

**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. 35976

A. Subcase 75-10061Y

**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: Robert M. and Jacqueline D. Ernest  
Address: Box 132, 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: Robert M. and Jacqueline D. Ernest, Box 132, Carmen, ID 83462
2. ☒ **Source**  
Should be: Carmen Creek
3. ☒ **Quantity**  
Should be: 0.013 cfs
4. ☒ **Priority Date**  
Should be: May 1, 1875
5. ☒ **Points of Diversion**  
Should be: T22N, R22E, SEC. 2, NENW (LOT 3) (C9 DIVERSION)  
T22N, R22E, SEC. 2, NWNW (LOT 4) (C8 DIVERSION)
6. ☐ **Instream Flow Description**  
Should be: \_\_\_\_\_
7. ☒ **Purpose(s) of Use**  
Should be: Irrigation
8. ☒ **Period of Year**  
Should be: April 1 to Oct. 31
9. ☒ **Place of Use**  
Should be: 1.7 ACRES IN SWNW, T22N, R22E, SEC. 2
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.

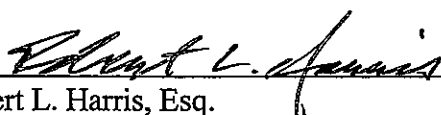
E. **REASONS SUPPORTING OBJECTION(S):** Property is clearly within decreed place of use for exchange rights as contained in the Carmen Creek Decree of 1902. See attached narrative, affidavits of Robert Parmenter and John Burns of Feb. 25, 2010, and other attached affidavits

**VERIFICATION (Must be Completed)**

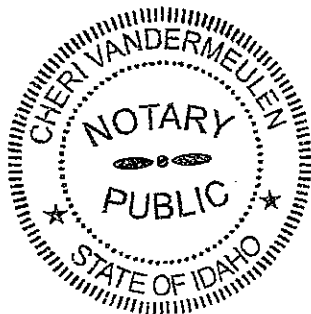
State of Idaho                     )  
                                              )ss.  
County of Bonneville         )

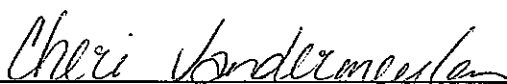
Robert L. Harris, duly sworn, upon oath, deposes and say:

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 16<sup>th</sup> 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 16<sup>th</sup> 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 Eisenhower  
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

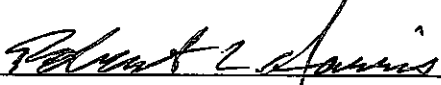
Ray Rigby  
Jerry Rigby  
Hyrum Erickson  
Rigby Andrus & Moeller  
PO Box 250  
Rexburg, ID 83440-0250

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.

## NARRATIVE

The Idaho Department of Water Resources' Supplemental Director's Report, dated January 11, 2010, does not provide a sufficient basis to change the recommendation for these water rights from allowed to disallowed. The water rights should be recommended as they were previously recommended in January 2007 by the Department. The procedure engaged in by IDWR to prepare the 706 report was deficient in several key respects. The report contains a number of factual errors and misstatements, does not adequately explain the Department's change in position from its prior recommendation, and ignores correspondence, records, other evidence, and affidavits filed by the objectors with the Department. The objector's property is within the place of use described in the Carmen Creek Decree of 1902.

As an initial matter, the 706 report was nearly six months late and appears to have been hurriedly put together. It does not appear that the 706 report contained a significant investigation into all of the relevant evidence that should have been considered. It appears from the 706 report that two affidavits from the claimants were considered, but evidence provided by the objectors was not considered.

In a prior pleading filed by Travis Thompson of Barker, Rosholt and Simpson, he indicated that the Department was willing to prepare a 706 report "however, the Department would not plan on doing the requisite field exam until sometime in the spring." It appeared from this statement, and comments of the court at the time, that the Department intended to conduct an actual field examination, but the objectors were not permitted to attend or provide input during any such field examination. Information was provided to Department Counsel who met with a representative and counsel of the objectors for about an hour prior to the day of the tour. To the best of our knowledge, the following day Department officials were accompanied by Bruce McFarland and took a short driving tour of the Carmen Creek Drainage. They examined certain McFarland property, but no affected residents located on the south side of Carmen Creek were visited, nor was their property examined or assessed.

Additionally, the Department's new 706 report appears to rely entirely on statements from the Affidavits of David McFarland and Robert Parmenter, which the Department accepted without the evaluation or confirmation necessary to place the material in a correct perspective. Further, the Affidavit of Robert Parmenter was relied on heavily by the Department in their revised 706 report, but in reviewing the affidavit, it does not appear to say what IDWR believes it says. Furthermore, additional affidavits provided by the objectors seem to be misstated or mis-characterized in the 706 report. One is given the caveat of "if true." There is no significant discussion of why the Department relied whole-heartedly on the affidavit from former Watermaster McFarland and the incomplete Affidavit of Mr. Parmenter, and ignored the significant other evidence provided by the objectors. Copies of these affidavits, along with another affidavit from Robert Parmenter, are attached.

Additionally, with respect to the Department's reliance on Mr. McFarland's affidavit, there is evidence relating to his water distribution within the Carmen Creek Drainage that may call into question his knowledge or credibility with regards to delivery of water. The objectors have obtained

water delivery records during the period covered by Mr. McFarland's affidavit, and it appears that some of those measurements contradict the blanket assertions contained in his affidavit. Additionally, due to errors in distribution by Watermaster McFarland, Ron Carlson the manager of IDWR from the Eastern Region office at the time was called upon to correct the distribution methodology by Mr. McFarland, which was done. The fact that Mr. McFarland was directed to change his water delivery methods calls into question whether or not water was delivered to the claimants in a manner that would satisfy the accomplished transfer statutes. At a minimum, the Department should have investigated and commented on the Watermaster's prior incidents with regards to delivery of water.

In addition, it appears that the 706 report misconstrues the intent of the accomplished transfer statutes. Generally, the statutes are intended to provide a mechanism for individuals who have changed elements of their water rights without going through the proper transfer proceedings outlined in the Idaho Code to have these changes reflected in their SRBA decree. Thus, the element changes to their water rights are generally to their own water rights. The 706 report effectively conveys or deeds the property from one group of individuals with historic decreed rights to another without decreed rights, which appears to be unprecedented in the SRBA. In other words, inaccurate or incorrect administration does not warrant a finding of an accomplished transfer that would take water from one group of individuals to another, especially when the water delivery records do not distinguish between the water rights delivered to various portions of the Carmen Creek Drainage. The records simply indicate that a certain amount of water was delivered to a heading, but does not distinguish between what priority date or which water right is being delivered at that time.

Furthermore, the Department included in its recommended place of use two additional tracts of land that were only patented in 1980, and contains no discussion or explanation of why these lands were included within the authorized places of use of the water rights. The Department also appears to have ignored the dates of numerous prior land sales within the decree place of use and the effect of those prior splits.

Lastly, there is detailed aerial photography from 1947 to the present time that was not considered by IDWR. There was a continuous pattern of irrigation on the south side of Carmen Creek, which is evident from the aerial photography and the periodic agricultural classifications by the Lemhi County Assessor depicted on the photography. Without the exchange water (the earlier priority date water), irrigation of these properties would not have shown up on the aerial photography as well. The physical vegetative evidence at the former Parmenter house and on other lands was not considered. The vegetation would not have grown and matured without sufficient and continuing supplies of water, and the Department appeared to ignore it in its 706 report. In short, given an understanding of the factors that control vegetative growth, water, soil, topography, elevation, etc., the history of the use of the objectors' water rights is very discernable, but their historic decreed water rights were removed from their properties and attached to the claimants' properties in the 706 report. For these reasons, the objectors object to the water right recommendations contained in the 706 report.

**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: DeLeon



VICKI ANDERSEN  
NOTARY PUBLIC for the  
State of Montana  
Residing at Dillon, Montana  
My Commission Expires  
September 16, 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*

Notary

*[Signature]*

Notary Public, Residing At: *Salmon*

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

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", written in a cursive style.

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.

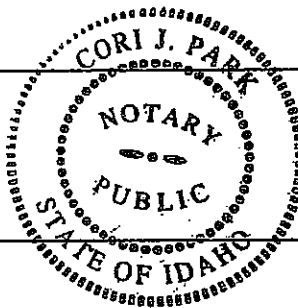
Signed: M. Gary Anderson

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

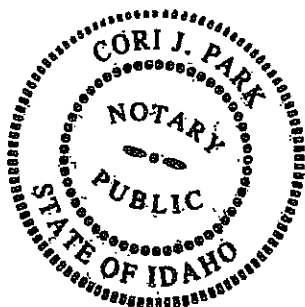
I lived on Carmen Creek from 1926 to 1990. I owned property both below Mr. Frank Parmenter and then later up the creek from Mr. Frank Parmenter.

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 9<sup>th</sup> 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.

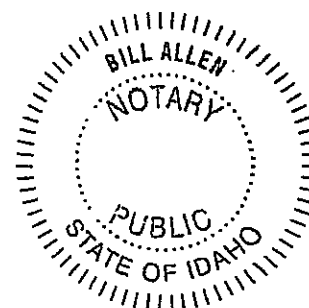
Signed Scoop Aldous

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

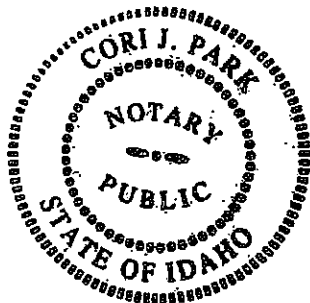
392 Carmen Creek Rd.

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.

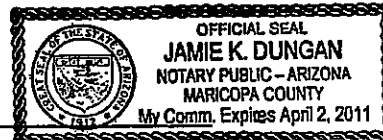
Signed: C.L. Underwood Mary Underwood

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**

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**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