

AFFIDAVIT OF DAVID J. BARBER DATED JUNE 14, 2002
Page 1

2. Attached to this Affidavit as Exhibit I are pages 1, 8, and 20 of the *Brief For The United States In Opposition* to the petitions for a writ of *certiorari* in Case nos. 98-684 and 98-706. The brief contains the following statement on page 8: "The United States has filed, on behalf of the Department of the Interior's Bureau of Land Management (BLM), approximately 11,000 federal reserved water right claims based on PWR 107 for stockwater purposes."

5. Further your affiant sayeth naught.


DAVID J. BARBER

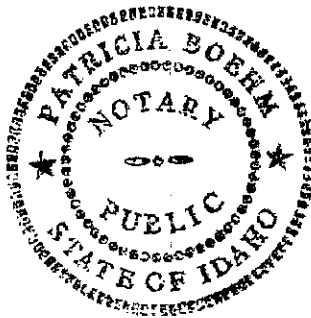
Subscribed and sworn before me this 14th day of June, 2002.



Notary Public for the State of Idaho

Residing at Base ID

My commission expires: 11/6/2003



AFFIDAVIT OF DAVID J. BARBER DATED JUNE 14, 2002

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14th day of June 2002, I caused to be served true and correct copies of the foregoing AFFIDAVIT OF DAVID J. BARBER DATED JUNE 14, 2002-- by the methods designated below as follows:

Mr. Larry Brown, Attorney
U.S. Department of Justice
Environment and Natural Resources Div.
550 W. Fort, Box 033
Boise, Idaho 83724

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☒ Facsimile (202) 305-0274

Mr. R. Lee Leininger, Attorney
U.S. Department of Justice
Environment and Natural Resources Div.
550 W. Fort, Box 033
Boise, Idaho 83724

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☒ Facsimile (303) 312-7379

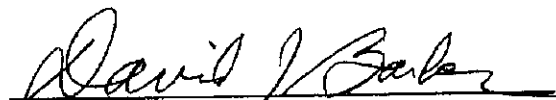

DAVID J. BARBER
Deputy Attorney General
Natural Resources Division

EXHIBIT I

In the Supreme Court of the United States

OCTOBER TERM, 1998

No. 98-684

STATE OF IDAHO, PETITIONER

v.

UNITED STATES OF AMERICA

No. 98-706

JERRY L. HOAGLAND, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

*ON PETITIONS FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF IDAHO*

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the Idaho Supreme Court (Pet. App.¹ 1-12) is reported at 959 P.2d 449. The opinion of the district court (Pet. App. 13-27) is unreported.

JURISDICTION

The judgment of the Idaho Supreme Court was entered on April 6, 1998. A petition for rehearing was

¹ Citations to "Pet. App." are to the appendix in No. 98-684.

2. Petitioner State of Idaho has enacted legislation requiring a general adjudication of water rights in the Snake River Basin within the State's borders. Idaho Code § 42-1406A(1) (1990 & Supp. 1998). Idaho has joined the United States as a party in the Snake River Basin Adjudication (SRBA) pursuant to the McCarran Amendment, 43 U.S.C. 666. See *United States v. Idaho, supra; In re Snake River Basin Water Sys.*, 764 P.2d 78 (Idaho 1988), cert. denied, 490 U.S. 1005 (1989). In response, the United States has filed water rights claims under federal and state law.

a. The United States has filed, on behalf of the Department of the Interior's Bureau of Land Management (BLM), approximately 11,000 federal reserved water right claims based on PWR 107 for stockwater purposes. The BLM asserts those water rights primarily for the benefit of its Taylor Grazing Act permittees, who graze livestock on public lands. The BLM's maintenance of those rights ensures that water will be perpetually available for stockwater purposes by whichever member of the public happens at any time to

generally from private appropriation") (Clerk's R. Exh. 30); *Federal Water Rights of the National Park Service, Fish and Wildlife Service, Bureau of Reclamation and the Bureau of Land Management*, Sol. Op. M-36914, 86 Interior Dec. 553, 580 (1979) ("This blanket withdrawal had the effect of reserving not only the land, but also the water for public use.") (Clerk's R. Exh. 31); 86 Interior Dec. at 581 ("The 1926 reservation was designed to prevent this private monopolization of water on the public domain. The means used was the traditional and most effective way of preserving resources on the public domain, i.e., restricting entry by withdrawing the land and thus maintaining the water thereon open and free for public use.") (emphasis added); *Purposes of Executive Order of April 17, 1926, Establishing Public Water Reserve No. 107*, Sol. Op. M-36914 (Supp. II), 90 Interior Dec. 81, 83 (1988) (Clerk's R. Exh. 32).

CONCLUSION

The petition for a writ of certiorari should be denied.
Respectfully submitted.

SETH P. WAXMAN

Solicitor General

LOIS J. SCHIFFER

Assistant Attorney General

ROBERT L. KLARQUIST

WILLIAM B. LAZARUS

Attorneys

JANUARY 1999

COPY



STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
ALAN G. LANCE

June 18, 2002

Diana Delaney, Chief Clerk
Snake River Basin Adjudication
253 Third Avenue North
PO Box 2707
Twin Falls, ID 83303-2707

Re: In Re SRBA Case No. 39576
Subcase Nos. 34-13676, 34-13677, 34-13678, etc.

Dear Diana:

Enclosed is a copy of our fax transmittal page indicating that the **AFFIDAVIT OF DAVID J. BARBER DATED JUNE 14, 2002** was faxed to your office on June 14, 2002. I spoke with Lettie this morning about the fax. She indicated that I could send I copy of the transmittal and the Affidavit would be back-dated to June 14, 2002.

Please let me or Pat know if there is a problem with this. Thank you for your assistance with this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Janene Hocking", written over a horizontal line.

JANENE HOCKING, PLS
Legal Assistant

/jh

Enclosures
srba courier file.doc

**** Transmit Conf. Report ****

P.1

Jun 14 2002 13:50

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STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
ALAN G. LANCE

June 14, 2002

Via Facsimile: (208) 736-2121

Diana Delaney, Chief Clerk
Snake River Basin Adjudication
PO Box 2707
Twin Falls, ID 83303-2707

Re: In Re SRBA Case No. 39576
Subcase Nos. 34-13676, 34-13677, 34-13678, 34-13679, 34-13681, 34-13682, 34-13683, 34-13684, 34-13685, 34-13686, 34-13687, 34-13689, 34-13690, 34-13691, 34-13692, 34-13693, 34-13694, 34-13695, 34-13696, 34-13697, 34-13698, 34-13699, 34-13700, 34-13701, 34-13702, 34-13703, 34-13704, 34-13705, and 34-13706.

Dear Diana:

Attached is a copy of the **AFFIDAVIT OF DAVID J. BARBER DATED JUNE 14, 2002**, to be filed with the Court. I will be sending by regular U.S. mail a copy of the affidavit to be conformed to the fax filing date and returned to me. I will also include 28 copies of the document for the files of each of the subcases named above.

Thank you for your assistance in this matter.

Sincerely,

A handwritten signature in dark ink, appearing to read "Alan G. Lance".



STATE OF IDAHO

OFFICE OF THE ATTORNEY GENERAL

ALAN G. LANCE

June 14, 2002

Diana Delaney, Chief Clerk
Snake River Basin Adjudication
PO Box 2707
Twin Falls, ID 83303-2707

Re: In Re SRBA Case No. 39576
Subcase Nos. 34-13676, 34-13677, 34-13678, 34-13679, 34-13681, 34-13682, 34-13683, 34-13684, 34-13685, 34-13686, 34-13687, 34-13689, 34-13690, 34-13691, 34-13692, 34-13693, 34-13694, 34-13695, 34-13696, 34-13697, 34-13698, 34-13699, 34-13700, 34-13701, 34-13702, 34-13703, 34-13704, 34-13705, and 34-13706.

Dear Diana:

Enclosed is a copy of the **AFFIDAVIT OF DAVID J. BARBER DATED JUNE 14, 2002**, the original of which was filed with the SRBA Court by facsimile on June 14, 2002. Please conform this document to the fax filed date of June 14, 2002, and return it to me for our files.

Our self-addressed, stamped envelope is included for your convenience in returning the conformed copy to me. I have also included 28 more copies of the affidavit so that each of the files you maintain on these subcases will have its own copy. Thank you for your assistance.

Sincerely,

A handwritten signature in cursive script, reading "Patricia Boehm".

PATRICIA BOEHM, PLS

Secretary

Natural Resources Division

/pb
Enc.

q:\users\pboehm\clksrba.doc