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GOVERNOR JEFF COLYER, M.D.
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RECEIVED

Dec 20 2018

Big Bend GMD #5

December 20, 2018

Board of Directors
Big Bend Groundwater Management District No. 5
125 South Main Street
Stafford, Kansas 67578

Board of Directors:

Pursuant to K.S.A. 82a-1041, the Big Bend Groundwater Management District No. 5 ("GMD5") Board of Directors has transmitted to me the "Request for Rattlesnake Creek / Quivira NWR LEMA," dated December 13, 2018, for consideration. The first step in the local enhanced management area ("LEMA") process is to determine if the management plan approved by the Board of Directors is acceptable for consideration and so that proceedings to designate a LEMA can be initiated.

Pursuant to K.S.A. 82a-1041(a), a management plan is acceptable for consideration if it: (1) purposes clear geographic boundaries; (2) pertains to an area wholly within the groundwater management district; (3) proposes goals and corrective control provisions as provided in K.S.A. 82a-1041(f) adequate to meet the stated goals; (4) gives due consideration to water users who already have implemented reductions in water use resulting in voluntary conservation measures; (5) includes a compliance monitoring and enforcement element; and (6) is consistent with state law. Further, the management plan should be intended to address one of the conditions set forth in K.S.A. 82a-1036(a)-(d).

Unfortunately, the management plan submitted lacks sufficient clarity for this initial review. At this time, the management plan appears to lack information required by K.S.A. 82a-1041(a)(1), (3), and (4). Further, it is unclear which condition contained in K.S.A. 82a-1036(a)-(d) the management is supposed to address. Without additional information, I cannot determine if the management plan meets these threshold requirements for consideration.

Primarily, it is unclear what the management plan's goal is and what is expected to be achieved. The management plan states that the goal is to "address conditions which require regulation in the public interest regarding streamflow within an area of enhanced management and to provide streamflow augmentation to the Rattlesnake Creek stream channel." An explanation of what conditions require regulation would be helpful. The management plan also contains an objective to "reduce water use in the LEMA area to a degree that will temper the growth of future streamflow losses..." How does this relate to the stated "goal," and what does it mean? These statements are vague and do not provide any measurable goals. Is it the intent of the Board of Directors that this management plan fully or only partially solves the impairment of Quivira National Wildlife Refuge?

Further, the stated goals must be addressed by adequate corrective control provisions contained in K.S.A. 82a-1041(f). The only corrective control contained in the management plan is the requirement that end guns be removed. However, it is unclear if this is an adequate corrective control because there is no enforcement

mechanism to ensure that less water is actually withdrawn because of this requirement. It is also unclear why other less efficient uses of water are not prohibited by the management plan. For example, the use of flood irrigation is less efficient than the use of endguns, but flood irrigation is not restricted in the management plan.

The management plan also fails to provide any statement in regard to giving due consideration to water users who already have implemented reductions in water use resulting in voluntary conservation measures. Finally, the proposal lacks a clear description of the boundaries. Please provide a complete listing of all sections that are proposed to be contained within the LEMA.

The management plan includes multiple voluntary actions that may be pursued by GMD5 or local water right owners to reduce water use. However, none of these voluntarily actions are enforceable by order of the Chief Engineer, and therefore, they may be pursued at any time with or without a LEMA in place.

Most significant among such voluntary actions is the development of an augmentation project. We fully support all efforts to develop an augmentation project. Pursuant to the MOU entered into between GMD5 and the Chief Engineer, augmentation will be accepted and taken into consideration as a part of any plan to address the impairment of Quivira National Wildlife Refuge. Augmentation is not a "corrective control" as envisioned by K.S.A. 82a-1041 and pursuant to K.S.A. 82a-706b augmentation may be brought forth voluntarily at any point by GMD5 or any other party that may wish to engage in such a project and must be accepted. Therefore, we continue to support and encourage all efforts to pursue the development of an augmentation project and reiterate that any such project will be accepted and considered in solving the impairment.

I would like to clarify one statement in the background section of the management plan. The third full paragraph on page 3 states, "In July 2017, the Chief Engineer and staff described the remedy as an augmentation wellfield capable of supplying 15 cubic feet per second ("cfs") to the stream channel and achieving a reduction of the future streamflow depletion as of 2003." That presentation provided for remedy requirements beyond GMD5's proposed 15 cfs augmentation project, calling for a 15% reduction in average basin use to stabilize streamflow. This presentation is available at: <http://agriculture.ks.gov/Quivira>.

In summary, I cannot complete a review of the proposed management plan because it contains no measurable goals and it is unclear if the proposed corrective controls would meet such undetermined goals. Please also make clear if it is the intent of the Board of Directors that this management plan fully or partially solves the impairment of Quivira National Wildlife Refuge. Additional information is also needed to determine how voluntarily conservation was taken into consideration as well as a clear definition of the proposed boundaries of the LEMA. I encourage you to revise your plan based on the comments contained in this letter so that your proposed management plan can be properly considered and that your full intent is clear and duly considered.

Sincerely,



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

cc: Orrin Feril, Manager GMD5
Lynn Preheim, Stinson Leonard Street LLP
Kent Moore, President, Water Protection Association of Central Kansas
Peter Balleau, Balleau Groundwater, Inc.
The Honorable Senator Mary Jo Taylor
The Honorable Representative Greg Lewis