LAW OFFICES

GIVENS PURSLEY LLP

RECEIVED
JUN 14 2004
WATER RESOURCES
WESTERN REGION

MEMORANDUM

TO: Mel Shulte
Idaho Department of Water Resources

FROM: John M. Marshall

RE: Jacobs Water Right
Our File No. 6018-1

DATE: June 9, 2004

This memorandum addresses ownership of water right 63-123, commonly called the "Jacobs" water right, and the basis for Lexington Hills Inc.'s and East Hills Development Inc.'s claims to a portion of this right.

Ownership of the Jacobs Water Right.

Water right 63-123 is an 1864-priority decreed water right authorizing diversion of 20.0 cfs (1000 inches). The right's point of diversion is the Farmer's Union Canal.

There are competing claims to ownership of the Jacobs right. Four entities have filed claims to the right in the Snake River Basin Adjudication ("SRBA"). Two of the four claimants, Farmers Union and Capital View, have claimed the entire 20.00 cfs. The other two claimants, Lexington Hills and East Hills Development have filed only partial claims corresponding to that amount of the Jacobs right historically delivered to them. Lexington Hills has filed a claim for 1.93 cfs of the Jacobs right, and East Hills Development has filed a claim for 0.52 cfs.

We have been able to establish a general ownership pattern for the Jacobs right. The right essentially has been split into three parts. Farmers Union holds one third of the right, Capital View Irrigation Inc. apparently holds one third, and several different landowners, including Lexington Hills and East Hills Development, own the other one-third portion.

This three-part split originates through a 1916 contract between Farmers Union and W.A. Keyt, a predecessor to Capital View Irrigation Inc. (the contract is attached as Exhibit A). According to the contract, Keyt had acquired all 20.00 cfs (1000 inches) of the Jacobs right and planned to initiate a new irrigation project above and to the north of Farmers Union's service

area. Farmers Union agreed to convey the water through its ditches to a point where Keyt would pump the water to his delivery system in exchange for 333.33 inches of the Jacobs right (1/3 of the right) to cover conveyance losses. Accordingly, as of 1916, the date of the contract, we know that Farmers Union held approximately 333 inches of the Jacobs right for conveyance losses and Keyt held approximately 666 inches for irrigation. Keyt's irrigation project apparently was organized as Capital View Irrigation, Inc.

Capital View states that they currently divert and delivery approximately 333 inches of water, leaving a 333-inch portion of the Jacobs right unaccounted for. Although we have not been able to trace exactly how this 333-inch portion was divided up, it is clear that the right became appurtenant through accomplished transfers to new lands outside of Capital View's service area, including lands owned by Lexington Hills and East Hills Development.[1] There are at least two sets of documents that confirm this.

First, the Farmers Union Canal Co. assesses Lexington Hills and East Hills Development for delivery of the Jacobs right. Importantly, the assessment for Jacobs water is expressly distinct from assessments for shares in the Farmers Union Canal Co. A Notice of Assessment from Farmers Union showing this distinction is attached as Exhibit B. Farmers Union shareholders as a whole are not assessed for delivery of Jacobs water. Only those individuals who own a piece of the Jacobs water are assessed. Presumably the assessment amount is calculated using the formula from the 1916 contract.

Second, we have located a deed in the chain of title dated March 6, 1942 from Idaho Farms to Western Land and Development that recites the conveyance of the land includes water rights "consisting principally of 128 inches of what is known as the Jacob's Water right, being water right #1 from the Boise River." Two subsequent deeds contain the same language. The deeds are attached as Exhibit C.

Based on all these documents, we are confident that Lexington Hills and East Hills Development own their claimed portions of the Jacobs right.

[1] Lands owned by these entities became the Lexington Hills Subdivision. These entities have since subdivided and sold the lands they owned. However Lexington Hills, Inc. expressly reserved all water rights from subsequent conveyances.

EXHIBIT A

Farmer's Union Ditch Company, Limited, a corporation.

to

W. A. Keyt

AGREEMENT
Dated July 17th, 1916
Ack'd July 29th, 1916 before Blanche Myer N.P. Ada Co. Idaho. Seal. Residence, Boise, Ada Co. Idaho, By President and Secretary
Ack'd W.J.Bishop N.P. Polk Co. July 22, 1916 Oregon. Seal. Residence, McMinnville, Polk County, Oregon. My commission expires Jan 29- 1917. By W.A.Keyt
Recorded April 11th, 1917
Book 7 of Contracts page 232

Capitol V
Has TO measure
48.

WITNESSETH, That, whereas, the party of the first part is the owner and in the possession of a certain canal or irrigation ditch, together with a right-of-way therefor, situate in Ada and Canyon Counties, State of Idaho, and described as follows, to-wit: Commencing at the headgate of said canal at a point on the northerly side of the Boise River in the Southeast Quarter of the Southeast Quarter of Section 32 in Township 4 North of Range 2 East of the Boise Meridian, and running thence in a northwesterly direction through Townships 4 North of Range 2 East; 4 North of Range 1 East; 5 North of Range 1 West; 4 North of Range 2 West, and 5 North of Range 2 West of the Boise Meridian, being the said ditch known as the Farmers Union Ditch, together with the right to divert certain waters from the Boise River into said ditch at the headgage thereof, for the use of the stockholders of said Farmers Union Ditch Company, Limited, and that said Farmers Union Ditch Company Limited, is, and since the year 1895 has been, engaged in conveying and distributing through its said ditch waters to its said stockholders for irrigation and domestic purposes; and

Whereas, the party of the second part is interested in certain lands situate in Township 5 North, Range 1 East, B. M. which lie adjacent to and north of the canal of the party of the first part where it crosses said Township and Range, which land is arid in character and requires artificial irrigation for the production of profitable crops thereon, and,

Whereas, the party of the second part is the owner of that certain water right generally known as the Jacobs Canal water right for 1000 miner's inches, or twenty cubic feet per second of time, of the waters of Boise river, Idaho, adjudicated to said canal company in that certain suit wherein the Farmers Co-operative Ditch Company, a corporation, was plaintiff, and the Riverside Irrigation District, Limited, et al., were defendants, then pending in the District Court of the Third Judicial District of the State of Idaho, in and for the Cpunty of Ada, now pending in the District Court of the Seventh Judicial District of the State of Idaho, in and for the County of Canyon, said decree being dated January 18, 1906, and said water right being designated therein as "right No. 2;" said water right having been specifically enumerated in certificate of transfer No 136 issued by the State Engineer of the State of Idaho, dated June 8, 1914, and of record in the office of the State Engineer of Idaho; said described water right now being diverted at the intake of the canal of the party of the first part herein and,

Whereas, in order for the party of the second part to apply the water which he owns as hereinabove described to said lands in Township 5 North, Range 1 East, adjacent to and north of the canal of the party of the first part herein, it is necessary that he convey the same through the canal of the party of the first part to a point in the Southwest Quarter (SW¼) of the Southwest Quarter (SW¼) of Section Thirty-four (34) Township Five (5) North, Range One (1) East, B. M., hereinafter more particularly described.

(Continued)

(Continuation of Entry # 40)

Now, therefore, it is mutually understood and agreed between the parties hereto as follows, to-wit:

That for and in consideration of the party of the second part conveying, transferring and delivering to the party of the first part a one-third interest in the water right of said Jacobs Canal water right hereinabove described, the said Farmers Union Ditch Company, Limited, hereby agrees to perpetually carry and deliver to the party of the second part, his heirs or assigns, during the entire irrigation season of each and every year after the date hereof, except as hereinafter provided, at the poin of diversion hereafter described, the waters represented by two-thirds of said Jacobs Canal water right herein above described, and at the elevation hereinafter described.

It is specially understood and agreed that the party of the first part shall be under no obligation to deliver to the party of the second part more water under this agreement than two-thirds of the amount which it is ultimately determined is represented by the water right of said Jacobs Canal Company, designated as "right No.2" in the priority suit on the Boise river hereinabove referred to, and which the party of the second part is entitled to have diverted from the Boise river by virtue of the ownership of said right, less proper deductions for seepage and evaporation.

It is further agreed that the party of the first part shall not be required to undergo any expense whatever in representing or defending said Jacobs Canal right in the litigation not pending in the Seventh Judicial District of the State of Idaho, in and for Canyon County, or any suit or action involving the transfer or use of said water but that said party of the second part shall cause the amount of water represented by said "right No.2" to be finally determined without expense to the party of the first part, and shall defend any suit or action involving the right to transfer, or use the same without expense to the party of the first part.

DELIVERY.

It is Expressly understood and agreed that the party of the second part and his assigns shall acquire no right or interest in or be entitled to the use of any part or portion of the waters now owned or hereafter acquired by the party of the first part by virtue of this agreement, and the party of the first part shall be under no obligation to carry or deliver the waters herein agreed to be carried and delivered until the party of the second part shall first have caused said waters represented by said "right No.2" to be delivered and maintained at the headgate of the party of the first part for diversion into its canal.

POINT OF DIVERSION.

It is agreed that the place of diversion from the canal of the party of the first part by the party of the second part, his heirs or assigns, of said water herein agreed to be carried and delivered, shall be on the following described tract of land to-wit:

On the North line of the canal of said Farmers Union Ditch Company, Limited, on the following described tract,

Beginning at the section corner on the township line common to Sections Thirty-three (33) and Thirty-four (34) in Township Five (5) North, Range One (1) East, B. M.; thence north 25° 10 Min. east, 520 ft. being the place of beginning; thence south 66° 56 Min. west, 54.5 ft; thence north 21° 10 Min. west, 390 ft. to a point 30 ft. east of

(Continued)

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the section line common to sections 33 and 34, Township 5 North, Range 1 East, B. M.; thence north 507 ft. parallel to said section line; thence east 10 Ft.; thence south 382 ft.; thence east 58 ft.; thence south 21° 10 Min. east, 480 ft; thence south 66° 56 Min. west, 54.5 ft. to the place of beginning containing 1.11 acres more or less.

ELEVATION OF DELIVERY. 1000)

It is understood and agreed that the party of the second part intends to elevate the water herein agreed to be carried, on to the lands to be irrigated by the same, by means of pumps. For the purpose of pumping the same he shall construct a sump on the north or right bank of the canal of the party of the first part at such distance from said canal as may be determined by the party of the second part; said sump shall be connected with the canal of the party of the first part by means of an open ditch so constructed that the waters to which the party of the second part is entitled may be measured into said ditch where it diverts from the canal of the party of the first part. A headgate or tap shall be constructed at the head of said ditch in such a manner and at such elevation as shall be approved by the party of the first part.

It is agreed that the party of the first part shall be under no obligation to deliver the water herein agreed to be carried and delivered to the party of the second part at an elevation greater that the present grade of the canal of the party of the first part where it passes the point of diversion described in the preceding paragraph, and the party of the first part shall have the same right to regulate the elevation and construction of the tap or headgate of the party of the second part as it has to regulate the taps or headgates of its stockholders or water users along the line of said canal.

MAINTANANCE.

For the purpose only of determining the annual maintenance to be paid by the party of the second part to the party of the first part for the carriage and delivery of said water hereinabove provided for, it is hereby agreed that the stock of the party of the first part represents eleven inches to the share and that the party of the second part shall pay to the party of the first part on each eleven inches diverted into and carried through the canal of the party of the first part for the party of the second part, the same annual maintenance as is paid by the stockholders of the party of the first part upon one share of the stock of said party of the first part; said estimate of the amount of water represented by one share of stock of said party of the first part being based upon the present capital sotck of said party of the first part, to-wit: 500 shares.

It is agreed, however, that the party of the second part shall pay no maintenance to the party of the first part until he diverts water from said canal of the party of the first part and then only upon the amount so diverted, provided, however, that when he shall have diverted or caused to be diverted the maximum amount which he is entitled to divert under this agreement he shall henceforth pay maintenance upon the maximum amount he is entitled to divert.

It is further agreed that in lieu of the payment of maintenance before the party of the second part diverts water from the canal of the party of the first part under this agreement, he shall give the party of the first part free use of all the water represented by said "right No.2" of the Boise river herein agreed to be carried and delivered.

(Continued)

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(Continuation of Entry #48.)

In the event said party of the second part, his heirs or assigns should fail or refuse to pay the maintenance as herein agreed, then the party of the first part shall be relieved during such delinquency only, from its obligation to carry and deliver said water herein agreed to be carried and delivered, and when said delinquent payments are made, together with 12% penalty on the amount of such delinquency the party of the first part shall resume its carriage and delivery of said water.

The maintenance charges herein provided for shall be paid by the party of the second part, his heirs or assigns, at the same time and in the same manner as assessments for maintenance are paid by the stockholders of the party of the first part.

The party of the second part shall not be liable for any portion of bonded or mortgaged indebtedness, or interest on bonds, mortgages or notes given by the party of the first part, whether outstanding at the date hereof or hereafter to be made or issued, for the purpose of developing, acquiring or purchasing water for said party of the first part. Should the party of the first part supplement its water supply by means of wells, sumps, reservoirs or other artificial means, the party of the second part shall pay no part of the expenses in developing, acquiring or maintaining the same or securing water therefrom, but the party of the second part shall be liable for its portion of the maintenance of the main canal as hereinabove provided. Party of the second part shall not be liable for any portion of moneys expended for the purpose of increasing the water supply of the stockholders of the party of the first part, whichhexpenditures do not increase the amount of water to be delivered under this agreement by the party of the first part to the party of the second part. Charges for betterments shall be considered as maintenance.

The party of the second part, his heirs or assigns, shall have no right, under this agreement, to exercise any management or control in the affairs, or of the property of the first part.

This contract is executed in duplicate, one copy of which is delivered to each of the parties hereto, and the same shall extend and bind the successors and assigns of the party of the first part and heirs, executors, administrators and assigns of the party of the party of the second part.

This contract is executed on behalf of the party of the first part by its President and Secretary by virtue of authority conferred upon said officers by resolution of its Board of Directors.

Farmers Union Ditch Co Ltd

(NO SEAL)

By Emil Jullion
President
Party of the first part.

Attest:
James M.Potter
Secretary.
W.A.Keyt
Party of the second part.

EXHIBIT B

Farmers Union Ditch Co., Ltd.

NOTICE OF 2001 WATER ASSESSMENT

Notice is hereby given that on January 18, 2001 an assessment has been levied by the Board of Directors of the Farmers Union Ditch Co., Ltd. on all of the capital stock of said corporation, and on all other water carried and delivered through the canal of said corporation.

Farmers Union Ditch Co., Ltd. shares are to be assessed at $200.00 per share. All other water delivered through the Farmers Union Canal will be assessed at $18.18 per miners inch. Storage water from Arrowrock and Anderson Ranch Reservoirs will be assessed at $.30 per acre foot.

Bureau of Reclamation charge for the replacement of the ensign valves on Arrowrock Dam causes us to charge a SPECIAL ASSESSMENT of $ 41.00 per share of FUD and $ 3.75 per miners inch of other water delivered through Farmers Union Canal.

This assessment is due and payable to the Secretary of said corporation on or before March 15, 2001.

Any assessment which remains unpaid after March 15, 2001 will be declared delinquent and subject to a penalty of fifteen percent (15%) of the assessment. The penalty will be added to the total assessment, and no water will be delivered until the assessment and penalty are paid in full.

Cust #2502.

2001 WATER ASSESSMENT

33.8	FARMERS UNION	$ 67.60
	ARROWROCK	$ 2.55
	ANDERSON	$
	BOISE VALLEY	$
96.4	JACOBS WATER	$ 1752.55
	MIDDLETON WATER	$
2.85	DEVELOPED WATER	$ 46.36
	OTHER WATER	$
	CREDIT	$
	DELINQUENT	$
	ACCOUNT SERVICE	$ 10.00
	SPECIAL ASSESSMENT (ARROWROCK)	$ 384.92
	PLEASE PAY THIS AMOUNT	$ 2263.98

Detach and return lower portion with your remittance.

RECEIVED FEB 13 2001

LEXINGTON HILLS, INC.
1815 E. STONYBROOK CT.
EAGLE, ID 83616

Please make checks payable to:
Farmers Union Ditch Co. Ltd.
2153 N. Pollard Lane
Star, ID 83669

Amount Paid $_____

EXHIBIT C

Idaho Farms Incorporated

To

The Western Loan &
Investment Company

Dated March 6, 1942

Instrument Number 211005

255/312

THIS INDENTURE, Made this 6th day of March, in the year of our Lord one thousand nine hundred and forty-two between IDAHO FARMS, INCORPORATED, a corporation duly organized and existing under the laws of the State of Idaho, and having its principal office in Idaho at Boise, in the County of Ada, party of the first part, and THE WESTERN LOAN & INVESTMENT COMPANY, a corporation, of Boise, County of Ada, State of Idaho, party of the second part,

WITNESSETH, That the said party of the first part, having been hereunto duly authorzied by resolution of its Board of Directors, for and in consideration of the sum of TEN & NO/100 ($10.00) DOLLARS , lawful money of the United States of America, and other good and valuable consideration to it in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained and sold, and by these presents does grant, bargain, sell, convey and confirm unto the said party of the second part, and to its successors and assigns forever, all the following described real estate situated in the County of Ada, State of Idaho, to-wit:

This legal description is not discussed in the water right records for 63-123

The South Half of the Northeast Quarter (S½NE¼), the Southeast Quarter of the Northwest Quarter (SE¼NW¼), the Southwest Quarter (SW¼) and the Southeast Quarter (SE¼) of Section Three (3), Township Four (4) North, Range One (1) East Boise Meridian, less right-of-way for roads.

Together with all water rights, ditch and ditch rights, and the irrigation pumping plant thereunto belonging and used in connection therewith. Said water right consisting principally of 128 inches of what is known as the Jacob's Water right, being water right #1 from the Boise River, as shown by the decree adjudicating the rights of Boise River, and 50 inches of what is known as the Davis Right, or right #2, from the Boise River, as shown by the decree adjudicating the priority of right from the Boise River, which said water rights, and the whole thereof, are diverted from the Boise River into the canal known as the Farmer's Union Ditch, operated by the Farmer's Union Ditch Company, Limited.

Subject to taxes and assessments for the year 1942.

(U.S.I.R. Stamps $41.25 cancelled)
(3-11-42 Wm.B.D.)

TOGETHER With all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and 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 said party of the first part.

TO HAVE AND TO HOLD, all and singular, the above mentioned and described premises, together with the appurtenances, unto the party of the second part, and to its successors and assigns forever. And the said party of the first part, and its successors, the said premises in the quiet and peaceable possession of the said party of the second part, its successors and assigns, against the said party of the first part, and its successors, and against all and every person and persons whomsoever, lawfully claiming or to claim the same, shall and will warrant and by these presents forever defend.

IN WITNESS WHEREOF, The party of the first part has caused its corporate name to be hereunto subscribed by its President and its corporate seal to be affixed by its Secretary in pursuance to said resolution the day and year first above written.

SIGNED, SEALED AND DELIVERED
IN PRESENCE OF - - - - - - -
(CORPORATE SEAL)

(15)

IDAHO FARMS, INCORPORATED
By J. W. Cunningham, Its President
Attest: J. B. [illegible]

STATE OF IDAHO)
) ss.
County of ADA)

On this 6th day of March in the year 1942, before me, the undersigned, a Notary Public in and for said State, personally appeared J. W. Cunningham and J. R. Cornell, known to me to be the President & Secretary, respectively, of the corporation that executed the instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation 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.

(SEAL)

Wm. B. Davidson
Notary Public for the State of Idaho,
Residing at Meridian, Idaho.
My commission expires: 12-1-43

Recorded at the request of WESTERN LOAN & INVESTMENT CO. at 15 minutes past 9 o'clock A.M., this 14 day of March, A.D. 1942.

Fees, $1.40

Recorder

COMPAPLI

The Western Loan & Investment Company

To

Alfred M. Popma

Instrument No. 312469

352/548

Dated January 2, 1951

THIS INDENTURE, Made this 2nd day of January, in the year of our Lord one thousand nine hundred and fifty-one between The Western Loan & Investment Company, a corporation duly organized and existing under the laws of the State of Idaho, and having its principal office in Idaho at Boise in the County of Ada, State of Idaho, party of the first part, and Alfred M. Popma, whose wife is Dorothy Popma, of Boise, County of Ada, State of Idaho, parties of the second part,

WITNESSETH, That the said party of the first part, having been hereunto duly authorized by resolution of its Board of Directors, for and in consideration of the sum of Ten and no/100 DOLLARS, lawful money of the United States of America, to it in hand paid by the said parties of the second part, the receipt whereof is hereby acknowledged, has granted, bargained and sold, and by these presents does grant, bargain, sell, convey and confirm unto the said parties of the second part, and to their heirs and assigns forever, all the following described real estate, situated in __, County of Ada, State of Idaho, to-wit:

this legal is not described in the water right for 63-123

The South half of the Northeast quarter (S½NE¼); the Southeast quarter of the Northwest quarter (SE¼NW¼); the Southwest quarter (SW¼); and the Southeast quarter (SE¼) of Section Three (3), in Township Four (4) North; Range 1 (1) E.B.M., in Ada County, Idaho, excepting all road rights-of-way, and also excepting the property described in that certain warranty deed, dated December 30, 1947, between The Western Loan & Investment Company, a corporation, and Harvey L. Bingham and Bertha Bingman, husband and wife, said warranty deed being recorded in the office of the county recorder of Ada County, Idaho, at Page 209, Book 313 of Deeds.

Together with all water rights, ditch and ditch rights, and the irrigation pumping plant thereunto belonging and used in connection therewith. Said water right consisting principally of 128 inches of what is known as the Jacob's Water right, being water right #1 from the Boise River, as shown by the decree adjudicating the rights of Boise River, and 50 inches of what is known as the Davis Right, or right #2, from the Boise River, as shown by the decree adjudicating the priority of right from the Boise River, which said water rights, and the whole thereof, are diverted from the Boise River into the canal known as the Farmer's Union Ditch, operated by the Farmer's Union Ditch Company, Limited. (U.S.I.R. Stamps $55.00 Cancelled) (P.S.B. 1-2-51)

TOGETHER With all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and 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 said party of the first part.

TO HAVE AND TO HOLD, all and singular, the above mentioned and described premises, together with the appurtenances, unto the parties of the second part, and to their heirs and assigns forever. And the said party of the first part, and its

(22)

successors, the said premises in the quiet and peaceable possession of the said parties of the second part, their heirs and assigns, against the said party of the first part, and its successors, and against all and every person and persons whomsoever, lawfully claiming or to claim the same, shall and will warrant and by these presents forever defend.

IN WITNESS WHEREOF, The party of the first part has caused its corporate name to be hereunto subscribed by its President and its corporate seal to be affixed by its Secretary in pursuance to said resolution the day and year first above written.

SIGNED, SEALED AND DELIVERED IN PRESENCE OF---

THE WESTERN LOAN & INVESTMENT COMPANY

BY Laurence Bettis
Its President

(CORP. SEAL)

Attest J. R. Cornell
Its Secretary

STATE OF IDAHO)
)ss.
County of Ada)

On this 2nd day of January in the year 1951, before me, the undersigned, a Notary Public in and for the said State, personally appeared Laurence Bettis and J. R. Cornell, known to me to be the President and Secretary respectively, of the corporation that executed this instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation 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.

(SEAL)

R. Roland Towle
Notary Public for the State of Idaho,
Residing at Boise, Idaho

Recorded at the request of Idaho Title Co. at 49 minutes past 9 o'clock A. M. this 3 day of January, 1951.

Fees $2.00

Recorder

Compared

and seal to be hereunto affixed by its duly authorized officers, this 11th day of December A. D., 1952.

(CORP. SEAL) UNION PACIFIC STAGES, INCORPORATED,

Attest: By R. J. Walsh
President.

A. J. Babel
Assistant Secretary

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

On the 11th day of December A. D., 1952, personally appeared before me R. J. WALSH and A. J. BABEL, who being by me duly sworn, did say, each for himself, that he, the said R. J. Walsh, is the President and he, the said A. J. Babel, is the Assistant Secretary of Union Pacific Stages, Incorporated, and that the within and foregoing instrument was signed in behalf of said corporation by authority of a resolution of the Board of Directors, and said R. J. Walsh and A. J. Babel each duly acknowledged to me that said corporation executed the same and that the seal affixed is the seal of said corporation.

(SEAL) G. W. Bouser
NOTARY PUBLIC Residing at: Omaha, Nebr.

My Commission Expires:
Aug. 24, 1957.

Recorded at the request of Union Pacific R. R. Co. at 15 minutes past 9 o'clock A. M., this 24 day of December, 1952.

Fees: $1.50

Recorder

Compared

Alfred M. Popma, et ux
to
Ann Frances Popma

Instrument Number 340264.

376/182

Dated: September 30, 1952.

WARRANTY DEED

This indenture made this 30th day of September, 1952, between Alfred M. Popma and Dorothy W. Popma, husband and wife, of Boise, Ada County, Idaho, the parties of the first part, and Ann Frances Popma, a spinster, of Boise, Ada County, Idaho, the party of the second part.

WITNESSETH: That the parties of the first part for and in consideration of the love and affection which the parties of the first part have and bear unto their daughter, the party of the second part, as also for the better maintenance, support, protection and livelihood of the party of the second part, do by these presents give, grant, alien and confrim, unto the second party of the second part, and to her heirs and assigns forever an undivided one-fourth (¼) interest in and to that certain lot, piece or parcel of land, particularly described as follows: located in Ada County, state of Idaho, to-wit:

The south half of the northeast quarter (S.½ NE¼); southeast quarter of the northwest quarter (SE¼ NW¼); southwest quarter (SW¼); and the southeast quarter (SE¼) of Section 3, Tp. 4 N., R. 1., E.B.M., all in Ada County, Idaho, excepting all rights of way heretofore granted, and except that portion described in that certain warranty deed, dated December 30, 1947, recorded December 31, 1947, in the office of the County Recorder of Ada County, Idaho, in Book 313 of Deeds, at page 209;

Not part of subject 63-123

(23)

Together with all water rights, ditch and ditch rights, and the irrigation pumping plant thereunto belonging and used in connection therewith. Said water right consisting principally of 128 inches of what is known as Jacob's water right, being water right #1 from the Boise River, as shown by the decree adjudicating the rights of Boise River, and 50 inches of what is known as the Davis River, or Right #2, from the Boise River, as shown by the decree adjudicating the priority of right from the Boise River which said water rights, and the whole thereof, are diverted from the Boise River into the canal known as the Farmer's Union Ditch, operated by Farmer's Union Ditch Company, Lt.

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 said parties of the first part.

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

IN WITNESS WHEREOF, The said parties of the first part have hereunto set their hand and seal, the day and year first above written.

SIGNED, SEALED AND DELIVERED

IN PRESENCE OF Paul S. Boyd — Alfred M. Popma (SEAL)

Paul S. Boyd — Dorothy W. Popma (SEAL)

STATE OF IDAHO)
) ss.
COUNTY OF ADA)

On this 30th day of September, 1952, before me the undersigned, a Notary Public in and for said state, personally appeared Alfred M. Popma and Dorothy W. Popma, 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.

(SEAL)

Paul S. Boyd
NOTARY PUBLIC, BOISE IDAHO

Recorded at the request of Paul S. Boyd at 54 minutes past 9 o'clock A. M., this 24 day of December, 1952.

Fees: $1.75

Recorder

Compared

Alfred M. Popma, et ux
to
Mary Louise Popma

Instrument Number 340265.

Dated: September 30, 1952.

WARRANTY DEED

This Indenture made this 30th day of September, 1952, between Alfred M. Popma and

03-123

1) Who owns the right? -

- Claimed by Capital View Inv. = 20 cfs in 5N, 1E, S32, 33, 34
- Claimed by Zamora Union = 20 cfs within 8394 acres.
- Claimed by East Hills Development = .5246
- Delivered by Zamora Union per agreement dated July 1916
  a - Transfers 1/3 of right to Zamora as compensation for delivering the remaining 2/3 of the right.

2) Decreed to 3N, 2E, S4, 9, 10, 11, 13, 14

3) Are Capital Views assessments based on 1000" or what? 350" per Pete Newton

4) Does Zamora assess Capital View based on 1000" or what amount? (See list dated 11-4-02.

1-21-05 Per call to Dave Law: ERO Resources is preparing a claim to file for Lexington Hills, HOA

IDAHO DEPARTMENT OF WATER RESOURCES

Adjudication Claim Report 63-123A

WATER RIGHT NUMBER: 63-123A

Owner Type	Name and Address
Original Owner	JACOBS CANAL CO
	, ID
Original Owner	FEDERAL LAND BANK OF SPOKANE
	, ZZ

Priority Date: 06/01/1864

Basis:

Status: See Remarks

Source	Tributary
BOISE RIVER	SNAKE RIVER

Beneficial Use	From To	Diversion Rate	Annual Volume
DOMESTIC	/ to /		
IRRIGATION	/ to /	0.690 CFS	
	Total Diversion:	0.690 CFS	

Location of Point(s) of Diversion

BOISE RIVER	NW1/4NW1/4NW1/4	Sec. 36,	Twp 65N, Rge 46E, B.M.

Place of Use

IRRIGATION

Twp	Rge	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
04N	01E	4									X			X	X	X	X		

DOMESTIC same as IRRIGATION

Conditions of Approval:

Remarks:

1. General — THIS RIGHT AND RIGHT NO. 63-00123B WERE RE-COMBINED AND FILED ON BY TWO DIFFERENT CANAL COMPANIES. FARMERS UNION FILED ON A63-00123C WHICH RECOMBINED BOTH BECAUSE THE WATER IS DELIVERED THROUGH THEIR DITCH FOR CAPITAL VIEW IRRIG. DIST. THEN CAPITAL VIEW IRRIG. DIST. FILED ON BOTH UNDER A63-00123 BECAUSE IT IS STILL THEIR WATER EVEN THOUGH IT IS DELIVERED THROUGH THE FARMER'S UNION CANAL CO. WHICH CLAIM IS RECOMMENDED WILL BE DECIDED AT A LATER DATE. JS

IDAHO DEPARTMENT OF WATER RESOURCES

Adjudication Claim Report 63-123B

WATER RIGHT NUMBER: 63-123B

Owner Type	Name and Address
Original Owner	JACOBS CANAL CO
	, ID

Priority Date: 06/01/1864

Basis:

Status: See Remarks

Source	Tributary
BOISE RIVER	SNAKE RIVER

Beneficial Use	From To	Diversion Rate	Annual Volume
IRRIGATION	/ to /	19.310 CFS	
	Total Diversion:	19.310 CFS	

Location of Point(s) of Diversion

BOISE RIVER SE1/4SE1/4 Sec. 32, Twp 04N, Rge 02E, B.M.

ADA County

Place of Use

IRRIGATION

Twp	Rge	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
03N	02E	4																	
03N	02E	9																	
03N	02E	10																	
03N	02E	11																	
03N	02E	13																	
03N	02E	14																	
04N	02W	2	X L1	X L2			X L3	X L4											
04N	02W	3	X L1					X L4											
04N	02W	4						X L4											

IDAHO DEPARTMENT OF WATER RESOURCES

Adjudication Claim Report 63-123B

04N 02W 5					X L 3											
05N 01W 19											X					
05N 01W 30										X	X					
05N 01W 31						X	X									
05N 02W 22											X	X				X
05N 02W 23											X	X			X	X
05N 02W 24									X	X	X	X				
05N 02W 25																X
05N 02W 26		X			X	X	X	X	X	X						
05N 02W 27			X	X			X	X	X	X	X	X	X	X	X	X
05N 02W 28							X			X	X	X	X	X	X	X
05N 02W 29				X									X	X		X
05N 02W 32		X	X								X	X				
05N 02W 33																
05N 02W 34																
05N 02W 35				X		X			X	X		X	X	X	X	X
05N 02W 36																

Conditions of Approval:

Remarks:

IDAHO DEPARTMENT OF WATER RESOURCES

Adjudication Claim Report 63-123B

1.	General	THIS RIGHT AND RIGHT NO. 63-00123A WERE RECOMBINED AND FILED ON BY TWO DIFFERENT CANAL COMPANIES. FARMERS UNION FILED ON BOTH THESE RIGHTS UNDER CLAIM NO. A63-00123C BECAUSE THE WATER IS DELIVERED THROUGH THEIR DITCH FOR THE CAPITOL VIEW IRRIG. DIST. THEN THE CAPITOL VIEW IRRIG. DIST FILED ON BOTH UNDER A63-00123 BECAUSE IT IS THEIR WATER EVEN THOUGH IT IS DELIVERED THROUGH THE FARMERS UNION DITCH CO. WHICH CLAIM WILL BE RECOMMENDED IN THE FINAL REPORT WILL BE DECIDED LATER DURING FINAL REVIEW. JS

Comments:

IDAHO DEPARTMENT OF WATER RESOURCES

Adjudication Claim Report 63-123C

WATER RIGHT NUMBER: 63-123C

Owner Type	Name and Address
Original Owner	JACOBS CANAL CO , ID
Current Owner	FARMERS UNION DITCH CO LTD 2153 N POLLARD STAR, ID 83669 (208)286-7318

Priority Date: 06/01/1864

Basis: Decreed

Status: Active

Source	Tributary
BOISE RIVER	SNAKE RIVER

Beneficial Use	From To	Diversion Rate	Annual Volume
IRRIGATION	3/15 to 11/15	20.000 CFS	
	Total Diversion:	20.000 CFS	

Location of Point(s) of Diversion

BOISE RIVER NE1/4SE1/4NE1/4 Sec. 5, Twp 03N, Rge 02E, B.M.

ADA County

Place of Use

IRRIGATION

Twp	Rge	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
04N	01E	3			40.0	12.0	20.0	34.0	12.0	40.0	40.0	40.0	38.0	39.0	25.0	40.0	40.0	36.0	456.0
04N	01E	4	30.0	34.0	34.0	36.0	36.0	30.0	39.0	36.0	38.0	30.0	38.0	38.0	35.0	38.0	39.0	38.0	569.0
04N	01E	5	36.0	38.0	40.0	38.0	38.0	36.0	34.0	34.0	40.0	36.0	38.0	38.0	36.0	40.0	36.0	36.0	594.0
04N	01E	6	32.0	36.0	37.0	36.0	39.0	39.0	39.0	38.0	40.0	38.0	37.0	35.0	36.0	36.0	37.0	35.0	590.0
04N	01E	7	15.0	30.0															45.0
04N	01E	8	34.0	25.0	15.0	30.0	20.0	37.0	4.0	12.0									177.0
04N	01E	9	38.0	12.0	24.0	15.0	35.0	38.0							4.0	8.0			174.0

IDAHO DEPARTMENT OF WATER RESOURCES

Adjudication Claim Report 63-123C

04N 01E	10		36.0	36.0		38.0	40.0	38.0	38.0	17.0	12.0	2.0	9.0	25.0	40.0	2.0	8.0	341.0
04N 01E	11									40.0	10.0	22.0	10.0		2.0	13.0		97.0
04N 01E	13			5.0			1.0	30.0	18.0	16.0	1.0			20.0	20.0			111.0
04N 01E	14	6.0		36.0	38.0	38.0	36.0	10.0	10.0									174.0
04N 01E	15	35.0	12.0	1.0	12.0													60.0
04N 01W	1	38.0 L1	38.0 L2	22.0	38.0	10.0			2.0					38.0	38.0			224.0
04N 01W	2					20.0 L3	38.0 L4	6.0										64.0
04N 01W	3					25.0 L3	40.0 L4	40.0		38.0	40.0							183.0
04N 01W	4	40.0 L1	40.0 L2	38.0	38.0	40.0 L3	40.0 L4	38.0	38.0	38.0	38.0	20.0	18.0	38.0	36.0	17.0	15.0	532.0
04N 01W	5	36.0 L1	38.0 L2	38.0	38.0	40.0 L3	40.0 L4	39.0	38.0	22.0	24.0			40.0	35.0	4.0	16.0	448.0
04N 01W	6	40.0 L1	40.0 L2	35.0	20.0	40.0 L3	38.0 L4	8.0 L5	14.0									235.0
04N 02E	18										3.0 L3	20.0 L4						23.0
04N 02E	19		3.0	6.0		24.0	40.0 L1		24.0								1.0	98.0
04N 02E	32					1.0			3.0								1.0	5.0
04N 02W	1	12.0 L1	20.0 L2	4.0	10.0	40.0 L3	40.0 L4											126.0
05N 01E	31				32.0		20.0 L1	35.0 L2	24.0	38.0	34.0 L3	34.0 L4	38.0	38.0	38.0	38.0	38.0	407.0
05N 01E	32										12.0	36.0	5.0			5.0		58.0
05N 01E	33												5.0			10.0		15.0
05N 01E	34											10.0						10.0
05N 01W	26									1.0	3.0	22.0				1.0	2.0	29.0
05N 01W	27								1.0	36.0	20.0	26.0	8.0				3.0	94.0

IDAHO DEPARTMENT OF WATER RESOURCES

Adjudication Claim Report 63-123C

05N 01W	28												3.0			3.0	22.0		28.0
05N 01W	31								3.0		7.0	26.0		1.0	27.0	36.0			100.0
05N 01W	32			10.0	14.0				1.0	32.0	7.0	38.0	38.0	40.0	40.0	39.0	39.0		298.0
05N 01W	33	20.0	35.0	30.0	24.0	18.0	1.0	31.0	38.0	39.0	39.0	38.0	38.0	40.0	36.0	38.0	38.0		503.0
05N 01W	34	26.0	10.0	36.0	40.0	1.0		28.0	32.0	40.0	40.0	39.0	39.0	38.0	38.0	20.0			427.0
05N 01W	35	38.0	38.0	32.0	38.0	37.0	33.0	40.0	40.0	40.0	40.0	38.0	38.0	38.0	40.0	30.0	16.0		576.0
05N 01W	36	12.0	30.0	38.0	39.0	20.0	30.0	35.0	39.0	39.0	36.0		36.0	39.0	39.0	38.0	38.0		508.0
05N 02W	36											12.0	3.0						15.0

Total Acres: 8394

Conditions of Approval:

Remarks:

1. THE LANDS ARE WITHIN THE SERVICE AREA OF THE FARMERS UNION DITCH CO., LTD. THE 20.00 CFS CLAIMED IN THIS WATER RIGHT IS DIVERTED BY THE FARMERS UNION DITCH CO. DURING THE ENTIRE IRRIGATION SEASON.
7.00 CFS FROM THIS WATER RIGHT IS DELIVERED TO THE CAPITOL VIEW IRRIGATION DIST. BY MEANS OF A PUMP IN THE FARMERS UNION CANAL, AND A DITCH LEADING FROM THE FARMERS UNION CANAL TO ANOTHER PUMP. THE REMAINING 13.00 CFS IS DELIVERED TO THE LANDS SERVICED BY THE FARMERS UNION DITCH CO., LTD. IF ONE OR BOTH OF THESE PUMPS ARE NOT OPERATING, THE 7.00 CFS, IS DELIVERED TO OTHER LANDS SERVICED BY THE FARMERS UNION DITCH CO., LTD.
THIS CLAIM IS BASED ON COMBINING WATER RIGHTS 63-00123A AND 63-00123B.
Duplicate claim filed under water right no. 63-00123D. DB 12/27/2000.

Comments:

IDAHO DEPARTMENT OF WATER RESOURCES

Adjudication Claim Report 63-123D

WATER RIGHT NUMBER: 63-123D

Owner Type	Name and Address
Current Owner	EAST HILLS DEVELOPMENT LLC 340 W STATE ST EAGLE, ID 83616

Priority Date: 06/01/1864

Basis: Decreed

Status: Active

Source	Tributary
BOISE RIVER	SNAKE RIVER

Beneficial Use	From	To	Diversion Rate	Annual Volume
IRRIGATION	03/15	11/15	0.525 CFS	
		Total Diversion:	0.525 CFS	

Location of Point(s) of Diversion

BOISE RIVER NE1/4SE1/4NE1/4 Sec. 5, Twp 03N, Rge 02E, B.M.

ADA County

Place of Use

IRRIGATION

Twp	Rge	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
04N	01E	3										25.0	25.0						50.0

Total Acres: 50

Conditions of Approval:

Remarks:

1. Water is delivered by the Farmers Union Ditch Company.
Duplicate filing by land owners under Farmers Union for Jacob's Canal Co. right.
See Terry Scanlan's letter dated January 11, 2000 in file.

Comments:

IDAHO DEPARTMENT OF WATER RESOURCES

Adjudication Claim Report 63-123E

WATER RIGHT NUMBER: 63-123E

Owner Type	Name and Address
Current Owner	CAPITOL VIEW IRRIGATION INC C/O PETE NEWTON PO BOX 208 EAGLE, ID 83616 (208)939-7292

Priority Date: 06/01/1864

Basis: Decreed

Status: Active

Source	Tributary
BOISE RIVER	SNAKE RIVER

Beneficial Use	From	To	Diversion Rate	Annual Volume
IRRIGATION	03/15	11/15	20.000 CFS	
		Total Diversion:	20.000 CFS	

Location of Point(s) of Diversion

BOISE RIVER SE1/4SE1/4 Sec. 32, Twp 04N, Rge 02E, B.M.

ADA County

Place of Use

IRRIGATION

Twp	Rge	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
05N	01E	32		20.0			40.0	40.0	40.0	40.0				30.0	40.0	40.0	40.0	40.0	370.0
05N	01E	33			40.0		40.0	40.0	40.0	40.0			20.0	30.0	40.0	40.0	40.0	40.0	410.0
05N	01E	34			40.0	40.0					40.0	40.0	40.0	40.0					240.0

Total Acres: 1020

Conditions of Approval:

Remarks:

1. Explanatory Properties are owned by uses of Capitol View, Inc. This water right had previously been split into 63-123A & 63-123B. In this filing they are being recombined, because Transfer 542 was never put into effect.
   Change in Place of Use, see Transfer 136.

IDAHO DEPARTMENT OF WATER RESOURCES

Adjudication Claim Report 63-123E

2. Explanatory THIS RIGHT IS A SPLIT FROM FORMER RIGHT 63-123.

Comments:

IDAHO DEPARTMENT OF WATER RESOURCES

Adjudication Claim Report 63-123F

WATER RIGHT NUMBER: 63-123F

Owner Type	Name and Address
Current Owner	LEXINGTON HILLS INC 1815 E STONYBROOK CT EAGLE, ID 83616 (208)939-6000

Priority Date: 06/01/1864

Basis: Decreed

Status: Active

Source	Tributary
BOISE RIVER	SNAKE RIVER

Beneficial Use	From	To	Diversion Rate	Annual Volume
IRRIGATION	03/15	11/15	1.930 CFS	
		Total Diversion:	1.930 CFS	

Location of Point(s) of Diversion

BOISE RIVER NE1/4SE1/4NE1/4 Sec. 5, Twp 03N, Rge 02E, B.M.

ADA County

Place of Use

IRRIGATION

Twp	Rge	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
04N	01E	3			40.0					40.0	40.0	40.0	40.0	40.0		15.0	15.0		270.0

Total Acres: 270

Conditions of Approval:

Remarks:

1. Explanatory — Lexington Hills Inc. acquired the approximately 270 acre place of use associated with this claim subsequently developed the property as a residential subdivision. Lexington Hills Inc. has retained a 96.5 inch (1.93 cfs) portion of this right.
2. Explanatory — THIS RIGHT IS A SPLIT FROM FORMER RIGHT 63-123.

Comments:

63-123 (Jacobs right)

Assessments by Zamora Union
(Per Ron Schreiner 11-4-02)

Donnaechea 34" Ellen Steinhauser-10"
Capital View - 350"
Lexington Hills Inc - 96.4"
Lexington Hills HOA - 107.6"
East Hills Development - 26.23"
Echo Creek - 33.77"
~~614"~~ 658"

Per Pete Newton (before losses)
Zamora Union delivers - 311"
" " assesses - 350"
Historically (?) 375"

3-16-04
OK per
Pete Newton

333" + 96.4" + 107.6" + 33.77" = 11.42 570.77" = Zamora.
.52 26.23" = East Hills
8.06 403.00 = Capital
1000"

See attached allocation table

6-2-04

Per Susan H

1) We need more ownership info - chain of title, etc to prove ownership of right

2) If no additional proof is available give all entities except Capital View to Farmers Union

3) Get affidavits from Farmers or others concerning historical delivery of water

IDAHO DEPARTMENT OF WATER RESOURCES

Water Right Report 63-123B

WATER RIGHT NUMBER: 63-123B

Owner Type	Name and Address
Current Owner	JACOBS CANAL CO
	, ID

Priority Date: 06/01/1864
Basis: Decreed
Status: Active

Source	Tributary
BOISE RIVER	SNAKE RIVER

Beneficial Use	From To	Diversion Rate	Annual Volume
IRRIGATION	/ to /	19.310 CFS	
	Total Diversion:	19.310 CFS	

Location of Point(s) of Diversion

BOISE RIVER SE1/4SE1/4 Sec. 32, Twp 04N, Rge 02E, B.M.
ADA County

Place of Use

IRRIGATION Within ADA County

T03N R02E S04	T03N R02E S09
T03N R02E S10	T03N R02E S11
T03N R02E S13	T03N R02E S14
T04N R02W S02 Lot 1 NENE	T04N R02W S02 Lot 2 NWNE
T04N R02W S02 Lot 3 NENW	T04N R02W S02 Lot 4 NWNW
T04N R02W S03 Lot 1 NENE	T04N R02W S03 Lot 4 NWNW
T04N R02W S04 Lot 4 NWNW	T04N R02W S05 Lot 3 NENW
T05N R01W S19 SWSW	T05N R01W S30 NWSW
T05N R01W S30 SWSW	T05N R01W S31 NWNW
T05N R01W S31 SWNW	T05N R02W S22 SWSW
T05N R02W S22 SESW	T05N R02W S22 SESE
T05N R02W S23 SWSW	T05N R02W S23 SESW
T05N R02W S23 SWSE	T05N R02W S23 SESE
T05N R02W S24 NESW	T05N R02W S24 NWSW
T05N R02W S24 SWSW	T05N R02W S24 SESW
T05N R02W S25 SESE	T05N R02W S26 NWNE
T05N R02W S26 NENW	T05N R02W S26 NWNW
T05N R02W S26 SWNW	T05N R02W S26 SENW

IDAHO DEPARTMENT OF WATER RESOURCES

Water Right Report 63-123B

T05N R02W S26	NESW	T05N R02W S26	NWSW
T05N R02W S27	SWNE	T05N R02W S27	SENE
T05N R02W S27	SWNW	T05N R02W S27	SENW
T05N R02W S27	NESW	T05N R02W S27	NWSW
T05N R02W S27	SWSW	T05N R02W S27	SESW
T05N R02W S27	NESE	T05N R02W S27	NWSE
T05N R02W S27	SWSE	T05N R02W S27	SESE
T05N R02W S28	SWNW	T05N R02W S28	NWSW
T05N R02W S28	SWSW	T05N R02W S28	SESW
T05N R02W S28	NESE	T05N R02W S28	NWSE
T05N R02W S28	SWSE	T05N R02W S28	SESE
T05N R02W S29	SENE	T05N R02W S29	NESE
T05N R02W S29	NWSE	T05N R02W S29	SESE
T05N R02W S32	NWNE	T05N R02W S32	SWNE
T05N R02W S32	SWSW	T05N R02W S32	SESW
T05N R02W S33		T05N R02W S34	
T05N R02W S35	SENE	T05N R02W S35	NWNW
T05N R02W S35	NESW	T05N R02W S35	NWSW
T05N R02W S35	SESW	T05N R02W S35	NESE
T05N R02W S35	NWSE	T05N R02W S35	SWSE
T05N R02W S35	SESE	T05N R02W S36	

Conditions of Approval:

Remarks:

1. General ALSO USED ON TOWN LOTS (BOISE).
WATER CARRIED IN FARMERS UNION CANAL.
DIV. RATE=19.3125 CFS.
TRANS. 136.

Comments:

IDAHO DEPARTMENT OF WATER RESOURCES

Water Right Report 63-123

WATER RIGHT NUMBER: 63-123

Owner Type | Name and Address

Priority Date:

Basis:

Status: See Remarks

Source | Tributary

Beneficial Use | From | To | Diversion Rate | Annual Volume

Total Diversion:

Location of Point(s) of Diversion

Place of Use

Conditions of Approval:

Remarks:

1. General SPLIT INTO 63-0123A & 63-0123B BY TRANS. 542.

Comments:

IDAHO DEPARTMENT OF WATER RESOURCES

Water Right Report 63-123A

WATER RIGHT NUMBER: 63-123A

Owner Type	Name and Address
Original Owner	JACOBS CANAL CO
	, ID
Current Owner	FEDERAL LAND BANK OF SPOKANE
	, ZZ

Priority Date: 06/01/1864
Basis: Decreed
Status: Active

Source	Tributary
BOISE RIVER	SNAKE RIVER

Beneficial Use	From To	Diversion Rate	Annual Volume
IRRIGATION	/ to /	0.690 CFS	
DOMESTIC	/ to /		
	Total Diversion:	0.690 CFS	

Location of Point(s) of Diversion

BOISE RIVER

Place of Use

IRRIGATION Within ADA County

T04N R01E S04	NESW	T04N R01E S04	SESW
T04N R01E S04	NESE	T04N R01E S04	NWSE
T04N R01E S04	SWSE		

DOMESTIC same as IRRIGATION

Conditions of Approval:

Remarks:

1. General TO FARMERS UNION CANAL.
   TRANS. 542.
   DIV. RATE=.6875 CFS.

Comments:

2.
IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE STATE OF IDAHO
IN AND FOR THE COUNTY OF CANYON.

Farmers'Co-operative Ditch Company, a corporation, Plaintiff.
vs
Riverside Irrigation District, Limited, a corporation, Jacobs Canal Company, Limited, et al., Defendants.

DECREE IN WATER SUIT.
Dated January 18, 1906;
Recorded March 30, 1906, @ 10:40 A.M.
Book 55 of Deeds at page 351.

II.

Recites:-Jacobs Canal Company, Limited, a corporation:-

That the defendant the Jacobs Canal Company Limited, be and it is hereby awarded the use of the waters of Boise River, diverted from a point on the north side of said river about one mile east of the east boundary line of the original townsite of Boise City, Idaho, through what is commonly known as the Jacobs Canal, for use upon the town lots and lands lying under said canal in Secs. 4, 9, 10, 11, 13, 14, T. 3 N., R. 2 E., B.M. in the following amount from the following date:

1000 inches from June 1, 1864, and hereby designated as Right No. 2, and adjudged to pay $70.00 costs in addition to the costs incurred by it.

* * * * * * * * * * * * * *

3.
IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE STATE OF IDAHO
IN AND FOR THE COUNTY OF ADA.

Jacobs Canal Company, Limited, a corporation, Plaintiff.
vs
John McClellan, A.O.Miller and Front Street Ditch Co., Ltd. a corporation, Defendants.

JUDGMENT AND DECREE OF THE COURT.
Dated April 7, 1906;
Filed and Entered April 7, 1906;
Book "G" of Judgments at page 187.

This cause having been called regularly for trial before the Court, Messrs W.E.Borah and George H,Parsons appeared as Counsel for the Plaintiff and Messrs Davidson & Stoutemyer appeared as counsel for the defendants; And the Court having heard the proofs of the respective parties and considered the same, and the records and papers in the case and the arguments of respective counsel thereon, and the cause having been submitted to the court for its decision;

It is now therefore ordered, adjudged and decreed that the title of the Complainant Jacobs Canal Company Limited to the following described ditch and real property in Ada Co., Ida., to-wit: All that certain ditch or canal known as the Jacobs Ditch, together with the ditches and waste ways appurtenant to the same, which said ditch takes water out of the Boise River on the North bank thereof at a point adjoining the right of way of the Oregon Short Line Railway Company, about one and one half miles southeasterly from Boise City; thence through the lands formerly belonging to Tom Davis, George W. Russell and L.F.Cartee; thence emerging into Front Street of said Boise City at or near Fifth Street; thence Down Front Street to Eighth Street; thence diagonally across Eighth Street, and emptying into the Boise City Canal Company's ditch on Grove Street, together with all water rights, rights of way, and appurtenances thereunto belonging except and subject to a certain right, water right and easement in said ditch and the whole thereof, which said right, water right and easement the court hereby orders, adjudges and decrees to be the right, water right, easement and property of the defendant Front Street Ditch Company, Limited, a corporation, and is described as follows, to-wit:-

(Entry # 3 continued)

A right on the part of Defendant, Front Street Ditch Company, Limited, to take sufficient water from said ditch to irrigate the lands belonging to said defendants stockholders and under said ditch which said lands the court hereby finds to be 26 acres of unplatted land and 38 and 8/10 acres of land platted and divided into town lots, making 64 and 8/10 acres in all for which the defendant company is entitled to water to irrigate out of said ditch, and a right and easement on the part of the defendant corporation in said ditch and to the use thereof for the purpose of conveying said water from the Boise River to and upon the said lands of said defendant's stockholders, said defendant Front Street Ditch Co., Ltd., being liable for its proportionate share of the cost of maintaining said ditch, and for that only, be and hereby is adjudged good and valid as against defendants John McClellan and Front Street Ditch Company Limited and said defendants are hereby forever enjoined and debarred from asserting any claim to said property except the easement and rights in said property, as in this judgment above specified.

That the title of the complaint Jacobs Canal Company, Limited, to the ditch or canal extending from the Boise City Canal on Thirteenth Street of said Boise City to the power house commonly known as Jacobs Mill, together with all rights of way, privileges, franchises and appurtenances thereunto belonging or in any wise appertaining with all and singular the tenements, hereditaments and appurtenances thereunto belonging, all of said property lying and being in Ada County, Idaho, be and hereby is adjudged and decreed good and valid as against defendants John McClellan and Front Street Ditch Company, Limited, and said defendants and each of them are hereby enjoined and debarred from asserting any claim whatever in and to said property, ditch of canal.

That the right and title of the defendant Front Street Ditch Company Ltd. in and to the right, water right and easement in said Jacobs Ditch as above specified be and are hereby adjudged and decreed good and valid as against the Plaintiff, Jacobs Canal Company, Limited, and said plaintiff is hereby forever enjoined and debarred from asserting any claim to that right, water right and easement in said Jacobs Ditch above specified and described as the right, water right, easement and property of defendant Corporation.

That the defendant Front Street Ditch Company, Ltd. do have and recover of and from the plaintiff its costs and disbursements herein taxed at the sum of $___

Done this seventh day of April, 1906.

(Signed) Geo. H. Stewart,
District Judge.

(The docket entry of said judgment shows amount of said judgment to be $23.15)

4.

The Jacobs Canal Company
a corporation.

to

The Boise Independent
School District

DEED.
Dated May 3, 1904;
Ack'd May 4, 1907, by President, before
W.S.Bruce, N.P.Ada Co., Idaho. Seal.
Recorded May 14, 1907, @ 1:50 P.M.
Consideration $150.00
Book 62 of Deeds at page 389.

Whereas the Board of Directors of said Corporation hereto duly assembled has authorized the sale and transfer of the property hereinafter described; now, Therefore in consideration of the sum of $150.00, lawful money of the United States paid by the said party of the second part, receipt whereof is hereby acknowledged, the said party of the first part doth by these presents grant, bargain, sell, convey and confirm unto the said party of the second part, its successors and assigns forever

That certain portion of ditch and ditch right of way known as the Jacobs MillDitch and right of way, running along the southerly side of Fairview Avenue of Boise City, Ada County, Idaho, from the point of intersection of said ditch with what is known as the Park School Grounds, said point of intersection being near Main Street of said Boise, thence westerly to a point where said ditch intersects Grove Street extended westerly of said Boise, together with all and singular the said right of way, franchises,

(Entry No. 4 continued)

tenements, hereditaments and appurtenances thereunto belonging.
Reserving however, to said first party the right to utilize and run water through said ditch till November 15, 1907,

(Corporate Seal).

(Signed) Jacobs Canal Company, Ltd.
By J. L. Niday, President.
Attest:- B.F.Olden, Secretary.

5.
Jacob's Canal Company, Ltd., a Corporation.

A B A N D O N M E N T .
Dated April 19, 1907;
Ack'd April 22,1907,by President, before Sherman G.King, N.P.Ada Co.,Idaho. Seal.
Recorded August 6, 1907,@ 2:P.M.
Witness: S.G.King.
Book 3 of Misc.Records at page 117.

Know all men by these presents, That the Undersigned Jacob's Canal Company, Ltd. a corporation organized under the laws of the State of Idaho, owner of that certain ditch or water way commonly known and called The Jacob's Mill Ditch, commencing at the intersection of 13th and Idaho Streets and extending through and across Lots 7,8,9,10,11 & 12 of Block 114 and Lots 1,2,3,4,5,11 and 12 of Block 115, and also extending across the intersection of Idaho and Fourteeth Streets, across Fifteenth Street and the intersection of 16th and Main Streets, Boise, Ada County, Idaho, for and in consideration of the sum of $1000, lawful money of the United States of America, in hand paid by the property owners abutting on and along said ditch, the receipt whereof is hereby acknowledged; do hereby and forever abandon the same from the point of intersection of said ditch with the curb line along the Northerly side of said Block 114, across said Blocks 114 and 115 and the streets and alleys through and between said blocks to the point of intersection of the said ditch with the southerly side of Main Street and the westerly side of 16th Street of said Boise for and to the use of the Public where the same crosses and runs upon said public streets and alleys, and to the owners of said respective lots through and upon which said ditch runs.

It being the intent of the said Jacob's Canal Company, Ltd., to forever abandon said ditch between the points aforesaid.

And the said Jacob's Canal Company Ltd. forever relinquish es all right, title and interest in and to said ditch between the points aforesaid and the right and privilege to run, convey or divert water in and through the same between the points aforesaid, from and after the time hereinafter stated, and hereby grants to the said City of Boise, and the respective property owners alongside of said ditch between said points the right to fill up and obliterate the same at any time after the time this abandonment is to take effect.

This abandonment is to take effect on the 15th day of November,1907.

In Witness whereof the said corporation has caused its name to be signed hereto by the President of said corporation, attested by the secretary, and the corporate seal to be attached on this 19th day of April A. D., 1907.

(Corporate Seal)

(Signed) Jacobs Canal Company Ltd.,
By J. L. Niday, President.
Attest:- B. F. Olden, Secretary.

6.

City Clerk

to

Boise City

TAX CERTIFICATE #778
Dated October 5, 1907;
Filed December 14, 1907;
Consideration $1303.91

Covers:- Right of Way for said canal crossing Ninth St. adjacent to and a little North of its intersection with Grove Sts. AldoRight of way for said canal at the intersection of 9th and Front Sts., assessed to Jacobs Canal Co., Ltd. for Street Paving in District No. 7.

Taxes

IT IS HEREBY CERTIFIED, That there are no taxes due and unpaid upon the lands described below, and that there are no unredeemed tax sales and that no tax deeds have been given thereon, except as shown on the foregoing abstract, subsequent to January 26, 1906, @ 9 A.M. *except* Taxes of 1907.

Judgments

IT IS HEREBY CERTIFIED, That there are no judgments or liens of any kind against any of the within named grantees, which are liens upon the lands described below, shown by the Judgment Docket of the District Court in and for Ada County, State of Idaho, or the United States District and Circuit Courts sitting in Ada County, Idaho, except as shown on foregoing abstract, subsequent to January 26, 1906, @ 9 A.M.

Certificate of Abstracter

STATE OF IDAHO,
County of Ada. } ss.

IT IS HEREBY CERTIFIED, That the above and foregoing entries numbered from One to 6 *inclusive, contain a true and correct abstract of all conveyances or other instruments of writing now on record in the office of the County Recorder in and for said county, which in any way affect the title of the following described real estate, subsequent to* January 26, 1906, @ 9 A.M.

The Ditch of the Jacobs Canal Company, Limited, commonly known as and called the "Jacob's Ditch".

This Certificate, No. 3325, *is made for the use and at the request of* J. L. Niday

IN WITNESS WHEREOF, The Boise Title and Trust Company, Limited, has caused its corporate seal to be hereto affixed and these presents to be signed by its manager, this Twenty-third *day of* December *1907, at* five *o'clock* P. *M.*

BOISE TITLE AND TRUST COMPANY, Limited,

By [signature] *Manager.*

Continuation
of
Abstract of Title
to

The Ditch of the Jacobs Canal Company, Limited, commonly known as, and called, the "Jacob's Ditch", excepting therefrom that portion thereof abandoned by said Company, and described in Instrument recorded August 6, 1907, in Book 3 of Miscellaneous Records, page 117; also excepting that part conveyed to the Boise Independent School District by Deed recorded May 14, 1907, in Book 62 of Deeds, page 389.

From December 23, 1907 at 5 o'clock P. M.

Articles of Incorporation

1 of

Front Street Ditch Company, Limited.

Filed March 11, 1905.

The purposes and objects for which said Corporation is formed, are: To acquire, take, hold and operate by right of location, purchase, lease or otherwise, water and water rights, use of water, canals, ditches and ditch rights, flumes, sluices and sluice ways, laterals, dams and all and any other improvements and constructions necessary and incident to such acquisition, ownership and operation of such canals and ditches.

To convey water from the Boise River by means of ditches, canals, flumes and other methods to lands situated within the corporate limits of Boise City, Ada Co. Idaho, for irrigation purposes.

To purchase, lease, construct and maintain any such means for conveying such water for such use and benefit of stockholders and members of the corporation.

To take, secure, hold, own, lease and otherwise acquire franchises and such right of way for canals and ditches.

That to each share of the stock of the corporation shall be inseparably attached the perpetual right to the use of 1 and 2/3 inches of water, subject to regulation of maintenance charges.

Its principal place of business shall be in Boise City, Ada Co. Idaho The term of its existence shall be 50 years from date of its corporation

That the number of Directors of this corporation shall be 5.

That the amount of the capital stock of this corporation shall be $22500.00 and is divided into 900 shares of the par value of $25.00 each.

That the amount of capital stock which has been actually subscribed is $1000.00.

Signed by the following Incorporators March 8, 1905.
John McClellan, John A. Ruhl, John Grumbling, Henry L. Tucker, A.O.Miller

Acknowledged March 10, 1905 by the above named incorporators before Lee Hutchinson, a Notary Public in and for Ada Co. Idaho. (Seal)

Front Street Ditch Company, Limited, a corporation

2 to

Jacobs Canal Company, Limited, a corporation

Deed

Dated Apl. 14, 1911

Recorded Apl. 15, 1911 in Book 87 of Deeds, page 369.

Consideration $613.00 and other valuable consideration.

WITNESSETH, That Whereas, the said party of the first part is a corporation and has acquired and is the owner of certain property, easements, water rights, ditches and franchises hereinafter more specifically described, situated in Boise City, Idaho, and

WHEREAS, the Stockholders holding and owning a majority of the stock of said corporation issued and outstanding at the regular annual meeting of the said stockholders, held in pursuance of the time fixed in the By Laws, and notice thereof duly given, duly passed the following resolution:

"Be it resolved, by the stockholders of said Front Street Ditch Company, at the regular annual meeting thereof, that it is for the best interest of said Company to sell and convey all of the assetts of said Company, for the sum of $613.00, and other valuable consideration, and go out of business, and apply the proceeds of such sale to the payment of said indebtedness; and Conrad Hansen, as Presiden and A.W. Brown, as Secretary of said Front Street Ditch Company, are hereby authorized and directed to make, execute and deliver for and in behalf of the said Front Street Ditch Company, and as its act and deed to said Jacobs Canal Company, a conveyance of all of the property of the said Front Street Ditch Company of every kind and nature whatsoever, and particularly the following described property, to-wit: All the right, title and interest of the said Front Street Ditch Company in that certain lateral or subsidiary ditch, taking water out of the Canal belonging to the said Jacobs Canal Company at Eighth and Front Streets, Boise, Idaho; thence running Westerly along the Southerly side of said Front Street to the Southwesterly corner of Ninth and Front Streets; thence dividing, one branch thereof running along the Westerly side of said Ninth Street of said Boise to the termination thereof, and the other continuing down the Southerly side of said Front Street to the passenger depot of the Oregon Short Line Railway Company, and thence in a Southwesterly direction to its termination, together with its sub-laterals; also that certain water right, or right to the use of water, thereunto belonging, and particularly the water right decreed the said Front Street Ditch Company in that certain suit to quiet title, wherein the Jacobs Canal Company, a corporation, was plaintiff, and John McClellan, A. O. Miller and the said Front Street Ditch Company were defendants, said decree being dated, filed and entered on the 7th day of April, 1906, and entered in Book "G" of Judgments, page 187 of the records of said Ada County, State of Idaho, together with the book accounts and books of account, stock book and seal belonging to said Company; and also all rights of way, easements and franchises belonging to said Company in whole or in part, or in any wise appertaining, and to affix to said conveyance the corporate name and seal of said Corporation", and

WHEREAS, The Board of Directors of said Front Street Ditch Company, did, at a meeting thereof duly called for such purpose, and convened on the 14th day of April, 1911, at which meeting a quorum of said Board was present and participated, approved the action of said stockholders of said Front Street Ditch Company in the adoption of said

resolution, and confirmed and adopted the same as the resolution of said Board of Directors, except that as Conrad Hansen was absent from said meeting, the name of John Grumbling, as Vice-President of said Board, was substituted, for "Conrad Hansen as President" and the words "By the Board of Directors of the said Front Street Ditch-Company, at a special called meeting thereof in manner prescribed by the By Laws of said Company" was substituted for the words "By the stockholders of said Front Street Ditch Company, at the regular annual meeting thereof."

NOW THEREFORE, In pursuance of said resolution aforesaid, and in consideration of the sum of $613.00 and other valuable considerations, paid by the said party of the second part, the receipt whereof is hereby acknowledged, the said party of the first part doth, by these presents, grant, bargain, sell, convey and confirm unto the said party of the second part, its successors and assigns forever, all of the following described property, easements, water rights, ditches and rights of way, described as follows, to-wit:

All of the property, rights, easements, ditches, ditch rights, franchises and water rights belonging to the said party of the first part, or in anywise appertaining and especially the water rights and easements awarded to the said party of the first part by that certain decree dated Aptil 7th, 1906, filed and entered April 7th, 1906, in Book "G" of Judgments, at page 187, of the District Court Records of said Ada County, State of Idaho, in that certain suit or action wherein The Jacobs Canal Company, Ltd. was plaintiff and John McClellan, A. O. Miller and The Front Street Ditch Company, Ltd., were defendants; also all the water rights, or rights to the use of water, easements and property rights of every kind and nature in or appertaining to that certain canal known as the Jacobs Canal, taking water out of the Boise River on the North bank thereof at a point adjoining the right of way of the Oregon Short Line Railway Company, about 1 1/2 miles South-Easterly from said Boise City; thence through the lands heretofore belonging to Thomas Davis, George W. Russell and L. F. Cartee; thence emerging into Front Street of said Boise at or near Fifth Street; thence down said Front Street on the Southerly side thereof to Eighth Street; thence diagonally across said Eighth Street to the confluence of same with the Canal belonging to the Boise City Canal Company; also the right, title and interest of the said party of the first part in and to that certain lateral or subsidiary canal taking water out of the said Jacobs Canal at Eighth and Front Streets of said Boise; thence running Westerly along the Southerly side of said Front Street to the South-westerly corner of Ninth and Front Streets; thence dividing, one branch thereof running along the Westerly side of Ninth Street, and the other continuing down the Southerly side of said Front Street by the Passesger Depot of the O. S. L. Railway Company, and thence in a South-westerly direction to the termination thereof, together with all sub-laterals, franchises, water rights, easements and appurtenances thereunto belonging, the property of the said party of the first part, and the rentals, issues and profits thereof.

.....

(Signed) The Front Street Dicth Company, Ltd.,
By John Grumling,
Vice-President.

Attest: A. W. Brown,
Secretary. (No Seal)

Acknowledged Apl. 14, 1911 by John Grunbling, said Vice President, and A. W. Brown, said Secretary, before Nellie T. Wood, a Notary Public in and for Ada Co. Idaho. (Seal)

WE HEREBY CERTIFY AS FOLLOWS:

No conveyances of, or other instruments relating to or affecting, the premises described in the caption hereto, which describe said premises, or any part thereof, are recorded or filed for record in the Recorder's Office of Ada County, Idaho, except as shown by entries No. 1 to 2 since December 23, 1907 at 5 o'clock P. M.

No judgments appear by the Judgment Dockets of any court of record in said county against any of the parties named herein

which are liens on said premises.

No tax sales of said premises appear on the records of the Assessor and Tax Collector or Auditor and Recorder of said County or of the City Clerk of Boise City not marked cancelled, redeemed or paid. since said date.

The assessment roll of Ada County shows the State and County, Etc., taxes for the year 1910 assessed to Jacobs Canal Company are paid.

Taxes of 1911 are a lien. ✓

No special assessments levied by Boise City on said premises. since said date.

IN WITNESS WHEREOF The Idaho Title and Trust Co., Limited, has caused its Corporate Seal to be hereto affixed and these presents to be signed by its manager thereunto duly authorized at Boise, Idaho, this September 9, 1911 at 5 o'clock P. M.

THE IDAHO TITLE AND TRUST COMPANY, LIMITED,

By Frank S. Bash Manager.

Boise Fruit Tracts
Transfer.

Transcript.

Application of
J. M. Wise.

Receipts from
B. F. Neal
for Blocks
Abstracts
and for D. W. Vail's
Abstract

MICROFILMED

File 63-7 63.123

BEFORE THE STATE ENGINEER OF THE STATE OF IDAHO.

IN THE MATTER OF THE APPLICATION :
OF BOISE FRUIT TRACTS COMPANY, FOR :
THE TRANSFER OF BOISE RIVER WATER RIGHTS. :

This cause came on for hearing at 2 o'clock P. M. on the 5th day of May, 1914, pursuant to a continuance from April 14, 1914, entered on request of certain protestants, upon the application of the Boise Fruit Tracts Company made under the provisions of Section 3264 of the Revised Codes of Idaho for a certificate of the StateEngineer of the State of Idaho transferring the point of diversion and place of use of certain water rights in Boise River as specifically described in said application now on file in this office, and upon the joint protest of the Farmers' Co-operative Ditch Company, the Pioneer Irrigation District and the Nampa-Meridian Irrigation District, Messrs. Walter Griffiths, T. L. Martin and B. F. Neal appearing as counsel on behalf of said applicant and Messrs. R. B. Scatterday, J. M. Thompson and H. E. McElroy appearing as counsel on behalf of said protestants. Documentary evidence was introduced on behalf of said applicant in support of its application and documentary evidence was introduced by said protestants in support of their protest.

Whereupon, the said matter was submitted to theState Engineer for his consideration and decision, and, after fully considering the same, said State Engineer is of the opinion that said application should be allowed and that an order should be made transferring the point of diversion and place of use of said waters of Boise River which are appurtenant to the lands described in said application and hereinafter described, and also the entire waters of the right of the Jacobs Canal hereinafter specifically described.

NOW THEREFORE, it is hereby ordered that the points of diversion from the Boise River and the places of use of the waters hereinafter described be, and the same are hereby transferred from the points of diversion and places of use hereinafter set out to the point of diversion and place of use hereinafter described:

PRESENT POINTS OF DIVERSION AND USE AND DESCRIPTION
OF WATER RIGHTS TRANSFERRED.

ALL of the water rights hereinafter described and hereby ordered transferred are described in that certain decree entered in the case entitled: "Farmers' Co-operative Ditch Company, Plaintiff, vs. Riverside Irrigation District and others, defendants," in the District Court of the Third (now Seventh) Judicial District of the State of Idaho, in and for the County of Canyon, decree in which cause was entered and filed in the office of the Clerk of said Court on the 18th day of January, 1906. Said waters are specifically described as follows, viz:

MICROFILMED

(1) All the water rights appurtenant to that part of Lots 1,2 and 3 in Sec. 12, T. 4 N. R. 4 W. B. M. and that part of Lots 3,4 and 5 in Sec. 7, T. 4 N. R. 3 W. B. M. which lie on the southerly side of the present main channel of the Boise River, area 200 acres; the W 25 acres of the NE¼ of the NW¼ of Sec. 14; the E½ of the NE¼ of Sec. 23; the E½ of the SE¼ of Sec. 14; the W 30 acres of the NW¼ of the NE¼ of Sec. 13, all in T. 4 N. R. 4 W. B. M.; and the NW¼ of the NE¼ of Sec. 19, T. 4 N. R. 3 W. B. M.; said water being heretofore diverted through the Pioneer Dixie Ditch, the point of diversion of which is described in said decree as follows, to-wit: The point of diversion is on the left bank of the Boise River in the SW¼ of Sec. 20, T. 4 N. R. 3 W. B. M. Said waters appurtenant to said lands hereinabove described being part of rights Nos. 8 and 45 as set out in said decree hereinabove referred to.

(2) All the water rights appurtenant to the E½ of Sec. 8 and all of Sec. 9 T. 4 N. R. 4 W. B. M., said water being heretofore diverted through the Riverside Canal, the point of diversion of which from the Boise River is described in said decree as follows, to-wit: The point of diversion is on the left bank of the Boise River near the center of Sec. 20, T. 4 N. R. 3 W. B. M., said waters appurtenant to said lands hereinabove described being all of Right No. 88 as set out in said decree hereinabove referred to.

(3) All the water rights appurtenant to the SW¼ of the SE¼ of Sec. 31, T. 5 N., R. 4 W. B. M., said water being heretofore diverted through the Eureka No. 2 Ditch, the point of diversion of which from the Boise River is described in said decree as follows, to-wit: The point of diversion is on the left bank of the Boise River near the SW corner of Sec. 12, T. 4 N. R. 4 W. B. M. Said water appurtenant to said lands hereinabove described being a part of Right No. 89 as set out in said decree hereinabove referred to.

(4) Also all of the water right of the Jacobs Ditch Company, Limited, consisting of 1000 miners inches as the same is described in the decree hereinabove referred to, and described in said decree as used under a rental system in the irrigation of town lots and blocks, for street sprinkling, sewer flushing and other municipal purposes in Boise City and additions thereto. Said water being heretofore diverted through the Jacobs Ditch, the point of diversion of which from the Boise River is described in said decree as follows, to-wit: The point of diversion is on the right bank of the Boise River about one mile East of Boise City; said water being all of Right No. 2 as set out in said decree hereinabove referred to.

POINT TO WHICH TRANSFERRED AND PLACE OF USE.

All the water rights hereinabove described and hereby ordered transferred are hereby ordered to be diverted into the canal of the Farmers' Union Ditch Company, Limited, at the following point of diversion from the Boise River, to-wit: To be diverted into the Farmers' Union Canal on the right bank of the Boise River in the SE¼ of the SE¼ of Sec. 32, T. 4 N. R. 2 E. of B. M. for use, for domestic and irrigation purposes, upon the following described lands, to-wit:

The following lands in Twp. 5 N. of R. 1 W. of B. M. Ada County, Idaho; SW¼ of SW¼ of Sec. 19; W½ of NW¼ of Sec. 30; SW¼ of SW¼ of Sec. 30; W½ of NW¼ Sec. 31; and the following described lands in Twp. 5 N. of R. 2 W. of B. M. in Canyon County, Idaho, to-wit:

75.3 acres in the S½ of the SW¼ and the S½ of SE¼ of Sec. 22; 123.2 acres in the S½ of the SW¼ and S½ of SE¼ of Sec.23; 29 acres in the SW¼ of Sec. 24; the SE¼ of the SE¼ of Sec. 25; the following lands in Sec. 26, the N½ of the NW¼; the SW¼ of the NW¼ and 26.7 acres of the SE¼ of the NW¼; the NW¼ of the NE¼ and 22.7 acres in the N½ of the SW¼; the following lands in Sec. 27, S½ of the NE¼; SW¼ of the NW¼; S½ of the SE¼ of the NW¼; the SW¼; 37 acres in the NW¼ of the SE¼; 16.6 acres in the NE¼ of the SE¼; 38.1 acres in the SW¼ of the SE¼ and 7.8 acres in the SE¼ of the SE¼; the following lands in Sec. 28, the SE¼; the S½ of the SW¼; the NW¼ of the SW¼ and the SW¼ of the NW¼; the following lands in Sec. 29, the SE¼ of the NE¼; N½ of SE¼ and SE¼ of SE¼; the following lands in Sec. 32, the S½ of NW¼ of NE¼; the W½ of the NW¼ of the NW¼ of NE¼; the S½ of the SW¼ of NE¼; the SE¼; SE¼ of SW¼ and the S½ of the SW¼ of the SW¼; all of Sec. 33; the following lands in Sec. 34, NW¼; the SW¼; the SE¼; the S½ of the NE¼; 37.3 acres in the NW¼ of the NE¼ and 23 acres in the NE¼ of the NE¼; the following lands in Sec. 35, 23.3 acres in the SE¼ of the NE¼; 5.2 acres in the NW¼ of the NW¼; 9.2 acres in the NW¼ of the SW¼; 8.3 acres in the NE¼ of the SW¼; 33 acres in the SW¼ of the SE¼; 36 acres in the SE¼ of the SW¼; the S½ of the SE¼; the NE¼ of the SE¼; 38 acres in the NW¼ of the SE¼, an irregular tract comprising 300 acres and being a part of each subdivision of forty acres in Sec. 36; also the following lands in T. 4 N. R. 2 W. B. M. in Canyon County, Idaho, to-wit: Lots 1,2,3 and 4 in Sec. 2; Lot 1 and the N 15 acres of Lot 4 in Sec. 3; Lot 4 in Sec. 4; Lot 1 and the N 32 acres of Lot 3 in Sec. 5, contiguous lands containing in all 3881 acres, more or less.

Dated Boise, Idaho, this 8th day of June, 1914.

F.P. King,
State Engineer.

Approved J. H. Peterson, Atty. Gen.

IN THE DISTRICT COURT OF THE UNITED STATES, IN AND FOR THE DISTRICT OF IDAHO, SOUTHERN DIVISION.

United States of America,
Plaintiff,
vs.
Boise Fruit Tracts Company, and J.H. Smith, State Engineer of the State of Idaho.
Defendants.

J U D G M E N T.

This cause came on regularly to be heard on the 31 day of July, 1916, J.L. McClear, United States District Attorney, and B.E. Stoutemeyer, District Counsel, United States Reclamation Service, appearing as counsel for the Plaintiff and T.L.

Martin and B.F. Neal, for the Defendant, Boise Fruit Tracts Company, and Defendant J.H. Smith, State Engineer of the State of Idaho, appearing in person. A Stipulation for judgment, signed by the respective parties Plaintiff and Defendant, either in person or by attorney, for a judgment herein was presented, and the cause was on said Stipulation submitted to the Court for consideration and decision.

WHEREFORE, By reason of the Stipulation aforesaid, it is ordered and adjudged that the said Plaintiff's application for an injunction against the transfer of that certain water right, known and described as the Jacobs Canal water right, for 1000 miners inches, or 20 cubic feet per second of time, of a date of priority of June 1st, 1864, and designated in that certain Decree of the District Court of the Seventh Judicial District of the State of Idaho, wherein the Farmers' Co-operative Ditch Company, a corporation, was Plaintiff and the Riverside Irrigation District, Ltd., et al, were Defendants, dated the 18th day of January, 1906, as "Right No.2", be, and the same is, hereby denied; and it is further adjudged that the transfer of the said water right of the Jacobs Canal Company, as provided in that certain Order of the State Engineer of the State of Idaho, dated June 8th, 1914, and set forth and described in the said Complaint, transferring the point of diversion of the said water right to the head-gate of the canal of the Farmers Union Canal Company, be, and the same is hereby confirmed as valid and legal, and the diversion of the said water right at said new point of diversion, to-wit, at the head-gate of the canal of the said Farmers Union Canal Company, be, and the same is hereby allowed and confirmed.

It is further ordered and adjudged that the said Defendants, their agents, servants, employees, and assigns, and all persons acting under or by authority of the said Defendants, or any of them, be and they are hereby perpetually enjoined and restrained from diverting the other water rights mentioned in the Complaint herein, or either or any of them, at any point other than the points named in the original Decree of the District Court of the Seventh Judicial District of the State of Idaho, hereinbefore referred to, said water rights, the diversions of which is hereby enjoined, are more particularly described in the said Order of the State Engineer and in said Complaint herein as follows:

All the water rights appurtenant to that part of Lots 1, 2, and 3 in Sec.12, T. 4 N., R. 4 W., B.M. and that part of Lots 3, 4, and 5 in Sec.7, T.4 N., R. 3 W., B.M. which lie on the Southerly side of the present main channel of the Boise River, area 200 acres; the W. 25 acres of the NE¼ of the NW¼ of Sec.14; the E½ of the NE¼ of Sec.23; the E½ of the SE¼ of Sec.14; the W 30 acres of the NW¼ of the NE¼ of Sec.13 all in T. 4 N., R. 4 W., B.M.; and the NW¼ of the NE¼ of Sec.19, T. 4 N., R. 3 W., B.M.; said water being heretofore diverted through the Pioneer Dixie Ditch the point of diversion of which is described in said decree as follows, to-wit:

The point of diversion is on the left bank of the Boise River in the SW¼ of Sec.20, T. 4 N.R3 W. , B.M. Said waters appurtenant to said lands hereinabove described being part of rights Nos. 8 and 45 set out in said decree hereinabove referred to.

All water rights appurtenant to the E½ of Sec.8 and all of Sec.9, T.4 N., R.4 W., B.M. said water being heretofore diverted through the Riverside Canal, the point of diversion of which from the Boise River is described in said decree as follows; to-wit: The point of diversion is on the left bank of the Boise River near the

center of Sec.20, T. 4 N., R. 3 W., B.M., and said waters appurtenant to said lands hereinbefore described being all of Right No. 88 as set out in said decree hereinabove referred to.

All the water rights appurtenant to the SW¼ of the SE¼ of Sec.31, T. 5 N., R. 4 W., B.M., said water being heretofore diverted through the Eureka No.2 ditch the point of diversion of which from the Boise River is described in said decree as follows, to-wit: The Point of diversion is on the left bank of the Boise River near the SW corner of Sec.12, T. 4 N., R. 4 W., B.M. Said water appurtenant to said lands hereinabove described being a part of Right No.89 as set out in said decree hereinabove referred to.

And it is fur ther ordered, adjudged and decreed that the permanent injunction of this Court issue herein, directed to the said Defendants, their servants, agents, employees, and attorneys, requiring them, and each of them, to perpetually refrain from diverting said described water rights, except the said described Jacobs Canal water right, into the said canal of the Farmers Union Canal Company, under said Order of the said State Engineer, or otherwise.

It is further ordered, and adjudged that the respective parties hereto shall each pay its own costs incurred herein.

Frank S. Dietrich.

UNITED STATES OF AMERICA
DISTRICT OF IDAHO,) ss.

I, W.D. McReynolds, Clerk of the United States District Court for the District of Idaho, do hereby certify that the foregoing copy of Judgment in cause No. 168, the United States, vs. Boise Fruit Tracts Company, and J.H. Smith, as State Engineer of the State of Idaho, has been by me compared with the original, and that it is a correct transcript therefrom and of the whole of such original, as the same appears of record and on file at my office and in my custody.

In testimony whereof, I have set my hand and affixed the seal of said Court in said District this 31st day of July, 1916.

(SEAL)
10 cent Revenue Stamp
attached.

W.D. McReynolds, Clerk.

IN THE MATTER OF THE APPLICATION OF THE BOISE FRUIT TRACTS COMPANY, FOR THE TRANSFER OF BOISE RIVER WATER RIGHTS.

I, J.H. Smith, State Engineer of the State of Idaho, hereby certify that on the 19th day of June, 1914, the State Engineer of the State of Idaho issued to the Boise Fruit Tracts Company, a Certificate of Transfer authorizing the transfer of the points of diversion and the place of use of certain water rights held by the above named Company, said points of diversion and place of use being described in the original decree entitled: "Farmers' Co-operative Ditch Company , Plaintiff, vs., Riverside Irrigation District, et al., Defendants", as follows, to-wit:

(1) All the water rights appurtenant to that part of Lots 1,2, and 3 in Sec.12, T.4 N., R. 4 W., B.M., and that part of Lots 3,4 and 5 in Sec.7, T. 4N., R.3W., B.M. which lie on the southerly side of the present main channel of the Boise River, area 200 acres; the W.25 acres of the NE¼ of the NW¼ of Sec.14; the E½ of the NE¼ of Sec.23; the E½ of the SE¼ of Sec.14; the W. 30 acres of the NW¼ of the NE¼ of Sec.13, all in T. 4 N., R. 4 W. , B.M.; and the NW¼ of the NE¼ of Sec.19, T. 4 N., R. 3 W., B.M.; said water being diverted through the Pioneer Dixie Ditch, the point of diversion of which is described in said decree as follows, to-wit: The point of diversion is on the left bank of the Boise River in the SW¼ of Sec.20, T. 4 N., R. 3 W., B.M. Said waters appurtenant to said lands hereinabove described being a part of rights Nos. 8 and 45, as set out in said decree hereinabove referred to.

(2) All the water rights appurtenant to the E½ of Sec.8 and all of Sec.9, T.4 N., R. 4 W., B.M., said water being heretofore diverted through the Riverside Canal, the point of diversion of which from the Boise River is described in said decree as follows, to-wit: The point of diversion is on the left bank of the Boise River near the center of Sec.20, T. 4 N., R.3W., B.M., said waters appurtenant to said lands hereinabove described being all of Right No.88 as set out in said decree hereinabove referred to.

(3) All the water rights appurtenant to the SW¼ of the SE¼ of Sec.31, T.5 N., R. 4 W., B.M. , said water being heretofore diverted through the Eureka No.2 Ditch, the point of diversion of which from the Boise River is described in said decree as follows, to-wit: The point of diversion is on the left bank of the Boise River near the S.W. corner of Sec.12, T.4 N., R.4 W., B.M. Said water appurtenant to said lands hereinabove described being a part of Right No.89, as set out in said decree hereinabove referred to.

That, under and by virtue of a Judgment issued by the District Court of the United States, in and for the District of Idaho, Southern Division, in the matter of the United States of America, Plaintiff, vs. Boise Fruit Tracts Company and J.H. Smith, State Engineer of the State of Idaho, Defendants, all of the above described water rights must hereafter be diverted from the Boise River at the points and through the canals described in the decree hereinabove referred to and shall be used upon the lands described in said decree and not upon the lands described in State Engineer's Certificate of Transfer, hereinabove referred to, under the heading, "Point to Which Transferred and Place of Use."

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of my office at Boise, Idaho, this 14th day of October, A. D. 1916.

J.H . SMITH,
State Engineer

(SEAL)

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF CANYON.

Farmers' Cooperative Ditch Company, (a corporation)

Plaintiff,

vs. D E C R E E.

Riverside Irrigating District, Limited, (a corporation) et al,

Defendants.

RECEIVED
Department of Reclamation

I.

That the defendant THOMAS DAVIS be and is hereby awarded the use of the waters of Boise River, diverted from a point on the north bank of said river about one mile east of the east line of the original townsite of Boise City, Idaho, through what is commonly known as the Jacobs Canal, for use upon lands lying in Secs. 10 and 11, T. 3 N. R. 2 E. B.M., in the following amount from the following date;

63 0120 [illegible] inches, from June 1, 1864; and hereby designated as Right No. 1.

That the defendant Thomas Davis be and is hereby awarded the use of said waters diverted from a point on the south side of said river in NW ¼ of NW ¼ of Sec. 9, T. 3 N. R. 2 E. B.M., through what is known as the Davis Canal, for use upon lands in Secs. 5, 6, 31 and 32, T. 4 N. R. 2 E. B.M., in the following amount from the following date;

63 0121 [illegible] inches, from June 1, 1864, and hereby designated as Right No. 94.

That the defendant Thomas Davis be and is hereby awarded the use of said waters diverted from said river at a point in NW ¼ of Sec. 9, T. 3 N. R. 2 E. B.M., through what is known as the Davis private ditch, for use upon SE ¼ of Sec. 5 and SE ¼ of Secs 8 and 9, all in T. 3 N. R. 2 E. B.M., in the following amount from the following date;

63 0122 [illegible] inches, from June 1, 1891; And hereby designated as Right No. 119

And adjudged to pay $56.40 costs, in addition to the costs incurred by

II.

JACOBS CANAL COMPANY, Limited, a corporation.

That the defendant the Jacobs Canal Company, Limited, be and it is hereby awarded the use of the waters of Boise River, diverted from a point on the north side of said river about one mile east of the east boundary line of the original townsite of Boise City, Idaho, through what is commonly known as the Jacobs Canal, for use upon the town lots and lands lying under said canal in Secs. 4, 9, 10, 11, 13, 14, T. 3 N. R. 2 E. B.M., in the following amount from the following date;

63 0123 [illegible] inches, from June 1, 1864; and hereby designated as Right No. 3

And adjudged to pay $70.00 costs, in addition to the costs incurred by it.

Office copy

IN THE DISTRICT COURT OF THE UNITED STATES, IN AND FOR THE DISTRICT OF IDAHO, SOUTHERN DIVISION.

United States of America, Plaintiff, vs. Boise Fruit Tracts Company, and J. H. Smith, State ~~Auditor~~ Engineer of State of Idaho, Defendants.	JUDGMENT.

This cause came on regularly to be heard on the 31 day of July, 1916, J. L. McClear, United States District Attorney, and B. E. Stoutemeyer, District Counsel, United States Reclamation Service, appearing as counsel for the Plaintiff, and T. L. Martin and B. F. Neal, for the Defendant, Boise Fruit Tracts Company, and Defendant, J. H. Smith, appearing in person. A Stipulation for judgment, signed by the respective parties Plaintiff and Defendant, either in person or by attorney, for a judgment herein was presented, and the cause was on said Stipulation submitted to the Court for consideration and decision.

WHEREFORE, By reason of the Stipulation aforesaid, it is ordered and adjudged that the said Plaintiff's application for an injunction against the transfer of that certain water right, known and described as the Jacobs Canal water right, for 1000 Miners inches, or 20 cubic feet per second of time, of a date of priority of June 1st, 1864, and designated in that certain Decree of the District Court of the Seventh Judicial District of the State of Idaho, wherein the Farmers Co-operative Ditch Company, a corporation, was Plaintiff, and the Riverside Irrigation District, Ltd., et al., were Defendants, dated the 18th day of January, 1906, as "Right No. 2", be, and the same is, hereby denied; and it is further adjudged that the transfer of the said water right of the Jacobs Canal Company, as provided in that certain Order of the State Engineer of the State of Idaho, dated June 8th, 1914, and set forth and described in the said Complaint, transferring the point of diversion of the said water right to the head-gate of the canal of the Farmers Union Canal Company, be, and the same is, hereby confirmed as valid and legal, and the diversion of the said water right at said new point of diversion, to-wit, at the head-gate of the canal of the said Farmers Union Canal Company, be, and the same is hereby allowed and confirmed.

It is further ordered and adjudged that the said Defendants, their agents, servants, employees, and assigns, and all persons acting under or by authority of the said Defendants, or any of them, be and they are hereby perpetually enjoined and restrained from diverting the other water rights mentioned in the Complaint herein, or either or any of them, at any point other than the points named in the original Decree of the District Court of the Seventh Judicial District of the State of Idaho, hereinbefore referred to, said water rights, the diversion of which is hereby enjoined, are more particularly described in the said Order of the State Engineer and in said Complaint herein as follows:

All the water rights appurtenant to that part of lots 1, 2, and 3 in Sec. 12, T. 4 N., R. 4 W., B. M. and that part of Lots 3, 4 and 5, in Sec. 7, T. 4 N., R. 3 W. B. M. which lie on the Southerly side of the present main channel of the Boise River, area 200 acres; the W. 25 acres of the N ½ of the NW¼ of Sec. 14; the S½ of the N ½ of Sec. 23; the E½ of the SW¼ of Sec. 14; the W 30 acres of the NW¼ of the NE¼ of Sec. 12, all in T. 4 N., R. 4 W. B. M.; and the NW¼ of the NE¼ of Sec. 19, T. 4 N., R. 3 W., B. M.: said water being heretofore diverted through the Pioneer Dixie Ditch the point of diversion of which is described in said decree as follows, to-wit:

The point of diversion is on the left bank of the Boise River in the SW¼ of Sec. 20, T. 4 N., R 3 W., B. M. said waters appurtenant to said lands hereinabove described being part of rights Nos. 8 and 45 set out in said decree hereinabove referred to.

All water rights appurtenant to the E½ of Sec. 8 and all of Sec. 9, T. 4 N., R. 4 W., B. M. said water being heretofore diverted through the Riverside Canal, the point of diversion of which from the Boise River is described in said decree as follows; to-wit: The Point of diversion is on the left bank of the Boise River near the center of Sec. 20, T. 4 N., R. 3 W., B. M., and said waters appurtenant to said lands hereinbefore described being all of Right No. 88 as set out in said decree hereinabove referred to.

All the water rights appurtenant to the SW¼ of the SE¼ of Sec. 31, T. 5 N., R. 4 W., B. M., said water being heretofore diverted through the Eureka No. 2 Ditch, the point of diversion of which from the Boise River is described in said decree as follows, to-wit: The Point of diversion is on the left bank of the Boise River near the SE corner of Sec. 12, T. 4 N., R. 4 W., B. M. Said water appurtenant to said lands hereinabove described being a part of Right No. 89 as set out in said decree hereinabove referred to.

And it is further ordered, adjudged and decreed that the permanent injunction of this Court issue herein, directed to the said Defendants, their servants, agents, employees, and attorneys, requiring them, and each of them, to perpetually refrain from diverting said described water rights, except the said described Jacobs Canal water right, into the said canal of the Farmers Union Canal Company, under said Order of the said State Engineer, or otherwise.

It is further ordered and adjudged that the respective parties hereto shall each pay its own costs incurred herein.

Frank S. Dietrich,

UNITED STATES OF AMERICA

DISTRICT OF IDAHO, } *ss.*

I, W. D. McREYNOLDS, Clerk of the United States District Court for the District of Idaho, do hereby certify that the foregoing copy of Judgment in Cause No. 108, The United States vs. Boise Unit Tracts [illegible], as State Engineer of the State of Idaho,

has been by me compared with the original, and that it is a correct transcript therefrom and of the whole of such original, as the same appears of record and on file at my office and in my custody.

In testimony whereof, I have set my hand and affixed the seal of said Court in said District this 21st *day of* July, *1916.*

W. D. McReynolds *Clerk.*

By ..... *Deputy.*

76806

No. 168

IN THE DISTRICT COURT OF THE UNITED STATES, DISTRICT OF IDAHO, Southern DIVISION.

United States of America,

Plaintiff,

vs.

Boise Fruit Tracts Company and J. H. Smith,

Defendants.

JUDGMENT

Filed July 31, 1916

W. D. McReynolds, Clerk

By ..... Deputy

STATE of IDAHO } ss
COUNTY of CANYON }

I hereby Certify that this instrument was filed for record at the request of Mona Black at 15 minutes past 2 o'clock P. M. this 12 day of Oct 1916 in my office, and duly recorded in book 6 of Misc. at page 242

A. E. Knowlton, Ex-Officio Recorder.

By Howard Sneed Deputy.

Fees, $2.00

COMPARED

NOTICE OF PROPOSED TRANSFER OF WATER RIGHTS.

Notice is hereby given that the Boise Fruit Tracts Company, a corporation of Boise, Idaho, has applied to the State Engineer of the State of Idaho for certificate authorizing it to transfer the use of 20 second feet, otherwise described as 1000 miners inches of the waters of the Boise River from the ditches in which the same has been heretofore diverted and carried and from the lands upon which it is now used, i. e. 270 miners inches diverted in the Pioneer Dixie Ditch under rights Nos. 8 and 45 and used upon the following lands in Tp. 4 N. R. 4 W. B. M., Canyon County, Idaho, to-wit: Lots 1, 2, and 3 Sec. 12; NW¼ of the NE¼ of Sec. 13; NE¼ of NW¼ Sec. 14; E½ of NE¼ Sec. 23 and E½ of SE¼ of SE¼ Sec. 14, and the following tracts in Twp. 4 N. R. 3 W. B. M. said County, to-wit: Lots 3, 4 and 5 in Sec. 7; NW¼ of NE¼ Sec. 19, 600 miners inches being all of the waters adjudicated to J. A. Black as right No. 88 and used upon the following lands in Twp. 4 N. of R. 4 W. of B. M., Canyon County, Idaho, viz: E½ of Sec. 8 and all of Sec. 9. 30 miners inches out of the water adjudicated to Eureka Ditch Company No. 2 under right No. 89 and used upon the following described lands, all in Twp. 5 N. of R. 4 W. of B. M. Canyon County, Idaho, to-wit: SW¼ of SE¼ of Sec. 31, ~~to the following described tracts, to-wit~~:

All waters hereinabove referred to are diverted on the left hand side of the Boise River and at the following points, viz:

Right No. 88 near the center of Sec. 27 Twp. 4 N. R. 3 W B. M. at the head gates of the Riverside Irrigation District, Ltd.,

Rights Nos. 8 and 45, near the center of the NE¼ of the SW¼ of Sec. 20, Twp. 4 N. R. 3 W. B. M.

And water under right No. 88 is diverted at the head gates of the Eureka Ditch Company near the SW¼ corner of Sec. 12 Twp. 4 N. R. 4 W. B. M., all in Canyon County, Idaho.

And diverted on the righthand side of the Boise River in Sec. 32, Twp. 4 N. of R. 2 E. B. M. in and through the main canals of the Farmers' Union Ditch Company, Limited, and thence carried through said ditch and diverted into ditches now in course of construction for the purpose of receiving said water from said Farmers' Union Ditch at a point in the NE¼ of the SW¼ of Sec. 31, in Twp. 5 N. of R. 1 W. of B. M. and to be used upon the following described tracts, to-wit:

The following land in Twp. 5 N. of R. 1 W. of B. M. Ada County, Idaho; SW¼ of SW¼ of Sec. 19; W½ of NW¼ of Sec. 30; SW¼ of SW¼ of Sec. 30; W½ of NW¼ Sec. 31; and the following described lands in Twp. 5 N. of R. 2 W. of B. M. in Canyon County, Idaho, to-wit:

75.5 acres in the S½ of SW¼ and the S½ of the SE¼ of Sec. 22; 123.2 acres in the S½ of the SW¼ and the S½ of the SE¼ of Sec. 23; 29 acres in the SW¼ of Sec. 24; the SE¼ of the SE¼ of Sec. 25; the following lands in Sec. 26, the N½ of the NW¼; the SW¼ of the NW¼ and 26.7 acres of the SE¼ of the NW¼; the NW¼ of the NE¼ and 22.7 acres in the N½ of the SW¼; the following lands in Sec. 27, S½ of the NE¼; SW¼ of the NW¼; S½ of the SE¼ of the NW¼; the SW¼; 37 acres in the NW¼ of the SE¼ 16.6 acres in the NW¼ of the SW¼; 38.1 acres in the SW¼ of the SE¼ and 7.8 acres in the SE¼ of the SE¼; the following lands in Sec. 28, the SE¼; the S½ of the NW¼; the NW¼ of the SW¼ and the SW¼ of the NW¼; the following lands in Sec. 29, the SE¼ of the NE¼ N½ of the SE¼ and SE¼ of the SE¼, the following lands in Sec. 32, the S½ of the NW¼ of NE¼; the W½ of the NW¼ of the NW¼ of the NE¼; the S½ of the SW¼ of the NE¼; the SE¼; the SE¼ of the SW¼ and the S½ of the SW¼ of the SW¼; all of Sec. 33, the following lands in Sec. 34, the NW¼; the SW¼; the SE¼; the S½ of the NE¼; 37.3 acres in the NW¼ of the NE¼ and 23 acres in the NE¼ of the NE¼; the following lands in Sec. 35, 23.3 acres in the SE¼ of the NE¼; 5.2 acres in the NW¼ of the NW¼; 9.2 acres in the NW¼ of the SW¼; 8.1 acres in the NE¼ of the SW¼; 33 acres in the SW¼ of the SE¼; 36 acres in the SE¼ of the SW¼; the S½ of the SE¼; the NE¼ of the SE¼; 38 acres in the NW¼ of the SE¼, an irregular tract comprising 300 acres and being a part of each subdivision of fouty acres in Sec. 36; also the following lands in Twp. 4 N. of R. 2 W. of B. M. in Canyon County, Idaho, to-wit:

Lots 1, 2, 3 and 4 in Sec. 2; Lot 1 and the N 15 acres of Lot 4 in Sec. 3; Lot 4 in Sec. 4; Lot 1 and the N 32 acres of Lot 3 in Sec. 5, contiguous lands containing in all 3881 acres, more or less.

And that at 10 o'clock A. M. on the _____ day of April, A. D. 1914, at the office of _____.

Caldwell, Idaho, before _____, the water commissioner of the Division No. _____, or his authorized agent, the opportunity will be given to any and all persons to appear and present for his consideration any reason or reasons why a certificate should not be issued authorizing such transfer, full details of the proposed transfer may be obtained from _____, water master of said stream.

_____

State Engineer.

IN THE MATTER OF THE APPLICATION OF BOISE FRUIT TRACTS COMPANY, FOR THE TRANSFER OF BOISE RIVER WATER RIGHTS.

I, J. H. Smith, State Engineer of the State of Idaho, hereby certify that, on the 19th day of June, 1914, the State Engineer of the State ofIdaho issued to the Boise Fruit Tracts Company, a Certificate of Transfer authorizing the transfer of the points of diversion and the pla ce of use of certain water rights held by the above named Company, said points of diversion and place of use being described in the original decree entitled: "Farmers' Co-operative Ditch Company, Plaintiff, vs. Riverside Irrigation District, et al., Defendants", as follows, to-wit:

(1) All the water rights appurtenant to that part of Lots 1, 2 and 3 in Sec. 12, T. 4 N., R. 4 W., B.M. and that part of Lots 3 , 4 and 5 in Sec. 7, T. 4 N., R. 3 W., B.M. which lie on the southerly side of the present main channel of the Boise River, area 200 acres; the W. 25 acres of the NE¼ of the NW¼ of Sec. 24; the E½ of the NE¼ of Sec. 23; the E½ of the SE¼ of Sec. 14; the W. 30 acres of the NW¼ of the NE¼ of Sec. 13, all in T; 4 N.,R. 4 W., B.M.; and the NW¼ of the NE¼ of Sec. 19, T. 4 N., R. 3 W., B.M.; said water being diverted through the Pioneer-Dixie Ditch, the point of diversion of which is described in said decree as follows, to-wit: The point of diversion is on the left bank of the Boise River in the SW¼ of Sec. 20, T. 4 N., R. 3 W., B. M. Said waters appurtenan to said lands hereinabove described beinga part of rights Nos. 8 and 45, as set out in said decree hereinabove referred to.

(2) All the water rights appurtenant to the E½ of She. 8 and all of Sec. 9, T. 4 N., R. 4 W., B.M., said water being heretofore diverted through the Riverside Canal, the point of

diversion of which from the Boise River is described in said decree as follows, to-wit: The point of diversion is on the left bank of the Boise River near the center of Sec. 20, T. 4 N., R. 3 W., B.M., said waters appurtenant to said lands hereinabove described being all of Right No. 88, as set out in said decree hereinabove referred to.

(5) All the water rights appurtenant to the SW¼ of the SE¼ of Sec. 31, T. 5 N., R. 4 W., B.M., said water being heretofore diverted through the Eureka No. 2 Ditch, the point of diversion of which from the Boise River is described in said decree as follows, to-wit: The point of diversion is on the left bank of the Boise River near the S.W. corner of Sec. 12, T. 4 N., R. 4 W., B.M. Said water appurtenant to said lands hereinabove described being a part of Right No. 89, as set out in said decree hereinabove referred to.

That, under and by virtue of a Judgment issued by the District Court of the United States, in and for the District of Idaho, Southern Division, in the matter of the United States of America, Plaintiff, vs. Boise Fruit Tracts Company and J. H. Smith, State Engineer of the State of Idaho, Defendants, all of the above described water rights must hereafter be diverted from the Boise River at the points and through the canals described in the decree hereinabove referred to and shall be used upon the lands described in said decree and not upon the lands described in State Engineer's Certificate of Transfer, hereinabove referred to, under the heading, "Point to Which Transferred and Place of Use".

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of my office at Boise, Idaho, this 14th day of October, A. D. 1916.

(SEAL)

J. H. Smith,

State Engineer.

COPY OF AMENDMENT

CERTIFICATE OF TRANSFER.

J. H. SMITH
STATE ENGINEER
FRED A. WILKIE
DEPUTY STATE ENGINEER

State of Idaho
Engineering Department
Boise

Received from the State Engineer of Idaho, the following described abstracts.

No. 5987

Prepared by the Idaho Title & Trust Company, Ltd.
~~Thomas Harrington~~

Boise, Idaho. Oct. 11, 1916.

B. A. Wells



J. H. SMITH
STATE ENGINEER
FRED A. WILKIE
DEPUTY STATE ENGINEER

State of Idaho
Engineering Department
Boise

Received from the State Engineer of Idaho five Abstracts described as follows:

No. 12425,
" 12396
" 12394
" 12446
" 12399

Prepared by Canyon County Abstract & Trust Co.

Thos E Ruckman

Boise, Idaho, Oct. 11, 1916.

B. F. NEAL
ATTORNEY AND COUNSELOR AT LAW
BOISE, IDAHO

File

August 16, 1916.

Hon. J. H. Smith, State Engineer,
Boise, Idaho.

My dear Sir:

Pardon me for troubling you again in the matter of the abstracts which are on file in your office in re Boise Fruit Tracts water transfers. The only excuse I can offer you for so troubling you is that the owners of the abstracts continue to trouble me, contending to me that now that the water is re-transferred to the original points of diversion the record stands as though this case had never been begun and that the abstracts under such a situation can not be of value to the State of Idaho, nor your office, nor you and that they are of the most value to the respective owners. Hence, they have requested me to make another application to you for their return.

The following are the names of the various owners of the abstracts with cost of sale to them, viz:

W. A. and Bert Black	$37.00
C. F. Zeigler	13.50
S. R. Sayre	5.00
Almyra Cashman & R. P. Cashman	11.00
D. G. Ruby	12.50
William Dickson	7.00
S. W. Vail and J. L. Powell	8.00

The above named represent all of the water users whose waters have been returned to them under the stipulation entered in the United States Court and upon which the proper judgment has also been entered. This application calls for all of the abstracts except that accompanying the Jacobs Ditch Company, Ltd.,

I am leaving the city early tomorrow morning for the locality of Hailey and will not be back for a week. If you can grant the request of these farmers in the respects mentioned, I would be glad indeed if you would do so and notify my office by letter or by telephone and Miss Jeffrey, my stenograph, will call, receipt for and get the abstracts and return them for me to the respective parties.

Very truly yours,

BFN/HJ

BEFORE THE STATE ENGINEER OF THE STATE OF IDAHO.

IN THE MATTER OF THE APPLICATION)
OF BOISE FRUIT TRACTS COMPANY, FOR)
THE TRANSFER OF BOISE RIVER WATER)
RIGHTS.)

This cause came on for hearing at 2 o'clock P. M. on the 5th day of May, 1914, pursuant ~~from~~ a continuence from April 14, 1914, entered on request of certain protestants, upon the application of the Boise Fruit Tracts Company made under the provisions of Section 3264 of the Revised Codes of Idaho for a certificate of the State Engineer of the State of Idaho transferring the point of diversion and place of use of certain water rights in Boise River as specifically described in said application now on file in this office, and upon the joint protest of the Farmers' Co-operative Ditch Company, the Pioneer Irrigation District and the Nampa--Meridian Irrigation District, Messrs. Walter Griffiths, T. L. Martin and B. F. Neal appearing as counsel on behalf of said applicant and Messrs. R. B. Scatterday, J. M. Thompson and E. E. McElroy appearing as counsel on behalf of said protestants. Documentary evidence was introduced on behalf of said applicant in support of its application and documentary evidence was introduced by said protestants in support of their protest,

Whereupon, the said matter was submitted to the State Engineer for his consideration and decision, and, after fully considering the same, said State Engineer is of the opinion that said application should be allowed and that an order should be made transferring the point of diversion and place of use of said waters of Boise River which are appurtenant to the lands described in said application and hereinafter described, and also the entire waters of the right of the Jacobs Canal hereinafter

specifically described.

NOW THEREFORE, it is hereby ordered that the points of diversion from the Boise River and the places of use of the waters hereinafter described be, and the same are hereby transferred from the points of diversion and places of use hereinafter set out to the point of diversion and place of use hereinafter described:

PRESENT POINTS OF DIVERSION AND USE AND DESCRIPTION OF WATER RIGHTS TRANSFERED.

ALL of the water rights hereinafter described and hereby ordered transferred are described in that certain decree entered in the case entitled: "Farmers' Co-operative Ditch Company, plaintiff, vs. Riverside Irrigation District and others, defendants," in the District Court of the Third (now Seventh) Judicial District of the State of Idaho, in and for the County of Canyon, decree in which cause was entered and filed in the office of the Clerk of said Court on the 18th day of January, 1906. Said waters are specifically described as follows, viz:

(1) All the water rights appurtenant to that part of Lots 1, 2 and 3 in Sec. 12, T. 4 N. R. 4 W. B. M. and that part of Lots 3, 4 and 5 in Sec. 7, T. 4 N. R. 3 W. B. M. which lie on the southerly side of the present main channel of the Boise River, area 200 acres; the W 25 acres of the NE¼ of the NW¼ of Sec. 14; the E½ of the NE¼ of Sec. 23; the E½ of the SE¼ of Sec. 14; the W 30 acres of the NW¼ of the NE¼ of Sec. 13, all in T. 4 N. R. 4 W. B. M.; and the NW¼ of the NE¼ of Sec. 19, T. 4 N. R. 3 W. B. M.; said water being heretofore diverted through the Pioneer Dixie Ditch, the point of diversion of which is described in said decree as follows, to-wit: The point of diversion is on the left bank of the Boise River in the SW¼ of Sec. 20, T. 4 N. R. 3 W. B. M. Said waters appurtenant to said lands hereinabove described being part of rights Nos. 8 and 45

as set out in said decree hereinabove referred to.

(2) All the water rights appurtenant to the E½ of Sec. 8 and all of Sec. 9 T. 4 N. R. 4 W. B. M., said water being heretofore diverted through the Riverside Canal, the point of diversion of which from the Boise River is described in said decree as follows, to-wit: The point of diversion is on the left bank of the Boise River near the center of Sec. 20, T. 4 N. R. 3 W. B. M., said waters appurtenant to said lands hereinabove described being all of Right No. 88 as set out in said decree hereinabove referred to.

(3) All the water rights appurtenant to the SW¼ of the SE¼ of Sec. 31, T. 5 N. R. 4 W. B. M., said water being heretofore diverted through the Eureka No. 2 Ditch, the point of diversion of which from the Boise River is described in said decree as follows, to-wit: The point of diversion is on the left bank of the Boise River near the SW corner of Sec. 12, T. 4 N. R. 4 W. B. M. Said water appurtenant to said lands hereinabove described being a part of Right No. 89 as set out in said decree hereinabove referred to.

(4) Also all of the water right of the Jacobs Ditch Company, Limited, consisting of 1000 miners inches as the same is described in the decree hereinabove referred to, and described in said decree as used under a rental system in the irrigation of town lots and blocks, for street sprinkling, sewer flushing and other municipal purposes in Boise City and additions thereto. Said water being heretofore diverted through the Jacobs Ditch, the point of diversion of which from the Boise River is described in said decree as follows, to-wit: The point of diversion is on the right bank of the Boise River about one mile East of Boise City; said water being all of Right No. 2 as set out in said decree hereinabove referred to.

POINT TO WHICH TRANSFERRED AND PLACE OF USE.

All the water rights hereinabove described and hereby

ordered transferred are hereby ordered to be diverted into the canal of the Farmers' Union Ditch Company, Limited, at the following point of diversion from the Boise River, to-wit: To be diverted into the Farmers' Union Canal on the right bank of the Boise River in the SE¼ of the SE¼ of Sec. 32, T. 4 N. R. 2 E. of B. M. for use, for domestic and irrigation purposes, upon the following described lands, to-wit:

The following lands in Twp. 5 N. of R. 1 W. of B. M. Ada County, Idaho; SW¼ of SW¼ of Sec. 19; W½ of NW¼ of Sec. 30; SW¼ of SW¼ of Sec. 30; W½ of NW¼ Sec. 31; and the following described lands in Twp. 5 N. of R. 2 W. of B. M. in Canyon County, Idaho, to-wit: 75.3 acres in the S½ of the SW¼ and the S½ of SE¼ of Sec. 22; 123.2 acres in the S½ of the SW¼ and S½ of SE¼ of Sec. 23; 29 acres in the SW¼ of Sec. 24; the SE¼ of the SE¼ of Sec. 25; the following lands in Sec. 26, the N½ of the NW¼; the SW¼ of the NW¼ and 26.7 acres of the SE¼ of the NW¼; the NW¼ of the NE¼ and 22.7 acres in the N½ of the SW¼; the following lands in Sec. 27, S½ of the NE¼; SW¼ of the NW¼; S½ of the SE¼ of the NW¼; the SW¼; 37 acres in the NW¼ of the SE¼; 16.6 acres in the NE¼ of the SE¼; 38.1 acres in the SW¼ of the SE¼ and 7.8 acres in the SE¼ of the SE¼; the following lands in Sec. 28, the SE¼; the S½ of the SW¼; the NW¼ of the SW¼ and the SW¼ of the NW¼; the following lands in Sec. 29, the SE¼ of the NE¼; N½ of SE¼ and SE¼ of SE¼; the following lands in Sec. 32, the S½ of NW¼ of NE¼; the W½ of the NW¼ of the NW¼ of NE¼; the S½ of the SW¼ of NE¼; the NE¼; SE¼ of SW¼ and the S½ of the SW¼ of the SW¼; all of Sec. 33, the following lands in Sec. 34, NW¼; the SW¼; the SE¼; the S½ of the NE¼; 37.3 acres in the NW¼ of the NE¼ and 23 acres in the NE¼ of the NE¼; the following lands in Sec. 35, 23.3 acres in the SE¼ of the NE¼; 5.2 acres in the NW¼ of the NW¼; 9.2 acres in the NW¼ of the SW¼; 8.1 acres in the NE¼ of the SW¼ 33 acres in the SW¼ of the SE¼; 36 acres in the SE¼ of the SW¼;

the S½ of the SE¼; the NE¼ of the SE¼; 38 acres in the NW¼ of the SE¼, an irregular tract comprising 300 acres and being a part of each subdivision of forty acres in Sec. 36; also the following lands in T.4 N.R. 2 W.B.M. in Canyon County, Idaho, to-wit: Lots 1, 2, 3 and 4 in Sec. 2; Lot 1 and the N 15 acres of Lot 4 in Sec. 3; Lot 4 in Sec. 4; Lot 1 and the N 32 acres of Lot 3 in Sec. 5, contiguous lands containing in all 3881 acres, more or less.

Dated Boise, Idaho, this 8th day of June, 1914.

J. P. King
State Engineer.

approved
J. H. Peterson
Atty Gen

CERTIFICATE OF TRANSFER

No. 136

AUTHORIZING TRANSFER OF
BOISE RIVER WATER RIGHTS.

APPLICATION FOR TRANSFER OF WATER RIGHTS.

RECEIVED
OFFICE OF STATE ENGINEER

State of Idaho,)
: ss.
County of Ada.)

J. M. Wise, being first duly sworn, deposes and says that he is President and Managing Officer of the Boise Fruit Tracts Company, a corporation duly organized under the laws of the State of Idaho and having its principal office and place of business at Boise, Idaho, and that his and said corporation's post office address is Boise, Idaho;that said corporation is the owner of and using certain water rights of 2000 miners inches of the waters of the Boise River in Ada and Canyon Counties, State of Idaho, decreed to the hereinafter named ditches and persons by the decree of Judge George H. Stewart of the Third Judicial District (now Seventh) of the State of Idaho, in and for the County of Canyon in the case of "Farmers' Co-operative Ditch Company, Ltd., plaintiff, vs. Riverside Irrigation District, Ltd., et al, defendants," said decree bearing date January 16, 1907, and duly of record in the office of the Recorder of the said Ada and Canyon Counties, for the purpose of irrigating the following described lands and lots situate, lying and being in the said counties of Ada and Canyon, State of Idaho, to-wit:

270 miners inches diverted in the Pioneer Dixie Ditch under rights Nos. 8 and 45 and used upon the following lands in Twp. 4 N. R. 4 W. B. M., Canyon County, Idaho, to-wit: Lots 1, 2 and 3 Sec. 12; NW¼ of NE¼ of Sec. 13; NE¼ of NW¼ Sec. 14; E½ of NE¼ Sec. 23 and E½ of SE¼ of SE¼ Sec. 14, and the following tracts in Twp. 4 N. R. 3 W. B. M. said County, to-wit: Lots 3, 4 and 5 in Sec. 7; NW¼ of NE¼ Sec. 19; 600 miners inches being all of the waters adjudicated to W. A. Black as right No. 88 and used upon the following lands in Twp. 4 N. R. 4

conducted to above described lands through said ditch as per map filed herewith and of this affidavit made a part;

30 miners inches diverted from the Eureka Ditch under right No. 89, being the part of the water diverted from said River under right No. 89 at the head gate of the Eureka Ditch Company near the SW corner of Sec. 12, Twp. 4 N. R. 4 W. of B. M. and conducted to above described lands through said ditch as per map filed herewith and of this affidavit made a part;

600 miners inches, being all of the W. A. Black right No. 88 in the before mentioned decree near the center of Sec. 20, Twp. 4 N. R. 3 W. B. M. at the head gates of the Riverside Irrigation District, Ltd., and conducted to the above described lands through said ditch as per map filed herewith and of this affidavit made a part;

1000 miners inches in Jacobs Ditch are now diverted from said Boise River at a point about one mile East of Boise City in the NE¼ of Sec. 24, Twp. 3 N. of R. 2 E. of B. M., on the right bank of said River and conducted to the lands above described as being situate in Boise City and its additions through said Jacobs Canal as per map filed herewith and of this affidavit made a part.

That the affiant and petitioner desires to abandon the use of all of the said waters from the above described lands and town lots and from the above mentioned municipal uses and to convey and use the same upon the following tracts situate, lying and being in the Counties of Ada and Canyon and State of Idaho, to-wit:

The following lands in Twp. 5 N. of R. 1 W. of B. M. Ada County, Idaho; SW¼ of SW¼ of Sec. 19; W½ of NW¼ of Sec. 30; SW¼ of SW¼ of Sec. 30; W½ of NW¼ of Sec. 31; and the following described lands in Twp. 5 N. of R. 2 W. of B. M. in Canyon County, Idaho, to-wit:

75.3 acres in the S½ of SW¼ and the S½ of the SE¼ of Sec. 22; 123.2 acres in the S½ of the SW¼ and the S½ of the SE¼ of Sec. 23; 29 acres in the SW¼ of Sec. 24; the SE¼ of the SE¼ of Sec. 25; the following lands in Sec. 26; the N½ of the NW¼; the SW¼ of the NW¼ and 26.7 acres of the SE¼ of the NW¼; the NW¼ of the NE¼ and 22.7 acres in the N½ of the SW¼; the following lands in Sec. 27, S½ of the NE¼; SW¼ of the NW¼; S½ of the SE¼ of the NW¼; the SW¼; 37 acres in the NW¼ of the SE¼ 16.6 acres in the NE¼ of the SE¼; 38.1 acres in the SW¼ of the SE¼ and 7.8 acres in the SE¼ of the SE¼; the following lands in Sec. 28, the SE¼; the S½ of the SW¼; the NW¼ of the SW¼; and the SW¼ of the NW¼; the following lands in Sec. 29, the SE¼ of the NE¼ N½ of the SE¼ and SE¼ of the SE¼; the following lands in Sec. 32, the S½ of the NW¼ of NE¼; the W½ of the NW¼ of the NW¼ of the NE¼; the S½ of the SW¼ of the NE¼; the SE¼; the SE¼ of the SW¼ and the S½ of the SW¼ of the SW¼; all of Sec. 33, the following lands in Sec. 34, the NW¼; the SW¼; the SE¼; the S½ of the NE¼ 37.3 acres in the NW¼ of the NE¼ and 23 acres in the NE¼ of the NE¼; the following lands in Sec. 35, 23.3 acres in the SE¼ of the NE¼; 5.2 acres in the NW¼ of the NW¼; 9.2 acres in the NW¼ of the SW¼; 8.1 acres in the NE¼ of the SW¼; 33 acres in the SW¼ of the SE¼; 36 acres in the SE¼ of the SW¼; the S½ of the SE¼; the NE¼ of the SE¼; 38 acres in the NW¼ of the SE¼; an irregular tract comprising 300 acres and being a part of each subdivision of forty acres in Sec. 36; also the following lands in Twp. 4 N. of R. 2 W. of B. M. in Canyon County, Idaho, to-wit:

Lots 1, 2, 3 and 4 in Sec. 2; Lot 1 and the N 15 acres of Lot 4 in Sec. 3; Lot 4 in Sec. 4; Lot 1 and the N 32 acres of Lot 3 in Sec. 5, contiguous lands containing in all 3881 acres, more or less.

W. of B. M., Canyon County, Idaho, viz: E½ of Sec. 8 and all of Sec. 9; 30 miners inches out of the water adjudicated to Eureka Ditch Company No. 2, under right No. 89 and used upon the following described lands, all in Twp. 5 N. R. 4 W. of B. M. Canyon County, Idaho, to-wit: SW¼ of SE¼ of Sec. 31;

20 second feet, otherwise described as 1000 miners inches under right No. 2, of the waters of the Boise River from the Jacobs Canal in which the same has been heretofore diverted and carried and from the town lots and blocks, sprinkling, sewer flushing and other municipal uses for which heretofore used in Boise City, Ada County, Idaho, and additions thereto,

And is the representative of the corporation to whom such right was issued or has become the owner thereof in the following manner, i. e. As to the lands in Canyon County, Idaho, by purchase from the persons who are the record owners of various tracts of lands hereinabove described as situate in Canyon County, Idaho, as per abstract of title of said water rights filed herewith and by reference made a part of this statement,

And as to lands in Ada County, by purchase from the corporation the owner of said water right and which has always applied the same to a beneficial use solely under a rental system as per abstract of title of said water rights filed herewith and by reference made a part of this statement.

That the waters hereinabove referred to is now diverted from said Boise River at divers points and through divers ditches as follows:

270 miners inches diverted in the Pioneer Dixie Ditch under right s Nos. 8 and 45 of the decree in the before mentioned case on the left bank of the Boise River near the center of the NE¼ of SW¼ of Sec. 20, Twp. 4 N. of R. 3 W. of B. M., and

That petitioner's reasons for desiring to make such transfer are as follows:

That these lands are arid in character and because of their location are extremely valuable after being watered.

That arrangements have been fully completed whereby said waters can be conveyed through the Farmers' Union Canal to a point from which the waters may be run and carried by gravity system to the lands hereinabove mentioned as proposed to be watered.

That the lands from which these waters are taken are of little value and the water alone is of much more value for use on the lands to which it will be transferred than land and water are in their present location.

That petitioner intends to divert and convey said 40 second feet, or 2000 miners inches of water to the tracts of land last above described in the following manner, to-wit: By diverting and carrying the same from right bank of the Boise River at point of intake of the Farmers' Union Canal thence through said canal to a point bordering upon said lands as per plat filed herewith and made a part hereof by reference, and from which point said waters will be carried by gravity system to the lands within described, as proposed to be irrigated.

That no one will be injured by such transfer and that by making said transfer the lands last above mentioned which are now of little value for lack of water with which to irrigate the same will become highly improved and planted to grain, grasses and orchards and will become the homes of a large number of citizens of Idaho and will very greatly increase the tax value of the property in both Ada and Canyon Counties, Idaho.

That there is no other source as this affiant believes and therefore alleges, from which water can be obtained for the irrigation of the lands last above described.

WHEREFORE, affiant and petitioner prays that the State Engineer issue to it the proper certificate authorizing such transfer and give proper notice of the same to the water commissioner of the division in accordance with provisions of Sec. 11, House Bill 106 of the laws of the Seventh Session of the Lesislature of the State of Idaho and acts amendatory thereof.

Boise Fruit Tracts Company,

By J. M. Wise

President and Manager.

Subscribed to before me this 5th day of March, A. D. 1914 by said J. M. Wise.

George H. Rust

Notary Public.

State of Idaho,)
: ss.
County of Ada.)

_____ and _____ being duly sworn, each for himself and not one for another, deposes and says, that he is a citizen of the United States and of the State of Idaho, residing at _____; that he is a user of water from the Boise River through _____ canal in the County of _____ and state of Idaho; that he has read or heard read the foregoing affidavit and petition of Boise Fruit Tracts Company and is familiar with its allegations and with the water right and lands therein mentioned and described and is not in any way interest in either nor in any way related to said petitioner; that the statements and allegations therein made are true of his own knowledge and that no one will be injured by the granting of the certificate authorizing the transfer therein petitioned.

_____

_____

Subscribed and sworn to before me this _____ day of March, A. D. 1914.

_____

Notary Public.

B. F. NEAL
ATTORNEY AT LAW
SUITE 305 - B SONNA BUILDING
BOISE, IDAHO

*Attorney for*_____

BEFORE THE STATE ENGINEER OF THE STATE OF IDAHO.

IN THE MATTER OF THE APPLICATION OF :
BOISE FRUIT TRACTS COMPANY, FOR THE :
TRANSFER OF BOISE RIVER WATER RIGHTS. :

This cause came on for hearing at 2 o'clock P. M. on the 5th day of May, 1914, pursuant to a continuance from April 14, 1914, entered on request of certain protestants, upon the application of the Boise Fruit Tracts Company made under the provisions of Section 3264 of the Revised Codes of Idaho for a certificate of the State Engineer of the State of Idaho transferring the point of diversion and place of use of certain water rights in Boise River as specifically described in said application now on file in this office, and upon the joint protest of the Farmers' Co-operative Ditch Company, the Pioneer Irrigation District and the Nampa-Meridian Irrigation District, Messrs. Walter Griffiths, T. L. Martin and B. F. Neal appearing as counsel on behalf of said applicant and Messrs. R. B. Scatterday, J. M. Thompson and H. E. McElroy appearing as counsel on behalf of said protestants. Documentary evidence was introduced on behalf of said applicant in support of its application and documentary evidence was introduced by said protestants in support of their protest,

Whereupon, the said matter was submitted to the State Engineer for his consideration and decision, and, after fully considering the same, said State Engineer is of the opinion that said application should be allowed and that an order should be made transferring the point of diversion and place of use of said waters of Boise River which are appurtenant to the lands described in said application and hereinafter described, and also the entire waters of the right of the Jacobs Canal hereinafter specifically described.

NOW THEREFORE, it is hereby ordered that the points of diversion from the Boise River and the places of use of the waters hereinafter described be, and the same are hereby transferred from the points of diversion and places of use hereinafter set out to the point of diversion and place of use hereinafter described:

PRESENT POINTS OF DIVERSION AND USE
AND DESCRIPTION OF WATER RIGHTS
TRANSFERRED.

ALL of the water rights hereinafter described and hereby ordered transferred are described in that certain decree entered in the case entitled: "Farmers' Co-operative Ditch Company, Plaintiff, vs. Riverside Irrigation District and others, defendants," in the District Court of the Third (now Seventh) Judicial District of the State of Idaho, in and for the County of Canyon, decree in which cause was entered and filed in the office of the Clerk of said Court on the 18th day of January, 1906. Said waters are specifically described as follows, viz:

(1) All the water rights appurtenant to that part of Lots 1, 2 and 3 in Sec. 12, T. 4 N., R. 4 W., B.M., and that part of Lots 3, 4, and 5 in Sec. 7, T. 4 N., R. 3 W., B.M., which lie on the southerly side of the present main channel of the Boise

River, area 200 acres; the W 25 acres of the NE¼ of the NW¼ of Sec. 14; the E½ of the NE¼ of Sec. 23; the E½ of the SE¼ of Sec. 14; the W 30 acres of the NW¼ of the NE¼ of Sec. 13, all in T. 4 N., R. 4 W., B.M.; and the NW¼ of the NE¼ of Sec. 19, T. 4 N., R. 3 W., B.M.; said water being heretofore diverted through the Pioneer Dixie Ditch, the point of diversion of which is described in said decree as follows, to-wit: The point of diversion is on the left bank of the Boise River in the SW¼ of Sec. 20, T. 4 N., R. 3 W., B.M. Said waters appurtenant to said lands hereinabove described being part of rights Nos. 8 and 45 as set out in said decree hereinabove referred to.

(2) All the water rights appurtenant to the E½ of Sec. 8 and all of Sec. 9 T. 4 N., R. 4 W., B.M., said water being heretofore diverted through the Riverside Canal, the point of diversion of which from the Boise River is described in said decree as follows, to-wit: The point of diversion is on the left bank of the Boise River near the center of Sec. 20, T. 4 N., R. 3 W., B.M., said waters appurtenant to said lands hereinabove described being all of Right No. 88 as set out in said decree hereinabove referred to.

(3) All the water rights appurtenant to the SW¼ of the SE¼ of Sec. 31, T. 5 N., R. 4 W., B.M., said water being heretofore diverted through the Eureka No. 2 Ditch, the point of diversion of which from theBoise River is described in said decree as follows, to-wit: The point of diversion is on the left bank of the Boise River near the SW corner of Sec. 12, T. 4 N., R. 4 W., B.M. Said water appurtenant to said lands hereinabove described being a part of Right No. 89 as set out in said decree hereinabove referred to.

(4) Also all of the water right of the Jacobs Ditch Company, Limited, consisting of 1000 miners inches as the same is described in the decree hereinabove referred to, and described in said decree as used under a rental system in the irrigation of town lots and blocks, for street sprinkling, sewer flushing and other municipal purposes in Boise City and additions thereto. Said water being heretofore diverted through the Jacobs Ditch, the point of diversion of which from the Boise River is described in said decree as follows, to-wit: The point of diversion is on the right bank of the Boise River about one mile East of Boise City; said water being all of Right No. 2 as set out in said decree hereinabove referred to.

POINT TO WHICH TRANSFERRED AND PLACE OF USE.

All the water rights hereinabove described and hereby ordered transferred are hereby ordered to be diverted into the canal of the Farmers' Union Ditch Company, Limited, at the following point of diversion from the Boise River, to-wit: To be diverted into the Farmers' Union Canal on the right bank of the Boise River in the SE¼ of the SE¼ of Sec. 32, T. 4 N., R. 2 E., of B.M., for use for domestic and irrigation purposes, upon the following described lands, to-wit:

The following lands in Twp. 5 N., of R. 1 W. of B.M. Ada County, Idaho; SW¼ of SW¼ of Sec. 19; W½ of NW¼ of Sec. 30; SW¼ of SW¼ of Sec. 30; W½ of NW¼ Sec. 31; and the following described lands in Twp. 5 N. of R. 2 W. of B. M. in Canyon County, Idaho, to-wit:

75.3 acres in the S½ of the SW¼ and the S½ of SE¼ of Sec. 22; 123.2 acres in the S½ of the SW¼ and S½ of SE¼ of Sec. 23; 29 acres in the SW¼ of Sec. 24; the SE¼ of the SE¼ of Sec. 25; the following lands in Sec. 26, the N½ of the NW¼; the SW¼ of the NW¼ and 26.7 acres of the SE¼ of the NW¼; the NW¼ of the NE¼ and 22.7 acres in the N½ of the SW¼; the following lands in Sec. 27, S½ of the NE¼; SW¼ of the NW¼; S½ of the SE¼ of the NW¼; the SW¼; 37 acres in the NW¼ of the SE¼; 16.6 acres in the NE¼ of the SE¼; 38.1 acres in the SW¼ of the SE¼ and 7.8 acres in the SE¼ of the SE¼; the following lands in Sec. 28, the SE¼; the S½ of the SW¼; the NW¼ of the SW¼ and the SW¼ of the NW¼; the following lands in Sec. 29, the SE¼ of the NE¼; N½ of SE¼ and SE¼ of SE¼; the following lands in Sec. 32, the S½ of NW¼ of NE¼; the W½ of the NW¼ of the NW¼ of NE¼; the S½ of the SW¼ of NE¼; the SE¼; SE¼ of SW¼ and the S½ of the SW¼ of the SW¼; all of Sec. 33; the following lands in Sec. 34, NW¼; the SW¼; the SE¼; the S½ of the NE¼; 37.3 acres in the NW¼ of the NE¼ and 23 acres in the NE¼ of the NE¼; the following lands in Sec. 35, 23.3 acres in the SE¼ of the NE¼; 5.2 acres in the NW¼ of the NW¼; 9.2 acres in the NW¼ of the SW¼; 8.1 acres in the NE¼ of the SW¼; 33 acres in the SW¼ of the SE¼; 36 acres in the SE¼ of the SW¼; the S½ of the SE¼; the NE¼ of the SE¼; 38 acres in the NW¼ of the SE¼, an irregular tract comprising 300 acres and being a part of each subdivision of forty acres in Sec. 36; also the following lands in T. 4 N., R. 2 W., B.M. in Canyon County, Idaho, to-wit: Lots 1, 2, 3 and 4 in Sec. 2; Lot 1 and the N 15 acres of Lot 4 in Sec. 3; Lot 4 in Sec. 4; Lot 1 and the N 32 acres of Lot 3 in Sec. 5, contiguous lands containing in all 3881 acres, more or less.

Dated Boise, Idaho, this 8th day of June, 1914.

F. P. King,
State Engineer.

Approved J. H. Peterson, Atty. Gen.

IN THE DISTRICT COURT OF THE UNITED STATES, IN AND FOR THE DISTRICT OF IDAHO, SOUTHERN DIVISION.

United States of America, Plaintiff, vs. Boise Fruit Tracts Company, and J. H. Smith, State Engineer of the State of Idaho. Defendants.	J U D G M E N T

This cause came on regularly to be heard on the 31 day of July, 1916, J. L. McClear, United States District Attorney, and B. E. Stoutemeyer, District Counsel, United States Reclamation Service, appearing as counsel for the Plaintiff and T. L. Martin and B. F. Neal, for the Defendant, Boise Fruit Tracts Company, and Defendant J. H. Smith, State Engineer of the State of Idaho, appearing in person. A Stipulation for judgment, signed by the respective parties Plaintiff and Defendant, either in person or by attorney, for a judgment herein was presented, and the cause was on said Stipulation submitted to the Court for consideration and decision.

WHEREFORE, By reason ofthe Stipulation aforesaid, it is ordered and adjudged that the said Plaintiff's application for an injunction against the transfer of that certain water right, known and described as the Jacobs Canal water right, for 1000 miners inches, or 20 cubic feet per second of time, of a date of priority of June 1st, 1864, and designated in that certain Decree of the District Court of the Seventh Judicial District of the State of Idaho, wherein the Farmers' Co-operative Ditch Company, a corporation, was Plaintiff and the Riverside Irrigation District, Ltd., et al, were Defendants, dated the 18th day of January, 1906, as "Right No. 2", be, and the same is, hereby denied; and it is further adjudged that the transfer of the said water right of the Jacobs Canal Company, as provided in that certain Order of the State Engineer of the State of Idaho, dated June 8th, 1914, and set forth and described in the said Complaint, transferring the point of diversion of the said water right to the head-gate of the canal of the Farmers Union Canal Company, be, and the same is hereby confirmed as valid and legal, and the diversion of the said water right at said new point of diversion, to-wit, at the head-gate of the canal of the said Farmers Union Canal Company, be, and the same is hereby allowed and confirmed.

It is further ordered and adjudged that the said Defendants, their agents, servants, employees, and assigns, and all persons acting under or by authority of the said Defendants, or any of them, be and they are hereby perpetually enjoined and restrained from diverting the other water rights mentioned in the Complaint herein, or either or any of them, at any point other than the points named in the original Decree of the District Court of the Seventh Judicial District of the State of Idaho, hereinbefore referred to, said water rights, the diversion of which is hereby enjoined, are more particularly described in the said Order of the State Engineer and in said Complaint herein as follows:

All the water rights appurtenant to that part of Lots 1, 2, and 3 in Sec. 12, T. 4 N., R. 4 W., B.M. and that part of Lots 3, 4, and 5 in Sec. 7, T. 4 N., R. 3 W., B.M., which lie on the Southerly side of the present main channel of the Boise River, area 200 acres; the W. 25 acres of the NE¼ of the NW¼ of Sec. 14, the E½ of the NE¼ of Sec. 23; the E½ of the SE¼ of Sec. 14; the W 30 acres of the NW¼ of the NE¼ of Sec. 13 all in T. 4 N., R. 4 W., B.M.; and the NW¼ of the NE¼ of Sec. 19, T. 4 N., R. 3 W., B.M.; said water being heretofore diverted through the Pioneer Dixie Ditch the point of diversion of which is described in said decree as follows, to-wit:

The point of diversion is on the left bank of the Boise River in the SW¼ of Sec. 20, T. 4 N., R. 3 W., B.M. Said waters appurtenant to said lands hereinabove described being part of rights Nos. 8 and 45 set out in said decree hereinabove referred to.

All water rights appurtenant to the E½ of Sec. 8 and all of Sec. 9, T. 4 N., R. 4 W., B.M. said water being heretofore diverted through the Riverside Canal, the point of diversion of which from the Boise River is described in said decree as follows; to-wit: The point of diversion is on the left bank of the Boise River near the center of Sec. 20, T. 4 N., R. 3 W., B.M., and

said waters appurtenant to said lands hereinbefore described being all of Right No. 8[illegible] as set out in said decree hereinabove referred to.

All the water rights appurtenant to the SW¼ of the SE¼ of Sec. 31, T. 5 N., R. 4 W., B.M., said water being heretofore diverted through the Eureka No. 2 ditch the point of diversion of which from the Boise River is described in said decree as follows, to-wit: The Point of diversion is on the left bank of the Boise River near the SW corner of Sec. 12, T. 4 N., R. 4 W., B.M. Said water appurtenant to said lands hereinabove described being a part of Right No. 89 as set out in said decree hereinabove referred to.

And it is further ordered, adjudged and decreed that the permanent injunction of this Court issue herein, directed to the said Defendants, their servants, agents, employees, and attorneys, requiring them, and each of them, to perpetually refrain from diverting said described water rights, except the said described Jacobs Canal water right, into the said canal of the Farmers Union Canal Company, under said Order of the said State Engineer, or otherwise.

It is further ordered, and adjudged that the respective parties hereto shall each pay its own costs incurred herein.

Frank S. Dietrich.

UNITED STATES OF AMERICA.

DISTRICT OF IDAHO,) ss.

I, W. D. McReynolds, Clerk of the United States District Court for the District of Idaho, do hereby certify that the foregoing copy of Judgment in cause No. 168, the United States, vs. Boise Fruit Tracts Company, and J. H. Smith, as State Engineer of the State of Idaho, has been by me compared with the original, and that it is a correct transcript therefrom and of the whole of such original, as the same appears of record and on file at my office and in my custody.

In testimony whereof, I have set my hand and affixed the seal of said Court in said District this 31st day of July, 1916.

W. D. McReynolds, Clerk.

(SEAL)
10 cent Revenue Stamp
attached.

IN THE MATTER OF THE APPLICATION OF THE BOISE FRUIT TRACTS COMPANY, FOR THE TRANSFER OF BOISE RIVER WATER RIGHTS.

I, J. H. Smith, State Engineer of the State of Idaho, hereby certify that on the 19th day of June, 1914, the State Engineer of the State of Idaho issued to the Boise Fruit Tracts Company, a Certificate of Transfer authorizing the transfer of the points of

diversion and the place of use of certain water rights held by the above named Company, said points of diversion and place of use being described in the original decree entitled: "Farmers' Co-operative Ditch Company, Plaintiff, vs. Riverside Irrigation District, et al., Defendants", as follows, to-wit:

(1) All the water rights appurtenant to that part of Lots 1, 2, and 3 in Sec. 12, T. 4 N., R. 4 W., B.M., and that part of Lots 3, 4, and 5 in Sec. 7, T. 4 N., R. 3 W., B.M., which lie on the southerly side of the present main channel of the Boise River, area 200 acres; the W. 25 acres of the NE¼ of the NW¼ of Sec. 14; the E½ of the NE¼ of Sec. 23; the E½ of the SE¼ of Sec. 14; the W. 30 acres of the NW¼ of the NE¼ of Sec. 13, all in T. 4 N., R. 4 W., B.M.; and the NW¼ of the NE¼ of Sec. 19, T. 4 N., R. 3 W., B.M.; said water being diverted through the Pioneer Dixie Ditch, the point of diversion of which is described in said decree as follows, to-wit: The point of diversion is on the left bank of the Boise River in the SW¼ of Sec. 20, T. 4 N., R. 3 W., B.M. Said waters appurtenant to said lands hereinabove described being a part of rights Nos. 8 and 45, as set out in said decree hereinabove referred to.

(2) All the water rights appurtenant to the E½ of Sec. 8 and all of Sec. 9, T. 4 N., R. 4 W., B.M., said water being heretofore diverted through the Riverside Canal, the point of diversion of which from the Boise River is described in said decree as follows, to-wit: The point of diversion is on the left bank of the Boise River near the center of Sec. 20, T. 4 N., R. 3 W., B.M., said waters appurtenant to said lands hereinabove described being all of Right No. 88 as set out in said decree hereinabove referred to.

(3) All the water rights appurtenant to the SW¼ of the SE¼ of Sec. 31, T. 5 N., R. 4 W., B.M., said water being heretofore diverted through the Eureka No. 2 Ditch, the point of diversion of which from the Boise River is described in said decree as follows, to-wit: The point of diversion is on the left bank of the Boise River near the S.W. corner of Sec. 12, T. 4 N., R. 4 W., B.M. Said water appurtenant to said lands hereinabove described being a part of Right No. 89, as set out in said decree hereinabove referred to.

That, under and by virtue of a Judgment issued by the District Court of the United States, in and for the District of Idaho, Southern Division, in the matter of the United States of America, Plaintiff, vs., Boise Fruit Tracts Company and J. H. Smith, State Engineer of the State of Idaho, Defendants, all of the above described water rights must hereafter be diverted from the Boise River at the points and through the canals described in the decree hereinabove referred to and shall be used upon the lands described in said decree and not upon the lands described in State Engineer's Certificate of Transfer, hereinabove referred to, under the heading, "Point to Which Transferred and Place of Use."

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of my office at Boise, Idaho, this 14th day of October, A.D. 1916.

J. H. SMITH,
State Engineer.

(SEAL)

STATE ENGINEER OF THE STATE OF IDAHO.

RECEIVED
MAY 15 1914
OFFICE OF STATE ENGINEER

In the Matter of the Application of BOISE FRUIT TRACTS COMPANY, a Corporation, for the Transfer of Water Right.

BRIEF OF PROTESTANTS.

The applicant in the above entitled matter has applied, under Section 3264 of the Revised Codes of Idaho, to the Water Commissioner and State Engineer of the State of Idaho to transfer water from certain lands below Caldwell, Idaho, to lands near Middleton, Idaho. The present diversion point of these waters being near Caldwell, some of the water is evidently returned water to Boise River, and other water can be picked up on the way to the lands to be irrigated. The applicant desires to transfer these waters from this point about twenty-five miles up the river, and to divert it into the Farmers' Union Ditch.

A hearing was had before the State Engineer and Water Commissioner of the State of Idaho on the 5th day of May, 1914, at Boise, Idaho. The Nampa-Meridian Irrigation District, the Farmers' Co-operative Ditch Company, Limited, and the Pioneer Irrigation District appeared and protested against the transfer, claiming that they would be injured by reason thereof.

A portion of said Section 3264 of the Revised Codes of Idaho reads as follows:

> "Provided, That any person owning any land to which water has been made appurtenant either by a decree of the court or under the provisions of this chapter, may voluntarily abandon the use of such water in whole or in part on the land which is receiving the benefit of the same, and transfer the same to other land. Such person desiring to change the place of use of such water shall first make application to the State Engineer, stating fully in such application the reasons for making such transfer. Such application shall describe the land, the use of the water on which is to be abandoned, and shall describe the land to which it is desired to have such

right transferred, and if such water is to be conducted to such land through another canal or lateral or from a different point of diversion than the one described in the license or decree of the court confirming such right, such facts shall be fully set out in such application, and, if the State Engineer shall require it, a plat showing the location of such land and ditches or canals or points of diversion shall be furnished by such applicant, and upon receipt of such application, the State Engineer shall examine the same and shall, provided no one shall be injured by the transfer, issue to such applicant, under the seal of his office, a certificate authorizing such transfer, which certificate shall state the name of the applicant, and shall contain a copy of the license or an abstract of the decree confirming the right to the use of the water upon the land from which it is desired to transfer such right, and a description of the land to which such right is transferred."

From the quoted portion of this section you will observe that the transfer applies only where there has been a decree of court or a license under the provisions of Chapter 2, Title 9 of the Revised Codes of Idaho, granting to such applicant a certain amount of water, the use of which has been acquired by appropriation to certain lands. In this case, however, there is no license, as provided by said Chapter, granted to the applicant, nor is there a decree of the court, decreeing to the lands from which said water is sought to be transferred any certain quantity of water. This is admitted by parties on all sides, and is a well-known fact, and the applicant in this matter has not even attempted to prove that there was a decree of the court granting to either party any certain amount of water for the lands from which the water is sought to be transferred, which we contend for, or that the State Engineer has issued a license as contemplated by said Section 3264, and the State Engineer has no jurisdiction in this instance to make any transfer under said Section 3264, for the reasons above stated.

It will certainly be conceded that if the statutes did not provide for a transfer, the State Engineer and the Water Commissioner would not have jurisdiction to make any transfer. This being true , it will certainly be admitted on

all sides that where the statute provides under what conditions transfers can be made, that is, by license or decree, the State Engineer is without any jurisdiction to make any transfer unless there is such a license or decree, and the statutes having provided that there must be a license issued by the State Engineer or a decree, and there being no decree or license, the State Engineer certainly has no right or jurisdiction to entertain the proposition of making a transfer. Thus in the first instance they have not brought themselves within the jurisdiction according to the statute, not having shown that there has been a license or decree.

Under no condition can the State Engineer of this State permit a transfer to be made to the injury of any other person owning a right or having a right to divert or to use water from Boise River. The above quoted portion of the statute says he may do so, <u>provided no one shall be injured by the transfer</u>. As to who is to determine whether any one is likely to be injured, we contend that it is for the State Engineer of the State of Idaho to examine the river and the ditches and decide for himself, from experiments and tests made on the river, whether transferring this water would in any way injure other appropriators on Boise River, and if the State Engineer should find upon such examination that other appropriators will be injured by the proposed transfer, he has no right to make it. The State Engineer and the Water Commissioner are in charge of the waters of Boise River, and they should determine for themselves, as before stated, by experiments and tests on the river,

whether or not any other appropriator would be injured. It should not be placed as a burden upon the water users of the Boise River valley, every time any one desires to transfer water, to come in and contest his application. The State Engineer should watch with a jealous eye the interests of appropriators on the river, and see that no one is injured by such a transfer. It is more incumbent upon him to guard the interests of the water appropriators not appearing and of those people who might be injured, than it is to grant a benefit to a certain applicant who is seeking to transfer the water. This statute was not intended as a means whereby benefits could be handed to applicants or whereby applicants could speculate on the use of the public waters of this state, but the statute was intended merely to permit landowners who owned lands where they had a water right to apply for the transfer thereof to other lands also owned by them. Under no condition can one transfer water and divert it from the river at another point to the injury of prior appropriators.

The Supreme Court of the State of Idaho, in the case of Hall vs. Blackman, 22 Ida., p. 556, in the syllabus by the court, says:

> "2. A change of the place of use of water must not be permitted where to do so will damage another appropriator."

We believe the affidavits presented by the protestants show conclusively that they and the other water users on the river are injured by the proposed change, even though the statements contained in applicant's affidavit be accepted as true. There can be no question whatever but that it is a fact that where water is conveyed through Boise River from the Farmers' Union headgate to a point below Caldwell, a distance of over thirty miles, at least part of that water is used and re-used a number of times by a number of intervening appropriators, before finally reaching users at the lower end of the river. Our appropriations were made on a river where about 12,000 inches of water had been appropriated by users below the Caldwell bridge, and we have the right to insist that that condition of the river be maintained. If those rights below us be moved to points thirty miles up the river, then Boise River, at a point near Caldwell, will not be a river at all, but simply a ditch for conveying water to one or two users at that point.

The Government investigations in connection with the reclamation service show a return flow of about 240 second feet of water below Highland Dam. That increase accrues to the benefit of all users along the river, a large part of which can be secured by these protestants, and even if the protestants can be deprived of only 100 inches each, or even only 5 inches each, then this proposed transfer amounts to the taking of property without due process of law, and it is such an injury as entitled them to the protection of the State Engineer on this application.

Of course there are many points on the river where a user may change his point of diversion a mile or two, in order to enable him to construct a more economical ditch, or perhaps even to reach other land, without injuring other users, but we assume it will be conceded that no such changes can be made where other users are injured, for that simply amounts to taking the property of the

other users without compensation. The Supreme Court of Idaho has laid down this rule in no uncertain words, and we wish to quote from a few, only, of those decisions.

In Hill vs. Standard Mining Company, 12 Ida. 223, the Court, on page 234, says:

> "This court has repeatedly held that an appropriator could not change his place of diversion of the waters of any stream if such change in any manner affected a lower appropriator of the waters of such stream, even though the lower appropriator be subsequent in right. The reasons for such conclusion, it seems to us, are well founded. Where the lower appropriator makes his appropriation he has the right to assume the upper appropriator will continue the use of the water as he found it, and if any change would damage him in the use of his appropriation, the courts will protect him in his rights."

In Montpelier Milling Company vs. City of Montpelier, 19 Ida. 212, at page 223, we find the following:

> "The fact that the appellant was the owner of one hundred and twenty-eight shares of stock in the Montpelier Irrigation Company, an appropriator of water prior in time to that of the respondent, did not give the appellant the right to change the point of diversion of the Montpelier Irrigation Company to a point above the point of diversion of the respondent, if such change resulted in injury to the respondent. (Rev. Codes, Sec. 3247; Walker v. McGinness, 8 Ida. 540, 69 Pac. 1003; Hill v. Standard Mining Co., 12 Ida. 223, 85 Pac. 907; Wiel on Water Rights, 291-297.)"

We shall not discuss further the affidavits presented, for we believe the facts we have covered therein, as well as other injurious consequences of such a change, are already known to the State Engineer. As we view Section 3264, it is made the duty of the State Engineer not to allow the change, unless no one be injured. The statute says:

> " . . . and upon receipt of such application, the State Engineer shall examine the same, and shall, PROVIDED NO ONE SHALL BE INJURED by the transfer, issue to such applicant" etc.

While, presumably, the other users on the river have the right to protest against the application, the statute says nothing which indicates it is the duty of all other water users to protest or make any showing whatever in order to protect their rights, but simply says the Engineer may grant the certificate, provided

no one shall be injured. The burden lies with the applicants to satisfy the Engineer that the change can be made without injury to others, and it surely cannot be claimed that the affidavits presented by the applicants prove an absence of injury to others, nor do we believe that such proof is obtainable.

The statute in no place says, nor even indicates, that the protestants must first prove an injury, nor that they are required to make any showing whatever - in other words, the State Engineer can hear evidence and proofs or not, as he desires. He can decide the question absolutely on the knowledge of the river which he has, and may take into consideration any facts or information which he already has or can himself procure from the investigations of others, or from further investigations to be made under his directions.

The fact cannot be controverted that on a river such as the Boise River changes of place of use such as are asked for here must necessarily result in injury to intervening users. It is well known that Snake River, just below the Milner Dam, is practically dry during the latter part of the irrigation season. An appropriator of water on Snake River at a point thirty miles below that dam who should apply for a transfer of his water to a point above the dam would be laughed out of court, and to a somewhat lesser degree only the identical principle is involved in the applications now before the State Engineer.

We submit that the Engineer must refuse to sanction this transfer, unless he can say that in his own mind he is perfectly satisfied that no one is injured. The duty is imposed upon him to guard the rights of other users on the river, and he must decide according to the facts as known to him, regardless of protests, applications or evidence offered by any of the parties interested. If he knows any of the evidence offered is not true,

or is inapplicable, he is at liberty to disregard it absolutely. On the other hand, if the Engineer is in doubt on the matter, then that doubt should be resolved in favor of the other users whose property interests are at stake, at least until such time as he can make such investigations as will settle the matter in his own mind beyond the question of a doubt.

Attorneys for Farmers' Co-operative Ditch Company.

Attorneys for Nampa-Meridian Irrigation District.

Attorneys for Pioneer Irrigation District.

Proof of Publication

Plaintiff's Exhibit 7

STATE OF IDAHO }
County of Ada } ss.

I, F. D. Roberts, being first duly sworn depose and say that I am over twenty-one years of age, and the publisher of THE STAR COURIER, a newspaper of general circulation, published at Star, County of Ada and State of Idaho, and the annexed Notice was published in said paper once each and every week for Six (6) consecutive weeks, the first publication being on the 6th day of March, 1914, and the last publication being on the 10th day of April, 1914.

F. D. Roberts

Subscribed and sworn to before me this 15 day of April, 1914.

E. C. Poland
Notary Public.

RECEIVED
APR 20 1914
OFFICE OF STATE ENGINEER

NOTICE OF PROPOSED TRANSFER OF WATER RIGHTS.

Notice is hereby given that the Boise Fruit Tracts Company, a corporation of Boise, Idaho, has applied to the State Engineer of the State of Idaho for certificate authorizing it to transfer the use of 20 second feet, otherwise described as 1000 miners inches of the waters of the Boise River from the Jacobs Canal in which the same has been heretofore diverted and carried and from the town lots and blocks, sprinkling, sewer flushing and other municipal uses for which heretofore used in Boise City, Idaho, and additions thereto. Said water right being known as Right No. 2 in that certain decree entered on January 16, 1907, in the District Court of Canyon County, Idaho, entitled "Farmers' Co-operative Ditch Company, Ltd., vs. Riverside Irrigation District, et al."

Said water above referred to is diverted on the right hand side of Boise River about one mile east of Boise City and to be again diverted on the right hand side of Boise River in Sec. 32, Twp. 4 N. R. 2 E. B. M. in and through the main canals of the Farmers' Union Ditch Company, Limited, and thence carried through said ditch and diverted into ditches now in course of construction for the purpose of receiving said water from said Farmers' Union Ditch at a point in the NE¼ of the SW¼ of Sec. 31 in Twp. 5 N. of R. 1 W. of B. M. and to be used upon the following described tracts, to-wit:

The following lands in Twp 5 N. of R. 1 W. of B. M. Ada County, Idaho; SW¼ of SW¼ of Sec. 19; W½ of NW¼ of Sec. 30; SW¼ of SW¼ of Sec. 30; W½ of NW¼ Sec. 31; and the following described lands in Twp. 5 N. of R. 2 W. of B. M. in Canyon County, Idaho, to-wit:

75.3 acres in the S½ of SW¼ and the S½ of the SE¼ of Sec. 22; 123.2 acres in the S½ of the SW¼ and the S½ of the SE¼ of Sec. 23; 29 acres in the SW¼ of Sec. 24; the SE¼ of the SE¼ of Sec. 25; the following lands in Sec. 26, the N½ of the NW¼; the SW¼ of the NW¼ and 26.7 acres of the SE¼ of the NW¼; the NW¼ of the NE¼ and 22.7 acres in the N½ of the SW¼; the following lands in Sec. 27, S½ of the NE¼; SW¼ of the NW¼; S½ of the SE¼ of the NW¼; the SW¼; 37 acres in the NW¼ of the SE¼; 16.6 acres in the NE¼ of the SE¼; 38.1 acres in the SW¼ of the SE¼ and 7.8 acres in the SE¼ of the SE¼; the following lands in Sec. 28, the SE¼; the S½ of the SW¼; the NW¼ of the SW¼, and the SW¼ of the NW¼; the following lands in Sec. 29, the SE¼ of the NE¼, N½ of the SE¼ and SE¼ of the SE¼, the following lands in Sec. 32, the S½ of the NW¼ of NE¼; the W½ of the NW¼ of the NW¼ of the NE¼; the S½ of the SW¼ of the NE¼; the SE¼; the SE¼ of the SW¼ and the S½ of the SW¼ of the SW¼; all of Sec. 33, the following lands in Sec. 34, the NW¼; the SW¼; the SE¼; the S½ of the NE¼; 37.3 acres in the NW¼ of the NE¼ and 23 acres in the NE¼ of the NE¼; the following lands in Sec. 35, 23.3 acres in the SE¼ of the NE¼; 5.2 acres in the NW¼ of the NW¼; 9.2 acres in the NW¼ of the SW¼; 8.1 acres in the NE¼ of the SW¼; 33 acres in the SW¼ of the SE¼; 36 acres in the SE¼ of the SW¼; the S½ of the SE¼; the NE¼ of the SE¼; 38 acres in the NW¼ of the SE¼; an irregular tract comprising 300 acres and being a part of each subdivision of forty acres in Sec. 36; also the following lands in Twp. 4 N. of R. 2 W. of B. M. in Canyon County, Idaho, to-wit:

Lots 1, 2, 3 and 4 in Sec. 2; Lot 1 and the N. 15 acres of Lot 4 in Sec. 3; Lot 4 in Sec. 4; Lot 1 and the N. 32 acres of Lot 3 in Sec. 5, contiguous lands containing in all 3881 acres, more or less.

And that at 10 o'clock, A. M., on the 14th day of April A. D., 1914, at the Representative Chamber, State House, Boise, Idaho, before E. Marsters, the Water Commissioner of Division No. 3, or his authorized agent, the opportunity will be given to any and all persons to appear and present for his consideration any reason or reasons why a certificate should not be issued authorizing such transfer; full details of the proposed transfer may be obtained from E. Marsters, Boise, Idaho, Water Master of said stream.

F. P. KING,
State Engineer.

First publication March 6, 1914.
Last publication April 10, 1914.

....., being first duly sworn over twenty-one years of age, E STAR COURIER, a news- , published at Star, County of the annexed Notice was pub- ch and every week for Six (6) first publication being on the ..., 1914, and the last publi- day of March, 1914.

E. D. Roberts

to before me this 15

1914 C. [illegible]

Notary Public.

NOTICE OF PROPOSED TRANSFER OF WATER RIGHTS.

Notice is hereby given that the Boise Fruit Tracts Company, a corporation of Boise, Idaho, has applied to the State Engineer of the State of Idaho for certificate authorizing it to transfer the use of 20 second feet, otherwise described as 1000 miners inches of the waters of the Boise River from the Jacobs Canal in which the same has been heretofore diverted and carried and from the town lots and blocks, sprinkling, sewer flushing and other municipal uses for which heretofore used in Boise City, Idaho, and additions thereto,

Said water above referred to is diverted on the right hand side of Boise River about one mile east of Boise City and to be again diverted on the right hand side of Boise River in Sec. 32, Twp. 4 N. R. 2 E. of B. M. in and through the main canals of the Farmers' Union Ditch Company, Limited, and thence carried through said ditch and diverted into ditches now in course of construction for the purpose of receiving said water from said Farmers' Union Ditch at a point in the NE¼ of the SW¼ of Sec. 31, in Twp. 5 N. of R. 1 W. of B. M. and to be used upon the following described tracts, towit:

The following lands in Twp. 5 N. of R. 1 W. of B. M. Ada County, Idaho; SW¼ of SW¼ of Sec. 19; W½ of NW¼ of Sec. 30; SW¼ of SW¼ of Sec. 30; W½ of NW¼ Sec. 31; and the following described lands in Twp. 5 N. of R. 2 W. of B. M. in Canyon County, Idaho, towit:

75.3 acres in the S½ of SW¼ and the S½ of the SE¼ of Sec. 22; 123.2 acres in the S½ of the SW¼ and the S½ of the SE¼ of Sec. 23; 29 acres in the SW¼ of Sec. 24; the SE¼ of the SE¼ of Sec. 25; the following lands in Sec. 26, the N½ of the N½; the SW¼ of the NW¼ and 26.7 acres of the SE¼ of the NW¼; the NW¼ of the NE¼ and 22.7 acres in the N½ of the SW¼; the following lands in Sec. 27, S½ of the NE¼; SW¼ of the NW¼; S½ of the SE¼ of the N½; the SW¼; 37 acres in the NW¼ of the SE¼; 16.6 acres in the N½ of the SE¼; 38.1 acres in the SW¼ of the SE¼ and 7.8 acres in the SE¼ of the SE¼; the following lands in Sec. 28, the SE¼; the S½ of the SW¼; the NW¼ of the SW¼, and the SW¼ of the NE¼; the following lands in Sec. 29, the SE¼ of the NE¼ N½ of the SE¼ and SE¼ of the SE¼, the following lands in Sec. 32, the S½ of the NW¼ of NE¼; the W½ of the NW¼ of the NW¼ of the NE¼; the S½ of the S½ of the NE¼; the SE¼; the SE¼ of the SW¼ and the S½ of the S½ of the SW¼; all of Sec. 33, the following lands in Sec. 34, the NW¼; the SW¼; the SE¼; the S½ of the NE¼; 37.3 acres in the NW¼ of the NE¼ and 23 acres in the E½ of the NE¼; the following lands in Sec. 35, 23.3 acres in the SE¼ of the NE¼; 5.2 acres in the NW¼ of the NW¼; 9.2 acres in the NW¼ of the SW¼; 8.1 acres in the NE¼ of the SW¼; 33 acres in the SW¼ of the SE¼; 36 acres in the SE¼ of the SW¼; the S½ of the SE¼; the NE¼ of the SE¼; 38 acres in the N½ of the SE¼, an irregular tract comprising 300 acres and being a part of each subdivision of forty acres in Sec. 36; also the following lands in Twp. 4 N. of R. 2 W. of B. M. in Canyon County, Idaho, to-wit:

Lots 1, 2, 3 and 4 in Sec. 2; Lot 1 and the N 16 acres of Lot 4 in Sec. 3; Lot 4 in Sec. 4; Lot 1 and the N 32 acres of Lot 3 in Sec. 5, contiguous lands containing in all 3881 acres, more or less.

And that at 10 o'clock A. M. on the _____ day of April, A. D. 1914, at the office of _____.

Boise, Idaho, before _____, the water commissioner of Division No. _____, or his authorized agent, the opportunity will be given to any and all persons to appear and present for his consideration any reason or reasons why a certificate should not be issued authorizing such transfer, full details of the proposed transfer may be obtained from _____ _____, water master of said stream.

_____

State Engineer.

STATE ENGINEER OF THE STATE OF IDAHO.

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IN THE MATTER OF THE APPLICATION OF BOISE FRUIT TRACTS COMPANY, A CORPORATION OF BOISE, IDAHO.

---APPLICANT'S BRIEF ON PROTEST---

To Honorable Frank P. King, State Engineer of the State of Idaho, and Honorable E. Marsters, Water Master for the Third Division of the State of Idaho.

This is an application on behalf of the petitioner to transfer the point of diversion and use of 2000 inches of water on the Boise River, as shown by the verified application on file in the office of the State Engineer; said water rights being therein specifically described, together with the present and proposed points of diversion.

In support of this application for transfer, the petitioner furnished your Honors with abstracts of title showing the title to all of the various tracts of land from which said water is being transferred, save and except as to the Jacobs Canal. As to the Jacobs Canal, it furnished an abstract of the water and also supporting affidavits showing that the same had been used under a rental system on town lots in Boise City, and that said canal has provided its customers with other water from equally good right. The applicant also furnished a map of the lands from which the water is being taken, together with the ditches through which it is carried and the points of diversion, also a map showing the ditch through which it will be hereafter diverted from the river and the lands upon which it is to be used after the transfer. The verified application also affirmatively shows that no one will be injured by such transfer but on the other hand said waters will perform a much higher duty in the development of the state than it has heretofore performed.

Petitioner's documentary evidence on file shows title

to the lands from which said water is sought to be transferred; that said waters have heretofore been appropriated from the Boise River and applied to said lands for a beneficial use. When this showing has been made, two things follow as a matter of law: first; that said water is appurtenant to the lands upon which it has heretofore been used. Secondly; that the fact that said water is an appurtenance to said lands gives the owners thereof the right to transfer the point of diversion and use of said waters or to sell the same to others who may transfer the use or point of diversion. As supporting this statement, see

Hard vs. Boise City Irrigation Co. 9 Ida. 589 - see page 602

Paddock vs. Clark, 22 Ida. 489 - see 503

Russell vs. Irish, 20 Ida. 194

Neilson vs. Parker, 19 Ida. 727

Taylor vs. Hullett, 15 Ida. 265

Hall vs. Blackman, 8 Ida. 272

McGinnis vs. Stanfield, 6 Ida. 372.

Ada County etc. Co. vs. Farmers etc. Co. 5 Ida. 793.

The Pioneer Irrigation District, Farmers Co-operative Ditch Company and the Nampa & Meridian Irrigation District, filed a written protest against the State Engineer transferring the point of diversion from the Boise River of the water rights described in the application. Said protest is upon the ground that protestants will be injured if said transfer is allowed by the State Engineer. The reasons why the protestants claim they will be injured are five in number and are set out in their protest now on file. We shall consider these grounds of protest in the order in which they numerically appear in the protest.

The first and second grounds of protest are identical in character and should be considered together and briefly stated is this: That the water rights sought to be transferred are not decreed water rights, as such rights are referred to by Section 3264 of the Revised Codes of Idaho, and that the lands from which

the water is sought to be transferred have no definite amount of water allotted or decreed to them and for this reason the State Engineer would be powerless to issue a certificate transferring any amount of water from these lands.

At this time we desire to call attention that Section 3264 of the Revised Codes of Idaho is not at all determinative of applicant's right to transfer the waters in question. The recognized right to transfer the point of diversion and use of the waters of this state is as old as the right to acquire the use of water itself. It was early recognized that in order to develop the highest efficiency of the waters of this state, those who had a right to its use, of necessity should have a right to transfer the place and the character of use. It is needless to say that the first appropriations of water in Idaho were made for mining purposes, then followed agriculture. The waters were first transferred from the mines to the agricultural lands. The first agricultural lands were immediately adjoining the streams, later came the irrigation of the higher lands and the construction of long and expensive canals. Through these changed conditions a change was made necessary in the points of diversion and uses of our public waters. Almost thirty years ago, the right to transfer the place of use and the character of use was recognized by our territorial legislature. See Section 3157 Revised Statutes of Idaho (1887). No procedure, however, for making this change of point of diversion or use was provided by our early statutes. So, after the creation of the office of the State Engineer, and the bringing under his control all questions affecting water rights, our State Legislature in 1903 adopted a provision, pointing out the procedure by which the change of the point of diversion and use of waters might be made. This law was amended in 1905 and again in 1907, to its present form. The language in the present statute which is pertinent to the question under consideration is as follows:

"That any person owning any land to which water has been made appurtenant either by a decree of the court or under the provisions of this chapter, may voluntarily abandon the use of such water in whole or in part on the land which is receiving the benfit of the same and transfer the same to other lands."

The applicants have a right to transfer the point of diversion of the waters for which application has been made for a number of reasons, among which are the following:

1st. The water rights sought to be transferred are appurtenant to the lands upon which they have heretofore been used, first by appropriation and application to said lands and second, by decree of court entered in the case of Farmers Co-operative Ditch Co. vs. Riverside Irrigation District et al in the District Court of the Seventh Judicial District, for Canyon County, which case is reported in the 16th Ida. page 525. The second reason is because they have a right under the statutes of this state to transfer the point of diversion from the river. Thirdly, they have a right to sell their water rights and the purchaser can transfer the point of diversion. By reference to the decree entered by Judge Stewart when sitting as trial judge of the Seventh Judicial District of this state, it will be seen that all the water rights herein attempted to be transferred were applied to the respective lands many years prior to the date of said decree. The mere application of such waters to said lands made them appurtenant thereto.

It will thus be seen that the waters which are sought to be transferred were "appurtenant" to the lands irrigated by them years before the statute under consideration, to-wit: Section 3264 of the Revised Codes was adopted. We further call attention to the fact that no decree of court making water appurtenant to land could add anything to the character of a water right which has already become appurtenant by operation of law, in that said water has been applied to said lands and thereby become an appurtenance. If it be argued also that under the provisions of Section 3264, in order to entitle water to be transferred, it must have been made appurtenant by decree of court, our answer is

that the waters sought to be transferred have been decreed to be appurtenant to the lands upon which they had been used by the decree of Judge Stewart in the case hereinabove referred to, which decree is affirmed by the supreme court and reported in 16 Ida. at page 525. It is urged in the affidavits on file in the present proceeding that the judgment of the district court upon the water rights affecting Boise River was reversed by the supreme court. Such is not its effect, as we understand the opinion of our supreme court. It must be remembered that the district judge by decree established the rights of the various parties to take waters from the Boise River and also established their priorities. He then found generally the amount of water which it took to irrigate the two characters of land in this valley, being bench and bottom lands. The supreme court held there was not sufficient evidence upon which to find the duty of water or the amount of water required for the irrigation of the lands in this valley and sent said case back for re-trial upon that question, but affirmed the judgment as to the respective rights and the priorities of the litigants. On page 538, the court says:

> "The judgment will be affirmed as to the respective rights and priorities of the several claimants and the appropriators whose rights have been litigated in this case. A new trial will be granted for the sole and only purpose of determining the duty of water on the two classes of lands involved in this action, namely, bench and bottom lands."

From this it will be seen that the rights to take water from the Boise River and the priorities thereof, has been finally and definitely determined in the case hereinabove referred to, and in the case now pending in the district court of the seventh judicial district of this state there is but one question to be determined and that is what is the duty of water of the two classes of lands in the Boise Valley, namely, bench and bottom lands. So, it will be seen that insofar as it is possible for a decree of court to determine the rights to take water from a natural stream, this has been determined between the various appropriators of the Boise River. Therefore, in our

application we have an established water right sufficient for the proper irrigation of the lands from which it is sought to be taken, appurtenant to said lands by operation of law and by decree of a court of competent jurisdiction.

In this connection we further desire to call attention to the fact that nowhere in Section 3264 of the Revised Codes is it provided that the amount of water to be transferred shall be definitely fixed. It is assumed that the amount to be transferred is the water right appurtenant to the land from which it is to be transferred. In the present case, the State Engineer, if this transfer is allowed, will transfer the water rights appurtenant to the lands which have heretofore been irrigated thereby. Such a transfer carries the entire right and if upon further hearing of the suit involving the waters of Boise River the duty of water shall be raised, the amount transferred would necessarily be smaller than that which was decreed by Judge Stewart.

Protestants objection on the ground that the State Engineer has no power to make this transfer, for the reason that the amount of water to which applicant is entitled has not been definitely fixed by decree of court, is well answered by the supreme court of Colorado in the case of Hallett vs. Carpenter, 86 Pac., 317-318. The same contention was there made as here. In answer to this contention, the court said:

"In the event of the supply of water becoming insufficient to supply the appropriation, the decree permitting the transfer will be construed as permitting only such portion of the appropriation as the amount transferred bears to the whole."

So, in the present case, when the duty of water is finally determined, the order of the State Engineeer directing the transfer will be construed in the light of the final decree determining the duty of water on the lands from which the transfer is made. All we ask is, that the State Engineer make an order directing the transfer of the waters appurtenant to the lands from which said transfer is sought to be made, as shown

by the application on file in his office.

RIGHT TO SELL

As to the right to sell a water right, under the laws and decisions of this state, there is no longer question. For instance, in the case of Hard vs. Boise City Irrigation and Land Company, 9 Ida. page 589, in discussing this particular proposition on page 597 the court says:

> "Land sometimes becomes valueless for crops in various ways. Too much water will cause it to become "crawfishy" salt grass will grow up, either rendering the soil valueless for most crops. then if the man with a right to the use of water for years cannot change it to other lands and cannot sell it, he must lose his valuable right and someone else succeeds to it without any compensation whatever to the party who has made it valuable by using it as required by the company and the statute."

Again on page 601 it is said:

> "Again, it seems to me that before the courts can be justified in denying to any person the right to voluntarily sell and dispose of any property right, he may possess, they should find such prohibition clearly expressed in law. It is a fundamental principle that every citizen has the inherent right to dispose of all his acquisitions, and unless that inherent right be expressly abridged by law, it should not be done by the courts. This is such a right as the law recognizes, and the courts are almost daily called upon to protect."**********
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> "It has been uniformly held by the courts of the arid states that those who divert and appropriate waters from the natural streams, may change the point of diversion and place of use of such waters so long as the same does not interfere with the rights of others, and that they may sell and transfer such right."

The third objection made to the transfer of these water rights is that the lands from which the water is sought to be transferred, lie down the stream from the lands of protestants, and that said lands are supplied in part by return waters to the river, and that by changing the point of diversion of the waters now appurtenant to these lands, the protestants will be injured because it would decrease the amount of water flowing past their head gates and there would still be sufficient to supply the lands from which said water is transferred by the return water to the river.

Protestants entirely failed to produce any evidence upon which this contention could be sustained. The affidavits

produced

Giving to his affidavit the fullest credit to which it could be entitled, it would only mean that his opinion is that there is seepage in the Boise River, based upon very limited observation. As against this affidavit of Mr. Stevenson, we call attention to the affidavits of Fred H. McConnell, a civil engineer who has continuously been water master on the Boise River in the locality of Caldwell since 1905, except during the year 1910. His statements are therefore based upon eight years of actual experience in handling and measuring the waters of the river. This affidavit is corroborated by M.G. McConnell and are marked "Defendant's Exhibits 2-R and 2-T in the evidence. There can be no question that the affidavits of these men who have for years had personal knowledge of the conditions of the Boise River at the particular points in controversy should be given greater weight than that of an engineer who has an opportunity to view the river only occasionally.

That there is no seepage, back flow, or return flow from Indian Creek either used or available for use for irrigation of any of the lands under the Eureka Ditch No.2, Pioneer Dixie Ditch, or the Black Right, is fully shown by the affidavits of W. A. & Bert Black, exhibits 2-D and 2-Q, and by the affidavits of Fred H. and M.G. McConnell. also by the abstract of title of the water filings on Indian Creek (which shows over 33,000 inches filed upon) and by exhibit A attached to the affidavit of Walter Griffiths as "Exhibit 4" in petitioner's showing and also by other exhibits in evidence.

Before protestants should be heard to say that the water rights sought to be transferred are only rights to the seepage and return flow to the Boise River, and therefore not transferrable, we feel the burden of proof is upon protestants to show to the satisfaction of the State Engineer and the Water Master for the Third Division that this seepage and return flow is a constant and dependable source from which water may be secured. A reference to the Stewart decree will show that all the rights

sought to be transferred are prior to 1883, and that the water was diverted from the natural flow of the river. The seepage and return flow in the Boise River, if any, is due to irrigation of the bench lands. Very little, if any of these lands were in cultivation at the time the appropriations of the waters were made which waters we are now attempting to trnafer. Therefore, it is safe to say that at the time the appropriations were made from the river, these appropriations were made from the natural flow and not a seepage or return flow. Protestents are now attempting to change the character of the water right of these appropriators and claim the only right they have is to divert the seepage and return flow. While we think there is no force whatsoever in this argument, at the same time before it can be seriously urged, it would be incumbent upon the protestants to show that such a source of water supply is constant and dependable and does not fluctuate with irrigation and weather conditions. Upon this point there is an absolute lack of any evidence whatsoever.

RIGHT TO TRANSFER WATER

The right to transfer water is a valuable right; it is based both upon the policy of reward to the individual, who through his energy and thrift has acquired the right to the use of water and also upon the highest public policy. That is, where land which has formerly been irrigated, and to which water has become appurtenant, ceases through changed conditions to require irrigation, public policy requires that such water be changed to other arid lands. For instance, in the Boise Valley there are lands which a few years ago required much water for irrigation, and appropriators actually applied to such lands large quantities of water for the production of profitable crops. In many instances the conditions have so changed that these lands require little or no irrigation. Doubtless with a proper

drainage system the same land which now requires no irrigation, will again have to be irrigated to be productive. Again, land may be so situated as to be of little value and the owner of the land may have an opportunity to dispose of his water right at a price in excess of the present value of his land and water right combined, and this water may be taken from the cheap land and applied to lands very valuable. This is the condition which now confronts those who are seeking to transfer their water rights. The lands from which we seek to transfer the water rights are poor in quality and cheap in price. If the State Engineer makes the order for which we ask, this same water will be applied to lands which very soon will have a value of from $200 to $300 an acre. That such a change is for the public good, seems to us should not be questioned.

The high purpose of all our statutes affecting irrigation and the decisions of our supreme court has been to so use the public waters of the state as to produce the greatest general benefit. As said in the case of Hard vs. Boise City Irrigation Co., 9 Ida. page 602,

> "Suppose he (entryman) originally took up 40 acres of land and acquired a right for the same and years afterward finds a use for his original tract for which it needs no irrigation, and in the meantime he has acquired an adjoining 40 -- will it be contended that he cannot use the water on that tract? If that be true, then he has a right, valuable to others and for which his neighbor is willing to pay a consideration, and in the acquisition of which he has been to much labor and expense, that at once becomes valueless by reason of judicial construction and forfeiture."

From the above quotation, it will be seen that the supreme court of this state heartily approves of water being used upon lands where it will be most beneficial.

The fourth objection is that the applicant has no right, title or interest which is subject to transfer. The applicant in this case is the purchaser of certain water rights which are appurtenant to the lands described in its application. Almost identically the same question arose in the case of Hard vs. Boise City Irrigation & Land Co., 9 Ida. 589, Mr. Hard was the grantee of a certain water right in the ditch now known

as the Ridenbaugh Canal. He had purchased this right from the owners of land under said canal. The canal refused to change the point of diversion upon the ground that the purchaser had nothing to sell and therefore the buyer took nothing. This decision is squarely in point and confirms beyond question the right to sell the use of water in this state.

The fifth objection by protestants is that the transfer of these rights to a point higher up the river will be injurious to them because their waters will be subject to a greater percentage of loss by seepage and evaporation. This objection is entirely inconsistent with objection No.3. The affidavits of protestants were filed for the purpose of showing there is a surplus return or surplus seepage water in the Boise River, that is, the return flow to the river exceeds both seepage and evaporation. It requires no argument on the proposition that there can be no net loss by seepage and evaporation where the return flow to the river shows a net gain. Protestants position in this matter is entirely inconsistent. They first ask that we be denied the transfer befause our waters are derived from the return flow, being seepage and tributary gains. They next ask that we be denied the right to make the transfer because by so doing we do not share in the losses by seepage and evaporation. If it be true there is a loss on the Boise River by seepage and evaporation, then the protestants are benefited by our waters being taken from the river 30 miles above the present point of diversion., for the reason every appropriator is entitled to have the water to which he is entitled measured at his point of diversion from the river. Now if there is a loss by seepage and evaporation, it is certainly a benefit to the protestants to have measured 1,000 inches of water at the head of the Farmers Union Ditch, rather than 30 miles below because by so doing, the protestants have gained the loss by seepage and evaporation on the thousand inches of water for a distance of 30 miles.

We do not feel it is incumbent upon the applicant in this case to show affirmatively more than the statute requires, that is, he should file his application, maps, description of the water right, old and new, points of diversion, etc. We have, however, gone further in this matter and shown conclusively that our position in asking for the transfer can be of no injury to any other appropriator; will be for the public good as well as a benefit to the parties immediately involved. The water will be taken from lands of little value and applied to those of great value. We have pointed out the statutes and court decisions which encourage the very thing to be done which we are here seeking. If this application is granted, 4,000 acres of heretofore arid lands will be put into cultivation. We feel the work being done to reclaim these valuable lands is a step in the right direction and should meet with encouragement and assistance.

Respectfully submitted,

B. F. Neal
Walter Griffith and
Martin & Martin.
Attys. for Petitioners.

RECEIVED
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OFFICE OF STATE ENGINEER

NOTICE OF PROPOSED TRANSFER OF WATER RIGHTS.

Notice is hereby given that the Boise Fruit Tracts Company, a corporation, of Boise, Idaho, has applied to the State Engineer of the State of Idaho for certificate authorizing it to transfer the use of 3/5 of a second foot, otherwise described as 30 miners inches of the waters of the Boise River from the Pioneer Dixie Ditch in which the same has been heretofore diverted and carried and from the lands upon which it is now used, i.e. West 30 acres of the northwest Quarter of the Northeast Quarter of Sec. 13, Twp. 4 N. of R. 4 W. B. M., the same being a part of the water adjudicated to the Pioneer Dixie Ditch as rights Nos. 8 and 45 in what is commonly known as the Boise River water decree in the case entitled: "Farmers' Co-operative Ditch Company, Ltd., plaintiff, vs. Riverside Irrigation District, et al, defendants," lately tried in the District Court of Canyon County, Idaho, and decree filed January 16, 1907, said waters are diverted on the left hand side of the Boise River at the head gates of said Pioneer Dixie Ditch in Northeast Quarter of Southwest Quarter of Sec. 20, Twp. 4 N. R. 3 W. B. M., and it is proposed to change point of diversion so that said water shall be diverted on the right hand side of the Boise River in Sec. 32 Twp. 4 N. R. 2 E. B. M. through the head gates of the Farmers' Union Ditch to the locality of the lands hereinafter described, and thence diverted from said ditch in works to be hereafter constructed and applied to a beneficial use upon the following described lands, to-wit:

The SW¼ of SE¼ and S½ of NW¼ of SE¼ Sec. 32, T. 5 N. R. 1 E. B.M.

And that at 10 o'clock A. M. on the 11 day of May, A. D. 1914, at the chambers of the House of Representatives Boise, Idaho, before E. Marsters, Water Commissioner of the Third

District, or his authorized agent, the opportunity will be given to any and all persons to appear and present for his consideration any reason or reasons why a certificate should not be issued authorizing such transfer.

Further details of the proposed transfer may be obtained from E. Marsters, Boise, Idaho, Water Commissioner of said stream.

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State Engineer.

October 14, 1916.

Re Certificate of Transfer.

Thos. E. Buckner, Attorney,
Caldwell, Idaho.

Sir:--

Enclosing herewith amendment to Certificate of Transfer issued to the Boise Fruit Tracts by F. P. King, on June 19,1914, as per request.

Very truly yours,

J. H. SMITH,

State Engineer.

CT

By_____

July 8th, 1916.

Mr. Tom Martin,
Boise, Idaho.

Dear Sir:-

Referring to the attached. The stipulation agreeing to the transfer will be satisfactory if supplimented to clearly convey the following understanding:

That the quantity of water to be transferred shall be only that amount as finally determined by the Court to be a valid right under Jacobs right No. 2. There shall be no transfer of water that has been abandoned through non-use, or by reason of lack of canal capacity for the conveyance of any part of Jacobs right No. 2 to the original place of use as defined by the Stewart decree.

Very truly yours,

State Engineer.

JWM-MLS

Boise Irrig. Dists. Ltr.

August 21, 1916.

Mr. B. F. Neal,
Boise, Idaho.

Dear Sir:

This is to acknowledge yours of the 16th inst. The matter relating to abstracts will be looked into at once, and if these are not necessary for our files according to the records made in connection with them, the abstracts will be returned.

Very truly yours,

J. H. Smith,

State Engineer.

By

Deputy.

FAW/FM

OFFICE OF STATE ENGINEER, STATE OF IDAHO.

In the matter of the application of Boise Fruit Tracts Company for the transfer of Boise River Water Rights.	:

I, F. P. KING, The duly apppinted, qualified and acting State Engineer of the State of Idaho do hereby certify that the above and foregoing is one of the original maps filed in the matter of the above application, and was used on the hearing of the protests against the allowance of said transfer.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal this 7th day of August, 1914.

F. P. KING,
State Engineer of the State of Idaho.

By Herbert Wing
Deputy

BEFORE THE STATE ENGINEER OF THE

STATE OF IDAHO.

IN THE MATTER OF THE APPLICATION OF BOISE FRUIT TRACTS COMPANY, FOR THE TRANSFER OF BOISE RIVER WATER RIGHTS.

This cause came on for hearing at 2 o'clock P. M. on the 5th day of May, 1914, pursuant to a continuance from April 14, 1914, entered on request of certain protestants, upon the application of the Boise Fruit Tracts Company made under the provisions of Section 3264 of the Revised Codes of Idaho for a certificate of the State Engineer of the State of Idaho transferring the point of diversion and place of use of certain water rights in Boise River as specifically described in said application now on file in this office, and upon the joint protest of the Farmers' Co-operative Ditch Company, the Pioneer Irrigation District and the Nampa--Meridian Irrigation District, Messrs. Walter Griffiths, T. L. Martin and B. F. Neal appearing as counsel on behalf of said applicant and Messrs. R. B. Scatterday, J. M. Thompson and H. E. McElroy appearing as counsel on behalf of said protestants. Documentary evidence was introduced on behalf of said applicant in support of its application and documentary evidence was introduced by said protestants in support of their protest.

Whereupon, the said matter was submitted to the State Engineer for his consideration and decision, and, after fully considering the same, said State Engineer is of the opinion that said application should be allowed and that an order should be made transferring the point of diversion and place of use of said waters of Boise River

which are appurtenant to the lands described in said application and hereinafter described, and also the entire waters of the right of the Jacobs Canal hereinafter specifically described.

NOW THEREFORE, It is hereby ordered that the points of diversion from the Boise River and the places of use of the waters hereinafter described be, and the same are hereby transferred from the points of diversion and places of use hereinafter set out to the point of diversion and place of use hereinafter described:

PRESENT POINTS OF DIVERSION AND USE AND DESCRIPTION OF WATER RIGHTS TRANSFERRED.

ALL of the water rights hereinafter described and hereby ordered transferred are described in that certain decree entered in the case entitled: "Farmers' Co-operative Ditch Company, plaintiff vs. Riverside Irrigation District and others, defendants," in the District Court of the Third (now Seventh) Judicial District of the State of Idaho, in and for the County of Canyon, decree in which cause was entered and filed in the office of the Clerk of said Court on the 18th day of January, 1906. Said waters are specifically described as follows, viz:

(1) All the water rights appurtenant to that part of Lots 1,2 and 3 in Sec. 12, T. 4 N. R. 4 W. B. M. and that part of Lots 3, 4 and 5 in Sec. 7, T. 4 N. R. 3 W. B. M. which lie on the southerly side of the present main channel of the Boise River, area 200 acres; the W 25 acres of the NE¼ of the NW¼ of Sec. 14; the E½ of the NE¼ of Sec. 23; the E½ of the SE¼ of Sec. 14; the W 30 acres of the NW¼ of the NE¼ of Sec, 13, all in T. 4 N. R. 4 W.B.M.; and the NW¼ of the NE¼ of Sec. 19, T. 4 N. R. 3 W.B. M.; said water being heretofore diverted through the Pioneer Dixie Ditch, the point of diversion of which is described in said decree as follows, to-wit: The point of diversion is on the left bank of the Boise

River in the SW¼ of Sec. 20, T. 4 N. R. 3 W. B. M. Said waters appurtenant to said lands hereinabove described being part of rights Nos. 8 and 45 as set out in said decree hereinabove referred to.

(2) All the water rights appurtenant to the E½ of Sec. 8 and all of Sec. 9 T. 4 N. R. 4 W. B. M., said water being heretofore diverted through the Riverside Canal, the point of diversion of which from the Boise River is described in said decree as follows, to-wit: The point of diversion is on the left bank of the Boise River near the center of Sec. 20, T. 4 N. R. 3 W. B. M., said waters appurtenant to said lands hereinabove described being all of Right No. 88 as set out in said decree hereinabove referred to.

(3) All the water rights appurtenant to the SW¼ of the SE¼ of Sec. 31, T. 5 N. R. 4 W. B. M., said water being heretofore diverted through the Eureka No. 2 Ditch, the point of diversion of which from the Boise River is described in said decree as follows to-wit: The point of diversion is on the left bank of the Boise River near the SW corner of Sec. 12, T. 4 N. R. 4 W. B. M. Said water appurtenant to said lands hereinabove described being a part of Right No. 89 as set out in said decree hereinabove referred to.

(4) Also all of the water right of the Jacobs Ditch Company, Limited, consisting of 1000 miners inches as the same is described in the decree hereinabove referred to, and described in said decree as used under a rental system in the irrigation of town lots and blocks, for street sprinkling, sewer flushing and other municipal purposes in Boise City and additions thereto. Said water being heretofore diverted through the Jacobs Ditch, the point of diversion of which from the Boise River is described in said decree as follows, to-wit: The point of diversion is on the right bank of the Boise River about one mile East of Boise City; said water being all of Right No. 2 as set out in said

decree hereinabove referred to.

POINT TO WHICH TRANSFERRED AND PLACE OF USE.

All the water rights hereinabove described and hereby ordered transferred are hereby ordered to be diverted into the canal of the Farmers' Union Ditch Company, Limited, at the following point of diversion from the Boise River, to-wit: To be diverted into the Farmers' Union Canal on the right bank of the Boise River in the SE¼ of the SE¼ of Sec. 32, T. 4 N. R. 2 E. of B. M. for use, for domestic and irrigation purposes, upon the following described lands, to-wit:

The following lands in Twp. 5 N. of R. 1 W. of B. M. Ada County, Idaho; SW¼ of SW¼ of Sec. 19; W½ of NW¼ of Sec. 30; SW¼ of SW¼ of Sec. 30; W½ of NW¼ Sec. 31; and the following described lands in Twp. 5 N. of R. 2 W. of B. M. in Canyon County, Idaho, to-wit: 75.3 acres in the S½ of the SW¼ and the S½ of SE¼ of Sec. 22; 123.2 acres in the S½ of the SW¼ and S½ of SE¼ of Sec. 23; 29 acres in the SW¼ of Sec. 24; the SE¼ of the SE¼ of Sec. 25; the following lands in Sec. 26, the N½ of the NW¼; the SW¼ of the NW¼ and 26.7 acres of the SE¼ of the NW¼; the NW¼ of the NE¼ and 22.7 acres in the N½ of the SW¼; the following lands in Sec. 27, S½ of the NE¼; SW¼ of the NW¼; S½ of the SE¼ of the NW¼; the SW¼; 37 acres in the NW¼ of the SE¼; 16.6 acres in the NE¼ of the SE¼; 38.1 acres in the SW¼ of the SE¼ and 7.8 acres in the SE¼ of the SE¼; the following lands in Sec. 28, the SE¼; the S½ of the SW¼; the NW¼ of the SW¼ and the SW¼ of the NW¼; the following lands in Sec. 29, the SE¼ of the NE¼; N½ of SE¼ and SE¼ of SE¼; the following lands in Sec. 32, the S½ of NW¼ of NE¼; the W½ of the NW¼ of the NW¼ of NE¼; the S½ of the SW¼ of NE¼; the SE¼; SE¼ of SW¼ and the S½ of the SW¼ of the SW¼; all of Sec. 33, the following lands in Sec. 34, NW¼; the SW¼; the SE¼; the S½ of the NE¼; 37.3 acres in the NW¼ of the NE¼ and 23 acres in the NE¼ of

NE¼; the following lands in Sec. 35, 23.3 acres in the SE¼ of the NE¼; 5.2 acres in the NW¼ of the NW¼; 9.2 acres in the NW¼ of the SW¼; 8.1 acres in the NE¼ of the SW¼, 33 acres in the SW¼ of the SE¼; 36 acres in the SE¼ of the SW¼; the S½ of the SE¼; the NE¼ of the SE¼; 38 acres in the NW¼ of the SE¼, an irregular tract comprising 300 acres and being a part of each subdivision of forty acres in Sec. 36; also the following lands in T. 4 N. R. 2 W. B. M. in Canyon County, Idaho, to-wit: Lots 1,2,3 and 4 in Sec. 2; Lot 1 and the N 15 acres of Lot 4 in Sec. 3; Lot 4 in Sec. 4; Lot 1 and the N 32 acres of Lot 3 in Sec. 5, contiguous lands containing in all 3881 acres, more or less.

Dated Boise, Idaho, this 8th day of June, 1914.

F. P. KING,

State Engineer.

Approved

J.H.Peterson, Atty.Gen.

STATE OF IDAHO, :
: SS.
COUNTY OF ADA. :

I, FP. KING, The duly appointed, qualified and acting State Engineer of the State of Idaho, do hereby certify that the above and foregoing is a full, true and correct copy of Certificate of Transfer No. 136, issued in the matter of the application of Boise Fruit Tracts Company for the transfer of Boise River Water Rights, as the same appears of record in the office of the State Engineer in Book 1 of Transfers at page 136.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this 19th day of June, 1914.

F P King

State Engineer.

No. 4243

The Idaho Title & Trust Co., Ltd.

ABSTRACTS OF TITLE
FOR ADA AND CANYON COUNTIES, IDAHO

HOME OFFICE
826 MAIN ST., BOISE, IDAHO

ABSTRACT OF TITLE

TO

The Ditch of the Jacobs Canal Company, Limited, known as the Jacobs Ditch, except parts herein described.

ABSTRACT OF TITLE

PREPARED BY



To Jacob Logsdon

4 Deeds 566
May 27. 1872

DRS - #150

Thomas Davis
To
Cyrus Jarvis

Deed. Warranty $1500.00
Dated May 17. 1872
Ackd May 27. 1872

Conveys a certain ditch from the Boise River at a point 1½ miles above Boise City through the lands of Thomas Davis and G W Russell and L. F. Cartee -(through which grantor holds right of way)- thence emerging into Front Street Boise City aforesaid at or near intersection of 5th St. Thence down Front Street to Eighth street and diagonally across Eighth St. and emptying into the Boise City Canal Co's Ditch on Grove St, with right of way from the said Boise River through the lands of said G. W. Russell. Thos Davis and L. F. Cartee to the place where the same emerges into Front St.

First party reserves the right to use of water from said ditch necessary to irrigate the lands belonging to said Davis

4 Deeds 570 | George W Russell | Deed | $10.00
May 27. 1872 | To | Dated Oct 21. 1869
Thomas Davis | Ackd Oct 21. 1869
Conveys right of way for a Ditch through the lands of first party in Sec 11 Twp 3n R 2 E
Said whereas there is a race or water course from Boise River across land of ~~Geo~~ W Russell to the land of Thomas Davis, therefore grants and conveys all the water that can be conveyed in and through the said race, ditch and water course to be led and conveyed from Boise River along ditch aforesaid

1 Contr 179 | Boise City Canal Co. | Deed | $1.00
Mch 30. 1878 | By J G Peck | Dated Mch 30. 1877
Geo Davis | No Ackd Given
F. M. Davis Trustee | Conveys for 10 years from date
To | the right of way and use of
Cyrus Jacobs | the Boise City Canal belonging
to first parties from or near the intersection of 9th and Market St in Boise Cy to or near the point where the canal or race leading to the Boise Cy Flouring Mill situate in the lower part of said Boise Cy and now owned by Grantee hereof intersects said Boise Cy Canal or Ditch

2 Court 63
July 30. 1890
2 30 P M

Boise City Canal Co
Geo D Ellis President
Board of Trustees
T M Davis Trustee
Geo Davis
To
Cyrus Jacob

Agreement
$1.00 and other consideration
Dated July 24. 1890
Acked July 24. 1890
Sells and Grants for 29 Years from May 8. 1890 use of Boise City Canal for running of water of Jacobs Ditch from point where said ditch intersects said Boise City Canal, being at or near the intersection of 8th and Grove St Boise Cy and down to the point where the ditch or race leading to the Boise Cy Flouring Mill or Jacobs Mill intersects the Boise Cy Canal — Grantee agrees to enlarge Boise Cy Canal sufficient for purposes herein and to take out only same amount of water as is turned in — Grantee responsible for damages resulting from his negligence etc —
Other consideration consists of 2½ shares Boise Cy Canal — Repairs on joint occupation Boise Cy Canal to be shared jointly

7 Mtg. 257
Aug 30. 1889
3 00 P M

Cyrus Jacobs
Mary Ellen Jacob (wife)
To
George W Grayson

Mortgage
Dated Aug 26. 1889
Acked Aug 30. 1889
On Jacobs Mill Ditch as described in Book 4 Deeds Page 566 and other property

To secure $15000

2 Pof A 11
Nov 27. 1891
10 Om

George W Grayson
to
Robert R Grayson

Power of Attorney
Dated June 6. 1888
Ackd July 5. 1888

For me and in my name. place & stead and for my use and benefit to ask. demand. sue for. recover. collect & receive all sums of money, debts. dues. accounts. legacies. etc as are now and shall hereafter become due. owing. payable or belonging to me and to take all lawful means for the recovery thereof by legal process and to compromise etc and to lease. let. demise. bargain. sell. remise. release. convey. mortgage and hypothecate lands and ~~tenement~~ upon terms & conditions as he shall deem fit. and to acknowledge all deeds. etc. satisfaction of mortgages etc as may be necessary in the premises.

Giving and Granting full power & authority

2 S of M 442
July 1. 1892
10 50 Am

George W Grayson
by R R Grayson. his
Atty in Fact
To
Cyrus Jacobs
Mary Ellen Jacobs. (wife)

Satisfaction of Mortgage
Dated July 16. 1891
Ackd July 16. 1891

Satisfies from lien of mortgage property described in Book 7 Mtgs at page 257. 263

21 Deeds 571
July 1. 1892.

Cyrus Jacobs & Bargain and Sale Deed $5000-
Mary E. Jacobs (w/s) Dated Sept 17. 1890
To Ack^d Sept 18. 1890
Boise Rapid Transit Conveys-
Company

That certain water right- and water ditch connected therewith known as the Jacobs Water Right- and Ditch- taking water from Boise River at a point upon the lands of George W Russell and conveying such water to the intersection of said Jacobs Ditch with the Boise City Canal at or near the intersection of 8th and Grove Streets in Boise City. also all the interest and right the the parties of the first part have in a certain agreement executed by the Boise City Canal Co. to Cyrus Jacobs dated July 24. 1890 and recorded in Book 2 of Contracts page 63. Granting to Cyrus Jacobs his heirs & assigns the right to run water of said Jacobs Ditch in and through a portion of the ditch or canal of said Boise City Canal Co for the term of 29 years. 2nd party to be subject to conditions of said agreement

1st party to transfer 2½ shares of stock of Boise City Canal Co to 2nd party as part Consideration.

C

13 Mtgs 550
Mar 31. 1894

Boise Rapid Transit & Mortgage Co. By.
Geo Amisbie Pres.
(Corp seal) attest
Judson Goff Asst Secty
To
Samuel N. Hays Trustee

Dated Mar 31. 1894
Ackd Mar 31. 1894
Before Chas A. Clark N. P. Ada Co Idaho
ON. All that certain Ditch known as Jacobs Ditch taken out of Boise River on the North Bank thereof about 3 miles South Easterly from Boise City & extending through a portion of said City which said ditch connects with the ditch of Boise City Canal Co near the corner of 8th & Grove streets in said City & extends from said point with said ditch of the Boise City Canal Co. to 13th Street in said city. thence leaving said Canal Co ditch to the power house of the said Boise Rapid Transit Co. Commonly known as Jacobs Mill also all headgates &c also the Water rights & privileges &c

To secure $5262.50 due on demand @ 1% per mo - due to Boise City National Bank dated June 2. 1893.
One note $2716 - due 90 days 12% per ann dated July 1. 1893 due to Capital State Bank -
One note $1030 - due 90 days @ 12% per ann dated Mar 10. 1894 due to Capital State Bank -
One note $700 - due Dec 1. 1892. @ 10% per ann dated Oct 1. 1892 due to Mrs McCarty -
One note $1200 - - due to John. B. Broadbent dated Jany 2nd 93
One note $1620 - due to General Electric Co. dated July 2. 1893. @ 8% per ann due 1 year -

21 Mtge 165
June 7. 1899
9 50 am.

Boise Rapid Transit Co
Company By
Geo Amslie Pres
(Corp seal) attest
G. H. Russell Secty.
To
Knickerbocker Trust Co

Deed of Trust
Dated Mar 1. 1899
Ackd May 10. 1899

On -

All property real personal or mixed of every kind or nature including all rights any Easements - franchises and privileges which may now belong to said Company or which shall hereafter be acquired by it.

To secure $500000 00 payable Mar 1. 1919. in Bonds of $500- each - & draw interest @ 6% per annum -

35 Deeds 352 Aug 13. 1901 11 50 A M

Cyrus Jacobs — Warranty Deed. $5000.00
Mary E Jacobs (wife) Dated Aug 2. 1890
To Acked Aug 2. 1890
George Anisle Conveys all right. title and interest of first parties & that certain water right and water ditch connected therewith known as Jacobs Water Right & Ditch and taking water from Boise River at a point upon lands of Geo W Russell and conveying such water to intersection of Jacobs Ditch with Boise City Canal at or near intersection of 8th and Grove Sts Boise Cy.

Also all interest first parties have in agreement by Boise Cy Canal Co to Cyrus Jacobs dated July 24. 1890 and recorded in Book 2 Contracts page 63. - Also 2½ shares Boise Cy Canal

35 Deeds 353 Aug 13. 1901 11 53 am

George Anisle to Boise Rapid Transit Co. (a corporation) — Warranty Deed $5000.00
Dated Aug 13. 1901
Acks Aug 13. 1901
Convey same property as described in last foregoing Entry

ABSTRACT CERTIFICATE. THE HALL & O'DONALD LITHO. CO., PRINTERS, TOPEKA.—13159.

State of Idaho, } ss.
County of Ada, }

I, JAMES S. BOGART, Abstracter of Titles within and for the County and State aforesaid, do hereby certify that the above and foregoing entries, numbered from 1 to 12, inclusive, constitue a true and correct Abstract of Title to Ditch and Water Right known as "Jacobs Ditch"

Since March 17 1892

I hereby further certify that there are no Judgments Lis Pendens, Mechanics Liens, Unpaid Taxes, Attachment Liens or other encumbrances affecting the title to above described premises other than are shown on foregoing Abstract of Title, Except Taxes of 1901

as same appears of Record in the office of the Recorder of Deeds, etc., of Ada County, aforesaid.

IN WITNESS WHEREOF, I have hereunto set my hand and seal, this 16th day of August A. D. 1901, at 3:30 o'clock P. M.

James S. Bogart
by E. E. Yates, Abstracter of Titles.

Taxes.

WE HEREBY CERTIFY, That there are no taxes due and unpaid upon the lands described below, and that there are no unredeemed tax sales except,

Taxes for 1903

and that no tax deeds have been given thereon, except as shown on the foregoing abstract.

Judgments.

WE FURTHER CERTIFY, That there are no judgments, suits pending or liens of any kind, against any of the within named grantees, which are liens on the lands described below, shown by the Judgment Docket of the District Court in and for Ada County, State of Idaho, except,

Certificate of Abstracter.

STATE OF IDAHO, }
County of Ada, } *ss.*

WE HEREBY CERTIFY, That there are no ~~the above~~ *and foregoing entries numbered from One to* ..... *inclusive, contain a true and correct abstract of all conveyances or other instruments of writing now on record in the office of the County Recorder in and for said County, which in any way affect the title of the following described real estate, subsequent to* Aug.16.1901 @ 2:30 P.M.

"Jacobs Ditch"

IN WITNESS WHEREOF, We have hereunto subscribed our name and affixed our official seal this 16th *day of* August *1903 at* 9: *o'clock* A. *M.*

McGrew & Abbs
Abstracters.

JAMES S. JOGART

ESTABLISHED 1883

BONDED ABSTRACTER.

Abstracter of Titles

THE OLDEST AND ONLY COMPLETE SET OF ABSTRACT BOOKS IN ADA COUNTY.

BOISE IDAHO

NO 14 ACKNOWLEDGMENT REGULAR		Chas. S. Adams. Notary Public Kings County, N. Y.
5 S. of M. 404 Jany. 22, 1904 3:41 P.M.	Knickerbocker Trust Co. As Trustee by B. L. Allen 4th V.Pres. Corp. seal Attest Illegible Secty. To Boise Rapid Transit Co.	Satisfaction of Mortgage. Dated Oct. 6, 1903. Ack'd Oct. 6, 1903. Releases:- Lien of Mortgage recorded in Book 21 of Mtgs. at page 165.

JAMES S. BOGART

ESTABLISHED 1889 — BONDED ABSTRACTER.

Abstracter of Titles

THE OLDEST AND ONLY COMPLETE SET OF ABSTRACT BOOKS IN ADA COUNTY.

BOISE IDAHO.

NO. 14 ACKNOWLEDGMENT REGULAR | James S. Bogart, Notary Public Ada County, Idaho.

5 S. of M. 405

Jany. 22, 1904.

3:42 P.M.

Samuel H. Hays, Trustee.

To

Boise Rapid Transit Co.

Satisfaction of Mortgage.

Dated Jany. 22, 1904.

Ack'd Jany. 22, 1904.

Releases:-

Lien of Mortgage recorded in Book 13 of Mortgages at page 550.

JAMES A. BOOART

ESTABLISHED 188[illegible]

Abstracter of Deeds

BONDED ABSTRACTER.

THE OLDEST AND ONLY COMPLETE SET OF ABSTRACT BOOKS IN ADA COUNTY.

BOISE IDAHO

NO. 147 ACKNOWLEDGMENT REGULAR | John J. Blake, Notary Public Ada County, Idaho.

47 Deeds 481
April 18, 1904.
3:55 P.M.

Boise Rapid Transit Co.
by W.E. Borah, V.Pres.
Corp. seal Attest.
W. N. Donaldson, Secty.

To

B. F. Olden
J. L. Niday

Deed. $1,000.
Dated April 13, 1904.
Ack'd April 13, 1904.
Conveys:-

The Board of directors of said Corporation heretofore duly assembled duly passed the following resolution, Be it resolved , by the Board of Directors that it is for the best interests of said Co. to sell and convey that ditch located and known as the Jacobs

NO. 15 CONTINUED.

47 Deeds 481

Ditch, as hereinafter described, and Isaac W. Anderson Pres. and W.M. Donaldson, Secty of said Co. are hereby directed and authorized to make, execute and deliver for and on behalf of said Boise Rapid Transit Co. and as its act and deed to said B. F. Olden and J.L. Niday a conveyance of said property and to affix to said conveyance the Corporate name and seal of said Corporation .

Now therefore , in pursuance of said resolution aforesaid and in consideration of $1,000. said first parties conveying unto the said parties of the second part , their heirs, assigns forever that certain ditch known as the Jacobs Ditch ,together with water rights and ditches and waste ways appurtenant to the same , said ditch takes water out of the Boise River on the N. bank thereof,at a point adjoining the right of way of the Oregon Short Line Railway Co. about 1-1/2 miles S.E'ly. from Boise City

No. 15 CONTINUED.

47 Deeds 481

thence through the land heretofore belonging to Thomas Davis, George W. Russell, and L.F. Cartee, thence e emerging into Front Street of said Boise at or near Fifth Street, thence down Front Street to Eighth St. thence diagonally across said 8th Street and emptying into the Boise City Canal Co's. ditch on Grove Street; together with the right of way from said Boise River through the lands of said George W. Russell, Thomas Davis, and L. F. Cartee , thereunto belonging to the place where said canal emerges into Front Street also all the interest and rights of way of the first part in a certain Agreement executed by the Boise City Canal Co to Cyrus Jacobs dated July 24, 1890 and recorded in Book 2 of Contracts at page 63 of the records of Ada County, also the ditch or canal extending from the Boise City Canal on 13th Street of said Boise to the Power House commonly known as the Jacobs Mill, also all of the rights of way, privileges, Franchises, and appurtenances thereunto belonging or in any wise appertaining.

JAMES S. BOGART — BONDED ABSTRACTER.

ESTABLISHED 1883.

Abstracter of Titles

THE OLDEST AND ONLY COMPLETE SET OF ABSTRACT BOOKS IN ADA COUNTY.

BOISE, IDAHO.

NO 16 ACKNOWLEDGMENT REGULAR | Sherman G. King, Notary Public Ada County, Idaho

5 3 Deeds 328

March 11, 1905

11:34 A.M.

R. F. Olden

J. L. Miday

To

Jacobs Canal Co Ltd.

a corporation.

Deed. $40,000.

Dated March 7, 1905.

Ack'd March 9, 1905.

Conveys:-

That certain ditch or canal known as the Jacobs Ditch, together with water rights and ditches and waste ways appurtenant to the same which said ditch takes water out of the Boise River on the N. bank thereof, at a point adjoining the right of way of the Oregon Short Line Railway Co. about 1-1/2 miles S. E. ly. from Boise City

No. 16 CONTINUED.

53 Deeds 328

thence through the land heretofore belonging to Thomas Davis , George W. Russell and L. F. Cartee , thence emerging into Front Street of said Boise at or near Fifth Street, thence down Front Street to Eighth St. thence diagonally across said 8th Street and emptying into the Boise City Canal Co's. ditch on Grove Street Together with the right of way from said Boise River through the lands of said George W. Russell , Thomas Davis and L.F. Cartee thereunto belonging, to the place where said canal emerges into Front Street also all the interest and rights of way of the First part in a certain Agreement executed by the Boise City Canal Co. to Cyrus Jacobs dated July 24, 1890 and recorded in Book 2 of Contracts at page 63 of the records of Ada County , also the ditch or canal extending from the Boise City Canal on 13th Street of said Boise to the Power House commonly known as the Jacobs Mill, also all of the rights of way , privileges, Franchises, and appurtenances thereunto belonging or in any wise appertaining.

ABSTRACT CERTIFICATE. **BOGART AND MICKEY, ABSTRACTERS OF TITLE, BOISE, IDAHO.**

STATE OF IDAHO, }
COUNTY OF ADA. } *ss.*

I, JAMES S. BOGART, Licensed Abstracter of Titles within and for the County and State aforesaid, do hereby certify that the above and foregoing entries, numbered from 1 to 16 *inclusive, constitute a true and correct Abstract of Title to*

Jacobs Canal Co's Ditch.

Except the taxes of 1905.

I further certify that there are no judgments, mechanic's liens, lis pendens, attachments, unpaid taxes, liens or encumbrances of any kind affecting the title to above described premises other than are shown on oregoing Abstract as same appears of Record in the office of the Recorder of Deeds, etc., of Ada County aforesaid. Subsecuent to ~~May~~ 18, 1903 at 9 o'clock A.M.

IN WITNESS WHEREOF, I have hereunto set my hand and seal, this 26th *day of* January *A. D. 1906., at* 9 *o'clock* A *M.*

James S Bogart
Licensed Abstracter of Title.

1.

Jacobs Canal Company, Limited. ARTICLES OF INCORPORATION.
Dated January 25, 1905;
Ack'd January 30, 1905, before
Walter S.Walker, N.P.Ada Co., Idaho. Seal.
Filed January 30, 1905, @ 4:10 P.M.
No. 661.

Name of said Corporation is : Jacobs Canal Company, Limited.

That the purposes for which said Corporation is formed are as follows:- To purchase, construct, maintain and operate in the State of Idaho, irrigation works and canals for the purpose of supplying water for irrigation, domestic and power purposes, to buy, deal in, hold, mortgage, have and sell real property, underlying or adjacent to any ditch or canal owned or controlled by this Corporation, to issue its bonds or other obligation to be secured by mortgage on any or all of its property, and to sell and dispose of the same and to do any and all lawful business in connection with the property, management, conduct and control of the business for which said corporation is formed and established.

The acquisition, ownership and operation by right of location, purchase or otherwise of water, water rights or rights to the use of water, canals, ditches, ditch rights and laterals for irrigation of lands, town and city lots, flushing of sewers, or other city or other municipal purposes, and all improvements and structures necessary or incident to such acquisition, ownership or operation, and the benefit of stockholders of this corporation.

It is hereby specially declared that one of the objects and purposes of this Corporation is to secure water, the right to the use and control thereof, as a private corporation, and for the benefit of the stockholders and the members thereof and that no water right or right to the use of water, or control thereof, shall be disposed of by said Corporation except to Stockholders and members of the corporation, and that only as the right thereof shall be attached to the stock thereof; Provided, However, that said Corporation by a majority vote of its trustees in favor of so doing, may sell water for flushing sewers, for irrigating lots in said Boise City and for purposes of generating power, to person or persons, corporation or municipality not holding stock in said corporation, by holding in the treasury of this corporation stock representing the water so sold or distributed.

Incorporated for fifty years. Place of business, Boise City, State of Idaho. Number of Directors five.

Capital Stock $40,000.00; 4000 shares of par value of $10.00 each.

(Signed) B. F. Olden
J. L. Niday
S. E. Vance
R. E. Green
Julius Meyer.

Transfer —

Boise Fruit Tracts Co.

Plaintiff's Exhibits.

MARKED FILED

STATE OF IDAHO)
) ss.
COUNTY OF ADA)

Walter Griffith, being first duly sworn, deposes and says that he is a citizen of the United States and a resident of the State of Idaho, and is engaged in the practice of law in the City of Caldwell, Canyon County, State of Idaho; that during the year 1913 and prior thereto since its creation, affiant was a member of the board of directors of the Payette Boise Water Users Association, a corporation; that at the time the instrument attached hereto and marked "Exhibit A" was executed, affiant was a member of the said board of directors; that affiant has examined Exhibit A and compared it with the original contract of which said exhibit is a copy and that the said exhibit is an accurate and true copy of said instrument; that the said contract entered into between the United States of America, the Pioneer Irrigation District and the Payette Boise Water Users Association for the purpose of securing a drainage system and an additional or supplemental water supply for the Pioneer Irrigation District by and through the reclamation service of the United States of America and the Payette Boise Water Users Association; that affiant is one of the attorneys for certain defendants in a case entitled "The United States of America vs. American Ditch Association, a corporation and others, defendants" now pending in the district court of the United States for the Southern Division of the District of Idaho; that as such attorney; affiant has examined the complaint in said entitled court and cause and particularly paragraph LXII thereof and has caused to be made a correct copy of said paragraph which copy is marked "Exhibit A" and is attached to this affidavit; that said action is brought by the United States of America for the purpose of adjudicating and determining the rights and priorities to the use of waters in the Boise Wiver and in the draws and

creeks running in and through that certain irrigation project commonly known as the Government Payette Boise Project and for the purpose of preserving and establishing the right of the plaintiff to all seepage or waste waters that are or may be developed by or through the construction of said irrigation system and to all seepage waters that may be developed by the irrigation of the lands within said project; that the instrument marked "Exhibit C" and attached hereto is a copy of a contract which was entered into between Judson Spofford and the Boise Land & Water Company, Limited, a corporation; that the East ½ of Section Eight (8) and all of Section Nine (9), Township Four (4) North, Range Four (4) West of the Boise Meridian is a portion of the land to which the water right designated in said contract was and is appurtenant and that William A. Black is the successor in interest to one of the said original appropriators, and is at present the owner of the above described land which land was at that time owned by said J. B. Wright, one of the said appropriators and that the irrigating canal known as the Riverside Canal is the canal mentioned in said contract and about which said contract was entered into.

Walter Griffiths

Subscribed and sworn to before me this 5th day of May, 1914.

Notary Public.

Exhibit "A"

Exhibit "A"

Draft of August 15, 1912.

THIS AGREEMENT made this _____ day of _____, 1913, between the UNITED STATES OF AMERICA, acting for this purpose by the Secretary of t he Interior, under the provisions of the Act of Congress of June 17, 1902 (32 Stat.388) known as the Reclamation Act, and acts amendatory thereof or supplementary thereto, and that act of Congress of February 21, 1911, (36 Stat.L.925), the party of the first part, hereinafter called the Government, and the PIONEER IRRIGATION DISTRICT, an irrigation district organized under the laws of the State of Idaho, and located in Canyon and Ada Counties, Idaho, acting for the purposes of this contract under authority of Title 14 of the Idaho Revised Codes, including Sections 2396, 2397 and 2398, the party of the second part, hereinafter called the District-

WITNESSETH, that

WHEREAS, the District includes within its boundaries about thirty-four thousand four hundred (34,400) acres of irrigated and irrigable land which is entitled to receive water from the District, and owns and controls those certain canals known as the Phyllis and Caldwell Canals through which water is upplied from the Boise River to the lands of the District for irrigation and domestic purposes, and whereas, the natural flow of the Boise River which the District is entitled to divert under its priorities and appropriations, is insufficient during the latter part of the irrigation season to furnish a complete water supply for the lands of the District, and the District desires to secure a certain amount of stored water in order to furnish its land owners and water users a more complete water supply during the low water periods of the irrigation seas:n, and

WHEREAS, The irrigation of large tracts of land from the canals of the District and other canals in the vicinity thereof

is resulting in bringing up seepage water and alkali in such quantities in some parts of the District that a large part of the lands of the District are likely to become permanently ruined and incapable of producing crops, or bearing any share of the expense of the District, unless a drainage system is promptly provided; and whereas, it is believed that such a drainage system will reclaim large acres which cannot now be cultivated successfully on account of such seepage conditions, and will check the spread of such seepage conditions, and save other large areas which are now threatened with destruction from the same cause, and

WHEREAS, the Government is now constructing, under the provisions of the Reclamation Act, that certain irrigation project known as the Boise Project, including the Arrowrock and Deer Flat storage reservoirs, and a portion of the lands of the District have been subscribed to said project by the individual owners of such lands, and

WHEREAS, it is believed that under existing conditions the only way in which the additional water supply and drainage system required by the District can be secured promptly and at a cost which the land owners of the District can afford to pay, is by means of a contract between the District and the Government, under the provisions of the Acts of Congress of June 17, 1902 (32 Stat.388) and February 21, 1911 (36 Stat.L.925) and Title 14 of the Idaho Revised Codes.

NOW THEREFORE, It is hereby agreed,

1. That as a part of the general drainage system of its Boise Project, the Government will construct in the Pioneer Irrigation District, a drainage system to a total cost of three hundred fifty thousand dollars ($350,000), beginning with the main drains and following with the principal branches, so far as said limit of expenditure will alow such work to go, such drainage system to be located approximately as shown on the attached map, and to have sufficient capacity in its main drains to carry

the seepage water flowing into the District from the lands lying above the District and draining into it, as well as that originating in the District itself. The Supervising Engineer in charge of such construction shall have the right to make changes in the location of the drains shown on the attached map, where such changes shall be found in his judgment to be necessary or desirable to increase the efficiency or economy of the system. It is fully understood that the Government is to expend only Three Hundred Fifty Thousand Dollars ($350,000) in drainage work in the Pioneer District under this contract and to stop when such limit of expenditures has been reached. It is not expected that the lands of the District can be completely drained at this cost nor a complete drainage system extended to each farm unit but only a general drainage system of principal drains with which the individual and community farm drains can be connected.

2. That the District will pay to the Government for the above described work in the District, the sum of Three Hundred Fifty Thousand Dollars ($350,000) in ten (10) installments of Thirty-five Thousand Dollars ($35,000) each, the first installment to be due and payable on the same day of the year following that in which announcement is made by the Secretary of the Interior that the said sum has been expended for such work, and one (1) installment on the same day of each year thereafter until all installments are paid, and will use the taxing power of the District and all the powers and resources of the District to collect said sums of money and pay the same to the Government when due.

3. That after the construction thereof, the District will maintain said drainage system in good serviceable condition, at its own expense, but if it shall fail or neglect to do so, the United States may maintain or repair the same and charge the cost thereof to the District, which cost the District will promptly pay.

4. That the District will pay to the Government the sum of Five Hundred Sixty Thousand Dollars ($560,000) for storage capacity in Arrowrock Reservoir, a reservoir to be constructed by the Government on Boise River in Boise and Elmore Counties, Idaho, and to have a capacity of between 200,000 and 250,000 acre-feet, and the Government will provide for the District that portion of the total storage capacity of Arrowrock Reservoir which Five Hundred Sixty Thousand Dollars ($560,000) is of the total cost of said reservoir, and will deliver at the downstream end of the outlets of the Arrowrock Reservoir, for the District each year after the completion of said reservoir, the same proportion of the stored water available from said reservoir at such times after three (3) days notice from the District to the Government officer in charge, and in such quantities as the District may direct, not in excess of the District's proportionate part of the available outlet capacity. The total cost of said reservoir to be determined and stated by the Secretary of the Interior in his public notice of the charges to be made for the Boise Project, and to include all costs and expenses of whatsoever nature or kind for the purpose of, growing out of, in connection with, or restulting from the construction of said reservoir including engineering expenses and overhead charges, and such interest, if any, as may be payable on account of advances under the provisions of the Act of Congress of June 25, 1910 (36 Stat.L.835) or other legislation by Congress.

5. The said sum of Five Hundred Sixty Thousand Dollars ($560,000) shall be paid by the District to the Government in ten (10) installments of Fifty-Six Thousand Dollars ($56,000) each, the first of which shall be due and payable one (1) year after the date upon which public notice or announcement is made by the Secretary of the Interior of the charges to be made upon the Boise Project, on account of the cost of construction of said project, and one (1) installment on the same day of

each year thereafter; and the District will use the taxing power of the District, and all the powers and resources of the District to collect said sums of money, and pay the same to the Government when due, and will also pay each year its proportionate share of the cost of operation and maintenance of said reservoir and delivery of water therefrom, as announced by the Secretary of the Interior.

6. No interest will be charged on any of the said installments for drainage work, or stored water or money to be paid to the Government for operation and maintenance, on account of the drainage works or stored water, until due; but any part thereof which may remain unpaid after the same is due shall bear interest from maturity until paid at ten (10) per cent per annum, and the Government shall not be obliged to deliver or turn out for the District any stored water while the District is in default on any of the payments herein provided to be made by the District to the Government.

7. The District agrees to distribute the amount of water delivered to it by the Government under this contract in full compliance with the provisions of said Reclamation Act of June 17, 1902, and the rules and regulations thereunder, and to use and distribute the same only upon the lands within the District, and in compliance with the provisions of Section 2 of the Act of Congress of February 21, 1911 (36 Stat.L.925), known as the Warren Act.

8. If it shall be found feasible to do so, the Government may, at its option, deliver to the District, in lieu of a portion of the stored water from Arrow rock Reservoir to which the District is entitled under this contract, stored water from Deer Flat Reservoir in an amount equal to that which if delivered from Arrowrock Reservoir would have been received at the same point on the irrigation system of the District, provided that the proprtion of the total amount

of the stored water of the District which may be delivered at any point on the canal system of the District below its head shall not be greater than the proportion of the lands of the District lying below such point, and which can be served by the water so delivered. Subject to the same limitation the Government may also substitute in the ditches of the District, stored water for the natural flow to which the District is entitled, and then may divert such natural flow to other points on the Boise Project.

9. The Government acting through the Secretary of the Interior will join with the Payette-Boise Water Users' Association in releasing such lands in the District as have been subscribed under stock subscription and contract to the said association, and have therefore become subject to the lien provided in such subscription and contract for the repayment of a proportionate part of the cost of the Payette-Boise project from the lien and obligation of such stock subscription, and also release and cancel the contract under date of April 3, 1906, between the Pioneer Irrigation District, and the Payette-Boise Water Users' Association, providing for a credit to the subscribed lands of the District for existing works.

10. The Payette-Boise Water Users' Association agrees to join in the release of said stock subscription contracts and liens upon conditions above stated, and its name is subscribed hereto in evidence thereof.

11. Where any appropriations of water have been made and water rights acquired by parties other than the District out of any of the draws, sloughs or natural channels of the Pioneer Irrigation District, and such rights are interfered with by the deepening of such channels and the constructions of the said drainage system in the Pioneer District, the District will keep the Government, its agents, officers and employes harmless from any and all claims, suits, judgments, liabilities

or obligations on account of, growing out of, or resulting from the interference with any such rights by the deepening of such channels and construction of such drainage system and will protect the Government from interference with its work by such appropriators and will extinguish such of said appropriations as constitute valid rights against the Government and would interfere with the construction of any part of said drainage system or will provide other means for diverting the water included in such rights or will substitute other water therefor.

IN WITNESS WHEREOF, the parties hereto have caused their names and seals to be attached the day and year first above written. The Pioneer Irrigation District and the Payette-Boise Water Users' Association, acting in pursuance of resolutions of their Board of Directors, of which certified copies are hereto attached and made a part hereof.

Pioneer Irrigation District

By_____

_____

Payette-Boise Water Users' Association

by_____

_____

_____

Secretary of the Interior, for and on behalf of the United States.

Exhibit "B"

62.

That the plans of said Boise Project include the recovery and use for irrigation purposes of such water as accumulates in the natural draws and creeks running through said project from seepage or other causes, and the returning thereof to the land for use in irrigation purposes, at all points where the recovery and use of such water is practical, and that pursuant to said plans the United States has filed applications to appropriate waters from the following streams, and in the following amounts and dates of priorities, and has received from the State Engineer of Idaho, the following permits therefor, to-wit:

Permit No. 4799 for 10 sec. ft. from Five Mile Creek under date of priority of April 28, 1909.

Permit No. 4845 for 150 sec. ft. of waters of Mason Creek under date of priority of June 2, 1909.

Permit No. 6234 for 2.4 sec. ft. of waters of Upper Deer Flat draw under date of priority of April 25,1910.

Permit No. 8895 for 10 sec. ft. of waters of Pipe Gulch Draw under date of priority of Aug. 16,1912.

Ex. C.

THIS AGREEMENT, made this 5th day of Sept., 1892 by and between Judson Spofford of Boise City, County of Ada, State of Idaho, party of the first part, and the Boise Land and Water Company, Limited, a corporation duly organized under the laws of the State of Idaho, whose principal place of business is in Boise City, County of Ada, State of Idaho, party of the second part.

WITNESSETH: That the said party of the first part, for and in consideration of the sum of one dollar, lawful money of the United States of American to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, does by these presents grant, bargain, sell, convey and confirm, unto the said party of the second part, and to its heirs and assigns, forever, all that certain water right located and appropriated by J. B. Wright, John M. Bowman, Geo. W. Grannis, M. F. Fowler, Jeremiah McKean, and W. A. Fowler, and situate in Ada County, State of Idaho, and being more particularly described as follows, to-wit: Six Thousand (6000) inches of water, measured under a four (4) inch pressure, to be taken from Boise River, at or near Kinkaid's place on the said Boise River in said County and State, the same being located July 8th, 1882 and the notice of location duly recorded in the Recorder's office of said Ada County, State of Idaho on July 24th, 1882, in book 1 of Water Rights, page 108, also the ditches constructed under and in connection with said water right, and the right to use Dixie slough for the conveyance of water of said water right, together with

all the rights and privileges growing out of, or belonging in any way to the said water right.

The said ditch commencing in section No. 20, and running through Sections No. 20 and 19 in Township 4 North of Range 3 West Boise Meridian, and running thence through sections 24, 13, 14, 15, 16, 17, 8, 7, 6, in Township 4 North of Range 4 West Boise Meridian, and running thence through section 1 in Township 4 North of Range 5 West, and running thence through sections 36, 35, 34, 27, 28, 29, and 30, in Township 5 North of Range 5 West, the said ditch terminating and ending in said last above described section.

The length of said ditch being about 15 miles long from the head gate to the terminues thereof.

The grantor herein reserving and excepting from this conveyance One Thousand inches of water out of the original six thousand located, as herein before described, and also reserving the right to convey the same through the ditch herein before described, to be taken out of ~~xhx~~ said ditch above east line of section 15 Township 4 North of Range 4 West. The grantor herein and his assigns, by reason of such reservation and as a consideration therefor, agrees that such reservation shall be subject to its proportionate share of keeping said ditch, and the head gates in good repair, between the point of original diversion of all the said water and the point where such one thousand inches of water is taken out of said ditch. Such reservation, however, gives to the grantor no rights or privileges in or about said ditch, or its control or management except the permissive right to have such water conveyed through said ditch.

TOGETHER with all and singular the tenements, hereditaments and appurtenances thereto belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereto and also all estate, right, title, interest in and to the said property, possession, claim and demand whatsoever, as well in law as in equity of the said party of the first part of, in or to the said premises, and every part or parcel thereof, with the appurtenances, to have and to hold, all and singular, the above mentioned and described premises, together with the appurtenances, unto the party of the second part, and to its heirs and assigns forever. And the said party of the first part, and his successors and assigns, the said premises in the quiet and peaceable possession of the said party of the second part, its heirs and assigns, against the said party of the first part, and his successors and assigns and against all and every person and persons whomsoever, lawfully claiming or to claim the same shall and will warrant and by these presents forever defend.

The said property is deeded subject to a mortgage of $6000, dated July 15th, 1892, which the party of the second part assumes and agrees to pay.

IN WITNESS WHEREOF, the said party of the first partyhas hereunto set his hand and seal the day and year first above written.

WITNESS: JUDSON SPOFFORD (seal)
John W. Daniels.

State of Idaho,)
: ss.
County of Ada.)

On this 5th day of September in the year 1892,

before me, J. W. Daniels a Notary Public in and for said County, personally appeared Judson Spofford, known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notorial Seal the day and year in this certificate first above written.

(Seal.) JOHN W. DANIELS.
Notary Public.

33 & 34
Judson Spofford
to
The Boise Land and Water Co., Limited.

WARRANTY DEED.

State of Idaho,)
: ss.
County of Ada.)

I hereby certify that this instrument was filed for record at request of Judson Spofford 50 minutes past 3 o'clock P.M. this 6 day of Sept. A.D. 1892, in my office and duly recorded in book 22 of deeds at page 187.

SHERMAN G. KING.
Ex-officio Recorder.

JAS. H. MORGAN.
DEPUTY.

Fees. $2.50, Coll.

SPOFFORD & HARD,
Real Estate Agents,
Boise City, Idaho.

MARTIN & MARTIN
ATTORNEYS AT LAW
BOISE, IDAHO

Attorneys for .....

State of Idaho,)
: ss.
County of Canyon .)

William A. Black and Bert Black

being first duly sworn, each for himself and not for the other, deposes and says that they have this day bargained, sold, contracted to transfer unto J. M. Wise, trustee of Boise Fruit Tracts Company, 600 inches of water, measured under 4 inch pressure, said water-right being appurtenant to the following described land, to-wit:

East half of Section ~~and~~ half all of Section 9, Township 4 North of Range 4 West

as evidenced by the decree dated January 18, 1906, in the case entitled The Farmers' Co-Operative Ditch Company, a corporation, Plaintiff, versus The Riverside Irrigation District, Limited, a corporation et al., Defendants, brought in the District Court of the Seventh Judicial District of the State of Idaho.

The said vendee and ~~the~~ associates intend to change the point of diversion as described in said decree to the following described point, to-wit: To a point on the right bank of the Boise River in Section 32, Township 4 North of Range 2 East of Boise-Meridian. That no one will be injured by such change, and that said deponents consent to said change and hereby join with said purchasers in petitioning the State Engineer for the State of Idaho for a certificate authorizing the purchasers to transfer the use of said waters to the new point of diversion as indicated above.

And further deponents sayeth not.

William A Black
Bert Black

Plaintiffs Exhibit 2

Subscribed and sworn to before me this 4th day of May, 1914.

Thos A Griffin
Notary Public.

FILED

State of Idaho,
County of Canyon) ss.

S. R. Sayre

being first duly sworn, each for himself and not one for the other, deposes and says that he has this day bargained, sold and transferred unto J. F. Wise, trustee of Boise Fruit Tracts Company, 30 inches of water, measured under 4-inch pressure, said water-right being a purtenant to the following desor bed land, to-wit:

S. W. ¼ S. E. ¼ Sec 31. T 5 R 4 W. B. M.

as evidenced by the decree dated January 20, 1903, in the case entitled The Farmers' Co-operative Ditch Company, a corporation, Plaintiff, versus The Riverside Irrigation District, Limited, a corporation et al., Defendants, pending in the District Court of the Seventh Judicial District of the State of Idaho.

That said vendee and his associates intend to change the point of diversion as described in said decree to the following described point, to-wit: To a point on the right bank of the Boise River in Section 32, Township 4 North of Range 2 East of Boise Meridian. That no one will be injured by such change, and that said deponents consent to said change and hereby join with said purchasers in petitioning the State Engineer for the State of Idaho for a certificate authorizing the purchasers to transfer the use of said waters to the new point of diversion as indicted above.

And further deponents sayeth not.

S R Sayre

P Tam
2 B

Subscribed and sworn to before me
this 4 day of May, 1914.

Notary Public,
My Commission expires _____.

State of Idaho,)
County of Canyon) ss.

S. W. Vail, Almyra Cashman, C. F. Zeigler
L. L. Powell, William Dickson and D. G. Kirby

being first duly sworn, each for himself and not one for the other, deposes and says that they have this day bargained, sold and transferred unto J. M. Rice, trustee of Boise Fruit Tracts Company, 332 inches of water, measured under 4-inch pressure, said water-right being appurtenant to the following described land, to-wit: All that part of lots 1-2 & 3 In Section 12, T.4 N. of R. 4 W. and all that part of lots 3-4-& 5 in Section 7, T. 4 N. of R. 3 W. which lies on the southerly side of the present main channel of the Boise River, area 200 acres. Also the West 25 acres of the NE¼ of the NW¼ of Section 14, the E½ of the NE¼ of Section 23 and the S½ of the SE¼ of the SE¼ of Section 14. Also the west 30 acres of the NW¼ of the NE¼ of Section 13, all in T. 4 North of R. 4 W., and the NW¼ of the NE¼ of Section 19, T.4 North, R. 3 W.

As evidenced by the decree dated January 18, 1906, in the case entitled The Farmers' Co-operative Ditch Company, a corporation, Plaintiff, versus The Riverside Irrigating District, Limited, a corporation et al., Defendants, brought in the District Court of the Seventh Judicial District of the State of Idaho.

That said vendee and his associates intend to change the point of diversion as described in said decree to the following described point, to-wit: To a point on the right bank of the Boise River in Section 32, Township 4 North of Range 2 East of Boise Meridian. That no one will be injured by such change, and that said deponents consent to said change and hereby join with said purchasers in petitioning the State Engineer for the State of Idaho for a certificate authorizing the purchasers to transfer the use of said waters to the new point of diversion as indicted above.

And further deponents sayeth not.

26

S. W. Vail
Almyra Cashman
C. F. Zeigler
L. L. Powell
Wilson Dickson
D. G. Kirby

Subscribed and sworn to before me this 4 day of May, 1914.

Notary Public.
My Commission expires _____.

State of Idaho,)
) ss.
County of Canyon.)

I, Bert Black

being first duly sworn, upon his oath, each for himself and not one for the other, deposes and says:

That he is a citizen of the United States and of the State of Idaho and now is, and during all of the times herein mentioned, has been the owner of lands lying under and irrigated from the Boise River through Riverside Canal. That said lands are in what is commonly known as the Dixie Flat; that there is a depression or swale running along the South side of said Dixie Flat and approximately parallel with Boise River, commonly known as Dixie Slough.

That there is a distinct bench south of Boise River and South of the land watered by the Pioneer Dixie, American, Eureka, Upper and Lower Center Point Canals, and the upper portion of the Riverside Canal and west of the Canyon at Caldwell. That at the foot or lower line of said bench the said land is lower than at the Boise River directly opposite. That said bench and the lowland at the foot of said bench runs approximately parallel with the Boise River, and all of the water that is wasted from the said bench or that seeps from said bench takes
20 a northwesterly course and flows along the foot of said bench in a swale commonly known as Dixie Slough, in a course approximately parallel with said Boise River and does not return to said Boise River until it reaches a point near Parma. That the general course of the waste water from the said lands west of the Canyon at Caldwell and between said bench and Boise River is toward said Dixie Slough and away from said Boise River.

That affiant has irrigated said lands from said canal during all of said years and has traveled over that neighborhood and is familiar with the lay of the country and the method of irrigation and the source and courses of irrigating ditches and waste ditches in that locality. That the waste

water from affiant's land and from the lands to the South and West flows toward and into Dixie Slough and away from the Boise River and does not return to the Boise River until it reaches a point near Parma, and west of and below all of the lands irrigated from said Pioneer Dixie, American, Eureka, Upper and Lower Center Points canals, and the Upper portion of Riverside Canal.

Bert Block

Subscribed and sworn to before
me this 14th day of May, 1914.

Thos D Griffin

Notary Public.

State of Idaho,)
: ss.
County of Canyon.)

S. W. Vail

being first duly sworn, upon his oath, each for himself and not one for the other, deposes and says:

That he is a citizen of the United States and of the State of Idaho, and now is, and during all of the times herein mentioned has been, the owner of lands and the right to use of the waters of the Boise River diverted through the Pioneer Dixie Canal and during the years of 1900 to 1913 inclusive has so diverted said waters through said canal and used the same for irrigation purposes upon said lands. That in the month of July of each of the years from 1906 to 1912 the waters of said Boise River ceased to flow and failed entirely at the diversion point of said canal and the said river bed was entirely at the diversion point of said canal and the said river bed was entirely dry both below and above said diversion point up to the Canyon at Caldwell, and so remained during each of said years until the Water Commissioner took charge of said River and controlled the diversion of water therefrom and caused said waters to flow past the upper canals on said River in quantities sufficient to supply the canals below said Canyon. That during said period said canal was entirely dry and the land owners thereunder were wholly unable to secure any water for irrigation. That affiant is familiar with said River between the diversion point of said canal and said Canyon, and there are no channels or courses, either on the surface or underneat the surface of the ground, between said points, through which any water can or does flow into said River during the period of low water in said River, or during the months of July, August and September of each year.

25

S. W. Vail

Subscribed and sworn to before me this 4th day of May, 1914.

Thos. D. Cahill
Notary Public.

C.L. "BUTCH" OTTER
Governor
DAVID R. TUTHILL, JR.
Director

State of Idaho
DEPARTMENT OF WATER RESOURCES
Western Region, 2735 Airport Way • Boise, Idaho 83705-5082
Phone: (208) 334-2190 • Fax: (208) 334-2348 • Web Site: www.idwr.idaho.gov

State of Idaho,)
: ss.
County of Canyon.)

J. E. Moreland

being first duly sworn, upon his oath, each for himself and not one for the other, deposes and says:

That he is a citizen of the United States and of the State of Idaho, and now is, and during all of the times herein mentioned has been, the owner of lands and the right to use of the waters of the Boise River diverted through the Peoria Dixie Canal and during the years of 1907 to 1913 inclusive has so diverted said waters through said canal and used the same for irrigation purposes upon said lands. That in the month of July of each of the years from 1905 to 1912 the waters of said Boise River ceased to flow and failed entirely at the diversion point of said canal and the said river bed was entirely at the diversion point of said canal and the said river bed was entirely dry both below and above said diversion point up to the Canyon at Caldwell, and so remained during each of said years until the Water Commissioner took charge of said River and controlled the diversion of water therefrom and caused said waters to flow past the upper canals on said River in quantities sufficient to supply the canals below said Canyon. That during said period said canal was entirely dry and the land owners thereunder were wholly unable to secure any water for irrigation. That affiant is familiar with said River between the diversion point of said canal and said Canyon, and there are no channels or courses, either on the surface or underneath the surface of the ground, between said points, through which any water can or does flow into said River during the period of low water in said River, or during the months of July, August and September of each year.

28

J. E. Moreland

Subscribed and sworn to before me this 4th day of May, 1914.

Thos. D. Griffin
Notary Public.

State of Idaho,)
: ss.
County of Canyon.)

J. L. Powell

being first duly sworn, upon his oath, each for himself and not one for the other, disposes and says:

That he is a citizen of the United States and of the State of Idaho, and now is, and during all of the times herein mentioned has been, the owner of lands and the right to use of the waters of the Boise River diverted through the Stones Dixie Canal and during the years of 1898 to 1912 inclusive has so diverted said waters through said canal and used the same for irrigation purposes upon said lands. That in the month of July of each of the years from 1905 to 1912 the waters of said Boise River ceased to flow and failed entirely at the diversion point of said canal and the said river bed was entirely at the diversion point of said canal and the said river bed was entirely dry both below and above said diversion point up to the Canyon at Caldwell, and so remained during each of said years until the Water Commissioner took charge of said River and controlled the diversion of water therefrom and caused said waters to flow past the upper canals on said River in quantities sufficient to supply the canals ~~balowidaRdvCanyon~~. That during said period said canal was entirely dry and the land owners thereunder were wholly unable to secure any water for irrigation. That affiant is familiar with said River between the diversion point of said canal and said Canyon, and there are no channels or courses, either on the surface or underneath the surface of the ground, between said points, through which any water can or does flow into said River during the period of low water in said River, or during the months of July, August and September of each year.

2 S

J. L. Powell

Subscribed and sworn to before me this 4th day of May, 1914.

Thos. D. Griffin
Notary Public.

State of Idaho,)
) ss.
County of Canyon.)

William Dickson

being first duly sworn, upon his oath, each for himself and not one for the other, deposes and says:

That he is a citizen of the United States and of the State of Idaho, and now is, and during all of the times herein mentioned has been, the owner of lands and the right to use of the waters of the Boise River diverted through the Pioneer Dixie Canal and during the years of 1898 to 1913 inclusive has so diverted said waters through said canal and used the same for irrigation purposes upon said lands. That in the month of July of each of the years from 1908 to 1912 the waters of said Boise River ceased to flow and failed entirely at the diversion point of said canal and the said river bed was entirely at the diversion point of said canal and the said river bed was entirely dry both below and above said diversion point up to the Canyon at Caldwell, and so remained during each of said years until the Water Commissioner took charge of said River and controlled the diversion of water therefrom and caused said waters to flow past the upper canals on said River in quantities sufficient to supply the canals below and above Canyon. That during said period said canal was entirely dry and the land owners thereunder were wholly unable to secure any water for irrigation. That affiant is familiar with said River between the diversion point of said canal and said Canyon, and there are no channels or courses, either on the surface or underneat the surface of the ground, between said points, through which any water can or does flow into said River during the period of low water in said River, or during the months of July, August and September of each year.

24

William Dickson

Subscribed and sworn to before
me this 6th day of May, 1914.

Thos. Griffin
Notary Public.

State of Idaho;)
: ss.
County of Canyon.)

L. E. York

being first duly sworn, upon his oath, each for himself and not one for the other, deposes and says:

That he is a citizen of the United States and of the State of Idaho, and now is, and during all of the times herein mentioned has been, the owner of lands and the right to the use of the waters of Boise River diverted through the Eureka Canal and during the years 1883 to 1913 inclusive has so diverted said waters through said canal and used the same for irrigation purposes upon said lands. That in the month of July, of each of the years from 1905 to 1912 the waters of said Boise River ceased to flow and failed entirely at the diversion point of said canal and the said river bed was entirely dry both below and above said diversion point up to the Canyon at Caldwell, and so remained during each of said years until the Water Commissioner took charge of said River and controlled the diversion of water therefrom and caused said waters to flow past the upper canals on said river in quantities sufficient to supply the canals below said Canyon. That during said period said canal was entirely dry and the land owners thereunder were wholly unable to secure any water for irrigation. That affiant is familiar with said River between the diversion point of said canal and said Canyon, and there are no channels or courses, either on the surface or underneath the surface of the ground between said points, through which any water can or does flow into said river during the period of low water in said river, or during the months of July, August and September of each year.

29

L. E. York

Subscribed and sworn to before me this 4th day of May, 1914.

Notary Public.

State of Idaho,)
: ss.
County of Canyon.)

J. Clinton Kelley

being first duly sworn, upon his oath, each for himself and not one for the other, deposes and says:

That he is a citizen of the United States and of the State of Idaho, and now is, and during all of the times herein mentioned has been, the owner of lands and the right to the use of the water of the Boise River diverted through the Pioneer Dixie Ditch Canal and during the years 1910 to 1914 inclusive has so diverted said waters through said canal and used the same for irrigation purposes upon said lands. That in the month of July, of each of the years from 1905 to 1912 the waters of said Boise River ceased to flow and failed entirely at the diversion point of said canal and the said river bed was entirely dyr both below and above said diversion point up to the Canyon at Caldwell, and so remained during each of said years until the Water Commissioner took charge of said River xxxxxxxxxx and controlled the diversion of water therefrom and caused said waters to flow past the upper canals on said River in quantities sufficient to supply the canals below said Canyon. That during said period said canal was entirely dur and the lands owners thereunder were wholly unable to secure any water for irrigation. That affiant is familiar with said River between the diversion point of said canal and said Canyon, and there are no channels or courses, either on the surface or underneath the surface of the ground, between said points, through which any water can or does flow into said river during the period of low water in said river, or during the months of July, August and September of each year.

29

J. Clinton Kelley

Subscribed and sworn to before me this 4th day of May, 1914

Grace A. Griffin

Notary Public.

State of Idaho,)
: ss.
County of Canyon.)

L. S. York

being first duly sworn, upon his oath, each for himself and not one for the other, deposes and says:

That he is a citizen of the United States and of the State of Idaho, and now is, and during all of the times herein mentioned has been, the owner of lands and the right to the use of the waters of Boise River diverted through the American Ditch Canal and during the years 1890 to 1913 inclusive has so diverted said waters through said canal and used the same for irrigation purposes upon said lands. That in the month of July, of each of the years from 1905 to 1912 the waters of said Boise River ceased to flow and failed entirely at the diversion point of said canal and the said river bed was entirely dry both below and above said diversion point up to the Canyon at Caldwell, and so remained during each of said years until the Water Commissioner took charge of said River and controlled the diversion of water therefrom and caused said waters to flow past the upper canals on said river in quantities sufficient to supply the canals below said Canyon. That during said period said canal was entirely dry and the land owners thereunder were wholly unable to secure any water for irrigation. That affiant is familiar with said River between the diversion point of said canal and said Canyon, and there are no channels or courses, either on the surface or underneath the surface of the ground between said points, through which any water can or does flow into said river during the period of low water in said river, or during the months of July, August and September of each year.

2/K

L. S. York

Subscribed and sworn to before me this 4th day of May, 1914.

Notary Public.

State of Idaho,)
: ss.
County of Canyon.)

C. L. Tatum

being first duly sworn, upon his oath, each for himself and not one for the other, deposes and says:

That he is a citizen of the United States and of the State of Idaho, and now is, and during all of the times herein mentioned has been, the owner of lands and the right to the use of the waters of Boise River diverted through the Eureka Ditch No 2. Canal and during the years 1908 to 1913 inclusive has so diverted said waters through said canal and used the same for irrigation purposes upon said lands. That in the month of July of each of the years from 1905 to 1912 the waters of said Boise River ceased to flow and failed entirely at the diversion point of said canal and the said river bed was entirely dry both below and above said diversion point up to the Canyon at Caldwell, and so remained during each of said years until the Water Commissioner took charge of said River and controlled the diversion of water therefrom and caused said waters to flow past the upper canals on said river in quantities sufficient to supply the canals below said Canyon. That during said period said canal was entirely dry and the lands owners thereunder were wholly unable to secure any water for irrigation. That affiant is familiar with with said River between the diversion point of said canal and said Canyon, and there are no channels or courses, either on the surface or underneath the surface of the ground between said points, through which any water can or does flow into said river during the period of low water in said river, or during the months of July, August and September of each year.

2 L

C. L. Tatum

Subscribed and sworn to before me this 4th day of May, 1914.

Notary Public.

State of Idaho,)
: ss.
County of Canyon,)

J. C. Nichols

being first duly sworn, upon his oath, each for himself and not one for the other, deposes and says:

That he is a citizen of the United States and of the State of Idaho, and now is, and during all of the times herein mentioned has been, the owner of lands and the right to the use of the waters of Boise River diverted through the Pioneer Ditch No. 2, Pioneer Ditch Canal and during the years 1907 to 1913 inclusive has so diverted said waters through said canal and used the same for irrigation purposes upon said lands. That in the month of July of each of the years from 1905 to 1912 the waters of said Boise River ceased to flow and failed entirely at the diversion point of said canal and the said river bed was entirely dry both below and above said diversion point up to the Canyon at Caldwell, and so remained during each of said years until the Water Commissioner took charge of said River and controlled the diversion of water therefrom and caused said waters to flow past the upper canals on said river in quantities sufficient to supply the canals below said Canyon. That during said period said canal was entirely dry and the landm owners thereunder were wholly unable to secure any water for irrigation. That affiant is familiar with with said River between the diversion point of said canal and said Canyon, and there are no channels or courses, either on the surface or underneath the surface of the ground between said points, through which any water can or does flow into said river during the period of low water in said river, or during the months of July, August and September of each year.

2 M

J. C. Nichols

Subscribed and sworn to before me this 4th day of May, 1914.

Notary Public.

State of Idaho,)
: ss.
County of Canyon.)

W. N. Nichols

being first duly sworn, upon his oath, each for himself and not one for the other, deposes and says:

That he is a citizen of the United States and of the State of Idaho, and now is, and during all of the times herein mentioned has been, the owner of lands and the right to the use of the waters of Boise River diverted through the American Ed Pioneer Ditches Dixie Canal and during the years 1890 to 1913 inclusive has so diverted said waters through said canal and used the same for irrigation purposes upon said lands. That in the month of July, of each of the years from 1905 to 1912 the waters of said Boise River ceased to flow and failed entirely at the diversion point of said canal and the said river bed was entirely dry both below and above said diversion point up to the Canyon at Caldwell, and so remained during each of said years until the Water Commissioner took charge of said River and controlled the diversion of water therefrom and caused said waters to flow past the upper canals on said river in quantities sufficient to supply the canals below said Canyon. That during said period said canal was entirely dry and the land owners thereunder were wholly unable to secure any water for irrigation. That affiant is familiar with said River between the diversion point of said canal and said Canyon, and there are no channels or courses, either on the surface or underneath the surface of the ground between said points, through which any water can or does flow into said river during the period of low water in said river, or during the months of July, August and September of each year.

W. N. Nichols

Subscribed and sworn to before me this 4th day of May, 1914.

Thos. A. Griffin
Notary Public.

State of Idaho,)
: ss.
County of Canyon.)

G. W. Snodgrass

being first duly sworn, upon his oath, each for himself and not one for the other, deposes and says:

That he is a citizen of the United States and of the State of Idaho, and now is, and during all of the times herein mentioned has been, the owner of lands and the right to use of the waters of the Boise River diverted through the Cassia Ditch No. 2 Canal and during the years of 1883 to 1913 inclusive has so diverted said waters through said canal and used the same for irrigation purposes upon said lands. That in the month of July of each of the years from 1905 to 1912 the waters of said Boise River ceased to flow and failed entirely at the diversion point of said canal and the said river bed was entirely at the diversion point of said canal and the said river bed was entirely dry both below and above said diversion point up to the Canyon at Caldwell, and so remained during each of said years until the Water Commissioner took charge of said River and controlled the diversion of water therefrom and caused said waters to flow past the upper canals on said River in quantities sufficient to supply the canals below said Canyon. That during said period said canal was entirely dry and the land owners thereunder were wholly unable to secure any water for irrigation. That affiant is familiar with said River between the diversion point of said canal and said Canyon, and there are no channels or courses, either on the surface or underneath the surface of the ground, between said points, through which any water can or does flow into said River during the period of low water in said River, or during the months of July, August and September of each year.

20

G. W. Snodgrass

Subscribed and sworn to before me this 4th day of May, 1914.

Chas. A. Griffin
Notary Public.

State of Idaho,)
: ss.
County of Canyon.)

L. A. Vail

being first duly sworn, upon his oath, each for himself and not one for the other, deposes and says:

That he is a citizen of the United States and of the State of Idaho, and now is, and during all of the times herein mentioned has been, the owner of lands and the right to the use of the waters of Boise River diverted through the Upper Central Point Canal and during the years 1906 to 1913 inclusive has so diverted said waters through said canal and used the same for irrigation purposes upon said lands. That in the month of July, of each of the years from 1905 to 1913 the waters of said Boise River ceased to flow and failed entirely at the diversion point of said canal and the said river bed was entirely dry both below and above said diversion point up to the Canyon at Caldwell, and so remained during each of said years until the Water Commissioner took charge of said River and controlled the diversion of water therefrom and caused said waters to flow past the upper canals on said river in quantities sufficient to supply the canals below said Canyon. That during said period said canal was entirely dry and the land owners thereunder were wholly unable to secure any water for irrigation. That affiant is familiar with said River between the diversion point of said canal and said Canyon, and there are no channels or courses, either on the surface or underneath the surface of the ground between said points, through which any water can or does flow into said river during the period of low water in said river, or during the months of July, August and September of each year.

2 P

L. A. Vail

Subscribed and sworn to before me this 4th day of May, 1914.

Fred D. Griffin
Notary Public.

State of Idaho,)
: ss.
County of Canyon.)

In Wm. A. Black

being first duly sworn, upon his oath, each for himself and not one for the other, deposes and says:

That he is a citizen of the United States and of the State of Idaho and now is, and during all of the times herein mentioned, has been the owner of lands lying under and irrigated from the Boise River through Riverside Canal. That said lands are in what is commonly known as the Dixie Flat; that there is a depression or swale running along the South side of said Dixie Flat and approximately parallel with Boise River, commonly known as Dixie Slough.

That there is a distinct bench south of Boise River and South of the land watered by the Pioneer Dixie, American, Eureka, Upper and Lower Center Point Canals, and the upper portion of the Riverside Canal and west of the Canyon at Caldwell. That at the foot or lower line of said bench the said land is lower than at the Boise River directly opposite. That said bench and the lowland at the foot of said bench runs approximately parallel with the Boise River, and all of the water that is wasted from the said bench or that seeps from said bench takes a northwesterly course and flows along the foot of said bench in a swale commonly known as Dixie Slough, in a course approximately parallel with said Boise River and does not return to said Boise River until it reaches a point near Parma. That the general course of the waste water from the said lands west of the Canyon at Caldwell and between said bench and Boise River is toward said Dixie Slough and away from said Boise River.

2 G

That affiant has irrigated said lands from said canal during all of said years and has traveled over that neighborhood and is familiar with the lay of the country and the method of irrigation and the source and courses of irrigating ditches and waste ditches in that locality. That the waste

water from affiant's land and from the lands to the South and West flows toward and into Dixie Slough and away from the Boise River and does not return to the Boise River until it reaches a point near Parma, and west of and below all of the lands irrigated from said Pioneer Dixie, American, Eureka, Upper and Lower Center Points canals, and the Upper portion of Riverside Canal.

Wm W Black

Subscribed and sworn to before me this 4th day of May, 1914.

Thos D Griffiss

Notary Public.

State of Idaho,)
: ss.
County of Canyon.)

M. G. McConnell, being first duly sworn, deposes and says:

That from the year 1905 to 1913 inclusive, excepting therefrom the year 1910, affiant has been either water master or assistant water master for the Boise River Water District.

That affiant has examined the records for July, 1910, as reported by the Water Master for that year to the water commissioner of the Third Division of Idaho, and that said records show that for the days of July in which the water was measured to the Pioneer Dixie Ditch Company's canal on the Boise River being from July 15 to July 31, inclusive, the amount was of an average of 35 second feet per an 24 hour period of time; that said ditch has a water right upon the Boise River for approximately 55 second feet; that said records show that the Farmers' Co-operative Ditch Company for the same period of July, 1910, received an average of 105 second feet per a 24 hour period of time; that said records do not show whether or not water was delivered at all to the Eureka Ditch or to either of the Lower or Upper Center Point Canals; that the records of the Water Master as reported to the said Water Commissioner for the month of July, 1908, for the 27th, 28th, 29th, 30th and 31st of said month, show that there was approximately an average of 21 second feet per a period of 24 hours furnished the Pioneer Dixie Ditch Company's canal for said period of July, and that for the same period of July of said year, the Farmers' Co-operative Ditch Company received an approximate average of 111 second feet per a period of 24 hours of time; and that during July of 1911 from the 15th to the 31st inclusive, the Pioneer Dixie Ditch Company received on an average approximately 25 second feet per a period of 24 hours of time; and that for the same period of July the Pioneer Dixie Ditch Company, the American Ditch Association and the Eureka Ditch

No. 2 and the Upper and Lower Center Point Canals as a whole for said period received on the average 64 second feet per a period of 24 hours of time and that for the same period the Farmers' Co-operative Ditch Company was receiving on the average approximately 164 second feet per a period of 24 hours of time.

That affiant has read the affidavit of C. C. Stevenson filed in the matter of the petition of the Boise Fruit Tracts Company for the transfer of water rights on the Boise River and has noted especially the fact therein stated that on said date in July, 1906, at a point in the bulk head on the Boise River the water flow of said Boise River measured approximately 1600 inches and at the same time just below the tap of what is known as the American Ditch the water flow amounted to approximately 3300 inches; that this fact might be easily possible and still not be due in any respect to back flow or seepage water since the Farmers' Co-operative Canal takes water from the Boise River above said bulk head as designated in said affidavit and returns a portion of said water often amounting from 500 to 3000 inches to the Boise River below said bulk head before said waters taken from the Boise River pass through the rating flume of said Farmers' Co-operative Ditch and that said waters are really a part of the Boise River and are merely temporarily diverted by the Farmers' Co-operative Ditch, and are not in any sense a part of the waters used by the said Farmers' Co-operative Ditch Company in irrigating the lands under their canal.

That affiant during all the years as above stated has been at work upon the Boise River, has observed the flow of the river and that from the point where the Farmers' Co-operative Ditch Company's waste gate returns the water temporarily diverted from the Boise River as mentioned above to the Boise River to a point below the headgate of the Lower Center Point canal upon said Boise River, there is practically

no return flow or seepage to said Boise River, since the canals running through the territories tributary to said Boise River, each in their turn, take up all the back flow and seepage water from the canals above them, and that affiant has measured the water to the ditches below said Farmers' Co-operative Ditch Company's canals and above a point just below the diversion point of the Lower Center point canal during the months of July of each year of which he has been at work upon said Boise River and that during said months the said water delivered to the said canals below the Farmers' Co-operative Ditch Company's canal is water turned past the diversion point of the said Farmers' Co-operative Ditch Company's canal especially for the use of said canals.

Affiant further states that he has observed the return flow to Boise River above said Farmers' Co-operative Ditch Company's canal and that the return flow to Boise River in the lowest season of the Boise River is very slight and that the maximum return flow during the low water season is not sufficient at any time to supply the ditches above said Farmers' Co-operative Ditch Company's canal which have rights prior to said Farmers' Co-operative Ditch Company and prior to the rights of all of said protestants; that the ditches below the Farmers' Co-operative Ditch Company's canals and above a point in the river just below the Lower Center Point Canal have rights of approximately 8000 inches of water which are prior right to the Farmers' Co-operative Ditch Company, and also prior to the rights of all of said protestants.

M. S. McConnell

Subscribed and sworn to before me
this 4th day of May, 1914.

Thos. D. Griffin
Notary Public.

State of Idaho,)
: ss.
County of Canyon.)

L. W. Peck, being first duly sworn, deposes and says that he is a citizen of the United States and of the State of Idaho and resides in Canyon County, Idaho; that affiant is and during all the time since the year 1901 has been superintendent of the Riverside, sometimes known as the Roswell, Canal and as such superintendent has had charge during the irrigating season of each of said years of the upper portion of said canal between the diversion point on Boise River and the Roswell Bench; that as such superintendent during said period, affiant has had charge of and controlled the headgates of said canal in Boise River and the waste gates on said canal between the point of diversion and the Roswell Bench and particularly at the point where said canal crosses Indian Creek; that during the irrigating season of each year during said period, there has been no water flowing through Indian Creek into Boise River.

2 8

That at the point where the Riverside Canal crosses Indian Creek there is a gate which completely controls the flow of water down Indian Creek at this point; that during the irrigation season of each year during said period, the said gates were kept closed and all water, if any there happened to be, that came down Indian Creek, was diverted at said point and carried down the said Riverside Canal.

That during the irrigating season of each year during said period, affiant has had charge and control of the gate through which the irrigating water is turned from the Riverside Canal into the Black Lateral for the irrigation of Section 9 and the East Half of Section 8, all in Township 4 West of Boise Meridian, and that the water for the irrigation of said land was diverted directly from the Boise River at the head of said Riverside Canal and carried through said canal and delivered to. Wm. A. Black for use upon said land.

That no water has been ever diverted from Indian Creek during the period affiant has had charge of said Riverside Canal for the use of said Wm. A. Black, or for the irrigation of said Section 9 and the East Half of said Section 8.

Further, affiant sayeth not. L. W. O'Neil

Subscribed and sworn to before me this 4th day of May, 1914.

Thos. D. Griffis
Notary Public.

-2-

IN THE MATTER OF THE APPLICATION OF THE BOISE FRUIT TRACTS COMPANY, A CORPORATION OF BOISE, IDAHO, TO TRANSFER WATER RIGHTS.

STATE OF IDAHO)
) ss.
COUNTY OF ADA)

#63-0123

B. F. Olden being first duly sworn deposes and says that he is one of the stockholders and Secretary of the Jacobs Canal Company, a corporation organized under the laws of the State of Idaho, that heretofore transferred its water right of 1000 miners inches, or 20 cubic feet per second of time, of the waters of the Boise River, being Water Right numbered 2, in that certain decree dated January 18, 1906, rendered in that certain suit wherein the Farmers Co-operative Ditch Company was plaintiff and the Riverside Irrigation District et al. were defendants, pending in the District Court of the Seventh Judicial District of the State of Idaho in and for Canyon County, and for which application is made herein for the transfer of the point of diversion thereof.

Affiant further says that he is familiar with business conditions and property rights of said company, and that the said company is able to supply all of its present users with water through their respective laterals as heretofore supplied to them, and in an amount to which they are entitled from an appropriation from the Boise River of a date of priority that will furnish a full irrigation season flow; and that it is the purpose and intention of the said company so to do; and that none of the said users of the water of the said Jacobs Canal Company, nor any other appropriator of the waters of Boise River will be injured by such transfer as herein proposed.

B. F. Olden

Subscribed and sworn to before me this 5th day of May, 1914.

John L. Judge

Notary Public.

MICROFILMED

IN THE MATTER OF THE APPLICATION
OF THE BOISE FRUIT TRACTS COMPANY
A CORPORATION OF BOISE? IDAHO, T O
TRANSFER WATER RIGHTS.

AFFIDAVIT OF
B. F. Olden on behalf of the
Transfer of the Jacobs Water Right.

Plaintiff's Exhibit 5

State of Idaho,)
: ss.
County of Canyon.)

Fred H. McConnell, being first duly sworn upon his oath says:

That affiant is a citizen of the United States and of the State of Idaho, and is a resident of Caldwell, in Canyon County, State of Idaho, and at all the times herein mentioned was, and now is a duly licensed and practicing surveyor and irrigation engineer within and under the laws of the said State of Idaho.

That during the summer of the year 1905 affiant was engaged as Water Master on the Boise River, and as a part of the duties as such Water Master affiant measured and distributed the waters from said Boise River into the irrigation canals diverting water from said River both above and below the Canyon at Caldwell, including the Riverside Irrigating District's Canal, the Farmer's Co-operative Ditch Company's Canal, the Canyon Water Company's Canal, the Siebenberg Co-operative Ditch Company's Canal, the Eureka Ditch Company's Canal, The Pioneer Dixie Ditch Company's Canal, the American Ditch Company's Canal, and the Center Point Ditch Company's Canals. That during the stage of low water in said River, during the months of July, August and September, in order to economize in the use and management of said waters and more efficiently control the same, affiant diverted a very large portion of the said waters at the Canyon at Caldwell into the said Farmer's Co-operative Ditch Company's Canal, and at a point a short distance from the headgate of said Canal, turned the same through a wastegage into the old river channel on the North side of the island between the wagon bridge and the Oregon Short Line Railroad bridge, and carried the same down said channel and distributed the same into the balance of the Canals diverting water below said point. That the above method of controling and distributing said waters of Boise River at said point is the method followed by the Water Master each year during the low water season. That the main channel of said River is on the South side of said island and on the South side of said main fha

channel, and opposite said island, there is an old bulkhead, mentioned in the affidavit of C. C. Stevenson on file in this matter, approximately eighty rods East and North from the Oregon Short Line Railroad Bridge over said Boise River. That the waters of Boise River thus diverted through said old channel do not flow past said bulkhead, but they pass on the opposite side of said island and directly past the headgate in the Siebenberg Canal.

That the Riverside Canal diverts water from Boise River at the upper end of the Canyon at Caldwell on the South side of said river, and is constructed along the South Bank of said River on a general level lower than the bed of said River and parallel with said River to and past the points of diversion, or headings, of all of the canals above mentioned, and completely and effectively cuts off and intercepts and prevents all waters, either above or below the surface of the ground, and returning or flowing into said Boise River from the South side of said River at any point between said Canyon, or the heading of said Riverside Canal, and the lowest one of said Canals and beyond the heading of said Centerpoint Canals; and the Siebenberg Canal is constructed in like manner, with relation to said Boise River, along the North side thereof, and likewise prevents all waters from returning or flowing into said Boise River from the North side thereof between said points.

That on the 6th day of November, 1918, affiant made cafeful and accurate measurements of the bed of said Boise River and said Riverside Canal at 4 different points from the head of said Riverside Canal to the heading of said Centerpoint Canal, and that said measurements showed the level of the bottom of said Riverside Canal to be lower than the level of the bed of said Boise River as follows: At the heading of said Riverside Canal the bottom of the same was .1 lower than the bed of said River; at a point immediately below said Wagon Bridge the bottom of said Canal was .4 feet lower than the bed of said River; at a point above the

Oregon Short Line Railroad Bridge the bottom of said Canal was 8 feet lower than the bed of said River; and at a point at the drop the bottom of said canal is 1.9 feet lower than the bed of said River.

That during the past 10 years affiant has been frequently engaged in making surveys of the lands on both sides of said River along and above and below said points, and has frequently traveled up and down on both sides of said River, and has had opportunity to observe whether or not there was at said points any return flow of water into said River; and that there is no return flow of water into said Boise River from either side of said River between said Canyon at Caldwell and said Centerpoint Canal during the irrigating season.

That on different occasions and in different years in the month of July affiant has observed said River at said points when there was no water whatever flowing therein and the bed of said River was entirely dry.

That there is a distinct bench south of Boise River and South of the land watered by the Pioneer Dixie, American, Eureka, Upper and Lower Center PointCanals, and the upper portion of the Riverside Canal and west of the Canyon at Caldwell. That at the foot or lower line of said bench the land is lower than at the Boise River directly opposite. That said bench and the lowland at the foot of said bench runs approximately parallel with the Boise River, and all of the water that is wasted from said bench or that seeps from said bench takes a northwesterly course and flows along the foot of said bench in a swale commonly known as Dixie Slough, in a course approximately parallel with said Boise River and does not return to said Boise River until it reaches a point near Parma. That the general course of the waste water from the said lands west of the Canyon at Caldwell and between said bench and Boise River is toward said Dixie Slough and away from or parallel to said Boise River.

That affiant has read the application of the Boise Fruit

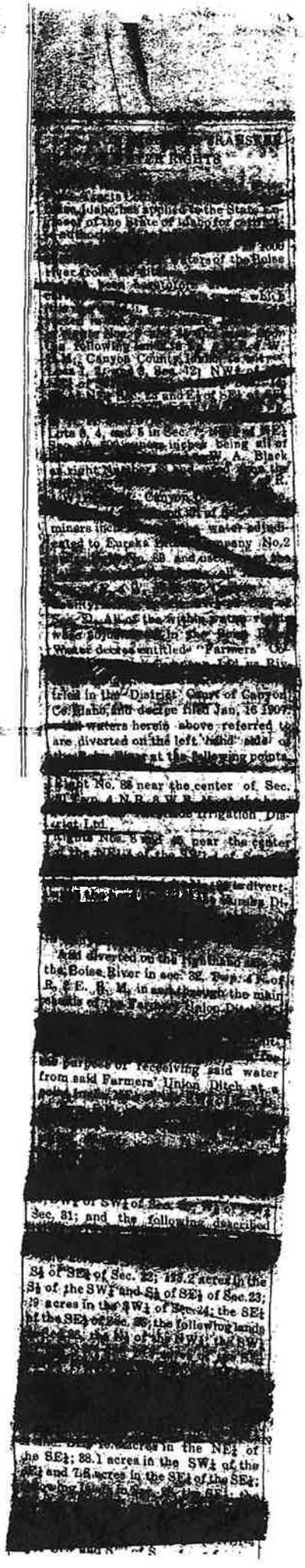
Tracts Company and the protests against the granting of said application and that from affiants experience as water Master on said Boise River and from affiants' observation and experience with said River, and the flow of water therein and the diversion of water therefrom, affiant states that said protestant and all and each of them and all other water users on said Boise River will not be injured and damaged in any manner or degree by the change of the place of diversion of said waters as set forth and requested in said application.

Fred H. McConnell

Subscribed and sworn to before me this 5th day of May, 1914.

Thos. D. Griffin

Notary Public.



AFFIDAVIT OF PUBLICATION

STATE OF IDAHO }
COUNTY OF CANYON } SS

Wm Lemon
~~J. L. BERTSCH~~, being duly sworn, deposes and says: That he is the publisher of the MIDDLETON HERALD, a weekly newspaper published in Middleton, Canyon County, Idaho; that said newspaper is in general circulation in the county aforesaid and in the vicinity of Middleton; that the advertisement, a copy of which is attached hereto, was published in said newspaper once a week for Five consecutive weeks in the regular and entire issue, and not in any supplement thereof, commencing with the issue dated March 6 1914, and ending with the issue dated [illegible] 1914.

RECEIVED
APR 20 1914
OFFICE OF STATE ENGINEER

Wm Lemon

Subscribed and sworn to before me this 13th day of April A. D. 1914, a notary public in and for said county.

H E Wallace
Notary Public

Publication Fee, $_____

AFFIDAVIT OF PUBLICATION

NOTICE OF PROPOSED TRANSFER OF WATER RIGHTS

Notice is hereby given that the Boise Fruit Tracts Company, a corporation of Boise, Idaho, has applied to the State Engineer of the State of Idaho for certificate authorizing it to transfer the use of 20 second feet, otherwise described as 1000 miners inches of the waters of the Boise river from the ditches in which the same has been heretofore diverted and carried ~~and from~~ the lands upon which it is now used, i. e. 270 miners inches diverted in the Pioneer Dixie Ditch under rights Nos. 8 and 45 and used upon the following lands in Tp. 4 N.R.4 W. B.M., Canyon County, Idaho, to wit: Lots 1, 2, and 3, Sec. 12; NW¼ of the NE¼ of Sec. 13; NE¼ of NW¼ Sec. 14; E½ of NE¼ Sec. 23 and E½ of SE¼ of SE¼ Sec. 14; and the following tracts in Twp. 4, N. R 3 W.B.M. said county, to wit: Lots 3, 4, and 5 in Sec. 7; NW¼ of NE¼ Sec. 19, 600 miners inches being all of the waters adjudicated to W. A. Black as right Number 88 and used upon the the following lands in Twp. 4 N. of R. 4 W. of B. M., Canyon County, Idaho, viz; E½ of Sec. 8 and all of Sec. 9. 30 miners inches out of the water adjudicated to Eureka Ditch Company No.2 under right No. 89 and used upon the following described lands, all in Twp. 5 N. of R. 4 W. of B. M. Canyon County, Idaho, to-wit: SW¼ of SE¼ of Sec. 31, All of the within water rights were adjudicated in the Boise River Water decree entitled "Farmers' Co-operative Ditch Company, Ltd. vs. Riverside Irrigation District, et al," lately tried in the District Court of Canyon Co. Idaho, and decree filed Jan. 16 1907.

All waters herein above referred to are diverted on the left hand side of the Boise River at the following points, viz:

Right No. 88 near the center of Sec. 20 Twp. 4 N.R. 3 W B. M. at the head gates of the Riverside Irrigation District Ltd.,

Rights Nos. 8 and 45 near the center of the NE1-4 of the SW1-4 of Sec. 20, Twp. 4 N. R. 3 W. B. M.

And water under right No. 89 is diverted at the head gates of the Eureka Ditch Company near the SW corner of Sec. 12 Twp. 4 N. R. 4 W. B. M. ;all in Canyon County, Idaho.

And diverted on the righthand side of the Boise River in sec. 32, Twp. 4 N.of R. 2 E. B. M. in and through the main canals of the Farmers Union Ditch Company, Limited, and thence carried through said ditch and diverted into ditches now in course of construction for the purpose of receeiving said water from said Farmers' Union Ditch at a point in the NE¼ of the SW¼ of Sec. 31, in Twp. 5 N. of R. 1 W. of B. M. and to be used upon the following described tracts, to-wit:

The following lands in Twp. 5 N. of R. 1 W. of B. M. Ada County, Idaho; SW¼ of SW¼ of Sec. 19; W½ of NW¼ of Sec. 30; SW¼ of SW¼ of Sec. 30; W½ of NW¼ Sec. 31; and the following described lands in Twp. 5 N. of R. 2 W. of B. M. in Canyon County, Idaho, to-wit:

75.3 acres in the S½ of SW¼ and the S½ of SE¼ of Sec. 22; 123.2 acres in the S½ of the SW¼ and S½ of SE¼ of Sec.23; 19 acres in the SW¼ of Sec.24; the SE¼ of the SE¼ of Sec. 25; the following lands in Sec.26, the N½ of the NW¼; the SW¼ of the NW¼ and 26.7 acres of the SE¼ of the NW¼; the NW¼ of the NE¼ and 22.7 acres in the N½ of the SW¼; the following lands in Sec. 27, S½ of the NE¼; SW¼ of the NW¼; S½ of the SE¼ of the NW¼; the SW¼; 37 acres in the NW¼ of the SE¼ 16.6 acres in the NE¼ of the SE¼; 38.1 acres in the SW¼ of the SE¼ and 7.8 acres in the SE¼ of the SE¼; following lands in Sec. 28, the SE¼; the S½ of the SW1-4; the NW¼ of the SW¼ and the SW¼ of the NW¼; the following

STATE OF IDAHO)
COUNTY OF CANYON) SS

~~J. L. BERTSCH~~, being duly sworn, deposes and says: That he is the publisher of the MIDDLETON HERALD, a weekly newspaper published in Middleton, Canyon County, Idaho; that said newspaper is in general circulation in the county aforesaid and in the vicinity of Middleton; that the advertisement, a copy of which is attached hereto, was published in said newspaper once a week for ... consecutive weeks in the regular and entire issue, and not in any supplement thereof, commencing with the issue dated ... 191... , and ending with the issue dated ... 191... .

Subscribed and sworn to before me this 13th day of April A. D. 1914, a notary public in and for said county.

Publication Fee, $...

20 Twp. 4 N.R. 3 W B. M. at the head gates of the Riverside Irrigation District Ltd.,
Rights Nos. 8 and 45 near the center of the NE1-4 of the SW1-4 of Sec. 20, Twp. 4 N. R. 3 W. B. M.
And water under right No. 89 is diverted at the head gates of the Eureka Ditch Company near the SW corner of Sec. 12 Twp. 4 N. R. 4 W. B. M. ,all in Canyon County, Idaho.

And diverted on the righthand side of the Boise River in sec. 32, Twp. 4 N.of R. 2 E. B. M. in and through the main canals of the Farmers Union Ditch Company, Limited, and thence carried through said ditch and diverted into ditches now in course of construction for the purpose of receeiving said water from said Farmers' Union Ditch at a point in the NE¼ of the SW¼ of Sec. 31, in Twp. 5 N. of R. 1 W. of B. M. and to be used upon the following described tracts, to-wit:

The following lands in Twp. 5 N. of R. 1 W. of B. M. Ada County, Idaho; SW¼ of SW¼ of Sec. 19; W½ of NW¼ of Sec. 30; SW¼ of SW¼ of Sec. 30; W½ of NW¼ Sec. 31; and the following described lands in Twp. 5 N. of R. 2 W. of B. M. in Canyon County, Idaho, to-wit:

75.3 acres in the S½ of SW¼ and the S½ of SE¼ of Sec. 22; 123.2 acres in the S½ of the SW¼ and S½ of SE¼ of Sec.23; 23 acres in the SW¼ of Sec.24; the SE¼ of the SE¼ of Sec. 25; the following lands in Sec,26, the N½ of the NW¼; the SW¼ of the NW¼ and 26.7 acres of the SE¼ of the NW¼; the NW¼ of the NE¼ and 22.7 acres in the N½ of the SW¼; the following lands in Sec. 27, S½ of the NE¼; SW¼ of the NW¼; S½ of the SE¼ of the NW¼; the SW¼; 37 acres in the NW¼ of the SE¼ 16.6 acres in the NE¼ of the SE¼; 38.1 acres in the SW¼ of the SE¼ and 7.8 acres in the SE¼ of the SE¼; following lands in Sec. 28, the SE¼; the S½ of the SW1-4; the NW¼ of the SW¼ and the SW¼ of the NW¼; the following lands in Sec. 29, the SE¼ of the NE1-4 N½ of SE¼ and SE¼ of SE1-4, the following lands in Sec. 32, the S½ of NW1-4 of NE1-4; the W½ of the NW1-4 of the NW1-4 of NE1-4; the S½ of the SW1-4 of NE1-4; SE1-4; SE1-4 of SW1-4 and the S½ of the SW1-4 of the SW1-4; all of Sec. 33, the following lands in Sec. 34, NW1-4; the SW1-4; the SE1-4; the S½ of the NE1-4; 37.3 acres in the NW 1-4 of the NE1-4 and 23 acres in the NE1 4 of the NE1-4; the following lands in section 35,

23.3 acres in the SE1-4 of the NE1-4; 5.2 acres in the NW¼ of the NW¼; 9.2 acres in the NW¼ of the SW¼; 8.1 acres of the NE¼ of the SW¼; 33 acres in the SW¼ of the SE¼; 36 acres in the SE¼ of the SW¼; the S½ of the SE¼; the NE¼ of the SE¼; 38 acres in the NW¼ of the SE¼, an irregular tract comprising 300 acres and being a part of each subdivision of forty acres in Sec. 36; also the following lands in Twp. 4 N. of R. 2 W. of B.M. in Canyon County, Idaho, to-wit: Lots 1, 2, 3 and 4 in Sec. 2; Lot 1 and the N 15 acres of Lot 4 in Sec. 3; Lot 4 in Sec. 4; Lot 1 and the N 32 acres of Lot 3 in Sec. 5. contiguous lands containing in all 3881 acres, more or less.

And that at 10 o'clock a. m. on the 14th day of April A. D. 1914, at the Chamber of the House of Representatives State House, Boise, Idaho, before E. Marsters, water commissioner of the Third District or his authorized agent, the opportunity will be given to any and all persons to appear and present for his consideration any reason or reasons why a certificate should not be issued authorizing such transfer, full details of the proposed transfer may be obtained from E. Marsters Boise, Idaho, water master of said stream.

F. P. King
State Engineer.

March 7, 1914.

Re transfer of water

Mr. Elias Marsters,
Water Commissioner,
Room 3, Gem Bldg.,
Boise, Idaho.

Sir:

I am enclosing you herewith the application of Mr. J. M. Wise, President and Manager of the Boise Fruit Tracts Co., for transfer of water right, also, notice for publication and copy of map. You will please complete the notice for publication and advise Mr. Wise as to the date of the hearing.

Very truly yours,

F. P. KING,

State Engineer.

App.Tr.-M.-NP

By_____

OFFICE OF STATE ENGINEER, STATE OF IDAHO.

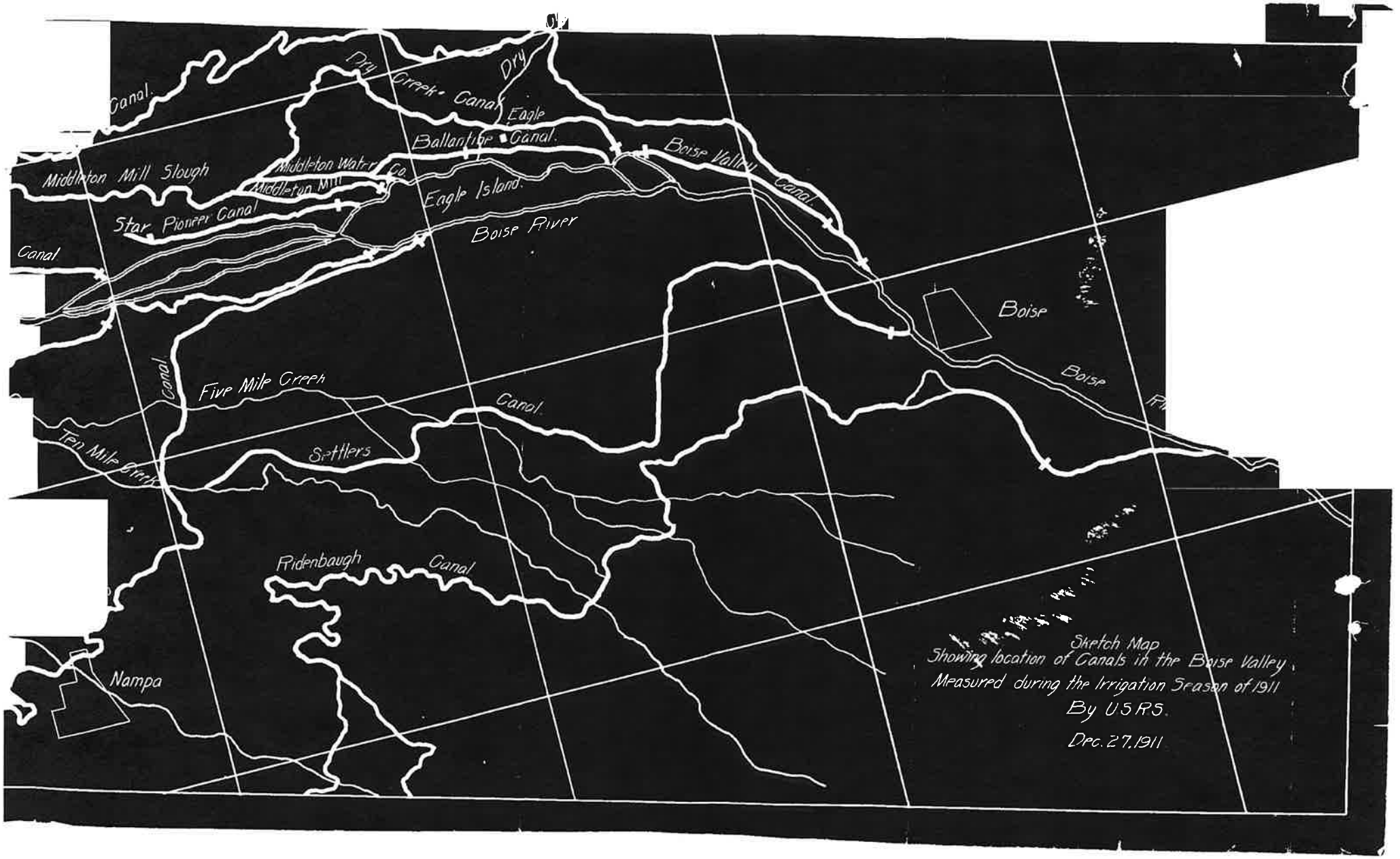
In the matter of the application of Boise Fruit Tracts Company for the transfer of Boise River Water Rights.	:

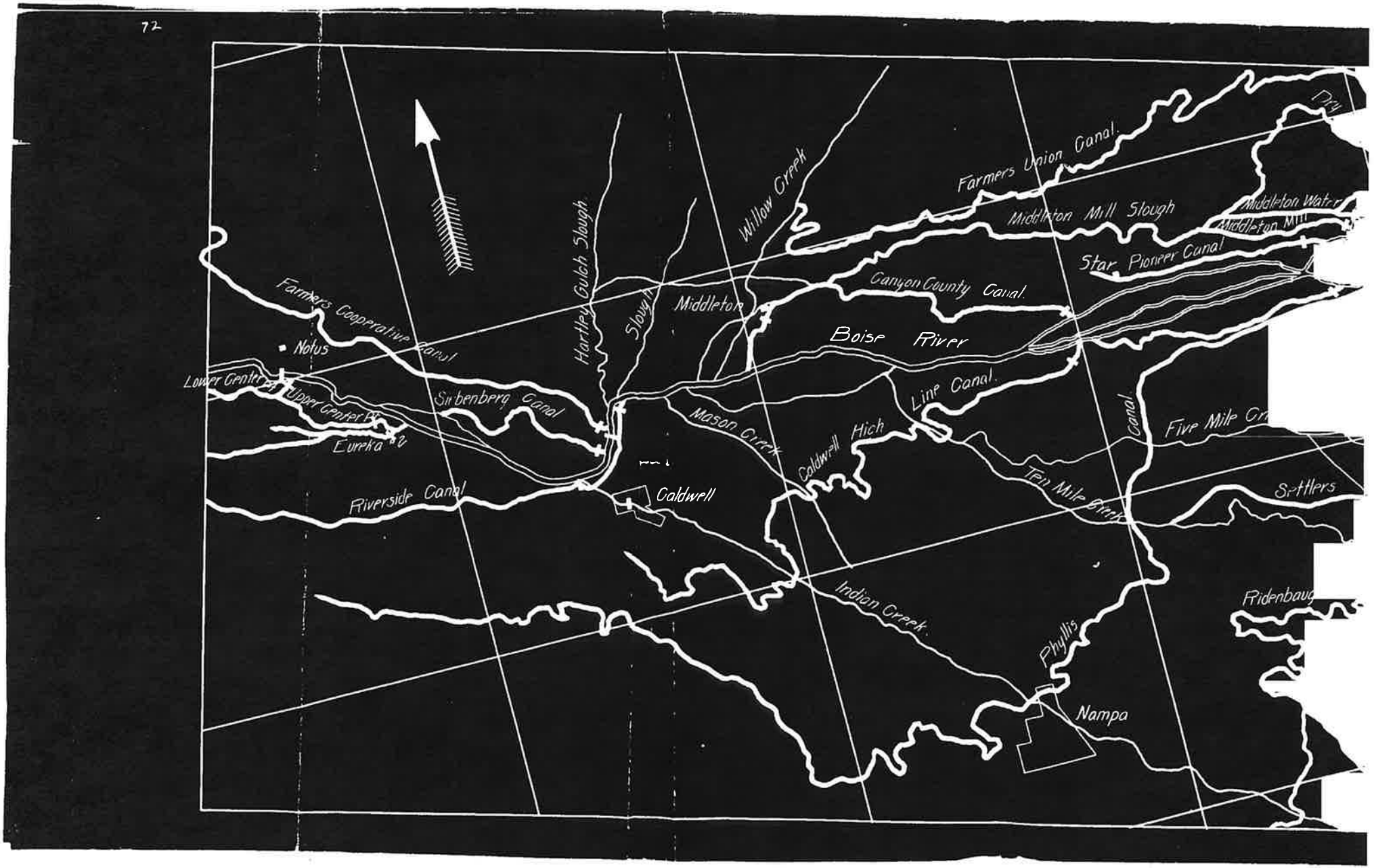
I, F. P. KING, The duly appointed, qualified and acting State Engineer of the State of Idaho do hereby certify that the above and foregoing is one of the original maps filed in the matter of the above application, and was used on the hearing of the protests against the allowance of said transfer.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal this 7th day of August, 1914.

F. P. KING,
State Engineer of the State of Idaho.

By Robert Wing
Deputy


Canal.
Dry Creek Canal
Dry
Eagle
Ballantine Canal.
Middleton Mill Slough
Middleton Water Co.
Middleton Mill
Eagle Island.
Star Pioneer Canal
Boise River
Canal
Boise
Five Mile Creek
Canal
Canal.
Ten Mile Creek
Settlers
Ridenbaugh
Canal
Nampa
Sketch Map
Showing location of Canals in the Boise Valley
Measured during the Irrigation Season of 1911
By U.S.R.S.
Dec. 27, 1911


Farmers Union Canal
Middleton Mill Slough
Middleton Water
Middleton Mill
Star Pioneer Canal
Canyon County Canal
Boise River
Willow Creek
Hartley Gulch Slough
Slough
Middleton
Farmers Cooperative Canal
Notus
Lower Center
Upper Center
Eureka
Siebenberg Canal
Mason Creek
Caldwell High Line Canal
Five Mile Cr
Ten Mile Creek
Settlers
Caldwell
Riverside Canal
Indian Creek
Phyllis
Nampa
Ridenbaug

Boise Fruit Tracts
Transfer

Protestant's
Exhibits.

Protestants exhibit A

STATE ENGINEER OF THE STATE OF IDAHO.

RECEIVED
MAY 2 1914
OFFICE OF STATE ENGINEER

In the Matter of the Application)
of BOISE FRUIT TRACTS COMPANY, a) P R O T E S T.
Corporation, of Boise, Idaho.)

To HON. FRANK P. KING,
State Engineer of the State of Idaho, and

HON. E. MARSTERS,
Water Master for the Third Division of the State of Idaho:

The undersigned, on behalf of the owners of water rights in Boise River whose names are hereunto attached, and on behalf of its stockholders and users of water from the canals of said Company, respectfully protest against the granting of a certificate to BOISE FRUIT TRACTS COMPANY, a corporation, of Boise, Idaho, or any other persons, authorizing it or them to transfer the use of 1000 inches measured under a four-inch pressure, being 20 second feet, of the water of Boise River, or any other amount of water thereof, from that certain land upon which said water is now used to the land to which it is proposed to be transferred.

Said lands upon which said water is now used and the lands to which the use thereof is proposed to be transferred are specifically described in a certain "Notice of Proposed Transfer of Water Right", published in "MIDDLETON HERALD", a newspaper published at Middleton, Idaho, beginning in the issue of February 26, 1914, a copy of said notice, marked Exhibit "a", being attached hereto and made a part of this protest.

All of the undersigned companies and owners of water rights use and are entitled to use the waters of Boise River, the dates of the priorities of said rights having been determined by decree of the District Court of the Seventh Judicial District of the State of Idaho, in and for the County of Canyon, in the case of Farmers' Co-operative Ditch Company vs. Riverside Irrigation

Irrigation District, Limited, et al., dated January 18, 1906, which decree has been vacated by the Supreme Court of Idaho, and said cause is still pending and undetermined, and no final judgment has been entered therein.

These protestants will be injured by such transfer for the following reasons:

1. That the said water rights sought to be transferred are not decreed water rights, as required by Section 3264 of the Idaho Revised Codes, and neither petitioner nor its predecessor in interest acquired the same by license from the State Engineer of Idaho, as provided by Section 3264 of the Revised Statutes of the State of Idaho.

2. That until said water rights are finally decreed by the court, it cannot be determined to what amount of water the said petitioner asking for said transfer is entitled, and it should not be granted a permit to transfer the amount asked for, for the reason that when a final decree is rendered in the action of Farmers' Co-operative Ditch Company, plaintiff, vs. Riverside Irrigation District, Limited, et al., defendants, now pending in the District Court of the Seventh Judicial District of the State of Idaho, in and for the County of Canyon, for a new trial, the water rights sought to be transferred by said application may be reduced by the court to an amount less than the amount now sought to be transferred, and until such rights are finally adjudicated the State Engineer has no jurisdiction in these proceedings.

3. That the lands from which said water is sought to be transferred lie several miles below and down the Boise River from the lands under the canals of these protestants; that almost all the water necessary for the irrigation of said lands, from which said applicant desires to transfer said water is returned water, returning to Boise River between the lands and the points of diversion of protestants' canals, excepting the right of

W. A. Black, which is above the headgate of the canal of the undersigned protestant, Farmers' Co-operative Ditch Company, and as to the land under this right, it to a certain extent may be supplied with returned water picked up at Indian Creek, before said Indian Creek reaches Boise River, which said Indian Creek is a tributary to Boise River, below the headgates of all the undersigned protestants; that these protestants and other users of water from Boise River between the present point of diversion of said water, as above stated, and the point at which it is proposed to divert said water are entitled to the first use of said water; that the said lands from which it is sought to transfer said water can secure sufficient water, even though no water be turned down to them in Boise River at or near the point of diversion of protestants' canals, or any of them, and by diverting said water from Boise River at the point at which the diversion is proposed to be changed, these protestants will be injured by reason of the reduction in the amount of water in Boise River from which they can draw their supply.

4. That said applicant has no right, title or interest in said water which can be transferred to the lands to which it is proposed to transfer it.

5. That by transferring said water the water remaining in said River, and from which these protestants must receive their supply, will be subject to a greater per cent of loss by seepage and evaporation.

PIONEER IRRIGATION DISTRICT,

By Thompson & Buckner
Its Attorneys.

FARMERS' CO-OPERATIVE DITCH COMPANY,

By Saunders & VanDusen
Its Attorney.

Nampa & Meridian Irrigation District
by Hugh E. McElroy

Thompson & Buckner, Attorneys at Law
CALDWELL, IDAHO

Exhibit "A"

NOTICE OF PROPOSED TRANSFER OF WATER RIGHTS

Notice is hereby given that the Boise Fruit Tracts Company, a corporation of Boise, Idaho, has applied to the State Engineer of the State of Idaho for certificate authorizing it transfer the use of 20 second feet, otherwise described as 1000 miners inches of the waters of the Boise river from the ditches in which the same has been heretofore diverted and carried and from the lands upon which it is now used, i. e. 270 miners inches diverted in the Pioneer Dixie Ditch under rights Nos. 8 and 45 and used upon the following lands in Tp. 4 N.R.4 W. B.M., Canyon County, Idaho, to wit: Lots 1, 2, and 3, Sec. 12; NW¼ of the NE¼ of Sec. 13; NE¼ of NW¼ Sec. 14; E½ of NE¼ Sec. 23 and E½ of SE¼ of SE¼ Sec. 14; and the following tracts in Twp. 4, N. R. 3 W.B.M. said county, to wit: Lots 3, 4, and 5 in Sec. 7; NW¼ of NE¼ Sec. 19, 600 miners inches being all of the waters adjudicated to W. A. Black as right Number 88 and used upon the the following lands in Twp. 4 N. of R. 4 W. of B. M., Canyon County, Idaho, viz: E½ of Sec. 8 and all of Sec. 9. 30 miners inches out of the water adjudicated to Eureka Ditch Company No. 2 under right No. 89 and used upon the following described lands, all in Twp. 5 N. of R. 4 W. of B. M. Canyon County, Idaho, to-wit: SW¼ of SE¼ of Sec 31, All of the within water rights were adjudicated in the Boise River Water decree entitled "Farmers' Co-operative Ditch Company, Ltd. vs. Riverside Irrigation District, et al," lately tried in the District Court of Canyon Co Idaho, and decree filed Jan. 16 1907.

All waters herein above refered to are diverted on the left hand side of the Boise River at the following points, viz:

Right No. 88 near the center of Sec. 20 Twp. 4 N.R. 3 W B. M. at the head gates of the Riverside Irrigation District Ltd.,

Rights Nos. 8 and 45 near the center of the NE1-4 of the SW1-4 of Sec. 20, Twp. 4 N. R. 3 W. B. M.

And water under right No. 88 is diverted at the head gates of the Eureka Ditch Company near the SW corner of Sec. 12 Twp. 4 N. R. 4 W. B. M. all in Canyon County, Idaho.

And diverted on the righthand side of the Boise River in sec. 32, Twp. 4 N.of R. 2 E. B. M. in and through the main canals of the Farmers Union Ditch Company, Limited, and thence carried through said ditch and diverted into ditches now in ecurse of construction for the purpose of receiving said water from said Farmers' Union Ditch at a point in the NE¼ of the SW¼ of Sec. 31, Twp. 5 N. of R. 2 W. of B. M. and to be used upon the following described tracts, to-wit:

The following lands in Twp 5 N. of R. 1 W. of B. M. Ada County, Idaho; SW¼ of SW¼ of Sec. 19; W½ of NW¼ of Sec. 30; SW¼ of SW¼ of Sec. 30; W½ of NW¼ Sec. 31; and the following described lands in Twp. 5 N. of R. 2 W. of B. M. in Canyon County, Idaho, to-wit:

75.3 acres in the S½ of SW¼ and the S½ of SE¼ of Sec. 22; 123.2 acres in the S½ of the SW¼ and S½ of SE¼ 59 acres in the SW¼ of Sec. 26, the following lands in Sec. 26, the N½ of the NW¼; the SW¼ of the NW¼ and 26.7 acres of the SE¼ of the NW¼; the NW¼ of the NE¼ and 22.7 acres in the N½ of the SW¼; the following lands in Sec. 27, S½ of the NE¼; SW¼ of the NW¼; S½ of the SE¼ of the NW¼; the SW¼; 37 acres in the NW¼ of the SE¼ 16.6 acres in the NE¼ of the SE¼; 38.1 acres in the SW¼ of the SE¼ and 7.8 acres in the SE¼ of the SE¼; 38.1 acres in the SW¼ of the SE¼ and 7.8 acres in the SE¼ of the SE¼; the folling lands in Sec. 28, the SE¼; the S½ of the SW1-4; the NW¼ of the SW¼ and the SW¼ of the NW¼; the filowing lands in Sec. 29, the SE¼ of the NE1-4 N½ of SE¼ and SE¼ of SE1-4, the following lands in Sec. 32, the S½ of NW1-4 of NE1-4; the W½ of the NW1-4 of the NW1-4 of NE1-4; the S½ of the SW1-4 of NE1-4; SE1-4; SE1-4 of SW1-4 and the S½ of the SW1-4 of the SW1-4; all of Sec. 33, the following lands in Sec. 34, N of 1-4; the SW1-4; the SE1-4; the S½ of the NE1-4; 37.3 acres in the NW 1-4 of the NE1-4 and 23 acres in the NE1 4 of the NE1-4; the following lands in section 35,

23.3 acres in the SE1-4 of the NE1-4; 6.2 acres in the NW¼ of the NW¼; 9.2 acres in the NW¼ of the SW¼; 8.1 acres in the NE¼ of the SW¼; 33 acres in the SW¼ of the SE¼; 36 acres in the SE¼ of the SW¼; the S½ of the SE¼; the NE¼ of the SE¼; 38 acres in the NW¼ of the SE¼, an irregular tract comprising 360 acres and being a part of each subdivision of forty acres in Sec. 36; also the following lands in Twp. 4 N. of R. 2 W. of B.M. in Canyon County, Idaho, to wit: Lots 1, 2, 3 and 4 in Sec. 2; Lot 1 and the N 16 acres of Lot 4 in Sec. 3; Lot 4 in Sec. 4; Lot 1 and the N 32 acres of Lot 3 in Sec. 5, contiguous lands containing in all 3881 acres, more or less.

And that at 10 o'clock a.m. on the 14th day of April A. D. 1914, at the Chamber of the House of Representatives State House, Boise, Idaho, before E. Marsters, water commissioner of the Third District or his authorized agent, the opportunity will be given to any and all persons to appear and present for his consideration any reason or reasons why a certificate should not be issued authorizing such transfer, full details of the proposed transfer may be obtained from E. Marsters Boise, Idaho, water master of said stream.

F.P. King
State Engineer.

NOTICE FOR PUBLICATION.

(Serial 04247)

Department of the Interior, United States Land Office at Boise, Idaho, January 27, 1914.

NOTICE is hereby given that Frank [illegible] January 21, 1907, made Homestead entry No. 9708, serial, No. 04247, for Lots 1 and 2, Section 35, Township 5 N., Range 3 W, Boise Meridian has filed notice of intention to make final five year Proof, to establish claim to the land above described, before the Register & Receiver of the U. S. Land Office, at Boise, Ida., on the 18th day of March 1914.

Claimant names as witnesses:
Arthur Robertson, of Caldwell, Ida.
Francis M. Burris, of Caldwell, Ida.
Mary A. Burris, of Caldwell, Ida.

WILLIAM R. [illegible]
Register.

Protestants, Exhibit B

STATE ENGINEER OF THE STATE OF IDAHO.

IN THE MATTER OF THE APPLICATION OF BOISE FRUIT TRACTS COMPANY, A CORPORATION, FOR TRANSFER OF WATER RIGHT.) Affidavit.

STATE OF IDAHO,)
) ss.
County of Canyon.)

L. E. GREENSLET, being first duly sworn, deposes and says: That he is a citizen of the United States and of the State of Idaho and is President of the Board of Directors of the Pioneer Irrigation District;

That he has read the notice of proposed transfer of water, given by F. P. King, State Engineer of the State of Idaho, on the application of the Boise Fruit Tracts Company, a corporation, as contained in the "Middleton Herald", in the issue of February 26, 1914, a copy of which paper with the notice contained therein is annexed to the protest marked Exhibit "A" on file in this office and by reference made a part thereof and hereof.

This affiant states that there is no permanent decree in force on Boise River, and that the decree referred to in said Exhibit "A", in the case entitled: "Farmers' Co-operative Ditch Company, Plaintiff, vs. Riverside Irrigation District, Limited, et al., Defendants," lately tried in the District Court of the Seventh Judicial District of the State of Idaho, in and for the County of Canyon, which decree was filed January 18, 1906, has been reversed as to the duty of water, by the Supreme Court of the State of Idaho, and that while the priority stands as in said decree mentioned, there is no specific amount of water decreed to any right under said decree; and affiant denies that W. A. Black, under Right No. 88, has been adjudicated six hundred (600) miner's inches of water, or any other amount, and denies that two hundred seventy (270) inches of water, or any other amount of water, has been adjudicated to the

Pioneer-Dixie Ditch, under rights Nos. 8 and 45, or right No. 8 or 45, to be used in Township four (4), North of Range four (4), West of Boise Meridian, in Canyon County, Idaho, on the lands described in said Exhibit "A", and denies that thirty (30) miner's inches, or any other amount of water, has been adjudicated to the Eureka Ditch Company, No. 2, under Right No. 89, to be used upon the lands in Township five (5), North of Range four (4), West of Boise Meridian, described in said Exhibit "A", and denies that said lands described in said Exhibit "A" have been decreed any amount of water whatever from Boise River, and states that the lands irrigated by the Eureka Ditch Company, to which water is diverted near the southwest corner of Section twelve (12), Township four (4), North of Range four (4), West of Boise Meridian, are irrigated by water returning to Boise River, which said Ditch Company can divert even though this transfer be made; that is to say, it is impossible to take said amount of water away from the headgate of the Eureka Ditch Company.

Affiant further states that there are now no decreed water rights in any amount to any of the lands described in applicant's application, nor have the owners of any of said lands any certificates of having appropriated any amount of water to their said lands, as required by Section 3264 of the Revised Codes of Idaho; that the owners of the lands to which said water is desired to be transferred and the applicant herein are not in a position to claim the benefits of Section 3264 of the Revised Codes aforesaid.

Affiant, on behalf of the Pioneer Irrigation District and the users of water under the canal system of said District, protests against the transfer of any water as asked for in said application, for the reason that such transfer would injure said Pioneer Irrigation District and the users of water under the canal system of said Pioneer Irrigation District.

Affiant further states that the Pioneer Irrigation District is a public corporation, duly organized and existing under and by virtue of the laws of the State of Idaho, and operates two canals,

namely, the Phyllis Canal and the Caldwell Canal; that the Phyllis Canal diverts water from Boise River on the south bank, opposite the lower part of Eagle Island, in Section twenty-four (24), Township four (4), North of Range one (1), West of Boise Meridian, for the use of lands lying under said canal; that the said Caldwell Canal diverts water from Boise River at a point on the ~~Frost~~ Schindler ranch in Section ~~eighteen~~ Nineteen (19), Township four (4), North of Range one (1), West of Boise Meridian; that under said canal system, including the said Phyllis Canal and the Caldwell Canal, the said Pioneer Irrigation District has 34,810 acres of land, which land is arid in character and requires water for irrigation, in order to make the same productive; that under said decree in the District Court of the Seventh Judicial District of the State of Idaho, in and for the County of Canyon, the Pioneer Irrigation District has rights Nos. 90, 117 and 135; that said points of diversion of the water appropriated by the Pioneer Irrigation District, used and to be used in the irrigation of said lands within said Pioneer Irrigation District, are between where the water is now diverted from Boise River to irrigate the lands mentioned in said application and in said notice marked Exhibit "A" and the point on Boise River where the water would be diverted to irrigate the lands asked to be irrigated by the proposed transfer; that the Pioneer Irrigation District and those who irrigate their lands from the canal system of said District will be injured by having said transfer made, in that such transfer will amount to giving practically a new water right to most of said lands not yet irrigated, which right would be prior to the water rights of the Pioneer Irrigation District;

That during a portion of every irrigation season, towit: the months of July, August and September, there is not sufficient water in Boise River to irrigate all the lands susceptible of irrigation from Boise River, which have prior to 1905 been irrigated and which have rights decreed to them under said decree of the said District Court of the Seventh Judicial District of the State of Idaho,

in and for the County of Canyon; that the right given to said lands from which the water rights are sought to be transferred is prior to the rights given to the Pioneer Irrigation District, and the lands to which said right is sought to be transferred have not been irrigated; that the lands within the Pioneer Irrigation District, to the amount of about fifteen thousand (15,000) acres, have been irrigated prior to 1905, as shown by said decree; that a large portion of the water used during the low water season in Boise River for several years last past, in the irrigation of the lands to which the rights mentioned in applicant's notice marked Exhibit "A" are now appurtenant, are returned waters to Boise River, or returned water on its way to Boise River, at points below where the Pioneer Irrigation District diverts its water from Boise River; that the water diverted by the canals of the Pioneer Irrigation District, after irrigating a portion of the lands within the Pioneer Irrigation District, finds, and has been for a number of years last past finding, its way to Indian Creek, which Indian Creek is a tributary of Boise River, and is crossed by the canal of the Riverside Irrigation District, Limited, which canal conveys the water under right No. 88, referred to in the notice of proposed transfer of water right in Exhibit "A"; that said canal of the Riverside Irrigation District, Limited, is now and has been for a number of years diverting water from said Indian Creek, to be used by the lands under said canal, including the lands owned by W. A. Black; that it is physically impossible to take all the water from the lands to which said water is now appurtenant, and transfer said water in accordance with applicant's notice, contained in Exhibit "A", attached to the protest herein, for the reason that a large amount of water which has been diverted hitherto to the lands from which said transfer is sought to be made is returned water, as above set forth, after it has been put to a beneficial use by the Pioneer Irrigation District and other users from Boise River - in other words, the transfer asked by applicant would not result in a transfer at all, but would secure for the lands from which said water is sought to be transferred an

additional amount of water to that now used in the irrigation of said lands from which the transfer is requested, while the greater portion of the water now pertaining to said lands now under irrigation would still remain available for such purpose, since the transfer would not decrease the amount of water in Boise River and in Indian Creek at the points where the same has been diverted to irrigate their lands for which applicant has asked the transfer, but would very materially decrease the amount of water in Boise River at the point where the waters of the Pioneer Irrigation District are diverted from Boise River, for the reason that in case said transfer were granted, applicant would be permitted to take water out of Boise River at a point above the diversion point of the waters used by the Pioneer Irrigation District in the irrigation of its lands;

That the lands to which the water is now appurtenant, mentioned in said notice of transfer, and from which applicant seeks to have the same transferred, are situated in the lower part of the Boise Valley, and the ditches conveying the water to said lands are among the lower ditches on the Boise River, but to irrigate the lands to which applicant proposes to transfer said water would require the water to be diverted among the upper ditches on Boise River;

That the condition of the Boise Valley, through which the Boise River flows, is such that a portion of the water used for the irrigation of the lands covered by the upper ditches again finds its way to Boise River, and a large amount of the water which finds its way to said river and is used again to irrigate the lands is diverted from said river to irrigate the lands from which said applicants seek this transfer;

That affiant has been informed that in the distribution of the water during the low-water season the Water Master of said river distributes a large portion of the water in the river to the

upper canals, and depends upon its return to the river for a large amount of the water to be used in irrigating the lands under the lower canals;

That the transfer proposed by applicants would merely take from the Pioneer Irrigation District and others the greater portion of the water permitted to be transferred, which would work an injury to the lands within the Pioneer Irrigation District, and for that reason this affiant, on behalf of said Pioneer Irrigation District and its landowners, protests against any transfer being made, as asked for by said application.

L E Greenslet

Subscribed and sworn to before me, this 24th day of April, A.D. 1914.

M. Thompson
Notary Public.

Protestants' Exhibit 6

State of Idaho, }
County of Canyon, } ss.

DANIEL L. BARKER, being first duly sworn, upon oath, deposes and says: That he is a director and general manager of the Nampa & Meridian Irrigation District; that said Irrigation District is the owner of what is known as the Ridenbaugh Canal System, diverting water from Boise River at a point about five miles above Boise City, Idaho; that what are known as the Penitentiary Canal and the New York Canal are the only canals in Boise Valley diverting water from said Boise River at a point higher up the said river than the said Ridenbaugh Canal; that said Ridenbaugh Canal diverts over twenty-thousand (20,000) inches of water which is used in irrigating approximately 25,000 acres of land on the bench from Boise City to Nampa, Idaho; that said Nampa & Meridian Irrigation District is a party to the suit of the Farmers Co-operative Ditch Company vs. Riverside Irrigation District, Ltd, et al, as referred to in the petition of Boise Fruit Tracts Company, a corporation, as shown by Notice thereof published in Middleton Herald, in the issue of March 5, 1914, now pending before the State Engineer of Idaho: That a final decree was entered in said action by the District Court of the Seventh Judicial District of the State of Idaho, for Canyon County, Idaho, on or about

January 18, 1906; that said Nampa & Meridian Irrigation District, with others, appealed from said decree, and that thereafter, said decree was set aside and vacated by the Supreme Court of the State of Idaho, and said cause remanded to the lower court with instructions to said court to re-determine the amount of water claimed by the different litigants in said case; that about 18,000 inches of the water claimed by the said Nampa & Meridian Irrigation District was adjudged in said suit to be of the priority of date of August 20, 1888, and is subject to the right claimed by Pioneer Dixie Ditch, Eureka Ditch Co, W. A. Beach, and the owners of the rights sought to be transferred; that the said action is still pending undetermined, and this affiant states on information and belief that neither or any of the water rights claimed by said petitioner have been decreed to the land as alleged in the petition, or that petitioners have a license for such water right.

Affiant says that the lands upon which said water rights claimed by petitioners have been heretofore used, are situated in the lower end of the Boise Valley below the City of Caldwell, and that practically all of the return flow of said Boise River, from the water used by the said Nampa & Meridian Irrigation District, returns to said Boise River at a point where the same can be,

and heretofore during the short water season on Boise River, has been utilized for the irrigation of the said lands of petitioners and their predecessors in interest; that there is a large amount of water returns to said Boise River from the irrigation of lands with water diverted from said river, which return flow of water can be and is utulized during the low water period of each year, in supplying said water rights claimed by petitioners; That the proposed point of diversion claimed by petitioners is above the whole of said return flow of water to Boise River; that if said return flow of water is not used to supply said water rights claimed by petitioners, said return flow of water is liable to be lost. That said proposed change of place of use is from the extreme lower end of Boise Valley to the upper end of said valley. That if such a change of place of use is permitted, that said return flow of water will continue and said owners of the lands upon which said water rights have been used will be able to largely appropriate said return flow of water, and that thereby said change of place of use will practically amount to a new appropriation of water; that the water supply of Boise River is not sufficient for all the lands lying thereunder and that the water rights of said Nampa & Meridian Irrigation District are usually cut and diminished during the month of August in each year on account of said insufficient supply, and that for such reason said change of

place of use of water will injure said Nampa & Meridian Irrigation District.

Daniel L. Barker

Subscribed and sworn to before me this 2nd day of May, 1914.

Hugh E McElhoy

Notary Public.

protest as to Exhibit D

STATE ENGINEER OF THE STATE OF IDAHO.

IN THE MATTER OF THE APPLICATION of BOISE FRUIT TRACTS COMPANY, a corporation, FOR THE TRANSFER OF WATER RIGHT. } AFFIDAVIT.

STATE of IDAHO, } ss.
COUNTY of CANYON, }

H. S. WILLIAMS, of Caldwell, Idaho, being first duly sworn, deposes and says: That he is a regularly licensed surveyor and irrigation engineer, and has been for eleven years last past, and has resided in the vicinity of Boise River for the past eleven years. That during the year 1910 he was water commissioner for the Third Division of the State of Idaho, and as such officer, had charge of the distribution of water from said Boise River.

That from his experience as said water commissioner, and from general observation of Boise River, affiant states that along the entire length of Boise River below the Highland Dam there is a considerable amount of return flow of water to said river, and that said amount of return flow is greater and very percept-

ible below the canyon near Caldwell, Idaho, and above the diversion points of the canals to which water is diverted from Boise River to irrigate the lands for which said applicants have requested the transfer in the above entitled matter. That affiant, as such water commissioner of Boise River, observed that the river could almost be drained dry by the ditches heading in the canyon near Caldwell, Idaho, and that the return flow from said point to the river was almost sufficient to supply water to the lands below said point; that said transfer can not be made without injury to the Farmers Co-operative Ditch Company, the Pioneer Irrigation District, and other companies taking water from Boise River between the point of diversion and the proposed point.

That Boise River has a broad, flat channel above the canyon near Caldwell, Idaho, which naturally causes the maximum amount of loss by seepage and evaporation; that while he found extensive seepage and evaporation going on above said canyon in Boise River, he found also a large amount of return flow below said canyon in Boise River; that the ditches of the protestants herein, such as the Pioneer Irrigation District and the Farmers' Co-operative Ditch Company, divert water from said Boise River at points where the return flow to said river below the canyon does not benefit them, the canals of the Pioneer Irrigation District diverting water above said canyon, and the Farmers Co-operative Ditch Company

diverting water at said canyon, and would be injured by said transfer. That during the low water season of said Boise River, the taking of 20 second feet of water from the flow does not lessen, to any perceptible extent, the area of the channel which the water covers, but it does make it necessary for the less amount to take care of a greater amount of seepage and evaporation. This last statement is based on the fact that the small body of flowing water does not put up the same amount of resistance to seepage and evaporation that a larger amount would; that the area covered by the flowing water, after the 20 second feet have been deducted, is but little decreased, and the wetted perimeter remains practically the same, and, as a result, the velocity is dimished, making the loss by seepage and evaporation greater.

That affiant has read the afidavit of L. E. Greenslet, and is familiar with the statements therein, and states that the same is true of his own knowledge, and that the said Pioneer Irrigation District and Farmers Co-operative Ditch Company will be injured by the granting of a certificate authorizing the transfer to the applicants. That he has also read the affidavit of W. J. Deveny

and is acquainted with the statements in said affidavit, and knows the same are true of his own knowledge, and

that the said Farmers Co-operative Ditch Company and the land owners thereunder will be injured by the granting of the certificate authorizing the transfer in accordance with the application.

F. L. Williamson

Subscribed and sworn to before me this 28th day of April, 1911.

R. B. Scandrett

Notary Public.

Protestants Exhibit D

STATE ENGINEER OF THE STATE OF IDAHO.

IN THE MATTER OF THE APPLICATION of BOISE FRUIT TRACTS COMPANY, a corporation, FOR THE TRANSFER OF WATER RIGHT. } AFFIDAVIT.

STATE of IDAHO, } ss.
COUNTY of CANYON, }

N. S. DILS, being first duly sworn, deposes and says: That he is a citizen of the United States and of the State of Idaho, and that he is a licensed engineer of the State of Idaho, and has been for several years last past; that he was at one time resident Hydrographer for the United States Geological Survey, and, as such, it was his duty to measure the waters in Boise River, and also to look after the return flow to said river, and that he has found that there is a great amount of return flow to Boise River, from the canyon near Caldwell, Idaho, down said stream; that when said river is almost dry as a result of a diversion dam being placed therein at the canyon near Caldwell, Idaho, to divert the waters of said river into the canals of the Riverside Irrigation District, Limited, and of the Farmers' Co-operative Ditch Company, within a short distance from said canyon water will be found running

in said river, and that said return flow below said canyon is increasing every year, on account of the increased irrigation farther up the river; that during the year 1906 affiant was the regularly appointed and acting Water Master under the Water Commissioner for the Third Division, State of Idaho, and as such Water Master had charge of the distribution ofthe waters of Boise River, and that the statements herein made are based upon his observations made during that time and at other times.

Affiant further states that the granting of the certificate authorizing the transfer as proposed in the application of said Boise Fruit Tracts Company, as shown by the notice published in "Middleton Herald", in the issue of March 5, 1914, would greatly injure the land owners in the Pioneer Irrigation District, and also the land owners taking water from the Farmers' Co-operative Ditch Company, Limited, and other water users farther up on Boise River.

N. S. Dils

Subscribed and sworn to before me this 29th day of April, 1914.

Kate Morrow

Notary Public.

Protestants Exhibit E

STATE ENGINEER OF THE STATE OF IDAHO.

IN THE MATTER OF THE APPLICATION of BOISE FRUIT TRACTS COMPANY, a corporation, FOR THE TRANSFER OF WATER RIGHT.

AFFIDAVIT.

STATE of IDAHO, } ss.
COUNTY of CANYON, }

W. J. Devers,

being first duly sworn, deposes and says: That he is President of Farmers Co-operative Ditch Company, and has resided at Caldwell, Idaho, for the past 12 years, and in the Boise Valley for the past 27 years.

That he has read the notice of proposed transfer of water given by F. P. King, State Engineer of the State of Idaho, on the application of the Boise Fruit Tracts Company, a corporation, as contained in the "Middleton Herald" in the issue of March 5, 1914,

This affiant states that there is no permanent decree in force in Boise River and that the decree referred to in said notice in the case entitled Farmers Co-operative Ditch Company, plaintiff, vs. Riverside Irrigation District, Limited, et al, defendants, lately

tried in the District Court of the Seventh Judicial District of the State of Idaho, in and for the County of Canyon, which decree was dated January 18, 1906, has been reversed as to the duty of water by the Supreme Court of the State of Idaho, and that while the priorities stand as in said decree mentioned, there is no specific amount of water decreed to any right under said decree; and affiant denies that W. A. Black, under Right No. 88, has been adjudicated six hundred (600) miner's inches of water, ~~#~~ or any other amount, and denies that two hundred seventy (270) inches of water, or any other amount of water, has been adjudicated to the Pioneer-Dixie Ditch under Rights Nos. 8 and 45, or Right No. 8 or 45, to be used in Township four (4) North of Range four (4) West of Boise Meridian, in Canyon County, Idaho, on the lands described in said Exhibit "A", and denies that thirty (30) miner's inches, or any other amount of water, has been adjudicated to the Eureka Ditch Company, No. 2, under Right No. 89, to be used upon the lands in Township five (5) North of Range four (4) West of Boise Meridian, described in said Exhibit "A", and denies that said lands described in said Exhibit "A" have been decreed any amount of water whatever from Boise River, and states that the lands irrigated by the Eureka Ditch Company, to which water is diverted near the Southwest corner of Section twelve (12), Township four (4) North of

Range four (4) West of Boise Meridian, are irrigated by water returning to Boise River, which said Ditch Company can divert even though this transfer be made; that is to say, it is impossible to take said amount of water away from the headgate of the Eureka Ditch Company.

Affiant further states that there are now no decreed water rights in any amount to any of the lands described in applicant's application, nor have the owners of any of said lands any certificates of having appropriated any amount of water to their said lands, as required by Section 3264 of the Revised Codes of Idaho; that the owners of the lands to which said water is desired to be transferred and the applicant herein are not in a position to claim the benefits of Section 3264 of the Revised Codes aforesaid.

Affiant, on behalf of the Farmers Co-operative Ditch Company and the users of water under the canal system of said company, protests against the transfer of any water as asked for in said application, for the reason that such transfer would injure said Farmers Co-operative Ditch Company and the users of water under the canal system of said Farmers Co-operative Ditch Company.

Affiant further states that Farmers' Co-operative Ditch Company is a corporation operating what is known as the Farmers Co-operative Ditch; that said ditch diverts water from Boise River on the north bank near the Caldwell bridge near Caldwell, in Canyon County, Idaho; that under said canal system the said company has about _____ acres of land, which land is arid in character and re-

quires water for irrigation in order to make the same productive; that under said decree in the District Court of the Seventh Judicial District of the State of Idaho, in and for the County of Canyon, the Farmers' Co-operative Ditch Company has Rights Nos. 60, 86, 105 and 126; that said points of diversion of the water appropriated by the Farmers' Cooperative Ditch Company, used and to be used for the irrigation of said lands lying under said Farmers' Co-operative Ditch Company are between where the water is now diverted from Boise River to irrigate the lands mentioned in said application of Boise Fruit Tracts Company and the point on Boise River where the water would be diverted to irrigate the lands asked to be irrigated by the proposed transfer; that the Farmers' Co-operative Ditch Company, and those who irrigate their land from the canal system of said company, will be injured by having said transfer made, in that such transfer will amount to giving practically a new water right to most of said lands not yet irrigated, which right would be prior to the water rights of the Farmers' Co-operative Ditch Company.

That during a portion of every irrigation season, to-wit: the months of July, August and September, there is not sufficient water in Boise River to irrigate all the lands susceptible of irrigation from Boise River, which have, prior to 1905, been irrigated and which have rights decreed to them under said decree of the said

District Court of the Seventh Judicial District of the State of Idaho, in and for the County of Canyon; that the right fiven to said lands from which water rights are sought to be transferred is prior to the rights given to the Farmers' Co-operative Ditch Company, and the lands to which said right is sought to be transferred have not been irrigated; that the lands within the Farmers Co-operative Ditch Company, to the amount of more than 8,000 acres, have been irrigated prior to 1905, as shown by said decree; that a large portion of the water used during the low water season in Boise River for several years last past, in the irrigation of the lands to which the rights mentioned in applicant's notice marked Exhibit "A" are now appurtenant, are returned waters to Boise River, or returned water on its way to Boise River at points below where the Farmers Co-operative Ditch Company diverts its water from Boise River; that the water diverted by the canals of the Pioneer Irrigation District, after irrigating a portion of the lands within the Pioneer Irrigation District, finds, and has been for a number of years last past finding, its way to Indian Creek, which Indian Creek is a tributary of Boise River and is crossed by the canal of the Riverside Irrigation District, Limited, which canal conveys the water under Right No. 66, referred to in the notice of proposed transfer of water right in Exhibit "A"; that said canal of the Riverside Irrigation District, Limited, is now and has been, for a number of years, diverting water from said

said Indian Creek, to be used by the lands under said canal, including the lands owned by W. A. Black; that it is physically impossible to take all the waterfrom the lands to which said water is now appurtenant, and transfer said water in accordance with applicant's notice, contained in Exhibit "A", attached to the protest herein, for the reason that a large amount of water which has been diverted hitherto to the lands from which said transfer is sought to be made is returned water, as above set forth, after it has been put to a beneficial use by the Pioneer Irrigation District and other users from Boise River-- in other words, the transfer asked by applicant would not result in a transfer at all, but would secure for the lands from which said water is sought to be transferred an additional amount of water to that now used in the irrigation of said lands from which the transfer is requested, while the greater portion of the water not pertaining to said lands now under irrigation would still remain available for such purpose, since the transfer would not decrease the amount of water in Boise River and in Indian Creek at the points where the same has been diverted to irrigate their lands for which applicant has asked the transfer, but would very materially decrease the amount of water in Boise River at the point where the waters of the Pioneer Irrigation District are diverted from Boise River, for the reason that in case said transfer were granted, applicant would

be permitted to take water out of Boise River at a point above the diversion point of the waters used by the Farmers Co-operative Ditch Company in the irrigation of its lands;

That the lands to which the water is now appurtenant, mentioned in said notice of transfer, and from which applicant seeks to have the same transferred, are situated in the lower part of the Boise Valley, and the ditches conveying the water to said lands are among the lower ditches on the Boise River, but to irrigate the lands to which applicant proposes to transfer said water would require the water to be diverted among the upper ditches on Boise River;

That the condition of the Boise Valley, through which the Boise River flows, is such that a portion of the water used for the irrigation of the lands covered by the upper ditches again finds its way to Boise River, and a large amount of the water which finds its way to said river and is used again to irrigate the lands is diverted from said river to irrigate the lands from which said applicants seek this transfer;

That affiant has been informed that in the distribution of the water during the low water season the Water Master of said river distributes a large portion of the water in the river to the upper canals, and depends upon its return to the river for a large amount

of the water to be used in irrigating the lands under the lower canals.

That the transfer proposed by applicants would merely take from the Farmers Co-operative Ditch Company and others the greater portion of the water permitted to be transferred, which would work an injury to the lands within the Farmers Co-operative Ditch Company, and for that reason this affiant, on behalf of said Farmers Co-operative Ditch Company and its land owners, protests against any transfer being made, as asked for by said application.

W J Dwens

Subscribed and sworn to before me this 28th day of April, 1914.

R. B. Scarborough

Notary Public.

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF CANYON.

[illegible]' Cooperative Ditch Company, (a corporation)

Plaintiff,

vs. D E C R E E.

Riverside Irrigating District, Limited, (a corporation)
et al,

Defendants.

FILED
U.S.
Reclamation

MICROFILMED

I.

That the defendant THOMAS DAVIS be and is hereby awarded the use of the waters of Boise River, diverted from a point on the north bank of said river about one mile east of the east line of the original townsite of Boise City, Idaho, through what is commonly known as the Jacobs Canal, for use upon lands lying in Secs. 10 and 11, T. 3 N. R. 2 E. B.M., in the following amount from the following date;

63 0120 110 inches, from June 1, 1864; and hereby designated as Right No. 1

That the defendant Thomas Davis be and is hereby awarded the use of said waters diverted from a point on the south side of said river in NW ¼ of NW ¼ of Sec. 9, T. 3 N. R. 2 E. B.M., through what is known as the Davis Canal, for use upon lands in Secs. 5, 6, 31 and 32, T. 3 N. R. 2 E. B.M., in the following amount from the following date;

63 0121 670 inches, from June 1, 1883, and hereby designated as Right No. 94.

That the defendant Thomas Davis be and is hereby awarded the use of said waters diverted from said river at a point in NW ¼ of Sec. 9, T. 3 N. R. 2 E B.M., through what is known as the Davis private ditch, for use upon SE ¼ of Sec. 5 and SE ¼ of Secs 8 and 9, all in T. 3 N. R. 3 E. B.M., in the following amount from the following date;

63 0122 27 inches, from June 1, 1891; And hereby designated as Right No. 119

And adjudged to pay $56.49 costs, in addition to the costs incurred by him.

II.

JACOBS CANAL COMPANY, Limited, a corporation.

That the defendant the JacobsCanal Company, Limited, be and it is hereby awarded the use of the waters of Boise River, diverted from a point on the north side of said river about one mile east of the east boundary line of the original townsite of Boise City, Idaho, through what is commonly known as the Jacobs Canal, for use upon the townsites and lands lying under said canal in Secs. 4, 9, 10, 11, 13, 14, T. 3 N. R. 2 E. B.M., in the following amount from the following date;

63 0123 1000 inches, from June 1, 1864; and hereby designated as Right No. 2

And adjudged to pay $70.00 costs, in addition to the costs incurred by [illegible]

MICROFILMED

FORM 713

THE FEDERAL LAND BANK OF SPOKANE

UNIT OF
THE FARM CREDIT ADMINISTRATION

TWELFTH DISTRICT
IDAHO, MONTANA, OREGON, AND WASHINGTON

SPOKANE, WASHINGTON

LEGAL DEPARTMENT

610 MAIN AVENUE
PHONE: RIV. 7141

January 7, 1935

Mr. Mans H. Coffin,
Director of Water Resources,
State Department of Reclamation,
Boise, Idaho.

Dear Sir:-

Re:- #17199 - B. Frank Neal - Ada Co.

I hand you herewith our draft No.30990 in the sum of $1.00 in payment of your charges for issuing certificate in connection with transferred right No. 542.

Yours very truly,

Albert Olsen
Attorney

AO:p
Enc.

RECEIVED
JAN 1 1935
DEPARTMENT OF RECLAMATION

December 31, 1934

Re: Transfer No. 542

Mr. WM. E. WELSH
Watermaster
Boise, Idaho

Dear Sir:

We are enclosing a copy of an Order Granting Transfer and a Certificate of Transfer of Water Right, as requested by the Federal Land Bank. No protestants having appeared at the date set for the hearing, this Transfer has been allowed.

Yours very truly,

Hans H. Coffin
Director of Water Resources

HHC:ci
Encl.

December 31, 1934

Re: Water Transfer no. 542

MR. ALBERT OLSEN
Legal Department
Federal Land Bank
Spokane, Washington

Dear Sir:

Enclosed please find Order Granting Transfer and Certificate of Transfer, No. 542, issued to the Federal Land Bank. Hearing was set on the 26th day of December, 1934. No protestants having appeared, and publication having been duly made, the Transfer has been allowed.

A charge of one dollar ($1.00) is made for the issuance of this Certificate which we trust you will remit to the Department of Reclamation at once.

Yours very truly,

Mans H. Coffin
Director of Water Resources

MHC:ci
Encl.

RECEIVED
DEC 26 1934
DEPARTMENT OF RECLAMATION

CONSENT TO TRANSFER OF WATER RIGHT.

The undersigned, Farmers' Union Ditch Company, acting herein by its duly qualified and authorized officers and agents, hereby consents to that certain transfer of water right applied for by the Federal Land Bank of Spokane, by application duly made to the Commissioner of Reclamation of the State of Idaho, involving a transfer of thirty-four and three-eights inches (0.6875 cu. ft. per second) of water from that certain land in the Capital View Irrigation District referred to in said application as the Neal land, to that other certain land referred to in said application as the Fleming land, which water if transferred will be diverted to said Fleming land from the Farmers' Union Ditch maintained by the undersigned company at the same point at which certain other water is diverted from said ditch to the said Fleming land, subject to maintenance charges of the undersigned.

FARMERS' UNION DITCH COMPANY

BY _____
President.

BY James M. Potter
Secretary.

Form No. 11-A

STATE OF IDAHO

DEPARTMENT OF RECLAMATION

BOISE, IDAHO

December 14, 1934

Date.....

THE CAPITAL NEWS PUBLISHING COMPANY
Boise, Idaho

DEAR SIR:

Enclosed you will find notice for publication once a week for ~~four~~ two consecutive weeks prior to December 26, 1934, the date set for proof, the expense of the publication to be paid by the applicant, The Federal Land Bank, through J. R. Smead, First National Bank Building, Boise, Idaho to whom you should furnish proof of publication on or prior to the date set for proof.

Please acknowledge receipt of this notice and furnish this office with a copy of the first publication.

Very truly yours,

R. W. FARIS

Commissioner of Reclamation

By _____
Director of Water Resources

FORM 21

Notice of Proposed Transfer of Water Right

Notice is hereby given that THE FEDERAL LAND BANK of SPOKANE, Washington, has applied to the Commissioner of Reclamation of the State of Idaho for a certificate authorizing him to transfer the use of 0.6875 cubic feet per second of the water of BOISE RIVER

from the land upon which it is now used, i. e. S½ NW¼, N½ SW¼ Section 33, Township 5 North, Range 1 East.

to the following described tract E½ SW¼, N½ SE¼, SW¼ SE¼, of Section 4, Township 4 North, Range 1 East.

And that, on the 26 day of December, A. D. 19~~3~~34, at Boise, Idaho before the Commissioner of Reclamation, or his authorized agent, the opportunity will be given to any and all persons to appear and present for his consideration any reason or reasons why a certificate should not be issued authorizing such transfer.

R. W. FARIS
Commissioner of Reclamation.

PROOF OF PUBLICATION

STATE OF IDAHO, } ss.
County of Ada, }

LEGAL NOTICE

NOTICE OF PROPOSED TRANSFER OF WATER RIGHT

Notice is hereby given that The Federal Land Bank of Spokane, Washington, has applied to the Commissioner of Reclamation of the State of Idaho for a certificate authorizing him to transfer the use of 0.6875 cubic feet per second of the water of Boise River from the land upon which it is now used, i. e. S½ NW¼, N½ SW¼ Section 33, Township 5 North, to the following described tract E½ SW¼, N½ SE¼, SW¼ SE¼, of Section 4, Township 4 North, Range 1 East.

And that, on the 26 day of December, A. D. 1934, at Boise, Idaho before the Commissioner of Reclamation, or his authorized agent, the opportunity will be given to any and all persons to appear and present for his consideration any reason or reasons why a certificate should not be issued authorizing such transfer.

R. W. FARIS,
Commissioner of Reclamation.
—Adv. MO—D. 24—637.

I, Irene Sailer

being first duly sworn, depose and say that I am twenty-one years of age, and the Principle Clerk of the BOISE CAPITAL NEWS, a newspaper of general circulation, published weekly at BOISE, County of Ada, and State of Idaho, and the annexed Notice was published in said paper once each and every week for Two consecutive weeks, the first publication being on the 17th day of December, 1934, and the last publication being on the 24th day of December, 1934; and that the said BOISE CAPITAL NEWS has been published continuously and uninterruptedly in said county during a period of seventy-eight consecutive weeks prior to the first publication of the attached notice.

Irene Sailer

Subscribed and sworn to before me this 24th day of January, 1935.

Edward T. Nay
Notary Public

Form No. 3—General voucher for travel expense, money advanced, supplies furnished and services rendered other than covered by pay-roll.

BOISE, IDAHO, December 17 1934

State of Idaho, Dr.

To Capital News Publishing Co., Boise, Idaho

DEPARTMENT Commissioner of Reclamation

NOTE:—Before filling out claim see instructions on back. This form may be made where inconvenient to carry employee on regular pay-roll blank. This form to be used by all persons, firms, corporations or employees other than State Officers.

Dec.	17	Legal Notice 26 lines	
	24	" " " " 26 "	
		52 lines	3.90

I hereby certify that each item of the above account is correct and just; that the supplies were actually furnished for the State of Idaho as itemized, and we have not received payment therefor.

CAPITAL NEWS PUBLISHING CO. *Claimant.*

By Grace Fuller

I hereby certify that the above account is correct and just; that each item for travel, services, supplies or money expended was undertaken, performed, rendered, furnished or advanced under competent orders and that the same was necessary in the public service; that such services and travel were actually rendered as charged; that the supplies charged for have been actually received in number and amount as charged; that the rate of pay of claimant as above set forth has been lawfully fixed by proper authority; that the purpose for which said travel was undertaken was.....

(Purposes must be fully stated)

.....

Head of Department or Institution.

I hereby certify that the above account is in proper form, that the totals carried thereon are correct, that receipted vouchers showing the payment of all items for which re-imbursement is assigned are submitted therewith, and that there are funds in the State Treasury or balance in the appropriations out of which the same may lawfully be paid.

.....

State Auditor.

By.....

Deputy.

State of Idaho

VOUCHER

No.....

CLAIM OF

Capital News Publishing Co.

BOISE, IDAHO

For.....

.....

Department or Institution.

.....

Fund or Appropriation.

Amount $.....

Filed.....

Referred.....

Paid by Warrant No.....

APPROVED IN THE ABOVE AMOUNT

.....

Governor.

.....

Attorney General.

.....

Secretary of State.

Classification Symbol	CLASSIFICATION

INSTRUCTIONS WHICH MUST BE OBSERVED

1. All claims against the State of Idaho must be filed with the State Auditor on or before the 12th day of each month or they will not be considered until the third Tuesday of the succeeding month.

2. Every claim must be fully itemized, showing the date, place, amount, to whom paid or advanced, and if for travel the points between which the travel was performed, number or amount of each article furnished and its unit cost. Travel expenses include room, meals, railroad, stage and street car fare, bus fare and other conveyance when necessary.

3. Receipt for each item of expenditure or money advanced must accompany claim showing date, place and amount of payment, by whom paid, the purpose thereof, and must be signed by the payee. No item will be allowed unless the receipt therefor is furnished.

4. No claim or pay-roll will be placed on file by the State Auditor which is not correct in form and on which all certificates and affidavits required are not properly filled out and signed.

5. Where an officer or employee works only a portion of a month the number of days actually worked and daily or monthly compensation must be shown on claim or pay-roll.

6. The certificates of officers and heads of departments and institutions on all vouchers and pay-rolls must be signed by such officers personally.

7. Each person named in pay-roll must sign same on proper line. Where officers or employees of any department or institution are located in different portions of the State, making it inconvenient to secure their signatures to a regular pay-roll, salary claim for each may be filed on Voucher Form No. 3, showing number of days actually employed and the daily or monthly rate of compensation.

N. B.—The making of a false statement on any voucher on which money is to be paid by the State, is a felony under Section 8123 of the Compiled Statutes of Idaho.

RECEIVED
DEC 28 1934
DEPARTMENT OF RECLAMATION

STIPULATION

In connection with the application for transfer of water right by the Federal Land Bank of Spokane, Washington, in which it is sought to abandon the use of 0.6875 cubic feet per second of water on certain land in the Capital View Irrigation District in Ada County, Idaho, and transfer the same for use upon the

> E½ SW¼, W½ SW¼ of SE¼, N½ SE¼ and the E½ SW¼ of SE¼ of Section Four (4) Township Four (4) North Range One (1) East, also in Ada County, Idaho.

IT IS HEREBY STIPULATED AND AGREED That the transfer of said water and water right shall not affect any claim or claims of lien on said water so transferred by any holder or holders of the bonds of the said Capital View Irrigation District, but that said lien, if the same exists, may be claimed by any such holder or holders of said bonds to the same effect as though said water and water right had not been so transferred.

Dec. 27, 1934

Attorney for Federal Land Bank of Spokane, Washington

Attorney for W. E. Buell, Representing a Majority of the Bondholders.

State of Idaho

DEPARTMENT OF RECLAMATION — No. 15300

Boise, Idaho, 1-11, 193...

RECEIVED FROM Federal Land Bank Spokane $1.00

One and 00/100 DOLLARS

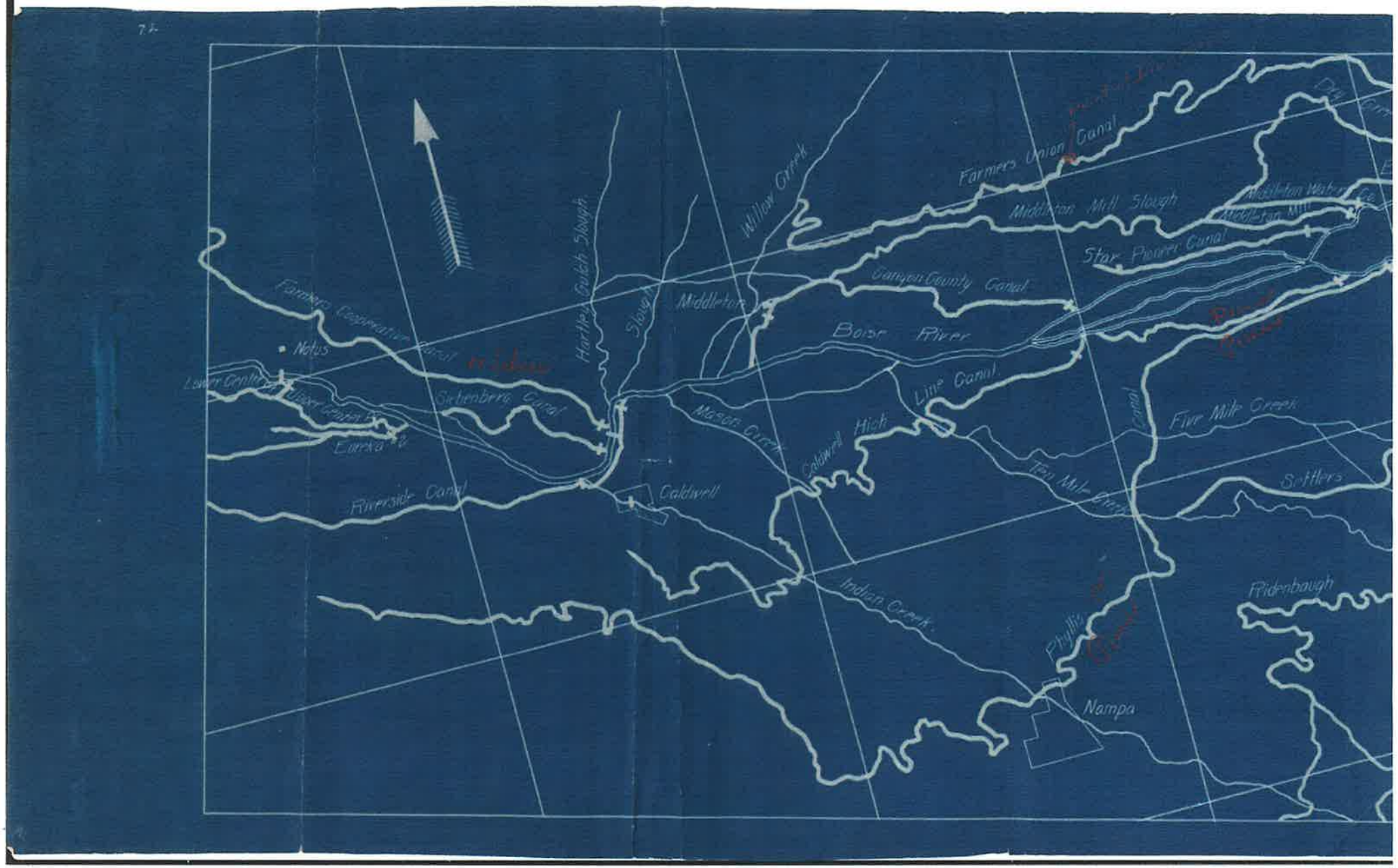
FOR

Carey Act Trust Fund	$	
Application for Permit No.	$	
Proofs	$	
Certified Copy	$	
Recording Deed	$	
Certificate of Transfer	$	1 00
Total	$	1 00

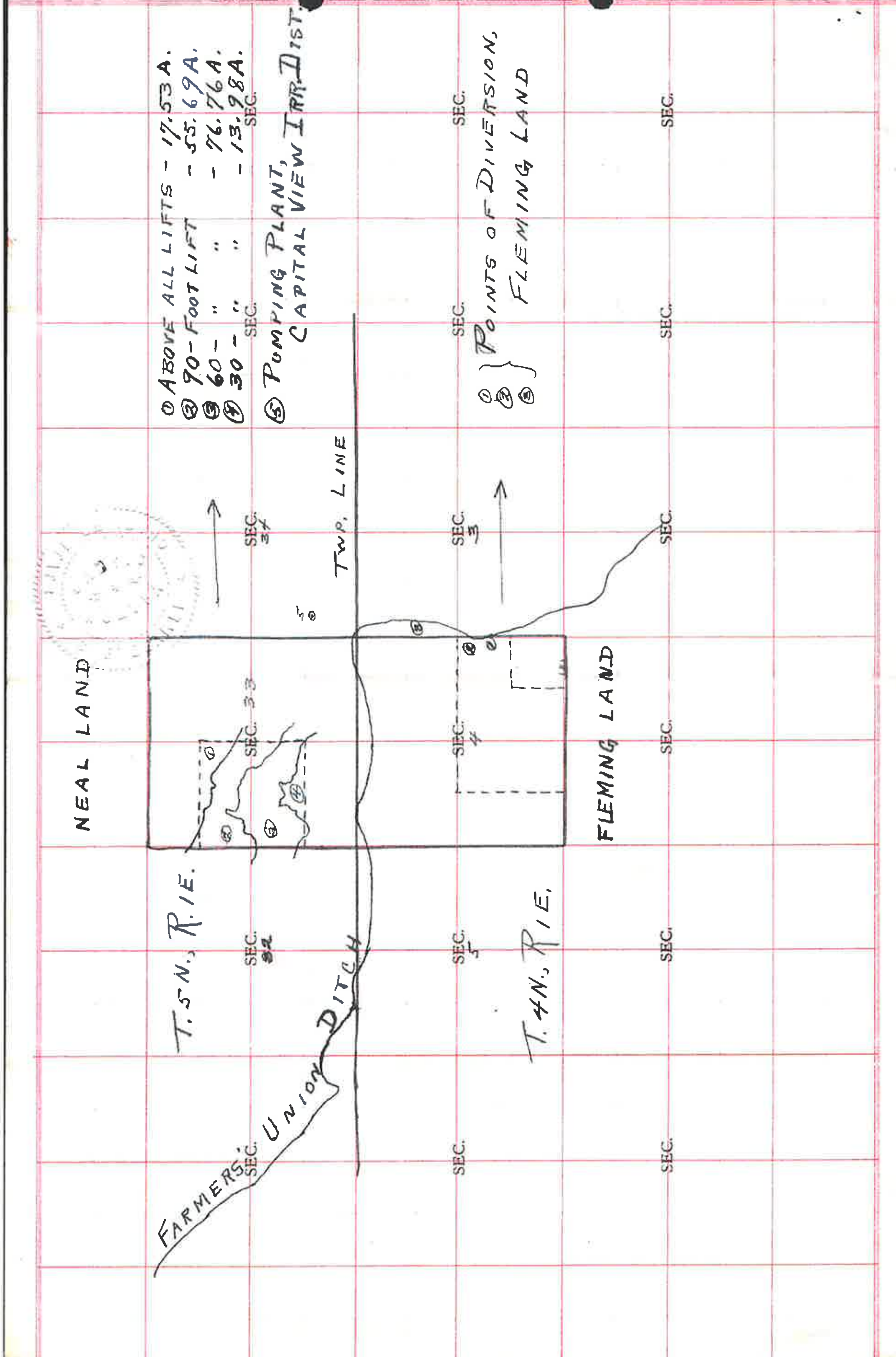
R. W. Trueblood
Commissioner of Reclamation

By Paul L. Henry


Dry Creek Canal
Eagle
Ballantyne Canal
Middleton Mill Slough
Middleton Water
Middleton Mill
Eagle Island
Star Pioneer Canal
Boise River
Boise
Boise River
Five Mile Creek
Canal
Settlers
Ten Mile Creek
Feidenbaugh
Canal
Nampa
Sketch Map
Showing location of Canals in the Boise Valley
Measured during the Irrigation Season of 1911
By U.S.R.S.
Dec. 27, 1911.


Farmers Union Canal
Middleton Mill Slough
Middleton Water Co.
Willow Creek
Hartley Gulch Slough
Star Power Canal
Canyon County Canal
Middleton
Boise River
Farmers Cooperative Canal
Notus
Lower Canyon Co.
Upper Canyon Co.
Eureka
Sixtenberg Canal
Mason Creek
Caldwell High Line Canal
Five Mile Creek
Ten Mile Drain
Settlers
Riverside Canal
Caldwell
Indian Creek
Nampa
Phyllis Canal
Ridenbaugh

Name of Applicant..



Scale: 2 Inches—1 Mile. Draw Map in Ink.

T R A N S C R I P T O F P R O C E E D I N G S

HELD BEFORE ELIAS MARSTERS, WATER COMMISSIONER OF THE THIRD DIVISION, AT BOISE, MAY 5, 1914, IN THE MATTER OF THE APPLICATION OF THE BOISE FRUIT TRACTS COMPANY FOR CERTIFICATE OF TRANSFER OF CERTAIN WATER RIGHTS AS PUBLISHED AND SET DOWN FOR HEARING APRIL 14, 1914, SAID HEARING HAVING BEEN POSTPONED BY AGREEMENT OF ALL PARTIES TO MAY 5, 1914.

WATER COMMISSIONER--You may proceed gentlemen.

B. F. NEAL-- Would suggest that in my mind that the transfers below Caldwell should all be considered together, because the evidence supporting them has been largely prepared in lump, and it seems to me that it would be better if we would consider them all together.

MARTIN-- Have you gentlemen any objection to the application being considered in that way.

THOMPSON-- I would rather take them up separately.

It was agreed that the evidence would go in as affecting all the applications but the separate pieces would be considered separately.

WING-- I was going to ask if your statement includes also that request of transfer set down for hearing on the 11th?

NEAL-- No Sir.

THOMPSON-- We would want to take the rights up separately.

NEAL-- You mean when you come to argue the question of that transfer?

THOMPSON-- Yes Sir.

NEAL-- I don't know any particular proceedure for a hearing of this kind. Will you indicate how you want us to proceed with the

matter, to what order?

WATER COMMISSIONER-- I suppose you lawyers ought to know how you want to proceed when you have a case. What we want, we want to get those records so they will be in a shape so that the Attorney General can advise us on them, so we will know how to decide this case. You might state your case, and then we will hear the other side.

NEAL-- I take it you don't care to have the application itself read in detail do you?

COMMISSIONER-- I think not.

NEAL-- Will say in short form that application is to transfer 270 miners inches of the waters of the Pioneer Dixie to the land which is described in the application, 600 miners inches of the Riverside District from land which is described in the application to lands described in the application, being the water which is proposed to transfer, being what is commonly known as the Black right. 30 miners inches of Eureka No. 2, being, I don't know the number, the right is described some place, being No. 89. I will say Mr. Thompson that the Dixie right applied to be transferred, does the printed notice say 270 or 370?

THOMPSON-- 270.

NEAL-- It is intended to be 370 instead of 270. I find that the mistake was made in the printed notice, and it should be 370, and from the lands which are described in the printed notice, and would ask as against these protestants here to change the number of inches described as 370 instead of 270, being from the lands which are described in the application.

SCATTERDAY-- If that is a judicial defect we would take advantage of it Mr. Neal.

NEAL-- It can be considered later and we can go on with the proof.

NEAL-- The application further describes the lands in detail from which we seek to transfer the water and also described the lands in detail which we propose to water, and I will read just the latter portion of the-- Let me have the one from your files, the Petition. (WING-- We haven't it here) Very well, I will not read that portion that I expected to. I thought I had the Petition here. We offer in support of our application, if you gentlemen care to have us make it a part of this record, abstracts of title for the various tracts of land. Do you care to go over them? They are here if you care go over them. I refer now to all the lands below Caldwell.

SCATTERDAY-- Abstracts--

NEAL-- Abstracts showing that the persons who make this application to transfer are the owners of the lands from which it is sought to transfer the water. The lands from which we seek to transfer the water, that the persons who say they are the owners are shown by the owners to be the record owners of the lands, except there is one exception, where it

is supported by an affidavit showing that the Deed is not of record but that he is the owner.

We offer in support of our application the affidavit of William A. Black, Bert Black, S. E. Sayre, S. W. Vail, Alma Cashman, C. A. Zeigler, J. L. Powell, William Dickson, and D. G. Ruby. The affidavits referred to being also for the description of the land etc.

We offer the affidavit of S. W. Vail, J. E. Moreland, J. L. Powell, William Dickson, L. E. York, Clinton Kelley, L. E. York, C. L. Tatum, J. C. Nichols, W. H. Nichols, G. W. Snodgrass, C. A. Vail, all of which affidavits are in substantially identical form and to the same effect. I will read just one of them that your Honor may understand the purport of all. (Reads one of affidavits referred to.) We offer in evidence the map also showing the lands which we are taking the water from, the portion colored green, being the lands from which water is being taken.

MARTIN-- I suggest you mark it as an exhibit.

Map referred to marked Plaintiff's Exhibit 1.

Affidavits were admitted in evidence as part of the record.

NEAL-- I will ask you to identify the following abstracts which we offer in evidence. The following abstracts are prepared by the Canyon Abstract and Trust Company of Caldwell: No. 12446, covering the C. F. Zeigler lands, No. 12394 covering the Cashman lands from which we are seeking the transfer of water, No. 12425, covering the Sayre lands from which wer are seeking the transfer of water, No. 12393, covering the Dickson lands from which we are seeking the the transfer of water, No. 13226, covering the William A. and Bert Black lands, from which we are seeking the transfer of water. No. 12468 covering the S. W. Vail lands, from

which we are seeking the transfer of water, and also the J. L. Powell lands from which we are seeking the transfer of water. Abstract No. 12396 covering the Ruby lands from which we are seeking the transfer of water, and I believe that is all. The abstracts which have been offered in evidence covering the lands from which the applicant seeks to transfer water, being the same lands covered by the contracts or by the affidavits of the various land owners which have been read and are in evidence.

We also offer the Proofs of Publication which are in the hands of the Engineer.

THOMPSON-- What do you intend to prove by Black's affidavit?

NEAL-- This proves that he was the owner of that water and that he has transferred it to us and that abstract that he is the owner of the land on which the water was used.

THOMPSON-- We object to the introduction of these affidavits for the purpose of showing that he is the owner of the water for the reason that it is not the best evidence.

NEAL-- We offer the Proof of Publication in the Middleton Herald and ask to have it marked Plaintiff's Exhibit 3.

THOMPSON-- The objection I wanted to apply to the affidavits of William Black, Bert Black, S. R. Sayre, S. W. Vail, being Plaintiff's Exhibits 2A, 2B and 2C, for the reason that the identification is not the best evidence.

NEAL-- We offer the duly verified application as a part of the case in chief.

THOMPSON-- We want to object to that. We want to object to the application of the Boise Fruit Tracts Company for the reason that the Fruit Tracts Company is not shown to be the owner of land or lands from which the water is sought to be transferred, or the owner of the land to

which it is to be transferred.

NEAL-- We will not offer the other proof of Publication at this time. We offer the files of the office. By the files of the office we mean the original application that was filed in the Engineer's office, and also the original notice filed setting the day.

THOMPSON-- Yes, we will admit that.

NEAL-- Also we haven't here the map which was filed, map of the district in which we propose to use the water, also another map prepared by the Reclamation Service showing the course of the various ditches. We have indicated on that the point where we take water from the Farmers Union Canal.

THOMPSON-- We will admit that subject to these objections: That the parties owning the lands from which the parties seek to transfer the water are not shown to be the parties owning the lands to which the water is sought to be transferred, and further that there is no Decree, that no Decree has been introduced showing that the parties seeking to make the transfer have been decreed the water which they seek to transfer, and on the further ground that the Commissioner has no jurisdiction.

MARTIN-- What reason?

SCATTERDAY-- On the ground that it is neither a right acquired by License nor a decreed right in accordance with the provisions of 3264 of the Code.

NEAL-- It is agreed then Mr. Thompson that all the papers offered will be admitted subject to those objections. All that have been offered may be admitted subject to those objections?

SCATTERDAY-- To avoid misunderstanding, I understood that

we were asked for this Stipulation to avoid causing inconvenience to you or the officers by sending for papers that we didn't have here. I wish to say that we object to all the proceedings and all the papers that have been offeredon the grounds that we set up in our Protest. I don't want it understood that we are waiving any of our rights that we set up in our Protest.

NEAL-- It is agreed on behalf of the protestants that the original application of transfer filed in the office of the State Engineer, being Plaintiff's Exhibit _____, the original Notice on file in the Engineer's office, being Plaintiff's Exhibit _____, the map of the lands to which it is proposed to transfer water, being Plaintiff's Exhibit _____, and the map showing the point of diversion of the Farmers Union Canal referred ot in the application, and the point of diversion from the Farmers Union Canal to the lands proposed to be watered, being Plaintiff's Exhibit _____, may be considered as in evidence, subject to the objections heretofore made by Mr. Thompson and Mr. Scatterday.

NEAL-- That is our case in chief.

MARTIN-- As far as these lands are concerned.

NEAL-- As far as these lands are concerned. Mr. Masters have you made any ruling with reference to the admission of those papers in evidence? I suppose there should be a ruling made, for instance those abstracts, and other various papers which they have objected to and which are not covered by the Stipulation, as we want to know whether they are in or not.

THOMPSON-- Couldn't we arrange it so that he could reserve his ruling?

COMMISSIONER-- That is what I will do. I will reserve my ruling.

MARTIN-- All of these papers offered can be considered in evidence for the purposes of this hearing and then he can reserve his ruling regarding them until the final determination. That would necessarily be true because the protestant would also offer papers to which perhaps the applicant would make objections, and the Commissioner doubtless would not desire to make any ruling on the objections at this time.

THOMPSON-- On behalf of the Pioneer Irrigation District, the Farmers Co-operative Ditch Company and the Nampa-Meridian Irrigation District we offer a Protest and ask to have it marked Protestant's Exhibit A In support of said--

GRIFFITH-- Just a minute Mr. Thompson. We object to the admission or consideration of the Protest offered on the grounds that it does not show sufficient or any reason or any fact upon which any reason can be based for refusing to transfer or change the place of diversion as applied for, or to deny the application of the applicant.

THOMPSON-- Protestants ask to introduce the affidavit of L. E. Greenslet and ask to have it marked Protestant's exhibit B. Protestants further ask to introduce in evidence the affidavit of Daniel L. Barker, on behalf of the Nampa-Meridian Irrigation District, and ask to have it marked Protestant's Exhibit C. Protestants ask to introduce affidavit of H. S. Williams, a regularly licensed Surveyor and Irrigation Engineer, on behalf of protestants, and ask to have it marked Protestant's

Exhibit D. Protestants ask to introduce in evidence affidavit of M. J. Devers, President of the Farmers Co-operative Ditch Company, on behalf of protestants, I ask to have it marked Protestant's Exhibit E. Protestants ask to introduce the affidavit of C. C. Stevenson, Civil Engineer and Irrigation Engineer of this State, on behalf of protestants and ask to have it marked Protestant's Exhibit F.

MARTIN-- Is that all Mr. Thompson. Have you offered all the affidavits you want to?

SCATTERDAY-- Just a minute and I will look Mr. Martin, I think there is another affidavit.

MARTIN-- That is the reason I was objecting. I thought there was another.

THOMPSON-- Protestants ask to introduce in evidence affidavit of S. N. Dills, and ask to have it marked Protestant's Exhibit G, on behalf of Protestants.

GRIFFITH-- We object to the acceptance of the affidavits offered, numbered from B to G inclusive, on the ground that the statements made in said affidavits are general, are statements of conclusions and comparative statements and not positive statements of facts, or statements of conditions or circumstances from which facts can be ascertained, and we object to each of said affidavits upon the grounds stated, and that they are incompetent, irrelevant and immaterial, and that they do not tend to prove any of the grounds stated in the Protest, or any of the issues in this matter.

THOMPSON-- On behalf of the Farmers Co-operative Ditch Company and the Nampa-Meridian Irrigation District and the Pioneer Irrigation District, we ask that the State Engineer of the State of Idaho make investigations

as to whether or not any one is injured by this transfer for the reason that affidavits are very unsatisfactory evidence, and the said protestants have protested on the grounds that they are injured and that the best way to decide the matter is for the State Engineer to make the investigation for himself. By this we mean from actual measurements and demonstrations on the River. We want to include the Water Commissioner in that also.

GRIFFITH-- We object to the request for the reason that it calls for an unnecessary delay in the action in this matter and it is not a request that is provided for by law.--

MARTIN-- Or financed by the Legisla ture.

GRIFFITH-- and it is not a right given to the protestants by any statute or law of the State of Idaho.

SCATTERDAY-- I would like to make some remarks that I don't believe belong in the record. (Makes remarks)

NEAL-- We offer in evidence applidant's Exhibit 2D and 2Q, being the affidavits of Bert Black and William A. Black, which are substantially identical in form, relating to their rights. The affidavits numbered, 2E, 2F, 2G, 2H, 2I, 2J, 2K, 2L, 2M, 2N, 2O and 2P being affidavits in same form, signed respectively by S. W. Vail, J. E. Moreland, J. L. Powell, William Dickson, L. E. York, Clinton Kelley, L. S. York, C. L. Tatum, J. C. Nichols, W. H. Nichols, C. W. Snodgrass, and C. A. Vail. We also offer in evidence as applicant's exhibit 2R, the affidavit of M. G. McConnell, Civil Engineer, also exhibit 2S, the affidavit of L. W. Peck, and as Exhibit 2T, the affidavit of Fred H. McConnell, a Civil Engineer.

We also offer in evidence the affidavit of Walter Griffith, one of counsel. No, I will withdraw the offer of Exhibit 4 for the present.

THOMPSON-- Now we object to the introduction of these from 2D to 2Q inclusive as incompetent, irrelevant and immaterial, merely stating conclusions of the affiants and not facts upon which the State Engineer or the Water Commissioner would consider in determining whether or not this transfer should be made.

NEAL-- Now we offer in evidence Plaintiff's Exhibit 4, being the affidavit of Walter Griffith, one of counsel, and thereto attached copy of contracts between the United States and the Pioneer Irrigation District, and the Water Users Association, as Exhibit A. Exhibit B, being paragraph 62 of the complaint filed in the United States District Court in the action entitled United States against American Ditch Company, et al. Exhibit C, copy of a contract entered into between one, Judson Spofford and the Boise Land and Water Company.

THOMPSON-- We object to the affidavit of Walter Griffith for the reason that it is immaterial and incompetent and to the agreement, to the proposed offer of Exhibit A, for the reason that it is not the best evidence, and it is also incompetent and immaterial. We also object to the introduction of Exhibit B for the reason that it is not the best evidence , that it is incompetent and immaterial. We object to the introduction of Exhibit C for the reason that it is not the best evidence and that it is incompetent, irrelevant and immaterial.

NEAL-- That is our case on this portion of the transfer.
THOMPSON-- We object to the introduction of 2R, 2S and 2T as being immaterial and incompetent and for the further reason that the affidavits merely state conclusions and not facts upon which the Engineer and the Water Commissioner can determine whether or not this transfer should be made.
NEAL-- That is our case, and I suppose we might put in the evidence on the other at this time, and involving the Jacobs ditch water, and take up the argument later. As I understand it there is no Protest here as far as the Jacobs ditch is concerned.
THOMPSON-- We want to show a protest. The reason we haven't shown one is because we haven't heard of it until to-day.
SCATTERDAY-- I wish the record to show that we enter a Protest at this time against that transfer. We haven't the evidence here to present,but we want the record to show a Protest against all of these transfers applied for on the ground of injury to the same parties who protested against the transfer in the Boise Fruit Tracts Company case.
NEAL-- In addition to the exhibits, the four papers which were filed in the Engineer's office and which have been by stipulation admitted subject to certain objections, wer offer in support of this branch of the case the affidavit of B. F. Holden, and ask to have it identified as our next exhibit, and Mr. Thompson I have the abstract of title to that in the office, I will send for it and have it here in a few minutes if you so desire. We offer in evidence abstract prepared by the Security Abstract and Title Company

of Boise, Idaho, showing the title to the water commonly known as the Jacobs ditch or canal, being the 1000 inches referred to in the application to transfer, and we will furnish the abstract to-morrowing morning, I omitted to bring it up with me. The abstract is offered in evidence, and marked Plaintiff's Exhibit 6. (Abstract not there to be marked, but it was so agreed.) We also offer in evidence the Proof of Publication showing publication of notice of Application to Transfer the Jacobs Canal water, and ask to have it marked Plaintiff's Exhibit 7.
We also offer in evidence all other papers and filed in the State Engineer's office pertaining to the transfer of this particular water right where not specifically mentioned otherwise. That is our case.
SCATTERDAY-- At this time, I wish to make the same request that Mr. Thompson made in regard to an examination and investigation of the River, and the conditions surrounding the rights proposed to be transferred, and request that actual investigation and experiments be made by or under the authority of the State Engineer and Water Commissioner, and that this application be not finally passed upon until such investigation is complete. I would like to make some remarks in conclusion which I do not think need be put in the record.
GRIFFITH-- We wish to offer the same objections that were made to Mr. Thompson's request to the request made by Mr. Scatterday. (Makes statement in answer to Mr. Scatterday's)
NEAL-- The applicant omitted one matter of answer to Protest, and at this time we would ask to introduce abstract No. 5987 prepared by the Idaho Title and Trust Company of

Caldwell, showing the water s filed on of Indian Creek up to the time of the change of the law, and also we would ask leave to supply filings on Indian Creek now of record in the office of the State Engineer. We ask leave to make a copy of this abstract, that is we will ask that the Court return it to the Abstract Company and let them make a certified copy of it. Of course, it can stay here for a few days, but the abstract must be returned. We didn't have time to have one made up.

MARTIN-- I desire to ask what is the proceedure affecting this Application of Transfer. That is is this matter submitted to the Attorney General after a transcript of the record here has been made with the recommendation of the State Engineer's office and the Water Commissioner?

COMMISSIONER-- Yes Sir.

MARTIN-- And the State Engineer's office and the Commissioner now desire to hear argument or do you wish briefs filed affecting the questions of objection?

COMMISSIONER-- We are ready to hear your argument, Yes.

THOMPSON-- I would like to ask a question. I would like to suggest if it is agreeable to counsel that we submit briefs and argue from the briefs.

COMMISSIONER-- I think it would be better for both sides to submit briefs. You can have ten days in which to file your briefs. That is all.

APPLICATION FOR TRANSFER OF WATER RIGHTS.

RECEIVED
APR 7 1914
OFFICE OF STATE ENGINEER

State of Idaho,)
:
County of Ada.)

J. M. Wise, being first duly sworn, deposes and says that he is President and Managing Officer of the Boise Fruit Tracts Company, a corporation duly organized under and by virtue of the laws of the State of Idaho, and having its principal office and place of business at Boise, Idaho, and that his and said corporation's post office address is Boise, Idaho; that said corporation is the owner of and using a water right of 30 miners inches of the Boise River in Canyon County, State of Idaho, decreed to the hereinafter named ditch by the decree of Judge George H. Stewart of the Third Judicial District (now Seventh) of the State of Idaho, in and for the County of Canyon in the case entitled "Farmers' Co-operative Ditch Company, Limited, plaintiff, vs. Riverside Irrigation District et al, defendants," said decree bearing date January 16, 1907, and duly of record in the office of the Recorder of said Canyon County, and also Ada County, Idaho.

The water sought to be transferred has been heretofore used for the purpose of irrigating the following lands situate lying, and being in Canyon County, State of Idaho, to-wit:

30 miners inches diverted in the Pioneer Dixie Ditch under rights Nos. 8 and 45 and used upon the following described land, to-wit:

The West Thirty (30) acres of the Northwest Quarter of the Northeast Quarter of Section 13, Twp. 4 N. of R. 4 W. of B.M,

And is the representative of the corporation which has become the owner thereof in the following manner, i.e. By purchase from the person who is the owner of record of the above mentioned tract of land as per abstract of title of said water and land filed herein and by reference made a part of this statement.

That the water hereinabove referred to is now diverted from said Boise River in the Pioneer Dixie Ditch under rights Nos. 8 and 45 of the decree in the before mentioned case, and is diverted on the left bank of said River near the center of the northeast quarter of the southwest quarter of Sec. 20 Twp. 4 N. of R. 3 W. of B. M. and conducted to the above described lands through said ditch as per map filed herewith and of this affidavit made a part.

That affiant and petitioner desires to abandon the use of all of said water from the above described lands and to convey and use the same upon the following tracts situate, lying and being in Ada County, State of Idaho, to-wit:

SW¼ of SE¼ and S½ of NW¼ of SE¼ Sec. 32, Twp. 5 N. R. 1 E. BM.

That it is proposed to divert said water on the right bank of the Boise River in the southeast quarter of the southeast quarter of Sec. 32 in Twp. 4 N. of R. 2 E. of B. M., the diversion point of the Farmers' Union Ditch or canal, and to carry said water through said Farmers' Union canal to a point adjacent to the lands to which it is proposed to make said water appurtenant, and thereupon to carry said water to the lands proposed to be irrigated through ditches, siphons and other works to be hereafter constructed.

That petitioner's reasons for desiring to make such transfer are as follows:

That these lands are arid in character and because of their location are extremely valuable after being watered.

That arrangements have been fully completed whereby said waters can be conveyed through the Farmers' Union Canal to a point from which the waters may be run and carried by gravity system to the lands hereinabove mentioned as proposed to be watered.

That the lands from which these waters are taken are of

little value and the water alone is of much more value for use on the lands to which it will be transferred than land and water are in their present location.

That petitioner intends to divert and convey said 3/5 of a second foot, otherwise described as 30 miners inches of water to the tracts of land last above described in the following manner, to-wit: By diverting and carrying the same from right bank of the Boise River at point of intake of the Farmers' Union Canal thence through said canal to a point bordering upon said lands as per plat filed herewith and made a part hereof by reference, and from which point said waters will be carried by gravity system to the lands within described, as proposed to be irrigated.

That no one will be injured by such transfer and that by making said transfer the lands last above mentioned which are now of little value for lack of water with which to irrigate the same will become highly improved and planted to grain, grasses and orchards and will become the homes of a large number of citizens of Idaho and will very greatly increase the tax value of the property in both Ada and Canyon Counties, Idaho.

That there is no other source as this affiant believes and therefore alleges, from which water can be obtained for the irrigation of the lands last above described.

WHEREFORE, affiant and petitioner prays that the State Engineer issue to it the proper certificate authorizing such transferr and give proper notice of the same to the water commissioner of the division in accordance with provisions of Sec. 11, S.B. 106 of the laws of the 7th Sess. of the Legislature of the State of Idaho and acts amendatory thereof.

Boise Fruit Tracts Company,
By _____
President and Manager.

Subscribed and sworn to before me this 6th day of April, A.D. 1914 by said E. Wise.

_____
Notary Public

T R A N S C R I P T O F P R O C E E D I N G S

HELD BEFORE ELIAS MARSTERS, WATER COMMISSIONER OF THE THIRD DIVISION, AT BOISE, MAY 5, 1914, IN THE MATTER OF THE APPLICATION OF THE BOISE FRUIT TRACTS COMPANY FOR CERTIFICATE OF TRANSFER OF CERTAIN WATER RIGHTS AS PUBLISHED AND SET DOWN FOR HEARING APRIL 14, 1914, SAID HEARING HAVING BEEN POSTPONED BY AGREEMENT OF ALL PARTIES TO MAY 5, 1914.

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NEAL-- The application further describes the lands in detail from which we seek to transfer the water and also described the lands in detail which we propose to water, and I will read just the latter portion of the-- Let me have the one from your files, the Petition. (WING-- We haven't it here) Very well, I will not read that portion that I expected to. I thought I had the Petition here. We offer in support of our application, if you gentlemen care to have us make it a part of this record, abstracts of title for the various tracts of land. Do you care to go over them? They are here if you care go over them. I refer now to all the lands below Caldwell.

SCATTERDAY-- Abstracts--

NEAL-- Abstracts showing that the persons who make this application to transfer are the owners of the lands from which it is sought to transfer the water. The lands from which we seek to transfer the water, that the persons who say they are the owners are shown by the owners to be the record owners of the lands, except there is one exception, where it

is supported by an affidavit showing that the Deed is not of record but that he is the owner.

We offer in support of our application the affidavit of William A. Black, Bert Black, S. L. Sayre, S. W. Vail, Alma Cashman, C. A. Zeigler, J. L. Powell, William Dickson, and D. G. Ruby. The affidavits referred to being also for the description of the land etc.

We offer the affidavit of S. W. Vail, J. E. Moreland, J. L. Powell, William Dickson, L. E. York, Clinton Kelley, L. E. York, C. L. Tatum, J. C. Nichols, W. H. Nichols, C. W. Snodgrass, C. A. Vail, all of which affidavits are in substantially identical form and to the same effect. I will read just one of them that your Honor may understand the purport of all. (Reads one of affidavits referred to.) We offer in evidence the map also showing the lands which we are taking the water from, the portion colored green, being the lands from which water is being taken.

MARTIN-- I suggest you mark it as an exhibit.

Map referred to marked Plaintiff's Exhibit 1.

Affidavits were admitted in evidence as part of the record.

NEAL-- I will ask you to identify the following abstracts which we offer in evidence. The following abstracts are prepared by the Canyon Abstract and Trust Company of Caldwell: No. 12446, covering the C. F. Zeigler lands, No. 12394 covering the Cashman lands from which we are seeking the transfer of water, No. 12425, covering the Sayre lands from which wer are seeking the transfer of water, No. 12393, covering the Dickson lands from which we are seeking the the transfer of water, No. 12226, covering the William A. and Bert Black lands, from which we are seeking the transfer of water. No. 12468 covering the S. W. Vail lands, from

which we are seeking the transfer of water, and also the J. L. Powell lands from which we are seeking the transfer of water. Abstract No. 12396 covering the Ruby lands from which we are seeking the transfer of water, and I believe that is all. The abstracts which have been offered in evidence covering the lands from which the applicant seeks to transfer water, being the same lands covered by the contracts or by the affidavits of the various land owners which have been read and are in evidence.

We also offer the Proofs of Publication which are in the hands of the Engineer.

THOMPSON-- What do you intend to prove by Black's affidavit?

NEAL-- This proves that he was the owner of that water and that he has transferred it to us and that abstract that he is the owner of the land on which the water was used.

THOMPSON-- We object to the introduction of these affidavits for the purpose of showing that he is the owner of the water for the reason that it is not the best evidence.

NEAL-- We offer the Proof of Publication in the Middleton Herald and ask to have it marked Plaintiff's Exhibit 3.

THOMPSON-- The objection I wanted to apply to the affidavits of William Black, Bert Black, S. R. Sayre, S. W. Vail, being Plaintiff's Exhibits 2A, 2B and 2C, for the reason that the identification is not the best evidence.

NEAL-- We offer the duly verified application as a part of the case in chief.

THOMPSON-- We want to object to that. We want to object to the application of the Boise Fruit Tracts Company for the reason that the Fruit Tracts Company is not shown to be the owner of land or lands from which the water is sought to be transferred, or the owner of the land to

which it is to be transferred.

NEAL-- We will not offer the other Proof of Publication at this time. We offer the files of the office. By the files of the office we mean the original application that was filed in the Engineer's office, and also the original notice filed setting the day.

THOMPSON-- Yes, we will admit that.

NEAL-- Also we haven't here the map which was filed, map of the district in which we propose to use the water, also another map prepared by the Reclamation Service showing the course of the various ditches. We have indicated on that the point where we take water from the Farmers Union Canal.

THOMPSON-- We will admit that subject to these objections: That the parties owning the lands from which the parties seek to transfer the water are not shown to be the parties owning the lands to which the water is sought to be transferred, and further that there is no Decree, that no Decree has been introduced showing that the parties seeking to make the transfer have been decreed the water which they seek to transfer, and on the further ground that the Commissioner has no jurisdiction.

MARTIN-- What reason?

SCATTERDAY-- On the ground that it is neither a right acquired by Licensee nor a decreed right in accordance with the provisions of 3264 of the Code.

NEAL-- It is agreed then Mr. Thompson that all the papers offered will be admitted subject to those objections. All that have been offered may be admitted subject to those objections?

SCATTERDAY-- To avoid misunderstanding, I understood that

we were asked for this Stipulation to avoid causing inconvenience to you or the officers by sending for papers that we didn't have here. I wish to say that we object to all the proceedings and all the papers that have been offeredon the grounds that we set up in our Protest. I don't want it understood that we are waiving any of our rights that we set up in our Protest.
NEAL-- It is agreed on behalf of the protestants that the original application of transfer filed in the office of the State Engineer, being Plaintiff's Exhibit _____, the original Notice on file in the Engineer's office, being Plaintiff's Exhibit _____, the map of the lands to which it is proposed to transfer water, being Plaintiff's Exhibit _____, and the map showing the point of diversion of the Farmers Union Canal referred ot in the application, and the point of diversion from the Farmers Union Canal to the lands proposed to be watered, being Plaintiff's Exhibit _____, may be considered as in evidence, subject to the objections heretofore made by Mr. Thompson and Mr. Scatterday.
NEAL-- That is our case in chief.
MARTIN-- As far as these lands are concerned.
NEAL-- As far as these lands are concerned. Mr. Masters have you made any ruling with reference to the admission of those papers in evidence? I suppose there should be a ruling made, for instance those abstracts, and other various papers which they have objected to and which are not covered by the Stipulation, as we want to know whether they are in or not.

THOMPSON-- Couldn't we arrange it so that he could reserve his ruling?

COMMISSIONER-- That is what I will do. I will reserve my ruling.

MARTIN-- All of these papers offered can be considered in evidence for the purposes of this hearing and then he can reserve his ruling regarding them until the final determination . That would necessarily be true because the protestant would also offer papers to which perhaps the applicant would make objections, and the Commissioner doubtless would not desire to make any ruling on the objections at this time.

THOMPSON-- On behalf of the Pioneer Irrigation District, the Farmers Co-operative Ditch Company and the Nampa-Meridian Irrigation District we offer a Protest and ask to have it marked Protestant's Exhibit A In support of said--

GRIFFITH-- Just a minute Mr. Thompson. We object to the admission or consideration of the Protest offered on the grounds that it does not show sufficient or any reason or any fact upon which any reason can be based for refusing to transfer or change the place of diversion as applied for, or to deny the application of the applicant.

THOMPSON-- Protestants ask to introduce the affidavit of L. E. Greenslet and ask to have it marked Protestant's exhibit B. Protestants further ask to introduce in evidence the affidavit of Daniel L. Barker, on behalf of the Nampa-Meridian Irrigation District, and ask to have it marked Protestant's Exhibit C. Protestants ask to introduce affidavit of H. S. Williams, a regularly licensed Surveyor and Irrigation Engineer, on behalf of protestants, and ask to have it marked Protestant's

Exhibit D. Protestants ask to introduce in evidence affidavit of H. J. Devers, President of the Farmers Co-operative Ditch Company, on behalf of protestants. I ask to have it marked Protestant's Exhibit E. Protestants ask to introduce the affidavit of C. C. Stevenson, Civil Engineer and Irrigation Engineer of this State, on behalf of protestants and ask to have it marked Protestant's Exhibit F.

MARTIN-- Is that all Mr. Thompson. Have you offered all the affidavits you want to?

SCATTERDAY-- Just a minute and I will look Mr. Martin, I think there is another affidavit.

MARTIN-- That is the reason I was objecting. I thought there was another.

THOMPSON-- Protestants ask to introduce in evidence affidavit of S. B. Dills, and ask to have it marked Protestant's Exhibit G. on behalf of Protestants.

GRIFFITH-- We object to the acceptance of the affidavits offered, numbered from B to G inclusive, on the ground that the statements made in said affidavits are general, are statements of conclusions and comparative statements and not positive statements of facts, or statements of conditions or circumstances from which facts can be ascertained, and we object to each of said affidavits upon the grounds stated, and that they are incompetent, irrelevant and immaterial, and that they do not tend to prove any of the grounds stated in the Protest, or any of the issues in this matter.

THOMPSON-- On behalf of the Farmers Co-operative Ditch Company and the Nampa-Meridian Irrigation District and the Pioneer Irrigation District, we ask that the State Engineer of the State of Idaho make investigations

as to whether or not any one is injured by this transfer for the reason that affidavits are very unsatisfactory evidence, and the said protestants have protested on the grounds that they are injured and that the best way to decide the matter is for the State Engineer to make the investigation for himself. By this we mean from actual measurements and demonstrations on the River. We want to include the Water Commissioner in that also.

GRIFFITH-- We object to the request for the reason that it calls for an unnecessary delay in the action in this matter and it is not a request that is provided for by law.--

MARTIN-- Or financed by the Legisla ture.

GRIFFITH-- and it is not a right given to the protestants by any statute or law of the State of Idaho.

SCATTERDAY-- I would like to make some remarks that I don't believe belong in the record. (Makes remarks)

NEAL-- We offer in evidence applidant's Exhibit 2D and 2Q, being the affidavits of Bert Black and William A. Black, which are substantially identical in form, relating to their rights. The affidavits numbered, 2E, 2F, 2G, 2H, 2I, 2J, 2K, 2L, 2M, 2N, 2O and 2P being affidavits in same form, signed respectively by S. W. Vail, J. E. Moreland, J. L. Powell, William Dickson, L. E. York, Clinton Kelley, L. S. York, C. L. Tatum, J. C. Nichols, W. H. Nichols, G. W. Snodgrass, and C. A. Vail. We also offer in evidence as applicant's exhibit 2R, the affidavit of M. G. McConnell, Civil Engineer, also exhibit 2S, the affidavit of L. W. Peck, and as Exhibit 2T, the affidavit of Fred H. McConnell, a Civil Engineer.

We also offer in evidence the affidavit of Walter Griffith, one of counsel. No, I will withdraw the offer of Exhibit 4 for the present.

THOMPSON-- Now we object to the introduction of these from 2D to 2G inclusive as incompetent, irrelevant and immaterial, merely stating conclusions of the affiants and not facts upon which the State Engineer or the Water Commissioner would consider in determining whether or not this transfer should be made.

NEAL-- Now we offer in evidence Plaintiff's Exhibit 4, being the affidavit of Walter Griffith, one of counsel, and thereto attached copy of contracts between the United States and the Pioneer Irrigation District, and the Water Users Association, as Exhibit A. Exhibit B, being paragraph 62 of the complaint filed in the United States District Court in the action entitled United States against American Ditch Company, et al. Exhibit C, copy of a contract entered into between one, Judson Spofford and the Boise Land and Water Company.

THOMPSON-- We object to the affidavit of Walter Griffith for the reason that it is immaterial and incompetent and to the agreement, to the proposed offer of Exhibit A, for the reason that it is not the best evidence, and it is also incompetent and immaterial. We also object to the introduction of Exhibit B for the reason that it is not the best evidence , that it is incompetent and immaterial. We object to the introduction of Exhibit C for the reason that it is not the best evidence and that it is incompetent, irrelevant and immaterial.

NEAL-- That is our case on this portion of the transfer.

THOMPSON-- We object to the introduction of 2R, 2S and 2T as being immaterial and incompetent and for the further reason that the affidavits merely state conclusions and not facts upon which the Engineer and the Water Commissioner can determine whether or not this transfer should be made.

NEAL-- That is our case, and I suppose we might put in the evidence on the other at this time, and involving the Jacobs ditch water, and take up the argument later. As I understand it there is no Protest here as far as the Jacobs ditch is concerned.

THOMPSON-- We want to show a protest. The reason we haven't shown one is because we haven't heard of it until to-day.

SCATTERDAY-- I wish the record to show that we enter a Protest at this time against that transfer. We haven't the evidence here to present, but we want the record to show a Protest against all of these transfers applied for on the ground of injury to the same parties who protested against the transfer in the Boise Fruit Tract s Company case.

NEAL-- In addition to the exhibits, the four papers which were filed in the Engineer's office and which have been by stipulation admitted subject to certain objections, wer offer in support of this branch of the case the affidavit of B. F. Holden, and ask to have it identified as our next exhibit, and Mr. Thompson I have the abstract of title to that in the office, I will send for it and have it here in a few minutes if you so desire. We offer in evidence abstract prepared by the Security Abstract and Title Company

of Boise, Idaho, showing the title to the water commonly known as the Jacobs ditch or canal, being the 1000 inches referred to in the application to transfer, and we will furnish the abstract to-morrowing morning. I omitted to bring it up with me. The abstract is offered in evidence, and marked Plaintiff's Exhibit 6. (Abstract not there to be marked, but it was so agreed.) We also offer in evidence the Proof of Publication showing publication of notice of Application to Transfer the Jacobs Canal water, and ask to have it marked Plaintiff's Exhibit 7.
We also offer in evidence all other papers and filed in the State Engineer's office pertaining to the transfer of this particular water right where not specifically mentioned otherwise. That is our case.
SCATTERDAY-- At this time, I wish to make the same request that Mr. Thompson made in regard to an examination and investigation of the River, and the conditions surrounding the rights proposed to be transferred, and request that actual investigation and experiments be made by or under the authority of the State Engineer and Water Commissioner, and that this application be not finally passed upon until such investigation is complete. I would like to make some remarks in conclusion which I do not think need be put in the record.
GRIFFITH-- We wish to offer the same objections that were made to Mr. Thompson's request to the request made by Mr. Scatterday. (Makes statement in answer to Mr. Scatterday's)
HEAL-- The applicant omitted one matter of answer to Protest, and at this time we would ask to introduce abstract No. 5987 prepared by the Idaho Title and Trust Company of

Caldwell, showing the water r filed on of Indian Creek up to the time of the change of the law, and also we would ask leave to supply filings on Indian Creek now of record in the office of the State Engineer. We ask leave to make a copy of this abstract, that is we will ask that the Court return it to the Abstract Company and let them make a certified copy of it. Of course, it can stay here for a few days, but the abstract must be returned. We didn't have time to have one made up.

MARTIN-- I desire to ask what is the proceedure affecting this Application of Transfer. That is is this matter submitted to the Attorney General after a transcript of the record here has been made with the recommendation of the State Engineer's office and the Water Commissioner?

COMMISSIONER-- Yes Sir.

MARTIN-- And the State Engineer's office and the Commissioner now desire to hear argument or do you wish briefs filed affecting the questions of objection?

COMMISSIONER-- We are ready to hear your argument. Yes.

THOMPSON-- I would like to ask a question. I would like to suggest if it is agreeable to counsel that we submit briefs and argue from the briefs.

COMMISSIONER-- I think it would be better for both sides to submit briefs. You can have ten days in which to file your briefs. That is all.

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J. H. SMITH
STATE ENGINEER
FRED A. WILKIE
DEPUTY STATE ENGINEER

State of Idaho
Engineering Department
Boise

Boise, Idaho, October 9, 1916.

RECEIVED from the State Engineer of Idaho Abstract of Title to Lots 1, 2, 3, Section 12, T. 4 N., R. 4 W., B.M., and Lots 3, 4, 5 in Section 7, T. 4 N., R. 3 W., B.M., Canyon County, Idaho, except right of way of Oregon Short Line Ry. Co., being Canyon Abstract & Trust Company's Abstract No. 12468, compiled at the request of S. W. Vail; which abstract was filed in the office of the State Engineer in support of the application of the Boise Fruit Tracts Company for authority to transfer certain Boise River water rights.

S. W. Vail

Boise, Idaho,

October 6th, 1916.

RECEIVED, from the State Engineer of Idaho, Abstract of Title, to the E½ of Sec. 8; and all of Sec. 9, Township 4 N., Range 4 W. of the Boise Meridian, Canyon County, Idaho, and the water right of Bert Black and William A. Black, being Canyon Abstract and Trust Company's Abstract # ~~15886~~ 13226, which Abstract was filed in the office of the State Engineer, in support of application of the Boise Fruit Tract Company for authority to transfer certain Boise River water rights.

F W Weed
for Wm & Bert Black

IDAHO DEPARTMENT OF WATER RESOURCES

Water Right Report 63-123A

WATER RIGHT NUMBER: 63-123A

Owner Type	Name and Address
Original Owner	JACOBS CANAL CO
	, ID
Current Owner	FEDERAL LAND BANK OF SPOKANE
	, ZZ

Priority Date: 06/01/1864
Basis: Decreed
Status: Active

Source	Tributary
BOISE RIVER	SNAKE RIVER

Beneficial Use	From	To	Diversion Rate	Annual Volume
IRRIGATION	/	/	0.690 CFS	
DOMESTIC	/	/		

Total Diversion: 0.690 CFS

Location of Point(s) of Diversion

BOISE RIVER

Place of Use

IRRIGATION

Twp	Rge	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
04N	01E	4									X			X	X	X	X		

DOMESTIC same as IRRIGATION

Conditions of Approval:

1. TO FARMERS UNION CANAL.
TRANS. 542.
DIV. RATE=.6875 CFS.

Remarks:

Comments:

IDAHO DEPARTMENT OF WATER RESOURCES

Water Right Report 63-123A

Water Supply Bank:

IDAHO DEPARTMENT OF WATER RESOURCES

Water Right Report 63-123B

WATER RIGHT NUMBER: 63-123B

Owner Type	Name and Address
Current Owner	JACOBS CANAL CO
	, ID

Priority Date: 06/01/1864
Basis: Decreed
Status: Active

Source	Tributary
BOISE RIVER	SNAKE RIVER

Beneficial Use	From To	Diversion Rate	Annual Volume
IRRIGATION	/ to /	19.310 CFS	

Total Diversion: 19.310 CFS

Location of Point(s) of Diversion

BOISE RIVER SE1/4SE1/4 Sec. 32, Twp 04N, Rge 02E, B.M.
ADA County

Place of Use

IRRIGATION

Twp	Rge	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
03N	02E	4																	
03N	02E	9																	
03N	02E	10																	
03N	02E	11																	
03N	02E	13																	
03N	02E	14																	
04N	02W	2	X L1	X L2			X L3	X L4											
04N	02W	3	X L1					X L4											

IDAHO DEPARTMENT OF WATER RESOURCES

Water Right Report 63-123B

	6	5	4	3	2	1	6	5	4	3	2	1
04N 02W					X L 4							
04N 02W				X L 3								
05N 01W									X			
05N 01W								X	X			
05N 01W					X	X						
05N 02W									X	X		X
05N 02W									X	X	X	X
05N 02W							X	X	X	X		
05N 02W												X
05N 02W	X			X	X	X	X	X				
05N 02W		X	X			X	X	X	X	X	X	X
05N 02W						X		X	X	X	X	X
05N 02W			X								X	X
05N 02W	X	X							X	X		
05N 02W												
05N 02W												
05N 02W			X		X		X	X		X	X	X
05N 02W												

Conditions of Approval:

IDAHO DEPARTMENT OF WATER RESOURCES

Water Right Report 63-123B

1. ALSO USED ON TOWN LOTS (BOISE).
WATER CARRIED IN FARMERS UNION CANAL.
DIV. RATE=19.3125 CFS.
TRANS. 136.

Remarks:

Comments:

Water Supply Bank:

FARMERS UNION DITCH CO. LTD.
2153 N. POLLARD LN.
STAR, ID. 83669

RECEIVED
JUN 17 2004
WATER RESOURCES
WESTERN REGION

June 15, 2004

Mr. Mel Shulte
Idaho Department of Water Resources
2735 Airport Way
Boise, Idaho 83705

Dear Mr. Shulte:

Here is what we have found in our records in regards to the Jacobs Water and when these HOAs' or individuals appear initially.

1980	Green Acres/Richard Hormaechea	34.0 inches
1992	Echo Creek HOA	33.77 inches
1992	Lexington Hills Inc.	96.4 inches
1994	Lexington Hills HOA	107.6 inches
1999	Ilene Stinar	10.0 inches
2000	East Hills Development	26.23 inches

For your information the Lexington Hills HOA came from a portion of Lexington Hills Inc.. Also the East Hills Development came from a portion of Echo Creek HOA.

A total of 264 inches of water was traced back as far as 1972 to Myron Holgate & Son, addressed to 1832 East Floating Feather Road, Eagle, Idaho. This is the total without Hormaechea and Stinar. The Stinar water was transferred from the previous owner David Willmot which dated back to 1981.

If you have any questions you can reach me at 286-7028.

Yours truly,

Ron Schreiner

Ron Schreiner
Asst. Sec.

FARMERS UNION DITCH CO. LTD.
2153 N. POLLARD LN.
STAR, ID. 83669

RECEIVED
JUN 17 2004
WATER RESOURCES
WESTERN REGION

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Ron Schreiner

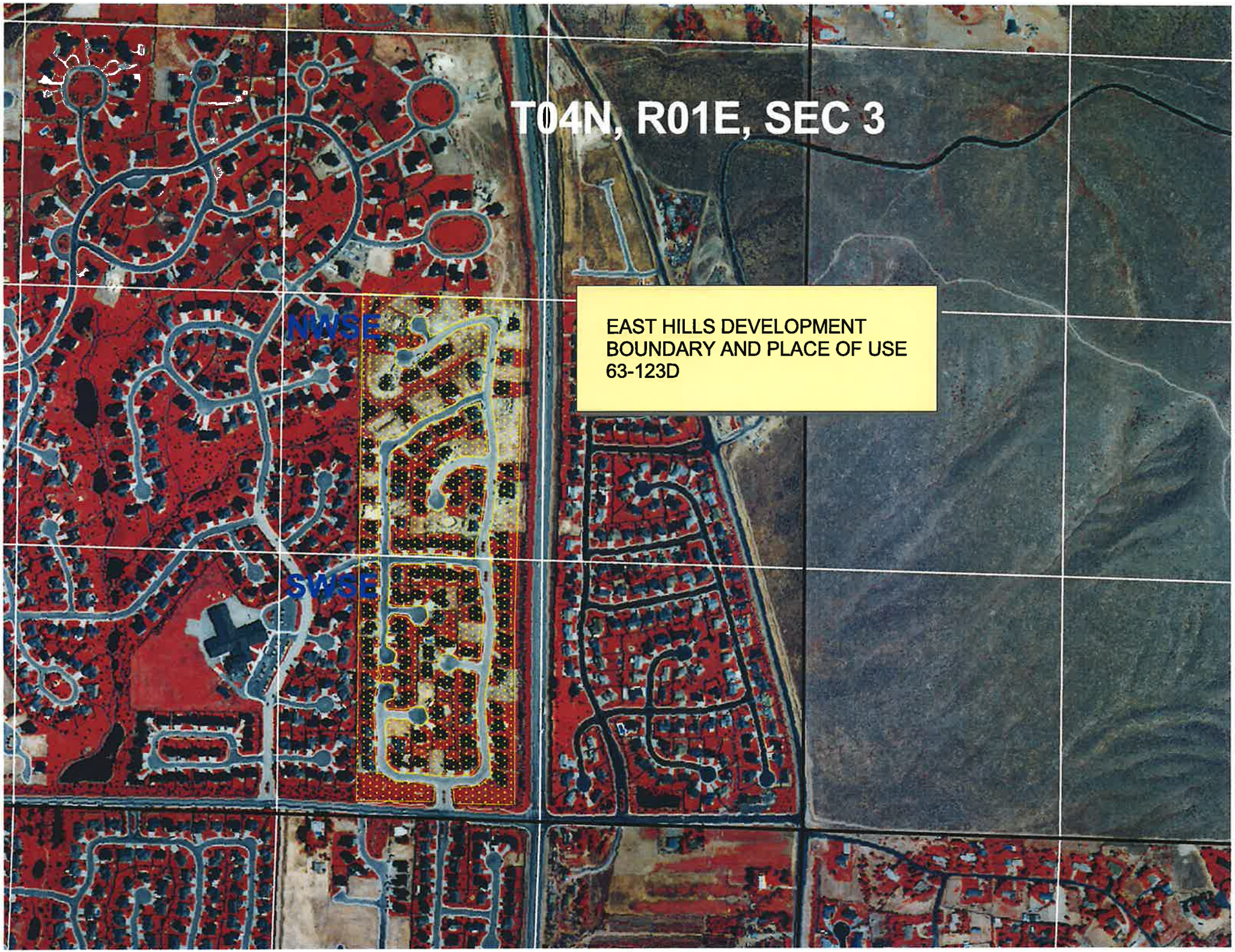
Ron Schreiner
Asst. Sec.


EAST HILLS DEVELOPMENT
BOUNDARY AND PLACE OF USE
63-123D

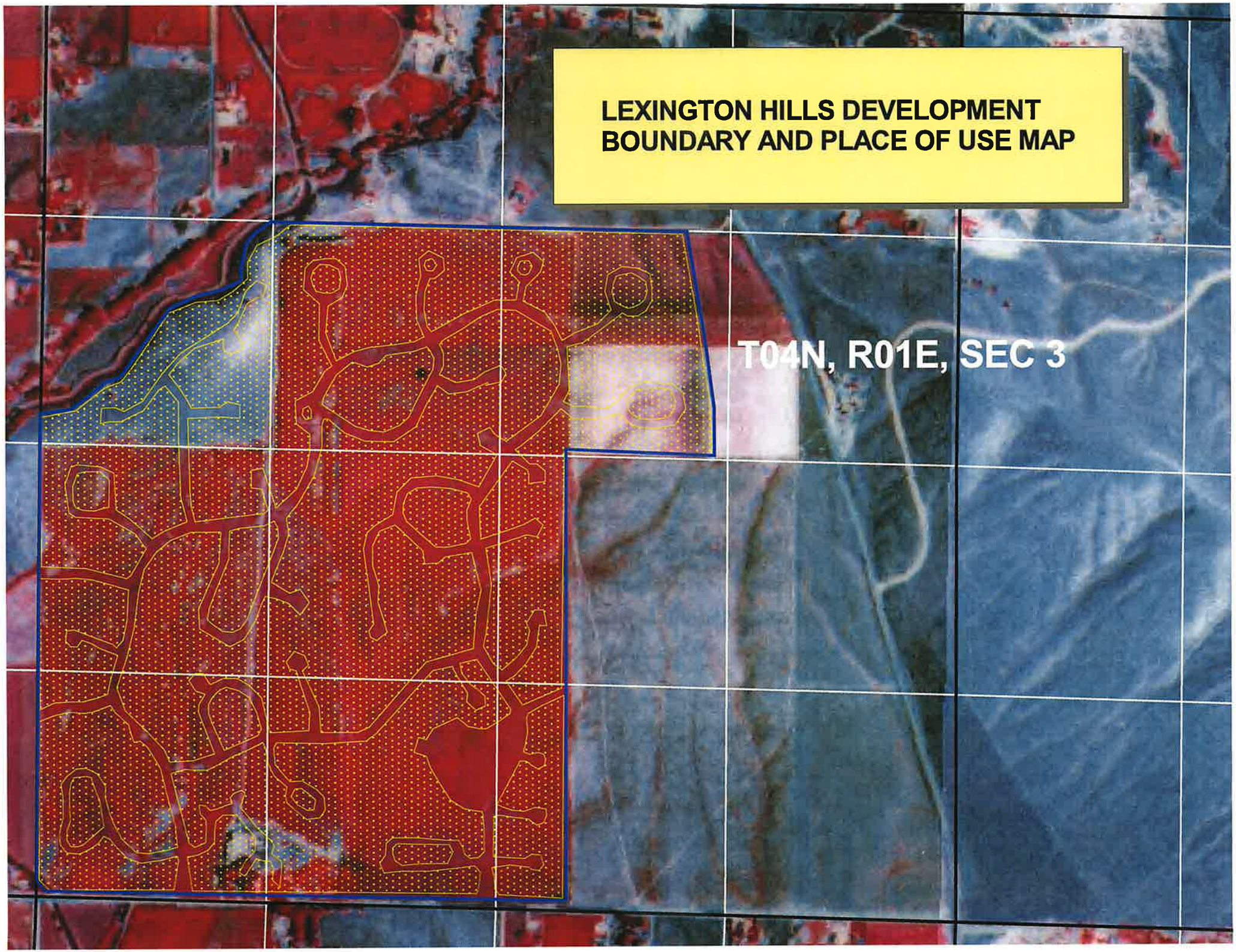

EAST HILLS DEVELOPMENT
BOUNDARY AND PLACE OF USE
63-123D

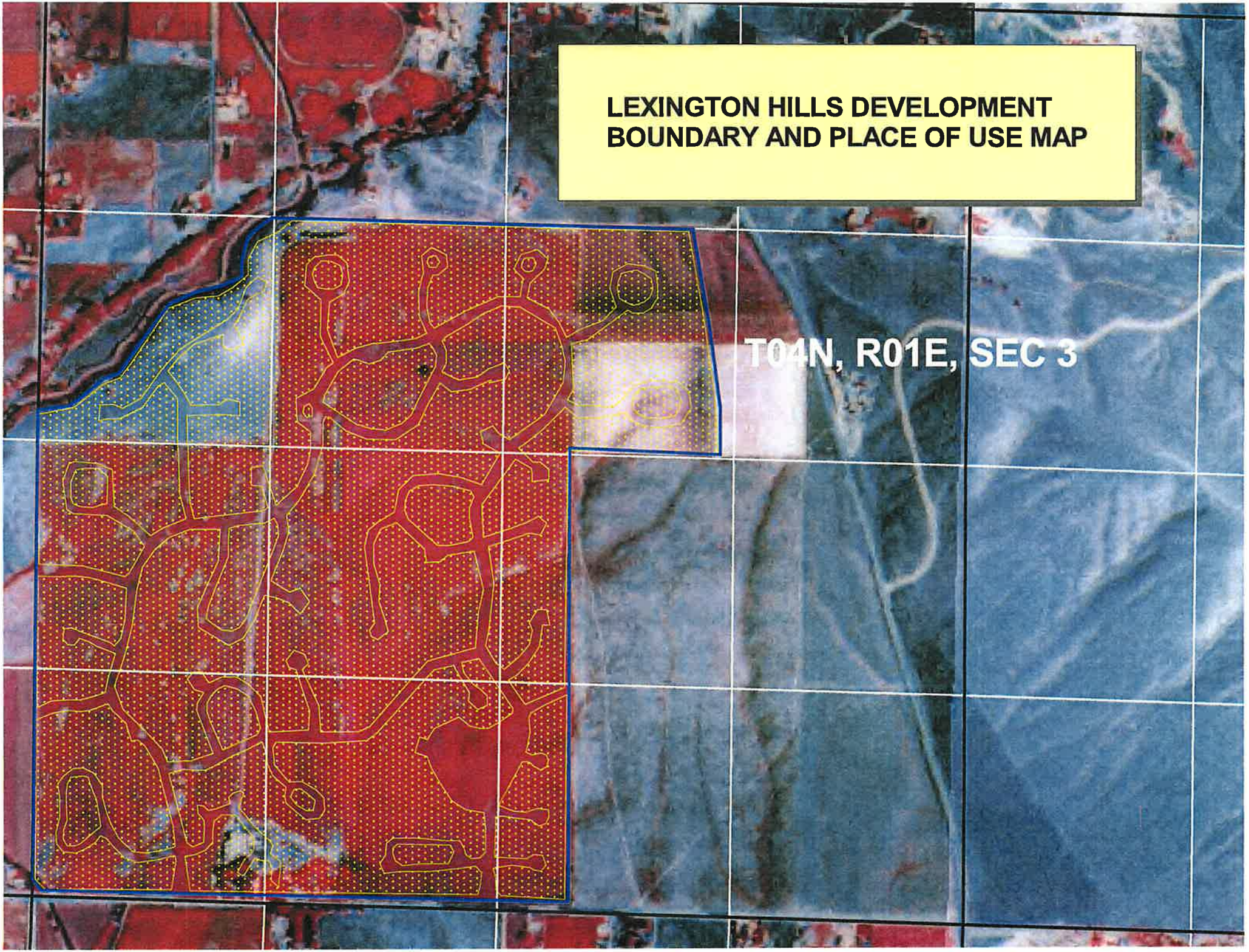

EAST HILLS DEVELOPMENT
BOUNDARY AND PLACE OF USE
63-123D

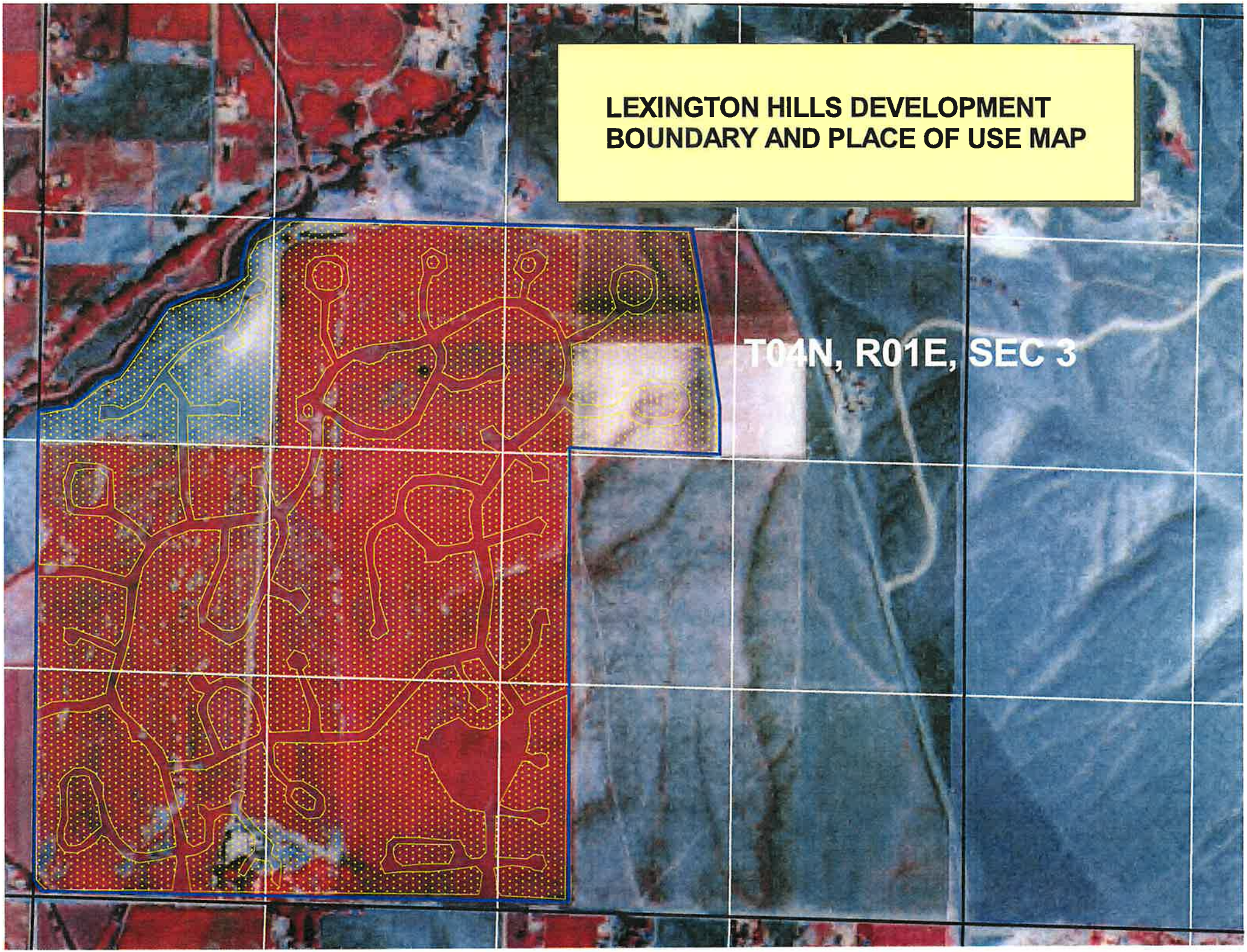

T04N, R01E, SEC 3
NWSE
SWSE
EAST HILLS DEVELOPMENT
BOUNDARY AND PLACE OF USE
63-123D


T04N, R01E, SEC 3
NWSE
SWSE
EAST HILLS DEVELOPMENT
BOUNDARY AND PLACE OF USE
63-123D


LEXINGTON HILLS DEVELOPMENT
BOUNDARY AND PLACE OF USE MAP


LEXINGTON HILLS DEVELOPMENT
BOUNDARY AND PLACE OF USE MAP
T04N, R01E, SEC 3


LEXINGTON HILLS DEVELOPMENT
BOUNDARY AND PLACE OF USE MAP
T04N, R01E, SEC 3


LEXINGTON HILLS DEVELOPMENT
BOUNDARY AND PLACE OF USE MAP
T04N, R01E, SEC 3


LEXINGTON HILLS DEVELOPMENT
BOUNDARY AND PLACE OF USE MAP


LEXINGTON HILLS DEVELOPMENT
BOUNDARY AND PLACE OF USE MAP


LEXINGTON HILLS DEVELOPMENT
BOUNDARY AND PLACE OF USE MAP


LEXINGTON HILLS DEVELOPMENT
BOUNDARY AND PLACE OF USE MAP

STEWART AND BRYAN DECREES GROUPED UNDER CANAL HEADINGS — CHART NO. 3

NAME OF CANAL	CHANGE IN P. OF D.	TRANSFER	PRIORITY NO.	PRIORITY DATE	AMOUNT DECREED STEWART DECREE	INTERVENORS STEWART DECREE	BRYAN DECREE	INCHES	TOTAL SEC. FT.
EUREKA No. 2			89	11-9-1883	21.70			1085	
	47		96	10-1-1887	29.50			1475	
	62		96	10-1-1887	1.00			50	
	71		24	6-1-1865	.80			40	
	85		24	6-1-1865	.50			25	
		111*	96	10-1-1887	1.20*			60*	
	131*		89	11-9-1883	.70*			35*	
	159		24	6-1-1865	.10			5	
	175		88	6-1-1883	1.70			85	
	224*		89	11-9-1883	.20*			10*	
			96	10-1-1887	.70*			35*	
	225*		89	11-9-1883	.60*			30*	
	287*		89	11-9-1883	1.40*			70*	
	289*		89	11-9-1883	.50*			25*	50.00
FARMERS UNION			126	7-2-1894	110.00			5500	
Jacobs Right =		136	2	6-1-1864	20.00			1000	= 63-123
		370	33	6-1-1866	1.124			56.2	
		373	33	6-1-1866	.374			18.7	
		374	65	6-1-1877	.40			20	
		375	65	6-1-1877	.20			10	
		384	65	6-1-1877	.40			20	
		385	65	6-1-1877	.266			13.3	
		386	65	6-1-1877	.40			20	
		387	65	6-1-1877	.40			20	
		391	3)	6-1-1864					
			54)	6-1-1871	.15			7.5	
		393	3)	6-1-1864					
			54)	6-1-1871	.288			14.4	
			120)	6-1-1891					
		395	65	6-1-1877	.50			25	
		430*	65	6-1-1877	.25*			12.5*	
	84		65	6-1-1877	.80			40	
		512	1	6-1-1864	1.00			50	
		513	1	6-1-1864	.50			25	
		530	1	6-1-1864	.30			15	
				7-2-1894			54.46	2723	
		1048	33	6-1-1866	.0875			4.375	
		1059	33	6-1-1866	.10			5	
		1855	32	6-1-1866	1.80			90	
									193.2995
GRAHAM & GILBERT			12	6-1-1865	2.03			101.5	2.03

*SUBTRACT

Jacobs Right

1) Deeded to 3N, 2E, S4, 9, 10, 11, 13, 14

2 Transferred to: 5N, 1W, 5N, 2W, 4N, 2W through Conners Union Canal 6-8-1914

~~to: 4N, 4W, 4N, 3W through Pioneer Dixie Ditch~~

~~to: 4N, 4W through Riverside Canal~~

~~to: 5N, 4W through Eureka #2 Ditch~~

3. W.A. Neff per the 7-17-1916 agreement owned land in 5N, 1E, S34

4. Capital View is in 5N, 1E, S32, 33, 34

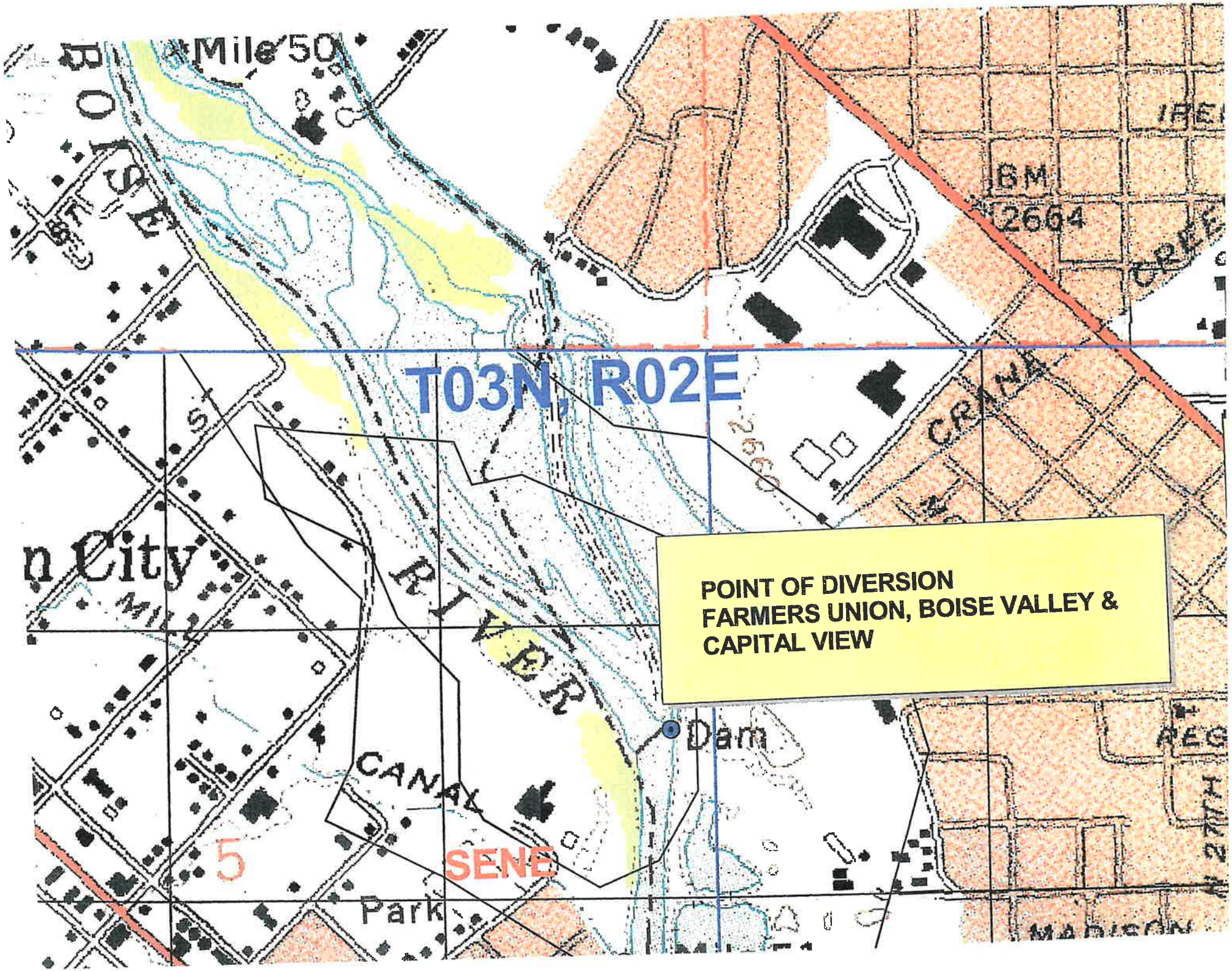
5. East Wells is in 4N, 1E, S3, W½SW

6. Lexington Wells Inc. is in 4N, 1E, S3, SW¼ W½SE, SWNE, SENW

7. Deed dated 3-6-1942 from Idaho Farms to Western Loan & Investment is in 4N, 1E, S3, SW¼, SE¼, S½NE, SENW, plus 128' of Jacops right

8. Deed Dated 1-2-1951 from Western Loan & Invest. to Alfred Popma (same as above)

9) Deed dated 9-30-1952 Popma to Popma
(same as above)


Mile 50
BOISE
BM
2664
T03N, R02E
n City
RIVER
Dam
CANAL
5
SENE
Park
POINT OF DIVERSION
FARMERS UNION, BOISE VALLEY &
CAPITAL VIEW

1-21-05 meeting (Issues & Questions)

1) Lexington Hills Inc claimed 94.4" - what happened to the rest of the 128" (31.6") ?
(part is East Hills 26.23" - the rest ?)
2) Was Myron Holgate & Sons the prior owner of the land at Lexington Hills & East Hills (YES - John will provide us with a deed from Holgate to Lexington Hills).
3)

Nick agrees - the deed from Holgate to Lexington Hills supported by the delivery and assessments of Farmers back to 1972 is enough evidence to recommend Claims by East Hills, Lexington HOA and Lexington Inc. based on accomplished transfers.

water not claimed by the private parties we can recommend to Farmers in addition to their contracted 1/3

→ Use Farmers assessments as the basis for splits and recommendations - anything leftover goes to Farmers.

GIVENS PURSLEY LLP

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Anne C. Kunkel
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D. David Lorello, Jr.
Emily A. MacMaster
Kimberly D. Maloney
John M. Marshall
Kenneth R. McClure
Kelly Greene McConnell
Cynthia A. Melillo
Christopher H. Meyer
L. Edward Miller
Patrick J. Miller
Judson B. Montgomery
Angela K. Nelson
Deborah E. Nelson
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Bradley V. Sneed
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Robert B. White
Michael V. Woodhouse

James A. McClure
OF COUNSEL

Raymond D. Givens
RETIRED

RECEIVED
JUN 14 2004
WATER RESOURCES
WESTERN REGION

June 9, 2004

Mel Shulte
Western Regional Office
Idaho Department of Water Resources
2735 Airport Way
Boise, ID 83705-5082

Re: Jacobs Water Right
GP File No. 6018-1

Dear Mel:

In our recent phone conversation, you asked that I forward any information I collect concerning ownership of the "Jacobs Water Right," right no. 63-123. In that regard, I have come across a few deeds that reference the right. I have attached them to the enclosed memorandum I prepared regarding the ownership of the right. The memo addresses the basis for Lexington Hills' claim to ownership. I would appreciate your forwarding the memorandum (including the deeds) to Nick Spencer for his review.

Please contact me if you have any questions.

Sincerely,

John M. Marshall

JMM/hcm
Enclosure
cc: Client
S:\CLIENTS\6018\1\JMM to Shulte enc Jacobs Water Right memo.DOC

File 63-7 63 (2)

BEFORE THE STATE ENGINEER OF THE STATE OF IDAHO.

IN THE MATTER OF THE APPLICATION OF BOISE FRUIT TRACTS COMPANY, FOR THE TRANSFER OF BOISE RIVER WATER RIGHTS.

This cause came on for hearing at 2 o'clock P. M. on the 5th day of May, 1914, pursuant to a continuance from April 14, 1914, entered on request of certain protestants, upon the application of the Boise Fruit Tracts Company made under the provisions of section 3264 of the Revised Codes of Idaho for a certificate of the StateEngineer of the State of Idaho transferring the point of diversion and place of use of certain water rights in Boise River as specifically described in said application now on file in this office, and upon the joint protest of the Farmers' Co-operative Ditch Company, the Pioneer Irrigation District and the Kuna-Meridian Irrigation District, Messrs. Walter Griffiths, T. L. Martin and R. F. Neal appearing as counsel on behalf of said applicant and Messrs. R. J. Scatterday, J. M. Thompson and H. E. McElroy appearing as counsel on behalf of said protestants. Documentary evidence was introduced on behalf of said applicant in support of its application and documentary evidence was introduced by said protestants in support of their protest.

Whereupon, the said matter was submitted to theState Engineer for his consideration and decision, and, after fully considering the same, said State Engineer is of the opinion that said application should be allowed and that an order should be made transferring the point of diversion and place of use of said waters of Boise River which are appurtenant to the lands described in said application and hereinafter described, and also the entire waters of the right of the Jacobs Canal hereinafter specifically described.

NOW THEREFORE, it is hereby ordered that the points of diversion from the Boise River and the places of use of the waters hereinafter described be, and the same are hereby transferred from the points of diversion and places of use hereinafter set out to the point of diversion and place of use hereinafter described:

PRESENT POINTS OF DIVERSION AND USE AND DESCRIPTION OF WATER RIGHTS TRANSFERRED.

ALL of the water rights hereinafter described and hereby ordered transferred are described in that certain decree entered in the case entitled: "Farmers' Co-operative Ditch Company, Plaintiff, vs. Riverside Irrigation District and others, defendants," in the District Court of the Third (now Seventh) Judicial District of the State of Idaho, in and for the County of Canyon, decree in which cause was entered and filed in the office of the Clerk of said Court on the 18th day of January, 1906. Said waters are specifically described as follows, viz:

(1) All the water rights appurtenant to that part of Lots 1,2 and 3 in Sec. 12, T. 4 N. R. 4 W. B. M. and that part of Lots 3,4 and 5 in Sec. 7, T. 4 N. R. 3 W. B. M. which lie on the southerly side of the present main channel of the Boise River, area 300 acres; the W 75 acres of the NE¼ of the NW¼ of Sec. 14; the N½ of the NE¼ of Sec. 23; the N½ of the SE¼ of Sec. 14; the W 30 acres of the NW¼ of the NE¼ of Sec. 13, all in T. 4 N. R. 4 W. B. M.; and the NW¼ of the NE¼ of Sec. 19, T. 4 N. R. 3 W. B. M.; said water being heretofore diverted through the Pioneer Dixie Ditch, the point of diversion of which is described in said decree as follows, to-wit: The point of diversion is on the left bank of the Boise River in the NW¼ of Sec. 20, T. 4 N. R. 3 W. B. M. Said waters appurtenant to said lands hereinabove described being part of rights Nos. 8 and 45 as set out in said decree hereinabove referred to.

(2) All the water rights appurtenant to the E½ of Sec. 8 and all of Sec. 9 T. 4 N. R. 4 W. B. M., said water being heretofore diverted through the Riverside Canal, the point of diversion of which from the Boise River is described in said decree as follows, to-wit: The point of diversion is on the left bank of the Boise River near the center of Sec. 20, T. 4 N. R. 3 W. B. M., said waters appurtenant to said lands hereinabove described being all of Right No. 80 as set out in said decree hereinabove referred to.

(3) All the water rights appurtenant to the SW¼ of the SE¼ of Sec. 31, T. 5 N., R. 4 W. B. M., said water being heretofore diverted through the Eureka No. 2 Ditch, the point of diversion of which from the Boise River is described in said decree as follows, to-wit: The point of diversion is on the left bank of the Boise River near the SW corner of Sec. 18, T. 4 N. R. 4 W. B. M. Said water appurtenant to said lands hereinabove described being a part of Right No. 89 as set out in said decree hereinabove referred to.

(4) Also all of the water right of the Jacobs Ditch Company, Limited, consisting of 1000 miners inches as the same is described in the decree hereinabove referred to, and described in said decree as used under a rental system in the irrigation of town lots and blocks, for street sprinkling, sewer flushing and other municipal purposes in Boise City and additions thereto. Said water being heretofore diverted through the Jacobs Ditch, the point of diversion of which from the Boise River is described in said decree as follows, to-wit: The point of diversion is on the right bank of the Boise River about one mile East of Boise City, said water being all of Right No. 2 as set out in said decree hereinabove referred to.

POINT TO WHICH TRANSFERRED AND PLACE OF USE.

All the water rights hereinabove described and hereby ordered transferred are hereby ordered to be diverted into the canal of the Farmers' Union Ditch Company, Limited, at the following point of diversion from the Boise River, to-wit: To be diverted into the Farmers' Union Canal on the right bank of the Boise River in the SE¼ of the SE¼ of Sec. 33, T. 4 N. R. 2 W. of B. M. for use, for domestic and irrigation purposes, upon the following described lands, to-wit:

The following lands in Twp. 5 N. of R. 1 W. of B. M. Ada County, Idaho: SW¼ of NE¼ of Sec. 19; W½ of NW¼ of Sec. 30; SW¼ of SW¼ of Sec. 30; W½ of NW¼ Sec. 31; and the following described lands in Twp. 5 N. of R. 2 W. of B. M. in Canyon County, Idaho, to-wit:

75.3 acres in the S½ of the SW¼ and the N½ of SE¼ of Sec. 22; 123.2 acres in the S½ of the SW¼ and S½ of SE¼ of Sec.23; 29 acres in the SE¼ of Sec. 24; the NE¼ of the SE¼ of Sec. 25; the following lands in Sec. 26, the E½ of the NW¼; the SW¼ of the NW¼ and 26.7 acres of the SE¼ of the NW¼; the NW¼ of the NE¼ and 12.7 acres in the N½ of the SW¼; the following lands in Sec. 27, S½ of the NE¼; NW¼ of the NW¼; S½ of the SE¼ of the NW¼; the SW¼; 37 acres in the NW¼ of the SE¼; 16.4 acres in the NE¼ of the SE¼; 39.1 acres in the SW¼ of the NE¼ and 7.8 acres in the SE¼ of the SE¼; the following lands in Sec. 28, the SE¼; the S½ of the SW¼; the NW¼ of the SW¼ and the SW¼ of the NW¼; the following lands in Sec. 29, the SE¼ of the NE¼; N½ of SE¼ and SE¼ of SE¼; the following lands in Sec. 32, the S½ of NW¼ of NE¼; the W½ of the NW¼ of the NW¼ of NE¼; the S½ of the SW¼ of NE¼; the SE¼; SE¼ of SW¼ and the S½ of the SW¼ of the SW¼; all of Sec. 33; the following lands in Sec. 34, NW¼; the SW¼; the SE¼; the S½ of the NE¼; 37.3 acres in the NW¼ of the NE¼ and 23 acres in the NE¼ of the NE¼; the following lands in Sec. 35, 23.3 acres in the SE¼ of the NE¼; 5.2 acres in the NW¼ of the NW¼; 9.2 acres in the NE¼ of the SW¼; 8.2 acres in the NE¼ of the SW¼, 33 acres in the SW¼ of the SE¼; 35 acres in the SE¼ of the SW¼, the S½ of the SE¼; the NE¼ of the SE¼; 38 acres in the NW¼ of the SE¼, an irregular tract, comprising 300 acres and being a part of each subdivision of forty acres in said Sec. 35; also the following lands in Tp. 4 N. R. 5 W. B. M. in Canyon County, Idaho, to-wit: Lots 1,2,3 and 4 in Sec. 2; Lot 1 and the N 15 acres of Lot 4 in Sec. 3; Lot 4 in Sec. 4; Lot 1 and the N 32 acres of Lot 3 in Sec. 5, contiguous lands containing in all 3081 acres, more or less.

Dated Boise, Idaho, this 8th day of June, 1914.

P.P. King,

State Engineer.

Approved J. H. Peterson, Atty. Gen.

IN THE DISTRICT COURT OF THE UNITED STATES, IN AND FOR THE DISTRICT OF IDAHO, SOUTHERN DIVISION.

United States of America,

Plaintiff,

vs.

Boise Fruit Tracts Company, and J.N. Smith, State Engineer of the State of Idaho,

Defendants.

JUDGMENT.

This cause came on regularly to be heard on the 31 day of July, 1916, J.L. McClear, United States District Attorney, and R.E. Stoutemeyer, District Counsel, United States Reclamation Service, appearing as counsel for the Plaintiff and F.D.

LAW OFFICES

GIVENS PURSLEY LLP

RECEIVED
JUN 14 2004
WATER RESOURCES
WESTERN REGION

MEMORANDUM

TO: Mel Shulte
Idaho Department of Water Resources

FROM: John M. Marshall

RE: Jacobs Water Right
Our File No. 6018-1

DATE: June 9, 2004

This memorandum addresses ownership of water right 63-123, commonly called the "Jacobs" water right, and the basis for Lexington Hills Inc.'s and East Hills Development Inc.'s claims to a portion of this right.

Ownership of the Jacobs Water Right.

Water right 63-123 is an 1864-priority decreed water right authorizing diversion of 20.0 cfs (1000 inches). The right's point of diversion is the Farmer's Union Canal.

There are competing claims to ownership of the Jacobs right. Four entities have filed claims to the right in the Snake River Basin Adjudication ("SRBA"). Two of the four claimants, Farmers Union and Capital View, have claimed the entire 20.00 cfs. The other two claimants, Lexington Hills and East Hills Development have filed only partial claims corresponding to that amount of the Jacobs right historically delivered to them. Lexington Hills has filed a claim for 1.93 cfs of the Jacobs right, and East Hills Development has filed a claim for 0.52 cfs.

We have been able to establish a general ownership pattern for the Jacobs right. The right essentially has been split into three parts. Farmers Union holds one third of the right, Capital View Irrigation Inc. apparently holds one third, and several different landowners, including Lexington Hills and East Hills Development, own the other one-third portion.

This three-part split originates through a 1916 contract between Farmers Union and W.A. Keyt, a predecessor to Capital View Irrigation Inc. (the contract is attached as Exhibit A). According to the contract, Keyt had acquired all 20.00 cfs (1000 inches) of the Jacobs right and planned to initiate a new irrigation project above and to the north of Farmers Union's service

area. Farmers Union agreed to convey the water through its ditches to a point where Keyt would pump the water to his delivery system in exchange for 333.33 inches of the Jacobs right (1/3 of the right) to cover conveyance losses. Accordingly, as of 1916, the date of the contract, we know that Farmers Union held approximately 333 inches of the Jacobs right for conveyance losses and Keyt held approximately 666 inches for irrigation. Keyt's irrigation project apparently was organized as Capital View Irrigation, Inc.

Capital View states that they currently divert and delivery approximately 333 inches of water, leaving a 333-inch portion of the Jacobs right unaccounted for. Although we have not been able to trace exactly how this 333-inch portion was divided up, it is clear that the right became appurtenant through accomplished transfers to new lands outside of Capital View's service area, including lands owned by Lexington Hills and East Hills Development.[1] There are at least two sets of documents that confirm this.

First, the Farmers Union Canal Co. assesses Lexington Hills and East Hills Development for delivery of the Jacobs right. Importantly, the assessment for Jacobs water is expressly distinct from assessments for shares in the Farmers Union Canal Co. A Notice of Assessment from Farmers Union showing this distinction is attached as Exhibit B. Farmers Union shareholders as a whole are <u>not</u> assessed for delivery of Jacobs water. Only those individuals who own a piece of the Jacobs water are assessed. Presumably the assessment amount is calculated using the formula from the 1916 contract.

Second, we have located a deed in the chain of title dated March 6, 1942 from Idaho Farms to Western Land and Development that recites the conveyance of the land includes water rights "consisting principally of 128 inches of what is known as the Jacob's Water right, being water right #1 from the Boise River." Two subsequent deeds contain the same language. The deeds are attached as Exhibit C.

Based on all these documents, we are confident that Lexington Hills and East Hills Development own their claimed portions of the Jacobs right.

[1] Lands owned by these entities became the Lexington Hills Subdivision. These entities have since subdivided and sold the lands they owned. However Lexington Hills, Inc. expressly reserved all water rights from subsequent conveyances.

EXHIBIT A

Farmer's Union Ditch Company, Limited, a corporation.

to

W. A. Keyt

48.

Capital V
Has TO
meadow

AGREEMENT
Dated July 17th, 1916
Ack'd July 29th, 1916 before Blanche Myer N.P. Ada Co. Idaho. Seal. Residence, Boise, Ada Co. Idaho, By President and Secretary
Ack'd W.J.Bishop N.P. Polk Co. July 22, 1916 Oregon. Seal. Residence, McMinnville, Polk County, Oregon. My commission expires Jan 29- 1917. By W.A.Keyt
Recorded April 11th, 1917
Book 7 of Contracts page 232

WITNESSETH, That, whereas, the party of the first part is the owner and in the possession of a certain canal or irrigation ditch, together with a right-of-way therefor, situate in Ada and Canyon Counties, State of Idaho, and described as follows, to-wit: Commencing at the headgate of said canal at a point on the northerly side of the Boise River in the Southeast Quarter of the Southeast Quarter of Section 32 in Township 4 North of Range 2 East of the Boise Meridian, and running thence in a northwesterly direction through Townships 4 North of Range 2 East; 4 North of Range 1 East; 5 North of Range 1 West; 4 North of Range 2 West, and 5 North of Range 2 West of the Boise Meridian, being the said ditch known as the Farmers Union Ditch, together with the right to divert certain waters from the Boise River into said ditch at the headgage thereof, for the use of the stockholders of said Farmers Union Ditch Company, Limited, and that said Farmers Union Ditch Company Limited, is, and since the year 1895 has been, engaged in conveying and distributing through its said ditch waters to its said stockholders for irrigation and domestic purposes; and

Whereas, the party of the second part is interested in certain lands situate in Township 5 North, Range 1 East, B. M. which lie adjacent to and north of the canal of the party of the first part where it crosses said Township and Range, which land is arid in character and requires artificial irrigation for the production of profitable crops thereon, and,

Whereas, the party of the second part is the owner of that certain water right generally known as the Jacobs Canal water right for 1000 miner's inches, or twenty cubic feet per second of time, of the waters of Boise river, Idaho, adjudicated to said canal company in that certain suit wherein the Farmers Co-operative Ditch Company, a corporation, was plaintiff, and the Riverside Irrigation District, Limited, et al., were defendants, then pending in the District Court of the Third Judicial District of the State of Idaho, in and for the County of Ada, now pending in the District Court of the Seventh Judicial District of the State of Idaho, in and for the County of Canyon, said decree being dated January 18, 1906, and said water right being designated therein as "right No. 2;" said water right having been specifically enumerated in certificate of transfer No 136 issued by the State Engineer of the State of Idaho, dated June 8, 1914, and of record in the office of the State Engineer of Idaho; said described water right now being diverted at the intake of the canal of the party of the first part herein and,

Whereas, in order for the party of the second part to apply the water which he owns as hereinabove described to said lands in Township 5 North, Range 1 East, adjacent to and north of the canal of the party of the first part herein, it is necessary that he convey the same through the canal of the party of the first part to a point in the Southwest Quarter ($SW\frac{1}{4}$) of the Southwest Quarter ($SW\frac{1}{4}$) of Section Thirty-four (34) Township Five (5) North, Range One (1) East, B. M., hereinafter more particularly described.

(Continued)

(Continuation of Entry #40)

Now, therefore, it is mutually understood and agreed between the parties hereto as follows, to-wit:

That for and in consideration of the party of the second part conveying, transferring and delivering to the party of the first part a one-third interest in the water right of said Jacobs Canal water right hereinabove described, the said Farmers Union Ditch Company, Limited, hereby agrees to perpetually carry and deliver to the party of the second part, his heirs or assigns, during the entire irrigation season of each and every year after the date hereof, except as hereinafter provided, at the poin of diversion hereafter described, the waters represented by two-thirds of said Jacobs Canal water right herein above described, and at the elevation hereinafter described.

It is specially understood and agreed that the party of the first part shall be under no obligation to deliver to the party of the second part more water under this agreement than two-thirds of the amount which it is ultimately determined is represented by the water right of said Jacobs Canal Company, designated as "right No.2" in the priority suit on the Boise river hereinabove referred to, and which the party of the second part is entitled to have diverted from the Boise river by virtue of the ownership of said right, less proper deductions for seepage and evaporation.

It is further agreed that the party of the first part shall not be required to undergo any expense whatever in representing or defending said Jacobs Canal right in the litigation not pending in the Seventh Judicial District of the State of Idaho, in and for Canyon County, or any suit or action involving the transfer or use of said water but that said party of the second part shall cause the amount of water represented by said "right No.2" to be finally determined without expense to the party of the first part, and shall defend any suit or action involving the right to transfer, or use the same without expense to the party of the first part.

DELIVERY.

It is Expressly understood and agreed that the party of the second part and his assigns shall acquire no right or interest in or be entitled to the use of any part or portion of the waters now owned or hereafter acquired by the party of the first part by virtue of this agreement, and the party of the first part shall be under no obligation to carry or deliver the waters herein agreed to be carried and delivered until the party of the second part shall first have caused said waters represented by said "right No.2" to be delivered and maintained at the headgate of the party of the first part for diversion into its canal.

POINT OF DIVERSION.

It is agreed that the place of diversion from the canal of the party of the first part by the party of the second part, his heirs or assigns, of said water herein agreed to be carried and delivered, shall be on the following described tract of land to-wit:

On the North line of the canal of said Farmers Union Ditch Company, Limited, on the following described tract,

Beginning at the section corner on the township line common to Sections Thirty-three (33) and Thirty-four (34) in Township Five (5) North, Range One (1) East, B. M.; thence north 25° 10 Min. east, 520 ft. being the place of beginning; thence south 66° 56 Min. west, 54.5 ft; thence north 21° 10 Min. west, 390 ft. to a point 30 ft. east of

(Continued)

40

(Continuation of Entry # 27)

the section line common to sections 33 and 34, Township 5 North, Range 1 East, B. M.; thence north 507 ft. parallel to said section line; thence east 10 Ft.; thence south 382 ft.; thence east 58 ft.; thence south 21° 10 Min. east, 480 ft; thence south 66° 56 Min. west, 54.5 ft. to the place of beginning containing 1.11 acres more or less.

ELEVATION OF DELIVERY. 1000)

It is understood and agreed that the party of the second part intends to elevate the water herein agreed to be carried, on to the lands to be irrigated by the same, by means of pumps. For the purpose of pumping the same he shall construct a sump on the north or right bank of the canal of the party of the first part at such distance from said canal as may be determined by the party of the second part; said sump shall be connected with the canal of the party of the first part by means of an open ditch so constructed that the waters to which the party of the second part is entitled may be measured into said ditch where it diverts from the canal of the party of the first part. A headgate or tap shall be constructed at the head of said ditch in such a manner and at such elevation as shall be approved by the party of the first part.

It is agreed that the party of the first part shall be under no obligation to deliver the water herein agreed to be carried and delivered to the party of the second part at an elevation greater that the present grade of the canal of the party of the first part where it passes the point of diversion described in the preceding paragraph, and the party of the first part shall have the same right to regulate the elevation and construction of the tap or headgate of the party of the second part as it has to regulate the taps or headgates of its stockholders or water users along the line of said canal.

MAINTANANCE.

For the purpose only of determining the annual maintenance to be paid by the party of the second part to the party of the first part for the carriage and delivery of said water hereinabove provided for, it is hereby agreed that the stock of the party of the first part represents eleven inches to the share and that the party of the second part shall pay to the party of the first part on each eleven inches diverted into and carried through the canal of the party of the first part for the party of the second part, the same annual maintenance as is paid by the stockholders of the party of the first part upon one share of the stock of said party of the first part; said estimate of the amount of water represented by one share of stock of said party of the first part being based upon the present capital sotck of said party of the first part, to-wit: 500 shares.

It is agreed, however, that the party of the second part shall pay no maintenance to the party of the first part until he diverts water from said canal of the party of the first part and then only upon the amount so diverted, provided, however, that when he shall have diverted or caused to be diverted the maximum amount which he is entitled to divert under this agreement he shall henceforth pay maintenance upon the maximum amount he is entitled to divert.

It is further agreed that in lieu of the payment of maintenance before the party of the second part diverts water from the canal of the party of the first part under this agreement, he shall give the party of the first part free use of all the water represented by said "right No.2" of the Boise river herein agreed to be carried and delivered.

(Continued)

41

(Continuation of Entry #48.)

In the event said party of the second part, his heirs or assigns should fail or refuse to pay the maintenance as herein agreed, then the party of the first part shall be relieved during such delinquency only, from its obligation to carry and deliver said water herein agreed to be carried and delivered, and when said delinquent payments are made, together with 12% penalty on the amount of such delinquency the party of the first part shall resume its carriage and delivery of said water.

The maintenance charges herein provided for shall be paid by the party of the second part, his heirs or assigns, at the same time and in the same manner as assessments for maintenance are paid by the stockholders of the party of the first part.

The party of the second part shall not be liable for any portion of bonded or mortgaged indebtedness, or interest on bonds, mortgages or notes given by the party of the first part, whether outstanding at the date hereof or hereafter to be made or issued, for the purpose of developing, acquiring or purchasing water for said party of the first part. Should the party of the first part supplement its water supply by means of wells, sumps, reservoirs or other artificial means, the party of the second part shall pay no part of the expenses in developing, acquiring or maintaining the same or securing water therefrom, but the party of the second part shall be liable for its portion of the maintenance of the main canal as hereinabove provided. Party of the second part shall not be liable for any portion of moneys expended for the purpose of increasing the water supply of the stockholders of the party of the first part, whichhexpenditures do not increase the amount of water to be delivered under this agreement by the party of the first part to the party of the second part. Charges for betterments shall be considered as maintenance.

The party of the second part, his heirs or assigns, shall have no right, under this agreement, to exercise any management or control in the affairs, or of the property of the first part.

This contract is executed in duplicate, one copy of which is delivered to each of the parties hereto, and the same shall extend and bind the successors and assigns of the party of the first part and heirs, executors, administrators and assigns of the party of the party of the second part.

This contract is executed on behalf of the party of the first part by its President and Secretary by virtue of authority conferred upon said officers by resolution of its Board of Directors.

Farmers Union Ditch Co Ltd

By Emil Jullion
President
Party of the first part.

(NO SEAL)

Attest:
James M.Potter
Secretary.
W.A.Keyt
Party of the second part.

EXHIBIT B

Farmers Union Ditch Co., Ltd.

NOTICE OF 2001 WATER ASSESSMENT

Notice is hereby given that on January 18, 2001 an assessment has been levied by the Board of Directors of the Farmers Union Ditch Co., Ltd. on all of the capital stock of said corporation, and on all other water carried and delivered through the canal of said corporation.

Farmers Union Ditch Co., Ltd. shares are to be assessed at $200.00 per share. All other water delivered through the Farmers Union Canal will be assessed at $18.18 per miners inch. Storage water from Arrowrock and Anderson Ranch Reservoirs will be assessed at $.30 per acre foot.

Bureau of Reclamation charge for the replacement of the ensign valves on Arrowrock Dam causes us to charge a SPECIAL ASSESSMENT of $ 41.00 per share of FUD and $ 3.75 per miners inch of other water delivered through Farmers Union Canal.

This assessment is due and payable to the Secretary of said corporation on or before March 15, 2001.

Any assessment which remains unpaid after March 15, 2001 will be declared delinquent and subject to a penalty of fifteen percent (15%) of the assessment. The penalty will be added to the total assessment, and no water will be delivered until the assessment and penalty are paid in full.

Cust #2502

2001 WATER ASSESSMENT

.338	FARMERS UNION	$ 67.60
	ARROWROCK	$ 2.55
	ANDERSON	$
	BOISE VALLEY	$
96.4	JACOBS WATER	$ 1752.55
	MIDDLETON WATER	$
2.85	DEVELOPED WATER	$ 46.36
	OTHER WATER	$
	CREDIT	$
	DELINQUENT	$
	ACCOUNT SERVICE	$ 10.00
	SPECIAL ASSESSMENT (ARROWROCK)	$ 384.92
	PLEASE PAY THIS AMOUNT	$ 2263.98

Detach and return lower portion with your remittance.

RECEIVED FEB 13 2001

LEXINGTON HILLS, INC.
1815 E. STONYBROOK CT.
EAGLE, ID 83616

Please make checks payable to:
Farmers Union Ditch Co. Ltd.
2153 N. Pollard Lane
Star, ID 83669

Amount Paid $_____

EXHIBIT C

Idaho Farms Incorporated

To

The Western Loan &
Investment Company

Dated March 6, 1942

Instrument Number 211005

255/312

THIS INDENTURE, Made this 6th day of March, in the year of our Lord one thousand nine hundred and forty-two between IDAHO FARMS, INCORPORATED, a corporation duly organized and existing under the laws of the State of Idaho, and having its principal office in Idaho at Boise, in the County of Ada, party of the first part, and THE WESTERN LOAN & INVESTMENT COMPANY, a corporation, of Boise, County of Ada, State of Idaho, party of the second part,

WITNESSETH, That the said party of the first part, having been hereunto duly authorzied by resolution of its Board of Directors, for and in consideration of the sum of TEN & NO/100 ($10.00) DOLLARS , lawful money of the United States of America, and other good and valuable consideration to it in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained and sold, and by these presents does grant, bargain, sell, convey and confirm unto the said party of the second part, and to its successors and assigns forever, all the following described real estate situated in the County of Ada, State of Idaho, to-wit:

The South Half of the Northeast Quarter (S½NE¼), the Southeast Quarter of the Northwest Quarter (SE¼NW¼), the Southwest Quarter (SW¼) and the Southeast Quarter (SE¼) of Section Three (3), Township Four (4) North, Range One (1) East Boise Meridian, less right-of-way for roads.

Together with all water rights, ditch and ditch rights, and the irrigation pumping plant thereunto belonging and used in connection therewith. Said water right consisting principally of 128 inches of what is known as the Jacob's Water right, being water right #1 from the Boise River, as shown by the decree adjudicating the rights of Boise River, and 50 inches of what is known as the Davis Right, or right #2, from the Boise River, as shown by the decree adjudicating the priority of right from the Boise River, which said water rights, and the whole thereof, are diverted from the Boise River into the canal known as the Farmer's Union Ditch, operated by the Farmer's Union Ditch Company, Limited.

Subject to taxes and assessments for the year 1942.

(U.S.I.R. Stamps $41.25 cancelled)
(3-11-42 Wm.B.D.)

TOGETHER With all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and 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 said party of the first part.

TO HAVE AND TO HOLD, all and singular, the above mentioned and described premises, together with the appurtenances, unto the party of the second part, and to its successors and assigns forever. And the said party of the first part, and its successors, the said premises in the quiet and peaceable possession of the said party of the second part, its successors and assigns, against the said party of the first part, and its successors, and against all and every person and persons whomsoever, lawfully claiming or to claim the same, shall and will warrant and by these presents forever defend.

IN WITNESS WHEREOF, The party of the first part has caused its corporate name to be hereunto subscribed by its President and its corporate seal to be affixed by its Secretary in pursuance to said resolution the day and year first above written.

SIGNED, SEALED AND DELIVERED
IN PRESENCE OF - - - - - - -
(CORPORATE SEAL) (15)

IDAHO FARMS, INCORPORATED
By J. W. Cunningham, Its President
Attest: J. B. [illegible]

STATE OF IDAHO)
) ss.
County of ADA)

On this 6th day of March in the year 1942, before me, the undersigned, a Notary Public in and for said State, personally appeared J. W. Cunningham and J. R. Cornell, known to me to be the President & Secretary, respectively, of the corporation that executed the instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation 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.

(SEAL)

Wm. B. Davidson
Notary Public for the State of Idaho,
Residing at Meridian, Idaho.
My commission expires: 12-1-43

Recorded at the request of WESTERN LOAN & INVESTMENT CO. at 15 minutes past 9 o'clock A.M., this 14 day of March, A.D. 1942.

Fees, $1.40

Recorder

COMPARED

The Western Loan & Investment Company

Instrument No. 312469

352/548

To

Alfred M. Popma

Dated January 2, 1951

THIS INDENTURE, Made this 2nd day of January, in the year of our Lord one thousand nine hundred and fifty-one between The Western Loan & Investment Company, a corporation duly organized and existing under the laws of the State of Idaho, and having its principal office in Idaho at Boise in the County of Ada, State of Idaho, party of the first part, and Alfred M. Popma, whose wife is Dorothy Popma, of Boise, County of Ada, State of Idaho, parties of the second part,

WITNESSETH, That the said party of the first part, having been hereunto duly authorized by resolution of its Board of Directors, for and in consideration of the sum of Ten and no/100 DOLLARS, lawful money of the United States of America, to it in hand paid by the said parties of the second part, the receipt whereof is hereby acknowledged, has granted, bargained and sold, and by these presents does grant, bargain, sell, convey and confirm unto the said parties of the second part, and to their heirs and assigns forever, all the following described real estate, situated in __, County of Ada, State of Idaho, to-wit:

The South half of the Northeast quarter (S½NE¼); the Southeast quarter of the Northwest quarter (SE¼NW¼); the Southwest quarter (SW¼); and the Southeast quarter (SE¼) of Section Three (3), in Township Four (4) North; Range 1 (1) E.B.M., in Ada County, Idaho, excepting all road rights-of-way, and also excepting the property described in that certain warranty deed, dated December 30, 1947, between The Western Loan & Investment Company, a corporation, and Harvey L. Bingham and Bertha Bingman, husband and wife, said warranty deed being recorded in the office of the county recorder of Ada County, Idaho, at Page 209, Book 313 of Deeds.

Together with all water rights, ditch and ditch rights, and the irrigation pumping plant thereunto belonging and used in connection therewith. Said water right consisting principally of 128 inches of what is known as the Jacob's Water right, being water right #1 from the Boise River, as shown by the decree adjudicating the rights of Boise River, and 50 inches of what is known as the Davis Right, or right #2, from the Boise River, as shown by the decree adjudicating the priority of right from the Boise River, which said water rights, and the whole thereof, are diverted from the Boise River into the canal known as the Farmer's Union Ditch, operated by the Farmer's Union Ditch Company, Limited. (U.S.I.R. Stamps $55.00 Cancelled) (P.S.B. 1-2-51)

TOGETHER With all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and 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 said party of the first part.

TO HAVE AND TO HOLD, all and singular, the above mentioned and described premises, together with the appurtenances, unto the parties of the second part, and to their heirs and assigns forever. And the said party of the first part, and its

(22)

successors, the said premises in the quiet and peaceable possession of the said parties of the second part, their heirs and assigns, against the said party of the first part, and its successors, and against all and every person and persons whomsoever, lawfully claiming or to claim the same, shall and will warrant and by these presents forever defend.

IN WITNESS WHEREOF, The party of the first part has caused its corporate name to be hereunto subscribed by its President and its corporate seal to be affixed by its Secretary in pursuance to said resolution the day and year first above written.

SIGNED, SEALED AND DELIVERED IN PRESENCE OF---

THE WESTERN LOAN & INVESTMENT COMPANY

BY Laurence Bettis
Its President

(CORP. SEAL)

Attest J. R. Cornell
Its Secretary

STATE OF IDAHO)
) ss.
County of Ada)

On this 2nd day of January in the year 1951, before me, the undersigned, a Notary Public in and for the said State, personally appeared Laurence Bettis and J. R. Cornell, known to me to be the President and Secretary respectively, of the corporation that executed this instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation 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.

(SEAL)

R. Roland Towle
Notary Public for the State of Idaho,
Residing at Boise, Idaho

Recorded at the request of Idaho Title Co. at 49 minutes past 9 o'clock A. M. this 3 day of January, 1951.

Fees $2.00

Recorder

Compared

and seal to be hereunto affixed by its duly authorized officers, this 11th day of December A. D., 1952.

(CORP. SEAL) UNION PACIFIC STAGES, INCORPORATED,

Attest: By R. J. Walsh
President.

A. J. Babel
Assistant Secretary

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

On the 11th day of December A. D., 1952, personally appeared before me R. J. WALSH and A. J. BABEL, who being by me duly sworn, did say, each for himself, that he, the said R. J. Walsh, is the President and he, the said A. J. Babel, is the Assistant Secretary of Union Pacific Stages, Incorporated, and that the within and foregoing instrument was signed in behalf of said corporation by authority of a resolution of the Board of Directors, and said R. J. Walsh and A. J. Babel each duly acknowledged to me that said corporation executed the same and that the seal affixed is the seal of said corporation.

(SEAL) G. W. Pouser
NOTARY PUBLIC Residing at: Omaha, Nebr.

My Commission Expires:
Aug. 24, 1957.

Recorded at the request of Union Pacific R. R. Co. at 15 minutes past 9 o'clock A. M., this 24 day of December, 1952.

Fees: $1.50

Recorder

Compared

Alfred M. Popma, et ux
to
Ann Frances Popma

Instrument Number 314026.

376/182

Dated: September 30, 1952.

WARRANTY DEED

This indenture made this 30th day of September, 1952, between Alfred M. Popma and Dorothy W. Popma, husband and wife, of Boise, Ada County, Idaho, the parties of the first part, and Ann Frances Popma, a spinster, of Boise, Ada County, Idaho, the party of the second part.

WITNESSETH: That the parties of the first part for and in consideration of the love and affection which the parties of the first part have and bear unto their daughter, the party of the second part, as also for the better maintenance, support, protection and livelihood of the party of the second part, do by these presents give, grant, alien and confrim, unto the second party of the second part, and to her heirs and assigns forever an undivided one-fourth (¼) interest in and to that certain lot, piece or parcel of land, particularly described as follows: located in Ada County, state of Idaho, to-wit:

The south half of the northeast quarter (S.½ NE¼); southeast quarter of the northwest quarter (SE¼ NW¼); southwest quarter (SW¼); and the southeast quarter (SE¼) of Section 3, Tp. 4 N., R. 1., E.B.M., all in Ada County, Idaho, excepting all rights of way heretofore granted, and except that portion described in that certain warranty deed, dated December 30, 1947, recorded December 31, 1947, in the office of the County Recorder of Ada County, Idaho, in Book 313 of Deeds, at page 209;

(23)

Together with all water rights, ditch and ditch rights, and the irrigation pumping plant thereunto belonging and used in connection therewith. Said water right consisting principally of 128 inches of what is known as Jacob's water right, being water right #1 from the Boise River, as shown by the decree adjudicating the rights of Boise River, and 50 inches of what is known as the Davis River, or Right #2, from the Boise River, as shown by the decree adjudicating the priority of right from the Boise River which said water rights, and the whole thereof, are diverted from the Boise River into the canal known as the Farmer's Union Ditch, operated by Farmer's Union Ditch Company, Lt.

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 said parties of the first part.

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

IN WITNESS WHEREOF, The said parties of the first part have hereunto set their hand and seal, the day and year first above written.

SIGNED, SEALED AND DELIVERED

IN PRESENCE OF Paul S. Boyd — Alfred M. Popma (SEAL)

Paul S. Boyd — Dorothy W. Popma (SEAL)

STATE OF IDAHO)
) ss.
COUNTY OF ADA)

On this 30th day of September, 1952, before me the undersigned, a Notary Public in and for said state, personally appeared Alfred M. Popma and Dorothy W. Popma, 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.

(SEAL)

Paul S. Boyd
NOTARY PUBLIC, BOISE IDAHO

Recorded at the request of Paul S. Boyd at 54 minutes past 9 o'clock A. M., this 24 day of December, 1952.

Fees: $1.75

Recorder

Compared

Alfred M. Popma, et ux

to

Mary Louise Popma

Instrument Number 340265.

Dated: September 30, 1952.

WARRANTY DEED

This Indenture made this 30th day of September, 1952, between Alfred M. Popma and

I.

That the defendant THOMAS DAVIS be and is hereby awarded the use of the waters of Boise River, diverted from a point on the north bank of said river about one mile east of the east line of the original townsite of Boise City, Idaho, through what is commonly known as the Jacobs Canal, for use upon lands lying in Secs. 10 and 11, T. 3 N. R. 2 E. B.M., in the following amount from the following date;

63 0120 110 inches, from June 1, 1864; and hereby designated as Right No. 1
512, 513, 580, 595

That the defendant Thomas Davis be and is hereby awarded the use of said waters diverted from a point on the south side of said river in NW ¼ of NW ¼ of Sec. 9, T. 3 N. R. 2 E. B.M., through what is known as the Davis Canal, for use upon lands in Secs. 5, 6, 31 and 32, T. 3 N. R. 2 E. B.M., in the following amount from the following date;

63 0121 670 inches, from June 1, 1886, and hereby designated as Right No. 94.

That the defendant Thomas Davis be and is hereby awarded the use of said waters diverted from said river at a point in NW ¼ of Sec. 9, T. 3 N. R. 2 E B.M., through what is known as the Davis private ditch, for use upon SE ¼ of Sec. 5 and SE ¼ of Secs 8 and 9, all in T. 3 N. R. 2 E. B.M., in the following amount from the following date;

63 0122 27 inches, from June 1, 1891; And hereby designated as Right No. 119
P.D. 32

And adjudged to pay $56.49 costs, in addition to the costs incurred by him.

II.

JACOBS CANAL COMPANY, Limited, a corporation.

That the defendant the Jacobs Canal Company, Limited, be and it is hereby awarded the use of the waters of Boise River, diverted from a point on the north side of said river about one mile east of the east boundary line of the original townsite of Boise City, Idaho, through what is commonly known as the Jacobs Canal, for use upon the town lots and lands lying under said canal in Secs. 4, 9, 10, 11, 13, 14, T. 3 N. R. 2 E. B.M., in the following amount from the following date;

63 0123 1000 inches, from June 1, 1864; and hereby designated as Right No. 2
542, 136

And adjudged to pay $70.00 costs, in addition to the costs incurred by it.

JUN 2 1 1996

DATE: July 26, 2004

TO: Nick Spencer

FROM: Mel Schulte MS

RE: Ownership of 63-123 (Jacobs Right)

Attached is documentation concerning the ownership of 63-123 (Jacobs right). You will note in John Marshall's letter dated June 9, 2004 he requested I forward to you the information he provided. Also, included is additional information independent of that provided by John.

Based on a tele-conference between Susan, myself and Jan on June 4th , I plan at this time to recommend 7.0 cfs to Capitol View Irrigation; 13.0 cfs to Farmers Union Ditch Co. and disallow the private claims by East Hills Development and Lexington Hills Inc. You might want to discuss this matter with Susan. Let me know if you would like a meeting between all of us.

The legal ownership of the Jacobs right is a mystery at this time and will have to be worked out in the SRBA review process. It's very likely that no matter which way we decide to structure our recommendations they will be challenged by someone.

MTS

RECEIVED
JAN 2 6 2005
WATER RESOURCES
WESTERN REGION

GIVENS PURSLEY LLP

LAW OFFICES
601 W. Bannock Street
PO Box 2720, Boise, Idaho 83701
TELEPHONE: 208 388-1200
FACSIMILE: 208 388-1300
WEBSITE: www.givenspursley.com

Gary G. Allen
Kelly T. Barbour *
Christopher J. Beeson
William C. Cole
Michael C. Creamer
Thomas E. Dvorak
Roy Lewis Eiguren
Timothy P. Feamside
Jeffrey C. Fereday
Steven J. Hippler
Karl T. Klein
Debora K. Kristensen
Anne C. Kunkel
Jeremy G. Ladle
Franklin G. Lee
David R. Lombardi
D. David Lorello, Jr.
Emily A. MacMaster
Kimberly D. Maloney
John M. Marshall
Kenneth R. McClure
Kelly Greene McConnell
Cynthia A. Melillo
Christopher H. Meyer
L. Edward Miller
Patrick J. Miller
Judson B. Montgomery
Angela K. Nelson
Deborah E. Nelson
W. Hugh O'Riordan, LL.M.
Michael C. Orr
Kenneth L. Pursley
Bradley V. Sneed
H. Barton Thomas, LL.M.
J. Will Varin
Conley E. Ward
Robert B. White
Raymond D. Givens
RETIRED
James A. McClure
RETIRED
*Licensed in Texas

January 25, 2005

Mr. Mel Shulte
Western Regional Office
Idaho Department of Water Resources
2735 Airport Way
Boise, ID 83705-5082

Re: Lexington Hills – Farmer's Union Water Rights
GP File No. 6018-1

Dear Mel:

Pursuant to our recent conversations, I am enclosing copies of deeds that convey property and appurtenances from Holgate Enterprises, Inc. to Lexington Hills, Inc. If can be of further assistance, please call me.

Sincerely,

John M. Marshall

JMM/hcm
Enclosures (8 deeds)
S:\CLIENTS\6018\1\JMM to IDWR enc Holgate deeds.DOC

MEMORANDUM

FROM: Mel Schulte

TO: FILE

RE: A summary of information concerning the Jacobs Canal Company water right 63-123.

DATE: July 1, 2005

HISTORICAL INFORMATION

Water right 63-123 was awarded in the Stewart Decree as Right No. 2 to the Jacobs Canal Company with a priority date of June 1, 1864. The decree specified an amount of 1000 inches to be diverted from the north side of the Boise River about one mile east of the original Boise City town site to be used in Secs. 4, 9, 10, 11, 13, 14; T03N, R02E. This is possibly one of the rights that cannot be cut in times of scarcity.

An approved water right transfer dated June 8, 1914 changed the point of diversion to the Farmer's Union Canal. The transfer describes a detailed place of use in T05N, R01W, T05N, R02W and T04N, R02W.

An agreement dated July 17, 1916 between Farmer's Union Ditch Company and W. A. Keyt, who is described in the agreement as the owner of the Jacobs Canal Company right, splits the ownership of right 63-123. This contract gives Farmer's Union Ditch Company one-third of the right as compensation for delivering the remaining two-thirds of the right to land of interest to Keyt in T05N, R01E. This parcel in T05N, R01E is apparently the same land that was organized as Capital View Irrigation District in 1922.

An approved transfer dated December 31, 1934 split .6875 cfs of the Jacobs Canal Company right into the ownership of the Federal Land Bank to be used on land in Sec. 4, T04N, R01E. This right is designated as 63-123A in the water right records but no specific claim was filed in the SRBA for this split and there is no proof the transfer was ever perfected.

OWNERSHIP ISSUE

It is an accepted fact Farmer's Union Ditch Co. was conveyed one-third or 333 inches of right 63-123 by virtue of the July 17, 1916 agreement and W. A. Keyt retained ownership of the remaining two-thirds or 667 inches.

Capital View Irrigation District, the apparent successor of interest to W. A. Keyt, has indicated they have historically been delivered and assessed for only 350 inches of the 667 inches retained by W. A. Keyt.

If Farmer's Union owns one-third of 63-123 and Capital View Irrigation claims to own approximately one-third of the right an issue to be resolved is who owns the remaining one-third. There are no water right records that address the ownership issue nor are there any water right records that accurately describe the places of use for the entire right.

The Boise River water master's records and the Farmer's Union Ditch Company records indicate the entire right has been historically diverted into the Farmer's Union Canal.

The Lexington Hills subdivisions were developed by Lexington Hills, Inc on land previously owned by the Holgate family. A series of deeds conveyed the land in parcels from the Holgates to Lexington Hills, Inc.

Lexington Hills, Inc executed The Declaration Of Covenants, Conditions, Restrictions and Easements for Lexington Hills which authorized the formation of a homeowners association to be responsible for various maintenance and operations including the irrigation system. Lexington Hills Homeowners' Association, Inc was formed in 1992.

The common areas within Lexington Hills development were conveyed in a series of 16 deeds from Lexington Hills, Inc to Lexington Hills HOA dating from 1992 to 2001. Six of the deeds include the conveyance of water totaling 119.40 inches of Jacobs water. The remaining 10 deeds are silent as to water. Twelve of the deeds reserve a perpetual 10' right-of-way for the irrigation system to the grantor, Lexington Hills, Inc.

FARMER'S UNION DITCH COMPANY RECORDS

Farmer's Union Ditch Co. records provide some information that can assist in determining who might own the portion of 63-123 not allocated to Farmer's Union and Capital View Irrigation. As of June 15, 2004 (See attached letter) Farmer's has been delivering and assessing 308 inches of the Jacobs right as described below:

Green Acres/Richard Hormaechea	**34.0 inches**	*
Echo Creek HOA	**33.77 inches**	*
Lexington Hills, Inc	**96.4 inches**	
Lexington Hills, HOA	**107.6 inches**	
Ilene Stinar	**10.0 inches**	*
East Hills Development	**26.23 inches**	

*** Not claimed in the SRBA**

A very important bit of information in Farmer's records is the fact that 264 inches of the above listed 308 inches can be traced back as early as 1972 to land previously owned by Myron Holgate & Sons. The Holgate land is the same parcel that was subdivided into the current Echo Creek, Lexington Hills and Lexington Hills East subdivisions.

CURRENT SRBA CLAIMS

63-123C	Farmer's Union Ditch Co.	20 cfs	1000 inches	*
-123D	East Hills Development	.525 cfs	26.23 inches	
-123E	Capital View Irrigation	20 cfs	1000 inches	*
-123F	Lexington Hills, Inc	1.93 cfs	96.4 inches	
-123G	Lexington Hills, HOA	4.605	230.23 inches	**

*** Farmer's Union and Capital View both claimed the entire right with the understanding that the real ownership and allocation of the right would be determined in the SRBA review and recommendations.**

****Lexington Hills HOA claimed all of the water delivered to the Lexington Hills subdivision. They believe that East Hills Development has been absorbed into the Lexington Hills HOA. They contend that because they are the entity designated in the CC& R's and their own Bylaws as being responsible for the operation and maintenance of the irrigation system they are also entitled to the water rights appurtenant to the subdivision property.**

PRELIMINARY RECOMMENDATIONS

Listed below are the diversion amounts and entities proposed for the preliminary recommendations:

63-123C	Farmer's Union Ditch Company	8.4 cfs	419.77 inches ***
-123D	East Hills Development	.52 cfs	26.23 inches
-123E	Capital View Irrigation	7.0 cfs	350.0 inches
-123F	Lexington Hills, Inc	1.93 cfs	96.4 inches
-123G	Lexington Hills HOA	2.15 cfs	107.6 inches
	TOTALS	20.00 cfs	1000 inches

****The Farmer's Union allocation includes the following:**

1916 contract portion conveyed as compensation	333.0 inches
Green Acres/Hormaechea part delivered but unclaimed	34.0 inches
Echo Creek HOA part delivered but unclaimed	33.77 inches

Ilene Stinar part delivered but unclaimed	**10.0 inches**
A remaining portion delivered but not claimed	**9.0 inches**
	419.77 inches

ADDITIONAL INFORMATION TO SUPPORT THE RECOMMENDATIONS

The records of the Boise River water master and the Farmer's Union Ditch Co. verify that the Jacobs right, 63-123, has been historically diverted into the Farmer's Union Canal.

There is insufficient information in our water right records to support the division of the Jacobs right to the above list of claimants and the places of use they claimed. The above recommendations can, however, be justified as accomplished transfers based on the records of Farmer's Union Ditch Co. Farmer's Union can trace the assessment and delivery of 264 inches of the Jacobs right back to 1972 to the parcel of land that is now known as Lexington Hills, Lexington Hills East and Echo Creek subdivisions. We have deeds on file that convey the land from Holgate Enterprises to Lexington Hills, Inc.

The unclaimed portions of 63-123 listed above were recommended to the Farmer's Union Ditch Co. for two reasons. First, they claimed the entire right and second they have historically delivered and used these unclaimed portions within their boundary. If any of the unclaimed parts can be recommended to other entities in the future, Farmer's Unions share will have to be reduced to avoid expanding the right.

The sixteen deeds conveying the common areas from Lexington Hills, Inc. to Lexington Hills HOA appear to transfer the water appurtenant to the common areas to the association. However, the water appurtenant to the individual lots owned by private parties is not addressed in any instruments of conveyance. Therefore, it appears Lexington Hills, Inc. as the developer of the subdivisions still holds title to that water in a fiduciary capacity for the individual private lot owners.

Another item of interest relating to Lexington Hills HOA's claim to be the owner of the entire 230 inches of water associated with the subdivision is the fact they have only been assessed by Farmer's Union for 107.6 inches since 1994. Why don't the assessments by Farmers Union Ditch Co. reflect an assessment to the HOA for the entire 230 inches? It would seem they would want to solidify their claim as the total owner by changing the ditch company records. Why would they allow Lexington Hills, Inc and East Hills Development to be assessed and pay for water that is owned by the homeowners? According to Ron Schreiner with Farmers, the Lexington Hills entities and East Hills assessments are paid separately by a property management firm.

Notices of error were filed by Lexington Hills HOA and Capital View challenging our recommendations for the amount of diversion rate, but did not include sufficient evidence to change the recommendations. Therefore no changes were made to our original recommendations. The issues involving the ownership of the Jacobs right need to be resolved at the objection phase when all of the parties can present their cases in a formal review process.

MTS

File No.: wild

1501001791

CORPORATE WARRANTY DEED

FOR VALUE RECEIVED, HOLGATE ENTERPRISES, INC., an Idaho Corporation

, a corporation

organized and existing under the laws of the State of Idaho, with its principal office at Boise, Idaho

of County of ADA , State of Idaho,

GRANTOR, hereby GRANT, BARGAIN, SELL and CONVEY unto

LEXINGTON HILLS, INC., an Idaho Corporation

GRANTEE

whose current address is: 2417 Bank Drive #101, Boise, Idaho 83705

the following described real property located in Ada County, State of Idaho,

more particularly described as follows, to wit:

See attached exhibit "A" which consists of one (1) page and is made a part hereof

9289994

BOISE TITLE & ESCROW
ADA COUNTY, ID. FOR ___
J. DAVID NAVARRO
RECORDER BY [signature]

'92 DEC 28 PM 3 40

RE-RECORD TO CORRECT LEGAL DESCRIPTION

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee(s), and Grantee(s) heirs and assigns forever. And the said Grantor does hereby covenant to and with the said Grantee(s), that Grantor is the owner in fee simple of said premises; that said premises are free from all encumbrances, EXCEPT those to which this conveyance is expressly made subject and those made, suffered or done by the Grantee(s); and subject to reservations, restrictions, dedications, easements, rights of way and agreements, (if any) of record, and general taxes and assessments, (including irrigation and utility assessments, if any) for the current year, which are not yet due and payable, and that Grantor will warrant and defend the same from all lawful claims whatsoever.

The officers who sign this deed hereby certify that this deed and the transfer represented thereby was duly authorized under a resolution duly adopted by the board of directors of the Grantor at a lawful meeting duly held and attended by a quorum.

In witness whereof, the Grantor has caused its corporate name to be hereunto affixed by its duly authorized officers this 30th day of November, in the year of 1992

(CORPORATE SEAL)

HOLGATE ENTERPRISES, INC.
(CORPORATE NAME)

By G. Marlynn Holgate
PRESIDENT

Attest: Verna C. Holgate
SECRETARY

ACKNOWLEDGEMENT — Corporate

STATE OF Idaho County of Ada

On this 30th day of November in the year of 1992, before me, the undersigned, a Notary Public in and for said State, personally appeared G. Marlynn Holgate & Verna C. Holgate known or identified to me to be the President & Secretary of the corporation that executed the instrument or the person S who executed the instrument on behalf of said corporation and acknowledged to me that such corporation executed the same

Signature [signature]
Name Georgia MacKley (type or print)

Residing at Boise, ID
My commission expires 6/20/94

9306032

Rerecord BOISE TITLE & ESCROW
ADA COUNTY, ID. FOR ___
J. DAVID NAVARRO
RECORDER BY [signature]

'93 JAN 25 PM 3 23

Boise Title & Escrow, Inc.

87-008

(34)

EXHIBIT "A"

150400179Z

A tract of land situated in the Southwest 1/4 of Section 3, Township 4 North, Range 1 East, Boise Meridian, Ada County, Idaho, described as follows:

Commencing at a found aluminum cap monumenting the Southeast Corner of said Southwest 1/4 of Section 3, thence along the southerly line of said Section 3, said line also being the centerline of Floating Feather Road North 89°-44'-43" West a distance of 2680.44 feet to a found brass cap monumenting the Southwest Corner of said Section 3, thence continuing along said southerly line South 89°-44'-43" East a distance of 1445.60 feet to a set P.K. Nail, said P.K. Nail being the POINT OF BEGINNING.

Thence leaving said southerly line North 00°-15'-17" East a distance of 402.73 feet to a found P.K. Nail on the southeasterly boundary of Lexington Hills Subdivision No. 1, (a recorded subdivision on file, in Book 59 of Plats, at Pages 5802, 5803 and 5804, Records of Ada County, Idaho), Thence along said southeasterly boundary the following courses:

South 65°-52'-00" East a distance of 168.52 feet to a found steel pin,
Thence North 56°-49'-00" East a distance of 169.87 feet to a found steel pin,
Thence North 24°-33'-00" East a distance of 151.25 feet to a found steel pin,
Thence North 09°-03'-00" West a distance of 136.60 feet to a found steel pin,
Thence North 37°-32'-00" West a distance of 96.00 feet to a found steel pin,

Thence leaving said southeasterly boundary North 55°-38'-30" East a distance of 152.54 feet to a found steel pin,
Thence North 05°-27'-00" West a distance of 379.32 feet to a found steel pin,
Thence South 11°-29'-11" East a distance of 512.22 feet to a found steel pin,
Thence South 00°-12'-00" East a distance of 277.52 feet to a found steel pin,

1501001793

Page Two
Legal Description
Lexington Hills Inc.
Additional Property Purchase
5.79 Acre Tract

Thence South 00°-15'-17" West a distance of 461.72 feet to a set steel pin on said southerly line of the Southwest 1/4, Thence along said southerly line North 89°-44'-43" West a distance of 471.43 feet to the POINT OF BEGINNING.

The above described tract of land contains 5.79 acres, more or less, subject to all existing easements and rights-of-way.

Prepared by:

ROYLANCE & ASSOCIATES, P.A.
4619 Emerald, Suite D-3
Boise, Idaho 83706
(208) 336-7350



10/21/92

WP\FILES\LEGAL\PN1302.LGL\PG.1-2

ST-93042003 PW

1590001724

WARRANTY DEED

FOR VALUE RECEIVED, HOLGATE ENTERPRISES, INC., an Idaho corporation, the Grantor, does hereby grant, bargain, sell and convey unto LEXINGTON HILLS, INC., an Idaho corporation, the Grantee, whose address is 1815 E. Stonybrook Court, Eagle, Idaho 83616, the real property in Ada County, more particularly described on Exhibit A attached hereto and incorporated herein.

TO HAVE AND TO HOLD the said premises, with their appurtenances, unto the said Grantee, its administrators and assigns forever. And, the said Grantor does hereby covenant to and with the said Grantee, that it is the owner in fee simple of said premises; that said premises are free from all encumbrances, except those of record, and that it will warrant and defend the same from all lawful claims whatsoever.

DATED this 7th day of July, 1993.

3360930 HOLGATE ENTERPRISES, INC.

STEWART TITLE

ADA COUNTY ID. FOR ___ By G. Marlynn Holgate (pres.)
J. DAVID NAVARRO G. Marlynn Holgate, President
RECORDER BY Grantor

STATE OF IDAHO)
'93 JUL 29 PM 3 15
County of Ada)

On this 21st day of July, 1993, before me the undersigned, a Notary Public in and for the State of Idaho, personally appeared G. MARLYNN HOLGATE, known to me to be the President of HOLGATE ENTERPRISES, INC., the corporation whose name is subscribed to the within Warranty Deed and known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same on behalf of said corporation and that said corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

J. Charles Blanton
NOTARY PUBLIC FOR IDAHO
Residing at Boise, Idaho
My Commission Expires: 2-19-94

ORDER NO. ST-93042003 PW

EXHIBIT "B"

PARCEL 3

A tract of land situated in the Southwest 1/4 of Section 3, Township 4 North, Range 1 East, Boise Meridian, Ada County, Idaho described as follows:

Commencing at a found brass cap monumenting the West 1/4 corner of said Section 3, thence along the Westerly line of the Southwest 1/4 of said Section 3, South 00 degrees 00'04" West a distance of 2623.34 feet to a found brass cap monumenting the Southwest corner of said Section 3, thence leaving said Westerly line and along the Southerly line of said Southwest 1/4, said line also being the centerline of Floating Feather Road, South 89 degrees 44'43" East a distance of 969.34 feet to a set P.K. Nail, said P.K. Nail being the POINT OF BEGINNING, thence leaving said Southerly line,

North 29 degrees 12'40" West a distance of 86.08 feet to a set steel pin, thence

North 00 degrees 15'17" East a distance of 345.05 feet to a set steel pin, thence

South 89 degrees 44'43" East a distance of 454.85 feet to a set steel pin, thence

South 65 degrees 52'00" East a distance of 76.64 feet to a set steel pin, thence

South 00 degrees 15'17" West a distance of 388.98 feet to a set P.K. Nail on the Southerly line of said Southwest 1/4, thence along said Southerly line

North 89 degrees 44'43" West a distance of 482.58 feet to the POINT OF BEGINNING.

2023001728

ACCOMMODATION RECORDING

WARRANTY DEED

GRANTOR: HOLGATE ENTERPRISES, INC., a corporation organized and existing under the laws of the State of Idaho, with its principal office at 1832 Floating Feather Road, Eagle, Idaho 83616, for good and valuable consideration, the receipt of which is hereby acknowledged, does hereby grant, bargain, sell and convey unto FLOATING FEATHER HOMES, INC., an Idaho corporation, of 2417 Bank Drive, Suite 101, Boise, Idaho 83705, as GRANTEE, and to grantee's successors and assigns forever, all of the following described real estate located in Eagle, County of Ada, Idaho:

All of that certain real property described in

Exhibit "A" attached hereto and incorporated

herein by reference;

TOGETHER with all improvements, water, water rights, ditches, ditch rights, easements, hereditaments and appurtenances thereto;

SUBJECT TO a Mortgage in favor of The Federal Land Bank of Spokane, a corporation, Inc., dated January 18, 1982, and recorded January 22, 1982, as Instrument No. 8202728, records of Ada County, Idaho;

SUBJECT ALSO TO reservations, restrictions and dedications of record, all easements and rights of way of record or appearing on the land or known to Grantee, and general taxes and assessments for the current year which are not yet due and payable.

Conveying hereby 170.43 acres, more or less.

Grantor, for itself, its successors and assigns does hereby covenant, warranty and shall defend the quiet and peaceable possession of said premises by the grantee, its successors and assigns forever against the lawful claims of all persons.

In construing this deed, and where the context so requires, the singular includes the plural and the masculine, the feminine and the neuter.

The officer(s) who sign this deed hereby certify that this deed and the transfer represented thereby was duly authorized under a resolution duly adopted by the board of directors of the grantor at a lawful meeting duly held and attended by a quorum.

IN WITNESS WHEREOF, Grantor has caused its corporate name and seal to be hereunto affixed by its duly authorized officers this 8th day of April, 1991.

96043519

HOLGATE ENTERPRISES, INC.

ADA CO. RECORDER
J. DAVID NAVARRO
BOISE ID
ALLIANCE TITLE

By G. Marlynn Holgate
G. Marlynn Holgate, President

Fee:

By

'96 MAY 23 AM 10 03

FEE 21.00 DLP

RECORDED AT THE REQUEST OF

1

(40)

Secretary

STATE OF IDAHO)
: ss.
County of Ada)

On this 25th day of April, 1991, before me, the undersigned, a Notary Public in and for said state, personally appeared G. Marlynn Holgate, known or identified to me to be the President of the corporation ~~and~~ _____, ~~known or identified to me to be the Secretary of the corporation,~~ who executed the instrument, or the person(s) who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation 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.

(SEAL)

NOTARY PUBLIC FOR IDAHO
Residing at Boise, Idaho
My Commission Expires 10-1-91

Order No.: ST-90022532 JF

EXHIBIT "A"

PARCEL 1

The South 1/2 of the Northeast 1/4, Southeast 1/4 of the Northwest 1/4, the Southwest 1/4, and the Southeast 1/4 of Section 3, in Township 4 North, Range 1 East, Boise Meridian, Ada County, Idaho.

EXCEPT all that portion of the Southeast 1/4 of the Northeast 1/4 and the Northeast 1/4 of the Southeast 1/4 of Section 3, Township 4 North, Range 1 East, Boise Meridian lying Easterly of the East line of that certain highway known as the Boise-Horseshoe Bend Highway Survey on file in the office of the Department of Public Works of the State of Idaho.

ALSO EXCEPT that portion of the Southeast 1/4 of the Southeast 1/4 lying East of Horseshoe Bend Highway, Section 3, Township 4 North, Range 1 East, Boise Meridian, Ada County, Idaho.

ALSO EXCEPT a parcel of land situate in the East one-half of Section 3, Township 4 North, Range 1 East, Boise Meridian, Ada County, Idaho, being more particularly described as follows:

COMMENCING at the Section corner common to Sections 2, 3, 10, 11, Township 4 North, Range 1 East, Boise Meridian; thence
South 89°53'17" West, 2,276.14 feet along the Section line common to said Section 3 and 10 to the REAL POINT OF BEGINNING; thence
North 00°47"30" West, 2,616.95 feet; thence
North 89°53'17" East, 1,511.68 feet along a line parallel to the Southerly boundary of said Section 3 to the Southwesterly right-of-way of Idaho State Highway 55; thence
South 18°06'46" East 2,151.15 feet along the Southwesterly right-of-way of Idaho State Highway 55: thence 580.50 feet along a curve deflecting to the right, with a radius of 1,865.20 feet, a central angle of 17°49'55" a long chord of 578.16 feet and a long chord bearing of South 09°11'49" East, along the Southwesterly right-of-way of Idaho State Highway 55 to the Southerly boundary

Continued on next page

CONTINUATION OF EXHIBIT "A"

Order No.: ST-90022532 JH

of said Section 3; thence
South 89°53'17" West, 2 236.70 feet along the Southerly boundary of said Section 3 to the REAL POINT OF BEGINNING.

ALSO EXCEPT - 5.00 ACRE TRACT

A tract of land situated in the Southwest 1/4 of Section 3, Township 4 North, Range 1 East, Boise Meridian, Ada County, Idaho described as follows:

Commencing at a found brass cap monumenting the West 1/4 corner of said Section 3; thence along the Westerly line of the Southwest 1/4 of said Section 3
South 00 degrees 00'04" West a distance of 2623.34 feet to a found brass cap monumenting the Southwest corner of said Section 3; thence leaving said Westerly line and along the Southerly line of said Southwest 1/4, said line also being the centerline of Floating Feather Road
South 89 degrees 44'43" East a distance of 927.00 feet to a set P.K. nail, said P.K. Nail being THE POINT OF BEGINNING; thence leaving said Southerly line
North 00 degrees 15'17" East a distance of 420.00 feet to a set steel pin; thence
South 89 degrees 44'43" East a distance of 518.60 feet to a set steel pin; thence
South 00 degrees 15'17" East a distance of 420.00 feet to a set P.K. Nail on the Southerly line of said Southwest 1/4; thence along said Southerly line
North 89 degrees 44'43" West a distance of 518.60 feet to THE POINT OF BEGINNING.

ALSO EXCEPT - 96.57 ACRE TRACT

A tract of land situated in the West 1/2 of Section 3, Township 4 North, Range 1 East, Boise Meridian, Ada County Idaho, described as follows.

Commencing at a found aluminum cap monumenting the South 1/4 corner of said Section 3; thence along the Southerly line of said Section 3, said line also being the centerline of Floating Feather Road
North 89 degrees 44'43" West a distance of 2680.44 feet to a found brass cap monumenting the Southwest corner of said Section 3, said brass cap also being THE POINT OF BEGINNING; thence leaving said Southerly line and along the Westerly line of said Section 3

Continued on next page

CONTINUATION OF EXHIBIT "A"

Order No.: ST-90022532 JH

North 00 degrees 00'04" East a distance of 2623.34 feet to a found brass cap monumenting the West 1/4 corner of said Section 3; thence leaving said Westerly line and along the East-West center-of-section line of said Section 3
South 89 degrees 43'02" East a distance of 1327.89 feet to a found steel pin, said pin being the Northeast corner of the Northwest 1/4 of the Southwest 1/4 of said Section 3; thence leaving said East-West center-of-section line
North 73 degrees 57 degrees 00" East a distance of 88.29 feet to a point; thence
South 65 degrees 36'30" East a distance of 487.68 feet to a point; thence
South 17 degrees 24'00" West a distance of 379.92 feet to a point; thence
South 16 degrees 30'30" East a distance of 238.22 feet to a point; thence
South 02 degrees 49'00" East a distance of 87.03 feet to a point; thence
South 00 degrees 55'30" East a distance of 216.77 feet to a point; thence
South 00 degrees 29'30" West a distance of 312.54 feet to a point; thence
South 05 degrees 27'00" East a distance of 379.32 feet to a point; thence
South 55 degrees 38'30" West a distance of 152.54 feet to a point; thence
South 37 degrees 32'00" East a distance of 96.00 feet to a point; thence
South 09 degrees 03'00" East a distance of 136.60 feet to a point; thence
South 24 degrees 33'00" West a distance of 151.25 feet to a point; thence
South 56 degrees 49'00" West a distance of 169.87 feet to a point; thence
North 65 degrees 52'00" West a distance of 168.52 feet to a point; thence
North 00 degrees 15'17" East a distance of 17.29 feet to a point; thence
North 89 degrees 44'43" West a distance of 33.27 feet to a point; thence
North 27 degrees 45'15" West a distance of 324.76 feet to a point; thence
North 72 degrees 52'00" West a distance of 83.80 feet to a point; thence
South 67 degrees 00'00" West a distance of 237.15 feet to a

Continued on next page

CONTINUATION OF EXHIBIT "A"

Order No.: ST-90022532 JH

point; thence
North 89 degrees 36'00" West a distance of 157.40 feet to a point; thence
South 14 degrees 20'00" East a distance of 275.57 feet to a point; thence
Southeasterly along the arc of a circular curve concave Southwesterly a distance of 51.74 feet, said curve having a central angle of 14 degrees 07'04", a radius of 210.00 feet, a chord bearing South 07 degrees 16'28" East a chord distance of 51.61 feet to a point; thence
South 00 degrees 12'56" East a distance of 163.36 feet to a point; thence
Southeasterly along the arc of a circular curve concave Northeasterly a distance of 19.58 feet, said curve having a central angle of 14 degrees 01'24", a radius of 80.00 feet, a chord bearing South 07 degrees 13'39" East a chord distance of 19.53 feet to a point; thence
South 14 degrees 14'21" East a distance of 46.90 feet to a point; thence
Southeasterly along the arc of a circular curve concave Southwesterly a distance of 4.90 feet said curve having a central angle of 14 degrees 01'24", a radius of 20.00 feet, a chord bearing South 07 degrees 13'39" East a chord distance of 4.88 feet to a point; thence
South 00 degrees 12'56" East a distance of 27.24 feet to a point; thence
Southeasterly along the arc of a circular curve concave Northeasterly a distance of 46.88 feet, said curve having a central angle of 89 degrees 31'46", a radius of 30.00 feet, a chord bearing South 44 degrees 58'49" East a chord distance of 42.25 feet to a point; thence
South 00 degrees 15'17" West a distance of 30.00 feet to a point on said Southerly line of Section 3; thence along said Southerly line
North 89 degrees 44'43" West a distance of 927.00 feet to THE POINT OF BEGINNING.

PARCEL 3

A Perpetual Non-Exclusive Easement for Access to and Maintaining and Servicing existing irrigation pumps and

Continued on next page

CONTINUATION OF EXHIBIT "A"

Order No.: ST-90022532 JH

underground lines over the following described parcels.

TRACT I

Government Lot 3 and the Southwest 1/4 Northwest 1/4, Section 3, Township 4 North, Range 1 East, Boise Meridian, Ada County, Idaho.

TRACT II

Lots 1 and 2, Block 1, ROCKET BAR SUBDIVISION, according to the Official Plat thereof, filed in Book 26 of Plats at Page 1636, Records of Ada County, Idaho.

WARRANTY DEED

GRANTOR, HOLGATE ENTERPRISES, INC., a corporation organized and existing under the laws of the State of Idaho, with its principal office at 142 S Samaria Road, Malad, ID 83252, for good and valuable consideration, the receipt of which is hereby acknowledged, does hereby grant, bargain, sell and convey unto **LEXINGTON HILLS, INC.,** an Idaho corporation of 1815 E Stonybrook Court, Eagle, ID 83616 as GRANTEE, and to Grantee's successors and assigns forever, all of the following described real estate located in Eagle, County of Ada, Idaho:

All of that certain real property described in 97006704

Exhibit "A" attached hereto and incorporated herein by reference;

ADA CO. RECORDER
J. DAVID NAVARRO
BOISE ID

TOGETHER with all improvements, water, water rights, ditches, ditch rights, easements, hereditaments and appurtenances thereto.

Lexington Hills Inc

'97 JAN 29 AM 9 42

SUBJECT TO reservations, restrictions and dedications of record, all easements and rights of way of record or appearing on the land or known to Grantee, and general taxes and assessments for the current year which are not yet due and payable.

21.00 DHee

RECORDED AT REQUEST OF

Conveying hereby 170.43 acres, more or less.

Grantor, for itself, its successors and assigns does hereby covenant, warranty and shall defend the quiet and peaceable possession of said premises by the grantee, its successors and assigns forever against the lawful claims of all persons.

In construing this deed, and where the context so requires, the singular includes the plural and the masculine, the feminine and the neuter.

The officer(s) who sign this deed hereby certify that this deed and the transfer represented thereby was duly authorized under a resolution duly adopted by the board of directors of the grantor at a lawful meeting duly held and attended by a quorum.

IN WITNESS WHEREOF, Grantor has caused its corporate name and seal to be hereunto affixed by its duly authorized officers this 21st of January, 1997.

HOLGATE ENTERPRISES, INC.

BY: G Marlynn Holgate (Pres.)
G Marlynn Holgate, President

THIS DEED IS TO CORRECT WARRANTY DEED INSTRUMENT #96043519 RECORDED MAY 23, 1996

(41)

STATE OF IDAHO)
:ss.
County of Ada)

On this 21st day of January, 1997, before me, the undersigned, a Notary Public in and for said State, personally appeared G MARLYNN HOLGATE, known or identified to me to be the President of HOLGATE ENTERPRISES, INC. who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year in this certificate first above written.

GEORGIA MACKLEY NOTARY PUBLIC STATE OF IDAHO

NOTARY PUBLIC FOR IDAHO
Residing at Meridian, ID
My Commission Expires: 6/22/2000

EXHIBIT "A"

PARCEL 1

The South 1/2 of the Northeast 1/4, Southeast 1/4 of the Northwest 1/4, the Southwest 1/4, and the Southeast 1/4 of Section 3, in Township 4 North, Range 1 East, Boise Meridian, Ada County, Idaho.

EXCEPT all that portion of the Southeast 1/4 of the Northeast 1/4 and the Northeast 1/4 of the Southeast 1/4 of Section 3, Township 4 North, Range 1 East, Boise Meridian lying Easterly of the East line of that certain highway known as the Boise-Horseshoe Bend Highway Survey on file in the office of the Department of Public Works of the State of Idaho.

ALSO EXCEPT that portion of the Southeast 1/4 of the Southeast 1/4 lying East of Horseshoe Bend Highway, Section 3, Township 4 North, Range 1 East, Boise Meridian, Ada County, Idaho.

ALSO EXCEPT a parcel of land situate in the East one-half of Section 3, Township 4 North, Range 1 East, Boise Meridian, Ada County, Idaho, being more particularly described as follows:

COMMENCING at the Section corner common to Sections 2, 3, 10, 11, Township 4 North, Range 1 East, Boise Meridian; thence
South 89°53'17" West, 2,276.14 feet along the Section line common to said Section 3 and 10 to the REAL POINT OF BEGINNING; thence
North 00°47"30" West, 2,616.95 feet; thence
North 89°53'17" East, 1,511.68 feet along a line parallel to the Southerly boundary of said Section 3 to the Southwesterly right-of-way of Idaho State Highway 55; thence
South 18°06'46" East 2,151.15 feet along the Southwesterly right-of-way of Idaho State Highway 55; thence 580.50 feet along a curve deflecting to the right, with a radius of 1,865.20 feet, a central angle of 17°49'55" a long chord of 578.16 feet and a long chord bearing of South 09°11'49" East, along the Southwesterly right-of-way of Idaho State Highway 55 to the Southerly boundary

Continued on next page

CONTINUATION OF EXHIBIT "A"

of said Section 3; thence
South 89°53'17" West, 2,236.70 feet along the Southerly boundary of said Section 3 to the REAL POINT OF BEGINNING.

A tract of land situated in the Southwest 1/4 of Section 3, Township 4 North, Range 1 East, Boise Meridian, Ada County, Idaho described as follows:

Commencing at a found brass cap monumenting the West 1/4 corner of said Section 3, thence along the Westerly line of the Southwest 1/4 of said Section 3, South 00 degrees 00'04" West a distance of 2623.34 feet to a found brass cap monumenting the Southwest corner of said Section 3, thence leaving said Westerly line and along the Southerly line of said Southwest 1/4, said line also being the centerline of Floating Feather Road, South 89 degrees 44'43" East a distance of 969.34 feet to a set P.K. Nail, said P.K. Nail being the POINT OF BEGINNING, thence leaving said Southerly line,
North 29 degrees 12'40" West a distance of 86.08 feet to a set steel pin, thence
North 00 degrees 15'17" East a distance of 345.05 feet to a set steel pin, thence
South 89 degrees 44'43" East a distance of 454.85 feet to a set steel pin, thence
South 65 degrees 52'00" East a distance of 76.64 feet to a set steel pin, thence
South 00 degrees 15'17" West a distance of 386.98 feet to a set P.K. Nail on the Southerly line of said Southwest 1/4, thence along said Southerly line
North 89 degrees 44'43" West a distance of 482.58 feet to the POINT OF BEGINNING.

ALSO EXCEPT - 96.57 ACRE TRACT

A tract of land situated in the West 1/2 of Section 3, Township 4 North, Range 1 East, Boise Meridian, Ada County Idaho, described as follows.

Commencing at a found aluminum cap monumenting the South 1/4 corner of said Section 3; thence along the Southerly line of said Section 3, said line also being the centetline of Floating Feather Road
North 89 degrees 44'43" West a distance of 2680.44 feet to a found brass cap monumenting the Southwest corner of said Section 3, said brass cap also being THE POINT OF BEGINNING; thence leaving said Southerly line and along the Westerly line of said Section 3

Continued on next page

deeded 4-25-91 to Floating Feather Hills, Inc
deeded to Lot. Hills, Inc 9-3-91 from " "

CONTINUATION OF EXHIBIT "A"

North 00 degrees 00'04" East a distance of 2623.34 feet to a found brass cap monumenting the West 1/4 corner of said Section 3; thence leaving said Westerly line and along the East-West center-of-section line of said Section 3
South 89 degrees 43'02" East a distance of 1327.89 feet to a found steel pin, said pin being the Northeast corner of the Northwest 1/4 of the Southwest 1/4 of said Section 3; thence leaving said East-West center-of-section line
North 73 degrees 57 degrees 00" East a distance of 88.29 feet to a point; thence
South 65 degrees 36'30" East a distance of 487.68 feet to a point; thence
South 17 degrees 24'00" West a distance of 379.92 feet to a point; thence
South 16 degrees 30'30" East a distance of 238.22 feet to a point; thence
South 02 degrees 49'00" East a distance of 87.03 feet to a point; thence
South 00 degrees 55'30" East a distance of 216.77 feet to a point; thence
South 00 degrees 29'30" West a distance of 312.54 feet to a point; thence
South 05 degrees 27'00" East a distance of 379.32 feet to a point; thence
South 55 degrees 38'30" West a distance of 152.54 feet to a point; thence
South 37 degrees 32'00" East a distance of 96.00 feet to a point; thence
South 09 degrees 03'00" East a distance of 136.60 feet to a point; thence
South 24 degrees 33'00" West a distance of 151.25 feet to a point; thence
South 56 degrees 49'00" West a distance of 169.87 feet to a point; thence
North 65 degrees 52'00" West a distance of 168.52 feet to a point; thence
North 00 degrees 15'17" East a distance of 17.29 feet to a point; thence
North 89 degrees 44'43" West a distance of 33.27 feet to a point; thence
North 27 degrees 45'15" West a distance of 324.76 feet to a point; thence
North 72 degrees 52'00" West a distance of 83.80 feet to a point; thence
South 67 degrees 00'00" West a distance of 237.15 feet to a

Continued on next page

CONTINUATION OF EXHIBIT "A"

point; thence
North 89 degrees 36'00" West a distance of 157.40 feet to a point; thence
South 14 degrees 20'00" East a distance of 275.57 feet to a point; thence
Southeasterly along the arc of a circular curve concave Southwesterly a distance of 51.74 feet, said curve having a central angle of 14 degrees 07'04", a radius of 210.00 feet, a chord bearing South 07 degrees 16'28" East a chord distance of 51.61 feet to a point; thence
South 00 degrees 12'56" East a distance of 163.36 feet to a point; thence
Southeasterly along the arc of a circular curve concave Northeasterly a distance of 19.58 feet, said curve having a central angle of 14 degrees 01'24", a radius of 80.00 feet, a chord bearing South 07 degrees 13'39" East a chord distance of 19.53 feet to a point; thence
South 14 degrees 14'21" East a distance of 46.90 feet to a point; thence
Southeasterly along the arc of a circular curve concave Southwesterly a distance of 4.90 feet said curve having a central angle of 14 degrees 01'24", a radius of 20.00 feet, a chord bearing South 07 degrees 13'39" East a chord distance of 4.88 feet to a point; thence
South 00 degrees 12'56" East a distance of 27.24 feet to a point; thence
Southeasterly along the arc of a circular curve concave Northeasterly a distance of 46.88 feet, said curve having a central angle of 89 degrees 31'46", a radius of 30.00 feet, a chord bearing South 44 degrees 58'49" East a chord distance of 42.25 feet to a point; thence
South 00 degrees 15'17" West a distance of 30.00 feet to a point on said Southerly line of Section 3; thence along said Southerly line
North 89 degrees 44'43" West a distance of 927.00 feet to THE POINT OF BEGINNING.

PARCEL 3

A Perpetual Non-Exclusive Easement for Access to and Maintaining and Servicing existing irrigation pumps and

Continued on next page

CONTINUATION OF EXHIBIT "A"

underground lines over the following described parcels.

TRACT I

Government Lot 3 and the Southwest 1/4 Northwest 1/4, Section 3, Township 4 North, Range 1 East, Boise Meridian, Ada County, Idaho.

TRACT II

Lots 1 and 2, Block 1, ROCKET BAR SUBDIVISION, according to the Official Plat thereof, filed in Book 26 of Plats at Page 1636, Records of Ada County, Idaho.

ST 93042003 PW

WARRANTY DEED

1590001718

FOR VALUE RECEIVED, HOLGATE ENTERPRISES, INC., a corporation duly organized and existing under the laws of the State of Idaho, the Grantor, does hereby grant, bargain, sell, and convey unto LEXINGTON HILLS, INC., the Grantee, whose current address is 1815 E. Stonybrook Court, Eagle, Idaho 83616, the following described property:

All of that certain real property described in Exhibit "A" attached hereto and incorporated herein by this reference.

TO HAVE AND TO HOLD the said premises, with its appurtenances unto the said Grantee, its successors and assigns forever. And the said Grantor does hereby covenant to and with the said Grantee, that it is the owner in fee simple of said premises; that it is free from all encumbrances except easements, covenants, and restrictions currently of record, and that Grantor will warrant and defend the same from all other lawful claims whatsoever.

IN WITNESS WHEREOF, the Grantor, pursuant to a resolution of its Board of Directors has caused its corporate name to be hereunto subscribed by its President and its corporate seal to be affixed by its Secretary this 19th day of July, 1993.

HOLGATE ENTERPRISES, INC.

By G. Marlynn Holgate (pres.)
G. Marlynn Holgate, President

ATTEST:

Verna C. Holgate (Sec.)
Secretary

STATE OF IDAHO)
) ss.
County of Ada)

On this 21st day of July, 1993, before me, a Notary Public for the State of Idaho, personally appeared G. Marlynn Holgate, known to me to be the President of Holgate Enterprises, Inc., and Verna C. Holgate, known to me to be the Secretary of Holgate Enterprises, Inc., and acknowledged to me that such corporation 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.

(SEAL)

A. Charles Blanton
Notary Public for Idaho
Residing at Boise, Idaho
My Commission Expires 3-19-98

930629

STEWART TITLE

J. D. RECORDED BY BBelveal 1800

'93 JUL 29 PM 3 15

38

ORDER NO. 93042003 PW

15800001719

EXHIBIT "A"

PARCEL 2

A tract of land situated in Section 3, Township 4 North, Range 1 East, Boise Meridian, Ada County, Idaho, described as follows:

Commencing at a found aluminum cap monumenting the Southeast Corner of said Section 3, thence along the Southerly line of the Southeast 1/4 of said Section 3, said line also being the centerline of Floating Feather Road,
North 89 degrees 44'33" West a distance of 2659.37 feet to a found aluminum cap monumenting the Southwest Corner of said Southeast 1/4, thence continuing along said Southerly line
South 89 degrees 44'33: East a distance of 383.23 feet to a found steel pin on the Easterly boundary of LEXINGTON HILLS SUBDIVISION NO. 5 (a recorded subdivision on file in Book * of Plats at Pages , , , , and , Records of Ada County, Idaho, thence leaving said Southerly line and along the Easterly boundary of said LEXINGTON HILLS SUBDIVISION NO. 5,
North 00 degrees 25'20" West a distance of 1837.17 feet to a set iron pipe, said pipe being the POINT OF BEGINNING, thence leaving said Easterly boundary of LEXINGTON HILLS SUBDIVISION NO. 5 and along the Northerly boundary of said LEXINGTON HILLS SUBDIVISION NO. 5 the following courses:

South 86 degrees 33'00" West a distance of 81.29 feet to a found steel pin, thence
South 71 degrees 00'00" West a distance of 30.82 feet to a found steel pin, thence
South 17 degrees 30'00" West a distance of 132.08 feet to a found steel pin, thence along the arc of a circular curve to the left a distance of 11.22 feet, said curve having a central angle of 12 degrees 51' 30", a radius of 50.00 feet, a chord bearing North 78 degrees 55'45" West, a chord distance of 11.20 feet to a found steel pin, thence
North 04 degrees 38'30" East a distance of 105.02 feet to a found steel pin, thence
North 74 degrees 53'00" West a distance of 65.46 feet to a found steel pin, thence
South 50 degrees 00'00" West a distance of 112.82 feet to a found steel pin, thence
North 81 degrees 15'00" West a distance of 121.84 feet to a found steel pin, thence
North 82 degrees 17'49" West a distance of 60.06 feet to a found steel pin, thence
South 78 degrees 45'00" West a distance of 108.26 feet to a found steel pin, thence
South 10 degrees 37'00" West a distance of 173.65 feet to a found steel pin, thence
South 41 degrees 07'00" West a distance of 46.91 feet to

Continuation of Exhibit A

Order No. ST-93042003 PW

a found steel pin, thence
South 73 degrees 34'00" West a distance of 187.74 feet to a found steel pin, thence
South 50 degrees 26'00" West a distance of 195.97 feet to a found steel pin, thence
South 41 degrees 34'00" West a distance of 80.02 feet to a found steel pin, thence
South 49 degrees 41'00" East a distance of 128.32 feet to a found steel pin, thence
South 40 degrees 19'00" West a distance of 25.00 feet to a found steel pin, thence
North 49 degrees 41'00" West a distance of 128.87 feet to a found steel pin, thence
South 41 degrees 34'00" West a distance of 234.67 feet to a found steel pin,
South 43 degrees 14'00" East a distance of 133.73 feet to a found steel pin, thence along the arc of a circular curve to the right a distance of 132.05 feet said curve having a central angle of 43 degrees 14'00", a radius of 175.00 feet, a chord bearing South 68 degrees 23'00" West, a chord distance of 128.94 feet to a found steel pin, thence
North 90 degrees 00'00" West a distance of 43.91 feet to a found steel pin on the Easterly boundary of LEXINGTON HILLS SUBDIVISION NO. 3 (a recorded subdivision on file in Book 62 of Plats, at Pages 6170 and 6171, Records of Ada County, Idaho), thence leaving said Northerly boundary of LEXINGTON HILLS SUBDIVISION NO. 5 and along the Easterly boundary of said LEXINGTON HILLS SUBDIVISION NO. 3, the following courses:

North 08 degrees 23'00" East a distance of 101.03 feet to a found steel pin, thence
North 11 degrees 08'00" West a distance of 98.99 feet to a found steel pin, thence
North 25 degrees 03'00" West a distance of 92.64 feet to a found steel pin, thence
North 42 degrees 08'00" East a distance of 35.36 feet to a found steel pin, thence
North 25 degrees 40'00" West a distance of 142.63 feet to a found steel pin, thence
North 58 degrees 27'41" East a distance of 47.18 feet to a found steel pin, thence
North 26 degrees 30'00" East a distance of 31.74 feet to a found steel pin, thence

Continuation of Exhibit A

Order No. ST-93042003 PW

North 15 degrees 07'00" West a distance of 135.45 feet to a found steel pin, thence leaving said Easterly boundary of LEXINGTON HILLS SUBDIVISION NO. 3, and along the Easterly boundary of LEXINGTON HILLS SUBDIVISION NO. 2 (a recorded subdivision on file in Book 62 of Plats at Pages 6152, 6153 and 6154, Records of Ada County, Idaho), the following courses: thence

North 15 degrees 07'00" West a distance of 162.06 feet to a found steel pin, North 89 degrees 00'00" West a distance of 103.12 feet to a found steel pin, thence along the arc of a circular curve to the left a distance of 23.39 feet, said curve having a central angle of 26 degrees 48'20", a radius of 50.00 feet, a chord bearing North 09 degrees 31'59" West, a chord distance of 23.18 feet to a found steel pin, thence

North 67 degrees 04'00" East a distance of 129.43 feet to a found steel pin, thence

North 08 degrees 40'00" West a distance of 72.09 feet to a found steel pin, thence

North 68 degrees 26'00" West a distance of 61.50 feet to a found steel pin, thence

North 07 degrees 37'00" West a distance of 71.71 feet to a found steel pin, thence

North 27 degrees 19'00" East a distance of 56.73 feet to a found steel pin, thence

North 26 degrees 24'00" West a distance of 71.24 feet to a found steel pin, thence

North 04 degrees 38'00" East a distance of 70.35 feet to a found steel pin, thence

North 28 degrees 37'00" East a distance of 146.40 feet to a found steel pin, thence

North 05 degrees 00'00" West a distance of 46.58 feet to a found steel pin, thence

North 54 degrees 30'00" West a distance of 123.93 feet to a found steel pin, thence

North 28 degrees 22'00" East a distance of 72.46 feet to a found steel pin, thence along the arc of a circular curve to the left a distance of 123.09 feet, said curve having a central angle of 21 degrees 42'02", a radius of 325.00 feet, a chord bearing North 17 degrees 30'59" East, a chord distance of 122.36 feet to a found steel pin, thence leaving said Easterly boundary of LEXINGTON HILLS SUBDIVISION NO. 2, South 63 degrees 57'51"

Continuation of Exhibit A

Order No. ST-93042003 PW

East a distance of 289.97 feet to a set steel pin, thence
North 59 degrees 06'00" East a distance of 100.00 feet to a set steel pin, thence
North 02 degrees 44'00" West a distance of 163.72 feet to a set steel pin, thence along the arc of a circular curve to the left a distance of 30.58 feet, said curve having a central angle of 06 degrees 22' 18", a radius of 275.00 feet, a chord bearing North 82 degrees 23'15" East, a chord distance of 30.57 feet to a set steel pin, thence
South 04 degrees 30'00" East a distance of 145.47 feet to a set steel pin, thence
North 69 degrees 43'00" East a distance of 323.10 feet to a set steel pin, thence
North 41 degrees 23'00" East a distance of 284.54 feet to a set steel pin, thence
South 89 degrees 30'00" East a distance of 200.25 feet to a set steel pin, thence
South 28 degrees 15'00" East a distance of 61.63 feet to a set steel pin, thence
South 42 degrees 12'00" East a distance of 94.18 feet to a set steel pin, thence
South 44 degrees 03'27" East a distance of 50.02 feet to a set steel pin, thence
South 38 degrees 51'00" East a distance of 78.33 feet to a set steel pin, thence
North 81 degrees 31'00" East a distance of 102.69 feet to a set steel pin, thence
South 52 degrees 00'00" East a distance of 73.82 feet to a set steel pin, thence
South 00 degrees 25'20" East a distance of 779.78 feet to THE POINT OF BEGINNING.

EXCEPTING THEREFROM:

A tract of land situated in the Southwest 1/4 of Section 3, Township 4 North, Range 1 East, Boise Meridian, Ada County, Idaho, described as follows:

Commencing at a found aluminum cap monumenting the Southeast Corner of said Southwest 1/4 of Section 3, thence along the Southerly line of said Section 3, said line also being the centerline of Floating Feather Road
North 89 degrees 44'43" West a distance of 2680.44 feet to a found brass cap monumenting the Southwest corner of said Section 3, thence continuing along said Southerly line
South 89 degrees 44'43" East a distance of 1445.60 feet to a set P.K. Nail, said P.K. Nail being the

Continuation of Exhibit A

Order No. ST-93042003 PW

POINT OF BEGINNING, thence leaving said Southerly line
North 00 degrees 15'17" East a distance of 402.73 feet to a found P.K. Nail on the Southeasterly boundary of LEXINGTON HILLS SUBDIVISION NO. 1, (a recorded subdivision on file, in Book 59 of Plats, at Pages 5802, 5803 and 5804, Records of Ada County, Idaho), thence along said Southeasterly boundary the following courses:

South 65 degrees 52'00" East a distance of 168.52 feet to a found steel pin, thence
North 56 degrees 49'00" East a distance of 169.87 feet to a found steel pin, thence
North 24 degrees 33'00" East a distance of 151.25 feet to a found steel pin, thence
North 09 degrees 03'00" West a distance of 136.60 feet to a found steel pin, thence
North 37 degrees 32'00" West a distance of 96.00 feet to a found steel pin, thence leaving said Southeasterly boundary
North 55 degrees 38'30" East a distance of 152.54 feet to a found steel pin, thence
North 05 degrees 27'00" West a distance of 379.32 feet to a found steel pin, thence
South 11 degrees 29'11" East a distance of 512.22 feet to a found steel pin, thence
South 00 degrees 12'00" East a distance of 277.52 feet to a found steel pin, thence
South 00 degrees 15'17" West a distance of 461.72 feet to a set steel pin on said Southerly line of the Southwest 1/4, thence along said Southerly line
North 89 degrees 44'43" West a distance of 471.43 feet to the POINT OF BEGINNING.

PT #4900
PT #1200

ST-9000232

91241185

(1)

STEWART TITLE

This Deed is being re-recorded to correct an omission in the Parcel 2 legal description only; no other changes have been made.

WARRANTY DEED

ADA COUNTY, IDAHO FOR ____
J. DAVID NAVARRO
RECORDER BY BBelveal

1800

'91 MAY 9 PM 2 33

GRANTOR, HOLGATE ENTERPRISES, INC., a corporation organized and existing under the laws of the State of Idaho, with its principal office at 1832 Floating Feather Road, Eagle, Idaho 83616, for good and valuable consideration, the receipt of which is hereby acknowledged, does hereby grant, bargain, sell and convey unto WESTERN EXCHANGE CORPORATION, an Idaho corporation, of P. O. Box 297, Ketchum, Idaho 83340, as GRANTEE, and to grantee's successors and assigns forever, all of the following described real estate located in Eagle, County of Ada, Idaho:

All of that certain real property described in

1299000590

Exhibit "A" attached hereto and incorporated

herein by reference;

TOGETHER with all improvements, water, water rights, ditches, ditch rights, easements, heredíments and appurtenances thereto;

SUBJECT TO reservations, restrictions and dedications of record, all easements and rights of way of record or appearing on the land or known to Grantee, and general taxes and assessments for the current year which are not yet due and payable.

Conveying hereby 96.57 acres, more or less.

Grantor, for itself, its successors and assigns does hereby covenant, warranty and shall defend the quiet and peaceable possession of said premises by the grantee, its successors and assigns forever against the lawful claims of all persons.

In construing this deed, and where the context so requires, the singular includes the plural and the masculine, the feminine and the neuter.

The officer(s) who sign this deed hereby certify that this deed and the transfer represented thereby was duly authorized under a resolution duly adopted by the board of directors of the grantor at a lawful meeting duly held and attended by a quorum.

IN WITNESS WHEREOF, Grantor has caused its corporate name and seal to be hereunto affixed by its duly authorized officers this 25TH day of April, 1991.

91241431

HOLGATE ENTERPRISES, INC.

ADA COUNTY, IDAHO STEWART TITLE
J. DAVID NAVARRO
~~Attest:~~ RECORDER BY R Wade

1800

By G. Marlynn Holgate
G. Marlynn Holgate, President

'91 APR 26 PM 2 38

By _____

(32)

portions of the Northeast 1/4 of the Northeast 1/4 of Section 9 and the Northwest 1/4 of the Northwest 1/4 of Section 10, Township 4 North, Range 1 East, Boise Meridian, Eagle, Ada County, Idaho;

Beginning at an aluminum cap marking the section corner common to Sections 3 and 4, and said Sections 9 and 10; thence
North 89 degrees 11'50" East 270.22 feet along the Northerly boundary of the said Northwest 1/4 of the Northwest 1/4 of Section 10, which is also the centerline of Floating Feather road, to a point, also said point being THE REAL POINT OF BEGINNING; thence
South 0 degrees 48'10" East 144.66 feet to a point; thence
South 27 degrees 35'27" East 345.59 feet to a point; thence
South 59 degrees 46'33" West 151.93 feet to a point on the centerline of the Farmer's Union Canal; thence continuing
South 59 degrees 46'33" West 190.32 feet to a point; thence
South 0 degrees 04'07" East 280.00 feet to a point; thence
South 89 degrees 18'41" West 172.29 feet to a point on the centerline of North Edgewood Road, said point being THE POINT OF ENDING of the above described 20.00-foot sanitary sewer easement.

THE POINT OF BEGINNING.

PARCEL 4

A Perpetual Non-Exclusive Easement for a sewer line over the following described Parcels:

CORRIDOR ONE

A 20.00-foot sanitary sewer easement being 10.00 feet left of and 10.00 feet right of and parallel with the following described centerline lying in portions of the Northeast 1/4 of the Northeast 1/4 of Section 9 and the Northwest 1/4 of the Northwest 1/4 of Section 10, Township 4 North, Range 1 East, Boise Meridian, Eagle, Ada County, Idaho;
Beginning at an aluminum cap marking the section corner common to Sections 3 and 4, and said Sections 9 and 10; thence
North 89 degrees 11'50" East 270.22 feet along the Northerly boundary of the said Northwest 1/4 of the Northwest 1/4 of Section 10, which is also the centerline of Floating Feather Road, to a point, also said point being THE REAL POINT OF BEGINNING; thence
South 0 degrees 48'10" East 144.66 feet to a point; thence
South 27 degrees 35'27" East 345.59 feet to a point; thence
South 59 degrees 46'33" West 151.93 feet to a point on the centerline of the Farmer's Union Canal; thence continuing
South 59 degrees 46'33" West 190.32 feet to a point; thence
South 0 degrees 04'07" East 517.66 feet to a point; thence
South 36 degrees 55'22" East 55.48 feet to a point; thence
South 2 degrees 41'13" East 127.34 feet to a point on the Southerly boundary of the said Northwest 1/4 of the Northwest 1/4 of Section 10, said point bears
North 87 degrees 18'47" East 173.46 feet along the said Southerly boundary of the NW 1/4 of 10 from the Southwest corner of the said Northwest 1/4 of the Northwest 1/4 of Section 10, also said point being THE POINT OF ENDING of the above described 20.00-foot sanitary sewer easement.

CORRIDOR TWO

A 20.00-foot sanitary sewer easement being 10.00 feet left of and 10.00 feet right of and parallel with the following described centerline lying in

South 09 degrees 03'00" East a distance of 136.60 feet to a point; thence
South 24 degrees 33'00" West a distance of 151.25 feet to a point; thence
South 56 degrees 49'00" West a distance of 169.87 feet to a point; thence
North 65 degrees 52'00" West a distance of 168.52 feet to a point; thence
North 00 degrees 15'17" East a distance of 17.29 feet to a point; thence
North 89 degrees 44'43" West a distance of 33.27 feet to a point; thence
North 27 degrees 45'15" West a distance of 324.76 feet to a point; thence
North 72 degrees 52'00" West a distance of 83.80 feet to a point; thence
South 67 degrees 00'00" West a distance of 237.15 feet to a point; thence
North 89 degrees 36'00" West a distance of 157.40 feet to a point; thence
South 14 degrees 20'00" East a distance of 275.57 feet to a point; thence
Southeasterly along the arc of a circular curve concave Southwesterly a distance of 51.74 feet, said curve having a central angle of 14 degrees 07'04", a radius of 210.00 feet, a chord bearing South 07 degrees 16'28" East a chord distance of 51.61 feet to a point; thence
South 00 degrees 12'56" East a distance of 163.36 feet to a point; thence
Southeasterly along the arc of a circular curve concave Northeasterly a distance of 19.58 feet, said curve having a central angle of 14 degrees 01'24", a radius of 80.00 feet, a chord bearing South 07 degrees 13'39" East a chord distance of 19.53 feet to a point; thence
South 14 degrees 14'21" East a distance of 46.90 feet to a point; thence
Southeasterly along the arc of a circular curve concave Southwesterly a distance of 4.90 feet said curve having a central angle of 14 degrees 01'24", a radius of 20.00 feet, a chord bearing South 07 degrees 13'39" East a chord distance of 4.88 feet to a point; thence
South 00 degrees 12'56" East a distance of 27.24 feet to a point; thence
Southeasterly along the arc of a circular curve concave Northeasterly a distance of 46.88 feet, said curve having a central angle of 89 degrees 31'46", a radius of 30.00 feet, a chord bearing South 44 degrees 58'49" East a chord distance of 42.25 feet to a point; thence
South 00 degrees 15'17" West a distance of 30.00 feet to a point on said Southerly line of Section 3; thence along said Southerly line
North 89 degrees 44'43" West a distance of 927.00 feet to

Order No.: ST-90022532 JH

EXHIBIT "A"

PARCEL 2

A tract of land situated in the West 1/2 of Section 3, Township 4 North, Range 1 East, Boise Meridian, Ada County Idaho, described as follows.

Commencing at a found aluminum cap monumenting the South 1/4 corner of said Section 3; thence along the Southerly line of said Section 3, said line also being the centerline of Floating Feather Road
North 89 degrees 44'43" West a distance of 2680.44 feet to a found brass cap monumenting the Southwest corner of said Section 3, said brass cap also being THE POINT OF BEGINNING; thence leaving said Southerly line and along the Westerly line of said Section 3
North 00 degrees 00'04" East a distance of 2623.34 feet to a found brass cap monumenting the West 1/4 corner of said Section 3; thence leaving said Westerly line and along the East-West center-of-section line of said Section 3
South 89 degrees 43'02" East a distance of 1327.89 feet to a found steel pin, said pin being the Northeast corner of the Northwest 1/4 of the Southwest 1/4 of said Section 3; thence leaving said East-West center-of-section line
North 73 degrees 57 degrees 00" East a distance of 88.29 feet to a point; thence
South 65 degrees 36'30" East a distance of 487.68 feet to a point; thence
South 17 degrees 24'00" West a distance of 379.92 feet to a point; thence
South 16 degrees 30'30" East a distance of 238.22 feet to a point; thence
South 02 degrees 49'00" East a distance of 87.03 feet to a point; thence
South 00 degrees 29'30" West a distance of 312.54 feet to a point; thence
South 05 degrees 27'00" East a distance of 379.32 feet to a point; thence
South 55 degrees 38'30" West a distance of 152.54 feet to a point; thence
South 37 degrees 32'00" East a distance of 96.00 feet to a point; thence
*South 00 degrees 55'30" East a distance of 216.77 feet to a point; thence

Secretary

STATE OF IDAHO)
: ss.
County of Ada)

On this 25TH day of April, 1991, before me, the undersigned, a Notary Public in and for said state, personally appeared G. Marlynn Holgate, known or identified to me to be the President of the corporation ~~and~~ _____, ~~known or identified to me to be the Secretary of the corporation,~~ who executed the instrument, or the person(s) who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation 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.

(SEAL)

NOTARY PUBLIC FOR IDAHO
Residing at Boise, Idaho
My Commission Expires 10-1-91

1333001075

CORPORATE WARRANTY DEED

FOR VALUE RECEIVED, **Lexington Hills, Inc., an Idaho Corporation successor by corporate name change to Floating Feather Hills, Inc., an Idaho Corporation**, a corporation organized and existing under the laws of the State of Idaho, with its principal office at **Boise**, State of Idaho, of County of **Ada**, GRANTOR, hereby GRANT, BARGAIN, SELL and CONVEY unto

Lexington Hills, Inc., an Idaho Corporation GRANTEE
whose current address is: **2417 Bank Drive Suite 101 Boise, Idaho 83705**
the following described real property located in **Ada** County, State of Idaho, more particularly described as follows, to wit.

SEE EXHIBIT "A" ATTACHED AND MADE A PART HEREOF.

9150049

BOISE TITLE & ESCROW
ADA COUNTY, ID. FOR
J. DAVID NAVARRO
RECORDER BY Mawson
600

'91 SEP 9 AM 11 35

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee(s), and Grantee(s) heirs and assigns forever. And the said Grantor does hereby covenant to and with the said Grantee(s), that Grantor is the owner in fee simple of said premises; that said premises are free from all encumbrances, EXCEPT those to which this conveyance is expressly made subject and those made, suffered or done by the Grantee(s); and subject to reservations, restrictions, dedications, easements, rights of way and agreements, (if any) of record, and general taxes and assessments, (including irrigation and utility assessments, if any) for the current year, which are not yet due and payable, and that Grantor will warrant and defend the same from all lawful claims whatsoever.

The officers who sign this deed hereby certify that this deed and the transfer represented thereby was duly authorized under a resolution duly adopted by the board of directors of the Grantor at a lawful meeting duly held and attended by a quorum.

In witness whereof, the Grantor has caused its corporate name to be hereunto affixed by its duly authorized officers this **3RD** day of **SEPTEMBER**, in the year of **1991**

CORPORATE SEAL

Lexington Hills, Inc.
(CORPORATE NAME)

By _____ PRESIDENT

Attest _____ SECRETARY

ACKNOWLEDGEMENT – Corporate

STATE OF Idaho County of Ada

On this 3rd day of September in the year of 1991 before me the undersigned a Notary Public in and for said State personally appeared Bryce L. Peterson + Duane Stueckle known or identified to me to be the President + Secretary/C.E.O. of the corporation that executed the instrument or the person(s) who executed the instrument on behalf of said corporation and acknowledged to me that such corporation executed the same

Signature _____
Name Georgia Mackley

Residing at Boise, ID
My commission expires 6/20/94

STATE OF IDAHO, COUNTY OF
I hereby Certify that this instrument was filed for record at the request of

at _____ minutes past _____ o'clock _____ m.
this _____ day of _____
19 _____ in my office, and duly recorded in Book _____ of Mortgages at page _____

Ex-Officio Recorder

By _____ Deputy

Fees $
Mail to

Boise Title & Escrow, Inc.

33A

87-008

EXHIBIT "A"

A tract of land situated in the West 1/2 of Section 3, Township 4 North, Range 1 East, Boise Meridian, Ada County, Idaho, described as follows:

Commencing at a found aluminum cap monumenting the South 1/4 corner of said Section 3; thence along the Southerly line of said Section 3, said line also being the centerline of Floating Feather Road
North 89°44'43" West a distance of 2680.44 feet to a found brass cap monumenting the Southwest corner of said Section 3, said brass cap also being the POINT OF BEGINNING; thence leaving said Southerly line and along the Westerly line of said Section 3
North 00°00'04" East a distance of 2623.34 feet to a found brass cap monumenting the West 1/4 corner of said Section 3; thence leaving said Westerly line and along the East-West center of section line of said Section 3
South 89°43'02" East a distance of 1327.89 feet to a found steel pin, said pin being the Northeast corner of the Northwest 1/4 of the Southwest 1/4 of said Section 3; thence leaving said East-West center of section line
North 73°57'00" East a distance of 88.29 feet to a point; thence
South 65°36'30" East a distance of 487.68 feet to a point; thence
South 17°24'00" West a distance of 379.92 feet to a point; thence
South 16°30'30" East a distance of 238.22 feet to a point; thence
South 02°49'00" East a distance of 87.03 feet to a point; thence
South 00°55'30" East a distance of 216.77 feet to a point; thence
South 00°29'30" West a distance of 312.54 feet to a point; thence
South 05°27'00" East a distance of 379.32 feet to a point; thence
South 55°38'30" West a distance of 152.54 feet to a point; thence
South 37°32'00" East a distance of 96.00 feet to a point; thence
South 09°03'00" East a distance of 136.60 feet to a point; thence
South 24°33'00" West a distance of 151.25 feet to a point; thence
South 56°49'00" West a distance of 169.87 feet to a point; thence
North 65°52'00" West a distance of 168.52 feet to a point; thence
North 00°15'17" East a distance of 17.29 feet to a point; thence
North 89°44'43" West a distance of 33.27 feet to a point; thence
North 27°45'15" West a distance of 324.76 feet to a point; thence
North 72°52'00" West a distance of 83.80 feet to a point; thence
South 67°00'00" West a distance of 237.15 feet to a point; thence
North 89°36'00" West a distance of 157.40 feet to a point; thence
South 14°20'00" East a distance of 275.57 feet to a point; thence Southeasterly along the arc of a circular curve concave Southwesterly a distance of 51.74 feet, said curve having a central angle of 14°07'04", a radius of 210.00 feet, a chord bearing
South 07°16'28" East a chord distance of 51.61 feet to a point; thence
South 00°12'56" East a distance of 163.36 feet to a point; thence Southeasterly along the arc of a circular curve concave Northeasterly a distance of 19.58 feet, said curve having a central angle of 14°01'24", a radius of 80.00 feet, a chord bearing
South 07°13'39" East a chord distance of 19.53 feet to a point; thence

South 14°14'21" East a distance of 46.90 feet to a point; thence Southeasterly along the arc of a circular curve concave Southwesterly a distance of 4.90 feet said curve having a central angle of 14°01'24", a radius of 20.00 feet, a chord bearing
South 07°13'39" East a chord distance of 4.88 feet to a point; thence
South 00°12'56" East a distance of 27.24 feet to a point; thence Southeasterly along the arc of a circular curve concave Northeasterly a distance of 46.88 feet, said curve having a central angle of 89°31'46", a radius of 30.00 feet, a chord bearing
South 44°58'49" East a chord distance of 42.25 feet to a point; thence
South 00°15'17" West a distance of 30.00 feet to a point on the said Southerly line of Section 3; thence along said Southerly line
North 89°44'43" West a distance of 927.00 feet to the POINT OF BEGINNING.

PI #4900
PT #1200

SI-90022532

(2)

This Deed is being re-recorded to correct an omission in the Parcel 2 legal description only; no other changes have been made.

WARRANTY DEED

1299000596

GRANTOR, WESTERN EXCHANGE CORPORATION, a corporation organized and existing under the laws of the State of Idaho with its principal office at P. O. Box 297, Ketchum, Idaho 83340, for good and valuable consideration, the receipt of which is hereby acknowledged, does hereby grant, bargain, sell and convey unto FLOATING FEATHER HILLS, INC., an Idaho corporation, of 2417 Bank Drive, Boise, Idaho 83705, as GRANTEE, and to grantee's successors and assigns forever, all of the following described real estate located in Eagle, County of Ada, Idaho:

All of that certain real property described in

Exhibit "A" attached hereto and incorporated

herein by reference;

TOGETHER with all improvements, water, water rights, ditches, ditch rights, easements, herediments and appurtenances thereto;

SUBJECT TO reservations, restrictions and dedications of record, all easements and rights of way of record or appearing on the land or known to Grantee, and general taxes and assessments for the current year which are not yet due and payable.

Conveying hereby 96.57 acres, more or less.

Grantor, for itself, its successors and assigns does hereby covenant, warranty and shall defend the quiet and peaceable possession of said premises by the grantee, its successors and assigns forever against the lawful claims of all persons.

In construing this deed, and where the context so requires, the singular includes the plural and the masculine, the feminine and the neuter.

The officer(s) who sign this deed hereby certify that this deed and the transfer represented thereby was duly authorized under a resolution duly adopted by the board of directors of the grantor at a lawful meeting duly held and attended by a quorum.

IN WITNESS WHEREOF, Grantor has caused its corporate name and seal to be hereunto affixed by its duly authorized officers this 25th day of April, 1991.

9124132

WESTERN EXCHANGE CORPORATION

ADA CO. TITLE FOR STEWART TITLE
J. DAVID NAVARRO
RECORDER

1800

President

Attest:

'91 APR 26 PM 2 38

9124186

By _____
Secretary

STEWART TITLE
ADA CO.
J. DAVID NAVARRO
RECORDER BY

1800

'91 MAY 9 PM 2 33

(33)

Order No. 90022532 JH/EG

STATE OF IDAHO, COUNTY OF ADA, ss.

On this 25th day of April in the year 1991, before me, the undersigned, a Notary Public in and for said State personally appeared Brian L. Ballard known to me to be the President of the corporation that executed this instrument and the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation 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.

Signature: Edith M. Sutton

Name: EDITH M. SUTTON
(Type or Print)

Residing At: Boise, Idaho

My Commission expires: 10-1-91

Order No.: ST-90022532 JH

EXHIBIT "A"

PARCEL 2

A tract of land situated in the West 1/2 of Section 3, Township 4 North, Range 1 East, Boise Meridian, Ada County Idaho, described as follows.

Commencing at a found aluminum cap monumenting the South 1/4 corner of said Section 3; thence along the Southerly line of said Section 3, said line also being the centerline of Floating Feather Road
North 89 degrees 44'43" West a distance of 2680.44 feet to a found brass cap monumenting the Southwest corner of said Section 3, said brass cap also being THE POINT OF BEGINNING; thence leaving said Southerly line and along the Westerly line of said Section 3
North 00 degrees 00'04" East a distance of 2623.34 feet to a found brass cap monumenting the West 1/4 corner of said Section 3; thence leaving said Westerly line and along the East-West center-of-section line of said Section 3
South 89 degrees 43'02" East a distance of 1327.89 feet to a found steel pin, said pin being the Northeast corner of the Northwest 1/4 of the Southwest 1/4 of said Section 3; thence leaving said East-West center-of-section line
North 73 degrees 57 degrees 00" East a distance of 88.29 feet to a point; thence
South 65 degrees 36'30" East a distance of 487.68 feet to a point; thence
South 17 degrees 24'00" West a distance of 379.92 feet to a point; thence
South 16 degrees 30'30" East a distance of 238.22 feet to a point; thence
South 02 degrees 49'00" East a distance of 87.03 feet to a point; thence
South 00 degrees 29'30" West a distance of 312.54 feet to a point; thence
South 05 degrees 27'00" East a distance of 379.32 feet to a point; thence
South 55 degrees 38'30" West a distance of 152.54 feet to a point; thence
South 37 degrees 32'00" East a distance of 96.00 feet to a point; thence
*South 00 degrees 55'30" East a distance of 216.77 feet to a point; thence

South 09 degrees 03'00" East a distance of 136.60 feet to a point; thence
South 24 degrees 33'00" West a distance of 151.25 feet to a point; thence
South 56 degrees 49'00" West a distance of 169.87 feet to a point; thence
North 65 degrees 52'00" West a distance of 168.52 feet to a point; thence
North 00 degrees 15'17" East a distance of 17.29 feet to a point; thence
North 89 degrees 44'43" West a distance of 33.27 feet to a point; thence
North 27 degrees 45'15" West a distance of 324.76 feet to a point; thence
North 72 degrees 52'00" West a distance of 83.80 feet to a point; thence
South 67 degrees 00'00" West a distance of 237.15 feet to a point; thence
North 89 degrees 36'00" West a distance of 157.40 feet to a point; thence
South 14 degrees 20'00" East a distance of 275.57 feet to a point; thence
Southeasterly along the arc of a circular curve concave Southwesterly a distance of 51.74 feet, said curve having a central angle of 14 degrees 07'04", a radius of 210.00 feet, a chord bearing South 07 degrees 16'28" East a chord distance of 51.61 feet to a point; thence
South 00 degrees 12'56" East a distance of 163.36 feet to a point; thence
Southeasterly along the arc of a circular curve concave Northeasterly a distance of 19.58 feet, said curve having a central angle of 14 degrees 01'24", a radius of 80.00 feet, a chord bearing South 07 degrees 13'39" East a chord distance of 19.53 feet to a point; thence
South 14 degrees 14'21" East a distance of 46.90 feet to a point; thence
Southeasterly along the arc of a circular curve concave Southwesterly a distance of 4.90 feet said curve having a central angle of 14 degrees 01'24", a radius of 20.00 feet, a chord bearing South 07 degrees 13'39" East a chord distance of 4.88 feet to a point; thence
South 00 degrees 12'56" East a distance of 27.24 feet to a point; thence
Southeasterly along the arc of a circular curve concave Northeasterly a distance of 46.88 feet, said curve having a central angle of 89 degrees 31'46", a radius of 30.00 feet, a chord bearing South 44 degrees 58'49" East a chord distance of 42.25 feet to a point; thence
South 00 degrees 15'17" West a distance of 30.00 feet to a point on said Southerly line of Section 3; thence along said Southerly line
North 89 degrees 44'43" West a distance of 927.00 feet to

THE POINT OF BEGINNING.

PARCEL 4

A Perpetual Non-Exclusive Easement for a sewer line over the following described Parcels:

CORRIDOR ONE

A 20.00-foot sanitary sewer easement being 10.00 feet left of and 10.00 feet right of and parallel with the following described centerline lying in portions of the Northeast 1/4 of the Northeast 1/4 of Section 9 and the Northwest 1/4 of the Northwest 1/4 of Section 10, Township 4 North, Range 1 East, Boise Meridian, Eagle, Ada County, Idaho;
Beginning at an aluminum cap marking the section corner common to Sections 3 and 4, and said Sections 9 and 10; thence
North 89 degrees 11'50" East 270.22 feet along the Northerly boundary of the said Northwest 1/4 of the Northwest 1/4 of Section 10, which is also the centerline of Floating Feather Road, to a point, also said point being THE REAL POINT OF BEGINNING; thence
South 0 degrees 48'10" East 144.66 feet to a point; thence
South 27 degrees 35'27" East 345.59 feet to a point; thence
South 59 degrees 46'33" West 151.93 feet to a point on the centerline of the Farmer's Union Canal; thence continuing
South 59 degrees 46'33" West 190.32 feet to a point; thence
South 0 degrees 04'07" East 517.66 feet to a point; thence
South 36 degrees 55'22" East 55.48 feet to a point; thence
South 2 degrees 41'13" East 127.34 feet to a point on the Southerly boundary of the said Northwest 1/4 of the Northwest 1/4 of Section 10, said point bears
North 87 degrees 18'47" East 173.46 feet along the said Southerly boundary of the NW 1/4 of 10 from the Southwest corner of the said Northwest 1/4 of the Northwest 1/4 of Section 10, also said point being THE POINT OF ENDING of the above described 20.00-foot sanitary sewer easement.

CORRIDOR TWO

A 20.00-foot sanitary sewer easement being 10.00 feet left of and 10.00 feet right of and parallel with the following described centerline lying in

portions of the Northeast 1/4 of the Northeast 1/4 of Section 9 and the Northwest 1/4 of the Northwest 1/4 of Section 10, Township 4 North, Range 1 East, Boise Meridian, Eagle, Ada County, Idaho;

Beginning at an aluminum cap marking the section corner common to Sections 3 and 4, and said Sections 9 and 10; thence

North 89 degrees 11'50" East 270.22 feet along the Northerly boundary of the said Northwest 1/4 of the Northwest 1/4 of Section 10, which is also the centerline of Floating Feather road, to a point, also said point being THE REAL POINT OF BEGINNING; thence

South 0 degrees 48'10" East 144.66 feet to a point; thence

South 27 degrees 35'27" East 345.59 feet to a point; thence

South 59 degrees 46'33" West 151.93 feet to a point on the centerline of the Farmer's Union Canal; thence continuing

South 59 degrees 46'33" West 190.32 feet to a point; thence

South 0 degrees 04'07" East 280.00 feet to a point; thence

South 89 degrees 18'41" West 172.29 feet to a point on the centerline of North Edgewood Road, said point being THE POINT OF ENDING of the above described 20.00-foot sanitary sewer easement.

Property managers at
9601 W. State
Ste 203
Boise 83703

Lexington Hills Heights
Lexington Hills, Inc
" " HOA
East Hills Development

assessed and payed separately by a management company.