

**STARTING
LEFT
SIDE OF
FILE**

State of Idaho
Department of Water Resources

Permit to Appropriate Water

NO. 2-10303

Priority: December 20, 2005

Maximum Diversion Rate: 0.12 CFS

This is to certify, that M GARLAND SMITH
ZOLA SMITH
GARLAND SMITH TRUST
5476 MARKET RD
MARSING ID 83639

has applied for a permit to appropriate water from:

Source: GROUND WATER **Tributary:** SNAKE RIVER
SNAKE RIVER COLUMBIA RIVER

and a permit is APPROVED for development of water as follows:

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>RATE OF DIVERSION</u>
IRRIGATION	03/01 to 11/15	0.12 CFS

LOCATION OF POINTS OF DIVERSION:

SNAKE RIVER L7 (NW¼ SE¼) Sec. 18, Twp 03N, Rge 04W, B.M. OWYHEE County
GROUND WATER L7 (NW¼ SE¼) Sec. 18, Twp 03N, Rge 04W, B.M. OWYHEE County

PLACE OF USE: IRRIGATION

Twp Rge Sec	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	Totals
03N 04W 18	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	3.9
																	L7

Total Acres: 3.9

CONDITIONS OF APPROVAL

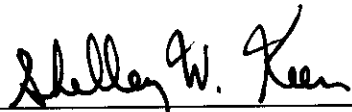
1. Proof of application of water to beneficial use shall be submitted on or before **May 01, 2011**.
2. Subject to all prior water rights.
3. Right holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code and applicable Well Construction Rules of the Department.
4. This right when combined with all other rights shall provide no more than 0.03 cfs per acre nor more than 4.5 afa per acre at the field headgate for irrigation of the lands above.
5. The Director retains jurisdiction to require the right holder to provide purchased or leased natural flow or stored water to offset depletion of Lower Snake River flows if needed for salmon migration purposes. The amount of water required to be released into the Snake River or a tributary, if needed for this purpose, will be determined by the Director based upon the reduction in flow caused by the use of water pursuant to this permit.
6. The right holder shall not assign or sell the permit without first securing the written approval of the Department of Water Resources.

State of Idaho
Department of Water Resources
Permit to Appropriate Water

NO. 2-10303

7. Project construction shall commence within one year from the date of permit issuance and shall proceed diligently to completion unless it can be shown to the satisfaction of the Director of the Department of Water Resources that delays were due to circumstances over which the permit holder had no control.
8. Water shall not be diverted under this right when flows in the Snake River are below established minimum flow amounts at any of the following locations: Weiser, 4750 cfs; Johnson Bar, 5000 cfs; Lime Point 13,000 cfs.

This permit is issued pursuant to the provisions of Section 42-204, Idaho Code. Witness the signature of the Director, affixed at Boise, this 11th day of May, 2006.


FOR KARL J. BREHER, Director

FORM 202
12/99

Ident. No. 2-10303 **RECEIVED**

DEPARTMENT OF
STATE OF IDAHO

DEC 20 2005

WATER RESOURCES
WESTERN REGION

DEPARTMENT OF WATER RESOURCES
APPLICATION FOR PERMIT

To appropriate the public waters of the State of Idaho

- APPLICATION FOR DIVERSION OF WATER**
- To appropriate the public waters of the State of Idaho
1. Name of Applicant Garland Smith / Zola Smith / Garland Smith Trust Phone 208-896-4324
- Mailing address 5476 Market Rd Marsing, ID 83639
2. Source of water supply Snake River Ground Water which is a tributary of Snake River
3. Location of point of diversion is Township 3N Range 4W Sec. 18, in the _____, _____, _____, _____, Govt. Lot 7, B.M., Owyhee County;
- additional points of diversion if any: _____
4. Water will be used for the following purposes:
- | | |
|---|--|
| Amount <u>.12 cfs</u> for <u>irrigation</u> | purposes from <u>Mar 1</u> to <u>Nov 15</u> (both dates inclusive) |
| (cfs or acre-feet per annum) | |
| Amount _____ for _____ | purposes from _____ to _____ (both dates inclusive) |
| (cfs or acre-feet per annum) | |
| Amount _____ for _____ | purposes from _____ to _____ (both dates inclusive) |
| (cfs or acre-feet per annum) | |
| Amount _____ for _____ | purposes from _____ to _____ (both dates inclusive) |
| (cfs or acre-feet per annum) | |
| Amount _____ for _____ | purposes from _____ to _____ (both dates inclusive) |
| (cfs or acre-feet per annum) | |
| Amount _____ for _____ | purposes from _____ to _____ (both dates inclusive) |
| (cfs or acre-feet per annum) | |
5. Total quantity to be appropriated is (a) .12 cfs and/or (b) _____
cubic feet per second acre feet per annum
6. Proposed diverting works:
- a. Describe type and size of devices used to divert water from the source Pump on River, pump on Sump 10' to 20' South of River
- b. Height of storage dam N/A feet; active reservoir capacity _____ acre-feet; total reservoir capacity _____ acre-feet
- c. Proposed well diameter is _____ inches; proposed depth of well is _____ feet
- d. Is ground water with a temperature of greater than 85°F being sought? NO
- e. If well is already drilled, when? _____; Drilling firm _____; Well was drilled for (well owner) _____; Drilling Permit No. _____
7. Time required for completion of works and application of water to proposed beneficial use is 5 years (minimum 1 year)
8. Description of proposed uses (if irrigation only, go to item 9):
- a. Hydropower; show total feet of head and proposed capacity in kW. _____
- b. Stockwatering; list number and kind of livestock. _____
- c. Municipal; show name of municipality. _____
- d. Domestic; show number of households. _____
- e. Other; describe fully. _____

9. Description of place of use:

- If water is for irrigation, indicate acreage in each subdivision in the tabulation below.
- If water is used for other purposes, place a symbol of the use (example: D for Domestic) in the corresponding place of use below. See instructions for standard symbols.

TWP	RGE	SEC	NE				NW				SW				SE				TOTALS
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
3N	4W	18																3.9	3.9

Total number of acres to be irrigated 3.9

10. Describe any other water rights used for the same purposes as described above. None

- Who owns the property at the point of diversion? Garland and/or Zola Smith
- Who owns the land to be irrigated or place of use? Garland and/or Zola Smith
- If the property is owned by a person other than the applicant, describe the arrangement enabling the applicant to make this filing:

12. Remarks: The proposed sump will be shallow and hydraulically connected to the river. The reason for the sump pump in addition to the river pump is to allow pumping when solid contaminants are abundant in the river decreasing pumping volume directly from the river. Also known as parcel #3

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

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

M Garland Smith / Zola D Smith
Signature of Applicant (and title, if applicable)

Received by [Signature] Date 12-20-05 Time 2:55 PM Preliminary check by SC
Fee \$ 100.00 Received by [Signature] # W033692 Date 12-20-05
Publication prepared by sk Date 4-5-06 Published in OWYHEE AVALANCHE
Publication approved 5-2-06 Date sk



02-10303

GOVT
LOT 7

PARCEL 3
NWSE
SWSE

02-10303

RECEIVED

FEB 22 2006

WATER RESOURCES
WESTERN REGION

REQUEST TO PROCESS

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

Name of Applicant

M. Garland Smith

Mailing Address

5476 Market Rd
Marsing, Id 83639

Application No.
(if known)

____ IN LOCAL PUBLIC INTEREST

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

____ PROPOSE MITIGATION NOW

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

☒ WILL AGREE TO MITIGATION IN THE FUTURE IF NECESSARY

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

Signature

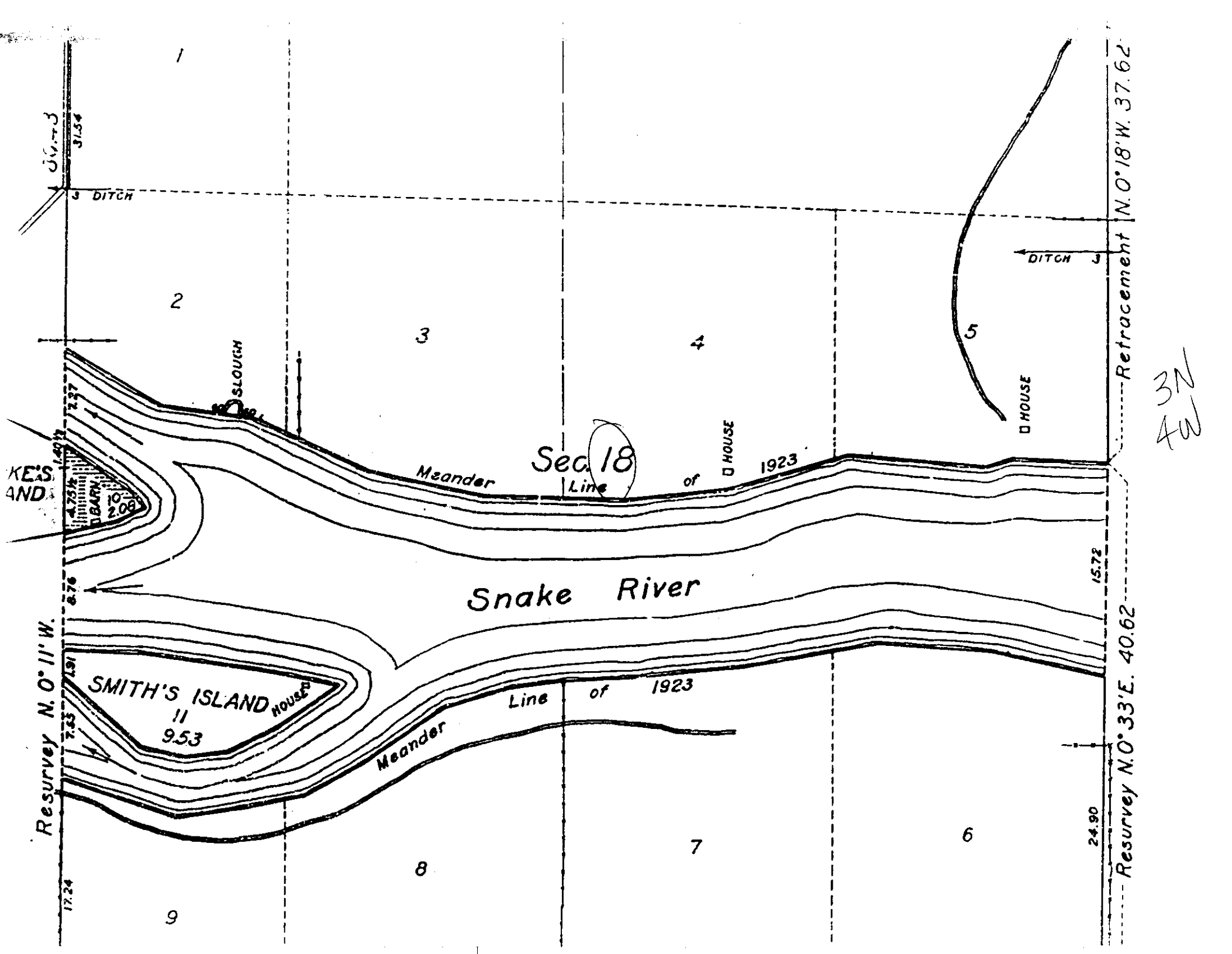
M. Garland Smith

Date

Feb. 19, 2006

Please return this form to:

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



**NOW
STARTING
RIGHT
SIDE OF
FILE**



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street, P.O. Box 83720, Boise, ID 83720-0098

Phone: (208) 287-4800 Fax: (208) 287-6700 Web Site: www.idwr.idaho.gov

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

May 11, 2006

M GARLAND SMITH
ZOLA SMITH
GARLAND SMITH TRUST
5476 MARKET RD
MARSING ID 83639

RE: Permit No. 2-10303

Permit Approval Notice

Dear Permit Holder:

The Department of Water Resources has issued the enclosed permit authorizing you to establish a new water right. Please be sure to thoroughly review the conditions of approval and remarks listed on your permit.

The permit is a PRELIMINARY ORDER issued by the Department pursuant to Section 67-5243, Idaho Code. It can and will become a final order without further action by the Department unless a party petitions for reconsideration or files an exception and/or brief within fourteen (14) days of the service date as described in the enclosed information sheet.

As a permit owner you must commence the excavation or construction of the diverting works within one year of the date the permit was issued, and you must proceed diligently until the project is completed. The date shown under condition no. 1 is the date when the project must be completed.

The Department will send you a 'Proof Due Notice' approximately 60 days prior to the above referenced date requesting you to file either a Proof of Beneficial Use form or a Request for Extension of Time form.

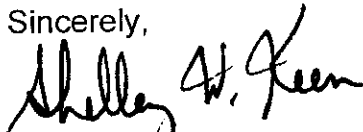
The right to drill a well is not a part of this permit to appropriate water. Beginning in July of 1987, a statute was enacted which requires a drilling permit for new well construction and deepening of existing wells. If the well(s) proposed for use under this water right permit were drilled or deepened after July 1, 1987, a separate drilling permit must be obtained from this Department. Please contact the Ground Water Protection Section located here at this office or our regional office nearest you.

Please note that a separate stream channel alteration permit must be obtained from the Department prior to any activity in the stream channel other than construction or maintenance of the diversion structure for your water right(s). Applications for stream channel alteration permits must be filed at least sixty days prior to the commencement of work in the stream.

Also, please note that water right owners are required to report any change of water right ownership and/or mailing address to the Department within 120 days of the change. Failure to report these changes could result in a \$100 late filing fee. Contact any office of the Department or visit the Department's homepage on the Internet to obtain the proper forms and instructions.

If you have any questions, please contact me at 208-287-4947.

Sincerely,

A handwritten signature in black ink, appearing to read "Shelley W. Keen". The signature is fluid and cursive, with the first name "Shelley" being more prominent.

Shelley W. Keen

Water Rights Supervisor

SWK:klt

Enclosure(s)

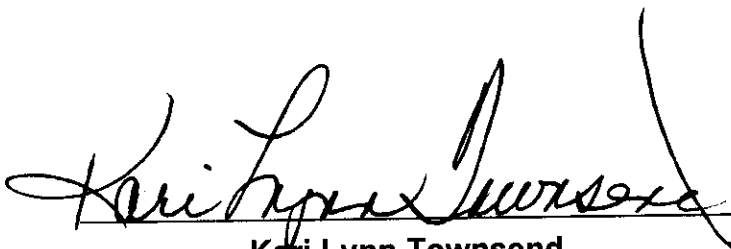
CERTIFICATE OF SERVICE

I hereby certify that on May 11, 2006 I mailed a true and correct copy, postage prepaid, of the foregoing PRELIMINARY ORDER(Approved Permit) to the person(s) listed below:

RE: WATER RIGHT NO.

2-10303

**M GARLAND SMITH
ZOLA SMITH
GARLAND SMITH TRUST
5476 MARKET RD
MARSING ID 83639**



**Kari Lynn Townsend
Secretary**

**EXPLANATORY INFORMATION
TO ACCOMPANY A
PRELIMINARY ORDER**

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

(Required by Rule of Procedure 730.02)

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

PETITION FOR RECONSIDERATION

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

EXCEPTIONS AND BRIEFS

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

REQUEST FOR HEARING

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

ORAL ARGUMENT

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

CERTIFICATE OF SERVICE

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

FINAL ORDER

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

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

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

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

APPEAL OF FINAL ORDER TO DISTRICT COURT

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

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

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

MEMORANDUM

Date: May 11, 2006
To: Water Right File 2-10303
From: eretelle
Re: permit review

No WD or moratorium.
Snake River Minimum Stream Flow.

No protest.
No overlap.

Recommend approval as suggested by IDWR Western.

The Owyhee Avalanche

P.O. Box 97 • HOMEDALE, ID 83628 • 208/337-4681

AFFIDAVIT OF PUBLICATION

STATE OF IDAHO)
) ss
COUNTY OF OWYHEE)

I, Joe E. Aman, being first duly sworn, depose and say:

1. That I am a citizen of the United States of America, and at all times hereinafter mentioned was and now over the age of twenty-one years, not a party to nor interested in the proceedings hereinafter mentioned.

2. That during the time of publication of the notice hereinafter mentioned, I was and now am the publisher of The Owyhee Avalanche, a newspaper of general circulation printed and published weekly, on Wednesday of each and every week, in the City of Homedale, County of Owyhee and State of Idaho.

3. That the said The Owyhee Avalanche has been printed and published continuously and uninterruptedly in said County during a period of more than seventy-eight weeks prior to the first publication of the attached notice.

4. That said notice of which a printed copy, taken from said newspaper, is hereto affixed, was published in the regular issue thereof, and not a supplement thereto, in said newspaper, in TWO (2)
(consecutive) calendar weekly issue(s) of said newspaper, in the following date(s):

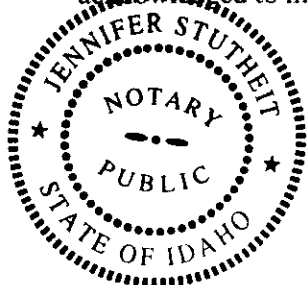
APRIL 5, 12, 2006

SIGNED: _____

STATE OF IDAHO }
COUNTY OF OWYHEE }

On this 20th day of Apr in the year of 2006 before me, a

Notary Public, personally appeared JOE E. AMAN
known or identified to me to be the person whose name subscribed to the within instrument, and being by me duly sworn, declared that the statements therein are true, and acknowledged to me that he executed the same.



Jennifer Stutheit
Notary Public of Idaho
Residing at HOMEDALE, IDAHO
My commission expires: JANUARY 3, 2009

The following application(s) have been filed to appropriate the public waters of the State of Idaho: 2-10303

ZOLA SMITH ✓
5476 MARKET RD
MARSING ID 83639
M GARLAND SMITH
5476 MARKET RD
MARSING ID 83639
GARLAND SMITH TRUST
5476 MARKET RD
MARSING ID 83639

Point(s) of Diversion L7
(NWSE) S18 T03N
R04W OWYHEE County
Source SNAKE RIVER
Tributary To COLUMBIA RIVER

Point(s) of Diversion L7
(NWSE) S18 T03N
R04W OWYHEE County
Source GROUND WATER
Tributary To SNAKE RIVER
Use: IRRIGATION 03/01 To
11/15 0.12 CFS
Total Diversion: 0.12 CFS
Date Filed: 12/20/2005
Place Of Use: IRRIGATION
T03N R04W S18 NWSE Lot 7
SWSE

Number of Acres 3.9

Remark: Applicant agrees to mitigate consumptive use in the future as needed.

Permits will be subject to all prior water rights. Protests may be submitted based on the criteria of Sec 42-203A, Idaho Code. Any protest against the approval of this application must be filed with the Director, Dept. of Water Resource, Western Region, 2735 Airport Wy, Boise ID 83705 together with a protest fee of \$25.00 for each application on or before 04/24/2006. The protestant must also send a copy of the protest to the applicant.

KARL J DREHER, Director

RECEIVED
MAY 01 2006
ACCTS PAYABLE

RECEIVED

MAY 01 2006

ACCTS PAYABLE

Kreger (Taylor), Sue

To: eleitzinger@idfg.idaho.gov
Subject: comment letters

**IDAHO DEPARTMENT OF WATER RESOURCES
WESTERN REGION
2735 AIRPORT WAY
BOISE ID 83705**

April 3, 2006

ERIC LEITZINGER, IDFG
PO BOX 25
BOISE ID 83707

Re: Applications for Permit Nos. 63-32265, 65-23032, 67-14694, 02-10303 and 02-10304

Dear Eric:

Attached are copies of applications that may be of interest to your agency. Please review the application (s) and submit any comments you may have.

This office normally completes the processing of an application within a six-week period and is required to take final action shortly thereafter. However, if your agency desires to file a formal protest against the approval of any of these applications, your written protest along with the \$25.00 protest fee for each application protested, must be received in this office by April 24, 2006.

If you have any questions regarding these applications, please contact this office at 334-2190.

Sincerely,



63-32265.pdf



65-23032.pdf



67-14694.pdf



2-10303.pdf



2-10304.pdf



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

FAX (208) 334-2348

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

February 15, 2006

M. GARLAND &/OR ZOLA SMITH
GARLAND SMITH TRUST
5476 MARKET RD
MARSING ID 83639

RE: Applications for Permit

Dear Applicants:

You have filed two applications for permit to appropriate water from the Snake River and shallow ground water for consumptive use, in this case, irrigation. All applications for consumptive use of water coming into this office must be accompanied by a Request to Process form. The forms are enclosed.

Please submit the requested information to allow final evaluation of your application to be completed. You may seek additional time to provide the information by making a written request to delay or interrupt processing. Your written response including the requested information, or a request for more time to seek the information must be received within thirty (30)-days of the date of this letter. The application will be voided or removed from our records without a timely reply.

IDWR forms and other information are available on the Internet at www.idwr.idaho.gov. Please contact me at 208-334-2190 if you need more information. Thank you for your attention to these matters.

Sincerely,

Steve Lester
Water Rights Supervisor

Enclosures: Request to Process Forms & Explanation



State of Idaho

DEPARTMENT OF WATER RESOURCES

IDAHO DEPARTMENT OF WATER RESOURCES
Western Region, 2735 Airport Way, Boise, Idaho 83705-8082 (208) 334-2190

WESTERN REGION

FAX (208) 334-2348

2735 AIRPORT WAY

BOISE ID 83705

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

March 30, 2006

Legal Notice Department

OWYHEE AVALANCHE

PO BOX 97

HOMEDALE ID 83628

RE: Application for Permit No. 2-10303

Dear LEGAL NOTICE DEPARTMENT:

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

An affidavit of publication must be submitted to the Department along with the publication bill. Please send the affidavit and bill to this office before 04/24/2006. Your cooperation is appreciated.

Sincerely

Sue Kreger
Administrative Assistant



State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190
The following application(s) have been filed to appropriate the public waters of the State of Idaho: FAX (208) 334-2348

2-10303

ZOLA SMITH
5476 MARKET RD
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DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

Point(s) of Diversion L7 (NWSE) S18 T03N R04W OWYHEE County Source SNAKE RIVER
Tributary To COLUMBIA RIVER

Point(s) of Diversion L7 (NWSE) S18 T03N R04W OWYHEE County Source GROUND WATER
Tributary To SNAKE RIVER

Use: IRRIGATION 03/01 To 11/15 0.12 CFS
Total Diversion: 0.12 CFS

Date Filed: 12/20/2005

Place Of Use: IRRIGATION

T03N R04W S18 NWSE Lot 7 SWSE

Number of Acres 3.9

Remark: Applicant agrees to mitigate consumptive use in the future as needed.

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

Any protest against the approval of this application must be filed with the Director, Dept. of Water Resource, Western Region, 2735 Airport Wy, Boise ID 83705 together with a protest fee of \$25.00 for each application on or before 04/24/2006. The protestant must also send a copy of the protest to the applicant.

KARL J DREHER, Director

Published in the Owyhee Avalanche on April 5 and 12, 2006.