

RECEIVED

JUN 02 2015

DEPARTMENT OF
WATER RESOURCESSTATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

\$50 fee

Received by DACRecpt No C100535Date 6-2-2015

REQUEST FOR EXTENSION OF TIME

To provide additional time in which to submit proof of beneficial use for a water right permit

The Idaho Department of Water Resources will consider this form a request that the permit holder(s) be granted an additional period of time under the provisions of Section 42-204, Idaho Code, in which to complete development of a water right and file proof of beneficial use of water. There is a **FILING FEE of \$50.00** to be included with this form when filed with IDWR.

Permit no. 63-12347Date proof is due June 1, 2015Name(s) of permit holder(s) Friends Dairy, LLCMailing address P. O. Box 580City MarsingState ID Zip 83639Telephone no. 208 697-4626Email NSDeruyter@gmail.com

Describe what work has been completed toward the development of this water right:

If no work has been completed, show "none".

Permit holder purchased this property in December 27, 2012 and was not aware of this outstanding permit until the notice that proof of beneficial use was received. Permit holder seeks 1 year to evaluate how much of the permit has been developed and whether further development is needed to ensure an adequate water supply for the dairy.

Costing \$ _____

The permit holder(s) has been unable to complete the remainder of the work for the following reasons:

As noted above, permit holder purchased property and was unaware of this outstanding permit given the complex history of water rights for this dairy. Permit holder asks for time to evaluate the dairy water supply and be certain it is adequate.

Permit holder(s) request an extension for

5 year(s).

modified per email request to go to 5 years from permit holder received on 7/13/2015. (DAC)

Augustine M. Deruyter, member
Signature (If other than permit holder, Power of Attorney must be supplied)

6-1-2015
Date

ACTION OF THE DEPARTMENT OF WATER RESOURCES

The Department has reviewed the explanation for delay and concludes the reason(s) for delay meets the requirements for approval of the Request for Extension of Time as provided by Section(s) 42-204 and/or 42-218, Idaho Code.

☒ IT IS HEREBY ORDERED that the permit is **REINSTATED** with the priority date advanced to November 14, 2009.

☒ IT IS HEREBY ORDERED that the above request for extension of time is **APPROVED**, and the time within which to submit proof of beneficial use is extended to June 1, 2020.

Signed this 16th day of July, 2015

Jeff Peppersack, Chief
Water Allocation Bureau



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street • P.O. Box 83720 • Boise, Idaho 83720-0098

Phone: (208) 287-4800 • Fax: (208) 287-6700 • Website: www.idwr.idaho.gov

C.L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

July 16, 2015

FRIENDS DAIRY LLC
PO BOX 580
MARSING ID 83639

REQUEST FOR EXTENSION OF TIME LETTER

RE: Permit No. 63-12347

Dear Permit Holder(s):

Enclosed is a copy of the approved request for extension of time submitted in connection with the above referenced permit which extends the proof due date to **June 01, 2020**.

The department granted this extension based on evidence of good cause. It is important that you work diligently toward the completion of the project during the development period allowed because the department **will not** grant an additional extension based on good cause, according to Section 42-204(6), Idaho Code.

This approved extension also reinstates the permit and advances the priority date since the request and the filing fee was submitted after the permit proof due date. The priority date of this permit is advanced to **November 14, 2009**, according to Section 42-218a(1), Idaho Code.

The extension is a PRELIMINARY ORDER issued by the Department pursuant to Rule 730 of the Department's Rules of Procedure (IDAPA 37.01.01). It can and will become a final order without further action by the Department unless a party petitions for reconsideration or files an exception and/or brief within fourteen (14) days of the service date as described in the enclosed information sheet.

Please be advised that Section 42-248, Idaho Code, requires you or the owner of this water right to maintain current ownership and address records on file with the department. Forms to file a change of ownership of a water right and/or a change in the address of the water right owner are available from any department office or at the department's website at www.idwr.idaho.gov.

If you have any questions concerning this permit, please contact the State Office of the Department located in Boise at (208) 287-4800.

Sincerely,

Darla Block
Technical Records Specialist

Enclosure(s)

c: ERO RESOURCES CORP

CERTIFICATE OF SERVICE

I hereby certify that on **July 17, 2015** I mailed a true and correct copy, postage prepaid, of the foregoing **PRELIMINARY ORDER (APPROVED REQUEST FOR EXTENSION OF TIME)** to the person(s) listed below:

RE: Preliminary Order in the Matter of Permit No. **63-12347**

**FRIENDS DAIRY LLC
PO BOX 580
MARSING ID 83639**

**ERO RESOURCES CORP
C/O STEVE HANNULA
4001 E MAIN ST
EMMETT ID 83617**


Darla Block
Technical Records Specialist

EXPLANATORY INFORMATION TO ACCOMPANY A PRELIMINARY ORDER

(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 service date 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.

Block, Darla

From: Suzanne DeRuyter [nsderuyter@gmail.com]
Sent: Monday, July 13, 2015 9:24 AM
To: Block, Darla
Subject: Re: Request for Extension of Time Received for Permit No. 63-12347

Good Morning, Darla:

Thank you for your email. I apologize for the delay in getting back to you but we just returned from vacation and then we had company from out of town last week.

First of all, I didn't realize that we could have an extension of an additional five years. Please accept this email as a written request to modify the extension request for the allowable five years as this would permit time to finish the project.

Thank you for your help in this matter and please let me know if there is anything else you might need to assist in the process.

Thank you,

Suzanne DeRuyter

On Tue, Jul 7, 2015 at 3:55 PM, Block, Darla <Darla.Block@idwr.idaho.gov> wrote:

July 7, 2015

Dear permit holder:

The Department is in receipt of your request for extension of time to submit proof of beneficial use for the above mentioned water right permit. On this extension request you have asked for 1 year.

According to Section 42-204, Idaho Code, you are allowed an initial development period of 5 years and only one extension request after that for up to 5 more years. You have already had the initial 5 years allowed under the permit. This extension request you filed will be considered your last extension request allowed under due diligence or good cause, but you could ask for up to 5 years on this extension request.

However, in order for me to modify your request for extension of time form from a 1 year extension to a 5 year extension, I need written request from you stating that you would like to have your extension request form modified to reflect a 5 year extension in lieu of the 1 year currently stated on the form. A reply to this email

Block, Darla

From: Block, Darla
Sent: Tuesday, July 07, 2015 3:57 PM
To: 'NSDeruyter@gmail.com'
Subject: Request for Extension of Time Received for Permit No. 63-12347

July 7, 2015

Dear permit holder:

The Department is in receipt of your request for extension of time to submit proof of beneficial use for the above mentioned water right permit. On this extension request you have asked for 1 year.

According to Section 42-204, Idaho Code, you are allowed an initial development period of 5 years and only one extension request after that for up to 5 more years. You have already had the initial 5 years allowed under the permit. This extension request you filed will be considered your last extension request allowed under due diligence or good cause, but you could ask for up to 5 years on this extension request.

However, in order for me to modify your request for extension of time form from a 1 year extension to a 5 year extension, I need written request from you stating that you would like to have your extension request form modified to reflect a 5 year extension in lieu of the 1 year currently stated on the form. A reply to this email could be used as your written request to have your form modified. Please respond as soon as possible, and be as specific as you can in your request.

Once I receive your reply, I will be able to move forward with processing your request right away.

Sincerely,

Darla Block
Technical Records Specialist
Water Allocation Bureau
Ph. #(208) 287-4945
Darla.Block@idwr.Idaho.gov