

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF PERMIT	)	PRELIMINARY ORDER
NO. 95-9342 IN THE NAMES OF	)	DENYING REQUEST
LARRY GRAY AND VELMA GRAY	)	FOR EXTENSION OF TIME
_____	)	

This matter having come before the Idaho Department of Water Resources (“Department”), the Department finds, concludes and orders:

FINDINGS OF FACT

1. On June 5, 2006, the Department issued Permit No. 95-9342 to Larry Gray and Velma Gray (“permit holders”) authorizing the total diversion of .20 cubic feet per second (cfs) of ground water for commercial and domestic use in Section 5, Township 45 North, Range 4 West, B.M., Benewah County. A condition of permit approval required the permit holder to submit proof of beneficial use of water (“proof”) to the Department on or before May 1, 2009.
2. On February 28, 2009, the Department notified the permit holder that proof was due and instructed the permit holder of the steps to be taken to submit the proof or a request for extension of time (“extension request”).
3. On April 6, 2009, the permit holder filed an extension request with the Department. This extension was approved based on due diligence or good cause. The extension established a new proof of beneficial use deadline of May 1, 2012.
4. On May 15, 2009, the Department notified the permit holder of the approved request for extension of time, and instructed the permit holder of the importance to work diligently towards the completion of the project during the construction period allowed since the Department will not grant an additional extension based on due diligence, according to Section 42-204(5), Idaho Code.
5. On February 29, 2012, the Department notified the permit holder that proof was due and instructed the permit holder of the steps to be taken to submit the proof or a request for extension of time (“extension request”).
6. On April 10, 2012, the permit holder filed a request for extension of time indicating that the reason for delay is: “The economic upheaval that America experienced tightened availability of funds.”

CONCLUSIONS OF LAW

1. Idaho Code § 42-204 provides for an extension:

1. 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

5. 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 therefore.

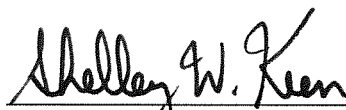
The holder of any permit who shall fail to comply with the provisions of this section within the time or times specified shall be deemed to have abandoned all rights under his permit.

2. The Department cannot grant an additional request for extension based on good cause. Therefore, the extension request should be denied.

ORDER

IT IS HEREBY ORDERED that the Request for Extension of Time filed on April 10, 2012, for Permit No. 95-9342 in the names of Larry Gray and Velma Gray, is **DENIED**.

Dated this 18th day of June, 2012.



Shelley W. Keen, Manager
Water Rights Section