

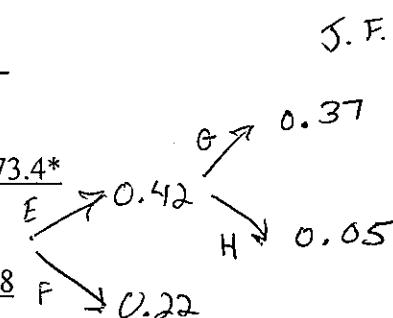
MEMO

FROM: Allen Merritt *AM*

DATE: May 16, 2000

TO: Transfer File Numbers and related rights:

<u>T5102</u>	<u>T5103</u>	<u>T5104</u>	<u>Unchanged</u>
T36-02229B 0.05/22.4/5.6	T36-02229D 0.03/12.8/3.2		T36-02229C 1.28/693.6*/173.4*
T36-02352B 0.31/63.2/15.8		36-02352D 0.53/105.5/26.4	T36-02352C 0.64/127.2/31.8
	T36-07260B 0.23/80/20		T36-07260A 1.27/436**/109**
	T36-07368B 0.08/**/20		T36-07368A 0.42/436**/109**
T36-07534D 0.09/7.0/7.4	T36-07534F 0.05/3.8/4.2		T36-07534E 2.20/693.6*/173.4*



* 36-02229 & 36-07534A are limited to 3.70 cfs/ 740 afa for irrigation of 185 acres.

** 36-07260 & 36-07368 are limited to 2.00 cfs/ 516 afa for irrigation of 129 acres.

In the Name of: **Luis M. &/or Maria Bettencourt**

SUBJECT: Review and Recommendation

Theses three transfers are related by ownership and have common rights as shown above. They should be processed together. The purpose of these transfers is to cover expansions of use or cover use at existing dairies. They were advertised together. Protests were files by Frank Veenstra to T5103 and T5104. T5102 was not protested but held with the others since it was related. A conference was held on 6/29/99. Based on the conference and further negotiation by the parties an agreement between Bettencourt and Veenstra ultimately resolved the protests and set out the split of the water rights which was the root of the dispute. We received the agreement 1/14/00. The agreement specifies that the following rights will be split as follows:

<u>Right</u>	<u>Bettencourt</u>	<u>Veenstra</u>
36-02352	0.84 cfs/ 168 afa/ 42 acres	0.64/ 128 afa/ 32 acres
36-07260+ 36-07368	1.79 cfs/ 462 afa/ 115.5 acres	0.21 cfs/ 54 afa/ 13.5 acres

T#5747

Rights 36-02229 and 36-07535A were not in dispute and not part of the agreement. They are appurtenant to land owned by Bettencourt which was purchased from Branchflower.

As noted part of the agreement identified water so that Veenstra could proceed to file a transfer to properly record water at his dairy. These applications were held so everything could move forward. On 5/4/00 Veenstra filed three transfers involving his agreed portion of the water rights. The Veenstra transfers include one for their dairy, one for their heifer operation and one to identify the remaining irrigated land. Recently Bettencourt has inquired as to the hold up of his transfers so his three are being moved forward with Veenstra's currently under process at the region.

Analysis

The three Bettencourt transfers are based on the total diversion volumes for the acres dried up (4.0 afa in this area) for conversion to dairy use. This basis was the standard at the time these transfers were filed in 1997. Since then the direction has been to base these types of changes of nature of use on the consumptive use volume (3.0 afa in this area). I have discussed this matter with Glen Saxton on 5/17/00 and we have concluded to finish processing these three Bettencourt transfers based on the 4.0 afa/acre conversion basis.

T5102

This transfer dries up a total of 23.2 acres for conversion to dairy use. This dairy site has no recorded rights for the site in SWSW & SESW S25, T07S, R16E.

T5103

This transfer dries up a total of 24.2 acres for conversion to dairy use. This dairy site has no recorded rights for the site in NWNW S35, T07S, R16E.

T5104

This transfer dries up a total of 26.4 acres for conversion to dairy use. This dairy site is currently covered by right 36-08199 (0.20 cfs/ 46.8 afa) for dairy use.

General concerns

The rights involved as recommended in the SRBA denote that use may be combined with NSCC shares. Review of the claimed acres in the SRBA by NSCC for the lands involved show that the potential acres are minimal but there may be some overlap. Essentially the subject rights are the primary water supply. To mitigate the potential for expansion the rights should be conditioned that the NSCC shares be maintained on the property.

Review of 36-02352 finds that the original license was for 1.5 cfs for 94 acres. In the SRBA the right was reduced to 1.48 cfs for 74 acres since land around the Veenstra dairy in the NE S23 had gone out of production due to the construction of the dairy. It is highly probable that more land has been reduced since the field review by SRBA but arguably the use has been converted to dairy use by Veenstra and the pending transfers are attempts to straighten this out.

No GIS work has been done for these transfers.

Recommendation

I recommend that these transfers be approved subject to the following conditions:

Common Conditions

- No new wells are authorized to be developed.
- All dairy wells shall have meters installed and use reported through the West ESPA Measurement district.
- All appurtenant NSCC shares shall be maintained on the property and not sold off.
- Subject to other federal, state and county requirements as may be appropriate.
- Subject to private agreement with protestant.
- Subject to SRBA.
- Irrigation wells shall measure and report use as required by 42-701.

T5102

- The total use at this site is limited to 0.45 cfs and 92.6 afa for use at the dairy.

T5103

- The total use at this site is limited to 0.39 cfs and 96.6 afa for use at the dairy.

T5104

- The total use at this site when combined with right 36-08199 is limited to 0.73 cfs and 152.3 afa for use at the dairy.