

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF PETITION TO)
CORRECT WATER RIGHT LICENSE)
NO. 35-9040)
_____)

**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 26, 1982, the Department issued Permit 35-9040 (permit) to the U. S. Dept. of Interior, Bureau of Land Management (right holder), for the diversion of 0.25 cfs from ground water for stock watering and wildlife purposes within SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 3, Township 1 North, Range 28 East, B. M., in Butte County.
2. On January 4, 1983, the Department received the right holder's proof of beneficial use statement for the permit.
3. On March 5, 1987, a Department field examiner conducted an inspection to verify the beneficial use established in accordance with the permit. The field examiner reported that ground water for the proposed stock water and wildlife uses was diverted in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 3, Township 1 North, Range 28 East, B. M., for distribution to stock watering troughs located in 25 sections throughout the area.
4. 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.

5. On October 22, 1987, the Department received the right holder's application for amendment to change the permitted point of diversion to the NE $\frac{1}{4}$ SW $\frac{1}{4}$, Section 3, Township 01 North, Range 28 East, B. M.
6. 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.
7. On February 10, 1988, the Department approved the right holder's application to amend the permit.
8. Also on February 10, 1988, the Department issued Water Right License 35-9040 (license) to the right holder with the point of diversion described as the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 3, Township 1 North, Range 28 East, Butte County, as had been permitted and reported by the Department field examiner.
9. On April 2, 1997, the right holder claimed the license in the Snake River Basin Adjudication (SRBA).
10. On May 29, 1997, the Department submitted a Director's Report to the SRBA court recommending that the point of diversion for Water Right 35-9040 be decreed as licensed.
11. On September 29, 1997, the right holder submitted an objection to the Director's Report for Water Right 35-9040 to the SRBA court. The objection stated, "The legal description(s) reported in the Director's Report for this claim is/are inaccurate."
12. On March 11, 1998, the SRBA court held a hearing concerning the objection filed by the right holder against the Department's recommendation for Water Right 35-9040. The right holder reported that Global Positioning System data its staff had collected during their investigation of the objection indicated the location of the point of diversion was incorrectly described on the license and subsequent recommendation.
13. The Department has received the right holder's Global Positioning System data showing that the point of diversion for water right 35-9040 is in SE $\frac{1}{4}$ SW $\frac{1}{4}$, Section 3, Township 01 North, Range 28 East, B. M., Butte County.
14. On July 16, 2001, the right holder submitted a petition asking the Department to correct the license by changing the point of diversion description to the SE $\frac{1}{4}$ SW $\frac{1}{4}$, Section 3, Township 01 North, Range 28 East, B. M., Butte County.

15. On December 2, 2004, the Department received the right holder's application for amendment to change the permitted point of diversion to the SE $\frac{1}{4}$ SW $\frac{1}{4}$, Section 3, Township 01 North, Range 28 East, B. M., Butte County.

CONCLUSIONS OF LAW

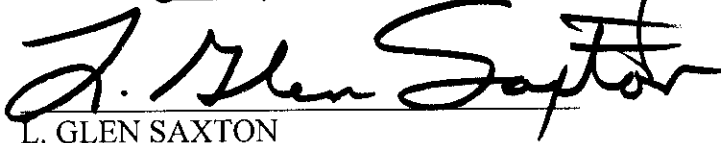
1. Under Section 42-219, *Idaho Code*, the Department has a statutory obligation to issue a water right license that accurately portrays the extent of beneficial use of water developed in accordance with the permit.
2. Water Right License 35-9040 described the point of diversion of the water use developed by the right holder as being within NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 3, Township 01 North, Range 28 East, Butte County, in accordance with information that proved to be inaccurate under additional scrutiny.
3. The point of diversion for Water Right 35-9040 should be described as SE $\frac{1}{4}$ SW $\frac{1}{4}$, Section 3, Township 01 North, Range 28 East, B. M., Butte County.
4. The Department should approve the application to amend Permit 35-9040.
5. The Department should revise the point of diversion description on the license.

ORDER

IT IS HEREBY ORDERED that the application to amend Permit 35-9040 submitted to the Department on December 2, 2004, is approved.

IT IS FURTHER HEREBY ORDERED that the point of diversion description for Water Right License 35-9040 is **CORRECTED** as set forth in the Amended Water Right License issued on this date in conjunction with this order.

Dated this 6th day of January, 2005.



L. GLEN SAXTON
Administrator, Water Management Division