

2. DWR's counsel took the initiative to arrange a conference call between DWR and GMD2 to discuss the Golden Rule Letter, which conference call occurred on November 15, 2018. During that call, GMD2's counsel notified DWR that clarifying, additional written discovery was forthcoming and thus DWR could defer responding to the Golden Rule Letter until after DWR responded to such discovery. DWR later responded to that additional written discovery (a second request for admissions and second interrogatories) on the agreed deadline of December 21, 2018. (See letter from DWR to GMD2, dated December 28, 2018, attached as **Exhibit B** hereto; see also DWR responses attached as Ex. A to the Motion.)

3. On December 28, 2018, DWR sent its response letter to GMD2's Golden Rule Letter. (See **Exhibit B** hereto.) With its letter, DWR provided GMD2 with access to unredacted copies of many previously redacted or withheld discovery documents and also enclosed a revised privilege log. (See **Exhibit B** hereto.) GMD2 attached DWR's original privilege log as Exhibit B to its Motion, but GMD2 fails to acknowledge, attach, or specifically address the contents of, DWR's revised privilege log.

II. ARGUMENT

4. Since DWR sent its December 28, 2018 response letter to GMD2, DWR has heard nothing from GMD2 about any remaining discovery issues. In the more than two months that have elapsed since December 28, at no point has GMD2 reached out to DWR regarding the issues addressed in DWR's response letter or in any way indicated that GMD2 was unsatisfied with DWR's response. Rather, GMD2 obviously has chosen the litigation strategy of sandbagging DWR with a baseless discovery motion at the eleventh-hour motion-deadline and only two weeks before the formal-phase hearing in this matter. If GMD2 truly were concerned about any discovery issues involving DWR, GMD2 would have reached out to DWR weeks if not months ago.

5. GMD2 provides no basis for its claim that “DWR has still improperly withheld information from the District”, and no explanation for its requests that all communications involving the Chief Engineer be unredacted and that DWR enumerate all *ex parte* communications involving the Chief Engineer and either DWR or Wichita. Such unsubstantiated claims and requests should not even merit a defense.

6. Nevertheless, the Presiding Officer should know that DWR has closely reviewed all documents that DWR originally withheld or redacted, and that DWR then chose to provide many items that it determined were less clearly subject to a privilege or protection or were not worth continuing to make such an assertion. (See **Exhibit B** hereto.) As indicated in DWR’s revised privilege log, many of the redacted or withheld communications involve legal advice sought by the Chief Engineer and provided by his attorney, KDA’s chief counsel. DWR is not in a position here to waive the attorney-client privilege of the Chief Engineer-Presiding Officer. Such a waiver of this and other asserted privileges and protections might properly be done by the Presiding Officer and KDA chief counsel following an *in camera* review of the disputed documents. DWR would not object to such a review. Notably, GMD2 has never requested it.

7. As to GMD2’s request for an enumeration of all *ex parte* communications with the Chief Engineer, DWR has already provided GMD2 with a list of reasonably known communications and meetings that DWR or the Chief Engineer had with Wichita leading up to this matter. (See DWR’s response to Interrogatory 9 of GMD2’s first interrogatories, and related spreadsheet, attached as Ex. A to the Motion; see also DWR’s responses to Interrogatories 3 and 4 of GMD2’s second interrogatories, attached as Ex. A to the Motion.) GMD2 provides no basis in its Motion for GMD2’s apparent assumption that *ex parte* communications between DWR or Wichita and the Presiding Officer have occurred since formal proceedings in this matter were

initiated. To the extent that GMD2's request regarding such communications is based on certain claims or characterizations made in GMD2's pending *Motion to Ensure Impartiality of Hearing Officer*, such request is unnecessary and improper for the reasons stated in DWR's response to such motion, which are incorporated herein.

8. Given all of the above, GMD2's request for payment of attorney's fees associated with its Motion is in particular bad form. Hopefully the gall in requesting fees as to issues not discussed or pursued in over two months is evident. If anything, the bad faith necessary to support an award of attorney's fees is present on the part of GMD2 in this matter. It certainly is not present on the part of DWR.

WHEREFORE, DWR requests that GMD2's Motion be denied; and for such other and further relief as the Presiding Officer deems just and equitable.

Respectfully submitted,



Aaron B. Oleen, S. Ct. #23588
1320 Research Park Drive
Manhattan, Kansas 66502
TEL: (785) 564-6715
FAX: (785) 564-6777
aaron.oleen@ks.gov
Attorney for KDA-DWR

CERTIFICATE OF SERVICE

I certify that on this 18th day of March, 2019, the above *DWR's Response in Opposition to GMD2's Motion to Compel to the Division of Water Resources* was electronically filed with the Presiding Officer for this matter and that copies were sent via e-mail to the following:

Presiding Officer

1320 Research Park Drive
Manhattan, KS 66502
david.barfield@ks.gov
kenneth.titus@ks.gov

Intervenors

1010 Chestnut
Halstead, KS 67056
twendling@mac.com

Equus Beds Groundwater Management District No. 2

313 Spruce
Halstead, KS 67056
tboese@gmd2.org
tom@aplawpa.com
stucky.dave@gmail.com
leland.rolfs@sbcglobal.net

City of Wichita

Department of Public Works & Utilities
455 North Main Street
Wichita, KS 67202
jpajor@wichita.gov
bmcleod@wichita.gov



Aaron B. Oleen, S. Ct. #23588

**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) Case No. 18 WATER 14014
In Harvey and Sedgwick Counties, Kansas.)**

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

**DWR's RESPONSES TO
GMD2'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS**

COMES NOW the Kansas Department of Agriculture, Division of Water Resources, and hereby provides responses to the First Request for Production of Documents propounded on DWR by Equus Beds Groundwater Management District Number 2 ("GMD2").

CERTAIN DEFINITIONS PROVIDED BY GMD2

1. "You" and/or "Your" means the Kansas Department of Agriculture ("KDA") and/or the Division of Water Resources ("DWR"), and any agent, consultant, employee, or manager for KDA and/or DWR.
2. "Chief Engineer" means David Barfield, Chief Engineer, Division of Water Resources, Kansas Department of Agriculture.
3. "The District" shall mean the Equus Beds Groundwater Management District No. 2.
4. "Subject Matter" means the content of this administrative hearing including, but not limited to, AMCs, the ASR Permit Modification Proposal, and all related subject matter.
5. "ASR Permit Modification Proposal" means the proposal dated March 12, 2018, that the City submitted to the Chief Engineer, Division of Water Resources, Kansas Department of Agriculture.
6. "AMC Proposal" means the Aquifer Maintenance Credits Proposal submitted as part of the ASR Permit Modification Proposal.
7. "AMC" means Aquifer Maintenance Credit.

8. "Aquifer" shall mean the Equus Beds Aquifer.
9. "The City" shall mean the City of Wichita.
10. "ASR" shall mean Aquifer Storage and Recovery.
11. As used herein, the term "document" means any medium upon which intelligence or information can be recorded or retrieved, and includes, without limitation, the original and each copy, regardless of origin and location, of any book, pamphlet, periodical, letter, memorandum, (including any memorandum or report of a meeting or conversation), contract, agreement, letter, e-mail, facsimile, check, receipt, notice, study, telegram, computer printout, invoice, computer data file, work papers, diary, calendar, transcript, bill, record, photograph, or any other graphic matter, however produced or reproduced, which is or was in your possession, custody or control.
12. As used herein, the term "communication" means any oral or written utterance of any nature including, but not limited to, correspondence, e-mail, facsimile, conversations, discussions, and consultations, between or among two or more persons.
13. As used herein, the terms "identification," "identify," or "identity," when used in reference to (a) a natural individual, require you to state his or her full name, job title, residential and business addresses and home and business phone numbers; (b) a corporation or business, require you to state its full name and any names under which it does business, the address of its principal place of business, and the addresses of all of its offices; (c) a document, requires you to state the number of pages and the nature of the document (e.g., letter or memorandum), its title, its date, the name or names of its authors and recipients, and its present location and custodian; (d) a communication, requires you to identify the document or documents which refer to or evidence the communication; and (e) an oral communication, requires you to identify the persons participating in the communication and to state the date, manner, place and substance of the communication.
14. When a request requires you to "state the basis of" a particular claim, defense, contention, or allegation, state in your answer the identity of each and every communication and each and every fact and legal theory that you think supports, refers to, or evidences such claim, defense, contention or allegation.
15. As used herein, the word "or" appearing in a request should not be read so as to eliminate any part of the request, but, whenever applicable, it should have the same meaning as the word "and."
16. As used herein, the words "person" or "entity" mean any natural person, company, business, partnership, corporation, association or other group carrying on a business enterprise.

RESPONSES TO PRODUCTION REQUESTS

1. Please produce any and all documents that demonstrate, reflect, or explain the accounting method that will be used for the AMC Proposal.

RESPONSE: See the documents posted on DWR's regularly updated public website for the Wichita ASR matter, at <https://www.agriculture.ks.gov/divisions-programs/dwr/managing-kansas-water-resources/aquifer-storage-and-recovery/wichita-asr>

See also the documents made available to GMD2 herewith (elimination of duplication attempted), at https://sokansas-my.sharepoint.com/:f/g/personal/aaron_oleen_kda_ks_gov/Eg9abVdhjFtFq2NZ_xFu61cBhP_wzOHfxlZBDepmhBEtbg?e=RB7uUv

2. Please produce any and all documents relating to the ASR Minimum Index Levels for the ASR Proposal.

RESPONSE: See the documents posted on DWR's regularly updated public website for the Wichita ASR matter, at <https://www.agriculture.ks.gov/divisions-programs/dwr/managing-kansas-water-resources/aquifer-storage-and-recovery/wichita-asr>

See also the documents made available to GMD2 herewith (elimination of duplication attempted), at https://sokansas-my.sharepoint.com/:f/g/personal/aaron_oleen_kda_ks_gov/Eg9abVdhjFtFq2NZ_xFu61cBhP_wzOHfxlZBDepmhBEtbg?e=RB7uUv

3. Please produce any and all documents used to arrive on the calculation for the AMC five percent initial loss determination.

RESPONSE: See the documents posted on DWR's regularly updated public website for the Wichita ASR matter, at <https://www.agriculture.ks.gov/divisions-programs/dwr/managing-kansas-water-resources/aquifer-storage-and-recovery/wichita-asr>

See also the documents made available to GMD2 herewith (elimination of duplication attempted), at https://sokansas-my.sharepoint.com/:f/g/personal/aaron_oleen_kda_ks_gov/Eg9abVdhjFtFq2NZ_xFu61cBhP_wzOHfxlZBDepmhBEtbg?e=RB7uUv

4. Please produce any and all documents used to arrive on the calculation of the AMC gradational annual losses.

RESPONSE: See the documents posted on DWR's regularly updated public website for the Wichita ASR matter, at <https://www.agriculture.ks.gov/divisions-programs/dwr/managing-kansas-water-resources/aquifer-storage-and-recovery/wichita-asr>

See also the documents made available to GMD2 herewith (elimination of duplication attempted), at https://sokansas-my.sharepoint.com/:f/g/personal/aaron_oleen_kda_ks_gov/Eg9abVdhjFtFq2NZ_xFu61cBhP_wzOHfxlZBDepmhBEtbg?e=RB7uUv

- 5. All documents relating to the work product of any expert who is expected to testify in this administrative hearing, including, but not limited to, documents evidencing, substantiating, referring or relating to: (a) each expert's factual observations and opinions; (b) the subject matter on which each expert was consulted and/or; (c) a summary of the grounds of each opinion; (d) all documents generated by, prepared by, provided to, relied upon, or reviewed by any such expert; (e) all documents provided to you by each expert, including but not limited to notes, reports, summaries, and correspondence; (f) documents evidencing the hourly rate of each expert, the method of determining the amount to be paid to the expert, the amount of fees earned by the expert to date, the amount of fees currently owed to the expert, the amount of fees billed to you by the expert, and the amount paid to the expert to date; and (g) a resume or curriculum vitae or other document summarizing such expert's qualifications within the field or discipline or area with respect to this litigation with regard to which such expert was consulted.**

RESPONSE: See the documents posted on DWR's regularly updated public website for the Wichita ASR matter, at <https://www.agriculture.ks.gov/divisions-programs/dwr/managing-kansas-water-resources/aquifer-storage-and-recovery/wichita-asr>

See also the documents made available to GMD2 herewith (elimination of duplication attempted), at https://sokansas-my.sharepoint.com/:f/g/personal/aaron_oleen_kda_ks_gov/Eg9abVdhjFtFq2NZ_xFu61cBhP_wzOHfxlZBDepmhBEtbg?e=RB7uUv

- 6. All documents relating to the work product of any consulting expert whose work will provide the basis, in whole or in part, of the testimony of any expert who will testify as a witness in this administrative hearing, including, but not limited to, documents evidencing, substantiating, referring or relating to: (a) each expert's factual observations and opinions; (b) the subject matter on which each expert was consulted; (c) a summary of the grounds of each opinion; (d) all documents generated by, prepared by, provided to, relied upon, or reviewed by any such expert; (e) all documents provided to you by each expert, including but not limited to reports, summaries, and correspondence; (f) documents evidencing the hourly rate of each expert, the method of determining the amount to be paid to the expert, the amount of**

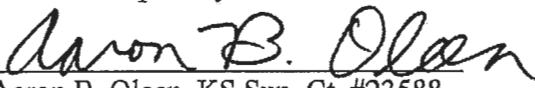
fees earned by the expert to date, the amount of fees currently owed to the expert, the amount of fees billed to you by the expert, and the amount paid to the expert to date; and (g) a resume or curriculum vitae or other document summarizing such expert's qualifications within the field or discipline or area with respect to this litigation with regard to which such expert was consulted.

RESPONSE: See the documents posted on DWR's regularly updated public website for the Wichita ASR matter, at <https://www.agriculture.ks.gov/divisions-programs/dwr/managing-kansas-water-resources/aquifer-storage-and-recovery/wichita-asr>

See also the documents made available to GMD2 herewith (elimination of duplication attempted), at https://sokansas-my.sharepoint.com/:f/g/personal/aaron_oleen_kda_ks_gov/Eg9abVdhjFtFq2NZ_xFu61cBhP_wzOHfxlZBDepmhBEtbg?e=RB7uUv

7. All documents upon which you relied or referred to in answering the District's First Set of Interrogatories.

***OBJECTION:** Counsel objects to the extent this request seeks documents protected by the attorney-client privilege, documents prepared in anticipation of litigation and thus protected as work product, and documents protected by any other legal privilege or protections. Subject to and without waiving the foregoing objections, DWR's response follows.*



Aaron B. Oleen, KS Sup. Ct. #23588

RESPONSE: See the documents posted on DWR's regularly updated public website for the Wichita ASR matter, at <https://www.agriculture.ks.gov/divisions-programs/dwr/managing-kansas-water-resources/aquifer-storage-and-recovery/wichita-asr>

See also the documents made available to GMD2 herewith (elimination of duplication attempted), at https://sokansas-my.sharepoint.com/:f/g/personal/aaron_oleen_kda_ks_gov/Eg9abVdhjFtFq2NZ_xFu61cBhP_wzOHfxlZBDepmhBEtbg?e=RB7uUv

8. All documents upon which you relied or referred to in answering the District's First Set of Requests for Admission.

***OBJECTION:** Counsel objects to the extent this request seeks documents protected by the attorney-client privilege, documents prepared in anticipation of litigation and thus protected as work product, and documents protected by any other legal privilege or protections. Subject to and without waiving the foregoing objections, DWR's response follows.*


Aaron B. Oleen, KS Sup. Ct. #23588

RESPONSE: See the documents posted on DWR's regularly updated public website for the Wichita ASR matter, at <https://www.agriculture.ks.gov/divisions-programs/dwr/managing-kansas-water-resources/aquifer-storage-and-recovery/wichita-asr>

See also the documents made available to GMD2 herewith (elimination of duplication attempted), at https://sokansas-my.sharepoint.com/:f/g/personal/aaron_oleen_kda_ks_gov/Eg9abVdhjFtFq2NZ_xFu61cBhP_wzOHfxlZBDepmhBEtbg?e=RB7uUv

9. Please provide all communications or correspondence, not privileged, between you and any third party concerning the ASR Permit Modification Proposal.

RESPONSE: See the documents posted on DWR's regularly updated public website for the Wichita ASR matter, at <https://www.agriculture.ks.gov/divisions-programs/dwr/managing-kansas-water-resources/aquifer-storage-and-recovery/wichita-asr>

See also the documents made available to GMD2 herewith (elimination of duplication attempted), at https://sokansas-my.sharepoint.com/:f/g/personal/aaron_oleen_kda_ks_gov/Eg9abVdhjFtFq2NZ_xFu61cBhP_wzOHfxlZBDepmhBEtbg?e=RB7uUv

10. Please produce all communications or correspondence between you and the City concerning the ASR Permit Modification Proposal, including before and after the ASR Permit Modification Proposal was submitted to You.

RESPONSE: See the documents posted on DWR's regularly updated public website for the Wichita ASR matter, at <https://www.agriculture.ks.gov/divisions-programs/dwr/managing-kansas-water-resources/aquifer-storage-and-recovery/wichita-asr>

See also the documents made available to GMD2 herewith (elimination of duplication attempted), at https://sokansas-my.sharepoint.com/:f/g/personal/aaron_oleen_kda_ks_gov/Eg9abVdhjFtFq2NZ_xFu61cBhP_wzOHfxlZBDepmhBEtbg?e=RB7uUv

11. Please produce all communications or correspondence, in your possession, between third parties and the City concerning the ASR Permit Modification Proposal, including before and after the ASR Permit Modification Proposal was submitted to You.

RESPONSE: See the documents posted on DWR's regularly updated public website for the Wichita ASR matter, at <https://www.agriculture.ks.gov/divisions-programs/dwr/managing-kansas-water-resources/aquifer-storage-and-recovery/wichita-asr>

See also the documents made available to GMD2 herewith (elimination of duplication attempted), at https://sokansas-my.sharepoint.com/:f/g/personal/aaron_oleen_kda_ks_gov/Eg9abVdhjFtFq2NZ_xFu61cBhP_wzOHfxlZBDepmhBEtbg?e=RB7uUv

12. Please produce all communications, not privileged, between you and/or your attorneys and with your experts in this case regarding the Subject Matter or the AMC Proposal.

RESPONSE: See the documents posted on DWR's regularly updated public website for the Wichita ASR matter, at <https://www.agriculture.ks.gov/divisions-programs/dwr/managing-kansas-water-resources/aquifer-storage-and-recovery/wichita-asr>

See also the documents made available to GMD2 herewith (elimination of duplication attempted), at https://sokansas-my.sharepoint.com/:f/g/personal/aaron_oleen_kda_ks_gov/Eg9abVdhjFtFq2NZ_xFu61cBhP_wzOHfxlZBDepmhBEtbg?e=RB7uUv

13. Please provide any and all documents, models, displays, exhibits, or any other form of demonstrative evidence which may be used as an exhibit at the administrative hearing in this matter.

RESPONSE: See the documents posted on DWR's regularly updated public website for the Wichita ASR matter, at <https://www.agriculture.ks.gov/divisions-programs/dwr/managing-kansas-water-resources/aquifer-storage-and-recovery/wichita-asr>

See also the documents made available to GMD2 herewith (elimination of duplication attempted), at https://sokansas-my.sharepoint.com/:f/g/personal/aaron_oleen_kda_ks_gov/Eg9abVdhjFtFq2NZ_xFu61cBhP_wzOHfxlZBDepmhBEtbg?e=RB7uUv

14. Please provide all handwritten or recorded personal notes (including computer entries) or other documents of any kind whatsoever, including calendars, diaries, or similar documents made regarding the events and incidents which form the basis of this Subject Matter.

OBJECTION: *Providing such calendar computer entries, where an electronic item is created every time one accepts an Outlook calendar invite, for example, is unduly burdensome. Subject to and without waiving the foregoing objections, DWR's response follows.*


Aaron B. Oleen, KS Sup. Ct. #23588

RESPONSE: See the documents posted on DWR's regularly updated public website for the Wichita ASR matter, at <https://www.agriculture.ks.gov/divisions-programs/dwr/managing-kansas-water-resources/aquifer-storage-and-recovery/wichita-asr>

See also the documents made available to GMD2 herewith (elimination of duplication attempted), at https://sokansas-my.sharepoint.com/:f/g/personal/aaron_oleen_kda_ks_gov/Eg9abVdhjFtFq2NZ_xFu61cBhP_wzOHfxlZBDepmhBEtbg?e=RB7uUv

See also the Excel spreadsheet produced in conjunction with DWR's response to Interrogatory 9 of GMD2's First Interrogatories.

15. Please provide any and all documents relating to non-retained experts You may call at the administrative hearing.

RESPONSE: See the documents posted on DWR's regularly updated public website for the Wichita ASR matter, at <https://www.agriculture.ks.gov/divisions-programs/dwr/managing-kansas-water-resources/aquifer-storage-and-recovery/wichita-asr>

See also the documents made available to GMD2 herewith (elimination of duplication attempted), at https://sokansas-my.sharepoint.com/:f/g/personal/aaron_oleen_kda_ks_gov/Eg9abVdhjFtFq2NZ_xFu61cBhP_wzOHfxlZBDepmhBEtbg?e=RB7uUv

16. Please provide all documents of any kind whatsoever relating to your method or your experts' methods of calculating the physical recharge of the Aquifer pursuant to the AMC Proposal.

RESPONSE: See the documents posted on DWR's regularly updated public website for the Wichita ASR matter, at <https://www.agriculture.ks.gov/divisions-programs/dwr/managing-kansas-water-resources/aquifer-storage-and-recovery/wichita-asr>

See also the documents made available to GMD2 herewith (elimination of duplication attempted), at https://sokansas-my.sharepoint.com/:f/g/personal/aaron_oleen_kda_ks_gov/Eg9abVdhjFtFq2NZ_xFu61cBhP_wzOHfxlZBDepmhBEtbg?e=RB7uUv

17. Please provide all documents of any kind whatsoever relating to the ASR Phase I and Phase II public hearings, including all testimonies submitted at the hearings and any recordings or transcripts of the hearings.

***OBJECTION:** This request is overly broad and unduly burdensome because virtually every document "related to" the City's ASR project could be said to be related to one of the aforementioned public hearings. Because GMD2 was involved with the aforementioned public hearings, counsel also objects to the extent that GMD2 already has copies of requested material. Counsel also objects to the extent this request seeks documents protected by the attorney-client privilege, documents prepared in anticipation of litigation and thus protected as work product, and documents protected by any other legal privilege or protections. Subject to and without waiving the foregoing objections, DWR's response follows.*


Aaron B. Oleen, KS Sup. Ct. #23588

RESPONSE: See the documents posted on DWR's regularly updated public website for the Wichita ASR matter, at <https://www.agriculture.ks.gov/divisions-programs/dwr/managing-kansas-water-resources/aquifer-storage-and-recovery/wichita-asr>

See also the documents made available to GMD2 herewith at https://sokansas-my.sharepoint.com/:f/g/personal/aaron_oleen_kda_ks_gov/Eg9abVdhjFtFq2NZ_xFu61cBhP_wzOHfxlZBDepmhBETbg?e=RB7uUv


The record for the ASR Phase I and Phase II public hearings is extensive. A reasonable effort has been made to locate and provide the requested testimonies and transcripts. A written transcript for the Phase I hearing was located and has been produced at the link above. No written transcript for the Phase II hearing exists, apparently, but a tape recording does. DWR will provide a copy of such recording if requested, subject to appropriate reimbursement for duplication costs, if necessary.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he served the above and foregoing responses to GMD2's First Request for Production of Documents by electronic mail on this 31st day of October, 2018, addressed to:

Equus Beds Groundwater Management District No. 2
313 Spruce
Halstead, KS 67056
tboese@gmd2.org
tom@aplawpa.com
stucky.dave@gmail.com

City of Wichita
Department of Public Works & Utilities
455 North Main Street
Wichita, KS 67202
jpajor@wichita.gov
bmcleod@wichita.gov


Aaron B. Oleen, S. Ct. #23588

STATE OF KANSAS

DEPARTMENT OF AGRICULTURE
1320 RESEARCH PARK DRIVE
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www.agriculture.ks.gov

GOVERNOR JEFF COLYER, M.D.
JACKIE McCLASKEY, SECRETARY OF AGRICULTURE

December 28, 2018

Via E-Mail Only

Tom Adrian
tom@aplawpa.com

Dave Stucky
stucky.dave@gmail.com

Leland Rolfs
leland.rolfs@sbcglobal.net

Re: *DWR's response to GMD2's 11-9-18 "Golden Rule Letter"*
Wichita Phase II ASR, KDA Case No. 18 WATER 14014

Gentlemen,

This letter responds to GMD2's above-referenced "Golden Rule Letter" regarding DWR's October 30 and 31, 2018, responses to GMD2's first written-discovery requests to DWR. As you know, after GMD2 sent the Golden Rule Letter to DWR on November 9, 2018, the parties discussed it at a conference call on November 15, 2018. During that call, GMD2's counsel notified DWR that additional/clarifying written discovery was forthcoming and thus DWR could defer responding to the Golden Rule Letter until after such discovery was propounded and answered. DWR answered that discovery on the agreed extended deadline of December 21, 2018.

The following responses track the numbered paragraphs in GMD2's Golden Rule Letter.

Regarding paras. 1-5:

DWR's counsel have reviewed and reconsidered DWR's privilege log and the items listed therein that were redacted or withdrawn. Although we believe that most, if not all, of the assertions were properly made, we conclude that, in many instances, maintaining those assertions is not worth the apparent worry that results to GMD2 or its counsel. Accordingly, see DWR's enclosed, revised privilege log. As its key explains, additional detail or explanation is in italics and documents previously redacted or withheld but now produced are shaded in gray and are available in a new subfolder in DWR's shared OneDrive folder for this matter, available here: https://sokansas-my.sharepoint.com/:f/g/personal/aaron_oleen_kda_ks_gov/EhMJSDAipvVKhzTUayoL54UBNGdszUrD7JoK50lV7CPTGw?e=IBFszw.

Furthermore, as to para. 3: DWR will not make a blanket production of all relevant documents that David Barfield sent or received. Mr. Barfield's role has only recently gone beyond that of Chief Engineer, to now also include Presiding Officer of this matter. This role change does not negate proper privileges or protections that applied to documents that Mr. Barfield sent or received when his role was merely that of Chief Engineer.

EXHIBIT "B"

Regarding para. 6:

DWR did not intentionally provide evasive answers to GMD2's first written discovery to DWR. Such discovery questions often included incorrect assumptions, imprecise/ambiguous terminology, or compound concepts that made it difficult for DWR to ascertain GMD2's intent and answer the questions. DWR did its best, as DWR also has done in answering GMD2's clarifying second written discovery to DWR. Hopefully those answers render moot para. 6 of the Golden Rule Letter.

Regarding para. 7:

Though it may be standard to request the identification of "all documents that are relevant" or "all documents that relate to" something, it is also standard—and appropriate—to object to such requests as being overly broad and unduly burdensome. Relevance is a subjective and relative concept, and DWR does not know whether what GMD2 thinks is relevant is the same as what DWR thinks is relevant. That said, DWR does not believe that it has intentionally withheld materially relevant documents that are not identified on its revised privilege log. DWR is aware of its ongoing obligation to supplement its discovery responses and DWR will do so, as necessary and appropriate.

Regarding para. 8:

DWR's interrogatory answers were not improper—see the discussion above regarding para. 6 of GMD2's Golden Rule Letter. Hopefully the concern regarding this para. 8 likewise has been negated given DWR's responses to GMD2's clarifying second written discovery to DWR.

Regarding para. 9:

DWR's answer to GMD2's first interrogatory no. 22 was not "completely evasive"—it just apparently was not the answer that GMD2 wanted to hear. DWR answered truthfully and with a reasonable amount of explanation.

Regarding para. 10:

DWR did not intentionally produce responsive documents in an unorganized manner. Had DWR more time and resources, it likely would have attempted to Bates-label and better organize its production. But given DWR's available resources, the breadth of GMD2's document requests, and the long history and number of documents that had been generated regarding the Wichita ASR project, DWR made the best production that it could under the circumstances and in the available time. DWR's counsel is willing to help GMD2's counsel locate particular documents, if GMD2's counsel believes they exist and has not found them in DWR's production.

If you still have any questions or concerns, please do not hesitate to contact me.

Sincerely,



Aaron B. Oleen
KDA Staff Attorney

Encl.

cc: Tessa Wendling (e-mail only)
Brian McCloud (e-mail only)

DWR REVISED (12-28-18)
Privilege Log re production to GMD2
KDA Case No. 18 WATER 14014

Key:

Italics = additional detail / explanation

Items highlighted gray = items previously redacted or withheld but subsequently produced on 12-28-18

Number corresponding to redacted / withheld document	Date of Document / Communication	Sender	Recipient(s)	Description	Claim(s) of Privilege	Additional Notes
1.	6-27-18	Aaron Oleen, KDA DWR Attorney	David Barfield, Chief Engineer; <i>Doug Schemm, Kenneth Titus</i>	Email Communication (<i>re AO legal input/advice re C.E.'s draft presentation-summary of Wichita's ASR Phase II modification requests</i>)	K.S.A. 60-426: Attorney-client privilege; K.S.A. 60-226(b)(4): Document prepared in anticipation of litigation	<i>Priv. Log item #s 1, 8, 11, 34, & 39 are the same</i>
2. <i>[now produced]</i>	8-31-17	Ginger Pugh, KDA DWR	Doug Schemm, Chris Beightel, Lane Letourneau, Jeff Lanterman—KDA DWR; David Barfield—Chief Engineer	Draft Letter	K.S.A. 60-226(b)(4): Document prepared in anticipation of litigation	
3. <i>[now produced]</i>	9-18-17	Ginger Pugh, KDA DWR	Doug Schemm, Chris Beightel, Lane Letourneau, Jeff Lanterman, Karen Hunter—KDA DWR; David Barfield—Chief Engineer	Draft Letter and Email Communication	K.S.A. 60-226(b)(4): Document prepared in anticipation of litigation	

4. <i>[now produced]</i>	3-21-18	Ginger Pugh, KDA DWR	Doug Schemm, Lane Letourneau, Chris Beightel, Jeff Lanterman—KDA DWR; David Barfield—Chief Engineer; Kenneth Titus—KDA Chief Legal Counsel	Draft Letter	K.S.A. 60-426: K.S.A. 60-226(b)(4): Document prepared in anticipation of litigation	
5. <i>[now produced]</i>	5-31-18	Ginger Pugh, KDA DWR	Kenneth Titus—KDA Chief Legal Counsel	Draft Order and Findings	K.S.A. 60-426: K.S.A. 60-226(b)(4): Document prepared in anticipation of litigation	
6. <i>[now produced]</i>	6-1-18	Ginger Pugh, KDA DWR	Kenneth Titus—KDA Chief Legal Counsel; Chris Beightel—KDA DWR; David Barfield—Chief Engineer	Draft Response/Letter	K.S.A. 60-426: Attorney-client privilege; K.S.A. 60-226(b)(4): Document prepared in anticipation of litigation	
7. <i>[now produced]</i>	6-1-18	Ginger Pugh, KDA DWR	David Barfield—Chief Engineer	Draft Order and Findings	K.S.A. 226(b)(4): Document prepared in anticipation of litigation	

8.	6-27-18	Aaron Oleen, KDA DWR Attorney	David Barfield—Chief Engineer; <i>Doug Schemm, Kenneth Titus</i>	Email Communication <i>(re AO legal input/advice re C.E.'s draft presentation- summary of Wichita's ASR Phase II modification requests)</i>	K.S.A. 60-426: Attorney-client privilege; K.S.A. 60- 226(b)(4): Document prepared in anticipation of litigation	<i>Priv. Log item #s 1, 8, 11, 34, & 39 are the same</i>
9.	5-30-18	David Barfield, Chief Engineer	Kenneth Titus—KDA Chief Legal Counsel	Email Communication <i>(re KT legal input/advice re pre- hearing & hearing procedure)</i>	K.S.A. 60-426: Attorney-client privilege; K.S.A. 60- 226(b)(4): Document prepared in anticipation of litigation	
10. <i>[now produced]</i>	4-17-18	David Barfield, Chief Engineer	Doug Schemm, Ginger Pugh—KDA DWR	Draft Letter and Draft Order and Findings	K.S.A. 60- 226(b)(4): Document prepared in anticipation of litigation	
11.	6-27-18	Aaron Oleen, KDA DWR Attorney	David Barfield—Chief Engineer; <i>Doug Schemm, Kenneth Titus</i>	Email Communication <i>(re AO legal input/advice re C.E.'s draft presentation- summary of Wichita's ASR Phase II modification requests)</i>	K.S.A. 60-426: Attorney-client privilege; K.S.A. 60- 226(b)(4): Document prepared in anticipation of litigation	<i>Priv. Log item #s 1, 8, 11, 34, & 39 are the same</i>
12. <i>[now produced]</i>	Unknown	Lane Letourneau, KDA DWR	N/A	Draft Answers to FAQs	K.S.A. 60- 226(b)(4): Document prepared in anticipation of litigation	

13.	3-4-16	Aaron Oleen, KDA DWR Attorney	Jim Bagley—KDA DWR	Email Communication <i>(re AO legal input/advice re draft Order Approving Available Recharge Credits as of 2014)</i>	K.S.A. 60-426: Attorney-client privilege; K.S.A. 60- 226(b)(4): Document prepared in anticipation of litigation	<i>Priv. Log items #s 13–30 compose a string pertaining to AO legal input/advice re drafting Order Approving Available Recharge Credits as of 2014)</i>
14.	3-4-16	Aaron Oleen, KDA DWR Attorney	Jim Bagley—KDA DWR	Email Communication <i>(re AO legal input/advice re draft Order Approving Available Recharge Credits as of 2014)</i>	K.S.A. 60-426: Attorney-client privilege; K.S.A. 60- 226(b)(4): Document prepared in anticipation of litigation	<i>Priv. Log items #s 13–30 compose a string pertaining to AO legal input/advice re drafting Order Approving Available Recharge Credits as of 2014)</i>
15.	3-8-16	Jim Bagley—KDA DWR	Aaron Oleen—KDA DWR Attorney	Email Communication <i>(re AO legal input/advice re draft Order Approving Available Recharge Credits as of 2014)</i>	K.S.A. 60-426: Attorney-client privilege; K.S.A. 60- 226(b)(4): Document prepared in anticipation of litigation	<i>Priv. Log items #s 13–30 compose a string pertaining to AO legal input/advice re drafting Order Approving Available Recharge Credits as of 2014)</i>

16.	3-4-16	Aaron Oleen, KDA DWR Attorney	Jim Bagley—KDA DWR	Email Communication <i>(re AO legal input/advice re draft Order Approving Available Recharge Credits as of 2014)</i>	K.S.A. 60-426: Attorney-client privilege; K.S.A. 60- 226(b)(4): Document prepared in anticipation of litigation	<i>Priv. Log items #s 13-30 compose a string pertaining to AO legal input/advice re drafting Order Approving Available Recharge Credits as of 2014)</i>
17.	3-4-16	Aaron Oleen, KDA DWR Attorney	Jim Bagley—KDA DWR	Email Communication <i>(re AO legal input/advice re draft Order Approving Available Recharge Credits as of 2014)</i>	K.S.A. 60-426: Attorney-client privilege; K.S.A. 60- 226(b)(4): Document prepared in anticipation of litigation	<i>Priv. Log items #s 13-30 compose a string pertaining to AO legal input/advice re drafting Order Approving Available Recharge Credits as of 2014)</i>
18.	3-4-16	Aaron Oleen, KDA DWR Attorney	Jim Bagley—KDA DWR	Email Communication <i>(re AO legal input/advice re draft Order Approving Available Recharge Credits as of 2014)</i>	K.S.A. 60-426: Attorney-client privilege; K.S.A. 60- 226(b)(4): Document prepared in anticipation of litigation	<i>Priv. Log items #s 13-30 compose a string pertaining to AO legal input/advice re drafting Order Approving Available Recharge Credits as of 2014)</i>

19.	3-4-16	Aaron Oleen, KDA DWR Attorney	Jim Bagley—KDA DWR	Email Communication <i>(re AO legal input/advice re draft Order Approving Available Recharge Credits as of 2014)</i>	K.S.A. 60-426: Attorney-client privilege; K.S.A. 60- 226(b)(4): Document prepared in anticipation of litigation	<i>Priv. Log items #s 13–30 compose a string pertaining to AO legal input/advice re drafting Order Approving Available Recharge Credits as of 2014)</i>
20.	3-4-16	Aaron Oleen, KDA DWR Attorney	Jim Bagley—KDA DWR	Email Communication <i>(re AO legal input/advice re draft Order Approving Available Recharge Credits as of 2014)</i>	K.S.A. 60-426: Attorney-client privilege; K.S.A. 60- 226(b)(4): Document prepared in anticipation of litigation	<i>Priv. Log items #s 13–30 compose a string pertaining to AO legal input/advice re drafting Order Approving Available Recharge Credits as of 2014)</i>
21.	3-4-16	Aaron Oleen, KDA DWR Attorney	Jim Bagley—KDA DWR	Email Communication <i>(re AO legal input/advice re draft Order Approving Available Recharge Credits as of 2014)</i>	K.S.A. 60-426: Attorney-client privilege; K.S.A. 60- 226(b)(4): Document prepared in anticipation of litigation	<i>Priv. Log items #s 13–30 compose a string pertaining to AO legal input/advice re drafting Order Approving Available Recharge Credits as of 2014)</i>

22.	3-4-16	Aaron Oleen, KDA DWR Attorney	Jim Bagley—KDA DWR	Email Communication <i>(re AO legal input/advice re draft Order Approving Available Recharge Credits as of 2014)</i>	K.S.A. 60-426: Attorney-client privilege; K.S.A. 60- 226(b)(4): Document prepared in anticipation of litigation	<i>Priv. Log items #s 13–30 compose a string pertaining to AO legal input/advice re drafting Order Approving Available Recharge Credits as of 2014)</i>
23.	3-4-16 through 4- 1-16	Aaron Oleen/Jim Bagley	Aaron Oleen/Jim Bagley	Email Communications <i>(re AO legal input/advice re draft Order Approving Available Recharge Credits as of 2014)</i>	K.S.A. 60-426: Attorney-client privilege; K.S.A. 60- 226(b)(4): Document prepared in anticipation of litigation	<i>Priv. Log items #s 13–30 compose a string pertaining to AO legal input/advice re drafting Order Approving Available Recharge Credits as of 2014)</i>
24.	4-1-16 through 4- 4-16	Aaron Oleen/Jim Bagley	Aaron Oleen/Jim Bagley/David Barfield	Email Communications <i>(re AO legal input/advice re draft Order Approving Available Recharge Credits as of 2014)</i>	K.S.A. 60-426: Attorney-client privilege; K.S.A. 60- 226(b)(4): Document prepared in anticipation of litigation	<i>Priv. Log items #s 13–30 compose a string pertaining to AO legal input/advice re drafting Order Approving Available Recharge Credits as of 2014)</i>

25.	4-1-16 through 4-4-16	Jim Bagley/David Barfield/Aaron Oleen	Jim Bagley/David Barfield/Aaron Oleen	Email Communications <i>(re AO legal input/advice re draft Order Approving Available Recharge Credits as of 2014)</i>	K.S.A. 60-426: Attorney-client privilege; K.S.A. 60-226(b)(4): Document prepared in anticipation of litigation	<i>Priv. Log items #s 13-30 compose a string pertaining to AO legal input/advice re drafting Order Approving Available Recharge Credits as of 2014)</i>
26.	4-1-16 through 5-4-16	Jim Bagley/David Barfield/Aaron Oleen	Jim Bagley/David Barfield/Aaron Oleen	Email Communications <i>(re AO legal input/advice re draft Order Approving Available Recharge Credits as of 2014)</i>	K.S.A. 60-426: Attorney-client privilege; K.S.A. 60-226(b)(4): Document prepared in anticipation of litigation	<i>Priv. Log items #s 13-30 compose a string pertaining to AO legal input/advice re drafting Order Approving Available Recharge Credits as of 2014)</i>
27.	4-1-16 through 5-9-16	Jim Bagley/David Barfield/Aaron Oleen	Jim Bagley/David Barfield/Aaron Oleen	Email Communications <i>(re AO legal input/advice re draft Order Approving Available Recharge Credits as of 2014)</i>	K.S.A. 60-426: Attorney-client privilege; K.S.A. 60-226(b)(4): Document prepared in anticipation of litigation	<i>Priv. Log items #s 13-30 compose a string pertaining to AO legal input/advice re drafting Order Approving Available Recharge Credits as of 2014)</i>

28.	5-10-16 through 5-11-16	Jim Bagley/David Barfield/Aaron Oleen	Jim Bagley/David Barfield/Aaron Oleen	Email Communications <i>(re AO legal input/advice re draft Order Approving Available Recharge Credits as of 2014)</i>	K.S.A. 60-426: Attorney-client privilege; K.S.A. 60- 226(b)(4): Document prepared in anticipation of litigation	<i>Priv. Log items #s 13-30 compose a string pertaining to AO legal input/advice re drafting Order Approving Available Recharge Credits as of 2014)</i>
29.	5-10-16 through 5-18-16	Jim Bagley/David Barfield/Aaron Oleen	Jim Bagley/David Barfield/Aaron Oleen	Email Communications <i>(re AO legal input/advice re draft Order Approving Available Recharge Credits as of 2014)</i>	K.S.A. 60-426: Attorney-client privilege; K.S.A. 60- 226(b)(4): Document prepared in anticipation of litigation	<i>Priv. Log items #s 13-30 compose a string pertaining to AO legal input/advice re drafting Order Approving Available Recharge Credits as of 2014)</i>
30.	5-10-16 through 5-18-16	Jim Bagley/David Barfield/Aaron Oleen	Jim Bagley/David Barfield/Aaron Oleen	Email Communications <i>(re AO legal input/advice re draft Order Approving Available Recharge Credits as of 2014)</i>	K.S.A. 60-426: Attorney-client privilege; K.S.A. 60- 226(b)(4): Document prepared in anticipation of litigation	<i>Priv. Log items #s 13-30 compose a string pertaining to AO legal input/advice re drafting Order Approving Available Recharge Credits as of 2014)</i>

31. <i>[now produced]</i>	10-18-17	Jeff Lanterman, KDA DWR	Lane Letourneau, Chris Beightel, Kristen Baum, Cameron Conant, Matt Meier—KDA DWR; David Barfield—Chief Engineer; Susan Metzger—KDA Deputy Secretary; Kenneth Titus—KDA Chief Legal Counsel	Email Communication	K.S.A. 60-426: Attorney-client privilege; K.S.A. 60-226(b)(4): Document prepared in anticipation of litigation	
32. <i>[now produced]</i>	8-9-18	Aaron Oleen/Brian McLeod—Deputy City Attorney, City of Wichita	Aaron Oleen/Brian McLeod	Email Communications	K.S.A. 60-226(b)(4): Document prepared in anticipation of litigation	
33. <i>[now produced]</i>	8-9-18	Jeff Lanterman, KDA DWR	Kelly Stewart, Mike Meyer, Lane Letourneau—KDA DWR	Email Communication	K.S.A. 60-226(b)(4): Document prepared in anticipation of litigation	
34.	6-27-18	Aaron Oleen—KDA DWR Attorney	David Barfield—Chief Engineer; Doug Schemm—KDA DWR; Kenneth Titus—KDA Chief Legal Counsel	Email Communication <i>(re AO legal input/advice re C.E.'s draft presentation-summary of Wichita's ASR Phase II modification requests)</i>	K.S.A. 60-426: Attorney-client privilege; K.S.A. 60-226(b)(4): Document prepared in anticipation of litigation	<i>Priv. Log item #s 1, 8, 11, 34, & 39 are the same</i>

35. <i>[now produced]</i>	3-14-18	Jeff Lanterman— KDA DWR	Doug Schemm, Lane Letourneau—KDA DWR	Email Communication	K.S.A. 60- 226(b)(4): Document prepared in anticipation of litigation	
36.	4-18-18	David Barfield, Chief Engineer	Lane Letourneau, Chris Beightel, Jeff Lanterman, Ginger Pugh, Doug Schemm—KDA DWR; Kenneth Titus—KDA Chief Legal Counsel	Email Communication <i>(discussion of KT's legal input/advice re why C.E. not delegating presiding-officer hearing authority)</i>	K.S.A. 60-426: Attorney-client privilege; K.S.A. 60- 226(b)(4): Document prepared in anticipation of litigation	
37.	7-16-18	Kenneth Titus, KDA Chief Legal Counsel	David Barfield—Chief Engineer; Aaron Oleen— KDA DWR Attorney; Chris Beightel, Doug Schemm, Jeff Lanterman, Ginger Pugh, David Engelhaupt, Cameron Conant—KDA DWR	Email Communication <i>(re KT legal advice re separation of C.E./Presiding Officer group & DWR group, for purposes of Wichita ASR Phase II modification-request hearing matter)</i>	K.S.A. 60-426: Attorney-client privilege; K.S.A. 60- 226(b)(4): Document prepared in anticipation of litigation	
38.	7-18-18	Aaron Oleen, KDA DWR Attorney	Lane Letourneau, Jeff Lanterman, Cameron Conant, Doug Schemm, Ginger Pugh, David Engelhaupt—KDA DWR	Email Communication <i>(re ABO legal advice re DWR group's testimony at Wichita ASR Phase II modification-request hearing)</i>	K.S.A. 60-426: Attorney-client privilege; K.S.A. 60- 226(b)(4): Document prepared in anticipation of litigation	

39.	6-27-18	Aaron Oleen, KDA DWR Attorney	Doug Schemm—KDA DWR; David Barfield— Chief Engineer; Kenneth Titus—KDA Chief Legal Counsel	Email Communication (<i>re AO legal input/advice re C.E.'s draft presentation- summary of Wichita's ASR Phase II modification requests</i>)	K.S.A. 60-426: Attorney-client privilege; K.S.A. 60- 226(b)(4): Document prepared in anticipation of litigation	<i>Priv. Log item #s 1, 8, 11, 34, & 39 are the same</i>
40. <i>[now produced]</i>	12-20-17	Jeff Lanterman, KDA DWR	David Barfield—Chief Engineer; Ginger Pugh, Chris Beightel, Lane Letourneau, David Englehaupt—KDA DWR	Email Communication	K.S.A. 60- 226(b)(4): Document prepared in anticipation of litigation	
41. <i>[now produced]</i>	3-14-18	David Barfield/Jeff Lanterman	N/A	Draft Letter	K.S.A. 60- 226(b)(4): Document prepared in anticipation of litigation	
42. <i>[now produced]</i>	12-20-17	David Barfield— Chief Engineer	Jeff Lanterman, Ginger Pugh, Chris Beightel, Lane Letourneau, David Engelhaupt—KDA DWR; Kenneth Titus—KDA Chief Legal Counsel	Email Communication	K.S.A. 60-426: Attorney-client privilege; K.S.A. 60- 226(b)(4): Document prepared in anticipation of litigation	

43. <i>[now produced]</i>	12-19-17	David Barfield— Chief Engineer	Chris Beightel, Lane Letourneau, David Engelhaupt, Ginger Pugh, Jeff Lanterman—KDA DWR	Email Communication	K.S.A. 60-226(b)(4): Document prepared in anticipation of litigation	
44.	12-18-17	David Barfield— Chief Engineer	Jeff Lanterman, Lane Letourneau, Chris Beightel—KDA DWR; Susan Metzger—KDA Deputy Secretary; Kenneth Titus—KDA Chief Legal Counsel	Email Communication <i>(discussion of KT's legal input/advice re why C.E. not delegating presiding-officer hearing authority)</i>	K.S.A. 60-426: Attorney-client privilege; K.S.A. 60-226(b)(4): Document prepared in anticipation of litigation	
45. <i>[now produced]</i>	5-24-16	David Barfield— Chief Engineer	Dough Schemm, Jim Bagley, Lane Letourneau, Chris Beightel, Jeff Lanterman, Karen Hunter—KDA DWR; Susan Metzger, KDA Deputy Secretary	Email Communication	Email contains link to irrelevant information	
46.	5-10-16	David Barfield/Aaron Oleen	David Barfield/Aaron Oleen	Email Communication <i>(re AO legal input/advice re draft Order Approving Available Recharge Credits as of 2014)</i>	K.S.A. 60-426: Attorney-client privilege; K.S.A. 60-226(b)(4): Document prepared in anticipation of litigation	

47.	10-1-15	Robert Large— Former KDA Chief Legal Counsel	Susan Metzger—KDA Deputy Secretary; David Barfield—Chief Engineer; Lane Letourneau, Jeff Jones, Doug Schemm— KDA DWR; Wendee Grady—Former KDA staff attorney	Email Communication <i>(re RL legal input/advice re whether public hearing required concerning ASR Phase II)</i>	K.S.A. 60-426: Attorney-client privilege; K.S.A. 60- 226(b)(4): Document prepared in anticipation of litigation	
48. <i>[now produced]</i>	10-1-15	David Barfield— Chief Engineer	Lane Letourneau, Chris Beightel, Jeff Lanterman, Jim Bagley, Doug Schemm—KDA DWR; Susan Metzger—KDA Deputy Secretary	Email Communication	Link to irrelevant information	
49. <i>[now produced]</i>	11-19-13	David Barfield— Chief Engineer	Sam Perkins, Jeff Lanterman, Jim Bagley, Chris Beightel, Tara Lanzrath, Lane Letourneau, Greg Foley-KDA DWR	Email Communication	Link to irrelevant information	
50. <i>[now produced]</i>	1-8-13	David Barfield— Chief Engineer	Lane Letourneau, Doug Schemm, Jim Bagley, Tara Lanzrath, Jeff Lanterman— KDA DWR	Email Communication	Link to irrelevant information	
51. <i>[now produced]</i>	6-27-18	Aaron Oleen—KDA DWR Attorney	David Barfield—Chief Engineer; Doug Schemm— KDA DWR; Kenneth Titus—KDA Chief Legal Counsel	Email Communication	K.S.A. 60-426: Attorney-client privilege; K.S.A. 60- 226(b)(4): Document prepared in anticipation of litigation	

52.	9-10-18	Kenneth Titus— KDA Chief Legal Counsel	Chris Beightel—KDA DWR; David Barfield— Chief Engineer	Email Communication <i>(re KT legal input/advice re draft e- mail to parties re various pre-hearing issues)</i>	K.S.A. 60-426: Attorney-client privilege (not redacted yet)	
53.	9-10-18	Chris Beightel/Kenneth Titus	Chris Beightel/Kenneth Titus/David Barfield	Email Communication <i>(re KT legal input/advice re draft e- mail to parties re various pre-hearing issues)</i>	K.S.A. 60-426: Attorney-client privilege	
54.	7-16-18 through 7-17-18	Chris Beightel/Kenneth Titus/David Barfield/Lane Letourneau	Chris Beightel/Kenneth Titus/David Barfield/Lane Letourneau	Email Communications <i>(re KT legal advice re separation of C.E./Presiding Officer group & DWR group, for purposes of Wichita ASR Phase II modification-request hearing matter)</i>	K.S.A. 60-426: Attorney-client privilege	
55. <i>[now produced]</i>	7-12-18	Chris Beightel/Lane Letourneau/David Barfield/Kenneth Titus	Chris Beightel/Lane Letourneau/David Barfield/Kenneth Titus	Email Communication	K.S.A. 60-426: Attorney-client privilege	
56. <i>[now produced]</i>	7-9-18	Chris Beightel/Lane Letourneau/David Barfield	Chris Beightel/David Barfield/Lane Letourneau/Jeff Lanterman/Kenneth Titus/Aaron Oleen	Email Communication	K.S.A. 60-426: Attorney-client privilege	

57.	4-17-18	David Barfield/Kenneth Titus	Lane Letourneau, Chris Beightel, David Barfield, Jeff Lanterman, Doug Schemm, Ginger Pugh	Email Communication <i>(re KT's legal input/advice re why C.E. not delegating presiding-officer hearing authority)</i>	K.S.A. 60-426: Attorney-client privilege; K.S.A. 60-226(b)(4): Document prepared in anticipation of litigation	
58. <i>[now produced]</i>	3-22-18	Chris Beightel—KDA DWR	David Barfield—Chief Engineer	Email Communication	K.S.A. 60-226(b)(4): Document prepared in anticipation of litigation	
59. <i>[now produced]</i>	3-8-16	Chris Beightel—KDA DWR	David Barfield—Chief Engineer	Email Communication	K.S.A. 60-226(b)(4): Document prepared in anticipation of litigation	
60.	11-5-04	Lee Rolfs	Will Gilliland/Jim Bagley	Internal memo <i>(LR legal analysis re certain change apps & proposed new app from Wichita, pertaining to Wichita ASR)</i>	K.S.A. 60-426: Attorney-client privilege; K.S.A. 60-226(b)(4): Document prepared in anticipation of litigation	

61.	10-11-04 through 10-12-04	Lee Rolfs/Jim Bagley/Tom Huntzinger/Dan Riley/Barbara Hodgson/Will Gilliland	David Pope/Tom Huntzinger/Jim Bagley/Barbara Hodgson/Dan Riley/Will Gilliland/Bruce Falk/Leslie Garner/Debra Mendez/Jessica Lynn/Kenneth Kopp	Email Communications <i>(re LR legal input/advice re draft pre-hearing order in Wichita ASR matter)</i>	K.S.A. 60-426: Attorney-client privilege	
62.	10-8-04	Jim Bagley	Lee Rolfs/David Pope	Email Communication & draft memo <i>(re JB's draft memo & identified issues to LR re certain apps filed by Wichita for the ASR project)</i>	K.S.A. 60-426: Attorney-client privilege; K.S.A. 60- 226(b)(4): Document prepared in anticipation of litigation	
63. <i>[now produced]</i>	10-11-04	Lee Rolfs	Dan Riley/Tom Huntzinger/David Pope/Jim Bagley/Barbara Hodgson/Will Gilliland/Bruce Falk/Leslie Gamer/Debra Mendez/Jessica Lynn	Email Communication	K.S.A. 60-426: Attorney-client privilege	
64.	6-23-05	Jim Bagley/Will Gilliland	Lee Rolfs/Kenneth Kopp/Will Gilliland/Jim Bagley/Doug Schemm	Email Communications <i>(re propriety of adding certain findings to an ASR order)</i>	K.S.A. 60-426: Attorney-client privilege	