

State of Idaho
Department of Water Resources
Permit to Appropriate Water

NO. 98-07815

Priority: July 29, 2002

Maximum Diversion Rate: 0.04 CFS

This is to certify, that PHILLIP R BEACHY And/Or JENNIFER S BEACHY
RR 1 BOX 1155
BONNERS FERRY ID 83805-8666

have applied for a permit to appropriate water from:

Source: SPRING

Tributary: SINKS

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

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>RATE OF DIVERSION</u>
IRRIGATION	04/01 to 10/31	0.02 CFS
DOMESTIC	01/01 to 12/31	0.02 CFS

LOCATION OF POINTS OF DIVERSION:

SPRING SE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 36, Twp 62N, Rge 01E, B.M., BOUNDARY County
SPRING SW $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 36, Twp 62N, Rge 01E, B.M., BOUNDARY County

PLACE OF USE: IRRIGATION and DOMESTIC

Twp	Rge	Sec	NE	NW	SW	SE	Totals
61N	01E	1	1.0				1.0
Total Acres:			1				

CONDITIONS OF APPROVAL

1. Proof of application of water to beneficial use shall be submitted on or before **June 01, 2005**.
2. Use of water under this right is subject to all prior water rights specifically including prior rights of the protestant.
3. Project construction shall commence within one year from the date of permit issuance and shall proceed diligently to completion unless it can be shown to the satisfaction of the Director of the Department of Water Resources that delays were due to circumstances over which permit holder had no control.
4. This right when combined with all other rights shall provide no more than 0.03 cfs per acre nor more than 3.0 afa per acre at the field headgate for irrigation of the lands above.
5. Domestic use is for 1 home and does not include lawn, garden, landscape, or other types of irrigation.

This permit is issued pursuant to the provisions of Section 42-204, Idaho Code. Witness the signature of the Director, affixed at Boise, this 18th day of August, 2003


for **KARL J DREHER, Director**

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

CHANGE IN ADDRESS

This form can be used to notify the Department of a change in
address of the owners of record for the listed water rights.
(Please print or type)

RECEIVED

JUN 27 2003

Department of Water Resources

[] Water Right Number(s): 98-7815

[] Name(s): Phillip R. Beachy and/or Jennifer
S. Beachy

[] Old Mailing Address: Rt 1 Box 498
Bonnors Ferry, ID 83805

[] New Mailing Address: RR 1 Box 1155
Bonnors Ferry, ID 83805-8666

Telephone Number: (208) 267 - 9592

[] Signature(s) of Owner(s) Phil Beachy Jennifer Beachy

(Include your title if on behalf of company or organization)

Date: 6-24-03

Database updated - Kari Lynn - 6.27.03

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

IN THE MATTER OF APPLICATION)
FOR PERMIT NO. 98-7815 IN THE)
NAME OF PHILLIP R. AND JENNIFER)
S. BEACHY)
_____)

PRELIMINARY ORDER

This matter having come before the Idaho Department of Water Resources ("Department") in the form of a protested application for permit and the Department having held a conference and a hearing in the matter, the hearing officer enters the following Findings of Fact, Conclusions of Law and Preliminary Order:

FINDINGS OF FACT

1. On July 29, 2002, Phillip R. and Jennifer S. Beachy ("applicant") submitted Application for Permit No. 98-7815 ("application") to the Department proposing the diversion of 0.04 cubic feet per second ("cfs") of water from a spring to be used for irrigation of 1 acre from March 15 to November 15 and for year-round domestic purposes. The proposed point of diversion is located in either the SE1/4SE1/4SE1/4 or the SW1/4SE1/4SE1/4 Section 36, T62N, R1E, B.M. and the place of use is within lot 1, Section 1, T61N, R1E, B.M., Boundary County, Idaho.

(Note: The "1/4" designations will be omitted from subsequent legal descriptions in this order).

2. The Department published notice of the application that was subsequently protested by Gary J. Wittgenstein ("protestant"). The concern of the protestant is that water for his water right is being intercepted by the applicant thus interfering with the protestant's ability to divert water under his prior water right.

3. On April 24, 2003, the Department conducted a hearing in the matter in Sandpoint, Idaho. The applicant was present and represented himself. The protestant was present and represented himself.

4. Issues the Department can consider in this matter are as follows:
- a. Whether the appropriation will reduce the quantity of water under existing water rights;
 - b. Whether the water supply itself is insufficient for the purpose for which it is sought to be appropriated;
 - c. Whether the application is made in good faith, or is made for delay or speculative purposes;

- d. Whether the applicant has sufficient financial resources with which to complete the work involved therein;
 - e. Whether the proposed appropriation will conflict with the local public interest; and
 - f. Whether the proposed appropriation is contrary to conservation of water resources within the state of Idaho.
5. Neither the applicant nor the protestant offered exhibits for admission as a part of the hearing record.

6. The applicant has constructed a cistern to intercept ground water for domestic and irrigation purposes. He constructed the cistern by excavating a hole in a wet area to a depth of about 20 feet deep, installing a 3-foot diameter culvert vertically in the hole and backfilling around the culvert with rock. The applicant has installed a pump rated at 9 gallons per minute to divert water from the cistern. The location of the cistern is about 140 yards upgradient of a similar water-gathering cistern used by the protestant.

7. The protestant uses water from his cistern that was constructed in 1992 for irrigation of about 1/2 acre. The cistern is located down gradient from the applicant and also was constructed in a wet area. The protestant stated that drought and use of the applicant's cistern has decreased the amount of water available for his use and that his cistern goes dry for several months in summer. When water is available from the cistern, the protestant estimates the rate of flow at 8 to 10 gallons per minute. In order to provide a more reliable source of water for domestic use in his home, in the fall of 1994, the protestant constructed a 6-inch diameter well to a depth of 220 feet. Use of water from the cistern by the protestant is a "use right" that has not been recorded with the department.

8. Remedies to the contested matter suggested by the protestant include removal of the applicant's cistern and denial of the application, monetary compensation to the protestant, or if the application is approved, that it be adequately conditioned to recognize the prior water right of the protestant.

CONCLUSIONS OF LAW

1. Section 42-203A, Idaho Code, provides 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... .

2. Both the applicant and protestant think that they may be using a common source of shallow ground water for their uses but neither has provided evidence to determine this for sure. During most of the year there is enough ground water for both the applicant's and protestant's uses.

3. The protestant has the prior right to the use of ground water even though specific elements of the right have not been defined through recording with the Department. The protestant's unrecorded water right is commonly referred to as a "use right".

4. Use of water as proposed in the application will not reduce the quantity of water under existing water rights if the application is adequately conditioned.

5. The water supply itself is sufficient for the purposes intended.

6. The application is made in good faith and not for delay or speculative purposes.

7. The applicant has constructed the diversion works and hence has shown sufficient financial resources with which to complete the project.

8. The application does not conflict with the local public interest.

9. The applicant has taken reasonable measures to impound water in his cistern. The application is not contrary to the conservation of water resources within Idaho.

10. The Department should approve the application with certain conditions.

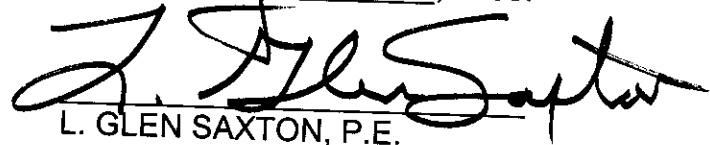
ORDER

IT IS THEREFORE hereby ORDERED that Application for Permit No. 98-7815 in the name of Phillip R. and/or Jennifer S. Beachy is **APPROVED** subject to the following conditions:

1. Proof of construction of works and application of water to beneficial use shall be submitted to the department on or before **June 1, 2005**.
2. Use of water under the application is subject to all prior water rights specifically including prior rights of the protestant.

3. Project construction shall commence within one year from the date of permit issuance and shall proceed diligently to completion unless it can be shown to the satisfaction of the Director of the Department of Water Resources that delays were due to circumstances over which permit holder had no control.
4. This right when combined with all other rights shall provide no more than 0.03 cfs per acre nor more than 3.0 afa per acre at the field headgate for irrigation purposes.
5. Domestic use is for 1 home and does not include lawn, landscape, or other types of irrigation.

Signed this 7th day of May, 2003.


L. GLEN SAXTON, P.E.
Hearing Officer

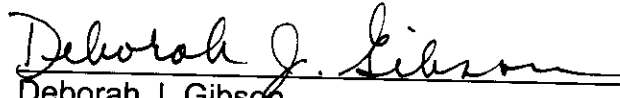
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of May, 2003, the above and foregoing document was served on the following by placing a copy of the same in the United States mail, postage prepaid and properly addressed to the following:

GARY J WITTGENSTEIN
PO BOX 87
BONNERS FERRY ID 83805

PHILLIP R BEACHY
JENNIFER S BEACHY
RT 2 BOX 498
BONNERS FERRY ID 83805

BOB HAYNES – NORTHERN REGION
IDAHO DEPT. OF WATER RESOURCES
1910 NORTHWEST BLVD STE 210
COEUR D' ALENE ID 83814-2615


Deborah J. Gibson
Administrative Assistant
Water Allocation Bureau

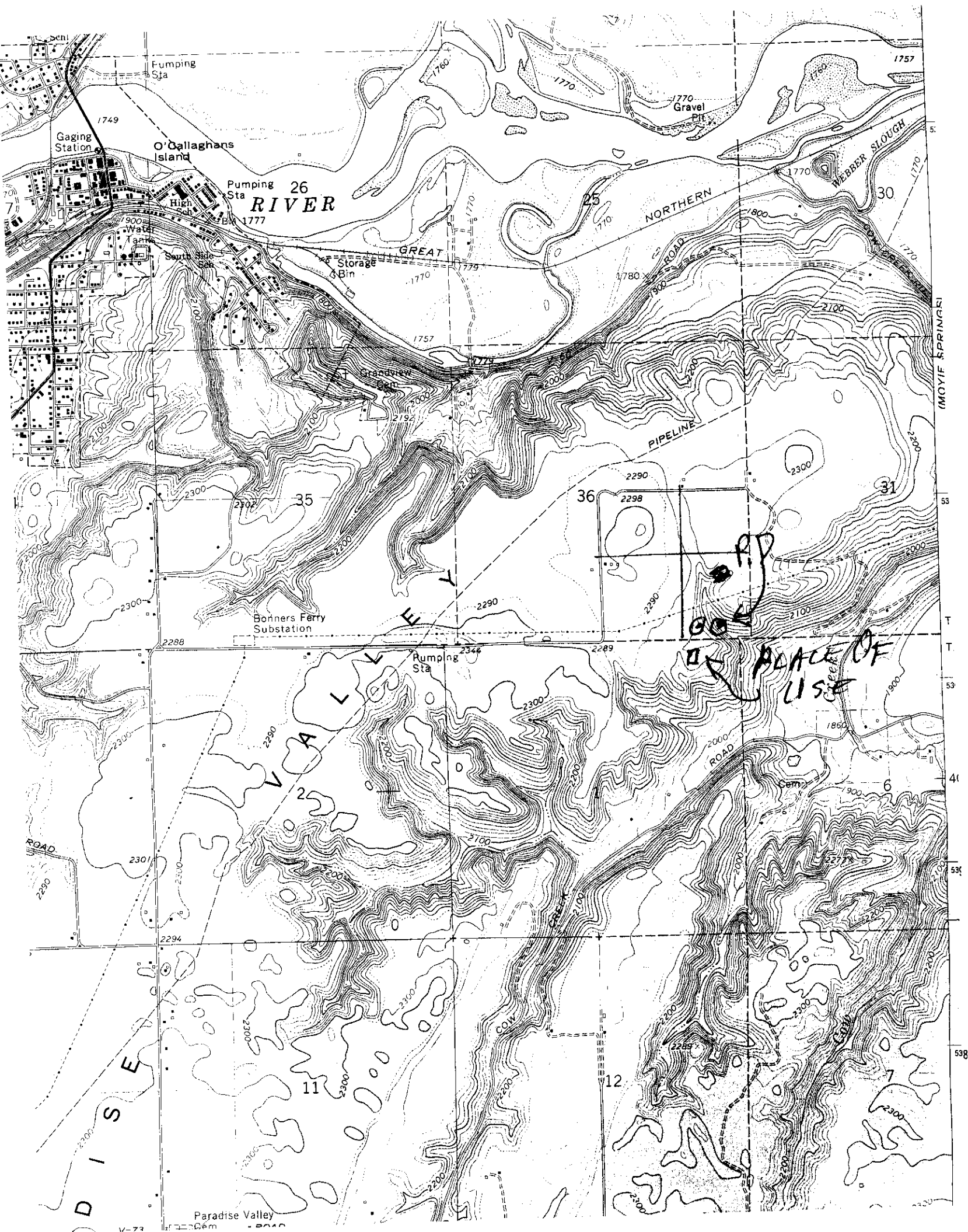
70130

Ident. No. 98-7815

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR PERMIT

To appropriate the public waters of the State of Idaho

1. Name of Applicant PHILLIP R. & OR JENNIFER S. BEAHY Phone 208-267-8592 ⁶⁹⁹⁻¹⁹⁴⁴
Mailing address RT1 Box 498 BONNERS FERRY, ID 83805
2. Source of water supply SPRING which is a tributary of SINKS
3. Location of point of diversion is Township 62N Range 1E Sec. 36 in the SE 1/4,
SE 1/4, SE 1/4, Govt. Lot BOUNDARY, B.M., BOUNDARY County;
additional points of diversion if any: SWSESE 36 62N1E
4. Water will be used for the following purposes:
Amount 0.02 for IRRIGATION purposes from MAR 15 to NOV (both dates inclusive)
(cfs or acre-feet per annum)
Amount 0.02 for DOMESTIC purposes from JAN 1 to DEC 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) 0.04 cubic feet per second and/or (b) _____ acre feet per annum
6. Proposed diverting works:
a. Describe type and size of devices used to divert water from the source SPRING BOX WITH PIPELINE
b. Height of storage dam _____ feet; active reservoir capacity _____ acre-feet; total reservoir capacity _____ acre-feet
c. Proposed well diameter is _____ inches; proposed depth of well is _____ feet
d. Is ground water with a temperature of greater than 85°F being sought? _____
e. If well is already drilled, when? _____; Drilling firm _____;
Well was drilled for (well owner) _____; Drilling Permit No. _____
7. Time required for completion of works and application of water to proposed beneficial use is 2 years (minimum 1 year)
8. Description of proposed uses (if irrigation only, go to item 9):
a. Hydropower; show total feet of head and proposed capacity in kW. _____
b. Stockwatering; list number and kind of livestock. _____
c. Municipal; show name of municipality. _____
d. Domestic; show number of households. DOMESTIC USE IN GARAGE & HOME
e. Other; describe fully. _____





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

August 18, 2003

PHILLIP R BEACHY
JENNIFER S BEACHY
RR 1 BOX 1155
BONNERS FERRY ID 83805-8666

RE: Permit No. 98-7815

Permit Approval Notice

Dear Permit Holder:

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

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

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

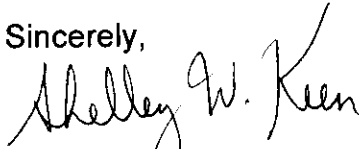
The Department will send you a 'Proof Due Notice' approximately 60 days prior to the above referenced date requesting you to file either a Proof of Beneficial Use form or a Request for Extension of Time form.

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 written in a cursive style with a large, stylized 'S' and 'K'.

Shelley W. Keen

Water Rights Supervisor

SWK:klt

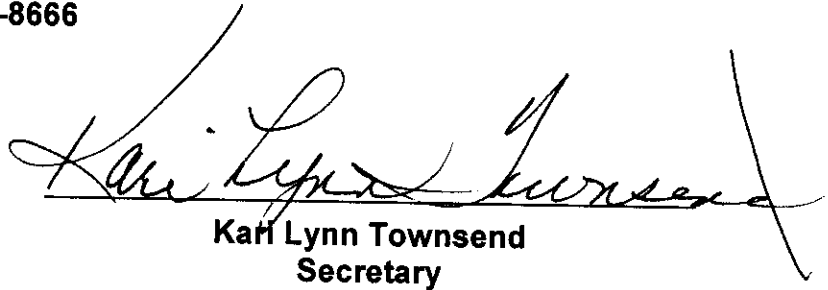
Enclosure(s)

CERTIFICATE OF SERVICE

I hereby certify that on August 18, 2003 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. 98-7815

**JENNIFER S BEACHY
PHILLIP R BEACHY
RR 1 BOX 1155
BONNERS FERRY ID 83805-8666**



**Karl Lynn Townsend
Secretary**

9. Description of place of use:

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

TWP	RGE	SEC	NE				NW				SW				SE				TOTALS
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
~~6N~~	~~1E~~	~~36~~	~~LOT 1~~																
6N	1E	1	LOT 1																1

Total number of acres to be irrigated _____

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

None

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

b. Who owns the land to be irrigated or place of use? 1'

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.

Shirley Beady owner
Signature of Applicant (and title, if applicable)

Received by Kay Date 7/29/02 Time 2:00 Preliminary check by _____
 Fee \$ 1.00 Received by Kay # 15171 Date 7/29/02
 Publication prepared by Jo Date 9/11/02 Published in Cornucopia Herald 9/19 & 26/02
 Publication approved Jo Date 10/4/02

**EXPLANATORY INFORMATION
TO ACCOMPANY A
PRELIMINARY ORDER**

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

ORAL ARGUMENT

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

CERTIFICATE OF SERVICE

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

FINAL ORDER

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

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

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

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

APPEAL OF FINAL ORDER TO DISTRICT COURT

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

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

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

MEMORANDUM

TO: GLEN SAXTON
FROM: PHIL RASSIER *PJR*
SUBJECT: APPLICATION FOR PERMIT 98-7815 – PHILLIP R. AND JENNIFER S. BEACHY
DATE: 7/29/2003

At your request, I have reviewed the draft final order in this matter. In reviewing the file, however, it appears that the Preliminary Order issued on May 7, 2003 has become final. The procedural course of proceedings is as follows:

- May 7, 2003 - Preliminary Order issued
- May 19, 2003 - Letter received from Protestant Gary Wittgenstein commenting on the Preliminary Order
- May 28, 2003 - Request from Wittgenstein that his letter received May 19 be treated as a Petition for Reconsideration. The hearing officer agreed to this request in a letter dated May 28, 2003.
- June 4, 2003 - Wittgenstein submitted a one-page brief in support of his Petition for Reconsideration.
- June 9, 2003 - Pursuant to IDWR Procedural Rule 730 and I.C. § 67-5243, the Petition for Reconsideration is deemed denied by operation of law due to the fact the hearing officer took no action on the petition within 21 days of its being filed on May 7, 2003.
- June 23, 2003 - The Preliminary Order became a final order 14 days following the denial of the Petition for Reconsideration by operation of law because Wittgenstein did not file an appeal or exceptions with the Director pursuant to IDWR Procedural Rule 730.02.b.iii.
- July 21, 2003 - Last day to file a petition for judicial review of the final order with the district court within 28 days of the order becoming final, pursuant to I.C. § 67-5273.

This matter should thus be considered final and the certificate of permit issued accordingly.

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, P.O. Box 83720
Idaho 83720-0098

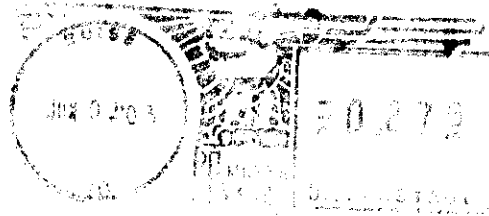
Return Service Requested

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JUN 9 2003

Department of Water Resources

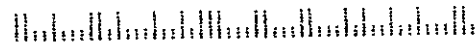
PHILLIP R BEACHY
RT 1 BOX 498
BONNERS FERRY ID 83805



*5/30 letter -
resent 6/10/03.
dy*

BEACHY 838052008 1802 07 06/05/03
RETURN TO SENDER
BEACHY
RT 1 BOX 1155
BONNERS FERRY ID 83805-8666
RETURN TO SENDER

06052008 1802 07 06/05/03



STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, P.O. Box 83720
Idaho 83720-0098

Return Service Requested

RT 1 Box 1155

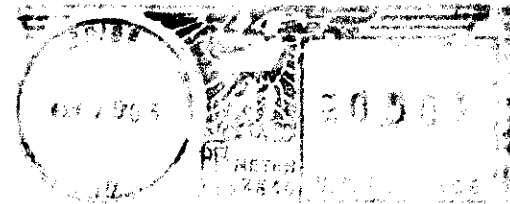
BONNERS FERRY, IDAHO 83805

RECEIVED

JUN 9 2003

Department of Water Resources

PHILLIP R BEACHY
JENNIFER S BEACHY
RT 1 BOX 498
BONNERS FERRY ID 83805



*5/28 letter
resent 6/10/03.
dy*

06052008 1802 07 06/05/03





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

June 5, 2003

Phillip R. Beachy
RR 1, Box 1155
Bonners Ferry, ID 80805-8666

**RE: APPLICATION FOR PERMIT NO. 98-7815 IN THE NAME OF PHILLIP R. AND
JENNIFER S. BEACHY**

Dear Mr. Beachy:

Enclosed is a copy of a brief submitted to the department by Gary J. Wittgenstein to the Director. I am forwarding a copy of it to you, since I cannot determine from Mr. Wittgenstein's FAXed letter that he served a copy of it upon you as he is required to do by IDAPA Rule 37.01.01302 (Rule of Procedure 302).

IDAPA Rule 37.01.01730.02.c (Rule of Procedure 730.02.c) provides that opposing parties shall have fourteen (14) days to respond to briefs. Please consider that the fourteen (14) day response period starts from the date Mr. Wittgenstein served you with a copy of his brief, if he did so, or the date of this letter, whichever is earlier. You are not required to respond to the petition unless you choose to, but if you do respond, in addition to sending a copy to me, you must serve a copy of your response upon Mr. Wittgenstein.

Sincerely,



L. GLEN SAXTON, P.E.
Hearing Officer

Encl: 1

c: Bob Haynes - IDWR
Gary Wittgenstein

Wittgenstein, Gary J.

RECEIVED

JUN - 4 2003

Glen Saxton.
Dept. of Water Resource.
Boise Idaho 83720

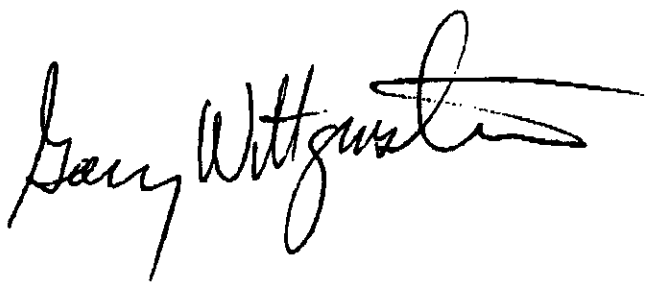
Department of Water Resources

Petition for Reconsideration.
Briefs in support of my position.
Permit no. 98-7815 Beachy.

According to section 42-203A for the department to consider in application for permit - 1) Will the proposed appropriation injure other water rights? Answer to question is yes. On 2 separate occasions during his testimony he said it would have an impact. How did he know that? Because he saw first hand on at least 2 occasions how my well was negatively impacted. No water. The burden of proof was on him according to the rules. He gave no evidence that it would not impact my ability to get water. On the contrary his testimony indicated it would. I don't understand how the department who has no experience with the water source can assume it will not impact my ability to appropriate water? Please see and reread my letter dated 5-14-03 the ISSUE paragraph. He can stop water from entering my well. I have documented the problem in a letter dated 8-23-2002 to the Beachy's. You have a copy of that letter.

2) Is the water supply itself sufficient for the purposes intended? He gave no evidence that it is sufficient. Remember I have a right to that water also. It has already been demonstrated that it is not enough for my use and his. I covered all this above. Again the department has no experience with this water. I have 10 plus years and again in 1994 he would be out of water. But that is only 1 in 10. The water supply will not be enough for his use and mine.

To summarize. The burden of proof is on him and he has given no proof that his use will not have a negative impact on my right to appropriate water. You misunderstood my comment about if they get a water right then I lose mine... I, right or wrong, consider a water right to be my ability to turn my faucet on any time and have water come out and use it like I have for the past 10 years. Like I have said before I don't understand what a water right is. On May 30th I ask you to give me a person to talk to in your Boise office that could explain to me what I don't understand.



98-7815

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, P.O. Box 83720
Boise, Idaho 83720-0098

Return Service Requested

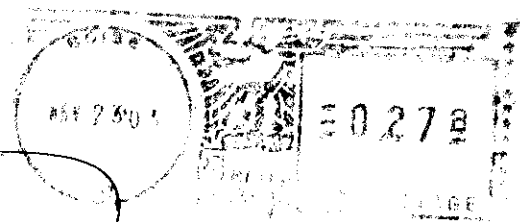
RECEIVED

JUN - 2 2003

Department of Water Resources

Beac 498

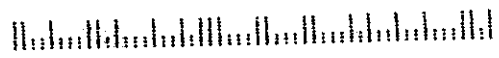
PHILLIP R BEACHY
JENNIFER S BEACHY
RT 2 BOX 498
BONNERS FERRY ID 83805



Resent 9/22/03 letter
to new address on
6/3/03 dg

BEACHY 838052006 1802 05 05/29/03
RETURN TO SENDER
BEACHY
RR 1 BOX 1155
BONNERS FERRY ID 83805-8666
RETURN TO SENDER

83720-0098





State of I ho

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

May 30, 2003

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

GARY J. WITTGENSTEIN
PO BOX 87
BONNERS FERRY ID 83805

**RE: APPLICATION FOR PERMIT NO. 98-7815 IN THE NAME OF PHILLIP R. AND
JENNIFER S. BEACHY**

Dear Mr. Wittgenstein:

I have reviewed your faxed letter dated May 30, 2003, in connection with the above referenced matter in which you ask for assistance from someone in Boise in interpreting the Idaho water right statutes and want someone to answer your questions.

In my May 28, 2003, letter to you, I answered the questions you raised as a part of your petition for reconsideration. Bob Haynes of the department's Coeur d' Alene office advised me that he has discussed Idaho water right statutes with you in the past, but is willing to further discuss additional questions that you may have.

Since I was the hearing officer in this contested matter, IDAPA 37.01.01417 (Procedure Rule 417) specifically prevents me from separately communicating with any party to the contested matter other than in connection with procedural matters such as scheduling. Such separate contacts are termed "ex parte" communications and are prohibited.

With respect to subsequent steps associated with the Preliminary Order served by IDWR on May 7, 2003, I am again sending you reference information titled "Responding to Preliminary Orders Issued by the Idaho Department of Water Resources" that IDWR has previously sent to you. If you have questions about the reference information, please feel free to contact Bob Haynes at (208) 769-1450.

Sincerely,


L. GLEN SAXTON, P.E.
Hearing Officer

Encl: 1

c: Bob Haynes
Phillip Beachy

RE: 98-7815

RECEIVED

MAY 30 2003

5/30/03

Department of Water Resources

Glen Saxton

Glen. I AM ASKING FOR HELP. IS THERE
SOMEONE IN YOUR BOISE OFFICE I
CAN CALL THAT WILL TAKE THE TIME
TO HELP ME UNDERSTAND THE DEPARTMENT'S
PHILOSOPHY IN DETERMINING WATER
RIGHTS. (INTERPRET THE STATUTES) AND
WHAT OPTIONS I MIGHT HAVE. IT WOULD
BE A BIG HELP TO ME IF SOMEONE WOULD
EXPLAIN AND ANSWER SOME OF MY
QUESTIONS. THANK YOU

Day # 208-267-8569

Home # 208-267-5484

Gary Wittgenstein



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

May 28, 2003

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

GARY J. WITTGENSTEIN
PO BOX 87
BONNERS FERRY ID 83805

**RE: APPLICATION FOR PERMIT NO. 98-7815 IN THE NAME OF PHILLIP R. AND
JENNIFER S. BEACHY**

Dear Mr. Wittgenstein:

I have reviewed your second letter dated May 28, 2003, in connection with the above referenced matter in which you say you have changed your mind and would like your letter dated May 14, 2003 treated as a petition for reconsideration. I will treat your letter as you have requested in order to provide you the opportunity to pursue additional administrative steps in this matter should you choose to do so.

With respect to the questions you have forwarded with your May 28, 2003 submittal, I offer the following comments:

- Q. If they get a water right then I lose my water right.
A. The approval of permit 98-7815 does not eliminate or cancel your water right. As I understood the testimony at the hearing, your use right predates any new use for Permit 98-7815
- Q. How is their right for 0.03 cfs per acre and 3 AFA arrived at?
A. IDWR generally allows 0.02 cfs per acre as a rate but for small acreages up to 5 acres will allow 0.03 cfs per acre due to the practical problem of irrigating with a very small flow rate. The volume of water allowed is a maximum based on consumptive use information for a particular area of the state.
- Q. Will there be meters installed?
A. IDWR did not require the installation of a water measuring meter as a condition of approval of Permit 98-7815.
- Q. Who will monitor water usage?
A. If the rights on a source were decreed, a water district could be established and a watermaster selected and paid by the water users to distribute water. Since the rights are not decreed, however, IDWR cannot create a water district for the distribution and monitoring of water use in the area.

With respect to subsequent steps associated with service of the Preliminary Order by IDWR on May 7, 2003 and the filing of a petition for reconsideration, you can refer to the explanatory information titled "Responding to Preliminary Orders Issued by the Idaho Department of Water Resources" that IDWR sent with the Preliminary Order.

Sincerely,

A handwritten signature in black ink, appearing to read "L. Glen Saxton". The signature is fluid and cursive, with the first name "L." being small and the last name "Saxton" being larger and more prominent.

L. GLEN SAXTON, P.E.
Hearing Officer

c: Bob Haynes
Phillip Beachy

TO
→ Glen Saxton

REC'D

MAY 28 2003

Department of Water Resources

5-28-03

210F4

Please consider this a petition For Reconsideration. I would like you to treat my letter to you dated 5-14-03 as a petition.

Consider the "issue" paragraph except last 2 sentences.

Consider the "Comments" paragraph 1st 2 sentences.

Consider the "Request" paragraph.

I expect to be able to turn on my faucet anytime AND have water come out like it has for the past 10 years.

I am Requesting you deny the water right.

I am also Requesting the questions that I asked be addressed.

Thank you

Gary J. Wittgenstein

P.S. I was going to give up I changed my mind.



State of Idaho

DEPARTMENT OF WATER RESOURCES1301 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.usDIRK KEMPTHORNE
GovernorKARL J. DREHER
Director

May 22, 2003

GARY J. WITTGENSTEIN
PO BOX 87
BONNERS FERRY ID 83805**RE: APPLICATION FOR PERMIT NO. 98-7815 IN THE NAME OF PHILLIP R. AND
JENNIFER S. BEACHY**

Dear Mr. Wittgenstein:

I have reviewed your letter dated May 14, 2003, in connection with the above referenced matter. Since the correspondence is not styled as a petition for reconsideration ("petition") and, since the text of the letter does not suggest that you want the letter treated as a petition, the department will not treat it as such.

I will place your letter in the water right file for reference and consideration relative to water distribution questions that may arise in the future.

If you have questions, please feel free to contact the department.

Sincerely,

A handwritten signature in black ink that reads "L. Glen Saxton". The signature is fluid and cursive, with the first name "L." and last name "Saxton" clearly legible.

L. GLEN SAXTON, P.E.
Hearing Officer

c: Bob Haynes
Phillip Beachy

- IF they get a water Right then I lose my water Right..
- They Have 2 Living Quarters.
- How is their Right For 0.03 CFS/ACRE AND 3.0 AFA/ACRE ARRIVED AT?
- Will there be meters installed?
- Who will monitor usage?

RECEIVED

MAY 19 2003

Department of Water Resources

Wittgenstein, Gary J.

Mr. L. Glen Saxton, P.E.
Hearing Officer
Department of Water Resource
State House
Boise, ID. 83720

5/14/2003

Pg 3 of 4

Consider → REQUEST FOR HELP TO PROTECT MY RIGHT TO APPROPRIATE WATER.
Wittgenstein / Beachy Protested Water Right

→ I am requesting the Idaho Department of Water Resources to consider some way or mechanism to help protect my ability to use water in some reasonable manner without having to use legal council. As the ORDER stands now with the approval of Permit # 98-7815 there is no means or method; no one to go to for help when I encounter trouble. It is not a matter of "IF" but "WHEN" it will happen. Will I be able to go to the Department for help? Once you approve his water right I will have no recourse except the courts. Number 2 in the ORDER Pg 3 means absolutely nothing when you have no water.

Consider → ISSUE. The simple fact of the matter is due to the location of Beachy's well (140 yards above mine) and the apparent same water source as my well, they have the ability (intentional or unintentional) to deny me water during certain times of the year. They can actually for all practical purposes STOP water from entering my well due to diversion. For example if they choose to irrigate for lets say 5 to 6 hours this will result in water levels diminishing in my well, if I would be irrigating at the same time, where I could NOT get any water. Recovery time would be days based on what I saw last year. It may well prove out with their year round demand it may not recover at all during the dry season. If it is due to Mother Nature I have no problem. But one has to ask oneself why do they get to irrigate whenever they choose and I have no options but to wait it out. Is that a water right under Idaho State Law? The simple answer is location and the ability to divert water away from your neighbor with NO consideration to rights. I guess I will have to ask them how much water I can have and when can I use it? ~~Obviously I put my well in the wrong place. Excuse me if I am getting a little emotional, but no one else seems to care.~~

~~CLEARIFICATION. I want to clarify that I have NO problem with the Beachy's getting a water right and the ability to use ALL the water they want. Let's face it the water is on their property. Looking back the only reason I sought Legal advice in the first place was I didn't get much hope or help from the Department. I do not mean that as a criticism, but I got the feeling there was not much that could be done and basically was told so. When they filed for a water right I was encouraged to protest. I sought no legal help in doing so or have I now in asking for your help. I now ask myself why I even bothered to challenge it? What good is a water right with no water? What good is a water right when there is no means to defend it without costly legal help? Right or wrong I feel the Department has backed me into a corner with no means to mediate or negotiate. They, the Beachy's have location advantage and diversion power. I was wining about the order to a Department employee on Monday 5/12/03 and he ask me "What did you expect, all the water?" I said NO, NO, NO. After thinking about his comment I should have said; "I expect to be able to turn on my faucet any time and have water come out and use it like I have for the past 10 years. I only had trouble 1 time until last year. Is that wanting all the water?"~~

Consider → ~~COMMENTS. The Department is 100% wrong with the thought that the appropriation will not reduce the quantity of water for my use. I also believe that given a severe drought like the one in 1994 the water supply itself will be insufficient for his use. Time will tell..... So the moral of the story is... a person can buy a piece of land, walk around and see a spring, then look down 140 yards away and see his neighbors well, and says to himself this looks like a good place to put my well, with no consideration for his neighbors rights. Old neighbor has no water one day and goes~~

Pg 4 of 4

to investigate and finds a new well above his. New neighbor sees foot prints and decides to visit and says you don't need that water anyway.. you got another well and hooked to a water system, you have enough water, besides my well is already in and what are you going to do about it? Well old neighbor is insulted and feels like this guy is pushing him around and trying to take away a source of water that was paid for with hard earned money along with taking away his right to that water. So he calls the Department for help, gets none, calls for Legal help, and sends a letter to new neighbor trying to defend his RIGHTS. New neighbor gets nervous and files for water right, after the well is in, pleads ignorance, and low and behold the Department gives him a water right, makes old neighbor look like the bad guy. Oh, but of course the ORDER says " use of water under the application is subject to all prior water rights specifically including prior rights of the protestant". In other words old neighbor will have to spend a considerable sum of money defending his right, most likely won't, new neighbor is snickering and has control of all the water. Oh yes moral to story...I got no help/ protection from the Department and I have NO RIGHTS AND NO WATER. Excuse me for getting cynical, but no one seems to care.

SUGGESTION. According to the Departments water users guide it states- The constitution and statutes of the State of Idaho guarantee the right to appropriate the public waters of the State of Idaho. When a private right to the use of public waters is established by appropriation, a water right is established that is a real property rights much like property rights in land. The constitution and statutes of the State of Idaho protect private property rights, including water rights.

It might be appropriate to insert the word " SOMETIMES ". Just about anywhere you want in that statement. I GUESS I REALLY DON'T UNDERSTAND.

Consider → REQUEST. Is there any past or present cases that the Department has on file that have some kind of mechanism (that has teeth in it) that allows me to go back to the Department or a way to mediate when there is a problem? Is there anything I can do short of getting legal council? Can his permit read cannot be used to irrigate or have a limit on how many times, or he cannot irrigate during August, September and October? Can anything be put in the PERMIT to help me?

Glen. I know this is a long letter, it rambles and may not make a lot of sense. It could be viewed with a tone of arrogance and disrespect. It is the way I feel and it came from the heart. I really don't care if you or your Department responds because I pretty well know the answers. I have one last thing to say.. What has been allowed to happen here is JUST NOT RIGHT and I hope it never happens to you

Gary J. Wittgarter



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

May 22, 2003

GARY J. WITTGENSTEIN
PO BOX 87
BONNERS FERRY ID 83805

**RE: APPLICATION FOR PERMIT NO. 98-7815 IN THE NAME OF PHILLIP R. AND
JENNIFER S. BEACHY**

Dear Mr. Wittgenstein:

I have reviewed your letter dated May 14, 2003, in connection with the above referenced matter. Since the correspondence is not styled as a petition for reconsideration ("petition") and, since the text of the letter does not suggest that you want the letter treated as a petition, the department will not treat it as such.

I will place your letter in the water right file for reference and consideration relative to water distribution questions that may arise in the future.

If you have questions, please feel free to contact the department.

Sincerely,


L. GLEN SAXTON, P.E.
Hearing Officer

c: Bob Haynes
Phillip Beachy

RECEIVED

MAY 13 2003

Department of Water Resources

Wittgenstein, Gary J.

Mr. L. Glen Saxton, P.E.
Hearing Officer
Department of Water Resource
State House
Boise, ID. 83720

5/14/2003

REQUEST FOR HELP TO PROTECT MY RIGHT TO APPROPRIATE WATER.
Wittgenstein / Beachy Protested Water Right

I am requesting the Idaho Department of Water Resources to consider some way or mechanism to help protect my ability to use water in some reasonable manner without having to use legal council. As the ORDER stands now with the approval of Permit # 98-7815 there is no means or method; no one to go to for help when I encounter trouble. It is not a matter of "IF" but "WHEN" it will happen. Will I be able to go to the Department for help ? Once you approve his water right I will have no recourse except the courts. Number 2 in the ORDER Pg 3 means absolutely nothing when you have no water.

ISSUE. The simple fact of the matter is due to the location of Beachy's well (140 yards above mine) and the apparent same water source as my well, they have the ability (intentional or unintentional) to deny me water during certain times of the year. They can actually for all practical purposes STOP water from entering my well due to diversion. For example if they choose to irrigate for lets say 5 to 6 hours this will result in water levels diminishing in my well, if I would be irrigating at the same time, where I could NOT get any water. Recovery time would be days based on what I saw last year. It may well prove out with their year round demand it may not recover at all during the dry season. If it is due to Mother Nature I have no problem. But one has to ask oneself why do they get to irrigate whenever they choose and I have no options but to wait it out. Is that a water right under Idaho State Law ? The simple answer is location and the ability to divert water away from your neighbor with NO consideration to rights. I guess I will have to ask them how much water I can have and when can I use it? Obviously I put my well in the wrong place. Excuse me if I am getting a little emotional, but no one else seems to care.

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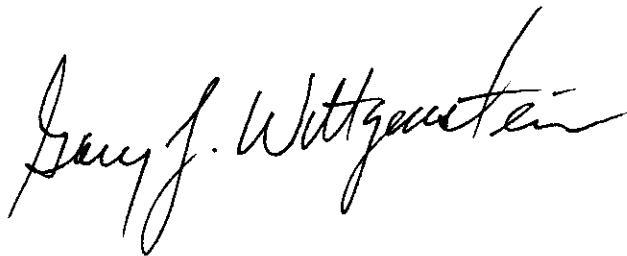
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A handwritten signature in black ink, reading "Gary J. Wittgarter". The signature is written in a cursive, flowing style with a large, prominent 'G' and 'W'.

U.S. Postal Service CERTIFIED MAIL RECEIPT

(Domestic Mail Only; No Insurance Coverage Provided)

Postage \$

Certified Fee

Return Receipt Fee
(Endorsement Required)

Restricted Delivery Fee
(Endorsement Required)

Total Postage & Fees \$

Postmark
Here

dg

5/7/03

Send
To
Street
City
State
ZIP
PS Form 3811, July 1999

PHILLIP R BEACHY
JENNIFER S BEACHY
RT 2 BOX 498
BONNERS FERRY ID 83805

Instructions

U.S. Postal Service CERTIFIED MAIL RECEIPT

(Domestic Mail Only; No Insurance Coverage Provided)

Postage \$

Certified Fee

Return Receipt Fee
(Endorsement Required)

Restricted Delivery Fee
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Total Postage & Fees \$

Postmark
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dg

5/7/03

Send
To
Street
City
State
ZIP
PS Form 3811, July 1999

GARY J WITTGENSTEIN
PO BOX 87
BONNERS FERRY ID 83805

Instructions

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

GARY J WITTGENSTEIN
PO BOX 87
BONNERS FERRY ID 83805

98-7815

2. Article Number (Copy from service label)

7000 1670 0011 3313 9178

PS Form 3811, July 1999

Domestic Return Receipt

102595-00-M-0952

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly) B. Date of Delivery

C. Signature

D. Is delivery address different from item 1?
If YES, enter delivery address below:

- ☐ Agent
☐ Addressee
☐ Yes
☐ No

3. Service Type

- ☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

PHILLIP R BEACHY
JENNIFER S BEACHY
RT 2 BOX 498
BONNERS FERRY ID 83805

98-7815

2. Article Number (Copy from service label)

7000 1670 0011 3313 9161

PS Form 3811, July 1999

Domestic Return Receipt

102595-00-M-0952

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly) B. Date of Delivery

C. Signature

D. Is delivery address different from item 1?
If YES, enter delivery address below:

- ☐ Agent
☐ Addressee
☐ Yes
☐ No

3. Service Type

- ☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

UNITED STATES POSTAL SERVICE



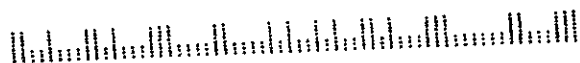
First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

• Sender: Please print your name, address, and ZIP+4 in this box •

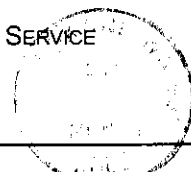
IDAHO DEPT OF WATER
RESOURCES
ATTN DEBORAH GIBSON
1301 N ORCHARD ST
BOISE ID 83706

98-7815

43



UNITED STATES POSTAL SERVICE

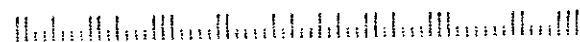


First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

• Sender: Please print your name, address, and ZIP+4 in this box •

IDAHO DEPT OF WATER
RESOURCES
ATTN DEBORAH GIBSON
1301 N ORCHARD ST
BOISE ID 83706

43





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

May 7, 2003

Re: In the matter of Application for Permit No. 98-7815 in the name of Phillip R.
and/or Jennifer S. Beachy

Dear Interested Parties:

The Department of Water Resources (department) has issued the enclosed **Amended Preliminary Order** 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 or files an exception and/or brief as described in the enclosed information sheet.**

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 our homepage on the Internet to obtain the proper reporting form.

If you have any questions, please call me at (208) 327-7953.

Sincerely,

Deborah J. Gibson
Administrative Assistant
Water Allocation Bureau

Enclosures

c: IDWR - Regional Office Manager

RESPONDING TO PRELIMINARY ORDERS ISSUED BY THE IDAHO DEPARTMENT OF WATER RESOURCES

The accompanying order is a **Preliminary Order** issued by the Idaho Department of Water Resources (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 further described below:**

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a preliminary order with the hearing officer within fourteen (14) days of the service date of the order as shown on the certificate of service. **Note: the petition must be received by the Department within this fourteen (14) day period.** The hearing officer 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 to the Director. Otherwise, this preliminary order will become a final order of the agency.

If any party appeals or takes exceptions to this preliminary order, opposing parties shall have fourteen (14) 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 Director. The Director retains the right to review the preliminary order on his own motion.

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, request 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 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 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 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.

IN THE MATTER OF APPLICATION FOR PERMIT NO. 98-7815
in the Name of Phillip & Jennifer Beachy

Location: Sandpoint, ID

* * Please Print * *

Emil Witzgenstein R.O. Box 87 D.F. 83803 Protestant
 Phil Beebe Rt 1 Box 1155 B.F. 83802 Applicant

Well Proof Report

Permit No. 762781
Metal Tag No.
Well ID # 334727
Water Right No.

Relationship: Owner/Operator
Name: GARY J WITTGENSTEIN Phone:(208)267-5484
Address: PO BOX 87
BONNERS FERRY ID 83805

Permit Status: Permitted

Well Location: Township 61N, Range 02E, Section 6, NW, NW
COUNTY BOUNDARY

Address of Well Site: NEW COW CREEK ROAD RD 22
ID

Use of Well: Domestic-Single Residence

Activity: New Well

Region: Northern

Construction Method:

Const Start Date: Oct 20 1994 Const End Date: Nov 01 1994

Well Drilling Company: MINDEN WATER WELLS (No. 320)

Card Hold Name: EDWARD A MINDEN Phone:(208)267-7916 (No. 4204)

Certifying Official:

Date Received: Nov 23 1994

Date Approved: Oct 19 1994

Date Inspected:

Completed Depth: 220 FT Drilled Depth: Surface Diameter: 6 inches

Primary Flow Depth: Overall Temp: Static Water Level: 80

Head Pipe Length: Tail Pipe Length Production Rate: 5 GPM

Closed in Pressure: 0 Psi Bottom Hole Temp: 0 F. Low Temp Geothermal: NO

Control Device Desc:

Access Port Desc:

Casing

From	To	Diam	Type	Gauge	Join Type	Material
	220					

Seal

From	To	Material	Amount	Method
------	----	----------	--------	--------

Screen

From	To	Dia	Type	Slot Size	# of Slots	Material	Perforation Meth	Screen Type
------	----	-----	------	--------------	---------------	----------	---------------------	-------------

Lithologic Layer

From	To	Diam	Water	Color	Material	Texture
------	----	------	-------	-------	----------	---------

Drive Shoe

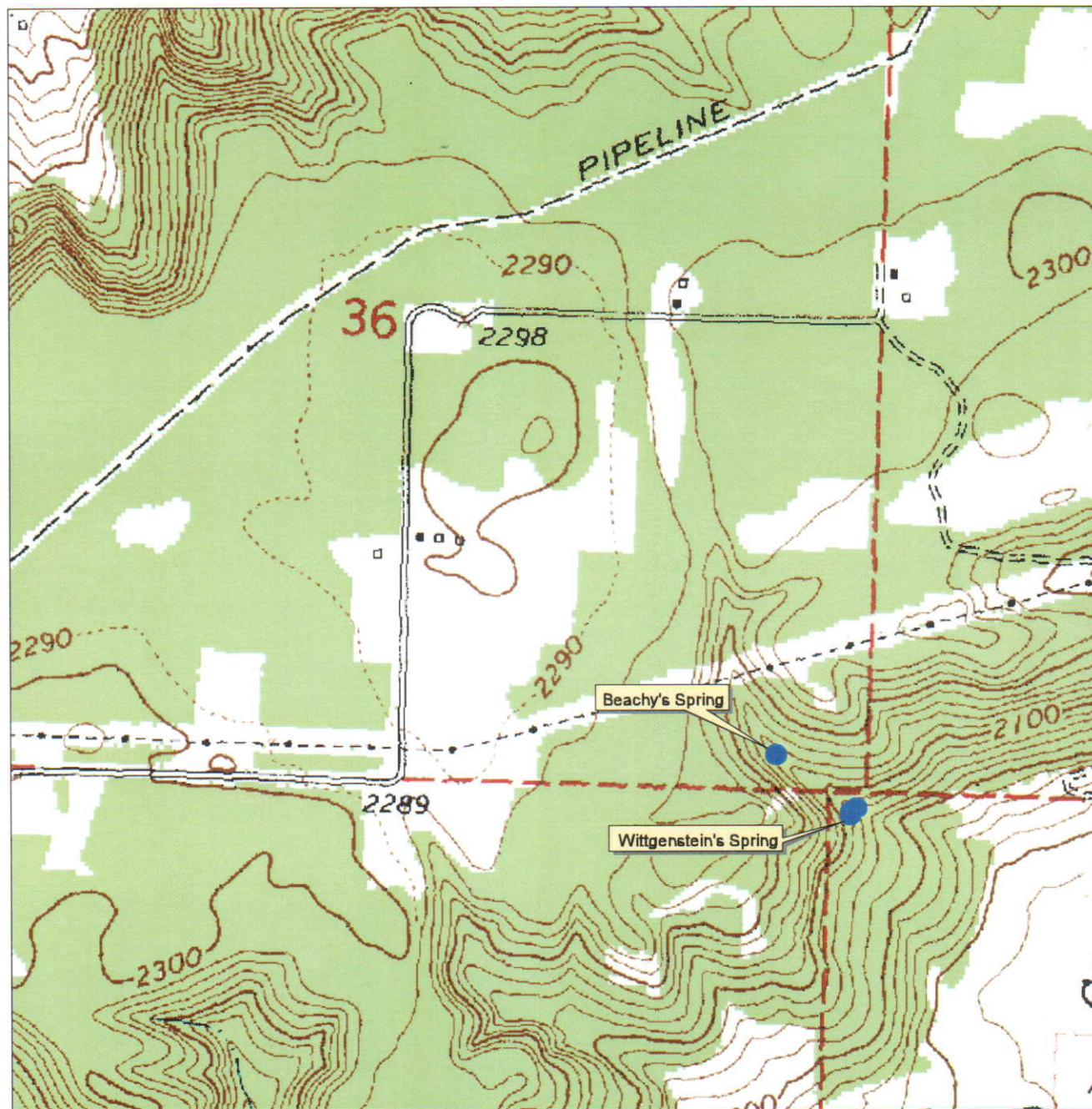
Depth	Test Description
-------	------------------

Application for Permit 98-7815

Field Map of Spring Locations

GPS Readings Taken 4-1-03 AB/RH

● Beachy.shp



WITTGENSTEIN'S SPRING



PHOTO TAKEN ON 4-1-03 DURING
FIELD VISIT BY AL BEARDSLEE &
ROBERT HAYNES.

BEACHY'S SPRING



PHOTO TAKEN ON 4-1-03 DURING
FIELD VISIT BY AL BEARDSLEE &
ROBERT HAYNES.

Application No. BEACHY
98-7815

SPECIAL NOTE: _____

PROTEST INFORMATION SHEET

Protestant(s)

1	<u>Gary Wittgenstein</u>	<u>PO Box 87 Bonners Ferry 83805</u>	<u>9/21/02</u>
2	_____	_____	_____
3	_____	_____	_____
4	_____	_____	_____
5	_____	_____	_____
6	_____	_____	_____
7	_____	_____	_____
8	_____	_____	_____
9	_____	_____	_____
10	_____	_____	_____

ATTORNEY

ADDRESS

Protest
DATE FILED: 9/21/02 PROTEST DUE DATE: 10/7/02
ISSUES: Well of protestant damaged as result of
Beachy well - insufficient water - well too close
to applicants well

Applicant(s)

ATTORNEY

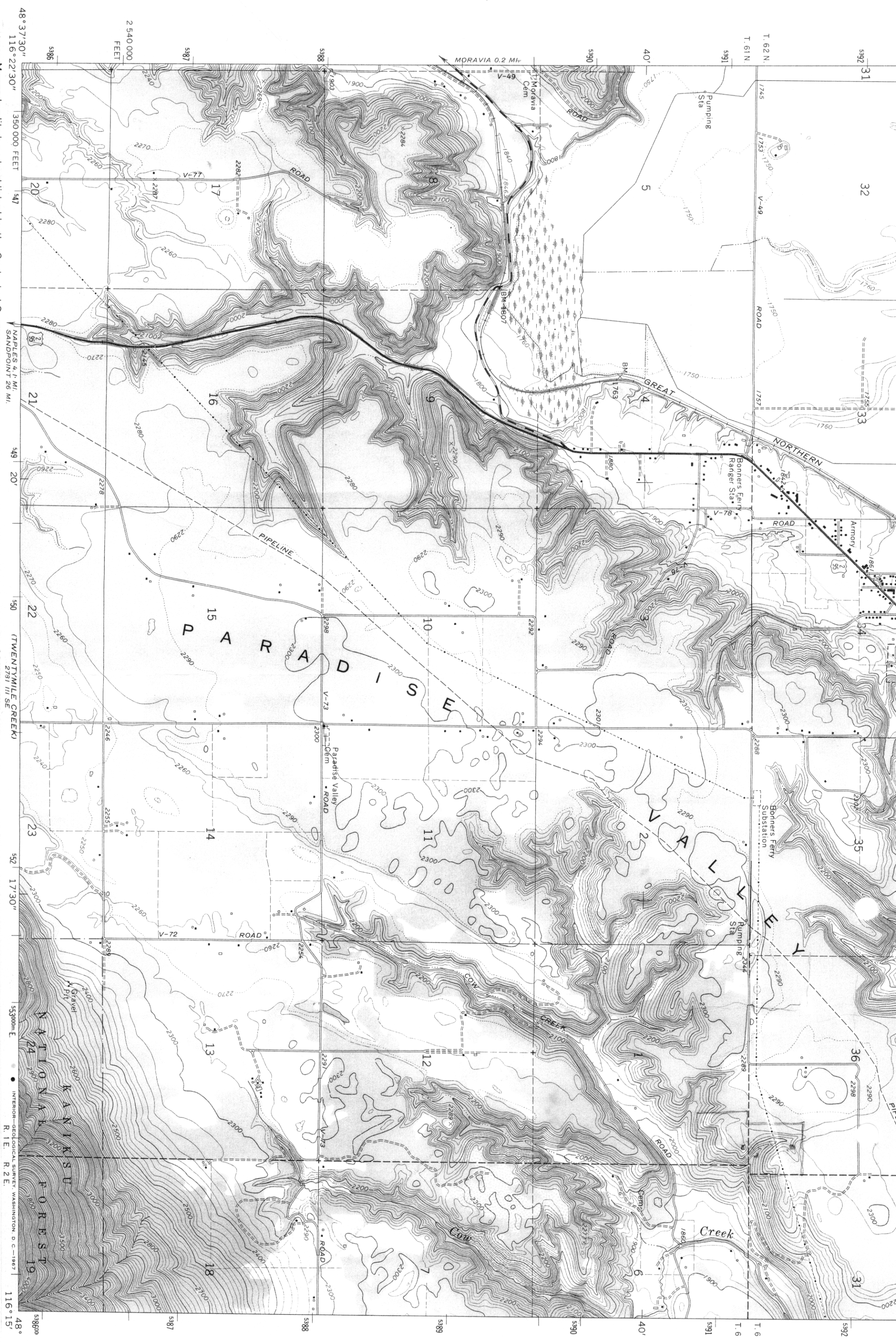
ADDRESS

	<u>DATE</u>
Protest Date Entered on Computer	<u>9/21/02</u>
Acknowledgment Letters Sent	<u>9/21/02</u>
Hearing Date	<u>3/24/03</u>
_____	<u>4/24/03</u>

(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

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.

98-7815

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:

GARY WITTGENSTEIN
PO BOX 87
BONNERS FERRY ID 83805

4a. Article Number
7099 3220 0005 8955 8974

4b. Service Type
☐ Registered ☒ Certified
☐ Express Mail ☐ Insured
☐ Return Receipt for Merchandise ☐ COD

7. Date of Delivery

5. Received By: (Print Name)

6. Signature: (Addressee or Agent)

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

APR 02 2003
RECEIVED
BONNERS FERRY ID 83805
APR 1 2003
USPS

Thank you for using Return Receipt Service.

PS Form 3811, December 1994

Domestic Return Receipt

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.

98-7816

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:

PHILLIP R &/OR JENNIFER S BEACHY
RT 2 BOX 498
BONNERS FERRY ID 83805

4a. Article Number
7099 3220 0005 8955 8967

4b. Service Type
☐ Registered ☒ Certified
☐ Express Mail ☐ Insured
☐ Return Receipt for Merchandise ☐ COD

7. Date of Delivery

5. Received By: (Print Name)

6. Signature: (Addressee or Agent)

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

APR 02 2003
RECEIVED
BONNERS FERRY ID 83805
APR 1 2003
USPS

Thank you for using Return Receipt Service.

PS Form 3811, December 1994

Domestic Return Receipt

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

1910 NORTHWEST BLVD SUITE 210

COEUR D ALENE ID 83814

08



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

1910 NORTHWEST BLVD SUITE 210

COEUR D ALENE ID 83814

08



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

IN THE MATTER OF APPLICATION)
FOR PERMIT NO. 98-7815)
IN THE NAME OF PHILLIP R &/OR JENNIFER S BEACHY)

NOTICE OF HEARING

On July 29, 2002, PHILLIP R &/OR JENNIFER S BEACHY (applicant) filed with the Department of Water Resources (department), application for permit No. 98-7815. The application was protested by GARY WITTGENSTEIN. The conference held by the department on March 24, 2003, did not resolve the matter of protest.

The department has scheduled the matter for hearing on **April 24, 2003, at 8:00 AM**, at the **GSA BUILDING, Conference Room, 1500 Highway 2 (Dover Highway) Sandpoint, Idaho**. The 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 hearing will be L. Glen Saxton.

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 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 hearing, please advise the department within ten (10) days prior to the hearing.

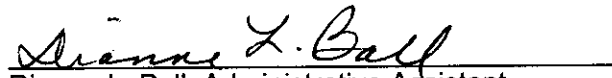
All parties to the matter will have the opportunity to respond and present information and argument on all issues involved.

Dated this 31st day of March, 2003.



Robert G. Haynes, Regional Supervisor

I hereby certify that on the 31st day of March, 2003, I mailed a true and correct copy of this document, postage prepaid, to the applicant(s) and protestant(s) listed below:


Dianne L. Ball, Administrative Assistant

Certified Mail

- ✓ PHILLIP R &/OR JENNIFER S BEACHY
RT 2 BOX 498
BONNERS FERRY ID 83805
- ✓ GARY WITTGENSTEIN
PO BOX 87
BONNERS FERRY ID 83805

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.

PUBLIC HEARING

File: 98-7815
PHILLIP R &/OR JENNIFER S BEACHY

Date: 3/24/2003

Time: 10:30 A.M.

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

ROSTER OF ATTENDANCE

NAME _____

ADDRESS

NAME _____

ADDRESS
P.O. Box 87 Bonners Ferry ID 83805
Box 1155 Bonner Ferry ID 83805

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.

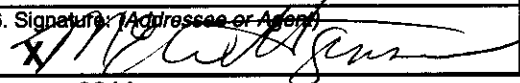
3. Article Addressed to:
GARY WITTGENSTEIN
PO BOX 87
BONNERS FERRY ID 83305

4a. Article Number
7099 3220 0005 8955 8806

4b. Service Type
☐ Registered ☒ Certified
☐ Express Mail ☒ Insured
☐ Return Receipt for Merchandise ☐ COD

7. Date of Delivery
MAR 03 2003

5. Received By: (Print Name)
IDWR/North

6. Signature: (Addressee or Agent)


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.
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1. ☐ Addressee's Address
2. ☐ Restricted Delivery
Consult postmaster for fee.

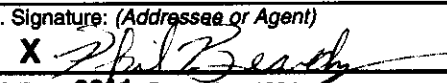
3. Article Addressed to:
PHILLIP R &/OR JENNIFER S BEACHY
RT 2 BOX 498
BONNERS FERRY ID 83305

4a. Article Number
7099 3220 0005 8955 8790

4b. Service Type
☐ Registered ☒ Certified
☐ Express Mail ☐ Insured
☐ Return Receipt for Merchandise ☐ COD

7. Date of Delivery
MAR 04 2003

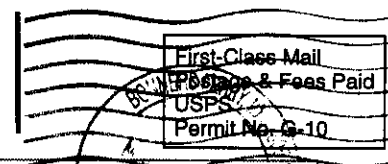
5. Received By: (Print Name)
IDWR/North

6. Signature: (Addressee or Agent)


PS Form 3811, December 1994 Domestic Return Receipt

Thank you for using Return Receipt Service.

UNITED STATES POSTAL SERVICE



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

DEPARTMENT OF WATER RESOURCES
1910 NORTHWEST BLVD SUITE 210
COEUR D ALENE ID 83814

02



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
1910 NORTHWEST BLVD SUITE 210
COEUR D ALENE ID 83814

02



BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATION)
FOR PERMIT NO. 98-7815)
IN THE NAME OF PHILLIP R &/OR JENNIFER S BEACHY)
_____)

NOTICE OF CONFERENCE
AND/OR HEARING

On July 29, 2002, PHILLIP R &/OR JENNIFER S BEACHY filed with the Department of Water Resources (department) Application for Permit No. 98-7815. The application was protested by GARY WITTGENSTEIN.

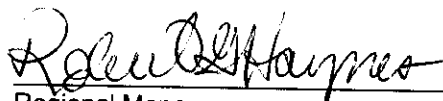
The department has scheduled the matter for conference &/or hearing at **10:30 a.m. on March 24, 2003 at the GSA Building conference room located at 1500 Highway 2 (Dover Highway) in Sandpoint, Idaho.** The conference &/or hearing will be held in accordance with provisions of Chapters 2 and 17, Title 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

Phillip R &/or Jennifer S. Beachy
Rt 2 Box 498
Bonners Ferry, ID 83805

Gary Wittgenstein
PO Box 87

Bonners Ferry, ID 83805

Card Recd 3/3/03

CONFERENCE AND HEARING PROCEDURE

APPLICATION FOR PERMIT

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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.

AFFIDAVIT OF PUBLICATION

State of Idaho

SS

County of Boundary, Carol Arthur

being first duly sworn on oath
deposes and says that he/she is ad manager

of the Bonners Ferry Herald, a newspaper printed and
published at Bonners Ferry, Boundary County, Idaho;
that the said newspaper has been continuously and
uninterruptedly published in said Boundary County during
a period of 12 months prior to the first publication of the

hereto attached notice of publication in the case of:

4879 Permit
Applications

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

said paper for a period of 2 consecutive weeks,

commencing on 19 day of Sept, 2002

and ending on the 26 day of Sept, 2002

and that said notice was published in said newspaper.

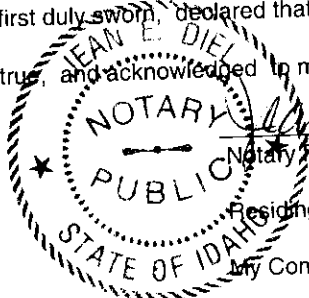
On the 26 day of Sept in the year
of 2002, before me, a Notary Public, personally

appeared Carol Arthur,

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.



Notary Public for Idaho

Residing at

My Commission expires: 7/22/2008

The following application(s) have been filed to appropriate the public waters of
the State of Idaho: **98-7815**

PHILLIP R BEACHY
JENNIFER S BEACHY
RT 1 BOX 498
BONNERS FERRY ID 83805
Point(s) of Diversion SESESE and SWSESE S36 T62N R01E BOUNDARY
County
Source SPRING Tributary To SINKS
Use: IRRIGATION 03/15 To 11/15 0.02 CFS
Use: DOMESTIC 01/01 To 12/31 0.02 CFS
Total Diversion 0.04 CFS
Date Filed: 07/29/2002
Place Of Use: IRRIGATION
T61N R01E S1 NENE Lot 1
Number of Acres 1
Place Of Use: DOMESTIC-same as IRRIGATION
Remark: Domestic use is for 1 home and garage.
98-7816

DEEP CREEK PROPERTY OWNERS ASSN
PO BOX 1011
BONNERS FERRY ID 83805
Point(s) of Diversion NWSW S19 T61N R01E BOUNDARY County
Source GROUNDWATER
Use: MUNICIPAL 01/01 To 12/31 0.1 CFS
Total Diversion 0.1 CFS
Date Filed: 08/06/2002
Place Of Use: MUNICIPAL
T61N R01E S19 SWNW
Remark: Municipal use is within the service area of Deep Creek Property
Owners Assn. **98-7817**

ROCKY MOUNTAIN ACADEMY
RT 1 BOX 511
BONNERS FERRY ID 83805
Point(s) of Diversion SESE S7 T61N R02E BOUNDARY County
Source GROUNDWATER
Use: DOMESTIC 01/01 To 12/31 0.11 CFS
Total Diversion: 0.11 CFS
Date Filed: 07/08/2002
Place Of Use: DOMESTIC
T61N R02E S5 NESW NWSW NWSE
Remark: Domestic use is for private school.

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

Any protest against the approval of these applications must be filed with the
Director, Dept. of Water Resource, Northern Region, 1910 Northwest Blvd.,
Suite 210, Coeur D'Alene ID 83814 together with a protest fee of \$25.00 for each
application on or before 10/07/2002. The protestant must also send a copy of the
protest to the applicant.

KARL J DREHER, Director

Legal BFH4879
September 19, 26, 2002



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

September 27, 2002

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

PHILLIP R BEACHY
JENNIFER S BEACHY
RT 1 BOX 498
BONNERS FERRY ID 83805

Application to Permit No. 98-7815

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

Enc.



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

September 27, 2002

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

GARY J WITTGENSTEIN
PO BOX 87
BONNERS FERRY, ID 83805

Application to Permit No. 98-7815

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).

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

CC: Phillip Beachy

Wittgenstein, Gary J.

Gary Wittgenstein
PO Box 87
Bonners Ferry, ID 83805

Director, Dept. of Water Resource
Northern Region, 1910 Northwest Blvd.
Suite, 210
Coeur D'Alene ID. 83814

9-26-2002

RECEIVED
SEP 27 2002
IDWR/North

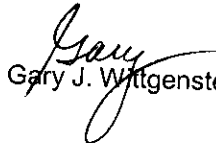
Director:

I am writing to protest against the approval of application for water right permit # 98-7814 filed in the name of Mr. & Mrs. Beachy RT. 1 Box 498, Bonners Ferry ID. 83805.

July 2002 the Beachy's installed a well approx. 100 yards above our well which was installed in 1992. There was immediate negative interference with the operation of our well (low water level) where we could no longer obtain water from it. Since then the well has operated very erratically. Based on 10 years experience with this water source I have concerns weather there will be enough water for me to exercise my water right as long as they are using the same source.

I have attached a copy of a letter dated 8-23-02 outlining our concerns over our water right sent to the Beachy's.

If you have any questions or need additional information I can be reached at Home 208-267-5484 or Work 208-267-8569. My home address is P.O. Box 87, Bonners Ferry ID. 83805.


Gary J. Wittgenstein

c.c. Mr. & Mrs. Beachy

LAW OFFICES
277 North 6th Street, Suite 200
PO Box 2720, Boise, Idaho 83701
TELEPHONE: 208 388-1200
FACSIMILE: 208 388-1300
WEBSITE: www.givenspursley.com

Gary G. Allen
Christopher J. Beeson
Michael C. Creamer
Jeffrey A. De Voe
Emily MacMaster Durkee
Thomas E. Dvorak
Roy Lewis Eiguren
Timothy P. Fearnside
Jeffrey C. Fereday
Steven J. Hippler
Karl T. Klein
Debora K. Kristensen
Anne C. Kunkel

Franklin G. Lee
David R. Lombardi
D. David Lorelio, Jr.
Kevin T. Maione
Kimberly D. Maloney
John M. Marshall
Kenneth R. McClure
Kelly Greene McConnell
Cynthia A. Melillo
Christopher H. Meyer
Kendall L. Miller
L. Edward Miller
Patrick J. Miller

Judson B. Montgomery
Angela K. Nelson
Deborah E. Nelson
W. Hugh O'Riordan
Kenneth L. Pursley
Brad V. Sneed
Conley E. Ward
Robert B. White

Raymond D. Givens
James A. McClure
Stephanie C. Westermeier
OF COUNSEL

Via Certified Mail—Return Receipt Requested

August 23, 2002

Mr. Phil Beachy
RR 1
Bonners Ferry, ID 83805

Re: Well Interference
Our File No. 6535-1

Dear Mr. Beachy:

We represent Gary Wittgenstein and make contact on his behalf concerning your interference with his water right.

In 1992, Mr. Wittgenstein installed a well on his property, which directly adjoins your property. The well is approximately 18 feet deep and cost approximately \$5000 to install. Since that time, Mr. Wittgenstein has used water from the well for household and other domestic uses. Mr. Wittgenstein's water use from this well is protected by a water right with a 1992 priority date.

We understand that in July, 2002, you installed a well of similar depth on your property, approximately 100 yards from Mr. Wittgenstein's well. At this same time, the water level in Mr. Wittgenstein's well dropped to a point that he could no longer obtain water from the well. Mr. Wittgenstein promptly attempted to discuss this problem with you. On July 29, 2002, Mr. Wittgenstein called your residence and left a message with your wife asking you to contact him regarding your impact on his water use. On August 1, 2002, Mr. Wittgenstein wrote you a letter explaining his concerns and asking you to contact him. To date, you have not responded to either Mr. Wittgenstein's phone call or correspondence. The operation of Mr. Wittgenstein's well remains erratic and slow today.

RECEIVED
SEP 27 2002
IDWR/North

Mr. Phil Beachy
August 23, 2002
Page 2

Mr. Wittgenstein seeks to be a good neighbor and hopes this matter can be resolved without litigation. However, if the use of your well continues to negatively impact the exercise of Mr. Wittgenstein's water right, he intends to take legal action against you to enjoin your water use and to seek any appropriate monetary damages. As a senior water right holder, Mr. Wittgenstein is entitled to certain protections under the law, including protection from infringement upon his use by a newer water user such as yourself.

Therefore, we request and demand that you take any and all necessary steps to ensure your water use does not impact the exercise of Mr. Wittgenstein's water right.

Sincerely,

A handwritten signature in cursive script, appearing to read "Deborah E. Nelson".

Deborah E. Nelson

cc: Gary Wittgenstein

DEN:caw S:\clients\6535\Demand Letter to Beachy.doc



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

September 11, 2002

LEGAL NOTICE DEPARTMENT
BONNERS FERRY HERALD
PO BOX 539
BONNERS FERRY ID 83805

FAXED TO JEAN AT 208-267-5523

9/11/02

*Please call to acknowledge
receipt. Thanks*
B

RE: Application for Permit Nos. 98-7815, 98-7816 and 98-7817

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 10/07/2002. Your cooperation is greatly appreciated.

Thanks to ☺

Sincerely

Dianne

Dianne Ball
Administrative Assistant

*I saw to send
proof before
publication*
B

9/12/02
Call from Jean
all ok to run
9/19 & 26/02
B

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

98-7815

PHILLIP R BEACHY
JENNIFER S BEACHY
RT 1 BOX 498
BONNERS FERRY ID 83805

Point(s) of Diversion SESESE and SWSESE S36 T62N R01E BOUNDARY County
Source SPRING Tributary To SINKS
Use: IRRIGATION 03/15 To 11/15 0.02 CFS
Use: DOMESTIC 01/01 To 12/31 0.02 CFS
Total Diversion: 0.04 CFS
Date Filed: 07/29/2002
Place Of Use: IRRIGATION
T61N R01E S1 NENE Lot 1
Number of Acres 1
Place Of Use: DOMESTIC - same as IRRIGATION
Remark: Domestic use is for 1 home and garage.

98-7816

DEEP CREEK PROPERTY OWNERS ASSN
PO BOX 1011
BONNERS FERRY ID 83805

Point(s) of Diversion NWSW S19 T61N R01E BOUNDARY County
Source GROUND WATER
Use: MUNICIPAL 01/01 To 12/31 0.1 CFS
Total Diversion: 0.1 CFS
Date Filed: 08/06/2002
Place Of Use: MUNICIPAL
T61N R01E S19 SWNW
Remark: Municipal use is within the service area of Deep Creek Property Owners Assn.

98-7817

ROCKY MOUNTAIN ACADEMY
RT 1 BOX 511
BONNERS FERRY ID 83805

Point(s) of Diversion SESE S7 T61N R02E BOUNDARY County
Source GROUND WATER
Use: DOMESTIC 01/01 To 12/31 0.11 CFS
Total Diversion: 0.11 CFS
Date Filed: 07/08/2002
Place Of Use: DOMESTIC
T61N R02E S5 NESW NWSW NWSE
Remark: Domestic use is for private school.

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

Any protest against the approval of these applications must be filed with the Director, Dept. of Water Resource, Northern Region, 1910 Northwest Blvd, Suite 210, Coeur D'Alene ID 83814 together with a protest fee of \$25.00 for each application on or before 10/07/2002. The protestant must also send a copy of the protest to the applicant.

KARL J DREHER, Director Published in Bonners Ferry Herald on 9/18 and 9/25/2002

*Corrected
w/ Carol Q AFH.
9/11/02
db*



State of Idaho
DEPARTMENT OF WATER RESOURCES

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

Fax (208) 769-1454

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

September 11, 2002

PHILLIP R BEACHY
JENNIFER S BEACHY
RT 1 BOX 498
BONNERS FERRY ID 83805

RE: Application for Permit No 98-7815

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 Bonners Ferry Herald on September 19 and 26, 2002. 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



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

September 03, 2002

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

RAY HENNEKEY
STATE OF IDAHO
DEPT OF FISH & GAME
2750 KATHLEEN AVE
COEUR D ALENE, ID 83814

Scanned and sent to Ray Hennekey via e-mail

9/5/02 dp

Application to Permit No. 98-7815 - Beachy

Dear Ray:

Enclosed is a copy of the above referenced application. Please review the application, complete the enclosed recommendation form, and submit it to this office within two weeks of receipt of this request.

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

Sincerely,

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

Dianne Ball
Administrative Assistant