

Names of Party Serving Document:

UNITED STATES OF AMERICA

Attorneys' Names and Addresses:

RONALD J. TENPAS
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) 334-1936
(202) 305-0435

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. 78-10625
	)	
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 a water use specialist. I have been employed by the Forest Service

for 31 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 78-10625, as amended and before the Court in the SRBA.

3. I have reviewed Exhibit 1, as amended, for Silvers 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 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 This is substantiated in historical documents maintained by the Idaho State Office of the United States Bureau of Land Management in Boise, Idaho.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.

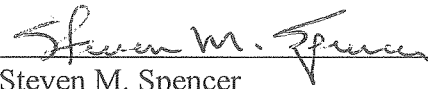
5. The priority date, May 10, 1906, for this reserved water right claim corresponds to the date of the Proclamation enlarging the Weiser Forest Reserve. *See* Exhibit 2.

6. Based upon the forgoing, I have personal knowledge of the following elements of the federal reserved right claim 78-10625 as amended in the SRBA, attached hereto as Exhibit 1:

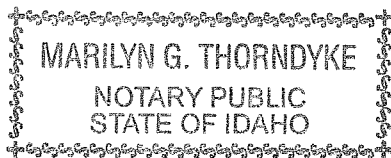
a. The land at the legal descriptions shown as the point of diversion and place of use is federally reserved National Forest System land. It was first reserved on May 10, 1906 in A Proclamation signed by President Theodore Roosevelt enlarging the Weiser Forest Reserve. It is now part of the Nez Perce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

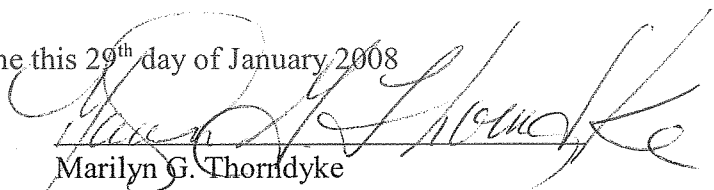
b. The name and address of the claimant is: UNITED STATES OF AMERICA acting on behalf of the USDA Forest Service, 550 W. Fort Street, MSC033, Boise, ID 83724.

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


Steven M. Spencer

SUBSCRIBED and SWORN to before me this 29th day of January 2008




Marilyn G. Thorndyke
NOTARY PUBLIC FOR: Idaho
Residing at: Boise, Idaho
My Commission Expires: 4/16/2010

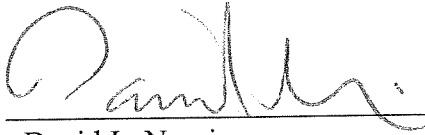
CERTIFICATE OF MAILING

I certify that on January 29, 2008, I mailed a true and correct copy of the foregoing Affidavit of Steven M. Spencer – 78-10625 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: 78-10625

Name and Address: UNITED STATES OF AMERICA ACTING THROUGH THE
USDA FOREST SERVICE
550 W FORT ST MSC 033
BOISE, ID 83724

Source: SHINGLE CREEK Tributary: RAPID RIVER

Quantity: 0.08 CFS
1.00 AFY

Priority Date: 05-10-1906

Point of
Diversion: T23N R01W S01 SWNE Within Idaho County

Purpose and Period of Use:	Purpose of Use	Period of Use	Quantity
	Administrative	01-01 TO 12-31	0.08 CFS 1.00 AFY

Use is for Silvers Administrative Site.

Place of Use: Administrative Within Idaho County
T23N R01W S01 SWNE

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

Explanatory Material: Basis of Claim - Reserved

FOREST SERVICE RECORD ID = 011717060210010220 00

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.

[SEAL.] Done at the City of Washington this 3d day of May, in the year of our Lord one thousand nine hundred and six, and of the Independence of the United States the one hundred and thirtieth.

THEODORE ROOSEVELT

By the President:

ELIHU ROOT
Secretary of State.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.

May 10, 1906.

A PROCLAMATION.

WHEREAS, the Weiser Forest Reserve, in the State of Idaho, was established by proclamation dated May twenty-fifth, nineteen hundred and five; Weiser Forest Reserve, Idaho. Preamble. Act, p. 3055. Post, p. 3294. Vol. 30, p. 36.

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; Forest reserve, Idaho, enlarged.

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.

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.

[SEAL.] Done at the City of Washington this 10th day of May, in the year of our Lord one thousand nine hundred and six, and of the Independence of the United States the one hundred and thirtieth.

THEODORE ROOSEVELT

By the President:

ELIHU ROOT
Secretary of State.

