

Water protesters go back to basics

By TAM MOORE
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REDMOND, Ore. — Those who don't like Oregon's handling of recent water allocations are going back to the basics, demanding the state comply with court orders establishing pre-1909 water rights.

The most visible argument may be over federal claims to adjust water use in the sprawling Malheur National Wildlife Refuge 40 miles south of Burns in Harney County. That case is before a state hearings officer. It's the tip of the iceberg with other challenges pending in the Grand Ronde Val-

ley of northeastern Oregon and the Lost River drainage of the Klamath Basin.

Circuit courts in Oregon decide validity of water rights that existed before 1909 when the state passed its first water permit law. The decrees provide road maps for allocation of water, including flows from the Donner und Blitzen River, which supplies the Malheur Refuge's water.

There's a difference between adjusting the post-1909 water rights, which are administered by Oregon's Water Resources Department, and those pre-1909 rights listed in a court decree.

"If you want to change the language of the decree, you go to the judge, not the Water Resources Department," says Laura Schroeder, the attorney who's han-



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Attorney Laura Schroeder says Oregon is trying to make water transfers that violate original court water right decrees.

dling the Malheur Refuge protest brought by Harney County Soil and Water Conservation District and Water for Life, a membership organization representing ranch and farm water users.

It's the third water right decree case Schroeder has filed in the past six months.

The Lost River case deals with clarification of specific land entitled to a decreed water right. The Grand Ronde case challenges an Oregon Water Trust application to transfer a decreed agricultural irrigation right to an instream flow benefiting fish.

Interest, and controversy, over water transfers led OWRD to form a task force this year examining revision of all the state's transfer rules. Water for Life said it may seek legislation to clarify what must

be done before water transfers are considered by OWRD.

Schroeder, in a presentation to the recent Oregon Cattlemen's Association convention, said changing the state's administrative rules won't change the hundreds of court decrees setting pre-1909 water rights. They are what the court said in the decree.

In the Grand Ronde case, she filed a request with Union County Circuit Court for an injunction halting the instream water transfer.

"Water Resources Department has neither the decree nor the statutory

authority to move water around" without going back to the local court Schroeder says.

Brad Harper, executive director of Water for Life, says there are actually two Malheur Refuge cases. The first, already in administrative hearing, involves transfer of 32,000 acres of rights mostly for livestock and irrigation into a new use "wildlife refuge." Water for Life contends the U.S. Fish and Wildlife Service forfeited most of those rights for non-use and OWRD won't act on petitions for cancellation.

The second Malheur case involves a USFWS filing on rights to water in ponds within the refuge, and a proposal to combine them with rights established in the Donner und Blitzen decree. It's to go to administrative hearing in January.