

Stanton, Jim

From: Stanton, Jim
Sent: Friday, February 12, 2010 4:22 PM
To: 'Greg Sullivan'
Cc: Stanton, Jim
Subject: RE: Veenstra Transfer

Greg – I verified the required mitigation volume with Aaron Marshall before writing the 30-day letter, as he has communicated with you on this since you and I last discussed it. I am depending on him to determine the correct amount. Once we receive the mitigation plan, I will run it by Aaron & Allen to see if it is sufficient; I would not try to make that determination on my own.

Allen instructed me to ask for information to support the amount of water claimed to be historically used at this dairy to support the use as a defense to forfeiture. This dairy has not reported its annual use to WD 130, as this has not been required so far. But that does leave us without records showing the actual usage. Allen is thinking that data on cow numbers, or other information, could take care of the forfeiture issue so it is not a hindrance to continued processing of the application. If you have questions on this, please talk to Allen.

From: Greg Sullivan [mailto:greg.sullivan@brockwayeng.com]
Sent: Friday, February 12, 2010 3:33 PM
To: Stanton, Jim
Subject: Veenstra Transfer

Jim,

I received your letter today with your concerns. I have tried unsuccessfully to reach you by phone so I will address these concerns by email.

Your required mitigation volume listed in the letter is incorrect. An email dated 12/23/2009 from Aaron Marshall clarifies the amount. I re-sent you that email this afternoon.

You also bring up the idea of forfeiture with this water right, again. We have already discussed this several times. Here is my understanding on the of the forfeiture issue. The original transfer to move 18 acres or so of irrigation was submitted 12 years ago. Due protests and other processing complication the 12 year old transfer finally got approved last year in 2009. The transfer to change the approximate 18 acres of irrigation water to S/C water was submitted in 2002. However, this transfer was held up because of the 12 year old transfer involved the parent WR to the 18 acres. Finally in April 2009, the transfer to split the parent right and place 18 acres of irrigation water to where it is currently described was processed. It appears that in an effort to process the 2002 S/C transfer application, you keep looking at aerial photographs of the proposed place of use, which was finally updated to the currently defined place of use in April 2009, and see that no irrigation has occurred there for a really long time. However, since 2002 the 18 acres of irrigation water has been used as S/C water pending the transfer application that was submitted in 2002. Therefore, if irrigation had occurred under the currently defined place of use for 18 acres it would have been considered an expansion of the water right and in violation of the allowed diversion rate under the water right.

An estimated water demand requirement spread sheet for a CAFO was submitted a few months ago with the initial analysis of the ESPA Model indicating that mitigation is required. This information should be sufficient for IDWR to properly evaluate the situation.

As of just recently, a water right has been identified by Luis Bettencourt to be used for mitigation for this transfer. The details of the transaction of the mitigation water is still in litigation between the two parties. It is expected that the complete S/C transfer and mitigation transfer will be submitted before your March 15 deadline.

Greg Sullivan
Brockway Engineering
Office: 208-736-8543
Fax: 208-736-8506