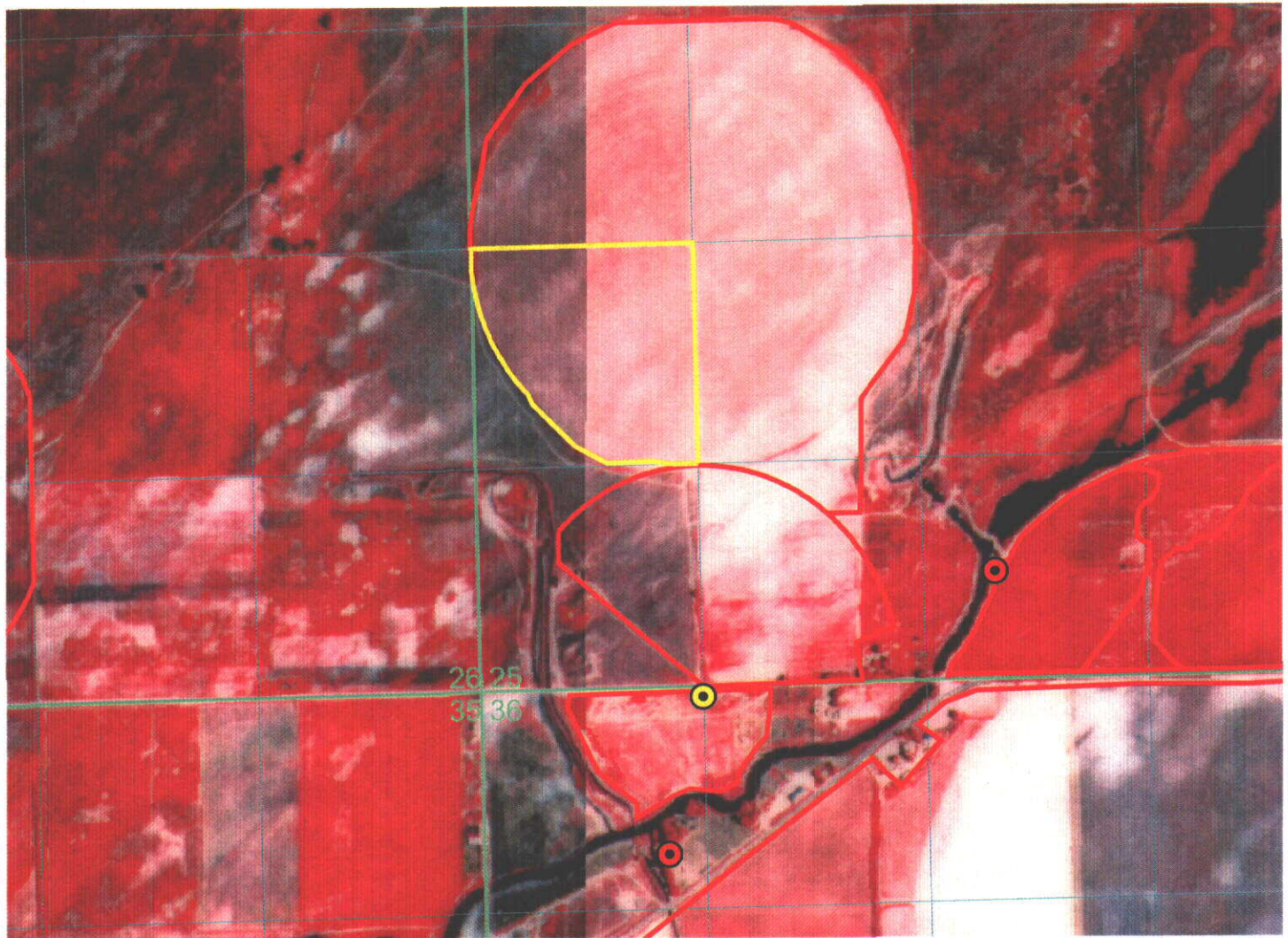


Idaho Department of Water Resources

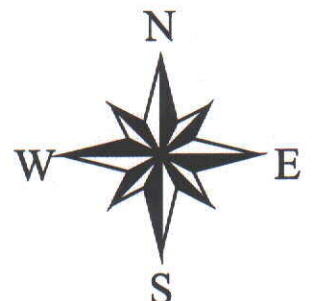
Water Right 31-11443

Township 7N Range 35E Section 25



0 1320 Feet

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



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

03/22/2001

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

RIGHT NUMBER: 31-11443
NAME AND ADDRESS: DONNA S BYBEE
ROBERT B BYBEE
2014 E 1800 N
TERRETON, ID 83450

SOURCE: GROUND WATER

QUANTITY: 0.66 CFS
99 AFY

PRIORITY DATE: 05/14/1976

POINT OF DIVERSION: T07N R35E S36 NENWNW Within JEFFERSON County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
IRRIGATION	04-01 11-01	0.66 CFS 99.00 AFY

PLACE OF USE:

IRRIGATION Within JEFFERSON
County
T07N R35E S25 NWSW 33

33 ACRES TOTAL

USE OF THE RIGHTS LISTED BELOW IS LIMITED TO THE IRRIGATION OF A COMBINED TOTAL OF 152 ACRES IN A SINGLE IRRIGATION SEASON. COMBINED RIGHT NOS.: 31-11443, 31-11604, 31-11688, 31-11689. IF RIGHT 31-11443 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 31-11604, 31-11688 AND 31-11689 SHALL BE REDUCED BY UP TO 33 ACRES TO COMPLY WITH THE 152 ACRE LIMIT DESCRIBED ABOVE.

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

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 31-11443
Date Received: 10/27/00
Receipt No:
Received By:

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

A311443



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	0.66	

7. Total Quantity Appropriated is:
0.66 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	NW	SW	IRRIGATION	33
					Section Acres	33
					Total Acres	33

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 SPLIT OFF OF ORIGINAL CLAIM 31-7199 DUE TO THE EXISTENCE OF COMPETING CLAIM 31-11331, WHICH CLAIMS THIS PORTION OF THE ORIGINAL RIGHT. THE UN-CONTESTED PORTION OF 31-7199 IS SPLIT OFF TO CLAIM 31-11442, ALSO CLAIMED BY ROBERT BYBEE.

31-11331 IS CLAIMED BY PAUL GUNDERSON, WHO OWNS THE POU COVERED BY THIS CLAIM. AT THE TIME LICENSE 31-7199 WAS PERFECTED, BYBEE'S PREDECESSOR WAS LEASING THE PROPERTY FROM GUNDERSON. THE COMPETING CLAIMS ARISE OVER A DISPUTE ABOUT THE TERMS OF THE LEASE AGREEMENT AND THE OWNERSHIP OF THE LICENSED RIGHT. BCONTOR 10/27/2000.

ORIGINAL CLAIM WAS FOR 2.64 CFS ON 142 ACRES. THIS CLAIM IS FOR 0.66 CFS ON 33 ACRES, 31-11442 IS FOR 1.98 CFS ON 109 ACRES. ORIGINAL CLAIM IS FULLY DISTRIBUTED AMONG SPLITS. BCONTOR 10/27/2000.

15. Basis of Claim: License

16. Signature(s)

(a.) 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 Basin Adjudication." (b.) I/We do _____ do not _____ wish to receive and pay a small annual fee for monthly copies of the docket sheet.

Number of attachments: _____

For Individuals:

I/We do solemnly swear or affirm that the statements contained in the foregoing document are true and correct.

Signature of Claimant(s): _____ Date: _____

_____ Date: _____

State of Idaho)
County of _____) SS.

Subscribed and sworn (or affirmed) before me this

of _____ 20__

Notary Public

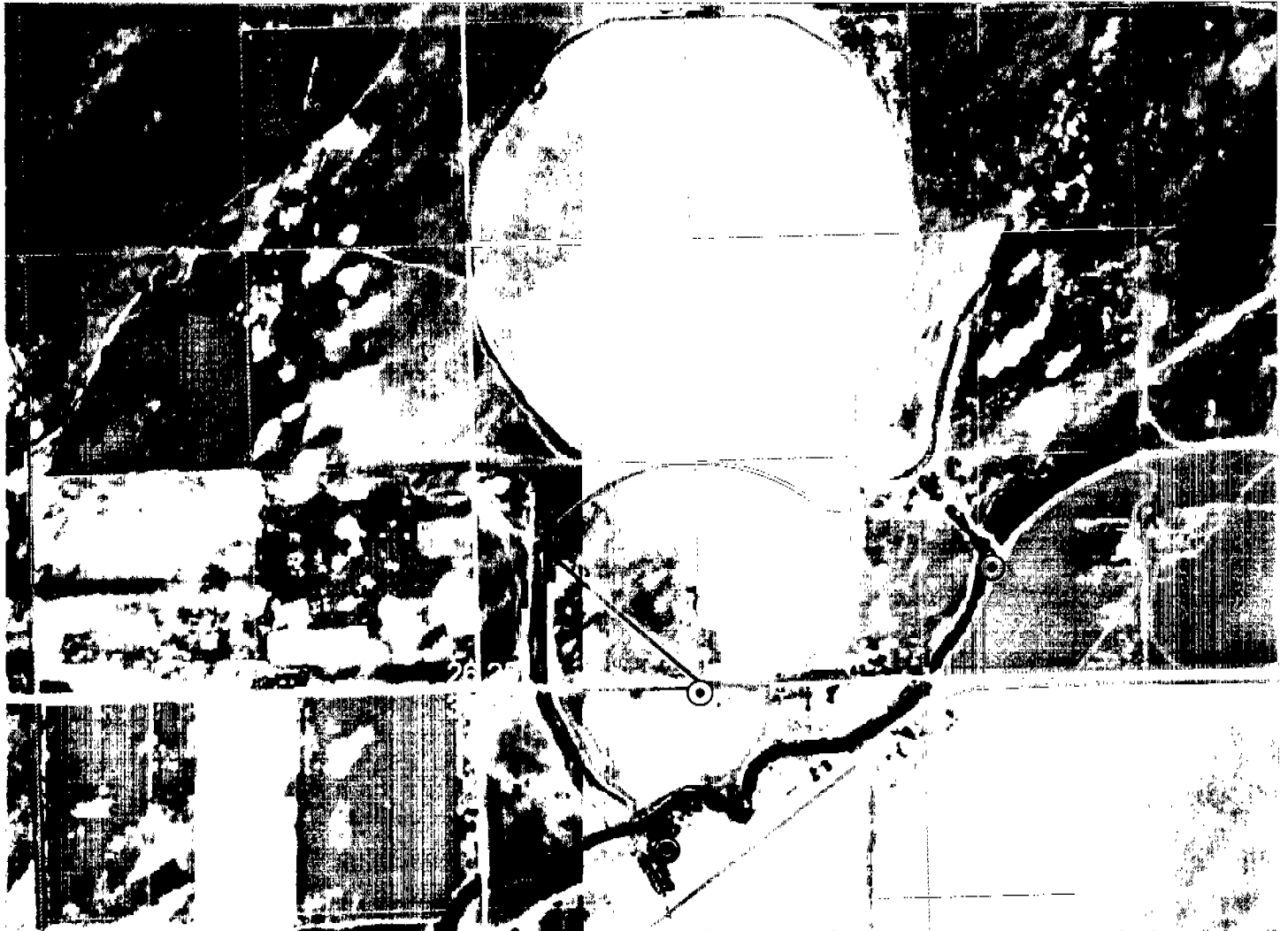
Residing at _____

My commission Expires _____

Idaho Department of Water Resources

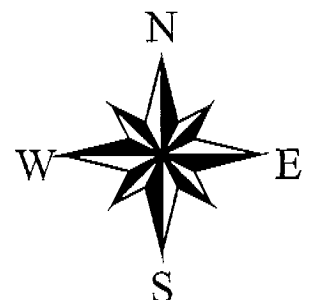
Water Right 31-11443

Township 7N Range 35E Section 25



0 1320 Feet

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



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



State of Idaho

DEPARTMENT OF WATER RESOURCES

900 N. Skyline Dr., Suite A, Idaho Falls, Idaho 83402-1718 • (208) 525-7161- Fax (208) 525-7177

EASTERN REGION

March 22, 2001

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

ROBERT B & DONNA S BYBEE
2014 E 1800 N
TERRETON ID 83450

RE: NOTICE OF ERROR

Dear Mr. and Mrs. Bybee:

Enclosed is our recommendation for 31-11443. Overlapping Water Right 31-11603 was split into 31-11688 and 31-11689. This changed the remarks slightly but does not affect your water right.

If you have any questions concerning this matter please feel free to contact Senior Water Agent Bryce Contor at (208) 525-7161.

Respectfully submitted,

Cheri Vandermeulen
Records Clerk

12/28/2000

IDAHO DEPARTMENT OF WATER RESOURCES
Adjudication Recommended Right Report

WATER RIGHT NO. 31-11443

<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	0.66 CFS	99 AFA	
Total Diversion			0.66 CFS	99 AFA	

Location of Point(s) of Diversion:

GROUND WATER NENWNW Sec. 36 Township 07N Range 35E JEFFERSON County

IRRIGATION Use:
Acre Limit: 33

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>
07N	35E	25		NWSW	33						

Total Acres: 33

Conditions of Approval:

1. 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.

Remarks:

1. Place of Use - Irrigation USE OF THE RIGHTS LISTED BELOW IS LIMITED TO THE IRRIGATION OF A COMBINED TOTAL OF 152 *Bac* ACRES IN A SINGLE IRRIGATION SEASON. COMBINED RIGHT NOS.: 31-11443, 31-11603, 31-11604. IF RIGHT 31-11443 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 31-11603 AND 31-11604 SHALL BE REDUCED BY UP TO 33 ACRES TO COMPLY WITH THE 152 *Bac* ACRE LIMIT DESCRIBED ABOVE.

Comments:

Water Right 31-11443

Author	Date	Subject	Comment
bcontor	11/1/00	Ownership	The ownership of this right is challenged by Paul Gunderson, who has filed competing claim 31-11331. Recommended to Bybee per lease contract in file 31-7199 from which 31-11443 was split. Gunderson invited on phone to provide counter-documentation, none
bcontor	11/1/00	split claim	Bybee claim 31-7199 was split to separate the contested and uncontested portions of the right. The uncontested portion is recommended as 31-11442 with enlargement 31-11408. This claim (31-11443) is the contested portion.
bcontor	11/1/00	Overlap	This claim overlaps post-AJ permit 31-7338. One of the conditions of 31-7338 is that the overlapped acres cannot be irrigated if the overlapping portion of license 31-7199 (now recommended as 31-11443) is transferred to a new POU.
bcontor	12/28/00	eCVR Modified	eCVR entered 12/28/2000 to add POU remark required by recommendation of 31-11603 and 11604. It is intended that this right be undencumbered; if this right is transferred to a new POU the other two should be adjusted to prevent enlargement.

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 1:58:26 PM	bcontor			In Process
POU	11/1/00 2:03:19 PM	bcontor			In Process
Priority Date	11/1/00 1:53:19 PM	bcontor			In Process
Quantity	11/1/00 2:04:50 PM	bcontor			In Process
Season	11/1/00 2:06:24 PM	bcontor			In Process
Source	11/1/00 1:58:59 PM	bcontor			In Process
Summary	11/1/00 2:06:04 PM		11/1/00 2:06:04 PM	bcontor	Complete
Use	11/1/00 2:03:46 PM	bcontor			In Process

Other Information:

Receipt Number(s):
 State or Federal: S
 Owner Name Connector: OR
 Water District Number:
 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 1:58:25 PM	bcontor	1. (NO) The basis is not beneficial use. 2. (YES) Parent right has a Point of Diversion. 3. (YES) The claimed Point of Diversion can be verified using the water right file. 8. (NO) Point of Diversion remark was not required. 9. (NO) Point of Diversion condition was not required. Edited PLS
POD	11/1/00 1:58:05 PM	bcontor	

POD	11/1/00 1:57:42 PM	bcontor	Edited point location
POU	11/1/00 2:03:17 PM	bcontor	1. (YES) The POU is required. 2. (NO) The basis of claim is not beneficial use. 3. (YES) The Parent Right has a POU. 4. (YES) The claimed POU can be verified using the water right file. 12. (NO) POU remark was not required. 13. (NO) POU condition was not required.
Priority Date	11/1/00 1:53:18 PM	bcontor	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.
Quantity	11/1/00 2:04:48 PM	bcontor	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. (NO) Quantity remark was not required. 10. (NO) Quantity condition was not required.
Season	11/1/00 2:06:22 PM	bcontor	1. (NO) The basis of claim is not beneficial use.
Source	11/1/00 1:58:57 PM	bcontor	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 Meas. District Exam 8. (NO) The source is not surface water. 10. (NO) Source remark was not required. 11. (NO) Source condition was not required.
Summary	11/1/00 2:06:02 PM	bcontor	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. (YES) Additional condition was 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.
Use	11/1/00 2:03:44 PM	bcontor	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.

MEMORANDUM

To: 31-11331, 31-11443
Fr: Bryce Contor
Date: 3/21/2001 *Bybee*
Re: Copy of Bybee Mortgage

The attached copy of a FmHA Mortgage to Don Bybee references a security interest in permit 31-7199. Mr. Paul Gunderson requests that this document be filed with the disputed claims arising from 31-7199.

Mr. Gunderson indicates that in about 1986 or 1987 FmHA foreclosed on the mortgage and believes that therefore even setting aside the contract dispute, Bybee has no claim upon rights arising out of original permit 31-7199.

Even if the other reasons for Bybee not having a right to this permit does not prevail the attached Real Estate Mortgage between Bybee and USDA-FmHA prevails.

The FmHA foreclosed on this mortgage attached for non payment. Around the year 1986 ~~I was app~~ Bill Spark from the FmHA approached me. He had a list of Machinery and wanted to know if I knew where or if I had seen several specific items. He stated the FmHA was foreclosing on Don Bybee and the items on his list were to be sold.

Paul Henderson 7/21/01

USDA-FmHA
Form FmHA 427-1 ID
(Rev. 8-29-78)

Position 5

REAL ESTATE MORTGAGE FOR IDAHO

204274
At _____ Day _____ 19____
At _____ O'Clock _____ M.
Jefferson Co. Recorder
Fee \$ _____ Deputy
Recorded at request of _____

THIS MORTGAGE is made and entered into by DON R. BYBEE AND MARVINE T. BYBEE

residing in _____ JEFFERSON _____ County, Idaho, whose post office address is
_____ HAMER _____, Idaho, 83405,
herein called "Borrower," and:

WHEREAS Borrower is indebted to the United States of America, acting through the Farmers Home Administration, United States Department of Agriculture, herein called the "Government," as evidenced by one or more promissory note(s) or assumption agreement(s), herein called "note," which has been executed by Borrower, is payable to the order of the Government, authorizes acceleration of the entire indebtedness at the option of the Government upon any default by Borrower, and is described as follows:

<u>Date of Instrument</u>	<u>Principal Amount</u>	<u>Annual Rate of Interest</u>	<u>Due Date of Final Installment</u>
June 6, 1980	\$ 41,200.00	5 1/2	June 6, 1987
June 6, 1980	33,900.00	14%	June 6, 1987
June 6, 1980	137,650.00	14%	June 6, 1991

And the note evidences a loan to Borrower, and the Government, at any time, may assign the note and insure the payment thereof pursuant to the Consolidated Farm and Rural Development Act, or Title V of the Housing Act of 1949:

And it is the purpose and intent of this instrument that, among other things, at all times when the note is held by the Government, or in the event the Government should assign this instrument without insurance of the note, this instrument shall secure payment of the note; but when the note is held by an insured holder, this instrument shall not secure payment of the note or attach to the debt evidenced thereby, but as to the note and such debt shall constitute an indemnity mortgage to secure the Government against loss under its insurance contract by reason of any default by Borrower:

NOW, THEREFORE, in consideration of the loan(s) and (a) at all times when the note is held by the Government, or in the event the Government should assign this instrument without insurance of the payment of the note, to secure prompt payment of the note and any renewals and extensions thereof and any agreements contained therein, including any provision for the payment of an insurance or other charge, (b) at all times when the note is held by an insured holder, to secure performance of Borrower's agreement herein to indemnify and save harmless the Government against loss under its insurance contract by reason of any default by Borrower, and (c) in any event and at all times to secure the prompt payment of all advances and expenditures made by the Government, with interest, as hereinafter described, and the performance of every covenant and agreement of Borrower contained herein or in any supplementary agreement, Borrower does hereby grant, bargain, sell, convey, mortgage, and assign unto the Government the following property situated in the State of Idaho,

County(ies) of JEFFERSON

TOWNSHIP 7 NORTH, RANGE 35 EAST, BOISE MERIDIAN.

The NW 1/4, SE 1/4, the S 1/2 SW 1/4 and the SE 1/4 SW 1/4 of section 25, said township and range, EXCEPTING THEREFROM: Commencing at the SW corner of said section 25, running thence east 1320 feet; thence north 520 feet, to a point on the west line of the SE 1/4 SW 1/4 of section 25, which is the place of beginning, and running thence south 340°05' east 452 feet; thence south 85°32' east 320 feet; thence north 40°42' east 594 feet; thence north 47°06' east 90 feet; thence north 17°35' east 266 feet; thence north 15°29' east 364 feet; thence north 37°24' east 272 feet; thence north 44°59' east 597 feet; thence north 21°19' east 440 feet to a point on the north line of the SE 1/4 of said section, which is 956 feet east of the center of said section 25; thence west 956 feet to the center of said section; thence south 1320 feet; thence west 1320 feet; thence south 701 feet to the point of beginning. ALSO EXCEPTING: Commencing at the SW corner of said section 25 said township and range, and running thence east on the section line 1320 feet; thence north 529 feet to a point on the west line of the SE 1/4 SW 1/4 of said section; thence south 34°45' east 11 feet; thence south 85°00' east 320 feet; thence north 40°42' east 594 feet; thence north 47°06' east 90 feet; thence north 17°35' east 266 feet; thence north 15°29' east 364 feet; thence north 37°24' east 272 feet; thence north 44°59' east 597 feet; thence north 21°19' east 440 feet to a point on the north line of the SE 1/4 of said section, which is 956 feet east of the center of said section 25; thence west 956 feet to the center of said section; thence south 1320 feet; thence west 1320 feet; thence south 701 feet to the point of beginning.

1 Johnston Pump, 150 HP, 25 feet, 10" Column 2 $\frac{1}{2}$ " Tube; Electric Panel; Set Pump &
Wire Panel, Holman Pivot set up w/concrete pad, 1 40 HP Motor Bowls; 1 Nelson 100
End Sum; 160 Pumps; 160 Pumps; 160 Pumps; 160 Pumps; 160 Pumps; 160 Pumps; 160 Pumps; 160 Pumps;

TOWNSHIP 7 NORTH, RANGE 35 EAST, BOISE MERIDIAN.

The NW $\frac{1}{4}$ SE $\frac{1}{4}$; the SW $\frac{1}{4}$ SE $\frac{1}{4}$ and the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of section 25, said township and range, EXCEPTING THEREFROM: Commencing at the SW corner of said section 25, running thence east 1320 feet; thence north 529 feet, to a point on the west line of the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of section 25, which is the place of beginning, and running thence south 24 $^{\circ}$ 05' east 452 feet; thence south 85 $^{\circ}$ 32' east 320 feet; thence north 43 $^{\circ}$ 48' east 694 feet; thence north 47 $^{\circ}$ 06' east 90 feet; thence north 17 $^{\circ}$ 35' east 266 feet; thence north 15 $^{\circ}$ 29' east 354 feet; thence north 37 $^{\circ}$ 24' east 272 feet; thence north 44 $^{\circ}$ 59' east 597 feet; thence north 21 $^{\circ}$ 19' east 440 feet to a point on the north line of the SE $\frac{1}{4}$ of said section, which is 956 feet east of the center of said section 25; thence west 956 feet to the center of said section; thence south 1320 feet; thence west 1320 feet; thence south 791 feet to the point of beginning. ALSO EXCEPTING: Commencing at the SW corner of said section 25 said township and range, and running thence east on the section line 1320 feet; thence north 529 feet to a point on the west line of the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of said section; thence south 84 $^{\circ}$ 05' east 452 feet; thence south 85 $^{\circ}$ 32' east 320 feet; thence north 43 $^{\circ}$ 48' east 694 feet to a point which is on the north and east lines of said section and which is the place of beginning, running thence south 86 $^{\circ}$ 15' east 140 feet; thence north 89 $^{\circ}$ 13' east 226 feet; thence south 62 $^{\circ}$ 06' east 150 feet, more or less, to the North Bank of Camas Creek, the said right of way, the centerline of which is last hereinbefore described as being 100 feet wide, and is to be used for the purpose of construction of a ditch to carry water which may be developed on the aforesaid premises from wells or ditches thereon to Camas Creek, a public water course. ALSO EXCEPTING: That part of the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of section 25, said township and range, lying south and east of Camas Creek.

The NE $\frac{1}{4}$ NW $\frac{1}{4}$; the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of section 25, said township and range.

Commencing at the SW corner of section 25, said township and range, running thence east 1,320 feet; thence north 529 feet to a point on the westline of the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of said section, which is the place of beginning, running thence north 3,431 feet, more or less, to the SW corner of the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of said section 25; thence east 50 feet; thence south 3,431 feet, more or less; thence west 50 feet, to the place of beginning.

The NE $\frac{1}{4}$ NW $\frac{1}{4}$ of section 36, township 7 north, range 35 east of the Boise Meridian, less that portion lying south of Camas Creek.

The NW $\frac{1}{4}$ NW $\frac{1}{4}$ lying east of the Holley Canal, section 36, said township and range.

ALSO, the borrowers' leasehold interest in the following described property:

TOWNSHIP 7 NORTH, RANGE 35 EAST, BOISE MERIDIAN.

Section 25: SE $\frac{1}{4}$ NW $\frac{1}{4}$; NE $\frac{1}{4}$ SW $\frac{1}{4}$: Commencing at the SW corner of said section 25 and running thence east 1320 feet; thence north 529 feet to a point on the west line of the SE $\frac{1}{4}$ of the SW $\frac{1}{4}$ of said section 25, which is the place of beginning; thence S 84 $^{\circ}$ 05' E 452 feet; thence S 85 $^{\circ}$ 32' E 320 feet; thence N 43 $^{\circ}$ 48' E 694 feet; thence N 47 $^{\circ}$ 06' E 90 feet; thence N 17 $^{\circ}$ 35' E 266 feet; thence N 15 $^{\circ}$ 29' E 354 feet; thence N 37 $^{\circ}$ 24' E 272 feet; thence N 44 $^{\circ}$ 59' E 597 feet; thence N 21 $^{\circ}$ 19' E 440 feet to a point on the north line of the SE $\frac{1}{4}$ of said section; thence west 956 feet; thence south 1320 feet; thence west 1320 feet; thence south 791 feet to the point of beginning. EXCEPTING THEREFROM the west 50 feet of all the above described property.

SUBJECT TO easements and rights of way for highways, roads, ditches, canals, pole, power and transmission lines as they exist.

Together with all water rights appurtenant thereto including but not limited to the following: Water License # 31-7043; Claim to Water Right No. 31-4016; Permit No. 31-7199 Together with all pumps, motors, & sprinkler equipment including but not limited to the following:

together with all rights, interests, easements, hereditaments and appurtenances thereunto belonging, the rents, issues, and profits thereof and revenues and income therefrom, all improvements and personal property now or later attached thereto or reasonably necessary to the use thereof, including, but not limited to, ranges, refrigerators, clothes washers, clothes dryers, or carpeting purchased or financed in whole or in part with loan funds, all water, water rights, and water stock pertaining thereto, and all payments at any time owing to Borrower by virtue of any sale, lease, transfer, conveyance, or condemnation of any part thereof or interest therein-all of which are herein called "the property":

TO HAVE AND TO HOLD the property unto the Government and its assigns forever in fee simple.

BORROWER, for Borrower's self, Borrower's heirs, executors, administrators, successors and assigns, WARRANTS THE TITLE to the property to the Government against all lawful claims and demands whatsoever except any liens, encumbrances, easements, reservations, or conveyances specified hereinabove, and COVENANTS AND AGREES as follows:

(1) To pay promptly when due any indebtedness to the Government hereby secured and to indemnify and save harmless the Government against any loss under its insurance of payment of the note by reason of any default by Borrower. At all times when the note is held by an insured holder, Borrower shall continue to make payments on the note to the Government, as collection agent for the holder.

(2) To pay to the Government such fees and other charges as may now or hereafter be required by regulations of the Farmers Home Administration.

(3) If required by the Government, to make additional monthly payments of 1/12 of the estimated annual taxes, assessments, insurance premiums and other charges upon the mortgaged premises.

(4) Whether or not the note is insured by the Government, the Government may at any time pay any other amounts required herein to be paid by Borrower and not paid by Borrower when due, as well as any costs and expenses for the preservation, protection, or enforcement of this lien, as advances for the account of Borrower. All such advances shall bear interest at the rate borne by the note which has the highest interest rate.

(5) All advances by the Government as described by this instrument, with interest, shall be immediately due and payable by Borrower to the Government without demand at the place designated in the latest note and shall be secured hereby. No such advance by the Government shall relieve Borrower from breach of Borrower's covenant to pay. Any payment made by Borrower may be applied on the note or any indebtedness to the Government secured hereby, in any order the Government determines.

(6) To use the loan evidenced by the note solely for purposes authorized by the Government.

(7) To pay when due all taxes, liens, judgments, encumbrances, and assessments lawfully attaching to or assessed against the property, including all charges and assessments in connection with water, water rights, and water stock pertaining to or reasonably necessary to the use of the real property described above, and promptly deliver to the Government without demand receipts evidencing such payments.

(8) To keep the property insured as required by and under insurance policies approved by the Government and, at its request, to deliver such policies to the Government.

APPROVED BY THE GOVERNMENT
DCA 18

9. To make an improvement, good repair and make repairs required by the Government; operate the property in a good and husbandlike manner; comply with such farm conservation practices and farm and home management plans as the Government at from time to time may prescribe; and not to abandon the property, or cause or permit waste, lessening or impairment of the security covered hereby, or, without the written consent of the Government, cut, remove, or lease any timber, gravel, oil, gas, coal, or other minerals except as may be necessary for ordinary domestic purposes.

10. To comply with all laws, ordinances, and regulations affecting the property.

11. To pay or reimburse the Government for expenses reasonably necessary or incidental to the protection of the lien and priority hereof and to the enforcement of or the compliance with the provisions hereof and of the note and any supplementary agreement (whether before or after default), including but not limited to costs of evidence of title to and survey of the property, costs of recording this and other instruments, attorneys' fees, trustees' fees, court costs, and expenses of advertising, selling, and conveying the property.

12. Neither the property nor any portion thereof or interest therein shall be leased, assigned, sold, transferred, or encumbered, voluntarily or otherwise, without the written consent of the Government. The Government shall have the sole and exclusive rights as mortgagee hereunder, including but not limited to the power to grant consents, partial releases, sub-ordinations, and satisfaction, and no insured holder shall have any right, title or interest in or to the lien or any benefits hereof.

13. At all reasonable times the Government and its agents may inspect the property to ascertain whether the covenants and agreements contained herein or in any supplementary agreement are being performed.

14. The Government may extend and defer the maturity of and renew and reamortize the debt evidenced by the note or any indebtedness to the Government secured hereby, release from liability to the Government any party so liable thereon, release portions of the property from and subordinate the lien hereof, and waive any other rights hereunder, without affecting the lien or priority hereof or the liability to the Government of Borrower or any other party for payment of the note or indebtedness secured hereby except as specified by the Government in writing.

15. If at any time it shall appear to the Government that Borrower may be able to obtain a loan from a production credit association, a Federal land bank, or other responsible cooperative or private credit source, at reasonable rates and terms for loans for similar purposes and periods of time, Borrower will, upon the Government's request, apply for and accept such loan in sufficient amount to pay the note and any indebtedness secured hereby and to pay for any stock necessary to be purchased in a cooperative lending agency in connection with such loan.

16. Default hereunder shall constitute default under any other real estate, or under any personal property or other security instrument held or insured by the Government and executed or assumed by Borrower, and default under any such other security instrument shall constitute default hereunder.

17. SHOULD DEFAULT occur in the performance or discharge of any obligation in this instrument or secured by this instrument, or should any one of the parties named as Borrower die or be declared an incompetent, a bankrupt, or an insolvent, or make an assignment for the benefit of creditors, the Government, at its option, with or without notice, may: (a) declare the entire amount unpaid under the note and any indebtedness to the Government hereby secured immediately due and payable, (b) for the account of Borrower incur and pay reasonable expenses for repair or maintenance of and take possession of, operate or rent the property, (c) upon application by it and production of this mortgage, without other evidence and without notice of hearing of said application, have a receiver appointed for the property, with the usual powers of receivers in like cases, (d) foreclose this instrument as provided herein by law, (e) require Borrower to surrender to the Government any and all abstracts of title then owned by Borrower covering all or any part of the property, and (f) enforce any and all other rights and remedies provided herein or by present or future law.

18. The proceeds of foreclosure sale shall be applied in the following order to the payment of: (a) costs and expenses incident to enforcing or complying with the provisions hereof, (b) any prior liens required by law or a competent court to be so paid, (c) the debt evidenced by the note and all indebtedness to the Government secured hereby, (d) inferior liens of record required by law or a competent court to be so paid, (e) at the Government's option, any other indebtedness of Borrower owing to or insured by the Government, and (f) any balance to Borrower. At foreclosure or other sale of all or any part of the property, the Government and its agents may bid and purchase as a stranger and may pay the Government's share of the purchase price by crediting such amount on any debts of Borrower owing to or insured by the Government, in the order prescribed above.

19. Borrower agrees that the Government will not be bound by any present or future State laws, (a) providing for valuation, appraisal, homestead or exemption of the property, (b) prohibiting maintenance of an action for a deficiency judgment or limiting the amount thereof or the time within which such action may be brought, (c) prescribing any other statute of limitations, (d) allowing any right of redemption or possession following any foreclosure sale, or (e) limiting the conditions which the Government may by regulation impose, including the interest rate it may charge, as a condition of approving a transfer of the property to a new Borrower. Borrower expressly waives the benefit of any such State laws. Borrower hereby relinquishes, waives, and conveys all rights, inchoate or consummate, of descent, dower and curtesy.

20. If any part of the loan for which this instrument is given shall be used to finance the purchase, construction or repair of property to be used as an owner-occupied dwelling (herein called "the dwelling") and if Borrower intends to sell or rent the dwelling and has obtained the Government's consent to do so (a) neither Borrower nor anyone authorized to act for Borrower will, after receipt of a bona fide offer, refuse to negotiate for the sale or rental of the dwelling or will otherwise make unavailable or deny the dwelling to anyone because of race, color, religion, sex, or national origin, and (b) Borrower recognizes as illegal and hereby disclaims, and will not comply with or attempt to enforce any restrictive covenants on the dwelling relating to race, color, religion, sex, or national origin.

21. This instrument shall be subject to the present regulations of the Farmers Home Administration, and to its future regulations not inconsistent with the express provisions hereof.

...shall be sent by certified mail, unless otherwise required by law, and addressed to the
...and such other address designated in a notice so given, in the case of the Government to Farmers Home Administration
...at Boise, Idaho 83702, and in the case of Borrower at the address shown in the Farmers Home Administration Finance
...other record, which normally will be the same as the post office address shown above.

(23) WAIVER. THE BORROWER ACKNOWLEDGES AND AGREES THAT IF BORROWER DEFAULTS A
NONJUDICIAL FORECLOSURE OF THE PROPERTY MAY BE CONDUCTED WITHOUT A HEARING OF ANY KIND.
THE BORROWER HEREBY WAIVES ANY RIGHTS BORROWER MAY HAVE TO ANY SUCH HEARING. NEVER-
THELESS THE REGULATIONS OF THE FARMERS HOME ADMINISTRATION IN EFFECT AT THE TIME SUCH
FORECLOSURE IS STARTED MAY PROVIDE A MEETING AND THE GOVERNMENT WILL FOLLOW THESE
REGULATIONS.

(24) At the option of the Government this mortgage may be foreclosed by action or advertisement as provided by
statute, and Borrower hereby irrevocably vests in the Government the statutory power of sale and constitutes and appoints
the Government his agent and attorney in fact to sell the property, after due notice, at public auction to the highest bidder,
for cash or secured credit at the option of the Government, and to give the purchaser a warranty deed binding upon Borrower
and all claiming under him:

(25) Borrower has assigned or waived or will immediately on request of the Government, assign or waive in favor of the
Government all grazing privileges, permits, licenses, or leases appurtenant to or used in connection with said land, and
Borrower further covenants and agrees to produce renewals thereof prior to their expiration and to pay all fees and charges
and to perform all acts and do all things necessary to keep and preserve all said grazing rights and renewals thereof, and in the
event of the failure of Borrower to do any of these things the Government may do so on behalf of Borrower, including
advancing such sums as may be necessary for this purpose, and such funds advanced shall be secured by this instrument.

(26) If any provision of this instrument or application thereof to any person or circumstances is held invalid, such
invalidity will not affect other provisions or applications of the instrument which can be given effect without the invalid
provision or application, and to that end the provisions hereof are declared to be severable.

IN WITNESS WHEREOF, Borrower has hereunto set Borrower's hand(s) and seal(s) this c 6th day of

June, 19 80.

Don R. Bybee
DON R. BYBEE

Maurine Bybee
MAURINE BYBEE

ACKNOWLEDGMENT

STATE OF IDAHO

COUNTY OF JEFFERSON

ss:

On this 6th day of JUNE, in the year of 1980, before me, the undersigned,
a Notary Public in and for said State, personally appeared Don R. Bybee and Maurine T. Bybee

known to me to be the person(s) whose name(s) are subscribed to the within instrument, and acknowledged
to me that they executed the same as their free act and deed for the uses, purposes and consideration
therein expressed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal on the said date.

(NOTARIAL SEAL)

Marlene G. Barrow
Marlene G. Barrow

Notary Public, residing at Bigby, Idaho

My commission expires life

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



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.

Contor, Bryce

From: Contor, Bryce
Sent: Wednesday, November 01, 2000 2:38 PM
To: Keen, Shelley
Subject: Condition on permit 31-7338

In reviewing AJ claims I noticed that post-AJ permit 31-7338 has a condition limiting its acreage if overlapping right 31-7199 is transferred to a new POU.

FYI AJ 31-7199 has been split and the portion overlapping 31-7338 will be recommended as 31-11443.

Dunno if this is something you need to know about or not but I thought it couldn't hurt to pass it along.

~~Read Word cell -~~

~~Merlin Goudier
plans in
1974~~

~~10/20/2000~~

~~Jan Taylor -~~

~~Alliance Title~~

Richard Hansen

10/20/2000

motor hp. = 150 on one well

only 2 = 180 inches on 3.82

$$\frac{3.82}{150} \times 200 \approx 5.1$$

Don Parker -

10/20/2000

N of Montevideo Hwy is correct

Paul Goudier

663 4412

10/20/00

Prior to Don leaving, Paul had filed for permit. Paul did not intend for Don get "ahead of me" on this.

One contract signed, other one filled out - nevertheless Paul had filed a permit, but it "vanished." Dept wanted "log" before processing permit. Couldn't find application

Log of phone conversation
w/ Paul Goudier 10/20/00

Reyes A. Cortez

10/20/00

~~1980~~ - DS Edwards applied for permit - Paul paid Edwards for application - Iadett protested - Harry - IDWR didn't approve despite agreement -

protested Bybee transfer -

- In processing protest, condition added to new permit tying to 31-7199

- If condition removed, problem goes away -

- Paul does not have a copy of contract -

- Paul's well pre-dates lease by 1 year -

Original permit ^{app} 1975 or 1976, Dept wouldn't issue permit until Gunderson produced well log →

- Compare Notary date vs. contract date -

- Dr. St. 102nd it was possible to drill

to have a well log to
obtain a WR permit.

10/20/00

Also per Skips, in the WR files is
a letter ^{from Skips} to request action of some
kind from Gunderson to facilitate
processing of permit application during
one of the "between-moratorium" windows,
to which Gunderson had failed to
respond.

R. Ryber

6025526

10/23/00

cal 390-5526

1) OK to split WR

2) Please recommend in Ryber, not
joint. If needed Robert will
drive to Boise to talk to
asst. attorney general.

Swan Valley Ranch
Mike Miles

10/23/00

SA IN R44E

22 acres

Ted Baker Farm

483-2129