

RECEIVED

AUG 13 2004

Department of Water Resources
Adjudication Bureau

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

In Re SRBA)
Case No. 39576) Subcase Numbers: 77-11144, 77-11158,
77-11200, 77-11230, 77-11240, 77-11360,
77-11480, 77-11488, and 78-10928
)
) **AFFIDAVIT OF**
) **FREDRIC W. PRICE**

STATE OF IDAHO)
COUNTY OF ADA) ss:

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

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 right 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 be made for 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 for the 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 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.

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

9. Based upon the field verifications 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 verifications and my review of the field investigation documents, the source of water for each of the above captioned subcases is a spring located at the Point of Diversion (hereinafter "POD") described in the Standard Forms 5 that have been filed with the court.

11. I have reviewed the official business records of BLM for the subcases subject to this affidavit for a federal reserved water right basis pursuant to PWR 107. The elements of the claimed water rights have been verified through examination of the claim file and the physical field investigation, and are correctly described in the abstract/recommendation of the claims as 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 above captioned subcases and based upon my review and independent verification, certain elements of the water right claims are not described correctly in IDWR's original abstract/recommendation of the claims. Those incorrect elements were amended pursuant to Standard Forms 5 filed in each of the above captioned subcases. The SF-5s preserve the "dual" based nature of the claims and do not elect a basis. This was done so that BLM could obtain IDWR's concurrence on the SF-5s for the state based portion, as IDWR could not sign onto an SF-5 for a water right based solely upon federal law.

i. **Subcase 77-11144:** 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 SE ¼ NE ¼, S29, T.24N., R.05E. instead of as NE ¼ SE ¼ NE ¼. An SF-5 was filed with the court on 06-08-2004 that affected this change and also preserved the dual-based nature of the claim. BLM would prefer the federal basis go to decree.

//

//

//

ii. **Subcase 77-11158:** 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 NE ¼ SW ¼ NW ¼, S20, T.24N., R.05E. instead of as NW ¼ SW ¼ NW ¼. An SF-5 was filed with the court on 06-08-2004 that affected this change and also preserved the dual-based nature of the claim. BLM would prefer the federal basis go to decree.

iii. **Subcase 77-11200:** 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 SE ¼ NE ¼, S33, T.24N., R.05E. instead of as NW ¼ SE ¼ NE ¼. An SF-5 was filed with the court on 06-08-2004 that affected this change and also preserved the dual-based nature of the claim. BLM would prefer the federal basis go to decree.

iv. **Subcase 77-11230:** 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 SW ¼, S20, T.24N., R.05E. instead of as SE ¼ NE ¼ SW ¼. An SF-5 was filed with the court on 06-08-2004 that affected this change and also preserved the dual-based nature of the claim. BLM would prefer the federal basis go to decree.

//

//

//

//

//

v. **Subcase 77-11240:** 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, S31, T.24N., R.05E. instead of as SE ¼ NE ¼ SE ¼. An SF-5 was filed with the court on 06-08-2004 that affected this change and also preserved the dual-based nature of the claim. BLM would prefer the federal basis go to decree.

vi. **Subcase 77-11360:** 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 NW ¼ NW ¼, S33, T.24N., R.05E. instead of as SW ¼ NW ¼ NW ¼. An SF-5 was filed with the court on 06-08-2004 that affected this change and also preserved the dual-based nature of the claim. BLM would prefer the federal basis go to decree.

vii. **Subcase 77-11480:** 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 NW ¼ NW ¼, S15, T.24N., R.05E. instead of as NW ¼ SW ¼ NW ¼. Similarly, the POU would be more accurately described as NW ¼ NW ¼ instead of a SW ¼ NW ¼. An SF-5 was filed with the court on 06-08-2004 that affected these changes and also preserved the dual-based nature of the claim. BLM would prefer the federal basis go to decree.

//

//

//

//

viii. Subcase 77-11488: 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, S21, T.24N., R.05E. instead of as SE ¼ NE ¼ SE ¼. An SF-5 was filed with the court on 06-08-2004 that affected this change and also preserved the dual-based nature of the claim. BLM would prefer the federal basis go to decree.

ix. Subcase 78-10928: 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 SE ¼ NE ¼, S13, T.21N., R.01E. instead of as SE ¼ SE ¼ NE ¼. An SF-5 was filed with the court on 06-08-2004 that affected this change and also preserved the dual-based nature of the claim. BLM would prefer the federal basis go to decree.

//

//

//

//

//

//

//

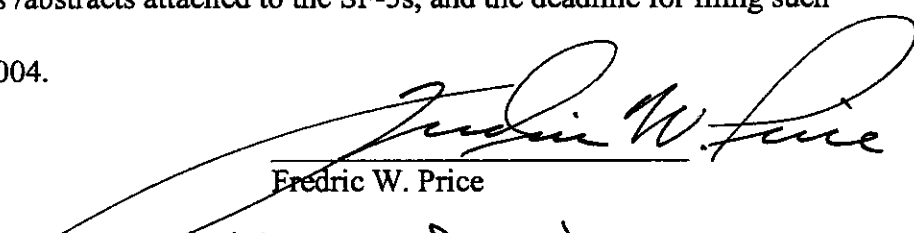
//

//

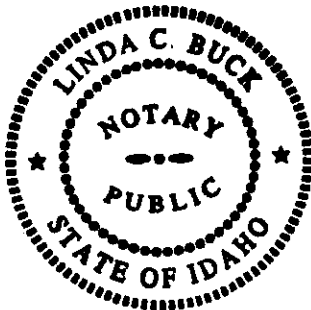
//

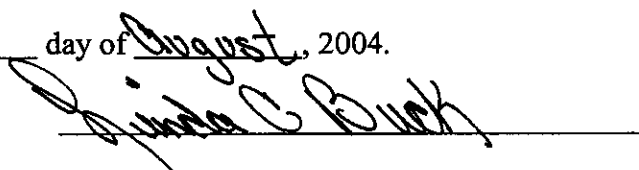
//

12. For each of the above captioned subcases, objections were filed by BLM, the State of Idaho, and several private parties. All parties have been dismissed, except for BLM's objections to its own claims. BLM's objections were resolved by submission of SF-5s in each of the above captioned subcases. All of the SF-5s for the above captioned subcases were filed with the SRBA Court on 06-08-2004. No objections have been filed against the amended director's report recommendations /abstracts attached to the SF-5s, and the deadline for filing such objections was 07-28-2004.


Fredric W. Price

Subscribed and sworn to before me this 11 day of August, 2004.
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 Aug. 12, 2004, I served a true and correct copy of the foregoing **AFFIDAVIT OF FREDRIC W. PRICE; SUBCASE NUMBERS: 77-11144, 77-11158, 77-11200, 77-11230, 77-11240, 77-11360, 77-11480, 77-11488, and 78-10928** by placing the documents in the United States Mail in Boise, Idaho, postage paid, and addressed as follows:

Original to:

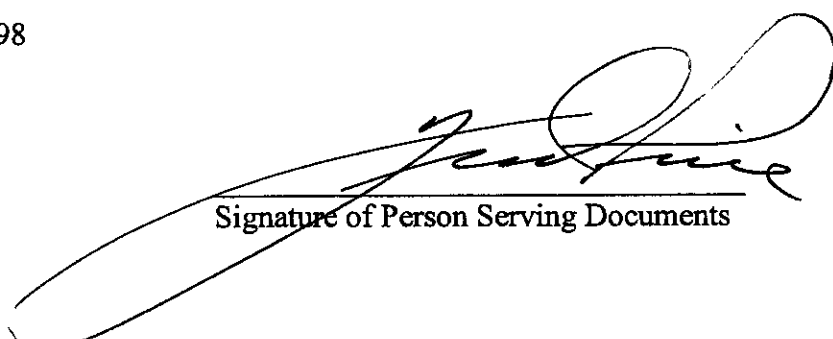
Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
P.O. Box 2707
Twin Falls, ID 83303-2707

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