

RECEIVED

FEB 26 2020

DEPARTMENT OF  
WATER RESOURCESSTATE OF IDAHO  
DEPARTMENT OF WATER RESOURCES

\$50 fee

Received by

KM

Recpt No.

C108360

Date

2-26-2020

## REQUEST FOR EXTENSION OF TIME

To provide additional time in which to submit proof of beneficial use for a water right permit

The Idaho Department of Water Resources will consider this form a request that the permit holder(s) be granted an additional period of time under the provisions of Section 42-204, Idaho Code, in which to complete development of a water right and file proof of beneficial use of water. There is a **FILING FEE of \$50.00** to be included with this form when filed with IDWR.

Permit no. 73-12265 + 73-12264 Date proof is due 3/2/2020  
 Name(s) of permit holder(s) James + Karen POSADA  
 Mailing address 721 1st Ave N. City St. Petersburg State FL Zip 33701  
 Telephone no. 208 727 7010 Email JP@resolvebio.com

Describe what work has been completed toward the development of this water right:

If no work has been completed, show "none".

see attachmentCosting \$ 16,774

The permit holder(s) has been unable to complete the remainder of the work for the following reasons:

see attachmentPermit holder(s) request an extension for 5 year(s).Signature [Signature] (If other than permit holder, Power of Attorney must be supplied)

Date

14 Feb 2020

## ACTION OF THE DEPARTMENT OF WATER RESOURCES

The Department has reviewed the explanation for delay and concludes the reason(s) for delay meets the requirements for approval of the Request for Extension of Time as provided by Section(s) 42-204 and/or 42-218, Idaho Code.

☒ **IT IS HEREBY ORDERED** that the permit is **REINSTATED** with the priority date advanced to October 29, 2018.

☒ **IT IS HEREBY ORDERED** that the above request for extension of time is **APPROVED**, and the time within which to submit proof of beneficial use is extended to January 1, 2024.

Signed this 31<sup>st</sup> day of May, 2020

Shelley W. Keen  
 Shelley W. Keen, Chief  
 Water Allocation Bureau

## **Attachment**

### **Describe what work has been completed toward the development of this water right:**

A test well has been drilled to determine if there is water. The well is 220 feet deep and preliminary testing indicates it would be adequate for a production well for the pivot. We have been monitoring this test well, a neighboring stock-water well and the Posada domestic well with data collectors in all three of the wells. This information will help determine the viability of the well options. A report is being updated to provide to the water user. This has been a joint effort from the Custer Soil and Water Conservation District and the Bureau of Reclamation. The approximate cost for work to date is \$16,744.

### **The Permit Holder has been unable to complete the remainder of the work for the following reason:**

The water right applications were delayed due to a protest. A driller had been scheduled for drilling by end of the protest period. After the protest was resolved it was difficult to reschedule a driller for early spring. It was also very difficult to drill the well during the growing season as it would hamper the ability of the producer to irrigate. During this delay in drilling there was a potential new buyer for the property. It was then necessary to delay progress until the land purchase moved forward. The sale appears to be moving forward and the potential new owner may take position in the next month. The buyer, Brian Funsten is currently working with the Custer SWCD and Jim Posada to request an extension for up to 5 years to allow the buyer an opportunity to understand the current water right and develop the new wells.

This surface water diversion is currently unscreened. This well project, being proposed by the Idaho Department of Fish and Game and Custer Soil and Water Conservation District will have future impact on addressing this unscreened diversion in an anadromous area.

## **CERTIFICATE OF SERVICE**

I hereby certify that on **June 1, 2020** I mailed a true and correct copy, postage prepaid, of the foregoing **PRELIMINARY ORDER (PRELIMINARY ORDER APPROVING REQUEST FOR EXTENSION OF TIME)** to the person listed below:

RE: Preliminary Order in the Matter of Permit No. **73-12264 & 73-12265**

**BRYAN R FUNDSTEN**  
**PO BOX 6236**  
**KETCHUM ID 83340-6236**

  
\_\_\_\_\_  
**Jean Hersley**  
**Technical Records Specialist II**

## **EXPLANATORY INFORMATION TO ACCOMPANY A PRELIMINARY ORDER**

(To be used in connection with actions when a hearing was **not** held)

(Required by Rule of Procedure 730.02)

The accompanying order or approved document is a "**Preliminary Order**" issued by the department pursuant to section 67-5243, Idaho Code. **It can and will become a final order without further action of the Department of Water Resources ("department") unless a party petitions for reconsideration, files an exception and brief, or requests a hearing as further described below:**

### **PETITION FOR RECONSIDERATION**

Any party may file a petition for reconsideration of a preliminary order with the department within fourteen (14) days of the service date of this order. **Note: the petition must be received by the department within this fourteen (14) day period.** The department will act on a petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See Section 67-5243(3) Idaho Code.

### **EXCEPTIONS AND BRIEFS**

Within fourteen (14) days after: (a) the service date of a preliminary order, (b) the service date of a denial of a petition for reconsideration from this preliminary order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this preliminary order, any party may in writing support or take exceptions to any part of a preliminary order and may file briefs in support of the party's position on any issue in the proceeding with the Director. Otherwise, this preliminary order will become a final order of the agency.

### **REQUEST FOR HEARING**

Unless a right to a hearing before the Department or the Water Resource Board is otherwise provided by statute, any person aggrieved by any final decision, determination, order or action of the Director of the Department and who has not previously been afforded an opportunity for a hearing on the matter may request a hearing pursuant to section 42-1701A(3), Idaho Code. A written petition contesting the action of the Director and requesting a hearing shall be filed within fifteen (15) days after receipt of the denial or conditional approval.

### **ORAL ARGUMENT**

If the Director grants a petition to review the preliminary order, the Director shall allow all parties an opportunity to file briefs in support of or taking exceptions to the preliminary order and may schedule oral argument in the matter before issuing a final order. If oral arguments are to be heard, the Director will within a reasonable time period notify each party of the place, date and hour for the argument of the case. Unless the Director orders otherwise, all oral arguments will be heard in Boise, Idaho.

### **CERTIFICATE OF SERVICE**

All exceptions, briefs, requests for oral argument and any other matters filed with the Director in connection with the preliminary order shall be served on all other parties to the proceedings in accordance with IDAPA Rules 37.01.01302 and 37.01.01303 (Rules of Procedure 302 and 303).

### **FINAL ORDER**

The Director will issue a final order within fifty-six (56) days of receipt of the written briefs, oral argument or response to briefs, whichever is later, unless waived by the parties or for good cause shown. The Director may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order. The department will serve a copy of the final order on all parties of record.

Section 67-5246(5), Idaho Code, provides as follows:

Unless a different date is stated in a final order, the order is effective fourteen (14) days after its service date if a party has not filed a petition for reconsideration. If a party has filed a petition for reconsideration with the agency head, the final order becomes effective when:

- (a) The petition for reconsideration is disposed of; or
- (b) The petition is deemed denied because the agency head did not dispose of the petition within twenty-one (21) days.

### **APPEAL OF FINAL ORDER TO DISTRICT COURT**

Pursuant to sections 67-5270 and 67-5272, Idaho Code, if this preliminary order becomes final, any party aggrieved by the final order or orders previously issued in this case may appeal the final order and all previously issued orders in this case to district court by filing a petition in the district court of the county in which:

- i. A hearing was held,
- ii. The final agency action was taken,
- iii. The party seeking review of the order resides, or
- iv. The real property or personal property that was the subject of the agency action is located.

The appeal must be filed within twenty-eight (28) days of this preliminary order becoming final. See section 67-5273, Idaho Code. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal.



State of Idaho

## DEPARTMENT OF WATER RESOURCES

322 East Front Street • P.O. Box 83720 • Boise, Idaho 83720-0098

Phone: (208) 287-4800 • Fax: (208) 287-6700 • Website: [www.idwr.idaho.gov](http://www.idwr.idaho.gov)

BRAD LITTLE  
Governor

GARY SPACKMAN  
Director

June 1, 2020

BRYAN R FUNDSTEN  
PO BOX 6236  
KETCHUM ID 83340-6236

### REQUEST FOR EXTENSION OF TIME LETTER

**RE: Permit No. 73-12264 & 73-12265**

Dear Permit Holder:

Enclosed is a copy of the approved request for extension of time submitted in connection with the above referenced permits which extends the proof due date to **January 01, 2024**.

The Department granted this extension based on evidence of good cause. It is important that you work diligently toward the completion of the project during the development period allowed according to Idaho Code § 42-204(6).

This approved extension also reinstates the permits and advances the priority date since the request and the filing fee was submitted after the permit proof due date. The priority date of permit 73-12264 is advanced to **October 29, 2018**, according to Idaho Code § 42-218a(1) and the priority date of permit 73-12265 is advanced to **November 25, 2018**, according to Idaho Code §42-218a(1).

The extension is a PRELIMINARY ORDER issued by the Department pursuant to Rule 730 of the Department's Rules of Procedure (IDAPA 37.01.01). It can and will become a final order without further action by the Department unless a party petitions for reconsideration or files an exception and/or brief within fourteen (14) days of the service date as described in the enclosed information sheet.

**Please be advised that Idaho Code § 42-248, requires you or the owner of this water right to maintain current ownership and address records on file with the Department. Forms to file a change of ownership of a water right and/or a change in the address of the water right owner are available from any Department office or at the Department's website at [www.idwr.idaho.gov](http://www.idwr.idaho.gov).**

If you have any questions concerning these permits, please contact the State Office of the Department located in Boise at (208) 287-4800.

Sincerely,

Debbi Judd

Technical Records Specialist

Enclosures



# Memorandum

**DATE:** May 27, 2020  
**FROM:** Debbi Judd  
**TO:** File 73-12264 & 73-12265  
**RE:** Request for Extension of Time – Timeline of Filings

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February 26, 2020 – The Department received a request for an extension of time, it was submitted by Karma Bragg with Custer Soil & Water Conservation District. The name on the form was James and Karen Posada and it was signed by James Posada. The fee was paid by Bryan Funsten.

March 4, 2020 – The Department received an ownership change for rights 73-182, 73-12264, & 73-12265 submitted by Bryan Funsten.

March 24, 2020 – I was not aware of the received ownership change so I sent an email to James Posada asking if he would like to amend the extension request to a lessor amount of time. Since the initial development period was less than 5 years, current policy is to offer permit holders the opportunity to get extensions for the difference pursuant to 42-218 in addition to possible extension allowed under 42-204. Mr. Posada replied that same day stating that he no longer owned the property and the permits were no longer needed.

May 18, 2020 – I received a call from Karma Bragg inquiring about the status of the extension requests and advising that there should have been an ownership change submitted. The ownership change was found and processed that same day. It should be noted IDWR doesn't typically process ownership changes filed for permits, they are typically held and completed as part of the exam and issuance of a license. But we received guidance from the legal team that it was ok to process it at this time.

May 19, 2020 – I sent an email to the new owner, Bryan Funsten, asking if he would like to amend the request to 3 years to bring the permit up to the five year development period.

May 20, 2020 – I sent another email to Bryan Funsten correcting previous information given that the permit was permitted for one year, not two years. The permits were issued December 20, 2018 with the proof due date January 1, 2020. Mr. Funsten replied that same day that he would like to amend the request to 4 years.

The extension received on 2/26/20 was filed by the permit holder at the time it was filed and it contained sufficient evidence that development was proceeding diligently. Even though James Posada indicated he no longer wanted to pursue the permits, the new owner does so they should be granted.

**From:** [BRYAN FUNSTEN](#)  
**To:** [Judd, Debbi](#)  
**Subject:** Re: Water Permits 73-12264 & 73-12265  
**Date:** Wednesday, May 20, 2020 9:10:39 AM

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Yes, I would like to extend the permits.  
Thanks Debbi.

Bryan

Sent from my iPhone

On May 20, 2020, at 8:47 AM, Judd, Debbi <[Debbi.Judd@idwr.idaho.gov](mailto:Debbi.Judd@idwr.idaho.gov)> wrote:

Good morning Bryan,

I am looking at these permits and notice that they were only permitted for one year. It was approved at the end of December and the proof due date was carried over into January of the next year. You may want to amend the extension request to 4 years instead of 3 years. Please respond if you would like to change the request to 4 years. I apologize for the confusion and inconvenience.

Thanks,  
Debbi

**From:** BRYAN FUNSTEN [<mailto:BFUNSTEN7177@msn.com>]  
**Sent:** Tuesday, May 19, 2020 12:33 PM  
**To:** Judd, Debbi <[Debbi.Judd@idwr.idaho.gov](mailto:Debbi.Judd@idwr.idaho.gov)>  
**Subject:** Re: Water Permits 73-12264 & 73-12265

Thanks Debbi.  
Yes, it is my intention to amend my request to 3 years.  
Thanks again for your help and guidance.

Bryan FUNSTEN

Sent from my iPhone

On May 19, 2020, at 9:53 AM, Judd, Debbi <[Debbi.Judd@idwr.idaho.gov](mailto:Debbi.Judd@idwr.idaho.gov)> wrote:

Good morning,



I am processing your request for extension of time for permits 73-12264 & 73-12265. The request asks for an additional 5 years to submit proof of beneficial use. These permits have not exhausted their full 5 year development period as they were permitted with a 2 year development period. If the Department approves a 5 year extension based on Idaho Code § 42-204(6), there may not be additional extensions available if needed. We can amend this request to 3 years, which would potentially give another 5 years in a subsequent request after that 3 years is up. If you would like to amend your request to 3 years, please respond to this email with your intention.

Thank you for your time and consideration,  
Debbi

Debbi Judd  
Technical Records Specialist  
[debbi.judd@idwr.idaho.gov](mailto:debbi.judd@idwr.idaho.gov)

Idaho Department of Water Resources  
322 E Front St  
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Boise, ID 83720-0098  
208-287-4920  
[www.idwr.idaho.gov](http://www.idwr.idaho.gov)



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DEPARTMENT OF  
WATER RESOURCES

**Custer Soil and Water Conservation District**  
P.O. Box 305, Challis, Idaho 83226 • 208-879-4428 • [www.custerdistrict.org](http://www.custerdistrict.org)

February 24, 2020

Idaho Department of Water Resources  
Angie Grimm, Manager Water Rights Section  
P. O. Box 83720  
Boise, Idaho 83226

Dear Ms. Grimm,

Please see attached an original, signed request for extension of time for permits # 73-12264 and 73-12265 along with an attachment to the request explaining the delay in completing these wells. With new ownership potential soon we have worked with both Jim Posada and Bryan Funsten to request an extension to these permits. I sent this letter in behalf of Jim and Bryan. Please also see a check #1817 in the amount of \$100 (\$50.00 per permit) from Bryan Funsten for full payment of the request.

The wells are a part of a potentially larger fish recovery project sponsored by the Idaho Department of Fish and Game and the Custer Soil and Water Conservation District that has been in development for the past three years. This request will allow the new owner time to review the planning effort and consider this plan fully upon ownership.

Please feel free to contact me or Mr. Posada if you have any additional questions. I can be reached at 208-879-4428.

Sincerely,

Karma Bragg, Project Manager  
Custer Soil and Water Conservation District