

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. 77-10796
	)	
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 77-10796, as amended and before the Court in the SRBA.

3. I have reviewed Exhibit 1, as amended by the Forest Service for Bernard 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 added to the Idaho and Payette National Forests in A Proclamation signed by President Woodrow Wilson on December 27, 1919. This consummated the Act of Congress, dated October 29, 1919, Public No. 69, which set apart and reserved certain lands in central Idaho as national forest lands. This is substantiated in historical documents maintained by the Idaho State Office of the United States Bureau of Land Management in Boise, Idaho.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 shown on the claim is November 5, 1906.

6. The priority date for this reserved water right claim should be December 27, 1919, which corresponds to the date of the Proclamation adding lands to the Idaho and Payette National Forests. *See* Exhibit 2.

7. Based upon the forgoing, I have personal knowledge of the following elements of the federal reserved right claim 77-10796 attached hereto as Exhibit 1, submitted in the SRBA:

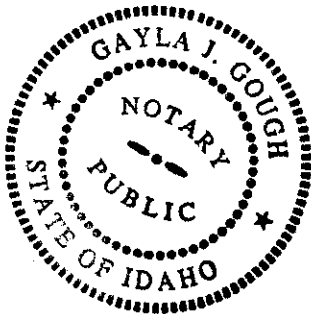
a. The land at the legal descriptions shown as the point of diversion and place of use is federally reserved National Forest System land. It was added to the Idaho and Payette National Forests as lands reserved in central Idaho in a Proclamation signed by President Woodrow Wilson on December 27, 1919. It is now part of the Salmon-Challis National Forest.

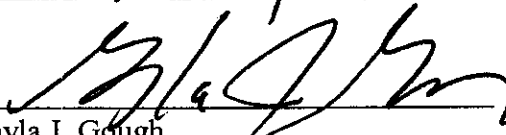
b. The name and address of the claimant is: UNITED STATES OF AMERICA acting on behalf of the USDA Forest Service, 550 W. Fort Street, MSC033, Boise, ID 83724.

c. The priority date should be: December 27, 1919.


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 – 77-10796 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: 77-10796

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

Source: BERNARD CREEK Tributary: SALMON RIVER, MIDDLE FORK

Quantity: .02 CFS

Priority Date: ~~11-14-1902~~ 11-05-1906

Point of Diversion: T19N R14E S22 NWNW Within Valley County

Purpose and Period of Use:	Purpose of Use	Period of Use	Quantity
	~~Domestic~~	04-01 TO 10-31	.02 CFS
	<u>Administrative</u>		

Place of Use: ~~Domestic~~ Within Valley County
Administrative
T19N R14E S22 Lot 3 SENW

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

Explanatory Material: Basis of Claim - Reserved

FOREST SERVICE RECORD ID = 0413 17060206 39 0002
Bernard Guard Station

EXHIBIT 1

December 27, 1919.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA
A PROCLAMATION.

Idaho and Payette
National Forests,
Idaho.
Proclamation
No. 324

WHEREAS, An Act of Congress, dated October 29, 1919, Public No. 69, set apart and reserved certain lands in central Idaho as national forest lands, subject to the approval of the Secretary of the Interior and to all valid existing claims, and included said lands within specified National Forests; and

WHEREAS, on December 23, 1919, the Secretary of the Interior approved such reservation of said lands; and

WHEREAS, It is desirable in the public interest to publish the consummation of said Act in order that due judicial notice thereof may be taken by all courts of law, and for other purposes;

Approved:

NOW, THEREFORE, I, WOODROW WILSON, President of the United States of America, do proclaim that the inclusion of the said lands in National Forests pursuant to said Act became effective as of December 23, 1919, and that the said lands are those indicated as additions to the Idaho and Payette National Forests, respectively, on the diagram hereto attached and forming a part hereof.

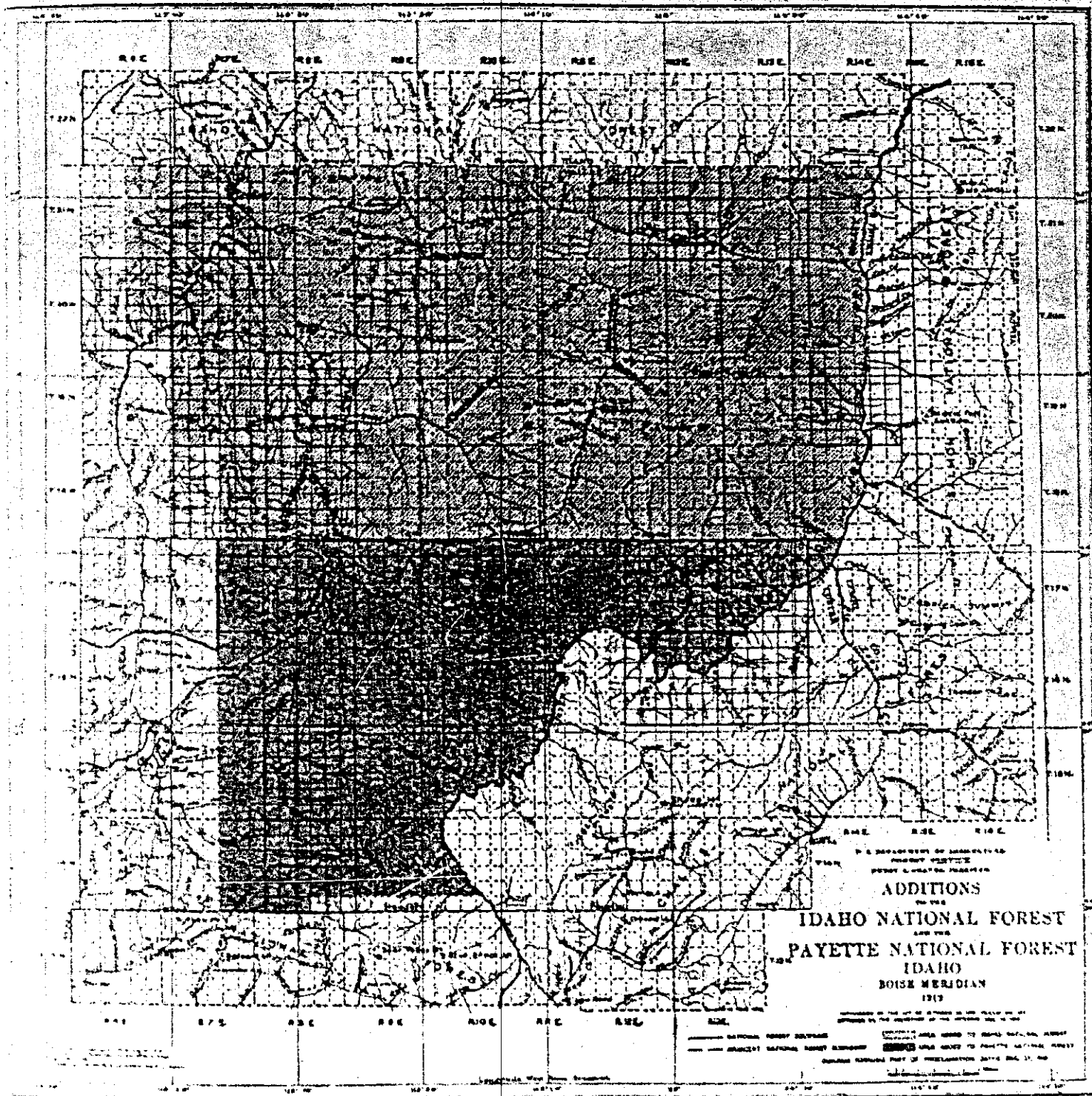
IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done in the District of Columbia this 27th day of December, in the year of our Lord one thousand nine hundred and nine-
[SEAL.] teen, and of the Independence of the United States the one hundred and forty-fourth.

WOODROW WILSON

By the President:

ROBERT LANSING,
Secretary of State.



SUBDIVISION

— REMARKS —

F. & G. DATE CLOSED, TERMINATED, REJECTED OR RESCINDED

EXHIBIT 2-PAGE 3