

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF LICENSE)
NO. 63-7533 IN THE NAME OF)
RAY OBENDORF)
_____)

**PRELIMINARY ORDER DENYING
PETITION TO CORRECT 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 as follows:

FINDINGS OF FACT

1. On December 18, 1975, the Department issued permit 63-7533 (permit) in the name of Ray Obendorf (permit holder) to develop a right to divert 1.0 cubic feet per second (cfs) from ground water in the NE $\frac{1}{4}$ SE $\frac{1}{4}$, Section 23, Township 6 North, Range 5 West, B.M., for stockwater purposes to provide water for 2000 cattle as described under item 8.a(3) on the application for permit.

2. On November 4, 1976, the Department received a proof of beneficial use statement for the permit.

3. On March 24, 1977, a Department field examiner (examiner) conducted an inspection to verify the beneficial use of water developed in accordance with the permit. The field exam report provides that "[w]ater is used for stockwater and also to sprinkle feedlot and cattle during dry hot weather." (Emphasis added.) The examiner estimated the diversion works could divert 1.0 cfs based on test pump information. The examiner listed 80 acre-feet as the recommended total annual diversion volume. The examiner did not provide an explanation for recommending 80 acre-feet.

4. The Department standard for stockwater use is 12 gallons per day per head for non-dairy cattle.

5. On January 31, 1978, a Department employee tasked with reviewing the field exam report and making a recommendation on how the water right should be licensed (reviewer) reviewed the March 24, 1977 field exam report. The reviewer recommended that the license be issued for 0.45 cfs, the amount necessary to supply 12 gallons of water for each head of cattle during a two-hour pumping period. The reviewer recommended an annual diversion volume of 27 acre-feet based on 12 gallons per day per head for 2000 head of cattle over 365 days a year.

6. On February 2, 1978, the Department sent the permit holder a letter informing him that the Department intended to issue a license with a diversion rate of 0.45 cfs up to a maximum volume of 27 acre-feet per year. The letter asked the permit holder to notify the Department within

10 days if he disagreed with the findings. The Department did not receive a response to the February 2, 1978 letter.

7. On February 21, 1978, the Department issued water right license 63-7533. At the top of the page, the license states an amount of 1.0 cfs. The license also states that an examination by the Department indicates a diversion capacity of 1.0 cfs. The license describes the beneficial use as stockwater subject to the condition that no more than 0.45 cfs may be diverted at any one time and the use is limited to an annual volume of 27 acre-feet. The Department finds that the license limits the use of water for stockwater purposes in the amount of 0.45 cfs and 27 acre-feet per year.

8. At the time of licensing in 1978, Idaho Code § 42-224 provided that any person aggrieved by a license issued by the Department had 60 days to appeal from the date of the issuance of the license. The permit holder did not appeal the issuance of the license.

9. On February 25, 2011, the Department received a petition to correct license 63-7533 from Basin and Range Resource Company, LLC (petitioner). The petition identifies Basin and Range Resource Company, LLC as the owner of the place of use described in license 63-7533. Basin and Range Resource Company, LLC, is the claimant listed in the Snake River Basin Adjudication recommendation for subcase 63-7533. The petitioner requests that license 63-7533 be corrected to include all the documented uses for a total diversion rate of 1.0 cfs and a total diversion volume of 80 acre-feet per year.

CONCLUSIONS OF LAW

1. Idaho Code § 42-219 requires that "...if the department is satisfied that the law has been fully complied with and that the water is being used...for the purpose for which it was originally intended, the department shall issue to such user or users a license confirming such use. Such license shall be issued...and shall state...the purpose for which such water is used, the quantity of water which may be used, which in no case shall be an amount in excess of the amount that has been beneficially applied..."

2. The Department's review of the examiner's recommendation for permit 63-7533 and decision to limit the use under the license to 0.45 cfs and 27 acre-feet per year for stockwater purposes was not an error. The decision was a determination of beneficial use based on the permitted use of stockwater for 2000 cattle.

3. Moreover, the permit holder had two opportunities to object if he disagreed with the quantity of water licensed. First, on February 2, 1978, the Department sent the permit holder a letter informing him that the Department intended to issue a license with a diversion rate of 0.45 cfs up to a maximum volume of 27 acre-feet per year. The letter specifically asked the permit holder to notify the Department within 10 days if he disagreed with the findings. The permit holder failed to respond. Then, once the license was issued on February 21, 1978, the permit holder had 60 days to file an appeal pursuant to Idaho Code § 42-224. The permit holder failed to file a timely appeal. Now, over 30 years later, the permit holder's successor-in-interest seeks to second guess the decisions of both the permit holder and the Department. The Department finds no justification to

revisit this issue now.

ORDER

IT IS HEREBY ORDERED that the petition to correct Water Right License 63-7533 is **DENIED**.

Dated this 20 day of April, 2011.



Jeff Peppersack, Chief
Water Allocation Bureau