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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. 78-10647
	)	
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 78-10647, as amended and before the Court in the SRBA.

3. I have reviewed Exhibit 1, as amended by the Forest Service for Seven Devils 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 May 10, 1906, in A Proclamation signed by President Theodore Roosevelt enlarging the Weiser 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 This is substantiated in historical documents maintained by the Idaho State Office of the United States Bureau of Land Management in Boise, Idaho.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, May 10, 1906, for this reserved water right claim corresponds to the date of the Proclamation enlarging the Weiser Forest Reserve. *See* Exhibit 2.

6. Based upon the forgoing, I have personal knowledge of the following elements of the federal reserved right claim 78-10647 attached hereto as Exhibit 1, submitted in the SRBA:

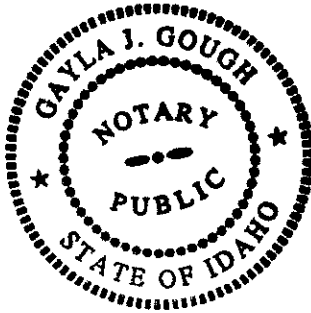
a. The land at the legal descriptions shown as the point of diversion and place of use is federally reserved National Forest System land. It was first reserved on May 10, 1906 in A Proclamation signed by President Theodore Roosevelt enlarging the Weiser Forest Reserve. It is now part of the Hells Canyon National Recreation Area.

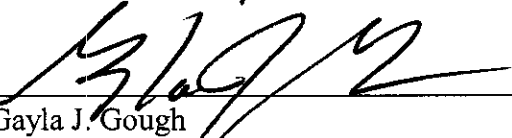
b. The name and address of the claimant is: UNITED STATES OF AMERICA acting on behalf of the USDA Forest Service, 550 W. Fort Street, MSC033, Boise, ID 83724.

c. The priority date is: May 10, 1906.


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

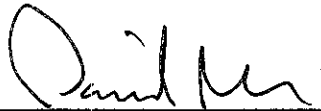
CERTIFICATE OF MAILING

I certify that on April 21, 2003, I mailed a true and correct copy of the foregoing Affidavit of Steven M. Spencer – 78-10647 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: 78-10647

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: ~~BRIDGE CREEK~~ SINKS

Quantity: .02 CFS

Priority Date: 05-10-1906

Point of Diversion: T23N R01W S07 SENW Within Idaho County

Purpose and Period of Use:	Purpose of Use	Period of Use	Quantity
	~~Domestic~~	06-01 TO 11-30	.02 CFS
	<u>Administrative</u>		

Place of Use: ~~Domestic~~ Within Idaho County
Administrative
T23N R01W S07 NESW

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

Explanatory Material: Basis of Claim - Reserved

FOREST SERVICE RECORD ID = 0117 17060210 01 0522
Seven Devils Guard Station

May 10, 1901

WEISER FOREST RESERVE
IDAHO.
(SECOND PROCLAMATION.)

By the President of the United States of America

A Proclamation.

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

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";

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;

Now, therefore, I, THEODORE ROOSEVELT, President of the United States of America, by virtue of the power in me vested by the aforesaid act of Congress, approved June fourth, eighteen hundred and ninety-seven, do proclaim that the aforesaid Weiser Forest Reserve is hereby enlarged to include the said additional lands, and that the boundaries of the reserve are, accordingly, now as shown on the diagram forming a part hereof:

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.

Warning is hereby expressly 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 10th day of May, 1901, the year of our Lord one thousand nine hundred and six, and of the Independence of the United States one hundred and thirtieth.

[SEAL]

THEODORE ROOSEVELT

By the President:

ELIHU ROOT

Secretary of State.

TOWNSHIP 23 NORTH RANGE 1 WEST 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	SW 1/4	SE 1/4	LOTS	OTHER DESCRIPTION							
16						All							
36						All		SG	Act of Cong	7/3/1890		Title to State to vest on approval of Survey, Subj to prior rights	
						19N 1W		SO Temp Wdl Little Salmon Forest					
								Res		11/14/1902		Wdn Proc 5/10/1906	
12	X	X				23N 1E	120.00	CE Pat	3218	5/29/1905		Part Act 9/17/1992	
						14N 2W		Proc Wdl Weiser Forest Res		5/10/1906		Chg to Weiser NF Act 3/4/1907; Name Chg EO 854 6/26/1908	
1	X	X	X			17N 1E		SO Wdl USFS Adm S		4/3/1907		Rgr Sta 14	
13	X					23N 1E	40.00	HE Pat	2463	4/10/1907			
1				X	X		160.00	HE Pat	2527	7/18/1907			
1			X			24N 1W	80.02	HE Pat	2735	5/26/1908			
						22N 1E		EO Name Chg Weiser NF Proc					
								5/10/1906 to Nezperce NF	854	6/26/1908			
22													
23													
26													
27						MS 2236 A, B	79.649	HE Pat	6080	8/3/1908		HC 360	
1		X				4							
2	X					1	160.17	HE Pat	193096	4/27/1911		B 04508	
28		X	X	X								Wdl Wdl Wdl, Sd Wdl Wdl, Wdl Wdl Wdl	
29						Wdl Wdl Wdl, NE Wdl Wdl	130.00	HE	B 015768	3/26/1914		Canc 9/25/1920	
27						See Rmks	80.00	HE	B 016253	7/24/1914		SW Wdl Wdl, Wdl Wdl Wdl, NE Wdl Wdl, E Wdl Wdl, SE Wdl Wdl; Rpt 1/5/1920	
13						HES 451	38.85	HE Pat	708762	9/27/1919		B 015977	
16				X	X								
36						All	720.00	IL Base	20	12/27/1919			
28						See Rmks						Wdl Wdl Wdl, Sd Wdl Wdl, NE Wdl Wdl, Wdl Wdl Wdl	
29				X		Wdl Wdl Wdl, NE Wdl Wdl	130.00	HE	B 025433	9/18/1920		Rpt 11/14/1922	
36			X			See Rmks	160.00					Wdl Wdl Wdl Wdl, Wdl Wdl Wdl, Wdl Wdl Wdl, E Wdl Wdl Wdl, Wdl Wdl Wdl, Wdl Wdl Wdl	
	X	X	X	X	X		560.00	HE Pat	793374	2/3/1921		Wdl Wdl Wdl Wdl, SW Wdl Wdl, Sd Wdl Wdl, E Wdl Wdl Wdl; B 021726	
16	X	X	X	X	X			IL Base	33	9/29/1922			7/17/1986
27						See Rmks	80.00	HE Pat	940646	6/25/1924		SW Wdl Wdl Wdl, Wdl Wdl Wdl, NE Wdl Wdl, E Wdl Wdl, SE Wdl Wdl; Recon	
28						See Rmks						Wdl Wdl Wdl, Sd Wdl Wdl, NE Wdl Wdl, Wdl Wdl Wdl	
29				X		See Rmks	130.00	HE Pat	961242	6/11/1925		Wdl Wdl Wdl, NE Wdl Wdl; B 026154; Acquired 5/16/1979	
24						See Rmks	27.5	HE Pat	977569	4/12/1926		NE Wdl Wdl Wdl, SE Wdl Wdl, E Wdl Wdl Wdl, SW Wdl Wdl Wdl; Other Tps 23N 1E; B 026110	
16						All							
36						All		SG	Act of Cong	1/25/1927		Extends Act 7/3/1890 to Min lands, Subj to prior rights	
1						Subdiv Und		R/W Trans Line	I 1313	12/18/1947			
7						25N 9E		Prop Wdl USFS Rec Area	I 09526	6/30/1958		Seven Devils; 23 FR 6269; Wdn PLO 5290 10/11/1972	
						22N 1E		Det PL 167 Act of Cong 7/23/1955	I 012977	12/14/1961		Det completed 12/8/1964; All NF surface Mgmt by USFS	
5						Wdl of 4							
6						Wdl Wdl 1, NE Wdl Wdl 1	24N 1W, 23N 2W					Wdn PLO 4222 5/25/1967; 32 FR 7913	
19						Sd of 1	24N 1W, 23N 2W					Wdn PLO 4222 5/25/1967; 32 FR 7913	
5						Wdl Tot 4							
6						Wdl Wdl 1, NE Wdl Wdl 1	24N 1W, 23N 2W					I 67; Heaven's Gate Viewpoint & Vista Point	
19						Sd of 1	24N 1W, 23N 2W					I 67; Lower Cannon Lake Camp	
7	X	X		X		Sd Wdl Wdl, SE Wdl Wdl						10/11/1972	
9						See Rmks		Prop Wdl USFS Adm Site	I 4458	8/20/1971	8:00 AM	SW Wdl Wdl, Wdl Wdl Wdl, Wdl Wdl Wdl, SE Wdl Wdl, SE Wdl Wdl; Seven Devils; Adm Site; Wdn PLO 5293	
7	X	X		X		SW Wdl Wdl, SE Wdl Wdl							
8						See Rmks		PLO Wdl USFS Adm Site	5283	10/11/1972		SW Wdl Wdl, Wdl Wdl Wdl, Wdl Wdl Wdl, Wdl Wdl Wdl; Seven Devils; Adm Site; 37 FR 22744	
7						See Rmks		PLO Wdl USFS Rec Area	5290	1/11/1972		I 09526; 37 FR 205, 22746; Other Tps 23N 2W, 24N 2W, 24N 2E, 24N 3E, 24N 4E	