



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

March 01, 2016

BYRON BARKER
LONNI LEAVITT BARKER
4567 N SKYLINE DR
EAGLE ID 83616

REQUEST FOR EXTENSION OF TIME LETTER

RE: Permit No. 63-33412

Dear Permit Holder(s):

Enclosed is a copy of the approved request for extension of time submitted in connection with the above referenced permit which extends the proof due date to **March 01, 2021**.

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 because the department **will not** grant an additional extension based on good cause, according to Section 42-204(6), Idaho Code.

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 Section 42-248, Idaho Code, 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.

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

Sincerely,

Darla Block
Technical Records Specialist

Enclosure(s)

c: SPF WATER ENGINEERING LLC

CERTIFICATE OF SERVICE

I hereby certify that on **March 02, 2016** I mailed a true and correct copy, postage prepaid, of the foregoing PRELIMINARY ORDER (**APPROVED REQUEST FOR EXTENSION OF TIME**) to the person(s) listed below:

RE: Preliminary Order in the Matter of Permit No. **63-33412**

**BYRON BARKER
4567 N SKYLINE DR
EAGLE ID 83616**

**LONNI LEAVITT BARKER
4567 N SKYLINE DR
EAGLE ID 83616**

**SPF WATER ENGINEERING LLC
C/O ROXANNE BROWN
300 E MALLARD DR STE 350
BOISE ID 83706**



**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.

Form No. 204 Rev. 12/12
RECEIVED

FEB 29 2016

DEPARTMENT OF
 WATER RESOURCES

STATE OF IDAHO
 DEPARTMENT OF WATER RESOURCES

\$50 fee

Received by DAB

Receipt No. 2101569

Date 2/29/2016

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. 63-33412 Date proof is due March 1, 2016
 Name(s) of permit holder(s) Byron Barker and Lonni Leavitt-Barker
 Mailing address 4567 N. Skyline Drive City Eagle State ID Zip 83616
 Telephone no. 208.939.3333 Email lonleavittbarker@gmail.com

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

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

see attached

Costing \$ see attached

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

see attached

Permit holder(s) request an extension for 5 year(s). Modified per email request from permit holder received on 3/1/2016 (DAB)

Signature Lonni Leavitt-Barker
 (if other than permit holder, Power of Attorney must be supplied)

Date Feb. 25, 2016

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 March 1, 2021.

Signed this 1st day of March, 2016

Jeff Peppersack, Chief
 Water Allocation Bureau

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

The reason we applied for water rights was to provide pasture for our livestock. We have fenced our entire property. We have run irrigation to the front two pastures. The pasture on the South side has been completed and planted. The pasture on the North side has been cultivated and prepped for pasture. We still need to install the sprinkler heads and plant.

The problem we are running into with the back pasture is there is an existing well without a pump. We have not been able to find (on the Water Resources Site or anywhere) any record of the well or how much it flows. We will have to have it tested for pressure and flow. We have had it tested for depth and know it is over 300 feet deep.

Also on that back pasture, we have met with Idaho Power to come up with a plan to bring 3 Phase power to the well. But Idaho Power cannot size their transformers until we know how much flow we have. Therefore, this pasture is on hold until we can identify these things.

Plans for this year: get front pasture completed. Get the well figured out, the flow and pressure tested on the back pasture.

Cost: We have probably spent about \$5,000. And still have \$25,000 to \$35,000 ahead of us to get the back pasture irrigated and planted.

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

In July of 2012, our then 2 year old son was diagnosed with cancer. Thus far he has undergone 3 years and 2 months of Chemotherapy and in September of 2015 finished his treatment. We are now in the phase of monthly testing and scans (for the next five years) to make sure the cancer stays away and to determine what the long term effects are from his Chemo. I'm not quite sure what you need as far as documentation but suffice it to say, the past 3 ½ years have gobbled up every bit of our finances, energy and attention. If needed, I can provide doctors letters, plenty of pictures or the never ending hospital paperwork and bills. We have not had the money, time or energy to even deal with our water rights development. We hope things will settle down and we can put some attention to this project.

Block, Darla

From: Lonni Leavitt-Barker [lonleavittbarker@gmail.com]
Sent: Tuesday, March 01, 2016 1:20 PM
To: Block, Darla
Subject: Re: FW: Request for Extension of Time Received for Permit No. 63-33412

Thank you Darla for the suggestion.

Please let this email serve as a formal request to modify our extension time from the requested 4 years to the allowed 5 years (under Section 42-204, Idaho Code). This would be for the permit assigned to Lonni Leavitt-Barker and Byron Barker at 4567 North Skyline Drive, Eagle, ID 83616.

Sincerely,

Lonni Leavitt-Barker

Lonni Leavitt-Barker
lonleavittbarker@gmail.com
www.reincarnatedasamother.blogspot.com

On Tue, Mar 1, 2016 at 9:12 AM, Block, Darla <Darla.Block@idwr.idaho.gov> wrote:

March 1, 2016

Dear permit holder:

The Department is in receipt of your request for extension of time to submit proof of beneficial use for the above mentioned water right permit. On this extension request you have asked for 4 years.

According to Section 42-204, Idaho Code, you are allowed an initial development period of 5 years and only one extension request after that for up to 5 more years. You have already had the initial 5 years allowed under the permit. This extension request will be considered your last extension request allowed under due diligence

or good cause. You could request that the Department modify your extension request from to reflect a 5 year extension in lieu of the 4 years currently requested on your form.

However, in order for me to modify your request for extension of time form from a 4 year extension to a 5 year extension, I need written request from you stating that you would like to have your extension request form modified to reflect a 5 year extension in lieu of the 4 years currently stated on the form. A reply to this email could be used as your written request to have your form modified. Please respond as soon as possible, and be as specific as you can in your request.

Once I receive your reply, I will be able to move forward with processing your extension request.

Sincerely,

Darla Block

Technical Records Specialist

Water Allocation Bureau

Ph. #[\(208\) 287-4945](tel:2082874945)

Darla.Block@idwr.Idaho.gov

Request For Extension Evaluation

Permit Number: 63-33412 Reviewer: dblock Review Date: 3/1/2016

Acceptability

- 1) Is the contact on the request the current permit holder? Yes
- 2) Does the address need to be updated? No
- 3) Extension request received date: 2/29/2016
- 4) Proof due date: 3/1/2016
- 5) Days added for holiday due date allowance:
- 6) Days added for weekend due date allowance:
- 7) Number of days late: -1
- 8) Request received timely? Yes
- 9) Appropriate fee paid? Yes

Analysis

- 1) Has adequate work been completed? Yes
- 2) Has the permit been involved in litigation? No
- 3) Is litigation documentation needed?
- 4) Is delay by government agency? No
- 5) Is delay documentation needed?
- 6) Greater than 25,000 AcFt for irrigation or 10,000 for reservoir? No
- 7) Number of years previously granted for development: 5
- 8) Initial authorized period less than 5 years? No
- 9) Does the application request the difference?
- 10) Contact applicant?

Proof Due Date Calculator

- 1) Number of years extension requested: 5
- 2) Has an extension been granted previously? No
- 3) Number of years granted under previous extensions:
- 4) Does the permit authorize diversion $\geq$ 2cfs or 100 acres? No
- 5) Is the extension of time to submit proof granted? Yes
- 6) Number of years extension granted: 5
- 7) New proof due date: 3/1/2021

Receipt IDs

W038661, C101569

Comments

Extension request filed and granted based on due diligence. Proof due extended to March 1, 2021. No more extensions allowed for due diligence. End of ten year development period.