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Department of Water Resources

**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                                 )  
                                                      )  
Case Number: 39576                        )  
\_\_\_\_\_  
                                                      )

Subcase No. 67-12138  
  
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 67-12138, as amended and before the Court in the SRBA.

3. I have reviewed Exhibit 1, as amended by the Forest Service for Indian Mountain Lookout.

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 Weiser Forest Reserve in A Proclamation signed by President Theodore Roosevelt on May 25, 1905. This is substantiated in historical documents maintained by the Idaho State Office of the United States Bureau of Land Management in Boise, Idaho.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.

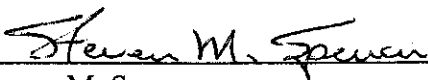
5. The priority date, May 25, 1905, for this reserved water right claim corresponds to the date of the Proclamation creating the Weiser Forest Reserve. *See* Exhibit 2.

6. Based upon the forgoing, I have personal knowledge of the following elements of the federal reserved right claim 67-12138 attached hereto as Exhibit 1, submitted in the SRBA:

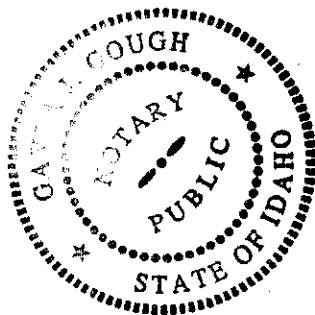
a. The land at the legal descriptions shown as the point of diversion and place of use is federally reserved National Forest System land. It was first reserved as the Weiser Forest Reserve on May 25, 1905 in A Proclamation signed by President Theodore Roosevelt. It is now part of the Payette National Forest.

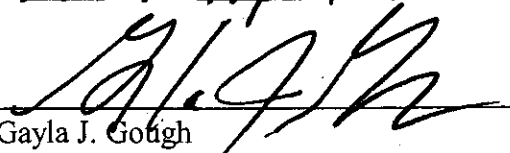
b. The name and address of the claimant is: UNITED STATES OF AMERICA acting on behalf of the USDA Forest Service, 550 W. Fort Street, MSC033, Boise, ID 83724.

c. The priority date is: May 25, 1905.

  
Steven M. Spencer

SUBSCRIBED and SWORN to before me this 28<sup>TH</sup> day of April, 2003



  
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 – 67-12138 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: 67-12138

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: ~~FALL CREEK~~ SINKS

Quantity: .02 CFS

Priority Date: ~~02-25-1905~~ 05-25-1905

Point of Diversion: T15N R02E ~~S31~~ S30 ~~NWNE~~ SESE Within Adams County

| Purpose and<br>Period of Use: | Purpose of Use        | Period of Use       | Quantity |
|-------------------------------|-----------------------|---------------------|----------|
|                               | <del>Domestic</del>   | 07-01 TO 09-30      | .02 CFS  |
|                               | <u>Administrative</u> |                     |          |
| Place of Use:                 | <del>Domestic</del>   | Within Adams County |          |
|                               | T15N R02E S32         | NWNW                |          |
|                               | <u>Administrative</u> |                     |          |

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

Explanatory Material: Basis of Claim - Reserved

FOREST SERVICE RECORD ID = 0412 17050124 47 0129  
Indian Mountain Lookout

EXHIBIT 1

May 25 1905.

THE WEISER FOREST RESERVE.

IDAHO.

By the President of the United States of America.

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 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:

Beginning at the north-west corner of Township eighteen (18) North, Range one (1) East, Boise Base and Meridian, Idaho; thence easterly to the north-east corner of Section four (4), said township; thence southerly to the north-east corner of Section sixteen (16), said township; thence westerly to the north-west corner of said section; thence southerly to the south-west corner of said section; thence easterly to the north-east corner of Section twenty-three (23), said township; thence southerly to the south-west corner of Section thirty-six (36), said township; thence easterly to the south-east corner of said township; thence northerly to the north-west corner of Section thirty-one (31), Township eighteen (18) North, Range two (2) East; thence easterly to the north-east corner of said section; thence southerly to the south-east corner of said section; thence easterly along the Fourth (4th) Standard Parallel North to the north-east corner of Section

five (5), Township seventeen (17) North, Range two (2) East; thence southerly to the south-east corner of said section; thence easterly to the north-east corner of the north-west quarter of Section nine (9), said township; thence southerly to the south-east corner of the south-west quarter of said section; thence westerly to the north-west corner of Section sixteen (16), said township; thence southerly to the south-west corner of said section; thence easterly to the south-east corner of said section; thence southerly to the north-west corner of Section twenty-seven (27), said township; thence easterly to the north-east corner of said section; thence southerly to the south-east corner of said section; thence easterly to the north-east corner of Section thirty-five (35), said township; thence southerly to the south-east corner of said section; thence easterly to the north-east corner of Township sixteen (16) North, Range two (2) East; thence southerly to the north-east corner of Section thirty-six (36), said township; thence westerly to the north-west corner of said section; thence southerly to the south-west corner of said section; thence easterly to the north-east corner of Section six (6), Township fifteen (15) North, Range three (3) East; thence southerly to the south-east corner of Section nineteen (19), said township; thence westerly to the north-west corner of Section thirty (30), said township; thence southerly to the north-east corner of Section thirty-six (36), Township fifteen (15) North, Range two (2) East; thence westerly to the north-west corner of said section; thence southerly to the south-west corner of said section; thence easterly to the south-east corner of said township; thence southerly to the south-west corner of Section eighteen (18), Township fourteen (14) North, Range three (3) East; thence easterly to the south-east corner of said section; thence southerly to the south-west corner of Section twenty (20), said township; thence easterly to the south-east corner of said section; thence southerly to the south-west corner of Section thirty-three (33), said township; thence easterly along the Third (3rd) Standard Parallel North to the north-east corner of Section four (4), Township thirteen (13) North, Range three (3) East; thence southerly to the north-west corner of Section fifteen (15), said township; thence easterly to the north-east corner of said section; thence southerly to the south-east corner of said section; thence easterly to the north-east corner of Section twenty-three (23), said township; thence southerly to the south-east corner of said section; thence easterly to the north-east corner of Section twenty-five (25), said township; thence southerly to the south-east corner of said section; thence westerly to the south-west corner of said section; thence southerly to the south-east corner of Section fourteen (14), Township twelve (12) North, Range three (3) East; thence westerly to the north-east corner of Section twenty-one (21), said township; thence southerly to the south-east corner of said section; thence westerly to the south-west corner of said section; thence southerly to the south-east corner of Section twenty (20), Township eleven (11) North, Range three (3) East; thence westerly to the south-west corner of said section; thence southerly to the south-east corner of Section thirty (30), said township; thence westerly to the north-west corner of Section thirty-five (35), Township eleven (11) North, Range two (2) East; thence southerly to the south-west corner of said section; thence westerly to the north-west corner of Section three

(3), Township ten (10) North, Range two (2) East; thence southerly to the south-west corner of Section fifteen (15), said township; thence easterly to the south-east corner of said section; thence southerly to the south-west corner of Section twenty-three (23), said township; thence easterly to the south-east corner of Section twenty-four (24), said township; thence northerly to the north-east corner of said section; thence westerly to the north-west corner of said section; thence northerly to the north-west corner of Section thirteen (13), said township; thence easterly to the north-east corner of said section; thence northerly to the north-west corner of Township ten (10) North, Range three (3) East; thence easterly to the north-east corner of Section four (4), said township; thence southerly along the section lines, allowing for the proper offset on the Second (2nd) Standard Parallel North, to the south-east corner of Section thirty-three (33), Township nine (9) North, Range three (3) East; thence westerly to the south-west corner of said township; thence northerly to the north-east corner of Section twenty-five (25), Township nine (9) North, Range two (2) East; thence westerly to the north-west corner of said section; thence northerly to the north-east corner of Section fourteen (14), said township; thence westerly to the south-west corner of Section nine (9), said township; thence northerly to the north-east corner of Section five (5), said township; thence westerly along the Second (2nd) Standard Parallel North to the south-west corner of Section thirty-two (32), Township ten (10) North, Range two (2) East; thence northerly to the north-west corner of Section eight (8), said township; thence easterly to the north-east corner of said section; thence northerly to the north-east corner of Section twenty-nine (29), Township eleven (11) North, Range two (2) East; thence westerly to the north-west corner of said section; thence northerly to the north-east corner of Section six (6), said township; thence westerly to the south-west corner of Section thirty-four (34), Township twelve (12) North, Range one (1) East; thence northerly to the north-west corner of Section three (3), said township; thence easterly to the south-east corner of Section thirty-four (34), Township thirteen (13) North, Range one (1) East; thence northerly along the section lines, allowing for the proper offset on the Third (3rd) Standard Parallel North, to the south-east corner of Section three (3), Township fourteen (14) North, Range one (1) East; thence westerly to the south-west corner of said section; thence northerly to the north-west corner of said section; thence westerly to the south-west corner of Section thirty-three (33), Township fifteen (15) North, Range one (1) East; thence northerly to the south-west corner of Section sixteen (16), said township; thence easterly to the south-east corner of said section; thence northerly to the north-east corner of said section; thence westerly to the north-west corner of said section; thence northerly to the north-east corner of Section five (5), said township; thence westerly to the south-west corner of Township sixteen (16) North, Range one (1) East; thence northerly along the range line, allowing for the proper offset on the Fourth (4th) Standard Parallel North, to the north-west corner of Township eighteen (18) North, Range one (1) 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

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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 settlement was made.

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

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

In Witness Whereof, I have hereunto set my hand and the seal of the United States to be affixed.

DONE at the City of Washington this 25th day of May, in the year of our Lord one thousand nine hundred and five, and of the Independence of the United States the one hundred and twenty-ninth.

[SEAL]

THEODORE ROOSEVELT

By the President:

FRANCIS B LOOMIS

*Acting Secretary of State.*

TOWNSHIP 15 NORTH RANGE 2 EAST OF THE BOISE MERIDIAN, IDAHO

| SECTION | SUBDIVISION |        |        |        | AGES | KIND OF ENTRY<br>-as-<br>PURPOSE OF ORDER | SERIAL FILE<br>-as-<br>ORDER NUMBER | DATE OF<br>ACTION | DATE<br>POSTED | REMARKS -<br>E. G. DATE CLOSED, TERMINATED, REJECTED OR RESCINDED |
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