

IDAHO SUPREME COURT 2019 UPDATE

Travis L. Thompson

Barker Rosholt & Simpson LLP

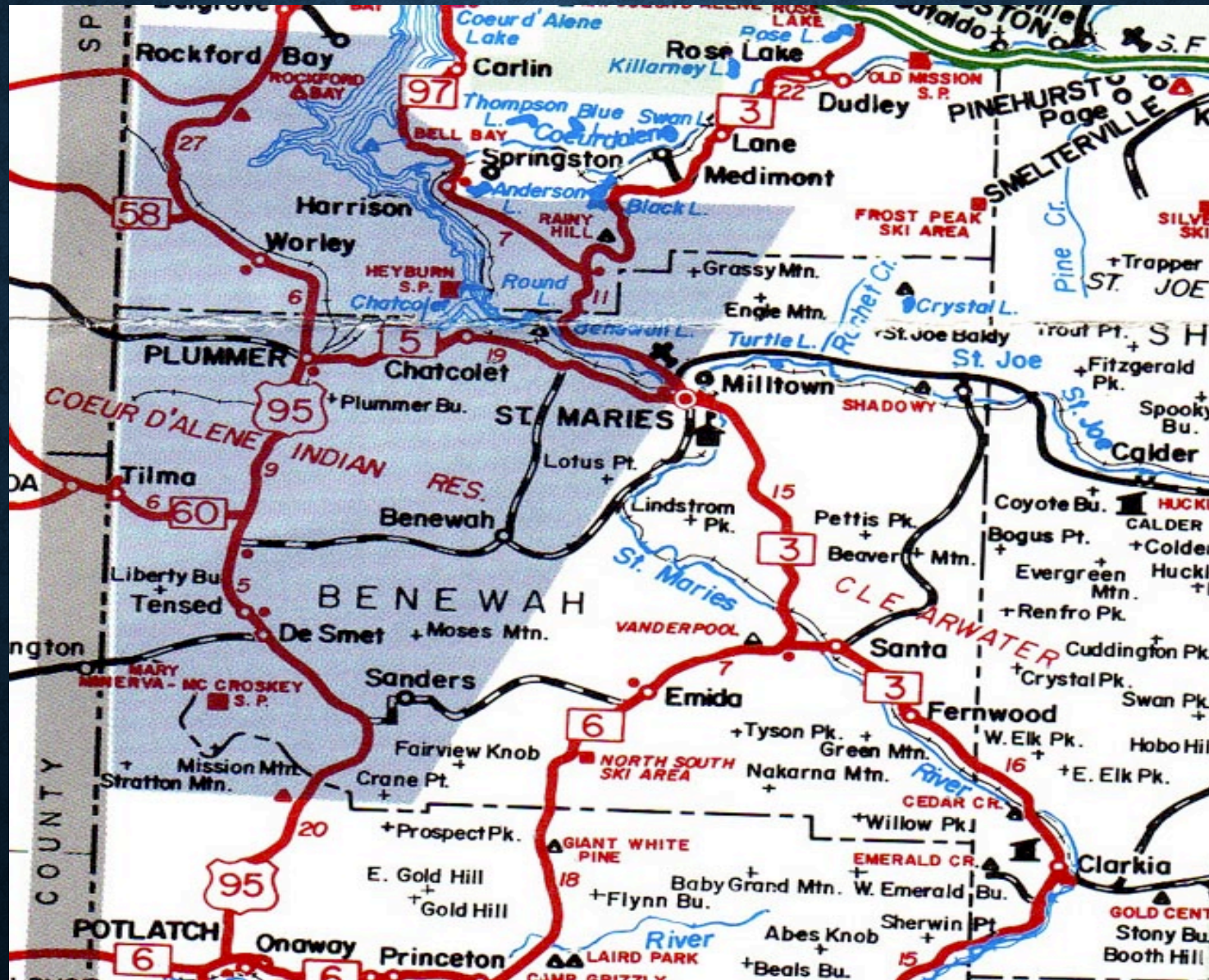
CELTICS 139 LAKERS 107



IDAHO SUPREME COURT CASES

- *McInturff v. Shippy*, 165 Idaho 489 (2019) (Ownership / License)
- *First Security Corp. v. Belle Ranch*, 165 Idaho 733 (2019)
(Ownership / SRBA)
- *Eagle Creek Irr. Co. v. AC & CE Investments, Inc.*, 165 Idaho 467
(2019) (Ownership / Mutual Irrigation Company)

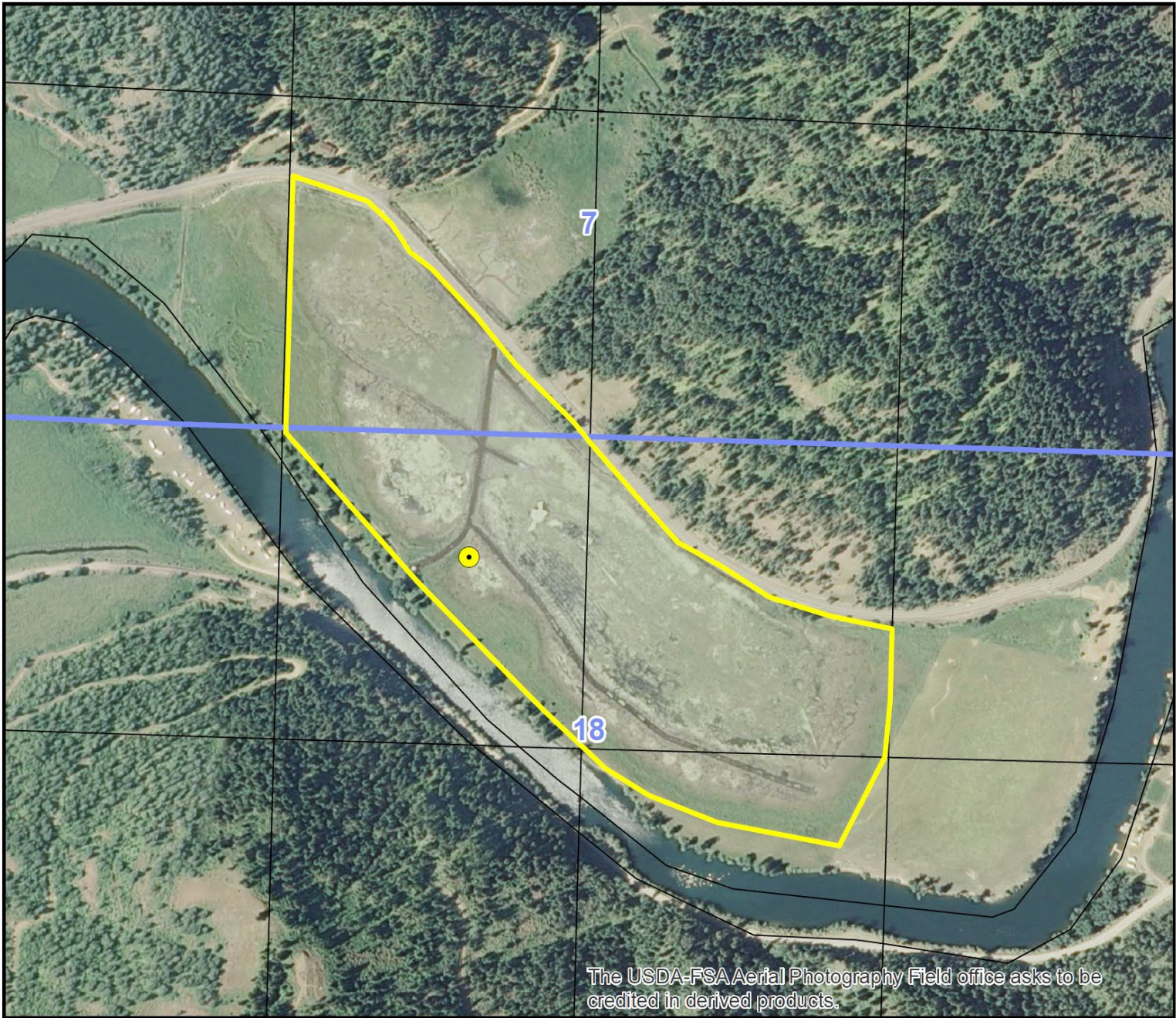
MCINTURFF V. SHIPPY



in the water right file.

01W

46N



The USDA-FSA Aerial Photography Field office asks to be credited in derived products.

MCINTURFF V. SHIPPY

- Coeur d'Alene-Spokane River Basin Adjudication
- Irrigation water right (St. Joe River) for 70 acres wild rice production
- Grower's association (St. Maries) entered into agreement with landowners to grow rice on their land.
- St. Maries applied for water right, IDWR permitted and licensed the right
- Condition: "This water right is appurtenant to the described place of use."

MCINTURFF V. SHIPPY

- St Marie's used the water right from 1980s to 2001.
- Sold the business and equipment to McInturff in 2001, including the water right.
- McInturff filed a notice of change of ownership with IDWR, record ownership changed in 2006.
- Landowner sold the property to Shippy (4 different conveyances 1993 – 1999)
- McInturff filed notice of claim in the CSRBA in 2015. Shippy filed objection and competing claim.
- Director's Report listed both claimants.
- Special Master determined McInturff to be the owner / Presiding Judge affirmed

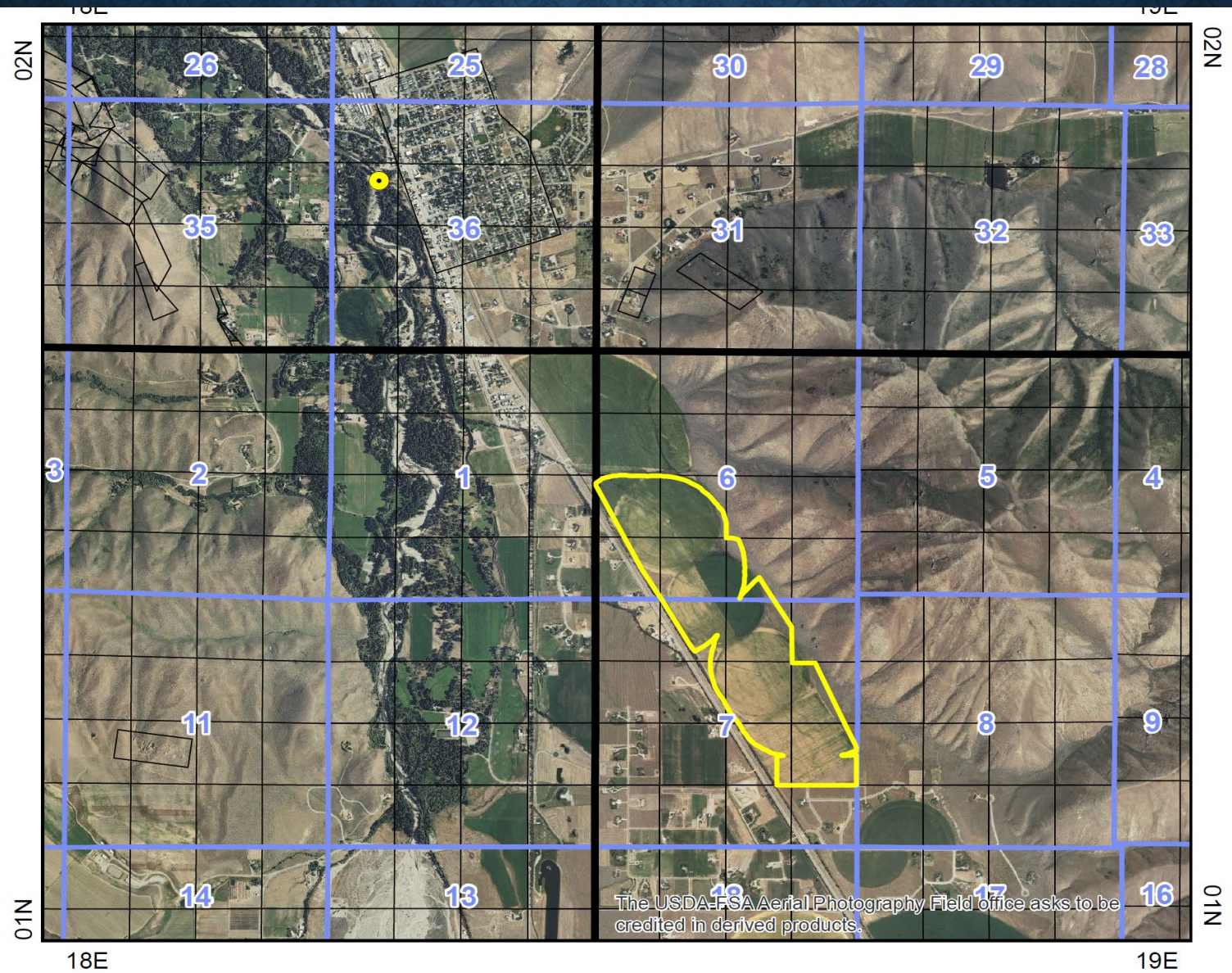
MCINTURFF V. SHIPPY

- S Ct. affirmed, noted that the district court correctly ruled that Shippy's objection was a collateral attack on the license process.
- Shippy and predecessor never challenged ownership with IDWR.
- “water may be appropriated for beneficial use on land not owned by the appropriator, and this water right becomes the property of the appropriator.” *First Sec. Bank of Blackfoot v. State*, 49 Idaho 740 (1930).
- The Court concluded the appurtenance remark “simply clarifies that the use of the water right is tied to the described place of use.”

MCINTURFF V. SHIPPY

- Court also held that CSRBA court did not have jurisdiction to determine the challenge to IDWR's change of ownership in 2006.
- Court said the "claims should have been brought in front of the Director during the change in ownership determination."
- Idaho Code 42-248 does not require IDWR to publish notice of such changes
- Notice only required to be mailed to "owner" of water right shown in the records at IDWR at time of mailing.
- Dissent by Justice Brody (water right's language created ambiguity)

FIRST SECURITY V. BELLE RANCH



FIRST SECURITY CORP. V. BELLE RANCH

- Three separate lawsuits concerning ownership of irrigation water rights to land owned by Belle Ranch LLC
- 289 acres worth of water rights, 15.3 acres contested
- South County Estates LLC formed in 2003, then dissolved in 2011.
- South County acquired the ranch in 2003 and executed a mortgage in 2005. South executed two more mortgages then defaulted in 2010.
- Mountain West Bank transferred property to GBCI, LLC who then conveyed property to Belle Ranch.

FIRST SECURITY CORP. V. BELLE RANCH

- South County transferred 15.3 acres of the water rights to various entities/individuals between 2007 and 2009.
- 2007 - IDWR recommended water rights in name of South County
- 2010 – SRBA Court decreed water rights in name of South County
- No objections to claims or appeals of decrees
- MWB filed notice of change in 2011, IDWR changed records

FIRST SECURITY CORP. V. BELLE RANCH

- 2012 – Belle Ranch filed notice of change of ownership, IDWR acknowledged change and modified records
- Aug 2014 – SRBA issued its Final Unified Decree
- Oct 2014 – First Security filed notice of change of ownership, IDWR processed and split the water rights
- 2016 – Belle Ranch notified IDWR that it disputed the split, IDWR proceeded to change water right back to South County and that parties could settle through a quiet title action.

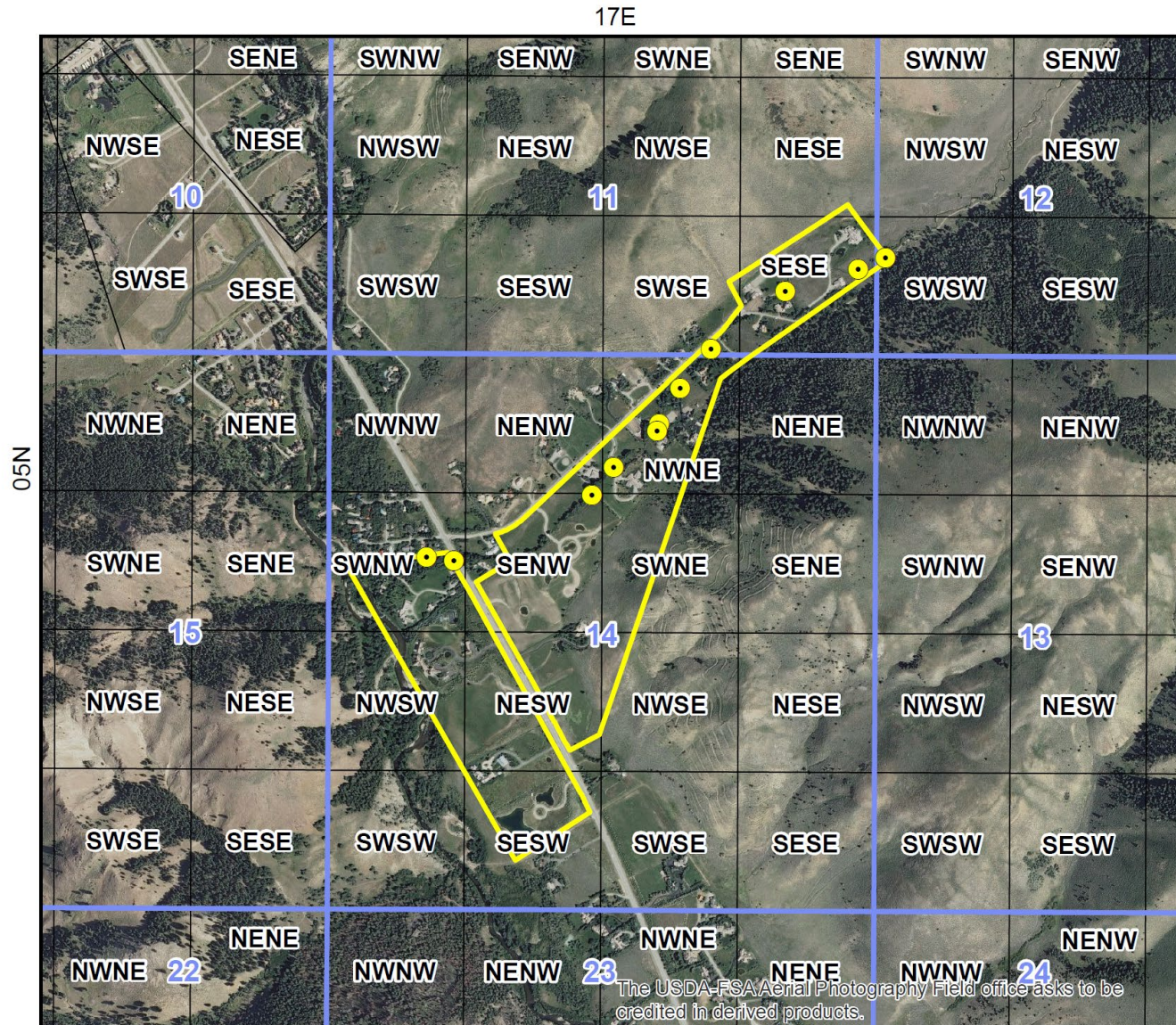
FIRST SECURITY CORP. V. BELLE RANCH

- District Court quieted title of all the rights to Belle Ranch except 2.8 acres.
- Court ruled there were genuine issues of fact precluding summary judgment on the water rights claimed by Big Stick, LLC.
- However, on reconsideration the Court ruled that res judicata barred all claims and entered judgment for Belle Ranch.
- Supreme Court affirmed and concluded elements of res judicata satisfied: 1) final judgment of the merits; 2) same parties due to general adjudication; 3) claims were adjudicated in SRBA.

FIRST SECURITY CORP. V. BELLE RANCH

- Appellants claimed “ownership” was not litigated in the SRBA.
- Court analyzed the statutes at issue 6-401 and 42-1411(2)(a)
- Court determined that “when a court issues a decree in the name of a claimant, it is deciding whether that claimant’s assertion of ownership is valid. Therefor, the issuance of the decree inextricably links a claimant with ownership of the water right.”
- Appellants failed to assert rights during SRBA and failed to file notices of change of ownership when title to water rights acquired.

EAGLE CREEK V. AC & CE INVEST.



EAGLE CREEK V. AC & CE INVEST.

- Eagle Creek formed as a non-profit mutual irrigation company in 1973
- Eagle Creek would issued 207 or 230 shares on a one share per irrigable acre basis.
- 1991 bylaw added requiring shareholder selling property to apply for transfer of shares within 60 days.
- Water right for irrigation purposes 143.9 acre permissible place of use

EAGLE CREEK V. AC & CE INVEST.

- AC's predecessor entered into agreement with Eagle Creek to change point of diversion upstream subject to IDWR approval.
- IDWR approved the change.
- AC's predecessor then quitclaimed any interest in water right back to Eagle Creek in 2005.
- 2010 – SRBA Court disallowed the predecessor claim and declared Eagle Creek owner of the water right.
- AC obtained property through deed of trust and took possession of property and began irrigating in fall of 2011.

EAGLE CREEK V. AC & CE INVEST.

- AC requested issuance of shares in its name.
- Eagle Creek asked AC to: 1) abide by 1993 diversion agreement with predecessor; 2) pay past due assessments (\$50/share); and 3) line or pipe the ditch crossing its property
- Eagle Creek then filed suit seeking a declaration that the company owned all the water rights and 15 shares. AC counterclaimed to quiet title to the 15 shares.
- District Court ruled as a matter of law the ownership of 15 shares passed to AC as an appurtenance to the property.

EAGLE CREEK V. AC & CE INVEST.

- Case proceeded to trial, but settled after opening statements
- Eagle Creek agreed to issue 15 shares to AC backdated to the trustee's sale.
- AC agreed to line the ditch in certain areas within 3 years or upon sale of the property.
- Issue on Appeal: “whether shares in a mutual irrigation company pass as an appurtenance to a property when neither the water right nor the corporate documents indicate the shares are appurtenant to the specific property conveyed?”

EAGLE CREEK V. AC & CE INVEST.

- Court noted “AC currently possesses the 15 shares.”
- “Determining whether a particular share is appurtenant to a specific tract of land depends upon the factual inquiry into the mutual irrigation company’s governing documents and the history of the water right.”
- “While a share can be appurtenant to a specific tract of land within an irrigation company’s serviceable area, such specific appurtenancy is not an integral feature.”

EAGLE CREEK V. AC & CE INVEST.

- Court contrasted Carey Act operating companies and irrigation districts.
- Because no appurtenancy statutes apply to mutual companies, whether a share is appurtenant to a specific acre is a matter of contract and corporate governance.
- Eagle Creek water right appurtenant to the whole service area, not individual tracts, governing documents do not “locate” the shares.
- Eagle Creek uses “floating” shares.
- Court distinguished earlier cases, *Wells, Watson, Ireton*

EAGLE CREEK V. AC & CE INVEST.

- Appurtenant water rights still pass as an appurtenance to land unless specifically reserved in the conveyance.
- In order for “shares” to apps with title, it must first be determined whether the shares are appurtenant to the tract of land being conveyed.
- A factual inquiry into the governing documents of the mutual irrigation company and history of the water rights is required.
- Court vacated district court’s summary judgment that stated 15 shares were appurtenant to AC Property.