

BEFORE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF LICENSE NO.)
47-7624 IN THE NAME OF)
CHERYL AND JAMES F. HERMAN)
_____)

**FINAL ORDER
CORRECTING LICENSE**

This matter having come before the Department of Water Resources (Department) as a result of approval of water right license 47-7624, the Department finds, concludes and orders:

FINDINGS OF FACT

1. On March 17, 1980, the Department issued permit no. 47-7624 (permit) authorizing diversion of 0.30 cubic feet per second from ground water to be used for commercial purposes in the NE¼NW¼ of Section 31, Township 12 South, Range 17 East, B.M.
2. On January 4, 1985, the Department received Proof of Beneficial Use for the permit.
3. On August 23, 1985 and on May 3, 1995, Department staff conducted a field examination to verify the beneficial use of water established in accordance with the permit. The August 23, 2005 field examination report identifies commercial use in the NE¼NW¼ of Section 31, and the SE¼SW¼ of Section 30, Township 12 South, Range 17 East, B.M.
4. Contrary to its long-standing practice, the Department did not notify the right holders of the opportunity to apply to amend the permit to include the SE¼SW¼ of Section 30, Township 12 South, Range 17 East, B.M.
5. On July 28, 2011, the Department issued water right licenses 47-7624 (license) as a preliminary order pursuant to the provisions of Section 42-219, Idaho Code. The license was issued to James F. Herman and Cheryl Herman (right holders) and authorized use only in the NE¼NW¼ of Section 31, Township 12 South, Range 17 East B.M.
6. On August 12, 2011, the preliminary order became final.
7. On September 9, 2011, the Department received the right holder's application for amendment to change the permitted place of use to include commercial use in the SE¼SW¼ in Section 30, Township 12 South, Range 17 East, B.M.

CONCLUSIONS OF LAW

1. The field examination report confirmed beneficial use was developed in the SE¼SW¼ of Section 30, Township 12 South, Range 17 East, B.M., but the Department could not recognize it as a valid place of use at licensing because it was not authorized by the permit.
2. The Department should have notified the right holders of the opportunity to amend the permit prior to issuing the license.
3. The Department should approve the application to amend permit 47-7624.
4. The Department should correct the place of use description on the license to include the SE¼SW¼ in Section 30, Township 12 South, Range 17 East, B.M.

ORDER

IT IS HEREBY ORDERED that the application to amend Permit 47-7624 is **APPROVED**.

IT IS FURTHER HEREBY ORDERED that the place of use description for water right license 47-7624 is **CORRECTED** as set forth in the amended water right license issued on this date in conjunction with this order.

Dated this 16th day of September, 2011.

Gary Spackman
Gary Spackman
Interim Director