

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)
)
Case Number: 39576)
_____)

Subcase No. 77-14231

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 77-14231, before the Court in the SRBA.

3. I have reviewed Exhibit 1, for Elk Creek 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 November 6, 1906 in A Proclamation signed by President Theodore Roosevelt to enlarge to the Sawtooth 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 This is substantiated in historical documents maintained by the Idaho State Office of the United States Bureau of Land Management in Boise, Idaho.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 for this reserved water right claim, November 6, 1906, corresponds to the date of the Proclamation to enlarge the Sawtooth Forest Reserve. *See* Exhibit 2.

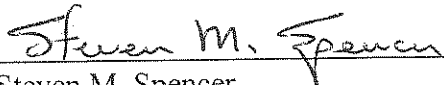
6. Based upon the forgoing, I have personal knowledge of the following elements of the federal reserved right claim 77-14231 attached hereto as Exhibit 1, submitted in the SRBA:

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 as an enlargement to the Sawtooth Forest Reserve on November 6, 1906, in A Proclamation signed by President Theodore Roosevelt. It is now part of the Boise National Forest.

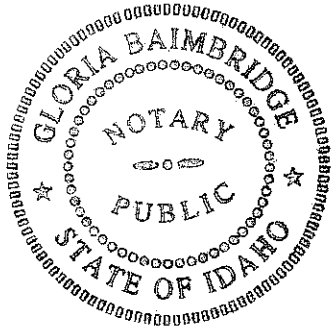
b. The name and address of the claimant is: UNITED STATES OF AMERICA acting on behalf of the USDA Forest Service, 550 W. Fort Street, MSC033, Boise,

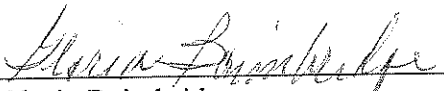
ID 83724.

c. The priority date will be: November 6, 1906.


Steven M. Spencer

SUBSCRIBED and SWORN to before me this 5th day of September, 2007




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

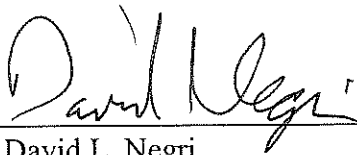
CERTIFICATE OF MAILING

I certify that on September 5, 2007, I mailed a true and correct copy of the foregoing Affidavit of Steven M. Spencer – 77-14231 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: 77-14231

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: 11/06/1906
3. Source of water: TRIBUTARY OF ELK CREEK Tributary: ELK CREEK
4. Location Meridian BOISE
Description of Diversion Works: Pipe From: Stream
Location of Point of Diversion
T: 13 N R 09 E S: 32 NWNE
Location of Place of Use
T: 13 N R 09 E S: 32 NWNE ac: 0
5. Quantity claimed: Period Quantity For
6 / 01 - 10 / 31 0.11 CFS Administrative
6. Total Consumptive Use Claimed for Present and Future Use is:
0.11 CFS
7. Present and future uses to which the water is or will be used:
Administrative
8. Remarks:
State Basin: 77
National Forest: Boise
Forest Service Record ID: 4 2 17060205 68 0000
Elk Creek 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:

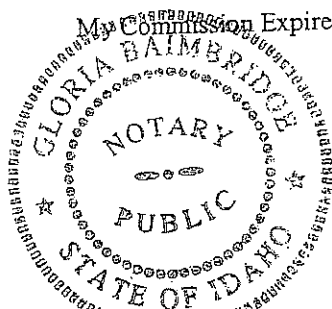
February 14, 2007
Gloria Baimbridge
Notary Republic

Residing at:

Boise, Idaho

My Commission Expires:

10/17/2008



Nov. 6, 1906

SAWTOOTH FOREST RESERVE

IDAHO.

(SECOND PROCLAMATION.)

By the President of the United States of America.

A Proclamation.

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

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;

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";

Now, therefore, I, THEODORE ROOSEVELT, President of the United States of America, by virtue of the power in me vested by the said act of Congress, do proclaim that the aforesaid Sawtooth Forest Reserve is hereby enlarged to include the said additional lands, and that the boundaries of the reserve are now as shown 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 6th 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.

SAWTOOTH FOREST RESERVE

IDAHO

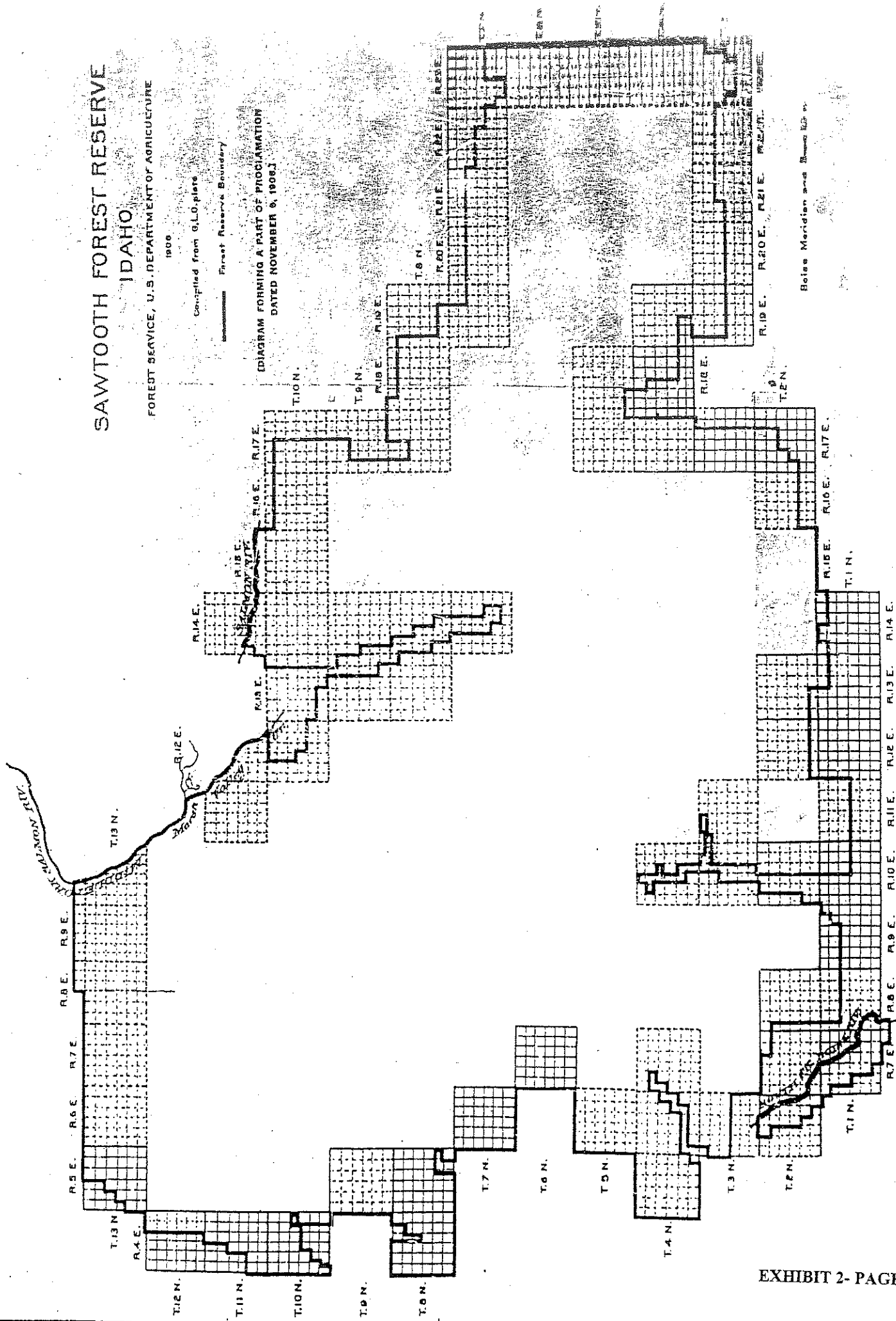
FOREST SERVICE, U.S. DEPARTMENT OF AGRICULTURE

1906

Compiled from G.L.O. plates

Forest Reserve Boundary

DIAGRAM FORMING A PART OF PROCLAMATION
DATED NOVEMBER 9, 1908.]



Boise Meridian and Range E. 10'