

Attorneys for Bluegrass, LLC and David Hendrickson

Scott L. Campbell, ISB No. 2251
Andrew J. Waldera, ISB No. 6608
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
22-797.0

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA

Case No. 39576

Subcase No. 63-04037

**MOTION AND MEMORANDUM TO FILE
LATE OBJECTION AND REQUEST FOR
EXPEDITED HEARING**

COMES NOW Bluegrass, LLC, by and through undersigned counsel of record, and pursuant to Idaho Rule of Civil Procedure 7 and Administrative Order One Sections 6(f)(2) and 1(10)(j), and hereby files this Motion And Memorandum To File Late Objection regarding water right no. 63-04037. Additionally, movant respectfully requests that an expedited hearing be set in this matter. This motion and memorandum is supported by the affidavits of David Hendrickson and Robert Donnelly filed contemporaneously herewith.

I. BACKGROUND

On or about August 2, 1989, this Court received a Notice of Claim To A Water Right Acquired Under State Law (“Claim”) from Victor L. and Ruth E. Nibler for water right no. 63-04037. Said Claim described a beneficial use right of groundwater in the amount of 2.4 cfs and/or 210.0 acre-feet per annum for the irrigation of Quail Hollow Golf Club (amounting to 60 acres) in Boise, Idaho. Said Claim also identified a priority date of October 1, 1931, and a period of use for irrigation purposes of March 15 through November 15 of each year. The Claim incorporated no conditions for use other than noting that the water claimed was used for the irrigation of the golf course.

On or about December 12, 2005 the Idaho Department of Water Resources released its Director’s Report recommending the elements of various water rights in Basin 63, including water right no. 63-04037—the water right that is the subject of this motion and memorandum. The Director’s Report recommended that water right no. 63-04037 comprise 1.0 cfs (231.75 acre-feet per annum) from ground water, and a priority date of April 7, 1937, for the purpose of irrigation of up to 51.5 acres (irrigation of Quail Hollow Golf Club) from March 1 through November 15 of each year. The Director’s Report additionally noted that the groundwater source of water right no. 63-04037 consisted of low temperature geothermal water, and the water derived from water right no. 63-04037 could not be used for irrigation purposes unless it was first used for heating purposes. Water right no. 63-04037 has not historically been used for heating purposes, and that condition forms the basis of this objection.

II. DISCUSSION

Movant Bluegrass, LLC is seeking an order from the Court granting it leave to file its late objection (attached hereto as Exhibit A) for the reasons more particularly set forth in the Affidavits of David Hendrickson and Robert Donnelly filed contemporaneously herewith. In general, the need for leave of the Court to file this late objection is necessitated by the parties' lack of understanding of the importance of the objection process, its procedure, and the need to even object. This generalized lack of understanding was further complicated by the lack of timely communication between Mr. Donnelly and Mr. Hendrickson, the latter being the operator of the golf course and most interested in the propriety and availability of use of water right no. 63-04037. Both Mr. Hendrickson and Mr. Donnelly are ordinary citizens who lack detailed knowledge of the nuances of Idaho water law, particularly the workings of the SRBA Court and its procedural requirements.

In essence, though admittedly late, the attached objection to the Director's Report is only late by one month. Once Mr. Hendrickson became aware of the importance of the situation, and the need to object to the heating use condition through his conversations with Vicky Music of the Idaho Department of Water Resources, Mr. Hendrickson called the SRBA Court to determine how he should proceed. Though the Court informed Mr. Hendrickson that the objection deadline had already passed, the Court nonetheless advised Mr. Hendrickson to file this motion. Upon the Court's advice, Mr. Hendrickson and Mr. Donnelly contacted attorney Scott Campbell to assist them and they have been working to address these matters.

The propriety of the Director's condition of heating prior to irrigation use is not insignificant. Water right no. 63-04037 has not historically been used for heating purposes. As such, no heating mechanism/infrastructure is in place to use said water for such a purpose.

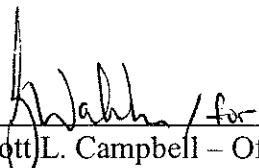
Further, a large portion of the irrigation season encompasses the spring and summer months when heat is not necessary and cannot be used. The Director's Report's condition for heating prior to irrigation use has the potential to severely hamper the irrigation beneficial use to which water right no. 63-04037 has historically been applied.

III. CONCLUSION

For the foregoing, Bluegrass, LLC respectfully requests that the Court grant its Motion To File Late Objection, and to accept the objection attached hereto as Exhibit A.

DATED this 25th day of May, 2006.

MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHARTERED

By  for
Scott L. Campbell – Of the Firm
Attorneys for Bluegrass, LLC and David
Hendrickson

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25th day of May, 2006, I caused a true and correct copy of the foregoing **MOTION AND MEMORANDUM TO FILE LATE OBJECTION AND REQUEST FOR EXPEDITED HEARING** 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
Fax: 387-6700

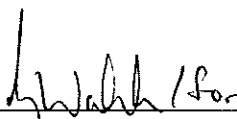
☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile

Charles L. Honsinger
RINGERT CLARK CHTD.
455 S. Third Street P.O. Box 2773
Boise, ID 83701-2773
Fax: 342-4657

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

Dana L. Hofstetter
608 W. Franklin
Boise, ID 83702
Fax: 424-8774

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



Scott L. Campbell