

# Idaho Department of Water Resources

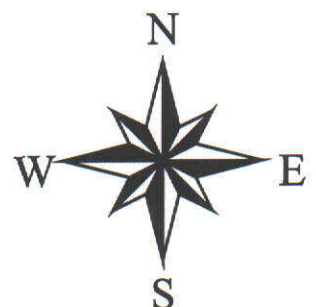
## Water Right 31-11408, 31-11442

Township 7 North Range 36 East Section 25



- Point of Diversion
- Point of Diversion - Other Rights
- Place of Use
- Place of Use - Other Rights
- Quarter-quarter Sections
- Section Lines
- Township Lines

0 700 Feet



GIS Illustration prepared from 1987/1988 NAPP photography by B. Contor 11/2000

11/01/2000

IDAHO DEPARTMENT OF WATER RESOURCES  
Adjudication Recommended Right Report

WATER RIGHT NO. 31-11442

|                   |                         |
|-------------------|-------------------------|
| <u>Owner Type</u> | <u>Name and Address</u> |
| Current Owner     | DONNA S BYBEE           |
| Current Owner     | ROBERT B BYBEE          |
|                   | 2014 E 1800 N           |
|                   | TERRETON, ID 83450      |
|                   | (208)662-5526           |

Priority Date: 05/14/1976  
Basis: License  
Status: Valid

Source Tributary to  
GROUND WATER

|                       |             |           |                       |               |                    |
|-----------------------|-------------|-----------|-----------------------|---------------|--------------------|
| <u>Beneficial Use</u> | <u>From</u> | <u>To</u> | <u>Diversion Rate</u> | <u>Volume</u> | <u>Subuse Code</u> |
| IRRIGATION            | 04/01       | 11/01     | 1.98 CFS              | 297 AFA       |                    |
| Total Diversion       |             |           | 1.98 CFS              | 297 AFA       |                    |

Point(s) of Diversion:

|          |       |         |                   |     |           |
|----------|-------|---------|-------------------|-----|-----------|
| Township | Range | Section | 1/4 of 1/4 of 1/4 | Lot | County    |
| 07N      | 35E   | 36      | NE NW NW          |     | JEFFERSON |

IRRIGATION Use:  
Acre Limit: 99

Place(s) of use:

Place of Use Legal Description: IRRIGATION JEFFERSON County

|                 |              |                |            |              |              |            |              |              |            |              |              |            |              |              |
|-----------------|--------------|----------------|------------|--------------|--------------|------------|--------------|--------------|------------|--------------|--------------|------------|--------------|--------------|
| <u>Township</u> | <u>Range</u> | <u>Section</u> | <u>Lot</u> | <u>Tract</u> | <u>Acres</u> | <u>Lot</u> | <u>Tract</u> | <u>Acres</u> | <u>Lot</u> | <u>Tract</u> | <u>Acres</u> | <u>Lot</u> | <u>Tract</u> | <u>Acres</u> |
| 07N             | 35E          | 25             |            | SWNW         | 33           |            | SENW         | 34           |            |              |              |            |              |              |
|                 |              |                |            | NESW         | 35           |            | SESW         | 3.3          |            |              |              |            |              |              |

Total Acres: 105.3

Conditions of Approval:

- C18 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.
- C05 RIGHT INCLUDES ACCOMPLISHED CHANGE IN PLACE OF USE PURSUANT TO SECTION 42-1425, IDAHO CODE.

Remarks:

- Place of Use - Irrigation THIS RIGHT IS LIMITED TO THE IRRIGATION OF 99 ACRES WITHIN THE PLACE OF USE DESCRIBED ABOVE IN A SINGLE IRRIGATION SEASON.
- Explanatory RIGHT NO. 31-11408 IS AN ENLARGEMENT OF THIS RIGHT PURSUANT TO SECTION 42-1426, IDAHO CODE.
- Place of Use - Irrigation USE OF THIS RIGHT WITH RIGHT NO. 31-11408 IS LIMITED TO THE IRRIGATION OF A COMBINED TOTAL OF 105.3 ACRES IN A SINGLE IRRIGATION SEASON.
- Quantity USE OF THIS RIGHT WITH RIGHT NO. 31-11408 IS LIMITED TO A TOTAL COMBINED DIVERSION RATE OF

1.98 CFS AND TO A TOTAL COMBINED ANNUAL DIVERSION VOLUME OF 297 AF.

*11/1/00*

Comments:

| Author  | Date    | Subject       | Comment                                                                              |
|---------|---------|---------------|--------------------------------------------------------------------------------------|
| bcontor | 11/1/00 | documentation | Documentation for this claim is found in paper file 31-7199 from which it was split. |
| bcontor | 11/1/00 | ownership     | Claimant owns POU in all but the SWNW. That parcel is leased from Harrops.           |

Dates:

Licensed Date:  
 Claim Received Date: 10/27/2000  
 Enlargement Use Priority Date:  
 Enlargement Statute Priority Date:  
 Decreed Date:  
 Date Filed with Court:  
 Objection Filed Date:  
 SF5 Filed:  
 Special Master Recom Signed Date:

Element Reviewed/Verified Dates:

| Element       | Last Review Date    | Reviewer | Last Verified Date  | Verifier | Status     |
|---------------|---------------------|----------|---------------------|----------|------------|
| POD           | 11/1/00 11:22:40 AM | bcontor  |                     |          | In Process |
| POU           | 11/1/00 11:32:05 AM | bcontor  |                     |          | In Process |
| Priority Date | 11/1/00 11:17:57 AM | bcontor  |                     |          | In Process |
| Quantity      | 11/1/00 11:33:40 AM | bcontor  |                     |          | In Process |
| Season        | 11/1/00 11:33:07 AM | bcontor  |                     |          | In Process |
| Source        | 11/1/00 11:24:23 AM | bcontor  |                     |          | In Process |
| Summary       | 11/1/00 11:34:56 AM |          | 11/1/00 11:34:56 AM | bcontor  | Complete   |
| Use           | 11/1/00 11:23:43 AM | bcontor  |                     |          | In Process |

Other Information:

Receipt Number(s):  
 State or Federal: S  
 Owner Name Connector: OR  
 Overall Max Diversion Rate: 1.98  
 Overall Max Diversion Volume: 297  
 Generic Max Rate per Acre:  
 Generic Max Volume per Acre:  
 Civil Case Number:  
 Old Case Number:  
 Decree Plaintiff:  
 Decree Defendant:  
 PresumptionFlag:  
 Notice of Error Flag:  
 Swan Falls Trust or Nontrust:  
 Swan Falls Dismissed:  
 DLE Act Number:  
 Cary Act Number:  
 Mitigation Plan: False  
 Parent Right: 31-7199 WRADJUDICATIONCLAIM

Verification Log:

| Element | Date Time Stamp     | Reviewer | Log Text                                                                                                                                                                                                                                                                                                                                                                                                                         |
|---------|---------------------|----------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| POD     | 11/1/00 11:22:38 AM | bcontor  | 1. (NO) The basis is not beneficial use.<br>2. (YES) Parent right has a Point of Diversion.<br>3. (YES) The claimed Point of Diversion can be verified using the water right file.<br>8. (NO) Point of Diversion remark was not required.<br>9. (NO) Point of Diversion condition was not required.<br>Edited PLS<br>Edited point location<br>1. (YES) The POU is required.<br>2. (NO) The basis of claim is not beneficial use. |
| POD     | 11/1/00 11:22:05 AM | bcontor  |                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| POD     | 11/1/00 11:21:35 AM | bcontor  |                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| POU     | 11/1/00 11:32:03 AM | bcontor  |                                                                                                                                                                                                                                                                                                                                                                                                                                  |

|               |                     |         |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
|---------------|---------------------|---------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Priority Date | 11/1/00 11:17:55 AM | bcontor | <p>3. (YES) The Parent Right has a POU.</p> <p>4. (NO) The claimed POU can not be verified using the water right file.</p> <p>5. (YES) There is evidence that there has been a change in the POU.</p> <p>6. (NO) The change can not be verified as an accomplished transfer.</p> <p>7. (YES) The change is an enlargement of the POU.</p> <p>Comment for 7: GIS</p> <p>8. (YES) An enlargement claim was filed.</p> <p>9. (YES) The file contains all the necessary information to verify the POU.</p> <p>12. (YES) POU remark was required.</p> <p>13. (NO) POU condition was not required.</p> <p>1. (NO) There has not been a later court decree of the water right(s) from the water source.</p> <p>4. (NO) The basis of claim is not beneficial use.</p> <p>5. (NO) The basis of claim is not a posted notice.</p> <p>6. (YES) Parent right has a priority date.</p> <p>7. (NO) The basis of claim is not an application or permit.</p> <p>12. (YES) The claim is recommended.</p> <p>13. (YES) The claim is coded correctly.</p> <p>14. (NO) Priority remark was not required.</p> <p>15. (NO) Priority condition was not required.</p> |
| Quantity      | 11/1/00 11:33:38 AM | bcontor | <p>1. (NO) The basis of claim is not beneficial use.</p> <p>2. (NO) The basis of claim is not a posted notice.</p> <p>3. (YES) The parent right has a diversion rate and/or diversion volume.</p> <p>4. (YES) The claimed diversion rate and/or volume can be verified using the water right file.</p> <p>7. (YES) The parent right has an annual diversion volume limit.</p> <p>8. (YES) Irrigation is a purpose of use.</p> <p>9. (YES) Quantity remark was required.</p> <p>10. (NO) Quantity condition was not required.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| Season        | 11/1/00 11:33:05 AM | bcontor | <p>1. (NO) The basis of claim is not beneficial use.</p> <p>2. (YES) The parent right has a period of use.</p> <p>3. (YES) The claimed Period of Use can be verified using the water right file.</p> <p>12. (YES) Irrigation is the purposed use.</p> <p>14. (NO) The period of use on the decree, license or transfer is not shorter on either the start or end date than allowable under IDWR's current standard.</p> <p>15. (NO) Period of Use remark was not required.</p> <p>16. (NO) Period of Use condition was not required.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| Source        | 11/1/00 11:24:22 AM | bcontor | <p>1. (NO) The basis is not beneficial use.</p> <p>2. (YES) Parent right has a source.</p> <p>3. (YES) The claimed source can be verified using the water right file.</p> <p>Comment for 7: Water Measurement District exam, license</p> <p>8. (NO) The source is not surface water.</p> <p>10. (NO) Source remark was not required.</p> <p>11. (NO) Source condition was not required.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| Summary       | 11/1/00 11:34:54 AM | bcontor | <p>1. (NO) The basis of the claim is not beneficial use.</p> <p>3. (NO) There is no indication that there has been a five year period of continuous nonuse that could result in a recommendation of forfeiture or partial forfeiture.</p> <p>5. (NO) General remark was not required.</p> <p>6. (NO) Explanatory remark was not required.</p> <p>7. (NO) Additional condition was not required.</p> <p>8. (YES) Wanted to view the recommended right.</p> <p>9. (YES) This is a split right.</p> <p>10. (NO) This is not a combined right.</p> <p>11. (NO) Documents were not linked or attached to this file.</p> <p>12. (YES) Set the verification date.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| Use           | 11/1/00 11:23:41 AM | bcontor | <p>1. (NO) The basis of claim is not beneficial use.</p> <p>2. (YES) The parent right has a purpose of use.</p> <p>3. (YES) The claimed purpose of Use can be verified using the water right file.</p> <p>11. (NO) Purpose of Use remark was not required.</p> <p>12. (NO) Purpose of Use condition was not required.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |

Priority Date 11/1/00 11:17:55 AM bcontor

Quantity 11/1/00 11:33:38 AM bcontor

Season 11/1/00 11:33:05 AM bcontor

Source 11/1/00 11:24:22 AM bcontor

Summary 11/1/00 11:34:54 AM bcontor

Use 11/1/00 11:23:41 AM bcontor

5. (YES) There is evidence that there has been a change in the POU.

6. (NO) The change can not be verified as an accomplished transfer.

7. (YES) The change is an enlargement of the POU.

Comment for 7: GIS

8. (YES) An enlargement claim was filed.

9. (YES) The file contains all the necessary information to verify the POU.

12. (YES) POU remark was required.

13. (NO) POU condition was not required.

1. (NO) There has not been a later court decree of the water right(s) from the water source.

4. (NO) The basis of claim is not beneficial use.

5. (NO) The basis of claim is not a posted notice.

6. (YES) Parent right has a priority date.

7. (NO) The basis of claim is not an application or permit.

12. (YES) The claim is recommended.

13. (YES) The claim is coded correctly.

14. (NO) Priority remark was not required.

15. (NO) Priority condition was not required.

1. (NO) The basis of claim is not beneficial use.

2. (NO) The basis of claim is not a posted notice.

3. (YES) The parent right has a diversion rate and/or diversion volume.

4. (YES) The claimed diversion rate and/or volume can be verified using the water right file.

7. (YES) The parent right has an annual diversion volume limit.

8. (YES) Irrigation is a purpose of use.

9. (YES) Quantity remark was required.

10. (NO) Quantity condition was not required.

1. (NO) The basis of claim is not beneficial use.

2. (YES) The parent right has a period of use.

3. (YES) The claimed Period of Use can be verified using the water right file.

12. (YES) Irrigation is the purposed use.

14. (NO) The period of use on the decree, license or transfer is not shorter on either the start or end date than allowable under IDWR's current standard.

15. (NO) Period of Use remark was not required.

16. (NO) Period of Use condition was not required.

1. (NO) The basis is not beneficial use.

2. (YES) Parent right has a source.

3. (YES) The claimed source can be verified using the water right file.

Comment for 7: Water Measurement District exam, license

8. (NO) The source is not surface water.

10. (NO) Source remark was not required.

11. (NO) Source condition was not required.

1. (NO) The basis of the claim is not beneficial use.

3. (NO) There is no indication that there has been a five year period of continuous nonuse that could result in a recommendation of forfeiture or partial forfeiture.

5. (NO) General remark was not required.

6. (NO) Explanatory remark was not required.

7. (NO) Additional condition was not required.

8. (YES) Wanted to view the recommended right.

9. (YES) This is a split right.

10. (NO) This is not a combined right.

11. (NO) Documents were not linked or attached to this file.

12. (YES) Set the verification date.

1. (NO) The basis of claim is not beneficial use.

2. (YES) The parent right has a purpose of use.

3. (YES) The claimed purpose of Use can be verified using the water right file.

11. (NO) Purpose of Use remark was not required.

12. (NO) Purpose of Use condition was not required.

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

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

CIVIL CASE NUMBER: 39576

Ident. Number 31-11442  
Date Received: 10/27/00  
Receipt No:  
Received By:

**NOTICE OF CLAIM TO A WATER RIGHT  
ACQUIRED UNDER STATE LAW**

A3111442



1. Name of Claimant(s)

ROBERT B BYBEE Phone: (208)662-5526

2014 E 1800 N  
TERRETON ID USA 83450

DONNA S BYBEE Phone: (208)662-5526

2014 E 1800 N  
TERRETON ID USA 83450

2. Date of Priority: 05/14/1976

3. Source: GROUND WATER Trib. to:

4. Point of Diversion:

| Township | Range | Section | 1/4 of 1/4 of 1/4 Lot | County    |
|----------|-------|---------|-----------------------|-----------|
| 07N      | 35E   | 36      | NE NW NW              | JEFFERSON |

5. Description of diverting works:

WELL (75 FT, ESTIMATED) TO SPRINKLER SYSTEM

6. Water is used for the following purposes:

| Purpose    | From  | To    | C.F.S. | (or) A.F.A |
|------------|-------|-------|--------|------------|
| IRRIGATION | 04/01 | 11/01 | 1.98   |            |

7. Total Quantity Appropriated is:  
1.98 C.F.S.

8. Total consumptive use:

9. Non-irrigation uses:

10. Place of use:

| Township | Range | Section | 1/4 of 1/4 | Lot | Use           | Acres |
|----------|-------|---------|------------|-----|---------------|-------|
| 07N      | 35E   | 25      | SE         | NW  | IRRIGATION    | 34    |
|          |       |         | SW         | NW  | IRRIGATION    | 33    |
|          |       |         | NE         | SW  | IRRIGATION    | 35    |
|          |       |         | SE         | SW  | IRRIGATION    | 7     |
|          |       |         |            |     | Section Acres | 109   |
|          |       |         |            |     | Total Acres   | 109   |

11. Place of use in counties: JEFFERSON

12. Do you own the property listed above as place of use? No

13. Other Water Rights Used:

14. Remarks:

THIS CLAIM IS THE PORTION OF CLAIM 31-7199 THAT IS ON LANDS OWNED BY CLAIMANT AND LANDS LEASED FROM HARROP. THE PORTION OF CLAIM 31-7199 THAT IS ON LANDS OWNED BY GUNDERSON IS SPLIT OFF TO CLAIM 31-11443. THIS IS BECAUSE THAT PORTION OF ORIGINAL CLAIM IS ALSO FILED ON BY GUNDERSON AS CLAIM 31-11331.

ORIGINAL CLAIM WAS FOR 2.64 CFS ON 142 ACRES IN COMBINATION WITH ENLARGEMENT CLAIM 31-11408, BASED ON ORIGINAL LICENSE FOR 2.64 CFS ON 132 ACRES. THIS CLAIM IS FOR 1.98 CFS ON 109 ACRES AND CLAIM 31-11443 IS FOR 0.66 CFS ON 33 ACRES. ORIGINAL CLAIM IS FULLY APPORTIONED TO SPLITS. BCONTOR 10/27/2000.

15. Basis of Claim: License

# Idaho Department of Water Resources

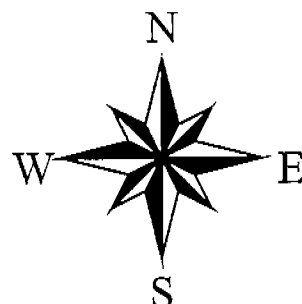
## Water Right 31-11408, 31-11442

Township 7 North Range 36 East Section 25



0 700 Feet

-  Point of Diversion
-  Point of Diversion - Other Rights
-  Place of Use
-  Place of Use - Other Rights
-  Quarter-quarter Sections
-  Section Lines
-  Township Lines



GIS Illustration prepared from 1987/1988 NAPP photography by B. Contor 11/2000

MEMORANDUM

To: A31-11331  
A31-11442  
A31-11443  
A31-11603  
A31-11604  
WR Permit 31-7338  
Fr: Bryce Contor   
Date: 2/26/2001  
Re: Gunderson/Bybee Competing Claims

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Paul Gunderson owns the NW 1/4 of the SW 1/4 of Section 25, Township 7N, Range 36E. For a time, these lands were leased by Don Bybee and/or his son Robert. Don Bybee is deceased. There are five water rights and/or claims associated with this property:

1. Permit 31-7338, issued to Paul Gunderson. It includes the restriction "Rights 31-7199 and 31-7338 when combined shall not exceed the irrigation of 252 acres. If right 31-7199 is changed through the statutory transfer procedure so that it is no longer appurtenant to the NWSW, Sec. 25, T7N, R35E, then the number of acres irrigated under this right shall be reduced by up to 33 acres to comply with the 252 acre limit described above."
2. Adjudication Claims 31-11442 and 31-11443. These are splits of Bybee claim 31-7199, based upon license 31-7199, referred to in the restriction on permit 31-7338. These are recommended to Bybee, based upon documentation in the files supporting Bybee's assertion that the lease agreement with Gunderson was that upon termination of the lease, Bybee would retain the water rights.
3. Adjudication Claim 31-11331. This was filed by Paul Gunderson as a competing claim to Bybee's claim 31-7199. With the split of 31-7199, 31-11331 competes directly with 31-11443. The preliminary recommendation is that 31-11331 be disallowed, with the remark "Recommended as right no. 31-11443."
4. Adjudication Claim 31-11603. This is a beneficial use claim based partly upon statutory claim 31-4035, and recommended on the strength of an affidavit from Marcus Barnes. 31-11603 is recommended for 77 acres within a permissible place of use including the subject quarter-quarter section. The Barnes affidavit does not indicate that the subject quarter-quarter was part of the original place of use.
5. Adjudication Claim 31-11604. This is an enlargement claim of 31-11604, recommended on the strength of affidavits of Mr. Gunderson and his son. It is recommended with a priority date of 1976 per the documentation provided. It is recommended on a permissible place of use basis with 31-11603. The permissible place of use does overlap the subject quarter-quarter, the special condition requiring reduction of 33 acres upon transfer of the Bybee license is also applied to these two recommendations.

Gunderson disagrees with the disallowal of 31-11331, and with the special condition that is attached to permit 31-7338 and recommendations 31-11603 and 31-11604. The essence of the disagreement is a question of ownership of the right to irrigate the subject NWSW quarter-quarter of section 25.

The attached narrative by Mr. Gunderson explains the core of the two reasons he believes he should own the rights:

1. The documentation provided by Bybee is fraudulent, and Gunderson should own that part of the Bybee license that is appurtenant to Gunderson's lands.
2. Were it not for a series of errors and omissions by the Department, Gunderson would have received a license for the irrigation of the quarter-quarter that was senior to Bybee's license, and therefore the special restriction would have been applied to the Bybee rights.

Mr. Gunderson feels that the just solution would be to grant Gunderson a license with priority date senior to Bybee's, and apply the restrictions to Bybee's rights. A less just, but acceptable solution, would be to simply remove the special restriction from Gunderson's rights. Recommending 31-11331 and disallowing 31-11443 would accomplish the same purpose/

The decision to recommend the Bybee claim in preference to the Gunderson claim, for license 31-7199, is based upon the documentation in the Bybee file. The question of whether that documentation is valid is beyond the scope of claims review and should properly be resolved by a court.

Similarly, the issue of injury due to Department failure to process Gunderson's original application, should also be resolved by court.

By formally objecting to these recommendations, Mr. Gunderson can have an opportunity present these concerns to the adjudication court.