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September 12, 2023

Division of Water Resources  
Kansas Department of Agriculture  
1320 Research Park Drive  
Manhattan, KS 66502-5000

Re : Draft supplement to the Technical Report on a Claim of Water Right Impairment dated July, 2016. As well as notification of possible administrative order regarding the draft supplement as updated.

Dear Chief Engineer Lewis:

As a potential Junior Water Rights holder subject to your suspected finding of impairment to Quivira National Wildlife Refuge (Refuge) I have concerns as to how your findings may affect the area including the so called "Junior Water Rights holders."

The form letter which I and many of my water rights holding neighbors have received is lacking specifics so I can only assume that it is similar to those sent in 2018. I do not know which rights, what the level of suspected contribution to impairment is and the linkages tying my rights to Quivira etc. However, in your letter you stated that comments could (should) be sent by September 19<sup>th</sup>, 2023.

As such reviewing the technical document dated July ,2016 found here.

[https://archive.gmd5.org/LEMA/2016-07-15\\_ImpairmentReport \[Final\].pdf](https://archive.gmd5.org/LEMA/2016-07-15_ImpairmentReport_Final.pdf)

Specifically, responses such as Kansas Corn's Greg Krissek who writes,

".. a Claim of Water Right Impairment in the Matter of Water Right File No. 7,571 (Initial Report) contains many errors. The errors are so numerous as to make the findings of the report appear to be in error.

The Impairment claim is based on a schedule that the Refuge claims they need. The Refuge provides no proof showing that the water is needed at the specific times they have listed in their schedule.

Furthermore, the water use that they have reported does not mirror the schedule at any point in the past 30 years. In the analysis in Attachment 6, it appears the Refuge did not even utilize all the water which was available. The use of water during the certification year which the water right was perfected (??) was not in line with the claimed needs of the refuge.

Therefore, the Refuge's claim of impairment would not be valid since they were not utilizing the water that is available to them. Additionally, basing an impairment analysis on the "claimed" needs and timing of the complaining party without requiring any verification of those needs and timing is not the proper way to decide on impairment."

Mr Krissek goes on to list numerous concerns about the perfection and certification of Water Right 7,571 as well as how addressing an intermittent flowing stream as noted by many others (Christiansen et al) was handled.

Along those lines, John Donley, counsel for Innovative Livestock Services notes: "K.A.R. 5-8-6(a) states that a water right should be perfected within four years of the completion of the diversion works. Under this rule, the water right perfection period ended December 26,

1982. If the water right file is missing an extension of that time period, it raises the question as to what other documents are missing from the file.

The permit for Water Right 7,571 states that the water right “must allow for the reasonable raising or lowering of the static water level and for the reasonable increase or decrease of stream flow at the appropriator’s point of diversion.” The Initial Report does not attempt to analyze whether the alleged impairment is caused by either a reasonable lowering of the static water level or a reasonable decrease of stream flow. Specifically, there is no analysis in the Initial Report regarding the Service’s proposed water schedule and the reasonableness of that schedule with their historic use and the historic stream flow of the Rattlesnake Creek.

The Service received notification from DWR multiple times regarding the fact that the full amount of the water right may not be reasonably available at all times. Specifically, DWR sent a letter to the service on August 19, 1993, stating that “it is quite probable that the natural flows of water to the full extent of the water right will not be available in most years.” (Emphasis added) In correspondence dated May 27, 1994, DWR again notified the Service that “no water right holder should expect to need or have available the maximum authorized quantity every year.” Why didn’t DWR utilize a reasonableness standard when drafting the initial report?”

Mr. Donley addresses his concern about including evaporation during the perfection period..

“If the evaporated amount is to be included, why hasn’t the service reported the evaporated amounts in their annual water use reports? Another problem that exists in the Initial Report, is the fact that the entire impairment claim is based on a water schedule that was recently

submitted by the Service. None of the Annual Water Management Plans contained in the file for the water right reference the water schedule submitted to DWR in the past. Those plans never reference anything close to the alleged needs submitted by the service in May 2015.

For these and many other reasons, the initial report does not provide the legal or factual foundation to find impairment. A more thorough and accurate analysis of the impairment complaint should include a look at the reasonableness of the alleged water shortages as compared to the alleged needs of the Service. Furthermore, the alleged needs of the Service should be scrutinized. Finally, a legal analysis should be completed to determine if 1987 was truly the proper year to certify and perfect the water right.”

Stafford County Farm Bureau sent a letter dated May 3, 2016 which drills into the Service’s operational plan..

“We are concerned that the Service operational plan is a change in management on the Quivira National Refuge. It appears that now we have seasonal Rattlesnake Creek surface water need estimates that have never existed until the last couple of years. We have gone from planning, managing, and storing for the benefit of the refuge to, "***We want our water when we want it.***" Thus raising these questions:

Has the water that is now being diverted been kept on the refuge and put to beneficial use?

Has consumptive use on the refuge increased under this new operational service plan?

The Farm Bureau letter goes on to inquire about the dynamic’s involved in Quivira’s reported water usage..

“In the following years, these diversions were reported. Nov-Dec of 1994 and with Jan-Feb of 1995 total diversions of 901.5, Nov-Dec of 2003 and with Jan-Feb of 2004 total diversions of 1086.7, Nov-Dec of 2006 and with Jan-Feb of 2007 total diversions of 1714.1, Nov-Dec of 2012 and with Jan-Feb of 2013 total diversions of 0.00 occurred respectively.

These four years all take the refuge from X full Nov. 1st to full on March 1st. Does this imply that the 75% of the refuge water needs can be met with less than 1714.1 acre feet of diversions, the highest amount of the four years needed to fill the refuge?

In the year of 1999 diversions from March 1st to Nov 1st totaled 2181.10 acre feet. The year of 2002 diversions from March 1st to Nov 1st totaled 6474.90 acre feet. The refuge started both these periods at 75% full and ended at 75% full.

What dynamics are at play here to need almost 300% more diversions in 2002 than was necessary in 1999?

These are valid points.. how can we conclude that despite all of this Junior Water Rights holders are solely to be blamed? And does QNWR reasonably deserve the right to SHUT DOWN upwards of 10,000 A/F of water (or whatever is coming) being Beneficially used by “Juniors” OR can they manage their resources better?

It would appear that Quivira sees recharge from underflow.. How else could the refuge refill over the winter despite a drought induced reduction of streamflow as occurred this past winter? Was that ACCOUNTED for in the original granting of the Water Right?

MANY questions abound about what amount of water was LEGALLY Perfected.

Furthermore, WHY is the Service allowed to offer a changed “operational plan” than the one (if any) was submitted during perfection??

Can the rest of us go back and ask for more water on our rights now because we NEED IT?

My neighbors Kim and Randy Fritzemeier who owns pasture upon the Rattlesnake Creek by the Zenith Gage note..

[https://archive.gmd5.org/RSC\\_Administration/Feedback/2023-08-21\\_Fritzemeier.pdf](https://archive.gmd5.org/RSC_Administration/Feedback/2023-08-21_Fritzemeier.pdf)

“GMD5 representatives say that the data used to formulate DWR’s 2016 Impairment Report was actually taken when the Quivira Wetlands had been drained for ongoing habitat improvements. Though the counties which pull water from the Rattlesnake Basin for agriculture purposes have been in a drought for nearly four years, the Quivira salt marsh has been refilling on its own, even before the recent rains in July of this year.

It is working as a healthy ecosystem should.

In addition, Kansas Department of Agriculture Chief Engineer of Water Resources David Pope said in a letter written to the U.S. Department of Interior in 1993: “It is quite probable that the natural flows of water to the full extent of this right will not be available in normal years. Management plans for the refuge area should be based on probable flows of Rattlesnake Creek.”

We own a Farm Bureau Century Farm pasture along the Rattlesnake. In Randy's youth – before irrigation was as prevalent – he remembers years when the Rattlesnake ran dry and years when it left its banks.

That cycle has continued throughout nearly 68 years of living on and working the land."

My Father Willard McClure was one of the first irrigators in Stafford County to sink and perfect a well and a water right in 1956 SENIOR to Quivira.. Most years today the static water level is ABOVE the level when that well was drilled in 1956 BEFORE the predominance of irrigation development which we have today.

As Richard Wenstrom notes.. "We have an abundance of water in the basin but due to the shallowness of the creek.. small changes in depth lead to HUGE changes in streamflow." As the aquifer rises and falls Naturally.. the stream flow will be impacted and hence Quivira's surface rights." (As DWR has repeatedly told the Service. See above)

Do we Fully understand these dynamics?

As noted in the Division's response at the end..

"Clearing of trees and brush along the creek will reduce riparian impact, benefiting the Refuge.

These actions could lead to improved water supply conditions and could therefore help to reduce the frequency and magnitude of future impairment."

We have a property which use to flood (40% of the property was underwater in 1987.. the year of Quivira's alleged perfection) with significant runoff events.. a quarter section above us was partially

entered into a Conservation easement since then.. the entire quarter which was farmed in the past is now overgrown with Cedar and Cottonwood trees.

I noted this year during a rain event that water was flowing into this quarter but NOT flowing out. Whereas other land nearby had culverts flowing with runoff across and through their properties.

How much of the measured decline in flow of the Rattlesnake Creek is ALSO impacted by the increase of invasive trees? There are A LOT of pastures and CRP quarters along its banks and within the corridor which are overgrown vs the historical norm pre development.

How does the Balleau Model account for this?

Continuing with the Division's respons..

“Streamflow has declined for many other reasons besides groundwater pumping: farming practices, trees, federal programs, etc.

While conservation practices do reduce stream flows by making more water available for crop use and recharge, ***the impairment determined by our analysis*** is caused by junior groundwater pumping as determined by the groundwater model.”

Again I would like to hear more about how the “Model” accounts for the growth of invasive Trees which are increasingly impacting streamflow over time.

We know from recent fires in Barber and Clarke Counties that Streamflow returned with surprising results once the invasive trees and brush were removed by fire.. extensive damage to structures and property notwithstanding.

Which brings me to my final point the economical BENEFICIAL USE of the state of Kansas's water resources.

“I don't think a lot of people realize that you multiply the gross revenue by a factor of 5 or 7. If you do that you get about \$1.5 BILLION which is the amount of money which turns in this local area due to Irrigation. When you look at it from that from that perspective in this six or seven county area you realize what an enormous impact that Irrigation has had.”

<https://vimeo.com/250689718>

As the five county letter reports..

[https://archive.gmd5.org/RSC\\_Administration/Feedback/2023-09-05\\_FiveCounty.pdf](https://archive.gmd5.org/RSC_Administration/Feedback/2023-09-05_FiveCounty.pdf)

“The impact will not only be felt as the current economic environment is dismantled, but also in the potential for new development is lost. In Edwards County there is a proposed dairy which will bring \$250 million in investment and 150 employees, that will likely not move forward if the water cuts are enacted.

Stafford County proposes a railroad transportation hub that will bring approximately \$50 million in investment, anchored by grain transportation, and it will be adversely affected if agricultural production is curtailed.

To put these costs into perspective, the assessed (tax) valuation in Stafford County, which is the heart of the affected area is about \$90 million per year, including all land, improvements, housing, commercial property, utilities, and personal property. The county budget for

Stafford County, at the heart of the affected area, is under \$8 million. St. John-Hudson school district, also in the heart of the affected area, has an annual budget of about \$5 million. The general funds of Cities of Stafford, St. John, and Macksville, the three largest towns in the county, are each around \$1 million.

The surrounding counties, their towns, and their school districts have budgets of similar scope and similarly experience crushing direct effects as well as a ripple effect throughout the community. The many signatures below are a testament to the widespread and deep consequences not only to farmers and the businesses that serve them, but also to small towns, school districts, and county governments.

The decimation of the local economy, however, is not necessary and a different course of action is possible if our government leaders will choose it.

Finally, we want to make clear the environmental context of this action. This proposed reductions in irrigation do not reduce aquifer usage or overall water consumption; it would simply take from irrigation use and give to Quivira National Wildlife Refuge.”

And our area Businesses concur the importance of irrigated Agriculture.

[https://archive.gmd5.org/RSC\\_Administration/Feedback/2023-08-24\\_SFCountyBusinesses.pdf](https://archive.gmd5.org/RSC_Administration/Feedback/2023-08-24_SFCountyBusinesses.pdf)

“As business owners in the rural county of Stafford, Kansas, we request that you sincerely review accurate facts and data surrounding the “impairment” filed by the US Fish and Wildlife Service concerning the Quivira National Wildlife Refgure. The consequences of the impending actions by the Ks Dept of Agriculture – Division of Water Resources will devastate the economy of multiple central Kansas counties.

I receive your finding of impairment as inadequate, inconclusive, lacking for possible other factors namely invasive growth of trees and I question the management plan as well as the beneficial usage of Quivira's impairment claims.

I have personally worked to sustain the basin for all users. As a board member of Water Pack I am committed to reaching a sustainable aquifer for the benefit of ALL right holders. I do NOT believe caving to the WANTS of one stake holder who's record is shaky at best with numerous documented cases of inefficient usage.. releasing water storage during a drought etc..

I'm not convinced that QNWR has proven that it's rights supersede the beneficial claim of the rights of the stakeholders upstream. The "Juniors" who operate their farms, businesses and municipalities efficiently, pay their taxes which funds the Hospitals, Schools and Municipalities services such as Health care to low income residents, and education for all as well as road maintenance, fire protection as well as the many other services provided for our population.

I support further invasive Tree removal; a sustainable augmentation plan and the GMD's water rights buy back program. We can't make it rain but we can be good stewards of what we are entrusted for the betterment of our communities and our state.

This situation wasn't created over a few years. The development and utilization of the basin has been underway since originally championed by your office. My father took a trip before developing irrigation on his farm to Brookover Feed yard in Garden City which was offered as the model for the future in the 1950's by the Chief Engineer of Kansas.

I'll close with Virginia Russell's letter who as a "farmers daughter, wife, retired educator, mother, grandmother and great grandmother" says

[https://archive.gmd5.org/RSC\\_Administration/Feedback/2023-08-29\\_Russell.pdf](https://archive.gmd5.org/RSC_Administration/Feedback/2023-08-29_Russell.pdf)

"If the US Fish and Wildlife Service moves ahead to secure water rights to the Rattlesnake Creek Basin that will quite possibly ruin the plans, dreams, and welfare not only for my sons, but for all their friends, neighbors and family farms within these five counties.

The survival of small towns like Stafford, Hudson, Macksville, Pratt and St John (to name a few) will be compromised. The businesses, Service Centers, Implement dealers will be in dire straits.

Governor Kelly, I've read of your concern about the economy of our State. Thank you for listening with careful consideration to the latest peril of the Irrigation farmer."

Personally I'm asking for more time to implement augmentation, to continue to secure funding for invasive tree removal and to possibly fund ACRES a 501 (3) c entity which now is in place to see if we could lease or buyback from willing sellers or lessors of Rights upstream.

I'd also ask that the Division look at requiring the KS Geological Survey to fix the Zenith gage since numerous reports exist of water bypassing that structure.. and consider asking the REFUGE to install an accurate metering structure.. as well as do a BETTER JOB of STEWARDSHIP of it's water resources.

Up the road Cheyenne bottoms notes in testimony before the House Water Committee on 8/22/23 that "Every single drop of water which

enters the bottoms is either utilized or evaporates.. We very seldom release water unless there is a flood.”

<https://www.youtube.com/watch?v=Vkx3enPRQy4>

The Service could take some notes from Cheyenne bottoms and SHOULD be HELD to a HIGHER STANDARD of Stewardship before other RIGHT HOLDERS are served cease and desist letters. We legally perfected our Rights.. Filed our paperwork and have developed our businesses accordingly.

As Legal Right Holders we are doing what we can daily to conserve, sustain and utilize for benefit the State’s water resources. It took a couple of decades for this situation to develop. It’s NOT going to be solved overnight.. Instead of litigating this issue it would be better if scarce resources could be spent on SOLVING this issue.

As my county commissioner and neighbor Jim Stanford notes..

“We need a healthy Quivira refuge **ALONG with** a flourishing agricultural and farming community. Both sides of the equation are especially important. If irrigation water rights are drastically slashed our county as our largest industry and my hunting business will be crushed financially.

[https://archive.gmd5.org/RSC\\_Administration/Feedback/2023-08-16\\_Stanford.pdf](https://archive.gmd5.org/RSC_Administration/Feedback/2023-08-16_Stanford.pdf)

Waterfowl need the QNWR refuge just as much as they need food from the surrounding farm fields. My clients bring in valuable tourism revenue to the state and our local economy.

Our county desperately needs our number one industry, agriculture, to be strong and healthy. Our school districts, local government, hospitals, grocery stores, and many other businesses are dependent on the jobs, tax base revenue, and the opportunity for us to prosper in a rural setting.”

We believe as the KS Geological survey notes

[https://kwo.ks.gov/docs/default-source/governor's-water-conference/2018-gov-conf/whitemorehpa\\_status\\_gov\\_conf\\_2018-final.pdf?sfvrsn=b5c58414\\_0](https://kwo.ks.gov/docs/default-source/governor's-water-conference/2018-gov-conf/whitemorehpa_status_gov_conf_2018-final.pdf?sfvrsn=b5c58414_0)

that we are Close to long term sustainability... We are committed to reaching that goal. Let’s work together to achieve it.

Thank you  
Sincerely

Jon McClure  
McClure Farms.

CC:  
GMD #5  
Water Pack  
My Facebook feed et all.