

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: 72-11765 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. The Master Title Plat (hereinafter "MTP") is an official business record of BLM. The MTP is the United States' official Record of Title. It is a graphic display of township survey data, and is 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."

The Historical Index (hereinafter "HI") is an official business record of the United States that maintains a time line of events occurring on United States' property.

4. At the request of counsel for the United States, I have reviewed the official business records of the BLM and Idaho Department of Water Resources (hereinafter "IDWR") for the subcases identified in Attachment 1, and verified that:

a. Upon review of BLM's MTPs and HIs, I was able to determine that the subcases identified in Attachment 1 were located on unreserved federal public domain lands as of April 17, 1926, and these lands currently remain under Department of Interior administration, except where noted below in paragraph 7(b).

b. From review of BLM's water right claim files, I was able to determine that: the water sources claimed by the subcases identified in Attachment 1 were confirmed by a physical field investigation; the location (Point of Diversion and Place of Use) of the sources is accurate; the source of water is a spring or waterhole; and the presence of water in quantities sufficient for consumption by livestock; except where noted below in paragraph 8.

5. At the request of counsel for the United States, I was asked to determine whether there were any prior water right claims asserted by non-federal entities to the sources associated with the subcases identified in Attachment 1. I researched each Point of Diversion and Place of Use described within the subcases identified on Attachment 1 using the information available on the IDWR internet web site. The web site shows IDWR water right records including both claims filed in the SRBA and administrative filings (i.e. applications, permits and licenses not filed in the SRBA). I identified two non-federal claims with senior priority dates for water sources claimed by BLM in subcases listed in Attachment 1.

a. **Subcase 72-14683:** Water Right Claim Number 72-04131 was recommended to Dale Gossi with a 01-01-1919 priority date for domestic and stockwater purposes. The

POD is on public land and the POU is on private land. BLM has been able to make use of the spring area for stockwatering purposes despite the private development.

b. **Subcase 72-15149:** Water Right Claim Number 72-10307B was recommended to George E. Santee, Jr. with a 04-01-1923 priority date for domestic, stockwater, and irrigation (2 acres) purposes. The POD is on public land and the POU is on private land. BLM has been able to make use of the spring area for stockwatering purposes despite the private development.

6. At the request of counsel for the United States, I was asked to determine whether there were any attempts to homestead or otherwise acquire fee title to the lands described by the Points of Diversion listed in the subcases identified in Attachment 1. The official business records of BLM that I reviewed were the BLM SRBA claim files, MTPs and HIs. Based upon my review, I was able to determine that there were no attempts to homestead or otherwise acquire fee title to the lands described by Points of Diversion identified in the subcases identified in Attachment 1, except where noted below. The homestead entries identified below were initiated under the authority of several different homestead acts. The provisions of such homestead acts were effectively repealed in 1934 by the Taylor Grazing Act, and repealed in actuality in 1976 by the Federal Land Policy and Management Act (FLPMA). Each homestead entry failed and was subsequently canceled or relinquished. Entries were active on 4/17/1926 for lands described in subcases: 72-13947, 72-14101, 72-14103, 72-14107, 72-14109, 72-14807, and 72-15297.

a.

	Case			
Subcase	Type	Serial No	Initiated	Closed
72-12695	HE	H 020340	7/11/1916	1/16/1917
72-12697	HE	H 020340	7/11/1916	1/16/1917
72-12699	HE	H 020340	7/11/1916	1/16/1917

72-12701	HE	H 020340	7/11/1916	1/16/1917
72-12703	HE	H 020340	7/11/1916	1/16/1917
72-12705	HE	H 020340	7/11/1916	1/16/1917
72-12707	HE	H 020340	7/11/1916	1/16/1917
72-12695	HE	H 022950	6/2/1917	1/10/1919
72-12697	HE	H 022950	6/2/1917	1/10/1919
72-12699	HE	H 022950	6/2/1917	1/10/1919
72-12701	HE	H 022950	6/2/1917	1/10/1919
72-12703	HE	H 022950	6/2/1917	1/10/1919
72-12705	HE	H 022950	6/2/1917	1/10/1919
72-12707	HE	H 022950	6/2/1917	1/10/1919
72-13947	SRHE	BL 039578	4/2/1925	11/22/1930
72-14101	SRHE	BL 041040	5/15/1920	2/23/1927
72-14103	SRHE	BL 041040	5/15/1920	2/23/1927
72-14107	SRHE	BL 041040	5/15/1920	2/23/1927
72-14109	SRHE	BL 041040	5/15/1920	2/23/1927
72-14807	SRHE	BL 038482	11/19/1920	6/12/1926
72-15297	DLE	H 014097	10/13/1913	11/19/1915
72-15297	HE	BL 039784	4/23/1925	11/24/1930

7. At the request of counsel for the United States, I was asked to determine whether any of the lands defined by Points of Diversion claimed in the subcases identified in Attachment 1 ever left United States ownership and were then subsequently reacquired by the United States. I have reviewed the official business records of the United States comprising Master Title Plats and Historical Indexes. I was able to determine from these records that the following land acquisitions are associated with certain subcases identified in Attachment 1.

- a. **Subcase 72-11765:** United States Desert Land Entry Patent (DLE Pat) 1099158 was issued to Ross A. Gossi on 10/12/1938. The United States assigned serial number BL-045006 to the entry application that led to this patent. Subsequently, the United States

reacquired this land pursuant to a Private Exchange Warranty Deed from James R. and Jo Ann Bennetts on 1/20/1966. The United States assigned serial number I-016418 to this action.

b. **Subcase 72-14261:** United States Desert Land Entry Patent (DLE Pat) 715986 was issued to Joseph Bodgers on 10/30/1919. The United States assigned serial number H-020517 to the entry application that led to this patent. Subsequently, the United States reacquired this land pursuant to a Deed from Anderson Ranches, Inc. on 4/13/1972. The United States assigned serial number I-4641 to this action.

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, except where noted below. The quantity for a federal reservation based upon Public Water Reserve 107 was stipulated to be 0.02 cfs. The quantity element for each of the subcases identified in Attachment 1 should be 0.02 cfs.

a. Four of the subcases identified in Attachment 1 describe stockwater claims to streams and should not contain a federal reservation pursuant to PWR 107.

1. **72-15905:** This subcase is a claim to instream stockwatering from Bluett Creek that was objected to by the State of Idaho. The parties can submit an SF-5 to remove the erroneous federal reserve component and change the priority date to 06-28-1934.

2. **72-15919B:** This subcase is a claim to instream stockwatering from Herd Creek that was objected to by the State of Idaho and BLM. The claim does not include a federal reserve component. The parties can submit an SF-5 to change the priority date to

06-28-1934 and correct the POU range to T10N.

3. **72-15949:** This subcase is a claim to instream stockwatering from an Unnamed Stream that was objected to by BLM. The parties filed an SF-5 on 12-02-1999 that removed the erroneous federal reserve component and corrected PODs and POUs.

4. **72-15968:** This subcase is a claim to instream stockwatering from an Unnamed Stream that was objected to by the State of Idaho. The parties can submit an SF-5 to remove the erroneous federal reserve component and change the priority date to 06-28-1934.

b. 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:

1. **Subcase 72-12089:** Upon closer inspection of the BLM Claim File and its respective map, it was discovered that a POU is missing and would be more accurately described if NENE, S26, T09N, R23E were added to the claim. Stockwater Storage should be added as a Purpose of Use for the Period of 1/1 through 12/31 for a Quantity of 2 AFY. *See Attachment 2.*

2. **Subcase 72-12269:** 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 ¼ NE ¼ NW ¼ and NE ¼ NW ¼ respectively. *See Attachment 3.*

3. **Subcase 72-12271:** Upon closer inspection of the BLM Claim File and its respective map it was discovered the POD would be more accurately described as SE ¼ SW ¼ NE ¼. *See Attachment 4.*

4. **Subcase 72-12279:** 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 SE ¼ SE ¼ NE ¼ and SE ¼ NE ¼ respectively. *See Attachment 5.*

5. **Subcase 72-14215:** Upon closer inspection of the BLM Claim File and its respective map it was discovered the POD and POU location would be more accurately described as Section 29 SE ¼ SW ¼ SW ¼ and Section 29 SW ¼ SW ¼ respectively. *See Attachment 6.*

Dated this 12 day of November, 2003

Alan R. Bittner
Alan R. Bittner

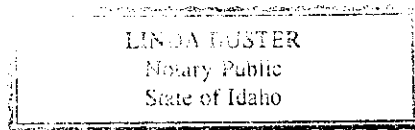
On this 12 day of November, 2003, before me Linda Buster, a notary public, personally appeared Alan R. Bittner, personally known to me to be the person whose name is subscribed to this instrument, and acknowledged that he executed the same.

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 November 13, 2003, I served a true and correct copy of the foregoing **AFFIDAVIT OF ALAN R. BITTNER; SUBCASE NUMBER: 72-11765 et. al., together with Attachment 1-6** 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

72-11765	72-11981	72-12227	72-12559	72-12823
72-11767	72-11983	72-12233	72-12561	72-12831
72-11769	72-12001	72-12239	72-12563	72-12837
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72-11789	72-12009	72-12247	72-12575	72-12845
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72-14817	72-15085	72-15473	
72-14823	72-15103	72-15483	
72-14825	72-15109	72-15485	
72-14827	72-15113	72-15503	
72-14829	72-15117	72-15535	
72-14831	72-15119	72-15561	
72-14837	72-15123	72-15563	

Attachment 2

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

DATE: APR-30-1997
PAGE: A-568

RIGHTS FROM: SOURCE: HERD LAKE TRIBUTARY: LAKE CREEK

RIGHT NUMBER: 72-12089

NAME & ADDRESS: UNITED STATES OF AMERICA ACTING THROUGH
USDI BUREAU OF LAND MANAGEMENT
IDAHO STATE OFFICE
1387 S VINNELL WAY
BOISE ID 83709-1657

SOURCE: HERD LAKE TRIBUTARY: LAKE CREEK

QUANTITY: 2.0 AFY

THE QUANTITY OF WATER UNDER THIS RIGHT SHALL NOT EXCEED 13,000
GALLONS PER DAY.

PRIORITY DATE: 01/01/1879

* 4/17/1926 CLAIMED UNDER FEDERAL RESERVED WATER RIGHT. *
* *
* THIS WATER RIGHT IS ALSO CLAIMED BASED ON FEDERAL LAW *
* WITH AN APRIL 17, 1926, DATE OF PRIORITY PURSUANT TO AN *
* EXECUTIVE ORDER SIGNED THE SAME DATE AND KNOWN AS PUBLIC *
* WATER RESERVE 107. *

POINT OF DIVERSION: T09N R19E S23 S25 SWSSE Within CUSTER County
NWNW

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	STOCKWATER	01-01 12-31	2.0 AFY
	<u>Stockwater Storage</u>	<u>01-01 12-31</u>	<u>2.0 AFY</u>

PLACE OF USE: STOCKWATER Within CUSTER County
T09N R19E S23 SESE
S25 NWNW

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

THE QUANTITY OF WATER DECREED FOR THIS WATER RIGHT IS NOT A
DETERMINATION OF HISTORICAL BENEFICIAL USE.

EXPLANATORY MATERIAL: BASIS OF CLAIM - BENEFICIAL USE
BLM RECORD ID = 7204580163
STOCKWATER, 218 RANGE CATTLE

Spring
IDWR # 72-12089
BLM # 7204580163
T 09 N R 19 E Sec. 23
NWSESE

ROAD
Creek

Mosquito

Creek

Spring

Herd Lake

Lake

Spring

15

13

22

23

24

27

26

25

34

35

36

C

Attachment 3

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAWDATE: APR-30-1997
PAGE: A-1483

RIGHTS FROM: SOURCE: SPRING TRIBUTARY: SALMON RIVER, EAST FORK

RIGHT NUMBER: 72-12269

NAME & ADDRESS: UNITED STATES OF AMERICA ACTING THROUGH
USDI BUREAU OF LAND MANAGEMENT
IDAHO STATE OFFICE
1387 S VINNELL WAY
BOISE ID 83709-1657

SOURCE: SPRING TRIBUTARY: SALMON RIVER, EAST FORK

QUANTITY: 0.02 CFS
THE QUANTITY OF WATER UNDER THIS RIGHT SHALL NOT EXCEED 13,000
GALLONS PER DAY.

PRIORITY DATE: 01/01/1879

* 4/17/1926 CLAIMED UNDER FEDERAL RESERVED WATER RIGHT. *
* *
* THIS WATER RIGHT IS ALSO CLAIMED BASED ON FEDERAL LAW *
* WITH AN APRIL 17, 1926, DATE OF PRIORITY PURSUANT TO AN *
* EXECUTIVE ORDER SIGNED THE SAME DATE AND KNOWN AS PUBLIC *
* WATER RESERVE 107. *

POINT OF DIVERSION: T10N R18E S26 ~~NE NW~~ Within CUSTER County
NE NW
PURPOSE AND PERIOD OF USE: PURPOSE OF USE PERIOD OF USE QUANTITY
STOCKWATER 01-01 12-31 0.02 CFS
PLACE OF USE: STOCKWATER Within CUSTER County
T10N R18E S26 ~~SW NW~~
NE NW
OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:
THE QUANTITY OF WATER DECREED FOR THIS WATER RIGHT IS NOT A
DETERMINATION OF HISTORICAL BENEFICIAL USE.
EXPLANATORY MATERIAL: BASIS OF CLAIM - BENEFICIAL USE
BLM RECORD ID = 7204580253
STOCKWATER, 390 RANGE CATTLE, 2 HORSES; WILDLIFE VAR. AMT.

Attachment 4

AJ5856NP

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

DATE: APR-30-1997
PAGE: A-944

RIGHTS FROM: SOURCE: SPRING TRIBUTARY: CHERRY GULCH
RIGHT NUMBER: 72-12271

NAME & ADDRESS: UNITED STATES OF AMERICA ACTING THROUGH
USDI BUREAU OF LAND MANAGEMENT
IDAHO STATE OFFICE
1387 S VINNELL WAY
BOISE ID 83709-1657

SOURCE: SPRING TRIBUTARY: CHERRY GULCH

QUANTITY: 0.02 CFS

THE QUANTITY OF WATER UNDER THIS RIGHT SHALL NOT EXCEED 13,000
GALLONS PER DAY.

PRIORITY DATE: 01/01/1979

* 4/17/1926 CLAIMED UNDER FEDERAL RESERVED WATER RIGHT. *
* *
* THIS WATER RIGHT IS ALSO CLAIMED BASED ON FEDERAL LAW *
* WITH AN APRIL 17, 1926, DATE OF PRIORITY PURSUANT TO AN *
* EXECUTIVE ORDER SIGNED THE SAME DATE AND KNOWN AS PUBLIC *
* WATER RESERVE 107. *

POINT OF DIVERSION: T10N R18E S26

Within CUSTER County

PURPOSE AND
PERIOD OF USE: PURPOSE OF USE
STOCKWATER

PERIOD OF USE
01-01 12-31

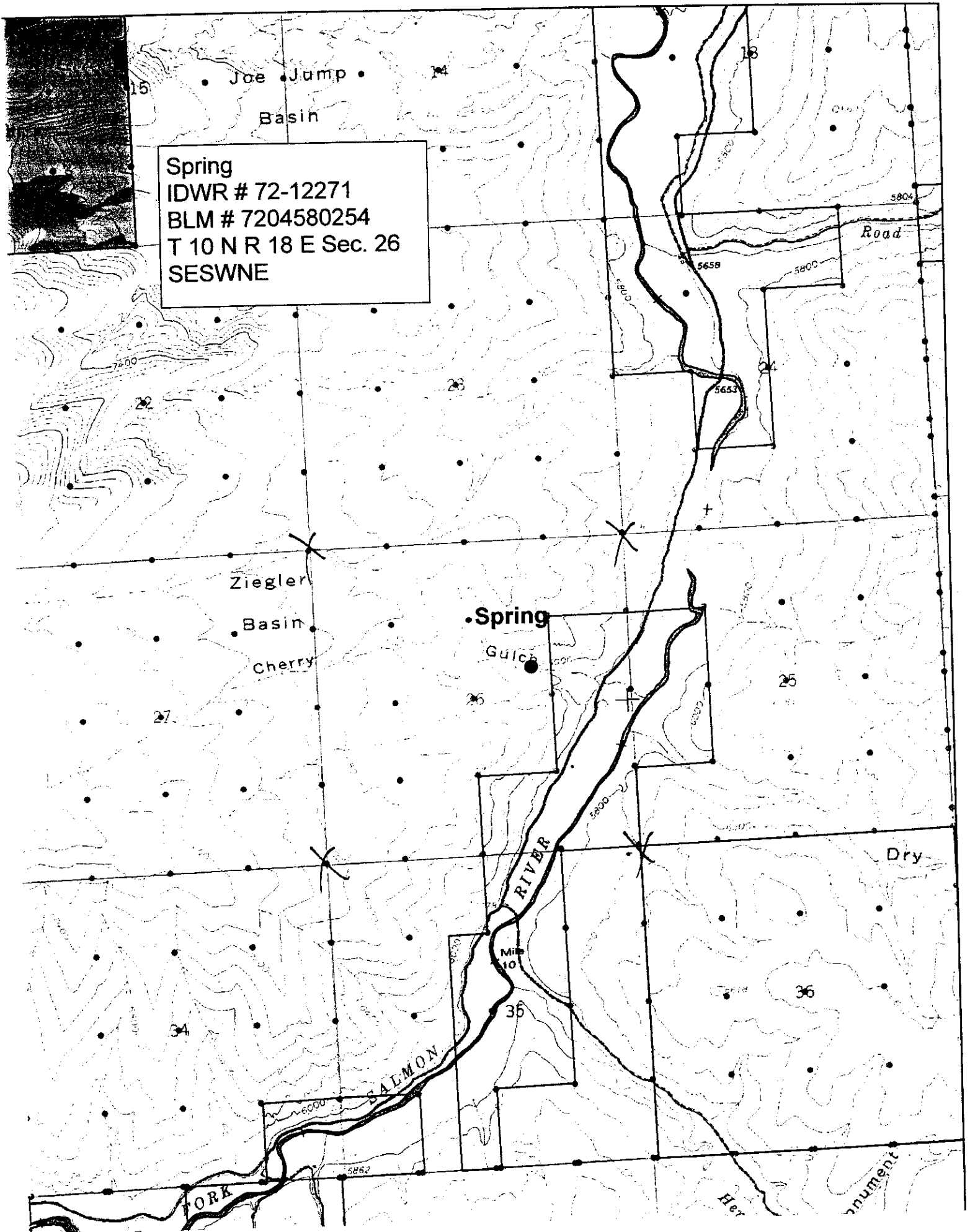
QUANTITY
0.02 CFS

PLACE OF USE: STOCKWATER Within CUSTER County
T10N R18E S26

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

THE QUANTITY OF WATER DECREED FOR THIS WATER RIGHT IS NOT A
DETERMINATION OF HISTORICAL BENEFICIAL USE.

EXPLANATORY MATERIAL: BASIS OF CLAIM - BENEFICIAL USE
BLM RECORD ID = 7204580254
STOCKWATER, 390 RANGE CATTLE, 2 HORSES; WILDLIFE VAR. AMT.



Attachment 5

RIGHTS FROM: SOURCE: SPRING TRIBUTARY: MARCO CREEK

RIGHT NUMBER: 72-12279

NAME & ADDRESS: UNITED STATES OF AMERICA ACTING THROUGH
USDI BUREAU OF LAND MANAGEMENT
IDAHO STATE OFFICE
1387 S VINNELL WAY
BOISE ID 83709-1657

SOURCE: SPRING TRIBUTARY: MARCO CREEK

QUANTITY: 0.02 CFS

THE QUANTITY OF WATER UNDER THIS RIGHT SHALL NOT EXCEED 13,000
GALLONS PER DAY.

PRIORITY DATE: 01/01/1879

* 4/17/1926 CLAIMED UNDER FEDERAL RESERVED WATER RIGHT. *
* *
* THIS WATER RIGHT IS ALSO CLAIMED BASED ON FEDERAL LAW *
* WITH AN APRIL 17, 1926, DATE OF PRIORITY PURSUANT TO AN *
* EXECUTIVE ORDER SIGNED THE SAME DATE AND KNOWN AS PUBLIC *
* WATER RESERVE 107. *

POINT OF DIVERSION: ~~TION RIBE 526~~ ~~SESENE~~ Within CUSTER County

PURPOSE AND TION RIBE 527 SESENE
PERIOD OF USE: PURPOSE OF USE PERIOD OF USE QUANTITY
STOCKWATER 01-01 12-31 0.02 CFS

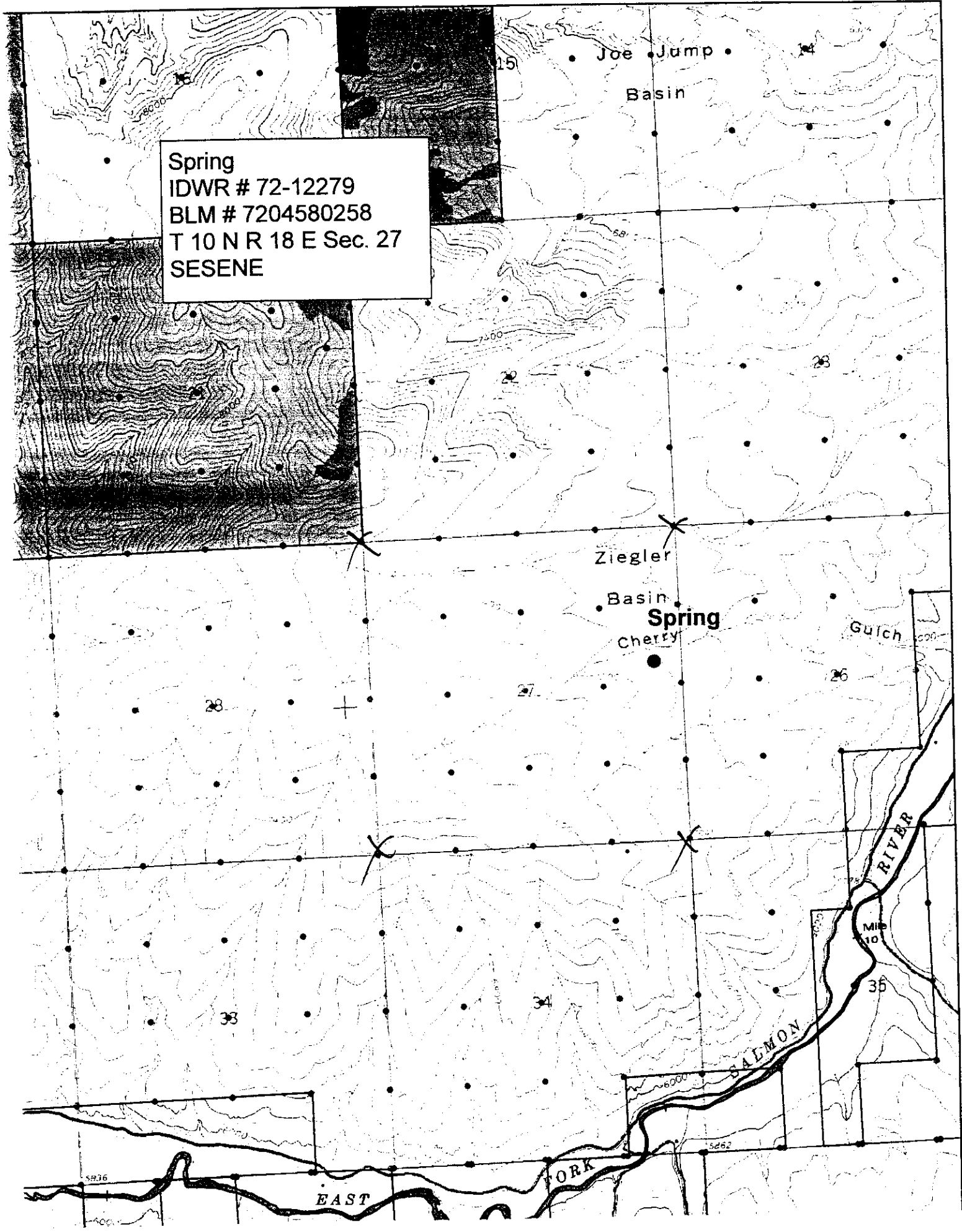
PLACE OF USE: STOCKWATER Within CUSTER County

~~TION RIBE 526~~ ~~SESENE~~
TION RIBE Sec 27 SESENE
OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

THE QUANTITY OF WATER DECREED FOR THIS WATER RIGHT IS NOT A
DETERMINATION OF HISTORICAL BENEFICIAL USE.

EXPLANATORY MATERIAL: BASIS OF CLAIM - BENEFICIAL USE
BLM RECORD ID = 7204580258
STOCKWATER, 390 RANGE CATTLE, 2 HORSES; WILDLIFE VAR. AMT.

Spring
IDWR # 72-12279
BLM # 7204580258
T 10 N R 18 E Sec. 27
SESENE



Attachment 6

AJ5856NP

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAWDATE: APR-30-1997
PAGE: A-1823

RIGHTS FROM: SOURCE: WHITE COLT SPRING TRIBUTARY: SPAR CANYON

RIGHT NUMBER: 72-14215

NAME & ADDRESS: UNITED STATES OF AMERICA ACTING THROUGH
USDI BUREAU OF LAND MANAGEMENT
IDAHO STATE OFFICE
1387 S VINNELL WAY
BOISE ID 83709-1657

SOURCE: WHITE COLT SPRING TRIBUTARY: SPAR CANYON

QUANTITY: 0.02 CFS

THE QUANTITY OF WATER UNDER THIS RIGHT SHALL NOT EXCEED 13,000
GALLONS PER DAY.

PRIORITY DATE: 01/01/1879

* 4/17/1926 CLAIMED UNDER FEDERAL RESERVED WATER RIGHT. *
* *
* THIS WATER RIGHT IS ALSO CLAIMED BASED ON FEDERAL LAW *
* WITH AN APRIL 17, 1926, DATE OF PRIORITY PURSUANT TO AN *
* EXECUTIVE ORDER SIGNED THE SAME DATE AND KNOWN AS PUBLIC *
* WATER RESERVE 107. *

POINT OF DIVERSION: T11N R19E ~~G33~~ ~~NE1/4~~ Within CUSTER County

PURPOSE AND
PERIOD OF USE:

529 SW SW SW
PURPOSE OF USE
STOCKWATER

PERIOD OF USE
01-01 12-31

QUANTITY
0.02 CFS

PLACE OF USE:

STOCKWATER

Within CUSTER County

T11N R19E ~~G33~~

529 SW SW
OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

THE QUANTITY OF WATER DECREED FOR THIS WATER RIGHT IS NOT A
DETERMINATION OF HISTORICAL BENEFICIAL USE.

EXPLANATORY MATERIAL: BASIS OF CLAIM - BENEFICIAL USE

Spring
IDWR # 72-14215
BLM # 7204581288
T 11 N R 19 E Sec. 29
SWSWSW

