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Robert E. Bakes, *of counsel*

Willis C. Moffatt, 1907-1980
Kirk R. Helvie, 1956-2003

May 3, 2010

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Deborah Gibson
Idaho Department of Water Resources
P.O. Box 83720
Boise, ID 83720-0098

Re: Request for Extension of Time; Permit No. 65-13961
MTBR&F File No. 24175.0002

Dear Ms. Gibson:

I am writing you on behalf of our client Terry A. Jones regarding Water Right Permit No. 65-13961, issued on October 1, 2003 (copy attached). On December 31, 2008, the Department made an additional information request seeking to clarify the scope of development of the permit in response to the Statement of Completion Mr. Jones submitted to the Department on or about September 19, 2008 (copies of the Department's December 2008 correspondence and the Jones Statement of Completion attached). Mr. Jones recently retained this firm to assist him in his dairy expansion efforts, of which the development of Permit No. 65-13961 ("Permit") is an integral part. The issues discussed below were discovered during our investigation of Mr. Jones' water right portfolio.

The Permit provides a total of 0.9 cfs for stockwater (0.63 cfs) and commercial (0.27 cfs) purposes. Mr. Jones sought the Permit in an effort to expand his preexisting dairy operation, as noted in Permit Conditions of Approval Nos. 9 and 10, and throughout the Permit backfile. Once secured, Mr. Jones immediately began expanding the dairy operation in conformance with the Permit, expanding from 200 head to 750 head by the end of 2004. However, by December 2005, Mr. Jones sold down his herd to 150 head in response to the convergence of a number of circumstances beyond his control.

For example, and since the beginning of his dairy expansion efforts, Mr. Jones continually encountered difficulty in securing and maintaining an adequate and trustworthy labor force. This led to various health complications for Mr. Jones as he performed the work of his unreliable help, in addition to his own labor responsibilities. Also during 2005, milk prices plummeted, and the dairy industry offered herd buyouts to decrease milk production in an effort to stabilize the market. Mr. Jones applied for, and received, one of these buyouts, but kept his

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heifers and young knowing that he would increase production again when market and labor conditions were less volatile.

By the close of 2006 the dairy herd was back up to 250-260 head, which is where the herd size stands today. After experiencing health difficulties in 2004-05, Mr. Jones decided that a man of his age, without sufficient, reliable labor help, would not be able to maintain and work the Permit-approved herd of 1,300 head. However, the preexisting dairy infrastructure, in conjunction with the improvements Jones constructed in 2003-04, could easily support in excess of 1,300 head. Thus, Mr. Jones began seeking potential lessees for the property. Mr. Jones' efforts turned up a few potential lease candidates, but none panned out to Mr. Jones' satisfaction. By 2008, the price of milk rapidly eroded again, and the national economy began the historic "Great Recession" from which we are all trying to recover.

Hopefully a sign of a sustained economic recovery, Mr. Jones has been approached by various individuals seeking to lease his dairy, and to expand its operations to the Permit-approved 1,300 head, and perhaps beyond. Mr. Jones met with one partnership group to discuss lease terms and additional infrastructure improvement plans on April 30, 2010. These negotiations are rapidly progressing past the due diligence stage, and the full development of the Permit is a major component of any Lessee-proposed dairy expansion.

As the Department is aware, Mr. Jones did submit a Statement of Completion in September 2008 in an effort to satisfy Condition of Approval No. 1 of the Permit (that proof of application of the water to beneficial use be submitted on or before October 1, 2008). However, in discussing the matter further with Mr. Jones, it is apparent that he did not fully understand the nature of that document. To be candid, Mr. Jones filled out the Statement of Completion ("Statement") after consulting with his well driller/pump contractor who told him that the well and pump could produce in excess of 30 gallons per minute. Consequently, Mr. Jones wrote down "30 gal per minute" in the Statement. The Statement also suggests Mr. Jones' watering of 1,000 head of dairy and/or beef cattle and horses for purposes of establishing the Permit-authorized stockwater use. Mr. Jones stated as much because his continuing intent was and is to expand the dairy, not because he was actually watering 1,000 head of livestock at the time. When completing the Statement in September 2008, Mr. Jones did not appreciate the fact that the intent of the document required him to already be watering 1,000 head of cattle in order to establish the water use. Mr. Jones' answer of "?" to item no. 7 on the Statement of Proof further evidences his misunderstanding of the document. We have since explained this situation to Mr. Jones which is why he instructed us to submit this letter, and the corresponding Request for Extension of Time, as soon as possible.

The Department's correspondence to Mr. Jones in December 2008 asked if he had developed the full extent of both the commercial and stockwater uses of the Permit. While Mr. Jones' Statement of Completion alluded to stockwatering uses, the Statement was silent as to

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commercial use of the water. Until recently, Mr. Jones did not realize that his use of water for flushing the milk parlor and stalls, flushing the barn, flushing the cattle pens, and his land application of wastewater from these dairy activities constituted commercial use of the water. Consequently, Mr. Jones has used, and does use the commercial component of the Permit for commercial purposes in connection with his dairy. Mr. Jones just did not realize that these "commercial" uses of the water needed to be further documented under the Permit.

Mr. Jones now understands that he has not yet developed the full potential of the Permit, and that he mistakenly submitted his Statement of Completion in September 2008 when he should have submitted a Request for Extension of Time instead. It is our hope that this letter and the attached Request rectifies this situation to the Department's satisfaction. Though Mr. Jones has not yet fully developed the Permit, he has invested substantial sums of money in improving the dairy to foster the expansion originally planned under the Permit. For example, Mr. Jones informs that he has expended between \$400,000 and \$500,000 in upgrading and expanding dairy infrastructure including well pumps, corrals, pens, stock tanks, milk holding tanks, plumbing, milking equipment, and barn and milking parlor reconstruction and expansion. Also, when Mr. Jones accepted the herd buyout in December 2005, he reinvested that money into the purchase of an additional 300 acres surrounding his dairy operation in order to create a larger buffer between his future expanded dairy operation and his neighbors. Consequently, Mr. Jones has several hundred thousands of dollars invested in the water development that the Permit contemplates.

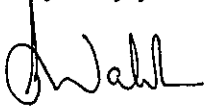
In sum, Mr. Jones prudently applied for the Permit to stay ahead of his expansion needs, but now finds himself having to catch up largely due to circumstances beyond his control. Yet, through it all, Mr. Jones has remained focused on completing the dairy expansion he envisioned when he first submitted the Permit application. Mr. Jones has steadfastly made expensive dairy improvements predicated upon the water that the Permit represents.

Mr. Jones did not appreciate the urgency of this matter until we recently advised him of the same upon completing our investigation of his water rights portfolio. We trust that this correspondence presents sufficient good cause for the Department to grant the extension requested.

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If you have any questions, please feel free to contact me directly at 385-5418. I thank you in advance for your consideration of this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read 'A. Waldera', with a stylized, cursive script.

Andrew J. Waldera

AJW/dll

Enclosures

cc: Terry Jones
Terrence S. Jones