

APR 18 2012

DEPARTMENT OF
WATER RESOURCES

April 15, 2012
Albert C. Fols and/or Alvera C. Fols
PO Box 56
Carmen, ID 83462

Gary Spackman, Interim Director
Idaho Department of Water Resources
PO Box 83720
Boise, Idaho 83720-0098

PETITION FOR RECONSIDERATION OF WATER RIGHT LICENSE NO. 75-07505

Albert and Alvera Fols (Petitioners) by and through themselves hereby file petition with The Director of Idaho Department of Water Resources for reconsideration of Water Right License No. 75-07505 (The License).

The Petitioners will show that The Director erred by allowing the use of more than one inch of irrigation water per acre (maximum allowed) and erred by allowing John and Ruth Burns (Claimants) to amend The License to include a second domestic use water right to the Place of Use (POU) without addressing a decreed domestic right that exists for the same domicile. Also, an investigation prompted by the APPLICATION FOR AMENDMENT (ATTACHMENT I) into the correct amount of water per acre and/or total irrigated acreage found that The Director erred by including irrigated acreage in The License that is illegal to irrigate.

MORE THAN ONE INCH PER ACRE

The License (Attachment II) allows a maximum diversion rate of 0.022cfs/acre¹.

CONDITIONS OF APPROVAL (CONDITIONS) for The License specifies:

“4. This right shall provide no more than 0.02 cfs per acre when combined with all other rights.”

However, The License in and by itself authorizes a greater amount of water per acre than Condition No. 4 allows. The Director has **not identified additional acreage for the domestic use element** of the The License.

The excess per acre rate, recently added by The Claimants' amendment as domestic use, is exclusively for irrigation use. The CONDITIONS specify:

“6. Domestic use is for external use in connection with one home. Irrigation of lawn, garden and landscaping associated with the home is authorized under the irrigation component of this right.”

Also, CONDITION #6 cannot limit the use to “Irrigation of lawn, garden and landscaping....” without appropriately defining “lawn, garden and landscaping”.

¹ The Place of Use is 10.9 acres with a maximum diversion rate of 0.024cfs

Example: One irrigator's "lawn" is another irrigator's pasture. The cultivation of many varieties of grass has a beneficial use as feed for livestock. Many grass varieties are used for lawns. Would the difference between agricultural beneficial use and a domestic lawn require that horses are not allowed to graze on the lawn or that the lawn clippings cannot be fed to livestock? Is an acre of alfalfa, that has a beautiful bloom, one irrigator's "landscaping associated with the home" or another irrigator's cattle feed?

THE LICENSE INCLUDES A DOMESTIC USE ELEMENT WITHOUT
ADDRESSING A DECREED DOMESTIC RIGHT THAT EXISTS FOR THE SAME
DOMICILE

The Claimants have a decreed domestic water right (75-10063, ATTACHMENT III) that allows a diversion rate of 13,000 gallons per day (40 gallons/day short of one (1) miner's inch of water). The Director has not addressed how Water Right 75-10063's inch of water will be balanced with the additional inch of domestic water allocated in The License.

The Petitioners are unaware of any domestic water rights in Water District 75D that allows a diversion rate greater than one inch/day. If The Director were to find that the well for 75-10063 is inadequate to produce the maximum diversion allowed, then The Director may justify additional domestic use in The License.

But, conditions would be necessary on The License and Water Right 75-10063. Decreed Water Right No. 75-10063 would have to be amended to add a condition that would limit the combined use of both water rights to a maximum diversion rate of 13,000 gallons per day. The Petitioners would also suggest that IDWR would need to have a method to monitor the use of the two wells. Flow meters and diversion rate reporting to IDWR by The Claimants would be appropriate.

THE DIRECTOR HAS INCLUDED ACREAGE IN THE LICENSE THAT IS
ILLEGAL TO IRRIGATE

The APPLICATION FOR AMENDMENT filed by The Claimants prompted an investigation by The Petitioners to find factual documents to confirm the total acreage that The Claimants own and what amount of that acreage is irrigated. Apparent contradictory documents concerning the allowable acreage totals and the maximum amount of water diverted for The License during the development process needed to be resolved.²

² The Licensed POU is 10.9 acres (ATTACHMENT II), the APPLICATION FOR PERMIT's POU is 11.5 acres (ATTACHMENT VII), and the POU advertised in 1990 by Director Higgson is 11.4 acres (ATTACHMENT VIII) and maximum diversion rate is different in most of the documents on file with IDWR associated with The License and its development.

Lemhi County Property Information Access (ATTACHMENT IV) and the Ajax Peak Subdivision plat map (ATTACHMENT V) confirm that The Claimants own 11.6 acres.

The Petitioners reviewed aerial photography and Idaho Department of Water Resource's (IDWR) past examination of The License. The Petitioners find that removal of 0.7 acres from irrigation is acceptable for the house, driveway, parking area, two outbuildings and arena (albeit documentation suggests one (1) acre is justified). But, The Petitioners have found an additional 46,800 square feet (1+ acre) of easement on The Claimants' property for Parmenter Road (identified as "Access and Utility Easement" in ATTACHMENT V³). Parmenter Road is a Lemhi County maintained road with an easement fifty (50) feet in width⁴ and, as such, is illegal to irrigate under County ORDINANCE NO. 1997-1 (ATTACHMENT VI).

The Director cannot **knowingly** authorize or embrace any illegal activity, in this instance including a roadway maintained by Lemhi County as irrigated acreage. The Petitioners do not suggest that The Claimants have ever intentionally irrigated Parmenter Road but The Claimants' use or nonuse of water on the roadway does not alter The Director's obligation to REMOVE the irrigated acreage presently included for the roadway easement. If The License is not amended to a lesser quantity of water diverted, The Claimants will enjoy 0.024cfs per acre on the POU that remains after the removal of the Parmenter Road easement. It is clear that The License restricts the quantity to 0.02cfs/acre.

DEVELOPMENT AND EXAMINATION OF WATER RIGHT LICENSE NO. 75-07505

The Petitioners agree that The Claimants established authorization to divert ground water for beneficial use on or before July 19, 1991. However, the development and examination as to the amount of water diverted and/or the amount of acreage for the POU was not fully developed until the completed examination of the APPLICATION FOR AMENDMENT (April 4, 2012).

Therefore, The Director is obligated to consider for review any and all documents associated with The License from the time The Claimants filed APPLICATION FOR PERMIT (March 16, 1990) through the deadline to file a PETITION FOR RECONSIDERATION (April 19, 2012).

The Claimants' assertion "that no one will be injured by such change" in the APPLICATION FOR AMENDMENT has no basis in fact. IDWR has in the past found instances where one ground water right affects others and ground water rights affect surface water rights. The Claimants have not shown the basis for the statement and should be required to produce documentation to confirm the unfounded assertion. The

³ The Claimants own Lot 1 of the Ajax Peak Subdivision

⁴ The easement is on Lot 1 with a length of 939 feet. 50' X 936' = 46,800

assertion should not have been accepted in the APPLICATION FOR AMENDMENT as credible.

Also, The Director should take into consideration The Claimants' request to correct earlier input by The Petitioners concerning The License. On March 31, 2012, Mr. John Burns emailed Craig Saxton; "I will be sending a brief memo correcting Mr. Fols' statements..." (ATTACHMENT IX). It is not clear what statements Mr. Burns is going to correct or when he intends to correct the statements. But, Mr. Burns does not represent Mr. Fols and does not have the authority to correct statements made by Mr. Fols. Mr. Burns can only correct the statements through a fair and open hearing of his memo that will apparently rebut statements made by Mr. Fols. Mr. Burns' desire to correct the statements is ostensibly a request for IDWR to hold a hearing for The License.

SUMMARY OF THE PETITIONERS' EVIDENCE AND RELEVANCE TO LICENSE 75-07505

- 1) The Petitioners have shown The License contradicts itself. The License dedicates all of the water diverted to irrigation and limits the irrigation to 0.02cfs/acre. But the maximum quantity of water to be diverted allows irrigation of 0.022cfs/acre for 10.9 acres.
- 2) The License allows the diversion of domestic ground water with a quantity of 0.02cfs without addressing an existing decreed ground water domestic right with an almost identical diversion rate. The License does NOT find additional use for the additional water.
- 3) The License does NOT adequately address a difference in use between the domestic water element and the irrigation element of the water right. The domestic water element is for irrigation of vegetation that is not adequately defined by IDWR and is not separable from the irrigation water element. If allowed, The Director will set a precedent where other water users would be allowed a second domestic ground water diversion for a single domicile that allows the total diversion use of the second domestic water right as irrigation.
- 4) The Petitioners have shown that The License allows for irrigation of a Lemhi County maintained roadway and that irrigation of said roadway is illegal. As a representative of the Idaho State Government, **The Director cannot issue a license that would allow or embrace an illegal activity.**
- 5) The examination and development of The License has been on going with changes to the acreage and/or quantity of water from July 19, 1991 until April 4, 2012. On April 5, 2012 service of The License was performed by The Director. Therefore, any party can entertain a timely petition for reconsideration of The License until April 19, 2012. The inclusion of any relevant past or present information must be considered timely in the reconsideration of The License.
- 6) **The Maximum Quantity of Water for The License should be: 0.02cfs for 9.9acres** when the acre of easement for Parmenter Road is removed from irrigated acreage.

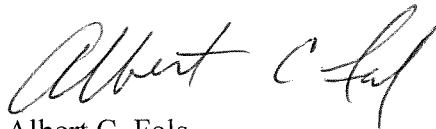
ADDITIONAL PARTIES MAY HAVE AN INTEREST IN THE PETITION FOR
RECONSIDERATION

The Petitioners are serving copies of this PETITION FOR RECONSIDERATION on:
Bruce Withers, County Prosecutor and Counsel for Lemhi County Commissioners
and
State of Idaho, Office of the Attorney General
because one or both may find it necessary to participate in the PETITION FOR
RECONSIDERATION or hearings that may be a result of the petition. Cover letters⁴
(ATTACHMENT X) will accompany copies served on these Parties.

PROPER PROTOCOL

The Petitioners expect that once this PETITION FOR RECONSIDERATION is served,
ALL communications of The Claimants and The Petitioners with The Director (which
includes The Director's staff that includes all IDWR employees), Counsel for the
Commissioners of Lemhi County, The Lemhi County Commissioners, and the State of
Idaho, Office of the Attorney General will be in written form and served on all Parties in
a timely manner. Of course, there is no expectation that any form of communication
between Parties when covered by attorney client privilege be limited in any way.

The Petitioners believe that the statements made herein are true and accurate,

 4/15/2012
Albert C. Fols

 4-15-2012
Alvera C. Fols

⁴ Cover letters contain contact information for the Parties

ATTACHMENT I

State of Idaho
Department of Water Resources
APPLICATION FOR AMENDMENT

(For Licensing Purposes)

WATER RIGHT NO. 75-07505

RECEIVED

APR 02 2012

DEPARTMENT OF
WATER RESOURCES

Date of Priority: March 16, 1990

Maximum Diversion Rate: 0.24 CFS

Comes now JOHN E BURNS
PO BOX 264
CARMEN ID 83462

And/Or

RUTH C BURNS
PO BOX 264
CARMEN ID 83462

and represents to the Director of the Idaho Department of Water Resources that he is the owner and holder of Permit to Appropriate the Public Waters of the State of Idaho No. 75-07505, and requests that the permit be changed as follows:

Source: GROUND WATER

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>RATE OF DIVERSION</u>
DOMESTIC	01/11 to 12/31	0.02 CFS
IRRIGATION	04/01 to 10/31	0.22 CFS

LOCATION OF POINT(S) OF DIVERSION:

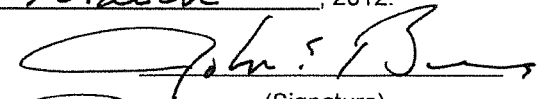
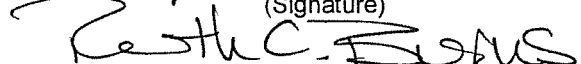
GROUND WATER NE1/4SE1/4 Sec. 3, Twp 22N, Rge 22E, B.M. LEMHI County
GROUND WATER NE1/4SE1/4 Sec. 3, Twp 22N, Rge 22E, B.M. LEMHI County

PLACE OF USE: IRRIGATION

Twp Rge Sec	NE				NW				SW				SE				Totals
	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
22N 22E 2							.4				1.3						1.7
22N 22E 3				1.5									7.7				9.2

Total Acres: 10.9

Permit holder asserts that no one will be injured by such change and that such change will be made at permit holder's own risk. Signed this 3/5th day of March, 2012.


(Signature)


State of Idaho
Department of Water Resources
APPLICATION FOR AMENDMENT
(For Licensing Purposes)
WATER RIGHT NO. 75-07505

FOR DEPARTMENT USE ONLY

Preliminary check by _____ Fee = 100 - Received by SRJ #C094976 Date 4-2-2012

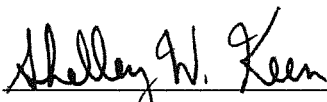
ACTION OF THE DEPARTMENT OF WATER RESOURCES

I, GARY SPACKMAN, of the Department of Water Resources hereby approve the above Application for Amendment for Permit No. 75-07505 with the following:

CONDITIONS OF APPROVAL

1. The right holder shall make beneficial use of rights 75-69A, 75-70A, 75-10061A, 75-10062A and 75-14248 for irrigation of the lands authorized to be irrigated under this right. The right holder shall limit the diversion of ground water for irrigation under this right to those times when rights 75-69A, 75-70A, 75-10061A, 75-10062A and 75-14248 are not available or are not reasonably sufficient to irrigate the place of use authorized under this right.
2. If rights 75-69A, 75-70A, 75-10061A, 75-10062A and 75-14248 are abandoned, forfeited, sold, transferred, leased or used on any other place of use, this right to divert ground water shall not be used for irrigation purposes without an approved transfer pursuant to Section 42-222, Idaho Code, or approval of the Department if a transfer is not required.
3. Rights 75-69A, 75-70A, 75-7505, 75-10061A, 75-10062A and 75-14248 when combined shall not exceed the irrigation of 10.9 acres.
4. This right shall provide no more than 0.02 cfs per acre when combined with all other rights.
5. When less than 0.02 cfs per acre is available under 75-69A, 75-70A, 75-10061A, 75-10062A and 75-14248, this water right may be used to bring the total combined diversion rate up to a maximum of 0.02 cfs per acre.
6. Domestic use is for external use in connection with one home. Irrigation of lawn, garden and landscaping associated with the home is authorized under the irrigation component of this right.
7. This right is limited to a maximum annual diversion volume of 38 af for irrigation of the place of use.
8. This right is limited to a maximum annual diversion volume of 0.2 af for domestic purposes.

Witness my hand this 4th day of April, 2012.


for GARY SPACKMAN
Interim Director

ATTACHMENT II

State of Idaho
Department of Water Resources
Water Right License

WATER RIGHT NO. 75-07505

Priority: March 16, 1990

Maximum Diversion Rate: 0.24 CFS

It is hereby certified that JOHN E BURNS
PO BOX 264
CARMEN ID 83462

And/Or

RUTH C BURNS
PO BOX 264
CARMEN ID 83462

has complied with the terms and conditions of the permit, issued pursuant to Application for Permit dated March 16, 1990; and has submitted Proof of Beneficial Use on July 19, 1991. An examination confirms water is diverted from:

SOURCE

GROUND WATER

and a water right has been established as follows:

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>DIVERSION RATE</u>
DOMESTIC	01/11 to 12/31	0.02 CFS
IRRIGATION	04/01 to 10/31	0.22 CFS

LOCATION OF POINT(S) OF DIVERSION:

GROUND WATER	NE1/4SE1/4	Sec. 3, Twp 22N, Rge 22E, B.M.	LEMHI County
GROUND WATER	NE1/4SE1/4	Sec. 3, Twp 22N, Rge 22E, B.M.	LEMHI County

PLACE OF USE: IRRIGATION

Twp	Rge	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
22N	22E	2							.4				1.3						1.7
22N	22E	3				1.5										7.7			9.2

Total Acres: 10.9

CONDITIONS OF APPROVAL

- The right holder shall make beneficial use of rights 75-69A, 75-70A, 75-10061A, 75-10062A and 75-14248 for irrigation of the lands authorized to be irrigated under this right. The right holder shall limit the diversion of ground water for irrigation under this right to those times when rights 75-69A, 75-70A, 75-10061A, 75-10062A and 75-14248 are not available or are not reasonably sufficient to irrigate the place of use authorized under this right.

State of Idaho
Department of Water Resources
Water Right License

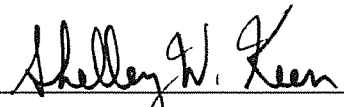
WATER RIGHT NO. 75-07505

CONDITIONS OF APPROVAL CONTINUED

2. If rights 75-69A, 75-70A, 75-10061A, 75-10062A and 75-14248 are abandoned, forfeited, sold, transferred, leased or used on any other place of use, this right to divert ground water shall not be used for irrigation purposes without an approved transfer pursuant to Section 42-222, Idaho Code, or approval of the Department if a transfer is not required.
3. Rights 75-69A, 75-70A, 75-7505, 75-10061A, 75-10062A and 75-14248 when combined shall not exceed the irrigation of 10.9 acres.
4. This right shall provide no more than 0.02 cfs per acre when combined with all other rights.
5. When less than 0.02 cfs per acre is available under 75-69A, 75-70A, 75-10061A, 75-10062A and 75-14248, this water right may be used to bring the total combined diversion rate up to a maximum of 0.02 cfs per acre.
6. Domestic use is for external use in connection with one home. Irrigation of lawn, garden and landscaping associated with the home is authorized under the irrigation component of this right.
7. This right is limited to a maximum annual diversion volume of 38 af for irrigation of the place of use.
8. This right is limited to a maximum annual diversion volume of 0.2 af for domestic purposes.

This license is issued pursuant to the provisions of Section 42-219, Idaho Code. The water right confirmed by this license is subject to all prior water rights and shall be used in accordance with Idaho law and applicable rules of the Department of Water Resources.

Signed and sealed this 4th day of April, 2012.

for 
GARY SPACKMAN
Interim Director

ATTACHMENT III

IDAHO DEPARTMENT OF WATER RESOURCES
Water Right Report

4/15/2012

WATER RIGHT NO. 75-10063

Owner Type Name and Address

Current Owner JOHN E BURNS

Current Owner RUTH C BURNS

PO BOX 264

CARMEN, ID 83462

(208)756-3645

Priority Date: 07/01/1947

Basis: Decreed

Status: Active

Source Tributary

GROUND WATER

Beneficial Use From To Diversion Rate Volume

STOCKWATER 1/01 12/31 0.02 CFS

DOMESTIC 1/01 12/31 0.04 CFS

Total Diversion 0.06 CFS

Location of Point(s) of Diversion:

GROUND WATER NENESE Sec. 03 Township 22N Range 21E LEMHI County

Place(s) of use:

PETITION FOR RECONSIDERATION OF WATER RIGHT LICENSE NO. 75-07505

Place of Use Legal Description: STOCKWATER LEMHI County

<u>Township</u>	<u>Range</u>	<u>Section</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>
22N	21E	3		NESE										

Place of Use Legal Description: DOMESTIC LEMHI County

<u>Township</u>	<u>Range</u>	<u>Section</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>
22N	21E	3		NESE										

Conditions of Approval:

1. N13 THE QUANTITY OF WATER UNDER THIS RIGHT SHALL NOT EXCEED 13,000 GALLONS PER DAY.
2. N11 THE QUANTITY OF WATER DECREED FOR THIS WATER RIGHT IS NOT A DETERMINATION OF HISTORICAL BENEFICIAL USE.
3. 6 HORSES RP 001440000010A

Dates:

Licensed Date:

Decreed Date: 09/15/2000

ATTACHMENT IV

Lemhi County Property Information Access

Parcel ID Number: **RP001440000010A**

Owner Information		Legal Description	
BURNS, JOHN E & BURNS, RUTH C BOX 264 CARMEN ID 83462		Tax Code: 210000 Zip: 0 AJAX PEAK LOT 1	
Category Information			
Category	Quantity	Unit	Value
15 - RUR SUB RES	11.600	AC	76779
32 - RURAL IMP ON AG	0.000		7460
37 - BLDG RES SUB	0.000		172147
Property Information		Tax Information	
362 CARMEN CRK RD Year Built: 1956 Split Lvl Last Remodeled: 0 Effective Year: 1975 Age: 0 Number Living Rooms: 1 Number Bedrooms: 6 Number Full Baths: 2 Half: 0 Number Family Rooms: 0 Number Dining Rooms: 1 Number Kitchens: 1 Number Util: 1 Other: 3 Number Fireplaces: 0 Main sf: 2328 Second sf: 0 Basement Total sf: 1484 Fin: 1484 Attic Total sf: 748 Fin: 748 Total Fin. Living sf: 4560 Prim.Heat: Gas F.A. Heating Central Air: N Garage 1: Garage 2: Prim.Siding: T1-11 100% Prim.Roof: Hvy Comp 100% Toilet 2,Lav 2,Tub 1 Shower 2,K.Sink 1		Tax Year: 2009 Bill #: 5555 Market: 278672 C.B.: 0.00 H.O.: 104471 Special: 80.00 Tax: 875.70 First Half: Cost: 0.00 Interest: 0.00 Penalty: 0.00 Paid: 437.85 Cancelled: 0.00 Second Half: Cost: 0.00 Interest: 0.00 Penalty: 0.00 Paid: 437.85 Cancelled: 0.00	
		Tax Year: 2010 Bill #: 5548 Market: 259104 C.B.: 0.00 H.O.: 100101 Special: 80.00 Tax: 909.86 First Half: Cost: 0.00 Interest: 0.00 Penalty: 0.00 Paid: 454.93 Cancelled: 0.00 Second Half: Cost: 0.00 Interest: 0.00 Penalty: 0.00 Paid: 454.93 Cancelled: 0.00	
		Tax Year: 2011 Bill #: 5549 Market: 256386 C.B.: 0.00 H.O.: 92040 Special: 80.00 Tax: 926.94 First Half: Cost: 0.00 Interest: 0.00 Penalty: 0.00 Paid: 463.47 Cancelled: 0.00 Second Half: Cost: 0.00 Interest: 0.00 Penalty: 0.00 Paid: 463.47 Cancelled: 0.00	

Tax Payment History											
Year/Type	Date	Half	Batch/Tran#	Tax	Penalty	Interest	Total	Remark	Payor	User	PUP
									BURNS,		

PETITION FOR RECONSIDERATION OF WATER RIGHT LICENSE NO. 75-07505

ATTACHMENT V

WARRANTY DEED

For Value Received

C. L. UNDERWOOD AND MARY UNDERWOOD: husband and wife

the grantor^s, do hereby grant, bargain, sell and convey unto

JOHN E. BURNS AND RUTH C. BURNS, husband and wife

whose current address is
143 CARMEN CREEK ROAD
CARMEN, ID 83462

the grantee^s, the following described premises, in.....LEMHI.....County Idaho, to wit:

Lot 1 of Ajax Peak Subdivision according to the official
plat thereof, filed for record in Book 5 of Plats at Page
No. 28, records of Lemhi County, Idaho. . .

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee^s,
their heirs and assigns forever. And the said Grantor^s do hereby covenant to and
with the said Grantee^s, that they are the owner^s in fee simple of said premises; that they are free
from all incumbrances

and that they will warrant and defend the same from all lawful claims whatsoever.

Dated: JULY 21, 1989

C. L. Underwood
C. L. UNDERWOOD

Mary Underwood
MARY UNDERWOOD

STATE OF IDAHO, COUNTY OF LEMHI

On this 21st day of July, 1989,
before me, a notary public in and for said State, personally
appeared

C. L. UNDERWOOD AND MARY
UNDERWOOD, husband and wife

known to me to be the person whose names are
subscribed to this instrument, and acknowledged to
me that they executed the same.

Thurle M. Santee Notary Public
Residing at SALMON, Idaho
Comm. Expires 6-19-1995

State of Idaho } 202023
County of Lemhi } ss No.

This instrument was filed for record at
the request of American Land Title
at 11 o'clock P. M. 7-21-89
and duly filed and indexed in the
records of Lemhi County

Alberta F. Erickson
Ex-Officio Registrar

By Leri J. Morton Deputy
Filed: 7-20-89

Notary Public for the AMERICAN LAND TITLE CO., Boise, Idaho

ATTACHMENT VI

AN ORDINANCE OF THE COUNTY OF LEMHI, STATE OF IDAHO, DECLARING IT UNLAWFUL TO PERMIT OR CAUSE WATER TO FLOW OR FALL ON COUNTY ROADS, STREETS, OR HIGHWAYS; PROVIDING FOR ABATEMENT; REQUIRING REPAIR AT THE EXPENSE OF THE PERSON, PARTNERSHIP OR CORPORATION CAUSING DAMAGE; ESTABLISHING PENALTIES; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Lemhi County Road Supervisor has notified the Board of Commissioners that persons in the County are allowing water to spray and flow on and across County roads, causing damage to said roads;

AND WHEREAS, the Board of Commissioners have determined that the maintenance and protection of the roads of the County require that said behavior be regulated by Ordinance; NOW THEREFORE:

BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF LEMHI COUNTY, IDAHO:

SECTION 1: WATER ON COUNTY ROADS PROHIBITED It shall be unlawful for any person, partnership, or corporation to permit or cause water to spray or flow on or across any public highway, road, street or county right of way located in Lemhi County, Idaho.

SECTION 2: ABATEMENT OF WATER ON PUBLIC ROADS, STREETS, OR HIGHWAYS The County Road Supervisor is hereby authorized to go upon the lands of any person, partnership, or corporation which has caused or allowed water to spray or flow on a public road, street, or highway in Lemhi County, and install such culverts and drains as may be necessary, and in such manner, as to cause water to drain from said highway to be carried down its natural channel to some point where the same may be disposed of without injury to said landowner and adjoining land owners, all at the expense of the person, firm, or corporation responsible for permitting or causing the water to be on the road.

SECTION 3: REPAIR OF STREETS, HIGHWAYS, ROADS BY PERSON RESPONSIBLE FOR INJURY All injuries to public streets, highways, or roads in Lemhi County, Idaho caused by water spraying or flowing thereon shall be immediately repaired at the expense of the person, firm, or corporation responsible for said injury. Said repairs are to be made under the supervision of the Lemhi County Road Supervisor, to the Supervisor's specifications.

SECTION 4: PENALTIES Violation of this ordinance is hereby declared to be a misdemeanor punishable by a fine of not to exceed THREE HUNDRED DOLLARS (\$300.00) and/or imprisonment in the County jail for a period not to exceed SIX (6) MONTHS. Said criminal penalties are in addition to repair costs and abatement costs referred to in Sections 2 and 3 above. All fines and restitution assessed pursuant to this Ordinance shall be paid into the County Road Fund, as provided by Idaho Code 40-921.

SECTION 5: EFFECTIVE DATE This ordinance shall be in full force and effect on and after its passage, approval, and publication according to law

PASSED AND APPROVED by the Board of Lemhi County, Idaho, Commissioners this 22 day of September, 1997.

Those voting aye 2 Those voting nay 0

SIGNED by the Chairman of the Board of Lemhi County, Idaho, Commissioners this 22 day of Sept, 1997.

By: Thomas C. Chaffin

ATTEST:

Alberta Anderson

ATTACHMENT VII

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR PERMIT

To appropriate the public waters of the State of Idaho

1. Name of applicant JOHN E. AND/OR RUTH C. BURNS Phone 756-3645
Post office address BOX 264, CARMEN, IDAHO 83462
2. Source of water supply GROUNDWATER which is a tributary of N.A.
3. Location of point of diversion is SE $\frac{1}{4}$ of SE $\frac{1}{4}$ of NE $\frac{1}{4}$, Govt. Lot _____
Sec. 3 Township 22 N Range 21 E B.M. LEMHI County; additional
points of diversion if any: N.A.
4. Water will be used for the following purposes:
- | | | | | |
|---|-----------------------|---|---|------------------------|
| Amount <u>0.23</u>
<small>(cfs or acre-feet per annum)</small> | for <u>IRRIGATION</u> | purposes from <u>3/1</u>
<small>(cfs or acre-feet per annum)</small> | to <u>12/1</u>
<small>(cfs or acre-feet per annum)</small> | (both dates inclusive) |
| Amount <u>0.04</u>
<small>(cfs or acre-feet per annum)</small> | for <u>DOMESTIC</u> | purposes from <u>3/1</u>
<small>(cfs or acre-feet per annum)</small> | to <u>12/1</u>
<small>(cfs or acre-feet per annum)</small> | (both dates inclusive) |
| Amount _____
<small>(cfs or acre-feet per annum)</small> | for _____ | purposes from _____ | to _____ | (both dates inclusive) |
| Amount _____
<small>(cfs or acre-feet per annum)</small> | for _____ | purposes from _____ | to _____ | (both dates inclusive) |
5. Total quantity to be appropriated is (a) 0.27
cubic feet per second and/or (b) _____
acre feet per annum
6. Proposed diverting works:
- a. Description of ditches, flumes, pumps, headgates, etc. 2 SUMPS WITH 18" DIA X 12' DEEP STAND PIPES, EACH WITH 2 HP CENT PUMP AND 3" DIA BURIED DISTRIBUTION LINE.
- b. Height of storage dam _____ feet; active reservoir capacity _____ acre-feet; total reservoir capacity _____ acre-feet; period of year when water will be diverted to storage: _____ to _____ inclusive.
- c. Proposed well diameter is 18 inches; proposed depth of well is 12 feet.
- d. Is ground water with a temperature of greater than 90°F being sought? NO
7. Time required for the completion of the works and application of the water to the proposed beneficial use is ONE (1) years (minimum 1 year).

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8. Description of proposed uses (if irrigation only, go to item 9):

- a. Hydropower; show total feet of head and proposed capacity in KW. _____
- b. Stockwatering; list number and kind of livestock. SIX HORSES
- c. Municipal; show name of municipality. _____
- d. Domestic; show number of households. ONE HOUSEHOLD
- e. Other; describe fully. _____

9. Description of place of use:

- a. If water is for irrigation, indicate acreage in each subdivision in the tabulation below.
- b. If water is used for other purposes, place a symbol of the use (example: D for Domestic) in the corresponding place of use below. See instructions for standard symbols.

TWP	RANGE	SEC.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				TOTALS
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	
22N	21E	2							3/4			1/4							1
22N	21E	3				3									7 1/2				10 1/2
22N	21E	3													Ds				

Total number of acres to be irrigated 11 1/2

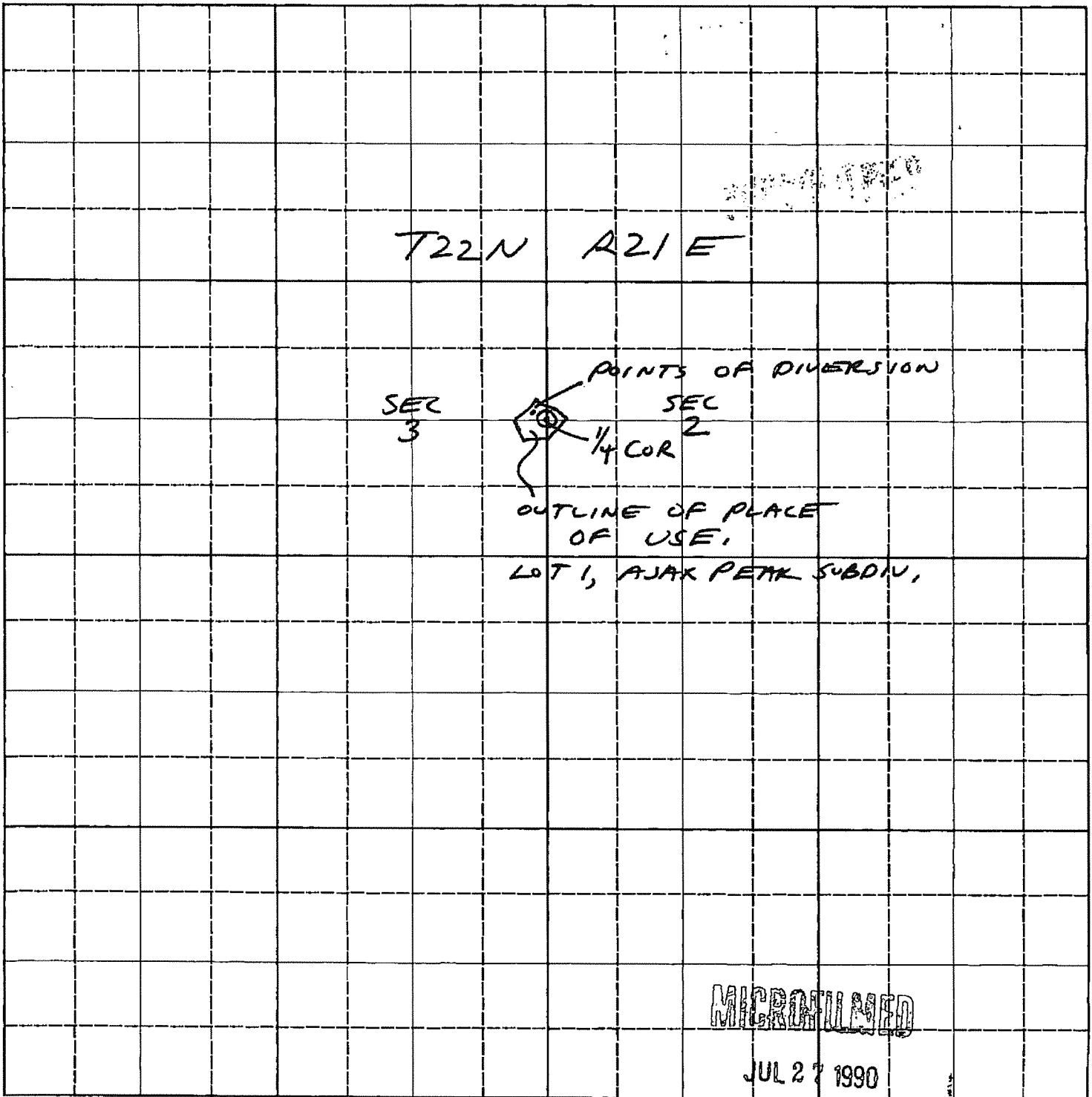
10. Describe any other water rights used for the same purposes as described above. 1875, 1888, 1892, 1882 DECREE (EXCH & DITCH); 1947 BENEFICIAL USE - 2 WELLS.

11. a. Who owns the property at the point of diversion? APPLICANT
- b. Who owns the land to be irrigated or place of use? APPLICANT
- c. If the property is owned by a person other than the applicant, describe the arrangement enabling the applicant to make this filing. -

12. Remarks: -

JUL 27 1990

13. Map of proposed project: show clearly the proposed point of diversion, place of use, section number, township and range number.



Scale: 2 inches equal 1 mile.

BE IT KNOWN that the undersigned hereby makes application for permit to appropriate the public waters of the State of Idaho as herein set forth.

PETITION FOR RECONSIDERATION OF WATER RIGHT LICENSE NO. 75-07505
(Applicant)

Received by DC Date 3/16/90 Time — Preliminary check by DU
Fee \$ 45 Received by RB # E012394 Date 3-16-90
Publication prepared by RB Date 5-17-24-90 Published in Recorder-Herald
Publication approved RB Date 6-5-90

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Application for Permit to appropriate the public waters of the State of Idaho No. _____, and said application is hereby _____.

1. Approval of said application is subject to the following limitations and conditions:

- a. SUBJECT TO ALL PRIOR WATER RIGHTS.
- b. Proof of construction of works and application of water to beneficial use shall be submitted on or before _____, 19 ____.
- c. The rate of diversion, if water is to be used for irrigation under this permit, when combined with all other water rights for the same land shall not exceed 0.02 cubic feet per second for each acre of land.
- d. The water right acquired under this permit if for hydropower purposes shall be junior and subordinate to all rights to the use of water, other than hydropower, within the State of Idaho that are initiated later in time than the priority of this permit and shall not give rise to any right or claim against any future rights to the use of water, other than hydropower, within the State of Idaho initiated later in time than the priority of this permit.
- e. Other:

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ATTACHMENT VIII

Affidavit of Publication

STATE OF IDAHO

ss.

County of Lemhi

NOTICE OF APPLICATION FOR WATER RIGHT

The Following applications(s)
have been filed to appropriate
the public waters of the state of
Idaho:

75-07505

BURNS, JOHN E.
BURNS, RUTH C.

BOX 264

CARMEN, ID 83462

Source: GROUNDWATER

Division Pt: SESENE Sec 3 T

22N R 21E

Use: IRRIGATION (.230 CFS)

DOMESTIC (.040 CFS)

Total Division: (.270 CFS)

Date Filed: 3/16/1990

In: T22N R21E S02 SWNW

NWSW S03 SENE NESE

11.4 ACRES TOTAL

The permit(s) will be subject
to all prior water rights. Protests
must be filed with the Director,
Dept. of Water Resources, East-
ern Region, 150 Shoup Avenue,
Suite 15, Idaho Falls, Idaho
83402 on or before JUNE 4, 1990.

KEITH HIGGINSON,

Director

Published 5/17/1990 and

5/24/1990

5-17-2tc

RICKY G. HODGES

being first duly sworn, deposes
and says he is one of the printers (publishers) of the RECORDER-HERALD, a newspaper published
weekly at Salmon, Lemhi County Idaho, and of general circulation therein.

That the Notice of Application for Water Right 75-07505

a true

printed copy of which is attached to the margin hereof, has been and was correctly printed and pub-
lished in the regular and entire issue of every number of said newspaper and not in any supplement
thereof or thereto for 2 consecutive issues, commencing with the issue
dated May 17, 1990 and ending with the issue dated May 24

19 90

STATE OF IDAHO

COUNTY OF LEMHI

On this twenty fourth day of May

in the year of 19 90

before me, A Notary Public, personally appeared

known or identified to me to be the person whose name subscribed to the within instrument, and being
by me first duly sworn, declared that the statements therein are true, and acknowledged to me that he
executed the same.

Shirley R. Hodges
Notary Public for Idaho

Residing At Salmon, Idaho

My Commission expires 9-21-95

Publication Fee \$ 37.80

ATTACHMENT IX

John Burns

Copy

RECEIVED

APR 02 2012

From: "John Burns" <treeboxmules@custertel.net>
To: "Saxton, Craig" <Craig.Saxton@idwr.idaho.gov>
Sent: Saturday, March 31, 2012 12:08 PM
Attach: Signed Amendment Request March31, 2012.doc; Conditions for License - Groundwater.doc
Subject: Application for Amendment, 75-07505

DEPARTMENT OF
WATER RESOURCES

Craig:

Signed amendment is attached together with the Conditions of Approval. Original with check for \$100 is in today's surface mail.

I will be sending a brief memo correcting Mr. Fols' statements which I would appreciate being placed in the Department's file containing his e-mails.

Your assistance, time, and patience are very much appreciated.

Thanks,

John Burns

ATTACHMENT X

April 15, 2012
Lawrence G. Wasden, Attorney General
P.O. Box 83720
Boise, Idaho 83720-0010

Mr. Attorney General,

Attached is a PETITION FOR RECONSIDERATION OF WATER RIGHT LICENSE NO. 75-07505 (The Petition). Apparently the Director of Idaho Department of Water Resources (The Director) has not served your office with the PRELIMINARY ORDER for Water Right No. 75-07505, but The Petitioners believe your office should be involved. The Petition is primarily a water right issue that will most likely be handled by Mr. Garrick Baxter, Esq. from your office.

The Petition also addresses an issue where the Place of Use for the Water Right includes a Lemhi County maintained roadway in the irrigated acreage. Lemhi County has ordinances forbidding the irrigation of County maintained roadways. Therefore, The Petitioners believe it is necessary to serve Lemhi County as well.

Representatives from your office may wish to resolve the roadway issue with Lemhi County representatives¹ before The Director's Order for the Water Right is fully licensed.

Thank you, in advance, for your time.

Sincerely,



Albert C. Fols

4/15/2012



Alvera C. Fols

4-15-2012

PO Box 56
Carmen, ID 83462
208-756-1535

¹ County Prosecutor and Counsel for Lemhi County Commissioners
Bruce Withers
1301 Main Street, Ste. 6
Salmon, ID 83467
(208) 756-2009

April 15, 2012

Bruce Withers, County Prosecutor and Counsel for Lemhi County Commissioners
1301 Main Street, Ste. 6
Salmon, ID 83467

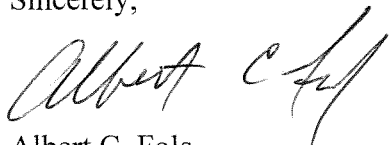
Mr. Prosecutor,

Attached is a PETITION FOR RECONSIDERATION OF WATER RIGHT LICENSE NO. 75-07505 (The Petition) that The Petitioners have served on various parties. The Petitioners included the Commissioners of Lemhi County in the service, through your office, because the Water Right at issue involves a Lemhi County maintained road. The Petitioners understand that it is illegal to irrigate Lemhi County maintained roads.

The Petition addresses an issue where the Place of Use (POU) for the Water Right includes a Lemhi County maintained roadway¹ in the irrigated acreage. The Petitioners believe that the Director, Idaho Department of Water Resources (The Director) had no previous knowledge of the roadway inclusion in the POU, thus inadvertently included the acreage. The Petitioners also believe that once informed of the error, The Director will amend The License and remove the one acre+ roadway easement from the POU.

It is also our understanding that Lemhi County had issues with some irrigators potentially damaging roadways in the past and has taken action to address the problem². Therefore, The County may want to be heard before the Water Right becomes fully licensed and dedicates 0.02cfs+ for use on the Parmenter Road easement.

Sincerely,

 4/15/2012

Albert C. Fols

 4-15-2012

Alvera C. Fols

PO Box 56
Carmen, ID 83462
208-756-1535

¹ Parmenter Road in the Ajax Peak Subdivision, Lemhi County, Idaho

² The Petitioners understand that at least one irrigator has previously been involved in Parmenter Road/irrigation issues along with other irrigators on other roads in Lemhi County, none of which were the Claimants associated with Water Right 75-07505.

CERTIFICATE OF SERVICE

I hereby certify that on April 16, 2012, I mailed the original copy, postage prepaid, of the foregoing PETITION FOR RECONSIDERATION OF WATER RIGHT LICENSE NO. 75-07505 to the person(s) listed below:

Gary Spackman, Interim Director
Idaho Department of Water Resources
PO Box 83720
Boise, Idaho 83720-0098

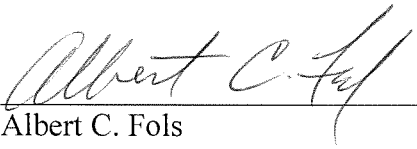
and that I mailed a true and correct copy, postage prepaid, of the foregoing PETITION FOR RECONSIDERATION OF WATER RIGHT LICENSE NO. 75-07505 to the person(s) listed below:

John E. Burns
Ruth C. Burns
PO Box 264
Carmen, ID 83462

State of Idaho
Office of the Attorney General
P.O. Box 83720
Boise, Idaho 83720-0010

and that I hand delivered a true and correct copy of the foregoing PETITION FOR RECONSIDERATION OF WATER RIGHT LICENSE NO. 75-07505 to the person(s) listed below:

County Prosecutor and Counsel for Lemhi County Commissioners
Bruce Withers
1301 Main Street, Ste. 6
Salmon, ID 83467

 4/16/2012
Albert C. Fols