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Claimants: Department of Water Resources
Adjudication Bureau

Dale E. Boyer and Elaine Boyer

Attorney Name and Address:

HEPWORTH, LEZAMIZ & HOHNHORST,
CHARTERED
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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. 36-00079

)

) AFFIDAVIT IN SUPPORT OF

Case No. 39576

) MOTION FOR SUMMARY JUDGMENT

)

* * * * *

Elaine Boyer, being first duly sworn upon oath, deposes and says:

1. I, Elaine Boyer, 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 Daniel
4 Moore and Dorothy Moore, 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 Daniel Moore and Dorothy Moore.

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.

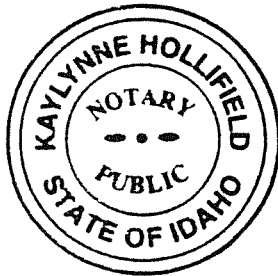
20 7. I have never intended to abandon my right or any part of it. I do not
21 believe that any of my predecessors in interest to the right intended to, or did abandon the
22 water right or any part of it. Since I have owned the water right, there has not been a
23

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 Eileen M. Boyer
5

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

This WARRANTY DEED made this 31 day of December, 1969,
between

Ethel Boyer, a widow,

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

Dale Boyer

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

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

Three thousand and no/100-----(\$3000.00) 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:

An undivided one-half interest in and to Lot 1
and Lot 2 of the Northeast Quarter of the
Southwest Quarter of Section 11, Township 7
South, Range 13 E.B.M.
Together with water right appurtenant thereto.

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.

Ethel F. Boyer

Grantor

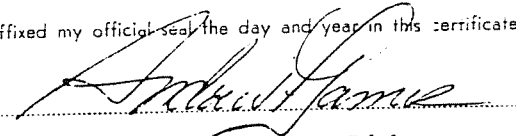
State of Idaho }
County of Gooding } ss.

On this 31 day of December, 1969, before me, the undersigned notary public in and for said state, personally appeared

Ethel Boyer

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 above written.


Notary public for the State of Idaho

Residing at Gooding, Idaho

Indexed..... Paged.....
in said state.

Indexed..... Paged.....
Proof read..... Corrected.....
No.....

WARRANTY DEED

to

State of Idaho, }
County of Gooding } ss.
I hereby certify that this instrument was
filed for record at the request of

at minutes past
o'clock M.

in my office and recorded in
Book Page
of the records of deeds.

County Recorder

By Deputy

Return to

REF: JAU28, HONDEY & SNOW

This block is provided by Gooding County to facilitate recording

of Sixty Nine Hundred and NO/100 ... DOLLARS
lawful money of the United States of America to them in hand paid by the said
part 1st of the second part, the receipt whereof is hereby acknowledged, he was granted, bargained and sold,
and by these presents do grant bargain and convey and confirm unto the said part 1st of the second
part, and to their heirs and assigns forever, all the following described real estate situate in Covington
County, State of Idaho to wit,

Robert L. Justice Ranch,
Lot One and Lot Two of the Northeast Quarter of
the Southwest Quarter of Section 11, Township 7
South, Range 13 E.R. M., according to the plat thereof
on file in the office of the County Recorder of Gooding
County, Idaho, together with water right appurtenant thereto.

TOGETHER with all and singular the tenements, hereditaments and appurtenances thereto belonging or in any way appertaining and the goods and chattels, lands and tenements, cash, issues and profits thereof, and all estate, right, title and interest in and to the said property or part thereof in equity, of the part of the said party.

TO HAVE AND TO HOLD the same unto the above named and described premises together with the accretions and the parcels of the premises and of their heirs and assigns forever. And the said part of the land and their heirs the said premises in the quiet and peaceable possession of the subjecting the premises their heirs and assigns against the said part for all the first part and their heirs and against all and every person and persons whomsoever lawfully claiming or to claim the same that and a WARRANT and by these presents forever DEFEND.

The WITNESS Witnessed the signature of the first party as follows: [Signature] "John
hand and used the day and year first above written

• Myrtlewood Rock Tunnel
Edward A. Tunnel.

TOGETHER with all and singular the tenements, buildinments and appurtenances thereto belonging or in any way appertaining, and the revenues and reverendies, 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 said part 108 of the first part: —

TO HAVE AND TO HOLD all and singular the above mentioned and described premises, together with the appurtenances, unto the part 108 of the second part, and to their heirs and assigns forever. And the said part 108 of the first part, and their heirs, the said premises to the quiet and peaceable possession of the said part 108 of the second part, their heirs, and assigns, against the said part 108 of the first part, and their heirs, and against all and every person and persons whatsoever, lawfully claiming or to claim the same and will WARRANT and by these presents forever DEFEND

IN WITNESS WHEREOF, the said part 108 of the first part in us, hereto set their hand & seal the day and year first above written.

Magdalena Leah French
Wilford R. French

STATE OF IDAHO.

County of Gooding

On this 27th day of May, in the year 1958, before me, the undersigned, a Notary Public

personally appeared Magdalena Leah French and Wilford French, husband and 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.

My commission expires Nov 1 1958



Hubert L. French
Notary Public in and for

the State of Idaho

residing at Gooding, Idaho

NAME	AMOUNT OF WATER IN SECOND FEET AND SOURCE	PRIORITY OF APPROPRIATION	DIVERSION POINT
MARSH, J. H., AND FLOSSIE MARSH	.5 Spring	July 1, 1916	Unnamed Spring; (Said Unnamed spring is located on the SW $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Sec. 19, Twp. 7 S. R. 14 E. B. M.) SE $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Sec. 19, Twp. 7 S. R. 14 E. B. M.
MOORE, DANIEL AND DOROTHY MOORE	1.4 Billingsley Creek	April 1, 1888	Sands Ditch Tax Nos. 9 and 10 in Sec. 11, Twp. 7 S. R. 13 E. B. M. containing approximately 10 acres in each tax number, a total of 20 acres.
NEAL, LOUIS, HARRY H. AND EFFIE M. NEAL, AND ALVA REED	2 Billingsley Creek 1 Billingsley Creek 2 Billingsley Creek .8 Spring	April 1, 1885 April 1, 1910 Jan. 2, 1891 Jan. 2, 1891	Sands Ditch Sands Ditch 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 1085 feet north 2 degrees 2' West from the southeast corner of said forty acre tract of land.) The SW $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Sec. 11, Twp. 7 S. R. 13 E. B. M. excepting approximately nine acres described as follows: Beginning at the Southeast Corner of the said Southwest Quarter of the SE $\frac{1}{4}$ of said Sec. 11, Thence north along the center of the Hagerman road 305.25 feet, thence North 80 degrees 55' West 807.5 feet, thence South 44 degrees 55' West 631.15 feet to the Quarter corner of the boundary line between Sections 11 and 14, thence due east to the place of beginning. Also the SE $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Sec. 11, Twp. 7 S. R. 13 E. B. M., excepting a strip of ground extending along the entire length of the south side of said SE $\frac{1}{4}$ of the SW $\frac{1}{4}$, which strip is 28 feet wide on the west and runs to a point at the east end, or the quarter corner of the above mentioned secs. 11 and 14, Twp. 7 S. R. 13 E. B. M.
MILES, LIBBIE	1.4 Len Lewis Spring	Sept. 1, 1889	Brailsford-Owens Ditch All that portion of the SW $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Sec. 36, Twp. 7 S. R. 13 E. B. M. lying west of the central channel of the "Brailsford Ditch," as now laid out and existing through said subdivision, which said tract of land contains approximately 7.17 acres of land and is more particularly bounded and described as follows, to-wit: "Commencing at the southwest corner of the SW $\frac{1}{4}$ of the NE $\frac{1}{4}$

WATER RIGHT ELEMENTS

1. Name and Address of Claimant: Dale E. Boyer and Elaine Boyer
P.O. Box 232
Hagerman, ID 83332
2. Source of Water: Billingsley Creek
3. Quantity of Water Used: 1.4 cfs
4. Date of Priority: April 1, 1888
5. Legal Description of the Point of Diversion: Township 7 South, Range 13 East, Boise Meridian, Section 11, SW1/4NE1/4, 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: Township 7 South, Range 13 East, Boise Meridian, Section 11, NE1/4SW1/4, Gooding County, Idaho; Irrigation - 20 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: 90.0 AFA
10. Conditions on the Exercise of Water Right: None
11. Remarks necessary for Definition: None