

913

RECEIVED

SEP 14 2010

DEPARTMENT OF
WATER RESOURCES

Names of Parties Filing Document:

UNITED STATES OF AMERICA

Attorneys' Names and Addresses:

IGNACIA S. MORENO
Assistant Attorney General
Environment and Natural Resources Division

R. LEE LEININGER
Trial Attorney, U.S. Dept. of Justice
Environment and Natural Resources Division
Natural Resources Section
550 West Fort Street, MSC 033
Boise, Idaho 83724
Ph.: (303) 844-1364 FAX: (303) 844-1350

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: 45-12549, 45-12550,
Case No. 39576) 45-12551 and 45-12813
)
) AFFIDAVIT OF
) FREDRIC W. PRICE
)
_____)

STATE OF IDAHO)
)
) ss:
COUNTY OF ADA)

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

1. My name is Fredric W. Price. I am an employee of the United States, Department
of Interior, Bureau of Land Management. The following statements are based upon my personal

knowledge. 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. Water Rights Specialist at the BLM, State Office in Boise, Idaho since August of 1993.

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), prepare as-built drawings, 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 at the BLM State Office, it is my responsibility to provide guidance and direction to Idaho BLM offices in all matters relating to water rights. I am also responsible for making recommendations to the Department of Justice and provide technical support on matter involving the SRBA. 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 used these resources to determine the ownership history for thousands of legal land descriptions. I provide training to BLM employees in how to read and interpret 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 for thousands of water right descriptions

for use within settlement documents (such as 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 water right field investigations, Master Title Plats, Historical Indexes, Control Document Indexes (hereinafter "CDI"), Tract Books, Serialized Case Recordation Files, Cadastral Survey Plats, Mining Claim Files, Grazing Allotment Files, Grazing Operator Files, 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 of the above matters.

4. At the request of counsel for the United States, I have reviewed the official business records of BLM and IDWR regarding the captioned subcases for an 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 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 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 captioned subcases were confirmed by field investigation.

9. Based upon the field verifications and my review of the field investigation and claim file documents for the 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 investigations and claim file documents, the source of water for the captioned subcases are springs or waterholes located at the Points of Diversion (hereinafter "POD") and Places of Use (hereinafter "POU") described in the Director's Report recommendations/abstracts dated February 27, 1998 from the Basin 45 Domestic & Stockwater Director's Report.

11. I have reviewed the official business records of BLM for the 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 Director's Report recommendations/abstracts dated February 27, 1998 from the Basin 45 Domestic & Stockwater Director's Report. The quantity for a federal reservation based upon Public Water Reserve 107 should be 0.02 cfs, not to exceed 13,000 gpd.

BLM prefers to receive a partial decree under the Federal Reserve basis.

12. The status of objections and pending Motions for Leave to File Late Objection in the above captioned subcases are as follows:

a. **STATE OF IDAHO:** The State of Idaho filed objections to all of the captioned subcases on July 2, 1998. All of the objections were withdrawn by the Stipulation to Resolve Objections (37-02809 et al) that was filed with the court on March 11, 2003.

b. **BRUCE & JARED BEDKE:** The court granted the Bedke Motions to File Late Objections in all of the captioned subcases on April 3, 2006. All of the objections to the captioned subcases were withdrawn by the Stipulation of Dismissal of Objections (45-12475 et al) that was filed with the court on August 10, 2007.

c. **MICHAEL & GARY POULTON:** The Poultons each filed a letter (45-02769

et al) with the court in all of the captioned subcases on April 7, 1999, which the court treated as Motions for Leave to File Late Objections.

The court required the Poultons to submit revised objection lists in order to clarify what subcases they wished to pursue, and the Poultons each submitted a Revised List (45-02769 et al) of subcases on July 9, 1999. They amended their motions with regard to subcase numbers. The Revised Lists do not include any of the captioned subcases. therefore the Poultons' pending Motions for Leave to File Objection were withdrawn by amendment (i.e. omission) pursuant to the Revised Lists.

The Supplemental Brief (45-02769 et al) filed on June 1, 2001 by Norm Semanko on behalf of the members of the Federal Stockwater Group also clarified what subcases the Poultons wished to pursue on Exhibit B. All of the captioned subcases are struck out on Exhibit B, which indicates that the Poultons had previously withdrawn their pending Motions for Leave to File Late Objections in those subcases.

d. JOE TUGAW: Tugaw filed a Motion to File Late Objection in all of the captioned subcases on July 12, 1999.

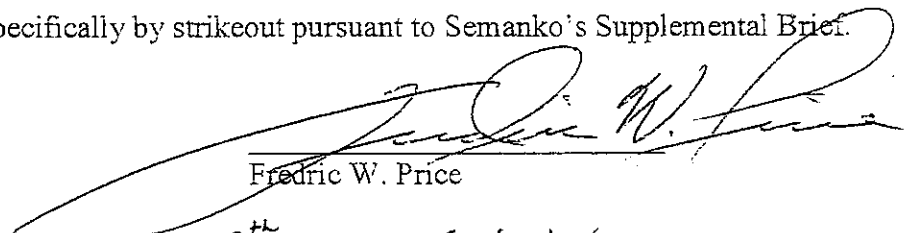
The pending motions for late objection by members of the Federal Stockwater Group (including Tugaw and the Poultons) were resolved by the Stipulation and Joint Motion for Order Approving Stipulation (37-02809 et al) that was filed with the court on August 29, 2002 ("Stipulation"). The Stipulation states under enumerated paragraph #1 that: "The Private Parties agree to dismiss with prejudice their objections and responses to the Water Rights listed on Exhibit A." All of the above captioned subcases are listed on Exhibit A. Tugaw has not yet filed anything with the court to implement the Stipulation.

e. STATUS: All of the above captioned subcases are uncontested. except for two

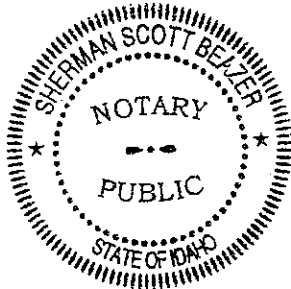
issues:

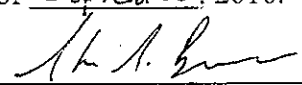
i. The pending Motions to File Late Objection filed by members of the Federal Stockwater Group (including Tugaw and the Poultons), in all of the captioned subcases, have been resolved by the August 29, 2002 Stipulation which requires the withdrawal with prejudice of the pending motions for late objection. Tugaw has not yet filed anything with the court to withdraw his pending motions for late objection.

ii. The court's Register of Actions ("ROA") in these subcases do not indicate that the pending Motions for Leave to File Late Objection filed by Michael & Gary Poulton were withdrawn by amendment pursuant to the Poultons' Revised Lists, or specifically by strikeout pursuant to Semanko's Supplemental Brief.


Fredric W. Price

Subscribed and sworn to before me this 13th day of September, 2010.
Witnessed by my hand and official seal.




Sherman Scott Beazer
Notary Public in and for the State of Idaho
Residing at: Boise, Idaho
My Commission Expires: 12-10-2015

CERTIFICATE OF SERVICE

I certify that on Sep. 13, 2010, I served a true and correct copy of the foregoing **AFFIDAVIT OF FREDRIC W. PRICE; SUBCASE NUMBER: 45-12549, 45-12550, 45-12551 and 45-12813** 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

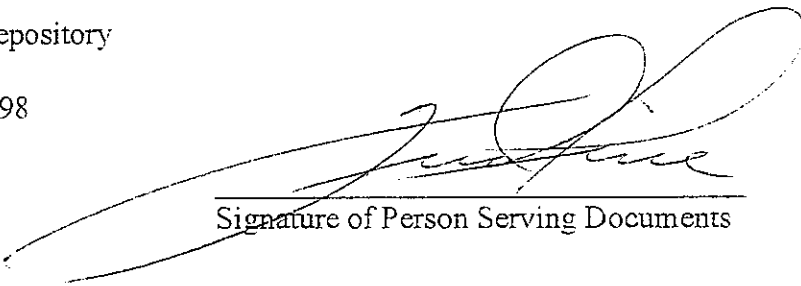
Copies to:

U.S. Department of Justice
General Litigation Section
Environment and Natural Resources Division
550 West Fort Street, MSC 033
Boise, ID 83724

Travis L. Thompson
Barker, Rosholt & Simpson, LLP
P.O. Box 485
Twin Falls, ID 83303-0485
Attorney for Michael & Gary Poulton
Attorney for Joe Tugaw

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