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Claimant: Department of Water Resources
Adjudication Bureau

Frank C. Erwin and Peggy Erwin

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. 36-00092

)

Case No. 39576

) AFFIDAVIT IN SUPPORT OF
) MOTION FOR SUMMARY JUDGMENT
)

* * * * *

Frank C. Erwin, being first duly sworn upon oath, deposes and says:

1. I, Frank C. Erwin, 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.

HEH
Chartered
Hepworth,
Lezamiz &
Hohnhorst

AFFIDAVIT IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT - 1

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 Walter
4 Rawlings and Mrs. Walter Rawlings, 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.

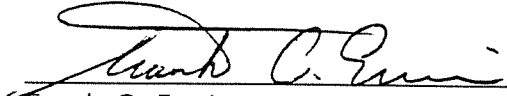
11 5. Attached to this affidavit as Exhibit "B" and incorporated into it is a
12 duplicate of the portion of the *New International Mortgage Bank* decree which shows the
13 water right I acquired through Walter Rawlings and Mrs. Walter Rawlings.

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.

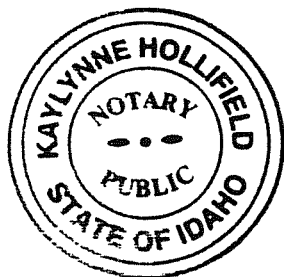
20 7. I have never intended to abandon my right or any part of it. I do not
21 believe that any of my predecessors in interest to the right intended to, or did abandon the
22 water right or any part of it. Since I have owned the water right, there has not been a
23

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.

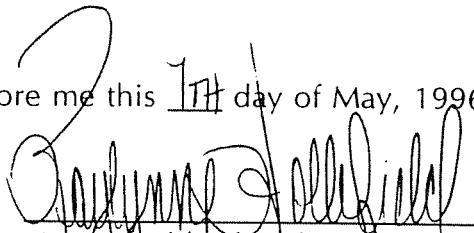
3 Dated May 7, 1996.

4 
5 Frank C. Erwin

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7 Subscribed and Sworn to before me this 17th day of May, 1996.



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

WARRANTY DEED

For Value Received

CLEAVE LLOYD and BETTY LLOYD, husband and wife

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

FRANK C. ERWIN and PEGGY J. ERWIN, husband and wife

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

A triangular shaped tract of land situate in the SW corner of the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Sec. 14, Twp. 7 S. R. 13 E.B.M., described as follows:
Beginning at a point at or near the SW corner of said NE $\frac{1}{4}$ NE $\frac{1}{4}$ where the west line of said NE $\frac{1}{4}$ NE $\frac{1}{4}$ intersects the cemetery lane (as now constructed along the south line of said NE $\frac{1}{4}$ NE $\frac{1}{4}$); thence north along the west line of said NE $\frac{1}{4}$ NE $\frac{1}{4}$ a distance of 245 feet; thence east approximately 10 feet to the center of the irrigation ditch of the Hagerman Water users Association; thence Southeasterly along the center of said ditch to its intersection with the north boundary of said cemetery lane, which point of intersection is approximately 150 feet east of the point of beginning; and thence west along the North side of said cemetery lane to the point of beginning.

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 incumbrances except as above described and that Grantor will warrant and defend the same from all lawful claims whatsoever.

Dated: May 8, 1973

Cleave L. Lloyd

Betty Lloyd

STATE OF IDAHO, COUNTY OF GOODING

On this 8 day of May, 1973, before me, a notary public in and for said State, personally appeared

CLEAVE LLOYD & BETTY LLOYD,
husband and wife

known to me to be the person(s) whose name(s) are subscribed to the within instrument, and acknowledged to me that they executed the same.

John M. Becker

Notary Public

STATE OF IDAHO, COUNTY OF Gooding

I hereby certify that this instrument was filed for record at the request of *Erwin* at 50 minutes past 10 o'clock on this 5th day of April, 1973 in my office, and duly recorded in Book of Deeds at page

Margaret F. Clements

Ex-Officio Recorder

By *Judy Lambner*

Deputy

Instrument No.

75823

WARRANTY DEED

FOR VALUE RECEIVED VERNON J. COX and TARA COX, husband and wife, hereinafter called the Grantor, hereby grant, bargain, sell and convey unto FRANK C. ERWIN and PEGGY J. ERWIN, husband and wife, of _____,

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

Township 7 South, Range 13 East of the Boise Meridian

Section 14: A tract of land in the NE¹/₄NE¹/₄ described as follows:

Beginning at the SE corner of the NE¹/₄NE¹/₄; thence West along the South boundary line of said NE¹/₄NE¹/₄ 776.11 feet; thence North parallel to the East line 25 feet to the true point of beginning; thence North parallel to the East line 392.45 feet; thence East parallel to the South line 442.45 feet; thence South 17.45 feet; thence East parallel to the South line 333.96 feet to the East line of said tract; thence North along the East line 330 feet; thence West 1320 feet more or less to the West line of said NE¹/₄NE¹/₄; thence South along said West line 705 feet; thence East parallel to the South line 543.89 feet, more or less, to the point of beginning.

EXCEPT highway right of way across part of NE¹/₄NE¹/₄ Section 14 as set forth in Second Judgment and Decree of Condemnation recorded March 26, 1964 as microfilmed instrument No. 10977A and filed in Case No. 10341, records of Gooding County, Idaho.

And

EXCEPT therefrom the following described tract in the NE¹/₄NE¹/₄:

Beginning at a point at or near the Southwest corner of said NE¹/₄NE¹/₄ where the West line thereof intersects the Cemetery lane, (as now constructed along the South side of said NE¹/₄NE¹/₄): thence North along the West line of said NE¹/₄NE¹/₄ 245 feet; thence East approximately 10 feet to the center of the irrigation ditch of the Hagerman Water Users Association; thence Southeasterly along the center of said ditch to its intersection with the North boundary of said Cemetery lane, which point of intersection is approximately 150 feet East of the point of beginning and thence West along the North side of said Cemetery lane to the point of beginning. (As set forth in Book 43 Deeds Page 318, records of Gooding County, Idaho.)

IN THE COUNTY OF GOODING, STATE OF IDAHO

Subject to a Mortgage with Federal Land Bank of Spokane in the amount of \$14,993.03.

Together with all water rights appurtenant thereto.

Hagerman

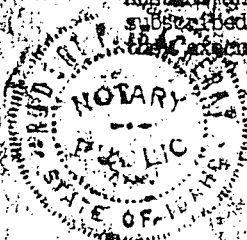
TO HAVE AND TO HOLD, the said premises, with their appurtenances unto the said Grantee and to the Grantee's heirs and assigns forever. And the Grantor does hereby covenant to and with the said Grantee, that the Grantor is the owner in fee simple of said premises; that they are free from all encumbrances except as above described and that Grantor will warrant and defend the same from all lawful claims whatsoever.

DATED April 4, 1977.

Vernon J. Cox Tara Cox
VERNON J. COX TARA COX

STATE OF IDAHO)
County of Gooding) ss.

On this 1st day of April, 1977, before me, a notary public in and for said State, personally appeared VERNON J. COX and TARA COX, 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.



Robert D. Thibault
Notary Public for Idaho
Residing at Wendell, Idaho

STATE OF IDAHO)
County of Gooding) ss.

65292

FILED

I hereby certify that this instrument was filed for record at the request of Frank Brown at 11 minutes past 2 o'clock P m., this 30 day of June, 1977, in my office, and duly recorded in Book _____ of Deeds at page _____.

Margaret F Clements
Ex-Officio Recorder

By Don Scott
Deputy

Mail To:
Idaho First National Bank
Wendell, Idaho 83355

INDEXED
Direct ☒
Indirect ☐

NAME	AMOUNT OF WATER IN SECOND FEET AND SOURCE	PRIORITY OF APPROPRIATION	DIVERSION POINT
POPE, ELI- JAH, AND LAUD POPE, GERALD AND BERNICE POPE	.5 Billingsley Creek .5 Spring	June 23, 1881 June 1, 1927	John Well Ditch Unnamed Spring
(Said Unnamed spring is located on the east portion of the tract of land immediately hereinafter described and about 75 yards from the east line thereof.)			
N $\frac{1}{2}$ of the SE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Sec. 11, Twp. 7 S. R. 13 E. B. M.			
PREWETT, E. M., AND MARGARET PREWETT	.2 Billingsley Creek	Sept. 10, 1884	Buckeye Ditch;
That certain portion of the SE $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Sec. 14, Twp. 7 S. R. 13 E. B. M. described as follows: Beginning at a point 670 feet east and 25 feet north of the southwest corner of the said SE $\frac{1}{4}$, running thence north to a point on the south boundary line of acreage tract or outlet 65, thence due west to a point in the center of the Stotz Ditch, thence in a southeasterly direction along the center of the said ditch to a point where said ditch intersects a line running east and west 25 feet north and parallel with south boundary of the said southeast boundary of the said southeast quarter, thence due east to the point of beginning. Also acreage tract or Outlots numbered 84 and 85 according to the map or plat of Hagerman Townsite; Also Lots 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 of Block 61; Lots 1, 2, 3, 4, 5, 6, 7, 10, 11, 12, 13, 14, 15, 16 of Block 48; Lots 4, 5, 6, 7, 8, 9, 10, 11, 12 and 13 of Block 52; Lots 4, 5, 6, 7, 8, 9, 10, 11, 12 and 13 of Block 47; Lots 1, 2, 3, 4, 5, 6, 7, 10, 11, 12, 13, 14, 15 and 16 of Block 51; Lots 1, 2, 3, 4, 5, 6, 7, 10, 11, 12, 13, 14, 15, 16 of Block 62 of the Village of Hagerman according to the Plat of Hagerman Townsite, in the office of the Recorder of Gooding County, Idaho.			
RAWLINGS, WALTER AND MRS. WALTER RAW- LINGS	.6 Spring	April 1, 1901	Florence Livestock Spring
A certain parcel of land, described in metes and bounds as follows: Beginning at the southwest corner of the NE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Sec. 14, Twp. 7 S. R. 13 E. B. M., and running thence East 594 feet, thence north 400 feet, thence West 594 feet, thence South 400 feet to the place of beginning, containing 5.45 acres more or less. A certain parcel of land, described in metes and bounds as follows: Beginning at a point 400 feet north of the southwest corner of the NE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Sec. 14, Twp. 7 S. R. 13 E. B. M. and running thence East 1320 feet, thence North 330 feet, thence West 1320 feet, thence South 330 feet to the place of beginning, containing 10 acres.			

WATER RIGHT ELEMENTS

- | | | |
|-----|---|---|
| 1. | Name and Address of Claimant: | Frank C. Erwin and Peggy Erwin
Route No. 1, Box 453
Hagerman, ID 83332 |
| 2. | Source of Water: | Florence Livestock Spring |
| 3. | Quantity of Water Used: | .6 cfs |
| 4. | Date of Priority: | April 1, 1901 |
| 5. | Legal Description of the Point of Diversion: | Township 7 South, Range 13 East, Boise Meridian, Section 12, SE1/4SE1/4NW1/4 |
| 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 14, NE1/4NE1/4 - 15.45 acres
Other Purposes: Please 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: | 69.53 AFA |
| 10. | Conditions on the Exercise of Water Right: | None |
| 11. | Remarks necessary for Definition: | None |