



DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

[Docket No. NRCS-2023-0018]

Notice of Intent to Prepare an Environmental Impact Statement for the Rattlesnake Creek Watershed Plan, in Stafford, Pratt, Rice, Reno, and Edwards Counties, Kansas

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of intent (NOI) to prepare an environmental impact statement (EIS).

SUMMARY: The Natural Resources Conservation Service (NRCS) Kansas State Office in cooperation with U.S. Army Corps of Engineers (USACE), U.S. Fish and Wildlife Service (USFWS), Environmental Protection Agency (EPA), Kansas Department of Health and the Environment (KDHE), Kansas Department of Agriculture (KDA), and Big Bend Groundwater Management District 5 (GMD-5) (project sponsor), announces its intent to prepare a watershed plan and EIS for the Rattlesnake Creek Watershed Plan, in Stafford County, KS. The proposed watershed plan will examine alternative solutions for GMD-5 to provide agricultural water management measures to Rattlesnake Creek and Quivira National Wildlife Refuge (NWR). NRCS is requesting comments to identify significant issues, potential alternatives, information, and analysis relevant to the proposed action from all interested individuals, Federal and State agencies, and Tribes.

DATES: We will consider comments that we receive by [INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. Comments received after close of the comment period will be considered to the extent possible.

ADDRESSES: We invite you to submit comments in response to this notice. You may submit your comments through one of the methods below:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov> and search for docket ID NRCS-2023-0018. Follow the online instructions for submitting comments; or
- *Mail or Hand Delivery:* Larry Schieferecke, Kansas State Conservation Engineer, USDA, NRCS, Kansas State Office, 760 South Broadway Boulevard, Salina, Kansas 67401-4604. In your comments, specify the docket ID NRCS-2023-0018.

All comments received will be posted without change and made publicly available on www.regulation.gov.

FOR FURTHER INFORMATION CONTACT: Larry Schieferecke; telephone: (785)823-4534; email: larry.schieferecke@usda.gov. Individuals who require alternative means for communication should contact the U.S. Department of Agriculture (USDA) Target Center at (202) 720-2600 (voice and text telephone (TTY)) or dial 711 for Telecommunications Relay service (both voice and text telephone users can initiate this call from any telephone).

SUPPLEMENTARY INFORMATION:

Purpose and Need

The primary purpose of the watershed plan is to provide for long-term, sustainable agricultural water management within the Rattlesnake Creek subbasin, including project components to address the impairment at Quivira NWR. GMD-5 has been awarded federal funding from NRCS through the Watershed Protection and Flood Prevention Act (Pub. L. 83-566, 16 U.S.C. 1001-1008 – referred to as PL-566 in this document) to provide for long-term, sustainable agricultural water management within the Rattlesnake Creek subbasin of GMD-5, including project components to help address the impairment at Quivira NWR. The project is essential for the Quivira NWR’s ongoing senior water right impairment (as described below), and the importance of groundwater to the agricultural economy. The sustainability of Quivira NWR relies on surface water diversions that the KDA Division of Water Resource (KDA-DWR) has deemed impaired due to junior groundwater pumping. A predictable and consistent source of water is also required to support the region's agricultural economy. Providing long-term agricultural water management for the region would help provide water resources for both the agricultural economy and help remedy Quivira NWR’s impaired senior water right.

A project will be developed through the preparation of the EIS that would assure a water supply for Quivira NWR while considering and minimizing economic impacts to the surrounding agricultural economy. In the state of Kansas, the use of water is monitored and regulated by KDA-DWR. Individuals that use the state water resources for any purpose other than domestic use is required to obtain a permit, or “water right.” The state regulates the water use under the prior appropriation doctrine, which provides priority access to individuals with older (or senior) water rights during water shortages as opposed to individuals with newer (or junior) water rights. The state does not guarantee the availability of a certain amount of water. The water right holder is entitled to the authorized amount while considering seniority and the natural availability of water and entitled to divert water at times when it is most beneficial. Impairment could still occur

because sufficient water is unavailable when the water is most beneficial, even though it is available on an annual basis. The 22,135 acre Quivira NWR is located at the northeastern end of the subbasin and Rattlesnake Creek flows through the refuge before discharging into the Arkansas River. The USFWS holds Water Right File Number 7,571 for the management of Quivira NWR. This water right, which is senior in priority to approximately 95 percent of all other water rights in the Rattlesnake Creek subbasin, has been impaired frequently over the past 20 years as determined by the KDA Chief Engineer.

Surface water and groundwater are essential resources to the central Kansas economy and environment. Management of the Rattlesnake Creek subbasin and its interrelated water resources has been difficult and complex because it involves administration of multiple users of a limited resource. The resource is relied upon for ecosystem sustainability (through management of surface water at the Quivira NWR; Recreational use) and for irrigated agriculture (through groundwater pumping), all of which are of equal importance in Kansas. To regulate water use, the state of Kansas uses a system of water rights, which dictates when and how much water may be diverted by users.

GMD-5 can assist the state of Kansas with the management of groundwater through various options. KDA-DWR has determined that surface water flows have been insufficient to support management practices at Quivira NWR during certain years and periods within those years because of the reductions in streamflow caused by groundwater use. Finding an agreeable solution that balances the needs of the Quivira NWR while limiting impacts to agriculture has been challenging.

Preliminary Proposed Action and Alternatives

The objective of the EIS is to formulate and evaluate alternatives for agricultural water needs and augmentation of wellfield and associated pipeline of water to Rattlesnake Creek upstream of Quivira NWR. This EIS is expected to evaluate three alternatives: two action alternatives, and one no action alternative. The alternatives that may be considered for detailed analysis include:

- *Alternative 1 – Proposed Action - Augmentation Wellfield and Groundwater Use Reduction Alternative:* The proposed action is to construct an augmentation wellfield and associated pipeline that provides 15 to 18 cubic feet per second (cfs) of water to Rattlesnake Creek upstream of Quivira NWR. Additionally, 2,500 acres of targeted water

right retirements and compensated conservation measures would be implemented. Finally, the proposed action would implement a multi-stakeholder adaptive management approach that would evaluate the success of the augmentation wellfield, water right retirements, and compensated conservation measures on an annual basis, and decrease pumping or increase groundwater retirements as needed to meet the Quivira NWR management goals and objectives.

- *Alternative 2 – No Action Alternative:* Taking no action predicts USFWS, the senior water right holder in the basin, will file a request to secure water with KDA-DWR for the impairment finding to the Quivira NWR if the project were not authorized and implemented under the PL-566 program. KDA-DWR would then administer the water right consistent with Kansas Statutes Annotated 82a-706b, which would restrict junior water right irrigation within the basin for irrigated crops. The decrease in irrigation will have severe negative effects to the local agricultural economy and agricultural producers due to decreased crop yields.
- *Alternative 3 - Groundwater Use Reduction Alternative:* The groundwater use reduction alternative would rely solely on reductions in groundwater use without development of an augmentation wellfield to increase Rattlesnake Creek streamflow. The groundwater use reduction alternative would incorporate the establishment of either a local enhancement management area (LEMA) or an intensive groundwater use control area (IGUCA). Either a LEMA or an IGUCA would implement measures to reduce groundwater use to avoid an impairment to the senior water right held by the USFWS. This alternative would allow GMD-5 to develop or initiate groundwater reduction measures prior to KDA-DWR enforcement; whereas the no-action alternative could potentially lead to water enforcement activities that are determined by KDA-DWR.

Summary of Expected Impacts

The following affected environment categories had the largest comparative difference and are heavily weighted in the proposed action alternative selection process.

- Aquifers and Sole Source Aquifers;
- Environmental Justice and Socioeconomic Status;
- Surface Water Resources and Water Quality; and

- Riparian Area.

All three alternatives have beneficial impacts to Rattlesnake Creek and Quivira NWR. The modeling data shows that all three alternatives will meet USFWS's water right. However, the Augmentation Wellfield and Groundwater Use Reduction Alternative would have the most immediate beneficial impact to Rattlesnake Creek and Quivira NWR following construction of the augmentation wellfield. Additionally, the Quivira NWR water needs would be met by engaging the augmentation wellfield pumps rather than relying on rainfall and climate conditions.

The No Action and Groundwater Use Reduction alternatives both resulted in a reduction in irrigation pumping that provides beneficial impacts outside of Rattlesnake Creek and Quivira NWR that include benefits to the local aquifer, surface water resources, and riparian areas. The reduction in irrigation pumping that causes an increase in Rattlesnake Creek flow and available water to Quivira NWR results in benefits to the local aquifer, and in effect, the surrounding streams, wetlands, and riparian areas. These effects benefit fish and wildlife resources including wildlife habitat and potentially threatened and endangered species outside of Quivira NWR. The human environment is improved by having a diversity of species and increased water resources in a relatively dry climate.

Though the Augmentation Wellfield and Groundwater Used Reduction Alternative includes a reduction in irrigation pumping (2,500 acre-feet per year), the primary water source is augmentation wellfield pumping. There are minimal beneficial impacts to areas outside Rattlesnake Creek and Quivira NWR compared to the No Action and Groundwater Use Reduction alternatives.

Under the No Action and Groundwater Use Reduction alternatives, the reduction in irrigation pumping comes at a significant cost to the regional economy and has a negative impact on low-income populations. In summary, the analysis showed the following for each alternative based on different crop scenarios:

- No Action Alternative: Net farm income under this alternative would decrease between \$6.1 million and \$12.1 million, annually, as compared to existing conditions.
- Augmentation Wellfield and Groundwater Use Reduction Alternative: Net farm income under this alternative would increase between \$6.0 million and \$11.8 million annually, relative to the No Action Alternative

and would decrease between \$0.1 million and \$0.3 million annually, as compared to existing conditions.

- **Groundwater Use Reduction Alternative:** This alternative would lead to a reduction in net farm income of between \$586,000 and \$788,000 annually, relative to the No Action Alternative and would be a decrease of \$5.5 million and \$11.3 million annually, as compared to existing conditions.

Anticipated Permits and Authorizations

The following permits and authorizations are anticipated to be required:

- *Clean Water Act Section 404.* A Clean Water Act section 404 permit must be obtained from the USACE to account for fills within jurisdictional waters of the United States (WOTUS). If needed, GMD-5 will obtain a Clean Water Act section 404 permit prior to construction.
- *Endangered Species Act Section 7.* GMD-5 is currently developing a Biological Assessment (BA) to support ESA section 7 consultation with the USFWS.
- *National Historic Preservation Act (NHPA) Section 106.* A Cultural Resources Inventory Report will be prepared and submitted to the Kansas State Historic Preservation Office (SHPO) for concurrence. Based on results in the report, the Kansas SHPO will make a determination on whether the project may affect cultural resources that are either listed on or eligible for listing in the National Register of Historic Places (NRHP).
- *State Sensitive Species.* GMD-5 will consult with the Kansas Department of Wildlife and Parks (KDWP) for activities that may affect state threatened or endangered species. If needed, the KDWP is required to issue special action permits for activities that may affect these species or state-designated critical habit.
- *National Pollutant Discharge Elimination System and Storm Water Pollution Prevention Plan.* A construction site discharge permit (NPDES) is required by the KDHE on behalf of the EPA if a construction site footprint is greater than 1 acre. Construction of the Proposed Action would involve more than 1 acre of disturbance; therefore, a Stormwater Pollution Prevention Plan (SWPPP) will be developed to minimize pollution from soil erosion and other sources during construction.

- *Construction Permits.* Any construction permits required from Stafford County will be obtained prior to construction.

Schedule of Decision-Making Process

A Draft EIS (DEIS) will be prepared and circulated for review and comment by agencies, Tribes, consulting parties, and the public for at least 45 days as required by 40 CFR 1503.1, 1502.20, 1506.11, and 1502.17, and 7 CFR 650.13. The DEIS is anticipated to be published in the *Federal Register*, approximately 6 months after publication of this NOI. A Final EIS is anticipated to be published within 6 months of completion of the public comment period for the DEIS.

NRCS will decide whether to implement one of the alternatives as evaluated in the EIS. A Record of Decision will be completed after the required 30-day waiting period and will be publicly available. The responsible Federal official and decision maker for the NRCS is the Kansas NRCS State Conservationist.

Public Scoping Process

Federal, State, Tribal, local agencies and representatives, and the public were invited to take part in this watershed plan scoping period through which coordination, sought input on issues of economic, environmental, cultural, and social importance in the watershed.

An open house public meeting was held January 13, 2022, from 4-6 p.m. in the Community Room at the Stafford County Annex in St. John, Kansas. The purpose of the meeting was to share information about the watershed planning process and to gather feedback from the public on how to improve agricultural water supply and fish and wildlife habitat within the Rattlesnake Creek Watershed in Stafford County.

Approximately 31 people signed into the meeting.

Public notices advertising the meeting were published in the *Great Bend Tribune*, *Hutchinson News*, *Stafford Courier*, *Pratt Tribune*, and *Saint John News* newspapers. Postcard invitations were sent to approximately 775 citizens and other interested parties near the proposed project area. A meeting notice was also published on the GMD-5's website.

Information shared at the meeting included the project background and location, project purpose and need, description of the purpose of and process for developing a watershed plan, environmental considerations within the project area, organizational information about the NRCS and GMD-5, and methods for providing public input. Draft scoping information and an executive summary were also provided at the meeting.

The project team received 11 comments during the specified 30-day comment period (December 29, 2021, through January 31, 2022).

Identification of Potential Alternatives, Information, and Analyses

NRCS invites agencies, Tribes, consulting parties, and individuals that have special expertise, legal jurisdiction, or interest in the Rattlesnake Creek Watershed project to provide comments concerning the scope of the analysis and identification of potential alternatives, information, and analyses relevant to the Proposed Action in writing.

NRCS will coordinate the scoping process to correspond with any required NHPA processes, as allowed in 36 CFR 800.2(d)(3) and 800.8 (54 U.S.C. 306108). The information about historic and cultural resources within the area potentially affected by the proposed Rattlesnake Creek project will assist NRCS in identifying and evaluating impacts to such resources in the context of both the National Environmental Policy Act (NEPA) and NHPA.

NRCS will consult with Native American tribes on a government-to-government basis in accordance with 36 CFR 800.2 and 800.3, Executive Order 13175, and other policies. Tribal concerns, including impacts on Indian trust assets and potential impacts to cultural resources and historic properties, will be given due consideration.

Authorities

This document is published pursuant to the NEPA regulations regarding publication of a NOI to issue an EIS (40 CFR 1501.9(d)). Watershed planning is authorized under the Watershed Protection and Flood Prevention Act of 1954, as amended, and the Flood Control Act of 1944.

Federal Assistance Programs

The title and number of the Federal Assistance Program as found in the Assistance Listing¹ to which this document applies is 10.904, Watershed Protection and Flood Prevention.

Executive Order 12372

Executive Order 12372, “Intergovernmental Review of Federal Programs,” requires consultation with State and local officials that would be directly affected by proposed Federal financial assistance. The objectives of the Executive Order are to foster an intergovernmental partnership and a strengthened federalism, by relying on State and

¹ See <https://sam.gov/content/assistance-listings>.

local processes for State and local government coordination and review of proposed Federal financial assistance and direct Federal development. This Rattlesnake Creek project is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

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Individuals who require alternative means of communication for program information (for example, braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or the USDA TARGET Center at (202) 720-2600 (voice and text telephone) or dial 711 for Telecommunications Relay Service (both voice and text telephone users can initiate this call from any phone). Additionally, program information may be made available in languages other than English.

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Kristin Ethridge,

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