



U.S. Department of Justice

Environment and Natural Resources Division
General Litigation Section

David L. Negri
550 West Fort Street, MSC 033
Boise, Idaho 83724

Telephone: 208-331-5943
Telecopier: 208-387-0842
Email: david.negri@usdoj.gov

May 2, 2003

Diana Delaney
Clerk of the District Court
Snake River Basin Adjudication
253 3rd Ave. North
Twin Falls, ID 83301

RECEIVED

MAY - 5 2003

Department of Water Resources

Re: Affidavit of Steven M. Spencer - SRBA Subcase no. 77-11658

Dear Diana:

On April 21, 2003 the United States filed the Affidavit of Steven M. Spencer in subcase no. 77-11658. There was an error in the subcase caption identifying the subcase as 77-11958. Although the Court record shows that the Affidavit was filed in the correct subcase we have amended the Affidavit to accurately reflect the subcase number. The amended Affidavit of Steven M. Spencer is attached.

If you have any questions please contact me at 208-331-5943.

Sincerely,

David L. Negri
United States Department of Justice

Enclosure(s)

Name of Party Filing Document:

UNITED STATES OF AMERICA

Attorney's Names and Addresses:

THOMAS L. SANSONETTI
United States Department of Justice
Assistant Attorney General
Environment and Natural Resources Division

DAVID L. NEGRI
United States Department of Justice
Environment and Natural Resources Division
General Litigation Section
550 W. Fort St. MSC033
Boise, ID 83724
(208) 331-5943

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 No. 77-11658	AMENDED
	)		
Case Number: 39576	)	AFFIDAVIT OF STEVEN M. SPENCER	
_____	)		

State of: IDAHO
County of: ADA

STEVEN M. SPENCER, being first duly sworn upon oath, deposes and says:

1. I am currently employed by the United States Department of Agriculture, Forest Service ("Forest Service"), as the consumptive water use specialist at the Boise Adjudication

Team. I have been employed by the Forest Service for 26 years.

2. As part of my assigned duties and responsibilities, I oversee water right claims submitted by the Forest Service in the Snake River Basin Adjudication ("SRBA"). Attached as Exhibit 1 is a true and correct copy of claim number 77-11658, as amended and before the Court in the SRBA.

3. I have reviewed Exhibit 1, as amended by the Forest Service for Warren Guard Station.

4. I have reviewed Forest Service historical records describing the reservation of early forest reserves, which later became known as National Forests. Based upon my review, the lands upon which the reserved water right claim is located, including both the legal locations of the point of diversion and place of use as described in Exhibit 1, were first reserved as the Payette Forest Reserve on June 3, 1905, in A Proclamation signed by President Theodore Roosevelt. This is substantiated in historical documents maintained by the Idaho State Office of the United States Bureau of Land Management in Boise, Idaho. Attached as Exhibit 2 is a copy of the above referenced Proclamation.

5. The priority date, June 3, 1905, for this reserved water right claim corresponds to the date of the Proclamation creating the Payette Forest Reserve. *See* Exhibit 2.

6. Based upon the forgoing, I have personal knowledge of the following elements of the federal reserved right claim 77-11658 attached hereto as Exhibit 1, submitted in the SRBA:

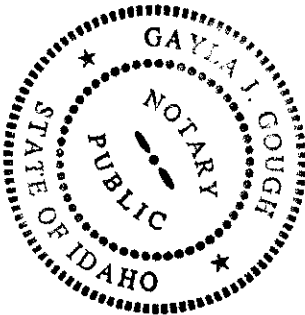
a. The land at the legal descriptions shown as the point of diversion and place of use is federally reserved National Forest System land. It was first reserved as the Payette Forest Reserve on June 3, 1905, in A Proclamation signed by President Theodore Roosevelt. It is now part of the Payette National Forest.

b. The name and address of the claimant is: UNITED STATES OF AMERICA acting on behalf of the USDA Forest Service, 550 W. Fort Street, MSC033, Boise, ID 83724.

c. The priority date is: June 3, 1905.

Steven M. Spencer
Steven M. Spencer

SUBSCRIBED and SWORN to before me this 28TH day of April, 2003



Gayla J. Gough
Gayla J. Gough
NOTARY PUBLIC FOR: Idaho
Residing at: Kuna, Idaho
My Commission Expires: 11/17/2004

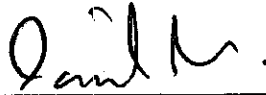
CERTIFICATE OF MAILING

I certify that on May 2, 2003, I mailed a true and correct copy of the foregoing Affidavit of Steven M. Spencer – 77-11658 to the following by First Class United States Mail, prepaid:

Copies to:

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



David L. Negri

NOTICE OF AMENDED CLAIM
RESERVED UNDER FEDERAL LAW

Right Number: 77-11658

Name and Address: UNITED STATES OF AMERICA ACTING THROUGH THE
USDA FOREST SERVICE
550 W FORT ST MSC 033
BOISE, ID 83724

Source: SPRING

Tributary: ~~WARREN CREEK~~ SINKS

Quantity: .02 CFS

Priority Date: 06-03-1905

Point of Diversion: T22N R06E S12

NWSW

Within Idaho County

Purpose and

Period of Use: Purpose of Use
~~Domestic~~
Administrative

Period of Use Quantity
05-01 TO 11-30 .02 CFS

Place of Use: ~~Domestic~~
Administrative
T22N R06E ~~S12~~ S11

Within Idaho County

NWSW SENE

Other Provisions Necessary for Definition / Administration of this Water Right:

Explanatory Material: Basis of Claim - Reserved

FOREST SERVICE RECORD ID = 0412 17060207 31 0405
Warren Guard Station

EXHIBIT 1

IDAHO

27

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

June 3, 1905.

A PROCLAMATION.

WHEREAS, it is provided by section twenty-four of the Act of Congress, approved March third, eighteen hundred and ninety-one, entitled, "An act to repeal timber-culture laws, and for other purposes", "That the President of the United States may, from time to time, set apart and reserve, in any State or Territory having public land bearing forests, in any part of the public lands wholly or in part covered with timber or undergrowth, whether of commercial value or not, as public reservations, and the President shall, by public proclamation, declare the establishment of such reservations and the limits thereof";

And whereas, the public lands in the State of Idaho, within the limits hereinafter described, are in part covered with timber, and it appears that the public good would be promoted by setting apart and reserving said lands as a public reservation:

Now, therefore, I, Theodore Roosevelt, President of the United States, by virtue of the power in me vested by section twenty-four of

The Payette Forest Reserve, Idaho.
Preamble.
Vol. 28, p. 1103.

Forest Reserve, Idaho.

the aforesaid Act of Congress, do hereby make known and proclaim that there are hereby reserved from entry or settlement and set apart as a Public Reservation all those certain tracts, pieces or parcels of land lying and being situate in the State of Idaho, and within the boundaries particularly described as follows:

Description.

Beginning at the north-west corner of Township twenty-three (23) North, Range four (4) East, Boise Base and Meridian, Idaho; thence southerly to the south-east corner of Township twenty-three (23) North, Range three (3) East; thence westerly to the north-west corner of Township twenty-two (22) North, Range two (2) East; thence southerly along the range line, allowing for the proper offset on the Fifth (5th) Standard Parallel North, to the south-west corner of Section nineteen (19), Township twenty (20) North, Range two (2) East; thence easterly to the north-east corner of Section twenty-nine (29), said township; thence southerly to the south-west corner of Section sixteen (16), Township nineteen (19) North, Range two (2) East; thence easterly to the south-east corner of said section; thence southerly to the south-west corner of Section thirty-four (34), said township; thence easterly to the south-east corner of Section thirty-one (31), Township nineteen (19) North, Range three (3) East; thence northerly to the north-east corner of said section; thence easterly to the south-east corner of Section twenty-nine (29), said township; thence northerly to the north-west corner of Section four (4), said township; thence easterly to the south-east corner of Section thirty-four (34), Township twenty (20) North, Range three (3) East; thence northerly to the north-west corner of Section twenty-three (23), said township; thence easterly to the north-east corner of Section twenty-four (24), said township; thence southerly to the south-east corner of Section twelve (12), Township nineteen (19) North, Range three (3) East; thence westerly to the south-west corner of said section; thence southerly to the south-west corner of Section twenty-five (25), said township; thence easterly to the south-east corner of said section; thence southerly to the south-west corner of Township nineteen (19) North, Range four (4) East; thence easterly to the south-east corner of Section thirty-one (31), said township; thence southerly to the south-west corner of Section five (5), Township eighteen (18) North, Range four (4) East; thence easterly to the north-east corner of Section nine (9), said township; thence southerly to the south-east corner of Section sixteen (16), said township; thence westerly to the north-west corner of Section twenty-one (21), said township; thence southerly to the south-east corner of Section thirty-two (32), said township; thence westerly along the Fourth (4th) Standard Parallel North, to the north-west corner of the north-east quarter of Section five (5), Township seventeen (17) North, Range four (4) East; thence southerly to the south-west corner of the south-east quarter of Section eight (8), said township; thence easterly to the north-east corner of Section sixteen (16), said township; thence southerly to the south-west corner of Section fifteen (15), said township; thence easterly to the north-east corner of Section twenty-two (22), said township; thence southerly to the south-east corner of said section; thence westerly to the north-west corner of Section twenty-eight (28), said township; thence southerly to the south-west corner of said section; thence easterly to the north-east corner of Section thirty-six (36), said township; thence southerly to the south-east corner of said township; thence westerly to the north-west corner of Section one (1), Township sixteen (16) North, Range four (4) East; thence southerly to the south-west corner of said section; thence easterly to the north-east corner of Section twelve (12), said township; thence southerly to the south-east corner of said township; thence westerly to the north-west corner of Section one (1),

Payette Forest
Reserve — Contin-
ued.

Township fifteen (15) North, Range four (4) East; thence southerly to the south-east corner of Section fourteen (14), said township; thence westerly to the north-west corner of Section twenty-two (22), said township; thence southerly to the south-east corner of Section thirty-three (33), said township; thence westerly to the north-west corner of Section five (5), Township fourteen (14) North, Range four (4) East; thence southerly to the south-west corner of said section; thence easterly to the south-east corner of said section; thence southerly to the south-west corner of Section nine (9), said township; thence easterly to the south-east corner of said section; thence southerly to the south-west corner of Section fifteen (15), said township; thence westerly to the north-west corner of Section twenty-one (21), said township; thence southerly to the south-west corner of said section; thence easterly to the south-east corner of Section twenty-three (23), said township; thence northerly to the south-west corner of Section twelve (12), said township; thence easterly to the south-east corner of said section; thence northerly to the north-west corner of Township fourteen (14) North, Range five (5) East; thence easterly to the north-east corner of Section five (5), said township; thence southerly to the south-west corner of Section nine (9), said township; thence easterly to the north-west corner of Section fifteen (15), said township; thence southerly to the south-west corner of said section; thence westerly to the north-west corner of Section twenty (20), said township; thence southerly to the south-west corner of Section thirty-two (32), said township; thence easterly along the Third (3rd) Standard Parallel North to the south-east corner of Section thirty-three (33), Township fourteen (14) North, Range seven (7) East; thence northerly along the section lines, allowing for the proper offset on the Fourth (4th) Standard Parallel North, to the north-east corner of Section four (4), Township eighteen (18) North, Range seven (7) East; thence westerly to the south-west corner of Township nineteen (19) North, Range seven (7) East; thence northerly to the north-east corner of Township nineteen (19) North, Range six (6) East; thence westerly to the south-west corner of Section thirty-four (34), Township twenty (20) North, Range six (6) East; thence northerly along the section lines to the point of intersection with the Fifth (5th) Standard Parallel North; thence easterly along said parallel to its intersection with the Middle Fork of the Salmon River; thence in a general north-easterly direction along the middle of the channel of said Middle Fork of the Salmon River to its confluence with said river; thence in a general north-westerly direction along the middle of the channel of said river to its intersection with the range line between Ranges six (6) and seven (7) East; thence southerly to the south-east corner of Township twenty-four (24) North, Range six (6) East; thence westerly to the north-west corner of Township twenty-three (23) North, Range four (4) East, the place of beginning; such of the above-named corners as have not been established by the official surveys being intended to be located at the points where such corners would fall in projecting the surveys in the directions indicated without allowing for any irregularities which may occur in actually extending the surveys.

Excepting from the force and effect of this proclamation all lands which may have been, prior to the date hereof, embraced in any legal entry or covered by any lawful filing duly of record in the proper United States Land Office, or upon which any valid settlement has been made pursuant to law, and the statutory period within which to make entry or filing of record has not expired: Provided, that this exception shall not continue to apply to any particular tract of land unless the entryman, settler or claimant continues to comply with the law under which the entry, filing or selection was made.

Lands excepted.

3070

Reserved from
settlement.

Name.

PROCLAMATIONS, 1905.

Warning is hereby expressly given to all persons not to make settle-
ment upon the lands reserved by this proclamation.

The reservation hereby established shall be known as The Payette
Forest Reserve.

IN WITNESS WHEREOF, I have hereunto set my hand and
caused the seal of the United States to be affixed.

Done at the City of Washington this 3d day of June, in the year of
our Lord one thousand nine hundred and five, and of the
[SEAL] Independence of the United States the one hundred and
twenty-ninth.

T. ROOSEVELT

By the President:

FRANCIS B. LOOMIS

Acting Secretary of State.

REMARKS-

EXHIBIT 2 - PAGE 5