

MEMORANDUM

DATE: September 20, 2005
TO: Dave Tuthill *DT*
FROM: Shelley W. Keen *SK*
RE: Licensing of Permit 37-8720

TO FILE

The WR Permits Section tried very hard to license Permit 37-8720 from 2000 through 2003. Both the permit holder and Norm Young, the division administrator at the time, disliked elements of the draft licenses, but for different reasons. No resolution could be reached, and no license was ever issued. Now the permit holder has submitted a transfer application for this right and several related rights. Permits are not usually included in transfer approvals. Staff members from Southern Region and Boise have requested licensing of this permit so that it can be included in the transfer. We would like your help in resolving the outstanding issues.

The first issue is whether this right should carry a combined diversion rate limit with Rights 37-8005B, 37-8005D, 37-8702, and 37-8812. The face values of these rights add up to 8.95 cfs. The capacity of the well that serves as their common point of diversion is 6.68 cfs. IDWR proposed to limit the rights to a combined total of 7.09 cfs to reflect the fact that 0.41 cfs from Right 37-8005D was transferred to the shared well after the development of period for this right. Jo Beeman, attorney for the permit holder, argues that there should be no combined limit because Rights 37-8005B and 37-8812 were transferred to the shared point of diversion during the development period and then not used while Permit 37-8702 and 37-8720 were being developed. Jo Beeman asserts that the *Wood V. Troutt* decision allows the right holder to discontinue using those rights without being subject to forfeiture while claims are pending in the SRBA. IDWR contends that the transfers carried conditions saying that they must be perfected within a year of approval and that the authorized place of use for the transferred rights was irrigated.

Also at issue is whether Permit 37-8720 should be considered a supplemental use or not. The field examiner wrote, "System was using canal water during exam, but will probably move this to other lands now that well is available." The file contains copies of letters from Ted Diehl of North Side Canal Company confirming the use of surface water at the place of use from 1993 through 2002. Jo Beeman contends that although the surface water and ground water are commingled prior to use, each source should be considered primary on different lands. See my 2/10/2003 memo in the file for more discussion of this issue.

For Norm Young, the bottom line seemed to be that he would not issue a license that would allow at some future time the diversion of more water than had ever occurred at any one point in time under that set of water rights, nor would he allow ground water to replace surface water so that the surface water could be used to irrigate new land.

I will be happy to meet with you to provide what details I can from memory. Thanks for your help.

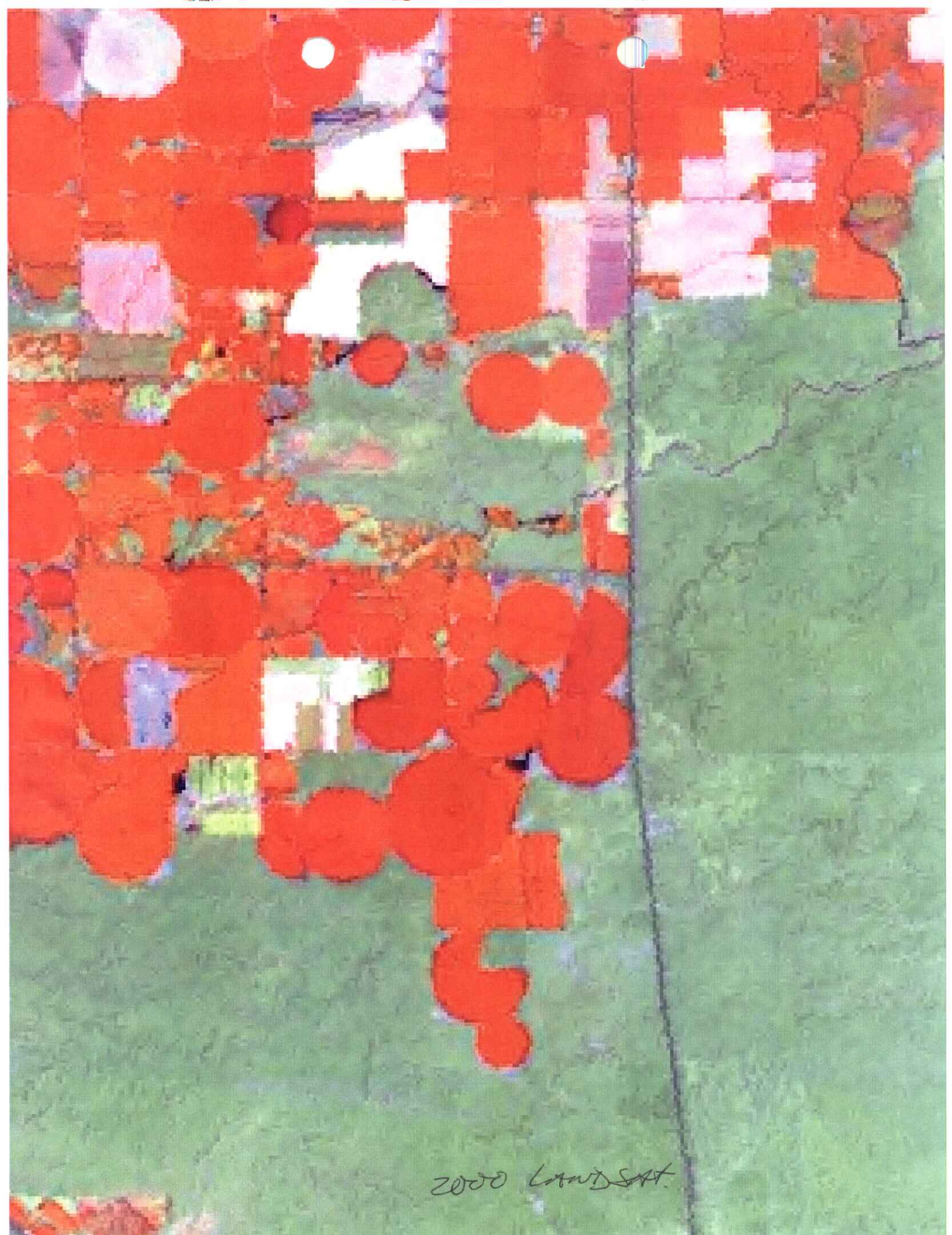


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& pond

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not very good

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6/24/2002
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