



APR 28 2005

CORPORATE HEADQUARTERS

Department of Water Resources

April 29, 2005

Hand Delivery

Karl J. Dreher, Director
State of Idaho
Department of Water Resources
322 East Front Street
PO Box 83720
Boise, ID 83720-0098

Re: Request for Approval to Provide Replacement Water Diverted Under Water Rights Curtailed by the Director's April 19, 2005 Order. [By submitting this Application for Approval for Replacement Water, Simplot does not concede that material injury to senior water rights has occurred, is occurring or has been demonstrated as a result of the diversion and use of water under the Simplot Water Rights affected by the Order.]

Dear Mr. Dreher:

J. R. Simplot Company ("Simplot") is the owner of Idaho Department of Water Resources ("IDWR") water right nos. 35-8726, 35-10422 and 35-10427 ("Affected Simplot Water Rights"), which are among several other water rights contained on a list titled, "Water District 120 Curtailment List, Prepared April, 2005". This list is attached to a letter dated April 22, 2005, from Lewis Rounds, the Watermaster for Water District 120 regarding, "Curtailment of Ground Water Rights with Priority Dates of February 27, 1979 or Later, Located in Water District 120."

The Affected Simplot Water Rights are within the American Falls – Aberdeen Groundwater District ("Groundwater District"). According to the letter from the Watermaster, holders of groundwater rights for irrigation within Groundwater Districts "...must participate in the mitigation plan of the district in which your groundwater point(s) of diversion is located."

Paragraph 9 of the Director's Order dated April 19, 2005, in the Matter of Distribution of Water to Various Water Rights Held by or for the Benefit of A&B Irrigation District, American Falls Reservoir District #2, Burley Irrigation District, Milner Irrigation District, Minidoka Irrigation District, North Side Canal Company and Twin Falls Canal Company provides:

"..ground water districts, and other entities seeking to provide replacement water or other mitigation in lieu of curtailment, must file a plan for

providing such replacement water with the Director, to be received no later than 5:00 pm on April 29, 2005.”

As of the date of the delivery of this letter, Simplot is not aware of any plan submitted by the Groundwater District that has been approved to mitigate diversions under the Affected Simplot Water Rights.

In order to conform to the April 29, 2005, deadline to submit a mitigation plan as specified in the IDWR’s April 19, 2005 Order and pending the approval of the Groundwater District’s Application for Approval to its Mitigation Plan, Simplot independently submits the following plan to provide replacement water for the Affected Simplot Water Rights to protect Simplot’s continued use of water during the 2005 irrigation season.

**Replacement Water for the Continued Diversion and Use of Water Under IDWR
Water Right Nos. 35-8726, 35-10422 and 35-10427**

Each of the Affected Simplot Water Rights are used to irrigate farmland in combination with other Simplot-owned water rights that are senior to the February 27, 1979 curtailment date identified in the Director’s Order and the Watermaster’s letter. Accordingly, each irrigated acre within the overlapping places of use receives part of its water supply through the Affected Simplot Water Rights, and part of its water supply through other senior Simplot water rights. The quantity each irrigated acre receives under the Affected Simplot Water Rights is more specifically described as follows:

<u>Water Right No.</u>	<u>Decreed Quantity (flow in cfs)</u>	<u>Quantity/ acre</u>
35-8726	2.6 cfs	.008 cfs/acre
35-10422	0.47 cfs	.001 cfs/acre
35-10427	<u>0.53 cfs</u>	.0015 cfs/acre
	3.60 cfs	

Copies of the IDWR License issued for water right no. 35-8726 and the partial decrees entered in the Snake River Basin Adjudication for water right nos. 35-10422 and 35-10427 are attached hereto as Exhibit A.

During 2004, portions of the irrigation systems used to apply water to Simplot’s irrigated farm land were converted from wheel and hand line sprinkler systems to overhead center pivot sprinkler systems. These conversions will result in the drying-up of 224.5 acres (corners) of the irrigated farmland during the 2005 irrigation season. The senior groundwater water rights appurtenant to the land that will become dry allow for the diversion of up to up to 4.18 cfs to irrigate these 224.5 acres. The rights appurtenant to the dry corners which are senior to the February 27, 1979 curtailment Order are portions of IDWR water right nos. 35-2713, 35-7169, 35-7373, 35-2553A, 35-2553B, 35-2351, 35-7372 (“Simplot Senior Water Rights). Exhibit B attached hereto provides a detailed description of the quantity of each of the Simplot Senior Water Rights available during

2005 to provide replacement water to allow Simplot to continue irrigating the land that would otherwise receive water under the Affected Simplot Water Rights.

Due to the uncertain status of the Groundwater District's 2005 Mitigation Plan Simplot is seeking the Director's approval to utilize the rights to divert 3.60 cfs/186.5 acres out of the 4.18 cfs/224.5 acres available under the Simplot Senior Water Rights to replace water formerly diverted under the Affected Simplot Water Rights.

The following replacement water under each of the Simplot Senior Water Rights is offered for the 2005 irrigation season:

<u>Water Right No.</u>	<u># Acres</u>	<u>Diversion Rate</u>	<u>Explanation for Total Acres</u>
35-2553B	73.00	0.15 cfs	Water Right Nos. 35-2553B, 35-2351 and 35-7372 share a common place of use, therefore acres are not cumulative (73 acres total under these three water rights)
35-2351	73.00	0.66 cfs	
35-7372	73.00	0.73 cfs	
35-2553A	36.50	0.69 cfs	Water Right Nos. 35-7169, and 35-7373 share a common place of use, therefore acres are not cumulative (71 acres total under these two water rights).
35-7169	71.00	0.99 cfs	
35-7373	71.00	0.28 cfs	
35-2713	<u>6.00</u>	<u>0.10 cfs</u>	
	*186.5	Total 3.60 cfs	

*See Explanation For Total Acres

In the event the Groundwater District's 2005 Mitigation Plan is approved covering the diversion and use of the Affected Simplot Water Rights, Simplot reserves the right to apply the entire quantity of water available under the Simplot Senior Water Rights to mitigate other water uses during the 2005 irrigation season or for use as a credit toward any mitigation that may be required during 2006.

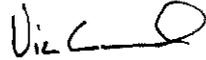
In addition to the Affected Simplot Water Rights described above, Simplot also owns water right nos. 35-8162 (.04 cfs/ 3.4 afa for industrial and commercial purposes), 35-8131 (.02 cfs/ 0.6 afa for industrial and commercial purposes) and 35-8114 (.01 cfs/ 4.22 afa for commercial purposes) which are also affected by the April 19, 2005 Order. For the same reasons described above Simplot also proposes to replace the volume of water diverted under these three water rights with the volume of water appurtenant to 3 acres of land that will not be irrigated under water right 35-2713.

After deducting all replacement volumes set forth above in this request, the balance of the water available under the Simplot Senior Water Rights (0.53 cfs/35 acres) would be available for use by Simplot to mitigate any further Orders curtailing additional water rights held by Simplot during 2005, or could be used to credit Simplot for mitigation that may be required during 2006.

Simplot also owns water right nos. 29-7763, and 36-8469 which are also subject to curtailment pursuant to the April 19, 2005 Order. Water will not be diverted under water right nos. 29-7763, and 36-8469 during the 2005. Consequently, replacement water is not proposed for these two water rights.

Simplot respectfully submits this proposal to use replacement water under senior groundwater rights to replace water that is subject to the April 19, 2005 Order. I am available to respond to any additional questions you may have about the replacement water offered in this proposal. Should your staff need access onto Simplot land to verify the representations of the irrigation system changes installed during 2004, please contact me and I will make the arrangements for the IDWR to enter our property.

Sincerely,

A handwritten signature in black ink, appearing to read "Vic Conrad". The signature is written in a cursive style with a large, looped "O" at the end.

Vic Conrad, Director
Land, Water & Asset Recovery

Exhibit A

State of Idaho
 Department of Water Resources
Water Right License

WATER RIGHT NO. 35-08726

Priority: April 28, 1989

Maximum Diversion Rate: 2.60 CFS

It is hereby certified that PRATT FARMS INC
 1356 S 3000 W
 ABERDEEN ID 83210 has complied with the terms and
 conditions of the permit, issued pursuant to Application for Permit dated April 28, 1989; and has
 submitted Proof of Beneficial Use on July 26, 1991. An examination indicates that the works have a
 diversion capacity of 6.7 cfs of water from:

SOURCE

GROUND WATER

and a water right has been established as follows:

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>DIVERSION RATE</u>
IRRIGATION	04/01 to 10/31	2.60 CFS

LOCATION OF POINT OF DIVERSION:

GROUND WATER NE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ Sec. 1, Twp 05S, Rge 30E, B.M., BINGHAM County

PLACE OF USE: IRRIGATION

Twp Rge Sec	NE				NW				SW				SE				Totals
	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
05S 30E 1	40.0	40.0	40.0	40.0													160.0
	L1	L2															
05S 31E 6					39.0	38.0	39.0	40.0									156.0

Total Acres: 316

CONDITIONS OF APPROVAL

1. This right is for the use of trust water and is subject to review 20 years after the issuance of the permit to determine availability of water and to re-evaluate the public interest.
2. This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 4.0 afa per acre at the field headgate for irrigation of the lands above.
3. Right 35-07034 is also diverted through the point of diversion described above.
4. Rights 35-07034 and 35-08726 when combined shall not exceed a total annual maximum diversion volume of 1264.0 af at the field headgate, and the irrigation of 316 acres.

This license is issued pursuant to the provisions of Section 42-219, Idaho Code. The water right confirmed by this license is subject to all prior water rights and shall be used in accordance with Idaho law and applicable rules of the Department of Water Resources.

Signed and sealed this 30th day of NOVEMBER, 2001.

Karl J. Dreher
 Acting for
 Director

MICROFILMED

DEC 12 2001

Exhibit A

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 35-10427

DISTRICT COURT-SRBA Fifth Judicial District County of Twin Falls - State of Idaho	
<div style="border: 1px solid black; padding: 5px; width: fit-content; margin: 0 auto;"> FEB 15 2002 </div>	
By _____	Clerk
_____	Deputy Clerk

NAME AND ADDRESS: PRATT FARMS INC
1356 S 3000 W
ABERDEEN, ID 83210

SOURCE: GROUNDWATER

QUANTITY: 0.53 CFS

USE OF THIS RIGHT WITH RIGHT NO. 35-07560 IS LIMITED TO A
TOTAL COMBINED DIVERSION RATE OF 6.60 CFS AND TO A TOTAL
COMBINED ANNUAL DIVERSION VOLUME OF 1436 AF.

PRIORITY DATE: 10/31/1986

THIS WATER RIGHT IS SUBORDINATE TO ALL WATER RIGHTS WITH A
PRIORITY DATE EARLIER THAN APRIL 12, 1994, THAT ARE NOT DECREED
AS ENLARGEMENTS PURSUANT TO SECTION 42-1426, IDAHO CODE. AS
BETWEEN WATER RIGHTS DECREED AS ENLARGEMENTS PURSUANT TO SECTION
42-1426, IDAHO CODE, THE EARLIER PRIORITY RIGHT IS THE SUPERIOR
RIGHT.

POINT OF DIVERSION: T05S R30E S01 SWSESE Within Bingham County

PURPOSE AND			
PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	04-01 TO 10-31	0.53 CFS

PLACE OF USE:	Irrigation		Within Bingham County
	T05S R30E S01	NESE 34.0	NWSE 40.0
		SWSE 37.0	SESE 38.0
	S12	NENE 40.0	NWNE 40.0
		SWNE 35.0	SENE 38.0
		NESE 21.0	SESE 36.0
	359.0 Acres Total		

USE OF THIS RIGHT WITH RIGHT NO. 35-07560 IS LIMITED TO THE
IRRIGATION OF A COMBINED TOTAL OF 359 ACRES IN A SINGLE
IRRIGATION SEASON.

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

THIS RIGHT IS BASED UPON AN ENLARGEMENT OF RIGHT
NO. 35-07560 PURSUANT TO SECTION 42-1426, IDAHO CODE.
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).

Exhibit A

SRBA Partial Decree Pursuant to I.R.C.P. 54(b) (continued)

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.



Roger Burdick
Presiding Judge of the
Snake River Basin Adjudication

Exhibit A

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 35-10422

DISTRICT COURT-SRBA
Fifth Judicial District
County of Twin Falls - State of Idaho

FEB 15 2002

By _____ Clerk
_____ Deputy Clerk

NAME AND ADDRESS: PRATT FARMS INC
1356 S 3000 W
ABERDEEN, ID 83210

SOURCE: GROUNDWATER

QUANTITY: 0.47 CFS

USE OF THIS RIGHT WITH RIGHTS LISTED BELOW IS LIMITED TO A
TOTAL COMBINED DIVERSION RATE OF 6.39 CFS AND TO A TOTAL
COMBINED ANNUAL DIVERSION VOLUME OF 1748 AF. COMBINED RIGHT
NOS.: 35-07169 AND 35-07373.

PRIORITY DATE: 07/31/1987

THIS WATER RIGHT IS SUBORDINATE TO ALL WATER RIGHTS WITH A
PRIORITY DATE EARLIER THAN APRIL 12, 1994, THAT ARE NOT DECREED
AS ENLARGEMENTS PURSUANT TO SECTION 42-1426, IDAHO CODE. AS
BETWEEN WATER RIGHTS DECREED AS ENLARGEMENTS PURSUANT TO SECTION
42-1426, IDAHO CODE, THE EARLIER PRIORITY RIGHT IS THE SUPERIOR
RIGHT.

POINT OF DIVERSION: T05S R31E S06 SWSESW Within Bingham County
S07 NENNSW

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	04-01 TO 10-31	0.47 CFS

PLACE OF USE:			Within Bingham County
	T05S R31E S06	NESW 40.0	NWSW 39.0
		SWSW 39.0	SESW 39.0
	S07	NENW 39.0	NWNW 39.0
		SWNW 39.0	SENW 40.0
		NESW 40.0	NWSW 32.0
		SWSW 12.0	SESW 39.0
	437.0 Acres Total		

USE OF THIS RIGHT WITH THE RIGHTS LISTED BELOW IS LIMITED TO
THE IRRIGATION OF A COMBINED TOTAL OF 437 ACRES IN A SINGLE
IRRIGATION SEASON. COMBINED RIGHT NOS.: 35-07169 AND 35-07373.

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

THIS RIGHT IS BASED UPON AN ENLARGEMENT OF RIGHT NUMBERS
35-07169 AND 35-07373 PURSUANT TO SECTION 42-1426, IDAHO CODE.
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).

Exhibit A

SRBA Partial Decree Pursuant to I.R.C.P. 54(b) (continued)

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.



Roger Burdick
Presiding Judge of the
Snake River Basin Adjudication

<p>NW¼ Section 7 T.5S R.31E New Pivot No. CP-1P</p>	<p>Water Rights Appurtenant to Place of Use: 35-7169, 35-7373, *35-10422 *This Water Right is subject to April 19, 2005 Order.</p> <p>Place of Use Irrigated Before Pivot: 157 acres Place of Use Irrigated After Pivot: <u>121.5 acres</u> Acres to dry-up during 2005: 35.50 acres</p> <p>Diversion rate per acres under water right 35-7169: 0.014 cfs/acre Diversion rate per acres under water right 35-7173: <u>0.004 cfs/acre</u> 0.018 cfs/acre</p> <p>Quantity available for replacement: 35.5 acres x 0.018 cfs/acre = 0.64 cfs</p>
<p>NE¼ Section 7 T.5S R.31E New Pivot No. CP-2P</p>	<p>Water Right Appurtenant to Place of Use: 35-2553A</p> <p>Place of Use Irrigated Before Pivot: 158 acres Place of Use Irrigated After Pivot: <u>121.5 acres</u> Acres to dry-up during 2005: 36.50 acres</p> <p>Diversion rate per acres under water right 35-2553A: 0.019 cfs/acre</p> <p>Quantity available for replacement: 36.5 acres x 0.019 cfs/acre = 0.69 cfs</p>
<p>NW¼ Section 8 T.5S R.31E New Pivot No. CP-3P</p>	<p>Water Rights Appurtenant to Place of Use: 35-2553B, 35-2351 and 35-7372</p> <p>Place of Use Irrigated Before Pivot: 158 acres Place of Use Irrigated After Pivot: <u>121.5 acres</u> Acres to dry-up during 2005: 36.50 acres</p> <p>Diversion rate per acres under water right 35-2553B: 0.002 cfs/acre Diversion rate per acres under water right 35-2351: 0.009 cfs/acre Diversion rate per acres under water right 35-7372: <u>0.01 cfs/acre</u> 0.02 cfs/acre</p> <p>Quantity available for replacement: 36.5 acres x 0.02 cfs/acre = 0.73 cfs</p>

Table 2: Summary by Pivot Number of Water Available To Replace The Affected Simplot Water Rights Resulting from Installing Pivots.

Pivot No.	Acres (Dry for 2005)	Flow Rate (cfs)
CP-7P	9.5	0.16
CP-4P	35.5	0.64
CP-5P	34.5	0.59
CP-6P	36.5	0.73
CP-1P	35.5	0.64
CP-2P	36.5	0.69
CP-3P	36.5	0.73
Total available for mitigation	224.5 acres	4.18 cfs