

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

AUDUBON OF KANSAS, INC.,)
)
Plaintiff,)
v.) Case No. 21-2025-HLT
)
UNITED STATES DEPARTMENT OF THE)
INTERIOR, et al.,)
Defendants.)

ORDER

Plaintiff brings claims alleging defendants violated their statutory duties to protect the senior water right held by the U.S. Fish and Wildlife Service and relied upon by the Quivira National Wildlife Refuge (“the Refuge”). Among other things, plaintiff alleges defendants entered an illegal agreement with the Big Bend Groundwater Management District No. 5 (“the District”), which permitted irrigators holding junior rights to starve the Refuge of groundwater. The District has filed a motion to intervene as a defendant in this action as a matter of right under Fed. R. Civ. P. 24(a) (ECF No. 11).¹ The parties have

¹ Alternatively, the District asserts permissive intervention under Fed. R. Civ. P. 24(b) is appropriate. ECF No. 12 at 12.

filed no response to the motion, and the time for doing so under D. Kan. Rule 6.1(d) has run. Accordingly, the motion is granted as unopposed.²

In addition to intervention being unopposed, the court finds intervention appropriate for the reasons set forth in the District's motion: (1) the application to intervene is timely, (2) the District claims an interest relating to the property or transaction which is the subject of the action, (3) the District's interests may be impaired or impeded by the outcome of this case, and (4) the District's interest is not adequately represented by existing parties.³

IT IS THEREFORE ORDERED that the District's motion to intervene is granted. The District shall file its response to plaintiff's amended complaint (ECF No. 18) by **April 14, 2021**.

Dated March 24, 2021, at Kansas City, Kansas.

s/ James P. O'Hara
James P. O'Hara
U.S. Magistrate Judge

² See D. Kan. Rule 7.4 ("If a responsive brief or memorandum is not filed within the Rule 6.1(d) time requirements, the court will consider and decided the motion as an uncontested motion. Ordinarily, the court will grant the motion without further notice.").

³ See, e.g., *Elliot Indus. Ltd. P'ship v. BP Amer. Prod. Co.*, 407 F.3d 1091, 1103 (10th Cir. 2005) (discussing Rule 24(a) factors).