

MAR 01 2010

DEPARTMENT OF
WATER RESOURCES

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Paul L. Arrington, ISB #7198
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Lloyd & Sheryl Tutor, James Edgren & Jennifer Brady, 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. See Attachment A
	)	
Case No. 39576	)	REQUEST FOR STATUS CONFERENCE
	)	
	)	
	)	

COME NOW, ALBERT & ALVERA FOLS, CHARLES & MARY HARLING, A.C. & LUELLA PILKERTON, LLOYD & SHERYL TUTOR, JAMES EDGREN & JENNIFER BRADY, 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 hereby request the Court to set a status conference in the above-referenced subcases.

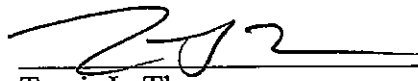
It has come to the Carmen Creek Users' attention that other claimants in Basin 75 have communicated with you ex parte (John Burns' letters of January 5th and 17th, 2010 and James Quinn's letter January 24, 2010 letter). See Ex. A. Counsel for these claimants, Mr. Jerry Rigby, immediately provided me with copies of these letters after learning they had been sent to the

Court. I have discussed this matter with Mr. Rigby and it is my understanding that his firm was not aware of the communications when they were sent by his clients.

We are unaware of any other ex parte contact with the Court but are very concerned about the past communications and would request the Court to set a status conference to discuss these matters, particularly so that the Court can advise all parties that such communications with the Court are prohibited in the future.

DATED this 26th day of February, 2010.

BARKER ROSHOLT & SIMPSON LLP



Travis L. Thompson

*Attorneys for for Albert & Alvera Fols, Charles &
Mary Harling, A.C. & Luella Pilkerton, Lloyd &
Sheryl Tutor, James Edgren & Jennifer Brady, and
Tracy Mascia*

CERTIFICATE OF MAILING

I certify that on February 26, 2010, I served the original and copies of the foregoing document to the following persons as indicated:

Original, hand delivery to:

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

Copies, U.S. Mail, postage prepaid to:

IDWR Document Depository
P.O. Box 83720
Boise, Idaho 83720-0098

U.S. Department of Justice
Environment & Natural Resources
550 West Fort Street, MSC 033
Boise, Idaho 83724

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

Ray Rigby
Jerry Rigby
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25 N. 2nd E
P.O. Box 250
Rexburg, Idaho 83440-0250

*Attorneys for James & Cathleen Tippet,
Thomas Family Trust, Rodney & Susan
Edmiston, Steven Yowell, Robert & Fran
Mosher, Danny & Roberta Fadness, Terry &
Veralyn Hershey, Phil Eisenhauer & Shelley
Erwin, Shirley Mattis, James Hudson, William
Clementz, Robert Ernest, John & Ruth Burns,
George Matejko, Donna and Thomas Jackson,
and Rick Rice*



Travis L. Thompson

ATTACHMENT A

75-69A	75-10061B	75-14019
75-69B	75-10061C	75-14021
75-69F	75-10061J	75-14025
75-69H	75-10061N	75-14027
75-69K	75-10061Q	75-14038
75-69L	75-10061R	75-14040
75-69M	75-10061T	75-14044
75-69N	75-10061X	75-14046
75-69P	75-10061Y	75-14049
75-69Q	75-10061Z	75-14050
75-69S		75-14051
75-69W	75-10062A	75-14052
75-69X	75-10062AA	75-14055
	75-10062AB	75-14056
75-70A	75-10062AC	75-14057
75-70B	75-10062AL	75-14058
75-70F	75-10062C	
75-70H	75-10062H	75-14387
75-70K	75-10062L	75-14388
75-70L	75-10062P	75-14393
75-70N	75-10062R	
75-70M	75-10062V	75-14441
75-70P	75-10062W	75-14443
75-70Q	75-10062X	
75-70S	75-10062Y	
75-70T		
75-70X	75-10136A	
75-70Y	75-10136B	
	75-10137A	
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75-10061AA		
75-10061AC	75-10678	
75-10061AE		
75-10061AM		

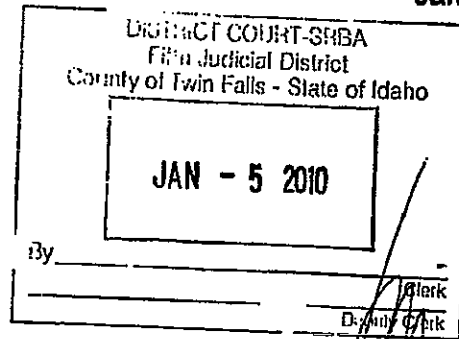
Exhibit A

John E. Burns
Box 264
Carmen, Idaho 83462

Hon. Terrence A. Dolan
Special Master
District Court – SRBA
Fifth Judicial District
P.O. Box 2707
Twin Falls, Idaho 83303 – 2707

In Re SRBA
Case No. 39576

January 5, 2010



Subcases 75-69A, et al.
(See Attached List)
Carmen Creek

Dear Special Master Dolan:

I and others involved in this litigation are extremely concerned with the Idaho Department of Water Resources approach to the Rule 706 Report which you ordered on March 25, 2009. The Department was unable to submit the report, due June 30, 2009, and at the Status Conference on December 17, 2009 were unable to predict when it will be completed.

Dates for discovery cut-off, dispositive motions filing and hearing, witness lists, and pre-trial conference were all set last March. Dates for those steps were vacated in the December 17, 2009 conference and new dates were not set because completion of the Rule 706 Report remains an unknown. The new trial date, October 27, 2010 is conditional.

Nonetheless the Department has posted on the IDWR Public Information Website extensive new "recommendations" which are a reversal of the Director's Reports submitted to the court in January 8, 2007. Publishing new conflicting "recommendations" without completion of the Rule 706 Report seems very improper.

As you know, I expressed this concern in the December 17 conference. I was told that the IDWR Public Information Website is used by staff as a work site and is not really for the public since most private individuals do not know how to access it anyway. In reality the IDWR public web site is the principal communications tool where the Department provides water related information in various categories to the public.

I also expressed concern that uncorrected Department transcription and data entry errors are being repeated in the new postings. You will recall I was advised that "the beauty of this process" is that such errors can ultimately be challenged in court.

Our understanding is that the "Rule 706 Report," was to secure an actual detailed field review. I do not believe that the Department's short van tour last summer of Carmen Creek can be considered to be an actual field review such as an expert witness would perform.

Special Master, page 2

Nor do I believe it was proper to exclude us from being present in the tour, however abbreviated, especially in light of the conflict of interest concerns we previously expressed to the Department.

My understanding of Rule 706, admittedly from a layman's perspective, is that an "expert witness" should not be named unless they are willing to perform the task. I suggest that being able to perform the assignment in the specified time is a requisite component of "willing."

We ask no more than that the Department conduct an actual field review which everyone concerned can accept as timely, technically thorough, professionally evaluated, and properly presented. Unless this occurs the intent of a Rule 706 Report will not be met.

Sincerely,



John E. Burns

208-756-3645

treeboxmules@centurytel.net

Copy to:

Director of Idaho Department of Water Resources
Attn: Garrick Baxter
P.O. Box 83720
Boise, Idaho 83720 - 0098

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

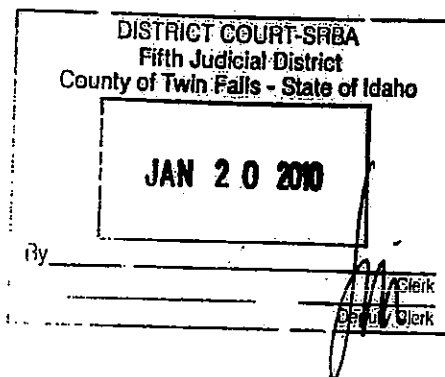
United States of America
U.S. Department of Justice
Environment & Natural Resources
550 West Fort Street, MSC 033
Boise, Idaho 83724

437

January 17, 2010

John E. Burns
Ruth C. Burns
Box 264
Carmen, Idaho 83462

Mr. Ray Rigby
Mr. Jerry Rigby
Rigby, Andrus & Moeller
25 North Second East
P.O. Box 250
Rexburg, Idaho 83449



Rear Ray & Jerry:

I appreciate our discussion of last Thursday concerning the Rule 706 Report. The scrambling of the recommended rights by the Department obviously creates an untenable situation in regard to your future ability to represent the sixteen families. Even should all wish to continue with you as our counsel I don't see how I could effectively coordinate with the group as I have endeavored to do in the past. The conflicts created by the Department are simply too great for it to be practical.

Rather than prolonging the uncertainty and confusion I am requesting that our legal relationship with your office be terminated at this time. I trust that you will notify the court that you no longer represent Ruth and I in Subcases 75-00069A, 75-00070A, 75-10061A, and 75-10062A. I assume you will still need to contact the others and obtain their requests for their subcases as I obviously can not speak for them..

I appreciate your work on our behalf over the several years this litigation has been ongoing, and regret that the State has seen fit to render our legal relationship untenable at this late date. I will need to pick up some of the exhibit material left with you earlier, and will contact your office when I will be in Rexburg. I assume you will make the proper notifications to the other agencies, etc.

Thanks again

John Burns
Ruth Burns

Copy:

Hon. Terrence A. Dolan, Special Master
District Court - SRBA
Fifth Judicial District
P.O. Box 2707
Twin Falls, Idaho 83303.

RECEIVED

Rowena T. & James R. Quinn
P.O. Box 1473
Carmen, Idaho 83462

FEB 01 2010

January 24, 2010

DEPARTMENT OF
WATER RESOURCES

Honorable Terrance A. Dolan
Snake River Basin Adjudication
P.O. Box 2702
Twin Falls, Idaho 833303

Dear Special Master Dolan:

We are extremely concerned over recent communications from the Idaho Department of Water Resources involving our water rights. One is a November 24, 2009 letter from Mr. Gary Spackman advising that rights 75-14539 and 14541 have been recommended by the Director, and a recommended denial for right 14540. The other is a voluminous report of January 14, 2010 by the Department recommending approval for rights 14539 and 14541 (above) and silent on 14540 as well as right 75-00061Q.

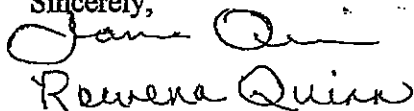
We were under the impression that all subcases challenged by Mr. Al Fols (Attorney Travis Thompson) had been consolidated and that we were represented by Mr. Ray Rigby. However, it appears that we may be represented in only one subcase and on our own in three of the subcases. It may be academic at this point, however, as apparently the Department's actions have completely disrupted our case by reversing the distribution of the key rights and splitting our group of defendants.

At this time our group has invested thousands of dollars in our legal defense based on the Director's recommendation in January of 2007, only to find three years later that we may now have to start over with new counsel. The Department has ignored the actual physical and historic evidence of water use on our property for the past 122 years and decided to accept the word of an individual to the contrary.

Please note that the Department has previously acknowledged to us that they "misfiled" the original claims by our predecessors, the Hamiltons, and as a result we had to go through the "late claim" process with attendant attorney fees and confusion. This was further confused by the Department and BLM misreading the legal description of the point of diversion, confusing us with individuals of the same name in a different part of the State, and requiring more procedural court steps rather than simply correcting their error.

We strongly urge that the Court insist upon a full examination of this case and the report. We ask that the court also recognize we need some additional time to prepare our objections as we apparently need to seek new counsel or represent ourselves, either of which introduces significant confusion, additional time, and expense.

Sincerely,



Rowena and James Quinn

Copies to:

Rigby Law Office
25 North Second Street
P.O. Box 250
Rexburg, Idaho 83449

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

Director of IDWR ✓
P.O. Box 83720
Boise, Idaho 83720-0098

U.S. Department of Justice
Environment & Natural Resources
550 West Fort Street, MSC 033
Boise, Idaho 83724

Court: Please advise if additional copies of this letter must be distributed. Thank you.