

07/2008

STATE OF IDAHO  
DEPARTMENT OF WATER RESOURCES

NOTICE OF PROTEST

RECEIVED  
SEP 30 2013  
Department of Water Resources  
Eastern Region

This form may be used to file a protest with the department under sections 42-108B, 42-203A, 42-203C, 42-211, and 42-222, Idaho Code. The department will also accept a timely protest not completed on this form if it contains the same information.

1. Matter being protested TRANS./EXCH. PROPOSALS 78799 AND 78800
2. Name of protestant JOHN E. AND RUTH C. BURNS
3. Protestant's Representative for service (If different than protestant)  
NA
4. Service mailing address P.O. Box 264, CARMEN, ID. 83462
5. Service telephone no. 208-756-3645 Email Address: TREEMULES@CUSTERTEL.NET
6. Basis of protest (including statement of facts and law upon which the protest is based)

SEE ATTACHED SHEETS:

1. BASIS FOR PROTEST (2 ps)

2. DESCRIPTION AND DISCUSSION OF 78799 (1 ps)

3. DESCRIPTION AND DISCUSSION OF 78800 (1 ps)

(additional pages may be attached to describe nature of the protest)

7. What would resolve your protest? WITHDRAWAL OF PROPOSALS  
FOR EXCH/TRANSFER 78799 AND 78800.

I hereby, acknowledge that if I, or my designated representative, fails to appear at any regularly scheduled conference or hearing in the matter of which I have been notified at the address above, the department may issue a notice of proposed default against me in this matter for failure to appear. I also verify that I have served a copy of this protest upon the applicant.

Signed this 26<sup>th</sup> day of SEPT., 20 13.

John E. Burns Ruth C. Burns  
Protestant

NA  
Protestant's Representative

Receipt  
#2039154

Date 9/26/13

**BASIS FOR PROTEST – PROPOSALS 78800 and 78799 (Bills, Nancy)  
Rights 75-10061AB, 75-10062Z, 75-14530, 75-66 and 75-10630, 75-2123**

Due to the relationship of the two proposals the reasons for protest are listed below without distinction between the two proposals.

1. Removal of 3.35 cfs of 1875, 1882, 1885 and 1915 water from Carmen Creek at the Freeman Creek diversion (Bills Ditch) point will negatively affect a number of Carmen Creek irrigators with decreed early rights on the mainstem of Carmen Creek during the most critical part of the irrigation season. This action simply bypasses long established diversion points in Carmen Creek below the Freeman Creek confluence.
2. Removal of 3.35 cfs from Carmen Creek via the Bills Ditch at the Freeman Creek diversion point will adversely affect recovery of the salmon and steelhead fishery and negate the large public and private investment in structures and time. Bypassing a major segment of Carmen Creek will adversely affect fish passage and constitute a major setback to recovery efforts.
3. Removal of early decreed water from the Carmen Drainage will negatively affect the objective of maintaining connectivity of Carmen Creek with the main stem of the Salmon River during critical periods of low flow
4. Placing an additional 3.35 cfs in the Bills Ditch for a total of 11.24 cfs will further overload this already unstable and hazardous ditch with a history of serious and damaging failure. This ditch failed last season resulting in a mass slope movement that overran the Carmen Creek Road and did major damage to the road, private property, and other ditches, and resulted in considerable expense to Lemhi County and others.
5. The transfer/exchange proposals will subject residential and other property owners in proximity to the Bills Ditch to increased and continuing risk and damage.
6. The proponent has failed to restore the private property seriously damaged in the Bills Ditch mass failure last summer. The property owners have not been compensated for the substantial loss of property value or expenses incurred resulting from the mass slope failure.

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7. Although proposed as an "exchange," by adding the Morton Ditch as an additional Point of Diversion for 1954 water, under no existing or reasonably foreseen circumstances could 1954 right water be considered to be of comparable or similar utility to early decreed water.

8. The proposed adjustments and expansion of Total Place of use and individual right Acreage Limits is not appropriate. Those limits were established in the rejudication for Water District 75D based on historic use and in consideration of the short time the bench was irrigated with license water.

9. The Bills Ditch, with its extreme length, drainage crossings, and steep slopes, is an inefficient facility with significant water transmission loss. A much more appropriate method for placing water on the bench would be pumping from the Salmon River.

10. The Bench Lands do not lie in an efficient pattern for irrigation due to numerous fingers and narrow strips of irrigable ground. Large scale aerial photography which illustrates this fact is available for IDWR inspection.

Water Rights Transfer/ Exchange Proposals by Bills

Date 9/26/13

Proposal 78799 (75-10630, 75-2123)

Add new (additional) Point of Diversion in Carmen Creek for the two 1954 rights via the existing Morton Ditch (CC 4) point of diversion. Retain the existing Point of Diversion for the two rights in Freeman Creek – Bills Ditch (FCC 1.) The total amount of water for the two rights is 7.89 cfs (394.5 inches.)

The proposal would also increase the Place of Use to 408.6 acres. The existing acreage irrigated by these rights is 297.5, located on the bench several miles below the Freeman Creek point of diversion.

The Morton Ditch carries 1875, 1882, 1885, early decreed water and 1915 water decreed in the rejudication. Under concurrent Proposal 78800, that water would be available to the bench lands via the Freeman Creek Point of Diversion and Bills Ditch.

The Morton Ditch in lower Carmen Creek provides irrigation to 111.5 acres located in the valley. The Morton ditch carries 3.35 cfs (167.5 inches) to the 111.5 acres served by the early rights.

Under the combined proposals (78799 and 78800) a total of 11.24 cfs (562 inches) could be placed in the Bills Ditch at one time. In the same manner, flow in Carmen Creek could be reduced by 3.35 cfs (167.5 inches.)

The Bills Ditch was constructed in segments over time in the mid to late 1950's. Its extension to the bench was for license water (1954 license, now decree with that priority date.) It never legally carried decreed water. In the recent rejudication no originally decreed water was approved for the bench. The bench lands lie outside and south of the Carmen drainage.

Proposal 78800 (75-10061AB, 75-10062Z, 75-14530, 75-66)

Transfer the Point of Diversion for these four rights from Morton Ditch to Bills Ditch. The ditch names used by the applicant for this transfer are local names, not the current designations for the headgate structures at the existing diversions: FCC 1 for Bills Ditch and CC 4 for Morton Ditch.

Morton Ditch is near the lower end of Carmen Creek and the Bills Ditch is at the extreme lower end of Freeman Creek just above the confluence with Carmen Creek. Although no diversion points exist in the short downstream reach of Freeman between the headgate and confluence, Diversions CC 1 through CC 9, plus two unnumbered, exist on Carmen from the Freeman confluence downstream.

The length of the Bills ditch from the Freeman diversion point to the proposed place of use is over 5 miles, mostly on steep side slopes. The ditch leaves the Carmen drainage at a low divide prior to entering the proposed Place of Use bench lands.

The proposal would also enlarge the Place of Use from 111.5 acres in the Carmen valley bottom to a total irrigated area of 408.6 acres. The four existing rights, (total 3.35 cfs or 167.5 inches) are limited to 111.5 acres individually and in the aggregate. The additional 297.1 acres in the proposed 408.6 acre place of use is the land on the bench which would receive water from the four transferred rights via the Bills ditch.

The bench lands are outside and south of the Carmen drainage. The diversion point in Freeman Creek and very long Bills Ditch (6 miles) are necessary to hold sufficient elevation to cross the divide and reach the bench. The 297.1 acres drain directly to the Salmon River via several incised gullies and canyons. There is no drainage, recharge, or waste water entering Carmen Creek from irrigation on the bench.

The Bills ditch was constructed in segments over time in the early to mid 1950's. It's extension to the bench was solely for 1954 license water available only in periods of high flow. It was not intended for did it ever legally transport decreed water. In the recent readjudication no originally decreed water was recognized for the bench.

# Water Rights – Nancy Bills Current Rights

Date 9/26/13

| DECREE  | PRIORITY | CFS  | INCHES | PT DIV  | PT USE | SEASON    | ACREAGE  |  |  |
|---------|----------|------|--------|---------|--------|-----------|----------|--|--|
| 10061AB | 1875     | 0.58 | 29     | CARMEN  |        | 4/1-10/31 | 111.5 +  |  |  |
| 01162Z  | 1882     | 0.32 | 16     | CARMEN  |        | 4/1-10/31 | 111.5 +  |  |  |
| 66      | 1885     | 1.5  | 75     | CARMEN  |        | 4/1-11/31 | 111.5 +  |  |  |
| 4339    | 1904     | 2.31 | 115.5  | SAL RIV |        | 4/1-10/31 | 77       |  |  |
| 14530   | 1915     | 0.95 | 47.5   | CARMEN  |        | 4/1-11/31 | 111.5 +  |  |  |
| 10630   | 1954     | 1.89 | 94.5   | FREEMAN |        | 4/1-10/31 | 297.1 ++ |  |  |
| 2123    | 1954     | 6    | 300    | FREEMAN |        | 4/1-10/31 | 297.1 ++ |  |  |
|         |          |      |        |         |        |           |          |  |  |
|         |          |      |        |         |        |           |          |  |  |

+ Place of Use limited to 111.5 individually and in the aggregate.

++ Place of Use limited to 297.1 individually and in the aggregate.