

ADRIAN & PANKRATZ, P.A.
Attorneys at Law
Old Mill Plaza, Suite 400
301 N. Main St.
Newton, KS 67114
Phone: (316) 283-8746
Fax: (316) 283-8787

**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.

**RESPONSE TO CITY OF WICHITA'S RESPONSE TO MOTION FOR EXTENSION
OF TIME**

COMES NOW the Equus Beds Groundwater Management District, Number 2 (hereinafter "the District"), by and through its attorneys, Thomas A. Adrian and David J. Stucky of Adrian & Pankratz, P.A., with its response to the City of Wichita's Response to Motion for Extension of Time, as follows:

1. The City of Wichita (hereinafter "the City") styles its answer as a response to the District's Motion for Extension of Time.
2. However, the Motion filed by the City ultimately seeks to remove the District as a party.
3. It is noteworthy, that the Motion is not entitled a "Motion to Remove a Party" or even initially suggestive of this goal. However, the "prayer for relief" seeks this remedy.
4. Interestingly, the Motion filed by the City fails to actually indicate why it is unreasonable for the District to seek more time to respond to the City's discovery and instead just makes a blanket accusation that the District's discovery is "frivolous."

5. The City further counters with arguments why it should not have to answer the District's discovery requests.
6. Consequently, the Motion filed by the City is just a thinly veiled attempt to avoid the need to answer the District's discovery.
7. Thus, boiled down to its naked premise, the City simply responds to the District's request for additional time to answer discovery with *its own* demand not to have to answer the District's discovery at all.
8. The District is confused by the allegations made in the Motion by the City against the District. The City writes, "Given that GMD2's position on its inability to form a 'recommendation' will prevent it reaching any such prior (sic?) to the scheduled October 22 hearing, any further information provided by the City to GMD2 will also be completely unproductive to the hearing scheduled in this matter." Perhaps a word is missing from this statement. Regardless, it is hard to understand how if this District has indicated that its answers are predicated on receiving more information and then that information is actually received in the future by the District, how that militates against the District then being able to fully answer.
9. The District has alleged that it wishes to receive comments from patrons in the District since proper notices have not been sent. This is standard protocol. Further, since hypertechnical data underlies the basis for many of the answers that the District must supply to the discovery requests, it makes sense that the District would first receive that data before responding. Otherwise, the District must answer the City's discovery requests with a blindfold on.

10. Notwithstanding the above, the District has the full intent of cooperating in the discovery process and answering the discovery. The District feels like it has raised viable concerns and expressed quite sensible and rational reasons warranting an extension to respond to the discovery. Thirty days is not an unreasonable extension of time to respond to the City's request for production due to the complexity of this litigation.
11. The District understands the urgency with which the City wishes to implement the AMC program and the District is working diligently to answer Wichita's discovery requests. To facilitate that production, the District hired consultants to assist the District in that task. These consultants have not been able to begin/complete the production at this time. The District fully intends to make a recommendation to the Chief Engineer when needed information is available to the District to make that recommendation.
12. Further, the request to remove the District as a party cannot be given any serious traction. If the concern is that the District has been slow in responding to the discovery requests, than the remedy is to order the District to respond to the discovery in a timely fashion. The remedy is not to remove the District as a party.
13. Although this is not civil litigation, in civil litigation where discovery is not responded to, the complaining party must send a golden rule letter, file a motion to compel, and then the remedy is to order that the discovery be responded to by a certain date. There is no precedent for removing a party under a circumstance such as this. This is so axiomatic that no case law even needs to be cited. Indeed, the City does not provide any case law or statutory authority for its position either—because none exists.
14. If the District is removed as a party, then a 30-day extension requested by the District will suddenly seem like a very minor concern. It is submitted that removal of the District

as a party will create such foundational procedural and due process considerations that the result of the entire administrative hearing will be defective. However, this issue is not ripe at this juncture.

15. K.S.A.82a-1020 *et seq.* provides it is in the public interest to establish groundwater management districts for the purpose of management of the groundwater resources of the state. The District carries out those duties, in part, by recommending to the Chief Engineer adoption of regulations concerning safe yield within the District. *See* K.A.R. 5-22-7. The AMC program, and the lowering of the being proposed by the City, has the potential of negatively impacting implementation of the safe yield regulation within the District and no other entity is more qualified than the District to protect the interests of the senior water right owners in the district than the GMD #2 Board. Therefore it would be inappropriate and counterproductive to exclude the District as a party from the hearing on the City's proposal. Any decision or order issued by the Chief Engineer in this matter will directly impact the District's ability to carry out its statutory duty.

16. On July 23, 2013, the City of Wichita (City) filed 30 new applications to appropriate water, File No's 48,704 through 48,733. The purpose of these wells was to "authorize the recovery of aquifer recharge credits from an existing municipal supply well." On January 23 and 28, 2016, Wichita published notice of the filing of the new applications in the Wichita Eagle newspaper."

K.S.A. 82a-1906, the statute requiring notice to well owners within ½ mile became effective July 1, 2016. Although K.S.A. 82a-1906 was not in effect when the applications were filed on July 23, 2013, it certainly was in effect on August 9, 2018, when the Chief Engineer sent notices to adjoining well owners, requesting comments

within 15 days. There is nothing in this statute limiting its applicability to applications filed after its effective date, but would logically apply to all notices sent out after July 1, 2016.

WHEREFORE, the District asks that it be given an extension of time to answer the City's discovery, for an extension on the discovery deadlines in this case, for an extension of the hearing date, that all requests by the City in its Motion be denied, and for such other relief as the Chief Engineer deems just and equitable.

RESPECTFULLY SUBMITTED,



Thomas A. Adrian, SC #06976

tom@aplawpa.com

David J. Stucky, SC #23698

ADRIAN & PANKRATZ, P.A.

dave@aplawpa.com

Attorneys for Equus Beds Groundwater
Management District Number 2

CERTIFICATE OF FILING AND SERVICE

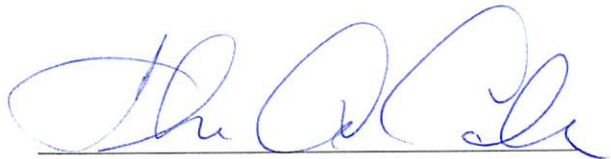
We, Thomas A. Adrian and David J. Stucky, do hereby certify that a true and correct copy of the above was served by () mail, postage prepaid and properly addressed by depositing the same in the U.S. mail; () fax; () email; and/or () hand delivery on the 12th day of September, 2018, to:

Aaron Oleen
Division of Water Resources
Kansas Department of Agriculture
1 320 Research Park Drive
Manhattan, Kansas 66502

Brian K. McLeod
Deputy City Attorney
City Hall - 13th Floor
455 N. Main
Wichita, Kansas 67202

and the original sent by () mail, () fax, () email, and/or () electronically filed to/with:

State of Kansas
Division of Water Resources
Kansas Department of Agriculture
1320 Research Park Drive, 3rd Floor
Manhattan, KS 66502



Thomas A. Adrian, SC #06976
tom@aplawpa.com
David J. Stucky, SC #23698
ADRIAN & PANKRATZ, P.A.
dave@aplawpa.com
Attorneys for Equus Beds Groundwater
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