



STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
LAWRENCE G. WASDEN

November 22, 2004

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
P. O. Box 2707
Twin Falls, Idaho 83303-2707

RE: Subcase Nos. 29-7479 & 29-7647

Dear Clerk:

Enclosed for filing, please find the original Affidavit of Ernest Carlsen and supporting materials. Please note that there is a typographical error at paragraph 7 of the Affidavit which identifies subcase number 29-7646 rather than the correct subcase number of 29-7647. This error will be corrected at trail.

Sincerely yours,

A handwritten signature in cursive script that reads "Ray Williams".

Ray Williams
Paralegal

Enclosure

cc: Gene & Jennifer Wise
Robert M. Wardle

LAWRENCE G. WASDEN
Attorney General
State of Idaho

CANDICE M. MCHUGH
Deputy Attorney General
Idaho Department of Water Resources
P.O. Box 83720
Boise, Idaho 83720-0098
Telephone: (208) 327-7900
Fax: (208) 327-5400
Idaho State Bar # 5908

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS**

In Re SRBA

Case No. 39576

Subcase Nos. 29-7479 & 29-7647

**AFFIDAVIT OF
ERNEST CARLSEN**

State of Idaho)
) ss.
County of Ada)

Ernest Carlsen, being first duly sworn, deposes and states as follows:

1. My name is Ernest Carlsen. I am a Water Right Supervisor with the Adjudication Bureau of the Idaho Department of Water Resources ("IDWR" or the "Department"). This affidavit is based on my own personal knowledge.

2. My work address is Idaho Department of Water Resources, 900 North Skyline Drive, Suite A, Idaho Falls, Idaho 83402. I reside in Idaho Falls, Idaho.

3. My educational background is as follows: Bachelor of Science in Biology.

4. My Department of Water Resources work experience includes the following:
Began working for IDWR in June 1976 as a Water Resource Agent, conducting licensing field exams and processing permit and transfer applications. Promoted to Water Resource Analyst in 1978 and as the representative from Eastern Region started attending administrative hearings and drafting Memorandum Decisions on protested applications. From 1987 to present I have been the Water Right Supervisor for the Snake River Basin Adjudication program in Eastern Region. In this position I oversee the various SRBA activities by four technical and two clerical staff. I also conduct field investigations and prepare Preliminary Director's Reports on the more technical water claims filed in the SRBA.

5. I understand that on October 13, 2004, the Court held a status conference on subcase nos. 29-7479 and 29-7647. In subcase 29-7647, Robert Wardle is the Claimant/Objector. In subcase 29-7479, Gene and Jennifer Wise are the Claimants/Objectors. At the status conference, the Special Master requested that the Department submit an affidavit that explains its recommendation for not increasing the quantity of water for these two subcases.

6. Water right no. 29-7647 was licensed on August 19, 1985, for 0.12 cfs with a June 15, 1982, priority date. A certified copy of this license is attached hereto as Exhibit A. Water right no. 29-7479 was licensed on July 29, 1986 for 0.12 cfs with an April 3, 1979, priority date. A certified copy of this license is attached hereto as Exhibit B. Both water rights were developed following the mandatory permit date of May 20, 1971, for appropriation from a surface water source.

7. Subcase nos. 29-7646 and 29-7479 are both licensed water rights and went through the administrative process binding the parties, their successors and the Department. See Idaho Code § 42-220. Proper notice was given to interested parties, and changing the quantity is not appropriate without an additional administrative process.

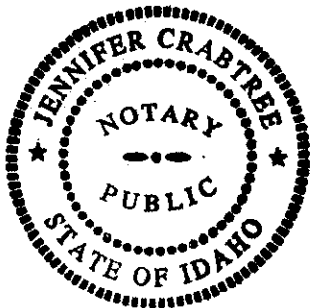
8. The permit applications for right no. 29-7646 and 29-7479 contained a request of 0.02 cfs per acre. Certified copies of the permits are attached hereto as Exhibit C and D, respectively. The licenses issued were for the amount per acre requested.

9. In addition, the SRBA Court has held that it is not proper to collaterally attack a license in the SRBA, *Memorandum Decision and Order on Challenge; and Order of Partial Decree*, Wood v. Troutt, Subcase No. 75-05663B (Issued May 9, 2002). Therefore, I believe there is no basis for IDWR to submit Director's Report for these two water rights in the SRBA that increase the licensed rate of diversion.

DATED this 17th day of November, 2004


ERNEST CARLSEN
Senior Water Resources Agent, IDWR

SUBSCRIBED AND SWORN to before me on this 17 day of November, 2004.




Notary Public for Idaho
Residing at Idaho Falls, Idaho
My Commission Expires: 9/23/09

CERTIFICATE OF MAILING

I certify that on November 22, 2004, I mailed the original and copies of this form, including all attachments, to the following persons by mailing the original and/or copies, postage prepaid and addressed as follows:

1. Original to:

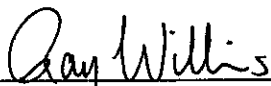
Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
P. O. Box 2707
Twin Falls, Idaho 83303-2707

2. Copies to:

Gene M. & Jennifer A. Wise
2712 S. Marsh Creek Road
McCammon, ID 83250

Robert M. Wardle
2652 S. Marsh Creek Road
McCammon, ID 83250

IDWR Repository
P.O. Box 83720
Boise, ID 83720



Signature of person or attorney mailing the form

WATER RIGHT LICENSE

THIS IS TO CERTIFY, that Charles Normann

Beneficial Use	Period of Use		Rate of Diversion	Annual Volume
Irrigation	from March 15	to November 15	at 0.12 cfs and	2.4 acre feet
	from	to	at	cfs and
	from	to	at	cfs and

(both dates inclusive)

Description and location of place of use

The foregoing is a true and certified copy of the document on file at the department of Water Resources.

EXHIBIT

A

MICROFILMED

CONDITIONS OF APPROVAL

- a. Modifications to or variance from this license must be made within the limits of Section 42-222, Idaho Code, or the applicable Idaho Law. This right may be forfeited by five years of non-use.
- b. The right to the use of the water hereby confirmed is restricted and appurtenant to lands or place of use herein described, and is subject to all prior water rights, as provided by the laws of Idaho.
- c. Any water right confirmed in this license 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 license 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 license.

Use of water under this license is subject to control by the watermaster of State Water District No. 29H, Marsh Creek.

Witness the seal and signature of the Director, affixed at Boise, Idaho, this 19th day of AUGUST, 19 85.

Acting for the

Director

Norman C. Young

State of Idaho
Department of Water Resources

SCANNED
JUN 15 2001

WATER RIGHT LICENSE

License of Water Right No. 29-7479 Priority April 3, 1979 Amount 0.12 cfs

THIS IS TO CERTIFY, that Gene M. Wise
of Pocatello, Idaho, has complied with the terms and conditions of Permit
No. 29-7479 issued pursuant to Application for Permit dated April 3, 1979,
and has submitted proof to the Department of Water Resources on July 23, 1982,
that he has applied water to a beneficial use; an examination by the Department indicates that the works have a
capacity for the diversion of 0.12 cfs of water from Walker Creek,
tributary to Marsh Creek, and that the permit holder has applied to a beneficial use and
established a right to use water as follows:

Beneficial Use	Period of Use	Rate of Diversion	Annual Volume
Irrigation	from <u>March 15</u> to <u>November 15</u>	at <u>0.12</u> cfs and	<u>3.40</u> acre feet
	from _____ to _____	at _____ cfs and	
	from _____ to _____	at _____ cfs and	

(both dates inclusive)

Subject, however, to the condition that no more than 0.12 cfs of water be diverted at any one time, and
that the amount of water so diverted and to which such right is entitled and confirmed for the purpose
aforementioned is limited to the amount which can actually be beneficially used and shall not exceed
21.0 acre feet per year, said waters to be diverted within the NE 1/4 Section 15,
Twp 8S, Rge 36E in the County of Bannock

Description and location of place of use:

Twp.	Range	Sec.	RESOURCES																Totals
			NE 1/4				NW 1/4				SW 1/4				SE 1/4				
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	
8S	36E	15								3						3			6

The foregoing is a true and certified copy of
the document on file at the department of
Water Resources.

Signed this 17 day of Nov., 2004
Christine Roberts

Total number of acres irrigated 6

EXHIBIT

B

CONDITIONS OF APPROVAL

a. Modifications to or variance from this license must be made within the limits of Section 42-222, Idaho Code, or the applicable Idaho Law. This right may be forfeited by five years of non-use.

b. The right to the use of the water hereby confirmed is restricted and appurtenant to lands or place of use herein described, and is subject to all prior water rights, as provided by the laws of Idaho.

c. Any water right confirmed in this license 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 license 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 license.

Use of water under this license is subject to control by the watermaster of State Water District No. 29H, Marsh Creek.

A lockable device subject to the approval of the Department shall be maintained on the diverting works in a manner that will provide the watermaster suitable control of the diversion.

Witness the seal and signature of the Director, affixed at Boise, Idaho, this 29TH day of

JULY, 19 86.

Acting for the Director

Norman C. Young

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR PERMIT

APPROVED

To appropriate the public waters of the State of Idaho

1. Name of applicant CHARLES NORMAN Phone 254-2448
Post office address RT 1, Box 1180, Marsh Cr. Rd., McCammon, Idaho 83250
2. Source of water supply WALKER CREEK which is a tributary of Marsh Creek
3. Location of point of diversion is NE $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 15 Township 8S
Range 36E B.M. Bannock County, additional points of diversion if any: _____

4. Water will be used for the following purposes:

- Amount .12 for IRRIGATION purposes from April 1 to Nov. 1 (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:

- a. .12 cubic feet per second and/or b. _____ acre-feet per annum.

6. Proposed diverting works:

- a. Description of ditches, flumes, pumps, headgates, etc. 1,000 FT of 12"X18" irrigation ditches currently in place and previously used by prior owners to irrigate this property from Walker Creek.
- b. Height of storage dam N/A feet, active reservoir capacity _____ acre-feet; total reservoir capacity _____ acre-feet, materials used in storage dam: _____

Period of year when water will be diverted to storage _____ to _____ inclusive.
(Month/Day) (Month/Day)

- c. Proposed well diameter is _____ inches; proposed depth of well is _____ feet.

7. Time required for the completion of the works and application of the water to the proposed beneficial use is 1 years (minimum 1 year - maximum 5 years).

8. Description of proposed uses:

a. If water is not for irrigation:

- (1) Give the place of use of water: _____ $\frac{1}{4}$ of _____ $\frac{1}{4}$ of Section _____ Township _____
Range _____ B.M. _____

- (2) Amount of power to be generated: _____ horsepower under _____ feet of head.

- (3) List number of each kind of livestock to be watered ALL Live stock currently have access to Walker Cr. which flows through this property.

- (4) Name of municipality to be served N/A, or number of families to be supplied with domestic water _____

- (5) If water is to be used for other purposes describe: _____
N/A



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

TWP	RANGE	SEC.	NE¼				NW¼				SW¼				SE¼				TOTALS
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
8s	36E	15		~~6.05~~	6.05	As	per	telecon			6.05								6.05

Total number of acres to be irrigated 6.05

c. Describe any other water rights used for the same purposes as described above. NONE

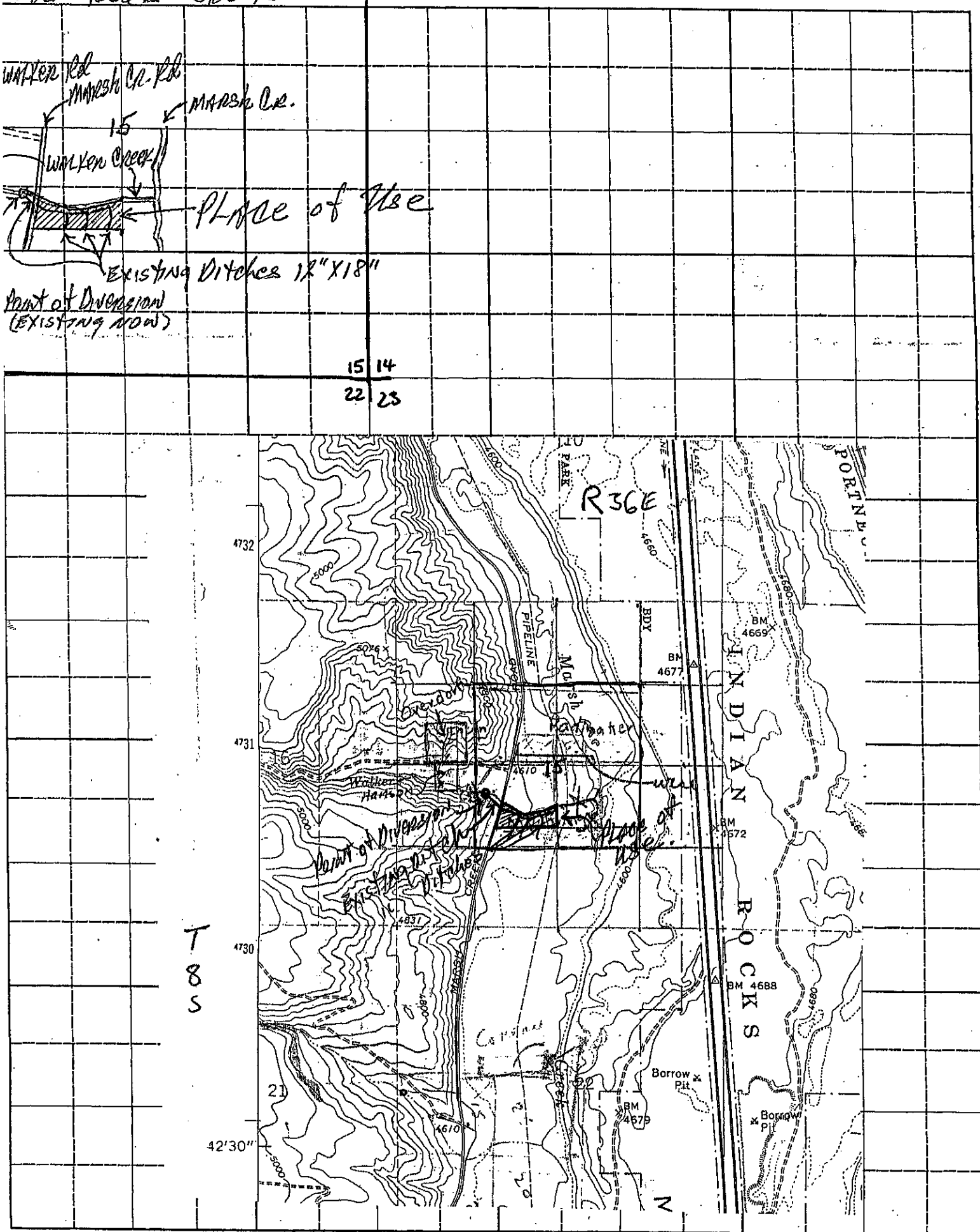
9. a. Who owns the property at the point of diversion MAURINE HENRICKS
b. Who owns the land to be irrigated or place of use Charles Norman
c. If the property is owned by a person other than the applicant, describe the arrangement enabling the applicant to make this filing N/A

10. Remarks The ditch from point of diversion and all ditches needed for irrigating this 6.05 acres currently exist from prior use for this purpose. Walker Creek crosses through front (west side) of this property and follows north border of property the full length. We also have a contract to purchase property which borders Walker Creek to the point it joins Marsh Creek and includes the junction with Marsh Creek. This contract is to purchase 10 acres from Chester Mechling and includes water rights on Marsh Creek. There will be no one downstream from us on Walker Creek that could be affected by approval of this permit.

WBO/CAL

(1. Map of proposed project. show clearly the proposed point of diversion, place of use, section number, township and range number.

T8S R36E SEC 15



Scale: 4 inches equal 1 mile.

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

Charles Norman
(Applicant)

Priority 6/15/1982

Received by CW Date 6-15-82 Time 10:25A.
Preliminary check by KCW Fee \$ 30.00 JUN 20 2001
Receipted by BP Date 6-22-82 # 92-301 SCANNED
Publication prepared by BP Date 6-23-82
Published in Idaho State Journal
Publication dates 7-1 & 7-8-1982
Publication approved CW Date 7-20-82
Protests filed by: None

Copies of protests forwarded by _____
Hearing held by _____ Date _____
Recommended for approval denial by RC

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. 29-7647, and said application is hereby APPROVED.

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 September 1, 19 83.

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. Other: Use of water under this permit in no way grants any right-of-way or easement across the land of another.
Use of water under this permit is subject to control by the watermaster of State Water District No. 29-H, Marsh Creek.

Witness my hand this 25th day of August, 1982.

L. Glen Saxton
Chief, Operations Bureau

The foregoing is a true and certified copy of the document on file at the department of Water Resources.

Signed this 22 day of Nov, 20 84
Christine Roberts

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR PERMIT

To appropriate the public waters of the State of Idaho

APPROVED

1. Name of applicant Gene M. Wise Phone 232-4806
Post office address 345 South 10th, Pocatello, Idaho 83201
2. Source of water supply Walker Creek which is a tributary of Marsh Creek trib Portneuf River
3. Location of point of diversion is NE $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 15 Township 8S
Range 36E B.M. Bannock County, additional points of diversion if any: _____
4. Water will be used for the following purposes:
Amount 0.16 for Irrigation purposes from Apr. 1 to Nov. 1 (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:
a. 0.16 cubic feet per second and/or b. _____ acre-feet per annum.
6. Proposed diverting works:
a. Description of ditches, flumes, pumps, headgates, etc. diversion ditches to place of use

b. Height of storage dam _____ feet, active reservoir capacity _____ acre-feet; total reservoir capacity _____ acre-feet, materials used in storage dam: _____
Period of year when water will be diverted to storage _____ to _____ inclusive.
(Month/Day) (Month/Day)
c. Proposed well diameter is _____ inches; proposed depth of well is _____ feet.
7. Time required for the completion of the works and application of the water to the proposed beneficial use is 5 years (minimum 1 year — maximum 5 years).
8. Description of proposed uses:
a. If water is not for irrigation:
(1) Give the place of use of water: _____ $\frac{1}{4}$ of _____ $\frac{1}{4}$ of Section _____ Township _____
Range _____ B.M. _____
(2) Amount of power to be generated: _____ horsepower under _____ feet of head.
(3) List number of each kind of livestock to be watered _____

(4) Name of municipality to be served _____, or number of families to be supplied with domestic water _____
(5) If water is to be used for other purposes describe: _____

EXHIBIT

D

[illegible]

Total number of acres to be irrigated	8
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c. Describe any other water rights used for the same purposes as described above. None

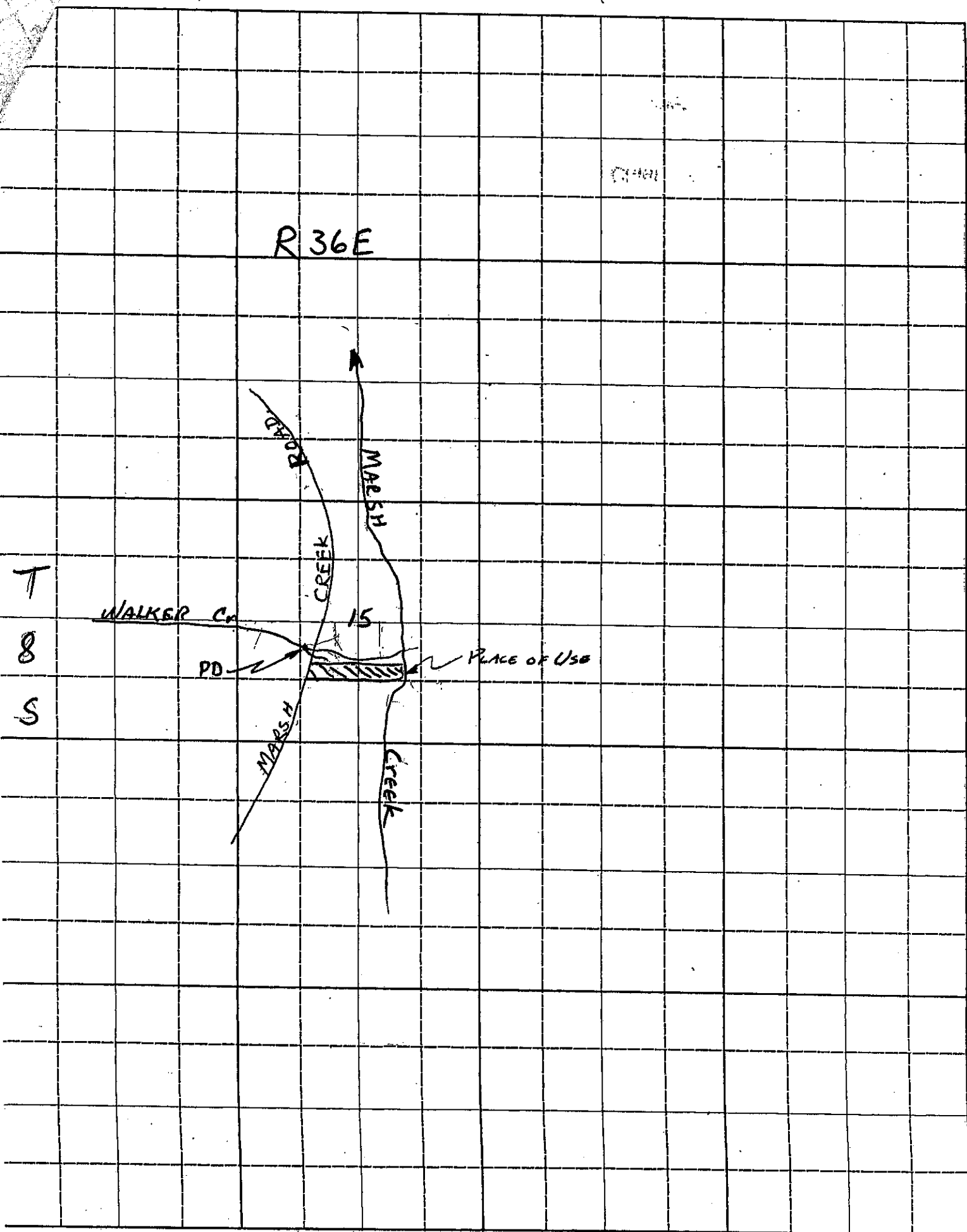
9. a. Who owns the property at the point of diversion George Henricks

b. Who owns the land to be irrigated or place of use _____ Applicant

c. If the property is owned by a person other than the applicant, describe the arrangement enabling the applicant to make this filing the point of diversion is same as when land was
in a single ownership.

10. Remarks

of proposed project: show clearly the proposed point of diversion, place of use, section number, township and range number.



Scale: 2 inches equal 1 mile.

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

Gene R. Wise
(Applicant)

priority

4/3/79

Received by _____ dh _____ Date 4-3-79 Time 4:30 p.m.

Preliminary check by LJ Fee \$ 20.00

Receipted by _____ dh _____ Date 4-3-79 # 12997

Publication prepared by 4-6-79 dh _____ Date 4-6-79

Published in Idaho State Journal

Publication dates April 12 & 19, 1979

Publication approved 97 Date 5/9/79

Protests filed by: _____

Copies of protests forwarded by _____

Hearing held by _____ Date _____

Recommended for approval denial by EMC 3.5

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. 29-7479, and said application is hereby approved.

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 August 1, 19 84.

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. Other: (1) The issuance of this permit in no way grants any right-of-way or easement across the land of another. (2) Use of water under this permit is subject to control by the watermaster of State Water District # 29 H Marsh Creek (3) A measuring device, subject to the approval of the Department, shall be installed on the diverting works in a manner that will provide the watermaster suitable control of the diversion.

Witness my hand this 17th day of August, 1979

The foregoing is a true and certified copy of the document on file at the department of Water Resources.

Signed this 22 day of Nov, 20 04
Christine Roberts

A. Glen Saylor
Chief, Operations Bureau