

BEFORE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF CORRECTING)
WATER RIGHT LICENSE NO. 35-8852)
_____)

**PRELIMINARY ORDER
CORRECTING LICENSE**

This matter having come before the Department of Water Resources (Department) as a request for correction of a water right license, the Department makes the following Findings of Fact, Conclusions of Law, and Order:

FINDINGS OF FACT

1. On February 13, 1990, the Department issued Permit 35-8852 (permit) to Idaho Fresh Pak Inc. (right holder) authorizing them to establish a right to divert groundwater for commercial purposes in the amount of 0.89 cubic feet per second (cfs).
2. On March 12, 1990, the Department received the right holder's proof of beneficial use statement for the permit.
3. On August 14, 1991, Department staff conducted a field examination to verify the beneficial use of water established in connection with the permit. The field examiner found that water had been used for commercial purposes at the locations authorized under the permit. The field examiner estimated a diversion capacity of 1.68 cfs, but he recommended issuance of a water right license for the permitted amount of 0.89 cfs. The field examiner also estimated the annual volume used based on the permitted flow operating 2 hours per day over a period of 250 days resulting in a volume of 36.8 acre-feet per annum (afa). The examiner did not provide any documentation for the information used to estimate the annual volume. The field examiner did note in the exam, "...based plant flowmeter on all effluent flow taken from flow rate logs..."
4. On November 25, 1992, the Department issued Water Right License 35-8852 (license) to the right holder authorizing the diversion of 0.89 cfs from ground water for commercial purposes. The license limited the total annual diversion of water to 36.8 acre-feet, based on the recommendations of the field examiner.
5. On April 24, 2006, the Department received a letter from Kent W. Foster, attorney for the right holder, asking the Department how to go about correcting the license. The letter described the historical use of water at the commercial facility and questioned the field examiner's use of 2 hours per day in the estimate of annual volume. The letter indicated that the facility has always been operated 24 hours per day. The letter also included a historical

record of annual wastewater quantity and days of land application per year as reported to the Department of Environmental Quality (DEQ). The letter indicated that the amount applied is essentially the amount diverted from the wells.

6. On October 17, 2006, Department staff reviewed the information submitted by Kent Foster and prepared a spreadsheet to calculate the annual volume of water used on the basis of the land application information. The land application quantities were compared to the quantity capable of being produced by the authorized diversion rate under the water right. The data supported a maximum annual volume of 430.8 afa for the period up to the date that proof was submitted for the permit.

7. Section 42-219, *Idaho Code*, includes the following directive to the Department:

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.

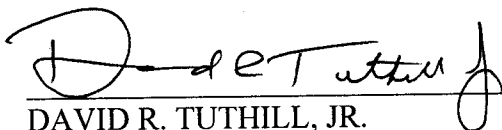
CONCLUSIONS OF LAW

1. As directed in 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 35-8852 authorized the diversion of only 36.8 afa for commercial use when the right holder had actually diverted and used 430.8 afa.
3. The Department should correct the annual volume of water authorized by the license to be used for commercial purposes.

ORDER

IT IS HEREBY ORDERED that the annual volume to be diverted for commercial purposes authorized by Water Right License 35-8852 is **CORRECTED** to 430.8 afa as set forth in the Amended Water Right License issued on this date in conjunction with this order.

Dated this 17th day of October, 2006.



DAVID R. TUTHILL, JR.
Administrator, Water Management Division