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Wilson v. Tyrrell, 246 P.3d 265 (Wyo. 2011)

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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

State Engineer discretion to require a headgate. Because the State Engineer determined the existing headgate was sufficient, the court held that nothing in the statute required Lucerne to build another headgate.

Second, the court determined that the State Engineer's decision not to require a headgate at the diversion dam was not arbitrary and capricious. The court found that the State Engineer considered Lucerne's water right, the easement granted in previous decisions, the factual circumstances on the property, and treated the diversion as it would any other in the state. For these reasons, the court held that the State Engineer's decision was not arbitrary and capricious.

Third, the court determined that the District Court of Goshen County ("district court") substantially complied with its mandate in *Wilson II* to locate the easement. The court again remanded the issue of quiet title on the Wilsons' property. It directed the district court to issue an order quieting title on the property subject to the Lucerne easement and enter an order of the location of that easement. The district court had previously issued an order of location after *Wilson II* and that order of location is the substance of the following issue on appeal.

Fourth, the court determined that the district court's order of location and extent of the easement was not clearly erroneous. The court speculated that the issue of location could be broken down two ways. Lucerne contended that whatever amount of water wherever flowing at any given time defined the historic use of the eastern channel. On the other hand, the Wilsons argued that where the water usually flows in the channel defined the easement. The court found that the Wilsons, as a practical matter, attempted to reargue an issue barred by *res judicata* and collateral estoppel because *Wilson I* had already determined the historic use of the easement. In *Wilson I*, the court determined that the historic use was to be wherever the channel was.

The court, therefore, affirmed the district court's finding on all issues but the quiet title issue, which the court remanded to the district court with the mandate to order the quieting of title on the Wilsons' property and to issue an order of location of Lucerne's easement.

Richard Neiley