

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF KANSAS

AUDUBON OF KANSAS, INC. )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 UNITED STATES DEPARTMENT OF )  
 THE INTERIOR; *et al* )  
 )  
 Defendants. )  
\_\_\_\_\_ )

Case No.: 2:21-cv-02025

**MOTION TO INTERVENE**  
**AND BRIEF IN SUPPORT**

**BIG BEND GROUNDWATER MANAGEMENT DISTRICT NO. 5's**  
**MOTION TO INTERVENE AND BRIEF IN SUPPORT**

Big Bend Groundwater Management District Number 5 (the "District") moves to intervene in this action on behalf of Defendants pursuant to Fed. Rule Civ. Pro. Rule 24.

The District is referenced numerous times throughout the Plaintiff's Complaint, reflecting the depth of its involvement in the events giving rise to this case. The District's Motion to Intervene ("Motion") is timely, and it has direct, substantial, and legally protectable interests in the outcome of this litigation. The District has been working with the Defendants for years to develop a sustainable, long-term plan to resolve the impairment complaint brought by the U.S. Fish and Wildlife Service in regard to its water right for the Quivira National Wildlife Refuge and is a party to the Memorandum of Agreement that Plaintiff seeks to void. Furthermore, the District and its constituents hold junior water rights that would be subject to the administrative orders sought by Plaintiff. No existing party adequately represents the District's interest. Therefore, this Court's disposal of the action without the District's involvement would negatively impact the District's ability to protect its interests and those of its constituents. In support of its Motion, the District avers and states as follows:

1. All water in the state of Kansas belongs to the State of Kansas and is appropriated pursuant to the Kansas Water Appropriation Act, K.S.A. 82a-701 *et seq.* ("KWAA").

2. Plaintiff's claim is based on the KWAA.

3. Plaintiff's claim alleges that failure to properly administer water rights under the KWAA has led to impairment of senior water rights held by the U.S. Fish and Wildlife Service ("the Service") for the Quivira National Wildlife Refuge has led to violations of federal law.

4. The Kansas Department of Agriculture's Division of Water Resources ("KDA-DWR") is the state of Kansas agency charged with administration and enforcement of the KWAA.

5. KDA-DWR has lawfully delegated the management of Kansas groundwater resources by creating special groundwater management districts pursuant to K.S.A. 82a-1020. The District was established to manage water in the Rattlesnake Creek basin.

6. Plaintiff's prayer for relief seeks several declaratory judgments that, if granted, would require the District to administer or possibly terminate junior water rights located within the District's boundaries.

7. Plaintiff also seeks the Court's declaration that the 2020 Memorandum of Agreement ("MOA") between the Service and the District is void, allegedly because the Service entered the agreement *ultra vires* and in violation of federal law.

8. The District has incurred and continues to incur significant expenses involved in project planning, engineering, hydrologic modeling, and the like to resolve issues related and subject to Plaintiff's challenge in the present action.

9. The District has relied on the MOA Plaintiff challenges in this action to obtain federal funding to begin development of an augmentation plan.

10. Plaintiff seeks declaratory judgments that would improperly restrict Defendants' and the District's discretion to pursue plans to manage the groundwater in the Rattlesnake Creek basin.

11. The District and its constituents have substantial economic and real property interests in the disposition of water rights, the development of a sustainable, long-term solution to the Service's impairment complaint, and the negotiated MOA between the Service and the District, all of which are the subject of the present action. Disposing of this action without the District's participation will impair the District's ability to protect its interests and those of its constituents.

12. No existing party adequately represents the District's interests.

13. Intervention by the District will not unduly delay the proceeding or prejudice the rights of the original parties to the case; rather, it will expedite the adjudication of those rights and assist the Court in implementing that adjudication.

Pursuant to Fed. R. Civ. P. Rule 24(c), a brief in support is attached.

Respectfully submitted,

STINSON LLP

/s/ Lynn D. Preheim

Lynn D. Preheim, KS #13300

Aimee D. Davenport, MO #50989\*

Christina J. Hansen, KS #26008

STINSON LLP

1625 N. Waterfront Parkway, Suite 300

Wichita, KS 67206

Telephone: (316) 265-8800

Facsimile: (316) 265-1349

[lynn.preheim@stinson.com](mailto:lynn.preheim@stinson.com)

[aimee.davenport@stinson.com](mailto:aimee.davenport@stinson.com)

[christina.hansen@stinson.com](mailto:christina.hansen@stinson.com)

*Attorneys for Groundwater Management District  
No. 5*

\*A motion for pro hac vice admission of Ms. Davenport is being filed contemporaneously with this motion.

**CERTIFICATE OF SERVICE**

I hereby certify that on March 9, 2021, I electronically filed the above and foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filings(s) to the following:

Randall K. Rathbun #09765  
Dylan P. Wheeler #28661  
DEPEW GILLEN RATHBUN & MCINTEER, LC  
8301 E. 21<sup>st</sup> Street N., Suite 450  
Wichita, KS 67206-2936

Richard Seaton #05994  
SEATON, SEATON & DIERKS, L.L.P  
410 Humboldt Street, Suite 6031  
Manhattan, KS 66502

Burke W. Griggs #22805  
GRIGGS LAND & WATER, LLC  
1717 W. 7<sup>th</sup> Street  
Lawrence, KS 66044

*Attorneys for Plaintiff*

*/s/ Lynn D. Preheim*

\_\_\_\_\_  
Lynn D. Preheim

*Attorney for Groundwater Management*

*District No. 5*