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CASE NUMBER: 2019-CV-000005

**THE STATE OF KANSAS
TWENTY-FOURTH JUDICIAL DISTRICT
SERVING
EDWARDS, HODGEMAN, LANE, NESS, PAWNEE, AND RUSH COUNTIES**

**IN THE
DISTRICT COURT OF EDWARDS COUNTY, KANSAS**

WATER PROTECTION ASSOCIATION
OF CENTRAL KANSAS

Plaintiff,

V.

DAVID BARFIELD, P.E., IN HIS
OFFICIAL CAPACITY AS CHIEF
ENGINEER, DIVISION OF WATER
RESOURCES, KANSAS DEPARTMENT
OF AGRICULTURE

Defendant,

V.

THE CITY OF HAYS, KANSAS AND
THE CITY OF RUSSELL, KANSAS

Intervenors

CASE NO. 2019-CV-000005

MOTION TO CORRECT AND SUPPLEMENT THE ADMINISTRATIVE RECORD

Omissions of materials from the administrative record will impede the Court's consideration of the Plaintiff's claims in the above-captioned matter, as well as the involvement of the Intervenors (the "Cities") in helping the Defendant (the "Agency") to craft the Master Order Contingently Approving Change Applications Regarding R9 Water Rights (the "Master Order").

The Plaintiff (“Water PACK”) therefore moves the Court to compel the Agency to correct and supplement the administrative record with the following materials relied upon by the Agency:

1. “Deposition Exhibits”, meaning Exhibits 1, 11, and 13 from the Chief Engineer’s January 2020 deposition (the “Deposition”) attached hereto as Exhibit A.
2. “Consumptive Use Analyses”, meaning the consumptive use analysis prepared by the Cities and the assessment thereof prepared by Agency staff [*See* A.R. 671].
3. “Pre-Greensburg Model Input Files”, meaning the input package to the three-dimensional groundwater flow model (the “GMD5 Model”) for Big Bend Groundwater Management District No. 5 (“GMD5”) provided to Water PACK and to GMD5 by the Agency on or about March 9, 2018 [*See* Deposition Ex. 12, 13, attached to Exhibit A].
4. “Post-Greensburg Model Input Files”, meaning the input package to the GMD5 Model provided to the Agency by Burns McDonnell (“BMcD”), the Cities’ consultant, in connection with their revised modeling report dated September 24, 2018 [*See* A.R. 345].
5. “Final Model Input Files”, meaning the input package to the GMD5 Model used by the Agency in its review dated Mar. 26, 2019 [*See* A.R. 306].
6. “Order Drafts”, meaning drafts of the Master Order prepared by or exchanged with the Cities prior to issuance of the Master Order [A.R. 58-304] or the draft proposed Master Order [A.R. 396-632], together with related correspondence.
7. “Transfer Application”, meaning the Cities’ application to transfer water from the R9 Ranch originally filed on January 6, 2016, as amended, to the extent omitted from the administrative record submitted to date. [*See* A.R. 63; *see also* A.R. 392 and Exhibit B].

Water PACK v. Barfield

Case No. 19-CV-05

Motion to Correct and Supplement the Administrative Record

This motion is supported by the attached Memorandum in Support of Motion and Exhibits.

Respectfully submitted by:

ROENBAUGH SCHWALB

/s/ Micah Schwalb

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this Motion to Correct and Supplement the Administrative Record was electronically served on counsel of record in this matter on the date that of entry in the corresponding electronic docket and filed in original form with the Clerk of the District Court.

By: /s/ Micah Schwalb

Micah Schwalb, #26501

MEMORANDUM IN SUPPORT OF MOTION

The Kansas Judicial Review Act (the “KJRA”) requires timely transmission of an agency record to the district court “consisting of any agency documents expressing the agency action, **other documents identified by the agency as having been considered by it before its action and used as a basis for its action** and any other material required by law as the agency record for the type of agency action at issue[.]” K.S.A. § 77-620 (emphasis supplied). The administrative record in this matter however omits (1) the Deposition Exhibits; (2) the Consumptive Use Analyses; (3) the Pre-Greensburg Model Input Files, the Post-Greensburg Model Input Files, and the Final Model Input Files (together, the “Model Input Files”); (4) the complete Transfer Application; and (5) the Order Drafts. In light of the plain language of KJRA § 77-620, and Kansas public policy,¹ the Court should “require or permit subsequent corrections or additions to the record” consisting of the materials referenced herein, as such materials were directly before the Agency prior to the issuance of the Master Order and used to craft the Master Order. *See* K.S.A. § 77-620(f).

BACKGROUND

This lawsuit concerns defects in the Master Order and the surrounding process employed by the Agency when processing the applications submitted by the Cities to change water rights appurtenant to the R9 Ranch owned by the Cities in Edwards County. In particular, the Petition highlighted the following:

1. A lack of specific findings with respect to material injury or adverse effects on those

¹ K.S.A. § 45-216(a) (“the public policy of Kansas is that public records shall be open for inspection by any person unless otherwise provided, and this act shall be liberally construed and applied to promote such policy.”); K.S.A. §75-4317(a) (“meetings for the conduct of governmental affairs and the transaction of governmental business be open to the public.”).

holding water rights with priorities junior to the R9 Ranch water rights (the “R9 Water Rights”) but senior to the date of the Cities’ change applications;

2. Ignoring evidence in the administrative record regarding consumptive uses made of the R9 Water Rights during the year of perfection, as well as the impact of proposed changes to the R9 Water Rights on holders of water rights adjacent to the R9 Ranch; and
3. The lack of a site-specific consumptive use analysis.

[*See* Petition at ¶¶ 20- 30]. In connection with efforts to obtain discovery in this matter, Water PACK later learned that counsel to the City of Hays prepared the initial Order Draft (the “Hays Draft”) and that the Agency required the Cities to prepare and use the Model Input Files in conjunction with the GMD5 Model, despite a dearth of authority permitting the Agency to do so.

As of the date of this motion, the Agency has not posted any of the Order Drafts to the public webpage developed by the Agency in connection with the Master Order referenced below, whether the Hays Draft or any other Order Drafts, nor sought to add those Order Drafts to the administrative record. Likewise, though the Chief Engineer used the Post-Greensburg Model Input Files and the Final Model Input files as a basis for the Master Order, those later Model Input Files do not appear within the agency record or on the Agency’s website. Finally, the Agency also did not provide the complete Transfer Applications as part of the administrative record transmitted to the Court, even though the Master Order references the Transfer Application repeatedly and portions of the Transfer Application appear within the administrative record. [A.R. 401, 406, 407]. This motion focuses on the absence of those materials from the administrative record, as well as public view.

STANDARD OF REVIEW

In the prayer for relief, the Petition in this matter references the following five subsections of

KJRA § 77-621(c):

(2) the agency has acted beyond the jurisdiction conferred by any provision of law;

...

(4) the agency has erroneously interpreted or applied the law;

(5) the agency has engaged in an unlawful procedure or has failed to follow prescribed procedure;

...

(7) the agency action is based on a determination of fact, made or implied by the agency, that is not supported to the appropriate standard of proof by evidence that is substantial when viewed in light of the record as a whole, which includes the agency record for judicial review, supplemented by any additional evidence received by the court under the [KJRA];

or

(8) the agency action is otherwise unreasonable, arbitrary or capricious.

Matters raised under subsections (c)(2), (4), and (5) are subject to *de novo* review as questions of law, subject to the admission of additional evidence beyond the record in the case of subsection (c)(5), such as the Deposition. *See* K.S.A. § 77-619. Subsection (c)(7) and Subsection (c)(8) in turn require other considerations.

Subsection (c)(7) requires assessment of an agency’s findings of fact “**in light of all the relevant evidence in the record cited by any party that detracts from such finding** as well as all of the relevant evidence in the record, compiled pursuant to K.S.A. 77-620, and amendments thereto, cited by any party that supports such finding[.] K.S.A. §77-620 (emphasis supplied). The Court may not reweigh the evidence or engage in *de novo* review under subsection (c)(7), but must instead “(1) review evidence both supporting and contradicting the agency's findings; (2) examine the presiding officer's credibility determination, if any; and (3) review the agency's explanation as to why the evidence supports its findings.” *Williams v. Petromark Drilling, LLC*, 299 Kan. 792, 795, 326 P.3d 1057 (2014); *see also Herrera-Gallegos*, 42 Kan.App.2d at 363, 212 P.3d 239 (2010) (“we must now consider all of the evidence — including evidence that detracts from an agency's factual findings — when we assess whether the evidence is substantial enough to support

those findings.”). “The plain language of the KJRA, like the federal APA, calls for the substantial evidence test to be applied to the whole record, not just the portion supporting the agency finding.” Steve Leben, *Challenging and Defending Agency Actions in Kansas*, 64 J.K.B.A. 23, 27 (June/July, 1995) (further noting that section 5-116 of the Model State APA is identical to subsection (c)(7) that that section 5-116 was intended to adopt the same substantial evidence test as applied under the federal APA).

Subsection (c)(8), by contrast, focuses upon “the quality of the agency’s reasoning” and seeks to consider whether an agency’s decision is “so wide of the mark that its unreasonableness lies outside the realm of fair debate.” *In re Protests of Oakhill Land Co.*, 46 Kan. App. 2d 1105, 1115, 269 P.3d 876 (2012); *Denning v. Johnson Cty., Sheriff’s Civil Serv. Bd.*, 46 Kan. App. 2d 688, 701, 266 P.3d 557, 568 (2011), *aff’d sub nom., Denning v. Johnson Cty.*, 299 Kan. 1070, 329 P.3d 440 (2014).

Essentially, the test under K.S.A. 77–621(c)(8) determines the reasonableness of the agency’s exercise of discretion in reaching its decision based upon the agency’s factual findings and the applicable law. **Useful factors that may be considered include whether: (1) the agency relied on factors that the legislature had not intended it to consider; (2) the agency entirely failed to consider an important aspect of the problem; (3) the agency’s explanation of its action runs counter to the evidence before it; and (4) whether the agency’s explanation is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.**

Wheatland Elec. Co-op., Inc. v. Polansky, 46 Kan. App. 2d 746, 757–58, 265 P.3d 1194 (2011) (internal citations omitted; emphasis supplied). This motion thus focuses upon the documents before the Agency to the extent relied upon and omitted from the administrative record, as well as the unlawful procedures employed by the Agency in connection with the Master Order.

ARGUMENT AND AUTHORITIES

The only requirement imposed upon an agency under the KJRA is the initial submission of the

agency record. KANSAS JUDICIAL COUNCIL, KANSAS APPELLATE PRACTICE HANDBOOK § 6.12 (6TH Ed. 2018). The agency record “must include any documents identified by the agency as having been considered before the action was taken or that served as a basis for the action.” *Id.* (citing K.S.A. 77-620(a)). Where the agency submits an incomplete agency record, the KJRA permits a plaintiff to move to correct or supplement the agency record in a manner not dissimilar to that available under the Federal Administrative Procedure Act (“APA”). *Compare* KJRA § 620(f) *with*. *Lindenman v. Umscheid*, 255 Kan. 610, 681 (Kan. 1994) (noting that the KJRA derives from the 1981 Uniform Model State Administrative Procedure Act); *Hale v. Substance Abuse Ctr. E., Inc.*, 19 Kan. App. 2d 569, 571 (1994); *and* NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS, REVISED MODEL STATE ADMINISTRATIVE PROCEDURES ACT 67 (October 2005 Meeting Draft) (noting that sections of the Model State Administrative Procedure Act are modeled upon the Federal APA). Indeed, “both federal and state statutes required whole record review in which ‘detracting evidence must also be considered.’ This well-developed meaning of whole record review clearly was intended to be incorporated into the Model Act provision, which was adopted verbatim in Kansas.” *Leben, supra*, at 28; *see also Fund for Animals v. Williams*, 391 F. Supp. 2d 191, 196 (D.D.C. 2005) (*citing* 5 U.S.C. §706).

Courts interpreting the Federal APA view the “whole” or “complete” administrative record as one that “consists of all documents and materials **directly or indirectly considered by the agency**” in reaching its decision. *Bar MK Ranches v. Yuetter*, 994 F.2d 735, 739 (10th Cir. 1993) (citations omitted; emphasis supplied). As such, a plaintiff must establish that omitted materials were directly or indirectly considered by the relevant decision-makers. *See Ctr. for Native Ecosystems v. Salazar*, 711 F.Supp.2d 1267, 1275 (D. Colo. 2010). “If it can be shown that the materials sought to be included in the record before the court, were indeed before the agency,

supplementation is appropriate.” *Chapa v. Dept. of the Interior*, 667 F.Supp.2d 111, 114 (D.D.C. 2009). Framed differently:

The proper touchstone remains the decision makers' actual consideration, and a party moving to complete the record must show with clear evidence the context in which materials were considered by decision makers in the relevant decision making process. For example, if a party moves to include a study that was cited in the recommendations of subordinates, the party need not show that the decision maker read the study, but the party must show that the study was so heavily relied on in the recommendations that the decision maker constructively considered it.

Id. at 1276. The requirement for a complete administrative record makes sense in light of the “substantial evidence” test set forth in subsection (c)(7) of KJRA § 77-621, which requires consideration of items held but ignored by an agency, as well as the need to assess whether “the agency's explanation of its action runs counter to the evidence before it.” *Wheatland Elec. Co-op.*, 46 Kan. App. at 757–58. Water PACK therefore urges the Court to require a record that includes documents besides those which “literally pass before the eyes of the final agency decisionmaker” if that decisionmaker based his decision on the work and recommendations of subordinates. *See Ctr. for Native Ecosystems*, 711 F.Supp.2d at 1275 (internal citations and formatting omitted).

1. THE DEPOSITION EXHIBITS AND THE TRANSFER APPLICATION SHOULD BE ADDED TO THE RECORD

An April 18, 2018 letter from the Agency to Water PACK entitled “Water PACK timeline request” introduced at the Deposition states the following:

As you know, per your open record request and in the public’s interest, KDA-DWR has developed a web page to provide documents and information related to our processing of Hays’s change applications and the Hays/Russell water transfer application <http://agriculture.ks.gov/HaysR9>. Additional information will be provided on the webpage as the process moves forward.

Deposition Exhibit 11, attached to Exhibit A. Deposition Exhibit 1 in turn encapsulates the webpage referenced by the Agency, and likewise should be included within the administrative

record as it references Transfer Application documents and a Transfer Application webpage omitted from the Agency record containing records pertinent to the Master Order. *See Exhibit B.* In light of the Agency's assertions regarding disclosures of the GMD5 Model to Water PACK and GMD5 detailed more fully below, we also urge the Court to order the Agency to include the letter from the Agency to GMD5 dated March 9, 2018 designated Deposition Exhibit 13 in Exhibit A that included an earlier edition of the Model Input Files. Such documents were before the agency prior to issuance of the Master Order and get to the heart of evidence considered or ignored thereby.

2. THE CONSUMPTIVE USE ANALYSIS SHOULD BE ADDED TO THE AGENCY RECORD

Change applications seeking to convert water from irrigation uses to municipal uses require consideration of the consumptive use made in association with a certificated water right in the year of perfection. The Master Order therefore considers the consumptive use in the context of determining what water might be available to the Cities in connection with the proposed change applications. [A.R. 71-75]. Prior to the Master Order, in a letter from the Agency to Hays counsel dated January 21, 2016, the Agency states the following:

We have completed an initial review of your consumptive use analysis and supporting data under K.A.R. 5-5-3 (change in consumptive use) and K.A.R. 5-5-9 (criteria for the approval of an application for a change in the use made of water from irrigation to any other type of beneficial use of water). Since you have provided documentation that many of the referenced water rights irrigated alfalfa during the perfection period, our consumptive use rules allow the use of the more generous net irrigation requirement (NIR) for alfalfa rather than com. We have consulted with Danny Rogers of KSU to confirm the reasonableness of these numbers for conditions in the area. While we have a few specific tracts of land to discuss, it appears the application of our rules could support a conversion of more than 6700 acre-feet to municipal use.

[A.R. 671] Further, in his Deposition, the Chief Engineer stated the following:

Q. Okay. Within those applications was there a consumptive use analysis? The initial applications?

A. I believe there was.

Q. Okay. Did anyone complete a review of that consumptive use analysis?

A. We -- I didn't personally do the consumptive use analysis. Again, staff reviewed that and determined the consumptive use appropriate from our rules.

Q. So they did an initial review?

A. I'm sure they did. I'm not sure to what extent they relied on that information submitted as opposed to just applying the rules.

Q. Okay. Does that initial review appear in the administrative record to your knowledge?

A. Our administrative review of their --

Q. Did your internal review of the consumptive, the initial consumptive use analysis, does that appear in the administrative record for this case?

A. Well, they're -- the work of Elizabeth Fitch to sort of determine the acres and cropping is in the administrative record. The result of the consumptive use determination by water right is also in the record.

Q. But that specific initial analysis, is that in the administrative record to your knowledge?

A. Which? The one the applicant provided?

Q. The initial -- correct.

A. Well, if it's part of the applications, 1 which I think it was, it is.

Q. Your internal review though?

A. Oh, I'm sorry. Our internal review of what they provided.

Q. Initially?

A. Not to my knowledge.

Q. Okay. Did you rely on that while processing the applications?

A. I don't think we did. Again, I think we did the determination of acres, appropriated cropping, and then applied the rule.

[Deposition, 94-96]. It appears, then, that one of the Consumptive Use Analyses specifically

referenced in the administrative record does not actually appear within the record certified by the Agency. In light of the importance of consumptive use calculations to the Master Order, as well as the Agency's separate admission that he did not review cropping records provided by Water PACK within the administrative record,² we would ask that the Court require the Agency to supplement the administrative records with the missing Consumptive Use Analyses, as well as any materials received from Dr. Rogers referenced in the January 21, 2016 letter from the Agency.

3. THE CRITICALLY IMPORTANT MODEL INPUT FILES ARE MISSING FROM THE AGENCY RECORD

The KJRA by its plain language requires transmission of an administrative record to the Court containing documents "identified by the agency as having been considered by it before its action and used as a basis for its action." K.S.A. § 77-620. Such documents include the Pre-Greensburg Model Input Files referenced in a letter to Water PACK and GMD5 dated February 19, 2018 as follows:

As part of our evaluation of the Cities' change applications, I have required the Cities to complete a modeling analysis to support their change applications by demonstrating that the proposed quantities for municipal use are reasonable over the long-term. I have also required the Cities to complete a modeling assessment of the impacts of the proposed changes on the area.

In view of past requests for additional time to review the technical work supporting the change applications, I am taking the opportunity now to provide to you and post on our web site the enclosed final modeling report done by the Cities' consultant, which report was finalized last week. The supporting model files will also be made available as soon as we reasonably can (we are working with the Cities' consultant to determine the best way to make these files available as they total over 30 Gb in size).

² Deposition at 41 ("Q. Thank you. Did you review these records in connection with processing the change applications? A. I didn't personally.").

[A.R. 635; *see also* Deposition Exhibit 13, attached within Motion Exhibit A³] Similarly, a letter from the Agency to Hays counsel dated April 6, 2016 also references Model Input Files in relation to a meeting held between counsel to Hays and Agency staff on March 24, 2016.

At the meeting we were informed that the City, through its consultant, Bums & McDonnell, is enhancing the Groundwater Management District #5 (GMD5) hydrologic model (Model) for use in the Project area specifically to determine what the sustainable level of withdrawals over time of the Project is and the effects of this level of withdrawal on the area. We understand that the City and Bums & McDonnell anticipate that the modeling work will not be finished for three to four months.

[A.R. 667]. Whether the enhancements referenced during the March 24, 2016 meeting between Hays and the Agency were included within the Pre-Greensburg Model Input Files remains unclear in their absence from the administrative record, let alone whether those enhancements contained further errors not revealed by the Agency's analysis. What is clear is that the record certainly omits the Post-Greensburg Model Input Files referenced in a letter from BMcD to the Hays city manager dated September 24, 2018:

During their review of the model files and the R9 Ranch Modeling Results provided by Burns & McDonnell (BMcD) to DWR on February 13, 2018, Balleau Ground Water, Inc. (BGW) identified a technical error in the operation of the Streamflow Routing Package (SFR) used by BMcD in preparing the modeling results report. Due to this error, the model was not correctly routing flow from cell to cell along the river flow paths. BMcD corrected this error, completed the model runs with the SFR package operating correctly, and revised the modeling results report to reflect the amended results.

As a part of BMcD's identification and correction of the technical error in the SFR package noted above, BMcD conducted a comprehensive review of all runs of the model to verify that the SFR package was functioning correctly. This included a review of the short-term (1991-2007) runs of the model, which revealed that the SFR package was not accurately

³ "This flash drive contains backup files provided to KDA-DWR by Bums & McDonnell Engineers for model scenarios described in the R9 Ranch Modeling Letter Report to Toby Dougherty, City Manager, Hays, KS, dated February 13, 2018. The backup files include seven zipfiles totaling 30 Gbytes in size containing groundwater model files corresponding to scenarios for the report, an Excel file, "R9 Modeled Well Flow Rates.xlsx" associated with the scenarios, and a "read me" text file (Model files readme.txt). The seven zipfiles are associated with model scenarios described in the report; the "read me" file provides some additional explanation."

accounting for streambed downcutting. This error was also corrected.

Please note that the revised groundwater model report does not address the “alternative” approaches to groundwater modeling offered by BGW or Keller-Bliesner Engineering, which were discussed in BMcD’s September 13, 2018 letter to Mr. Dougherty and forwarded to the Chief Engineer.

Highlighting reliance upon the GMD5 Model and the Model Input Files prepared by BMcD in connection with the Master Order, the Chief Engineer indicated the following during his Deposition:

Q. Okay. What about the model? Was the model -- use of the model pursuant to your rules?

A. The groundwater model?

Q. Yes.

A. The use of the groundwater model was done to determine the reasonable long-term yield for the ranch that I used as a limitation on our approvals.

Q. Okay. Who helped prepare that model?

A. Well, Burns and McDonnell's, the cities' consultants.

Q. Um-hm?

A. Did the modeling work.

Q. Okay. And where did they get the inputs for the model, for their modeling work?

A. Well, they used the GMD 5 groundwater model that was developed by Balleau Groundwater.

Q. Okay. And that -- sorry. Just have to get through who's -- where all this comes from. Where did Balleau's -- what is the genesis of Balleau's model? What's the basis for it?

A. Balleau Groundwater developed the model for GMD 5's use.

[...]

Q. Is there any regulation that says that this, this model is the standard that's used to determine groundwater flows in connection with a change application?

A. We don't -- we don't do that, I guess.

Q. Okay. So the answer is no?

A. Well, we don't do it one way or the other.

Q. Okay.

A. I mean.

Q. Okay.

A. We don't have an approved list of tools.

Q. Okay. And there's not an approved list of tools for change applications?

A. Correct.

[...]

Q. Okay. Is that -- and you testified earlier that the, I believe the initial request was based on modeling of net consumptive use; is that correct?

A. The initial request of 7,600? I don't --

Q. Is that wrong?

A. I don't have any knowledge it was based on modeling?

Q. Okay. What about the 4,800 acre feet? Is that based on modeling?

A. It is.

[Deposition at 54, 56]⁴ The Chief Engineer described the final editions of the Model Input Files as follows:

Q. The final model referenced in the September 28th, I think, 2018, revised Burns and McDonnell report, did that serve as an input to the master order?

A. It certainly informed portions of the master order, yes.

Q. The final master order?

⁴ See also Deposition at 77 (“A. Well, I think the modeling analysis was site specific in terms of what does the model say about the terms and conditions under which this approval was granted and how would that affect the ranch and its immediate vicinity.”).

A. Yes.

Q. Okay. Did prior versions of the Burns and Mac model inform the draft master order that was initially released to the GMD?

A. Well, the version that informed it was the model report -- what was the -- so we posted a model report February 19, 2018, of their earlier work which is essentially the same model, the same model runs except for this minor correction that was done.

Q. Um-hm?

A. So that's the version of the model that -- that's reported on February 2018 that informed the draft proposed master order, and really the final order as well.

[Deposition at p. 98]. The Agency also admitted that the Post-Greensburg Model Input Files and the Final Model Input Files were not provided to Water PACK and yet relied upon by the Agency:

Q. Okay. So there's a thumb drive provided to the district, GMD 5?

A. Correct.

Q. Prior to the Greensburg meeting?

A. Yes.

Q. The Greensburg meeting occurs on June 21st, 2018, correct?

A. Correct.

Q. And then there is input from the GMD received, I believe you testified earlier, August 30th of '18?

A. Correct.

Q. And then revised input from the GMD on September 14th of 2018?

A. I believe that's what I said, yes.

Q. Okay. Did that revised input result to in any changes to the modeling work?

A. It did.

Q. Okay. And did that -- did those changes to the modeling work result in this report from Burns and McDonnell?

A. The revised report, yes.

Q. What's the date of that revised report, if you don't mind me asking?

A. September 24, 2018.

Q. Okay. Was there any provision of their adjustments to the model to the public, to the GMD or to -- well, let's just focus on the public first.

A. So what was the question?

Q. They do the analysis and reproduce the report on September 28th you said?

A. Yes.

Q. And then they do that based upon modifications to the model. Were the modifications to the model provided to the public?

A. Not to my knowledge. We would have if it had been requested.

[...]

Q. Okay.

A. I guess I would have expected we would have sent the final model to them as well in the same way but I don't -- I may be remembering wrong, so.

Q. All right. So [do] all modifications to the model appear in the administrative record?

A. I'm not certain.

[Deposition at 85-88]. The Chief Engineer as such relied upon and in fact required the Cities to perform the modeling used to generate the Master Order in the absence of any regulatory or statutory requirement permitting him to impose such a requirement in connection with processing change applications.⁵ The Model Input Files in turn were used to prepare the analysis of the model runs performed by Agency staff, model runs that were not made available to the public. Given that the administrative record references the GMD5 Model and references to the Model Input Files too numerous to reference in this motion, we urge the Court to order their inclusion within the administrative record.

⁵ See KJRA § 77-617(1), (2) (a party may raise issues in court not raised before the agency except when the agency action is an order as to which the person was not notified or the agency action being challenged is a rule that the party did not have an opportunity to challenge).

4. THE CHIEF ENGINEER ADMITS THAT HAYS PROVIDED AN INITIAL DRAFT OF THE MASTER ORDER IN THE FORM OF THE HAYS DRAFT THAT FORMED THE BASIS OF THE MASTER ORDER

Section 82-1041(d) of the Groundwater Management District Act permits the Agency to engage in specific exchanges with groundwater management districts regarding the contents of a proposed local enhanced management plan described therein, subject to convening a final public hearing. The regulations applicable to the Master Order, by contrast, contain no similar provisions for negotiating an order to be issued in connection with a change application made to the Agency.

Nonetheless, both the Agency and Hays have acknowledged that the Hays Draft, described as “Version A” during the Deposition, was used to craft the Master Order.⁶ Paragraph 20 of The Cities’ Response to WaterPACK’s Motion for Discovery reads as follows:

On December 4, 2016, the undersigned, counsel for the City of Hays, sent a draft ‘Initial Order’ to David Barfield and members of his staff that included the Cities’ suggested terms and conditions. Thereafter, the Chief Engineer’s lawyer made substantial changes, including changing the title from ‘Initial Order’ to ‘Master Order,’ and maintained control of the document throughout the Change Order proceeding.

The Chief Engineer likewise confirmed that Hays counsel initiated use of the Hays Draft, which led to additional Order Drafts exchanged with the Cities.

Q. Who drafted the first version of the order?

A. Mr. Traster.

Q. Can you tell me about the -- why did Mr. Traster draft the first version of the order?

A. Well, he offered at a point in time to -- to provide a draft for us to review, so it was partially just economy of state resources for him to provide initial draft. This is a pretty unique set of circumstances and the city needed some unique things. It's preparing the way for a water transfer process later on where the city has a burden so, you know, they wanted to help sort of shape the document in terms of what -- what they needed to meet their client's needs and all the processes that they would have to go through. So some very unique

⁶ See *The Cities’ Response to WaterPACK’s Motion for Discovery* ¶ 29.

circumstances.

Q. Is the version that Mr. Traster drafted in the administrative record?

A. No.

Q. Okay. Would you be able to provide that us -- is it in your records?

A. I'm sure it's in an e-mail somewhere.

Q. Okay.

A. Or in some form.

Q. All right. Did Mr. Traster provide input on any of the versions, multiple versions, of this draft order between the version that was reviewed by the GMD and the final order?

A. What was your question?

Q. Sorry.

A. That's all right.

Q. So earlier you testified we have, I'll refer to these as versions A, B and C.

A. Okay.

Q. For purposes of the deposition. Version A is the version that Mr. Traster provided?

A. Um-hm.

Q. Version B would be the version that was put forth as the draft master order and reviewed by the GMD

A. Right.

Q. Version C is the final order.

A. Right.

Q. The contingent order that was published on this website, did Mr. Traster have input on revisions to the order between versions B and C?

A. So.

[...]

A. So, you know, we took full control of the drafting of the document somewhere in the

summer of 2017, well before even the proposed draft master order.

Q. Um-hm?

A. But Mr. Traster did have an opportunity to review what we were doing and had input into it.

[...]

Q. Is it common to let counsel for a water -- in a water transfer act proceeding draft the order?

A. Well, I've never been offered before.

Q. Okay.

A. So it's not common.

[...]

Q. Sorry. So we're talking about the decision to permit the cities to draft version A.

A. Um-hm.

Q. And you referenced the fact that this is a unique proceeding; is that correct?

A. I did.

**Q. And that there was an offer made it sounds like -- **

A. Um-hm.

Q. -- from the cities to draft it. What was the setting for that offer? Was it a meeting? Was it e-mails?

MR. BULLER: Objection. Beyond the scope.

A. As I recall it was at the end of one of our meetings, face-to-face meetings, Mr. Traster offered to do an initial draft.

Q. Okay. Were these meetings announced to the public?

MR. BULLER: Objection. Beyond the scope.

A. No. The meetings were not announced.

[Deposition 99-107]. In response to examination by Agency counsel, the Chief Engineer also

stated the following:

Q. And the final master order that was issued around March 27, 2019, how much involvement -- well, let me rephrase that. After the public informational meeting, who -- who drafted the -- the changes to the master order that -- these changes that you indicated followed the public informational meeting, how were they drafted? How and who drafted those?

A. Well again, as I referenced earlier today, we took control of the drafting process well before this, but much of the material added to the order was added by myself that included an overview of the public review process, the places and the input we got from that process generally in the review of the specific pertinent comments that were provided, and then several sections that provide our evaluation, my evaluation, of that. So virtually all of the significant additions to the order that were done were authored by myself.

[Deposition 139-140]

To summarize: the City of Hays provided the Hays Draft, had opportunities to comment on every Order Draft, and did so during meetings not made known to the public. What's more, the multiple versions of the Order Drafts (or comments on them) remain omitted from the record and were not made known to the public on the Agency's website, whether in the forms initially exchanged by the Cities and the Agency, or in the Word-formatted versions used to prepare the comparison attached to the Cities' Response to WaterPACK's Motion for Discovery as Exhibit 9. Given that the agency record "must include any documents identified by the agency as having been considered before the action was taken or that served as a basis for the action", and that the Agency relied upon versions exchanged with Hays to craft the Master Order published in the Gotham Bold font typical of Hays counsel filings, we ask that the Court order the Agency to correct the administrative record with the Order Drafts as "other documents identified by the agency as having been considered by it before its action and used as a basis for its action" in light of the record as a whole. KJRA §§ 77-620, 77-621(c)(7)

CONCLUSION

Water PACK identifies credible, non-speculative evidence in this motion indicating that the requested documents were used or known by the Agency in connection with the Master Order. The Consumptive Use Analyses, Model Input Files, and Transfer Application were all cited in the administrative record and relied on in making the challenged determination. The Cities exchanged the aforementioned materials to the Agency, together with the Order Drafts, for the purpose of aiding the Agency in making a reasoned decision. The Agency also confirmed that the omitted materials relate to the Master Order and were relied upon in crafting the Master Order, and the materials bear on the claims set forth in the Petition. For the foregoing reasons, and to ensure that the Court or any other appellate court is able to properly review the actions of the Agency based upon a complete administrative record, Water PACK respectfully requests that the Court GRANT this motion.

Dated: February 21, 2020

ROENBAUGH SCHWALB

By: /s/ Micah Schwalb

Micah Schwalb

Counsel to Plaintiff

Water PACK v. Barfield

Case No. 19-CV-05

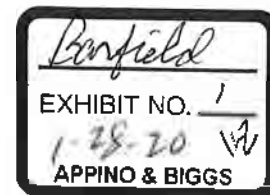
Motion to Correct and Supplement the Administrative Record

EXHIBIT A

DEPOSITION EXHIBITS

[Attached]

Home > Divisions & Programs > Division of Water Resources >
Water Appropriation > Change Applications > Hays Change



City of Hays / R9 Ranch Water Right Change Applications

NEWS:

On May 29, WaterPACK filed a request for judicial review (see below).

On March 27, 2019, the chief engineer contingently approved the change applications submitted by the cities of Hays and Russell to convert the irrigation rights of the R9 Ranch in Edwards County to municipal use for the cities. Documents related to this action can be accessed in the table below.

Background

The City of Hays purchased the approximately 7,000-acre R9 Ranch and its thirty water rights in southwestern Edwards County in 1995 with the intention of someday using the water as part of the Cities of Hays and Russell's water supply.

During June 2015, the Cities of Hays and Russell (Cities) submitted applications to KDA-DWR to change the use made of water from irrigation to municipal use for the R9 Ranch water rights. As these proposed changes envision moving greater than 2,000 acre-feet more than 35 miles, during January 2016, the Cities submitted an application to transfer water from Edwards County to the Cities pursuant to the Water Transfer Act ([K.S.A. 82a-1501](#), et seq.).

The water right change applications and other information related to their consideration are available below.

During May 2018, a draft proposed master order and exhibits were transmitted to GMD5 for its review and posted on this website, along with the change applications and amendments. A public informational meetings was held on June 21, 2018 to discuss the applications. GMD5 provided a recommendation on August 28, which was supplemented on September 14; WaterPACK provided additional responses on August 21 and 13; and the cities provided responses on September 14 and 18.

[Additional information on the Hays/R9 Transfer Application](#)

Change Application Processing

Description	Document File	File Size	Date Posted	Provided by
DWR's letter addressing corrected preliminary legal descriptions on Second Amended Change Applications	Letter and supporting documents	402 KB	05/15/2019	DWR
Cities' notice of corrected legal descriptions missing from the second Amended Change Applications	Letter to DWR	117 KB	05/15/2019	City of Hays
DWR's contingent approval documents for the proposed changes	Transmittal Letter Contingently Approved Order	836 KB 8 MB	03/28/2019	DWR

Summary of DWR contingent approval of Hays/Russell change applications regarding R9 Ranch Project	DWR Approval Summary	130 KB	03/28/2019	DWR
DWR staff review of R9 Ranch pumping and water levels	DWR staff review	1 MB	03/28/2019	DWR
Cities' amended monitoring plan	Amended monitoring plan	358 KB	02/04/2019	City of Hays
Updated modeling report based on fixing a minor technical error in the modeling identified by GMD 5 in July	Updated modeling report	5 MB	09/24/2018	Burns & McDonnell
GMD5 recommendation regarding change applications, expanded	GMD5 Recommendation, expanded	499 KB	09/14/2018	GMD5
GMD5 recommendation regarding change applications	GMD5 Recommendation	643 KB	08/30/2018	GMD5
Notice to GMD5 of proposed municipal well revised location description	Notice to GMD5 of revised well location description	301 KB	08/21/2018	DWR City of Hays
Proposed municipal well revised location description	Revised well location description	249 KB	08/21/2018	City of Hays
DWR request to GMD5 for a recommendation concerning Hays/Russell R9 Ranch change applications	Request for Recommendation	55 KB	08/03/2018	DWR
Public Informational Meeting support information from June 21, 2018	See Reference Materials table below	NA	06/25/2018	DWR City of Hays WaterPACK
DWR summary and tentative timeline concerning review of Hays/Russell R9 Ranch change applications	Summary and tentative timeline	61 KB	05/15/2018	DWR
Transmittal to GMD No. 5	Transmittal to GMD No. 5	46 KB	05/07/2018	DWR
Draft proposed master order	Draft proposed master order	1 MB	05/07/2018	DWR
Draft proposed master order exhibits	Draft proposed master order exhibits	5 MB	05/07/2018	DWR
Letter to DWR confirming intent to amend change applications	Intent to amend change applications	80 KB	05/07/2018	City of Hays
Notice of posting modeling report and modeling files	R9 Notice of Posting Modeling Report	40 KB	02/19/2018	DWR
R9 Ranch Groundwater Modeling Report	R9 Ranch Modeling Report	3.4 MB	02/16/2018	City of Hays
Meeting Follow-up Letter 04/06/2016	DWR Additional Comments	2 MB	04/08/2016	DWR

KDA-DWR letter with additional comments on review of the change applications 03/08/2016	DWR Meeting Preparation	446 KB	04/08/2016	DWR
KDA-DWR letter with comments from its initial review of the change applications 01/21/2106	DWR Initial Review Letter	894 KB	04/08/2016	DWR

WaterPACK Judicial Review

File/Description	File Size	Document Date
Order Partially Granting and Partially Denying Motion for Discovery, as to Request for Depositions	222 KB	01/13/2020
Order Partially Denying Motion for Discovery and Taking Request for Depositions Under Advisement	222 KB	12/16/2019
Response to Supplemental Brief (Russell)	1 MB	12/06/2019
Response to Supplemental Brief (Cities)	6 MB	12/06/2019
Response to Supplemental Brief (DWR)	192 KB	12/06/2019
Supplemental Brief (Water PACK)	180 KB	11/08/2019
Order Setting Oral Arguments on Motion for Discovery	58 KB	10/08/2019
Response to Motion for Discovery (Russell)	741 KB	9/20/2019
Response to Motion for Discovery (Cities)	985 KB	9/19/2019
Response to Motion for Discovery (DWR)	36 KB	9/19/2019
Motion for Discovery (Water PACK)	221 KB	8/27/2019
DWR Answer	171 KB	6/28/2019
Hays/Russell Motion to Intervene	213 KB	6/28/2019
Petition for Judicial Review (Water PACK)	189 KB	5/29/2019
Petition for Judicial Review with Attachments (Water PACK)	12 MB	

Requests for Administrative Review

File/Description	File Size	Document Date
Order Declining Request for Secretarial Review (Water PACK)	161 KB	4/29/2019
Order Declining Request for Secretarial Review (Pam and Steve Wetzel)	156 KB	4/29/2019
Order Declining Request for Secretarial Review (Richard Wenstrom)	157 KB	4/29/2019

Order Declining Request for Secretarial Review (Jane Wenstrom)	157 KB	4/29/2019
Order Declining Request for Secretarial Review (Leroy Wetzel)	153 KB	4/29/2019
Order Declining Request for Secretarial Review (Kent Wetzel)	141 KB	4/24/2019
Petition for Administrative Review (Water PACK)	256 KB	4/9/2019
Petition for Administrative Review (Pam and Steve Wetzel)	48 KB	4/6/2019
Petition for Administrative Review (Richard Wenstrom)	190 KB	4/5/2019
Petition for Administrative Review (Jane Wenstrom)	64 KB	4/5/2019
Petition for Administrative Review (Leroy Wetzel)	80 KB	4/4/2019
Petition for Administrative Review (Kent Wetzel)	77 KB	

Change Applications

File No.	Original Application	Amended Application	Second Amended Application
Multiple	Cover letter for original application June 25, 2015	Amended applications sent November, 2016 -no cover letter	Cover letter with second group of amended applications March 25-26, 2018
21,729-D1	21,729-D1 original application	21,729-D1 amended application	21,729-D1 second amended application
21,729-D2	21,729-D2 original application		21,729-D2 second amended application
21,730	21,730 original application	21,730 amended application	21,730 second amended application
21,731	21,731 original application	21,731 amended application	21,731 second amended application
21,732-D1	21,732-D1 original application	21,732-D1 amended application	21,732-D1 second amended application
21,732-D2	21,732-D2 original application		21,732-D2 second amended application
21,733	21,733 original application	21,733 amended application	21,733 second amended application
21,734	21,734 original application	21,734 amended application	21,734 second amended application
21,841	21,841 original application	21,841 amended application	21,841 second amended application
21,842	21,842 original application	21,842 amended application	21,842 second amended application

22,325	22,325 original application	22,325 amended application	22,325 second amended application
22,326	22,326 original application	22,326 amended application	22,326 second amended application
22,327	22,327 original application	22,327 amended application	22,327 second amended application
22,329	22,329 original application	22,329 amended application	22,329 second amended application
22,330	22,330 original application	22,330 amended application	22,330 second amended applications
22,331	22,331 original application	22,331 amended application	22,331 second amended application
22,332	22,332 original application	22,332 amended application	22,332 second amended application
22,333	22,333 original application	22,333 amended application	22,333 second amended application
22,334	22,334 original application	22,334 amended application	22,334 second amended application
22,335	22,335 original application	22,335 amended application	22,335 second amended application
22,338	22,338 original application	22,338 amended application	22,338 second amended application
22,339	22,339 original application	22,339 amended application	22,339 second amended application
22,340	22,340 original application	22,340 amended application	22,340 second amended application
22,341	22,341 original application	22,341 amended application	22,341 second amended application
22,342	22,342 original application	22,342 amended application	22,342 second amended application
22,343	22,343 original application	22,343 amended application	22,343 second amended application
22,345	22,345 original application	22,345 amended application	22,345 second amended application
22,346	22,346 original application	22,346 amended application	22,346 second amended application
27,760	27,760 original application	27,760 amended application	27,760 second amended application
29,816	29,816 original application	29,816 amended application	29,816 second amended application
30,083	30,083 original application	30,083 amended application	30,083 second amended application
30,084	30,084 original application	30,084 amended application	30,084 second amended application

Reference Materials

Description	Document File	File Size	Date Posted	Provided by
Recharge Information, Hansen Report	USGS Water-Resources Investigations Report 87-4230	17 KB	04/08/2016	USGS
GMD #5 Groundwater Model Report	Hydrologic Model of Big Bend GMD No. 5	13 KB	04/08/2016	Balleau Groundwater, INC.
R9 Ranch area wells	Local well ID lookup table KGS WIZARD website	NA	04/08/2016	KGS

Public Comments Regarding Change Applications

Description	Document File	File Size	Document Date	Provided by
Cities' letter to DWR regarding change applications	Hays and Russell to DWR	64 KB	09/14/2018	Hays & Russell
Cities' Comments on Draft Master Order	Hays and Russell Letter	2 MB	09/14/2018	Hays & Russell
WaterPack transfer quantity challenge to DWR	WaterPack Letter	633 KB	09/11/2018	WaterPack
Balleau technical assessment on the R9 Ranch modeling and WaterPACK analysis	Balleau assessment	44 MB	08/30/2018	GMD5
Balleau in-line comments on the Keller-Bliesner August 21 review	Balleau comments on Keller report	1.8 MB	08/27/2018	GMD5
Keller review of Burns & McDonnell modeling report	Keller review of Burns and McDonnell report	197 KB	08/22/2018	Keller
Cities of Hays and Russell response to Keller report from June 21, 2018 public meeting	Cities' response to Keller report	165 KB	08/06/2018	Hays & Russell
Burns & McDonnell review of Keller R9 Ranch reports from June 21, 2018 public meeting	Burns & McDonnell review of Keller report	5 MB	08/06/2018	Burns & McDonnell
Email string between GMD 5 and the Cities' consultants regarding the Cities' modeling work	July 2018 email string	171 KB	07/2018	Multiple
Public comment	Kent Moore (WaterPACK)	91 MB	07/25/2018	WaterPACK
Public comment	Richard Wenstrom	78 KB	07/16/2018	Wenstrom
Public comment	Kent Moore (WaterPACK)	192 KB	07/16/2018	WaterPACK
Public comment	Leroy Wetzel	61 KB	07/13/2018	Wetzel
Public comment	Lee Borck	90 KB	07/10/2018	Borck
Public comment	Quentin Hirsh	15 KB	07/10/2018	Hirsh
Public comment	William Burr	16 KB	07/07/2018	Burr
Public comment	Barry Mayhew	15 KB	07/06/2018	Mayhew
Public comment	Jared Stegman	15 KB	06/29/2018	Stegman

City of Hays and DWR Presentations on Hays/R9 Water Right Changes	Link to YouTube Video DWR Hays/R9 Summary DWR PPT City of Hays PPT	NA	06/25/2018	DWR/Hays
Public comments by WaterPACK/Keller on Hays/R9 Water Right Changes - Consumptive Use	Link to YouTube Video WaterPACK/Keller PPT	NA	06/25/2018	WaterPACK/Keller
Public comment	Jane Wenstrom	104 KB	06/09/2018	Wenstrom
R9 Ranch Consumptive Use Analysis	R9 Ranch Consumptive Use Analysis	5 MB	11/24/2016	WaterPACK

Timeline

- 1995 R9 Ranch and water rights purchased by the City of Hays
- 2015-06-26 Cities of Hays and Russell (Cities) apply to change R9 Ranch water rights from irrigation to municipal use
- 2016-01-06 Cities apply to transfer water from R9 Ranch to Hays and Russell
- 2016-01-21 KDA-DWR letter to the Cities with comments from its review of the change applications
- 2016-03-08 KDA-DWR letter to the Cities with additional comments from its review of the change applications
- 2016-03-24 Cities of Hays and Russell meet with KDA-DWR to discuss details of the water right change applications
- 2016-04-06 KDA-DWR letter to the Cities summarizing 3/24/2016 meeting and next steps
- 2018-02-16 KDA-DWR post Cities' modeling report
- 2018-05-07 KDA-DWR transmits draft proposed master order with exhibits to GMD No. 5 for review and posts to its website
- 2018-05-11 KDA-DWR posts change applications and amendments to its website.
- 2018-06-21 Public informational meeting to discuss application in Greensburg, Kansas.
- Summer 2018 Public input on proposed change applications
- 2018-08-30 GMD No. 5 comments on change applications
- 2018-09-14 GMD No. 5 provides supplemental comments on change applications
- 2018-10-05 Updated modeling report
- 2019-03-27 Contingent Approval of Change Applications

1320 Research Park Drive
Manhattan, Kansas 66502
(785) 564-6700



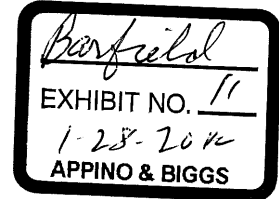
900 SW Jackson, Room 456
Topeka, Kansas 66612
(785) 296-3556

Jackie McClaskey, Secretary

Governor Sam Brownback

April 18, 2016

Richard & Jane Wenstrom
WaterPACK
306-A N. Main St
St. John KS 67576



Subject: Water PACK timeline request

Richard and Jane,

This letter is in response to your emails of March 16 requesting information on anticipating timelines for future hearing(s) related to the City of Hays ("Hays") change applications and water transfer application.

As you know, per your open record request and in the public's interest, KDA-DWR has developed a web page to provide documents and information related to our processing of Hays's change applications and the Hays/Russell water transfer application <http://agriculture.ks.gov/HaysR9>. Additional information will be provided on the webpage as the process moves forward.

As you suggest, I cannot provide a definitive determination of how or when these matters will proceed, but below is the best information I have at this time.

We are currently evaluating the Hays change applications. Before the water transfer process will be initiated, the change applications will have to be in a form that can be contingently approved. Our review of the change applications considers statutory and regulatory requirements for changes under our traditional requirements, irrespective of any additional considerations required by the transfer act.

KDA met with the cities of Hays and Russell on March 24. Attached is the letter I sent to Hays on April 6 summarizing the meeting and next steps in our review of the change applications. As the letter notes, Hays is working on additional, detailed modeling and analysis to support its applications, particularly related to the long-term sustainability of its project. At the meeting the Hays stated that it will provide this work as soon as possible and estimated that it should be done by mid-summer this year.

As I have committed to you and other, I will hold a public meeting or hearing prior to contingently approving the City's change applications. I expect to hold the meeting or hearing after Hays has

provided its updated modeling and analysis, and after KDA-DWR and the public have had a reasonable opportunity to review Hays's work. I am hoping this will occur late this summer or early this fall. At this point, the scope of such a meeting or hearing has not been fully determined.

Hays is entitled to request a post-decision hearing upon contingent approval of their change applications. And anyone who believes they have been aggrieved by the contingent approvals may request a review by the secretary of agriculture.

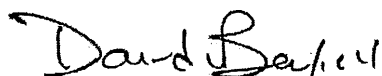
Only after the changes have been contingently approved will the water transfer hearing process be initiated. Attached is a document that outlines the water transfer process timeline. The water transfer public hearing is a minimum of six months after initiation of this process.

In sum, there will be at least two opportunities for public input related to the matter; a public meeting or hearing on Hays's change applications and the water transfer hearing.

Finally, in your letter of March 16 you said, "*When I visited with you after the Water PACK annual meeting in St. John, I asked if there would be time for GMD5 and Balleau to run the model when the exact locations of the 14 water wells were finally determined on the R9 Ranch and you said 'yes'.*" We have the proposed location of the wells in Hays's change applications. Hays has asked for the ability to vary these locations by up to 1,000 feet. Our letter to Hays provides our response to that request. Hays is committed to maintaining at least one-half mile spacing from any neighboring well outside the R9 Ranch border. With those conditions, I believe that the locations provided by Hays are sufficient for your modeling evaluation. Let me know if you do not agree.

Let me know if you have any further questions that I can address at this time.

Sincerely,



David W. Barfield, P.E.
Chief Engineer
Division of Water Resources

Attachments: Letter to City of Hays, April 6
Water Transfer Act Procedure Overview

Cc:
David Traster, attorney for the City of Hays
Orrin Feril, GMD 5
Chris Beightel, KDA-DWR
Jeff Lanterman, Stafford Field Office, KDA-DWR

1320 Research Park Drive
Manhattan, Kansas 66502
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900 SW Jackson, Room 456
Topeka, Kansas 66612
(785) 296-3556

Jackie McClaskey, Secretary

Governor Sam Brownback

April 6, 2016

David M. Traster
Daniel J. Buller
Foulston Siefkin LLP
1511 N. Waterfront Parkway, Suite 100
Wichita, KS 67206-4466

RE: Water Right File Nos. 21,729; 21,730; 21,731; 21,732;
21,733; 21,734; 21,841; 21,842; 22,325; 22,326; 22,327; 22,329;
22,330; 22,331; 22,332; 22,333; 22,334; 22,335; 22,338; 22,339;
22,340; 22,341; 22,342; 22,343; 22,345; 22,346; 27,760; 29,816;
30,083 and 30,084

Gentlemen,

Thank you for meeting with KDA-DWR at our offices in Manhattan on Thursday, March 24 to discuss the City of Hays's (City) pending applications to change the R9 Ranch water rights (Change Applications) to municipal use as part of a project to supply the City of Hays and possibly other municipal users in the region (Project). We found the discussion informative and positive, and we would like to continue the dialogue with the City so that KDA-DWR will have the best information available with which to process and consider the City's Change Applications.

As we noted at the meeting, at this stage, we are evaluating the Change Applications pursuant to applicable statutes and regulations as if the proposed municipal use was occurring at some distance from the existing ranch, but less than 35 miles, i.e. without the additional considerations required by the water transfer act. This includes a review of whether the proposed changes are reasonable and will not impair neighboring water rights over the proposed life of the project.

The following is a summary of the issues that KDA-DWR raised in our letters of January 21 and March 8 of this year, and the statuses of those issues after our meeting with City representatives last week:

1. Consumptive use analysis (January 21 letter)

It appears that KDA-DWR has all the necessary information to apply the consumptive use criteria of K.A.R. 5-5-3 and K.A.R. 5-5-9 to the City's Change Applications. It further appears that, after applying the relevant regulations, our consumptive use analysis shows that 7,604 acre-feet of the 7,626 acre-feet requested by the City in its Change Applications is eligible for conversion to

municipal use. KDA-DWR's slightly smaller amount is limited by the amount certified under each right.

2. Justification for proposed municipal use, proposed amount, project phasing (January 21 letter)

We understand from our conversation at the meeting that, if the final amount of water allowed by KDA-DWR to be converted to municipal use is acceptable to the City, then the City intends to construct one pipeline for the Project but develop water production capacity over time, with those water rights not needed in the initial phase of the Project "held in reserve", that is, not used, until needed for municipal use. Thus the City clarified its plan to dry up (stop irrigating) with the R9 water rights once cover crops are established. For the most part, this has already occurred, with remainder to be completed in 2016 and 2017.

KDA-DWR requested that the City provide information towards justifying the total quantity sought in the Change Applications as they will be finalized for municipal use, and how water use would be limited to reasonable municipal use in the future. Specifically, we request that the City provide 50-year projections of population, commercial, and industrial growth anticipated to create demand for the R9 Ranch water for the City of Hays, including the specific quantity justified for Hays with the assumptions relied on to develop the projection. To the extent the City of Russell is committed to the project, their needs can also be included.

At the meeting, the City indicated that it would like to have the approval of the Change Applications for municipal and related uses in the full quantity determined to be approvable as consistent with statute and regulatory requirements, even if the City cannot fully justify this demand at this time. Rather, the City proposes that the approval allow the City to bring wells into production as demand develops, subject to specific criteria and review by the chief engineer (e.g. area served, population projections, industrial demand served, existing water rights, etc.). In addition, the City stated that the Project may have drought mitigation benefits for the region that the City will request be considered in determining what is reasonable. In addition to the information requested in the paragraph above, we request the City provide a specific proposal for how it will justify demand beyond this amount and proposed method for review and approval by the chief engineer.

The City has not proposed a methodology for determining a reasonable cap on the rate of the individual wells in the well field. We request this be provided.

3. Water conservation requirements (January 21 letter)

In our January 21 letter, KDA-DWR stated that "...the sufficiency of proposed water conservation will be evaluated against the regional averages of per capita water usage for comparable cities in your region..." At our March 24 meeting, Mr. Dougherty stated that the City is proud of its water conservation and will continue to conserve water in the future.

Given the City's strong record of conservation, the dedication of City leaders to continue water conservation, and a plan to keep use within reasonable limits as requested above, it appears that

the City's water conservation requirements are on track for favorable consideration by KDA-DWR.

4. Flexibility in locating points of diversion (January 21 letter)

The City's preliminary design leading to the Change Applications provides planned locations of the consolidated municipal wells meeting the requirements of KDA-DWR rules. The City has requested flexibility to allow the final locations of the points of diversion to vary by up to 1000 feet without requiring a change application. The justification stated at the meeting is that the final design of the Project well field has not been completed, and for at least some of the wells, will not be completed until future project phases. Optimal final locations for the wells will be based on a number of criteria including access, terrain, power transmission lines, etc. The City does not object to an approval with its requested flexibility that includes specific additional criteria that must be met (e.g. half-mile spacing to neighboring point of diversion outside the R9 Ranch boundary, etc.) but wishes to avoid having to go through the water right change process multiple times to optimize the design of the well field.

KDA-DWR is willing to consider this approach for future phases where needed but urges the City to perform such hydrologic testing and design work as needed to tighten up its Change Applications so that the final locations can be known within 300 feet for the initial phase, and provide reasonable justification for those Project well locations for future phases that the City believes may need more than 300 feet of horizontal location flexibility at the time of approval.

5. Long-term sustainability of the project and effects to the area (March 8 letter)

At the meeting we were informed that the City, through its consultant, Burns & McDonnell, is enhancing the Groundwater Management District #5 (GMD5) hydrologic model (Model) for use in the Project area specifically to determine what the sustainable level of withdrawals over time of the Project is and the effects of this level of withdrawal on the area. We understand that the City and Burns & McDonnell anticipate that the modeling work will not be finished for three to four months.

The City, through its counsel, Mr. Traster, said that sustainability is a water management goal of the Project. The Project's estimated cost is \$76 Million. The City said that the sustainability of the Project will have to be demonstrated to the finance market so that funding to build the Project can be secured.

Should the modeling work demonstrate that the long-term sustainable yield of the Project area is less than otherwise allowed by KDA-DWR rules, the City will amend its Change Applications accordingly. As noted above, the City envisions that it will request the ability to pump at higher rates and quantities in drought periods.

As the modeling work continues, we encourage the City to engage the stakeholders affected by the Project, including GMD5, WaterPACK and KDA-DWR, to allow an understanding of the model enhancements and future scenarios evaluated; any adjustments to the configurations of the well field and operational plans; and impacts on neighboring wells; the stream, water levels in the area,

and on the long-term health of that part of the basin.

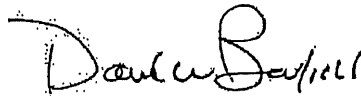
6. Basin stakeholders' desire to have their concerns heard prior to a decision (March 8 letter)

At the meeting, the City expressed its desire and commitment to keeping the process towards completing the Project as transparent as possible. We discussed the options for public involvement including informational meetings and formal hearings. For the City, Mr. Traster said that, at this time, the City does not intend to request a pre-decision hearing, but it reserves the right to make such a request.

The City did say, however, that if the chief engineer wishes to hold a pre-decision meeting or hearing of his own volition, the City would not object and would participate in such proceeding.

Thank you for your attention to these requests. If you have questions or comments about these requests or the characterizations made herein, please contact me at (785) 564-6670.

Sincerely,



David W. Barfield, P.E.
Chief Engineer
Division of Water Resources

pc: Tohy Dougherty
City Manager
City of Hays
P.O. Box 490
Hays, KS 67601

Jon Quinday
City Manager
City of Russell
133 W. 8th Street
Russell, KS 67665

PC: Via E-mail
Stafford City Field Office
GMD No. 5
Richard Wenstrom, WaterPACK

Kansas Water Transfer Act

WHAT IS A WATER TRANSFER?

A "water transfer" for purposes of the Kansas Water Transfer Act (K.S.A. 82a-1501 *et seq.*) is the diversion and transportation of water in a quantity of 2,000 acre feet or more per year for beneficial use at a point of use outside a 35-mile radius from the point of diversion for such water. Water transfers are approved upon application, which is reviewed by a water transfer hearing panel.

WHO SERVES ON THE WATER TRANSFER HEARING PANEL?

The water transfer hearing panel consists of the Chief Engineer of the Division of Water Resources, the Director of the Kansas Water Office, and the Secretary of Health and Environment (or the Director of the Division of Environment if designated by the Secretary). The panel shall request the appointment of a presiding officer from the Office of Administrative Hearings, knowledgeable in Kansas water law, to preside over the proceeding and issue an initial order approving or denying the water transfer, which is then reviewed and followed by a final order of the water transfer hearing panel.

WHAT CRITERIA IS CONSIDERED FOR EVALUATING A WATER TRANSFER?

The act provides for the following criteria that must be met in order for a water transfer to be approvable:

1. No water transfer shall be approved which would reduce the amount of water required to meet the present or reasonably foreseeable future beneficial use of water by present or future users in the area from which the water is to be taken, unless:
 - o The panel determines that the benefits to the state for approving the transfer outweigh the benefits to the state of not approving the transfer;
 - o The chief engineer recommends to the panel and concurs that an emergency exists to the public health, safety, or welfare; or
 - o The Governor has declared that an emergency exists which affects the public health, safety, or welfare.
2. No water transfer shall be approved if:
 - o The transfer would impair water reservation rights, vested rights, appropriation rights, or prior applications for permits to appropriate water; and
 - o Unless the presiding officer appointed by the hearing panel determines that the applicant has adopted and implemented conservation plans and practices that meet certain statutory criteria.
3. When determining whether the benefits of the state for approving an application outweigh the benefits to the state for denying an application, the presiding officer appointed by the panel will consider:
 - o Any current beneficial use being made of the water to be diverted including minimum desirable streamflow requirements;
 - o Any reasonably foreseeable future beneficial use;
 - o The economic, environmental, public health and welfare, and other impacts of approving or denying the transfer;
 - o Alternative sources of water available to the applicant and present or future users;
 - o Whether applicant has taken appropriate measures to preserve the quality and remediate any contamination of water currently available to applicant;
 - o Sufficiency of detailed plan to operate facilities and carry water from point of diversion so that all parties can understand the impacts of the transfer;

- o Effectiveness of conservation plans and practices;
- o Conservation plans and practices by parties in opposition of or who may be affected by the transfer; and
- o Any applicable management program, standards, policies, and rules and regulations of a groundwater management district.

WHAT IS THE PROCEDURE FOR APPLICATION OF A WATER TRANSFER?

Step 1: Application for transfer is filed with the chief engineer, or the chief engineer (plus one other member of the panel) determine it is in the best interest of the state to conduct a water transfer hearing based on:

- an application for permit to appropriate water;
- an application to change an existing water right; or
- a proposed contract for the sale of water from the state's conservation storage water supply capacity.

Step 2: Panel requests a presiding officer be appointed by the Office of Administrative Hearings to preside over the proceedings pursuant to the Kansas Administrative Procedure Act.

Step 3: Hearing Officer gives notice of prehearing conference not more than 14 days after the panel is assigned that officer

- Given by mail to applicant, parties who have intervened, and commenting agencies
- Shall be published in the Kansas register and at least two newspapers in area of proposed point of diversion

Step 4: Presiding officer holds prehearing conference commencing 90-120 days after notice has been given and concluding not later than 45 days after it commences.

Step 5: Formal public hearing will be held not less than 90 and not more than 120 days after conclusion of prehearing conference, concluding not later than 120 days after commencement.

- Held in basin of origin
- If deemed necessary by hearing officer, public comment hearing shall be held in basin of use

Step 6: Hearing officer issues initial order approving or denying the transfer not later than 90 days after conclusion of formal public hearing

- Shall include findings of fact relating to each factor of benefit to state of approval or denial
- Hearing officer can order approval of a transfer of a smaller amount than requested

Step 7: Panel reviews initial order of hearing officer and enters final order not later than 90 days after entry of initial order

- Panel may extend the 90 day limit with written consent of all parties or for good cause.

Step 8: Record of any hearing or proceeding maintained and made available for public examination in office of the chief engineer.

STATE OF KANSAS

DEPARTMENT OF AGRICULTURE
1320 RESEARCH PARK DRIVE
MANHATTAN, KS 66502
PHONE: (785) 564-6700
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GOVERNOR JEFF COLYER, M.D.
JACKIE McCLASKY, SECRETARY OF AGRICULTURE

March 9, 2018

Big Bend Groundwater Management District #5
125 S. Main
Stafford, KS 67578

Mr. Feril,

Per your request please find enclosed two copies of a USB drive, each containing the modflow modeling files associated with the R9 Ranch evolution related to the pending application for the City of Hays.

This flash drive contains backup files provided to KDA-DWR by Burns & McDonnell Engineers for model scenarios described in the R9 Ranch Modeling Letter Report to Toby Dougherty, City Manager, Hays, KS, dated February 13, 2018. The backup files include seven zipfiles totaling 30 Gbytes in size containing groundwater model files corresponding to scenarios for the report, an Excel file, "R9 Modeled Well Flow Rates.xlsx" associated with the scenarios, and a "read me" text file (Model files readme.txt). The seven zipfiles are associated with model scenarios described in the report; the "read me" file provides some additional explanation.

By copy of this letter I am also sending one USB drive to Richard Wenstrom.

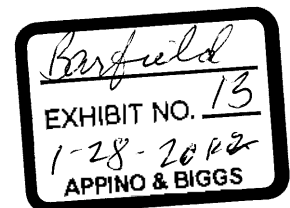
If you experience any problems with the files please feel free to contact our office.

Sincerely,

David W. Barfield, P.E.
Chief Engineer
Division of Water Resources

DWB:kh

CC: Richard Wenstrom, WaterPACK



Water PACK v. Barfield

Case No. 19-CV-05

Motion to Correct and Supplement the Administrative Record

EXHIBIT B

TRANSFER APPLICATION EXHIBITS

[Attached]

Exhibit List

- Ex. 1 R9 Ranch Water Right File and Circle Numbers
- Ex. 2 2015-06-25 Change Application Cover Letter
- Ex. 3 2015-06-24 - 21,729 Change Application
- Ex. 4 2015-06-24 - 21,730 Change Application
- Ex. 5 2015-06-24 - 21,731 Change Application
- Ex. 6 2015-06-24 - 21,732 Change Application
- Ex. 7 2015-06-24 - 21,733 Change Application
- Ex. 8 2015-06-24 - 21,734 Change Application
- Ex. 9 2015-06-24 - 21,841 Change Application
- Ex. 10 2015-06-24 - 21,842 Change Application
- Ex. 11 2015-06-24 - 22,325 Change Application
- Ex. 12 2015-06-24 - 22,326 Change Application
- Ex. 13 2015-06-24 - 22,327 Change Application
- Ex. 14 2015-06-24 - 22,329 Change Application
- Ex. 15 2015-06-24 - 22,330 Change Application
- Ex. 16 2015-06-24 - 22,331 Change Application
- Ex. 17 2015-06-24 - 22,332 Change Application
- Ex. 18 2015-06-24 - 22,333 Change Application
- Ex. 19 2015-06-24 - 22,334 Change Application
- Ex. 20 2015-06-24 - 22,335 Change Application
- Ex. 21 2015-06-24 - 22,338 Change Application
- Ex. 22 2015-06-24 - 22,339 Change Application
- Ex. 23 2015-06-24 - 22,340 Change Application
- Ex. 24 2015-06-24 - 22,341 Change Application
- Ex. 25 2015-06-24 - 22,342 Change Application
- Ex. 26 2015-06-24 - 22,343 Change Application
- Ex. 27 2015-06-24 - 22,345 Change Application
- Ex. 28 2015-06-24 - 22,346 Change Application
- Ex. 29 2015-06-24 - 27,760 Change Application
- Ex. 30 2015-06-24 - 29,816 Change Application
- Ex. 31 2015-06-24 - 30,083 Change Application

- Ex. 32 2015-06-24 - 30,084 Change Application
- Ex. 33 2014-12-23 Interlocal Cooperation Agreement
- Ex. 34 2015-04-06 Ellis County Resolution
- Ex. 35 2014-04-10 Letter of Support Ellis County
- Ex. 36 LaCrosse Letter of Support
- Ex. 37 2015-12-22 Victoria Letter of Support
- Ex. 38 2015-10-11 Hays Daily News - Not Even a Trickle Water Struggles Continue For Victoria Couple
- Ex. 39 2015-10-11 Salina Journal - Shunned at Victoria McCarters Coming Up Dry in Quest For Safe Water
- Ex. 40 2015-09-24 - KWCH - Victoria Resident Disputes City Over Clean Water
- Ex. 41 2015-09-24 R9 Ranch Conceptual Development Memo
- Ex. 41.1 2015-12-23 Conceptual Pipeline Corridor
- Ex. 41.2 2015-06-23 R9 Conceptual Development PowerPoint
- Ex. 41.3 R9 Ranch Groundwater Rights by Priority
- Ex. 41.4 2015 R9 Ranch Well and Circle Status
- Ex. 42 2015 Excerpt from Hays's Official Statement for Recent Bond Issue
- Ex. 42.1 2015-12-13 Ellis County Government Property Values
- Ex. 43 2015 Excerpt from Russell's Official Statement for Recent Bond Issue
- Ex. 43.1 2015-12-13 Russell County Government Property Values
- Ex. 44 2014-12 Hays-Russell Economic Impact Preliminary Report
- Ex. 45 2010-05 Hays Population Report
- Ex. 46 2002-01-09 Memo to David Pope re: Growth Projections for Hays & Russell
- Ex. 47 1996-06-05 Madden - Potential Hydrologic and Economic Third-Party Effects of Transfer in Edwards County
- Ex. 48 2015-08 DWR Water Use Fact Sheet
- Ex. 49 2012 DWR Kansas Irrigation Water Use Report
- Ex. 50 2001 - Gilson - The Value of Ogallala Aquifer Water in SW Kansas
- Ex. 51 2014-03-28 Hays Letter to David Barfield - Water Conservation Plan
- Ex. 52 1985-07-25 - Hays IGUCA Order
- Ex. 53 2014-12 City of Russell Water Supply Study - Final Report
- Ex. 54 1994-09-10 Wichita Eagle, Hays Covets Supply of Water to the South
- Ex. 55 1991-03 March Ellis County Coalition - Hays Water Survey - Water Study Panel

- Ex. 56 2002-02-20 PWWSD 15 Water Conservation Plan
- Ex. 57 2015 Map Showing Progress Reverting Ranch to Grass
- Ex. 58 2015-01 Vision of the Future of Water Supply in Kansas
- Ex. 59 2012-08 Russell Water Conservation Plan
- Ex. 60 2014-03-27 Hays Water Conservation Plan
- Ex. 61 2014-05-20 Russell Ordinance No. 1850 - Water Rates
- Ex. 62 2014-06-17 Russell Ordinance No. 1852- Water Rates Outside Corp Limits
- Ex. 63 2015-11-24 Hays Ordinance No. 3913
- Ex. 64 2014-03-27 Hays Ordinance No. 3881 - Water Conservation
- Ex. 65 2015-08-18 Russell City Code - Water Service Provisions
- Ex. 66 2015-07-24 Hays City Code - Water Service Provisions
- Ex. 67 2009-06-29 Instructions for Completing Applications for Permit to Appropriate Water
- Ex. 68 2002-08-15 Municipal Application Supplemental Information Sheet
- Ex. 69 2015-10 Rural Water Districts in Trego County
- Ex. 70 2015-10 Rural Water Districts in Ellis County
- Ex. 71 2015-10 Rural Water Districts in Russell County
- Ex. 72 2015-10 Rural Water Districts in Rush County
- Ex. 73 1971–2000 Average Annual Precipitation
- Ex. 74 1997 KS Municipal Water Use Report
- Ex. 75 1998 KS Municipal Water Use Report
- Ex. 76 1999 KS Municipal Water Use Report
- Ex. 77 2000 KS Municipal Water Use Report
- Ex. 78 2001 KS Municipal Water Use Report
- Ex. 79 2002 KS Municipal Water Use Report
- Ex. 80 2003 KS Municipal Water Use Report
- Ex. 81 2004 KS Municipal Water Use Report
- Ex. 82 2005 KS Municipal Water Use Report
- Ex. 83 2006 KS Municipal Water Use Report
- Ex. 84 2007 KS Municipal Water Use Report
- Ex. 85 2008 KS Municipal Water Use Report
- Ex. 86 2009 KS Municipal Water Use Report
- Ex. 87 2010 KS Municipal Water Use Report

- Ex. 88 2011 KS Municipal Water Use Report
- Ex. 89 2012 KS Municipal Water Use Report
- Ex. 90 1977-07-05 Black & Veatch, Hays Water Supply Memorandum
- Ex. 91 1981-01-30 Approval of Application for File 33,296
- Ex. 92 1984-05-31 Lower Smoky Hill IGUCA Order
- Ex. 93 1990-05-22 Department of the Army Permit No. 2SB OXR 1 3138
- Ex. 94 2004-06-15 Burns & McDonnell - Phase II Smoky Hill Well Field Study
- Ex. 95 2002-11-15 Brikowski Final Report re: Sustainable Yield from Smoky Hill River Wellfield
- Ex. 96 2003-02-14 Burns & McDonnell - Status Report on Kanopolis and Lake Wilson Evaluation
- Ex. 97 2003-06-03 Burns & McDonnell - Summary Report, Smoky Hill Well Field Study
- Ex. 98 2006-10-03 Initial Order Approving Well Relocation in Hays' Smoky Hill Wellfield
- Ex. 99 2005-09-30 Burns & McDonnell - Supplemental Groundwater Modeling Report on Smoky Hill River Wellfield
- Ex. 100 2010-08 Wilson Lake Environmental Report
- Ex. 101 1987-09-16 Dakota Water Quality Data - Chart & Map
- Ex. 102 1987-09-16 Dakota Test Hole Drilling Report
- Ex. 103 1988-03-04 Dakota Test Hole Drilling Report
- Ex. 104 1992-05-15 File 40,702 Application
- Ex. 105 1992-05-15 File 40,703 Application
- Ex. 106 1992-05-15 File 40,704 Application
- Ex. 107 1992-05-15 File 40,705 Application
- Ex. 108 1992-05-15 File 40,706 Application
- Ex. 109 1992-05-15 File 40,707 Application
- Ex. 110 1992-07-01 Permit for File 40,702
- Ex. 111 1992-07-01 Permit for File 40,703
- Ex. 112 1992-07-01 Permit for File 40,704
- Ex. 113 1992-07-01 Permit for File 40,705
- Ex. 114 1992-07-01 Permit for File 40,706
- Ex. 115 1992-07-01 Permit for File 40,707
- Ex. 116 1997-01-01 Evaluation of Long-Term Effect of Water Resources Development on the Dakota Aquifer

- Ex. 117 1992-07-21 Bucher, Willis & Ratliff Letter to Squier re: City of Hays, Dakota Wellfield Development
- Ex. 118 KGS Dakota Aquifer Study, Vol. 1, Hydrogeologic Setting
- Ex. 119 KGS Dakota Aquifer Study, Vol. 2, Numerical Modeling
- Ex. 120 2001-09-24 Ground Water Associates, Inc. - South Russell Water Project Report
- Ex. 121 2000-11-01 Water Supply Contract Between PWWSD #15 & Hays
- Ex. 122 2001-08-03 Letter from KGS re: Review of Loan Fund Project No. 2304
- Ex. 123 2001-08-06 Letter from KWO re: Review of Loan Fund Project No. 2304
- Ex. 124 2002-04-30 Ground Water Associates, South Russell Project - Water Quality Report
- Ex. 125 2003-05 Bartlett & West Engineers - Water Supply Alternative Review
- Ex. 126 1967-03 Wilson and Company, Water Supply Study Report for Russell
- Ex. 127 1991-08-22 Wilson Lake Application for Permit to Appropriate Water
- Ex. 128 2012-02-21 Letourneau letter granting Wilson Application extension to 12-31-16
- Ex. 129 1993-08-26 Black & Veatch, Memorandum re: Wilson Lake
- Ex. 130 1997-09 Wilson Lake Reconnaissance Study for Water Supply Storage Reallocation
- Ex. 131 2003-02-20 Burns & McDonnell - Evaluation of Lake Wilson and Kanopolis Reservoir
- Ex. 132 2003-09 Army Corps of Engineers Eastern Smoky Hill-Saline Basin Public Water Supply Study
- Ex. 133 2005-07-07 Burns & McDonnell - Wilson Lake Water Treatment Facilities, Concept Design Report
- Ex. 134 2015-01 KGS Information Circular re: The High Plains Aquifer
- Ex. 135 1985-04-18 Letter from Layne-Western Co. re: Additional Groundwater Supplies
- Ex. 136 1987-01 Clarke Well and Equipment, Inc. - Additional Water Supply in Trego County
- Ex. 137 1989-09-21 Summary of Potential Long-Term Sources of Water Supply
- Ex. 138 1989-08-24 Ground Water Associates Letter re: Water Rights for Sale in Graham County
- Ex. 139 1997-05-13 Black & Veatch - Hays Water Resources Evaluation, Summary Report
- Ex. 140 2002-01-10 PWWSD 15 Meeting Agenda
- Ex. 141 1998-04-06 Black & Veatch - Memorandum - Post Rock Costs
- Ex. 142 2006-06-14 Burns & McDonnell - Post Rock Water Supply Alternative Executive Summary
- Ex. 143 1990-09-09 Michael Perrault, Precious Water - How Hays Plans to Keep it Flowing
- Ex. 144 1993-04 Black & Veatch - Big Creek Water Banking Operation Plan

- Ex. 145 2006-08 Bartlett & West Engineers - Hays Wastewater Reuse Update
- Ex. 146 1991-05 Black & Veatch - Operation Plan Big Creek Water Banking Plan
- Ex. 147 1993-04 Black & Veatch - Operation Plan Big Creek Water Banking Plan
- Ex. 148 1974-04 Layne-Western Company - Groundwater Hydrology Study Saline River Valley
- Ex. 149 1986-05-13 Black & Veatch Letter to Carter, Hays City Manager
- Ex. 150 2001-08-22 Water Rights on Saline River
- Ex. 151 1993-07-01 DWR Policy Safe Yield in Alluvium
- Ex. 152 1994-10-13 Portion of KS Register Adopting K.A.R. 5-3-11
- Ex. 153 2009 KWO - 2009 Kansas Water Plan
- Ex. 154 2012 Cedar Bluff Lake Reservoir Information Sheet
- Ex. 155 1984-05 Cedar Bluff Water Supply and Operation Studies
- Ex. 156 2003-01-30 Letter from KWO re: Cedar Bluff
- Ex. 157 1984-05-31 DWR Interim Order re: Lower Smoky Hill IGUCA
- Ex. 158 1984-07-27 DWR Correctional Order re: Lower Smoky Hill IGUCA
- Ex. 159 1988-07-28 DWR Upper Smoky Hill IGUCA Order
- Ex. 160 2003-04-28 Letter from Bird to Sebelius
- Ex. 161 2004-09-22 Cedar Bluff Artificial Recharge Pool Operations Agreement
- Ex. 162 2008-06-30 Burns & McDonnell - Cedar Bluff Cattle Feeders Water Right Evaluation
- Ex. 163 2011-07-15 City Commission Work Session Agenda Packet
- Ex. 164 1990-01-03 Black & Veatch - Development of Big Bend Study
- Ex. 165 1993-11-01 Water Group Subcommittee Meeting
- Ex. 166 1989-09-15 DWR Policy closing Walnut Creek and Tribs
- Ex. 167 1992-01-29 Walnut Creek IGUCA Order
- Ex. 168 1996-12-06 Amendment to Walnut Creek IGUCA
- Ex. 169 1998-06-24 Amendment to Walnut Creek IGUCA
- Ex. 170 2001-06-29 Amendment to Walnut Creek IGUCA
- Ex. 171 1981-07-08 Pawnee Valley IGUCA Order
- Ex. 172 1985-09-13 Pawnee Valley IGUCA Order
- Ex. 173 2007-06-18 Pawnee Valley Phase 1 IGUCA Order
- Ex. 174 2015-12-13 Info. from WIMAS Database for File 40,406
- Ex. 175 1997-11-19 Hays Daily News, Glen Elder is Focus of Water Meeting
- Ex. 176 1997-10-17 Letter from DWR to Hays County Coalition

- Ex. 177 2002-01-31 Letter from PWWSD 15 to the Cities of Hays and Russell
- Ex. 178 Pikitanoi Information
- Ex. 179 1999-02-25 KWO, The Pikitanoi Report
- Ex. 180 2003-02-13 Duffy Memo to Greenlee re: Water Issues for Hays and Russell
- Ex. 181 1997-03-24 Doug Wildin Letter
- Ex. 182 2002-07 Ground-Water Recharge in the Upper Arkansas River Corridor in SW KS