

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF PERMIT	)	
NO. 34-13838 IN THE NAME OF	)	PRELIMINARY ORDER DENYING
ANTELOPE VALLEY RANCH, L.L.C.	)	PETITION FOR RECONSIDERATION
_____	)	

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

FINDINGS OF FACT

1. On August 11, 2006, the Department issued a *Preliminary Order Granting Petition for Reconsideration* (order) in the matter of Permit No. 34-13838 (permit) issued to Antelope Valley Ranch L.L.C. In the order, the Department revised the conditions of approval for the permit.

2. The Department issued the order pursuant to Idaho Code § 67-5243 and Rule 730 of the Department's Rules of Procedure (IDAPA 37.01.01.730).

3. Rule 730.02.a. of the Department's Rules of Procedure (IDAPA 37.01.01.730.02.a.) provides in pertinent part as follows:

Any party may file a petition for reconsideration of this preliminary order with the hearing officer issuing the order within fourteen (14) days of the service date of this order. The hearing officer issuing this order will dispose of the petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law.

4. On August 25, 2006, the Department received a petition for reconsideration of the order from Marvin M. Smith, an agent for the permit holder. In the petition, Mr. Smith expresses the permit holder's disagreement with the Department's conclusions that the permit should not authorize the impoundment of water diverted during the irrigation season and that during the irrigation season the outflow from the reservoir established in connection with the permit shall equal the amount diverted into the reservoir under the permit.

5. When applying the permit, Antelope Valley Ranch L.L.C. requested authorization to divert water to storage only during the non-irrigation season. In the "Remarks" section of the application, the applicant wrote, "A 50 acre foot impoundment will be filled in the winter months. Applicant will run irrigation water thru [sic] impoundment during irrigation season."

6. The permit holder also has water rights 34-513B, 34-514B, 34-515B, and 34-560B that authorize the diversion of 0.17 cfs, up to a total of 15 af, into and/or through the reservoir for recreation purposes during the irrigation season. Rights 34-513B, 34-514B, 34-515B, and 34-560B began as irrigation rights with consumptive use components, and there is nothing in the elements of the rights saying that they cannot be used consumptively. They should be viewed as authorizing the diversion of water that may be used within the reservoir to replace evaporation losses.

7. Jennie Marie Smith protested Application 34-13838. On, November 14, 2005, Ms. Smith withdrew her protest subject to a set of conditions, including, "The pond and the retained waters within the pond shall not be used for irrigation purposes and that all waters flowing into the pond shall flow out of the pond to the creek bed and ultimately to Cherry Creek."

CONCLUSIONS OF LAW

1. The petition for reconsideration is timely.
2. The permit holder did not submit additional evidence to support the petition.
3. The permit requirement that from April 1 to October 31 the outflow from the reservoir into Cherry Creek shall equal or exceed the inflow to the reservoir from Cherry Creek is appropriate to protect prior surface water rights from the depletion of water caused by evaporation losses from the reservoir and to comply with Jennie Marie Smith's conditional withdrawal of protest. However, the requirement pertains to water diverted pursuant to the permit and not to water diverted pursuant to Rights 34-513B, 34-514B, 34-515B, and 34-560B.
4. The permit holder is authorized to store the water diverted pursuant to Rights 34-513B, 34-514B, 34-515B, and 34-560B, up to 15 acre feet, during the irrigation season to offset evaporation losses from the reservoir.
5. The Department should not modify the permit.
6. The Department should deny the petition for reconsideration received by the Department on August 25, 2006, in connection with Permit 34-13838.

ORDER

IT IS HEREBY ORDERED that the petition for reconsideration of the *Preliminary Order Granting Petition for Reconsideration* in the matter of Permit No. 34-13838 is **DENIED**.

Dated this 29th day of August, 2006.


GARY SPACKMAN