

BEFORE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF CORRECTING)
WATER RIGHT LICENSE NO. 63-11053)
_____)

**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 finds, concludes, and orders:

FINDINGS OF FACT

1. Water Right 63-8206 authorizes the diversion of 0.07 cfs of water from a spring within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$, Section 5, T2N, R5W, B. M., for heating purposes.

2. Water Right 63-8207 authorizes the diversion of 0.04 cfs of water from Dixie Gulch Creek within the SW $\frac{1}{4}$ NE $\frac{1}{4}$, Section 5, T2N, R5W, B. M., for domestic purposes.

3. On March 2, 1992, the Department received a beneficial use field report in connection with Permit to Appropriate Water No. 63-11053 (permit) in accordance with Idaho Code § 42-217. The field examiner reported that the water used in connection with the permit was diverted from a spring within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$, Section 5, T2N, R5W, B. M., in common with water diverted and used under Water Right 63-8206. The field examiner recommended that Right 63-11053 be conditioned so that it and Right 63-8206 are limited to a total combined diversion rate of 0.07 cfs.

4. On July 16, 1992, the Department issued Water Right License 63-11053 to Eugenia C. Landon for the diversion of 0.07 cfs. Approval condition no. 7 on the license said, "The total combined diversion rate under this right and 63-8207 shall not exceed 0.04 cfs."

5. Idaho Code § Section 42-219 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. The current owner of Water Rights 63-8206, 63-8207, and 63-11053 is Trinity Springs, Inc.

7. On September 28, 2005, the Department received a request to correct approval condition no. 6 on the license from the attorney for Trinity Springs, Inc., Christopher H. Meyer of Givens Pursley LLP.

CONCLUSIONS OF LAW

1. Approval condition no. 7 on Water Right License 63-11053 does not accurately portray the water use developed in accordance with Permit 63-11053.

2. Under Idaho Code § 42-219 the Department has a statutory obligation to issue a water right license that accurately portrays the water right developed in accordance with the permit.

3. Approval condition no. 6 on Water Right License 63-11053 should have established a combined diversion limit of 0.07 cfs when Right 63-11053 is used in combination with Right 63-8206.

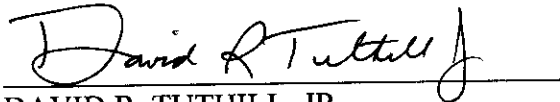
4. The Department should correct approval condition no. 7 on Water Right License 63-11053.

ORDER

IT IS HEREBY ORDERED that approval condition no. 7 on Water Right License 63-11053 shall say, "The total combined diversion rate under Rights 63-8206 and 63-11053 shall not exceed 0.07 cfs."

IT IS FURTHER HEREBY ORDERED that the Department shall issue a corrected water right license document for Water Right 63-11053 on this date in connection with this order.

Dated this 4th day of October, 2005.



DAVID R. TUTHILL, JR.

Administrator, Water Management Division