

BEFORE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF PETITION TO)
CORRECT WATER RIGHT LICENSE)
NO. 83-7112)
_____)

**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 September 7, 1993, the Department issued Permit 83-7112 (permit) to Lane Weimer (right holder) authorizing him to establish a right to divert water from Lewis Creek, a tributary of the North Fork of the Clearwater River, for domestic and power production purposes. The power component of the permit authorized the diversion of 1.0 cfs of water within the NW¼NW¼ of Section 29, Township 39 North, Range 4 East, B.M.
2. On March 24, 1997, the Department received the right holder's proof of beneficial use statement for the permit.
3. On August 31, 1998, 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 from the authorized point of diversion had been used for domestic purposes in one home and for the generation of power for use in the home. The field examiner measured a total diversion rate of 0.09 cfs from Lewis Creek, but he recommended issuance of a water right license for 0.15 cfs because the system was capable of conveying at least that much water and because more than 0.09 cfs of water is available from the source stream at certain times of the year. The basis for the field examiner's recommendation of 0.15 cfs was a theoretical calculation incorporating an efficiency estimate of 70% for the turbine used to generate power.
4. On March 23, 1999, the Department issued Water Right License 83-7112 (license) to the right holder authorizing the diversion of 0.15 cfs from Lewis Creek for power production purposes and 0.04 cfs from Lewis Creek for domestic purposes in accordance with the recommendations of the field examiner. The license limited the total annual diversion of water to 108.4 acre-feet, based on a continuous diversion of 0.15 cfs.

5. On May 21, 1999, the Department received the right holder's petition asking the Department to change the license to authorize a diversion rate of 1.0 cfs for power production purposes.
6. On June 8, 1999, the Department wrote the right holder a letter explaining that under the Department's Rules of Procedure (IDAPA 37.01.01), the opportunity to appeal matters related to the issuance of the license had passed and that the right holder could file an application for a new water right for any additional beneficial use of water over the amounts authorized in the license.
7. On July 12, 2004, the Department received a letter from the right holder asking the Department to re-issue the license for 0.5 cfs for power production purposes. In the letter, the right holder explained that the prior request from 1999 was late because he is "snowed in from December to mid April" and only receives mail every two to four weeks. The right holder also explained in the letter that his "beneficial use has been for .5" cfs.
8. Analysis of the data collected by the field examiner, the field examiner's methods, and the information provided by the right holder confirms that the right holder could employ the facilities confirmed by the field examiner in 1998 to divert and use 0.5 cfs of water when it is available from Lewis Creek to generate power.
9. 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 83-7112 authorized the diversion of only 0.15 cfs for the generation of power when the right holder had actually diverted and used 0.50 cfs to generate power.
3. The Department should revise rate of diversion of water authorized by the license to be use for power production purposes.
4. Because it is dependent on the diversion rate, which is being revised, the Department should also revise the annual volume of water that can be diverted by the right holder.

ANALYSIS

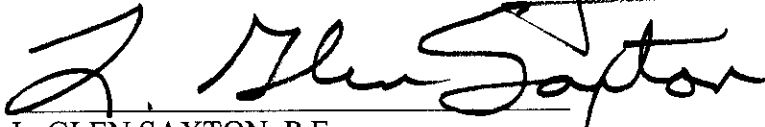
The Department's field examiner rightly acknowledged that the right holder had constructed a system that could use a flow greater than what he witnessed in August, typically a low flow period, for the production of power. The examiner attempted to compensate for inspecting during a low flow period by calculating the maximum amount of water that could be beneficially used by the right holder. The field examiner erred by using the wrong equation for his calculation. Using the correct equation, the Department can show that it is highly likely that the right holder has used 0.5 cfs to generate power.

ORDER

IT IS HEREBY ORDERED that the maximum rate of diversion for power purposes and the total maximum diversion rate authorized by Water Right License 83-7112 are **CORRECTED** to 0.50 cfs as set forth in the Amended Water Right License issued on this date in conjunction with this order.

IT IS FURTHER HEREBY ORDERED that the maximum annual diversion volume for power purposes and the total maximum annual diversion volume authorized by Water Right License 83-7112 are **CORRECTED** to 215 acre-feet as set forth in the Amended Water Right License issued on this date in conjunction with this order.

Dated this 23rd day of July, 2004.


L. GLEN SAXTON, P.E.
Administrator, Water Management Division