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Department of Water Resources
Adjudication Bureau

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OFFICE OF THE
ATTORNEY GENERAL

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. 35976

Case No. 36-00003B

BUCKEYE FARMS' MOTION TO FILE
LATE RESPONSE OR IN THE
ALTERNATIVE MOTION TO
PARTICIPATE

DESCRIPTIVE SUMMARY

96-04-0035

This document is the Motion of Buckeye Farms for Leave to File a Late Response or, in the alternative, Motion to Participate, in the above-captioned subcase.

MOTION TO FILE LATE RESPONSE;
ALTERNATIVE MOTION TO PARTICIPATE

Consistent with Administrative Order 1, Sections 4A.c.(4)(b) and 6.g., and Idaho Rules of Civil Procedure, Rules 55(c), 60(b) and 24, Buckeye Farms ("Movant"), through its counsel, respectfully moves this Court for an order granting leave to file the response attached hereto as Exhibit "A" or, in the alternative, grant leave to participate in Subcase No. 36-00003B.

The Movant submits as grounds for the Motion to File Late Response the following:

1. The Movant is a party to the SRBA.

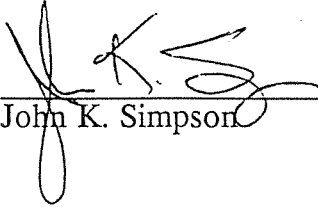
2. The Movant is a claimant to certain water rights whose source, Billingsley Creek, and conveyancing system, the Buckeye Ditch, are identical to the above-captioned claim.
3. The Movant is a Protestant to Permit Application No. 36-08684 which claims water and uses that may be the subject of Subcase No. 36-00003B.
4. Good cause exists to grant leave to file the response.
5. Failure to file a timely response was not willful.
6. The existing party would not be prejudiced by granting leave to file the response.
7. The Movant's response is meritorious.

Alternatively, grounds for the Motion to Participate are as follows:

1. The Movant is a party to the SRBA.
2. The motion is timely made.
3. The Movant has an interest in the subject matter of the subcase and the disposition of the subcase may impair or impede the Movant's ability to protect that interest.
4. The Movant's interest in the matter is not adequately represented by an existing party to the subcase.
5. The Movant's claim and the subcase involve common questions of law and fact.
6. Participation by the Movant will not unduly delay the proceedings or prejudice the existing party to the subcase.

RESPECTFULLY SUBMITTED This 23rd day of April, 1996.

ROSHOLT, ROBERTSON & TUCKER



John K. Simpson

CERTIFICATE OF MAILING

I hereby certify that on the 23rd day of April, 1996, I mailed the original and copies of this response, including all attachments, to the following persons, by mailing the original and/or copies, postage prepaid and addressed as follows:

1. Original to:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
P.O. Box 2707
Twin Falls, Idaho 83303-2707

2. One copy to the owner of the water right at the following address:

Name: Barbara Gardner & Robert B. Gardner
Address: P. O. Box 41, Hagerman, ID 83332

3. One copy to the party who filed the objection, or if represented by an attorney, to their attorney at the following address:

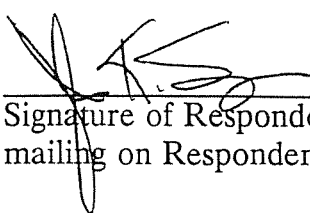
Name: Patrick D. Brown & Penelope Parker
Hepworth, Nungester & Lezamiz
Address: P. O. Box 389
Twin Falls, ID 83303

4. One copy to:

Chief, Natural Resource Division
Office of the Attorney General
State of Idaho
P.O. Box 44449
Boise, Idaho 83711-4449

5. One copy to:

United States Department of Justice
Environmental and Natural Resource Division
550 West Fort Street, MSC 033
Boise, Idaho 83724



Signature of Respondent or attorney
mailing on Respondent's behalf

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