

City, Wagonhound lock horns in second water rights battle

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Despite a virtually identical case still pending with the Wyoming State Supreme Court, Wagonhound Land and Livestock, LLC and the city of Douglas went head to head June 22 over another petition for water rights.

The petition requests a transfer of water rights belonging to Gregory A. and Carolyn A. Stinson, amounting to 4.08 cfs, approximately 30 miles upstream from Orin Junction to Wagonhound's Morton Ranch. The hearing was presided over by Randy Tullis, superintendent of water division I, with the assistance of Senior Assistant Attorney General Marian Yoder.

In between these two points of diversion lies the city of Douglas along with the 12 ranchers and irrigators who also protested the petition.

The petitioners, represented by attorneys Mistee Godwin and Robert Berger, argued that the amount of water requested in the petition was "insignificant" considering the entire flow of the North Platte River.

"If this petition is granted, it would result in the continued use of the very same water rights with the same priority dates at the same rate of diversion from the same source of supply for the same agricultural irrigation purposes on different lands," Berger said.

"The point their attorneys obsessed on was asking the city, 'When haven't you been able to pull up water from the river.'" City Administrator Bobbe Fitzhugh, who represented the city of Douglas as a protestant, said.

(The protestants decided to use their limited resources to pay for legal representation at the State Supreme Court level and therefore had no legal council at this hearing.)

"Ninety-five percent of the North Platte is regulated," Fitzhugh said. "It's storage for Nebraska. Only a little dab of that river is divided amongst the irrigators.

"They keep talking about how insignificant this amount of water is. The only point I was trying to make is that you can serve entire communities' irrigation needs with the amount of water they're talking about."

Tributaries played a major part in the protestants' argument. Fitzhugh and Victor Garber, who spoke as an affected rancher, said the current point of diversion falls after several tributaries flow into the Platte River.

"In the Wagonhound-VenJohn petition, we protestants demonstrated that there was a contribution out of the LaBonte and Wagonhound tributaries that represented 7.6 percent of the VenJohn water right," Garber said.

"Those two tributaries represent only two of the 25 found between [Wagonhound and the Stinson ranch]."

Jeff Fassett, former superintendent of the board of control and current vice president of HDR, and Ray Lovitt, Board of Control field commissioner for division I, testified that it would be logical to assume that if gauging stations on the LaBonte and Wagonhound Creeks demonstrated a 7.6 percent contribution to VenJohn, it would have to be the same for Stinson because it is measuring the same tributaries.

That those two creeks represented only two of 25 tributaries, the two witnesses concluded that the other 23 tributaries must contribute to the water collected by the Stinsons.

"The only reason the rate of contribution cannot be measured for the other 23 tributaries is because only LaBonte and Wagonhound have gauging stations," Garber said.

Fitzhugh and Garber repeatedly stated their position was one that is not against all water rights transfers, but those that do not follow criteria spelled out in state statute 41-3-104.

The statute states: "Water transferred by the granting of the petition shall not exceed the amount of water historically diverted under existing use, nor exceed the historic rate of diversion under the existing use, nor increase the historic amount of consumptively used under the existing use, nor decrease the historic amount of return flow, nor in any manner injure other existing lawful appropriators."

Fitzhugh and the irrigators successfully argued in the VenJohn hearing that the tributaries contributed to the water rights. The Board of Control decided that four percent was coming from the tributaries, (a number Fitzhugh argued was arbitrarily chosen as roughly half of their 7.6 percent conclusion).

"We were somewhat encouraged by the fact for the first time, I think ever, the Board of Control did not automatically grant an agriculture to agriculture transfer at 100 percent," Fitzhugh said.

"[Wagonhound's attorneys] pretend as if VenJohn never happened," Fitzhugh said. "They want a 1:1 ratio."

Although Stinson argued in his testimony that he had virtually no return flow using his flood irrigation system, Fitzhugh and Garber argued to the contrary.

"They want to take flood irrigation and transfer it upstream and do sophisticated pivot systems; pivot irrigation is much more efficient and you have zero return flow typically," Fitzhugh said. "You use every bit of water you pull out of the river.

"You can water every acre you have twenty-four seven for an entire irrigating season if you choose to because [all you have] to do is flip a switch."

During the hearing, Gregory Stinson testified that he only irrigated some of his property twice out of the past five years and other areas only twice out of the past nine years.

The state engineer used infrared photography to determine what acreage of Stinson's property was irrigated. Wagonhound's attorneys argued that the photos were taken in advance of when the Stinsons would have irrigated the tracks in question.

"That [argument] was in direct contrast to Stinson's testimony," Garber said. "It would seem that the historical use would be such that would not allow a transfer of all this water under Wyoming statute on a 1:1 ratio."

In addition to Greg Stinson's testimony, Wagonhound's attorneys put Greg Richendifer, the farming manager for Wagonhound, on the stand. Richendifer argued that the water transfer would simply restore irrigation to what it was on the Morton Ranch (what is now Wagonhound's) property in the early 1990s.