

the SD-6 LEMA Management Plan satisfied the three initial requirements as set forth in K.S.A. 82a-1041(b)(1)-(3). (Attachment B.)

4. Pursuant to K.S.A. 82a-1041(b), timely notice of the second public hearing was mailed to each owner located within the proposed SD-6 LEMA and published in the Colby Free Press on April 26, 2017, the Sheridan Sentinel on April 27, 2017, and in the Kansas Register on April 27, 2017. The second public hearing was conducted by the Chief Engineer on May 31, 2017 in Hoxie, Kansas to consider whether the proposed SD-6 LEMA Management Plan is sufficient to address any of the existing conditions set forth in K.S.A. 82a-1036(a)-(d). (Attachment C.)

Applicable Law

1. The formation of a local enhanced management area is governed pursuant to K.S.A. 82a-1041. When the Chief Engineer finds that a local enhanced management plan submitted by a groundwater management district is acceptable for consideration, then the Chief Engineer shall initiate proceedings to designate a local enhanced management area as soon as practicable.
2. Once the proceedings are initiated, the Chief Engineer shall hold an initial public hearing to resolve the following:
 1. Whether one or more of the circumstances specified in K.S.A. 82a-1036(a) through (d), and amendments thereto, exist;
 2. Whether the public interest of K.S.A. 82a-1020, and amendments thereto, requires that one or more corrective control provisions be adopted; and
 3. Whether the geographic boundaries are reasonable.
3. The following circumstances are specified in K.S.A. 82a-1036(a) through (d):
 1. Groundwater levels in the area in question are declining or have declined excessively;
 2. The rate of withdrawal of groundwater within the area in question equals or exceeds the rate of recharge in such area;
 3. Preventable waste of water is occurring or may occur within the area in question;
 4. Unreasonable deterioration of the quality of water is occurring or may occur within the area in question.
4. K.S.A. 82a-1020 recognizes that it is in the interest of the public to create “special districts for the proper management of the groundwater resources of the state; for the conservation of groundwater resources; for the prevention of economic deterioration; for associated endeavors within the state of Kansas through the stabilization of agriculture; and to secure for Kansas the benefit of its fertile soils and favorable location with respect to national and world markets. It is the policy of this act to preserve basic water use doctrine and to establish the right of local water users to determine their destiny with respect to the use of the groundwater insofar as it does not conflict with the basic laws and policies of the state of Kansas.”

5. K.S.A. 82a-1041(b)(3) directs the Chief Engineer to conduct a subsequent hearing only if the initial public hearing is favorable on all three issues of fact and the expansion of geographic boundaries is not recommended.
6. K.S.A. 82a-1041(c) limits the subject of the second hearing to the local enhanced management plan that the Chief Engineer previously reviewed and in subsection (d) requires the Chief Engineer to issue an order of decision within 120 days:
 1. Accepting the local enhanced management plan as sufficient to address any of the conditions set forth in K.S.A. 8a-1036(a)-(d);
 2. Rejecting the local enhanced management plan as insufficient to address any of the conditions set forth in K.S.A. 8a-1036(a)-(d);
 3. Returning the local enhanced management plan to the groundwater management district, giving reasons for the return and providing the district with the opportunity to resubmit a revised plan for public hearing within 90 days of the return of the deficient plan; or
 4. Returning the local enhanced management plan to the groundwater management district and proposing modifications to the plan, based on testimony at the hearing or hearings, that will improve the administration of the plan, but will not impose reductions in groundwater withdrawals that exceed those contained in the plan. If the groundwater management district approves of the modifications proposed by the chief engineer, the district shall notify the Chief Engineer within 90 days of receipt of return of the plan. Upon receipt of the groundwater management district's approval of the modifications, the chief engineer shall accept the modified local management plan. If the groundwater management district does not approve of the modifications proposed by the Chief Engineer, the local management plan shall not be accepted.
7. Pursuant to K.S.A. 82a-1041(e), if the Chief Engineer issues an order of decision, then an order of designation that designates the area in question as a local enhanced management area shall be issued within a reasonable time following the order of decision.

Testimony

1. The record of the initial public hearing in this matter has been incorporated into the record for this second public hearing. (Transcript, p. 7-8.)
2. Since hydrologic conditions underlying the SD-6 LEMA remain similar to those established in the public hearings held in 2012, the Order of Decision, Order of Designation, and supporting testimony submitted by GMD4 dated November 28, 2012, from those proceedings were incorporated into the record for this second public hearing. (Exhibits A, B, and C.) (Transcript, p. 8.)
3. Ray Luhman, Colby, Kan., Manager of GMD4 – Mr. Luhman led the oral testimony in support of the re-formulation of the SD-6 LEMA for the period 2018-2022 pursuant to GMD4's proposed plan. Mr. Luhman submitted written testimony similar to that submitted at the initial public hearing, with the addition of the SD-6 LEMA Management Plan 2018-

2022 dated February 2, 2017, and the final committee report from the SD-6 LEMA Advisory Committee. (Exhibits D & E.) Mr. Luhman's oral testimony was based, in part, on the previous testimony of GMD4 dated November 28, 2012, which was incorporated into the record. Further, Mr. Luhman testified that there were declines in the depth to water at the seven observation wells within the SD-6 LEMA, and that there is an 80% correlation coefficient between the amount of pumpage and groundwater declines, or in other words if pumping could be limited to 15,000 acre feet per year, then there is an 80% chance of stabilizing the water table. Data from 2013, 2014, and 2015 show significantly less water was used because of the SD-6 LEMA allocations and that this correlated with a slowing rate of decline in depth to water, and even a rise in some places. Mr. Luhman also referenced Dr. Bill Golden's ongoing study that shows irrigators were able to reduce water use with the SD-6 LEMA and still maintain a similar level of net profit. (Exhibit E.) He also noted the successful use of "umbrella accounts" to allow flexibility among water rights. The proposed SD-6 LEMA Management Plan allows irrigators 55 inches per acre in a five-year allocation (an average of 11 inches per year), livestock use would be limited to 12 gallons per head per day, and recreational uses would be held to 90% of the authorized quantity. The plan for 2018-2022 would also include a carry-over of up to five inches per acre into the new LEMA from unused allocation from the 2012-17 period. The SD-6 LEMA Management Plan includes a mechanism to allow the transfer of water from one owner's account to another, the continuation of the Advisory Committee, and a requirement that any district established in this area with stricter corrective controls would take precedent over the SD-6 LEMA requirements. Exhibits D and E were incorporated into the record. (Transcript pp. 11-28.)

4. Brent Rogers, Hoxie, Kan., President of the GMD4 Board – Mr. Rogers testified that he has heard a high amount of positive feedback from those who own property in the SD-6 LEMA. He was encouraged that a carry-over provision would be allowed because it further encourages water users to save anything left over in their existing allocations rather than use them unnecessarily for fear of losing the water. (Transcript pp. 27-28.)
5. Mitchell Baalman, Hoxie, Kan., - Mr. Baalman owns land inside and outside the SD-6 LEMA. He testified that the SD-6 LEMA has made the residents inside western Sheridan County become better water managers and that it is visible that the water users inside the SD-6 LEMA are using their water more efficiently. He also testified that the mentality of the farmer regarding water use was changing and that he was optimistic about the SD-6 LEMA and other LEMAs in the future. (Transcript pp. 28-30.)

Findings of Fact

1. The proposed geographical boundaries of the SD-6 LEMA include the following sections in Sheridan and Thomas Counties, Kansas:

Sheridan County

T7S, R28W, Sections 19-21 and 28-33;

T7S, R29W, Sections 4-9 and 16-36;

T7S, R30W, Sections 19-36;

T8S, R29W, Sections 1-18;
T8S, R30W, Sections 1-18.

Thomas County

T8S, R31W, Sections 22-27 and 34-36.

The proposed SD-6 LEMA Management Plan proposes clear geographic boundaries and is located wholly within GMD4. (Exhibit D, p. 1.)

2. The proposed SD-6 LEMA Management Plan will limit water diversions within the SD-6 LEMA to 117,600 acre feet total for the period between January 1, 2018 and December 31, 2022 plus any carry-over amount from the existing SD-6 LEMA period. This five-year allocation, along with flexibility in how the allotment is applied, provide corrective control provisions which help meet the stated goal for reduced use of water. This five-year allocation is an increase from the SD-6 LEMA Management Plan in effect from 2013-2017 because water rights were released from Environmental Quality Incentives Programs and Agricultural Water Enhancement Programs. (Transcript pp. 15, 25-27; Exhibit E, GMD4 Testimony p. 3.)
3. Evidence shows there is a remaining need for corrective control provisions and that those proposed in the SD-6 LEMA Management Plan have been effective. Groundwater levels in the areas described above were declining in 2012 and continue to decline, however, the implementation of the SD-6 LEMA has reduced the rate of decline. From 2008 through 2013, observation wells averaged 1.5 feet per year declines in the water table. From 2013 through 2017, the observation wells averaged 0.68 feet per year declines. Despite the improvement in the rate of decline, the evidence still conclusively shows that the water table continues to decline and corrective controls are required. (Exhibit E, GMD4 Testimony, p. 3.)
4. The proposed SD-6 LEMA Management Plan takes into account existing conservation measures by permitting a five-inch carry over allotment, if any such amount remains at the end of the existing SD-6 LEMA, to reward those users who have voluntarily used less water than their full allocation. (Transcript p. 6; Exhibit D, p. 2.)
5. The proposed SD-6 LEMA Management Plan continues to provide for comprehensive accounting procedures and penalties for violations. (Exhibit D, pp. 3-7.)

Conclusions of Law

1. Notice of the initial public hearing and the second public hearing was proper and complied with the requirements of K.S.A 82a-1041(b).
2. As determined by the Initial Public Hearing Order, the initial requirements for the establishment of a LEMA were met during the initial public hearing.
3. The second public hearing took place according to the requirements of K.S.A. 82a-1041.

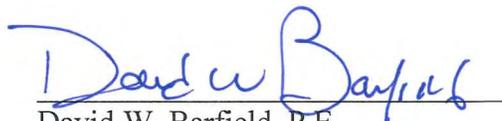
4. Corrective controls are required within the SD-6 LEMA in order to address excessive declines in the groundwater level and to address rates of withdrawal that exceed the rate of recharge as stated by K.S.A. 82a-1036.
5. A corrective control provision that only reduces the rate of decline, but does not prevent decline, is in the public interest as contemplated by K.S.A. 82a-1020.
6. Pursuant to K.S.A. 82a-1041(d)(1), the proposed SD-6 LEMA Management Plan is sufficient to address declines in groundwater levels and a rate of withdrawal that exceeds the rate of recharge in the area in question.
7. The proposed SD-6 LEMA Management Plan is consistent with the Kansas Water Appropriations Act and other Kansas law.

Order of Decision

COMES NOW, the Chief Engineer, who, based upon substantial competent evidence, as provided by the testimony and comments offered at, or in relation to, the second public hearing, finds that the proposed Sheridan 6 Local Enhanced Management Area Plan, 2018-2022 Administration is sufficient to address the decline in groundwater levels in the area in question.

THEREFORE, the Chief Engineer, pursuant to K.S.A. 82a-1041(e)-(h), shall within a reasonable time, enter a subsequent order of designation, which shall define the boundaries of the SD-6 LEMA and include all necessary corrective control provisions.

ENTERED THIS 24th **DAY OF AUGUST, 2017.**



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

Attachments:

Attachment A: “Sheridan 6 Local Enhanced Management Area Plan, 2018-2022 Administration.”

Attachment B: "Findings and Order Establishing the Initial Requirements for the Designation of a Local Enhanced Management Area, dated May 31, 2017."

Attachment C: "Proofs of Publication – Colby Free Press, April 26, 2017; Sheridan Sentinel, April 27, 2017, and Kansas Register, April 27, 2017."

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