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Orrin Feril, Manager
125 South Main Street
Stafford, Kansas 67578
ph: (620) 234-5352
fx: (620) 234-5718
gmd5@gmd5.org
www.gmd5.org

Testimony before the House Water Committee Overview of Quivira Topics and Groundwater Management District No. 5

**By
Orrin Feril
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Chairman Minnix and members of the committee, thank you for the opportunity to provide an update on the activities of Big Bend Groundwater Management District No. 5 (“District”) especially as they relate to Quivira National Wildlife Refuge (“Refuge”). I am Orrin Feril, providing this testimony on behalf of the District.

I became District Manager in the fall of 2012 at the tail end of the most recent drought of record in the region. As a result of these conditions, the United States Fish and Wildlife Service (Service) filed the impairment complaint for the Water Right File No. 7571 in the spring of 2013. Since that time, the District and I have been pursuing an amenable resolution to the issue we are discussing today. It is safe to say that the water resource issues in the region surrounding the Refuge are complex. For a detail oriented individual like me, it is easy to get lost in these complexities. So, I will do my best to focus this testimony on the major milestones over the past 10 years.

- In 2016, three years after the impairment complaint, the Chief Engineer filed the final impairment report. This report indicated the pumping of groundwater by junior water users is impairing the ability for the Refuge to utilize their water right.
- Immediately after this report was issued, the District and local stakeholders began working to craft projects to provide water directly to the Refuge via an augmentation wellfield. There were two augmentation proposals offered directly to the Service in 2016 and 2017. Both of these proposals were quickly rejected by the Service.
- The District began discussions with KDA–DWR to determine if a local enhanced management area (LEMA) would be possible to address the impairment findings. Following two years and a dozen attempts by the District, it became apparent to the District board that a LEMA would not be possible with the restrictions required by KDA–DWR for approval.
- Therefore, in 2019, KDA–DWR began crafting orders to directly administer water over 1200 water rights within South Central Kansas. As drafted, these orders would reduce water pumping by 30% off of historic water use amounts. In South Central Kansas the average historic water use for the region is approximately 70% of authorized quantities. This proposed reduction would result in a cumulative 60% reduction from authorized quantities.

- Prior to implementation in 2019, the Service withdrew the request to secure water in an effort to work “with local stakeholders to find a voluntary solution to satisfy the...impairment.”
- In 2020, the District worked diligently with the Service to evaluate the framework for a resolution. This culminated in a Memorandum of Agreement between the District and the Service to pursue a resolution following completion of the necessary regulatory requirements under state and federal law.
- In 2020, the District began working with USDA’s Natural Resources Conservation Service (NRCS) to develop a Watershed Plan-Environmental Assessment. A Watershed Plan-EA provides National Environmental Policy Act (NEPA) compliance for the proposed resolution as it evaluates all aspects of the issue. This project has letters of support from the Kansas Congressional delegation, U.S Fish and Wildlife Service (FWS), Kansas Water Office, The Nature Conservancy, and Kansas Farm Bureau.
- Despite setbacks beyond the District’s control (COVID-19 pandemic and regulatory timelines), the Watershed Plan process is on time and on budget. The Watershed Plan is now considered a Watershed Plan-Environmental Impact Statement which provides additional durability and evaluation for the project.
- In February 2023, the Service filed a request to secure water for 2023. The District responded quickly asking the Service to withdraw the request based on its continuing investments to address the impairment. The District continues to work with the Service in the Watershed Plan process.
- After its first action was dismissed in federal court and a denial of its application to the Kansas Supreme Court, Audubon of Kansas filed suit in Shawnee County where the action is pending. The suit alleges that KDA–DWR failed to meet its non-discretionary duty to administer water to address impairment and requests the court to order KDA–DWR to administer water immediately. The District is opposing these claims and has filed a motion to intervene in the action and awaits the court’s approval.
- The District was recently notified that KDA–DWR is committed to administering water rights in the Rattlesnake Creek region. However, the details of this plan are not yet made public. There is significant speculation and anxiety in the region as the potential economic impact is anticipated to be significant. From initial discussions with KDA–DWR staff, this administration is based on a preliminary update to the District’s hydrologic model and have a similar framework as the 2019 plan. This preliminary update will be replaced with a more thorough update and calibration that is being completed within this month by Balleau Groundwater Inc.
- Amidst everything else, the District continues to pursue water right retirements, water right transfers, water technology improvements, and more. These efforts are supplemental to the other objectives currently active. The District remains committed to a holistic approach to resolving the Refuge’s water issues. To date, the District has secured over 1,500 acre-feet of water usage reduction through water right retirements, transfers, or offsets.
- The District and NRCS are nearly complete in evaluating all alternatives in the Watershed Plan-EIS. The full draft plan is currently under review by state and federal executive agencies and additional public comment periods will follow soon. Based on these assessments, the District believes an augmentation wellfield should be the primary part of

a final solution. The request to secure water from the Service and related lawsuits filed by third parties threaten the viability of this resolution in which the District has so heavily invested.

The District and I remain committed to managing the water resource in central Kansas. While this is a complex issue that requires significant time to study and evaluate, a resolution to the issue is within reach. As Kansans, we pride ourselves on solving problems and putting our head down and putting in the work. I take this to heart, and we will work through the issues as they are presented. We ask for one thing, patience. The issues we are discussing did not present themselves quickly so rushing to resolve the issue is not prudent either.

Thank you for the opportunity to provide an update on the activities of the District as they relate to the Refuge. Big Bend Groundwater Management District No. 5 is ready and willing to continue to be a productive partner in this matter and we appreciate the committee's continued interest and support as we work toward the resolution.