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**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’S MOTION TO MODIFY ORDER ON PREHEARING MOTIONS  
AND DISTRICT’S MOTION FOR CONTINUANCE OF HEARING**

COMES NOW the Equus Beds Groundwater Management District Number 2 (hereinafter “the District”), by and through counsel Thomas A. Adrian of Adrian & Pankratz, P.A., Leland Rolfs of Leland Rolfs Consulting, and David Stucky, with its Response to City of Wichita’s Motion to Modify Order on Prehearing Motions and District’s Motion for Continuance of Hearing. In support of said Motion, Movant states as follows:

1. In ruling on various motions, the Presiding Officer recognized the following facts and made the following findings in her Order on Prehearing Motions (“Order”):
  - a. The parties were originally given a deadline of submitting expert reports by February 15, 2019.
  - b. That date was subsequently moved back to February 18, 2019.
  - c. Only the District and the Intervenors have filed expert reports that met all the Kansas guidelines for the admissibility of expert reports.
  - d. The City of Wichita (“the City”) failed to provide the “observations, opinions or conclusions of any given expert.” Without offering the rationale of any

expert as it related to the cursory factual information provided, the reports were defective. Thus, the City has until August 23, 2019 at 12:00 p.m. to supplement its expert reports.

- e. Likewise, the Division of Water Resources (“DWR”) failed to submit any expert reports by the requisite deadlines.
- f. However, the Order specifies that Lane Letourneau may testify as an expert, but only to the extent consistent with the opinions rendered in his deposition and his previously submitted written testimony.
- g. The DWR has until August 23, 2019 at 12:00 p.m. to submit its “additional” expert reports, if desired.
- h. The reason for the liberal opportunity to give the City and the DWR an opportunity to supplement or submit additional expert reports is because all parties should have a “reasonable opportunity to be heard” and present “evidence and argument.”
- i. On the other hand, by ignoring the requisite deadlines set for expert witnesses yet seeking to advance expert testimony at the hearing, the DWR and the City could put the District at a disadvantage by springing “unfair surprise” on the District.
- j. The Order aptly observes, “Supplementation is intended for changes due to newly discovered evidence or material inadvertently left out, not for the initial disclosure of an opinion on the central issue of the lawsuit.” (citations omitted).

- k. In sum, although the City and the DWR failed to comply with the expert deadlines, the opportunity to give all parties a chance to reasonably be heard outweighed strict adherence to the technical deadlines.
- l. The Order also gave the City and the DWR until 12:00 p.m. on August 6, 2019 to supplement their responses to the District's discovery requests, since the original responses were ruled as incomplete.
2. The District certainly understands the rationale of the decision of the Hearing Officer. The District also has the desire to win the case based on the merits, rather than on a procedural technicality.
3. However, one very important observation to make about the original Scheduling Orders is that the parties were given additional time to take depositions *after* the expert reports were submitted.
4. The District would like the opportunity to take depositions, if desired, after the District receives any supplemental or additional expert reports. Of course the District cannot anticipate the scope of the depositions required until after any supplemental expert reports are filed.
5. This opportunity to take depositions helps the District to avoid "unfair surprise" at the hearing.
6. Additionally, after any depositions are completed, the District would have very little time to then focus its attention on preparing for the formal hearing.
7. As the Hearing Officer astutely determined and noted in the Order, the City's proposal is "an extensive highly technical document that may be the subject of expert testimony at the hearing."

8. Due to the highly technical nature of the City's proposal, a mere 30 days is not adequate for the District to review and examine supplemented and/or entirely new expert reports.
9. Due to the highly technical nature of the City's proposal, the District will undoubtedly need to employ the services of the District's consultant(s) to review the supplemented and/or new expert reports, which will require more than a 30-day window prior to the hearing.
10. Further, the District may desire to have its experts prepare rebuttal expert reports, if necessary, to clarify issues at the hearing.
11. In addition to the supplemented and/or new expert reports that may be filed by the City and the DWR, as noted, the DWR and the City were given an additional opportunity to furnish supplemental responses to the District's discovery. The District has now received additional discovery from both the City and the DWR. Although the District has only begun to look at these supplemental answers and documents, it suffices to say that the District has received hundreds of pages of additional documents. Sifting through these additional documents and answers will only add to the workload of the District in preparing for the hearing.
12. On the other hand, the other parties have had the District's answers to discovery for months. The other parties have had the District's expert reports for over five months. The other parties have had the full opportunity to digest the District's reports and factor these reports into the hearing strategy. The other parties have had the full opportunity to take depositions of the District's experts. The other parties have had

the full opportunity to consider the District's expert reports in filing and responding to motions.

13. On the other hand, while it is understandable to give the City and the DWR an opportunity to supplement or produce new expert reports, this late deadline puts the District at a significant disadvantage.
14. The District currently would not have the same opportunity afforded to the DWR and to the City to take depositions.
15. The District would have a very short window of time to digest the supplemental or additional expert reports and prepare for the hearing.
16. It also merits pointing out that had the City and the DWR properly submitted expert reports in the first place, it would have likely guided the factual content of the District's motions. In looking at the City's supplemental answers to the District's Request for Admissions, for example, it likely would have altered the uncontroverted facts outlined in the Motion for Summary Judgment. Indeed, the District fairly recognizes that absent new motion deadlines, it is impossible to offer a curative remedy for this procedural disadvantage heaped on the District.
17. However, the District is merely asking for an opportunity to properly consider the additional expert reports in preparing for the hearing and the ability to conduct depositions, if desired.
18. Consequently, with the new expert deadline of August 23, 2019, it is impractical for the District to adequately prepare in a short month after getting saddled with what could be a wealth of highly technical expert information.

19. Further, on August 2, 2019, the City filed a Motion to Modify Order on Prehearing Motions. In a separate order, provided later that day, the Presiding Officer determined that the other parties should have until noon on August 6, 2019, to respond to the City's new motion. This shall serve as the District's formal response.
20. The District does not object to giving the City more time to comply with the Order, provided that it is also afforded additional time to prepare for the hearing. The District understands that the City's counsel was on vacation. The District also understands that it could take some additional time to recreate a digital document set. Consequently, the District is sympathetic to the City requiring additional time. In return, the District is merely asking for the same level of courtesy in receiving additional time to prepare for the hearing.
21. By way of further response, if the City is "opening the door" to modifying the Order, the District would also like the opportunity to list other Requests for Admission and Interrogatory questions that it believes were never properly answered by the City. The response of the District in early June was only intended to provide examples of defective answers—not an exhaustive list. Thus, the District would respectfully ask for the opportunity to provide an exhaustive list of "defective" answers if this was what the Presiding Officer originally expected of the District. The District apologizes for misunderstanding this expectation.
22. The District is cognizant that the Presiding Officer mentioned she was "loathe" to continue the hearing.
23. However, the District firmly believes that if one of the parties is going to be allowed to supplement existing expert reports, as in the case of the City, and another party is

allowed to submit entirely new expert reports, as in the case of DWR, a continuance is the only tenable outcome in this situation to avoid unfair surprise and to give all parties a reasonable opportunity to prepare.

24. As another reason for this Motion, one of the attorneys for the District, and potentially one of the District's experts, have personal conflicts that have arisen at the same time as the scheduled hearing dates.

25. Moving this hearing should not prejudice any of the other parties. On the other hand, not moving the hearing will greatly prejudice the District. In sum, the District should not be penalized for any inadvertence of the City and of the DWR. The District is simply asking for the same due process afforded to the other parties in preparing for this hearing.

WHEREFORE, the District respectfully asks that the Presiding Officer continue the hearing for at least 90 days, give the District the opportunity to properly review, and if necessary, take depositions after additional or supplemental expert reports are completed, for the opportunity to clarify the requested answers to its Second Request for Admissions and Interrogatories, to rule on the City's Motion to Modify Order on Prehearing Motions in a manner consistent with this response, and for any other relief the Presiding Officer deems just and equitable.

RESPECTFULLY SUBMITTED,



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**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; (x) email; and/or ( ) hand delivery on the 6th day of August, 2019, to:

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