

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF PETITION TO)
CORRECT WATER RIGHT LICENSE)
NO. 45-7601)
_____)

**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 makes the following Findings of Fact, Conclusions of Law, and Order:

FINDINGS OF FACT

1. On September 17, 1986, the Department issued Permit 45-7601 (permit) to the Bureau of Land Management (right holder), for the diversion of 0.02 cfs from springs (Briggs & Roberts Gulch) for livestock and wildlife purposes within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 3, Township 13 South, Range 20 East, B. M. and the place of use within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ and SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 25 and the SW $\frac{1}{4}$ NE $\frac{1}{4}$ and SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 35, Township 12 South, Range 20 East, B. M., Cassia County.
2. On December 3, 1986, the Department received the right holder's proof of beneficial use statement for the permit.
3. On May 26, 1987, a Department field examiner conducted an inspection to verify the beneficial use established in accordance with the permit. The field examiner reported that the stockwater and wildlife uses were established with a point of diversion in Government Lot 1 (NW $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$) of Section 3, Township 13 South, Range 20 East, B. M. and the place of use within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ and SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 25 and the SE $\frac{1}{4}$ NE $\frac{1}{4}$ and SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 35, Township 12 South, Range 20 East, B. M., Cassia County.
4. On April 20, 1992, the Department received the right holder's Application for Amendment of Permit (For Licensing Purposes) listing Conditions/Remarks including:
 7. Source is known locally as Briggs Spring.
 8. Place of use is also known as Robbers Gulch Pipeline.The Application for Amendment of a Permit for 45-7601 was approved by the Department on June 15, 1992.

5. Section 42-219, *Idaho Code*, says, in pertinent part:

Upon receipt by the department of water resources of all the evidence in relation to such final proof, it shall be the duty of the department to carefully examine the same, and if the department is satisfied that the law has been fully complied with and that the water is being used at the place claimed and for the purpose for which it was originally intended, the department shall issue to such user or users a license confirming such use.

6. On June 15, 1992, the Department issued Water Right License 45-7601 (license) to the right holder with the point of diversion within Government Lot 1 (NW $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$) of Section 3, Township 13 South, Range 20 East, B. M. and the place of use described as the NE $\frac{1}{4}$ SW $\frac{1}{4}$ and SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 25, Township 12 South, Range 20 East, B. M. and the SE $\frac{1}{4}$ NE $\frac{1}{4}$ and SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 35, Township 12 South, Range 20 East, B. M., as reported by the Department's field examiner.
7. On March 25, 1993, the right holder claimed the license in the Snake River Basin Adjudication (SRBA).
8. On March 2, 1998, the Department submitted a Director's Report to the SRBA court recommending that claim 45-7601 be disallowed because the claim was incomplete.
9. On July 2, 1998, the right holder submitted an objection to the Director's Report for Water Right 45-7601 to the SRBA court. The right holder objected to the Name and Address, Source, Quantity, Priority Date, Point(s) of Diversion, Purpose(s) of Use, Period of Year, and Place of Use elements of this water right noting the right "was not recommended, but should be recommended with the elements described above." The right holder further noted, "This license was disallowed in the Director's Report. The United States of America, acting through the BLM, uses water for stock water purposes at this water source located on public lands. This claim is supplemental to other claims and should be decreed."
10. In 1999, the right holder reported that Global Positioning System (GPS) data its staff had collected during their investigation of the objection indicated the location of the point of diversion and place of use were incorrectly described on the license.
11. The Department has received the right holder's map depicting the GPS data points showing the point of diversion for water right 45-7601 is within Government Lot 1 (SE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$) of Section 3, Township 13 South, Range 20 East, B. M. and the place of use within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 25, and SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 35, Township 12 South, Range 20 East, B. M., Cassia County.
12. On or around July 3, 2002, the right holder submitted a petition asking the Department to correct the land descriptions based on GPS information. The request noted, "BLM is not seeking to transfer (or move) the location of development but is simply seeking to more accurately describe the original constructed location."

13. On February 7, 2006 the right holder submitted an Amended Notice of Claim for 45-7601, changing the claimed point of diversion description to Government Lot 1 (SE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$) of Section 3, Township 13 South, Range 20 East, B. M. and place of use within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 25, and SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 35, Township 12 South, Range 20 East, B. M., Cassia County.
14. On March 7, 2008, the right holder submitted an application to amend Permit 45-7601 to depict the point of diversion and place of use as depicted in the February 7, 2006 amended notice of claim.
15. Section 42-111, *Idaho Code*, says, in pertinent part:

Whenever a permit has been issued pursuant to the provisions of this act, and the permit holder desires to change the place, period, or nature of the intended use, or make other substantial changes in the method of diversion or proposed use or uses of the water, he shall file an application for amendment upon forms to be furnished by the department of water resources together with the statutory fee for filing and recording same, and upon receipt thereof it shall be the duty of the department of water resources to examine same and if approval thereof would not result in the diversion and use of more water than originally permitted and if the rights of others will not be adversely affected thereby, the director of the department of water resources shall approve said application and return an approved copy to the permit holder.

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. Water Right License 45-7601 described the point of diversion as Government Lot 1 (NW $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$) of Section 3, Township 13 South, Range 20 East, B. M. and place of use within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ and SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 25, and SE $\frac{1}{4}$ NE $\frac{1}{4}$ and SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 35, Township 12 South, Range 20 East, B. M., Cassia County in accordance with information that proved to be inaccurate under additional scrutiny.
3. The point of diversion for Water Right 45-7601 should be described as Government Lot 1 (SE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$) of Section 3, Township 13 South, Range 20 East, B. M. and the place of use within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 25, and SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 35, Township 12 South, Range 20 East, B. M., Cassia County.
4. The Department should approve the application to amend Permit 45-7601.

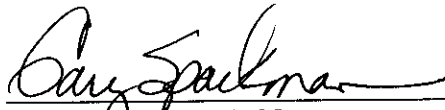
5. The Department should revise the legal descriptions for the point of diversion and place of use on the license.

ORDER

IT IS HEREBY ORDERED that the application to amend Permit 45-7601 submitted to the Department on March 7, 2008 is approved.

IT IS FURTHER HEREBY ORDERED that the point of diversion and place of use descriptions for Water Right License 45-7601 are CORRECTED as set forth in the Amended Water Right License issued on this date in conjunction with this order.

Dated this 28th day of March, 2008.



GARY SPACKMAN

Administrator, Water Management Division