

BEFORE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF PETITION TO)
CORRECT WATER RIGHT LICENSE)
NO. 33-7179)
_____)

**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 April 9, 2002, Rights 33-87, 33-2034, 33-2106, 33-2141, and 33-11002 were decreed in the Snake River Basin Adjudication (SRBA) with a total combined diversion rate limit of 8.0 cfs.
2. On April 29, 2004, the Department issued an amended permit and Water Right License 33-7179 (license) to Birch Creek Ranches LLC for the diversion of 1.23 cfs from Black Creek to irrigate 61.7 acres within a 76.7 acre permissible place of use. The amended permit and license included a condition (condition of approval #10) that limits the total combined diversion rate to 6.14 cfs for Rights 33-87, 33-2034, 33-2106, 33-2141, 33-7179, and 33-11002.

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 use limit of 6.14 cfs stated in the approval conditions for the amended permit and Water Right License 33-7179 is not consistent with the determination of the SRBA court that Rights 33-87, 33-2034, 33-2106, 33-2141, and 33-11002 have a combined use limit of 8.0 cfs.
3. The Department cannot restrict the use of water authorized by Rights 33-87, 33-2034, 33-2106, 33-2141, and 33-11002 through the licensing of Right 33-7179.

4. The Department should revise condition of approval #10 on the amended permit and license to allow a total combined diversion rate of 8.0 cfs.

ORDER

IT IS HEREBY ORDERED that approval condition #10 for the amended permit and Water Right License 33-7179 is **CORRECTED** to say:

Rights 33-87, 33-2034, 33-2106, 33-2141, 33-7179, and 33-11002 when combined shall not exceed a total diversion rate of 8.0 cfs, a total annual maximum diversion volume of 1075 af at the field headgate, and the irrigation of 307.1 acres.

IT IS FURTHER HEREBY ORDERED that a corrected Water Right License shall be issued on this date in conjunction with this order.

Dated this 26th day of June, 2008.



JEFF PEPPERSACK
Chief, Water Allocation Bureau