

Scott J. Smith (ISB# 6014)
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Pocatello, Idaho 83204-1391
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RECEIVED

JAN 16 2008

DEPARTMENT OF
WATER RESOURCES

Attorney for Robert E. Fuchs (Deceased) and Donna T. Fuchs

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: 21-10557 and 21-13013
Case No. 39576)
AFFIDAVIT OF COUNSEL IN
SUPPORT OF OPPOSITION TO
MOTION FOR SUMMARY
JUDGMENT

State of Idaho)
ss:
County of Bannock)

SCOTT J. SMITH, after being duly sworn on oath, deposes and states as follows:

1. I am a partner in the law firm of Racine Olson Nye Budge & Bailey, Chartered, who address is 201 East Center St., Pocatello, Idaho, 83201. I am the attorney of record for Robert E. Fuchs (deceased) and Donna T. Fuchs. I have personal knowledge of the facts contained herein.

2. Attached hereto as Exhibit A is a true and correct copy of the relevant page from the Rexburg Decree decreeing 275 inches from the Fall River to Z. Sunberg with a priority date of June 1, 1890.

3. Attached hereto as Exhibit B is a true and correct copy of a transcript of testimony provided by Z. Sunberg during the Rexburg Decree hearings.

4. Attached hereto as Exhibit C is a true and correct copy of a deed recorded 12/26/1903 showing that Z. Sunberg as the owner of Lots 1, 2, 3 and 4 of Section 7, T8N, R42E.

5. Attached hereto as Exhibit D is a true and correct copy of a deed recorded 12/5/1910 showing a transfer of Lots 1, 2, 3 and 4 of Section 7, T8N, R42E to Joseph Seeley.

6. Attached hereto as Exhibit E is a true and correct copy of a deed dated 10/18/1927 showing a transfer of Lots 1, 2, 3 and 4 of Section 7, T8N, R42E to Edgar Barney.

7. Attached hereto as Exhibit F is a true and correct copy of a deed recorded 4/10/1947 showing a transfer of Lots 3 and 4 of Section 7, T8N, R42E to Earl Barney.

8. Attached hereto as Exhibit G is a true and correct copy of a deed recorded 8/28/1959 showing a transfer of much of the Barney ranch (including Lots 1 and 2 but excluding Lots 3 and 4) to W. S. "Bill" Tanner.

9. Attached hereto as Exhibit H is a true and correct copy of a deed recorded 12/10/1956 showing a transfer of additional portions of the Barney ranch to W.S. "Bill" Tanner.

10. Attached as Exhibit I is a true and correct copy of a Certificate of a Change of Point of Diversion dated 4/14/1950.

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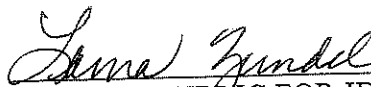
FURTHER SAITH AFFIANT NAUGHT.

DATED this 14 day of January, 2008.


SCOTT J. SMITH

SUBSCRIBED AND SWORN TO before me this 14 day of January, 2008.




NOTARY PUBLIC FOR IDAHO
Residing at: Pocatello
My Commission Expires: 4-10-2012

CERTIFICATE OF SERVICE

I hereby certify that on the 14 day of January, 2008, I caused a true, correct and complete copy of the foregoing document to be served by U.S. first-class mail, postage prepaid, upon the following unless a different method of service is indicated:

1. Original to:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
P.O. Box 2707
Twin Falls, Idaho 83303-2707

2. Copies to:

Director of IDWR
P.O. Box 83720
Boise, Idaho 83720-0098

Chief, Natural Resource Division
Office of the Attorney General
State of Idaho
P.O. Box 44449
Boise, Idaho 83711-4449

US Department of Justice
Environment & Natl' Resources
550 West Fort Street, MSC 033
Boise, Idaho 83724

George Nedrow
1361 N 3125 East
Ashton, Idaho 83420

Robert L Harris
Representing: RLF I LLC, et al
P.O. Box 50130
Idaho Falls, Idaho 83405


SCOTT J. SMITH

EXHIBIT A

St. Anthony Railroad Company, 17 inches, Sept. 1, 1901, North Fork of Snake River. (For station and railroad purposes.)

St. Anthony Union Canal Company, Limited, 30,000 inches, June 21, 1888, North Fork of Snake River.

St. Anthony Union Canal Company, Limited, 5,000 inches, July 29, 1892, North Fork of Snake River.

(The appropriations are to be reduced after the first day of July in each year to 25,000 inches for 15 days; then restored to 30,000 for 15 days; then reduced to 25,000 for the balance of the irrigating season, of the date of June 21st, 1888.)

Staten, John E., Swan Valley Irrigation Company, Limited.

Stephens, A. R., 280 inches, June 1, 1900, Cooley Spring.

Stevens, N. H., 130 inches, May 1, 1894, Trail Creek.

Stewart, Samuel (deceased), Estate of, by Mary H. Birch, Adminx., and Mary H. Birch, 500 inches, Apr. 1, 1898, Teton River.

Stewart, Samuel (deceased), Estate of, by Mary H. Birch, Adminx., and Mary H. Birch, 250 inches, June 1, 1884, Teton River.

Stewart, Thompson, 50 inches, June 1, 1899, Badger Creek.

Stone, Henry J., 160 inches, June 1, 1896, Fox Creek.

Storer, Sarah, The Farmers' Friend Canal Company.

Streeper, C. A., The Farmers' Friend Canal Company.

Streeper, Howard, 300 inches, June 2, 1889, South Fork of Snake River.

Sugar City Townsite Company. (See Hill Ditch Company, and Willard Ricks.)

Sullivan, Thomas F., and Mary A., 640 inches, Nov. 25, 1902, North Fork of Snake River.

Summers, Stephen J., and William and Soren Nelson, 670 inches, June 10, 1885, South Fork of Snake River.

Sundberg, Z., 275 inches, June 1, 1890, Fall River. 21-0114 - 21 0115

Sundberg, Z., 60 inches, June 1, 1894, Black Spring Creek.

Sunnydell Irrigation Canal Company, The, 1,000 inches, June 1, 1889, South Fork of Snake River.

Swanner, Samuel, 40 inches, June 1, 1889, South Leigh Creek.

Swanner, Samuel, 120 inches, June 1, 1891, South Leigh Creek.

Swanstrom, Albert, 180 inches, Aug. 9, 1902, Sheridan Creek.

Swan Valley Irrigation Company, Limited, 1,800 inches, June 1, 1900, Palisade Creek.

Swenson, L. P., Trego Ditch Company.

Sylvester, James. (No right established.)

T.

Tanner, A. B. (I. M. Fisher, substituted for.)

Tanner, James W., 130 inches, May 1, 1902, Palisade Creek.

Tanner, N. Jr., 25 inches, Sept. 1, 1895, Springs on land; also waste water from S. W. Gibbs' land.

Tarbet, Albert, 160 inches, July 7, 1898, Darby Creek.

Tarbet, Willard, 160 inches, July 7, 1898, Darby Creek.

Taylor & Cedar Hollow Canal Company. (Part of system of Idaho Canal & Improvement Company.)

Taylor & Goshen Canal Company, Limited, 9,300 inches, June 16, 1900, from the tail-race of the City Canal of Idaho Falls.

Taylor, Jackson C., 90 inches, June 1, 1896, South Leigh Creek.

Taylor, John, 175 inches, Oct. 16, 1886, Lyman or Lyons Creek.

Taylor, Joseph E., 180 inches, Jan. 18, 1905, North Leigh Creek or Spring Creek.

Teeples, Henry, Lowder Canal Company.

Teton Irrigation (or "Irrigating") & Manufacturing Company (sued in the name of Teton Irrigation Canal Company), 2,202 inches, June 1, 1884, Teton River, to be diverted at the Bird Headgate near the Teton Mill.

Teton Irrigation (or "Irrigating") & Manufacturing Company (sued in

EXHIBIT B

- Q. He owned a considerable interest in that land, did he not?
- Q. He has irrigated these lands, has he not?
- A. Yes sir.
- Q. And you irrigated it during the last season, did you not?
- Q. What amount of land is there on this tract? That has not been irrigated that can be brought under cultivation and irrigation and cultivation? A. Six and a half acres.
- Swinn—I believe that is all on this claim.

CROSS EXAMINATION BY SWINN.

- Q. What kind of crops do you raise?
- A. Alfalfa, red clover, wheat, oats, potatoes.
- Q. How often do you water these crops during the season—take your alfalfa for instance, how many times would you water that? A. First crop, generally three times.
- Q. When would you harvest the first crop?
- A. Generally sometime between the first and tenth of July.
- Q. When do you begin to irrigate it in the spring?
- A. From the twentieth of May to the first of June.
- Q. During that period it would require in order to produce an average crop, three wettings? A. Yes sir, three wettings.
- Q. And you think it would take a volume of water equal to three inches to successfully conduct the water over the land—
- A. Which ranch do you have reference to?
- Q. The last one? A. I think it will take three inches.
- Q. Then when you say three inches you mean you use that three inches during the period you are engaged in watering the crop?
- A. Yes sir.
- Q. You don't have reference to a continuous flow upon that land of three inches? A. No sir.

Swinn—That is all—call Zack Sundberg.

ZACK SUNDBERG, being first duly sworn, on behalf of his own claim, testified as follows:—

DIRECT EXAMINATION BY SWINN.

- Q. Mr. Sundberg, you are the owner of the land described in your cross complaint and described as lots one, two, three and four in section seven, township eight north of range forty—

1233 two containing 149.85 acres? A. Yes sir, 149.85 acres.

Q. How long have you owned that land? A. Little over a year.

Q. Who did you purchase the land from?

A. S. H. Cartwell.

Q. Did Mr. Cartwell give you a deed for the land and the water that goes with it? A. Yes sir.

Q. From what source did you irrigate this land Mr. Silkey?

A. From Fall River.

Q. From what ditch did you take the water? A. From the Silkey, Drake and Farnsworth ditch.

Q. How much of this tract of land Mr. Sundberg is susceptible of irrigation from that ditch?

A. You mean how much have I? Q. How much may be?

A. In the neighborhood of ninety acres.

Q. How much have you irrigated?

A. Somewhere in the neighborhood of eighty acres.

Q. You don't know anything about the irrigation of the land prior to your taking possession of it when you purchased it?

A. No sir, I don't.

Q. You have an interest in the Drake, Silkey and Farnsworth ditches? A. Yes sir.

Q. How much of that land does Mr. Sundberg own that land susceptible of irrigation? A. Well, I would judge about 80 or 90 acres.

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Q. How much of that land does Mr. Sundberg own that land susceptible of irrigation? A. Well, I would judge about 80 or 90 acres.

EXHIBIT C

No 2120

E/10/2

This Indenture, made the 7th day of October in the year of our Lord one thousand nine hundred and thirteen (1913) between Samuel B. Cantwell & Linna Cantwell his wife of the County of Treasure State of Idaho the parties of the first part, and

J. Gack Lundberg of the County of Treasure and State of Idaho the party of the second part

WITNESSETH: That the said parties of the first part, for and in consideration of the sum of Twenty-eight hundred DOLLARS lawful money of the United States of America, to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, do hereby by these presents GRANT, BARGAIN, SELL and CONFIRM and CONFIRM unto the said party of the second part, and to his heirs and assigns forever, all the lot parcel of land situated lying and being in the County of Treasure and State of Idaho and bounded and described as follows, to-wit:

Lots one (1), two (2), three (3), four (4) of section seven (7) Township eight (8) North of Range forty-two (42) E.T.M. and Lot one (1) of section twelve (12) Township eight (8) North of Range forty-one (41) containing 149 7/8 acres, according to the Government survey
Also, a one-fourth (1/4) interest in what is known as the Mc Bee ditch and a one-fourth (1/4) interest in the canal being taken out of the Black Springs Creek.

Together with all and singular the tenements, hereditaments and appurtenances thereto belonging, or in anywise appertaining, and the rents, issues and profits thereof:

TO HAVE AND TO HOLD, all and singular, the said premises, together with the appurtenances and privileges thereunto in anywise appertaining, unto the said party of the second part, and to his heirs and assigns forever. And the said party of the first part, and their heirs, the said premises in the quiet and peaceable possession of the said party of the second part, and their heirs and assigns, against the said parties of the first part and their heirs, and against all and every person or persons whomsoever, lawfully claiming or to claim the same, shall and will warrant, defend, and by these presents forever defend

IN WITNESS WHEREOF, the said parties of the first part have hereunto set their hands and seals, the day and year first above written.

Signed, sealed and delivered in the presence of Samuel B. Cantwell (SEAL)
Chas. B. Gowerman (SEAL)
Linna Cantwell (SEAL)

STATE OF IDAHO,

County of Treasure, I do hereby certify that on this 7th day of October in the year 1913, before me Chas. B. Gowerman a Notary Public in and for said county and state, personally appeared Samuel B. Cantwell

known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same; and I do hereby certify that: on this 7th day of October in the year 1913, before me the officer above described Linna Cantwell wife of the above named Samuel B. Cantwell personally appeared known to me to be the person whose name is subscribed to the within instrument, described as a married woman; and upon an examination without the hearing of her husband, I made her acquainted with the contents of the instrument, and thereupon she acknowledged to me that she executed the same and that she does not wish to retract such acknowledgment.

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



Chas. B. Gowerman Notary Public
 Filed for record at the request of J. Gack Lundberg at 60 minutes past o'clock P.M., the 26th day of December A.D. 1913 W. L. H. H. H.

EXHIBIT D

61-53

THIS INDENTURE made 9th day of September in the year One thousand nine hundred and ten between ZACH SUNDBERG of Carstairs of the Province of Alberta formerly of the County of Fremont in the State of Idaho, Farmer, and ANNIE J. SUNDBERG wife of Zach Sundberg aforesaid, the parties of the first part; and Joseph Nephil Sealey of Stirling in the Province of Alberta, Farmer, the party of the second part.

WITNESSETH: That the said parties of the first part for and in consideration of the sum of Four Thousand and fifty(4050) Dollars of lawful money of the United States of America, to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged do by these presents Grant, Bargain, Sell and Convey and Confirm unto the said party of the second part and to his heirs and assigns forever, all that certain lot, piece or parcel of land situate, lying and being in the County of Fremont and State of Idaho, and bounded and described as follows, to-wit:

Lots One(1) Two(2) Three(3) Four(4) of Section Seven(7) Township eight(8) North of Range Forty-two(42) E. B. M., and Lot One(1) of Section Twelve(12) Township Eight (8) North, of Range Forty-one(41) containing 149 85/100 acres, according to the Government Survey.

Also a one fourth($\frac{1}{4}$) interest in what is known as the McBeck Ditch and a one fourth($\frac{1}{4}$) interest in the canal being taken out of Black Springs Creek.

SUBJECT to a Mortgage of Eighteen hundred(1800) Dollars made between Zach Sundberg and Annie J. Sundberg as Mortgagors And the American Freshhold Land Mortgage Co. as Mortgagee-

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in any wise appertaining and the rent issues and profits thereto.

TO HAVE AND TO HOLD all and singular the said premises together with the appurtenances and privileges thereunto incident unto the said party of the second part and to his heirs and assigns forever. And the said parties of the first part and their heirs, the said premises in the quiet and peaceable possession of the said party of the second part his heirs and assigns against the said parties of the first part and their heirs and against all and every person or persons whomsoever lawfully claiming or to claim the same shall and will warrant and by these presents forever defend.

IN WITNESS WHEREOF the said parties of the first part have hereunto set their hands and seals the day and year first above written.

Signed, Sealed and Delivered

in the presence of

Charles W. Moore

Canada

Province of Alberta

Zach Sundberg (Seal)

Annie J. Sundberg (Seal)

I DO HEREBY CERTIFY THAT on this 9th day of September in the year 1910, before me Charles W. Moore a Notary Public in and for the said Province, personally appeared Zach Sundberg known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same. And I do hereby certify that, on this 9th day of September in the year 1910, before me the officer above described

personally appeared Annie J. Sundberg, wife of the above named Zach Sundberg known to be the person whose name is subscribed to the within instrument, described as a married woman: and upon an examination without the hearing of her husband, I made her acquainted with the contents of the instrument, and thereupon she acknowledged to me that she executed the same, and that she does not wish to retract such execution.

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

Charles W. Moore

A Notary Public in and for the Province

My commission is perpetual

of Alberta (Seal)

Filed for record at the request of Johnston & Ritchie at 3 A. M., December 5th 1910

I. M. Corey, Recorder

Madison Co.

No. 34928

DEPARTMENT OF THE INTERIOR,

UNITED STATES LAND OFFICE BLACKFOOT, IDAHO.

Serial No. 0384

Receipt No. 657467

CERTIFICATE.

December 1, 1910

IT IS HEREBY CERTIFIED, that, in pursuance of law, Caleb V. Anderson residing at Rexburg in Fremont County, State of Idaho on this day purchased of the Register of this office the $E\frac{1}{2}$ SE $\frac{1}{4}$ Section 28; $E\frac{1}{2}$ NE $\frac{1}{4}$ Section 33 Township 6 North Range 40 East, Boise Meridian, Idaho, containing 160 acres, at the rate of one dollar and 25 cent per acre, amounting to Two hundred Dollars and $\frac{1}{4}$ cents, for which the said Caleb V. Anderson has made payment in full as required by law.

Now, therefore, be it known, that, on presentation of this Certificate to the COMMISSIONER OF THE GENERAL LAND OFFICE, the said Caleb V. Anderson shall be entitled to receive a Patent for the lot above described

Henry W. Kiefer, Register

Filed for record at the request of F. A. Miller at 4-30 P. M., December 7th 1910

I. M. Corey, Recorder

BY Rose D. Miller, deputy

EXHIBIT E

#244283

WARRANTY DEED

THIS INDENTURE, Made the 18th day of October in the year of our Lord one thousand nine hundred and 27 between Joseph W. Seeley and Celia Seeley, his wife of the County of Sanpete, State of Utah, the parties of the first part, and Edgar Barney of the County of Fremont, State of Idaho, the party of the second part,

WITNESSETH: That the said parties of the first part, for and in consideration of the sum of Four thousand and no/100 DOLLARS, lawful money of the United States of America, to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, have granted, bargained and sold and do by these presents GRANT, BARGAIN,

SELL, CONVEY and CONFIRM unto the said party of the second part, and to his heirs and assigns forever, all that certain lot, piece or parcel of land situate, lying and being in the County of Fremont and State of Idaho, and bounded and described as follows, to-wit: Commencing at a point thirteen rods North of the Southwest corner of the Southeast quarter of Section 12, Township 8, North Range 41, E.B.M., running thence North 90 rods, more or less, to the east bank of Snake River, thence in a southwesterly direction along said river bank 100 rods, more or less, thence east 33 rods, to place of beginning. Said tract containing 11 acres more or less, and being all of Lot 3 of said Section 12, except that part conveyed to J.R. Silkey, and Lots 1, 2, 3 and 4 of section 7, Township 8 North of Range 42 E.B.M. and Lot 1 of Section 12, Township 8 North Range 41, containing 149.85 acres, according to the Government Survey. Also a one-quarter interest in what is known as the McFee ditch and a one-quarter interest in the canal being taken out of Black Springs Creek

Subject to all taxes.

24.40 Revenue stamps attached and cancelled.

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, and the rents, issues and profits thereof, and all estate, right, title and interest in and to the said property, as well in law as in equity, of the said parties of the first part.

TO HAVE AND TO HOLD, All and singular, the above mentioned and described premises, together with the appurtenances, unto the said party of the second part, to his heirs and assigns forever. And the said parties of the first part, his heirs, the said premises in the quiet and peaceable possession of the said party of the second part, his heirs and assigns, against the said parties of the first part and their heirs, and against all and every person or persons whomsoever, lawfully claiming or to claim the same, shall and will warrant any, and by these presents forever defend.

IN WITNESS WHEREOF, The said parties of the first part have hereunto set their hands and seals the day and year above written.

Signed, Sealed and Delivered in the Presence of
A. L. Peterson

Joseph W. Seeley (SEAL)
Celia Seeley (SEAL)
(SEAL)
(SEAL)

STATE OF UTAH ss. On this 18th day of October, in the year 19 27,
County of Sanpete

Before me, a Notary Public in and for said County and State, personally appeared Joseph W. Seeley and Celia Seeley, his wife

Known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

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

EXHIBIT F

67416-16

Warranty Deed

BOOK 54 PAGE 118

THIS INDENTURE, Made this 10th. day of April in the year of our Lord One Thousand Nine Hundred and forty-seven, between

Edgar Barney and Lillie Barney, his wife,
of St. Anthony, County of Fremont, State of Idaho,
the parties of the first part, and

Earl Barney
of St. Anthony, County of Fremont, State of Idaho,
the party of the second part:

WITNESSETH: That the said parties of the first part, for and in consideration of the sum of One thousand five hundred and no/100 - - - - - DOLLARS, lawful money of the United States of America, to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged

, do by these presents, Grant, Bargain, Sell and Convey and Confirm unto said party of the second part, and to his heirs and assigns forever: All that certain lot five or parcel of land situate, lying and being in the County of Fremont State of Idaho, bounded and more particularly described as follows, to-wit:

Lots 3, and 4, of Section 7, Township 8 North, Range 42, East Boise Meridian. Together with 100 inches of Silkie De-creased water.



Together with all and singular, the tenements, hereditaments and appurtenances therunto belonging or in anywise appertaining, and the rents, issues and profits thereof.

TO HAVE AND TO HOLD, all and singular, the said premises, together with the appurtenances and privileges therunto incident unto the said party of the second part, and to his heirs and assigns forever. And the said parties of the first part, and their heirs the said premises in the quiet and peaceable possession of the said party of the second part his heirs and assigns against the said party of the first part, and their heirs and against all and every person or persons whomsoever, lawfully claiming or to claim the same, shall and will warrant and by these presents forever defend.

IN WITNESS WHEREOF, The said parties of the first part have hereunto set their hand and seal the day and year first above written.

Signed, Sealed and Delivered in the Presence of

_____	}	Edgar Barney	1560
_____		Lillie Barney	1560
_____			1560
_____			1560

Exhibit 6A

STATE OF IDAHO,
County of **Tremont**

} ss.

On this **10th.** day of **April** in the year **1947**, before me,
Ralph Litton, a **Notary Public** in and for said County and State, personally appeared

Edgar Barney and Lillie Barney, his wife,

known to me to

be the person **s** whose name **s are** subscribed to the within instrument, and acknowledged to me that **he y** executed the same.

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

written



Ralph Litton
Notary Public

Residence **St. Anthony, Idaho.**

WARRANTY DEED

Edgar Barney
and
Lillie Barney

Edgar Barney

Dated *April 10 1947*

STATE OF IDAHO
County of *Tremont*

I hereby certify that this instrument was filed for

record in the register of

Edgar Barney

at *112* minutes past *4*

o'clock *PM*, the *5* day of

June A.D. 19*47*

at my office and duly recorded in Book *54*

of Page *119*

By *Handwritten* Deputy

Fee \$ *1.50*

Done 205 St Anthony

269201

EXHIBIT G

THIS INDENTURE, Made this 20th day of April, 1956 by and between LILLIE BARNEY of the County of Fremont, State of Idaho, the party of the first part; and W. S. TANNER and NETTIE TANNER, his wife, of the County of Jefferson, State of Idaho, the parties of the second part.

WITNESSETH, That the said party of the first part, for and in consideration of the sum of Twenty One Thousand (\$21,000.00) Dollars lawful money of the United States of America, to her in hand paid by parties of the second part, the receipt whereof is hereby acknowledged, has granted, bargained and sold, and by these presents do grant, bargain, sell, convey and confirm unto the said parties of the second part and to their heirs and assigns forever, all the following described real estate, situate in the County of Fremont, State of Idaho, to wit:

The SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 1, Lots 1, 6 and 7, and the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 12, all in Township 8, North Range 41, E. B. M.;

Also--

Lots 8, 9, 13, and 14, the SE $\frac{1}{4}$ SW $\frac{1}{4}$, the NE $\frac{1}{4}$ SE $\frac{1}{4}$, and the SW $\frac{1}{4}$ SE $\frac{1}{4}$, all in Section 6, and Lots 1 and 2, the NW $\frac{1}{4}$ NE $\frac{1}{4}$, and the NE $\frac{1}{4}$ NW $\frac{1}{4}$, all in Section 7, and all in Township 8, North Range 42, E. B. M., LESS THE FOLLOWING:

Commencing at a point in Section 6, Township 8, North Range 42, E. B. M. where Black Springs Creek confluences with Henrys Fork of the Snake River (also known as the North Fork of the Snake River) and running thence Northeasterly along Southerly bank of said river 700 feet; thence South 350 feet to a point at the base of a rock ledge; thence Westerly along base of said rock ledge, which is approximately parallel to said creek, to a point directly South of point of beginning; thence North to the point of beginning.

Also--

Subject to right of way to and from above described commencing at a point in said Section where Black Springs Creek intersects high water line on Southerly bank of said river, and thence Easterly along said high water line $\frac{1}{4}$ mile, more or less, to County road right of way; thence Southerly at a 90° angle 15 feet; thence Westerly, parallel to said high water line to said Black Springs Creek; thence Northerly to point of beginning; owner of land will maintain a locked gate at Easterly end of right of way and said road will be used only in connection and for purpose of maintaining and carrying on fish rearing in said creek and pond;

Also--

Beginning at a point 1 rod North of where Black Springs Creek intersects the East line of Section 6, Township 8, North Range 42, E. B. M., thence in a Westerly direction, at all time one rod North of said Black Springs Creek, 1075 feet, more or less, to East line of Tax 1; thence due North to the South bank of Henrys Fork of the Snake River; thence along the South bank of said river in a Northeasterly direction to the East line of said Section 6, Township 8, North Range 42; thence South along said Section line to the point of beginning.

TOGETHER, With all and singular the tenements, hereditaments and appurtenances, including all water rights, ditch and canal rights thereunto belonging or in anywise appertaining, and the reversion or reversions, remainder and remainders, rents, issues and profits thereof, and all estate, title and interest in and to the said property as well in law as in equity, of the said party of the first part.

TO HAVE AND TO HOLD, All and singular, the above mentioned and described premises, together with the appurtenances, unto

000000 67 PAGE 452

the parties of the second part, and to their heirs and assigns forever. And the said party of the first part, and her heirs, the said premises in the quiet and peaceable possession of the said parties of the second part, and their heirs and assigns against the said party of the first part and her heirs and against all and every person and persons, whomsoever lawfully claiming or to claim the same, shall and will WARRANT and by these presents forever DEFEND.

IN WITNESS WHEREOF, The said party of the first part has hereunto set her hand and seal the day and year first above written.

Signed, sealed and delivered
in the presence of

Lillie Barrow (SEAL)

STATE OF IDAHO)
County of Madison) ss.

On this 20th day of April, in the year 1936 before me
Ray W. Rigby, a Notary Public in and for the State of Idaho,
personally appeared LILLIE BARNEY, a widow, known to me to
be the person whose name is subscribed to the within instrument,
and acknowledged to me that she executed the same.

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

Lay W. Richey
Notary Public

Residing at Rexburg, Idaho

My Commission Expires January 24, 1959

1521

Paid for by _____ \$ _____

W. S. Danner
R. B. Beyer, Jr.
3d Illinois St. 3
Chicago, Ill. 28
Sent by Reg. Mail 1957
Postage paid at _____
Dancer
Singer in Italian. Fed. 150
La Monte Dancer
Recorder
Macedonia
Denain

EXHIBIT H

BOOK 64 PAGE 207

THIS INDENTURE, made this 6th day of June, 1956, between EARL BARNEY and EULA BARNEY, his wife,

of Chester, County of Fremont, State of Idaho, the parties of the first part and

W. S. TANNER and NETTIE TANNER, his wife, of Rigby, County of Jefferson, State of Idaho, the parties of the second part,

WITNESSETH, that the said parties of the first part, for and in consideration of the sum of TEN AND NO/100 (\$10.00) Dollars

lawful money of the United States of America, and other valuable considerations to them in hand paid by the parties of the second part, the receipt whereof is hereby acknowledged,

have granted, bargained, sold, and by these presents, do grant, bargain, sell and convey and confirm unto the said parties of the second part, and to their heirs and assigns, forever, all the following described real estate, situated in Chester, County of Fremont, State of Idaho, to-wit:

The SE1/4 of Section 6, and the NE1/4 of Section 7, all in Township 8, North Range 42, E.B.M., together with 45 acre feet of Island Park Reservoir storage water in the Fremont-Madison Irrigation District.

TOGETHER with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, and rents, issues and profits thereof; and all estate, right, title and interest in and to the said property, as well in law as in equity, of the said parties of the first part.

TO HAVE AND TO HOLD, all and singular the above mentioned and described premises together with the appurtenances unto the parties of the second part, and to their heirs and assigns forever. And the said parties of the first part, and their heirs, the said premises in the quiet and peaceable possession of the said parties of the second part, their heirs and assigns, against the said parties of the first part, and their heirs, and against all and every person and persons whomsoever, lawfully claiming or to claim the same shall and will warrant and by these presents forever defend.

IN WITNESS WHEREOF, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

Executed and Delivered in the Presence of

Ray W. Rigby

Earl Barney

Eula Barney

[SEAL]

[SEAL]

[SEAL]

[SEAL]

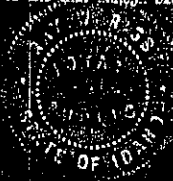
Original to original 1/6/1956

Ex. 11, A

BOOK 54 PAGE 208

STATE OF IDAHO,
County of Madison, } ss.

On this 6th day of June, in the year 1956, before me
Ray W. Rigby, a Notary Public in and for said State, personally appeared
Earl Barney and Eula Barney,
known to me to be the persons whose names are subscribed to the within instrument, and acknowledged
to me that they executed the same.



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

Ray W. Rigby
Notary Public for the State of Idaho,
Residing at Rexburg, Idaho.

No. 285217

WARRANTY DEED

(FORM No. 10)

Earl Barney
TO

W. J. Jensen
Dated June 6, 1956

STATE OF IDAHO,

County of Blaine

I hereby certify that this instrument
was filed for record at request of
Blaine State Co.
at 40 minutes past 3
o'clock P.M., this 10 day of
June, 1956, in my
office, and duly entered in Book 69
of Blaine
at page 207

Jack A. Stone
By M. M. Stone
Fees, \$1.50
Mail to

55- STATE-WESS LAW PUB. CO., PORTLAND, ORE.

EXHIBIT I

Ex. 10.2.

STATE OF IDAHO

DEPARTMENT OF RECLAMATION

CERTIFICATE OF CHANGE OF POINT OF DIVERSION OF DECREED WATER RIGHTS

No. 204

~~THIS IS TO CERTIFY THAT EDGAR BARNEY, of St. Anthony, Idaho, is the owner of and using a certain water right for four (4) cubic feet per second of the waters of Fall River with priority of June 1, 1890 and for one and two tenths (1.2) cubic feet per second of the waters of Black Spring Creek with priority of June 1, 1894, said water being decreed to Z. Sundberg by Judge J. M. Stevens of the District Court of the 6th Judicial District of the State of Idaho, in and for the County of Fremont, in the case of~~

REXBURG IRRIGATION COMPANY, et al
Plaintiffs,

vs.

TETON IRRIGATION CANAL COMPANY, et al
Defendants.

said decree bearing date of December 16, 1910 and being appurtenant to the following described lands, to-wit:

Lots 1, 2, 3, and 4, Section 7,
Township 8 North, Range 42 East, B.M.

That said decree has been entered in the records of the Department of Reclamation of the State of Idaho, in Volume 5 of Decrees, beginning at Page 450.

And that now, upon the application of Edgar Barney, of St. Anthony, Idaho, for a Certificate of Change of Point of Diversion for 5.2 cubic feet per second of the waters of Fall River and Black Spring Creek, made before the State Reclamation Engineer of the State of Idaho, and said application having been granted, the right to change such point of diversion is HEREBY GRANTED.

That said change of point of diversion shall not modify in effect said decreed water right, or place of use. Said water is to be limited at any given time to an amount actually needed and beneficially used for such purposes, and shall not exceed the following amount, to-wit:

4 cubic feet per second from Fall River with Priority
of June 1, 1890,

1.2 cubic feet per second from Black Spring Creek with
priority of June 1, 1894.

That the water rights above described have heretofore been diverted from Fall River and Black Spring Creek with point of diversion in the SW $\frac{1}{4}$ Section 18, Township 8 North, Range 42 East, B.M.

That the water rights above described will hereafter be diverted from said streams with point of diversion in the SE $\frac{1}{4}$ Section 35, Township 9 North, Range 43 East, B.M.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the official seal of the Department of Reclamation of the State of Idaho, to be hereunto affixed at Boise, Idaho, this 14th day of April, 1950.

Mark R. Kulp

MARK R. KULP
State Reclamation Engineer