

Albert P. Barker
John A. Rosholt
John K. Simpson
Travis L. Thompson
Shelley M. Davis
Paul L. Arrington
Scott A. Magnuson
Sarah W. Higer

RECEIVED
APR 04 2012
DEPARTMENT OF
WATER RESOURCES



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Post Office Box 485
Twin Falls, Idaho 83303-0485
(208) 733-0700 telephone
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April 3, 2012

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

United States Dept. of Justice
Environment & Natural Resources Division
550 West Fort St., MSC 033
Boise, ID 83724

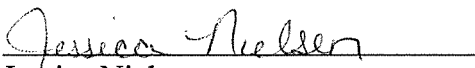
Re: *J.R. Simplot Co. Notice of Late Claim Subcase No. 65-9429*

To Whom It May Concern:

Enclosed please find a corrected copy of the first page of *Memorandum In Support of Motion to File Late Notice of Claim and Affidavit of Paul L. Arrington* regarding the above referenced matter. Please replace the pages on the original documents we sent on Friday March 30, 2012.

Should you have any questions, please contact our office.

Thank you,


Jessica Nielsen
Assistant for Paul L. Arrington

Enclosures
PLA/jn

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DEPARTMENT OF
WATER RESOURCES

LODGED

Albert P. Barker, ISB #2867
Paul L. Arrington, ISB #7198
BARKER ROSHOLT & SIMPSON LLP
113 Main Ave. West, Suite 303
P.O. Box 485
Twin Falls, Idaho 83303-485
Telephone: (208) 733-0700
Facsimile: (208) 735-2444

Attorneys for J.R. Simplot Company

DISTRICT COURT - SRBA Fifth Judicial District County of Twin Falls - State of Idaho	
MAR 30 2012	
By _____	Clerk
_____	Deputy Clerk

**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

)
) **Subcases: 65-9429**
)
)

) **MEMORANDUM IN SUPPORT OF**
) **MOTION TO FILE LATE NOTICE OF**
) **CLAIM**
)
)

COMES NOW, J.R. Simplot Company ("Simplot"), claimant in the above subcase, by and through its attorneys, the law firm of Barker, Rosholt & Simpson, LLP, and hereby submits this *Memorandum in Support of Motion to File Late Claim*. This *Motion* is further supported by the *Affidavit of Ronald D. Parks* ("Parks Aff.") and the *Affidavit of Paul L. Arrington* ("Arrington Aff."), each filed concurrently herewith.

INTRODUCTION

Through this motion, Simplot seeks to claim a water right that was previously decreed in the Payette Adjudication and which has been continuously diverted and put to beneficial use since that time. Unfortunately, while another similarly situated water right decreed in the Payette Adjudication (65-6356) was claimed and partially decreed in the SRBA, this right was

MEMORANDUM IN SUPPORT OF MOTION TO FILE LATE NOTICE OF CLAIM

APR - 5 2012

inadvertently overlooked. Upon learning of this omission, Simplot immediately made a good faith effort to correct the oversight by filing this motion.

FACTUAL BACKGROUND

Simplot acquired ownership of certain properties in Payette County in 1984 from Robert F., Linda and Paul Johanek. *Arrington Aff.* Ex. A. Appurtenant to the property are water rights 65-6356 and 65-9426. Each right was claimed and decreed in the Payette Adjudication. *Arrington Aff.* Ex. B. Notwithstanding this 1984 acquisition by Simplot, water right 65-6356 was claimed in the SRBA by, and subsequently decreed to, the Johaneks. *Id.* at Ex. C. However, neither the Johaneks nor Simplot filed a claim for water right 65-9429 in the SRBA.

In 1999, Simplot conveyed the property and water rights to ML Investment Company. *Id.* at Ex. A. The property and water rights were conveyed back to Simplot on May 9, 2008. *Id.* ML Investment Company did not attempt to file a late claim for water right 65-9429 while it owned the property.

Simplot did not discover that water right 65-9429 had not been claimed in the SRBA until it filed a *Notice of Change in Water Right Ownership* with the Department on March 19, 2012. *Arrington Aff.* at Ex. A. At that time, it was discovered that water right 65-9429 had not been claimed in the SRBA – even though it had been decreed in the Payette Adjudication just one year prior to the commencement of the SRBA. It is unclear why water right 65-9429 was unclaimed in the SRBA. As soon as Simplot discovered the oversight, it immediately contacted the undersigned attorney to file this motion.

As decreed in the Payette Adjudication, water right 65-9429 has a priority date of April 1, 1965, and authorizes a diversion of 0.44 cfs for irrigation from springs that are tributary to Little Whitley Gulch Creek. *Id.* at Ex. B. The *Notice of Claim* attached to Simplot's motion seeks

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identical elements. Furthermore, since acquiring the right in 1984, Simplot has continuously diverted and beneficially used the right. *Parks Aff.*

STANDARD OF REVIEW

Idaho Civil Rules of Procedure 55(c) governs this motion to file a late notice of claim. AO1 § 4d(2)(d) (late claims reviewed under I.R.C.P. 55(c) criteria). As such, the Court applies a “good cause” standard.¹ The Rule 55(c) “good cause” standard considers whether: (1) the failure to file a timely claim was willful, (2) there would be prejudice to other water users, and (3) a meritorious position has been presented. *McFarland*, 123 Idaho at 936; *see also Order Granting Motions to File Late Notices of Claim* at 1 (Subcase No. 71-10886 et al., July 27, 2005).²

In determining whether to grant a motion under Rule 55(c), the Court must “examine each case in light of the unique facts and circumstances presented.” *Baldwin v. Baldwin*, 114 Idaho 525, 527 (Ct. App. 1988). Finally, “[j]udgments by default are not favored, and the general rule in doubtful cases is to grant relief from default in order to reach a judgment on the merits.” *Johnson v. Pioneer Title Co. of Ada County*, 104 Idaho 727, 732 (Ct. App. 1983).

ARGUMENT

I. Simplot Meets the “Good Cause” Standard for Filing a Late Notice of Claim.

The central question in this matter is whether a previously decreed water right, which has been continuously diverted and put to beneficial use, should be claimed, and ultimately decreed, in the SRBA. Simplot, and the previous owners of water right 65-9429, mistakenly failed to file

¹ This standard is more lenient than the Rule 60(b) standard. *McFarland v. Curtis*, 123 Idaho 931, 935 (Ct. App. 1993).

² Other jurisdictions apply similar criteria, such as: (1) proof that the default was not willful or culpable; (2) prompt action by the defaulting party to correct the default; (3) the existence of a meritorious defense; (4) an absence of prejudice to the opponent; (5) whether the default resulted from a good faith mistake in following a rule of procedure; (6) the nature of the defendant’s explanation for defaulting; (7) the amount in controversy; (8) the availability of effective alternative sanctions; and (9) whether entry of a default would produce a harsh or unfair result. *See Memorandum Decision and Order on Challenge; Order of Recommitment* at 6 (Subcase No. 47-14633 et al., March 22, 2005).

a claim for water right 65-9429 in the SRBA. Due to this oversight, the water right has gone unclaimed in the SRBA. Unless this motion is granted, this decreed water right may be lost. Accordingly, Simplot seeks an order from this Court granting this motion to file a late notice of claim.

A. Failure to File a Timely Claim Was Not Willful.

Failure to file a claim for water right 65-9429 was not “willful.” Even though both water rights 65-6356 and 65-9429 were conveyed to Simplot in 1984, the SRBA claim for water right 65-6356 was actually filed by the Johaneks. *Arrington Aff.* at Ex. C. It is unknown why the Johaneks did not also file a claim for water right 65-9429. Even though the right has remained unclaimed in the SRBA, Simplot has continued to beneficially use water right 65-9429 since it acquired the right in 1984. *Parks Aff.*

Upon learning of the oversight, Simplot immediately contacted the undersigned attorney to research the matter and file this motion. This continued use of the water, combined with Simplot’s immediate effort to correct the oversight, demonstrates that the failure to file a timely claim was not willful.

B. Allowing a Late Claim Will Not Prejudice of Water Users.

No water users will be prejudiced by the granting of this motion. Indeed, notwithstanding the failure to file a claim for this water right, Simplot has continuously diverted and applied the water to a beneficial use since it acquired the property in 1984. *Parks Aff.* As such, it should not come as a surprise to the area water users that Simplot seeks to claim its water in the SRBA. It is unlikely any water user would assert prejudice as a result of this claim.

That notwithstanding, any water user who may feel that he or she will be prejudiced by this late claim may participate in the proceedings before the SRBA by filing an objection and/or

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response. In other words, such a water user will have a full and fair opportunity to address his or her concerns before this Court.

To the contrary, denying this motion will result in a previously decreed water right, which has been diverted and continuously used, being lost due to an unintentional oversight. Since there is no prejudice in granting this motion and any concerns can be addressed through the objection/response process, the motion should be granted.

C. Simplot has Presented a Meritorious Position.

Finally, a meritorious position has been presented. Water right 65-9429 was decreed in the Payette Adjudication. *Arrington Aff.* Ex. B. In association with that adjudication, the water right was claimed, reviewed and recommended to the Court and, finally, decreed. *Id.* Simplot acquired the property in 1984 and then conveyed the property to ML Investments in 1999, before reacquiring the property in 2008. *Id.* at Ex. A. During this time, the water right has been beneficially used as decreed in the Payette Adjudication. *Parks Aff.*

This, combined with the fact that the failure to file in the SRBA was merely an oversight – not a willful act – and that there will be no prejudice, confirms that a meritorious position warrants an order granting Simplot’s motion.

CONCLUSION

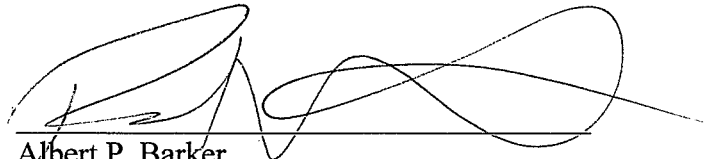
Through this motion, Simplot seeks authority to file a late claim for a water right previously decreed in the Payette Adjudication. As discussed above, failure to file a timely claim was not willful and there will be no prejudice in granting this motion. Accordingly, since a meritorious position has been presented, the Court should grant this motion.

///

///

DATED this 30th day of March, 2012.

BARKER ROSHOLT & SIMPSON LLP

A handwritten signature in black ink, appearing to be 'Albert P. Barker', written over a horizontal line.

Albert P. Barker
Paul L. Arrington

Attorneys for J.R. Simplot Company

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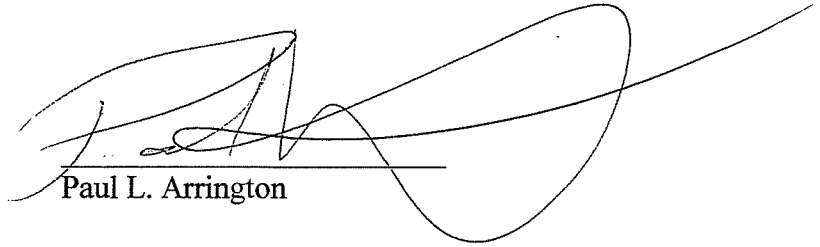
CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of March, 2012, I served a true and correct copy of the foregoing document(s) on the person(s) listed below, in the manner indicated:

IDWR Document Depository
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Boise, Idaho 83720-0098

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

United States Department of Justice
Environment and Natural Resource Division
550 West Fort St., MSC 033
Boise, Idaho 83724



Paul L. Arrington

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Albert P. Barker, ISB #2867
Paul L. Arrington, ISB #7198
BARKER ROSHOLT & SIMPSON LLP
113 Main Ave. West, Suite 303
P.O. Box 485
Twin Falls, Idaho 83303-485
Telephone: (208) 733-0700
Facsimile: (208) 735-2444

Attorneys for J.R. Simplot Company

DEPARTMENT OF
WATER RESOURCES

DISTRICT COURT - SRBA Fifth Judicial District County of Twin Falls - State of Idaho
MAR 30 2012
By _____
_____ Clerk
_____ Deputy Clerk

**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. 65-9429

AFFIDAVIT OF PAUL L. ARRINGTON

I, PAUL L. ARRINGTON, being first duly sworn upon oath, deposes and hereby states as follows:

1. I reside in Twin Falls County and I am over the age of 18. I am an attorney representing the J.R. Simplot Company.
2. Attached hereto, as Exhibit A, is a true and correct copy of the March 16, 2012 *Notice of Change in Water Right Ownership*, with attachments, filed with the Idaho Department of Water Resources on March 19, 2012.
3. Attached hereto, as Exhibit B, is a true and correct copy of excerpts from the decree issued in the Payette Adjudication.
4. Attached hereto, as Exhibit C, is a true and correct copy of the Partial Decree issued by this Court for water right 65-6356 on September 25, 1998.

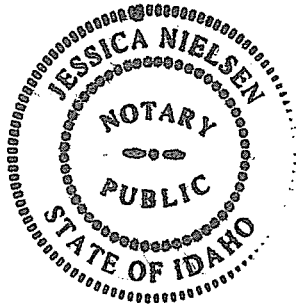
AFFIDAVIT OF PAUL L. ARRINGTON

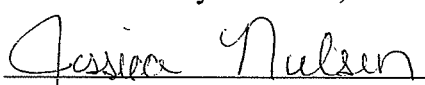
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FURTHER YOUR AFFIANT SAYETH NAUGHT


Paul L. Arrington

SUBSCRIBED & SWORN to before me this 30th day of March, 2012.




Notary Public in and for the State of Idaho
My Commission Expires: 4/3/18

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CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of March, 2012, I served a true and correct copy of the foregoing document(s) on the person(s) listed below, in the manner indicated:

Original to:

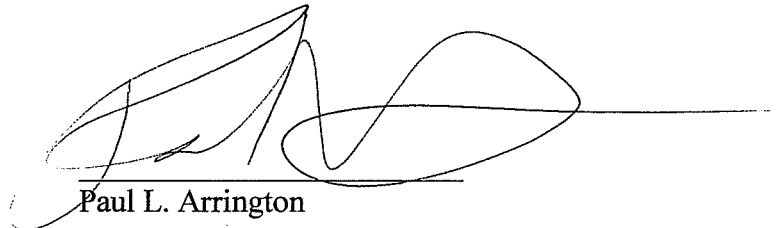
Clerk of the District Court
Snake River Basin Adjudication
253 3rd Ave North
P.O. Box 2707
Twin Falls, Idaho 83303-2707

Copies to:

IDWR Document Depository
P.O. Box 83720
Boise, Idaho 83720-0098

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

United States Department of Justice
Environment and Natural Resource Division
550 West Fort St., MSC 033
Boise, Idaho 83724



Paul L. Arrington

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Exhibit A

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STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

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MAR 19 2012

Notice of Change in Water Right Ownership

WATER RESOURCES
WESTERN REGION

1. List the numbers of all water rights and/or adjudication claim records to be changed. If you only acquired a portion of the water right or adjudication claim, check "Yes" in the "Split?" column.

Water Right/Claim No.	Split?	Water Right/Claim No.	Split?	Water Right/Claim No.	Split?
PD 65-9429	Yes ☐		Yes ☐		Yes ☐
PD 65-6356	Yes ☐	NOT CHANGED	Yes ☐		Yes ☐
	Yes ☐		Yes ☐		Yes ☐
	Yes ☐		Yes ☐		Yes ☐
	Yes ☐		Yes ☐		Yes ☐

2. Previous Owner's Name: Linda Johaneck, Robert F Johaneck, Paul Johaneck

Name of current water right holder/claimant

3. New Owner(s)/Claimant(s): J. R. SIMPLOT COMPANY

Name of each new owner as listed on the conveyance document

New owner continued Name connector ☐ and ☐ or ☐ and/or

PO BOX 27

Mailing address

BOISE

City

ID
State

83707
ZIP

208-336-2110

Telephone

Email

4. If the water rights and/or adjudication claims were split, how did the division occur?

- ☐ The water rights or claims were divided as specifically identified in a deed, contract, or other conveyance document.
☐ The water rights or claims were divided proportionately based on the portion of their place(s) of use acquired by the new owner.

5. Date you acquired the water rights and/or claims listed above: January 19, 1984

6. This form must be signed and submitted with the following **REQUIRED** items:

- A copy of the conveyance document – warranty deed, quitclaim deed, court decree, contract of sale, etc. The conveyance document must include a legal description of the property or description of the water right(s) if no land is conveyed.
- Plat map, survey map or aerial photograph which clearly shows the place of use and point of diversion for each water right and/or claim listed above (if necessary to clarify division of water rights or complex property descriptions).
- Filing fee (see instructions for further explanation):
 - \$25 per undivided water right.
 - \$100 per split water right.
 - No fee is required for pending adjudication claims.

7. Signature: [Signature]

Signature of new owner/claimant

TERRY T. UHLING

Signature: [Signature]

Signature of new owner/claimant

Title, if applicable Senior Vice
President, Secretary &
General Counsel

Title, if applicable

3/16/12
Date

Date

SCANNED

For IDWR Office Use Only:

Received by RS

Date 3-19-12

Receipt No. W039990/W039991

Receipt Amt. \$25-/\$25-5 2012

Approved by [Signature]

Processed by [Signature]

Date [Signature]

0353384

0024050

BARGAIN AND SALE DEED

GRANTOR, **ML INVESTMENT COMPANY**, a Nevada corporation, of 999 Main Street, Suite 1300, Boise ID 83702 for Ten Dollars and other good and valuable consideration, the receipt of which is hereby acknowledged, does hereby bargain, sell and convey unto **J.R. SIMPLOT COMPANY**, a Nevada corporation, whose principal address is 999 Main Street, Suite 1300, Boise ID 83702 as GRANTEE, and to GRANTEE's successors and assigns forever, all of the following described real estate located in Payette County, State of Idaho:

PLEASE SEE ATTACHED EXHIBIT "A" LEGAL DESCRIPTION

TOGETHER WITH all improvements, easements, hereditaments and appurtenances thereto, and SUBJECT TO such rights, easements, covenants, restrictions and zoning regulations as appear of record or by use upon the premises.

In construing this deed, and where the context so requires, the singular includes the plural and the masculine, the feminine and the neuter.

IN WITNESS WHEREOF, GRANTOR has hereunto caused this deed to be executed in its corporate name this 9th day of May, 2008.

ML INVESTMENT COMPANY

By Debbie S. McDonald
Debbie S. McDonald

Instrument # 353384

PAYETTE COUNTY
5-16-2008 02:19:12 No. of Pages: 2
Recorded for: AMERITITLE
BETTY J. DRESSEN
Ex-Officio Recorder Deputy
Index to: BARGAIN & SALE DEED

Kathleen D. Hruska
Deeds

STATE OF IDAHO)
County of ADA) ss.

On this 9th day of May, 2008 before me, a Notary Public in and for said State, personally appeared Debbie McDonald, known to me to be the PRESIDENT, respectively of M. L. Investment Company, the corporation that executed the within instrument, and acknowledged to me that said corporation executed the same. IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



George R. Amodeo
Notary Public for Idaho
Residing at: BOISE, ID
My Commission Expires: JUNE 13, 2012

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Exhibit A

Legal Description

In Twp. 7 N., R.5 W., B.M., Payette County, Idaho:

In Sec. 9: NE1/4NE1/4 and W1/2SE1/4NE1/4.

AND

A parcel of land situated in the W1/2NE1/4 of said Sec 9, being more particularly described as follows:

Beginning at the Southwest corner of said W1/2NE1/4; thence North 0°09' 00" West along the West boundary line of said W1/2NE1/4 2667.25 feet to the Northwest corner of said W1/2NE1/4; thence North 89 ° 54'45" East along the North boundary line of said W1/2NE1/4 651.99 feet to the REAL POINT OF BEGINNING;

thence continuing North 89°54'45" East 673.3 feet to the Northeast corner of said W1/2NE1/4

thence South 0°07'17" East along the East boundary line of said W1/2NE1/4 2078.46 feet;

thence North 89°33'48" West 417.55 feet;

thence South 33° 18' 24" West 461.89 feet;

thence North 0° 09' 00" West 2448.37 feet more or less to a point on the North boundary line of said W1/2NE1/4 and the POINT OF BEGINNING.

Together with all water rights appurtenant thereto including, but not limited to, Idaho Department of Water Resources water right no. 65-9429.

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COPY

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BARGAIN AND SALE DEED

FOR VALUE RECEIVED, **J. R. SIMPLOT COMPANY**, a Nevada corporation, successor by merger to Payette Farms Company, an Idaho corporation, as to Parcel I; **J. R. SIMPLOT COMPANY**, a Nevada corporation, as to Parcel II; and **J. R. SIMPLOT COMPANY**, a Nevada corporation, successor by merger to Simplot Industries, Inc., a Utah corporation, by merger with P & F Storage Co., an Idaho corporation, as to Parcel III, as Grantor, does hereby grant, bargain, sell and convey unto **ML INVESTMENT COMPANY**, a Nevada corporation, as Grantee, whose current address is P.O. Box 27, Boise, Idaho 83707, all that certain real property located in Payette County, Idaho and as more particularly described on Exhibit A attached hereto and made a part hereof by this reference.

TOGETHER WITH all improvements, easements, hereditaments and appurtenances thereto, and subject to such rights, easements, covenants, restrictions and zoning regulations as appear of record or based upon the premises.

IN WITNESS WHEREOF, the Grantor has caused its corporate name to be hereunto subscribed by its President, and its corporate seal to be affixed by its Secretary, this 30th day of April, 1999.

280965

J. R. SIMPLOT COMPANY

STATE OF IDAHO }
County of Payette } ssBy: Stephen A. Beebe
Its PresidentI hereby certify that this instrument
was filed for record at the request of
FIRST AMERICAN TITLE CO.

ATTEST:

By: Laura L. Stigle
SecretaryTime 4:00 PM
Date May 3, 1999
Instrument # 280965 Seeds

LAURAL L. STIGLE

By: Laura L. Stigle Official Recorder
DeputyFee \$15.00STATE OF IDAHO)
County of Ada) ss.

On this 30th day of April, 1999, before me, a Notary Public in and for said State, personally appeared STEPHEN A. BEEBE and RONALD N. GRAVES, the President and Secretary, respectively, of the corporation that executed the foregoing instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

R. Scott Fusley
Notary Public for Idaho
Residing at Boise, Idaho
My Commission Expires: 5-13-2003

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EXHIBIT "A"

PARCEL I:

In Twp. 8 N., R. 3 W., B.M. Payette County, Idaho:
In Sec. 6: Government Lot 7;
In Sec. 7: W1/2;
In Sec. 18: NW1/4 and NW1/4SW1/4;

In Twp. 8 N., R. 4 W., B.M., Payette County, Idaho:
In Sec. 1: S1/2S1/2 and N1/2SW1/4;
In Sec. 2: The North 466.7 feet of the East 466.7 feet of
the NE1/4SE1/4;
In Sec. 12: All of said Section;
In Sec. 13: N1/2; N1/2SW1/4 and SW1/4SW1/4;

AND Beginning at the East Quarter corner of Section 13, Township
8 North, Range 4 West, B.M.;

Thence North 89°34' West along the midsection line of said
Section 13 a distance of 1,764 feet more or less to a fence,
the true POINT OF BEGINNING;

Thence South 50°7.5' West along said fence a distance of
1,107.5 feet to a point on the West boundary of the
NW1/4SE1/4;

Thence North along the West boundary of the NW1/4SE1/4 a
distance of 710 feet more or less to the North boundary of the
NW1/4SE1/4;

Thence South 89°34' East along the North boundary of the
NW1/4SE1/4 850 feet to the TRUE POINT OF BEGINNING.

In Sec. 14: S1/2SE1/4;
In Sec. 23: N1/2 SAVE AND EXCEPTING the N1/2N1/2NW1/4 and
In Sec. 24: W1/2NW1/4.

In Twp. 8 N., R. 4 W., B.M., Payette County, Idaho:
In Sec. 2: The SE1/4 SAVE AND EXCEPT the North 466.7 feet of
the East 466.7 feet thereof;
the E1/2SW1/4;
the SW1/4SW1/4;
and that portion of Government Lot 4 lying North
and West of the County Road crossing said legal
subdivision SAVE AND EXCEPT the following portion
thereof:
Beginning at a point 70 feet, more or less, West of
the NE corner of said Lot 4, which point is

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APR - 5 1912

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EXHIBIT "A" CONTINUED

identical with that point where the North line of said Lot 4 intersects the West side line of the right-of-way of the county road as now located; run thence West following the said North side line of said Lot 4 a distance of 625 feet; thence South at right angles to said North line of said Lot 4 to the right-of-way of the aforesaid county road; thence following the said right-of-way of said county road in a Northeasterly direction to the point of beginning;

In Sec. 3: Government Lots 2, 3, and 4;
The S1/2NW1/4 and the SW1/4;

In Sec. 10: The SE1/4NE1/4; W1/2NE1/4; SE1/4; E1/2SW1/4;
N1/2NW1/4SW1/4; E1/2SE1/4NW1/4SW1/4; NW1/4 SAVE AND
EXCEPT THE S1/2NE1/4SE1/4NW1/4 and the
N1/2SE1/4SE1/4NW1/4;

In Sec. 11: All of said Section;
In Sec. 14: The N1/2; N1/2S1/2; and S1/2SW1/4;
In Sec. 15: All of said Section;
In Sec. 22: The N1/2;
In Sec. 23: The N1/2N1/2NW1/4;

In Sec. 27: A parcel of land in the SW1/4NE1/4 more particularly described as follows:
Beginning at the North quarter corner of said Section 27;
run thence S. 0°13' W. on the midsection line of said Sec. 27 a distance of 1589.8 feet to a point on the Southerly right-of-way of State Highway #52; said point being the REAL POINT OF BEGINNING;
thence continuing S. 0°13' W. along said midsection line a distance of 898.4 feet to a point on the Northerly bank of the main channel of the Payette River;
thence S. 40°58.5' E. along the Northerly bank of said Payette River a distance of 200.0 feet to a point;
thence N. 0°13' E. a distance of 200.0 feet to a point;
thence N. 40°58.5' W. a distance of 169.6 feet to a point;
thence N. 0°13' E. a distance of 700.0 feet to a point on the Southerly right-of-way of State Highway #52;

CONTINUED

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APR 5 2012

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Page 3

EXHIBIT "A" CONTINUED

thence Westerly on the arc of a circle 2825.0 feet in radius curving to the left an arc distance of 29.1 feet, along the Southerly right-of-way line of said Highway, the chord of said arc running N. 42° 51.3' W. a distance of 29.1 feet to the real point of beginning.

AND

A parcel of land in the SW1/4NE1/4 of Section 27, Township 8 North, Range 4 West, B.M. more particularly described as follows:

Beginning at the north quarter corner of said Section 27, Township 8 North, Range 4 West, B.M.;

Thence South 0°13' West along the midsection line of said Section 27 a distance of 2,488.2 feet to a point on the northerly bank of the main channel of the Payette River;

Thence South 40°58.5' East a distance of 200 feet to the true point of beginning;

Thence South 40°58.5' East along the northerly bank of the main channel of the Payette River a distance of 200 feet to a point;

Thence North 14°02' East a distance of 240 feet to a point;

Thence North 70°20' West a distance of 200 feet to the easterly line of the parcel of land on which the Payette Farms Company's pumping plant is situated;

Thence South 0°13' West a distance of 150 feet to the northerly bank of the main channel of the Payette River to the point of beginning.

In Twp. 9 N., R. 4 W., B.M., Payette County, Idaho:
In Sec. 34: The SW1/4NW1/4; and the S1/2.

PARCEL II:

In Twp. 7 N., R. 5 W., B.M., Payette County, Idaho:

In Sec. 9: NE1/4NE1/4 and W1/2SE1/4NE1/4.

AMM

SCANNED

APR - 5 2012

280965

Page 4

FA-11224

EXHIBIT "A" CONTINUED

A parcel of land situated in the W1/2NE1/4 of said Sec. 9, being more particularly described as follows:

Beginning at the Southwest corner of said W1/2NE1/4; thence North 0°09'00" West along the West boundary line of said W1/2NE1/4 2667.25 feet to the Northwest corner of said W1/2NE1/4; thence North 89°54'45" East along the North boundary line of said W1/2NE1/4 651.99 feet to the REAL POINT OF BEGINNING;

thence continuing North 89°54'45" East 673.3 feet to the Northeast corner of said W1/2NE1/4;

thence South 0°07'17" East along the East boundary line of said W1/2NE1/4 2078.46 feet;

thence North 89°33'48" West 417.55 feet;

thence South 33°18'24" West 451.89 feet;

thence North 0°09'00" West 2448.37 feet more or less to a point on the North boundary line of said W1/2NE1/4 and the POINT OF BEGINNING.

PARCEL III:

The South Half of the Northeast Quarter of the Southeast Quarter of the Northwest Quarter (S1/2NE1/4SE1/4NW1/4) and the North Half of the Southeast Quarter of the Southeast Quarter of the Northwest Quarter (N1/2SE1/4SE1/4NW1/4) of Section Ten (10), Township Eight (8) North, Range Four (4) West, Boise Meridian, Payette County, Idaho.

State of Idaho ss
County of Payette

I hereby certify that the foregoing instrument is a true and correct copy of the original on file in this office.

Dated APR 09 2001
LAURA L. STIGILE

Clerk of the District Court and
Ex-Officio Auditor and Recorder

By [Signature] Deputy

SCANNED

APR - 5 2012

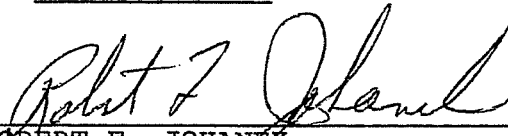
STATE OF IDAHO

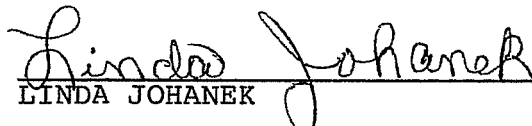
DEPARTMENT OF WATER RESOURCES

ASSIGNMENT OF PERMIT

We, Robert F. Johanek, Linda Johanek and Paul Johanek, hereby assign to J. R. Simplot Company of P.O. Box 27, Boise, Idaho 83707, all our right, title and interest in and to said Claim Number 65-6356 to appropriate the public waters of the State of Idaho.

Made this 19 day of January, 1984.


ROBERT F. JOHANEK

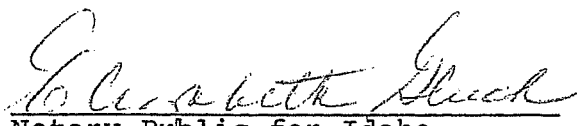

LINDA JOHANEK


PAULA JOHANEK

STATE OF IDAHO)
COUNTY OF ADA)

On this 23rd of January, 1984, before me, a Notary Public in and for said State, personally appeared Robert F. Johanek, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that said person executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

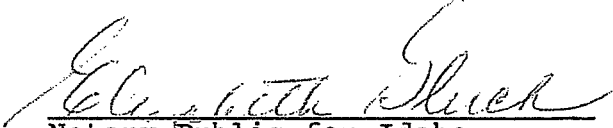

Notary Public for Idaho
Residing at 777 N. 1st St. Idaho
My Commission Expires: 7-25-85

SCANNED
APR - 5 2012

STATE OF IDAHO)
)
COUNTY OF ADA)

On this 23rd of January, 1984, before me, a Notary Public in and for said State, personally appeared Linda Johaneck, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that said person executed the same.

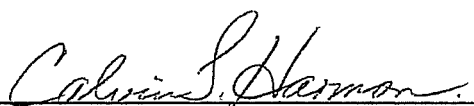
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.


Notary Public for Idaho
Residing at ~~Kingston~~ Idaho
My Commission Expires: 7-25-85

STATE OF IDAHO)
)
COUNTY OF ADA)

On this 19 of January, 1984, before me, a Notary Public in and for said State, personally appeared Paul Johaneck, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that said person executed the same.

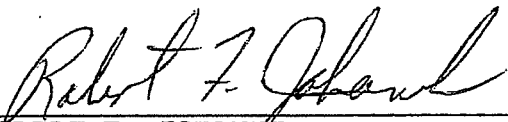
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.


Notary Public for Idaho
Residing at Fruitland Idaho
My Commission Expires: 8/31/85

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
ASSIGNMENT OF PERMIT

We, Robert F. Johanek, Linda Johanek and Paul Johanek, hereby assign to J. R. Simplot Company of P.O. Box 27, Boise, Idaho 83707, all our right, title and interest in and to said Claim Number 65-9429 to appropriate the public waters of the State of Idaho.

Made this 19 day of January, 1984.


ROBERT F. JOHANEK

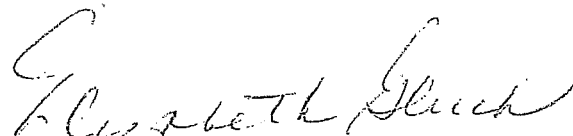

LINDA JOHANEK


PAULA JOHANEK

STATE OF IDAHO)
COUNTY OF ADA)

On this 23rd of January, 1984, before me, a Notary Public in and for said State, personally appeared Robert F. Johanek, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that said person executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.


Notary Public for Idaho
Residing at Kingfield, Idaho
My Commission Expires: 7-25-85

SCANNED

APR - 5 2012

STATE OF IDAHO)
)
COUNTY OF ADA)

On this 27th of January, 1984, before me, a Notary Public in and for said State, personally appeared Linda Johanek, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that said person executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Cheryl Tyler
Notary Public for Idaho
Residing at Blainville, Idaho
My Commission Expires: July 23, 1984

STATE OF IDAHO)
)
COUNTY OF ADA)

On this 19 of January, 1984, before me, a Notary Public in and for said State, personally appeared Paul Johanek, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that said person executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Calvin S. Harman
Notary Public for Idaho
Residing at Fruitland, Idaho
My Commission Expires: 8/31/85

WARRANTY DEED

THIS INDENTURE, Made this 19 day of January, 1984, between MICHAEL J. DAY, a single man of County of Payette, State of Idaho, the party of the first part, and J. R. SIMPLOT COMPANY, a Nevada corporation whose current mailing address is P.O. Box 27, Boise, Idaho 83707, the party of the second part,

W I T N E S S E T H:

THAT the said party of the first part, for and in consideration of the sum of Ten and no/100 (\$10.00) Dollars, of the United States of America, to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained and sold, and by these presents does grant, bargain, sell, convey and confirm unto the said party of the second art, and to its successors and assigns forever, all the following described real estate, situated in Payette County, State of Idaho, to-wit:

In Twp. 7 N., R. 5 W., B.M., Payette County, Idaho:

In Sec. 9: NE 1/4 NE 1/4 and W 1/2 SE 1/4 NE 1/4.

TOGETHER with personal property consisting of a pump and irrigation lines.

TOGETHER with any and all water, water rights, ditches, ditch rights, minerals, mineral leases, and any and all irrigation rights appurtenant to said lands or in anywise connected therewith.

SUBJECT to the rights of the owner of an undivided on-half of the minerals as reserved by A. S. Capps and Florence L. Capps, husband and wife, in Deed recorded March 7, 1957, Fee #96822, Deed Records of Payette County, Idaho.

SUBJECT to all valid outstanding reservations, easements, rights-of-way, restrictions, dedications, mineral leases, mineral reservations, and mineral conveyances of record.

TOGETHER with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining, the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all estate, right, title and interest in and to the said property, as well in law as in equity, of the said party of the first part.

SCANNED

APR - 5 2012

218821

TO HAVE AND TO HOLD, all and singular the above mentioned and described premises, together with the appurtenances, unto the party of the second part, and to its successors and assigns forever. And the said party of the first part, and his heirs, the said premises in the quiet and peaceable possession of the said party of the second part, its successors and assigns, against the said party of the first part, and its successors and against all and every person and persons whomsoever, lawfully claiming or to claim the same shall and will WARRANT and by these presents forever DEFEND.

IN WITNESS WHEREOF, the said party of the first part has hereunto set his hand and seal the day and year first above written.

Michael J. Day
MICHAEL J. DAY

STATE OF IDAHO)
)
COUNTY OF ADA)

On this 19 of January, 1984, before me, a Notary Public in and for said State, personally appeared Michael J. Day, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that said person executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Calvin S. Herman
Notary Public for Idaho
Residing at Fruitland Idaho

218821

State of Idaho, County of Payette

I certify that this instrument was filed for record at the request of Land Title Insurance Company

June 3, 1987 at 4:26 P. M. in Book 48 of Deeds, page 218821.

Laura L. Stigile, Ex-Officio Recorder by L. L. Stigile Deputy

Fee: \$4.00

Exhibit B

FILED

JAN 21 1986

Thelma R. Kolodziej CLERK

Karen Browne DEPUTY

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR GEM COUNTY

IN THE MATTER OF THE GENERAL	)	
DETERMINATION OF THE RIGHT TO	)	Civil No. 3667
THE USE OF SURFACE AND GROUND-	)	
WATER OF THE PAYETTE RIVER	)	PARTIAL DECREE
DRAINAGE.	)	PURSUANT TO RULE
	)	54(b) I.R.C.P.

The report of the Director of the Idaho Department of Water Resources (Director herein) entitled PROPOSED FINDING OF WATER RIGHTS IN THE PAYETTE RIVER DRAINAGE BASIN (PROPOSED FINDING herein) was filed with this court on April 26, 1979. The report contains Findings of Fact, Conclusions of Law, Statutory and Decreed Rights not Claimed, Claims Submitted: Recommended to be Disallowed; Surface Water Rights, and Groundwater Rights.

As a result of the resolution of objections filed to the PROPOSED FINDING, certain amendments, additions, and deletions have occurred to the PROPOSED FINDING as set forth in the following stipulations and court orders on file with the court:

1. ORDER CONFORMING PROPOSED FINDING OF WATER RIGHTS TO UNCONTESTED OBJECTIONS - filed September 26, 1979;
2. ORDER (Orville Jackson) - filed February 26, 1982;
3. STIPULATION RESOLVING ECKROAT OBJECTION - filed May 12, 1980;
4. STIPULATION RESOLVING STRINGER OBJECTION - filed

May 5, 1980;

5. STIPULATION RESOLVING OBJECTION OF UNITED STATES -
filed February 18, 1982;

6. STIPULATION RESOLVING MITCHELL OBJECTION - filed
May 12, 1980;

7. ORDER ALLOWING FILING OF LATE OBJECTION TO PROPOSED
FINDINGS OF WATER RIGHTS AND AMENDING SUCH FINDINGS TO INCLUDE
WATER RIGHT OF MCCALL-DONNELLY SCHOOL DISTRICT No. 421 - filed
September 24, 1983;

8. ORDER ALLOWING FILING OF LATE OBJECTION TO PROPOSED
FINDINGS OF WATER RIGHTS AND AMENDING PROPOSED FINDING OF WATER
RIGHTS (Thomas J. Davis and Jemima K. Davis) - filed July 12,
1982.

9. STIPULATION AND ORDER (Pancheri and MacGregor Land
and Livestock Company) - filed December 21, 1984.

The PROPOSED FINDING has also been corrected for clerical
errors pursuant to court order:

1. ORDER CORRECTING CLERICAL OVERSIGHTS IN PROPOSED
FINDING OF WATER RIGHTS - filed September 28, 1979;

2. ORDER CORRECTING CLERICAL ERRORS - filed November
25, 1985.

This partial decree does not include any of the
PROPOSED FINDING which is still involved in unresolved objections.
The attached Exhibit A lists the water rights which are
not included in the partial decree because they are involved in

RECORDED
JUL 24 1996

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APR - 5 2012

unresolved objections. The reserved water right claims of the United States Department of Agriculture, Forest Service, are also not included because they are currently the object of negotiations between the State of Idaho and the United States. Those reserved right claims are listed in Exhibit B. In addition, those water rights which were part of the court decision in Branson v. Miracle, 107 Idaho 221 (1984), are not included in this partial decree.

IT IS HEREBY ORDERED, ADJUDGED and DECREED, that the water rights of the Payette River Drainage Basin with the exceptions noted above are as described in the PROPOSED FINDING, as amended by:

1. ORDER CONFORMING PROPOSED FINDING OF WATER RIGHTS TO UNCONTESTED OBJECTIONS - filed September 26, 1979;
2. ORDER (Orville Jackson) - filed February 26, 1982;
3. STIPULATION RESOLVING ECKROAT OBJECTION - filed May 12, 1980;
4. STIPULATION RESOLVING STRINGER OBJECTION - filed May 5, 1980;
5. STIPULATION RESOLVING OBJECTION OF UNITED STATES - filed February 18, 1982;
6. STIPULATION RESOLVING MITCHELL OBJECTION - filed May 12, 1980;
7. ORDER ALLOWING FILING OF LATE OBJECTION TO PROPOSED FINDINGS OF WATER RIGHTS AND AMENDING SUCH FINDINGS TO INCLUDE

JUL 24 1995

SCANNED
APR - 5 2012

WATER RIGHT OF McCALL-DONNELLY SCHOOL DISTRICT No. 421 - filed
September 24, 1983;

8. ORDER ALLOWING FILING OF LATE OBJECTION TO PROPOSED
FINDINGS OF WATER RIGHTS AND AMENDING PROPOSED FINDING OF WATER
RIGHTS (Thomas J. Davis and Jemima K. Davis) - filed July 12,
1982.

9. STIPULATION AND ORDER (Pancheri and MacGregor Land
and Livestock Company) - filed December 21, 1984.

10. ORDER CORRECTING CLERICAL OVERSIGHTS IN PROPOSED
FINDING OF WATER RIGHTS - filed September 28, 1979;

11. ORDER CORRECTING CLERICAL ERRORS - filed November
25, 1985, all of which are incorporated herein by reference.

DATED this 20th day of December, 1985.


JIM R. DOONITTLE
District Judge

Rule 54(b) Certificate

With respect to the issues determined by the above
judgment, it is hereby CERTIFIED, in accordance with the Rule
54(b), I.R.C.P., that the court has determined that there is no
just reason for delay of the entry of a final decree and that the
court has and does direct that the above partial decree shall be
a final judgment upon which execution may issue and appeal may be
taken as provided by the Idaho Appellate Rules.

JUL 24 1986

SCANNED
APR - 5 2012

DATED this 20th day of December, 1985.

Jim R. Doolittle
JIM R. DOOLITTLE
District Judge

STATE OF IDAHO)
County of Gem) ss.

I certify that the foregoing
is a true and correct copy
of the original on file in
this office.

DATED 4-29-86

Thelma R. Kolodziej, Clerk

By: Karen Brown Deputy

MAR 02, 1979

PROPOSED FINDING OF WATER RIGHTS - PAYETTE RIVER DRAINAGE

PAGE 481

INDICATES TOTAL

SOURCE: SPRINGS

TRIBUTARY TO: LITTLE SQUAM CREEK

RIGHT NUMBER	NAME AND ADDRESS	PRIORITY DATE	USE	USE PERIOD FROM TO	MAX AMOUNT MAX RATE	DIVERSION POINT	PLACE OF USE AND ACREAGE	BASIS FOR RIGHT
-----------------	---------------------	------------------	-----	-----------------------	------------------------	--------------------	-----------------------------	--------------------

65-7444

BEAL, HOMER C.
ULA, IDAHO 83657

12/12/1973

STOCKWATER

1/ 1 12/31

1.40 AFA
.03 CFSSENE S13
T10N R 2ESENE
S13 T10N R 2E

PERMIT

REMARKS: THIS RIGHT WHEN
COMBINED WITH RIGHT 65-7445
SHALL PROVIDE NO MORE THAN .03
CFS NOR 1.4 AFA. THIS PERMIT
RIGHT IS NOT DECEED BY THE
PRESENT ADJUDICATION
PROCEDURE, AND IS INCLUDED FOR
INFORMATION PURPOSES ONLY.
NORMAL STATUTORY PROCEDURES
MUST BE COMPLETED FOR
LICENSING.

65-7445

BEAL, HOMER C.
ULA, IDAHO 83657

12/12/1973

STOCKWATER

1/ 1 12/31

1.40 AFA
.03 CFSSENE S13
T10N R 2ESENE
S13 T10N R 2E

PERMIT

REMARKS: THIS RIGHT WHEN
COMBINED WITH RIGHT 65-7444
SHALL PROVIDE NO MORE THAN .03
CFS NOR 1.4 AFA. THIS PERMIT
RIGHT IS NOT DECEED BY THE
PRESENT ADJUDICATION
PROCEDURE, AND IS INCLUDED FOR
INFORMATION PURPOSES ONLY.
NORMAL STATUTORY PROCEDURES
MUST BE COMPLETED FOR
LICENSING.

INDICATES TOTAL

SOURCE: SPRINGS

TRIBUTARY TO: LITTLE WHITLEY GULCH

RIGHT NUMBER	NAME AND ADDRESS	PRIORITY DATE	USE	USE PERIOD FROM TO	MAX AMOUNT MAX RATE	DIVERSION POINT	PLACE OF USE AND ACREAGE	BASIS FOR RIGHT
-----------------	---------------------	------------------	-----	-----------------------	------------------------	--------------------	-----------------------------	--------------------

65-9429

JUHANEK, ROBERT F. G
JUHANEK, LINDA G
JUHANEK, PAUL
ROUTE 1, FRUITLAND, IDAHO
83619

4/ 1/1965

IRRIGATION

3/15 11/15

--- AFA
.44 CFSNENE S 9
T 7N R 5NNENE(15)
S 9 T 7N R 5NBENEFICIAL
USEIRRIGATION
FROM STORAGE

1/ 1 12/31

5.00 AFA
--- CFS
*---AFA
*.44+CFS

SAFE AS OTHER USE

Exhibit C

SCANNED
APR - 5 2012

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)
PARTIAL DECREE PURSUANT TO
I.R.C.P. 54(b) FOR
Water Right 65-06356

NAME AND ADDRESS: LINDA F JOHANEK
ROBERT F JOHANEK
5515 WHITLEY DR
FRUITLAND, ID 83619

PAUL JOHANEK
RT 1
FRUITLAND, ID 83619

SOURCE: GROUNDWATER

QUANTITY: 0.04 CFS
1.20 AFY

THE QUANTITY OF WATER UNDER THIS RIGHT SHALL NOT EXCEED 13,000
GALLONS PER DAY.

PRIORITY DATE: 06/01/1965

POINT OF DIVERSION: T07N R05W S08 NENE Within Payette County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Domestic 1 HOME	01-01 TO 12-31	0.04 CFS 1.20 AFY

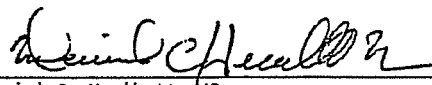
PLACE OF USE: Domestic T07N R05W S08 NENE Within Payette County

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

THE QUANTITY OF WATER DECREED FOR THIS WATER RIGHT IS NOT A
DETERMINATION OF HISTORICAL BENEFICIAL USE.

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.


Daniel C. Hurlbutt, JR.
Presiding Judge
Snake River Basin Adjudication