

RECEIVED

DEC 09 2005

DEPARTMENT OF
WATER RESOURCES

Names of Parties Filing Document:

UNITED STATES OF AMERICA

Attorneys' Names and Addresses:

KELLY A. JOHNSON
Acting 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

STATE OF IDAHO)

COUNTY OF ADA)

ss:

)
) Subcase Numbers: 34-13677, 34-13686,
) and 34-13687
)
) **AFFIDAVIT OF**
) **FREDRIC W. PRICE**
)

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 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 for 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 water sources described by the above captioned subcases were confirmed by field investigation.

9. Based upon the field verification and my review of the field investigation documents for each of 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 Point of Diversion (hereinafter "POD") and Place of Use (hereinafter "POU") described in the recommendation/abstract attached to the Standard Forms 5 filed with the court on November 16, 2005.

//

11. I have reviewed the official business records of BLM for each of 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 claim files and physical field investigations and are correctly described in the recommendation/abstract attached to the Standard Forms 5 filed with the court on November 16, 2005. The quantity for a federal reservation based upon Public Water Reserve 107 should be 0.02 cfs, not to exceed 13,000 gpd.

a. BLM would prefer to receive partial decrees for a federal reserve basis.

b. The SF-5 in each of the above captioned subcases removed any reference to other water rights within the remark under the quantity element, such that it now reads: "The quantity of water under this right shall not exceed 13,000 gallons per day."

c. **34-13677:** This claim is to an unnamed spring source located in the NENWNW, S17, T10N, R22E. There are two other public water reserves, besides PWR-107, that affect land and water in this location.

1. **PWR 28:** President Woodrow Wilson signed an Executive Order (EO) on May 31, 1915 that reserved water sources for public use. For the legal land description described above, the EO reserved "...a spring and water course leading therefrom located approximately in what will be when surveyed the W1/2 of W1/2, Sec. 17". See Attachment 1. The only spring producing a water course therefrom within the above described legal description is nearby Poison Spring. It appears that the portion of the EO, affecting this location, is referring to nearby Poison Spring rather than the unnamed spring claimed under 34-13677.

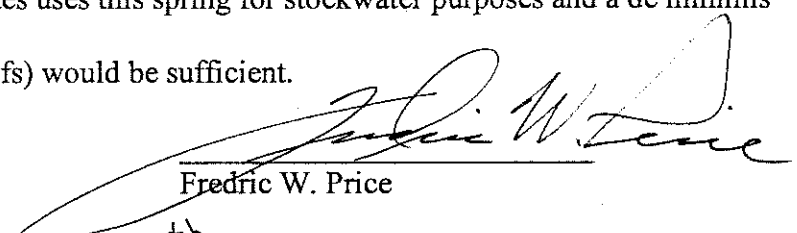
//

//

2. **PWR 66:** President Woodrow Wilson signed an Executive Order on August 15, 1919 that reserved water sources for public use within the above described legal land description. See Attachment 2. PWR 66 applies to the unnamed spring described by 34-13677.

3. **Interpretation 22 of Public Water Reserves 28 and 66:** The Secretary of the Interior updated these PWRs following official surveys to identify the surveyed legal land descriptions affected by the EO. See Attachment 3.

4. For 34-13677, BLM would prefer to receive a partial decree for the earliest applicable federal reserve pursuant to the August 15, 1919 EO for PWR 66. The United States uses this spring for stockwater purposes and a de minimis quantity (0.02 cfs) would be sufficient.


Fredric W. Price

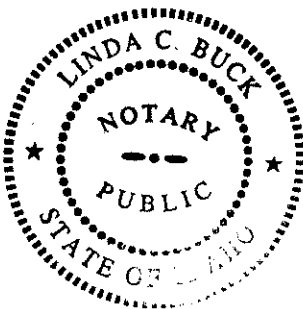
Subscribed and sworn to before me this 7th day of December, 2005.
Witnessed by my hand and official seal.


Linda C. Buck

Notary Public in and for the State of Idaho

Residing at: Mountain Home, ID

My Commission Expires: 12-21-2005



CERTIFICATE OF SERVICE

I certify that on 12/07, 2005, I served a true and correct copy of the foregoing **AFFIDAVIT OF FREDRIC W. PRICE; SUBCASE NUMBERS: 34-13677, 34-13686, and 34-13687; together with Attachments 1-3** by placing the document in the United States Mail in Boise, Idaho, postage paid, and addressed as follows:

Original to:

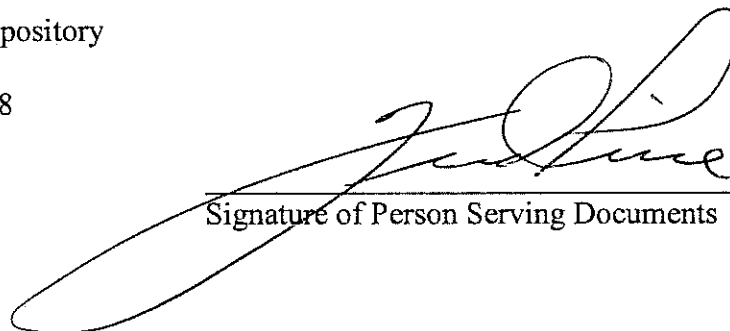
Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
P.O. Box 2707
Twin Falls, ID 83303-2707

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

ATTACHMENT 1

PWR 28

Executive Order dated 05-31-1915 and
known as Public Water Reserve 28

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 herein-after 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
(Unsurveyed) of a spring and water course
leading therefrom located approx-
imately in what will be when sur-
veyed the $W\frac{1}{2}$ of $W\frac{1}{2}$, Sec. 17, and
 $E\frac{1}{2}$ of $E\frac{1}{2}$, Sec. 18.

T. 10 N., R. 40 E., All land within one-quarter mile
(Unsurveyed) of Remington waterhole, located
approximately in what will be when
surveyed Sec. 12;
All land within one-quarter mile
of Lava waterhole, located approx-
imately in what will be when sur-
veyed Sec. 24.

T. 16 S., R. 12 E., Sec. 12, $E\frac{1}{2}$;
Sec. 13, $E\frac{1}{2}$;
Sec. 24, $E\frac{1}{2}$;
Sec. 25, NE $\frac{1}{4}$.

T. 15 S., R. 13 E., Sec. 22, NE $\frac{1}{4}$;
Sec. 23, all;
Sec. 26, NE $\frac{1}{4}$;
Sec. 32, all.

T. 16 S., R. 13 E., Sec. 5, all;
Sec. 8, all;
Sec. 11, S₂;
Sec. 14, NE₄;
Sec. 21, E₂;
Sec. 28, S₂.

T. 14 S., R. 30 E., Sec. 31, SW₄ of NE₄, E₂ of NW₄.

T. 6 S., R. 35 E., Sec. 33, SE₄ of NE₄.

T. 4 S., R. 5 W., Sec. 29, SW₄ of NW₄.

Fredric W. Price
President.

31 May 1915.

ATTACHMENT 2

PWR 66

Executive Order dated 08-15-1919 and
known as Public Water Reserve 66

IDAHO

ORDER OF WITHDRAWAL

PUBLIC WATER RESERVE NO. 66

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., 407), 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., 862).

IDAHO

Boise Meridian

- T. 1 N., R. 5 E., Sec. 4, lots 3 and 4.
T. 10 N., R. 21 E., Sec. 34, SE $\frac{1}{4}$ of NE $\frac{1}{4}$, NE $\frac{1}{4}$ of SE $\frac{1}{4}$,
Sec. 35, S $\frac{1}{2}$ of N $\frac{1}{2}$, W $\frac{1}{2}$ of SW $\frac{1}{4}$, SE $\frac{1}{4}$.
T. 10 N., R. 22 E., Sec. 17, W $\frac{1}{2}$ of NW $\frac{1}{4}$,
Sec. 18, E $\frac{1}{2}$ of SE $\frac{1}{4}$.
T. 2 S., R. 17 E., Sec. 15, SE $\frac{1}{4}$ of SW $\frac{1}{4}$, SW $\frac{1}{4}$ of SE $\frac{1}{4}$,
Sec. 22, SW $\frac{1}{4}$ of NE $\frac{1}{4}$, E $\frac{1}{2}$ of NE $\frac{1}{4}$.
T. 15 S., R. 22 E., Sec. 34, W $\frac{1}{2}$ of NE $\frac{1}{4}$, NW $\frac{1}{4}$ of NW $\frac{1}{4}$,
E $\frac{1}{2}$ of NW $\frac{1}{4}$.

NEVADA

Mt. Diablo Meridian

- T. 37 N., R. 53 E., Sec. 16, S $\frac{1}{2}$, S $\frac{1}{2}$ of N $\frac{1}{2}$.

UTAH

Salt Lake Meridian

T. 14 N., R. 15 W., Sec. 22, SW $\frac{1}{4}$ of NW $\frac{1}{4}$.
T. 13 N., R. 16 W., Sec. 18, SW $\frac{1}{4}$ of SE $\frac{1}{4}$,
Sec. 26, NE $\frac{1}{4}$ of NW $\frac{1}{4}$,
Sec. 27, SE $\frac{1}{4}$ of NW $\frac{1}{4}$.
T. 14 S., R. 1 W., Sec. 4, SW $\frac{1}{4}$ of SW $\frac{1}{4}$.
T. 4 S., R. 10 W., Sec. 17, SE $\frac{1}{4}$ of SE $\frac{1}{4}$.
T. 31 S., R. 14 W., Sec. 7, NE $\frac{1}{4}$ of SW $\frac{1}{4}$,
Sec. 18, lot 1.
T. 31 S., R. 15 W., Sec. 12, NW $\frac{1}{4}$ of SW $\frac{1}{4}$, NE $\frac{1}{4}$ of SW $\frac{1}{4}$.
T. 32 S., R. 16 W., Sec. 29, SE $\frac{1}{4}$ of NE $\frac{1}{4}$.
T. 31 S., R. 22 E., Sec. 1, lots 10 and 16.
T. 35 S., R. 23 E., Sec. 14, SW $\frac{1}{4}$ of NE $\frac{1}{4}$.
T. 30 S., R. 25 E., Sec. 24, S $\frac{1}{2}$ of NW $\frac{1}{4}$, NE $\frac{1}{4}$ of SW $\frac{1}{4}$.

Andrew A. [Signature]
President.

W. C. [Signature] 1919

ATTACHMENT 3

Interpretation No. 22
of Public Water Reserves 28 and 66

Secretarial Order dated 01-12-1926.

66

INTERPRETATION NO. 22

of Public Water Reserves Nos. 28 and 66,

Idaho

It is hereby ordered that so much of the orders of withdrawal of May 31, 1915, creating Public Water Reserve No. 28, and of August 15, 1919, creating Public Water Reserve No. 66, as describes the following unsurveyed lands be construed in conformity with recent surveys accepted by the General Land Office to describe the following tracts:

Boise Meridian

That part of Public Water Reserve No. 28 now reading:

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 W₁ of W₁, Sec. 17, and E₂ of E₂, Sec. 18.

That part of Public Water Reserve No. 66 now reading:

T. 10 N., R. 22 E., Sec. 17, W₁ of NW₁,
(Unsurveyed) Sec. 18, E₂ of SE₁.

Describes:

T. 10 N., R. 22 E., Sec. 17, NW₁, W₁ of SW₁, SE₁ of SW₁, SW₁ of SE₁,
Sec. 18, E₂ of SE₁.

Frederic W. Price
Secretary

JAN 12 1926