

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT ("Agreement") is entered into and made effective this 6th day of May, 2015, between: Vincent and Malinda Tracy ("Tracy" or "Tracys") and John and Susan Simpson ("Simpson" or "Simpsons"). Collectively, Tracy and Simpson will be referred to herein as "Parties." Individually, Tracy and Simpson may be referred to herein as a "Party."

RECITALS

WHEREAS Simpson is the owner of certain real property located in Lemhi County, Idaho, more particularly described on Exhibit A, attached hereto.

WHEREAS Tracy is the owner of certain real property located in Lemhi County, Idaho, more particularly described as follows:

Lot 5 of the Barracks Lane Subdivision, according to the official plat thereof, filed for record in Book 6 of Plats and Page 6 official records of Lemhi County, Idaho, and amended in Book 6 of Plats at Page 6A and further amended in Book 6 of Plats at Page No. 14, records of Lemhi County, ID

WHEREAS Simpson owns water right no. 74-15624 for 0.15 cfs to divert waste water right for irrigation purposes, bearing a priority date of March 28, 2005 ("Simpson Water Right"). The Simpson Water Right was licensed by the Idaho Department of Water Resources ("IDWR").

WHEREAS on July 25, 2013, Tracys filed a *Motion for Late Claim* ("Late Claim") in the Snake River Basin Adjudication ("SRBA") for subcase no. 74-15911.

WHEREAS on October 17, 2014, IDWR recommended ("Recommendation") subcase no. 74-15911 as a waste water right for 0.09 cfs for irrigation purposes, bearing a priority date of March 15, 1976 ("Tracy Water Right").

WHEREAS the waste water source for the Simpson Water Right and Tracy Water Right is the same.

WHEREAS Simpson and Tracy each divert their waste water rights in the SWNE, Section 29, Township 21 North, Range 23 East ("Point of Diversion").

WHEREAS the irrigation season for the Simpson Water Right and the Tracy Water Right is March 15 – November 15 ("Irrigation Season").

WHEREAS on October 31, 2014, Simpson filed an objection to the IDWR Recommendation.

WHEREAS on January 5, 2015, Simpson moved the SRBA District Court to set aside subcase nos. 74-00178BB and 74-10168 ("Set Aside Motion"). Subcase nos. 74-00178BB and 74-10168 were previously decreed disallowed by the SRBA District Court.

WHEREAS on February 17, 2015, Tracys filed a *Memorandum in Opposition to Motion to Set Aside Final Order Disallowing Water Right Claims* ("Memorandum in Opposition").

WHEREAS on April 21, 2015, the SRBA District Court is set to hear argument on Simpsons' Set Aside Motion and Tracys' Memorandum in Opposition.

WHEREAS Tracy and Simpson wish to resolve their differences.

NOW, THEREFORE, by mutual consideration of the Recitals stated above, by the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **ROTATION.** As will be explained below, the Parties agree to a rotation ("Rotation") during the Irrigation Season as follows:

1.1 Simpson shall be entitled to irrigate beginning at noon on Wednesday and running through Saturday.

1.2 Tracy shall be entitled to irrigate beginning on Sunday and running through noon on Wednesday.

This cycle shall repeat itself until the Irrigation Season is completed, and shall begin again at the start of the next Irrigation Season.

Notwithstanding the above Rotation, in the event that there is more water available than authorized under the water right of the Party who is on rotation, then the non-rotation Party may divert water and put it to beneficial use on the non-rotation Party's property, regardless of whose day it is to divert water under the Rotation. Provided, that this is the only exception to the Rotation and that prior to diverting outside of the Rotation, as allowed under this provision, the non-rotation Party must ensure that water is available for beneficial use at the other Party's property.

2. **PRIORITY DATE AND QUANTITY.** The Parties recognize the priority dates and quantities for the Simpson Water Right and the Tracy Water Right. Irrespective of the priority dates and the quantities set forth in the Simpson Water Right and the Tracy Water Right, the Parties expressly agree they are on equal footing and shall share and share alike in the waste water available at the Point of Diversion, subject only to the Rotation described in Paragraph 1, herein.

3. **MAINTENANCE & REPAIR.** All costs relating to the maintenance and repair of the shared portion of diversion system, including the pond and the shared portion of the ditch diverting from the pond, shall be divided equally between the parties. All costs relating to the

maintenance and repair of the individual diversion systems, including ditches, headgates and irrigation systems, shall be the responsibility of the party using that system.

4. SIMPSON SET ASIDE MOTION. Upon execution of this Agreement, Simpsons shall withdraw their Motion to Set Aside, with prejudice, each side to bear its own costs and attorneys' fees.

5. TRACY LATE CLAIM. Upon execution of this Agreement, Simpsons and Tracys shall resolve the Tracy Late Claim by entering into a Standard Form 5 ("SF5") with IDWR. The Tracy Late Claim shall be described as set forth in the IDWR Recommendation with the addition of the following language in the Other Provisions Necessary for Definition or Administration of this Water Right: "For purposes of administration, this water right is governed by a Settlement Agreement dated _____, recorded in the Lemhi County Recorder's Office as Instrument No. _____." The "Settlement Agreement" referred to in the prior sentence is this Agreement, and the date shall be the date the Agreement is executed. Simpsons agree they shall take no action, nor solicit any action that would prevent the Tracy Late Claim from being recommended by Special Master Terrence Dolan and partially decreed by the SRBA District Court in accordance with this Agreement.

6. RECORDING. This Agreement shall be recorded in the Lemhi County Recorder's Office.

7. HEADINGS. The headings in this Agreement are for convenience only and do not explain, define, limit, amplify, or aid in the interpretation, construction, or meaning of the provisions of this Agreement.

8. GOVERNING LAW. This Agreement shall be governed by the laws of the State of Idaho.

9. NO CONSTRUCTION. No Party or such Party's attorney shall be deemed to be the drafter of this Agreement for purposes of interpreting or construing any of the provisions of this Agreement. This Agreement shall be interpreted in accordance with the fair meaning of its language and not strictly for or against any of the Parties to this Agreement.

10. MEDIATION AND ARBITRATION. Simpson and Tracy agree that disputes for any violation of this Agreement shall be settled first by mediation and if unsuccessful by arbitration, with litigation only allowed for the purpose of enforcing the arbitrator's decision. Mediation and arbitration shall be governed by Idaho's Uniform Mediation Act (Idaho Code § 9-801 *et seq.*) and Arbitration Act (Idaho Code § 7-901 *et seq.*).

11. ATTORNEYS' FEES. In any suit, action, or appeal therefrom to enforce or interpret this Agreement, the prevailing party shall be entitled to recover its costs incurred therein, including reasonable attorneys' fees and costs, including those associated with any appeal.

12. COUNTERPARTS. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

13. ENTIRE AGREEMENT. This Agreement contains the entire agreement between the parties and supersedes all prior agreements, oral or written, with respect to the subject matter hereof.

14. MODIFICATION. This Agreement may not be modified except in a writing signed by all parties.

15. BINDING AGREEMENT. This Agreement is binding on all successors and heirs of both parties.

IN WITNESS WHEREOF, the Parties hereto have executed and delivered this Agreement as of the date recited above (the “Effective Date”):

[signatures begin on next page]

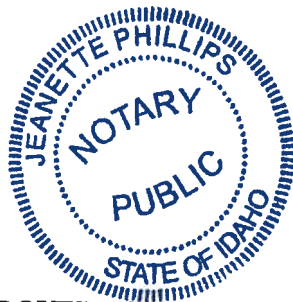
Vincent Tracy
Vincent Tracy

Malinda Tracy
Malinda Tracy

STATE OF IDAHO)
) ss
County of Lemhi)

On this 7 day of May, 2015, before me, the undersigned, a Notary Public in and for said State, personally appeared VINCENT TRACY and MALINDA TRACY, known or identified to me to be the persons who signed the above instrument and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



Jeanette Phillips
Notary Public for Idaho
Residing at: 607 Guleke St, Salmon ID 83467
Comm. Exp.: 3/10/2020

APPROVED AS TO FORM AND CONTENT:

Chris M. Bromley
Chris M. Bromley
McHugh Bromley, PLLC
Attorneys for Vincent and Malinda Tracy

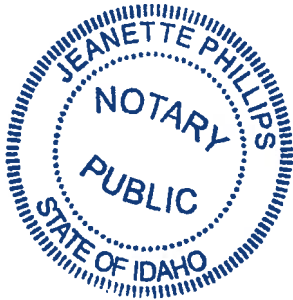
John Alfred Simpson
John Alfred Simpson

Susan Isley Simpson
Susan Isley Simpson

STATE OF IDAHO)
) ss
County of Lemhi)

On this 6 day of May, 2015, before me, the undersigned, a Notary Public in and for said State, personally appeared JOHN ALFRED SIMPSON and SUSAN ISLEY SIMPSON, known or identified to me to be the persons who signed the above instrument and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



Jeanette Phillips
Notary Public for Idaho
Residing at: 607 Guleke St, Salmon, Id 83467
Comm. Exp.: 3/10/2020

APPROVED AS TO FORM AND CONTENT:

Paul L. Arrington
Barker Rosholt & Simpson, LLP
Attorneys for John and Susan Simpson