

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF PERMIT NO. 77-07382) **PRELIMINARY ORDER REMOVING**
AND APPLICATION FOR PERMIT NO.) **MORATORIUM CONDITION AND**
77-14161 IN THE NAME OF) **REJECTING APPLICATION FOR**
BARBARA PYLE) **PERMIT**
_____)

This matter having come before the Department of Water Resources (Department), the Department finds, concludes and orders:

FINDINGS OF FACT

1. On August 26, 1999, Barbara Pyle (applicant) applied to the Department for a permit to appropriate 0.04 cubic feet per second of water from the South Fork of the Salmon River in the NE¼NE¼, Sec. 6, Township 23 North, Range 8 East, B. M., for internal and external domestic purposes.

2. IDWR held the application (77-07382) and did not process it pursuant to the Wilderness Areas Moratorium, which the Director issued on October 26, 1999, and which prohibited the processing of applications for consumptive uses of surface and groundwater in and tributary to the Selway-Bitterroot Wilderness Area, the Gospel-Hump Wilderness Area and the Frank Church River of No Return Wilderness Area.

3. On August 17, 2004, the applicant amended the application to include internal domestic use only.

4. On August 30, 2004, the applicant made a second application (77-14161) to the Department for a permit to appropriate 0.04 cubic feet per second of water from the South Fork of the Salmon River in the NE¼NE¼, Sec. 6, Township 23 North, Range 8 East, B. M., for domestic purposes, including ½ acre of irrigation. Application 77-14161 duplicates Application 77-7382 in all elements of the appropriation. IDWR held the application and did not process it pursuant to the Wilderness Areas Moratorium.

5. On February 15, 2005, the Department issued Permit 77-07382 (permit) to Barbara Pyle (permit holder) with a condition of approval prohibiting use of water for irrigation until the time when the Wilderness Areas Moratorium was lifted or modified to include consumptive uses.

6. On November 9, 2005, the Director rescinded the Wilderness Areas Moratorium.

7. On February 3, 2006, the applicant notified the Department of her continuing interest in having the second application (77-14161) processed because she would prefer to have a permit without the condition of approval prohibiting use of water for irrigation until the time when the Wilderness Areas Moratorium was lifted or modified to include consumptive uses.

SUPPORT DATA

IN FILE # 77-7382

8. Water Appropriation Rule 045.01.c.iii. (IDAPA 37.03.08. 045.01.c.iii.), which sets forth criteria for determining if an application is made in good faith, says that "An application will be found to have been made in good faith if: ... iii. There are no obvious impediments that prevent the successful completion of the project."

9. The existence of one permit is an impediment to the completion of a new one since no further beneficial use can be established.

10. Section 42-203A(5), *Idaho Code*, provides that the director of the Department may reject an application and refuse issuance of a permit if the "application is not made in good faith."

CONCLUSIONS OF LAW

1. Application 77-14161 was not made in good faith as set forth in Water Appropriation Rule 045.01.c.i.

2. The Department should reject application 77-14161 and refuse issuance of a permit as provided in Section 42-203A(5), *Idaho Code*.

3. Permit 77-07382 authorizes use of water for ½ acre of irrigation now that the Wilderness Areas Moratorium has been lifted.

4. The Department should modify the condition of approval prohibiting use of water for irrigation until the time when the Wilderness Areas Moratorium was lifted or modified to include consumptive uses.

ORDER

IT IS HEREBY ORDERED that the condition of approval on Permit No. 77-07382 prohibiting use of water for irrigation until the time when the Wilderness Areas Moratorium was lifted or modified to include consumptive uses is **MODIFIED** as follows.

The irrigation occurring under this domestic use shall not exceed 1/2 acre.

IT IS FURTHER HEREBY ORDERED that issuance of a permit to appropriate water as proposed in Application for Permit No. 77-14161 in the name of Barbara Pyle is **REFUSED** and the application is **REJECTED** as provided in Section 42-203A(5), *Idaho Code*.

Dated this 18th day of July, 2006.


GARY SPACKMAN