

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.

✓ RECEIVED  
AUG 05 2016  
WATER RESOURCES  
WESTERN REGION

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

- 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, 2016.

Protestant



Protestant's Representative





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 **M**

#### GENERAL

Listing Date 5/9/2008  
 M 65  
 DM 129  
 Is TV?  
 Is & Restrict? Yes  
 Is b & Gutter? No  
 Is Flood Ins Req? No  
 Is Prov. Dist? No  
 Is gation?  
 Is gation Dist?  
 Is g Dist Name  
 Is Allowed? No  
 Is ed Street? No  
 Is one Lines? Yes  
 Is lewalks? No  
 Is rvey Avail?  
 Is ew?  
 Is aterfront?  
 Is tr Shrs Avail?  
 Is ater Deliv?  
 Is bdivision Timber Ridge

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.

Directions North on Cemetery Road, Right on Wallace, Left on Shadow Pine Circle.  
 Subdivision Timber Ridge Subdivision, Lot #28

#### FEATURES

IRIGATION TYPE  
 ROAD/STREET Dirt  
 PERMS  
 TOPOGRAPHY  
 WASTE DISPOSAL SYSTEM  
 WATER

Weiser  
 Cant Dist Health -  
 Env. Hlth. Spec - Jeff Ba Han  
 Septic guy  
 208-642-9321  
 X 14

95

PAYETTE  
 - 13 mi  
 Light → 2009  
 (2) max  
 Station  
 SW 3rd

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

