

State of Idaho  
Department of Water Resources  
**Permit to Appropriate Water**

NO. 84-12195

Priority: November 22, 2004

Maximum Diversion Rate: 0.01 CFS

This is to certify, that EDWARD D TROUTWINE Or ROSE M TROUTWINE  
2264 OROFINO CREEK RD  
OROFINO ID 83544

have applied for a permit to appropriate water from:

**Source:** SPRING

**Tributary:** OROFINO CREEK

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> |
|-----------------------|----------------------|--------------------------|
| DOMESTIC              | 01/01 to 12/31       | 0.01 CFS                 |

**LOCATION OF POINT OF DIVERSION:**

SPRING L5 (SW $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ ) Sec. 11, Twp 36N, Rge 02E, B.M., CLEARWATER County

**PLACE OF USE:** DOMESTIC

| Twp Rge Sec | NE |    |    |    | NW |    |    |    | SW |    |    |     | SE |    |    |    | Totals |
|-------------|----|----|----|----|----|----|----|----|----|----|----|-----|----|----|----|----|--------|
|             | NE | NW | SW | SE | NE | NW | SW | SE | NE | NW | SW | SE  | NE | NW | SW | SE |        |
| 36N 02E 11  |    |    |    |    |    |    |    |    |    |    |    | X   |    |    |    |    |        |
|             |    |    |    |    |    |    |    |    |    |    |    | L 5 |    |    |    |    |        |

**CONDITIONS OF APPROVAL**

1. Proof of application of water to beneficial use shall be submitted on or before **March 01, 2006**.
2. Subject to all prior water rights.
3. Domestic use is for 1 home and shop building.
4. The domestic use authorized under this right shall not exceed 13,000 gallons per day.
5. This right does not grant any right-of-way or easement across the land of another.

This permit is issued pursuant to the provisions of Section 42-204, Idaho Code. Witness the signature of the Director, affixed at Boise, this 24<sup>th</sup> day of March, 2005.

  
FOR KARL J DREHER, Director

RECEIVED

71749

Ident. No. 84-12195

RECEIVED

NOV 22 2004

IDWR/North

STATE OF IDAHO  
DEPARTMENT OF WATER RESOURCES  
**APPLICATION FOR PERMIT**  
To appropriate the public waters of the State of Idaho

1. Name of Applicant Edward D. or Rose M. Troutwine Phone 208-476-7004  
Mailing address 2264 Orofino Creek Road Orofino, ID 83544  
2. Source of water supply Spring which is a tributary of Orofino Creek  
3. Location of point of diversion is Township 36 N Range 2 EBM Sec. 11 in the SW  $\frac{1}{4}$ ,  
SW  $\frac{1}{4}$ , Govt. Lot #5, B.M., Clearwater County;  
additional points of diversion if any:

4. Water will be used for the following purposes:

Sec → Amount 0.007326 for Domestic purposes from Jan/1 to Dec/31 (both dates inclusive)  
attached memo (01) Amount \_\_\_\_\_ for \_\_\_\_\_ purposes from \_\_\_\_\_ to \_\_\_\_\_ (both dates inclusive)  
Amount \_\_\_\_\_ for \_\_\_\_\_ purposes from \_\_\_\_\_ to \_\_\_\_\_ (both dates inclusive)  
Amount \_\_\_\_\_ for \_\_\_\_\_ purposes from \_\_\_\_\_ to \_\_\_\_\_ (both dates inclusive)  
Amount \_\_\_\_\_ for \_\_\_\_\_ purposes from \_\_\_\_\_ to \_\_\_\_\_ (both dates inclusive)  
Amount \_\_\_\_\_ for \_\_\_\_\_ purposes from \_\_\_\_\_ to \_\_\_\_\_ (both dates inclusive)  
Amount \_\_\_\_\_ for \_\_\_\_\_ purposes from \_\_\_\_\_ to \_\_\_\_\_ (both dates inclusive)

5. Total quantity to be appropriated is (a) 0.007326 (01) 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 catch basin - 1 1/4 inch  
pipe - 1250 gallon supply tank - 1 1/4 inch pipe to point of use  
b. Height of storage dam \_\_\_\_\_ feet; active reservoir capacity \_\_\_\_\_ acre-feet; total  
reservoir capacity \_\_\_\_\_ acre-feet  
c. Proposed well diameter is \_\_\_\_\_ inches; proposed depth of well is \_\_\_\_\_ feet  
d. Is ground water with a temperature of greater than 85°F being sought? NO  
e. If well is already drilled, when? \_\_\_\_\_; Drilling firm \_\_\_\_\_  
Well was drilled for (well owner) \_\_\_\_\_; Drilling Permit No. \_\_\_\_\_

7. Time required for completion of works and application of water to proposed beneficial use is 1 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. 1 household (including shop building)  
e. Other; describe fully. \_\_\_\_\_

9. Description of place of use:

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

| TWP | RGE | SEC | NE |    |    |    | NW |    |    |    | SW <sup>25</sup> |    |    |    | SE |    |    |    | TOTALS |
|-----|-----|-----|----|----|----|----|----|----|----|----|------------------|----|----|----|----|----|----|----|--------|
|     |     |     | NE | NW | SW | SE | NE | NW | SW | SE | NE               | NW | SW | SE | NE | NW | SW | SE |        |
| 36N | 2E  | 11  |    |    |    |    |    |    |    |    |                  |    | D  |    |    |    |    |    |        |
|     |     |     |    |    |    |    |    |    |    |    |                  |    |    |    |    |    |    |    |        |
|     |     |     |    |    |    |    |    |    |    |    |                  |    |    |    |    |    |    |    |        |
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|     |     |     |    |    |    |    |    |    |    |    |                  |    |    |    |    |    |    |    |        |
|     |     |     |    |    |    |    |    |    |    |    |                  |    |    |    |    |    |    |    |        |

Total number of acres to be irrigated \_\_\_\_\_

10. Describe any other water rights used for the same purposes as described above: \_\_\_\_\_ 476-477

11. a. Who owns the property at the point of diversion? Russell Haralson 2260 Orofino Rd 83544
- b. Who owns the land to be irrigated or place of use? Edward D. and Rose M. Troutwine
- c. If the property is owned by a person other than the applicant, describe the arrangement enabling the applicant to make this filing: Conveyed by warranty deed # 152727 (see exhibit A)

12. Remarks: See memo dated Nov. 16, 2004

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.)

SEE exhibit C

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.

Edward D. Troutwine  
Rose M. Troutwine  
 Signature of Applicant (and title, if applicable)

Received by cm Date 11-22-04 Time 1:19 pm Preliminary check by \_\_\_\_\_  
 Fee \$ 100.00 Received by cm # N016650 Date 11-22-04  
 Publication prepared by cm Date 2/9/05 Published in Clearwater Tribune 2/17+24/05  
 Publication approved cm Date 3/4/04

MEMO

Nov. 16, 2004

TO WHOM IT MAY CONCERN:

Per warranty deed # 152727 (see exhibit A), George and Beverly Pearcey conveyed one-third of their interest in and to that certain spring situate on Government Lot 5, Section 11, Township 36 N, Range 2 E. B. M.

Per Second Judicial Court Decree, case number 6496 (see exhibit B), George and Beverly Pearcey were appropriated 0.0222 cubic feet of water per second with a priority ~~and~~ time of May, 1948, from spring described in previous paragraph.

Thus, our one-third of the Pearcey's interest in said spring is one-third of 0.0222 cubic feet per second, or 0.007326 cubic feet per second, ~~and~~ our beneficial use in the area of application illustrated in exhibit C.

Exhibit C also shows the point of diversion for said spring which rests on Russell Haralson property who is the current owner of the Pearcey estate.

If you have further questions please contact us at 208-476-7804

Ed + Rose Troutwine

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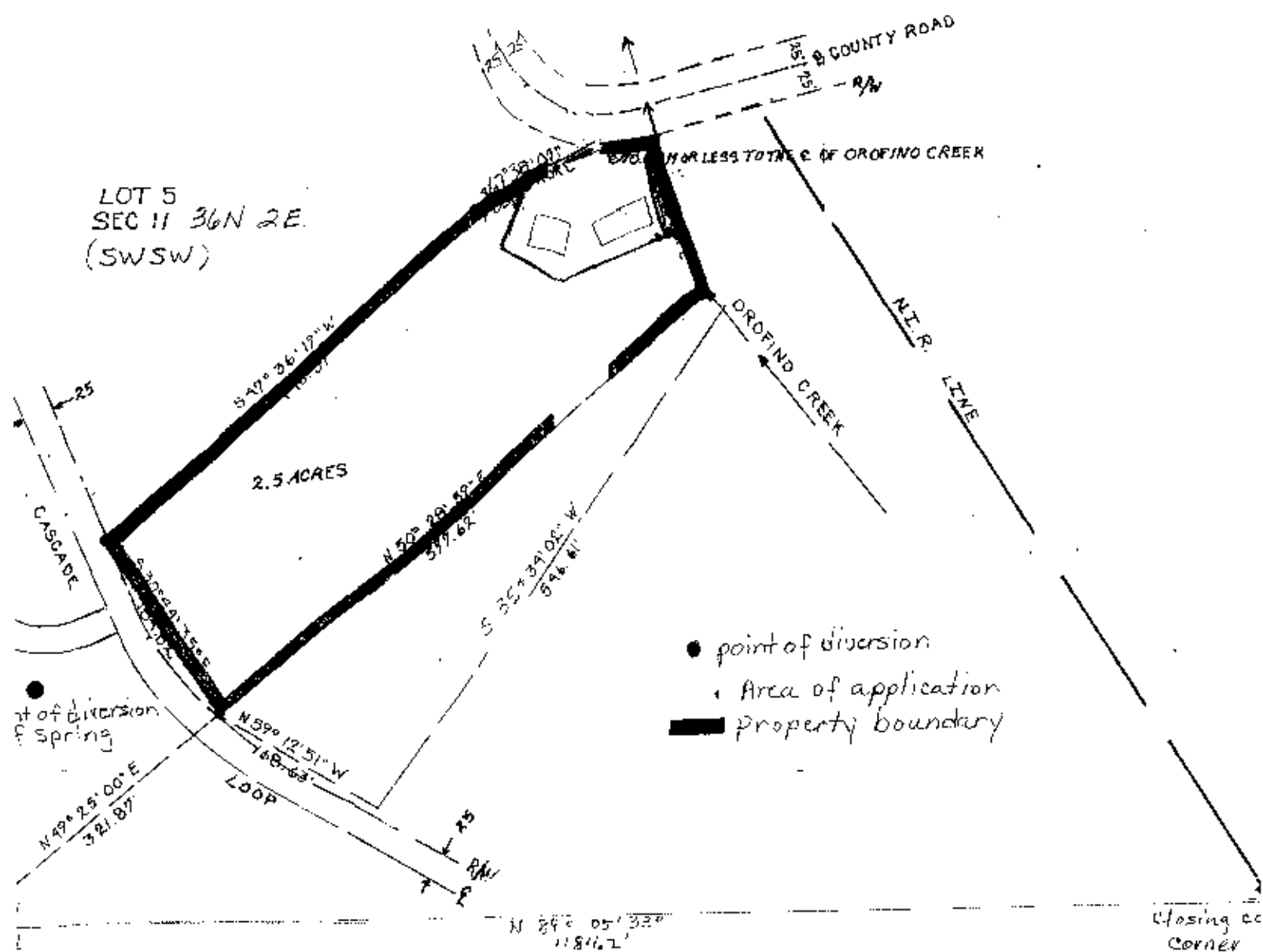


EXHIBIT A

COPY

152727

EXEMPTION  
INDEXED  
SERIAL  
DELIVERED  
FILED

✓  
T. I.  
✓  
✓  
✓

WARRANTY DEED

GEORGE W. PEARCY and BEVERLY O. PEARCY, husband and wife, hereinafter called the Grantors, in and for good and valuable consideration, the receipt of which is hereby acknowledged, do hereby GRANT, CONVEY, and WARRANT to EDWARD D. TROUTWINE, an unmarried man, of P.O. Box 1414, Orofino, ID 83544, hereinafter called the Grantee, the following described real property described in Exhibit A, attached.

SUBJECT TO: Water right and easement as granted by instrument recorded July 19, 1949 in Book 32 of Deeds, Page 627, therein.

ALSO SUBJECT TO: Easement granted to Clearwater County for roadway 60 feet in width as granted by Instrument No. 141060, recorded May 13, 1985 of official records.

ALSO SUBJECT TO: That certain mortgage given to First Security Bank, N.A., as beneficiary, dated April 1, 1976 and recorded as Instrument No. 111567, records of Clearwater County, Idaho.

TO HAVE AND TO HOLD the said premises with their appurtenances, unto the said Grantee and to the Grantee's heirs and assigns forever. And the Grantors do hereby covenant to and with the Grantee, that they are free from all encumbrances, except as above described; and that Grantors will warranty and forever defend the title thereto against all lawful claims and demands whatsoever.

DATED this 25 day of September 1989.

  
GEORGE W. PEARCY

  
BEVERLY O. PEARCY

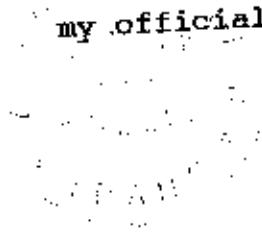
STATE OF IDAHO

County of Clearwater

) ss.  
)

On this 1st day of September 1989, before me, the undersigned notary public, personally appeared George W. Percy and Beverly O. Percy, known to me to be the persons whose name are subscribed to the within instrument, and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

  
William J. Anderson  
Notary Public in and for the  
State of Idaho, residing in  
Orofino, therein.

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## EXHIBIT A

A tract of land located in Government Lot 5, Section 11, Township 36 North, Range 2 East of the Boise Meridian, Clearwater County, Idaho.

### MORE PARTICULARLY DESCRIBED AS:

Beginning at the Southwest Corner of Section 11, Township 36 North, Range 2 East of the Boise Meridian; thence N 49° 25'00" E, 321.87 feet to the Point of Beginning; thence N 50° 28'59" E, 577 feet more or less to the centerline of Orofino Creek; thence Northwesterly along the centerline of Orofino Creek 150 feet more or less to a point in the south right-of-way line of the County Road; thence Southwesterly along the South right-of-way line 115 feet more or less; thence S 47°36'19" W, 443.51 feet to a point in the North East Right-of-Way line of Cascade Drive; thence along a curve in Cascade Drive, the long cord bearing S 30° 44'35" E, 184.82 feet to the point of beginning.

containing 2.50 acres more or less.

Also, and/or excepting the right of joint use on an existing driveway located over the following described line; Beginning at the Point of Beginning of the above described parcel; thence N 30° 44'35" W, 184.82 feet, thence N 47° 36'19" E, 443.51 feet to the Point of Beginning; thence N 67° 38'07" E 105 feet more or less to the South right-of-way line of the County Road.

### EXCEPTING

An undefined easement for an existing water line including ingress and egress for operation and maintenance of said water line.

The right of ingress and egress over and maintenance of a 50 foot long, existing driveway located adjacent to and North of the Point of Beginning for the above described parcel.

ALSO

Seller conveys a One-Third of their One-Half interest in and to that certain spring situate upon the property of the Seller and that Buyer shall share proportionally in maintaining said system.

FURTHER

Seller conveys a One-third interest in said irrigation system from Orofino Creek to the Buyer.

Filed and recorded at the request of INTERMOUNTAIN TITLE CO  
12:42 o'clock P.M., this 15<sup>th</sup> day of September, 1989  
Allen Medsker By: John Christensen  
County Auditor-Recorder Deputy  
Teton County, Idaho  
Fee: 6.00 Returns: \_\_\_\_\_

DISTRICT COURT

SECOND JUDICIAL DISTRICT

STATE OF IDAHO

COUNTY OF CLEARWATER

GUS I. SWANBERG and  
DORAMAE SWANBERG,  
Husband and Wife,

Plaintiffs,

vs.

ARLEN N. BRUCE and  
VIOLET BRUCE,  
Husband and Wife,

Defendants.

Case No. 6496

DECREE

This cause having come on for trial pursuant to setting on the 13th day of April, 1977, upon the complaint of plaintiffs Gus I. Swanberg and Doramse Swanberg, husband and wife, and the answer, counterclaim and amended counterclaim of the defendants; Arlen N. Bruce and Violet R. Bruce, husband and wife, appearing in person and by their attorneys of record, and the plaintiffs, and each of them, appearing by their attorneys of record and declining to introduce any evidence in support of their complaint; and witnesses having been called by the defendants in support of their counterclaim, said witnesses having been sworn and examined in open court, and oral and documentary evidence having been heard, considered, and submitted, and the case having been submitted to the court for decision, and the court being fully advised in the premises, and having made, entered and filed herein

NOW THEREFORE, BASED THEREON, AND GOOD CAUSE APPEARING

THEREFOR, the court renders and enters herein its judgment and decree, as follows:

IT IS CONSIDERED, ORDERED, ADJUDGED AND DECREED that George Pearcey and Beverly Pearcey, husband and wife, and Arlen N. Bruce and Violet R. Bruce, husband and wife, own as tenants in common, the water appropriation and delivery system now existing and in place and use between the spring of water rising to the surface on the land on Lot 5 described in "Exhibit A" attached hereto, and by reference made a part hereof, and the land described in "Exhibit B" attached hereto and by reference made a part hereof, as more fully set forth and described in paragraph VII of the findings of fact heretofore made and entered herein

IT IS FURTHER CONSIDERED, ORDERED, ADJUDGED AND DECREED, that George Pearcey and Beverly Pearcey, husband and wife, and Arlen N. Bruce and Violet R. Bruce, husband and wife, own as tenants in common, .0444 cubic feet of water per second of time of the waters of the spring located upon Lot 5 of the land described in "Exhibit A" attached hereto, with priority in time of appropriation and beneficial use of May, 1948, and that .0222 cubic feet of water per second of time thereof has been put to a beneficial use continuously from and after May, 1948, upon the land described in "Exhibit A" attached hereto by George Pearcey and Beverly Pearcey, husband and wife, and their predecessors in interest, and that .0222 cubic feet of water per second of time thereof has been put to a beneficial use continuously from and after May 1948, upon the land described in "Exhibit B" attached hereto, by Arlen N. Bruce and Violet R. Bruce.

Decree - 2

WARE, STELLMON & O'CONNELL  
LAWYERS  
LEWISTON, IDAHO

husband and wife, and their predecessors in interest, said time of appropriation and application to beneficial use of the foregoing water rights being identical.

IT IS FURTHER, CONSIDERED, ORDERED, ADJUDGED AND DECREED that Arlen N. Bruce and Violet R. Bruce, husband and wife, are the owners through appropriation and application to beneficial use upon the lands described in "Exhibit B" attached hereto, and are entitled to the possession and use of an additional water right in and to .05439 cubic feet of water per second of time of the waters of said spring on Lot 5 described in "Exhibit A" attached hereto in addition to .0222 cubic feet of water per second of time thereof mentioned in the preceeding paragraph, with priority of time of appropriation and application to beneficial use of said additional .05439 cubic feet of water per second of time of the waters of said spring of May 15, 1957.

IT IS FURTHER CONSIDERED, ORDERED, ADJUDGED AND DECREED, that the complaint of plaintiffs Gus I. Swanberg and Doremaa Swanberg, husband and wife, be dismissed with prejudice, and that they take nothing thereby.

IT IS FURTHER CONSIDERED, ORDERED, ADJUDGED AND DECREED that the defendants and counter claimants Arlen N. Bruce and Violet R. Bruce, husband and wife, having offered no evidence in support of their claim for damages, compensatory or punitive, are denied damages against the plaintiffs herein, but are awarded their costs herein taxed in the sum of \$ \_\_\_\_\_.

Done in open court this 13th day of April, 1977.

Ray E. Masman  
District Judge

Township 36 North, Range 2 E.B.M.;

Section 11: Lot 5, all that part of Lot 3  
lying Southwesterly of Orofino Creek;

EXCEPTING THEREFROM the following:

1. That part of Lot 5 lying East of Orofino Creek,  
and being between Orofino Creek and the Nez Perce  
Indian Reservation Line.
2. A water right in and to a certain spring situate  
on Lot 5, aforesaid.
3. Commencing at the section corner common to Sections  
10, 11, 14 and 15, Township 36 North, Range 2 E.B.M.,  
thence N.  $0^{\circ}02'$  W. a distance of 1529.7 feet; thence  
N.  $53^{\circ}19'$  E. a distance of 63.2 feet, which is the  
TRUE POINT OF BEGINNING; thence N.  $53^{\circ}19'$  E. 134.6  
feet to the West right of way line of the County  
Road; thence  
Southeasterly along said right of way line 502  
feet; thence  
Westerly 285 feet; thence  
N.  $33^{\circ}37'$  W. 520 feet to the TRUE POINT OF BEGINNING
4. A portion of Lot 5, Section 11, Township 36 North,  
Range 2 E.B.M., described as:  
  
Beginning at a point 1,320 feet north of the section  
corner common to Sections 10, 11, 14 and 15, Townshi  
36 North, Range 2 E.B.M.; thence  
East 233 feet to the right of way line of the  
roadway traversing said premises; thence  
Northerly and Northwesterly along said right of way  
line, 600 feet, more or less, to the point of  
intersection with the west line of said Lot 5;  
thence  
South 450 feet to the point of beginning.

5. A portion of Lot 3, Section 11, Township 36 North, Range 2 E.B.M., described as:

Beginning at the section corner common to Sections 10, 11, 14 and 15, Township 36 North, Range 2 E.B.M., thence

N.  $0^{\circ}02'$  W. 1529.7 feet; thence N.  $53^{\circ}19'$  E. 63.2 feet to the TRUE POINT OF BEGINNING; thence N.  $53^{\circ}19'$  E. 134.6 feet to the West right of way line of the County Road; thence N.  $42^{\circ}46'$  W. 145.2 feet along said right of way line; thence N.  $53^{\circ}45'$  W. 74.3 feet along said right of way line to the section line between Sections 10 and 11, thence

South along the section line 81.9 feet; thence

S.  $7^{\circ}51'$  E. 95.3 feet; thence

S.  $33^{\circ}37'$  E. 66.0 feet to the TRUE POINT OF BEGINNING.

6. A portion of Lot 3, Section 11, Township 36 North, Range 2 E.B.M., described as:

Commencing at the section corner common to Sections 10 and 11, Township 36 North, Range 2 E.B.M., thence N.  $0^{\circ}02'$  W. 1833.0 feet to the TRUE POINT OF BEGINNING; thence

North along the section line 88 feet, more or less, to the West bank of ~~Whitney~~ Creek; thence

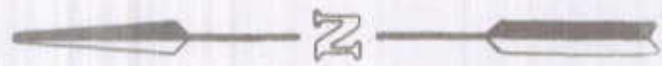
Southeasterly along the West bank of ~~Whitney~~ Creek to its intersection with the County Road right of way line; thence

Northwesterly along the County Road right of way line, 260 feet, more or less, to the TRUE POINT OF BEGINNING. "L. A. B. & D."

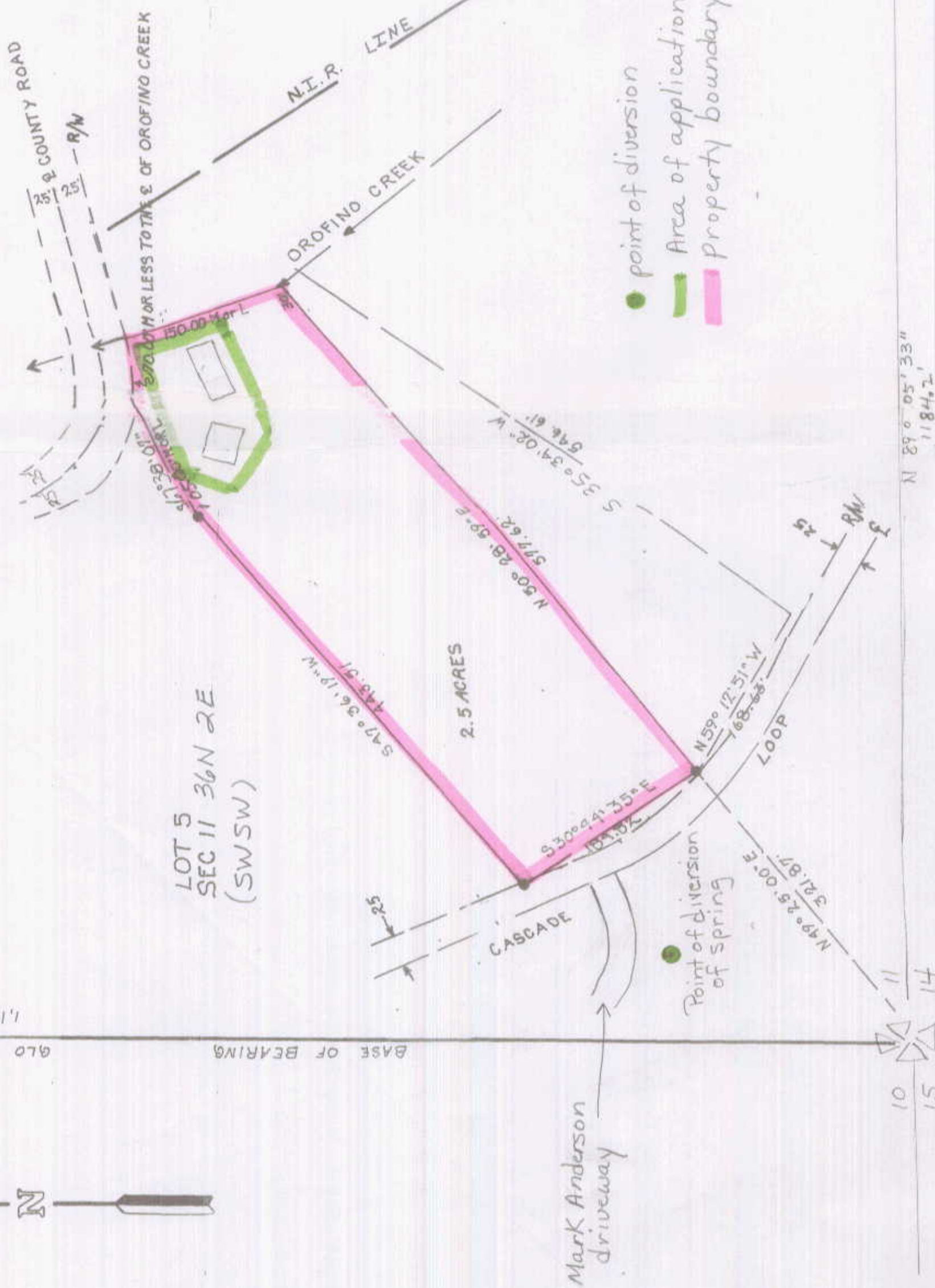
Property situated in Clearwater County, State of Idaho, to-wit:

Lot Four (4), East of the Reservation Line, of Section Eleven (11), Township Thirty-six (36) North, Range Two (2), E.B.M., and that part of Government Lot Five (5) in Section Eleven (11), Township Thirty-six (36) North, Range Two (2), E.B.M., lying east of Orofino Creek and being between the said Creek and the Nez Perce Indian Reservation line, excepting from the above grant the railroad right of way of the Camas Prairie R.R. and reservations made in previous grants.

# EXHIBIT C



BASE OF BEARING  
GLO N 00° 02' W  
1,110.73



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](http://www.idwr.idaho.gov)

DIRK KEMPTHORNE  
Governor

KARL J. DREHER  
Director

March 24, 2005

EDWARD D TROUTWINE  
ROSE M TROUTWINE  
2264 OROFINO CREEK RD  
OROFINO ID 83544

RE: Permit No. 84-12195

### 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.

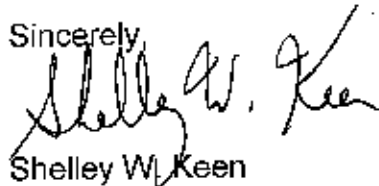
Enclosed is a form entitled 'Instructions for Proof of Beneficial Use.' Please read the instructions carefully since you must take further action to develop this permit into a licensed water right. Also enclosed is a form entitled 'Proof of Beneficial Use.' If your project is already completed, you should complete and submit this form immediately.

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 a 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:kit

Enclosure(s)

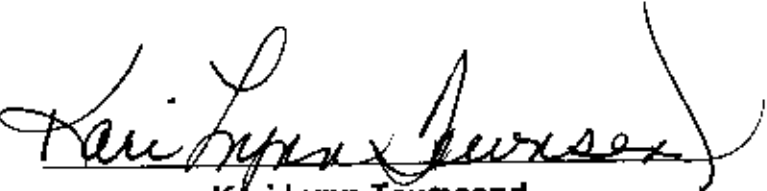
# **CERTIFICATE OF SERVICE**

I hereby certify that on March 24, 2005 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.**

**84-12195**

**EDWARD D TROUTWINE  
ROSE M TROUTWINE  
2264 OROFINO CREEK RD  
OROFINO ID 83544**

  
**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.

## **Comment Report**

**84-12195**

1. dball 2/2/2005 Legal Notice Remarks

Comment: Domestic use is for 1 home and shop building.

2. kwalker 3/18/2005 Permit Review

Comment: Application falls within Salmon Clearwater moratorium area. Warranty deed and decree of Swanberg vs. Bruce in file limits use to 1/3 of 1/2 interest in the spring. See file for more information.

# AFFIDAVIT OF PUBLICATION

STATE OF IDAHO )  
 ) ss.  
County of Clearwater )

MARCIE STANTON

RECEIVED

MAR 03 2005

IDWR/North

being first duly sworn, on oath, deposes and says:

That I am and at all times herein mentioned have been a citizen of the United States and of the State of Idaho, over 21 years of age, and that I am not a party to nor interested in the above entitled proceeding; that I am and at all times herein mentioned have been the Editor, Foreman, of the THE CLEARWATER TRIBUNE; that said Clearwater Tribune is a newspaper of general circulation, printed and published weekly at Orofino, in the County of Clearwater and State of Idaho; that the Clearwater Tribune has been continuously and uninterruptedly published in Clearwater County, Idaho, during the period of seventy-eight consecutive weeks prior to the

Dept. of Water Resource

## TROUTWINE NOTICE

of which the annexed is a full, true and correct printed copy, was published in the regular and entire issue of said newspaper, and not in any supplement thereof, for a full period of two non-consecutive issues, commencing on the 17th day of February 2005 and ending on the 24th day of February 2005

STATE OF IDAHO )  
 )  
COUNTY OF CLEARWATER )

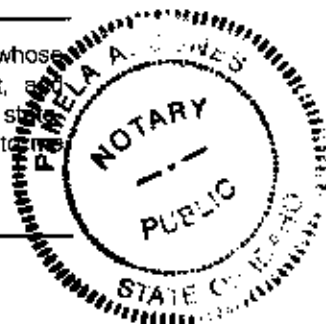
On this 25th day of February in the year of 2005, before me, a Notary Public, personally appeared

Marcie Stanton

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 she executed the same.

Pamela A. Jones

Notary Public for Idaho  
Resident at Orofino, Idaho  
My commission expires: 11-26-07



## NOTICE

The following application(s) have been filed to appropriate the public waters of the State of Idaho:  
**84-12195**

EDWARD D TROUTWINE  
ROSE M TROUTWINE  
2264 OROFINO CREEK RD  
OROFINO ID 83544

Point(s) of Diversion L5 (SWSWSW) S11 T36N R02E

CLEARWATER County

Source SPRING Tributary To OROFINO CREEK

Use: DOMESTIC 01/01 To 12/31 0.01 CFS

Total Diversion: 0.01 CFS

Date Filed: 11/22/2004

Place Of Use: DOMESTIC

Remark: Domestic use is for 1 home and shop building.

**84-12196**

EDWARD D TROUTWINE  
ROSE M TROUTWINE  
2264 OROFINO CREEK RD  
OROFINO ID 83544

Point(s) of Diversion L5 (SWSWSW) S11 T36N R02E

CLEARWATER County

Source OROFINO CREEK Tributary To CLEARWATER RIVER

Use: IRRIGATION 03/15 To 11/15 0.01 CFS

Total Diversion: 0.01 CFS

Date Filed: 11/22/2004

Place Of Use: IRRIGATION T36N R02E S11 SWSW Lot 5

Number of Acres 0.5

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, Northern Region, 1910 Northwest Blvd, Suite 210, Coeur D' Alene ID 83814 together with a protest fee of \$25.00 for each application on or before 03/07/2005. The protestant must also send a copy of the protest to the applicant.

KARL J DREHER, Director

02-17, 24c

**Ball, Dianne**

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**From:** Ball, Dianne  
**Sent:** Wednesday, February 16, 2005 9:54 AM  
**To:** 'Clearwater Tribune'  
**Subject:** RE: Legal notice for WR Numbers 84-12195 and 84-12196 for publication on February 17 and 24, 2005

Thanks. Sure do need PROOF PRIOR TO PUBLICATION to check to see what happens in layout. FAX 208-769-1454

AND - Thanks again.

Dianne

-----Original Message-----

**From:** Clearwater Tribune [mailto:cleartrib@clearwater.net]  
**Sent:** Wednesday, February 16, 2005 9:51 AM  
**To:** Ball, Dianne  
**Subject:** Re: Legal notice for WR Numbers 84-12195 and 84-12196 for publication on February 17 and 24, 2005

Hello, Dianne,

I found your legal right here in the correct folder. I believe what happened is that I thought another person who checks the e-mail had taken care of it, so it was a dumb error on our part. I apologize, but it's right here and I'll take care of it.

Thank you for your patience!

Andrea

2/16/2005



**State of Idaho**  
**DEPARTMENT OF WATER RESOURCES**

**NORTHERN REGION, Suite No. 210 • 1910 Northwest Blvd. • Coeur d'Alene, Idaho 83814-2615**  
**(208) 769-1450**

**DIRK KEMPTHORNE**  
GOVERNOR

**KARL J. DREHER**  
DIRECTOR

February 09, 2005

EDWARD D TROUTWINE  
ROSE M TROUTWINE  
2264 OROFINO CREEK RD  
OROFINO ID 83544

RE: Applications for Permit Nos. 84-12195 and 84-12196

Dear Applicant(s):

The Department of Water Resources acknowledges receipt of your water right application. Please refer to the above referenced number in all future correspondence regarding this application.

A legal notice of the application has been prepared and is scheduled for publication in the Clearwater Tribune on February 17 and 24, 2005. Submittal of protests to this application will be allowed for a period ending ten days after the second publication.

If the application is protested you will be sent a copy of the protest(s). All protests must be resolved before the application can be considered for approval. If the protest(s) cannot be resolved voluntarily, the Department will conduct a conference and/or hearing on the matter.

If the application is not protested, it will be forwarded to our State Office in Boise for final processing. The State Office will notify you of any action taken on the application and will send you a copy of the permit if approved. A typical processing time for an unprotested application is about eight to twelve weeks.

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

Sincerely,

A handwritten signature in cursive script that reads "Allen Beardslee".

Allen Beardslee  
Senior Water Resource Agent

Enclosure(s) - Receipt No. N016650. (Receipt No. N016649 given to you at time applications were completed. Computerized copy enclosed.)



State of Idaho

## DEPARTMENT OF WATER RESOURCES

NORTHERN REGION, Suite No. 210 • 1910 Northwest Blvd. • Coeur d'Alene, Idaho 83814-2615  
(208) 769-1450

Fax (208) 769-1454

DIRK KEMPTHORNE  
GOVERNOR

KARL J. DREHER  
DIRECTOR

February 09, 2005

**MARCIE STANTON**  
**LEGAL NOTICE DEPARTMENT**  
CLEARWATER TRIBUNE  
PO BOX 71  
OROFINO ID 83544

e-mailed to Marcie at [cleartrib@clearwater.net](mailto:cleartrib@clearwater.net)

RE: Application for Permit No. 84-12195 and 84-12196

**Dear Marcie:**

Enclosed you will find a legal notice which we wish to have published in your newspaper on the dates indicated, February 17 and 24, 2005, (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 03/07/2005. Your cooperation is, as always, GREATLY appreciated. It's always a pleasure to work with you.

Sincerely

*Dianne*

Dianne Ball  
Administrative Assistant

**Ball, Dianne**

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**From:** Ball, Dianne  
**Sent:** Wednesday, February 09, 2005 10:34 AM  
**To:** Legal Notices-Clearwater Tribune (E-mail)  
**Subject:** Legal notice for WR Numbers 84-12195 and 84-12196 for publication on February 17 and 24, 2005

A very good day to you, Marcie,

Attached is our cover letter requesting publication on February 17 and 24, 2005 of the legal notice, also attached.

If you have ANY questions, please call me at 208-769-1450.

Also, **PLEASE FAX A PROOF COPY TO ME PRIOR TO PUBLICATION.**

Thank you very much. It is always a pleasure to work with you.

 *Dianne*

Dianne Ball, Administrative Assistant  
Idaho Department of Water Resources  
1910 Northwest Blvd., Suite 210  
Coeur d'Alene, ID 83814  
Phone 208-769-1450 FAX 208-769-1454

2/9/2005

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

**84-12195**

EDWARD D TROUTWINE  
ROSE M TROUTWINE  
2264 OROFINO CREEK RD  
OROFINO ID 83544

Point(s) of Diversion L5 (SWSWSW) S11 T36N R02E CLEARWATER County

Source SPRING Tributary To OROFINO CREEK

Use: DOMESTIC 01/01 To 12/31 0.01 CFS  
Total Diversion: 0.01 CFS

Date Filed: 11/22/2004

Place Of Use: DOMESTIC T36N R02E S11 SWSW Lot 5

Remark: Domestic use is for 1 home and shop building.

**84-12196**

EDWARD D TROUTWINE  
ROSE M TROUTWINE  
2264 OROFINO CREEK RD  
OROFINO ID 83544

Point(s) of Diversion L5 (SWSWSW) S11 T36N R02E CLEARWATER County

Source OROFINO CREEK Tributary To CLEARWATER RIVER

Use: IRRIGATION 03/15 To 11/15 0.01 CFS  
Total Diversion: 0.01 CFS

Date Filed: 11/22/2004

Place Of Use: IRRIGATION T36N R02E S11 SWSW Lot 5

Number of Acres 0.5

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, Northern Region, 1910 Northwest Blvd, Suite 210, Coeur D' Alene ID 83814 together with a protest fee of \$25.00 for each application on or before 03/07/2005. The protestant must also send a copy of the protest to the applicant.

KARL J DREHER, Director

Published on February 17 and 24, 2005



**State of Idaho**  
**DEPARTMENT OF WATER RESOURCES**

**NORTHERN REGION, Suite No. 210 • 1910 Northwest Blvd. • Coeur d'Alene, Idaho 83814-2615**  
**(208) 769-1450**

**DIRK KEMPTHORNE**  
GOVERNOR

**KARL J. DREHER**  
DIRECTOR

February 02, 2005

RAY HENNEKEY  
STATE OF IDAHO  
DEPT OF FISH & GAME  
1540 WARNER AVE  
LEWISTON, ID 83501

FAXED TO RAY 2/2/05  
5 pages total

Application to Permit No. 84-12195

Dear Ray :

The Department of Water Resources is seeking written comment and/or recommendations from your agency regarding the above referenced water right application. A copy of the application follows for your reference.

This office can publish notice of the application as soon as the initial review is completed; therefore, your prompt response to this request is appreciated. If your agency desires to formally protest the approval of this application, you may do so after the notice is published by filing a written protest along with a \$25.00 filing fee within 10 days after final publication.

You may comment by e-mail to [Dianne.Ball@idwr.idaho.gov](mailto:Dianne.Ball@idwr.idaho.gov)

Please contact this office if you have any questions regarding the application.

Sincerely,

A handwritten signature in cursive script that reads "Dianne".

Dianne Ball  
Administrative Assistant

Enclosure(s)