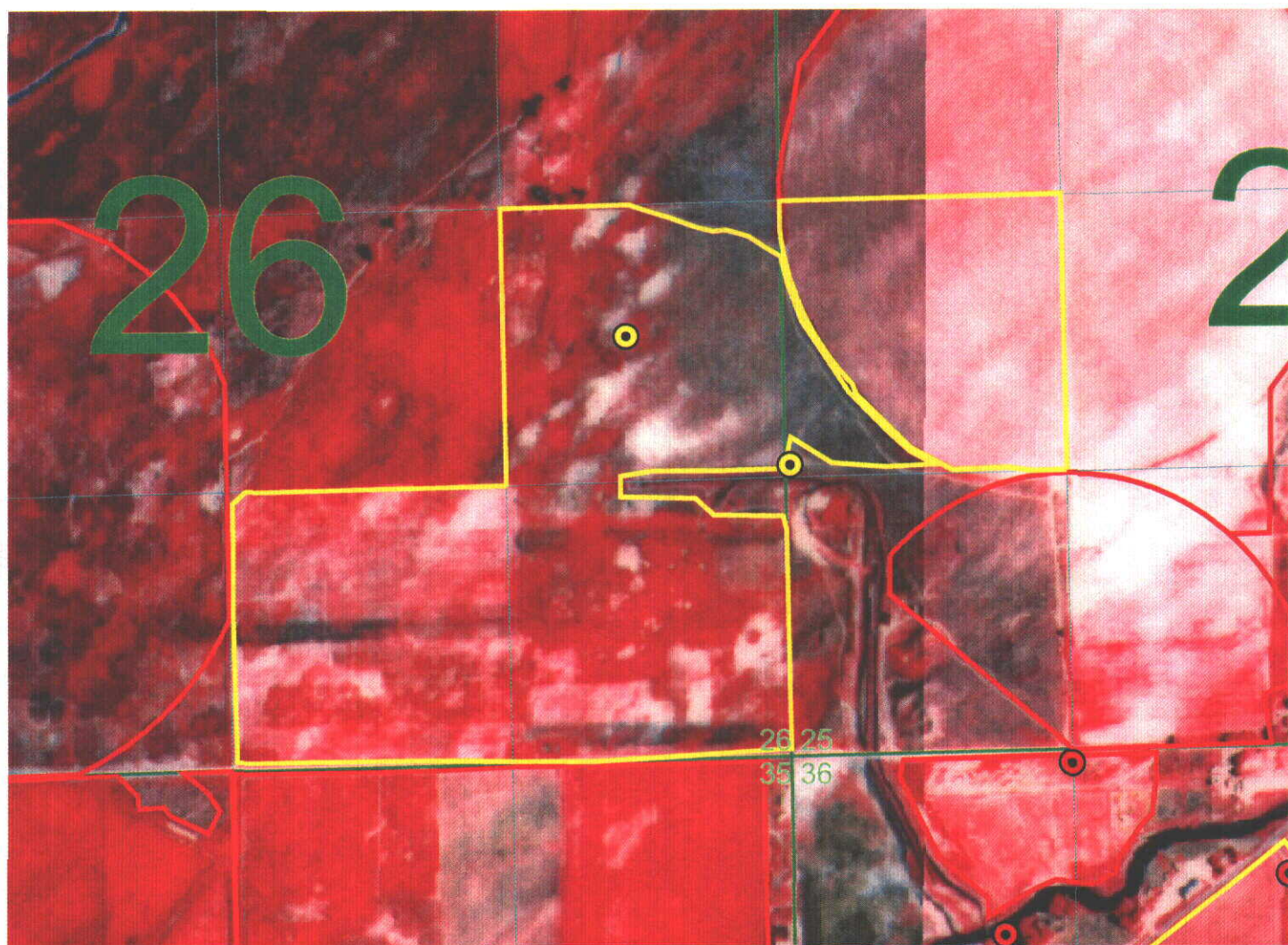


Idaho Department of Water Resources

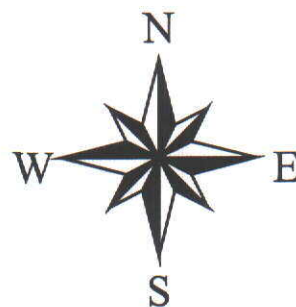
Water Right 31-11603 and 31-11604

Township 7N Range ~~36~~³⁵E Section 25, 26



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 12/2000

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

03/22/2001

RIGHT NUMBER: 31-11604
NAME AND ADDRESS: PAUL GUNDERSON
1555 E 1500 N
HAMER, ID 83425

SOURCE: GROUND WATER

QUANTITY: 1.04 CFS
182 AFY

USE OF THIS RIGHT WITH RIGHT NO. 31-11688 AND RIGHT NO. 31-11689 IS LIMITED TO A TOTAL COMBINED DIVERSION RATE OF 2.35 CFS.

PRIORITY DATE: 12/31/1976

THIS WATER RIGHT IS SUBORDINATE TO ALL WATER RIGHTS WITH A PRIORITY DATE EARLIER THAN APRIL 12, 1994, THAT ARE NOT DECREED AS ENLARGEMENTS PURSUANT TO SECTION 42-1426, IDAHO CODE. AS BETWEEN WATER RIGHTS DECREED AS ENLARGEMENTS PURSUANT TO SECTION 42-1426, IDAHO CODE, THE EARLIER PRIORITY RIGHT IS THE SUPERIOR RIGHT.

POINT OF DIVERSION: T07N R35E S25 SWNWSW Within JEFFERSON County

PURPOSE AND
PERIOD OF USE:

PURPOSE OF USE	PERIOD OF USE	QUANTITY
IRRIGATION	04-01 10-31	1.04 CFS 182.00 AFY

PLACE OF USE:

IRRIGATION Within JEFFERSON
County

T07N R35E S25	NWSW	38	T07N R35E S26	NESE	37
T07N R35E S26	SWSE	39	T07N R35E S26	SESE	38

152 ACRES TOTAL

USE OF THIS RIGHT WITH RIGHT NO. 31-11688 AND RIGHT NO. 31-11689 IS LIMITED TO THE IRRIGATION OF A COMBINED TOTAL OF 152 ACRES IN A SINGLE IRRIGATION SEASON.

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.

THIS RIGHT IS BASED UPON AN ENLARGEMENT OF RIGHT NO. 31-
11688 AND RIGHT NO. 31-11689 PURSUANT TO SECTION 42-1426,
IDAHO CODE.

EXPLANATORY MATERIAL: BASIS OF CLAIM - Beneficial Use

THIS RIGHT IS FOR AN ENLARGEMENT OF 52 ACRES WITHIN THE
PLACE OF USE DESCRIBED FOR THIS RIGHT.

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 31-11604
Date Received: 12/28/00
Receipt No:
Received By:

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

A3111604



1. Name of Claimant(s)

PAUL GUNDERSON Phone: (208) 663-4412

1555 E 1500 N
HAMER ID USA 83425

2. Date of Priority: 04/01/1976

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	25	NW SW	JEFFERSON

5. Description of diverting works:

WELL TO SPRINKLER SYSTEM

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or) A.F.A
IRRIGATION	04/01	10/31	1.6	

7. Total Quantity Appropriated is:
1.6 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	40
Section Acres					40

07N	35E	26	NE	SE	IRRIGATION	40
			SW	SE	IRRIGATION	40
			SE	SE	IRRIGATION	40
					Section Acres	120
					Total Acres	160

11. Place of use in counties: JEFFERSON

12. Do you own the property listed above as place of use? Yes

13. Other Water Rights Used:

14. Remarks:

OTHER RIGHTS USED: 31-07338, 31-11603.

THIS IS AN ENLARGEMENT OF BENEFICIAL USE CLAIM NUMBERED 31-11603 ON THE SAME LANDS. IN 1975 I DRILLED ANOTHER WELL (31-07338) AND WATERED HAY AND PASTURE IN ALL 4 QUARTER SECTIONS IN 1976.

15. Basis of Claim: Beneficial Use

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 A31-11604Date Received 12/27/2000Receipt Number EO26404
BAC

NOTICE OF CLAIM
TO A
WATER RIGHT
ACQUIRED UNDER STATE LAW

RECEIVED

DEC 28 2000

Department of Water Resources
Eastern Region

Please type or print clearly

1. Name of Claimant (s) Paul Gunderson Phone () _____Mailing Address 1555 E 1500 N Hamer ID Zip 834252. Date of Priority (Only one (1) per claim) 4/1/19763. Source of water supply (a) Ground water
which is tributary to (b) _____4. a. Location of existing point of diversion is: Township 7N Range 35E Section 25,
NW 1/4 of SW 1/4 of _____ 1/4, Govt. Lot, _____ B.M., County of _____

Additional points of diversion if any: _____

b. If instream flow, beginning point of claimed instream flow is:

Township _____ Range _____ Section _____, _____ 1/4 of _____ 1/4 of _____ 1/4,

Govt. Lot _____ B.M., County of _____

ending point is: Township _____ Range _____ Section _____, _____ 1/4 of _____ 1/4 of _____

_____ 1/4, Govt. Lot _____ B.M., County of _____

5. Description of existing diversion works (Dams, Reservoirs, Ditches, Wells, Pumps, Pipelines, Headgates, Etc),
including the dates of any changes or enlargements in use, the dimensions of the diversion works as
constructed and as enlarged and the depth of each well.Well to sprinkler system

6. Water is claimed for the following purposes:

(both dates are inclusive)

(cfs)

(acre feet)

For Irrigation purposes from 4/1 to 10/31 amount 1.6 or _____

For _____ purposes from _____ to _____ amount _____ or _____

For _____ purposes from _____ to _____ amount _____ or _____

For _____ purposes from _____ to _____ amount _____ or _____

7. Total quantity claimed (a) 1.6 (cfs) and/or (b) _____ (acre feet)

8. Total consumptive use claimed is _____ acre feet per annum.

9. Non-irrigation uses; describe fully (eg. Domestic: Give number of households served; Stockwater: Type and number of livestock Etc.) _____

10. Description of place of use:

a. If water is for irrigation, indicate acreage in each subdivision in the tabulation below.

b. If water is used for other purposes, place a symbol of use (example: D for Domestic) in the corresponding place of use below. See instructions for standard symbols.

TWP	RNG	SEC	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	
<u>7N</u>	<u>35E</u>	<u>25</u>										<u>40</u>							<u>40</u>
<u>7N</u>	<u>35E</u>	<u>25</u>													<u>40</u>		<u>40</u>	<u>40</u>	<u>120</u>

Total number of acres irrigated 160

11. In which county (ies) are lands listed above as place of use located? Jefferson

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

If your answer is No, describe in Remarks below the authority you have to claim this water right.

13. Describe any other water rights used at the same place and for the same purposes as described above.

31-07338, Beneficial use claim or None ()

14. Remarks: This is an enlargement of the beneficial use claim
numbered _____ on the same lands. In 1975 I drilled
another Well (31-07338) and watered hay and pasture on all 4
quarter sections in 1976

Last Name _____ Ident No. _____

Copies: White -State, Yellow-Claimant

Scale: 2 inches equals 1 mile

Last Name _____ Ident No. _____

Copies: White-State, Yellow-Claimant

15. Basis of Claim (check one) Beneficial Use ☒ Posted Notice _____ License _____ Permit _____

Decree _____

If applicable provide IDWR Water Right Number _____

Court _____ Case Number _____ Decree Date _____

Plaintiff vs Defendant _____

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

Signature of Claimant (s) *Paul Lundgren* Date 12/27/00

Date _____

For Organizations: I do solemnly swear or affirm that I am _____

Title _____

of _____, that I have signed the foregoing

Organization

document in the space below as _____ of _____

Title

Organization

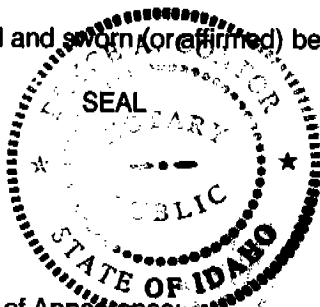
and that the statements contained in the foregoing document are true and correct.

Signature of Authorized Agent _____

Title and Organization _____ Date _____

State of Idaho/or _____)
County of Jeerson) SS.

Subscribed and sworn (or affirmed) before me this 27th day of December 2000



Notary Public *Bryce A. Contor*

Residing at Mud Lake ID

My Commission Expires 10/14/2005

Please Print Name

17. Notice of Appearance

Notice is hereby given that I, _____ will be acting as attorney at law on behalf of the claimant signing above, and that all notices required by law to be mailed by the director to the claimant signing above should be mailed to me at the address listed below.

Signature _____

Address _____

Date _____

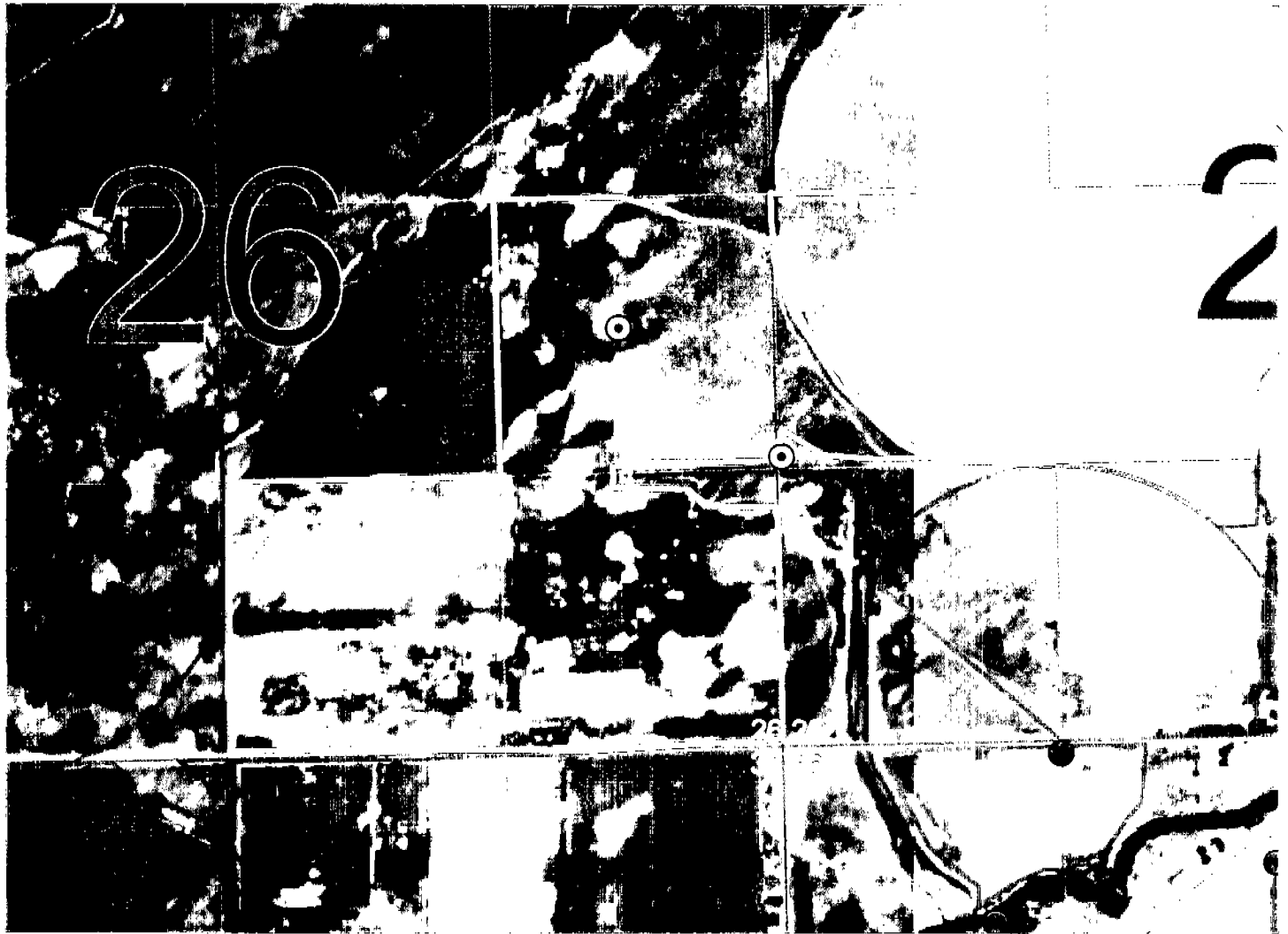
Last Name _____ Ident. Number _____

Copies White-State, Yellow-Claimant

Idaho Department of Water Resources

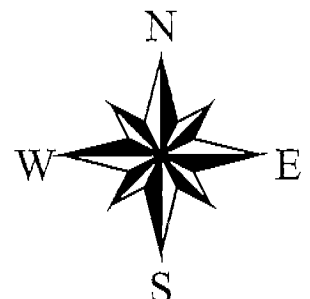
Water Right 31-11603 and 31-11604

Township 7N Range 36E Section 25, 26



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 12/2000



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

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

March 22, 2001

Paul Gunderson
1555 E 1500 N
Hamer, ID 83425

Re: Notice of Error, Water Rights 31-95A, 31-7008, 31-11603, 31-11604, 31-11688, 31-11689.

Dear Mr. Gunderson:

Enclosed are revised recommendations for several of your water rights, based upon additional information you have provided as part of the Notice of Error process.

Right 31-95A is recommended with the original source and priority date, with an accomplished change of point of diversion and place of use. These changes are representative of your claim and the probate document. While the original right was for 10 cfs, it was for more lands than currently irrigated. I have based the diversion rate on the rate of 0.032 cfs/acre (about 1 1/2 times the standard rate) calculated by a department engineer for the adjoining Marty lands. This comes to 4.99 cfs.

Recommendation 31-7008 is adjusted to include stockwater. I was unable to adjust diversion rate or volume, as these came from a formal license. As we have discussed, only the Allocations Bureau of IDWR can adjust rate or volume of a license. The burden of proof is very high; to have a license amended, you must prove that the original licensing examination was obviously in error, and document the concurrent existence of the capacity you propose instead. At a minimum, this requires a written report from a Professional Engineer and solid documentation (receipts, design specifications, and/or concurrent measurements) of original capacity. Another option is to apply for a new permit for the additional rate, based on pre-moratorium development of capacity. This requires solid documentation that the claimed capacity was in place and used prior to November, 1987. I am not encouraging you to pursue either of these options, but simply outlining what the options are.

Recommendation 31-11603 has been split into recommendation 31-11688 and 31-11689, to allow recommendation of both the early priority date documented by the Bessie Hutchinson permit and the higher diversion rate documented by the Marcus Barnes affidavit.

Recommendation 31-11688 is for the 2.09 cfs measured by watermaster Henninger in 1940, as documented in the Lyndon Laird "Proof of Beneficial Use" for Laird's portion of permit 16969. While the permit was for priority date 1928, that permit was not for the point of diversion Laird actually developed. Through approximately five years of correspondence with Mr. Laird, the department consistently held that the permit could not be amended to allow the earlier priority date with the later point of diversion. Consequently, the priority date I have recommended is based upon the earliest documented beneficial use, which occurred in 1939. I have attached your amended, increased stockwater use, to this earlier recommendation.

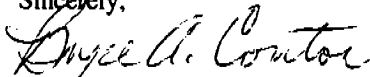
Recommendation 31-11689 is for the original 2.31 cfs I recommended for 31-11603. This is based upon the Marcus Barnes affidavit, 0.03 cfs/acre on the lands Barnes affirms were irrigated, and current capacity of the diversion works.

Combined use limitations limit the total irrigation under 31-11688 and 31-11689 to 2.31 cfs of irrigation on 100 acres. This limitation allows me to recommend both rights for their full amount, which protects you in case one or the other should run aground of an objection. The other alternative would be to recommend as much as possible to the earlier right, and only the additional capacity to the later right.

Enlargement recommendation 31-11604 is modified to reflect the fact that more acres are recommended under 31-11688 than were recommended under 31-11603. Effectively, this takes acres away from the 1976 enlargement and adds them to the 1939 beneficial use right. The combined use limitations are also modified to reflect the split of 31-11603.

I have enclosed copies of the preliminary recommendations on these rights (except 31-11603, which is superceded). Please review these carefully and contact me if you have questions.

Sincerely,



Bryce A. Contor
Senior Water Resource Agent

enclosures

12/29/2000

IDAHO DEPARTMENT OF WATER RESOURCES
Adjudication Recommended Right Report

WATER RIGHT NO. 31-11604

Owner Type Name and Address
 Current Owner PAUL GUNDERSON
 1555 E 1500 N
 HAMER, ID 83425
 (208)663-4412

Priority Date: 12/31/1976
 Basis: Beneficial Use
 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	10/31	1.5 CFS	262.5 AFA	
Total Diversion			1.5 CFS	262.5 AFA	

Location of Point(s) of Diversion:

GROUND WATER SWNWSW Sec. 25 Township 07N Range 35E JEFFERSON County

IRRIGATION Use:
 Acre Limit: 75

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		NWSW	38									
		26		NESE	37		SWSE	39		SESE	38			

Total Acres: 152

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.
2. C11 THIS WATER RIGHT IS SUBORDINATE TO ALL WATER RIGHTS WITH A PRIORITY DATE EARLIER THAN APRIL 12, 1994, THAT ARE NOT DECREED AS ENLARGEMENTS PURSUANT TO SECTION 42-1426, IDAHO CODE. AS BETWEEN WATER RIGHTS DECREED AS ENLARGEMENTS PURSUANT TO SECTION 42-1426, IDAHO CODE, THE EARLIER PRIORITY RIGHT IS THE SUPERIOR RIGHT.

Remarks:

1. Place of Use - Irrigation 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, 31-11603, 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

ACRE LIMIT DESCRIBED ABOVE.

2. Place of Use - Irrigation USE OF THIS RIGHT WITH RIGHT NO. 31-11603 IS LIMITED TO THE IRRIGATION OF A COMBINED TOTAL OF 152 ACRES IN A SINGLE IRRIGATION SEASON.
3. Explanatory THIS RIGHT IS FOR AN ENLARGEMENT OF 75 ACRES WITHIN THE PLACE OF USE DESCRIBED FOR THIS RIGHT.
4. Quantity USE OF THIS RIGHT WITH RIGHT NO. 31-11603 IS LIMITED TO A TOTAL COMBINED DIVERSION RATE OF 2.35 CFS.
5. General THIS RIGHT IS BASED UPON AN ENLARGEMENT OF RIGHT NO. 31-11603 PURSUANT TO SECTION 42-1426, IDAHO CODE.

Comments:

<u>Author</u>	<u>Date</u>	<u>Subject</u>	<u>Comment</u>
bcontor	12/29/00	Recommendation	For documentation and recommendation, see eCVR and physical file for 31-11603. This right is an enlargement of 31-11603.
bcontor	12/29/00	Priority Date	In conversation claimant indicates "early 1976" but documentation indicates no specific date, therefore per instructions 12/31/1976 is recommended.

Dates:

Licensed Date:
 Claim Received Date: 12/28/2000
 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:

<u>Element</u>	<u>Last Review Date</u>	<u>Reviewer</u>	<u>Last Verified Date</u>	<u>Verifier</u>	<u>Status</u>
POD	12/29/00 12:50:55 PM	bcontor			In Process
POU	12/29/00 1:00:26 PM	bcontor			In Process
Priority Date	12/29/00 12:02:27 PM	bcontor			In Process
Quantity	12/29/00 1:03:24 PM	bcontor			In Process
Season	12/29/00 1:02:04 PM	bcontor			In Process
Source	12/29/00 12:51:32 PM	bcontor			In Process
Summary	12/29/00 1:11:28 PM		12/29/00 1:11:28 PM	bcontor	Complete
Use	12/29/00 1:01:12 PM	bcontor			In Process

Other Information:

Receipt Number(s):
 State or Federal:
 Owner Name Connector:
 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

Verification Log:

<u>Element</u>	<u>Date Time Stamp</u>	<u>Reviewer</u>	<u>Log Text</u>
POD	12/29/00 12:50:53 PM	bcontor	1. (YES) The basis is beneficial use. 4. (NO) There is not evidence that there has been a change in the Point of Diversion. 6. (YES) The file contains all the necessary information to verify the POD.

POD 12/29/00 12:09:13 PM bcontor
 POD 12/29/00 12:08:54 PM bcontor
 POU 12/29/00 1:00:24 PM bcontor

Priority Date 12/29/00 12:02:24 PM bcontor

Quantity 12/29/00 1:03:21 PM bcontor

Season 12/29/00 1:02:02 PM bcontor

Source 12/29/00 12:51:31 PM bcontor

Summary 12/29/00 1:11:21 PM bcontor

Use 12/29/00 1:01:10 PM bcontor

Comment for 6: NWMD GPS and field inspection

8. (NO) Point of Diversion remark was not required.

9. (NO) Point of Diversion condition was not required.

Edited PLS

Edited point location

1. (YES) The POU is required.

2. (YES) The basis of claim is beneficial use.

5. (NO) There is no evidence that there has been a change in the POU.

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

Comment for 9: ASCS

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. (YES) The basis of claim is beneficial use.

4b. (YES) The priority date was claimed after the date a permit was required for the source and water use.

9. (YES) The claim was for an expansion or enlargement under 42-1416B or 42-1426.

10. (YES) The claim file contains sufficient evidence of priority date.

12. (YES) The claim is recommended.

13. (YES) The claim is coded correctly.

14. (NO) Priority remark was not required.

15. (YES) Priority condition was required.

1. (YES) The basis of claim is beneficial use.

5. (YES) A flow measurement was required.

Comment for 5: NWMD exam

6. (YES) The source is ground water and the purpose of use requires a 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. (YES) The basis of claim is beneficial use.

4. (NO) There is not evidence that there has been a change to the period of use.

9. (YES) The file contains all the necessary information to verify the period of use.

11. (NO) The basis of is not a decree, license, or a transferred beneficial use right that has had the period of use administratively determined.

13. (YES) Irrigation is the purposed use.

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

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

1. (YES) The basis is beneficial use.

4. (NO) There is not evidence that there has been a change in the Source.

7. (YES) The file contains all of the necessary information to verify the source.

Comment for 7: NWMD field inspection

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

10. (NO) Source remark was not required.

11. (NO) Source condition was not required.

1. (YES) The basis of the claim is beneficial use.

2. (YES) All the water being used for all the purposes is being claimed and to the extent it was claimed.

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

4. (NO) There is not evidence that there has been a change to the purpose of use.

9. (YES) The file contains all the necessary information to verify the purpose of use.

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

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

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.