

Michael P. Tribe, ISB No. 6816
 LING, ROBINSON & WALKER
 Attorneys at Law
 615 H Street
 P. O. Box 396
 Rupert, Idaho 83350
 Telephone (208) 436-4717
 Facsimile (208) 436-6804

Attorneys for Kevin, Norman and Delores 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, 45-10481
	)	and 45-12906
Case No. 39576	)	
	)	AFFIDAVIT OF BENNIE SMYER
	)	
	)	

STATE OF IDAHO)
) ss.
 County of Cassia)

Bennie 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 is a life long resident of the Albion Valley.

3. That I am familiar with the property that is currently owned by Kevin and Norman and the area of use recommended in Water Right No. 45-10480, 45-10481 and 45-12906.

AFFIDAVIT OF BENNIE SMYER

4. That in my youth I spent considerable time on the NE ¼ of Section 16 and have personal knowledge that water was used to irrigate the place of use know claimed by Kevin Smyer

5. That my father pastured dairy cows on the NE ¼ of Section 16 from approximately 1943 until at least 1948

6. That I have observed water running off Norman's place of use and onto Kevin's place of use as far back as 1943.

7. That I have been involved on the advisory board for water rights in the Albion water district and served on such board for seventeen (17) years

8. That Kate Bridger irrigated the land owned by Kevin Smyer and that Albert W. Clark irrigated the land prior to Kate Bridger's ownership

9. That the land in the NE ¼ of Section has been irrigated by diversion ditches when there has been available water since I can remember in the early 1940's

FURTHER YOUR AFFIANT SAITH NAUGHT.

Bennie Smyer
Bennie Smyer

SUBSCRIBED AND SWORN to before me this 27th day of February, 2006.

(SEAL)

MICHAEL P. TRIBE
NOTARY PUBLIC
STATE OF IDAHO

Michael P. Tribe
Notary Public for Idaho
Residing at: Rupert, ID
My Commission expires: 2/15/11