

**In the Twenty-Third Judicial District  
District Court of Gove County, Kansas**

JON and ANN FRIESEN; FRIESEN  
FARMS, LLC, et. al.,  
Plaintiffs,

vs.

Case No. 2018-CV-10

DAVID BARFIELD, P.E., THE CHIEF  
ENGINEER OF THE STATE OF  
KANSAS, DEPARTMENT OF  
AGRICULTURE, DIVISION OF  
WATER RESOURCES, in his official  
capacity,  
Defendant.

Pursuant to K.S.A. Chapter 77

**Northwest Kansas Groundwater Management  
District Number Four's Answer**

The Northwest Kansas Groundwater Management District Number Four (GMD4), by counsel, Adam C. Dees, Clinkscales Elder Law, Hays, Kansas, answers the Petitioner for Judicial Review (Petition), pursuant to K.S.A. 77-614(d), filed by Jon and Ann Friesen, Friesen Farms, LLC, et al. (Petitioners) as follows:

1. GMD4 denies each and every allegation not specifically admitted below.
2. GMD4 admits paragraphs 1 through 31 regarding the names and addresses of the plaintiffs. GMD4 is without sufficient information or knowledge as to each Plaintiffs' ownership, holdings, or interests in agricultural land and water

rights in the specific counties designated and therefore denies the same regarding each plaintiff.

3. GMD4 admits paragraphs 52 and 53.

4. GMD4 is without sufficient information or knowledge to admit or deny paragraphs 54 and 55, and therefore denies those paragraphs.

5. GMD4 admits in part and denies in part paragraph 56. GMD4 admits that Plaintiffs seek review of the April 13, 2018 Order. The remainder of Plaintiffs' paragraph 56 contains legal assertions; therefore, GMD4 denies the remainder of paragraph 56.

6. In response to paragraph 57, GMD4 admits the Order is effective in Gove County and admits that three of the plaintiffs reside in Gove County. GMD4 is without sufficient information or knowledge regarding whether those plaintiffs own land in Gove County; therefore, GMD4 denies that three of the plaintiffs own land in Gove County.

7. GMD4 admits paragraphs 58 through 60.

8. Plaintiffs' paragraph 61 contains legal assertions; therefore, GMD4 denies paragraph 61.

9. GMD4 admits paragraph 62.

10. GMD4 is without sufficient information or knowledge to admit or deny paragraph 63 and therefore denies that paragraph.

11. GMD4 denies paragraph 64.

12. Plaintiffs' paragraph 65 contains legal assertions; therefore, GMD4 denies paragraph 65.

13. GMD4 is without sufficient information or knowledge to admit or deny paragraph 66 and therefore denies paragraph 66.

14. GMD4 admits paragraphs 67 through 69.

15. GMD4 admits that on October 10, 2017, five irrigators intervened in the LEMA proceeding and filed a motion for continuance with a proposed November 14, 2017 hearing date. GMD4 further admits that the Plaintiffs asserted the allegations contained in paragraph 70(a-i), but denies the allegations contained in paragraph 70(a-i).

16. GMD4 denies paragraph 71, except that GMD4 admits the Chief Engineer did respond to the Motion for Continuance by electronic mail.

17. In response to paragraph 72, GMD4 admits that the intervenors sent several documents to the Kansas Department of Agriculture, Division of Water Resources (DWR) and the Secretary of the Kansas Department of Agriculture (KDA) on October 27, 2017. GMD4 denies the rest of paragraph 72.

18. GMD4 admits the Intervenors made the statements found in paragraph 73 in their Petition for Review to the Secretary of the Kansas Department of Agriculture, but denies those statements and allegations.

19. GMD4 admits paragraphs 74 through 81.

20. Plaintiffs' paragraphs 82 through 103 contain legal assertions; therefore, GMD4 denies paragraphs 82 through 103.

21. In response to paragraph 104, GMD4 admits that the Intervenors filed previous briefing and that the Intervenors attempt to incorporate their previous briefings in this matter, but denies the content of those briefings.

22. Plaintiffs' paragraphs 106 through 157 contain legal assertions; therefore, GMD4 denies paragraphs 106 through 157.

23. GMD4 is without sufficient information or knowledge to admit or deny paragraphs 159 and 160 and therefore denies those paragraphs.

24. GMD4 denies paragraphs 161 and 162.

25. GMD4 admits paragraph 163.

26. GMD4 admits paragraph 164 in that the Chief Engineer found that groundwater levels "have declined or are still declining" and that the "rate of withdrawal of groundwater there exceeds the rate of recharge," but denies the rest of paragraph 164.

27. Plaintiffs' paragraphs 165 through 171 contain legal assertions; therefore, GMD4 denies paragraphs 165 through 171.

28. GMD4 admits paragraphs 172 and 173.

29. Plaintiffs' paragraph 174 contains legal assertions; therefore, GMD4 denies paragraph 174.

30. GMD4 admits paragraph 175.

31. Plaintiffs' paragraphs 176 and 177 contain legal assertions; therefore, GMD4 denies paragraphs 176 and 177.

32. GMD4 denies paragraphs 178 through 180.

### **Incorporation of Previous Filings**

33. GMD4 incorporates its previous filings in this matter by reference including, but not limited to:

33.1. Written Response to Intervenors Motion to Provide Due Process Protections dated November 1, 2017.

33.2. Answer to Petition for Review filed with Kansas Secretary of the Department of Agriculture dated November 6, 2017.

33.3. Testimony of the Northwest Kansas GMD4 to Hearing Officer Connie Owen, appointed by David Barfield, Chief Engineer, Division of Water Resources, Kansas Department of Agriculture, Re: Written testimony for proposed District-wide LEMA of August 23, 2017; and, supplemental written testimony.

33.4. Testimony of the Northwest Kansas Groundwater Management District Number 4 to Hearing Officer David Barfield, Chief Engineer, Division of Water Resources, Kansas Department of Agriculture, RE: Written Testimony for Proposed District-Wide LEMA of November 14, 2017 and Affidavit of the Timeline of LEMA Public Meetings, Board Meetings, and Notices.

### **Affirmative Defenses**

The GMD4 asserts the following affirmative defenses:

1. GMD4 alleges the Petition fails to state a claim upon which relief may be granted.
2. GMD4 asserts all defenses, affirmative or otherwise, including, but not limited to, those the GMD4 discovers during these proceedings.

Therefore, GMD4 requests the Court deny the relief requested by Plaintiffs and for any other relief the Court determines just and equitable.

SUBMITTED BY:

/s/ Adam C. Dees

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## Certificate of Service

I certify that on the date and time above, the above *Northwest Kansas Groundwater Management District Number Four's Answer* was electronically filed with the Clerk of the District Court using the Court's electronic filing system, which will send a notice of electronic filing to the following registered participants:

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Gove County Clerk of the District  
Court  
eFlex

By: /s/ Adam C. Dees

Adam C. Dees, # 25017