

During the drafting process, the District requested comments and suggestions from area water users. The District received both verbal and written comments from concerned water users. Most of the comments the District received are summarized in the section below:

1. Why is MDS not being administered first before any other action is taken?

K.S.A. 82a-703b authorizes the Chief Engineer to administer water rights with priority date after April 12, 1984 when the minimum desirable streamflow (“MDS”) falls below trigger points established in K.S.A. 82a-703c. These statutes are a part of the Kansas Water Appropriation Act (K.S.A. 82a-701 *et seq*) and there is no reference to it in the Groundwater Management District Act (K.S.A. 82a-1030 *et seq*). Therefore, there is no mechanism that allows the District to initiate or recommend MDS administration. The MDS wells do have lower priority numbers, and priority is a major consideration in connection with the LEMA proposal. It is the District’s understanding that MDS administration is a form of real-time administration to address site-specific issues. Each administration action is treated on a case-by-case basis by the Chief Engineer and staff. The Chief Engineer’s final impairment report noted that real-time administration would be ineffective in providing a relief to Quivira NWR. Additionally, it is the District’s understanding that nothing within the LEMA process precludes the Chief Engineer from administering water rights according to K.S.A. 82a-703b.

2. Only the wells near the stream should be involved in this LEMA and the junior water rights should be administered first.

This LEMA is solely in response to the Quivira NWR impairment complaint. Two different aspects of water law must be considered when addressing that complaint. One is the prior appropriation doctrine, commonly referred to as “first in time-first in right.” The other is the statutory framework governing impairment claims. Both priority of the water rights and their relative contribution to the impairment must be considered and balanced in formulating any solution. Priority is easily determined by the water right number. Impairment was determined using the best scientific tool available, which is the BBGMDMOD model. The LEMA committee, and ultimately the District board, is pursuing a LEMA that considers and balances both.

Strict administration is the method DWR and the Chief Engineer would use to address the Quivira NWR impairment complaint. However, it is not a desirable solution and would have devastating consequences. From the very early stages in the process, the LEMA committee had a guiding principal: “Put no one out of business”. In the case of strict administration, the most junior water right contributing to the impairment would likely be shut completely off. This would continue “up the line” until the senior water right (Water Right File No 7571) was fully satisfied. The LEMA committee felt this would be a significant economic hardship to the region and put several multi-generational farming operations out of business.

With the BBGMDMOD, the District can determine the water rights that have the most effect on the stream. Like the case of strict administration, if those water rights with the most impact on the stream were shut off completely, there would be a significant economic hardship to the region and several multi-generational farming operations would be put out of business.

3. For the sake of the future of my water supply, water should not be moved out of Rattlesnake Creek subbasin into other subbasins.

The administrative basin boundaries as defined by K.A.R. 5-6-15 are used for determining the drainage basin in which a water right is located. These boundaries were last updated in February 2002 by KDA–DWR, USGS and NRCS. It is the understanding of the District that these drainage basin boundaries reflect the surface water drainage, but do not necessarily reflect the movement of groundwater. Balleau Groundwater Inc. has, in coordination with the Partnership, developed a better understanding of the groundwater movement in 2007 through the development of the BBGMDMOD. In the event of an application to move water across the subbasin boundaries, as defined by K.A.R. 5-6-15, the BBGMDMOD will be utilized in some capacity to determine the long-term impact of such an action. This will be conducted in order to protect the existing water rights and domestic wells at the destination location.

4. Water should not be retired from Stafford county as this will decrease the economic value of the ground.

If water is offered voluntarily for purchase by the District by the water right owner, the District will evaluate the economic impact such a purchase will have on the area. Historically, the District has completed such transactions and taken these water rights out of production in their respective areas. Without knowing the offers the District may receive, it is presumptuous to assume the magnitude of these retirements on any specific area.

5. If water allocations are imposed, water use history should not be used as its basis because it penalizes those that have conserved water.

The Rattlesnake Creek LEMA proposal does require allocations if the water use goals are not met in the first seven years of the LEMA. These allocations will be based on each individual water right's certified appropriation. With the legislative amendment to K.S.A. 82a-718, the premise of using historic water use as a basis for administration has issues. Using water use history as the basis for allocations rewards water users that maximized historic usage and penalizes more conservative water users within the same area. Furthermore, utilizing certified water appropriations reinforces the value of existing water right property values.

6. My water right is not located within the Rattlesnake Creek subbasin and should be excluded from the LEMA.

As stated in response to comment #3, the administrative boundaries established by KDA–DWR in K.A.R. 5-6-15 are used for surface drainage rather than groundwater movement. BBGMDMOD has incorporated data from all previous groundwater models created in this area (Mid-Ark model, Rattlesnake Creek model, etc.) as well as datasets for both surface elevations and underground lithology. By incorporating these datasets together, the BBGMDMOD better represents the groundwater movement over time and the respective impacts to neighboring systems. In several cases, the District will agree that on the surface the water does not flow toward the Rattlesnake Creek channel in these outlying areas. However, when analyzing the effect these areas have on Zenith gage after 68 years, these areas do have an impact. Therefore, they are included in this LEMA boundary for the sole purpose that the LEMA plan is intended to look at the long-term effects to the hydrologic system.

Green = current draft plan is in good shape. Yellow = needs more clarification. Red = elements are missing or incomplete

AUGMENTATION		
7/12 draft	8/9 draft	Augmentation project; 15 cfs capacity; up to 5,000 AF annually
7/12 draft	8/9 draft	Design completed by December 31, 2019
7/12 draft	8/9 draft	Financing secured by June 30, 2020
7/12 draft	8/9 draft	Fully functional by March 15, 2022

WATER USE		
7/12 draft	8/9 draft	Water use targets/allocations set for 2020-2029
LEMA-wide:		
7/12 draft	8/9 draft	Water use by juniors is held to an average of 210,000 AF per year
7/12 draft	8/9 draft	Performance evaluated in 2025 for 2020-2024, and in 2030 for 2025-2029
7/12 draft	8/9 draft	Water use by seniors is not restricted by the LEMA
Zone D/St John area/high priority area:		
7/12 draft	8/9 draft	Water use by all users is held to an average of 25,655 AF per year (is there senior use in Zone D?)
7/12 draft	8/9 draft	The five-year limit may be climate adjusted, but the ten-year limit will be 2,100,000 acre-feet of junior use in the LEMA.
7/12 draft	8/9 draft	No other adjustments to the water use limits
7/12 draft	8/9 draft	Quality controlled water use reports are sole basis for determining water use
7/12 draft	8/9 draft	Water use targets/allocations given to each junior water right based on priority (and maybe proximity), giving due consideration for past conservation.
7/12 draft	8/9 draft	Water users who limit themselves to their target use 2020-2024 will receive the same target use 2025-2029.
7/12 draft	8/9 draft	If the LEMA water use limitation is exceeded either:
7/12 draft	8/9 draft	Water users who exceed their target use 2020-2024 will receive the same target use 2025-2029 less the total amount of their over use in 2020-2024, OR
7/12 draft	8/9 draft	If the limit is exceeded by less than 3,500 acre-feet, then the basin has until December 31, 2025 to take actions to remedy the shortfall and avoid enforcing allocations on the water rights that exceeded their 2020-2024 target use

MODELING		
7/12 draft	8/9 draft	GMD5 Model updated and re-calibrated by December 31, 2026 using data through 2024
7/12 draft	8/9 draft	Model update and recalibration conducted collaboratively with KDA-DWR and others
7/12 draft	8/9 draft	2026-updated model to find allowable junior pumping to reduce rate of increasing depletions by half or more for 2030-2039

IF NO AUGMENTATION		
7/12 draft	8/9 draft	If augmentation is not fully functional by December 31, 2022, juniors immediately restricted to annual limit of 150,000 acre-feet in the LEMA using original allocation methodology
7/12 draft	8/9 draft	If augmentation is not fully functional by December 31, 2024 LEMA is terminated, IGUCA proceedings will determine the level of pumping allowable to remedy impairment.

LEMA PLAN DOCUMENT		
7/12 draft	8/9 draft	Include executive summary/overview that lays out the major corrective control elements of the plan with pumping numbers, dates, and consequences
	8/9 draft	Clear goals and a clear basis to determine that proposed corrective controls accomplish the goal
	8/9 draft	Boundary of the LEMA is justified
	8/9 draft	Water Bank - details on what flexibility is going to be allowed and how it will be tracked
	8/9 draft	Clear explanation of the on-going nature of the LEMA and its tests to make sure they are on-track; and controls if they are not
	8/9 draft	Clear provisions and processes to adjust the LEMA without undermining it, e.g. draft plan provisions 7a, 8a, 8b, 8d