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Fred Grunder - Pratt (V Pres.)  
John Janssen - Kiowa (Treas.)  
Tom Taylor - At-Large (Sec.)  
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U.S. Fish and Wildlife Service  
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Lakewood, CO 80228

Attn: Matt Hogan, Regional Director

Director Hogan,

Big Bend Groundwater Management District No. 5 is troubled by the U.S. Fish and Wildlife Service's recent request for the Kansas Department of Agriculture, Division of Water Resources to administer water in the Rattlesnake Creek subbasin ("Request" or "Request to Secure"). The Service and GMD 5 have been working together diligently in good faith to address the claimed impairment, and the Service's sudden and unexpected request for water is not in line with those efforts. In reliance on our July 25, 2020 Memorandum of Agreement and the parties' mutual efforts and discussions, GMD 5 has invested thousands of hours and millions of dollars working toward a solution, including purchasing real estate and water rights, employing experts, and undertaking numerous other steps and expenditures in reliance on the Service's representations and good faith.

The Service now asks KDA–DWR to administer water rights, putting all of this progress and expense at risk. The farmers and water right holders who have operated in good faith are now left to question whether to continue with their efforts given the uncertainty created by the Service's request for water. GMD 5 respectfully requests that the Service continue its commitment to a long-term solution and withdraw its request for water.

#### GMD 5 Remains Committed to Working Together

Our partnership is critical to developing a lasting solution and will involve earnest cooperation of all parties. The Service's Request to Secure is inherently antagonistic to resolving water supply issues in the watershed and contradicts many years of cooperation between our organizations. The Service's action also reflects a lack of trust in GMD 5's commitment to the Refuge despite GMD 5's public commitment and pecuniary investments to bring additional water to the Refuge.

GMD 5 remains committed to working with the Service to resolve issues at the Refuge despite the Service's apparent change in position. GMD 5 understands that the Refuge needs reliable water supplies to maintain its success as a wildlife habitat and will continue to follow sound science and data to ensure that both the Refuge and surrounding agricultural users can prosper together in the subbasin. The success of our joint efforts will hinge on the Service's good faith actions in working with GMD 5 instead of unilaterally pursuing water through KDA-DWR's strict administration.

### The Service's Request to Administer is Too Soon

As you know, we are in the middle of a significant and complex National Environmental Policy Act evaluation in the subbasin. GMD 5 started this assessment in full reliance on the Service's representations and commitments in our MOA, which acknowledges that GMD 5 will analyze the environmental impacts of an augmentation wellfield, as well as evaluate and implement certain other conservation measures in the watershed. Based on this Agreement, GMD 5 procured funding to undertake these studies prior to the implementation of any measure.

Impacts from the COVID-19 pandemic, as well as the GMD 5's desire to complete a thorough environmental assessment, delayed the original timelines. But as the Service is well aware, the evaluations have since been pursued diligently for quite some time now and are providing the data our respective teams need to make sound decisions for the watershed. The Service's efforts to have KDA-DWR administer water ahead of this data is not logical.

### GMD 5 Has Spent Millions Towards a Solution

GMD 5's expenditures towards the resolution are mounting – estimated at around \$4 million to date. A large portion of these expenses include GMD 5 reducing water usage in the subbasin directly in response to the Service's requests to do so. GMD 5 has done this by purchasing and transferring water rights in the subbasin and by promoting voluntary reductions in water use by members. Specific categories of expenditures include:

- Securing over 1,500 acre-feet of water to reduce water usage to help the Refuge through water right transfers or offset agreements from GMD 5 members.
- Spending significant staff time studying and understanding the Refuge and the Service's needs;
- Coordinating with the Service and other agencies to develop the Memorandum of Agreement to serve as a roadmap for evaluation of alternatives;
- Contracting engineering and environmental specialists to perform the scoping, public meetings, agency coordination, biological assessments, modeling, and feasibility studies needed for the proposed augmentation wellfield;
- Contracting engineering consultants retained specifically to coordinate with the Natural Resource Conservation Service and the Service on NEPA requirements;
- Contracting outreach professionals and devoting staff time to public outreach and education;
- Completing hydrologic modeling for prospective water right transfers;

- Acquiring new water rights and surrounding real estate for the augmentation wellfield, and
- Acquiring additional water quality equipment that will be necessary when connecting an augmentation wellfield to the Refuge.<sup>1</sup>

These expenses do not begin to capture the thousands of additional hours spent by GMD 5 Board members, legislators and stakeholders at in-person meetings and public outreach sessions to support the development of an amicable solution. We've come too far to address issues at the Refuge for Service to change course now.

#### The Service's Request to Secure Water is Unnecessary and Threatens Continued Cooperation

The Service's Request to Secure Water now, prior to the completion of the environmental assessment, is premature, unnecessary and would be an unfortunate use of public funds. In its February 10, 2023 letter to KDA-DWR, the Service, states that "it has recently become clear that, while the [environmental assessment] is an essential tool for analyzing the feasibility of an augmentation wellfield that may assist in remedying our impaired senior water right, the [environmental assessment] alone cannot fully remedy our water right impairment." We do not understand the Service's conclusion that one of the several alternatives under assessment will not remedy the impairment before the assessment is even complete.

GMD 5 also does not understand why the Service filed its Request to Secure Water at this particular time. Through our close coordination with your team, the Service has indicated that it would employ a cooperative approach so long as the NEPA process is proceeding comprehensively and in good faith. We are in the middle of the NEPA process and several ongoing analyses. To rush an outcome prior to the completion of the process is contrary to what the Service has indicated. We see no reason for the apparent change this year from the prior years that compelled the Service to file its Request to Secure Water.

#### The Service's Request to Secure Water Jeopardizes Existing Agricultural Agreements

The timing of the Service's Request to Secure Water impacts the 2023 growing season. Producers made arrangements to manage and cultivate their fields many months prior to the actual growing season. Many supply agreements are now set and agricultural producers in the GMD 5 have since begun securing the grain and seed to sow this Spring. Water users in the subbasin now face much uncertainty and instability given the Service's pending Request to Secure Water.

#### GMD 5 Asks that the Service Withdraw its Request to Secure Water

For all of these reasons, GMD 5 implores the Service to withdraw its Request to Secure Water. Maintaining a Request to Secure Water this far into the cooperative process (and before the NEPA review is complete) reflects a complete lack of recognition of GMD 5's past and ongoing investments, violates the partnership we've worked tirelessly to maintain and erodes the trust that

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<sup>1</sup> These are estimates and do not include each and every aspect of GMD 5's expenditures.

any continued partnership will need. Withdrawing the Service's request will demonstrate a renewed commitment to our partnership and will not prevent the Service from making a subsequent filing if necessary after the environmental assessments are complete.

Leaving it in place will harm any and all cooperative efforts moving forward by diverting the focus on the adversarial proceedings to ensue from the Request to Secure. We ask that the Service support a cooperative approach to resolving issues at the Refuge rather than working against it. GMD 5 will continue to engage with the Service to the best of its capabilities while completing the NEPA analysis. Initial results from environmental assessments are promising and we look forward to discussing detailed results with your team in the near future. Please contact me if you would like to discuss this further. I look forward to continuing our productive relationship.

Sincerely,



[Darrell N Wood \(Mar 6, 2023 19:18 CST\)](#)

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cc:

The Honorable Laura Kelly, Governor of Kansas  
Will Lawrence, Chief of Staff to Governor Laura Kelly  
U.S. Senator Jerry Moran  
U.S. Senator Roger Marshall  
U.S. Representative Ron Estes  
Kansas State Senator Alicia Straub  
Kansas State Representative Brett Fairchild  
Mr. Earl Lewis, Chief Engineer, KDA-DWR







# 2023-03-06 Letter in Response to Request to Secure Water

Final Audit Report

2023-03-07

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