



State of Idaho

DEPARTMENT OF WATER RESOURCES

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C.L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

August 14, 2012

J R SIMPLOT CO
C/O VIC CONRAD
PO BOX 27
BOISE, ID 83707

Re: Water right number 63-33515

Dear Water Right Holder:

I am writing today to inform you of a potential problem IDWR has discovered--regarding how the water right referenced above was recommended or decreed in the SRBA--that may affect future administration of the right, and to explain IDWR's proposal to rectify the situation.

As you likely are aware, the water right referenced above is part of a group of sixteen water rights in Basin 63 which have been referred to as the "Bryan Decree rights." This reference is to the decree entered in the case of *Pioneer Irrigation District v. American Ditch Association, et al.* (Seventh Judicial District, Canyon County, decree entered by Judge E. L. Bryan on February 14, 1929). This case was begun in 1913, following entry of what generally is referred to as the "Stewart Decree" of the rights on the Boise River in the case of *Farmers' Cooperative Ditch Company, Inc. v. Riverside Irrigation District, Ltd., et al.* (Seventh Judicial District, Canyon County, decree entered by Judge George H. Stewart on January 18, 1906). The purpose of the *Pioneer Irrigation District v. American Ditch Association, et al.*, case was to adjudicate a small number of rights that for various reasons had not been previously adjudicated and decreed in the Stewart Decree. These rights were decreed in the February 14, 1929, Bryan Decree, but that decree imposed upon them the following limitation:

[A]ll rights and amounts of water herein awarded are and are hereby decreed to be subject, subsequent and inferior to all the rights and priorities established by and awarded in said Stewart Decree.

Eleven rights originally were made subject to this limitation. Two more were added by a subsequent order entered in the case by Judge A. O. Sutton on January 30, 1932 entitled *Order for Distribution of Waters of Boise River for 1932*, which order in turn was extended by a subsequent order entered by Judge Charles E. Winstead on June 23, 1933, entitled *For 1933 and until Further Order of the Court*, an order still in effect today. Three other rights were added to the list of "Bryan Decree rights" by two subsequent decrees which made the rights contained therein subject to both the Stewart and Bryan Decrees. A complete list of the "Bryan Decree rights" is enclosed with this letter.

The rights on the Bryan Decree list all have priority dates senior to one or more rights contained in the Stewart Decree, but because of the limitation quoted above the watermaster historically has subordinated them to the Stewart Decree rights junior to them. This subordination was carried over into the SRBA recommendations for Basin 63.

However, in making its recommendations IDWR placed language referencing the subordination not on the Bryan Decree rights that were subordinated to one or more Stewart Decree rights, but rather on the Stewart Decree rights that receive the benefit of the subordination. IDWR has now determined that this approach was flawed because IDWR did not likewise place notice of the subordination on the rights that are subject to the burden of the subordination. IDWR should have placed language referencing the subordination also on the Bryan Decree rights to better communicate how they historically have been administered and to provide clear instruction to the watermaster.

Of the sixteen "Bryan Decree rights," one was not claimed in the SRBA, three are still before the SRBA Court, and the remaining twelve have been partially decreed. For the three still before the SRBA Court, IDWR intends to discuss this problem with the parties to those subcases as part of the ongoing objection resolution process and to propose that appropriate subordination language be inserted into the SF-5s resolving those subcases. For the twelve that have been partially decreed, IDWR intends to ask the SRBA Presiding Judge to re-open the partial decrees to insert appropriate subordination language.

Enclosed with this letter is a table listing the Stewart Decree water rights to which your water right historically has been subordinated. Below that table on the enclosure is the subordination condition that IDWR proposes to be placed on your right.

Please carefully consider this situation and let me know by October 31, 2012, whether you are amenable to inclusion of this condition in your water right. If this is not acceptable to you, please let me know why it is not, and your thoughts on how this situation should be addressed.

In conclusion please let me emphasize that the purpose of this proposal is not to impose any greater limitations on this group of rights than have historically existed. Rather, it is intended simply to maintain the historic status quo in terms of how these rights have always been delivered by the watermaster. (IDWR has confirmed with the watermaster that these rights have always been administered subject to the subordination provision of the Bryan Decree). IDWR fears that if these corrections are not made, the legal confusion that would result from the subordination condition being on the rights gaining the benefits of subordination—but not on the rights bearing the burden of subordination—could result in litigation between the holders of the benefitted rights and the holders of the burdened rights, and could produce unforeseen detrimental consequences to the entire delivery regime on the Boise River. This is a situation we all should try to avoid.

Thank you very much for your consideration and attention. I look forward to hearing from you.

Very truly yours,

A handwritten signature in black ink, appearing to read "Carter Fritschle", with a stylized, flowing script.

CARTER FRITSCHLE

Adjudication Section Manager

Enclosures

BRYAN DECREED RIGHTS BY NUMERICAL ORDER WITH NAMES & STATUS

63-294 – Pioneer Irrigation District – Dylan Lawrence, Attorney – PD Issued

63-295 - “ “ “

63-296 – Farmers Cooperative Ditch Co. – Ringert Law Chtd , Attorney – PD Issued

63-297 – Farmers Union Ditch Co. Ltd – Jerry Kiser, Attorney – PD Issued

63-298 – Not Claimed

63-299 – Riverside Irrigation District – Al Barker, Attorney - PD Issued

63-300 - “ “ “

63-301 – BOR – Contested – Status - 8/14/12 – Trial Set – 11/14/12 - Boise Div. Dam – Irrig.

63-302 - “ “ “ “ “

63-303 – BOR – PD Issued

63-304 – **Split into:**

63-33515 – J R Simplot – Vic Conrad, Representative – PD Issued

63-33516 – Vale Island Farms – Michael Lawrence, Attorney – PD Issued

63-367 – BOR – PD Issued (Boise Diversion Dam - Power)

63-372 – Boise Kuna Irrigation District – Al Barker, Attorney - PD Issued
New York Irrigation District – Kendal A. McDevitt - “

63-373 – BOR – Contested – Status - 8/14/12 – Trial Set – 11/14/12 - – Boise Div Dam – Irrig.)

63-374 – Pioneer Dixie Ditch Co. – Marjorie Maxwell, Representative - PD Issued

JR Simplot Company

Bryan Decree Right 63-33515

Basin	Sequence	Suffix	Priority Date	Rate	Current Owner
63	33515		4/1/1910	1.70	J R SIMPLOT CO

Stewart Decree Rights with Equal or Junior Priority Dates

Basin	Sequence	Suffix	Priority Date	Rate	Current Owner
63	292		4/1/1910	7.00	ISLAND HIGHLINE DITCH CO
63	382	B	6/14/1912	0.44	MACE CATLIN DITCH CO
63	293		4/1/1915	10.00	ISLAND HIGHLINE DITCH CO

Priority date condition to be added to water right 63-33515:

Pursuant to a call in times of scarcity, this right is junior to water right nos. 63-292, 63-293 and 63-382B and any future splits of these rights.