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Mike Beam, Secretary

Laura Kelly, Governor

RECEIVED

August 23, 2019

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Sent via electronic mail to [karin@depewgill.com](mailto:karin@depewgill.com) and [randy@depewgillen.com](mailto:randy@depewgillen.com).

Big Bend GMD #5

Randall K. Rathbun  
Depew Gillen Rathbun & McInteer LC  
8301 E. 21<sup>st</sup> Street North - Suite 450  
Wichita, Kansas 67206  
*Counsel for Audubon Society of Kansas*

**Re: In the Matter of the U.S. Fish and Wildlife Service's Impairment Complaint, Water Right File No. 7,571.**

Dear Mr. Rathbun:

This letter is in response to the letter you sent on behalf of the Audubon Society of Kansas ("AOK") dated August 16, 2019, regarding the formal notice to not proceed with hearings to establish the local enhanced management area proposed by the Big Bend Groundwater Management District No. 5 ("GMD5"). In that letter you make two primary requests, the first, requesting acknowledgement that AOK is party to any proceedings and has standing under the Kansas Judicial Review Act ("KJRA") to intervene in any action and, second, that you be provided notice of any action as if you were a party.

GMD5's request for review by the Secretary of Agriculture is currently under consideration and we should know soon whether he intends to conduct an administrative review. Since this case is under active consideration, we decline to address whether AOK is a party to any proceeding, other than to note the current request for review is based on the narrow issue of when the Chief Engineer is required to initiate proceedings to designate a local enhanced management area and not on the resolution of the impairment itself. Further, the facts in the present case are very different than those you cite in *Cochran* or *Bremby*, making it far from clear that AOK is party with proper standing. In any case, it is beyond the authority of the Chief Engineer to make any acknowledgement at this time.

As there is much public interest in how the impairment of Quivira National Wildlife Refuge is solved, we will continue to provide notice directly to the parties affected by any orders issued and continue to timely post notices, information, and other correspondence on our website.

Sincerely,

David W. Barfield, P.E.  
Chief Engineer