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DEPARTMENT OF
WATER RESOURCES

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Attorneys for Lloyd & Sheryl Tutor

**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

)
) Subcase Nos. 75-14023, 75-14027, and
) 75-14029

)
) **MOTION TO SET ASIDE PARTIAL
DECREES**

)
)
)

COMES NOW, Claimants Lloyd and Sheryl Tutor, by and through counsel of record¹,
Barker Rosholt & Simpson LLP, and pursuant to I.R.C.P. 60(b), hereby moves the Court for an
order setting aside the partial decrees in the above-referenced subcases in order to correct certain
errors.

BASIS FOR MOTION

The Claimants sent a letter to the Court filed on June 30, 2011 requesting a correction to
the quantity, place of use, and combined use remarks for water right 75-14029. The Court

¹ Counsel filed a motion to withdraw as counsel of record on July 29, 2011. The matter is set for hearing on August 25, 2011. Counsel expects this motion to be the final matter to be handled for the Claimants in these subcases.

referred the matter to Special Master Dolan and a hearing was held on August 4, 2011. Counsel appeared for the Claimants at that hearing and identified errors in the other three subcases referenced above. Special Master Dolan then continued the hearing on the motion regarding 75-14029 until September 29, 2011 so that the present motion could be heard and all three subcases could be considered together.

Place of Use / Combined Use Remark (75-14023)

The place of use is incorrectly described, based upon IDWR's prior recommendation, and should be corrected to match the place of use as decreed on water right 75-14025. The Claimants request the Court to correct the error through an amended partial decree. *See Exhibit A* (proposed changes identified in strikethrough/underline format).

In addition, water right 75-14023 was partially decreed on October 28, 2009. The water right was decreed prior to resolution of the litigation regarding the Claimants' other water rights, 75-14025 and 75-14027. Accordingly, the combined use remark is currently incomplete and should be corrected to list all of the Claimants' water rights through an amended partial decree. *See Exhibit A.*

Place of Use (75-14027)

The Claimants, IDWR, and the other parties in the subcase filed a Standard Form 5 with the Court on October 18, 2010. The "place of use" element identified 1.7 acres in the SWSE of Section 34, Township 23N, Range 22 East. The Special Master's recommendation and partial decree incorrectly listed Township 22N. This clerical error should be corrected through an amended partial decree. *See Exhibit B* (proposed changes identified in strikethrough/underline format).

Place of Use / Quantity / Combined Use Remark (75-14029)

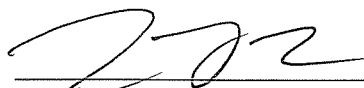
As detailed in the Claimants' letter filed with the Court on June 30, 2011, the place of use, quantity, and combined use remark need to be corrected to match up properly with the Claimants' other water rights and to accurately describe the amount of water associated with a 1915 water right on Carmen Creek. The Claimants request the Court to correct the error through an amended partial decree. *See* Exhibit C (proposed changes identified in strikethrough/underline format).

The Claimants have reviewed the proposed amended decrees with IDWR, who agrees with the proposed changes. Finally, the Claimants submit the mistakes in the partial decrees were not willful, and that they have "good cause" to correct these errors. Claimants respectfully request the Court to amend the partial decrees accordingly.

The Claimants further request the Court to schedule a hearing on this motion at the continued hearing in subcase 75-14029 currently scheduled before Special Master Dolan on September 29, 2011 at 10:00 a.m.

DATED this 15th day of August, 2011.

BARKER ROSHOLT & SIMPSON LLP



Travis L. Thompson
Paul L. Arrington

Attorneys for Lloyd & Sheryl Tutor

CERTIFICATE OF MAILING

I certify that on August 15, 2011, 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

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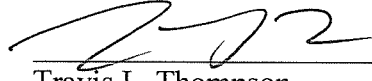
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Travis L. Thompson

Exhibit A

08/10/2011

IDAHO DEPARTMENT OF WATER RESOURCES
AMENDED PARTIAL DECREE DESCRIPTION

RIGHT NUMBER: 75-14023

NAME AND ADDRESS: LLOYD A TUTOR
HC 60 BOX 52E12
ROUND MOUNTAIN NV 89045

SHERYL L TUTOR
HC 60 BOX 52E12
ROUND MOUNTAIN NV 89045

SOURCE: CARMEN CREEK

TRIBUTARY: SALMON RIVER

QUANTITY: 0.038 CFS

PRIORITY DATE: 12/22/1910

POINT OF
DIVERSION:

T23N R22E S35 NENE Within LEMHI County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
IRRIGATION	04/01 10/31	0.038 CFS
PLACE OF USE: <u>IRRIGATION in LEMHI County</u>		
~~T22N R22E S03 Lot 1 NENE~~ 0.50	T22N R22E S03 Lot 2 NWNE	~~1.41.2~~
T23N R22E S34 SWSE 0.50 <u>1.7</u>	~~T23N R22E S34 SESE~~ 0.50	

2.9 ACRES TOTAL

Place of use does not include federal public lands

irrigation Right Nos. 75-14023, 75-14025, 75-14027, and 75-14029 are limited to the
of a combined total of 2.9 acres in a single irrigation season.

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. Section 42-1412(6), Idaho Code.

EXPLANATORY MATERIAL: BASIS OF CLAIM - License

Right includes accomplished change in place of use pursuant to Section 42-1425, Idaho Code.

Exhibit B

08/10/2011

IDAHO DEPARTMENT OF WATER RESOURCES
AMENDED PARTIAL DECREE DESCRIPTION

RIGHT NUMBER: 75-14027

NAME AND ADDRESS: LLOYD A TUTOR
HC 60 BOX 52E12
ROUND MOUNTAIN NV 89045

SHERYL L TUTOR
HC 60 BOX 52E12
ROUND MOUNTAIN NV 89045

SOURCE: CARMEN CREEK TRIBUTARY: SALMON RIVER

QUANTITY: 0.007 CFS

PRIORITY DATE: 05/01/1882

POINT OF
DIVERSION: T23N R22E S35 NENE Within LEMHI County

PURPOSE AND
PERIOD OF USE:

	<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
	IRRIGATION	04/01 10/31	0.007 CFS
PLACE OF USE:	<u>IRRIGATION in LEMHI County</u>		
	T22N R22E S03 Lot 2 NWNE 1.20	<u>T23N</u> ~~T22N~~ R22E S34	SWSE 1.70

2.9 ACRES TOTAL

Place of use does not include federal public lands.

The rights listed below are limited to the irrigation of a combined total of 2.9 acres in a single irrigation season. Combined Right Nos.:75-14023, 75-14025, 75-14027 and 75-14029.

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. Section 42-1412(6), Idaho Code.

EXPLANATORY MATERIAL: BASIS OF CLAIM - Decreed

Exhibit C

08/10/2011

IDAHO DEPARTMENT OF WATER RESOURCES
AMENDED PARTIAL DECREE DESCRIPTION

RIGHT NUMBER: 75-14029

NAME AND ADDRESS: LLOYD A TUTOR
HC 60 BOX 52E12
ROUND MOUNTAIN NV 89045

SHERYL L TUTOR
HC 60 BOX 52E12
ROUND MOUNTAIN NV 89045

SOURCE: CARMEN CREEK TRIBUTARY: SALMON RIVER

QUANTITY: 0.03855 CFS

PRIORITY DATE: 04/01/1915

POINT OF
DIVERSION:

T23N R22E S35 NENE Within LEMHI County

PURPOSE AND
PERIOD OF USE:

	<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
	IRRIGATION	04/01 10/31	0.03855 CFS
PLACE OF USE:	<u>IRRIGATION in LEMHI County</u>		
	T22N R22E S03 Lot 1 NENE 0.50	T22N R22E S03 Lot 2 NWNE	1.41.20
	T23N R22E S34 SWSE 0.501.7	T23N R22E S34 SESE	0.50

2.9 ACRES TOTAL

Place of use does not include federal public lands.

Right Nos. 75-14023, 75-14025, 75-14027, and 75-14029 are limited to the irrigation of a combined total of 2.9 acres in a single irrigation season.

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. Section 42-1412(6), Idaho Code.

EXPLANATORY MATERIAL: BASIS OF CLAIM - Beneficial Use