

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: 79-11598 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.

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.

a. **Subcases 29-12679 and 27-12681:** The lands described in these subcases are also subject to a federal reserve pursuant to Executive Order (hereinafter "E.O.") dated 12-29-1919 and known as Public Water Reserve 68 (hereinafter "PWR 68"). Attachment 2. I do hereby certify that Attachment 2 to this affidavit is a true and correct copy of an Executive Order issued by President Woodrow Wilson on December 29, 1919 and known as PWR 68.

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.

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

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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 79-11640:** Upon closer inspection of the BLM Claim File, field investigation, its respective map, it was discovered that the tributary name identified for the spring was incorrectly identified as Skeleton Creek. The correct name is the Salmon River.

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ii. **Subcase 79-11671:** Upon closer inspection of the BLM Claim File, field investigation, and its respective map, it was discovered that the POD would be more accurately described as Lot 3 (NE ¼ SW ¼ NW ¼), S25, T.30N., R.01W. instead of Lot 3 (NE ¼ SW ¼ NE ¼). The POU would be more accurately described as Lot 3 (SW ¼ NW ¼), S25, T.30N., R.01W. instead of Lot 3 (SW ¼ NE ¼).

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
SRHE	C 012255	12/30/1922	09-03-1926	79-11716
SRHE	C 013133	12/10/1929	01-18-1936	79-11683
SRHE	C 013133	12/10/1929	01-18-1936	79-11679
HE	L 07549	08/11/1919	04-14-1920	79-11677
SRHE	L 07480	03-29-1920	09-29-1921	79-11716
HE	C 012124	07-03-1920	11-17-1925	79-11683

Case Type	Serial No	Initiated	Closed	Subcase
HE	C 012124	07-03-1920	11-17-1925	79-11679
HE	L 04983	10-13-1906	07-10-1913	79-11685
SRHE	C 013169	12-10-1929	04-11-1935	79-11650
HE	L 07450	03-27-1919	11-06-1920	79-11650
HE	L 06655	11-02-1916	03-25-1919	79-11650
SRHE	C 013333	09-11-1931	05-25-1937	79-11668
SRHE	C 013333	09-11-1931	05-25-1937	79-11718
SRHE	C 013333	09-11-1931	05-25-1937	79-11661
SRHE	C 013333	09-11-1931	05-25-1937	79-11666
SRHE	C 012384	07-24-1925	01-17-1931	79-11668
SRHE	C 012384	07-24-1925	01-17-1931	79-11718
SRHE	C 012384	07-24-1925	01-17-1931	79-11661
SRHE	C 012384	07-24-1925	01-17-1931	79-11666
SRHE	C 012375	02-09-1926	11-16-1931	79-11652
SRHE	C 012375	02-09-1926	11-16-1931	79-11656
SRHE	C 012375	02-09-1926	11-16-1931	79-11720
SRHE	C 013139	12-10-1929	04-11-1935	79-11664
SRHE	C 013139	12-10-1929	04-11-1935	79-11662
SRHE	L 06242	07-20-1918	09-30-1920	79-11668
SRHE	L 06242	07-20-1918	09-30-1920	79-11661
SRHE	L 06987	06-30-1919	11-28-1924	79-11718
HE	L 04825	03-17-1913	09-05-1913	79-11718
HE	L 02723	07-28-1909	06-18-1915	79-11666
HE	L 02436	03-27-1909	02-11-1910	79-13687
SRHE	C 012346	05-25-1926	04-26-1931	79-11638
SRHE	C 012346	05-25-1926	04-26-1931	79-11640
SRHE	C 012346	05-25-1926	04-26-1931	79-11648
HE	C 012129	07-09-1919	03-18-1925	79-11644
HE	L 07569	11-29-1919	05-28-1920	79-11642
HE	L 07269	05-11-1918	06-11-1919	79-11638
HE	L 07269	05-11-1918	06-11-1919	79-11640
HE	L 06367	11-05-1915	04-16-1924	79-11634
HE	L 06945	02-09-1917	05-10-1917	79-11694
HE	L 9360	09-09-1902	05-29-1903	79-11696
HE	L 06845	05-23-1919	09-26-1924	79-11608
SRHE	C 013073	03-29-1929	06-20-1930	79-11608
SRHE	C 013073	03-29-1929	06-20-1930	79-11612

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b. The following failed homestead entries were active on 04-17-1926:

i. **Subcase 79-11716:** An application for SRHE, made pursuant to the Act of 12-29-1916, was initiated by Guy Davenport on 12-30-1922 for 240.0 acres of public land. The United States assigned serial case file number **C-012255** to this application. The SRHE was subsequently cancelled on 09-03-1926. This homestead entry was active on 04-17-1926.

ii. **Subcase 79-11668, 79-11718, 79-11661, and 79-11666:** An application for SRHE, made pursuant to the Act of 12-29-1916, was initiated by Sammuel L. McDaniel on 07-24-1925 for 320.0 acres of public land. The United States assigned serial case file number **C-012384** to this application. The SRHE was subsequently cancelled on 01-17-1931. This homestead entry was active on 04-17-1926.

iii. **Subcase 79-11652, 79-11656, and 79-11720:** An application for SRHE, made pursuant to the Act of 12-29-1916, was initiated by William F. McRoberts on 02-09-1926 for 285.7 acres of public land. The United States assigned serial case file number **C-012375** to this application. The SRHE was subsequently cancelled on 11-16-1931. This homestead entry was active on 04-17-1926.

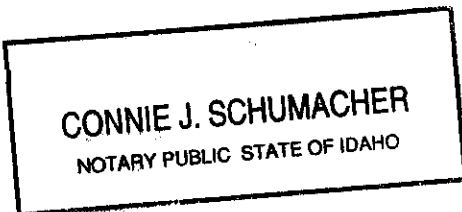
12. At the request of counsel for the United States, I was asked to determine whether there were any senior water right claims asserted by non-federal entities to the sources associated with the subcases listed on Attachment 1. I researched each Point of Diversion described within the subcases listed 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



Notary Public in and for the State of Idaho
Residing at: Cottonwood, ID
My Commission Expires: 8.4.2009

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: 79-11598 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:

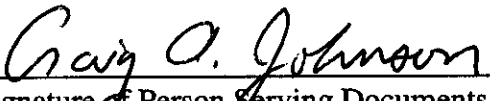
Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
P.O. Box 2707
Twin Falls, ID 83303-2707

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 79		
79-11598	79-11677	79-13691
79-11600	79-11678	
79-11601	79-11679	
79-11603	79-11681	
79-11605	79-11683	
79-11608	79-11685	
79-11610	79-11689	
79-11612	79-11691	
79-11614	79-11693	
79-11616	79-11694	
79-11618	79-11696	
79-11620	79-11698	
79-11622	79-11700	
79-11624	79-11702	
79-11626	79-11704	
79-11628	79-11706	
79-11630	79-11707	
79-11632	79-11708	
79-11634	79-11709	
79-11636	79-11711	
79-11638	79-11712	
79-11640	79-11714	
79-11642	79-11716	
79-11644	79-11718	
79-11648	79-11720	
79-11650	79-11722	
79-11652	79-11724	
79-11654	79-11726	
79-11656	79-11728	
79-11658	79-11730	
79-11661	79-11734	
79-11662	79-11749	
79-11664	79-11751	
79-11666	79-11783	
79-11667	79-11784	
79-11668	79-13681	
79-11669	79-13682	
79-11670	79-13683	
79-11671	79-13685	
79-11673	79-13687	