

03/22/2001

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

RIGHT NUMBER: 31-11689

NAME AND ADDRESS: PAUL GUNDERSON
1555 E 1500 N
HAMER, ID 83425

SOURCE: GROUND WATER

QUANTITY: 2.35 CFS
274.9 AFY

USE OF THIS RIGHT WITH RIGHT NO. 31-11604 AND RIGHT NO. 31-11688 IS LIMITED TO A TOTAL COMBINED DIVERSION RATE OF 2.35 CFS.

USE OF THIS RIGHT WITH RIGHT NO. 31-11688 IS LIMITED TO A TOTAL COMBINED DIVERSION RATE OF 2.35 CFS AND TO A TOTAL COMBINED ANNUAL DIVERSION VOLUME OF 364 AF.

PRIORITY DATE: 06/30/1951

POINT OF DIVERSION:	T07N R35E S25	SWNWSW	Within JEFFERSON County
	T07N R35E S26	NESE	Within JEFFERSON County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
IRRIGATION	04-01 10-31	2.31 CFS
		269.50 AFY
STOCKWATER	01-01 12-31	0.04 CFS
		5.40 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

STOCKWATER Within JEFFERSON
County

T07N R35E S25	NWSW	T07N R35E S26	NESE
T07N R35E S26	SWSE	T07N R35E S26	SESE

152 ACRES TOTAL

THIS RIGHT IS LIMITED TO THE IRRIGATION OF 77 ACRES WITHIN THE PLACE OF USE DESCRIBED ABOVE 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.

USE OF THIS RIGHT WITH RIGHT NO. 31-11604 AND RIGHT NO 31-11688 IS LIMITED TO THE IRRIGATION OF A COMBINED TOTAL OF 152 ACRES IN A SINGLE IRRIGATION SEASON.

USE OF THIS RIGHT WITH RIGHT NO. 31-11688 IS LIMITED TO THE IRRIGATION OF A COMBINED TOTAL OF 100 ACRES IN A SINGLE IRRIGATION SEASON.

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

THE QUANTITY OF WATER DECREED FOR THIS WATER RIGHT FOR STOCKWATER USE IS NOT A DETERMINATION OF HISTORICAL BENEFICIAL USE.

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 - Beneficial Use

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

RIGHT INCLUDES ACCOMPLISHED CHANGE IN POINT OF DIVERSION PURSUANT TO SECTION 42-1425, IDAHO CODE.

RIGHT NO. 31-11604 IS AN ENLARGEMENT OF THIS RIGHT PURSUANT TO SECTION 42-1426, IDAHO CODE.

IDAHO DEPARTMENT OF WATER RESOURCES
Adjudication Recommended Right Report

03/22/2001

WATER RIGHT NO. 31-11689

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

Priority Date: 06/30/1951
Basis: Beneficial Use
Status: Active

Source Tributary to
GROUND WATER

A31-11689



Beneficial Use	From	To	Diversion Rate	Volume	Subuse Code
IRRIGATION	04/01	10/31	2.31 CFS	269.5 AFA	
STOCKWATER	01/01	12/31	0.04 CFS	5.4 AFA	
Total Diversion			2.35 CFS	274.9 AFA	

Location of Point(s) of Diversion:

GROUND WATER	SWNWSW	Sec. 25	Township 07N	Range 35E	JEFFERSON County
GROUND WATER	NESE	Sec. 26	Township 07N	Range 35E	JEFFERSON County

IRRIGATION Use:
Acre Limit: 77

STOCKWATER Use:
Number of other uses: 400

Place(s) of use:

Place of Use Legal Description: IRRIGATION						JEFFERSON County								
Township	Range	Section	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres
07N	35E	25		NWSW	38									
		26		NESE	37		SWSE	39		SESE	38			

Place of Use Legal Description: STOCKWATER						JEFFERSON County								
Township	Range	Section	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres
07N	35E	25		NWSW										
		26		NESE			SWSE			SESE				

Total Acres: 152

Conditions of Approval:

1. C05 RIGHT INCLUDES ACCOMPLISHED CHANGE IN PLACE OF USE PURSUANT TO SECTION 42-1425, IDAHO CODE.
2. N08 THE QUANTITY OF WATER DECREED FOR THIS WATER RIGHT FOR STOCKWATER USE IS NOT A DETERMINATION OF HISTORICAL BENEFICIAL USE.
3. C03 RIGHT INCLUDES ACCOMPLISHED CHANGE IN POINT OF DIVERSION PURSUANT TO SECTION 42-1425, IDAHO CODE.
4. 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. Explanatory RIGHT NO. 31-11604 IS AN ENLARGEMENT OF THIS RIGHT PURSUANT TO SECTION 42-1426, IDAHO CODE.
2. Place of Use - Irrigation THIS RIGHT IS LIMITED TO THE IRRIGATION OF 77 ACRES WITHIN THE PLACE OF USE DESCRIBED ABOVE IN A SINGLE IRRIGATION SEASON.
3. 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, 31-11604, 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.
4. Place of Use - Irrigation USE OF THIS RIGHT WITH RIGHT NO. 31-11604 AND RIGHT NO 31-11688 IS LIMITED TO THE IRRIGATION OF A COMBINED TOTAL OF 152 ACRES IN A SINGLE IRRIGATION SEASON.
5. Quantity USE OF THIS RIGHT WITH RIGHT NO. 31-11604 AND RIGHT NO. 31-11688 IS LIMITED TO A TOTAL COMBINED DIVERSION RATE OF 2.35 CFS.
6. Place of Use - Irrigation USE OF THIS RIGHT WITH RIGHT NO. 31-11688 IS LIMITED TO THE IRRIGATION OF A COMBINED TOTAL OF 100 ACRES IN A SINGLE IRRIGATION SEASON.
7. Quantity USE OF THIS RIGHT WITH RIGHT NO. 31-11688 IS LIMITED TO A TOTAL COMBINED DIVERSION RATE OF 2.35 CFS AND TO A TOTAL COMBINED ANNUAL DIVERSION VOLUME OF 364 AF.

Comments:

Author	Date	Subject	Comment
bcontor	3/22/01	Recommendation	See eCVR 31-11603 for full review. This right and 31-11688 were split from 31-11603 per NOE evidence that development took place in two phases. This portion is for additional capacity developed in 1951.

Dates:

Licensed Date:
 Claim Received Date:
 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
Summary	3/22/01 11:13:49 AM		3/22/01 11:13:49 AM	bcontor	Complete

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

Parent Right: 31-11603 ChangeOfOwnership

Verification Log:

<u>Element</u>	<u>Date Time Stamp</u>	<u>Reviewer</u>	<u>Log Text</u>
POD	3/22/01 11:04:28 AM	bcontor	Edited PLS
POD	3/22/01 11:04:12 AM	bcontor	Edited point location
POD	3/22/01 11:03:17 AM	bcontor	Edited point location
POU	3/22/01 11:05:44 AM	bcontor	Edited shape boundary
POU	3/22/01 11:05:26 AM	bcontor	Edited shape boundary
Summary	3/22/01 11:13:47 AM	bcontor	1. (YES) The basis of the claim is beneficial use. 2. (NO) All the water being used for all the purposes is not being claimed and to the extent it was claimed. 4. (YES) A portion of the claim is being recommended. 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.



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

Cheri Vandermeulen
Records Clerk



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.

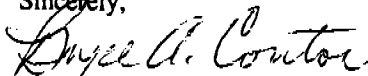
Recommendation 31-11689 is for the original 2.31 cfs I recommended for 31-11603. This is based upon the Marcus Barnes affidavit, 0.03 cfs/acre on the lands Barnes affirms were irrigated, and current capacity of the diversion works.

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