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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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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. 83-10137
	)	
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 83-10137 as amended and before the Court in the SRBA.

3. I have reviewed Exhibit 1, as amended by the Forest Service for Hemlock Butte 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 This is substantiated in historical documents and maps maintained by the Idaho State Office of the United States Bureau of Land Management in Boise, Idaho.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 83-10137 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 Clearwater National Forest.

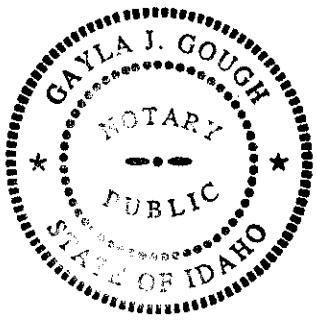
b. The name and address of the claimant is: UNITED STATES OF AMERICA acting on behalf of the USDA Forest Service, 550 W. Fort Street, MSC033, Boise, ID 83724.

c. The priority date is: February 22, 1897

Steven M. Spencer

Steven M. Spencer

SUBSCRIBED and SWORN to before me this 25TH 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 – 83-10137 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: 83-10137

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: ~~HEM CREEK~~ SINKS

Quantity: .02 CFS

Priority Date: 02-22-1897

Point of Diversion: T36N R07E S07 NWSE Within Idaho County

Purpose and Period of Use:

Purpose of Use	Period of Use	Quantity
~~Domestic~~ Administrative	06-01 TO 10-31	.02 CFS

Place of Use: ~~Domestic~~ Administrative Within Idaho County
T36N R07E S07 NESW

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

Explanatory Material: Basis of Claim - Reserved

FOREST SERVICE RECORD ID = 0105 17060307 11 A002
Hemlock Lookout

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.

Rex 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

[No. 23.]

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 aforesaid 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 settlement.

Warning is hereby expressly given to all persons not to enter or make settlement upon the tract of land 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 22d day of February, in the year of our Lord one thousand, eight hundred and ninety-seven, and of the Independence of the United States the one hundred and twenty-first.

[SEAL.]

GROVER CLEVELAND

By the President:

RICHARD OLNEY

Secretary of State.

TOWNSHIP 36 NORTH RANGE 7 EAST OF THE BOISE MERIDIAN, IDAHO

SECTION	SUBDIVISION																LOTS	OTHER DESCRIPTION	ACRES	KIND OF ENTRY —OR— PURPOSE OF ORDER	SERIAL FILE —OR— ORDER NUMBER	DATE OF ACTION	DATE POSTED	—REMARKS— E. G. DATE CLOSED, TERMINATED, REJECTED OR RESCINDED
	NE ¼				NW ¼				SW ¼				SE ¼											
	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	FOR ORDERS EFFECTING DISPOSAL OR USE OF UNIDENTIFIED LANDS WITHDRAWN FOR CLASSIFICATION, MINERALS, WATER, AND/OR OTHER PUBLIC PURPOSES, AND INDIAN TREATIES, REFER TO INDEX OF MISCELLANEOUS DOCUMENTS							
16																		All						
36																		All		SG	Act of Cong	7/3/1890		Title to State to vest on approval of Survey, Subj to prior rights
					ENTIRE TOWNSHIP													36N 6E		Proc Wdl Bitterroot Forest Res	23	2/22/1897		Chg to Bitterroot NF Act 3/4/1907; Name Chg EO 842 6/26/1908
16																		All						
36	X	X	X	X	X	X	X	X	X									9S 31E	1000.00	IL Base	4	1/21/1908		
					ENTIRE TOWNSHIP													28N 10E		EO Name Chg Bitterroot NF				
																				Proc 23 2/22/1897 to Clearwater				
																				NF	842	6/26/1908		Partially Name Chg Proc 1140 6/29/1911
36										X	X	X	X	X	X	X		6N 44E	280.00	IL Base	6	10/20/1908		
																		M&B; 28N 10E		Proc Name Chg Clearwater NF				
																				EO 842 6/26/1908 to Selway NF	1140	6/29/1911		Trfd to Clearwater NF EO 6889 10/29/1934
16																		All						
36																		All		SG	Act of Cong	1/25/1927		Extends Act 7/3/1890 to Min lands, Subj to prior rights
																		M&B; 36N 10E		EO Trf Selway NF Proc 1140				
																				6/29/1911 to Clearwater NF	6889	10/29/1934		
33	X	X		X	X								X		X	X								
34					X	X	X	X	X	X								34N 6E		Prop Wdl USFS Rec Area	1 04218	5/11/1953		Partially Term 12/9/1971, 6/22/1982, 7:45 AM, 47 FR 24418
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Boise
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EXHIBIT 2- PAGE 5