

Name of Party Filing Document:

UNITED STATES OF AMERICA

Attorney's Names and Addresses:

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Environment and Natural Resources Division

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Environment and Natural Resources Division
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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. 82-10286
	)	
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 82-10286.

3. I have reviewed Exhibit 1, as amended by the Forest Service for Adams Work Center.

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 May 22, 1905, in A Proclamation signed by President Theodore Roosevelt further modifying the Bitter Root Forest Reserve. This is substantiated in historical documents and maps maintained by the Idaho State Office of the United States Bureau of Land Management in Boise, Idaho.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 Proclamation.

5. The priority date, May 22, 1905, for this reserved water right claim corresponds to the date of the Proclamation. *See* Exhibit 2.

6. Based upon the forgoing, I have personal knowledge of the following elements of the federal reserved right claim 82-10286 attached hereto as Exhibit 1, submitted in the SRBA:

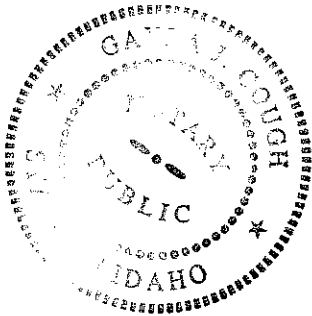
a. The land at the legal descriptions shown as the point of diversion and place of use is federally reserved National Forest System land. It was first reserved May 22, 1905, in A Proclamation signed by President Theodore Roosevelt. It is now part of the Nez Perce National Forest.

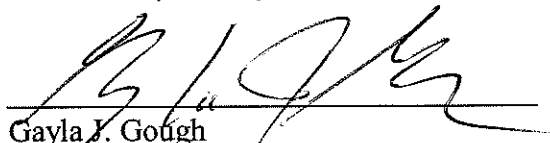
b. The name and address of the claimant is: UNITED STATES OF AMERICA acting on behalf of the USDA Forest Service, 550 W. Fort Street, MSC033, Boise, ID 83724.

c. The priority date is: May 22, 1905


Steven M. Spencer

SUBSCRIBED and SWORN to before me this 13TH day of May, 2005




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

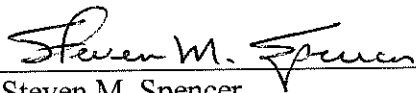
CERTIFICATE OF MAILING

I certify that on June 15, 2005, I mailed a true and correct copy of the foregoing Affidavit of Steven M. Spencer – 82-10286 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



Steven M. Spencer

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: 82-10286

RESERVED UNDER FEDERAL LAW

RECEIVED
DEC - 2 2004
DEPARTMENT OF
WATER RESOURCES

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: 05/22/1905

3. Source of water: SPRING

Tributary: ADAMS CREEK

4. Location Meridian BOISE

Description of Diversion Works: Headbox

From: Spring

Location of Point of Diversion

T: 27 N R 03 E S: 26 NENE L 1

Location of Place of Use

T: 27 N R 03 E S: 26 NENE L 1

5. Quantity claimed: Period Quantity For
6 / 01 - 10 / 31 0.04 CFS Administrative

6. Total Consumptive Use Claimed for Present and Future Use is:
0.04 CFS

7. Present and future uses to which the water is or will be used:
Administrative

8. Remarks:

State Basin: 82

National Forest: Nez Perce

Forest Service Record ID: 1 17 17060305 1 0 1212

Adams Work Center

I verify to the best of my knowledge the statements contained in this document are true and correct.

Steven M. Spencer
STEVEN M. SPENCER
Consumptive Use Water Specialist

Subscribed and sworn to before me on:

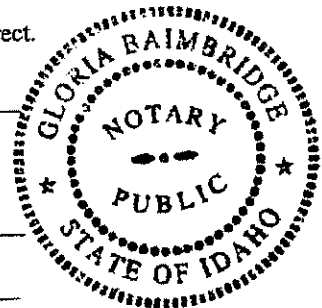
12-2-04
Gloria Baimbridge
Notary Republic

Residing at:

Boise, Idaho - Ada County

My Commission Expires:

12-7-08



(6th) Principal Meridian, Wyoming; thence westerly to the southwest corner of said township; thence northerly along the range line, allowing for the proper offset on the Fourth (4th) Standard Parallel North, to the north-west corner of Township seventeen (17) North, Range eighty-one (81) West, the place of beginning;

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.

Reserved from settlement.

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 17th day of May, in the year of our Lord one thousand, nine hundred and five, and of the Independence of the United States the one hundred and twenty-ninth.

T. ROOSEVELT

By the President:

F. B. LOOMIS

Acting Secretary of State.

May 22, 1905.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.

A PROCLAMATION.

The Bitter Root Forest Reserve, Idaho and Mont. Preamble. Vol. 29, p. 899; Vol. 33, p. 2373; Vol. 26, p. 1103.

Whereas, The Bitter Root Forest Reserve, in the States of Idaho and Montana, was established by proclamation dated February twenty-second, eighteen hundred and ninety-seven, under and by virtue of 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", which provides, "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";

Vol. 30, p. 36.

And whereas, it is further 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"; under which provision the boundary lines of the said forest reserve were changed and the area reduced by proclamation dated June fourteenth, nineteen hundred and four;

Vol. 33, p. 2373.

And whereas, it appears that the public good would be promoted

by further releasing and excluding lands from the said forest reserve, and by including therein additional lands which are in part covered with timber;

Now, therefore, I, Theodore Roosevelt, President of the United States, by virtue of the power vested in me by the aforesaid act of Congress, approved June fourth, eighteen hundred and ninety-seven, do hereby make known and proclaim that the boundary lines of the aforesaid Bitter Root Forest Reserve are hereby further modified so as to read as follows:

Area modified.

Beginning at the north-east corner of Township thirty-six (36) North, Range five (5) East, Boise Base and Meridian, Idaho; thence southerly, allowing for the proper offset on the Sixth and one-half (6½) Standard Parallel North, to the north-east corner of Township thirty-one (31) North, Range five (5) East; thence westerly to the north-east corner of Section four (4), said township; thence southerly to the north-east corner of Section twenty-one (21), said township; thence westerly to the north-west corner of said section; thence southerly to the north-east corner of Section thirty-two (32), said township; thence westerly to the north-west corner of Section thirty-one (31), said township; thence southerly to the south-west corner of said township; thence westerly to the north-east corner of Section three (3), Township thirty (30) North, Range four (4) East; thence southerly to the south-east corner of said section; thence westerly to the north-west corner of Section seven (7), said township; thence southerly to the north-east corner of Section thirty-six (36), Township thirty (30) North, Range three (3) East; thence westerly to the north-west corner of said section; thence southerly, allowing for the proper offset on the Sixth (6th) Standard Parallel North, to the north-east corner of Section fourteen (14), Township twenty-nine (29) North, Range three (3) East; thence westerly to the north-west corner of Section eighteen (18), said township; thence southerly to the south-west corner of said township; thence westerly to the north-west corner of Section four (4), Township twenty-eight (28) North, Range two (2) East; thence southerly to the south-west corner of Section nine (9), said township; thence easterly to the south-east corner of said section; thence southerly to the south-west corner of Section fifteen (15), said township; thence easterly to the south-east corner of said section; thence southerly to the south-east corner of Section thirty-four (34), said township; thence westerly to the south-west corner of said section; thence southerly to the south-west corner of Section thirty-four (34), Township twenty-six (26) North, Range two (2) East; thence westerly, along the Fifth and one-half (5½) Standard Parallel North, to the north-west corner of Township twenty-five (25) North, Range two (2) East; thence southerly along the range line to its intersection with the Salmon River; thence in a general easterly direction along the middle of the channel of said river to its intersection with the range line between Ranges eighteen (18) and nineteen (19) East; thence northerly along said range line to its intersection with the boundary line between the States of Idaho and Montana; thence in a general north-easterly direction along said state boundary line to its intersection with the township line between Townships one (1) and two (2) South, Base and Principal Meridian, Montana; thence easterly to the south-east corner of Township one (1) South, Range nineteen (19) West; thence northerly to the north-east corner of said township; thence westerly along the Base Line to the south-west corner of the south-east quarter of Section thirty-two (32), Township one (1) North, Range nineteen (19) West; thence northerly to the north-west corner of the north-east quarter of Section five (5), said town-

Description.

Bitter Root Forest Reserve — Continued.

ship; thence westerly to the north-east corner of lot one (1) of Section three (3), Township one (1) North, Range twenty-one (21) West; thence southerly to the south-east corner of the south-west quarter of said section; thence westerly to the north-west corner of the north-east quarter of Section nine (9), said township; thence southerly to the south-west corner of the south-east quarter of said section; thence westerly to the south-west corner of said section; thence southerly to the south-east corner of Section seventeen (17), said township; thence westerly to the south-east corner of the south-west quarter of said section; thence southerly to the south-west corner of the south-east quarter of Section twenty-nine (29), said township; thence westerly to the north-west corner of the north-east quarter of Section thirty-one (31), said township; thence southerly, allowing for the proper offset on the Base Line, to the south-west corner of the south-east quarter of Section one (1), Township one (1) South, Range twenty-two (22) West; thence westerly to the north-east corner of Section eleven (11), said township; thence southerly to the south-east corner of said section; thence westerly to the south-west corner of the south-east quarter of said section; thence southerly to the south-west corner of the south-east quarter of Section thirty-five (35), said township; thence westerly to the north-east corner of Section three (3), Township two (2) South, Range twenty-two (22) West; thence southerly to the south-east corner of Section thirty-four (34), said township; thence westerly to the south-east corner of the south-west quarter of said section; thence southerly to the south-east corner of the south-west quarter of Section three (3), Township three (3) South, Range twenty-two (22) West; thence westerly to the north-east corner of Section nine (9), said township; thence southerly to the south-east corner of said section; thence westerly to the south-west corner of said section; thence northerly to the north-west corner of said section; thence easterly to the south-east corner of the south-west quarter of Section four (4), said township; thence northerly to the north-east corner of the south-west quarter of said section; thence easterly to the south-east corner of the north-east quarter of said section; thence northerly to the south-east corner of Section sixteen (16), Township two (2) South, Range twenty-two (22) West; thence westerly to the south-east corner of the south-west quarter of Section sixteen (16), said township; thence northerly to the north-east corner of the north-west quarter of said section; thence easterly to the north-east corner of said section; thence northerly to the north-west corner of Section three (3), said township; thence easterly to the south-east corner of the south-west quarter of Section thirty-four (34), Township one (1) South, Range twenty-two (22) West; thence northerly to the north-east corner of the south-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-west corner of Section eleven (11), said township; thence easterly to the south-east corner of the south-west quarter of Section two (2), said township; thence northerly, allowing for the proper offset on the Base Line, to the north-west corner of the south-east quarter of Section thirty-six (36), Township one (1) North, Range twenty-two (22) West; thence westerly to the north-east corner of the south-east quarter of Section thirty-four (34), said township; thence southerly to the south-east corner of said section; thence westerly along the Base Line to the south-west corner of Section thirty-three (33), said township; thence northerly to the north-west corner of the south-west quarter of said section; thence easterly to the south-east corner of the north-west quarter of Section thirty-four (34), said township; thence northerly to the north-east corner of the north-west quarter of said

section; thence easterly to the south-east corner of the south-west quarter of Section twenty-six (26), said township; thence northerly to the north-east corner of the south-west quarter of said section; thence easterly to the south-east corner of the north-west quarter of Section twenty-five (25), said township; thence northerly to the north-east corner of the north-west quarter of said section; thence easterly to the south-east corner of Section nineteen (19), Township one (1) North, Range twenty-one (21) West; thence northerly to the south-west corner of Section eight (8), said township; thence easterly to the south-east corner of the south-west quarter of said section; thence northerly to the north-west corner of the north-east quarter of said section; thence easterly to the south-west corner of Section four (4), said township; thence northerly, allowing for the proper offset on the township line, to the north-west corner of the south-west quarter of Section thirty-three (33), Township two (2) North, Range twenty-one (21) West; thence easterly to the north-east corner of the south-east quarter of said section; thence northerly to the north-west corner of Section thirty-four (34), said township; thence westerly to the south-east corner of the south-west quarter of Section twenty-eight (28), said township; thence northerly to the north-east corner of the south-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 said section; thence easterly to the north-west corner of the north-east quarter of Section twenty-seven (27), said township; thence southerly to the south-west corner of the north-east quarter of said section; thence easterly to the south-east corner of the north-east quarter of Section twenty-six (26), said township; thence northerly to the north-east corner of the south-east quarter of Section fourteen (14), said township; thence westerly to the north-west corner of the south-west quarter of said section; thence northerly to the south-east corner of Section three (3), said township; thence westerly to the south-east corner of the south-west quarter of said section; thence northerly to the north-east corner of the south-west quarter of said section; thence westerly to the north-west corner of the south-west quarter of said section; thence northerly to the north-west corner of said section; thence westerly to the south-east corner of Section thirty-two (32), Township three (3) North, Range twenty-one (21) West; thence northerly to the south-east corner of the north-east quarter of said section; thence westerly to the south-west corner of the north-east quarter of said section; thence northerly to the north-east corner of the north-west quarter of Section twenty (20), said township; thence westerly to the south-west corner of Section seventeen (17), said township; thence northerly to the north-east corner of the south-east quarter of the north-east quarter of Section seven (7), said township; thence westerly to the north-west corner of the south-east quarter of the north-east quarter of said section; thence northerly to the south-west corner of lot one (1) of Section six (6), said township; thence easterly to the south-west corner of lot two (2) of Section five (5), said township; thence southerly to the south-west corner of the south-east quarter of said section; thence easterly to the south-east corner of said section; thence northerly to the north-east corner of the south-east quarter of Section twenty-nine (29), Township four (4) North, Range twenty-one (21) West; thence westerly to the north-west corner of the south-west quarter of said section; thence northerly to the south-west corner of Section twenty (20), said township; thence easterly to the south-east corner of said section; thence northerly to the north-east corner of Section seventeen (17), said township; thence westerly to the north-west corner of the north-east quarter of said section; thence

Bitter Root Forest Reserve — Continued.

PROCLAMATIONS, 1905.

Bitter Root Forest Reserve — Continued.

southerly to the south-west corner of the north-east quarter of said section; thence westerly to the north-west corner of the south-east quarter of Section eighteen (18), said township; thence northerly to the north-west corner of the south-east quarter of Section six (6), said township; thence easterly to the south-east corner of the north-east quarter of said section; thence northerly to the north-west corner of Section five (5), said township; thence easterly along the First (1st) Standard Parallel North to the south-east corner of the south-west quarter of Section thirty-three (33), Township five (5) North, Range twenty-one (21) West; thence northerly to the north-east corner of the north-west quarter of said section; thence westerly to the south-west corner of Section twenty-eight (28), said township; thence northerly to the south-west corner of Section nine (9), said township; thence easterly to the south-west corner of the south-east quarter of said section; thence northerly to the north-east corner of the north-west quarter of Section thirty-three (33), Township six (6) North, Range twenty-one (21) West; thence westerly to the north-west corner of said section; thence northerly to the north-east corner of the south-east quarter of Section twenty-nine (29), Township seven (7) North, Range twenty-one (21) West; thence westerly to the north-west corner of the south-east quarter of said section; thence northerly to the north-east corner of the north-west quarter of said section; thence westerly to the south-west corner of Section twenty (20), said township; thence northerly to the south-west corner of Section eight (8), said township; thence easterly to the south-east corner of the south-west quarter of said section; thence northerly to the north-east corner of the north-west quarter of Section five (5), said township; thence easterly to the south-west corner of Section thirty-three (33), Township eight (8) North, Range twenty-one (21) West; thence northerly to the north-west corner of Section twenty-eight (28), said township; thence easterly to the north-east corner of said section; thence northerly to the south-west corner of Section fifteen (15), said township; thence easterly to the south-east corner of the south-west quarter of said section; thence northerly to the north-east corner of the south-west quarter of Section ten (10), said township; thence westerly to the north-west corner of the south-west quarter of said section; thence northerly to the south-west corner of Section three (3), said township; thence easterly to the south-east corner of said section; thence northerly to the north-east corner of said section; thence easterly, along the Second (2nd) Standard Parallel North, to the south-east corner of Township nine (9) North, Range twenty-one (21) West; thence northerly to the north-east corner of Township ten (10) North, Range twenty-one (21) West; thence westerly along the township line to its intersection with the boundary line between the States of Montana and Idaho; thence along said state boundary line to its intersection with the township line between Townships thirty-eight (38) and thirty-nine (39) North, Boise Base and Meridian, Idaho; thence westerly along said township line to the north-west corner of Township thirty-eight (38) North, Range ten (10) East; thence southerly to the south-west corner of Township thirty-seven (37) North, Range ten (10) East; thence westerly along the Seventh (7th) Standard Parallel North to the north-east corner of Township thirty-six (36) North, Range five (5) East, the place of beginning; such of the above-named corners and other turning points as have not been established by the official surveys being intended to be located at the points where the same would fall in projecting the surveys in the directions indicated without allowing for any irregularities which may occur in actually extending the surveys; except-

ing and excluding from reservation all those certain tracts, pieces or parcels of land lying and being situate in the State of Idaho and particularly described as follows:

What will be when surveyed Sections one (1) to eighteen (18), both inclusive, Township twenty-six (26) North, Range six (6) East, Boise Base and Meridian, Idaho; Sections nineteen (19) to thirty-six (36), both inclusive, Township twenty-seven (27) North, Range six (6) East; Sections four (4) to nine (9), both inclusive, and Sections sixteen (16), seventeen (17) and eighteen (18), Township twenty-six (26) North, Range seven (7) East; Sections nineteen (19), twenty (20) and twenty-one (21), and Sections twenty-eight (28) to thirty-three (33), both inclusive, Township twenty-seven (27) North, Range seven (7) East; and all Township twenty-nine (29) North, Range eight (8) East;

Lands in Idaho excluded.

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.

Lands excepted.

The lands in the State of Montana hereby excluded from the reserve and restored to the public domain shall be open to settlement from the date hereof, but shall not be subject to entry, filing or selection until after ninety days notice by such publication as the Secretary of the Interior may prescribe.

Excluded lands in Montana restored to public domain.

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

Reserved from settlement.

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 May, in the year of our Lord one thousand, nine hundred and five, and of the Independence of the United States the one hundred and twenty-ninth.

THEODORE ROOSEVELT

By the President:

FRANCIS B. LOOMIS
Acting Secretary of State.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.

May 22, 1905.

A PROCLAMATION.

WHEREAS, The Yellowstone Forest Reserve, in the States of Wyoming and Montana, was established by proclamation, dated January twenty-ninth, one thousand nine hundred and three, under the provisions 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", and the act of Congress, approved June fourth, eighteen hundred and ninety-seven, entitled, "An Act making appropriate sundry civil expenses of the Government for the

The Yellowstone Forest Reserve. Wyo., Mont., and Idaho.
Preamble.
Vol. 26, p. 1565;
Vol. 27, p. 989;
Vol. 32, pp. 1999, 2006, 2030; Vol. 33, p. 2344.
Post, p. 3291.