

Wilderness Moratorium Areas

October 26, 1999

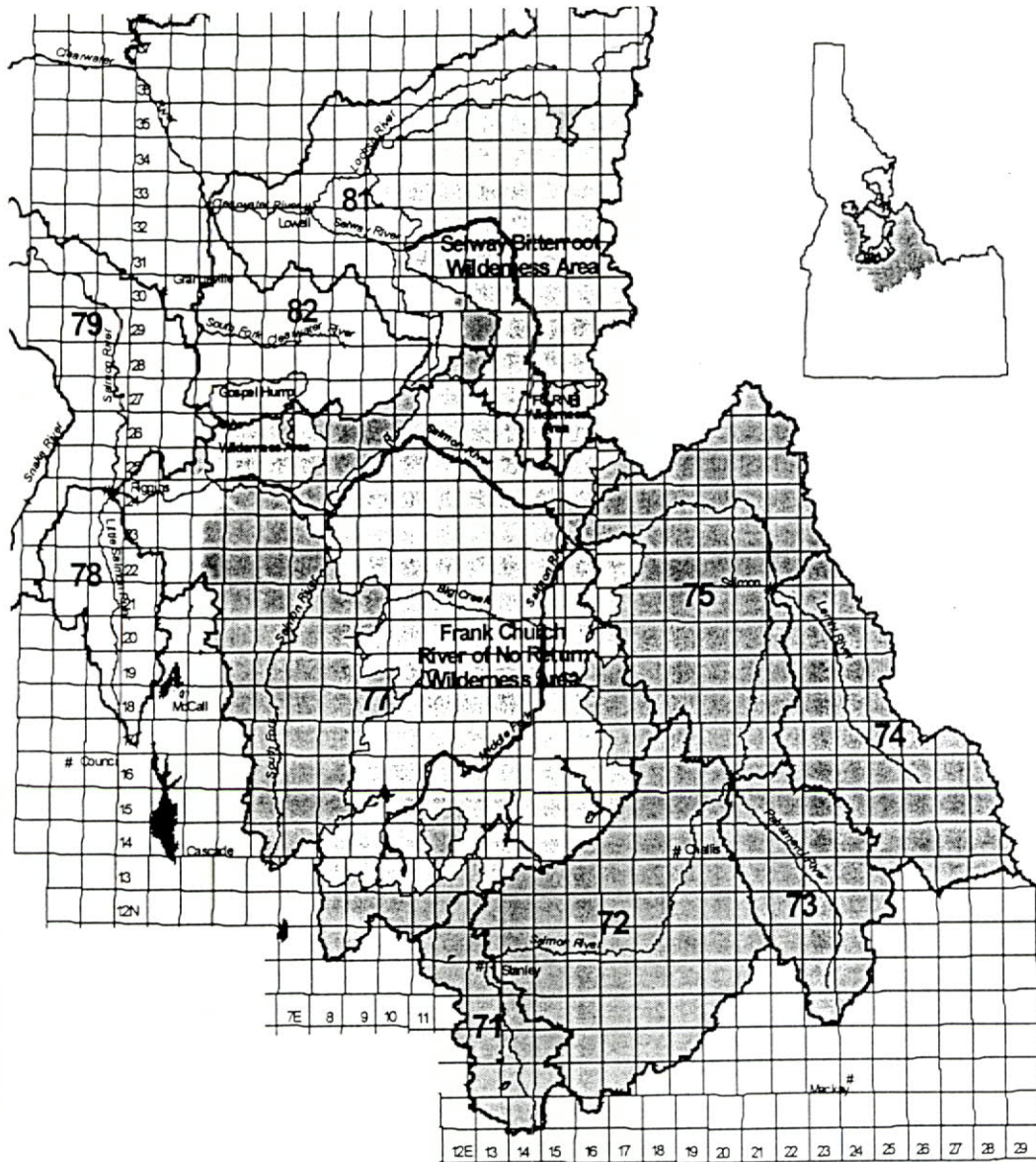
Legend:

- DWR Administrative Basins with basin number
- Wilderness Areas
- Tributary Areas
- Township/Range

The map displays the following details:

- Basin Numbers:** 74, 75, 76, 77, 78, 79, 80, 81, 82.
- Wilderness Areas:** Shaded regions include the Frank Church River of No Return Wilderness Area, the Selway-Bitterroot Wilderness Area, and the Snake River Canyon.
- Tributary Areas:** Hatched regions include the Snake River, the Selway River, and the Bitterroot River.
- Towns and Locations:** Boise, Idaho Falls, Pocatello, Teton, Jackson, and various smaller towns like McCall, Cascade, and Stanley.
- Rivers and Creeks:** Snake River, Selway River, Bitterroot River, and others.
- Scale:** 0 to 11 miles.

☐ DWR Administrative Basins with basin number
☐ Wilderness Areas
☒ Tributary Areas
☐ Township/Range



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AUG 25 2000

ANDREWS
TO
PROBST

SPRING

530
HEL

② 5729
HEL

③ 5723
HEL

PROBST
TO
ANDREWS

52
815

PROBST
TO
ERICKSON

① 304

THE UNIVERSITY OF CHICAGO

MICROFILMED
DEC 14 1999

PROPOSED FINDING OF WATER RIGHTS - LEMMI RIVER DRAINAGE

Source: Lemmi River, Div. L-26

Pt. of Div.: NW¹SW¹, Sec. 8, T10N, R14E

IDENT. NO.	NAME AND ADDRESS	PRIORITY	PURPOSE	PERIOD OF USE From To	MAXIMUM RATE OF DIVERSION (cfs)	PLACE OF USE and LANDS IRRIGATED	BASIS OF RIGHT and REMARKS	
							license	
74-2331B	ANDREWS, Boyd and/or Lorna Route 1 Salmon, Idaho	1 -27-1966	Irrigation	4/1 11/1	1.58	Sec. 31 NE ¹ SE ¹ , SE ¹ SE ¹ , Sec. 32 NE ¹ SW ⁴ , NW ¹ SW ⁴ , SW ¹ SW ⁴ , SE ¹ SE ¹ , T20N, R24E	1.0 3.0	PROTEST TO ANDREWS
							22.2 19.0 33.0 30.0	
							108.2	

*These rights marked as above
are to be added to the
existing rights in the
area.*

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**NOTICE OF APPLICATION FOR
WATER RIGHT**

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

74-07389

PROBST, ALLAN
PROBST, KARLA
RR1 BOX 41
SALMON, ID 83467

Source: SPRING Tributary:
LEMHI RIVER

Diversion Pt: NESESW Sec 32 T
20N 4 24E in LEMHI County.

Use: DOMESTIC STOCKWATER
(0.020 CFS)
(0.020 CFS)

Total Diversion: (0.020 CFS)

Date Filed: 4/26/1999

In: LEMHI County

T20N R24E S31 NESE SESE

74-07390

US DEPT OF AGRICULTURE
FOREST SERVICE

RR 2 BOX 600

SALMON, ID 83467

Source: SPRING Tributary:

LITTLE BEAR CREEK

Diversion: Pt: SENESW Sec 9 T
15N R 28E in LEMHI County.

Use: STOCKWATER (0.020 CFS)

Total Diversion: (0.020 CFS)

Date Filed: 4/27/1999

In: LEMHI County

T15N R28E S09 NESW

Any protests against the proposed application must be filed with the Dept. of Water Resources, 900 N Skyline Dr., Ste A, Idaho Falls ID 83402, together with a protest fee of \$25.00 on or before JUNE 7, 1999 to be considered by the Department in its decision to grant or deny any part of the proposed application. The protestant must also send a copy of the protest to the applicant.

KARL J. DREHER Director
Published: 5/20/1999 & 5/27/1999

5-20-21c

Affidavit of Publication

STATE OF IDAHO }
County of Lemhi } ss.

RICKY G. HODGES being first duly sworn, deposes and says he is one of the publishers (printers) of The Recorder Herald, a newspaper published weekly at Salmon, Lemhi County, Idaho, and of general circulation therein. That the IDAHO DEPARTMENT OF WATER RESOURCES

74-07390 & 74-07389

a true printed copy of which is attached to the margin hereof, has been and was correctly printed and published in the regular and entire issue of every number of said newspaper and not in any supplement thereof or thereto for TWO (2) consecutive issues, commencing with the issue dated 5-20-99 and ending with the issue dated 5-27-99

STATE OF IDAHO }
County of Lemhi } ss.

On this 27th day of MAY in this year of 1999 before me, A Notary Public, personally appeared RICKY G. HODGES, 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.

Residing At Salmon, Idaho

Ricky G. Hodges
Notary Public for Idaho

My Commission Expires: 9-21-2001

Publication Fee \$ 63.36

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JUN 10 1999

Department of Water Resources
Eastern Region

MICROFILMED
JUN 14 1999

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF PERMIT NO.)
74-07389 IN THE NAME OF)
ALLAN AND KARLA PROBST)
_____)

PRELIMINARY ORDER

This matter having come before the Department of Water Resources (Department) as a result of a response by the permit holder to an order issued by the Department, the Department makes the following Findings of Fact, Conclusions of Law, and Order:

FINDINGS OF FACT

1. On October 26, 1999, The Director of the Department (Director) issued a Moratorium Order (order) to stop further development of all existing permits to appropriate water within the Selway-Bitterroot, Gospel-Hump, and Frank Church-River of No Return Wilderness Areas, and within areas tributary to those wilderness areas.

2. On February 10, 2000, Allan Probst (permit holder) filed a request for an indefinite stay in the development period for Permit No. 74-07389 (permit) in response to Condition 5.b of the order.

3. The permit holder provided information describing the extent of development and beneficial use that had occurred under the permit.

4. The permit holder provided information to show that the project had not been completed due to circumstances over which the permit holder had no control.

CONCLUSIONS OF LAW

1. Section 42-204(1), *Idaho Code* provides that the Department may allow for delays in the development of a permit which are due to certain matters beyond the control of the permit holder.

2. The permit holder has provided sufficient justification for the Director to authorize an indefinite stay in the development period for the permit.

3. The Director should authorize an indefinite stay in the development period with certain conditions.

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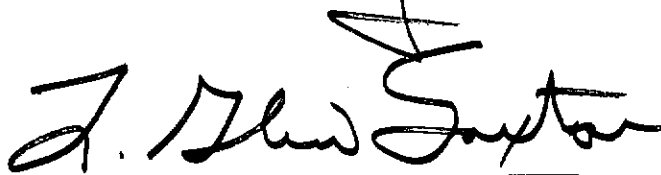
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ORDER

IT IS THEREFORE HEREBY ORDERED that an indefinite stay in the development period for the above captioned permit is **GRANTED** subject to the following conditions and limitations:

1. Additional work by the permit holder in developing a water right under terms of the permit is not authorized until the Department specifically authorizes resumption of work.
2. If resumption of work is authorized under this permit, the development period for this permit shall be extended by the number of days lost as a result of the indefinite stay hereby granted.
3. The permit holder is not authorized to assign ownership of the permit to another party without prior approval of the Department.
4. The Department may rescind or modify the indefinite stay hereby granted if the Selway-Bitterroot, Gospel-Hump, and Frank Church-River of No Return Wilderness Moratorium is modified or rescinded.

Dated this 11th day of February, 2000.



for KARL J. DREHER
Director

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

IN THE MATTER OF APPLICATIONS AND)
PERMITS FOR THE DIVERSION AND USE)
OF SURFACE WATER AND GROUND)
WATER IN AND TRIBUTARY TO THE)
SELWAY-BITTERROOT WILDERNESS)
AREA, GOSPEL-HUMP WILDERNESS AREA,)
AND FRANK CHURCH-RIVER OF NO)
RETURN WILDERNESS AREA)
_____)

MORATORIUM ORDER

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

FINDINGS OF FACT

1. On April 30, 1993, the Director issued an Amended Moratorium Order that stopped the approval of certain applications seeking to appropriate surface water within the Salmon and Clearwater River Basins in Idaho.
2. On December 13, 1993, the United States filed Notices of Claim in the Snake River Basin Adjudication ("SRBA") for federal reserved water rights for the Selway-Bitterroot, Gospel-Hump, and Frank Church-River Of No Return wilderness area designations. On February 27, 1997, a motion to amend the Notices of Claim for all three wilderness area designations was filed with the District Court of the Fifth Judicial District of the State of Idaho (the "SRBA district court") to change the claimed priority dates.

3. As amended, pertinent portions of the claim filed in the SRBA for a federal reserved water right for the Selway-Bitterroot Wilderness are as follows:

Identification Number: A31-11191
Name of Claimant: United States of America

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Date of Priority: September 3, 1964, except for Magruder Corridor that has priority date of July 23, 1980

Source of Water Supply: All streams, lakes, ponds, springs, seeps or other natural sources of water including groundwater, whether named or not and whether perennial, intermittent or ephemeral within the boundaries of the Selway-Bitterroot Wilderness. This claim is intended to also include those sources of water which are not presently known or not reasonably susceptible of quantification because of the de minimus and diffuse nature of their flow and which supply wetlands, marshes, or other vegetation which serves such wilderness purposes as habitat protection and drinking water for wildlife. Tributary to Lochsa and Selway Rivers.

Location of Points of Diversion: None

Location of Place of Use: All locations in the Selway-Bitterroot Wilderness where natural sources of water exist.

Instream Flow Beginning

And Ending Points: All locations in the Selway-Bitterroot Wilderness where natural sources of water exist

Total Quantity Claimed: The entire unappropriated flow and all other natural sources of water as of the date of designation, specifically, September 3, 1964.

4. As amended, pertinent portions of the claims filed in the SRBA for federal reserved water rights for the Gospel-Hump Wilderness are as follows:

Identification Numbers: 77-12774, 82-11120

Name of Claimant: United States of America

Date of Priority: February 24, 1978

Source of Water Supply: All streams, lakes, ponds, springs, seeps or other natural sources of water including groundwater, whether named or not and whether perennial, intermittent or ephemeral within the boundaries of the Gospel-Hump Wilderness. This claim is intended to also include those sources of

water which are not presently known or not reasonably susceptible of quantification because of the de minimus and diffuse nature of their flow and which supply wetlands, marshes, or other vegetation which serves such wilderness purposes as habitat protection and drinking water for wildlife. Tributary to Salmon River.

Location of Points of Diversion: None

Location of Place of Use: All locations in the Gospel Hump Wilderness where natural sources of water exist.

Instream Flow Beginning

And Ending Points: All locations in the Gospel-Hump Wilderness where natural sources of water exist

Total Quantity Claimed: The entire unappropriated flow and all other natural sources of water as of the date of designation, specifically, February 24, 1978.

5. As amended, pertinent portions of the claims filed in the SRBA for federal reserved water rights for the Frank Church-River of No Return Wilderness are as follows:

Identification Numbers: A75-13605, A77-12775

Name of Claimant: United States of America

Date of Priority: July 23, 1980

Source of Water Supply: All streams, lakes, ponds, springs, seeps or other natural sources of water including groundwater, whether named or not and whether perennial, intermittent or ephemeral within the boundaries of the Frank Church-River of No Return Wilderness. This claim is intended to also include those sources of water which are not presently known or not reasonably susceptible of quantification because of the de minimus and diffuse nature of their flow and which supply wetlands, marshes, or other vegetation which serves such wilderness purposes as habitat protection and drinking water for wildlife. Tributary to Salmon River.

Location of Points of Diversion: None

Location of Place of Use: All locations in the Frank Church-River of No Return Wilderness where natural sources of water exist.

Instream Flow Beginning

And Ending Points: All locations in the Frank Church-River of No Return Wilderness where natural sources of water exist

Total Quantity Claimed: The entire unappropriated flow and all other natural sources of water as of the date of designation, specifically, July 23, 1980.

6. On December 18, 1997, the SRBA district court issued *Order Granting and Denying United States' Motions for Summary Judgment on Reserved Water Rights* for claims made by the United States under the Wilderness Act, Multiple-Use Sustained-Yield Act ("MUSYA"), and Hells Canyon National Recreation Area Act ("HCNRA"), referred to herein as "1997 SRBA Reserved Rights Order." In this order, the SRBA district court ruled that: "The United States is entitled to a federal reserved water right for all unappropriated flows in the Frank Church-River of No Return, the Selway-Bitterroot, and the Gospel-Hump wilderness areas." (1997 SRBA Reserved Rights Order, p. 5). The SRBA district court emphasized its ruling by stating: "The amount of water minimally sufficient to fulfill Congressional intent is the total amount of unappropriated water within each [wilderness] area, **such that none is ever available for future appropriation.**" (1997 SRBA Reserved Rights Order, p. 15, emphasis added).

7. On July 24, 1998, the SRBA district court issued *Memorandum Decision Granting, In Part, and Denying, In Part, the United States' Motion for Summary Judgment on Reserved Water Rights Claims* for claims made by the United States under the Wild and Scenic Rivers Act, referred to herein as "1998 SRBA Wild and Scenic Decision." In this decision, the SRBA district court ruled that under the Central Idaho Wilderness Act, the United States "... **reserved land north and south of the Mainstem of the Salmon River as wilderness, thereby reserving all unappropriated flows of water in the Mainstem**" referring back to the 1997 SRBA Reserved Rights Order in a footnote. (1998 SRBA Wild and Scenic Decision, p. 7, emphasis added). The SRBA district court noted that "Congress declared that the Mainstem of the Salmon River [that segment of the main Salmon River designated as a component of the Wild and Scenic Rivers System] would be administered solely under the Wild and Scenic Rivers Act, not the Wilderness Act." However, the SRBA district court did not describe any limitation on the reservation of unappropriated flows, nor did the court distinguish between that segment of the main Salmon River designated as Wild and Scenic and that segment adjacent to the Gospel-Hump and Frank Church-River of No Return Wilderness Areas that lies downstream of the Wild and Scenic designation.

8. On October 1, 1999, the Supreme Court of the State of Idaho issued 1999 Opinion No. 113 in the case of *Potlatch Corp. et al. v. United States of America* affirming the 1997 SRBA Reserved Rights Order granting the United States reserved water rights for all unappropriated water in the Frank Church-River of No Return, the Selway-Bitterroot, and the Gospel-Hump Wilderness Areas.

9. As of the date of this Order, there are approximately 60 pending applications for permits to appropriate surface water and ground water in the Selway-Bitterroot, Gospel-Hump, and Frank Church-River of No Return Wilderness Areas, and areas tributary to the wilderness areas. In addition, approximately 90 permits to appropriate water have been issued in these areas for which proof of beneficial use has not yet been submitted.

10. Although the SRBA district court has not issued final decrees for federal reserved water rights in the Selway-Bitterroot, the Gospel-Hump, and the Frank Church-River of No Return Wilderness Areas, the Supreme Court's decision of October 1, 1999, once final, will preclude future appropriations of water within the wilderness areas and in areas tributary to the wilderness areas.

CONCLUSIONS OF LAW

1. The Director is responsible for the allocation of water for new uses in Idaho. Section 42-203A(5), Idaho Code, reads in pertinent part as follows:

... In all applications whether protested or not protested, where the proposed use is such (a) that it will reduce the quantity of water under existing water rights, or (b) that the water supply itself is insufficient for the purpose for which it is sought to be appropriated, or (c) where it appears to the satisfaction of the director that such application is not made in good faith, is made for delay or speculative purposes, or (d) that the applicant has not sufficient financial resources with which to complete the work involved therein, or (e) that it will conflict with the local public interest, where the local public interest is defined as the affairs of the people in the area directly affected by the proposed use, or (f) that it is contrary to conservation of water resources within the state of Idaho; the director of the department of water resources may reject such application and refuse issuance of a permit therefor, or may partially approve and grant a permit for a smaller quantity of water than applied for, or may grant a permit upon conditions. (emphasis added)

2. The Director is authorized under the provisions of Section 42-1805(7), Idaho Code, as follows:

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

3. The claims filed by the United States in the SRBA for federal reserved water rights for all unappropriated water in the Selway-Bitterroot, Gospel-Hump, and Frank Church-River of No Return Wilderness Areas did not limit the claimed amount to unappropriated water arising solely within the wilderness areas as of the date the wilderness areas were reserved, nor did the claims include subordination to existing permits to appropriate water having junior priority dates for private holdings within the wilderness areas. Neither the 1997 SRBA Reserved Rights Order nor the Idaho Supreme Court decision affirming the 1997 SRBA Reserved Rights Order limited the federal reserved water rights to unappropriated water arising solely within the boundaries of the wilderness areas. Therefore, both the SRBA district court and the Idaho Supreme Court have included unappropriated water flowing into the wilderness areas, either above or below land surface, as part of the unappropriated water "in" or "within" the wilderness areas.

4. Neither the 1997 SRBA Reserved Rights Order, the 1998 SRBA Wild and Scenic Decision, nor the Idaho Supreme Court decision affirming the 1997 SRBA Reserved Rights Order excluded portions of the Middle Fork of the Salmon River, the South Fork of the Salmon River, or Big Creek lying upstream of the wilderness area boundaries, or clearly excluded the Mainstem of the Salmon River, from being considered as sources for unappropriated water "in" or "within" the wilderness areas as of the date the wilderness areas were reserved.

5. Although petitions for rehearing are pending before the Idaho Supreme Court, a moratorium on the granting of new permits to appropriate surface water or ground water and on continued development under existing permits is necessary. A moratorium will preserve the status quo until final decrees are issued for federal reserved water rights and limit the potential for resources being expended to develop water rights for which no unappropriated water may be available.

6. Because this moratorium order is issued to preserve the status quo, the order should take effect immediately upon issuance to protect the public interest in accordance with the provisions of Section 67-5247, Idaho Code.

ORDER

IT IS, THEREFORE, HEREBY ORDERED that the prior Amended Moratorium Order of the Director issued on April 30, 1993, remains in effect and the requirements listed below also apply.

IT IS FURTHER HEREBY ORDERED that a moratorium is established on the processing of applications for permits to appropriate surface water or ground water within and tributary to the Selway-Bitterroot Wilderness Area, the Gospel-Hump Wilderness Area, and the Frank Church-River of No Return Wilderness Area, subject to the following conditions:

1. This moratorium order shall be in effect on and after its entry and shall remain in effect until withdrawn or modified by order of the Director, except as provided herein.
2. This moratorium order applies to all applications for permit, previously filed or to be filed, and all existing permits for which proof of beneficial use has not been filed with the Department, seeking to appropriate surface water or ground water within the Salmon River Basin upstream from the location where the Salmon River leaves the Gospel-Hump Wilderness Area in Section 3, T24N, R4E, B.M. and in the Clearwater River Basin upstream from the location where the Selway River leaves the Selway-Bitterroot Wilderness Area in Section 7, T31N, R10E, B.M. The wilderness areas and tributary areas affected by this moratorium order are depicted on the attached map.
3. This moratorium order does not apply to any application proposing a non-consumptive use of water.
4. This moratorium order does not prevent the Director from reviewing an application that otherwise would not be approved under terms of this moratorium on a case by case basis, if the Director determines that the use of the water pursuant to the application would have no effect on other water rights due to:
 - (a) the location of use; or
 - (b) the effect on other water rights would be offset through mitigation provided by the applicant.

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5. The holders of all existing permits to appropriate water within the Selway-Bitterroot, Gospel-Hump, and Frank Church-River of No Return Wilderness Areas, and within areas tributary to those wilderness areas, shall upon receipt of this moratorium order immediately stop further development under the permit, and within sixty (60) days of receipt of this order do one of the following:

- (a) file proof of beneficial use documenting the extent of diversion and beneficial use of water that was completed prior to receiving this moratorium order; or
- (b) request a stay in the development period under the permit, in accordance with Section 42-204, Idaho Code, until the conditions that resulted in this order have been alleviated, if such should ever occur.

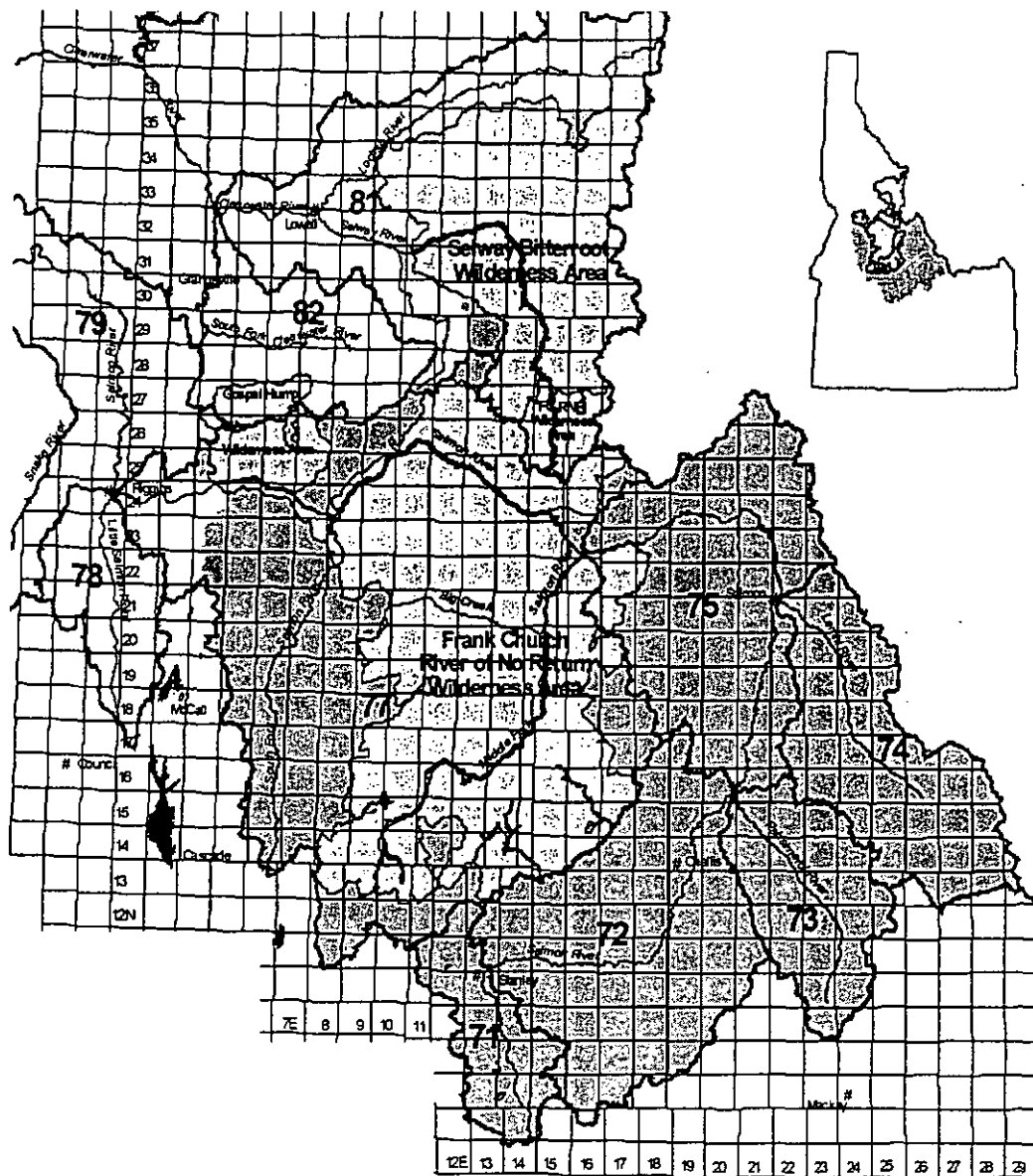
Dated this 26th day of October, 1999.



KARL J. DREHER
Director

October 26, 1999

- ☐ IDWR Administrative Basins with basin number
☐ Wilderness Areas
☒ Tributary Areas
☐ Township/Range



MORATORIUM ORDER - Page 9

State of Idaho
Department of Water Resources

Permit To Appropriate Water

NO. 74-07389

Proposed Priority: April 26, 1999

Maximum Diversion Rate:

0.02 CFS

This is to certify, that ALLAN PROBST
KARLA PROBST
RR 1 BOX 41
SALMON ID 83467

has applied for a permit to appropriate water from:
SPRING tributary of LEMHI RIVER

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

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>RATE OF DIVERSION</u>
STOCKWATER	01/01 to 12/31	0.02 CFS
DOMESTIC	01/01 to 12/31	0.02 CFS
	Totals	0.02 CFS

LOCATION OF POINT(S) OF DIVERSION: NESESW , Sec. 32, Township 20N, Range 24E
LEMHI County

PLACE OF USE: STOCKWATER

TWN RGE SEC

20N 24E 31 NESE SESE

PLACE OF USE: DOMESTIC, same as STOCKWATER use

CONDITIONS OF APPROVAL AND REMARKS

1. Proof of construction of works and application of water to beneficial use shall be submitted on or before July 1, 2000.
2. Subject to all prior water rights.
3. Use of water under this water right will be regulated by the watermaster of State Water District No. 74.
4. Upon specific notification by the Department, the right holder shall install a lockable device of a type acceptable to the Department in a manner that will provide the watermaster suitable control of the diversion.
5. The domestic use authorized under this right shall not exceed 13,000 gallons per day per home.
6. The irrigation occurring under this domestic use shall not exceed 1/2 acre.
7. Domestic use is for 2 homes.
8. Stockwater use is for 300 range cattle.

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State of Idaho
Department of Water Resources

Permit To Appropriate Water

NO. 74-07389

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

28 th day of June, 1999.


Karl J. Dreher, Director
for

MICROFILMED

DEC 14 1999

JUN 15 1999

Department of Water Resources

Ident. No.

74-07389

STATE OF IDAHO OF WATER RESOURCES APPLICATION FOR PERMIT

To appropriate the public waters of the State of Idaho

- Name of Applicant ALLAN & KARLA PROBST Phone 208-756-2194
Mailing address RR1 BOX 41 SALMON ID. 83467
- Source of water supply SPRING which is a tributary of LEMMI RIVER
- Location of point of diversion is Township 20N Range 24E Sec. 32 in the SE 1/4, SW 1/4, SW 1/4, Govt. Lot , B.M., LEMMI CO. County; additional points of diversion if any:
- Water will be used for the following purposes:
 Amount 0.02 for DOMESTIC purposes from JAN 1 to JAN 1 (both dates inclusive)
 (cfs or acre-feet per annum)
 Amount 0.02 for Stockwater purposes from " to " (both dates inclusive)
 (cfs or acre-feet per annum)
 Amount for purposes from to (both dates inclusive)
 (cfs or acre-feet per annum)
 Amount for purposes from to (both dates inclusive)
 (cfs or acre-feet per annum)
 Amount for purposes from to (both dates inclusive)
 (cfs or acre-feet per annum)
 Amount for purposes from to (both dates inclusive)
 (cfs or acre-feet per annum)
- Total quantity to be appropriated is (a) 0.02 - 10641 MIN and/or (b)
 cubic feet per second acre feet per annum
- Proposed diverting works:
 - Describe type and size of devices used to divert water from the source 20' LONG 8" DIAMETER PERFORATED INTAKE PIPE
 - Height of storage dam NA feet; active reservoir capacity acre-feet; total reservoir capacity acre-feet
 - Proposed well diameter is inches; proposed depth of well is 18 feet
 - Is ground water with a temperature of greater than 85°F being sought? NO
 - If well is already drilled, when? ; Drilling firm
 Well was drilled for (well owner) ; Drilling Permit No.
- Time required for completion of works and application of water to proposed beneficial use is 1 years (minimum 1 year)
- Description of proposed uses (If irrigation only, go to item 9):
 - Hydropower; show total feet of head and proposed capacity in KW.
 - Stockwatering; list number and kind of livestock. 300 HEAD - CATTLE
 - Municipal; show name of municipality.
 - Domestic; show number of households. 2
 - Other; describe fully.

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Department of Water Resources
Eastern Region

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	
D 20N	24E	31													D/S			D/S	

* Change as per telegram with Kevla Probst
4-28-1999 HefTotal number of acres to be irrigated NEARLY

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

11. a. Who owns the property at the point of diversion? APPLICANTb. 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 8 1/2"x11" map clearly identifying the proposed point of diversion, place of use, section #, township & range. (A photocopy of a USGS 7.5 minute topographic quadrangle map is preferred.)

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

Allen D. Probst
Signature of Applicant (and title, if applicable)

Received by HWO Date 4-28-99 Time _____ Preliminary check by _____
 Fee \$ 50 Receipted by HWO # E024955 Date 4-28-99
 Publication prepared by SC Date 5/10/99 Published in Recorder Herald
 Publication approved SC Date 6/10/99

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DEC 14 1999

ANDREWS
TO
PROBST

SPRING

530
HEL

PROBST

530
HEL

2

530
HEL

3

52

5

TO
ANDREWS

0604

316

PROPOSED FINDING OF WATER RIGHTS - LEMHI RIVER DRAINAGE

Source: Lemhi River, Div. L-28

Pt. of Div.: SW $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 8, T19N, R24E

FILE NO.	NAME AND ADDRESS	PRIORITY	PER USE	PERIOD OF USE From To	MAXIMUM RATE OF DIVERSION (cfs)	PLACE OF USE and LANDS IRRIGATED	BASIS OF RIGHT and REMARKS	IDENT NO.
74-1791	MASTERS LIVESTOCK, INC. c/o St. John Mahaffey Box 4 Tendoy, Idaho	4 -1 -1934	Irrigation	4/1 11/1	0.62	Sec. 6 SE $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 7 NE $\frac{1}{4}$ NE $\frac{1}{4}$, T19N, R24E	Beneficial Use 12.5 8.0 <u>20.5</u>	74-22
74-0671	ANDREWS LIVESTOCK COMPANY Tendoy, Idaho	4 -1 -1949	Irrigation	4/1 11/1	0.83	Sec. 30 SW $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 31 NE $\frac{1}{4}$ NE $\frac{1}{4}$, T20N, R24E	Beneficial Use 8.2 19.4 <u>27.6</u>	
74-0635	DeCORA, C. Everett and/or Shirley P. Tendoy, Idaho	4 -1 -1957	Irrigation	4/1 11/1	0.09	Sec. 5 Lot 4, T19N, R24E	Beneficial Use 3.0 <u>3.0</u>	
	STATE OF IDAHO Department of Fish & Game Box 25 Boise, Idaho	4 -1 -1961	Fish Return	4/1 11/1	0.80	Sec. 8 NW $\frac{1}{4}$ SW $\frac{1}{4}$, T19N, R24E	Beneficial Use	
	ANDREWS, Gail D. c/o 1 Tendoy, Idaho	1 -27-1966	Irrigation	4/1 11/1	1.58	Sec. 31 NE $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 32 NE $\frac{1}{4}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$, T20N, R24E	License 3.0 6.0 3.0 7.0 26.0 31.0 9.0 8.8 14.0 <u>107.8</u>	

MICROFILMED
DEC 14 1999

PROPOSED FINDING OF WATER RIGHTS - LEMHI RIVER DRAINAGE

Source: Lemhi River, Div. L-26

Pt. of Div.: SW $\frac{1}{4}$ Sec. 8, T19N, R24E

IDENT. NO.	NAME AND ADDRESS	PRIORITY	PURPOSE	PERIOD OF USE From To	MAXIMUM RATE OF DIVERSION (cfs)	PLACE OF USE and LANDS IRRIGATED	BASIS OF RIGHT and REMARKS	
							License	
74-2331B	ANDREWS, Boyd and/or Lorna Route 1 Salmon, Idaho	1 -27-1966	Irrigation	4/1 11/1	1.58	Sec. 31 NE $\frac{1}{4}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$,	1.0	PROTEST TO ANDREWS
						Sec. 32 NE $\frac{1}{4}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$,	3.0	
						SW $\frac{1}{4}$ SW $\frac{1}{4}$,	22.2	
						SE $\frac{1}{4}$ SE $\frac{1}{4}$,	19.0	
						T20N, R24E	33.0	
							30.0	
							108.2	

These rights marked in orange
are for 1965 water right to
the 200 acre owned by
the Department of
Fish and Game

MICROFILMED

DEC 14 1999



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

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

February 11, 2000

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

ALLAN PROBST
KARLA PROBST
RR 1 BOX 41
SALMON ID 83467

RE: Preliminary Order for Water Right 74-07389

Dear Mr. & Mrs. Probst:

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

If you have any questions regarding this matter, please call me at 208-327-7940.

Sincerely,

Jeff Peppersack, Manager
Water Right Permits Section

JP:klt

Enclosures

cc: IDWR - ~~Southern~~ ^{EASTERN} Region

MICROFILMED

AUG 25 2000

CERTIFICATE OF MAILING

I hereby certify that on the 11th day of February, 2000, I mailed a true and correct copy, postage prepaid, of the foregoing PRELIMINARY ORDER to the person(s) listed below:

RE: Preliminary order for Water Right 74-07389

ALLAN PROBST
KARLA PROBST
RR 1 BOX 41
SALMON ID 83467


Kari Lynn Townsend
Secretary

MICROFILMED
AUG 25 2000

Responding to Preliminary Orders Issued by the Idaho Department of Water Resources

The Idaho Department of Water Resources (Department) issues water right permits, licenses, and transfers as preliminary orders pursuant to section 67-5243, Idaho Code. A preliminary order can and will become a final order without further action of the department unless a party petitions for reconsideration or files an exception and/or brief 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 the 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 twenty-one (21) 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 a 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. Otherwise, a preliminary order will become a final order of the Department.

If any party appeals or takes exceptions to a preliminary order, opposing parties shall have twenty-one (21) days to respond to any party's appeal. Written briefs in support of or taking exceptions to the preliminary order shall be filed with the Department. The Department retains the right to review the preliminary order on its own motion.

ORAL ARGUMENT

If the Department grants a petition to review a preliminary order, the Department 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 Department will within a reasonable time period notify each party of the place, date and hour for the argument of the case. Unless the Department orders otherwise, all oral arguments will be heard in Boise, Idaho.

MICROFILMED
AUG 25 2000

CERTIFICATE OF SERVICE

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

FINAL ORDER

The Department 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 Department 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.

MICROFILMED

AUG 25 2000

RECEIVED

FEB 10 2000

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

Department of Water Resources

REQUEST FOR STAY IN THE DEVELOPMENT PERIOD AND
QUESTIONNAIRE TO DETERMINE EXTENT OF DEVELOPMENT

The Idaho Department of Water Resources considers this form a request for stay in the development period of a permit in the Selway-Bitterroot, Gospel-Hump, and Frank Church-River of No Return Wilderness Moratorium Area. In addition, this form is a statement of the permit holder(s) extent of development prior to the Moratorium Order issued October 26, 1999. This form must be completed in order to process a request for stay.

1. Permit No. 74-07389 Telephone No. 208-756-2194
2. Name(s) of Permit Holder(s): ALLAN & KARA PROBST
3. Have you begun construction of the diversion works authorized under this permit?

No ☐Yes ☒ if yes, describe the extent of completion of the diversion works:

COLLECTION PIPE BEDDED IN GRAVEL-PLUMBED
WITH GRAVITY FLOW PIPE TO HYDRANT. LIVESTOCK WATER.
300 HEAD.

4. Have you diverted and beneficially used any water under this permit?

No ☐Yes ☒ if yes, please describe the uses: LIVESTOCK WATER - 300 HEAD.Domestic (no. of households): _____ Stockwater (no. and type of stock): 300 CATTLE

Irrigation (no. of acres): _____ Other: _____

5. Describe what remains to be done in order to complete the development authorized under this permit:

DOMESTIC HOUSEHOLD USE.

6. I Request an Indefinite Stay in the Development Period of the Above Numbered Permit ☒ (check here)

The information given on this form is my true statement of the extent to which the above numbered permit has been developed prior to October 26, 1999. I understand that any willful misrepresentations may result in voiding of the permit.

Signature of Permit Holder Allan D. Probst-Downer Date 2-7-2000
(include your title, if on behalf of company or organization) MICROFILMED

AUG 25 2000

MEMORANDUM

Date: February 7, 2000

To: WR File No. 74-07389

From: Jeff Peppersack

Re: Wilderness Moratorium

Allan Probst called to discuss the Feb. 2, 2000 letter regarding the moratorium order. He wanted to clarify the requirements in the moratorium order. He has developed the stockwater use under the permit but has not developed the domestic use yet. We discussed the options and he indicated that he would probably request a stay in order to preserve the right to develop the permit further if the order is ever rescinded.

MICROFILMED
AUG 25 2000



State of Idaho
DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, P.O. Box 83720, Boise, Idaho 83720-0098
Phone: (208) 327-7900 FAX: (208) 327-7866

February 2, 2000

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

ALLAN PROBST
RR 1 BOX 41
SALMON ID 83467

Re: Water Right Permit No. 74-07389

Dear Permit Holder(s):

On October 26, 1999, the Director of the Department of Water Resources issued an order establishing a moratorium on the processing or development of applications and permits to appropriate surface water or ground water within and tributary to the Selway-Bitterroot Wilderness Area, the Gospel-Hump Wilderness Area, and the Frank Church-River of No Return Wilderness Area. The order required permit holders to immediately stop further development under the permit, and within sixty (60) days of receipt of the order do one of the following:

- (a) file proof of beneficial use documenting the extent of diversion and beneficial use of water that was completed prior to receiving the order; or
- (b) request a stay in the development period under the permit, in accordance with Section 42-204, *Idaho Code*, until the conditions that resulted in the order have been alleviated, or such should ever occur.

The order does not apply to non-consumptive uses of water. An in-house domestic use with no associated irrigation or other consumptive uses is considered non-consumptive.

Our records indicate that the order was sent by certified mail to the address listed on your permit. The sixty (60) day period has passed and we have not received any response from you as required in the order.

The purpose of this letter is to request that you take the appropriate action as required in the order. I have enclosed two forms; either can be used to avoid cancellation of your permit. The first form is used to file proof of beneficial use. Filing proof of beneficial use is considered your statement that the development under the permit has been completed and that water has been applied to beneficial use according to the provisions of the permit. Upon receipt of such proof and the fee as required under Section 42-221, *Idaho Code*, the department conducts a field examination and issues a license confirming the use found.

The second form is a request for a stay in the development period and questionnaire to determine the extent of development under the permit. This form is used to request an indefinite stay in the development period. If a stay is granted, future development under the permit may be possible if the moratorium order is rescinded and if resumption of work is authorized. No fee is required to request a stay in the development period.

MICROFILMED

AUG 25 2000

We will withhold further action on this permit for 28 days from the date of this letter in order to allow you time to respond. If we do not receive a response from you within this time period we will begin action to cancel the permit pursuant to Section 42-311(1), *Idaho Code*.

Please call me at 208-327-7940 if you have any questions regarding this matter.

Sincerely,



Jeff Peppersack, Manager
Water Right Permits Section

Enclosures

MICROFILMED
AUG 25 2000

Z 269 221 970

US Postal Service

Receipt for Certif

No Insurance Coverage Pro
Do not use for International

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

74-07389
ALLAN PROBST
RR 1 BOX 41
SALMON

ID 83467

Stick postage stamps to article to cover First-Class postage, certified mail fee, and charges for any selected optional services (See front).

1. If you want this receipt postmarked, stick the gummed stub to the right of the return address leaving the receipt attached, and present the article at a post office service window or hand it to your rural carrier (*no extra charge*).

2. If you do not want this receipt postmarked, stick the gummed stub to the right of the return address of the article, date, detach, and retain the receipt, and mail the article.

3. If you want a return receipt, write the certified mail number and your name and address on a return receipt card, Form 3811, and attach it to the front of the article by means of the gummed ends if space permits. Otherwise, affix to back of article. Endorse front of article **RETURN RECEIPT REQUESTED** adjacent to the number.

4. If you want delivery restricted to the addressee, or to an authorized agent of the addressee, endorse **RESTRICTED DELIVERY** on the front of the article.

5. Enter fees for the services requested in the appropriate spaces on the front of this receipt. If return receipt is requested, check the applicable blocks in item 1 of Form 3811.

6. Save this receipt and present it if you make an inquiry.

102595-99-M-0079

Is your E-MAIL ADDRESS computed 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:

74-07389
ALLAN PROBST
RR 1 BOX 41
SALMON

4a. Article Number

4b. Service Type

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

7. Date of Delivery

10-29-9

5. Received By: (Print Name)

KARLA PROBST

6. Signature: (Addressee or Agent)

X

Karla Probst

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

Thank you for using Return Receipt Service.

UNITED STATES POSTAL SERVICE



First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

• Print your name, address, and ZIP Code in this box •

DEPARTMENT OF WATER RESOURCES
1301 N. ORCHARD ST.
BOISE, ID 83706-2237

RECEIVED

AUG 25 2000

NOV 2 - 1999

Department of Water Resources

WA





State of Idaho

DEPARTMENT OF WATER RESOURCES

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

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

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

October 26, 1999

CERTIFIED MAIL

RE: Procedures Available upon Issuance of Final Moratorium Order

Dear Applicant or Permit Holder:

The accompanying "Final Order" by the Director of the Department of Water Resources establishes a moratorium on the processing of applications for permits to appropriate surface water or ground water within and tributary to the Selway-Bitterroot Wilderness Area, the Gospel-Hump Wilderness Area, and the Frank Church-River of No Return Wilderness Area. The order is issued pursuant to Section 67-5246, Idaho Code, and is effective as of October 25, 1999.

This letter provides a statement of the available procedures pursuant to Section 67-5246, Idaho Code, and provides the time limits for filing a petition for reconsideration of the order. The statement is required by the Department's Rule of Procedure 740.02.

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a final order within fourteen (14) days of the service date of the order. The department will act on a petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be deemed denied by operation of law pursuant to Section 67-5246(4), Idaho Code.

A party may not be required to comply with a final order unless the party has been served with or has actual knowledge of the order. If the order is mailed to the last known address of a party, the service is deemed to be sufficient.

OPPORTUNITY TO REQUEST HEARING

The department did not conduct a hearing prior to issuance of the accompanying order. Section 42-1701A(3) provides, in pertinent part, as follows:

MICROFILMED

OCT 25 2000

Moratorium Letter

October 26, 1999

Page 2 of 2

Unless the right to a hearing before the director or the water resource board is otherwise provided by statute, any person aggrieved by any decision, determination, order or action of the director of the department of water resources or any applicant for any permit, license, certificate, approval, registration, or similar form of permission required by law to be issued by the director, who is aggrieved by a denial or conditional approval ordered by the director, and who has not previously been afforded an opportunity for a hearing on the matter shall be entitled to a hearing before the director to contest the denial or conditional approval upon filing with the director, within fifteen (15) days after receipt of the denial or conditional approval, a written petition stating the grounds for contesting the action by the director and requesting a hearing.

APPEAL OF FINAL ORDER TO DISTRICT COURT

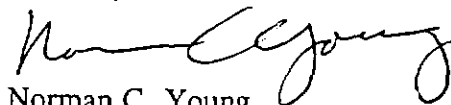
Pursuant to Sections 67-5270 and 67-5272, Idaho Code, any party aggrieved by a final order or orders previously issued in a matter before the department may appeal the final order and all previously issued orders in the matter to district court by filing a petition in the district court of the county in which:

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

The appeal must be filed within twenty-eight (28) days of (a) the service date of the final order, (b) an order denying petition for reconsideration, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration, whichever is later. See Section 67-5273, Idaho Code. The filing of an appeal to district court does not in itself stay the effectiveness or enforcement of the order under appeal.

For questions regarding the moratorium order please contact Glen Saxton, Water Allocation Bureau Chief, or me at (208) 327-7900.

Sincerely,



Norman C. Young

Administrator

Water Management Division

MICROFILMED
AUG 25 2000



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

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

June 28, 1999

DIRK KEMPTHORNE
GOVERNOR

ALLAN PROBST
KARLA PROBST
RR 1 BOX 41
SALMON ID 83467

KARL J. DREHER
DIRECTOR

PERMIT APPROVAL NOTICE

RE: PERMIT NO. 74-07389

Dear Permit Holder:

The Department of Water Resources (IDWR) 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 IDWR pursuant to section 67-5243, Idaho Code. It can and will become a final order without further action by IDWR unless a party petitions for reconsideration or files an exception and/or brief 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.

Also, please note that water right owners are required to report any change of water right ownership and/or change of 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 reporting form.

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

Sincerely,

Shelley W. Keen
Water Rights Supervisor

SK:klt
Enclosures

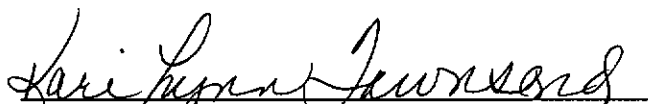
MICROFILMED
DEC 14 1999

CERTIFICATE OF MAILING

I hereby certify that on the 28th day of June, 1999, I mailed a true and correct copy, postage prepaid, of the foregoing PRELIMINARY ORDER (Approved Permit) to the person(s) listed below:

Water Right No. 74-07389

ALLAN PROBST
KARLA PROBST
RR 1 BOX 41
SALMON ID 83467


Kari Lynn Townsend
Secretary

MICROFILMED
DEC 14 1999

Responding to Preliminary Orders Issued by the Idaho Department of Water Resources

The Idaho Department of Water Resources (Department) issues water right permits, licenses, and transfers as preliminary orders pursuant to section 67-5243, Idaho Code. A preliminary order can and will become a final order without further action of the department unless a party petitions for reconsideration or files an exception and/or brief 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 the 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 twenty-one (21) 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 a 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. Otherwise, a preliminary order will become a final order of the Department.

If any party appeals or takes exceptions to a preliminary order, opposing parties shall have twenty-one (21) days to respond to any party's appeal. Written briefs in support of or taking exceptions to the preliminary order shall be filed with the Department. The Department retains the right to review the preliminary order on its own motion.

ORAL ARGUMENT

If the Department grants a petition to review a preliminary order, the Department 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 Department will within a reasonable time period notify each party of the place, date and hour for the argument of the case. Unless the Department 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 Department in connection with a preliminary order shall be served on all other parties to the proceedings in accordance with Rules of Procedure 302 and 303.

FINAL ORDER

The Department 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 Department 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.

MICROFILMED

DEC 14 1999

02/99

APPLICATION FOR PERMIT STATE OFFICE ANALYSIS

by

Cindy J. J. J.

No.: 74-1389 Name: Probst Date: 6/23/99 Ad OK? ☒ ☒ Gvmt Lts: ☒AREA OF CONCERN: ☐ No/Yes: SC Mor / ☐ GWMA / Trust / Non-trustPROTESTED: ☐ 020 (Protest Agreement) or *W19 (Order)

SYSTEM COMPLETED:

> 1 year
≤ 1 year/no proof P16

GROUNDWATER: (✓ FLO-CH)

DRILLING PERMIT

All wells (✓ WDAQ3) - 046-P23
In Basin 34? - 085
Irr. within WD - P05 (new well location)
WMD (✓ MAP) - North / East / West
> 0.24 cfs/5 acres - 067 or No MD (in-stream stock or power)
≤ 0.24 cfs/5 acres - No MD

WMD

Supp irr use only - 065-079 (if GW use SW)-(keep SW)-(GW not primary irr source)
Supp. irr + uses - 100-101
> 0.24 cfs/5 acres - 01M (report when notified)
≤ 0.24 cfs/5 acres - No MD

SURFACE WATER: (✓ FLO-CH) (Surface water that doesn't sink is regulated):

FISH & GAME CONTACTED: ☐ YES / NO; WHEN: 5/11/99 RESPONSE: None

IN/ABOVE MSF (✓ MAP)

- *WB9

IN-STREAM DEVELOPMENT

- P52 (stream channel alteration)

WD (✓ MAP & LISTING)

- R04 (WD # 74)

> 0.20 cfs

- 01J-P08 (MD & LD)

≤ 0.20 cfs

- 01H-P01 (LD), 01R or No MD (in-stream stock)

WMD (✓ MAP)

> 0.24 cfs/5 acres

- 067 or No MD (in-stream stock or power)

≤ 0.24 cfs/5 acres

- No MD

SPRINGS/SINK, INACTIVE WD & REST OF STATE

> 0.24 cfs/5 acres

- 01M or No MD (in-stream stock or power)

≤ 0.24 cfs/5 acres

- No MD

RIVER BASINS: (*Surface water):

Snake R (01)

- *W22-P04, NA

(02/03-irr)

- 007 (w/ remark *WB9 if above Weiser), NA

Payette R(65)

- *W22 (regulated uses), 047-P04 (Payette Lake), NA

~~Salmon R (70's)~~

- 029 (fish screens), NA

Weiser R (67)

- 086, 087

USE:

STORAGE (✓ 3 compo.)

- 18A (in & out MD for on-stream storage), 18B-P09 (>10' dam), NA

IRR ≤ 5 acres

- R66/R67/R68/R69 (0.03 cfs/acre + 3.0/3.5/4.0/4.5 AF)

> 5 acres

- R62/R63/R64/R65 (0.02 cfs/acre + 3.0/3.5/4.0/4.5 AF)

STOCKWATER

- R37 (BLM/USFS); NA

MINING

- 054(req)-081-P10

FISH PROPAGATION

- 029(70's only)-007-042(req)-081 (WQ)-P10

HEATING/COOLING

- R07 (injection well)

POWER

- 17H/17K(+uses)-08A-025(P18)-01N-028-081(P10)-027 (if no other cons. use);
17G (FERC) or 17M (FERC); 18B-P09; >25 cfs-P18

MUNICIPAL

In restricted area?

- 022, 075, 004 (+memo?)

Irr., GW supp. to SW?

- 102

DOMESTIC

Surface water

- *WB5 (Big Wood R or Boise R ↑ Star Bridge); 27A (Payette River); NA

> 1 in rest. area

- 071(070)

FIRE PROTECTION

- 077

LOCATION:

BOISE FRONT LOGEO

- 058 (<85° GW temp only)

~~MITIGATION~~

- 120

42-248 AREA

- P84 (in 20/30/40/50/60/70/80 (87) basin)

SWAN FALLS FLAG (✓ Code)

Trust

- 051-052-053-P74 (Consumptive Uses), NA

Non-Trust (1)

- 048-049 (Consumptive Uses), NA

OWNERSHIP:

- 004 (PD/PU)

OTHER CONDITIONS:

STANDARD REMARKS:

- (Dwoz) 300cc @ woi/2 @ 070

BENEFICIAL USE DUE:

- 7 / 11 2000

COMMENTS:

RECEIVED
JUN 15 1999

Copy to Fish Commission

Department of Water Resources

Dist. for staffing
Submitted for advertising 4-28-99

Form No. 202
4/87

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATIONS FOR PERMIT ANALYSIS PERMIT

Probst
INITIAL REVIEW BY HWS DATE 4-28-99 APPLICATION NO. 74-07389

REQUIRED INFORMATION

- ☒ Name (If applicant is a corporation or partnership, names must be provided for the director, officers, & other partners.)
☒ Address
☒ Source (See USGS Quad for names of water sources)
☒ Point of Diversion (10 acres for spring, lot & block descriptions for subdivisions, local name, flow and/or volume)
☒ County
☒ Quantity (flow and/or volume)
☒ Period of Use
☒ Nature of proposed use (Include description of use.)
☒ Description of diverting works
☒ Time required for beneficial use of water
☒ Place of use or acres irrigated
☒ Map
☒ Signature (If applicant is corp., partnership, or municipality, title of signatory is required)
☒ Fee
☒ Yes ☐ No* In form to receipt

ADDITIONAL INFORMATION

- ☐ Overlapping place of use (Describe source & relationship to present application on the back.)
☐ Overlapping point of diversion
☐ Yes ☒ No Field check required
Field check by _____
☐ Yes ☒ No Field report attached
☐ Yes ☒ No Critical groundwater area
☐ Yes ☒ No Groundwater management area
☐ Yes ☒ No Send dam safety information
☐ Yes ☒ No Send power requirement letter
☐ Yes ☒ No Send fish farm requirement letter
☐ Yes ☒ No Power residency affidavit
☐ Yes ☒ No Power efficiency form
☐ Yes ☒ No Within trustwater boundary (If yes, attach trust water supplementary analysis sheet.)
☐ Yes ☒ No Diversion greater than 5 cfs or 500 acre ft. (If yes, attach large diversion supplementary analysis sheet.)
See reverse side for additional information

*REQUEST THE FOLLOWING ADDITIONAL INFORMATION FROM THE APPLICANT _____

_____ Date Requested _____

PROCESSING

☒ Yes ☐ No In form for advertising
☐ Yes ☒ No Statewide advertising
☒ Yes ☐ No Fee amount, receipt date & No. recorded on application

SEND COPIES TO

☐ Idaho Dept. of Health & Welfare ☐ U.S. BLM
☒ Idaho Dept. of Fish & Game *5/1/99* ☐ U.S. Forest Service
☐ Idaho Dept. of Lands ☐ Water District
☐ Adjudication Bureau Unit ☐ Other _____

FINAL REGIONAL PROCESSING REVIEW

☒ Yes ☐ No Affidavit of publication received
☒ Yes ☐ No Application published correctly. If not, record action taken _____

☒ Yes ☐ No Publication dates & paper, recorded on application
☐ Yes ☒ No Protests received
Final date for protest _____
☐ Yes ☐ No Protests, dates, resolution of protest, recorded on application
☐ Yes ☐ No Recommendations attached
☐ Yes ☐ No Measuring device required
☐ Yes ☐ No Access port required
☐ Yes ☐ No Will water be delivered by watermaster? If yes, what Dist. _____
☐ Yes ☐ No Special conditions of approval or cover letter below.

Date of priority recommended 4-26-1999

By: *[Signature]* Date: 6-10-1997

STATE OFFICE REVIEW

By _____ Date: _____

ADDITIONAL INFORMATION

LOCAL PUBLIC INTEREST

Comments received from

_____ City _____ Idaho Fish & Game _____ Irrigation Dist.
 _____ County _____ Idaho Health & Welfare _____ Canal Company
 _____ Reservations _____ Div. of Environment _____ Other _____

Project impacts/implications report

COMMENTS

This image shows a single sheet of white paper with horizontal blue or grey ruling lines. The lines are evenly spaced and run across the width of the page. There are approximately 20 lines visible. The paper appears to be a standard notebook page or a sheet of stationery. There is no handwriting or other markings on the page.

NOTICE OF APPLICATION FOR
WATER RIGHT

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

74-07389

PROBST, ALLAN

PROBST, KARLA

RR1 BOX 41

SALMON, ID 83467

Source: SPRING Tributary:

LEMHI RIVER

Diversion Pt: NESESW Sec 32 T
20N 4 24E in LEMHI County.

Use: DOMESTIC STOCKWATER

(0.020 CFS)

(0.020 CFS)

Total Diversion: (0.020 CFS)

Date Filed: 4/26/1999

In: LEMHI County

T20N R24E S31 NESE SESE

74-07390

US DEPT OF AGRICULTURE

FOREST SERVICE

RR 2 BOX 600

SALMON, ID 83467

Source: SPRING Tributary:

LITTLE BEAR CREEK

Diversion: Pt: SENESW Sec 9 T
15N R 28E in LEMHI County.

Use: STOCKWATER (0.020 CFS)

Total Diversion: (0.020 CFS)

Date Filed: 4/27/1999

In: LEMHI County

T15N R28E S09 NESW

Any protests against the pro-
posed application must be filed with
the Dept. of Water Resources, 900
N Skyline Dr., Ste A, Idaho Falls ID
83402, together with a protest fee of
\$25.00 on or before JUNE 7, 1999
to be considered by the Department
in its decision to grant or deny any
part of the proposed application. The
protestant must also send a copy of
the protest to the applicant.

KARL J. DREHER, Director

Published: 5/20/1999 & 5/27/1999

5-20-21c

Affidavit of Publication

STATE OF IDAHO

ss.

County of Lemhi

RICKY G. HODGES being first duly sworn, deposes and says he is one of the publishers (print-
ers) of The Recorder Herald, a newspaper published weekly at Salmon, Lemhi County, Idaho,
and of general circulation therein. That the IDAHO DEPARTMENT OF WATER RESOURCES

74-07390 & 74-07389

a true printed copy of which is attached to the margin hereof, has been and was correctly printed
and published in the regular and entire issue of every number of said newspaper and not in any
supplement thereof or thereto for TWO (2) consecutive issues, commencing with the
issue dated 5-20-99 and ending with the issue dated 5-27-99

STATE OF IDAHO

ss.

County of Lemhi

On this 27th day of MAY in this year of 1999 before me, A Notary Public, person-
ally appeared RICKY G. HODGES, 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 state-
ments therein are true, and acknowledged to me that he executed the same.

Residing At Salmon, Idaho

Ricky G. Hodges
Notary Public for Idaho

My Commission Expires: 9-21-2001

Publication Fee \$ 63.36

RECEIVED

JUN 10 1999

Department of Water Resources
Eastern Region

MICROFILMED
JUN 14 1999



State of Idaho

DEPARTMENT OF WATER RESOURCES

900 N. Skyline Dr., Suite A, Idaho Falls, Idaho 83402-1718 - (208) 525-7161- Fax (208) 525-7177

EASTERN REGION

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

MAY 12, 1999

Legal Notices Department
RECORDER-HERALD
P.O. BOX 310
SALMON, ID 83467

Dear Legal Dept.:

Enclosed you will find legal notices which we wish to have published on the dates indicated (once a week for two consecutive weekly issues) in your newspaper. 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. Your cooperation is appreciated.

Please send the affidavit of publication and publication billing to this office before JUNE 7, 1999.

Yours truly,

Sharla Cox
Senior Secretary

Encl.

*mailed
5/12/99
sc*

MICROFILMED
DEC 14 1999

NOTICE OF APPLICATION FOR WATER RIGHT

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

74-07389

PROBST, ALLAN
PROBST, KARLA
RR1 BOX 41
SALMON, ID 83467

Source: SPRING

Tributary: LEMHI RIVER

Diversion Pt: NESESW Sec 32 T 20N R 24E in LEMHI County.

Use: DOMESTIC	(	0.020 CFS)
STOCKWATER	(	0.020 CFS)
Total Diversion:	(	0.020 CFS)

Date Filed: 4/26/1999

In: LEMHI County		
T20N R24E S31	NESE	SESE

Any protests against the proposed application must be filed with the Dept. of Water Resources, 900 N Skyline Dr., Ste A, Idaho Falls ID 83402, together with a protest fee of \$25.00 on or before JUNE 7, 1999. to be considered by the Department in its decision to grant or deny any part of the proposed application. The protestant must also send a copy of the protest to the applicant.

KARL J. DREHER, Director

Published: 5/20/1999 & 5/27/1999

MICROFILMED
DEC 14 1999



State of Idaho
DEPARTMENT OF WATER RESOURCES

900 N. Skyline Dr., Suite A, Idaho Falls, Idaho 83402-1718 - (208) 525-7161- Fax (208) 525-7177

EASTERN REGION

May 11, 1999

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

IDAHO FISH & GAME
PO BOX 1336
SALMON ID 83467

RE: Applications for Permit #34-07593, 74-07389 and 74-07390

Dear Sirs:

We are enclosing a copy of the application (s) that may be of interest to your department. Please review the application (s) and submit any comments you may have to our Department as soon as possible. The last date of protest is June 7, 1999, and we are required to take final action shortly thereafter.

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

Respectfully submitted,

Harold W. Jones
Water Right Supervisor

HWJ: sc

Enc.

MACROFILMED

DEC 14 1999



State of Idaho

DEPARTMENT OF WATER RESOURCES

900 N. Skyline Dr., Suite A, Idaho Falls, Idaho 83402-1718 - (208) 525-7161- Fax (208) 525-7177

EASTERN REGION

May 11, 1999

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

ALLAN & KARLA PROBST
RR 1 BOX 41
SALMON ID 83467

RE: Application for Permit # 74-07389

Dear Applicant:

This office is currently in the process of advertising the application in the Recorder Herald on May 20 and 27, 1999. The advertisement will be published once a week for two consecutive weeks, and a period of ten days following the second publication will be allowed for the submittal of protests.

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

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

Sincerely,

Harold W. Jones
Water Right Supervisor

HWJ::sc

MICROFILMED

DEC 14 1999