

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF LICENSE)
NO. 37-7861 IN THE NAME OF)
JAMES W. MECHAM)
_____)

**PRELIMINARY ORDER
CORRECTING A LICENSE**

This matter having come before the Department of Water Resources (Department) as a *Request for Amendment of License*, the Department finds, concludes, and orders:

FINDINGS OF FACT

1. On October 28, 1980, the Department received an application for permit from James W. Mecham ("Mecham") for 0.714 cubic feet per second (cfs) of Stoddard Creek Spring water for fish propagation and power purposes from March 15 to November 1, and 0.30 cfs of Stoddard Creek Spring water for fish propagation and power purposes from November 1 to March 15, and 0.714 cfs of Stoddard Creek Spring water for recreation purposes from January 1 to December 31, and 1.0 acre feet (af) of Stoddard Creek Spring water for recreation storage each year. The Department assigned identification no. 37-7861 to the application.
2. Section 10 of the application for permit stated, "The applicant will be simply adding the above uses to water that has been decreed to him (and recorded) for irrigation and stock water etc."
3. Section 6a of the application for permit stated, "Water to be piped to fish ponds then used for irrigation and some small hydro electric generation. Small amt. diverted at pond for recreation."
4. On March 13, 1981, the Department issued permit no. 37-7861 ("permit") for the uses proposed in the application.
5. On November 27, 1987, the Department received a proof of beneficial use statement and a beneficial use field report from certified examiner Gerald Martens for the permit.
6. On September 29, 2006, the Snake River Basin Adjudication ("SRBA") court decreed water right nos. 37-1244 and 37-4389 with a condition limiting the use of both water rights to a combined total of 0.714 cfs for the irrigation of 11 acres.
7. On December 22, 2009, the Department issued water right license no. 37-7861 ("license") to Mecham for 0.71¹ cfs and 284 af of Stoddard Creek Spring water for power purposes from March 15 to November 1 and 0.30 cfs and 80 af of Stoddard Creek Spring water for power purposes from November 2 to March 14. The license limited the diversion rate to 0.714 cfs when water rights 37-1244, 37-4389, and 37-7861 are combined. The Department issued the license as a preliminary order of the agency.
8. On August 9, 2012, the SRBA court received Mecham's request to set aside the partial decrees for rights 37-1244 and 37-4389. The motion explained that the right should not contain a combined use of

¹ The Department issues water right approvals to the hundredth of a cfs.

0.714 cfs. The SRBA court has set a continued hearing on this motion for March 27, 2013.

9. On November 2, 2012, the Department received a *Request for Amendment of License* from Mecham. The request stated that water right no. 37-4389 should not have been included in the water right condition that limited water rights 37-1244, 37-4389, and 37-7861 to a combined diversion rate of 0.714 cfs because it does not allow Mecham to irrigate and generate power at the same time.

10. It has been Mecham's practice to divert no more than 0.714 cfs from Stoddard Creek Spring. Mecham diverts and uses water from Lower Waddington Spring pursuant to water right 37-4389 when water from Stoddard Creek Spring is not available or is being used for power generation purposes. Therefore, it has not been Mecham's practice to limit all three rights (37-1244, 37-4389, and 37-7861) to 0.714 cfs. Rather, the water from Lower Waddington Spring pursuant to water right 37-4389 provides an additional amount over and above the 0.714 cfs from Stoddard Creek Spring.

CONCLUSIONS OF LAW

1. Under Section 42-219, *Idaho Code*, 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. In connection with the permit, Mecham established a beneficial use of water from Stoddard Creek Spring limited to 0.714 cfs in combination with water right 37-1244, but not limited in combination with water right 37-4389.

3. The condition on license no. 37-7861 limiting the combined use of water of water right nos. 37-1244, 37-4389 and 37-7861 to 0.714 cfs does not accurately portray the water use developed in accordance with the permit.

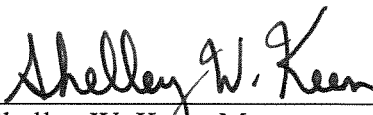
4. The Department should correct license no. 37-7861 to describe the combined diversion rate limitation of 0.714 cubic feet per second to include only water rights 37-1244 and 37-7861.

ORDER

IT IS HEREBY ORDERED that approval condition no. 5 on license no. 37-7861 in the name of James W. Mecham is **CORRECTED** to state:

Rights 37-1244 and 37-7861 when combined shall not exceed a total diversion rate of 0.714 cfs.

Dated this 14th day of March, 2013.



Shelley W. Keen, Manager
Water Rights Section