

BEFORE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF PETITION TO)
CORRECT WATER RIGHT LICENSE NO.)
35-8659 SUBMITTED BY HARDIE)
RICHARDS)
_____)

**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 October 15, 1987, Valley Pork Producers applied for a permit to appropriate water from a ground water source for stockwater and commercial purposes in the amount of 0.20 cfs. The application was signed by Hardie L. Richards as owner and manager of the business. The application identified the location of the point of diversion as the SE1/4SW1/4SE1/4 of Section 15, T4N, R37E, B.M. in Jefferson County. The application identified the location of the place of use as the SW1/4SE1/4 of the same section.
2. On January 7, 1988, the Department approved the permit as Permit 35-8659 (permit), with proof of beneficial use due on February 1, 1989.
3. Proof of beneficial use for the permit was submitted on February 12, 1988.
4. A field exam was conducted for the permit on June 8, 1988. The examiner reported that the point of diversion and the stockwater and commercial uses were established in the SW1/4SE1/4 of Section 15, T4N, R37E.
5. On April 22, 1991, the Department issued Water Right License 35-8659 (license) in the name of Valley Pork Producers. The point of diversion and place of use were described on the license as the SW1/4SE1/4 of Section 15, T4N, R37E.
6. On September 22, 2005, Hardie Richards submitted a letter and notarized statement to the Department indicating that he made a mistake by indicating the locations for the point of diversion and place of use for the water right to be in the SW1/4SE1/4 of Section 15. The letter included maps indicating that the correct locations for the point of diversion and place of use are in the SE1/4SE1/4 of Section 15, T4N, R37E, B.M. Mr. Richards asked how to go about correcting the error. The Department considers the letter to be a petition to correct the license.

7. On October 5, 2005 Department staff visited the site to confirm the locations and collected Global Positioning System data for the well and place of use developed under the permit. The Global Positioning System data confirmed the location of the point of diversion and place of use and staff concluded that the correct locations were in the SE1/4SE1/4 of Section 15, T4N, R37E, B.M.
8. 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.

9. On October 13, 2005 the Department received an application for amendment from Hardie Richards to change the permitted point of diversion and place of use to the SE1/4SE1/4 of Section 15, T4N, R37E, B.M.

CONCLUSIONS OF LAW

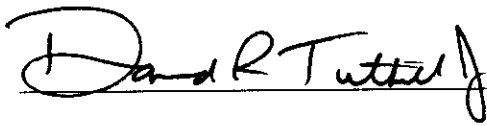
1. Under Section 42-219, *Idaho Code*, the Department has a statutory obligation to issue a water right license that accurately portrays the extent of beneficial use of water developed in accordance with the permit.
2. The license described the point of diversion and place of use of the water use developed by the right holder as being within the SW1/4SE1/4 of Section 15, T4N, R37E, B.M., in accordance with information that proved to be inaccurate under additional scrutiny.
3. The authorized point of diversion and place of use for the license should be described as SE1/4SE1/4 of Section 15, T4N, R37E, B.M.
4. The Department should approve the application to amend the permit.
5. The Department should correct the point of diversion and place of use descriptions on the license.

ORDER

IT IS HEREBY ORDERED that the application to amend Permit 35-8659 submitted to the Department on October 13, 2005 is approved.

IT IS FURTHER HEREBY ORDERED that the point of diversion and place of use descriptions for Water Right License 35-8659 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 October, 2005.

A handwritten signature in black ink, reading "David R. Tuthill, Jr.", is written over a horizontal line.

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