

Fax

May 27, 2004

**TO: Special Master Cushman, Boise Office
David Barber, AG's Office
Nick Spencer, Attorney for IDWR
Lee Leiminger, DOJ-ENRD, Denver**

FROM: Fred Price, BLM-ISO

**RE: PWR Affidavit
24-10263,
24-10331,
24-10373**

Names of Parties Filing Document:

UNITED STATES OF AMERICA

Attorneys' Names and Addresses:

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

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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

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Subcase Numbers: 24-10263, 24-10331,
 and 24-10373

Case No. 39576

**AFFIDAVIT OF
 FREDRIC W. PRICE**

STATE OF IDAHO)

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ss:

COUNTY OF ADA)

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

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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 above captioned subcases representing 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 above captioned subcases 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 above captioned subcases to BLM's MTPs and HIs. I was able to determine that each of the above captioned subcases 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. Subcase 10373: The land, upon which the spring described in this claim resides, was unreserved federal public domain on April 17, 1926. Private Exchange IDI-034332 culminated in this land being disposed of on 06-30-2003 pursuant to Patent Number 11-2003-0083 issued to Hartman Ranch LLC. This land is currently in private ownership.

8. The claimed water source described by the above captioned subcases were confirmed by field investigation.

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9. Based upon the field verification and my review of the field investigation documents for the above captioned subcases, 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 above captioned subcases is a **spring or waterhole** located at the claimed Point of Diversion (hereinafter "POD") and Place of Use (hereinafter "POU").

11. I have reviewed the official business records of BLM for the above captioned subcases for a federal reserved water right pursuant to PWR 107. **The elements of the claimed water rights** have been verified through examination of the claim file and physical field investigation and are **correctly described** in the abstract/recommendations 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 above captioned subcases. 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 above captioned subcases, **except where noted below**. The homestead entries identified below were initiated under the authority of the Stock Raising Homestead Act of 12-29-1916. 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). The homestead entries listed below failed and were subsequently relinquished or canceled.

a. The following table identifies all failed attempts to homestead.

Case Type	Serial No	Initiated	Closed	Subcase
SRHE	BL-036222	02-08-1923	11-08-1928	24-10263
SRHE	BL-044032	12-20-1928	07-24-1933	24-10263
SRHE	BL-046845	09-29-1933	09-20-1940	24-10263
SRHE	BL-040700	12-11-1930	11-12-1937	24-10373

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

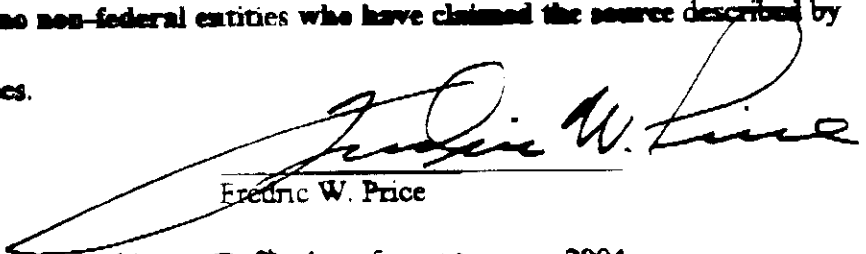
i. Subcase 24-10263: An application for SRHE, made pursuant to the Act of 12-29-1916, was initiated by Hyrum S. Roos on 02-08-1923 for 640.0 acres of public land. The United States assigned serial case file number BL-036222 to this application. The SRHE was subsequently relinquished on 11-08-1928. This 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: 24-10331 and 24-10373.

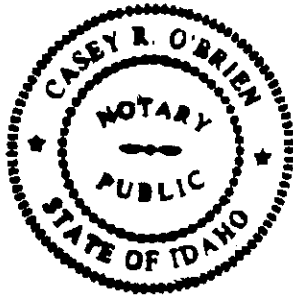
d. The following subcase lies within property no longer owned or administered by BLM: 24-10373 (private land).

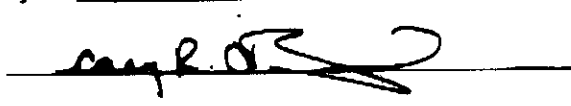
13. At the request of counsel for the United States, I was asked to determine whether there were any senior water right claims asserted by non-federal entities to the sources associated with the above captioned subcases. I researched the Point of Diversion described within these subcases using the information 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 source described by the above captioned subcases.


Fredric W. Price

Subscribed and sworn to before me this 27th day of MAY, 2004.
Witnessed by my hand and official seal.




Notary Public in and for the State of Idaho
Residing at: Merida, Idaho
My Commission Expires: 10/31/2009

CERTIFICATE OF SERVICE

I certify that on May 27, 2004, I served a true and correct copy of the foregoing **AFFIDAVIT OF FREDRIC W. PRICE; SUBCASE NUMBER: 24-10263, 24-10331, and 24-10373** by placing the documents in the United States Mail in Boise, Idaho, postage paid, and addressed as follows:

Original to:

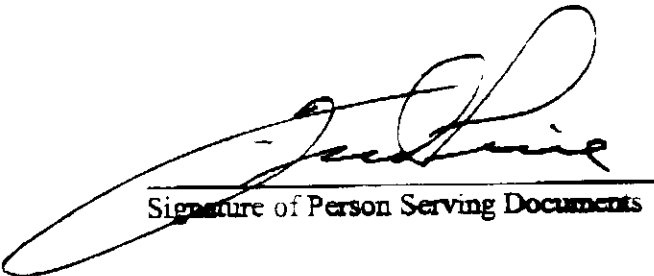
Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
P.O. Box 2707
Twin Falls, ID 83303-2707

Copies to:

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Signature of Person Serving Documents