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Name of Party Filing Document:

UNITED STATES OF AMERICA

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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. 77-10692
	)	
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 77-10692, as amended and before the Court in the SRBA.

3. I have reviewed Exhibit 1, as amended by the Forest Service for Burgdorf 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 Payette Forest Reserve on June 3, 1905, 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 This is substantiated in historical documents maintained by the Idaho State Office of the United States Bureau of Land Management in Boise, Idaho.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, June 3, 1905, for this reserved water right claim corresponds to the date of the Proclamation creating the Payette Forest Reserve. See Exhibit 2.

6. Based upon the forgoing, I have personal knowledge of the following elements of the federal reserved right claim 77-10692 attached hereto as Exhibit 1, submitted in the SRBA:

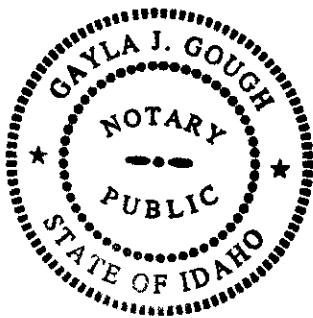
a. The land at the legal descriptions shown as the point of diversion and place of use is federally reserved National Forest System land. It was first reserved as the Payette Forest Reserve on June 3, 1905, in A Proclamation signed by President Theodore Roosevelt. It is now part of the Payette National 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: June 3, 1905.

Steven M. Spencer
Steven M. Spencer

SUBSCRIBED and SWORN to before me this 16TH day of April, 2003



Gayla J. Gough
Gayla J. Gough
NOTARY PUBLIC FOR: Idaho
Residing at: Kuna, Idaho
My Commission Expires: 11/17/2004

CERTIFICATE OF MAILING

I certify that on April 21, 2003, I mailed a true and correct copy of the foregoing Affidavit of Steven M. Spencer – 77-10692 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: 77-10692

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: ~~LAKE CREEK~~ SINKS

Quantity: .02 CFS

Priority Date: 06-03-1905

Point of Diversion: T22N R04E S11 NENE Within Idaho County

Purpose and Period of Use:	Purpose of Use	Period of Use	Quantity
	~~Domestic~~	05-01 TO 10-31	.02 CFS
	<u>Administrative</u>		

Place of Use: ~~Domestic~~ Within Idaho County
Administrative
T22N R04E S01 SESW

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

Explanatory Material: Basis of Claim - Reserved

FOREST SERVICE RECORD ID = 0412 17060208 26 0409
Burgdorf Guard Station

IDAHO

47

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.

June 3, 1905.

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 Payette Forest Reserve, Idaho.
Preamble.
Vol. 28, p. 1103.

Forest reserve, Idaho.

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:

Description.

Beginning at the north-west corner of Township twenty-three (23) North, Range four (4) East, Boise Base and Meridian, Idaho; thence southerly to the south-east corner of Township twenty-three (23) North, Range three (3) East; thence westerly to the north-west corner of Township twenty-two (22) North, Range two (2) East; thence southerly along the range line, allowing for the proper offset on the Fifth (5th) Standard Parallel North, to the south-west corner of Section nineteen (19), Township twenty (20) North, Range two (2) East; thence easterly to the north-east corner of Section twenty-nine (29), said township; thence southerly to the south-west corner of Section sixteen (16), Township nineteen (19) North, Range two (2) East; thence easterly to the south-east corner of said section; thence southerly to the south-west corner of Section thirty-four (34), said township; thence easterly to the south-east corner of Section thirty-one (31), Township nineteen (19) North, Range three (3) East; thence northerly to the north-east corner of said section; thence easterly to the south-east corner of Section twenty-nine (29), said township; thence northerly to the north-west corner of Section four (4), said township; thence easterly to the south-east corner of Section thirty-four (34), Township twenty (20) North, Range three (3) East; thence northerly to the north-west corner of Section twenty-three (23), said township; thence easterly to the north-east corner of Section twenty-four (24), said township; thence southerly to the south-east corner of Section twelve (12), Township nineteen (19) North, Range three (3) East; thence westerly to the south-west corner of said section; thence southerly to the south-west corner of Section twenty-five (25), said township; thence easterly to the south-east corner of said section; thence southerly to the south-west corner of Township nineteen (19) North, Range four (4) East; thence easterly to the south-east corner of Section thirty-one (31), said township; thence southerly to the south-west corner of Section five (5), Township eighteen (18) North, Range four (4) East; thence easterly to the north-east corner of Section nine (9), said township; thence southerly to the south-east corner of Section sixteen (16), said township; thence westerly to the north-west corner of Section twenty-one (21), said township; thence southerly to the south-east corner of Section thirty-two (32), said township; thence westerly along the Fourth (4th) Standard Parallel North, to the north-west corner of the north-east quarter of Section five (5), Township seventeen (17) North, Range four (4) East; thence southerly to the south-west corner of the south-east quarter of Section eight (8), said township; thence easterly to the north-east corner of Section sixteen (16), said township; thence southerly to the south-west corner of Section fifteen (15), said township; thence easterly to the north-east corner of Section twenty-two (22), said township; thence southerly to the south-east corner of said section; thence westerly to the north-west corner of Section twenty-eight (28), said township; thence southerly to the south-west corner of said section; thence easterly to the north-east corner of Section thirty-six (36), said township; thence southerly to the south-east corner of said township; thence westerly to the north-west corner of Section one (1), Township sixteen (16) North, Range four (4) East; thence southerly to the south-west corner of said section; thence easterly to the north-east corner of Section twelve (12), said township; thence southerly to the south-east corner of said township; thence westerly to the north-west corner of Section one (1),

PROCLAMATIONS, 1905.

3069

Payette Forest
Reserve — Contin-
ued.

Township fifteen (15) North, Range four (4) East; thence southerly to the south-east corner of Section fourteen (14), said township; thence westerly to the north-west corner of Section twenty-two (22), said township; thence southerly to the south-east corner of Section thirty-three (33), said township; thence westerly to the north-west corner of Section five (5), Township fourteen (14) North, Range four (4) East; thence southerly to the south-west corner of said section; thence easterly to the south-east corner of said section; thence southerly to the south-west corner of Section nine (9), said township; thence easterly to the south-east corner of said section; thence southerly to the south-west corner of Section fifteen (15), said township; thence westerly to the north-west corner of Section twenty-one (21), said township; thence southerly to the south-west corner of said section; thence easterly to the south-east corner of Section twenty-three (23), said township; thence northerly to the south-west corner of Section twelve; said township; thence easterly to the south-east corner of said section; thence northerly to the north-west corner of Township fourteen (14) North, Range five (5) East; thence easterly to the north-east corner of Section five (5), said township; thence southerly to the south-west corner of Section nine (9), said township; thence easterly to the north-west corner of Section fifteen (15), said township; thence southerly to the south-west corner of said section; thence westerly to the north-west corner of Section twenty (20), said township; thence southerly to the south-west corner of Section thirty-two (32), said township; thence easterly along the Third (3rd) Standard Parallel North to the south-east corner of Section thirty-three (33), Township fourteen (14) North, Range seven (7) East; thence northerly along the section lines, allowing for the proper offset on the Fourth (4th) Standard Parallel North, to the north-east corner of Section four (4), Township eighteen (18) North, Range seven (7) East; thence westerly to the south-west corner of Township nineteen (19) North, Range seven (7) East; thence northerly to the north-east corner of Township nineteen (19) North, Range six (6) East; thence westerly to the south-west corner of Section thirty-four (34), Township twenty (20) North, Range six (6) East; thence northerly along the section lines to the point of intersection with the Fifth (5th) Standard Parallel North; thence easterly along said parallel to its intersection with the Middle Fork of the Salmon River; thence in a general north-easterly direction along the middle of the channel of said Middle Fork of the Salmon River to its confluence with said river; thence in a general north-westerly direction along the middle of the channel of said river to its intersection with the range line between Ranges six (6) and seven (7) East; thence southerly to the south-east corner of Township twenty-four (24) North, Range six (6) East; thence westerly to the north-west corner of Township twenty-three (23) North, Range four (4) 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 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 selection was made.

Lands excepted.

3070

PROCLAMATIONS, 1905.

Reserved from
settlement.

Name.

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

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

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 2d day of June, in the year of
our Lord one thousand nine hundred and five, and of the

[SEAL.] Independence of the United States the one hundred and
twenty-ninth.

T. ROOSEVELT

By the President:

FRANCIS B. LOOMIS

Acting Secretary of State.

TOWNSHIP 22 NORTH RANGE 4 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. G. DATE CLOSED, TERMINATED, REJECTED OR RESCINDED	
	NE 1/4		NW 1/4		SW 1/4		SE 1/4		LOTS	OTHER DESCRIPTION							
	NE 1/4	NW 1/4	NE 1/4	NW 1/4	NE 1/4	NW 1/4	NE 1/4	NW 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						Partially Recon 2/17/1988	
36										All		Act of Cong	7/3/1890			Title to State to vest on approval of Survey. Subj to prior rights	
1			X	X	X						160.00	NE Pat	1660	2/12/1902			
			ENTIRE TOWNSHIP							14m 7E		SO Temp Wdl Bitterroot Forest					
												Res		11/14/1902		MO; Wdn Proc 6/3/1905	
			ENTIRE TOWNSHIP							23N 4E		Proc Wdl Payette Forest Res		6/3/1905		Chg to Payette NF Act 3/4/1907; Name Chg EO 855 6/26/1908	
										16N 4E		EO Name Chg Payette NF Proc					
												6/3/1905 to Idaho NF	855	6/26/1908		Trfd to Payette NF PLO 218 3/18/1944	
16										All							
36										All		SE	Act of Cong	1/25/1927		Extends Act 7/3/1890 to Min lands, Subj to prior rights	
			ENTIRE TOWNSHIP							13N 5W		PLO Trf Idaho NF EO 855					
												6/26/1908 to Payette NF	128	3/18/1944			
1							X			Subj to SE							
12	X	X	X	X						See Rmks		PLO Wdl USFS Adm S	725	6/4/1951		NE NE NE; Other Tps 3N 13E, 40N 11E, 41N 11E, 42N 11E, 42N 12E; Burgdorf; 16 FR 5446	
1	X							X	2, 3	See Rmks						NE NE NE; SE NE NE; Other Tps 3N 13E, 40N 11E, 41N 11E, 42N 11E, 42N 12E; Burgdorf	
												PLO Wdl USFS Rec Area	725	6/4/1951		Campground & Summer Home Area; 16 FR 5445	
4										See Rmks		Prop Wdl Adm S	I 05280	7/16/1953		ES NE NE NE; SE NE NE; Other Tps 16N 1E; Bear Pete Lookout; Wdn PLO 1374 12/20/1956	
4										16N 1E		PLO Wdl USFS Adm S	1374	12/20/1956		I 05280; Bear Pete Lookout; 21 FR 10400; Partially Rev PLO 2431 7/10/1961	
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