

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

IN THE MATTER OF PERMIT	)	
NO. 95-9070 IN THE NAME OF	)	ORDER DENYING REQUEST
THOMAS R. DE TAR	)	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 August 6, 2001, the Department issued Permit No. 95-9070 to Thomas R. deTar ("permit holder") authorizing the diversion of 0.20 cubic feet per second (cfs) of water from a Spring and Unnamed Stream (tributary to the Spokane River) to be used for irrigation of 10 acres within the NESW, of Section 10, Township 50 North, Range 05 West, Kootenai 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 August 1, 2006.

2. On May 31, 2006, the Department notified the permit holder that proof of beneficial use was due and instructed the permit holder of the steps to be taken to submit a Proof of Beneficial use ("proof"), or a Request for Extension of Time ("extension request").

3. On July 12, 2006, the permit holder filed an extension request with the department. The permit holder provided evidence that he had been delayed because "high spring runoff damaged collection pipes, which need to be repaired in dry season." This extension was approved and granted based on due diligence and extended the proof deadline to August 1, 2008.

4. On May 31, 2008, the Department notified the permit holder that proof of beneficial use was due and instructed the permit holder of the steps to be taken to submit a Proof of Beneficial use ("proof"), or a Request for Extension of Time ("extension request").

5. On July 30, 2008, the permit holder filed a second extension request with the department.

CONCLUSIONS OF LAW

1. Idaho Code § 42-204 (1 & 5) states in pertinent part as follows:

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, 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.

5. In all other situations not governed by these provisions 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, upon request for extension received on or before the date set for completion, provided good cause appears therefor.

...

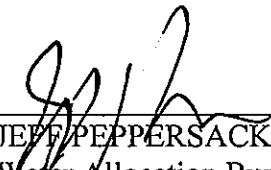
The holder of any permit who shall fail to comply with the provisions of this section within the time or times specified shall be deemed to have abandoned all rights under his permit.

2. Idaho Code Section 42-204 authorizes the Department's approval of one extension of time for good cause, also known as due diligence. The 2006 extension of time for due diligence was the one allowed, under Section 42-204. The Department cannot approve another extension of time for filing proof of beneficial use, based on due diligence.

ORDER

IT IS HEREBY ORDERED that the Request for Extension of Time filed on July 30, 2008, for Permit No. 95-9070 in the name of Thomas R. deTar is **DENIED**.

Dated this 20th day of August, 2008.



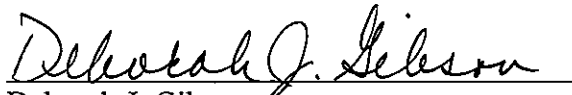
JEFF PEPPERSACK, Chief
Water Allocation Bureau

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21st day of August, 2008, a true and correct copy of the document described below was served by placing a copy of the same in the United States mail, postage prepaid, certified mail – return receipt requested, and properly 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

THOMAS R DE TAR
3135 SOUTH SCHILLING LOOP
POST FALLS ID 83854


Deborah J. Gibson
Administrative Assistant