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Department of Water Resources
Adjudication Bureau

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1 Claimants:

Marilyn J. Miller

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

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

10 * * * * *

11 In Re SRBA

) Subcase No. 36-00085A

)

12 Case No. 39576

) AFFIDAVIT IN SUPPORT OF
) MOTION FOR SUMMARY JUDGMENT
)

14 * * * * *

15 Marilyn J. Miller, being first duly sworn upon oath, deposes and says:

16 1. I, Marilyn J. Miller, 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.

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 Mrs.
4 Florence Parrott, to whom the right was decreed in the case of *New International Mortgage*
5 *Bank v. Idaho Power Company, et al*, Equity No. 1602, in the District Court of the United
6 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 Mrs. Florence Parrott.

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.

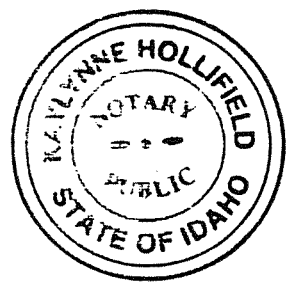
20 7. I have never intended to abandon my right or any part of it. I do not
21 believe that any of my predecessors in interest to the right intended to, or did abandon the
22 water right or any part of it. Since I have owned the water right, there has not been a
23

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 14, 1996.

4 Marilyn Miller
5 Marilyn Miller

6
7 Subscribed and Sworn to before me this 14 day of May, 1996.



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

WARRANTY DEED

For Value Received
 Beaudine L. Donaldson, Personal Representative of the Estate of
 Gloria May Hickok

Hereinafter called the Grantor, hereby grants, bargains, sells and conveys unto

David E. Waite, a single man, and Marilyn J. Waite, a single
 woman, (Brother and Sister) 2134 Highland Avenue East,
 Twin Falls, Idaho 83301

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

Real property situate in the County of Gooding,
 State of Idaho, more particularly described
 on Exhibit A, attached hereto and by this reference
 made a part hereof.

TO HAVE AND TO HOLD, the said premises, with their appurtenances unto the said Grantee and
 to the Grantee's heirs and assigns forever. And 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 incum-
 brances except as above described and that Grantor will warrant and defend the same from all lawful
 claims whatsoever.

Dated: this 8th day of April, 1980.

Beaudine L. Donaldson PR

STATE OF IDAHO, COUNTY OF Gooding
 On this 8th day of April, 1980
 before me, a notary public in and for said State, per-
 sonally appeared

Beaudine L. Donaldson, Representative
 of the Estate of Gloria May Hickok

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

Richard B. ...
 Notary Public

Residing at *Gooding*, Idaho.

Exhibit "A"

Township 7 South, Range 13 East of the Boise Meridian

Section 14: Part of the SE $\frac{1}{4}$ NW $\frac{1}{4}$, also being Part of A-62, A-83 and A-84, adjacent to the town 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 North quarter corner of said

Section 14;

thence S 0° 04' 37" W, 1926.38 feet along the centerline of said Section 14 and the centerline of State Street of said Townsite to it's intersection with the centerline of Valley Street;

thence N 89° 55' 23" W, 869.41 feet along the centerline of Valley Street;

thence N 0° 04' 37" E, 25.00 feet to a point on the Southerly boundary of said Lot A-83 and the True Point of Beginning;

thence N 0° 04' 37" E, 230.00 feet;

thence N 89° 55' 23" W, 260.71 feet to the

Northwesterly boundary of said Lot A-84;

thence N 26° 31' 16" E, 402.64 feet to the Northwest corner of said Lot A-83;

thence S 89° 29' 41" E, 412.31 feet along the northerly boundaries of said Lots A-83 and A-82 to the center of the Bell Ditch;

thence S 13° 14' 37" W, 618.24 feet to the Southerly boundary of said Lot A-83;

thence N 89° 55' 23" W, 138.13 feet along the Southerly boundary of said Lot A-83 to the True Point of Beginning.

IN THE COUNTY OF GOODING, STATE OF IDAHO -

Together with 10 shares of stock of Buckeye Water

NAME

AMOUNT OF WATER
IN SECOND FEET
AND SOURCEPRIORITY OF
APPROPRIATION DIVERSION POINT

of said section, township and range aforesaid; thence east along the south boundary of said subdivision 463 feet to the center of the said "Brailsford Ditch;" thence following the center channel of said ditch north 19 degrees 34' West 170 feet; thence north 48 degrees 14' West 165 feet; thence north 9 degrees 29' West 723 feet; thence north 20 degrees 15' West 330 feet to the northwest corner of said subdivision; thence south along the west boundary line of said subdivision 1330 feet to the place of beginning.

Also the SE $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Sec. 36, Twp. 7 S. R. 13 less the north 2 $\frac{1}{2}$ acres thereof now belonging to one W. C. Barton, said exception being that portion of said tract of land lying north of the public highway.

PARROTT,
MRS. FLOR-
ENCE,

1.2 Billingsley Creek Sept. 10, 1884 Buckeye Ditch;

A certain tract of land commencing 204.3 feet west of the southeast corner of Block No. 10 and continuing along said line west 195.7 feet to the southwest corner of said Block, thence north along said block line 269.3 feet to the northwest corner of said block; thence east along said block line 297 feet; thence in a south-westerly direction 287.7 feet to the point of beginning containing 1.32 acres more or less, all in Block No. 10, of the Townsite of Hagerman, according to the map or plat on file in the office of the Recorder of Gooding County, Idaho;

Also Lots 1 to 7 inclusive and 10 to 16 inclusive of Block 9, Lots 3, 4, 7, 10, 11, 12, 14, 15, 16, in Block 8, Lots 9, 10, 11, 12, 13, 14, 15, and 16 in Block 5 of Hagerman Townsite, according to the map or plat thereof on file in the office of the Recorder of Gooding County, Idaho.

PENFOLD,
JOHN T.,
AND EMMA
PENFOLD

2 Spring Feb. 1, 1888 Weatherby Springs;

The SE $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Sec. 25, Twp. 7 S. R. 13 E. B. M. and that portion of the NE $\frac{1}{4}$ of the SW $\frac{1}{4}$ of said Section 25, known as Tax No. 3, and more particularly described as follows, to-wit: Beginning at a point on the East line of the southwest quarter of Sec. 25, Twp. 7 S. R. 13 E. B. M. 1590 feet north of the southeast corner of said SW $\frac{1}{4}$ of Sec. 25, thence running north 34 degrees West 468 feet, thence North 20 degrees, west 685 feet to within 15 feet of the North boundary of said SW $\frac{1}{4}$ of Sec. 25, thence 89 degrees 18 minutes east 500 feet and thence south 1035 feet to the place of beginning.

PENFOLD,
PARLEY,
AND GRACE
PENFOLD

2.4 Billingsley Creek March 30, 1884 E.M. Bell Ditch
.4 Billingsley Creek Sept. 10, 1884 Buckeye Ditch

The NE $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Sec. 27, Twp. 7 S. R. 13 E. B. M.

WATER RIGHT ELEMENTS

1. Name and Address of Claimant:
Marilyn J. Miller
2134 Highland
Twin Falls, ID 83301
2. Source of Water:
Billingsley Creek
3. Quantity of Water Used:
.20 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 14, SE1/4NW1/4, Gooding County, Idaho; Irrigation - 4.3
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:
19.35
10. Conditions on the Exercise of Water Right:
None
11. Remarks necessary for Definition:
None