

BEFORE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF LICENSE NO.)
37-7822 IN THE NAME OF)
SOUTH GIMLET WATER USERS)
ASSOCIATION INC.)
_____)

**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:

FINDINGS OF FACT

1. On July 17, 1980, the Department issued permit 37-7822, in the name of Wood River Properties Inc., authorizing year round diversion of 20 cubic feet per second (cfs) of water from Big Wood River for recreation and aesthetic purposes with a condition requiring that proof of the application of water to beneficial use (proof) shall be submitted on or before July 1, 1985.
2. On May 28, 1985, the Department granted a Request for Extension of Time to submit proof of beneficial use in connection with permit 37-7822, extending the deadline to July 1, 1988.
3. On July 1, 1988, the Department received proof of beneficial use for permit 37-7822.
4. On June 28, 1988, a certified water right field examiner conducted a licensing field examination and found that the diversion works developed under permit 37-7822 had the capacity to divert 20 cfs as permitted. The examiner recommended license 37-7822 be issued for year round diversion of 20 cfs for recreation and aesthetic purposes, but did not recommend an annual diversion volume for each use, or a maximum diversion volume.
5. On November 1, 1991, the Department issued license 37-7822 in the name of Wood River Properties Inc. The license authorized year round diversion of 20 cfs for recreation and aesthetic purposes and authorized an annual diversion volume of 7,300 acre-feet for each purpose of use, and a maximum annual diversion volume of 7,300 acre-feet.
6. On October 29, 2009, the Department received a Notice of Change in Water Right Ownership and changed the name on license 37-7822 to South Gimlet Water Users Association, Inc.
7. On August 19, 2011, the South Gimlet Water Users Association Inc. submitted a request to amend license 37-7822 stating that the licensed maximum diversion volume was in error and should be 14,454 acre-feet.

ANALYSIS

Year round diversion of 20 cfs would generate a maximum diversion volume of 14,454 acre-feet and is calculated as $(20 \text{ cfs}) * (365 \text{ days}) * (1.9835) = 14,454 \text{ acre-feet per year}$. The Departments practice is to round to 3 significant figures, or 14,500 acre-feet.

The licensed volume was calculated by multiplying 20 (cfs) by 365 (days) equaling 7,300.

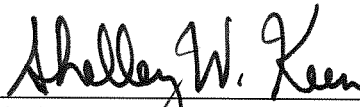
CONCLUSIONS

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. The Department erred when it calculated a maximum diversion volume of 7,300 acre-feet.
3. The annual diversion volume for recreation and aesthetic purposes and the maximum diversion volume on license 37-7822 should be corrected to 14,500 acre-feet.

ORDER

IT IS THEREFORE HEREBY ORDERED that the annual diversion volume for recreation and aesthetic purposes and the maximum diversion volume on license 37-7822 is **CORRECTED** to 14,500 acre-feet:

DATED this 2nd day of September, 2011.



Shelley W. Keen, Manager
Water Right Permits Section

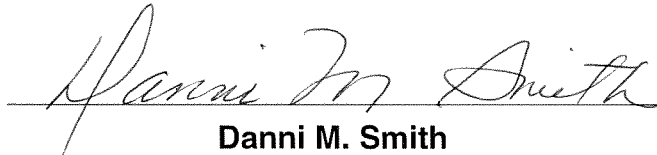
CERTIFICATE OF SERVICE

I hereby certify that on September 2, 2011, I mailed a true and correct copy, postage prepaid, of the foregoing **Preliminary Order Correcting License** to the persons listed below:

RE: WATER RIGHT NO. 37-7822

**SOUTH GIMLET WATER USERS ASSN INC
C/O WYMAN TAYLOR
PO BOX 2382
KETCHUM ID 83340**

**SPECK & AANESTAD
JAMES P SPECK
PO BOX 987
KETCHUM ID 83340**


**Danni M. Smith
Office Services Supervisor**

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.