



United States Department of the Interior

FISH AND WILDLIFE SERVICE



February 10, 2023

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

RECEIVED

Feb 10 2023

Big Bend GMD #5

Dear Mr. Lewis:

The U.S. Fish and Wildlife Service (FWS) appreciates Governor Kelly's leadership in working to address water use and conservation in the state of Kansas. The FWS intends to cooperate with the Governor to address this critical issue. As part of this effort, I have communicated my interest to Governor Kelly in addressing our specific concerns at Quivira National Wildlife Refuge (Refuge).

The FWS holds a senior water right critical for the Refuge to meet its establishing purpose as a sanctuary for the protection of migratory waterfowl and other waterbirds. You are likely aware the FWS has cooperated with the Big Bend Groundwater Management District #5 (GMD) and local partners for over 25 years to formulate collaborative solutions to resolve the water right impairment. When voluntary efforts failed at the end of the Rattlesnake Creek Partnership Agreement (2000 – 2012), the FWS followed Kansas State law and administrative procedures to seek relief from injury to its water right by requesting an impairment investigation in 2013. In July 2016, it was determined the FWS's senior water right of 14,632 acre-feet has been, and continues to be, impaired by junior groundwater pumping, largely for agriculture.

In response, the FWS filed a request to secure water for the years 2018 and 2019. The Kansas Department of Agriculture, Division of Water Resources continued to work with the GMD to develop a locally-led solution to the impairment from 2016 through 2019 without resolution. While the previous Chief Engineer prepared to administer water orders effective January 1, 2020, the FWS instead chose to continue working with the GMD on a collaborative solution. More recently, the FWS and GMD coordinated next steps and options with the development of a Memorandum of Agreement signed on July 25, 2020, with substantive terms that expired on December 31, 2021.

In continuation of this collaborative effort, FWS supported the GMD's effort to secure funding through the U.S. Department of Agriculture – Natural Resource Conservation Service (NRCS) in 2022, to perform environmental planning and design of an augmentation well field. The FWS is a cooperating agency working with the GMD as it leads the development of the Rattlesnake Creek Watershed Plan and Environmental Assessment (EA). The FWS remains concerned about the NRCS-led process that began with a public scoping meeting on January 13, 2022 and is tentatively planned for completion in the summer of 2023. No alternative exists under the EA that will provide complete remedy for the impairment of FWS's senior water right. The FWS believes the alternatives contained in the most recent draft of the EA do not differ significantly from past proposals championed by GMD, all of which have failed to provide water to the Refuge due to reliance on unenforceable water management tools.

Enclosed is the FWS 2023 request to secure water regarding water right No. 7571 from injury due to junior groundwater wells. Progress has been made with the draft EA and field level feasibility analyses over the past year, and the FWS will continue to support the National Environmental Policy Act process. However, it has recently become clear that, while the EA is an essential tool for analyzing the feasibility of an augmentation wellfield that may assist in remedying our impaired senior water right, the EA alone cannot fully remedy our water right impairment. Therefore, this request is the only means left to the FWS to fully remedy our impairment.

The FWS understands that augmentation can be a part of your remedy so long as the EA demonstrates augmentation to be feasible without significant adverse impacts. As a cooperating agency, the FWS will remain engaged in the planning process to help assess the feasibility and impacts of the augmentation well field, which will determine the appropriate level of augmentation.

Please contact Matt Hogan, Regional Director, Mountain Prairie Region, at 303-726-6251 or Matt_Hogan@fws.gov if you have any questions or would like to discuss further. Thank you for your assistance.

Sincerely,

A handwritten signature in blue ink, appearing to read "Matthew White", with a long horizontal flourish extending to the right.

Director

Enclosure

CC: Will Lawrence, Chief of Staff to Governor Kelly

REQUEST TO SECURE WATER

To: Chief Engineer
Division of Water Resources
Kansas Department of Agriculture
(or his or her authorized agent)

February 6, 2023
(Date)

1. I am presenting the following information as the basis for action on my request to secure water:

That pursuant to K.S.A. 82a-701 et. seq., a water right, identified as follows, has been established:

a. Vested Right
File No. County Source
Quantity Rate
b. Appropriation Right
File No. 7571 Priority Date August 15, 1957
Status Certified
Rattlesnake Creek Source 14,632 Quantity 300 cfs Rate

2. That the authorized place of use for the water right is: Quivira National Wildlife Refuge

3. A. That the appurtenant to the water right described in paragraphs 1 and 2 is owned by:

U.S. Dept. of the Interior - U.S. Fish and Wildlife Service Name P.O. Box 25486, Denver Federal Center, Mailstop 60189, Denver, CO 80225 Address

B. That the land described in paragraph 2 is owned by:
(If different than owner of water right)

same as above Name Address

4. That the undersigned, (if not the owner) has an interest in the above-described land and water right as follows:

Agent (tenant, lessee, buyer, contract or other)

5. That during this calendar year 0 acre-feet of water has been used under this right.

6. That the undersigned has need for 14,632 acre-feet of water at a rate of See attached g.p.m. for Recreational purposes at locations described as follows:

Fish and Wildlife Habitat, Forage
No. of Acres: 22,135 Kind of Crop: N/A

7. That I am prepared to, and will, in the exercise of my water right described above, apply to beneficial use all water available to me at a rate of 14,632 ac-ft/year g.p.m. or less, commencing at 12 o'clock A.M. on February 7, 2023.
8. That I have been informed that water is available from the source of supply in the amount of:

<u>Date</u>	<u>Estimated Flow</u>	<u>Location</u>
<u>1974 - current</u>	<u>Variable</u>	<u>Rattlesnake Creek, Zenith Gage</u>
_____	_____	_____

9. That I have been informed that water is, or was, being diverted from the source of supply as follows:

<u>Date</u>	<u>Water Right</u>	<u>Name</u>	<u>Estimated Rate of Diversion</u>
<u>1974 - current</u>	<u>Multiple</u>	<u>Junior Appropriators</u>	<u>30,000 - 60,000 AF per year depletions to Rattlesnake Creek</u>
_____	_____	_____	_____

10. That I have advised the persons listed below of my need for water and my intention to exercise my water right:

<u>Name of Person</u>	<u>Date</u>	<u>Agreeable - Yes Or No</u>
<u>Big Bend GMD No. 5</u>	<u>01/05/2022 and 10/12/2022</u>	<u>No</u>
_____	_____	_____
_____	_____	_____

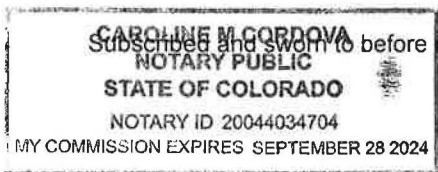
I request in accordance with the provisions of K.S.A. 82a-706b, that the Chief Engineer or his or her authorized agent open, close, adjust or regulate the headgates, valves, or other controlling works of any ditch, canal, conduit, pipe, well, or structure as may be necessary to secure water to which I am entitled:

Brian S. Caruso
Signature

State of Colorado)
County of Jefferson) SS

Brian S. Caruso by me being duly sworn, declare that the information is true and correct to the best of his or her knowledge and belief.

Brian S. Caruso
Affiant's Signature



Subscribed and sworn to before me this 6th day of February, 20 23

Caroline M. Cordova
Notary Public
135 Quitman Street
Denver CO 80219

My Commission Expires September 28, 2024