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1 Claimants:

Howard L. Morris and Rhonda K. Morris

Department of Water Resources
Adjudication Bureau

2 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

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7 IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
8 STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS
9

10 * * * * *

11 In Re SRBA

) Subcase No. 36-00062

)

12 Case No. 39576

) AFFIDAVIT IN SUPPORT OF
) MOTION FOR SUMMARY JUDGMENT
)

13
14 * * * * *

15 Howard L. Morris, being first duly sworn upon oath, deposes and says:

16 1. I, Howard L. Morris, am a claimant of a previously decreed water right,
17 which is the water right before the Court in this subcase. I make the foregoing and
18 following statements in this affidavit based on my personal knowledge and beliefs and I am
19 otherwise competent to testify regarding those statements.

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

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 L.W.
4 Hoffman and Mrs. L.W. Hoffman, 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 L.W. Hoffman and Mrs. L.W. Hoffman.

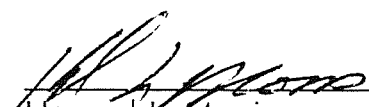
14 6. My water right has been used and exercised on the real property
15 identified in Exhibit "A" and which is also identified in Exhibit "B". The purposes for which
16 that right has been used and is being used are set forth in the attached Exhibit "C," along
17 with the periods and places of use and 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

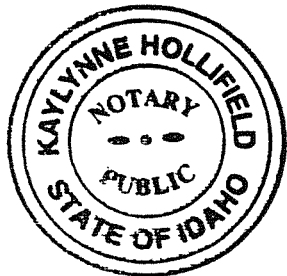
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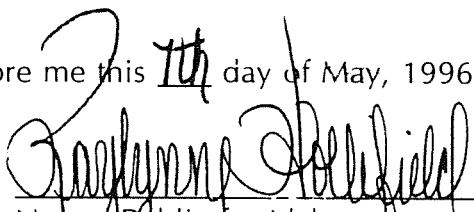
continuous five-year period of nonuse. I understand and believe that there has never been
a continuous five-year period of nonuse of the right.

Dated May 7, 1996.


Howard L. Morris

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




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

WARRANTY DEED

For Value Received

J. ALVIN MUSSER and HOPE I. MUSSER, husband and wife
the grantors, do hereby grant, bargain, sell and convey unto

HOWARD L. MORRIS and RHONDA K. MORRIS, husband and wife
the grantees, whose current address is Route #1, Hagerman, Idaho 83332

the following described premises, in Gooding County Idaho, to-wit:

"SEE ATTACHED EXHIBIT A"
(Consisting of 1 Page)

Alvin Musser
Hope I. Musser
6/13

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

and that t he y will warrant and defend the same from all lawful claims whatsoever.

Dated: December 1, 1987

J. Alvin Musser
J. Alvin Musser
Hope I. Musser
Hope I. Musser

STATE OF IDAHO, COUNTY OF GOODING

On this 1st day of December, 19 87
before me, a notary public in and for said State, personally
appeared

J. Alvin Musser
Hope I. Musser

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

Deanna L. Long
Notary Public

Residing at Gooding, Idaho
Comm. Expires 8/1/93

STATE OF IDAHO, COUNTY OF

I hereby certify that this instrument was filed for record at the request
of

at _____ minutes past _____ o'clock m.,
this _____ day of _____
19 _____, in my office, and duly recorded in Book _____
of Deeds at page _____

Ex-Officio Recorder

By _____ Deputy

Fees \$ _____
Mail to _____



First American Title Company of Idaho

INSTRUMENT NO.

"EXHIBIT A"

TRACT I:

Township 7 South, Range 14 East of the Boise Meridian
Section 31: All of Lots 1 and 2 South of the North Bank
of John Curran Irrigation Ditch.

Township 7 South, Range 13 East of the Boise Meridian
Section 36: NW $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$,

S $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$,

SE $\frac{1}{4}$ NE $\frac{1}{4}$,

W $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$,

NW $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ and

That part of the SW $\frac{1}{4}$ NE $\frac{1}{4}$ described as

follows:

Beginning at the Southeast corner of the

SW $\frac{1}{4}$ NE $\frac{1}{4}$;

thence West 330 feet;

thence North 495 feet;

thence East 330 feet;

thence South 495 feet to the place of beginning.

Except strip of land for highway purposes across
the NE $\frac{1}{4}$ NE $\frac{1}{4}$ said Sec. 36, as set forth in Deed to
State of Idaho, recorded June 21, 1938 in Book 30
Deeds Page 103, records of Gooding County, Idaho.

TRACT II:

Township 7 South, Range 13 East of the Boise Meridian
Section 36: North 165 feet of the E $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$

IN THE COUNTY OF GOODING, STATE OF IDAHO

Together with all water and water rights, ditches and ditch rights used
thereon or appurtenant thereto including but not limited to water licenses
36-0061, 36-0062, and 36-0063.

NAME	AMOUNT OF WATER IN SECOND FEET AND SOURCE	PRIORITY OF APPROPRIATION	DIVERSION POINT
	.28 Spring	May 1, 1913	Weatherby Springs;
	.8 Spring	Nov. 1, 1915	Weatherby Springs;
SE$\frac{1}{4}$ of the NE$\frac{1}{4}$ of Sec. 36, S$\frac{1}{2}$ of the NE$\frac{1}{4}$ of the NE$\frac{1}{4}$, NW$\frac{1}{4}$ of the NE$\frac{1}{4}$ of the NE$\frac{1}{4}$, Sec. 36, SE$\frac{1}{4}$ of the SW$\frac{1}{4}$ of the NE$\frac{1}{4}$, of Sec. 78, E$\frac{1}{2}$ of the SW$\frac{1}{4}$ of the SW$\frac{1}{4}$ of NE$\frac{1}{4}$, of Sec. 36, and NE$\frac{1}{4}$ of the SE$\frac{1}{4}$, all in Sec. 36, Twp. 7 S. R. 13 E. B. M. Also that portion of Lot 2 Sec. 31, Twp. 7 S. R. 14 E. B. M. more particularly described as follows: "Beginning at the southwest corner of said Lot 2, thence running north on the Section line about 80 rods to the north bank of John Curran's irrigation ditch; thence east along said ditch bank about 90 rods to the east line of said Lot 2; thence south along said line about 80 rods to the southeast corner of said Lot 2; thence west along the south line of said Lot 2, about 80 rods to the point of beginning; The entire above tract contains 157.85 acres.			
HOMES, GER- TRUDE, AND BEN HOMES	6.6 Billingsley Creek	Sept. 10, 1884	Buckeye Ditch
Starting at the NW corner of NE$\frac{1}{4}$NW$\frac{1}{4}$ of Sec. 33, Twp. 7 S. R. 13 E. B. M. first corner and running due east 804 feet to 2nd corner; thence due south 234 feet to third corner; thence due east 228 to fourth corner; thence due South 65 rods 13 feet to fifth corner; thence due west 1032 feet to sixth corner; thence about due north 80 rods to starting point, said tract containing about 30 acres of land except 7/12ths of an acre lying east of the Dilatash Ditch located in the northeast corner of the above described tract; and the NW$\frac{1}{4}$ of the NW$\frac{1}{4}$ of Sec. 23, Twp. 7 S. R. 13 E. B. M.; containing in both forties approximately 70 acres of land.			
JENSEN, J. H., AND MRS. J. H. JENSEN	.7 Billingsley Creek	Sept. 10, 1884	Buckeye Ditch
	1.4 Billingsley Creek	April 1, 1885	Sands Ditch
	.5 Billingsley Creek	March 30, 1884	E.H. Bell Ditch
NE$\frac{1}{4}$ of the NW$\frac{1}{4}$ of Sec. 14, Twp. 7 S. R. 13 E. B. M. Excepting therefrom the following described tract of land: Beginning at the southeast corner of the NW$\frac{1}{4}$ of the NW$\frac{1}{4}$, Sec. 14, Twp. 7 S. R. 13 E. B. M.; thence west along the south boundary thereof 286 feet; thence in a northeasterly direction along the Dilatash water ditch 671 feet; thence east 115 feet to the east boundary line of the said NE$\frac{1}{4}$ of the NW$\frac{1}{4}$; thence south along the east boundary line thereof to the southeast corner of the said NE$\frac{1}{4}$NW$\frac{1}{4}$, the place of beginning. Also that part of the Southeast Quarter of the Northwest Quarter (SE$\frac{1}{4}$NW$\frac{1}{4}$) Section 14, Twp. 7 S. R. 13 E. B. M., Tax No. 25, described as follows: Beginning at the northwest corner of the SE$\frac{1}{4}$ of the			

NAME	AMOUNT OF WATER IN SECOND FEET AND SOURCE	PRIORITY OF APPROPRIATION	DIVERSION POINT
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feet; thence West along the north boundary line of said SE $\frac{1}{4}$ of the SE $\frac{1}{4}$ of said Section, Township and Range 832 feet to the point of beginning.

Also:

All that portion of the NW $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Sec. 2, Twp. 7 S. R. 13 E. B. M. lying north and east of the state highway, known as the "Old Oregon Trail," as now laid out and existing across said subdivision of land. The lands herein conveyed being a triangular shape tract situate in the northeasterly portion of the said NW $\frac{1}{4}$ of the SE $\frac{1}{4}$ of said section, township and range aforesaid.

Also:

That certain part or portion of the NW $\frac{1}{4}$ of the SE $\frac{1}{4}$ of section 2, in Twp. 7 S. R. 13 E. B. M. more particularly described as follows, to-wit: Beginning at a point on the southeast corner of the said NE $\frac{1}{4}$, running thence west to a point on the southwest corner of the said NE $\frac{1}{4}$, thence North to a point 321 feet and 9 inches south from the Northeast corner of the said NE $\frac{1}{4}$, thence due east to a point on the east boundary line of said NE $\frac{1}{4}$ distant 321 feet and 9 inches south from the northeast corner of said NE $\frac{1}{4}$, thence due south to the place of beginning..

Also:

Beginning at a point 107 feet 3 inches south of the northeast corner of the NE $\frac{1}{4}$ of the SE $\frac{1}{4}$, Sec. 2, Twp. 7 S. R. 13 E. B. M. thence running south 214 ft. 6 inches, thence west 80 rods, thence north 214 feet 6 inches, thence east 80 rods to the point of beginning.

.4 Billingsley Creek June 26, 1881 John Bell Ditch;
.4 Unnamed Springs June 26, 1881 2 Unnamed Springs;

(Said Two Unnamed Springs arise on the land described immediately hereafter.)

appurtenant to

That certain tract of land more particularly described as follows, to-wit:

Beginning at a point on the first standard parallel south 2832 links west from the northeast corner of Sec. 2, Twp. 7 S. R. 13 E. B. M. and running thence west along said standard parallel 1168 links, thence south along western boundary of Lot 2, same section and range, 1032 links, thence east parallel to first course 1163 links, thence north parallel to second course 1032 links, to point of beginning, all in Lot 2, Sec. 2, Twp. 7 S. R. 13 E. B. M.

WATER RIGHT ELEMENTS

1.	Name and Address of Claimant:	Howard L. Morris and Rhonda K. Morris 1101 East 2900 South Hagerman, ID 83332
2.	Source of Water:	Weatherby Springs
3.	Quantity of Water Used:	.28 cfs
4.	Date of Priority:	May 1, 1912
5.	Legal Description of the Point of Diversion:	Township 7 South, Range 14 East, Section 30, SE1/4NE1/4SW1/4, Gooding County, Idaho
6.	Purpose of Use:	Irrigation; Diversion System Maintenance; Stockwater; Wildlife; Recreation; Aesthetics; Domestic
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, Section 36, NE1/4NE1/4 - 30 acres Township 7 South, Range 13 East, Section 36, SW1/4NE1/4 - 5 acres Township 7 South, Range 13 East, Section 36, SE1/4NE1/4 - 40 acres Township 7 South, Range 13 East, Section 36, NE1/4SE1/4 - 15 acres Township 7 South, Range 14 East, Section 31, NW1/4NW1/4 - 5 acres Township 7 South, Range 14 East, Section 31, SW1/4NW1/4 - 30 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:	562.5 afa
10.	Conditions on the Exercise of Water Right:	None
11.	Remarks necessary for Definition:	None