

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF PERMIT NOS.)
35-7962 AND 35-7963 IN THE NAME OF)
NORMAN E NEF AND SONS INC)
_____)

**ORDER CONTINUING INDEFINITE
STAY IN DEVELOPMENT PERIOD**

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 15, 1992, the Director of the Department issued an order establishing a moratorium on processing and approval of applications for permit to appropriate water from all surface and ground water sources upstream from the USGS Gauge on the Snake River near Weiser, Idaho. On April 30, 1993, the Director issued an *Amended Moratorium Order* (ESPA Moratorium Order) covering the Eastern Snake River Plain Aquifer (ESPA). The moratorium order was issued to protect existing water rights due to effects of drought, reduced recharge and increased demands on the ESPA.

2. On November 9, 1994, the Director of the Department issued an *Order for Temporary Stay of Development and Notice of Formal Proceedings* (Temporary Stay Order) in connection with certain permits within the ESPA for which proof of beneficial use of water (proof) had not been filed with the Department. As grounds for the Temporary Stay Order, the Director cited the ESPA Moratorium Order, various calls by senior surface and ground water right holders against holders of later in time ground water rights, and drought conditions that aggravated water shortages experienced by all water right holders. The Temporary Stay Order required the permit holders to 1) submit proof of beneficial use developed under their permit, 2) request authority to continue development based on substantial investment towards development of the permit, or 3) request an indefinite stay in the development period.

3. The Temporary Stay Order provided that permit holders could:

"Request an indefinite stay in the development period for the project, or any part of the project for which a substantial investment has not been made, until the conditions that resulted in this order have been alleviated if such should ever occur. Upon approval of any such stay, no further development is to occur until such time as the department has issued an extension of time setting a date for completion of the project."

4. On February 1, 1995, Norman E. Nef and Sons, Inc., the holder of Permit Nos. 35-7962 and 35-7963 (permit holder), filed a response to the Temporary Stay Order with the Department requesting an indefinite stay in the development period for the permits.

5. On February 13, 1995, the Department issued an order granting an indefinite stay in the development period for Permit Nos. 35-7962 and 35-7963 subject to the following conditions:

- 1) Additional work by the permit holder in developing a water right under terms of the permits is not authorized until the department specifically authorizes resumption of work.
- 2) The permit holder is not authorized to assign ownership of the permits to another party without prior approval of the department.
- 3) The department may rescind or modify the indefinite stay hereby granted if the Eastern Snake River Plain moratorium is modified or rescinded.
- 4) This order does not grant a stay in development beyond December 31, 1997.

6. On July 31, 1997, the Department sent a notice to the permit holder that proof of beneficial use was due on or before October 1, 1997. On September 12, 1997, the permit holder filed a Request for Extension of Time for Filing Proof of Beneficial Use (extension request) with the Department. On April 23, 1998, the Department issued an order granting an extension of time to submit proof and set the proof due date to October 1, 2002 with the following conditions:

- 1) The permit holder is not authorized to assign ownership of the permits to another party without prior approval of the department.
- 2) Additional work by the permit holder in development of water rights under terms of the permits is not authorized until specifically authorized by the department.

7. An additional extension request was approved on August 28, 2002 with similar conditions. The approval set the proof due date to October 1, 2007.

8. On July 31, 2007, the Department sent a notice to the permit holder that proof of beneficial use was due on or before October 1, 2007. On September 27, 2007, the permit holder filed another extension request with the Department to extend the proof due date to October 1, 2010.

9. The conditions resulting in the ESPA Moratorium Order and the Temporary Stay Order, including drought and water delivery calls, have continued in the ESPA.

CONCLUSIONS OF LAW

1. The ESPA Moratorium Order prohibiting processing and approval of applications for permit is still in effect.

2. The conditions resulting in the Temporary Stay Order have not been alleviated.

3. The Department should continue the indefinite stay in the development period, with conditions, as granted on February 13, 1995 for Permit Nos. 35-7962 and 35-7963.

ORDER

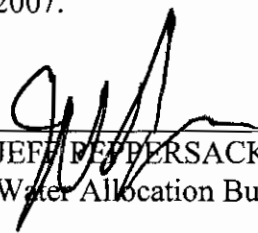
IT IS THEREFORE, HEREBY ORDERED that the order granting an indefinite stay in the development period for Permit Nos. 35-7962 and 35-7963 issued by the Department on February 13, 1995 is **CONTINUED** subject to the following conditions:

- 1) Additional work by the permit holder in developing a water right under terms of the permits is not authorized until the Department specifically authorizes resumption of work.
- 2) The permit holder is not authorized to assign ownership of the permits to another party without prior approval of the Department.
- 3) The Department may rescind or modify the indefinite stay hereby granted if the Eastern Snake River Plain moratorium is modified or rescinded.

This order does not prevent the Director from reviewing continued development of a permit on a case-by-case basis if,

- 1) The Director determines that protection and furtherance of the public interest justifies continued development of a permit;
- 2) The Director determines that continued development and use of water will have no effect on prior water rights because of its location, insignificant consumption of water or mitigation provided by the permit holder to offset injury to other rights.

Dated this 6th day of December, 2007.


JEFF PEPPERSACK, Bureau Chief
Water Allocation Bureau