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Department of Water Resources

Name of Party Filing Document:

UNITED STATES OF AMERICA

Attorney's Names and Addresses:

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Environment and Natural Resources Division

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Environment and Natural Resources Division
General Litigation Section
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Boise, ID 83724
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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 No. 23-10768
	)	
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 23-10768, as amended and before the Court in the SRBA.

3. I have reviewed Exhibit 1, as amended by the Forest Service for Caribou Basin 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 Caribou Forest Reserve on January 15, 1907, 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 This is substantiated in historical documents maintained by the Idaho State Office of the United States Bureau of Land Management in Boise, Idaho.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.

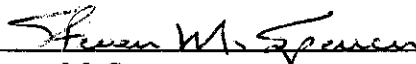
5. The priority date, January 15, 1907, for this reserved water right claim corresponds to the date of the Proclamation creating the Caribou Forest Reserve. *See* Exhibit 2.

6. Based upon the forgoing, I have personal knowledge of the following elements of the federal reserved right claim 23-10768 attached hereto as Exhibit 1, submitted in the SRBA:

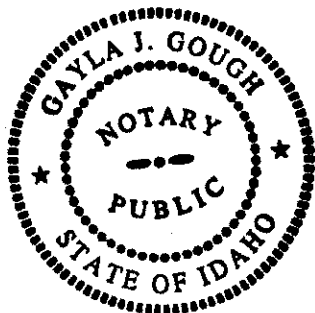
a. The land at the legal descriptions shown as the point of diversion and place of use is federally reserved National Forest System land. It was first reserved as the Caribou Forest Reserve on January 15, 1907, in A Proclamation signed by President Theodore Roosevelt. It is now part of the Caribou-Targhee National Forests.

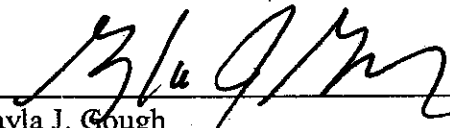
b. The name and address of the claimant is: UNITED STATES OF AMERICA acting on behalf of the USDA Forest Service, 550 W. Fort Street, MSC033, Boise, ID 83724.

c. The priority date is: January 15, 1907.


Steven M. Spencer

SUBSCRIBED and SWORN to before me this 1st day of May, 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 – 23-10768 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: 23-10768

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: MC COY CREEK

Quantity: .02 CFS

Priority Date: 01-15-1907

Point of Diversion: T03S R44E S20

NWNE

Within Bonneville County

Purpose and

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

Period of Use

05-01 TO 11-30

Quantity

.02 CFS

Place of Use: ~~Domestic~~
Administrative
T03S R44E S20

Within Bonneville County

NWNE

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

Explanatory Material: Basis of Claim - Reserved

FOREST SERVICE RECORD ID = 040517040104100266 00

CARIBOU BASIN GUARD STATION

EXHIBIT 1

IDAHO

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

January 15, 1907.

A PROCLAMATION

WHEREAS, the public lands in the States of Idaho and Wyoming, which are hereinafter indicated, are in part covered with timber, and it appears that the public good would be promoted by setting apart said lands as a public reservation;

Caribou Forest Reserve, Idaho and Wyo.

And 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;

Now, therefore, I, Theodore Roosevelt, President of the United States of America, by virtue of the power in me vested by section twenty-four of the aforesaid act of Congress, do proclaim that there are hereby reserved from entry or settlement and set apart as a Public Reservation, for the use and benefit of the people, all the tracts of land, in the States of Idaho and Wyoming, shown as the Caribou Forest Reserve on the diagram forming a part hereof;

Forest Reserve, Idaho and Wyoming.

Excepting from the force and effect of this proclamation all lands which are at this date embraced in any legal entry or covered by any lawful filing or selection 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; and also excepting all lands which at this date are embraced within any withdrawal or reservation for any use or purpose to which this reservation for forest uses is inconsistent. Provided, that these exceptions 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, or unless the reservation or withdrawal to which this reservation is inconsistent continues in force; not excepting from the force and effect of this proclamation, however, any land within the boundary herein described, which has been withdrawn to protect the coal therein but this proclamation does not vacate any such coal land withdrawal; and provided that these exceptions shall not apply to any land embraced in any selection, entry or filing, which has been allowed or permitted to remain of record subject to the creation of a permanent reservation.

Lands excepted.

Coal lands.

3268

PROCLAMATIONS, 1907.

Reserved from
settlement.

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

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 15th day of January, in the year of our Lord one thousand nine hundred and seven,

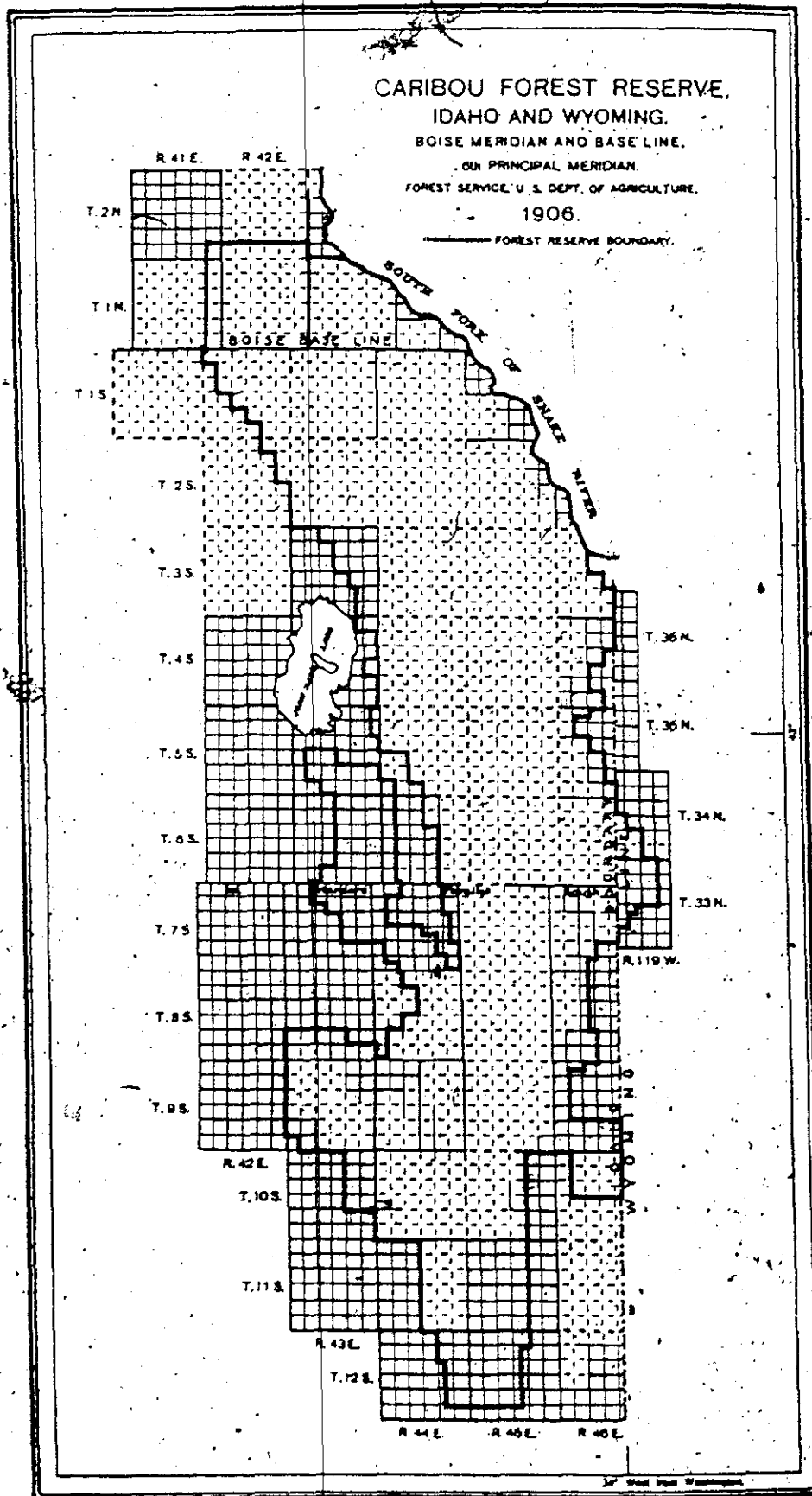
[SEAL] and of the Independence of the United States the one hundred and thirty-first.

THEODORE ROOSEVELT

By the President:

ELIHU ROOT

Secretary of State.



TOWNSHIP 3 SOUTH RANGE 44 EAST OF THE BOISE MERIDIAN, IDAHO

SECTION				SUBDIVISION				ACRES	KIND OF ENTRY -OR- PURPOSE OF ORDER	SERIAL FILE -OR- ORDER NUMBER	DATE OF ACTION	DATE POSTED	REMARKS - E. & DATE CLOSED, TERMINATED, REJECTED OR RESCINDED
NE 1/4	NW 1/4	SW 1/4	SE 1/4	LOTS	OTHER DESCRIPTION								
16					ALL		16		Act of Cong		7/27/1890		Title to State to vest on approval of Survey, Subj to prior rights
36					ALL		16		30 Temp Mt Carbon Forest Res		12/15/1906		Wm Rice 1/15/1907
					16 1/4				30 Temp Mt Carbon Forest Res		1/15/1907		Dis to Carbon Mt Act 3/4/1907
					16 1/4				30 Temp Mt Carbon Forest Res		8/26/1910		Rev Ed 3/27/1918
					16 1/4				30 Temp Mt Carbon Forest Res		5/29/1917		Act 11/15/1913
					16 1/4				30 Temp Mt Carbon Forest Res		7/27/1918		Cl Non Coal
16					ALL		16		Act of Cong		1/25/1927		Extends Mt 7/24/1890 to Mt 1890, Subj to prior rights
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