

69563

Ident. No. 97-7417

RECEIVED

MAR 19 2004

Department of Water Resources

STATE OF IDAHO

DEPARTMENT OF WATER RESOURCES

APPLICATION FOR PERMIT

To appropriate the public waters of the State of Idaho

RECEIVED

OCT 16 2001

IDWR/North

1. Name of Applicant J D LUMBER INC Phone 208 448 2671
 Mailing address PO BOX 55 PRIEST RIVER IDAHO 83856
2. Source of water supply UNNAMED STREAM which is a tributary of SAN BORN CREEK
3. Location of point of diversion is Township 56N. Range 4W Sec. 3, in the 1/4,
NE SE SW SE 1/4, Govt. Lot 1/4, B.M., BOAVER County;
 additional points of diversion if any: NW 1/4 SE 1/4, SEC. 3, T. 56N., R. 4W.

4. Water will be used for the following purposes:

Amount 75 for STORAGE FOR RECREATION purposes from Y1 to 12/31 (both dates inclusive)
 (cfs or acre-feet per annum)

Amount 75 for STORAGE FOR WILDLIFE purposes from Y1 to 12/31 (both dates inclusive)
 (cfs or acre-feet per annum)

Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
 (cfs or acre-feet per annum)

Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
 (cfs or acre-feet per annum)

Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
 (cfs or acre-feet per annum)

Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
 (cfs or acre-feet per annum)

5. Total quantity to be appropriated is (a) _____ and/or (b) 75
 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 ON-STREAM POND - 2
DAMS, 15 ACRES SURFACE AREA - 5' DEEP

b. Height of storage dam 7 feet; active reservoir capacity 75 acre-feet; total
 reservoir capacity 75 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? _____

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. _____

e. Other; describe fully. RECREATION STORAGE IS FOR FISHING/SWIMMING.

9. Description of place of use:

a. If water is for irrigation, indicate acreage in each subdivision in the tabulation below.

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

TWP	RGE	SEC	N E				N W				S W				S E				TOTALS
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
56N	4E	3.									*			*	*	*			

* = STORAGE FOR WILDLIFE RECREATION

Total number of acres to be irrigated _____

10. Describe any other water rights used for the same purposes as described above. N/A

11. a. Who owns the property at the point of diversion? APPLICANT

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

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

12. Remarks: _____

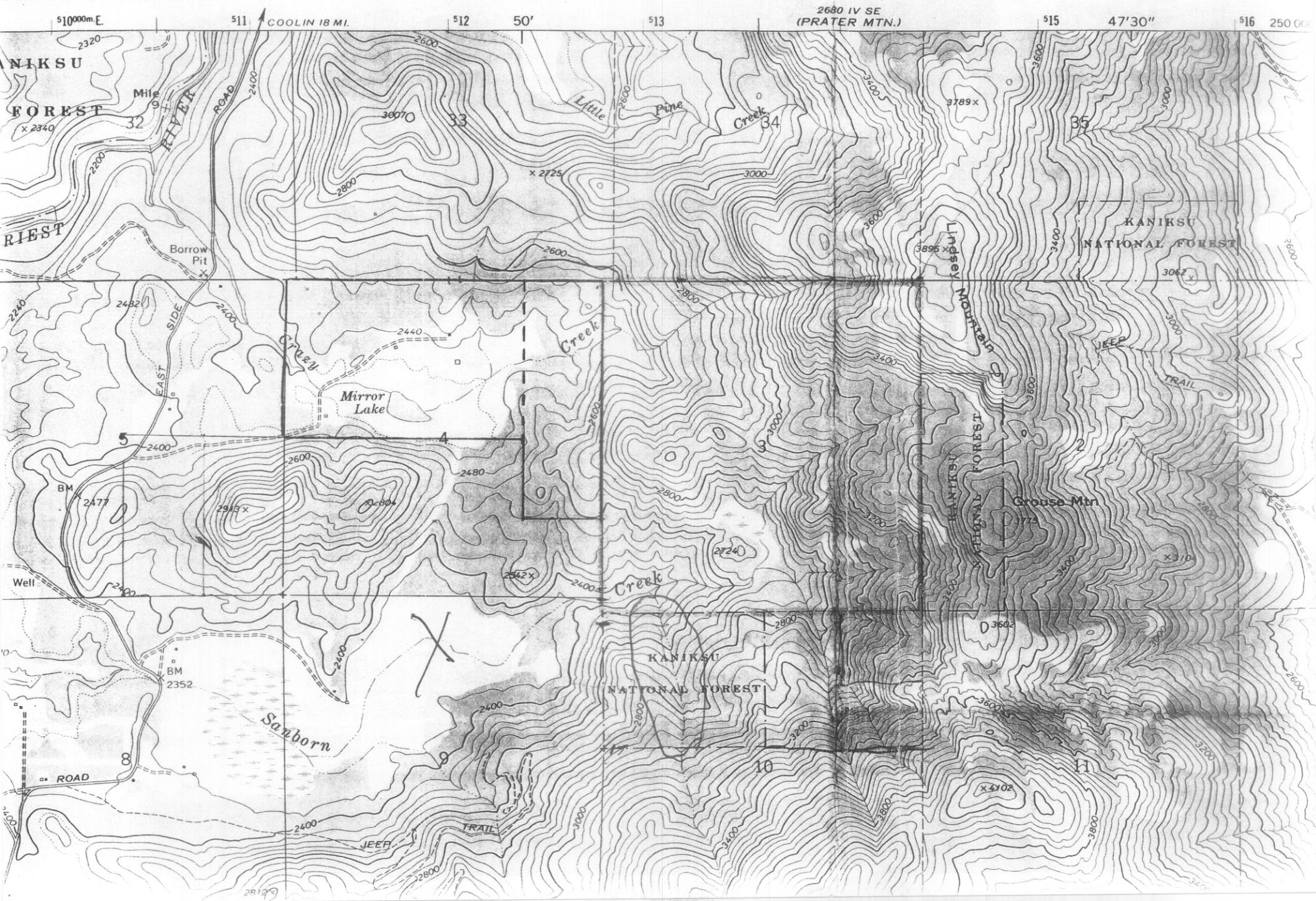
13. MAP OF PROPOSED PROJECT REQUIRED - Attach an 8½"x11" map clearly identifying the proposed point of diversion, place of use, section #, township & range. (A photocopy of a USGS 7.5 minute topographic quadrangle map is preferred.)

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.

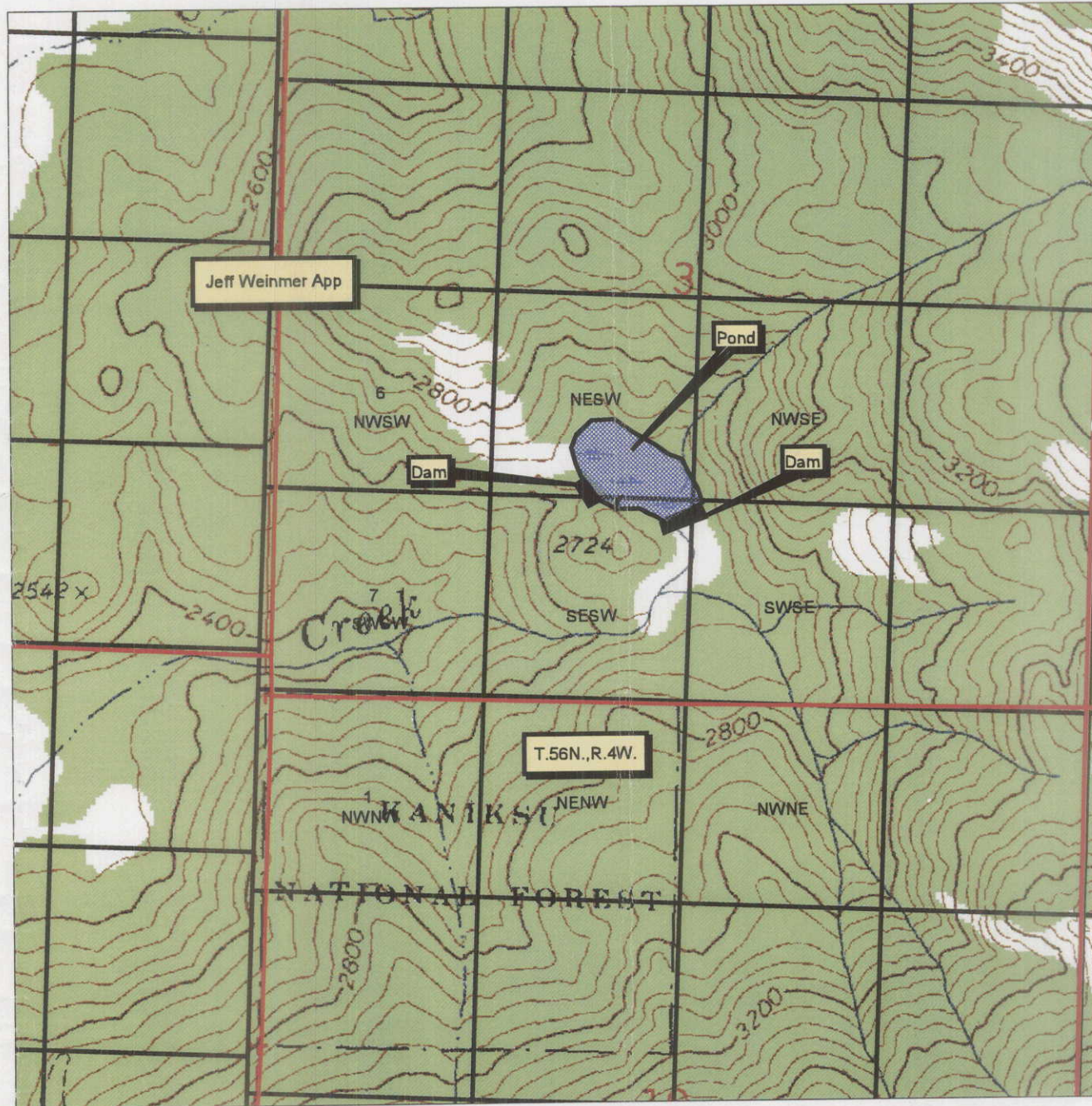
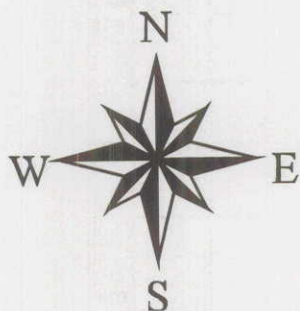
J.D. LUMBER
Signature of Applicant (and title, if applicable)

Received by db Date 10/16/01 Time 1:05 P Preliminary check by _____
 Fee \$ 250.00 Received by db # ND14711 Date 10/16/01
 Publication prepared by db Date 11/28/01 Published in Priest River Times Date 12/5 & 12/01
 Publication approved db Date 1/4/02

UNITED STATES
DEPARTMENT OF THE INTERIOR
GEOLOGICAL SURVEY



-  PLSS Section LinesSections.shp
-  T56n04w.shp
-  Quad IndexQuadcov.shp



State of Idaho
Department of Water Resources
Permit to Appropriate Water
NO. 97-07417

Priority: October 16, 2001

Maximum Diversion Volume: 75.0 AF

This is to certify, that J D LUMBER INC
PO BOX 55
PRIEST RIVER ID 83856

has applied for a permit to appropriate water from:

Source: UNNAMED STREAM **Tributary:** SANBORN CREEK

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

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>ANNUAL VOLUME</u>
WILDLIFE STORAGE	01/01 to 12/31	75.0 AF
RECREATION STORAGE	01/01 to 12/31	75.0 AF

LOCATION OF POINTS OF DIVERSION:

UNNAMED STREAM	NE $\frac{1}{4}$ SW $\frac{1}{4}$	Sec. 3, Twp 56N, Rge 04W, B.M., BONNER County
UNNAMED STREAM	SE $\frac{1}{4}$ SW $\frac{1}{4}$	Sec. 3, Twp 56N, Rge 04W, B.M., BONNER County
UNNAMED STREAM	SW $\frac{1}{4}$ SE $\frac{1}{4}$	Sec. 3, Twp 56N, Rge 04W, B.M., BONNER County
UNNAMED STREAM	NW $\frac{1}{4}$ SE $\frac{1}{4}$	Sec. 3, Twp 56N, Rge 04W, B.M., BONNER County

PLACE OF USE: WILDLIFE STORAGE & RECREATION STORAGE

Twp Rge Sec	NE				NW				SW				SE				Totals
	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
56N 04W 3									X				X		X	X	

CONDITIONS OF APPROVAL

1. Proof of application of water to beneficial use shall be submitted on or before **March 01, 2005**.
2. Subject to all prior water rights.
3. The storage of water under this right is contingent upon the certification of the dam and authorization of storage per the dam safety provisions of the Idaho Code.
4. Recreation storage use is for fishing and swimming.

This permit is issued pursuant to the provisions of Section 42-204, Idaho Code. Witness the signature of the Director, affixed at Boise, this 6th day of April, 2004.


Acting for **KARL J DREHER**, Director



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Boise, ID 83706 - P.O. Box 83720, Boise, ID 83720-0098

Phone: (208) 327-7900 Fax: (208) 327-7866 Web Site: www.idwr.state.id.us

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

April 7, 2004

J D LUMBER INC
PO BOX 55
PRIEST RIVER ID 83856

RE: Permit No. 97-7417

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.

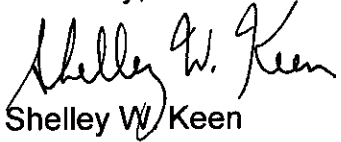
Enclosed is a form entitled 'Instructions for Proof of Beneficial Use.' Please read the instructions carefully since you must take further action to develop this permit into a licensed water right. Also enclosed is a form entitled 'Proof of Beneficial Use.' If your project is already completed, you should 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 208-327-7946.

Sincerely,

A handwritten signature in black ink that reads "Shelley W. Keen". The signature is fluid and cursive, with the first name being the most prominent.

Shelley W. Keen

Water Rights Supervisor

SWK:klt

Enclosure(s)

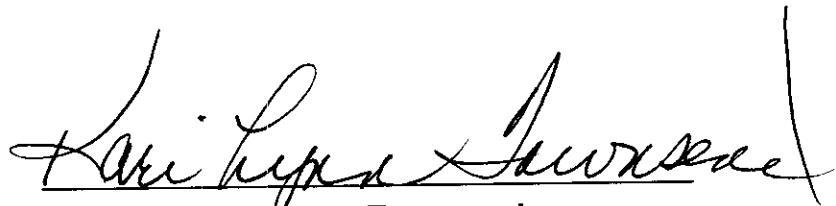
CERTIFICATE OF SERVICE

I hereby certify that on April 7, 2004 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.

97-7417

**J D LUMBER INC
PO BOX 55
PRIEST RIVER ID 83856**

A handwritten signature in black ink, appearing to read "Kari Lynn Townsend", is written over a horizontal line.

**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.

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MAR 19 2004

Department of Water Resources

Memorandum

To: State Office

 **From: Northern Region**

Date: March 16, 2004

Re: Dismissal of Protest against Application for Permit 97-7417

Northern Region recommends that the Permit for this filing be approved.

JANET JENKINS

Attorney at Law

JANET JENKINS

JOHN MOREY MAURICE OF COUNSEL
ROBYN KARLE, LEGAL ASSISTANT

706 SUPERIOR STREET, SUITE C
SANDPOINT, IDAHO 83864

PHONE: (208) 263-7999
FAX: (208) 263-8228
EMAIL: JENKINS@SANDPOINT.NET

RECEIVED

MAR 09 2004

IDWR/North

March 8, 2004

Al Beardsly
Department of Water Resources
1910 Northwest BLVD.
Coeur D' Alene, Idaho 83814

Re: Henderson/ J.D. Lumber Protest

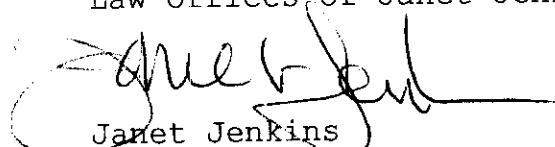
Dear Al:

Please find enclosed the original voluntary Dismissal of
Protest to J.D. Lumber's permit application.

Thanks for your help in this matter.

Sincerely,

Law Offices of Janet Jenkins



Janet Jenkins
Attorney at Law

JJ/as

BEFORE THE DEPARTMENT OF WATER RESOURCES

RECEIVED
MAR 09 2004
IDWR/North

In The Matter of Application	)	
For Permit No. 97-7417	)	Voluntary Dismissal
In The Name Of	)	Of Protest
JD Lumber Company	)	
_____	)	

Comes Now Orlin Henderson, and hereby dismisses his protest of
the above named Application For Permit No. 97-7417.

DATED this 8 day of March, 2004.

Orlin Henderson
Orlin Henderson



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 5, 2004

JENNIFER MYERS
LEGAL ASSISTANT
HOLMES LAW OFFICE, P.A.
PO BOX 909
COEUR D ALENE ID 83816-0909

RE: JD Lumber, Inc. v. Orlin Henderson
Permit Application, #97-7417

Dear Ms. Myers:

Enclosed is a Certified Copy of the Notice of Protest filed by Orlin Henderson on December 18, 2001.

There is a \$1.00 fee for any certified copy from our Department. Please remit by return mail.

Thank you,

Sincerely,

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

Dianne Ball
Administrative Assistant

Enclosure - Certified Copy

◆ **HOLMES LAW OFFICE, P.A.** ◆

Edwin B. Holmes

Lisa A. Holmes

February 3, 2004

Bob Haynes
Idaho Dept of Water Resources
1910 NW Blvd
Coeur d'Alene ID 83814

RECEIVED
FEB 04 2004
IDWR/North

Re: JD Lumber, Inc v. Orlin Henderson
Permit Application, Ident #97-7417

Dear Mr. Haynes:

This office represents JD Lumber, Inc. in connection with the above referenced matter. I have enclosed a copy of a Notice of Protest which we will be needing a certified copy of for an upcoming trial. Please let me know if there is any fee to certify this document.

Thank you for your assistance. If you have any questions, please do not hesitate to call.

Sincerely,

HOLMES LAW OFFICE, P.A.



JENNIFER MYERS
Legal Assistant

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
NOTICE OF PROTEST

This form must be used to file a protest with this department under sections 42-100B, 42-201A, 42-203C, 42-211, 42-222 and 42-214, Idaho Code. The department will also accept a timely protest not completed on this form if it contains the same information.

1. Matter being protested J.D. Lumber, Inc. Permit Application, Ident #97-7417
Name of protestor Orlin Henderson, H.C.R. 6 Box 14, Priest River, IDAHO 8

2. Protestant (representative for service if different than protestant)
Janet Jenkins, Attorney at Law

3. Service mailing address Post Office Box 698, Sandpoint, Idaho 83864
Service telephone no (208) 263-7999

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

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

What would resolve your protest? Modification of the proposed application to assure Henderson his water rights are protected and modification of the dam design to protect against harm.

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

18 day of December, 2001

Orlin Henderson
PROTESTANT

Janet Jenkins, Attorney at Law
PROTESTANT REPRESENTATIVE

NOTICE OF PROTEST

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

Orlin Henderson protests J.D. Lumber Inc.'s application to divert waters from unnamed stream which is a tributary of Sanborn Creek for recreational storage - fishing/swimming. The proposed diversion obstructs and impedes Henderson's water rights for stock water and ground water on contiguous lands in Sections 8 and 9, thereby causing him injury and harm. The stored waters also are a source of evaporation which hinders availability of water to Henderson's lands.

Additionally, the dam has already been constructed. Although it is not in a high risk area, it does not appear to have any release capabilities; its embankment slopes appear to have been constructed with soil and boulders without reinforcement; and, in Mr. Henderson's view, poses a threat of safety impact in the event of a winter thaw. Winter thaws in the past, even without stored waters, have caused washouts and flooding in the subject area. This potential risk is of significant concern because the land area and vegetation are highly degraded because of past logging practices.

This protest is based on Idaho Code 42-101 et seq. and IDAPA rules regarding safety of dams.

Claim No. 97-7416

69516
STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

RECEIVED
OCT 02 2001
IDWR/North

CLAIM TO A WATER RIGHT

Under the provisions of Section 42-243, *Idaho Code*, any person claiming a water right established by diversion and application of water to beneficial use must file a claim with the Department of Water Resources. **The filing of this claim does not confirm the water right claimed.** Water rights represented by a valid permit, license, decree, or previous claim are exempt from this requirement, as are uses of water for domestic purposes as defined in Section 42-111, *Idaho Code*. A filing fee must be submitted with this claim. See the instruction sheet to determine the appropriate fee.

Notice is hereby given that Orelin Henderson
(Name of Claimant)
3747 Eastside Rd Priest River Id. Telephone No: 208-448-1738
(Mailing Address) (Zip Code) 83856

claims a right to the diversion and beneficial use of surface or ground water. The extent and nature of said claim is as follows:

1. Date of Priority: (When the water was first applied to beneficial use) at least 100 yrs.
A claim is not acceptable for the use of surface water with a priority later than May 20, 1971. A claim is not acceptable for the use of ground water with a priority date later than March 25, 1963, unless the water is used for domestic purposes as defined in Section 42-111, *Idaho Code*.

2. Describe the source of water: (Name of stream, lake, spring, etc., or ground water)
SANBORN CREEK
SANBORN CREEK tributary to the Priest River

3. Describe the purpose for which the water has been used and the time during the year when you have used the right claimed:
(cfs or af) (Irrigation, Domestic, Stock, Etc.) (Both dates inclusive) (MM/DD) (MM/DD)

Quantity <u>0.05</u>	Use <u>STOCKWATER</u>	Period of Use From <u>7/1</u> to <u>12/31</u>
Quantity _____	Use _____	Period of Use From _____ to _____
Quantity _____	Use _____	Period of Use From _____ to _____
Quantity _____	Use _____	Period of Use From _____ to _____

4. 0.05 TOTAL QUANTITY USED.
(cfs or af)

SEE ATTACHMENT

5. A) Location of point of diversion is _____ 1/4 of _____ 1/4 of _____ 1/4 Govt. Lot _____
Sec. 849 Township S6N. Range 4W. B.M., BONNER County;
additional points of diversion, if any: _____

B) Describe means of diversion of water: (Pump and pipeline, well, diversion dam, reservoir, length of ditch etc.). Give sizes and capacities. Be specific. Describe any changes in the system and give the date of the change.

150 HEAD OF RANGE STOCK - IN-STREAM WATERING.

6. A) Describe the place of use within each 40-acre tract in the appropriate box using the symbols listed below. If the use is for irrigation, describe the location by listing the number of irrigated acres within each 40-acre tract.
D - domestic, S - stockwater, M - municipal, C - Commercial, I - Industrial, X - other

Twp	Rge	Sec	NE¼				NW¼				SW¼				SE¼				TOTAL ACRES
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SE	SW	

TOTAL ACRES ~~500~~

- B) If water is used for purposes other than irrigation, fully describe the use. Be specific. _____

NOTE: Include here the type and number of stock watered: 100 To 150 head - Beef Cattle

7. Remarks: _____

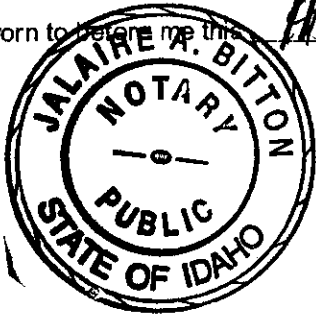
8. Map -- Attach an 8½"x11" map clearly identifying the point of diversion and the place of use by 40-acre subdivisions, section, township and range of the public land survey system. (A photocopy of a USGS 7½ minute topographic quadrangle map is preferred.) Attach an aerial photograph of the place of use if available.

State of Idaho)
County of Bonner) ss.

Be it known that the undersigned, being duly sworn, deposes and says that he, she, they subscribed the forgoing claim to a water right, together with all attached information, and that the matters and facts therein are true to the best of the affiant's knowledge.

X Orlin Henderson
Claimant's Signature (and title if claim is for an organization)

Sworn to before me this 17th day of September, 2001.



Jalaine A. Bitton
Notary Public

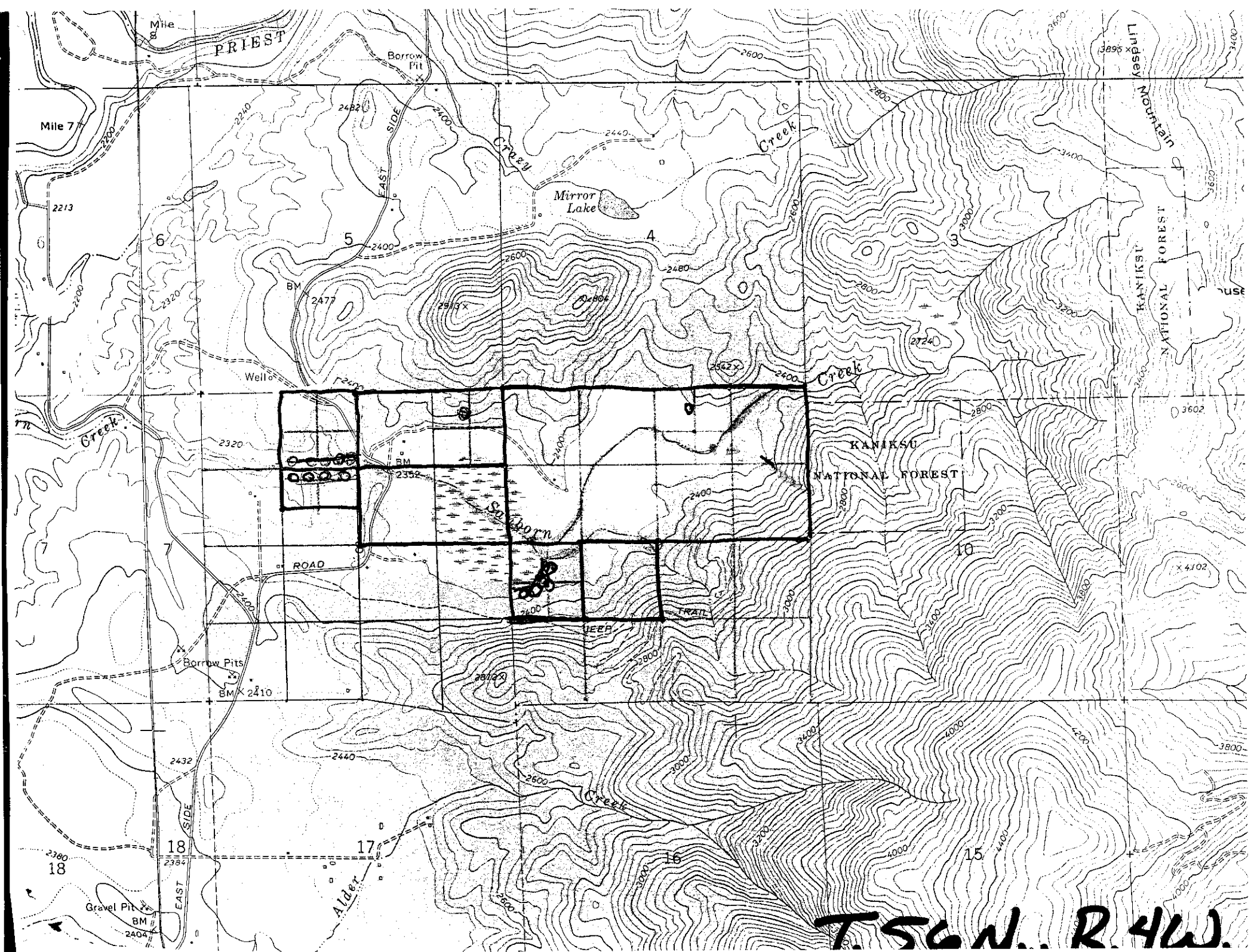
Residing at: Priest River

My commission expires: 2-26-04

FOR DEPARTMENT USE ONLY

Received by Priest River Times Date 10/2/01 Published _____
Prelim. check by _____ Date _____ Publication dates 11/7 + 14/01
Fee \$100.00 Receipt # N014685 Publication checked by _____ Date _____
Receipt prepared by JB Date 10/2/01 Exceptions filed by _____

in



SECTION 9, T. 56N., R. 4W.

UNNAMED STREAMS + SAUBORN CREEK

NE $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ NE $\frac{1}{4}$
NE $\frac{1}{4}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$
NE $\frac{1}{4}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$

SPRINGS: NW $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ ✓, NE $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ ✓
NW $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ ✓, SW $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ ✓
SE $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ ✓

SECTION 8, T. 56N., R. 4W.

UNNAMED STREAMS + SAUBORN CREEK

SE $\frac{1}{4}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ NE $\frac{1}{4}$
NE $\frac{1}{4}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$

SPRINGS: NW $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ ✓, SE $\frac{1}{4}$ NE $\frac{1}{4}$
NW $\frac{1}{4}$ ✓, SW $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ ✓, NE $\frac{1}{4}$
SE $\frac{1}{4}$ NW $\frac{1}{4}$ ✓, NW $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ ✓

PUBLIC HEARING

File: 97-7417
J D LUMBER INC

Date: 3/24/2003

Time: 8:00 A.M.

Place: GSA BUILDING
CONFERENCE ROOM
1500 HIGHWAY 2 (DOVER HIGHWAY)
SANDPOINT ID 83864

ROSTER OF ATTENDANCE

[illegible]

Is your RETURN ADDRESS completed on the reverse side?

SENDER:

- Complete items 1 and/or 2 for additional services.
- Complete items 3, 4a, and 4b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):

1. ☐ Addressee's Address
2. ☐ Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to:

J D LUMBER INC
PO BOX 55
PRIEST RIVER ID 83866

4a. Article Number

7099 3220 0005 8955 9315

4b. Service Type

- ☐ Registered ☒ Certified
☐ Express Mail ☐ Insured
☐ Return Receipt for Merchandise ☐ COD

7. Date of Delivery

3-3-03

5. Received By: (Print Name)

JOHN Brower

6. Signature: (Addressee or Agent)

John Brower

8. Addressee's Address (Only if requested and fee is paid)

PS Form 3811, December 1994

Domestic Return Receipt

Thank you for using Return Receipt Service.

Is your RETURN ADDRESS completed on the reverse side?

SENDER:

- Complete items 1 and/or 2 for additional services.
- Complete items 3, 4a, and 4b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):

1. ☐ Addressee's Address
2. ☐ Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to:

ORLIN HENDERSON
C/O JANET JENKINS, ATTORNEY
PO BOX 898
SANDPOINT ID 83864

4a. Article Number

7099 3220 0005 8955 8820

4b. Service Type

- ☐ Registered ☒ Certified
☐ Express Mail ☐ Insured
☐ Return Receipt for Merchandise ☐ COD

7. Date of Delivery

3-3-03

5. Received By: (Print Name)

Robyn Kauls

6. Signature: (Addressee or Agent)

X Robyn Kauls

8. Addressee's Address (Only if requested and fee is paid)

706 SUPERIOR ST, STE C

PS Form 3811, December 1994

Domestic Return Receipt

Thank you for using Return Receipt Service.

Application No. 97-7417

SPECIAL NOTE:

Dam already constructed - method in question
and safety threat - Obstructs protestants rights.

PROTEST INFORMATION SHEET

Protestant(s)

- | | | | | |
|----|------------------------|---------------------------------|-----------------------------|--------------|
| 1 | <u>Orlin Henderson</u> | <u>cl/o Janet Jenkins, Atty</u> | <u>to Box 698 Sandpoint</u> | <u>83864</u> |
| 2 | | <u>706 Superior St. Ste C</u> | <u>Sandpoint</u> | |
| 3 | | | | |
| 4 | | | | |
| 5 | | | | |
| 6 | | | | |
| 7 | | | | |
| 8 | | | | |
| 9 | | | | |
| 10 | | | | |

ATTORNEY

Janet Jenkins

ADDRESS

706 Superior St. Ste C (208)

263-7999

PO Box 698 Sandpoint ID 83864

DATE FILED:

PROTEST DUE DATE:

12/24/01

ISSUES:

Safety concern + impeding of existing WR of
Henderson

Applicant(s)

ATTORNEY

ADDRESS

DATE

Protest Date Entered on Computer

12/19/01

Acknowledgment Letters Sent

12/19/01

Hearing Date

3/24/03

(Other Dates)

Other Information:

Protest information submitted to computer (following hearing):

CONFERENCE/HEARING SCHEDULE

Northern Region

Location GSA BUILDING
Conference Room
1500 Highway 2 (Dover Highway)
Sandpoint, ID 83864

March 24, 2003

8:00 A.M. 97-7417 - J D Lumber Inc.

10:30 A.M. 98-7815 - Phillip R &/or Jennifer S. Beachy

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATION
FOR PERMIT NO. 97-7417
IN THE NAME OF J D LUMBER INC

)
) NOTICE OF CONFERENCE
) AND/OR HEARING
)

On October 16, 2001, J D LUMBER INC filed with the Department of Water Resources (department) Application for Permit No. 97-7417. The application was protested by ORLIN HENDERSON.

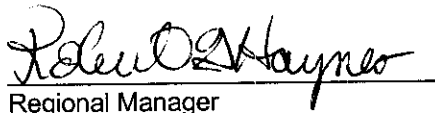
The department has scheduled the matter for conference &/or hearing at **8:00 a.m. on March 24, 2003 at the GSA Building conference room located at 1500 Highway 2 (Dover Highway) in Sandpoint, Idaho.** The conference &/or hearing will be held in accordance with provisions of Chapters 2 and 17, Title 42 and Chapter 52, Title 67, Idaho Code, the adopted Rules of Procedure of the department and Water Appropriation Rules 40 and 45. A copy of the rules may be obtained from the department upon request. The presiding officer at the conference &/or hearing will be ROBERT HAYNES, P.E., Regional Manager, Idaho Dept. of Water Resources.

If you plan to offer exhibits for the record, note that IDAPA Rule of Procedure 37.01.01606 requires that you provide a copy of exhibits to each party and to the presiding officer.

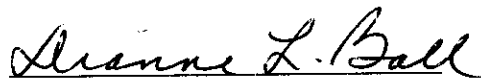
The conference &/or hearing will be conducted in a facility which meets the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations in order to attend, participate in or understand the conference &/or hearing, please advise the department within ten (10) days prior to the conference &/or hearing.

All parties to the matter will have the opportunity to respond and present information and argument on all issues involved.

Dated this 28th day of February, 2003.


Regional Manager

I hereby certify that on the 28th day of February, 2003, I mailed a true and correct copy, postage prepaid, of this document to the applicants(s) and protestant(s) listed below:


Administrative Assistant

Certified Mail:

J D LUMBER INC
PO BOX 55
PRIEST RIVER, ID 83856

ORLIN HENDERSON
C/O JANET JENKINS, ATTORNEY
PO BOX 698
SANDPOINT ID 83864

CONFERENCE AND HEARING PROCEDURE

APPLICATION FOR PERMIT

ISSUES

Section 42-203A, Idaho Code, requires the department to consider the following issues in connection with an application for permit:

1. Will the proposed appropriation injure other water rights?
2. Is the water supply sufficient for the purpose for which it is sought to be appropriated?
3. Was the application made in good faith or for delay or speculative purposes?
4. Does the applicant have sufficient financial resources with which to complete the proposed project?
5. Will the proposed use conflict with the local public interest, where local public interest is defined as the affairs of the people in the area directly affected by the proposed use?
6. Will the proposed use be contrary to the conservation of water resources within the State of Idaho?

BURDEN OF PROOF

The applicant has the initial burden of proof for issues 1, 2, 3, 4, and 6 above and must provide evidence for the department to evaluate these criteria.

The initial burden of proof on issue 5 above lies with both the applicant and protestant as to factors of which they are most knowledgeable and cognizant. The applicant has the ultimate burden of persuasion, however, for this issue.

PROCEDURE

The department generally conducts an informal conference with the parties to determine the issues and to try to settle a protested matter before a hearing is scheduled. If a hearing is held, the department will issue a written decision based on the hearing record.

CONFERENCE

The purpose of a prehearing conference is to provide the opportunity for the parties and the department to familiarize themselves with a contested matter and to attempt to resolve the matter. At the conference, the department may also formulate and simplify the issues, identify documents to avoid unnecessary proof, exchange proposed exhibits or prepared testimony, limit witnesses, discuss settlement or make settlement offers, schedule hearings, establish procedure at hearing and address other matters that may expedite orderly conduct and disposition of the proceeding or its settlement.

HEARING

The department will tape record the hearing. Copies of a hearing are available upon request and the payment of the cost of reproducing the tape.

The hearing likely will be conducted by a hearing officer appointed by the Director rather than by the Director himself. If so, the hearing officer will prepare a recommended order for the Director's consideration. Parties can file exceptions to a recommended order, briefs in support of the exceptions or may request oral argument. Parties may seek judicial review of any final order issued by the director.

Parties may by written stipulation waive the right to a recommended order, particularly when a shortened decision process is desirable or necessary. Such a waiver does not eliminate any rights of the parties in connection with the final order and judicial review of the order.

EXHIBITS

A party who plans to offer an exhibit as part of the hearing record must provide a copy of the proposed exhibit to the parties and to the hearing officer.

AMERICANS WITH DISABILITIES ACT

Any hearing scheduled will be conducted in a facility which meets the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations in order to attend, participate in or understand the hearing, please advise the department within ten (120) days prior to the hearing.

August 27, 2002

Robert G. Haynes
State of Idaho, Dept of Water Resouces
Northern Region, Suite No. 210
1910 Northwest Blvd.
Couer d'Alene, ID 83814-2615

Re: Application to Permit No. 97-7417

RECEIVED
AUG 28 2002
IDWR/North

Dear Mr. Haynes,

In response to Mr. Henderson's protest to our application for a water right, I have enclosed some photos that show the infeed and outfeed to the pond in question, are dry. These photos were taken during the July 4th weekend.

Please include these photos in our file to substantiate our claim that the creeks in question do not run year round as Mr. Henderson claims.

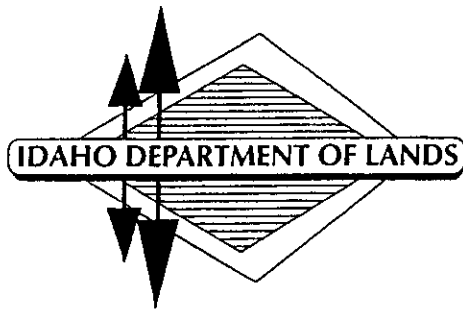
Anyone from the department is more than welcome to contact me and I'll be happy to take them onto the area in question so they can see for themselves what dry is.

Sincerely,



Jeff Weimer





Coeur d'Alene Staff Headquarters

3780 Industrial Ave S, Coeur d'Alene, ID 83815

Telephone (208) 769-1525

Fax No. (208) 769-1524

MEMORANDUM

RECEIVED

MAY 28 2002

IDWR/North

TO: Bill Love, FPA - POLN

FROM: Jim Colla, FPAC *JC*

DATE: May 28, 2002

SUBJECT: Complaint – JD Lumber

On April 29th, Douglass Fitting, Forest Hydrologist, and I accompanied you, Stan Galloway, and Larry Stone from IDL and Jeff Weimer and Van Smith from JD Lumber on a field inspection of a approximately 1320 acre block of JD Lumber land located in the Sanborn Creek drainage, about three miles northeast of Priest River, Idaho. Douglass and I became involved because of a complaint that was referred to me from Mr. Tomanage of the Farm Bureau Federation in Boise. Apparently a Mr. Orlin Henderson, whose property is adjacent to the JD Lumber parcel, has made complaints and claims alleging that forest practice activity on the JD Lumber piece caused stream damage, excessive road erosion, and a dam to wash out. The purpose of our visit was to investigate the JD operation for any possible violations of the Forest Practices Act (FPA) and resultant impacts to beneficial uses.

Prior to actual field inspection, we reviewed past FPA inspection reports on the property. We did find that as recent as three years ago, a number of issues related to road maintenance were found to be in non-compliance. However, JD Lumber did not own the property at that time. Our records indicate several parties have had an interest in this property over the last five years. It has been re-logged with each successive ownership change, with minor deviations noted and corrected for various elements of the FPA. No Notice of Violations were issued on any of the past operations.

We physically inspected several road miles on the JD Lumber property, focusing on roads emanating from the current access point and former access point across Mr. Henderson's property. We also looked at roads in close proximity to various tributaries of Sandborn Creek that have their origin in a beaver pond. Finally, we examined other roads and small stream crossings higher in the drainage on the south side of the parcel.

Generally we found the existing roads, which have been in place for several years, to be in a stable configuration. Parent material is composed of weathered and shallow granitics with numerous rock outcrops. Roads in this land type are subject to a certain degree of surface erosion if not properly maintained. Since they purchased the property, JD Lumber has provided spot rock in key locations, added surface cross drainage, and installed/upgraded culverts in several locations. While we did see some areas that could use additional cross-drainage, particularly near the Henderson access point, there was no evidence of excessive surface erosion or mass wasting from roads. We also saw no evidence that equipment had adversely impacted stream protection zones including the beaver pond, that streams had been diverted, or that shading and filtering effects of streamside vegetation had been destroyed by the conduct of forest practices. Even though this property had been heavily logged by previous owners, advance regeneration is present throughout the block, and residual stocking of larger trees is sufficient to maintain a diverse forest structure. An adverse condition for hydrologic assessment does not exist.

In conclusion, we could find no evidence that Mr. Henderson's problems are a result of improper forest practices on the JD Lumber property. However, neither did we look at all JD Lumber's roads, nor look at any roads on Henderson's property. While it is possible we may have missed something, it is not likely. Another possible explanation for any change in stream flow may be simply weather related; the droughts of the recent past have had significant stream flow impacts in many areas of the northern Rockies. Soils present, and their shallow nature, in the drainage do not have a high water storage capacity so they may be particularly susceptible to drought conditions. Lastly, we noted at an overlook location where a beaver pond had been drained on Mr. Henderson's property and streams have been channelized, this action could possibly significantly alter flow regimes.

C: Craig Foss, C-BFA
Allen Beardslee, IDWR
Jeff Weimer, JD Lumber

Monday, January 28, 2002

RECEIVED
JAN 31 2002
IDWR/North

Robert G. Haynes, P.E.
State of Idaho
Dept. of Water Resources
Northern Region, Suite No. 210
1910 Northwest Blvd.
Coeur D'Alene, Id. 83814-2615

Re: Application to Permit No. 97-7417

Dear Robert,

I did talk with Orlin Henderson, Protestant, to try and resolve our differences. He maintains the creek out of the pond runs year round. We maintain dry is dry. We have repaired a very minor part of a huge existing beaver dam and cannot see where we have changed it's operation or hydrological function from what it was historically, especially since our application is for a non-consumptive use. We've provided answers to the Protestants questions and also the Department of Water Resources.

We also question if the Protestant claims to be short of water and groundwater is in fact self inflicted. Why is Mr. Henderson converting his wetlands into dry pasture through massive stream channelization and drainage of beaver ponds? Since Mr. Henderson's purchase of an excavator in the spring of 2000, he has done nothing but accelerate his program to drain his wetlands.

I hope we have provided all the information you've requested. The next step would be to schedule a hearing.

Sincerely,



Jeff Weimer
President
JD Lumber, Inc.

Monday, Jan. 28, 2002

Robert G. Haynes, P.E.
State of Idaho
Dept. of Water Resources
Northern Region, Suite No. 210
1910 Northwest Blvd.
Coeur D'Alene, Id. 83814-2615

RECEIVED
JAN 31 2002
IDWR/North

Re: Application to Permit No. 97-7417

Orlin Henderson's Protest:

1. The proposed diversion obstructs and impedes Henderson's water rights for stock water and ground water on contiguous lands in Section 8 and 9 thereby causing him injury and harm.

Answer: The creeks feeding the pond go dry in late June or early July. (Affidavits) The only year round creek is on the other side of the drainage, (see map) is unimpeded and runs all year. Mr. Henderson's channelization of the stream for drainage purposes, has by far the largest effect on ground water, especially if he penetrated the restrictive layer of soil or hard pan.

2. The dam is already constructed and does not appear to have release capabilities. Winter thaws have caused washouts and flooding in the subject area. The potential risk is significant because the land area and vegetation are highly degraded because of past logging practices.

Answer: We repaired the existing beaver dam since a beaver made a nest in the dam and caused a minor washout. We put in some concrete 5' long 1' thick and 15" high to repair the damage. The actual beaver dam is 35+ feet long and ranges from 2 to 10 to 12 feet deep. We thought we were doing a good thing to help protect the watershed. The beavers would have patched that up anyway, we just expedited it.

We had a winter thaw during the week of Dec. 17th and Jan. 7th. The dam is doing just fine.

The property was logged before we bought it. The logging had met all State specifications and in fact the State was trying to trade for the property when we bought it so it is hardly bare of trees or vegetation.

3. The stored waters also are a source of evaporation which hinders availability of water to Henderson's lands.

Answer: The evaporation point is moot since infeeding creeks go dry in early summer before evaporation becomes a factor. No infeeding water=no outfeeding water. The point could be made that the pond is providing storage during the dry

months and that water is seeping out below the pond and into the groundwater.

Additional Information: Aerial photos from 1965, 1979, and 1996 shows the ponds existence. See attached.

RECEIVED
JAN 31 2002
IDWR/North

Monday, January 28, 2002

State Criteria,

1. Will the proposed use reduce the quantity of water under existing water rights?

Answer: No. The streams feeding the pond all go dry. The only year round water flow is on the other side of the drainage. (See map)

2. Is the proposed water supply insufficient for the purpose intended?

Answer: No.

3. Is the application made in good faith or for delay or speculative purposes?

Answer: Yes, No, No.

4. Has the applicant sufficient financial resources with which to complete the project?

Answer: Yes.

5. Will the proposed use conflict with the local public interest?

Answer: No it will not. In fact it will be a benefit to the public in that the pond provides resting and nesting areas for migratory birds as well as moose habitat.

6. Will the proposed use be contrary to the conservation of water resources within the State of Idaho?

Answer: No. In fact that's why we repaired the large beaver dam to protect and maintain the resource that has been there for many years. (See aerals).

Sincerely,



Jeff Weimer
President
JD Lumber, Inc.

RECEIVED
JAN 31 2002
IDWR/North

AFFIDAVIT

STATE OF IDAHO,)
 : ss
County of Bonner.)

JEFF WEIMER, being first duly sworn, deposes and upon his oath states as follows:

1. That I am your undersigned Affiant;
2. That I am the owner of 695 acres in Section 3, Township 56 North, Range 4 West of the Boise Meridian, and I also own 169 acres in Section 10.
4. That I have owned that ground in Section 3 for two years and was well acquainted with the lie of the land in Section 3 because of purchasing some timber on that Section.
5. That I have owned the land in Section 10 for 14 years and am well acquainted with the lie of the land and the water courses on both Sections 10 and 3.
6. That all the intermittent creeks that could be tributaries to Sanborn Creek flowing out of Section 3 dry up in late Spring and early Summer.
7. The only year-round creek flowing into Sanborn Creek that I have observed, is out of Section 10 and it flows through only the extreme Southwest corner of Section 3 before it flows into Sanborn Creek.
8. That during the 14-year time period I owned the ground adjacent in Section 10, I had many occasions to be in Section 3 for recreational purposes, especially where the pond is located in Section 3, and during the summer months there was no flow in or out of the pond at all.

DATED this 23 day of January, 2002.

Jeff Weimer
Jeff Weimer

SUBSCRIBED and SWORN TO before me this 23 day of January, 2002.

Teresa Brooks
Notary Public - State of Idaho.
Residing at Priest River, therein.
My commission expires: 4/30/2003.

AFFIDAVIT

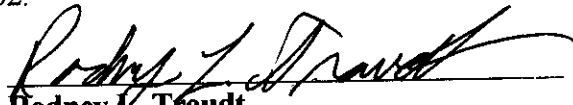
RECEIVED
JAN 31 2002
IDWR/North

STATE OF IDAHO,)
 : ss
County of Bonner.)

RODNEY L. TROUDT, being first duly sworn, deposes and upon his oath states as follows:

1. That I am your undersigned Affiant;
2. That I grew up in Priest River, Bonner County, Idaho.
3. That during the middle '70s I had many occasions when I fished for brook trout in the pond on Section 3, Township 56 North, Range 4 West of the Boise Meridian.
4. That I know of my personal knowledge and observation, that all the little intermittent streams in Section 3 would be dry by summertime.

DATED this 28 day of January, 2002.


Rodney L. Troud

SUBSCRIBED and SWORN TO before me this 28 day of January, 2002.


Teresa Brooks
Notary Public - State of Idaho.
Residing at Priest River, therein.
My commission expires: 4/30/2003

RECEIVED
JAN 31 2002
IDWR/North

JOSEPH P. DELAY, being first duly sworn, deposes and upon his oath states as follows:

5. That all the little creeks in Section 3, dried up by the summer season.

SUBSCRIBED and SWORN TO before me this 15th day of January, 2002.

Notary Public - State of Washington.

Residing at 1414 E. 1st St., therein.

My commission expires: 11-23-05

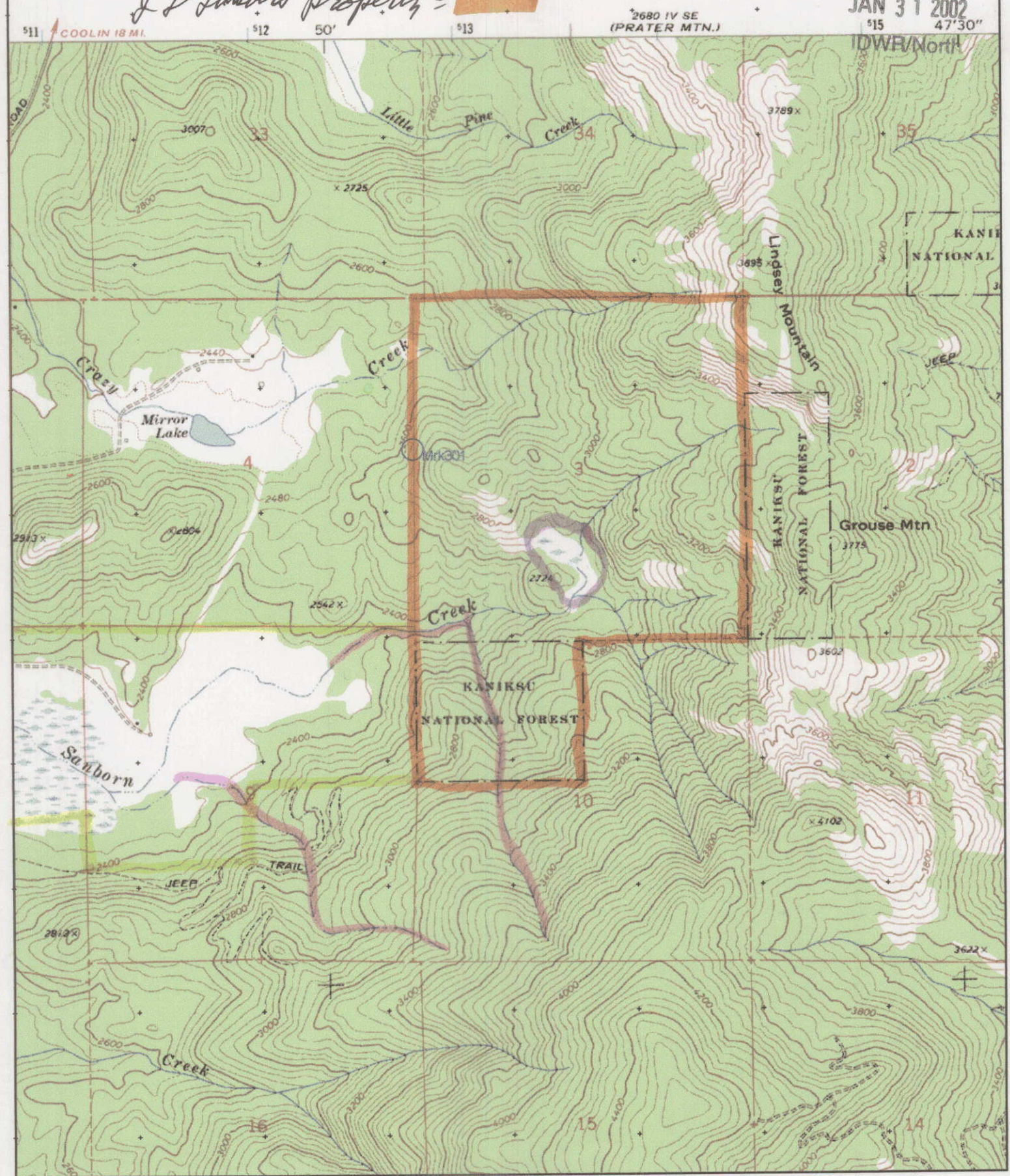


Year round - ek =
Mr. Henderson's property =
J D Lumber's property =

Ar in question =

RIOR

RECEIVED
JAN 31 2002
47°30"
IDWR/North



1965

22

8-17-65

DOR-3FF-23

CFL 302.73

RECEIVED
JAN 31 2002
IDWR/North

1996

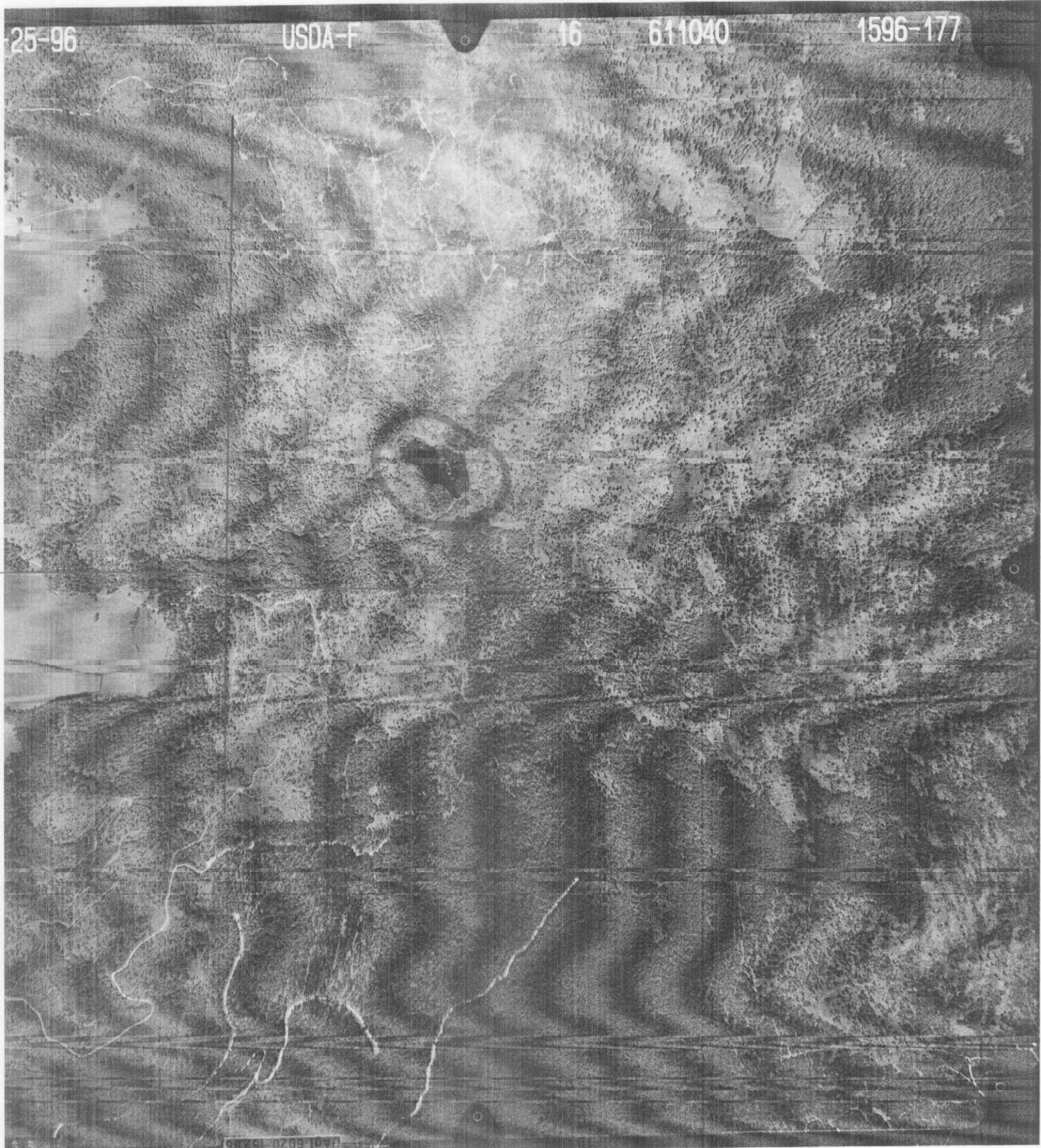
25-96

USDA-F

16

611040

1596-177



USDA 6020 1996

RECEIVED
JAN 31 2002
IDWR/North



FILED
JAN 11 2009
FBI/Nor

**IDAHO FISH & GAME**

PANHANDLE REGION
2750 Kathleen Avenue
Coeur d'Alene, Idaho 83815

RECEIVED

Dirk Kempthorne / Governor
Rod Sando / Director

DEC 21 2001

December 18, 2001

IDWR/North

Mr. Al Beardslee
IDWR Suite # 210
1910 Northwest Boulevard
Coeur d'Alene, ID 83814

Dear Mr. Beardslee:

REFERENCE: WATER RIGHT APPLICATION # 97-7417, JD LUMBER INC.

We have reviewed the above-named water right application. The application is to withdraw 75 acre-feet from Sanborn Creek, a tributary to Priest River, for recreation and wildlife. The applicant would install two dams on Sanborn Creek to create a 15-acre in-stream pond for fishing and swimming.

We have concerns about both the potential impact of withdrawing 75 acre feet of flows that currently recharge the Priest River and about potential water quality impacts that creation of a pond on Sanborn Creek may have. We believe that these concerns merit your review and consideration prior to issuing a water right, particularly in light of the fact that the requested right to use this public resource solely to create opportunities for personal recreation.

A withdrawal of 75 acre feet could impact stream flows needed to protect fish in both Sanborn Creek and in Priest River, especially if all or substantial portions of the withdrawal are made during critical flow periods and particularly in low flow years like 2000. We believe that it is important to demonstrate that the time and place of this requested withdrawal of 75 acre feet will not impair flows in Sanborn Creek and Priest River prior to awarding this water right.

We are also concerned about the impacts a 15 surface acre pond may have on water quality in Sanborn Creek and Priest Lake. If constructed in the stream channel, a pond of this size will almost certainly contribute to elevated water temperatures in those streams. Elevated water temperatures could have adverse impacts on fisheries in both water bodies.

Construction of ponds in the existing stream channels will also require additional permits from Idaho Department of Lands and, very likely, the US Corps of Engineers. Pond design and construction details require review. We urge you to inform the applicant of the additional permit requirements as well as requirements to identify and mitigate for potential adverse impacts that building a pond in-stream may have on Sanborn Creek and Priest River fisheries.

We recommend for your consideration a permit condition that may make it possible to address our concerns and still make it possible for the applicant to obtain water for his interests.

Constructing the pond off-stream would not only help mitigate potential stream temperature increases, but would make it possible to allow diversions only during periods of high flow when ample water is available instream for both diversion and fish. This action could provide the applicant with the water right requested for the desired recreational opportunities.

We note that this applicant intends to create recreational storage for fishing. The applicant should be informed that a permit is required prior to stocking private ponds with fish. In addition, unless the fish to be stocked are delivered by a commercial hatchery (required for trout), the applicants must also acquire a fish transport permit to bring fish to the pond. Both permits are available from Idaho Department of Fish and Game.

Thank you for the opportunity to comment.

Sincerely,

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

Greg Tourtlotte
Regional Supervisor

GIT:RH:kh

C: Tracey Trent, NRPB Boise



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

December 19, 2001

J D LUMBER INC
PO BOX 55
PRIEST RIVER, ID 83856

Application to Permit No. 97-7417

Dear Applicant(s):

Enclosed is a copy of a protest filed against approval of the above referenced application. The Department suggests that you contact the protestant(s) directly to determine the nature of the protest and, if possible, to resolve the matter without action by the Department. In our experience, informal discussion between the parties prior to initiation of formal proceedings often leads to resolution of the protest.

If the protest cannot be resolved informally, the matter will be scheduled for conference and/or hearing. The following are criteria the Department must consider in either approving or denying the application (Section 42-203A, Idaho Code).

1. Will the proposed use reduce the quantity of water under existing water rights?
2. Is the proposed water supply insufficient for the purpose intended?
3. Is the application made in good faith or for delay or speculative purposes?
4. Has the applicant sufficient financial resources with which to complete the project?
5. Will the proposed use conflict with the local public interest?
6. Will the proposed use be contrary to the conservation of water resources within the State of Idaho?

You will be notified at a later date of the time and place of the conference and/or hearing. Please contact this office if you have any questions regarding this procedure.

Sincerely,

Robert G. Haynes, P.E.
Regional Manager



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**

December 19, 2001

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

ORLIN HENDERSON
C/O JANET JENKINS
ATTORNEY AT LAW
PO BOX 698
SANDPOINT ID 83864

Application to Permit No. 97-7417

Dear Protestant(s):

The Department of Water Resources acknowledges receipt of your protest against the approval of the above referenced application. A copy of your protest has been sent to the applicant. The Department suggests that you contact the applicant directly for details regarding the application and, if possible, to resolve the matter without action by the Department. In our experience, informal discussion between the parties prior to initiation of formal proceedings often leads to resolution of the protest.

If the protest cannot be resolved informally, the matter will be scheduled for conference and/or hearing. The following are criteria the Department must consider in either approving or denying the application (Section 42-203A, Idaho Code).

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4. Has the applicant sufficient financial resources with which to complete the project?
5. Will the proposed use conflict with the local public interest?
6. Will the proposed use be contrary to the conservation of water resources within the State of Idaho?

You will be notified at a later date of the time and place of the conference and/or hearing. Please contact this office if you have any questions regarding this procedure.

Sincerely,

Robert G. Haynes, P.E.
Regional Manager

**STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
NOTICE OF PROTEST**

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.

- 1 Matter being protested J.D. Lumber, Inc. Permit Application, Ident #97-7417
- 2 Name of protestant Orlin Henderson, H.C.R. 6 Box 14, Priest River, IDAHO 83856
- 3 Protestant's representative for service (If different than protestant)
Janet Jenkins, Attorney at Law
- 4 Service mailing address Post Office Box 698, Sandpoint, Idaho 83864
- 5 Service telephone no (208) 263-7999
- 6 Basis of protest (including statement of facts and law upon which the protest is based)
See Attached.

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

- 7 What would resolve your protest? Modification of the proposed application to assure Henderson his water rights are protected and modification of the dam design to protect against harm.

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

Signed this 18 day of December, 2001

Orlin Henderson
PROTESTANT

Janet Jenkins, ATT at Law
PROTESTANT'S REPRESENTATIVE

NOTICE OF PROTEST

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

Orlin Henderson protests J.D. Lumber Inc.'s application to divert waters from unnamed stream which is a tributary of Sanborn Creek for recreational storage - fishing/swimming. The proposed diversion obstructs and impedes Henderson's water rights for stock water and ground water on contiguous lands in Sections 8 and 9, thereby causing him injury and harm. The stored waters also are a source of evaporation which hinders availability of water to Henderson's lands.

Additionally, the dam has already been constructed. Although it is not in a high risk area, it does not appear to have any release capabilities; its embankment slopes appear to have been constructed with soil and boulders without reinforcement; and, in Mr. Henderson's view, poses a threat of safety impact in the event of a winter thaw. Winter thaws in the past, even without stored waters, have caused washouts and flooding in the subject area. This potential risk is of significant concern because the land area and vegetation are highly degraded because of past logging practices.

This protest is based on Idaho Code 42-101 et seq. and IDAPA rules regarding safety of dams.

Priest River Times
P.O. Box 10
Priest River, ID 83856
Phone: (208) 448-2431

**ADVERTISING
INVOICE/STATEMENT**

Statement			Agency/Client Name	
01/31/02			DEPARTMENT OF WATER RESOURCES	
Total Amount Due				Terms of Payment
56.40				net 15th
Current Amount Due	1-30 Days	31-60 Days	61-90 Days	Over 90 Days
56.40	0.00	0.00	0.00	0.00

Page #	Billing Date	Billed Account #	Agency/Client Number	
1	01/31/02	40100140-000		
Billed Account Name & Address			Remittance Address	
DEPARTMENT OF WATER RESOURCES 1910 NORTHWEST BLVE. SUITE 210 COEUR D ALENE, ID 83814			Priest River Times P.O. Box 10 Priest River, ID 83856	

RECEIVED
FEB 06 2002
IDWR/North

PLEASE DETACH AND RETURN UPPER PORTION WITH YOUR REMITTANCE

Date	Reference #	Description-Other Comments/Charges	Type	Units	Runs	Rate	Amount	Total
01/14/02	40547346-001	Beginning Balance 115199536	PAY				105.48 -49.08	105.48 56.40
<i>Statement follow-up re 97-7417 JD LUMBER original bill sent down 1/4/02 Thanks Dianne</i> <i>(Paid to SO 2/6/02 3 pages)</i>								

Statement of Account Aging of Past Due Amounts					Total Amount Due						
Current Amount Due	1-30 Days	31-60 Days	61-90 Days	Over 90 Days							
56.40	0.00	0.00	0.00	0.00	56.40						
Priest River Times P.O. Box 10 Priest River, ID 83856				Past due accounts are subject to finance charges of 1 1/2% per month, which is an annual percentage of 18%, applied to the previous balance.							
Advertiser Information											
Statement Date	Billed Account #	Agency/Client Number	Agency/Client Name								
01/31/02	40100140-000										

THINK SPRING!

Priest River Times
P.O. Box 10
Priest River, ID 83856
Phone: (208) 448-2431

**ADVERTISING
INVOICE/STATEMENT**

Statement		Agency/Client Name		
02/06/02		DEPARTMENT OF WATER RESOURCES		
Total Amount Due		Terms of Payment		
56.40		net 6th		
Current Amount Due	1-30 Days	31-60 Days	61-90 Days	Over 90 Days
56.40	0.00	0.00	0.00	0.00

Page #	Billing Date	Billed Account #	Agency/Client Number		
1	02/06/02	40100140-000			
Billed Account Name & Address			Remittance Address		
DEPARTMENT OF WATER RESOURCES 1910 NORTHWEST BLVE. SUITE 210 COEUR D'ALENE, ID 83814			Priest River Times P.O. Box 10 Priest River, ID 83856		

PLEASE DETACH AND RETURN UPPER PORTION WITH YOUR REMITTANCE

Date	Reference #	Description-Other Comments/Charges	Type	Units	Runs	Rate	Amount	Total
12/05/01	40547344-001	#602215 APP# 97-7417	DIS	7.00 in	1	UL	56.40	56.40

Statement of Account Aging of Past Due Amounts					
Current Amount Due	1-30 Days	31-60 Days	61-90 Days	Over 90 Days	Total Amount Due
56.40	0.00	0.00	0.00	0.00	56.40
Priest River Times P.O. Box 10 Priest River, ID 83856			Past due accounts are subject to finance charges of 1 1/2% per month, which is an annual percentage of 18%, applied to the previous balance.		
Advertiser Information					
Statement Date	Billed Account #	Agency/Client Number		Agency/Client Name	
02/06/02	40100140-000				

NOTICE OF APPLICATION FOR WATER RIGHT

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

97-7417

JD LUMBER INC

PO BOX 55

PRIEST RIVER, ID 83856

Point(s) of Diversion

County: UNNAMED STREAM Tributary To SANBORN CREEK

Source: UNNAMED STREAM Tributary To SANBORN CREEK

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Source: UNNAMED STREAM Tributary To SANBORN CREEK

Point(s) of Diversion

PRT Legal 602215
Dec. 5, 12, 2001

KARL J. DREHER, Director

Date Filed 10/16/2001

Place of Use: WILDLIFE STORAGE and RECREATION STORAGE

TS6N R04W S3 NESW SESW NWSE SWSE

Remark: Recreation storage is for fishing and swimming.

Permits will be subject to all prior water rights. Protests must be submitted based on the criteria of Sec. 42-2034, Idaho Code.

Any protest against the approval of this application must be filed with the Director, Dept. of Water Resources, 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 12/24/2001. The protestant must also send a copy of the protest to the applicant.

Total Diversion:

Use: RECREATION STORAGE 01/01 To 12/31 75 AFA

Use: WILDLIFE STORAGE 01/01 To 12/31 75 AFA

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Use: WILDLIFE STORAGE 01/01 To 12/31 75 AFA

AFFIDAVIT OF PUBLICATION

State of Idaho

ss.

County of Bonner,

Tern Jue

being first duly sworn on oath

deposes and says that he/she is Gen. Manager

of the Priest River Times, a newspaper printed and

published at Priest River, Bonner County, Idaho; that the

said newspaper has been continuously and uninterruptedly

published in said Bonner County during a period of 12

months prior to the first publication of the hereto attached

notice of publication in the case of:

Application - JD Lumber
97-7417

as it was published in the regular and entire issue of the

said paper for a period of 2 consecutive weeks,

commencing on 5th day of Dec., 2001

and ending on the 12th day of Dec., 2001

and that said notice was published in said newspaper.

On this 27th day of Dec. in the year

of 2001, before me, a Notary Public, personally

appeared Tern Jue

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.

Shannon M. Foste
Notary Public for Idaho
Residing at Priest River
Commission expires: 10/9/07

RECEIVED

JAN 04 2002

IDWR/North

NOTICE OF APPLICATION FOR WATER RIGHT

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

97-7417

JD LUMBER INC

PO BOX 55

PRIEST RIVER, ID 83856

Point(s) of Diversion

NESW S3 T56N R04W BONNER

County:

Source: UNNAMED STREAM Tributary To SANBORN CREEK

Point(s) of Diversion

SESW S3 T56N R04W BONNER

County:

Source: UNNAMED STREAM Tributary To SANBORN CREEK

Point(s) of Diversion

SWSE S3 T56N R04W BONNER

County:

Source: UNNAMED STREAM Tributary To SANBORN CREEK

Point(s) of Diversion

NWSE S3 T56N R04W BONNER

County:

Source: UNNAMED STREAM Tributary To SANBORN CREEK

Use: WILDLIFE STORAGE

01/01 To 12/31

75-AFA

Use: RECREATION STORAGE

01/01 To 12/31

75 AFA

Total Diversion:

75 AFA

Date Filed: 10/16/2001

Place Of Use: WILDLIFE STORAGE and RECREATION STORAGE

T56N R04W S3 NESW SESW NWSE SWSE

Remark: Recreation storage is for fishing and swimming.

Permits will be subject to all prior water rights. Protests must 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 Resources, 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 12/24/2001. The protestant must also send a copy of the protest to the applicant.

PRT Legal 602215

Dec. 5, 12, 2001

EARL J. DREHER, Director



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

November 28, 2001

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

J D LUMBER INC
PO BOX 55
PRIEST RIVER ID 83856

RE: Application for Permit No 97-7417

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 Priest River Times on December 5 and 12, 2001. 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,

Allen Beardslee
Senior Water Resource Agent

Enclosure - Receipt No. N014711



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

November 28, 2001

Legal Notice Department
PRIEST RIVER TIMES
PO BOX 10
PRIEST RIVER ID 83856

FAXED 11/28/01 TO 208 448-2938
TWO PAGES INCLUDING COVER LETTER

RE: Application for Permit No. 97-7417

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 12/24/2001. Your cooperation is appreciated.

Sincerely

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

Dianne Ball
Administrative Assistant

The following application(s) have been filed to appropriate the public waters of the State of Idaho:
97-7417

J D LUMBER INC
PO BOX 55
PRIEST RIVER ID 83856

Point(s) of Diversion	NESW	S3	T56N	R04W	BONNER County
Source	UNNAMED STREAM Tributary To SANBORN CREEK				
Point(s) of Diversion	SESW	S3	T56N	R04W	BONNER County
Source	UNNAMED STREAM Tributary To SANBORN CREEK				
Point(s) of Diversion	SWSE	S3	T56N	R04W	BONNER County
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Point(s) of Diversion	NWSE	S3	T56N	R04W	BONNER County
Source	UNNAMED STREAM Tributary To SANBORN CREEK				
Use:	WILDLIFE STORAGE 01/01 To 12/31			75 AFA	
Use:	RECREATION STORAGE 01/01 To 12/31			75 AFA	
	Total Diversion:			75 AFA	

Date Filed: 10/16/2001

Place Of Use: WILDLIFE STORAGE and RECREATION STORAGE
T56N R04W S3 NESW SESW NWSE SWSE

Remark: Recreation storage is for fishing and swimming.

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KARL J DREHER, Director Published in Priest River Times on December 5 and 12, 2001.



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

11/20/2001

RAY HENNEKEY
IDF&G
2750 KATHLEEN AVE
COEUR D ALENE ID 83815

FAXED TO IDF&G 11/20/2001 db

11:50 am
4 pages including letter

Application to Permit No. 97-7417

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 is enclosed for your reference.

This office can complete the processing of an unprotested application as soon as the protest period is past; therefore, your prompt response to this request is appreciated. If your agency desires to file a formal protest against the approval of this application, your written protest along with a \$25.00 filing fee must be received in this office by December 24, 2001.

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

Sincerely,

A handwritten signature in cursive script, appearing to read 'Dianne'.

Dianne Ball
Administrative Assistant

Enclosure(s)