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Water transfer dispute goes to state board

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DOUGLAS -- Around 50 people packed the Converse County Courthouse meeting room for two days of testimony and exhibits dealing with a proposed water rights transfer.

Some were simply curious, but most were people with water rights in between the two points of transfer -- and were concerned about how their own rights to withdraw water from the North Platte River could be affected.

The testimony Thursday and Friday took place before hearing chairman Randy Tullis, Division 1 superintendent for the state engineer's office. He will forward transcripts and evidence to the state Board of Control, which administers water rights and will make the decision whether to approve Wagonhound Land and Livestock's petition.

Wagonhound attorney Bob Berger of Lonabaugh and Riggs of Sheridan said the petition should not affect anyone else's right to pull water from the river.

His client wants to take 2.5 cubic feet per second of water and move the point of diversion upstream about 30 miles to irrigate hay fields Wagonhound owns a few miles northwest of Douglas. The water would irrigate the same number of acres as it currently does at Steven M. VenJohn's property near Orin Junction.

Berger emphasized that the petition asks to move rights that would retain the same priority date, diversion rate and purpose, just to a different location.

That location, commonly referred to as the Morton Place, was once fertile ag land before sizable water rights associated with the property were sold far upstream to the town of Mills and the Dave Johnston Power Plant. Wagonhound bought the land after that sale. Now, Berger said, the ranch is making "great strides" in restoring the land to its historic, productive use.

"We feel quite confident ... that there will be no injury to other appropriators," Berger said. "It will not make a difference, whether it is diverted upstream or downstream."

About 24 people with water rights between the two points hired Cheyenne water attorney Harriet Hageman to represent them at the hearing. The protestors said they believed their right to water would be injured if the transfer is allowed.

Hageman said that while Wagonhound's attorney makes the transfer sound simple, it isn't. She described 2.5 cubic feet per second as anything but minimal. Instead, she said, it's an amount that, drawn out over a 153-day irrigation season, would supply 3,000 people with a full year of municipal

water use.

That could injure interveners, she said. The transfer could also result in increases in historic diversion rates, the rate of diversion and total consumptive use -- all of which cause injury, she maintained.

Several engineering and water experts testified for each side about whether the transfer would, in fact, cause injury -- one of the main considerations before the Board of Control.

Among those was the city of Douglas, represented by Administrator Bobbe Fitzhugh. Her testimony explained that the city is concerned not only about its ability to exercise its water rights to the North Platte, but also about the trend of separating rights from land that could someday be subdivided.

In 2004, water rights attached to county land now called Sundance Meadows were sold to Wagonhound. As the pricey subdivision developed, homeowners discovered their wells wouldn't produce enough flow for household use, and asked the city to attach to the municipal water system.

A \$4.8 million new treatment plant should come on line in May, and would be a more integral part of the city's water system as population grows. Fitzhugh said that while the city relies on its river water treatment plant as a backup source right now, Douglas' population is expected to at least double within the next seven to 10 years. Outlying areas depending on city water could also expand rapidly.

As municipal needs grow, Fitzhugh said, any transfers that could affect the city's rights are of great concern. She said testimony presented by experts on both sides of the matter had not changed her belief that the city's rights could be injured.

Hageman cut short additional testimony by her clients after Fitzhugh spoke, resting the protestors' case at nearly 5 p.m. Friday.

The transcripts, evidence and written closing arguments will go to Board of Control, which is composed of four superintendents from the state's four water districts and the state engineer. Tullis said the board will likely begin considering the case at its May meeting, but would not reach a decision until its August meeting, coincidentally scheduled in Douglas.