

**Request for Rattlesnake Creek / Quivira NWR LEMA Submitted to the
Chief Engineer, Kansas Department of Agriculture – Division of Water Resources**

XXXX XX, 2018

Overview and Goal Expression

In an effort to address Rattlesnake Creek streamflow concerns, groundwater depletions and their impact on Rattlesnake Creek, and to provide a remedy to the Quivira National Wildlife Refuge (“the Refuge”) impairment complaint in Big Bend Groundwater Management District #5 (“the District”), the District Board of Directors proposes the following plan be submitted via the Local Enhanced Management Area (“LEMA”) process per K.S.A. 82a-1041 for an area designated in Attachment 1.

The goal of the LEMA is to address conditions which require regulation in the public interest regarding streamflow depletion within an area of enhanced management (Attachment 1) and to provide streamflow augmentation to the Rattlesnake Creek stream channel. The LEMA is intended to reduce the hydrologic stress from irrigation operations on the aquifer and the interrelated stream systems, while restoring the supply to prior uses on the stream system. The objectives are to reduce water-use in the LEMA area to a degree that will temper the growth of future streamflow depletion, and to restore the useful supply to diversion points of the Rattlesnake Creek region.

This LEMA shall be initiated as of XXXX XX, 2019. The proposed LEMA shall include all points of diversion within the LEMA boundaries with priority date after August 15, 1957.

The LEMA will combine the efforts of several parties to create a holistic approach to stabilizing the use of water in and around the Rattlesnake Creek subbasin. The District is seeking partner agencies at the state and federal levels in addition to working with both public and private organizations to bring all available resources together into a unified plan.

1) Background

The District has, for the past forty (40) years, striven to fulfill the following mission statement:

“Big Bend Groundwater Management District #5 was organized through the efforts of concerned citizens to conserve, promote, and manage groundwater resources so that quality and quantity of that resource will be maintained for present and future needs. The Groundwater Management laws (K.S.A. 82a-1020-1035) establish the right of local landowners and water users to determine their own destiny with respect to the use of groundwater within the basic law of the State of Kansas”

In the years leading up to the establishment of the District, the local landowners made a large investment to construct and operate wells for irrigation, stockwater, industrial and other types of beneficial use. The District’s management programs and subsequent regulations have greatly limited the groundwater development in many areas of the District.

In the District’s first management program approved June 6, 1976, the Board of Directors recognized the unique nature of the local area and implemented guidelines to protect and conserve

the Great Bend Prairie aquifer. These included strict monitoring of water use with flow meters, well spacing requirements, discouragement of waste of water and encouragement of the re-used water sources. In the 1979 district management program, the Board of Directors implemented a safe yield policy and maximum reasonable quantity for irrigation to limit the development even further. The District further solidified the safe yield for the area through the promulgation of K.A.R. 5-25-4 in 1980. By revising K.A.R. 5-25-4 in 1984, the Board of Directors further limited the safe yield policy to 3,000 acre-feet (“AF”) in a two-mile radius. The District formally closed to new appropriations on December 17, 1998 through another revision to K.A.R. 5-25-4. As a result of these management objectives and regulations, the water level declines have been limited. In severely dry years, the District does experience declines in the local Great Bend Prairie aquifer. However, in years of average to above average precipitation, the District recharges quickly.

In 1993, the Rattlesnake Creek Partnership (“Partnership”) was formed to develop and implement solutions to water resource concerns within the subbasin. The Partnership was comprised of the District, Water Protection Association of Central Kansas (“Water PACK”), Kansas Department of Agriculture – Division of Water Resources, and United States Fish and Wildlife Service. In 2000, the Partnership developed the Rattlesnake Creek Management Program (“program”) following several years of hydrologic study and public outreach. The program utilized new management tools (end gun removal, water banking, augmentation, multi-year flex accounts, etc.), education outreach programs, and enhanced compliance and enforcement to achieve the established goals. Several of these programs were voluntary/incentive-based tools that were not available at the beginning of the program. In fact, some of the programs did not get significant participation until after 2012. As a result, not every conservation goal outlined in the program was met at the end of the program in 2012.

In 1999, a task force was established to study the viability of water banking in Kansas. The task force determined that water banking could be a powerful incentive-based tool for conservation that will result in water being put to its most economic and beneficial use. However, there was no mechanism in Kansas statutes that would allow their establishment in Kansas. In 2001, K.S.A. 82a-761 *et seq.* was adopted by the legislature. K.S.A. 82a-765 requires that each chartered water bank will result in a savings of 10 percent or more in the total amount of groundwater consumed for a representative past period. In 2005, the Central Kansas Water Bank Association (“Association”) became the first chartered water bank in the state. While the Association covers the same geographic boundaries, has the same staff, and utilizes the same monitoring network as the District, the Association is governed by a separate board of directors and funded entirely through its own administrative fees. The Association has undergone several changes since its inception in 2005, but still offers the same services to the water users of the region. The Association offers area water users two programs for the flexible use of the water resource. The first program is for the transfer of a portion of the historical water use of a water right(s) to other areas within the same subbasin. The second program allows a portion of unused water to be preserved for future use at the same location. These programs have gained in popularity and give water users added water use flexibility while conserving water.

In 2008, the District, with technical assistance and peer review from the Partnership, contracted with Balleau Groundwater Inc. to develop a high-resolution hydrologic model of the District (Balleau Groundwater, Inc., 2010). This hydrologic model (“BBGMDMOD”) is designed to have seven layers representing unique geologic formations below the ground surface. One of the

primary reasons for multiple layers is to be able to track the movement of water between these layers. This is especially important for the area surrounding the Refuge, where the tracking of poor quality water will be important. BBGMDMOD has been the primary tool utilized by KDA–DWR and other stakeholders to evaluate the effects of groundwater pumping and surface drainage within the subbasin. However, the majority of the work conducted by KDA–DWR to date has been done using an alternative version of the model which flattens the seven layers into a single layer. When evaluating water movement, specifically lower quality water, the seven-layer model is the only option available that can conduct this analysis properly.

On April 8, 2013, the Service officially filed an impairment claim on the Rattlesnake Creek against junior appropriators within the subbasin. The Service alleged that junior appropriators were reducing the flows in the Rattlesnake Creek such that their use prevented the Service from exercising Water Right File No. 7,571. Following this filing, the Chief Engineer and KDA–DWR staff began investigating the hydrologic effects of junior pumping on the subbasin. The District’s BBGMDMOD was used to conduct this investigation in addition to further discussions with Service staff regarding water management at the Refuge. In July 2016, the Chief Engineer published the final report detailing the investigation (Barfield, 2016).

Since 2016, the District has submitted proposals to the Service in an effort to settle the impairment through agreement (Big Bend Groundwater Management District No. 5, 2016) (Big Bend Groundwater Management District No. 5, 2017). These proposals have been declined. The District remains committed to working to resolve the impairment utilizing the most current science, effective tools, and programs available.

In June 2017, the District requested an outline from KDA–DWR regarding the basic requirements for a successful remedy to the impairment claim at Quivira NWR. In July 2017, the Chief Engineer and staff described the remedy as an augmentation well field capable of supplying 15 cfs to the stream channel and achieving a reduction of the future streamflow depletion as of 2003. With this goal established for an effective remedy, the District board by formal motion in August 2017, determined that a LEMA plan would be the framework for the remedy.

2) Reduce Hydrologic Stress and Augment Depleted Flows

a. Hydrologic Stress Factors

The District will work with water right holders and users to enhance the water use efficiency for all types of use within the LEMA boundary including, but is not limited to, irrigation, municipal, stockwater, recreation, domestic, and industrial uses. A few dozen pre-1957 priority operators will be excluded from the end gun curtailment program detailed in subsection (i) unless they elect voluntarily to participate.

The reduction in water use in this area will be achieved through the execution of several objectives that include but are not limited to: 1) permanent retirement of water rights through the expansion of the Conservation Reserve Enhancement Program (“CREP”) and the Water Transition Assistance Program (“WTAP”), 2) permanent purchase and retirement of water rights by the District, 3) permanent movement of water from hydrologically sensitive areas to lesser sensitive areas, 4) temporary water leases through

the Association, 5) temporary set aside and rotation programs, 6) enrollment in Water Conservation Areas, 7) removal of invasive tree species (*i.e.*, Russian olive, salt cedar, etc.), or 8) any combination of these programs that have the positive hydrologic effect to the region as confirmed using BBGMDMOD.

The response to the LEMA program will be seen slowly during the LEMA period. It is not practical to measure that response at the Zenith gage, due to the other factors that affect the baseline in the absence of the LEMA program (weather and a myriad of variables in streamflow other than irrigation). The success of this aspect of the program will be evaluated by examining water-use reports over five-year periods. The target aggregate water withdrawals from the aquifer has been estimated by modeling at 210,000 acre-feet per year (“AFY”).

- i. Irrigation Use: Water use reduction by irrigation use will be achieved by requiring the removal of any nozzle at the end of the center pivot system that has a larger bore diameter than the previous nozzle on the center pivot system, commonly referred to as end guns. Effective December 31, 2018, all these types of end guns will be removed to prevent the wetting of the acres beyond the end of the center pivot system.

District staff has compiled a database of the end guns within the LEMA boundary. These locations are indicated in Attachment 2. As of January 2015, the District determined that there were 1306 end guns installed on center pivot systems within the LEMA boundary. The District has worked hard to estimate the water savings that will result by removing end guns. The District estimates a savings of 19,000 AFY. Additional management action to reduce water use will also be needed. BBGMDMOD suggests that another 4,000 AFY of water use needs to be curtailed in the focused area five to ten miles around St John (Attachment 3). BBGMDMOD suggests that this reduction amount in water use will lessen the growth of future depletion at Zenith gage.

The following methodology will be utilized to establish a voluntary water use target for each irrigation water right within the LEMA boundary for the period 2020-2024:

Group 1. The most senior grouping shall be water rights with priority date on or before August 15, 1957. This group shall not be subject to any of the voluntary water use targets.

Group 2. The second group shall be water rights with priority date after August 15, 1957 and on or before January 8, 1976. Secondly this group represents water rights that participated in the District’s Agricultural Water Enhancement Program (“AWEP”) to remove end guns. This group shall have a voluntary water use target that is 75.00 percent of their respective authorized quantities per their certificates of appropriation.

Group 3. The third group shall be water rights with priority date after August 15, 1957 and on or before January 8, 1976. This group shall have a voluntary water use target that is 72.00 percent of their respective authorized quantities per their certificates of appropriation.

Group 4. The fourth group shall be water rights with priority date after January 8, 1976 and on or before April 10, 1984. Secondly this group represents water rights that participated in the District’s AWEP to remove end guns. This group shall have a voluntary water use target that is 70.00 percent of their respective authorized quantities per their certificates of appropriation.

Group 5. The fifth group shall be water rights with priority date after January 8, 1976 and on or before April 10, 1984. This group shall have a voluntary water use target that is 68.00 percent of their respective authorized quantities per their certificates of appropriation.

Group 6. The most junior grouping shall be water rights with priority date after April 10, 1984. Secondly this group represents water rights that participated in the District’s AWEP to remove end guns. This group shall have a voluntary water use target that is 60.00 percent of their respective authorized quantities per their certificates of appropriation.

Group 7. The most junior grouping shall be water rights with priority date after April 10, 1984. This group shall have a voluntary water use target that is 55.00 percent of their respective authorized quantities per their certificates of appropriation.

Group Number	Water Right Count	Appropriated Acre-Feet	Percent of Authorized	Total Recommended Water Use Target (AF)
2	29	7,009.00	75 %	5,256.75
3	717	140,529.40	72 %	101,181.17
4	30	5,894.00	70 %	4,125.80
5	717	129,158.15	68 %	87,827.54
6	13	2,413.00	60 %	1,447.80
7	135	18,595.30	55 %	10,227.42
Total	1,641	303,598.85		210,066.48

The District will monitor water use annually for each water right in the LEMA area for the period 2020-2024. Each water right holder will receive an annual report comparing the holder’s actual use to the voluntary water use target specific to their water right file. The annual report will also provide an update to area water users regarding the progress toward achieving the water use target for the entire LEMA area. Water right holders whose actual use is equal to or less than their voluntary water use target during the period 2020-2024 will not be subject to mandatory allocations as set forth in Section 8(b) in the event that the LEMA falls short of its five-year goal.

The District will hold meetings throughout the LEMA area to showcase how to utilize technology effectively to maximize the economic yield into the future while reducing the water diverted within the area. Such technologies include, but not limited to, mobile drip irrigation, soil moisture probes, telemetry monitoring, and variable rate irrigation. The District will work with state and federal agencies to provide attractive cost shares for the implementation of technologies that conserve water. Water technology farms are a good way to showcase these technologies to nearby producers. Through these farms, producers

can see how the implementation of new technologies can save water while maintaining or improving the economic viability of the area. Through the LEMA, the District will work to promote the establishment of additional technology farms within the LEMA boundary.

The implementation of Water Conservation Areas (“WCA”) will be encouraged to allow water users to achieve water savings specific to their own needs. The WCA statute was established in 2015 to provide a “simple, streamlined and flexible tool that allows any water right owner or group of owners the opportunity to develop a management plan to reduce withdrawals” from the aquifer.

- ii. Municipal Use: According to the U.S. Geological Survey (Lanning-Rush & Restrepo-Osorio, 2017), the average gallons per capita per day (“gpcd”) for public water suppliers (“PWS”) in Kansas is 138 gpcd over the past five years. There are seven PWS within the LEMA boundary:

Public Water Supplier	GPCD (2011-2015)	UFW (2011-2015)
Belpre	152	21 %
Greensburg	283	11 %
Haviland	152	8 %
Macksville	123	12 %
Mullinville	203	15 %
Stafford	124	12 %
St John	140	20 %

The U.S. Geological Survey study also calculated the percent unaccounted for water (“UFW”) for each PWS. The gpcd and ufw are listed in the chart above.

The Great Bend Prairie Regional Advisory Committee (“the RAC”) has a goal to attain less than 20 percent water loss by 2025 and less than 10 percent water loss by 2045. The District will work with the RAC and each municipality to reduce the gpcd and ufw. The District’s efforts will include educational outreach to schools and public service groups.

- iii. Stockwater Use: There are thirteen feedlots within the LEMA area. The District will work with each facility, KDA–DWR, and KLA to improve the efficiency of water delivery where feasible through existing tools available. These tools include the utilization of thermostatically controlled tanks versus continuous flow water tanks and the implementation of water reuse systems. The water savings will be on a case-by-case basis.

In the case where feeding facilities utilize effluent from the facility’s lagoon in accordance with K.A.R. 5-6-14, a special exemption may be granted in writing from the District board to allow the use of an end gun for that purpose.

- iv. Recreation Use: There are thirty-one water rights within the LEMA area for recreation use. The District intends to work with the holders of these rights to ensure the water is put to beneficial use when appropriate for the area in which the holders are diverting water.

The District will work with state agencies to ensure that existing conservation plans are brought up-to-date to promote more efficient methods of operations that are specific to the needs of each water right.

- v. Industrial Use: There are twenty-six water rights for industrial use within the LEMA area. These uses will be reviewed to determine where water efficiencies can be gained. The District will encourage the use of lower quality water where feasible as a replacement for fresh water.

b. Augmentation Program

In 2014, Governor Sam Brownback signed into law a provision specific to the Rattlesnake Creek subbasin to “allow augmentation for the replacement in time, location and quantity of the unlawful diversion, if such replacement is available and offered voluntarily.” This legislation was the subject of overwhelming supporting testimony from several groups from across the State, which resulted in unanimous action from the Kansas legislature to approve the bill. The concept of augmentation is to utilize the aquifer underground as a reservoir to supply water to the stream in times of shortage.

Augmentation will be implemented from a to-be-constructed wellfield designed for up to 15 cubic feet per second (“cfs”) capacity. Based on the analysis conducted by Balleau Groundwater Inc. (“BGW”), the intent of augmentation is to provide an additional tool to enhance the unique habitat the Refuge provides for various endangered species. The ability to utilize underground water in times of need further protects the biological integrity, diversity and environmental health of the Refuge. The area surrounding the Refuge has been underdeveloped for large-scale irrigation historically due to the water quality in the upper zones of the aquifer. However, this area does have a quantity of water that can be appropriated in a sustainable manner. The sources supporting the augmentation wellfield have been examined in BBGMDMOD as was done in the impairment analysis. The yield is supported by induced capture of evapotranspiration from adjacent water-logged soils and wetland vegetation, in addition to sources captured from formerly-rejected recharge by making space available in the aquifer. Rattlesnake Creek is to be augmented by waters that are now lost to the atmosphere, bypassed as storm runoff in Peace Creek, or discharged as brackish baseflow to the east. This further supports the concept of augmentation as a remedy for the impairment at the Refuge.

According to the various augmentation studies conducted within this subbasin, there are several key factors that need to be addressed. These include, but are not limited to: wellfield location, wellfield capacity, pumping rate, delivery rate, water quality, delivery frequency, and delivery location. The District has analyzed augmentation for each factor.

i. Location

A wellfield south of the Refuge has been identified as an optimal location for the foreseeable future. The precise locations of this wellfield have not been finalized as further studies will be needed to determine water availability and quality. However, a conceptual augmentation system is shown in Attachment 4. The water table in this area is stable enough to support augmentation. The large-scale development for irrigation and other practices has been limited due to the natural water quality in the area. The water quality in the upper zones of the aquifer is very similar to the water quality already feeding the Little Salt Marsh. The conceptual wellfield is thought to overlie areas that can safely yield higher quantities of freshwater without risk of up-coning poor quality water. Further site-specific test drilling will be required to ensure proper placement of wells in a way to protect the upper zone of the aquifer from degradation. BBGMDMOD simulates shallow fresh-water ingress to the wells at a higher rate and volume, dominating and diluting any smaller upward migration from saline sources. Observation wells will be installed to provide additional locations to test water quality and verify water table elevations and eventual trends of water quality. The concept is to use a location in T23S, R10W south of Peace Creek and west of Salt Marsh Road. Wells will be sited with screen lengths and depths to access the yield and quality of water suited to the Refuge requirement as presented, or the range of 3,000 to 9,000 $\mu\text{S}/\text{cm}$ in terms of specific conductance.

ii. Diversion & Delivery Rate

The District will pay the cost to develop, construct, and operate a 15 cfs wellfield south of the Refuge. Based on conversations with the Chief Engineer, KDA–DWR has determined that up to 15 cfs is an appropriate max flow rate/instantaneous capacity. Water will then be delivered directly to the Rattlesnake Creek channel immediately upstream of the Refuge. The discharge released to the stream is intended to make up the diversions required to serve the Refuge water right file # 7571 of 1957 priority date. Depletion of the stream will be relieved to the extent that the end gun program slows the future growth of effects on the stream. That effect is not expected to fully reverse trends or to provide a complete offset of future stream depletion; thus, the augmentation wells will serve to deliver flow sufficient to meet the objective for serviceable supply on this reach of Rattlesnake Creek. Water lines will be installed in a manner that will minimize any disturbance to surface lands and utilize already authorized right of ways where possible to get access to the creek channel. This delivery location complies with the statutory requirement of K.S.A. 82a-706b (a)(2) to allow augmentation as a remedy. It is assumed that the Kansas Department of Health and Environment (“KDHE”) will require special permitting approved due to the similarity of ground and surface-water quality in the area. Kansas Surface Water Quality Standards recognize the chloride content of Rattlesnake Creek above Little Salt Marsh being 1400 mg/l.

iii. Real-Time Operation

The hands-on operation of the augmentation wellfield does not hinge on knowing the magnitude of effects from the end gun program. The wellfield will deliver a make-up flow to the stream depending on conditions of streamflow and diversion requirement as observed. Diversion requirements are given by the Refuge and applied with practical considerations in the Chief Engineer’s impairment analysis. The peak 15 cfs wellfield has the ability to serve those requirements. Calculations and diversion reports suggest that about one-third of the time augmentation will not be needed, one-third of the time 15 cfs

will be needed, and a wellfield release of 5 or 6 cfs will characterize the middle third of days. The Refuge is understood to have operable storage capacity to accommodate at least a week's volume if the deliveries over or under perform by a few cfs for a few days. The District proposes that the delivery rate be set weekly in coordination with Refuge requests and KDA-DWR staff review of conditions on the stream. Rain, high flows or bypass of the Refuge diversions would warrant shut-down of augmentation delivery, then restoration when those conditions pass. The Refuge reports about 25 cfs as the peak month average diversion rate. If that is the current diversion capacity on the Refuge, then augmentation can be shut down at higher flows. The Refuge and District will need to coordinate such factors. As confidence in standard practice is realized, the initial hands-on control of discharge might be handed over from the District to KDA-DWR or Refuge staff.

iv. Annual Water Quantity

The augmentation wellfield will release an adequate volume of suitable groundwater delivered to the creek channel for use by the Refuge to meet the management objectives for maintaining forage and habitat. The water provided will be measured for rate and quality at the point it is placed in the creek channel. The capacity of the wellfield exceeds the 5,000 AFY amount suggested to relieve the impairment, in most years, of the Service's water right at the Refuge in the Chief Engineer's final impairment report. In the Chief Engineer's final impairment report, the analysis conducted was retroactive and reviewed any impairment that may have occurred prior to the Refuge's claim of impairment in 2013. Based on a prospective analysis by BGW that looks at years after the 2013 claim of impairment, augmentation pumping is sustainable, effective, and does not degrade the quality of water the Refuge requires. The authority for such water will be processed in the same manner as any other water right with KDA-DWR. This evaluation by KDA-DWR will further ensure that there will not be an increase in permitted consumptive use in the area. The new appropriative water right will be considered non-consumptive as the quantity authorized will be combined and limited to the authorized quantity already appropriated under Water Right File No. 7571. In no calendar year will the combined quantity diverted from the augmentation well fields and the surface diversions at the Refuge exceed 14,632 AF.

v. Water Quality

The quality of this water would fall within the specified range (3,000 to 9,000 $\mu\text{S}/\text{cm}$) presented by the Service. The water quality can be managed based on the requirements of Refuge staff by providing more or less fresh water from redundant capacity of wells with varying water quality. As stated before, the water quality in the aquifer surrounding the Refuge is analogous to the source of the baseflow water quality utilized in Little Salt Marsh. As a result, the water quality at the Refuge will not be altered in suitability for use through the implementation of the augmentation plan. Coordination with KDHE will be crucial in this process to ensure the water quality of the Rattlesnake Creek stream channel is maintained throughout this project.

vi. Drought

In times of severe drought, as defined by the Palmer Drought Severity Index of -3.0 or less, augmentation will continue to be provided to those water management structures defined in the Service's water conservation plan as amended in 2018.

Augmentation shall not occur in times of bypass flow or times of release from storage in Little Salt Marsh. The augmentation water must be put to a concurrent beneficial use or held in storage for later beneficial use.

3) Central Kansas Water Bank Association

- a. The District is fortunate to have the only functioning water bank in the state of Kansas. This provides a unique opportunity to allow for additional flexibility in the water use of the area while implementing real water conservation. In the early years (2005-2010), there was little participation in the Association due to restrictive rules, an uninformed public, and confusing methodologies. The Association has addressed these issues through public outreach meetings and amendments to statutes, rules, and policies governing water bank activity. In recent years there have been significant advances in the participation from area water users. It is anticipated that this growth will continue in coming years. The Association is beginning another evaluation as required by statute by an independent panel of experts in water law, economics, geology, and hydrology. The District intends to work with the Association to update the programs to promote the movement of water away from highly sensitive areas within the Rattlesnake Creek subbasin.
- b. The review process will take time to be completed. As a result, it is difficult to estimate the outcome of the review in addition to the timeliness of the updates. The District will work closely with the Association to ensure that the Association programs continue to provide area water users with flexible water conservation options.
- c. The District has partnered with The Nature Conservancy (“TNC”) to pursue funding to incentivize the transfers of water out of areas of concern. The intent of this funding is to provide added financial incentive to water users in priority areas to deposit water into the Association for use outside of these priority areas. By providing financial incentive it is believed that this will further promote these transfers and provide added water conservation for areas of high impact to the stream channel.

4) Violations

- a. The LEMA order of designation shall serve as initial notice of the creation of the LEMA and its terms and conditions to all water right owners within the Rattlesnake Creek LEMA area on its effective date.
- b. Upon the District learning of an alleged violation, District staff will provide KDA–DWR with the information the District believes shows the alleged violation. KDA–DWR shall investigate within 60 days and impose restrictions and fines as described below or allowed by law.
- c. In the event that the District or KDA–DWR determine that a water user is operating a center pivot system with a functional end gun installed without a written exception from the District, KDA–DWR will address these violations as follows:

- i. operation of the end gun within the first six months of the LEMA plan will result in notification of the offense to the landowner;
 - ii. operation of the end gun following the first six months of the LEMA plan will result in an automatic one-year suspension of the water right and a \$1,000 fine for every day of operation up to a maximum of \$10,000.
- d. KDA–DWR will address violations of the authorized quantities in accordance with K.A.R. 5-14-12, as amended July 14, 2017.
- e. In addition to other authorized enforcement procedures, if the District Board finds by a preponderance of evidence of watering of unauthorized acres, waste of water, meter tampering, removing the meter while pumping, or any other overt act designed to alter the metered quantity as described in K.A.R. 5-14-10 occurred, then the District Board will make a recommendation to the Chief Engineer that a written order be issued which states:
- i. the nature of the violation;
 - ii. the factual basis for the violation; and
 - iii. that the water right is suspended for 5 years.

5) Meters

- a. All water right owners shall be responsible for ensuring their water flow meters are in compliance with state and local law(s). To ensure accurate measurement of water throughout the LEMA, the District and/or KDA–DWR will place a seal on all water flowmeters or measuring chambers in 2019.
- b. In addition to maintaining compliance and reporting water usage annually from each point of diversion, all water right owners shall install and maintain an alternative method of determining the time that the well is operating. This information must be sufficient to be used to determine operating time in the event of a meter failure. Should the alternative method fail or be determined inaccurate the well shall be assumed to have pumped its full annual authorized quantity for the year in question. Well owners/operators are encouraged to give the details of the alternative method in advance to District staff in order to ensure that the data is sufficient.
- c. Any water right owner or authorized designee who finds a flow meter that is inoperable or inaccurate shall within 48 hours contact the District office concerning the matter and provide the following information:
 - i. water right file number;
 - ii. legal description of the well;
 - iii. date the problem was discovered;
 - iv. flow meter model, make, registering units and serial number;
 - v. the meter reading on the date discovered;
 - vi. description of the problem;
 - vii. what alternative method is going to be used to track the quantity of water diverted while the inoperable or inaccurate meter is being repaired/replaced;

- viii. the projected date that the meter will be repaired or replaced; and
 - ix. Any other information requested by the District staff or Board regarding the inoperable or inaccurate flow meter.
- d. Whenever an inoperable or inaccurate meter is repaired or replaced, the owner or authorized designee shall submit form KDA–DWR 1-560 Water Flowmeter Repair/Replacement Report to the District within seven days.
- e. This metering protocol shall be a specific annual review issue and if discovered to be ineffective, specific adjustments shall be recommended to the Chief Engineer by the advisory committee.

6) Advisory Committee

- a. The Rattlesnake Creek LEMA Advisory Committee shall be appointed and maintained by the District board consisting of 5 members as follows: one (1) District staff; two (2) District Board Members; one (1) representative of Water PACK; and one (1) stakeholder from within the Rattlesnake Creek LEMA area. One of the Rattlesnake Creek LEMA advisory members shall chair the committee whose direction shall be to further organize and meet annually to consider:
- i. water use data;
 - ii. water table information;
 - iii. economic data as is available;
 - iv. compliance and enforcement issues;
 - v. any new and preferable enhanced management authorities become available; and
 - vi. other items deemed pertinent to the advisory committee.

7) LEMA Order Reviews

- a. The LEMA will be evaluated twice in the first ten (10) years, which would allow the parties to revisit the terms and evaluate its efficacy after a meaningful period of observation.
- b. The water use target for the LEMA area is 210,000 AFY. The water use performance has an inherent standard error of about two percent of pumping, thus the water use target will have statistical leeway of +/-5,000 AFY before adjustments are administered for the next period.
- c. In addition to the annual status reviews per Section 6, the Rattlesnake Creek LEMA Advisory Committee shall also conduct a more formal LEMA Order review every five years within the term of the LEMA. The first of these reviews shall be for the years 2020-2024. Review items will focus on economic impacts to the LEMA area and the local public interest. Water level data may be reviewed by the committee.
- d. The committee, in conjunction with KDA–DWR and the District, shall also produce a report following each formal review to the Chief Engineer and the District board which contains specific recommendations regarding future LEMA actions. All recommendations shall be supported by reports, data, testimonials, affidavits or other information of record.

8) Alternative Corrective Controls

- a. The LEMA Order review identified in Section 7 shall be conducted in a manner to determine if further revisions to the order are necessary at that time. The committee, in conjunction with KDA–DWR and the District, shall review:
 - i. The water use reports and imagery of end gun acres reduced will be examined alongside BBGMDMOD results to determine annual water use in the LEMA area. When evaluating the effects of the amount of water savings achieved, if there is a different distribution of water savings that has the same hydrologic result as demonstrated with the BBGMDMOD and approved by the Chief Engineer, then the program will be considered successful and no modified controls will be necessary.
 - ii. The augmentation wellfield implementation will be reviewed to determine the effect augmentation has on the immediate area surrounding the wellfield. The goal for augmentation implementation is a fully-operational peak 15 cfs wellfield and delivery system to the Rattlesnake Creek stream channel.
- b. If the goals are not met before the LEMA Order review based on the most up-to-date technical analysis, the District will use the methodology below to implement revised water right allocations for the period 2025-2029 to cover any shortfall. Revised allocations will be assigned to the holders of individual water rights who exceeded their voluntary water use target for the period 2020-2024 as set forth in Section 2(a)(i).

If the District comes within 5,000 AFY of meeting its water use goal (210,000 AFY), the methods outlined in Section 2(a) will still be available to the stakeholders in the region for a redemption period of six months, in addition to adjusted allocations for the period from 2025-2029, to bring the water use in line with the water use goals as defined in Section 2.

If an irrigation water right meets the respective voluntary water use target for the period 2020-2024, the voluntary water use target outlined in Section 2(a)(i) shall remain unchanged.

If an irrigation water right that exceeded the respective voluntary water use target for the period 2020-2024, the voluntary water use target shall become required for the period 2025-2029. In addition to the required water allocation, the shortfall quantity shall be distributed based on the groups assigned in Section 2(a)(i) starting with Group 7 and proceeding through Group 2 to bring the LEMA area in line with the water use goal of 210,000 AFY.

- c. In the case where an augmentation project has not been fully implemented by 2022, the voluntary water use targets will become mandatory for the period 2023-2027. Further, should augmentation continue to be unavailable by 2024, the District will use the methodology outlined in subsection b to implement water right allocations for the period 2025-2029 to best serve the LEMA goals and objectives. If and when augmentation is provided, allocations will be increased starting with Group 2 and proceed to Groups 3 through 7 respectively until the water accounting is complete.

- d. If during future LEMA Order reviews, the corrective controls are determined to be too great, the appropriate modifications to the corrective controls will be made to come in line with the hydrologic conditions as determined by the BBGMDMOD. These modifications will be based on the most up-to-date modeling available at the time. The District will plan to have BBGMDMOD updated and calibrated six months prior to the review outlined in Section 7 and 8.

9) Appeals Process

- a. The following process shall govern appeals regarding the modification of the voluntary water use targets:
 - i. The District and KDA–DWR will coordinate to ensure that no later than 60 days after the LEMA order of designation, the basis of the voluntary water use targets shall be publicly available through the District and KDA–DWR websites.
 - ii. Any appeal of the voluntary water use targets must be filed in writing no later than 60 days following publication of the LEMA order of designation. Failure to file an appeal within this timeframe will cause the voluntary water use targets to become final during the LEMA period.
 - iii. Only the voluntary water use targets may be appealed through this appeal process. No other issues including, but not limited to, the LEMA boundaries, violations, meter issues, etc. may be appealed through this process.
 - iv. Any appeal will first be heard by the District staff who will determine if there was an error in the original calculation of the voluntary water use targets.
 - v. Any determination made by the District staff may be appealed to the District Board of Directors.
- b. The following factors, in order of importance, will be used when reviewing the determination of the voluntary water use targets on appeal:
 - i. First, the reviewer will consider any and all aspects of the water right, water use history, place of use, point of diversion, or any other factors the reviewer determines appropriate to review the appeal.
 - ii. Second, the reviewer may consider any conservation efforts implemented by the water user within the previous five calendar years that effectuate measurable water savings.
- c. Should a water right holder or water use correspondent bring evidence that demonstrates that the voluntary water use target should be modified, the District Board of Directors may amend the voluntary water use target for the next review period.

10) Impairment Complaints

- a. While this program is being undertaken, the District stakeholders request that any impairment complaint filed in the District while the LEMA plan is in effect, which is based upon either water supply issues or a regional decline impairment cause, be received by the Chief Engineer, and be investigated by the Chief Engineer with consideration to the on-going LEMA activities.

11) Water Level Monitoring

- a. The District maintains a routine water level measurement network throughout the Rattlesnake Creek subbasin area. This monitoring will continue throughout the term of the LEMA plan. In addition to the existing network, the District will install observation wells as necessary to monitor the impact of the augmentation well field. These measurements will be a part of the existing WIZARD database curated by the Kansas Geological Survey.

12) Water Quality Monitoring

- a. The District has been monitoring the surface water quality along the Rattlesnake Creek channel for several years. This monitoring will continue throughout the term of the LEMA plan on at least a quarterly basis. The observation wells that will be installed around the augmentation wellfield will be sampled routinely to enhance the understanding of the water quality in this area. Coordination with Kansas Department of Health and Environment will be crucial in this process to ensure the water quality of the Rattlesnake Creek stream channel is maintained throughout this project.

13) Coordination

- a. The District stakeholders and the Board of Directors expect reasonable coordination between the Chief Engineer's office and the District board on at least the following efforts:
 - i. Development of the LEMA Order resulting from the LEMA process;
 - ii. Compliance and enforcement of the Rattlesnake Creek LEMA order;
 - iii. Installing and maintaining seals on water flow meters; and
 - iv. Annual reporting of water usage and evaluation of progress toward overall LEMA goals.

References

- Balleau Groundwater, Inc. (2010). *Hydrologic Model of Big Bend Groundwater Management District No. 5*. consultant report prepared for Big Bend GMD #5.
- Barfield, D. (2016). *Final Report of the Chief Engineer*. Manhattan: Kansas Department of Agriculture - Division of Water Resources.
- Big Bend Groundwater Management District No. 5. (2016). *Stakeholder Proposal in Connection with USFWS Impairment Complaint*. Stafford: Big Bend Groundwater Management District No. 5.
- Big Bend Groundwater Management District No. 5. (2017). *Second Stakeholder Proposal in Connection with USFWS Impairment Complaint*. Stafford: Big Bend Groundwater Management District No. 5.
- Lanning-Rush, J., & Restrepo-Osorio, D. (2017). *Public-Supply Water Use in Kansas 2015*. U.S. Geological Survey.

DRAFT









