

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

REQUEST FOR EXTENSION OF TIME )  
TO SUBMIT PROOF OF BENEFICIAL ) **PRELIMINARY (Now Final) ORDER**  
USE FOR WATER RIGHT PERMIT NO. )  
34-07580 IN THE NAME OF GORDON )  
PLAYER )  
\_\_\_\_\_ )

**FINDINGS OF FACT**

1. The Idaho Department of Water Resources (IDWR) approved permit to appropriate water no. 34-07580 on January 27, 1998. The owner of the permit is Gordon Player (Player).

2. The permit required submittal of proof of construction of works and application of water to beneficial use on or before February 1, 2000.

3. In August 1999, Player filed a Request for Extension of Time in which to submit proof of beneficial use for permit no. 34-07580. Player submitted the following description of the work completed toward development and reason for the extension:

Applicant has conducted surveys and core drillings on the site, and as a result, has expended substantial funds for the development of this right. Due to conditions associated with the farming economy, it is not practical at this time to undertake the entire cost of construction of the project. Applicant desires to retain the ability to develop the project, and for that reason, requests that this extension of time be granted.

4. IDWR approved the request for extension of time in which to submit proof of beneficial use, and ordered that proof of beneficial use must be submitted on or before February 1, 2004.

5. On December 18, 2003 IDWR received a second request for extension of time in which to submit proof of beneficial use for water right permit no. 34-07580. Player cited the following reasons for requesting the extension of time.

As indicated in the original request for extension of time, the applicant has conducted surveys and core drilling on the site resulting in substantial expenditures. Of the economic conditions were cited as the basis for not completing the project at the time, the drought and the intervening five (5) years has rendered the construction of the pond to be a futility at this time. Drought conditions in Antelope Creek during that period are well documented in the form of the state's declarations. Although applicant intends to ultimately develop the project. The lack of available water to fill the pond, at least initially, has rendered the pond's construction impractical at this time. Given the existing drought conditions, applicant requests an extension of five (5) years in order to develop the project.

#### CONCLUSIONS OF LAW

1. Idaho Code Section 42-204 describes five factual circumstances when a request for extension of time to submit proof of beneficial use may be approved. The statute numbers each of the qualifying circumstances, and corresponding numbers are set out in parenthetically numbered paragraphs below:

(1) An extension can be granted "where the applicant is prevented from proceeding with work" because he has not obtained the "necessary consent or final approval or rejection from the federal government because of a 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 extension can be granted for the period of time construction of the project was delayed.

(2) An extension can be granted for a project proposing irrigation of more than 5,000 acres and diversion of more than 25,000 acre feet in one irrigation project.

(3) An extension of time may be granted for a permit authorizing construction of a reservoir of more than 10,000 acre feet.

(4) An extension of time may be granted to the United States or the Idaho Water Resource Board if additional time is needed for planning, authorization, funding, or other delays caused by governmental processes.

(5) Not more than one extension of time for submittal of proof of beneficial use may be granted upon a showing of good cause.

2. In each of the factual circumstances where an extension of time can be granted as set forth above, the permit holder must also make a showing that he is diligently proceeding with project construction. Idaho Code Section 42-204 also states that a permit holder must, within one-year of a date upon which said permit is approved, “commence the excavation or construction of the works by which he intends to divert the water, and must prosecute the work diligently and uninterruptedly to completion, unless temporarily interrupted through no fault of the owner of such permit by circumstances, over which he has no control.”

3. The permit holder already received one extension of time as allowed for good cause. A second extension of time cannot be granted for this purpose.

4. In addition, the permit holder has not constructed any of the works as authorized by the permit during the initial development, or during the period of the first extension of time for submittal of proof. The permit holder has not diligently pursued construction of the project.

5. The existence of drought conditions does not justify non-construction of an essential portion of the proposed project.

### **ORDER**

IT IS HEREBY ORDERED, that the request for extension of time to provide additional time in which to submit proof of beneficial use for water right permit no. 34-07580 is **DENIED**.

DATED this 15<sup>th</sup> day of January, 2004.

\_\_\_\_\_/Signed/\_\_\_\_\_  
Gary Spackman

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this \_\_\_\_\_ day of January, 2004, the above and foregoing document was served on the following by placing a copy of the same in the United States mail, postage prepaid and properly addressed to the following:

GORDON PLAYER  
PO BOX 2167  
KETCHUM ID 83340

IDWR – SOUTHERN REGION  
1341 FILLMORE ST STE 200  
TWIN FALLS ID 83301-3380

GARY D SLETTE  
ROBERTSON HEPWORTH SLETTE  
WORST & STOVER PLLC  
PO BOX 1906  
TWIN FALLS ID 83303-1906

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Deborah J. Gibson  
Administrative Assistant  
Water Allocation Bureau