

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF A PETITION)
TO CORRECT WATER RIGHT)
LICENSE NO. 37-8062)
_____)

**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 Water Right License No. 37-8062, the Department makes the following Findings of Fact, Conclusions of Law, and Order:

FINDINGS OF FACT

1. On March 23, 1983, the Department issued Permit 37-8062 (permit) to Claude G. Ballard (right holder) authorizing the establishment of a right to divert 0.02 cfs of water from a spring located in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 30, Township 2 North, Range 16 East, B.M., for domestic purposes within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 30, Township 2 North, Range 16 East, B.M.
2. On September 26, 1985, the Department received the right holder's proof of beneficial use statement for the permit.
3. On August 14, 1987, Department staff conducted a field examination to verify the beneficial use of water established in connection with the permit. The field examiner reported that water was being diverted from a spring located within Govt. Lot 3 (NW $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$) of Section 30, Township 2 North, Range 16 East, B.M., for domestic use located within the Govt. Lot 4 (SW $\frac{1}{4}$ SW $\frac{1}{4}$) of Section 30, Township 2 North, Range 16 East, B.M.
4. On September 12, 1989, the right holder applied to amend the permit (amendment) to change the authorized point of diversion to match the reported findings of the Department's field examiner.
5. On October 31, 1989, the Department approved the amendment and issued Water Right License 37-8062 (license) to the right holder for the diversion of 0.01 cfs from a spring located within Govt. Lot 3 (NW $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$) of Section 30, Township 2 North, Range 16 East, B.M., for domestic use located within Govt. Lot 4 (SW $\frac{1}{4}$ SW $\frac{1}{4}$) of Section 30, Township 2 North, Range 16 East, B.M.

6. On November 19, 2004, the Department received the right holder's petition (petition) to correct the licensed place of use to show that it is in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 30, Township 2 North, Range 16 East, B.M., but that it is not in Govt. Lot 4.
7. Mineral Survey No. 1610 "Sarah Lode" is located partly within the area that is otherwise known as Govt. Lot 4 (SW $\frac{1}{4}$ SW $\frac{1}{4}$) of Section 30, Township 2 North, Range 16 East, B.M.
8. In connection with the petition, the right holder submitted a copy of a quitclaim deed showing that Marjorie E. Ayars had quitclaimed her interest in Mining Claim No. 1610 "Sarah Lode" to the right holders in 1975.
9. Also in connection with the petition, the right holder submitted a copy of a "Right of Way Grant/Temporary Use Permit" (Serial Number IDI-27206) issued by the United States Department of Interior, Bureau of Land Management (BLM), authorizing him to construct and operate a water distribution pipeline on federally managed land. Item No. 20 of the document indicates that the BLM expects the right holder to pursue correcting the license so that the place of use does not include federal public land.
10. Govt. Lot 4 (SW $\frac{1}{4}$ SW $\frac{1}{4}$) of Section 30, Township 2 North, Range 16 East, B.M., is federal public land managed by the BLM, except for that portion described as Mineral Survey No. 1610 "Sarah Lode", which is private land.
11. The field report completed by the Department's field examiner in 1987 shows that the domestic use of water authorized by the permit was established within Mineral Survey No. 1610 "Sarah Lode."
12. 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. Section 42-219, *Idaho Code*, obligates the Department to issue a water right license that accurately portrays the beneficial use of water developed in accordance with the permit.
2. The right holders diverted water from a spring within Govt. Lot 3 (NW $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$) of Section 30, Township 2 North, Range 16 East, B.M., and made beneficial use of it within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 30, Township 2 North, Range 16 East, B.M., as authorized by the permit.

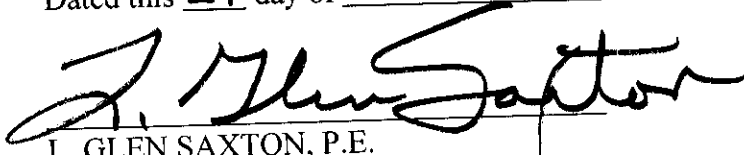
3. By further describing the authorized place of use as Govt. Lot 4, the license gives the impression that the authorized place of use includes federally managed public land when, in fact, the entire place of use is on private land known as Mineral Survey No. 1610 "Sarah Lode."
4. The Department should correct the place of use description on the license.

ORDER

IT IS HEREBY ORDERED that the place of use description for Water Right License 37-8062 is **CORRECTED** to depict the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 30, Township 2 North, Range 16 East, B.M., as set forth in the Amended Water Right License issued on this date in conjunction with this order.

IT IS FURTHER HEREBY ORDERED that Water Right License 37-8062 is **MODIFIED** to contain remarks saying, "This right is appurtenant to land designated as Mineral Claim Survey No. 1610, Sarah Lode," and, "The place of use for this water right does not include federal public land."

Dated this 29th day of November, 2004.


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