

# Watermaster Review Form: Water Right Transfer



Oregon Water Resources Department  
725 Summer St NE, Suite A  
Salem, Oregon 97301-1266  
(503) 986-0900  
www.oregon.gov/OWRD

Transfer Application: T-14346

Review Due Date: 12/06/2023

Applicant Name: City of John Day

Proposed Changes:  POU  POD  POA  USE  OTHER

Reviewer(s): Eric W. Julsrud

Date of Review: 12/07/2023

- Do you have evidence that the right has not been used in the last 5 years and that the presumption of forfeiture would not likely be rebuttable?  Yes  No If "Yes", attach evidence (e.g. dated aerial photo showing pavement or building on the land for >5 yrs.)
- Is there a history of regulation on the source that serves this (or these) right(s) that has involved the transferred right(s) and downstream water rights?  Yes  No Generally characterize the frequency of any regulation or explain why regulation has not occurred:  
The John Day River is regulated annually due to deficiency in supply.
- Have headgate notices been issued for the source that serves the transferred right(s)?  
 Yes  No  Records not available.
- In your estimation, after the proposed change, would distribution of water for the right(s) result in regulation of other water rights that would not have occurred if use under the original right(s) was/were maximized?  Yes  No If "Yes", explain:  
See additional information attached.
- In your estimation, if the proposed change is approved, are there upstream water rights that would be affected?  Yes  No If "Yes", describe how the rights would be affected and list the rights most affected:  
See additional information attached.

6. Check here  if it appears that downstream water rights benefit from return flows resulting from the current use of the transferred right(s)? If you check the box, generally characterize the locations where the return flows likely occur and list the water rights that benefit most:

The rights involved in this transfer have not been used for more than 20 years(C-36368) and more than 9 years (C-85675, 87480). It is not clear if C-25786 has been used within the last 5 years. In my opinion if there are any return flows they would be immeasurable.

N/A

7. For POD changes and instream transfers, check here if there are channel losses between the old and new PODs or within the proposed instream reach? If you check the box, describe and, if possible, estimate the losses:

See additional information attached.

N/A

8. For instream transfers that propose protection of a reach beyond the mouth of the source stream:

N/A Would the quantity be measureable into the receiving stream consistent with OAR 690-077-0015(8)?  Yes  No

9. For POU changes:  N/A Is it likely the original place of use would continue to receive water from the same source?  Yes  No If "Yes", explain:

See additional information attached.

10. For POU or USE changes:  N/A In your best judgment, would use of the existing right at "full face value," result in the diversion of more water than can be used beneficially and without waste?

Yes  No If "Yes", explain:

11. For POU changes that involve micro-irrigation:  N/A

a. Has the applicant made changes (absent a transfer) to convert to micro-irrigation within the current place of use boundary of the water right proposed for transfer, and previously demonstrated to the Department through monitoring and site inspections by the Watermaster that the proposed transfer will not result in injury or enlargement?

Yes  No If "Yes", explain:

b. Has a temporary transfer of this nature been previously filed and approved on the same lands (or portions thereof) as those lands involved in this transfer?

Yes  No If "Yes", answer the following:

i. Were there any problems with more acres being irrigated (or wetted) than were authorized under the temporary transfer?  Yes  No If "Yes", explain:

ii. Did the designated areas that were to remain dry (or not wetted) under the temporary transfer actually remain dry?  Yes  No If "No", explain:

iii. Did the applicant comply with and meet all of the conditions of the temporary transfer?  Yes  No If "No", explain:

iv. Do you have any other observations regarding the temporary transfer?  Yes  No If "Yes", describe:

v. Did the applicant demonstrate to the Department through monitoring and site inspections by the Watermaster that neither injury nor enlargement occurred as a result of the temporary transfer?  Yes  No If "No", explain:

c. To the best of your knowledge, if this transfer is approved, does it appear that:

i. "Injury" will occur to other water rights that share the same source?  Yes  No If "Yes", explain:

See additional information attached.

ii. "Enlargement" of the water right being transferred will occur?  Yes  No If "Yes", explain:

See additional information attached.

12. Are there other issues not identified through the above questions that should be considered in determining whether the change "can be effected without injury to other rights"?

Yes  No If "Yes", explain:

C-86575 is not owned by the applicant in this transfer. C-85675 should be removed from this application or the actual owner of the ground (1188 Destinations, LLC) should be added to this application. See continued discussion attached.

13. What alternatives may be available for addressing any issues identified above:

See additional information attached.

14. Do conditions need to be included in the transfer order to avoid enlargement of the right or injury to other rights?  No  Yes, as checked and provided below:

For POU changes that involve micro-irrigation, provide the monitoring and reporting conditions necessary to prevent injury/enlargement:

A Headgate should be required prior to diverting water.

Measurement Devices for POD or POA: (if this condition is selected, also fill in the top sections of Page 4)

*a. Before water use may begin under this order, the water user shall install a **totalizing flow meter\***, or, with prior approval of the Director, another suitable measuring device,  at each point of diversion/appropriation (new and existing) **OR** at each new point of diversion/appropriation  with the exception that water rights issued to the Bureau of Reclamation or an irrigation district (or similar entity) are not subject to this condition.*

*b. The water user shall maintain the meters or measuring devices in good working order.*

*c. The water user shall allow the Watermaster access to the meters or measuring devices; provided however, where the meters or measuring devices are located within a private structure, the Watermaster shall request access upon reasonable notice.*

Reservoir water use measurement: (if this condition is selected, also fill in the top sections of Page 4)

*a. Before water use may begin under this order, the water user shall install **staff gages\***, or, with prior approval of the Director, other suitable measuring devices, that measure the entire range and stage between empty and full in each reservoir. Staff gages shall be United States Geological Survey style.*

*b. Before water use may begin under this order, if the reservoir is located in channel, weirs or other suitable measuring devices must be installed upstream and downstream of the reservoir, and, an adjustable outlet valve must be installed. The water user shall maintain such devices in good working order. A written waiver may be obtained, if in the judgment of the Director, the installation of weirs or other suitable measuring devices, or the adjustable outlet valve, will provide no public benefit.*

\* The following alternative device(s) should be substituted for the bold, underlined device in the above selected condition:

Weir

Submerged Orifice

Parshall Flume

Flow Restrictor

Other: \_\_\_

**Oregon Water Resources Department**  
**Measurement Condition Information for the Applicant**  
*(To be sent with the Draft Preliminary Determination or Final Order)*

Transfer #: T- 14346

In order to avoid enlargement of the right or injury to other rights, a \_\_\_\_\_ will  
be required to be installed **prior to diversion of water**, as a condition of this transfer:  
 at each point of diversion/appropriation (new and existing) **OR**  
 at each new point of diversion/appropriation.

For additional information, or to obtain approval of a different type of measurement device, the applicant should contact the area Watermaster:

Watermaster name: Eric W. Julsrud

District: 4

Address: 201 South Humbolt Street, Suite 180

City/State/Zip: Canyon City, OR 97820

Phone: 541-575-0119

Email: Eric.W.Julsrud@water.oregon.gov

**Note:** *If a device other than the one specified in the Preliminary Determination or Final Order is approved by the Watermaster, fill out and mail the form below to the Salem office.*

\*\*\*\*\*

**Approval of an Alternate Measurement Device** T- 14346  
*(to be filled out after consultation with the applicant, or after a site visit)*

On behalf of the Director, I authorize use of the following suitable **alternate measurement device**:

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Watermaster signature District Date

If this form is used for approval of an alternative measurement device, it must be mailed to:

Oregon Water Resources Department  
725 Summer Street NE, Suite A  
Salem, OR 97301-1266

T-14346, City of John Day

Question #4

I have personal and professional knowledge of non-use of C-36368, 36367, 85675, 87480.

C-36367 is the actual storage right for the San Juan Log Pond and not apart of this transfer. Only C-36368 has been included in this transfer.

C-36368 and C-36367 have not been exercised from July 2000 to present. The San Juan Log Pond has not been in existence since I arrived in this basin in July 2000 to work as an Assistant Watermaster, District 4.

C-85675 and C-87480 have not been utilized since at least September of 2014 according to the mill manager at the time. I have copies of a statement from the mill manager from September of 2014 which indicates this was the last time the mill utilized these water rights to water logs. My personal and professional recollection of the use of these two water rights differ from the statement of the mill manager. As an Assistant Watermaster for this basin I was in charge of regulating the John Day River from its head waters to the confluence of the South Fork John Day River (July 2000 through November of 2005). After November of 2005 I was hired as the Watermaster for District 4 and I have occupied this position from that time to present (18 years). During my tenure in this basin I can only recall these two water rights being exercised from approximately 2000 through 2004. I have this knowledge from a working knowledge of the river as well as my duties which would bring me to the location of the place of use of each water right involved in this transfer on nearly a daily basis during the irrigation season of each year.

If these three water rights (C-36368, 85675 and 87480) are allowed to be transferred instream as proposed there will be additional regulation of water rights that have not occurred since my tenure in this basin (July, 2000). The applicant is requesting to transfer 362.2 Acreft of water instream under C-36368. My calculations indicate only 361.98 Acreft are authorized under this certificate. The applicant is requesting to transfer 108.66 Acreft instream under C-85675. C-85675 only authorizes 108.6 Acreft. The applicant is requesting to transfer instream 135.83 Acreft instream under C-87480. C-87480 only authorizes 75 Acreft of water over the course of the irrigation season. This water right was a converted adjudicated irrigation water right. The limitations of the John Day Decree still apply to this water right otherwise there will be enlargement and increased injury. The applicant is requesting to transfer instream 19.75 Acreft of C-25786. The applicant only owns roughly 2.1 acres of this certificate which would be 10.5 Acreft available to transfer instream. Out of that roughly 2.1 acres of land there is a large portion that is consumed by an access road and a parking area that would need to be deducted from the total.

#### Question #5

By potentially allowing non used water rights to be transferred instream there are upstream water rights that would definitely be subject to regulation that were not regulated prior to this transfer. The ditch that would be primarily affected would be the "Luce Long Ditch". This ditch has over 100 users on the ditch and the POD for this ditch is nearly in the middle of the requested instream reach. C-87480 is senior to every water right on this ditch. Historically, the river at this ditch POD becomes nearly dry every year as water levels drop and regulation ensues. This scenario will guarantee that C-87480 would affect over 20 water rights on this ditch alone (C-91792, 91788, 91787, 91789, 91790, 91791, 91752, 91793, 91794, 91797 and many others). Additionally, this transfer could affect every junior water right above the proposed reach to the headwaters of the John Day River. By my estimation this would be over 100 certificates.

## Question #7

This section of the John Day River (The portion of the river that flows through the City of John Day's boundary) is generally a losing reach. The only recharge to the river of any consequence is Canyon Creek itself. There are no irrigated fields of significant size in this area and therefore negligible return flow areas. The "Luce Long Ditch" is a 6.76 cfs ditch that has its point of diversion near river mile 247.5. This ditch generally struggles to divert adequate water due to the low river levels. Near river mile 246.4 (The proposed end of the instream reach) the river begins to recharge slightly from the return flows from the Luce Long Ditch and other factors. The river does not really begin to rebound well for another mile or more downstream. The amount of loss within this section of the river is not easily quantified as it is dependent on many factors namely temperature, shallow groundwater levels, precipitation and whether there is a high demand for water above the City of John Day to the City of Prairie City which varies year to year.

This instream transfer is proposing to **NOT** initiate a reach from the authorized POD's downstream to a lower point. C-25786 has a point of diversion located within the NE NE Section 25 of T. 13S R. 31 W.M. at approximately river mile 249.8. the proposed reach is to begin at approximately river mile 247.98. The proposed reach is proposed to begin 1.82 miles below the authorized POD for C-25786.

C-87480 has an authorized POD at approximately river mile 247.19 along with C-85675. The proposed instream reach beginning is approximately river mile 247.98. The proposal then is to protect water approximately 0.79 miles above where it was authorized to be withdrawn from the John Day River.

C-36368 has an authorized point of diversion at approximately river mile 247.5 but the proposed instream reach will begin at approximately river mile 247.98. This means that the proposed instream reach will protect water approximately 0.49 miles upstream of the point of diversion location for this certificate.

In my opinion allowing protection of water above the authorized point of diversion is enlargement of the water right and will exacerbate the conditions in this section of the river that is currently already experiencing losing reach characteristics.



#### Question #9

A portion of C-25786 is owned by the City of John Day. By my best calculations this amounts to approximately 0.75 acres of pasture type lands (green space) and approximately 1.35 acres of dirt, gravel roads and parking areas. This "Green Space" is down slope of the ditch and neighboring lands which are irrigated from the ditch. With no changes to infrastructure or irrigation practices of the neighboring lands, the lands that are owned by the City of John Day will continue to be irrigated if this transfer is approved.

#### Question 11(c.), (i.)

The applicant is requesting to transfer instream more water than what is currently authorized by the respective certificates with no reduction in the protected amount due to concerns of injury or other users on the John Day River system. The applicant is also requesting to "resurrect" water rights that have undergone significant period of non-use to transfer these rights instream. The applicant is also requesting a reach that is not consistent with the respective points of diversions for these water rights; this can result in injury and enlargement. Additionally, there is no consideration with the loss that this portion of the river experiences year to year, this can also result in injury to other water right holders within the reach and upstream of the identified reach.

I could propose to address concerns of injury for C-25786 by reducing acres to what is actually being used and to what the applicant actually owns as well as the protected flow level to address consumptive use and loss factors for transportation. See calculations attached. This however does not address the losing reach characteristics of the section of the river the applicant is requesting. Frankly, I would limit the protective reach to the authorized point of diversion for C-25786 to avoid these concerns. Further, I suggest reshaping the reach requested to begin at a point of diversion of the applicant's choosing and then carry the reach downstream to a lower point.

Question 11(c.), (ii.)

Enlargement under this transfer application is apparent in the applicant's request to protect water in a reach above the authorized point of diversion for the respective certificates. It is also apparent in the request to protect more water instream than what is authorized by the respective certificates. The applicant is also requesting to transfer water rights instream that they do not own (C-85675). The applicant is also incorrect in their assessment of the location of C-25786 and assumption that they own more of this certificate. This is likely a result of their use of OWRD's online Water Right Information System's depiction of this certificate. C-25786 was a certificate issued to W.H. Shank not to lands mapped by the State Engineer's Office as belonging to W.D. Bourshon under C-24917. Certificate C-24917 was cancelled under S.O. Vol 33 Pg. 691 by the City of John Day on the 18<sup>th</sup> Day of September, 1980. See Question #9 for more discussion on the actual amount of acres the City of John Day owns from C-25786.

Question 13

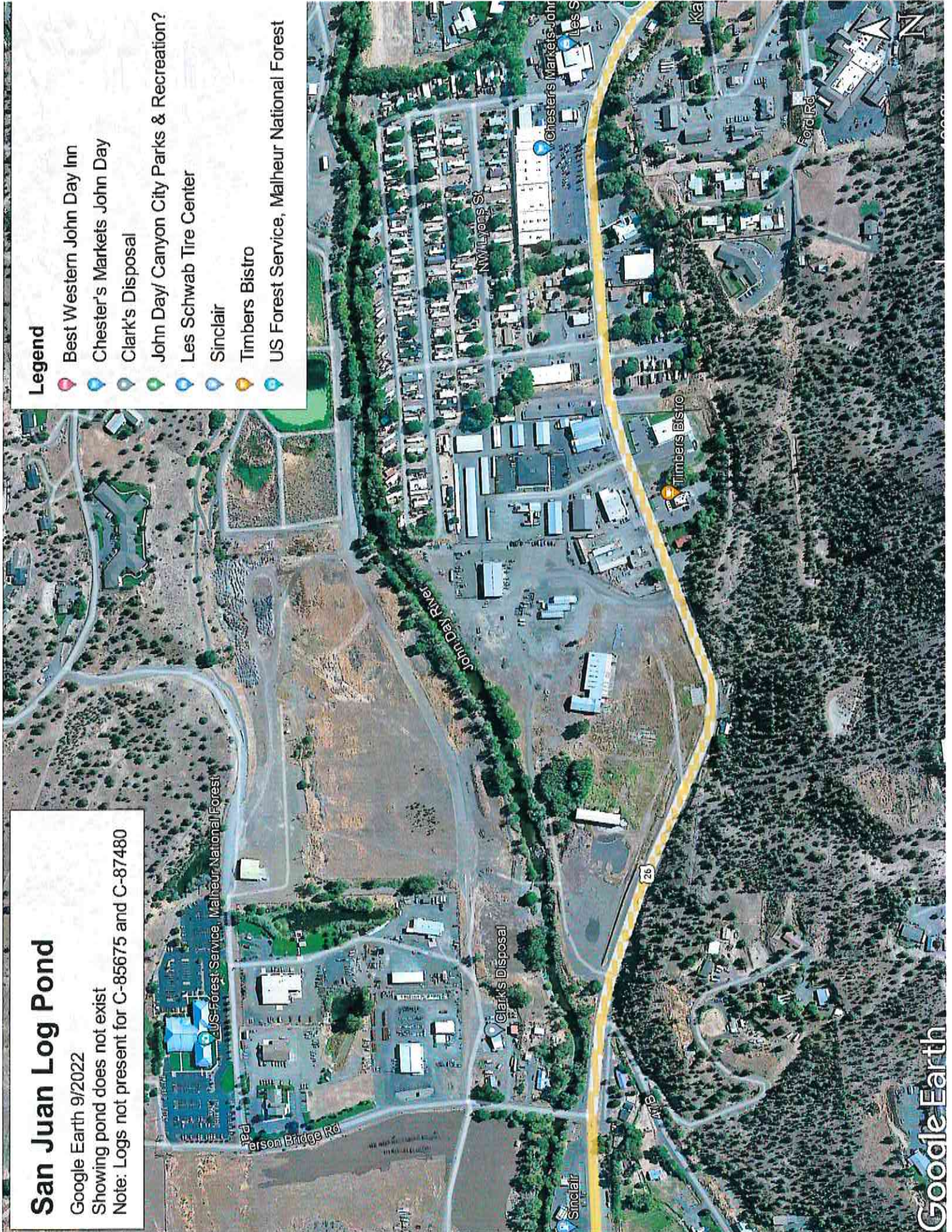
C-25786 should be shaped to protect instream only that portion the City of John Day actually owns (see calculations attached) and remain within the John Day River Decree limitations. A minimum of a 1% loss per mile transportation loss should be applied to the protected water. In my professional opinion certificates (C-36368, 87480, 85675) should be removed from this application due to non-use. C-85675 should be also removed unless the City Of John Day can prove they own the ground. The applicant's own statement indicate that they are aware of and admit to the non-use of these certificates including C-25786, 36368, 87480 and 85675. If needed I can provide a Watermaster Affidavit attesting to my knowledge of non-use of these certificates over my tenure in this basin from July 2000 to present (December 11<sup>th</sup>, 2023).

# San Juan Log Pond

Google Earth 9/2022  
Showing pond does not exist  
Note: Logs not present for C-85675 and C-87480

## Legend

- Best Western John Day Inn
- Chester's Markets John Day
- Clark's Disposal
- John Day/ Canyon City Parks & Recreation?
- Les Schwab Tire Center
- Sinclair
- Timbers Bistro
- US Forest Service, Malheur National Forest



# San Juan Log Pond

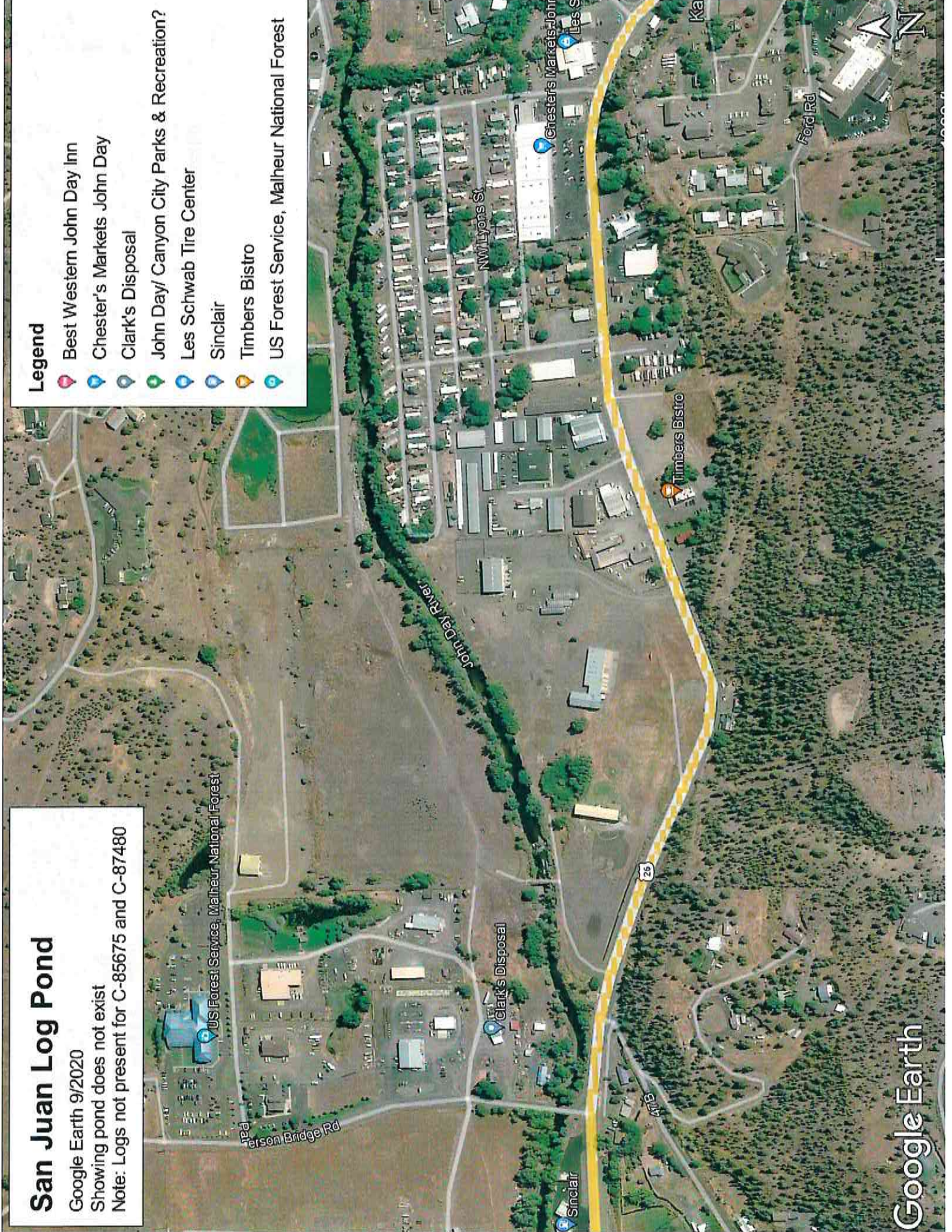
Google Earth 9/2020

Showing pond does not exist

Note: Logs not present for C-856675 and C-87480

## Legend

- Best Western John Day Inn
- Chester's Markets John Day
- Clark's Disposal
- John Day/ Canyon City Parks & Recreation?
- Les Schwab Tire Center
- Sinclair
- Timbers Bistro
- US Forest Service, Malheur National Forest



# San Juan Log Pond

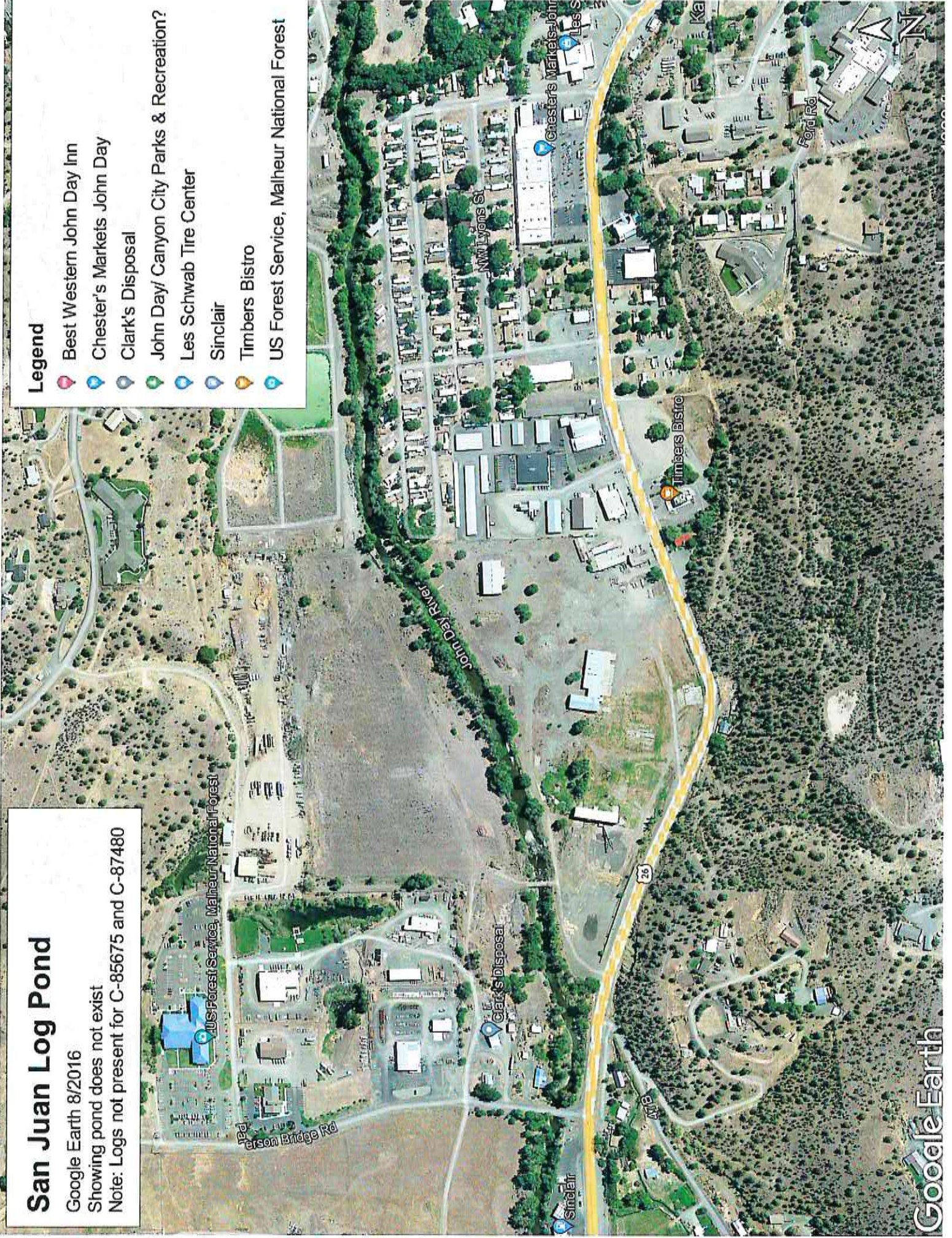
Google Earth 8/2016

Showing pond does not exist

Note: Logs not present for C-85675 and C-87480

## Legend

- Best Western John Day Inn
- Chester's Markets John Day
- Clark's Disposal
- John Day/ Canyon City Parks & Recreation?
- Les Schwab Tire Center
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- Timbers Bistro
- US Forest Service, Malheur National Forest



# San Juan Log Pond

Google Earth 5/2016

Note: Logs not present for C-87480 and C-85675

## Legend

- Best Western John Day Inn
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- John Day/ Canyon City Parks & Recreation?
- Les Schwab Tire Center
- Sinclair
- Timbers Bistro
- US Forest Service, Malheur National Forest

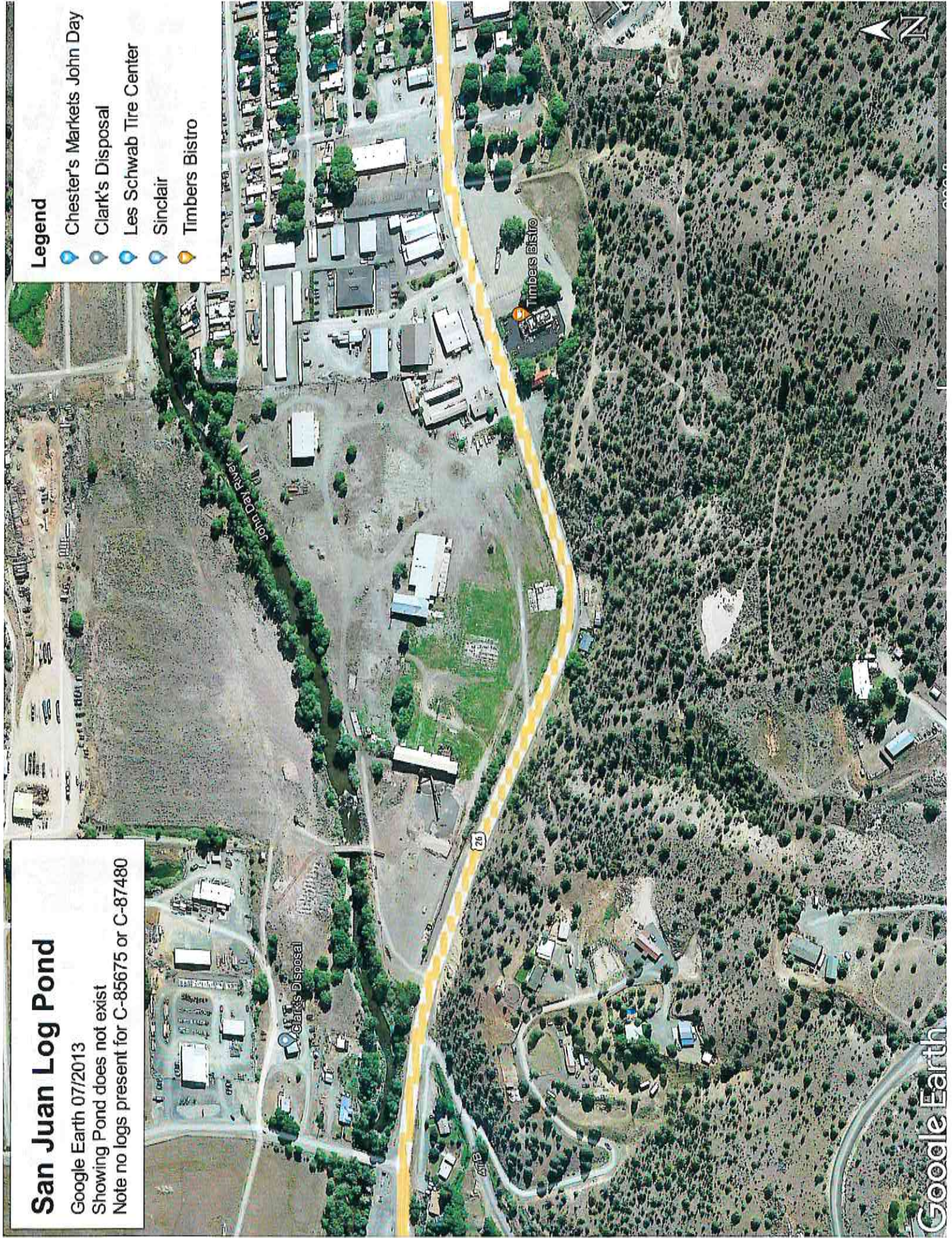


# San Juan Log Pond

Google Earth 07/2013  
Showing Pond does not exist  
Note no logs present for C-85675 or C-87480

## Legend

- Chester's Markets John Day
- Clark's Disposal
- Les Schwab Tire Center
- Sinclair
- Timbers Bistro








# San Juan Log Pond

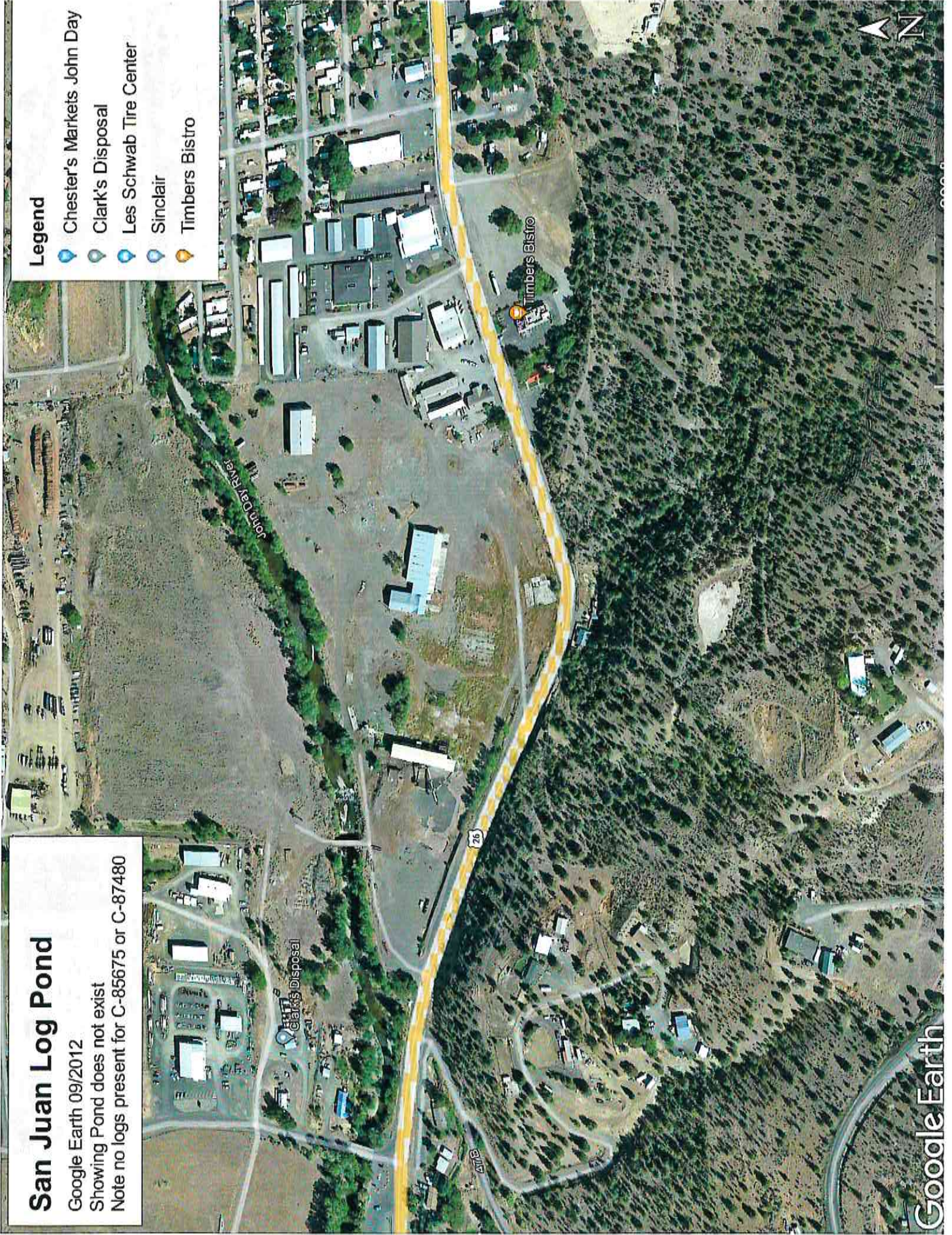
Google Earth 09/2012

Showing Pond does not exist

Note no logs present for C-85675 or C-87480

## Legend

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-  Sinclair
-  Timbers Bistro





# San Juan Log Pond

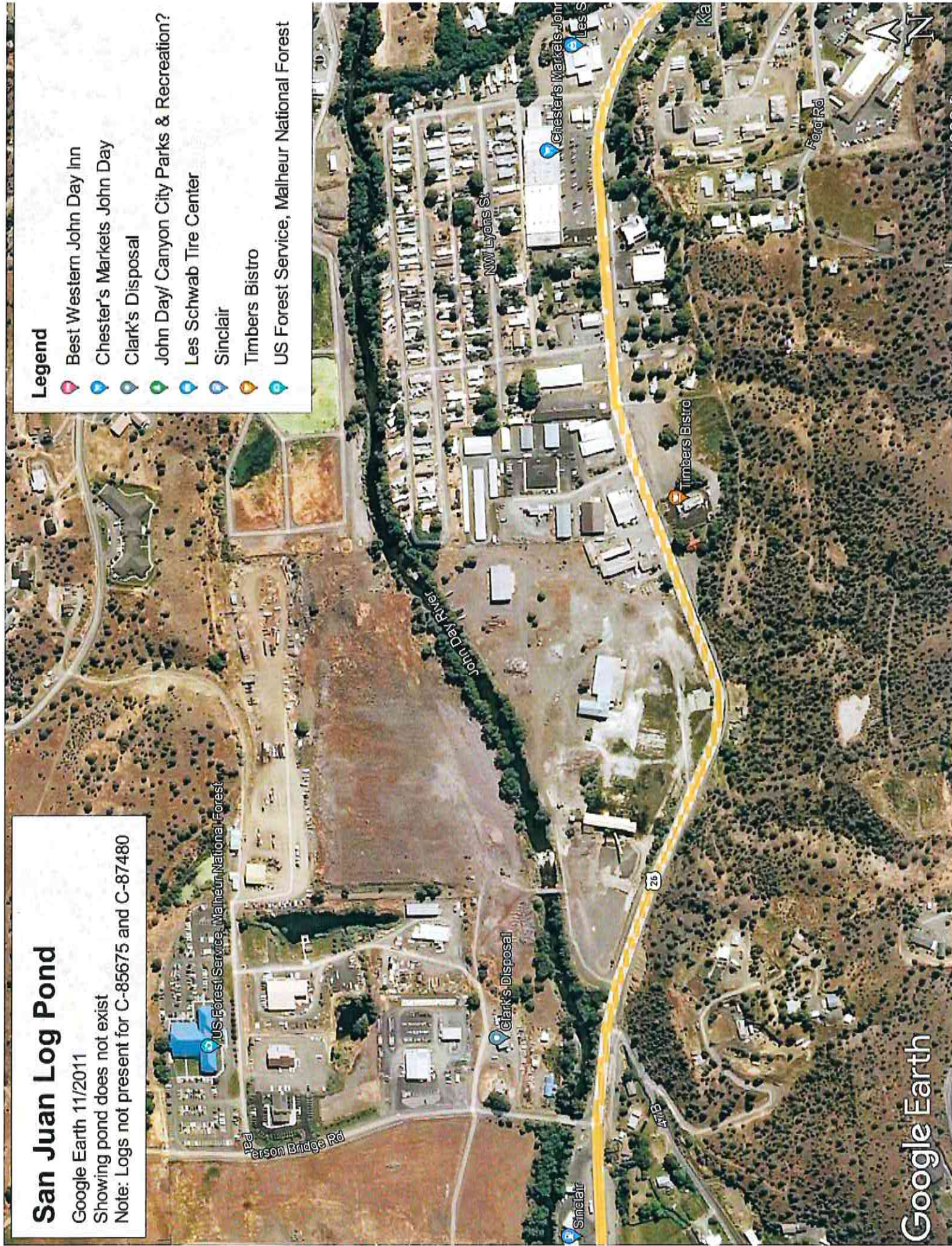
Google Earth 11/2011

Showing pond does not exist

Note: Logs not present for C-85675 and C-87480

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# San Juan Log Pond

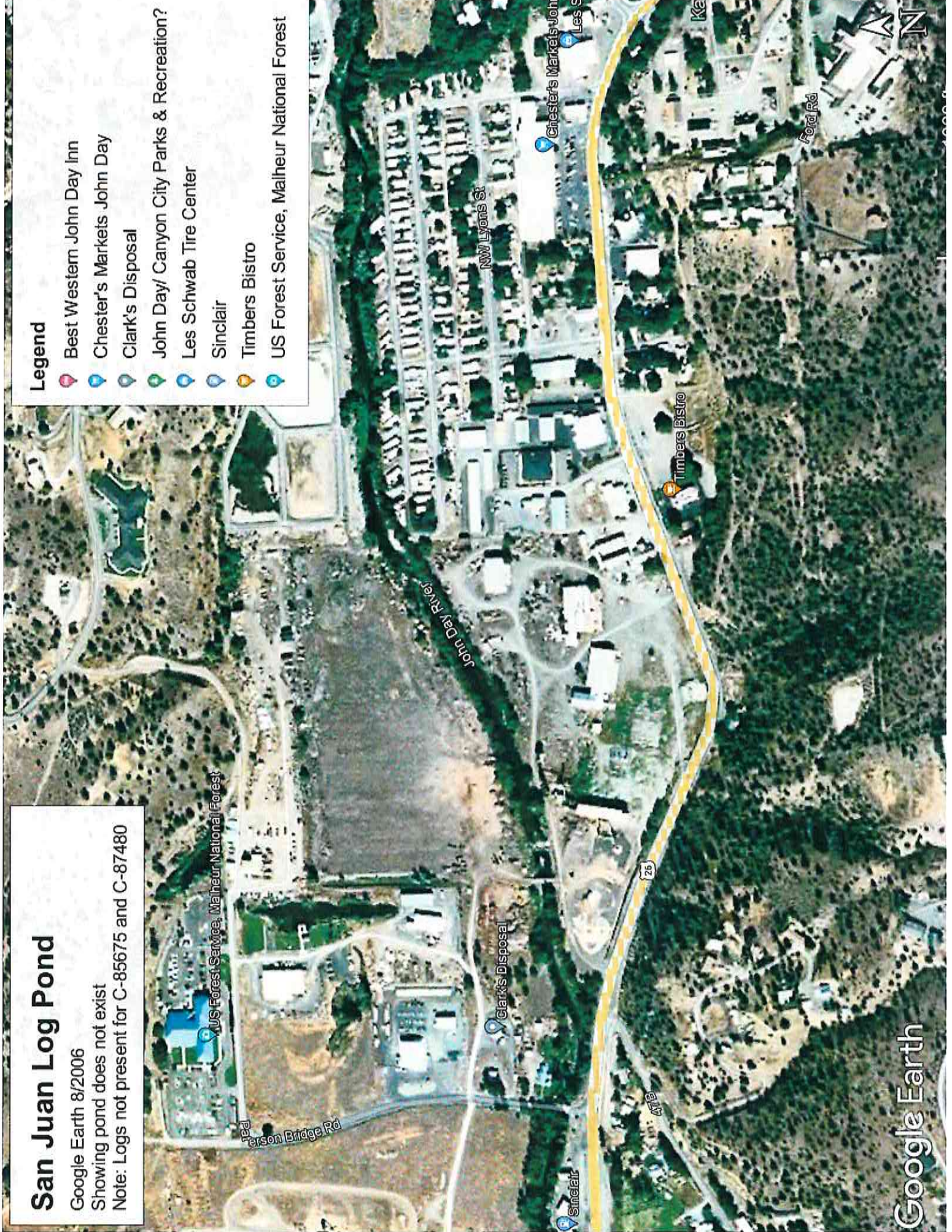
Google Earth 8/2006

Showing pond does not exist

Note: Logs not present for C-85675 and C-87480

## Legend

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# San Juan Log Pond

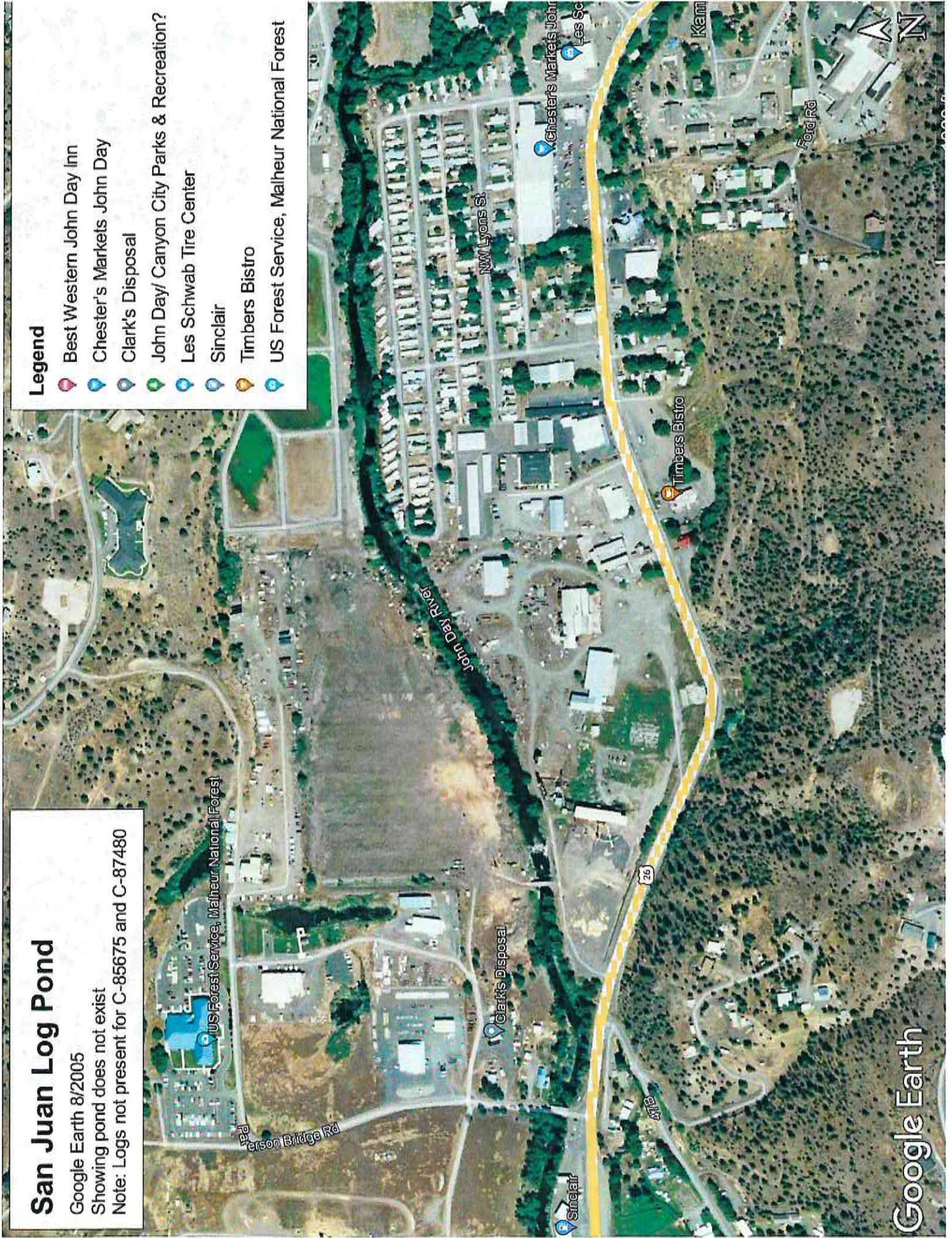
Google Earth 8/2005

Showing pond does not exist

Note: Logs not present for C-85675 and C-87480

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# San Juan Log Pond

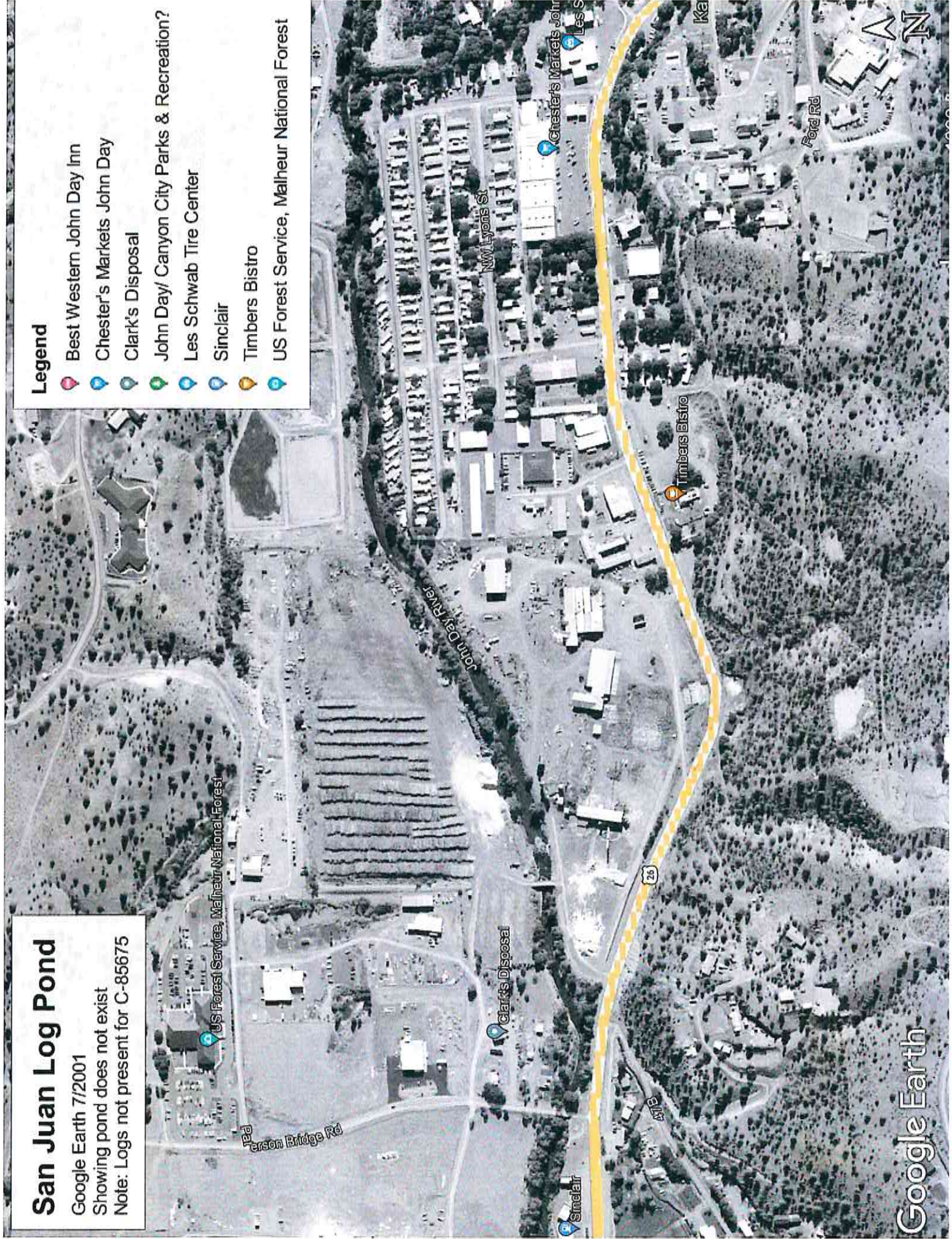
Google Earth 7/2001

Showing pond does not exist

Note: Logs not present for C-85675

## Legend

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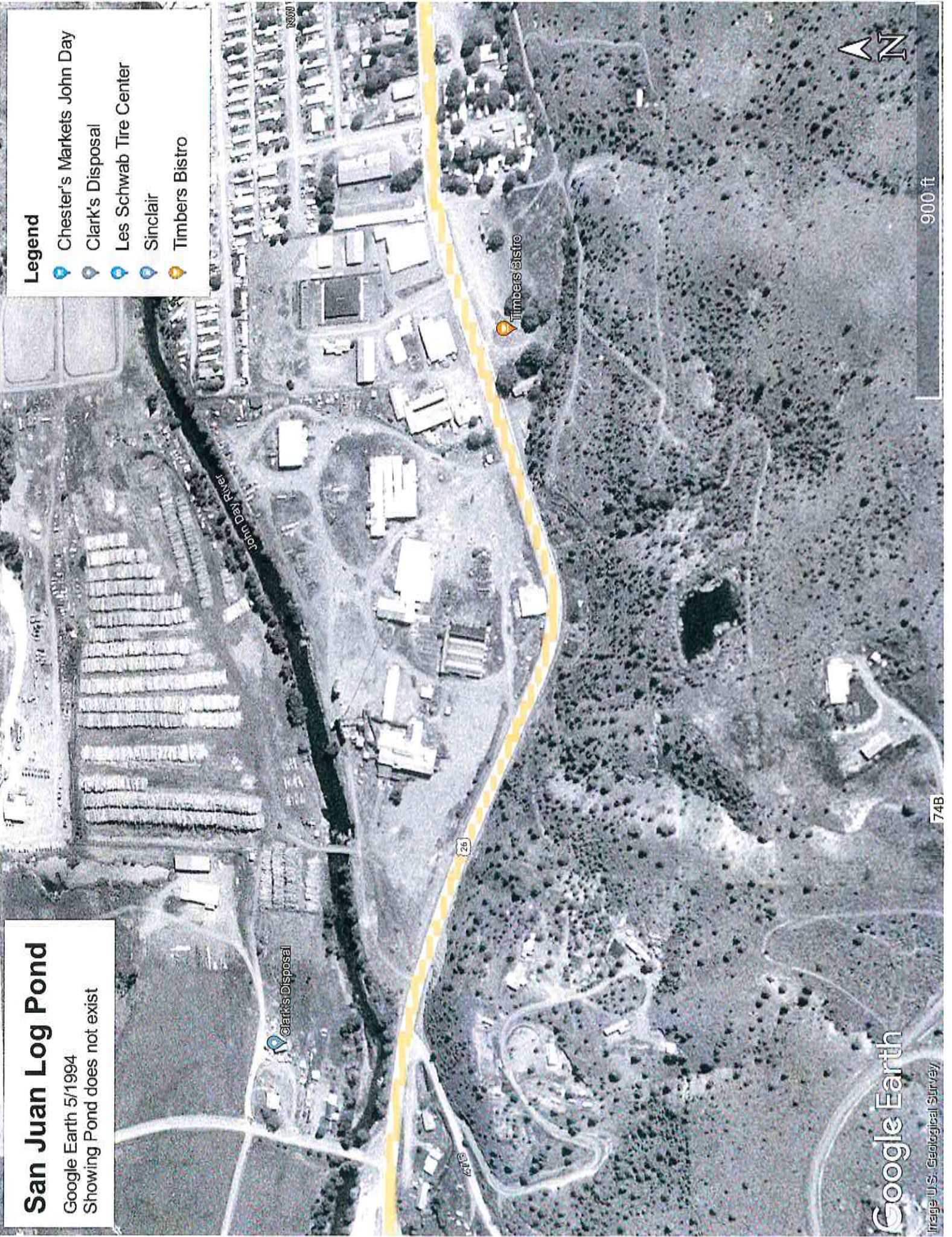
# San Juan Log Pond

Google Earth 5/1994

Showing Pond does not exist

## Legend

-  Chester's Markets John Day
-  Clark's Disposal
-  Les Schwab Tire Center
-  Sinclair
-  Timbers Bistro



 Clark's Disposal

 Timbers Bistro

Calculation to determine flow available at Western Edge of the City Limits after consumptive use and 1% per mile flow reduction

C-25786 0.75 acres x 5 acreft/acre= 3.75 Acreft Max Duty

C-25786 from Canyon Creek to Western City Boundary									
Protection Period	Days	Acres	( acres / calculated cert rate )	( rate x 1.9835 x days ) Shaped per Decree Limitations	( See Cuenca Tables - inches / 12 )	( acreft CU x acres involved )	( CU(ft) / 1.9835 )	( Rate allowed per month / days in month )	( Q (cfs) allowed after 1% per mile transportation loss applied )
			Max Rate Allowed By Certificate	Duty Calc. from Cert. max rate (acreft)	Cuenca Tables Consumptive Use Net Irr (Feet)	Number of Acreft available (acreft)	Rate allowed per month (cfs)	Q (cfs) allowed per day of consumptively used water	Q(cfs) allowed at Western Edge of Boundary
April	30	0.75	0.019	0.710	0.1475	0.1106	0.0558	0.0019	0.0018
May	31	0.75	0.019	0.710	0.3408	0.2556	0.1289	0.0042	0.0041
June	30	0.75	0.019	0.710	0.4425	0.3319	0.1673	0.0056	0.0054
July	31	0.75	0.019	0.540	0.5808	0.4356	0.2196	0.0071	0.0069
August	31	0.75	0.019	0.540	0.4625	0.3469	0.1749	0.0056	0.0055
September	30	0.75	0.019	0.540	0.3283	0.2463	0.1242	0.0041	0.0040
Total:	183	0.75	---	3.750	2.3025	1.7269	---	---	---
Average:	---	---	0.019	0.625	0.3838	0.2878	0.0547	0.0047	0.0046