

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

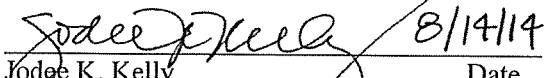
Subcase No.: 63-33515

**STIPULATED AMENDED REQUEST FOR
CORRECTION OF ERROR**

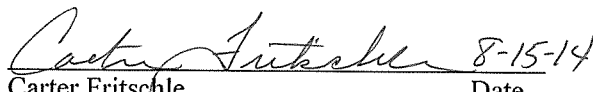
The parties and IDWR agree and stipulate that the elements of this water right should be described per the attached.

CLAIMANT:

JR Simplot Company


Jodee K. Kelly 8/14/14
Attorney for JR Simplot Company Date

IDWR CONCURRENCE:


Carter Fritschle 8-15-14
Manager, Adjudication Section Date

IDWR CONCURRENCE:


Emmi Blades 8/15/14
Deputy Attorney General Date
Attorney for IDWR

STIPULATED AMENDED REQUEST FOR CORRECTION OF ERROR

THE IDAHO DEPARTMENT OF WATER RESOURCES (IDWR) HAS IDENTIFIED AN ERROR IN THE SRBA PARTIAL DECREE OF THE WATER RIGHT LISTED BELOW. IDWR REQUESTS THE COURT DETERMINE IF IT CAN CORRECT THE ERROR THROUGH ITS NORMAL NOTICE AND HEARING PROCESS, AND IF SO, CORRECT THE ERROR ACCORDINGLY. BY COPY OF THIS FORM IDWR IS ALSO NOTIFYING THE OWNER OF THE WATER RIGHT OF THE ERROR IN QUESTION.

WATER RIGHT NO. 63-33515

NAME OF OWNER LISTED ON THE PARTIAL DECREE: JR SIMPLOT COMPANY

CURRENT OWNER (IF DIFFERENT): _____

TODAY'S DATE: August 15, 2014

An error exists in the description of the following element of the partial decree:

1. ☐ **Name and Address**

Should be: _____

2. ☐ **Source**

Should be: _____

3. ☒ **Quantity**

The following language should be inserted directly after the step-down cut condition:

This step-down cut condition shall be implemented before the step-down cut condition contained in water rights identified as originating from the Stewart Decree is implemented.

4. ☒ **Priority Date**

The following language should be added to the partial decree:

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.

5. ☐ **Point of Diversion**

Should be: _____

6. ☐ **Instream Flow Beginning and/or Ending Point**

Should be: _____

7. ☐ **Purpose(s) of Use**

Should be: _____

8. ☐ **Period of Year**

Should be: _____

9. ☐ **Place of Use**

Should be: _____

10. ☒ **Other Provisions**

The following language should be added to the partial decree:

The step-down cut condition contained in the quantity element of this partial decree and the subordination condition contained in the priority date element of this partial decree do not modify, amend, or waive any defenses available to this right to a call in times of scarcity.

Additional explanation or supporting documentation of the error:

Several water rights in Basin 63 were previously decreed in the case *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), commonly referred to as the “Bryan Decree.” The Bryan Decree case commenced in 1913, following entry of what generally is referred to as the “Stewart Decree,” a 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 Bryan Decree 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 were originally 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.

The Bryan Decree rights 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 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.

IDWR's initial error correction request, submitted to the Court on May 29, 2014, asked that the following language be added to the priority date element of the partial decree for water right number 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." IDWR again requests that the Court add this language to the partial decree for water right number 63-33515.

In response to IDWR's initial error correction request, an objection was filed dated July 11, 2014. The objection claimed IDWR's proposed subordination condition was insufficient to remedy an ambiguity created by the step-down cut conditions already in place on both Bryan and Stewart Decree rights. At the hearing on the Court's Notice of Intent to Issue Amended Partial Decrees on July 15, 2014, the Court granted the parties time to negotiate language to clarify that ambiguity. As a result, IDWR requests the following language be added to the quantity element of the partial decree for water right number 63-33515 directly after the step-down cut condition: "This step-down cut condition shall be implemented before the step-down cut condition contained in water rights identified as originating from the Stewart Decree is implemented."

During negotiation regarding language to clarify the ambiguity described above, interest was expressed that language be included in the partial decrees at issue explaining that neither the proposed subordination condition or step-down clarification condition modify, amend, or waive any defenses available to rights to a call in times of scarcity. Accordingly, IDWR also requests the following language be added to the other provisions element of the partial decree for water right number 63-33515: "The step-down cut condition contained in the quantity element of this partial decree and the subordination condition contained in the priority date element of this partial decree do not modify, amend, or waive any defenses available to this right to a call in times of scarcity."

For more information about the error the Court and/or water right holder should contact the person identified below.

CONTACT PERSON: Emmi Blades
TELEPHONE NUMBER: 208-287-4809
E-MAIL ADDRESS: emmi.blades@idwr.idaho.gov
MAILING ADDRESS: IDWR
322 E. Front St.
P.O. Box 83720
Boise, ID 83720-0098

Amended Corrected Recommendation for 63-33515 is attached.

CERTIFICATE OF SERVICE

I certify that on August 15, 2014, I caused to be served true and correct copies of this STIPULATED AMENDED REQUEST FOR CORRECTION OF ERROR, to the following persons, in the manner indicated and addressed as follows:

1. Original to:

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

☐ Overnight Mail
☒ Regular Mail
☐ Hand-Delivered
☐ Facsimile

2. Copies to:

IDWR Document Repository
P.O. Box 83720
Boise, ID 83720-0098

☐ Overnight Mail
☐ Regular Mail
☒ Hand-Delivered
☐ Facsimile

Jodee K. Kelly
JR Simplot Company
P.O. Box 27
Boise, ID 83707

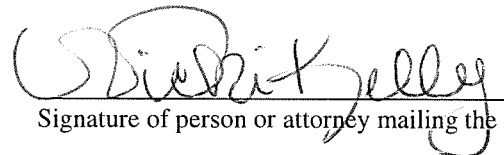
☐ Overnight Mail
☒ Regular Mail
☐ Hand-Delivered
☐ Facsimile

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

☐ Overnight Mail
☒ Regular Mail
☐ Hand-Delivered
☐ Facsimile

U.S. Department of Justice
Environment & Nat'l Resources Div.
550 W. Fort St., MSC 033
Boise, ID 83724

☐ Overnight Mail
☒ Regular Mail
☐ Hand-Delivered
☐ Facsimile


Signature of person or attorney mailing the form

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 63-33515

NAME AND ADDRESS: J R SIMPLOT CO
PO BOX 27
BOISE ID 83707

SOURCE: BOISE RIVER

TRIBUTARY: SNAKE RIVER

QUANTITY: 1.700 CFS

Whenever it becomes necessary for the watermaster to deliver this right the following condition shall apply. This right shall receive 100 percent of its decreed quantity until the natural flow of the waters of the Boise River shall decrease so that all rights containing this condition cannot receive 100 percent of their decreed quantities, at which time this right and the other rights containing this condition shall first be cut to 75 percent of their decreed quantities, as the natural flow of the river decreases, beginning with the latest rights containing this condition and proceeding to the earliest rights containing this condition in the order of their priority dates, and after all of the rights containing this condition shall have been reduced to 75 percent of their decreed quantities, should the natural flow of the waters of the river decrease below the amount necessary to supply 75 percent of those decreed quantities, then this right and the other rights containing this condition, beginning with the latest and proceeding to the earliest, shall be reduced to 60 percent of their decreed quantities.

This step-down cut condition shall be implemented before the step-down cut condition contained in water rights identified as originating from the Stewart Decree is implemented.

PRIORITY DATE: 04/01/1910

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.

POINT OF

DIVERSION: T04N R03W S7 SESW Lot 2 Within CANYON County
T04N R03W S7 SESW Lot 2 Within CANYON County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
IRRIGATION	03/01 11/15	1.700 CFS

Diversion for irrigation under this water right prior to April 1 and after October 31 shall occur only when the natural flow in the Boise River below the Star Bridge in Township 04 North, Range 01 West, Section 18, NE¼ of the SE¼ of the SE¼, Boise Meridian (approximate river mile 33.9) is sufficient for water to be available for diversion at the point of diversion described above, provided that any such use of this water right prior to April 1 and after October 31 shall be subordinated to water rights for storage in Lucky Peak Reservoir, Lake Lowell, Arrowrock Reservoir, and/or Anderson Ranch Reservoir, as decreed in SRBA Case No. 39576.

PLACE OF USE: IRRIGATION in CANYON County

T04N R03W S07 Lot 3 NWSW	22.00	T04N R03W S07 Lot 3 SWSW	26.00
T04N R04W S12 Lot 1 NESE	17.00	T04N R04W S12 SESE	3.00

68 ACRES TOTAL

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

This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.

The step-down cut condition contained in the quantity element of this partial decree and the subordination condition contained in the priority date element of this partial decree do not modify, amend, or waive any defenses available to this right to a call in times of scarcity.

EXPLANATORY MATERIAL: BASIS OF CLAIM - Decreed

This right is a split from former right 63-304..

Water deliverd via the McManus-Teater ditch and the Feeder ditch for the
Upper Center Point Ditch Co. and the Eureka Ditch Co.