

NOV 14 2003

Page 1 -AFFIDAVIT OF FREDRIC W. PRICE; Subcase Numbers: 33-10476 et. al.

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 "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. 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, except where noted under paragraph 11(b) below. 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, except where noted below.

The following is a summary of land acquisitions associated with certain subcases listed on Attachment 1.

a. **Subcases 33-10633 and 33-10476:** The land described in these subcases went to State of Idaho ownership pursuant to the Act of 07-03-1890. BLM reacquired this land in a land exchange with the State of Idaho on 09-14-1990. The United States assigned serial number IDI-26444 to this action. For subcase 33-10476, also see paragraph 11(b)(1).

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 (except where noted under paragraph 11(b) below) located at the claimed Point of Diversion (hereinafter "POD") and Place of Use (hereinafter "POU"), except as noted under paragraph 11(a) below.

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, 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:

1. **Subcase 33-10496:** Upon closer inspection of the BLM Claim File, filed investigation, and more recent GPS data collection, it was discovered that the POD would be more accurately described as NE $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$, S02, T.09N., R.27E. instead of the NW $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$.

2. **Subcase 33-10519:** Upon closer inspection of the BLM Claim File,

field investigation, and its respective map, it was discovered that the tributary would be more accurately described as Little Lost River instead of Sinks.

3. **Subcase 33-10521:** Upon closer inspection of the BLM Claim File, field investigation, and its respective map, it was discovered that the tributary would be more accurately described as Little Lost River instead of Sinks.

4. **Subcase 33-10525:** 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 (SW $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$), S21, T.07N., R.28E. instead of the NW $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$. Similarly, the POU would be more accurately described as Lot 3 (SW $\frac{1}{4}$ NE $\frac{1}{4}$), S21, T.07N., R.28E.

5. **Subcase 33-10527:** 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 2 (SE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$), S21, T.07N., R.28E. instead of the SW $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$. Similarly, the POU would be more accurately described as Lot 2 (SW $\frac{1}{4}$ NE $\frac{1}{4}$), S21, T.07N., R.28E.

6. **Subcase 33-10569:** Upon closer inspection of the BLM Claim File, filed investigation, and its respective map, it was discovered that IDWR's recommendation/abstract contains a typographical error in purpose of use and quantity. The purpose of use is listed as "Stockwater 1,153 Range Cattle," where it should simply be described as "Stockwater." The total quantity is listed as 0.02 cfs, but the quantity under purpose and period of use is only 0.01 cfs. The quantity under purpose and period of use would be more accurately described as 0.02 cfs.

7. **Subcase 33-10611:** Upon closer inspection of the BLM Claim File,

filed investigation, and more recent GPS data collection, it was discovered that the POD would be more accurately described as SE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$, S23, T.08N., R.28E. instead of the NE $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$. Similarly, the POU would be more accurately described as SW $\frac{1}{4}$ NE $\frac{1}{4}$, S23, T.08N., R.28E.

8. **Subcase 33-10613:** Upon closer inspection of the BLM Claim File, filed investigation, and more recent GPS data collection, it was discovered that the POD would be more accurately described as SE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$, S23, T.08N., R.28E. instead of the NE $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$. Similarly, the POU would be more accurately described as SW $\frac{1}{4}$ NE $\frac{1}{4}$, S23, T.08N., R.28E.

9. **Subcase 33-10615:** Upon closer inspection of the BLM Claim File, filed investigation, and more recent GPS data collection, it was discovered that the POD would be more accurately described as SE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$, S23, T.08N., R.28E. instead of the NE $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$. Similarly, the POU would be more accurately described as SW $\frac{1}{4}$ NE $\frac{1}{4}$, S23, T.08N., R.28E.

10. **Subcase 33-10891:** 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 NW $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$, S08, T.09N., R.26E. instead of the NE $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$

11. **Subcase 33-10893:** Upon closer inspection of the BLM Claim File, field investigation, and its respective map, it was discovered that IDWR's recommendation/abstract contains a typographical error in POU. The POU would be more accurately described at the POD: NE $\frac{1}{4}$ SE $\frac{1}{4}$, S05, T.10N., R.27E. instead of SW $\frac{1}{4}$ NE $\frac{1}{4}$.

12. Subcase 33-10908: This claim was disallowed in the Director's Report and BLM objected to the disallowance. Upon closer inspection of the BLM Claim File, field investigation, and its respective map, I concur with IDWR's recommendation/abstract.

13. Subcase 33-10914: This claim was disallowed in the Director's Report and BLM objected to the disallowance. Upon closer inspection of the BLM Claim File, field investigation, and more recent GPS data collected, this is a viable and productive "Spring" tributary to "Sinks." The location of the POD is SW ¼ SE ¼ SE ¼, S34, T.11N., R.25E. The purpose of use is "Stockwater," and the period of use is January 1 through December 31. The POU element, as claimed, contained more than one land description and is perhaps why the claim was disallowed. The POU would be more accurately described at the POD: SE ¼ SE ¼, S34, T.11N., R.25E. The notice of claim also asserted a federal reservation pursuant to PWR 107.

b. Certain subcases listed on Attachment 1 describe claims which should not or do not contain a federal reserve basis.

1. Subcase 33-10476: This subcase is a claim to instream stockwater from Squaw Creek that was disallowed in the Director's Report, objected to by BLM, and response filed by the State of Idaho. This claim does not include a federal reserve component. The parties could submit an SF-5 to overcome the disallowance and change the priority date to 06-28-1934 (state basis).

2. Subcase 33-10897: This subcase is a claim to instream stockwatering from Hurst Creek that was disallowed in the Director's Report,

objected to by the BLM, and response filed by the State of Idaho. This claim does not include a federal reserve component. The parties could submit an SF-5 to overcome the disallowance and change the priority date to 06-28-1934 (state basis).

3. Subcase 33-10899: This subcase describes Blind Springs located on lands withdrawn to the Challis National Forest. This claim should not contain a federal reservation pursuant to PWR 107.

4. Subcase 33-10911: This subcase is a claim to instream stockwatering from Big Spring Creek that was objected to by BLM and the State of Idaho. This claim does not include a federal reserve component. The parties could submit an SF-5 to change the priority date to 06-28-1934 (state basis) and remove private land from the claim.

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.

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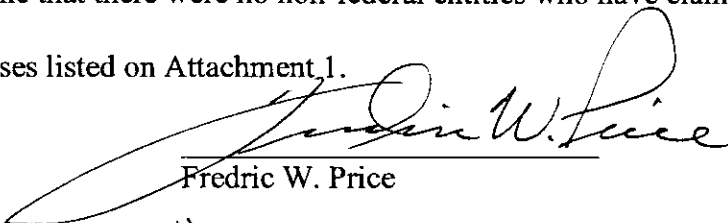
Subcase	Case Type	Serial No	Initiated	Closed
33-10914	DLE	BL-039873	12-17-1925	07-18-1928
33-10914	SRHE	BL-044397	02-25-1930	02-02-1931
33-10914	SRHE	BL-045635	06-26-1931	09-15-1934
33-10555				
33-10557				
33-10559				
33-10561				
33-10563				
33-10565				
33-10567				
33-10879				
33-10880				
33-10881				
33-10882				
33-10883				
33-10884				
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33-10887				
33-10890				
33-10891	HE	H-018283	07-01-1915	10-15-1920
33-10525				
33-10527	DLE	H-014130	10-21-1913	10-26-1916
33-10525				
33-10527	HE	BL-044504	08-01-1931	11-06-1936

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

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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.


Fredric W. Price

Subscribed and sworn to before me this 14th day of November, 2003.
Witnessed by my hand and official seal.


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 1/02/14, 2003, I served a true and correct copy of the foregoing **AFFIDAVIT OF FREDRIC W. PRICE; SUBCASE NUMBERS: 33-10476 et. al., together with Attachment 1** by placing the documents in the United States Mail in Boise, Idaho, postage paid, and addressed as follows:

Original to:

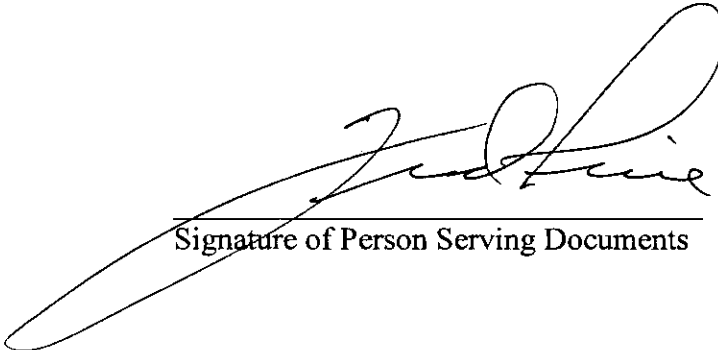
Clerk of the District Court
Snake River Basin Adjudication
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Twin Falls, ID 83303-2707

Copies to:

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Environment and Natural Resources Division
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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
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Signature of Person Serving Documents

ATTACHMENT 1

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	33-10615
	33-10625
33-10476	33-10633
33-10488	
33-10490	33-10874
33-10492	33-10875
33-10496	33-10876
33-10502	33-10877
33-10504	33-10878
33-10511	33-10879
33-10513	33-10880
33-10515	33-10881
33-10517	33-10882
33-10519	33-10883
33-10521	33-10884
33-10523	33-10885
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