

Memorandum

Date: December 19, 2002

To: 29-4235 (formerly 29-263A), Farrington
29-4273, Worth

From: Ernie Carlsen

RE: Priority date

Both of the above mentioned claims were originally filed with priority dates of Feb 26, 1869. For claim 29-263A the basis of the priority date is decreed right 29-263 in Smith v Pocatello, June 5, 1926.

Right 29-263 was decreed to the Estate of T. B. Smith for 0.20 cfs from Mink Creek with a priority date of Feb 26, 1869. The right was appurtenant to 10 acres with a 220 acre described place of use that included the NWSW Section 17, T07S, R35E, where the claimant's property is located. The Findings of Fact in Smith v Pocatello states that for many years prior to 1888 there were 50 acres irrigated from Gibson Jack Creek. In 1889 the four owners of the 50 acres started construction of a ditch from Mink Creek and subsequently ceased diverting Gibson Jack and started using Mink Creek to irrigate the 50 acres plus some new land.

The Findings of Fact go on to explain that by the late 1890s the Pocatello Water Company Ltd. had constructed diversion works on Gibson Jack Creek and Cusick Creek. That "all of said waters" of Gibson Jack Creek, Cusick Creek and a portion of Mink Creek were insufficient to satisfy the requirements of Pocatello during the hot summer months. This finding may explain why the source of

water for rights 29-263, 29-265, 29-267 and 29-269 was changed from Gibson Jack Creek to Mink Creek.

The USGS Quad (AA89) illustrates the location of the ditch from Mink Creek. The ditch enters the NWSW Section 17, T07S, R35E but is north east of the old highway. Water from this ditch cannot reach the claimants property south west of the old highway because it is higher in elevation.

Claimants did not provide evidence to support the claimed priority. In reviewing the warrantee deeds ownership of the property was divided in 1937. Walter Hayden purchased Mrs. Worth's property. While G. L. Smith retained 2.5 acres now owned by Mr. Farrington. The warrantee deed (instrument no. 238594) contains the first mention of a water system for use on the G. L. Smith property. The deed states: "There is specifically reserved, however, unto George L. Smith, ...an equal right the reservoir and domestic waters, pipe line, and supply of said waters forever". Though the source of water and irrigation are not specifically mentioned it is obvious work was done to develop water use and the logical source would have been Gibson Jack Creek. Though not conclusive evidence of irrigation because of the proximity of the POU to the creek, I am recommending a priority for claims 29-4235 and 29-4273 based on this warrantee deed.