

RECEIVED

JUN 07 2004

LAW OFFICES OF

PIKE & SMITH P.A.

Edward W. Pike
Admitted in Idaho and Utah
Certified Mediator

Franklin N. Smith
Admitted in Idaho, Utah and Nevada
Of Counsel: Van Cott, Bagley,
Cornwall & McCarthy
Salt Lake City, Utah

IDAHO FALLS OFFICE:

O.E. Bell Center
151 N. Ridge Ave., Suite 210
P.O. Box 2949
Idaho Falls, Idaho 83403-2949
Telephone (208) 528-6444
Telefax (208) 528-6447

Mark J. Miller
Admitted in Idaho and Nevada

Stephanie J. Bonney
Admitted in Idaho

Penny North Shaul
Admitted in Idaho
Child Custody Mediator

Judith A. Lewis-Frazee
Admitted in Idaho, Penn. and Maryland
Of Counsel - Driggs, Idaho Office

DEPARTMENT OF
WATER RESOURCES

June 3, 2004

L. Glen Saxton, P.E.
Administrator
Water Management Division
Department of Water Resources
P.O. Box 83720
Boise, ID 83720-0098

**RE: Application for Transfer No. 70627 in the Name of Robert or Donna Bybee:
Protestant Paul Gunderson**

Dear Mr. Saxton:

Thank you for granting Mr. Gunderson an extension of time to June 4 to respond to your letter of May 14. The response of Mr. Gunderson is as follows:

1. There is a scrivener's error in the warranty deed from D.F. Edwards to Paul Gunderson, concerning the property in question, which was described in the warranty deed as NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 25. This is in error. It should be the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 25. The parties to this dispute have always recognized the correct description is the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 25.

2. Mr. Robert Bybee takes the position that the lease agreement dated March 25, 1976 (and I assume he has furnished you with a copy of the same) between Mr. Gunderson and Mr. Don R. Bybee (Robert's father) give him the right to water used by Don initially until 1981 until he filed bankruptcy and Robert for 2 years, 1981-1982, on the leased property of the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 25 Township 7 North Range 35 E.B.M. Mr. Gunderson claims that this purported lease is not the lease signed by him, and as evidence thereof, please note the lease on the front page furnished to you by Mr. Robert Bybee shows a date of March 25, 1976, but the signature page shows a notarization and date of March 7, 1976. It is Mr. Gunderson's belief and contention that Mr. Don Bybee changed the first page of this printed lease and added the typewritten portion of a reversion back to Bybee from Gunderson of any water used on Gunderson's property, after Mr. Gunderson signed the document.

3. The Seventh Judicial District Court, Jefferson County, Idaho, Hon. Brent J. Moss, District Judge, granted a Motion to Dismiss the application of Robert Bybee on the grounds the court had no jurisdiction. A copy of the order is annexed hereto. Mr. Gunderson advises he is

DRIGGS OFFICE:

Outfitters Building, 10 Ashley Ave., Suite 206, Driggs, ID 83422 Telephone (208) 354-3029

not aware of receiving any notice of any hearing after this dismissal, before the Snake River Adjudication Board, or any other tribunal concerning this matter. ✓

4. It is Mr. Gunderson's position that Mr. Robert Bybee cannot have any right of reversion to water that was granted by permit to be used on Gunderson's property, which continues to be Gunderson's property and has been his property ever since the permit was issued to the NW ¼ SW ¼ of Section 25. ✓

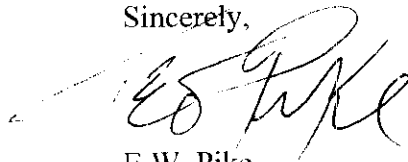
5. Gunderson raises the defense of non-use of the permit for a period in excess of five years. In connection therewith, this raises the question of the statute of limitations, that only allows five years to change a judgment or decree. This period of time long ago expired. ✓

6. Mr. Gunderson has prepared a writing setting forth other information that he believes is applicable, which has been duly executed by him and included herewith as an Exhibit A. Mr. Gunderson has duly filed a notice of protest, which is part of your record. ✓

7. The permit in its present condition reads as being applicable only to Paul Gunderson's deeded property, and therefore it cannot revert to Bybee. For the reasons set forth herein, Mr. Robert Bybee has never had any property for it to revert to. ✓

8. If you do not deny Bybee's request, Gunderson requests a further evidentiary hearing upon reasonable notice.

Sincerely,



E.W. Pike

Attorney for Paul Gunderson

cc: Ron Carlson, D.W.R.
Paul Gunderson

EWP/js
gunderson/saxton.2ltr

THIS INDENTURE, Made this 25th day of March, 1976

Between Paul Gunderson

of Terretton, Idaho
and Don R. Bybee

hereinafter called the party of the first part,

of Hamer, Idaho

hereinafter called the party of the second part;

WITNESSETH, That the said party of the first part has leased and demised, and by these presents

does lease and demise, unto the said party of the second part the NW $\frac{1}{4}$ of SW $\frac{1}{4}$ Sec 25
Township 7N 35 E.B.M.

with the appurtenances, for the term of 5 years from March 25, 1976

at the use for rent or sum of
exchange of/property listed item on below DOLLARS

payable in lawful money of the United States of America.

1. That portion of the SW $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Sec 25 Township 7 North 35 E.B.M. lying North West of Camas Creek and North East of Owsley Wells and trench. And that portion of NW $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Sec 25 Township 7 North 35 E.B.M. lying North and East of Owsley Wells and trench.
2. Party of the second part agrees to replace fences as is at end of lease.
3. Both parties agree that any water used on NW $\frac{1}{4}$ of SW $\frac{1}{4}$ Sec 25 Township 7 North 35 E.B.M. would revert back to party of second part and his property at end of lease.

This lease will expire March 1981.

AND IT IS HEREBY AGREED, That if any rents shall be due and unpaid, or if default shall be made in any of the covenants herein contained, then it shall be lawful for the said party of the first part to re-enter said premises and to remove all persons therefrom.

And the said party of the second part does hereby covenant, promise and agree to pay the said party of the first part, the said rent in the manner hereinbefore specified.

And that at the expiration of the said term the said party of the second part will quit and surrender the said premises in as good state and condition as reasonable use and wear thereof will permit (damage by the elements excepted)

IN WITNESS WHEREOF, The said parties have hereunto set their hands and seals the day and year first above written.

SIGNED, SEALED AND DELIVERED IN PRESENCE OF

Paul Gunderson [Seal]
Paul Gunderson [Seal]

Don R. Bybee [Seal]
Don R. Bybee [Seal]

STATE OF IDAHO, } ss.
County of Jefferson

On this 7th day of March

in the year 1976, before me
a Notary Public

in and for said State, personally appeared

known to me to be the person whose name
acknowledged to me that he executed the same.

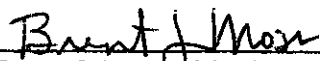
subscribed to the within instrument, and

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

Lee J. Shaw
Notary Public, for the State of Idaho,
Residing at Terreton, Idaho.

No.	LEASE	-TO-	Dated	19	ss.	STATE OF IDAHO,	County of	I hereby certify that this instrument was filed for record at request of	at	minutes past	M, this	day	of	A. D. 19	in my office, and duly recorded in Book	of	at page	Ex-Office Recorder.	By	Fees, \$	Deputy.	Mail to	STATE-TOUR COMPANY, BOISE
-----	-------	------	-------	----	-----	-----------------	-----------	--	----	--------------	---------	-----	----	----------	---	----	---------	---------------------	----	----------	---------	---------	---------------------------

DATED: April 16 2001.


Hon. Brent J. Moss, District Judge

CLERK'S CERTIFICATE OF SERVICE

I hereby certify that I served a true and correct copy of the foregoing, to the following, by the indicated method on this 16 day of April, 2001, by U.S. mail, hand delivery or facsimile, with the necessary postage affixed thereto.

Gregory W. Moeller
RIGBY, THATCHER, ANDRUS,
RIGBY, KAM & MOELLER
25 North Second East
P.O. Box 250
Rexburg, ID 83440

☒ U.S. Mail
☐ Fax
☐ Hand Delivered

E. W. Pike
PIKE & SMITH, P.A.
P.O. Box 2949
Idaho Falls, ID 83403-2949

☒ U.S. Mail
☐ Fax
☐ Hand Delivered


CLERK

[gunderson/bybee/dismiss.ord](#)

In the spring of 1974 I hired Lamar Barrus from Basalt Idaho to drill a well on the SW ¼ SW ¼ Sec 25 T7N R35E. Prior to his starting to drill the well he requested I make an application for a water use permit to IDWR. I did process the application for a permit. After Lamar Barrus completed drilling the well, I received a telephone call from IDWR. IDWR requested a copy of the well log from me. (By requesting the well log I knew the IDWR had the application for a permit at that time.) I responded that I did not have a well log. IDWR requested I call Lamar Barrus and have him submit the well log because IDWR said they would not process my application for a permit until they received a well log. IDWR said this was a way they had of getting a well log from the well drillers. Lamar Barrus replied to me he would send the to IDWR but he submitted well logs as a group once a year. A few months later IDWR call me again by telephone and said if I wanted the application processed I would have to get Lamar Barrus to submit a well log. I called Lamar Barrus a second time to request him to file the well log with IDWR. He said he would. He submitted the well log in July 1975. I then waited for IDWR to process the permit. I can't remember if I checked on this application or if it were an earlier application for another well that IDWR told me to be patient. Some applications may take several years.

The next event I remember pertaining to this application happened in 1980. D. F. Edwards reviewed all the water right on property I was buying from him. D. F. Edwards did not find a filling for the subject well. He then filed another application for a permit on the subject well. He then informed me about what he had done and requested I reimburse him for the filling fee, which I did. At this time I informed ^{him} that what he had done was not necessary. I had already made an application prior to drilling the well and was just waiting for IDWR to send the permit. I then check with IDWR for a status of the permit. At this point IDWR informed me they had no record of the application.

Holley and Jactett Canal Companies filed a protest to the application filed by Mr. Edwards. IDWR (Bob Fleener) held a prehearing conference. At the prehearing conference both Holley and Jactett Canal Companies agreed to withdraw their protest and the permit was to be issued. The canal companies stated to me that they protested all new water filings. Several months later I called Bob Fleener and requested the status of the permit. Bob said they were working on it. I insisted I wanted some kind of documentation. He told me not worry "I could still pump water." I later checked IDWR in Idaho Falls for a status. IDWR stated they could not process the application because of the moratorium on drilling wells in the Mud Lake area. I replied the well was drilled in 1974 and the second application was submitted in 1980, both prior to the moratorium. IDWR said that did not make any difference about issuing a permit because the moratorium prevailed. Later around 1997 when meeting with IDWR on another subject with Attorneys Scott Seedall and Ray Rigby attending, I asked the question about issuing the permit and moratorium to IDWR. Both attorneys stated to IDWR that the moratorium would have no affect on processing the permit on the well. At that point IDWR processed the 1980 application. When IDWR processed the application they add a remark to the permit which encumbered the permit by stating that if any water is transferred from permit 31-07199 that those acres are to be removed from 31-7338 or in other words 33 acres of permit 31-7338 will be without water. This deteriorated water permit is the result of administrative errors of omission since 1974, taking place during 27 year period. To date over \$10,000 of legal fees have spent to find a solution for the errors with no solution in sight. That is over \$300 per acre for the water in question and the legal fees appear to be just beginning. -- Paul Gunderson

