



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

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