

According to the posted notice William R. Bowers was the original claimant. Bowers was listed as not showing up to defend his right in court. See e-mail to Ryan from Nick Spenser

Galbraith, Trent

From: Mikesell, Ryan
Sent: Wednesday, August 31, 2005 11:37 AM
To: Galbraith, Trent
Subject: FW: 21-4130

-----Original Message-----

From: Spencer, Nick
Sent: Friday, May 20, 2005 2:40 PM
To: Mikesell, Ryan
Subject: RE: 21-4130

Hi Ryan. Thanks for the info on Mexican restaurants in Rexburg. I have found some more information regarding the William R. Bowers posted notice. Candice provided me with a copy of the findings of fact and conclusions of law entered in the Rexburg Decree case. I had looked at the decree itself before, but was not familiar with the findings and conclusions. In reviewing this document I find buried in the middle of the findings a list of people who were served in the Rexburg Decree case, but who failed to appear and defend their water rights. Among the persons listed is "Bowers, W.R." Considering the proximity in time of his posted notice to the Rexburg Decree litigation I think the odds are pretty good that the guy listed is the same one who filed the posted notice. Since he failed to come forward to defend his water right, we can presume that as of the date of entry of the Rexburg Decree it ceased to exist. I believe this is sufficient basis for you to disallow the claim in the preliminary recommendation, and put the burden on the claimant to prove that the posted notice "William R. Bowers" is not the Rexburg Decree "Bowers, W.R." Again, even if they can't do this, but can show historic use, we may be able to recognize a beneficial use right with a priority date junior to the Rexburg Decree. But that will be an issue to be discussed at the notice of error meeting with Wild Rose Ranch. I hope this helps. NBS

-----Original Message-----

From: Mikesell, Ryan
Sent: Friday, May 20, 2005 11:36 AM
To: Spencer, Nick
Subject: RE: 21-4130

Nick,

Ron's out of the office today so I'll have to wait for next week to talk to him. anyways... there are a few good mexican places in Rexburg. There's a new place that's a chain in town called "Bajio" it's in the plaza across the street from Wal-mart. I hear it's good and is pretty mild. The other place I like is called "Jalisco's" and it's address is 240 N 2nd E. It's on the main street and easy to find- It has really good food but it's a little more authentic. It's as spicy or mild as you want. And then there's a place called Gringo's that just off main street. It's got a much nicer atmosphere than Jalisco's but I didn't really like the food as much. I guess it's kind of a trade off... better food but not as nice or good food, but better scenery. I think Bajio is probably right in the middle.

-----Original Message-----

From: Spencer, Nick
Sent: Thursday, May 19, 2005 4:51 PM
To: Mikesell, Ryan
Subject: RE: 21-4130

Ryan, I don't have a quick and easy answer to your question. I think the intent of the decree was to include every existing right, but since in those days every party had to be personally named and served to be joined, there were of course lots of people left out. That is why with big, old decrees like this one, they are always followed by a zillion summary supplemental decrees scooping up people that didn't get joined the first time around. Therefore I think it is theoretically possible that William R. Bowers or his successors in interest got overlooked, were therefore not joined, and could therefore have a right existing outside of the decree. I suggest that probably the quickest way to handicap the odds that this could have happened is for you to ask Ron Carlson what Water District's 01's position is regarding the possibility of rights being left out of the Rexburg Decree. Assuming that Ron and you agree that it's possible, then we need to determine if William R. Bowers or his successors were ever joined. We have a list of the parties whose rights were adjudicated in the decree, and I do not see William R. Bowers listed. However, he could have lost the right by having been named as a party defendant and then having failed to appear and defend his right. We don't have a list of people who were joined but failed to appear. Do you guys have such a list over there? Of course another complicating factor is whether Bowers still owned the right in 1910

when the Rexburg decree was entered. To figure this out would require looking at the chain of title of the property to see who owned it in 1910 and then try to figure out if that person was joined, and if so whether the right was decreed or whether it was disallowed for his failure to appear. Then...the next question is whether he could have shown up in a summary supplemental decree. Ray Williams, one of our paralegals, is working on a summary of all the decrees in Basin 21. This will give us a handle on which summary supplemental decrees are out there where this right might be found.

Before we spend a bunch of time trying to figure out whether this right should have been in the decree, I suggest that perhaps the easiest approach might be for you to have the county recorder up in St. Anthony mail you down a copy of the posted notice. There were a lot of hoops that people had to jump through to get their posted notices validly recorded and lots of people screwed up, which is why a lot of claims based on posted notices get recommended for disallowal. Get me a copy of the posted notice so I can look it over and determine if it is valid. If it is not, then it doesn't matter whether the right should have been included in the Rexburg decree, because it was never a valid right to begin with. If that is the case, but there is a legitimate water use up there, maybe the end result will be that we can recommend the right as a beneficial use right with a priority date junior to the Rexburg decree, and avoid the whole question.

Anyway, let me know what Ron Carlson thinks about the question.

Finally, I've stayed at the Wild Rose Ranch. Why do they want a water right? It's too cold and windy up there to do any decent irrigation. And they have no other need for it since the fishermen all just drink beer, not water. NBS

P.S. We all like Mexican. If you could recommend a decent Mexican restaurant in Rexburg we would much appreciate it. NBS

-----Original Message-----

From: Mikesell, Ryan
Sent: Thursday, May 19, 2005 3:33 PM
To: Spencer, Nick
Subject: 21-4130

Nick,

I came up with a pretty good question for you. I have been reviewing the claims for the Wild Rose Ranch Inc. and I stumbled upon some evidence of priority that I'm not so sure of. I have enclosed a scanned copy of it for you to review. I guess that my question is should it have been included in the Rexburg decree? I can't seem to find anything else on springs that far north. This is from a spring that runs into the north end of Henry's Lake. I guess I should still look up the reference included in this evidence but I wanted to know if this claimed priority date was even possible.

Also, as a side note- Ernie has asked me to recommend someplace to eat in Rexburg for you fine folks. I will tell you that there's not a lot there. There is a new Winger's across the street from Albertson's (next to Wal-Mart). There's also Frontier Pies next to the Cotton Tree Inn- they've got your standard country cook'n. And there are lots of little Mexican places that aren't too bad either. If that's what you like let me know and I'll tell you about where all those are.

Thanks,

Ryan

<< File: 21-4130 EOP.pdf >>

Claim no. A 21-10019

Claimant Contact Log

Date _____

Remarks

Agent initials

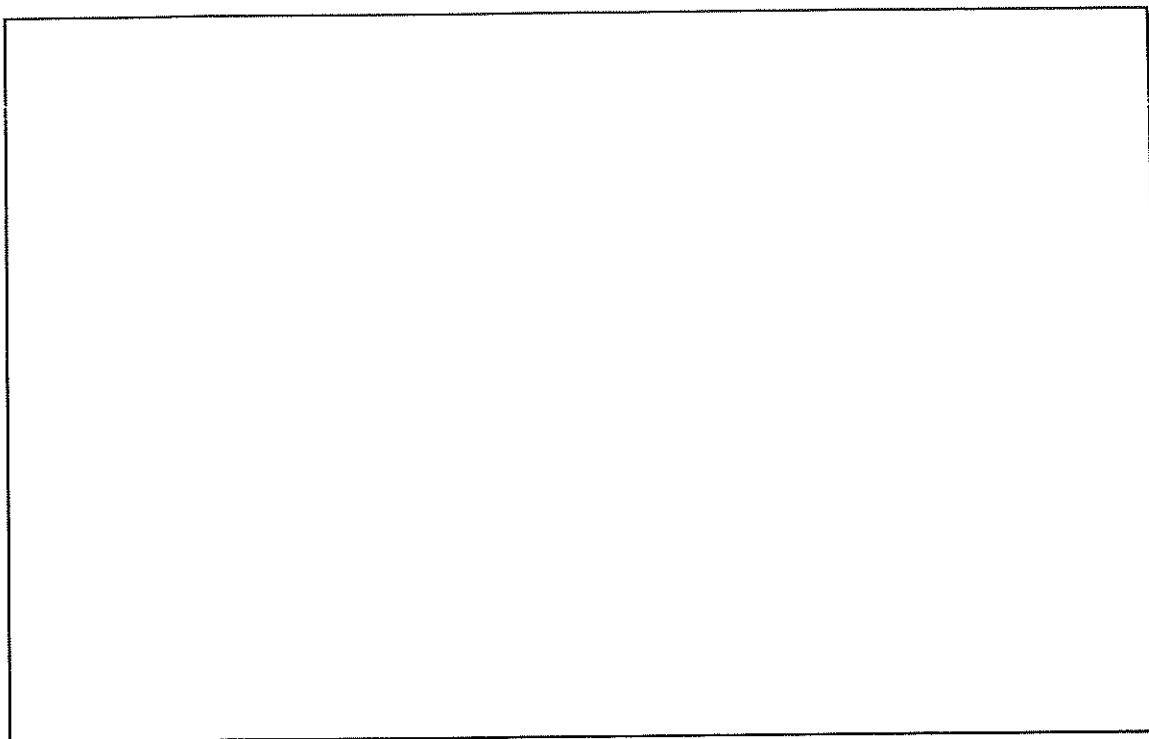
Is shaw
Steve McCormick

10-18-04
13:54

Perry V. Dietrich - No answer.

6-23-05. Called 356-3250

Water Right No(s). 21-10019



GPS DATA: 21-10019-1 POND.
21-10019-2 POND ALONG SPRING
Tag # _____ Location: _____

Diversion Data:

Source: SPRING Trib to: HENRY'S FORK

MOTOR

Make: NA Model: _____ Hp: _____
SN: _____

PUMP

Make: NA Model: _____ Disch: _____
SN: _____

NOTES:

POD shown on map appears wrong. Actual POD
is closer to SW 1/4 Sec 29, 16N, 43E

Field Exam Date: 6-23-05 Agent: Steve McGinnis

Point of Diversion and Source Data Entry Form

Claim Number: 21-10019Water Right Point(s) of diversion and Source.

Water Right Point of Diversion: T _____, R _____, Sec. _____, _____, _____, _____, County: _____

Source: _____ Tributary to: _____

Water Right Point of Diversion: T _____, R _____, Sec. _____, _____, _____, _____, County: _____

Source: _____ Tributary to: _____

Claimed Point(s) of Diversion and Source.

Twp	Rge	Sec	Gov Lot	QQQ of QQ of Q	County	Source	Tributary to
15N	43E	30		NW-SE-SE	FACIMINT	SPRING	HENRY'S LAKE

Recommended Point(s) of Diversion and Source. (see GPS)

Twp	Rge	Sec	Gov Lot	QQQ of QQ of Q	County	Source	Tributary to

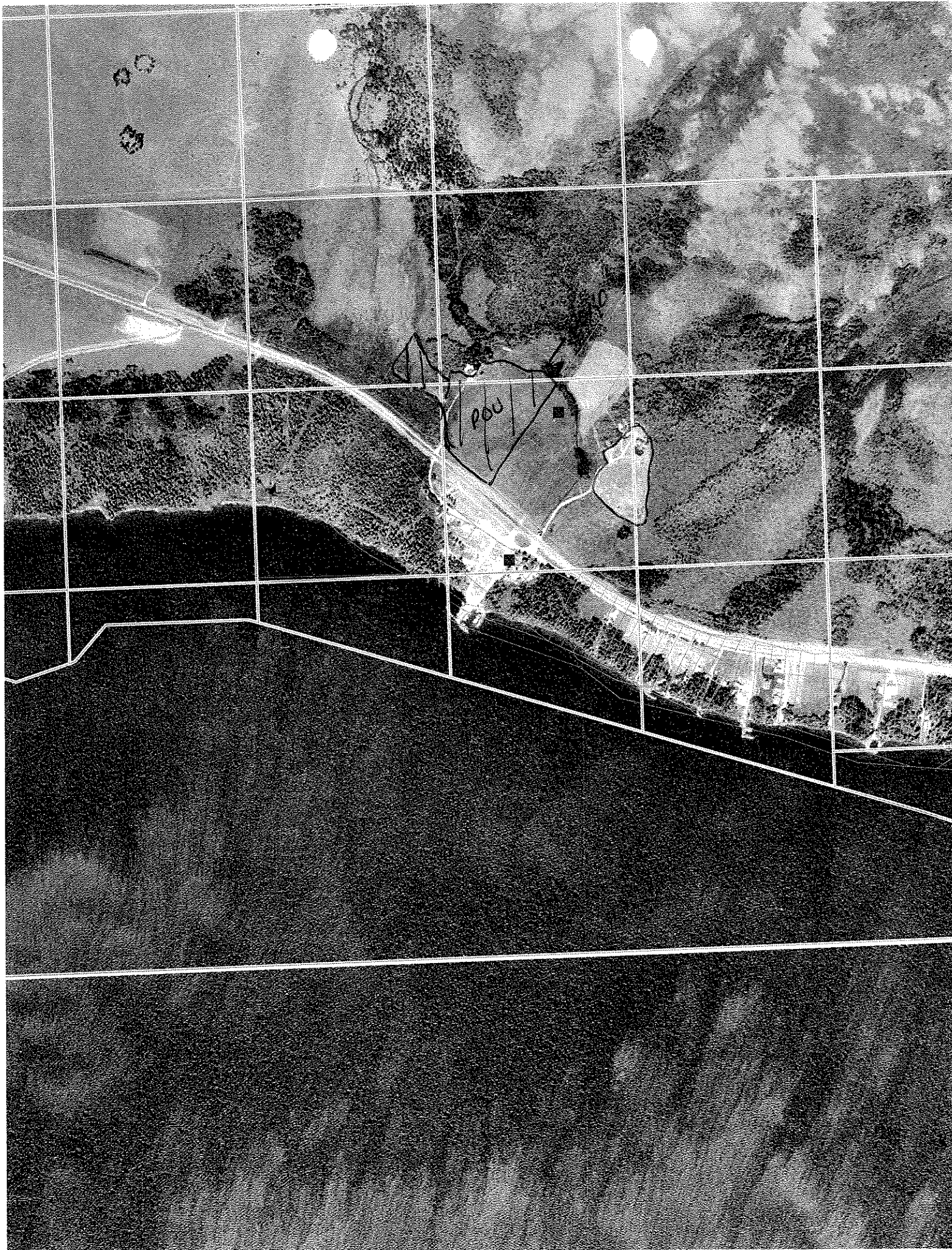
Other rights from this POD? _____

Transfers Pending or approved: _____

Document how the POD and Source were verified:

POD verified by inspection on 6-23-05 by Steve McCormick with
 Bob Kane

Reviewer: _____ Date: _____



Place Of Use Data Entry Form

Claim Number: 21-10019

Claimed Place Of Use

Twp	Rge	Sec	QQ	Q	County	Lot Num	Acres	Purpose of Use
16N	43E	30	NE-NE		FREMONT		15	IRR / STOCKWATER / FISH PROP
							25	IRR / Stock
							20	IRR / Stock

Total acres 60

Recommended Place of Use

Twp	Rge	Sec	QQ	Q	County	Lot Num	Acres	Purpose of Use
16N	43E	30	NE/NE		FREMONT		15?	IRR / STOCKWATER
			NW/NE				25	
			SE/NE				20	

Total acres 60?

Pending or approved Transfers: _____

Overlapping rights: _____

Document how the POU was verified:

POU verified by inspection on 6-23-05 by Steve McConnell with
 Bob Kane.

Reviewer: _____ Date: _____