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FILE**

Ident. No. 71-07178

RECEIVED

AUG 27 1999

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

RECEIVED

AUG 27 1999

APPLICATION FOR PERMIT

To appropriate the public waters of the State of Idaho

Department of Water Resources

Department of Water Resources

1. Name of Applicant Patrick W. Lee r/on John T. Brown Phone 788-2888
Mailing address C/O John T. Brown, PO Box 61, Sun Valley, ID 83353
2. Source of water supply Lost Creek which is a tributary of Sinks
3. Location of point of diversion is Township 8N Range 14E Sec. 34 in the SE 1/4
SW 1/4, SE 1/4, Govt. Lot _____, B.M., Custer County
additional points of diversion if any: SW/SE/SE Sec. 34 T. 8N R. 14E
4. Water will be used for the following purposes:
 Amount * 1.0 cfs for Irrig. purposes from 5-1 to 10-30 (both dates inclusive)
 (cfs or acre-feet per annum)
 Amount 5.5 AFA for Storage for Acce. W: 11/1/99 purposes from 1-1 to 12-31 (both dates inclusive)
 (cfs or acre-feet per annum)
 Amount * 5.5 AFA for Storage for Irrig. purposes from 5-1 to 10-30 (both dates inclusive)
 (cfs or acre-feet per annum)
 Amount * 1.0 cfs for Div. to Storage 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)
5. Total quantity to be appropriated is (a) 1.0 and/or (b) 5.5
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 Two existing ponds dug in stream channel. Pump to be installed in lower pond for gravity irrigation*
 - b. Height of storage dam _____ feet; active reservoir capacity 5.5 acre-feet; total reservoir capacity 5.5 acre-feet * Continued in Remarks
 - 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) _____; Drilling Permit No. _____
7. Time required for completion of works and application of water to proposed beneficial use is 2 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. _____

* Removed per protest agreement
see A Merritt's memo of 8/24/99

8. 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	
8N	14E	34														20	30		50
8N	14E	34															R		
																	WS		
																	AS		

WS = Wildlife Storage AS = Inn. Storage Total number of acres to be irrigated 50

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? Patrick W. Lee & John T. Brown

b. Who owns the land to be irrigated or place of use? Same

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

12. Remarks: Be. Other - Lost Cr. has two branches which both sink in SE 1/4 Sec. 34 except during very high flood stages. Both will be collected in 2 recreation/fish ponds just upstream of the sinks.

Irrigation water will be pumped from the ponds with overflow returning to the sinks. A headgate & ditch in the east channel will take water to the ponds in the west channel. We may also irrigate directly from this ditch.

13. MAP OF PROPOSED PROJECT REQUIRED - Attach an 8 1/2"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.

John T. Brown
Signature of Applicant (and title, if applicable)

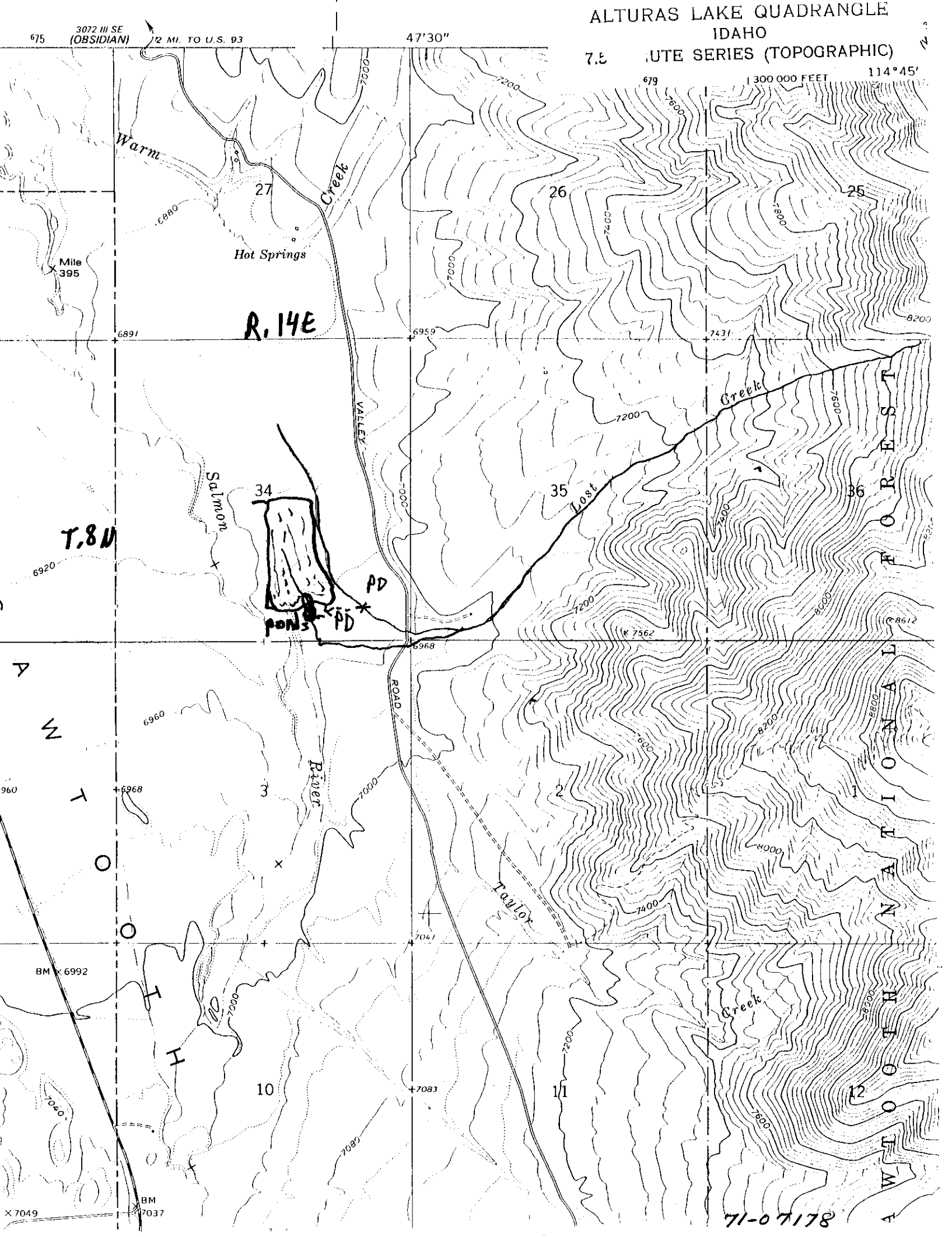
Received by J. F. Stanton Date 8-10-98 Time 5:05 pm Preliminary check by JS
Fee \$ 100. Receipted by JS # 5621415 Date 8-10-98
Publication prepared by MB Date 10/26/98 Published in The Challis Messenger
Publication approved MB Date 11/13/98

ALTURAS LAKE QUADRANGLE
IDAHO
7.5 MINUTE SERIES (TOPOGRAPHIC)

3072 III SE (OBSIDIAN)
2 MI. TO U.S. 93

47°30"

114°45'





66120-12 186120-12

c.f.l. 208.11

9-9-77

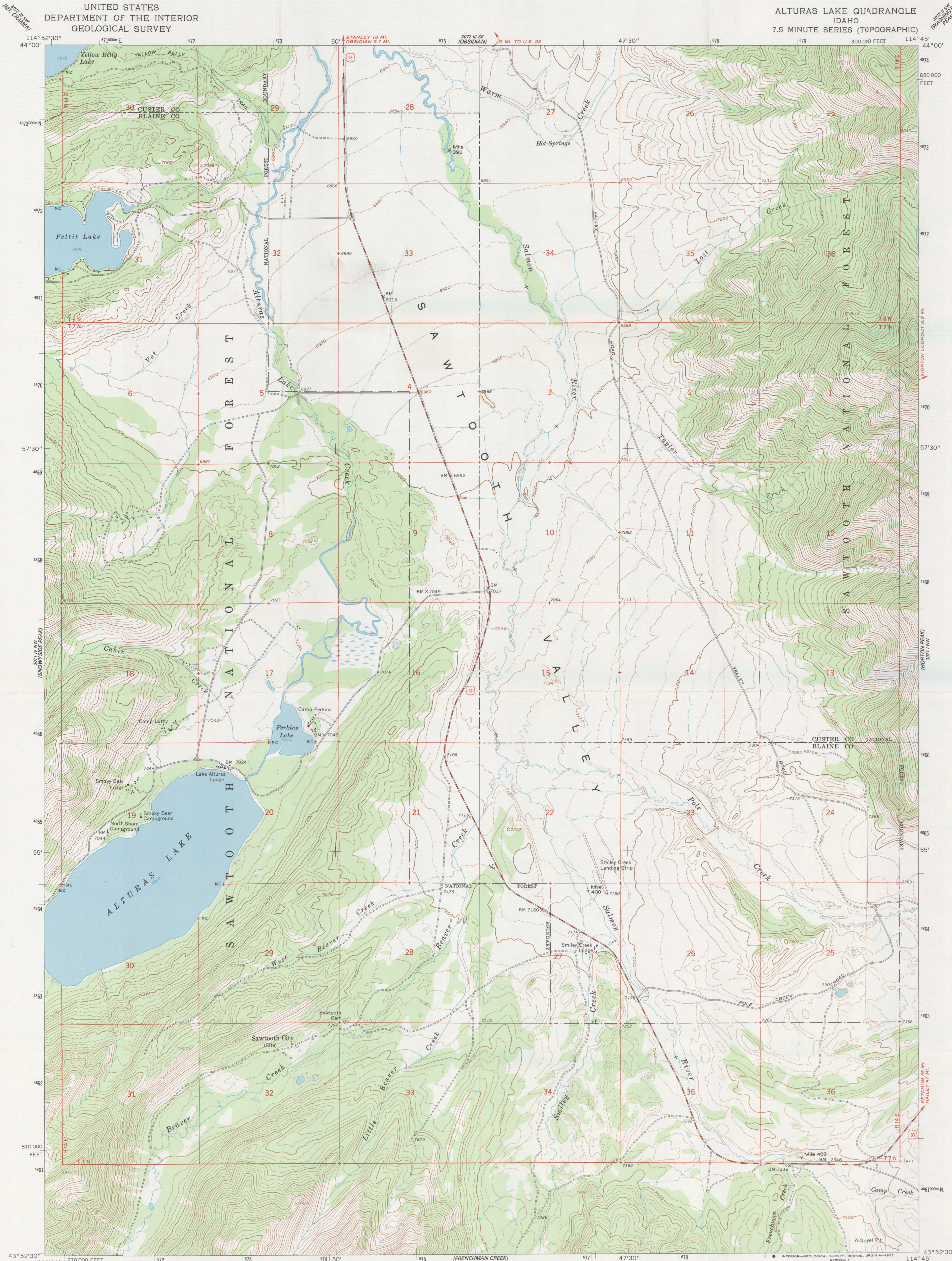
F16

PVT

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UNITED STATES
DEPARTMENT OF THE INTERIOR
GEOLOGICAL SURVEY

ALTURAS LAKE QUADRANGLE
IDAHO
7.5 MINUTE SERIES (TOPOGRAPHIC)



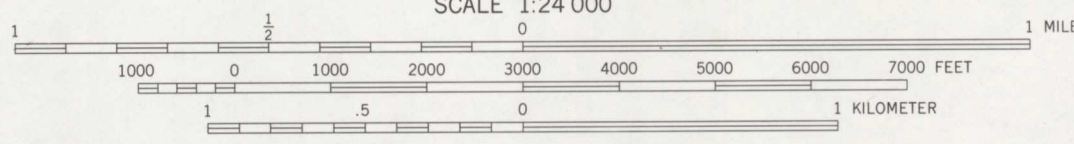
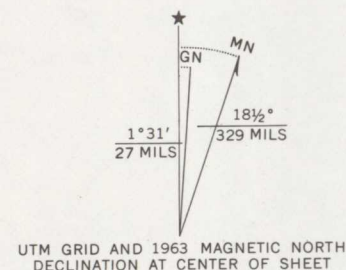
Mapped, edited, and published by the Geological Survey

Control by USGS and USC&GS

Topography by photogrammetric methods from aerial photographs taken 1957. Field checked 1963

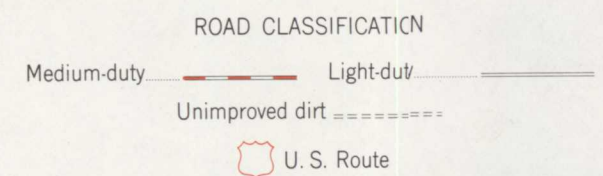
Polyconic projection. 1927 North American datum. 10,000-foot grid based on Idaho coordinate system, central zone 1000-meter Universal Transverse Mercator grid ticks, zone 11, shown in blue

Where omitted, land lines have not been established
Fine red dashed lines indicate selected fence lines



CONTOUR INTERVAL 40 FEET
DOTTED LINES REPRESENT 20-FOOT CONTOURS
NATIONAL GEODETIC VERTICAL DATUM OF 1929

THIS MAP COMPLIES WITH NATIONAL MAP ACCURACY STANDARDS
FOR SALE BY U.S. GEOLOGICAL SURVEY, DENVER, COLORADO 80225, OR RESTON, VIRGINIA 22092
A FOLDER DESCRIBING TOPOGRAPHIC MAPS AND SYMBOLS IS AVAILABLE ON REQUEST



ALTURAS LAKE, IDAHO
N4352.5—W:1445/7.5

1963

AMS 3071 IV NE-SERIES V893

71-07178

**NOW
STARTING
RIGHT
SIDE OF
FILE**

To: File Numbers 71-07178, 71-07179

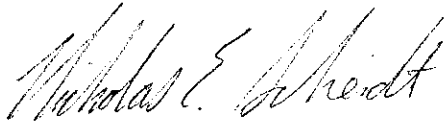
From: Nick Scheidt *N/S*

Subject: Evaporative Loss Associated with Permits to Appropriate Water no. 71-07178
and no. 71-07179

Memorandum

This memorandum addresses the quantity of evaporative loss associated with the subject permits to appropriate water for proposed wildlife ponds. It was determined that these storage ponds would create an additional evaporative loss of only 0.5 acre-ft/year. This loss would not cause a measurable difference in flow of the Salmon River or local aquifer, and therefore would not be detrimental to aquatic habitat or species.

Sincerely,

A handwritten signature in cursive script that reads "Nicholas E. Scheidt". The signature is written in dark ink and is positioned above the printed name.

Nicholas E. Scheidt

Cc: Bill Graham, Gary Spackman

November 29, 2005

RECEIVED

DEC 05 2005

DEPARTMENT OF
WATER RESOURCES

State of Idaho
Department of Water Resources
322 East Front Street
P.O. Box 83720
Boise, Idaho 83720-0098

Re: Application to Appropriate Water nos. 71-7178 and 71-7179

Dear Mr. Spackman:

Pursuant to the request set forth in your letters of November 21, 2005 relating to the forgoing Applications, we hereby state that it is our continuing interest that the Department issue the permits to appropriate water sought in the referenced Applications.

At the time the relevant moratorium was imposed the Department had advised us that it had completed processing of our two Applications and the Department would be issuing the requested permits the following week.

Given that circumstance we request that the Department issue forthwith the permits to appropriate water sought under Applications 71-7178 and 71-7179.

Respectfully submitted,



John T. Brown



Patrick W. Lee

November 21, 2005

PATRICK W LEE
C/O JOHN T BROWN
PO BOX 61
SUN VALLEY ID 83353

Re: Application to Appropriate Water no. 71-7178

Dear Applicant:

The records of the Idaho Department of Water Resources (the Department) show that you filed an application to appropriate water no. 71-7178 with the Department proposing diversion of water from a water source in the Salmon River Basin or the Clearwater River Basin. In April 1993, a moratorium order signed by the Director of the Department prohibited processing and approval of most new permits to appropriate water proposing to divert and use water from surface water sources in the Salmon River and Clearwater River Basins. In October 1999, a second moratorium order signed by the Director of the Department prohibited processing and approval of most new permits to appropriate water proposing to divert and use water from surface water and ground water sources within and upstream of designated wilderness areas in the Salmon River and Clearwater River Basins. Recently, the Director of the Department issued an order rescinding both moratoriums.

Enclosed is the order titled *Order Rescinding Salmon-Clearwater Basin Moratorium and Wilderness Moratorium*. The order directs Department staff to begin processing applications to appropriate water that were held during the moratoriums. Applications will be processed in the approximate order of the Department's receipt of the applications. A reasonable number of applications will be processed each month considering other duties assigned to Department staff. A document attached to the order titled "Statement of Available Procedures and Applicable Time Limits" explains possible actions you might take should you disagree with the order.

Because of the passage of time since you filed your application for permit to appropriate water, ownership of land, desire to use water, or other circumstances may have changed. **This letter requests that you inform the Department in writing, at the address in the letterhead, of your continuing interest in applying for a permit to appropriate water. This letter is a request for additional information under Idaho Code § 42-204. If the requested written statement of continuing interest is not received by the Department within thirty (30) days of the date of this letter, the Department will assume you are no longer interested in**

SCANNED

10/21/05
J. Lee
J. Lee

November 21, 2005

Page 2

applying for a permit to appropriate water, and will void your application pursuant to Idaho Code § 42-204. If you wish to voluntarily withdraw your application, please complete the enclosed withdrawal form and return it to this office.

If you have questions, please call the Department at (208)287-4952.

Sincerely,

A handwritten signature in black ink, reading "Gary Spackman". The signature is fluid and cursive, with the first name "Gary" and last name "Spackman" clearly legible.

Gary Spackman, Chief
Water Allocations Bureau

Enclosures (2)

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

IN THE MATTER OF APPLICATIONS AND	)	ORDER RESCINDING
PERMITS FOR THE DIVERSION AND USE	)	SALMON - CLEARWATER
OF SURFACE WATER AND GROUND	)	BASIN MORATORIUM AND
WATER IN THE SALMON RIVER AND	)	WILDERNESS
CLEARWATER RIVER BASINS	)	MORATORIUM

FINDINGS OF FACT

Salmon - Clearwater Basin Moratorium

1. On May 15, 1992, the Director of the Department of Water Resources ("Director" or "Department") issued a *Moratorium Order* enjoining the processing of most applications to appropriate surface water sources within the Salmon and Clearwater River Basins. On April 30, 1993, the Director issued an *Amended Moratorium Order* ("Salmon - Clearwater Order"), again enjoining the processing of most applications to appropriate water.

2. The Salmon - Clearwater Order stated:

This moratorium shall be in effect on and after the date it is entered until withdrawn or modified by further order of the Director. A future decision to continue or rescind the moratorium will consider all efforts being made within the region toward the recovery of the salmon.

3. Since the issuance of the Salmon - Clearwater Order, significant efforts have been undertaken in the Salmon River and Clearwater River Basins for the recovery of salmon. These activities include:

- Protection of instream flows in streams and rivers to benefit anadromous fish habitat;
- A process for re-establishment of flows in dewatered anadromous fish streams by delivery of rented or acquired water rights to the dewatered reaches;
- Screening and control of irrigation diversions;
- Consolidation of irrigation diversions;

- Riparian habitat improvement projects; and
- Administration of water rights following creation of the Upper Salmon River Water District (creation anticipated at the end of 2005).

Wilderness Moratorium

4. On October 26, 1999, the Director issued a *Moratorium Order* ("Wilderness Order") enjoining further processing and development of pending applications and permits for the diversion and use of surface and ground water in and tributary to the Selway-Bitterroot Wilderness Area, the Gospel-Hump Wilderness Area, and the Frank Church River of No Return Wilderness Area.

5. The Director issued the Wilderness Order in response to an Idaho Supreme Court decision titled *United States v. City of Challis*, 133 Idaho 525, 988 P.2d 1199 (1999). The *City of Challis* decision affirmed a 1997 Snake River Basin Adjudication (SRBA) District Court decision that the United States is entitled to reserved water rights to all unappropriated water within the Selway-Bitterroot, the Gospel-Hump, and the Frank Church River of No Return Wilderness areas. The Director determined the recognition of the federal reserved water rights to include all unappropriated water within and upstream of the wilderness areas.

6. The Wilderness Order affected all water permits and applications for permit for which proof of beneficial use had not been filed with the Department in the Salmon River Basin upstream from the location where the Salmon River leaves the Gospel-Hump Wilderness Area in Section 3, Township 24 North, Range 4 East, Boise Meridian, and in the Clearwater River Basin upstream from the location where the Selway River leaves the Selway-Bitterroot Wilderness in Section 7, Township 31 North, Range 10 East, Boise Meridian.

7. The Wilderness Order required all water permit holders to cease development authorized by the permits. Some permit holders submitted proof of beneficial use for the beneficial use completed as of the date of the Wilderness Order. Other permit holders ceased development, and the requirement for filing proof of beneficial use was stayed until the Wilderness Order was amended or lifted to allow additional development.

8. The Idaho Supreme Court granted a petition for rehearing of the *City of Challis* decision, and, on October 27, 2000, the Idaho Supreme Court issued another decision titled *Potlatch Corp. v. United States of America*, 134 Idaho 916, 12 P.3d 1260 (2000). The Court reversed its previous decision in *United States v. City of Challis* and held the Wilderness Act and associated wilderness designations did not create federal reserved water rights for the Frank Church River of No Return, the Selway-Bitterroot, and the Gospel-Hump Wilderness Areas.

Wild and Scenic Rivers

9. In the case of *Potlatch Corp. and Hecla Mining v. United States*, 134 Idaho 912, 12 P.3d 1256 (2000), the Idaho Supreme Court determined that federal designation of Wild and Scenic Rivers in Idaho reserved water rights for the federal government to satisfy the intent of the designation. The Idaho Supreme Court remanded the case to the SRBA District Court for quantification of the reserved water rights for the Wild and Scenic Rivers.

10. On November 16, 2004, the SRBA District Court entered an Amended Order Approving Stipulation and Entry of Partial Decrees in SRBA Case No. 39576 (Consolidated Subcase No. 75-13316 Wild & Scenic Act Claims). The amended order and the associated partial decrees define federal reserved water rights nos. 75-13316, 77-11941, 77-13844, 78-11961, 81-10472, 81-10513, and 81-10625 in Wild and Scenic Rivers in the Salmon and Clearwater River basins. A stipulated agreement (hereafter referred to as the "Wild & Scenic Agreement") between the United States and parties to the original subcases prior to consolidation forms the framework for the partial decrees issued by the SRBA District Court. The Wild & Scenic Agreement and the partial decrees defining the federal reserved water rights set forth subordination provisions under which the federal reserved water rights are subordinate to other existing and future water rights, describe limitations on appropriation and beneficial use under existing and future water rights to which the federal reserved water rights are subordinate, and provide specific requirements for the administration of water rights within the Salmon and Clearwater River basins.

CONCLUSIONS OF LAW

1. In issuing the Salmon - Clearwater Order and the Wilderness Order, the Director relied on Idaho Code § 42-1805(7). The subsection grants the Director the authority:

After notice, to suspend the issuance or further action on permits or applications as necessary to protect existing vested water rights or to ensure compliance with the provisions of chapter 2, title 42, Idaho Code, or to prevent violation of the minimum flow provisions of the state water plan.

2. The Salmon - Clearwater Order was issued after the Director found and concluded that further appropriations of surface water at the time would not be in the local public interest and would not be consistent with conservation of the waters of the State of Idaho.

3. Enhancements to streamflows, other improvements to anadromous fish habitat, the execution of the Wild & Scenic Rivers Agreement, and the determination of related federal reserved water rights, have addressed the underlying basis upon which the *Amended Moratorium Order* was issued.

4. The prohibition of new water right appropriations by the Director's Salmon – Clearwater Order dated April 30, 1993, can be rescinded and processing of applications to appropriate surface water in the Salmon River and Clearwater River Basins can be allowed.

5. The Wilderness Order was issued following the initial Idaho Supreme Court decision of *United States v. City of Challis*, 133 Idaho 525, 988 P.2d 1199 (1999). Based on the Court's decision, the Director determined there was no additional water available for appropriation. Upon reconsideration, the subsequent Idaho Supreme Court decision, *Potlatch Corp. v. United States of America*, 134 Idaho 916, 12 P.3d 1260 (2000), determined that the wilderness designations did not reserve water rights for the wilderness. As a result of the latest Supreme Court decision in *Potlatch*, the Wild and Scenic Rivers Agreement, and related federal reserved water rights, there is additional water available for appropriation within the limitations described by the Wild & Scenic Agreement and the partial decrees for related federal reserved water rights.

6. The prohibition of new water right appropriations and development authorized by permits to appropriate water by the Director's Wilderness Order dated October 26, 1999, can be rescinded and processing of applications to appropriate water and continued development authorized under existing permits to appropriate water can be allowed.

7. Permit holders who were prohibited from completing application of water for the beneficial use authorized under existing permits are entitled to additional time to complete application of water for beneficial use. For each permit, the additional time granted for completing development should be equal to the number of days from the date the Wilderness Order was issued to the date proof of beneficial use was originally due under the permit. The Department should issue an order subsequent to this order establishing the additional time to complete development delayed by the Wilderness Order and specifying the revised date for filing proof of beneficial use for each permit.

ORDER

IT IS HEREBY ORDERED that the *Amended Moratorium Order*, issued on April 30, 1993, prohibiting appropriations of surface water in the Salmon and Clearwater River Basins, is **RESCINDED**.

IT IS FURTHER ORDERED that the *Moratorium Order*, issued on October 26, 1999, prohibiting appropriations of surface and ground water and development of permits for the use of surface water or ground water in and tributary to the Selway-Bitterroot Wilderness Area, the Gospel-Hump Wilderness Area, and the Frank Church River of No Return Wilderness Areas, is **RESCINDED**.

IT IS FURTHER ORDERED that permit holders who were prohibited from completing beneficial use of water authorized under existing permits by the *Moratorium Order* issued on October 26, 1999, are granted additional time for completing the beneficial use authorized. For

each permit, the additional time granted for completing development shall be equal to the number of days from the date the Wilderness Order was issued to the date proof of beneficial use was originally due for the permit. The Department shall issue an order subsequent to this order allowing additional time for completion of beneficial use delayed by the Wilderness Order and specifying a date for filing proof of beneficial use for each permit.

IT IS FURTHER ORDERED that appropriations of ground water and surface water within the Salmon River Basin may resume subject to the requirements of the Wild and Scenic Agreement and the federal reserved water rights decreed in accordance with that stipulated agreement.

IT IS FURTHER ORDERED that Department staff shall process new applications to appropriate water generally in the chronological order of the receipt of the applications. Department staff shall also process a reasonable number of applications per month considering all other duties assigned to Department staff.

Dated this 9th day of November, 2005.



KARL J. DREHER
Director

**EXPLANATORY INFORMATION
TO ACCOMPANY A
FINAL ORDER**

(To be used in connection with actions when a hearing was not held)

(Required by Rule of Procedure 740.02)

The accompanying order is a "Final Order" issued by the department pursuant to section 67-5246, Idaho Code.

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a final order within fourteen (14) days of the service date of this order as shown on the certificate of service. **Note: The petition must be received by the Department within this fourteen (14) day period.** 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 67-5246(4), Idaho Code.

REQUEST FOR HEARING

Unless the right to a hearing before the director or the water resource board is otherwise provided by statute, any person who is aggrieved by the action of the director, and who has not previously been afforded an opportunity for a hearing on the matter shall be entitled to a hearing before the director to contest the action. The person shall file with the director, within fifteen (15) days after receipt of written notice of the action issued by the director, or receipt of actual notice, a written petition stating the grounds for contesting the action by the director and requesting a hearing. See section 42-1701A(3), Idaho Code. **Note: The request must be received by the Department within this fifteen (15) day period.**

APPEAL OF FINAL ORDER TO DISTRICT COURT

Pursuant to sections 67-5270 and 67-5272, Idaho Code, any party aggrieved by a final order or orders previously issued in a matter before the department may appeal the final order and all previously issued orders in the matter 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: a) the service date of the final order, b) an order denying petition for reconsideration, or c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration, whichever is later. See section 67-5273, Idaho Code. The filing of an appeal to district court does not in itself stay the effectiveness or enforcement of the order under appeal.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21st day of November, 2005, a true and correct copy of the above and foregoing documents described below were served on the following by placing a copy of the same in the United States mail, postage prepaid and properly addressed to the following:

Document(s) Served: Order Rescinding Salmon-Clearwater Basin Moratorium and Wilderness
Moratorium
Explanatory Information to Accompany a Final Order

See attached service list.


Deborah J. Gibson
Administrative Assistant

Name	Address	City	State	Postal Code
PATRICK W LEE	C/O JOHN T BROWN PO BOX 61	SUN VALLEY	ID	83353
STANLEY SEWER ASSN	PO BOX 71	STANLEY	ID	83278
SALMON RIVER HEREFORD RANCH	HC 63 BOX 1760	CHALLIS	ID	83226
ELINOR J CORRIGAN	PO BOX 569	CHALLIS	ID	83226
MOUNTAIN SPRINGS WATER INC	PO BOX 628	CHALLIS	ID	83226
US DEPT OF INTERIOR	BUREAU OF LAND MANAGEMENT SALMON DISTRICT 1206 S CHALLIS ST	SALMON	ID	83467
ROBERT A PIVA	HC 63 BOX 1641	CHALLIS	ID	83226
DANA C HURLESS	HC 67 BOX 621	CLAYTON	ID	83227
TRENT J ROMAN	HC 82 BOX 4023-4	CHALLIS	ID	83226
PARKINSON FOUNDATION SEED FARM	C/O BOB PARKINSON PO BOX 65	ELLIS	ID	83235
THOMPSON CREEK MINING CO	PO BOX 62	CLAYTON	ID	83227
CHALLIS IRRIGATION CO	PO BOX 71	CHALLIS	ID	83226
TAIT P JOHNSON	1317 N 141ST AVE	OMAHA	NE	68154
ARCHIE SHERWOOD	PO BOX 163	CLAYTON	ID	83227
L & W STONE CORP	PO BOX 789	CHALLIS	ID	83226
DON M ONEAL	8 ONEAL LN	MAY	ID	83253-2003
US DEPT OF INTERIOR	BUREAU OF LAND MANAGEMENT SALMON DISTRICT 1206 S CHALLIS ST	SALMON	ID	83467
RICHARD L TYLER	796 LEE CREEK RD	LEADORE	ID	83464
ERNEST GEORGE HOLSCHER	BOX 96	LEADORE	ID	83464
ROBERT L THOMAS	12 REBA LN	SALMON	ID	83467
EDWARD M SNOOK	1205 HWY 28	SALMON	ID	83467
STEPHANIE SNOOK	505 W WINDSOR CT	COEUR D ALENE	ID	83815
HARRY L COLEMAN	PO BOX 70	LEADORE	ID	83464-0070
SHIRLEY R COLEMAN	435 TEE CIR	ST GEORGE	UT	84770
JAMES KRUCKEBERG	411 EIGHTEEN MILE RD	LEADORE	ID	83464-5030
GERALD R MORPHEY	PO BOX 625	SALMON	ID	83467-0625
ALBERT D ANDERSON	5425 BUNDY AVE NORTH	KEISER	OR	97303
JERRY G BLACKBURN	PO BOX 41	LEADORE	ID	83464
VELMA MAHAFFEY	PO BOX 14	LEMHI	ID	83465
DALE A PETERSON	PO BOX 67	LEADORE	ID	83464
WILLIAMS LAKE RECREATIONAL WATER & SEWER DISTRICT	PO BOX 82	SALMON	ID	83467
E J SCHWARZENBERGER	PO BOX 146	UCON	ID	83454
MERRIDEE S OVERACKER	1510 HWY 93 N	SALMON	ID	83467
MICHAEL J OVERACKER	162 HIGHWAY 93 N	SALMON	ID	83467-5301
LEWIS E ROSS	HC 10 BOX 112	GIBBONSVILLE	ID	83463
THOMAS CHARLES PIKE	3478 SALMON RIVER RD	SHOUP	ID	83469-6506
J REX TOLMAN	41 CORBETT LN	SALMON	ID	83467
SALMON RIVER PROPERTIES INC	PO BOX 774	SALMON	ID	83467
DONALD L HAWKINS	14429 WATKINS DR	LA MIRADA	CA	90638
DIXIE GRAVES	PO BOX 963	SALMON	ID	83467
GUY M CARLSON	PO BOX 319	RIGGINS	ID	83549
JOE B SCOTT	380 E PARKCENTER BLVD STE 100	BOISE	ID	83706
WELLS LIVESTOCK INC	512 N BROADWAY	BUHL	ID	83316
JACK A WALKER		YELLOW PINE	ID	83677
SALMON RIVER TOURS CO	PO BOX 779	NORTH FORK	ID	83466
KENNETH D CASPER	812 7TH ST S	NAMPA	ID	83651
DALE J LACRONE	BOX 63	NEW PLYMOUTH	ID	83655
UNIVERSITY OF IDAHO REGENTS	C/O GERARD BILLINGTON FINANCE & ADMINISTRATION PO BOX 443162	MOSCOW	ID	83844-3162
BARBARA G PYLE	77 SILVER FOX TR	MC CALL	ID	83638
STEVE M WRIGHT	PO BOX 1450	MCCALL	ID	83638
RICHARD L PULLEN	STAR RT	POLLOCK	ID	83547
ROBERT J KYRK	HC75 BOX 3546	NEW MEADOWS	ID	83654
THOMAS D MEES	1882 POLE CREEK RD	COUNCIL	ID	83612
WAYNE H REDENBAUGH	PO BOX 275	POLLOCK	ID	83547
RAYMOND K STOLTEY	HC 75 BOX 3556	NEW MEADOWS	ID	83654

DELBERT M WELCH	PO BOX 962	VALDEZ	AK	99686
PAUL SAND	PO BOX 16	WHITE BIRD	ID	83554
JAMES E BONATO	PO BOX 350	LUCILE	ID	83542
BONNIE E KANNADA	PO BOX 55	WHITE BIRD	ID	83554
EUGENE H TENNIES	HCR 75 BOX 32	KOOSKIA	ID	83539
RUSSELL C TRAINOR	HCR 75 BOX 38 A	KOOSKIA	ID	83539
USDA FOREST SERVICE	NEZ PERCE NATIONAL FOREST □ SUPERVISORS OFFICE □ 1005 HIGHWAY 13	GRANGEVILLE	ID	83530
US DEPT OF AGRICULTURE	US FOREST SERVICE □ CLEARWATER NATIONAL FOREST □ 12730 HWY 12	OROFINO	ID	83544 9333
FRANK CAPITO	PO BOX 2545	COEUR D ALENE	ID	83816
GARY BOWLING	3366 N CROFT WAY	EAGLE	ID	83616
AHSAHKA WATER & SEWER DIST	PO BOX 37	AHSAHKA	ID	83520
IDAHO WATER RESOURCE BOARD	PO BOX 83720	BOISE	ID	83720-0098
DON R BERRY	PO BOX 424	LEWISTON	ID	83501
CITY OF KOOSKIA	PO BOX 126	KOOSKIA	ID	83539-0126
MARK LADOUX	PO BOX 149	PECK	ID	83545-0149
JOSEPH SCHNELL	RR 2 BOX 311A	GRANGEVILLE	ID	83530
CITY OF KENDRICK	PO BOX 195	KENDRICK	ID	83537
PORT OF LEWISTON	1626 6TH AVE N	LEWISTON	ID	83501

RECEIVED

DEC 13 1999

Department of Water Resources

December 8, 1999

Glen Saxton
Water Allocation Bureau Chief
Idaho Department of Water Resources
1301 North Orchard Street
P.O. Box 83720
Boise, ID 83720-0098

Re: Petition For Reconsideration Of Final Moratorium Order
As It May Be Applied To Applications For Permit
Numbers 71-07178 and 71-07179

Dear Mr. Saxton:

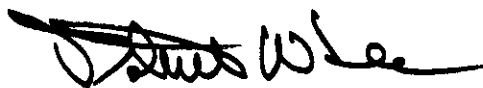
On November 8, 1999, we petitioned for reconsideration of the Final Moratorium Order issued by the Department of Water Resources in response to the decision of the Idaho Supreme Court in Potlatch Corporation, et al. vs. United States of America in the SRBA. On November 10, the Department issued an order granting our Petition For Reconsideration, allowing us an opportunity to submit additional information relating to our applications.

In response to that order granting our Petition For Reconsideration, we asked in a telephone conversation with you for scheduling of a hearing date to submit further information, a request that you agreed to. Subsequent to our conversation, the Idaho Supreme Court agreed, on November 30, to rehear the Potlatch case on which the Moratorium Order of the Department of Water Resources was based. In light of the action of the Idaho Supreme Court, it probably makes sense, in terms of utilization of your resources and final determination of the water appropriation permit applications 71-07178 and 71-07179, to postpone hearing and submission of additional information by us until the Supreme Court has heard and acted upon arguments and briefs in the Potlatch case in its February term. Accordingly, we request that the Department of Water Resources hold in abeyance further

Glen Saxton
December 8, 1999
Page 2

proceedings on our request to reconsider the Moratorium Order as it applies to our pending water appropriation permit applications until after the Supreme Court has acted on rehearing in the Potlatch case, and at that time schedule the hearing you have granted.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Patrick W. Lee", with a stylized flourish at the end.

Patrick W. Lee

cc: Jack Brown

RECEIVED

NOV 12 1999

Department of Water Resources

425 8th Street, NW #342
Washington, DC 20004

November 8, 1999

VIA FACSIMILE and FIRST CLASS MAIL

Sharla Curtis
Senior Water Resource Agent
Department of Water Resources
1301 North Orchard Street
P.O. Box 83720
Boise, ID 83720-0098

Dear Ms. Curtis:

In view of the Final Moratorium Order of the Department of Water Resources dated October 26, 1999, I have amended our Application for Permit 71-07179 and submit that application herewith.

As you know, the Final Moratorium Order by its terms excludes from the moratorium all applications for non-consumptive uses. The amendment to our application submitted herewith eliminates the proposed consumptive irrigation use and limits the Application for Permit No. 71-07179 to diversion of groundwater for wildlife storage purposes -- a non-consumptive use. By our earlier agreement to the terms of your September 15, 1999 letter, Application for Permit No. 71-07178 was already limited to non-consumptive storage use. Accordingly, we request that you proceed to issue permit approval documents 71-07178 and 71-07179 as indicated in your letter of September 15, 1999, exclusive of the proposed irrigation use and limited to storage use.

Sincerely yours,



Patrick W. Lee

Attachment



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, P.O. Box 83720, Boise, Idaho 83720-0098

Phone: (208) 327-7900 FAX: (208) 327-7866

November 10, 1999

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

PATRICK W LEE
425 8TH STREET NW #342
WASHINGTON DC 20004

RE: Water Appropriation Applications 71-07178 and 71-07179

Order Granting Petition for Reconsideration

Dear Mr. Lee:

Today I received your letter asking the Department of Water Resources (IDWR) to continue processing Water Appropriation Applications 71-07178 and 71-07179 with the irrigation use removed from 71-07179. Although you have not specifically described it as such, I will treat your letter as a petition for reconsideration of the decision by IDWR to hold your applications in conformance to the October 26, 1999, Wilderness Area Moratorium Order.

According to your letter, it is your understanding that the terms of the moratorium order allow IDWR to process your applications for wildlife storage because it is a non-consumptive use. Last week I sent you and John T. Brown a letter explaining why your applications cannot be processed under the provisions of the moratorium order. A copy of my letter, which was mailed to Mr. Brown's address, is enclosed. Even with the irrigation use removed from Application 71-07179, the moratorium still prevents your applications from being processed. Instead of allowing Lost Creek water to sink and to recharge the shallow groundwater, which is likely tributary to the Salmon River, Application 71-07178 proposes to impound Lost Creek water. By impounding the water, it is exposed to evaporation that would not otherwise have occurred. Similarly, by pumping and impounding groundwater under Application 71-07179 you would be exposing the water to evaporation that would not otherwise occur. Because of the increased evaporation that occurs when water is impounded, wildlife storage is a consumptive use of water. For these reasons, I cannot continue to process your applications at this time.

Nevertheless, there are some circumstances under which your application could be processed. For example, your applications might be processed if you could show that evaporation from the proposed ponds would merely offset evapotranspiration from significant vegetation growing under natural conditions at the same location. Please note, however, I have reviewed the aerial photographs you provided with your applications, and they do not appear to show much vegetation along the channels formed by Lost Creek where the ponds are to be located. As stated

Patrick W. Lee
November 10, 1999
Page 2

in my previous letter, your application might also be processed if you offer a mitigation plan acceptable to IDWR. Therefore, your petition for reconsideration is **GRANTED** to allow you the opportunity to collect and submit a mitigation plan or additional information that might allow your applications to be processed. Meanwhile, I will hold your applications indefinitely in conformance with the moratorium order.

If you have any questions, please contact me at 208-327-7946.

Respectfully,

A handwritten signature in black ink that reads "Shelley Walter Keen". The signature is written in a cursive, flowing style.

Shelley Walter Keen
Water Rights Supervisor

Cc: John T. Brown



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, P.O. Box 83720, Boise, Idaho 83720-0098

Phone: (208) 327-7900 FAX: (208) 327-7866

November 2, 1999

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

PATRICK W LEE
JOHN T BROWN
C/O JOHN T BROWN
PO BOX 61
SUN VALLEY ID 83353

RE: Water Appropriation Applications 71-07178 and 71-07179

Dear Mr. Lee and Mr. Brown:

Last week the Department of Water Resources (IDWR) mailed you a copy of the moratorium order issued October 26, 1999, for most of the Salmon River drainage. Your two water appropriation applications, 71-07178 and 71-07179, propose to establish new water rights within the area affected by the moratorium order. The moratorium order allows for processing an application only if one or more of the following criteria is met.

1. The application proposes a non-consumptive use of water.
2. The use of the water pursuant to the application would have no affect on other water rights due to the proposed location of use.
3. The use of the water pursuant to the application would have no affect on other water rights due to mitigation provided by the applicant.

The first exception does not apply to your applications because the irrigation use proposed in Application 71-07179 is consumptive and the wildlife storage use proposed in both applications is also consumptive. Wildlife storage is consumptive because of the increased evaporation that would occur when the water is impounded. The second exception does not appear to apply because a direct hydrologic connection between the sources named in your applications and the Salmon River is highly probable. The third exception does not apply because you have not offered a source of water to mitigate for your proposed water uses. For these reasons, I cannot continue to process your applications at this time. I will hold your applications indefinitely in conformance with the moratorium order unless you offer a mitigation plan or other information showing that your applications can be processed under the exception criteria listed above.

Patrick W. Lee
John T. Brown
November 2, 1999
Page 2

If you have any questions, please contact me at 208-327-7946.

Respectfully,

A handwritten signature in cursive script that reads "Shelley Walter Keen". The signature is fluid and written in dark ink.

Shelley Walter Keen
Water Rights Supervisor

UNITED STATES POSTAL SERVICE
OFFICIAL BUSINESS

SENDER INSTRUCTIONS

Print your name, address and ZIP Code in the space below.

- Complete Items 1, 2, 3, and 4 on the reverse.
- Attach to front of article if space permits, otherwise affix to back of article.
- Endorse article "Return Receipt Requested" adjacent to number.

RECEIVED

NOV 1 - 1999



Department of Water Resources

PENALTY FOR PRIVATE
USE, \$300

RETURN
TO



Print Sender's name, address, and ZIP Code in the space below.

STATE OF IDAHO
DEPT. OF WATER RESOURCES
1301 N. ORCHARD
BOISE, IDAHO 83706

10A



United States Postal Service

Official Business

RECEIVED

NOV 1 - 1999



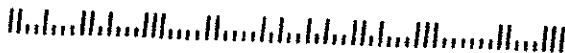
Department of Water Resources

PENALTY FOR PRIVATE
USE, \$300

Print your name, address and ZIP Code here

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
1301 NORTH ORCHARD STREET
BOISE, IDAHO 83706-2237

WA



Z 269 222 009

US Postal Service

Receipt for Certified Mail

No Insurance Coverage Provided.

Do not use for International Mail.

Sent to	
Street & Number	
Post Office, State, & ZIP Code	
Postage	\$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to Whom & Date Delivered	
Return Receipt Showing to Whom, Address, & Addressee's Address	
TOTAL Postage & Fees	\$
Postmark or Date	

ID 62350

71-07178
 PATRICK W LEE
 C/O JOHN T BROWN
 PO BOX 61
 SUN VALLEY

PS Form 3800, April 1995

Z 269 221 993

US Postal Service

Receipt for Certified Mail

No Insurance Coverage Provided.

Do not use for International Mail.

Sent to	
Street & Number	
Post Office, State, & ZIP Code	
Postage	\$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to Whom & Date Delivered	
Return Receipt Showing to Whom, Address, & Addressee's Address	
TOTAL Postage & Fees	\$
Postmark or Date	

ID 62350

71-07178
 JOHN T BROWN
 PO BOX 61
 SUN VALLEY

PS Form 3800, April 1995



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, P.O. Box 83720, Boise, Idaho 83720-0098

Phone: (208) 327-7900 FAX: (208) 327-7866

September 15, 1999

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

John T. Brown &/or
Patrick W. Lee
PO Box 61
Sun Valley, ID 83353

RE: Applications for Permit Nos. 71-07178 and 71-07179

Dear Applicants:

The above referenced applications have been forwarded from our regional office in Idaho Falls to the State Office here in Boise for permit review. The protest of Idaho Fish and Game was withdrawn by letter (copy enclosed). I wanted to be sure that you had an opportunity to review their letter and to let us know that you agreed with the changes listed therein.

If you agree with the changes, the department will prepare permit approval documents as follows:

71-07178

5.5 acre feet for wildlife storage
diverted from Lost Creek

71-07179

0.5 cubic feet per second for irrigation of 25 acres (the maximum
number of acres that can be irrigated at an inch per acre with 0.5 cfs)
0.5 cfs for diversion to storage
5.5 acre feet for wildlife storage

If you accept the above changes, we need you to identify the location of the 25 acres. The application originally identified 50 acres (20 in the NWSE and 30 in the SWSE). Please identify for us which 25 acres you will irrigate from the well under 71-07179.

As soon as you let us know that you concur with these changes and identify the location of the 25 acres, we can complete our review of the applications and prepare permits for administrative approval. If you have any other questions or concerns, please contact me at 327-5452.

Sincerely,

A handwritten signature in cursive script that reads "Sharla Curtis".

Sharla Curtis
Senior Water Resource Agent

RECEIVED

AUG 27 1999

MEMO

Department of Water Resources

FROM: Allen Merritt



DATE: August 24, 1999

TO: Application for Permit No: 71-07178 & 71-07179

In the Name of: Patrick W. Lee &/or John T. Brown

SUBJECT: Review and Recommendation

These two applications are for a development of water for use in ponds for wildlife and irrigation of a pasture. Application 71-07178 is for water from Lost Creek and 71-07179 is for water from a well. Since the applications are related to the same project they were advertised together. The proposed site is within the Salmon River Drainage where a moratorium exists for surface water development due to impacts on Salmon. The applicant was informed of the moratorium. The applicant requested processing since Lost Creek is not tributary to the Salmon River and does not impact Salmon. The applicant provided maps, etc. to demonstrate that Lost Creek is not tributary to the Salmon River.

I decided to process both applications but provide specific notice to IDF&G, SNRA, USFWS, USNMFS & USFS. (See letter 10/27/98) IDF&G initially filed a letter of protest of both applications without fee then finalized protest of the Lost Creek application. USFS commented in letter dated 11/19/98 that the Lost Creek although it sinks it influences flows in Salmon River and at times the Salmon River dries up and prevents fish passage.

IDF&G ultimately withdrew their protest in a letter dated 8/4/99 which outlines an agreement where certain things were to be done and which limited use of both applications.

RECOMMENDATION:

The issue of the moratorium needs to be reviewed by the administration. It appears to me that if these applications are approved subject to the private agreement that the "salmon fishery" issue has been addressed and IDF&G is satisfied. I recommend that the agreement be incorporated in approval and that it be issued as a preliminary order with notice being provided to the same parties as listed above. I recommend that the following be considered for conditions of approval:

-Permit 71-07178 is non-consumptive and authorized for use as follows:

5.5 af Storage for Wildlife in two ponds to be constructed on-stream (On existing or reconstructed Lost Creek Channel).

-Permit 71-07178 is subject to private agreement with F&G whereby Lost Creek channel must be restored to reconnect flow to Salmon River. This work must be accomplished pursuant to an approved plan which has been reviewed by IDF&G and subject to a SCA permit and Corp of Engineers 404 permit

-Permit 71-07179 is authorized for use as follows:

0.5 cfs for irrigation of 25 acres (1"/acre).

0.5 cfs for injection into Lost Creek for wildlife.

-Total authorized diversion rate is 0.5 cfs.

-Well authorized to be drilled under 71-07179 must be drilled pursuant to an approved drilling permit.

-Well must have an installed meter to measure peak discharge.



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

August 9, 1999

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

JOHN T BROWN
PO BOX 61
SUN VALLEY ID 83353

RE: Applications for Permit No. 71-07178 (Lost Creek) & No. 71-07179 (Groundwater) filed in the name of Patrick W. Lee &/or John T. Brown

Dear Applicants:

We have received a withdrawal of the protest filed by the Idaho Dept. Fish & Game against approval of Application No. 71-07178.

Since they were the only protestant, the issue of the protest has been resolved and the Department is now prepared to proceed with the normal processing of that application and companion application which includes regional review prior to being forwarded to our State Office.

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



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

August 9, 1999

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

JAMES R LUKENS
REGIONAL SUPERVISOR
ID DEPT FISH & GAME
PO BOX 25
BOISE ID 83707-0025

RE: Application for Permit No. 71-07178 (LEE, Patrick &/or BROWN,
John T.)

Dear Mr. Lukens:

This office acknowledges receipt of the withdrawal of your protest
against the above referenced application.

Since you were the only protestant, the issue of the protest has
been resolved and the Department is now prepared to proceed with
the normal processing of the application which includes regional
review prior to being forwarded to our State Office.

The Department will continue review of the application without
further contact with you unless information is requested.

Please feel free to contact this office if you have any questions
regarding this procedure.

Very truly yours,

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

AM:MB



IDAHO FISH AND GAME
600 South Walnut/PO Box 25
Boise, Idaho 83707-0025

Dirk Kempthorne/Governor
Jerry Mallet/Interim Director

August 4, 1999

James E. Stanton
Sr. Water Resource Agent
Idaho Department of Water Resources
1341 Fillmore St. Suite 200
Twin Falls, Idaho 83301

RECEIVED

AUG 09 1999

**Department of Water Resources
Southern Region**

RE: Application No. 71-07178 & 71-07179

Dear Mr. Stanton:

Department personnel have reviewed the applications by Jack Brown and Pat Lee to develop water for two fish ponds and to provide irrigation water for grass production for up to six horses. Mike Larkin, our fisheries manager, met with Mr. Brown on 7/23/99, and came to the following agreement: (1) continue to use the existing diversion from Lost Creek to supply a base flow into the two ponds, and (2) develop a 0.5cfs well to augment the flow into the ponds during mid-summer. The overflow from the ponds would then be adequate to provide the irrigation water needed for six horses.

The remaining channels of Lost Creek could be restored into a natural channel which could reconnect to the Salmon River. Presently, Lower Lost Creek is being diverted with no water right onto the neighbor's property. Mr. Brown discussed the option of filing on this water for fish propagation and if feasible, reconnect the channel to the Salmon River. Although this is a very small stream, chinook parr frequently use this type of habitat for rearing. Mr. Larkin also recommended that Mr. Brown work with the SNRA to install a culvert in Valley Road to avoid driving through Lost Creek. With these changes we withdraw our protest.

Thanks for the opportunity to comment.

Sincerely,

James R. Lukens
Regional Supervisor

JRL:MRL:jw

cc: Mike Larkin
Gary Gadwa
Brent Snider
Pat Marcuson
Jack Brown
Becky Nourse
Natural Resources Bureau

RECEIVED

DEC 23 1998

Department of Water Resources
Southern Region

December 22, 1998

Mr. Allen D. Merritt, P.E.
Southern Region Manager
Department of Water Resources
1341 Fillmore Street, Suite 200
Twin Falls, Idaho 83301-3380

Re: Application for Perm [REDACTED]

Dear Mr. Merritt,

Thank you for your letter of December 16, 1998.

On December 17, 1998 I spoke with the protestant in this matter, Mike Larkin of Idaho Fish and Game Department.

Mr. Larkin would like to defer any discussion until we can meet and review the site.

With winter already here, it will probably be mid-May of 1999 before we can again see the ground at the site.

We would ask that you hold this application in abeyance until we can seek a resolution to the protest short of asking for action by IDWR.

Thank You.

Sincerely,



John T. Brown

cc: Mike Larkin, IF & G



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

December 16, 1998

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

JOHN T BROWN &/OR
PATRICK W LEE
PO BOX 61
SUN VALLEY ID 83353

RE: APPLICATION FOR PERMIT NO. 71-07178

Gentlemen:

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

Please note that your application is considered a contested case and subject to the Rules of Procedure adopted by the Department.

If you need a copy of these rules, please contact this office. The Rules of Procedure are also available on the Internet by using the IDWR Homepage at the following electronic address:

<http://www.idwr.state.id.us/apa/idapa37/0101.htm>

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 wish to proceed with a Pre-hearing Conference &/or formal Hearing, please notify this office.

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

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

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

December 16, 1998

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

ATTN MIKE LARKIN
ID DEPT OF FISH & GAME
PO BOX 1336
SALMON ID 83467

RE: APPLICATION FOR PERMIT 71-07178

Dear Protestant(s):

Your protest against the approval of the above referenced application 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.

Please note that the application is considered a contested case and subject to the Rules of Procedure adopted by the Department.

If you need a copy of these rules, please contact this office. The Rules of Procedure are also available on the Internet by using the IDWR Homepage at the following electronic address:

<http://www.idwr.state.id.us/apa/idapa37/0101.htm>

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 Department of Fish and Gam.
Request for Services and Supplies34723
Project Cost Account(s) (PCA)11/20/98
Date

Quantity	Complete Specifications for Purchase	Est. Cost
1	Protest Fee - Idaho Dept of Water Resources Receipt Required TO Clear Rotary Loan # 070634 11/23/98 RECEIVED DEC 14 1998 Department of Water Resources Southern Region 826000952 DP 5999	\$25.00

Substitution

Justification

Suggested Sources

Deliver To IDWR, 1341 Fillmore St, Suite 200
Twin Falls, Idaho 83301Signature
395-48-4773

Concurrence, including Funds Availability

PCA Leader	Date
JE/mrp	11/20/98
Regional Supervisor	Date
Bureau Chief	Date
SMB/ms	11/23/98
Chief, Administration	Date
SPM/ms	11/23/98
Director	Date

Comments:

Rotary fund

Disposition (Purchasing/Engineer Use Only)

- ☐ Approved for your purchase. Have vendor put Req. # _____ on invoice.
- ☐ Item has been ordered. Copy of PO # _____ attached.
- ☐ Bids have been requested. Req. # _____ has been assigned.
- ☐ Sent to State Purchasing for bid. Req. # _____ has been assigned.
- ☐ EPA has been requested/approved. EPA # _____
- ☐ To be filled by Mailroom/Warehouse
- ☐ Other: _____
- ☐ Funds have been preencumbered.
- ☐ Funds have been preencumbered. Funds will be encumbered when purchase order is issued.
- ☐ Funds have been encumbered.



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

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

December 1, 1998

JOHN T BROWN
P O BOX 61
SUN VALLEY, ID 83353

RE: Request for files on Applications # 71-07178, # 71-07179

Dear Mr. Brown:

Enclosed are the copies of the above referenced application files that you requested in your Memo Via Fax of November 30, 1998.

Also, the Department is waiting for the \$25.00 Protest Fee from protestant Idaho Dept of Fish and Game-Salmon Region. This is the reason you have not yet received a copy of the Protest.

If we can be of further help to you, please let us know.

Sincerely,

A handwritten signature in cursive script that reads "Allan E. Bates".

Allan E. Bates
File Clerk

Enc.



STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
1341 FILLMORE STREET, SUITE 200
TWIN FALLS, ID 83301-3380
PH. (208) 736-3033

Date Dec 1, 1998
Name John H. Brown
Address PO Box 61 Sun Valley, Id 83353

No. of Copies	Materials	Cost
35	Copies of (71-07178) 54m	\$1.75
35	✓ - (71-07179) 54m	1.75
	per your request	
	Postage	3.00
		TOTAL \$6.50

Please find enclosed the form(s) and/or information you requested. The charge, if any, is indicated above.

If we may be of further assistance, please contact us.

Sincerely,

Allen E. Bates

MEMO VIA FAX

TO: Records Custodian/ Id. Dept. of Water Resources-
Southern Division

FROM: John T. Brown

DATE: November 30, 1998

NO. of Pgs. 1

FAX #: 208 736-3037

Re: Application # 71-07178, #71-07179

RECEIVED

NOV 30 1998

Department of Water Resources
Southern Region

Records Custodian,

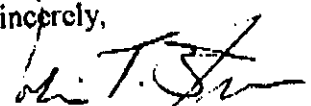
This is a public writing act request pursuant to 9-337 et. Seq. for copies of all writing and records which the IDWR has regarding the above referenced files. This request includes all notes, maps, photos, arial photos, c-mail transmissions and receipts, facsimiles and phone calls. If you claim that any documents are exempt form this request; please identify the particular documents, and the dates of those particular document, which you contend to be exempt under application of the law.

I agree to pay all costs associated with this request for copies. Please send the billing and documents to:

John T. Brown
P.O. Box 61
Sun Valley, Id. 83353
(208) 788-3888

Thank you for your assistance in this matter.

Sincerely,


John T. Brown



United States
Department of
Agriculture

Forest
Service

Sawtooth National
Recreation Area
1-800-260-5970

Star Route
Ketchum, Id. 83340
(208) 727-5000

"...to assure the preservation and protection of the natural, scenic, historic, pastoral, and fish and wildlife values and to provide for the enhancement of the recreational values associated therewith..."

File Code: 2540

Date: November 19, 1998

James Stanton
Idaho Department of Water Resources
1341 Fillmore Street, Suite 200
Twin Falls, ID 83301-3380

RECEIVED

NOV 23 1998

Department of Water Resources
Southern Region

Dear Mr. Stanton:

Thank you for your request for comment on the pending Applications for Permit No. 71-07178 and 71-07179 of Messrs. Brown and Lee. On October 21, 1998 several of my staff, including our hydrologist, reviewed the conditions of Lost Creek in the vicinity of the property of Messrs. Brown and Lee. Mr. Jack Brown, property co-owner, accompanied them. The purpose of the review was to observe the extent and nature of the Lost Creek system, and to specifically assess if it likely has any influence on the Salmon River. It is my understanding that the applicants claim Lost Creek has no effect on the potential migration of anadromous fish in the Salmon River.

My staff observed Lost Creek from where it crosses the Valley Road (194), to near Warm Creek, approximately 1 1/2 miles north. Through most of this distance, Lost Creek maintains considerable flow even in October. However, much of the channel length has established in an abandoned irrigation ditch, resulting in narrow, but moderate quality, sedge habitats. As of the day of review, flowing water carried to just south of the line separating Section 34 from 27, approximately 3/4 mile below the pond developments. Water flow diminished rapidly after a ditch division in the north 1/4 of Section 34. Beyond the last water, even the channel faded into the upper end of an extensive wetland. This wetland shortly leads to Warm Creek and then the Salmon River. The Lost Creek source appears to be closely associated with this particular finger and southern margin of the wetland. It is our opinion that, although no channel appears to connect Lost Creek with Warm Creek or the Salmon River, it's flows do, in fact, influence conditions there. As such, it appears the moratorium would appropriately apply to this proposed development. As recently as 1992, and again in 1994, the Salmon River was dry during summer and fall within the vicinity of the development prohibiting chinook migration. Please let me know if you have further questions, and please advise us of your decision on these permit applications.

Sincerely,

Steve Rinella
Acting Area Ranger

cc: IDFG, Salmon



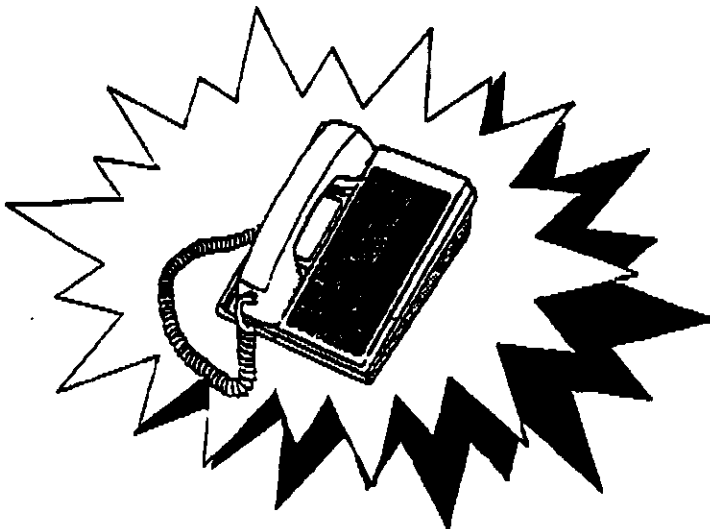
To: James StantonFrom: Mike Larkin

REGION 7
P.O. Box 1336
Salmon, Id 83467-1336
(208) 756-2271
FAX 756-6274

We are transmitting 3 page(s),
including this cover sheet. If the
transmission is not complete, please
call the Region 7 number at left.

MESSAGE

Protest Fee & Notice of Protest

**MX**

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
NOTICE OF PROTEST

RECEIVED

NOV 20 1998

Department of Water Resources
Southern Region

This form may be used to file a protest with the department under sections 42-108B, 42-203A, 42-203C, 42-211, 42-222 and 42-224, Idaho Code. The department will also accept a timely protest not completed on this form if it contains the same information.

Matter being protested Application #'s 71-07178 + ~~71-07179~~

Name of protestant Idaho Fish & Game - Salmon Region

Protestant's representative for service (If different than protestant)

Mike Larkin

Service mailing address Box 1336 Salmon, Idaho 83467

Service telephone no. 208-756-2271

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

Surface water withdrawal potential impact
on fishery resources

(additional pages may be attached to describe the nature of the protest)

What would resolve your protest? Work with landowners to
understand their needs, current use, and
potential impact on river system.

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 certify that I have served a copy of this protest upon the applicant.

Signed this 20 day of Nov, 1998

Idaho Fish & Game
PROTESTANT

Mike Larkin
PROTESTANT'S REPRESENTATIVE

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 J.F. Sturten Date 11-20-98 Time 9:25 am
\$25.00 fee Receipted by MB # 5021673 Date 12/14/98

Form BA-1
7/91Idaho Department of Fish and Game
Request for Services and Supplies34723
Project Cost Account(s) (PCA)11/20/98
Date

Quantity	Complete Specifications for Purchase	Est. Cost
1	Protest Fee - Idaho Dept of Water Resources	\$25.00

Substitution

Justification

Suggested Sources

Deliver To IDWR, 1341 Fillmore St, Suite 200
Twin Falls Idaho 83301

Signature

Concurrence, including Funds Availability

PCA Leader _____ Date _____
 Regional Supervisor JE/MRA Date 11/20/98
 Bureau Chief _____ Date _____
 Chief, Administration _____ Date _____
 Director _____ Date _____

Comments:

Disposition (Purchasing/Engineer Use Only)

- ☐ Approved for your purchase. Have vendor put Req. # _____ on invoice.
- ☐ Item has been ordered. Copy of PO # _____ attached.
- ☐ Bids have been requested. Req. # _____ has been assigned.
- ☐ Sent to State Purchasing for bid. Req. # _____ has been assigned.
- ☐ EPA has been requested/approved. EPA # _____
- ☐ To be filled by Mailroom/Warehouse
- ☐ Other: _____
- ☐ Funds have been preencumbered.
- ☐ Funds have been preencumbered. Funds will be encumbered when purchase order is issued.
- ☐ Funds have been encumbered.

AFFIDAVIT OF PUBLICATION

State of Idaho, County of Custer, ss:

1. Ruth E. Burchill, representing the Challis Messenger, a weekly newspaper, published at Challis, Idaho, do solemnly swear that the notice hereto attached and made a part hereof, was published in the regular and entire issue of the Challis Messenger for 2 consecutive weeks, commencing with the issue dated Nov 5 1998 and ending with the issue dated Nov 12 1998.

Ruth E. Burchill

STATE OF IDAHO

COUNTY OF CUSTER

On this 12th day of Nov in the year of 1998 before me, a Notary Public, personally appeared Ruth E. Burchill known or identified to me to be the person whose name subscribed to the within instrument, and being by me first duly sworn, declared that the statements therein are true, and acknowledged to me that he executed the same.

Robert M. Beck
Notary Public for Idaho

Residing at Challis, Id.

My commission expires: 3-19-2004

NOTICE OF APPLICATION FOR WATER RIGHT

The following applications have been filed to appropriate the public waters of the State of Idaho:

PATRICK W LEE &/OR

JOHN T BROWN

PO BOX 61

SUN VALLEY ID 83353

Application for Permit No. 71-07178

Source: Lost Creek tributary to sinks
Diversion Pt(s): SW1/4SE1/4,
SE1/4SE1/4, S34, T08N, R14E; Custer
County.

Uses:

Irrigation*1.0 cfs*05/01-09/30

Storage for Wildlife*5.5 afa*01/01-12/31

Storage for Irr.*5.5 afa*05/01-09/30

Div.to Storage*1.0 cfs*01/01-12/31

Total Diversion: 1.0 cfs

In: Aesthetic Storage & Wildlife
Storage within SW1/4SE1/4 and
Irrigation of 50 acres within
W1/2SE1/4, all S34, T08N, R14E;
Custer County.

Date Filed: 08/10/98

Application for Permit No. 71-07179

Source: groundwater

Diversion Pt(s): SW1/4SE1/4, S34,
T08N, R14E; Custer County.

Uses:

Diversion to Storage*1.0 cfs*01/01-12/31

Storage for Wildlife*5.5 afa*01/01-12/31

Irrigation*1.0 cfs*05/01-09/30

In: Irrigation of 50 acres within
W1/2SE1/4 and Wildlife Storage within
SW1/4SE1/4, all S34, T08N, R14E.

Date Filed: 08/10/98

The applications propose to divert surface water/groundwater within the "Salmon and Clearwater River Basins" presently under a moratorium order dated May 15, 1992. The order allows the Director to consider on a case-by-case basis applications if it can be shown the development will have no effect on prior surface and groundwater rights because of its location, insignificant consumption, or mitigation by the applicant to offset injury to other rights. The applicant has submitted supportive documents as part of the application. ~~Any protest~~ against the proposed applications must be filed with the Department of Water Resources,

Southern Region, 1341 Fillmore St., Suite 200; Twin Falls, ID 83301 together with a protest fee of \$25.00 on or before November 23, 1998 to be considered by the Department in its decision to grant or deny any part of the proposed application. (Each application requires a separate protest). The protestant must also send a copy of the protest to the applicant.
Karl J. Dreher, Director

Pub: Nov. 5 & 12, 1998.

RECEIVED

OK
MB
11/13/98

TRANSMISSION VERIFICATION REPORT

TIME : 11/10/1998 14:40
NAME : IDWR SOUTHERN REGION
FAX : 2087363037
TEL : 2087362033

DATE, TIME
FAX NO./NAME
DURATION
PAGE(S)
RESULT
MODE

11/10 14:39
912087566274-244305
00:00:50
03
OK
STANDARD
ECM



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

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

November 10, 1998

Mike Larkin
Idaho Fish & Game Dept.
PO Box 1336
Salmon, ID
83467

FAXED This Date

RE: App. for Permit 71-07178 & 07179; Your Letter Dated 11-9-98

Dear Mr. Larkin;

We have received your letter protesting the above-referenced applications. There is a \$25. protest fee per application, however, and this did not accompany the letter. The applications are being processed together at the applicant's request, but only 71-07178 is for surface water. Although not absolutely required, we have a standard protest form that we suggest be used. We will keep your letter on file for information purposes, but this cannot be considered an official protest without the fee. A protest form is enclosed for your use. The last day for protests on these applications is November 23.

Regards,

A handwritten signature in cursive script that reads 'Jim'.

James E. Stanton
Sr. Water Resource Agent



IDAHO FISH AND GAME

1215 Hwy 93 N
P.O. Box 1336
Salmon, Idaho 83467
208-756-2271

Philip E. Batt/Governor
Stephen P. Mealey/ Director

November 9, 1998

Mr. James E. Stanton
Sr. Water Resource Agent
Idaho Dept of Water Resources
1341 Filmore St. Suite 200
Twin Falls, Idaho 83301-3380

RECEIVED
NOV 10 1998
Department of Water Resources
Southern Region

RE: Application No.'s 71-07178 & 71-07179

Dear Mr. Stanton:

The Idaho Department of Fish and Game, Salmon Region, is concerned the additional surface water use in this area may impact fishery resources. Chinook salmon, bull trout, as well as other resident trout species, use adjacent waters for rearing. The application does not fully explain how Lost Creek water is used now, and how this application will impact side channels of the Salmon River.

Until we have a chance to meet with the landowners and understand how this system functions now and how it will likely function in the future, we protest further development of this application.

Thanks for the opportunity to comment.

Sincerely

Mike Larkin
Regional Fisheries Manager
Salmon Region

CC: Dale Bregy, NMFS
Mike Donahoo, USFWS
Cindy Robertson, IDFG

NOTICE OF APPLICATIONS FOR
WATER PERMIT

The following applications have been
filed to appropriate the public waters of
the State of Idaho:

PATRICK W LEE &/OR

JOHN T BROWN

PO BOX 61

SUN VALLEY ID 83353

Application for Permit No. 71-07178

Source: Lost Creek tributary to sinks
Diversion Pt(s): SW1/4SE1/4,
SE1/4SE1/4, S34, T08N, R14E; Custer
County.

Uses:

Irrigation*1.0 cfs*05/01-09/30

Storage for Wildlife*5.5 afa*01/01-12/31

Storage for Irr.*5.5 afa*05/01-09/30

Div.to Storage*1.0 cfs*01/01-12/31

Total Diversion: 1.0 cfs

In: Aesthetic Storage & Wildlife
Storage within SW1/4SE1/4 and
Irrigation of 50 acres within
W1/2SE1/4, all S34, T08N, R14E;
Custer County.

Date Filed: 08/10/98

Application for Permit No. 71-07179

Source: groundwater

Diversion Pt(s): SW1/4SE1/4, S34,
T08N, R14E; Custer County.

Uses:

Diversions to Storage*1.0 cfs*01/01-12/31

Storage for Wildlife*5.5 afa*01/01-12/31

Irrigation*1.0 cfs*05/01-09/30

In: Irrigation of 50 acres within
W1/2SE1/4 and Wildlife Storage within
SW1/4SE1/4, all S34, T08N, R14E.

Date Filed: 08/10/98

The applications propose to divert
surface water/groundwater within the
"Salmon and Clearwater River Basins"
presently under a moratorium order
dated May 15, 1992. The order allows
the Director to consider on a case-by-
case basis applications if it can be
shown the development will have no
effect on prior surface and groundwater
rights because of its location,
insignificant consumption, or mitigation
by the applicant to offset injury to other
rights. The applicant has submitted
supportive documents as part of the
application. Any protest against the
proposed applications must be filed with
the Department of Water Resources,
Southern Region, 1341 Fillmore St.,
Suite 200; Twin Falls, ID 83301
together with a protest fee of \$25.00 on
or before November 23, 1998 to be
considered by the Department in its
decision to grant or deny any part of
the proposed application. (Each
application requires a separate protest).
The protestant must also send a copy of
the protest to the applicant.

Karl J. Dreher, Director



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

October 27, 1998

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

CUSTER PUBLISHING CO
PO BOX 405
CHALLIS ID 83226

Gentlemen:

Enclosed you will find a legal notice which we wish to have published in your newspaper. We have inserted the required publication dates.

We have attempted to submit this legal as camera ready. Please call me at your earliest convenience and prior to your staff re-typing the legal if it does not meet your specifications so I can possibly make adjustments.

If you cannot publish the notice on the proposed dates, please contact us immediately.

In order to receive payment, an affidavit of publication must be submitted to the Department along with the publication bill.

Very truly yours,

Mary Baldwin
Sr. Secretary

Enclosure

NOTICE OF APPLICATIONS FOR WATER PERMIT

The following applications have been filed to appropriate the public waters of the State of Idaho:

PATRICK W LEE &/OR
JOHN T BROWN
PO BOX 61
SUN VALLEY ID 83353

Application for Permit No. 71-07178

Source: Lost Creek tributary to sinks

Diversion Pt(s): SW1/4SE1/4, SE1/4SE1/4, S34, T08N, R14E; Custer County.

Uses:

Irrigation	1.0 cfs	05/01-09/30
Storage for Wildlife	5.5 afa	01/01-12/31
Storage for Irrigation	5.5 afa	05/01-09/30
Diversion to Storage	1.0 cfs	01/01-12/31

Total Diversion: 1.0 cfs

In: Aesthetic Storage & Wildlife Storage within SW1/4SE1/4 and Irrigation of 50 acres within W1/2SE1/4, all S34, T08N, R14E; Custer County.

Date Filed: 08/10/98

Application for Permit No. 71-07179

Source: groundwater

Diversion Pt(s): SW1/4SE1/4, S34, T08N, R14E; Custer County.

Uses:

Diversion to Storage	1.0 cfs	01/01-12/31
Storage for Wildlife	5.5 afa	01/01-12/31
Irrigation	1.0 cfs	05/01-09/30

In: Irrigation of 50 acres within W1/2SE1/4 and Wildlife Storage within SW1/4SE1/4, all S34, T08N, R14E.

Date Filed: 08/10/98

The applications propose to divert surface water/groundwater within the "Salmon and Clearwater River Basins" presently under a moratorium order dated May 15, 1992. The order allows the Director to consider on a case-by-case basis applications if it can be shown the development will have no effect on prior surface and groundwater rights because of its location, insignificant consumption, or mitigation by the applicant to offset injury to other rights. The applicant has submitted supportive documents as part of the application. Any protest against the proposed applications must be filed with the Department of Water Resources, Southern Region, 1341 Fillmore St., Suite 200; Twin Falls, ID 83301 together with a protest fee of \$25.00 on or before November 23, 1998 to be considered by the Department in its decision to grant or deny any part of the proposed application. **(Each application requires a separate protest).** The protestant must also send a copy of the protest to the applicant.

Karl J. Dreher, Director

Published in The Challis Messenger on 11/05 & 11/12/98.



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

October 27, 1998

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

ATTN MIKE LARKIN
ID DEPT OF FISH & GAME
PO BOX 1336
SALMON ID 83467

ATTN CARL PENCE
SAWTOOTH NAT REC AREA
STAR RT
KETCHUM ID 83340

US FISH & WILDLIFE SVCE
RT 1 BOX 290
RUPERT ID 83350

ATTN LUCY WARD
US FOREST SERVICE
STANLEY RANGER DIST
HC 64 BOX 9900
STANLEY ID 83278

ATTN JACQUELINE WYLAND
NAT MARINE FISHERIES SVCE
911 N E 11TH RM 260
PORTLAND OR 97232

Re: Applications for Permit No. 71-07178 & 71-07179 (Patrick W. Lee &/or John T. Brown)

Dear Agency Representative:

The Department is seeking a written Comment &/or Recommendation from your agency regarding the above referenced application for surface water and associated application for groundwater; a copy of the applications are enclosed for your information and reference.

Regional review of an unprotested application can be completed as soon as the final protest period is past; therefore, your prompt response to this request is appreciated.

If you have any questions about an application, please contact this office or the applicant.

Very truly yours,

James E. Stanton
Sr. Water Resource Agent

JS:MB

Enclosure(s)



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

October 26, 1998

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

PATRICK W LEE &/OR
JOHN T BROWN
PO BOX 61
SUN VALLEY ID 83353

Re: Applications for Permit Nos. 71-07178 & 71-07179

Dear Applicant(s):

This office has scheduled advertising the applications in The Challis Messenger for 11/05 & 11/12/98. A period of ten days following the second publication will be allowed for the submittal of protests.

If an application is protested you will be sent a copy of the protest. The protest must be resolved before the application is approved or denied. If the protest is not resolved voluntarily, this Department will conduct a conference and/or hearing on the matter.

If an application is not protested, it will be forwarded to our State Office in about five weeks. State office personnel will conduct a complete review prior to final processing of the application and will notify you of the outcome of this review. If a permit is issued, you will be sent a copy. A typical processing time for an unprotested application is about eight weeks.

Please feel free to contact this office if you have any questions regarding this procedure.

Very truly yours,

James E. Stanton
Sr. Water Resource Agent

JS:MB

September 15, 1998

Mr. James E. Stanton
Sr. Water Rights Agent
Idaho Department of Water Resources
1341 Filmore Street, Suite 200
Twin Falls, Idaho 83301-3380

RECEIVED
SEP 17 1998
Department of Water Resources
Southern Region

Re: Applications for Permits Nos. 71-07178 and 71-07179

Dear Mr. Stanton,

After speaking with you yesterday I have located additional aerial photos of the property subject to the applications, and a copy of these photos have been enclosed for your review and inclusion in the application file.

These photos were taken for the US Forest Service-USDA- and are on file at the SNRA Headquarters at Ketchum, Idaho.

As to the evidence that you requested for these applications we have now provided

2-USGS Alturas Quad maps-surveyed in 1957 and field checked in 1963
1-1977 USFS aerial photo
1-1985 HAP photo from NRCS
1-1993 USFS aerial photo

copies of the Driggs, Pingree, and USFS water right abstracts with respective priority dates 1937, 1923, and 1901.

All of the above show vividly, or note, that Lost Creek sinks prior to becoming tributary to the Salmon River. The photo and maps take us back over 40 years, and the priority dates and information on the abstracts give us a 97 year history on Lost Creek.

If there is additional or different evidence which you require, would you please advise me as to what that might be and we will try to furnish that to you.

We believe that IDWR aerial photos taken in 1987-88 must surely be identical to those we have provided from other agencies.

Thank you for your assistance in this matter.

Sincerely,



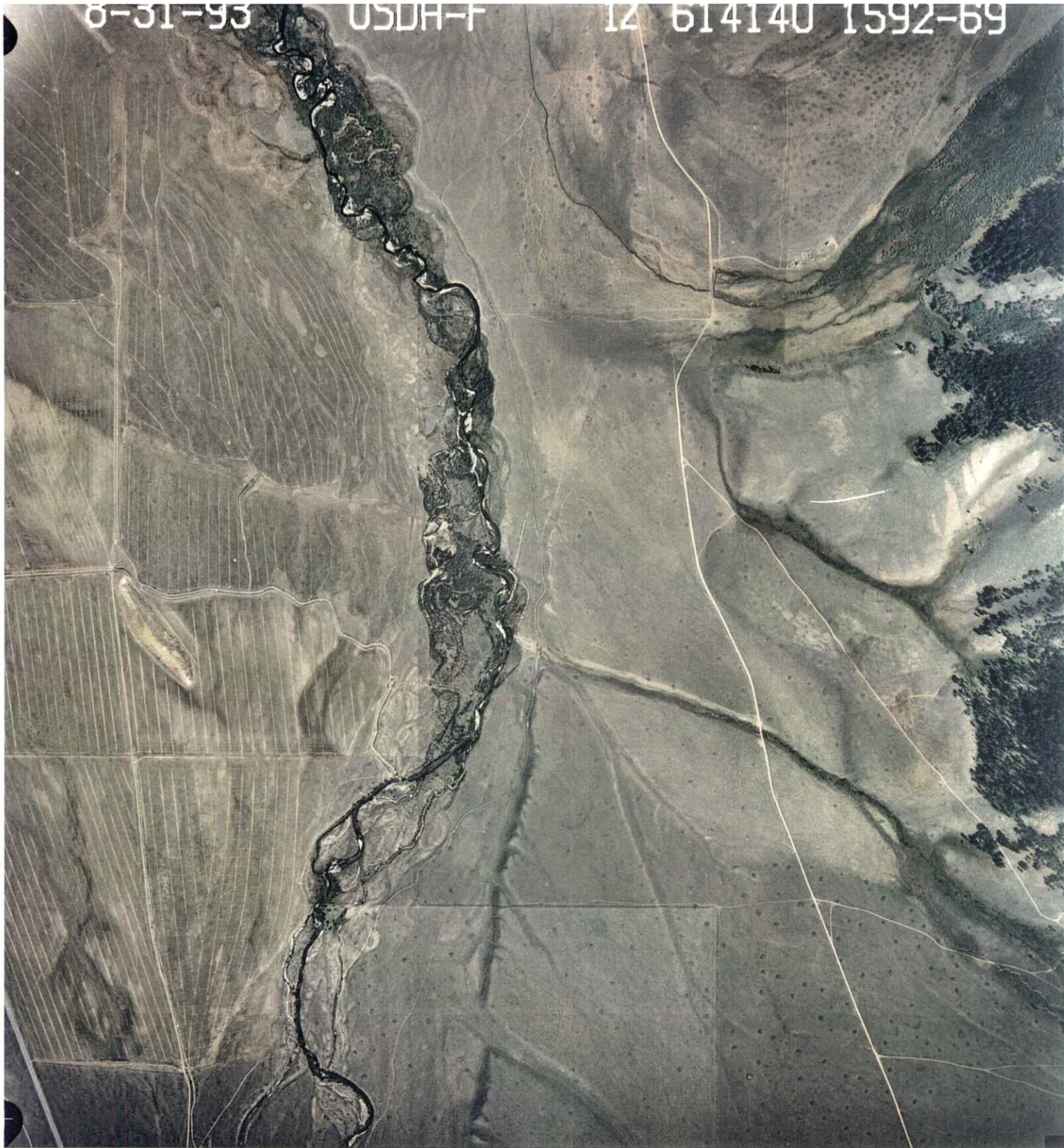
John T. Brown

71-07178

8-31-93

USDAH-F

12 614140 1592-69



RECEIVED

SEP 17 1998

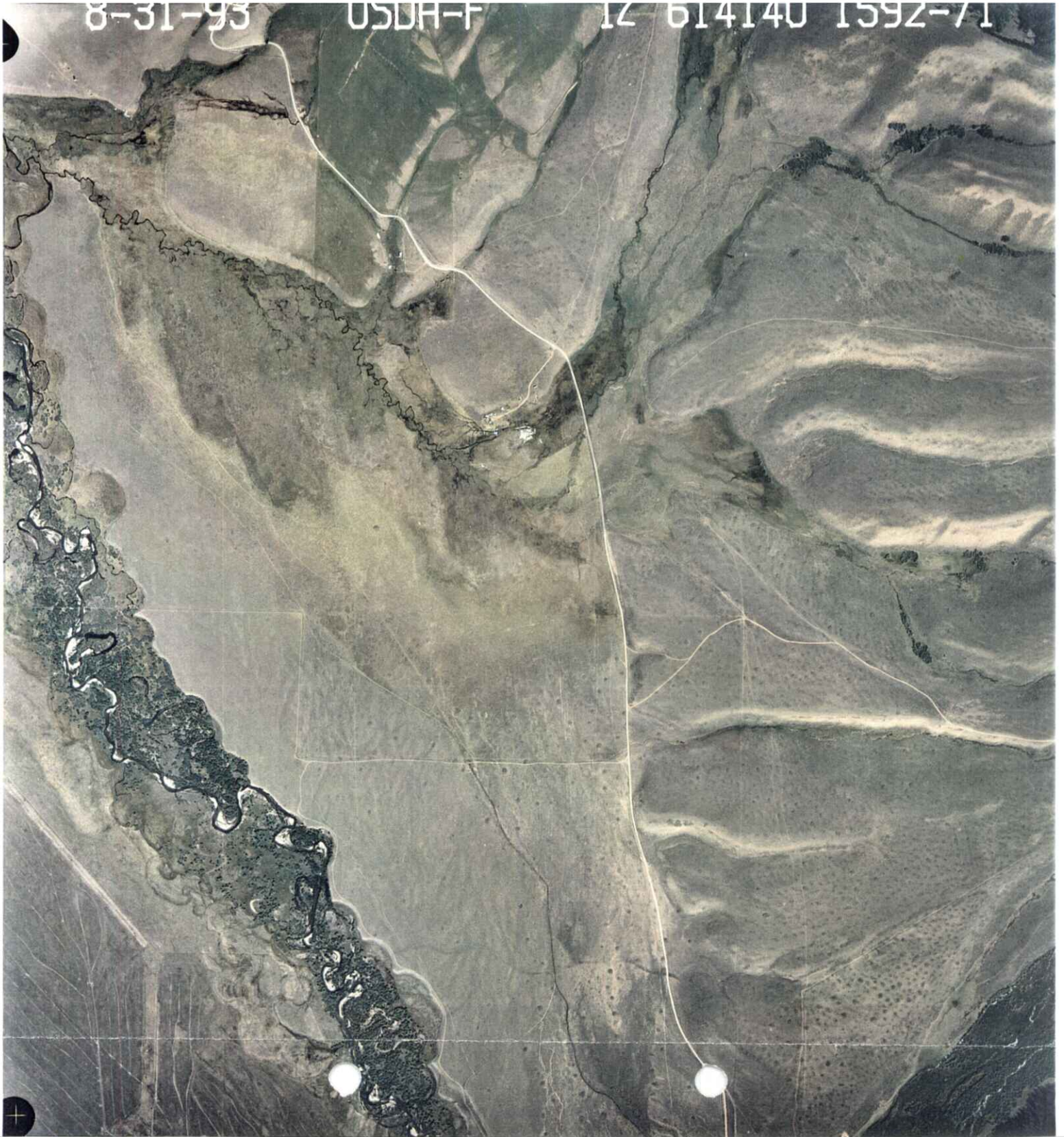
**Department of Water Resources
Southern Region**

71-0 7178

8-31-93

USDA-F

12 614140 1592-71



RECEIVED

SEP 17 1998

**Department of Water Resources
Southern Region**

September 10, 1998

Mr. James E. Stanton
Sr. Water Rights Agent
Idaho Department of Water Resources
1341 Filmore Street, Suite 200
Twin Falls, Idaho 83301-3380

Hand Delivered 9/10/98

Re: Applications for Permits Nos. 71-07178 and 71-07179

Dear Mr. Stanton,

We are very disappointed to receive your letter dated September 1, 1998 in which you advise that we have not responded to your letter of August 14, 1998.

We did in fact respond with an August 20, 1998 letter and enclosures that would be evidentiary to the strong suggestion that we have a special situation that should be exempt from the moratorium orders.

With this letter we have included a copy of the August 20, 1998 letter and the enclosures that accompanied the letter.

We have attached additional enclosures with today's letter that further substantiate that Lost Creek is not tributary to the Salmon River, but rather sinks on our property before the surface waters reach the Salmon River.

1.-September 9, 1977 USFS aerial photo showing the subject property and the sinking of Lost Creek on file at SNRA Headquarters, Ketchum Idaho.

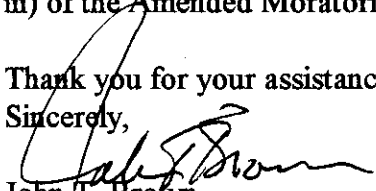
2.-August 9, 1995 365-161 431410 HAP 84F infrared photo, copied from the actual photo on file in the Natural Resources Conservation Services offices in Hailey, Idaho.

The Moratorium Order dated May 15, 1992 and attached to your letter of September 1, 1998 appears to be amended by the Amended Moratorium Order, dated April 30, 1993, which was attached to your letter of August 14, 1998.

Again we would ask that Permit Nos. 71-07178 and 71-07179 be submitted to the Director for consideration under the special case consideration outlined in Paragraph 7., a), and iii) of the Amended Moratorium Order dated April 30, 1993.

Thank you for your assistance in this matter.

Sincerely,


John T. Brown

August 20, 1998

Mr. James E. Stanton
Sr. Water Rights Agent
Idaho Department of Water Resources
1341 Filmore Street, Suite 200
Twin Falls, Idaho 83301-3380

Re: Brown/Lee Application for Permit filed 8/10/98 Custer County, Lost Creek,
T8N, R14E, SE 1/4 Sec 34

Dear Mr. Stanton,

With respect to your letter of August 14, 1998, we would like you to process the Applications together, and we will address below the suggested evidence for the review of surface claims, in light of the moratorium.

With respect to the Moratorium Order dated April 30, 1993, we ask that the Director review the surface Application pursuant to Paragraph 7, a), i), the location of use.

Lost Creek totally sinks on our property in the SE 1/4 Sec 34. While the creek is in the Salmon River Basin the creek is not tributary to the Salmon River because of the sinking aspect of the water.

Lost Creek does not at this time, or in recent history, provide a flow for the migration of anadromous fish.

1.-Copy of USGS Alturas Quadrangle map (1957, field checked 1963) which shows Lost Creek sinking in the SE1/4 and NE1/4 of Sec, 34.

2. -Water right abstract
Barton Driggs WR5809N
71-02074
indicates Lost Creek sinks

3.- Water right abstract
Sabie Pingree
AV5809NP
A71-10103
indicates Lost Creek sinks

4.- Water right abstract

USA,USDA,USFAS

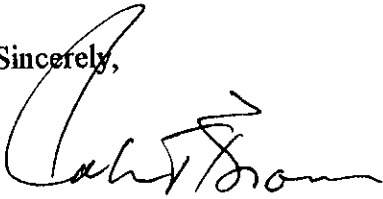
AV5809NP

A71-10855

indicates Lost Creek sinks

Thank you for your assistance in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "John T. Brown", with a large, stylized initial "J" and "B".

John T. Brown

cc: Patrick Lee

enc: USGS Maps
water abstract copies

IDAHO DEPARTMENT OF WATER RESOURCES
WATER RIGHT PROFILE REPORTDATE: 08/10/98
PAGE: 7

OWNER CODE	NAME & ADDRESS	PRIORITY DATE	WATER USE	USE PERIOD FROM TO	DIVERSION RATE	DIVERSION VOLUME
C	BURTON W. DRIGGS	11/07/1947	IRRIGATION STOCKWATER DOMESTIC	00/00 00/00 00/00 00/00 00/00 00/00	1.600 CFS	

TOTAL DIVERSION:

1.600 CFS

Water Source: LOST CREEK

Tributary to: SINKS

Stage: LICENSE

Point(s) of Diversion:

T08N R14E S35

NWSE

CUSTER County

Place of use Legal Description for: IRRIGATION

NE				NW				SW				SE								
T	R	S		Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	
08N	14E	35																		
																			SUM	
																			80.0	
																			80.0	
																			TOTAL ACRES	
																			15 02	
																			80.0	

Place of use location for STOCKWATER is the same location as described for: IRRIGATION

Place of use location for DOMESTIC is the same location as described for: IRRIGATION

Pou County: CUSTER

Remarks: GEN P/U INCOMPLETE. SEE FILE. AC. IRR.=80.
H.E.S. NO.288.

Dates:	App. Received:	Priority Date:	11/07/1947
	Proof Due Date:	Proof Made Date:	
	Exam Made Date:	Exam Sent to S.O.:	
	Licensed Date:		07/03/1979

Misc: Water District Number: Field Exam Fee:

Audit: 02/11/85 05/28/88 CONVERT

AJ5809NP
No. A71-10103

IDAHO DEPARTMENT OF WATER RESOURCES
ADJUDICATION CLAIM PROFILE REPORT

DATE: 08/10/98
PAGE: 7

OWNER CODE	NAME & ADDRESS	PRIORITY DATE	WATER USE	USE PERIOD FROM TO	DIVERSION RATE	DIVERSION VOLUME
C	SABEY D PINGREE TRUST 1171 CHANDLER DR SALT LAKE CITY UT 84103 (801) 364-8056	02/26/1923	IRRIGATION STOCKWATER DOMESTIC	04-15 10-15 01-01 12-31 01-01 12-31	1.60 CFS 0.03 CFS 0.04 CFS	
TOTAL DIVERSION: CONSUMPTIVE USE:					1.60 CFS	200.00 AFA

Water Source: LOST CREEK

Tributary to: SINKS

Stage: BENEFICIAL USE

CUSTER County

Point(s) of Diversion: T08N R14E S35 NWSE

Place of use Legal Description for: IRRIGATION

NE				NW				SW				SE																	
T	R	S		NENE	NWNE	SWNE	SENE	:	NENW	NWNW	SWNW	SENW	:	NESW	NWSW	SWSW	SESW	:	NESE	NWSE	SWSE	SESE	:	SUM					
				Lt	Ac	Lt	Ac		Lt	Ac	Lt	Ac		Lt	Ac	Lt	Ac		Lt	Ac	Lt	Ac							
08N	14E	35	:					:					:	20		13	30	:			15	02	:	80.0					
								:					:					:					:					:	80.0
								:					:					:					:					:	

TOTAL ACRES

Place of use location for STOCKWATER is the same location as described for: IRRIGATION

Place of use location for DOMESTIC is the same location as described for: IRRIGATION

POU County: CUSTER

Non-Irrigation Uses: D/1 HOUSE, S/50-100 BEEF CATTLE

Other Rights: NONE

Remarks: GEN P/U INCOMPLETE. SEE FILE. AC. IRR.=80.
H.E.S. NO.288.
THIS BENEFICIAL USE CLAIM REPRESENTS LICENSE #71-02074. THE
LICENSED PRIORITY WAS 11/07/1947. THE DATE THAT THE WATER WAS
FIRST PUT TO BENEFICIAL USE ON THE PROPERTY WAS 02/26/1923.
THIS CLAIM REPRESENTS THE EARLIER PRIORITY. SEE ATTACHED
DOCUMENTS.

7/2/97 TF; OWNERSHIP CHANGED TO SABEY PINGREE TRUST

Dates:	Exam Made Date:	Verified Date:	Objection Filed Date:
Misc:	Water District Number:	Field Inspection Flag:	Presumption Flag:

AJ5809NP
No. A71-10855

IDAHO DEPARTMENT OF WATER RESOURCES
ADJUDICATION CLAIM PROFILE REPORT

DATE: 08/10/98
PAGE: 8

OWNER CODE	NAME & ADDRESS	PRIORITY DATE	WATER USE	USE PERIOD FROM TO	DIVERSION RATE	DIVERSION VOLUME
C	UNITED STATES OF AMERICA ACTING THROUGH USDA FOREST SERVICE 550 W FORT STREET PO BOX 33C BOISE ID 83724	12/31/1901	STOCKWATER	06-01 09-30	0.02 CFS	
TOTAL DIVERSION:					0.02 CFS	

Water Source: ~~LOST CREEK~~

Tributary to: ~~SINKS (SALMON RIVER)~~

Stage: BENEFICIAL USE

Point(s) of Beginning Stream Reach: T08N R14E S25
Point(s) of Ending Stream Reach: T08N R14E S36

NESW
NWNW

CUSTER County
CUSTER County

Place of use Legal Description for: STOCKWATER

NE				NW				SW				SE			
NENE	NWNE	SWNE	SENE	NENW	NWNW	SWNW	SENW	NESW	NWSW	SWSW	SESW	NESE	NWSE	SWSE	SESE
T	R	S	: Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac
08N 14E 25 :															

POU County: CUSTER

Remarks: EXP FOREST SERVICE RECORD ID = 0414 17060201 46 2016

Dates: Exam Made Date:

Verified Date:

Objection Filed Date:

Misc: Water District Number:

Field Inspection Flag:
Presumption Flag:



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

September 1, 1998

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

JOHN T BROWN
PO BOX 61
SUN VALLEY ID 83353

Re: Applications for Permit Nos. 71-07178 & 71-07179 (Patrick W. Lee &/or John T. Brown)

Dear Applicants:

This letter is a follow-up of our correspondence of August 14, 1998 regarding further directions for processing of the above referenced applications; however, we have not received any response from you.

Enclosed is a copy of an Order establishing a Moratorium on the issuance of new consumptive use permits in the Salmon River drainage. This Order affects your applications; therefore, they will be held without action in the foreseeable future.

If you wish to withdraw the applications, please date, sign and return the enclosed withdrawal forms. The filing fee will be refunded.

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

Very truly yours,

James E. Stanton
Sr. Water Resource Agent

JS:MB

Enclosures

RECEIVED

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

MAY 19 1992

Department of Water Resources
Southern Region Office

IN THE MATTER OF APPLICATIONS AND)
PERMITS FOR THE DIVERSION AND USE)
WATER WITHIN THE SALMON AND)
CLEARWATER RIVER BASINS, IDAHO)

MORATORIUM ORDER

The Director of the Department of Water Resources, having responsibility for the administration of the appropriation of the water of the State of Idaho and the protection of rights to the use of water within the state and the public interest in water resources of the state and conservation of the water resources of the state enters the following Findings of Fact, Conclusions of Law and Order:

FINDINGS OF FACT

1. The Salmon and Clearwater River basins are free-flowing streams of the state, generally without obstructions from dams and impoundments and serve as habitat for anadromous salmon and steelhead fish.

2. The National Marine Fisheries Service (NMFS) has listed the Snake River sockeye, spring/summer and fall chinook salmon under provisions of the Endangered Species Act (ESA). That action has resulted in the need to take measures to facilitate the recovery of the salmon. Such measures include protection of the habitat conditions as well as modification of the operation of dams which imperil fish passage through the lower Snake and Columbia Rivers.

3. Diversions of water from the Salmon and Clearwater Rivers and their tributaries have the potential of impacting the salmon and steelhead on their migration to the ocean and return to spawning areas in the river basins.

4. Flows of many streams, springs and rivers within the Salmon and Clearwater River basins are considerably below normal due to the effects of drought conditions across Southern Idaho which have prevailed within the recent six-year period.

5. Actions are necessary in the public interest to control the appropriation of water from the Salmon and Clearwater Rivers and their tributaries to the extent practicable to prevent loss of anadromous fish. Such actions, however, will only be meaningful over the long-term if other interests in the region make meaningful efforts to remove or modify the down-river obstructions to fish passage caused by the dams.

CONCLUSIONS OF LAW

1. The Director of the Department of Water Resources is authorized under the provisions of Section 42-1805(7), Idaho Code:

after notice, to suspend the issuance or further action on permits or applications as necessary to protect existing vested water rights or to ensure compliance with the provisions of chapter 2, title 42, Idaho Code, or to prevent violation of minimum flow provisions of the state water plan.

2. The granting of new water right permits within the Salmon and Clearwater River basins could impact salmon and steelhead, which action would be contrary to the local public interest in such fish resources and would be inconsistent with the conservation of water resources within the state of Idaho which the Director is charged to protect under the provisions of Section 42-203A(5), Idaho Code.

ORDER

IT IS, THEREFORE, HEREBY ORDERED THAT a moratorium is established on the processing of applications for permits to appropriate surface water resources within the Salmon and Clearwater River basins subject to the following conditions:

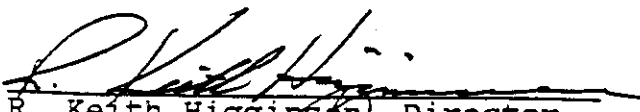
1. This moratorium shall be in effect on and after the date it is entered until withdrawn or modified by further order of the Director. A future decision to continue or rescind the moratorium will consider all efforts being made within the region toward the recovery of the salmon.

2. This moratorium applies to all applications, previously filed, or yet to be filed seeking permits to appropriate surface water within the drainage basins of the Salmon and Clearwater Rivers upstream from their mouths.

3. This moratorium does not apply to the continued development of water under previously-issued permits.

4. This moratorium does not apply to applications for minor stockwatering or domestic purposes as defined in Section 42-111, Idaho Code.

Dated this 15TH day of May, 1992.


R. Keith Higginson, Director



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

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

August 14, 1998

John T Brown
PO Box 61
Sun Valley, ID
83353

RE: Applications for Permit Filed 8-10-98

Dear Mr. Brown;

As we discussed when you filed these applications, the Salmon River drainage is covered by a moratorium on the approval of new consumptive-use water permits in order to protect the dwindling salmon and steelhead trout runs in that area. Since one of your applications requests the diversion of surface water for irrigation, it may be covered by the moratorium. A copy of the moratorium order is enclosed. In order for us to process your application on Lost Creek, Paragraph 7 of the order must be satisfied; your best option may be to supply evidence showing that water from Lost Creek does not enter the Salmon River. Although your groundwater application is not covered by the moratorium, we will hold both applications at this time. If you so desire, we can process the groundwater application separately. Please respond to this letter by August 31. If you have questions, feel free to contact me.

Regards,

James E. Stanton
Sr. Water Resource Agent

71-07178