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Department of Water Resources

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. 77-13913
	)	
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 77-13913, as amended and before the Court in the SRBA.

3. I have reviewed Exhibit 1, as amended by the Forest Service for Elk Creek 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 on November 6, 1906 in A Proclamation signed by President Theodore Roosevelt to enlarge to the Sawtooth Forest Reserve. This is substantiated in historical documents maintained by the Idaho State Office of the United States Bureau of Land Management in Boise, Idaho.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 for this reserved water right claim should be November 6, 1906, which corresponds to the date of the Proclamation to enlarge the Sawtooth Forest Reserve. *See* Exhibit 2. However, I have discovered an inadvertent typographical error in the priority date on the amended claim. The priority date on the amended claim is November 16, 1906. I have determined that for this individual water right and this water right only, given the location, a 10 day later or junior priority date will most likely be insignificant in the event water rights must be administered and managed by priority or seniority at some time in the future.

6. Based upon the forgoing, I have personal knowledge of the following elements of the federal reserved right claim 77-13913 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 an enlargement to the Sawtooth Forest Reserve on November 6, 1906, in A Proclamation signed by President Theodore Roosevelt. It is now part of the Boise 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 will be: November 16, 1906.

Steven M. Spencer
Steven M. Spencer

SUBSCRIBED and SWORN to before me this 18TH day of April, 2003



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

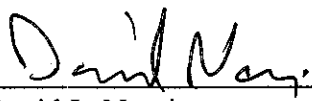
CERTIFICATE OF MAILING

I certify that on April 21, 2003, I mailed a true and correct copy of the foregoing Affidavit of Steven M. Spencer – 77-13913 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: 77-13913

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

Source: SPRINGS Tributary: ELK CREEK

Quantity: .02 CFS

Priority Date: ~~05-29-1905~~ 11-16-1906

Point of Diversion: T13N R09E S32 NWNE Within Valley County

Purpose and Period of Use:	Purpose of Use	Period of Use	Quantity
	~~Domestic~~	05-01 TO 11-30	.02 CFS
	<u>Administrative</u>		

Place of Use:	~~Domestic~~	Within Valley County
	<u>Administrative</u>	
	T13N R09E S32	NWNE

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

Explanatory Material: Basis of Claim - Reserved

FOREST SERVICE RECORD ID = 0402 17060205 68 0016
Elk Creek Guard Station

Nov. 6, 1906

SAWTOOTH FOREST RESERVE.

IDAHO.

(SECOND PROCLAMATION.)

By the President of the United States of America.

A Proclamation.

WHEREAS, the Sawtooth Forest Reserve, in the State of Idaho, was established by proclamation dated May twenty-ninth, nineteen hundred and five;

And whereas, it appears that the public good would be promoted by adding to the said forest reserve certain lands, within the State of Idaho, which are in part covered with timber;

And whereas, it is provided by the Act of Congress, approved June fourth, eighteen hundred and ninety-seven, entitled, "An Act Making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and ninety-eight, and for other purposes," that "The President is hereby authorized at any time to modify any Executive order that has been or may hereafter be made establishing any forest reserve, and by such modification may reduce the area or change the boundary lines of such reserve, or may vacate altogether any order creating such reserve";

Now, therefore, I, THEODORE ROOSEVELT, President of the United States of America, by virtue of the power in me vested by the said act of Congress, do proclaim that the aforesaid Sawtooth Forest Reserve is hereby enlarged to include the said additional lands, and that the boundaries of the reserve are now as shown on the diagram forming a part hereof.

This proclamation will not take effect upon any lands withdrawn or reserved, at this date, from settlement, entry, or other appropriation, for any purpose other than forest uses, or which may be covered by any prior valid claim, so long as the withdrawal, reservation, or claim exists.

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 6th day of November,
in the year of our Lord one thousand nine hundred and
six, and of the Independence of the United States the
one hundred and thirty-first.

[SEAL.]

THEODORE ROOSEVELT

By the President:

ROBERT BACON

Acting Secretary of State.

SAWTOOTH FOREST RESERVE IDAHO

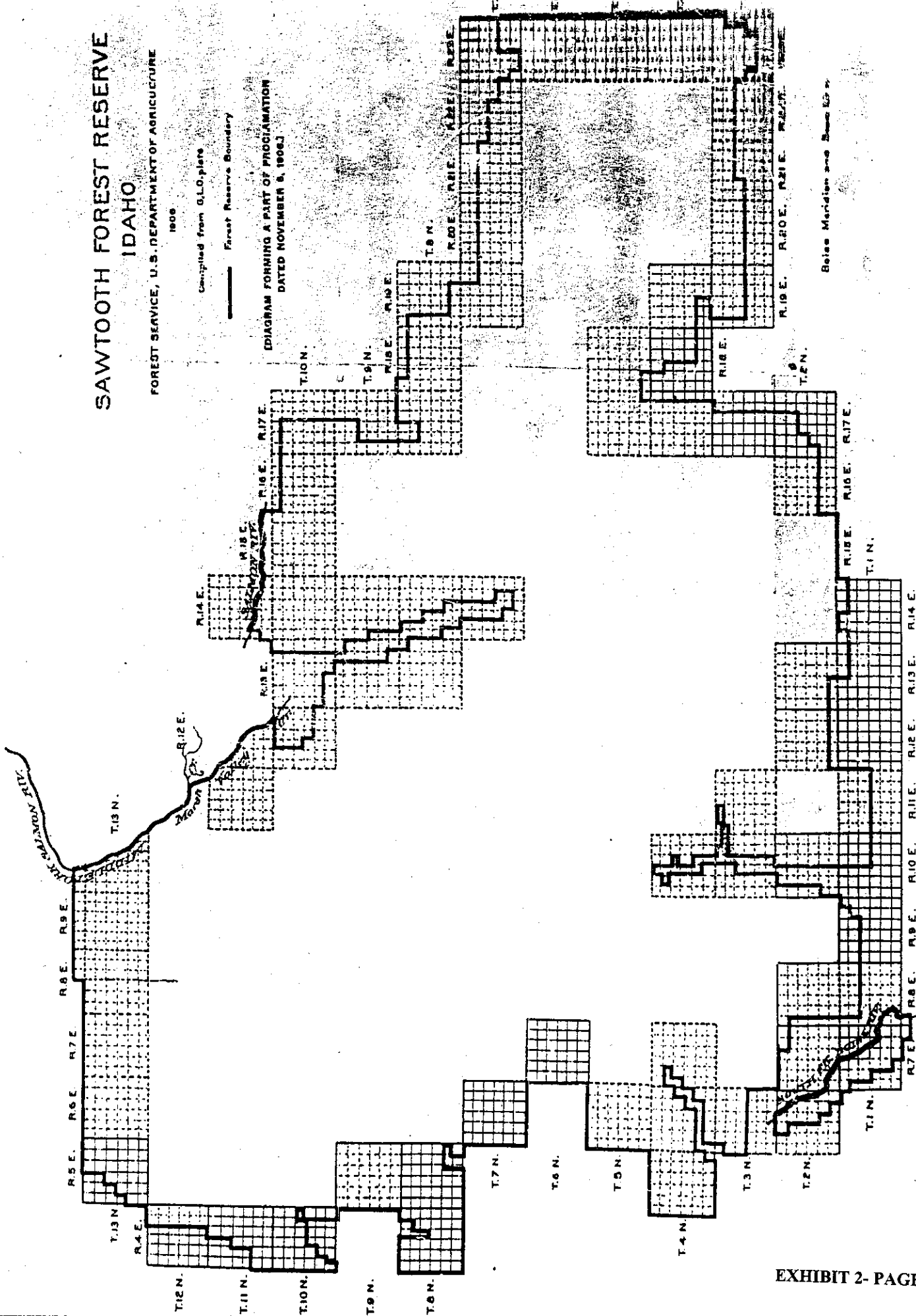
FOREST SERVICE, U.S. DEPARTMENT OF AGRICULTURE

1906

Compiled from G.L.O. plat

Forest Reserve Boundary

DIAGRAM FORMING A PART OF PROCLAMATION
DATED NOVEMBER 9, 1906



Beise Meridian and Base 43°

