

RECEIVED
NOV 18 2003
Department of Water Resources

Names of Parties Filing Document:

UNITED STATES OF AMERICA

Attorneys' Names and Addresses:

THOMAS L. SANSONETTI
Assistant Attorney General
Environment and Natural Resources Division

R. LEE LEININGER
Trial Attorney, U.S. Dept. of Justice
General Litigation Section
Environment and Natural Resources Division
550 West Fort Street, MSC 033
Boise, Idaho 83724
Ph.: (303) 312-7322 FAX: (303) 312-7379

**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: 22-12906 et. al
)
)
 Case No. 39576) **AFFIDAVIT OF**
) **FREDRIC W. PRICE**
)

STATE OF IDAHO)
)
COUNTY OF ADA) ss:

I Fredric W. Price, being of lawful age, and having first been duly sworn, state the following:

1. My present position is that of Water Rights Specialist for the United States, Department of Interior, Bureau of Land Management (hereinafter "BLM"), Idaho State office. My current responsibilities include coordinating the BLM's efforts for the Snake River Basin Adjudication (hereinafter "SRBA") in Idaho. In that capacity, I provide guidance and technical support to the State Director, Field Office Managers, and technical specialists in BLM field offices, particularly those specialists working in water rights and related issues. I develop agency policy on water issues and in other programs affected by water rights, such as the range management and realty programs. I also review, interpret and analyze water rights claims for preparing opinions, recommendations, objections and other SRBA documents to the Department of Justice.

2. I have been employed by the BLM since 1982 in the following positions:

a. Eleven and a half years in various positions within the Rangeland Firefighting Program at the BLM, Shoshone Field Office. I spent 12 months working on that office's water rights team to develop and create 5,500 BLM claims;

b. Since August of 1993 as a Water Rights Specialist in the BLM, State Office;

3. My experience with water rights is as follows:

a. My eleven and a half years in BLM's fire program required that I have the ability to understand and interpret maps, legal land descriptions, and Range Improvement Project Files. I was routinely required to: travel to remote fire locations with just a map; map the position and extent of fires for which I was responsible; locate, construct and maintain range improvements (including but not limited to: spring developments, pipelines and fences), and to supplement the range improvement project files. I taught several

courses to new employees in interpreting maps and BLM Master Title Plats, as well as, in the use of a compass. In my work with the BLM, I have been responsible for tasks requiring an ability to interpret: maps, legal land descriptions, and water claims, including the preparation, mapping and review of 5,500 SRBA water right claims for BLM. I have reviewed hundreds of Range Improvement Project Files for the purpose of locating the project, to determine when it was constructed, whether it was completed, whether it is still functional, to identify candidates for filing SRBA water claims, and to capture certain types of projects into the Geographic Information System (i.e. computer mapping system).

b. As a Water Rights Specialist in the BLM State Office, it is my responsibility to provide guidance and direction to Idaho BLM offices in all matters relating to water rights, and make recommendations to the Department of Justice. My experience with water rights in my present position is as follows. I develop policy for BLM across several programs to deal with water issues, such as the range management and realty programs. I have reviewed tens of thousands of 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 hundreds of deeds to determine who owned what land descriptions. I've determined the changes needed to over a thousand water right descriptions for use with the SRBA Standard Form 5 (hereinafter ASF-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. I provide advice, guidance and direction to BLM field office personnel as to investigating and preparing claims, how to interpret water rights and how they relate to other water rights. 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 hundreds of 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. I developed the investigative criteria to be used for BLM field offices to investigate water sources for claims preparation and for objection purposes. I have reviewed thousands of BLM claim files and field investigations conducted by BLM. I have also performed investigations of water rights in the field. I routinely provide technical assistance, reports, recommendations and opinions to the Department of Justice concerning all the above matters.

4. 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.

5. 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.

6. 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.

7. 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.

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

9. 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.

10. 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").

a. **Subcases 22-12920, 22-12930, and 22-12932:** Review of BLM's water right files reveals that these are claims to waterholes in the form of a natural potholes. PWR 107 applies to springs and waterholes.

11. 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. 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.

12. 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 attempts to homestead. Paragraph 12(b) below will provide more information with regard to any entries that were active on 04-17-1926, and paragraph 12(c) will identify subcases where there was no active entry.

Case Type	Serial No	Initiated	Closed	Subcase
HE	BL-019562	01-26-1915	10-05-1915	22-12906
HE	BL-022056	07-10-1918	04-30-1926	22-12920
HE	BL-022649	05-10-1919	12-10-1919	22-12906
HE	BL-034358	12-10-1919	02-09-1928	22-12906
SRHE	BL-040676	06-08-1928	08-24-1933	22-12920
SRHE	BL-041109	05-11-1929	02-13-1934	22-12928
SRHE	BL-041144	06-13-1928	05-20-1936	22-12930, 22-12932
HE	BL-043158	08-10-1928	01-26-1934	22-12906
SRHE	BL-046826	09-20-1933	03-10-1939	22-12920
SRHE	BL-047024	02-13-1934	01-23-1940	22-12928

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

1. **Subcase 22-12906:** An application for HE, made pursuant to the Act of 06-17-1910, was initiated by John D. Flamm on 12-10-1919 for 160.00 acres of public land. The United States assigned serial case file number **BL-034358** to this application. The HE was subsequently relinquished on 02-09-1928 due to conflict with another entry. This homestead entry was active on 04-17-1926.

2. **Subcases 22-12920:** There were two failed attempts to homestead the public land described in this subcase that were active on 04-17-1926.

A. An application for HE, made pursuant to the Act of 06-17-1910, was initiated by Lawrence L. Varin on 07-10-1918 for 320.00 acres of public land. The United States assigned serial case file number **BL-022056** to this application. The HE was subsequently cancelled on 04-30-1926 due to contest of entry. This homestead entry was active on 04-17-1926.

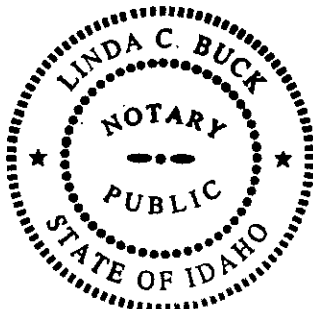
//

B. An application for Stock-Raising Homestead Entry (hereinafter "SRHE"), made pursuant to the Act of 12-29-1916, was initiated by Samuel H. Boyle on 06-08-1928 for 560.00 acres of public land. The United States assigned serial case file number **BL-040676** to this application. The SRHE was subsequently relinquished on 08-24-1933 due to contested entry. This homestead entry was active on 04-17-1926.

c. There were no active homestead entries on 04-17-1926 for the following subcases: 22-12924, 22-12926, 22-12928, 22-12930, and 22-12932.

13. 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.

Subscribed and sworn to before me this 17th day of November, 2003.
Witnessed by my hand and official seal.



Fredric W. Price
Fredric W. Price
Linda C. Buck
Notary Public in and for the State of Idaho
Residing at: Mountain Home, ID
My Commission Expires: 12-21-05

CERTIFICATE OF SERVICE

I certify that on Nov, 17, 2003, I served a true and correct copy of the foregoing **AFFIDAVIT OF FREDRIC W. PRICE; SUBCASE NUMBERS: 22-12906 et. al., together with Attachment 1** by placing the documents in the United States Mail in Boise, Idaho, postage paid, and addressed as follows: *also by fax*

Original to:

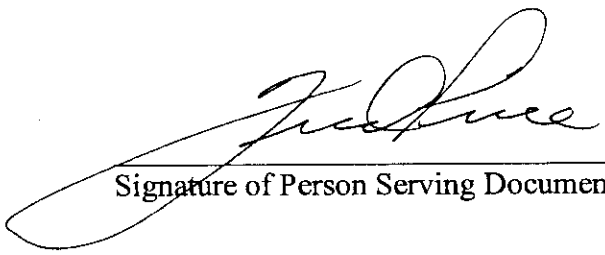
Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
P.O. Box 2707
Twin Falls, ID 83303-2707

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

B 22

22-12906
22-12920
22-12924
22-12926
22-12928
22-12930
22-12932