

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 JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS**

In Re SRBA	)	Subcase Number(s): 51-10398 et.al.
	)	see ATTACHMENT 1
Case No. 39576	)	
	)	AFFIDAVIT OF
	)	ROBERT R. MALLIS
_____	)	

STATE OF IDAHO	)	
	)	ss:
COUNTY OF ADA	)	

I Robert R. Mallis, being of lawful age, and having been first duly sworn, do depose and state:

1. My name is Robert R. Mallis. My education includes a B. S. degree in geology from Virginia Polytechnic Institute and State University. I am an employee of the United States Department of the Interior, Bureau of Land Management (hereinafter "BLM"). My position is that of a geologist in the Lower Snake River District (hereinafter "LSRD"), Owyhee Field Office,

Boise, Idaho. As part of my assigned duties, since January 1996, I am responsible for coordinating activities of the BLM within the Snake River Basin Adjudication (hereinafter "SRBA") for the LSRD, and individually responsible for handling the water right claims made by the United States of America on behalf of BLM for the Owyhee Field Office within the LSRD. Since October 1995, I have been dealing with water rights and I have: investigated hundreds of water right claims; collected, compiled, and analyzed factual information and evidence for thousands of water right claims; and reviewed and analyzed official business records associated with water rights that are maintained by BLM and the Idaho Department of Water Resources (hereinafter "IDWR").

2. I have extensive knowledge of, and experience with, the official business records of BLM associated with its water right claim filings in the SRBA, including but not limited to: BLM water right claim files, BLM water right field investigations, Master Title Plats and Historical Indexes.

3. 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.

4. Based upon a review of BLM's SRBA water right claim files and IDWR's abstract/recommendations, the subcases identified in Attachment 1 are BLM "dual" claims based upon state and federal law. The federal claim basis is claimed pursuant to an Executive Order,

Page 2 of 8 AFFIDAVIT OF ROBERT R. MALLIS FOR SUBCASE NUMBER 51-10398 et. al.

dated April 17, 1926, and known as Public Water Reserve 107 (hereinafter "PWR 107"). The state basis is a beneficial use basis with a priority date of June 28, 1934. The 1934 date was reached through settlement with the State of Idaho. The subcases identified in Attachment 2 are BLM claims based upon state law only.

a. **Subcase 51-10918:** The lands described in this subcase are also subject to a federal reserve pursuant to Executive Order, dated 4-15-1922, and known as Public Water Reserve 83. Attachment 3.

5. At the request of counsel for the United States, I have reviewed the official business records of the BLM and compared the subcases listed in Attachment 1 to BLM's MTP's and HI's. I was able to determine that the subcases shown in Attachment 1 were located on unreserved federal public domain lands as of April 17, 1926, and that these lands currently remain under Department of the Interior administration, except where noted below.

a. The following subcases lie on lands not owned by the United States:

Subcase 55-10621

Subcase 55-12701

Subcase 61-11453

Subcase 65-19886

Subcase 65-20041

b. The subcases shown below were found to be located on lands that had left federal ownership and were subsequently reconveyed back to the United States:

- 1) **Subcase 55-11702:** State Grant Act of Congress of 7/3/1890. Title to State of Idaho vested subject to prior rights. Reconveyed to the U. S. via State exchange. Title accepted by the U. S. on 8/21/1987.

- 2) **Subcase 55-11722:** State Grant Act of Congress of 7/3/1890. Title to State of Idaho vested subject to prior rights. Reconveyed to the U. S. via State exchange. Title accepted by the U. S. on 8/21/1987.
- 3) **Subcase 55-11724:** State Grant Act of Congress of 7/3/1890. Title to State of Idaho vested subject to prior rights. Reconveyed to the U. S. via State exchange. Title accepted by the U. S. on 8/21/1987.
- 4) **Subcase 55-11726:** State Grant Act of Congress of 7/3/1890. Title to State of Idaho vested subject to prior rights. Reconveyed to the U. S. via State exchange. Title accepted by the U. S. on 8/21/1987.
- 5) **Subcase 55-11728:** State Grant Act of Congress of 7/3/1890. Title to State of Idaho vested subject to prior rights. Reconveyed to the U. S. via State exchange. Title accepted by the U. S. on 8/21/1987.

6. The water sources claimed in the subcases shown in Attachment 1 were confirmed by field investigation.

7. Based upon the field verification and my review of the field investigation documents for each of the subcases listed in attachment 1, there is sufficient water at these sites for consumption by livestock.

8. Based upon the field verification and my review of the field investigation documents, the source of water for each of the subcases listed in Attachment 1 is a spring or waterhole located at the claimed Point of Diversion and Place of Use except as noted below under paragraph 9.

9. The following subcases listed on Attachment 1 describe claims which should not contain a federal reserve basis:

Subcase 51-10570: This claim is for a stockpond.

Subcase 51-10657: This claim is for a stream.

Subcase 51-11102: This claim is for a stockpond.

Subcase 51-11140: This claim is for a stockpond.

Subcase 51-11141: This claim is for a stockpond.

Subcase 51-11342: This claim is for a stockpond.

Subcase 55-12371: This claim is for a stream.

10. At the request of counsel for the United States, I was asked to determine whether there were any homestead entries of record for the lands described by the Points of Diversion associated with the subcases listed on Attachment 1. I have reviewed the official business records of BLM for each of the subcases listed on Attachment 1 to determine if any homestead entries were ever initiated on lands described in the subcase. The official records I reviewed were the BLM SRBA Claim file, the MTP, and the HI. Those subcases, where there had been an attempt by private parties to homestead or otherwise acquire the land described by the Point of Diversion, are described in the table below. The homestead entries identified below were initiated under the authority of several different homestead acts. Each homestead entry associated with the public domain lands described in the table below failed and was subsequently canceled or relinquished.

Subcase	Case Type	Serial No	Initiated	Closed
51-10912	SRHE	BL044745	10/12/1929	12/18/1940
51-10996	SRHE	B024583	7/4/1922	6/17/1927
51-10996	SRHE	BL045274	4/5/1933	2/17/1939
51-11002	SRHE	B024583	7/4/1922	6/17/1927
51-11002	SRHE	BL045275	5/14/1932	8/11/1939
51-11014	SRHE	B024583	7/4/1922	6/17/1927
51-11014	SRHE	BL045275	5/14/1932	8/11/1939
55-12439	SRHE	BL041876	4/20/1922	9/27/1927
55-12439	SRHE	BL046193	2/23/1932	1/23/1934
55-12893	SRHE	B023037	9/14/1921	10/20/1926
61-10953	SRHE	BL041618	11/14/1919	6/4/1930

61-11355	HE	B06274	5/12/1909	12/19/1912
61-11355	HE	B013796	1/24/1913	4/24/1919

11. At the request of counsel for the United States, I was asked to determine whether there were any prior water right claims asserted by non-federal entities to the sources associated with the subcases identified in Attachment 1. I researched each Point of Diversion and Place of Use described within the subcases identified on Attachment 1 using the information available on the IDWR internet web site. The web site shows IDWR water right records including both claims filed in the SRBA and administrative filings (i.e. applications, permits and licenses not filed in the SRBA). I identified two overlapping non-federal claims with senior priority dates. The following is a summary of each subcase identified on Attachment 1 having an overlapping senior non-federal water right claim:

Subcase 55-10384: POD overlaps with non-federal claim 55-10323 that has a priority date of 6-1-1942.

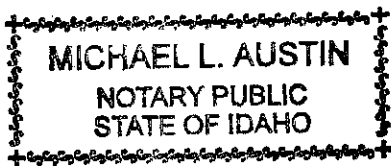
Subcase 55-10857: POD overlaps with non-federal claim 55-10320 that has a priority date of 6-1-1942.

Robert R. Mallis

Robert R. Mallis

Subscribed and sworn to before me this 11th day of February, 2004.

Witnessed by my hand and official seal



Michael Austin

Notary Public for State of Idaho

Residing at: Ada County

My Commission Expires: 12-09-08

Attachment 1
PWR 107 Subcases

51-10570
51-10657
51-10888
51-10912
51-10918
51-10924
51-10945
51-10951
51-10972
51-10976
51-10984
51-10996
51-11002
51-11014
51-11102
51-11140
51-11141
51-11157
51-11342
55-10384
55-10621
55-10857
55-11225
55-11702
55-11722
55-11724
55-11726
55-11728
55-11827
55-12213
55-12371
55-12439
55-12701
55-12893
55-13403
61-10953
61-11355
61-11453
65-19886
65-20041

Attachment 2
State Based Subcases

51-10398
51-10481
51-10897
55-12854
55-13383
65-20553
65-20558

ATTACHMENT 3

Public Water Reserve 83

dated 04-15-1922

ORDER OF WITHDRAWAL

PUBLIC WATER RESERVE NO. 83

Under and pursuant to the provisions of the act of Congress approved June 25, 1910 (36 Stat., 847), 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, 1912 (37 Stat., 497), it is hereby ordered that the lands hereinafter listed 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 (39 Stat., 852).

CALIFORNIAMount Diablo Meridian

37 T. 37 N., R. 16 E., Sec. 21, NW $\frac{1}{4}$ of NE $\frac{1}{4}$,
NW $\frac{1}{4}$ of NE $\frac{1}{4}$,
NW $\frac{1}{4}$ of SW $\frac{1}{4}$.

IDAHOBoise Meridian

64 T. 11 S., R. 3 E., Sec. 24, SW $\frac{1}{4}$ of NW $\frac{1}{4}$,
NW $\frac{1}{4}$ of SW $\frac{1}{4}$.

65 T. 11 S., R. 4 E., Sec. 30, lot 3.

NEVADAMount Diablo Meridian

112- T. 39 N., R. 26 E., Sec. 3, lot 16.

OREGON

Willamette Meridian

75 T. 24 S., R. 45 E., Sec. 14, SE $\frac{1}{4}$ of SW $\frac{1}{4}$.

76 T. 24 S., R. 46 E., Sec. 11, NW $\frac{1}{4}$ of SW $\frac{1}{4}$.

Amey H. H. H.
President.
April 15, 1922.

CERTIFICATE OF SERVICE

I certify that on February 11, 2004, I severed a true and correct copy of the foregoing **AFFIDAVIT OF ROBERT R. MALLIS FOR SUBCASE NUMBER 51-10398 et. al., together with Attachments 1 through 3** by placing the documents in the United States mail in Boise, Idaho, postage paid, and addressed as follows:

1. Original to:

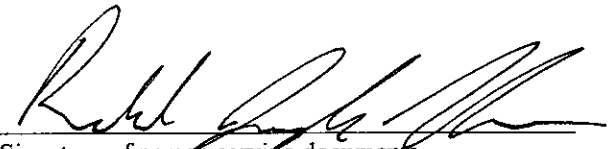
Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
P. O. Box 2707
Twin Falls, Idaho 83303-2707

2. Copy to:

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

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

U.S., Department of Justice
Environment and Natural
Resources Division
General Litigation Section
550 West Fort Street, MSC 033
Boise, Idaho 83724



Signature of person serving documents