

Names of Parties Filing Document:

UNITED STATES OF AMERICA

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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: 74-11236 et. al.
	)	See Attachment 1
	)	
Case No. 39576	)	AFFIDAVIT OF
	)	ALAN R. BITTNER
_____	)	

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 BLM official business records for the captioned subcases, including but not limited to, BLM claim files and BLM physical field investigations. I have also reviewed the official business records of IDWR for the captioned subcases, including IDWR's Director's Report recommendations. Each element of the water rights described by the captioned subcases has been independently verified and are exactly as described in the Director's Report recommendations for state basis of the captioned subcases, except the priority date for a federal reservation pursuant to PWR 107 would be April 17, 1926, quantity was stipulated to in Basin-Wide Issue #9 to be 0.02 cfs, and except as follows. For the following subcases and based upon my review and independent verification, certain elements of the federal reserve basis are not exactly as described in the Director's Report recommendations for the state basis of the captioned

subcases and those elements should be altered as described below:

- a. **Subcase 74-11236:** Upon closer inspection of the BLM Claim File and its respective map it was discovered that the tributary would be more accurately described as an unnamed stream.
- b. **Subcase 74-11323:** 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 NW $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ and SW $\frac{1}{4}$ SW $\frac{1}{4}$ respectively.
- c. **Subcase 74-11353:** 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 $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$.
- d. **Subcase 74-11407:** 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 $\frac{1}{4}$ NW $\frac{1}{4}$.
- e. **Subcase 74-11437:** 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 $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$.
- f. **Subcase 74-11489:** Upon closer inspection of the BLM Claim File and its respective map it was discovered that the tributary would be more accurately described as sinks.
- g. **Subcase 74-11499:** 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 T19N R24E Sec 36 NW $\frac{1}{4}$ NE $\frac{1}{4}$.
- h. **Subcase 74-11619:** 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 T19N R 23E Sec 21 Lot 4 (NW $\frac{1}{4}$ NW $\frac{1}{4}$).
- i. **Subcase 74-11693:** Upon closer inspection of the BLM Claim File and its respective map it was discovered that the tributary would be more accurately described as Mormon Canyon.
- j. **Subcase 74-11743:** Upon closer inspection of the BLM Claim File and its respective map it was discovered that the tributary would be more accurately described as Sawmill Canyon.

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k. **Subcase 74-11841:** 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 $\frac{1}{4}$ SE $\frac{1}{4}$.

l. **Subcase 74-11912:** 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 Lot 4 (SE $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$) and Lot 4 (NW $\frac{1}{4}$ NW $\frac{1}{4}$) respectively.

m. **Subcase 74-12098:** 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 R23E Sec 22 NW $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ and T18N R23E Sec 22 NW $\frac{1}{4}$ NE $\frac{1}{4}$ respectively.

n. **Subcase 74-12372:** 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 $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ and T18N R23E Sec 22 SW $\frac{1}{4}$ NW $\frac{1}{4}$ respectively.

o. **Subcase 74-12374:** 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 $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$.

p. **Subcase 74-12612:** 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 T17N R24E Sec 8 SW $\frac{1}{4}$ NE $\frac{1}{4}$.

q. **Subcase 74-12630:** 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 T17N R24E Sec 18 SW $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$.

r. **Subcase 74-12826:** 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 T16N R25E Sec 6 Lot 5 (SW $\frac{1}{4}$ NW $\frac{1}{4}$).

s. **Subcase 74-12828:** 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 T16N R25E Sec 6 Lot 5 (SW $\frac{1}{4}$ NW $\frac{1}{4}$).

t. **Subcase 74-12904:** 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 T14N R28E Sec 3 Lot 3 (NE $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$).

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- u. **Subcase 74-12920:** 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 T14N R28E Sec 1 SE $\frac{1}{4}$ NW $\frac{1}{4}$.
- v. **Subcase 74-13186:** 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 T20N R23E Sec 13 NW $\frac{1}{4}$ NE $\frac{1}{4}$.
- w. **Subcase 74-13260:** 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 NW $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$.
- x. **Subcase 74-13270:** 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 Lot 3 (SW $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$) and Lot 3 (NE $\frac{1}{4}$ NW $\frac{1}{4}$) respectively.
- y. **Subcase 74-13362:** 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 Lot 1 (SW $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$).
- z. **Subcase 74-13416:** 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 SW $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$.
- aa. **Subcase 74-13646:** 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 T17N R27E Sec 15 NW $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$.
- bb. **Subcase 74-13662:** 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 NE $\frac{1}{4}$ NE $\frac{1}{4}$.
- cc. **Subcase 74-13672:** 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 NE $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ and SW $\frac{1}{4}$ NW $\frac{1}{4}$ respectively.
- dd. **Subcase 74-13844:** 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 T22N R23E Sec 33 NW $\frac{1}{4}$ NW $\frac{1}{4}$.
- ee. **Subcase 74-14078:** 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 $\frac{1}{4}$ NE $\frac{1}{4}$.

ff. **Subcase 74-14082:** 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 T20N R23E Sec 6 NE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$.

gg. **Subcase 74-14110:** 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 $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ and SW $\frac{1}{4}$ SE $\frac{1}{4}$ respectively.

hh. **Subcase 74-14118:** 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 2 (NE $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$) and Lot 2 (SW $\frac{1}{4}$ NW $\frac{1}{4}$) respectively.

ii. **Subcase 74-14809:** 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 R23E Sec 30 Lot 1 (NW $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$) and T18N R23E Sec 30 Lot 1 (NW $\frac{1}{4}$ NW $\frac{1}{4}$) respectively.

jj. **Subcase 74-14810:** 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 T17N R22E Sec 1 SE $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ and T17N R22E Sec 1 SW $\frac{1}{4}$ SE $\frac{1}{4}$ respectively.

kk. **Subcase 74-14811:** 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 T19N R25E Sec 7 NW $\frac{1}{4}$ SW $\frac{1}{4}$.

ll. **Subcase 74-14812:** 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 R25E Sec 7 SE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ and T18N R25E Sec 7 SE $\frac{1}{4}$ SW $\frac{1}{4}$ respectively.

mm. **Subcase 74-14823:** 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 NW $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ and SE $\frac{1}{4}$ SW $\frac{1}{4}$ respectively.

nn. **Subcase 74-14865:** 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 T17N R23E Sec 11 NW $\frac{1}{4}$ SW $\frac{1}{4}$.

oo. **Subcase 74-14875:** 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 5 (NE $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$) and Lot 5 (SW $\frac{1}{4}$ NW $\frac{1}{4}$) respectively.

pp. **Subcase 74-14876:** Upon closer inspection of the BLM Claim File, GPS data recorded at the site and the respective map it was discovered that the POU location would be more accurately described as NW ¼ NE ¼.

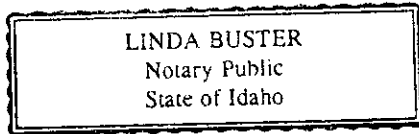
qq. **Subcase 74-14925:** Upon closer inspection of the BLM Claim File and its respective map it was discovered that the POD location would be more accurately described as SW ¼ NE ¼ SE ¼.

Dated this 29th 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 29th, 2003, I served a true and correct copy of the foregoing **AFFIDAVIT OF ALAN R. BITTNER; SUBCASE NUMBER: 74-11236 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

74-11236
74-11323
74-11353
74-11407
74-11437
74-11489
74-11499
74-11619
74-11693
74-11743
74-11841
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