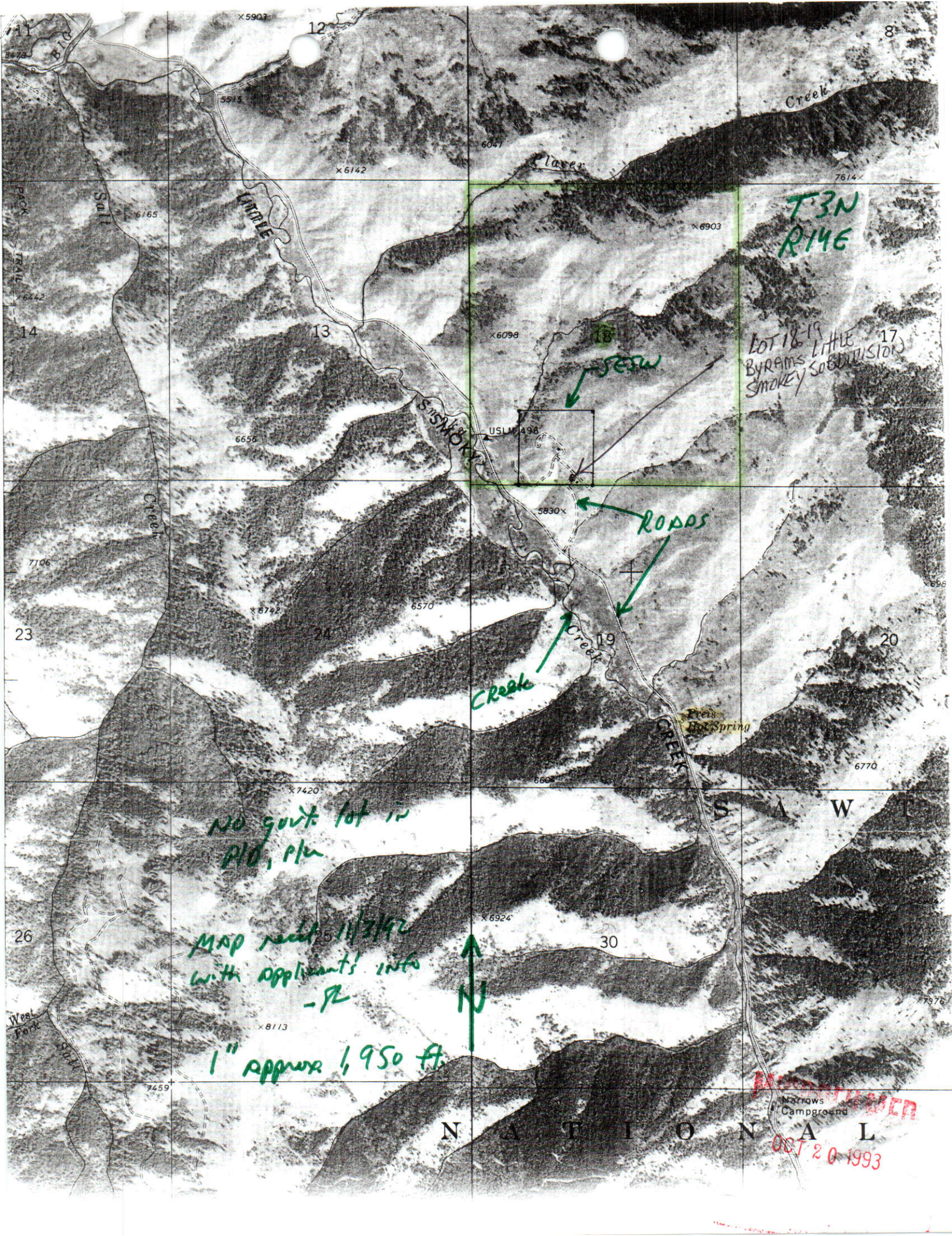




T3N
R14E

LOT 18-19
BYRAMS LITTLE
SMOKEY SUBDIVISION

SESW

ROADS

Creek

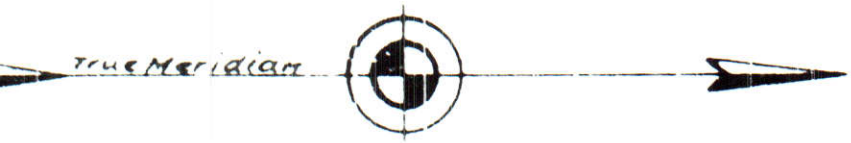
No govt lot in
PLO, PLU

MAP rectified 11/3/92
with applicants' info
- R

1" approx 1,950 ft.

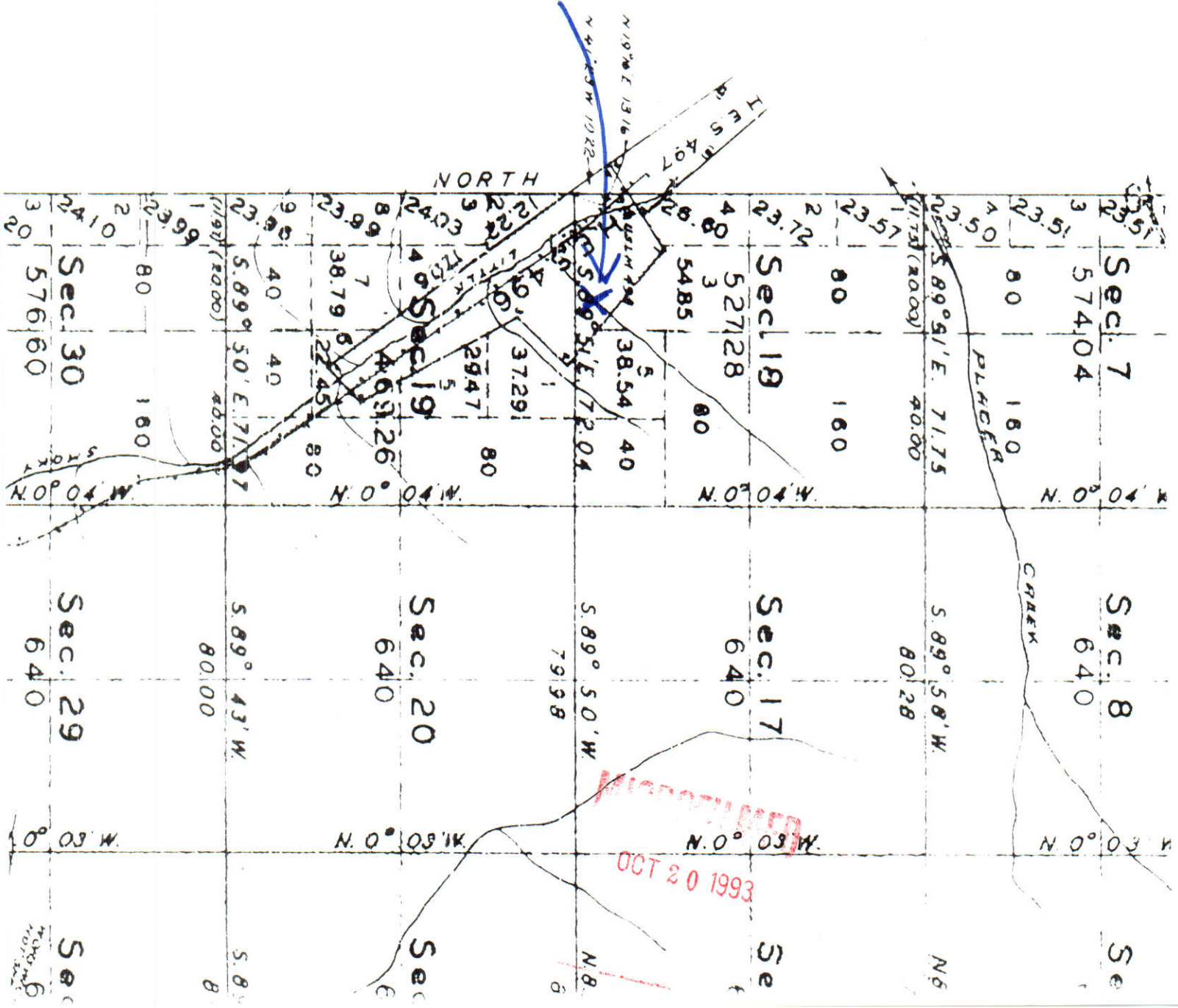


NATIONAL
OCT 20 1993



3N
14E
5.18

H.E.S.
496

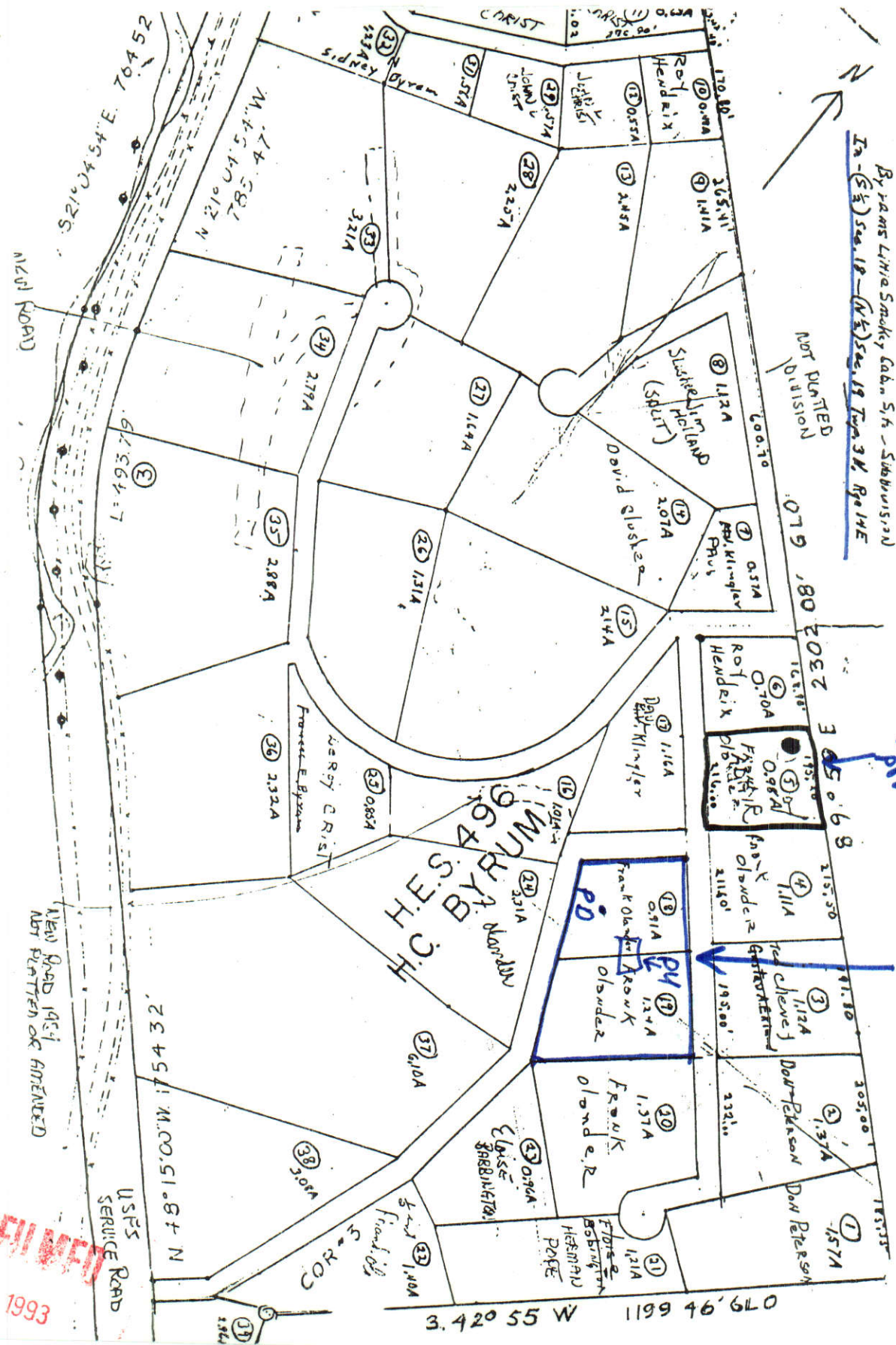


By 1/2 MS LINE Smoky Cabin 5/4 - Subdivision
 In (5 1/2) Sec. 18 - (N 1/2) Sec. 19 Twp 34 Rpt 14E

NOT PLATTED
 DIVISION

Plain -
 Different
 Application

Clower



RECEIVED
 OCT 20 1993

State of Idaho
Department of Water Resources

WATER RIGHT LICENSE

WATER RIGHT NO. 63-11957

Priority: September 29, 1992

Maximum Diversion Rate:

0.02 CFS

This is to certify, that MARY E OLANDER
902 9TH AVE E
GOODING ID 83330

has complied with the terms and conditions of the permit, issued pursuant to Application for Permit dated September 29, 1992; and has submitted Proof of Beneficial Use on March 29, 1994. An examination indicates that the works have a diversion capacity of 0.020 cfs of water from a GROUNDWATER source, and a water right has been established as follows:

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>RATE OF DIVERSION</u>	<u>ANNUAL VOLUME</u>
-----------------------	----------------------	--------------------------	----------------------

DOMESTIC	01/01 to 12/31	0.02 CFS	
----------	----------------	----------	--

LOCATION OF POINT(S) OF DIVERSION:

SESW , Sec. 18, Township 03N, Range 14E
CAMAS County

PLACE OF USE: DOMESTIC

TWN RGE SEC

03N 14E 18

SESW

CONDITIONS OF APPROVAL AND REMARKS

1. This water right is appurtenant to the described place of use.
2. This right is subject to all prior water rights and may be forfeited by five years of non-use.
3. Modifications to or variance from this license must be made within the limits of Section 42-222, Idaho Code, or the applicable Idaho law.
4. Use of this right with Right 63-08961 is limited to a total combined annual diversion volume of 1.2 af.
5. Place of use is located in Lots 18 and 19, Byram's Little Smokey Cabin Site Subdivision within N.E.S. 496.
6. Domestic use is for 1 home.

This license is issued pursuant to the provisions of Section 42-219, Idaho Code. Witness the seal and signature of the Director, affixed at Boise, this 9TH day of JULY, 1996.

Acting for

KARL J. DREHER, Director

AUG 09 1996

RECEIVED STATE OF IDAHO
MAR 29 1994 DEPARTMENT OF WATER RESOURCES
Department of Water Resources

PROOF OF BENEFICIAL USE

The Idaho Department of Water Resources considers this form a statement that the permit holder(s) has/have completed all development that will occur under this permit and that water has been applied according to the provisions of the permit for the beneficial use(s) described below. This form must be accompanied by a license examination fee, when necessary, or a completed field examination report prepared by a certified water right examiner who has been appointed by the department.

1. Permit No. 63-11957 Telephone No. (208) 934-4652
2. Name(s) of Permit Holder(s): MARY E. and FRANK H. OLANDER, Jr.
3. Mailing Address: 902 9TH AVE EAST GOODING, ID 83330
4. Source of Water: GROUNDWATER

If GROUNDWATER, Well Driller's Name: RDY ROESSLER Date Drilled: 2 AUG 1987

OPTIONAL:

Pump horsepower: _____ Pressure (psi): _____ Dynamic pumping level (ft.): _____

5. Extent of Use (as authorized by the permit):

Domestic 1 (No. of households) Stockwater _____ (No. and type of stock)

Irrigation _____ (No. of acres) Other _____

6. Total rate and/or volume for which proof is submitted .04 cfs OR _____ acre/feet

7. Refer to the approval conditions on your permit and respond accordingly:

Measuring device: Required? _____ Yes ☒ No Installed? _____ Yes _____ No

Flow Measurement Port: Required? _____ Yes ☒ OR No Installed? _____ Yes _____ No

8. Fee Enclosed: \$ 0 (See License Fee Schedule on back of Instruction Sheet)

9. Person to contact to accompany the Department representative during field examination of the water system.

FRANK H. OLANDER, Jr. H (208) 934-4652 O (208) 389-5123
Name Telephone No.

902 9TH AVE, EAST GOODING, ID 83330
Address

10. The above information is my true statement of the extent to which the above numbered permit has been developed and I relinquish any undeveloped portion of the permit to the state of Idaho.

30 MAR 94

Date

[Signature]
Signature (and title, if on behalf of a company or organization)

AUG 09 1996

State of Idaho
Department of Water Resources

Permit To Appropriate Water

NO. 63-11957

Proposed Priority: September 29, 1992 Maximum Diversion Rate: 0.02 CFS

This is to certify, that **MARY E OLANDER**
902 9TH AVE E
GOODING ID 83330

has applied for a permit to appropriate water from: **GROUNDWATER**
and a permit is **APPROVED** for development of water as follows:

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

LOCATION OF POINT(S) OF DIVERSION: SESW , Sec. 18, Township 03N, Range 14E
CAMAS County

PLACE OF USE: DOMESTIC
TWN RGE SEC

03N 14E 18 SESW

CONDITIONS/REMARKS:

1. Proof of construction of works and application of water to beneficial use shall be submitted on or before September 1, 1994.
2. Subject to all prior water rights.
3. The total combined rate of diversion under this right and Right 63-08961 shall not exceed 0.04 cfs.
4. This permit does not allow construction of any additional works. Place of use is located in Lots 18 & 19, Byram's Little Smokey Cabin Site Subdivision within H.E.S. 496.
5. Domestic use is for 1 home.

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

7th day of September, 1993.


for R. Keith Higginson, Director

RECEIVED

OCT 20 1993

RECEIVED
AUG 6 1993

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
SOUTHERN REGIONAL OFFICE
OCT 19 1992
Ident. No. 63-11957

RECEIVED
SEP 20 1992

Department of Water Resources
to appropriate the public waters of the State of Idaho
Southern Region Office

1. Name of applicant Mary E. Olander Phone 934-4652
Post office address 902 9th Ave E, Coalinga, ID 83330
2. Source of water supply ground water which is a tributary of _____
3. Location of point of diversion is 1/4 of SE 1/4 of SW 1/4, Govt. Lot _____
3N Township 14E Range B.M. Camas County; additional
points of diversion if any: _____
4. Water will be used for the following purposes:

Amount (cfs or acre-feet per annum)	Purposes from	to	both dates inclusive
<u>.03</u>	<u>Domestic</u>	<u>4-1</u>	<u>12-31</u>
Amount _____	Purposes from _____	to _____	(both dates inclusive)
Amount _____	Purposes from _____	to _____	(both dates inclusive)
Amount _____	Purposes from _____	to _____	(both dates inclusive)
Amount _____	Purposes from _____	to _____	(both dates inclusive)

5. Total quantity to be appropriated is (a) .03 cubic feet per second and/or (b) _____ acre feet per annum

6. Proposed diverting works:
a. Description of ditches, flumes, pumps, headgates, etc. 220' well, 3/4 Hp pump
To a single domestic cabin

b. Height of storage dam _____ feet; active reservoir capacity _____ acre-feet; total
reservoir capacity _____ acre-feet; period of year when water will be diverted to storage: _____
c. ~~Proposed~~ well diameter is 6" inches; ~~proposed~~ depth of well is 220' feet.
d. Is ground water with a temperature of greater than 90°F being sought? NO

7. Time required for the completion of the works and application of the water to the proposed beneficial use is _____ years (minimum 1 year).

OCT 30 1993

8. Description of proposed uses (if irrigation only, go to item 9):

- Hydropower; show total feet of head and proposed capacity in KW. _____
- Stockwatering; list number and kind of livestock. _____
- Municipal; show name of municipality. _____
- Domestic; show number of households. one domestic cabin.
- Other; describe fully. minimal watering of trees and shrubs

9. Description of place of use:

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

TWP	RANGE	SEC.	NE¼				NW¼				SW¼				SE¼				TOTALS
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
3N	14E	18												D					

Total number of acres to be irrigated _____

- Describe any other water rights used for the same purposes as described above. 63-8961 is a license for a hand dug well at the same P/D & P/U as this right.
- Who owns the property at the point of diversion? applicant (now dry)
 - Who owns the land to be irrigated or place of use? "
 - If the property is owned by a person other than the applicant, describe the arrangement enabling the applicant to make this filing. _____

OCT 20 1993

- COMMENTS

Remarks: this application covers the additional .02 cts not licensed under 63-8961. 63-8961 has an annual volume of 1.2 cfs. The place of use covers Lots 18 & 19 Byram's Little Smoky Subdivision for this application. The hand dug well under 63-8961 dried up and was replaced in 1987. Drilling permit 63-8961-101

Remarks: Property also covers lots 18 & 19, Byram's Little Smoky Subdivision, located within H.E.S. 496.

- per applicant's correspondence 11/3/92 - JG



NOT PUTTED
/ DIVISION

Plain
Different
Application

Draper

NEW ROAD 1954
NOT PLATTEN OR AMENDED

USPS
SERVICE ROAD

SEP 20 1993

H.E.S. 496
H.C. BYRUM
25
3514
North

3. 42° 55' W 1199 46' 610

A full-page sheet of white graph paper featuring a uniform grid of thin black lines. The grid consists of 20 columns and 20 rows, creating a total of 400 small squares. The lines are evenly spaced and extend across the entire page, leaving no margins.

Mary E. Olander
(Applicant)

Received by MM MTS Date 10-19-92 Time 1:26pm Preliminary check by [Signature]
Fee \$ 30.00 Received by MTS # 5015030 Date 9-29-92
Publication prepared by GG Date 11/11/1992 Published in Gooding Leader
Publication approved ST Date 12-8-92
11/19 & 11/26/92

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Application for Permit to appropriate the public waters of the State of Idaho No. _____, and said application is hereby _____.

1. Approval of said application is subject to the following limitations and conditions:

a. SUBJECT TO ALL PRIOR WATER RIGHTS.

b. Proof of construction of works and application of water to beneficial use shall be submitted on or before _____, 19 ____.

c. The rate of diversion, if water is to be used for irrigation under this permit, when combined with all other water rights for the same land shall not exceed 0.02 cubic feet per second for each acre of land.

d. The water right acquired under this permit if for hydropower purposes shall be junior and subordinate to all rights to the use of water, other than hydropower, within the State of Idaho that are initiated later in time than the priority of this permit and shall not give rise to any right or claim against any future rights to the use of water, other than hydropower, within the State of Idaho initiated later in time than the priority of this permit.

e. Other:

RECEIVED

OCT 20 1993



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720-9000

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

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

July 10, 1996

MARY E OLANDER
902 9TH AVE E
GOODING ID 83330

RE: WATER RIGHT NO. 63-11957

Dear Water Right Holder(s):

Enclosed is a copy of the Water Right License issued on the above referenced permit. If you have any questions, please contact me within 10 days of receipt of this license.

Sincerely,

Acting for Shelley W. Keen
Water Rights Supervisor

SK:rl

Enclosure

AUG 09 1996

MEMORANDUM

TO: File 63-11957

FROM: Sharla

DATE: June 28, 1996

RE: Conditions of License

When the application for permit was originally filed, the applicant stated that the application was to cover the additional 0.02 cfs (of the 0.04 cfs normally granted for domestic use) above what was licensed under 63-08961. The earlier license was for a hand dug well within the same legal description as the newer filing, but is now dry. The place of use shown under that license was Lot 18, Byram's Little Smokey Subdivision.

The second application for permit was protested. The protestant objected to the further development of the spring-fed system used by all subdivision occupants. Upon clarification that this particular application was for a private well, it appeared that the protestant was willing to withdraw his protest, dependent upon condition of the permit that stated no construction of any additional works would take place under the permit. The protestant didn't formally withdraw his protest as asked, so a conference was scheduled and the protestant failed to appear; the protest was dismissed. The condition prohibiting construction of additional works was placed on the permit. This condition has been removed for licensing.

The earlier license was issued for full volume of 1.2 af for domestic use (internal and external). No volume component will be placed on the new license, however, the limiting condition will be added: Use of this right with Right No. 63-08961 is limited to a total combined annual diversion volume of 1.2 af.

Finally, there is only one well log on microfilm from the SESW, S18. The well was drilled in Lot 5 of the subdivision identified under this permit. Water was found at 99-100 feet and the static water level was 88 feet. This application was specifically filed to pick up 0.02 cfs, bringing the domestic use for this home up to 18 gpm standardly allowed for one home; by using the pumping level from the nearby well a theoretical capacity calculation is within this ballpark. Therefore, this license will be issued for the remaining 0.02 cfs.

Examiner: Sandy Hemenway
Exam Date: June 10, 1994

MAILED 9-10-96
AUG 09 1996

LICENSE REVIEW CHECKLIST

PERMIT NO. 63-11957

DATE 6/28/96

REVIEWER: S H A R L A

NAME Change OK

Address Change NO

SOURCE Change ✓

Is change clarification of originally intended source? ✓
If not, prepare Notice of Intent to Void

POINT OF DIV Change ✓

Amendment required NO

PLACE OF USE Change ✓

Amendment required NO

Does map agree with written description? yes no no map attached

OVERLAPS P/D P/U

verified by
assessor's office

RATE OF DIV

Permitted Rate .02 cfs

Fee limit cfs

Measured cfs

Theoretical cfs

no fee req'd or paid
no measurement made .01 @ 220'
.75 x 8.8 x .7 / 100 + 2.31 x 40 = .09 dtw assumed
Recommended Total Div Rate .02 cfs

ANNUAL VOLUME/ NATURE OF USES

Use
Domestic

Volume Calculation

1.2 standard af

 af

 af

 af

 af

SUBTOTAL 1.2

Flow rate .02 cfs X 365 days X 1.982 = 14.5 af

Total volume recommended 1.2 af
(SUBTOTAL or Flow Rate, whichever is less)

REMARKS

1 home.
Plu aka Lots 18 & 19, Byram's Little
Smoking Cabin Subd. w/ HES 496.

CONDITIONS Watermaster Control WD#

 GW Measurement/Measuring Device

 Overlap spec. cond limit volume w/ 63-8961 to 1.2 af.

 Use-specific conditions

Advancement of Priority Date Required yes no

SRBA Claim Filed N/A

Adjustment Memo

1st Amend Letter N/A

2nd Amend Letter

Explain overlap
cond.

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
BENEFICIAL USE FIELD REPORT

RECEIVED

JUL 28 1995

Department of Water Resources

A. GENERAL INFORMATION

Permit No. 63-11957

1. Owner: Mary E. and Frank H. Olander Phone No. (208) 934-4652

Current Address: 902 9th Ave E. Gooding, Id. 83330

2. Accompanied by: N/A EXAM DATE: 6-10-94

Address: N/A Phone No.

Relationship to Permit Holder:

3. Source: Groundwater tributary to

B. OVERLAP REVIEW

1. Other water rights with the same place of use: N/A

2. Other water rights with the same point of diversion:

C. DIVERSION AND DELIVERY SYSTEM

1. Point(s) of Diversion:

Ident No.	Gov't Lot	1/4	1/4	1/4	Sec.	Twp.	Rge.	County	Method of Determination/Remarks
			SE	SW	18	3N	14E	Camas	per county assessor - see narrative

2. Place(s) of Use:

Indicate Method of Determination

TWP	RGE	SEC	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
3N	14E	18												D					

AUG 09 1996

09 1998

2. Measurements:

Measurement Equipment	Type	Make	Model No.	Serial No.	Size	Calib. Date

D. FLOW MEASUREMENTS

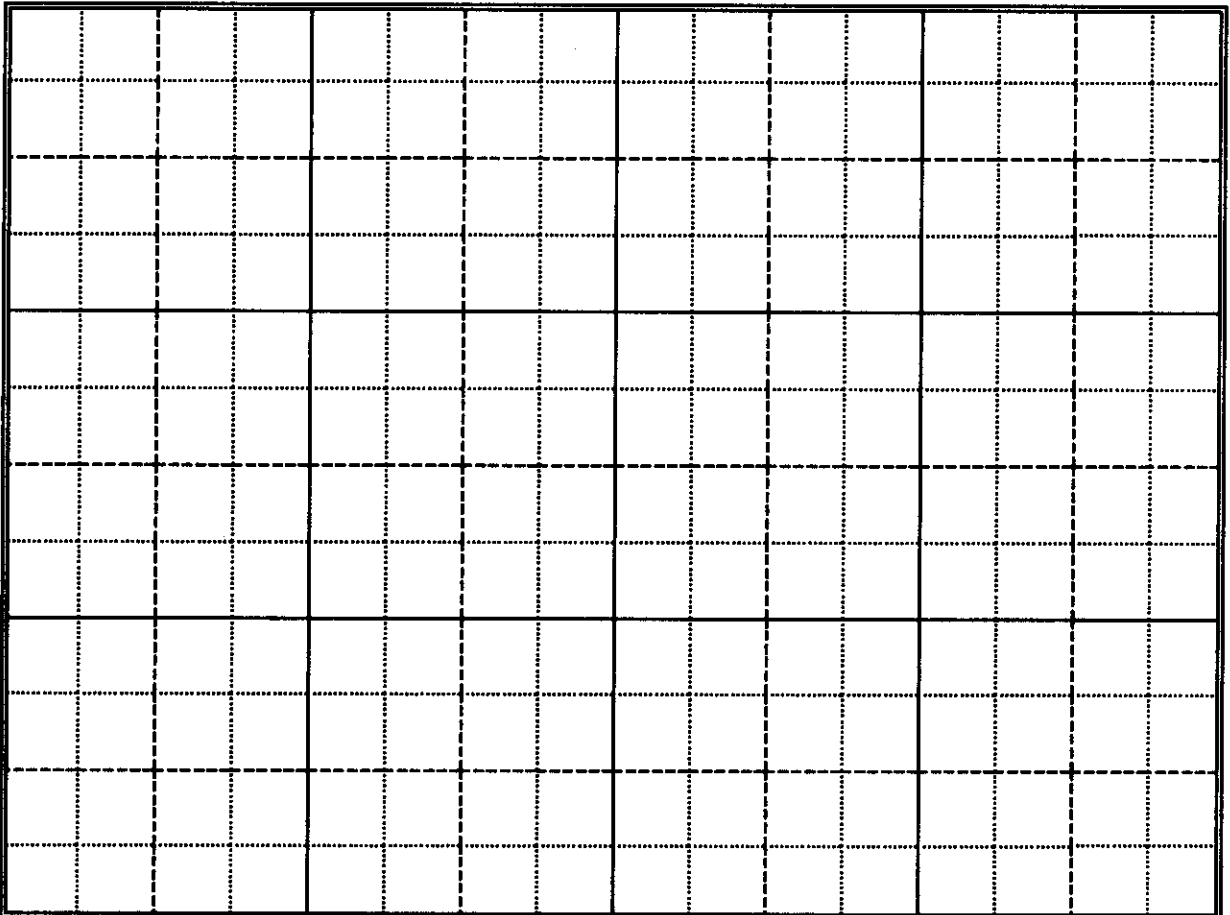
*Code to correspond with No. on map and aerial photo

Well or Diversion Identification No. *	Motor Make	Hp	Motor Serial No.	Pump Make	Pump Serial No. or Discharge Size

4.

Copy of USGS Quadrangle Attached Showing location(s) of point(s) of diversion and place(s) of use (required).
Aerial Photo Attached (required for irrigation of 10+ acres)
Photo of Diversion and System Attached

Scale: 1" =



↑
N/A
↓

3. Delivery System Diagram: Indicate all major components and distances between components. Indicate weir size/ditch size/pipe l.d. as applicable.

E. NARRATIVE/REMARKS/COMMENTS

- Confirmed per telephone with Camas County Assessors Office / Darrel (208) 764-2242 on 6-10-94.
- shows: 2 parcels with
- subd. shown within H.E.S (Homestead Entry Study) # 496
 - Lot 18 + 19 Byram's Little Smokey Cabin Site
 - no block #
 - house shown on the property

Have conditions of permit approval been met? ☒ yes ☐ no

AUG 09 1996

Permit No. 63-11957 Reviewed by [Signature] Date 3-4-5-94

TYPES OF USE

Dom.

Correct Uses? yes
n below.

☐ Surface water source
☒ Ground water source

yes Drilling permit required?
no Copy in the file? Drilling Permit No. 63-87-W-0004-000
10.00 Amount paid for permit yes Correct?
no Well log in the file?

<u>no</u>	Required?
<u>1</u>	Amount Submitted
	Correct?

	Required?
	Installed?
	Waiver requested?

Date proof received		
Date proof due	-	
No. of days late	=	
Priority Date	+	
New Priority Date		

Proof acceptable

New Address

Proof Made 3-29-94

April 7, 1994

MARY E OLANDER
902 9TH AVE E
GOODING ID 83330

PROOF ACKNOWLEDGMENT LETTER

RE: PERMIT NO. 63-11957

Dear Permit Holder:

The department acknowledges receipt of the proof of beneficial use form submitted for the above referenced permit. The next step in the process of developing a water right is for the department to conduct a field examination to determine and confirm the use being made of the water.

If you have questions concerning this matter, please feel free to contact the WESTERN Regional Office in Boise at (208)334-2190.

Sincerely,

JULIE L. YARBROUGH
Senior Secretary

c: IDWR - Region

AUG 09 1996



State of Idaho
DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720-9000
Phone: (208) 327-7900 FAX: (208) 327-7866

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

September 8, 1993

MARY E OLANDER
902 9TH AVE E
GOODING ID 83330

PERMIT APPROVAL NOTICE

RE: PERMIT NO. 63-11957

Dear Permit Holder:

Enclosed is a copy of your approved application for permit. Please be sure to thoroughly review the "CONDITIONS/REMARKS:" listing on the permit.

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

Sincerely,

A handwritten signature in black ink, appearing to be 'Jim Johnson', written over the typed name and title.

JIM JOHNSON
Water Rights Supervisor

JJ:dc

Enclosures

RECEIVED

OCT 20 1993

APPLICATION FOR PERMIT
STATE OFFICE REVIEW

Application #: 63-11957 Date: 8/17/93 Reviewer: Cindy Zimmerman

AREA OF CONCERN? - No/Yes B.R.D. Mor.
SYSTEM COMPLETED:
No - 26A-P17
Complete in 1 year - P16
Yes
Proof not submitted - P16
Proof submitted - N/A
GROUNDWATER:
+ 0.2 cfs <flo-ch> - 01G-P03, 01C-P03 (existing), NMR
- 0.2 cfs - NMR <flow chart>
Drilling Permit:
Included w/permit - P99 Permit No. 63-87-W-004-000
Existing well - N/A (if drilled before 7/1/87)
No WD permit? - 046-46A(IRR)-46B-P23 (if drilled after 7/1/87)
SURFACE WATER: not in WD - 01C-P03 (+.2 w/pump), NMR <flow chart>
LOCATION:
Water District - WD No. _____
Surface water - 005 or 005-01J-P08(+.2)
or 005-01H-P01(-.2 w/pump); NMR
Groundwater - P05 (if well has not been drilled)
Irrigation Dist. - 023
Canal Co. Areas - 023
Drainage Districts - 024
Flood Control Dist. - 063
Boise Front (63) - 058 (Groundwater temperature)
Swan Falls Flag - B (1, Blank or Other)
Trust - 051-052-053-P74(Consumptive Uses)
Non Trust <1> - 048-049
RIVER BASINS (Surface): Water District Control Condition (005) &....
Boise (63) - 05A (req), 11E (non-domestic use)
Payette (65) - 047-P04, _____-P_____
Snake (01, 02 & 03) - 11A-P04(01), 061-P07(02/03 No W.D.Cond.)
USE:
Fish Propagation - 06A, 09E-P10 (WQ/Choose One) & 010, 042 (req),
002-P06(MD), 07A(Special), 044(Policy 5G)
Power - 08A, 17K, 025, 027 (req); 01F-P19; 09E-P10;
+25 cfs-P18; 17G or 17M; 18B-P09
Mining - 06A, 010, or 09E-P10 & 054 (req)
Storage(✓ 3 compo.) - 18A-for multi MD in WD, 18B-P09 (+10'Size)
Rec/Wildlf/Aesthetic - 027-if +½ A. pond (Non-Consumptive)
Domestic (surface - 021 - Boise River upstream from L Peak
restricted areas) 27A - Payette River & main tributaries
OWNERSHIP:
Non land owner - 004
PROTESTED:
Hearing agreement - 020 ⁶³⁻⁸⁹⁶¹⁽⁰⁴⁾
REMARKS: - ① WBI ② This permit does not allow construction of any add works.
③ P/U cts 18 & 19, Byrnes Little Smokey Sub. located in HES 496. ④ W01 (1)
OTHER CONDITIONS: -
BENEFICIAL USE DUE: - 9 -1-1994
COMMENTS: - 1) Mm Exempt. 2) Div Desc.

WR0749NP
No. P63-11957

IDAHO DEPARTMENT OF WATER RESOURCES
WATER RIGHT PROFILE REPORT
(REGIONAL)

DATE: 08/17/93
PAGE: 1

OWNER CODE	NAME & ADDRESS	PRIORITY DATE	WATER USE	USE PERIOD FROM TO	DIVERSION RATE	DIVERSION VOLUME
C	MARY E OLANDER 902 9TH AVE E GOODING ID 83330 (208) 934-4652	09/29/1992	DOMESTIC	01-01 12-31	0.02 CFS	
TOTAL DIVERSION:					0.02 CFS	

Water Source: GROUNDWATER

Tributary to:

Stage: PERMIT

Point(s) of Diversion: T03N R14E S18 SE SW

Place of use Legal Description for: DOMESTIC

NE				NW				SW				SE					
T	R	S	:	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac
03N	14E	18	:														

Pou County: CAMAS

Remarks: The total combined rate of diversion under this right and Right 63-08961 shall not exceed 0.04 cfs. This permit does not allow construction of any additional works. Place of use is located in Lots 18 & 19, Byram's Little Smokey Cabin Site Subdivision within H.E.S. 496. Domestic use is for 1 home.

Dates: App. Received: 09/29/1992 Priority Date: 09/29/1992
Proof Due Date: 09/01/1994 Proof Made Date:
Exam Made Date: Exam Sent to S.O.:
Licensed Date:

Misc: Water District Number: Field Exam Fee:

Comments: Date: 08/17/1993 User-ID: ZIMMERMA Subject: MORATORIUM EXEMPTION
This permit is located within the Boise River Drainage Moratorium boundary; however, its domestic use is within the acceptable parameters of the Moratorium guidelines.

Date: 08/17/1993 User-ID: ZIMMERMA Subject: DIVERSION DESCRIPTION
Drilling permit #63-87-W-0004-000 states 6" by 220' deep well, with 3/4 hp pump to cabin.

Audit: 08/17/93 ZIMMERMA

3N 14E 5.18

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPROPRIATION APPLICATION ANALYSIS SHEET

INITIAL REVIEW BY: JC DATE: 10/24/92 APPLICATION: 63-11957

REQUIRED INFORMATION

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

Gov't. Lots:
 N P/D
 N P/U

ADDITIONAL INFORMATION

YES NO but see next pg.
 N/A
☐ Overlapping place of use: (Describe source & relationship to present application on the back.)
☐ Overlapping point of diversion:
☐ Field check required: Field check by: _____
☐ Field report attached:
☐ Critical groundwater area:
☐ Groundwater management area:
☐ 1992 moratorium
☐ Diversion within interim protected river area
☐ Send dam safety information:
☐ Send power requirement letter:
☐ Send fish farm requirement letter:
☐ Power residency affidavit:
☐ Power efficiency form:
☐ Within trust water boundary: (If yes, attach Trust Water Supplementary Analysis Sheet.)
☐ Diversion greater than 5 cfs or 500 af or irrigation greater than 200 acres: (If yes, attach Large Diversion supplementary analysis sheet.)
☐ *REQUEST ADDITIONAL INFORMATION FROM THE APPLICANT

RECEIVED
AUG 06 1993

Department of Water Resources

DATE REQUESTED: _____
☐ Additional information on reverse side:

 CMAS Co.

PROCESSING

APPLICATION NO.

63-11957

YES NO

☒ ☐
☐ ☒
☒ ☐

In form for advertising:

Statewide advertising:

Fee amount, receipt number and date recorded on application:

SEND COPIES TO

YES NO

☐ ☒
☐ ☒
☐ ☒
☐ ☒

I.D. Health and Welfare

I.D. Fish and Game

I.D. Lands

Adjudication Bureau

YES NO

☐ ☒
☐ ☒
☐ ☒
☐ ☒

U.S. BLM

U.S. Forest Svc.

Water Dist. #

Other

FINAL REGIONAL PROCESSING REVIEW

YES NO

☒ ☐
☒ ☐

Affidavit of publication received:

Application published correctly: If not, record action taken.

☒ ☐
☐ ☐

Publication dates and paper recorded on application:

Protests received: Final date for protest December 7, 1992

Protestant Failed to Appear

Protest dates, resolution of protest recorded on application:

Recommendations attached: Approve, Dnr

Measuring device required:

Measuring port required:

Water delivered by water master? District #

Special conditions of approval or cover letter:

Approval of this permit does not allow construction of any additional works.
Only the existing well will allow diversion under this permit.

See below for additional information

Recommended Date or Priority 9/29/1992Recommended by: DnrDate 8/2/1993

STATE OFFICE REVIEW

See below for additional information. By Date

ADDITIONAL INFORMATION

NOTE: 63-18761 Ivanhoe .02 cfs, 1.2 Ato D/I, groundwater. Replaced hand dug well in 1987 with drilled well. Now applying for W.R. for same home from 1987 well to obtain additional .02 cfs that D/I could have (although full mine already mined).

Not sure if Appl serves real purpose but applicant is entitled to now permit it so desired.

BEFORE THE DEPARTMENT OF WATER RESOURCES

STATE OF IDAHO

IN THE MATTER OF APPLICATIONS FOR)
PERMIT NO. 63-11936 IN THE NAME OF) ORDER TO SHOW CAUSE
DAVID J. &/OR GLORIA ADAIR AND NO.)
63-11957 IN THE NAME OF MARY. E)
OLANDER.)

Whereas, a conference was scheduled for July 7, 1993, in the matter of protested water right applications nos. 63-11936 and 63-11957 and,

Whereas, protestant Erle B. Byrum was properly notified of the conference but failed to appear,

Now, therefore, IT IS HEREBY ORDERED that the protestant, Erle B. Byrum provide to the Department no later than August 5, 1993, any information as to why he did not appear at the conference. Failure to provide this information will result in dismissal of the protests.

Dated this 20th day of July, 1993.

David R. Tuthill, Jr.
David R. Tuthill, Jr., P.E.
Manager, Western Regional Office

CERTIFICATE OF MAILING

I hereby certify that on the 22nd day of July, 1993, I mailed true and correct copies by certified mail, postage prepaid, of this document to Erle B. Byrum.

Sue Taylor
Sue Taylor, Sec - Office Coordinator

RECEIVED
OCT 20 1993

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATION)
FOR PERMIT NO. 63-11936 IN THE)
NAME OF DAVID J &/OR GLORIA ADAIR)
AND APPLICATION FOR PERMIT NO.)
63-11957 IN THE NAME OF MARY E.)
OLANDER.)

NOTICE OF CONFERENCE

On September 21, 1992, David J. &/or Gloria Adair filed with the Department of Water Resources an application for permit to appropriate the public waters of the State of Idaho. On September 29, 1992, Mary E. Olander filed an application with the Department. The applications were protested by Erle B. Byrum.

The Department has set the matter of protest for a conference to be held on Wednesday, July 7, 1993, at 10:00 a.m., in the Second Floor Conference Room, Department of Water Resources, 1301 N. Orchard St., Boise, Idaho 83706. The conference will be held in accordance with provisions of Chapters 2 and 17, Title 42, and Chapter 52, Title 67, of the Idaho Code, the adopted Rules of Practice and Procedure of the Department of Water Resources, and Rules 4 and 5 of the adopted Rules and Regulations of Water Appropriation of the Department of Water Resources. Opportunity shall be afforded all parties to respond and present information and argument on all issues involved.

Dated this 1st day of June, 1993.



DAVID R. TUTHILL, JR., P. E.
Manager, Western Regional Office

MICROFILMED

OCT 20 1993

I hereby certify that on the 1st day of June, 1993, I mailed a true and correct copy, postage prepaid, of this document to the applicant(s) and protestant(s) listed:

Sue Taylor
Sue Taylor
Secretary

Certified Mail

DAVID J &/OR GLORIA ADAIR
430 FIFTH AVE E
PO BOX 454
GOODING ID 83330

MARY E OLANDER
902 9TH AVE E
GOODING ID 83330

ERLE B BYRUM
PO BOX 204
GOODING ID 83330

Non-Certified Mail

THOMAS A MILLER ESQ
HAWLEY TROXELL ENNIS & HAWLEY
PO BOX 1617
BOISE ID 83701

RECEIVED
OCT 20 1993

CONFERENCE AND HEARING PROCEDURE

IN THE MATTER OF A PROTESTED APPLICATION FOR PERMIT

In accordance with IDAHO CODE, Section 42-203, the following issues are involved in the consideration of the application and protest(s):

- 1) Will the proposed use reduce the quantity of water under existing rights?
- 2) Is the proposed water supply insufficient for the purposes 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 proposed project?
- 5) Will the proposed use conflict with the local public interest?
- 6) Is the proposed use contrary to conservation of water resources within the state of Idaho?

BURDEN OF PROOF

The Applicant has the initial burden of proof on issues 1,2,3,4,& 6 above, that is, the applicant has the burden of coming forward with evidence for evaluation of those criteria.

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

PROCEDURE

The procedure normally followed by the department in arriving at a decision on the issues which must be considered is to first hold a conference in the matter and then, if necessary, hold a hearing. If a hearing is held a written decision is issued based on the hearing record.

CONFERENCE

Preliminary to holding a hearing, a pre-hearing conference is held to familiarize the department and the parties with the matter and to determine if a resolution of the protest(s) is possible without the need for a hearing.

MINNESOTA
OCT 20 1993

At the conference the department may formulate and simplify the issues, obtain admissions of fact and of documents which will avoid unnecessary proof, arrange for the exchange of proposed exhibits or prepared expert testimony prior to the hearing, limit the number of witnesses, consolidate the examination of witnesses, and advise the parties of the procedure which will be followed at any subsequent hearing.

HEARING

Any party may request in writing five (5) days before any hearing that the oral proceedings thereof be taken in the form of stenographic notes at the expense of the requesting party. Any party may have such stenographic notes of the oral proceedings, or part thereof, transcribed at his own expense. A taped record of the proceedings will be maintained for the appeal period.

If the hearing is conducted by a hearing officer appointed by the Director, rather than the Director himself, a proposed decision will be issued and the parties will be afforded the opportunity to file exceptions to the proposed decision and present briefs and to request oral argument before the Director prior to the issuance of a final decision by the Director. This procedure is required by IDAHO CODE, Section 42-1701A.

The parties by written stipulation, may waive their right to a proposed decision, however, the failure of either party to waive a proposed decision will not predjudice the director's review of a party's evidence and arguments. However, such a waiver will shorten the decision making process and may expedite substantially the issuance of a final decision. Whether compliance with Section 42-1701A is waived will not affect a party's right to petition for a rehearing of the final decision pursuant to rule 11 of the Department's Rules of Practice and Procedure or affect a party's right to appeal the final decision to the District Court.

Under the provisions of the IDAHO CODE, Sections 42-1701A and 67-5215, any court review of the department's decision on appeal shall be confined to the record created before the department.

If you require special accommodations for a disability in order to participate in or attend the conference (hearing) (public meeting) please advise the department within ten (10) days prior to the conference, hearing or public meeting.

EXHIBITS

If any party at a hearing intends to present an exhibit to augment the hearing record, such party shall in advance of the hearing, prepare sufficient copies of the exhibit for distribution to all parties at the hearing.

OCT 20 1993



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

February 9, 1993

THOMAS A MILLER ESQ
HAWLEY TROXELL ENNIS & HAWLEY
PO BOX 1617
BOISE ID 83701

ERLE B BYRUM
PO BOX 204
GOODING ID 83330

Re: Protested Applications for Permit Nos. 63-11957 in the
Name of Mary E. Olander, and 63-11936 in the Name of David
J. &/or Gloria Adair

Dear Interested Parties:

Pursuant to our recent telephone conversations, enclosed please find a proposed withdrawal of protest document. If the parties find this document acceptable, please sign it and return it to this office. If the document is not acceptable, please prepare an alternative document or contact this office. If we receive the document signed as proposed, we will proceed with processing these applications for permit.

Sincerely,

DAVID R. TUTHILL, JR., P.E.
Manager, Western Regional Office

DRT:st

Encl: Withdrawal of Protest Form

RECORDED

OCT 20 1993

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATION)
FOR PERMIT NO. 63-11957)
IN THE NAME OF MARY E. OLANDER) WITHDRAWAL OF PROTEST

I, the undersigned applicant, agree to the inclusion of the following condition of approval on our water right permit. Therefore, I the undersigned protestant agree to withdraw my protest to the application contingent on the inclusion of the condition on the above-referenced permit.

Approval of this permit does not allow construction of any additonal water diversion works. Only the existing well will be used to divert water under this permit.

Dated this ____ day of _____, 1993.

Mary E. Olander, Applicant

Dated this ____ day of _____, 1993.

Erle B. Byrum, Protestant for Application no. 63-11957

RECORDED

OCT 20 1993

CONVERSATION MEMORANDUM

DATE 2/2/93

FILE 63-11936

NAME OF PARTY Erle Byrum 934-4379/

63-11957

EMPLOYEE D. Tuthill 733-5001 (Erle Byrum work No.)

RE: Location of Conference

Cannot come to Boise for a conference.

would consider withdrawing the protest if the permit is

conditioned to prevent additional development.

Tom Miller agreed with this approach.

Dnr

OCT 20 1993

HAWLEY TROXELL ENNIS & HAWLEY

ATTORNEYS AND COUNSELORS

FIRST INTERSTATE CENTER

SUITE 1000

POST OFFICE BOX 1617

BOISE, IDAHO 83701

TELEPHONE

(208) 344-6000

FAX

(208) 342-3829

POCATELLO OFFICE

125 NORTH GARFIELD

POST OFFICE BOX 4167

POCATELLO, IDAHO 83205

TELEPHONE

(208) 232-0845

THOMAS A. MILLER

January 25, 1993

VIA FAX 334-2348

State of Idaho
Department of Water Resources
Western Region
2735 Airport Way
Boise, Idaho 83705-5082

Attn: David R. Tuthill, Jr., P.E.
Manager, Western Regional Office

Re: Application for Permit No. 63-11936 (Adair, David J.
and Gloria)
Application for Permit No. 63-11957 (Olander, Mary E.)

Protests by Erle B. Byram

Dear Mr. Tuthill:

This is to confirm that February 10 at 10 a.m. is an acceptable time for the hearing of the Byram protests, if a hearing is necessary.

However, the applicants respectfully request that the hearing be held in Boise rather than in Gooding. Frank Olander, Jr., son of applicant Mary E. Olander, is a necessary witness. He lives and works in the Boise area and it would be inconvenient for him to take time off his work for a hearing in Gooding. Also, the applicants wish to mitigate their legal expenses. If the hearing were held in Gooding, those legal expenses would be increased significantly. They do not believe it fair for them to be burdened by unnecessary legal expenses, particularly in view of the lack of substance in the protests.

If you will review the applications and the protests, it should be apparent on the face of the record that Mr. Byram is clear off the mark. He is basically protesting applications for water rights on spring waters, whereas the applications are for

MISRECEIVED

OCT 20 1993

HAWLEY TROXELL ENNIS & HAWLEY

Mr. Tuthill
January 1993
Page 2

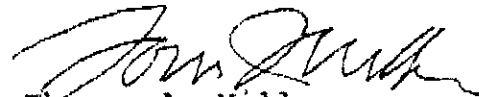
water rights from wells. Mr. Byram does not appear to object to the applications in that respect, except by shotgun-type rather than focused objections.

If the Department believes that a hearing is necessary, then it should be held in the place most convenient and least expensive for these applicants.

We cannot close this letter without commenting that the outrageous, untrue, libelous and generally irrelevant statements by Mr. Byram in his letter to the Department of January 10, 1993 will not be left unanswered and will be responded to in detail at the appropriate time.

Please let us know your decision on the hearing as soon as possible.

Yours truly,


Thomas A. Miller

TAM/jw
cc: Mr. & Mrs. David J. Adair
P. O. Box 454
Gooding, ID 83330

Mrs. Mary E. Olander
902 9th Ave. E.
Gooding ID 83330

B. Byram
204
Gooding ID 83330

Mr. Frank Olander, Jr.
P. O. Box 404
Idaho City, ID 86361

RECORDED

OCT 20 1993

HAWLEY TROXELL ENNIS & HAWLEY

ATTORNEYS AND COUNSELORS

FIRST INTERSTATE CENTER

SUITE 1000

POST OFFICE BOX 1617

BOISE, IDAHO 83701

TELEPHONE

(208) 344-6000

FAX

(208) 342-3829

POCATELLO OFFICE

125 NORTH GARFIELD

POST OFFICE BOX 4167

POCATELLO, IDAHO 83205

TELEPHONE

(208) 233-0845

THOMAS A. MILLER

December 22, 1992

VIA FAX 334-2348

Department of Water Resources
Western Region
2735 Airport Way
Boise, Idaho 83705-5082

Attn: David R. Tuthill, Jr., P.E.
Manager, Western Regional Office

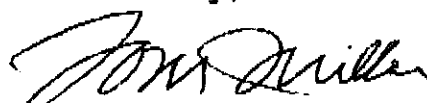
Re: Mary E. Olander Application for Permit
No. 63-11957 - Protest by Erle B. Byram

Dear Mr. Tuthill:

I write as attorney for Mary E. Olander, applicant for the above-referenced permit, regarding E. B. Byram's protest.

Mr. Byram should be required to comply with the statutory requirement that he specify the basis of his protest.

Yours truly,


Thomas A. Miller

TAM/jw

cc: Mrs. Mary E. Olander
902 9th Avenue East
Gooding, ID 83330
Phone 934-4652

MICROFILMED

OCT 20 1993



State of Idaho
DEPARTMENT OF WATER RESOURCES

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

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

January 13, 1993

Mr. Erle B. Byrum
P.O. Box 204
Gooding, ID 83330

RE: Application for Permit No. 63-11936 in the Name of
David J. and/or Gloria Adair, and Application for Permit
No. 63-11957 in the Name of Mary E. Olander

Dear Mr. Byrum:

Thank you for the faxed copy of your letter dated January 10, 1993,
in the above-referenced matter.

My letter dated December 21, 1992 had requested that you send your
reasons for objection to Mr. and Mrs. Adair, and Mr. Miller. I
cannot determine from your letter if this action was taken, but to
expedite this matter I will forward copies of your letter to both
of these parties and to Ms. Olander.

You called to request information about springs. Please find
enclosed copies of the Idaho Code in this regard that may be of
some assistance.

At this point I will assume that the Department will need to
conduct a conference in a first step toward resolution of this
matter. I will tentatively plan to conduct the conference at 10:00
am on Wednesday, February 10, 1993 in Gooding. If any of the
parties in this matter cannot attend at this time, please advise me
no later than January 25. We will plan to send out confirmation of
the conference shortly thereafter.

Sincerely,

David R. Tuthill, Jr., P.E.
Manager, Western Regional Office

cc: Mr. and Mrs. David J. Adair
430 Fifth Avenue East
P.O. Box 454
Gooding, ID 83330

Ms. Mary E. Olander
902 9th Ave. E.
Gooding, ID 83330

Thomas A. Miller, Esq.
Hawley Troxell Ennis and Hawley
P.O. Box 1617
Boise, ID 83701

NOT RECORDED

OCT 20 1993

January 10, 1993

David R. Tuthill Jr., P.E.
 Manager, Western regional office
 Western region, 2735 Airport Way
 Boise, ID 83705-5082

RE: Application for permit No. 63-11936 in the name of David and/or Gloria Adair and permit No. 63-11957 in the name of Mary E. Olander

Dear Mr. Tuthill Jr., P.E.,

As you know our ever incompetent and inept postal system hadn't delivered your letter dated 12/21/92 until 1/6/93, I suppose Christmas would be a good excuse.

History: Since the inception of the Byram summer home subdivision the Adair and Olander families have created 99% of all problems. They are continually filing lawsuits, threatening people, intimidated and bullying the people of the subdivision. All lot sales in the area have ceased because the public learns that the families live there and their reputations precede them.

The original idea was for everyone to use the spring fed water system and all people residing in said subdivision would share in systems costs and repairs. The Olander and Adair families made such a stink in the 90-91 years we rewrote the covenant so that they may drill personal wells with the intent of leaving all other springs unfilled so they may feed the wells. If they are allowed to file on additional springs this is simply hoggish and vindictive as the Adairs have a well and the Olanders have a well plus spring rights.

Using the water appropriation rules and regulations of the State of Idaho, I file this protest.

- 1) Spring or marsh may be on private property plus the water subs out on private property.
- 2) The Adair family doesn't have the knowledge nor the financial means to develop the springs. The Olander family have spring fed water rights along with a well and they still owe me \$500.00 from the spring system.
- 3) Will the proposed use reduce the quantity of water under existing water rights? (Yes)
- 4) Is the proposed water supply insufficient for the purposes intended? (Yes)
- 5) Is the application made in good faith or for delay or speculative purposes? (Yes)

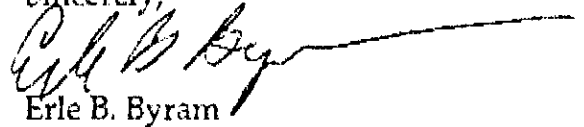
RECEIVED

OCT 20 1993

- 6) Has the applicant sufficient financial resources with which to complete the project? (No)
- 7) Will the proposed use under this permit conflict with the local public interest? (Yes)
- 8) Will the proposed use be contrary to conservation of water resources within the state of Idaho? (Yes)

9) Rule #3	3,3,2,9.	4,5,3,1,1.
10) Rule #4	4,1,1,3.	4,5,3,1,1.
	4,1,1,5.	4,5,3,1,2.
	4,1,2,5.	4,5,3,1,3.
	4,3,2,1.	4,5,3,2.
	4,3,3,1.	4,5,3,2,1.
	4,4,2,1.	4,5,3,2,2.
	4,4,2,2.	4,5,3,3,1.
	4,4,2,3.	4,5,3,4.
	4,4,5.	4,5,3,4,1.
		4,5,3,4,2.
		4,5,3,5.
11) Rule #5	5,1,1.	5,1,4.
	5,1,1,1.	5,1,5.
	5,1,1,2.	5,1,5,3.
	5,1,1,3.	5,1,5,4.
	5,1,2,1.	5,3,4,1.
	5,1,3.	6,5.
	5,1,3,1.	6,1,0.
	5,1,3,3.	7,1,1,1.

Sincerely,



Erle B. Byram

OCT 20 1993

tor of the department of water re-
n the authority of S.L. 1974, ch. 286,
S.L. 1974, ch. 20, § 28 (§ 42-1801a).
ref. Petition for cancellation,

Every permit to appropriate
ransferred, assigned or mort-
ct shall be immediately can-
inding on the state of Idaho.
6, § 5, p. 106.]

sions of this act shall not ap-
state. [1937, ch. 142, § 6, p.

ctions in which "this act" is compiled,
to § 42-205.

t — Appeals. — Whenever a
visions of this act, and the
iod, or nature of the intended
e method of diversion or pro-
in application for amendment
it of water resources together
ding same, and upon receipt
of water resources to examine
It in the diversion and use of
he rights of others will not be
the department of water re-
turn an approved copy to the
of water resources shall give
e deems appropriate and may
upon conditions, or may deny
is or denial of an amendment
d mail and shall be subject to
iority of the right established
d under these provisions shall
for permit, provided the per-
ons of this act.
h permit has not been issued,
the applicant or his agent on
hall be initialed and dated. If
water than originally asked,
the date of said amendment.
any additional filing fee as a
sion or volume of storage re-

requested in such amended application. If amendment is made after publica-
tion of notice of the original application, said notice shall be republished
following amendment, upon payment by the applicant of the statutory fee
for republication as in this act provided.

The notice shall be published in the same manner as provided by section
42-203, Idaho Code, for publication of notice of an application for permit.
Protests to the application for amendment may be filed with and heard by
the director in the same manner as provided by section 42-203, Idaho Code,
for protests to an application for a permit.

If a protest is filed and a hearing on the protest held, any person ag-
grieved by the final decision of the director following the hearing may seek
judicial review thereof pursuant to section 42-1701A(4), Idaho Code.

If no protest is filed and the director grants the amendment in part or on
conditions or rejects the amendment without a hearing, the applicant may
request a hearing pursuant to section 42-1701A(3), Idaho Code, for the
purpose of contesting the action of the director and following the hearing
and the issuance of a final decision by the director may seek judicial review
thereof pursuant to section 42-1701A(4), Idaho Code. [1907, p. 314, § 1;
reen. R. C. & C. L., § 3255; C. S., § 5571; I. C. A., § 41-205; am. 1967, ch.
374, § 4, p. 1079; am. 1980, ch. 238, § 4, p. 526.]

Compiler's notes. Section 42-203 referred
to in the third paragraph of this section has
been amended and transferred to § 42-203A.

Sections 3 and 5 of S.L. 1980, ch. 238 are
compiled as §§ 42-204 and 42-219, respec-
tively.

Sec. to sec. ref. This section is referred to
in § 42-1409.

Cited in: Shokal v. Dunn, 109 Idaho 330,
707 P.2d 441 (1985).

ANALYSIS

Changing point of diversion.
List of lands.

Changing Point of Diversion.

It was error for the district court to enjoin

landowners from changing the point of diver-
sion of water from a well located on one sec-
tion of land owned by them to another section
of their land, where such owners had filed a
proper application for such change with the
state reclamation engineer (now the director
of the department of water resources), who
declined to hear or process the application.
State ex rel. Tappan v. Smith, 92 Idaho 451,
444 P.2d 412 (1968).

List of Lands.

Amendment of list of lands to be reclaimed
is properly allowed where rights of others are
not adversely affected and no additional
water is claimed. Big Wood Canal Co. v.
Chapman, 45 Idaho 380, 263 P. 45 (1927).

42-212. Diversion of private waters. — The department of water re-
sources is hereby prohibited from issuing or granting permits to divert or
appropriate the waters of any lake not exceeding five (5) acres in surface
area at highwater mark, pond, pool or spring in this state, which is located
or situated wholly or entirely upon the lands of a person or corporation,
except to the person or corporation owning said land, or with his or its
written permission, executed and acknowledged as required for the convey-
ance of real estate. [1911, ch. 230, § 1, p. 782; reen. C.L., § 3255a; C.S.,
§ 5572; I.C.A., § 41-206.]

RECEIVED

OCT 20 1993

Whenever it shall appear to the board of county commissioners from competent evidence that any consumer or consumers of water distributed through any ditch or canal, is entitled to the distribution or use of any water therefrom, at not to exceed a proportionate amount of the actual cost of maintenance and operation of said ditch or canal, they shall, upon request of such person or persons so entitled, fix the rate per cubic foot per second to be charged to such consumer or consumers for the current year. [1899, p. 380, § 30; reen. R.C. & C.L., § 3298; C.S., § 5645; I.C.A., § 41-905.]

CHAPTER 11

RIGHTS OF WAY

SECTION.

- 42-1101. Rights of landowners to water.
 42-1102. Owners of land — Right to right of way.
 42-1103. Owners of springs and streams — Right to right of way.
 42-1104. Right of way over state lands.

42-1101. Rights of landowners to water. — All persons, companies and corporations owning or claiming any lands situated on the banks or in the vicinity of any stream, are entitled to the use of the waters of such stream for the purpose of irrigating the land so held or claimed. [R.S., § 3180; reen. R.C. & C.L., § 3299; C.S., § 5646; I.C.A., § 41-1001.]

Riparian Rights.

In the dissenting opinion this section was cited in support of the application of the doctrine of riparian rights to the irrigation law, but the majority of the court, without citing this section, declared, in effect, that the doctrine of riparian rights has no place in the jurisprudence of this state. *Drake v. Earhart*, 2 Idaho 750, 23 P. 541 (1890).

Riparian rights are substantial property rights which may not be arbitrarily destroyed, but they are subject to the police power of the state and, within reasonable

SECTION.

- 42-1105. Right of way for riparian proprietors.
 42-1106. Right of eminent domain.
 42-1107. Right of way for drains.
 42-1108. Right to cross ditches.

limits, may be modified by legislation passed in the interest of the general welfare. *California-Oregon Power Co. v. Beaver Portland Cement Co.*, 73 F.2d 555 (9th Cir. 1934), *aff'd*, 295 U.S. 142, 55 S. Ct. 725, 79 L. Ed. 1356 (1935).

Collateral References. Constitutionality of statutes affecting riparian rights. 56 A.L.R. 277.

Prescriptive right of riparian owners to continuance of an artificial channel or ditches. 88 A.L.R. 134.

42-1102. Owners of land — Right to right of way. — When any such owners or claimants to land have not sufficient length of frontage on a stream to afford the requisite fall for a ditch, canal or other conduit on their own premises for the proper irrigation thereof, or where the land proposed to be irrigated is back from the banks of such stream, and convenient facilities otherwise for the watering of said lands cannot be had, such owners or claimants are entitled to a right of way through the lands of others, for the purposes of irrigation: provided, that in the making, constructing, keeping up and maintenance of such ditch, canal or conduit, through the lands of others, the person, company or corporation, proceeding under this section, and those succeeding to the interests of such person, company or corporation, must keep such ditch, canal or other conduit in

good repair, and at the expense of the owner thereof, by such work or repairs thereof, or resulting therefrom, (to the extent avoidable) to such owner. [R.C. & C.L., § 3300; C.S., § 5648.]

Compiler's notes. These sections so appeared in the

ANALY.

Condemnation for right of way.
 Use of existing canal.

Condemnation for Right of Way.

Where an owner of land for irrigation water across adjacent landowner, the owner has a right of way to such land under the law of eminent domain. *Marty*, 97 Idaho 85, 540 P.2d 949 (1973), *overruled on other grounds*, 401 U.S. 1000 (1975). *Idaho State Court of First Jud*, 546 P.2d 949 (1976).

Landlocked individuals have a right of way through the purposes of irrigation. *Cañon Co. v. Twin Falls Canal Co.*, 604 P.2d 122 (1980), 912 U.S. 101 S. Ct. 1983 (1981).

Use of Existing Canal.

Where an irrigation company has chased approximately 300 acres of water and sought to put the water to use on land located within the canal system, but where the

42-1103. Owners of Land.

— Where the owners of land on a stream, desire to conduct irrigation, or to any city, or to any factory, or to any other beneficial use, and to such use, the owners or appropriators have a right of way across the lands of others in the manner above provided. [R.C. & C.L., § 3301; C.S., § 5648; I.C.A., § 41-1002.]

Collateral References. 28 Eminent Domain, §§ 1-9, 18 29A C.J.S., Eminent Domain, § 1-9, 18 Constitutionality of statutes affecting riparian rights. 56 A.L.R. 277 Liability of irrigation districts to supply water, and for negligence.

ACT 20 1993

missioners from compe-
er distributed through
se of any water there-
actual cost of mainte-
l, upon request of such
foot per second to be
ent year. [1899, p. 380,
A., § 41-905.]

of way for riparian propri-
rs.
of eminent domain.
of way for drains.
o cross ditches.

ll persons, companies
ed on the banks or in
f the waters of such
ld or claimed. [R.S.,
C.A., § 41-1001.]

ified by legislation passed
e general welfare. Califor-
Co. v. Beaver Portland Ce-
555 (9th Cir. 1934), aff'd,
Ct. 725, 79 L. Ed. 1356

rences. Constitutionality
ng riparian rights. 56

t of riparian owners to
artificial channel or
134.

. — When any such
th of frontage on a
her conduit on their
e the land proposed
m, and convenient
nnot be had, such
rough the lands of
a the making, con-
, canal or conduit,
oration, proceeding
sts of such person,
or other conduit in

good repair, and are liable to the owners or claimants of the lands crossed by such work or aqueduct for all damages occasioned by the overflow thereof, or resulting from any neglect or accident (unless the same be unavoidable) to such ditch or aqueduct. [1881, p. 269; R.S., § 3181; reen. R.C. & C.L., § 3300; C.S., § 5647; I.C.A., § 42-1002.]

Compiler's notes. The words in parentheses so appeared in the law as enacted.

ANALYSIS

Condemnation for right of way.
Use of existing canal.

Condemnation for Right of Way.
Where an owner of land was denied access for irrigation water across the lands of an adjacent landowner, the owner could condemn a right of way to supply the water under the law of eminent domain. *White v. Marty*, 97 Idaho 85, 540 P.2d 270 (1975); overruled on other grounds, *Carr v. Magistrate Court of First Judicial District*, 108 Idaho 546, 700 P.2d 949 (1985).

Landlocked individuals may condemn a right of way through the lands of others for purposes of irrigation. *Canyon View Irrigation Co. v. Twin Falls Canal Co.*, 101 Idaho 604, 619 P.2d 122 (1980), cert. denied, 451 U.S. 912, 101 S. Ct. 1983, 68 L. Ed. 2d 301 (1981).

Use of Existing Canal.
Where an irrigation company had purchased approximately 300 cfs of Snake River water and sought to put that water to beneficial use on land located west of an existing canal system, but where the irrigation com-

pany had no canal and there existed no natural waterway by which its water could be transported by gravity to its stockholders' lands, the irrigation company could condemn the right to enlarge and use the existing canal in common with the canal company and thus the irrigation company could divert its water from the Snake River into the canal company's canal system and then reclaim a like amount, with due allowance for seepage and evaporation, at a headgate closer to its irrigation project site. *Canyon View Irrigation Co. v. Twin Falls Canal Co.*, 101 Idaho 604, 619 P.2d 122 (1980), cert. denied, 451 U.S. 912, 101 S. Ct. 1983, 68 L. Ed. 2d 301 (1981).

Collateral References. 26 Am. Jur. 2d, Eminent Domain, §§ 1-9, 189-198.

29A C.J.S., Eminent Domain, §§ 1-4, 45.

Constitutionality of statutes affecting riparian rights. 56 A.L.R. 277.

Liability of irrigation district for failure to supply water, and for negligent construction or operation of ditches or canals. 69 A.L.R. 1232; 160 A.L.R. 1171; 169 A.L.R. 536.

Prescriptive right of riparian owners to continuance of an artificial channel or ditches. 88 A.L.R. 134.

Right of owner to alter his easement in such a way as to deprive servient estate of incidental benefits. 172 A.L.R. 193.

42-1103. Owners of springs and streams — Right to right of way.

— Where the owners of any spring, or the appropriators thereof, or of any stream, desire to conduct the waters thereof to any lands for the purposes of irrigation, or to any city or town for the use of the inhabitants thereof, or to any factory, or to any distant place, with the intent to apply the same to a beneficial use, and to accomplish such object it is necessary to cross with ditches, flumes or other conduit, the lands owned or occupied by others than the owners or appropriators of such spring or stream, the right of way over and across the lands of others for conducting said water may be acquired in the manner above provided. [1881, p. 271; R.S., § 3185; reen. R.C. & C.L., § 3301; C.S., § 5648; I.C.A., § 41-1003.]

Collateral References. 26 Am. Jur. 2d, Eminent Domain, §§ 1-9, 189-198.

29A C.J.S., Eminent Domain, §§ 1-4, 45.

Constitutionality of statutes affecting riparian rights. 56 A.L.R. 277.

Liability of irrigation district for failure to supply water, and for negligent construction

or operation of ditches or canals. 69 A.L.R. 1232; 160 A.L.R. 1171; 169 A.L.R. 536.

Prescriptive right of riparian owners to continuance of an artificial channel or ditches. 88 A.L.R. 134.

Right of owner to alter his easement in

OCT 20 1993



State of Idaho
DEPARTMENT OF WATER RESOURCES

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

December 2, 1992

MARY E OLANDER
902 9TH AVE E
GOODING ID 83330

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

Re: Application for Permit No. 63-11957

Dear Applicant:

Enclosed is a copy of a protest(s) filed against the issuance of a permit pursuant to the above-referenced application. The Department suggests that you contact the protestant(s) and attempt to resolve the protest(s).

If this office has not been advised within twenty (20) days that the protest(s) has been resolved, the matter will be scheduled for a conference. At such a conference, the following are the principle items the Department will review (per Section 42-203, 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 purposes 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 under this permit conflict with the local public interest?
6. Will the proposed use be contrary to conservation of water resources within the state of Idaho?

Please contact this office if you have questions regarding this procedure.

Sincerely,

DAVID R. TUTHILL, JR., R.E.
Manager, Western Regional Office

Enclosure: Copy of protest(s)

RECEIVED

OCT 20 1993



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

December 2, 1992

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

E B BYRAM
PO BOX 204
GOODING ID 83330

Re: Application for Permit No. 63-11957 in the Name of Mary E. Olander

Dear Protestant:

This office acknowledges receipt of your protest to the issuance of a permit pursuant to the above referenced application. The Department suggests you contact the applicant(s) directly in an effort to determine what is proposed by the application and to attempt to resolve the protest.

If this office has not been advised within twenty (20) days that the protest has been resolved, the matter will be scheduled for conference. At such a conference, the following are the principle items the Department can consider in either approving or denying an application or permit (Section 42-203, 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 purposes 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 under this permit conflict with the local public interest?
6. Will the proposed use be contrary to conservation of water resources within the state of Idaho?

If this office can be of further assistance, please contact us.

Sincerely,

DAVID R. TUTHILL, JR., P. E.
Manager, Western Regional Office

DRT/st

RECEIVED

OCT 20 1993

DEC - 2 1992

Department of Water Resources
Western Regional Office

11/30/92

Director, Dept. of water resources- Western region
2735 Airport Way
Boise, ID 83705

In regards to water application filing 63-11957
Mary Olander
902 9th Ave. E.
Gooding, ID 83330

I Erle B. Byram protest this application. I own lots in this subdivision and there are several reasons that the application should be denied and the reasons will be presented at the hearing.


E.B. Byram
P.O. Box 204
Gooding, ID 83330

OCT 20 1993

AFFIDAVIT of PUBLICATION

State of Idaho }
County of Gooding } ss.

Department of Water Resources
Western Regional Office

Betty Nance, being first duly sworn, deposes and says that she is the printer (publisher) of the Lincoln County Journal, a newspaper published every week in Shoshone, County of Lincoln, State of Idaho; that said newspaper has been continuously and uninterruptedly published for a period of seventy-eight consecutive weeks prior to the first publication of the annexed notice, and is a newspaper qualified to publish legal notices as provided by act of the 1919 session of the legislature of the State of Idaho, known as House Bill 145; that the annexed advertisement was published once each week for

2 consecutive issues in said newspaper proper and not in a supplement; that the date of the first publication of said advertisement was on the

18 day of November, 1992

and the date of the last publication was on the 25 day of

November, 1992

Betty Nance

Subscribed and sworn to before me this 25th day of November, 1992

(SEAL)

Norma De Voe

NOTARY PUBLIC

GOODING COUNTY LEADER
Gooding, Idaho

COST OF PUBLICATION

Number of Picas per Line _____

Number of Lines in Notice _____

Number of Insertions 24

Lines tabular at _____ 6¢/Pica
319 Lines straight at 15.95 5¢/Pica
Subsequent lines at 12.76 4¢/Pica
TOTAL COST 28.71

COPY OF NOTICE

(Paste Here)

Mary Olander groundwater
TITLE OF NOTICE

PLAINTIFF ATTORNEY

DEFENDANT

PLAINTIFF

Dept of Water Resources
BILL TO

PUBLICATION RATES

(Idaho Code, Rev. Statutes 1984)

7-8 pt. per line tabular.....6¢/Pica

7-8 pt. per line straight.....5¢/Pica

7-8 pt. per line successive
insertions.....4¢/Pica

RECORDED

OCT 20 1993

No 5514

13775

**NOTICE OF APPLICATION FOR
WATER RIGHT**

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

63-11957 ✓ *st*

OLANDER, MARY 3

902 9TH AVE E

GOODING, ID 83330

Source: GROUNDWATER

Diversion Pt: SESW Sec 18 T 03N

R 14E in CAMAS County.

Use: DOMESTIC (.020 CFS)

Total Diversion: (.020 CFS)

Date Filed: 9/29/1992

In: CAMAS County

T03N R14E S18 SESW

The permit(s) will be subject to all
prior water rights. Protests must be
filed with the Director, Dept. of
Water Resources, Western Region,
2735 Airport Way, Boise, Idaho
83705 on or before DECEMBER 7
1992.

s/ R. KEITH HIGGINSON, DIREC-
TOR

Pub: 11-18/25 G13775

State law requires that this report be filed with the Director, Department of Water Resources within 30 days after the completion or abandonment of the well.



State of Idaho
DEPARTMENT OF WATER RESOURCES

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

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

October 29, 1992

Mary E. Olander
902 9th Avenue E.
Gooding, ID. 83330

RE: Application for Permit

Dear Applicant:

Your application for permit for a domestic well was received at this office on 10/19/92. Before the application can be advertised and processed, additional information is needed.

Please review the attached map. The application states that the well and home are in SESW Sec. 18. The subdivision plat that you included with your application does not allow me to confirm the location of the well and homesite. Please mark the location of your property on the enclosed map and return it to me within 30 days. Note that the map outlines Section 18 and the SESW tract in question. Based on your response, the application will be processed.

Let me know if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Steve Lester".

Steve Lester
Water Rights Supervisor

Enclosure: Map

601 20 1993

DATE: OCTOBER 16, 1992

TO: DAVID TUTHILL, MANAGER
WESTERN REGION

FROM: MEL SCHULTE *MTS.*
WATER RESOURCE AGENT
SOUTHERN REGION

Steve
RECEIVED

OCT 19 1992

Department of Water Resources
Western Regional Office

DAVE:

ENCLOSED ARE THREE APPLICATIONS FOR PERMIT AND ONE PROOF OF BENEFICIAL USE THAT WE RECEIVED AT SOUTHERN. THEY ALL RELATE TO SUBDIVISIONS AT THE EXTREME EASTERN EDGE OF BASIN 63 SO THEY NEED TO BE PROCESSED AT WESTERN. THERE IS A QUESTION CONCERNING WHERE THE SECTION 18-19 LINE CROSSES BYRAM'S LITTLE SMOKEY SUBDIVISION. I WAS PROMISED BY THE APPLICANTS A COPY OF A CURRENT SURVEY AND WILL FORWARD IT TO YOUR OFFICE WHEN I RECEIVE IT.

IT'S MY UNDERSTANDING THE APPLICANTS WERE ADVISED BY AN ATTORNEY TO FILE THESE PERMITS EVEN THOUGH THEY ARE EXEMPT. EVIDENTLY THERE IS A CONFLICT AMONG PROPERTY OWNERS THAT MOTIVATED THE FILINGS. IF QUESTIONS ARISE OR I CAN PROVIDE ANY ADDITIONAL INFORMATION PLEASE LET ME KNOW.

HOPE ALL IS GOING WELL FOR YOU AND THE WESTERN STAFF. SAY HELLO TO EVERYONE FOR ME. TAKING THIS POSITION AT SOUTHERN HAS BEEN A GOOD MOVE FOR ME.

MTS.
ENC.

OCT 20 1992

63-11957

OLANDER, MARY E
902 9TH AVE E
GOODING, ID 83330

Source: GROUNDWATER

Diversion Pt: SESW Sec 18 T 03N R 14E in CAMAS County.

Use: DOMESTIC (.020 CFS)
Total Diversion: (.020 CFS)

Date Filed: 9/29/1992

In: CAMAS County
T03N R14E S18 SESW

1993