

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE STATE
OF IDAHO, IN AND FOR THE COUNTY OF CUSTER.

IN THE MATTER OF THE PETITION OF THE BOARD OF DIRECTORS OF BIG LOST RIVER IRRIGATION DISTRICT, AN IRRIGATION DISTRICT ORGANIZED AND EXISTING UNDER THE LAWS OF THE STATE OF IDAHO, FOR THE EXAMINATION, APPROVAL, AND CONFIRMATION OF CERTAIN PROCEEDINGS FOR THE ANNEXATION OF CERTAIN LANDS TO SAID DISTRICT, OF CERTAIN PROCEEDINGS FOR THE EXCLUSION OF CERTAIN LANDS FROM SAID DISTRICT, OF ALL PROCEEDINGS CONNECTED WITH THE FORMULATION AND ADOPTION OF A PLAN OF OPERATIONS FOR SAID DISTRICT, OF ALL PROCEEDINGS IN CONNECTION WITH THE ASSESSMENT AND APPORTIONMENT OF BENEFITS BY REASON OF THE CARRYING OUT OF SUCH PLAN THE COST OF WHICH IS REPRESENTED BY ITS FIRST ISSUE, FIRST SERIES BONDS IN THE AMOUNT OF \$238,500.00 ISSUED FOR THE PURCHASE OF IRRIGATION WORKS AND WATER RIGHTS, OF ALL PROCEEDINGS CONNECTED WITH THE AUTHORIZATION, ISSUANCE AND SALE OF SAID BONDS, AND OF ALL MATTERS IN CONNECTION WITH OR RELATED TO ANY OF THE ABOVE MENTIONED PROCEEDINGS.

FINDINGS OF FACT
AND
CONCLUSIONS OF LAW

The petition of Roy C. Pearson, Manning Sutton and L. H. Evans, constituting the Board of Directors of the BIG LOST RIVER IRRIGATION DISTRICT, an Irrigation District duly organized and existing as such under the laws of the State of Idaho, praying for the examination, approval and confirmation of certain proceedings for the annexation of certain lands to said District; of certain proceedings for the exclusion of certain lands from said District, of all proceedings connected with the formulation and adoption of a plan of operations for said District; of all proceedings in connection with the Assessment and Apportionment of Benefits by reason of the carrying out of such plan, the cost of which is represented by its First Issue, First Series Bonds in the amount of \$238,500.00 issued for the purchase of irrigation works and water rights; of all proceedings connected with the authorization, issuance and sale of said bonds, and of all matters in connection with or related to any of the above mentioned proceedings, came

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on regularly to be heard in open court on Monday, the 6th day of January, 1936, at 2:00 o'clock P. M. of said day before the Honorable Guy Stevens, District Judge, at the Court Room of said Court ^{in Challis} in the County of Custer, State of Idaho, the petitioners appearing by their counsel, George L. Ambrose, Esquire, and no person or party interested in the subject matter of said petition adverse to said petitioners, appearing or having demurred to or answered said petition within the time allowed by law, or at all.

Thereupon, it was duly ordered by the Court that the default of each and every person and party interested in the subject matter of the petition who did not appear, demur, answer or otherwise plead in said cause, within the time allowed by law be, and the same was, therefore, duly entered.

Thereupon, the Court did examine into the sufficiency of the proof of giving and publishing notice of the filing of said petition and the hearing thereon, and finding that said notice had been duly given and published for the time and in the manner prescribed by law as hereinafter in these findings of fact more fully set forth.

WHEREUPON, documentary evidence and proof were offered on behalf of the petitioners and in support of the petition herein, and the Court having examined and heard all the evidence and proof produced herein and having duly considered the same, and all matters and things in connection with the filing of said petition and the hearing thereon appearing to the Court to be in all respects proper and legal, and the Court being fully advised in the premises, and the cause having been submitted to the Court for decision, the Court then and thereupon made and filed the following findings of fact, to-wit:-

FINDINGS OF FACT

I.

That this petition was filed by the Board of Directors of ~~BIG LOST RIVER IRRIGATION DISTRICT~~ in the District Court in and for

Custer County, Idaho, which is the County in which the office of said Board is situated, on December 3, 1935; that the notice in the matter of the said petition herein for the judicial examination, approval and confirmation of certain proceedings for the annexation of certain lands to said BIG LOST RIVER IRRIGATION DISTRICT, of certain proceedings for the exclusion of certain lands from said District, of all proceedings connected with the formulation and adoption of a plan of operations for said District, of all proceedings in connection with the assessment and apportionment of benefits by reason of the carrying out of such plan, the cost of which is represented by its First Issue, First Series Bonds in the amount of \$238,500.00 issued for the purchase of irrigation works and water rights, of all proceedings connected with the authorization, issuance and sale of said bonds, and of all matters in connection with or related to any of the above mentioned proceedings, was given and published by the Clerk of this Court in the Mackay Miner, a weekly newspaper of general circulation published in Custer County, Idaho, entitled under the laws to publish such notice, for four successive weeks in five successive issues therein immediately prior to the time set for this hearing, being the issues of December 5th, 12th, 19th and 26th, 1935, and January 2nd, 1936; and said notice was also published by the Clerk of this Court in the Arco Advertiser, a weekly newspaper of general circulation published in Butte County, Idaho, entitled under the laws to publish such notice, for four successive weeks in five successive issues therein immediately prior to the time set for this hearing, being the issues of December 6th, 13th, 20th and 27th, 1935, and January 3rd, 1936; that said notice was given and published by said Clerk in compliance with the order of this Court duly made and entered on the 4th day of December, 1935; that said notice set forth the filing of said petition in this Court, the prayer of the petition herein, and the time and place for the hearing of said petition as at two o'clock P. M. on Monday, the 6th day of January, 1936, at the Court Room of said Court in the Village of Challis,

Custer County, Idaho; and further, said notice did state that any person interested in the subject matter of said petition or the proceedings to be then examined and confirmed by said Court, might, on or before the date set for the hearing of said petition, appear, demur, answer or otherwise plead to said petition and file objections or remonstrances thereto.

II.

That the said Roy C. Pearson, Manning Sutton, and L. H. Evans constitute the duly elected, qualified and acting Board of Directors of BIG LOST RIVER IRRIGATION DISTRICT, an Irrigation District duly organized and existing as such under and by virtue of the laws of the State of Idaho; and that the office of said Board of Directors is and at all times herein mentioned was, situate in the County of Custer, State of Idaho.

III.

That BIG LOST RIVER IRRIGATION DISTRICT is and during all the times since the 9th day of July, 1920, has been an irrigation district duly organized and existing under and by virtue of the laws of the State of Idaho relating to Irrigation Districts, and it embraces within its boundaries lands within the County of Custer and Butte within said State; and that the first Board of Directors of said District was duly elected, said Board so elected consisting of Ed. M. Rowe, H. N. Mickelson, and Charles B. Lemon, all of whom thereafter duly qualified as said Board of Directors.

IV.

That by the decree of the above entitled Court made and entered on or about February 24, 1921, in Judgment Book 2 of said Court at Page 372 in a proceeding entitled:-

"In the matter of the Petition of the Board of Directors of the Big Lost River Irrigation District of the Counties of Butte and Custer, State of Idaho, for the judicial examination, approval and confirmation of all the proceedings heretofore had for the purpose of organizing said District and for every other act and proceeding of said District had or performed in connection therewith from the date of filing the petition for the organization of said District to the date of filing this petition."

all matters relating to the organization of said District and generally all matters and things done and had by said District from its organization up to the date of said decree were duly and regularly confirmed and adjudged to be legal and valid; and no appeal was had from said decree and the same is and has been since the rendition thereof unmodified and unreversed and in full force and effect.

V.

That between, on or about February 25, 1925, and April 3, 1925, H. M. Gray and other persons, who were the owners of land within said irrigation district and forming a part thereof, filed with the Board of Directors of said district a petition in writing, duly verified, setting forth, among other things, that such lands named in said petition were a part of said irrigation district and that as owners of such lands they had installed a good and sufficient water system independent of the water system of such irrigation district for the irrigation of their lands because of the failure of said district in owning a sufficient water right to furnish an adequate water supply for said lands, and describing in a general way such independent system, setting forth the character of such lands and praying that said lands might be excluded from said irrigation district; that the said petition described the said lands and also described the several parcels owned by the several petitioners. The said lands are situated in Custer County, State of Idaho, and are described as follows, to-wit:-

The South Half of the Northeast Quarter ($S\frac{1}{2}NE\frac{1}{4}$),
Southeast Quarter of the Northwest Quarter ($SE\frac{1}{4}NW\frac{1}{4}$),
Northeast Quarter of the Southwest Quarter ($NE\frac{1}{4}SW\frac{1}{4}$),
Section 8, Township 6 North, Range 25 East Boise
Meridian:

Southeast Quarter of the Southwest Quarter ($SE\frac{1}{4}SW\frac{1}{4}$), Section 8, Northeast Quarter of the Northwest Quarter ($NE\frac{1}{4}NW\frac{1}{4}$) and the North Half of the Northeast Quarter ($N\frac{1}{2}NE\frac{1}{4}$), Section 17, Township 6 North, Range 25 East Boise, Meridian;

Northwest Quarter of the Southwest Quarter, ($NW\frac{1}{4}SW\frac{1}{4}$), Section 17, the West Half of the Northeast Quarter ($W\frac{1}{2}NE\frac{1}{4}$), Southeast Quarter of the Northeast Quarter ($SE\frac{1}{4}NE\frac{1}{4}$), and Tax #2, Section 18, Township 7 North, Range 24 East Boise Meridian;

The North Half of the Southeast Quarter ($N\frac{1}{2}SE\frac{1}{4}$), North Half of the Southwest Quarter ($N\frac{1}{2}SW\frac{1}{4}$), Section 9, Township 6 North, Range 25 East, Boise Meridian;

South Half of the Southeast Quarter ($S\frac{1}{2}SE\frac{1}{4}$), South Half of the Southwest Quarter ($S\frac{1}{2}SW\frac{1}{4}$), Section 9, Northwest Quarter of the Northeast Quarter ($NW\frac{1}{4}NE\frac{1}{4}$), Fract. Northeast Quarter of the Northwest Quarter ($NE\frac{1}{4}NW\frac{1}{4}$), Northwest Quarter of the Northwest Quarter ($NW\frac{1}{4}NW\frac{1}{4}$), Fract. Southwest Quarter of the Northwest Quarter ($SW\frac{1}{4}NW\frac{1}{4}$), Section 16, Township 6 North, Range 25 East Boise Meridian;

South Half of the Southwest Quarter ($S\frac{1}{2}SW\frac{1}{4}$), Northwest Quarter of the Southwest Quarter ($NW\frac{1}{4}SW\frac{1}{4}$), Section 1, Northeast Quarter of the Southeast Quarter ($NE\frac{1}{4}SE\frac{1}{4}$), Section 2, Township 6 North, Range 24 East Boise Meridian.

That at said time, George L. Ambrose was the duly elected, qualified and acting Secretary of said BIG LOST RIVER IRRIGATION DISTRICT. That on June 9, 1925, Roy C. Pearson, H. N. Mickelson and H. W. Angelo were the duly elected and qualified and acting Directors of said District and as such constituted its Board of Directors; that the said Board of Directors so constituted as aforesaid at a meeting held on said date, to-wit, June 9, 1925, at 9:00 o'clock A. M., which was the first regular meeting of the Board after the filing of said petition, heard the said petition and the allegations thereof having been established, the said Board of Directors by its resolution duly adopted, made an order on said date granting said petition and changing the boundaries of said District so as to exclude the lands described in said petition. That thereupon a copy of said order of said Board of Directors duly certified by the President and Secretary of said Board, excluding said lands

and changing the boundaries of said Irrigation District, was thereafter filed for record in the Recorder's Office of Custer County, Idaho in which said lands are situated, and said lands since the date of said order excluding them from said District have not been and are not now within said Irrigation District or a part thereof.

VI.

That between, on or about January 1, 1927, and February 1, 1927, Joseph W. Anderson and other persons, who were the owners of land within said irrigation district and forming a part thereof, filed with the Board of Directors of said District a petition in writing, duly verified, setting forth, among other things that such lands named in said petition were a part of said irrigation district, and that as owners of such lands they had installed a good and sufficient water system independent of the water system of such irrigation district for the irrigation of their lands, because of the failure of said district in owning a sufficient water right to furnish an adequate water supply for said lands, and describing in a general way such independent system, setting forth the character of such lands and praying that said lands might be excluded from such irrigation district; that the said petition described the said lands and also described the several parcels owned by the several petitioners. The said lands are situated in Butte and Custer Counties, State of Idaho, and are described as follows, to-wit:

BUTTE COUNTY, IDAHO.

East Half of the Northwest Quarter ($E\frac{1}{2}NW\frac{1}{4}$), Northwest Quarter of the Northwest Quarter ($NW\frac{1}{4}NW\frac{1}{4}$), Section 16, West Half of the Northeast Quarter ($W\frac{1}{2}NE\frac{1}{4}$), and the Northwest Quarter ($NW\frac{1}{4}$) of Section 17, Township 4 North, Range 26 East Boise Meridian;

Southwest Quarter of the Northwest Quarter ($SW\frac{1}{4}NW\frac{1}{4}$)
Section 16, Southeast Quarter of the Northeast
Quarter ($SE\frac{1}{4}NE\frac{1}{4}$) of Section 17, Township 4 North,
Range 26 East Boise Meridian;

Lot 24 in Block 8 of the Original Town of Arco,
Butte County, Idaho;

Lots 7 and 8, in Block 14 of the Original Town of
Arco, Butte County, Idaho;

Northwest Quarter ($NW\frac{1}{4}$) Section 17, and South
Half of the Southeast Quarter ($S\frac{1}{2}SE\frac{1}{4}$) of Section
7, Township 3 North, Range 27 East Boise Meridian;

North Half of the Southeast Quarter ($N\frac{1}{2}SE\frac{1}{4}$)
Section 7, Township 3 North, Range 27 East
Boise Meridian;

Lot 16, Block 2 of the First Addition to the
Town of Arco, Butte County, Idaho;

Also beginning at a point 80 rods due east from
the southwest corner of Section 9, Township 4
North, Range 26 East Boise Meridian, and running
thence due north 160 rods; thence due east 140
rods; thence due south 160 rods; thence due west
140 rods to place of beginning, containing 140
acres less $1\frac{1}{2}$ acres for school house site;

Southwest Quarter of the Northeast Quarter
($SW\frac{1}{4}NE\frac{1}{4}$) Section 19, West Half of the Southeast
Quarter ($W\frac{1}{2}SE\frac{1}{4}$), Section 19, East Half of the
Southwest Quarter ($E\frac{1}{2}SW\frac{1}{4}$), Section 19, Township
4 North, Range 26 East Boise Meridian;

Northeast Quarter ($NE\frac{1}{4}$) Section 13, Township 3
North, Range 26 East Boise Meridian, Lots 1 and
2, Section 7, East Half of the Northwest Quarter
($E\frac{1}{2}NW\frac{1}{4}$) Section 7, Township 3 North, Range 27
East Boise Meridian;

Southwest Quarter of the Northeast Quarter
($SW\frac{1}{4}NE\frac{1}{4}$) Section 19, Township 4 North, Range
26 East Boise Meridian;

East Half of the Southwest Quarter ($E\frac{1}{2}SW\frac{1}{4}$), East
Half of the Northwest Quarter ($E\frac{1}{2}NW\frac{1}{4}$), Section
11, Township 4 North, Range 26 East Boise Meridian;

South Half of the Southwest Quarter ($S\frac{1}{2}SW\frac{1}{4}$) Sec-
tion 8, Township 3 North, Range 27 East Boise
Meridian;

East Half of the Southeast Quarter ($E\frac{1}{2}SE\frac{1}{4}$), East
Half of the Southwest Quarter ($E\frac{1}{2}SW\frac{1}{4}$), Section 8,
Northeast Quarter of the Northeast Quarter ($NE\frac{1}{4}NE\frac{1}{4}$)
Section 17, Township 4 North, Range 26 East Boise
Meridian.

CUSTER COUNTY, IDAHO

Southeast Quarter of the Northwest Quarter ($SE\frac{1}{4}NW\frac{1}{4}$) and the West Half of the Northwest Quarter ($W\frac{1}{2}NW\frac{1}{4}$), Section 21, Tax No. 1, and Tax No. 2, being in the Southeast Quarter of the Northeast Quarter ($SE\frac{1}{4}NE\frac{1}{4}$) and the Northeast Quarter of the Southeast Quarter ($NE\frac{1}{4}SE\frac{1}{4}$), Section 20, Township 7 North, Range 24 East Boise Meridian;

Northwest Quarter of the Northwest Quarter ($NW\frac{1}{4}NW\frac{1}{4}$), Section 8, and Tax No. 4, being the South Half of the Southwest Quarter ($S\frac{1}{2}SW\frac{1}{4}$) Section 5, less 2.26 acres, all in Township 6 North, Range 25 East Boise Meridian;

Northwest Quarter of the Northwest Quarter ($NW\frac{1}{4}NW\frac{1}{4}$), Tax No. 1, being a portion of the Southwest Quarter of the Northwest Quarter ($SW\frac{1}{4}NW\frac{1}{4}$), and the Northwest Quarter of the Southwest Quarter ($NW\frac{1}{4}SW\frac{1}{4}$), and the Southeast Quarter of the Northwest Quarter ($SE\frac{1}{4}NW\frac{1}{4}$), and the Southwest Quarter of the Northeast Quarter ($SW\frac{1}{4}NE\frac{1}{4}$), all in Section 27, Township 7 North, Range 24 East Boise Meridian;

East Half of the Southwest Quarter ($E\frac{1}{2}SW\frac{1}{4}$), the West Half of the Southeast Quarter ($W\frac{1}{2}SE\frac{1}{4}$), Section 31, Township 7 North, Range 25 East Boise Meridian;

North Half of the Northeast Quarter ($N\frac{1}{2}NE\frac{1}{4}$), Southwest Quarter of the Northeast Quarter ($SW\frac{1}{4}NE\frac{1}{4}$), Northwest Quarter of the Southeast Quarter ($NW\frac{1}{4}SE\frac{1}{4}$), Section 6, Township 6 North, Range 25 East Boise Meridian;

Northeast Quarter of the Southeast Quarter ($NE\frac{1}{4}SE\frac{1}{4}$), South Half of the Northeast Quarter ($S\frac{1}{2}NE\frac{1}{4}$), Northwest Quarter of the Northeast Quarter ($NW\frac{1}{4}NE\frac{1}{4}$), East Half of the Northwest Quarter ($E\frac{1}{2}NW\frac{1}{4}$), and Tax No. 1 and Tax No. 2, the same being the Northwest Quarter of the Northwest Quarter ($NW\frac{1}{4}NW\frac{1}{4}$) and the Southwest Quarter of the Northwest Quarter ($SW\frac{1}{4}NW\frac{1}{4}$), respectively, all in Section 31, Township 7 North, Range 25 East Boise Meridian.

That at said time George L. Ambrose was the duly elected, qualified and acting secretary of said Big Lost River Irrigation District; that on February 1, 1927, Roy C. Pearson, H. N. Mickelson, and H. W. Angelo, were the duly elected, qualified and acting directors of said district and as such constituted its Board of Directors; that said Board of Directors so constituted as aforesaid, at a meeting held on said date, to-wit, February 1, 1927, at 1:00 o'clock P. M., heard the said petition. Thereupon said board, by its resolution duly

adopted, ordered that the said petitions and each and all of them be denied; that thereafter and within the statutory period, the petitioners prosecuted an appeal to the District Court of the Sixth Judicial District of the State of Idaho, in and for the County of Butte and also in and for the County of Custer, in which counties the lands described in said petitions were located; that the said District Court thereafter heard said appeal on its merits, and after the trial of said cause made and entered Findings of Fact, Conclusions of Law and Decree therein on or about the 7th day of June, 1928, excluding all of the above described lands from said district; that no appeal was had from said judgment and decree and the same is and has been since the rendition thereof unmodified and unreversed and is in full force and effect. Thereupon the said Board, by its resolution duly adopted, pursuant to the decree of the said District Court as aforesaid, on the 21st day of February, 1930, ordered that all the lands described in said decree be excluded from said district; that since the date of said decree, said lands have not been and are not now within said irrigation district or a part thereof, except as a portion thereof may have been re-annexed to said district under the proceedings hereinafter set forth.

VII.

That on or about March 21, 1934, W. I. Nielson filed a petition in writing, duly verified, with the Board of Directors of said district, setting forth, among other things, that such lands named in the said petition are a part of such irrigation district, are too high to be watered from water owned and controlled by said district, and that as the owner of the lands described in said petition he had installed a

good and sufficient water system independent of the water system of the District, for the irrigation of said lands, and praying in such petition for the exclusion of the lands described from said District. The lands referred to in said petition are situate in Custer County, State of Idaho, and are described as follows, to-wit:

North Half of the Southeast Quarter (N $\frac{1}{2}$ SE $\frac{1}{4}$)
and North 125 rods of the Southwest Quarter
(SW $\frac{1}{4}$), Section 26, Township 7 North, Range
24 East, Boise Meridian.

That on August 11, 1934, which was the first regular meeting of the Board after the filing of said Petition; a hearing on said petition was duly and regularly had before said board on said day; that at such time George L. Ambrose was the duly elected, qualified and acting secretary of said Big Lost River Irrigation District; that on the said August 11, 1934, Roy C. Pearson, Manning Sutton and L. H. Evans were the duly elected, qualified and acting directors of said district and as such constituted its Board of Directors; that said Board of Directors so constituted as aforesaid, at a meeting held on said date, at two o'clock P. M., heard the said petition, and the allegations thereof having been established, the said board, by its resolution duly adopted, made an order on said date, granting said petition and changing the boundaries of said district so as to exclude the lands described in said petition. That thereupon a copy of the said order of said Board of Directors, duly certified by the President and Secretary of said Board of Directors, excluding said lands and changing the boundaries of said irrigation district, was thereafter duly filed for record in the Recorder's Office of Custer County, Idaho, in which said lands are situated, and said lands, since the date of said order excluding them from said district, have not been, and are not

now, within said irrigation district or a part thereof.

VIII.

That on or about the 10th day of April, 1934, Arthur L. Ferris and other persons who were the holders of title and evidence of title representing the whole of a certain body of land hereinafter described, adjacent to the boundaries of said irrigation district, filed with the Board of Directors of said District a petition in writing praying that said land might be annexed to said Big Lost River Irrigation District. The said petition described the said lands and also described the several parcels owned by the several petitioners. That said land was described as follows:

Northwest quarter (NW $\frac{1}{4}$) of Section 17; and South half of the Southeast quarter (S $\frac{1}{2}$ SE $\frac{1}{4}$) of Section 7, Township 3 North, Range 27 East Boise Meridian, Butte County;

South half of the Southwest quarter (S $\frac{1}{2}$ SW $\frac{1}{4}$) of Section 8, Township 3 North, Range 27 East Boise Meridian, Butte County;

Northeast quarter of the Southeast quarter (NE $\frac{1}{4}$ SE $\frac{1}{4}$), South half of the Northeast quarter (S $\frac{1}{2}$ NE $\frac{1}{4}$), Northwest quarter of the Northeast quarter (NW $\frac{1}{4}$ NE $\frac{1}{4}$), East half of the Northwest quarter (E $\frac{1}{2}$ NW $\frac{1}{4}$), and Tax No. 1 (NW $\frac{1}{4}$ NW $\frac{1}{4}$), and Tax No. 2 (SW $\frac{1}{4}$ NW $\frac{1}{4}$) of Section 31, Township 7 North, Range 25 East Boise Meridian, Custer County;

East half of the Southwest quarter (E $\frac{1}{2}$ SW $\frac{1}{4}$), West half of the Southeast quarter (W $\frac{1}{2}$ SE $\frac{1}{4}$), Section 31, Township 7 North, Range 25 East Boise Meridian, Custer County;

Northwest quarter of the Northwest quarter (NW $\frac{1}{4}$ NW $\frac{1}{4}$) of Section 8; South half of the Southwest quarter (S $\frac{1}{2}$ SW $\frac{1}{4}$) of Section 5, less 2.26 acres conveyed to Troy D. Smith, Township 6 North, Range 25 East Boise Meridian, Custer County;

Southwest quarter of the Northeast quarter (SW $\frac{1}{4}$ NE $\frac{1}{4}$) of Section 19, Township 4 North, Range 26 East Boise Meridian, Butte County;

Northwest quarter (NW $\frac{1}{4}$), Northwest quarter of the Southwest quarter (NW $\frac{1}{4}$ SW $\frac{1}{4}$), Northeast quarter of the Southwest quarter (NE $\frac{1}{4}$ SW $\frac{1}{4}$), Northwest quarter of the Southeast quarter (NW $\frac{1}{4}$ SE $\frac{1}{4}$) of Section 36, Township 7 North, Range 24 East Boise Meridian, Custer County.

That at said time George L. Ambrose was the duly elected, qualified, and acting secretary of said Big Lost River Irrigation District; that said secretary thereupon caused a notice of the filing of said petition to be published three weeks in The Mackay Miner, a weekly newspaper of general circulation published weekly at Mackay, in Custer County, Idaho, said publication commencing with the issue of April 12, 1934 and ending with the issue dated April 26, 1934; that said secretary also caused said notice to be published for three weeks in The Arco Advertiser, a weekly newspaper of general circulation published at Arco, in Butte County, Idaho, the first publication of said notice being on the 13th day of April, 1934, and the last publication being on the 27th day of April, 1934; that the notice so published in each of said newspapers stated the fact of the filing of such petition, the names of the petitioners, the description of the lands mentioned in the said petition, and the prayer thereof, and it notified all persons interested in or who might be affected by such change of boundaries of the district to appear at the office of said district on May 1, 1934, at two o'clock P. M. of said date, to show cause in writing, if any they had, why the lands mentioned and described in said petition should not be annexed to said district.

That on May 1, 1934, Roy C. Pearson, Manning Sutton, and L. H. Evans were the duly elected, qualified, and acting directors of said district, and as such constituted its board of directors; that said board of directors, so constituted as aforesaid, at a meeting held on said date, to-wit: May 1, 1934, at two o'clock P. M. heard the said petition pursuant to said notice and its publication as aforesaid; that at said meeting no protest or objection in writing or otherwise was filed or presented against the annexation of said lands, or any of them. Thereupon the said board, by its resolution duly adopted, ordered that all the lands described

in said petition and above described be annexed to said district; that thereupon a copy of the order of the board of directors ordering such change of boundaries, certified by the president and secretary of the board, was thereafter duly filed for record in the recorder's office of Custer County, Idaho and Butte County, Idaho, in each of which counties is situated some of the lands of said district.

That no protest having been filed to the annexation of any of said lands to the district, no election was necessary upon said question, and that ever since the making and recording of the said order of the board of directors the lands in said petition and hereinbefore described, and every part thereof, have been and now are a part of said irrigation district and within its boundaries as fully and to every intent and purpose as if the said lands had been included therein in the original organization of said district.

VIX.

That on or about October 10, 1934, the Board of Directors of the Big Lost River Irrigation District, so constituted as aforesaid, filed with Reconstruction Finance Corporation, Washington, D. C., an application for a loan in the sum of \$250,000.00 for the purpose of acquiring supplemental water rights and irrigation works for said District; that thereafter on or about February 28, 1935, the said application was approved by said Corporation, by its resolution of that date, in the sum of \$238,500.00, and pursuant thereto on or about March 20, 1935, the said Board of Directors of said District at a special meeting of that date, adopted a resolution in the form required by Reconstruction Finance Corporation, confirming, ratifying and approving the action of said Board in making said application, and the statements of fact and representations therein made, and agreeing by said

resolution to accept the benefits of said loan, and assenting and agreeing to all the terms and conditions of the aforesaid resolution adopted by Reconstruction Finance Corporation in the approval of said loan, and also agreeing to faithfully do and perform all the things on the part of said district to be done thereunder as well as those of all other resolutions and agreements required or contemplated to be adopted and made by the said District pursuant to the terms of said resolution of said Reconstruction Finance Corporation; and also agreeing to execute or adopt such further or special or other agreements or resolutions in accordance with the provisions of said resolution of Reconstruction Finance Corporation as such Corporation may from time to time require; and authorizing and directing the officers of said District to do all acts and things necessary, proper or appropriate to comply with and carry out the terms and conditions of the aforesaid resolution of this Board of date March 20, 1935, and of the said resolution of Reconstruction Finance Corporation.

X.

That the board of directors of said Big Lost River Irrigation District, constituted as aforesaid, at a meeting of such board duly called on the 1st day of April, 1935, which was as soon as was practicable after the organization of said district, duly formulated a general plan of its proposed operations by a resolution duly entered on the minutes of its meeting of said date; said plan stated what construction work and property said district proposed to purchase and the cost of purchasing the same; said works and property were substantially as follows: Those storage, flood water, and natural flow rights on Big Lost River and its tributaries, the Mackay Dam and storage reservoir, The Carey Act project and the main diversion canal known as the Blaine Canal, all belonging to Utah Construction Company, a Utah

corporation, and all other irrigation works and holdings of said company in Butte and Custer Counties, Idaho; also certain water rights appurtenant to privately owned lands within said Carey Act project, and if necessary the purchase of the lands to which such water rights were appurtenant as an incident thereto; that the estimated cost of said purchases and the carrying out of said plan was by said resolution determined to be the sum of \$238,500.00, or so much thereof as might be necessary. By the terms of said resolution the right was reserved to said district to eliminate from said property any item thereof which might thereafter not be deemed necessary or desirable in connection with said plan, in case any saving of cost could be effected by such elimination.

Prior to the formulation of said plan and for the purpose of ascertaining the cost of carrying out the same said board of directors caused surveys, examinations, and plans to be made which demonstrated the practicability of such plan to furnish a desired and necessary supplemental water supply to the lands within said district and which furnished a proper basis for the cost of carrying out such plan; all such surveys, examination, maps, plans, and estimates were made under the direction of J. Ray Weber, a competent irrigation engineer, and were certified by him. A copy of said plan was submitted by said board of directors to the Department of Reclamation of the State of Idaho which department thereafter, to-wit: on or about the 3rd day of April, 1935, filed with the said board of directors a report approving and recommending said plan as practicable and feasible.

XI.

That upon receiving said report of the Department of Reclamation the board of directors of said district, constituted as aforesaid, at a meeting duly called and held on April 16, 1935 proceeded by resolution duly entered on its minutes to determine

the amount of money necessary to be raised to carry out said proposed plan of operations, which amount of money was determined by said resolution to be \$238,500.00; and moreover by said resolution at said meeting said board determined that it was advisable and for the best interests of the district that the said \$238,500.00 be raised by a bond issue of the district; and thereupon said board at said meeting by resolution duly adopted and entered on its minutes called a special election to be held within the district on the 18th day of May, 1935, at which election there should be submitted to the qualified electors of said district the question whether the negotiable coupon bonds of said district in the said sum of \$238,500.00 should be authorized for the aforesaid purposes; and the Secretary of said board of directors was by said resolution directed to give notice of such election in the manner hereinafter set forth.

XII.

That notice of such election was duly given by posting notices thereof in three public places in each election precinct of said district at least four weeks before the date of said election and by publishing the said notice in The Mackay Miner and in The Arco Advertiser, each a weekly newspaper of general circulation published in said district and in the counties of Custer and Butte, respectively, the counties in which said district is located. Said notice was published in one issue of each of said newspapers each week for each of five weeks prior to the date of said election; that is to say, said notice was published as aforesaid at least four weeks before the date of said election. Said notice so published and posted as aforesaid specified the time of holding the election, the qualifications of voters, the amount of bonds proposed to be issued, and stated that the maps, plans, and estimates of the said district's plan

operations and the report of the Department of Reclamation of the State of Idaho with respect thereto were on file in the office of the board of directors of said district at Mackay, Idaho, and at the office of the said Department of Reclamation at the State Capitol, Boise, Idaho.

XIII.

That on the 18th day of May, 1935, after due notice thereof had been given as aforesaid, and as required by the laws of the State of Idaho, said special election was duly and regularly held within said district and the result thereof determined and declared in conformity with Title 42, "Irrigation Districts", Idaho Code Annotated, governing the election of irrigation district officers; that at said election the ballots cast contained the words "Bonds -- yes" or "Bonds -- no", or words equivalent thereto. That at said election 532 votes were cast, of which 513 votes were "Bonds -- yes" and 19 votes were "Bonds -- no"; and the official returns of said election, in all respects as provided by law, were made and filed with the board of directors of said Big Lost River Irrigation District on or prior to May 28, 1935.

XIV.

That on May 28, 1935 said board of directors of said district, constituted as aforesaid, met at an adjourned regular meeting at its usual place of meeting to canvass the returns of said election. Thereupon such canvass of said returns was made in public, as required by law, and being concluded the board declared by resolution duly entered on its minutes the result thereof to be 513 votes cast at said election in favor of issuing said bonds in the amount of \$238,500.00 and 19 votes cast against the issuing of said bonds, which affirmative vote was far more than the necessary two-thirds vote required to authorize the

issuance of said bonds.

XV.

That said board of directors, constituted as aforesaid, at a meeting duly called and held on the 18th day of September, 1935, by resolution duly entered on its minutes, fixed October 14, 1935, at ten o'clock A. M., at its office in Mackay, Custer County, Idaho, as the time and place of a meeting of said board for the purpose of determining the benefits which would accrue to each tract or legal subdivision of land in said district from the consummation of said district's plan of operations adopted as aforesaid, and for the purpose of apportioning, assessing, and distributing the costs thereof represented by said bond issue of \$238,500.00 theretofore authorized over and upon said tracts and legal subdivisions of land, and for the purpose of making a list of such assessment, apportionment, and distribution of costs, and for the purpose of hearing all persons interested who might appear at such meeting. That prior to said September 18, 1935 said board of directors of Big Lost River Irrigation District examined each tract and legal subdivision of land in said district for the purpose of determining the benefits which would accrue to each of such tracts and subdivisions by reason of the carrying out of its said plan.

XVI.

That pursuant to said order of said board of directors made on September 18, 1935 as aforesaid, the secretary of said district caused due notice of said meeting of said board of directors set for October 14th as aforesaid to be given in the manner hereinafter stated and set forth. Said notice so given specified the time and place of said meeting and the objects thereof, and that at said meeting said board of directors would hear all persons interested who might appear, and that said board would con-

tinue in session from day to day until the said assessment and apportionment of benefits was completed.

A copy of said notice was published in The Mackay Miner, a weekly newspaper of general circulation, published weekly within said district, at Mackay, in Custer County, Idaho. Said Publication was made for a period in excess of two weeks before the time of said meeting, to-wit, once each week for four consecutive publications commencing with the issue of September 19, 1935 and ending with the issue of October 10th, 1935. Said notice was also published in The Arco Advertiser, a weekly newspaper of general circulation, published at Arco, Butte County, Idaho within said district, being published in like manner in excess of a period of two weeks before the time of such meeting, to-wit, four consecutive publications commencing with the issue dated September 20, 1935 and ending with the issue of October 11, 1935.

That on the 3rd day of October, 1935 the secretary of said district mailed a copy of said notice to each of the owners of land in said Big Lost River Irrigation District (both those residing within and those residing without the counties of Custer and Butte, in the State of Idaho) by depositing a copy of said notice, enclosed in an envelope, in the United States Post Office at Mackay, Idaho (the place where the office of said district was located) with postage thereon prepaid, addressed to each of said landowners at his last known place of residence, thus notifying by mail all those landowners whom it was reasonably practicable to notify of said meeting personally or by mail.

XVII.

~~That on the 14th day of October, 1935 the said board of~~ directors, constituted as aforesaid, met at 10 o'clock A. M. of said day at its office in Mackay, in Custer County, Idaho, being

the time and place fixed by the notice aforesaid, and proceeded to hear, and did hear, all persons interested who appeared before said board, and heard all evidence, including all maps and surveys which any owner of land produced; that landowners Margaret Judd, J. R. Pence, and Tri-State Lumber Company, a corporation, successor to Gem State Lumber Company, appeared before said board and presented oral protests against the apportionment of any costs against their respective lands; that said protests, and each of them, were by said board duly considered and denied; that no other protests or objections whatsoever were made by any other landowner to the list and apportionment of benefits as finally adopted and set out in Exhibit "A" attached to said petition and made a part thereof; that said board continued in session from day to day at adjourned sessions of said meeting until the 25th day of October, 1935.

That at said meeting said board of directors of said Big Lost River Irrigation District determined the benefits which would accrue to each of the tracts and legal subdivisions of land from the carrying out of its plan, and distributed the cost thereof, to-wit: \$238,500.00 represented by its authorized bond issue aforesaid, over each of such tracts and subdivisions of land in proportion to such benefits and made and adopted a list of such apportionment and benefits, which list contains a complete description of each tract and subdivision of land in said district with the amount and rate per acre of such apportionment or distribution of cost and the name of the owner thereof; that a true copy of said list of such apportionment and benefits is attached to said petition and filed herein marked "Petitioners' Exhibit "13", which is hereby referred to and made a part hereof as fully and to all intents and purposes as if copied at length herein;

that the apportionment of benefits and costs shown thereon are just and equitable and said list and apportionment of benefits is in every respect legal and valid; that all the lands listed and described in said Petitioners' Exhibit "13" are within the boundaries of said Big Lost River Irrigation District, and whenever hereafter any annual assessment is made for raising the interest on said authorized bond issue of \$238,500.00 or any portion of the principal it should be spread upon the lands described in said Petitioners' Exhibit "13" in the same proportion as the assessment of benefits, and all of said lands are legally bound and obligated to pay such assessments in such proportion. That the whole amount of the assessment of benefits so assessed and apportioned as aforesaid equals the amount of the obligation authorized by the electors of said District at the election held May 18, 1935 for the authorization of the issuance of the bonds of said District in the sum of \$238,500.00.

XVIII.

That at said meeting the said board of directors in order to prevent an inequitable distribution to the lands within the district of the supplemental water supply to be acquired by it pursuant to said plan of operations adopted by the Board of Directors of said District as hereinbefore set forth, found, determined, and declared certain factors and considerations to be an integral part of said assessment and apportionment of benefits and to be basic and binding regulations which would govern the distribution of water so acquired, and by a resolution duly adopted at said meeting and spread upon its minutes, the said Board of Directors of said Big Lost River Irrigation District found, determined and declared, and this Court does find, determine and declare as follows:-

That the following factors and considerations are hereby found, determined, and declared to be an integral part of said apportionment and assessment of benefits, to-wit:-

That from an examination of the tracts and legal subdivisions of the land in the District, it appeared to the said Board of Directors of said Big Lost River Irrigation District and it was found and determined by said Board, and this Court does find and determine that there are certain basic benefits which will accrue generally to all the irrigable lands of the district due to the acquisition by it of the storage, flood water and natural flow rights on Big Lost River and its tributaries, the Mackay Dam and storage reservoir, the Carey Act Project, and a main diversion canal known as the Blaine Canal, belonging to the Utah Construction Company, and all other irrigation works and holdings of said Company in Butte and Custer Counties, Idaho, and also certain water rights appurtenant to privately owned lands within said Carey Act Project and, if necessary, the purchasing of the lands to which such water rights are appurtenant as an incident thereto, irrespective of whether a specific supplemental storage water right is allocated to said land; and that said basic benefits vary in amount from approximately \$2.00 to approximately \$5.00 per irrigable acre, the precise amount being as shown on said list and apportionment of benefits hereby adopted.

That from such examination it appeared to the said Board of Directors of said Big Lost River Irrigation District and it was found and determined by said Board and this Court does find and determine that certain (but not all) of said lands within the district require also a supplemental storage water right from the reservoir and irrigation works proposed to be acquired by the district, such supplemental water rights so required being in varying amounts, depending upon the priority of the decreed water right in Big Lost River and its tributaries belonging to the owner thereof substantially as shown in the following table:

| <u>Decreed Priority.</u> | <u>Supplemental Requirement In Acre Feet Measured In Reservoir.</u> |
|--------------------------|---|
| Before June, 1884 | None |
| June, 1884 | .46 |
| July, 1884 | .59 |
| August, 1884 | .64 |
| September, 1884 | .65 |
| October, 1884 | .81 |
| June, 1885 | 1.04 |
| After June, 1885 | 1.17 |
| Year 1886 | 1.35 |
| Year 1887 | 1.51 |
| Year 1888 | 1.54 |
| Year 1889 | 1.59 |
| Year 1890 | 1.63 |
| Year 1891 | 1.63 |
| Year 1892 | 1.65 |
| Year 1893 | 1.65 |
| Year 1894 | 1.68 |
| Year 1895 | 1.73 |
| Year 1896 | 1.73 |

| | |
|------------------------------------|------|
| Year 1897 | 1.76 |
| Year 1898 | 1.77 |
| Year 1899 | 1.77 |
| Year 1900 and Subsequent years. | 1.79 |

That it appeared to the said Board of Directors of Big Lost River Irrigation District and it now appears to this Court and this Court does find from a study of the records of the flow of Big Lost River and its tributaries over a period of five years prior to 1935 of extreme drouth conditions and resultant low water run off that the reservoir storage water proposed to be acquired by the district will in the average year yield not less than 24,500 acre feet measured in said reservoir, and that those lands within said district to which have been apportioned certain benefits designated "Amount Storage Water Assessment" are benefited by the allotment to such lands of storage water in the amount of approximately \$6.00 per acre foot for the storage water so allotted, the precise amount of benefits, however, being the amount shown on said list and apportionment of benefits.

It is hereby further found and determined by this Court that storage water is hereby allotted to those lands against which "Storage Water Assessment" benefits have been apportioned according to said list and apportionment of benefits, and only such lands shall be entitled to storage water.

And in any year when the available storage water owned by the District equals 24,500 acre feet measured in the reservoir, then the several classes of land shown in the above table shall be entitled to supplemental storage water in the amounts shown therein.

And in any year when the water supply belonging to the district and available for storage shall be more or less than 24,500 acre feet, then the respective landowners entitled to storage water shall be entitled to the available stored waters on the same basis and in the same proportion as shown to be the supplemental requirement in acre feet for the several classes of land according to the above table.

Provided, however, that nothing herein contained shall be construed to prevent the storage in said reservoir, whenever the same may be lawfully done, of decreed water belonging to any individual landowner of the district and subsequent distribution to such landowner for his use, with such reasonable deduction for losses as may hereafter be fixed by the rules and regulations of the district.

XIX.

That said Board of Directors, constituted as aforesaid, at a meeting duly called and held on the 30th day of November, 1935, by a resolution duly adopted and entered on its minutes, resolved to issue, negotiate and sell \$238,500.00 par value of its negotiable coupon bonds authorized at the election hereinbefore mentioned; that said Board of Directors by its said resolution duly adopted as aforesaid, made the following orders and authorizations relative to the issuance of said bonds to-wit:-

- (1) That for the purpose of carrying out said general plan of proposed operations of said District, said Board authorized to be issued as of January 1, 1936, negotiable coupon bonds of said District in the aggregate principal amount of \$238,500.00 dated July 1, 1935 and numbered from One (1) to Two Hundred Thirty-nine (239) inclusive, and in denominations of \$1000.00 each except bond numbered 239 which shall be in the denomination of \$500.00, all of said bonds to constitute a single issue; and that the whole of said bonds authorized as aforesaid shall be denominated "First Series, First Issue Bonds of Big Lost River Irrigation District;" that said bonds shall bear interest from date of issuance, to-wit, January 1, 1936, at the rate of 4% per annum, payable July 1, 1936, and semi-annually thereafter on January 1, and July 1st of each year, and shall be numbered and mature as follows:-

| <u>BOND NUMBERS</u> (Inclusive) | <u>AMOUNT</u> | <u>MATURITY DATE.</u> |
|------------------------------------|---------------|-----------------------|
| 1 - 12 | \$12,000.00 | January 1, 1947 |
| 13 - 26 | \$14,000.00 | January 1, 1948 |
| 27 - 43 | \$17,000.00 | January 1, 1949 |

| | | |
|-----------|-------------|-----------------|
| 44 - 62 | \$19,000.00 | January 1, 1950 |
| 63 - 83 | \$21,000.00 | January 1, 1951 |
| 84 - 107 | \$24,000.00 | January 1, 1952 |
| 108 - 133 | \$26,000.00 | January 1, 1953 |
| 134 - 164 | \$31,000.00 | January 1, 1954 |
| 165 - 200 | \$36,000.00 | January 1, 1955 |
| 201 - 239 | \$38,500.00 | January 1, 1956 |

- (2) That said schedule of bond maturities conforms as nearly as practicable to "Plan No. 1" maturity schedule contemplated by Section 42-402 of the Idaho Code Annotated, 1932.
- (3) That the principal of and interest on said bonds shall be payable on presentation and surrender of the matured bonds or proper coupons in such funds as at the respective due dates thereof shall constitute lawful money of the United States of America at First Security Trust Company, Salt Lake City, Utah.
- (4) That each of said bonds so issued shall be signed by the President and Secretary of the Board of Directors and the corporate seal of said District shall be impressed upon each bond and the coupons attached to each of said bonds shall be executed with the engraved facsimile signature of the Secretary of said District.
- (5) That before the final sale of said bonds or any part thereof, said issue shall be confirmed in the District Court of Custer County, Idaho, the County in said State in which the office of said District is situated, as provided by Section 42-406 et seq, Idaho Code Annotated, 1932, and judgment shall be rendered ratifying, approving and confirming the authorization of said bonds, the apportionment of benefits under

said bond issue upon the lands within said District, and the levy and assessment of taxes for the payment of principal and interest on said bonds, and for the establishment of a Safety Fund.

- (6) That the Secretary and Treasurer of said District shall each keep a record of the bonds sold, their number, the date of sale, the price received, and the name of the purchaser.
- (7) That said bonds, the coupons attached thereto, and the certificate to appear on the reverse side thereof shall be in substantially the form as set forth in Section 7 of the aforesaid resolution of the Board of Directors of said District of date November 30, 1935, a certified copy of which resolution duly certified by the Secretary of said District was introduced in evidence at the hearing of said cause January 6, 1936, and marked "Petitioners' Exhibit 3" which is hereby referred to and made a part hereof as fully and to all intents and purposes as if copied at length herein.
- (8) That the full faith, credit and resources of Big Lost River Irrigation District is pledged to each successive holder of each of the bonds authorized by said resolution for the punctual payment of the principal and interest thereof when and as the same shall become due.
- (9) That by the terms of the aforesaid resolution, it was, among other things, provided and agreed by said Board that in accordance with Section 42-413 of the Idaho Code Annotated, 1932 and any other statutes of the State of Idaho thereunto

appertaining, a safety fund would be provided to insure the payment of said District's obligations under said bond issue, by making all annual levies for the payment of principal and interest of said bonds 15% in excess of the amount which would be required to meet such obligations, if all District taxes were paid without delinquency, which Safety Fund is to be used to meet any deficiency which might otherwise occur in the payment of the principal and interest of said bonds, and that such Safety Fund shall be kept intact by renewing such 15% excess levy whenever such Safety Fund should become reduced below 10% of the said unpaid bonded indebtedness of the District, and continuing the same until such Safety Fund should again be brought up to at least 10% of such unpaid bonded indebtedness; that said resolution further provided that in order to pay the principal and interest on said bonds, said Board of Directors would annually at its regular meeting in October levy taxes upon the lands in the District subject to taxation for such purpose, upon the basis and in the proportion of the list and apportionment of benefits approved by the Court as hereinabove contemplated, which taxes would be sufficient to raise the moneys required to meet without delinquency the successive annual payments of principal and interest falling due upon all outstanding bonds.

(10) That notice of the October meeting of the Board of Directors of said District at which assessments to pay bond interest and principal are to be levied, a statement of the estimated expenditures of the District for the year during which any levies of taxes or assessments are to be collected and used, together with a statement of the taxes and assessments proposed to be levied and levied, notices of hearings or proceedings for revisions of tax levies or assessments or land valuations or assessments of benefits on land with actions thereon, audits of the financial affairs of the District, statements of all delinquent district taxes and assessments with names of land owners, descriptions of land, and notices of all meetings of the Board of Directors of said District, shall all be submitted to Reconstruction Finance Corporation. That said District shall, every six months, furnish to Reconstruction Finance Corporation a statement as to the physical condition of all properties owned or maintained by the District, also such further reports or statements in writing to said Corporation as it may request, and shall notify said Corporation of any suit or litigation which may be instituted against said District and shall give said Corporation full access at all times to the District's records, reports and files.

That said resolution so adopted as aforesaid is in all respects proper and legal and in full compliance with the statutes of Idaho relative thereto.

XX.

That on the 3rd day of December, 1935, said Board of Directors, constituted as aforesaid, at a meeting of said Board duly called and held, by resolution duly adopted and entered in the minutes of proceedings of said Board, found and determined that it was necessary and would be most advantageous to the District that the whole of said bond issue be negotiated and sold at one time and declared its intention to sell the whole of said issue; that Reconstruction Finance Corporation having offered to purchase the whole of said issue at the par or face value of said bonds plus interest accruing thereon after date of issue, after entry of final decree of this Court confirming, ratifying and approving the proceedings of said Board relative to the authorization, issuance and sale of said bonds, upon entry of said decree aforesaid the president and secretary of said District were authorized to deliver to Reconstruction Finance Corporation or such agent as it might designate, the whole of said bond issue upon payment to the Treasurer of the District, in lawful money of the United States, the sum of \$238,500.00, plus interest accrued on said bonds from date of issue to date of said delivery; and Reconstruction Finance Corporation having offered to purchase the whole of said issue at the face value of said bonds and accrued interest thereon, notice of the time and place of sale was dispensed with. That the aforesaid sale of said bonds to Reconstruction Finance Corporation is proper and legal in all respects and in accordance with the laws of the State of Idaho.

XXI.

That at said meeting held on the 30th day of November, 1935, the said Board of Directors, constituted as aforesaid, authorized by resolution duly entered on its minutes the insti-

tution of this confirmation proceeding; that it is for the best interests of said District to have each and all of the proceedings above recited for the exclusion of lands from the boundaries of the District, the inclusion of lands within the boundaries of the District, and all proceedings for the authorization and issuance of said bonds in the amount of \$238,500.00, all proceedings for the listing, assessment, and apportionment of the cost of consummating the plan of the District aforesaid and which cost is represented by said bond issue, and all matters connected therewith and herein set out judicially examined and confirmed; that said petitioner Roy G. Pearson is the duly elected, qualified, and acting President of said Big Lost River Irrigation District; that George L. Ambrose is the duly appointed, qualified, and acting Secretary of said District; that Manning Sutton is the duly appointed, qualified, and acting Treasurer of said District; that said petitioners, Roy G. Pearson, Manning Sutton, and L. H. Evans, throughout the years 1934 and 1935 and at the date of filing this petition, and at the date of the hearing thereof, were the duly elected, qualified, and acting directors of said Big Lost River Irrigation District, and as such have constituted and do now constitute its Board of Directors.

XXII.

That all of the proceedings of Big Lost River Irrigation District relating to the exclusion of lands from said District or the inclusion of lands in said District as set forth and described in petitioners' petition on file herein, were duly and lawfully taken, and that all actions, conditions and things required to be done in connection therewith were done in accordance with the Statutes of Idaho relative thereto.

XXIII.

That all of the proceedings of said Big Lost River Irrigation District relating to the authorization, issuance and sale of First Issue, First Series Bonds of said District in the sum of \$238,500.00, as set forth and described in petitioners' petition on file herein, were duly and lawfully taken and that all actions, conditions and things required to be done in connection therewith were done in accordance with the laws of the State of Idaho relative thereto.

XXIV.

That all of the proceedings of said District relating to the determination of benefits to the lands within said Irrigation District from the authorization and issuance and sale of said bonds over and upon the various tracts and subdivisions of lands within said District and the respective amounts of apportionment thereon and the special factors and considerations entering into said apportionment and the basic rules and regulations governing the use and distribution of water upon lands within said District were properly and legally taken and are just and equitable and that the benefits to be received by said lands will be greatly in excess of the apportionment made against said lands under said bond issue, and that the apportionment and distribution thereof upon the lands in said District as set forth in the aforesaid "Petitioners' Exhibit 13" attached hereto and made a part hereof as fully and to all intents and purposes as if copied at length herein, is proper and legal in all respects, and just and equitable.

XXV.

That the provisions made by the Board of Directors of said Big Lost River Irrigation District for the levy and collection of annual assessments upon all of the lands upon which

benefits were apportioned for the payment of interest on and principal of said bond issue and the provisions made for the establishment and maintenance of a "Safety Fund" to insure the payment thereof, are in all respects proper and legal and in accordance with the Statutes of the State of Idaho relative thereto.

XXVI.

That the aforesaid First Series, First Issue Bonds of said Big Lost River Irrigation District in the sum of \$238,500.00 par or face value and all interest thereon constitute and are valid and legal bonds and valid indebtedness of said District, and that all the lands in said District are, and will remain, liable to be assessed for the payment of said bonds, and all interest thereon, except such lands set forth and described in the aforesaid Petitioners' Exhibit 13", which is hereby referred to and made a part hereof as fully and to all intents and purposes as if copied at length herein, which lands will not be benefited by the issuance of said bonds or the irrigation works and proposed plan of operations of said Big Lost River Irrigation District.

XXVII.

That the agreements of loan entered into by said Big Lost River Irrigation District and the Reconstruction Finance Corporation, and all covenants, stipulations and agreements entered into and made a part of such loan agreements, and all proceedings had and taken by said District pursuant to said loan agreements, including the authorization of sale and negotiation of bonds of said District to Reconstruction Finance Corporation as hereinbefore set forth, are in all respects proper and legal and in accordance with the Laws of the State of Idaho.

XXVIII.

That all of the proceedings had and taken by said Big Lost River Irrigation District set forth in the petition of said petitioners on file herein, are in all respects proper and legal, have been done in due time and in accordance with the laws of the State of Idaho relative thereto, and are legal, valid and binding upon said District and upon all the lands included therein and affected thereby.

XXIX.

That each and every allegation contained in the petition of the petitioners on file herein is true.

CONCLUSIONS OF LAW

THEREUPON, the Court, from the foregoing Findings of Fact, made and filed the following Conclusions of Law:-

I.

That BIG LOST RIVER IRRIGATION DISTRICT is, and during all the time since July 9, 1920 has been, an Irrigation District, duly organized and existing under and by virtue of the laws of the State of Idaho, relating to the organization and existence of Irrigation Districts, and that the petitioners herein named, Roy C. Pearson, Manning Sutton and L. H. Evans were, at the times alleged in said petition and at the date of the filing thereof and hearing thereon, the duly elected, qualified and acting Board of Directors of said District, and that acting together said petitioners constitute said Board of Directors, and as said Board they made and filed the petition herein on behalf of said District.

II.

That each and every of the proceedings taken and had by Big Lost River Irrigation District relating to the exclusion of lands from or the inclusion of lands in said District as set forth and described in petitioners' petition on file herein, were regularly and legally done, had, made, determined and entered at the proper time and in the proper manner and order, and in full and strict compliance with the statutes and laws of the State of Idaho applicable thereto.

III.

That each and every of the proceedings taken and had by Big Lost River Irrigation District relating to the formulation and adoption of a plan of operations whereby said District proposed to purchase those storage, flood water, and natural flow rights on Big Lost River and its tributaries, the Mackay Dam and storage reservoir, the Carey Act Project and the main diversion canal known as the Blaine Canal, all belonging to the Utah Construction Company, a Utah Corporation, and all other irrigation works and holdings of said Company in Butte and Custer Counties, Idaho; also certain water rights appurtenant to privately owned lands within said Carey Act Project, and if necessary, the purchase of the lands to which such water rights were appurtenant as an incident thereto, at the estimated cost of said purchases and the carrying out of said plan of operations of the sum of \$238,500.00, as set forth and described in petitioners' petition on file herein, were regularly and legally done, had, made, determined and entered at the proper time and in the proper manner and order and in full and strict compliance with the statutes and laws of the State of Idaho applicable thereto.

IV.

That each and every of the proceedings taken and had by Big Lost River Irrigation District relating to the authoriza-

tion, issuance and sale of the First Issue, First Series Bonds of said District in the sum of \$238,500.00 par or face value as set forth and described in petitioners' petition on file herein, and in the minutes of the Board of Directors of said District of dates November 30 and December 3, 1935, fully set forth in "Petitioners' Exhibit 3" on file herein, which are hereby referred to and made a part hereof as fully and to all intents and purposes as if copied at length herein, were regularly and legally done, had, made, determined and entered at the proper time and in the proper manner and order, and in full and strict compliance with the statutes and laws of the State of Idaho applicable thereto.

V.

That each and every of the proceedings taken and had by Big Lost River Irrigation District relating to the determination of benefits to the lands within said Irrigation District from the authorization and issuance of bonds over and upon the various tracts and subdivisions of lands within said District and the respective amounts of apportionment thereon and the special factors and considerations entering into said apportionment and the basic rules and regulations governing the use and distribution of water upon lands within said District, whereby the apportionment and distribution of benefits were had and made upon the lands in said District as set forth and described in petitioners' petition and "Petitioners' Exhibit 3" and in Petitioners' Exhibit 13" on file herein, which are hereby referred to and made a part hereof as fully and to all intents and purposes as if copied at length herein, were just and equitable, and were regularly and legally done, had, made, determined and entered at the proper time and in the proper manner and order, and in full and strict compliance with the statutes and laws of

the State of Idaho applicable thereto. That the lands covered by the aforesaid apportionment of benefits and distribution of costs are situated in Butte and Custer Counties, State of Idaho, and are more particularly described in "PETITIONERS' EXHIBIT 13" admitted in evidence and on file herein, which is hereby referred to and made a part hereof as fully and to all intents and purposes as if copied at length herein.

VI.

That each and every of the proceedings taken and had, and provisions made by the Board of Directors of said District for the levy and collection of annual assessments upon all of the lands upon which benefits were apportioned for the payment of interest on and principal of said bond issue in the sum of \$238,500.00, and for the establishment and maintenance of a "Safety Fund" to insure the payment thereof, as set forth and described in Petitioners' Petition on file herein and also in "Petitioners' Exhibit 3" admitted in evidence and on file herein, which is hereby referred to and made a part hereof as fully and to all intents and purposes as if copied at length herein, were regularly and legally done, had, made, determined and entered at the proper time and in the proper manner and order, and in full and strict compliance with the statutes and laws of the State of Idaho applicable thereto.

VII.

That the said First Issue, First Series Bonds of Big Lost River Irrigation District in the sum of \$238,500.00 par or face value, and all interest thereon, constitute and are valid and legal bonds and valid indebtedness of said District; and that all the lands in said District are and shall remain liable to be assessed for the payment of said bonds and all interest thereon, except such lands as are set forth and described in the list and apportionment of benefits, the aforesaid "Petition-

ers' Exhibit 13", hereto attached and made a part hereof as aforesaid, which will not be benefited by the issuance of said bonds or by the irrigation works and proposed plan of operations of said District.

VIII.

That the agreements of loan entered into by Big Lost River Irrigation District and Reconstruction Finance Corporation and all covenants, stipulations and agreements entered into and becoming a part of such loan agreements and each and every of the proceedings had and taken by said District pursuant to said loan agreements, including the authorization of sale and negotiation of bonds of said District to Reconstruction Finance Corporation, as set forth and described in the aforesaid "Petitioners' Exhibit 3", hereto attached and made a part hereof as aforesaid, were regularly and legally done, had, made, determined and entered at the proper time and in the proper manner and order, and in full and strict compliance with the statutes and laws of the State of Idaho applicable thereto.

IX.

That the petitioners herein are entitled to a decree of this Court directing, authorizing and empowering the officers of said Big Lost River Irrigation District to sell and deliver to Reconstruction Finance Corporation all of the said First Issue, First Series Bonds of said District for the par or face value thereof together with all accrued interest thereon, and that said sale and negotiation of said bonds is in all respects valid and legal and in full and strict compliance with the statutes and laws of the State of Idaho applicable thereto.

X.

That each and every of the acts and proceedings taken and had by said Big Lost River Irrigation District as set forth and described in petitioners' petition on file herein, were

regularly and legally done, had, made, determined and entered at the proper time and in the proper manner and order, and in full and strict compliance with the statutes and laws of the State of Idaho applicable thereto, and are valid and binding upon said district and all the lands included therein and affected thereby.

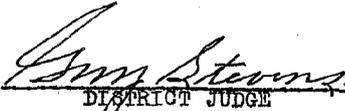
XI.

That the petitioners are entitled to a judgment and decree of this Court ratifying, approving and confirming the proceedings taken and had by the Board of Directors of Big Lost River Irrigation District as set forth and described in their petition on file herein, for the annexation of certain lands to said District, certain proceedings for the exclusion of certain lands from said District, all proceedings connected with the formulation and adoption of a plan of operations for said District, all proceedings in connection with the assessment and apportionment of benefits by reason of the carrying out of such plan, the cost of which is represented by its First Issue, First Series Bonds in the amount of \$238,500.00 issued for the purchase of irrigation works and water rights, a copy of the list of said assessment and apportionment of benefits being on file herein and marked "Petitioners' Exhibit 13," certain proceedings for the levy and collection of annual assessments for the payment of principal and interest of said bond issue and the establishment and maintenance of a "Safety Fund", all proceedings connected with the authorization, issuance and sale of said bonds, and also ratifying, approving and confirming the agreements, covenants and stipulations of loan entered into by Big Lost River Irrigation District and Reconstruction Finance Corporation, including the authorization

of sale and negotiation of said bonds of said District to Reconstruction Finance Corporation, and all proceedings had and taken by said District as set forth and described in petitioners' petition on file herein, as legal, valid and binding upon said District and upon all the lands included therein and affected thereby. That the said petitioners are entitled to a judgment and decree of this Court in all respects as prayed for by them in their petition on file herein.

Let judgment and decree be entered accordingly.

Dated this 25th day of January, 1936.


DISTRICT JUDGE

STATE OF IDAHO
COUNTY OF OUSTER 188

I hereby certify that the foregoing is a full,
true and correct copy of the original on file
in this office.

Date 2-29-96

Wendy Murphy
Deputy Clerk

Case No. 7293

DEPARTMENT OF

of the

Sixth Judicial District

is and for

OUSTER COUNTY.

281

Deputy Clerk

File No. 10

of

Ernest J. Donaldson

1986

Deputy Clerk

688907-111