

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF PETITION TO)
CORRECT WATER RIGHT LICENSE)
NO. 43-7267)
_____)

**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 July 1, 1986, the Department issued Permit 43-7267 (permit) to the U. S. Dept. of Interior, Bureau of Land Management (right holder), for the diversion of .03 cfs of water from a spring (North Chokecherry Spring) for stockwater and wildlife purposes within the SW¼SE¼ of Section 35, Township 13 South, Range 25 East, B. M., Cassia County.
2. On July 28, 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 the stockwater and wildlife uses were established in the SW¼SE¼ of Section 35, Township 13 South, Range 25 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 March 2, 1992, the Department issued Water Right License 43-7267 (license) to the right holder for .02 cfs with the point of diversion and place of use described as the SW¼SE¼ of Section 35, Township 13 South, Range 25 East, Cassia County, 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 Water Right 43-7267 be disallowed because the claim was incomplete.
8. On July 2, 1998, the right holder submitted an objection to the Director's Report for Water Right 43-7267 to the SRBA court. The objection stated, "This license was disallowed in the Director's Report. The United States of America, acting through the BLM, uses water for stockwater purposes at this water source located on the public lands. This claim is supplemental to other claims and should be decreed."
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 were incorrectly described on the license.
10. The Department has received the right holder's GPS data showing that the point of diversion for water right 43-7267 is in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 35, Township 13 South, Range 25 East, B. M., Cassia County and the place of use is in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 35, Township 13 South, Range 25 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 and place of use to the SE $\frac{1}{4}$ SW $\frac{1}{4}$, Section 35, Township 13 South, Range 25 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 43-7267 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 35, Township 13 South, Range 25 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 43-7267 should be described as SE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 35, Township 13 South, Range 25 East, B. M., Cassia County. Place of use for Water Right 43-7267 should be described as SE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 35, Township 13 South, Range 25 East, B. M., Cassia County.
4. The Department should approve the application to amend Permit 43-7267.
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 43-7267 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 43-7267 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