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Claimants: Department of Water Resources
Adjudication Bureau

Richard D. Simon

Attorney Name and Address:

HEPWORTH, LEZAMIZ & HOHNHORST,
CHARTERED
133 Shoshone St. North
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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. 36-00035J

)

Case No. 39576

)

AFFIDAVIT IN SUPPORT OF

)

MOTION FOR SUMMARY JUDGMENT

)

* * * * *

Richard D. Simon, being first duly sworn upon oath, deposes and says:

1. I, Richard D. Simon, 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 Edna N.
4 Clifford, Frances M. Clifford, Wm. H. Clifford, Howard F. Clifford, Richard O. Clifford,
5 Doyle O. Clifford, Milton L. Clifford, Elvira E. McCorkle and Ethel C. Smith, to whom the
6 right was decreed in the case of *New International Mortgage Bank v. Idaho Power*
7 *Company, et al*, Equity No. 1602, in the District Court of the United States, for the District
8 of Idaho, Southern Division.

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

13 5. Attached to this affidavit as Exhibit "B" and incorporated into it is a
14 duplicate of the portion of the *New International Mortgage Bank* decree which shows the
15 water right I acquired through Edna N. Clifford, Frances M. Clifford, Wm. H. Clifford,
16 Howard F. Clifford, Richard O. Clifford, Doyle O. Clifford, Milton L. Clifford, Elvira E.
17 McCorkle and Ethel C. Smith.

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

7. I have never intended to abandon my right or any part of it. I do not believe that any of my predecessors in interest to the right intended to, or did abandon the water right or any part of it. Since I have owned the water right, there has not been a continuous five-year period of nonuse. I understand and believe that there has never been a continuous five-year period of nonuse of the right.

Dated May 7, 1996.

Melinda V. Bunn
Richard D. Simon by Melinda V. Bunn

Subscribed and Sworn to before me this 17th day of May, 1996.

John C. Repworth
Notary Public for Idaho
Residing at: Twin Falls, Idaho
My Commission Expires: 1-11-97

WARRANTY DEED

For Value Received

HELMA MONIKA MUELLER DROWN, also known as
 HELMA MONIKA DROWN, formerly known as HELMA MONIKA MUELLER, also shown of record as
 MONICA MUELLER, a married woman dealing with her sole and separate property,
 Hereinafter called the Grantor, hereby grants, bargains, sells and conveys unto

RICHARD D. SIMON, a married man as his sole and separate property

Whose address is: 2795A South 900 East, Hagerman, Idaho 83332

Hereinafter called the Grantee, the following described premises situated in Gooding County, Idaho,
 to-wit:

See Exhibit "A" Attached consisting of two (2) pages.

RDS

TO HAVE AND TO HOLD, the said premises, with their appurtenances unto the said Grantee
 and to the successors heirs and assigns of the Grantee forever. The Grantor does hereby covenant to
 and with the said Grantee, that the Grantor is the owner in fee simple of said premises; that they are
 free from all incumbrances except as above described and that Grantor will warrant and defend the
 same from all lawful claims whatsoever.

Dated: June 29, 1995

Helma Monika Mueller Drown
 HELMA MONIKA MUELLER DROWN Drown

STATE OF IDAHO, COUNTY OF Gooding

On this 29th day of June, 1995,
 before me, a notary public in and for said State, per-
 sonally appeared

Helma Monika Mueller Drown

known to me to be the person whose name is
 subscribed to the within instrument, and acknowledged
 to me that she executed the same.

Sheila M. Shepard
 Notary Public

Residing at
 Commission expires: 8-21-99

Buhl, Idaho.

161780

STATE OF IDAHO COUNTY OF GOODING

Filed for record at the request of Land Title & Escrow

56 min. past 2 o'clock P.M. this 29

of June, 1995 9:00

HELEN A. PAOLI, Recorder

Christa Sides Deputy

PARCEL NO. 1

TOWNSHIP 7 SOUTH, RANGE 13 EAST OF THE BOISE MERIDIAN,
GOODING COUNTY, IDAHO

Section 27: A tract of land in the NWNE $\frac{1}{4}$ of said Section, described as follows:

Beginning at the North quarter corner of said Section 27;
Thence North 89°52' East, along the North line of said Section
1433.75 feet to THE TRUE POINT OF BEGINNING;
Thence continuing North 89°52' East, 595.79 feet;
Thence South 13°42' West, 719 feet;
Thence South 89°18' West, 834.05 feet;
Thence North 27°13' East, 718.30 feet;
Thence North 49°29' East 105.20 feet to THE TRUE POINT OF
BEGINNING

TOGETHER WITH a perpetual easement for a road right of way, 30
feet wide, located in the SE $\frac{1}{4}$ of Section 22, Township 7
South, Range 13 East of the Boise Meridian, the centerline of
which is described as follows:

Beginning at the Southeast corner of said Section 22;
Thence North 250 feet along the East line of said Section 22
to THE TRUE POINT OF BEGINNING;
Thence West parallel to the South line of said Section 22 to
the East bank of the Big Bend Ditch;
Thence Southerly along the East bank of said Big Bend Ditch to
intersect the South line of said Section 22, which point is
South 89°52' West 590.70 feet from the Southeast corner of
Section 22.

PARCEL NO. 2

TOWNSHIP 7 SOUTH, RANGE 13 EAST OF THE BOISE MERIDIAN,
GOODING COUNTY, IDAHO

Section 22: SE $\frac{1}{4}$; EXCEPTING THEREFROM that part of the SE $\frac{1}{4}$ of said
Section 22, described as follows:

Beginning at the Northeast corner of said SE $\frac{1}{4}$;
Thence South along the East boundary of the SE $\frac{1}{4}$, 836.0
feet;
Thence West parallel with the North boundary of the SE $\frac{1}{4}$,
550.0 feet more or less to the centerline of the Big Bend
Irrigation Ditch as now constructed;
Thence Northerly along the centerline of the Big Bend
Irrigation Ditch, 836.0 feet more or less to the North
boundary of said SE $\frac{1}{4}$;
Thence East 550.0 feet to THE TRUE POINT OF BEGINNING.

Together with 12 shares of Big Bend water
Together with 20 shares of water from Buckeye Ditch and 19 shares of Big Bend
Ditch water.

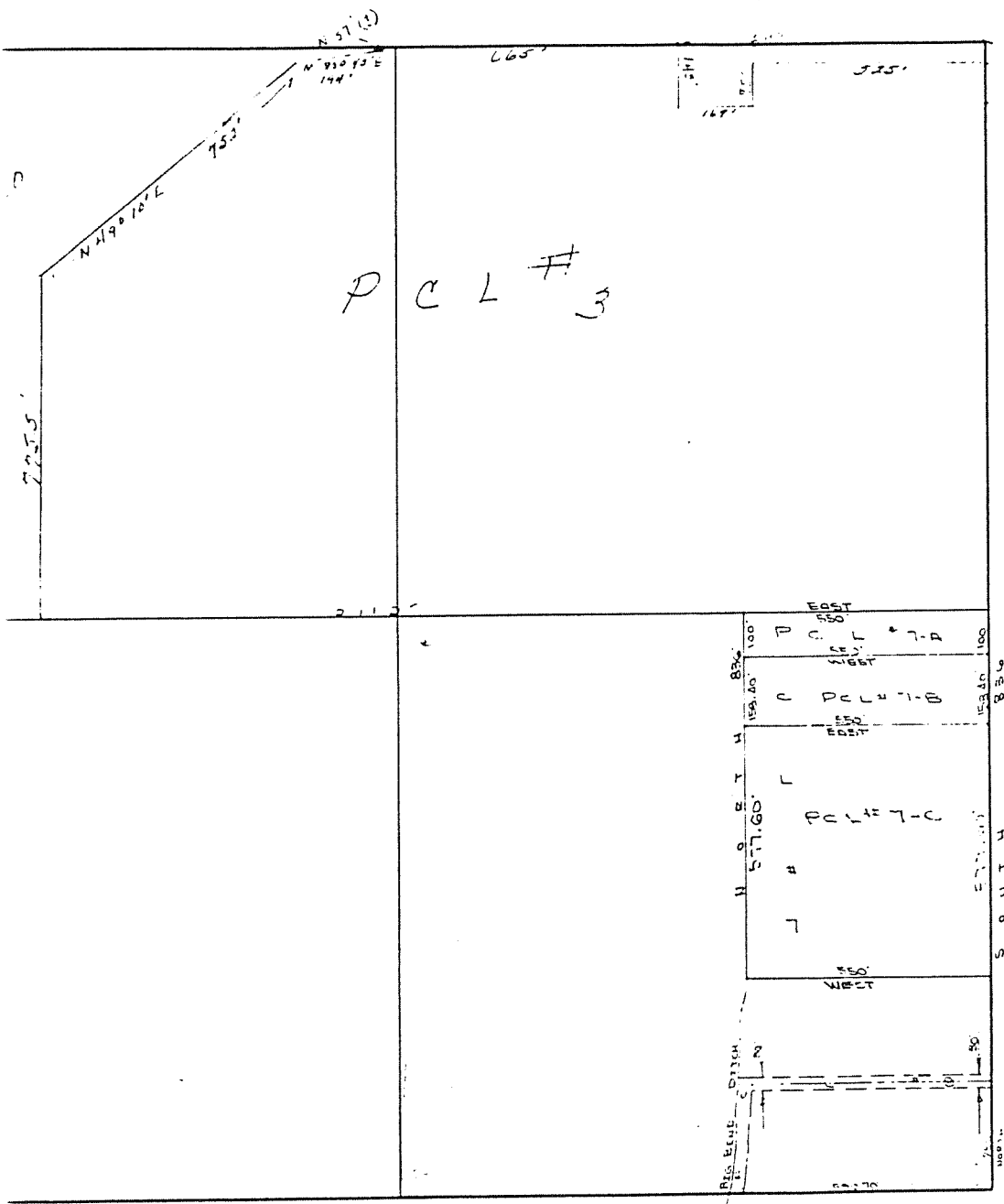
Continued...

TWP

S

RGE

EBM.



COUNTY

SEC.

27

TWP

7

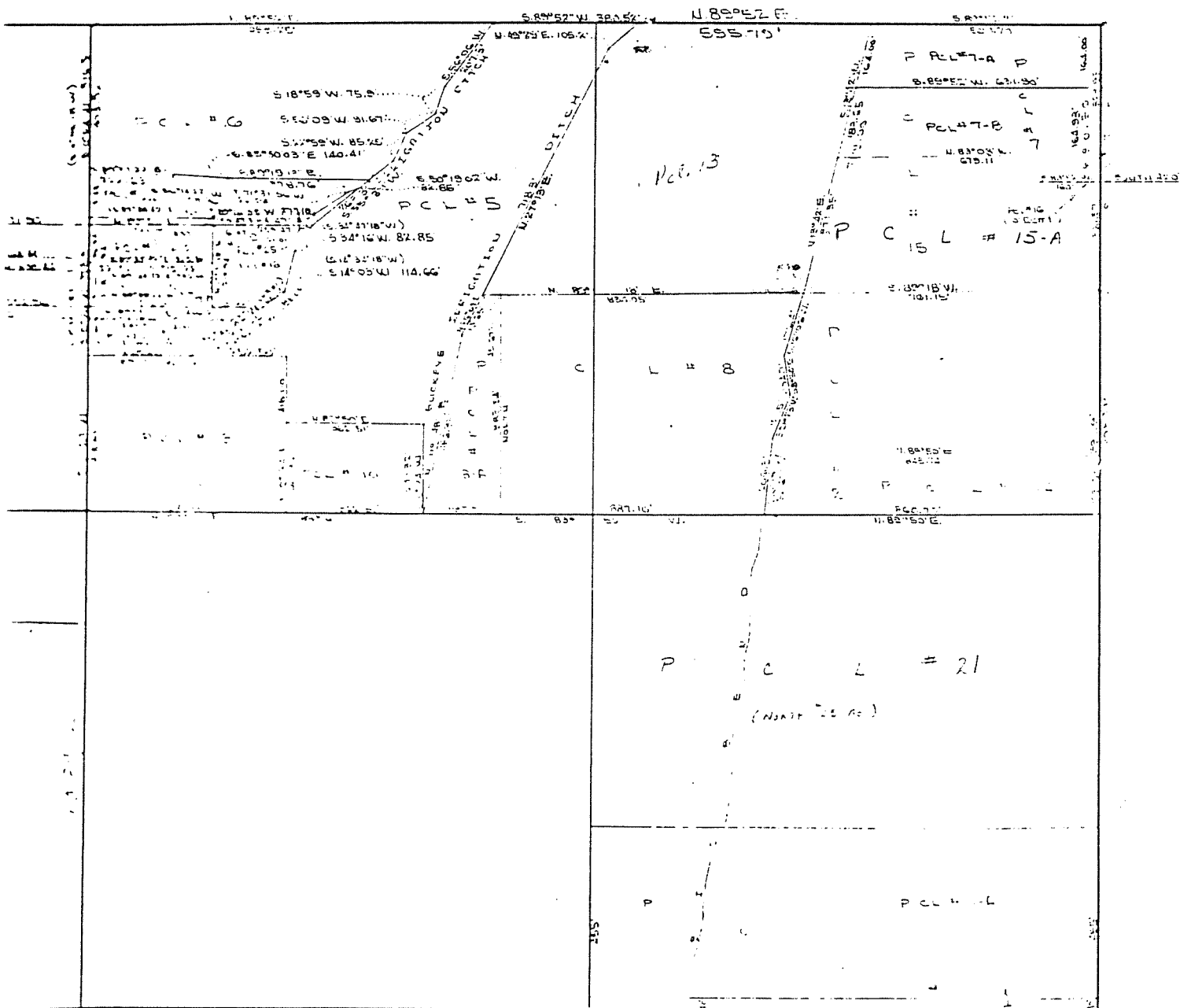
S

RGE

13

EBM.

NORTH
HALF



(x PCL # 7 pt PCL # 1)

PCL # 4 includes PCL # 9 + PCL # 17 which is pt. of PCL # 9

NAME	AMOUNT OF WATER IN SECOND FEET AND SOURCE	PRIORITY OF APPROPRIATION	DIVERSION POINT
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SE of the NE $\frac{1}{4}$ of the NW $\frac{1}{4}$ (or Lot 3), Sec. 1, Twp. 6
S. R. 13 E. B. M.

CLIFFORD, EDNA K.,	3. Spring	March 8, 1902	Weatherby Springs;
FRANCES	1.5 Billingsley Creek	March 30, 1884	E.M. Bell Ditch;
M. CLIF- FORD, WIL.	1.6 Billingsley Creek	Sept. 10, 1884	Buckeye Ditch;
H. CLIF- FORD, HOW-	NW $\frac{1}{4}$ of the NE $\frac{1}{4}$, E $\frac{1}{2}$ of the NE $\frac{1}{4}$ and the NE $\frac{1}{4}$ of the SE $\frac{1}{4}$, of Sec. 27, and the SE $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Sec. 22, Twp. 7		
AND F. CLIF- FORD, RICH-	S. R. 13 E. B. M.		
AND C. CLIF- FORD, DOYLE	.5 Billingsley Creek	April 1, 1908	Sand's Ditch;
G. CLIFFORD, MILTON L. CLIFFORD, ELVIRA E. McCORKLE, ETHEL C. SMITH	3 Billingsley Creek	April 1, 1880	Two Clifford Ditches and flume;

appurtenant to the following land;

(The diversion point of one Clifford ditch is 150 feet below the diversion point of said Sand's Ditch, the other 550 ft. below the diversion point of said Sand's Ditch and the flume 450 ft. below the diversion point of Sand's Ditch, all on the north side of Billingsley Creek.)

All of the SE $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Sec. 11, Twp. 7 S. R. 13 E. B. M. and that portion of Lots 2 and 3 in said section 11 bounded and described as follows:
Commencing at the quarter corner between Secs. 2 and 11, Twp. 7 S. R. 13 E. B. M., thence west along the section line between said Sections 374.3 feet; thence south 15 degrees 48' east 70 feet; thence south 5 degrees 7' west 63 feet; thence south 13 degrees 29' east 33 feet; thence south 25 degrees 35' east 44 feet; thence south 25 degrees 35' east 243.5 feet; thence south 27 degrees 43' west 323 feet; thence south 35 degrees 53' west 13.4 feet to a point (which said point is south 25 degrees 45' west 823.7 feet

NAME	AMOUNT OF WATER IN SECONDS FEET AND SOURCE	PRIORITY OF APPROPRIATION	DIVERSION POINT
	from the said quarter corner first above mentioned and is 729 feet south of the section line between said sections 2 and 11); thence north 80 degrees 28' west 949 feet to a point (which point is 573.8 feet south of a point on the section line between said sections 2 and 11 in said Twp. and Range aforesaid 1330 feet west from the said quarter corner between sections 2 and 11 first above mentioned;) thence north 80 degrees 28' west 199.1 feet to a point; thence South 23 degrees 40' west about 2269 feet to a point 290 feet east from the quarter corner on the west boundary line of section 11, Twp. 7 S. R. 13 E. B. M.; thence east along the south boundary line of Lot 3 of said Section 11 to the southeast corner of said Lot 3; thence north along the east boundary line of said Lot 3 to the northeast corner thereof; thence east along the south boundary line of Lot 2, in said section 11 to the southeast corner of said Lot 2; thence north along the east boundary line of said Lot 2 to the place of beginning.		
CONDIT, JAMES E. AND JENNIE M. CONDIT	.5 Spring	April 1, 1930	Muitt Spring (Said Muitt Spring is located on the SE $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Sec. 19, Twp. 7 S. R. 14 E. B. M.) The NW $\frac{1}{4}$ of the SW $\frac{1}{4}$ (also known as Lot 3) of Section 19, Twp. 7 S. R. 14 E. B. M.
DILATUSH, E. W., AND ALICE I. DILATUSH, AND CHARLES C. CAREY	2.4 Billingsley Creek .3 Spring	Jan. 2, 1891 Jan. 2, 1891	Granger Ditch Unnamed Spring (Said unnamed spring arises in the SE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Sec. 11, Twp. 7 S. R. 13 E. B. M. at a point 1035 feet north 2 degrees 2' west from the southeast corner of said tract of land. That the point of diversion of said Granger Ditch is on the bank of Billingsley Creek about 100 feet below the diversion point of said Buckeye Ditch and from the diversion point of said Granger Ditch the quarter section corner common to secs. 11 and 12 Twp. 7 S. R. 13 E. B. M. bears south 31 degrees 27' east a distance of 833.4 ft. Beginning at the southeast corner of the NW $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Sec. 11, Twp. 7 S. R. 13 E. B. M.; thence west along the forty line 1075'; thence north 20 degrees 49' east 820 feet; thence north 24 degrees 34' east 450 feet; thence south 81 degrees 26' east 593 feet to the east forty line, thence south along the forty line 1122 feet to the point of beginning.
ELIASON, ARMEDIA	.8 Spring .4 Spring	Dec. 12, 1901 April 4, 1910	Weatherby Springs; (Hoagland Tunnel) Weatherby Springs; The NW $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Sec. 36, Twp. 7 S. R. 13 E. B. M. excepting therefrom, however, the following described tract of land: Beginning at the quarter corner between Sections 25 and 36 of said township and range, running thence east 399 feet to the center of the public highway, thence in a southwesterly direction in the center of said highway 278 feet, thence westerly along the north bank of the Clifford Ditch 370 feet, to the west boundary line of said NW $\frac{1}{4}$ of the NE $\frac{1}{4}$ of said Section 36, thence north along said west boundary line 257 feet to the point of beginning, said tract of land excepted containing 2.3 acres, more or less, and the property herein described containing 37.8 acres, more or less.

WATER RIGHT ELEMENTS

1. Name and Address of Claimant:
Richard D. Simon
2795-A South 900 East
Hagerman, ID 83332
2. Source of Water:
Billingsley Creek
3. Quantity of Water Used:
.4 cfs
4. Date of Priority:
March 30, 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 22, SE1/4SE1/4 - 12 acres
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:
54 afa
10. Conditions on the Exercise of Water Right:
None
11. Remarks necessary for Definition:
None