

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF KANSAS

AUDUBON OF KANSAS, INC.,

Plaintiff,

-vs-

UNITED STATES DEPARTMENT OF THE
INTERIOR, *et al.*,

Defendants,

BIG BEND GROUNDWATER
MANAGEMENT DISTRICT No. 5,

Intervenor.

Case No. 2:21-CV-02025-HLT-JPO

**MOTION TO DISMISS BY DEFENDANTS MICHAEL BEAM,
SECRETARY OF THE KANSAS DEPARTMENT OF AGRICULTURE &
EARL LEWIS, CHIEF ENGINEER OF THE KANSAS DEPARTMENT
OF AGRICULTURE, DIVISION OF WATER RESOURCES & MOTION
TO REMAIN AS INTERVENOR-PARTY BY EARL LEWIS, CHIEF
ENGINEER OF THE KANSAS DEPARTMENT OF AGRICULTURE,
DIVISION OF WATER RESOURCES**

COMES NOW, Defendants Michael Beam, Secretary of the Kansas Department of Agriculture (“KDA Secretary) and Earl Lewis, Chief Engineer of the Kansas Department of Agriculture, Division of Water Resources (“Chief Engineer”) (collectively the “Kansas Defendants”), by and through their counsel of record, Tyler E. Heffron, Derek S. Casey, and Kacey S. Mayes of Triplett Woolf Garretson, LLC, and Kenneth B. Titus, Chief Counsel of the Kansas Department of Agriculture and Special Assistant Attorney General, and Stephanie A. Murray and Kelly Ann Navinsky-Wenzl, Special Assistant Attorney Generals and Staff Attorneys of the Kansas Department of Agriculture, and respectfully move the Court for an order dismissing any

claims for relief asserted against them in this action, pursuant to Fed.R.Civ.P. 12(b)(1), (6) and (7), based on lack of subject matter jurisdiction, failure to state a claim upon which relief can be granted, and failure to join all indispensable parties. The Chief Engineer further requests relief from the Court that after the claims against the Kansas Defendants are dismissed, and if claims against other parties remain viable in this action, that he remain as an intervenor-party hereto for the limited purpose of protecting and asserting Kansas' significant statutory, regulatory, and common law interests in the sovereign administration of water within its borders. *See* Fed.R.Civ.P. 24(a)(2) & (b)(2); K.S.A. § 82a-701, *et seq.* In support of the foregoing, the Kansas Defendants contemporaneously filed a Memorandum in Support of their Motion to Dismiss and the Chief Engineer's Motion to Remain as Intervenor-Party, which is hereby incorporated by reference in its entirety.

WHEREFORE, the Kansas Defendants respectfully request, pursuant to Fed.R.Civ.P. 12(b)(1), (6), and (7), that any claims for relief asserted against them in this action be dismissed for lack of subject matter jurisdiction, failure to state a claim upon which relief can be granted, and failure to join all indispensable parties. Further, the Chief Engineer respectfully requests that after the claims for relief against the Kansas Defendants are dismissed, and if claims against other parties remain viable in this action, that he remain as an intervenor-party hereto for the limited purpose of protecting and asserting Kansas' significant statutory, regulatory, and common law interests in the sovereign administration of water within its borders, pursuant to Fed.R.Civ.P. 24(a)(2) and (b)(2) and the Kansas Water Appropriation Act, K.S.A. § 82a-701 *et seq.* The Kansas Defendants request such other relief the Court deems just and proper.

Respectfully submitted,

By /s/ Tyler E. Heffron

Tyler E. Heffron, #22115
Derek S. Casey, #15125
Kacey S. Mayes, #28224
TRIPLETT WOOLF GARRETSON, LLC
2959 North Rock Road, Suite 300
Wichita, KS 67226
Telephone: (316) 630-8100
Facsimile: (316) 630-8101
theffron@twgfirm.com
dscasey@twgfirm.com
ksmayes@twgfirm.com

AND

Kenneth B. Titus, #26401
Chief Counsel & Special Asst. Atty. General
Kelly Navinsky-Wenzl, #25480
Staff Attorney & Special Asst. Atty. General
Stephanie A. Murray, #27635
Staff Attorney & Special Asst. Atty. General
KANSAS DEPARTMENT OF
AGRICULTURE
1320 Research Park Drive
Manhattan, Kansas 66503
Telephone: (785) 564-6715
Facsimile: (785) 564-6777
Kenneth.titus@ks.gov

*Attorneys for Michael Beam, Secretary of the
Kansas Department of Agriculture, and Earl Lewis,
Chief Engineer of the Kansas Department of
Agriculture, Division of Water Resources*

CERTIFICATE OF SERVICE

I certify, pursuant to D. Kan. Rule 5.4.9, that service of this document was accomplished through the Notice of Electronic Filing for parties and attorneys who are filing users in this case.

/s/ Tyler E. Heffron

Tyler E. Heffron, #22115