

STATE OF KANSAS

DEPARTMENT OF AGRICULTURE
1320 RESEARCH PARK DRIVE
MANHATTAN, KS 66502
PHONE: (785) 564-6700
FAX: (785) 564-6777



900 SW JACKSON, ROOM 456
TOPEKA, KS 66612
PHONE: (785) 296-3556
www.agriculture.ks.gov

GOVERNOR JEFF COLYER, M.D.
JACKIE McCLASKEY, SECRETARY OF AGRICULTURE

November 15, 2018

Orrin Feril, Manager
Big Bend Groundwater Management District # 5
125 S. Main
Stafford, KS 67578

RE: MOU regarding Augmentation for Rattlesnake Creek

Dear Orrin,

I received two originals, signed by GMD 5, of our proposed Memorandum of Understanding between the Chief Engineer, Kansas Department of Agriculture, Division of Water Resources and Big Bend Groundwater Management District No. 5 regarding the initial duties of each party in the planning, design, and implementation of an augmentation wellfield in the Rattlesnake Creek subbasin and to memorialize the Parties' understanding of the role of augmentation in remedying the Quivira impairment.

Attached is one original of the agreement which I have signed. We are retaining the second original in our files.

We look forward to working with GMD 5 to implement augmentation for the Rattlesnake Creek pursuant to the MOU.

Sincerely,

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

Cc: Lynn Preheim, Stinson Leonard Street LLP
Jeff Lanterman, DWR Water Commissioner, Stafford

Enclosure

RECEIVED

NOV 19 2018

Big Bend GMD #5

**Memorandum of Understanding Between the Chief Engineer, Kansas Department of
Agriculture, Division of Water Resources and the Big Bend Groundwater Management
District No. 5**

The Chief Engineer, Kansas Department of Agriculture, Division of Water Resources (“Chief Engineer”) and the Big Bend Groundwater Management District No. 5 (“the District”) (collectively the “Parties”) enter into this Memorandum of Understanding (“Agreement”) this 14th day of November, 2018 (“Effective Date”). The purpose of this Agreement is to document the initial duties of each party in the planning, design, and implementation of an augmentation wellfield in the Rattlesnake Creek subbasin and to memorialize the Parties’ understanding of the role of augmentation in remedying the impairment complaint filed on April 8, 2013, by the U.S. Fish and Wildlife Service (the “Service”) related to its water right for the Quivira National Wildlife Refuge (“the Refuge”), Water Right File No. 7,571.

WHEREAS, on July 15, 2016, the Chief Engineer published his final report detailing the impairment investigation conducted at the request of the Service. The Chief Engineer’s final report concludes that “upstream, junior groundwater pumping regularly and significantly impairs the Service’s ability to use its Water Right File No. 7,571.”;

WHEREAS, the Chief Engineer’s final report states: “Based on the historical analysis, and assuming that the basin’s hydrology will not significantly change, for better or worse, in the next several decades, it appears that, to relieve the impairment of the Service’s water right, groundwater reductions and/or augmentation will be needed to increase available streamflow at the Refuge by 3,000-5,000 acre-feet on a regular basis.”;

WHEREAS, K.S.A. 82a-706b(a)(2) states: “Upon making a determination of an unlawful diversion, the chief engineer or the chief engineer’s authorized agents, shall, as may be necessary to secure water to the person having the prior right to its use . . . within the rattlesnake creek subbasin located in hydrologic unit code 11030009, allow augmentation for the replacement in time, location and quantity of the unlawful diversion, if such replacement is available and offered voluntarily.”;

WHEREAS, at various times the District proposed the framework to develop an augmentation project to supply the Refuge with supplemental water to address the impairment complaint at the Refuge;

WHEREAS, the Parties agree that the development and implementation of an augmentation project will play an integral role in remedying the impairment complaint regarding the Service’s water right; and

WHEREAS, the Parties agree that at this initial stage in the development of an augmentation project, there are many details that are unknown that are more appropriately set forth in a later agreement, but that both Parties desire to put the proper assurances in place that will allow the immediate development of an augmentation wellfield.

THEREFORE, mindful of the circumstances outlined in these recitals, the Parties express their mutual understanding as follows:

1. **Affirmation of Statutory Duty.** Pursuant to K.S.A. 82a-706b, the Chief Engineer acknowledges his statutory duty to allow and approve an augmentation project, in so far as it may be done within the Kansas Water Appropriation Act (K.S.A. 82a-701 *et al.*) and any rules and regulations adopted thereunder. This shall include allowing augmentation for the replacement in time, location, and quantity of the unlawful diversion, if such replacement is available and offered voluntarily. The Chief Engineer acknowledges and agrees that K.S.A. 82a-706b requires him to process and approve all proper applications for the establishment of water rights to provide such augmentation.
2. **Assistance in Developing an Augmentation Project.** The Chief Engineer agrees to make a good faith effort to provide all administrative and regulatory assistance and support within his authority and in accord with the duties and responsibilities of the Chief Engineer, to assist in the development of an augmentation project. This includes, but is not limited to, assisting the District in the promulgation and amendment of any necessary administrative rules and regulations or the lawful waiver thereof.
3. **District Responsibilities.** Nothing in this Agreement shall obligate the District to develop an augmentation project or accrue any costs associated with such a project. However, if the District decides to develop an augmentation project, then the District shall be responsible for the cost to develop, construct, operate, and maintain that wellfield and all pipelines or canals, and points of discharge necessary to ensure water from the wellfield is delivered to the Rattlesnake Creek channel or any other point agreed upon with the Service.
4. **Future Terms, Conditions, and Agreements Necessary.** The Chief Engineer and the District acknowledge that since the augmentation project is still in the initial stages of development, it will be necessary to develop additional terms and conditions to properly regulate the rate, quantity, and quality of the water provided to the Refuge.
5. **Consideration of Water Provided.** The Chief Engineer shall take into consideration any augmentation project and the amount of water that can be provided to the Refuge when considering any plan to reduce water use by users that are impairing the Refuge. This includes a plan based on a Local Enhanced Management Area, Intensive Use Groundwater Control Area, administration of individual water rights, or any other order, plan, or voluntary action intended to reduce water use to aid in addressing the impairment of the Refuge.
6. **Modification.** No modification of this Agreement shall be valid unless the change is made in writing and is approved by authorized representatives of the Parties, evidenced by the signature of each respective representative.
7. **Term and Termination.** This Agreement shall remain in effect so long as all provisions herein remain consistent with Kansas law. Either party may terminate this Agreement upon 60 days-notice in writing.
8. **Notices.** All official notices shall be sent to Parties' designated contacts as listed below:

Chief Engineer
Division of Water Resources
Kansas Department of Agriculture
1320 Research Park Drive
Manhattan, KS 66502

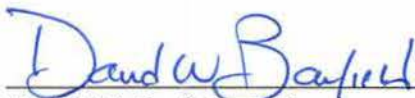
Manager
GMD5
125 S. Main St.
Stafford, KS 67578

Lynn Preheim
Stinson Leonard Street LLP
1625 N. Waterfront Pkwy
Suite 300
Wichita, KS 67206

9. **No Third-Party Beneficiary.** No participant in this Agreement intends for this Agreement to confer any benefit upon any person or entity not a signatory to this Agreement, whether as a third-party beneficiary or otherwise. This specifically includes the Service and the Refuge.

10. **Headings.** The headings of clauses contained herein are used for convenience and ease of reference. They shall not limit the scope or intent of the clause.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first written above.



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



Darrell Wood
President, Board of Directors
Big Bend Groundwater Management District No. 5