

MEMORANDUM

October 18, 1996

TO: 67-07478 File  
Dam Safety Section

FROM: Cindy Hodges

RE: *Violations Found During Field Examination*

On September 18, 1996, I visited the Randy Landreth farm to conduct a beneficial use examination for the above permit. While on site, I found several conditions of concern including the recent construction of six separate earthen ponds which are being used to continually capture and retain flows delivered through the Schwenkfelder Ditch under Little Weiser River natural flow and storage rights. A seventh pond captures spring runoff from the foothills above the property (dry at the time of visit). Total estimated capacity of the ponds is 300 AF. All embankments appeared to be 10 feet or less.

Water District 67A Watermaster Richard Krettin assisted me during the exam. He also represents the Little Weiser Irrigation District as watermaster and ditch rider. Both the Little Weiser I.D. and water users along the Schwenkfelder lateral were concerned about the storage of flows in Mr. Landreth's ponds, especially late in the season when the only flows being delivered were stored flows. The storage of flows has been interfering with the availability of critical return flows to downstream water users. Mr. Krettin specifically questioned Mr. Landreth's right to retain storage water delivered by the irrigation district. Mr. Landreth, who was available for the examination, claims that IDWR told him the ponds were exempt from water right filing requirements. Unfortunately, he could not recall the IDWR representative who gave him this information.

From a water right standpoint, I have to conclude that Mr. Landreth's construction and use of his ponds in the above manner is in fact a violation of permitting statutes. Permit 67-07478 is an early season (< June 15) natural flow right which does not authorize storage. According to the Watermaster, Landreth also holds title to decreed rights 67-00478 and 67-00483 for 72 acres, and shares in storage for 77 acres irrigation. Little Weiser Irrigation District is presently in dispute with Landreth over an apparent spreading of storage water to an additional 11 or so acres. This spreading is possible largely due to the presence of the ponds; therefore the District is very interested in the outcome of my investigation.

Our rule of thumb with respect to relift/regulation ponds is that no storage results if the pond(s) fill in 24 hours at the available rate of flow and if no flows are held when irrigation is not occurring. I was not able to obtain an incoming rate of flow, but decreed flow for 72 acres (under Muir v. Allison) is 0.9 cfs. Permit 67-07478 authorizes up to an additional 4.0 cfs. 4.9 cfs will generate only 9.7 acre-feet in a 24 hour period, which is only a fraction of the developed storage on the Landreth property. This rate of flow is only authorized for a short period during early summer, and the largest share should not have been diverted at all for many years because much of the land under the permit is enrolled in CRP. Therefore, unauthorized storage is occurring for much of the year.

Under certain circumstances, uses which are not on a water right permit, and which are developed during the normal development period of the permit, may be included on the final license. I explored this possibility for the Landreth right, but the ponds may not be included because they were apparently developed after proof was filed (1985). CFSA maps used for the field exam were from 1987 and do not show ponds; Mr. Landreth stated they were built beginning in 1989. In order for storage in the ponds to be authorized, a separate application for permit must be filed, or a transfer completed on an existing decreed right. Richard Krettin and I discussed such an application and concluded that it would likely be initially protested by both water users and the Irrigation District, but that conditions of use could be imposed which would protect senior rights. For example, diversions to storage under a new right should cease by June 15 each year, and all subsequent incoming flows must bypass the ponds.

In the meantime, I feel this should be treated as an illegal diversion, or at least a potential 1997 illegal diversion since the 1996 irrigation season is now all but completed. I advised Mr. Landreth at the time of the field exam of the complications created by the ponds and promised to follow up with more information. Accordingly, I will draft a letter to him advising that 1997 diversions into the ponds in excess of that required to regulate flows, will be seen as an illegal diversion unless an application for permit or for transfer has been properly filed.