

LAW OFFICES OF

**RACINE OLSON NYE BUDGE & BAILEY
CHARTERED**

201 EAST CENTER STREET
POST OFFICE BOX 1391
POCATELLO, IDAHO 83204-1391

TELEPHONE (208) 232-6101
FACSIMILE (208) 232-6109

www.racinelaw.net

SENDER'S E-MAIL ADDRESS: rcb@racinelaw.net

BOISE OFFICE

101 SOUTH CAPITOL
BOULEVARD, SUITE 208
BOISE, IDAHO 83702
TELEPHONE: (208) 395-0011
FACSIMILE: (208) 433-0167

IDAHO FALLS OFFICE

477 SHOUP AVENUE
SUITE 203A
IDAHO FALLS, ID 83402
TELEPHONE: (208) 528-6101
FACSIMILE: (208) 528-6109

*ALSO MEMBER WY & IL BARS
**ALSO MEMBER UT BAR
***ALSO MEMBER CO BAR
†ALSO MEMBER D. C. BAR
‡ALSO MEMBER MO BAR
§ALSO MEMBER IL BAR
¶ALSO MEMBER WA BAR

LOUIS F. RACINE (1917-2005)
WILLIAM D. OLSON
W. MARCUS W. NYE
RANDALL C. BUDGE
JOHN A. BAILEY, JR.
JOHN R. GOODELL*
JOHN B. INGELSTROM
DANIEL C. GREEN**
BRENT O. ROCHE
KIRK B. HADLEY
FRED J. LEWIS
MITCHELL W. BROWN
ERIC L. OLSEN
CONRAD J. AIKEN***
RICHARD A. HEARN, M.D.†
DAVID E. ALEXANDER‡†
LANE V. ERICKSON**
PATRICK N. GEORGE**
SCOTT J. SMITH
STEPHEN J. MUHONEN
BRENT L. WHITING
JUSTIN R. ELLIS
JOSHUA D. JOHNSON‡
JONATHAN S. BYINGTON
DAVE BAGLEY
CAROL TIPPI VOLYN‡‡
THOMAS J. BUDGE
CANDICE M. MCHUGH***

February 5, 2007

Ernie Carlson
IDWR/Eastern Region
900 N. Skyline Drive, Suite A
Idaho Falls, Idaho 83402

Re: *Water Right Nos. 35-13553, 35-13554*

Dear Ernie:

I represent Jeff Underwood, personal representative of the Estate of Robert F. Underwood, deceased, claimant with respect to the above-referenced water rights.

Enclosed for your convenient reference is a copy of the Order entered December 14, 2006, by Judge Melanson granting our Motion to File Late Notices of Claims for the above-referenced water rights. Recently Jeff Underwood received a call from someone at IDWR requesting affidavits in support of the priority date and use of these rights. Accordingly, we have obtained affidavits from James Rodney Prestidge, James Prestidge and Wayne Kendall, copies of which are enclosed. We can provide the originals but I wasn't sure what you needed or where they should be filed and so I am holding them for the time being.

I am also enclosing a copy of the Supporting Affidavit of Jeff Underwood with attachments filed with the SRBA Court in conjunction with my Motion to File Late Claim. I trust these are sufficient to document these water rights.

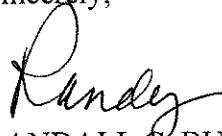
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FEB 06 2007
Department of Water Resources
Eastern Region

February 5, 2007
Page 2

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FEB 06 2007
Department of Water Resources
Eastern Region

If you have any questions or need additional information, please contact me.

Sincerely,



RANDALL C. BUDGE

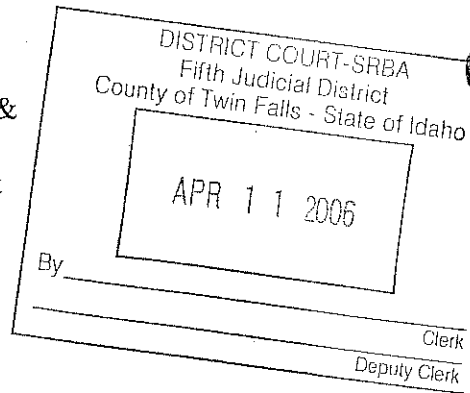


RCB:rr

Enclosures

cc: Jeff Underwood (w/encls.)

Randall C. Budge, ISB No. 1949
RACINE, OLSON, NYE, BUDGE &
BAILEY, CHARTERED
P.O. Box 1391; 201 E. Center Street
Pocatello, Idaho 83204-1391
Phone: 208-232-6101
Fax: 208-232-6109
<rcb@racinelaw.net>



COPY

RECEIVED
FEB 06 2007
Department of Water Resources
Eastern Region

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 35-13553. 35-13554**
)
)
Case 39576) **SUPPORTING AFFIDAVIT OF**
) **JEFF UNDERWOOD**
)
)

STATE OF IDAHO)
 : SS
COUNTY OF BANNOCK)

JEFF UNDERWOOD, being first duly sworn under oath, deposes and states that the following is true and correct to the best of his knowledge, information and belief:

1. My name is Jeff Underwood and I reside at 360 Kirkwood Place, Pocatello, Idaho 83204. I am 49 years old and a lifelong resident of the state of Idaho.

2. My father Robert F. Underwood was born on January 27, 1925, and died on January 3, 2006 at 80 years of age. A copy of his Death Certificate is attached as Exhibit A. I am the duly-appointed and acting personal representative of his estate as evidenced by the Letters of Personal Representative issued by the Bingham County Magistrate Court, Exhibit B attached.

3. This Affidavit is submitted for the purpose of supporting the Motions to File Late Notice of Claim and two Notices of Claim to a Water Right, designated Water Right Nos. 35-

SUPPORTING AFFIDAVIT OF JEFF UNDERWOOD - 1

13553 and 35-13554. These claims pertain to two wells located on my father's real property in Bingham County, Idaho.

4. After I was appointed Personal Representative of the Estate of Robert F. Underwood and in conjunction with my efforts to identify and administer the assets of the Estate, it came to my attention that my father did not file a Notice of Claim to a Water Right in this case, the SRBA, with respect to two wells used to irrigate his farm land. I have reason to believe that he failed to timely file these claims due to inadvertence, neglect and oversight due to his advanced age and deteriorated health.

5. I am familiar with the property and the historic use of the wells for irrigation purposes as I worked on the farm and assisted my father for as long as I can remember as a small boy, which would be since approximately 1956. My father taught me how to flood-irrigate the land from the two wells which were then in existence, and the same irrigation practices continued up until now. I have also reviewed the files and records of my father in order to confirm when my father acquired the real property and when the wells were constructed, as will be further discussed below. Based upon my own personal knowledge, review of my father's files and records and discussions with him, the information contained in each of the Notice of Claim is complete and accurate to the best of my knowledge and belief.

6. The subject real property to which the water rights are appurtenant was acquired by my father September 29, 1941, pursuant to the Deed attached as Exhibit C. My father remained the continuous owner of the property as evidenced by the current tax notices attached as Exhibit D.

7. The first well drilled (Well No. 1) relating to Claim No. 35-13553 was drilled by Paul Vollmer on or about November 1, 1947, at a cost of \$750 as evidenced by the cancelled check attached as Exhibit E. The turbine pump, 30 hp. motor and related equipment were acquired and installed on or about May 15, 1948, as evidenced by the receipt from Niel F. Boyle Hardware Company, Exhibit F attached. This Well No. 1 was continuously used to flood-irrigate 101.8 acres and provide stock water to 50 head of beef cows and calves as described in the

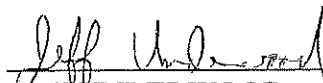
101.8 acres and provide stock water to 50 head of beef cows and calves as described in the Notice of Claim.

8. Well No. 2 pertaining Claim No. 35-13554 contained a 15 hp. electric motor and centrifugal pump and was used to flood-irrigate the property in the manner described in the Notice of Claim. This well became operational on or about April 1, 1956, and has been continuously used in the same manner to date to flood-irrigate the described property. The well was drilled in the fall of 1955 or spring of 1956. The drilling of the well and installation of pump, motor and equipment are evidenced by my father's (3) checks to driller Paul Vollmer in 1955 and 1956 and checks in 1956 and 1957 for equipment, copies of which are attached as Exhibit G.

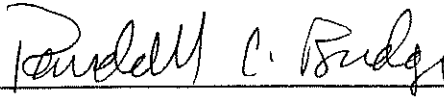
9. The information contained in both Notices of Claim is true and correct to the best of my knowledge. Both wells have been continuously pumped from the priority date stated for each and used to flood-irrigate the described property raising hay and grain on a rotation basis. My father owned, operated and irrigated the property in the manner described himself until approximately 2000, when he was no longer able to do so due to his age and health problems. From that time until his death he leased the property out on a year-to-year basis and the water was used in the same manner by the lessee to irrigate the property and raise crops in the same manner described above. I assisted my father in irrigating the property from the time I was a small boy of about five years of age off and on for many years. I have also personally observed the irrigation practices by my father and by his lessees my entire life and therefore know that the information set forth in the Notices of Claim is accurate.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

DATED this 10th day of April, 2006.


JEFF UNDERWOOD

SUBSCRIBED AND SWORN TO before me this 10th day of April, 2006.



NOTARY PUBLIC FOR IDAHO,
Residing at Pocatello.
My Commission Expires 10/11/2006.

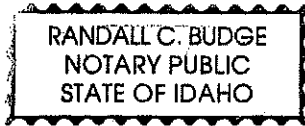


EXHIBIT "A"

DEATH CERTIFICATE

**STATE OF IDAHO
CERTIFICATION OF VITAL RECORD**

STATE OF IDAHO
IDAHO DEPARTMENT OF HEALTH AND WELFARE
BUREAU OF HEALTH POLICY AND VITAL STATISTICS

CERTIFICATE OF DEATH

Date Filed JANUARY 19, 2006

State File No. 2006-00174

DECEDENT - LEGAL NAME ROBERT FLOYD UNDERWOOD			
SEX MALE	SOCIAL SECURITY NUMBER 518-36-3148	AGE 80 YEARS	DATE OF BIRTH JANUARY 27, 1925
BIRTHPLACE ABERDEEN, IDAHO		PLACE OF RESIDENCE ABERDEEN, IDAHO	
MARITAL STATUS AT TIME OF DEATH WIDOWED		NAME OF SURVIVING SPOUSE (If wife, maiden name)	WAS DECEDENT EVER IN U.S. ARMED FORCES? YES
FATHER - NAME FRANK UNDERWOOD		BIRTHPLACE UTAH	
MOTHER - MAIDEN NAME EMMA JANE STANDLEY		BIRTHPLACE UTAH	
METHOD OF DISPOSITION BURIAL		FUNERAL SERVICE LICENSEE LANCE R. PECK	
NAME AND ADDRESS OF FUNERAL FACILITY DOWNARD-HANSEN FUNERAL HOME, POCA TELLO, IDAHO			
DATE OF DEATH JAN. 03, 2006	TIME OF DEATH 2:15 P.M.	CITY, TOWN OR LOCATION OF DEATH POCA TELLO, IDAHO	COUNTY OF DEATH BANNOCK
CAUSE OF DEATH (underlying cause last) a. CARDIO PULMONARY FAILURE			Approximate Interval Between Chest and Death IMMEDIATE
DUE TO (or as a consequence of): b. ASHD - CHF			YEARS
DUE TO (or as a consequence of): c.			
DUE TO (or as a consequence of): d.			
OTHER SIGNIFICANT CONDITIONS CONTRIBUTING TO DEATH but not resulting in the underlying cause given above NONE STATED			WAS AN AUTOPSY PERFORMED? NO
MANNER OF DEATH NATURAL		NAME OF CERTIFIER JAMES W. ALLEN	TITLE CORONER
CORONER SUBSEQUENT CERTIFICATION IF NECESSARY			
EXTERNAL CAUSES ONLY			
DATE OF INJURY	TIME OF INJURY	PLACE OF INJURY	INJURY AT WORK?
LOCATION WHERE INJURY OCCURRED			
DESCRIPTION OF HOW INJURY OCCURRED			

This is a true and correct reproduction of the document officially registered and placed on file with the IDAHO BUREAU OF HEALTH POLICY AND VITAL STATISTICS.

DATE ISSUED: JANUARY 20, 2006

This copy not valid unless prepared on engraved border
the text, state seal and signature of the Registrar

JANE S. SMITH
STATE REGISTRAR



EXHIBIT "B"

LETTERS OF PERSONAL REPRESENTATIVE

Dwight E. Baker
BAKER & HARRIS
PO Box 577
199 W Bridge
Blackfoot, ID 83221
Telephone: (208)785-2310
Facsimile: (208)785-6749
Idaho State Bar No. 1350

STATE OF IDAHO
COUNTY OF BINGHAM } SS
I hereby certify that the foregoing instrument is a full,
true and correct copy of the original on file in the
office of the undersigned Clerk of the Magistrate's
Division, District Court of the Seventh Judicial District
of Idaho, for Bingham County.
Date 5-10-06
By BARBARA J. STAUB
Clerk, District Court Magistrate Division
Deputy Clerk

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BINGHAM

IN THE MATTER OF THE JOINT
ADMINISTRATION OF THE ESTATES OF

AUDREY ANNA UNDERWOOD and
ROBERT F. UNDERWOOD,

Deceased.

Case No. CV- 06-559

LETTERS TESTAMENTARY

(I.C. 15-3-602 and 15-3-702)

JEFF UNDERWOOD is hereby appointed personal representative of the Estates of
AUDREY ANNA UNDERWOOD and ROBERT F. UNDERWOOD, deceased, with all authority
pertaining thereto. Administration of the estate is unsupervised.

These Letters are issued to evidence the appointment, qualification, and authority of the
personal representative.

WITNESS: RYAN W. BOYER, Magistrate of the District Court, County of
Bingham, State of Idaho, with the seal of the Court affixed this 10 day of ~~February~~ March, 2006.

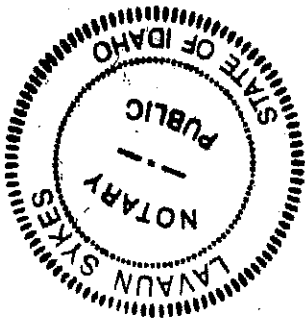
RYAN W. BOYER
Magistrate

STATE OF IDAHO)
) ss.
County of Bingham)

The undersigned, hereby accepts the appointment to the office of personal representative of the Estates of AUDREY ANNA UNDERWOOD and ROBERT F. UNDERWOOD, deceased, and do solemnly swear that I will perform, according to law, the duties of personal representative of said estates.

Jeff Underwood
Jeff Underwood
360 Kurtwood Place
Pocatello, ID 83204
208-232-2837

SUBSCRIBED AND SWORN to before me this 27th day February, 2006.



Lavaun Sykes
NOTARY PUBLIC
Residing at Blackfoot
My Commission Expires: 5-17-08

EXHIBIT "C"

DEED

DEED OF COUNTY PROPERTY

143 / 143 143

INSTRUMENT No. 32099

FAIRBANKS & SONS, POTATILLO, IDAHO

THIS INDENTURE, Made and entered into this 29th day of September, A. D. 19 41, by and between the County of Bingham, State of Idaho, party of the first part, and American Falls Canal Securities Corp. Aberdeen, Idaho, party of the second part.

WITNESSETH: That Whereas, by an order duly given, made and entered by the Board of County Commissioners of said County, in meeting assembled on the 12th day of August, 19 41, it was found and determined that the certain tract or parcel of land belonging to said County and hereinafter particularly described, was not necessary for the use of said County, and that the same should therefore, pursuant to the provisions of Section 30-708, Idaho Codes Annotated, as amended, be sold at public auction on the 29th day of September, 19 41; and

WHEREAS, Pursuant to said order and the statute in such case made and provided, the sale was advertised on the 23rd day of August, 19 41, being thirty days prior thereto, in The Daily Bulletin, a daily newspaper published in said County (or posted in five public places of the said county), affidavit of the giving of which notice has been duly filed with the Clerk of the Board of County Commissioners of said county; and

WHEREAS, At the time advertised for said sale the said land was, by the Clerk of said Board, sold at public auction to the party of the second part herein, who was the highest bidder therefor, for the sum of \$ 60.00, cash, lawful money of the United States of America, which said sum the said party of the second part has paid to the Treasurer of the said Bingham County;

NOW, THEREFORE, For and in consideration of the said sum hereinbefore mentioned thus paid, and pursuant to the law in such cases made and provided, the party of the first part herein does hereby grant, bargain, sell, convey and confirm unto the said party of the second part, his heirs and assigns forever, all that certain tract or parcel of land situated in the County of Bingham, State of Idaho, and more particularly described as follows:

The Northwest Quarter of the Southwest Quarter (NW $\frac{1}{4}$ SW $\frac{1}{4}$), and the Southhalf of the Southhalf (S $\frac{1}{2}$ S $\frac{1}{2}$) Section 4, Township 5 South of Range 31, East of the Boise Meridian, Bingham County, Idaho.

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining; to have and to hold the same unto the party of the second part, his heirs and assigns forever.

IN WITNESS WHEREOF, The Board of County Commissioners of said County has caused the name of said County to be hereunto subscribed by the chairman of said Board, and the seal of said Board of County Commissioners to be hereunto affixed.

Done at Blackfoot, Idaho, the day and year first above written.

ATTEST:

SEAL

BINGHAM COUNTY

Jno. H. Felt
County Auditor and Ex-Officio Clerk of the
Board of County Commissioners.

By Louis Felt
Chairman, Board of County Commissioners.

STATE OF IDAHO,

ss.

COUNTY OF BINGHAM

On this 9th day of October, 19 41, before me Jno. H. Felt, Clerk of the District Court, State of Idaho, in and for said County, personally appeared Louis Felt, known to me to be the Chairman of the Board of County Commissioners of said Bingham County, who executed the foregoing instrument, and acknowledged to me that he executed the same as such officer.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

SEAL

Jno. H. Felt
Clerk of the District Court, State of Idaho
in and for Bingham County.

I hereby certify that this instrument was filed for record at the request of D. H. Blossom, Sec. at 30 minutes past 10 o'clock, A. M., this 21st day of October.

EXHIBIT "D"

TAX NOTICES

ASSESSOR

I-1700

REQUESTED

RECTIONS

AG 40
AZING 51
HOMESITE
RES BLDG
IMP ON AG

Tax Code

LOTS/ACRES

165.000 AC
26.000 AC
1.000 AC
8.000 AC

2000

19-00

MARKET VALUE

67,870
390
8,500
5,000
4,279

OWNERS:

SEC 04

S

2796

W

1300

S

PRIOR YEAR

CURRENT YEAR

Mail To:

83,539

83,539

UNDERWOOD ROBERT F

PRIOR YEAR

ESTIMATED

077.10

1,077.10

2796 W 1300 S
ABERDEEN

ID 83210

DO NOT PAY ESTIMATE

ASSESSMENT NOTICE

PRESORTED
FIRST-CLASS MAIL
U S POSTAGE PAID
BLACKFOOT ID 83221
PERMIT NO 196

Soil Conservation
IR 59 red
Acres

Taxes are based on the
valuation listed on this statement
FOR ANY QUESTIONS
PLEASE NOTIFY THE
ASSESSOR'S OFFICE BEFORE

JUNE 26, 2000

PARCEL #
RP 0035700

117
123
282

882
982



Property Master			
Year 2006	Parcel # RP0035700	Status Active	Property Type Real
Location Code 31	Property Code Area 019000	Parcel Type	Appraiser Initials KDR

Physical Location	
Address	2796 W 1300 S ID
Group Type	SECT
Group #	044073
Description	T5S R31E SEC 04
Zoning	A
Township/Range/Section	5S 31E 04

Owner/Contact Information	
Name	UNDERWOOD ROBERT F
Mailing Address	2796 W 1300 S ABERDEEN ID 83210-9766

Description

T5S R31E SEC 04
S2S2* NWSW

Additional Owners/Contacts

Solid Waste		Photo	Map
Unit 1	Type A	PHOTO NUMBER 102	

Status	State Cat. Code	Acres	Assessed Value	Assessment Roll	Property Occupancy	Valuation Method
Active	1	165.000	67,870	Primary	Non-Occupancy	LAND BASE
Active	5	26.000	390	Primary	Non-Occupancy	LAND BASE
Active	10	1.000	10,300	Primary	Non-Occupancy	LAND BASE
Active	19	8.000	0	Primary	Non-Occupancy	LAND BASE
Active	31		5,000	Primary	Non-Occupancy	MARKET
Active	32		3,033	Primary	Non-Occupancy	MARKET
Total Acres:		200.000	86,593	Total Values		
			(2,500)	Less Homeowners Exemption		
			84,093	Taxable Value		

EXHIBIT "E"

PAUL VOLLMER CHECK
(Well No. 1)

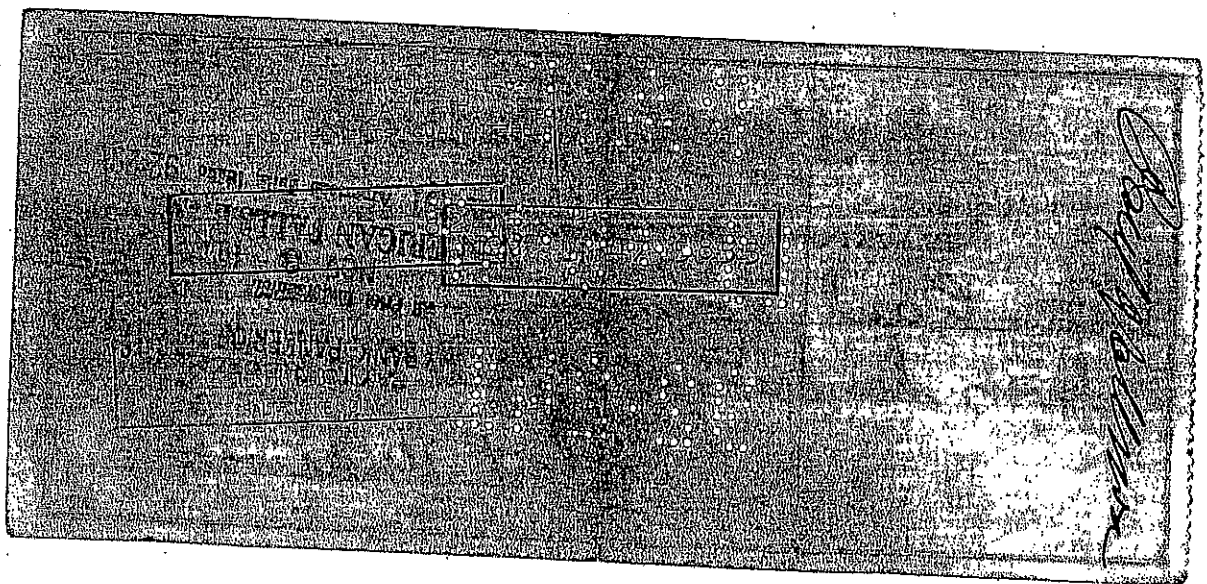
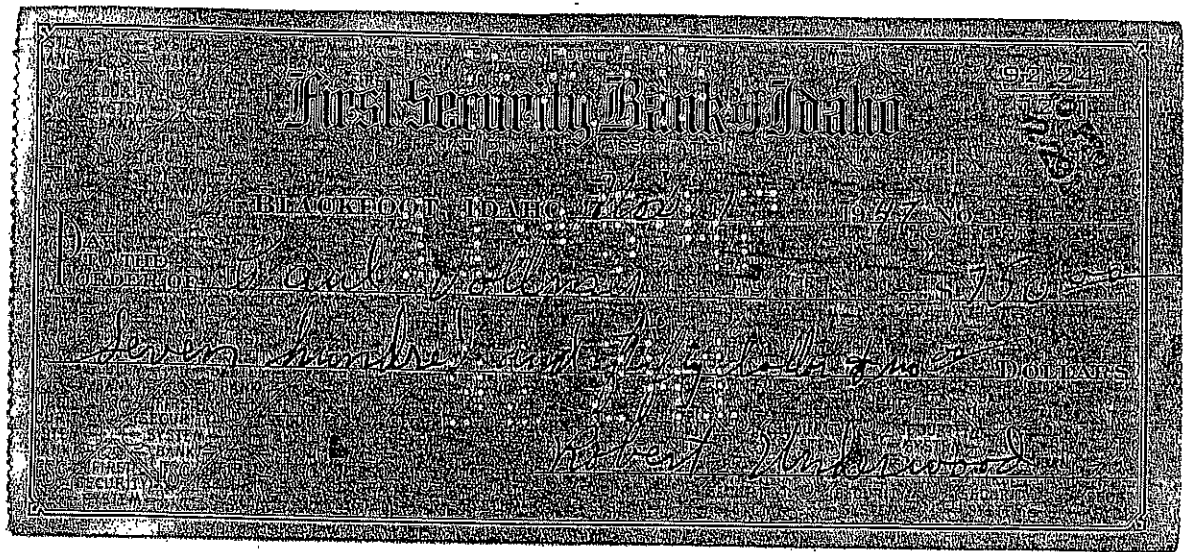


EXHIBIT "F"

NIEL F. BOYLE HARDWARE RECEIPT
(Well No. 1)

\$1,234.00

Blackfoot, Idaho,

May 15, 1948

On or before 5th day of December, 1948, for value received in

One 10" 3 Stage Figure 6930 Turbin W/Full Dia. Imp. #10058

90 Ft. 8" x 2" x 1 1/4" column

10 Ft. 8" ID Section Pipe

One 8" ID Galv. Strainer

One A208-16-1/2 Unit Head to receive 30 HP 3PH 60 Cy 220 V Motor type FR 365 (16-1/2 X 1-1/8) RPM 1760 (Motor #6790250)

One 1 Qt. Solenoid Oiler 220 V

One 8" ID Discharge Flange W/Bolts & gaskets.

Sale price of above merchandise

\$2,054.00

P lus installation, less electrical hook up

80.00

\$2,134.00

less: down payments of \$100.00 1/8/48; \$800.00 2/13/48

900.00

Balance owing

\$1,234.00

hereinafter described as merchandise, bought of Neil F. Boyle Hardware and Furniture Company, I

promise to pay to the order of Neil F. Boyle Hardware and Furniture Company

One Thousand Two Hundred Thirty Four and no/100----- DOLLARS

at Blackfoot, Idaho, with interest at the rate of 6 per cent. per annum, from May 15, 1948

interest payable when due until paid, and in case this note is collected by an attorney I

agree to pay all cost of collection, including a reasonable attorney's fee.

The express condition of this transaction is such that the title or ownership of said merchandise does not pass from the said Neil F. Boyle Hardware and Furniture Company until this note and interest shall have been paid in full, and if this note, together with all interest thereon, be not paid at maturity, said Neil F. Boyle Hardware and Furniture Company may take possession of said merchandise and may sell the same at public or private sale, without notice, and apply the proceeds on this note, or they may without sale, endorse the true value of said merchandise on this note, and I agree to pay on this note any balance due thereon after such endorsements, as damages and rental for said merchandise. Said Neil F. Boyle Hardware and Furniture Company, or their Agent have full power to declare this note due and take possession of said merchandise when they deem themselves insecure, even before the maturity of this note in case said merchandise shall be taken back, this shall be a warrant for entering upon the premises of the maker to obtain possession of said merchandise.

Due December 5, 1948

Address Sterling, Idaho

No. 27

Robert F. Underwood

EXHIBIT "G"

**CHECKS
(Well No. 2)**

