

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF PERMIT	)	
NOS. 63-22948, 63-22949, 63-22950,	)	
63-22951, 63-22952, 63-22953, AND	)	ORDER GRANTING PETITION
63-22954 IN THE NAME OF GEORGE E.	)	FOR RECONSIDERATION
COLWELL AND CHERYL F. COLWELL	)	
_____	)	

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

FINDINGS OF FACT

1. On September 15, 2005, the Department issued the following water appropriation permits to George E. Colwell and Cheryl F. Colwell (permit holders) for the use of water from unnamed drains in Payette County for stock watering purposes: 63-22948, 63-22949, 63-22950, 63-22951, 63-22952, 63-22953, and 63-22954 (permits).

2. Approval condition no. 6 on each of the seven permits said:

The source of water diverted under this right is waste water and is subject to the right of the original appropriator, in good faith and in compliance with state laws governing changes in use and/or expansion of water rights, to cease wasting water, to change the place of use or manner of wasting it, or to recapture it.

3. The permits were issued as preliminary orders (orders) of the Department pursuant to Idaho Code § 67-5243 and Rule 730 of the Department's Rules of Procedure (IDAPA 37.01.01.730).

4. 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.

5. On September 29, 2005, the Department received a petition for reconsideration of the issuance of the permits (petition) from the permit holders' attorney. The petition seeks a change to approval condition no. 6 on each of the permits to acknowledge that some of the water to be appropriated in connection with the permits may not be waste water.

6. The Department did not conduct an investigation to determine that all of the water proposed for appropriation in connection with the permits is waste water.

CONCLUSIONS OF LAW

1. The petition was filed timely.
2. The source of water to be appropriated in connection with the permits may not be waste water entirely.
3. The Department should grant the petition and revise approval condition no. 6 on each of the seven permits.

ORDER

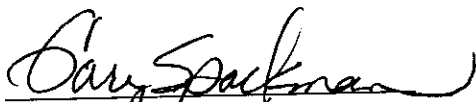
IT IS HEREBY ORDERED that the petition for reconsideration of the preliminary orders issuing water appropriation Permit Nos. 63-22948, 63-22949, 63-22950, 63-22951, 63-22952, 63-22953, and 63-22954 is **GRANTED** pursuant to Idaho Code § 67-5243.

IT IS FURTHER HEREBY ORDERED that approval condition no. 6 on each of the permits is **MODIFIED** to say:

To the extent that the source of water diverted under this right is waste water, it is subject to the right of the original appropriator, in good faith and in compliance with state laws governing changes in use and/or expansion of water rights, to cease wasting water, to change the place of use or manner of wasting it, or to recapture it.

IT IS FURTHER HEREBY ORDERED that a revised permit document shall be ISSUED for each of the seven permits in connection with this order.

Dated this 11th day of October, 2005.


GARY SHACKMAN