

07/2008

## STATE OF IDAHO

### DEPARTMENT OF WATER RESOURCES

#### NOTICE OF PROTEST

This form may be used to file a protest with the department under sections 42-108B, 42-203A, 42-203C, 42-211, and 42-222, Idaho Code. The department will also accept a timely protest not completed on this form if it contains the same information.

1. **Matter being protested:** "Application for Transfer No. 81039"
2. **Name protestant:** Edward Kalinowski
3. **Protestant's Representative for service** (If different than protestant):  
Barker, Rosholt & Simpson LLP, Shelley M. Davis Esq.
4. **Service mailing address:** PO Box 127, News Meadows, Idaho, 83654
5. **Service telephone no.:** 208 347-4440. **Email Address:** [kalinows@hawaii.edu](mailto:kalinows@hawaii.edu)
6. **Basis of protest** (including statement of acts and law upon which the protest is based)

When I purchased my property, I was provided a series of documents from the realtors and the mortgage company which described the property. There was no record or document supporting any water rights by another party on Lot 28. I was provided a Topographic map that noted the **WATERLINE EASEMENT IS NOT USED** (see attachment).

Three statements from the Wallace have resonated after I meet them – **this is our irrigation ditch, this is our easement and the spring belongs to them.** They placed a cement cap, chain and lock on the spring establishing their claim. As a new resident to Idaho, I was not educated enough to question their actions. Their explanation to me was that "my children would play in the water." The fact is my children are 22-36 years old and live in another state. This situation raised red flags.

This property is deeded to me and purchased in good faith. The Multiple Listing Service that advertised the property as having a "Spring running through the property" (see attachment).

The fact that my property is riddled with an unnamed ditch supposedly with rights given to the Osborn Ranch (disputed by Leonard Wallace Senior) which leads to the National Forest with an irrigation gate on Three Mile Creek and as well an easement to a Spring on my deeded property and an additional pipe from the spring leading to ditch. These prompted me to approach various state and county agencies for clarification. The results of my inquiries revealed:

- Ed "Charlie" Wallace sold their property to the Walters (early 1980s), Walters to Hobie Alder (Around 1993), Timber Ridge subdivision was developed in 1995. My particular property was owned by H. Alder Jr. and sold to Jason Mayer. I purchased the property in 2008 and began construction in 2009.
- From the early 1980s until I filed an "Application for Permit" there were no water rights applied for on the Spring located on my Deeded property.



SCANNED  
AUG 23 2016

✓ RECEIVED  
AUG 05 2016  
WATER RESOURCES  
WESTERN REGION

received  
2:30PM  
\$250 8/5/16  
# W044491  
✓

- The Wallace's property (5 acres) have been accessing water from 78-10067 (2 sites) 19N02ESec.8 Proof date 9/1/1970 decreed date 11/6/2007 that they currently have rights, a ditch (Unknown name) accessing Three Mile Creek, from the Kalinowski property (without rights) and the Henley property (without rights) and an artesian well located on the east side of the Leonard Wallace Sr. property.
- Wallace Sr. had at one point made an arrangement to **Barter** water from his artesian well, piped under the road to Mr. Chuck Phiel (Neighbor).
- The Wallace's stated that they are using the water for irrigation and drinking water. They are also using the water to fill a water truck and watering the road in front of their residence to control dust. The health risk of the using this water as a source of drinking water is questionable.

**Personal impact:** My property consists of Residential, Timber, and Pasture. I am retired and on a fixed income and had planted an Orchard and maintain a small number of cattle. Because of the lack of irrigation and stock water resources, the orchard has failed and my cattle are on leased property in Meadows and Midvale. I currently have the deed and pay the taxes and no access to the natural Spring located 19N2E Section 9 NE NW SW Adams County.

7. What would resolve your protest?

The Wallace's have the right as does any person to use the 2 public easements designated on Sheet 3 of 7 - TIMBER RIDGE SUBDIVISION, Toothman-Orton Engineering Company located in Adams County Planning Office.

Neither the disclosure documents at the time of my purchase of this property nor research by the State Department of Water Resources has a record reflecting the Wallace's Water Rights to the Spring located on my deeded property. It appears that the Wallace's, **without the Spring located on my deeded property** have sufficient water resources. There has been no data presented to prove that relocating their current POD is necessary. The only palatable solution is that they withdraw there proposed POD Relocation plan.

I hereby, acknowledge that if I, or my designated representative, fail to appear at any regularly scheduled conference or hearing in the matter of which I have been notified at the address above, the department may issue a notice of proposed default against me in this matter for failure to appear. I also verify that I have served a copy of this protest upon the applicant.

Signed this 5 day of August, 20 16.

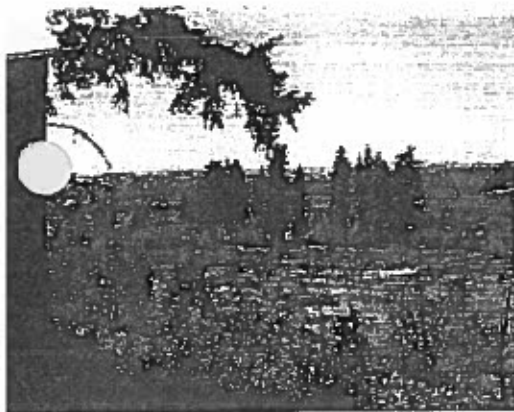
Protestant

Protestant's Representative

SCANNED

AUG 7 3 2016





MLS # 98359704  
 Class Land  
 Type Building Lots  
 Area New Meadows - 1920  
 Address tbd Shadow Pine Circle  
 City New Meadows  
 Zip 83654

Asking Price \$225,000  
 Status Active  
 # Acres 6.35  
 Land Size 5 Acres - 9.9 Acres  
 Lot Size X  
 Cross Street  
 Price/Acre 35,433.07

#### ADDITIONAL PHOTOS



Documents: Map

#### GENERAL

g Date 5/9/2008

65

4 129

: TV?

& Restrict? Yes

& Gutter? No

I Ins Req? No

ov. Dist? No

ition?

tion Dist?

Dist Name

llowed? No

et? No

e Lines? Yes

walks? No

ey Avail?

? Yes

rfront?

Shrs Avail?

r Deliv?

lvision Timber Ridge

tions North on Cemetery Road, Right on Wallace, Left on Shadow Pine Circle.

l Timber Ridge Subdivision, Lot #28

#### FEATURES

GATION TYPE

D/STREET Dirt

MS

OGRAPHY

ITE DISPOSAL SYSTEM

TER

Taxes: Year & Amount 2007

28.76

County Adams

School District

Grade School

Jr High

Sr High

Electric Installed

Fenced

Gas None

Land Use Single

Site Features

#### REMARKS

Only vacant parcel for sale that fronts over 750 feet of USFS land! Quiet, located at the end of cul-de-sac. Spring runs through property.

*Wolson*  
*Cont Dist Health -*  
*SNV Hth. Spec + Jeff Be Horn*  
*Sept - Jan*  
*208-642-9321*  
*X 14*

95

PAYETTE

— 13 mi

Light → 200y

②

may station

SW 3rd

Richard Price  
 Holland Realty  
 208-869-6391  
 rprice@holland-realty.com



This information is not guaranteed. EQUAL HOUSING OPPORTUNITY

Today's Date: 07/13/2008 11:42 AM

SCANNED

AUG 23 2016



STATE OF IDAHO  
DEPARTMENT OF WATER RESOURCES

✓ RECEIVED  
AUG 03 2016  
WATER RESOURCES  
WESTERN REGION

**NOTICE OF PROTEST**

This form may be used to file a protest with the department under sections 42-108B, 42-203A, 42-203C, 42-211, and 42-222, Idaho Code. The department will also accept a timely protest not completed on this form if it contains the same information.

1. **Matter being protested.** Proposed Application for Transfer No. 81039. Specifically, the proposed relocation of Points of Diversion from their original site approximately .25 miles north and east of my property line to a spring site within my legally deeded, titled and taxed property boundaries and on which we have applied for water rights permit on July 7, 2016, evidenced and acknowledged by deposit of our check #2798 by IDWR.
2. **Name of protestant.** James L. & Sandra J. Henley, referred to herein as a single party.
3. **Protestant's Representative for Service.** None specified at this time. Legal representation will be provided by our family attorney, if required for final resolution.
4. **Service mailing address.** P.O. Box 396, New Meadows, Idaho, 83654.
5. **Service telephone no.** 208-347-3191 **Email Address:** [sjhenley8@gmail.com](mailto:sjhenley8@gmail.com)
6. **Basis of protest including statement(s) of fact:**

Prior to purchase of my legally deeded property in 1998, Due Diligence research was performed by myself, with our family attorney, Mr. David Leroy of Boise, Idaho advising. Separate, subsequent conferences with he and Mr. Hobart Alter of HPG Enterprises, developer and owner of the property and myself revealed no existent nor pending water rights issues associated with this property; two platted **waterline easements and one irrigation (ditch) easement** did exist but were acceptable to me in terms of purchase. All research indicated that no rights of record were held on the numerous springs on our property, an important issue to us and a fact which was affirmed by your IDWR representative, Dannie Merriman earlier this month.

The easements, recognized by the county but not issued by them, provide access, but do not provide rights to the springs themselves, which are held under the IDWR authority. The two waterline easements are, if fact, depicted in one of the engineering/topographical drawing under the heading of TH-12 as "(Not used)". The statement in the Wallace filing #81309, sec. 6, subsec. b, is a misrepresentation of fact, citing "**County Easement for both springs**"; no such easement exists in writing and the county is not the issuing agency for easements in any case. Both springs fall solely within IDWR authority not the county.

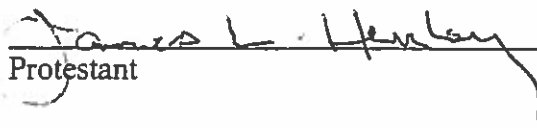
Appropriate rights applications have been duly filed with the IDWR for these springs by the legal owners of the spring sited properties (myself and Ed Kalinowski) and are awaiting IDWR determinations.

7. **What would resolve your protest?** I certainly have no objection to the legal and appropriate transfer of Leonard Wallace's rights to his family members. I do however, vehemently object to their attempt to relocate the PODs to my property as a part of this transfer of a decades old water right (78-10067). We purchased this property unencumbered in 1998, are the legal deeded and titled owners and have paid substantial property taxes since our purchase. The only satisfactory resolution would be the abandonment of the **POD Relocation** portion of this Transfer Application by the Wallace family recognizing that we have filed for rights on these springs. Failing to do so will result in our utilization of legal resources to protect our rights as the legal owners of this property and it's resources.

SCANNED  
AUG 23 2016

I hereby acknowledge that if I, or my designated representative, fails to appear at any regularly scheduled conference or hearing in the matter of which I have been notified at the address above, the department may issue a notice of proposed default against me in this matter for failure to appear. I also verify that I have served a copy of this protest upon the applicant.

Signed this \_\_\_\_\_ day \_\_\_\_\_, 2016

  
Protestant

\_\_\_\_\_  
Protestant's Representative

SCANNED

AUG 23 2016

**NOTE:**

A protestant is required to timely file a protest with the department together with a \$25.00 protest fee for each application being protested in order for the protestant to be considered a full party by the department. In addition, the department's Rule of Procedure, IDAPA 37.01.01203, requires a protestant to send a copy of a protest to the applicant.

---

**INSTRUCTIONS**

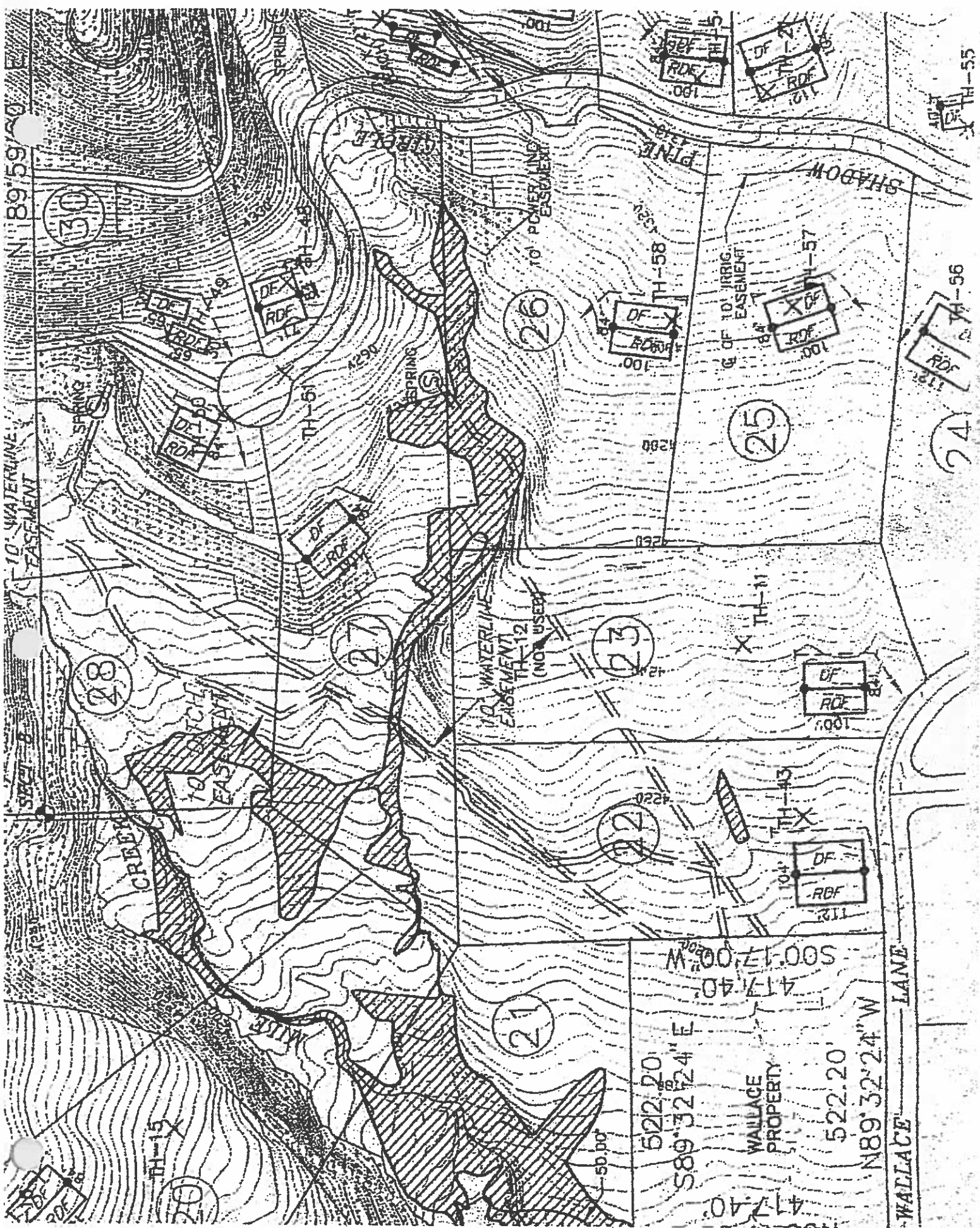
1. The matter being protested must be clearly identified. A typical matter is identified by the application number such as "Application for Permit No. \_\_\_\_\_ in the name of \_\_\_\_\_" or "Application for Transfer No. \_\_\_\_\_ in the name of \_\_\_\_\_."
  2. Show the name of the protestant. Only one (1) protestant may be shown per protest form. If this protest form is signed by more than one person, the hearing officer will consider the first signer as the official protestant and the representative for service of documents.
  3. If the protestant is represented by an attorney or other authorized representative, show the representative's name. The department then will serve documents on the representative and upon the protestant if specifically requested.
  4. Show the address where the department is to serve the documents. This should be the address of the authorized representative unless the protestant does not designate a representative.
  5. Show the telephone number of the authorized representative unless the protestant does not designate a service representative.
  6. Specifically describe the nature of the protest.
  7. Describe the relief being sought by the protestant.
- 

**FOR DEPARTMENT USE ONLY**

Received by  Date 8/3/16 Time 11:10  
\$25.00 fee Received by  # W044478 Date 8/3/16

SCANNED

AUG 23 2016



N 89° 59' 30" E

522.20'  
589° 32' 24" E  
417.40'  
WALLACE PROPERTY  
522.20'  
N 89° 32' 24" W  
417.40'

JAMES L HENLEY  
SANDRA J HENLEY  
PO BOX 386  
NEW MEADOWS, ID 83654-0396

92-372/1231

2792

DATE

July 7, 2016

PAY TO THE  
ORDER OF

IDWR

\$ 100.00

One hundred dollars &amp; 00/100

DOLLARS

**usbank.**

All of US serving you®

MEMO

Water Rights Permit James Henley

⑆123103729⑆ 153301929622⑈2792

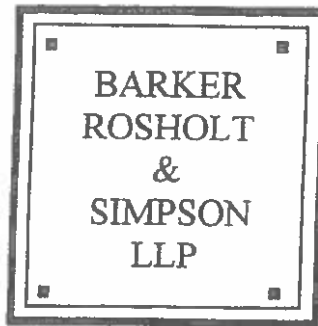
END OF SLIP

For Deposit Only to the  
Idaho State Treasurer's Account  
by DEPT. OF WATER RESOURCES

SCANNED

AUG 23 2016

ALBERT P. BARKER  
JOHN A. ROSHOLT  
JOHN K. SIMPSON  
TRAVIS L. THOMPSON  
SHELLEY M. DAVIS  
PAUL L. ARRINGTON  
SCOTT A. MAGNUSON



1010 W. Jefferson, Suite 102  
Post Office Box 2139  
Boise, Idaho 83701-2139  
(208) 336-0700 telephone  
(208) 344-6034 facsimile  
brs@idahowaters.com

163 2nd Avenue West  
Post Office Box 63  
Twin Falls, Idaho 83303-0063  
(208) 733-0700 telephone  
(208) 735-2444 facsimile

Shelley M. Davis  
smd@idahowaters.com

December 6, 2016

**VIA U.S. MAIL**

Idaho Department of Water Resources  
Western Region  
2735 Airport Way  
Boise, ID 83705-5082

RECEIVED

DEC 08 2016

WATER RESOURCES  
WESTERN REGION

Re: Application for Permit No. 78-12445

Dear Clerk:

Please find enclosed herewith *Notices of Protest* for the above referenced application for permit by James and Sandra Henley and Edward Kalinowski. Also enclosed herewith, please find check number 24999 in the amount of \$50.00, the fee for processing the two protests. Please return conformed copies in the enclosed postage prepaid self-addressed stamped envelope 

Please contact me if you have any questions or concerns. Thank you for your assistance.

Very truly yours,  
**BARKER ROSHOLT & SIMPSON LLP**



Jessica L. Witt, Assistant to  
Shelley M. Davis

Encl.

EX-100-17-0

DEC 14 2016

07/2008

STATE OF IDAHO  
DEPARTMENT OF WATER RESOURCES

NOTICE OF PROTEST

✓  
RECEIVED  
DEC 08 2016  
WATER RESOURCES  
WESTERN REGION

This form may be used to file a protest with the department under sections 42-108B, 42-203A, 42-203C, 42-211, and 42-222, Idaho Code. The department will also accept a timely protest not completed on this form if it contains the same information.

1. Matter being protested: **Eulla and Michael Wallace Application for Permit No. 78-12445**
2. Name of protestant: **Edward Kalinowski**
3. Protestant's Representative for service (if different than protestant)

**Shelley M. Davis**  
**Barker Rosholt & Simpson LLP**

4. Service mailing address: **1010 W. Jefferson St., Ste. 102, P.O. Box 2139, Boise, ID 83701-2139**
5. Service telephone no. **208-336-0700** Email address: **smd@idahowaters.com**
6. Basis of protest (including statement of facts and law upon which the protest is based).  
**Protestant has information that indicates Applicant intends to use delivery conduits crossing the Protestants' property to which Applicants have no rights. Further, in the application Applicants have referenced in the 'other water rights' portion of the application water right no. 78-10067, and springs identified thereunder. Protestants have protested transfer application no. 81039, filed by the same Applicants, which seeks to add additional springs as points of diversion under water right no. 78-10067, to which Applicants have no right.**
7. What would resolve your protest?  
**Clarification that only those springs identified on the face of the SRBA decree for water right no. 78-10067 issued on November 6, 2007, are referenced in the 'other water rights' portion of the application, and further assurance that no diversion of the water sought by the application will be delivered through the ditches or other delivery conduits located on Protestants' property.**

I hereby acknowledge that if I, or my designated representative, fails to appear at any regularly scheduled conference or hearing in the matter of which I have been notified at the address above, the department may issue a notice of proposed default against me in this matter for failure to appear. I also verify that I have served a copy of this protest upon the applicant.

Signed this 6<sup>th</sup> day of December, 2016.

Edward Kalinowski

Protestant

By: [Signature]  
Protestant's Representative

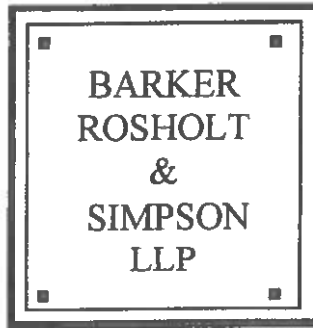
---

FOR DEPARTMENT USE ONLY

Received by cd Date 12/8/16 Time 1:30

\$25.00 fee Received by cd # W044828 Date 12/8/16

ALBERT P. BARKER  
JOHN A. ROSHOLT  
JOHN K. SIMPSON  
TRAVIS L. THOMPSON  
SHELLEY M. DAVIS  
PAUL L. ARRINGTON  
SCOTT A. MAGNUSON



1010 W. Jefferson, Suite 102  
Post Office Box 2139  
Boise, Idaho 83701-2139  
(208) 336-0700 telephone  
(208) 344-6034 facsimile  
brs@idahowaters.com

163 2nd Avenue West  
Post Office Box 63  
Twin Falls, Idaho 83303-0063  
(208) 733-0700 telephone  
(208) 735-2444 facsimile

Shelley M. Davis  
smd@idahowaters.com

December 6, 2016

**VIA U.S. MAIL**

Idaho Department of Water Resources  
Western Region  
2735 Airport Way  
Boise, ID 83705-5082

RECEIVED

DEC 08 2016

WATER RESOURCES  
WESTERN REGION

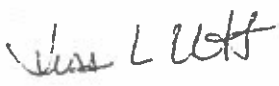
Re: Application for Permit No. 78-12445

Dear Clerk:

Please find enclosed herewith *Notices of Protest* for the above referenced application for permit by James and Sandra Henley and Edward Kalinowski. Also enclosed herewith, please find check number 24999 in the amount of \$50.00, the fee for processing the two protests. Please return conformed copies in the enclosed postage prepaid self-addressed stamped envelope 

Please contact me if you have any questions or concerns. Thank you for your assistance.

Very truly yours,  
**BARKER ROSHOLT & SIMPSON LLP**



Jessica L. Witt, Assistant to  
Shelley M. Davis

Encl.

SCANNED

DEC 14 2016

07/2008

STATE OF IDAHO  
DEPARTMENT OF WATER RESOURCES

✓  
RECEIVED  
DEC 08 2016  
WATER RESOURCES  
WESTERN REGION

**NOTICE OF PROTEST**

This form may be used to file a protest with the department under sections 42-108B, 42-203A, 42-203C, 42-211, and 42-222, Idaho Code. The department will also accept a timely protest not completed on this form if it contains the same information.

1. Matter being protested: **Eulla and Michael Wallace Application for Permit No. 78-12445**
2. Name of protestant: **James and Sandra Henley**
3. Protestant's Representative for service (if different than protestant)

**Shelley M. Davis  
Barker Rosholt & Simpson LLP**

4. Service mailing address: **1010 W. Jefferson St., Ste. 102, P.O. Box 2139, Boise, ID 83701-2139**
5. Service telephone no. **208-336-0700** Email address: **smd@idahowaters.com**
6. Basis of protest (including statement of facts and law upon which the protest is based).  
**Protestant has information that indicates Applicant intends to use delivery conduits crossing the Protestants' property to which Applicants have no rights. Further, in the application Applicants have referenced in the 'other water rights' portion of the application water right no. 78-10067, and springs identified thereunder. Protestants have protested transfer application no. 81039, filed by the same Applicants, which seeks to add additional springs as points of diversion under water right no. 78-10067, to which Applicants have no right.**
7. What would resolve your protest?  
**Clarification that only those springs identified on the face of the SRBA decree for water right no. 78-10067 issued on November 6, 2007, are referenced in the 'other water rights' portion of the application, and further assurance that no diversion of the water sought by the application will be delivered through the ditches or other delivery conduits located on Protestants' property.**

I hereby acknowledge that if I, or my designated representative, fails to appear at any regularly scheduled conference or hearing in the matter of which I have been notified at the address above, the department may issue a notice of proposed default against me in this matter for failure to appear. I also verify that I have served a copy of this protest upon the applicant.

Signed this 6<sup>th</sup> day of December, 2016.

James and Sandra Henley  
Protestant

By: [Signature]  
Protestant's Representative

---

FOR DEPARTMENT USE ONLY

Received by [Signature] Date 12/8/16 Time 1:30  
\$25.00 fee Received by [Signature] # W044828 Date 12/8/16