



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

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C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Interim Director

August 21, 2009

EL DORADO HYDRO
ATTN: VICTOR ENGEL
ONE TECH DRIVE, SUITE 220
ANDOVER, MA 01810

RE: Water Permit 78-7254 & Water Rights 78-7150B, 78-7154, & 78-7188

Dear Mr. Engel,

I am in receipt of the letter you sent to me on June 4, 2009 pertaining to a change in contact information regarding water right permit 78-7254. In the letter you indicated that the permit holder name should be El Dorado Hydro and provided a new point of contact and contact information for all matters pertaining to the permit. You also provide a check for \$25.00 to cover the change in ownership processing fee. I have updated the contact information regarding El Dorado Hydro, because I am not technically recognizing it as a change in ownership, but instead an update in ownership information, I do not require a processing fee of \$25.00. As requested the change has been made at no cost to you and I have returned the check with this letter. Moving forward there are two issues that await resolution, they are (1) the licensing of the water right permit 78-7254, and (2) the change in contact information associated with your other existing water rights, - 78-7150B, 78-7154, and 78-7188.

Licensing Water Right Permit 78-7188

As you are aware I am reviewing your permit prior to issuing a water right license. By issuing a license, the Department confirms the extent of development that has been established in compliance with the terms of the permit. During my field examination of your water use I found that certain elements of the permit have been developed differently than described on your permit. Changes that do not increase the authorized use of water under the permit can be requested and approved in accordance with Section 42-211, Idaho Code. Before a license can be issued, your permit must be amended to depict your water use as it was actually developed.

Based on my findings, the following elements were developed differently than described on your permit:

☒ **Point of Diversion**

☒ **Place of Use**

The enclosed Application for Amendment form depicts the elements of the water right, as they will appear on the license when it is issued. Please review the amendment form carefully. If you concur with the information presented, please sign the form and return it with a \$50.00 filing fee.

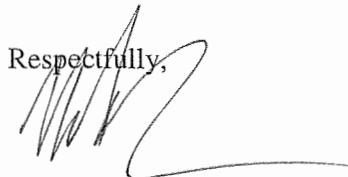
Change in Contact Information for WRs 78-7150B, 78-7154, and 78-7188

In the state of Idaho, a water right permit is recognized as *personal property*. As such, it is owned by the person or entity that applied for the permit, or the person or entity to which the permit has been assigned. On the other hand, a licensed water right is *real property* and considered an appurtenance to the land, which is to say, regardless of the ownership name identified on the water right, the water right belongs to the person or entity that legally owns the land where the water is beneficially used. In your case, research with Idaho County, pertaining to the deed (warranty deed 396324) describing the parcel of ground where beneficial use occurs (power house), indicates that the property is currently owned by J.W. Whitman, Inc. Barring evidence to the contrary, J.W. Whitman, Inc. would be recognized by the Department as the actual owner of the water rights. Exceptions to this law are made if a separate conveyance of the water right or an express reservation for the water right when the land was previously conveyed has severed the water right as an appurtenance to the land. A water right can be separately conveyed by the same means that land is conveyed.

To carry out the task of updating the contact information associated with your other three water rights, since you do not appear to own the land in question, I will need evidence from you verifying the ownership of the water rights by one of your business entities. If evidence of water right ownership does not currently exist, a quitclaim deed from the current property owner would be an acceptable vehicle for conveying ownership to you and providing evidence to the Department of your new ownership. If you already have proof of water right ownership, and that ownership is in the name of one of your past business entities (i.e. Elk Creek Hydro, Sithe Energies, Chi Mountain States Operations), in addition to proof of ownership, I will require evidence verifying the existence of El Dorado Hydro, and the conveyance of the rights and holdings of whatever business entity was declared in the past to be the owner of the water rights to your current ownership group. Because the Department would only be updating contact information and not technically changing the ownership, there would be no filing fees associated with these changes. Please be aware that Idaho Code §42-248 requires water right owners to report any change in water right ownership and/or mailing address to the Department within 120 days of a change or suffer possible penalty.

Correcting ownership and contact information can be a challenging and potentially tedious task, especially when water rights have had the level of historical ownership change activity that this family of rights has had. The fact that you do not appear to own the land where the water is beneficially used adds an additional layer of complexity. Your patience and support in correcting these matters are greatly appreciated. If you have any questions regarding these issues please contact me by phone at (208) 287-4914, or by email at mathew.weaver@idwr.idah.gov.

Respectfully,



Mathew Weaver, PE
Staff Engineer

Enclosures

Cc: Dale Higbee

State of Idaho
Department of Water Resources
APPLICATION FOR AMENDMENT

(For Licensing Purposes)

WATER RIGHT NO. 78-07254

Date of Priority: February 20, 1984

Maximum Diversion Rate: 2.58 CFS

Maximum Diversion Volume: 778.0 AF

Comes now EL DORADO HYDRO
C/O VICTOR A ENGEL
ONE TECH DRIVE
STE 220

ANDOVER MA 01810 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. 78-07254, and requests that the permit be changed as follows:

Source: BIG ELK CREEK

Tributary: LITTLE SALMON RIVER

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>RATE OF DIVERSION</u>	<u>ANNUAL VOLUME</u>
POWER	03/01 to 07/31	2.58 CFS	778.0 AF

LOCATION OF POINT(S) OF DIVERSION:

BIG ELK CREEK SE $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ Sec. 23, Twp 22N, Rge 01E, B.M.

IDAHO County

PLACE OF USE: POWER

Twp Rge Sec	NE				NW				SW				SE				
	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	Totals
22N 01E 27				X													

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 _____ day of _____, 200__.

(Signature)

State of Idaho
Department of Water Resources
APPLICATION FOR AMENDMENT
(For Licensing Purposes)
WATER RIGHT NO. 78-07254

FOR DEPARTMENT USE ONLY

Preliminary check by _____ Fee = _____ Received by _____ # _____ Date _____

ACTION OF THE DEPARTMENT OF WATER RESOURCES

I, GARY SPACKMAN, of the Department of Water Resources hereby approve the
above Application for Amendment for Permit No. 78-07254 with the following:

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. The diversion and use of water for hydropower purposes under this license is subject to review by the Director on or after August 31, 2019. Upon appropriate findings relative to the interest of the public, the Director may cancel all or any part of the use authorized herein and may revise, delete or add conditions under which the right may be exercised.
3. Use of water under this right shall be non-consumptive.
4. This right does not grant any right-of-way or easement across the land of another.
5. This right does not constitute Idaho Public Utilities Commission or Federal Energy Regulatory Commission approval that may be required.
6. The right holder shall install a measuring device that can be used to determine the instantaneous rate of flow of water through the system, or the right holder shall provide to the department a flow rate measurement or computation made by a certified water right examiner in accordance with actual system design and operation.
7. The rights for the use of water confirmed in this license shall be junior and subordinate to all rights for the use of water other than hydropower, within the State of Idaho that are initiated later in time than the priority of this right and shall not give rise to any right or claim against any future rights for the use of water, other than hydropower, within the State of Idaho initiated later in time than the priority of this right.

Witness my hand this _____ day of _____, 2009.

GARY SPACKMAN
Interim Director