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DEPARTMENT OF
WATER RESOURCES

Michael P. Tribe, ISB No. 6816
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Attorneys for Kevin Smyer

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 No. 45-10481
Case No. 39576) AFFIDAVIT OF KEVIN SMYER

STATE OF IDAHO)
County of Cassia) ss.

Kevin Smyer, being first duly sworn, deposes and says:

1. That this affiant is an adult resident of Idaho and makes this Affidavit on his own personal knowledge, is competent to testify to the matters stated herein, and this Affidavit sets forth facts as would be admissible in evidence.

2. That your affiant owns the property listed as the place of use and point of diversion for Water Right No. 45-10481.

3. That your affiant purchased said property from the estate of Kate Bridger on August 19, 1985.

4. That your affiant filed a Notice of Claim to a beneficial use surface water

AFFIDAVIT OF KEVIN SMYER

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3 right for irrigation in the Snake River Adjudication on May 9, 1989. That claim is currently
4 listed as Water Right No. 45-10481, which was amended on August 28, 2003.

5 5. That your affiant personally has diverted water from the spring located on
6 my property beginning 1986 for use in irrigating my property.

7 6. That there were existing ditch works extending from the springs when
8 your affiant purchased the property.

9 7. That said spring is wholly located on property belonging to your affiant.

10 8. That the spring is tributary to sinks and does not reenter an existing stream
11 channel. The water from the spring does not run off your affiant's property.

12 9. That your affiant has never granted a third party the right to divert water
13 from the spring.

14 10. That to your affiant's knowledge, none of my predecessors in interest have
15 granted permission to any third party to divert waters from the spring off the property which it is
16 appurtenant to.

17 11. That your affiant has never intended on abandoning my right to divert
18 water from the spring.

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FURTHER YOUR AFFIANT SAITH NAUGHT.

Kevin Smyer
Kevin Smyer

SUBSCRIBED AND SWORN to before me this 21 day of February, 2006.

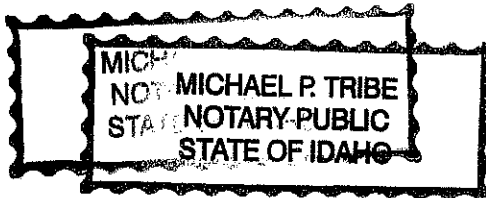
(SEAL)

Michael P. Tribe

Notary Public for Idaho

Residing at: Rupert, ID

My Commission expires: April 15, 2011



CERTIFICATE OF MAILING

I hereby certify that on the 21st day of February, 2006, I served the original and true and correct copies, respectively, of the foregoing AFFIDAVIT OF KEVIN SMYER upon:

Original to:

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

Copies to:

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

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

The United States Department of Justice
Environment and Natural Resources Division
550 West Fort Street, MSC 033
Boise, Idaho 83724

Rochelle M. Davis, Esq.
Barker Rosholt & Simpson, LLP
P. O. Box 2139
Boise, ID 83701-2139
Attorneys for Earl Warthen

by depositing said document in the United States mail, postage prepaid, in envelopes addressed to said persons/entities at the foregoing addresses.


Michael P. Tribe