

AOK Continues Pressure on Behalf of Quivira Water Right

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In 2018, Prairie Wings recounted the plight of Quivira National Wildlife Refuge, deprived for years by irrigators upstream of the water to which it is legally entitled. The Refuge owns a senior water right issued in 1957, entitling it to 14,632 acre feet per year. Despite this priority, irrigators upstream have been allowed to create frequent and substantial shortages there, through agricultural irrigation.

In 2017, in a letter to the Kansas Division of Water Resources (DWR), AOK demanded that the senior water right of Quivira National Wildlife Refuge be enforced. We said the law requires DWR to reverse the longstanding depletion of water at Quivira caused by upstream violators. DWR itself had found in 2016 that the wetlands of the Refuge were “regularly and substantially” lowered because of irrigation upstream, in violation of its rights.

Since the 2017 letter, there have been several new developments:

(1) AOK’s attorney, Randy Rathbun, wrote the U.S. Fish and Wildlife Service and DWR saying if they do not act to protect Quivira’s water right, AOK will file suit to force that protection, and will request an award of attorney fees.

(2) USFWS then filed its request to secure water rights with DWR.

(3) Representatives of AOK, including Rathbun, met with DWR’s chief engineer and staff, and with the state secretary of agriculture, to discuss resolution without litigation. Some progress was made.

(4) The Kansas Department of Health and Environment issued its report on the quality of the water needed when restoring Quivira’s rights. KDHE also recommended that the chief engineer codify maximum levels of chloride in an administrative order, and that careful monitoring of the water quality be maintained.

(5) Groundwater Management District No. 5 (GMD5), an organization of local irrigators, submitted a proposal for a Local Enhanced Management Area (“LEMA”) in February, 2019, which

was rejected by DWR on July 30, 2019. Barfield gave notice of his intent to “administer water rights” on or about Sept 1, to be effective Jan 1, 2020.

(6) On August 16 on behalf of AOK Rathbun requested notice of Barfield’s future actions and also a right to participate in administrative proceedings. Barfield replied on August 23, without committing.

(7) Then on August 27, a group of ten interested entities wrote to Barfield asking that he reconsider his decision to administer water rights. The group included various agricultural trade organizations, and also the Nature Conservancy and Kansas Bankers Association.

(8) On August 30, Secretary of Agriculture Mike Beam denied GMD5’s request for a stay and granted administrative review.

(9) Barfield replied to the ten entities on September 20, denying their request that he reconsider, citing the risk of litigation if he granted it. He issued a map dividing the watershed of Rattlesnake Creek into three zones, with reductions in irrigator usage to be spread over three years. He said he “fully supports augmentation” but that it must be done through local action. He also proposed a local pooling of water rights through a Water Conservation Area. In justification of his position, he mentioned that a court-ordered solution could “result in much more significant reductions” for the irrigators.

As the leading advocate for conservation in Kansas, AOK is determined to vindicate Quivira’s water rights, either through administrative action or in the courts. It is worth emphasizing that farmers using irrigation are generally able to make good money even when they reduce their water usage. Two studies at Kansas State University have shown this to be the case. See Golden and Leatherman, “Impact Analysis of the Walnut Creek Intensive Groundwater Use Control Area,” *Journal of Regional Analysis and Policy* 47(2):176-187; and Golden, “Monitoring the Impacts of Sheridan County 6 Local Enhanced Management Area,” *Interim Report* for 2013-2015, November 8, 2016. So this is not necessarily a zero-sum game, and the needs of agriculture and of conservation may both be capable of being satisfied.