

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF THE CORRECTION)
OF COMBINED FLOW LIMITATIONS)
IN REGARDS TO WATER RIGHT)
LICENSES 37-7014 AND 37-7644)
_____)

**PRELIMINARY ORDER
CORRECTING LICENSES**

This matter having come before the Department of Water Resources (the Department) as a result of the Department's investigations into Watermaster responsibilities and regulation requirements regarding ground water rights in Water District 37, the Department makes the following Findings of Fact, Conclusions of Law, and Order:

FINDINGS OF FACT

1. On August 1, 1966, the Department issued water right license G-29372 (current water right number 37-2649) to Don D. & Wayne Baldwin, for the diversion of 7.44 cfs of ground water from a well located within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 20, Township 1 South, Range 19 East, B. M., Blaine County, colloquially known as the "Lucke Well", for the irrigation of 372 acres.
2. On June 23, 1966, Department staff conducted the Field Exam in association with water right license G-29372 (37-2649), at this time the field examiner observed a flow rate of 7.60 cfs.
3. On July 15, 1977, transfer 2057 was approved by the Department splitting water right 37-2649 into two components; 37-2649A for the diversion of 4.24 cfs of ground water from the Lucke Well for the irrigation of 212 acres, and 37-2649B for the diversion of 3.20 cfs of ground water from the Lucke Well for the irrigation of 160 acres. The combined flow rate for both water rights is 7.44 cfs.
4. On March 24, 1994, the Department issued water right license 37-7014 to John Flood Queens Crown Ranch, for the diversion of 5.00 cfs of ground water from the Lucke Well, for the irrigation of 445 acres. A condition on the license established a combined diversion rate limit of 7.26 cfs for water right 37-07014 and water right 37-2649. The combined use diversion rate was based upon the observed flow rate of the Lucke Well at the time of the third Field Exam associated with the license (conducted in 1984). This limitation failed to take into account evidence of historical fluctuations (annually and seasonally) in flows, as well as historically documented flows in excess of 7.26 cfs.

5. On July 9, 1993, Department staff conducted a Field Exam in association with water right license 37-7644, at this time the filed examiner observed a flow rate of 4.35 cfs. In the Remarks section of the Field Exam the examiner comments on the annual fluctuations of flow at the well due to drought conditions and the fact that the historical maximum observed flow of the well is 398 inches (7.96 cfs).

6. On February 22, 2005, the Department issued water right license 37-7644 to John F. Stevenson, for the diversion of 2.02 cfs of ground water from the Lucke Well, for the irrigation of 139.5 acres. A condition on the license established a combined diversion rate limit of 5.00 cfs for water rights 37-7644, 37-2649A, 37-2649B, and 37-7014. There is no evidence in the file supporting a combined diversion rate limitation of 5.00 cfs. This limitation failed to take into account evidence of historical fluctuations (annually and seasonally) in flows, as well as historically documented flows in excess of 5.00 cfs.
7. In the spring of 2008, the Watermaster of Water District 37 asked the Department to review all ground water rights in District 37 that had conditions requiring Watermaster regulation. The intent of the review was to provide guidance to the Watermaster so that he might more effectively carry out the responsibilities associated with the regulation and control of ground water rights within the District. During this review the Department noticed discrepancies in combined use limitations governing the group of water rights that share the Lucke Well as their initial point of diversion.
8. On September 15, 2008, Mr. John F. Stevenson, the owner of water right 37-7644 contacted the Department in writing, granting consent to the modification of his water right to reflect a corrected combined diversion rate limitation of 7.44 cfs.
9. On December 10th, 2008, Travis L. Thompson, legal council for Mr. John Flood and the Queens Crown Ranch, contacted the department in writing, requesting that the Department correct water right 37-7014 to reflect a combined diversion rate limitation of 7.44 cfs.

CONCLUSIONS OF LAW

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 combined diversion rate limits on water right licenses 37-7014 and 37-7644 reduce the amount of water that can be diverted in accordance with water rights 37-2649A and 37-2649B. These limitations were based in part on observed flows at the shared point of diversion at the time of field exam and did not take into account evidence of historical fluctuation in flow rates from the well, and evidence of historical flow rates in excess of those observed at the time the combined use limitations were enacted.
3. Correcting the combined diversion rate limits on water rights 37-7014, 37-7644, 37-2649A, and 37-2649B is necessary for proper administration of the water rights by the Watermaster.

4. The Department should revise the conditions on water rights 37-7644 and 37-7014, which impose combined flow rate limitations on all water rights which share the Lucke Well as a point of diversion, to 7.44 cfs.

ORDER

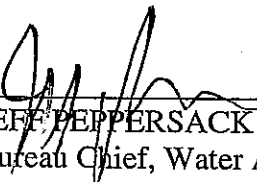
IT IS HEREBY ORDERED that condition number seven for Water Right License 37-7014 be corrected and amended to the following.

The maximum combined rate of diversion under this right and rights 37-2649A and 37-2649B shall not exceed 7.44 cfs.

IT IS FURTHER HEREBY ORDERED that condition number nine for Water Right License 37-07644 be corrected and amended to the following.

Rights 37-7644, 37-2649A, 37-2649B, and 37-7014 when combined shall not exceed a total diversion rate of 7.44 cfs.

Dated this 23 day of December, 2008.



JEFF PEPPERSACK
Bureau Chief, Water Allocation Bureau