STATE OF KANSAS
BEFORE THE DIVISION OF WATER RESOURCES,
KANSAS DEPARTMENT OF AGRICULTURE

In the Matter of the City of Wichita's Phase II Aquifer Storage and Recovery Project in Harvey and Sedgwick Counties, Kansas.	))Case No. 18 WATER 14014)

Pursuant to K.S.A. 82a-1901 and K.A.R. 5-14-3a.

PREHEARING ORDER

Comes now, Constance C. Owen, Presiding Officer, who hereby sets forth the following matters and procedures for the conduct of the hearing regarding the City of Wichita's proposed modifications to Phase II of its Aquifer Storage Project ("Project").

1. On April 12, 2019, at 3:00p.m., a prehearing conference regarding the Project was held by telephone.

2. The call was presided over by the Presiding Officer. Representatives and counsel from the following parties were present: Brian McLeod and Joseph Pajor for the City of Wichita ("City"), Tom Adrian, Lee Rolfs, David Stucky and Tim Boese for the Equus Beds Groundwater Management District No. 2 ("GMD2"), Aaron Oleen, Lane Letourneau and Chris Beightel for the Division of Water Resources, Kansas Department of Agriculture ("DWR"), and Tessa Wendling for the Intervenors.

3. In an order dated March 19, 2019, the Presiding Officer was delegated by the Chief Engineer of DWR pursuant to K.A.R. 5-14-3a to preside over this matter.

4. Discussion included the Presiding Officer's access to the record, identification of pending motions and procedures for their resolution, and clarification of procedures for conducting and scheduling the evidentiary hearing. Discussion also included the proposed procedural plan and schedule submitted by GMD2 via email on April 11, 2019.

THEREFORE, having considered all matters raised at the prehearing conference, the Presiding Officer sets forth the following:

1. The Presiding Officer will, at her discretion, contact the Chief Engineer's office regarding documents and other materials posted on DWR's website relative to this Proposal for the purpose of obtaining copies of items referenced in those documents but not posted on the website. The parties stated they had no objection.

2. The parties agreed that eight motions remain pending at this time, all of which were filed on March 11, 2019. These motions are:

a. City's Prehearing Motion in Limine to Exclude "Expert Reports" of Carl E. Nuzman, Tim Boese, and David Pope;

b. GMD2's Motion in Limine to Exclude Expert Testimony of the City;

c. GMD2's Motion for Summary Judgment;

d. GMD2's Motion to Compel to the Division of Water Resources;

e. GMD2's Motion to Compel to the City of Wichita;

f. GMD2's Motion in Limine and Motion to Bar Agency Recommendations:

g. GMD2's Motion to Dismiss;

h. Intervenors' Motion in Support of Equus Beds Groundwater Management District No. 2's Motion to Ensure Impartiality of Chief Engineer, Motion in Limine to Exclude Expert Testimony of City, Motion in Limine to Exclude Expert Testimony of DWR or Recommendations, Motion to Dismiss and Motion for Summary Judgment.

3. Any party wishing to file a response relative to any of the eight pending motions must do so on or before 5:00p.m., Friday, May 3, 2019. As previously ordered, all parties have agreed to accept service of all hearing documents solely by electronic mail.

4. As counsel for GMD2 stated, GMD2's Motion to Ensure Impartiality of Hearing Officer, filed March 11, 2019, is moot. To the extent that any of the other pending motions address this issue, those arguments are moot, as well.

5. All parties stated that they do not anticipate filing additional prehearing motions at this time.

6. Oral argument on the pending motions will be conducted in person on May 28, 2019, at 10:00 a.m. at the Harvey County Courthouse, 800 N. Main St., Newton, Kansas.

7. A status conference to address potential rulings on the pending motions and related issues as may arise will be conducted by telephone at 1:00p.m. on June 27, 2019.

8. An evidentiary hearing shall be held in this case; a Notice of Hearing containing all relevant information shall be issued as soon as the location and dates can be confirmed.

9. Written testimony and/or comments may be submitted in advance of the hearing by mailing a copy to Ronda Hutton, Kansas Department of Agriculture, 1320 Research Park Drive, Manhattan, Kansas 66502, Attn: Wichita ASR Project Testimony or an electronic copy may be submitted via email to ronda.hutton@ks.gov.

10. As documented in previous orders in this case, the hearing shall specifically consider the following two issues:

a. Should the bottom of the storage basin area be lowered as proposed by the City of Wichita?

b. Should the changes in the conditions in the City of Wichita's ASR Phase II permits be approved to allow the use of Aquifer Maintenance Credits as the City has described and proposed?

11. As previously ordered in the Order to Modify Hearing and Schedule, issued September 27, 2018 and the Pre-Hearing Conference Order, issued July 23, 2018, the City shall bear the burden of proof, proving by a preponderance of the evidence that the proposed changes to the project should be approved. K.A.R. 5-14-3a(n)(1). The proposed changes must meet the requirements set forth for Aquifer Storage and Recovery projects in K.A.R. 5-12-1, *et al.* and the requirements set forth in K.S.A. 82a-708b, including that the proposed changes are reasonable and will not cause impairment and that the proposed changes relate to the same local source of supply. Whether or not a change is reasonable should consider the effect upon the public interest.

12. As previously ordered in the Pre-Hearing Conference Order issued July 23, 2018, the hearing, to the extent reasonable and at the discretion of the Presiding Officer, shall be conducted pursuant to K.A.R. 50-14-3a. The rules of evidence will not be strictly adhered to in the formal phase of the hearing. However, all cross-examinations conducted should have some reasonable relationship to the testimony provided, and the privileges listed in K.S.A. 60-426 through 60-436, and any other privileges

recognized by law shall be given effect, insofar as the Presiding Officer determines such application is reasonable. All rules and procedures shall be applied by the Presiding Officer to provide all parties to this action a reasonable opportunity to be heard and present evidence.

13. As previously ordered in the Pre-Hearing Conference Order issued July 23, 2018, the designated parties to this hearing, and the order in which they shall present evidence, are as follows: the City of Wichita, Equus Beds Groundwater Management District No. 2, the Division of Water Resources, and the Intervenors (Richard Basore, Josh Carmichael, Judy Carmichael, Bill Carp, Carol Denno, Steve Jacob, Terry Jacob, Michael J. McGinn, Bradley Ott, Tracy Pribbenow and David Wendling). The Presiding Officer reserves the option to question witnesses directly during the hearing, and, at her discretion, may allow opportunities for response.

IT IS SO ORDERED, THIS 1ST DAY OF MAY, 2019.

Constance C. Owen
Presiding Officer

CERTIFICATE OF SERVICE

On this 1ST day of May, 2019, I hereby certify that the original of the foregoing PreHearing Order was sent by electronic mail to the following:

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Intervenors
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Constance C. Owen
Presiding Officer