

PROTEST INFORMATION SHEET

Application No. _____

Stutzke
94-7858

SPECIAL NOTE: _____

Protestant(s) NAME(S)	ADDRESS	PHONE
1 (USD1) BLM	1387 S Vinnell Way	(208) 373 3831
2		
3		
4		
5		
6		
7		
8		
9		
10		

Protestant(s) ATTORNEY	ADDRESS	PHONE
Fredric W Price	Same as above	

DATE FILED: 3/18/11 PROTEST DUE DATE: 5/9/11

ISSUES: _____

Applicant(s)

ATTORNEY	ADDRESS	PHONE

DATE

Protest Date Entered on Computer _____

Acknowledgment Letters Sent _____

Conference/Hearing Date _____

(Other Dates)

Other Information _____

Protest information submitted to computer following hearing: _____



State of Idaho

DEPARTMENT OF WATER RESOURCES

Northern Region, 7600 N. Mineral Drive, Suite 100 • Coeur d'Alene, Idaho 83815

Phone: (208) 762-2800 • Fax: (208) 762-2819 • Web Site: www.idwr.idaho.gov

C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Interim Director

May 11, 2011

ROD STUTZKE
PO BOX 433
MURRAY, ID 83874

RE: Application for Permit No(s). 94-7858

Dear Applicant(s):

Enclosed is a copy of a protest(s) filed against the issuance of Permit No(s). 94-7858. 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(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. If you are interested in this option, please contact our office for details.

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.

Sincerely,

Robert G. Haynes, P.E.
Regional Manager

Enclosure Pre-Hearing Conference Procedures
Copy of Protest



State of Idaho

DEPARTMENT OF WATER RESOURCES

Northern Region, 7600 N. Mineral Drive, Suite 100 • Coeur d'Alene, Idaho 83815
Phone: (208) 762-2800 • Fax: (208) 762-2819 • Web Site: www.idwr.idaho.gov

C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Interim Director

May 11, 2011

US DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
ATTN: FREDRIC W PRICE
1387 S VINNELL WAY
BOISE, ID 83709

RE: Application for Permit No(s). 94-7858

Dear Protestant(s):

This office acknowledges receipt of your protest to the issuance of Permit No(s). 94-7858. 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. If you are interested in this option, please contact our office for details.

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.

Sincerely,

Robert G. Haynes, P.E.
Regional Manager

Enclosure(s) Pre-Hearing Conference Procedures

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. 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.

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
NOTICE OF PROTEST
94-07858

May 6, 2011

RECEIVED
MAY 06 2011
DEPARTMENT OF
WATER RESOURCES

1. Matter being protested

Application for Permit No. 94-07858 for Rod Stutzke.

2. Name of protestant

United States Department of the Interior
Bureau of Land Management
Idaho State Office
1387 South Vinnell Way
Boise, Idaho 83709-1657

3. Protestant's Representative for service (if different than protestant)

Fredric W. Price (contact person)

4. Service mailing address

same as above

5. Service telephone no.

(208) 373-3831

RECEIVED
MAY 11 2011
IDWR/NORTHERN

6. Basis of protest (including statement of facts and law upon which the protest is based).

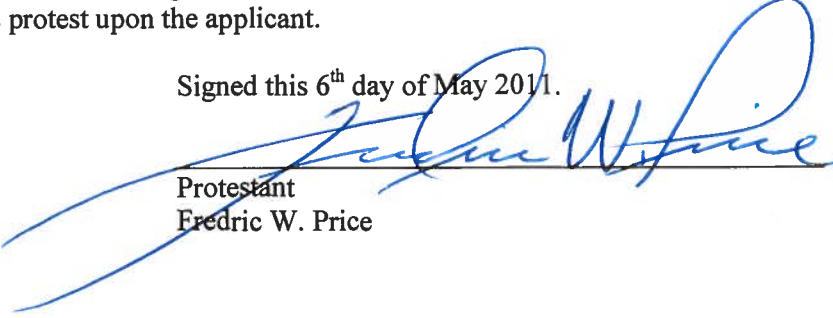
The Application for Permit describes a legal land description for Point of Diversion (POD) and Place of Use (POU) within the SWSW, S12, T50N, R05E. This nominal quarter-quarter land description contains both private and public lands. Use of water on public lands is not authorized.

7. What would resolve your protest?

Amend the place of use element to make it clear that only non-federal land is intended. BLM's protest could be resolved by the inclusion of a condition under the place of use element that reads as follows: "Place of use does not include federal public lands."

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 6th day of May 2011.


Protestant
Fredric W. Price

Attachments:

◆ Maps prepared by BLM for illustrative purposes.

◆ Master Title Plat: T50N R05E

◆ Application for Permit No. 94-07858 for Rod Stutzke form #202 submitted by applicant to IDWR for Water Right Report.

FOR DEPARTMENT USE ONLY

Received by SR Date 5/6/11
Fee Paid \$25.00 Date 5/6/11 Received by SR Receipt # CD93022

CERTIFICATE OF SERVICE

I certify that on May 6, 2011, I served a true and correct copy of the **"Protest of Application for Permit No. 94-07858"** for Rod Stutzke with enclosures upon the following individuals by placing the documents in the United States mail in Boise, Idaho, postage paid, and addressed as follows:

Original to:

Jeff Peppersack, Administrator
Idaho Department of Water Resources (IDWR)
Idaho State Office
Water Management Division,
P.O. Box 83720
322 East Front Street
Boise, Idaho 83720-0098

Copies to:

Idaho Department of Water Resources (IDWR)
Northern Regional Office
7600 Mineral Drive, Suite 100
Coeur d'Alene, ID 83815-7763

Rod Stutzke
PO Box 433
Murray, Idaho 83874

George Stephenson
1421 Shelbourne St SW
Calgary, AB T3C 2L1

Cynthia Weston, Resource Coordinator
U.S., Department of the Interior,
Bureau of Land Management,
Coeur d'Alene Field Office
3815 Schreiber Way
Coeur d'Alene, ID 83815

Scott Sanner, Mining Engineer
U.S., Department of the Interior,
Bureau of Land Management,
Coeur d'Alene Field Office
3815 Schreiber Way
Coeur d'Alene, ID 83815

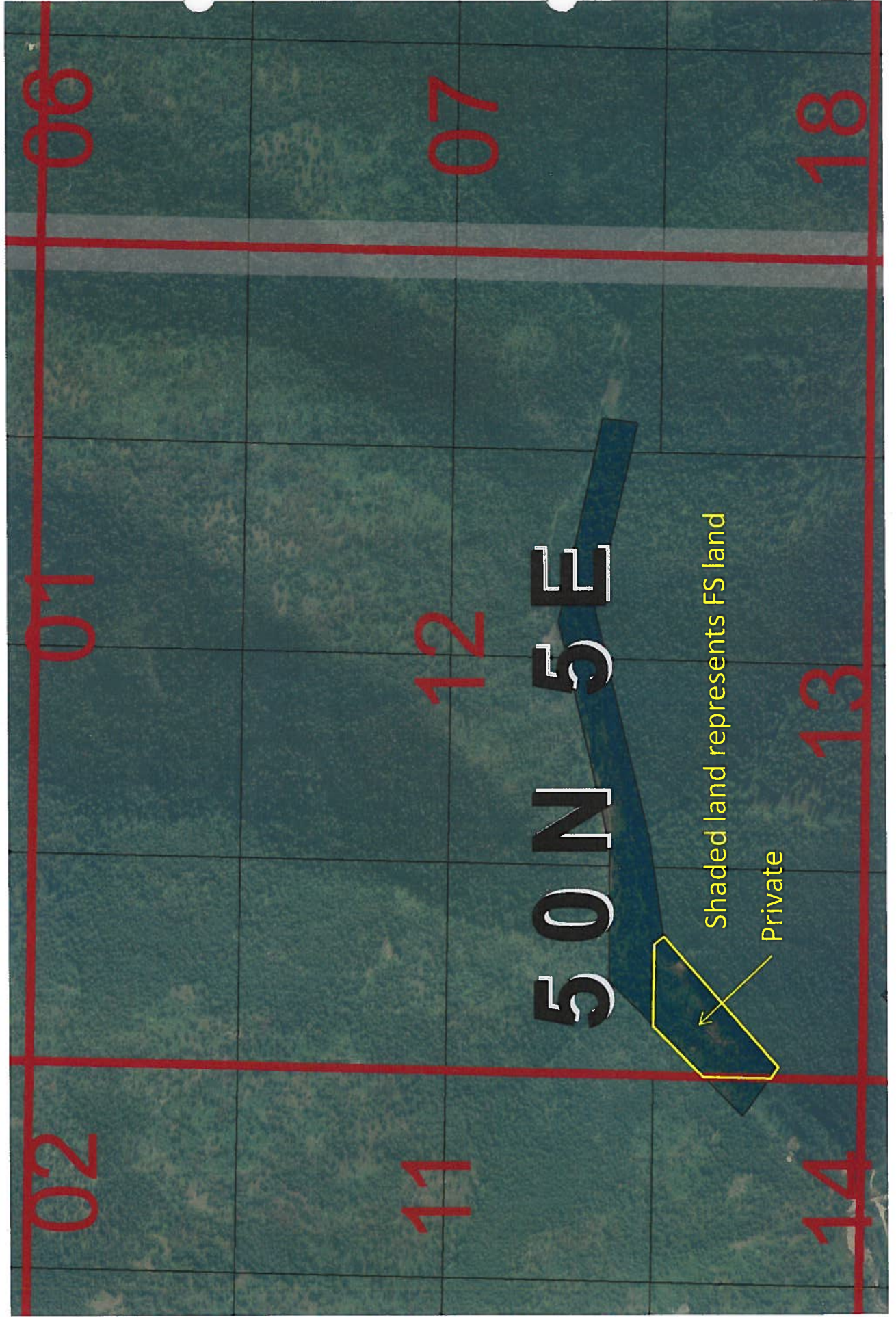
Brandon Anderson

Person Serving Documents (print name)

Brandon Anderson

Signature of Person Serving Documents

94-07858, Rod Stutzke



SHOSHONE COUNTY 079
COEUR D'ALENE DISTRICT

STATUS OF PUBLIC DOMAIN LAND AND MINERAL TITLES

MT PLAT

[illegible]

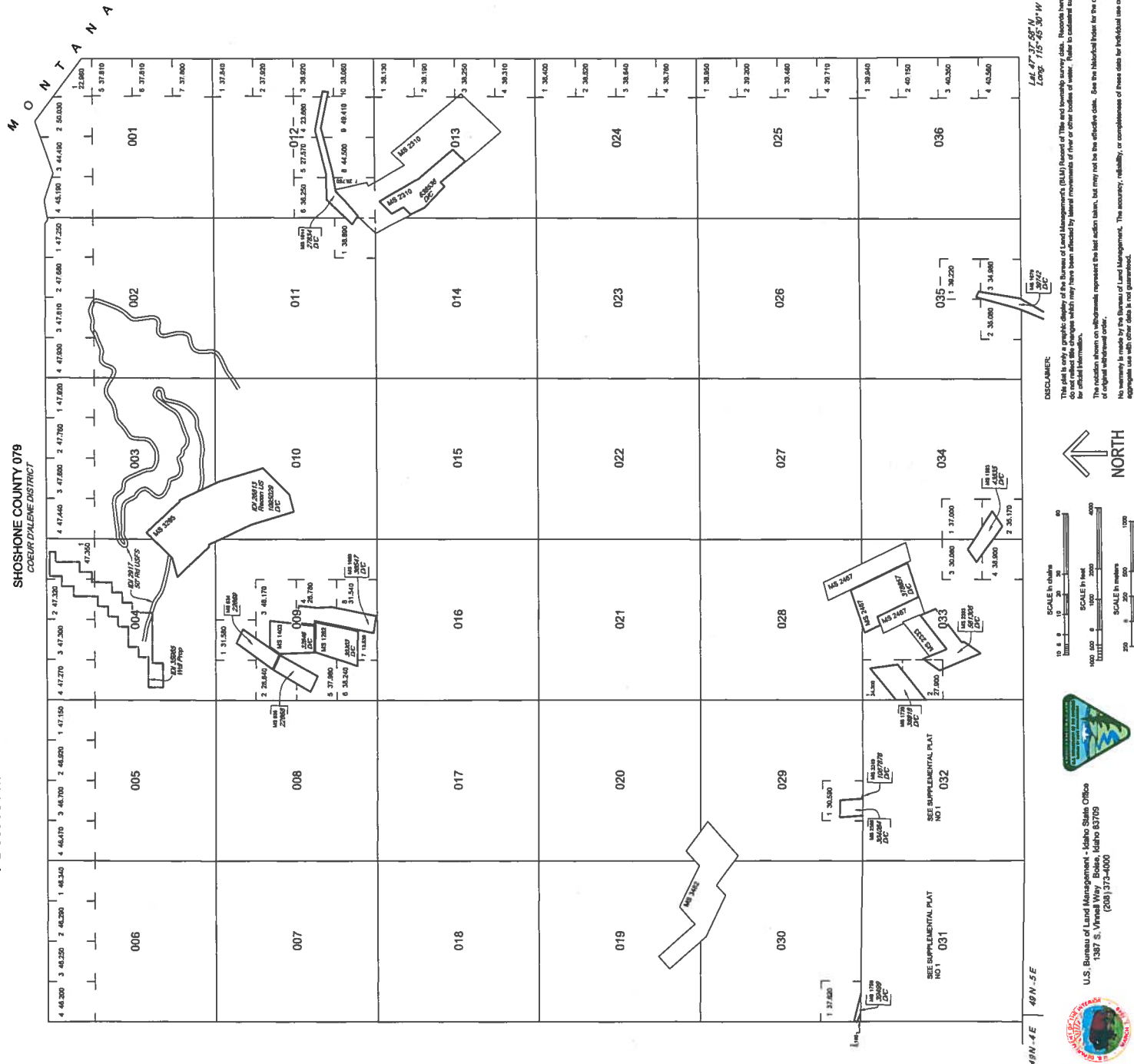
AM To Included In Wall Cover d'Alene NF Proc 11/08/1908

AN Tp included in IDI 08640 Del PL 167 (Act of Cong 372723/1955) completed 01/18/1981. All NF surface Mgmt by

FOR ORDERS EFFECTING DISPOSAL OR USE OF
UNIDENTIFIED LAND REFER TO INDEX OF
MISCELLANEOUS DOCUMENTS

FILE REF: B06000000006-AM100000.dwg	
CONVERTED TFF: 07/19/2011	BY: JCB
LAST UPDATED: 07/19/2011	BY: JCB
QUICK #1:	QUICK #2:
POSTED TO PUBLIC RECORDS: February 14, 2011	
BY:	
PUBLIC LAND SURVEY SYSTEM (PLSS)	
BLM ACQR ACQUIRED:	04/09/2008
OTHER:	N/A
PROJECTED COORDINATE SYSTEM: UTM ZONE 11N, 1983	
NOTES:	
USE PLATS:	

Bolton Mar.
T. 50 N
R. 5 E



Water Right Report

05/04/2011

IDAHO DEPARTMENT OF WATER RESOURCES
Water Application Report

WATER RIGHT NO. 94-7858

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	ROD STUTZKE PO BOX 433 MURRAY, ID 83874 (208) 682-2011

Priority Date: 03/18/2011

Status: Active

<u>Source</u>	<u>Tributary</u>
EAST FORK EAGLE CREEK	PRICHARD CREEK

<u>Beneficial Use</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
MINING	01/01	12/31	1.34 CFS	
Total Diversion			1.34 CFS	

Location of Point(s) of Diversion:

Mix PVT / FS

EAGLE CREEK	SWSW	Sec. 12	Township 50N	Range 05E	SHOSHONE County
-------------	------	---------	--------------	-----------	-----------------

Place(s) of use:

Place of Use Legal Description: MINING SHOSHONE County

<u>Township</u>	<u>Range</u>	<u>Section</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>

50N	05E	12		SWSW	Mix	PVT/FS											
-----	-----	----	--	------	-----	--------	--	--	--	--	--	--	--	--	--	--	--

Dates:

Date Application Received: 03/18/2011

Date Application Denied:

Last Date of Beneficial Use:

Extension End Date:

Protest Deadline Date: 5/9/2011

Number of Protests: 0

Enlargement Use Priority Date:

Enlargement Statute Priority Date:

Other Information:

State or Federal:

Owner Name Connector:

Water District Number:

Generic Max Rate per Acre:

Generic Max Volume per Acre:

Application Type: New Appropriation

Applicant Remarks:

Other Water Rights:

Time to Complete Works: 5

Transfer Affected Description:

Transfer Affected Contracts:

Old Transfer Number:

Transfer Reason:

Transfer Return Flows:

Swan Falls Trust or Nontrust:

Swan Falls Dismissed:

DLE Act Number:

Cary Act Number:

Mitigation Plan: False

77124

Ident. No. 94-7558

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR PERMIT

RECEIVED

MAR 18 2011

To appropriate the public waters of the State of Idaho

IDWR / NORTH

1. Name of Applicant Rod Stutzke Phone 208-682-2011
Mailing address P.O. box 433 Murray, ID. 83874
2. Source of water supply East Eagle cr. which is a tributary of Prichard cr.
3. Location of point of diversion is Township 50N Range 5E Sec. 12 in the SW SW Mix PVT/FS Shoshone County;
additional points of diversion if any:

4. Water will be used for the following purposes:

Amount 1.34 for mining purposes from 1/1 to 12/31 (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)
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) 1.34 and/or (b) _____
cubic feet per second acre feet per annum

6. Proposed diverting works: _____
a. Describe type and size of devices used to divert water from the source Pipe and Pump
in stream
b. Height of storage dam _____ feet; active reservoir capacity _____ acre-feet; total
reservoir capacity _____ acre-feet
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? NO
e. If well is already drilled, when? _____; Drilling firm _____
Well was drilled for (well owner) _____; Drilling Permit No. _____

7. Time required for completion of works and application of water to proposed beneficial use is 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. Mining

94-7658

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.

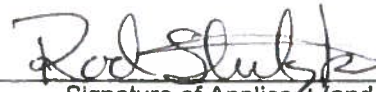
TWP	RGE	SEC	NE				NW				SW				SE				TOTALS
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
50N	5E	12											X	Mix	PV+FS				

Total number of acres to be irrigated 10. Describe any other water rights used for the same purposes as described above. None

11. a. Who owns the property at the point of diversion? George Stephenson
- b. Who owns the land to be irrigated or place of use? George Stephenson
- c. If the property is owned by a person other than the applicant, describe the arrangement enabling the applicant to make this filing: property is leased to applicant for six years
12. Remarks: _____
- _____
- _____
- _____

13. MAP OF PROPOSED PROJECT REQUIRED - Attach an 8½"x11" map clearly identifying the proposed point of diversion, place of use, section #, township & range. (A photocopy of a USGS 7.5 minute topographic quadrangle map is preferred.)

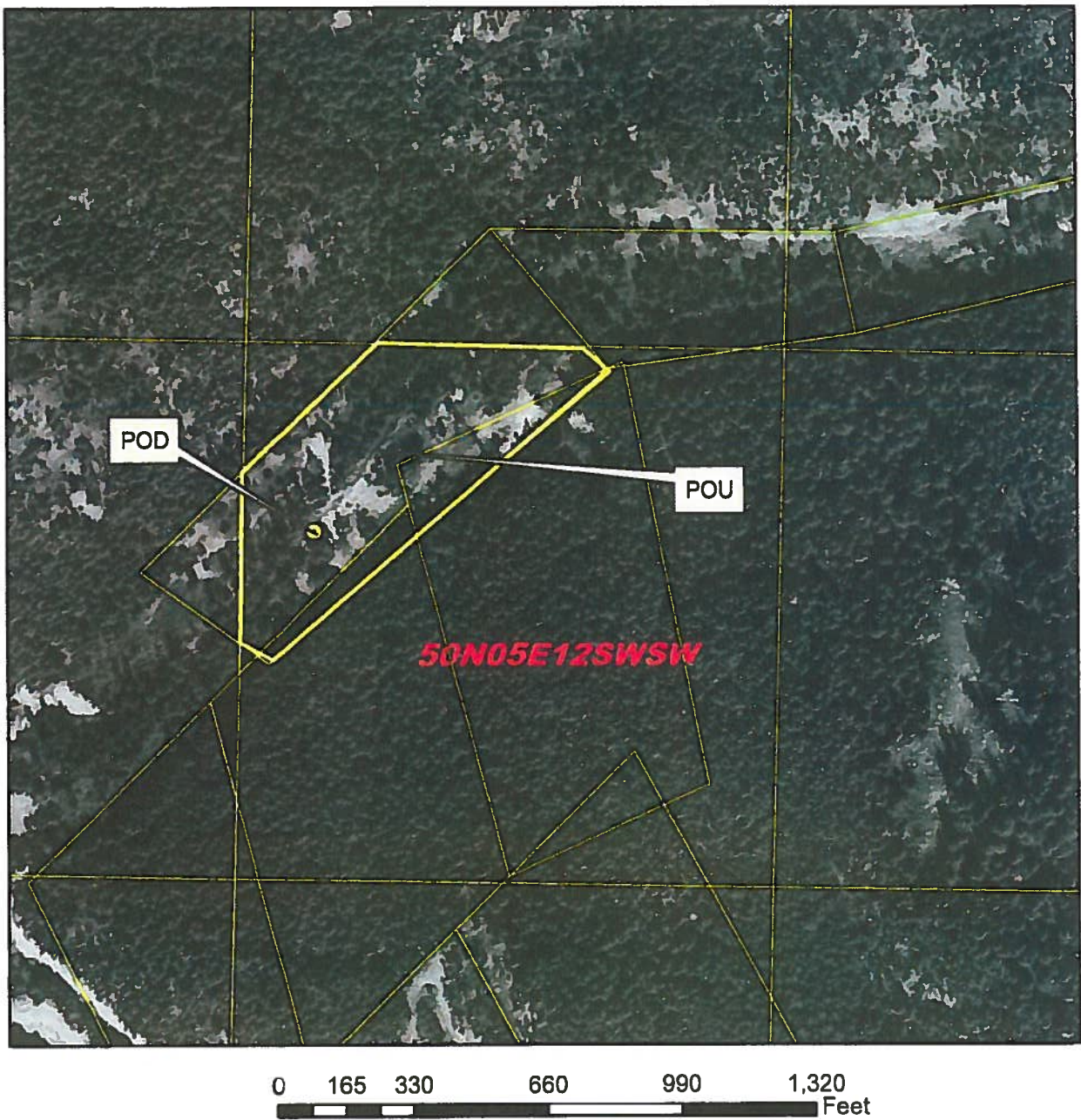
BE IT KNOWN that the undersigned hereby makes this application for permit to appropriate the public waters of the State of Idaho as herein set forth.



Signature of Applicant (and title, if applicable)

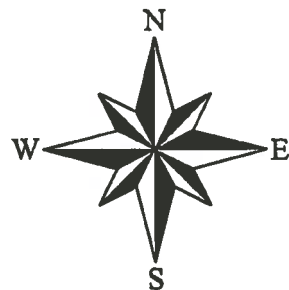
Received by [Signature] Date 3/18/11 Time _____ Preliminary check by _____
 Fee \$ 290.00 Recelpted by [Signature] # N026771 Date 3/18/11
 Publication prepared by _____ Date _____ Published in _____
 Publication approved _____ Date _____

94-7858



Legend

-  workingpod
-  workingpou
-  QQ
-  Taxlots





50N05E12SWSW

PLACER LEASE "AGREEMENT"

Made this 6th day of July, 2009

BETWEEN

**George Stephenson, of Calgary, Alberta
(hereinafter referred to as "STEPHENSON")**

-AND-

**Rod Stutzke, of Prichard, Idaho
(hereinafter referred to as "STUTZKE")**

THEREFORE: As both parties have agreed to enter this agreement under the following terms:

STEPHENSON has agreed to lease to STUTZKE placer properties for the sole purpose of placer mining and STUTZKE has agreed to test and confirm the possibility of bringing the property into production. The properties are more commonly known as; the NOONDAY, MIDNIGHT, NO. 9 AND NO. 10 placer claims located on East Eagle Creek, location being 19-50-5, BPI 34/86, comprising of 31.420 acres in the Shoshone district of Idaho.

STUTZKE agrees to pay an 18% (eighteen percent) GOR (gross overriding royalty) to STEPHENSON on each cleanup completed. STUTZKE agrees to divide (on each cleanup), all large nuggets on a 2/3 (to STRUTZKE) TO 1/3 (to STEPHENSON) basis until STEPHENSON has received 18% percent then any or all remaining gold shall go to STUTZKE.

STEPHENSON covenants and agrees that:

- 1. The property is in good standing in all jurisdictions.**
- 2. He has disclosed all his knowledge about the property and he knows of no reason about any matters that would withhold STUTZKE from entering this agreement.**



PAGE 2

- 3. STEPHENSON agrees that STUTZKE can cut and use any timber on the property, within all regulations, for the sole purpose of mining the said claims.**

STUZKE covenants and agrees that:

- 1. He will comply within all the laws and regulations of all state and federal bodies that govern the Shoshone District of Idaho.**
- 2. He will pay all necessary payments, bonds and any other costs related to placer mining requirements in the [Shoshone mining district.**
- 3. This agreement is for the sole purpose of gold production.**
- 4. Upon termination of this agreement STUTZKE shall have no further interest of any kind in the said claims.**
- 5. He has one year to test the property from the signing of this agreement (STEPHENSON shall receive 18% of any gold during the test year) then, for the following six years, production of a minimum of \$10,000 US Dollars worth of gold to STEPHENSON on an annual yearly basis. STUTZKE has the right to pay \$10,000 US funds in lieu of gold to maintain the lease annually or a gold and cash combination which would total \$10,000 US in value per year.**
- 6. He will remove all equipment on the property at his expense within one year of termination of this agreement.**
- 7. He will save STEPHENSON harmless to any liability, lawsuit and claim of any kind, due to placer mining the said claims, while this agreement is in effect.**
- 8. He will pay all costs related to placer mining of the claims.**

OTH parties agree that:

- 1. This agreement shall not exceed 7 years.**
- 2. This agreement is binding upon to both STEPHENON and STUTZKE heirs and successors during the term of this agreement.**
- 3. Time is of the essence.**

F.S.
al

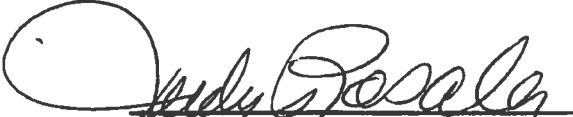
PAGE 3

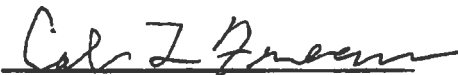
4. Failure to comply with any part of this agreement shall cause the termination of this agreement. The party, which has failed to comply with this agreement, will have a 60 days extension from notification from the other party, in writing of the failure to comply, to put back in good standing any breach of this Agreement. If upon 60days that the breach of any condition is not met, this agreement is terminated immediately.
5. Anniversary date of this agreement is based on the signing date.
6. Annual or annually is based off the signing date.
7. This agreement can be amended at anytime upon both parties signed and agreed acknowledgement in writing of any change to this agreement.

AGREE TO:


George Stephenson


Rod Stutzke


Witness


Witness

R.S.
