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Claimants: Department of Water Resources
Adjudication Bureau

Keith L. Fuell and Jolene Fuell

Attorney Name and Address:

HEPWORTH, LEZAMIZ & HOHNHORST,
CHARTERED
133 Shoshone St. North
P.O. Box 389
Twin Falls, ID 83303-0389
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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. 36-00086C

)

Case No. 39576

) AFFIDAVIT IN SUPPORT OF
) MOTION FOR SUMMARY JUDGMENT
)

* * * * *

Keith L. Fuell, being first duly sworn upon oath, deposes and says:

1. I, Keith L. Fuell, 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 John T.
4 Penfold and Emma Penfold, 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.

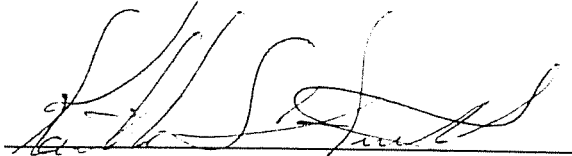
11 5. Attached to this affidavit as Exhibit "B" and incorporated into it is a
12 duplicate of the portion of the *New International Mortgage Bank* decree which shows the
13 water right I acquired through John T. Penfold and Emma Penfold.

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.

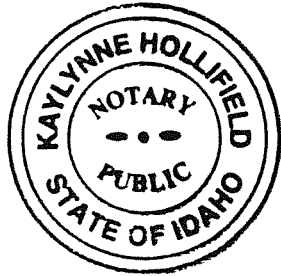
20 7. I have never intended to abandon my right or any part of it. I do not
21 believe that any of my predecessors in interest to the right intended to, or did abandon the
22 water right or any part of it. Since I have owned the water right, there has not been a
23

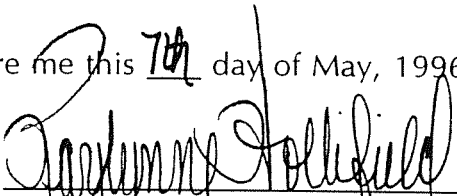
1 continuous five-year period of nonuse. I understand and believe that there has never been
2 a continuous five-year period of nonuse of the right.

3 Dated May 7, 1996.

4 
5 Keith L. Fuell

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




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

WARRANTY DEED

This Warranty Deed made this 27th day of July, 1975,
between James P. Crist and Stella May Crist, Husband and Wife,
of Hagerman, County of Gooding, State of Idaho hereinafter re-
ferred to as "grantor", and Keith L. Fuell and Jolene Fuell,
Husband and Wife, Twin Falls, County of Twin Falls, State of
Idaho hereinafter referred to as "grantee".

WITNESSTH, that grantor, for and in consideration of the
sum of Ten dollars (\$10.00) and other valuable consideration,
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:

A parcel of ground being a portion of the SE $\frac{1}{4}$ NW $\frac{1}{4}$ and a
portion of the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 25, T. 7S., R. 13E.,
B.M. and more particularly described as follows:

PORTION OF THE SE $\frac{1}{4}$ NW $\frac{1}{4}$

Beginning at the North $\frac{1}{4}$ Corner of said Section 25,
thence S0°11'54" W along the center sectionline for
a distance of 1607.47 feet to the true point of beginning;

Thence S89°59'59"W for a distance of 508.00 feet;

Thence N1°48'00"E for a distance of 289.31 feet to a point
on the North line of the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 25;

Thence S89°59'59"W along the Northline of the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of
Section 25, for a distance of 811.95 feet to the NW corner
of the SE $\frac{1}{4}$ NW $\frac{1}{4}$;

Thence S0°08'40"W along the West line of the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of
Section 25 for a distance of 1318.31 feet to the SW corner
of the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 25;

Thence N89°59'58"E along the South line of the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of
Section 25 for a distance of 1310.62 feet to a point on the
Center Sectionline of Section 25;

Thence N0°11'54"E along the center Sectionline of Section
25 for a distance of 1029.14 feet to the true point of beginning;

Containing 36.34 acres more or less and subject to a County
Road R/W along the East boundary thereof.

And that part of the NE $\frac{1}{4}$ SW $\frac{1}{4}$, more particularly described as follows:

Beginning at the North quarter corner of said Section 25;
Thence South 0°11'54" West along the center section line of Section 25 for a distance of 2,636.61 feet to the Southeast corner of the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of said Section 25;
Thence South 0°11'54" West along the center section line for a distance of 15 feet, to the True Point of Beginning;
Thence continuing South 0°11'54" West along said center line 148.56 feet;
Thence South 89°18' West 447.00 feet, more or less, to the Curran Ditch;
Thence North 20° West 163.71 feet, more or less to a point 15 feet South of the North line of said NE $\frac{1}{4}$ SW $\frac{1}{4}$;
Thence East parallel with and 15 feet South of said line 500 feet more or less to the True Point of Beginning.
together with all decreed water rights appurtenant thereto, as set forth in the Decree in New Int. Mortgage Co. vs. Idaho Power Company, recorded in Book 6 of Judgments at Page 31, Records of Gooding, County, being 80" with a Feb. 1, 1888 priority.
Together with all and singular the tenements, hereditaments

and appurtenances thereunto belonging or in anywise 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 ahe above mentioned and described premises, together with appurtenances, unto the grantee, and to the grantee's heirs and assigns forever. And the grantor's and the grantor's heirs, the said premise in 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 claiming 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.

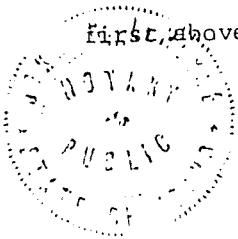
James P. Crist
Stella May Crist

STATE OF IDAHO)
) SS.
County of Gooding)

On this 29th day of July, 1975, before me, the undersigned, a Notary Public in and for said State, personally appeared JAMES P. CRIST and STELLA MAY CRIST, 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.



John A. Myers
Notary Public for the State of Idaho:
Residing at Gooding, Idaho.

150925

STATE OF IDAHO COUNTY OF GOODING

Filed for record at the request of Kath Fuell
31 min. past 1 o'clock P m. this 8
of Dec, 1992 per 9.00

JOHN A. MYERS Recorder

By Arbata Sales Deputy

NAME	AMOUNT OF WATER IN SECOND FEET AND SOURCE	PRIORITY OF APPROPRIATION	DIVERSION POINT
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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 360 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 $\frac{1}{2}$ 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 239.3 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 1.52 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
PENEOLD

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: | Keith L. Fuell and Jolene Fuell
Route 1, Box 225
Hagerman, ID 83332 |
| 2. | Source of Water: | Weatherby Springs |
| 3. | Quantity of Water Used: | 1.6 cfs |
| 4. | Date of Priority: | February 1, 1888 |
| 5. | Legal Description of the Point of Diversion: | Township 7 South, Range 14 East, Boise Meridian, Section 30, NE1/4SW1/4, 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, Boise Meridian, Section 25, SE1/4NW1/4 - 37 acres
Township 7 South, Range 13 East, Boise Meridian, Section 25, NE1/4SW1/4 - 2 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: | 175.5 AFA |
| 10. | Conditions on the Exercise of Water Right: | None |
| 11. | Remarks necessary for Definition: | None |