

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

IN THE MATTER OF PERMIT)
NO. 63-31877 IN THE NAME OF)
GRAHAM & JORDAN INVESTORS LLC)
_____)

**ORDER DENYING REQUEST
FOR EXTENSION OF TIME**

This matter having come before the Idaho Department of Water Resources (“Department”), the Department makes the following Findings of Fact, Conclusions of Law and Order:

FINDINGS OF FACT

1. On May 10, 2004, the Department issued Permit No. 63-31877 to Graham & Jordan Investors LLC (“permit holder”) authorizing the diversion of 0.19 cubic feet per second (cfs) of ground water for Domestic use for 17 homes in the (NENW) and the (NWNW) of Section 28, Township 03 North, Range 01 West, Ada 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 holders that proof was due and instructed the permit holders of the steps to be taken to submit the proof or a request for extension of time (“extension request”).
3. On March 19, 2009, the permit holder filed an extension request with the department. This extension was approved and granted based on due diligence or good cause. A proof of beneficial use deadline of May 1, 2010 was set.
4. On March 25, 2009, the Department notified the permit holders of the approved request for extension of time and instructed the permit holders of the importance to work diligently towards the completion of the project during the construction period allowed, since the department would not grant an additional extension request based on good cause.
5. On February 26, 2010, the Department notified the permit holders that proof was due and instructed the permit holders of the steps to be taken to submit the proof or a request for extension of time (“extension request”).
6. On April 30, 2010, the permit holders filed a request for extension of time indicating that the reason for delay is: “Permit holder completed the work needed for use of the water rights granted, and had every intention of selling property to end users who would be using the water rights.” “However, the economic downturn and the catastrophic loss of real estate business in the treasure valley left permit holder with fully-developed property and no buyers/end users. The home sites are currently being marketed and will eventually have end users utilizing the domestic system and water rights.”

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 additional requests 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 30, 2010, for Permit No. 63-31877 in the name of Graham & Jordan Investors LLC, is **DENIED**.

Dated this 14th day of May, 2010.



Jeff Peppersack, Chief
Water Allocation Bureau

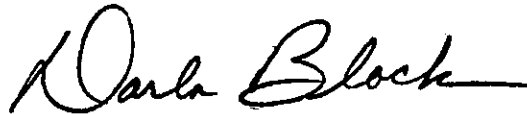
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17th day of May, 2010, a true and correct copy of the documents described below was served by placing in the U.S. Mail, with postage prepaid and addressed to the following:

Document(s) Served: Order Denying Request for Extension of Time, and
Explanatory Information to Accompany a Preliminary Order without a
Hearing

GRAHAM & JORDAN INVESTORS, LLC
3394 S MCDERMOTT
NAMPA ID 83687

CONGER MANAGEMENT GROUP
1627 S ORCHARD ST STE 24
BOISE ID 83705

A handwritten signature in black ink, reading "Darla Block". The signature is fluid and cursive, with a horizontal line extending from the end of the name.

Darla Block
Technical Records Specialist
Water Allocation Bureau

Statement of Available Procedures and Applicable Time Limits

RESPONDING TO PRELIMINARY ORDERS ISSUED BY THE IDAHO DEPARTMENT OF WATER RESOURCES (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 issuance 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.