

# Moffatt Thomas

MOFFATT THOMAS BARRETT ROCK & FIELDS, CHTD.

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JAN 22 2009

DEPARTMENT OF  
WATER RESOURCES

January 22, 2009

Boise  
Idaho Falls  
Pocatello  
Twin Falls

US Bank Plaza Building  
101 S Capitol Blvd 10th Fl  
PO Box 829  
Boise Idaho 83701 0829

208 345 2000  
800 422 2889  
208 385 5384 Fax  
www.moffatt.com

|                       |                        |                                                 |
|-----------------------|------------------------|-------------------------------------------------|
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| Mark S. Prusynski     | David P. Gardner       | <i>* licensed in WA, ID application pending</i> |
| Stephen R. Thomas     | Tara Martens           | Robert E. Bakes, of counsel                     |
| Glenna M. Christensen | Mark C. Peterson       |                                                 |
| Gerald T. Husch       | Julian E. Gabiola      | <i>Willis C. Moffatt, 1907-1980</i>             |
| Scott L. Campbell     | Kimberly D. Evans Ross | <i>Kirk R. Helvie, 1956-2003</i>                |
| Robert B. Burns       | Jason G. Murray        |                                                 |

Director  
Idaho Department of Water Resources  
322 E. Front Street, 6th Floor  
P.O. Box 83720  
Boise, ID 83720

**Re: Transfer Approval Notices 74518 and 72670**  
**Petitions for Reconsideration**  
MTBR&F File No. 22271.0002

Dear Director:

Please find enclosed an original and two copies of the Petition for Reconsideration for each of the above referenced Transfer Approval Notices for filing with the Department. Please date stamp the copies and return them in the envelopes provided.

*SR Done Both Copies*

Please note that the Department's Certificate of Service for the Transfer Approval Notice for Transfer No. 74518 includes Ronald A. Achs of Sun Valley. We believe this person is incorrectly listed and, therefore, request he be removed from the service list for the transfer.

Please contact this office if you have any questions or concerns. Thank you for your attention.

Very truly yours,

  
Scott L. Campbell

SLC/dll

Enclosures

cc: Allen Merritt  
Chris Kretz  
Scott King

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JAN 22 2009  
DEPARTMENT OF  
WATER RESOURCES

Scott L. Campbell, ISB No. 2251  
MOFFATT, THOMAS, BARRETT, ROCK &  
FIELDS, CHARTERED  
101 S. Capitol Blvd., 10th Floor  
Post Office Box 829  
Boise, Idaho 83701  
Telephone (208) 345-2000  
Facsimile (208) 385-5384  
22271.0002

Attorneys for Cassia Creek Farms LLC

THE STATE OF IDAHO  
DEPARTMENT OF WATER RESOURCES

IN THE MATTER OF APPLICATION FOR  
TRANSFER NO. 74518 IN THE NAME OF  
CASSIA CREEK FARMS LLC

PETITION FOR RECONSIDERATION

**I.  
INTRODUCTION**

Cassia Creek Farms LLC ("Applicant"), by and through its counsel, hereby presents this Petition for Reconsideration of the Transfer Approval issued by the Idaho Department of Water Resources on January 9, 2009. This Petition is brought pursuant to IDAPA 37.01.01.730.a and Idaho Code Sections 67-5243(3) and 67-5245(3)-(4).

**II.  
ARGUMENT**

This Petition requests that the Transfer Approval Notice be modified to correct certain errors identified by the consultant for the Applicant which are specifically identified in Exhibit A (correspondence from Scott King, SFP Engineering) attached hereto and incorporated

herein by reference. The Applicant believes that these calculations and corrected information should be incorporated into the Transfer Approval under Transfer No. 74518 because they represent the appropriate calculations for these elements of the water rights. Applicant requests that the Transfer Approval Notice be modified accordingly.

Additionally, Applicant requests that the conditions on each of the water rights under Transfer Approval 74518 which require completion of the transfer within one year be modified to two years. The basis of this request is the potential delays in completing construction of the anticipated replacement and new wells which are allowed by Transfers 72670 and 74518.

Based upon Applicant's review, this requested change impacts Condition 5 on Water Rights 43-2489, 43-2504, 43-2516, 43-2517, 43-2575, 43-13351, 43-13352; Condition 7 on Water Rights 43-13577, 43-2488, 43-2475, 43-2472; and Condition 8 on Water Right 43-2519.

### **III. CONCLUSION**

Based upon these considerations and the good faith actions of the Applicant to date in this approval process, the Applicant requests that the Transfer No. 74518 be modified to reflect these changes.

DATED this 22<sup>nd</sup> day of January, 2009.

MOFFATT, THOMAS, BARRETT, ROCK &  
FIELDS, CHARTERED

By Scott L. Campbell  
Scott L. Campbell – Of the Firm  
Attorneys for Cassia Creek Farms LLC

## CERTIFICATE OF SERVICE

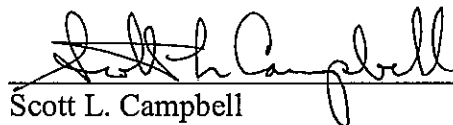
I HEREBY CERTIFY that on this 22<sup>nd</sup> day of January, 2009, I caused a true and correct copy of the foregoing **PETITION FOR RECONSIDERATION** to be served by the method indicated below, and addressed to the following:

Director  
IDAHO DEPARTMENT OF WATER RESOURCES  
322 E. Front Street, 6th Floor  
P.O. Box 83720  
Boise, ID 83720

☒ U.S. Mail, Postage Prepaid  
☒ Hand Delivered  
☐ Overnight Mail  
☐ Facsimile

Allen Merritt  
Water Rights Supervisor  
IDAHO DEPARTMENT OF WATER RESOURCES  
SOUTHERN REGION OFFICE  
1341 Fillmore Street, Suite 200  
Twin Falls, ID 83301-3380

☒ U.S. Mail, Postage Prepaid  
☐ Hand Delivered  
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☐ Facsimile

  
\_\_\_\_\_  
Scott L. Campbell



January 21, 2009

Christopher Kretz  
Cassia Creek Farms, LLC  
PO Box 580  
Danville, CA 94526

*Subject: Combined Use Limit Discrepancy Issue, Transfer No. 74518*

Dear Mr. Kretz,

Per your request, I have reviewed the recently approved water right Transfer No. 74518. This review indicates the following two discrepancies with combined use limits imposed on the transferred rights:

1. The following combined use limit identifies a diversion rate of 25.0 cfs. My review indicates this diversion rate should instead be **25.58 cfs**.

"Rights 43-2471, 43-2472, 43-2475, 43-4199, and 43-13577 when combined shall not exceed a total diversion rate of 25.0 cfs, a total annual maximum diversion volume of 5296.0 af at the field headgate, and the irrigation of 1324 acres."

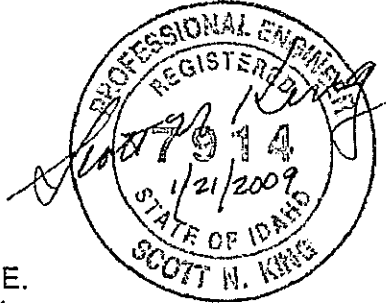
2. The following combined use limit identifies a diversion rate of 70.8 cfs. My review indicates this diversion rate should instead be **71.38 cfs**.

"Rights 43-2471, 43-2472, 43-2475, 43-2488, 43-2489, 43-2504, 43-2505, 43-2516, 43-2517, 43-2519, 43-2575, 43-4199, 43-13351, 43-13352, 43-13577, and 43-13603 when combined shall not exceed a total diversion rate of 70.8 cfs, a total annual maximum diversion volume of 16419.6 af at the field headgate, and the irrigation of 4128.8 acres."

I have communicated with Jeanie Robertson of IDWR's Southern Region office regarding the combined use limits. Ms. Robertson has confirmed that the rate-of-flow combined use limits as applied by IDWR and outlined above appear to be in error and the higher rates listed per my review are correct. In addition, I discussed possible errors in the annual volume limit listed in the #2 item above. Ms. Robertson has

confirmed that the annual volume amount of 16419.6 af is correct. Please let me know if you have any further questions.

Sincerely,



Scott N. King, P.E.  
Supervising Engineer

cc: Scott Campbell / Moffatt Thomas

File: 272.0060