

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF PETITION TO)
CORRECT WATER RIGHT LICENSE)
NO. 35-8039)
_____)

**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 20, 1982, the Department issued Permit 35-8039 (permit) to the U. S. Dept. of Interior, Bureau of Land Management (right holder), for the diversion of .25 cfs from ground water for stock watering and wildlife purposes within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 27, Township 3 South, Range 28 East, B. M., in Blaine County.
2. On March 25, 1987, the Department received the right holder's proof of beneficial use statement for the permit.
3. On April 5, 1988, 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 SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 27, Township 3 South, Range 28 East, B.M., in accordance with the permit.
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 July 14, 1989, the Department issued Water Right License 35-8039 (license) to the right holder with the point of diversion and place of use described as the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 27, Township 3 South, Range 28 East, Blaine County, as had been permitted and reported by the Department field examiner.

6. On April 2, 1997, the right holder claimed the license in the Snake River Basin Adjudication (SRBA).
7. On May 29, 1997, the Department submitted a Director's Report to the SRBA court recommending that the point of diversion and place of use for Water Right 35-8039 be decreed as licensed.
8. On September 29, 1997, the right holder submitted an objection to the Director's Report for Water Right 35-8039 to the SRBA court. The objection stated, "The legal description(s) reported in the Director's Report for this claim is/are inaccurate."
9. 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 35-8039. 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 and place of use were incorrectly described on the license and subsequent recommendation.
10. The Department has received the right holder's Global Positioning System data showing that the point of diversion and place of use for water right 35-8039 are in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$, Section 27, Township 03 South, Range 28 East, B.M.
11. On July 16, 2001, the right holder submitted a petition asking the Department to correct the license by changing the point of diversion and place of use descriptions to SE $\frac{1}{4}$ NW $\frac{1}{4}$, Section 27, Township 3 South, Range 28 East, B. M.
12. On December 2, 2004, the Department received the right holder's application for amendment to change the permitted point of diversion to the SE $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$, Section 27, Township 3 South, Range 28 East, B.M., and the permitted place of use to the SE $\frac{1}{4}$ NW $\frac{1}{4}$, Section 27, Township 3 South, Range 28 East, B. M.
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

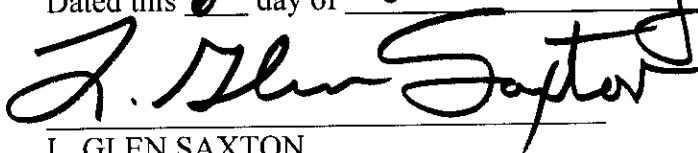
1. Under Section 42-219, *Idaho Code*, the Department has a statutory obligation to issue a water right license that accurately portrays the extent of beneficial use of water developed in accordance with the permit.
2. Water Right License 35-8039 described the point of diversion and place of use of the water use developed by the right holder as being within the SW¼NW¼ of Section 27, Township 3 South, Range 28 East, B. M., Blaine County, in accordance with information that proved to be inaccurate under additional scrutiny.
3. The point of diversion and place of use for Water Right 35-8039 should be described as SE¼NW¼, Section 27, Township 3 South, Range 28 East, B. M., Blaine County.
4. The Department should approve the application to amend Permit 35-8039.
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 35-8039 submitted to the Department on December 2, 2004, is approved.

IT IS FURTHER HEREBY ORDERED that the point of diversion and place of use description for Water Right License 35-8039 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