

MEMORANDUM

Date: July 09, 2003
To: Transfer 68993
From: amerritt
Re: evaluation of sufficiency

Evaluation of Sufficiency of Information Submitted (Transfer 68993 in the name of John Busman - Busman Dairy)

This transfer initially proposes to dry up 20 acres of land (60 afa of CU water) which is a portion of a PPU of 372 acres known as the Larsen Farm. This farm is irrigated using rights 36-7044, 36-2676 and 36-7158 from ground water. The water proposed to be converted from irrigation is proposed to be used for stockwater and commercial uses at an existing dairy currently partially covered under decree 36-10640. The transfer proposes to move the water across the ESPA approximately 36 miles down gradient toward the west to the site of the dairy where the water will be combined with the existing right. The transfer will tie all rights in a common system served by three existing wells at the site of the dairy. The water being transferred is assumed to be totally consumptive.

The application has been augmented by a mitigation plan involving drying up of initially 21.1 acres on the Beckley property (near Dietrich) approximately 21.4 miles NE of the dairy site. These acres are a portion of the place of use of right 37-7331 recently recommended in the SRBA. Recommendation for 37-7331 notes that the right is combined with AFRD 2 and BWCC shares however further review based on submittal of the stock certificates for the Beckley shares in BWCC show that the shares are associated with adjoining land but the land involved in the transfer is primarily supplied water from right 37-7331.

Authority to File:

The subject land being dried up involved in transfer is owned by John and Vivian Larsen. The file contains an agreement for purchase and sale of subject lands from John and Vivian Larsen to Del Kohtz. Also in the file is an agreement for purchase and sale of 60 afa of water from subject rights from Del Kohtz to John Busman. (60 afa equates to 20 acres of the original place of use based on CU of 3 afa/acre)

The subject land on the Beckley property involved in the mitigation plan is owned by R.K. and Bonnie Beckley. The file contains an option agreement between the Beckleys and Del Kohtz for purchase of a portion of right 37-7331. Purchase of Land not included. FSA is the lien holder for the Beckley property and there is a statement in the file approving sale of 40 acres worth of water subject to the proceeds being applied to the loan until FSA is paid in full. The file also contains an agreement for purchase and sale of 60 afa consumptive water being a portion of 37-7331 between Del Kohtz and John Busman of Busman Dairy.

Water Right Validity:

All rights involved in the transfer from the Larsen property have been recently decreed in the SRBA with dates of partial decrees ranging from 12/ 1996 to 1/1998. Forfeiture does not appear to be an issue. Included with the application are documents evidencing the recent use of the irrigation rights in years 1996 through 2000.

The right involved in the transfer from the Beckley property for mitigation has been recently

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recommended in the SRBA but not yet partially decreed. The file includes an evaluation of the consumptive nature of the right with use as recent as 2002. Forfeiture does not appear to be an issue.

Enlargement of Use:

Due to the irrigation rights being changed to commercial and stockwater needs an analysis of the historical use information has been made for both the Larsen farm and the Beckley farm. Based on this analysis the consumptive use allowable to be transferred from the Larsen farm should be limited to no more than 2.69 afa per acre of dried up land for conversion of nature of use. The consumptive use for the fields involved in the transfer on the Beckley property should be limited to no more than 2.84 afa per acre for the lands being dried up for this transfer.

Injury to Other Water Rights:

Included with the application is a proposed mitigation plan prepared by Brockway Engineering. The plan is based on modeling of the ESPA. The plan involves a stepped increase of use at the Busman dairy up to the applied for amount (60 afa being added to the dairy) after several years in combination with an immediate none use of a portion of the Beckley right (21.1 acres) with a stepped increase of allowable use over several year up to an allowable 10.55 acres with a permanent none use of 10.55 acres. The plan acknowledges the historical use of the Larsen rights and historical use on the Beckley property.

Local Public Interest:

The dairy has existed for several years and continues to provide jobs and tax base for local economy. No adverse impacts identified. Transfer is based on total consumption of water however it is likely a small portion of water diverted will be returned to aquifer.

Beneficial Use/Conservation of Water Resources:

No Issue Identified.

The application has been advertised and protested by Clear Springs. Negotiations continue regarding withdrawal of the protest.

Other issues:

Proposed use within WD 130 and the watermaster has provided comment based on the present submittal.