

**Names of Parties Filing Document:**

UNITED STATES OF AMERICA

**Attorneys' Names and Addresses:**

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**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS**

|                |   |                                   |
|----------------|---|-----------------------------------|
| In Re SRBA     | ) | Subcase Numbers: 75-11708 et. al. |
|                | ) | See Attachment 1                  |
|                | ) |                                   |
| Case No. 39576 | ) | <b>AFFIDAVIT OF</b>               |
|                | ) | <b>ALAN R. BITTNER</b>            |
| _____          | ) |                                   |

|                 |   |     |
|-----------------|---|-----|
| STATE OF IDAHO  | ) |     |
|                 | ) | ss: |
| COUNTY OF LEMHI | ) |     |

I Alan R. Bittner, being first duly sworn, do depose and state:

1. My name is Alan R. Bittner. I am a graduate of Cornerstone University in Grand Rapids, Michigan. I received a Bachelor of Arts degree in Biology in 1989. I am currently employed by the United States, Department of the Interior, Bureau of Land Management (BLM),

as a Natural Resource Specialist for the Salmon Field Office, Upper Columbia Salmon Clearwater District (hereinafter "UCSC") of the Bureau of Land Management (hereinafter "BLM") located in Salmon, Idaho. I have extensive knowledge of, and experience with, the official business records of BLM associated with its water right claim filings in the Snake River Basin Adjudication (SRBA). This knowledge and experience includes but is not limited to BLM water right claim files, BLM water right field investigations, Master Title Plats (hereinafter "MTP"), Historical Indexes (hereinafter "HI"), and Control Document Index cards (hereinafter "CDI cards"). In the 6 years that I have been dealing with water rights, I have: investigated thousands of claims; collected, compiled and analyzed factual information and evidence for thousands of water right claims; and reviewed and analyzed countless numbers of official business records associated with water rights and maintained by BLM, the Idaho Department of Water Resources (hereinafter "IDWR"), several Idaho Counties, and various federal agencies.

2. As part of my assigned duties and responsibilities, I am responsible for coordinating the activities of BLM within the SRBA for the Challis Field Office and the Salmon Field Office, and individually responsible for handling the water right claims made by the United States of America on behalf of BLM for the Challis and Salmon Field Offices within the UCSC District.

3. At the request of counsel for the United States, I have reviewed the official business records of BLM that comprise the SRBA Water Right Claim files for the above captioned SRBA claims made by the United States of America on behalf of the BLM and have reached the determinations described below.

4. The Master Title Plats are official business records of the United States that identify United States' property and its status. The MTP is the United States' official Record of Title. It is a graphic display of township survey data, and are drafted from information abstracted, compiled,

and composed from the latest approved U.S. Government Survey Plats, survey field notes, and protraction diagrams. It describes the locations of United States property, aliquot parcels, and government surveyed "lots." I have reviewed these records and determined that the federal public domain containing the water sources asserted in the above captioned SRBA claims are located on unreserved federal public domain as of April 17, 1926; and this land currently remains under Department of Interior administration.

5. The claimed water sources were confirmed by field investigation.

6. Based upon the field verification and my review of the field investigation documents, there is sufficient surface water at this site for consumptive use by livestock.

7. Based upon the field verification and my review of the field investigation documents, the source of water for each of the captioned subcases is a spring located at the claimed Point of Diversion (hereinafter "POD") and Place of Use (hereinafter "POU"), except as noted below.

8. I have reviewed the BLM official business records for each of the subcases subject to this affidavit for a federal reserved water right pursuant to PWR 107. The elements of the claimed water rights have been verified through examination of claim files and physical field investigations and are correctly described in the abstract/recommendation of the claims issued by IDWR. The quantity for a federal reservation based upon Public Water Reserve 107 was stipulated to and ruled upon in Basin-Wide Issue #12 to be 0.02 cfs. The quantity element for each of the above captioned subcases should be 0.02 cfs.

9. For the following subcases, based upon my review and independent verification, certain elements of the claim are not described correctly in IDWR's abstract/recommendation of the claim. The BLM has objected to the incorrect abstracting/reporting of these elements. Those

elements should be altered as described below:

- a. **Subcase 75-11708:** Upon closer inspection of the BLM Claim File and its respective map it was discovered that the tributary for this spring would be more accurately described as Golway Gulch.
- b. **Subcase 75-11742:** Upon closer inspection of the BLM Claim File, GPS data recorded at the site and the respective map it was discovered that the source is a Spring not Groundwater and the POD location would be more accurately described as SW  $\frac{1}{4}$  SW  $\frac{1}{4}$  SE  $\frac{1}{4}$ .
- c. **Subcase 75-11980:** Upon closer inspection of the BLM Claim File, GPS data recorded at the site and the respective map it was discovered that the POD and POU location would be more accurately described as T18N R21E Sec 19 Lot 2 (NW  $\frac{1}{4}$  SW  $\frac{1}{4}$  NW  $\frac{1}{4}$ ) and T18N R21E Sec 19 Lot 2 (SW  $\frac{1}{4}$  NW  $\frac{1}{4}$ ) respectively.
- d. **Subcase 75-12192:** Upon closer inspection of the BLM Claim File and its respective map it was discovered that the POD location would be more accurately described as SE  $\frac{1}{4}$  SE  $\frac{1}{4}$  SE  $\frac{1}{4}$ .
- e. **Subcase 75-12712:** Upon closer inspection of the BLM Claim File and its respective map it was discovered that the POD and POU location would be more accurately described as T16N R20E Sec 5 Lot 1 (SE  $\frac{1}{4}$  NE  $\frac{1}{4}$  NE  $\frac{1}{4}$ ) and T16N R20E Sec 5 Lot 1 (NE  $\frac{1}{4}$  NE  $\frac{1}{4}$ ) respectively.
- f. **Subcase 75-13734:** Upon closer inspection of the BLM Claim File and its respective map it was discovered that the county for this spring POD would be more accurately described as Lemhi County.
- g. **Subcase 75-13739:** Upon closer inspection of the BLM Claim File and its respective map it was discovered that the POD and POU location would be more accurately described as T18N R21E Sec 7 NE  $\frac{1}{4}$  SW  $\frac{1}{4}$  SE  $\frac{1}{4}$  and T18N R21E Sec 7 SW  $\frac{1}{4}$  SE  $\frac{1}{4}$  respectively.
- h. **Subcase 75-13741:** Upon closer inspection of the BLM Claim File and its respective map it was discovered that the POD and POU location would be more accurately described as T18N R21E Sec 19 SW  $\frac{1}{4}$  SW  $\frac{1}{4}$  NE  $\frac{1}{4}$  and T18N R21E Sec 19 SW  $\frac{1}{4}$  NE  $\frac{1}{4}$  respectively.
- i. **Subcase 75-13742:** Upon closer inspection of the BLM Claim File and its respective map it was discovered that the POD and POU location would be more accurately described as T19N R21E Sec 34 NW  $\frac{1}{4}$  NW  $\frac{1}{4}$  NW  $\frac{1}{4}$  and T19N R21E Sec 34 NW  $\frac{1}{4}$  NW  $\frac{1}{4}$  respectively.

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- j. **Subcase 75-13743:** Upon closer inspection of the BLM Claim File and its respective map it was discovered that the POD and POU location would be more accurately described as T19N R21E Sec 34 SW  $\frac{1}{4}$  NW  $\frac{1}{4}$  NW  $\frac{1}{4}$  and T19N R21E Sec 34 NW  $\frac{1}{4}$  NW  $\frac{1}{4}$  respectively.
- k. **Subcase 75-13744:** Upon closer inspection of the BLM Claim File and its respective map it was discovered that the POD and POU location would be more accurately described as T19N R21E Sec 34 SW  $\frac{1}{4}$  NW  $\frac{1}{4}$  NW  $\frac{1}{4}$  and T19N R21E Sec 34 NW  $\frac{1}{4}$  NW  $\frac{1}{4}$  respectively.
- l. **Subcase 75-13745:** Upon closer inspection of the BLM Claim File and its respective map it was discovered that the POD and POU location would be more accurately described as T18N R20E Sec 25 SE  $\frac{1}{4}$  SE  $\frac{1}{4}$  SW  $\frac{1}{4}$  and T18N R20E Sec 25 SE  $\frac{1}{4}$  SW  $\frac{1}{4}$  respectively.
- m. **Subcase 75-13746:** Upon closer inspection of the BLM Claim File and its respective map it was discovered that the POD and POU location would be more accurately described as T18N R21E Sec 30 NW  $\frac{1}{4}$  SW  $\frac{1}{4}$  SE  $\frac{1}{4}$  and T18N R21E Sec 30 SW  $\frac{1}{4}$  SE  $\frac{1}{4}$  respectively.
- n. **Subcase 75-13749:** Upon closer inspection of the BLM Claim File, GPS data recorded at the site and the respective map it was discovered that the POD location would be more accurately described as NW  $\frac{1}{4}$  NE  $\frac{1}{4}$  SW  $\frac{1}{4}$ .
- o. **Subcase 75-13754:** Upon closer inspection of the BLM Claim File, GPS data recorded at the site and the respective map it was discovered that the POD location would be more accurately described as NW  $\frac{1}{4}$  SE  $\frac{1}{4}$  SW  $\frac{1}{4}$ .
- p. **Subcase 75-13755:** Upon closer inspection of the BLM Claim File, GPS data recorded at the site and the respective map it was discovered that the POD location would be more accurately described as T20N R21E Sec 35 NW  $\frac{1}{4}$  SW  $\frac{1}{4}$  SW  $\frac{1}{4}$ .
- q. **Subcase 75-13756:** Upon closer inspection of the BLM Claim File, GPS data recorded at the site and the respective map it was discovered that the POD and POU location would be more accurately described as T23N R22E Sec 4 NW  $\frac{1}{4}$  SW  $\frac{1}{4}$  NW  $\frac{1}{4}$  and T23N R22E Sec 4 SW  $\frac{1}{4}$  NW  $\frac{1}{4}$  respectively.
- r. **Subcase 75-13757:** Upon closer inspection of the BLM Claim File, GPS data recorded at the site and the respective map it was discovered that the POD and POU location would be more accurately described as Lot 6 (NE  $\frac{1}{4}$  NE  $\frac{1}{4}$  NE  $\frac{1}{4}$ ) Lot 6 (NE  $\frac{1}{4}$  NE  $\frac{1}{4}$ ) respectively.

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s. **Subcase 75-13759:** Upon closer inspection of the BLM Claim File, GPS data recorded at the site and the respective map it was discovered that the POD and POU location would be more accurately described as SW ¼ NE ¼ SW ¼ and NE ¼ SW ¼ respectively.

t. **Subcase 75-13764:** Upon closer inspection of the BLM Claim File and its respective map it was discovered that the POU location would be more accurately described as SE ¼ SE ¼ and both POD and POU locations being in Lemhi County.

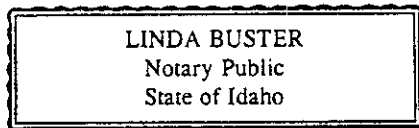
u. **Subcase 75-13765:** Upon closer inspection of the BLM Claim File, GPS data recorded at the site and the respective map it was discovered that the POD location would be more accurately described as SW ¼ SE ¼ SE ¼ and both POD and POU locations being in Lemhi County.

v. **Subcase 75-13767:** Upon closer inspection of the BLM Claim File, GPS data recorded at the site and the respective map it was discovered that the POD and POU location would be more accurately described as NE ¼ NE ¼ SW ¼ and NE ¼ SW ¼ respectively.

Dated this 21<sup>st</sup> day of August, 2003

Alan R. Bittner  
Alan R. Bittner

On this 29 day of August 2003, before me Linda Buster, a notary public, personally appeared Alan R. Bittner, personally known to me to be the person whose name is subscribed to this instrument, and acknowledged that he executed the same.



Linda Buster

Notary Public for the State of Idaho

Residing at: Salmon, Idaho

My Commission Expires: 8-22-06

## CERTIFICATE OF SERVICE

I certify that on August 29<sup>th</sup>, 2003, I served a true and correct copy of the foregoing **AFFIDAVIT OF ALAN R. BITTNER; SUBCASE NUMBER: 75-11708 et. al., together with Attachment 1** upon the following individuals by placing the documents in the United States Mail in Salmon, Idaho, postage paid, and addressed as follows:

Original to:

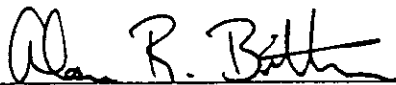
Clerk of the District Court  
Snake River Basin Adjudication  
253 Third Avenue North  
P.O. Box 2707  
Twin Falls, ID 83303-2707

Copies to:

U.S. Department of Justice  
General Litigation Section  
Environment and Natural Resources Division  
550 West Fort Street, MSC 033  
Boise, ID 83724

Chief, Natural Resources Division  
Office of the Attorney General  
State of Idaho  
P.O. Box 44449  
Boise, ID 83711-4449

IDWR Document Depository  
P.O. Box 83720  
Boise, ID 83720-0098



Signature of Person Serving Documents

## Attachment 1

75-11708  
75-11742  
75-11980  
75-12192  
75-12712  
75-13734  
75-13739  
75-13741  
75-13742  
75-13743  
75-13744  
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75-13767