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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: 78-10960 et. al.
) See Attachment 1
)

Case No. 39576

) **AFFIDAVIT OF**
) **CRAIG A. JOHNSON**
)

STATE OF IDAHO)

) ss:

COUNTY OF IDAHO)

I Craig A. Johnson, being of lawful age, and having first been duly sworn, state the
following:

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1. My present position is that of Fisheries Biologist for the United States, Department of Interior, Bureau of Land Management (hereinafter "BLM"), Upper Columbia-Salmon Clearwater District (UCSCD), Cottonwood Field Office, located in Cottonwood, Idaho. My education includes a B.S. degree (wildlife and fisheries) from Oregon State University and a M.S. degree (range resources) from University of Idaho. I have been employed by BLM in Idaho, as a Fisheries Biologist since 1979, as a Range Conservationist since 1976, and as a Range Technician since 1973. Since 1991, I have been the Water Rights Coordinator for the Cottonwood Field Office.

2. As part of my assigned duties and responsibilities, I am responsible for the activities concerning water right claims made by the United States of America on behalf of BLM for the Cottonwood Field Office. 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 (hereinafter "SRBA"). I have performed many filed investigations for the purpose of filing water right claims, objections, and responses. While performing my duties, I extensively use claim files, range improvement project files, water rights inventory records, field investigation records, Master Title Plats (hereinafter "MTP"), Historical Indexes (hereinafter "HI"), USGS topographic maps, water rights databases, and Geographic Information Systems (hereinafter "GIS") technology to analyze all aspects of water rights claims involving federal and private claims. I have also extensively used the Idaho Department of Water Resources (hereinafter "IDWR") website database and Internet Mapping Service. Using these tools, I have collected, compiled, and analyzed data to research hundreds of water rights claims filed with the State of Idaho and the SRBA.

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I have reviewed numerous legal land descriptions represented in Points of Diversion (hereinafter "POD") and Places of Use (hereinafter "POU") that were published in SRBA Director's Reports to determine land ownership by comparing those land descriptions to BLM's Master Title Plats and Historical Indexes. I have reviewed numerous deeds to determine who owned what land descriptions. I've determined the changes needed to many water right descriptions for use with the SRBA Standard Form 5 (hereinafter "SF-5") to resolve objections involving the BLM. I have extensive knowledge of, and experience with, the official business records of BLM and the Idaho Department of Water Resources (hereinafter "IDWR"), including but not limited to: BLM water right claim files, BLM field investigations, Master Title Plats, Historical Indexes, Control Document Indexes (hereinafter "CDI"), Tract Books, IDWR Adjudication Files, and IDWR Water Right Files. For hundreds of subcases, I have made determinations whether multiple claims exist for the same source and what the nature of their relationship is to each other. I have reviewed many Range Improvement Project Files for the purpose of locating the project, to determine when it was constructed, whether it was completed, if it is still functional, who contributed to the construction and in what amounts, and to determine whether water is present and in what amounts.

3. At the request of counsel for the United States, I have reviewed the official business records of BLM and IDWR for the subcases listed on Attachment 1 for SRBA claims made by the United States of America on behalf of the BLM, and have reached the determinations described herein.

4. 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.

5. Based upon a review of BLM's SRBA water right claim files and IDWR's abstract/recommendations, the subcases listed on Attachment 1 are BLM "dual" claims based upon state and federal law. The federal claim basis is claimed pursuant to an Executive Order, dated April 17, 1926, and known as Public Water Reserve 107 (hereinafter "PWR 107"). The state basis is based on beneficial use with a priority date of June 28, 1934. The 1934 date was reached through settlement with the State of Idaho.

6. I have reviewed the official business records of BLM and compared the subcases listed on Attachment 1 to BLM's MTPs and HIs. I was able to determine that the subcases listed on Attachment 1 are located on unreserved federal public domain as of April 17, 1926; and this land currently remains under Department of Interior administration, except where noted below.

b. The following is a summary of a land acquisition associated with a subcase listed on Attachment 1.

i. **Subcase 78-12024 and 78-12025:** United States CE Patent number 2921 was issued to Brigham G. Lawson on 12-29-1904. Subsequently, the United States reacquired this land from Keymor Land and Timber Co., recorded on 12-15-1993 as instrument No. 371957 in the records of Idaho County, Idaho. The priority date should be 12-29-1904 under a state law basis.

7. The claimed water sources described by the subcases listed on Attachment 1 were confirmed by field investigation.

8. Based upon the field verification and my review of the field investigation documents for each of the subcases listed on Attachment 1, there is sufficient surface water at these sites for consumptive use by livestock.

9. Based upon the field verification and my review of the field investigation documents, the source of water for each of the subcases listed on Attachment 1 is a spring or waterhole located at the claimed Point of Diversion (hereinafter "POD") and Place of Use (hereinafter "POU").

10. I have reviewed the official business records of BLM 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 reported 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, not to exceed 13,000 gpd.

a. For the following subcases and based upon my review and independent verification, certain elements of the federal reserve basis are not described correctly in IDWR's original abstract/recommendation of the claim. Those elements should be altered as described below:

i. **Subcase 78-12025:** Upon closer inspection of the BLM Claim File and its respective map, it was discovered that the tributary name identified for the spring was incorrectly identified as sinks. The correct name is Hazard Creek.

11. 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 in the subcases listed on 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 listed below failed and was subsequently canceled or relinquished.

a. The following table identifies all failed attempts to homestead.

Case Type	Serial No	Initiated	Closed	Subcase
HE	B 023761	05-19-1919	09-29-1919	78-12024
SRHE	BL 042576	04-18-1927	03-09-1931	78-11034
SRHE	BL 042576	04-18-1927	03-09-1931	78-11090
SRHE	BL 042576	04-18-1927	03-09-1931	78-11024
SRHE	BL 042576	04-18-1927	03-09-1931	78-11006
SRHE	BL 042576	04-18-1927	03-09-1931	78-10988
SRHE	BL 042576	04-18-1927	03-09-1931	78-10986
SRHE	BL 042550	02-18-1928	03-02-1928	78-10944
SRHE	BL 042550	02-18-1928	03-02-1928	78-10945
SRHE	BL 043333	01-14-1930	08-10-1933	78-10944
SRHE	BL 043333	01-14-1930	08-10-1933	78-10945
SRHE	BL 046002	08-04-1931	11-09-1937	78-11040
SRHE	BL 046002	08-04-1931	11-09-1937	78-10980
SRHE	BL 046002	08-04-1931	11-09-1937	78-10984
SRHE	BL 046002	08-04-1931	11-09-1937	78-10988
SRHE	BL 046002	08-04-1931	11-09-1937	78-10986
SRHE	BL 045686	11-23-1932	05-12-1933	78-11034
SRHE	BL 045686	11-23-1932	05-12-1933	78-11090
SRHE	BL 045686	11-23-1932	05-12-1933	78-11026
SRHE	BL 045686	11-23-1932	05-12-1933	78-11024
SRHE	BL 045686	11-23-1932	05-12-1933	78-10994
SRHE	B 025251	12-22-1921	06-12-1930	78-12022
SRHE	B 025251	12-22-1921	06-12-1930	78-11080
SRHE	B 025278	12-22-1921	03-15-1927	78-10996

Case Type	Serial No	Initiated	Closed	Subcase
SRHE	B 023866	12-23-1921	07-01-1924	78-10988
SRHE	B 023866	12-23-1921	07-01-1924	78-10986
HE	B 017169	02-26-1915	04-11-1916	78-11048
HE	B 023862	06-12-1919	07-01-1924	78-11034
HE	B 023862	06-12-1919	07-01-1924	78-11090
HE	B 023862	06-12-1919	07-01-1924	78-11024
HE	B 014549	06-02-1913	01-08-1914	78-11048
SRHE	BL 043792	07-13-1928	08-11-1936	78-10972
SRHE	BL 044873	01-08-1930	12-23-1935	78-11028
SRHE	BL 042009	02-09-1923	02-20-1928	78-10972
SRHE	BL 042592	05-07-1927	11-22-1930	78-10958
SRHE	B 021346	01-18-1922	04-25-1927	78-10972
SRHE	B 021346	01-18-1922	04-25-1927	78-10968

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b. The following subcases had failed homestead entries that were active on 04-17-1926: 78-10968, 78-10972, 78-10996, 78-11080, and 78-12022.

i. **Subcases 78-11080 and 78-12022:** An application for SRHE, made pursuant to the Act of 12-29-1916, was initiated by William H. Hillman on 12-22-1921 for 480.0 acres of public land. The United States assigned serial case file number **B-025251** to this application. The SRHE was subsequently cancelled on 06-12-1930. This homestead entry was active on 04-17-1926.

ii. **Subcase 78-10996:** An application for SRHE, made pursuant to the Act of 12-29-1916, was initiated by Calvin Q. Parks on 12-22-1921 for 480.0 acres of public land. The United States assigned serial case file number **B-25278** to this application. The SRHE was subsequently cancelled on 03-15-1927. This homestead entry was active on 04-17-1926.

iii. **Subcase 78-10972:** An application for SRHE, made pursuant to the Act of 12-29-1916, was initiated by George Aubin on 02-09-1923 for 600.0 acres

of public land. The United States assigned serial case file number **BL-042009** to this application. The SRHE was subsequently relinquished on 02-20-1928. This homestead entry was active on 04-17-1926, **however see conflicting entry B-021346 for the same legal land description below under 11.b.iv.**

iv. **Subcase 78-10972 and 78-10968:** An application for SRHE, made pursuant to the Act of 12-29-1916, was initiated by Charles S. McMillin on 01-18-1922 for 320.0 acres of public land. The United States assigned serial case file number **B-021346** to this application. The SRHE was subsequently cancelled on 04-25-1927. This homestead entry was active on 04-17-1926, however see conflicting entry BL-042009 for 78-10972 above under 11.b.iii. The portion of entry B-021346 that is associated with subcase 78-10968 does not conflict with entry BL-042009.

c. The following subcases occur on United States' property pursuant to a reacquisition: 78-12024 and 78-12025. See paragraph 6.b.i.

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12. At the request of counsel for the United States, I was asked to determine whether there were any senior water right claims asserted by non-federal entities to the sources associated with the subcases listed on Attachment 1. I researched each Point of Diversion described within the subcases listed on Attachment 1 using the information available on the IDWR internet web site. My research would have revealed any active claims on record with IDWR, including claims filed in the SRBA and administrative filings (i.e. applications, permits and licenses not filed in the SRBA). I was able to determine that there were no non-federal entities who have claimed the sources described by the subcases listed on Attachment 1.

Craig A. Johnson
Craig A. Johnson

Subscribed and sworn to before me this 20th day of April, 2004.
Witnessed by my hand and official seal.

Connie J. Schumacher

CONNIE J. SCHUMACHER
NOTARY PUBLIC STATE OF IDAHO

Notary Public in and for the State of Idaho
Residing at: Cottonwood, ID
My Commission Expires: 8-9-2009

CERTIFICATE OF SERVICE

I certify that on April 20, 2004, I served a true and correct copy of the foregoing **AFFIDAVIT OF CRAIG A. JOHNSON; SUBCASE NUMBERS: 78-10906 et. al., together with Attachment 1** by placing the documents in the United States Mail in Cottonwood, 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

BASIN 78	
78-10906	78-10996
78-10908	78-11000
78-10910	78-11002
78-10912	78-11004
78-10913	78-11006
78-10915	78-11008
78-10918	78-11010
78-10922	78-11014
78-10924	78-11016
78-10926	78-11018
78-10930	78-11020
78-10932	78-11024
78-10934	78-11026
78-10938	78-11028
78-10940	78-11030
78-10942	78-11032
78-10944	78-11034
78-10945	78-11036
78-10948	78-11038
78-10950	78-11040
78-10952	78-11048
78-10954	78-11050
78-10956	78-11058
78-10958	78-11060
78-10960	78-11062
78-10964	78-11064
78-10968	78-11068
78-10972	78-11074
78-10974	78-11076
78-10976	78-11078
78-10978	78-11080
78-10980	78-11086
78-10982	78-11090
78-10984	78-12022
78-10986	78-12024
78-10988	78-12025
78-10990	78-12030
78-10992	
78-10994	