AD ASTRA PER ASPERA

Kansas

Department of Agriculture

Quivira National Wildlife Refuge Impairment Complaint

Impairment Complaints in Kansas

- In Kansas, surface water and groundwater are all part of the same priority system and the administrative review must take place first.
- Impairment is not defined in the Kansas Water Appropriation Act. K.S.A. 82a-706b provides the authority to deal with impairment:
  - "It shall be unlawful for any person to prevent, by diversion or otherwise, any water of this state from moving to a person having a prior right to use the same…the chief engineer, as may be necessary to secure water to the person having the prior right…may…direct that headgates, valves or other controlling works of any ditch, canal, conduit, pipe, well or structure be opened close, adjusted or regulated…
- Kansas law requires a formal complaint be filed with the Chief Engineer so that an administrative investigation may be conducted, which may result in an administration of a water right.
- Once this administrative process is complete, including administrative and judicial reviews, then there is a statutory cause of action for injunction and damages between the private parties.

Tools Available to the Chief Engineer

- Administration by Priority
  - Would require individual orders and determinations, and does not allow collective cuts in water use.
- Local Enhanced Management Areas (LEMA) (2012)
  - Developed by a local Groundwater Management District (GMD) and presented to the Chief Engineer. Public hearings on the necessity of forming the area and on the proposed corrective controls. Must have a goal, etc. (Allows the use of corrective controls not otherwise available to a GMD or the Chief Engineer.) Bottom Up Plan.
- Intensive Groundwater Use Control Area (IGUCA) (1978)
  - Similar to LEMA, except that the Chief Engineer holds hearings and develops his own plan based on testimony at public hearings. Top Down Plan.
- There is a special statutory section that allows for streamflow augmentation in the Rattlesnake Basin if it is brought forward voluntarily.
- Kansas does not have a statutory mechanism in place to hold a general stream adjudication.

Summary of Activities Since the Service Claimed Impairment

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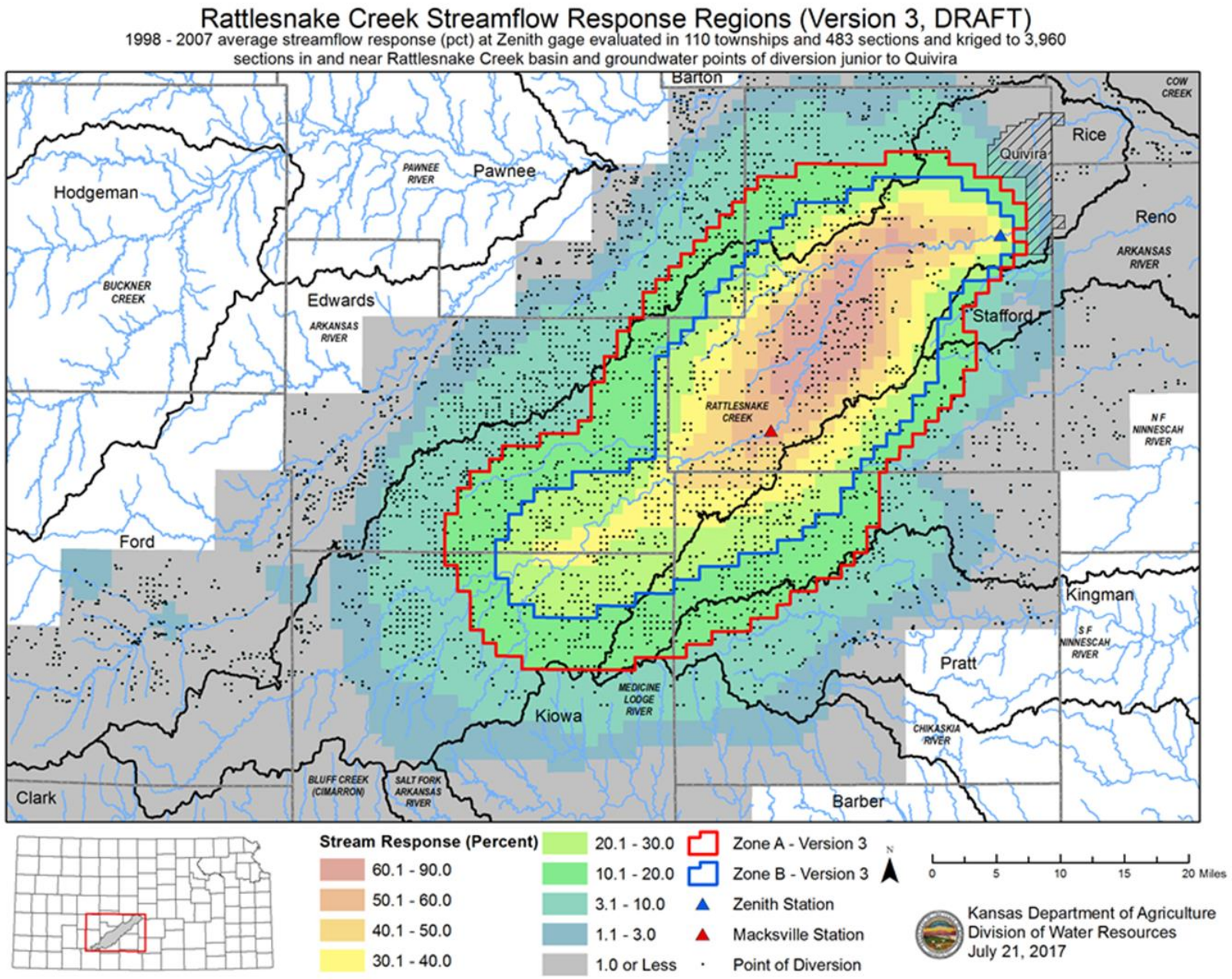
- Met with the GMD No. 5 Board and reported to GMD No. 5's 2013 annual meeting on the request of the Service and how the investigation would proceed.
- Met with the Service to confirm their intent and to outline information KDA-DWR would need.
- Received additional information requested of the Service to define their specific needs.
- Used the GMD No. 5 groundwater model to determine the magnitude and timing of the effect of junior groundwater pumping on the Rattlesnake Creek at Quivira.
- November 4, 2014, KDA-DWR presented groundwater modeling results for nine alternative historical scenarios at a public meeting in St. John. A summary PowerPoint is available.
- December 2, 2015, KDA-DWR published its initial impairment investigation report for review and comment.
- December 10, 2015, KDA-DWR held a public meeting in St. John to present a summary of the initial report's findings, answer questions and seek input.
- On July 15, 2016, after two rounds of drafts and input, KDA-DWR to publish Final Report.
- August 15, 2016, basin plan to implement remedy is submitted to chief engineer.
- Since January 2017, DWR has meet with the GMD5 Board at least five times and the Service at least two times.
- The GMD5 Board has proposed two solutions, both of which have been rejected as insufficient by the Service.
- DWR has determined 30% cuts are necessary to prevent future depletions and that 3,000 to 5,000 acre feet of augmentation is necessary each year to meet the Service's water right via stream flow. Cuts could be as high as 50% if no augmentation is provided.



Zone A – Approx. 135,000 acres with 160,000 acre-feet per year of pumping.
A 30% reduction would equal 40,700 acre-feet.

The Current Approach

- In addition to developing augmentation capacity of 15 cfs, GMD No. 5 has voted to pursue a LEMA and is currently developing a LEMA structure that would achieve a 15% reduction over 5 years.
- If augmentation is put in place during that time period, then the 15% reduction in use will be maintained for another 5 years and then the impairment will be re-evaluated.
- So far the GMD is interested in ordering the removal of end-guns and is developing other methods to cut back use.
- Should the GMD fail to reach 15% on their own, the LEMA will include automatic corrective controls to reach the required goals.
- Ultimately we are still working with the GMD to get a plan in place so that administration can occur for the 2018 irrigation season.
- We continue to have concerns (along with the Service) about the quality of water used for augmentation and are looking additional solutions outside the LEMA process, such as administering wells subject to Minimum Desirable Streamflow.
- Overall, our work with the Service has been positive. They have been patient while the state administrative process has run its course, and they have engaged with us when the GMD has proposed their previous plans.
- We have an administrative duty to make sure the Service's senior priority right is fulfilled and are working to develop a solution to accomplish this.