

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

IN THE MATTER OF PERMIT NO. 98-7873)	PRELIMINARY ORDER DENYING
IN THE NAME OF ROBERT PAUL SHELTON)	REQUEST FOR EXTENSION
AND/OR LESLIE ANN SHELTON)	OF TIME
_____)	

This matter having come before the Idaho Department of Water Resources (“Department”) as a request for additional time to submit proof of beneficial use, the Department finds, concludes and orders:

FINDINGS OF FACT

1. On April 11, 2008, the Department issued Permit No. 98-7873 (“Permit”) in the name of Robert Paul Shelton and/or Leslie Ann Shelton (“Permit Holders”) authorizing the diversion of 0.16 cubic feet per second (cfs) of ground water for irrigation, domestic and stock water uses in Section 1, Township 61 North, Range 1 East, B.M., Boundary County. A condition of permit approval required the Permit Holders to submit proof of beneficial use of water to the Department on or before April 1, 2012.
2. On February 16, 2012, the Permit Holders filed an Extension Request with the Department. The Department approved this Extension Request based on due diligence and good cause. The approved extension request established a new proof of beneficial use due date of April 1, 2013.
3. On March 28, 2013, the Permit Holders filed an Extension Request with the Department. The Department approved this Extension Request based on due diligence and good cause. The approved extension request established a new proof of beneficial use due date of April 1, 2018.
4. On January 31, 2018, the Department notified the Permit Holders by certified mail that proof of beneficial use was due and instructed the Permit Holders of the steps to be taken to submit a *Statement of Completion for Submitting Proof of Beneficial Use* (“Proof”), or a *Request for Extension of Time* (“Extension Request”).
5. On March 30, 2018, the Permit Holders filed an Extension Request for Permit No. 98-7873 with the Department, indicating the reason for delay as, “Working to acquire additional adjoining acreage and infrastructures. Property currently is in probate that we are working on combining.”

APPLICABLE STATUTES

Idaho Code § 42-218 states, in pertinent part:

Whenever a less period of time than the maximum prescribed in section 42-204[, Idaho Code,] has been granted by the department of water resources for making proof of

beneficial use, upon a satisfactory showing being made by the permit holder, the department can extend the time for making such proof of beneficial use, but in no case shall such extension or extensions, including the original time granted, exceed the maximum prescribed in 42-204[, Idaho Code].

Idaho Code § 42-204(6) states, in pertinent part:

In all other situations . . . the department may grant one (1) extension of time, not exceeding five (5) years beyond the date originally set for completion of works and application of the water to full beneficial use . . . provided good cause appears therefor.

. . . The holder of any permit who shall fail to comply with the provisions of this section within the time or times specified shall be deemed to have abandoned all rights under his permit.

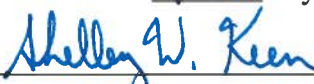
CONCLUSIONS OF LAW

1. The Permit Holders have received the maximum development period pursuant to Idaho Code § 42-218 and the maximum extension for good cause pursuant to Idaho Code § 42-204(6).
2. Pursuant to Idaho Code § 42-204(6), the Department cannot grant an additional extension request based on good cause.
3. The Department should deny the Extension Request.

ORDER

IT IS HEREBY ORDERED that the Extension Request filed on March 30, 2018, for Permit No. 98-7873 in the names of Robert Paul Shelton, and/or Leslie Ann Shelton is **DENIED**.

DATED this 9th day of April, 2018.



Shelley W. Keen, Manager
Water Rights Section

RECEIVED

MAR 30 2018

DEPARTMENT OF
WATER RESOURCESSTATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

\$50 fee

Received by

TE

Recpt No.

C104884

Date

3.30.2018

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. 98-07873 Date proof is due 4/1/2018
 Name(s) of permit holder(s) ROBERT PAUL SHELTON, LISSIE ANN SHELTON
 Mailing address 5751 N 15th ST City DALTON GARDENS State ID Zip 83815
 Telephone no. 208 659 1056 Email RPSHELTON@CME.COM

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

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

CONNECTION OF ADDITIONAL RESIDENTS, UNDERGROUND WATER MAIN 2" APPLICABLE TO FUTURE CONNECTIONS IS BARN, RESIDENCE, SHOP, STOCK WATER TANK FIELD IRRIGATION

Costing \$ 10,000⁰⁰

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

CURRENTLY WORKING TO ACQUIRE ADDITIONAL ADJOINING ACRES AND INFRASTRUCTURE. PROPERTY CURRENTLY IS IN PROBATE THAT WE ARE WORKING ON COMPLETION

Permit holder(s) request an extension for 3 year(s).Signature [Signature] (If other than permit holder, Power of Attorney must be supplied)

Date

3/27/2018

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 _____, 20____.

☐ 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 _____, 20____.

Signed this _____ day of _____, 20____

DENIED PER ORDER DATED: April 9, 2018.

Jeff Peppersack, Chief
Water Allocation Bureau

Block, Darla

From: Block, Darla
Sent: Friday, April 06, 2018 9:31 AM
To: 'rpshelton@me.com'
Subject: Water Right Permit # 98-7873

Paul,
Michele Edl informed me that you are planning to file partial proof on the above mentioned permit for domestic use of 1 home (Mother in-Laws home). Michele informed you incorrectly regarding the fee you have already paid for the Request for Extension of Time form you filed. The Department has to deny your extension request, therefore, the fee you paid at the time of filing is spent for the processing of the extension denial.

The license examination fee for the proof statement you plan to file will be \$50.00.

Sincerely,

*Darla Block
Technical Records Specialist
Water Allocation Bureau
Ph. #(208) 287-4945
Darla.Block@idwr.idaho.gov*



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

C.L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

April 11, 2018

ROBERT PAUL SHELTON
LESLIE ANN SHELTON
5751 N 15TH ST
DALTON GARDENS ID 83815

RE: Permit No. 98-7873

Dear Permit Holder(s):

The Department acknowledges receipt of your request for extension of time (extension request) for the permit referenced above. The Department will not grant an additional extension for this permit based on good cause or due diligence according to Idaho Code § 42-204(6).

Enclosed is a copy of an Order Denying Request for Extension of Time issued in response to the extension request you filed with the Department for this permit. The accompanying order is a **preliminary order** issued by the Department pursuant to Idaho Code § 67-5243. It can and will become a final order without further action of the Department unless a party (1) petitions for reconsideration within fourteen days after the service date of the preliminary order, or (2) requests a hearing within fifteen days after the service date of the preliminary order. These remedies are further described in the attached information sheet.

LAPSE NOTICE

You are hereby notified that under the provision of Idaho Code § 42-218a, the above referenced **permit has lapsed and is of no further force nor effect**. The permit may be reinstated according to Idaho Code § 42-218a (1) if you submit an acceptable proof of beneficial use (proof statement) to the department within sixty days of the mailing of this lapse notice. An acceptable proof statement submittal must include the examination fee or a completed field examination report prepared by a certified water right examiner. **A proof statement may be submitted for all or any portion of the permitted use which has been established during the development period from (April 11, 2008 to April 01, 2018).**

After 60 days of the mailing of this lapse notice the permit may only be reinstated according to Idaho Code § 42-218a (2) including a reasonable cause for the delay, a reinstatement fee of \$250.00 and a report prepared by a certified water right examiner clearly confirming the extent of beneficial use of water during the development period of the permit. The permit priority date will be advanced to the date an acceptable proof statement is received.

If you cannot meet the requirements explained above to reinstate this permit, you may be able to apply for a new water right permit or seek other remedies. Please contact our regional office in your area for information related to new appropriations or other options. Department forms are available from any department office or at the department's website at www.idwr.idaho.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read 'JP', is positioned above the typed name.

Jeff Peppersack, Chief
Water Allocation Bureau

Enclosure(s)

CERTIFICATE OF SERVICE

I hereby certify that on **April 12, 2018** I mailed a true and correct copy, postage prepaid, of the foregoing PRELIMINARY ORDER (**PRELIMINARY ORDER DENYING REQUEST FOR EXTENSION OF TIME**) to the person(s) listed below:

RE: Preliminary Order in the Matter of Permit No. **98-7873**

ROBERT PAUL SHELTON
5751 N 15TH ST
DALTON GARDENS ID 83815

LESLIE ANN SHELTON
5751 N 15TH ST
DALTON GARDENS ID 83815



Darla Block
Technical Records Specialist

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.