

Bates Creek regulation case continues

Casper – In a case between Bates Creek groundwater users and the State Engineer's Office (SEO), the groundwater users have recently filed a notice of appeal with the Wyoming Supreme Court.

The court case concerns the senior surface water rights and the junior groundwater rights in the Bates Creek Basin south of Casper.

"There's a statute in Wyoming law that says that to regulate junior groundwater the SEO has to show that the groundwater and the surface water come from one source of supply," says Cheyenne attorney Kara Brighton, of Hageman and Brighton, P.C., who's representing the groundwater users. "Our contention is the State Engineer's Office hasn't met the burden required to regulate."

Although she concedes that there is some connection between the surface and groundwater, she says the question remains whether it comes from one source of supply. "In our view, the level of connection has yet to be proven by the State Engineer's Office," she says, adding, "And whether there's enough proof that the statute requirements have been met to regulate the junior groundwater rights for the benefit of the senior surface water rights."

A landowner in the middle of the basin placed the first call for water in 2007, which regulated the upper users, including groundwater user Dennis Rivett. "We had briefed that case to the court, but it was delayed and no decision had been issued before the 2008 irrigation season began, and at that point someone lower in the basin put in a call, which regulated all the groundwater users within the basin," says Brighton. This prompted groundwater user Dave Whisler to join the case.

That delay in the court decision resulted in three consolidated actions in the current case: one for Rivett in 2007, one for Rivett in 2008 and one for Whisler in 2008.

"Most water users in the Bates Creek Basin rely on their ground water wells to irrigate their hay, so this has significantly affected their ability to operate," says Brighton.

To date there has been no call for regulation in the 2009 water year. Because the District Court affirmed the SEO's decision to regulate, the SEO hasn't conducted additional work to prove the level of connectivity of the water in the basin.

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