

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF PERMIT 22-13506	)	PRELIMINARY ORDER
IN THE NAME OF FREEMONT-MADISON	)	GRANTING EXTENSION OF
IRRIGATION DISTRICT	)	TIME TO SUBMIT PROOF
	)	OF BENEFICIAL USE

This matter having come before the Idaho Department of Water Resources ("Department") as a Request for Extension of Time to submit proof of beneficial use, the Department finds, concludes and orders:

FINDINGS OF FACT

1. On April 23, 1969, the United States of America, Acting through the Regional Director, Region I, Bureau of Reclamation (B.O.R.), applied to the Department for a permit to appropriate 670 cubic feet per second (cfs) and 220,000 acre-feet to be diverted from 45 ground water wells located in an area ranging from Township 6 North through 9 North, and Range 38 East through 44 East, B. M., for irrigation purposes.
2. On March 24, 1970, the Department approved the application as permit 22-7022 with a condition requiring that proof of the application of water to beneficial use (proof) shall be submitted on or before March 24, 1975.
3. On December 31, 1974, the Department notified the permit holder by certified mail that proof of beneficial use was due and instructed the permit holder of the steps to be taken to submit the required proof of beneficial use.
4. Section 42-204(4), Idaho Code, provides:

In connection with permits held by the United States, or the Idaho water resource board, whether acquired as the original applicant, by assignment or otherwise, the director of the department of water resources may extend the time for completion of the works and application of the water to full beneficial use for such additional period or periods of time as he may deem necessary upon application supported by a showing that such additional time is required by reason of the status of plans, authorization, construction fund appropriations, construction, or any arrangements which are found to be requisite to completion of the construction of such works.

5. On February 12, 1975, the Department received the permit holder's first of seven (7) Request for Extension of Time to submit proof of beneficial in connection with permit 22-7022. The Department approved all 7 extensions based on Section 42-204(4), Idaho Code, with the

seventh approval extending the date to submit proof of beneficial use to November 1, 2007.

6. On October 26, 1988, the B.O.R. filed Snake River Basin Adjudication claim 22-7022. The claim listed 5 of the 45 permitted wells as developed points of diversion.
7. On April 22, 2005, the B.O.R. assigned permit 22-7022 to Fremont-Madison Irrigation District (permit holder).
8. February 6, 2006, the permit holder requested that permit 22-7022 be split into two parts. One part, identified as permit 22-13505, authorizes the diversion of 140 cubic feet per second (cfs) from 5 points of diversion, represents the developed portion of the permitted use. The other part, identified as permit 22-13506, represented the remainder of the amounts authorized by permit 22-7022. The reason for the request was to allow for processing of the developed portion (22-13505) in the SRBA.
9. On February 27, 2006, the Department filed *Notice of filing of Director's Report for Basin 22, Part I, Ground Water for Irrigation and Other Water Rights*. The recommendation for claim 22-7022 was included in this report.
10. On April 12, 2006, Fremont-Madison Irrigation District filed an objection to the recommendation for 22-7022. The objection challenged the recommended diversion rate, season of use, and place of use. The objection questioned whether the source of the water from various wells within the place of use should be considered recovered surface water in part and ground water in part.
11. On May 5, 2006, a Notice of Completed Administrative Proceedings was filed with the Snake River Basin Adjudication (SRBA) court, informing the court that recommendation 22-7022 had been split into 22-13505 and 22-13506. Amended Director's Reports were submitted for 22-13505 and 22-13506.
12. On September 21, 2007, the Department received a Request for Extension of Time to submit proof of beneficial in connection with permit 22-13506. The permit holder requested that the proof due date be extended to November 1, 2012. The request was granted on October 23, 2007 for good cause shown as provided in Section 42-204(5), Idaho Code.
13. On September 5, 2012, Fremont-Madison Irrigation District withdrew SRBA claim 22-13506.
14. On October 26, 2012, the Department received a Request for Extension of Time to submit proof of beneficial in connection with permit 22-13506. The permit holder requested that the proof due date be extended to November 1, 2017.
15. The request for an additional period of time to complete development in connection with Permit 22-13506 is based on delay due to litigation which might bring title to the water in question. The Department's water right and adjudication files include the necessary documentation showing that development in connection with the permit was delayed due to

Snake River Basin Adjudication court proceedings dating from April 12, 2006 through September 5, 2012. This delay has prevented development of the right.

CONCLUSIONS OF LAW

1. Section 42-204(1), Idaho Code, provides:

In cases where the applicant is prevented from proceeding with his work by his failure to obtain necessary consent or final approval or rejection from the federal government because of the pendency of an application for right of way or other matter within the jurisdiction of the United States, or by litigation of any nature which might bring his title to said water in question, the department of water resources upon proper showing of the existence of any such condition, and being convinced that said applicant is proceeding diligently and in good faith, shall extend the time so that the amount of time lost by such delays shall be added to the time given in the original permit for each and every action required.

2. Section 42-218, Idaho Code, provides in part:

The department shall grant no extension unless the application therefor be filed with it prior to the date upon which the proof of beneficial use was required to be made under the original terms of the permit.

3. The permit holder provided necessary evidence to justify an extension of time.
4. The request was submitted timely.
5. The Department should grant an extension of time to submit proof of beneficial use in connection with permit 22-13506.

ORDER

IT IS HEREBY ORDERED that the Request for Extension of Time to submit proof of beneficial use is **GRANTED**.

IT IS FURTHER HEREBY ORDERED that the deadline to submit proof of beneficial use in connection with permit 22-13506 is **EXTENDED** to November 1, 2017.

Dated this 8th day of November, 2012.



Jeff Peppersack, Chief
Water Allocation Bureau