

GMD3 leadership response to the observations and concerns of Hamilton County constituents included with their petition request.

The Hamilton County written petition - observation and grievance statements are reproduced below in italics with a GMD3 response following each statement segment.

1. Constituent concerns with use of the GMD3 Well Drawdown Evaluation Guidelines.

- a) *The current process used by GMD 3 staff to evaluate applications to move points of diversion (i.e. re-drill wells) is in conflict with the long-established regulatory and technical procedures of the Kansas Department of Agriculture, Division of Water Resources (DWR).*

GMD3 Response: We can find no published information on DWR procedures from which to evaluate any alleged conflict. Generally, a properly conducted “Theis analysis” referenced in GMD3 rules and regulations has long formed the basis for evaluating well-to-well pumping and aquifer effects. Even site-specific analyses of this nature always includes uncertainty and data limitations, and accordingly must be properly applied on a case-by-case basis when water supply is limited and declining. Due to these factors, guidelines include a reasonable level of conservatism, depending on circumstances and available data, to ensure the statutory mandate is met and water estates are reasonably protected. The GMD3 board requested a transparent method to consistently apply the Theis analysis to advise their regular reviews and help all members evaluate local well pumping risks, including the applicant. The GMD3 guidelines are the result. GMD3 adopted [the guidelines](#) by reference in the official Management Program after a period of training state staff (2017) and practical trial period in the long-established board activity to consider spacing rule waivers. Unlike state technical procedures, GMD3 has published guidelines for the benefit of all to encourage consistent implementation of procedures and inform the application of laws, rules and regulations, and the Management Program. The published guidelines allow for members to participate in the process of reviewing local aquifer conditions and available field knowledge to be used with any technically trained professional to understand, replicate, or improve the assumptions inherent in every Theis mathematical analysis. The goal is to facilitate the best information for the best decisions with respect to all constituents, including domestic rights and the public interest of the management program.

- b) *The GMD 3 evaluation method often conflicts with their own established spacing regulations.*

GMD3 Response: There is no rule conflict as the regulation does not prohibit consideration of other more informative local information and analysis to further implement water right change law, other laws and the management program. KAR 5-23-3 sets minimum well spacing requirements that were based in large part on a Theis analysis using averaged aquifer conditions that existed more than 30 years ago. Since then, there have been cases where the intent of the law superseded the rule and regulations as 1990’s averaged aquifer conditions don’t exist today for every case. In reality, very few aquifer areas have retained conditions of 30 years ago, and GMD3 explicitly has power to enforce their spacing regulations and make

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recommendations to the Chief Engineer. With excellent aquifer data available to Kansas citizens, there should be better local drawdown estimates to inform all concerned. The GMD3 evaluation guidelines help all with the information needed to manage their water supply risks.

- c) *The GMD3 evaluation method was vaguely explained at an annual meeting after the process had been in use for several years. The evaluation method has not presented and explained to the Hamilton County constituents of GMD3, and no public input was formally solicited. It is difficult for the average citizen and water user to understand it and it is likely that even some of the GMD3 board members do not understand it to a degree that would allow them to explain it to their constituents. It has been our experience that the GMD3 evaluation method leaves the applicant out of the process until a determination has been made by GMD3 staff.*

GMD3 Response: The GMD3 well drawdown evaluation guidelines are designed to assist each applicant and the other well and water estate owners with a more transparent and inclusive evaluation process than otherwise available. The 12-page published guidelines include both the evaluation process and some considerations for decision makers who must weigh the risks inherent with the changing local water settings.

- d) *The [GMD3] conclusions sometimes imply a finding of probable impairment, which is inappropriate since the evaluation method is not approved by DWR and the responsibility for determination of impairment lies solely with the Chief Engineer of DWR.*

GMD3 Response: Groundwater water right impairment has now been defined by the Kansas courts. Therefore, potential water right impairment and supply risks are hydrologic calculations that any technical person having hydrologic expertise can evaluate. Evaluating the results in a state administrative decision is an explicit duty of the Chief Engineer of KDA/DWR. The GMD3 service can advise all concerned in the detail of the pumping drawdown estimates and the risks involved in a local hydrologic setting to advise and assist all members and others in their efforts to weigh the preponderance of risks and benefits to private property and public interest for proposed water management projects. The GMD3 information does not quantify impairment, but rather indicates whether a basis for concern exists and where more action or a more conservative approach may be needed to protect prior property rights. The GMD3 published well drawdown evaluation guidelines provide a consistent and transparent process that serves all in the declining aquifer community, including domestic supply concerns.

2. Constituent concern for GMD3 delay of state applications.

- a) *There have been a number of cases where an application to move a point of diversion complied with all state regulatory requirements and was tentatively approved by DWR but was delayed by GMD 3. The evaluation process used by GMD 3 resulted in conflicting recommendations for approval and caused excessive delays in the resolution of these conflicts. In some cases, these delays were in excess of six months and impacted*

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the applicant's ability to use their lawfully owned land and water resources. (Refer to recent applications submitted by Mr. David Walker.)

GMD3 Response: GMD3 strives to complete timely application review in consideration of both member applicants AND neighboring well owners who have prior water rights. This is done while also advising and assisting state staff. Additional information can alter a tentative conclusion or assumption. Better aquifer data, fewer neighboring wells and timely coordination with state staff can speed up aquifer review and pumping effect estimates.

Mr. Walkers referenced application was very timely reviewed once it was filed with the state. Mr. Walker was sent to GMD3 by DWR for well drawdown analysis prior to Mr. Walker submitting his application to the state. Not unusual for members to gain more information before filing. GMD3 staff conducted the analysis, and the well drawdown estimates indicated the proposal included a location with critical well concerns in the area if the new well came in as proposed. A discussion with the GMD3 Board occurred on Dec 12, 2018, the very same day Mr. Walker submitted his application to the state. So, a recommendation was very timely. GMD3 continues to work with the state to harmonize and improve evaluation procedures in both offices to provide the best timely information to yield the best decisions for all concerned.

3. Constituent concerns GMD3 does not support WCAs.

a) *GMD 3 does not support Water Conservation Areas and has consistently obstructed and delayed recommendations of approval of Water Conservation Area plans.*

GMD3 Response: The facts are a matter of record that GMD3 consistently supports WCAs as documented early on in GMD3 Testimony on February 13, 2017 to the State legislature. Unlike the state, GMD3 has never recommended denial of a WCA plan reviewed during the small window the statute provides for the District in the statutory review process. If WCA review was not simple, the required rules and regulation to effectuate the law would have long ago been initiated. Questions are asked and any concerns may be expressed in unique plan elements, such as well flexibility, as a matter of board practice to consider all constituents prior rights and their supply conditions. The GMD3 board has worked to advise a consistency of thought with the management program and passed resolution 2017-2 seven years ago to encourage the chief engineer to provide the needed rules in the interests of all members and to effectuate WCA law as required and anticipated in the near future.

b) *GMD 3 does not support innovative water conservation efforts that are initiated at the local level and supported by state agencies such as the Kansas Water Office and Kansas Department of Agriculture.*

GMD3 Response: GMD3 can find no factual evidence to support this statement, which indicates a need for more outreach, education, and advocacy by GMD3 with constituents and others. In fact, the structure and content of the official Management Program document contains numerous concepts and goals promoting innovative water conservation efforts, including those supported by state agencies and others.

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4. Constituent concerns GMD3 has not helped the livestock industry.

- a) *GMD 3 is well aware of the importance of the livestock industry to Southwest Kansas, yet they obstructed the implementation of regulations that would provide a reasonable and predictable method of converting water quantity from irrigation use to livestock (i.e. stockwatering) use. This refers to the discussions and comments submitted by GMD 3 during the period of 2015 to 2017 in opposition to the current version of K.A.R. 5-5-9.*

GMD3 Response: While it is true that GMD3 is well aware of the importance of the livestock industry to Southwest Kansas and the state, having stockmen serving on the board for many years, GMD3 is unable to locate any GMD3 submittals to the state in opposition to K.A.R. 5-5-9. The Board meeting minutes of the Dec. 14, 2016, documents that GMD3 supports the change to the consumptive use calculation in K.A.R. 5-5-9, in recognition of the importance of livestock and other industries to Kansas, including Hamilton County.

- b) *GMD 3 also objected to proposals drafted by DWR to provide much needed flexibility for the livestock industry. Term permit applications to resolve critical livestock water supply issues have been consistently obstructed and delayed by GMD 3, resulting in adverse impacts on the applicants.*

GMD3 Response: It is the practice of GMD3 to advocate for regulatory reform, innovation, and benefits for the District livestock industry and other sectors of the economy with concepts that are consistent with state laws and policies designed to protect water supply and private property rights of all constituents. The need for flexibility in water right use and management for the livestock industry and other sectors is well documented in District water right records and the GMD3 Board record. This includes a specific example in southern Hamilton County.

An April 1, 2008 letter from GMD3 to DWR documents innovative work with the Syracuse and Timeline dairies for reasonable water right improvements to add: 1) “flexibility in well sources to supply the Dairies, 2) improving nutrient management program implementation, and 3) simplifying management of water right compliance criteria. The state was either unwilling or unable to move forward with the GMD3 recommendations that were simple, enforceable, and respectful of others water rights. However, the seeds of GMD3 innovative water administration concepts are continually planted and generally take time to grow.

5. Constituent concern of a substantial District budget.

- a) *GMD 3 has a substantial annual budget that is in excess of one million dollars. Only \$35,000 was allocated for water conservation projects in 2022, and little of that (\$105) has been used for any benefit. The 2023 budget indicates a line-item allocation of \$10,000. In contrast, Groundwater Management Districts 1 and 4 have invested hundreds of thousands of dollars in cost-share programs to implement water conservation technology and education.*

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GMD3 Response: While it is true that a line item in recent past GMD3 annual budgets is labeled water conservation projects, that line item does not indicate the GMD3 resources invested to generate groundwater conservation benefits for GMD3 constituents, including members in Hamilton County. The water user fee assessed by GMDs 4 and 1 are more than 2 times and 3.5 times respectively the fee assessed by GMD3 in budget year 2023. The GMD3 board has not yet seen the need to raise water user fees significantly to provide funding back to constituents when those funding services are provided by other federal and state agencies. See response to constituent statement 6(b). GMD3 has taken a different approach to seek outside conservation projects funding. The legislative post audit [Evaluating Groundwater Management Districts' Efforts to Conserve Water](#) highlights the success of GMD3 in the recent 10 years in leveraging local funds for millions of federal dollars in cost share conservation programs and other constituent benefits to multiply member water conservation investment dollars, including members with interests in Hamilton County.

6. Constituent concerns GMD3 has raised assessments.

- a) *GMD 3 has raised assessments even though the annual budget carryover has exceeded \$400,000.*

GMD3 Response: The auditors for GMD3 and other area municipalities recommends maintaining a carryover of at least three months' worth of anticipated general fund expenditures. The board has followed the advice and recommendations of the auditors to protect the purposes of District public funds and the public interest to operate the official management program.

- b) *The assessment on water use within GMD 3 was raised from \$0.14/acre-foot in 2022 to \$0.16/acre-foot in 2023. There has been no corresponding increase in services and benefits received by the constituents of GMD 3, including those in Hamilton County.*

GMD3 Response: Costs for operating the management program continue to increase. The GMD3 water user fee is less than half of the next highest user fee of the other Kansas GMDs and is the lowest in Kansas. Even with increasing costs, services are increasing in 2023 with the new I-CARE feedback reporting to each active irrigation well owner in the District. It is the practice of the Board to remain frugal and responsible with the funding requested to operate the management program. The management program activities of GMD3 have significantly increased water conservation project capital for constituents in recent years to include those with property and water use in Hamilton County.

- c) *The assessment on land located within GMD 3 is \$0.05/acre, the maximum amount allowed by law.*

GMD3 Response: The \$0.05/acre land assessment on parcels of 40 acres or more in size has been standard practice by all GMDs for many years in order to distribute the management program funding burden across the entire hydrologically dependent community.

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7. Constituent concerns for dryland farmer benefits

- a) *We can identify no benefits that are received by dryland farmers that reside and/or own land within GMD 3. Their land is assessed at the same rate as irrigated farm land on an acreage basis but we can see no advantage gained by them. We expect that a significant majority of dryland farmers would opt to be exempted from this taxation and the indiscernible benefits that go with it.*

GMD3 Response: GMD3 is organized at the community level with two basic functions: to meet needs and solve problems of a local nature. The land assessment provides constituents the opportunity to have a say in water management policy. Domestic and other small uses on dryland farm ground are an important part of the community and small uses on non-irrigated land remain important to land values.

- b) *It is apparent that most landowners do not understand the assessment process and where the tax money goes. Only 0.08% of the eligible acres have been excluded from taxation based on the information presented in Table 1 of the Official Management Program adopted in 2022.*

GMD3 Response: There are a number of reasons for the current 0.08% of the assessable land being excluded from District land assessment and management program participation rights. By law, such requests must be made and found eligible, and any water use on a parcel renders it ineligible to be exempted. GMD3 receives and investigates such requests as they are received to allow a proper and timely decision.

- c) *It has been our experience that GMD 3 does not encourage dryland producers to become involved in District business. This includes being nominated for board positions.*

GMD3 Response: Currently, most of the 15 board members have dryland production and domestic wells as part of their farming operations.

8. Constituent concerns GMD3 programs duplicate state services.

- a) *Most of the programs and services offered by GMD 3 duplicate those offered at no charge by state agencies.*

GMD3 Response: While federal government, state agencies, the GMD3 board and other local government entities provide some similar services, they are formed in different ways, have a different basis for providing services, and exercise their authority differently. District constituents have organized for local provision of public services identified as prudent to meet a need by the governing body as a means to improve the community decision making (local control) which is itself a unique public service.

- b) *GMD 3 does provide a place of use monitoring service for a fee. This service is used by a minute number of individuals and is delegated to Groundwater Management Districts where they exist. It is our understanding that this function is served by DWR outside of Groundwater Management Districts.*

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GMD3 Response: The referenced place of use monitoring service is provided by DWR outside of GMDs but generally not within GMD3 as a matter of statewide rules and regulations that require relevant change proposals to be denied unless compliance monitoring services are secured.

- c) *We have observed that the State of Kansas can fulfill the current services provided by GMD 3 and generally shows a greater willingness to consider innovative approaches to water resources issues.*

GMD3 Response: The State of Kansas can fulfill some services provided by GMD3, but no state agency has the explicit duty to manage local groundwater supplies. This has been true even before the passage of the GMD Act in 1972. The service of GMD3 includes to advise and assist other agencies and water managers in the conduct of their activities in order to implement a locally adopted official management program, and to realize the formal right for constituents to have a say in solving public problems affecting local interests. The different water agencies generally exercise their authority differently and provide their unique focus to water resources related issues. Some services not provided by the state are provided by GMD3 with all member interests in mind, including domestic drinking water concerns. See previous response to the first concern above.

9. Constituent concern for Ark River management in Hamilton County

- a) *GMD 3 continues to extend its reach in Southwest Kansas. The management plan adopted in 2022 seeks to incorporate the Arkansas River corridor within Hamilton County into GMD 3. We believe that the majority of Hamilton County water users oppose this initiative.*

GMD3 Response: GMD3 works to meet needs and solve problems of the management program, including those associated with the natural infrastructure of the public river system, including water quantity and quality, as an important aquifer recharge and alternative source of water for the District hydrologic community. The Arkansas River corridor across Hamilton County and GMD3 to the east edge of Ford County became a high priority area of the management program in 1984 when the Board requested that the Upper Ark River Intensive Groundwater Use Control Area be formed and the Kearny-Finney moratorium area be abolished. The boundaries proposed by GMD3 included the hydrologic community across Hamilton County. Those boundaries were adopted by the state for special action planning. The 2022 update of the management program document continues the long-standing work with a local view on needed services and problem solving that otherwise go unaddressed in Hamilton County and downstream.

- b) *We further believe that GMD 3 is not equipped to deal with the extremely complicated issues associated with management of the Arkansas River.*

GMD3 Response: On the contrary, GMD3 is the best equipped local government instrument to deal with the extremely complicated issues associated with management of the Arkansas River. GMD3 has a demonstrated successful history of formal local stakeholder

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representation and collaborative studies and work in the natural infrastructure of the river system in coordination with other local, state, and federal agencies. The current surface water representative on the board is a lifelong ditch system irrigator with 28 years of service on the Colorado and Kansas Arkansas River Compact Administration (ARCA); a significant portion of that time as vice chair of ARCA. Other past and present board members are also surface water irrigators with ARCA experience. GMD3 staff resources include licensed water professionals with the necessary expertise and experience, including seven years of service to ARCA as assistant operations secretary, 18 years of state water rights administration, many years serving the Kansas litigation team for the Kansas vs. Colorado Supreme Court original action no.105 case, and 15 years managing and financing river system water quality and quantity improvement studies and projects, including significant investments in Hamilton County. The GMD3 board continues to support conference and travel funding to insure GMD3 is well up to date with the partnerships and the expertise necessary to deal with the extremely complicated relationships, institutions, and activities of interstate water basins, including groundwater.

- c) *An Intensive Groundwater Use Control Area (IGUCA) covers the Arkansas River corridor in Hamilton County and DWR has staff dedicated to the management and enforcement of interstate agreements related to the Arkansas River.*

GMD3 Response: See responses to concern 9(a) and 9(b) above. The dedication and expertise of existing DWR staff are highly commendable. But the public resources available to address the upper Ark basin in Kansas has long been recognized as short staffed and under financed. GMD3 concerns the river system focusing on water supply values of flow quantity and quality and associated groundwater issues. GMD3 actions have moved state action in recent years to collaborate with Colorado people who share the basin upstream. GMD3 has established river and Stateline groundwater gages with permanent funding for the needed management data with the help of the legislature. GMD3 assists in collecting water quality samples to quantify how Colorado water use affects Hamilton County and areas downstream across GMD3. The GMD3 focus is on local concerns, practical management with solutions.

10. Constituent concern of little or no benefit of GMD3 to the portion of Hamilton County in the District.

- a) *The portion of GMD 3 lying within Hamilton County has been subject to little or no beneficial management by GMD 3.*

GMD3 Response: GMD3 strives to remain responsive to the needs and problems identified by each elected representative, including all directors that have been elected from Hamilton County. District staff regularly visit the area wells and provide flowmeter assistance, including adding a hefty flowmeter seal to protect constituent flowmeter rule compliance interests. Assistance is provided in regional water quality and quantity studies that include Hamilton County, adding to the information available to Hamilton County constituents. Other services are available as requested by both constituents and the state. Irrigators across the entire District received Irrigation Climate And Resource Evaluation (I-CARE) reports

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this year as a new service for each active well. The report includes local aquifer use and decline conditions, climate, and other resources to assist constituents in their own conservation and management goals. See GMD3.org/icare on line for more information.

b) *Little or no effort has been made to understand and quantify the unique attributes of the aquifers that occur in southern Hamilton County.*

GMD3 Response: In addition to elected board members from Hamilton County, GMD3 staff resources together have more than 90 years of experience working with District wells and aquifer issues that include southern Hamilton and northern Stanton Counties where Ogallala Aquifer formation is in hydrostatic contact with the deeper formations of the High Plains Aquifer system. Hydrological studies and aquifer property quantification have been conducted by GMD3 staff for water right cases and regional groundwater model calibration working with the Kansas Geological Survey(KGS) and others. The unique attributes of the aquifers that occur in southern Hamilton County extend into Colorado as the High Plains Hydrologic Unit where GMD3 recently conducted a quantification study with help from engineers and hydrologists at S.S. Papadopoulos and Associates. An update of the GMD3 area groundwater model is under way with help of KGS and Kansas Water Office. This adds an additional model layer based in part on GMD3 knowledge of the unique aquifer conditions in southern Hamilton County. The model will also add a Graphical User Interface to help it be user friendly enough to use and understand the model data for constituents, including those in Hamilton County.

c) *In contrast, GMD 3 has invested funds in an activity that transported water by truck from Eastern Kansas to locations in and outside GMD 3, where it was dumped for no tangible benefit to anyone.*

GMD3 Response: As stated earlier, GMD3 management program activity includes actions to plant seeds for improving source development, protections, and policies for more sustainable future water supplies. The referenced proof-of-concept (POC) activities have been frugal projects to identify development needs and plant seeds with government agencies and other decision makers and potential partners as part of GMD3 board efforts to address the future water shortage problems. The quantifiable and measurable benefits of the POC projects have been actual steps in the direction of addressing the \$10 billion annual lost opportunity costs projected for southwest Kansas in 2065 as water supplies become depleted. Again, the highest water supply depletion rates anywhere in Kansas exist in Hamilton County.

Hamilton County constituents request.

We respectfully request that the Board of GMD 3 vote to approve this request to remove Hamilton County from the boundaries and jurisdiction of GMD 3 and then direct GMD 3 staff to engage with the Chief Engineer of DWR to implement this action at the earliest possible date.

GMD3 Board Response.

See December 11, 2023, letter from Thomas A. Adrian, Attorney for the Board.