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March 1, 2018

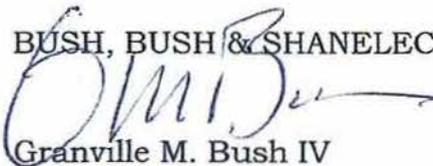
Board of Directors
Groundwater District #5
125 S Main
Stafford KS 67578

Re: Comments on proposed LEMA plan

Dear Board:

On behalf of a number of landowners and water right holders located in the proposed LEMA area, we have submitted herewith the comments and concerns they have expressed. The comments are contained on your form and the two pages thereafter.

Sincerely,

BUSH, BUSH & SHANELEC

Granville M. Bush IV

GMBIV: td

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Big Bend GMD #5

Darrell Wood - Edwards (Pres.)
Fred Grunder - Pratt (V Pres.)
John Janssen - Kiowa (Treas.)
Jerry Cullop - Rice (Sec.)
Justin Gatz - Reno
Kent Lamb - Stafford
Phil Martin - Barton
Kerry Froetschner - Pawnee
Tom Taylor - At-Large



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In accordance with K.S.A. 82a-1041, Big Bend Groundwater Management District #5 ("District") is pursuing a Local Enhanced Management Area ("LEMA"). On February 15, 2018, the District board presented the key components of the draft LEMA plan at the annual meeting. These components are: 1) end gun removal within entire LEMA area, 2) implement streamflow augmentation at a rate of 15 cubic feet per second ("cfs"); and 3) promote movement or retirement of water rights out of sensitive areas of the LEMA. The draft LEMA document is available for public review and comment. Please use this form to submit comments and concerns to the District by **March 1, 2018**.

Name (optional): **Bush, Bush & Shanelec**

Contact Info (optional): **(620) 278-2331**

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March 1, 2018

Board of Directors
Big Bend Groundwater Management District #5
125 S. Main Street
Stafford, KS 67578

RE: Proposed Rattlesnake Creek LEMA

Dear Board:

We have been asked by a number of landowners and senior water right holders whose property is located within the geographical boundaries of the proposed Rattlesnake Creek Local Enhanced Management Area ("LEMA") to contact you regarding the proposal. Please accept and consider this letter as part of the public comments you are receiving related to this proposed action.

There are numerous landowners and water users within the area served by Groundwater Management District #5 ("GMD#5") that are deeply concerned about the proposed LEMA in its current draft form. Among these concerns are the following:

(Remainder of Letter on Following Pages)

I. Proposed required removal of all “end gun” nozzles from center pivot irrigation systems.

The current draft of the LEMA proposal would require all irrigators with center pivot irrigation systems to remove all “end guns.” According to your count, this would eliminate 1,306 such nozzles. The LEMA proposal indicates that the District has conducted modeling that suggests the District would experience a 19,000 AFY savings. What modeling was used? What data revealed such a conclusion? Removing end guns from the systems will only increase pressure at other nozzles. The pumps will still pump exactly the same amount of water. The only consequence from this proposed action would be the non-irrigation of cropland, resulting in a decrease in its value. In fact, the LEMA proposal itself indicates that this solution will not decrease the amount of water being used, but will only “lessen the growth”.

II. Modification of the geographical areas within the proposed Rattlesnake Creek LEMA to include property located within the Mystery River drainage area.

For reasons that are entirely unclear, the current draft of the LEMA proposal expands the geographical boundaries of the LEMA to include areas within the Mystery River Drainage Area. Previous studies, that were adopted and enforced by the DWR Chief Engineer, determined that the Mystery River Drainage Area did not impact stream flow at Zenith. This was the official position since at least 1999. So, why has this area now been included? Its inclusion will not impact the current stream flow issues and thus it should be excluded from the LEMA proposal.

III. Pumping by Minimum Desirable Streamflow (“MDS”) wells if unaffected.

The current LEMA draft proposal is completely silent with regard to Minimum Desirable Streamflow (MDS) wells. State law clearly states that MDS wells, applied for after April 12, 1984, have junior status. The owners of these wells were fully aware of the potential that their wells could be curtailed or shut down if streamflow levels fell below minimum levels established by the legislature, having acknowledged this potential in writing and making it a condition of the drilling before such wells were drilled. In spite of the fact that this action would have a positive impact on the problem to be addressed, and in spite of the fact that the owners of such MDS wells were advised in writing that these wells could be shut down in times where minimum streamflows were not being met, the proposed LEMA takes no action in that regard.

IV. State water law is being ignored.

The current draft of the LEMA proposal ignores Kansas water law. Kansas is an “appropriation” water rights state, “first in time, first in right.” This has been the law in Kansas since the enactment of the Water Appropriations Act in 1945. In 1957 the Legislature recognized a “water right” as a “property right.” It appears that the current draft of the LEMA proposal does not recognize the rights of the more senior appropriators. By requiring all irrigators to eliminate end gun nozzles without regard to permit dates is to allow junior appropriators the same status as senior appropriators. Also, by not requiring the shut off of MDS wells, the appropriate deference to senior permit holders is not being given. This is clearly a violation of Kansas water law.

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Big Bend GMD #5

Please understand that each of the individuals who contacted us recognizes the needs of the Quivira National Wildlife Refuge. They understand and are sympathetic to those needs and are in favor of a real solution that would adequately address the issues in a manner that would bring about sustainable improvement regarding these issues that have been wrestled with for years.

However, it is difficult to understand why the Board would propose a LEMA that will not solve the problem. The elimination of end guns from center pivot irrigation systems will not reduce water usage, it will only eliminate some acreage from receiving water thereby reducing the value of that ground for each and every irrigator. The LEMA proposal itself indicates that this strategy is not a solution because it will not reduce water usage, but may merely "lessen the growth of future depletion ...". Also, including areas within the geographic boundary of the proposed LEMA, where the Division of Water Resources and the Chief Engineer have previously held that water from that area does not migrate to the affected areas of concern and will not increase the water measured at the Zenith gate. An action that could be taken that would help achieve the stated goals is not included in the proposed LEMA. That action is the shutting off or restricting the MDS wells in the Rattlesnake Creek Basin. The owners of these wells fully understood this when they made application for these wells that they might not be permitted to divert water in the future if Minimum Desirable Streamflow requirements were not being met. Such is the current situation.

Why the GMD#5 Board fails to propose this obvious course of action is puzzling. It is particularly so, as the owners of these MDS wells fully understood the potential that these wells would be shut down if minimum streamflow levels were not met. As the Board is fully aware, these owners signed an acknowledgement to that effect before drilling the wells. Common sense indicates that such action would have a positive impact on the problem, and State law requires it. The solutions that the GWD#5 proposes will have little or no effect on correcting the problem.

On behalf of our clients, and a number of affected landowners and water users, we respectfully request the Board adopt provisions within the LEMA that will actually work, and drop those that won't. Additionally, as we believe this proposed action will have a significant impact on landowners and water users in the affected area, we request that the Board extend the time for public comment so that all may have an opportunity to provide input on these issues.

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Granville M. Bush IV

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