

## MEMORANDUM

TO: File

FROM: Monica Van Bussum

DATE: December 7, 2006

RE: Determination of private water rights from Galloway Canal

The first task of this memo is to summarize my current understanding of the basis of SRBA claims for private water from Galloway Canal. The second task is to make a recommendation regarding the handling of SRBA claim 67-14353. This memo assumes some passing familiarity with the Smith/Shoesmith agreement with Weiser Irrigation District (WID) of 1932 and other agreements for private water from Galloway Canal. Please reference my memo of December 2005 for a synopsis of these agreements.

*67-2164A (Smith Land & Livestock) and 67-2164B (Ed Pollard)*

These claims are based on a license granted to Ida Shoesmith and Polly Smith in 1933 using the Galloway Canal. This license predates the WID license 67-2169G for water off the Galloway Canal. Both claims are recommended based not only on the license, but on the 1932 WID agreement with Smith/Shoesmith. The 1932 Smith/Shoesmith agreement stated Smith/Shoesmith had 320 irrigable acres and could utilize up to 600 inches of water carried in the Galloway Canal. This water had been previously carried in the Smith/Shoesmith canal but, when WID extended the POD of the Galloway Canal to its current location, this agreement was signed to allow Smith/Shoesmith to carry their private water through the Galloway Canal. License is for 299 acres and 5.98 cfs. Combined recommended acreage is 275 acres and 5.50 cfs.

*67-14444 (Smith) and 67-14445 (Ed Pollard)*

The purpose of these claims was to improve upon license 67-7165 based on the Smith/Shoesmith contract with WID. 67-7165 was licensed for 72 acres and 0.62 cfs. Combined recommended acreage for 67-14444 and 67-14445 is 117 acres and 2.34 cfs. 67-7165 was for private water from the Galloway Canal. Recommended priority date is one day after license 67-2164.

*67-14355 (Green) and 67-14357 (Pollard)*

These claims were disallowed because they were duplicates of the claimants' 67-2169 splits. The Smith/Shoesmith agreement did not mention the license or permit WID held for water from the Galloway Canal, so any rights appurtenant to the Smith/Shoesmith agreement are considered private rights and not affiliated with WID's license.

*67-14352 (Syme) and 67-14353 (Ed Pollard)*

These claims were originally thought to be storage water; we now believe them to be for live, private water from the Galloway Canal. They appear to be enlargements to again improve upon license 67-2164 and more fully claim private water from Galloway Canal granted to Smith/Shoesmith 1932 agreement. The claimants have stated they started pumping from the Galloway Canal after the WID license was granted and have provided invoices for the installation of power to the pumps. There are two apparent questions at this point that need to be answered in this review of the recommendations:

1. Did the Smith/Shoesmith agreement in any way limit the acreage that could be irrigated with the 600 inches?
2. Is it possible to establish a private water right from the Galloway Canal after WID was granted license 67-2169 on 12-18-1936?

*Did the Smith/Shoesmith agreement in any way limit the acreage that could be irrigated with the 600 inches?*

The Smith/Shoesmith agreement did state the combined ownership of the parties was 320 irrigable acres, but they were allotted 600 inches of water. 600 inches is far above the standard current usage on 320 acres. The department standard is to use 1 miner's inch of water per acre. 320 acres at 1 inch per acre would be 6.4 cfs.

If we combined all the recommendations among Smith Land & Livestock, Dan Smith and Ed Pollard from the Galloway Canal as they stand today, the combined cfs is 7.84 (392 inches) and acreage is 392. 392 acres is well above the 320 acres mentioned in the Smith/Shoesmith agreement. Clearly, we read the contract to mean that, in return for giving up land to allow WID to enlarge the Smith/Shoesmith canal, Smith and Shoesmith were given the right to no more than 600" of water during the irrigation season. Paragraph (f) states that "the water which [WID] is to so transport . . . shall be the waters of [Smith and Shoesmith]...."

Given our understanding, there is more water available under the contract (208 inches, or 4.16 cfs). It is possible to have a beneficial use right in an irrigation canal provided the water is unappropriated. We would not recommend a priority date the day after 67-2164 in this case because the right was not established until 1954 with the installation of the sprinkler system and pump. WID filed a beneficial use claim for water from the Galloway Canal under 67-14621 with a priority date of 4/15/1957. Invoices provided by Ed Pollard and his attorney for the installation of sprinklers and pump date from 1954, which predates the WID beneficial use claim and we would consider the water as unappropriated before 1957.

*Is it possible to establish a private water right from the Galloway Canal after WID was granted license 67-2169 on 12-18-1936?*

The Smiths were granted license 67-7165 in 1973, well after WID license 67-2169. WID did not object to the license at that time and the Smiths established a private water right

from Galloway Canal nearly 40 years after 67-2169 and 16 years after WID's beneficial use right 67-14621. No rights could be established after the SRBA is completed because at this point we consider the Galloway Canal fully appropriated. However, this does open up the option for folks who have been pumping off the Galloway Canal since before 1957 to establish private beneficial use rights from the Galloway Canal.

### *Conclusion*

From the answers to the above questions, it would appear we can recommend 67-14352 and 67-14353 as private water rights from Galloway Canal. Should we recommend 67-14352 and 67-14353, we would have to reduce the recommendation for WID beneficial use claim 67-14621 by approximately 4 cfs, from 28.18 cfs to around 24 cfs.