

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF PETITION TO
CORRECT WATER RIGHT LICENSE
NO. 43-7273

**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 August 11, 1986, the Department issued Permit 43-7273 (permit) to the U. S. Dept. of Interior, Bureau of Land Management (right holder), for the diversion of .01 cfs of water from a spring (Iwe Spring) for stockwater and wildlife purposes within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 18 of Township 12 South, Range 26 East, B. M.
2. On December 3, 1986, the Department received the right holder's proof of beneficial use 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 stockwater and wildlife uses were established in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 18, of Township 12 South, Range 26 East, B. M.
4. 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.

5. On January 9, 1992, the Department issued Water Right License 43-7273 (license) to the right holder for .01 cfs with the point of diversion of SW $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 18 of Township 12 South, Range 26 East, B. M., and the place of use described as the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 18, of Township 12 South, Range 26 East, B. M., as had been permitted and reported by the Department's field examiner.

6. On March 25, 1993, the right holder claimed the license in the Snake River Basin Adjudication (SRBA).
7. On March 23, 1998, the Department submitted a Director's Report to the SRBA court recommending that the point of diversion and place of use for water right 43-7273 be decreed as licensed.
8. On July 2, 1998, the right holder submitted an objection to the Director's Report for Water Right 43-7273 to the SRBA court. The objection stated, "The legal descriptions reported in the Director's Report for this claim are inaccurate."
9. 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 was incorrectly described on the license and subsequent recommendation.
10. The Department has received the right holder's GPS data showing that the point of diversion for water right 43-7273 is in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 18, Township 12 South, Range 26 East, B. M., Cassia County. The right holder also indicated the place of use for water right 43-7273 is more accurately described in SE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 18, Township 12 South, Range 26 East, B. M., Cassia County.
11. On July 3, 2002, the Department received 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 the development, but is simply seeking to more accurately describe the original constructed location."
12. On May 16, 2006, the Department received the right holder's application for amendment to change the permitted point of diversion to the SW $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ and the place of use to the SE $\frac{1}{4}$ SW $\frac{1}{4}$, Section 18, Township 12 South, Range 26 East, B. M., Cassia County.
13. 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 43-7273 described the point of diversion and place of use of the water use developed by the right holder as being within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 18, Township 12 South, Range 26 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 43-7273 should be described as SW $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 18, Township 12 South, Range 26 East, B. M., Cassia County. Place of use for Water Right 43-7273 should be described as SE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 18, Township 12 South, Range 26 East, B. M., Cassia County.
4. The Department should approve the application to amend Permit 43-7273.
5. The Department should revise the point of diversion and place of use descriptions on the license.

ORDER

IT IS HEREBY ORDERED that the application to amend Permit 43-7273 submitted to the Department on May 16, 2006 is approved.

IT IS FURTHER HEREBY ORDERED that the place of use description for Water Right License 43-7273 is **CORRECTED** as set forth in the Amended Water Right License issued on this date in conjunction with this order.

Dated this 18th day of May, 2006.



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