

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR EXTENSION OF TIME TO AVOID
FORFEITURE OF A WATER RIGHT

RECEIVED

AUG 09 2010

DEPARTMENT OF
WATER RESOURCES

Section 42-222, Idaho Code, provides that a water right shall be lost and forfeited and the water right revert to the state upon the failure of a water user to apply the water to beneficial use for a period of five (5) years. The Director may allow an additional five (5) year period of non-use without forfeiture upon a showing of reasonable cause.

1. Name of water right holder Orion Holdings, LLC (Contact name is Mr. Don Newell)
2. Mailing address 618 N. Pioneer Oak, Salt Lake City UT 84108 Email ashton.homes@hotmail.com
3. The right was obtained or is evidenced by:
 - a. Decree to See attached profile report in Case of _____
vs. _____, Dated 2/16/07 in _____
Court, _____ County of _____ Fully _____ (Name of Court) describe decree
 - b. License No. _____
 - c. Claim No. _____
 - d. SRBA No. _____
4. Source of water Groundwater tributary to N/A
(Name of stream or source)
5. Date of priority of right December 31, 1939
6. Description of Right:
amount See attached for profile report purposes from _____ to _____
(cfs/ac-ft)
amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)
7. Point of Diversion _____ 1/4 _____ 1/4 of Sec. _____ Twp. _____ Rge. _____ County _____
8. Lands irrigated or Place(s) of Use: See attached profile report.

TWP	RGE	SEC	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	

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WATER RESOURCES
WESTERN REGION

Total Acres _____

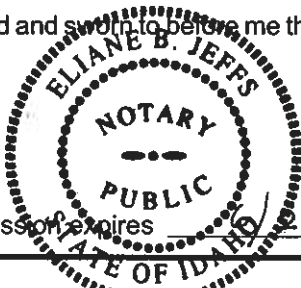
9. Give the last date when water was put to beneficial use Nov. 15, 2006 See attached narrative
Length of extension of time requested _____ years, or until November 15, 2016
(Date)
10. Explain fully your reasons for requesting an extension of time within which to resume the use of your water right and reasons for non-use See attached narrative

The information contained in this application is true to the best of my knowledge.

(Signature of Applicant)

MANAGER

Subscribed and sworn to before me this 5th day of August, 20 10.



(Notary Public)

My commission expires 6/26/10 Residing at Nampa, Idaho

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined this application for extension of time within which to resume the use of a water right and I hereby _____ said application subject to the following conditions or reasons:

Signed this _____ day of _____, 20 _____.

Chief, Water Allocation Bureau

FOR DEPARTMENT USE ONLY

Date Received 8/9/2010 FEE Received by SRJ Date 8/9/2010 Receipt # C091500
Preliminary T by RZ Publication prepared by DB Pub. approved by _____ Date _____
Published in IDAHO STATESMAN Dates Published SEPT. 16 & 23, 2010
Protests filed by _____
Copies of protests forwarded by _____ Hearing held by _____ Date _____
Recommended for - APPROVAL / DENIAL By _____

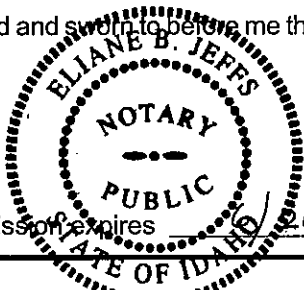
9. Give the last date when water put to beneficial use Nov. 15, 2006 See attached narrative
Length of extension of time requested _____ years, or until November 15, 2016
(Date)
10. Explain fully your reasons for requesting an extension of time within which to resume the use of your water right and reasons for non-use See attached narrative

The information contained in this application is true to the best of my knowledge.

(Signature of Applicant)

MANAGER

Subscribed and sworn to before me this 5th day of August, 20 10.



Eliane B. Jeffs
(Notary Public)

My commission expires 6/10

Residing at Nampa, Idaho

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined this application for extension of time within which to resume the use of a water right and I hereby approve said application subject to the following conditions or reasons:

The right holder shall resume beneficial use of water on or before November 15, 2016.

Signed this 29th day of October, 20 10.

Chief, Water Allocation Bureau

FOR DEPARTMENT USE ONLY

Date Received 8/9/2010 FEE Received by SRJ Date 8/9/2010 Receipt # C091500

Preliminary T by RL Publication prepared by JB Pub. approved by _____ Date _____

Published in IDAHO STATESMAN Dates Published SEPT. 16 & 23, 2010

Protests filed by _____

Copies of protests forwarded by _____ Hearing held by _____ Date _____

Recommended for - APPROVAL / DENIAL By _____

Close

IDAHO DEPARTMENT OF WATER RESOURCES
Water Right Report

7/20/2010

WATER RIGHT NO. 63-4695

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	ORION HOLDINGS LLC 618 N PIONEER OAK SALT LAKE CITY, UT 84108 801-381-6950
Original Owner	LORNA M DENNETT
Original Owner	MEL DENNETT 1970 SOUTH CHANNEL RD MERIDIAN, ID 83642

Priority Date: 12/31/1939
Basis: Decreed
Status: Active

<u>Source</u>	<u>Tributary</u>
GROUND WATER	

<u>Beneficial Use</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
IRRIGATION	03/01	11/15	0.2 CFS	45.5 AFA
DOMESTIC	01/01	12/31	0.04 CFS	
AESTHETIC STORAGE	01/01	12/31		9.9 AFA
DIVERSION TO STORAGE	03/01	11/15	0.07 CFS	
Total Diversion			0.31 CFS	

Location of Point(s) of Diversion:

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GROUND WATER	NESWSW	Sec. 17	Township 04N	Range 01E	ADA County
GROUND WATER	NESESW	Sec. 17	Township 04N	Range 01E	ADA County

IRRIGATION Use:
Acre Limit: 10.1

Place(s) of use:

Place of Use Legal Description: IRRIGATION ADA County

Township	Range	Section	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres
04N	01E	17		SWSW	39		SESW	31						
				SWSE	8									
		20		NWNE	7									
				NENW	11		NWNW	5						

Place of Use Legal Description: DOMESTIC ADA County

Township	Range	Section	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres
04N	01E	17		SESW										

Place of Use Legal Description: AESTHETIC STORAGE ADA County

Township	Range	Section	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres
04N	01E	17		SWSW			SESW							

Total Acres: 101

Conditions of Approval:

1.		Rights 63-132, 63-4695, 63-31312 and 63-31313 under Transfer 72596 authorize the combined total diversion of water for aesthetic storage in the amount of 42.2 af to be used for replacement of losses caused by evaporation from 14.5 acres total surface area of seven (7) aesthetic ponds authorized for aesthetic storage under right 63-32235.
2.	T07	The right holder shall accomplish the change authorized by this transfer within three years of the date of this approval.
3.	T08	Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.
4.	T09	Approval of this transfer does not preclude the opportunity for review of the validity of this water right in the ongoing Snake River Basin Adjudication.

5.	01M	After specific notification by the Department, the right holder shall install a suitable measuring device or shall enter into an agreement with the Department to determine the amount of water diverted from power records and shall annually report the information to the Department.
6.	X27	This right is limited to the irrigation of 10.1 acres within the place of use described above in a single irrigation season.
7.	N10	The quantity of water decreed for this water right for domestic use is not a determination of historical beneficial use.
8.	N12	The quantity of water under this right for domestic use shall not exceed 13,000 gallons per day.
9.	R65	This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 4.5 afa per acre at the field headgate for irrigation of the lands above.
10.	X36	Right 63-17863 is also diverted through the point of diversion described above.
11.	X01	Domestic use is for 1 home.
12.		Use of this right is combined with water from Mace-Catlin Ditch Company.

Dates:

Licensed Date:

Decreed Date: 02/16/2007

Enlargement Use Priority Date:

Enlargement Statute Priority Date:

Water Supply Bank Enrollment Date Accepted:

Water Supply Bank Enrollment Date Removed:

Application Received Date:

Protest Deadline Date:

Number of Protests: 0

Other Information:

State or Federal:

Owner Name Connector:

Water District Number:

Generic Max Rate per Acre:

Generic Max Volume per Acre:

Civil Case Number:

Old Case Number:

Decree Plaintiff:

Decree Defendant:

Swan Falls Trust or Nontrust:

Swan Falls Dismissed:

DLE Act Number:

Cary Act Number:

Mitigation Plan: False

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Narrative
Application for Extension of Time to Avoid Forfeiture
Water Rights No. 63-31313, 63-31312, 63-17863, 63-4695
Water Right Holder: Orion Holdings, LLC

APPLICATION ITEM 9

GIVE THE LAST DATE WHEN WATER WAS PUT TO BENEFICIAL USE:

No. 63-31313 – July 15, 2006
No. 63-31312 – July 15, 2006
No. 63-17863 – November 15, 2006
No. 63-4695 – November 15, 2006

The above listed dates represent the last date of substantial beneficial use for the respective water rights at which time historically irrigated pasture areas were replaced by site development. The dates listed correspond to the month and day at termination of the irrigation season of use for the respective water right in the year 2006. The dates listed also equate to approximately 4 years of reduced beneficial use as of termination of irrigation season in year 2010.

LENGTH OF EXTENSION OF TIME REQUESTED:

No. 63-31313 – July 15, 2016
No. 63-31312 – July 15, 2016
No. 63-17863 – November 15, 2016
No. 63-4695 – November 15, 2016

The requested dates for time extension to avoid forfeiture represent 5 years from the month, day and year of the last year of which the water would need to be placed to use to avoid forfeiture for the respective water right.

The requested time extension anticipates sufficient time, based on current conditions, for the land development market to recover and result in build-out, including landscaping, of the remaining residential lots in Phase 1 and common areas and residential lots in the final Phase 2 of the Shores. Orion Holdings has not previously requested a time extension to avoid forfeiture for the above listed water rights.

APPLICATION ITEM 10

EXPLAIN FULLY YOUR REASONS FOR REQUESTING AN EXTENSION OF TIME WITHIN WHICH TO RESUME THE USE OF YOUR WATER RIGHT AND REASONS FOR NON-USE:

History of Beneficial Use - The above referenced water rights are appurtenant to lands within the Shores development and are used in conjunction with water delivered by the Mace-Catlin ditch. Construction of the Shores began with rough grading of almost the entire site in 2005 followed by development of Phase 1 through 2006. Prior to site

development, the water rights were used primarily for irrigation of pasture areas. With increasing site development, the water rights were used as needed for irrigation of common areas and a tree nursery.

Transfer 72596 was applied for on November 23, 2005 and approved on August 15, 2007 authorizing changes to the water rights to accomplish irrigation of common areas and residential lots within a 101-acre permissible place of use that represents the Shores development. Transfer 72596 also authorizes diversion of water from water rights 63-31313, 63-31312, and 63-4695 for aesthetic storage to mitigate evaporative losses from aesthetic ponds pursuant to water right permit 63-32235. Irrigation and mitigation uses authorized by Transfer 72596 for the above-referenced water rights are in combination with water from the Mace-Catlin Ditch Company (water right 63-33067 as split from 63-132 changed in transfer).

Portions of the water rights continue to be put to beneficial use as of the date of this application. Following approval of Transfer 72596, the water rights were, and continue to be, used in a pressurized irrigation system to irrigate all landscaped common areas and residential lots, as they became landscaped, in Phase 1 of the Shores. As of July 2010, approximately 20 of the 56 residential lots in Phase 1 are landscaped and being irrigated with the water rights.

On June 29, 2010, the Department approved a request by Orion Holdings, LLC, for a time extension to submit proof of beneficial use for water right permit 63-32235. As described in the narrative that accompanied that request, the infrastructure needed to deliver water from water rights 63-132, 63-31313, 63-31312, and 63-4695 for mitigation of evaporative losses from the aesthetic ponds (under permit 63-32235) has been constructed and is operational. The narrative also described that pond construction to-date under 63-32235 represents approximately 85% of the pond surface area responsible for evaporative losses.

Reasons for Reduced Beneficial Use at Present – In addition to the site development as described above, the following are circumstances that have prevented Orion Holdings and its predecessor in interest from fully utilizing the water rights.

Ownership Changes – South Channel LLC, the former owner of the Shores, held the project until December 31, 2008 at which time the project was conveyed to Marshall & Ilsley Bank. Depressed real estate sales brought on by the strong economic downturn resulted in delays in build-out of lots and related landscape irrigation. Orion Holdings acquired the project in August 2009. The current owner, Orion Holdings, did not own the project and therefore did not have control over beneficial use for approximately 3 years out of the 4 years of reduced beneficial use.

Other Activities & Entitlements – After acquiring the project in August 2009, Orion Holdings has transitioned into management and operations of the project, finalized re-listing as of October 2009 with ongoing marketing of available lots within The Shores, and is continuing or renewing entitlements. Those entitlements include having obtained a

time extension for the final plat for Phase 2 (the final phase) from the City of Eagle, a time extension for the joint 404 from permit the U.S. Army Corps of Engineers, and finalizing the required wetland mitigation in Phase 2 to obtain final approval on the 404 permit.

Economic Conditions – The downturn in the housing market conditions that began in late 2006 has continued into 2010 and has resulted in reduced demand for residential lots. The status of the 56 buildable lots in Phase 1 as of July 2010 follows: approximately 23 lots have finished homes or are in the process of home construction or permitting, approximately 27 developed lots are under the ownership of Orion Holdings and offered for sale by the Shores listing agent, with the remaining approximately 6 lots having been purchased from Orion Holdings.

Landscaping of Residential Lots – The majority of irrigation demand in the Shores arises from landscaping on residential lots. The pressure irrigation infrastructure needed for delivering water to approximately 67 of the total 86 buildable lots is in place and operational. However, market conditions continue to affect acquisition of lots by builders or private owners who, in turn, control development and installation of landscaping on the residential lots. The permit holder has no control over the timing of landscaping and associated beneficial use of the water rights on residential lots. In this respect, the water rights should not be subject to forfeiture.