

D

1

FINDINGS OF FACT

- PRELIMINARY ORDER DENYING REQUEST FOR EXTENSION OF TIME - Pg 1**

report for the permit.

8. On November 24, 2009, the Department issued a Preliminary Order Rejecting Beneficial Use Field Report and Voiding Application for Amendment of Permit for Permit No. 37-8205. The proposed amendment was voided for failure to submit information necessary to analyze potential increased water use and consumptive use as required by law and conditions of the permit.

9. On December 18, 2009, the permit holder filed another extension request with the Department. The extension request included information indicating that the proposed amendment of the permit would increase consumptive use of water by 15.93 acre-feet per year. The permit holder requested the extension to address the need to provide mitigation due to the increase in consumptive use under the proposed amendment. The permit holder indicated they are unable to address mitigation due to pending litigation in the Snake River Basin Adjudication ("SRBA") with respect to other water rights that could be used for mitigation.

CONCLUSIONS OF LAW

1. Idaho Code § 42-204 provides in pertinent part as follows:

1. In cases where the applicant is prevented from proceeding with his work by his failure to obtain necessary consent or final approval or rejection from the federal government because of the pendency of an application for right of way or other matter within the jurisdiction of the United States, or by litigation of any nature **which might bring his title to said water in question**, the department...shall extend the time so that the amount of time lost by such delays shall be added to the time given in the original permit for each and every action required. (emphasis added)

5. In all other situations . . . **the department may grant one (1) extension of time**, not exceeding five (5) years beyond the date originally set for completion of works and application of the water to full beneficial use . . . provided good cause appears therefore. (emphasis added)

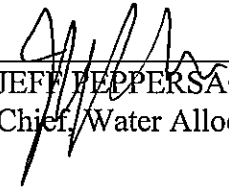
2. The Department has already granted one extension request under Idaho Code § 42-204(5) and is prohibited from granting additional extension requests unless the permit holder was prevented from proceeding with development of the permit due to federal government delay or litigation pursuant to Idaho Code § 42-204(1). Idaho Code § 42-204(1) requires that the litigation must be "...of any nature which might bring his title to said water in question."

3. The Department cannot grant an extension request for pending litigation under Idaho Code § 42-204(1) where the nature of the litigation is such that it would not bring title to water under the permit into question. The permit is not the subject of pending litigation in the SRBA. The permit holder has not provided information that would indicate that the title of water is in question due to pending litigation. The Department should deny the extension request filed on December 18, 2009.

ORDER

IT IS HEREBY ORDERED that the extension request filed on December 18, 2009 for Permit No. 37-8205 in the name of Sun Valley Land & Minerals, Inc. is **DENIED**.

Dated this 30th day of December, 2009.



JEFF PEPPERSACK
Chief, Water Allocation Bureau