Ranchers and officials feud over water rights

Rachel Odell /

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BURNS - Harney County rancher Susie Hammond believes the best type of neighbor is the one you don't see too often, lends a hand if you need it, and to whom she offers help.

The matriarch of the Hammond Ranch, nestled in the Blitzen Valley about 60 miles south of Burns in eastern Oregon, said she doesn't like the neighbor she has: the U.S. Fish and Wildlife Service.

She accuses it of misusing the region's water - one of the West's most precious resources.

The Fish and Wildlife Service manages endangered species and wildlife refuges, including the 186,500-acre Malheur National Wildlife Refuge, which borders the ranch the Hammonds bought in 1964.

A towering woman with short, white hair, diamond rings on her fingers and a no-nonsense look, Hammond said the fights with the refuge began in the mid-1970s when the agency made drastic changes to its livestock grazing program.

Confrontations between the Hammonds and the refuge landed Hammond's husband, Dwight, in federal prison for several days in 1994 for interfering with federal contractors.

About 25 miles north of the Hammond ranch, in the cool offices of the Fish and Wildlife Service, deputy refuge manager Chad Karges acknowledges there is a ”long history” between the Hammonds and the refuge.

In a quiet voice, Karges says that officials are working hard to better relationships with all the Harney County neighbors, including the Hammonds.

Still, the bristling between the two neighbors - a rancher and the federal government - promises to continue.

The Hammonds are trying to stop the state from granting a winter water right for 820 cubic feet per second from the Donner und Blitzen River, which meanders from its headwaters on Steens Mountain north to Malheur Lake.

That's enough water to irrigate roughly 33,000 acres.

The river's flows vary depending on the time of year, with peak flows in the spring melting season of about 1,900 cubic feet per second.

The water right would allow the refuge to divert the water during the non-irrigation season, from Oct. 2 to March 14. During that time farmers in the lush valley likely couldn't use early spring runoff - water generated when warm spells that melt snow on Steens - to irrigate crops. That is when the ground is usually frozen and it is not the growing season.

But even though the farmers cannot use the water during that time, Hammond and an agriculture industry advocacy group known as Water For Life, along with some local officials, say the refuge shouldn't have it either.

Already the refuge has water rights to irrigate 33,000 acres during the irrigation season, from March 15 to Oct. 1.

”They would be taking the water away from Harney County,” Hammond said. ”We're looking at the refuge wanting to claim all of the water, all of the time with absolutely no consideration for future economic development.”

Refuge officials say the water right application just seeks to make legal a practice that has been ongoing for decades.

State officials asked the refuge to apply for the winter water right in the early 1990s, saying the agency needed to formally get a right to use the early season water.

The Hammonds and others objected to the water right request. They argued that the full 820 cfs is not available at least 50 percent of the time, which Oregon law requires before the state can grant a water right.

The refuge asked for an exemption to that rule, saying they would use any spring runoff up to 820 cfs. They also said the use of the water served a public good - essentially because it helped the federal agency fulfill its mission of protecting wildlife.

For decades, when spring run off was available, refuge officials diverted some of that water to roughly 33,000 acres to create wetlands and breeding grounds for the more than 130 species of migratory birds that stop by during their vernal travels.

”Spring migration starts in early January,” Karges said. ”You don't start putting water out the day the birds show up. We're trying to set the table.”

That ”table” is a series of wetlands with native grasses filled with bugs, insects and other delicacies to satiate the traveling birds.

But opponents of the water right application seem unlikely to budge.

”We are talking about a lot of water, and if they get this water right, it would without a question preclude any future development,” said Brad Harper, executive director of Water for Life.

That development for Harney County could be water storage ponds, or reservoirs, for livestock grazing on Steens Mountain, or it could include ”the entire universe of things,” Harper said.

Critics also take issue with how the refuge plans to use the water it diverts - both in the summer and in the winter. The refuge wants to transfer the official use of their water to a designation called ”wildlife refuge management,” which would be a broad, all-encompassing use that would include irrigation, dust and fire control, wetlands development and more.

Because officials are asking for flexibility within the definition of their water right, they also want the ability to move water around onto different lands. Typically, the water right is attached to a specific piece of land and must be applied on that property.

Under the refuge's transfer application, the water right could be moved anywhere on the refuge, depending on what refuge employees wanted to use the water for.

Critics of the refuge argue that wildlife refuge management is a waste of water and does not constitute a beneficial use.

”The highest input into the Harney County economy is cattle,” Hammond said. ”For the refuge to continuously negatively effect the cattle industry, for the refuge to not produce a beneficial crop on the best farm land in the valley is a crime.”

Under state law, beneficial uses may include irrigation for crop growing, fire and dust control, and more, said Adam Sussman, senior policy analyst at the Oregon Water Resources Department.

But critics say refuge officials want special treatment. They say it is not fair for the refuge to get more flexibility - the ability to irrigate any land so long as it is within refuge boundaries - when ranchers don't have that same flexibility.

Refuge officials say growing habitat for waterfowl is a complicated process that involves rotating irrigation of certain fields and moving water around, which is why they want more flexibility with their water.

”The way we irrigate is not typical for agriculture,” refuge biologist Rick Roy said. ”We grow ducks, not hay. We need flexibility.”

But the critics have little empathy for the federal government.

Stacy Davies is the ranch manager at Roaring Springs Ranch, a major livestock producer in Harney County. From 1997 to 2002, the ranch had permission to graze cattle on the refuge through a conservation agreement with the refuge.

Davies said the refuge will be receiving special treatment if the state allows officials to transfer the water away from the specific parcels of land to which it is assigned.

”If water resources will allow people to file for a ranch management water right to do what the refuge wants to do, I could support it (the refuge's application),” Davies said. ”But I think this is special treatment for the refuge.”

Sussman, of the water resources department, said officials would review a request if a rancher wanted to change the use of his water right from irrigation to ”ranch management.” However, the agency has not received any application like that, and officials would have to study it.

Refuge officials acknowledge that some people in the community resent the federal agency.

But Karges and refuge biologist Roy say they are working to meet with Harney County residents, help farmers with projects on their lands, develop better communication and essentially improve relationships.

”The dispute over water rights is just one part of the story,” Roy said during a recent early morning tour of the refuge. ”Steens is beautiful, the refuge is too. We're tired of the animosity. We have a job to do and we're not for one minute proposing to sacrifice the refuge to get along with anyone. That said, there are lots of ways to work together.”

Harney County Judge Steve Grasty, offered kudos to the refuge for trying to find solutions to the winter water question. He said he is trying to negotiate a compromise that will help secure some water for possible future development.

Pressed further, though, he offered the following insight into the Harney County citizens' sentiments.

”The ranching community today is under the same type of attack the Native Americans were a century ago,” he said. ”They lost everything, and now we feel like we're going to lose everything.”

In the high arid country of Harney County, ”water is everything,” rancher Davies said.

But federal officials warn against exaggerating the scope of the refuge's request for the wintertime water.

”That is not a huge amount of water,” said Michael Eberle, chief of the water resources branch for the U.S. Fish and Wildlife Service in Oregon and Washington. ”We're taking it out at 10 different places and spreading it over 33,000 acres.”

Karges and Roy of the refuge have been introducing Harney County residents to a collaborative, problem solving process that originated in Montana. Known as the Blackfoot Challenge, the process relies on a group of land owners to coordinate management of the natural resources Blackfoot River, involving local, state and federal government officials.

Karges said such a process could help local residents work with the federal government to ensure that all sides were represented when it came to finding common ground with natural resource management.

”We're trying to get more resolution locally,” Karges said. ”If you want to protect wildlife, you protect the rural lifestyle.”

Whether local residents heed their call for cooperation remains to be seen.

”The history of the refuge is not good,” Rancher Davies said. ”But there are opportunities to change that. I would really like to see the refuge pursue opportunities to build real strong relationships with its neighbors, and they could.”

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