

Moffatt Thomas

MOFFATT THOMAS BARRETT ROCK & FIELDS, CHTD.

RECEIVED

MAY 18 2010

Boise
Idaho Falls
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DEPARTMENT OF
WATER RESOURCES

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May 18, 2010
*via U.S. Mail and
Hand Delivery*

Eugene C. Thomas
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Richard C. Fields
John S. Simko
John C. Ward
D. James Manning
David B. Lincoln
Gary T. Dance
Larry C. Hunter
Randall A. Peterman
Mark S. Prusynski
Stephen R. Thomas
Glenna M. Christensen
Gerald T. Husch
Scott L. Campbell
Robert B. Burns
Michael E. Thomas

Patricia M. Olsson
Christine E. Nicholas
Bradley J. Williams
Lee Radford
Michael O. Roe
Nancy J. Garrett
David S. Jensen
James L. Martin
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Mark C. Peterson
Tyler J. Anderson
Jon A. Stenquist

Jason G. Murray
Rebecca A. Rainey
Paul D. McFarlane
Tyler J. Henderson
C. Edward Cather III
Andrew J. Waldera
Dylan B. Lawrence
Benjamin C. Ritchie
Tonn K. Petersen
Matthew J. McGee
David J. Dance

Robert E. Bakes, *of counsel*

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

Darla Block
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. Block:

Thank you for speaking with me last Friday, May 14, 2010. In follow-up to our conversation I am enclosing a check for \$50.00 on behalf of our client Terry Jones to preserve/reinstate the full quantity of Permit No. 65-13961. I am also writing to confirm the contents of our telephone discussion.

As we discussed, Terry Jones was seeking an extension of time in which to fully develop the above-referenced permit. The reasons underlying the extension request were outlined in my correspondence to Deborah Gibson, dated May 3, 2010 (copy enclosed). According to my understanding of our telephone conversation on Friday May 14, 2010, the Department will be denying Mr. Jones' extension request largely because the Statement of Completion that he submitted on September 19, 2008 has not been "received" by the Department due to Mr. Jones' failure to remit the full \$100.00 filing fee. As noted above, I have enclosed a check for the payment of the \$50.00 fee shortfall that occurred in September 2008.

As you know, the ability of Mr. Jones to fully develop Permit No. 65-13961 is crucial to the expansion of his existing dairy up to 1,300 head of cattle. There can be no dairy expansion without the full use and development of the permit. As you also know, Mr. Jones is in active lease negotiations with a prospective lessee who will be bringing up to 1,300 head of cattle to the dairy this Fall if the lease is executed. These lease negotiations are progressing rapidly, and the water available under Permit No. 65-13961 is absolutely necessary to the lease agreement. We cannot find ourselves in a situation where the lease is executed, there are 1,300 head of cattle on the dairy as of this Fall, and the Department later decides that the dairy is operating in violation of the permit. This is why I am writing you to reconfirm the following points:

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1. Upon payment of the additional \$50.00 filing fee, the Department will deem Mr. Jones' Statement of Completion "received" as of today (May 18, 2010).
2. The payment, once received, reinstates the full quantity of the existing permit (0.9 cfs; 0.63 cfs for stockwater purposes and 0.27 cfs for commercial purposes). Therefore, Mr. Jones and his prospective lessee are free to move up to 1,300 head of cattle onto the existing dairy this Fall, and to make full use of the permitted 0.9 cfs pursuant to the terms of Permit No. 65-13961.
3. Due to the late payment of the entire \$100.00 Statement of completion filing fee, the existing priority date of Permit No. 65-13961 (June 29, 2000) will be advanced one (1) day for every day that the full \$100.00 filing fee was late from the original required date of beneficial use completion prescribed within the permit (October 1, 2008). In this matter, the "late" period comprises 594 days (the difference between May 18, 2010 and the original permit proof date of October 1, 2008). Therefore, the new priority date of Permit No. 65-13961 for licensing purposes will now be February 13, 2002 (594 days after the existing June 29, 2000 priority date).
4. For licensing purposes, the Department will still need to conduct a beneficial use field examination at the dairy. Given current Department staffing and budgetary constraints, and the existing field examination backlog, the Department will not be able to schedule and perform a field exam at the Jones dairy until sometime in the Summer of 2011 at the earliest.

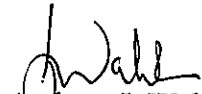
If my understanding of our phone conversation on May 14, 2010 (summarized above) is in error in any regard, please so inform me in writing by this Friday, May 21, 2010. If I do not receive written correspondence from the Department to the contrary by this Friday, May 21, 2010, Mr. Jones will rely upon the contents of this letter to his detriment for purposes of the ongoing lease negotiations, and for purposes of making additional, costly dairy facility infrastructure upgrades above and beyond the \$400,000 - \$500,000 he has already expended since October 2003.

The importance of this matter, and Mr. Jones' ability to use the full permit amount of 0.9 cfs for the operation of a 1,300 head dairy, cannot be understated. Upon the payment of the additional \$50.00 enclosed herewith, and unless the Department informs me otherwise in writing, Mr. Jones or his lessee is authorized to make full use of the quantity of water provided by Permit No. 63-13961 (0.9 cfs) for stockwater and commercial purposes in connection with a dairy operation of up to 1,300 head of cattle. The only substantive difference in the permit for licensing purposes will be the advancement of the existing priority date from June 29, 2000 to February 13, 2002.

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Thank you again for speaking with me last Friday. I appreciate your ongoing assistance with this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read 'A. Waldera', written over the printed name.

Andrew J. Waldera

AJW/dll
Enclosure

cc: Carter Fritschle
Terry Jones
Terrence S. Jones

Idaho Department of Water Resources Receipt

Receipt ID: C090809

Payment Amount \$50.00 Date Received 5/18/2010 2:21 PM Region STATE
Payment Type Check Check Number 202230
Payer MOFFATT THOMAS
Comments PERMIT #65-13961 FOR TERRY JONES

Fee Details

Amount	Description	PCA	Fund	Fund Detail	Subsidiary	Object
\$50.00	~~EXTENSIONS~~ Proof	56103	0229	21		1155

Additional
\$50.00 fee
for Proof

SR2

Signature Line (Department Representative)

Receipt Details for ID C090678

SR2

Status	Adjustment Type	Version
		2

General Information:

Date Received 5/3/2010 4:31:36 PM	Date Deposited	Region STATE	Total Amount \$50.00	Payment Type Check
Payee: MOFFATT THOMAS				

Account Information

Check Number 202013

Comment PERMIT #65-13961 FOR TERRY A JONES

Fee Details

Amount	Description	PCA	Fund	Fund Detail	Subsidiary	Object
\$50.00	EXTENSIONS	56103	0229	21		1155