

MEMORANDUM

Date: January 19, 2010
To: Transfer 75750
From: jstanton
Re: Comment/Analysis

This application describes the current place of use for these rights, which does not match the recorded place of use. The problem was found last summer by WD 130, who notified the applicant. He has filed this transfer to correct the problem; no changes to the existing operation will occur if the transfer is approved.

A problem I found in my review is that conditions tying Right 36-15999 with the other 3 rights are totally wrong. 15999 is a dairy right in another section, so has nothing to do with the irrigation rights. The error was either created in 2008 under T66524, or was just passed along from a previous transfer. I will fix this problem in the new transfer.

Another issue I found was that 36-16633 & 35 had no individual volumes assigned. 16635 is the senior rights, so I have assigned 4.0 afa/ac for the 131.2 ac/year limit; the diversion rate is not a limiting factor. 16633 has problem with Conditions 1 & 6 on T66524, as the two conditions contradict each other. Condition 1 limits the rate and volume for the 2 rights combined to what would be allowed for 173.4 acres, but Condition 6 limits this right to 167.8 acres. One condition or the other must be wrong, and I have asked Pam to check it out. Nick Van Dyke has checked it out, and found that Condition 6 is wrong; 36-16633 is limited to 167.8 ac on its own, and we agreed that the problem can be fixed in the new transfer instead of having to go back and re-do the previous transfer.

As filed by the consultant for Mr. Verbree, the application showed 226 acres as the proposed ppu. But my ArcMap shapefile based on the 2009 photo shows 211.5 ac. The applicant has confirmed that this is correct, so I will get a corrected application with proper signatures before proceeding.

The existing west well in this system is currently described incorrectly in the water rights. Cindy took a GPS reading of this well per my request, and found it to be in the NW/SW/SW Sec. 23 in a non-irrigated area. I am correcting the application based on this data. The actual site is a little SW of the described pod, but is clearly in the other 40.

Parallel Processing Required: No.

Advertising Required: No.

Authority To File: The applicants are the owners of record for Rights 36-15998 & 16633, but not for 16635 (even though the last 2 rights are appurtenant to exactly the same land under T66524 approved in 2008). They have provided a deed from 2000 showing their ownership of the land under the 2 rights. The lienholder has given its ok to the transfer, so ownership does not appear to be an issue.

Water Right Validity: The rights are co-mingled with canal shares, so the system irrigates more land than the groundwater rights cover. Forfeiture for non-use is not an issue.

Injury To Other Rights: There should be none with standard conditions. Well usage is monitored by WD 130, so any excess usage would be detected. The pods are not changing, so there is no need for

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mitigation.

Enlargement of Use: The two areas south of the main pivot were not irrigated in 2004 or 2006 according to ArcMap photos, but are now irrigated. The small pivot in Sec. 26 does not show much vegetation, so it may not have been there very long. NSCC has confirmed that there are 141 canal shares for this property (S 1/2 Sec. 23), so groundwater could be considered as the primary source for 70.5 acres. The transfer should be conditioned to require use of surface water first in order to make it clear that the affected rights are supplemental in nature in case they try to split the 2 sources apart in a future transfer.

Local Public Interest: No issues identified.

Beneficial Use/Conservation of Water Resources: No issues identified.

Review of the application finds that there is no clear inconsistency with criteria set forth in Sec. 42-222 I. C. preventing processing. At least prior to advertising, no other issues have been identified that would require further review or submittal of additional data by the applicant.