



CORPORATE HEADQUARTERS

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MAR 25 2011

**DEPARTMENT OF
WATER RESOURCES**

November 24, 2011

Overnight Mail

Julie Murphy
Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
PO Box 2707
Twin Falls, ID 83303-2707

Re: SRBA Claim Nos. 47-2281.

Dear Ms. Murphy:

At the request of and as an accommodation to the J. R. Simplot Self-Declaration of Revocable Trust ("Simplot Trust") I am enclosing for filing with the Court a Motion to File Late Objection in SRBA Subcase 47-2281. Attached to the Motion are the related Affidavit of Vic Conrad in Support of Motion to File Late Objection, proposed Order Setting Hearing for Subcase 47-2281, proposed Order Granting Motion to File Late Objection and a Standard Form 1 Objection signed by Ronald N. Graves, Trustee for the Simplot Trust.

As instructed by Special Master Booth during a Status Conference held on March 8, 2011, I am enclosing the Motion in advance of April 7, 2011, to allow sufficient time to register the Motion on the next available Docket Sheet.

Sincerely,

Vic Conrad
Land, Water & Asset Recovery

Enclosure

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MAR 25 2011
DEPARTMENT OF
WATER RESOURCES

Gray Young, ISB #4173
c/o J. R. Simplot Company
999 Main Street, Suite 1300
Boise, Idaho 83702
Phone: 208-336-2110
Facsimile: 208-389-7464
gray.young@simplot.com

Attorney for J. R. Simplot Self-Declaration of Revocable Trust

**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. 47-2281

**MOTION TO FILE LATE
OBJECTION**

J. R. Simplot Self-Declaration of Revocable Trust ("Simplot Trust") requests an order from the Court permitting it to file a late objection to the Idaho Department of Water Resources' ("IDWR") Recommendation for water right 47-2281.

Water right 47-2281, which bears a priority of November 15, 1954, was originally claimed by Jane and Ronald Pierce. Simplot Trust is the successor in interest to this water right. The license for this water right was issued by IDWR, without a volume limit, on October 6, 1959. IDWR's Recommendation for water right 47-2281 was included in a February 2, 2007 Basin 47 Director's Report. The objection deadline was September 19, 2007. Subsequent to the objection deadline, Simplot Trust discovered that the volume limit in the Recommendation of 3.5 acre feet per acre per annum is in error. A Standard Form 1 Objection accompanies this Motion.

Where a partial decree has not been entered, a motion to file a late objection may be granted upon a showing of good cause pursuant to Idaho Rule of Civil Procedure 55(c). *Order on Motion to Set Aside Partial Decrees and File Late Objections*, Subcases 65-7267 *et al.*, slip op. at 6 (also cited as 5 SRBA 4 at 4.5) (January 31, 2001). This Rule 55(c) good cause standard takes into account the following factors:

- (1) whether the default was willful;

- (2) whether setting aside the judgment would prejudice the opponent; and
- (3) whether a meritorious position has been presented.

Id. at 7 (also cited as 5 SRBA 4 at 4.5) (citing McFarland v. Curtis, 123 Idaho 931, 936, 854 P.2d 274, 279 (1993)). Simplot Trust can show good cause for the Court to grant this Motion.

1. Simplot Trust's failure to file an objection before the objection deadline was not willful. The Recommendation for water right 47-2281 contains many implications affecting the water right which are not readily apparent. The Recommendation for water right 47-2281 involves combined use limits Recommended by IDWR in the January 29, 2007 Basin 47 Director's Report for water right nos. 47-2281, 47-2283, 47-2365, 47-2424, 47-7071, 47-7102, and 47-2122. These combined use limits affect the quantity of water that can be put to beneficial use and the total acres to be irrigated when all these rights are combined. The Recommendations also contain combined use limits for certain water rights within this group, when used in combination with certain other water rights within the group. Unaware of the ultimate implications of some of these complexities, Simplot Trust did not recognize the flaws in the Recommendation for water right 47-2281 until after the Basin 47 objection period expired. (See attached Affidavit of Vic Conrad in Support of Motion to File Late Objection).

2. An order granting this Motion will not disrupt proceedings or prejudice other parties. There are no other objectors to water right 47-2281. The issuance of a partial decree for water right 47-2281 has been held in suspense pending a resolution to the objection filed by Simplot Trust for 47-2283 and 47-2424.

3. Simplot Trust timely filed objections to the combined use limits in the Recommendations for water rights 47-2283 and 47-2424 due to an error by the IDWR which would have resulted in a reduction in the overall place of use that could be irrigated by 271 acres and resulted in a volume limit of 3.5 acre feet per acre per annum for water right 47-2283, bearing a December 27, 1954 priority, for which no volume limit was contained on the license issued on July 10, 1959 by IDWR. The Simplot Trust objections to water rights 47-2283 and 47-2424 have been resolved through IDWR's agreement to correct the combined use acreage error and amend the volume limit for 47-2283 to 4.0 acre feet per acre per annum, consistent with IDWR's Irrigation Season of Use, Consumptive Irrigation and Field Headgate Requirements map dated January 17, 2006 ("Map"), which contains IDWR's volume and

consumptive irrigation standards for each of the IDWR Administrative Basins in the State of Idaho.

Simplot Trust respectfully notes that both the claimant and the IDWR became aware of the error in the volume limit for 47-2283 considerably after the objection period had expired. Nevertheless, IDWR was willing to correct the water right 47-2283 volume limit to 4.0 acre feet per acre because the claimant had filed a timely objection to water right 47-2283 on other grounds. Although water right 47-2281 has very similar facts and a 4.0 acre feet per acre per annum designation on the Map, IDWR has indicated procedural concerns about correcting the volumetric limitation in the absence of the filing by the claimant of an formal objection to the Recommendation for 47-2281.

After the close of the objection period for Basin 47 and during the process of investigation to correct the errors for water rights 47-2283 and 47-2424, Simplot Trust discovered that a volume limit error in the Recommendation for water right 47-2281, similar to the volume limit error in the Recommendation for water right 47-2283, exists. Similar to water right 47-2283, the license IDWR issued for 47-2281 on October 6, 1959 does not contain a volume limit. Also, like 47-2283, the place of use for 47-2281 was licensed in the geographic area identified on IDWR's Map indicating 4.0 acre feet per acre per annum as the standard field headgate volume.

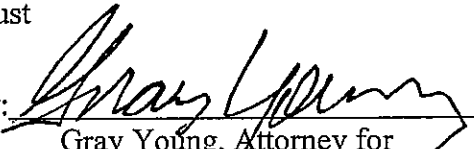
A license issued on May 27, 1975 by IDWR for Water Right no. 47-7102, bearing a priority of June 4, 1970, overlaps the place of use described by 47-2281. This license, which is nearly 16 years junior to 47-2281, was issued with a condition limiting 47-7102 and 47-2281, when combined, to no more than 3.5 acre feet per acre. There are no issues in dispute with respect to the Recommendation for 47-7102. However, through its investigation, Simplot Trust determined that water right 47-2281, unless combined with water right 47-7102, should not be limited to 3.5 acre feet per acre per annum.

Simplot Trust can show that water right 47-2281 should be decreed as claimed or, in the alternative, with a volume limit no less than 4.0 acre feet per acre per annum. As shown on IDWR's Map, IDWR's standard for the geographic area covering the claimed place of use is 4.0 acre feet per acre per annum. Unless this Motion is granted, a partial decree will be issued for water right 47-2281 that inappropriately diminishes the quantity of water available for this right

to a volume that is below both the license for this water right (which was without a volume limit) and the IDWR standard for the geographic area covering the claimed place of use.

Date: 3/24/11

J. R. Simplot Self-Declaration of Revocable
Trust

By: 
Gray Young, Attorney for
J. R. Simplot Self-Declaration
of Revocable Trust

CERTIFICATE OF MAILING

I certify that on March 24, 2011, I mailed the original and copies of this Motion to File Late Objection, including all attachments, to the following persons:

1. Original to:

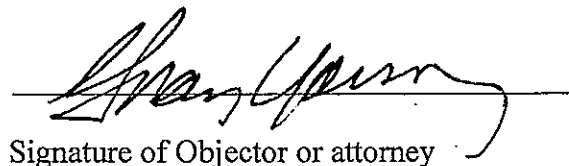
Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
PO Box 2707
Twin Falls, ID 83303-2707

2. Copies to:

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

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

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



Signature of Objector or attorney

mailing on Objector's behalf

325
RECEIVED

MAR 25 2011

DEPARTMENT OF
WATER RESOURCES

Gray Young, ISB #4173
c/o J. R. Simplot Company
999 Main Street, Suite 1300
Boise, Idaho 83702
Phone: 208-336-2110
Facsimile: 208-389-7464
gray.young@simplot.com

Attorney for J. R. Simplot Self-Declaration of Revocable Trust

**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. 47-2281

**AFFIDAVIT OF VIC CONRAD
IN SUPPORT OF MOTION TO FILE
LATE OBJECTION**

STATE OF IDAHO)
)
County of Ada)

I, Vic Conrad, having been duly sworn, do hereby depose and say as follows:

1. I am an employee of the J. R. Simplot Company. My title is Director, Land Water & Asset Recovery. I make this affidavit based upon my personal knowledge.
2. The J. R. Simplot Company manages all farm and ranch property owned by the J. R. Simplot Self-Declaration of Revocable Trust ("Simplot Trust") located in the states of Idaho, Oregon, Washington and Nevada pursuant to Operating Agreements for each such property. The water rights involved in this subcase are managed by the J. R. Simplot Company on behalf of the Simplot Trust pursuant to a certain Operating Agreement, Jack Ranch ("Schnell Portion") dated June 1, 2000. Said agreement renews automatically on a year-to-year basis and is currently in full force and effect.
3. I am responsible for conducting the review of all water rights filed by the Simplot Trust in the Snake River Basin Adjudication ("SRBA"). Part of this responsibility involves the

review of the recommendations made by the Idaho Department of Water Resources ("IDWR") for the Simplot Trust's water rights claimed in the SRBA when Director's Reports are issued for sub-basins within the SRBA.

4. In its Basin 47 Director's Report, the IDWR recommendation for water right 47-2281 dated January 29, 2007 was combined with recommendations for water right nos. 47-2283, 47-2365, 47-2424, 47-7071, 47-7102 and 47-7122. In addition to recommending use limits for all of these water rights combined, the IDWR recommended combined use limits for certain subgroups of water rights among this group of water rights.
5. When I reviewed the Recommendations, I discovered when calculating the various limits recommended by the IDWR that the ultimate outcome would result in substantially reducing the total number of acres that could be irrigated by the Simplot Trust. This error originated with the combined use limits recommended by IDWR for 47-2283 and 47-2424. For this reason, timely objections were filed by the Simplot Trust to these two water right recommendations.
6. Because of the complexity of IDWR's combined use limit recommendations, my review of this group of combined claims was focused on the number of acres that could be irrigated in connection with the combined claims rather than the presence or absence of volumetric limitations of the individual claims. In preparing the objections to this group of claims, I concluded that objecting to individual claim volumes, which could be affected by the combined use limits recommended, was premature until the acreage error was corrected by the IDWR. I believed any individual claim volumetric adjustments could be made as a matter of course once the IDWR correct the acreage error. Consequently I mistakenly overlooked the recommendation for the volume limit IDWR applied to 47-2281.
7. I discovered the volume limit error after the close of the objection period for Basin 47. Furthermore, I believed that any individual claim volume limits would be corrected once the acreage error for the combined group of claims was resolved. In fact, two volume errors were discovered after the acreage error was corrected, but unfortunately the volume errors were not known until after the Basin 47 objection period expired. Consequently, the Simplot Trust did not willfully fail to file a timely objection to the

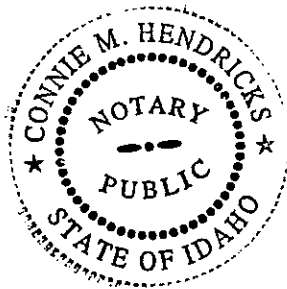
volume limit recommended for 47-2281. The failure was inadvertent and was directly related to the complexity of the IDWR's recommended combined use limits for this group of claims.

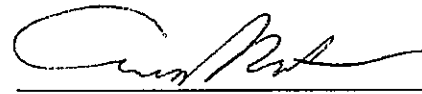
Further the affiant sayeth not.



Vic Conrad

SUBSCRIBED AND SWORN to before me on this 24th day of March, 2011.





NOTARY PUBLIC FOR IDAHO
Residing at Boise, Idaho
My commission expires: 8/22/2014

CERTIFICATE OF MAILING

I certify that on March 24, 2011, I mailed the original and copies of this Affidavit of Vic Conrad in Support of Motion to File Late Objection, to the following persons:

1. Original to:

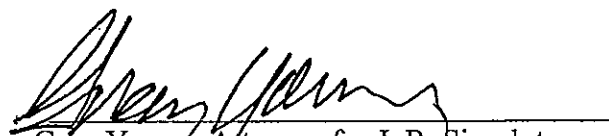
Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
PO Box 2707
Twin Falls, ID 83303-2707

2. Copies to:

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

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

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



Gray Young, Attorney for J. R. Simplot
Self-Declaration of Revocable Trust

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MAR 25 2011

DEPARTMENT OF
WATER RESOURCES

March __, 2011
District Court - SRBA
Twin Falls Co., Idaho
Filed _____

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

ORDER SETTING HEARING

SUBCASE NO: 47-2281

Please be advised that Special Master THEODORE R. BOOTH has set a Hearing of the Motion to File Late Objection in the above subcase as follows:

Tuesday May 3, 2011 at 11:00 am (MT)

SRBA
253 - 3RD AVENUE NORTH
TWIN FALLS, ID

Parties may participate by telephone by dialing the number 225-446-0193 and when prompted entering the code 675342

IT IS SO ORDERED.

Dated: _____

/S/ THEODORE R. BOOTH
Special Master
Snake River Basin Adjudication

Gray Young
C/o J. R. Simplot Company
999 Main Street, Suite 1300
PO Box 27
Boise, Idaho 83707-0027

CERTIFICATE OF MAILING

I Certify that a true and correct copy of the ORDER SETTING HEARING was mailed on March ___, 2011, with sufficient first-class postage to the following:

J. R. Simplot Self-Declaration of
Revocable Trust

Represented by:

Gray A. Young
J. R. Simplot Company
999 Main Street, Suite 1300
PO Box 27
Boise, ID 83707-0027
Phone: 208-336-2110

United States of America

Represented by:

US Department of Justice
Environment & Natural Resources
550 West Fort Street, MSC 033
Boise, ID 83724

Director of IDWR
PO Box 83720
Boise, ID 83720-0098

/s/ Diana R. Delaney
Deputy Clerk

Gray Young
C/o J. R. Simplot Company
999 Main Street, Suite 1300
PO Box 27
Boise, Idaho 83707-0027

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MAR 25 2011

DEPARTMENT OF
WATER RESOURCES

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. 47-2281

ORDER GRANTING MOTION TO
FILE LATE OBJECTION

On March __, 2011, Claimant J.R. Simplot Self-Declaration of Revocable Trust ("Simplot Trust") filed a *Motion to File Late Objection* ("Motion") with accompanying *Affidavit of Vic Conrad in Support of Motion to File Late Objection*, and a proposed *Standard Form 1 Objection* with respect to the Idaho Department of Water Resources' recommendation for water right 47-2281. A hearing on the *Motion* was granted on _____, 2011. No objections to the *Motion* were filed. A hearing on the *Motion* was held on May 3, 2011. The Court, having reviewed the *Motion* and supporting *Affidavit* and being fully advised, hereby finds that good cause exists for the *Motion* to be granted.

THEREFORE, IT IS ORDERED, THAT THE *Motion* is **granted**.

The *Standard Form 1 Objection* that accompanied the *Motion*, and a copy of this *Order*, will be forwarded to the Idaho Department of Water Resources for further action.

IT IS SO ORDERED.

Dated May __, 2011.

/S/ THEODORE R. BOOTH

Special Master
Snake River Basin Adjudication

CERTIFICATE OF MAILING

I Certify that a true and correct copy of the ORDER GRANTING MOTION TO FILE LATE OBJECTION was mailed on May __, 2011, with sufficient first-class postage to the following:

J. R. Simplot Self-Declaration of
Revocable Trust

Represented by:

Gray A. Young
J. R. Simplot Company
999 Main Street, Suite 1300
PO Box 27
Boise, ID 83707-0027
Phone: 208-336-2110

United States of America

Represented by:

US Department of Justice
Environment & Natural Resources
550 West Fort Street, MSC 033
Boise, ID 83724

Director of IDWR
PO Box 83720
Boise, ID 83720-0098

/s/ Diana R. Delaney
Deputy Clerk

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MAR 25 2011

DEPARTMENT OF
WATER RESOURCES

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

Subcase 47-2281
(Insert water right number)

In Re SRBA)

Case No. 39576)

**STANDARD FORM 1
OBJECTION**

Please fill in the following information:

NAME AND ADDRESS OF PERSON OBJECTING

Name: J. R. Simplot Self-Declaration of Revocable Trust

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

Daytime Phone: 208-336-2110

Name & Address of Attorney, if any:

CLAIMANT OF WATER RIGHT AS LISTED IN DIRECTOR'S REPORT

Name: J. R. Simplot Self-Declaration of Revocable Trust

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

I object to the following elements as recommended in the Director's Report. (Please check the appropriate box(es)).

1. ☐ **Name and Address**
Should be: _____
2. ☐ **Source**
Should be: _____
3. ☒ **Quantity**
Should be: 1,020 AFA
4. ☐ **Priority Date**
Should be: _____
5. ☐ **Point(s) of Diversion**
Should be: _____
6. ☐ **Instream Flow Description**
Should be: _____
7. ☐ **Purpose(s) of Use**
Should be: _____
8. ☐ **Period of Year**
Should be: _____
9. ☐ **Place of Use**
Should be: _____
10. **I object because:**
☐ This water right should not exist.

☐ This water right was not recommended, but should be recommended with the elements described above.

REASONS SUPPORTING OBJECTION(S):

The license issued by the IDWR on October 6, 1959 for this water right did not include a provision limiting the annual diversion volume. The IDWR standard shown on the IDWR's Irrigation Season of Use, Consumptive Use and Field Headgate Requirements Map dated January 17, 2006 shows the geographic location for the place of use and point of diversion under this right are situated within an area requiring 4.0 acre feet per acre for the Field Headgate requirement. The Recommendation by the IDWR dated January 29, 2007 contains an annual volume limit of 3.5 acre feet per acre which is inconsistent with IDWR's Field Headgate

Standard and the license issued on October 6, 1959. The annual volume limit should be removed, or in the alternative should be recommended with a 4.0 acre feet per acre limit that is consistent with the IDWR's Field Headgate Standard.

VERIFICATION (Must be Completed)

State of Idaho)
)ss.
County of Ada)

Ronald N. Graves, Trustee of the J. R. Simplot Self-Declaration of Revocable Trust, duly sworn, upon oath, deposes and says:

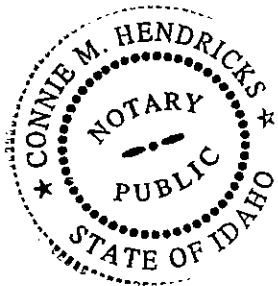
That I am the Trustee of the claimant filing this objection, as defined by I.C. § 42-1401A(1) and or that I am the attorney for the party/claimant objecting and that I have read this objection, know its contents and believe that the statements are true to the best of my knowledge.

Ronald N. Graves - Trustee

Ronald N. Graves, Trustee for the J. R. Simplot Self-Declaration of Revocable Trust

(Attorney signing in representative capacity)

Subscribed and sworn to before me on: March 24, 2011



[Signature]
Notary Public for Idaho
Residing at: Boise
My Commission Expires: 8/22/2014

INSTRUCTIONS FOR MAILING

You must mail the objection, 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.

CERTIFICATE OF MAILING

I certify that on _____, 2011 I mailed the original and copies of this objection, including all attachments, to the following persons:

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 Self-Declaration of Revocable Trust
Address:	PO Box 27
	Boise, ID 83707

3. Copies to:

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

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

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

Signature of Objector or attorney
mailing on Objector's behalf