



**State of Idaho**

**DEPARTMENT OF WATER RESOURCES**

Northern Region • 7600 N Mineral Drive, Suite 100 • Coeur D'Alene ID 83815-7763

Phone: (208) 762-2800 • Fax: (208) 762-2819

Website: [idwr.idaho.gov](http://idwr.idaho.gov) • Email: [northerninfo@idwr.idaho.gov](mailto:northerninfo@idwr.idaho.gov)

**BRAD LITTLE**  
Governor

**GARY SPACKMAN**  
Director

October 6, 2020

TERRY D BECKER  
4924 HIGHWAY 1  
BONNERS FERRY, ID 83805

RE: Application for Permit No. 98-8026

Dear Protestant:

This office acknowledges receipt of your protest to the issuance of Permit No(s). 98-8026. As part of the application process, the following options are available for the resolution of contested (protested) applications:

-Direct contact with the applicant(s) to determine the nature of the protest(s) and to attempt to resolve the protest. Sincere conversation between the parties prior to initiation of formal proceedings can often resolve protest(s).

-Formal proceedings administered by the Department pursuant to the Department's Rule of Procedure (IDAPA 37.01.01). A pre-hearing conference identifies the protestant's concerns and reviews the resolution possibilities with the parties. If the concerns cannot be resolved, a formal hearing will be scheduled.

-Mediation through a certified professional mediator can reduce costs and time that are associated with formal proceedings, present the opportunity to address non-water concerns, provide influence over a final settlement, and fast track the processing of the application if a mediated agreement is reached.

Please consider with the applicant the best option(s) for resolution of the contested application and forward your choice to the Department's regional manager. If no response is received within a few weeks, you may be notified that a pre-hearing conference will be scheduled.

You may contact this office if you have any questions regarding the procedure discussed in this letter or additional information about water rights and other matters administered by this agency is available on the Internet at [www.idwr.idaho.gov](http://www.idwr.idaho.gov).

Sincerely,

A handwritten signature in blue ink, appearing to read 'Douglas Jones', is written over a horizontal line.

Douglas Jones  
Northern Regional Manager

Enclosure    Pre-Hearing Conference Procedures



State of Idaho

## DEPARTMENT OF WATER RESOURCES

Northern Region • 7600 N Mineral Drive, Suite 100 • Coeur D'Alene ID 83815-7763

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BRAD LITTLE  
Governor

GARY SPACKMAN  
Director

October 6, 2020

SHEM JOHNSON  
PO BOX 1952  
BONNERS FERRY, ID 83805-1952

RE: Application for Permit No(s). 98-8026

Dear Applicant:

Enclosed is a copy of a protest filed against the issuance of Permit No. 98-8026. As part of the application process, the following options are available for the resolution of contested (protested) applications:

- Direct contact with the protestant(s) to determine the nature of the protest and to attempt to resolve the protest. Sincere conversation between the parties prior to initiation of formal proceedings can often resolve protest.

- Formal proceedings administered by the department pursuant to the Department's Rule of Procedure (IDAPA 37.01.01). A pre-hearing conference identifies the protestant's concerns and reviews the resolution possibilities with the parties. If the concerns cannot be resolved, a formal hearing will be scheduled.

- Mediation through a certified professional mediator can reduce costs and time that are associated with formal proceedings, present the opportunity to address non-water concerns, provide influence over a final settlement, and fast track the processing of the application if a mediated agreement is reached.

Please consider with the protestant the best option(s) for resolution of the contested application and forward your choice to the Department's regional manager. If no response is received within a few weeks, you may be notified that a pre-hearing protest conference will be scheduled.

You may contact this office if you have any questions regarding the procedure discussed in this letter or additional information about water rights and other matters administered by this agency is available on the Internet at [www.idwr.idaho.gov](http://www.idwr.idaho.gov).

Sincerely,

A handwritten signature in blue ink, appearing to read "Douglas Jones", is written over the word "Sincerely,".

Douglas Jones  
Northern Regional Manager

Enclosure(s)

Pre-Hearing Conference Procedures  
Copy of Protest

Cc:

NORTHWEST GROUNDWATER CONSULTANTS LLC  
2660 E THOMAS HILL DR  
COEUR D ALENE, ID 83815-6335


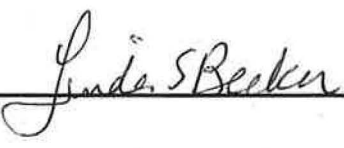

SEP 18 2020

September 15, 2020

IDWR / NORTH

Terry and Linda Becker and Laurel Avery oppose water right # 98-8026 because there is an existing water right on the south creek with existing pond. This water right was filed at the Boundary County Court House on February 11, 1963, file number 88721, (see attached) pre Water Association Board. The Water Association Board was established in 1965. Laurel Avery remembers the pond being constructed in the 1960s by her Uncle, John Deboer.

If the said creek is used for irrigating alfalfa fields it will negate all downstream flow at that point which is unacceptable to the parties opposing the permit. The water in this creek is used for watering livestock, sub-irrigating pastures, and fills Laurel's pond.

    
Terry Becker Linda Becker Laurel Avery

SCANNED

SEP 23 2020

N036437  
9/18/2020  
Ja 2500



Terry D. Becker  
4424 Hwy 1  
Bonners Ferry, Id.  
83805

CERTIFIED MAIL



7020 0090 0001 7634 1620



1000



83815

U.S. POSTAGE P  
EOW LETTER  
BONNERS FERRY  
83805  
SEP 16 20  
AMOUNT

\$4.10

R2304W119951-01

Director, Dept. of Water Resources  
Northern Region  
7600 N. Mineral Dr STE 100  
Coeur D Alene, ID  
83815-7763

8381537753 R011



## Alleman, Tammy

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**From:** Maxey, Shaun  
**Sent:** Tuesday, September 22, 2020 4:03 PM  
**To:** Alleman, Tammy; Frederick, Adam  
**Subject:** FYI: Latest call concerning Protest on 98-8026 (Johnson, Shem) from Becker

Adam and Tammy:

Linda Becker called again, said her phone service is poor, and provided additional contact information. I explained that I had just retrieved her voicemail for me and sent the previous e-mail to both of you. She provided the following latest contact information .

(208) 290.3693 Mrs. Linda Becker  
(208) 290.6700 Mr. Terry Becker (preferred number)

[tlfencing26@gmail.com](mailto:tlfencing26@gmail.com)

[skimmerhorn2@icloud.com](mailto:skimmerhorn2@icloud.com)

Shaun

## Alleman, Tammy

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**From:** Maxey, Shaun  
**Sent:** Tuesday, September 22, 2020 3:25 PM  
**To:** Alleman, Tammy; Frederick, Adam  
**Subject:** FW: Message from +12082903693 (call concerning Protest on 98-8026 Johnson, Shem)  
**Attachments:** VoiceMessage.wav

Adam and Tammy:

I got an incoming call that was broken off twice in mid conversation about a Protest being filed on 98-8026. The caller (Linda Becker) was concerned that she did not provide contact phone numbers for herself (Linda Becker) (208) 290.3693 and her husband (Terry Becker (208) 290.3693. I also got the attached voicemail from her. Her voicemail box hasn't been set up yet so I wasn't able to reach her on a callback.

Ms. Becker requested a call back concerning next steps and said that was concerned that she had not provided a phone number in her protest letter to IDWR or the Applicant. She also said another protestant (Laurel Avery) does not have a phone number. She also said that due to a family emergency that she (Linda Becker) may be hard to reach.

Ms. Becker said she has sent certified mail to the Applicant but that he had not picked it up yet. She also said she had sent her protest letters well in advance of the deadline.

Shaun

**From:** State of Idaho - Cisco Unity Connection Messaging System [mailto:unityconnection@icsadmum01.ics.idaho.gov]  
**Sent:** Tuesday, September 22, 2020 3:07 PM  
**To:** idwr-2816@icsadmum01.ics.idaho.gov  
**Subject:** Message from +12082903693

SCANNED  
SEP 23 2020  
RECEIVED  
SEP 22 2020  
IDWR / NORTH

BK 8 MISC  
Pg 498  
#88721  
2-11-1963

The said pipeline shall be excavated, constructed and maintained by Gifford E. Dinning and Laura A. Dinning, his wife, and LeRoy Fairchild and Louise Fairchild, his wife, and their heirs and assigns in a good and workmanlike manner so as to interfere as little as possible with the continued use of the land through which the right-of-way passes by John DeBoer and his successors and assigns.

This grant shall convey no fee simple estate to the said Gifford E. Dinning and Laura A. Dinning, his wife, and LeRoy Fairchild and Louise Fairchild, his wife, and shall be subject to any rights in, to, upon, over, across and under said land now outstanding.

IN WITNESS WHEREOF, John DeBoer has executed this instrument on the 2nd day of October, 1962.

John DeBoer  
John DeBoer, a single man

STATE OF IDAHO }  
County of Boundary }

es;

#### ACKNOWLEDGMENT

On this 2nd day of October, in the year of 1962, before me, the undersigned, a Notary Public in and for said county and State, personally appeared John DeBoer, a single man, known to me (or-proved-to-me-on-the-oath-of ---) to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same as his free act and deed for the uses, purposes and consideration therein expressed.

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

(Notarial Seal)  
My commission expires: 11/23/65

Peter B. Wilson  
Notary Public, Residing at Bonners Ferry

STATE OF IDAHO }  
County of Boundary }

es

Filed for record at the request of LeRoy Fairchild on the 11 day of February 1963 at 2:25 o'clock p.m., and recorded in Book 8 of Miscellaneous on page 497.

Fee \$1.25

Marion Mesenbrink, County Recorder  
By M. Runyan, Deputy

COMPARED 8 8 7 2 1

#### AGREEMENT

GIFFORD E. DINNING and LAURA A. DINNING, husband and wife, first party, and LE ROY FAIRCHILD and LOUISE FAIRCHILD, husband and wife, second party, each in consideration of the acceptance and performance by the other of the hereinafter outlined covenants, conditions, and duties do hereby agree as follows:

1. That said parties shall purchase the right to use all the waters of the natural spring on the property of JOHN DE BOER, said spring being more particularly described and located as:

Located approximately 900 feet Northwest of the center of Section Thirty-one (31), Township Sixty-five (65) North, Range One (1) East, B.M., Boundary County, Idaho; and said parties do further agree to acquire a right of way for a pipeline from said spring said right of way described as follows:

A right of way 12½ feet on each side of a centerline described as: Beginning at said spring site and running thence Southwesterly to a point approximately 600 feet North of the center of Section Thirty-one (31), Township Sixty-five (65) North, Range One (1) East, B.M., Boundary County, Idaho, thence Southwesterly approximately 1,700 feet to a point 125 feet South of the Northwest corner of the Northeast Quarter of the Southwest Quarter (NE¼ SW¼) of said Section Thirty-one (31), Township Sixty-five

SCANNED

SEP 23 2020



STATE OF IDAHO

County of Boundary

ss.

February

On this 11 day of January, 1963, before me, the undersigned Notary Public, personally appeared LE ROY FAIRCHILD and LOUISE FAIRCHILD, husband and wife, known to me to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same.

(Notarial Seal)

Robert A. Nystron  
Notary Public for Idaho  
Residing at Bonhars Ferry  
Com. Exp.: 2-15-63

STATE OF IDAHO

County of Boundary

ss.

Filed for record at the request of Le Roy Fairchild on the 11 day of February 1963 at 2:30 o'clock p.m., and recorded in Book # of Miscellaneous on page 498.

Fee \$3.50

Marion Wasmbrink, County Recorder  
By M. Runyan, Deputy

*See follow in  
front for Map*

8 8 7 4 2 COMPARED

## RECEIPT AND ACKNOWLEDGMENT

REGARDING AGREEMENT EXECUTED THE 31st DAY OF MAY, 1962

Between

NAPLES LUMBER CO., INC., AS SELLER, AND

RALPH SPRING and JAMES SPRING, AS PURCHASERS

RALPH SPRING and JAMES SPRING, purchasers in the above-described Agreement, do agree and acknowledge that Naples Lumber Co., Inc., seller in said Agreement, has, pursuant to Paragraph IV of the above-described Agreement, made payments upon the costs of construction of the dry kiln in the amount of Seven Thousand Two Hundred Thirty-nine and 84/100 Dollars (\$7,239.84), as follows:

\$ 500.00	6/12/62	to	Idaho Lumber & Tie Co.
\$ 500.00	6/19/62	to	Ralph Spring and James Spring
\$1,064.20	7/ 5/62	to	Ralph Spring and James Spring
\$ 500.00	7/ 9/62	to	Idaho Lumber & Tie Co.
\$1,890.64	7/12/62	to	Olyde Cox
<u>\$2,785.00</u>	7/31/62	to	L. D. McFarland Co., for Kiln

\$7,239.84

Purchasers acknowledge and agree that the above-mentioned amount is to be added to the balance of the purchase price of said Agreement. That including the amount of the above-mentioned payments the balance of purchase price of said Agreement is on this date in the amount of Forty seven thousand four hundred seventy nine & 84/100 Dollars (\$47,479.84/100), exclusive of interest.

Dated this 26 day of November, 1962.

Ralph J. Spring  
Ralph Spring

James D. Spring  
James Spring

Also expended for Kiln not included in above was 250.00 for 60 Kiln cars @ 4.00 each. This am't to be added to the above amount, R.J.S. J.D.S.

## A D D E N D U M

TO AGREEMENT EXECUTED THE 31st DAY OF MAY, 1962

Between

NAPLES LUMBER CO., INC., AS SELLER,

and

RALPH SPRING and JAMES SPRING, AS PURCHASERS

This day it has been agreed between the seller and the purchasers to the above-des-



(65) North, Range One (1) East, S.M., Boundary County, Idaho; said line entering the property of first party at a point 125 feet South of the Northeast corner of the Northwest Quarter of the Southwest Quarter (NW $\frac{1}{4}$  SW $\frac{1}{4}$ ) of said Section Thirty-one (31); thence continuing Southwesterly to a point in the property of second party which is 600 feet South of the Northeast corner of the East Half of the Southeast Quarter (E $\frac{1}{2}$  SE $\frac{1}{4}$ ) of Section Thirty-six (36), Township Sixty-five (65) North Range One (1) West, S.M., Boundary County, Idaho, and thence continuing Southwesterly to a point of termination at the farmstead of second party as said farmstead of second party as said farmstead exists on September 30, 1962.

2. That said right of use, right of way, and pipeline shall be jointly owned by the parties and the interest of first party shall run with the land described as:

The West Half of the Southwest Quarter (W $\frac{1}{2}$  SW $\frac{1}{4}$ ) of Section Thirty-one (31), Township Sixty-five (65) North Range One (1) East S.M., Boundary County, Idaho;

and the interest of second party shall run with the land described as:

The East Half of the Southeast Quarter (E $\frac{1}{2}$  SE $\frac{1}{4}$ ), Section Thirty-six (36), Township Sixty-five (65) North, Range One (1) West, S.M., Boundary County, Idaho.

3. The first party hereby grants, bargains, sells and conveys to second party a right of way as above described and second party hereby grants, bargains, sells and conveys to first party a right of way as above described; each grant herein being for so long as the hereinabove and hereinafter terms, conditions, covenants and agreements are complied with by the other.

4. Each party shall share equally the cost of acquiring the water and right of way, and the cost of constructing, operating, maintaining, altering, repairing, modifying, replacing and reconstructing said pipeline.

5. Unless the parties otherwise agree in writing, the water shall be used by each only for the following purposes: watering sufficient livestock for one farm family's needs, for domestic use for one farm family, and for a yard and garden not exceeding one (1) acre in size for one farm family.

6. Each party shall be entitled to fifty (50%) per cent of the water flow at all times; and in the event of water shortage at any given time, then water shall first be used for domestic and livestock purposes.

7. A schedule of hours covering use of the water for garden and law purposes is attached hereto and made a part hereof as though fully set forth at length herein. (no schedule attached)

8. The rights, privileges, duties and obligations set forth herein shall inure to the benefit and duty of the heirs, successors and assigns of said parties.

February  
DATED this 11 day of January, 1963.

Laura A. Dinning  
Gifford Dinning  
Louise Fairchild  
Haroy E. Fairchild

STATE OF IDAHO

County of Boundary

ss.

February

On this 11 day of January, 1963, before me, the undersigned Notary Public, personally appeared GIFFORD E. DINNING and LAURA A. DINNING, husband and wife, known to me to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same.

(Notarial Seal)

Robert A. Nystrom  
Notary Public for Idaho  
Residing at Bonners Ferry  
Com. Exp.: 2-15-65

SCANNED

SEP 23 2020

## **PRE-HEARING CONFERENCE AND/OR HEARING PROCEDURE APPLICATION FOR PERMIT**

### **ISSUES**

Applications to appropriate the water of the State of Idaho are referred to as applications for permit, and are for the development of new water rights. Section 42-203A, Idaho Code, requires the department to consider the following issues in connection with an application for permit:

1. Will the proposed appropriation reduce the quantity of water under existing water rights?
2. Is the water supply sufficient for the purpose for which it is sought to be appropriated?
3. Was the application made in good faith or for delay or speculative purposes?
4. Does the applicant have sufficient financial resources with which to complete the proposed project?
5. Will the proposed use conflict with the local public interest, where local public interest is defined as interests that the people in the area directly affected by a proposed water use have in the effects of such use on the public water resource?
6. Will the proposed use be contrary to the conservation of water resources within the State of Idaho?
7. Will the proposed use adversely affect the local economy of the watershed or local area within which the source of water for the proposed use originates, in the case where the place of use is outside of the watershed or local area where the source of water originates?

### **BURDEN OF PROOF**

The applicant has the initial burden of proof for issues 1, 2, 3, 4, 6, and 7 above and must provide evidence for the department to evaluate these criteria.

The initial burden of proof on issue 5, if applicable, lies with both the applicant and protestant as to factors of which they are most knowledgeable and cognizant. The applicant has the ultimate burden of persuasion, however, for this issue.

### **PROCEDURE**

The department generally conducts an informal conference with the parties to determine the issues and to try to settle a protested matter before a hearing is scheduled. If a hearing is held, the department will issue a written decision based on the hearing record.

## **CONFERENCE**

The purpose of a pre-hearing conference is to provide the opportunity for the parties and the department to familiarize themselves with a contested matter and to attempt to resolve the matter. At the conference, the department may also formulate and simplify the issues to avoid unnecessary proof, identify documents, schedule discovery, exchange proposed exhibits or prepared testimony, limit witnesses, discuss settlement or make settlement offers, schedule hearings, establish procedure at hearing, and address other matters that may expedite orderly conduct and disposition of the proceeding or its settlement. When attending the conference, please bring a calendar with your schedule for the next two–six month period from the date of the pre-hearing conference for the purpose of scheduling a hearing. Parties will be expected to discuss their availability at the prehearing conference for the purpose of scheduling the hearing.

## **HEARING**

A hearing may be conducted according to Sections 42-1701A(1) and (2), Idaho Code and the department's Rules of Procedure. Copies of Idaho Code and the department's rules are available upon request or by accessing the department's website at: [www.idwr.idaho.gov](http://www.idwr.idaho.gov) . The department records formal hearings, and copies of a hearing recording are available upon request. There may be a charge for reproducing the recording.

The hearing will likely be conducted by a hearing officer appointed by the Director rather than by the Director himself. If so, the hearing officer will prepare a recommended or preliminary order. Parties can petition for reconsideration of a decision or file exceptions. A brief to support exceptions may request oral argument. Parties may seek judicial review of any final order issued by the Director.

## **EXHIBITS**

A party who plans to offer an exhibit as part of the hearing record must provide a copy of the proposed exhibit to the parties and to the hearing officer.

## **AMERICANS WITH DISABILITIES ACT**

Any hearing scheduled will be conducted in a facility which meets the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations in order to attend, participate in or understand the hearing, please notify the department no later than ten (10) days prior to the hearing.