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KANSAS DEPARTMENT OF AGRICULTURE  
BEFORE THE DIVISION OF WATER RESOURCES

In the Matter of the Designation of  
the Wichita County Local Enhanced  
Management Area in Wichita County,  
Kansas

PROCEEDINGS held before CHRIS BEIGHTEL,  
Hearing Officer, Division of Water Resources, Kansas  
Department of Agriculture, at the Kansas Department  
of Agriculture, 1320 Research Park Drive, Manhattan,  
Kansas, on the 14th day of August, 2020, at  
9:06 a.m. and reported by Janelle Lindeman, CSR.

**Public Hearing - August 14, 2020**

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1 HEARING OFFICER BEIGHTEL: Okay.  
2 Please come to order. We will now go on the  
3 record.

4 Good morning, everyone. I'm Chris  
5 Beightel. I'm the Acting Chief Engineer for the  
6 Kansas Department of Agriculture, Division of  
7 Water Resources, and I am serving as the  
8 presiding officer over today's hearing. I am in  
9 Manhattan, Kansas, and with me are KDHE counsel,  
10 Kenneth Titus, staff attorneys, Kelly  
11 Navinsky-Wenzl and Stephanie Murray, and our  
12 court reporter.

13 Today we are holding a public hearing  
14 on In the Matter of the Designation of the  
15 Wichita County Local Enhanced Management Area in  
16 Wichita County, Kansas, or Wichita County LEMA.  
17 That's L-E-M-A as we will refer to it. Today is  
18 Friday, August 14th, 2020. The time is 9:05 a.m.

19 We are in the midst and I hope  
20 nearing the end of a global pandemic of the  
21 COVID-19 virus. In an effort to reduce  
22 everyone's risk but continue with the important  
23 work of managing our water resources, we are  
24 conducting today's hearing partially in person  
25 but also connected with some of the hearing

1 participants via Zoom videoconferencing. For  
2 those that want to observe the hearing today and  
3 not necessarily participate by giving testimony,  
4 the hearing is being live-streamed on KDA's  
5 YouTube Channel, and the video of the hearing  
6 will be archived and available on the KDA's  
7 website for later viewing.

8 We are also connected via Zoom to  
9 St. Anthony Catholic Church Parish Hall in Leoti,  
10 Kansas where Western Kansas Groundwater  
11 Management District #1, or GMD #1, is hosting a  
12 space for the public to attend and participate in  
13 the hearing.

14 Because we want to make the hearing  
15 as clear and complete as possible, we have  
16 required that anyone who wants to give oral  
17 testimony at today's hearing from a location  
18 other than Leoti to make arrangements 24 hours  
19 ahead of time. And likewise for anyone wanting  
20 to share a visual presentation, we have required  
21 that the presentation be provided to us 24 hours  
22 ahead of time so it can be displayed during the  
23 oral testimony. If you wanted to include a  
24 visual presentation but did not provide it by the  
25 deadline, I will still accept it as written

1 testimony if you get it to me in the next two  
2 weeks. If you have not already done so, I would  
3 ask everyone present at St. Anthony Catholic  
4 Church Parish Hall in Leoti, Kansas to please  
5 sign the attendance sheet. If you plan to give  
6 testimony, please indicate that on the sign-in  
7 sheet. Additionally, a record is being kept in  
8 Manhattan of those individuals that requested to  
9 provide testimony from a location outside of  
10 Leoti.

11 This hearing is being held pursuant  
12 to K.S.A. 82a-1041(b) which governs the  
13 establishment of Local Enhanced Management Areas,  
14 or LEMAs. The LEMA process requires that two  
15 public hearings be held: An initial hearing over  
16 three questions to determine if there is a need  
17 for the LEMA, and then if the need is found, a  
18 second hearing to determine if the LEMA plan that  
19 the GMD has proposed is appropriate to address  
20 the need. And finally, if the results of both  
21 hearings are favorable, the LEMA may be  
22 established.

23 Pursuant to K.S.A. 82a-1041(b),  
24 timely notice of this public hearing was  
25 published in the Scott County Record on July 16,

1 2020 and in the Wichita County Native Sun on  
2 July 15, 2020. Additionally, each water right  
3 owner within the boundaries of the Proposed LEMA  
4 was also mailed an individual notification of the  
5 hearing.

6 Today is the initial hearing where we  
7 will cover the three topics that are prescribed  
8 by statute: (1) Whether one or more of the  
9 following circumstances exists, and I'm  
10 paraphrasing here: A. Groundwater levels are  
11 declining or have declined excessively. B. The  
12 rate of withdrawal exceeds the rate of recharge.  
13 C. Water is being wasted; or D. Water quality  
14 is being deteriorated. (2) Whether the public  
15 interest requires corrective control provisions;  
16 and (3) Whether the geographic boundaries are  
17 reasonable.

18 So those are the topics we are  
19 limited to covering today. And I want to be  
20 clear that today we are not covering the details  
21 of how the LEMA might work. If after today's  
22 hearing, the findings are favorable on all three  
23 of the points I just mentioned, then a second  
24 hearing will be held to consider the merits of  
25 the specific actions in the proposed plan.

1 I will also note that the July 9,  
2 2020 pre-hearing order included a deadline of  
3 July 31, 2020 for anyone wishing to formally  
4 intervene in this proceeding. We received no  
5 requests to intervene by the deadline. If you  
6 did not formally intervene, you may still provide  
7 oral or written testimony and I invite you to  
8 give oral testimony today whether you signed up  
9 in advance or not.

10 While you may not be a formal party  
11 here or be represented by legal counsel, know  
12 that your testimony will be carefully considered  
13 as I seek to decide this matter.

14 Today I will accept oral and written  
15 testimony regarding the Wichita County LEMA.  
16 When we have heard the last oral testimony today,  
17 I will adjourn the oral testimony portion of the  
18 hearing but will leave the record open and  
19 continue to accept written testimony until  
20 5:00 p.m. August 28th, 2020 which is two weeks  
21 from today.

22 The order of events today will be  
23 that first we will hear from GMD #1, then we will  
24 hear from KDA-DWR, and finally, we will hear from  
25 anyone else who would like to give oral

1 testimony. GMD #1 and KDA-DWR are recognized as  
2 formal parties and are each represented here by  
3 counsel. While I am not expecting formal  
4 examination of witnesses, I understand that  
5 counsel may assist representatives providing oral  
6 testimony and ask clarifying questions as  
7 necessary.

8 Oral testimony may be provided by any  
9 member of the public, including water right  
10 owners, businesses, organizations, or anyone else  
11 that wishes to place a comment on the record. I  
12 may ask clarifying questions of anyone who  
13 provides oral testimony to ensure that we have a  
14 complete record. Additionally, individuals may  
15 also ask clarifying questions, however, such  
16 questions shall not constitute a formal  
17 cross-examination or an attempt to undermine  
18 someone's testimony. If the people who are asked  
19 such questions want to answer, they are free to  
20 do so. If any person wishes to respond to a  
21 question in writing following the hearing, they  
22 will be allowed to do so.

23 You may also provide your testimony  
24 or comments in written form. They may include  
25 rebuttal testimony based on anything you hear

1 today. I will accept written testimony today, so  
2 if you are at the Leoti location, please provide  
3 it to Mike Meyer and after today's hearing you  
4 can e-mail your testimony to Ronda Hutton, and  
5 that's at Ronda.Hutton@ks.gov, or you can mail  
6 your testimony to WHC LEMA care of Ronda Hutton,  
7 1320 Research Park Drive, Manhattan, Kansas,  
8 66502. Again, the deadline for submitting that  
9 testimony is Friday, August 28th, 2020. If you  
10 are providing testimony by mail, it must be  
11 postmarked by this date.

12 Prior to today's hearing, we have  
13 received pre-filed testimony from GMD1, KDA-DWR  
14 and various persons. The testimony has been  
15 posted on KDA's website and to the extent the  
16 testimony is not presented here today, it is  
17 incorporated into the record of these  
18 proceedings. The documents have already been  
19 marked by the court reporter, and as we receive  
20 testimony, it will be posted on the KDA website.

21 This hearing is being audio recorded  
22 at the Leoti location and it is being transcribed  
23 by a court reporter, so I would ask that you  
24 speak clearly so that she can hear you. We may  
25 have to make some adjustments as you approach to

1 make your testimony. Please remember that only  
2 one person can speak at any time. When you  
3 approach to give your testimony, please state  
4 your name and your address before you begin your  
5 testimony.

6 Does anyone have any questions before  
7 we begin?

8 Okay. GMD1, if you are ready, let's  
9 begin with you.

10 MR. ADRIAN: Thank you for those  
11 remarks, Hearing Officer. I would like to just  
12 comment that I'm Tom Adrian and my associate, Joe  
13 Uhlman, are present by Zoom and we represent --  
14 we're the attorneys that represent District 1.  
15 We have assisted them in the presentation, but we  
16 will not be necessarily asking questions or  
17 participating in this proceeding, and we can  
18 provide the court reporter with more detailed  
19 address information if she feels it's necessary.  
20 So again, thank you for conducting this hearing  
21 and we will be presenting two witnesses on behalf  
22 of the District. One will be the District  
23 Manager, Kyle Spencer, and the other will be  
24 Brownie Wilson from KGS, and they will simply  
25 introduce themselves and give their testimony.

1 Thank you.

2 HEARING OFFICER BEIGHTEL: Thank you,  
3 Tom. Kyle, whenever you're ready.

4 MR. SPENCER: Good morning,  
5 everybody. My name is Kyle Spencer from Scott  
6 City, Kansas, and I'm the Manager for Groundwater  
7 Management District #1. Our office is located in  
8 Scott City. We provided the hearing officer and  
9 the Division of Water Resources with our written  
10 testimony. My oral testimony will highlight this  
11 written testimony and then I will answer any  
12 questions if you have them.

13 As the hearing officer stated, there  
14 are three questions that need to be answered in  
15 this initial hearing for the LEMA. I'm going to  
16 address each of those items.

17 First is whether one or more of the  
18 circumstances specified in Sections A through D  
19 of K.S.A. 82a-1036 exist. Second is whether it  
20 is in the public interest that the corrective  
21 controls of this LEMA be adopted. Third and  
22 finally, whether the proposed geographic  
23 boundaries of the LEMA are reasonable.

24 Our testimony and evidence will  
25 address each of these three questions. They will

1 show that the groundwater levels in Wichita  
2 County have declined and continue to decline and  
3 the rate of withdrawal of groundwater within the  
4 area in question equals or exceeds the rate of  
5 recharge. Our testimony and evidence will also  
6 show it is in the interests of Wichita County  
7 residents and the public in general that this  
8 LEMA be established. And finally, we will show  
9 that the proposed geographic boundaries are  
10 reasonable.

11 Regarding the first question, the  
12 hearing officer must determine that at least one  
13 of the factors listed in K.S.A. 82a-1036 exist.  
14 Those factors are (A) Groundwater levels in the  
15 area in question are declining or have declined  
16 excessively. (B) The rate of withdrawal of  
17 groundwater within the area in question equals or  
18 exceeds the rate of recharge. (C) A preventable  
19 waste of water is occurring or may occur within  
20 this area. Or (D) An unreasonable deterioration  
21 of water quality is occurring or may occur.

22 Today I will address Items (A) and  
23 (B). Groundwater levels in Wichita County have  
24 declined excessively and continue to decline.  
25 This is plainly shown for all sections of the

1 Proposed LEMA of Wichita County in our Exhibit 1,  
2 which contains Kansas Geological Survey maps of  
3 the change in saturated thickness for the  
4 District. Percentage reductions and saturated  
5 thickness from predevelopment to recent levels  
6 within the Proposed LEMA vary from a minimum of  
7 26 percent to a maximum of 100 percent, with  
8 values in excess of 60 percent dominating the  
9 area in question.

10 Additionally, Wichita County has  
11 averaged an annual water level decline of  
12 0.59 feet in the more recent record according to  
13 Kansas Geological Survey. The aquifer's average  
14 remaining saturated thickness across the county  
15 is at or near the minimum thickness levels  
16 required to support irrigation or other uses.  
17 Therefore, the groundwater levels are declining  
18 excessively in the area.

19 With regard to whether the rate of  
20 withdrawal of groundwater within the Proposed  
21 LEMA equals or exceeds the rate of recharge, as  
22 is noted in our testimony -- in our written  
23 testimony, on average, Wichita County averages  
24 54,600 acre-feet of pumping per year between the  
25 years of 2009 through 2015.

1 Data and analysis by KGS in  
2 developing its groundwater model for GMD1 shows  
3 that recharge from all sources to the aquifer in  
4 this Proposed LEMA currently averages less than  
5 20,000 acre-feet per year, and this will decline  
6 to 10 to 12,000 acre-feet per year in the future.  
7 Compared to the 54,600 acre-feet of pumping, a  
8 significant deficit is evidenced. This deficit  
9 will almost certainly continue without corrective  
10 controls.

11 Taking these two items together, we  
12 assert we have proven the first question. Based  
13 on the wealth of data compiled by us and other  
14 reputable sources such as KGS, the area in the  
15 Proposed LEMA is facing a critical water shortage  
16 due to declines in groundwater levels and due to  
17 the rate of withdrawal greatly exceeding the rate  
18 of recharge.

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

22 Because of the critical water  
23 shortages in addressing the first question, we  
24 assert these corrective controls are necessary  
25 and in the public interest. More than that, our

1 corrective controls are narrowly tailored to  
2 address the specific issue. Our Proposed LEMA  
3 controls for Wichita County entail generally a  
4 25 percent maximum reduction in water use for all  
5 irrigation Appropriation Water Right holders for  
6 five years. The goal is to limit irrigation  
7 withdrawals to 246,882 acre-feet over that  
8 five-year period. This would significantly aid  
9 in stabilizing the water levels in the aquifer.

10 We have applied a formula to each  
11 irrigation Appropriation Water Right to determine  
12 each allocation for this five-year period and  
13 that formula can be found in our LEMA plan and we  
14 have not required the vested right holders comply  
15 with the LEMA, but instead allow for voluntary  
16 participation by those users. The LEMA's  
17 proposed allocations only apply to irrigation  
18 appropriation rights as irrigation accounts for  
19 95 percent of the aquifer's use. While the plan  
20 does not include restrictions to other users, we  
21 recommend that municipalities, domestic users,  
22 stockwater right holders and industrial users  
23 voluntarily limit their consumption. This serves  
24 the current public interest and the future public  
25 interest of Wichita County residents. It serves

1 the current public interest by keeping the LEMA  
2 narrowly tailored to prevent undue disruption to  
3 agricultural activities, and it serves the future  
4 public interest by ensuring the long-term  
5 viability of the aquifer for years to come, which  
6 is the ultimate goal of this LEMA.

7 We've also served the public interest  
8 by providing ample notice and time to comment by  
9 all residents and water users in our Proposed  
10 LEMA. With the ongoing water level declines and  
11 reducing well yields, additional management to  
12 extend the useful life of the aquifer of Wichita  
13 County has been the subject of extensive  
14 discussion and action over the years. In 2014, a  
15 GMD1 district-wide LEMA was proposed and the  
16 stakeholders of Wichita County voted in approval  
17 of having the LEMA imposed by a vote of 51 in  
18 favor and 31 against. That LEMA did not move  
19 forward as it was not adequately supported in  
20 other areas of the District. When the option for  
21 Water Conservation Areas, or WCAs, were added to  
22 the Water Appropriation Act in 2015, local water  
23 users of Wichita County voluntarily enrolled in  
24 the Wichita County WCA. I've included some  
25 details about the Wichita County WCA as

1 Exhibit 6 in our written testimony, but from  
2 March, 2017 to December 2018, 26 users  
3 voluntarily enrolled in this program and  
4 voluntarily agreed to reduce their water use by  
5 roughly 29 percent for the first seven-year  
6 period, increasing to 50 percent in the final  
7 period of the WCA. These voluntary enrollments  
8 represented potential water savings of  
9 2,650 acre-feet per year and this will increase  
10 in subsequent periods.

11 While the accomplishments of the  
12 voluntary WCA have been significant, with  
13 80 percent of the county's actively irrigated  
14 acres not currently enrolled, the water issues  
15 have not been fully addressed. Wichita County  
16 water users and stakeholders have worked with  
17 GMD1 Board for years urging them to supplement  
18 the Wichita County water management with a LEMA.

19 As is demonstrated in Exhibit 7 of  
20 our written testimony listing the public meetings  
21 in which LEMA proposals for Wichita County have  
22 been discussed, the LEMA process and the  
23 proposals have been presented to the public at  
24 public meetings and there have been multiple GMD1  
25 meetings with many interested people attending

1       between 2015 and today.

2                       From March, 2018 to March, 2020,  
3       there have been 21 board meetings that have  
4       discussed this Proposed LEMA, six special board  
5       meetings that discussed this LEMA, two annual  
6       meetings where the proposed LEMA was the primary  
7       focus, and one specific meeting in which the  
8       Proposed LEMA was the only topic of discussion.  
9       In addition, we have a website that has a section  
10      that is dedicated specifically to this LEMA and  
11      includes all documents we've developed and we've  
12      sent newsletters that discuss this LEMA. In  
13      response to public input from these meetings and  
14      notices, the LEMA plan was modified several times  
15      incorporating changes such as adjusting the LEMA  
16      period from 15 years to five years, adjusting the  
17      allocation carryover, along with modifications to  
18      the allocation of the appeal process in order to  
19      better address voluntary -- previous voluntary  
20      conservation measures and water right ownership  
21      changes. All of these items represent  
22      significant public involvement that resulted in  
23      the locally-developed and locally-requested plan  
24      that the Chief Engineer is hearing today.

25                       So for those reasons, we would

1 maintain that the areas proposed in this LEMA are  
2 in need of corrective controls and it is in the  
3 public interest to allow for such controls. It  
4 is in the future public interest as it would  
5 preserve the aquifer for years to come and it is  
6 in the current public interest as we have  
7 narrowly tailored the restrictions to  
8 specifically address the water issue in a way we  
9 feel won't unduly disrupt irrigation water users.  
10 And it's in the public's expressed interest as  
11 they have been well informed of the LEMA plan and  
12 they have expressed their support for it.

13 Then the final question to be  
14 answered today is whether or not the geographic  
15 boundaries are reasonable.

16 The Proposed LEMA has very definite  
17 boundaries. These boundaries being the majority  
18 of Wichita County absent the southernmost  
19 townships which are not part of GMD1. As is  
20 demonstrated in the water data submitted in both  
21 our and KGS' written testimony and from what I've  
22 already stated regarding the aquifer conditions  
23 in the Proposed LEMA, the entire county within  
24 GMD1 is in need of enhanced management proposed  
25 by this LEMA.

1 All this data reflects that the  
2 townships in our proposed LEMA are under great  
3 risk of running out of pumpable water from the  
4 High Plains aquifer. GMD1 has been discussing  
5 LEMAs for the entire District, but due to the  
6 severity of water resources within Wichita County  
7 and at the urging of the county's water users,  
8 the District chose to limit the initial Proposed  
9 LEMA to the area at greatest risk, and we've used  
10 reliable data to determine specifically those  
11 at-risk areas. Because we've limited the scope  
12 to the most critical areas, our geographic  
13 boundaries are reasonable.

14 So in conclusion, we contend that  
15 we've demonstrated all three questions to be  
16 addressed in this initial hearing are satisfied.  
17 First, the area of the Proposed LEMA without  
18 question has declining water levels, clearly  
19 meeting the statutory test for LEMA  
20 consideration. Second, the proposed area would  
21 clearly benefit from the corrective controls  
22 allowed by the Proposed LEMA to protect the  
23 future use of the High Plains aquifer in this  
24 region. The majority of invested persons were  
25 made aware of the LEMA process and invited to

1 participate and kept informed of the situation.  
2 Thus, the public interest as envisioned in  
3 K.S.A. 82a-1020 will be served by the adoption of  
4 these corrective control provisions and these  
5 corrective controls will stabilize the aquifer  
6 and guarantee its use for future generations.  
7 And third, our geographic boundaries are  
8 reasonable because the entire county within GMD  
9 is in decline and in need of corrective controls.

10 This concludes my testimony and I  
11 will now stand for questions.

12 HEARING OFFICER BEIGHTEL: Thank you,  
13 Kyle. I don't have any questions at this time.  
14 Thank you.

15 MR. SPENCER: We have a question here  
16 in the room.

17 HEARING OFFICER BEIGHTEL: Kyle, I  
18 would ask if someone has a question, they're  
19 going to have to come up and stand in front of  
20 the computer and ask us the question. We need to  
21 get that.

22 MR. BJURSTROM: Good morning. I'm  
23 Wayne Bjurstrom. My question is what is -- go  
24 ahead.

25 HEARING OFFICER BEIGHTEL: Could you

1 say your name again?

2 MR. BJURSTROM: Wayne, W-a-y-n-e as  
3 in John Wayne, Bjurstrom, B-j-u-r-s-t-r-o-m, just  
4 like it sounds.

5 HEARING OFFICER BEIGHTEL: Thank you.

6 MR. BJURSTROM: My question is why --  
7 what is the reasoning based on that the recharge  
8 will be reduced by 20 percent? Are we going to  
9 get less rain or have you guys got long-range  
10 forecasts or what is the reasoning behind that  
11 assumption, which does factor in tremendous on  
12 the length of the groundwater. Thank you.

13 HEARING OFFICER BEIGHTEL: Thank you.  
14 And if anyone wants to answer that question from  
15 GMD1, feel free to. If not, you may or may not  
16 respond in writing later. We'll note the  
17 question for the record. Again, this is not the  
18 kind of hearing where we're doing that kind of  
19 examination, so I will leave it to you. If you'd  
20 like to respond, let me know. If you'd like to  
21 respond later, that would be fine, too.

22 MR. SPENCER: I guess first I would  
23 say, Wayne, probably with KGS' testimony coming  
24 up, your question may be answered. We're not  
25 saying the recharge is going to reduce by

1 20 percent. We are saying the recharge is going  
2 to continue to decline into the future. Part of  
3 that -- I mean some of the recharge -- well,  
4 actually I'll just leave it at that for right  
5 now.

6 HEARING OFFICER BEIGHTEL: Are there  
7 any other questions in the room, Kyle?

8 MR. SPENCER: I don't see anybody  
9 raising their hand at this time.

10 HEARING OFFICER BEIGHTEL: Okay.  
11 Thank you for your testimony.

12 MR. SPENCER: Okay. Thank you.

13 MR. WILSON: I guess I'm up next.

14 HEARING OFFICER BEIGHTEL: Yes,  
15 Brownie, go ahead.

16 MR. WILSON: I submitted a  
17 PowerPoint. Do you want me to show that or are  
18 you going to show that?

19 HEARING OFFICER BEIGHTEL: We will  
20 show that, and don't forget, do please introduce  
21 yourself before you get going.

22 MR. WILSON: Okay. I see it now. My  
23 name is Brownie Wilson. I am the GIS and Support  
24 Services Manager in the Geohydrology Section for  
25 the Kansas Geological Survey. Our address is

1 1930 Constant Avenue, Lawrence, Kansas, 66047.

2 Okay. In my oral comment today, I  
3 want to highlight our Annual Water Level Network  
4 and then I'm going to briefly address three items  
5 that were submitted as written testimony.

6 The KGS is a research and a service  
7 division within University of Kansas and we have  
8 been directed and funded by the state Water Plan  
9 Fund to provide technical support to the western  
10 GMDs in groundwater research.

11 Next slide, please.

12 The KGS administers the Cooperative  
13 Annual Water Level Network. Each winter, the KGS  
14 and DWR measure about 1400 water wells primarily  
15 in the winter months, typically January, and we  
16 focus that effort primarily on the High Plains  
17 aquifer in Western and Southcentral Kansas.

18 The KGS has developed customized  
19 software that's coupled with GPS that allows us  
20 to visit the same wells year after year. We  
21 measure the wells primarily using steel tapes or  
22 electric tapes with precisions down to hundredths  
23 of a foot. Data is reviewed on-site when we  
24 collect the information and also later when we  
25 come back to the office and many times some wells

1 will be revisited if deemed necessary, and all  
2 that data is served online and can be retrieved  
3 through our WIZARD database.

4 The data is used primarily by us kind  
5 of to provide estimates of aquifer storage and  
6 changes over time and this is appropriate at a  
7 regional and sub-county scale.

8 Next slide, please.

9 One of the articles of testimony that  
10 was submitted was KGS Open-File Report 2019-16.  
11 This is a collection of maps that are showing the  
12 estimated aquifer thickness in predevelopment,  
13 the average of 1997 to 1999, the average of 2017  
14 to 2019. Those are shown on the screen and  
15 what's not shown on the screen but were included  
16 in that report are the actual and percent change  
17 in the aquifer thickness from predevelopment to  
18 the average of 2017 to 2019.

19 The predevelopment is based on well  
20 records taken from geologic bulletins and they  
21 represent conditions typically in the 1940s,  
22 maybe some early 1950s, whereas data for the  
23 later time periods, those in the 1900s and 2000s,  
24 are from WIZARD. For Wichita County  
25 specifically, the average estimated aquifer

1 thickness was 73 feet in predevelopment, 32 feet  
2 in 1997-1999 and 23 feet in 2017-2019. From  
3 predevelopment to present day, the average  
4 thickness in the aquifer in Wichita County has  
5 declined an estimated 50 feet which represents  
6 68 percent of that original predevelopment  
7 thickness, and the reason for that decline is  
8 simple: More water is typically pumped from the  
9 aquifer each year than what goes into it through  
10 natural recharge.

11 Next slide, please.

12 The next article of written testimony  
13 is KGS Open-File Report 2015-33. It's kind of a  
14 lengthy but exciting read on a report that  
15 documents the creation of groundwater flow model  
16 that simulates groundwater conditions in GMD1  
17 from predevelopment to 2013. The modeling  
18 project started in January of 2013 and was funded  
19 through the state Water Plan Fund and GMD1 and  
20 was completed in July of 2015. Over that time  
21 frame, we had an advisory committee composed of  
22 members of GMD1, the Kansas Water Office,  
23 Department of Agriculture, Division of Water  
24 Resources, and other members of the public.  
25 Groundwater models, I like to describe them as

1 big water calculators. They take aquifer inflows  
2 and outflows to an aquifer system and then they  
3 simulate what the changes in groundwater and  
4 stream flow are over time. They're great tools  
5 for management and educational applications  
6 because they allow for a better understanding of  
7 the aquifer conditions and the ability to do  
8 future projections and scenarios into the future.

9 On the screen there on the left side  
10 is a figure from that read. That modeling report  
11 is Figure SA5. It shows the annual aquifer  
12 budget for Wichita County used by the model from  
13 predevelopment to 2013, and then a future  
14 simulated scenario where there are no changes in  
15 water use policy. We call this our status quo  
16 scenario. Total recharge is a positive number,  
17 it's above the 0 line. That represents all the  
18 water that's going into the aquifer as inflows.  
19 The biggest outflow of the aquifer is from wells  
20 as shown by that purple line, it's a negative  
21 number which indicates water is coming out of the  
22 aquifer, and then storage is representing the  
23 change in storage in the aquifer over time. So  
24 over the transient period of the model from  
25 predevelopment to 2013 in Wichita County, the

1 total average groundwater pumping has shown a  
2 declining trend from highs in the 1970s. The  
3 average from predevelopment to 2013 is  
4 72,356 acre-feet. This equates to about  
5 1.8 inches a year over the county area. Over  
6 that same transient period, the total annual  
7 average recharge to the models is also showing  
8 declining trends and averages from 1946 to 2013  
9 21,340 acre-feet. This equates to 0.56 inches a  
10 year, 0.15 of that is from precipitation. Now  
11 because more water is being withdrawn from the  
12 aquifer than is replaced through recharge, the  
13 water levels have been declining in the aquifer  
14 as the aquifer loses storage and that's shown by  
15 that maroon line. On the right side is  
16 Figure SA6, and this kind of goes to the question  
17 that Wayne had about recharge, and it shows --  
18 it's a little messy, but it shows the total  
19 recharge with that solid red line, but it's made  
20 up of many different things and many different  
21 components. Total recharge, that solid red line,  
22 is made up of recharge coming from precipitation,  
23 how that recharge is enhanced when it falls over  
24 irrigated fields. It also includes irrigation  
25 return flows and drainage from D-water units, and

1 all this recharge as it travels through the  
2 subsurface takes about a decade or so for it to  
3 travel to the vadose zone and then actually reach  
4 the water table. So irrigation return flows is  
5 shown by that lighter blue line with the X marks.  
6 That's showing a decline in response over time  
7 and that's in response to the reductions in  
8 pumping that are occurring, whereas the  
9 precipitation based recharge, that brown line  
10 with the brown dots, is pretty consistent into  
11 the future. So as our irrigation return flows  
12 are starting to decline, the total amount of  
13 recharge is also starting to decline, however,  
14 that's coming from precipitation is pretty  
15 consistent and from this point forward it will  
16 probably be -- it probably represents the likely  
17 source of new water coming into the system.

18 Next slide, please.

19 This is the last slide and addresses  
20 the last article of written testimony. This is a  
21 report. The KGS was requested by GMD1 to look at  
22 water levels and groundwater use in Wichita  
23 County from 2009 to 2015 and it calculates the  
24 average reduction in average annual amount of  
25 water use needed to produce on average stable

1 water levels. For this analysis, the annual  
2 groundwater use was provided by the Kansas  
3 Department of Agriculture, Division of Water  
4 Resources. DWR reviewed water use reports in  
5 relation to their annual allocations in order to  
6 determine new LEMA allocations, so over the time  
7 period between 2009 and 2015, total reported  
8 water use for all the irrigation water rights  
9 including vested water rights ranges from a low  
10 of 40,000 acre-feet in 2015 to a high of 63,000  
11 acre-feet in 2012 and the average over the 2009  
12 to 2015 time period is 54,600 acre-feet.

13 Groundwater levels are based on 33 wells that  
14 were measured each and every year every winter  
15 period from 2009 to 2016. This allows us a  
16 consistent measure of the change in the water  
17 table across the time period for Wichita County.  
18 The average water level change ranges from a  
19 slight rise in 2015 of 0.02 feet to the largest  
20 decline negative 1.3 feet in 2012 and the average  
21 over the time period is 0.59 feet. Figure 3 of  
22 that report shows the relationship then between  
23 groundwater use and water level change. This is  
24 a statistically significant relationship and our  
25 square value there is .78. This indicates that

1 78 percent of that variation that we see in the  
2 annual water level change each year can be  
3 explained statistically by the variations in the  
4 total annual water use as reported. So based on  
5 the correlation of conditions from 2009 to 2015  
6 shown by that maroon square there on the graph, a  
7 20 percent reduction in the average annual  
8 reported use would allow for stabilized water  
9 levels and that's defined as a 0 change in the  
10 water table and they're shown by that olive  
11 triangle on the graph. Now this is important.  
12 With this relationship, we need to remember that  
13 water level trends that we are monitoring for  
14 continuously recorded wells across the High  
15 Plains suggest that these type of conditions and  
16 the inputted water use reductions would probably  
17 hold true for the next decade or two. However,  
18 the analysis should be repeated over time as  
19 those components that make up the water balance,  
20 the inflows and the outflows, as those slowly  
21 adjust to the new pumping allocations determined  
22 by any proposed management plans in changing  
23 aquifer conditions change so will the inflows and  
24 we will probably need to repeat this analysis as  
25 time goes on. So with that, this ends my oral

1 testimony. I thank you for your time and I will  
2 stand for questions.

3 HEARING OFFICER BEIGHTEL: Thank you,  
4 Brownie. I don't have any questions at this  
5 time. Are there any other questions from Leoti?

6 MR. MEYER: We don't see anything,  
7 Mr. Hearing Officer.

8 HEARING OFFICER BEIGHTEL: Thank you,  
9 Mike. Is there anyone else from GMD1?

10 MR. ADRIAN: Those will be the only  
11 witnesses, our only testimony the District will  
12 present.

13 HEARING OFFICER BEIGHTEL: Okay.  
14 Thank you. Let's move on to KDA-DWR.

15 MS. MURRAY: Okay. I'm Stephanie  
16 Murray. I'm the attorney for DWR. DWR plans to  
17 offer testimony from two people, Lane Letourneau  
18 and Mike Meyer, and Mr. Letourneau will offer his  
19 testimony first.

20 MR. LETOURNEAU: Okay. Thank you,  
21 everyone. My name is Lane Letourneau and I am  
22 the Water Appropriation Program Manager for the  
23 Kansas Department of Agriculture, Division of  
24 Water Resources, and from here on, I'll refer to  
25 it as DWR.

1           As the agency that administers the  
2           Kansas Water Appropriation Act and other laws  
3           applicable to water management in Kansas, DWR  
4           wants to provide testimony in support of the  
5           request by Western Kansas GMD #1 to initiate a  
6           Local Enhanced Management Area for Wichita  
7           County.

8           After our review of the Proposed LEMA  
9           plan, we believe the plan and the conditions  
10          within the Proposed LEMA support favorable  
11          findings as to all three criteria established in  
12          K.S.A. 82a-1041(b). We believe data provided by  
13          Brownie and the Kansas Geological Survey show  
14          groundwater level declines and groundwater  
15          withdrawals exceeding aquifer recharge within the  
16          Proposed LEMA boundaries sufficient to designate  
17          the Proposed LEMA, and we believe the geographic  
18          boundaries of the Proposed LEMA are reasonable as  
19          the KGS data shows a decline in the groundwater  
20          levels throughout all of GMD1.

21          Additionally, DWR feels that the  
22          creation of this LEMA within the proposed  
23          boundaries serves the public interest of  
24          K.S.A. 82a-1020 as required. The plan was  
25          presented to the acting chief engineer with the

1 recommendation of the GMD1 Board of Directors  
2 and, broadly speaking, DWR feels the elements of  
3 the proposed plan comport with basic state law  
4 and policy. We are also aware that there's been  
5 a strong local support for this LEMA as well as  
6 ample opportunity for public involvement in the  
7 process.

8 DWR feels this plan establishes  
9 management goals that conserve water in the  
10 Ogallala aquifer and we are committed to continue  
11 working with our stakeholders to provide  
12 conservation tools that maximize both the usable  
13 life of the aquifer and the economic security for  
14 Kansas water users, and we feel the approval of  
15 this LEMA plan would represent a positive step  
16 towards achieving that goal. And that's the end  
17 of my testimony.

18 HEARING OFFICER BEIGHTEL: Thank you,  
19 Lane. I don't have any questions for you at this  
20 time, and if there's no questions in Leoti, I  
21 think we'll move on to Mr. Meyer.

22 MS. MURRAY: I just wanted to say  
23 before Mr. Meyer begins his testimony, his  
24 testimony will reference existing water  
25 conservation areas in Wichita County. I have and

1 I think that you have in front of you the  
2 findings and order designating Wichita County  
3 Water Conservation Areas and that was submitted  
4 online prior to the hearing so this is maybe a  
5 redundant request, but I do want to ask that that  
6 findings and order be admitted into the record as  
7 DWR Exhibit 1 -- or Exhibit A.

8 HEARING OFFICER BEIGHTEL: It shall  
9 be admitted. I don't know about the exhibit  
10 numbers but we'll admit it for sure. Okay.

11 MR. MEYER: Good morning.  
12 Mr. Hearing Officer, would you like to see the  
13 crowd here in Leoti? Does that matter?

14 HEARING OFFICER BEIGHTEL: I wouldn't  
15 mind if you want to swing me around. Very good.  
16 All right. Thanks. I'm a little dizzy but I  
17 appreciate you doing that.

18 MR. MEYER: Yes, my name is Mike  
19 Meyer, Kansas Department of Agriculture, Division  
20 of Water Resources. Our agency office is in  
21 Garden City, Kansas. I am the local Water  
22 Commissioner there.

23 As the agency administers the Kansas  
24 Water Appropriation Act and other laws applicable  
25 to water management in Kansas, DWR wants to

1 provide testimony in support of the request by  
2 Western Kansas Groundwater District #1 to  
3 initiate a Local Enhanced Management Area for  
4 Wichita County.

5 Either myself or my staff have  
6 attended most of GMD1's monthly board meetings  
7 over the past two to three years and have  
8 particularly been involved in the GMD1 board's  
9 discussion regarding the Proposed LEMA for  
10 Wichita County. When asked, we have assisted GMD  
11 staff with developing the Proposed LEMA plan  
12 which I believe meets the required criteria and  
13 sets desirable conservation goals that are in the  
14 public interest. My staff is equipped to  
15 continue to assist GMD1 with administration of  
16 this LEMA as needed and as ultimately designated  
17 and I believe this LEMA can successfully meet the  
18 stated goals.

19 I'm also aware that the Proposed LEMA  
20 has received strong local support from Wichita  
21 County citizens. This support has been evidenced  
22 through the success of and support for existing  
23 Water Conservation Areas in Wichita County. I've  
24 attached the findings and order designating the  
25 Wichita County Conservation Area to my written

1 testimony as I think Stephanie referred to  
2 Exhibit A. There has also been a strong public  
3 attendance at the monthly Groundwater District  
4 board meetings as well as the annual meetings  
5 where this LEMA was discussed, as well as public  
6 meetings hosted by local supporters themselves.  
7 Overall, I believe this LEMA should be approved  
8 and it advances water conservation in this area  
9 and will, therefore, serve the interests of all  
10 Wichita County public citizens. That's the end  
11 of my testimony.

12 HEARING OFFICER BEIGHTEL: Thank you,  
13 Mike. I guess I would ask one more document that  
14 it might be useful to have, I'd like to have the  
15 Wichita County WCA LEMA plan itself in addition  
16 to just the findings and orders. If someone  
17 could provide that to me in the record, that  
18 would be great, and I don't have any questions  
19 for Mike.

20 I think we are at the end of the  
21 presentations by the parties and now we'll move  
22 on to public testimony, and I've been provided a  
23 list so I'm going to go through the list and when  
24 I'm done with that, if you haven't signed up on  
25 the list but you still want to give oral

1 testimony, we will give you an opportunity to do  
2 that.

3 MR. ADRIAN: Mr. Hearing Officer,  
4 this is Tom Adrian. The plan was submitted as  
5 part of Kyle's written testimony. Do you want  
6 something more introduced than that or is that  
7 sufficient?

8 HEARING OFFICER BEIGHTEL: The  
9 Wichita County WCA plan was?

10 MR. ADRIAN: No. The LEMA plan.

11 HEARING OFFICER BEIGHTEL: The LEMA  
12 plan. Forgive me, I misspoke. I meant the WCA  
13 plan because we have the WCA findings and orders  
14 and I wanted the plan to go along with it.

15 MR. ADRIAN: All right. Thank you.

16 HEARING OFFICER BEIGHTEL: Sorry for  
17 that mistake. All right. Well, the first name  
18 that I have from the public is Titus Jaeger. Is  
19 Titus Jaeger there and would he like to give  
20 testimony today?

21 MR. MEYER: Mr. Jaeger declined at  
22 this moment.

23 HEARING OFFICER BEIGHTEL: Hey, Mike,  
24 would you mind just staying right there. Thank  
25 you. I appreciate that. Thanks. Is Mr. Farrin

1 Watt there and would he like to give testimony?

2 MR. WATT: Good morning,  
3 Mr. Chairman. My name is Farrin Watt. I'm from  
4 Leoti, Kansas. We're third generation with  
5 fourth generation on our farm here in Wichita  
6 County and I wanted to touch on three different  
7 topics today. I want to talk about the WCA, the  
8 irrigation wells here in Wichita County and then  
9 our responsibility.

10 In 2016 after months of discussion, a  
11 group of Wichita County producers and landowners  
12 entered into an agreement to voluntarily conserve  
13 one of our most valuable resources, water. This  
14 process was driven by the realization that five  
15 or six decades -- over five or six decades that  
16 this Ogallala aquifer had been overused which I  
17 think we've damaged forever. This effort was  
18 driven by a failed GMD-wide effort in 2014 to  
19 form a LEMA to help sustain the aquifer, which  
20 actually passed in Wichita County and failed in  
21 three of the five counties in the GMD. Our WCA  
22 effort encompasses nearly 13,000 acres. It's  
23 just over 21 percent of the active wells in  
24 Wichita County. In the WCA process, we agreed to  
25 reduce our water usage by 29 percent from the

1 average consumption between 2009 and 2015. I  
2 have an example of one of those WCAs. We have a  
3 farm that had an irrigation history of  
4 168 acre-feet between 2009 and 2015. The WCA  
5 allocation was 119 feet for this new agreement.  
6 Our goal was not only to reduce the usage by  
7 29 percent but also reduce and save even further.  
8 2017 we used 100.62 acre-feet. In 2018, we used  
9 80.07 acre-feet and in 2019 we used 80.02  
10 acre-feet for a three-year average use of  
11 89.57. So we not only reduced our usage by  
12 29 percent, we also banked 29.43 acre-feet on the  
13 average over those three years and banked just  
14 short of 89 acre-feet worth of usage over that  
15 three-year period. So essentially in four  
16 years -- or in three years we saved an additional  
17 year's worth of water even over and above the  
18 29 percent that we committed to. This year we  
19 will probably use our allocation because it's  
20 been a dry year and we still think we'll be able  
21 to save most, if not all, of our banked water  
22 that we saved in the last three years. So this  
23 farm over a three-year period, the corn average  
24 on it has been over 230 bushels per acre, so  
25 water saving is achievable and good yields can be

1 achieved as well.

2 Okay. As far as the wells in Wichita  
3 County, it's not uncommon to drive through the  
4 county and see wells that are no longer being  
5 used. In fact, I just noticed two wells that  
6 have been taken out of production since the first  
7 of this year and I would guess that there are  
8 others. We all can talk about how it used to be,  
9 and I remember growing up, wells were pumping 800  
10 to 1500 gallons per minute and we thought a  
11 500-gallon well was a small well. Recently I was  
12 told that we have I think 15 wells in the county  
13 that will pump over 500 gallons now and the rest  
14 of them are smaller than that. In fact, between  
15 2005 and 2013, the average gallons per minute  
16 pumped by the wells in this county were  
17 197 gallons per minute, and I would guess that  
18 number has probably declined since then. As of  
19 2019, there were 919 irrigation wells in Wichita  
20 County, 573 were active, 346 were inactive, which  
21 is about 38 percent inactive which is a  
22 staggering number.

23 And then finally, our responsibility.  
24 Our grandfathers developed irrigation in the '50s  
25 and '60s and passed it on to their children and

1 they passed it on to us. What will our children  
2 and grandchildren remember that we passed on to  
3 them. We must reduce and sustain this critical  
4 natural resource for future generations. These  
5 small communities have been blessed with large  
6 numbers of young families that are either staying  
7 on the farm or moving back to the farm. These  
8 young families are having children and making  
9 this their home. Let's take this long overdue  
10 opportunity to embrace this LEMA and do the right  
11 thing to keep our communities viable for many  
12 generations to come. That's all I have. Thank  
13 you.

14 HEARING OFFICER BEIGHTEL: Thank you  
15 for your testimony, Mr. Watt. Next I'll note  
16 that Tammy Simons has submitted written testimony  
17 but does not plan any oral testimony today.  
18 Mr. Tom Riddler (sp), did I get that right?

19 MR. MEYER: Tom is declining at this  
20 point in time.

21 HEARING OFFICER BEIGHTEL: Okay.  
22 Mr. Frank Mercurio.

23 MR. MERCURIO: Good morning. My name  
24 is Frank Mercurio. I'm from Scott City, Kansas,  
25 and I'm chairperson of the Upper Smoky Hill

1 Regional Advisory Committee and I'm here to make  
2 a statement on behalf of that group today.

3 The Upper Smoky Hill Regional  
4 Advisory Committee represents all or portions of  
5 seven counties in West Central Kansas, including  
6 Wichita County. Our mission is to represent  
7 water users in the region and address a variety  
8 of water resource issues. The focus of our  
9 efforts is to conserve and extend the life of the  
10 High Plains/Ogallala aquifer within our region.  
11 This aquifer provides the vast majority of our  
12 water supply and is the sole source of supply in  
13 most of the region.

14 The Upper Smoky Hill Regional  
15 Advisory Committee developed goals and specific  
16 actions to conserve and extend the life of our  
17 groundwater resources. Our highest priority is  
18 irrigation use since it represents 96 percent of  
19 all water use within our region. Our first  
20 action under this goal that is our highest  
21 priority is to support the implementation of the  
22 Wichita County LEMA.

23 We believe that the Wichita County  
24 LEMA is compatible with all the requirements for  
25 implementation of a LEMA. The depletion of the

1 High Plains/Ogallala aquifer within Wichita  
2 County is a matter of fact. This is clearly  
3 stated in the previously approved Wichita County  
4 Water Conservation Area Management Plan, and I  
5 quote: The Kansas Geological Survey estimates  
6 that approximately 65 percent of the original  
7 water in storage within this portion of the High  
8 Plains aquifer has been depleted, end quote. It  
9 is subsequently stated in this plan that the rate  
10 of withdrawal of groundwater within Wichita  
11 County substantially exceeds the rate of recharge  
12 within this area. There can be no doubt that  
13 this level of depletion poses a serious problem  
14 relating to a sufficient water supply within  
15 Wichita County.

16 It is certainly within the public  
17 interest to act and to take measures that would  
18 mitigate the depletion of this vital water  
19 resource. Agriculture is the economic driver of  
20 Wichita County and the region. A substantial  
21 reduction in agricultural production will  
22 diminish the economy and adversely impact the  
23 communities that depend upon agriculture.  
24 Excessive depletion threatens the ability to  
25 supply feed and water for livestock production

1 which is the largest value-added sector of the  
2 local economy. In the extreme, communities and  
3 individual users may not have sufficient quantity  
4 and quality of water to meet domestic needs.

5 The geographic area encompassed by  
6 the Wichita County LEMA is appropriate because  
7 all portions of the county have experienced  
8 substantial to extreme depletion. The entire  
9 county will benefit from the conservation that  
10 the Wichita County LEMA will likely achieve.

11 Thank you for this opportunity to present  
12 testimony on behalf of the Upper Smoky Hill  
13 Regional Advisory Committee. That concludes my  
14 testimony.

15 HEARING OFFICER BEIGHTEL: Thank you  
16 for your testimony. I thanked Mr. Mercurio for  
17 his testimony. I was on mute so he didn't get to  
18 hear it, so there it is. Thank you,  
19 Mr. Mercurio, for your testimony.

20 That's the last person that I've got  
21 on my list of the public who might want to give  
22 testimony today. Is there anyone else, Mike,  
23 that is there that would like to give testimony?

24 MR. MEYER: No.

25 HEARING OFFICER BEIGHTEL: Thank you.

1 Before we move on, we received a question over  
2 our YouTube live-stream which indicates two  
3 things, the live-stream's working and somebody's  
4 able to ask a question, so I'm going to read the  
5 question.

6 The question is from Mr. Dale Bollin  
7 (sp). It asks: For water right holders who  
8 enrolled in the voluntary Water Conservation  
9 Area, how would contemplated LEMA restrictions  
10 affect these rights holders. Again, if anyone  
11 wants to take that question on, I invite you to  
12 do so. If you would rather respond to that  
13 later, you may do that as well. Would anybody  
14 like to respond to that question probably from  
15 the GMD.

16 Okay. So if we're declining to  
17 respond to that, I guess we'll just note that  
18 question for the record and we'll go from there.

19 Well, at this time, I guess, I will  
20 adjourn the oral testimony portion of the hearing  
21 unless there's anything else for anybody. Okay.  
22 I'm adjourning the oral testimony portion of the  
23 hearing. I will leave the record open and will  
24 accept written testimony until 5 p.m.

25 August 28th, 2020, which again is two weeks from

**Public Hearing - August 14, 2020**

1           today and we are adjourned everyone. Thank you.

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	23:4;29:3;39:20	46:10,25	9:25;10:3	5:5;37:3
#	<b>added (1)</b> 16:21	<b>against (1)</b> 16:18	<b>appropriate (3)</b> 5:19;25:6;45:6	<b>attended (1)</b> 36:6
#1 (7) 4:11,11;7:23;8:1; 11:7;33:5;36:2	<b>addition (2)</b> 18:9;37:15 <b>additional (2)</b> 16:11;40:16	<b>agency (3)</b> 33:1;35:20,23 <b>agreed (2)</b> 17:4;39:24	<b>Appropriation (7)</b> 15:5,11,18;16:22; 32:22;33:2;35:24 <b>approval (2)</b> 16:16;34:14	<b>attending (1)</b> 17:25 <b>attorney (1)</b> 32:16
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