

02/02/2006

IDAHO DEPARTMENT OF WATER RESOURCES
PRELIMINARY RECOMMENDATION OF WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 67-2164A

NAME AND ADDRESS: SMITH LAND & LIVESTOCK CO
2039 WEISER RIVER RD
WEISER ID 83672

SOURCE: WEISER RIVER

TRIBUTARY: SNAKE RIVER

QUANTITY: 2.360 CFS

PRIORITY DATE: 08/15/1933

POINT OF DIVERSION:

T10N R04W S4 NENENE Rediversion Within WASHINGTON County

T11N R04W S35 SWNENW Within WASHINGTON County

PURPOSE AND
PERIOD OF USE:

PURPOSE OF USE

PERIOD OF USE

QUANTITY

IRRIGATION

03/01 11/15

2.360 CFS

PLACE OF USE: IRRIGATION Within WASHINGTON County

T10N R04W S04 Lot 3 NENW	33.00	T10N R04W S04 Lot 4 NWNW	30.00
T10N R04W S04 SWNW	16.00	T11N R04W S33 SWSW	15.00
T11N R04W S33 SESW	24.00		

118 ACRES TOTAL

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.

EXPLANATORY MATERIAL: BASIS OF CLAIM - License

Right includes accomplished change in point of diversion pursuant to Section 42-1425, Idaho Code.



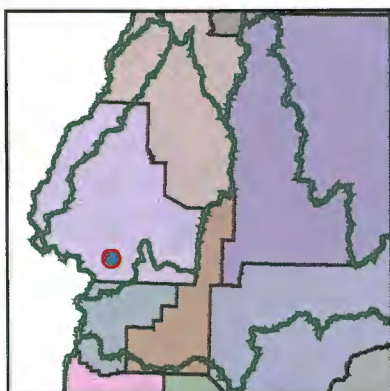
Idaho Department of Water Resources

Adjudication Claim Number: **67-2164 A**

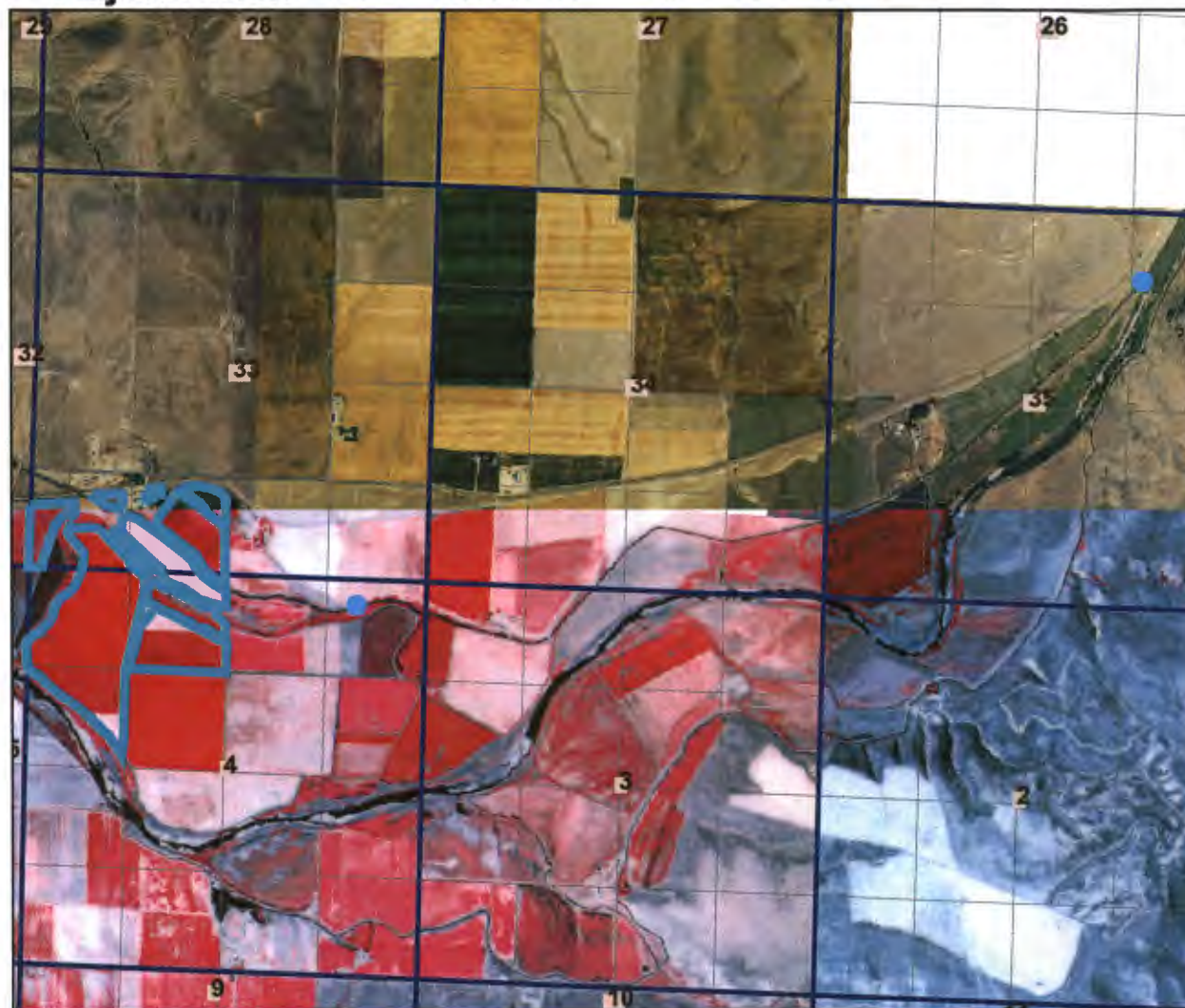
T10N R04W
T11N R04W

Legend

-  Point(s) of Diversion
-  Place of Use
-  Quarter Quarter Lines
-  Section Lines



Payette County
IDWR Basin 67



0 1 2 Miles

Prepared by M. Van Bussum
On Thursday, February 2, 2006
1987 Aerial Photography



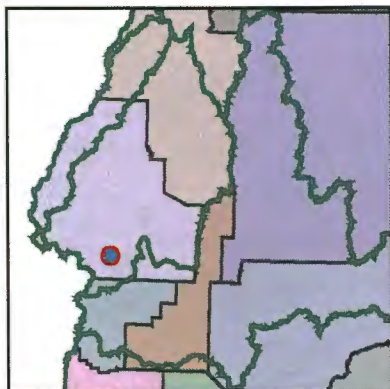
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Adjudication Claim Number: **67-2164 A**

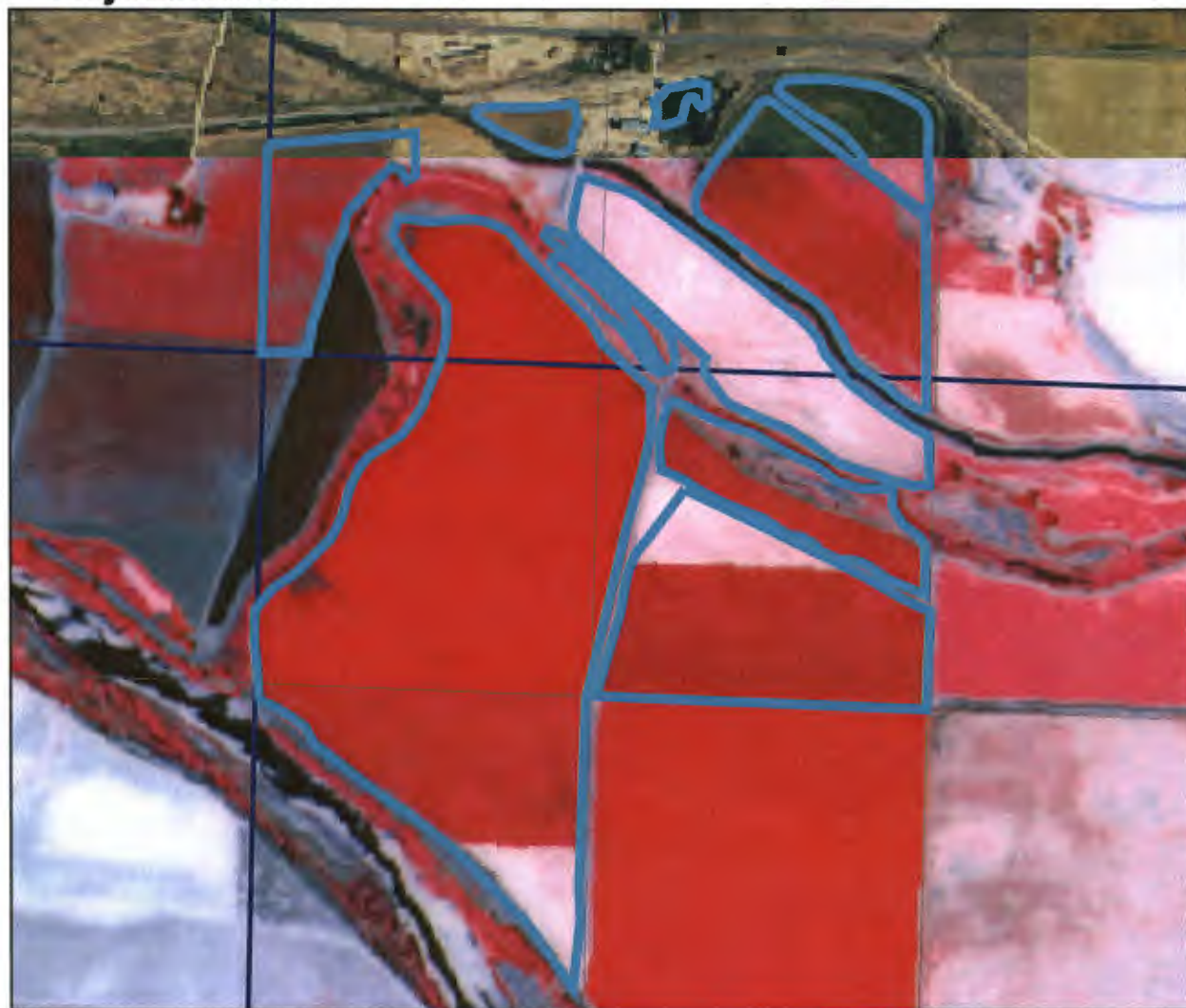
T10N R04W
T11N R04W

Legend

-  Point(s) of Diversion
-  Place of Use
-  Quarter Quarter Lines
-  Section Lines



Payette County
IDWR Basin 67



0 0.3 0.6 Miles

Prepared by M. Van Bussum
On Thursday, February 2, 2006
1987 Aerial Photography

State of Idaho

License and Certificate of Water Right

Water License No. 17813, Priority August 15, 1933, Amount 5.98 Sec. Ft..

THIS IS TO CERTIFY that IDA M. SHOESMITH & POLLY A. SMITH of Weiser, Idaho, made application for a permit to appropriate the public waters of the State of Idaho, dated August 15, 1933, that Permit No. 17813 was issued under said application; that Certificate of Completion of works, with a carrying capacity of 9.14 second feet, was issued thereunder on May 7, 1935, showing that said works were completed on the 6th day of January, 1934; and that on the 6th day of January, 1934,

IDA M. SHOESMITH & POLLY A. SMITH

of Weiser, State of Idaho, made proof to the satisfaction of the Commissioner of Reclamation of Idaho, of a right to the use of the waters of Weiser River, a tributary of Snake River, for the purpose of irrigation and domestic use, under Use Permit No. 17813 of the Commissioner of Reclamation, and that said right to the use of said waters has been perfected in accordance with the laws of Idaho, and is hereby confirmed by the Commissioner of Reclamation of Idaho and entered of record in Volume 7 of Licenses, at page 3786, on the 25th day of June, 1935;

The right hereby confirmed dates from August 15, 1933;

The Point of Diversion is located in the NE 1/4 SE 1/4, Sec. 35, Tp. 11 N., R. 4 W., B. M., Washington County.

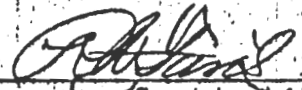
That the amount of water to which such right is entitled and hereby confirmed, for the purposes aforesaid, is limited to an amount actually needed and beneficially used for said purposes, and shall not exceed 5.98 cubic feet per second.

Description and location of use:

Twp.	Range	Section	Forty-Acre Tract	No. Acres Described in Permit	No. Acres Actually Irrigated
10 N.	4 W.	3	Ida M. Shoesmith's Lands		
			Lot 3	27	10
			Lot 4	38	20
			SW 1/4 NW 1/4	40	35
		4	SW 1/4 NE 1/4	40	40
			SE 1/4 NE 1/4	40	40
					145
			Polly A. Smith's Lands		
11 N.	4 W.	4	Lot 3	40	40
			Lot 4	40	40
			SW 1/4 NW 1/4	32	32
			SW 1/4 SW 1/4	22	22
		33	SE 1/4 SW 1/4	38	20
					154

The right to the use of the water aforesaid hereby confirmed is restricted to the lands or place of use herein described, as provided by the laws of Idaho.

WITNESS the seal and signature of the Commissioner of Reclamation, affixed at Boise, Idaho, this 25th day of June, 1935.


Commissioner of Reclamation.



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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.

THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO,
IN AND FOR THE COUNTY OF TWIN FALLS

THE GENERAL ADJUDICATION
RIGHTS TO THE USE OF WATER FROM
SNAKE RIVER BASIN WATER SYSTEM.

CIVIL CASE NUMBER: 395 '6

Ident. Number: A67-02164A
Date Received: 9/28/1989
Receipt No: M004741
Received By: ES

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: SMITH LAND & LIVESTOCK CO. 208-549-0867
Address: 2039 WEISER RIVER ROAD
WEISER, ID 83672

2. Date of Priority: AUG 15, 1933

3. Source: WEISER RIVER Trib. to: SNAKE RIVER

Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4	Lot	County
10N	04W	4	NE	NE	NE		WASHINGTON
11N	04W	35	SW	NE	NW		WASHINGTON

Description of diverting works:
HEADGATE IN GALLOWAY CANAL, GRAVITY DITCH TO IRRIGATION.

Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or)	A.F.A.
IRRIGATION	03/15	11/15	3.080		

Total Quantity Appropriated is:
3.080 C.F.S. (and/or) A.F.A.

Total consumptive use is 539.0 Acre Feet Per Annum.

Non-irrigation uses:
STOCKWATER INCIDENTAL TO THE IRRIGATION

Place of Use:

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
10N	04W	4	NE	NW	3	IRR	40.0
			NW	NW	4	IRR	30.0

A-02164A

Page 1

Date: 09/28/89

SCANNED
MAY 10 2004

SCANNED
MAY 10 2004

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10. Place of Use: Continued

Ship	Range	Section	1/4 of	1/4 of	Lot	Use	Acres
10N	04W	4	SW	NW		IRR	32.0
					Section	Acres	102.0
11N	04W	33	SW	SW		IRR	32.0
			SE	SW		IRR	20.0
					Section	Acres	52.0
					Total	Acres	154.0

use in counties: WASHINGTON

Do you own the property listed above as place of use? YES

Other Water Rights Used:

STORAGE RIGHTS CRANE CO RES. 361.6 SHARES.

Remarks:

REMARKS:
SPLIT RIGHT FROM PARENT 67-2164, ORIGINALLY LICENSED TO IDA M.
SHOESMITH & POLLY A. SMITH. FOR 299 ACRES & 5.98 CFS.

Basis of Claim: LICENSE

Water Right Number: 17813

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Signature(s) _____

By signing below, I/We acknowledge that I/We have received, read and understand the form entitled "How you will receive notice in the Snake River Floodplain Adjudication." (b.) I/We do _____ do not ☒ wish to receive and pay the annual fee for monthly copies of the docket sheet.

Number of attachments: 1

Organizations:

I solemnly swear or affirm that I am V President of _____

Smith Land & Livestock Co., that I have signed the foregoing
organization

and in the space below as V. President of _____

Title

Smith Land & Livestock Co. and that the statements contained in the
organization

foregoing document are true and correct.

Richard C. Smith
Signature of Authorized Agent

V. Pres. Smith Land & Livestock Co.
Title and Organization

9/28/89

Date

State of Idaho)

County of Ada)

SS.

Subscribed and sworn (or affirmed) before me this 28th day

SEPTEMBER 1989

Donna P. Smith
Notary Public

Seal

Residing at BOISE, ID

My Commission Expires 11/08/1994