

John E. Burns & Ruth C. Burns
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RECEIVED
JUN 21 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	)	Subcases 75-10061A, et al. (See attached list)
	)	(Carmen Creek)
Case No. 39576	)	
	)	MOTION FOR REHEARING OF ORDER
	)	DENYING MOTION TO REMAND SUBCASES
	)	

COMES NOW JOHN E. & RUTH C. BURNS, holders of Decreed Water Rights in Water District 75-D and claimants thereof in the SRBA, who by and through themselves, file this *Motion for Rehearing of Order Denying Motion to Remand Subcases*.

On June 11, 2010, Special Master Terrance A. Dolan denied the Claimants' *Motion to Remand Subcases to the Director of IDWR* filed on May 11, 2010, by Robert L. Harris, attorney of record for John E. & Ruth C. Burns, George Matejko, Rick & Linda Rice, Robert M. & Jaqueline D. Ernest, William W. Clementz, and James R. & Rowena D. Quinn. Hearing on the motion was held in Twin Falls on June 3, 2010. Mr. Harris represented the above group by telephone.

Claimants' *Motion to Remand Subcases to The Director of IDWR* is needed to secure compliance with the mandatory requirements of Idaho Code 42-1425 (2)(a) which have not been met, correct errors of fact, omissions, and generalizations prejudicial to the claimants, and secure the claimants' due process entitlements. The Court's Order of June 11, 2010, if not reconsidered and modified, will deny Claimants' right of due process and preclude development of a complete and accurate record prior to trial.

Brief in Support of Motion for Rehearing of Order Denying Motion to Remand Subcases to the Director of IDWR follows. *Affidavit of John E. Burns* is attached hereto.

BRIEF

1. The language of Idaho Code Section 42-1425(2)(a) is concise and unambiguous.

The statute is specific in its requirement that “If an objection is filed to a recommendation for accomplished change of place of use, point of diversion, nature or purpose of use or period of use, **the District Court shall remand the water right to the director for further hearing** to determine whether the change injured a water right existing on the date of the change or constituted an enlargement of the original right.”

Claimant’s respectfully disagree with the Court’s interpretation that language in 42-1425(2), preceding the quotation above, somehow modifies or renders moot the remand requirements that follow in 42-1425(2)(a.) The former deals with the circumstances under which a claim of accomplished transfer **may be made**, while the latter deals with specific remand and administrative hearing requirements in the event accomplished transfer **has been recommended by the Director**.

Both sections contain the date references to the commencement of the SRBA process and existing rights. No additional considerations or criteria applicable to the remand requirement are contained within or implied by the statutory language. Failure to require the Director’s hearing will result in the Claimants being forced to address issues at Trial that properly should have been clarified administratively prior to trial. Remand to the Director is simply required by the statute and should be so ordered.

2. Claimants are entitled to due process and the development of a full and complete administrative record.

The SRBA Court, in its Order of May 25, 2010, noted that “Members of the Burns Group” had filed objections to the Supplemental Director’s Report, and the Court further stated that in regard to the distribution of Exchange Water Rights there is an “**undeveloped record at this stage of proceedings**.” (pg7, second para.)

The SRBA Court, in further discussion of the Director’s recommendations, also took specific note of the substantial changes between the original *Director’s Report* and the *Supplemental Director’s Report*, and observed that the “**direct conflict in the two recommendations lessens the weight of the more recent Supplemental Director’s Report**.” (pg7, third para.)

Claimants should not be deprived of this specific statutory requirement of their due process rights by denial of their *Motion for Remand*. The findings of the SRBA Court as described in detail in the May 25, 2010, Order by Presiding Judge Wildman can only be construed to reinforce the need for development of a proper and complete record by means of the Department hearing.

3. **The Director's hearing is required by statute precisely to avoid proceeding to court without complete factual information and a full and accurate administrative record.** The convoluted discussion of land sales during the June 3, 2010 hearing illustrates the fallacy of attempting to clearly define an evidentiary matter on the basis of generalizations. Claimants note that the role of counsel is not to be a source of factual evidence. Regardless, the inability of the hearing participants on June 3 to respond with actual facts was very obvious, notwithstanding the Court's efforts to obtain clarity. Conclusions should be drawn from facts in the record, not uncertain generalizations.

Referring to that discussion and uncertainty, the Court in its Order of June 11, 2010, states, "There was general agreement that the land was first subdivided in the 1970's when certain parcels were allocated their share of the 1875 and 1882 exchange water." We urge the Court to take note of the fact that the only "certain parcels" subdivided during or prior to the "1970's" that could have been "allocated their share of the 1875 and 1882 exchange water" were located on the South Side of Carmen Creek. No such parcels were in existence on the North Side at that time.

With respect, the first sale of land from the Palmer homestead was made in **1915, not the "1970's"** as stated in the Court's order. In fact, several sales by Mr. Frank Parmenter in the 1960's also took place on the South Side, contrary to the order's language. (Exhibit 3, Sales Chronology.)

In addition, major acquisitions by Mr. Parmenter in 1946, 1951, and 1954, resulted in ownership of some 650 contiguous acres. **Significant additional water rights, including additional "exchange water," came with those lands.** The impression has been created that the 160 acre Palmer homestead and the 40 acre 1912 Desert Land Patent passed through the decades as a unified and separate block up to the filing of the Ajax Peak Subdivision in 1980. This is not the factual case.

In the 1970's, the entire Parmenter holdings were broken up and the residual portion of the original Palmer homestead passed through additional owners. Ultimately, in 1979 the remainder of the homestead was acquired by Maurice Foland and the Ajax Peak subdivision was platted. **Some 23 land transactions took place involving the original homestead prior to the subdivision.**

In 1980 Mr. Foland secured patent to two contiguous BLM tracts and included them in the Ajax Peak Subdivision. These North Side tracts have also been recommended for exchange rights by the Department.

In sum, the "general agreement" referenced by the Court is the result of an apparent lack of factual understanding by those participating in the discussion, rather than upon the actual evidence previously provided to all, including both sales and large acquisitions.

A mandatory administrative hearing will clarify the record and ensure that the actual evidence and facts, rather than generalizations, are the basis on which issues are judged at Trial.

4. **The Court ignored the question of enlargement in its denial of the *Motion for Remand*.** The statute is clear that **enlargement** is a significant aspect that must be considered in a Director's hearing involving objections to accomplished transfer recommendations. Claimants' *Motion to Remand Subcases to The Director of IDWR* of May 11, 2010, states (pg1, first para):

"...hereby moves the Court to remand the above subcases to the Director of the Idaho Department of Water Resources for a hearing to determine whether the Department's accomplished transfer findings contained in their Supplemental 706 Report submitted to the Court in January of 2010 injured existing water rights **or constituted an enlargement of original rights.**"

In addition, Claimants' *Reply to Response to Objector's Motion to Remand Subcases to the Director of IDWR...* of June 1, 2010, reiterates (pg5, in both first and second paras.) the statutory requirement that the question of **enlargement of original rights** shall be examined through the required hearing. The language of the statute does not provide for a determination or assessment of the possible outcome of the required hearing or the granting or denial of the hearing on some sort of prior assessment. The hearing is required when the two statutory requisites – a recommendation for accomplished transfer by the IDWR and filing of an objection thereto – are met as they are in this case.

5. **The Court's phrase "The evidence is that Mr. Parmenter made the alleged transfer of exchange water from the south side...to the north side in 1948" is incorrect.** Although the Fols Group now claims a 1948 transfer, neither the IDWR 706 Report nor the existing record contain evidence of any actual transfer, alleged or otherwise. No documentation has been provided to show actual intent by prior owners to permanently separate the rights in question from the Decreed place of use, nor has documentation been provided to support actual intent by prior owners to permanently place the water on properties now belonging to the Fols Group. Instead, the Department relies solely on affidavits by two individuals which purport to describe the use of exchange water, but use at times and locations of convenience by landowners was commonplace.

In fact, Claimants have provided numerous affidavits from individuals in the chain of ownership and others with work experience on the lands in question which refute any allegation of intent to remove water rights and transfer rights to a different location. (Affidavit of John Burns, attached as Exhibit 2.) Without exception, these affidavits specifically discuss the management, use, and irrigation of the South Side lands throughout the irrigation season, and contradict any assertion of accomplished transfer of the rights.

The mere use of water at various times and locations does not constitute accomplished transfer, nor do affidavits from individuals who would have been young children at the time.

6. **The SRBA Court observed that the 1982 IDWR Abstract of Water Rights for Carmen Creek is a comprehensive description of the various water rights diverted from Carmen Creek and its tributaries.** In its Order of May 25, 2010, the Court further states, **“The 1982 Abstract identified the place of use of the Exchange Water Rights as those owned by the Burns Group^{1/} located on the south side of Carmen Creek.** The Court also found that the 1982 Abstract was consistent with the *McNutt Decree*.” (Pg6, second full para.)

Thus, in 1982 the Idaho Department of Water Resources officially confirmed and documented the status of the exchange water rights – i.e. place of use – for the six tracts on the South Side owned by the “Burns Group” or “South Side Users.” (Note that the “Middle Group” on the North Side is also within the 1902 Decree Place of Use, and is correctly recognized as such by the Department.) It also confirmed and documented that the tracts now owned by the “Fols Group” on the north side of Carmen Creek were within the place of use only for a 1910 License Right but not within the place of use for the Exchange Rights (or any rights) adjudicated in the 1902 Carmen Creek Decree.

The SRBA Court stated in its May 25, 2010, Order (Pg9, first para.) that the **1982 Abstract was “specifically prepared by IDWR for purposes of distributing the Exchange Water Rights.”** The correspondence and other descriptive material in the IDWR file record (Burns Affidavit) illustrate concisely that the Carmen Creek Watermaster at that time was closely involved in the preparation and review of the 1982 Abstract, and in his final review concurred in its accuracy. The preparation of the 1982 Abstract was not a simple office exercise, but as the IDWR record shows it involved meetings with water users and field trips, and ultimately distribution to the local court and others in the area concerned with water rights. This evidence has previously been furnished to all participants.

The 1982 Abstract is clearly a conclusive “benchmark.” It reflects a comprehensive field and record examination and analysis of facts actually known and existing in 1982 ^{2/}. It is very well documented in the official records and is not based on speculation, generalizations, or memory.

To suggest that the Fols Group’s unsupported claim of transfer, alleged to have taken place in 1948, some 64 years ago, carries sufficient weight to overcome the very substantial development, review, analysis and official documentation of the 1982 Abstract is unrealistic.

Claims or allegations of transfer or changes in the decreed rights to water preceding the findings of the 1982 Abstract are without merit.

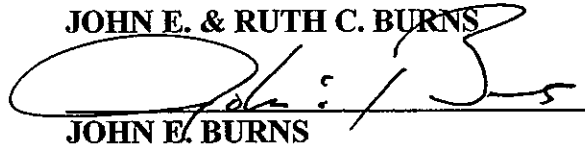
^{1/} The South Side Users (Burns Group) recognize that the “Middle Group” of lot owners on the North Side, as distinct from the Fols Group, are located within the place of use for the rights, including Exchange Rights, Decreed in 1902 and as such support their entitlement to appurtenant shares of those rights.

^{2/} The 1982 Abstract was preceded by the 1969 Abstract which likewise conformed to the 1902 Carmen Creek Decree.

THEREFORE, Claimants respectfully request that the Court grant the requested rehearing and permit argument on the *Request for Remand to the Director*. In the alternative, Claimants request that the Court on consideration of the facts in the record and described herein grant the *Request for Remand* and so notify the Director in order that the hearing may be scheduled without further delay.

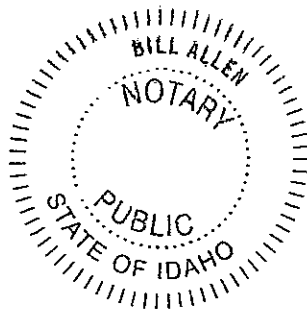
RESPECTFULLY SUBMITTED this 16th day of June, 2010.

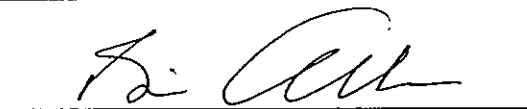
JOHN E. & RUTH C. BURNS


JOHN E. BURNS


RUTH C. BURNS

SUBSCRIBED AND SWORN to before me this 16th day of June, 2010.





Notary public for Idaho
Residing at: Salmon, Idaho
My Commission Expires: 2/19/2015

CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of June, 2010, I mailed the original and copies of this motion, including all attachments to the following persons.

1. Original to:
Clerk of the District Court
Snake River Basin Adjudication
253 Third Ave. North
Twin Falls, ID 83303-2707

2. Copies to:
IDWR Document Depository
P.O.Box 83720
Boise, ID 83720-0098

United States Department of Justice
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George and Ilene Matejko
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Danny and Roberta Fadness
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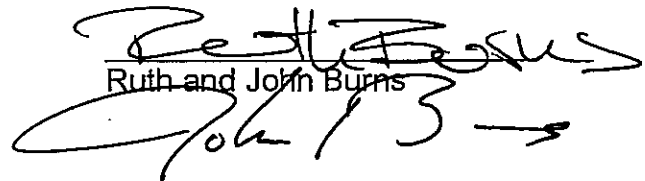
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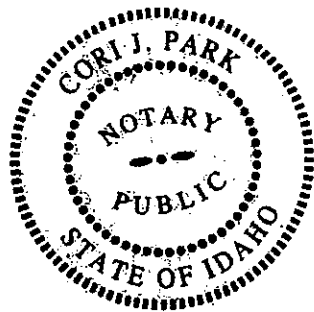
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Ruth and John Burns

SUBSCRIBED AND SWARN to before me this 17th day of June 2010





Notary public for Idaho
Residing at: Salmon, Idaho
My Commission Expires: 6-2-2012

Attachment A

75-10061AA	75-10061N	75-10061A
75-10061B	75-10061X	75-10061Q
75-10061C	75-10062L	75-10061R
75-10061J	75-10062V	75-10061Y
75-10061T	75-14025	75-10061AE
75-10061Z	75-14027	75-10062A
75-10061AC	75-14044	75-10062P
75-10061AM	75-14046	75-10062W
75-10062C	75-14055	75-10062AC
75-10062-H	75-14056	75-14441
75-10062R	75-14057	75-14443
75-10062X	75-14058	75-14540
75-10062Y		
75-10062AA		
75-10062AB		
75-10062AL		
75-10136A		
75-10136B		
75-10137A		
75-10137B		
75-14388		

Exhibit 1

John E. & Ruth C. Burns
Box 264
Carmen, Idaho 83462

May 20, 2010

Mr. Garrick Baxter, Attorney
Idaho Department of Water Resources
P.O. Box 83720
Boise, Idaho 83720 – 0098

Re: Carmen Creek

Dear Mr. Baxter:

Enclosed are documents which the Department has perhaps not seen, or which were not considered in preparation of the January 10, 2010 "706 Report" involving Carmen Creek.

The material consists of correspondence and other documents from Department files and affidavits from a number of individuals with direct knowledge of water use on the South Side of Carmen Creek. We are preparing our response to the State's and Mr. Travis Thompson's filings of May 17 (concerning the interim administration issue) but wanted to apprise you of these items as quickly as possible.

The enclosed items are:

1. Copy of our motion of May 10, 2010 requesting that the court order the administrative hearing required by statute in matters concerning transfer recommendations.
2. Nine affidavits by individuals who either owned, lived, or worked on the former Thomas Palmer Homestead. Without exception these individuals are clear and unambiguous in their recollections of the continuous availability of water to the "home place" (the South Side properties) and the irrigation thereon.
3. Seven affidavits by individuals who were subsequent purchasers of the tracts on the South Side, or who had observations of the continuous availability of water and the irrigation thereon.
4. Copy of the Court Order dated March 25, 2009 which states the IDWR was to complete the 706 Report by June 30, 2009.
5. Copies of Court documents dated October 10, 2008; December 5, 2008; March 25, 2009; December 18, 2009; and April 6, 2010 which outline the delays in the trial schedule resulting from the 706 Report issue, Department's schedule, and Department's failure to meet the due date for the report.
6. Copies of the 1969 and 1982 IDWR Abstract of Water Rights for Carmen Creek District 75-D, and Departmental correspondence relating to review and distribution of the 82 Abstract.

7. Correspondence from Carmen Creek Watermaster stating concurrence with the 1982 Abstract. The quality of the document in the IDWR files is poor, so a typed transcription and comment by me is included.
8. Copies of Departmental correspondence with watermaster prior to 1982 Abstract preparation concerning Carmen Creek water rights, appurtenant rights, etc.

You of course have a copy of the January 10, 2010, 706 report, and I note that a copy was provided to the court by Mr. Thompson in his filing of May 17.

We have not yet received Mr. Ron Carlson's affidavit, former Regional Watermaster in Idaho Falls, describing his involvement in 1989 – 90 in the issue of water delivery to the South Side properties. We anticipate submitting it with our forthcoming response to the State's and Mr. Thompson's May 17 filings. We also have a considerable amount of IDWR documents relating to water delivery, as well as logs of daily deliveries for the time period covered in Mr. Seth McFarland's affidavit. We will also provide that material with our court response to the State's and Mr. Thompson's May 17 filings.

Please let me know if you have any questions on this material.

Sincerely,



Ruth C. Burns

208-756-3645
treeboxmules@centurytel.net

Copies to:

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253 Third Ave. North
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IDWR Document Repository
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Natural Resources Division
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Travis L. Thompson
Barker, Rosholt & Simpson
113 Main Ave. West, Suite 303
P.O. Box 485
Twin Falls, Idaho 83303 – 485

Index of Attachments to Burns' May 20, 2010 Letter to Garrick Baxter, IDWR

1. Copy of Motion of May 10, 2010, concerning IDWR Administrative Hearing.
- 2.-3. Affidavits by Individuals who owned, lived, or worked on the former Palmer homestead, who were nearby or adjacent residents, purchased S. Side tracts, or discussed S. Side irrigation with owners or residents of Parmenter home place.
 - a. Affidavit by Robert Parmenter. Resident, son of owner, from 1947 to mid-1960's.
 - b. Affidavit by Jerry Parmenter. Resident, son of owner, from 1948 to 1962.
 - c. Affidavit by Butch Howick. Resident, operated for father, several years late 1960's.
 - d. Affidavit by Mike Werner. Resident with father, 1974 to 1975 or 1976.
 - e. Affidavit by Robert Merrick. Owner for 3 years, 1976 to 1979.
 - f. Affidavit by Mike Ernest. Worked for Robert Merrick, several years.
 - g. Affidavit by Bill Howell. Nearby rancher since 1926.
 - h. Affidavit by Scoop Aldous. Adjacent rancher, 1956 to 1960.
 - i. Affidavit by John Aldous. Adjacent rancher since 1975.
 - j. Affidavit by John Burns describing conversation with Robert Parmenter.
 - k. Affidavit by John Burns describing conversation with Robert Merrick.
 - l. Affidavit by Ruth Burns describing conversation with Jerry Parmenter.
 - m. Affidavit by John Burns describing conversation with Kim Wolfley.
 - n. Affidavit by Robert Ernest. Purchased S. Side tract in 1969 from Parmenter.
 - o. Affidavit by Gary Anderson. Purchased S. Side tract in 1977 from Merrick.
 - p. Affidavit by Underwoods. Purchased S. Side tract in 1981 from Foland.
4. Copy of Court Order of March 25, 2009 with 706 Report Deadline (June 30, 2009.)
5. Copies of Court documents dated October 10, 2008; December 5, 2008; March 25, 2009; December 18, 2009; and April 6, 2010 concerning delays and postponements of trial schedule.
- 6.-8. Copies of 1969 and 1982 IDWR Abstracts and related Departmental Correspondence.

INDEX OF ATTACHMENTS TO EXHIBIT 1, AFFIDAVIT OF JOHN BURNS.

COPY

Robert L. Harris, Esq. (ISB #7018)
Luke H. Marchant, Esq. (ISB #7944)
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Telephone: (208) 523-0620
Facsimile: (208) 523-9518

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 No.: See Exhibit A.

**MOTION TO REMAND SUBCASES TO
THE DIRECTOR OF IDWR FOR
INJURY ANALYSIS PURSUANT TO
IDAHO CODE § 42-1425(2)(a)**

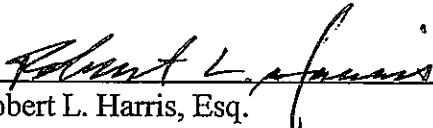
John E. Burns, Ruth C. Burns, George Matejko, Rick Rice, Linda Rice, Robert M. Ernest, Jacqueline D. Ernest, William W. Clementz, James R. Quinn and Rowena D. Quinn, by and through counsel of record, Robert L. Harris of Holden, Kidwell, Hahn & Crapo, P.L.L.C., hereby moves the Court to remand the above subcases to the Director of the Idaho Department of Water Resources for a hearing to determine whether the Department's accomplished transfer findings contained in their Supplemental 706 Report submitted to the Court in January of 2010 injured existing water rights or constituted an enlargement of the original rights. The objectors specifically objected to the 706 Report's findings that an accomplished transfer had effectively removed water from their respective properties on the south side of Carmen Creek to the north side of Carmen Creek. Such a finding would necessarily require that any and all irrigation on the south side ceased entirely, and the

claimants have not had an opportunity to present evidence from prior landowners testifying to the continued use and utilization of water late in the irrigation season on their respective properties.

While the above claimants had presumed that the hearing pursuant to Idaho Code § 42-1426(a) would likely have been set up automatically, and our review of the Court documents, it appears that such a hearing has not been provided for at this point. Depending on the Director's schedule, we hope to have the hearing as soon as possible, and not jeopardize the currently scheduled trial date to be held in October of 2010.

The hearing for this motion will be held on June 3, 2010, at 1:30 p.m.

DATED this 10th day of May, 2010.



Robert L. Harris, Esq.
Attorneys for John E. Burns, Ruth C. Burns, George
Matejko, Rick Rice, Linda Rice, Robert M. Ernest,
Jacqueline D. Ernest, William W. Clementz, James R.
Quinn and Rowena D. Quinn

CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of May, 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

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Robert & Fransicka Mosher
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- 3 - MOTION TO REMAND SUBCASES TO THE DIRECTOR OF IDWR FOR INJURY ANALYSIS PURSUANT TO IDAHO
CODE § 42-1425(2)(A)

George Matejko
PO Box 129
Carmen, ID 83462

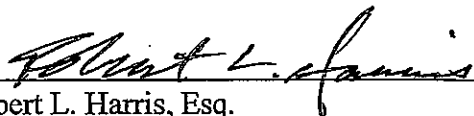
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James Hudson
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Travis L. Thompson
Paul L. Arrington
Sarah W. Higer
Barker Rosholt & Simpson
PO Box 485
Twin Falls, ID 83303-0485


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

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Exhibit A

CARMEN CREEK WATER RIGHTS

Current January 11, 2010 706 ADR		Prior Recommendation		Difference		OBJECTION
Water Right No.	Owner	Individual Diversion Rate Limitation (cfs)	Total Place of Use (Acres)	Individual Diversion Rate Limitation (cfs)	Total Place of Use (Acres)	
1875 South Side (Burns)	75-10061A Burns	0	0	-0.085	-10.9	Water Right should not have been disallowed
	75-10061R Matejko	0	0	-0.073	-9.4	Water Right should not have been disallowed
	75-14441 Rice	0	0	-0.082	-8	Water Right should not have been disallowed
	75-10061Y Ernest	0	0	-0.013	-1.7	Water Right should not have been disallowed
	75-10061AE Clementiz	0	0	-0.017	-2.1	Water Right should not have been disallowed
	75-10061Q Quinn	0	0	-0.025	-3.2	Water Right should not have been disallowed
Middle Group	75-10061AA Edmiston	0.056	7.1	0.031	7.1	Quantity
	75-10061AC Cabigas & Greenway	0.024	3	0.0144	3	Quantity
	75-10061AM Yowell	0.039	5	0.019	5	Quantity
	75-10061B Hudson	0.088	11.2	0.087	11.2	Quantity
	75-10061C Fadness	0.035	4.4	0.011	4.4	Quantity
	75-10061J Tippet	0.032	4.1	0.031	4.1	Quantity
	75-10061T Mosher	0.047	6	0.047	6	Quantity
	75-10061Z Mattis	0.053	6.7	0.052	6.7	Quantity
	75-10137A Eisenhauer	0.035	4.4	0.035	4.4	Quantity
	75-10137B Harshey	0.035	4.5	0.035	4.5	Quantity
North Side (Fols)	75-10061N Pilkerton	0.018	2.3	0	0	Water Right should have been disallowed
	75-10061X Harling	0.015	1.9	0	0	Water Right should have been disallowed
	75-14025 Tutor	0.023	2.9	0	0	Water Right should have been disallowed
	75-14044 Edgren & Brady	0.013	1.7	0	0	Water Right should have been disallowed
	75-14055 Marcia	0.013	1.6	0	0	Water Right should have been disallowed
	75-14056 Fols	0.075	9.5	0.075	9.5	Water Right should have been disallowed
	TOTALS	0.601	76.3	0.6374	91.7	
				-0.0364	-15.4	

CARMEN CREEK WATER RIGHTS

1882										
	Water Right No.	Owner	Current January 11, 2010 706 ADR			Prior Recommendation		Difference		OBJECTION
			Individual Diversion Rate Limitation (cfs)	Total Place of Use (Acres)	Individual Diversion Rate Limitation (cfs)	Total Place of Use (Acres)	Individual Diversion Rate Limitation (cfs)	Total Place of Use (Acres)		
South Side (Burns)	75-10062A	Burns	0	0	0.042	10.9	-0.042	-10.9	Water Right should not have been disallowed	
	75-10062P	Matejko	0	0	0.036	9.4	-0.036	-9.4	Water Right should not have been disallowed	
	75-14443	Rice	0	0	0.031	8	-0.031	-8	Water Right should not have been disallowed	
	75-10062W	Ernest	0	0	0.008	1.7	-0.008	-1.7	Water Right should not have been disallowed	
	75-10062AC	Clementz	0	0	0.008	2.1	-0.008	-2.1	Water Right should not have been disallowed	
Middle Group	75-14540	Quinn	0	0	0.02	3.2	-0.02	-3.2	Water Right should not have been disallowed	
	75-10062Y	Edmiston	0.025	7.1	0.015	7.1	0.01	0	Quantity	
	75-10062AA	Cabigas & Greenway	0.011	3	0.008	3	0.003	0	Quantity	
	75-10062AL	Yowell	0.018	5	0.01	5	0.008	0	Quantity	
	75-10062C	Hudson	0.04	11.2	0.043	11.2	-0.003	0	Quantity	
	75-14388	Fadness	0.016	4.4	0.005	4.4	0.011	0	Quantity	
	75-10062H	Tippett	0.015	4.1	0.016	4.1	-0.001	0	Quantity	
	75-10062R	Mosher	0.021	6	0.023	6	-0.002	0	Quantity	
	75-10062X	Mattis	0.024	6.7	0.026	6.7	-0.002	0	Quantity	
	75-10136A	Eisenhauer	0.016	4.4	0.017	4.4	-0.001	0	Quantity	
North Side (Fols)	75-10136B	Hershey	0.016	4.5	0.017	4.5	-0.001	0	Quantity	
	75-10062AB	Jackson	0.03	8.4	0.033	8.4	-0.003	0	Quantity	
	75-10062L	Pikerton	0.008	2.3	0	0	0.008	2.3	Water Right should have been disallowed	
	75-10062V	Harling	0.007	1.9	0	0	0.007	1.9	Water Right should have been disallowed	
	75-14027	Tutor	0.01	2.9	0	0	0.01	2.9	Water Right should have been disallowed	
	75-14046	Edgren & Brady	0.006	1.7	0	0	0.006	1.7	Water Right should have been disallowed	
	75-14057	Marcia	0.006	1.6	0	0	0.006	1.6	Water Right should have been disallowed	
	75-14058	Fols	0.034	9.5	0	0	0.034	9.5	Water Right should have been disallowed	
	TOTALS		0.303	84.7	0.358	100.1	-0.055	-15.4		

1882

**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.

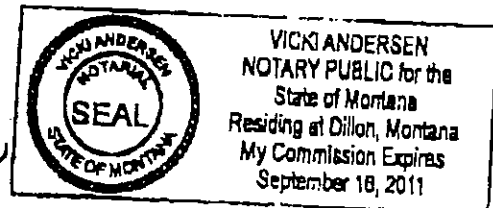
My father acquired additional acreage in 1951 and 1954 which brought the size of our ranch property to about 650 acres on both sides of the Creek. Those purchases increased our irrigated acreage significantly.

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



My Commission Expires: 9-16-2011

Statement of Jerry Parmenter

P.O. Box 50159

Billings, mt. 59105

I reside at 2318 Savelle Tr. Billings, mt. 59105, Montana. From about 1948 until 1962 I lived on Carmen Creek near Salmon, Idaho, with my family in the home my farther, Frank Parmenter, built. I understand that the house and nearby land is now owned by John and Ruth Burns, and several others on the South side of Carmen Creek.

On April 17, 2010, at the Fairgrounds near Carmen I spoke with John Burns concerning my recollections of the home place and our use of water in connection with our ranching activity there.

My father owned some 600 acres and we ran range cattle, sheep, and had a herd of 40 milk cows. The milk barn was located below the house. We also had a large shop building, and others buildings or sheds remaining from the earlier days.

I recall the willow that was planted by my Mother in front of the house, and the spruce trees planted in back. We had a large garden area in back and an apple orchard nearby.

The nearby area including the orchard, garden, house site, and surrounding hay and pasture ground was irrigated from what we called the "Rose Ditch." Mr. Fred Rose owned the next ranch below us. Another ditch with an Idaho Department of Fish & Game fish screen passed between the milk barn and shop building but due to its location on the lower slope it provided water to less of our acreage.

We were always able to keep the land irrigated through the season. In those days a rancher could move his water as needed to different parts of the property in order to make the best use of it.

Signed: _____

Jerry Pammenter

Date: 4-28, 2010

Notary: _____

Notary Public Residing At: Billings



HOPE C. HEADLEE
NOTARY PUBLIC for the State of Montana
Residing at Billings, Montana
My Commission Expires

July 25, 2011

My Commission Expires: July 25, 2011

Statement of Butch Howick

**Highway 93 South
Salmon, Idaho 83467**

On April 29, 2010, I spoke with John Burns at our property south of Salmon, Idaho, concerning the several years in the late 1960's when I worked with my father on the Parmenter place up Carmen Creek.

My father, Eamar Howick, had rented the property and house from Frank Parmenter. and resided in the house built by Parmenter in the 1940,s. In addition to the house, the facilities included a shop building, garage, milk barn, and other sheds, corrals, etc.

My father had severely injured his hand in an accident, so in addition to caring for my place up the Lemhi it was necessary for me to work the property up Carmen Creek too.

We milked up to 70 dairy cows and also ran range cattle. We had no sheep.

A large garden was located behind the house. An orchard with a number of mature trees and varieties of apples was further behind the garden and a pasture area extended beyond that. We mostly used that area to graze our few horses.

In front of the house to the west was a large field that extended from the driveway to the next ranch. The field was bounded on the upper side by the Carmen Creek Road and the lower side by Carmen Creek. We cut two crops of hay in that field each year.

Flood irrigation for that hay meadow and the house, orchard, garden, and back pasture was provided primarily by a ditch that passed into the upper end and along the top edge of the back pasture, crossed under the Carmen Creek Road, and crossed under the road again to enter the high side of the hay meadow on the west. It then entered the next ranch. Smaller distribution ditches enabled the house area, garden, etc. to be irrigated.

A second ditch passed between the shop building and the milk barn and crossed the lower portion of the hay meadow and then passed into the next ranch.

These ditches provided continuous water for the full season. This portion of the ranch on the south side always had sufficient water.

We grazed the milk cows in the creek bottom and the lower benches of the north side closest to the creek. We grew hay on the benches above that.

Since the hay acreage on the north side was at the lower end of a lengthy ditch system, the water loss before reaching the property was considerable and the flow was inadequate at times. We would then adjust our irrigational timing in that area to those periods when Mr. McFarland could provide water from his adjacent ranch that was surplus to his needs.

Signed: *Edmund F. Howick*
(Butch) Howick

Butch Howick

Notary: *Linda K. Robie*

Notary Public, Residing at: *Salmon*
Idaho



Date: *April 28* 2010

My Commission Expires: *10-6-2011*

Statement of Mike Warner

Salmon, Idaho 83463

^{now}
I lived on the Parmenter ranch which my father rented from Frank Parmenter from about 1974 until the time when Mr. Parmenter sold the property in about 1975 or 1976.

The house we occupied was located on the south side of Carmen Creek. Mr. Parmenter built the house shortly after World War 2. In addition to the house, a large shop building and milk barn were there, as well as some other outbuildings.

The property on the south side of the Creek was irrigated from two ditches. One was close to the Carmen Creek road and crossed under the road and then back. The other ran between the shop and barn. Both passed through the property and then onto what is now the John Aldous ranch.

That field is now split between the Rice, Matejko, and Burns properties, and continues to be irrigated to this day by them. In back of the house was a large garden area and an orchard, with more irrigated meadow ground to the east.

Mr. Parmenter had earlier sold a tract to Bob Ernest and our eastern fence was at the Ernest property boundary. A third ditch provided water to the Ernest land. He built a home there, but another house owned later by Jerry Hamilton did not exist while we were on the ranch.

We did not have dairy cows, but did have sheep and cattle. The cattle were black angus but we didn't run them on the range. We used the irrigated ground on the south side for pasture.

During the several years while we operated the ranch the ditches flowed through the irrigation season and we kept the house area and adjacent fields irrigated. We always had sufficient water on the south side to keep the land productive and green.

When Mr. Parmenter began to break up the property for subdivision we moved to Kirtley Creek. I now live in Salmon and my work involves travel in the surrounding area so I have remained familiar with Carmen Creek. My observation is that the land has continued to be irrigated through the years.

Signed:

Mike Warner
Mike Warner

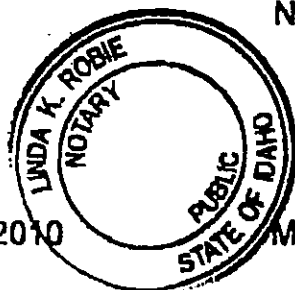
Notary:

Linda K. Robie
Notary Public, Residing At Salmon Idaho
10-6-2011

Date:

5-3-

2010



My Commission Expires:

10-6-2011

Statement of Robert A. Merrick
2418 East Locust Lane
Nampa, Idaho 83686

On March 23, 2004, I spoke with John Burns of Carmen, Idaho, concerning my time on the ranch property in Carmen Creek which my family and I formerly owned. I understand he resides in the same house in which we lived during our ownership.

I purchased the house and approximately 426 acres from Mr. Frank Parmenter in 1976. The area surrounding the house was landscaped lawn and trees, including spruce trees in back and a willow out front. Access was via a short driveway extending from the Carmen Creek Road on the south. The road ran roughly east to west.

Several outbuildings were located nearby, including a large shop building and a dairy barn down the slope from the house. The subdivision road did not exist at the time we lived there. Ours was the only house on the property.

An apple orchard was behind the house in the large pasture extending to the east. A large garden area lay between the house and the pasture and extended almost to the road. The area west of the house was a large open irrigated pasture from our driveway to the boundary of the Aldous ranch property. We used the pasture for the 30 to 40 dairy cows that we milked.

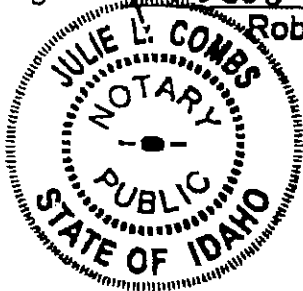
We irrigated the pastures from two ditches which passed near the house. The lower ditch flowed between the shop building and the milk barn and traversed the lower portion of the pasture until it entered the Aldous ranch. The upper ditch crossed the pasture behind the house, passed under the Carmen Creek road, and ran next to the road for a short distance until it again passed under the road and ran across the top of the large field. This ditch was used to irrigate the orchard and the area surrounding the house, as well as the pastures.

We flood irrigated from both ditches which carried water until the end of the irrigation season. We kept the pastures and area surrounding the house green and productive. When we purchased the property from Mr. Parmenter it was well irrigated and had good water rights. The rights were not lost or abandoned at that time or during our ownership.

Signed: Robert A. Merrick
Robert A. Merrick

Notary: Julie L. Combs

Notary Public, Residing At: Nampa, ID



Date: 3-30, 2010

My Commission Expires: 10-8-2014

Statement of Mike Ernest
59 Fulton Road
Salmon, Idaho 83467

I reside in Salmon, Idaho, where I operate an electrical contracting business. I have been a resident of Lemhi County, Idaho, for 38 years. For many years I resided in Carmen Creek with my parents.

I spoke with John Burns of Carmen, Idaho, on April 9, 2010, concerning my personal knowledge and experience with the irrigation and ranch activities on the Parmenter land, and in particular with Robert Merrick's use and ownership of the property.

I worked for Mr. Merrick helping milk his dairy herd, cutting and hauling hay, and irrigating. I believe Mr. Merrick leased the Parmenter place for some time prior to his purchase of the house and land. He lived there for several years, and eventually sold to the Wolfley interests.

My recollection is that Mr. Wolfley lived there for a short time until the late 1970's. Following that, the ranch was broken up and subdivided.

During the time I worked there the property on the South side was always irrigated and kept green and productive. Three ditches provided continuous flow on the South side between the Carmen Creek road and Carmen Creek.

The lower ditch which passes between the milk barn and the shop building that Parmenter constructed crossed the large hay and pasture area west of the Parmenter house. The middle ditch served all of the ground between the road and the creek from the east line of the property to the west line where the Aldous ranch begins. The upper ditch serves the portion of the property east of the Parmenter house.

I have observed the area for many years following my work for Mr. Merrick and to this day. It has always been irrigated for the full season.

Signed: _____

Mike Ernest

Mike Ernest
59 Fulton Road
Salmon, Idaho 83467

Notary: _____

Brenda Parmenter

Notary Public, Residing At: _____

Salmon, ID

Date: _____

April

13

, 2010

My Commission Expires: _____

3/14/2011

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.

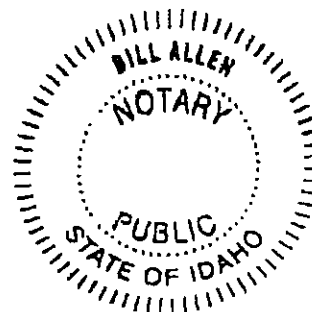
Signed Scoop Aldous

Scoop Aldous

1011 South Church St.
Salmon, Idaho 83487

Notary: For [Signature]
Notary Public, Residing at:

My Commission Expires: 2/19/2009



John Aldous statement:

4-26-10

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.

Additionally, during the time that Robert Merrick owned the Parmenter home place he and I worked together to maintain the two ditches.

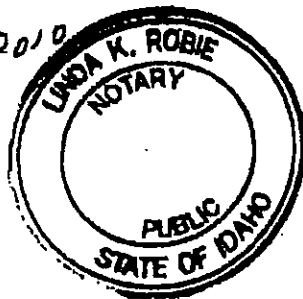
Signed: John Aldous

Notary Public: Linda K. Robie
Notary Public Residing At: Salmon, Idaho

John Aldous
PO Box 44
Carmen, Id 83462

Date:

4-28-2010



My Commission Expires: 10-6-2011

**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, 10128, 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 1846, 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 1980's. The screen is located on an easement granted to the Idaho Fish & Game in 1981 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 80 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
362 Carmen Creek Road
P.O. Box 284
Carmen, Idaho 83482

Notary

Notary Public, Residing At:

Salmon

My Commission Expires:

6-2-2012



Statement of John Burns
Discussion with Robert A. Merrick
March 23, 2010

I spoke at length with Mr. Robert Merrick by telephone on March 23, 2010, concerning his knowledge of the time when he and his family resided on the property he purchased from Mr. Frank Parmenter in 1976. At the time of our conversation he was at his home in Nampa, Idaho and I was at home in Carmen, Idaho.

Mr. Merrick purchased over 400 acres of the Parmenter holdings. A large block on the North side of Carmen Creek had previously been sold by Parmenter to Mr. Archie McFarland. Three small tracts on the South side above the home place had also previously been sold by Parmenter.

Mr. Merrick and his family resided in the house constructed by Parmenter which is located on the original home place at the site of the homestead house, and which includes the irrigation ditches passing near the house and outbuildings.

He noted that he used the milk barn milked 30 to 40 cows. The cows grazed the irrigated pastures above and below the house. He kept the pastures, orchard, house vicinity, and garden area well irrigated through the full irrigation season.

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



Statement of Ruth Burns
PO Box 264
Carmen, Id 83462

On Sunday afternoon April 18, 2010 I spoke with Mr. Jerry Parmenter at the Lemhi County Fairgrounds. Mr. Parmenter had spoken with my husband the day before about the water issues involving our property on Carmen Creek and I wanted to thank him.

During my conversation with Mr. Parmenter I explained to him that a man who lived on the north side of the creek on the upper bench was trying to say that during the time that the Parmenter family lived on the property and owned the whole ranch they had moved the water from the south side of the creek up to the upper bench on the north side of the creek in the late season.

Mr. Parmenter said, 'Why would we do that? Why would we move the water from the house, the orchard, the garden, the hay field, pasture and the milk barn on the south side of the creek?'

Mr. Parmenter went on to explain to me that they ran the ditches on the south side of the creek all year round.

Further, Mr. Parmenter told me that as they had less water right on the north side upper bench to the McFarland water right that the upper ditch on the north side was shut off in the late season on the Parmenter property.

Signed: Ruth Burns

Ruth Burns
PO Box 264
Carmen, Id 83462

Notary: BARRY SOLK

Notary Public, Residing At: SALMON, Id

Date: 4/20/10



Commission Expires: 3/03/13

**Statement of John Burns
Telephone Conversation with Kim Wolfley
March 21, 2010**

During the evening of March 21, 2010, I spoke by telephone with Mr. Kim Wolfley concerning his recollections of the period when he owned a portion of the property formerly owned by Mr. Frank Parmenter. He purchased the land in 1977 from Merrick & Ihli who had previously purchased the acreage from Parmenter.

Mr. Wolfley resided in the house constructed originally by Parmenter until his sale of the property in 1979. No other residences existed on the property.

The area on the south side of Carmen Creek was irrigated by two ditches. The lower ditch passed above the milk barn and onto the property owned by Mr. Gary Anderson, then onto the property owned by Tim Jewell, and ultimately to the Aldous Ranch.

The upper ditch entered the large meadow and orchard in back of the house, passed under the Carmen Creek Road and ran adjacent to the road until it recrossed and entered the Anderson property and onto the Jewell land and then the Aldous Ranch.

The Ajax Peak subdivision road did not exist at this time, and the Parmenter, Anderson, and Jewell lands were an open hay field from the house to the Aldous Ranch line. Mr. Wolfley raised two crops of alfalfa hay on the property.

Mr. Wolfley stated that they milked 30 cows at the milk barn. They also ran cattle on the government range.

He noted that water was always available, and that the neighbors would work the timing of their irrigation whenever necessary in order to help each other during drier periods. His ranching experience also included the Keystone Ranch up Freeman Creek, the major tributary of Carmen Creek.

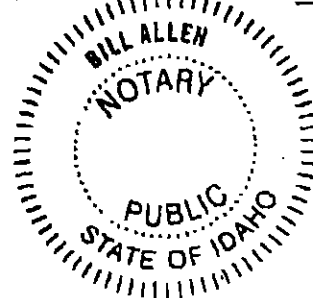
Mr. Wolfley stated that the water rights from the 1902 Carmen Creek Decree were very important, and were intact when he acquired the property. He stated that no rights had been abandoned or given up in any way prior to or during his ownership.

Signed John E. Burns Notary Bill Allen

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

Notary Public, Residing At: Salmon, ID.

My Commission Expires: 2/19/2015



**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.

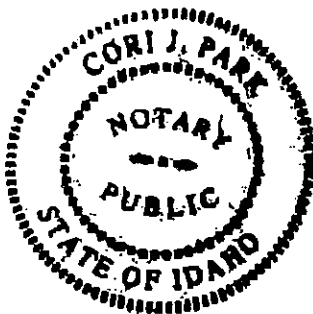
PO Box

Carmen, Idaho 83462

Notary: Q

Notary Public, Residing at: Silver, ID

My Commission Expires: 6-2-2012



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: _____

Gary Anderson

Gary Anderson
404 Broadway Street
Salmon, Idaho 83462

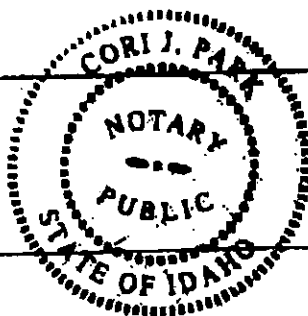
Date: _____

20 February 2009

Notary: _____

*[Signature]*Notary Public, Residing at: *Salmon**6.2.2012*

My Commission Expires: _____



Statement 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.

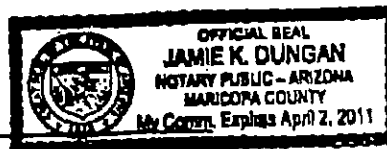
Signed: C.L. Underwood Mary Underwood

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:



RECEIVED

MAR 26 2009

DEPARTMENT OF
WATER RESOURCES

DISTRICT COURT-SRBA
Fifth Judicial District
County of Twin Falls - State of Idaho

MAR 25 2009

By [Signature] Clerk
Deputy Clerk

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) Subcases 75-69A, et al.
Case No. 39576) (see attached list)
) Carmen Creek
)
) AMENDED TRIAL SCHEDULE ORDER

A status conference was held by telephone on March 5, 2009. The parties agreed to amend the October 9, 2008 *Trial Schedule Order*.

THEREFORE IT IS ORDERED that the following amended trial schedule shall govern the conduct of proceedings through trial:

June 30, 2009	706 reports from IDWR due.
September 30, 2009	Discovery cut-off; discovery shall be complete.
October 30, 2009	Deadline to file dispositive motions.
December 17, 2009 9:00 a.m.	Hearing on dispositive motions: SRBA Courthouse 253 3 rd Avenue N. Twin Falls, Idaho.
February 18, 2010 9:00 a.m.	Witness and exhibit lists due; pre-trial conference by telephone: Conference no: 1-225-383-1099 Participant code: 654400.
February 24, 2010 10:00 a.m.	Trial, SRBA Courthouse, Twin Falls, Idaho.

3/25/09

DATED March 25, 2009.


TERRENCE A. DOLAN
Special Master
Snake River Basin Adjudication

RECEIVED

OCT 10 2008
DEPARTMENT OF
WATER RESOURCES

2008 OCT -9 AM 11:24

DISTRICT COURT-ST A
TWIN FALLS CO., IDA. 10
FILED

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	)	Subcases: 75-69A et al (See Attachment A)
	)	"Carmen Creek"
Case No. 39576	)	
	)	TRIAL SCHEDULE ORDER
	)	

An initial hearing was held on September 10, 2008, at the Lemhi County Courthouse. The parties agreed on a trial schedule.

THEREFORE, IT IS ORDERED that the following schedule shall govern the conduct of proceedings through trial:

November 20, 2008, 9:00 a.m.

Mandatory Settlement Conference
Brooklyn Annex
200 Fulton
Salmon, Idaho
Settlement Moderator: Ted Booth
*Please note the US is excused from
participating in the settlement
conference*

May 29, 2009

Discovery cut-off; discovery shall be
complete.

June 18, 2009, 10:00 a.m.

Pretrial conference by telephone.
Witness and exhibit lists due
Conference No: 1-225-383-1099
Participant Code: 654400

June 24, 2009, 9:00 a.m.

Trial:
Lemhi County Courthouse
206 Courthouse Dr
Salmon, Idaho

10/10/08

Dated October 9, 2008


TERRENCE A. DOLAN
Special Master
Snake River Basin Adjudication

Travis L. Thompson, ISB #6168
Paul L. Arrington, ISB #7198
BARKER ROSHOLT & SIMPSON LLP
113 Main Avenue West, Suite 303
P.O. Box 485
Twin Falls, Idaho 83303-0485
Telephone: (208) 733-0700
Facsimile: (208) 735-2444

*Attorneys for Albert & Alvera Fols, Charles & Mary Harling, A.C. & Luella Pilkerton,
Lloyd & Sheryl Tutor, Marci Dixon, and Tracy Marcia*

**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 Exhibit A
	)	
Case No. 39576	)	MOTION FOR COURT TO REQUEST
	)	PREPARATION OF RULE 706 REPORT & TO SET
	)	STATUS CONFERENCE
	)	
	)	
	)	

COME NOW, ALBERT & ALVERA FOLS, CHARLES & MARY HARLING, A.C. & LUELLA PILKERTON, LLOYD & SHERYL TUTOR, MARCI DIXON, AND TRACY MARCIA (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 move this Court for an Order requesting that the Idaho Department of Water Resources ("Department") prepare a Report in accordance with Idaho Rule of Evidence 706 (a "706 Report"), for the water rights listed on Exhibit A, attached hereto. In addition, the Carmen Creek Users request a status conference to discuss the time required to prepare such 706 Report and the impact, if any, on the October 9, 2008, *Trial Schedule Order*.

**MOTION FOR COURT TO REQUEST PREPARATION OF RULE 706 REPORT & TO SET STATUS 1
CONFERENCE**

12/5/08

On February 20, 2008, the Court granted the Carmen Creek Users' leave to file late objections on the above water rights. Leave was granted to file an amended objection on a portion of the water rights in this Court's November 6, 2008, *Order Granting Motion to Amend Objections*. Currently, the discovery deadline is May 29, 2009, and the matter is set for trial on June 24, 2009.

The Carmen Creek Users request that the Department prepare a 706 Report for each of the above water rights. Counsel for the Carmen Creek Users has spoken with counsel for the Department, who indicated that the Department would be willing to prepare a 706 Report for the above water rights. However, the Department would not plan on doing the requisite field exam until some time in the spring. Depending on when the Department is able to do the field exam and issue the 706 Report, the discovery deadline and trial may need to be changed. As such, a status conference would be appropriate to allow the Court, Department and parties to discuss potential scheduling issues that may arise.

Accordingly, the Carmen Creek Users request that the Department prepare a 706 Report for the above water rights and that the Court set a status conference to address the timing of the 706 Report and any impacts on the *Trial Schedule Order*.

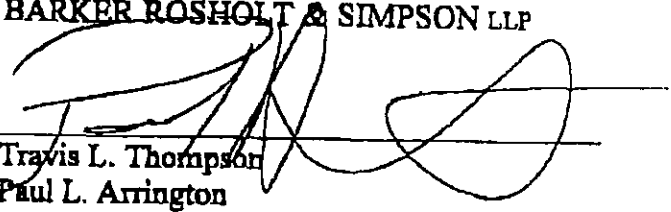
//

//

//

DATED this 5th day of December, 2008.

BARKER ROUSHOLT & SIMPSON LLP

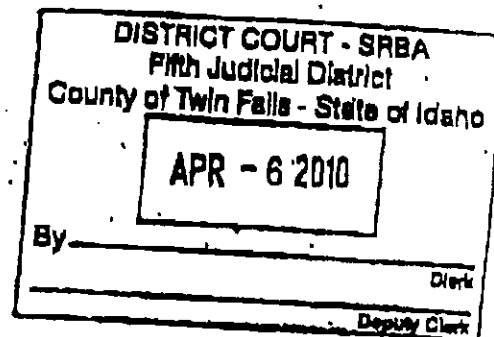


Travis L. Thompson
Paul L. Arrington

RECEIVED

APR 09 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

Case No. 39576

) Subcases 75-10061A, et al. (Attachment A)
) (Carmen Creek)

) TRIAL SCHEDULE ORDER

A status conference was held by telephone on April 1, 2010. The parties agreed on a trial schedule for the contested Carmen Creek claims listed on Attachment A. The parties also agreed the claims listed on Attachment B are now uncontested but because they overlap with the contested claims, the Court will hold them until final resolution of any combined use remarks.

THEREFORE, IT IS ORDERED that the following schedule shall govern the conduct of proceedings through trial:

July 30, 2010	Discovery cut-off; all discovery shall be completed.
August 12, 2010	Deadline to file dispositive motions.
August 26, 2010	Responses to dispositive motions due.
September 2, 2010	Replies due.
September 10, 2010 10:00 a.m.	Hearing on dispositive motions: SRBA Courthouse 253 3 rd Avenue north Twin Falls, Idaho.
October 14, 2010 9:30 a.m.	Pre-trial hearing by telephone: AT&T operator: 215-446-0193 Participant Code: 654400.

October 27, 2010
9:00 a.m.

Trial:
Lemhi County Courthouse
206 Courthouse Drive
Salmon, Idaho.

DATED April 6, 2010.


TERRENCE A. DOLAN
Special Master
Snake River Basin Adjudication

RECEIVED
DEC 21 2009
DEPARTMENT OF
WATER RESOURCES

DISTRICT COURT - SRBA Fifth Judicial District County of Twin Falls - State of Idaho	
DEC 18 2009	
By _____	Clerk
_____	Deputy Clerk

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	)	Subcases 75-69A, et al.
	)	(see attached list)
	)	Carmen Creek Claims
Case No. 39576	)	ORDER VACATING TRIAL ORDERS
	)	AND SETTING NEW TRIAL DATE

On March 25, 2009, the Special Master entered an *Amended Trial Schedule Order* in the above 79 claims. On June 22, 2009, the trial location was changed to Salmon, Idaho.

On December 17, 2009, a status conference was held by telephone. Attorneys Travis L. Thompson, Jerry R. Rigby, Hyrum D. Erickson, and Garrick L. Baxter appeared, along with Suzy Cooley-Denney. Parties John B. Burns and Albert C. Fols also appeared.

Counsel and the parties discussed progress on IDWR's "706 Report" and the need to reset the trial to late summer or fall. The general consensus was to vacate all current trial orders and set a new trial date in October, 2010, in Salmon, Idaho.

THEREFORE, IT IS ORDERED that:

1. All current trial *Orders* are vacated; and
2. Trial shall be held beginning Wednesday, October 27, 2010, 9:00 a.m., at the Lemhi County Courthouse, Salmon, Idaho.

DATED December 18, 2009.



TERRENCE A. DOLAN
Special Master
Snake River Basin Adjudication

12/18/09

**Watermaster Comments to IDWR on 1982 Abstract
Letter Rec'd March 26, 1982 by IDWR, Eastern Region
(1982 McFarland Letter 1 – Thompson)**

174
November 17, 2008
Rev: May 12, 2009
Rev. Feb. 9, 2010

This letter was in response to IDWR request for review and comment by the 75-D Watermaster to the February 1982 revised abstract. (See IDWR memo of February 25, 1982.)

Excerpt:

"The revision is usable and agrees with my interpretation of the 1902 decree and exchange agreements. The exchange rights are probably most deserving of specific mention. The names marked with an asterisk are the ones which presently receive exchange water with one exception. Each person/place receives 45 inches of water except Theodore Batson and Elwood D. Clark who each get ½ share or 22 ½ inches of water. All exchange water is considered 1882 water as a matter of practicality."

The above quoted paragraph deals with the "exception" (McKinney) for which exchange water is not being delivered. The comments, however, bear directly on the current issue in that Mr. McFarland states "The names marked with an asterisk are the ones which presently (i.e. – 1982) receive exchange water.....," and both Thomas Palmer rights with identical places of use (the Original Homestead) are so identified in the abstract. Thus, Mr. McFarland clearly states, contrary to his recent affidavit, that in 1982 exchange water was being delivered to the Thomas Palmer place of use for the original homestead and not the 1912 patent.

Comment:

The Abstract clearly shows rights 75-0069 and 75-0070 with exchange rights. Mr. McFarland states his concurrence with the Abstract.

The subsequent treatment and manipulation of the two rights identified above is a key factor in the current issue. As the Watermaster notes, the exchange rights have been split in one instance, but he mentions no such change for the Thomas Palmer homestead. It should be noted that the Watermaster has not conformed to the Abstract in the subsequent treatment of rights 75-0069 and 75-0070, but rather has sought to separate the exchange rights from 069 to the benefit of 070, which in themselves have not been correctly delivered.

In addition, the treatment of all exchange water as "1882 water," when in fact only 4.40 cfs (220 inches) is actually 1882 and 8.00 cfs (400 inches) is 1875 raises certain questions on the correctness of this "matter of practicality" approach. The question actually centers on the treatment of two other large 1882 rights which are not exchange rights. In addition, one is a May 2 right with the other being May 1. The 1882 exchange rights are May 1. The effect of this grouping of rights with different priorities suggests potential benefit to some individuals in the application of priority delivery cuts. A careful investigation of this procedure by IDWR is long overdue.



STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
EASTERN REGION

John V. Evans
Governor

C. Stephen Allred
Director

1515 Lincoln Road
Idaho Falls, Idaho 83401
(208) 523-7186

October 16, 1980

Jim Smith
P.O. Box 80
Carmen, Idaho 83462

Dear Jim:

Your recent letter requesting information per water right #75-069 and 75-070 is listed below.

75-069 according to the decree abstract in this office is appurtenant to the land also within NE $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 3, T. 22N, R. 22E. It appears that the 9.25 acres in question is within the NE $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 3, T. 22N, R. 22E. Any local surveyor can verify the exact location.

The waters of Carmen Creek are appurtenant to the decreed place of use regardless of the owner and recent land subdivision. Priority and legal right (unless withheld) continue in force per decree.

It would certainly not be out of order to request the new owners to provide you with adequate information for the delivery of their water rights.

On 75-070, I could not locate the place of use for this water right. This would only be of concern if 75-070 was an overlapping water right for the land in question.

Hopefully this office has been of some help.

Very truly yours,

BILL RHOADS
Sr. Resource Analyst

BR:bs

Bill Rhodes - Senior Analyst

RECEIVED

OCT 15 1980

Department of Water Resources
Eastern District Office

Dear Sir,

Enclosed is a copy of a land deed on Carman Creek. The land falls under water right # 75-070 or 75-069. This ranch has subdivided and the water rights are a bit uncertain.

Could you please verify 2 things?
1. Which right - 070 or 069 would cover the enclosed piece of ground?

and
2. Is this a legal claim to water?

Thank you for your attention to this matter. Your findings will be of great interest and benefit to both the seller and to the buyer.

Sincerely,

Jim Smith

Box 80

Carman, Del. 83467

Box 123

Comm. Order 3462

Harold Carlson
Department of Water Resources
Eastern District Office
150 S. 400 W. 2nd Ave.
Salt Lake Falls, Idaho 83401

RECEIVED

MAR 26 1982

Department of Water Resources
Eastern District Office

Dear Sir:

This letter is to comment on the 1952 revision of
the old water master's rights, which District 75 District
included herein.

The revision is reasonable and agrees with my interpretation
of the 1902 decree and exchange agreements. The exchange
rights are probably mostly deserving of specific mention. The
names listed with an asterisk are the ones which are actually
receiving exchange water with one exception. Each named
person/ place receives 1/3 acre of water except Theodore
Baker and Edward O. Clark who each get 1/2 share
or 1/3 acre of water. All exchange water is
considered 1/3 acre of water as a matter of practicality.

The exception is the Peter McKinney right which is believed
to be one presently. Sometime shortly after 1902, Peter McKinney
purchased the lands of William Smith and Robert Martin and
apparently transferred his share to these lands. At least, the
old water master's records show these lands receiving 3 shares
until about 1957. No official record of this transaction has been
found but old timers testify to its use. In fact, District
1957, the State Department of Reclamation told the water master to
turn off the exchange rights to force the water users to come to
an agreement as to where the Peter McKinney right was to be
used. The water master just shut the Peter McKinney right off. That
is the current status of the right.

Sincerely yours,
Dave M. Farland

Watermaster, Dist 75-D

encl 1 sheet

Phone 156-3752

Carmen Idaho 83467

April 25, 1981

Ron Carlson
Department of Water Resources
150 Shoup
Idaho Falls, Idaho 83401

Dear Ron,

Monday, April 13, about 20 water users from Carmen Creek met with Bill Rhoads of your department in Salmon. We discussed available options concerning claiming the large amounts of water used but not appropriated, on Carmen Creek. It seemed that it would be necessary to file claims on each diversion.

After discussing filing with Mr. Rhoads, the water users agreed it would be best if we could get assistance from your department. We ask that Mr. Rhoads work with me in Carmen if possible.

Carmen Creek has approximately 25 diversions serving about 40 users on 6000 acres. I expect it will take one to three days with some fieldwork required to complete the project. I will work directly with your personnel as a representative of all the water users until final approval is needed.

If Mr. Rhoads could come during the last week in May, I will have enough preliminary data compiled to most efficiently use his time.

Sincerely yours,
David M. M. Farland
Watermaster District 75-D

RECEIVED

APR 29 1981

Department of Water Resources
Eastern District Office

DATE 2-25-82

FROM Glen

TO Bob F

SUBJECT - attached is revised, updated abstr.
for Carmen Cr & Trib, Lemhi County.- Suggest the region sent its or
take to the watermaster & ask for
comment.

- major changes include

- a) rate shown in cfs rather than inches
- b) Exchange rts shown in the
body of the abstract, rather

SIGNATURE

FROM

TO

SUBJECT

than @ end of abstract

- c) users of the exchange water
identified in abstr for 1st time,
(upper users)

- D) the owners & descr of the land
of the (lower users - Big Flat)
deleted from abstract since
their names & land descr.
was misleading in our previous
abstract

- E) Permit & Lic rts compiled

- F) Claimed rights compiled

SIGNATURE

TO

SUBJECT

I would appreciate, the
region advising me of any
changes or objection by the
watermaster, since I need
to send a copy to the courthouse
for their general use in answering
questions on Carmen Cr. & a copy to
the magistrate judge who lives
on Carmen Cr.

SIGNATURE

same file
75-D

(13)

TITLE OF CASE
DAVID MCNUTT, et al
VS
THOMAS PALMER, et al
Abstract revised February 1982

SOURCE
Carmen Creek and tributaries
WATER DIST.
75-D
COUNTY
Lemhi
JUDICIAL DIST.
May 9, 1902
JUDGE
Joseph C. Rich
RECORDED
IN BOOK NO. _____
AT PAGE NO. _____
FILE NO. _____

PAGE 1

P.N. DN.	DEGREED OWNER	NAME	PRESENT OWNER	AMT. INCRES. AML SEC. FTY.	PRIORITY	DIVISION	REMARKS, LAND TO BE IRRIGATED, ETC.	GT.
75 0058	Frank P. McCracken			0.60	05-01-1865		W4NW4 Sec 17, SW4SW4 Sec 8, lots 10 & 12 Sec 7 T22N-R22E	
75 0060	Montraville White Est.			1.40	05-01-1874		SE4NW4, SW4NE4, NE4SW4, NW4SE4 Sec 9 T22N-R22E	
75 0061	Emma White			0.40	05-01-1874		NE4SE4 Sec 9 T22N-R22E	
75 0064	John F. Ferguson			1.50	05-01-1874		E4NE4 Sec 9 NW4NW4 Sec 10 T22N-R22E	
75 0051 thru 0057	Exchange Rights			8.00	05-01-1878		E4NE4 Sec 9 NW4NW4 Sec 10 T22N-R22E to be distributed among the users marked with an asterisk (*) to be distributed among the users marked with an asterisk (*) Portion of SW4NE4 above Carmen Creek Ditch Sec 5 T22N-R22E	
75 0075	Peter McKinney			0.30	05-01-1882		SW4 Sec 24, W4NW4 Sec 25, E4NE4 Sec 26, NE4 Sec 35 T23N-R22E	
75 0076	Ernest R. Benedict			3.60	05-01-1882		S4SW4, NE4SW4, NW4SE4 Sec 35 T23N-R22E	
75 0062	A. C. Mather			2.50	05-02-1882		NW4 Sec 8 T22N-R22E	
75 0063	William Smith			1.60	05-01-1884		W4SE4, S4SW4 Sec 3 T22N-R22E	
75 0065	Hillard H. Dahle			1.50	05-01-1885		E4NW4, lot 2, NW4NE4 Sec 17 T22N-R22E	
75 0066	Wallace W. Slavin			1.50	05-01-1885		S4SW4, NW4SW4, SW4SE4 Sec 9 T22N-R22E	
75 0067	John Dimock			1.00	05-01-1885		N4SW4, SW4SW4, SW4NE4 Sec 30, W4NW4 Sec 31 T23N-R23E	
75 0079	Ora L. A. William L. Igon			1.40	05-01-1885		SE4SE4 Sec 25 T23N-R22E, SE4SW4, SW4 Sec 30, NE4NW4, NW4NE4 Sec 31 T23N-R23E	
75 0069	Thomas Palmer			0.40	05-01-1888		S4NE4, NE4SE4 Sec 3, SW4NW4 Sec 2, T22N-R22E	
75 0071	John Palmer			2.00	05-01-1888		E4NW4, NE4SW4, NW4NE4 Sec 10 T22N-R22E	
75 0081	Lemhi Placer Mining Co.			10.00	1889		Near two East Forks of Carmen Creek	
75 0072	Albert J. Mathews			0.20	05-01-1890		S4NE4, NE4NE4 Sec 17, SE4SE4 Sec 8 T22N-R22E	
75 0070	Thomas Palmer			0.60	05-01-1892		See place of use for right 75-0069 above.	

1 5 9 5 1 1 P.N. & PRIORITY NUMBER 94.3 DEGREE NUMBER GT. & REMARKS TOTAL

JUL 31 1986

TITLE OF CASE

VS

THOMAS PALMER, et al

SOURCE

WATER DIST.

JUDICIAL DIST.

DATE OF DECREE

IN BOOK NO.

AT PAGE NO.

FILE NO.

PAGE

Abstract revised February 1982

75-D

LEMMI

RECORDED

JUDGE Joseph C. Rich

PN	DN	DECEASED OWNER	NAME	PRESENT OWNER	AMT. SEC. FTY	INCHES	PRIORITY	SUBDIV.	DIVISION	REMARKS, LAND TO BE IRRIGATED, ETC.	CT.
75	0077	Ernest R. Benedict		*	1.4	05-1-1892				See place of use for right 75-0076 (Page 1)	
75	0080	Ora L. & Wm. L. Igou		*	2.0	05-1-1892				See place of use for right 75-0079 (Page 1)	
75	0082	Lemhi Placer Mining Co.			40.0	10-15-1892				On Kirtley Creek from Oct 15 to Apr 15 except the water right can be used when excess over irrig. rts	
75	0059	Frank P. McCracken			0.30	05-1-1896				See place of use for right 75-0058 (Page 1)	
75	0068	Eliza S. Mather			1.4	05-1-1896				See place of use for right 75-0076 (Page 1)	
75	0074	Peter McKinney		*	1.0	05-1-1896				See place of use for right 75-0072 (Page 1)	
75	0073	Albert J. Mathews		*	0.8	05-1-1897				See place of use for right 75-0072 (Page 1)	
75	0078	Elwood D. Clark		Sprgs.	all	05-1-1898				Springs on own land	
		Theodore Batson		*	0.3					No land description in decree	
		Robert Martin		*						See place of use for right 75-0072 (Page 1)	
		John Daniels		*						See place of use for right 75-0072 (Page 1)	

69

TITLE OF CASE

DAVID MCNUTT, et al
vs.
THOMAS PALMER, et al

SOURCE: CARMON CREEK

WATER DIST. 3 N.

JUDICIAL DIST. 5

DATE OF DECREE 5-9-02

COUNTY Lemhi

JUDGE Joseph C. Rich

RECORDED IN BOOK NO. 1 AT PAGE NO. 103

PAGE 1

FILE NO. 3N-1

P.N.	D.N.	DECEDED OWNER	NAME	PRESENT OWNER	INCHES AMT. 36x48 FT.	PRIORITY	SUBDIV.	DIVISION	REMARKS, LAND TO BE IRRIGATED, ETC.	GT.
1		Frank P. McCracken			30	5-1-09			WATER 17; SW 1/4 SW 8; Lots 10, 12-7-22N-22E.	
2		Montraville White Est.			70	5-1-11			SE 1/4 SW 1/4, NW 1/4, NE 1/4 SW 1/4, NW 1/4 SE 1/4 9-22N-22E.	
2		Emma White			20	"			NE 1/4 SE 1/4 9-22N-22E.	
2		John F. Ferguson			75	"			E 1/4 9; NW 1/4 10-22N-22E.	
3		Peter McKinney			15	5-1-82			Portion of SW 1/4 above Carmon Creek Ditch 5-22N-22E	
3		Ernest R. Benedict			180	"			SW 1/4 24; NW 1/4 25; E 1/4 SE 1/4 26; NE 1/4 35-23N-22E.	
4		A. G. Mathier			125	5-2-82			S 1/4 SW 1/4, NE 1/4 SW 1/4, NW 1/4 SE 1/4 35-23N-22E.	
5		William Smith			80	5-1-84			NW 1/4 8-22N-22E.	
6		Hillard H. Dahle			75	5-1-85			W 1/4 SE 1/4, S 1/4 SW 1/4 3-22N-22E.	
6		Wallace W. Slavin			75	"			E 1/4 NW 1/4, Lot 2, NW 1/4 17-22N-22E.	
6		John Dimock			50	"			S 1/4 SW 1/4, NW 1/4 SW 1/4, SE 1/4 9-22N-22E.	
6		Ora L. & William L. Igou			70	"			N 1/4 SW 1/4, NW 1/4 SW 1/4, SE 1/4 NW 1/4 31-23N-23E	
7		Thomas Palmer			20	5-1-88			SE 1/4 SE 1/4 25-23N-22E; SE 1/4 SW 1/4 SE 1/4 30; NE 1/4 NW 1/4 23N-23E.	
7		John Palmer Lemhi			100	"			S 1/4 NE 1/4 SE 1/4 3; SW 1/4 NW 1/4 2-22N-22E.	
8		Placer Mining Co.			500	"			E 1/4 NW 1/4, NE 1/4 SW 1/4, NW 1/4 10-22N-22E.	
9		Albert J. Mathews			10	5-1-90			Near top East Forks of Carmon Cr.	
10		Thomas Palmer			30	5-1-92			S 1/4 NE 1/4 SE 1/4 17; SE 1/4 SE 1/4 822N-22E.	
10		Ernest R. Benedict			70	"			See No. 7	
10		Ora L. & Wm. L. Igou			100	"			See No. 3	
11		Lemhi Placer Mining Co.			2000	10-15-92			See No. 6	
									On Kirtley Creek - from Oct. 15 to Apr. 15 except the water can be used when there is excess over irrigation rights.	

LEGEND

P.N. : PRIORITY NUMBER

D.N. : DEGREE NUMBER

GT. : CUMULATIVE TOTAL

64

TITLE OF CASE

SOURCE CARMEN CREEK

WATER DIST. 3 N.

JUDICIAL DIST. 5

DATE OF DECREE

COUNTY Lemhi

JUDGE Joseph C. Rich

RECORDED IN BOOK NO. AT PAGE NO.

FILE NO. 3N-1

PAGE 2

RN.	DN.	DECEDED OWNER	NAME	PRESENT OWNER	INCHES OF ANTI-PROCT.D	PRIORITY	SUBDIV. SEC.	DIVISION	REMARKS, LAND TO BE IRRIGATED, ETC.	GT.
12		Frank P. McCracken			15	5-1-96			See No. 1	
12		Eliza S. Mather			70	"			SE1/4 34-23N-22E; Lots 3, 4-2; Lot 1-3-22N-22E.	
12		Peter McKinney			50	"			Desert Lot NE1/4 5, NW1/4 8-22N-22E.	
13		Albert J. Mathews			50 40	5-1-97			See No. 9	
14		Elwood D. Clark		Sprgs.	all	5-1-98			Springs on own land	
		Rights below deeded to above water users. An exchange of Carmen Cr. water for Salmon R. Water to irrigate the lands below							No land description in decree,	
		David McNutt	✓	75-0053	200	5-1-75			Part of NW1/4 and NE1/4 32; SE1/4, SW1/4 29, NW1/4 22-23N-22E	
		Mary J. Birdsaya		75-0055	100	"			SW1/4, S1/4 and portions of NW1/4, NE1/4 NE1/4, NW1/4 32- portions of NE1/4, SE1/4 31 23N-22E	
		Anna B. Davis		75-0056	100	"			SE1/4, S1/4 and portions of NW1/4, NE1/4 32; and part of NE1/4 31-23 No-22E, SE1/4 31 Lots 2, 3 & 4-5; Lot 1-6-22N-22E.	
		Henry Oreber		75-0052	70	5-1-82			N1/4 5; NE1/4 Lot 12-6-22N-22E.	
		Niel Sweeney		75-0053	35	"			SW1/4, S1/4 5; SE1/4 6-22N-22E.	
		Peter McKinney		75-0054	60	"			Lot 14, SE1/4 6; S1/4 5, 22-N-22 E.	
		George L. Shoup, M. M. McPherson			55	"				
		A. J. Mannab, Wm. H. Shoup		75-0057						

LEGEND P.N. = PRIORITY NUMBER D.N. = DECREE NUMBER G.T. = CUMULATIVE TOTAL

Jul 31 1896

Exhibit 2

John E. Burns & Ruth C. Burns
Box 264
Carmen, Idaho 83462

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 No. 75-10061A, et al. (See Attached List)
	)	(Carmen Creek)
Case No. 39576	)	
	)	AFFIDAVIT OF JOHN E. BURNS
	)	IN SUPPORT OF MOTION FOR REHEARING
	)	OF ORDER DENYING MOTION TO REMAND
	)	
	)	

STATE OF IDAHO	)	
	)	ss.
COUNTY OF LEMHI	)	

John E. Burns, being first duly sworn upon oath deposes and states as follows:

1. My name is John E. Burns. I am retired and reside at 362 Carmen Creek Road, Carmen, Idaho, 83462. My wife, Ruth C. Burns and I jointly own a portion of the original Thomas Palmer Homestead and live in the house built by Frank Parmenter in 1947 on the site of the original homestead house.

2. My education background includes a Bachelor of Science degree in Forest Management from the University of Montana in 1961. My course work and field training included surveying, mapping, aerial photogrammetry, field techniques, statistical methods, ecology, plant physiology, botany, dendrology, plant identification, silviculture, range management, watershed management, soils, and other natural sciences and technical fields related to land and vegetative management.

3. During the years following my graduation I participated in numerous training courses on the technical and administrative procedures concerning land management.

4. My employment included seasonal work with the U.S. Forest Service prior to graduation, and for 33 years thereafter permanent employment with that agency until retirement in 1994. I held both field and administrative positions on National Forests in Wyoming, Colorado, California, and Idaho, and staff positions in the Denver and San Francisco regional headquarters and the Washington, D.C. national headquarters.
5. Throughout my career I performed extensive technical field work and data collection, report writing and analysis, preparation of National Environmental Policy Act documents, review of proposed actions, and recommendations for or approval of analyses. My work included rights of way, trespass investigation, boundaries and land ownership, water rights and diversions, land acquisition, exchanges, federal water rights claims, contracts, permits, budgetary and organizational planning, work force management, and other matters related to management and issues on National Forest lands and intermingled and nearby private lands.
6. After retirement I served as a member of the Idaho Fish and Game Commission for eight years, two years as chair. The Commission was frequently involved in matters related to land acquisitions and disposal, stream conditions, diversions, and water rights.
7. As a result of my residency as well as prior position as Forest Supervisor of the Salmon National Forest I am well acquainted with Carmen Creek and the surrounding landscape and waters there. My knowledge of the area and its conditions was further enhanced by my tenure as the Fish and Game Commissioner for the Salmon Region. Throughout and following my employment I was frequently a member of or advisor to County boards or organizations dealing with land use and water issues.
8. I served as president and chief operating officer for Fenton International, Inc. for three years from 2004. The company manufactured and marketed a veterinary product in the United States and exported to several foreign countries.

9. My wife and I acquired the Carmen Creek land and house in 1989. The house is located on the site of the original Thomas Palmer homestead house. Our portion of the original homestead is within the decreed place of use for the rights enumerated to Thomas Palmer in the Carmen Creek decree of 1902 and described in the Standrod District Court findings in 1898, and the 1969 and 1982 IDWR Abstracts of Water Rights in Carmen Creek.

10. The appurtenant rights to the property have been confirmed by the Idaho Department of Water Resources through the Department's 1969 and 1982 Abstracts and the Departmental official file correspondence describing the meetings, field examinations, watermaster involvement with IDWR staff, and review of the 1982 Abstract, as well as Department correspondence confirming appurtenant rights.

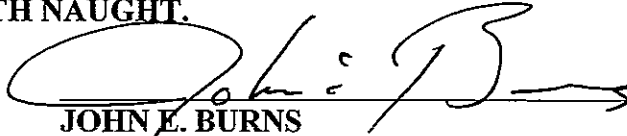
11. My personal meetings and discussions with the Regional Watermaster at the time of filing in the SRBA process in 1989 - 90, discussions and meetings with IDWR personnel in conjunction with the SRBA filing process, and the January 11, 2007 Director's recommendations confirmed the status of appurtenant rights to Exchange Water on the South Side properties.

12. Prior to and following the purchase of the Carmen Creek property I researched the Water Rights in detail, including the early General Land Office surveys and plats, the court file and decree for Carmen Creek, including both the 1898 Standrod court records and the May 9, 1902 Rich court records and Decree. I am thoroughly familiar with the adjudicated rights for the 160 acre Thomas Palmer Homestead patented in 1901.

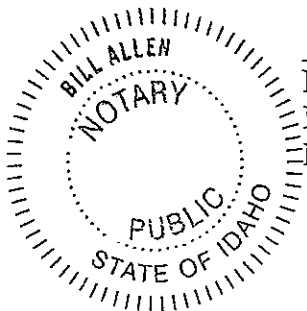
13. My research and experience combined with 22 years residence in Carmen Creek have provided a clear understanding to me of the basic water rights in Carmen Creek, including the rights assigned to the Palmer homestead as a share of the Big Flat exchange agreement which was an integral part of the 1902 Decree.

14. Attached hereto as Affidavit Exhibit 1 is a copy of transmittal letter to Mr. Garrick Baxter, IDWR, dated May 20, 2010 with 30 attachments referenced therein. For clarity, an index of attachments to the Baxter letter is provided.

FURTHER YOUR AFFIANT SAYETH NAUGHT.


JOHN E. BURNS

SUBSCRIBED AND SWORN to before me this 16th day of June 2010.




Notary Public for Idaho
Residing at: Salmon, Idaho
My Commission Expires: 2/19/2015

Exhibit 3

History of Sales - Palmer Homestead

Revised: 5/11/09

Note: This Summary Includes only Sales involving the Original HES plus Purchases of acreage by Parmenter.

See Following (2nd) Summary for Sales involving the 1912 DLA.

HE 935 160 Acres Pat 2/09/01

SW NW S2, S ½ NE S3, NESE S3 all in T22N R22E.

1. 10/1/15. Palmer to James Palmer. XXX
Parcel of 10 ½ acres in SWNW S2.
2. 9/29/15. Palmer to Curran.
SWNW S2 except 10 ½ to J. Palmer.
S ½ NE, NESE S3.
3. 8/11/16. Curran to C. Curran.
SWNW S2 except 10 ½ to J.
S ½ NE, NESE in S3.
4. 8/28/18. Curran to Bengoechea XXX
SWNW S2 except 10 ½ to J.
S ½ NE, NESE in S3.
5. 9/21/21. Bengoechea to Chapman (Sheep Co.)
SWNW S2 except 10 ½ to J.P.
S ½ NE, NESE in S3.
6. 9/21/21. Chapman to Salmon Sheep Co.
SWNW S2 except 10 ½ to J.P.
S ½ NE, NESE in S3.
7. 11/1/27. Salmon Sheep Co. to Ada Investment Co.
SWNW S2 except 10 ½ to J.P.
S ½ NE, NESE in S3.
8. 4/23/28. T. Palmer (Estate) to Lillie Jones Sandiland
10 ½ to J.P.
Also 120 acres not in Original HES.

9. 9/1/28. Ada Investment Co. to Bicknell Livestock Co.
SWNW S2 except 10 ½ to J.P.
S ½ NE, NESE in S3.
 10. 1/6/38. Bicknell Livestock Co. to Cooper. XXX
SWNW S2 except 10 ½ to J.P.
S ½ NE, NESE in S3.
 11. 2/2/46. Cooper to Parmenter XXX
SWNW S2 except 10 ½ to J.P.
S ½ NE, NESE in S3.

Plus: Palmer DLA 40 Acre Patent.
Curran DLA 160 Acre Patent.
 - 11a 6/4/51. Only: Mattson to Parmenter
J. Palmer HES 120 Acre Patent plus 10 ½ J. Palmer
1915 purchase from Palmer.
 - 11b 11/5/54. Only: Allison's to Parmenter
Portions of E. Mather's and A.C. Mather's DLA and HES
Patents totaling 170.62 acres.
- Note: Parmenter purchases 46 through 54 total 654+ contiguous acres.
-
12. 3/16/55 Parmenter to Lemhi County
Road, drainage, irrigation ditches, and structures
NESE S3
 13. 8/31/61 Parmenter to Idaho Fish & Game Dept.
Fish Screen & Fish Bypass
SWNE S3 (Easement) Now Burns.
 14. 6/19/68. Parmenter to Herman.
Fraction Lot 4 S2 1.0 Acres
 15. 11/10/69. Parmenter/s to Ernest, R M. Now Clementz.
Tract in SWNW S2. 3.37 acres.

XXX

16. 11/10/69. Parmenter/s to Ernest, R A. Now Ernest.
Tract in SWNW S2. 5.0 acres. XXX
17. 12/2/69. Parmenter to Parmenter, R et a
Remaining Acreage in SWNW S2.
S ½ NE, NESE in S3.
18. 1/21/70. Parmenter, R et al to McFarland, A.
Tract in SWNW S2.
Tract in SENE S3.
19. 8/28/72 Parmenter, R et al to Parmenter, F.
6/23/72. Remaining acreage in SWNW S2.
S ½ NE, NESE in S3.
20. 1/20/76. Parmenter, F to Merrick & Ihli. XXX
Remaining acreage in SWNW S2.
Remaining acreage in SENE S3.
SWNE, NESE in S3.
21. 3/23/77. Merrick & Ihli to Hemminger. Now Quinn.
Tract in SENE S3 and SWNW S2. 3.29 acres.
22. 12/2/77. Merrick & Ihli to Jewell. Now Rice.
Tract in NESE SE. 9.26 acres.
Now Lot 2, Block 1, Carmen Creek Ranchettes.
23. 12/2/77. Merrick & Ihli to Anderson. Now Matejko.
Tract in NESE S3. 9.25 acres.
Now Lot 1, Block 1, Carmen Creek Ranchettes.
24. 12/6/77. Merrick & Ihli to Wolfley. XXX
Remaining acreage in SWNW S2.
Remaining acreage in NESE S3 and S ½ NE S3.
Total acreage 127.06.
25. 7/16/79. Wolfley to Foland. XXX
Remaining acreage in SWNW S2.
Remaining acreage in NESE S3 and S ½ NE S3.

26. 3/11/80. Foland to Carmen Land (McFarland.)
Tract in SWNW S2. 2.42 acres.
27. 3/ /80. Foland to Schultz. Now Hershey.
Lot 21, Ajax Peak Subdivision.
Tract in SWNE S3.
28. 4/25/80. Foland to Knauff. Now Edmiston.
Lot 9, Ajax Peak Subdivision.
Tract in SWNE S3.
29. 7/7/80. Foland to Anderson. Now Matejko.
Lot 4, Ajax Peak Subdivision.
Tract in NESE and SENE S3.
30. 7/10/80. Foland to Fadness. Now Fadness.
Lot 20, Ajax Peak Subdivision.
Tract in SWNW S3.
31. 7/ /80. Foland to Coffin. Now Yowell.
Lot 10, Ajax Peak Subdivision.
Tract in SWNE S3.
32. 11/6/80. Foland to Riley. Now Eisenhower.
Lot 22, Ajax Peak Subdivision.
Tract in SENW and SWNW S3.
33. 11/3/80. Foland to Drew. Now Jackson.
Lot 3, Ajax Peak Subdivision.
Tract in SENE S3.
34. 2/5/81. Foland to Mosher. Now Mosher.
Lot 7, Ajax Peak Subdivision.
Tract in SWNE S3.
35. 6/30/81. Foland to Andreessen. Now Mattis.
Lot 6, Ajax Peak Subdivision.
Tract in SWNE S3.

- | | | | |
|-----|-----------|--|-------------------|
| 36. | 7/1/81. | Foland to Underwood.
Lot 1, Ajax Peak Subdivision.
Tract in NESE S3 | Now Burns.
XXX |
| 37. | 5/25/82. | Foland to Hudson.
Lot 5, Ajax Peak Subdivision.
Tract in SENE S3. | Now Hudson. |
| 38. | 5/31/83. | Foland to Dennis.
Lot 12, Ajax Peak Subdivision.
Tract in SWNE S3. | Now Tippet. |
| 39. | 2/9/80. | Foland to Zanutto.
Lot 2, Ajax Peak Subdivision.
Tract in SENE S3 and SWNW S2. | Now Sorenson. |
| 40. | 11/25/81. | Foland to Myers.
Lot 11, Ajax Peak Subdivision.
Tract in SWNE S3. | Now Cabigas. |

Note also: Parmenter to Robie, 1.0 acres, in Lot 2 S2. 4/17/68. (Now Robie)
Parmenter to Herman, 10 acres, NW S2. 6/19/68. (Now Rogers)

Note also: XXX or XXX indicates deed included in prior Thompson response to
Discovery.

History of Sales – Palmer 1912 Desert Land Act Patent

Revised 5/11/09

Note: This Summary includes only sales involving the 1912 Palmer DLA Patent plus the two 1980 Tract Purchases thru BLM for Foland.

See Preceding Summary for Sales involving the 1901 HE Patent.

**DLA Patent 262461 Hailey 0998 April 29, 1912
Govt Lot 2 of Section 3 in T22N R22E.**

- | | | | |
|-----|----------|--|-------------------|
| 41. | 2/17/80. | Foland to McAtee
Lot 13, Ajax Peak Subdivision
Tract in Govt Lot 2 S3 | Now Pilkerton |
| 42. | 2/1/81. | Foland to Adams
Lot 14, Ajax Peak Subdivision
Tract in Govt Lot 2 S3 | Now Harling |
| 43. | 1/5/94. | Foland to Gordon/Martinson
Lots 15 – 19, Ajax Peak Subdivision
Tracts in Govt Lot 2 S3 | XXX |
| 44. | 9/20/01. | Martinson/Gordon to Tutor
Lot 17, Ajax Peak Subdivision
Tract in Govt Lot 2 S3 | Now Tutor |
| 45. | 12/3/01. | Martinson/Gordon to Bishop
Lots 18 – 19, Ajax Peak Subdivision
Tracts in Govt Lot 2 S3 | XXX |
| 46. | ----- | Gordon to Wilson
Lot 16, Ajax Peak Subdivision
Tract in Govt Lot 2 S3
Wilson to Dixon 12/5/02 | Now Dixon |
| 47. | 1/16/07 | Martinson to Mascia
Lot 15, Ajax Peak Subdivision
Tract in Govt Lot 2, S3 | Now Mascia
XXX |

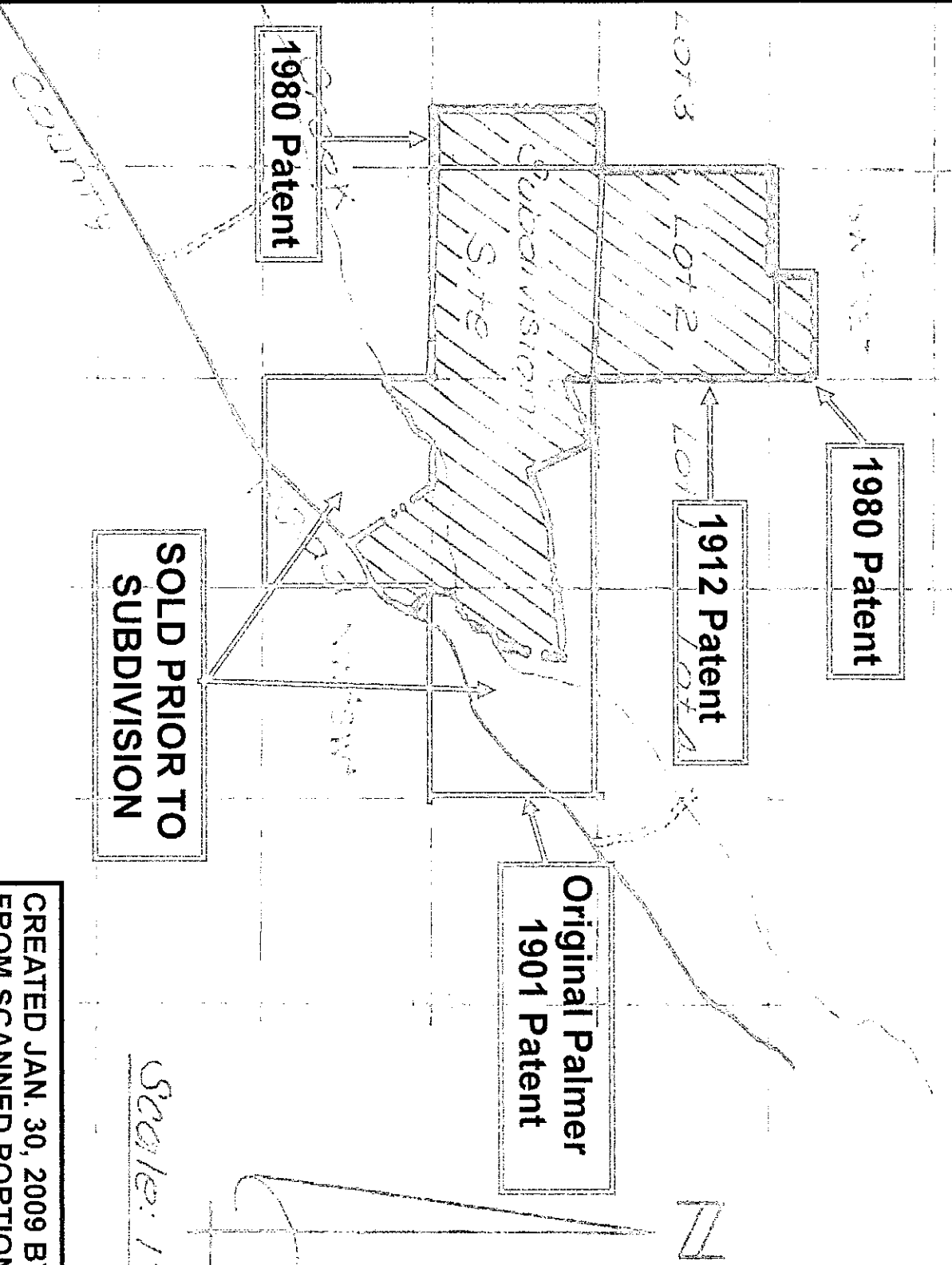
48.	11/26/04	Bishop to Fols	Now Fols
		Lots 18 – 19, Ajax Peak Subdivision	
		Tracts in Govt Lot 2, S3	XXX

Note also: Eleven Sales have occurred in Govt Lot 2 S3 since 1980. All lots have sold at least twice.

Note also: XXX indicates deed included in prior Thompson response to Discovery.

Note also: Lot 20, Fadness, and Lot and Lot 12, Tippet, lie partially within Govt Lot 2 S3 as well as SWNE S3. Listed under the latter.

Note also: XXX indicates deed included in prior Thompson response to Discovery.



1980 Patent

1980 Patent

1912 Patent

Original Palmer
1901 Patent

SOLD PRIOR TO
SUBDIVISION

Scale: 1" = 2000'

VICINITY MAP

CREATED JAN. 30, 2009 BY BURNS
FROM SCANNED PORTION OF AJAX
PEAK SUBDIVISION PLAT.
EXHIBIT 3 MAP A

Ajax Peak Subdivision
6 Lot Sales in 1912 DLA

Ajax Pk Subdivision
15 Lot Sales within
Homestead Portion

Thomas Palmer Homestead
23 Sales Prior to Subdivision

1915 Thru 1981 — 42 plus
Sales Involving This Area

VICINITY MAP

CREATED JAN. 30, 2009 BY BURNS
FROM SCANNED PORTION OF AJAX
PEAK SUBDIVISION PLAT.
EXHIBIT 3 Maps

Scale: 1"=2000'

