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Claimants: Department of Water Resources
Adjudication Bureau

Michael J. Fleming

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. 36-00064B

)

Case No. 39576

) AFFIDAVIT IN SUPPORT OF
) MOTION FOR SUMMARY JUDGMENT
)

* * * * *

Michael J. Fleming, being first duly sworn upon oath, deposes and says:

1. I, Michael J. Fleming, 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.

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 Gertrude
4 Homes and Ben Homes, to whom the right was decreed in the case of *New International*
5 *Mortgage Bank v. Idaho Power Company, et al*, Equity No. 1602, in the District Court of
6 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 Gertrude Homes and Ben Homes.

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 ____, 1996.

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Michael J. Fleming

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

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Notary Public for Idaho

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Residing at: _____

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My Commission Expires: _____

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This WARRANTY DEED made this 22 day of March 19 71
between

Geo. H. Lemmon and Irene E. Lemmon, husband & wife,

of Hagerman County of Gooding State of Idaho
hereinafter referred to as "grantor", and

Michael J. Fleming

of Bliss County of Gooding State of Idaho
hereinafter referred to as "grantee".

WITNESSETH that grantor, for and in consideration of the sum of—

Thirty-five thousand and no/100 (\$35,000.00)..... dollars,

in lawful money of the United States, to grantor in hand paid by grantee, the receipt of which is hereby acknowledged,
has granted, bargained and sold, and by these presents does grant, bargain, sell, convey and confirm unto grantee,
and to grantee's heirs and assigns forever, all of the following described property situate in Gooding County,
State of Idaho:

TOGETHER with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in any-
wise appertaining, the reversion and reversions, remainder and remainders, 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 grantor.

TO HAVE AND TO HOLD all and singular the above mentioned and described premises, together with the
appurtenances, unto the grantee, and to the grantee's heirs and assigns forever. And the grantor, and the grantor's
heirs, the said premise in the quiet and peaceable possession of the grantee, and the grantee's heirs and assigns,
against the grantor, and the grantor's heirs, and against all and every person and persons whomsoever lawfully claim-
ing the same, shall and will WARRANT and by these presents forever DEFEND.

IN WITNESS WHEREOF, the grantor has subscribed this deed the day and year first above written.

Geo. H. Lemmon
Irene E. Lemmon
Grantor

Township 7 South, Range 13 East of the Boise Meridian

Section 23: N $\frac{1}{2}$ NW $\frac{1}{4}$ except the following described tracts:

a. Blocks E and F, Plat of Hagerman, according to the plat thereof on file in the office of the County Recorder of Gooding County, Idaho, described as follows:

Beginning at the NE corner of NE $\frac{1}{4}$ NW $\frac{1}{4}$;

thence West along the North line of NE $\frac{1}{4}$ NW $\frac{1}{4}$

521.4 feet;

thence South parallel with the East line of

NE $\frac{1}{4}$ NW $\frac{1}{4}$ 233.89 feet;

thence East parallel with the North line of

NE $\frac{1}{4}$ NW $\frac{1}{4}$ 521.4 feet to the East line of said tract;

thence North along said East line 233.89 feet

to the point of beginning.

b. East 295 feet of the NE $\frac{1}{4}$ NW $\frac{1}{4}$ (except the Plat of Hagerman):

c. Beginning at a point 234 feet South of

the NE corner of the NE $\frac{1}{4}$ NW $\frac{1}{4}$;

thence West 295 feet along the South line of

the Original Plat of Hagerman, the true point of beginning;

thence South parallel with the East line of the

NE $\frac{1}{4}$ NW $\frac{1}{4}$, 230 feet more or less to a ditch;

thence Northwesterly along said ditch to the

intersection with the South line of the Plat of Hagerman;

thence East along the South line of said Plat

of Hagerman, to the point of beginning.

d. Beginning at the NE corner of the NW $\frac{1}{4}$ NW $\frac{1}{4}$;

thence South along East line of the NW $\frac{1}{4}$ NW $\frac{1}{4}$

170 feet;

thence West parallel with the said North line

of the NW $\frac{1}{4}$ NW $\frac{1}{4}$, 420 feet;

thence North parallel with the East line of

said tract, 170 feet to the North line of the NW $\frac{1}{4}$ NW $\frac{1}{4}$;

thence East along said North line 420 feet

to the point of beginning.

e. An 80 foot wide right-of-way located in the NW $\frac{1}{4}$ NW $\frac{1}{4}$, Section 23, Township 7 South, Range 13 E.B.M., Gooding County, Idaho centered on a survey line described as follows:

From the section corner common to Sections 14, 15, 22, 23 Township 7 South, Range 13 E.B.M., a distance of 405 feet Southerly along the West section line of said Section 23 to the point of beginning;

From this point of beginning, a distance of 347 feet on a bearing of S 18° 46' E;

thence a distance of 506.58 feet along a curve to the right with a central angle of 38° 30', a radius of 753.90 feet and a tangent of 263.28 feet;

thence a distance of 94.4 feet on a bearing of S 19° 44' W to a point on the North line of SW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 23, that is 83 feet Easterly from the Northwest corner of SW $\frac{1}{4}$ NW $\frac{1}{4}$ of said Section 23.

Also

A 50 foot wide right-of-way located in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 23, Township 7 South, Range 13 E.B.M., Gooding County, Idaho, centered on a survey line described as follows:

From the section corner common to Sections 14, 15, 22, 23 Township 7 South, Range 13 E.B.M., a distance of 885 feet Southerly along the West section line of said Section 23 to the point of beginning;

From this point of beginning, a distance of 50 feet on a bearing of N 31° 44' E;

thence a distance of 60 feet on a bearing of N 46° 44' E;

thence a distance of 30 feet on a bearing of N 71° 14' E to the intersection with the Westerly edge of an 80 foot wide right-of-way, and together with all appurtenances, including, but not limited to water rights and ditches."

NAME	AMOUNT OF WATER IN SECOND FEET AND SOURCE	PRIORITY OF APPROPRIATION	DIVERSION POINT
	.23 Spring	May 1, 1913	Weatherby Springs;
	.8 Spring	Nov. 1, 1915	Weatherby Springs;
SE$\frac{1}{4}$ of the NW$\frac{1}{4}$ of Sec. 33, S$\frac{1}{2}$ of the NW$\frac{1}{4}$ of the NE$\frac{1}{4}$, NW$\frac{1}{4}$ of the NE$\frac{1}{4}$ of the NW$\frac{1}{4}$, Sec. 33, SE$\frac{1}{4}$ of the SW$\frac{1}{4}$ of the NE$\frac{1}{4}$, of Sec. 73, E$\frac{1}{2}$ of the SW$\frac{1}{4}$ of the SW$\frac{1}{4}$ of NE$\frac{1}{4}$, of Sec. 33, and NE$\frac{1}{4}$ of the SE$\frac{1}{4}$, all in Sec. 33, 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 3, 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 80 rods to the east line of said Lot 3; thence south along said line about 80 rods to the southeast corner of said Lot 3; 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	5.6 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 Dilatush 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,	.7 Billingsley Creek	Sept. 10, 1884	Buckeye Ditch
J. H.,	1.4 Billingsley Creek	April 1, 1885	Sands Ditch
AND MRS.	.5 Billingsley Creek	March 30, 1884	E.M. Bell Ditch
J. H. JENSEN	NW$\frac{1}{4}$ 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 Dilatush 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		

WATER RIGHT ELEMENTS

- | | | |
|-----|---|---|
| 1. | Name and Address of Claimant: | Michael J. Fleming and Paul F. Fleming
Route No. 1, Box 7
Hagerman, ID 83332 |
| 2. | Source of Water: | Billingsley Creek |
| 3. | Quantity of Water Used: | 4.52 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 23, 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 23, NE1/4NW1/4, Gooding County, Idaho - 40 acres
Township 7 South, Range 13 East, Boise Meridian, Section 23, NW1/4NW1/4, Gooding County, Idaho - 11 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: | 229.5 afa |
| 10. | Conditions on the Exercise of Water Right: | None |
| 11. | Remarks necessary for Definition: | None |