

RECEIVED

APR 22 2003

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. 21-11763
	)	
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 21-11763, as amended and before the Court in the SRBA.

3. I have reviewed Exhibit 1, as amended by the Forest Service for Island Park Ranger 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 Henrys Lake Forest Reserve on May 23, 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 This is substantiated in historical documents maintained by the Idaho State Office of the United States Bureau of Land Management in Boise, Idaho.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, May 23, 1905, for this reserved water right claim corresponds to the date of the Proclamation creating the Henrys Lake Forest Reserve. *See* Exhibit 2.

6. Based upon the forgoing, I have personal knowledge of the following elements of the federal reserved right claim 21-11763 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 Henrys Lake Forest Reserve on May 23, 1905, in A Proclamation signed by President Theodore Roosevelt. It is now part of the Caribou-Targhee National Forests.

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: May 23, 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

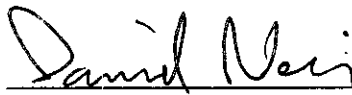
CERTIFICATE OF MAILING

I certify that on April 21, 2003, I mailed a true and correct copy of the foregoing Affidavit of Steven M. Spencer – 21-11763 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: 21-11763

Name and Address: UNITED STATES OF AMERICA ACTING THROUGH THE
USDA FOREST SERVICE
550 W FORT STREET, MSC033
BOISE, ID 83724

Source: GROUNDWATER

Quantity: .10 CFS

Priority Date: 05-23-1905

Point of Diversion: T13N R43E S27 NESW

Purpose and Period of Use:	Purpose of Use	Period of Use	Quantity
	~~Domestic~~	01-01 TO 12-31	.10 CFS
	<u>Administrative</u>		

Place of Use:	~~Domestic~~	
	<u>Administrative</u>	
	T13N R43E S27	NESW

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

Explanatory Material: Basis of Claim - Reserved
Island Park Ranger Station

EXHIBIT 1

IDAHO

3052

PROCLAMATIONS, 1905.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.

May 23, 1905.

A PROCLAMATION.

The Henrys Lake
Forest Reserve,
Idaho.
Preamble.
Vol. 28, p. 1103.

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:

Forest reserve,
Idaho.

Now, therefore, I, Theodore Roosevelt, 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 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 particularly described as follows:

Description.

Beginning at the point where the State Line between the States of Idaho and Montana intersects the western boundary of the Yellowstone National Park; thence southerly and easterly along the boundary of said Park to the point of intersection with the State Line between the States of Idaho and Wyoming; thence southerly along said State Line to the south-east corner of Township seven (7) North, Range forty-six (46) East, Boise Base and Meridian, Idaho; thence westerly to the south-west corner of Section thirty-five (35), Township seven (7) North, Range forty-five (45) East; thence northerly to the south-east corner of Section fifteen (15), said township; thence westerly to the south-west corner of said section; thence northerly to the north-west corner of Section three (3), said township; thence westerly to the south-west corner of Section thirty-three (33), Township eight (8) North, Range forty-five (45) East; thence northerly to the south-east corner of Section eight (8), said township; thence westerly to the south-west corner of the south-east quarter of said section; thence northerly to the north-west corner of the south-east quarter of Section five (5), said township; thence westerly to the south-west corner of the north-west quarter of Section six (6), said township; thence northerly, allowing for the proper offset on the Second (2nd) Standard Parallel North, to the south-east corner of Section twenty-five (25), Township nine (9) North, Range forty-four (44) East; thence westerly to the south-west corner of Section twenty-six (26), said township; thence northerly to the south-east corner of Section ten (10), said township; thence westerly to the south-west corner of Section seven (7), said township; thence northerly to the south-east corner of Section one (1), Township nine (9) North, Range forty-three (43) East; thence westerly to the north-east corner of Section ten (10), said township; thence southerly to the south-east corner of said section; thence westerly to the south-west corner of Section nine (9), said township; thence northerly to the north-west corner of said section; thence westerly to the south-west corner of Section six (6), said township; thence northerly

Henry's Lake For-
est Reserve — Con-
tinued.

to the south-east corner of Township ten (10) North, Range forty-two (42) East; thence westerly to the south-west corner of said township; thence northerly to the south-east corner of Township eleven (11) North, Range forty-one (41) East; thence westerly to the south-west corner of Section thirty-four (34), said township; thence northerly to the north-west corner of Section twenty-two (22), said township; thence easterly to the south-west corner of Section thirteen (13), said township; thence northerly to the north-west corner of said section; thence westerly to the north-east corner of Section seventeen (17), said township; thence southerly to the south-east corner of said section; thence westerly to the south-west corner of Section eighteen (18), said township; thence northerly to the south-east corner of Section one (1), Township eleven (11) North, Range forty (40) East; thence westerly to the south-west corner of Section two (2), said township; thence northerly to the north-west corner of Section two (2), Township twelve (12) North, Range forty (40) East; thence easterly along the Third (3rd) Standard Parallel North to the north-west corner of Section two (2), Township twelve (12) North, Range forty-one (41) 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 the north-west quarter of Section twelve (12), said township; thence easterly to the south-east corner of the north-east quarter of Section eight (8), Township twelve (12) North, Range forty-two (42) East; thence northerly to the north-east corner of Section five (5), said township; thence easterly to the south-east corner of Section thirty-four (34), Township thirteen (13) North, Range forty-two (42) East; thence northerly to the north-east corner of said section; thence easterly to the south-west corner of Section twenty-five (25), said township; thence northerly to the south-west corner of the north-west quarter of said section; thence easterly to the south-east corner of the north-east quarter of said section; thence northerly to the north-east corner of Section twenty-four (24), said township; thence westerly to the north-west corner of the north-east quarter of said section; thence northerly to the south-west corner of the north-east quarter of Section twelve (12), said township; thence easterly to the south-east corner of the north-east quarter of said section; thence northerly to the north-east corner of Section one (1), said township; thence westerly to the north-west corner of said section; thence southerly to the south-west corner of said section; thence westerly to the south-west corner of Section six (6), said township; thence northerly to the north-east corner of Township thirteen (13) North, Range forty-one (41) East; thence westerly to the north-west corner of Section one (1), said township; thence southerly to the south-west corner of said section; thence westerly to the south-east corner of Section four (4), said township; thence northerly to the north-east corner of said section; thence westerly to the north-west corner of said section; thence southerly to the south-west corner of said section; thence westerly to the north-west corner of Section ten (10), Township thirteen (13) North, Range forty (40) East; thence southerly to the south-west corner of said section; thence westerly to the north-west corner of Section eighteen (18), said township; thence northerly to the north-east corner of Section twelve (12), Township thirteen (13) North, Range thirty-nine (39) East; thence westerly to the north-west corner of Section seven (7), said township; thence southerly to the north-east corner of Section twenty-four (24), Township thirteen (13) North, Range thirty-eight (38) East; thence westerly to the north-west corner of Section twenty-two (22), said township; thence southerly to the south-west corner of said section; thence easterly to the south-east corner of said section;

Henry Lake Forest Reserve — Continued.

thence southerly, allowing for the proper offset on the Third (3rd) Standard Parallel North, to the north-east corner of Section ten (10), Township twelve (12) North, Range thirty-eight (38) East; thence westerly to the north-west corner of said section; thence southerly to the south-west corner of said section; thence westerly to the north-west corner of Section eighteen (18), Township twelve (12) North, Range thirty-seven (37) East; thence southerly to the south-east corner of Section thirteen (13), Township twelve (12) North, Range thirty-six (36) East; thence westerly to the south-west corner of Section eighteen (18), Township twelve (12) North, Range thirty-five (35) East; thence northerly along the range line, allowing for the proper offset on the Third (3rd) Standard Parallel North, to the State Line between the States of Idaho and Montana; thence in a general easterly direction along said State Line to the point of intersection with the western boundary of the Yellowstone National Park, the place of beginning; excepting and excluding from reservation all those certain tracts, pieces or parcels of land lying and being situate within the boundaries particularly described as follows:

Lands excluded.

Beginning at the north-west corner of Section thirty-one (31), Township sixteen (16) North, Range forty-three (43) East, Boise Base and Meridian, Idaho; thence easterly to the north-east corner of Section thirty-three (33), said township; thence southerly to the south-east corner of said section; thence easterly to the north-east corner of Township fifteen (15) North, Range forty-three (43) East; thence southerly to the south-east corner of said township; thence easterly to the north-east corner of Section five (5), Township fourteen (14) North, Range forty-four (44) East; thence southerly to the north-west corner of Section nine (9), said township; thence easterly to the north-east corner of said section; thence southerly to the south-east corner of Section sixteen (16), said township; thence westerly to the south-west corner of Section seventeen, said township; thence southerly to the south-east corner of Section nineteen (19), said township; thence westerly to the south-west corner of said section; thence northerly to the south-east corner of Section thirteen (13), Township fourteen (14) North, Range forty-three (43) East; thence westerly to the south-west corner of said section; thence northerly to the north-west corner of said section; thence westerly to the south-west corner of Section eleven (11), said township; thence northerly to the south-east corner of Section twenty-seven (27), Township fifteen (15) North, Range forty-three (43) East; thence westerly to the south-west corner of said section; thence northerly to the north-west corner of said section; thence westerly to the south-west corner of Section nineteen (19), said township; thence northerly to the north-west corner of Section thirty-one (31), Township sixteen (16) North, Range forty-three (43) 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;

Lands 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: *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 settlement was made.

PROCLAMATIONS, 1905.

3053

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

Reserved from settlement.

The reservation hereby established shall be known as The Henrys Lake Forest Reserve.

Name.

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 23d day of May, 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 13 NORTH RANGE 43 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						
	N	E	W	S	W	E	S	E								
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																
2																
11																
14																
23																
25																
26																
36																
16																
36																
25																
25																
25																
22																
23																
26																
21																
28																
29																
23																
14																
34																
23																
35																
23																
24																
26																
27																
34																
26																
27																
1																
2																
14																
14																
15																
22																
30																
28																
29																
25																
23																
29																
24																
30																
13																
24																

