

State of Idaho
Department of Water Resources

AMENDED

Water Right License

AMENDED

WATER RIGHT NO. 92-07208

Priority: May 02, 1994

Maximum Diversion Rate: 2.23 CFS
Maximum Diversion Volume: 24.0 AF

It is hereby certified that EMERALD CREEK GARNET LTD
PO BOX 190
FERNWOOD ID 83830-0190 has complied with the terms and conditions
of the permit, issued pursuant to Application for Permit dated May 02, 1994; and has submitted Proof of
Beneficial Use on May 13, 1999. An examination confirms water is diverted from:

SOURCE

EMERALD CREEK

Tributary: ST MARIES RIVER

WILLOW CREEK

SINKS

EAST FORK EMERALD CREEK

EMERALD CREEK

WEST FORK EMERALD CREEK

EMERALD CREEK

UNNAMED STREAM

WEST FORK EMERALD CREEK

and a water right has been established as follows:

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>DIVERSION RATE</u>	<u>ANNUAL DIVERSION VOLUME</u>
MINING	01/01 to 12/31	2.23 CFS	24.0 AF

LOCATION OF POINT(S) OF DIVERSION:

EMERALD CREEK	SE1/4SW1/4 Sec. 22, Twp 43N, Rge 01E, B.M. SHOSHONE County
EMERALD CREEK	NE1/4NW1/4 Sec. 27, Twp 43N, Rge 01E, B.M. SHOSHONE County
WILLOW CREEK	NW1/4NW1/4 Sec. 27, Twp 43N, Rge 01E, B.M. SHOSHONE County
EMERALD CREEK	SW1/4NW1/4 Sec. 27, Twp 43N, Rge 01E, B.M. SHOSHONE County
EMERALD CREEK	SE1/4NW1/4 Sec. 27, Twp 43N, Rge 01E, B.M. SHOSHONE County
EMERALD CREEK	NE1/4SW1/4 Sec. 27, Twp 43N, Rge 01E, B.M. SHOSHONE County
EMERALD CREEK	NW1/4SW1/4 Sec. 27, Twp 43N, Rge 01E, B.M. SHOSHONE County
UNNAMED STREAM	SW1/4SW1/4 Sec. 27, Twp 43N, Rge 01E, B.M. SHOSHONE County
EMERALD CREEK	SE1/4SW1/4 Sec. 27, Twp 43N, Rge 01E, B.M. SHOSHONE County
UNNAMED STREAM	NE1/4NE1/4 Sec. 28, Twp 43N, Rge 01E, B.M. BENEWAH County
WILLOW CREEK	SE1/4NE1/4 Sec. 28, Twp 43N, Rge 01E, B.M. BENEWAH County
UNNAMED STREAM	NE1/4SE1/4 Sec. 28, Twp 43N, Rge 01E, B.M. BENEWAH County
UNNAMED STREAM	SE1/4SE1/4 Sec. 28, Twp 43N, Rge 01E, B.M. BENEWAH County
WEST FORK EMERALD CREEK	NE1/4SE1/4 Sec. 33, Twp 43N, Rge 01E, B.M. BENEWAH County
WEST FORK EMERALD CREEK	NW1/4SE1/4 Sec. 33, Twp 43N, Rge 01E, B.M. BENEWAH County
EMERALD CREEK	SW1/4NW1/4 Sec. 34, Twp 43N, Rge 01E, B.M. BENEWAH County
EAST FORK EMERALD CREEK	NW1/4SW1/4 Sec. 34, Twp 43N, Rge 01E, B.M. BENEWAH County
WEST FORK EMERALD CREEK	NE1/4SE1/4 Sec. 36, Twp 43N, Rge 01W, B.M. BENEWAH County
WEST FORK EMERALD CREEK	NW1/4SE1/4 Sec. 36, Twp 43N, Rge 01W, B.M. BENEWAH County
WEST FORK EMERALD CREEK	SW1/4SE1/4 Sec. 36, Twp 43N, Rge 01W, B.M. BENEWAH County
UNNAMED STREAM	SE1/4SE1/4 Sec. 36, Twp 43N, Rge 01W, B.M. BENEWAH County

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PLACE OF USE: MINING

Twp Rge Sec	NE				NW				SW				SE				Totals
	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
43N 01E 22												X			X		
43N 01E 27		X	X		X	X	X	X	X	X	X	X		X	X		
43N 01E 28	X			X									X			X	
43N 01E 33													X	X			
43N 01E 34							X			X							
43N 01W 36													X	X	X	X	

CONDITIONS OF APPROVAL

1. Water used under this right when discharged into a natural channel or subsurface system shall meet Idaho Water Quality Standards.
2. After specific notification by the Department, the right holder shall install a suitable measuring device or shall enter into an agreement with the Department to use power records to determine the amount of water diverted and shall annually report the information to the Department.
3. A separate stream alteration permit from the IDWR is required for any activity in the stream channel other than construction and/or maintenance of the diversion structure. If the proposed construction or operation involves construction of an outfall or any other work in the stream channel other than a water diversion, the right holder shall contact the Department and obtain a Stream Channel Alteration permit prior to the start of construction.
4. This right authorizes no more than one diversion period per washer per 30-day period, or one diversion period per washer per calendar month.
5. The maximum duration of diversion period authorized under this right is limited to 5 hours in two weeks.
6. An intake screen of 1/4 inch or smaller mesh shall be installed at the point of diversion to prevent any negative impact on juvenile fish.
7. The approach velocity at the point of diversion shall not exceed 0.5 feet per second.
8. The issuance of this right in no way grants any right-of-way or easement across the land of another.
9. Water shall not be diverted under this right when flows in the St. Maries River are below established minimum flow amounts. The right holder shall be responsible for monitoring the daily flow of the St. Maries River near Santa using real-time data published on the internet by the U.S. Geological Survey and shall cease diverting water when flows in the St. Maries are below established minimum instream flow amounts.

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10. Under this right, the land application of water is limited to the reclamation of land directly affected as a result of being mined and is not to exceed a total of 26 acres annually within the place of use described above for mining.

11. Subject to all prior water rights

This license is issued pursuant to the provisions of Section 42-219, Idaho Code. The water right confirmed by this license is subject to all prior water rights and shall be used in accordance with Idaho law and applicable rules of the Department of Water Resources.

Signed this 11th day of June, 2015.



for GARY SPACKMAN
Director

BEFORE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF PETITION TO
CORRECT WATER RIGHT LICENSE
NO. 92-7208

**PRELIMINARY ORDER
CORRECTING LICENSE**

This matter having come before the Department of Water Resources (Department) as a result of the filing of a petition to correct a water right license, the Department finds, concludes and orders as follows:

FINDINGS OF FACT

1. On July 19, 1994, the Department issued Permit 92-7208 (permit) to Emerald Creek Garnet Company (right holder) authorizing the establishment of a right to divert Emerald Creek, East Fork Emerald Creek, West Fork Emerald Creek, Willow Creek and Unnamed stream for irrigation and mining purposes. The irrigation component of the permit authorized the diversion of 0.10 cfs to irrigate twenty six acres of land within portions of Sections 22, 27, 28, 33, and 34 of Township 43 North, Range 1 East, and Section 36 of Township 43 North, Range 1 West, B.M. The mining component allowed a diversion of 2.23 cfs within the same place of use as the irrigation use. The water was to be diverted from 22 points of diversion in Sections 22, 27, 28, 33, and 34 of Township 43 North, Range 1 East, and 4 points of diversion in Section 36 of Township 43 North, Range 1 West, B.M.
2. On May 14, 1999, the Department received the right holder's proof of beneficial use statement for the permit. On the proof statement the right holder indicated that the total diversion rate for the water developed was 0.10 cfs for irrigation and 2.23 cfs for mining.
3. On June 13, 2007, Department staff conducted a field examination to verify the beneficial use of water established in connection with the permit. The field examiner found that water from the authorized points of diversion had been used only for the mining purposes and no irrigation had been developed. The field examiner also found that the right holder's pumping systems provided 2.23 cfs and 24 af. The place of use was described in portions of Sections 22, 27, 28, 33, and 34 of Township 43 North, Range 1 East, and Section 36 of Township 43 North, Range 1 West, B.M. The points of diversion were described as 17 points of diversion in Sections 22, 27, 28, 33, and 34 of Township 43 North, Range 1 East, and 4 points of diversion in Section 36 of Township 43 North, Range 1 West, B.M.

4. On March 6, 2009, the Department issued Water Right License 92-7208 (license) to the right holder for the diversion of 2.23 cfs and 24 af for mining purposes. However, the license described the points of diversion as 17 points of diversion in Sections 22, 27, 28, 33, and 34 of Township 43 North, Range 1 East, and 4 points of diversion in Section 36 of Township 43 North, Range 1 West, B.M. However, the place of use was described as being in portions of Sections 22, 27, 28, 33, and 34 of Township 43 North, Range 1 East, and Section 36 of Township 43 North, Range 1 *East*, B.M.
5. On May 21, 2015, the Department was made aware through an objection in the Coeur D'Alene-Spokane River Basin Adjudication that the license may have been issued with the incorrect legal descriptions for the portion of the place of use actually located in Section 36 of Township 43 North, Range 1 *West*, B.M.
6. On May 26, 2015, Department staff reviewed the water right file and determined that the legal descriptions for the place of use in Section 36 of Township 43 North, Range 1 *East*, B.M. was incorrect and the place of use in Section 36 should have been described in Township 43 North, Range 1 *West*, B.M.
7. On May 28, 2015 and June 10, 2015, Department staff corresponded with the right holder to inform it of the error in the license, and to request its input on possibly correcting the license. The right holder agreed with the Department's analysis and requested that the legal description for the licensed place of use be corrected.
8. Idaho Code § 42-219 includes the following directive to the Department:

Upon receipt by the department of water resources of all the evidence in relation to such final proof, it shall be the duty of the department to carefully examine the same, and if the department is satisfied that the law has been fully complied with and that the water is being used at the place claimed and for the purpose for which it was originally intended, the department shall issue to such user or users a license confirming such use.

ANALYSIS

The permit and the field exam showed 4 points of diversion from West Fork Emerald Creek and unnamed stream and a portion of the place of use in Section 36 of Township 43 North, Range 1 West, B.M. The maps in the field exam and the permit also show that the 4 points of diversions, West Fork Emerald Creek, the unnamed stream and the a portion of the place of use were all in Section 36 of Township 43 North, Range 1 West, B.M. The license states that the same 4 points of diversion from West Fork Emerald Creek and the unnamed stream are in Section 36 of Township 43 North, Range 1 West, B.M., but the place of use was described in Section 36 of Township 43 North, Range 1 East, B.M. The United States Department of Interior Geological Survey maps show that West Fork Emerald Creek and the unnamed stream are in Section 36 of Township 43 North, Range 1 West, B.M., and so diversion from these water sources to a place of use in Section 36 of Township 43 North, Range 1 East could not be made as described by the license. The water right file has a letter from the Idaho Department of Lands claiming that this water right is on lands owned by the State of Idaho. Section 36 of Township 43 North, Range 1 East, B.M. is under the control of the Idaho Panhandle National Forest not the Idaho Department of Lands. The portion of the place of use actually in Section 36 of Township 43 North, Range 1 West, B.M. is on land owned by the State of Idaho. The legal description for the portion of the place of use in

Section 36 for this license should be described as being in Section 36 of Township 43 North, Range 1 West, B.M.

CONCLUSIONS OF LAW

1. Under Idaho Code § 42-219, the Department has a statutory obligation to issue a water right license that accurately portrays the extent of beneficial use of water developed in accordance with the permit.
2. Water Right License 92-7208 authorized a portion of the place of use in Section 36 of Township 43 North, Range 1 *East*, B.M. when this place of use is clearly in Section 36 of Township 43 North, Range 1 *West*, B.M.
3. The Department should revise the legal description for the place of use in Section 36 of Township 43 North, Range 1 East, B.M. on the license to Section 36 of Township 43 North, Range 1 West, B.M.

ORDER

IT IS HEREBY ORDERED that the place of use in Section 36 of Township 43 North, Range 1 East, B.M. for Water Right License 92-7208 are **CORRECTED** as set forth in the Amended Water Right License issued on this date in conjunction with this order.

Dated this 11th day of June, 2015.

Shelley Keen
Shelley Keen, Manager
Water Right Section



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street • P.O. Box 83720 • Boise, Idaho 83720-0098

Phone: (208) 287-4800 • Fax: (208) 287-6700 • Website: www.idwr.idaho.gov

C.L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

June 15, 2015

EMERALD CREEK GARNET LTD
PO BOX 190
FERNWOOD ID 83830-0190

RE: License No. 92-7208

Issuance of License

Dear Water Right Holder(s):

The Department of Water Resources has issued the enclosed Amended Water Right License as the Department was made aware through an objection in the Coeur D'Alene Spokane River Basin Adjudication that the original license had been issued with incorrect legal descriptions. This license confirms that a water right has been established in accordance with your permit. This license supersedes the license document issued March 6, 2009. Please be sure to thoroughly review the conditions of approval and remarks listed on your license.

The Amended License is a PRELIMINARY ORDER issued by the Department pursuant to Rule 760 of the Department's Rules of Procedure (IDAPA 37.01.01). It can and will become a final order without further action by the Department unless a party petitions for reconsideration or files an exception and/or brief within fourteen (14) days of the service date as described in the enclosed information sheet.

Please note that water right owners are required to report any change of water right ownership and/or mailing address to the Department within 120 days of the change. Failure to report these changes could result in a \$100 late filing fee. Contact any office of the Department or visit the Department's homepage on the Internet to obtain the proper forms and instructions.

If you have any questions, please contact me at 208-287-4951.

Sincerely,

Pamela Skaggs

Water Rights Supervisor

Enclosure(s)

c: DEPARTMENT OF LANDS DEPUTY ATTORNEY GENERAL MICHAEL ORR
IDWR NORTHERN REGIONAL OFFICE CHAD GOODWIN

CERTIFICATE OF SERVICE

I hereby certify that on June 16, 2015, I mailed a true and correct copy, postage prepaid, of the foregoing AMENDED PRELIMINARY ORDER (Approved Amended License) to the person(s) listed below:

RE: WATER RIGHT NO. 92-7208

**EMERALD CREEK GARNET LTD
PO BOX 190
FERNWOOD ID 83830-0190**

**MICHAEL ORR
DEPUTY ATTORNEY GENERAL
DEPARTMENT OF LANDS
PO BOX 83720
BOISE ID 83720-0010**

**CHAD GOODWIN
IDAHO DEPARTMENT OF WATER RESOURCES
7600 N MINERAL DR STE 100
COEUR D' ALENE ID 83815**



**Darla Block
Technical Records Specialist**

EXPLANATORY INFORMATION TO ACCOMPANY A PRELIMINARY ORDER

(To be used in connection with actions when a hearing was **not** held)

(Required by Rule of Procedure 730.02)

The accompanying order or approved document is a "Preliminary Order" issued by the department pursuant to section 67-5243, Idaho Code. **It can and will become a final order without further action of the Department of Water Resources ("department") unless a party petitions for reconsideration, files an exception and brief, or requests a hearing as further described below:**

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a preliminary order with the department within fourteen (14) days of the service date of this order. **Note: the petition must be received by the department within this fourteen (14) day period.** The department will act on a petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See Section 67-5243(3) Idaho Code.

EXCEPTIONS AND BRIEFS

Within fourteen (14) days after: (a) the service date of a preliminary order, (b) the service date of a denial of a petition for reconsideration from this preliminary order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this preliminary order, any party may in writing support or take exceptions to any part of a preliminary order and may file briefs in support of the party's position on any issue in the proceeding with the Director. Otherwise, this preliminary order will become a final order of the agency.

REQUEST FOR HEARING

Unless a right to a hearing before the Department or the Water Resource Board is otherwise provided by statute, any person aggrieved by any final decision, determination, order or action of the Director of the Department and who has not previously been afforded an opportunity for a hearing on the matter may request a hearing pursuant to section 42-1701A(3), Idaho Code. A written petition contesting the action of the Director and requesting a hearing shall be filed within fifteen (15) days after receipt of the denial or conditional approval.

ORAL ARGUMENT

If the Director grants a petition to review the preliminary order, the Director shall allow all parties an opportunity to file briefs in support of or taking exceptions to the preliminary order and may schedule oral argument in the matter before issuing a final order. If oral arguments are to be heard, the Director will within a reasonable time period notify each party of the place, date and hour for the argument of the case. Unless the Director orders otherwise, all oral arguments will be heard in Boise, Idaho.

CERTIFICATE OF SERVICE

All exceptions, briefs, requests for oral argument and any other matters filed with the Director in connection with the preliminary order shall be served on all other parties to the proceedings in accordance with IDAPA Rules 37.01.01302 and 37.01.01303 (Rules of Procedure 302 and 303).

FINAL ORDER

The Director will issue a final order within fifty-six (56) days of receipt of the written briefs, oral argument or response to briefs, whichever is later, unless waived by the parties or for good cause shown. The Director may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order. The department will serve a copy of the final order on all parties of record.

Section 67-5246(5), Idaho Code, provides as follows:

Unless a different date is stated in a final order, the order is effective fourteen (14) days after its service date if a party has not filed a petition for reconsideration. If a party has filed a petition for reconsideration with the agency head, the final order becomes effective when:

- (a) The petition for reconsideration is disposed of; or
- (b) The petition is deemed denied because the agency head did not dispose of the petition within twenty-one (21) days.

APPEAL OF FINAL ORDER TO DISTRICT COURT

Pursuant to sections 67-5270 and 67-5272, Idaho Code, if this preliminary order becomes final, any party aggrieved by the final order or orders previously issued in this case may appeal the final order and all previously issued orders in this case to district court by filing a petition in the district court of the county in which:

- i. A hearing was held,
- ii. The final agency action was taken,
- iii. The party seeking review of the order resides, or
- iv. The real property or personal property that was the subject of the agency action is located.

The appeal must be filed within twenty-eight (28) days of this preliminary order becoming final. See section 67-5273, Idaho Code. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal.