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Claimants: Department of Water Resources
Adjudication Bureau

Doyt H. Simcoe and Roxie Simcoe

Attorney Name and Address:

HEPWORTH, LEZAMIZ & HOHNHORST,
CHARTERED
133 Shoshone St. North
P.O. Box 389
Twin Falls, ID 83303-0389
Telephone: (208)734-7510

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

* * * * *

In Re SRBA

) Subcase No. 36-00003F

)

Case No. 39576

)

AFFIDAVIT IN SUPPORT OF

)

MOTION FOR SUMMARY JUDGMENT

)

* * * * *

Doyt H. Simcoe, being first duly sworn upon oath, deposes and says:

1. I, Doyt H. Simcoe, am a claimant of a previously decreed water right, which is the water right before the Court in this subcase. I make the foregoing and following statements in this affidavit based on my personal knowledge and beliefs and I am otherwise competent to testify regarding those statements.

2. I own real property described in the deed attached to this affidavit as Exhibit "A" and incorporated by reference into this affidavit. Exhibit "A" is a duplicate of my deed, which is recorded in the official property records of the Gooding County Recorder's Office, Gooding, Idaho. I also own the water right claimed in this subcase.

HLH
Chartered
Hepworth,
Lezamiz &
Hohnhorst

1 3. The real property described in Exhibit "A" includes decreed,
2 appurtenant water rights. The water right involved in this subcase is appurtenant to that real
3 property. I acquired that water right as successor in interest in the real property to New
4 International Mortgage Bank, to whom the right was decreed in the case of *New*
5 *International Mortgage Bank v. Idaho Power Company, et al*, Equity No. 1602, in the
6 District Court of the United States, for the District of Idaho, Southern Division.

7 4. I request this Court take judicial notice of the contents of the final
8 decree entered in that case, dated March 22, 1932, and decreed by the Honorable Charles
9 Cavanah, Federal District Court Judge. A certified copy of that decree is in the files of this
10 Court.

11 5. Attached to this affidavit as Exhibit "B" and incorporated into it is a
12 duplicate of the portion of the *New International Mortgage Bank* decree which shows the
13 water right I acquired through New International Mortgage Bank.

14 6. My water right has been used and exercised on the real property
15 identified in Exhibit "A" and which is also identified in Exhibit "B". The purposes for which
16 that right has been used and is being used are set forth in the attached Exhibit "C," along
17 with the periods and places of use and other elements of my right. Exhibit "C," which is
18 incorporated into this affidavit, shows how my decreed right has been beneficially used and
19 how it should be decreed.

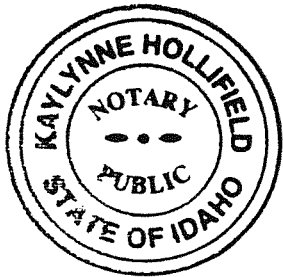
20 7. I have never intended to abandon my right or any part of it. I do not
21 believe that any of my predecessors in interest to the right intended to, or did abandon the
22 water right or any part of it. Since I have owned the water right, there has not been a
23

1 continuous five-year period of nonuse. I understand and believe that there has never been
2 a continuous five-year period of nonuse of the right.

3 Dated May 7, 1996.

4 Doyt H. Simcoe
5 Doyt H. Simcoe

6
7 Subscribed and Sworn to before me this 7th day of May, 1996.



Kaylynne Hollifield
Notary Public for Idaho
Residing at: TWIN FALLS, IDAHO
My Commission Expires: 10/2001



WARRANTY DEED

COPY

For Value Received

Barbara Gardner, a married woman, as her sole and separate property,
hereinafter referred to as Grantor, does hereby grant, bargain, sell, and convey unto
Doyt H. Simcoe and Roxie J. Simcoe, husband and wife,
hereinafter referred to as Grantee, whose current address is
562 Sunrise Blvd. N., Twin Falls, ID, 83301
the following described premises, to-wit:

See Exhibit A attached hereto and made a part hereof.

155374

STATE OF IDAHO COUNTY OF GOODING
Filed for record at the request of **FIRST AMERICAN TITLE**

46 min. past 4 o'clock p m. this 7
of January, 1994 Fee #62

JOHN A. MYERS Recorder

By Helen K. Priett Deputy

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee, his heirs and assigns forever. And the said Grantor does hereby covenant to and with the said Grantee, that Grantor is the owner in fee simple of said premises; that said premises are free from all encumbrances except current years taxes, levies, and assessments, and except U. S. Patent reservations, restrictions, easements of record, and easements visible upon the premises, and that Grantor will warrant and defend the same from all claims whatsoever.

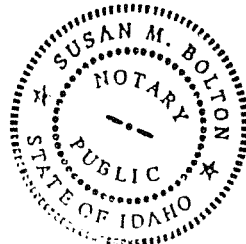
Dated: January 7th, 1994.

Barbara Gardner
Barbara Gardner

STATE OF IDAHO

COUNTY OF Gooding

On this 7th day of January, in the year 1994, before me, a Notary Public in and for said State, personally appeared Barbara Gardner, known or identified to me to be the person whose name is subscribed to the within Instrument, and acknowledged to me that she executed the same.



Susan M. Bolton
Notary Public for Idaho
Residing at Gooding, Idaho
Commission Expires: 10-16-98

First American Title Company of Idaho



EXHIBIT A

Lot 38 and that portion of Lot 26 of the Buckeye Ranch, according to the Official Plat on file in the County Recorder of Gooding County, State of Idaho, described as follows:

BEGINNING at the Southwest corner of said Lot 26, also being the Southeast corner of Deed, recorded January 10, 1989 as Instrument No. 119145;

Thence in a North Easterly direction to a point on the North line of said Lot 26, which bears 820 feet East of the Northwest corner of Lot 27;

Thence East 502.4 feet more or less, along the North Lot line of Lot 26 to the Northeast corner of said Lot 26;

Thence South, along the East line of said Lot 26 to the Southeast corner thereof;

Thence West 660.5 feet more or less along the South Lot line to the POINT OF BEGINNING.

TOGETHER with 37 inches of Buckeye Ditch water.

and 8 South, Range 13 E. B. M. bears south 75° 50' west 4435 feet distant;

Buckeye
ditch
36-003

Also 20 second foot of the waters flowing in Billingsley Creek, with a date of priority of September 10, 1884, the same being diverted by means of a dam in, and a ditch leading from, said Billingsley Creek, the point of diversion being in the SE $\frac{1}{4}$ NE $\frac{1}{4}$, Sec. 11, Twp. 7 South, Range 13 E. B. M., from which the quarter section corner common to Sections 11 and 12, Twp. 7 South, Range 13 E. B. M. bears south 47° 22' east 718 feet distant. ✓

IT IS FURTHER ORDERED, ADJURED, AND DECREED, That the amounts of water heretofore set out, diverted from said natural water supply at the points of diversion heretofore mentioned and set out, are necessary for the proper irrigation and cultivation of, and that the same is appurtenant to the following, described land of the plaintiff, viz:

SW $\frac{1}{4}$ of NE $\frac{1}{4}$; NW $\frac{1}{4}$ of SE $\frac{1}{4}$; SE $\frac{1}{4}$ of NW $\frac{1}{4}$; NE $\frac{1}{4}$ of SW $\frac{1}{4}$, Section 27; SE $\frac{1}{4}$ of NE $\frac{1}{4}$; NE $\frac{1}{4}$ of SE $\frac{1}{4}$; Lots 4, 5, 8, and 9, all in Section 28; Lots 1, 4, 5, and 8; SE $\frac{1}{4}$ of SE $\frac{1}{4}$, all in Sec. 33; Lots 1, 2, 5, 4, 5, and 7; SE $\frac{1}{4}$ of NW $\frac{1}{4}$; NE $\frac{1}{4}$; NE $\frac{1}{4}$ of NW $\frac{1}{4}$, all in Sec. 34; SE $\frac{1}{4}$ of NW $\frac{1}{4}$ and NW $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 35, all in Township 7 South, Range 13 E. B. M. Terrace Bar, Big Foot Bar, Union Bar and Comstock Placer Mining Claims according to plat of Mineral survey No. 1, Lot 37, filed in U. S. Land Office at Hailey, Idaho, November 20, 1884; Starr Hunt, Jack Rabbitt and Fractional Terrace Bar Placer Mining Claims according to plat of mineral survey No. 801, Lot 38, filed in U. S. Land Office at Hailey, Idaho, January 2, 1890; all in Township 7 South, Range 13, E. B. M. All islands in Snake River South of said Section 33, Township 7 South, Range 13 E. B. M., excepting tracts 16, 27, 37, 124, and 125 of Map of Buckeye Ranch recorded in Book 1 of Plats, page 44, in the office of the County Recorder of Lincoln County, Idaho.

IT IS FURTHER ORDERED, ADJURED, AND DECREED, That said plaintiff may, and is hereby given the right to, change its point of diversion of the waters diverted from Billingsley Creek at the point of diversion hereinbefore described and set out to that certain point of diversion on Riley Creek heretofore designated and set out as the Tucker or Thompson Spring diversion, or elsewhere on Riley Creek;

WATER RIGHT ELEMENTS

1. Name and Address of Claimant: Doyt H. Simcoe and Roxie J. Simcoe
562 Sunrise Blvd. N.
Twin Falls, ID 83301
2. Source of Water: Billingsley Creek
3. Quantity of Water Used: .8 cfs
4. Date of Priority: September 10, 1884
5. Legal Description of the Point of Diversion: Township 7 South, Range 13 East, Boise Meridian, Section 11, SE1/4SE1/4NE1/4, Gooding County, Idaho
6. Purpose of Use: Irrigation; Diversion System Maintenance; Stockwater; Wildlife; Recreation; Aesthetics
7. Period of Year Water is used for such Purposes: Irrigation purpose is used during the irrigation season; All other purposes are used year around
8. Legal Description of the Place of Use: Irrigation: Township 7 South, Range 13 East, Boise Meridian, Section 27, NE1/4SW1/4
Other Purposes: Place of use is in each quarter section where there are irrigated acres and in the delivery system from the point of diversion to the property.
9. Annual Volume of Consumptive Use: 180 afa
10. Conditions on the Exercise of Water Right: None
11. Remarks necessary for Definition: None