

**Supplemental Testimony of the Northwest Kansas Groundwater Management District No. 4 (GMD 4) 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**

**Presented by: Raymond Luhman**

**2. Supplement to Section 2 regarding whether it is in the public interest to adopt corrective control measures.**

These are excerpts from the GMD #4 Management Program of 9/19/2016, Section IV. Subsection 6 and Subsection 1 b and go further in explaining that the proposed restrictions are in the public interest:

**Public Interest**

"Public interest" is a fundamental term used throughout the Kansas Water Appropriation Act and the Groundwater Management District Act, and within regulations developed under both statutes. Yet the term is only narrowly defined within state statute and regulation. It has been generally accepted that the complete definition of this term is actually embodied in the full suite of statutes and associated regulations, and therefore must be considered in this total, overarching context. This full context also includes the administrative, executive and judicial systems whose policies and actions also become part of the complete definition. In contrast, it has also been generally accepted that a specific statutory definition of "public interest" would be restrictive and confining, thus having more disadvantages than advantages.

The groundwater management district act made it state policy that the local land owners and water users were to determine their own destiny in regard to groundwater management issues - so long as local decisions were consistent with state law. Since a groundwater management district cannot determine its own destiny without also expressing its own public interest, it seems logical that such authority is inherent in the groundwater management district act. Yet, any local expression of public interest must also be consistent with the overarching state expression of public interest, which is subject to eventual change through any administrative, legislative or judicial actions taken.

This issue is identified as a problem because it is not currently known if the existing state expression of "public interest" can be interpreted to accommodate the regional exclusivity being proposed herein. If so, there is little problem. If not, the state's inability to accommodate local programs and regulations defining a more local expression of public interest, will be considered a local management problem.

In this spirit, this management program is being written to embody a more local definition (expression) of public interest which the board believes is best for the landowners and water users of this GMD and hence best for the state

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of Kansas. The board also believes it is more clearly within the spirit of the groundwater management district act. If in fact the entire suite of statutes and regulations define public interest in concert with the administrative, executive and judicial systems, then the groundwater management districts are clearly part of these systems and they deserve sufficient consideration. A single expression of public interest exclusively from the state perspective may not serve Kansas as well as a more flexible definition recognizing regional diversity.

Goal(s) for Management Problem 6 - Public interest:

- 1) To convey through this management program a clear expression of what the local "public interest" is within this GMD relative to groundwater management issues.
- 2) To insure the district's ability to continue determining the local public interest within the authorities expressed in the groundwater management district act. In order to insure the ability to continue determining the local public interest, the district shall work with the Legislature and all appropriate state agencies insuring that they recognize, support and promote the local public interest expressed herein.

Applicable Regulations: All Regulations  
Applicable Programs: All Programs

### **Management Plan Subsection 1 b**

*Direction/Influence of existing development.* This particular sub-problem of depletion may necessitate policies encouraging or mandating higher efficiencies of water usage along with efforts that reduce consumptive water use. It could also involve additional control measures designed to reduce annual withdrawals within over-appropriated areas to new acceptable limits - including compliance and enforcement, incentive programs or other efforts.

Examples of such efforts would be: multi-year allocations of existing water rights in specified, high priority areas; additional restrictions on adding acres to existing water rights; non-private ownership of existing water rights to explore other conservation/economic uses of the limited supply in specified, high priority areas; and/or incorporating an economic component in decisions regarding changes to existing water rights. Some of these approaches may require the establishment of an Intensive Groundwater Use Control Area (IGUCA) or a Local Enhanced Management Area (LEMA). State supported programs, such as Water Conservation Areas (WCAs) may also be considered.

### **3. Supplement to Section 3 regarding whether the geographic boundaries are reasonable.**

Regarding the public comments that the DW-LEMA is too large: although the DW-LEMA would cover the entire district, the proposed restrictions are localized to ensure that areas in need of adjustments in the diversions are identified and dealt with accordingly, while those areas exhibiting little or no depletion are held harmless. 88% of the townships within GMD 4 have declining water tables (136 townships out of 155 townships that make up the GMD 4). To continue encouraging conservation in

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all of GMD 4, educate water users, and decrease decline, the GMD 4 Board proposed a reasonable DW-LEMA. Approximately 82% of the water rights in GMD 4 will have a reduced water usage and DW-LEMA allocation.

Specifically, the first purpose of the proposed DW-LEMA is to conserve water, especially in those areas that exhibited a .5% or greater annual decline rate from 2004—2015. Additional monitoring and enforcement requirements will be placed on alluvial wells and wells in those townships exhibiting less than .5% annual decline from 2004—2015. Those areas that exhibited a .5% or greater annual decline rate from 2004—2015 will have limits imposed based on the degree of decline. Again, 82% of the water rights in GMD 4 will have a reduced water usage and DW-LEMA allocation. This rewards those areas where conservation may already be occurring because those areas would have lesser decline. It will also reduce the allowed irrigation from those areas of greater decline.

The second purpose of the proposed DW-LEMA is to promote improved management. Under the DW-LEMA, all irrigation water right holders will be required to highly monitor their metered pumping. Through additional monitoring, the GMD 4 Board believes the irrigation water right holders will more judiciously use their water rights. This educates the water right holders and will lead to further decreases in aquifer decline and depletion.

A third purpose, or a result of the district-wide boundaries, is an incentive for those water users located in the green or blue townships to judiciously apply their water. Judicious application would prevent their respective townships from increasing their annual decline to above .5% and potentially risk an imposed reduction in DW-LEMA allocation if subsequent LEMAs are proposed.

The district wide boundaries also will reduce potential future confusion for water users. As areas increase or decrease in decline, subsequent DW-LEMA iterations will focus on the corrective controls rather than the boundaries. Instead of being required to move the full boundaries of the DW-LEMA in subsequent plans, water users, the GMD, and DWR will only have re-calculate decline and allocations. Therefore, having the entire GMD included in the LEMA provides for effective and efficient future management.

The GMD 4 Board contends that such an approach does identify smaller aquifer sub-units in the fact that varying reductions are imposed. Therefore, The GMD 4 Board requests the Hearing Officer find that the boundaries are reasonable and include all of GMD 4 in the DW-LEMA.