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DEPARTMENT OF
WATER RESOURCES

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Counsel for the United States of America

**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: 51-13089, 51-13090,
Case No. 39576) 51-13091, 51-13092, 51-13093, 51-13094,
) 51-13095, 51-13096, 51-13097, 55-13897,
) 55-13898, 55-13899, 55-13900, 55-13901,
) 55-13902, 55-13903
)
) **AFFIDAVIT OF**
) **FREDRIC W. PRICE**
_____)
)

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

FREDRIC W. PRICE, being first duly sworn upon oath, deposes and says:

I. Introduction.

1. Current position and duties. My name is Fredric W. Price. I am an employee of the United States, Department of the 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 the Interior, Bureau of Land Management (BLM), Idaho State Office. BLM has formally assigned me with a delegation of authority for all water issues, including but not limited to, settlement authority for the agency and for all aspects of BLM's participation in general stream adjudications in Idaho and part of Nevada (*e.g.*, Snake River Basin Adjudication (SRBA), Coeur d'Alene-Spokane River Basin Adjudication, Palouse River Basin Adjudication, Clark Fork -Pend Oreille River Basin Adjudication, Jarbidge River Basin Adjudication (Nevada), Bruneau River Basin Adjudication (Nevada)). In this capacity, I provide guidance, training 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: filing of Notices of Claim; preparing opinions; recommendations; objections; responses; and other litigation documents/products to the Department of the Interior Solicitor's Office and the Department of Justice.

2. Positions with BLM. I have been employed by the BLM since 1982 in the following positions:

a. Eleven and one-half years in various positions within the Rangeland Firefighting Program in the BLM, Shoshone Field Office. I spent twelve months over

three years working on that office's water rights team to develop and create 5,500 BLM claims;

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

3. **Water rights experience.** My experience with water rights is as follows:

a. My eleven and one-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 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 rights 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 potential water rights claims for filing in the SRBA, 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, training and direction to Idaho BLM offices in all matters relating to water rights. I am responsible for determining the position of the

agency and making recommendations to the Solicitor's Office and the Department of Justice. I provide decision making and technical support on any and all matters involving general stream adjudications affecting Idaho BLM. As Water Rights Specialist in the BLM State Office, I work on water rights issues on a daily basis, including the following activities. I develop policy for Idaho BLM across several programs to deal with water issues, such as the range management and realty programs. I help develop water policy for BLM on a national level. I train BLM employees in understanding water rights, including the elements of water rights, filing procedures, and the steps involved in adjudicating and permitting rights. I have reviewed tens of thousands of legal land descriptions represented by Points of Diversion (POD) and Places of Use (POU) that are published in Idaho Department of Water Resources (IDWR) Director's Reports, in order 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 have provided training to BLM employees in how to read and interpret Master Title Plats and Historical Indexes. I have reviewed hundreds of patents and deeds to determine property owners of parcels described by legal description. I have developed and determined the settlement position of the agency for thousands of subcases. I have determined the changes needed for thousands of water right descriptions for use within settlement documents (such as the Standard Form 5 (SF-5) or Stipulated Agreements), in order to resolve objections involving the BLM. I have extensive knowledge of, and experience with, the official business records of BLM and IDWR, including but not limited to: BLM water right claim files; BLM water right field investigations; Master Title Plats; Historical Indexes; Control Document Indexes (CDI);

Tract Books; Serialized Case Recordation Files; Homestead Entries; Cadastral Survey Plats; Mining Claim Files; Grazing Allotment Files; Grazing Operator Files; IDWR Adjudication Files; and IDWR Water Right Files. I provide advice, training, guidance and direction to BLM employees concerning: investigation and preparation of claims; interpretation of water rights; and the relationship among water rights. For thousands of subcases, I have made determinations as to whether multiple claims exist for the same source and the relationship among claims. I have reviewed hundreds of Range Improvement Project Files for the purpose of locating the project and determining when it was constructed, whether it was completed, if it is still functional, the persons who contributed to the construction, the amounts of contributed, and whether water is present and, if so, in what quantities. 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 numerous investigations of water rights in the field, including BLM's Owyhee Wild and Scenic Rivers claims that are the subject of this affidavit. I routinely provide technical assistance, reports, recommendations and opinions to the Department of the Interior Solicitor's Office and the Department of Justice concerning all of the above matters. I have testified in person and by affidavit in numerous state and federal court proceedings regarding technical water right matters.

4. Involvement with these subcases. As part of my responsibilities as Water Rights Specialist at the BLM State Office, I was responsible for preparing the Notices of Claim that were filed for the 16 Wild and Scenic Rivers in the Owyhee Canyonlands area of southwestern Idaho within Basins 51 and 55 (Owyhee Wild and Scenic Rivers). Notices of Claim were filed for each

of the 16 designated Owyhee Wild and Scenic Rivers on December 14, 2012, and assigned the following subcase numbers:

Wickahoney Creek	Subcase No. 51-13089
Sheep Creek	Subcase No. 51-13090
Little Jacks Creek	Subcase No. 51-13091
Jarbridge River	Subcase No. 51-13092
Duncan Creek	Subcase No. 51-13093
Cottonwood Creek	Subcase No. 51-13094
West Fork Bruneau River	Subcase No. 51-13095
Big Jacks Creek	Subcase No. 51-13096
Bruneau River	Subcase No. 51-13097
Deep Creek	Subcase No. 55-13897
Dickshooter Creek	Subcase No. 55-13898
North Fork Owyhee River	Subcase No. 55-13899
Owyhee River	Subcase No. 55-13900
Red Canyon	Subcase No. 55-13901
South Fork Owyhee River	Subcase No. 55-13902
Battle Creek	Subcase No. 55-13903

I was also responsible for preparing fourteen Amended Notices of Claim and the three Second Amended Notices of Claim for these Owyhee Wild and Scenic Rivers. I have reviewed and am familiar with the *Owyhee Canyonlands Wilderness and Wild & Scenic Rivers Final Management Plan and Environmental Assessment* (Record of Decision signed 04/10/2015) prepared by the BLM Boise District Office for ongoing management of the Owyhee Wild and

Scenic Rivers, as discussed in section 19, below. I was part of the crew conducting cross-sectional surveys of BLM's Owyhee Canyonlands Wild and Scenic Rivers claims. I supervised and participated in the quantification of the Owyhee Wild and Scenic Rivers claims. I was the principal BLM negotiator and agency and technical representative in the settlement negotiations that culminated in execution of the Stipulation and Joint Motion for Order Approving Stipulation (Stipulation) and the agreement by the parties to the proposed Partial Decrees attached as Attachments 1 – 16 to that Stipulation (Partial Decrees).

5. Purpose of Affidavit. I have prepared this Affidavit at the request of counsel to address the basis for each element of the Partial Decrees, including the legal basis of the claimed water rights and the quantity of water to be adjudicated.

6. Overview of Owyhee Wild and Scenic Rivers claims and Partial Decrees. The United States, on behalf of BLM, claims water rights for instream flows for each segment of Owyhee Wild and Scenic Rivers that is designated as a component of the national Wild and Scenic River System. The designated rivers are depicted on the Overview Map of and Owyhee Wild and Scenic Rivers attached hereto as Attachment A.

7. Legal basis for claimed water rights. The United States asserts federal reserved water rights for each of the Owyhee Wild and Scenic Rivers pursuant to the Wild and Scenic Rivers Act of 1968, Pub. L. 90-542, 82 Stat. 906, Oct. 2, 1968 (codified as amended at 16 U.S.C. §§ 1271, *et seq.*), and the Omnibus Public Land Management Act of 2009 (Owyhee WSR Designation Act), Pub. L. 111-11, 123 Stat. 991, §§ 1501 – 1508, Mar. 30, 2009 (codified as amended at 16 U.S.C. §§ 1271 – 1287). The Owyhee WSR Designation Act was signed into law by the President on March 30, 2009. The Owyhee WSR Designation Act amended the Wild and Scenic Rivers Act by designating 16 new river reaches in Owyhee County as components of the

national Wild and Scenic Rivers System. The United States' entitlement to federal reserved water rights to fulfill the purposes of the Wild and Scenic Rivers Act was affirmed in *Potlatch Corp. v. United States*, 12 P.3d 1256, 1258-59 (2000).

II. Explanation of water right elements. This portion of this Affidavit addresses the basis for each element of the Partial Decrees based on the elements identified in Idaho Code § 42-1409 (1)(a), (b), (c), (d), (f), (g), (h) and (k).

8. Name and address of owner (I.C. § 42-1409 (1)(a)): Element 1 of each of the Partial Decrees states that the owner of the right is:

UNITED STATES OF AMERICA, on behalf of the Department of the Interior,
Bureau of Land Management
Idaho State Office
1387 S. Vinnell Way
Boise, Idaho 83709-1657

This federal reserved water right claimed pursuant to the Wild and Scenic Rivers Act and the Owyhee WSR Designation Act will be adjudicated in the name of the United States of America. The Owyhee WSR Designation Act directs that the designated Owyhee Wild and Scenic Rivers shall be administered by the Department of the Interior. As directed in BLM's Water Rights Manual 7250, Rel. No. 7-110 (9/30/2013), it is the responsibility of BLM to prepare water right claims and to compile the necessary evidence to support claims for water rights on BLM-administered lands and waters.

9. Source of water (I.C. § 42-1409 (1)(b)): Element 2 of each of the Partial Decrees identifies the specified Wild and Scenic River as the source of the water claimed. These specified rivers are all designated by the Owyhee WSR Designation Act.

10. Quantity of right (I.C. § 42-1409 (1)(c)(ii)): Element 3 of each of the Partial Decree identifies the quantification site for the water right by specific legal description (§ 3.a.(3)).

Each of the Owyhee Wild and Scenic Rivers water rights includes: (i) a base flow component (§ 3.a.(1)), so that when the streamflow at the quantification site is less than the identified high flow amount, the United States' water right is for the flows identified for each semi-monthly time period as set forth in § 3.a.(1) of the Partial Decree; and (ii) a high flow component (§ 3.a.(2)), so that when the streamflow at the quantification site is equal to or greater than the identified high flow amount, the United States' water right is for the entire streamflow up to the specified (very high) flow amount. The water right also precludes any diversion of water out of the watershed of the Wild and Scenic River Basin above the ending point (downstream terminus) of the designated reach (§ 3.c.). The bases for these claimed quantities are addressed in section III., below.

11. Priority date (I.C. § 42-1409 (1)(d)(ii)): Element 4 of each of the Partial Decrees identifies the priority date of the water right as March 30, 2009—the date on which the Owyhee Wild and Scenic Rivers were designated as components of the national Wild and Scenic Rivers System by enactment of the Owyhee WSR Designation Act.

12. Point of diversion (I.C. § 42-1409 (1)(f)): Element 5 of each of the Partial Decrees states that there is no diversion associated with the water right and identifies the locations of the beginning point and the ending point of the water right. The Owyhee WSR Designation Act specified the beginning point and the ending point of each designated river by reference to confluence with other streams or other physical features or, in some instances, legal description. For consistency with Idaho Code § 42-1409(1)(f), BLM determined legal descriptions for the referenced physical features and set forth those descriptions, as well as any legal descriptions provided by the Act, in Element 5 of each of the Partial Decrees. The water right applies to the entire reach of the river designated as a component of the national Wild and Scenic Rivers System

by the Owyhee WSR Designation Act. The streamflow decreed will be used throughout the identified stream reach.

13. Purpose of use (I.C. § 42-1409 (1)(g)(ii)): Element 6 of each of the Partial Decrees states that the purpose of the water right is to fulfill the purposes of the Wild and Scenic Rivers Act and the Owyhee WSR Designation Act. More specifically, the purpose of the water right is to protect instream flows in quantities sufficient to fulfill the purposes for which the Owyhee Wild and Scenic Rivers were designated as components of the national Wild and Scenic Rivers System. As addressed in section 19, below, the *Owyhee Canyonlands Wilderness and Wild & Scenic Rivers Final Management Plan and Environmental Assessment* (Record of Decision signed 04/10/2015) identifies the outstandingly remarkable values of the Owyhee Wild and Scenic Rivers to include fisheries and recreational values for all 16 of the rivers, with the exception of Wickahoney Creek, for which recreation is not an outstandingly remarkable value. The purpose of the water rights includes protection of instream flows to preserve these values.

14. Period of use (I.C. § 42-1409 (1)(g)(ii)): Element 7 of each of the Partial Decrees states that the period of use is January 1 to December 31. Water is necessary to fulfill the purpose of the reservations year-round and, consequently, the water rights are to be adjudicated for year-round use.

15. Place of use (I.C. § 42-1409 (1)(h)(ii)): Element 8 of each of the Partial Decrees states that the instream flow water right is used throughout the entire designated reach from the beginning point to the ending point. The federal reservation that created each of these federal reserved water rights is identified in Section 10.a. of the Partial Decree as the Wild and Scenic River Act and the Owyhee WSR Designation Act.

16. Annual volume of consumptive use: Element 9 of each of the Partial Decrees states that the instream flow water right is non-consumptive. The instream flows to be decreed for Wild and Scenic River purposes are completely non-consumptive (other than evaporation and evapotranspiration that may take place within the designated segment). No consumptive volumes are included in the Partial Decrees. All natural flow remains available for appropriation and use downstream from the ending point of the water rights.

17. Other provisions necessary for definition or administration of water right (I.C. § 42-1409 (1)(h)(ii); I.C. § 42-1409 (1)(k)): Element 10.a. of each of the Partial Decrees provides that the water right is a federal reserved water right established pursuant to the Wild and Scenic River Act and the Owyhee WSR Designation Act. Element 10.b. of the Partial Decrees identifies the subordinations that have been agreed to under the terms of the Stipulation and to which the adjudicated federal water rights will be subject, as further addressed in section 26, below. These additional provisions are necessary to define the unique characteristics of these federal reserved water rights and to describe the rights and uses to which these federal reserved water rights are subordinated in order to provide for proper administration of the water rights and other existing and future water rights.

III. Quantification of water right. This portion of this Affidavit addresses the manner in which the water rights described in the Partial Decrees were quantified.

18. Basis of quantification. The quantification of the water rights described in the Partial Decrees involved a four-step process. First, BLM identified the outstandingly remarkable values for which the Owyhee Wild and Scenic Rivers were designated as components of the national Wild and Scenic Rivers System and determined the water-dependent values for which necessary flows should be quantified. Second, BLM developed hydrologic data for each of the

Owyhee Wild and Scenic Rivers. Third, BLM identified the flows necessary to protect these selected water-dependent outstandingly remarkable values. Fourth, the BLM integrated the identified flows into water right claims and ultimately the Partial Decrees. The analyses involved in each of these four steps are described below.

19. Identification of outstandingly remarkable values. To be included in the national Wild and Scenic Rivers Act System, a river must “possess outstandingly remarkable scenic, recreational, geologic, fish and wildlife, historic, cultural, or other similar values.” 16 U.S.C. § 1271. The Owyhee WSR Designation Act does not state the outstandingly remarkable values of the Owyhee Wild and Scenic Rivers. However, the *Owyhee Canyonlands Wilderness and Wild & Scenic Rivers Final Management Plan and Environmental Assessment* identifies the outstandingly remarkable values of the Owyhee Wild and Scenic Rivers to include fisheries and recreational values for all 16 of the rivers, with the exception of Wickahoney Creek, for which recreation is not an outstandingly remarkable value. BLM therefore quantified the Owyhee Wild and Scenic Rivers water rights based on BLM’s calculation of the flows necessary to protect the water-dependent outstandingly remarkable fisheries and recreational values of the Owyhee Wild and Scenic Rivers. BLM concluded that the flows that protect the fisheries and recreational values of the Owyhee Wild and Scenic Rivers will also preserve the outstandingly remarkable scenic values of the rivers.

20. Hydrology. In order to protect the entire designated reach of each of the Owyhee Wild and Scenic Rivers, BLM quantified the claims based on selected quantification points located as close to the ending point (downstream terminus) of each designated segment as practical). See Overview Map of and Owyhee Wild and Scenic Rivers attached hereto as Attachment A. (Due to access issues across private lands adjacent to the ending point of the

designated Wild and Scenic reach of the South Fork Owyhee River, the quantification site is located on public land several miles upstream from the ending point. Due to the extremely rugged canyon terrain at the ending point of the designated Deep Creek reach, the quantification site is located a couple of miles upstream from the ending point, where access is somewhat easier.)

The Owyhee Wild and Scenic Rivers for the most part lack stream gages. (There are a few discontinued gages with limited periods of record in these basins. Active stream gages are located on the Owyhee River (near Rome, Oregon) and on the Bruneau River. In addition, the United States Geological Survey (USGS) recently installed a new gage on the Owyhee River near Crutcher's Crossing and intends to install a new gage on Big Jacks Creek in the near future.) BLM and USGS therefore began collecting hydrological data (stream cross-sections and discharge measurements) in 2012 to augment existing gage data and to better enable USGS to synthesize the hydrology of the ungaged rivers at the selected quantification points. Based on this data, USGS estimated hydrology based on regional regression analyses and indexing to gaged streams. These analyses are described in two reports: (1) Scientific Investigations Report 2013-5212 entitled Streamflow Monitoring and Statistics for Development of Water Rights Claims for Wild and Scenic Rivers, Owyhee Canyonlands Wilderness, Idaho, 2012; and (2) Scientific Investigations Report 2014-5143 entitled Streamflow Statistics for Development of Water Rights Claims for the Jarbidge Wild and Scenic River, Owyhee Canyonlands Wilderness, Idaho, 2013-14 - A Supplement to Scientific Investigations Report 2013-5212.

BLM and USGS hydrologists determined semi-monthly and high flow claim quantities based on the 20% exceedance discharges, 1.5-year and 100-year flood frequency discharges from the interpolated hydrologic data. An "exceedance discharge" is the flow that is exceeded the stated percentage of the time (therefore, the lower the exceedance value, the higher the flow). The

20% exceedance discharge constitutes the relatively high flow that is exceeded only 20% of the time for each semi-monthly period. A “flood frequency discharge” (sometimes referred to as a “recurrence interval flow”) is the high flow that recurs on average each stated time duration (the longer the stated duration, the higher the flow). The 1.5-year flow constitutes the high flow that recurs on average every year and a half and that roughly corresponds to the bank-full discharge; the 100-year flood frequency discharge constitutes the very high flow that recurs on average every 100 years.

21. Quantification of flows necessary to protect fisheries values. BLM incorporated two components into its quantification of the flows necessary to protect the fisheries values of the Owyhee Wild and Scenic Rivers: (i) the fish habitat base flow (including the wildlife flow necessary to sustain macroinvertebrate communities); and (ii) the aquatic habitat maintenance high flow. BLM’s analysis directed at identifying the necessary fish habitat base flow, including the wildlife flow, is addressed in detail in the Affidavit of Scott E. Hoefer. BLM’s analysis of the flows necessary to provide the aquatic habitat maintenance high flow is described in the Affidavit of Bryce A. Bohn. I generally describe these analyses in sections 22 and 23 below.

22. Fish habitat base flow. The fish habitat base flow component is based on identifying the minimum flow necessary to provide sufficient flow velocity and depth for selected aquatic species to complete their life cycles. The fish habitat base flow component is the minimum flow necessary to provide instantaneous habitat flow protection for the aquatic resource.

As explained in the Hoefer Affidavit, there were no available site-specific analyses of fish habitat base flow requirements for the Owyhee Wild and Scenic Rivers. BLM therefore quantified the flows necessary to satisfy the fish habitat base flow component based on consideration of the flows identified as necessary to meet this component for the six Wild and Scenic Rivers

adjudicated in the SRBA (Consolidated Subcase No. 75-13316 (encompassing Subcases 75-13316, 77-11941, 77-13844, 78-11961, 81-10472, 81-10513 and 81-10625)), and extrapolation of those flows to the Owyhee Wild and Scenic Rivers. Those SRBA investigations included intensive fish habitat base flow analyses carried out over a number of years using the Instream Flow Incremental Methodology (a collection of computer models and analytical procedures designed to predict changes in fish habitat from incremental flow changes), as well as one of its major elements, the Physical Habitat Simulation System (a computer modeling system that calculates the amount of microhabitat available for different life states at different flow levels for a target species). BLM compared and related the results of those analyses to the hydrology of the Owyhee Wild and Scenic Rivers. Based on that analysis, BLM determined that the 20% exceedance discharges, *i.e.*, the flows in each semi-monthly period that are exceeded 20% of the time, would provide the necessary instantaneous fish habitat flow protection.

As explained in the Hoefer Affidavit, a minimum flow equivalent to the 80% exceedance discharge is necessary in order to maintain a healthy macroinvertebrate community. Because the 20% exceedance discharge encompasses (is greater than) the 80% exceedance discharge, BLM quantified its fish habitat base flow component based on the 20% exceedance discharge.

23. Aquatic habitat maintenance high flow. The aquatic habitat maintenance high flow component considers both aquatic habitat maintenance and riparian ecosystem maintenance. The aquatic habitat maintenance component ensures sufficient transport of bedload sediment through the stream reach to preserve the stream channel with a bed of coarse gravel largely clear of sand and dirt. The riparian ecosystem maintenance component ensures flows sufficient to maintain the riparian ecosystems within the river.

As explained in the Bohn Affidavit, the aquatic habitat maintenance high flow was quantified as the 1.5 year recurrence interval flow, *i.e.*, the high flow that recurs on average every year and a half. Studies have established that this flow level is a good surrogate for bank-full flow, *i.e.*, the flow that overtops the river bank and inundates the adjacent flood plain. This flow level has been established to be the most efficient flow for transporting bedload sediment and maintaining channel structure. Based on discussions with representatives of the State, and their interest in capping the aquatic habitat maintenance high flow at a level above which flows may be destructive and achieving consistency with the earlier SRBA Wild and Scenic Rivers settlement, BLM concluded that setting the upper limit of the aquatic habitat maintenance high flow at the 100-year recurrence interval flow would not impede the objective of transporting bedload sediment through the designated reaches and maintaining channel structure. The aquatic habitat maintenance high flow was therefore quantified as the 1.5-year recurrence interval flow, up to but not including flows at or above the 100-year flood flow.

The flows necessary to meet the fish habitat base flow, aquatic habitat maintenance high flow, and recreation components of the water rights encompass a wide range of flows, including bank-full flows that periodically overtop the river bank and inundate riparian ecosystems adjacent to the river. These flows were determined to provide sufficient water to protect the riparian ecosystem and a separate quantification of riparian maintenance flows was therefore not deemed to be necessary.

24. Recreation flow. Boating is the primary recreational value on the Owyhee Wild and Scenic Rivers (other than Wickahoney Creek, for which recreation is not an outstandingly remarkable value). Therefore, the necessary recreational flows calculated by BLM were designed to support various forms of boating. BLM's analysis of the flows necessary to protect the

outstandingly remarkable recreation values of the Owyhee Wild and Scenic Rivers is described in the Affidavit of Thomas J. ("TJ") Clifford. As explained in the Clifford Affidavit, BLM relied on the knowledge of its river rangers to identify specific flow levels necessary to support recreational boating opportunities on each river. These BLM rangers have extensive experience floating the rivers and have documented their observations of the flow levels that provide for various boating opportunities. The recreational floating season was individually defined for each river and recreational flows were identified during these floating seasons on each of the rivers. The recreation flows identified during these floating seasons on each of the rivers are higher than the (20% exceedance) fish habitat base flow in some semi-monthly periods. (The identified recreation flows were higher than the (20% exceedance) fish habitat base flow in 24 out of 360 semi-monthly periods encompassed by the 15 claims for which recreation is an outstandingly remarkable value (all the Owyhee Wild and Scenic Rivers except Wickahoney Creek)). BLM determined that 80% exceedance flows would provide sufficient water to preserve general recreational opportunities for the period of the year outside of the recreational boating season.

25. Integration of identified flows into claim form and Partial Decree. The Owyhee Wild and Scenic Rivers claims, and ultimately the Partial Decree, were quantified by combining the fish habitat base flows, the aquatic habitat maintenance high flows, and the recreation flows. The water right described in each of the Partial Decrees includes: (i) a base flow component, selected as the higher of the fish habitat base flow and the recreation flow for each semi-monthly period; and (ii) an aquatic habitat maintenance high flow component to maintain physical aquatic habitat in the long term. The base flow component is expressed such that when the streamflow is less than the identified threshold amount, the United States' water right is for the flows identified for each semi-monthly period. The aquatic habitat maintenance high flow

component is expressed as a threshold or “trigger,” such that when the streamflow is equal to or greater than the identified threshold amount, the United States’ water right is for all streamflows, up to but not including flows at or above the 100-year flood flow. The water right also precludes any diversion of water out of the watershed of the Owyhee Wild and Scenic River Basins above the ending point (downstream terminus) of the designated reach. This provision is intended to provide additional protection of aquatic habitat maintenance flows.

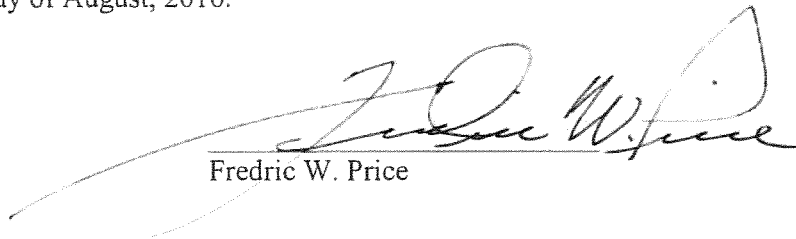
26. Subordinations included in Partial Decree. As set forth in Section 10.b. of the Partial Decree, the federal reserved water right for each of the Owyhee Wild and Scenic Rivers will be subordinate to: (i) *de minimis* domestic and stockwater uses; and (ii) in-basin water rights up to a specified diversion amount for each semi-monthly period during March through June—but subject to a minimum instream flow level for each of those semi-monthly periods, below which the subordination will not apply. (The subordination is therefore to the specified diversion amount for each semi-monthly period during March through June, or the amount available above specified minimum instream flow level for each of those semi-monthly periods, whichever is less.) BLM has concluded that these subordinations will not significantly diminish the flows in the Owyhee Wild and Scenic Rivers.

27. Water right described in Partial Decree protects fisheries and recreational values. Based on my understanding of the Wild and Scenic Rivers Act and the Owyhee WSR Designation Act and the outstandingly remarkable fisheries and recreational values of the Owyhee Wild and Scenic Rivers, I conclude that the flows identified in the Partial Decrees, taking into account the small depletions likely to occur under the subordinations provided for in Section 10.b. of the Partial Decrees, provide a sufficient variety, frequency and quantity of flows to protect the outstandingly remarkable fisheries and recreational values that Congress sought to protect by

adding the Owyhee Wild and Scenic Rivers as components of the national Wild and Scenic Rivers System.

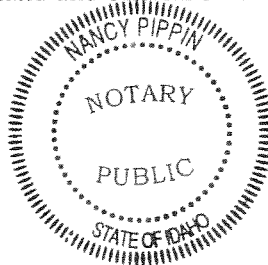
28. Further affiant sayeth naught.

Dated this 30th day of August, 2016.


Fredric W. Price

Subscribed and sworn to before me this 30th day of August, 2016.

Witnessed by my hand and official seal.




Nancy L. Pippin
Notary Public in and for the State of Idaho
Residing at: Mountain Home, Idaho
My Commission Expires: 09-06-2017

CERTIFICATE OF SERVICE

I certify that on August 30, 2016, I served a true and correct copy of the foregoing **AFFIDAVIT OF FREDRIC W. PRICE; SUBCASE NUMBER: 51-13089, 51-13090, 51-13091, 51-13092, 51-13093, 51-13094, 51-13095, 51-13096, 51-13097, 55-13897, 55-13898, 55-13899, 55-13900, 55-13901, 55-13902, 55-13903** by placing the document in the United States Mail in Boise, Idaho, postage paid, and addressed as follows:

Original to:

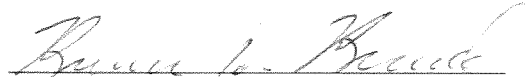
Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
P.O. Box 2707
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