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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         | ) | Subcase No. 81-10300           |
|                    | ) |                                |
| 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 81-10300, as amended and before the Court in the SRBA.

3. I have reviewed Exhibit 1, as amended by the Forest Service for Hells Half Acre 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 a Public Reservation by Presidential Proclamation No. 23 signed February 22, 1897, by Grover Cleveland. This is substantiated in historical documents and maps maintained by the Idaho State Office of the United States Bureau of Land Management in Boise, Idaho. Attached as Exhibit 2 is a certified copy of the above referenced Presidential Proclamation No. 23 establishing the Public Reservation.

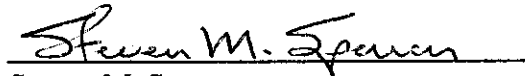
5. The priority date, February 22, 1897, for this reserved water right claim corresponds to the date of Presidential Proclamation No. 23. *See* Exhibit 2.

6. Based upon the forgoing, I have personal knowledge of the following elements of the federal reserved right claim 81-10300 attached hereto as Exhibit 1, submitted in the SRBA:

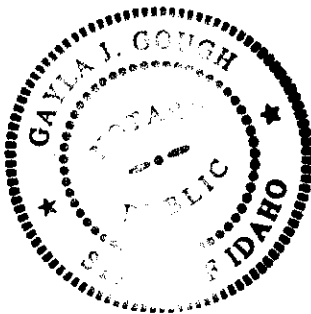
a. The land at the legal descriptions shown as the point of diversion and place of use is federally reserved National Forest System land. It was first reserved by Presidential Proclamation No. 23 February 22, 1897 as a Public Reservation. It is now part of the Bitterroot National Forest.

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: February 22, 1897

  
Steven M. Spencer

SUBSCRIBED and SWORN to before me this 24<sup>TH</sup> day of March, 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 March 28, 2003, I mailed a true and correct copy of the foregoing Affidavit of Steven M. Spencer – 81-10300 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: 81-10300

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: ~~HELLS HALF ACRE CREEK~~ SINKS

Quantity: .02 CFS

Priority Date: 02-22-1897

Point of Diversion: T27N R15E S28 SENW Within Idaho County

| Purpose and<br>Period of Use: | Purpose of Use        | Period of Use  | Quantity |
|-------------------------------|-----------------------|----------------|----------|
|                               | <del>Domestic</del>   | 06-01 TO 11-30 | .02 CFS  |
|                               | <u>Administrative</u> |                |          |

Place of Use: ~~Domestic~~ Within Idaho County  
Administrative  
T27N R15E S29 NESW

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

Explanatory Material: Basis of Claim - Reserved

FOREST SERVICE RECORD ID = 0103 17060301 18 A002  
Hells Half Lookout

EXHIBIT 1

UNITED STATES DEPARTMENT OF THE INTERIOR  
BUREAU OF LAND MANAGEMENT

Idaho State Office  
1387 S. Vinnell Way  
Boise, Idaho 83709

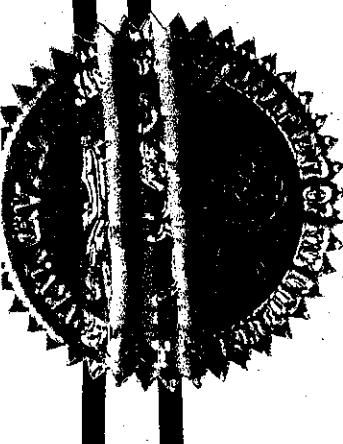
March 21, 2003

Date

TO WHOM IT MAY CONCERN:

I HEREBY CERTIFY that the attached reproduction(s) is a copy of documents on file in this office.

IN TESTIMONY WHEREOF I have hereunto subscribed my name and caused the seal of this office to be affixed on the above day and year.

  
Peter J. Roundy  
Contact Representative

No warranty is made by the Bureau of  
Land Management for the use of the data  
for purposes not intended by BLM.

EXHIBIT 2 - PAGE 1

ID 1270-1  
(May 2001)

# IDAHO

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.

February 22, 1897.

## 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

Preamble.  
Vol. 26, p. 1103.

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 States of Idaho and Montana, 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;

Forest reservation.  
Idaho and Montana.

Now, therefore, I, Grover Cleveland, President of the United States, by virtue of the power in me vested by section twenty-four of the afore-said Act of Congress, do hereby make known and proclaim that there is 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 States of Idaho and Montana, and within the boundaries particularly described as follows, to-wit:

Boundaries.

Beginning at the north-east corner of Township thirty-six (36) North, Range five (5) East, Boise Meridian, Idaho; thence southerly along the surveyed and unsurveyed range line between Ranges five (5) and six (6) East, to the point of intersection with the Salmon River; thence in an easterly direction along the middle of the channel of said river to the point of intersection for the unsurveyed range line between Ranges eighteen (18) and nineteen (19) East; thence northerly along said unsurveyed range line to the point of intersection with the boundary line between the States of Idaho and Montana; thence in an easterly direction along said State boundary line to the point for the unsurveyed range line between Ranges nineteen (19) and twenty (20) West, Principal Meridian, Montana; thence northerly along said range line to the Base Line; thence westerly along said base line to the south-east corner of Township one (1) North, Range twenty (20) West; thence northerly along the range line to the north-east corner of said township; thence westerly along the surveyed and unsurveyed township line between Townships one (1) and two (2) North, to the point for the south-east corner of Township two (2) North, Range twenty-two (22) West; thence northerly along the unsurveyed range line between Ranges twenty-one (21) and twenty-two (22) West, allowing for the proper offsets on the First (1st) and Second (2nd) Standard Parallels North, to the point for the north-east corner of Township ten (10) North, Range twenty-two (22) West; thence westerly along the unsurveyed township line between Townships ten (10) and eleven (11) North, to the point of intersection with the boundary line between the States of Montana and Idaho; thence along said State boundary line to the point for the unsurveyed township line between Townships thirty-eight (38) and thirty-nine (39) North, Idaho; thence westerly along said township line to the point for the north-west corner of Township thirty-eight (38) North, Range ten (10) East; thence southerly along the unsurveyed range line between Ranges nine (9) and ten (10) East, to the point for the south-west corner of Township thirty-seven (37) North, Range ten (10) East; thence westerly along the unsurveyed Seventh (7th) Standard Parallel North, to the north-east corner of Township thirty-six (36) North, Range five (5) East, the place of beginning.

Prior valid entries  
excepted.

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; and all mining claims duly located and held according to the laws of the United States and rules and regulations not in conflict therewith;

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, settlement or location was made.

Reserved from set-  
tlement.

Warning is hereby expressly given to all persons not to enter or make settlement upon the tract of land reserved by this proclamation.

PROCLAMATIONS. Nos. 23, 24.

901

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 22d day of February, in the year of our Lord one thousand, eight hundred and ninety-  
[SEAL.] seven, and of the Independence of the United States the one hundred and twenty-first.

GROVER CLEVELAND

By the President:

RICHARD OLNEY

*Secretary of State.*

UNSURVEYED TOWNSHIP 27 NORTH RANGE 15 EAST OF THE BOISE MERIDIAN, IDAHO

| SECTION                                                                                                                                                                           | SUBDIVISION     |        |        |        |        |        |        |        |        |        | ACRES        | KIND OF ENTRY<br>-OR-<br>PURPOSE OF ORDER | SERIAL FILE<br>-OR-<br>ORDER NUMBER | DATE OF<br>ACTION | DATE<br>POSTED | REMARKS -<br>E. 6. DATE CLOSED, TERMINATED, REJECTED OR RESCINDED  |                                   |                   |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------------|-------------------------------------------|-------------------------------------|-------------------|----------------|--------------------------------------------------------------------|-----------------------------------|-------------------|
|                                                                                                                                                                                   | NE 1/4          |        |        |        | NW 1/4 |        |        |        | SE 1/4 |        |              |                                           |                                     |                   |                |                                                                    | LOTS                              | OTHER DESCRIPTION |
|                                                                                                                                                                                   | NE 1/4          |        | NW 1/4 |        | SW 1/4 |        | SE 1/4 |        |        |        |              |                                           |                                     |                   |                |                                                                    |                                   |                   |
|                                                                                                                                                                                   | NE 1/4          | NW 1/4 | NE 1/4 | NW 1/4 | SW 1/4 | SE 1/4 | NE 1/4 | NW 1/4 | SW 1/4 | SE 1/4 |              |                                           |                                     |                   |                |                                                                    |                                   |                   |
| FOR ORDERS EFFECTING DISPOSAL OR USE OF UNIDENTIFIED LANDS WITHDRAWN FOR CLASSIFICATION, MINERALS, WATER, AND/OR OTHER PUBLIC PURPOSES, REFER TO INDEX OF MISCELLANEOUS DOCUMENTS |                 |        |        |        |        |        |        |        |        |        |              |                                           |                                     |                   |                |                                                                    |                                   |                   |
| 16                                                                                                                                                                                |                 |        |        |        |        |        |        |        |        |        | All          |                                           |                                     |                   |                | Title to State to vest on approval of Survey, Subj to prior rights |                                   |                   |
| 36                                                                                                                                                                                |                 |        |        |        |        |        |        |        |        |        | All          |                                           |                                     |                   |                |                                                                    |                                   |                   |
|                                                                                                                                                                                   | ENTIRE TOWNSHIP |        |        |        |        |        |        |        |        |        |              | 36N 6E                                    |                                     |                   |                |                                                                    | Proc Wd1 Bitterroot Forest Res 23 |                   |
| 16                                                                                                                                                                                |                 |        |        |        |        |        |        |        |        |        | All          |                                           |                                     |                   |                |                                                                    |                                   |                   |
| 36                                                                                                                                                                                |                 |        |        |        |        |        |        |        |        |        | All; 14N 43E | 1280.00                                   |                                     |                   |                |                                                                    |                                   |                   |
|                                                                                                                                                                                   | ENTIRE TOWNSHIP |        |        |        |        |        |        |        |        |        |              | 22N 1E                                    |                                     |                   |                |                                                                    |                                   |                   |
|                                                                                                                                                                                   |                 |        |        |        |        |        |        |        |        |        |              |                                           |                                     |                   |                |                                                                    |                                   |                   |
| 16                                                                                                                                                                                |                 |        |        |        |        |        |        |        |        |        | All          |                                           |                                     |                   |                |                                                                    |                                   |                   |
| 36                                                                                                                                                                                |                 |        |        |        |        |        |        |        |        |        | All          |                                           |                                     |                   |                |                                                                    |                                   |                   |
|                                                                                                                                                                                   |                 |        |        |        |        |        |        |        |        |        | 24N 12E      |                                           |                                     |                   |                |                                                                    |                                   |                   |
|                                                                                                                                                                                   |                 |        |        |        |        |        |        |        |        |        |              |                                           |                                     |                   |                |                                                                    |                                   |                   |
| 1                                                                                                                                                                                 |                 |        |        |        |        |        |        |        |        |        | All          |                                           |                                     |                   |                |                                                                    |                                   |                   |
| 2                                                                                                                                                                                 |                 |        |        |        |        |        |        |        |        |        | All          |                                           |                                     |                   |                |                                                                    |                                   |                   |
| 3                                                                                                                                                                                 |                 |        |        |        |        |        |        |        |        |        | All          |                                           |                                     |                   |                |                                                                    |                                   |                   |
| 4                                                                                                                                                                                 |                 |        |        |        |        |        |        |        |        |        | All          |                                           |                                     |                   |                |                                                                    |                                   |                   |
| 5                                                                                                                                                                                 |                 |        |        |        |        |        |        |        |        |        | All          |                                           |                                     |                   |                |                                                                    |                                   |                   |
| 6                                                                                                                                                                                 |                 |        |        |        |        |        |        |        |        |        | All          |                                           |                                     |                   |                |                                                                    |                                   |                   |
| 7                                                                                                                                                                                 |                 |        |        |        |        |        |        |        |        |        | All          |                                           |                                     |                   |                |                                                                    |                                   |                   |
| 8                                                                                                                                                                                 |                 |        |        |        |        |        |        |        |        |        | All          |                                           |                                     |                   |                |                                                                    |                                   |                   |
| 9                                                                                                                                                                                 |                 |        |        |        |        |        |        |        |        |        | All          |                                           |                                     |                   |                |                                                                    |                                   |                   |
| 10                                                                                                                                                                                |                 |        |        |        |        |        |        |        |        |        | All          |                                           |                                     |                   |                |                                                                    |                                   |                   |
| 11                                                                                                                                                                                |                 |        |        |        |        |        |        |        |        |        | All          |                                           |                                     |                   |                |                                                                    |                                   |                   |
| 12                                                                                                                                                                                |                 |        |        |        |        |        |        |        |        |        | All          |                                           |                                     |                   |                |                                                                    |                                   |                   |
| 13                                                                                                                                                                                |                 |        |        |        |        |        |        |        |        |        | All          |                                           |                                     |                   |                |                                                                    |                                   |                   |
| 14                                                                                                                                                                                |                 |        |        |        |        |        |        |        |        |        | All          |                                           |                                     |                   |                |                                                                    |                                   |                   |
| 15                                                                                                                                                                                |                 |        |        |        |        |        |        |        |        |        | All          |                                           |                                     |                   |                |                                                                    |                                   |                   |
| 16                                                                                                                                                                                |                 |        |        |        |        |        |        |        |        |        | All          |                                           |                                     |                   |                |                                                                    |                                   |                   |
| 17                                                                                                                                                                                |                 |        |        |        |        |        |        |        |        |        | All          |                                           |                                     |                   |                |                                                                    |                                   |                   |
| 18                                                                                                                                                                                |                 |        |        |        |        |        |        |        |        |        | All          |                                           |                                     |                   |                |                                                                    |                                   |                   |
| 19                                                                                                                                                                                |                 |        |        |        |        |        |        |        |        |        | All          |                                           |                                     |                   |                |                                                                    |                                   |                   |
| 20                                                                                                                                                                                |                 |        |        |        |        |        |        |        |        |        | All          |                                           |                                     |                   |                |                                                                    |                                   |                   |
| 21                                                                                                                                                                                |                 |        |        |        |        |        |        |        |        |        | All          |                                           |                                     |                   |                |                                                                    |                                   |                   |
| 22                                                                                                                                                                                |                 |        |        |        |        |        |        |        |        |        | All          |                                           |                                     |                   |                |                                                                    |                                   |                   |
| 23                                                                                                                                                                                |                 |        |        |        |        |        |        |        |        |        | All          |                                           |                                     |                   |                |                                                                    |                                   |                   |
| 24                                                                                                                                                                                |                 |        |        |        |        |        |        |        |        |        | All          |                                           |                                     |                   |                |                                                                    |                                   |                   |
| 25                                                                                                                                                                                |                 |        |        |        |        |        |        |        |        |        | All          |                                           |                                     |                   |                |                                                                    |                                   |                   |
| 26                                                                                                                                                                                |                 |        |        |        |        |        |        |        |        |        | All          |                                           |                                     |                   |                |                                                                    |                                   |                   |
| 27                                                                                                                                                                                |                 |        |        |        |        |        |        |        |        |        | All          |                                           |                                     |                   |                |                                                                    |                                   |                   |
| 28                                                                                                                                                                                |                 |        |        |        |        |        |        |        |        |        | All          |                                           |                                     |                   |                |                                                                    |                                   |                   |
| 29                                                                                                                                                                                |                 |        |        |        |        |        |        |        |        |        | All          |                                           |                                     |                   |                |                                                                    |                                   |                   |
| 30                                                                                                                                                                                |                 |        |        |        |        |        |        |        |        |        | All          |                                           |                                     |                   |                |                                                                    |                                   |                   |
| 31                                                                                                                                                                                |                 |        |        |        |        |        |        |        |        |        | All          |                                           |                                     |                   |                |                                                                    |                                   |                   |
| 32                                                                                                                                                                                |                 |        |        |        |        |        |        |        |        |        | All          |                                           |                                     |                   |                |                                                                    |                                   |                   |
| 33                                                                                                                                                                                |                 |        |        |        |        |        |        |        |        |        | All          |                                           |                                     |                   |                |                                                                    |                                   |                   |
| 34                                                                                                                                                                                |                 |        |        |        |        |        |        |        |        |        | All          |                                           |                                     |                   |                |                                                                    |                                   |                   |
| 35                                                                                                                                                                                |                 |        |        |        |        |        |        |        |        |        | All; 24N 12E |                                           |                                     |                   |                | Det completed 10/16/1961; All NF surface Mgmt by USFS              |                                   |                   |
| 4                                                                                                                                                                                 |                 |        |        |        |        |        |        |        |        |        |              |                                           |                                     |                   |                |                                                                    |                                   |                   |
| 5                                                                                                                                                                                 |                 |        |        |        |        |        |        |        |        |        |              |                                           |                                     |                   |                |                                                                    |                                   |                   |
| 6                                                                                                                                                                                 |                 |        |        |        |        |        |        |        |        |        | M68; 24N 12E |                                           |                                     |                   |                | Admt: Kit Carson; Wdn PLD 4033 6/6/1966                            |                                   |                   |