



NOTICE OF AOK LAWSUIT

on behalf of Quivira Water Right

Dick Seaton

American Avocet (*Recurvirostra americana*). Photo by Dave Rintoul

AOK has gone to court to protect Quivira National Wildlife Refuge.

On January 15, 2021, Audubon of Kansas filed a federal lawsuit against Kansas and federal government defendants asking the court to force them to restore and protect the water rights of the Quivira National Wildlife Refuge.

Randy Rathbun, AOK trustee and former board chair, is our lead attorney. Much of the heavy research and drafting was done by Burke Griggs, a water law expert at Washburn University Law School, and by Randy's young associate Dylan Wheeler. The attorneys are all donating their services, but will seek compensation from the government defendants if AOK is successful.

The suit names as defendants the U.S. Department of Interior and its Secretary, the U.S. Fish and Wildlife Service and its Director, the Kansas Secretary of Agriculture, and the Chief Engineer of the Kansas Division of Water Resources.

Quivira is a 22,135 acre wildlife refuge in south central Kansas, which provides sanctuary to a wide variety of waterfowl, shorebirds and other wetland species. It is a wetland of international importance.

The federal government owns it and the Service manages it. But its water rights are determined under Kansas law. AOK's suit claims

that the defendants have ignored and violated state and federal law, and that the result has been to deprive the Refuge of water it needs and is legally entitled to.

In 1957 the Service obtained a Kansas water right which has priority over all later rights. But both state and federal defendants have allowed upstream irrigators in the Rattlesnake Creek basin to exceed the limits of their rights for the last 34 years, reducing the water available to Quivira.

AOK's case alleges violations of several federal laws, including the National Wildlife Refuge System and Improvement Act of 1997, the Endangered Species Act, and the National Environmental Policy Act. It also claims defendants have violated the Kansas Water Appropriation Act.

Our federal complaint asks the court for (1) a declaration that the rights of the Refuge have been violated, (2) an injunction barring further violations, (3) an order requiring the defendants to take all steps necessary to eliminate upstream violations, and (4) an order for AOK's attorney fees and costs.

Editor's note: In late October, the judge hearing the case dismissed AOK's suit on procedural grounds; our legal counsel informs us that they have decided to appeal to the Tenth Circuit Court of Appeals. Once again, stay tuned by checking the AOK website for further developments.