

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF AMENDMENT)
OF PERMIT NO. 37-8205 IN THE NAME OF)
SUN VALLEY LAND & MINERALS INC)
_____)

**ORDER DENYING PETITION
FOR RECONSIDERATION**

This matter having come before the Department of Water Resources (Department) as a petition to reconsider the issuance of an amended permit, the Department finds, concludes, and orders:

FINDINGS OF FACT

1. On October 14, 2008 Sun Valley Land & Minerals, Inc. (applicant) through Charles G. Brockway (representative), filed an application for amendment of Permit 37-8205 (application) seeking to modify the location of the authorized points of diversion and to change the nature of use of the permit. Included with the filing was a letter describing the application including:

- a.) a description of the point of diversion change
- b.) a description of the addition of fish propagation use
- c.) a clarification of potential uses for heating including heating an outdoor pond and/or ice melting a reservoir spillways and headgate.

2. During review of the application Department staff discussed concerns about the application with the applicant's representative. Department staff raised concerns about the manner in which fish propagation was being requested to be added to the permit and also the potential that the use of geothermal water for recreational use in a large pond or for ice melting and other proposed uses may conflict with the public interest or may be contrary to conservation of water resources in the state of Idaho.

3. On February 13, 2009 the applicant modified the application. The revised application indicated the purpose of the amendment of permit was to change the point of diversion. Included with the filing was a letter from their representative indicating the modified application "...is only to modify the location of the points of diversion." Notice of the application was published indicating the amendment proposes to change the point of diversion authorized under the permit.

4. On March 20, 2009, the Department approved the amendment of Permit No. 37-8205 modifying the authorized location of the points of diversions from which ground water may be used for heating and recreational uses. The approval was conditioned with the same descriptions for heating and recreational uses as originally permitted.

5. The Department issued the amendment of permit as a preliminary order pursuant to Idaho Code § 67-5243 and Rule 730 of the Department's Rules of Procedure (IDAPA 37.01.01.730).

6. Idaho Code § 67-5243(3) provides in pertinent part as follows:

Unless otherwise provided by statute or rule, any party may file a motion for reconsideration of a recommended order or a preliminary order within fourteen (14) days of the issuance of that order. The presiding officer shall render a written order disposing of the petition.

7. On March 24, 2009, the Department received a timely petition for reconsideration (petition) from Charles G. Brockway.

8. In the petition, the applicant's representative seeks modification of the conditions of use which describe the allowed uses for heating and recreation. The petition seeks to modify the uses to reflect those uses outlined in the October 14, 2008 letter or to delete the conditions that describe heating and recreation uses altogether.

ANALYSIS

The Department processed and approved the amendment of permit based on the revised application and letter submitted on February 13, 2009. The Department could not interpret the intent of the application to include a change to the conditions of the original permit describing the heating and recreation uses without an expressed intent to change those uses. Instead, the application and letter indicated the intent was only to modify the point of diversion. Published notice of the application did not include intent to seek changes to the described uses.

The Department could withdraw the order approving the application to allow the applicant to revise the application. A revised application to change the heating uses as suggested by the petition would result in a new published notice and would require review of the proposed changes based on public interest, conservation of water and other issues that may arise if the revised application is protested. In the alternative, the Department could deny the petition for reconsideration and require the applicant to file a new application to amend the permit in order to seek the desired changes. Either way, a new or revised application must be filed with the Department for processing if the applicant desires to change the heating or recreation uses. Since the application was approved by the Department as requested in the application, the Department should deny the petition for reconsideration.

CONCLUSIONS OF LAW

1. The petitioner has not provided adequate justification to show that reconsideration of the amendment approval is warranted.

2. The Department should deny the petition for reconsideration of the order pursuant to Idaho Code § 67-5243(3).

ORDER

IT IS HEREBY ORDERED that the petition for reconsideration of the preliminary order
ORDER DENYING PETITION FOR RECONSIDERATION Page 2

amending Permit No. 37-8205 is **DENIED** pursuant to Idaho Code § 67-5243(3).

Dated this 31st day of March, 2009.



JEFF PEPPERSACK
Chief, Water Allocation Bureau

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1st day of April, 2009, a true and correct copy of the document(s) described below was served by placing the same in the United States mail, postage prepaid and properly addressed to the following:

Document(s) Served: Order Denying Petition for Reconsideration and Explanatory Information sheet for an Order Denying a Petition for Reconsideration when a hearing was held.

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SUN VALLEY ID 83353

BROCKWAY ENGINEERING
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TWIN FALLS ID 83301



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