

RECEIVED

MAR 18 2010

DEPARTMENT OF
WATER RESOURCES

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

A. Subcase 75-10136B

Case No. 35976

STANDARD FORM 1
OBJECTION

Please fill in the following information:

B. NAME AND ADDRESS OF PERSON OBJECTING

Name: John E. & Ruth C. Burns, Box 264, Carmen, ID 83462,
George Matejko, Box 129, Carmen, ID 83462
Rick & Linda Rice, Box 285, Carmen, ID 83462
Robert M. & Jacqueline D. Ernest, Box 132, Carmen, ID 83462
William W. Clementz, Box 255, Carmen, ID 83462
James R. & Rowena D. Quinn, Box 1473, Carmen, ID 83462

Name & Address of Attorney, if any:

Robert L. Harris
Holden, Kidwell, Hahn & Crapo, PLLC
PO Box 50130, Idaho Falls, ID 83405

C. CLAIMANT OF WATER RIGHT AS LISTED IN DIRECTOR'S REPORT

Name: Terry and Veralyn Hershey
Address: Box 121, Carmen, ID 83462

D. I object to the following elements as recommended in the Director's Report. (Please check the appropriate box(es)).

1. ☐ **Name and Address**
Should be: _____
2. ☐ **Source**
Should be: _____
3. ☒ **Quantity**
Should be: 0.017 cfs
4. ☐ **Priority Date**
Should be: _____
5. ☐ **Points of Diversion**
Should be: _____
6. ☐ **Instream Flow Description**
Should be: _____
7. ☐ **Purpose(s) of Use**
Should be: _____
8. ☐ **Period of Year**
Should be: _____
9. ☐ **Place of Use**
Should be: _____
10. **I object because:**
 - ☐ This water right should not exist.
 - ☐ This water right was not recommended, but should be recommended with the elements described above.

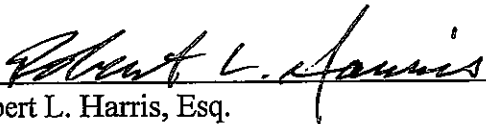
E. **REASONS SUPPORTING OBJECTION(S):** See attached narrative.

VERIFICATION (Must be Completed)

State of Idaho)
)ss.
County of Bonneville)

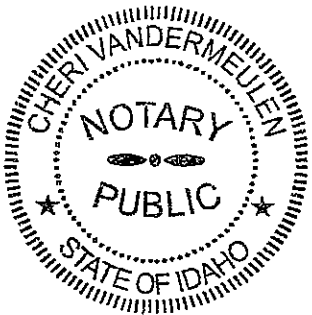
Robert L. Harris, duly sworn, upon oath, deposes and say:

That I am the attorney for the party/claimant objecting and that I have read this objection, know its contents and believe that the statements are true to the best of my knowledge.



Robert L. Harris, Esq.
Holden, Kidwell, Hahn & Crapo, P.L.L.C.

Subscribed and sworn to before me this 10th day of March, 2010.





Notary Public for Idaho
Residing at: Idaho Falls, ID
My Commission Expires: July 7, 2015

CERTIFICATE OF MAILING

I hereby certify that on the 16th day of March, 2010, I mailed the original and copies of this objection, including all attachments, to the following persons:

1. Original to:
Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
P.O. Box 2707
Twin Falls, ID 83303-2707
2. Copies to:
IDWR Document Depository
P.O. Box 83720
Boise, ID 83720-0098
Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
P.O. Box 44449
Boise, ID 83711-4449
United States Department of Justice
Environmental and Natural Resource
Division
550 West Fort Street, MSC 033
Boise, ID 83724
Steven K. Yowell
3509 Ballance Court
Chesapeake, VA 23321
Johnny J. Cabigas
1267 Mobil Ave.
Camarillo, CA 93010
William Clementz
PO Box 255
Carmen, ID 83462
Philip Eisenhauer
Shelley Erwin
3608 Foothill Blvd.
Redding, CA 96001
Terry & Veralyn Hershey
PO Box 121
Carmen, ID 83462
Rodney & Susan Edmiston
PO Box 155
Carmen, ID 83462
Rick & Linda Rice
PO Box 285
Carmen, ID 83462
Shirley Mattis
PO Box 265
Carmen, ID 83462
James & Rowena Quinn
PO Box 1473
Carmen, ID 83462
Robert & Jacqueline Ernest
PO Box 32
Carmen, ID 83462
Robert & Fransicka Mosher
PO Box 213
Carmen, ID 83462

George Matejko
PO Box 129
Carmen, ID 83462

Danny & Roberta Fadness
PO Boc 286
Carmen, ID 83462

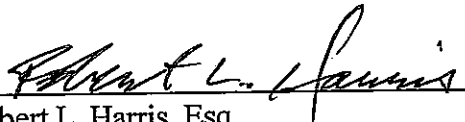
Ray Rigby
Jerry Rigby
Hyrum Erickson
Rigby Andrus & Moeller
PO Box 250
Rexburg, ID 83440-0250

Travis L. Thompson
Paul L. Arrington
Sarah W. Higer
Barker Rosholt & Simpson
PO Box 485
Twin Falls, ID 83303-0485

James & Cathleen Tippet
PO Box 15
Carmen, ID 83462

James Hudson
PO Box 173
Carmen, ID 83462

John & Ruth Burns
PO Box 264
Carmen, ID 83462


Robert L. Harris, Esq.
Holden, Kidwell, Hahn & Crapo, P.L.L.C.

REASONS SUPPORTING OBJECTIONS

We concur that lands within the place of use for the Palmer Homestead described in the 1902 Carmen Creek Decree should receive an appurtenant share of the so-called "exchange rights", as should all lands within the described place of use. However, the outcome of other objections to water rights affected by the IDWR 706 Report of January 11, 2010 will affect the quantity of water appropriate for this water right. Therefore, pending resolution of all claims and objections in Carmen Creek, this water right should be held in abeyance and adjusted accordingly at the proper time.

**Statement of Robert F. Parmenter
10129 Highway 41 North
Dillon, Montana 59725**

I reside at 10129 Highway 41 North near Dillon, Montana 59725, where I own and operate a cattle business.

On February 25, 2010 I met with John Burns at my home near Dillon to discuss the water use on the home place surrounding the house my father built in 1947. I understand Mr. Burns now owns the house and a portion of the acreage where my family and I resided. The following is my recollection of the property and its use:

In 1946 my parents purchased the "Cooper place" of about 350 acres on Carmen Creek. The Cooper property consisted of the original Thomas Palmer homestead and two other contiguous parcels.

I lived with my parents first in the original homestead house on the South side of Carmen Creek and then in the house which my father built in 1947 next to the old house. I resided there until the mid-1960's when I moved elsewhere.

I recall my father landscaped the area surrounding the house and planted the spruce trees and willow tree which have survived to this day and are now quite large. An apple orchard existed in the field in back of the house at the time we moved there. The trees were old at that time, but were productive and provided several varieties of late maturing apples, both cooking and eating.

My Mother always had a large garden with vegetables and raspberry bushes. The garden lay in back of the house and extended toward the road. We flood irrigated the garden, orchard, back field, and area surrounding the house season-long from the historic upper ditch.

A large field of about 20 acres extended westward below the Carmen Creek Road from the drive in front of the house to the adjacent ranch property. We grew two crops of alfalfa-Orchardgrass hay there each year. We irrigated this field primarily from the same upper ditch and partially from a lower ditch which passed below the house and above the milk barn. The lower ditch was also an old ditch and flowed through the season.

In the early 1960's the Idaho Fish & Game Department installed a fish screen on the lower ditch just below the headgate and cutout which regulated the ditch flow. I always called this screen a "fish killer" as the salmon and steelhead tended to get caught and crushed in the wiper mechanism. Keeping the dead fish cleaned from the screen was a frequent chore.

My father acquired additional acreage in 1951 and 1954 which brought the size of our ranch property to about 650 acres on both sides of the Creek. Those purchases increased our irrigated acreage significantly.

In addition to our hay and cattle we ultimately ran about 60 head of milk cows. I built the milk barn to accommodate that operation.

Our family took pride in the appearance of the home, landscaping, and surrounding fields, and kept it well tended and irrigated until the time when the last of the property including the home place was sold by my father in 1976. We had begun to sell parcels in 1968.

Signed Robert F. Parmenter
Robert F. Parmenter

Notary: Vicki Andersen
Notary Public Residing At: Dillon



VICKI ANDERSEN
NOTARY PUBLIC for the
State of Montana
Residing at Dillon, Montana
My Commission Expires
September 18, 2011

My Commission Expires: 9-16-2011

Statement of John Burns
Meeting and Discussion with Robert F. Parmenter
Dillon, Montana
February 25, 2010

The following describes my personal discussion with Mr. Robert Parmenter concerning his recollections of his period of residence on the former Thomas Palmer Homestead in Carmen Creek. I reside at 362 Carmen Creek Road in the house built by Robert's father, Frank Parmenter, in 1947. I and my wife, Ruth, have resided there since 1989.

I met with Mr. Parmenter at his home, 10129, Highway 41 North, Dillon, Montana, on the morning of February 25, 2010. He agreed to meet with me in order to discuss his family's irrigation of the home place and land surrounding it during the time when the Parmenter family owned the ranch property. Their ownership began in 1946, and by 1954 totaled about 650 acres. In 1968 the family began to sell portions of their holdings and by 1976 the last acreage was sold.

According to Mr. Parmenter, they initially resided in the original house on the old homestead south of the Creek. They built the new house in 1947 next to the original house on the side toward the Carmen Creek Road. Two historic ditches flowed through the home place, one above the house close to the road, and one lower between the house and milk barn. Both remain in their original locations except for some change in alignment of part of the upper ditch necessitated by reconstruction of the Carmen Creek Road. Robert recalls he worked on the road project, operating a slip during the day shift and driving a gravel truck during the night shift.

The drive next to the house and down to the lower ground next to the Creek was the original access to the property. The Ajax Peak subdivision road, built in 1979, now bisects the large 20 acre field that extended from the drive in front of the house to the boundary of what is now the Aldous ranch. The portion of the field from the subdivision road back to the house and the area surrounding the house is now part of the Burns property, and the portion between the subdivision road and the Aldous line to the west is now the Matejko and Rice properties.

According to Mr. Parmenter, they irrigated the property season-long. Both ditches flowed for the season. The higher elevation top ditch was used to flood irrigate most of the ground, including around the house and the field to the west, as is the case today.

The Parmenters harvested two cuttings of hay, largely alfalfa and orchard grass, from this field each season. The field was irrigated primarily through the top ditch. Although the lower ditch also ran season-long, it did not have enough elevation to flood a large area until further toward the west end of the property. They normally had a large stack in a dry corner of the field, and Robert recalls having a runaway with a haysled team when he was feeding. He was thrown from the sled across the team when the runaway hung up on a frozen bundle of fence wire and stopped abruptly

The Parmenters always raised a large garden, vegetables and raspberry bushes. It lay behind the house on the east and extended almost to the Carmen Creek road. It was irrigated from the top ditch as was the large back field and orchard.

The orchard remains today, and is quite old. Robert recalls that the orchard was not planted by them but was old when they moved there. The water could be moved from the top ditch though smaller distribution ditches in order to cover the area. They normally used the back field for grazing.

He recalls his father planting the spruce trees behind the house and the willow tree on the west side. Those trees are now quite large, the willow being some 13 feet in circumference, and the spruce trees each over 6 feet in circumference. Core drilling of the spruces confirms that their age dates from the 1940's.

Mr. Parmenter recalls the construction of the Idaho fish and Game Department fish wheel and screen on the lower ditch in the early 1960's. The screen is located on an easement granted to the Idaho Fish & Game in 1961 for that purpose. Robert refers to it as a "fish killer." He stated that removing mangled dead fish, primarily salmon but some steelhead, from the screen was an unpleasant but frequently necessary chore in order to keep the water flowing through the screen. The wiping mechanism itself would catch and crush the fish, clogging the screen. A program of screen replacement is now underway on Carmen Creek with an improved design.

In addition to the house, the Parmenters also constructed a large shop building and a milk barn. Mr. Parmenter stated that the largest number of milk cows they had at one point to be about 60 head. They produced Grade A milk for a creamery in Montana.

A small wood frame building between the house and the shop was used as a woodshed by the Parmenters. Robert stated it was in existence when they moved to the property. In more recent years it has been used as a garage building and loafing shed.

Mr. Parmenter also recalls that he and his father contracted with Mr. Larry Bills to extend the Parmenter Ditch on the bench south of the Carmen Road to Mr. Bills' land on the large bench above the bluffs overlooking the Salmon River. The ditch carries water from Freeman Creek and is roughly six miles long. The Parmenters used the older (upper) segment of the ditch initially to carry water to their land south of the road and homestead.

Signed John E. Burns

John E. Burns
362 Carmen Creek Road
P.O. Box 264
Carmen, Idaho 83462

Notary [Signature]
Notary Public, Residing At: Salmon

My Commission Expires: 6-2-2012



January 5, 2010

Dear Mr. Baxter,

It is my understanding that you are relying heavily on affidavits for your conclusions in the 706 report. We don't believe that you have considered any of the affidavits that we have been assembling and would like you to please consider the enclosed.

Thank you very much.

Very respectfully,

A handwritten signature in black ink, appearing to read "Ruth Burns". The signature is stylized with a large, sweeping initial "R" and a long, horizontal flourish extending to the right.

Ruth Burns

Statement of Gary Anderson

Water Rights and Use

Lot 1, Block 1, Carmen Creek Ranchettes, Carmen, Idaho

I acquired this tract on December 2, 1977 from Robert and Jane Merrick and Michael and Linda Ihli, and constructed a home there in 1981. This tract is a part of the original Thomas Palmer homestead. The road into the Ajax Peak Subdivision had not yet been built along the northeast boundary of the property, so the irrigated meadow extended unbroken over to the driveway accessing the house built by the Parmenters in the 1940's. The land to the west of my line was also unbroken meadow (Lot 2) and was acquired by Tim Jewell.

The property was simply irrigated meadow and not landscaped prior to construction of the house. Water from the lower ditch was used season long to irrigate the area around the house (including new lawn and trees) from the time construction was completed until I sold the home in 1994.

The lower ditch divides the property with about half the ground above it and the same amount below. The upper ditch enters the property after passing under the Carmen Creek Road perhaps 150 feet northeast of where the line between my land and the Jewell land meet the road right-of-way (now Rice-Matejko line.)

I used water from the upper ditch to flood the pasture area to the extent the watermaster made it available. My interest was primarily in maintaining the attractive appearance of the meadow so I tended not to irrigate as intensively as one would for hay production.

At one point I permitted rancher John Aldous to irrigate the ground and cut hay on it, but excessive irrigation resulted in moisture in the crawl space of the house, and I terminated the hay arrangement. Not owning stock myself, at times I also permitted others to graze the ground.

Mr. Jewell irrigated his property frequently. He sold the house he built in the late 1970's to Mrs. Linda Metcalf, with a small part of the property when he was transferred out of town. I understand he later sold the pasture acreage to her and Mr. Rick Rice when they married. He permitted hay cutting and grazing on his land.

I first paid water tax in 1982, and thereafter each year until I moved. My understanding and belief was that by using the water each year and paying the tax I was protecting all rights connected with the property. I also understood that the tax was for water delivery to the several subdivided tracts on the south side of Carmen Creek.

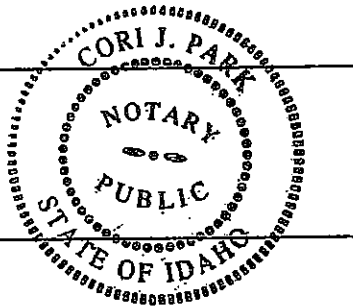
Signed: *M. Gary Anderson*

Gary Anderson
404 Broadway Street
Salmon, Idaho 83462

Date: *20 February 2009*

Notary: *[Signature]*
Notary Public, Residing at: *Salmon*

6.2.2012
My Commission Expires:



Statement by Mr. Bill Howell
Use of water on Carmen Creek

I lived on Carmen Creek from 1926 to 1970. I owned property both below Mr. Frank Parmenter and then later up the creek from Mr. Frank Parmenter.

It was my observation that Mr. Parmenter irrigated his property on the south side of the creek for the full irrigation season till the freeze.

Signed Bill Howell

Mr. Bill Howell

On this 9th day of December, 2008



Cori J. Park
Notary
Commission Exp: 6-2-2012
Residing in Salmon, ID

Statement of Scoop Aldous
Observations on Water Use – Carmen Creek

I lived with my family on the ranch next to the Parmenter home place property from 1956 to 1960. During that time I managed and irrigated the meadows and livestock, as well as maintained the improvements, ditches, fences, buildings and so on.

The ranch is located downstream from the Parmenter land, and is irrigated using the same ditch system that passes through the home place upstream. At one time both ranches were owned by brothers, John and Thomas Palmer.

On the South side where the residences were located, both properties were served by three active ditches.

Because the same ditches served both properties, it was necessary to coordinate the irrigation work so that each would derive the greatest benefit of the water use. The Parmenter house was relatively new and nicely landscaped, with lawn, willow, evergreen, and apple trees. It had a large vegetable garden. The ditches were very old and supported large cottonwoods along the banks, as they do to this day. The willow is now huge, and is a Carmen Creek landmark. So are the big evergreen trees at the rear of the house.

In addition to flood irrigation, Mr. Parmenter had an underground pipe system from the ditches to outlet risers in spots. Pipes also passed under the Carmen Creek road to provide flood irrigation to those parts of the land where the road lay between the irrigated land and the ditch or both upper ditches.

I observed that the Parmenter place was always green through the summer, and that irrigation there continued through the season until freezing.

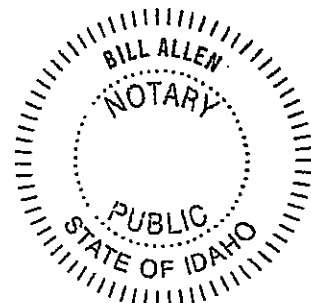
Signed Scoop Aldous

Scoop Aldous

1011 South Church St.
Salmon, Idaho 83467

Notary: For Bill Allen
Notary Public, Residing at:

My Commission Expires: 2/19/2009



**Statement of Robert Ernest
Use of Water on Property, Carmen Creek**

December 10, 2008

I started coming to Salmon/Carmen Creek in 1957 to hunt and camp. I had been told by my brother-in-law about Carmen Creek. I saw that the land owned by Mr. Frank Parmenter was always well watered in the late season when I was here to hunt so I realized it had good water rights.

I met with Mr. Frank Parmenter in his home, which is now the Burns property, after he put the ranch up for sale. He showed me the property on the south side of the creek between the creek and the Carmen Creek Rd. that included his home. He told me that it had the best water rights. I was not interested in property that did not have good water rights.

There was other property that Mr. Parmenter showed me which only had high water rights but I paid \$500 an acre more per acre for the property that was on the old homestead with the old water rights and made sure that it was in the deed that the water went with the property. My actual purchase was in 1969. Mr. Erin Robie handled the paper work.

After we were living on the property Mr. Archie McFarland came along one day and took my siphon out of the ditch. My father Mr. Robert A. Ernest told him that we had all the water rights and he had better put the siphon back in the ditch. Mr. McFarland did so and he didn't bother us again.

The property was flood irrigated when I purchased it but I put in a sprinkler system so that there was not so much water. The lower ditch on the property was always so full that it was also a problem. There were sheep in the lower pasture and woods at that time.

I have continued to irrigate the property for the full irrigation season since my purchase. I did sell the adjacent parcel to my home to my father who subsequently sold it. It is now owned by Bill & Katie Clementz, and has been continuously irrigated since I sold it. I also purchased a two acre parcel which was between me and what is now the Quinn property.

At the time of my purchase from Mr. Parmenter my land was irrigated meadow.

Signed Robert M. Ernest Jacqueline D. Ernest 12/11/08.

Robert M. Ernest

Jacqueline D. Ernest

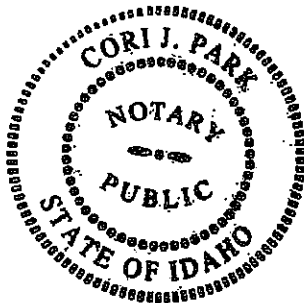
392 Carmen Creek Rd.

PO Box

Carmen, Idaho 83462

Notary: Q
Notary Public, Residing at: Salmon, ID

My Commission Expires: 6-2-2012



Statement of C.L. Underwood and Mary W. Underwood
Water Rights and Use
Lot 1, Ajax Peak Subdivision, Carmen, Idaho

We acquired Lot 1 of the Ajax Peak Subdivision on Carmen Creek on July 1, 1981, from Maurice Foland, the developer of the subdivision. We resided there continuously until the property was sold to John and Ruth Burns on July 21, 1989. At the time of our purchase the property was very well watered.

The deed from Mr. Foland states in part, "Together with all water and water rights, ditches, and ditch rights appertaining thereto or used in connection therewith."

The residence on the property was built by Frank and Mary Parmenter in or about 1946, and is on the site of the original Thomas Palmer homestead dwelling. Other major buildings present are the "milk barn" and large shop building.

The property contains an orchard of six very old apple trees in the back pasture, very large spruce trees adjacent to the back of the house, a huge weeping willow tree in front, and very large cottonwoods along the two ditches serving the property. The headgate for the lower ditch is located on the property. That ditch passes below the shop building and above the milk barn. The headgate for the upper ditch is located about half a mile above the property.

Distribution ditches enabled water to reach the various parts of the lot. In order to simplify irrigation we installed a metal diversion box in the upper ditch with two pipe outlets. One pipeline fed a pump which enabled sprinkling, rather than flooding, the area between the house and road, portions of the pasture, the lawn and trees, as well as watering stock. A second flexible pipeline enabled directing water to "high spots."

As a result of an inquiry by us to the Idaho Department of Water Resources, two representatives visited us. They referred our questions on the actual water rights to Mr. Dave McFarland, the local watermaster.

Obviously we had no reason to not rely on the integrity and accuracy of the watermaster for our water delivery, nor did we possess the background, means or ability to question his statements or actions. In no case, however, did we knowingly surrender or forgo any water rights known to be available to us.

The property was irrigated each season to the extent of the water made available to us by the watermaster.

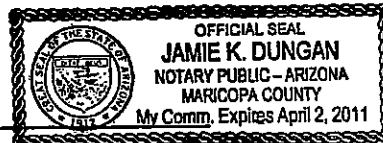
Signed: C.L. Underwood Mary Underwood

C.L. Underwood and Mary Underwood
10362 West Loma Blanca
Sun City, Arizona 85351

Date: October 10, 2008

Notary: Jamie K. Dungan Peoria, Arizona
Notary Public, residing at:

April 2, 2011
My Commission Expires:



John Aldous statement:

I have been ranching on Carmen Creek since 1975 and I have been maintaining the two lower ditches on the south side during that time. The Burns have been helping with that work since they moved here 19 years ago, sharing costs and labor. Matejko, Rice and Quinn's have also done work on the ditches.

John Aldous.

John Aldous

Date. *1/30/09*

FAX to Hyrum Erickson - 208-356-0768

treeboxmules

From: "John Burns" <treeboxmules@centurytel.net>
To: "Hyrum Erickson" <herickson@rex-law.com>
Sent: Monday, February 23, 2009 11:27 AM
Subject: Statement by John Aldous

Hyrum:

John Aldous is the ranch owner immediately adjacent to the subdivided properties. He gets water thru the lower ditch, middle ditch, and upper ditch (plus 1954 ditch) on the south side, and the ditch thru Hudson and Mattis on the north side.

This statement is not notarized, you'll note. If it becomes necessary we'll work with him to get it notarized, but we were fortunate to get this much.

I'm sending a copy by fax, as I don't recall if I got a copy to you earlier.

John B.

Pg 1 of 2

2/23/2009