

MEMO

FROM: Allen Merritt

DATE: 6/20/2013

TO: 37U WD file and TC-37-~~62~~62

SUBJECT: Phone conversations and visit

On 6/5/2013 I approved temp change TC-37-62 in the name of Aaron Andrews. The temp change moved Ellsworth rights 37-738, 37-749C and 37-2443 from their decreed place of use to lands owned by Andrews. This temp change was similar to one approved in 2012 which involves the change in place of use only.

On 6/19/2013 I received a phone call from Chip Molyneux. Mr. Molyneux represented Fish Creek Reservoir Co. He indicated that in 2012 the temp change caused some issues with some of the shareholders and the delivery of their water and indicated that the 2013 temp change may cause injury to shareholders and wanted to know what if anything could be done about it. The potential injury as explained by Mr. Molyneux was to users on the Hot Springs Ditch. He indicated that when these rights were moved out of the ditch it would cause problems for shareholders in the ditch to get water down the ditch. During the remainder of the day I discussed these matters with Lawrence Kimble, watermaster for 37U that delivers the privately held decrees on Fish Creek and also the person who delivers the shares to the storage water from the Fish Creek Reservoir Co. I also talked to Aaron Andrews and Chip Molyneux in a joint phone call. Taking into consideration what was said it was apparent I did not quite understand the delivery of water through the Hot Springs Ditch and/or its location. I determined to do a field visit to get a better understanding and agreed to visit on 6/20/13. In preparation I did some WR research as to the decreed rights involved.

On the morning of 6/20/13, Doug Jones and I met with Lawrence Kimble who showed us some of the re-diversions along the Highline Canal, the diversion at the Hot Springs Ditch and the diversion complex at the Highline Canal which includes the diversion with a control works down the canal a short distance with a bypass back to the Fish Creek proper and a screen at the head of a re-diversion to a gravity pipeline. It was observed that there were no measuring devices at the points of diversion for the Highline Canal and at the Hot Springs Ditch. I understand that Kimble utilizes weirs at or near the fields where water is delivered and/or estimates of sprinkler capacities. I further understand he applies a 30% shrink or delivery charge for both the storage shares and the private decrees at these measurement points per long standing agreement or practice. During this review Mr. Kimble referred to the bypass water as Hot Springs Ditch water almost like the channel at this point became the ditch. This is not in conformance with the decrees nor the USGS quad maps.

It was observed or reported that rights associated with the Highline canal are being delivered thru the Hot Springs Ditch (specifically the subject Ellsworth rights listed above) and likewise some rights associated with the Hot Springs Ditch are reported to be delivered thru the Highline Canal.

After the tour we met with Andrews, Molyneux, Kimble, Cenarrusa, McKenzie, Cross and others interested in delivery of the water at or near the end of the Hot Springs Ditch. I explained what we

had found during the field review and the review of the water right records. I pointed out that the subject Ellsworth rights should not be in the Hot Springs Ditch according to the recent SRBA decree and that the TC-37-62 actually would be delivering it at the proper POD. I did not see that there was injury to divert as decreed. Actually the diversion via the Hot Springs Ditch likely had helped the delivery of shares by wetting the ditch but this benefit was actually improper delivery and should not continue. I also reviewed some of the other decrees and based on the review advised that the users should review their rights and if they are not being delivered according to the decrees that they need to file transfers. (Potentially ownership changes in a few instances).

I told Mr. Kimble our office would work toward preparing a listing of the current decrees and prepare maps so he could check how he is making deliveries and potentially work with the water users to get them to file transfers, ownership changes, etc.