

## Comment Report

47-8385

1. mbaldwin 7/3/2002 Comment/Analysis

Comment: Default Order issued 7/2/2002-no response to continued interest inquiry.

RECEIVED

MAY 08 1995

STATE OF IDAHO  
DEPARTMENT OF WATER RESOURCES  
APPLICATION FOR PERMIT

Ident. No. 47-08385

Department of Water Resources  
Southern Region

To appropriate the public waters of the State of Idaho

Fax (206) 432-5775  
(206) 432-5772 (1)  
Phone (208) 326-3378 (2)

1. Name of applicant Crystal Springs Ranch G. Ltd. Partnership  
Post office address 20924 SE 213th Street, Maple Valley, WA 98038

2. Source of water supply Unnamed seeps/springs which is a tributary of Cedar Draw Creek

3. Location of point of diversion is SW 1/4 of SE NE 1/4 of NE 1/4, Govt. Lot (5-31-95)  
Sec. 14 Township 9S Range 15E B.M. Twin Falls County; additional  
points of diversion if any: \_\_\_\_\_

4. Water will be used for the following purposes:

Amount 1.0 cfs for Fish/Recreation purposes from Jan. 1 to Dec. 31 (both dates inclusive)  
(cfs or acre-feet per annum)

Amount \_\_\_\_\_ for \_\_\_\_\_ purposes from \_\_\_\_\_ to \_\_\_\_\_ (both dates inclusive)  
(cfs or acre-feet per annum)

Amount \_\_\_\_\_ for \_\_\_\_\_ purposes from \_\_\_\_\_ to \_\_\_\_\_ (both dates inclusive)  
(cfs or acre-feet per annum)

Amount \_\_\_\_\_ for \_\_\_\_\_ purposes from \_\_\_\_\_ to \_\_\_\_\_ (both dates inclusive)  
(cfs or acre-feet per annum)

5. Total quantity to be appropriated is (a) 1.0 cfs and/or (b) \_\_\_\_\_  
cubic feet per second acre feet per annum

6. Proposed diverting works:

a. Description of ditches, flumes, pumps, headgates, etc. Construct dam approx. 7 feet in height  
to collect and impound approx. 1.0 cfs of unnamed springs and seeps. Surface area  
of pond is approx. 1 acre.

b. Height of storage dam 7.0 feet feet; active reservoir capacity 4.0 acre-feet; total  
reservoir capacity 4.0 acre-feet; period of year when water will be diverted to storage:  
Jan. 1 to Dec. 31 inclusive.

c. Proposed well diameter is \_\_\_\_\_ inches; proposed depth of well is \_\_\_\_\_ feet.

d. Is ground water with a temperature of greater than 85°F being sought? \_\_\_\_\_

e. If well is already drilled, when? \_\_\_\_\_; Drilling firm \_\_\_\_\_;

Well was drilled for (well owner) \_\_\_\_\_

7. Time required for the completion of the works and application of the water to be proposed beneficial use is  
Five (5) years (minimum 1 year).

8. Description of proposed uses (if irrigation only, go to item 9):

- a. Hydropower; show total feet of head and proposed capacity in KW. \_\_\_\_\_
- b. Stockwatering; list number and kind of livestock. \_\_\_\_\_
- c. Municipal; show name of municipality. \_\_\_\_\_
- d. Domestic; show number of households. \_\_\_\_\_
- e. Other; describe fully. Fish propagation and recreation - fly-fishing pond

9. Description of place of use:

- a. If water is for irrigation, indicate acreage in each subdivision in the tabulation below.
- b. If water is used for other purposes, place a symbol of the use (example: D for Domestic) in the corresponding place of use below. See instructions for standard symbols.

TWP	RANGE	SEC.	NE¼				NW¼				SW¼				SE¼				TOTALS
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
9S	15E	14	H/R																

Total number of acres to be irrigated None

10. Describe any other water rights used for the same purposes as described above. \_\_\_\_\_

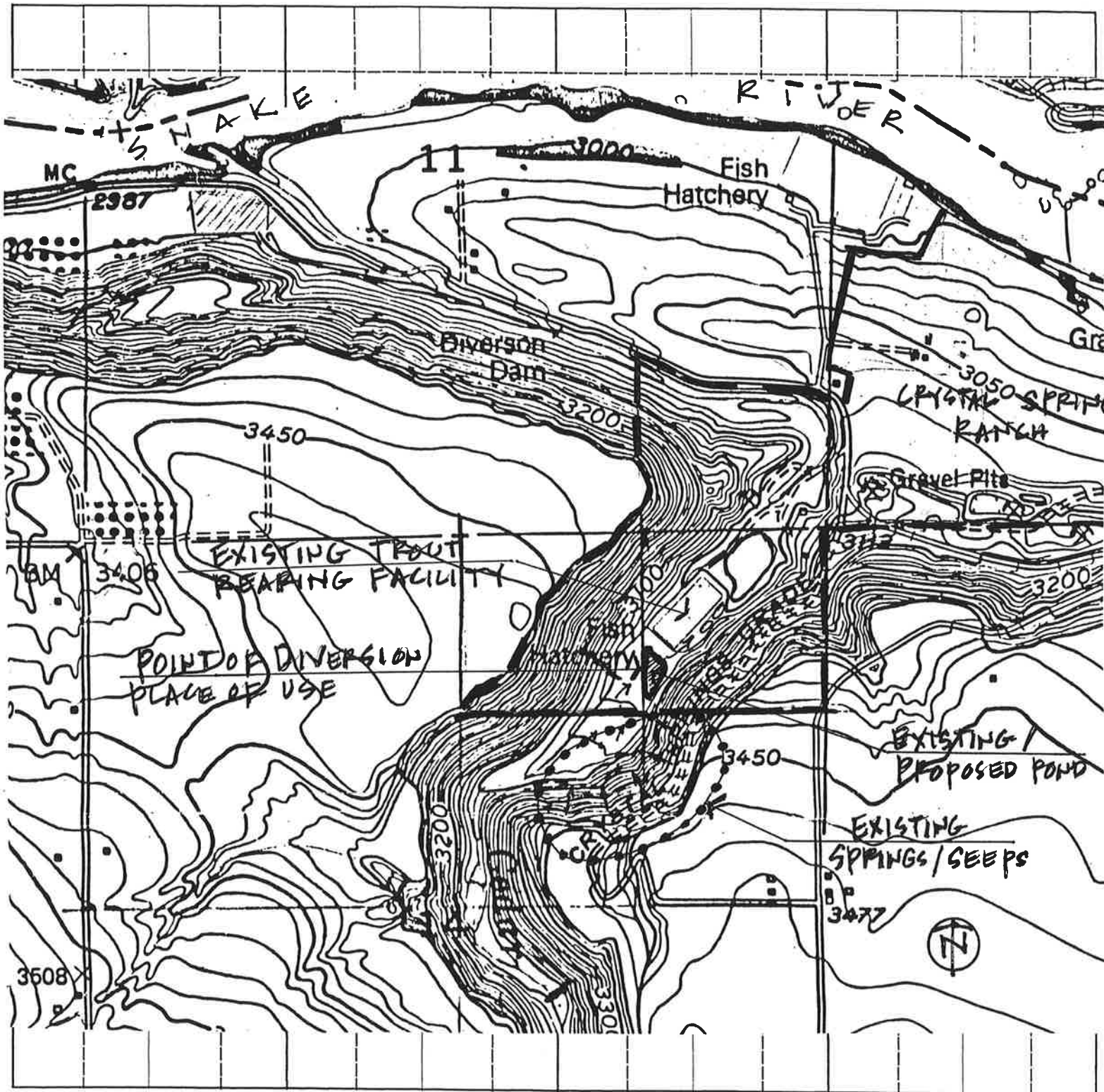
11. a. Who owns the property at the point of diversion? Crystal Springs Ranch G. Ltd. Partnership

b. Who owns the land to be irrigated or place of use? Crystal Springs Ranch G. Ltd. Partnership

c. If the property is owned by a person other than the applicant, describe the arrangement enabling the applicant to make this filing. \_\_\_\_\_

12. Remarks: A pond, approx. 0.15 acre in surface area X 18" deep already exists at the point of diversion and place of use. The existing pond will be enlarged by construction of a 4ft dam along the ponds westerly side, and excavating the existing ground approx. 3ft. The flow would then be diverted Northeasterly, instead of northwesterly to Cedar Draw Creek.

13. Map of proposed project: show clearly the proposed point of diversion, place of use, section number, township and range number.



Scale: 2 inches equal 1 mile.

BE IT KNOWN that the undersigned hereby makes application for permit to appropriate the public waters of the State of Idaho as herein set forth.

Crystal Springs Ranch G. Limited Partnership  
by its General Partner, Crystal Springs  
Ranch, L.L.C.

  
David R. Millard (Applicant) Managing Member

Received by MTS Date 5-8-95 Time 11:15 Preliminary check by J. Stanton  
Fee \$ 100 Receipted by MTS # 5018062 Date 5-8-95  
Publication prepared by MB Date 6/23/95 Published in Times News  
Publication approved M. Baldwin Date 8/22/95

### ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Application for Permit to appropriate the public waters of the State of Idaho No. \_\_\_\_\_, and said application is hereby \_\_\_\_\_.

1. Approval of said application is subject to the following limitations and conditions:

a. SUBJECT TO ALL PRIOR WATER RIGHTS.

b. Proof of construction of works and application of water to beneficial use shall be submitted on or before

\_\_\_\_\_, 19 \_\_\_\_.

c. The rate of diversion, if water is to be used for irrigation under this permit, when combined with all other water rights for the same land shall not exceed 0.02 cubic feet per second for each acre of land.

d. The water right acquired under this permit if for hydropower purposes shall be junior and subordinate to all rights to the use of water, other than hydropower, within the State of Idaho that are initiated later in time than the priority of this permit and shall not give rise to any right or claim against any future rights to the use of water, other than hydropower, within the State of Idaho initiated later in time than the priority of this permit.

e. Other:

**BEFORE THE DEPARTMENT OF WATER RESOURCES  
OF THE STATE OF IDAHO**

IN THE MATTER OF APPLICATIONS )  
IN THE NAME OF CRYSTAL SPRINGS )  
RANCH )  
\_\_\_\_\_ )

**DEFAULT ORDER**

These matters having come before the Idaho Department of Water Resources ("Department") as Applications ("applications") filed by Crystal Springs Ranch ("applicant") associated with lands in Twin Falls County, Idaho; the Department makes the following Findings of Fact, Conclusions of Law and Order:

**FINDINGS OF FACT**

1. Application for Transfer No. 67625/3909 was filed on November 7, 1989 with the Department proposing to modify water rights. The Department advertised the application on January 4 and 11, 1990 and was subsequently protested by Everett Weaver. The Department has held the application pending resolution of the contested case.

2. Three Applications for Permit filed with the Department of Water Resources proposing to appropriate the public waters of the State of Idaho, advertised on July 6 and 13, 1999 and were subsequently protested by the Idaho Department of Fish and Game are listed as follows:

47-08385 filed on May 8, 1995  
47-08386 filed on May 31, 1995  
47-08388 filed on June 20, 1995

The Department has held the applications pending resolution of the contested cases.

3. On February 25, 2002 the Department corresponded with the applicant inquiring of their continuing interest in the applications. The applicant did not respond to the inquiry.

**CONCLUSIONS OF LAW**

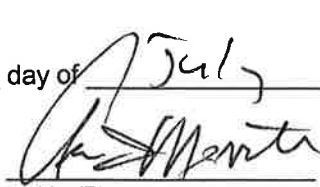
1. IDAPA Rule 37.01.01700 (Rule of Procedure 700) authorizes the Department to issue a Notice of Proposed Default for Failure to Respond to a written inquiry.

2. On June 20, 2002 the Department sent a Notice of Proposed Default for Failure to Respond to the applicant; the applicant did not respond.

**ORDER**

IT IS THEREFORE, HEREBY ORDERED that Application for Transfer No. 67625/3909, Application for Permit Nos. 47-08385, 47-08386, and 47-08388 are **SET ASIDE** and **DISMISSED** without further consideration by the Department as provided in IDAPA Rule 37.01.01702 (Rule of Procedure 702).

Dated this 2<sup>nd</sup> day of July, 2002.



ALLEN MERRITT, PE  
Southern Region Manager (Presiding Officer)

### CERTIFICATE OF MAILING

I hereby certify that on the 2<sup>nd</sup> day of July, 2002 a true and correct copy of the above and foregoing Default Order was forwarded with all required charges prepared, to the parties listed:



Secretary

ATTN DAVID MILLARD  
CRYSTAL SPRINGS RANCH  
20924 SE 213<sup>TH</sup> STREET  
MAPLE VALLEY WA 98038

EVERETT WEAVER  
1728 E 4200 N  
BUHL ID 83316

DAVID PARRISH SUPERVISOR  
ID DEPT FISH & GAME  
PO BOX 428  
JEROME ID 83338



State of Idaho

# DEPARTMENT OF WATER RESOURCES

1341 Fillmore Street, Suite 200, Twin Falls ID 83301-3380

Phone: (208) 736-3033 FAX: (208) 736-3037

SOUTHERN REGION

DIRK KEMPTHORNE  
Governor

KARL J. DREHER  
Director

June 29<sup>th</sup>, 2002

ATTN DAVID MILLARD  
CRYSTAL SPRINGS RANCH  
20924 SE 213<sup>TH</sup> STREET  
MAPLE VALLEY WA. 98038

Re: **Protested** Application for Transfer No. 67625 (3909); Application for Permit Nos. 47-08385, 47-08386 & 47-08388

Dear Mr. Millard:

The enclosed "Notice of Proposed Default Order" has been prepared pursuant to Rules of Procedure 700 through 702 listed below. Pursuant to Rule of Procedure 701 the applicant must petition within seven (7) days from the date of service to prevent the issuance of the default order. Rules of Procedure 053 through 057 may have bearing on responding to this notice.

**700. NOTICE OF PROPOSED DEFAULT AFTER FAILURE TO APPEAR OR RESPOND (Rule 700).** If an applicant or claimant or appellant, petitioner, protestant, complainant, or moving party fails to appear at the time and place set for hearing, or prehearing conference, on an application or claim or appeal, petition, complaint, or motion, or fails to respond to a written information inquiry, the presiding officer may serve upon all parties a notice of a proposed default order denying the application or claim or appeal, petition, complaint, or motion. The notice of a proposed default order shall include a statement that the default order is proposed to be issued because of a failure of the applicant or claimant or appellant, petitioner, complainant or moving party to appear at the time and place set for hearing or prehearing conference, or to respond to the information inquiry. The notice of proposed default order may be mailed to the last known mailing address of the party proposed to be defaulted. (4-5-00)

**701. SEVEN DAYS TO CHALLENGE PROPOSED DEFAULT ORDER (Rule 701).** Within seven (7) days after the service of the notice of proposed default order, the party against whom it was filed may file a written petition requesting that a default order not be entered. The petition must state the grounds why the petitioning party believes that default should not be entered. (7-1-93)

**702. ISSUANCE OF DEFAULT ORDER (Rule 702).** The agency shall promptly issue a default order or withdraw the notice of proposed default order after expiration of the seven (7) days for the party to file a petition contesting the default order or receipt of a petition. If a default order is issued, all further proceedings necessary to complete the contested case shall be conducted without participation of the party in default (if the defaulting party is not a movant) or upon the results of the denial of the motion (if the defaulting party is a movant). All issues in the contested case shall be determined, including those affecting the defaulting party. Costs may be assessed against a defaulting party. (7-1-93)



**053. COMMUNICATIONS WITH AGENCY (Rule 53).** All written communications and documents that are intended to be part of an official record for a decision in a contested case must be filed with the officer designated by the agency. Unless otherwise provided by statute, rule, order or notice, documents are considered filed when received by the officer designated to receive them, not when mailed, or otherwise transmitted. (7-1-93)

**054. IDENTIFICATION OF COMMUNICATIONS (Rule 54).** Parties' communications addressing or pertaining to a given proceeding should be written under that proceeding's case caption and case number, if applicable. General communications by other persons should refer to case captions, case numbers, permit or license numbers, or the like, if this information is known. (7-1-93)

**055. SERVICE BY AGENCY (Rule 55).** Unless otherwise provided by statute or these rules, the officer designated by the agency to serve rules, notices, complaints, and orders issued by the agency may serve these documents by regular mail or by certified mail, return receipt requested, to a party's last known mailing address or by personal service. Unless otherwise provided by statute, these rules, order or notice, service of orders and notices is complete when a copy, properly addressed and stamped, is deposited in the United States mail, or the Statehouse mail if the party is a State employee or State agency. The officer designated by the agency to serve documents in a proceeding must serve all orders and notices in a proceeding on the representatives of each party designated pursuant to these rules for that proceeding and upon other persons designated by these rules or by the agency. (4-5-00)

**056. COMPUTATION OF TIME (Rule 56).** Whenever statute, these or other rules, order, or notice requires an act to be done within a certain number of days of a given day, the given day is not included in the count, but the last day of the period so computed is included in the count. If the day the act must be done is Saturday, Sunday or a legal holiday, the act may be done on the first day following that is not Saturday, Sunday or a legal holiday. (7-1-93)

**057. ADDITIONAL TIME AFTER SERVICE BY MAIL (RULE 57).** Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon the party and the notice or paper is served upon the party by mail, three (3) days shall be added to the prescribed period. This rule, however, shall not extend the time for filing a protest, a petition for reconsideration of a preliminary, recommended or final order before the agency, the time for filing exceptions with the agency head to a preliminary or recommended order, or the time for filing an appeal with the district court from a final decision of the agency. (4-5-00)

All "Administrative Rules" of the Department may be found at the following internet address:

<http://www2.state.id.us/adm/adminrules/rules/idapa37/37index.htm>

If you have any questions regarding this matter please feel free to contact me at this office.

Sincerely,

A handwritten signature in dark ink, appearing to read "Allen Merritt", is written over a light blue horizontal line.

Allen Merritt, PE  
Southern Region Manager

**BEFORE THE DEPARTMENT OF WATER RESOURCES  
OF THE STATE OF IDAHO**

IN THE MATTER OF APPLICATIONS )  
IN THE NAME OF CRYSTAL SPRINGS )  
RANCH )  
\_\_\_\_\_ )

**NOTICE OF  
PROPOSED DEFAULT ORDER**

These matters having come before the Idaho Department of Water Resources ("Department") as Applications ("applications") filed by Crystal Springs Ranch ("applicant") associated with lands in Twin Falls County, Idaho; the Department makes the following Findings of Fact, Conclusions of Law and Order:

**FINDINGS OF FACT**

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2. Three Applications for Permit filed with the Department of Water Resources proposing to appropriate the public waters of the State of Idaho, advertised on July 6 and 13, 1999 and were subsequently protested by the Idaho Department of Fish and Game are listed as follows:

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47-08388 filed on June 20, 1995

The Department has held the applications pending resolution of the contested cases.

3. On February 25, 2002 the Department corresponded with the applicant inquiring of their continuing interest in the applications. The applicant did not respond to the inquiry.

**CONCLUSIONS OF LAW**

1. IDAPA Rule 37.01.01700 (Rule of Procedure 700) authorizes the Department to issue a Notice of Proposed Default for Failure to Respond to a written inquiry.

2. The Department should enter a Notice of Proposed Default for Failure to Respond to a written request for information about the applications and for failure to show a continuing interest in the applications.

**ORDER**

IT IS THEREFORE, HEREBY ORDERED that the Department plans to enter a Default Order **SETTING ASIDE** Application for Transfer No. 67625/3909, Application for Permit Nos. 47-08385, 47-08386, and 47-08388 as provided in IDAPA Rule 37.01.01702 (Rule of Procedure 702).

Dated this 20<sup>th</sup> day of June, 2002.



ALLEN MERRITT, PE  
Southern Region Manager (Presiding Officer)

CERTIFICATE OF MAILING

I hereby certify that on the 20<sup>th</sup> day of June, 2002 a true and correct copy of the above and foregoing Notice of Proposed Default Order was forwarded with all required charges prepared, by both Regular U.S. Mail and Certified Mail to the parties listed:



Secretary

ATTN DAVID MILLARD  
CRYSTAL SPRINGS RANCH  
20924 SE 213<sup>TH</sup> STREET  
MAPLE VALLEY WA 98038

EVERETT WEAVER  
1728 E 4200 N  
BUHL ID 83316

DAVID PARRISH SUPERVISOR  
ID DEPT FISH & GAME  
PO BOX 428  
JEROME ID 83338



State of Idaho

## DEPARTMENT OF WATER RESOURCES

1341 Fillmore Street, Suite 200, Twin Falls ID 83301-3380

Phone: (208) 736-3033 FAX: (208) 736-3037

SOUTHERN REGION

DIRK KEMPTHORNE  
Governor

KARL J. DREHER  
Director

February 25, 2002

Crystal Springs Ranch  
Attn: David Millard  
20924 SE 213<sup>th</sup> Street  
Maple Valley, WA 98038

RE: Transfer Application No. 3909  
Applications for Permit 47-8385, 47-8386 and 47-8388

Dear Mr. Millard:

As you may recall several years ago you filed an application for transfer to modify water rights on Cedar Draw and three applications for permit to develop springs and creeks tributary to Cedar Draw and Cedar Draw. The transfer application was protested by Everett Weaver and the applications for permit were protested by Idaho Department of Fish & Game. To date no conference or hearing has been held regarding these protested matters.

The purpose of this letter is to inquire of your continued interest in your applications. Please let me know within **30 days** of your continued interest.

Do you want to withdraw the applications? Do you want our office to continue to hold the applications? Do you want to schedule a conference and/or a hearing? What dates are you available to hold a conference?

If you have questions, please feel free to contact me at this office.

Sincerely,

Allen Merritt, PE  
Southern Region Manager



State of Idaho

DEPARTMENT OF WATER RESOURCES

Southern Region, 222 Shoshone St. East, Twin Falls, Idaho 83301-6105 (208) 736-3033  
Fax (208) 736-3037

August 22, 1995

PHILIP E. BATT  
Governor

KARL J. DREHER  
Director

DAVID R MILLARD MANAGING MEMBER  
CRYSTAL SPRINGS RANCH G LTD PTN  
20924 SE 213TH STREET  
MAPLE VALLEY WA 98038

RE: APPLICATIONS FOR PERMIT NOS. 47-08385, 47-08386, 47-08388

Dear Mr. Millard:

Enclosed is a copy of a protest filed against the above referenced applications.

The Department suggests you contact the protestant(s) directly to determine the exact nature of the protest(s) and, if possible, to resolve the matter without action by the Department.

The attachment to this letter describes the issues which the Department must consider in taking action on an application. It also gives a brief description of the conference and hearing procedure followed by the Department in resolving protested applications.

If you have any questions or if this office can be of further assistance, please feel free to contact us.

Very truly yours,

Allen D. Merritt, P.E.  
Southern Region Manager

AM:MB  
Enclosure(s)



State of Idaho

DEPARTMENT OF WATER RESOURCES

Southern Region, 222 Shoshone St. East, Twin Falls, Idaho 83301-6105 (208) 736-3033  
Fax (208) 736-3037

August 22, 1995

PHILIP E. BATT  
Governor

KARL J. DREHER  
Director

CARL H NELLIS SUPERVISOR  
ID DEPT OF FISH & GAME  
PO BOX 428  
JEROME ID 83338

RE: APPLICATION FOR PERMIT NOS. 47-08385, 47-08386, 47-08388  
(Crystal Springs Ranch G Ltd Partnership)

Dear Mr. Nellis:

Your protest against the approval of the above referenced applications has been received and a copy has been sent to the applicant with the suggestion that he contact you directly to determine the exact nature of the protest and, if possible, to resolve the matter without action by the Department.

The attachment to this letter describes the issues which the Department must consider in taking action on an application. It also gives a brief description of the conference and hearing procedure followed by the Department in resolving protested applications.

If you have any questions or if this office can be of further assistance, please feel free to contact us.

Very truly yours,

Allen D. Merritt, P.E.  
Southern Region Manager

AM:MB  
Enclosure(s)



**IDAHO FISH & GAME**

*Magic Valley Region*  
868 East Main • P.O. Box 428  
Jerome, Idaho 83338  
(208) 324-4350  
Fax (208) 324-1160

**Phil Batt / Governor**

**Jerry M. Conley / Director**

July 11, 1995

Mr. Allen Merritt  
Southern Region Supervisor  
Idaho Dept. of Water Resources  
222 Shoshone St. East  
Twin Falls, Idaho 83301

RECEIVED  
JUL 17 1995  
Department of Water Resources  
Southern Region

**Re: Water Right Applications 47-08385, 47-08386, and 47-08388 - Cedar Draw Creek  
(Crystal Springs Ranch G LTD Partnership)**

Dear Allen,

The Idaho Dept. of Fish and Game protests water right applications # 47-08385, 47-08386, and 47-08388 for the cumulative diversion of 6.0 cfs of Cedar Draw Creek water for commercial trout production and recreation. Existing diversions on Cedar Draw Creek for fish rearing facilities, hydropower, and irrigation have already impacted water quality in the stream and consequently, negatively impacted fish and wildlife resources. Therefore, the Department does not feel this requested diversion of water would be in the best public interest.

Sincerely,

Carl H. Nellis  
Magic Valley Regional Supervisor

cc: IDFG-Natural Resource Policy Bureau (Robertson)  
IDFG-Legal

Receipt # 5018294  
7/17/95  
MB