

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF PERMIT NO. 37-7844)
IN THE NAME OF DARLENE JEVNE)
_____)

**ORDER GRANTING PETITION
FOR RECONSIDERATION**

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

FINDINGS OF FACT

1. On April 12, 2005, the Department issued a preliminary order (order) voiding Permit to Appropriate Water No. 37-7844 (permit) in the name of Darlene Jevne (permit holder).

2. On April 15, 2005, the Department served notice to the permit holder that it had issued the order.

3. The Department issued the order because the Department's field examiner reported that he could not confirm that the permit holder had established a beneficial use of water in connection with the permit.

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 April 27, 2005, the permit holder filed a Petition for Reconsideration (petition) with the department in connection with the order. In her petition, Ms. Jevne said, "The diversion was not abandoned."

6. On April 28, 2005, the Department disposed of the petition by granting the permit holder 30 days to provide documentation to support the petition.

7. On May 18, 2005, the Department received a letter from Allan Smetana, a representative of the permit holder, stating that he would provide information to support the petition within two weeks.

8. On June 2, 2005, the Department received substantial documentation, including signed statements from witnesses, showing that a beneficial use of water may have been established in connection with the permit.

CONCLUSIONS OF LAW

1. The petition was filed timely.

2. Although the documentation supporting the petition was not submitted within 30 days from the Department's letter disposing of the petition for reconsideration, the documentation should be considered to have been submitted timely because permit holder showed good faith by communicating with the Department prior to the deadline and by providing substantial information within a few days after the deadline.

3. The Department should grant the petition for reconsideration of the order pursuant to Rule 730.02.a of the Department's Rules of Procedure.

ORDER

IT IS HEREBY ORDERED that the petition is **GRANTED** pursuant to Rule 730.02.a. of the Department's Rules of Procedure.

IT IS FURTHER ORDERED that the permit holder shall cooperate with the Department's field examiner to make the permitted point of diversion and place of use available for inspection during the 2005 irrigation season.

IT IS FURTHER ORDERED that the permit holder shall submit information that may be requested by the field examiner to confirm the extent of the beneficial use of water established in connection with the permit during the authorized development period for the permit. The information shall be submitted within 30 days of the request unless the Department grants additional time in response to a written request from the permit holder.

Dated this 9th day of June, 2005.


GARY SPACKMAN