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Geringer v. Runyan, 235 P.3d 867 (Wyo. 2010)

WYOMING

Geringer v. Runyan, 235 P.3d 867 (Wyo. 2010) (holding that the abandonment of a water right is determined by whether an aquifer has a limited amount of water available, not whether the right is limited by a shared flow rate of the well).

The Geringers (“Plaintiffs”) petitioned the Wyoming State Board of Control (the “Board”) to have their neighbors’ (“Appellees”) water rights from particular wells declared abandoned. Prior to their ownership, the Plaintiffs’ and Appellees’ lands were held in common ownership. At that time, the state adjudicated additional supply water from the Leonard No. 1 Well and Chamber No. 2 Well to irrigate what is now the separate lands of the Plaintiffs and Appellees. The Plaintiffs claimed that their use of the wells was hindered because the Plaintiffs’ pivot irrigation system requires the full authorized flow rate from the well right; however, the Plaintiffs could only obtain full water flow when the Appellees did not use the wells. The Board denied the Plaintiffs’ petition on the grounds that the Plaintiffs lacked standing because they failed to prove a required element. The Board reasoned that the Plaintiffs must show that the water in the aquifer is limited; however, the Plaintiffs only showed a limitation on the water flow, not on the water available in the aquifer. The Plaintiffs appealed to the District Court, Platte County, which affirmed the Board’s decision.

The Plaintiffs appealed to the Supreme Court of Wyoming (“the court”); the court reviewed the issue *de novo*. The court stated the petitioners applying for water right abandonment must prove three elements: (1) the petitioner has a valid water right equal to or junior to the water right sought to be declared abandoned; (2) the water right the petitioner holds must be from the same water supply he or she petitioned the court to declare abandoned; and (3) the petitioner will benefit if the Board declares the water right abandoned or the petitioner will be harmed if the water use is resumed. The first two elements went undisputed; the court focused on the third element.

While the court disagreed with the Board’s factual finding, the court agreed with the Board’s overall decision. The Board, without sufficient supporting evidence, found that the Plaintiffs were taking excess water based on the amount of water needed for their crops. However, the court affirmed the Board’s decision because the Plaintiffs were confusing the issue; abandonment of water rights turns on whether an aquifer is limited by the amount of water available in that aquifer, not whether, as the Plaintiffs claimed, the water is limited by the flow rates of wells. Therefore, the Plaintiffs lacked standing because they did not prove they would be harmed or benefited by the Board’s denial or approval of their petition for abandonment of a water right.

In summary, the court affirmed the district court and Board decisions that the Plaintiffs lacked standing to petition for an abandoned water right because Plaintiffs did not prove they would be

harmed or benefited from a declaration of water right abandonment. Therefore, abandonment of a water right turns on whether an aquifer is limited by the amount of water available in that aquifer, not whether the water is limited by the flow rates of wells

Nicole Tachibana

Wilson v. Tyrrell, 246 P.3d 265 (Wyo. 2011) (holding that (1) section 41-3-613 of the Wyoming Statutes Annotated did not require the State Engineer to mandate the installation of a headgate at the point where water rights holders diverted water, and (2) the scope of an easement used to transport water is defined by its historic use).

This case involved three different consolidated cases concerning a quiet title action brought by the landowners (“Wilsons”) against Lucerne Canal and Power Company (“Lucerne”) and Mr. Tyrrell, the Wyoming State Engineer. In general, the Wilsons challenged the scope of an easement owned by Lucerne, which provided for the transport of water from the North Platte River and a right-of-way access across the Wilsons’ property to the headgate of the Lucerne irrigation system. Toward this end, the case involved seven issues appealed from three prior district court orders and decisions of the State Engineer.

Lucerne perfected the water right involved in 1893. The adjudicated point of diversion was a headgate that drew water from the eastern branch of the North Platte River. The river divides upstream of the headgate, and in 1913, Lucerne constructed a diversion dam on the main channel of the river in order to maintain a sufficient flow to his headgate on the eastern branch. Ultimately, the eastern branch maintained its flow only because of Lucerne’s diversion dam. However, the watercourse of the eastern channel transversed the Wilsons’ property and created an island between the eastern channel and the main river course.

Prior Wyoming Supreme Court (“court”) decisions (*Wilson I* & *Wilson II*) decided several issues critical to the disposition in this case. First, the court resolved *Wilson I* through the issuance of a consent decree recognizing the existence of Lucerne’s easement and right-of-way across the Wilsons’ property. Second, in *Wilson II*, the court determined that the eastern channel no longer remained part of the river and that the main channel of the river was the actual boundary of the Wilsons’ property now subject to Lucerne’s easement. The subject case decided four water law issues dealing with the extent of Lucerne’s easement.

First, the court determined that the State Engineer’s decision not to require Lucerne to install a headgate at its diversion dam satisfied the requirements of section 41-3-613 of the Wyoming Statute. The Wilsons claimed that the statute required a substantial headgate at the diversion dam built on the main channel to direct water into the eastern channel. However, the court found that the statute gave the