

THE STATE



OF KANSAS

**KANSAS DEPARTMENT OF AGRICULTURE**

Dale A. Rodman, Secretary of Agriculture

**DIVISION OF WATER RESOURCES**

David W. Barfield, Chief Engineer

**BEFORE THE DIVISION OF WATER RESOURCES,  
KANSAS DEPARTMENT OF AGRICULTURE**

In The Matter of )  
the Designation of the Sheridan 6 ) 12 WATER 8366  
Local Enhanced Management Area ("LEMA") )  
\_\_\_\_\_) )

**ORDER OF DECISION ACCEPTING THE SHERIDAN 6 LOCAL ENHANCED MANAGEMENT PLAN  
(PURSUANT TO K.S.A. 82a-1041(d)(1))**

On the 28<sup>th</sup> of November, 2012, the above-captioned matter came on for a second and final public hearing before the Chief Engineer. The hearing took place in the Sheridan County Courthouse, 925 9<sup>th</sup> Street, Hoxie, Kansas, between approximately 10:35 am and approximately 1:00 pm. Written testimony was filed in advance of the hearing, at the hearing, and after the hearing, until the record closed on December 4, 2012. For the reasons set forth below, I order the acceptance of the local enhanced management plan proposed for the Sheridan 6 LEMA pursuant to K.S.A. 82a-1041(d)(1). Consequently, an order of designation shall follow this Order of Decision.

## **I. PROCEDURAL BACKGROUND.**

1. On July 16, 2012, Northwest Kansas Groundwater Management District No. 4 (“GMD4”) submitted the Sheridan 6 High Priority Area Enhanced Management Proposal (“Proposal”) to the Chief Engineer, Division of Water Resources (“DWR”), for review pursuant to K.S.A. 82a-1041(a). GMD4 Exh. 1, App. 2, pp. 18-24. Upon receipt of the Proposal, DWR conducted such a review. Based on that review, I found that “on its face,” the Proposal meets the threshold requirements of K.S.A. 82a-1041(a). *Id.*, pp. 25-26. I initiated proceedings to consider the designation of a Local Enhanced Management Area (“LEMA”) accordingly. DWR Exh. A. To that end, I delegated my authority to a designated hearing officer to conduct an initial public hearing on the matter. *Id.* Notice of the first public hearing took place as documented in DWR Exhs. A through F-1.1

2. The initial public hearing in this matter took place on September 13, 2012, before the hearing officer, Ms. Constance C. Owen, in Hoxie, Kansas. Based on the testimony provided at that hearing and the applicable law, Ms. Owen concluded that the Proposal “satisfies the three initial requirements for approval” as set forth in K.S.A. 82a-1041(b)(1)-(3). DWR Exh. T, p. 8. Because Ms. Owen’s findings were favorable on these three requirements and because she did not recommend expanding the geographical boundaries set forth in the Proposal, K.S.A. 82a-1041(b) required a subsequent hearing concerning the Proposal, and I set that hearing accordingly. DWR Exh. F-2.2

3. The Notice of the second public hearing denotes the time and the place of the hearing, and states that the hearing will consider “whether to accept, reject, or suggest modifications to the proposed LEMA.” DWR Exh. F-2. The Notice of Hearing was provided to water right holders of record

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1 Because of a counting error, there are two exhibits labeled as DWR Exh. F: the proof of publication of the notice of hearing for the first hearing in Vol. 31, No. 32 of the *Kansas Register*, dated August 9, 2012, the last exhibit DWR entered into the record for the first hearing; and the notice of hearing for the second hearing, dated October 10, 2012, the first exhibit DWR entered into the record for the second hearing. To correct this error, the earlier Exhibit F has been relabeled DWR Exh. F-1, and the later Exhibit F has been relabeled DWR Exh. F-2. DWR regrets the error.

or their designated water use correspondents of record in the area by certified mail. DWR Exhs. G, H. A copy of the Notice of Hearing was published on October 18, 2012 in the *Kansas Register*, DWR Exh. J, and in the Hoxie *Sentinel*, a newspaper of general circulation in Sheridan and Thomas counties, DWR Exh. I.

## **II. APPLICABLE LAW AND THE PURPOSE OF THIS ORDER OF DECISION.**

1. A LEMA is a creature of statute, K.S.A. 82a-1041 in particular, that engages both the Kansas Water Appropriation Act (“KWAA”), K.S.A. 82a-701 *et seq.*, and the Groundwater Management District Act (“GMDA”), K.S.A. 82a-1020 *et seq.* K.S.A. 82a-1041 sets forth the requirements and limitations for establishing LEMA’s. As part of the GMDA, K.S.A. 82a-1041 allows groundwater management districts to address groundwater declines and other conditions of concern through locally-generated management plans that include specific goals and corrective control provisions. These plans must be consistent with state law. This local autonomy over the management plan distinguishes LEMAs from Intensive Groundwater Use Control Areas, or “IGUCAs,” as set forth at K.S.A. 82a-1036 through 82a-1038. The LEMA statute, K.S.A. 82a-1041, refers to an IGUCA statute, K.S.A. 82a-1036, for its shorthand articulation of the groundwater conditions that may give rise to the establishment of a LEMA. K.S.A. 82a-1041(a). A LEMA must comport with the public interest, a term that figures prominently in both the KWAA and the GMDA, because the Chief Engineer has the statutory duty to regulate the distribution of the state’s water resources for the benefit of all of its inhabitants according to the law. K.S.A. 82a-1041(b)(2); K.S.A. 82a-706; K.S.A. 82a-702; K.S.A. 82a-1020. A LEMA comes into being by an Order of Designation of the Chief Engineer, who is statutorily charged with the enforcement and administration of the water laws of Kansas. K.S.A. 82a-1041(e), K.S.A. 82a-706. An order of designation is the final agency action of DWR, and is distinct from this

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<sup>2</sup> See note 1 above.

Order of Decision, which is an intermediate step in the LEMA process. *See* 82a-1041(d) through 82a-1041(h).

2. K.S.A. 82a-1041(b)-(d) sets forth the specific process that applies to this second public hearing, which took place subsequent to the initial public hearing as summarized in Section I above. The Proposal is a “local enhanced management plan” as that latter term is used throughout K.S.A. 82a-1041. The subject matter of this second public hearing is statutorily limited to the Proposal that my office initially reviewed in July and August of 2012. K.S.A. 82a-1041(c). Pursuant to K.S.A. 82a-1041(d), this second public hearing provides the necessary forum in which the public, including GMD4, contributes testimony on the question of “whether to accept, reject, or suggest modifications to the proposed LEMA [i.e., the Proposal].” DWR Exhs. I, J. This second hearing was the final public hearing in this matter, and the record closed on December 4, 2012. *Id.* Consequently, K.S.A. 82a-1041(d) requires the Chief Engineer to issue an order of decision either: (1) accepting the Proposal; (2) rejecting the Proposal; (3) returning the Proposal and providing GMD4 the opportunity to resubmit it within 90 days; or (4) returning the Proposal to GMD4 with proposed modifications that do not impose additional reductions in groundwater withdrawals. Based upon the language of K.S.A. 82a-1041(d)-(e), the order of decision is just that: an order of the Chief Engineer indicating his decision to accept the Proposal, reject it, or return it for modification and resubmission.

3. If the Chief Engineer issues an order of decision accepting the Proposal pursuant to K.S.A. 82a-1041(d)(1), then K.S.A. 82a-1041(e) requires an order of designation that designates the area in question as a LEMA. K.S.A. 82a-1041(f) specifically requires the order of designation to set forth the circumstances and appropriate findings that support that order, and to order the adoption of the specific corrective control provisions that the Proposal recommends. Those requirements do not attach to the order of decision, which is an intermediate order. Therefore, while this Order of Decision does provide a

skeletal summary of the testimony presented in this matter, it provides only those findings that are necessary at this intermediate stage, and does not provide complete findings of fact and conclusions of law that are appropriate to the order of designation. Because this Order of Decision accepts the Proposal, the order of designation will be issued within a reasonable time, and will contain findings, conclusions, and other elements that are necessary and appropriate to final agency action.

### **III. TESTIMONY.**

1. The record of the first public hearing in this matter has been incorporated into the record for this second public hearing. Transcript, p. 6.

2. Mr. Wayne Bossert, the Manager of GMD4, led the oral testimony in support of the Proposal. Assisting him was Mr. Raymond Luhman, the Assistant Manager of GMD4. Most of their oral testimony was essentially a summary and explication of GMD4 Exh. 1, which consists of: GMD4's written testimony in this proceeding; Appendix 1 to that testimony, which is the Proposal; and seven other appendices. GMD4's testimony summarized the Proposal, explained and defended the process by which GMD4 set the geographical boundaries of the Sheridan 6 LEMA, and emphasized the extensive deliberative process which produced the main provisions of the Proposal. At the second hearing, GMD4 also provided GMD4 Exh. 3, an academic study entitled "Potential Economic Impact of Water Use Changes in Northwest Kansas," by Drs. Bill Golden, Jeff Peterson, and Dan O'Brien. Following the second hearing, GMD4 provided supplementary written testimony in support of the Proposal. GMD4 Exhs. 4-5. This supplemental testimony responded to a number of specific questions and concerns that arose from both public hearings, including specific questions and requests from me.

3. Mr. Brownie Wilson of the Kansas Geological Survey provided both written and oral testimony in support of the Proposal. GMD4 Exh. 2. His testimony focused upon the technical methods

by which GMD4 set the geographical boundaries of the Sheridan 6 LEMA, and hydrogeological information concerning the groundwater flow characteristics of the Ogallala-High Plains Aquifer beneath the Sheridan 6 LEMA.

4. GMD4 Exhs. 1 through 5 were accepted into the record.

5. DWR provided written testimony in support of the Proposal. Mr. Andrew Lyon of DWR submitted two reports. The first report, “Northwest Kansas Model Development Process,” dated November 15, 2012, DWR Exh. K, summarized the Northwest Kansas Model (“NWK Model”), a computer groundwater model adapted from the Republican River Compact Administration Groundwater Model and calibrated “for the purposes of better predicting groundwater levels in northwest Kansas and to analyze alternative groundwater management scenarios in GMD 4.” DWR Exh. K, p. 1. This report contains three attachments. Attachment 1 to DWR Exh. K is a report by S. S. Papadopoulos & Associates, “NW Kansas Model Calibration,” dated April, 2009, and was submitted as DWR Exh. L. Attachment 2 is a text file, “run\_base\_2006-2008.txt,” which consists of model runs from the NWK Model; it was submitted as DWR Exh. M. Attachment 3, listed as “NWKS\_Model\_HPA\_SD6\_%\_Reductions\_Attachment.png,” is a graphic file entitled “Water level change since 2005 in spatially averaged heads for priority area 6 and for all of GMD4.” This third attachment was submitted as DWR Exh. N.

6. Mr. Lyon also submitted a second report in support of the Proposal, “Northwest Kansas Model: Water Level Difference Between Pumping Scenarios,” dated November 21, 2012, DWR Exh. O. This second report of Mr. Lyons contains three attachments. Attachment 1 to DWR Exh. O is identical to DWR Exh. L. Attachment 2 to DWR Exh. O, “NWKS\_Model\_WLD\_Scenario1vs3.bmp,” is a groundwater map entitled “Water Level Difference (ft), NWKS Model, Status Quo Pumping vs. HPA 30% Pumping Reduction (results at end of 2055),” and was submitted as DWR Exh. P. Attachment 3 to

DWR Exh. O, “NWKS\_Model\_WLD\_Scenario1vs3\_SD6.bmp,” and was submitted as DWR Exh. Q. Finally, DWR submitted a map entitled “2010-2012 Saturated Thickness (ST) within Sheridan County 6 High Priority Area,” as DWR Exh. R.

7. In addition to the exhibits from the first hearing (DWR Exhs. A through F-1), all of the exhibits DWR submitted for the second hearing (DWR Exhs. F-2 through R) were accepted into the record.

8. Mr. Edward Kemp, of Winona, Kansas, which is located in Logan County, submitted written testimony via electronic mail on December 4, 2012. Mr. Kemp’s testimony was critical of DWR for allowing groundwater to be consumed at the present rate. Exh. 6. It was accepted into the record.

9. Mr. Scott E. Ross, Water Commissioner for the Stockton Field Office of DWR, spoke in support of the Proposal. He stressed that both DWR and GMD4 have cooperated for over four years to assist the stakeholders in the Sheridan County High Priority Area No. 6 “to achieve a workable means to conserve and extend the practical life of the local groundwater supply.” Transcript, p. 76. On behalf of DWR, Mr. Ross pledged his full support to ensure that the Proposal would achieve “its locally generated goals.” *Id.* at pp. 76-77.

10. Mr. Scott Maurath, a lifelong irrigator, a GMD4 board member for over ten years, GMD4 board president for four or five years, and a resident of Oakley Kansas, testified in support of the Proposal. He stressed that the Proposal sought to establish a conservation plan for the local groundwater supply that would not do irreparable damage to the local economy. Mr. Maurath also stressed the care with which GMD4 and the KGS had worked on the boundary issue. He stressed two aspects of this issue: first, that in applying different criteria and different threshold values to help determine the

boundaries of the LEMA, both GMD4 and the KGS consistently returned to roughly the same boundaries, with small differences. Transcript, pp. 79-81. Second, Mr. Maurath stressed the need to make the total geographical area of the LEMA big enough to achieve meaningful water use reductions, but small enough so that GMD4 and DWR could monitor and enforce the Proposal's provisions. *Id.* at p. 79.

11. Mr. Mitchell Baalman, a fourth-generation farmer from Sheridan County and also a GMD4 board member, testified in support of the Proposal. He stated that his family had become concerned by the problem of declining groundwater supplies as early as 1984, and that he and GMD4 have been working on the problem of addressing groundwater declines since the early 2000's—a problem that the LEMA process was intended to address more effectively than the IGUCA process, because the LEMA process enables the local GMD to retain control over the particular corrective control provisions of the LEMA. *Id.* at 82-86. Mr. Baalman believed that GMD4 and DWR can cooperate effectively in making sure the Sheridan 6 LEMA works as planned. *Id.* at p. 83. Mr. Baalman also stated that he believed that irrigators within the Sheridan 6 LEMA will "probably make more money" but not spend so much as a result of the reduction in groundwater pumping. *Id.* at pp. 83-84. When I questioned him about whether the reduction in groundwater pumping would actually increase his net profits, Mr. Baalman replied that "we'll probably net more . . ." *Id.* at pp. 87-88. Mr. Baalman also stated that this reduction, coupled with the flexibility of the five-year allocation and the ability to move water rights among different points of diversion, would still enable him to farm his ground profitably during the proposed LEMA period of five years. *Id.*, pp. 87-90.

12. Mr. Brent Rogers, a farmer from northeast Sheridan County and a GMD4 board member who does not own land within the proposed LEMA, spoke in favor of the Proposal. He stated that Sheridan County farmers form "the top echelon of farmers in the country," *Id.*, at p. 91, and stressed that

their skill, together with the necessary flexibility in water use afforded by the Proposal, would allow them to stay in business despite the reduction in groundwater use. “I think they’re going, they’re going to be fine.” *Id.*

13. Mr. Roch Meier, a farmer whose water rights are contained within the proposed LEMA’s boundaries, spoke in favor of the Proposal, and provided some information about corn yields from his irrigated fields. Mr. Meier used 17 inches of water on one field in 2012, and that field yielded 249 bushels of corn per acre; he used 10.5 inches of water on a different field (roughly 95% of the Proposal’s annual limitation of 11 inches), which yielded 193 bushels per acre. Based on his experience, the difference in yields between full and reduced irrigation, 56 bushels, resulted from the 6.5 inch difference in the amount of irrigated water. *Id.*, pp. 92-93. Put another way, a 38.2% reduction in water use translated to a 22.5% reduction in corn yield. Mr. Meier believed that the water savings was worth the sacrifice in yields, because it would allow the farm families of Sheridan County to continue to irrigate their ground in future generations. *Id.* at p. 94.

14. Mr. Harold Murphy, a farmer with water rights who lives in Selden, Kansas, provided both oral and written testimony for the first hearing in this matter, and he spoke at this second hearing as well. Mr. Murphy stated two criticisms of the Proposal’s allowance to transfer authorized quantities of water among different points of diversion. First, Mr. Murphy believed that this allowance would enable those with more wells to use more water per acre than those with fewer wells, an unequal result with which he disagreed. Second, he believed that this allowance would enable those water rights owners whose wells cannot physically pump 11 inches per year to transfer their remaining capacity to other wells, worsening the depletion problem for future generations and “enabling those users with more wells to use more water unfairly, unequally, than what is now permitted.” *Id.*, at pp. 95-96.

15. Mr. Gary Moss, a farmer in Sheridan County with water rights within the proposed LEMA, spoke in favor of the Proposal. He argued that the Proposal should be extended throughout GMD4 entirely, and not just limited to the Sheridan 6 HPA. *Id.* at p. 97. However, Mr. Moss expressed similar concerns to those of Mr. Murphy. Namely, Mr. Moss believed that the Proposal's flexibility provisions, without limitation, would enable people to purchase crippled water rights that cannot pump enough water to irrigate their present place of use, and move that water to the purchasers' place of use, producing a situation where, at least theoretically, more water would be used under the Proposal than without it. Mr. Moss recommended that there should be a distance limitation on moving such water. *Id.* at pp. 98-99.

16. Jeff Younger, who works for Seminole Energy Services, a provider of natural gas service to water rights owners in the area, was the last person to provide oral testimony. He spoke in favor of the Proposal, because he wants to keep selling gas to his customers, and "if we continue to do what we're doing [i.e., pump groundwater at existing rates], I might not be able to do that." *Id.*, at p. 100.

#### IV. DISCUSSION.

1. Because of the limited nature of this Order of Decision (*see* Section II above), and the need to establish regulatory clarity for water rights holders within the Sheridan 6 LEMA before January 1, 2013 (*see* GMD4 Exh. 1 at p. 16; GMD4 Exh. 5, p. 1), this is neither the place nor the time to engage in an extensive discussion of the various issues presented by the Proposal and the testimony. That extensive discussion will take place in the order of designation. The process by which GMD4 has produced the Proposal, and the purpose with which it has pursued this LEMA, deserve praise. As Mr. Bossert stated, "[i]n the end, the consensus was that consensus was the preferred approach." Transcript, p. 31. However, there are five issues which merit limited discussion here.

2. First, there is the issue of the geographical boundaries of the Sheridan 6 LEMA. Ms. Owen's Order of October 4, 2012 contains a useful summary of this issue, DWR Exh. T, pp. 6-8. That order found the boundaries of the Sheridan 6 LEMA to be reasonable. *Id.* At the second hearing, both GMD4 provided substantial testimony defending these boundaries, which are based upon technical methods of hydrogeologic analysis, reasoned decisions concerning the appropriate hydrological criteria for choosing the boundaries, and extensive deliberations within GMD4 and among the stakeholders within the Sheridan 6 high priority area— taken together, a process that dates back to 1999. *See generally* GMD4 Exh. 1, pp. 2-10. There was no testimony presented at the second hearing that attempted to discredit the boundaries contained in the Proposal. In determining the boundaries, it is clear that GMD4 took pains to base them upon sound and well-developed hydrological data, reasoned and iterative technical criteria, and consensus-based decision-making. Similarly, the size of the proposed LEMA allows a substantial reduction in groundwater pumping, but one that can be monitored and enforced effectively and manageably by DWR, GMD4, KGS, and by the water rights owners themselves.

3. Second, there is the issue of a potential conflict in water law doctrine. The Chief Engineer has the general statutory duty to enforce and administer the water laws of Kansas “in accordance with the rights of priority of appropriation.” K.S.A. 82a-706. By contrast, the Proposal reduces all non-domestic water rights of the same use made of water by the same amount, regardless of priority. GMD4 Exh. 1, App. 1, p. 19. However, the Proposal, together with the testimony, appear to render this conflict more apparent than real. The Proposal sets all irrigation water rights at a 55 inch allocation for five years, and several experienced irrigators within the Sheridan 6 LEMA gave oral testimony stating that this would be sufficient water for their needs, obviating the need for priority administration. *See, e.g.,* Transcript at pp. 87-90 (Baalman); *Id.* at p. 91 (Rogers). No one testified that 11 inches would be insufficient for their irrigation needs. Furthermore, the Proposal allows irrigators to move water around within their allocations, and to obtain water rights from others within the LEMA boundaries. GMD4

Exh. 1, App. 1, p. 19. And in the event that a senior water right is impaired as a result of direct well interference by a junior right, the GMD4 testimony makes clear that such a senior right will be entitled to request an impairment investigation by DWR. GMD4 Exh. 1, p. 15.

4. Third, there is the issue of treating different uses made of water differently under the Proposal. The Proposal reduces irrigation water rights more than recreational water rights; and while stockwatering water rights are restricted under the Proposal to require good management, the proportionate reduction for this use is not clear. This also presents a potential conflict in water law doctrine. With certain exceptions that do not apply here, the date of priority of a water right and not the purpose of its use determines the right to use water, K.S.A. 82a-707(b); but that priority only engages “when the [water] supply is not sufficient to satisfy all water rights.” *Id.* As the stockwatering uses comprise a small fraction of the total reduction in groundwater use during the Sheridan 6 LEMA Period, and for the reasons set forth in Paragraph 3 above, this third issue is not sufficiently problematic to reject or require modification of the Proposal.

5. Fourth, there is the issue of flexibility. Some irrigators within GMD4 expressed concerns that the Proposal’s provisions for moving the authorized quantities of irrigation water rights within an allocation, and for moving water rights’ place of use from one part of the proposed LEMA to another, would favor those with multiple water rights at the expense of those with single rights, and would also promote the mining of wells that, because they are currently rate-challenged, might not otherwise be used absent the allocations. *See, e.g.*, Transcript at pp. 95-96 (Mr. Murphy); pp. 98-99 (Mr. Moss). These are astute concerns. However, GMD4 appears to have anticipated them, and its testimony largely assuages them. The movement of water by such transfers is limited by the boundaries of the LEMA, and by the cap on irrigation allocations at the authorized quantities of their constituent rights. *See* GMD4 Exh. 5. For the five-year term set forth in the Proposal, I find these restrictions sufficient to alleviate the

Proposal's stated concerns; but I believe that the longer-term management of the Sheridan 6 LEMA area will require a careful evaluation as to whether the Proposal's flexibility creates problems in specific areas. The forthcoming order of designation will contain a monitoring plan sufficient to consider this concern, and will charge the LEMA review committee to consider the issue of flexibility. As for the possibility that irrigators with more rights will obtain benefits from the Proposal's flexibility provisions that are not available to those with fewer or single rights, that economic—or hydraulic—inequality is a problem no chief engineer can resolve.

6. Finally, there is the issue of the limited time period of the Sheridan 6 LEMA as envisioned by the Proposal—five years. While the Proposal has set forth an attainable goal of reducing groundwater pumping by approximately 20%, the short five-year period of the Proposal threatens to undermine the fundamental purpose of the LEMA in the first place—namely, conserving and extending the practical life of the area's groundwater supply for future generations. *See, e.g.*, Transcript at p. 94 (Mr. Meier). Mr. Bossert and the board members of GMD4 who testified at the second hearing clearly stated that they understand the problem to be one that requires a long-term solution. The Proposal provides for a review committee to make recommendations for future management beyond the five-year period of the LEMA. GMD4 Exh. 1, App. 1, at pp. 22-23. However, K.S.A. 82a-1041(d) does not require a local enhanced management plan to establish a permanent reduction in groundwater use; it merely requires the plan to address the problem of declines. Nonetheless, unless this LEMA is renewed for a longer period, then the work and cooperation of GMD4, KGS and DWR will be largely wasted, and remembered as little more than a gesture.

## V. FINDINGS OF FACT.

1. The geographical boundaries of the Sheridan 6 LEMA Proposal contain the following sections in Sheridan County and Thomas County:

Sheridan County:

TWP 7S-28W: Sections 19-21 and 28-33;

TWP 7S-29W: Sections 4-9 and 16-36;

TWP 7S-30W: Sections 19-36;

TWP 8S-29W: Sections 1-18;

TWP 8S-30W: Sections 1-18.

Thomas County:

TWP 8S-R31W: Sections 22-27 and 34-36.

2. Groundwater levels in the area described in Paragraph 1 above are declining, in some cases precipitously; these levels have declined excessively; and the rate of withdrawal of groundwater there exceeds the rate of recharge.

3. The boundaries of the proposed LEMA are entirely within the boundaries of GMD4.

4. These boundaries are clear and reasonable.

5. The overarching goal of the Proposal is to collectively restrict diversions of nondomestic groundwater rights to no more than 114,000 acre-feet total, during the period bounded by January 1, 2013, and December 31, 2017.

6. The corrective control provisions of the Proposal are sufficient to meet this overarching goal.

7. Due to the hydrogeologic features of the aquifer in the area described in Paragraph 1, the reduction in groundwater pumping by water rights owners within the proposed LEMA should inure almost entirely to their future benefit.

8. The irrigators within the proposed LEMA can sustain their irrigated farming operations profitably with the Proposal's five-year allocation of 55 inches, which is sufficient to meet their needs.

## **VI. CONCLUSIONS OF LAW.**

1. Notice of the first public hearing in this matter was proper and complied with the requirements of K.S.A. 82a-1041(b).
2. Notice of the second public hearing in this matter was proper and complied with the requirements of K.S.A. 82a-1041(b).
3. The second hearing took place according to the requirements of K.S.A. 82a-1041.
4. K.S.A. 82a-1041(d)(1) allows acceptance of a local enhanced management plan, provided that the Chief Engineer finds the plan to be “sufficient to address” groundwater declines, or “sufficient to address” the disparity between groundwater withdrawals and recharge. K.S.A. 82a-1041(d)(1) (with apposite reference to K.S.A. 82a-1036(a)-(b)). It must be stressed that a finding of such sufficiency does not mean that such a plan is sufficient to resolve such declines and disparity over the long term.
5. The Proposal is “sufficient to address” these problems within the modest confines of K.S.A. 82a-1041(d)(1), because it reduces overall groundwater usage by approximately 20% for a period of five years.
6. The Proposal is consistent with the KWAA and with other Kansas law.
7. The Proposal comports with the public interest of the inhabitants of the State of Kansas pursuant to K.S.A. 82a-1020 and the KWAA.

## **VII. ORDER OF DECISION.**

NOW, THEREFORE, for the reasons set forth above, it is the decision and order of the Chief Engineer that the Proposal is sufficient to address the decline in groundwater levels in the area in question.

1. The geographical boundaries of the Sheridan 6 LEMA shall be as follows and shall contain all points of diversion that are located within the following sections in Sheridan County and Thomas County:

Sheridan County:

TWP 7S-28W: Sections 19-21 and 28-33;

TWP 7S-29W: Sections 4-9 and 16-36;

TWP 7S-30W: Sections 19-36;

TWP 8S-29W: Sections 1-18;

TWP 8S-30W: Sections 1-18.

Thomas County:

TWP 8S-R31W: Sections 22-27 and 34-36.

2. This Order shall be in effect immediately, and shall govern all irrigation, stockwatering, and recreational rights within the Sheridan 6 LEMA between January 1, 2013, and December 31, 2017. This five-year term shall be known as the “Sheridan 6 LEMA Period.”

3. The total amount of diversions of water within the Sheridan 6 LEMA shall be restricted to no more than 114,000 acre-feet of water, to be diverted during the Sheridan 6 LEMA Period.

4. Each irrigation water right within the Sheridan 6 LEMA shall be limited to a total maximum quantity of 55 inches per irrigated acre for the Sheridan 6 LEMA Period. This five-year quantity of 55 inches shall be known as the “initial irrigation allocation,” and shall be quantified according to the procedure set forth in the Proposal, GMD4 Exh. 1, Appendix 5, p. 35. The initial

irrigation allocation may be increased or decreased subject to the terms and limitations set forth below.

In the event of such increase or decrease, that allocation shall be known as the “irrigation allocation.”

5. Individual points of diversion pumping to a common irrigation system or systems shall be provided a single allocation for the total system irrigated acres. The total amount of water pumped by all of the points of diversion must remain within that system’s allocation.

6. Multiple irrigation allocations may be combined into an irrigation allocation account, which may be apportioned to the irrigation water rights’ individual points of diversion within that irrigation allocation account, provided the total allocation account is not exceeded.

7. Irrigation allocations may be transferred to a different place of use and/or point of diversion within the Sheridan 6 LEMA, provided that the transferors and transferees of such allocations comply with GMD4 procedures for approving these transfers. All such transfers shall be limited to the Sheridan 6 LEMA Period. No such transfers shall take place until GMD4 develops appropriate procedures and forms that comply with the KWAA, the GMDA, and the terms of this Order and the forthcoming order of designation.

8. Whether through transfer, purchase, lease, or other conveyance, no irrigation allocation within the Sheridan 6 LEMA shall exceed 5 times the annual quantity of water authorized by the irrigation water right or rights that comprise the irrigation allocation.

9. No irrigation allocation shall be allowed to pump more than the annual quantity of water authorized by its constituent irrigation water right or rights in any single year.

10. No irrigation water right within a 5-year allocation status established pursuant to K.A.R. 5-5-11 shall receive an irrigation allocation that exceeds its current allocation limit under that regulation.

11. Each and every irrigation allocation shall be assigned to a specific point or points of diversion, and shall consist of all of the water rights and appurtenant acres related to that point of diversion.

12. Before October 1, 2013, any irrigation allocation may be converted to a Multi-year flex account (“MYFA”) pursuant to K.S.A. 82a-736 and its attendant regulations, provided that such allocation is eligible for a MYFA, and provided further that the MYFA quantity or quantities of water do not exceed the irrigation allocation. After October 1, 2013, no conversions to MYFA’s shall be allowed.

13. For any irrigation water right enrolled in any state or federal conservation program approved pursuant to K.S.A. 82a-741 and/or K.A.R. 5-7-4, whose conservation term expires on or before September 30, 2017, the initial irrigation allocation for such right shall be limited to 11 acre-inches per acre for the remaining years of the Sheridan 6 LEMA period.

14. Any irrigation water right enrolled into, contracting with, or officially participating in a reduced water use program (such as AWEP, EQIP, or the Northwest Kansas Groundwater Conservation Foundation) during the Sheridan 6 LEMA period shall not be allowed to transfer any part of its initial irrigation allocation.

15. All stockwatering water rights within the Sheridan 6 LEMA shall be granted an allocation for use based on 12 gallons per head per day, according to their licensed lot capacity as of December 31,

2010, for the Sheridan 6 LEMA Period. This quantity of 12 gallons per head per day shall include both drinking water and additional quantities for servicing/flushing, as those terms are used in K.A.R. 5-3-22.

16. All stockwatering water rights within the Sheridan 6 LEMA shall be converted to a five-year allocation, to be known as the “initial stockwatering allocation.”

17. The initial stockwatering allocation may be increased or decreased by purchase, sale, transfer, or other conveyance of water rights and water allocations. In the event of any modification in quantity from the initial stockwatering allocation, that subsequent allocation shall be known as the “stockwatering allocation.”

18. Recreational water rights shall be limited to 90% of their annual authorized quantity as of December 31, 2010.

19. GMD4 shall develop procedures by which nondomestic water rights within the Sheridan 6 LEMA are converted to their initial allocations, as well as the procedures by which the initial allocations are subsequently modified, and all such procedures shall be subject to the approval of the Chief Engineer.

20. Pursuant to K.S.A. 82a-1041(f), an order of designation shall be issued within a reasonable time of this Order of Decision, setting forth the complete terms for the Sheridan 6 LEMA, including violations, metering, monitoring and enforcement, accounting, corrective control provisions, an advisory committee, review of LEMA orders, impairment complaints, and other terms as necessary.

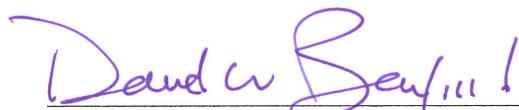
21. Because this Order of Decision accepts the Proposal pursuant to K.S.A. 82a-1041(d)(1) as set forth herein, K.S.A. 82a-1041(e) requires me to issue an order of designation “within a reasonable time. . . .” The order of designation is subject to the requirements set forth in K.S.A. 82a-1041(e)-(g). As an order of decision issued pursuant to K.S.A. 82a-1041(d)(1), this Order of Decision is a final order, but because the order of designation must now be issued subsequently to this Order of Decision, this Order of Decision is not final agency action as defined by K.S.A. 77-607(b)(2).

22. DWR shall distribute this Order of Decision to all water right holders in the Sheridan 6 LEMA.

23. This Order of Decision shall be published electronically by posting on both the GMD4 and DWR websites.

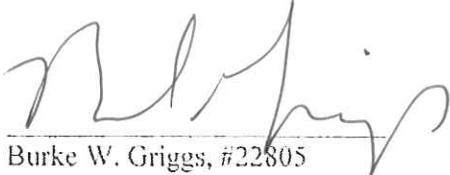
**IT IS SO ORDERED.**

Dated at Topeka, Kansas, this 31<sup>st</sup> day of December, 2012.



David W. Barfield  
David W. Barfield  
Chief Engineer  
Division of Water Resources,  
Kansas Department of Agriculture

PREPARED BY:

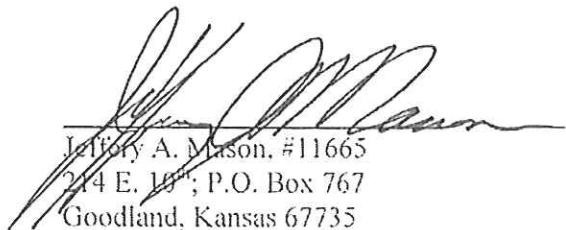


Burke W. Griggs, #22805

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APPROVED BY:



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Telephone: (785) 890-6588

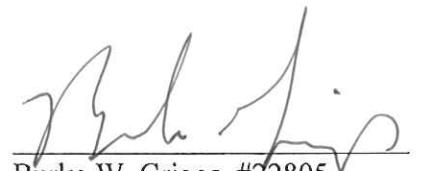
*Attorney for GMDA*

## CERTIFICATE OF MAILING

I, Burke W. Griggs, hereby certify that I caused a copy of the Order of Decision Accepting the Sheridan 6 Local Management Plan to be placed in the United States mail, first class postage prepaid on December 31, 2012, and to be sent by electronic mail as well, to the following:

Mr. Wayne Bossert, Manager  
Northwest Kansas Groundwater Management District No. 4  
P.O. Box 905  
1175 S. Range  
Colby, Kansas 67701

Jeffery A. Mason, #11665  
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