

MEMORANDUM

TO: State Engineer Personnel

FROM: Patrick T. Tyrrell, State Engineer

DATE: December 1, 2004

SUBJECT: Applications for irrigation water rights on new lands with no previous irrigation permits within the boundaries of irrigation districts; applications for supplemental supplies (surface water) and additional supplies (ground water) within the boundaries of irrigation districts; and applications for storage permits within the boundaries of irrigation districts.

The Courts have generally held that return flow water may be reused on lands from which the return flows derive or originate. Return flows within the boundaries of an irrigation district will generally flow to natural watercourses, manmade drains (ditches) or buried tile drains ("horizontal wells"). The purpose of this MEMO is to provide direction to our personnel on how to deal with proposed applications, either surface or ground water, that lie within the boundaries of an irrigation district.

If we receive an application for a permit, the following guidelines should provide direction on how to respond.

1. If the application proposes to divert water directly from an artificially-constructed surface or underground drain within the irrigation district, we will notify the irrigation district by certified mail and ask for their consent. We should provide copies of the application and map, if any. We will give the district 45 days in which to respond.
 - a. If the district consents to the application, we will finalize our review of the application at hand and provide finalized copies of the application and map to the irrigation district. If our review of

the application results in substantive revisions, the application will be re-submitted to the district for final consent.

b. If the district denies consent to the application, this fact will be reported to the State Engineer in the form of a memorandum stating the facts of the case, including a recommendation on how to proceed.

c. Should we receive no response to our notification, we will send the irrigation district a follow-up certified letter advising the district that their failure to respond to this letter within 15 days will be reported to the State Engineer and we will proceed with our review and finalization of the application.

2. If the application proposes to divert water from a natural watercourse within the boundaries of an irrigation district, we will notify the irrigation district and ask for their comments. We should provide copies of the application and map, if any. We will give the district 45 days in which to respond with their comments. If no comments are received in a timely manner, we will proceed with our review.

NOTE: Since natural watercourses may be used in the delivery of irrigation water within an irrigation district, it is important that proper designs are used in the development of the new facility that will allow for proper water administration. A proper design may include a controllable and lockable head-gate or diversion structure.

3. If the application proposes to divert water from a source that is separate from the water supply to the irrigation district and will not interfere with the delivery of water within the irrigation district, no consent from the irrigation district is necessary. Upon final approval of the permit, copies of the new permit and map will be sent to the irrigation district.

4. If the lands in the proposed application already have water provided through the irrigation district water rights (original, supplemental, secondary or additional) and the application proposes to provide a supplemental or additional supply water right from a water source outside of the irrigation district, no consent from the irrigation district is necessary. Example: Iron Creek flows adjacent to and through the Shoshone Irrigation District. If water is available, a permit can be issued from Iron Creek for lands within or without the District, and no consent is necessary. Upon final approval of the permit, copies of the new permit and map will be sent to the irrigation district.

Please be aware that not all irrigation districts are a matter of record in this Office. If you encounter a situation where it is unclear if an irrigation district is involved, please ask questions of the applicant, engineer, surveyor or our field personnel.

It should be common practice to include a limitation (condition) on the permit application that acknowledges that a proposed diversion may be subordinated to water rights within an irrigation district. The following limitation may be appropriate: "This appropriation diverts within the boundaries of the _____ Irrigation District. Its satisfaction is subject to the availability of unappropriated water."