

1320 Research Park Drive  
Manhattan, Kansas 66502  
(785) 564-6700



900 SW Jackson, Room 456  
Topeka, Kansas 66612  
(785) 296-3556

Jackie McClaskey, Secretary

Governor Sam Brownback

## MEMORANDUM

December 13, 2017

To: Orrin Feril, GMD 5 Manager  
GMD 5 Board of Directors

From: David Barfield and Jackie McClaskey, Kansas Department of Agriculture

Please consider this letter a follow-up to the short phone conversation between Orrin and members of our KDA team last week about the status of the GMD's efforts to develop a LEMA to address the impairment of Quivira National Wildlife Refuge, and about the need to have a public meeting soon to update and engage basin stakeholders. As we discussed, there is a high level of concern and misunderstanding in the basin regarding what is going to happen, and tensions seem especially heightened as we approach the end of the calendar year.

In addition, this letter will provide an update to our December 8, 2016, letter regarding steps needed to develop a remedy to the Quivira impairment. Since that time, significant progress has been made, but as we all know, work remains. Since December 2016, the following key events have occurred:

- In February 2017, GMD 5 provided a second offer to resolve the impairment.
- GMD 5 then asked KDA to define what elements it believed necessary to resolve the impairment beyond augmentation.
- KDA provided that information at our meeting on July 6, 2017.
- On August 11, 2017, GMD 5 provided a framework for a proposed LEMA to remedy the impairment.
- At that time and since, KDA has provided expectations for necessary LEMA plan elements as well as appropriate technical support to assist GMD 5 in developing specifics for the proposed LEMA.
- The GMD 5 Board and a subcommittee of GMD 5 have worked with staff and consultants to develop additional LEMA components.

We are pleased to hear that the work of the subcommittee is progressing and the development of a LEMA plan is near completion. We look forward to receiving the initial plan soon. In light of the progress made and our desire to provide every opportunity for a locally developed solution, **KDA will not impose strict administration of water rights on January 1, 2018, nor do we have any intent to do so in the immediate future.** KDA believes more time to develop and implement a locally-developed solution — a LEMA that comes from your board — remains the best path forward.

It is critical that formal action to address the impairment begin in 2018. Since the Chief Engineer has a statutory duty to secure water to senior water rights, it is imperative that any LEMA plan submitted include the essential

elements needed to resolve the impairment. The basis of this plan should include at least: 1) 2018-2022 as the initial period for evaluating its success in achieving the needed water use reductions; 2) actual steps toward reduction of water use beginning in 2018 (for example, implementation of the GMD Board's concept to require the removal of end guns); and 3) a detailed plan for augmentation implementation (if included in your proposal).

Further, as we have often stated, a proposal that includes augmentation is expected to also include water use reductions so that a sustainable solution can be achieved. While we believe you can develop a LEMA with a flexible management plan to accomplish the needed pumping reductions over the initial period, such a LEMA will be required to define the reduction goal, achieve real pumping reductions, provide a means of evaluating if the goal is achieved, and include a plan for defined corrective controls to be implemented in the subsequent period if the goal is not achieved in the initial period. We have provided a number of examples of acceptable options that may be included in a LEMA plan, but they are not the only options. The fundamentals of an acceptable plan — that depletions need to be significantly reduced to make augmentation viable — remain firm. How the basin wants to get there is for your board to decide. KDA does have a legal obligation to secure water to senior users and, therefore, remains committed to providing you and your board with technical, policy, and outreach assistance to help you make your LEMA work — not only to address the impairment, but also to have as little economic impact on district water users as possible. If a local solution to address impairment is not proposed early in 2018, other actions will need to be considered.

**It is time that GMD 5 and KDA jointly host a public meeting** to provide stakeholders an update on the work that has been done and engage them in the LEMA process by presenting and taking feedback on the initial LEMA plan. This public forum needs to be held no later than early February. Brittney Houck, KDA executive assistant, will be reaching out to you to get a date set on the calendar.

Thank you for your commitment to working with us to find a solution.