

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

IN THE MATTER OF PERMIT)
NO. 15-7184 IN THE NAME OF)
DAVID AND ALICE EDWARDS)
_____)

**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 June 19, 2000, the Department issued Permit No. 15-7184 to John F. Fredrickson Co. authorizing the diversion of 4.76 cubic feet per second (cfs) of ground water to be used for irrigation within Sections 21 & 22, Township 14 South, Range 35 East, of Oneida 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 June 1, 2005.

2. On January 27, 2005, the Department received an Assignment of Permit from John F. Fredrickson Co. assigning the permit to David and Alice Edwards (“permit holders”).

3. On March 31, 2005, the Department notified the permit holder that proof was due and instructed the permit holder of the steps to be taken to submit proof or a Request for Extension of Time (“extension request”).

4. On April 21, 2005, the permit holder filed with the Department an extension request to extend the proof deadline. The permit holder explained that they had experienced a delay getting electricity to the site. This extension was approved and granted based on due diligence which extended the proof deadline to June 1, 2007.

5. On January 18, 2007, the Department received an Application for Amendment of a Permit (“Amendment of Permit”). The Amendment of Permit was filed for changing the point of diversion for permit no. 15-7184.

6. The Amendment of Permit was granted and issued on March 21, 2007.

7. On March 31, 2007, the Department notified the permit holder that proof was due and instructed the permit holder of the steps to be taken to submit the proof or an extension request.

8. On April 12, 2007, the permit holder filed a second request for extension of time for filing proof with the Department. The permit holder explained that "[t]he permit had to be amended, and we didn't receive it until the 27th of March, 2007."

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 THEREFORE, HEREBY ORDERED that the Request for Extension of Time filed on April 12, 2007, for Permit No. 15-7184 in the name of David and Alice Edwards is **DENIED**.

Dated this 29th day of May, 2007.



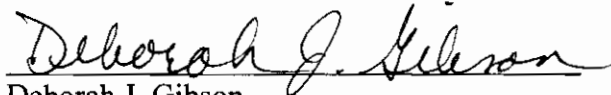
JEFF PIPERSACK, Bureau Chief
Water Allocation Bureau

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30th day of May, 2007, a true and correct copy of the documents described below were served on the following as noted:

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

DAVID EDWARDS
ALICE EDWARDS
310 SOUTH 5800 WEST
MALAD ID 83252



Deborah J. Gibson
Administrative Assistant
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.