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Jackie McClaskey, Secretary

Governor Sam Brownback

December 8, 2016

Dear GMD No. 5 Board Members,

On Thursday, December 1, we received the U.S. Fish & Wildlife Service's response to GMD #5's Stakeholder Proposal of September 8. As you know, the Service declined the Basin's offer principally on the grounds that it is insufficient in quantity and that placing augmentation infrastructure on the refuge as described in the offer poses "significant legal obstacles." It appears from its response that the Service intends to file a request to secure water, which we anticipate receiving soon. Nevertheless, the Service goes on to state that, "We look forward to continuing to work with GMD #5 as we seek a resolution to the matter that is fully protective of the interests of the United States."

Our final report does not specifically identify a remedy for the impairment. We intentionally did not do this work in favor of fostering constructive and effective dialogue in the basin and between the basin stakeholders and the Service. We continue to hold that locally developed solutions are best. For this reason, we request the basin stakeholders develop a revised settlement offer by February 15, 2017. We very much hope that the extra time, and the Service's stated willingness to continue to work with GMD #5, will allow the basin stakeholders to work with the Service to find a path forward to a negotiated settlement.

Should an agreement not be reached, we will be obligated to develop an administrative remedy for implementation in 2018 and beyond.

Since it is late in the year and many producers have already made cropping decisions and purchases for the coming year, we will not administer the basin's impairing water rights during the 2017 irrigation season.

Please let me know if we can be of any assistance to you in this matter. We look forward to discussing this further with the Board at your next meeting on Dec. 15.

Sincerely,

David W. Barfield, P.E.  
Chief Engineer  
Kansas Department of Agriculture,  
Division of Water Resources

Pc:

Sec. Jackie McClaskey, Kansas Department of Agriculture

Will Meeks, U.S. Fish and Wildlife Service, Mountain-Prairie Region

Mike Oldham, Quivira National Wildlife Refuge

Lynn Preheim, Stinson Leonard Street LLP

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