

September 11, 2008

Idaho State
Department of Water Resources
Attn: Mr. John Westra

Ref: Permit #63-31141

I, Leo Allen Smith, do assign water application permit #63-31141 to
Catheryn N. Spencer.

The property listed on referenced application was sold to Catheryn Spencer
in February of 2001.

Thank you for your attention to this matter.

Leo Allen Smith

Leo Allen Smith

Dated: 9-11-08

Assignment of
Application

✓ data base
updated

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

IN THE MATTER OF APPLICATION FOR)

PERMIT #63-31141 IN THE NAME OF)

LEO ALLEN SMITH)

PRELIMINARY ORDER

VOIDING APPLICATION

FINDINGS OF FACT

1. On May 15, 1992, IDWR placed a "Hold" on the processing of new ground water appropriations in the Boise River Basin.

2. On December 22, 2000, Leo Allen Smith filed application for permit #63-31141 with the Idaho Department of Water Resources (IDWR) seeking ground water for irrigation beneficial use.

3. In early January 2008, IDWR again resumed processing of new ground water appropriations in the Boise Basin. On July 23, 2008, IDWR sent Mr Smith a letter requesting his intent for processing the application for permit. A response was required within 30 days from the letter date.

4. To date, IDWR has not received a response from Leo Allen Smith.

CONCLUSIONS OF LAW

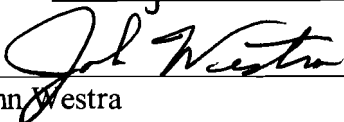
1. Idaho Code (IC)§ 42-204 and the Rules and Regulations of IDWR state that if an applicant does not submit requested information to IDWR within thirty (30) days of the date of request, IDWR may void the application. Water Appropriation Rule #35 also requires applicants to provide written notification to IDWR of changes in the applicant's name or address.

2. Leo Allen Smith failed or refused to provide IDWR the requested information. The application should be voided.

ORDER

IT IS HEREBY ORDERED that Application for Permit #63-31141 in the name of Leo Allen Smith be VOIDED.

Dated this 29th day of August, 2008



John Westra
Manager, Western Regional Office

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of September, 2008, I mailed a true and correct copy of the foregoing **PRELIMINARY ORDER** to the person(s) listed below:



John VanOrder
Office Specialist

Application for Permit #63-31141

Leo Allen Smith
722 Valli-Hi RD
Eagle ID 83616

Ident. No. 63-31141

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR PERMIT

RECEIVED

DEC 22 2000

To appropriate the public waters of the State of Idaho

WATER RESOURCES
WESTERN REGION

1. Name of Applicant LEO ALLEN SMITH Phone (208) 939-8166
Mailing address 722 VALLI-HI ROAD, EAGLE, ID. 83616
2. Source of water supply GROUND WATER which is a tributary of N/A
3. Location of point of diversion is Township 5N Range 1E Sec. 32, in the SW 1/4, NE 1/4, _____ 1/4, Govt. Lot _____, B.M., ADA _____ County; additional points of diversion if any: N/A
4. Water will be used for the following purposes:
- | | |
|--|-------------------------|
| Amount <u>0.11</u> for <u>IRRIGATION</u> purposes from <u>5/1</u> to <u>11/15</u> (both dates inclusive) | <u>3/1</u> <u>10/31</u> |
| (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) 0.11 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 192' WELL WITH A 6" CASEING, EQUIPPED WITH A 1.5HP SUBMERSIBLE PUMP,
- b. Height of storage dam N/A feet; active reservoir capacity N/A acre-feet; total reservoir capacity N/A acre-feet
- c. ~~Proposed~~ ^{EXISTING} well diameter is 6 inches; proposed depth of well is 192 feet
- d. Is ground water with a temperature of greater than 85°F being sought? NO
- e. If well is already drilled, when? 5/16/89; Drilling firm DENNIS PHIPPS #332
Well was drilled for (well owner) MICHAEL THOMAS MCLEMORE; Drilling Permit No. 63-89-Z-127
7. Time required for completion of works and application of water to proposed beneficial use is 1.0 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. N/A
- b. Stockwatering; list number and kind of livestock. N/A
- c. Municipal; show name of municipality. N/A
- d. Domestic; show number of households. N/A
- e. Other; describe fully. N/A

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	N E				N W				S W				S E				TOTALS
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
5N	1E	32			3.9														3.9

Total number of acres to be irrigated 3.9

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

N/A

11. a. Who owns the property at the point of diversion? LEO ALLEN SMITH

b. Who owns the land to be irrigated or place of use? LEO ALLEN SMITH

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: SEE ATTACHMENT "A"

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.

Leo A. Smith

Signature of Applicant (and title, if applicable)

Received by JD Date 12-22-00 Time 4:00 p.m. Preliminary check by _____
 Fee \$ 100.00 Received by JD # 0027244 # 0027244 Date 12-26-00
 Publication prepared by DB Date 10/8/2008 Published in IDAHO STATESMAN
 Publication approved _____ DATE: _____ Date 7 OCTOBER 16 & 23, 2008

ATTACHMENT A

Application for Permit

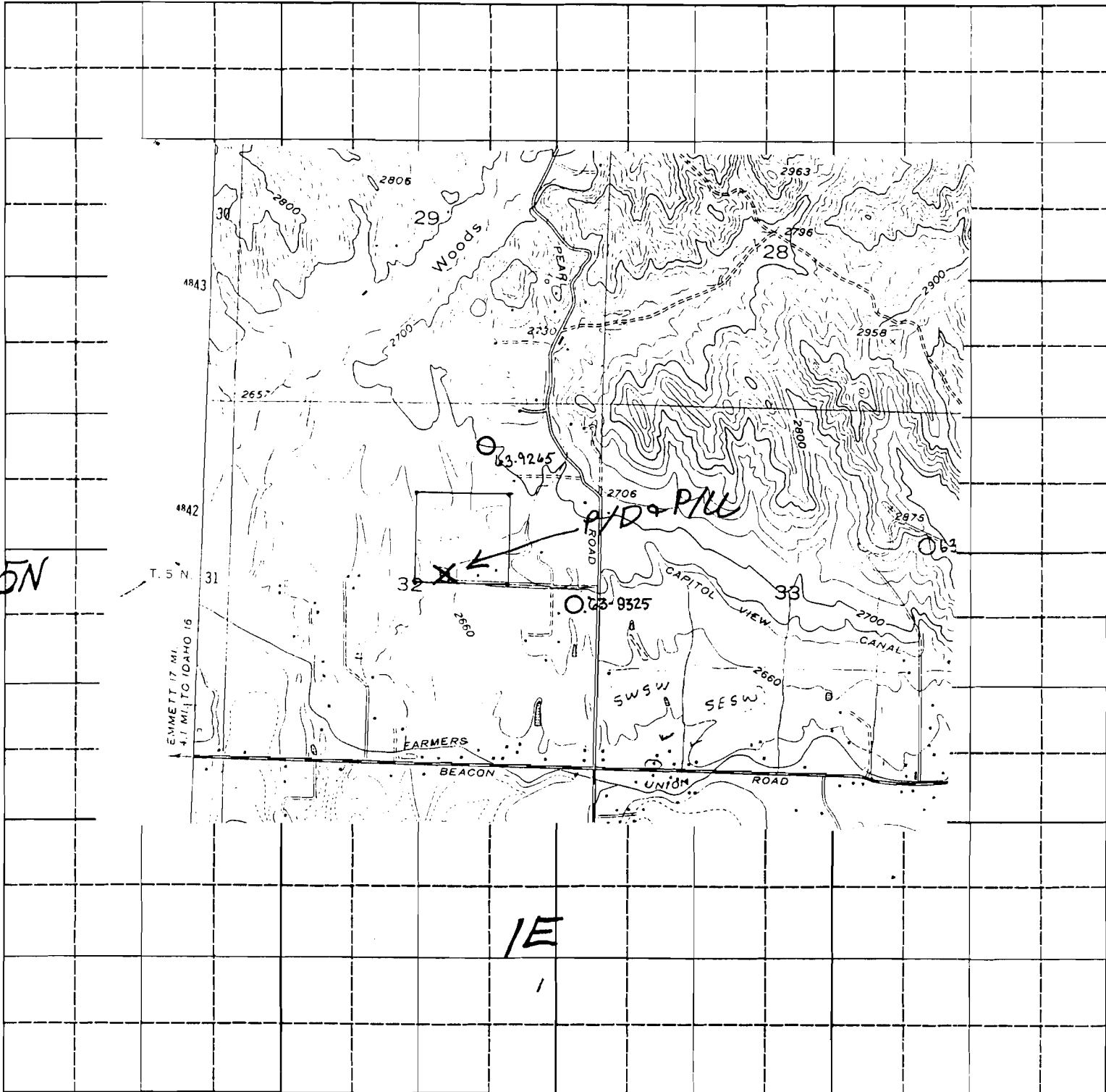
Item #12 Remarks:

The proposed use of the existing irrigation well is to complete a sprinkler system on 3.9 acres of property. Currently this field is overgrown with weeds and sagebrush posing a fire danger in the foothill area, North of Eagle, during the dry summer months. The project includes installation of an underground sprinkler system and the planting of a drought resistant strain of pasture grass.

Overall benefits are fire hazard reduction and esthetically improve and conform to the existing natural setting of the neighborhood.

Water usage is projected as minimal with very minimal loss of ground water resource due to evaporation. This will be accomplished by utilization of the proposed sprinkler system 2 to 3 time a week, for eight hour periods, during the cool, nighttime hours. The water not absorbed by the grass will seep back into the soil and ground water table.

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.

Leo A. Smith
(Applicant)

REQUEST TO PROCESS

COMPLETE REQUEST IF YOU WANT YOUR APPLICATION TO BE PROCESSED USING ONE OF THE
THREE ALTERNATIVES BELOW

Name of Applicant LEO ALLEN SMITH
Mailing Address 722 VALLI-HI ROAD
EAGLE, ID. 83616
Application No. _____
(if known)

 IN LOCAL PUBLIC INTEREST

Yes, I want my application processed and before it is advertised, I will amend my application to demonstrate that the proposed appropriation is in the local public interest including the need to preserve flows in the Snake River during the migration periods of anadromous fish.

 PROPOSE MITIGATION NOW

Yes, I want my application processed and before it is advertised, I will amend my application to include proposed mitigation to offset anticipated depletions in the Snake River during periods of anadromous fish migration.

 7 WILL AGREE TO MITIGATION IN THE FUTURE IF NECESSARY

Yes, I want my application processed at this time, and I will accept a condition of approval that will require mitigation should the Director of the Idaho Department of Water Resources determine that mitigation is necessary to offset depletions from this appropriation to flows in the Snake River during periods of anadromous fish migration. I understand that mitigation is not required now but may be needed in the future. I also understand that the Director will not require mitigation until I have an opportunity to review the process by which the need for mitigation is established and the amount of water required is quantified.

Signature

Leo A. Smith

Date

12/15/00

Please return this form to:

Idaho Dept. of Water Resources
Western Regional Office
2735 Airport Way
Boise, ID 83705-5082

Buffington, Denise

From: Buffington, Denise
Sent: Wednesday, October 08, 2008 8:27 AM
To: legals@idahostatesman.com
Subject: Legal Notices
Attachments: Ada County Ads Cover Letter.RTF; 63-12262 Ad.RTF; 63-12446 Ad.RTF; 63-12505 Ad.RTF; 63-12536 Ad.RTF; 63-31141 Ad.RTF

Attached, please find (5) legal notices being submitted for publication. Please contact me if you have any questions or are not able to run the ads on the dates listed.

Thank you,

Denise Buffington
Idaho Department of Water Resources
Western Region

10/8/2008

October 08, 2008

Legal Notice Department

IDAHO STATESMAN

PO BOX 40

BOISE ID 83707

RE: Application for Permit No. 63-12262, 63-12446, 63-12505, 63-12536 & 63-31141

Dear LEGAL NOTICE DEPARTMENT:

Enclosed you will find a legal notice which we wish to have published in your newspaper on the dates indicated (once a week for two consecutive weekly issues). If you cannot publish the notice on the proposed dates, please contact us immediately.

An affidavit of publication must be submitted to the Department along with the publication bill. Please send the affidavit and bill to this office before 11/03/2008. Your cooperation is appreciated.

Sincerely,

Denise Buffington
Administrative Assistant

The following application(s) have been filed to appropriate the public waters of the State of Idaho:

63-31141

KATHRYN SPENCER
722 VALLI HI RD
EAGLE ID 83616

Point(s) of Diversion SWNE S32 T05N R01E ADA County Source GROUND WATER

Use: IRRIGATION 03/01 To 11/15 0.11 CFS

Total Diversion: 0.11 CFS

Date Filed: 12/26/2000

Place Of Use: IRRIGATION

T05N R01E S32 SWNE

Number of Acres 3.9

Remark: Water bearing zone to be appropriated is from 200 to 250 feet.

Permits will be subject to all prior water rights. Protests may be submitted based on the criteria of Sec 42-203A, Idaho Code.

Any protest against the approval of this application must be filed with the Director, Dept. of Water Resource, Western Region, 2735 Airport Wy, Boise ID 83705 together with a protest fee of \$25.00 for each application on or before 11/03/2008. The protestant must also send a copy of the protest to the applicant.

DAVID R. TUTHILL, JR., Director

Published on October 16th & 23rd, 2008



P. O. Box 140024
Boise, ID 83714-0024

722 W Vall hi Rd.

To: John Westra

Fax number: 3342348

From: Kathy Spencer

Contact number: 208-377-0181

Date: 9/11/08

Regarding: transfer of well
63-311141

Comments:

Thank you John for your
direction & help in this matter.
Call me with any questions or
next step. Come see our great gardens
& whols. nursery & education ctr.
Kathy 8674046 cel
3770137 Fax

MEMORANDUM

Type: In Office Conversation
Telephone
Meeting Notes

Follow-up
Log of Events
Other _____

To: #63-31141
From: J. Westra, Western Reg. JFW
Date: 9/10/08

RE: Kathy Spencer 867-4046

- Spencer is new owner of property. Smith needs to assign permit application to Spencer. Kathy will get the assignment and forward it.



State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way • Boise, Idaho 83705-5082

Phone: (208) 334-2190 • Fax: (208) 334-2348 • Web Site: www.idwr.idaho.gov

C. L. "BUTCH" OTTER
Governor

DAVID R. TUTHILL, JR.
Director

August 29, 2008

Leo Allen Smith
722 Valli-Hi RD
Eagle ID 83616

RE: Preliminary Order in the Matter of Application for Permit #63-31141

Dear Applicant:

The accompanying order is a "**preliminary order**" issued by the department pursuant to section 67-5243, Idaho Code. It can and will become a final order without further action of the department unless a party petitions for reconsideration within fourteen (14) days after issuance as described in the enclosed information sheet.

If you have any questions regarding this matter, please call me at 208-334-2190.

Sincerely,

A handwritten signature in black ink that reads 'John Westra'. The signature is written in a cursive, flowing style.

John Westra, Manager
Western Regional Office

Enclosures

**EXPLANATORY INFORMATION
TO ACCOMPANY A
PRELIMINARY ORDER**

The accompanying order or approved document is a "**Preliminary Order**" issued by the department pursuant to section 67-5243, Idaho Code. It can and will become a final order without further action of the Department of Water Resources (department) unless a party petitions for reconsideration, files an exception and brief, or requests a hearing as further described below:

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a preliminary order with the department within fourteen (14) days of the service date of this order. The department will act on a petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See Section 67-5243(3) Idaho Code.

EXCEPTIONS AND BRIEFS

Within fourteen (14) days after (a) the service date of a preliminary order, (b) the service date of a denial of a petition for reconsideration from this preliminary order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this preliminary order, any party may in writing support or take exceptions to any part of a preliminary order and may file briefs in support of the party's position on any issue in the proceeding with the Director. Otherwise, this preliminary order will become a final order of the agency.

REQUEST FOR HEARING

Unless a right to a hearing before the department or the Idaho Water Resource Board (Board) is otherwise provided by statute, any person aggrieved by any final decision, determination, order or action of the Director of the department and who has not previously been afforded an opportunity for a hearing on the matter may request a hearing pursuant to section 42-1701A(3), Idaho Code. A written petition contesting the action of the Director and requesting a hearing shall be filed within fifteen (15) days after receipt of the denial or conditional approval.

ORAL ARGUMENT

If the Director grants a petition to review the preliminary order, the Director shall allow all parties an opportunity to file briefs in support of or taking exceptions to the preliminary order and may schedule oral argument in the matter before issuing a final order. If oral arguments are to be heard, the Director will within a reasonable time period notify each party of the place, date and hour for the argument of the case. Unless the Director orders otherwise, all oral arguments will be heard in Boise, Idaho.

CERTIFICATE OF SERVICE

All exceptions, briefs, requests for oral argument and any other matters filed with the Director in connection with the preliminary order shall be served on all other parties to the proceedings in accordance with IDAPA Rules 37.01.01302 and 37.01.01303 (Rules of Procedure 302 and 303).

FINAL ORDER

The Director will issue a final order within fifty-six (56) days of receipt of the written briefs, oral argument or response to briefs, whichever is later, unless waived by the parties or for good cause shown. The Director may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order. The department will serve a copy of the final order on all parties of record.

Section 67-5246(5), Idaho Code, provides as follows:

Unless a different date is stated in a final order, the order is effective fourteen (14) days after its issuance if a party has not filed a petition for reconsideration. If a party has filed a petition for reconsideration with the agency head, the final order becomes effective when:

- (a) the petition for reconsideration is disposed of; or
- (b) the petition is deemed denied because the agency head did not dispose of the petition within twenty-one (21) days.

APPEAL OF FINAL ORDER TO DISTRICT COURT

Pursuant to sections 67-5270 and 67-5272, Idaho Code, if this preliminary order becomes final, any party aggrieved by the final order or orders previously issued in this case may appeal the final order and all previously issued orders in this case to district court by filing a petition in the district court of the county in which:

- i. A hearing was held,
- ii. The final agency action was taken,
- iii. The party seeking review of the order resides, or
- iv. The real property or personal property that was the subject of the agency action is located.

The appeal must be filed within twenty-eight (28) days of this preliminary order becoming final. See section 67-5273, Idaho Code. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal.



State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way • Boise, Idaho 83705-5082

Phone: (208) 334-2190 • Fax: (208) 334-2348 • Web Site: www.idwr.idaho.gov

July 23, 2008

Leo Allen Smith
722 Valli Hi Rd
Eagle ID 83616

C. L. "BUTCH" OTTER
Governor

DAVID R. TUTHILL, JR.
Director

RE: Held Application for Permit #63-31141; filed 12/22/2000

Dear Applicant(s):

As you aware, the above referenced application for permit located in the Boise River Basin has been held by our agency since the 1990s. The Department began holding new groundwater applications for consumptive use due to prolonged drought and concerns about declining aquifer levels. As a result, the Treasure Valley Ground Water Study was initiated. The study was completed in 2002, and now provides modeling for projecting future groundwater availability in the valley. Our agency will process held applications as staff resources are available.

Attached is a profile report of your application as submitted to our agency. You must still have full possessory interest / ownership in the listed point of diversion and place of use land locations for processing consideration. Please check carefully the specifics on the application. Your application will need to have public notice published in the local county newspaper. The notice will be published once per week for 2 consecutive weeks. Anyone having issue with an application may file a protest within the time allowed.

The application lists a point of diversion in Township 05N, Range 01E, Section 32. Ground water less than 200 feet depth at this location is considered tributary to the Boise River. Surface water in or tributary to the Boise River upstream of Star bridge is fully appropriated. This means that a new appropriation of ground water would potentially injure a senior Boise River surface water right. Our agency can not process your application unless one of the following can be satisfied:

- 1. An acceptable mitigation plan is filed to mitigate for ground water use that would otherwise cause injury to senior water rights from the Boise River. An example might be the purchase and retirement of an equivalent Boise River surface right.*
- 2. The application proposes to appropriate ground water deeper than 200 feet below ground surface. Applications meeting this criterion shall be evaluated on a case-by-case basis in accordance with applicable water laws and rules.*

Page 2.
Application

We are asking for you to convey your intentions regarding the application by completing the attached response form. Please respond to the following:

- If you desire to develop the water use, and wish our agency to complete the processing of your application, please mark the *YES* response. Also, mark the choice needed to meet the Boise River shallow ground water criteria. A consultant list is enclosed if you need assistance.

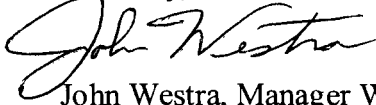
OR

-Mark the *NO* response to withdraw the application. The application will be removed from processing and our records. Our agency will not be able to provide refunds of fees for withdrawn applications.

-Sign, date, and return the response. Response forms need to be returned to this office no later than 30 days of this letter date.

Should you have questions about the history or further processing of this application, please contact Denise Buffington or John Westra at the Western Regional Office, phone 334-2190.

Sincerely,

A handwritten signature in black ink, appearing to read "John Westra", written in a cursive style.

John Westra, Manager Western Region

Enclosure: Proof Report, Response Sheet, Consultant list, Map Shallow GW.



State of Idaho
DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190
FAX (208) 334-2348

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

January 3, 2001

Leo Allen Smith
722 Valli-Hi Rd
Eagle ID 83616

RE: APPLICATION FOR PERMIT

Dear Applicant:

Your recent application for permit to appropriate ground water for a consumptive use was received on 12/22/00. Processing of this application must be delayed.

Due to continued drought and to protect existing water rights and water supplies, the Director of this agency declared a moratorium on May 15, 1992 concerning water right applications proposing new consumptive uses of public water, regardless of source. The moratorium was lifted in May 1995, but application processing was subsequently suspended until technical data was available from the Treasure Valley Hydrologic Study. This study has been completed, but the processing hold on water rights in the Treasure Valley will not be lifted until a plan has been developed to determine a prudent way to issue water rights.

This office will hold your application and will resume processing as soon as possible based on the above considerations. Applications received will be processed in priority order. Delays related to department actions do not affect the date of priority or seniority of an application. You may circumvent this processing hold by submitting a mitigation plan for this application. If you choose to submit mitigation, I would recommend that you hire a consultant to put together the necessary elements of an acceptable mitigation plan.

Please contact me at 334-2190 if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Lori Graves".

Lori Graves

Water Allocations