The Greater GMD 4 LEMA Dispute: Kansas Water Rights, Prior Appropriation, and the Limits of Administrative Authority (Part 1)

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Overview

Kansas faces a legitimate groundwater conservation challenge and the controversy surrounding the proposed renewal of the Greater Northwest Kansas Groundwater Management District No. 4 (GMD 4) Local Enhanced Management Area (LEMA) raises important questions about the future of Kansas water law. At stake is more than the amount of groundwater farmers may pump. The dispute implicates established water rights, the authority of administrative agencies, the economic value of agricultural land, and the relationship between groundwater conservation and private property rights.

The Ogallala Aquifer is not an unlimited resource, and continued withdrawals in excess of recharge threaten the long-term productivity of portions of western Kansas. But recognizing the need for conservation does not resolve the separate question of how conservation may lawfully be accomplished. The choice should not be between conserving groundwater and protecting property rights. Both are essential to the long-term economic viability of western Kansas.

The Economic Importance of Kansas Water Rights

Kansas water law rests on the Kansas Water Appropriation Act.[1] The Act establishes a system of prior appropriation under which water rights are administered according to legally recognized priorities. Under the familiar principle of first in time, first in right, senior water rights generally receive protection against interference from junior rights, subject to applicable statutory requirements.

A water right is not ownership of the water itself. Rather, it is a legally recognized right to divert and use water in accordance with the terms and conditions of the right. But that distinction does not diminish the economic importance of an established water right. For agricultural producers, water availability influences crop selection, yields, farm income, financing decisions, and the value of agricultural real estate. Changes in the practical ability to exercise a water right can affect the economic value of an entire farming operation.

[1] K.S.A. § 82a-701 *et seq.*

At the same time, the High Plains Aquifer, including the Ogallala formation underlying much of western Kansas, has experienced substantial groundwater declines in portions of the region. Where pumping persistently exceeds recharge, continued extraction reduces the resource available to future generations.

The resulting problem is straightforward. Individual farmers make economically rational decisions for their own operations, but the cumulative effect of those decisions can contribute to depletion that threatens the long-term productivity of the region.

Neither extreme offers a satisfactory solution. Simply telling farmers to conserve does not address the economic realities of agricultural production. Conversely, assuming that every existing water right must always be exercised to its maximum authorized quantity, regardless of aquifer conditions, ignores the resource problem. The policy challenge is to establish rules that preserve the legal integrity of water rights while creating incentives for economically sustainable groundwater use.

The Legal Warning in *Friesen v. Barfield*

The current controversy is not the first time a GMD 4 groundwater-management plan has generated litigation. In *Friesen v. Barfield*,[2] landowners challenged an earlier GMD 4 district-wide LEMA. The court addressed arguments involving prior appropriation, statutory authority, equal protection, property rights, regulatory takings, procedural protections, and the reasonableness of the administrative action. The court ultimately upheld the earlier LEMA.

Its reasoning deserves attention because it illustrates the potential difficulty of challenging groundwater restrictions based solely on traditional prior appropriation principles. The court concluded that the Legislature had expressly authorized corrective controls under the LEMA statute. It also reasoned that the restrictions were temporary and subject to review rather than permanent alterations of the underlying water rights. The court further concluded that the plan's differential treatment of irrigation rights was rationally related to groundwater conservation. In reaching that conclusion, the court noted the defendants' position that irrigation accounted for approximately 97 percent of groundwater use within GMD 4. The court rejected the constitutional and procedural challenges presented in the case.

Particularly important was the court's treatment of the relationship between prior appropriation and the LEMA statute. The court recognized the tension between the traditional priority system and statutory authority to impose corrective controls. It concluded that the Legislature intended to authorize conservation measures that could operate differently from the ordinary application of prior appropriation.

The distinction is important because legislative authorization to impose corrective controls does not necessarily authorize the Chief Engineer to disregard the statutory priority system. K.S.A. § 82a-707(b) provides that the

[2] No. 2018-CV-000010 (Gove County District Court Oct. 15, 2019).

priority date of a water right, rather than the purpose of use, determines the right to divert and use water when the available supply is insufficient to satisfy all water rights. That priority rule remains an important part of Kansas water law, but its application in a LEMA must be considered alongside the specific corrective-control provisions of K.S.A. § 82a-1041(f), discussed below.

There is an important qualification, however. *Friesen* was a county district court memorandum decision. It is not a Kansas Supreme Court or Kansas Court of Appeals decision establishing binding statewide precedent. It also does not resolve the legal questions presented by the proposed 2028–2032 Greater GMD 4 LEMA.

Nevertheless, *Friesen* illustrates an important legal obstacle for landowners challenging groundwater restrictions. A court may conclude that the Legislature authorized a particular conservation mechanism and that temporary restrictions do not necessarily constitute an unconstitutional taking merely because they reduce the amount of water a producer can pump.

But that does not mean every conservation measure adopted under the LEMA statute is necessarily lawful. A policy preference for conservation does not, by itself, answer whether a particular allocation method complies with the Kansas Water Appropriation Act and other applicable statutes. That distinction is important. The legal authority to impose conservation restrictions and the economic wisdom of those restrictions are separate questions.

The current statutory framework provides an important additional consideration. Kansas law[3] expressly requires the Chief Engineer, in reviewing a proposed LEMA, to determine whether the plan is "consistent with state law." That requirement is significant. The Legislature did not grant the Chief Engineer unrestricted discretion to allocate groundwater withdrawals according to whatever methodology the agency considers desirable for conservation purposes. Moreover, the Chief Engineer is authorized to determine permissible total groundwater withdrawals within a LEMA but, insofar as reasonably possible, those withdrawals are to be apportioned among valid groundwater rights according to their relative priority dates.[4] Although the statute also authorizes reductions in permissible withdrawals,[5] those provisions must be read together. The authority to impose corrective controls does not necessarily eliminate the relevance of established water-right priorities. When the Chief Engineer determines permissible total withdrawals under subsection (f)(2), the statute expressly directs that, insofar as reasonably possible, those withdrawals be apportioned according to the relative priority dates of the affected water rights. The relationship between that provision and the separate authority to impose reductions under subsection (f)(3) presents an important question of statutory interpretation. Accordingly, the central legal question concerning the proposed Greater GMD 4 LEMA is not whether the Legislature authorized LEMAs. It

[3] K.S.A. § 82a-1041(a)(6).
[4] K.S.A. § 82a-1041(f)(2).
[5] K.S.A. § 82a-1041(f)(3).

plainly did. The question is whether the particular allocation methodology adopted for the proposed LEMA is consistent with the Kansas Water Appropriation Act and the other applicable provisions of Kansas water law.

The Proposed Greater GMD 4 LEMA

The proposed Greater GMD 4 LEMA has proceeded through the initial stages of the administrative review process. On May 27, 2026, the Chief Engineer of the Kansas Department of Agriculture's Division of Water Resources conducted an initial public hearing concerning the proposed management plan. On August 5, 2026, the Chief Engineer issued an Initial Public Hearing Order concluding that the proposal satisfied the initial statutory requirements necessary to continue the renewal process and directing that a second public hearing be conducted. The second public hearing was scheduled for October 13, 2026, in Colby, Kansas. That hearing was intended to address the proposed corrective controls, the likelihood that the management plan would achieve its stated conservation objectives, and whether the proposed plan should ultimately be approved.

The administrative proceeding is significant to affected landowners and agricultural producers because the outcome may affect pumping allowances, agricultural production decisions, and the economic value of water-dependent farming operations. As of November 13, 2026, the publicly available administrative materials do not identify a final order approving or rejecting the proposed renewal

As discussed in my earlier article, "Kansas Farm Bureau Challenges Greater GMD 4 LEMA: The Fight Over Water Rights and Prior Appropriation," the Kansas Farm Bureau and affected landowners have challenged aspects of the proposed renewal. Their arguments include concerns that the proposed restrictions conflict with established water-right priorities and Kansas statutory law. Those arguments remain allegations in the pending administrative controversy and should not be treated as resolved legal conclusions.

The broader issue is the permissible scope of administrative authority over existing water rights. When government officials determine how much groundwater individual producers may pump, they are making decisions with substantial economic consequences. Those decisions can affect the productive capacity of farmland, the value of irrigation equipment, farm financing, and the long-term viability of agricultural operations. Thus, the statutory authority for those decisions should be clear.

Why Administrative Restrictions Are Not Enough

There is a broader policy concern with relying primarily on mandatory restrictions to accomplish groundwater conservation. Under a regulatory approach, government officials must determine how conservation burdens should be distributed among water users, which uses should receive preferential treatment, and how restrictions should change over time.

Those decisions inevitably generate disputes involving statutory authority, administrative discretion, fairness, and the protection of existing rights. Uniform restrictions may appear administratively simple, but equal percentage reductions do not necessarily produce equal economic consequences. A reduction of a given volume of water may have substantially different effects depending on soil characteristics, crop selection, irrigation technology, rainfall, and the availability of alternative production practices. Conversely, allowing some users to continue pumping at historically authorized levels while imposing disproportionate reductions on others can create legitimate concerns about the distribution of conservation costs.

The underlying economic problem is that a regulatory allocation formula may not reflect the relative value of water in its various agricultural uses or the cost of conserving an additional unit of water. That does not mean groundwater conservation should be abandoned. It means that conservation policy should be designed with greater attention to economic incentives, voluntary arrangements, and the legal characteristics of existing water rights.

Conclusion

The Greater GMD 4 controversy should not be reduced to a contest between farmers who oppose conservation and government officials who support it. Farmers have legitimate interests in the water rights upon which their operations and investments depend. The state also has a legitimate interest in preventing groundwater depletion that threatens future agricultural productivity. Those objectives are not inherently incompatible.

But conservation cannot become a justification for disregarding established legal rights, and administrative authority should not become a substitute for clear statutory rules. The Legislature should examine whether the relationship among the Kansas Water Appropriation Act, the Groundwater Management District Act, and the LEMA provisions is sufficiently clear. Where uncertainty exists, the Legislature should provide clarification rather than leave fundamental policy questions to administrative interpretation or case-by-case litigation.

The legal integrity of existing water rights matters. So does the long-term condition of the aquifer. The question is whether Kansas can develop a groundwater-management system that respects both.

In Part 2, I will examine a more constructive alternative: a groundwater-management framework built around property rights, voluntary water markets, measurable conservation, and economic incentives that reward farmers for conserving water rather than relying primarily on administrative restrictions.

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