

T3606 WARDLE

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

3606
RECEIVED

AUG 20 1990

Department of Water Resources
Eastern District Office

IN THE MATTER OF APPLICATION FOR) ORDER ADOPTING
TRANSFER NO. 3606 OF WATER RIGHT NO.) PROPOSED MEMORANDUM
29-7647 IN THE NAME OF ROBERT M. WARDLE) DECISION AND ORDER
_____)

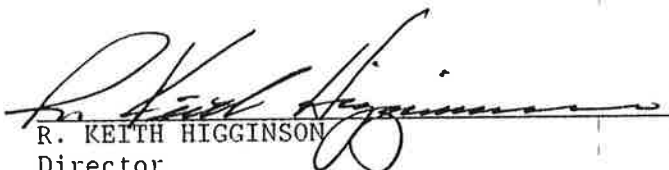
WHEREAS, R. Keith Higginson, Director of the Department of Water Resources having issued and served a copy on the parties on July 18, 1990, a Proposed Memorandum Decision and Order in the above-captioned matter, pursuant to Section 67-5211, Idaho Code; and,

WHEREAS, more than fifteen days have passed since the service of the Proposed Memorandum Decision and Order; and,

WHEREAS, no exception to that Proposed Memorandum Decision and Order has been received;

IT IS, THEREFORE, HEREBY ORDERED that said Proposed Memorandum Decision and Order be adopted and issued as the Final Decision and Order and Application for Transfer No. 3606 is APPROVED.

Dated this 14th day of AUGUST, 1990.


R. KEITH HIGGINSON
Director

Page _____ of _____

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

Transfer No. _____

APPLICATION FOR TRANSFER OF WATER RIGHT
PART 1

Name of applicant Robert M. Wardle Phone 254-3884
 Post Office address 2652 S. Marsh Cr. Rd. McCammon, ID 83250

A. PURPOSE OF TRANSFER

1. ☐ Change point of diversion ☒ Add diversion point(s) ☐ Change place of use
☐ Change nature of use ☐ Change period of use ☐ Other _____
 2. Describe the reason for the proposed changes To more effectively irrigate the lower portion
of my acreage.

B. DESCRIPTION OF RIGHT(S) OR PORTION THEREOF, AFTER THE REQUESTED CHANGE

- | 1. Right Number | Priority | Amount
(cfs/ac-ft) | Nature
of Use | Period of Use |
|-----------------|-----------|-----------------------|------------------|---------------|
| 29-7647 | 6-15-1982 | 0.12 cfs | Irrigation | 3-15 to 11-15 |
| | | | | to |
| | | | | to |
| | | | | to |
2. Total amount of water being transferred 0.12 cubic feet per second and/or _____ acre-feet per annum.
 3. Source of water Walker Creek tributary to Marsh Creek
 4. Point(s) of Diversion:

Lot	¼	¼	¼	Sec.	Twp.	Rge.	County	Local name for diversion
		NE	SW	15	8S	36E	Bannock	P.D. #1 (old)
		NE	SW	15	8S	36E	Bannock	P.D. #2 (new)

5. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	
8S	36E	15									6								6

Total acres 6

PART 1

6. General Information:

a. Description of diversion system (two) Ditch to place of use

NA b. Are the lands from which you propose to transfer the water right subject to any liens, deeds of trust, mortgages, or contracts? _____ Yes _____ No. If yes, provide a notarized statement from the holder of the lien, deed of trust, mortgage or contract agreeing to the proposed changes.

c. Describe the affect on the land now irrigated if the place of use is changed pursuant to this transfer:

NA

d. Remarks:

Use of this second Point of Diversion will provide more efficient use of water
on my lower acres.**ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES**This is to certify that I have examined Application for Transfer of Water Rights No. 29-7647And said application is hereby APPROVED, subject to the following limitations and conditions:
pursuant to PROPOSED MEMORANDUM DECISION AND ORDER and ORDER ADOPTING PROPOSED
MEMORANDUM DECISION AND ORDER.Witness my hand this 14TH day of AUGUST, 19 90.

Director

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR TRANSFER OF WATER RIGHT

PART 2

(Attach one copy for each right)

A. DESCRIPTION OF RIGHT AS RECORDED

1. Right evidenced by:

- a. Decree No. _____ Decreed to _____
in case of _____ vs. _____
dated _____ in _____ county of _____
- b. License No. 29-7647 issued by the Idaho Department of Water Resources.
- c. Claim No. _____ on file with the Idaho Department of Water Resources.
- d. Transfer No. _____ which produced this right.

- ☒ 2. Attach a copy of last year's tax notice for the property to which the water right is appurtenant or other documents which show ownership. Label document as attachment A. Check appropriate box below:

☒ Tax Notice ☐ Warranty Deed ☐ Other _____

3. Source of water Walker Creek tributary to Marsh Creek

4. Date or priority June 15, 1982

5. Water is used for the following purpose:

amount 0.12 cfs for Irrigation purposes from 3-15 to 11-15
(cfs/ac-ft)
amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)
amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)

6. Total amount of water under right 0.12 cubic feet per second and/or _____ acre-feet per annum.

7. Point(s) of Diversion:

Lot	1/4	1/4	1/4	Sec.	Twp.	Rge.	County	Local name for diversion
		NE	SW	15	8S	36E	Bannock	

8. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				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	
8S	36E	15									6								6

Total acres 6

9. Describe any other water rights used for the same purpose as described above None

10. To your knowledge, has any portion of this water right undergone a period of five or more consecutive years of non-use?

No _____

If yes, describe _____

B. DESCRIPTION OF PORTION OF RIGHT BEING TRANSFERRED

(If the entire right is to be changed by the applicant, omit part B and C.)

1. amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)

2. Point(s) of Diversion:

Lot	1/4	1/4	1/4	Sec.	Twp.	Rge.	County	Local name for diversion

3. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				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	

Total acres _____

C. DESCRIPTION OF UNCHANGED PORTION OF RIGHT (omit if there is no change)

1. amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)

2. Point(s) of Diversion:

Lot	1/4	1/4	1/4	Sec.	Twp.	Rge.	County	Local name for diversion

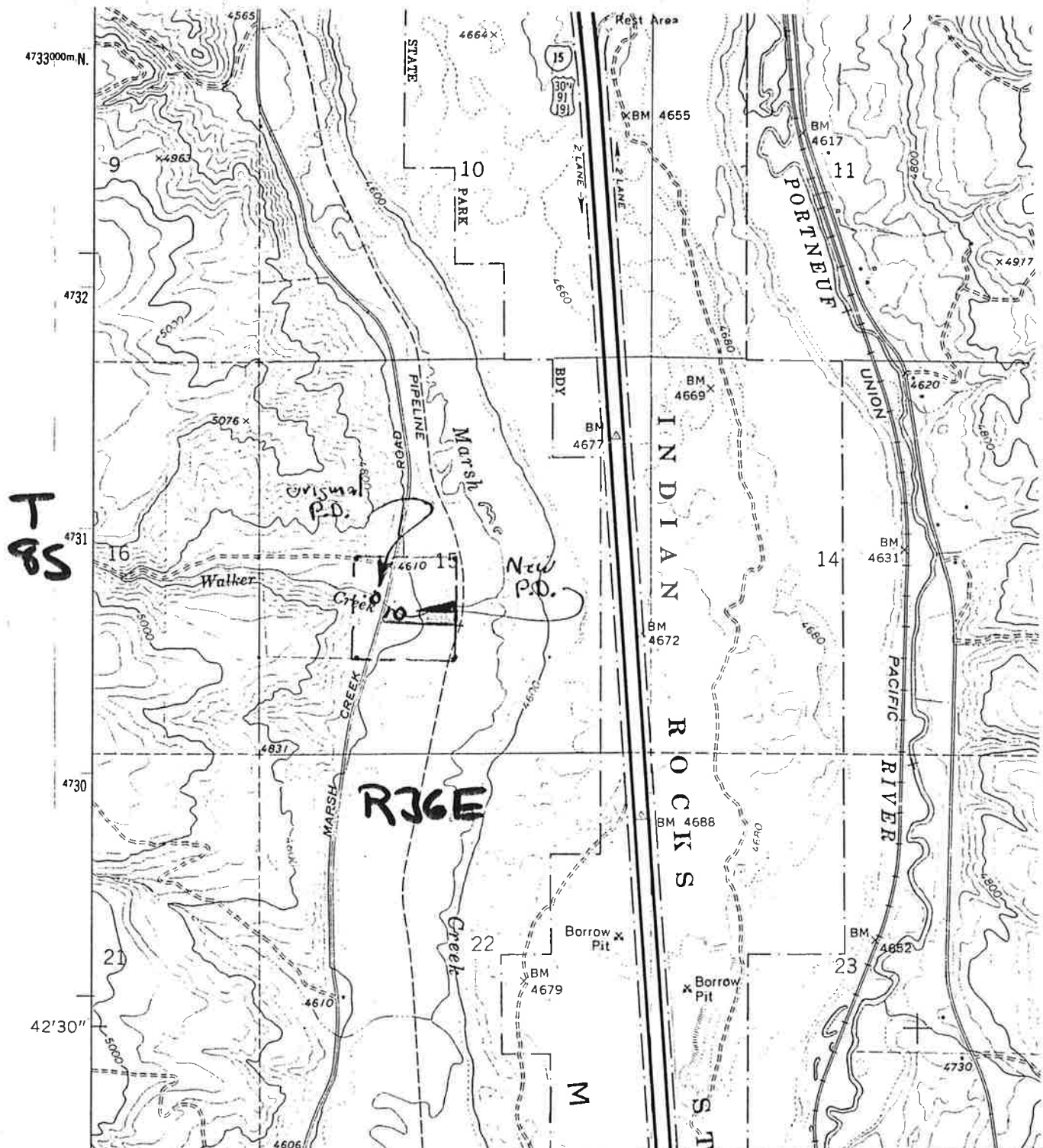
3. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				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	

Total acres _____

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR TRANSFER OF WATER RIGHT
PART 3

- A. Draw a map or attach a USGS map indicating the new point(s) of diversion and/or the new place of use for rights described in part 1. Clearly depict the land by section, township and range number.



PART 3**B. CHANGES IN NATURE OF USE**

1	New Nature of Use	Amount (cfs/ac-ft)	Hours/days/year	Period of Use
				to _____
				to _____

2. Quantity and quality of return flows and location of discharge:

3. Describe effects on other water uses resulting from the proposed change:

I hereby assert that no one will be injured by such change and that the change does not constitute an enlargement in use of the original right. The information contained in this application is true to the best of my knowledge.

I understand that any willful misrepresentations made in this application may result in voiding its approval.

[Signature]
(Signature of Applicant)

Subscribed and sworn to before me this 26 day of July, 19 89.

[Signature]
(Notary Public)

My commission expires October 23 1993

Assist by HWJ

FOR DEPARTMENT USE ONLY

Transfer contains _____ pages and _____ attachments

Received by HWJ Date 7-28-89 Protest filed by Keith V. HenrichsPrelim. check by SMD Fee 30.00Receipted by HWJ #E009654 Date 7-28-89Published in Idaho State Journal Copies of protest forwarded by CWPub. dates 9-21 & 28-89 Hearing held by _____ Date _____Watermaster recommendation requested on _____ Recommended for ☐ approval ☐ denial

_____ rec'd. _____ by _____

Copy of transfer sent to lien holder _____

BEFORE THE DIRECTOR
OF THE
DEPARTMENT OF WATER RESOURCES

IN THE MATTER OF APPLICATION FOR
TRANSFER NO. 3606 OF WATER RIGHT
NO. 29-07647 IN THE NAME OF
ROBERT M. WARDLE

)
) Source: Walker Creek
)
) County: Bannock
)
)

PROPOSED MEMORANDUM DECISION AND ORDER
APPROVING APPLICATION FOR TRANSFER OF
WATER RIGHT NO. 29-07647

On July 28, 1989, Robert Wardle (applicant) filed an application for transfer (application) to add a point of diversion to water right No. 29-07647.

Notice of the application was published in the Idaho State Journal on September 21 and 28, 1989. On October 2, 1989, a protest was received from Keith Henrichs.

A prehearing conference was held on March 27, 1990 to discuss the issues of Mr. Henrichs' protest.

Findings of Fact

1. The applicant, Robert Wardle, intends to add a diversion point downstream of his original point of diversion. Both the original and proposed point of diversion are located in the same quarter-quarter section.

2. The original point of diversion is used by the applicant and two others, Gene Wise (Water Right No. 29-07479) and Raymond Girard (Water Right No. 29-07205). If the proposed new point of diversion is approved, Girard and Wise would then utilize this second ditch also.

3. The parties have entered into a rotation agreement. Under this agreement the applicant is entitled to receive the flow of Walker Creek for 31 hours every ten (10) days so long as the flow is 0.36 cfs or more. The Department of Water Resources has endorsed this agreement as long as all parties abide by the terms of the agreement. The rotation agreement is designed to be an interim measure until the Snake River Basin Adjudication is concluded in Basin 29.

4. The point of diversion proposed by the applicant is downstream of protestant Henrichs' existing headgate. The applicant intends to use the proposed new point of diversion to better irrigate the lower portions of his property.

5. With the rotation agreement in place protestant Henrichs should not use water during the applicant's turn to take Walker Creek water.

6. Since the diversion schedules of the applicant and protestant do not overlap within the rotation agreement, and the proposed point of diversion is below (downstream) from the protestant's headgate, there is no perceived interference between applicant and protestant.

7. Protestant Henrichs testifies that the use of the proposed point of diversion would be a violation of the rotation agreement. He also testifies that he uses any surplus water in the creek when other users are scheduled for their turn. Henrichs states the addition of the proposed point of diversion would interfere with this practice.

Section 42-222, Idaho Code (1989 supp.) provides that:

. . . the director of the department of water resources shall examine all the evidence and available information and shall approve the change in whole or in part, or upon conditions (emphasis added), provided water rights are not injured thereby, the change does not constitute an enlargement in use of the original right and the change is in the local public interest as defined in Section 42-203A, Idaho Code.

CONCLUSIONS OF LAW

1. The use proposed in this application for transfer does not necessarily represent a rotation agreement. The time of water use by the parties does not overlap.
2. The addition of a second point of diversion will not necessarily result in an enlargement in the use under the original right.
3. No other recorded water rights will be injured by the proposed transfer while the rotation agreement is in effect.
4. The change proposed is consistent with the local public interest.

ORDER

IT IS, THEREFORE, HEREBY ORDERED that Application for Transfer of Water Right No. 29-07647 is APPROVED subject to the following conditions:

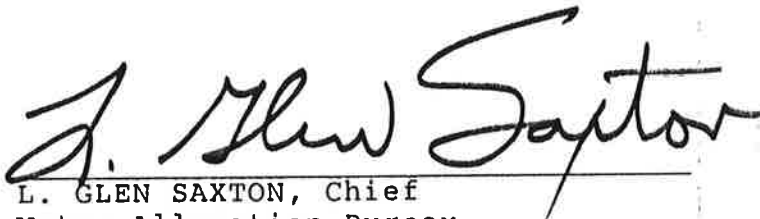
1. Only one point of diversion can be used at any one time.
2. A measuring device and headgate of a type approved by the Department of Water Resources shall be installed at the new point of diversion prior to use of the new point of diversion.
3. The use of the new point of diversion is contingent

upon continued compliance with the current rotation agreement.

4. The change authorized by this transfer shall be accomplished within one (1) year of the date of this approval.

5. Failure to comply with the conditions of this transfer is cause for the director to issue an order to show cause why the approval of the transfer should not be rescinded.

Dated this 18th day of July, 1990.


L. GLEN SAXTON, Chief
Water Allocation Bureau

CERTIFICATE OF MAILING

I HEREBY CERTIFY That on this the 18th day of July, 1990, a true and correct copy of the foregoing PROPOSED MEMORANDUM DECISION AND ORDER, was mailed, postage prepaid to:

Robert M. Wardle
2652 S. Marsch Creek Rd.
McCammon, ID 83250

Keith V. Henrichs
2526 S. March Creek Rd.
McCammon, ID 83250

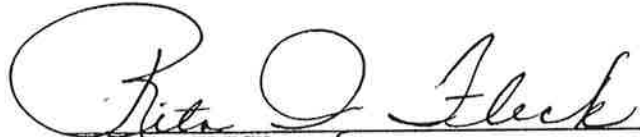

RITA L. FLECK
Secretary/Records Manager

CERTIFICATE OF MAILING

I HEREBY CERTIFY THAT on this the 16th day of August 1990, a true and correct copy of the ORDER ADOPTING PROPOSED MEMORANDUM DECISION AND ORDER was mailed, postage prepaid to:

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

Keith V. Henrichs
2526 S. Marsh Creek Rd.
McCammon, ID 83250

A handwritten signature in cursive script, appearing to read "Rita I. Fleck", written over a horizontal line.

RITA I. FLECK
Secretary/Records Manager
Idaho Department of Water Resources