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DEPARTMENT OF
WATER RESOURCES

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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	)	Subcase No. 22-4096
	)	
	)	
	)	MOTION TO FILE LATE
Case No. 39576	)	OBJECTION
	)	
	)	

Blackfoot Farms, LLC ("Blackfoot Farms"), by and through counsel, hereby files this Motion to File Late Objection, pursuant to Administrative Order 1 § 10(j), to the Idaho Department of Water Resources' ("IDWR" or "Department") recommendation of water right number 22-4096. This motion is supported by the Affidavit of Young Harvey Walker filed contemporaneously herewith.

BACKGROUND

Blackfoot Farms purchased real property in 2005 in Township 4 North, Range 45 East, Section 11, Teton County to which water right number 22-4096 is appurtenant. The prior owner of the property, Thomas Winger, filed an SRBA claim to water right number 22-4096 in 1988. The claim is outlined as follows:

Date of Priority	March 1, 1904
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Source	Springs Tributary to Teton Creek
Purposes of Use	Irrigation and Stockwater
Quantity	0.687 cfs
Place of Use	Township 4 North, Range 45 East, Section 11 – 80 acres
Basis of Claim	Statutory Claim

(See Exhibit A attached hereto.)

The Director's Report for this water right claim was filed with the Court on or about December 20, 2006 in the Basin 22, Part 2 Irrigation & Others report. IDWR recommended a place of use consisting of only 44.2 acres—a significant decrease from the 80 acres claimed. Further, IDWR recommended a priority date of April 15, 1904 rather than March 1, 1904. (See Exhibit B attached hereto.) The objection period for Basin 22, Part 2 ended July 25, 2007, and the response period ended September 26, 2007. The initial hearings for this reporting area are presently scheduled to occur during the week of August 18, 2008 in Rexburg, Idaho. The hearing for uncontested recommendations is scheduled to occur October 21, 2008.

LEGAL STANDARD

The Court has broad discretion to grant a motion to file late objection. In subcases where partial decrees have not been entered by the court, the Court allows the filing of late objections where there is "good cause." Late objections are typically permitted so long as the delay in filing the objection is not willful, will not prejudice the parties, and the grounds for the objection are meritorious.

ARGUMENT

Due to recently discovered facts, Blackfoot Farms seeks an order from the Court granting it leave to file a late objection to Subcase Number 22-4096. In conjunction with the Department's recommendation of water right number 22-4096, Blackfoot Farms met directly with Trent Galbraith, the IDWR employee assigned to evaluate water right number 22-4096, to ensure that the water right would be properly recommended so as to avoid unnecessary expense adjudicating the water right. (*Affidavit of Young Harvey Walker* at ¶ 5.) Based on Mr. Walker's communications with Mr. Galbraith, Blackfoot Farms understood that water right number 22-4096 would be recommended as claimed. *Id.* at ¶ 6. However, the Director's Report recommended a place of 44.2 acres rather than the 80 acres claimed. In addition, the Report recommended a priority date of April 15, 1904 rather than March 1, 1904.

Blackfoot Farms did not immediately recognize the discrepancy between the claimed and recommended elements of water right number 22-4096, in large part due to Blackfoot Farms' reliance upon the representation of Trent Galbraith that the water right would be recommended as claimed. In May of 2008 Blackfoot Farms undertook to transfer a portion of its water rights at which point it was surprised to discover the error in the Department's recommendation of water right number 22-4096. Blackfoot Farms promptly retained legal counsel in an effort to correct the error.

This Motion to file Late Objection is made in the early stages of the adjudication process for this reporting area, with initial hearings not scheduled to occur until late August, 2008. Accordingly, the filing of this objection will not cause unnecessary delays nor cause prejudice to any parties. It is in the interest of justice that this motion be granted so as to allow water right number 22-4096 to be properly adjudicated and to avoid penalty to Blackfoot Farms which has

endeavored to work with IDWR in a collaborative fashion to ensure the proper recommendation of its water rights.

CONCLUSION

Pursuant to Administrative Order 1 ("AO1"), Section 10(j), the motion for late objection shall be reported on the Docket Sheet and a hearing on the motion shall be scheduled by the Special Master assigned to the basin. Blackfoot Farms, LLC, respectfully requests that a hearing be set on this motion to file late objection on or near to the dates of the initial hearings.

For the foregoing reasons, Blackfoot Farms LLC, further respectfully requests that the court grant its Motion for Late Objection and accept for filing the objection attached hereto as Exhibit C.

DATED this 20th day of June, 2008.

RACINE OLSON NYE BUDGE &
BAILEY, CHARTERED

By: _____

THOMAS J. BUDGE

CERTIFICATE OF MAILING

I certify that a true and correct copy of the above **MOTION TO FILE LATE RESPONSE(S)** was served this 23rd day of June, 2008, via United States mail with sufficient first-class postage to the following:

Clerk of the SRBA Court 253 Third Avenue North PO Box 2707 Twin Falls, ID 83302-2707	Original	
Natural Resources Division Chief State of Idaho Attorney General's Office PO Box 44449 Boise, ID 83711-4449		IDWR Repository PO Box 83720 Boise, ID 83720-0098
United States Department of Justice Environment & Natural Resources Div 550 West Fort Street MSC 033 Boise, ID 83724		Blackfoot Farms LLC c/o Harvey Walker 2338 North 2930 West Arco, ID 83213
Blackfoot Farms LLC 500 Huntsman Way Salt Lake City, UT 84108		



ROBIN ROEBUCK

EXHIBIT A



IDAHO DEPARTMENT OF WATER RESOURCES
Adjudication Claim Report

06/20/2008

WATER RIGHT NO. 22-4096

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	BLACKFOOT FARMS LLC 500 HUNTSMAN WAY SALT LAKE CITY, UT 84108 (801)584-5700
Original Owner	THOMAS E WINGER 50 W 225 S DRIGGS, ID 83422 (208)354-2442
Original Owner	ELDON WINGER
Original Owner	ELVA G WINGER PO BOX 214 DRIGGS, ID 83422 (208)354-2483

Priority Date: 03/01/1904

Basis: Statutory Claim

Status: Active

<u>Source</u>	<u>Tributary</u>
SPRINGS	TETON CREEK

<u>Beneficial Use</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
IRRIGATION	6/01	10/31	0.667 CFS	
STOCKWATER	1/01	12/31	0.02 CFS	
Total Diversion			0.687 CFS	

Location of Point(s) of Diversion:

SPRINGS	NENWNW	Sec. 11	Township 04N	Range 45E	TETON County
SPRINGS	SENWNW	Sec. 11	Township 04N	Range 45E	TETON County

Place(s) of use:

Place of Use Legal Description: IRRIGATION TETON County

Township	Range	Section	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres
04N	45E	11		NENW	40		NWNW	40						

Place of Use Legal Description: STOCKWATER same as IRRIGATION

Total Acres: 80

Conditions of Approval:

1.	BOTH OF THESE SPRINGS WERE DEVELOPED APPROX THE SAME TIME. THEY WERE BOTH IN USE WHEN I PURCHASED THIS PLACE IN 1940. THE ABSTRACT SHOWS A DATE OF 12-05-1902 WHEN THE PLACE WAS FIRST HOMESTEADED. **CHANGED OWNERSHIP 8/19/96; "P" OWNER/EC** OWNERSHIP CHANGE COMPLETED WITH "C" OWNER CODE 8/22/96/JT
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Dates:

Licensed Date:

Claim Received Date:

Decreed Date:

Enlargement Use Priority Date:

Enlargement Statute Priority Date:

Other Information:

State or Federal: S

Owner Name Connector:

Water District Number: 01

Generic Max Rate per Acre:

Generic Max Volume per Acre:

Civil Case Number:

Old Case Number:

Decree Plaintiff:

Decree Defendant:

Swan Falls Trust or Nontrust:

Swan Falls Dismissed:

DLE Act Number:

Cary Act Number:

Mitigation Plan: False

EXHIBIT B

IDAHO DEPARTMENT OF WATER RESOURCES
Adjudication Recommended Right Report

06/20/2008

WATER RIGHT NO. 22-4096

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	BLACKFOOT FARMS LLC 500 HUNTSMAN WAY SALT LAKE CITY, UT 84108 (801)584-5700
Original Owner	THOMAS E WINGER 50 W 225 S DRIGGS, ID 83422 (208)354-2442
Original Owner	ELDON WINGER
Original Owner	ELVA G WINGER PO BOX 214 DRIGGS, ID 83422 (208)354-2483

Priority Date: 04/15/1904

Basis: Beneficial Use

Status: Active

<u>Source</u>	<u>Tributary</u>
SPRINGS	TETON CREEK

<u>Beneficial Use</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
IRRIGATION	6/01	10/31	0.667 CFS	
STOCKWATER	1/01	12/31	0.02 CFS	
Total Diversion			0.687 CFS	

Location of Point(s) of Diversion:

SPRINGS	NENWNW	Sec. 11	Township 04N	Range 45E	TETON County
SPRINGS	SWNWNW	Sec. 11	Township 04N	Range 45E	TETON County

Place(s) of use:

Place of Use Legal Description: IRRIGATION TETON County

Township	Range	Section	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres
04N	45E	11		NENW	37		NWNW	7.2						

Place of Use Legal Description: STOCKWATER same as IRRIGATION

Total Acres: 44.2

Conditions of Approval:

1.	C18	This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.
2.	E01	Use of this right is combined with water from Garden Irrigation Company.

Dates:

Other Information:

State or Federal: S

Owner Name Connector:

Water District Number: 01

Generic Max Rate per Acre:

Generic Max Volume per Acre:

Swan Falls Trust or Nontrust:

Swan Falls Dismissed:

DLE Act Number:

Cary Act Number:

Mitigation Plan: False

Close