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Mike Beam, Secretary

Laura Kelly, Governor

July 30, 2019

Sent via electronic mail to dnwfarm@gmail.com; lynn.preheim@stinson.com; and oferil@gmd5.org.

Darrell Wood, President
Big Bend Groundwater Management District No. 5
125 South Main Street
Stafford, Kansas 67578

Re: February 22, 2019 request to initiate local enhanced management area proceedings.

Darrell and GMD5 Board:

We have completed our review of Groundwater Management District No. 5's ("GMD5") February 22, 2019, request to initiate Local Enhanced Management Area ("LEMA") proceedings, and per statutory requirements, I regret to inform you that GMD5's proposed LEMA is not acceptable for further consideration in its current form. In addition to several face-to-face conversations, a complete review of the technical and legal problems with the proposed LEMA was provided to you on May 30, 2019, via email. Since that review, my position on the acceptability of the proposed LEMA remains unchanged and you may consider this letter formal notification that LEMA proceedings will not be initiated to consider your current plan.

As a result of our most recent face-to-face meeting in Wichita on July 15, 2019, you requested a list reiterating the necessary elements for any LEMA with a goal of solving the impairment of Quivira National Wildlife Refuge. While we have previously provided this information in multiple forms, the following bullet points reflect our best attempt to succinctly summarize the core requirements of a LEMA aimed at solving the impairment:

- A stated goal of reducing upstream junior groundwater pumping that has the effect of halving the growth rate of depletions at the Zenith gage on Rattlesnake Creek.
- An overall limitation for total withdrawals within the boundaries of the LEMA.
- Specific limitations for withdrawals within the areas considered Zone A, Zone D, and/or the area within Zone A that is outside Zone D, as needed.
- Specific individual 5-year allocations for each water right within the LEMA boundaries consistent with the goal and limitations stated above.
- A method to adjust limitations and individual allocations based on the amount of water retired from Zone D or moved to areas that have lesser impact on Rattlesnake Creek.
- If an augmentation project able to deliver up to 5,000 acre-feet of water at a rate of 15 cfs of acceptable water quality is not operational by January 1, 2023:

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Big Bend GMD #5

- Authority to limit total withdrawals within Zone A to an average use of 150,000 acre-feet per year for 2023-2025 with specific allocations for each water right within the LEMA to achieve a withdrawal goal of 150,000 acre-feet.
- A specific request granting the Chief Engineer authority to initiate an IGUCA process to determine the appropriate pumping limitations necessary to resolve the impairment without augmentation and a requirement that such limitations be implemented by January 1, 2026, if augmentation continues to be unavailable.
- A requirement that limitations and allocations be measured by annual water use reports.

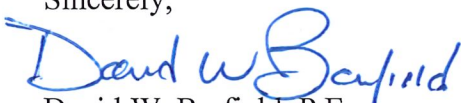
This list does not contain every element that may be required in order to successfully implement a LEMA. A great deal of flexibility remains in your hands as to how these requirements might be specifically set up. For more information about the elements that may make a future LEMA plan feasible, please refer to a letter from former Secretary of Agriculture Jackie McClaskey dated April 26, 2018, the scorecard included with the email from Chris Beightel dated August 23, 2018, and our informal review comments on your current LEMA plan provided as an attachment to my email of May 30, 2019.

I hope that your board will be able to come together and develop a solution for this impairment or at least critical components of such a solution. In particular, we urge GMD5 to move forward with your proposed augmentation project to provide protection to irrigators in the basin. We also urge you to partner with WaterPACK and other interested parties to retire or move water rights out of the high impact area. Any reductions in water use, retirements, or similar accomplishments will be considered in our administration, no matter what form it may take. If we can further assist you in regard to these critical actions in any way, please let us know.

As matters currently stand, I can no longer delay action in the basin. It is now necessary for me to exercise my duties as Chief Engineer and take action to protect the senior water right owned by the U. S. Fish and Wildlife Service. Therefore, I intend to directly administer the basin by administrative orders issued on or around September 1, 2019, and to become effective on January 1, 2020. Our intention is to provide time for local irrigators to plan for the 2020 growing season. Consistent with our discussions last fall, initial allocations will be based on the assumptions that an acceptable augmentation project will be developed within three years and that 4,400 acre-feet of retirements and moves out of Zone D will also occur in that time frame. I also intend to work with local partners to develop a Water Conservation Area (“WCA”) for the administered area that will provide flexibility to the administered water rights. We anticipate this WCA will include multi-year allocations and the ability to move allocations between water rights. More information about these actions will be made public as soon as possible.

While we have so far been unable to reach an agreement on how best to solve the impairment through this LEMA process, should GMD5 develop a viable LEMA plan in the future, we hope that it might be put in place and allow the administration orders to be lifted.

Sincerely,



David W. Barfield, P.E.

Chief Engineer

Division of Water Resources

Cc: Sec. Michael Beam
Kent Moore, President, WaterPACK
Kent Askren, Kansas Farm Bureau