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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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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. 77-10887
	)	
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 77-10887, as amended and before the Court in the SRBA.

3. I have reviewed Exhibit 1, as amended by the Forest Service for Oregon 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 This is substantiated in historical documents and maps maintained by the Idaho State Office of the United States Bureau of Land Management in Boise, Idaho.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 copy of the above referenced Presidential Proclamation No. 23 establishing the Public Reservation.

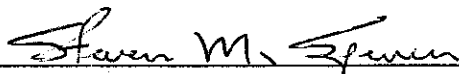
5. The priority date, February 22, 1897, for this reserved water right claim corresponds to the date of Presidential Proclamation No. 23. *See* Exhibit 2.

6. Based upon the forgoing, I have personal knowledge of the following elements of the federal reserved right claim 77-10887 attached hereto as Exhibit 1, submitted in the SRBA:

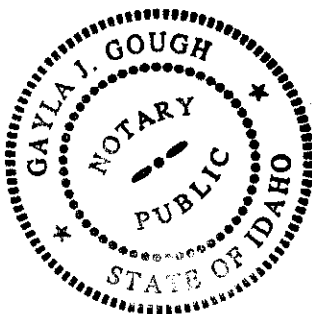
a. The land at the legal descriptions shown as the point of diversion and place of use is federally reserved National Forest System land. It was first reserved by Presidential Proclamation No. 23 February 22, 1897 as a Public Reservation. It is now part of the Nez Perce National Forest.

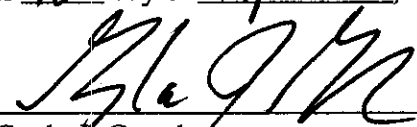
b. The name and address of the claimant is: UNITED STATES OF AMERICA acting on behalf of the USDA Forest Service, 550 W. Fort Street, MSC033, Boise, ID 83724.

c. The priority date is: February 22, 1897


Steven M. Spencer

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




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

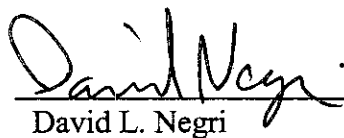
CERTIFICATE OF MAILING

I certify that on April 21, 2003, I mailed a true and correct copy of the foregoing Affidavit of Steven M. Spencer – 77-10887 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: 77-10887

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: SINKS

Quantity: .02 CFS

Priority Date: 02-22-1897

Point of Diversion: T25N R06E S12 NWSE Within Idaho County

Purpose and Period of Use:	Purpose of Use	Period of Use	Quantity
	~~Domestic~~	06-01 TO 10-31	.02 CFS
	<u>Administrative</u>		

Place of Use:	~~Domestic~~	Within Idaho County
	<u>Administrative</u>	
	T25N R06E S12	NESW

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

Explanatory Material: Basis of Claim - Reserved

FOREST SERVICE RECORD ID = 0117 17060207 02 2211
Oregon Butte Lookout

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. 2, p. 102.

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 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-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 25 NORTH RANGE 6 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
	OTHER DESCRIPTION					LOTS						
	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											
	NE 1/4	NW 1/4	SW 1/4	SE 1/4								
16						All		SG	Act of Cong	7/3/1890		Title to State to vest on approval of Survey, Subj to prior rights
36						All		Proc Wdl Bitterroot Forest Res	23	2/22/1897		Chg to Bitterroot NF Act 3/4/1907; Name Chg EO 854 6/26/1908
						M&B; 36N 6E		SO Temp Wdl Bitterroot Forest				
						M&B; 14N 7E		Res		11/14/1902		MD; Chg to Bitterroot NF Act 3/4/1907; Rest SO 6/29/1907
						See Rmks		SO Rest NF SO 11/14/1902		6/29/1907		All land lying S of Salmon River; Other Tp 23N 3E
16						All; 14N 43E	640.00	IL Base	2	11/2/1907		
						See Rmks		EO Name Chg Bitterroot NF				
								Proc 23 2/22/1897 to Nez Perce				
								NF	854	6/26/1908		All land lying N & E of center line Salmon River; Other Tp 22N 1E
						See Rmks		SO Wdl Pwr S		2/17/1909		All land lying S of Salmon River; Other Tp 24N 1E; Rev SO 3/30/1909
						See Rmks		SO Rev Pwr S Res SO 2/17/1909		3/30/1909		All land lying S of Salmon River; Other Tp 24N 1E; Rest GLO 0 4/8/1909
						See Rmks		GLO 0 Rest Pwr S SO 3/30/1909		4/8/1909		All land lying S of Salmon River; Other Tp 25N 1E; Open to Entry
						See Rmks						Every smallest legal Subdiv any portion of which when Sur will be within 1/2 mile on S side of Salmon River; Other Tp 29N 14N; Wdn EO 7/2/1910
						See Rmks		SO Temp Wdl Pwr S Res 8		5/29/1909		Every smallest legal Subdiv any portion of which when Sur will be within 1/2 mile on S side of Salmon River; Other Tp 29N 14N; Rev 5/7/1998, PLO 7324
						See Rmks		EO Wdl Pwr S Res 8		7/2/1910		
36						All; 61N 3W	640.00	IL Base	5	10/15/1917		Every smallest legal Subdiv any portion of which when Sur will be within 1/2 mile of N Bank Salmon River; Other Tp 27N 1E
						See Rmks		SO Wdl Pwr S Cl 50		9/29/1922		
16						All						
36						All		SG	Act of Cong	1/25/1927		Extends Act 7/3/1890 to Min lands, Subj to prior rights
						See Rmks		Act of Cong Wdl Idaho NF		4/10/1928		M&B; Entire Tp excluding Nez Perce NF; Other Tp 24N 4E; Trfd PLO 218 3/18/1944
						13N 5W		PLO Trf Idaho NF Act of Cong				
						See Rmks		4/10/1928 to Payette NF	218	3/18/1944		
31						See Rmks		Det PL 167 Act of Cong 7/23/1955	1 08167	6/20/1957		All land lying S of Salmon River being the forest Bdy within Payette NF; Other Tp 19N 3E; Det completed 12/22/1960; All NF surface Mgmt by USFS
2						All						
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