



State of Idaho

DEPARTMENT OF WATER RESOURCES

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DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

November 29, 2004

Paul Gunderson
1555 E 1500 N
Hamer, ID 83425

**RE: APPLICATION FOR TRANSFER NO. 70627 IN THE NAME OF ROBERT OR
DONNA BYBEE**

Dear Mr. Gunderson:

This office acknowledges receipt of your letter dated November 16, 2004, in which you request a hearing in connection with the transfer approved in the above referenced matter. The Department will treat your request as being filed pursuant to Section 42-1701A(3), Idaho Code.

In order to identify issues, determine whether a pre-hearing conference is necessary, determine the nature of any hearing to be conducted, and to address other matters which may expedite orderly conduct and disposition of the proceeding in a timely manner, the parties are directed to identify and briefly discuss all issues that are proposed for hearing.

Based on information already in Department files, it appears that the nature of the issues remaining at this point are probably legal rather than factual. To this end, it is appropriate to provide some guidance to the parties by listing issues that are not relevant because the issues have been previously determined in a court of law and litigation of those issues is precluded by res judicata. Specifically, the following likely are **not** available issues for hearing:

1. Interpretation of past rental or lease agreements between Paul Gunderson ("Gunderson") and Robert Bybee ("Bybee") or their predecessors, since this matter has already been previously litigated.
2. The ownership of water right no. 31-11443, since the Snake River Basin Adjudication ("SRBA") Court has issued a partial decree identifying Bybee as the owner of this right.

Paul Gunderson
November 29, 2004
Page 2

3. The reduction of acreage condition of approval for water right 31-7338 issued on August 20, 1997 to Gunderson, since the time period in which to contest the condition has passed.
4. Whether water right nos. 31-11688 and 31-11689 decreed to Gunderson in the SRBA properly include the following condition:

"If water 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 31-11698 shall be reduced by up to 33 acres to comply with the 152 acre limit described above."

The parties are directed to provide a written response to this letter on or before **December 17, 2004**. Upon an acceptable showing of good cause, the parties may seek an extension of this response date. Failure to timely respond to this letter may result in the issuance of a Final Order by the Department based on information already in the Department files.

Sincerely,



L. GLEN SAXTON, P.E.
Administrator
Water Management Division

c: Robert Bybee
I M Family Limited Partnership
E W Pike, Pike & Smith PA
Ron Carlson - IDWR
Roger Warner - IDWR
Phil Rassier - A G