

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION	)	PRELIMINARY ORDER
FOR EXTENSION OF TIME TO AVOID	)	RESCINDING THE JULY 9, 2008
FORFEITURE OF WATER RIGHT	)	ORDER GRANTING AN EXTENSION
NO. 74-15021 IN THE NAME OF	)	OF TIME TO AVOID FORFEITURE
MELVIN W. ANDREWS	)	
_____	)	

This matter having come before the Department of Water Resources (Department) as an application for extension of time to avoid forfeiture, the Department makes the following Findings of Fact, Conclusions of Law, and Order:

FINDINGS OF FACT

1. On May 15, 2003 the Department received an Application for Extension of Time to Avoid Forfeiture of a Water Right ("extension") for water right no. 74-15021 in the name of Melvin W. Andrews ("right holder"). The extension was for a diversion of 0.75 cfs from the Lemhi River for the irrigation of 51.4 acres within Sections 31 and 32, of Township 20 North, Range 24 East, in Lemhi County.
2. On August 19, 2003, the Department granted the extension of time to avoid forfeiture authorizing resumption of use of the water right on or before August 1, 2008.
3. On March 12, 2008, the Department received a second Application for Extension of Time to Avoid Forfeiture of a Water Right ("second extension") for water right no. 74-15021.
4. On May 29, 2008, the Department issued a Notice to Resume Water Use for water right no. 74-15021 in accordance with 42-222, Idaho Code. The right holder did not report resumption in use of water ,
5. On July 9, 2008, the Department granted the second extension of time to avoid forfeiture with an extension to June 1, 2014.
6. A further examination of Department records shows that the second extension was issued in error because of a duplicate water right file.

CONCLUSIONS OF LAW

1. Section 42-222 (4) (c, d & e), Idaho Code, states in pertinent part as follows:

(c) The director of the department of water resources shall find from the evidence presented in any hearing, or from information available to the department, the reasons for such nonuse of water and where it appears to the satisfaction of the director of the department of water resources that other rights will not be impaired by granting an extension of time within which to resume the use of the water and good cause appearing for such nonuse, he may grant one (1) extension of five (5) years within which to resume such use.

(d) If the use of the water has not been resumed and report thereon made on or before the date set for resumption of use such right shall revert to the state and again be subject to appropriation, as provided in this section.

(e) In the event the director of the department of water resources determines that a proposed extension of time within which to resume use of a water right shall not be approved as provided in this section, he shall deny same and forward notice of such action to the applicant by certified mail, which decision shall be subject to judicial review as hereafter provided.

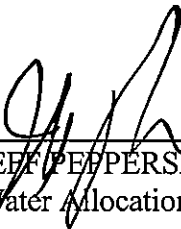
2. The Department erred in granting a second extension of time to avoid forfeiture.

3. The Department should rescind the order granting the extension of time to avoid forfeiture dated July 9, 2008.

ORDER

IT IS HEREBY ORDERED that the order dated July 9, 2008 for Water Right No. 74-15021 is **rescinded** and the right is forfeited unless protected from forfeiture through other exceptions or defenses provided by law.

Dated this 20th day of August, 2008.



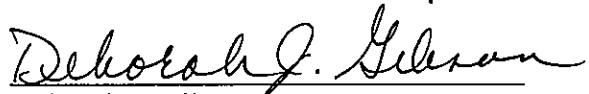
JEFF PEPPERSACK, Chief
Water Allocation Bureau

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21st day of August, 2008, I mailed a true and correct copy, postage prepaid, by U.S. Certified Mail with Return Receipt Requested, of the document as described below was served by placing the same in the United States mail, Certified postage prepaid, properly addressed to the following:

Document Description: PRELIMINARY ORDER RESCINDING THE JULY 9, 2008
ORDER GRANTING AN EXTENSION OF TIME TO AVOID FORFEITURE

MELVIN W. ANDREWS
809 JEFFERSON
SALMON ID 83467


Deborah J. Gibson
Administrative Assistant
Water Management Division