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Department of Water Resources



# United States Department of the Interior

## BUREAU OF LAND MANAGEMENT

Jarbidge Field Office  
2620 Kimberly Road  
Twin Falls, Idaho 83301-7975  
<http://www.id.blm.gov/offices/jarbidge>



In Reply Refer To:  
7250  
51-11842, et. al.

February 12, 2004

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

Dear Gentlemen:

Enclosed is an affidavit by John R. Ash of the USDI, Bureau of Land Management, addressing the issue of PWR 107 for several subcases in Basin 51 as requested by Special Master Cushman. The original document has been submitted to the SRBA District Court (2/11/04) and this copy is provided for your review and records.

Sincerely,

  
John R. Ash  
Natural Res. Spec.

Enclosure

**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  
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General Litigation Section  
Environment and Natural Resources Division  
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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

Case No. 39576

STATE OF IDAHO )

COUNTY OF ADA )

ss:

)  
) Subcase Numbers: 51-11842 et. al.  
) See Attachment #1  
)

) **AFFIDAVIT OF**  
) **JOHN R. ASH**  
)

I John R. Ash, being of lawful age, and having first been duly sworn, state the following:

1. My name is John R. Ash. I am a graduate of Northern Arizona University in Flagstaff, Arizona. I received a Bachelor of Science degree in Biology in 1973. I also have additional education in graduate studies of Range Management, Soils and Hydrology at the University of Arizona in Tucson, Arizona in 1979-1980. Currently, I am an employee of the United States, Department of Interior, Bureau of Land Management. The following statements are based upon my personal knowledge. My present position is that of Natural Resource Specialist (Range Management, Water Rights, Minerals, Water Quality, etc.) for the United States, Department of Interior, Bureau of Land Management (hereinafter "BLM"), Lower Snake River District, Jarbidge Field Office, located in Twin Falls, Idaho. 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 (SRBA), including but not limited to: BLM water right claim files; BLM water right field investigations; Master Title Plats (hereinafter "MTP"); Historical Indexes (hereinafter "HI"); and Serial Register pages. Since January 1992, I have been dealing with water rights, I have: investigated hundreds of claims; collected, compiled and analyzed factual information and evidence for over a thousand water right claims; reviewed and analyzed official business records associated with water rights that are maintained by BLM, the Idaho Department of Water Resources (hereinafter IDWR), several Idaho Counties, and various federal agencies.

2. As part of my assigned duties and responsibilities, since January 1992, I have been responsible for coordinating the activities of BLM with the SRBA for the Jarbidge Field Office of the Lower Snake River District (hereinafter LSRD), and individually responsible for handling the water right claims made by the United States of America on behalf of BLM for the Jarbidge Field Office within the LSRD. My current responsibilities include coordinating the BLM's efforts for

the Snake River Basin Adjudication (hereinafter "SRBA") in Idaho at the Field Office level. In that capacity, I provide guidance and technical support to the Field Office Manager and technical specialists at the BLM field office, particularly those specialists working in water rights and related issues. 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 1980 in the following positions:

a. Twelve years in the position of Rangeland Management and Wildland Fire Programs at the BLM, Arizona Strip (St. George, Utah) and Bruneau (Boise, Idaho) Field Offices;

b. Since January of 1992 as a Natural Resource Specialist in the BLM, Lower Snake River District, Jarbidge Field Office;

3. My experience with water rights is as follows:

a. My twelve years in BLM's range management and fire programs 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 field and fire locations with just a map; map the position and extent of range projects and/or 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 new and seasonal employees how to interpret USGS topographical maps and BLM Master Title Plats, how to locate Section corners and quarter markers in the field, and how to use a compass and global positioning system (GPS). 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 1,200 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 Jarbidge Field Office, it is my responsibility to provide guidance and direction to the field office in all matters relating to water rights, and make recommendations to the BLM State Office and the Department of Justice. My experience with water rights in my present position is as follows. I have assisted in the development of policy for BLM across several programs to deal with water issues, such as the range management and realty programs. I have reviewed 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 many deeds to determine who owned what land descriptions. I've determined the changes needed for hundreds of 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, Serial Register pages, Tract Books, IDWR Adjudication Files, and IDWR Water Right Files. I provide advice, guidance and direction to BLM Jarbidge 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. At the field office level, I helped develop the investigative criteria to be used for the BLM field office to investigate water sources for claims preparation and for objection purposes. I have also performed hundreds of investigations of water rights in the field. I have reviewed hundreds of BLM claim files and field investigations conducted by BLM. 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 28 subcases listed in Attachment 1 for SRBA claims made by the United States of America on behalf of the BLM, and have reached the determinations described herein. The 28 subcases shown in Attachment 1 are BLM water right claims for natural playa lakes and naturally-occurring free-flowing springs and streams.

5. The Master Title Plat (hereinafter "MTP") is official business record of the BLM that identify United States' property and its status. 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"), except where noted below. 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 51-12256, 51-12258, 51-12262, and 51-12264:** The lands described in these subcases are subject to a federal reserve pursuant to Executive Order (hereinafter "E.O.") dated 04-07-1917 and known as Public Water Reserve 47 (hereinafter "PWR 47"). Attachment 2. I do hereby certify that Attachment 2 of this affidavit is a true and correct copy of an Executive Order issued by President Woodrow Wilson on April 07, 1917 and known as PWR 47. These four water right subcases are streams and not subject to PWR 107.

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.

a. The following subcase lies on land not owned by the United States or not administered by U.S.D.I.:

i. **Subcase 51-12273:** This claim describes land that is owned privately. This claim should not have been filed by BLM, and should not contain a federal

reservation pursuant to PWR 107.

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

a. **Subcase 51-11962:** Review of BLM's water right files reveals that this claim is a waterhole in the form of a natural playa lake known as Idaho Lake. PWR 107 applies to springs and natural waterholes.

b. **Subcase 51-12185:** Upon closer inspection of the claim file and field investigation, this source (man-made reservoir) did not exist on 04-17-26 so it is not appropriate under PWR 107. This original diversion has failed and the BLM has no plans to reconstruct the diversion, therefore the BLM wishes to forfeit this claim.

c. **Subcases 51-12329 and 51-12627:** Upon closer inspection of these claim files, I believe these water holes (ponds) were constructed after 05-20-1971. These water sources should be claimed administratively (i.e., permit/license) rather than in the SRBA, therefore these Subcases should be dismissed.

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:

i. **Subcase 51-11860:** Upon closer inspection of the BLM Claim File, field investigation, and its respective map, it was discovered that the POU would be more accurately described as only the NE  $\frac{1}{4}$  SE  $\frac{1}{4}$ , S17, T.16S., R.12E. instead of also describing a POU of NW  $\frac{1}{4}$  SE  $\frac{1}{4}$ , S17, T.16S., R.12E. There is no reason for more than one POU to be described since the POD was claimed with the correct location. An SF-5 is circulating.

ii. **Subcase 51-12044:** 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 SE  $\frac{1}{4}$  SE  $\frac{1}{4}$  SE  $\frac{1}{4}$ , S31, T.14S., R.08E., instead of SW  $\frac{1}{4}$  SE  $\frac{1}{4}$  SE  $\frac{1}{4}$ , S31. The incorrect POD may have been a typographical error or oversight by the BLM or in IDWR's recommendation/abstract as the POU was claimed with the correct location. An SF-5 is circulating.

iii. **Subcase 51-12262:** Upon closer inspection of the BLM Claim File, field investigation, and its respective map, it was discovered that the PODs would be more accurately described by adding Lot 2 (NW  $\frac{1}{4}$  NE  $\frac{1}{4}$ ), S33, T.16S., R.12E.

(beginning), along with Lot 1 (NE  $\frac{1}{4}$  NE  $\frac{1}{4}$ ), S33, T.16S., R.12E. (ending). Also, it was discovered that the POUs would be more accurately described for this claim by adding the following POU; Lot 2 (NW  $\frac{1}{4}$  NE  $\frac{1}{4}$ ), S33, T.16S., R.12E. An SF-5 is circulating.

iv. **Subcase 51-12291:** Upon closer inspection of the BLM Claim File, field investigation, and its respective map, it was discovered that the PODs would be more accurately described as SW  $\frac{1}{4}$  SW  $\frac{1}{4}$  SE  $\frac{1}{4}$ , S09, T.11S., R.09E. (beginning), instead of just the SW  $\frac{1}{4}$  SE  $\frac{1}{4}$ , S09, T.11S., R.09E., **and** as Lot 3 (NW  $\frac{1}{4}$  NE  $\frac{1}{4}$ , NW  $\frac{1}{4}$ ), S01, T.11S., R.08E. (ending), instead of SW  $\frac{1}{4}$  NE  $\frac{1}{4}$ , S01, T.11S., R.08E. Also, it was discovered that the POUs would be more accurately described for this claim by adding the following POUs; Lot 3 (NE  $\frac{1}{4}$  NW  $\frac{1}{4}$ ), Lot 4 (NW  $\frac{1}{4}$  NW  $\frac{1}{4}$ ), SE  $\frac{1}{4}$  NW  $\frac{1}{4}$ , and SW  $\frac{1}{4}$  NW  $\frac{1}{4}$ , S01, T.11S, R.08E., and correctly identifying the NW  $\frac{1}{4}$  NW  $\frac{1}{4}$ , S07, T.11S., R.09E., as Lot 1 (NW  $\frac{1}{4}$  NW  $\frac{1}{4}$ ), S07, T11S., R.09E. An SF-5 is circulating.

v. **Subcase 51-12416A:** 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 SW  $\frac{1}{4}$  SW  $\frac{1}{4}$  NW  $\frac{1}{4}$  **and** NW  $\frac{1}{4}$  SW  $\frac{1}{4}$  NW  $\frac{1}{4}$ , S29, T.15S., R.12E., instead of NW  $\frac{1}{4}$  SW  $\frac{1}{4}$  NW  $\frac{1}{4}$ , S30, T.15S., R.12E. The POU is correct. An SF-5 is circulating.

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

i. **Subcase 51-12291 and 51-12416A:** These subcases are claims to instream stockwater from Unnamed Streams that were objected to by the State of

Idaho. These claims contain a federal reserve basis pursuant to PWR 107, but should not as they are not claims to springs or waterholes. These claims also do not lie within the area reserved by PWR 47. The parties could submit an SF-5 to remove the erroneous federal reserve component and change the State-based date of priority to 06-28-1934.

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, HIs, and Serial Register pages. 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  |
|-----------|-----------|------------|------------|----------|
| DLE       | H-024749  | 08-11-1919 | 03-07-1924 | 51-11854 |
| SRHE      | H-025632  | 11-10-1920 | 05-29-1924 | 51-11860 |
| SRHE      | BL-039596 | 05-29-1924 | 02-04-1930 | 51-11860 |

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

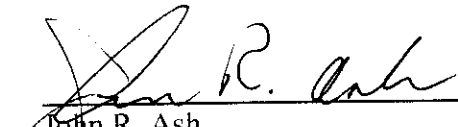
i. **Subcase 51-11860:** An application for SRHE, made pursuant to the Act of 12-29-1916, was initiated by George L. Pinkston on 05-29-1924 for 320

acres of public land. The United States assigned serial case file number **BL-039596** to this application. The SRHE was subsequently cancelled on 02-04-1930 due to inaction by entryman. This homestead entry was active on 04-17-1926.

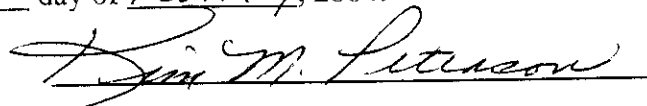
c. There were no active homestead entries on 04-17-1926 that failed for the following subcases: 51-11842, 51-11845, 51-11849, 51-11851, 51-11863, 51-11946, 51-12031, 51-12034, 51-12044, 51-12211, 51-12224, 51-12821, 51-12822, and 51-12827.

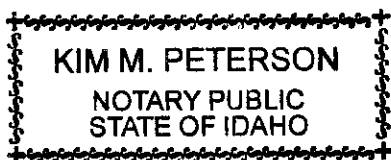
d. The following subcases lie within property not owned or administered by BLM: 51-12273 (private land).

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 was one non-federal entity who has claimed the source described by the subcase **51-12824**. This claim is subcase 51-12956, which is senior to BLM's subcase.

  
John R. Ash

Subscribed and sworn to before me this 11<sup>th</sup> day of February, 2004.  
Witnessed by my hand and official seal.





Notary Public in and for the State of Idaho  
Residing at: Gooding, Idaho  
My Commission Expires: 11/15/2010

## CERTIFICATE OF SERVICE

I certify that on Feb. 11, 2004, I served a true and correct copy of the foregoing **AFFIDAVIT OF JOHN R. ASH; SUBCASE NUMBERS: 51-11842 et. al., together with Attachment 1 and Attachment 2** by placing the documents in the United States Mail in Boise, Idaho, postage paid, and addressed as follows:

Original to:

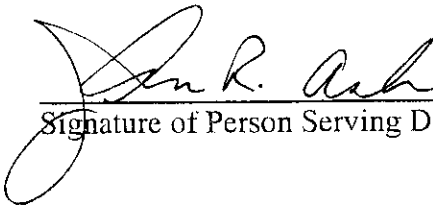
Clerk of the District Court  
Snake River Basin Adjudication  
253 Third Avenue North  
P.O. Box 2707  
Twin Falls, ID 83303-2707

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

## Subcases

51-11842  
51-11845  
51-11849  
51-11851  
51-11854  
51-11860  
51-11863  
51-11946  
51-11962  
51-12031  
51-12034  
51-12044  
51-12185  
51-12211  
51-12224  
51-12256  
51-12258  
51-12262  
51-12264  
51-12273  
51-12291  
51-12329  
51-12416A  
51-12627  
51-12821  
51-12822  
51-12824  
51-12827

## ATTACHMENT 2

Public Water Reserve 47

04-07-1917

Executive Order

Signed by President Woodrow Wilson

INDEX OF FEDERAL

Public Water Reserve No. 47, Idaho No. 3

Under and pursuant to the provisions of the act of Congress approved June 25, 1910 (36 Stat., 947), entitled "An act to authorize the President of the United States to make withdrawals of public lands in certain cases," as amended by act of Congress approved August 24, 1916 (37 Stat., 497), it is hereby ordered that the lands hereinafter described be, and the same are hereby, withdrawn from settlement, location, sale, or entry, and reserved for public use in accordance with the provisions of Sec. 10 of the act of December 29, 1916 (Public No. 290).

Boise Meridian

✓ T. 12 N., R. 22 E., Sec. 24, S $\frac{1}{2}$  of NE $\frac{1}{4}$ , E $\frac{1}{2}$  of SE $\frac{1}{4}$ .

✓ T. 12 N., R. 23 E., Sec. 31, S $\frac{1}{2}$  of SW $\frac{1}{4}$ .

✓ T. 13 N., R. 23 E., Sec. 30, S $\frac{1}{2}$  of NW $\frac{1}{4}$ , NE $\frac{1}{4}$  of SE $\frac{1}{4}$ .

✓ T. 16 S., R. 12 E., Sec. 21, E $\frac{1}{2}$ ;  
✓ Sec. 27, SW $\frac{1}{4}$  of SW $\frac{1}{4}$ ;  
✓ Sec. 28, E $\frac{1}{2}$  of E $\frac{1}{2}$ ;  
✓ Sec. 33, N $\frac{1}{2}$  of NE $\frac{1}{4}$ ;  
✓ Sec. 34, N $\frac{1}{2}$  of NW $\frac{1}{4}$ .

Woodrow Wilson  
President.

7 April 1917