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DEPARTMENT OF
WATER RESOURCES

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**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 CLARIFICATION OF ORDER
	)	GRANTING LEAVE TO WITHDRAW
	)	
	)	

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 seek clarification of the *Order Granting Leave to Withdraw*, dated March 3, 2010, entered in the above-referenced subcases.

On March 2, 2010, the law firm of Rigby, Andrus & Rigby, Chartered (hereinafter, the "Rigby firm"), filed a *Motion to Withdraw*, seeking leave to withdraw as counsel in this matter for the group of 16 claimants -- generally referred to herein as the "Burns Group." The Court

granted that motion the next day on March 3, 2010.¹ The Carmen Creek Users, however, were preparing a response to the motion seeking to address concerns that the motion might cause delays in the current scheduling order. Since these concerns were not addressed in the *Order*, the Carmen Creek Users seek clarification to confirm that granting the *Motion to Withdraw* will not be used as justification for delay in the trial schedule previously set by the Court, assuming objections are filed and not resolved in the subcases.

Under I.R.C.P. 11(b)(2), counsel may withdraw only after “first obtaining leave and order of the court upon a motion filed with the court, and a hearing on the motion.” The rule provides that leave “may be granted by the court for good cause and ***upon such conditions or sanctions as will prevent any delay in determination and disposition of the pending action*** and the rights of the parties.” *Id.* (emphasis added). Furthermore, if leave is granted, the clients of the withdrawn counsel must, “***within 20 days,***” either hire a new attorney or provide a written “notice with the court stating how the client will proceed without an attorney.” Rule 11(b)(3) (emphasis added).

The Carmen Creek Users are concerned that withdrawal of counsel will cause a delay in these proceedings. Under the present schedule, any objections to the Amended Recommendations are due on March 19, 2010. Responses are due on April 16, 2010. This process started approximately two years ago when late objections were filed and the subcases were group together for resolution. Since then, the parties have had settlement discussions, including a Court ordered mediation session, and the Department recently amended its recommendations for the water rights. This matter is set to culminate in a trial, beginning on October 27, 2010. The Carmen Creek Users have relied on this schedule to ensure a timely

¹ While the Order Granting Leave to Withdraw was signed on March 3, 2010, it was not served until March 4, 2010.

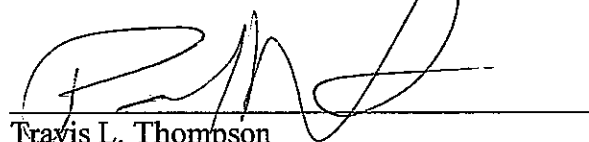
resolution to the pending objections.

Rule 11(b)(2) allows the Court to place conditions on the withdrawal in order to “prevent any delay in determination and disposition of the pending action and the rights of the parties.”

While the Court’s *Order* does require the members of the Burns group to retain new counsel within 20 days, should they decide to hire new counsel, it does not address the current scheduling order or place any conditions on the withdrawal in order to “prevent any delay.” Accordingly, the Court should reconsider the *Order* and clarify that no changes in the present schedule will be allowed by the granting of the *Motion to Withdraw*.

RESPECTFULLY SUBMITTED this 8th day of March, 2010.

BARKER ROSHOLT & SIMPSON LLP

A handwritten signature in black ink, appearing to read 'T. Thompson', is written over a horizontal line.

Travis L. Thompson

Paul L. Arrington

*Attorneys for Albert & Alvera Fols, Charles &
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CERTIFICATE OF MAILING

I certify that on this 8th day of March, 2010, I served the original and copies of the foregoing document to the following persons as indicated:

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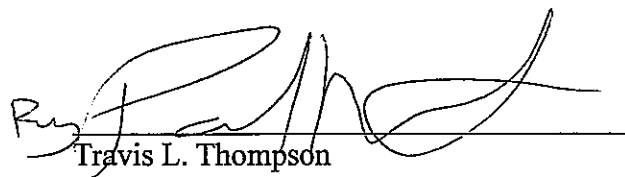
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ATTACHMENT A

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
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