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DEPARTMENT OF
WATER RESOURCES

Fredric W. Price
Water Rights Specialist
U.S.D.I., Bureau of Land Management
Idaho State Office
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Boise, Idaho 83709-1657
(208) 373-3831 phone
(208) 373-3839 fax
fwprice@blm.gov

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

IN THE MATTER OF LICENSE NO. 17-) CASE NO. 17-07154
07154 IN THE NAME OF ZELDON NELSON)
) **PETITION FOR RECONSIDERATION**
)
_____)

On October 29, 2013, the Idaho Department of Water Resources ("IDWR") issued a License No. 17-07154 to Zeldon Nelson. The United States of America, Department of Interior, Bureau of Land Management ("BLM") respectfully files this Petition for Reconsideration regarding issuance of License No. 17-07154 pursuant to the IDWR rules of procedure, IDAPA 37.01.01.740.02.

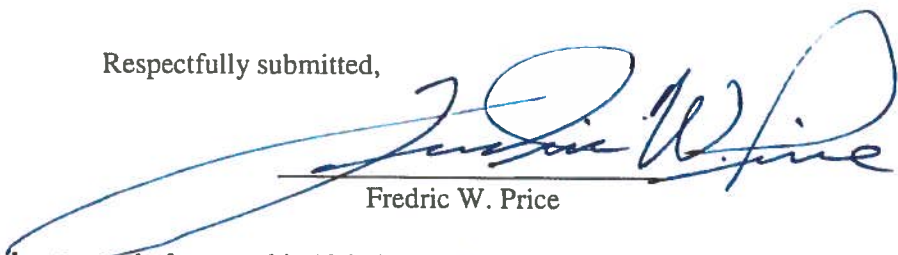
On August 21, 2013, Mr. Nelson filed an Application for Amendment for Licensing Purposes ("Permit Amendment") with IDWR just prior to issuance of the License on October 29, 2013. The Permit Amendment sought to change the Place of Use ("POU") element by adjusting the acres within several POUs and by adding a new POU (i.e. previously unclaimed) described in T14S, R30E, S29, SESW (BLM). The new POU that was added by the Permit Amendment is entirely owned by the BLM. Mr. Nelson is not authorized to conduct irrigated agricultural use of BLM land. There was no opportunity to review the Permit Amendment for protest purposes because the amendment was not advertised and therefore there was no notice given to water

users (See the evolution of the POU element in *Exhibit 1* to the *Affidavit of Fredric W. Price*).

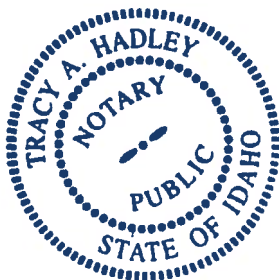
BLM respectfully requests that IDWR issue an Amended License removing the POU described in the T14S, R30E, S29, SESW (BLM) because Mr. Nelson is not authorized to conduct irrigation agricultural use of federal public land.

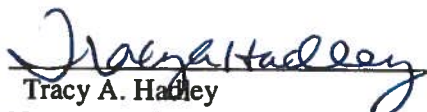
Under state law a water right cannot be established in trespass (see *In Re General Determination of Rights to Use of Surface and Ground Waters of Payette River*, 107 Idaho 221, 687 P.2d 1348, 1353 (1984); *Lemmon v. Hardy*, 95 Idaho 778, 519 P.2d 1168 (1974); *Reed v. Morton*, 480 F.2d 634 (9th Cir. 1973); *Jones v. McIntire*, 60 Idaho 338, 91 P.2d 373 (1939); *Bachman v. Reynolds Irrigation Dist.*, 56 Idaho 507, 55 P.2s 1314 (1936); *Bassett v. Swenson*, 51 Idaho 256, 5 P.2d 722 (1931); *Short v. Praisewater*, 35 Idaho 691, 208 P. 844 (1922); *Rabido v. Furey*, 33 Idaho 56, 190 P. 73 (1920); and *King v. Chamberlin*, 20 Idaho 504, 118 P. 1099 (1911)).

Respectfully submitted,


Fredric W. Price

Subscribed and sworn to before me this 12th day of November, 2013.
Witnessed by my hand and official seal.




Tracy A. Hadley
Notary Public in and for the State of Idaho
Residing at: Meridian, Idaho
My Commission Expires: 08-22-2015

CERTIFICATE OF SERVICE

I HEARBY CERTIFY that on November 12, 2013, I served a true and correct copy of the foregoing **PETITION FOR RECONSIDERATION; LICENSE NO. 17-07154** by placing the document in the United States Mail in Boise, Idaho, postage paid, and addressed as follows:

Original to:

Gary Spackman, Director
IDWR, State Office
322 East Front Street
P.O. Box 83720
Boise, ID 83720-0098

Copies to:

Zeldon Nelson
37777 West Juniper RD
Malta, ID 83342

Karen M. Kraus, Range Technician
Danny K. Miller, Realty Specialist
U.S.D. I., Bureau of Land Management
Pocatello Field Office
4350 Cliffs Drive
Pocatello, ID 83204



Signature of Person Serving Documents

NOV 12 2013

DEPARTMENT OF
WATER RESOURCESBEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF LICENSE NO. 17-)
 07154 IN THE NAME OF ZELDON NELSON) **AFFIDAVIT OF**
) **FREDRIC W. PRICE**
 _____)

STATE OF IDAHO)
) ss:
 COUNTY OF ADA)

I Fredric W. Price, being of lawful age, and having first been duly sworn, do depose and state:

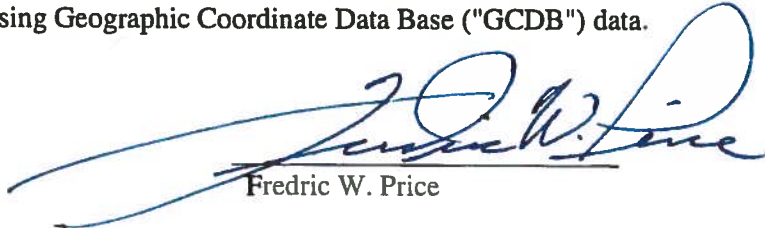
1. My name is Fredric W. Price. The following statements are based upon my personal knowledge. My present position is that of Water Rights Specialist for the United States, Department of Interior, Bureau of Land Management ("BLM"), Idaho State Office.

2. Attached hereto as *Exhibit 1* are true and correct copies of portions of official business records of IDWR (i.e. pages 2, 6, 7, 8 and 9) obtained by me. I have marked up the IDWR records in red for illustrative purposes.

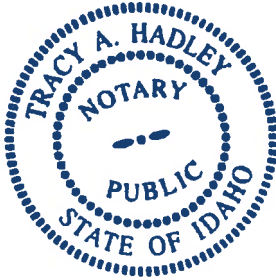
Page 5 of *Exhibit 1* is a true and correct copy of BLM's Master Title Plat ("MTP"). The MTP is an official business record of BLM and is the United States' official Record of Title. It is a graphic display of township survey data, and is drafted from information abstracted, compiled, and composed from the latest approved U.S. Government Survey Plats, survey field notes, and protraction diagrams. It describes the locations of United States property, aliquot parcels, and government surveyed "lots."

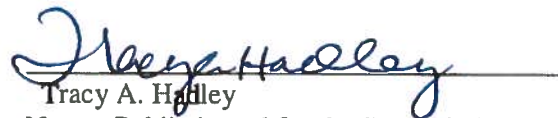
Pages 3 and 4 of *Exhibit 1* are maps that I have prepared to illustrate where the irrigation

shapefile for License No. 17-07154 is located relative to federal public land. BLM land is shaded in yellow. According to Oneida County Tax Parcel Data, the boundary line between privately owned land and federal public land coincides with the quarter-quarter ("QQ") lines depicted on these maps using Geographic Coordinate Data Base ("GCDB") data.


Fredric W. Price

Subscribed and sworn to before me this 12th day of November, 2013.
Witnessed by my hand and official seal.




Tracy A. Hadley
Notary Public in and for the State of Idaho
Residing at: Meridian, Idaho
My Commission Expires: 08-22-2015

CERTIFICATE OF SERVICE

I certify that on November 12, 2013, I served a true and correct copy of the foregoing **AFFIDAVIT OF FREDRIC W. PRICE; LICENSE NO. 17-07154** by placing the document in the United States Mail in Boise, Idaho, postage paid, and addressed as follows:

Original to:

Gary Spackman, Director
IDWR, State Office
322 East Front Street
P.O. Box 83720
Boise, ID 83720-0098

Copies to:

Zeldon Nelson
37777 West Juniper RD
Malta, ID 83342

Karen M. Kraus, Range Technician
Danny K. Miller, Realty Specialist
U.S.D. I., Bureau of Land Management
Pocatello Field Office
4350 Cliffs Drive
Pocatello, ID 83204



Signature of Person Serving Documents

EXHIBIT 1

17-07154 License 10-29-2013

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Page 1

State of Idaho
Department of Water Resources
Water Right License

WATER RIGHT NO. 17-07154

Priority: January 10, 2003

Maximum Diversion Rate: 4.85 CFS
Maximum Diversion Volume: 1,166.1 AF

It is hereby certified that ZELDON NELSON
37777 WEST JUNIPER RD
MALTA ID 83342 has complied with the terms and conditions of the
permit, issued pursuant to Application for Permit dated January 10, 2003; and has submitted Proof of
Beneficial Use on March 18, 2013; and a water right has been established as follows:

SOURCE
GROUND WATER

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>DIVERSION RATE</u>	<u>ANNUAL DIVERSION VOLUME</u>
STOCKWATER	01/01 to 12/31	0.02 CFS	0.6 AF
IRRIGATION	04/01 to 10/31	4.85 CFS	1,166.1 AF

LOCATION OF POINT(S) OF DIVERSION:

GROUND WATER SE4SW4 Sec. 32 Twp 14S Rge 30E, B.M. ONEIDA County

PLACE OF USE: STOCKWATER

Twp Rge Sec	NE	NW	SW	SE	Totals
14S 30E 29					
14S 30E 32					

PLACE OF USE: IRRIGATION

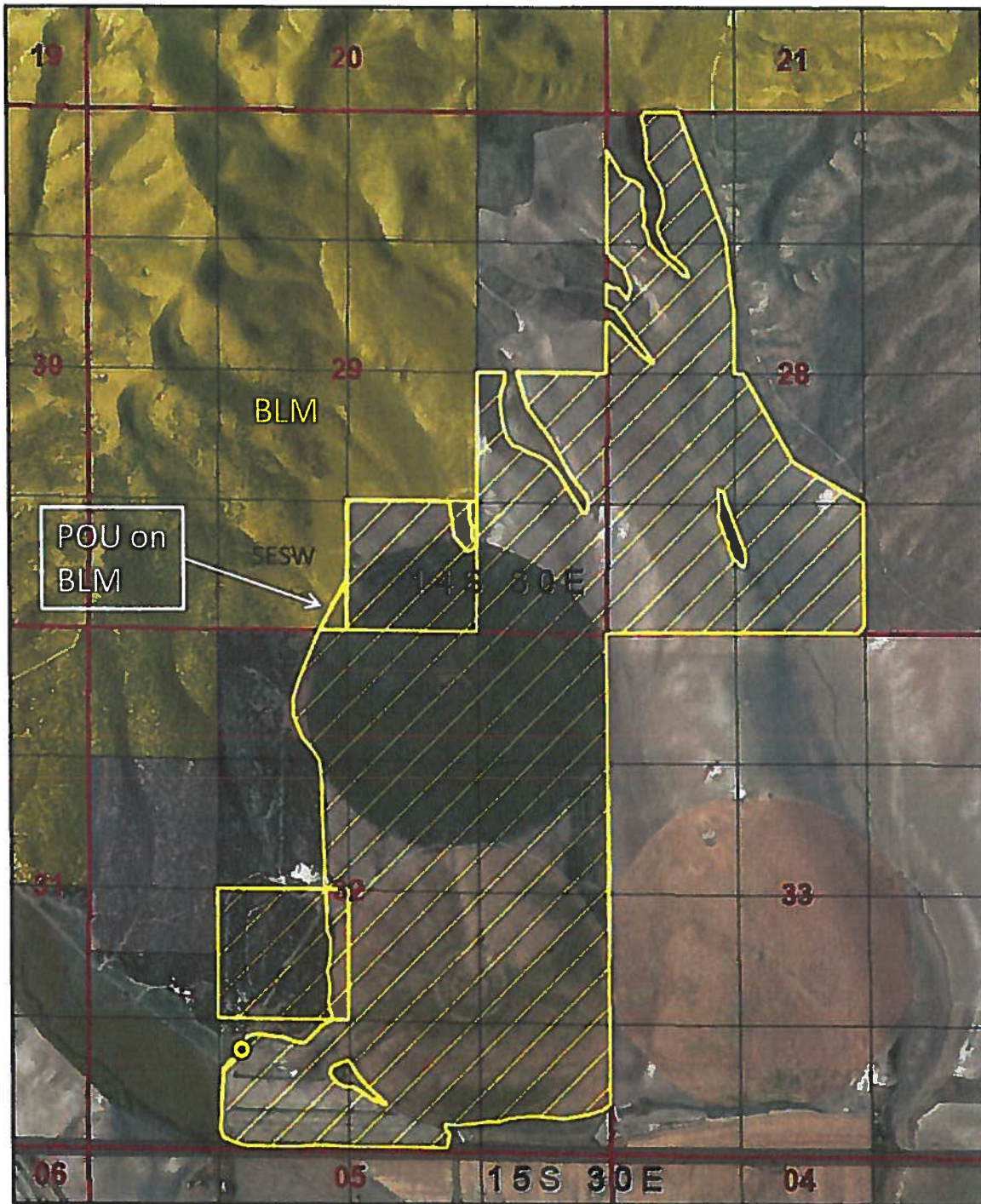
Twp Rge Sec	NE	NW	SW	SE	Totals
14S 30E 28					
14S 30E 29					
14S 30E 32					

Total Acres: 671

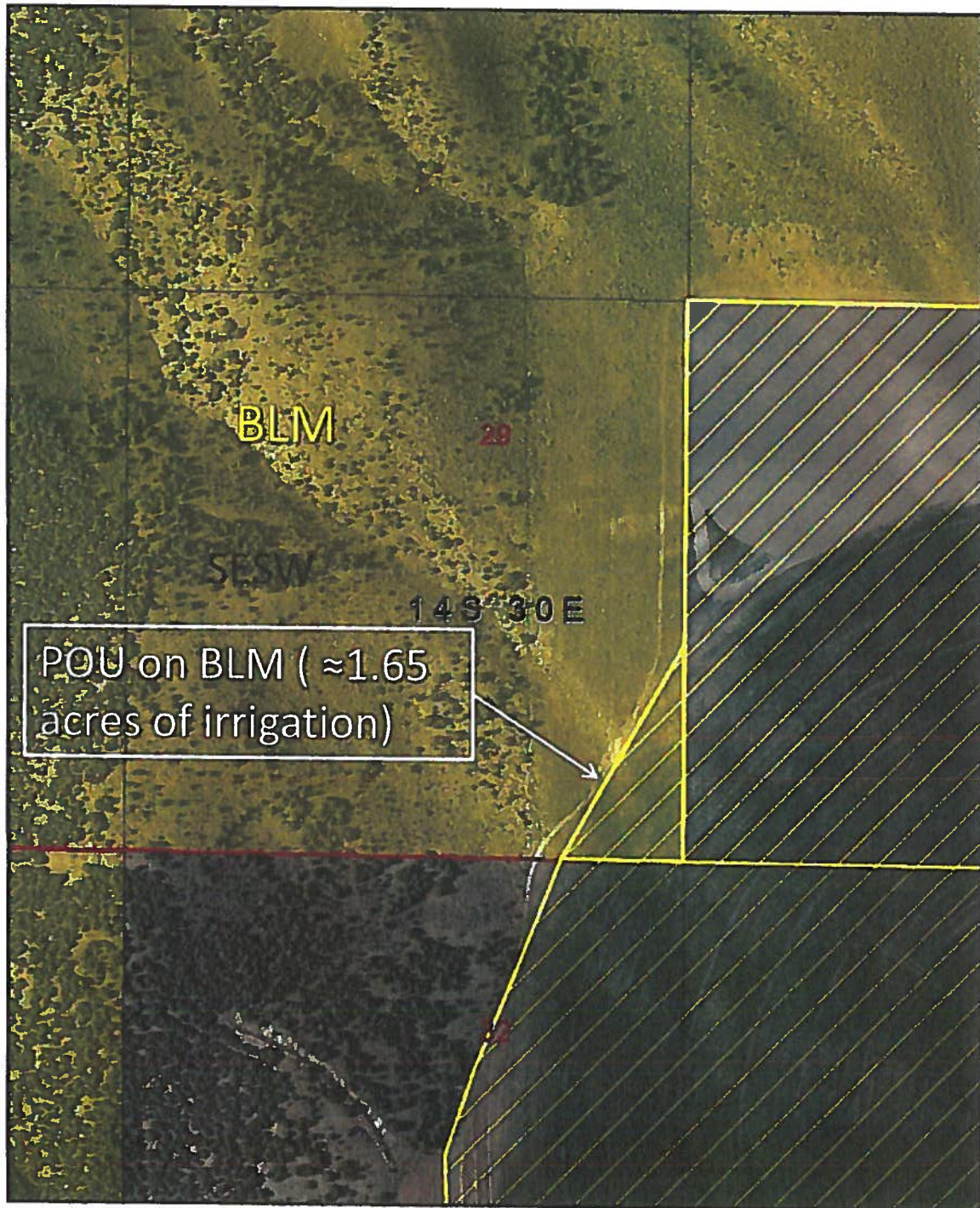
1. Rights 17-7008B, 17-7089 and 17-7154 when combined shall not exceed a total diversion rate of 5.29 cfs, a total annual maximum irrigation diversion volume of 2348.5 af at the field headgate, and the irrigation of 671 acres.
2. This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 3.5 afa per acre at the field headgate for irrigation of the lands above.

The License describes a POU in T14S, R30E, S29, SESW
which is BLM land.

17-07154 (Nelson)



17-07154 (Nelson)



17-07154 Application for Permit 01-10-2003

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3. Description of place of use:

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

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

TWP	RGE	SEC	NE				NW				SW				SE				TOTALS
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
14S	30E	28					20	20			20	40	40	40					180
		29													40	40	40		120
		29													S				
		32	40	40	40	40	10			10	20	20	40	40	40	40	40	40	407
		32					D			D	D			D					

Total number of acres to be irrigated 478 707

10. Describe any other water rights used for the same purposes as described above. License No. 17-70083
(part) and No. 17-07089

11. a. Who owns the property at the point of diversion? George L. Nelson Family Trust
b. Who owns the land to be irrigated or place of use? George L. Nelson Family Trust

c. If the property is owned by a person other than the applicant, describe the arrangement enabling the applicant to make this filing: Son and executor of George L. Nelson Family Trust

12. Remarks: Currently renting with plans to purchase.
I have "power of attorney."

13. MAP OF PROPOSED PROJECT REQUIRED - Attach an 8 1/2"x11" map clearly identifying the proposed point of diversion, place of use, section #, township & range. (A photocopy of a USGS 7.5 minute topographic quadrangle map is preferred.)

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

Zeldon Nelson
Signature of Applicant (and title, if applicable)

Received by DC Date 1/10/2003 Time Preliminary check by Date 1/10/2003
Fee \$ 610 Received by DC # EO 29422
Publication prepared by DC Date 2/10/2003 Published in Idaho Enterprise
Publication approved SC Date 2/10/03

The Application for Permit does not list a POU in T14S, R30E, S29, SESW (BLM).

17-07154 Advertisement

AFFIDAVIT OF PUBLICATION

STATE OF IDAHO)
COUNTY OF ONEIDA) ss

Kristine D. Smith, being duly sworn, deposes and says: That she is the publisher of THE IDAHO ENTERPRISE, a weekly newspaper published at Malad, in the County of Oneida and State of Idaho; that said newspaper has been and is in general circulation in the county aforesaid, and in the vicinity of Malad; that the advertisement, a copy of which is attached hereto, was published in said newspaper once a week for 21 consecutive weeks in the regular and entire issue of said newspaper during the period of time of publication, and was published in the newspaper proper and not a supplement; that said newspaper has been established and regularly published for more than seventy-eight consecutive weeks prior to the date of first publication of said advertisement.

Such notice was published in the issue beginning with the issue of 2-6-03 and ending with the issue of 2-13-03.

Kristine D. Smith

STATE OF IDAHO)
COUNTY OF ONEIDA)

On this 6 day of Feb. 2003, before me, Lisa D. Lewis, a Notary Public, personally appeared Kristine D. Smith, known to me to be the person whose name is subscribed to the within instrument, and being by me first duly sworn, declared that the statements therein are true, and acknowledged to me that she executed the same.

Lisa D. Lewis
Notary Public for Idaho
Residing at Malad ID
My commission expires: 2-5-08

original in file
15-7239

been filed in appropriate the public waters of the State of Idaho:

15-7239
TIMOTHY R WILLIE
3585 W HWY 38
MALAD CITY ID 83252
Point(s) of Diversion: NENENW
811 T14S R30E ONEIDA
County

Source GROUND WATER
Use: IRRIGATION 04/01 To 10/
31 0.02 CFS
Use: STOCKWATER 01/01 To
12/31 0.02 CFS

Total Diversion: 0.04 CFS
Date Filed 01/03/2003
Place of Use: IRRIGATION and
STOCKWATER
T14S R30E 811 NENW

Number of Acres 48
Permits will be subject to all prior
water rights. Protests may be
submitted based on the criteria
of Sec 42-203A, Idaho Code.

Any protest against the approval
of this application must be filed
with the Director, Dept. of Water
Resources, Eastern Region, 900
N Skyline Dr Ste A, Idaho Falls
ID 83402 together with a protest
fee of \$25.00 for each applica-
tion on or before February 24,
2003. The protestant must also
send a copy of the protest to the
applicant.

KARL J DREHER, Director
Published on February 6 and 13,
2003

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

17-7154
ZELDON NELSON
37777 WEST JUNIPER RD
MALTA ID 83342

Point(s) of Diversion: SESEW 832
T14S R30E and SWSE 829
T14S R30E, ONEIDA County

Source GROUND WATER
Use: IRRIGATION
04/01 To 10/31 9.58 CFS
Use: STOCKWATER 01/01 To
12/31 0.02 CFS

Total Diversion: 9.6 CFS
Date Filed: 01/10/2003
Place of Use: IRRIGATION

T14S R30E 829 NENW SENW
NENW NENW SENW SESEW
T14S R30E 829 NESE SWSE
SESE

T14S R30E 832 NENE NWNE
SWNE SESE NENW SENW
NESE SESEW NESE NWSE
SWSE SESE

Number of Acres 707
Place of Use: STOCKWATER
T14S R30E 829 SWSE

T14S R30E 832 NENW SENW
NENW SESEW

Permits will be subject to all prior
water rights. Protests may be
submitted based on the criteria

of Sec 42-203A, Idaho Code.

Any protest against the approval
of this application must be filed
with the Director, Dept. of Water
Resources, Eastern Region, 900
N Skyline Dr Ste A, Idaho Falls
ID 83402 together with a protest
fee of \$25.00 for each applica-
tion on or before February 24,
2003. The protestant must also
send a copy of the protest to the
applicant.

KARL J DREHER, Director
Published on February 6 and 13,
2003

L. #2671 2/6-2/13-03-27

The Advertisement does not list a POU in T14S, R30E, S29, SESE (BLM).

17-07154 Permit 04-17-2003

Page 1 of 2

State of Idaho

Department of Water Resources

Permit to Appropriate Water

NO. 17-07154

Priority: January 10, 2003

Maximum Diversion Rate: 8.85 CFS

This is to certify, that ZELDON NELSON
37777 WEST JUNIPER RD
MALTA ID 83342

has applied for a permit to appropriate water from:

Source: GROUND WATER

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>
STOCKWATER	01/01 to 12/31	0.02 CFS
IRRIGATION	04/01 to 10/31	8.85 CFS

LOCATION OF POINT(S) OF DIVERSION:

GROUND WATER SE $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 32, Twp 14S, Rge 30E, B.M., ONEIDA County

GROUND WATER SW $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 29, Twp 14S, Rge 30E, B.M., ONEIDA County

PLACE OF USE: STOCKWATER

Twp Rge Sec	NE				NW				SW				SE				Totals
	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
14S 30E 29																X	
14S 30E 32					X			X	X			X					

PLACE OF USE: IRRIGATION

Twp Rge Sec	NE				NW				SW				SE				Totals
	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
14S 30E 28							20.0	20.0			20.0	40.0	40.0	40.0			180.0
14S 30E 29													40.0		40.0	40.0	120.0
14S 30E 32	40.0	40.0	40.0	40.0	10.0			10.0	28.0			39.0	40.0	40.0	40.0	40.0	407.0
Total Acres:																	707.0

CONDITIONS OF APPROVAL

1. Proof of application of water to beneficial use shall be submitted on or before May 01, 2008.
2. Subject to all prior water rights.
3. Right holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code and applicable Well Construction Rules of the Department.
4. Project construction shall commence within one year from the date of permit issuance and shall proceed diligently to completion unless it can be shown to the satisfaction of the Director of the Department of Water Resources that delays were due to circumstances over which permit holder had no control.

The Permit does not list a POU in T14S, R30E, S29, SESW (BLM).

17-07154 Application for Amendment 08-15-2013

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Page 1

State of Idaho
Department of Water Resources
APPLICATION FOR AMENDMENT
(For Licensing Purposes)
WATER RIGHT NO. 17-07154

AUG 21 2013
Department of Water Resources
Eastern Region

Date of Priority: January 10, 2003

Maximum Diversion Rate: 4.85 CFS
Maximum Diversion Volume: 1,165.5 AF

Comes now ZELDON NELSON
37777 WEST JUNIPER RD
MALTA ID 83342

and represents to the Director of the Idaho Department of Water Resources that he is the owner and holder of Permit to Appropriate the Public Waters of the State of Idaho No. 17-07154, and requests that the permit be changed as follows:

Source: GROUND WATER

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>RATE OF DIVERSION</u>	<u>ANNUAL VOLUME</u>
STOCKWATER	01/01 to 12/31	0.02 CFS	0.6 AF
IRRIGATION	04/01 to 10/31	4.85 CFS	1,165.5 AF

LOCATION OF POINT(S) OF DIVERSION:

GROUND WATER SE1/4SW1/4 Sec. 32, Twp 14S, Rge 30E, B.M. ONEIDA County

PLACE OF USE: STOCKWATER

Twp Rge Sec	NE				NW				SW				SE				Totals
	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
14S 30E 29																X	
14S 30E 32					X												

PLACE OF USE: IRRIGATION

Twp Rge Sec	NE				NW				SW				SE				Totals
	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
14S 30E 28					22.0	35.0			17.0	40.0	39.0	39.0					192.0
14S 30E 29												2.0	33.0		38.0	40.0	113.0
14S 30E 32	40.0	40.0	40.0	40.0	14.0		8.0	7.0			32.0	40.0	40.0	36.0	29.0		368.0

Total Acres: 671

Permit holder asserts that no one will be injured by such change and that such change will be made at permit holder's own risk. Signed this 15 day of Aug, 2013

Zeldon Nelson
(Signature)

The Application for Amendment introduces the POU described in T14S, R30E, S29, SESW (BLM). This Application for Amendment was not advertised.