map was moved
6 around. And in my opinion, this is just my
7 opinion, it was manipulated in order to get the
8 most amount of votes in order for passage.

9 I also heard today testimony that they
10 were trying to tie the votes of board members to a
11 support of the LEMA, and I find that highly
12 offensive. There were so many more interactions
13 or different personality issues, you're voting for
14 a Thomas County representative and Sherman county.
15 There's so many more influences that it
16 would be a terrible stretch to say that was a vote
17 in support of the LEMA.

18 Thank you.

19 HEARING OFFICER OWEN: Thank you very
20 much.

21 And the next name is Jon Friesen?

22 JON FRIESEN: Jon Friesen, Colby, Kansas.
23 J-o-n. Okay?

24 My first point is the protection of the
25 actual water right. Okay? Now I stand there even

1 though we don't have full use of our water rights
2 today, we still need to protect our water rights,
3 and any time we allow bigger government to take
4 part of that and change that. I think that's an
5 admiral goal to try to keep the protection of
6 them, okay?

7 I served 12 years on the GMD Board here.

8 I fought for those water rights all through those
9 12 years.

10 We've referenced from the GMD Board, from
11 the GMD staff here earlier that we had an annual
12 meeting. We had a contested election, first time
13 that I ever can remember in history.

14 Oddly enough, yes, it was a contested
15 election. I want to go on record that the vote
16 count was done by the board attorney and Tracy
17 Streeter at the Kansas Water Rights.

18 The reason to throw a reason of objection
19 into that is we need to go back, and I can't
20 verify the year of 2014 or '15, of handling an
21 election of the annual meeting. So there is a
22 little distrust. Our GMD Board represents us. It
23 is solely funded from us, the water users and the
24 landowners. The LEMA is a Local Enhanced
25 Management, uh --

1 HEARING OFFICER OWEN: Area.

2 JON FRIESEN: Area. Thank you. This has
3 no -- no feeling of that whatsoever. There was
4 never a show of hands in any of the meetings.
5 There was never a vote taken, whether people
6 accepted this idea or opposed this idea.
7 We as farmers, we're naturally thinking of
8 conservation. That's part -- that's part of our
9 vocabulary, that's part of our ideas. But to come
10 down from an agency that we're funding, this
11 carries so much part of a state interaction.
12 Every meeting that I have gone to that the
13 state has been involved with, the state runs it.
14 The State says how about if we write something
15 like this? When the board members or the
16 committee members can sit there and say, maybe we
17 shouldn't do anything. Maybe we don't know the
18 ramifications of what we're doing and maybe we
19 need to step back.

20 So -- so that finishes that part of it,
21 okay?

22 The other part is, is I really want to,
23 going with the Brownie Wilson in this thing. And
24 while my 12 years of service to the GMD Board, not
25 one board member, and not one person in a board

1 room ever asked to verify the data that we looked
2 at. We actually have on minutes and a motion
3 approved that said we would only accept KGS's
4 deal.

5 This is a pretty big undertaking. Brownie
6 had a pretty good speech there of -- writing there
7 that says what we were actually doing. But from
8 the standpoint of all of us producers out here,
9 we've got a pretty good idea what's going on out
10 there also. It's pretty hard to put what we know
11 down on paper. We do lack a few names, a few
12 letters at the end of our name, of Ph.Ds, and so
13 on and so forth. But as farmers we're all Ph.Ds
14 in this water District. We know what we've got.
15 We know the depth of water. We know what we're
16 declining that water table at.

17 The data that's misskewed is, I have a
18 measurement observation well that was read in
19 January. 2016 the well was read in January, and
20 it was a -- and I can't verify it exactly to the
21 inches of how much, but it was three feet higher
22 than it was in 2014 -- 2015. Did I get that?
23 '16. Okay. I probably got you confused. You got
24 a question, did you follow me through that?

25 HEARING OFFICER OWEN: I think so.

1 JON FRIESEN: Okay. We came back and read
2 that well 30 days later before the annual meeting,
3 and we wrote on that that it was the same level
4 that it was the year before. This is where I get
5 into question whether we got accurate data. We
6 can skew these data. What was that well?

7 And the point is, is how do you -- to take
8 one sole points of data to make this decision, I
9 would think that KGS would try to be verifying
10 what they're saying to us in common terms and
11 common sense, and not be burying us in this stuff
12 that we can't even understand it all.

13 And I have no further comments. Thank
14 you.

15 HEARING OFFICER OWEN: Thank you very
16 much.

17 Those are the only names that were on the
18 list sign-up to provide comments. Would anyone
19 else like to provide comments before we close
20 today? Even if you didn't sign the sheet?

21 Okay. It's kind of dark out there, but
22 I'm not seeing any hands.

23 I did also receive one written comment.
24 If there are other written comments to leave with
25 me before the end of today, please do so before

1 you leave the theatre. Any other written comments
2 can be supplied, as I said, at the beginning, no
3 later than the end of the day, September 13, and
4 those are supplied to Division of Water Resources,
5 either by mail or by e-mail. And details can be
6 provided to you before you leave today, or on
7 their website, give them a call, catch them at the
8 field office and ask how to do that.

9 On September 13th at the close of
10 business, then the hearing will officially close
11 in terms of the comments taken. Then as soon as
12 possible I will evaluate everything that's been
13 provided, and I will issue a written order that
14 determines whether or not the LEMA process moves
15 forward.

16 As I said before, it's only on the three
17 factual matters that we talked about. Is there a
18 need? And is it in the public interests that
19 there be at least one corrective control
20 provision? And are the proposed boundaries
21 reasonable?

22 So I thank you all very much for coming
23 today. I applaud you for your participation in an
24 incredibly important issue facing not just you,
25 but our state and the world.

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So for now that will close the hearing for
today. Thank you much.

* * * * *

CERTIFIED COPY

1 STATE OF KANSAS,
2 THOMAS COUNTY, SS

4 C E R T I F I C A T E

5
6 I, Marilyn F. Bailey, a Registered Merit
7 Reporter and Certified Realtime Reporter of
8 Kansas, certify that the foregoing is a full and
9 correct transcript of all the and oral
10 proceedings had in this matter at the
11 aforementioned time and place.

12 IN WITNESS WHEREOF I have hereunto
13 set my hand and official seal at Colby, Kansas
14 this 16th day of September, 2017.

15
16 *Marilyn F Bailey*

17
18 MARILYN F. BAILEY, RMR-CRR

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