

ORIGINAL

DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO
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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 Nos. 51-02002, <i>et al.</i> [Exhibit A]
	)	Subcase Nos. 51-12756, <i>et al.</i> [Exhibit B]
Case No. 39576	)	Subcase Nos. 51-12767, <i>et al.</i> [Exhibit C]
	)	
	)	JOINT MOTION FOR TECHNICAL
	)	AMENDMENTS AND ENTRY OF
	)	SECOND REVISED PROPOSED CONSENT
	)	DECREE AND SECOND REVISED
	)	PARTIAL FINAL DECREES

The United States, the State of Idaho ("State"), and Riddle Ranches hereby file this Joint Motion for two reasons. First, this Motion outlines technical amendments which correct certain information in the Revised Proposed Consent Decree and Revised Partial Final Decrees. These technical amendments are outlined below and are incorporated into the Second Revised Proposed

Consent Decree and Second Revised Partial Final Decrees attached hereto. Second, this Motion renews the Parties' request for an Order that approves the Second Revised Proposed Consent Decree and Second Revised Partial Final Decrees filed herewith and enters the partial final decrees for the 369 claims described in the attachments to the Second Revised Proposed Consent Decree.

BRIEF HISTORY OF PROCEEDINGS

On October 13, 2005, the State, Riddle Ranches, and J.R. Simplot Company (the "Objectors") made an offer of judgment in this matter to the United States. The offer of judgment was clarified in subsequent letters. On November 15, 2006, the United States conditionally accepted the offer of judgment. On January 9, 2006, the Objectors and United States sought to implement the offer of judgment by filing a Joint Motion for Approval of Consent Decree and Entry of Partial Final Decrees. On February 8, 2006 and March 9, 2006, the Shoshone-Paiute Tribes ("Tribes") filed Objections to Entry of the Consent Decree. After the Parties filed briefs regarding the Tribal Objections, a hearing was held on April 13, 2006.

Subsequent to the hearing, the United States, Objectors, and Tribes reached a tentative agreement which could resolve the Tribes' Objections to the Consent Decree, subject to a decision of the Tribal Council approving the agreement. That agreement was incorporated into the Revised Consent Decree and Revised Partial Final Decrees which were filed on May 23, 2006. On June 23, 2006, the Court issued an Order granting sufficient time for the Tribal Council to consider the agreement. The Tribal Council approved the agreement via Tribal Resolution on August 15, 2006. On August 17, 2006, the Tribes withdrew their objections and requested additional time to review the Revised Partial Final Decrees for technical accuracy.

Subsequent to the Tribes' withdrawal of its objections, the Parties discussed a number of technical corrections required to ensure the accuracy of the water rights outlined in the Revised Partial Final Decrees. An outline of technical corrections is provided below and incorporated into

the Second Revised Proposed Consent Decree and Second Revised Partial Final Decrees attached hereto. With those amendments incorporated, the Parties request an Order approving the Second Revised Proposed Consent Decree and entering the Second Revised Partial Final Decrees attached thereto.

OVERVIEW OF TECHNICAL AMENDMENTS

The following discussion outlines the technical amendments which are incorporated into the Second Revised Proposed Consent Decree and Second Revised Partial Final Decrees filed herewith.

A. Amend Priority Date for Nine Proposed Water Rights: 55-13799; 55-13800; 55-13801; 55-13803; 55-13804; 55-13806; 55-13808; 55-13811; and 55-13814.

The priority date of these proposed water rights was incorrectly listed as 1866. The priority date has been corrected to 1886, the date of the applicable Executive Order which created the Reservation.

B. Amend Numbering of Water Right 55-13815 for Dry Creek to Water Right 55-13801.

In the Revised Partial Final Decrees, the Parties inadvertently listed water right 55-13815 two separate times for water rights from Dry Creek and from the Owyhee River for instream stock water purposes.^{1/} The listing of water right 55-13815 for Dry Creek was an error and has been replaced with water right 55-13801 in the Second Revised Partial Final Decrees. The listing of water right 55-13815 for the Owyhee River is correct and remains unchanged. These changes are consistent with the Director's Report which lists both water right numbers.

C. Amend Water Right Description for Water Right 55-13801.

^{1/}The Revised Partial Final Decrees filed on May 23, 2006 did not include page numbers. For ease of reference, the Parties included page numbers on the Second Revised Partial Final Decrees filed herewith. The water right for Dry Creek that has been corrected to 55-13801 is located on page 309. The water right from the Owyhee River with the correct number 55-13815 is located on page 323.

The beginning point of the instream stock water right listed in water right 55-13801 was incorrectly listed as T15S, R3E, Sec 14, NE1/4. The Parties believe that the error is based on an error in the Director's Report, Attachment II, page 12, which appears to have inadvertently borrowed the Old Man Canyon location of water right 55-13800. Instead, water right 55-13801 is located in Dry Creek and should have a beginning point listed as T15S, R3E, Sec 36, NW1/4.

D. Correct Claim Number Discrepancy Regarding Water Rights 55-13603 through 55-13607.

In the Director's Report, IDWR incorrectly assigned five water right claims to the wrong basin. Those claim numbers were originally listed as 51-12603 through 51-12607, which was incorrect because the claims were actually located in Basin 55 rather than Basin 51. Accordingly, on January 9, 2006, IDWR issued a Notice of Change of Subcase Numbers which changed the notice of these claim numbers to 55-13603 through 55-13607.^{1/} Thus far, the SRBA Court has properly removed the incorrect claim numbers: 51-13603 through 51-13607. However, the Court has yet to properly replace those claim numbers with 55-13603 through 55-13607. For these reasons, the Parties request the Court to add claim numbers 55-13603 through 55-13607 to Exhibits B & C, where appropriate.

E. Clarify that Water Right 51-12775 Applies to Two Springs.

Water right number 51-12775 is listed twice in the Director's Report. These two listings of water right 51-12775 appear to be duplicative because they apply to the same legal description. However, the Parties discussed these claims with IDWR and clarified that there are two separate spring symbols located within the legal description covered by water right 51-12775. The Parties clarified this matter in the Second Revised Partial Final Decrees by inserting the following language

^{2/}The Revised Consent Decree, Footnote 1, addressed this issue but listed the date of IDWR's Notice of Change of Subcase Numbers incorrectly as January 6, 2006 rather than January 9, 2006.

in the description for water right number 51-12775: "This water right includes two separate springs located within this legal description."

F. Request Court to Withdraw Water Right Claim Numbers 51-12899 and 55-13822.

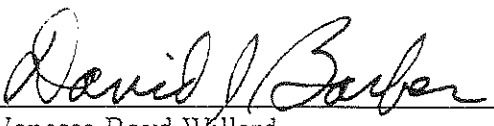
Claim numbers 51-12899 and 55-13822 were created by Special Master Hammerle for the purpose of taking objections to the claim notice located on the first four pages of the United States' claims on behalf of the Tribes. *See Order Clarifying Director's Report in Reporting Area 6 (Basins 51 and 55), Volume Three, Federal Reserved Water Rights Filed on Behalf of the Shoshone-Paiute Tribes*, dated March 8, 1999. Since these claim numbers do not actually correspond to a water right, it is not appropriate to either decree them or disallow them as water rights. However, these claim numbers must be accounted for in the record. Accordingly, the Parties request the Court to withdraw these claim numbers. This request for withdrawal of claim numbers 51-12899 and 55-13822 is reflected in paragraph number three which has been added to the Second Revised Proposed Consent Decree filed herewith.

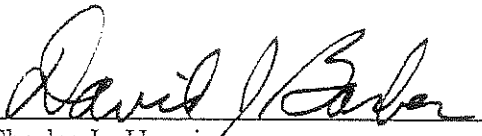
With the incorporation of these technical changes outlined above, the Parties respectfully request an Order approving the Second Revised Proposed Consent Decree and entering the proposed partial decrees attached thereto as the Second Revised Proposed Partial Decrees. The Parties have consulted with J.R. Simplot Co. and are authorized to represent that it does not object to this motion. The Parties have consulted with the Tribes and are authorized to represent that the Tribes do not object to this motion.

Respectfully submitted this 22nd day of September 2006.

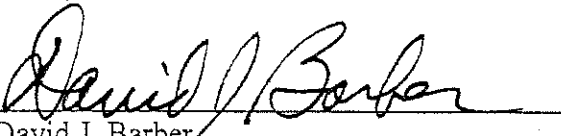
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CERTIFICATE OF SERVICE

I certify that on this 22nd day of September 2006, I caused to be served the original and/or copy of this **JOINT MOTION FOR TECHNICAL AMENDMENTS AND ENTRY OF SECOND REVISED PROPOSED CONSENT DECREE AND SECOND REVISED PARTIAL FINAL DECREES** on the following persons by the indicated method:

1. Original to:

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Simplot Livestock Co.
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TM Ranch Co.
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IDWR Document Depository
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Not Applicable


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