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Idaho Department of Water Resources

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FILED 274  
SRBA  
TWIN FALLS, IDAHO

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     | ) | Water Right 34-00564                    |
|                | ) |                                         |
|                | ) | ORDER AMENDING IRRIGATION PERIOD OF USE |
|                | ) | ELEMENT IN PARTIAL DECREE and           |
| Case No. 39576 | ) | INCORPORATING INTO PARTIAL DECREES AN   |
|                | ) | EXPRESS STATEMENT REGARDING GENERAL     |
|                | ) | PROVISIONS, <i>NUNC PRO TUNC</i>        |

A *Partial Decree* was entered for the above-captioned irrigation water right on January 15, 1998. The period of use element was decreed as "irrigation season." In *A&B Irrigation Dist. v. Idaho Conservation League*, 131 Idaho 411, 423, 958 P.2d 568, 580 (1998), the Idaho Supreme Court remanded with the directive to include specific dates for the period of use element. Following remand, on June 24, 1999, IDWR filed a *Supplemental Director's Report, Reporting Area 1, IDWR Basin 34, Regarding Revision of Period of Use (For Irrigation Water Uses) and Conjunctive Management General Provisions*, which included an irrigation period of use recommendation for this water right. On August 2, 1999, Claimant Simmons Trust Partnership filed an objection and on September 8, 1999, a response to the objection was filed by the State of Idaho.

THEREFORE, IT IS ORDERED that the period of use element for the irrigation portion of the above-captioned water right is hereby amended and decreed as:

|                |            |                |
|----------------|------------|----------------|
| PERIOD OF USE: | IRRIGATION | 05-01 TO 10-15 |
|                | STOCKWATER | 10-16 TO 04-30 |

The period of use for irrigation described above may be extended in seasons of unusual characteristics to a beginning date of 04-20 and an ending date of 10-31 at the discretion of the Director of the Idaho Department of Water Resources.

IT IS FURTHER ORDERED that the *Partial Decree* for the above-captioned water right is hereby amended and decreed to contain the following:

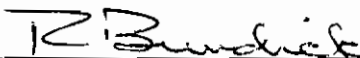
This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the court a point in time no later than the entry of a final unified decree. I.C. section 42-1412(6).

This order is being entered *nunc pro tunc* as of the date the *Partial Decree* was issued and is not intended to modify subsequent administrative changes for the water right, if any, which occurred following entry of the *Partial Decree*.

#### 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.

Dated 11-1-01

  
\_\_\_\_\_  
ROGER BURDICK  
Presiding Judge  
Snake River Basin Adjudication

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

AMENDED

2001 OCT 32 PM 2:32

In Re SRBA )  
                  ) PARTIAL DECREE PURSUANT TO  
                  ) I.R.C.P. 54(b) FOR  
Case No. 39576 )  
                  ) Water Right 34-00564

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2001 OCT 32 PM 2:32

NAME AND ADDRESS: SIMMONS TRUST PARTNERSHIP  
HC 63 BOX 1552  
CHALLIS, ID 83226

SOURCE: BIG LOST RIVER TRIBUTARY: SINKS  
PARSONS CREEK BIG LOST RIVER

QUANTITY: 1.20 CFS

THE APPROPRIATOR IS ENTITLED TO THE AMOUNT OF WATER DESCRIBED  
ABOVE FOR STOCKWATER PURPOSES AT A POINT OF MEASUREMENT WHERE THE  
DELIVERY DITCH ENTERS THE PLACE OF USE DESCRIBED ABOVE.

THE PORTION OF THIS RIGHT FOR STOCKWATER PURPOSES MAY BE  
DIVERTED SO LONG AS THE AMOUNT OF WATER DIVERTED AT THE POINT OF  
DIVERSION FOR STOCKWATER PURPOSES DOES NOT CONSTITUTE  
UNREASONABLE WASTE AND DOES NOT CONFLICT WITH THE PUBLIC  
INTEREST, AS DETERMINED BY THE DIRECTOR.

PRIORITY DATE: 11/01/1882

POINT OF DIVERSION: T08N R21E S15 NESWNW Within Custer 0001 County  
R22E S13 NWSW

| PURPOSE AND<br>PERIOD OF USE: | PURPOSE OF USE | PERIOD OF USE  | QUANTITY |
|-------------------------------|----------------|----------------|----------|
|                               | Irrigation     | 05-01 TO 10-15 | 1.20 CFS |
|                               | Stockwater     | 10-16 TO 04-30 | 0.02 CFS |

THE PERIOD OF USE FOR IRRIGATION DESCRIBED ABOVE MAY BE EXTENDED  
IN SEASONS OF UNUSUAL CHARACTERISTICS TO A BEGINNING DATE OF  
04-20 AND AN ENDING DATE OF 10-31 AT THE DISCRETION OF THE  
DIRECTOR OF THE IDAHO DEPARTMENT OF WATER RESOURCES.

| PLACE OF USE: | Irrigation        | Within Custer | 0001 County |
|---------------|-------------------|---------------|-------------|
|               | T08N R22E S24     | SWSW 39.0     | SESW 38.0   |
|               | S25               | NWNE 30.0     | SWNE 40.0   |
|               |                   | NENW 38.0     | NWNW 39.0   |
|               |                   | SENE 40.0     |             |
|               | 264.0 Acres Total |               |             |

| Stockwater         | Within Custer | 0001 County |
|--------------------|---------------|-------------|
| Same as Irrigation |               |             |

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. I.C. SECTION 42-1412(6).

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER AMENDING IRRIGATION PERIOD OF USE ELEMENT IN PARTIAL DECREE was mailed on November 01, 2001, with sufficient first-class postage to 2:32 the following:

FILED 78  
NOV 01 2001  
CLERK OF DISTRICT COURT  
IDAHO

STATE OF IDAHO

Represented by:  
HARRIET A. HENSLEY  
PO BOX 83720  
BOISE, ID 83720-0010  
Phone: 208-334-4543

SIMMONS TRUST PARTNERSHIP  
SIMMONS TRUSTS

Represented by:  
JAMES R BENNETTS  
PO BOX 36  
CHALLIS, ID 83226  
Phone: 208-879-4488

DIRECTOR OF IDWR  
PO BOX 83720  
BOISE, ID 83720-0098

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 )  
 ) PARTIAL DECREE PURSUANT TO  
 ) I.R.C.P. 54(b) FOR  
Case No. 39576 )  
 )  
 ) Water Right 34-00564

1998 JAN 15 PM 1:05

DISTRICT COURT-SRBA  
TWIN FALLS CO., IDAHO  
FILED \_\_\_\_\_

NAME & ADDRESS: SIMMONS TRUST PARTNERSHIP  
HC 63 BOX 1552  
CHALLIS ID 83226

SOURCE: BIG LOST RIVER TRIBUTARY: SINKS  
PARSONS CREEK BIG LOST RIVER

QUANTITY: 1.2 CFS

THE APPROPRIATOR IS ENTITLED TO THE QUANTITY OF WATER  
DESCRIBED FOR STOCK WATER PURPOSES AT A POINT OF MEASUREMENT  
WHERE THE DELIVERY DITCH ENTERS THE PLACE OF USE DESCRIBED.  
THE QUANTITY OF WATER UNDER THIS RIGHT FOR STOCKWATER USE  
SHALL NOT EXCEED 13,000 GALLONS PER DAY.

USE OF THIS RIGHT WITH RIGHTS LISTED BELOW IS LIMITED TO A  
TOTAL COMBINED DIVERSION RATE OF 10.08 CFS.  
COMBINED RIGHT NOS.: 34-00561, 34-00562, 34-00563, 34-00565,  
34-00694, 34-00693, 34-00324A, 34-00325A AND 34-02310.

PRIORITY DATE: 11/01/1882

POINT OF DIVERSION: T08N R21E S15 NESWN Within CUSTER County  
R22E S13 NWSW

| PURPOSE AND<br>PERIOD OF USE: | PURPOSE OF USE | PERIOD OF USE     | QUANTITY |
|-------------------------------|----------------|-------------------|----------|
|                               | IRRIGATION     | Irrigation Season | 1.2 CFS  |
|                               | STOCKWATER     | 10-16 04-30       | 0.02 CFS |

| PLACE OF USE: | IRRIGATION      | Within CUSTER County |         |         |
|---------------|-----------------|----------------------|---------|---------|
|               | T08N R22E S24   | SWSW 39              | SESW 38 |         |
|               | S25             | NWNE 30              | SWNE 40 | NENW 38 |
|               |                 | SENW 40              |         | NWNW 39 |
|               | 264 ACRES TOTAL |                      |         |         |

USE OF THIS RIGHT WITH RIGHTS LISTED BELOW IS LIMITED TO THE  
IRRIGATION OF A COMBINED TOTAL OF 264 ACRES IN A SINGLE  
IRRIGATION SEASON.

COMBINED RIGHT NOS.: 34-00561, 34-00562, 34-00563, 34-00565,  
34-00694, 34-00693, 34-00324A, 34-00325A AND 34-02310.

THIS RIGHT IS LIMITED TO THE IRRIGATION OF 60 ACRES WITHIN  
THE PLACE OF USE DESCRIBED ABOVE IN A SINGLE IRRIGATION SEASON.

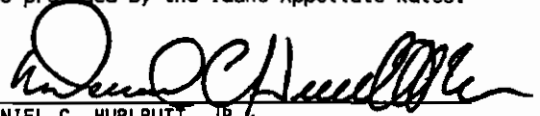
Place of use for STOCKWATER is same as IRRIGATION

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

THE QUANTITY OF WATER DECREED FOR THIS WATER RIGHT FOR  
STOCKWATER USE 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