

KDA Input on GMD5 proposed LEMA related to Quivira

Sept 8, 2017

Introductory comments:

- KDA wants the GMD to be successful in developing a LEMA proposal to resolve the impairment via augmentation and a flexible plan to accomplish needed pumping reduction to stabilize depletions.
- At our last discussion, Sec. McClaskey provided the following requirements for a LEMA plan to be successful: 1) the plan needs to produce similar water savings to those specified in KDA's July presentation, 2) the plan's water savings need to be explicitly stated and measurable, and 3) the plan needs to have teeth. For example, a defined process to achieve the needed water savings in the second five years in addition to any portion of the savings committed to but not achieved in the first 5 years.
- KDA believes one way to provide a flexible plan within the LEMA law is to define the goal, a means to evaluate if the goal is achieved, and a plan for defined corrective controls that will be implemented in the subsequent period if the goal is not achieved in the initial period.
- Overview of LEMA process attached.

Goal: In KDA's July presentation, an average of 24,000 AF/year of reduction in use was needed stabilize future depletions (a 15% reduction in pumping in Zone A). In a LEMA plan, likely this will be expressed as the amount of pumping allowed within the LEMA over the years 2018-22.

- GMD 5's proposed LEMA boundary is for Zone A & all the Rattlesnake.
 - What is your intent in adding all the Rattlesnake? Some of the area in the Upper Rattlesnake is not well connected to Zenith streamflow.
 - Is it your intent not to include the Rattlesnake below Zenith? Only Rattlesnake in GMD 5 will be part of your plan.

How to measure whether the goal is achieved: Compare average use for the period 2018-2022 with the average use of the water rights in the area from 2003-12.

Potential corrective controls to be included in the LEMA plan:

- End Gun removal ordered.
 - All those with end guns removed will be given a 5-year allocation of their average use 2003-12 less the % reduction determined by GMD 5 to be gained by the end gun removal.
 - Basis for ordering end gun removals K.S.A. 82a-1041 corrective control "any other provisions making such additional requirements as are necessary to protect the public interest"
 - If we do 5-year allocations, it seems there would be no need to change base acres.
- Considerations of water bank transfers across subbasin boundaries. What do you have in mind here??
- WCA – provide for a "Wichita County type" umbrella WCA that water users can enter into, e.g. when receiving grants for technology/water use efficiency improvements, providing for a multiyear allocation to achieve and measure water use reductions.
- MDS administration??
- Other???
- Note: consider providing an incentive to those enrolling in the WCA or removing end guns with allocation agreement, saying if the initial 5-year goal is not reached, their reductions will be considered in the next 5-year allocations.

Corrective controls to be implemented if water savings not fully achieved:

- 5-year review, assuming augmentation implemented
 - If goal accomplished, continue with the plan for 5 more years.
 - If the goal is not accomplished (rather than 15% reduction in use, the reduction is 15% - X):
 - An allocation for each water right will be provided for the next 5 years achieving water use reductions of 15% + X (from 2003-12 average use) implemented as:
 - A 5-year allocation provided in inches/acre. Significant flexibility in moving allocations, etc.
 - Question: should allocations be varied by seniority. For example: those junior to MDS could get less; those senior to MDS more (allowing allocations to be moved)
- 5-year review, if augmentation not implemented:
 - 30% cuts for 2023-28 until augmentation provided.....
- 10-year review

Other discussion items:

- Surety in appropriation of augmentation water – DWR needs general locations, quantities, and rates so we can: evaluate safe yield, check with KDHE on water quality issues, and review timing and quantity of additional losses induced by this pumping.
- Water bank - What changes are needed in water bank to assure it assists in LEMA objectives?
- How to provide GMD with assurance the augmentation will be credited?
- We are working on an order to require USFWS to update their water conservation plan; measurement. We have informed them it is coming.
- Right of way access and land acquisition for well field

Questions/other matters:

- Statutory changes to address water bank concerns.
- Crane letter

Identify next steps

- How else can KDA assist the GMD in its LEMA development?
- GMD provide end gun database with savings expected for KDA review
- GMD provide general locations, quantities, and rates of proposed augmentation for KDA review

LEMA process overview and key statutory provisions:

Overview of process:

- **GMD develops its LEMA goal and plan.** Submits to chief engineer.
- **Chief Engineer reviews plan to insure it is “acceptable for consideration”**, i.e. meets the plan requirements listed below. If found to be acceptable, initiates initial public hearing.
- **Initial hearing** –Chief Engineer provides notice of initial hearing requiring 30 days notice by publication and to each affected water right owner. A hearing is held on the 3 questions below. There is no time limit placed on the designated hearing officer to make his/her decision.
- **Subsequent hearing(s)** –If the hearing officer makes a positive finding on all three initial questions, the Chief Engineer holds one or more hearings on the merits of the plan. The notice requirements are the same.
- **Chief Engineer decision and order** - The Chief Engineer must issue an order of decision within 120 days and then an order of designation within a reasonable time afterwards.

LEMA Plan requirements - K.S.A. 82a-1041 requires a LEMA plan to: *(1) Proposes clear geographic boundaries; (2) pertains to an area wholly within the groundwater management district; (3) proposes goals and corrective control provisions as provided in subsection (f) adequate to meet the stated goals; (4) gives due consideration to water users who already have implemented reductions in water use resulting in voluntary conservation measures; (5) includes a compliance monitoring and enforcement element; and (6) is consistent with state law.*

Initial hearing questions:

(b) In any case where proceedings to designate a local enhanced management area are initiated, the chief engineer shall conduct an initial public hearing on the question of designating such an area as a local enhanced management area according to the local enhanced management plan. The initial public hearing shall resolve the following findings of fact:

- (1) Whether one or more of the circumstances specified in K.S.A. 82a-1036(a) through (d), and amendments thereto, exist;*
- (2) whether the public interest of K.S.A. 82a-1020, and amendments thereto, requires that one or more corrective control provisions be adopted; and*
- (3) whether the geographic boundaries are reasonable.*