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To: Earl Lewis, P.E., Chief Engineer, Division of Water Resources, Kansas Department of Agriculture
From: Richard Felts, President of Kansas Farm Bureau
Date: November 20, 2020
Re: GMD 4 District-Wide LEMA proposal

Chief Engineer Lewis on behalf of Kansas Farm Bureau I want to thank you for the opportunity to provide written comments regarding the proposed Western Kansas Groundwater Management District (GMD) 1 Wichita County Local Enhanced Management Area (LEMA). We strongly support and encourage efforts to address aquifer overdraft and groundwater declines with strategies that are consistent with state water law.

We understand the economic and hydrologic challenges in dealing with the Ogallala. Local stakeholders in Wichita County have worked diligently to come up with solutions offered in their LEMA proposal, many of which are desperately needed and long overdue. As a statewide farm organization we wrestle with whether the solutions offered are in conformity with the letter and intent of the Kansas Water Appropriation Act (KWAA) and the Groundwater Management District Act (GMD Act); what precedent does this advance and are private property rights being diminished?

The most basic law governing the use of water in Kansas is found in **K.S.A. 82a-706** ...*The chief engineer shall enforce and administer the laws of this state pertaining to the beneficial use of water and shall control, conserve, regulate, allot and aid in the distribution of the water resources of the state for the benefits of beneficial users of all of its inhabitants in accordance with the rights of priority of appropriation.* Unfortunately, the LEMA proposal does not do that.

K.S.A. 82a-707 (b) further clarifies the principles the chief engineer is to follow when the supply of water is not sufficient to satisfy all water rights. The statute states...*the date of priority of every water right of every kind, and not the purpose of use, determines the right to divert and use water at any time when the supply is not sufficient to satisfy all water rights....*

Insufficient water supply now, and looming in the future, is the stimulus for this LEMA, so these principles undoubtedly apply as you consider the LEMA proposal. The Wichita County LEMA would impose mandatory reductions on a single purpose of use—irrigation. **How can a LEMA be consistent with state law when it ignores water right priority and regulates only one type of use?** The rationale for this is said to be because irrigation is the majority user but that is not consistent with the law and sets a dangerous precedent that leads to the devaluing of irrigation water rights (property rights) while giving that value, without compensation, to someone else.



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Authority granted in the GMD Act K.S.A. **82a-1020** (built upon the KWAA K.S.A. **82a-1039**) states...*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...insofar as it does not conflict with the basic laws and policies of the state of Kansas.* LEMA law is buried far within the GMD Act therefore also being subject to the KWAA and its most fundamental principles.

We fully understand the dilemma and are NOT suggesting that strict priority be enforced to implement a LEMA. We only ask that if reductions are applied then all beneficial uses of water must meet the desired goals of the District.

With regards to priority, one suggestion would be to add an element to LEMA's that would require the consent of the "senior" water rights (those water rights established prior to a "to-be-determined" date when overdevelopment occurred) before applying reductions. This voluntary participation would alleviate our concerns that state law is being violated by ignoring priority and that private property rights are being subjectively recognized. Upholding private property rights would ultimately establish and value the markets for water right seniority which has been undermined by issuance of term permits and selective administration.

The proposed LEMA, if approved by you, would essentially grant the GMD Board authority to regulate hand-picked water rights with no regards to priority and ambiguously based upon type of use. By definition, water rights are real property rights and management decisions that affect private property rights outside of the very basic principles established in Kansas water law, no matter how good the intention, violates our water law and ultimately throws the system into chaos where winners and losers are "chosen". This is not consistent with the KWAA or the GMD Act.

Thank you for your consideration of these comments and we look forward to helping devise long-term solutions in tune with Kansas water law while looking for the best options that respect private property rights, sustains the economy and utilizes local, stakeholder input that conforms with our water law.

Sincerely,

Rich Felts

KFB President