

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 43-104B

(Insert the Subcase number from the

Objection to which you are responding)

Case 39576

STANDARD FORM 2

RESPONSE TO OBJECTION

INSTRUCTIONS

This form must be used to file a response to any objection filed against a water right recommended in a Director's Report. Forms may be obtained from the SRBA Court, the Idaho Department of Water Resources (IDWR), or you may copy or reproduce this blank form. If you copy or reproduce this form, please copy on both sides with the even-number pages upside down.

The water right number listed as the "Subcase on the objection you are responding to must be inserted above as the "Subcase." You may respond to all objections filed against one water right using one response form. But you must use a separate form for each different water right. If you choose to file one form to respond to all objections filed against the same water right, your response should cover every issue raised in all the objections.

You must file your response by the deadline shown in the notice that IDWR mailed to you. The response must be received by the court on or before the deadline specified. Instructions for mailing this response are found at Page 5 and must be strictly followed.

This form has been adopted by the court in *SRBA Administrative Order 1, Rules of Procedure* (amended Sept. 30, 1996), Section 4, which may be consulted for further information.

Any party physically filing 25 or more responses must contact the Clerk of the SRBA Court no later than 14 days prior to the filing deadline and arrange for an appointment to file multiple responses.

By filing a response form, you are certifying that the response is well-grounded in fact; that it is warranted by existing law or a good-faith argument for the extension, modification or reversal of existing law; and that it is not filed for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase in the cost of litigation.

SF. 2

Amended 9/30/96

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE

I. GENERAL INFORMATION

Please fill in the following information:

Party/Claimant responding:

Name: J. R. Simplot Company

Address: P.O. Box 27
Boise, ID 83707

Phone: Work: 208-336-2110 Home:

Briefly describe your interest in this water right:

Claimant

If this response is filed by an attorney:

Attorney Name: _____

Attorney Address: _____

Attorney Phone No.: _____

If filed by an attorney, notice of pending court proceedings will be sent to the attorney only.

2. *Party/Claimant who filed objection:*

Name: Ted Higley

Address: PO Box 57, Malta, ID 83342

II. STATEMENT OF THE RESPONSE

Please check each box which identifies your response.

1. ☐ **Name and Address:** I respond to the objection concerning the name and/or address of the owner of the water right.
2. ☐ **Source:** I respond to the objection concerning the source of water.
3. **Quantity:** I respond to the objection concerning:
 - ☒ a. the total quantity of water used in cubic feet per second; or
 - ☐ b. the total quantity of water stored in acre feet per year; or
 - ☐ c. the total quantity of water reserved for each and every purpose, including all present and future uses.
4. ☐ **Priority Date:** I respond to the objection concerning the priority date.
5. ☒ **Point(s) of Diversion:** I respond to the objection concerning the legal description of the point(s) of diversion.
6. ☐ **Instream Flow:** I respond to the objection concerning the legal description of the beginning and ending points of the instream flow.
7. ☐ **Purpose(s) of Use:** I respond to the objection concerning the purpose(s) of use.
8. ☐ **Period of Year:** I respond to the objection concerning the period of year when water is used or is necessary for the purpose stated.
9. **Place of Use:** I respond to the objection concerning:
 - ☐ a. the legal description of the place of use; or
 - ☐ b. the number of irrigated acres within each 40-acre subdivision.
10. ☐ **Consumptive Use:** I respond to the objection concerning the annual volume of consumptive use.
11. **Water Right Recommendation:** I respond to the objection concerning:
 - ☐ a. this water right being recommended at all; or
 - ☐ b. this water right not being recommended.

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12. ☐ Description of Reservation: I respond to the objection concerning the legal description of the reservation.
13. ☐ Other: I respond to the objection concerning:

REASONS SUPPORTING EACH BOX CHECKED

You must state the reason(s), by number, for each box checked. You may use additional pages if necessary.

Reason for Checking box 3.a: The Objector indicates the quantity recommended in the Director's Report for this right should be "Even per Acre." The meaning of the Objection is vague and unclear. In the interest of judicial economy J. R. Simplot Company nevertheless submits the following: Water right no. 43-104 as provided in the Jobe Adams Decree (1922) and as further confirmed and explained in the J.B. Hitt et al. Decree (1926), provides for the diversion of .8 c.f.s. from Cassia Creek to be used to irrigate land currently owned by the J. R. Simplot Company. The entire water right remains appurtenant to Simplot's land, and therefore the entire quantity is owned by Simplot. Consequently, the Objector has no interest in any portion of this water right. However, because the recommendation by the Objector, "Even per Acre," is vague and unclear, Simplot is responding to any attempt by the Objector to assert any interest whatsoever in Simplot's right to divert up to .8 c.f.s under water right 43-104B.

Reason for Checking box 5: The Objector recommends the Director's Report should be amended to include only two of the five points of diversion reported by the Director. The two points identified by the Objector are located within the NE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ and the SE $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 14 T.13S R.26E. In addition to these two points of diversion, the Director also recommends points of diversion within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 14 T.13S R.26E, the SW $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 21 T.13S R.26E and the NE $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 22 T.13S R.26E. Simplot disputes the Objector's attempt to limit Simplot's diversion points under this water right to only those two points identified in his objection because all five diversion points are used and have been historically used to divert water pursuant to this water right. Simplot agrees with the Director that all five diversion points identified in his Report for water right no. 43-104B should be decreed.

CHANGES TO THE DIRECTOR'S REPORT

Specifically describe how you want the Director's Report to be changed. You may use additional pages if necessary.

Simplot agrees with the recommendation by the Director for this water right and does not propose any changes.

Note: You should attach copies of documents which support your response. Note on each document the box number it supports.

- ☐ Check here if you are submitting documents. Please list each document by the title and number of pages. You may use additional pages if necessary:

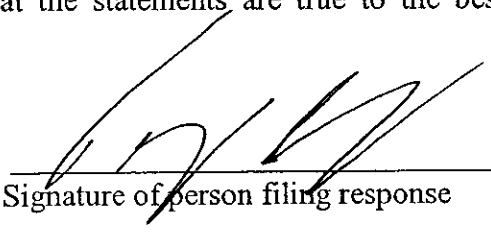
IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE

State of Idaho

County of Ada

Terry T. Uhling, Vice President Environmental Health, Safety & Regulatory Affairs and Associate General Counsel for the J. R. Simplot Company duly sworn, upon oath, deposes and says:

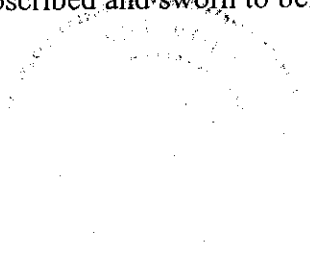
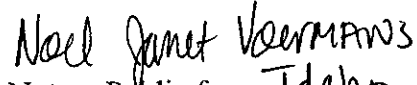
That I am the party/claimant filing this response (as listed on Page 2, Section 1, "Party/Claimant responding"), that I am a water claimant or party in this proceeding as defined by I.C. §§ 42-1401A(1) and (7) or that I am the attorney for the party/claimant responding, and that I have read this response, know its contents and believe that the statements are true to the best of my knowledge.



Signature of person filing response

Attorney signing in representative capacity

Subscribed and sworn to before me on:



Notary Public for Idaho
Residing at: Boise
My Commission expires: 10/07/02

INSTRUCTIONS FOR MAILING

You must mail the response including all attachments, to the Clerk of the Court. FAX filings will not be accepted. You must also send a copy to all the parties listed below in the Certificate of Mailing.

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
CERTIFICATE OF MAILING

I certify that on April 11 2008, 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
PO Box 2707
Twin Falls, ID 83303-2707

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

Name: J. R. Simplot Company

Address: PO Box 27 Boise, ID 83707

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

Name: Ted Higley

Address: PO Box 57, Malta, ID 83342

4. Copies to:

IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

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

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
PO Box 44449
Boise, ID 83711-4449



Signature of Respondent or attorney
mailing on Respondent's behalf