

Travis L. Thompson, ISB #6168
Paul L. Arrington, ISB #7198
BARKER ROSHOLT & SIMPSON LLP
113 Main Avenue West, Suite 303
P.O. Box 485
Twin Falls, Idaho 83303-0485
Telephone: (208) 733-0700
Facsimile: (208) 735-2444

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*Attorneys for Albert & Alvera Fols, Charles & Mary Harling, A.C. & Luella Pilkerton,
Lloyd & Sheryl Tutor, Marci Dixon, and Tracy Mascia*

**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	)	Subcase Nos. 75-10061Q
	)	
Case No. 39576	)	MOTION TO ALTER OR AMEND SPECIAL
	)	MASTER'S RECOMMENDATION
	)	
	)	

COME NOW, ALBERT & ALVERA FOLS, CHARLES & MARY HARLING, A.C. & LUELLA PILKERTON, LLOYD & SHERYL TUTOR, MARCI DIXON, AND TRACY MASCIA (hereinafter collectively referred to as the "Carmen Creek Users"), claimants in the SRBA, by and through their attorneys of record, Barker Rosholt & Simpson LLP, and file this *Motion to Alter or Amend Special Master's Recommendation* in the above-listed subcase. The grounds for the motion are set forth below.

BASES TO ALTER OR AMEND

The Carmen Creek Users have been granted leave to file late objections, and amended objections, to the respective water right claims filed by a group of water right claimants represented by Ray Rigby (i.e. "Burns Group", Tippet, Fadness, Mosher, Matejko, Ernest,

Hudson, Burns, Rice, Eisenhower, Edmiston, Mattis, Yowell, Hershey, and Thomas Family Trust¹) concerning their claimed portions of a water right with the 1875 priority date originally decreed in 1902. See February 28, 2008 *Order Granting Motion to File Late Objections and Setting Status Conference* (Subcase No. 69-A et al) and November 6, 2008 *Order Granting Motions to Amend Objections* (Subcase No. 69-B et al).

Water right claim 75-10061Q was not reported until IDWR issued a Director's Report for Late Claims on March 21, 2008, some three months after the Carmen Creek Users had filed their *Motion to File Late Objections* on the rest of the water right claims filed by the Burns' Group on the 1875 water right (originally decreed in the 1902 *McNutt v. Palmer* decree). Consequently, the Carmen Creek Users did not include water right claim 75-10061Q in their original filings concerning this matter. Although the Carmen Creek Users did mistakenly identify water right claim 75-10061Q in their *Motion to Amend Objections* on September 18, 2008, it was determined that no late objection had been previously filed for this claim.

For the reasons set forth in the Carmen Creek Users' *Motion to File Late Objections* filed on January 8, 2008 for the other claims filed on the 1875 water right, the Court should grant the present *Motion to Alter or Amend Special Master's Recommendation*. Since water right claim 75-10061Q claims a part of the 1875 water right decreed in the 1902 *McNutt v. Palmer* decree, and all of the other claims to that water right have been objected to and are at issue, this claim should be addressed in that proceeding as well.

Counsel for the Carmen Creek Users advised the Court they would be filing a motion to file late objection on water right claim 75-10061Q at the November 6, 2008 hearing on the

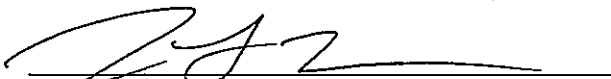
¹ It appears that Johnny Cabigas and Lana Greenway are the current owners of the Thomas Family Trust property and associated water right claim #75-10678.

Motion to Amend Objections. After that hearing, the parties held a settlement conference in Salmon, Idaho on November 20, 2008. Counsel for the Carmen Creek Users was then involved in a three-week administrative hearing before IDWR in Boise, Idaho (from December 3 – 17, 2008). Consequently, the motion to file late objection on water right claim 75-10061Q was not filed prior to the Special Master Report that was issued on December 18, 2008.

The Carmen Creek Users request the Special Master to alter or amend the present recommendation for water right claim 75-10061Q to allow for a late objection to be filed so that all water right claims to the 1875 water right (originally decreed in the 1902 decree) can be properly adjudicated together.

DATED this 2nd day of January, 2009.

BARKER ROSHOLT & SIMPSON LLP


Travis L. Thompson

*Attorneys for Albert & Alvera Fols, Charles & Mary
Harling, A.C. & Luella Pilkerton, Lloyd & Sheryl Tutor,
Marci Dixon, and Tracy Mascia*

CERTIFICATE OF MAILING

I certify that on 27th day of January, 2009, I mailed the original and copies of the foregoing motion, including all exhibits, to the following persons:

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

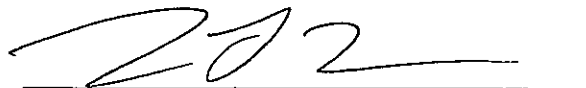
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Boise, Idaho 83724

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

James and Rowena Quinn
P.O. Box 1473
Carmen, ID 83462


Travis L. Thompson