

Peppersack, Jeff

From: Peppersack, Jeff
Sent: Tuesday, December 05, 2006 2:26 PM
To: 'Bill@hollifieldlawoffice.com'
Subject: Albers Dairy

Mr. Hollifield,
I've finally had a chance to look closer at the ownership changes filed for Albers Dairy to follow up on your letter of November 7.

I think the splits that you worked out with Kari Lynn would ordinarily be correct; however, there are some complicating factors associated with the commercial/stockwater rights. The rights include conditions as follows:

Commercial use is for a dairy located within the SW, S32, T04S, R06E.

The place of commercial use authorized by this approval includes land upon which wastewater may be applied for irrigation purposes to satisfy water quality requirements. Water diverted under this approval shall not be used for irrigation unless the water is first used in the dairy as authorized by these water rights.

So, the transfer included lands where the wastewater is to be applied for treatment purposes; but, the water must first be used in its entirety at the dairy. It may not make sense to split up the rights because the parts not associated with the dairy facility won't be able to use the water (just re-use as wastewater). I guess we could split them in a way to ensure the total quantity can be used by the dairy and then re-used on the described land-application place-of-use (by clarifying some of the conditions in the split). As an alternative, you may want to pursue a quit-claim deed from the owner to acquire the commercial water rights, in whole, rather than the appurtenant parts.

When we process a similar transfer today, we don't generally include the wastewater lands in the description as long as there is another valid water right for irrigation of those lands. The wastewater portion is not significant enough to irrigate the land by itself, so it is viewed as a by-product for treatment of the water, not an actual beneficial use of the water.

I think we can handle it either way, just let me know how you want to proceed.

Jeff Peppersack, Manager
Water Rights Permit Section
208-287-4948

re-sent 2/12/07

3/20/07

Bill Hollifield called & indicated
he would pursue quit-claim deeds to
the water rights that include land
application
JP