



United States Department of the Interior
FISH AND WILDLIFE SERVICE
Mountain-Prairie Region



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Mr. Orrin Feril
Big Bend GMD #5
125 S. Main Street
Stafford, Kansas 67578

Re: Water Right File No. 7571, GMD #5 Proposed Scope of Work for Augmentation for
Quivira National Wildlife Refuge

Dear Mr. Feril:

The U.S. Fish and Wildlife Service (Service) would like to thank you and the Big Bend Groundwater Management District #5 (GMD #5) Board for engaging on this issue and for the significant amount of work that you have put into developing your "Stakeholder Proposal in Connection with USFWS Impairment Complaint" which was presented orally during the August 22, 2016, meeting held at Quivira National Wildlife Refuge (Refuge). We have reviewed the proposal and engaged Regional and Headquarter's leadership as well as the Department of the Interior's Office of the Solicitor, which is responsible for providing legal advice to the Service.

Based on these discussions, we have determined the Service cannot accept the GMD #5 proposal to remedy the impairment of Water Right No. 7,571. The Chief Engineer's final impairment report (Barfield 2016) outlines that "groundwater reductions and/or augmentation will be needed to increase available streamflow at the Refuge by 3,000-5,000 acre-feet on a regular basis." GMD #5's proposal offers a maximum amount of 1,500 acre-feet via augmentation during normal to wet years, and even less in times of drought when impairment is greatest. According to the proposal, if the Palmer-Drought Index is -3.0 or less (severe to extreme drought) the Service would receive less than 1,500 acre-feet of water while junior groundwater irrigators continue to irrigate uninhibited.

We also believe there are significant legal obstacles to your proposal. While we appreciate your recognition that the Refuge needs water to meet the objectives of various statutes, and that water is critical to preserve and maintain the Refuge as an internationally recognized location, we have significant concerns about your proposal as to the quantity, timing, quality, and the location of water delivery. The Refuge has been designated as critical habitat for the whooping crane, and it also provides habitat for the endangered interior least tern. The proposal would compromise our ability to maintain the physical and biological features that are essential to the conservation of those species pursuant to the Endangered Species Act.

Similarly, the National Wildlife Refuge System Improvement Act and the Migratory Bird Conservation Act require the Service ensure the protection of the biological integrity, diversity, and environmental health of the Refuge as well as the protection of its fish and wildlife resources. Finally, a water right is a valuable property right; and the proposal would result in an unacceptable diminishment of the value of that right.

At this point, given that GMD #5 proposal is half of the minimum amount of the 3,000 acre-feet the State Engineer concluded was needed to relieve the Service's impairment, we believe our most appropriate recourse is for the Service to file a Request to Secure Water with the State of Kansas. We look forward to continuing to work with GMD #5 as we seek a resolution of the matter that is fully protective of the interests of the United States.

Sincerely,



Will Meeks
Assistant Regional Director
National Wildlife Refuge System

References

Barfield, D.W. 2016. Final Report of the Chief Engineer, Prepared pursuant to K.A.R. 5-4-1, Concerning a Claim of Water Right Impairment, In the Matter of Water Right File No. 7,571 Owned and operated by U.S. Fish and Wildlife Service. Division of Water Resources, Kansas Department of Agriculture
<http://agriculture.ks.gov/divisions-programs/dwr/water-appropriation/impairment-complaints/qui-vira-national-wildlife-refuge>

cc:

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