

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

IN THE MATTER OF LICENSE	)	
NO. 35-8062 IN THE NAME OF	)	PRELIMINARY ORDER
<u>LENARD SCHRITTER</u>	)	CORRECTING LICENSE

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

FINDINGS OF FACT

1. On November 30, 1982, Lenard Schritter filed an application with the Department, seeking a permit to divert 7.96 cfs of ground water to irrigate 398 acres in Section 1, T06S, R30E. The application was still pending before the Department in 1989. During that time period, many ground water applications were being held, awaiting the resolution of the Swan Falls matter. The Department determined that it could process and approve Mr. Schritter's application because the proposed use had actually been developed prior to October 1, 1984. Permit 35-8062 was issued by the Department on August 14, 1989, authorizing the diversion of 7.96 cfs to irrigate 398 acres.

2. Proof of Beneficial Use was filed by Mr. Schritter on August 15, 1990. The Proof stated that the ground water well had been drilled in 1982 and 398 acres had been irrigated under Permit 35-8062.

3. The Department conducted a field examination for Permit 35-8062 on June 4, 1991. The field examiner measured the ground water well, and found it had a capacity of 4.78 cfs. The field report described a $\frac{3}{4}$ mile linear mainline system, which would have traversed the entire permitted place of use, but only listed 169.5 irrigated acres. Water Right License 35-8062 was issued on July 19, 1995 for 169.5 irrigated acres, 3.39 cfs, and 678 acre-feet (4 af/acre). Even though the field examiner found a higher diversion rate, the license rate was limited to 0.02 cfs per irrigated acre. The license issued by the Department was not challenged by Mr. Schritter.

4. On December 27, 2006, the Department sent a certified letter to Mr. Schritter, notifying him that he was irrigating acres in Section 1, T06S, R30E, without a water right. Mr. Schritter contacted the Department about the letter and discovered that License 35-8062 did not cover the entire 398 acres authorized by Permit 35-8062. Michael Schritter, on behalf of his father, Lenard, and Schritter Farms, sent a letter in February 2007 asking the Department to correct License 35-8062 to authorize 390 acres and 4.78 cfs. The difference between the permitted place of use (398 acres) and the acres requested by Schritter Farms (390 acres) is due to a wide farm road cutting through the middle of the property.

5. As part of the petition to correct License 35-8062, Schritter Farms provided power records showing a consistent use of power by the ground water pump from 1988 to 2006. License 35-8062 is the only water right diverted from the ground water well. Schritter Farms also produced crop rotation records showing that the entire place of use had been cultivated and planted from 1983 to 2006. The crop rotation records describe frequent plantings of water intensive crops such as potatoes and sugar beets. Aerial photography confirms that the entire place of use identified in Permit 35-8062 was cultivated in 1987 and 1992. Aerial photography provided by Schritter Farms confirms that the entire place of use was cultivated in 1990 and 1991.

6. Evidence suggests that, when the beneficial use field exam was completed in 1991, the field examiner failed to identify the full amount of irrigation developed under Permit 35-8062.

CONCLUSIONS OF LAW

1. Idaho Code § 42-219 describes the Department's role in licensing a water right after proof of beneficial use has been submitted:

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.

2. 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 developed in accordance with a permit. License 35-8062 does not accurately portray the full extent of beneficial use developed under Permit 35-8062. Evidence suggests the true development occurring under Permit 35-8062 was 390 acres and a diversion rate of 4.78 cfs.

3. The Department should correct License 35-8062 to authorize a diversion rate of 4.78 cfs, a diversion volume of 1,560 acre-feet (4 af/acre), and the irrigation of 390 acres.

ORDER

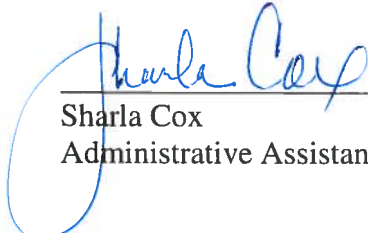
IT IS HEREBY ORDERED that Water Right License 35-8062 is CORRECTED as set forth in the Amended Water Right License issued in conjunction with this Order.

Dated this 28th day of December, 2011.


James Cefalo
Water Resources Program Manager

CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of December, 2011, I mailed a true and correct copy, of the foregoing PRELIMINARY ORDER CORRECTING LICENSE, to the person(s) listed below:



Sharla Cox
Administrative Assistant

U.S. MAIL

RE: PRELIMINARY ORDER CORRECTING LICENSE (35-8062)

Lenard Schritter
2870 West 1800 South
Aberdeen ID 83210

Michael Schritter
Schritter Farms
2953 West 1700 South
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