

MEMORANDUM

Date: November 17, 2008
To: Transfer 73362
From: jstanton
Re: Comment/Analysis

This application proposes to tie 2 existing feedlots together for maximum efficiency of water use. Cattle move between the feedlots as needed for operational efficiency, so everything as a single system on the water rights just makes sense. I visited the property to verify the usage and legal descriptions, and produced a corrected application that the applicants have signed to take care of some minor legal-description errors on the original. The transfer should be approvable with standard conditions. With all 3 wells in adjacent cells in the ESPA model, and no decreed volumes on the rights, no mitigation analysis is possible; any changes in river flows would be insignificant, anyway.

Parallel Processing: Yes

Advertising Required: No per Pam Skaggs. Transfer covers existing usage; no new wells, corrals, etc.

Authority To File: The applicants are the owners of record for these rights, so this is not an issue.

Water Right Validity: These rights have been decreed in the SRBA. Both facilities are in operation, so forfeiture does not appear to be an issue. Cattle numbers vary all the time in feedlots, so just counting noses would not provide any useful data on this issue.

Although the domestic rate under Right 37-12833 indicates use in 2 or more homes, there are 2 homes & 1 office in the described pou. Right 37-12832 already covers 1 domestic use in the south tract, which has a home with lawn. So I am recommending 0.1 afa minimum volume & 0.02 cfs for the office, and reducing the domestic rate to 0.06 cfs under 12833 (1.3 afa total domestic volume; no change to total div rate). The overall rates & volumes for these uses will be the same either way. This SEEMS to agree with the way the claims were recommended.

Injury To Other Rights: There should be none with proper conditions.

Enlargement of Use: With so many rights on the same facilities, it could be questioned whether the rights should have been decreed as de minimus uses. But according to Carter Fritschle, our legal staff and the SRBA Court agreed at the time that Title 42-111 as amended in 1995 was NOT retroactive; right developed before that date COULD BE STACKED to allow more than 14.6 afa to be diverted from a single water system. Pam originally told me that we can proceed without worrying about historic volume usage, but that has now changed. Based on cattle numbers supplied by the applicant for the SRBA review, I have determined the maximum volume that each of the 8 rights could have used under their individual priority dates. The total usage in 1982 for the north system would have been 71.0 afa based on 5100 adult cattle and 2 homes with lawn. For the south system, total usage in 1992 would have been 14.6 afa in 1992 based on 1000 adult cattle and 1 home. They are not asking for more water.

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.
