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DEPARTMENT OF
WATER RESOURCES

Name of Party Filing Document:

UNITED STATES OF AMERICA

Attorney's Names and Addresses:

MATTHEW J. McKEOWN
Acting Assistant Attorney General
United States Department of Justice
Environment and Natural Resources Division

DAVID L. NEGRI
United States Department of Justice
Environment and Natural Resources Division
Natural Resources Section
550 West Fort Street, MSC 033
Boise, Idaho 83724
(208) 333-1936; facsimile (208) 334-1414
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)
)
Case Number: 39576)

)

Subcase No. 77-11569

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 30 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 77-11569, before the Court in the SRBA.

3. I have reviewed Exhibit 1, filed by the Forest Service for Cape Horn 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 as the Salmon River Forest Reserve in 'A Proclamation' signed November 5, 1906 by Theodore Roosevelt. This is substantiated in historical documents and maps maintained by the Idaho State Office of the United States Bureau of Land Management in Boise, Idaho.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 establishing the Salmon River Forest Reserve.

5. The priority date, November 5, 1906, for this reserved water right claim corresponds to the date of the Presidential Proclamation. *See* Exhibit 2.

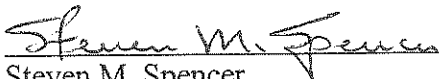
6. Based upon the forgoing, I have personal knowledge of the following elements of the federal reserved right claim 77-11569 attached hereto as Exhibit 1, submitted in the SRBA:

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 November 5, 1906 as the Salmon River Forest Reserve. It is now part of the Salmon-Challis National Forest.

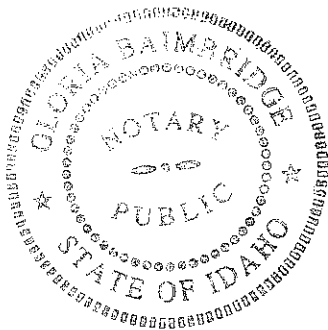
b. The name and address of the claimant is: UNITED STATES OF

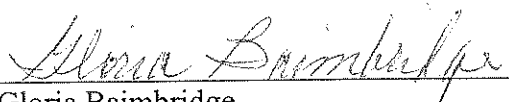
AMERICA acting on behalf of the USDA Forest Service, 550 W. Fort Street, MSC033, Boise,
ID 83724.

c. The priority date is: November 5, 1906


Steven M. Spencer

SUBSCRIBED and SWORN to before me this 13 day of February 2007




Gloria Baimbridge
NOTARY PUBLIC FOR: Idaho
Residing at: Boise, Idaho
My Commission Expires: 10/17/2008

CERTIFICATE OF MAILING

I certify that on February 14, 2007, I mailed a true and correct copy of the foregoing Affidavit of Steven M. Spencer – 77-11569 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

A handwritten signature in black ink, appearing to read "D. Negri", is written over a horizontal line.

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: 77-11569

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: 11/05/1906
3. Source of water: KNAPP CREEK Tributary: MARSH CREEK
4. Location Meridian BOISE
Description of Diversion Works: Ditch or Canal From: Stream
Location of Point of Diversion
T: 12 N R 12 E S: 7 SWSE
Location of Place of Use
T: 12 N R 11 E S: 13 SENE
5. Quantity claimed: Period Quantity For
7/ 01 - 9/ 30 1.00 CFS Administrative
6. Total Consumptive Use Claimed for Present and Future Use is:
1.00 CFS
7. Present and future uses to which the water is or will be used:
Administrative
8. Remarks:
State Basin: 77
National Forest: Challis
Forest Service Record ID: 4 6 17060205 54 0 0011
Cape Horn Guard Station.

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:

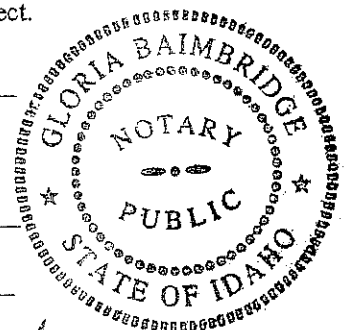
May 23, 2005
Gloria Baimbridge
Notary Republic

Residing at:

Boise, Idaho - Ada County

My Commission Expires:

10-07-08



SALMON RIVER FOREST RESERVE
IDAHO

By the President of the United States of America

A Proclamation

WHEREAS, the public lands in the State of Idaho, which are hereinafter indicated, are in part covered with timber, and it appears that the public good would be promoted by setting apart said lands as a public reservation;

And 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";

Now, therefore, I, THEODORE ROOSEVELT, President of the United States of America, by virtue of the power in me vested by section twenty-four of the aforesaid act of Congress, do proclaim that there are hereby reserved from entry or settlement and set apart as a Public Reservation, for the use and benefit of the people, all the tracts of land, in the State of Idaho, shown as the Salmon River Forest Reserve on the diagram forming a part hereof.

This proclamation will not take effect upon any lands withdrawn or reserved, at this date, from settlement, entry, or other appropriation, for any purpose other than forest uses, or which may be covered by any prior valid claim, so long as the withdrawal, reservation, or claim exists.

Warning is hereby 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 5th day of November,
in the year of our Lord one thousand nine hundred and
six, and of the Independence of the United States the
one hundred and thirty-first.

[SEAL]

THEODORE ROOSEVELT

By the President:

ROBERT BACON

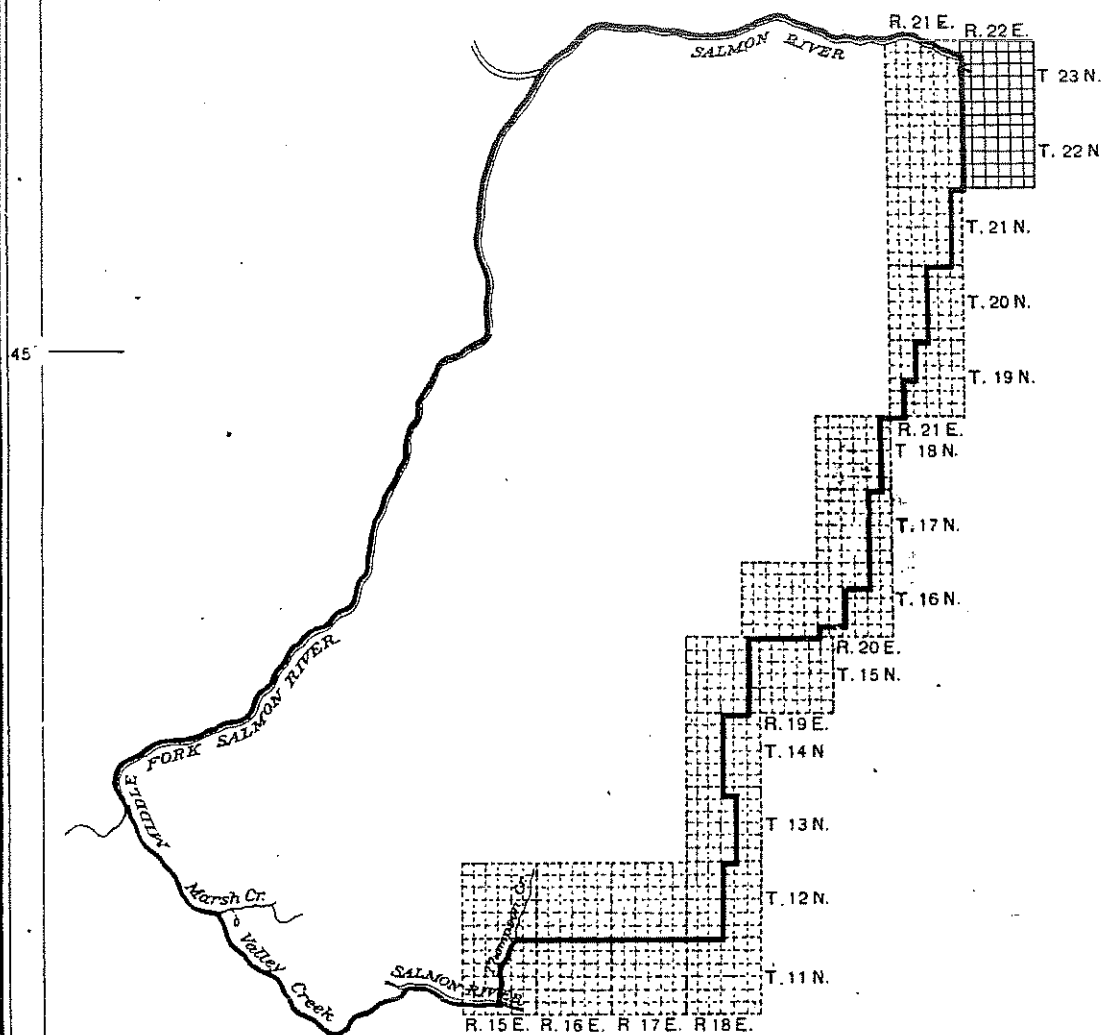
Acting Secretary of State.

SALMON RIVER FOREST RESERVE,
IDAHO.

BOISE MERIDIAN AND BASE LINE.
FOREST SERVICE, U. S. DEPT. OF AGRICULTURE,
1906.

Compiled from G. L. O. Plats.

— Forest Reserve Boundary.



[DIAGRAM FORMING A PART OF PROCLAMATION
DATED NOVEMBER 5, 1906]

37° 30' Longitude West from Washington.