

Name of Party Filing Document:

UNITED STATES OF AMERICA

Attorney's Names and Addresses:

KELLY A. JOHNSON
United States Department of Justice
Acting 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; facsimile (208) 387-0842
ISB#6697

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. 81-10303
	)	
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 28 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 81-10303.

3. I have reviewed Exhibit 1, as amended by the Forest Service for Lochsa Administrative Site.

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 This is substantiated in historical documents and maps maintained by the Idaho State Office of the United States Bureau of Land Management in Boise, Idaho.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 81-10303 attached hereto as Exhibit 1, submitted in the SRBA:

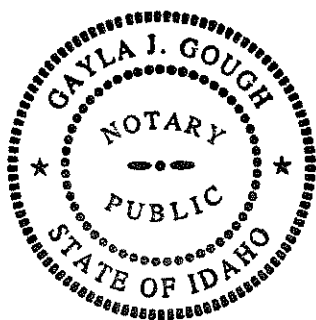
a. The land at the legal descriptions shown as the point of diversion and place of use is federally reserved National Forest System land. It was first reserved by Presidential Proclamation No. 23 February 22, 1897 as a Public Reservation. It is now part of the Clearwater National Forest.

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
Steven M. Spencer

SUBSCRIBED and SWORN to before me this 4th day of May, 2005



Gayla J. Gough
Gayla J. Gough
NOTARY PUBLIC FOR: Idaho
Residing at: Kuna, Idaho
My Commission Expires: 11/20/2010

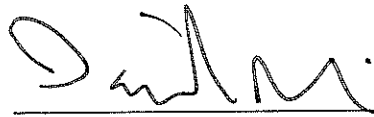
CERTIFICATE OF MAILING

I certify that on May 7, 2005, I mailed a true and correct copy of the foregoing Affidavit of Steven M. Spencer – 81-10303 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

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS
IN RE THE GENERAL ADJUDICATION
OF RIGHTS TO THE USE OF WATER FROM
THE SNAKE RIVER BASIN WATER SYSTEM

CIVIL CASE NUMBER: 39576

Ident. Number: **81-10303**

RESERVED UNDER FEDERAL LAW

1. Name of Claimant: UNITED STATES OF AMERICA on behalf of the U.S.D.A. Forest Service
Address: 550 W. Fort Street MSC033
Boise ID 83724
2. Date of Priority: 02/22/1897
3. Source of water: ZION CREEK Tributary: LOCHSA RIVER
4. Location Meridian BOISE
Description of Diversion Works: Diversion Dam From: Stream
Location of Point of Diversion
T: 35 N R 09 E S: 28 SESE
Location of Place of Use
T: 35 N R 09 E S: 33 NENE
5. Quantity claimed: Period Quantity For
5 / 01 - 10 / 31 0.50 CFS Administrative
6. Total Consumptive Use Claimed for Present and Future Use is:
0.50 CFS
7. Present and future uses to which the water is or will be used:
Administrative
8. Remarks:
State Basin: 81
National Forest: Clearwater
Forest Service Record ID: 1 5 17060303 0 0 A001
Lochsa Administrative Site.

twenty-one (21) and twenty-two (22) East, to the north-east corner of Township seven (7) North, Range twenty-one (21) East; thence westerly along the township line to the north-west corner of said township; thence northerly along the range line to the north-east corner of Township eight (8) North, Range twenty (20) East; thence westerly along the surveyed and unsurveyed township line between Townships eight (8) and nine (9) North, to the north-west corner of Township eight (8) North, Range seventeen (17) East; thence southerly along the range line to the south-east corner of Township eight (8) North, Range sixteen (16) East; thence easterly along the unsurveyed township line to the point for the south-east corner of Township eight (8) North, Range seventeen (17) East; thence southerly along the unsurveyed and surveyed range line between Ranges seventeen (17) and eighteen (18) East, subject to the easterly offset on the First (1st) Standard Parallel North, to the south-east corner of Township four (4) North, Range seventeen (17) East; thence easterly along the township line to the north-east corner of Township three (3) North, Range eighteen (18) East; thence southerly along the range line to the south-east corner of said township; thence easterly along the township line between Townships two (2) and three (3) North, to the south-east corner of Township three (3) North, Range twenty-four (24) East, the place of beginning.

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;

Prior valid entries
excepted.

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.

Warning is hereby expressly given to all persons not to enter or make settlement upon the tract of land reserved by this proclamation.

Reserved from set-
tlement.

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.

[No. 23.]

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. 23, p. 1103.

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 afore-said 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.

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.

[No. 24.]

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 reservations, and the President shall, by public proclamation, declare the establishment of such reservations and the limits thereof";

Preamble.
Vol. 26, p. 1163.

And whereas, the public lands in the State of Washington, 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, 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 State of Washington, and within the boundaries particularly described as follows, to-wit:

Forest reservation,
Washington.

Beginning at the south-east corner of Township twenty-one (21) North, Range five (5) West, Willamette Base and Meridian, Washington; thence northerly along the surveyed and unsurveyed range line between Ranges four (4) and five (5) West, to the point for the north-east corner of Township twenty-three (23) North, Range five (5) West; thence easterly along the unsurveyed and surveyed township line to the point for the south-east corner of Township twenty-four (24) North, Range four (4) West; thence northerly along the unsurveyed range line to the point for the north-east corner of said township; thence easterly along the unsurveyed and surveyed Sixth (6th) Standard Parallel North, to the south-east corner of Township twenty-five (25) North, Range three (3) West; thence northerly along the surveyed and unsurveyed range line between Ranges two (2) and three (3) West, to the north-east corner of Township twenty-nine (29) North, Range three (3) West; thence westerly along the surveyed and unsurveyed Seventh (7th) Standard Parallel North, to the point for the south-east corner of Township thirty (30) North, Range nine (9) West; thence northerly along the unsurveyed and surveyed range line to the north-east corner of said township; thence westerly along the township line between Townships thirty (30) and thirty-one (31) North, to the north-east corner of Township thirty (30) North, Range fourteen (14) West; thence northerly along the range line to its intersection with the shore of the Strait of Juan de Fuca; thence

Boundaries.