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United States Department of the Interior

Department of Water Resources



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
47-15285, et. al.

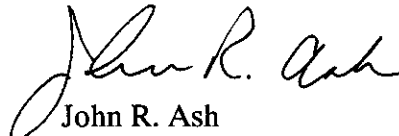
April 8, 2004

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 47 as requested by Special Master Dolan. The original document has been submitted to the SRBA District Court (4/8/04) and this copy is provided for your review and records.

Sincerely,


John R. Ash
Natural Res. Spec.

Enclosure

APR 12 2004

Department of Water Resources

Names of Parties Filing Document:

UNITED STATES OF AMERICA

Attorneys' Names and Addresses:

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 Assistant Attorney General
 Environment and Natural Resources Division

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 General Litigation Section
 Environment and Natural Resources Division
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 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: **47-15285 et. al.**
) See Attachment #1
)

Case No. 39576

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

STATE OF IDAHO)

ss:

COUNTY OF TWIN FALLS)

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 the Interior, Bureau of Land Management. 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 Fighting programs at the BLM, Arizona Strip (St. George, Utah) and Bruneau (Boise, Idaho) Field Offices;

b. Since January of 1992, I have been a Natural Resource Specialist in the BLM, Lower Snake River District, Jarbidge Field Office. My present position is that of a Natural Resource Specialist (Range Management, Water Rights, Minerals, Water Quality, etc.) for the United States, Department of the Interior, Bureau of Land Management (hereinafter "BLM"), Lower Snake River District, Jarbidge Field Office, located in Twin Falls, Idaho.

2. As part of my assigned water right duties and responsibilities, since January 1992, I have fulfilled the leadership role in the duty of coordinating the activities of the BLM with the SRBA for the Jarbidge Field Office of the Lower Snake River District (hereinafter "LSRD"), and have been 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 SRBA in Idaho at the Field Office level. In that capacity, I provide leadership, 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.

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, ponds, 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 and verifying the existence of improvement projects, to determine when they were constructed, whether they were completed properly, whether still functional or not, who contributed to the construction costs and in what amounts, and to determine whether water is present and in what amounts. This was all done to identify candidates for filing SRBA water claims.

b. As a Water Rights Specialist in the BLM, Jarbidge Field Office, it is my responsibility to provide leadership, 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 assistance to BLM Jarbidge Field Office personnel as to investigating and preparing claims, how to interpret water rights and how they relate to other water right claims. 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. At the field office level, I helped develop the investigative criteria to be used for the BLM field office to investigate water sources for claim preparations 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 121 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 121 subcases shown in Attachment 1 are BLM water right claims for naturally-occurring free-flowing springs, except where noted below under paragraph 6.b.

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". Additionally, 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 Director's Report abstracts and/or 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 47-15468, 47-15471, 47-15472, 47-15473, 47-15492, 47-15529, 47-15532, 47-15535, 47-15546, 47-15563, 47-15875, 47-16558, 47-16563, and 47-16564:

The lands described in these subcases are also subject to a federal reserve pursuant to Executive Order dated 05-31-1915 and known as **Public Water Reserve 28** (hereinafter "PWR 28"). 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 May 31, 1915 and known as PWR 28. These subcases are subject to both PWR 28 and PWR 107 as the water sources claimed are to springs.

b. Subcases 47-15478, 47-15480, 47-15482, 47-15487, 47-15538, 47-15549, 47-15607, and 47-15610: As these subcases describe claims to streams, the lands described in these subcases would only be subject to a federal reserve pursuant to **PWR 28**. This reservation is not limited to certain water source types. As these subcases do not describe springs or waterholes, PWR 107 would not apply to these subcases.

7. I have reviewed the official business records of BLM and compared the subcases listed on Attachment 1 to BLM's Master Title Plats and Historical Indexes. 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 the Interior administration.

a. With regard to those subcases listed under paragraphs 6.a. and 6.b., I was able to determine that those subcases were also located on unreserved federal public domain as of May 31, 1915, which was the date of PWR 28.

8. The claimed water sources described by the subcases listed on Attachment 1 were verified and confirmed by field investigations, sometimes more than once.

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 located at the claimed Point of Diversion and Place of Use, except as noted below under paragraph 11 a.

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 47-15482:** 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 ¼, NE ¼ SE ¼, S13, T.16S., R.12E., instead of R.13E., (beginning). The incorrect POD was a typographical error and oversight by the BLM or in IDWR's recommendation and/or abstract as the ending POD and two POUs were claimed with the correct locations in R.12E.

ii. **Subcase 47-15549:** Upon closer investigation of the BLM Claim file, the MTP, and the HI, it was discovered that this instream stockwater claim is partially subject to a federal reserve pursuant to **PWR 28** and that the claim should be appropriately split into two “new” separate claims: one based on state law and the other based upon state and federal law. The federal claim basis is claimed pursuant to an Executive Order, dated May 15, 1915, and known as **Public Water Reserve 28**. 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. The new assigned subcase numbers and appropriate POD and POU descriptions for each of the claims are as follows.

1. **Subcase 47-17115**, subject to state law only would be:

PODs: T16S, R13E, S20, SESENW (beginning), and S20, NESWSE (ending); and S28, NWNWNW (beginning), and S28, SWSSENW (ending).

POUs: T16S, R13E, S20, SWNE, SENW, NWSE, and SWSE; and S28, NENW, NWNW, and SENW.

2. **Subcase 47-17116**, subject to state and federal law:

PODs: T16S, R13E, S28, NWNESW (beginning), and S28, Lot 4 (SWSWSW) (ending).

POUs: T16S, R13E, S28, NESW, NWSW, and Lot 4 (SWSW).

iii. **Subcase 47-15812:** 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 NW ¼ SW ¼, S10, T.08S., R.13E., instead of SW ¼ NW ¼. The incorrect POU may have been a transposed typographical error or

oversight by the BLM or in IDWR's recommendation and/or abstract as the POD was claimed with the correct location.

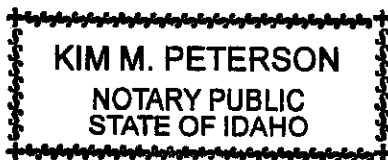
iv. **Subcase 47-16564:** Upon closer inspection of the BLM Claim File, field investigation, and its respective map, it was discovered that the **POD** would be more accurately described as NW ¼, NE ¼, SE ¼, S28, T.16S., R.13E., instead of the SW ¼, SE ¼, NE ¼. Similarly, the **POU** should be described as NE ¼ SE ¼, S28, T.16S., R.13E., instead of the SE ¼, NE ¼. The incorrect POD and POU may have been a transposed typographical error or oversight by the BLM or in IDWR's recommendation and/or abstract.

v. **Subcase 47-16578:** 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 at the POD in SW ¼ NW ¼, S09, T.15S., R.13E., instead of the NE ¼ SW ¼. This corrected POU would therefore be consistent with the ground verified POD. The incorrect POU may have been a typographical error or oversight by the BLM or in IDWR's recommendation and/or abstract as the POD was claimed with the correct location.

John R. Ash
John R. Ash

Subscribed and sworn to before me this
Witnessed by my hand and official seal.

8th day of April, 2004.



Kim M. Peterson
Notary Public in and for the State of Idaho

Residing at: Gooding

My Commission Expires: 1/15/2010

CERTIFICATE OF SERVICE

I certify that on April 8, 2004, I served a true and correct copy of the foregoing **AFFIDAVIT OF JOHN R. ASH; SUBCASE NUMBERS: 47-15285 et. al., together with Attachment 1 and Attachment 2** by placing the documents in the United States Mail in Twin Falls, Idaho, postage paid, and addressed as follows:

Original to:

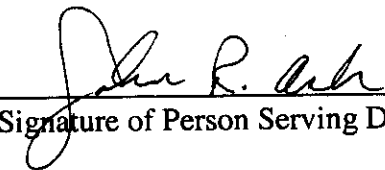
Clerk of the District Court (Hand delivered)
Snake River Basin Adjudication
253 Third Avenue North
P.O. Box 2707
Twin Falls, ID 83303-2707

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

47-15285	47-15473	47-15607	47-16518
47-15287	47-15478	47-15610	47-16519
47-15297	47-15480	47-15638	47-16520
47-15299	47-15482	47-15641	47-16521
47-15310	47-15487	47-15644	47-16522
47-15319	47-15492	47-15656	47-16524
47-15334	47-15495	47-15665	47-16531
47-15337	47-15498	47-15677	47-16534
47-15340	47-15501	47-15680	47-16535
47-15343	47-15507	47-15722	47-16536
47-15346	47-15510	47-15726	47-16543
47-15349	47-15515	47-15734	47-16545
47-15352	47-15529	47-15738	47-16546
47-15399	47-15532	47-15742	47-16554
47-15402	47-15535	47-15785	47-16555
47-15405	47-15538	47-15791	47-16556
47-15408	47-15540	47-15799	47-16558
47-15411	47-15543	47-15810	47-16560
47-15414	47-15546	47-15812	47-16561
47-15417	47-15549	47-15833	47-16562
47-15427	47-15551	47-15875	47-16563
47-15430	47-15554	47-15895	47-16564
47-15447	47-15557	47-16477	47-16565
47-15450	47-15560	47-16478	47-16577
47-15451	47-15563	47-16481	47-16578
47-15454	47-15566	47-16494	47-16584
47-15457	47-15573	47-16496	47-16590
47-15460	47-15576	47-16509	47-16591
47-15465	47-15581	47-16510	47-16592
47-15468	47-15584	47-16517	
47-15471			
47-15472			

ATTACHMENT 2

Public Water Reserve 28

05-31-1915

Executive Order

Signed by President Woodrow Wilson

DEPARTMENT OF THE INTERIOR
UNITED STATES GEOLOGICAL SURVEY
WASHINGTON

OFFICE OF THE DIRECTOR

May 15, 1915

521110
Registered G.L.O. JUN 3 1915
Referred to
Assigned to
Answered by
Noted
File

The Honorable,

The Secretary of the Interior.

Sir:

In accordance with your instructions, I recommend that the lands hereinafter listed, upon which watering places are reported to exist, be withdrawn from all forms of entry except those specifically excepted under the withdrawal acts (36 Stat., 847, 37 Stat., 497). This withdrawal (Public Water Reserve No. 28, Idaho No. 1), involving approximately 5,765 acres in the various arid parts of Idaho, is recommended in order that the right to the use of the few springs located in the areas may remain in the public.

Respectfully,

MAY 26 1915

Respectfully referred to the President with favorable recommendation.

Allen M. Lane

Geo. C. Fisher
Director.



*Received by Mr. O. June 16 1915 521110
Posted in Div. O. JUN 17 1915 521110*

*June 11 1915 Order transmitted.
To "O" for posting.
Referred to "C".
MAY 15*

ORDER OF WITHDRAWAL

Public Water Reserve No. 28, Idaho No. 1

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 described be, and the same are hereby, withdrawn from settlement, location, sale, or entry, and reserved for public use.

Boise Meridian

- T. 10 N., R. 22 E., All land within one-quarter mile of a spring and water course leading therefrom located approximately in what will be when surveyed the $\frac{W}{4}$ of $\frac{W}{4}$, Sec. 17, and $\frac{E}{4}$ of $\frac{E}{4}$, Sec. 18.
- T. 10 N., R. 40 E., All land within one-quarter mile of Remington waterhole, located approximately in what will be when surveyed Sec. 12;
All land within one-quarter mile of Lava waterhole, located approximately in what will be when surveyed Sec. 24.
- T. 16 S., R. 12 E., Sec. 12, $\frac{E}{4}$;
Sec. 13, $\frac{E}{4}$;
Sec. 24, $\frac{E}{4}$;
Sec. 25, $\frac{NE}{4}$.
- T. 15 S., R. 13 E., Sec. 22, $\frac{NE}{4}$;
Sec. 23, all;
Sec. 26, $\frac{NE}{4}$;
Sec. 32, all.

Public Water Reserve No. 28, Idaho No. 1

6-3

T. 16 S., R. 13 E., Sec. 5, all;
Sec. 8, all;
Sec. 11, $\frac{1}{2}$;
Sec. 14, NE $\frac{1}{4}$;
Sec. 21, E $\frac{1}{2}$;
Sec. 28, $\frac{1}{2}$.

T. 14 S., R. 30 E., Sec. 31, SW $\frac{1}{4}$ of NE $\frac{1}{4}$, E $\frac{1}{2}$ of NW $\frac{1}{4}$.

T. 6 S., R. 35 E., Sec. 33, SE $\frac{1}{4}$ of NE $\frac{1}{4}$.

Boise T. 4 S., R. 5 W., Sec. 29, SW $\frac{1}{4}$ of NW $\frac{1}{4}$.

Wendell Nelson
President.

31 May 1915.