

Nelson, Dan

From: Peppersack, Jeff
Sent: Wednesday, November 05, 2003 8:28 AM
To: Nelson, Dan
Subject: RE: Dairy Volume Question for Stacked Water Rights

Hi Dan,

I have no problem with the full consumptive volume going on the senior right. I wouldn't bother putting a volume on the junior right at all because it doesn't add any volume in combination with the senior because it is just used to increase rate. Any volume number added to the junior will be meaningless because of the combined limit.

Jeff

-----Original Message-----

From: Nelson, Dan
Sent: Wednesday, November 05, 2003 8:16 AM
To: Peppersack, Jeff
Subject: Dairy Volume Question for Stacked Water Rights

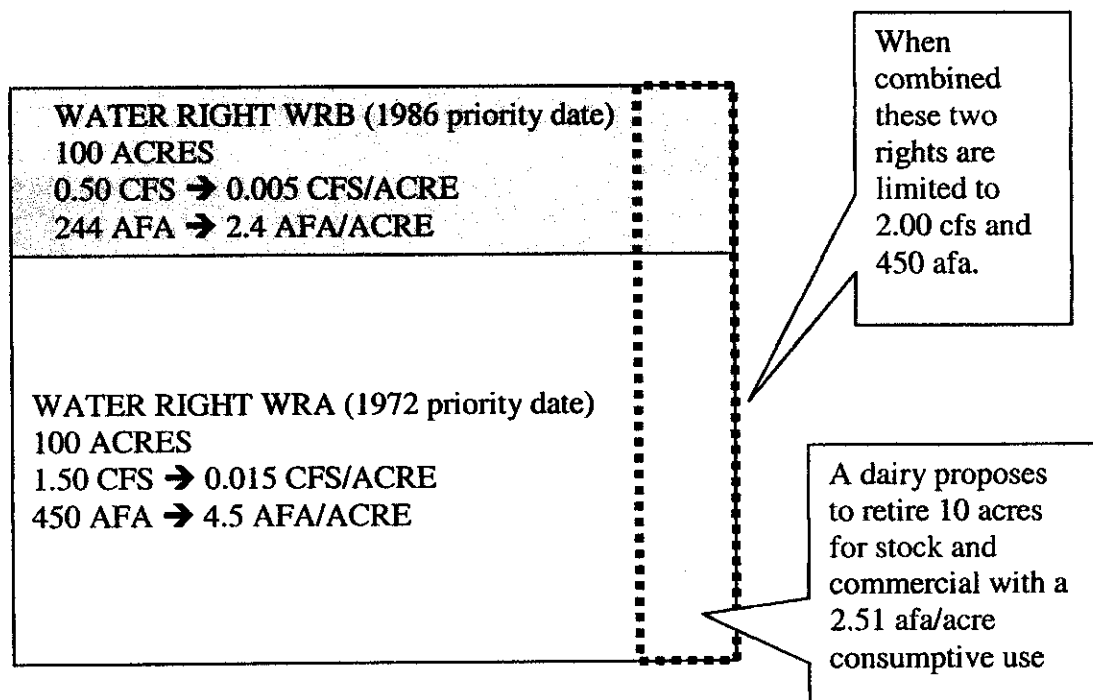
Hello Jeff,

Steve asked that I run this problem by you for your input. We have run into an interesting twist to stacked water rights being retired for a dairy transfer. I have created a fictitious worksheet to hopefully explain what is happening with the transfer I am working with (the worksheet uses simplified numbers to make calculations easier). The worksheet proposes to split 10 acres off a 100 acre farm that has 2 water right WRA and WRB. WRA is the first right filed on the 100 acre farm with full volume of 4.5 afa/acre and 3/4 of an inch of water per acre. WRB is the second water right filed on the 100 acre farm to increase the diversion rate to a full inch to the acre. A volume was added to WRB based on the diversion rate, but when both rights were combined they were limited to volume listed in WRA or 4.5 afa/acre. The consultant proposes that the WRA should receive full volume, since it has always had the ability to supply full volume and only the total volume for the dairy use should be limited. The attached worksheet will hopefully explain this scenario a little better.

I should be available for the next two days if you want to call and go over any of the information. This is a tricky one, so I am not sure what we should do. The consultant makes an excellent point, and I guess I am leaning towards his way of thinking. Steve and I have both scratched our heads on this one, and would appreciate any insight you could provide.

Thank you

Dan Nelson
Western Region



One of our consultants proposed retiring 10 acres from two existing water rights to supply water for a dairy. The historic consumptive use for the dairy was 2.51 afa per acre. The dairy needs 25.1 acre-feet of water for commercial and stockwater purposes. There isn't a problem with the division of volume between the stockwater and commercial use for the 25.1 acre-feet. However, the consultant did bring forth an interesting argument concerning the volumes for the two water rights. The consultant argues that WRA (shown above) has always had the ability to supply the full volume of water needed for the 10 acres being removed from irrigation, and WRB (shown above) was licensed to bring the diversion rate up to an inch per acre. Therefore, the consultant has proposed the following scenario:

Dairy use WRA → 0.15 cfs and 25.1 afa
Dairy use WRB → 0.05 cfs and 24.0 afa (24 afa used because volume per acre less than 2.51 afa/acre)

TOTAL Dairy Use → 0.20 cfs and 25.1 afa

Continued

The department has used the percentage based on the diversion rate to determine the volume that would be allocated to each right. This is how we have determined the volumes in the past:

2.00 cfs limitation for both water rights

WRA = 1.50 cfs/ 2.00 cfs = 0.75 or 75% of diversion rate

WRB = 0.50 cfs/ 2.00 cfs = 0.25 or 25% of diversion rate

25.1 afa needed for dairy volume

WRA = 25.1 afa X 0.75 = 18.8 afa for dairy use from WRA

WRB = 25.1 afa X 0.25 = 6.3 afa for dairy use from WRB

Using the department standard the water allocation would be as follows:

Dairy use WRA → 0.15 cfs and 18.8 afa

Dairy use WRB → 0.05 cfs and 6.3 afa

TOTAL Dairy Use → 0.20 cfs and 25.1 afa

Both scenarios end up with the same ending volume and rates, however, the consultant's proposal would allow the full volume to be diverted at a lower rate of diversion from WRA if WRB (a latter in time priority date) is shut off by a call on the aquifer. This is a legitimate argument, since WRA could have still use the full diversion volume under the irrigation component if WRB was shut down due to a call.

So, the big question is what do we do in this situation?