

IDAHO DEPARTMENT OF WATER RESOURCES  
Proof Report

6/25/2020

Water Application 45-7581

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	BRUCE B TURNER 1046 W SHERINGTON DR EAGLE, ID 83616 (208) 938-0001

Status: Denied

Source

Tributary

Beneficial Use

From

To

Diversion Rate

Volume

Source and Point(s) of Diversion

Place Of Use

Conditions of Approval:

Comments:

Dates and Other Information

Application Denied Date: 6/11/1991

Number of Protests: 0

Water District Number: TBD

Application Type: New Appropriation

Mitigation Plan: False

Combined Use Limits

N/A

SubCase:

N/A

Water Supply Bank:

N/A



State of Idaho

## DEPARTMENT OF WATER RESOURCES

Southern Region, 2148 4th Ave. East, Twin Falls, Idaho 83301 (208) 734-3578

CECIL D. ANDRUS  
Governor

R. KEITH HIGGINSON  
Director

July 28, 1988


Bruce B. Turner  
Water Canyon #13  
Declo, ID 83323

Re: Application No. 45 7581

Dear Mr. Turner:

As of today, this office has completed a draft of a decision in the matter of your application and forwarded the file to the state office for final review.

Very Truly yours,

  
Loren O. Holmes, P. E.  
Southern Region Manager

45-7581



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720 - (208) 334-7900

*Loren*

CECIL D. ANDRUS

GOVERNOR

R. KEITH HIGGINSON

DIRECTOR

July 14, 1988

Bruce B. Turner  
Water Canyon #13  
Declo, Idaho 83323

RECEIVED

JUL 20 1988

Department of Water Resources  
Southern Region Office

Re: Application for Permit No. 45-7581

Dear Mr. Turner:

The decision on your application to divert water from Marsh Creek is in the final stages of being drafted and the recommended decision will be submitted to this office by the Southern Region office by next week.

We apologize for the delay in issuing the decision on your application and assure you that the delay was due to the continuously heavy work load that the regional office has.

The decision on your application should be issued within the next three weeks. If you have any questions please let me know.

Sincerely,

*Norm C. Young*

Norman C. Young, Administrator  
Resources Administration Division

C: Bruce Newcomb

BEFORE THE DEPARTMENT OF WATER RESOURCES  
OF THE STATE OF IDAHO

RECEIVED

SEP 15 1985

Department of Water Resources  
Bureau of Water Rights

IN THE MATTER OF APPLICATION  
FOR PERMIT AND PROPOSAL TO  
EXCHANGE WATER NO. 45-7581

BRUCE B. TURNER,

Applicant;

BURLEY IRRIGATION DISTRICT,  
MINIDOKA IRRIGATION DISTRICT,  
U.S. BUREAU OF RECLAMATION,

Protestants.

SOURCE: MARSH CREEK

COUNTY: Cassia

PROPOSED MEMORANDUM DECISION AND ORDER  
DENYING APPLICATION FOR PERMIT NO. 45-7581

BY HEARING OFFICER BOBBY D. FLEENOR

Bruce B. Turner (applicant), having filed an application for permit and application to exchange water; protests having been received; and a hearing having been held, the Department finds, concludes, and orders as follows:

FINDINGS OF FACT

The Application

1) On July 3, 1985, Bruce B. Turner, applied to the Department of Water Resources to appropriate 8.0 cubic feet per second (cfs) of water from the unappropriated flows of Marsh Creek, tributary to the Snake River, in Cassia County.

2) The applicant proposed to divert the water by means of a pump located in the SW1/4SW1/4NW1/4 Sec. 36, Twp. 10S, Rge. 24E, B.M., and use it for

irrigation of 506 acres of land located in the N1/2, SW1/4, and W1/2SE1/4 of Sec. 1, Twp. 11S, Rge. 24E B.M.

3) The application was accompanied by a document titled, "Proposal to Exchange Water" in which the applicant proposed to lease 1500 acre-feet per year of water stored in Palisades Reservoir through the Water District 01 Rental Pool and release it to replace water depleted from the Snake River by his proposed diversion from Marsh Creek.

4) Notice of the application and proposal to exchange water was published in the South Idaho Press and Idaho Falls Post Register on September 12 and 19, 1985.

#### Protests

5) On September 25, 1985, a protest against granting of the application was received from the Burley Irrigation District (BID) and on September 30, 1985, protests were received from the Minidoka Irrigation District (MID) and from the U. S. Bureau of Reclamation (USBR). The protestants based their objections on the following:

- a) The proposed diversion would reduce the quantity of water available under existing rights.
- b) The supply of unappropriated water available at the proposed point of diversion is insufficient for the purpose for which it is sought to be appropriated.
- c) Approval of the application is not in the local public interest in that it will interfere with the proper operation of the Burley Irrigation District.

#### Hearing

6) On December 17, 1985, a hearing in the matter was held in Burley. The applicant was present and represented by Roger Ling, Attorney. BID was represented by Douglas Whipple, Attorney and Evan Rasmussen, District Manager. MID was represented by Kent Fletcher, Attorney. USBR was represented by Max Van Den Berg from the Burley Project office.

- 7) At hearing, the parties stipulated the following:
- a) That Marsh Creek is a natural watercourse which is tributary to the Snake River.
  - b) That the total diversion rate proposed by the applicant is reduced from 8 cfs to 2.2 cfs.
  - c) That the applicant withdraws that portion of his application seeking to obtain a water right, and desires to proceed only with the application for a right to exchange water under Section 42-240, IDAHO CODE.
  - d) That the applicant will exchange water leased by him from Water District No. 1, Water Bank which consists of stored water above the point of diversion of MID and BID for water in Marsh Creek that would, but for the diversion of the water by applicant, return to the Snake River.
  - e) That the leased water sought to be exchanged for waters in Marsh Creek is a supplemental water source for lands of the applicant, which lands are not served by BID.
  - f) That BID has three points of diversion on Marsh Creek, located downstream from applicant's pump.
  - g) That applicant will install flow meters to determine the water being diverted by exchange and will not divert water from Marsh Creek when there is not sufficient water in Marsh Creek to meet the demands of BID at its diversion downstream from applicant's diversion.
  - h) That the protest of MID is withdrawn so long as the applicant causes leased water to be placed in the Snake River equal to the amount diverted from Marsh Creek by the applicant under the exchange.
- 8) The following exhibits were entered on the record:
- a) BID Exhibit No. 1: A map showing the district boundaries and the BID diversion points on Marsh Creek.
  - b) BID Exhibit No. 2: A map showing the locations of Applicant's proposed diversion point and place of use.
  - c) BID Exhibits No. 3 through 8: Photographs showing Marsh Creek at each of the BID diversions.
  - d) USBR Exhibit No. 1: Water flow data excerpted from the United States Geological Survey records for gaging station 103083200, "Marsh Creek near Albion, Idaho" for water years 1969 through 1974.

9) The Department takes official notice of the Decree of the Fourth Judicial District Court in the case of Twin Falls Canal Co. vs Charles N. Foster, dated June 20, 1913 (hereinafter termed the Foster Decree).

#### Existing Water Rights

10) Under Water Right No. 45-0512, designated Right No. 8 in the Foster Decree, the USBR Minidoka Project is entitled to 150 cfs of water from Marsh Creek with a priority of April 10, 1909. BID pumps water from Marsh Creek downstream from applicant's proposed diversion and has the capability to divert flows into its "J" canal upstream from applicant. Water which is not diverted from Marsh Creek flows into the Snake River to become part of the stream flow gains which are accounted for by the Watermaster of Water District 01 and credited against withdrawals from storage by the Minidoka Project.

#### Availability of Water

11) Based on evidence entered by protestants, the flows of Marsh creek have been insufficient to fill water right No. 45-0512 (150 cfs) during the period 1969 through 1974 and would only rarely be sufficient to fill that right during the irrigation season. However, at times the flow of Marsh Creek exceeds the amounts actually pumped by BID.

#### Local Public Interest

10) BID alleges that applicant's proposal will interfere with operation of the district by requiring delivery of water to lands outside the district to the injury of users within the district. Of the flow of Marsh Creek, 150 cfs is appropriated by BID with a priority senior to applicant. Applicant's place of use is outside the boundaries of the district.

#### CONCLUSIONS OF LAW

##### Applicable legal principles

1) Section 42-105 of the Idaho Code states in part as follows:

The water to which a person may be entitled by reason of valid permit or license issued by the department of water resources of water right heretofore established by diversion and application to beneficial use under the constitution of this state may be turned into the channel of another stream and mingled with its water, and then reclaimed; and water may be turned into any ditch, natural channel or waterway from reservoirs or other sources of water supply, and such water may be substituted or exchanged for an equal amount of water diverted from the stream, creek, or river into which such water flows, or any tributary thereof, but in reclaiming waters so mingled, or diverting water in lieu thereof from any such stream, creek, river, or tributary, the amount of water to which prior appropriators may be entitled shall not be diminished, and due allowance shall be made for loss by evaporation and seepage. Approval of any such exchange of water shall be obtained by filing application for permit to appropriate water under the provisions of section 42-202, Idaho Code, in the event the water to be exchanged is unappropriated public water, or by filing an application to exchange water as provided in this act in the event the water to be exchanged has been previously appropriated by the applicant under the constitution or statutes of this state. In no case, however, shall any exchange of water be approved by the department of water resources until the department has received an agreement in form approved by the attorney general signed by the person proposing the exchange and each person or organization owning rights to water with whom such exchange is proposed to be made. (Emphasis added).

2) Section 42-240 of the Idaho Code, which was repealed by the 1986 session laws, provided a procedure whereby a person could apply to the department of water resources to exchange water and, upon a finding by the director that the exchange would not affect other water rights, could receive approval for the exchange. Since the repeal of this statute, the only statute under which a person wishing to exchange water may proceed is 42-105.

3) Idaho Code, Sec. 42-203A(5) (Supp. 1987) states in part as follows:

The director of the Department of water resources shall find and determine from the evidence presented to what use or uses the water sought to be appropriated can be and are intended to be applied. 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 department that such application is not made in good faith, and 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 directly affected by the proposed use; the director of the department of water resources may reject such application and refuse issuance of a permit therefor, or may partially approve and grant a permit for a smaller quantity of water than applied for, or may grant a permit on conditions.

4) Consideration of the local public interest criterion of Idaho Code, Sec. 42-203A(5) (Supp 1987) is defined by the Department's Water Appropriation Rules and Regulations, Rule 5,1,5, to include:

Compliance with applicable air, water, and hazardous substance standards, and compliance with planning and zoning ordinances of local or state jurisdictions.

#### Application of legal principles

##### Impact on Existing Rights

5) Applicant does not propose to physically deliver stored water to Marsh creek. The natural flows of Marsh Creek are, at times, insufficient to meet the demands of the existing BID diversions, therefore, additional diversion by applicant would reduce the quantity of water available under existing rights.

##### Availability of Water

6) Marsh Creek flows are not sufficient to fill the 150 cfs water right of the Minidoka Project. Water not diverted by BID flows into the Snake River and is credited against diversions from the Snake River by the Minidoka Project. Therefore, there is insufficient water available for appropriation by applicant.

##### Local Public Interest

7) The applicant's proposal does not interfere with the jurisdiction of the BID or obligate it to deliver water to lands outside the district.

##### Exchange of Water

8) Applicant's proposal is to divert exchange water from one source

for water to be diverted from another source without any commingling of the waters. No agreement exists between the applicant and BID or other users of rights involved in the proposed exchange as required by Section 42-105 of the Idaho Code.

Conclusion

9) Since there is no exchange agreement between the Applicant and the Burley Irrigation District and since there is not sufficient water in Marsh Creek for the proposed project without the exchange, this application must be denied.

ORDER

IT IS THEREFORE, HEREBY ORDERED that application for permit and proposal to exchange water No. 45-7581 be DENIED.

Dated this 6<sup>th</sup> day of September, 1988.

  
BOBBY D. FLEENOR  
Hearing Officer

STATE OF IDAHO  
DEPARTMENT OF WATER RESOURCES  
APPLICATION FOR PERMIT

To appropriate the public waters of the State of Idaho

1. Name of applicant Bruce B. Turner Phone 654-2616  
Post office address Water Canyon #13, Declo, ID. 83323
2. Source of water supply Marsh Creek which is a tributary of Snake River
3. Location of point of diversion is SW  $\frac{1}{4}$  of SW  $\frac{1}{4}$  of NW  $\frac{1}{4}$ , Govt. Lot \_\_\_\_\_  
Sec. 36 Township 10S. Range 24E B.M. Cassia County; additional  
points of diversion if any: \_\_\_\_\_

4. Water will be used for the following purposes:

Amount 8.0 cfs for Irrigation purposes from Mar. 15 to Nov. 15 (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) 8.0 and/or (b) \_\_\_\_\_  
cubic feet per second acre feet per annum

6. Proposed diverting works:

a. Description of ditches, flumes, pumps, headgates, etc. Centrifugal pump  
Pipeline to place of use

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:  
\_\_\_\_\_ to \_\_\_\_\_ inclusive.

c. Proposed well diameter is \_\_\_\_\_ inches; proposed depth of well is \_\_\_\_\_ feet.

d. Is ground water with a temperature of greater than 90°F being sought? \_\_\_\_\_

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).

45-7581

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. \_\_\_\_\_
- Other; describe fully. \_\_\_\_\_

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	
11S	24E	1	40	40	40	40	38	8	22	40	40	39	39	40		40	40		506

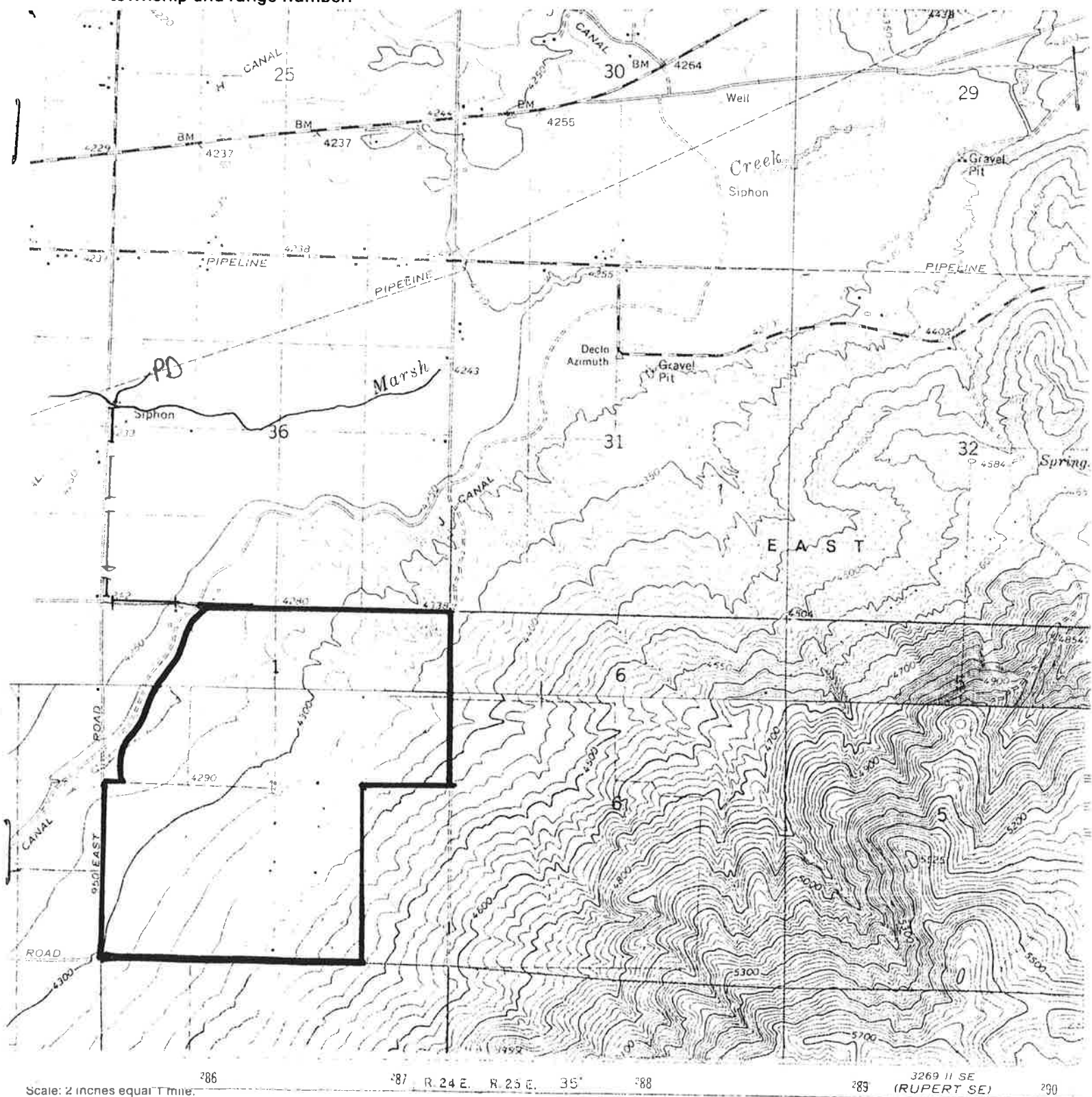
Total number of acres to be irrigated 506

10. Describe any other water rights used for the same purposes as described above. 45-7501  
45-7551, 45-7249

11. a. Who owns the property at the point of diversion? Applicant  
 b. Who owns the land to be irrigated or place of use? Applicant owns 270, Oileen Lewis  
 c. If the property is owned by a person other than the applicant, describe the arrangement enabling the applicant to make this filing. Long-term lease

12. Remarks: Water pumped from marsh Creek will be  
replaced by water leased from Storage as per Section 42-1765  
IDatto Code

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



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.

Bruce B. Lerner  
(Applicant)

Received by T.G. Blau Date 7-3-85 Time 1:30 Preliminary check by J  
Fee \$ 185<sup>00</sup>/<sub>100</sub> Receipted by TGB # 36624 Date 7-3-85  
Publication prepared by M.H. Date 9/4/85 Published in South Id. Press  
I.F. Post Register  
Publication approved maria Date 9/9/85

### 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 9 1985

Department of Water Resources  
Southeast District Office

APPLICATION FOR PERMIT 45-7581

PROPOSAL TO EXCHANGE WATER

In exchange for water diverted under application 45-7581, the applicant proposes to lease 1500 acre-feet per annum of water stored in Palisades Reservoir under License 01-2068.

The stored water is to be released at Palisades dam (NW1/4NE1/4 Sec. 17, T1S R45E, Bonneville county) and delivered via the Snake River to Minidoka dam (SE1/4SW1/4 Sec. 1, T9S R25E, Cassia county) to be released to replace water depleted from the Snake river by the proposed diversion from Marsh creek.

The exchange will be administered by the watermaster of Water District 01 through the district storage rental pool.

*Bruce B. Turner*  
-----  
Bruce B. Turner  
Applicant