

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

87-12005

IN RE: THE GENERAL
ADJUDICATION OF RIGHTS
TO THE USE OF WATER FROM
THE PALOUSE RIVER BASIN
WATER SYSTEM

) Case No.: 59576
)
) **NOTICE OF CLAIM**
)
) **Federal Reserved Water Right**
)
)
)

RECEIVED
DEC 30 2019
DEPARTMENT OF
WATER RESOURCES

1. **Name and address of claimant:**

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and
ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the
REGIONAL DIRECTOR, NORTHWEST REGION

Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

2. **Date of Priority:** Time Immemorial

3. **a. Source of water supply:** Spring (Federal I.D. #1000)

b. which is a tributary to: Thorn Creek

4. **Point of Diversion:** This claim is for a spring and/or fountain *in situ* including sufficient groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or fountains.

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1000	37N	5W	8	SENE	Boise	Latah

See Attached Map.

5. **Place of Use:**

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1000	37N	5W	8	SENE	Boise	Latah

See Attached Map.

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 PALOUSE RIVER BASIN
WATER SYSTEM

Case No.: 59576

NOTICE OF CLAIM

Federal Reserved Water Right

87-12003
RECEIVED
DEC 30 2019
DEPARTMENT OF
WATER RESOURCES

1. Name and address of claimant:

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and
ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the
REGIONAL DIRECTOR, NORTHWEST REGION
Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

2. Date of Priority: Time Immemorial

3. a. Source of water supply: Spring (Federal I.D. #1000)

b. which is a tributary to: Thorn Creek

4. Point of Diversion: This claim is for a spring and/or fountain *in situ* including sufficient groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or fountains.

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1000	37N	5W	8	SENE	Boise	Latah

See Attached Map.

5. Place of Use:

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1000	37N	5W	8	SENE	Boise	Latah

See Attached Map.

6. **Purpose of Water Use:**
The purpose of use includes the full range of uses to which the Tribe and its members have always put the springs and fountains, including as a water source for consumptive use, for wildlife and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce Reservation pursuant to the documents referenced in Section 9 and the provisions in Section 10, *infra*.
7. **Period of Use:** January 1 through December 31.
8. **Quantity Reserved (In cfs):** Half the natural flow.
9. **Basis of Claim:**
The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.
10. **Other Provisions:**
 - a. The United States has asserted other claims in the Palouse River Basin Adjudication. Paragraphs 10(a) – (g) express assertions applicable to all claims filed by the Bureau of Indian Affairs in its capacity as trustee for the Nez Perce Tribe in the Palouse River Basin Adjudication. The United States claims waters from groundwater and surface water sources within the Palouse River Basin in the state of Idaho to satisfy the rights reserved to the Nez Perce Tribe by the 1855 Treaty and the 1863 Treaty and to fulfill the permanent homeland purpose of the Nez Perce Reservation. Such present and future purposes include: instream flows for fish habitat; hunting, gathering, and pasturing; spring and fountains flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; and consumptive use claims on two allotments held in trust by the United States.
 - b. The Nez Perce Tribe has occupied a territory in what is now central Idaho, southeastern Washington, and northeastern Oregon since time immemorial. *United States v. Webb*, 219 F.3d 1127, 1129 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). The Palouse River Basin is within the Tribe’s traditional lands.

- c. There is a complex history of the United States' establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the "exclusive right to fish in all streams running through or bordering" the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the "right of taking fish at all usual and accustomed places in common with the citizens of the Territory" to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.
- d. Article III of the 1855 Treaty further reserves to the Tribe "the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land."
- e. Article VIII of the Nez Perce Treaty of 1863 includes a unique provision reserving to the Nez Perce Tribe the use of "springs and fountains" within the area ceded under Article I of the 1863 Treaty. For purposes of the priority date of the springs and fountains claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.
- f. Pursuant to the General Allotment Act of 1887, Act of February 8, 1887, 24 Stat. 388, *amended*, Act of February 28, 1891, 26 Stat. 794, there are two allotments (Allotments 182-43 and 182-45) held in trust by the United States located within the boundaries of the Palouse River Basin and the northwestern corner of the Nez Perce Reservation. For purposes of the priority date of the domestic and stock watering claims for these two allotments, the United States claims June 11, 1855 pursuant to the 1855 Treaty.
- g. In order to comply with Idaho Code § 42-1409(1), the United States has designated "places of use," "points of diversion," and "purposes of use" in submitting this water rights claim. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe's future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Reservation. The statute's terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.

11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled "How you will receive notices in the Palouse River Basin Adjudication."
- (b) I do ___ do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

For Organizations:

I do solemnly swear and affirm that I am Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.

Signature of Authorized Agent:
Title and Organization:



Northwest Regional Director
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

Notice is hereby given that the United States Department of Justice will represent the United States of America, including the U.S. Department of the Interior, Bureau of Indian Affairs, in all matters pertaining to the Palouse River Basin Adjudication.

All notices, filings and correspondence concerning this matter should be mailed to the United States Department of Justice at the address set forth below:

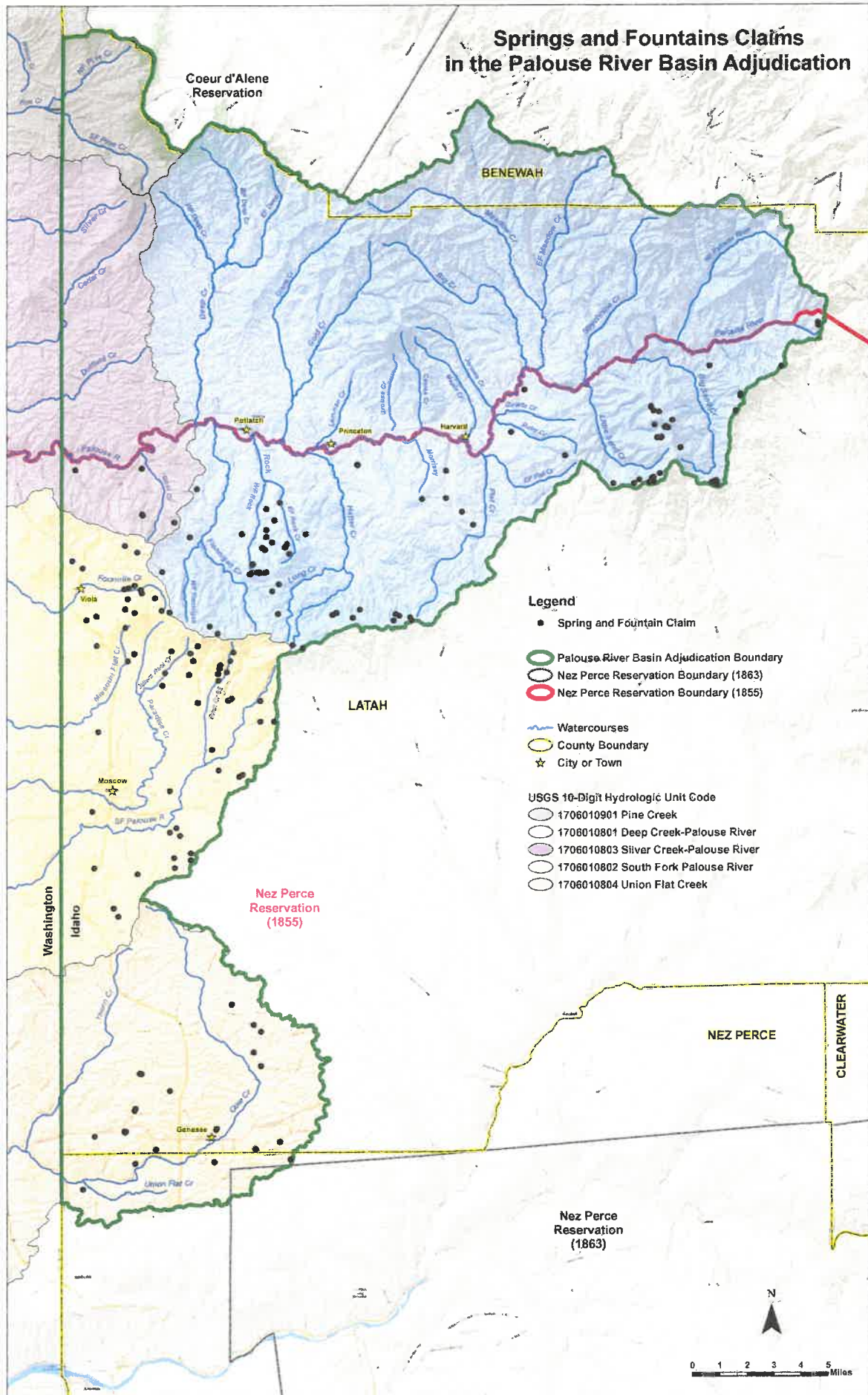
A handwritten signature in blue ink, appearing to read "K.M. Kane", is written over a horizontal line.

Katherine M. Kane
United States Department of Justice
Indian Resources Division
Natural Resources Section
999 18th Street
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

Springs and Fountains Claims in the Palouse River Basin Adjudication



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

87-12006

IN RE: THE GENERAL
ADJUDICATION OF RIGHTS
TO THE USE OF WATER FROM
THE PALOUSE RIVER BASIN
WATER SYSTEM

Case No.: 59576

NOTICE OF CLAIM

Federal Reserved Water Right

RECEIVED
DEC 30 2019
DEPARTMENT OF
WATER RESOURCES

1. Name and address of claimant:

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and
ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the
REGIONAL DIRECTOR, NORTHWEST REGION
Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

2. Date of Priority: Time Immemorial

3. a. Source of water supply: Spring (Federal I.D. #1001)

b. which is a tributary to: Cow Creek

4. Point of Diversion: This claim is for a spring and/or fountain *in situ* including sufficient
groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or
fountains.

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1001	37N	5W	14	NENE	Boise	Latah

See Attached Map.

5. Place of Use:

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1001	37N	5W	14	NENE	Boise	Latah

See Attached Map.

6. **Purpose of Water Use:**

The purpose of use includes the full range of uses to which the Tribe and its members have always put the springs and fountains, including as a water source for consumptive use, for wildlife and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce Reservation pursuant to the documents referenced in Section 9 and the provisions in Section 10, *infra*.

7. **Period of Use:** January 1 through December 31.

8. **Quantity Reserved (In cfs):** Half the natural flow.

9. **Basis of Claim:**

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

10. **Other Provisions:**

- a. The United States has asserted other claims in the Palouse River Basin Adjudication. Paragraphs 10(a) – (g) express assertions applicable to all claims filed by the Bureau of Indian Affairs in its capacity as trustee for the Nez Perce Tribe in the Palouse River Basin Adjudication. The United States claims waters from groundwater and surface water sources within the Palouse River Basin in the state of Idaho to satisfy the rights reserved to the Nez Perce Tribe by the 1855 Treaty and the 1863 Treaty and to fulfill the permanent homeland purpose of the Nez Perce Reservation. Such present and future purposes include: instream flows for fish habitat; hunting, gathering, and pasturing; spring and fountains flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; and consumptive use claims on two allotments held in trust by the United States.
- b. The Nez Perce Tribe has occupied a territory in what is now central Idaho, southeastern Washington, and northeastern Oregon since time immemorial. *United States v. Webb*, 219 F.3d 1127, 1129 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). The Palouse River Basin is within the Tribe’s traditional lands.
- c. There is a complex history of the United States’ establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing

rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the "exclusive right to fish in all streams running through or bordering" the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the "right of taking fish at all usual and accustomed places in common with the citizens of the Territory" to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.

- d. Article III of the 1855 Treaty further reserves to the Tribe "the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land."
- e. Article VIII of the Nez Perce Treaty of 1863 includes a unique provision reserving to the Nez Perce Tribe the use of "springs and fountains" within the area ceded under Article I of the 1863 Treaty. For purposes of the priority date of the springs and fountains claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.
- f. Pursuant to the General Allotment Act of 1887, Act of February 8, 1887, 24 Stat. 388, *amended*, Act of February 28, 1891, 26 Stat. 794, there are two allotments (Allotments 182-43 and 182-45) held in trust by the United States located within the boundaries of the Palouse River Basin and the northwestern corner of the Nez Perce Reservation. For purposes of the priority date of the domestic and stock watering claims for these two allotments, the United States claims June 11, 1855 pursuant to the 1855 Treaty.
- g. In order to comply with Idaho Code § 42-1409(1), the United States has designated "places of use," "points of diversion," and "purposes of use" in submitting this water rights claim. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe's future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Reservation. The statute's terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.

11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled "How you will receive notices in the Palouse River Basin Adjudication."
- (b) I do ___ do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

For Organizations:

I do solemnly swear and affirm that I am Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.

Signature of Authorized Agent:
Title and Organization:

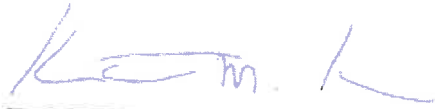


Northwest Regional Director
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

Notice is hereby given that the United States Department of Justice will represent the United States of America, including the U.S. Department of the Interior, Bureau of Indian Affairs, in all matters pertaining to the Palouse River Basin Adjudication.

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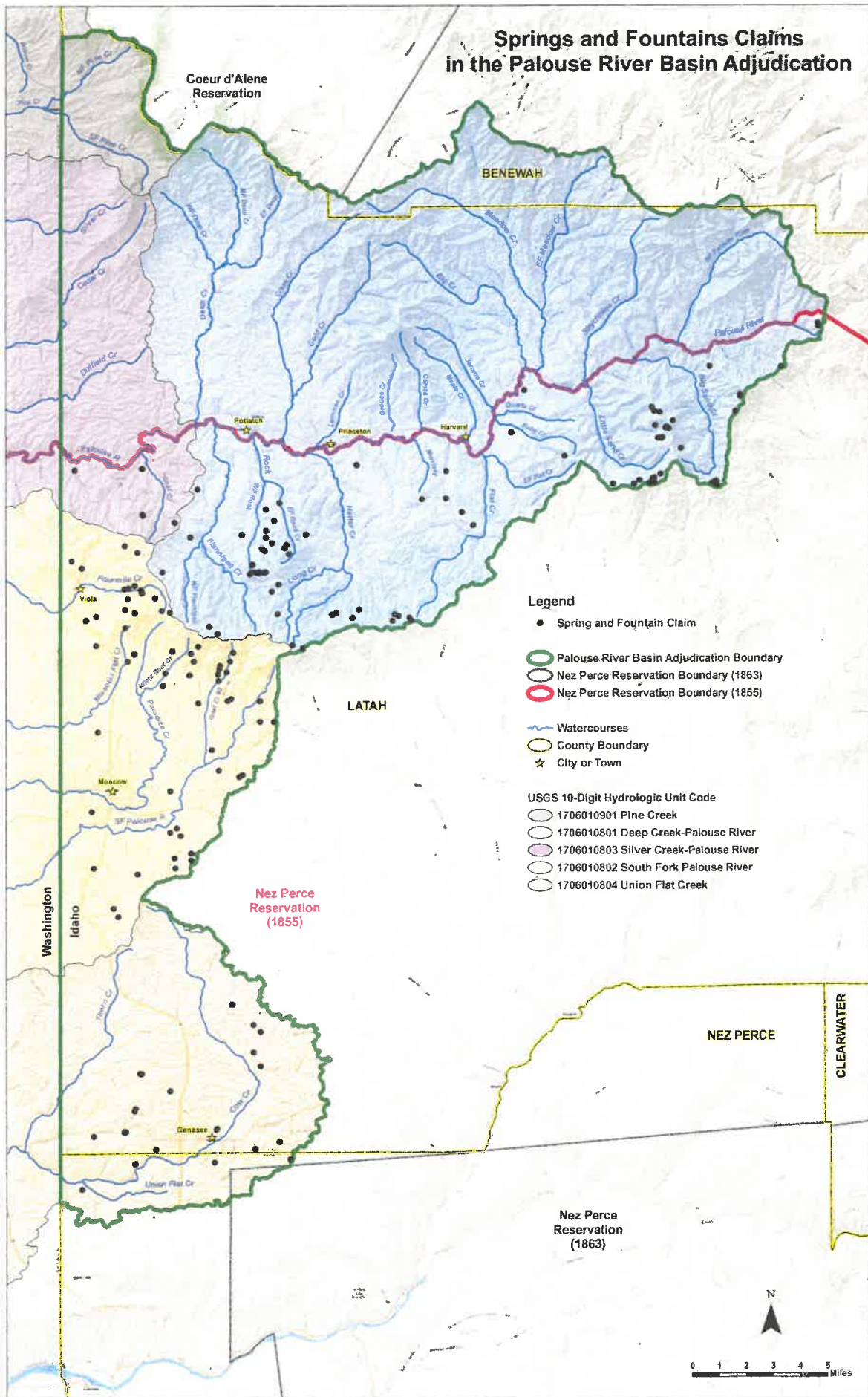


Katherine M. Kane
United States Department of Justice
Indian Resources Division
Natural Resources Section
999 18th Street
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

Springs and Fountains Claims in the Palouse River Basin Adjudication



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

87-17007

IN RE: THE GENERAL
ADJUDICATION OF RIGHTS
TO THE USE OF WATER FROM
THE PALOUSE RIVER BASIN
WATER SYSTEM

)
)
)
)
)
)
)

Case No.: 59576

NOTICE OF CLAIM

Federal Reserved Water Right

RECEIVED

DEC 30 2019

DEPARTMENT OF
WATER RESOURCES

1. **Name and address of claimant:**

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and
ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the
REGIONAL DIRECTOR, NORTHWEST REGION

Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

2. **Date of Priority:** Time Immemorial

3. **a. Source of water supply:** Spring (Federal I.D. #1002)

b. which is a tributary to: Cow Creek

4. **Point of Diversion:** This claim is for a spring and/or fountain *in situ* including sufficient
groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or
fountains.

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1002	37N	5W	14	NENE	Boise	Latah

See Attached Map.

5. **Place of Use:**

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1002	37N	5W	14	NENE	Boise	Latah

See Attached Map.

6. Purpose of Water Use:

The purpose of use includes the full range of uses to which the Tribe and its members have always put the springs and fountains, including as a water source for consumptive use, for wildlife and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce Reservation pursuant to the documents referenced in Section 9 and the provisions in Section 10, *infra*.

7. Period of Use: January 1 through December 31.

8. Quantity Reserved (In cfs): Half the natural flow.

9. Basis of Claim:

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

10. Other Provisions:

- a. The United States has asserted other claims in the Palouse River Basin Adjudication. Paragraphs 10(a) – (g) express assertions applicable to all claims filed by the Bureau of Indian Affairs in its capacity as trustee for the Nez Perce Tribe in the Palouse River Basin Adjudication. The United States claims waters from groundwater and surface water sources within the Palouse River Basin in the state of Idaho to satisfy the rights reserved to the Nez Perce Tribe by the 1855 Treaty and the 1863 Treaty and to fulfill the permanent homeland purpose of the Nez Perce Reservation. Such present and future purposes include: instream flows for fish habitat; hunting, gathering, and pasturing; spring and fountains flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; and consumptive use claims on two allotments held in trust by the United States.
- b. The Nez Perce Tribe has occupied a territory in what is now central Idaho, southeastern Washington, and northeastern Oregon since time immemorial. *United States v. Webb*, 219 F.3d 1127, 1129 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). The Palouse River Basin is within the Tribe’s traditional lands.
- c. There is a complex history of the United States’ establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing

rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the “exclusive right to fish in all streams running through or bordering” the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the “right of taking fish at all usual and accustomed places in common with the citizens of the Territory” to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.

- d. Article III of the 1855 Treaty further reserves to the Tribe “the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land.”
- e. Article VIII of the Nez Perce Treaty of 1863 includes a unique provision reserving to the Nez Perce Tribe the use of “springs and fountains” within the area ceded under Article I of the 1863 Treaty. For purposes of the priority date of the springs and fountains claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.
- f. Pursuant to the General Allotment Act of 1887, Act of February 8, 1887, 24 Stat. 388, *amended*, Act of February 28, 1891, 26 Stat. 794, there are two allotments (Allotments 182-43 and 182-45) held in trust by the United States located within the boundaries of the Palouse River Basin and the northwestern corner of the Nez Perce Reservation. For purposes of the priority date of the domestic and stock watering claims for these two allotments, the United States claims June 11, 1855 pursuant to the 1855 Treaty.
- g. In order to comply with Idaho Code § 42-1409(1), the United States has designated “places of use,” “points of diversion,” and “purposes of use” in submitting this water rights claim. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe’s future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Reservation. The statute’s terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.

11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled “How you will receive notices in the Palouse River Basin Adjudication.”
- (b) I do ___ do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

For Organizations:

I do solemnly swear and affirm that I am Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.

Signature of Authorized Agent:
Title and Organization:

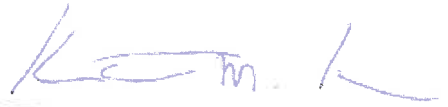


Northwest Regional Director
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

Notice is hereby given that the United States Department of Justice will represent the United States of America, including the U.S. Department of the Interior, Bureau of Indian Affairs, in all matters pertaining to the Palouse River Basin Adjudication.

All notices, filings and correspondence concerning this matter should be mailed to the United States Department of Justice at the address set forth below:

A handwritten signature in blue ink, appearing to read "K.M. Kane", is written over a horizontal line.

Katherine M. Kane
United States Department of Justice
Indian Resources Division
Natural Resources Section
999 18th Street
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

**Springs and Fountains Claims
in the Palouse River Basin Adjudication**

Coeur d'Alene
Reservation

BENEWAH

LATAH

Washington

Idaho

Nez Perce
Reservation
(1855)

Nez Perce
Reservation
(1863)

NEZ PERCE

CLEARWATER

Legend

- Spring and Fountain Claim
- Palouse River Basin Adjudication Boundary
- Nez Perce Reservation Boundary (1863)
- Nez Perce Reservation Boundary (1855)
- Watercourses
- County Boundary
- ☆ City or Town

USGS 10-Digit Hydrologic Unit Code

- 1706010901 Pine Creek
- 1706010801 Deep Creek-Palouse River
- 1706010803 Silver Creek-Palouse River
- 1706010802 South Fork Palouse River
- 1706010804 Union Flat Creek

Scale: 0 1 2 3 4 5 Miles

North Arrow

- **Spring and Fountain Claim**

○ Nez Perce Reservation Boundary.(1863)

 Watercourses

★ City or Town

1706010901 Pine Creek

1706010803 Silver Creek-Palouse River

1706010802 South Fork Palouse River

1706010804 Union Flat Creek

NEZ PERCE

Nez Perce
Reservation
(1863)

CLEARWATER

0 1 2 3 4 5 Miles

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

87-12008

RECEIVED

IN RE: THE GENERAL)
ADJUDICATION OF RIGHTS)
TO THE USE OF WATER FROM)
THE PALOUSE RIVER BASIN)
WATER SYSTEM)
)
)
)

Case No.: 59576

NOTICE OF CLAIM

Federal Reserved Water Right

DEC 30 2019

DEPARTMENT OF
WATER RESOURCES

1. Name and address of claimant:

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and
ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the
REGIONAL DIRECTOR, NORTHWEST REGION

Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

2. Date of Priority: Time Immemorial

3. a. Source of water supply: Spring (Federal I.D. #1003)

b. which is a tributary to: Fourmile Creek

4. Point of Diversion: This claim is for a spring and/or fountain *in situ* including sufficient
groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or
fountains.

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1003	41N	5W	32	NENE	Boise	Latah

See Attached Map.

5. Place of Use:

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1003	41N	5W	32	NENE	Boise	Latah

See Attached Map.

6. Purpose of Water Use:

The purpose of use includes the full range of uses to which the Tribe and its members have always put the springs and fountains, including as a water source for consumptive use, for wildlife and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce Reservation pursuant to the documents referenced in Section 9 and the provisions in Section 10, *infra*.

7. Period of Use: January 1 through December 31.

8. Quantity Reserved (In cfs): Half the natural flow.

9. Basis of Claim:

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

10. Other Provisions:

- a. The United States has asserted other claims in the Palouse River Basin Adjudication. Paragraphs 10(a) – (g) express assertions applicable to all claims filed by the Bureau of Indian Affairs in its capacity as trustee for the Nez Perce Tribe in the Palouse River Basin Adjudication. The United States claims waters from groundwater and surface water sources within the Palouse River Basin in the state of Idaho to satisfy the rights reserved to the Nez Perce Tribe by the 1855 Treaty and the 1863 Treaty and to fulfill the permanent homeland purpose of the Nez Perce Reservation. Such present and future purposes include: instream flows for fish habitat; hunting, gathering, and pasturing; spring and fountains flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; and consumptive use claims on two allotments held in trust by the United States.
- b. The Nez Perce Tribe has occupied a territory in what is now central Idaho, southeastern Washington, and northeastern Oregon since time immemorial. *United States v. Webb*, 219 F.3d 1127, 1129 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). The Palouse River Basin is within the Tribe’s traditional lands.
- c. There is a complex history of the United States’ establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing

rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the “exclusive right to fish in all streams running through or bordering” the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the “right of taking fish at all usual and accustomed places in common with the citizens of the Territory” to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.

- d. Article III of the 1855 Treaty further reserves to the Tribe “the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land.”
- e. Article VIII of the Nez Perce Treaty of 1863 includes a unique provision reserving to the Nez Perce Tribe the use of “springs and fountains” within the area ceded under Article I of the 1863 Treaty. For purposes of the priority date of the springs and fountains claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.
- f. Pursuant to the General Allotment Act of 1887, Act of February 8, 1887, 24 Stat. 388, *amended*, Act of February 28, 1891, 26 Stat. 794, there are two allotments (Allotments 182-43 and 182-45) held in trust by the United States located within the boundaries of the Palouse River Basin and the northwestern corner of the Nez Perce Reservation. For purposes of the priority date of the domestic and stock watering claims for these two allotments, the United States claims June 11, 1855 pursuant to the 1855 Treaty.
- g. In order to comply with Idaho Code § 42-1409(1), the United States has designated “places of use,” “points of diversion,” and “purposes of use” in submitting this water rights claim. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe’s future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Reservation. The statute’s terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.

11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled “How you will receive notices in the Palouse River Basin Adjudication.”
- (b) I do ___ do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

For Organizations:

I do solemnly swear and affirm that I am Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.

Signature of Authorized Agent:
Title and Organization:

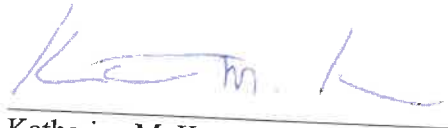


Northwest Regional Director
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

Notice is hereby given that the United States Department of Justice will represent the United States of America, including the U.S. Department of the Interior, Bureau of Indian Affairs, in all matters pertaining to the Palouse River Basin Adjudication.

All notices, filings and correspondence concerning this matter should be mailed to the United States Department of Justice at the address set forth below:

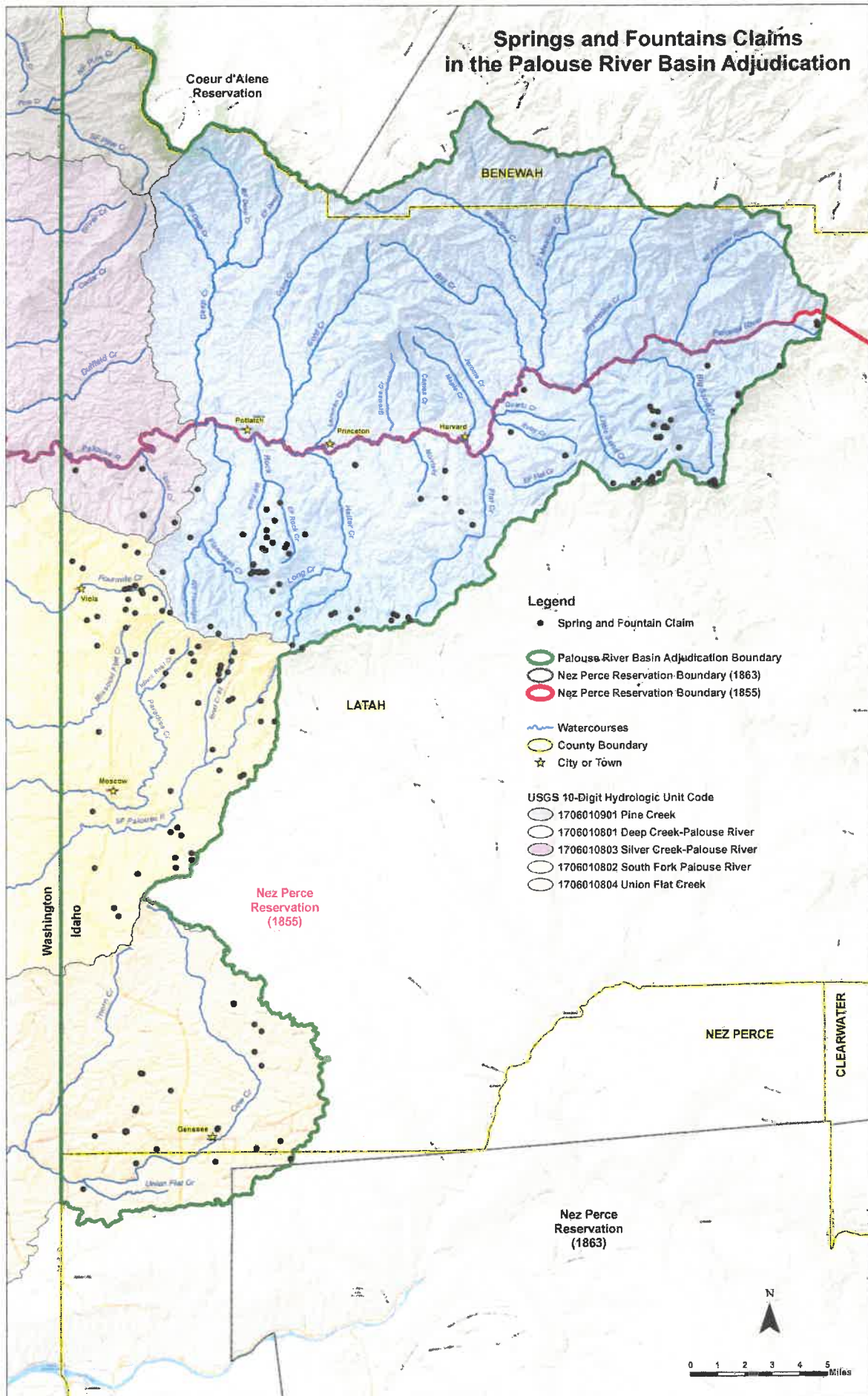
A handwritten signature in blue ink, appearing to read 'K.M. Kane', is written over a horizontal line.

Katherine M. Kane
United States Department of Justice
Indian Resources Division
Natural Resources Section
999 18th Street
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

Springs and Fountains Claims in the Palouse River Basin Adjudication



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

87-12009

IN RE: THE GENERAL)
ADJUDICATION OF RIGHTS)
TO THE USE OF WATER FROM)
THE PALOUSE RIVER BASIN)
WATER SYSTEM)
)
)
)

Case No.: 59576

NOTICE OF CLAIM

Federal Reserved Water Right

RECEIVED
DEC 30 2019
DEPARTMENT OF
WATER RESOURCES

1. Name and address of claimant:

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and
ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the
REGIONAL DIRECTOR, NORTHWEST REGION

Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

2. Date of Priority: Time Immemorial

3. a. Source of water supply: Spring (Federal I.D. #1004)

b. which is a tributary to: Gnat Creek

4. Point of Diversion: This claim is for a spring and/or fountain *in situ* including sufficient
groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or
fountains.

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1004	40N	5W	23	NESE	Boise	Latah

See Attached Map.

5. Place of Use:

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1004	40N	5W	23	NESE	Boise	Latah

See Attached Map.

6. Purpose of Water Use:

The purpose of use includes the full range of uses to which the Tribe and its members have always put the springs and fountains, including as a water source for consumptive use, for wildlife and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce Reservation pursuant to the documents referenced in Section 9 and the provisions in Section 10, *infra*.

7. Period of Use: January 1 through December 31.

8. Quantity Reserved (In cfs): Half the natural flow.

9. Basis of Claim:

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

10. Other Provisions:

- a. The United States has asserted other claims in the Palouse River Basin Adjudication. Paragraphs 10(a) – (g) express assertions applicable to all claims filed by the Bureau of Indian Affairs in its capacity as trustee for the Nez Perce Tribe in the Palouse River Basin Adjudication. The United States claims waters from groundwater and surface water sources within the Palouse River Basin in the state of Idaho to satisfy the rights reserved to the Nez Perce Tribe by the 1855 Treaty and the 1863 Treaty and to fulfill the permanent homeland purpose of the Nez Perce Reservation. Such present and future purposes include: instream flows for fish habitat; hunting, gathering, and pasturing; spring and fountains flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; and consumptive use claims on two allotments held in trust by the United States.
- b. The Nez Perce Tribe has occupied a territory in what is now central Idaho, southeastern Washington, and northeastern Oregon since time immemorial. *United States v. Webb*, 219 F.3d 1127, 1129 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). The Palouse River Basin is within the Tribe’s traditional lands.
- c. There is a complex history of the United States’ establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing

rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the “exclusive right to fish in all streams running through or bordering” the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the “right of taking fish at all usual and accustomed places in common with the citizens of the Territory” to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.

- d. Article III of the 1855 Treaty further reserves to the Tribe “the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land.”
- e. Article VIII of the Nez Perce Treaty of 1863 includes a unique provision reserving to the Nez Perce Tribe the use of “springs and fountains” within the area ceded under Article I of the 1863 Treaty. For purposes of the priority date of the springs and fountains claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.
- f. Pursuant to the General Allotment Act of 1887, Act of February 8, 1887, 24 Stat. 388, *amended*, Act of February 28, 1891, 26 Stat. 794, there are two allotments (Allotments 182-43 and 182-45) held in trust by the United States located within the boundaries of the Palouse River Basin and the northwestern corner of the Nez Perce Reservation. For purposes of the priority date of the domestic and stock watering claims for these two allotments, the United States claims June 11, 1855 pursuant to the 1855 Treaty.
- g. In order to comply with Idaho Code § 42-1409(1), the United States has designated “places of use,” “points of diversion,” and “purposes of use” in submitting this water rights claim. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe’s future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Reservation. The statute’s terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.

11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled “How you will receive notices in the Palouse River Basin Adjudication.”
- (b) I do ☐ do not ☒ wish to receive and pay a small annual fee for monthly copies of the docket sheet.

For Organizations:

I do solemnly swear and affirm that I am Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.

Signature of Authorized Agent:
Title and Organization:

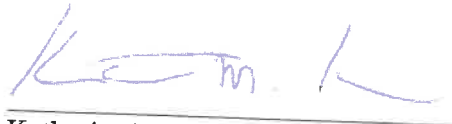


Northwest Regional Director
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

Notice is hereby given that the United States Department of Justice will represent the United States of America, including the U.S. Department of the Interior, Bureau of Indian Affairs, in all matters pertaining to the Palouse River Basin Adjudication.

All notices, filings and correspondence concerning this matter should be mailed to the United States Department of Justice at the address set forth below:

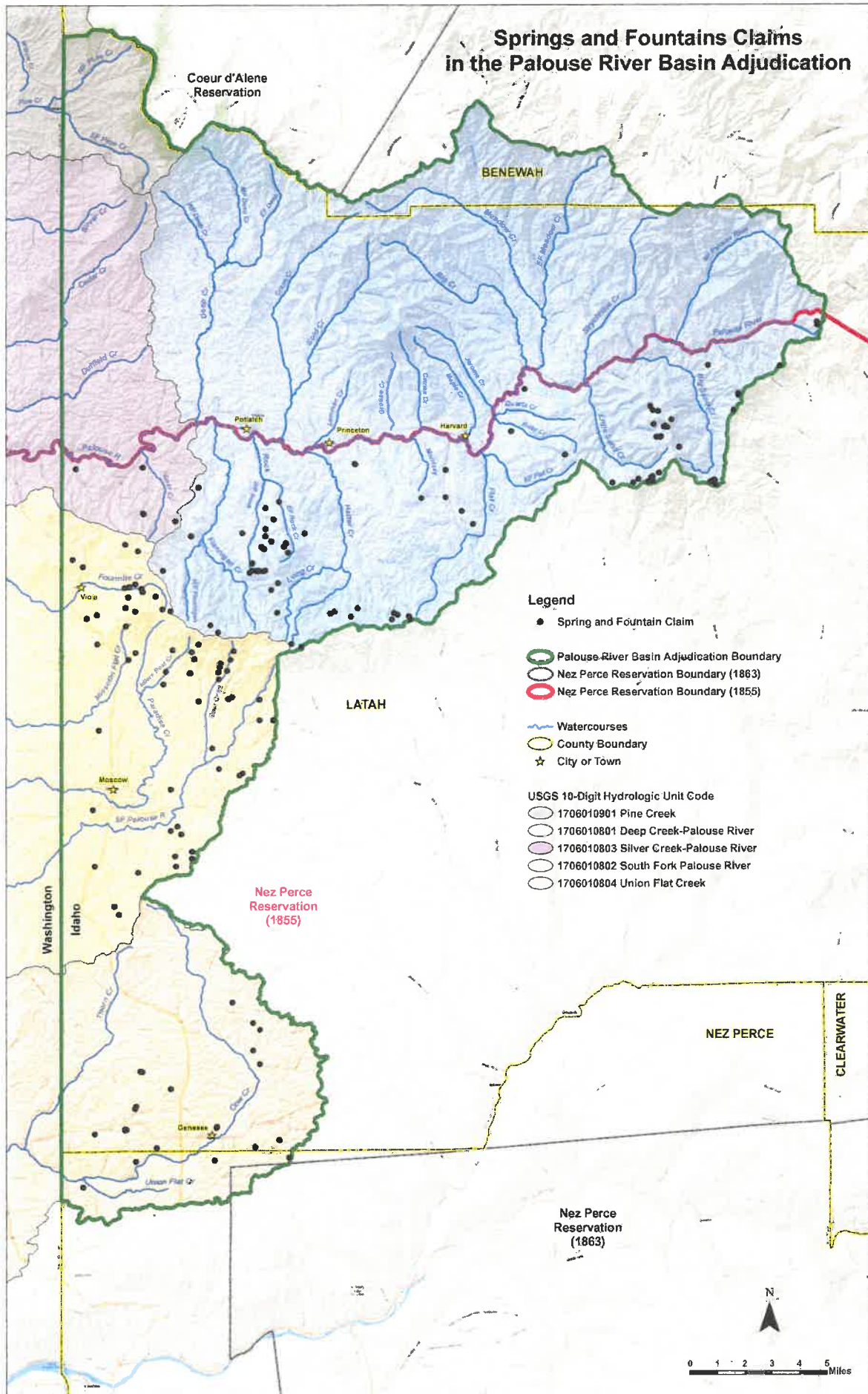
A handwritten signature in blue ink, appearing to read "K.M. Kane", is written over a horizontal line.

Katherine M. Kane
United States Department of Justice
Indian Resources Division
Natural Resources Section
999 18th Street
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

Springs and Fountains Claims in the Palouse River Basin Adjudication



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

87-12010

IN RE: THE GENERAL
ADJUDICATION OF RIGHTS
TO THE USE OF WATER FROM
THE PALOUSE RIVER BASIN
WATER SYSTEM

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)
)
)
)
)
)

Case No.: 59576

NOTICE OF CLAIM

Federal Reserved Water Right

RECEIVED

DEC 30 2019

DEPARTMENT OF
WATER RESOURCES

1. **Name and address of claimant:**

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and
ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the
REGIONAL DIRECTOR, NORTHWEST REGION
Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

2. **Date of Priority:** Time Immemorial

3. **a. Source of water supply:** Spring (Federal I.D. #1005)

b. which is a tributary to: Paradise Creek

4. **Point of Diversion:** This claim is for a spring and/or fountain *in situ* including sufficient groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or fountains.

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1005	40N	5W	22	NESE	Boise	Latah

See Attached Map.

5. **Place of Use:**

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1005	40N	5W	22	NESE	Boise	Latah

See Attached Map.

6. **Purpose of Water Use:**

The purpose of use includes the full range of uses to which the Tribe and its members have always put the springs and fountains, including as a water source for consumptive use, for wildlife and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce Reservation pursuant to the documents referenced in Section 9 and the provisions in Section 10, *infra*.

7. **Period of Use:** January 1 through December 31.

8. **Quantity Reserved (In cfs):** Half the natural flow.

9. **Basis of Claim:**

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

10. **Other Provisions:**

- a. The United States has asserted other claims in the Palouse River Basin Adjudication. Paragraphs 10(a) – (g) express assertions applicable to all claims filed by the Bureau of Indian Affairs in its capacity as trustee for the Nez Perce Tribe in the Palouse River Basin Adjudication. The United States claims waters from groundwater and surface water sources within the Palouse River Basin in the state of Idaho to satisfy the rights reserved to the Nez Perce Tribe by the 1855 Treaty and the 1863 Treaty and to fulfill the permanent homeland purpose of the Nez Perce Reservation. Such present and future purposes include: instream flows for fish habitat; hunting, gathering, and pasturing; spring and fountains flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; and consumptive use claims on two allotments held in trust by the United States.
- b. The Nez Perce Tribe has occupied a territory in what is now central Idaho, southeastern Washington, and northeastern Oregon since time immemorial. *United States v. Webb*, 219 F.3d 1127, 1129 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). The Palouse River Basin is within the Tribe’s traditional lands.
- c. There is a complex history of the United States’ establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing

rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the "exclusive right to fish in all streams running through or bordering" the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the "right of taking fish at all usual and accustomed places in common with the citizens of the Territory" to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.

- d. Article III of the 1855 Treaty further reserves to the Tribe "the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land."
- e. Article VIII of the Nez Perce Treaty of 1863 includes a unique provision reserving to the Nez Perce Tribe the use of "springs and fountains" within the area ceded under Article I of the 1863 Treaty. For purposes of the priority date of the springs and fountains claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.
- f. Pursuant to the General Allotment Act of 1887, Act of February 8, 1887, 24 Stat. 388, *amended*, Act of February 28, 1891, 26 Stat. 794, there are two allotments (Allotments 182-43 and 182-45) held in trust by the United States located within the boundaries of the Palouse River Basin and the northwestern corner of the Nez Perce Reservation. For purposes of the priority date of the domestic and stock watering claims for these two allotments, the United States claims June 11, 1855 pursuant to the 1855 Treaty.
- g. In order to comply with Idaho Code § 42-1409(1), the United States has designated "places of use," "points of diversion," and "purposes of use" in submitting this water rights claim. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe's future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Reservation. The statute's terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.

11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled "How you will receive notices in the Palouse River Basin Adjudication."
- (b) I do ___ do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

For Organizations:

I do solemnly swear and affirm that I am Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.



Signature of Authorized Agent:
Title and Organization:

Northwest Regional Director
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

Notice is hereby given that the United States Department of Justice will represent the United States of America, including the U.S. Department of the Interior, Bureau of Indian Affairs, in all matters pertaining to the Palouse River Basin Adjudication.

All notices, filings and correspondence concerning this matter should be mailed to the United States Department of Justice at the address set forth below:

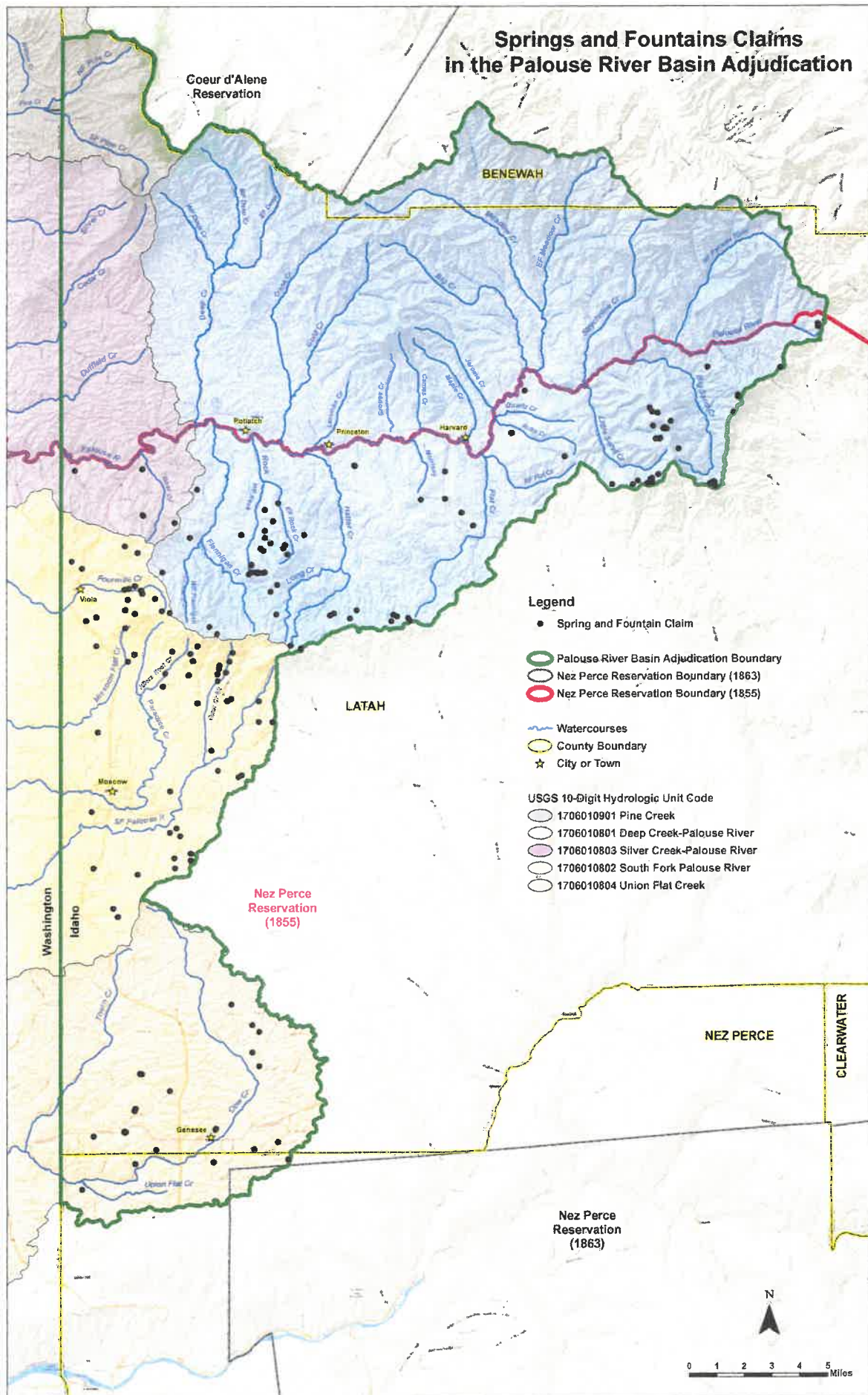
A handwritten signature in blue ink, appearing to read "K.M. Kane", is written over a horizontal line.

Katherine M. Kane
United States Department of Justice
Indian Resources Division
Natural Resources Section
999 18th Street
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

Springs and Fountains Claims in the Palouse River Basin Adjudication



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

87-12011

IN RE: THE GENERAL
ADJUDICATION OF RIGHTS
TO THE USE OF WATER FROM
THE PALOUSE RIVER BASIN
WATER SYSTEM

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)
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)
)

Case No.: 59576

NOTICE OF CLAIM

Federal Reserved Water Right

DEC 30 2011
DEPARTMENT OF
WATER RESOURCES

1. Name and address of claimant:

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and
ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the
REGIONAL DIRECTOR, NORTHWEST REGION

Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

2. Date of Priority: Time Immemorial

3. a. Source of water supply: Spring (Federal I.D. #1006)

b. which is a tributary to: South Fork Palouse River

4. Point of Diversion: This claim is for a spring and/or fountain *in situ* including sufficient groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or fountains.

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1006	39N	5W	29	SESE	Boise	Latah

See Attached Map.

5. Place of Use:

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1006	39N	5W	29	SESE	Boise	Latah

See Attached Map.

6. Purpose of Water Use:

The purpose of use includes the full range of uses to which the Tribe and its members have always put the springs and fountains, including as a water source for consumptive use, for wildlife and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce Reservation pursuant to the documents referenced in Section 9 and the provisions in Section 10, *infra*.

7. Period of Use: January 1 through December 31.

8. Quantity Reserved (In cfs): Half the natural flow.

9. Basis of Claim:

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

10. Other Provisions:

- a. The United States has asserted other claims in the Palouse River Basin Adjudication. Paragraphs 10(a) – (g) express assertions applicable to all claims filed by the Bureau of Indian Affairs in its capacity as trustee for the Nez Perce Tribe in the Palouse River Basin Adjudication. The United States claims waters from groundwater and surface water sources within the Palouse River Basin in the state of Idaho to satisfy the rights reserved to the Nez Perce Tribe by the 1855 Treaty and the 1863 Treaty and to fulfill the permanent homeland purpose of the Nez Perce Reservation. Such present and future purposes include: instream flows for fish habitat; hunting, gathering, and pasturing; spring and fountains flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; and consumptive use claims on two allotments held in trust by the United States.
- b. The Nez Perce Tribe has occupied a territory in what is now central Idaho, southeastern Washington, and northeastern Oregon since time immemorial. *United States v. Webb*, 219 F.3d 1127, 1129 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). The Palouse River Basin is within the Tribe’s traditional lands.
- c. There is a complex history of the United States’ establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing

rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the “exclusive right to fish in all streams running through or bordering” the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the “right of taking fish at all usual and accustomed places in common with the citizens of the Territory” to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.

- d. Article III of the 1855 Treaty further reserves to the Tribe “the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land.”
- e. Article VIII of the Nez Perce Treaty of 1863 includes a unique provision reserving to the Nez Perce Tribe the use of “springs and fountains” within the area ceded under Article I of the 1863 Treaty. For purposes of the priority date of the springs and fountains claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.
- f. Pursuant to the General Allotment Act of 1887, Act of February 8, 1887, 24 Stat. 388, *amended*, Act of February 28, 1891, 26 Stat. 794, there are two allotments (Allotments 182-43 and 182-45) held in trust by the United States located within the boundaries of the Palouse River Basin and the northwestern corner of the Nez Perce Reservation. For purposes of the priority date of the domestic and stock watering claims for these two allotments, the United States claims June 11, 1855 pursuant to the 1855 Treaty.
- g. In order to comply with Idaho Code § 42-1409(1), the United States has designated “places of use,” “points of diversion,” and “purposes of use” in submitting this water rights claim. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe’s future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Reservation. The statute’s terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.

11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled “How you will receive notices in the Palouse River Basin Adjudication.”
- (b) I do ___ do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

For Organizations:

I do solemnly swear and affirm that I am Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.



Signature of Authorized Agent:
Title and Organization:

Northwest Regional Director
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

Notice is hereby given that the United States Department of Justice will represent the United States of America, including the U.S. Department of the Interior, Bureau of Indian Affairs, in all matters pertaining to the Palouse River Basin Adjudication.

All notices, filings and correspondence concerning this matter should be mailed to the United States Department of Justice at the address set forth below:

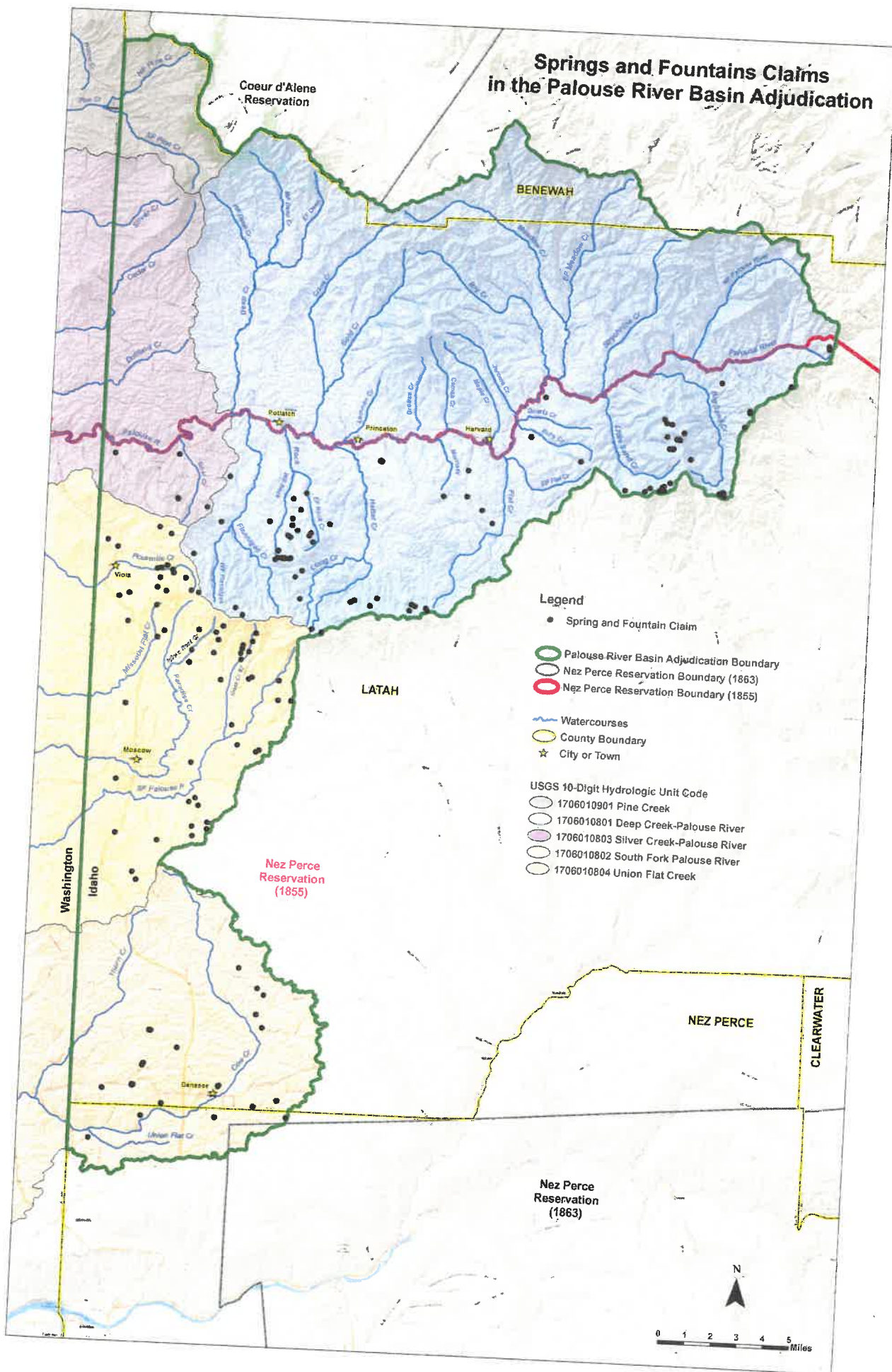


Katherine M. Kane
United States Department of Justice
Indian Resources Division
Natural Resources Section
999 18th Street
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

Springs and Fountains Claims in the Palouse River Basin Adjudication



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

87-12012

IN RE: THE GENERAL
ADJUDICATION OF RIGHTS
TO THE USE OF WATER FROM
THE PALOUSE RIVER BASIN
WATER SYSTEM

Case No.: 59576

NOTICE OF CLAIM

Federal Reserved Water Right

RECEIVED
DEC 30 2019
DEPARTMENT OF
WATER RESOURCES

1. **Name and address of claimant:**

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and
ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the
REGIONAL DIRECTOR, NORTHWEST REGION
Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

2. **Date of Priority:** Time Immemorial

3. **a. Source of water supply:** Spring (Federal I.D. #1007)

b. which is a tributary to: Cow Creek

4. **Point of Diversion:** This claim is for a spring and/or fountain *in situ* including sufficient groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or fountains.

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1007	37N	4W	17	NWSW	Boise	Latah

See Attached Map.

5. **Place of Use:**

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1007	37N	4W	17	NWSW	Boise	Latah

See Attached Map.

6. **Purpose of Water Use:**

The purpose of use includes the full range of uses to which the Tribe and its members have always put the springs and fountains, including as a water source for consumptive use, for wildlife and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce Reservation pursuant to the documents referenced in Section 9 and the provisions in Section 10, *infra*.

7. **Period of Use:** January 1 through December 31.

8. **Quantity Reserved (In cfs):** Half the natural flow.

9. **Basis of Claim:**

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

10. **Other Provisions:**

- a. The United States has asserted other claims in the Palouse River Basin Adjudication. Paragraphs 10(a) – (g) express assertions applicable to all claims filed by the Bureau of Indian Affairs in its capacity as trustee for the Nez Perce Tribe in the Palouse River Basin Adjudication. The United States claims waters from groundwater and surface water sources within the Palouse River Basin in the state of Idaho to satisfy the rights reserved to the Nez Perce Tribe by the 1855 Treaty and the 1863 Treaty and to fulfill the permanent homeland purpose of the Nez Perce Reservation. Such present and future purposes include: instream flows for fish habitat; hunting, gathering, and pasturing; spring and fountains flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; and consumptive use claims on two allotments held in trust by the United States.
- b. The Nez Perce Tribe has occupied a territory in what is now central Idaho, southeastern Washington, and northeastern Oregon since time immemorial. *United States v. Webb*, 219 F.3d 1127, 1129 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). The Palouse River Basin is within the Tribe’s traditional lands.
- c. There is a complex history of the United States’ establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing

rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the "exclusive right to fish in all streams running through or bordering" the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the "right of taking fish at all usual and accustomed places in common with the citizens of the Territory" to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.

- d. Article III of the 1855 Treaty further reserves to the Tribe "the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land."
- e. Article VIII of the Nez Perce Treaty of 1863 includes a unique provision reserving to the Nez Perce Tribe the use of "springs and fountains" within the area ceded under Article I of the 1863 Treaty. For purposes of the priority date of the springs and fountains claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.
- f. Pursuant to the General Allotment Act of 1887, Act of February 8, 1887, 24 Stat. 388, *amended*, Act of February 28, 1891, 26 Stat. 794, there are two allotments (Allotments 182-43 and 182-45) held in trust by the United States located within the boundaries of the Palouse River Basin and the northwestern corner of the Nez Perce Reservation. For purposes of the priority date of the domestic and stock watering claims for these two allotments, the United States claims June 11, 1855 pursuant to the 1855 Treaty.
- g. In order to comply with Idaho Code § 42-1409(1), the United States has designated "places of use," "points of diversion," and "purposes of use" in submitting this water rights claim. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe's future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Reservation. The statute's terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.

11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled "How you will receive notices in the Palouse River Basin Adjudication."
- (b) I do ___ do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

For Organizations:

I do solemnly swear and affirm that I am Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.



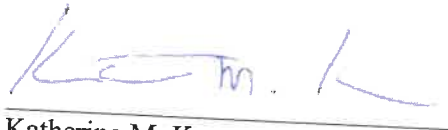
Signature of Authorized Agent:
Title and Organization:

Northwest Regional Director
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

Notice is hereby given that the United States Department of Justice will represent the United States of America, including the U.S. Department of the Interior, Bureau of Indian Affairs, in all matters pertaining to the Palouse River Basin Adjudication.

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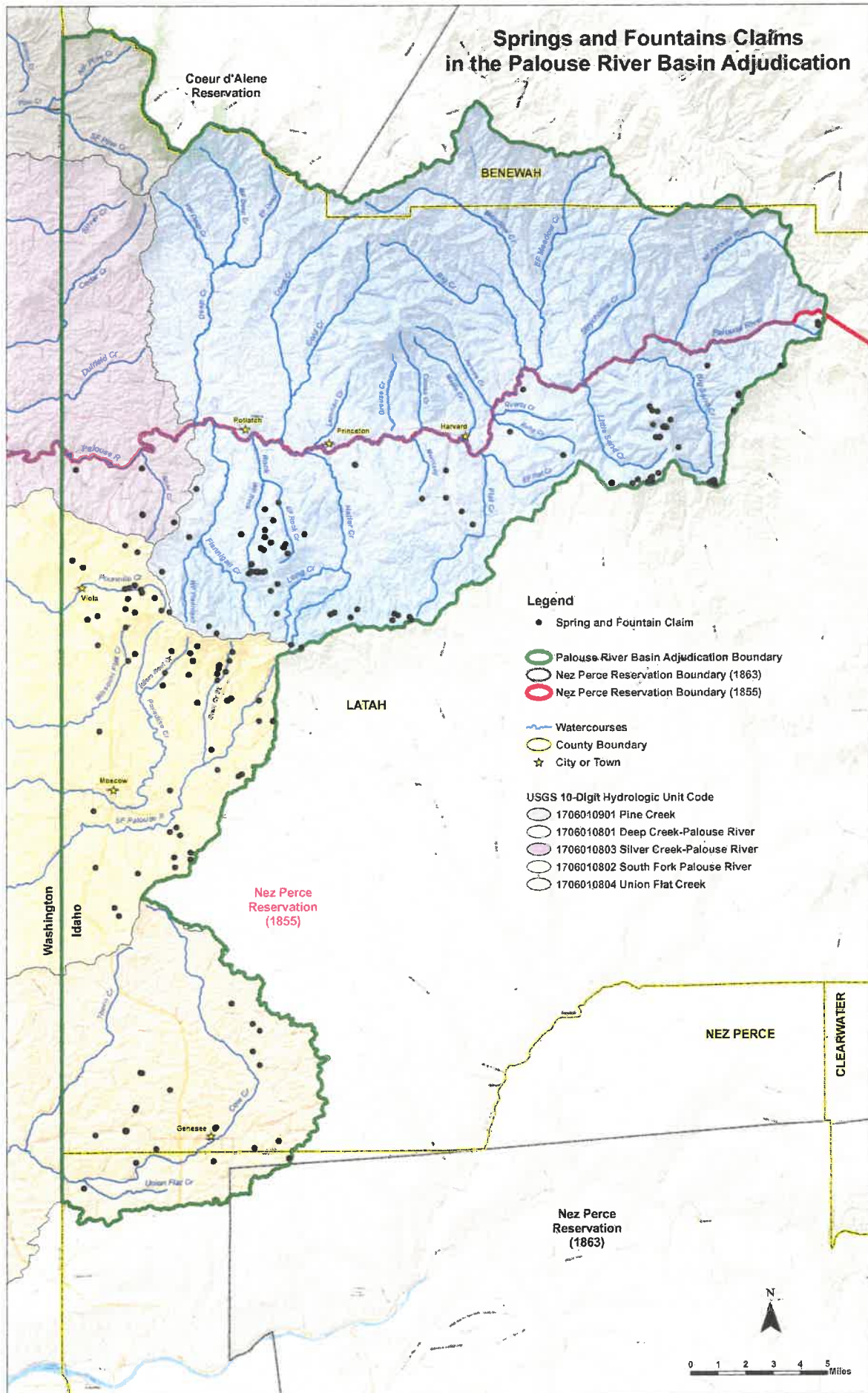


Katherine M. Kane
United States Department of Justice
Indian Resources Division
Natural Resources Section
999 18th Street
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

Springs and Fountains Claims in the Palouse River Basin Adjudication



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

87-17013

IN RE: THE GENERAL
ADJUDICATION OF RIGHTS
TO THE USE OF WATER FROM
THE PALOUSE RIVER BASIN
WATER SYSTEM

Case No.: 59576

NOTICE OF CLAIM

Federal Reserved Water Right

RECEIVED
DEC 30 2019
DEPARTMENT OF
WATER RESOURCES

1. **Name and address of claimant:**

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and
ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the
REGIONAL DIRECTOR, NORTHWEST REGION
Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

2. **Date of Priority:** Time Immemorial

3. **a. Source of water supply:** Spring (Federal I.D. #1008)

b. which is a tributary to: Flannigan Creek

4. **Point of Diversion:** This claim is for a spring and/or fountain *in situ* including sufficient
groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or
fountains.

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1008	40N	5W	14	NENE	Boise	Latah

See Attached Map.

5. **Place of Use:**

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1008	40N	5W	14	NENE	Boise	Latah

See Attached Map.

6. **Purpose of Water Use:**

The purpose of use includes the full range of uses to which the Tribe and its members have always put the springs and fountains, including as a water source for consumptive use, for wildlife and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce Reservation pursuant to the documents referenced in Section 9 and the provisions in Section 10, *infra*.

7. **Period of Use:** January 1 through December 31.

8. **Quantity Reserved (In cfs):** Half the natural flow.

9. **Basis of Claim:**

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

10. **Other Provisions:**

- a. The United States has asserted other claims in the Palouse River Basin Adjudication. Paragraphs 10(a) – (g) express assertions applicable to all claims filed by the Bureau of Indian Affairs in its capacity as trustee for the Nez Perce Tribe in the Palouse River Basin Adjudication. The United States claims waters from groundwater and surface water sources within the Palouse River Basin in the state of Idaho to satisfy the rights reserved to the Nez Perce Tribe by the 1855 Treaty and the 1863 Treaty and to fulfill the permanent homeland purpose of the Nez Perce Reservation. Such present and future purposes include: instream flows for fish habitat; hunting, gathering, and pasturing; spring and fountains flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; and consumptive use claims on two allotments held in trust by the United States.
- b. The Nez Perce Tribe has occupied a territory in what is now central Idaho, southeastern Washington, and northeastern Oregon since time immemorial. *United States v. Webb*, 219 F.3d 1127, 1129 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). The Palouse River Basin is within the Tribe’s traditional lands.
- c. There is a complex history of the United States’ establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing

rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the "exclusive right to fish in all streams running through or bordering" the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the "right of taking fish at all usual and accustomed places in common with the citizens of the Territory" to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.

- d. Article III of the 1855 Treaty further reserves to the Tribe "the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land."
- e. Article VIII of the Nez Perce Treaty of 1863 includes a unique provision reserving to the Nez Perce Tribe the use of "springs and fountains" within the area ceded under Article I of the 1863 Treaty. For purposes of the priority date of the springs and fountains claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.
- f. Pursuant to the General Allotment Act of 1887, Act of February 8, 1887, 24 Stat. 388, *amended*, Act of February 28, 1891, 26 Stat. 794, there are two allotments (Allotments 182-43 and 182-45) held in trust by the United States located within the boundaries of the Palouse River Basin and the northwestern corner of the Nez Perce Reservation. For purposes of the priority date of the domestic and stock watering claims for these two allotments, the United States claims June 11, 1855 pursuant to the 1855 Treaty.
- g. In order to comply with Idaho Code § 42-1409(1), the United States has designated "places of use," "points of diversion," and "purposes of use" in submitting this water rights claim. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe's future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Reservation. The statute's terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.

11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled "How you will receive notices in the Palouse River Basin Adjudication."
- (b) I do do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

For Organizations:

I do solemnly swear and affirm that I am Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.

Signature of Authorized Agent:
Title and Organization:

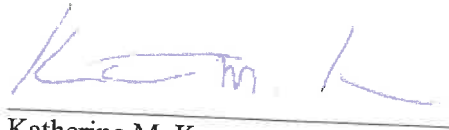


Northwest Regional Director
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

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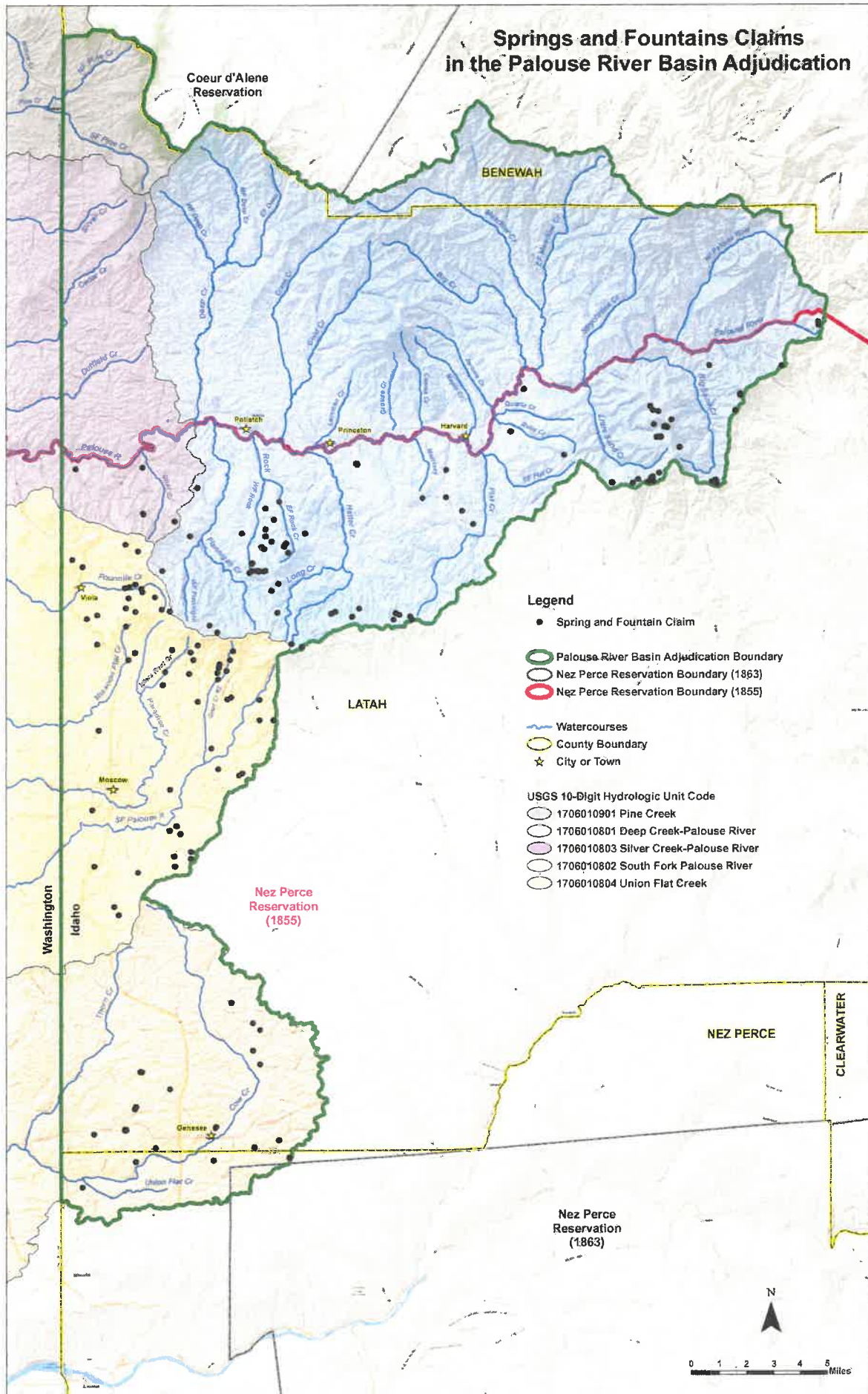


Katherine M. Kane
United States Department of Justice
Indian Resources Division
Natural Resources Section
999 18th Street
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

Springs and Fountains Claims in the Palouse River Basin Adjudication



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

87-12014

RECEIVED

DEC 30 2019

DEPARTMENT OF
WATER RESOURCES

IN RE: THE GENERAL) Case No.: 59576
ADJUDICATION OF RIGHTS)
TO THE USE OF WATER FROM) NOTICE OF CLAIM
THE PALOUSE RIVER BASIN)
WATER SYSTEM) Federal Reserved Water Right
)
)
)
)

1. Name and address of claimant:

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and
ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the
REGIONAL DIRECTOR, NORTHWEST REGION

Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

2. Date of Priority: Time Immemorial

3. a. Source of water supply: Spring (Federal I.D. #1009)

b. which is a tributary to: Flannigan Creek

4. Point of Diversion: This claim is for a spring and/or fountain *in situ* including sufficient
groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or
fountains.

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1009	40N	5W	11	SWSE	Boise	Latah

See Attached Map.

5. Place of Use:

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1009	40N	5W	11	SWSE	Boise	Latah

See Attached Map.

6. Purpose of Water Use:

The purpose of use includes the full range of uses to which the Tribe and its members have always put the springs and fountains, including as a water source for consumptive use, for wildlife and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce Reservation pursuant to the documents referenced in Section 9 and the provisions in Section 10, *infra*.

7. Period of Use: January 1 through December 31.

8. Quantity Reserved (In cfs): Half the natural flow.

9. Basis of Claim:

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

10. Other Provisions:

- a. The United States has asserted other claims in the Palouse River Basin Adjudication. Paragraphs 10(a) – (g) express assertions applicable to all claims filed by the Bureau of Indian Affairs in its capacity as trustee for the Nez Perce Tribe in the Palouse River Basin Adjudication. The United States claims waters from groundwater and surface water sources within the Palouse River Basin in the state of Idaho to satisfy the rights reserved to the Nez Perce Tribe by the 1855 Treaty and the 1863 Treaty and to fulfill the permanent homeland purpose of the Nez Perce Reservation. Such present and future purposes include: instream flows for fish habitat; hunting, gathering, and pasturing; spring and fountains flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; and consumptive use claims on two allotments held in trust by the United States.
- b. The Nez Perce Tribe has occupied a territory in what is now central Idaho, southeastern Washington, and northeastern Oregon since time immemorial. *United States v. Webb*, 219 F.3d 1127, 1129 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). The Palouse River Basin is within the Tribe’s traditional lands.
- c. There is a complex history of the United States’ establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing

rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the “exclusive right to fish in all streams running through or bordering” the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the “right of taking fish at all usual and accustomed places in common with the citizens of the Territory” to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.

- d. Article III of the 1855 Treaty further reserves to the Tribe “the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land.”
- e. Article VIII of the Nez Perce Treaty of 1863 includes a unique provision reserving to the Nez Perce Tribe the use of “springs and fountains” within the area ceded under Article I of the 1863 Treaty. For purposes of the priority date of the springs and fountains claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.
- f. Pursuant to the General Allotment Act of 1887, Act of February 8, 1887, 24 Stat. 388, *amended*, Act of February 28, 1891, 26 Stat. 794, there are two allotments (Allotments 182-43 and 182-45) held in trust by the United States located within the boundaries of the Palouse River Basin and the northwestern corner of the Nez Perce Reservation. For purposes of the priority date of the domestic and stock watering claims for these two allotments, the United States claims June 11, 1855 pursuant to the 1855 Treaty.
- g. In order to comply with Idaho Code § 42-1409(1), the United States has designated “places of use,” “points of diversion,” and “purposes of use” in submitting this water rights claim. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe’s future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Reservation. The statute’s terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.

11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled “How you will receive notices in the Palouse River Basin Adjudication.”
- (b) I do ___ do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

For Organizations:

I do solemnly swear and affirm that I am Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.

Signature of Authorized Agent:
Title and Organization:

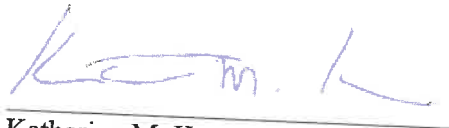


Northwest Regional Director
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

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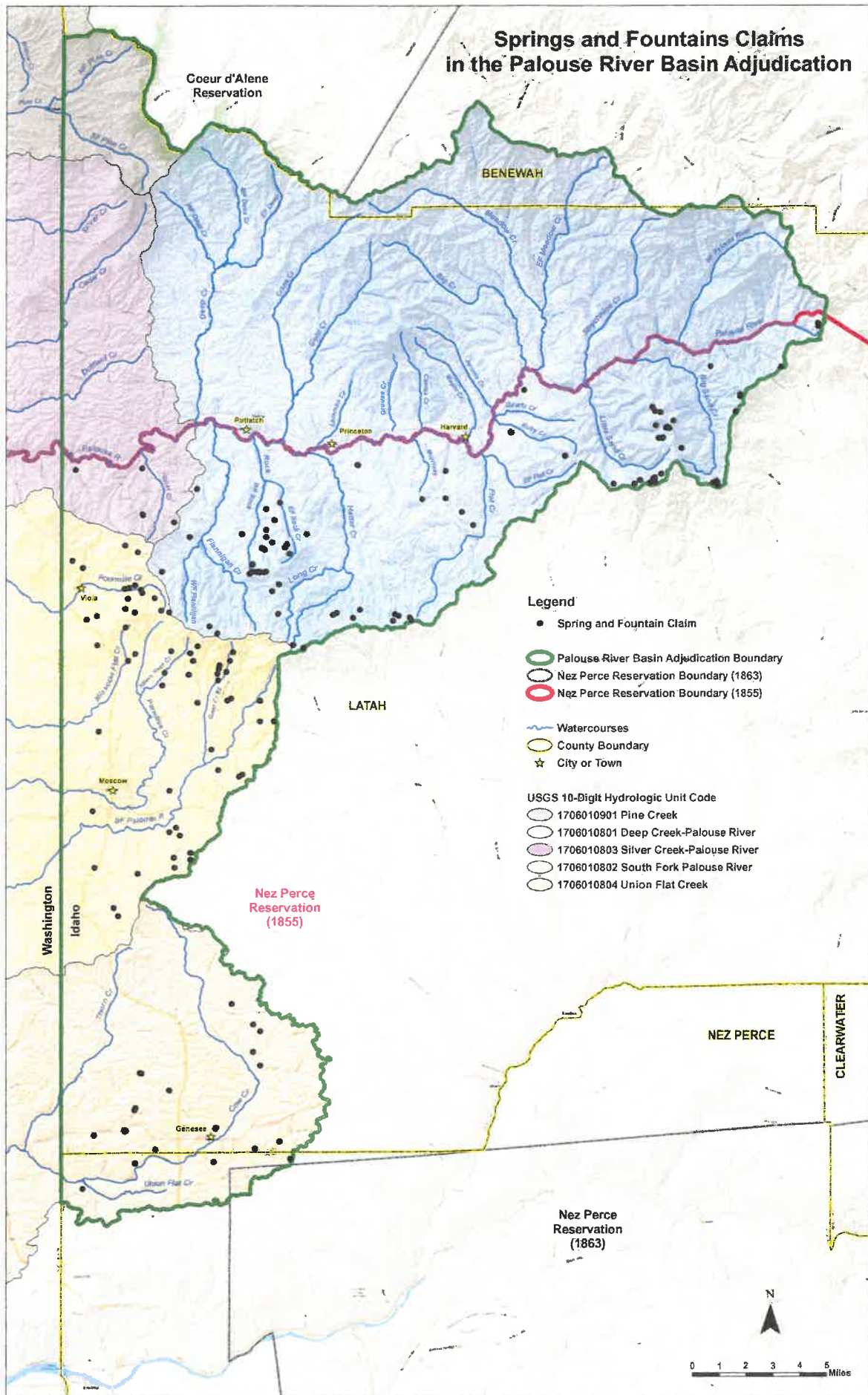


Katherine M. Kane
United States Department of Justice
Indian Resources Division
Natural Resources Section
999 18th Street
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

Springs and Fountains Claims in the Palouse River Basin Adjudication



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

87-12015

IN RE: THE GENERAL)
ADJUDICATION OF RIGHTS)
TO THE USE OF WATER FROM)
THE PALOUSE RIVER BASIN)
WATER SYSTEM)
)
)
)

Case No.: 59576

NOTICE OF CLAIM

Federal Reserved Water Right

RECEIVED
DEC 30 2019
DEPARTMENT OF
WATER RESOURCES

1. Name and address of claimant:

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and
ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the
REGIONAL DIRECTOR, NORTHWEST REGION

Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

2. Date of Priority: Time Immemorial

3. a. Source of water supply: Springs (Federal I.D. #1010)

b. which is a tributary to: Fourmile Creek

4. Point of Diversion: This claim is for a spring and/or fountain *in situ* including sufficient groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or fountains.

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1010-1	41N	6W	36	SWNE	Boise	Latah
1010-2	41N	6W	36	NESE	Boise	Latah

See Attached Map.

5. Place of Use:

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1010-1	41N	6W	36	SWNE	Boise	Latah
1010-2	41N	6W	36	NESE	Boise	Latah

See Attached Map.

6. Purpose of Water Use:

The purpose of use includes the full range of uses to which the Tribe and its members have always put the springs and fountains, including as a water source for consumptive use, for wildlife and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce Reservation pursuant to the documents referenced in Section 9 and the provisions in Section 10, *infra*.

7. Period of Use: January 1 through December 31.

8. Quantity Reserved (In cfs): Half the natural flow.

9. Basis of Claim:

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

10. Other Provisions:

- a. The United States has asserted other claims in the Palouse River Basin Adjudication. Paragraphs 10(a) – (g) express assertions applicable to all claims filed by the Bureau of Indian Affairs in its capacity as trustee for the Nez Perce Tribe in the Palouse River Basin Adjudication. The United States claims waters from groundwater and surface water sources within the Palouse River Basin in the state of Idaho to satisfy the rights reserved to the Nez Perce Tribe by the 1855 Treaty and the 1863 Treaty and to fulfill the permanent homeland purpose of the Nez Perce Reservation. Such present and future purposes include: instream flows for fish habitat; hunting, gathering, and pasturing; spring and fountains flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; and consumptive use claims on two allotments held in trust by the United States.
- b. The Nez Perce Tribe has occupied a territory in what is now central Idaho, southeastern Washington, and northeastern Oregon since time immemorial. *United States v. Webb*, 219 F.3d 1127, 1129 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). The Palouse River Basin is within the Tribe’s traditional lands.
- c. There is a complex history of the United States’ establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing

rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the “exclusive right to fish in all streams running through or bordering” the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the “right of taking fish at all usual and accustomed places in common with the citizens of the Territory” to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.

- d. Article III of the 1855 Treaty further reserves to the Tribe “the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land.”
- e. Article VIII of the Nez Perce Treaty of 1863 includes a unique provision reserving to the Nez Perce Tribe the use of “springs and fountains” within the area ceded under Article I of the 1863 Treaty. For purposes of the priority date of the springs and fountains claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.
- f. Pursuant to the General Allotment Act of 1887, Act of February 8, 1887, 24 Stat. 388, *amended*, Act of February 28, 1891, 26 Stat. 794, there are two allotments (Allotments 182-43 and 182-45) held in trust by the United States located within the boundaries of the Palouse River Basin and the northwestern corner of the Nez Perce Reservation. For purposes of the priority date of the domestic and stock watering claims for these two allotments, the United States claims June 11, 1855 pursuant to the 1855 Treaty.
- g. In order to comply with Idaho Code § 42-1409(1), the United States has designated “places of use,” “points of diversion,” and “purposes of use” in submitting this water rights claim. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe’s future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Reservation. The statute’s terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.

11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled “How you will receive notices in the Palouse River Basin Adjudication.”
- (b) I do do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

For Organizations:

I do solemnly swear and affirm that I am Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.

Signature of Authorized Agent:
Title and Organization:

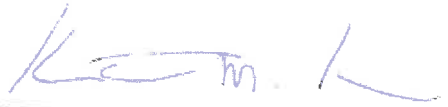


Northwest Regional Director
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

Notice is hereby given that the United States Department of Justice will represent the United States of America, including the U.S. Department of the Interior, Bureau of Indian Affairs, in all matters pertaining to the Palouse River Basin Adjudication.

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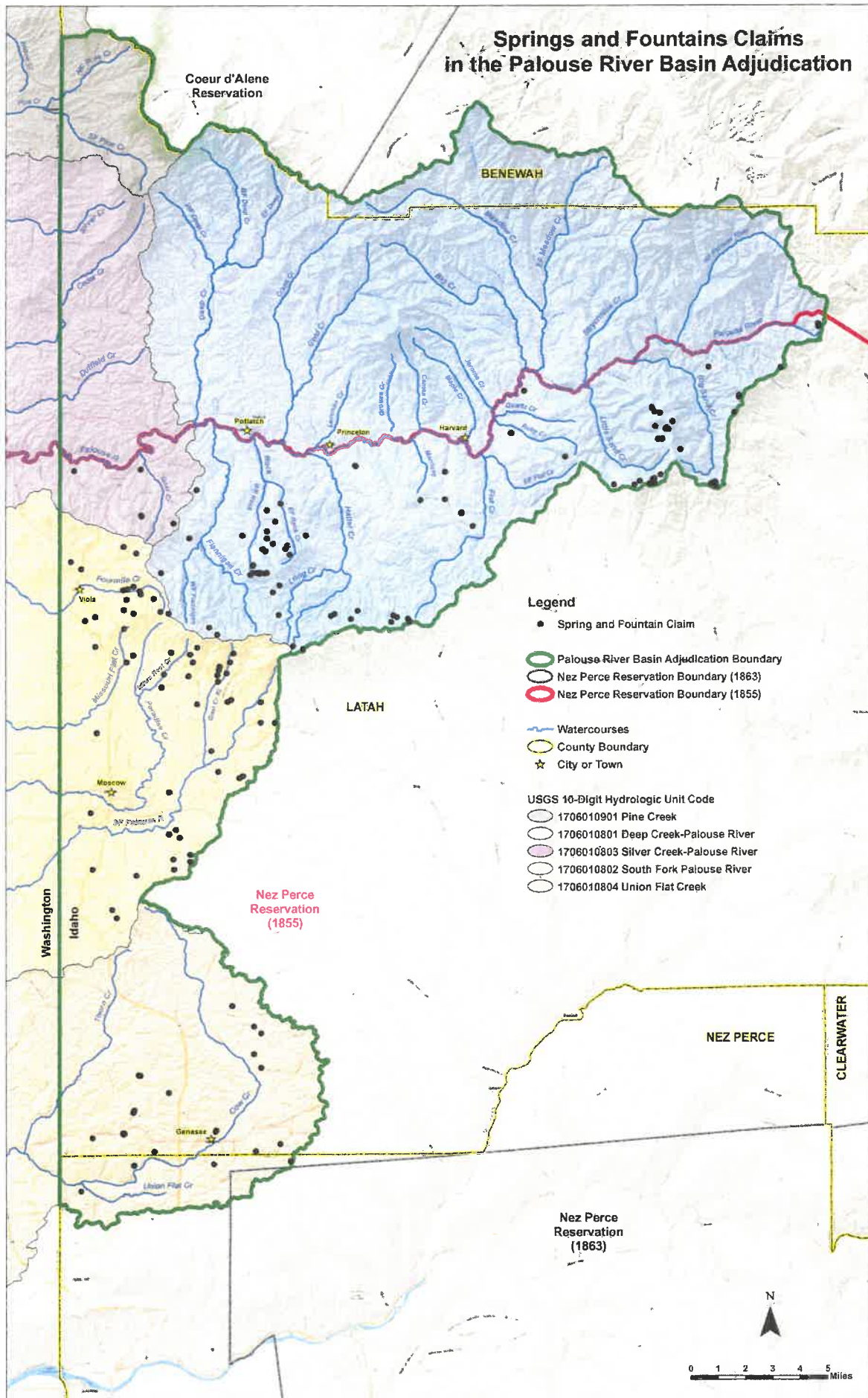


Katherine M. Kane
United States Department of Justice
Indian Resources Division
Natural Resources Section
999 18th Street
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

Springs and Fountains Claims in the Palouse River Basin Adjudication



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

87-12016

RECEIVED

IN RE: THE GENERAL)
ADJUDICATION OF RIGHTS)
TO THE USE OF WATER FROM)
THE PALOUSE RIVER BASIN)
WATER SYSTEM)

Case No.: 59576

NOTICE OF CLAIM

Federal Reserved Water Right

DEC 30 2019

DEPARTMENT OF
WATER RESOURCES

1. Name and address of claimant:

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and
ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the
REGIONAL DIRECTOR, NORTHWEST REGION

Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

2. Date of Priority: Time Immemorial

3. a. Source of water supply: Spring (Federal I.D. #1011)

b. which is a tributary to: South Fork Palouse River

4. Point of Diversion: This claim is for a spring and/or fountain *in situ* including sufficient
groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or
fountains.

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1011	39N	5W	11	NENE	Boise	Latah

See Attached Map.

5. Place of Use:

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1011	39N	5W	11	NENE	Boise	Latah

See Attached Map.

6. Purpose of Water Use:

The purpose of use includes the full range of uses to which the Tribe and its members have always put the springs and fountains, including as a water source for consumptive use, for wildlife and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce Reservation pursuant to the documents referenced in Section 9 and the provisions in Section 10, *infra*.

7. Period of Use: January 1 through December 31.

8. Quantity Reserved (In cfs): Half the natural flow.

9. Basis of Claim:

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

10. Other Provisions:

- a. The United States has asserted other claims in the Palouse River Basin Adjudication. Paragraphs 10(a) – (g) express assertions applicable to all claims filed by the Bureau of Indian Affairs in its capacity as trustee for the Nez Perce Tribe in the Palouse River Basin Adjudication. The United States claims waters from groundwater and surface water sources within the Palouse River Basin in the state of Idaho to satisfy the rights reserved to the Nez Perce Tribe by the 1855 Treaty and the 1863 Treaty and to fulfill the permanent homeland purpose of the Nez Perce Reservation. Such present and future purposes include: instream flows for fish habitat; hunting, gathering, and pasturing; spring and fountains flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; and consumptive use claims on two allotments held in trust by the United States.
- b. The Nez Perce Tribe has occupied a territory in what is now central Idaho, southeastern Washington, and northeastern Oregon since time immemorial. *United States v. Webb*, 219 F.3d 1127, 1129 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). The Palouse River Basin is within the Tribe’s traditional lands.
- c. There is a complex history of the United States’ establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing

rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the “exclusive right to fish in all streams running through or bordering” the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the “right of taking fish at all usual and accustomed places in common with the citizens of the Territory” to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.

- d. Article III of the 1855 Treaty further reserves to the Tribe “the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land.”
- e. Article VIII of the Nez Perce Treaty of 1863 includes a unique provision reserving to the Nez Perce Tribe the use of “springs and fountains” within the area ceded under Article I of the 1863 Treaty. For purposes of the priority date of the springs and fountains claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.
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- g. In order to comply with Idaho Code § 42-1409(1), the United States has designated “places of use,” “points of diversion,” and “purposes of use” in submitting this water rights claim. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe’s future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Reservation. The statute’s terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.

11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled “How you will receive notices in the Palouse River Basin Adjudication.”
- (b) I do ___ do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

For Organizations:

I do solemnly swear and affirm that I am Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.



Signature of Authorized Agent:

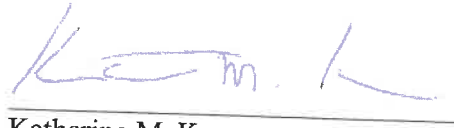
Title and Organization:

Northwest Regional Director
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

Notice is hereby given that the United States Department of Justice will represent the United States of America, including the U.S. Department of the Interior, Bureau of Indian Affairs, in all matters pertaining to the Palouse River Basin Adjudication.

All notices, filings and correspondence concerning this matter should be mailed to the United States Department of Justice at the address set forth below:

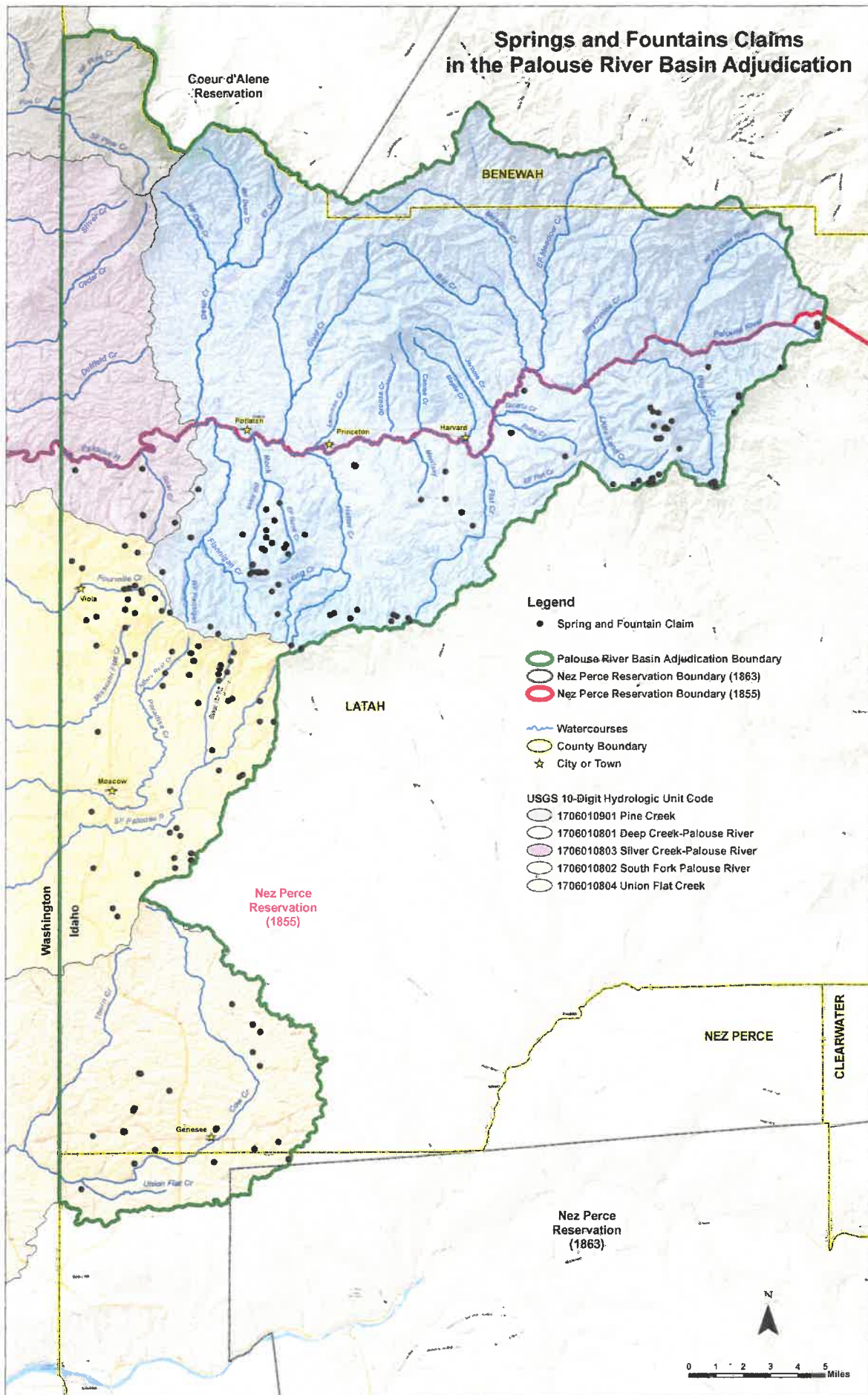
A handwritten signature in blue ink, appearing to read "K.M. Kane", is written over a horizontal line.

Katherine M. Kane
United States Department of Justice
Indian Resources Division
Natural Resources Section
999 18th Street
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

Springs and Fountains Claims in the Palouse River Basin Adjudication



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

87-12017

RECEIVED

IN RE: THE GENERAL
ADJUDICATION OF RIGHTS
TO THE USE OF WATER FROM
THE PALOUSE RIVER BASIN
WATER SYSTEM

Case No.: 59576

NOTICE OF CLAIM

Federal Reserved Water Right

DEC 30 2019
DEPARTMENT OF
WATER RESOURCES

1. Name and address of claimant:

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the REGIONAL DIRECTOR, NORTHWEST REGION

Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

2. Date of Priority: Time Immemorial

3. a. Source of water supply: Spring (Federal I.D. #1012)

b. which is a tributary to: Palouse River

4. Point of Diversion: This claim is for a spring and/or fountain *in situ* including sufficient groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or fountains.

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1012	41N	6W	13	NWNE	Boise	Latah

See Attached Map.

5. Place of Use:

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1012	41N	6W	13	NWNE	Boise	Latah

See Attached Map.

6. Purpose of Water Use:

The purpose of use includes the full range of uses to which the Tribe and its members have always put the springs and fountains, including as a water source for consumptive use, for wildlife and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce Reservation pursuant to the documents referenced in Section 9 and the provisions in Section 10, *infra*.

7. Period of Use: January 1 through December 31.

8. Quantity Reserved (In cfs): Half the natural flow.

9. Basis of Claim:

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

10. Other Provisions:

- a. The United States has asserted other claims in the Palouse River Basin Adjudication. Paragraphs 10(a) – (g) express assertions applicable to all claims filed by the Bureau of Indian Affairs in its capacity as trustee for the Nez Perce Tribe in the Palouse River Basin Adjudication. The United States claims waters from groundwater and surface water sources within the Palouse River Basin in the state of Idaho to satisfy the rights reserved to the Nez Perce Tribe by the 1855 Treaty and the 1863 Treaty and to fulfill the permanent homeland purpose of the Nez Perce Reservation. Such present and future purposes include: instream flows for fish habitat; hunting, gathering, and pasturing; spring and fountains flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; and consumptive use claims on two allotments held in trust by the United States.
- b. The Nez Perce Tribe has occupied a territory in what is now central Idaho, southeastern Washington, and northeastern Oregon since time immemorial. *United States v. Webb*, 219 F.3d 1127, 1129 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). The Palouse River Basin is within the Tribe’s traditional lands.
- c. There is a complex history of the United States’ establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing

rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the “exclusive right to fish in all streams running through or bordering” the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the “right of taking fish at all usual and accustomed places in common with the citizens of the Territory” to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.

- d. Article III of the 1855 Treaty further reserves to the Tribe “the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land.”
- e. Article VIII of the Nez Perce Treaty of 1863 includes a unique provision reserving to the Nez Perce Tribe the use of “springs and fountains” within the area ceded under Article I of the 1863 Treaty. For purposes of the priority date of the springs and fountains claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.
- f. Pursuant to the General Allotment Act of 1887, Act of February 8, 1887, 24 Stat. 388, *amended*, Act of February 28, 1891, 26 Stat. 794, there are two allotments (Allotments 182-43 and 182-45) held in trust by the United States located within the boundaries of the Palouse River Basin and the northwestern corner of the Nez Perce Reservation. For purposes of the priority date of the domestic and stock watering claims for these two allotments, the United States claims June 11, 1855 pursuant to the 1855 Treaty.
- g. In order to comply with Idaho Code § 42-1409(1), the United States has designated “places of use,” “points of diversion,” and “purposes of use” in submitting this water rights claim. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe’s future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Reservation. The statute’s terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.

11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled “How you will receive notices in the Palouse River Basin Adjudication.”
- (b) I do ___ do not **X** wish to receive and pay a small annual fee for monthly copies of the docket sheet.

For Organizations:

I do solemnly swear and affirm that I am Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.



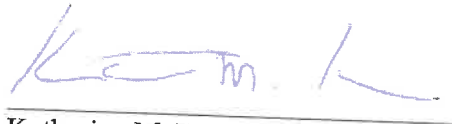
Signature of Authorized Agent:
Title and Organization:

Northwest Regional Director
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

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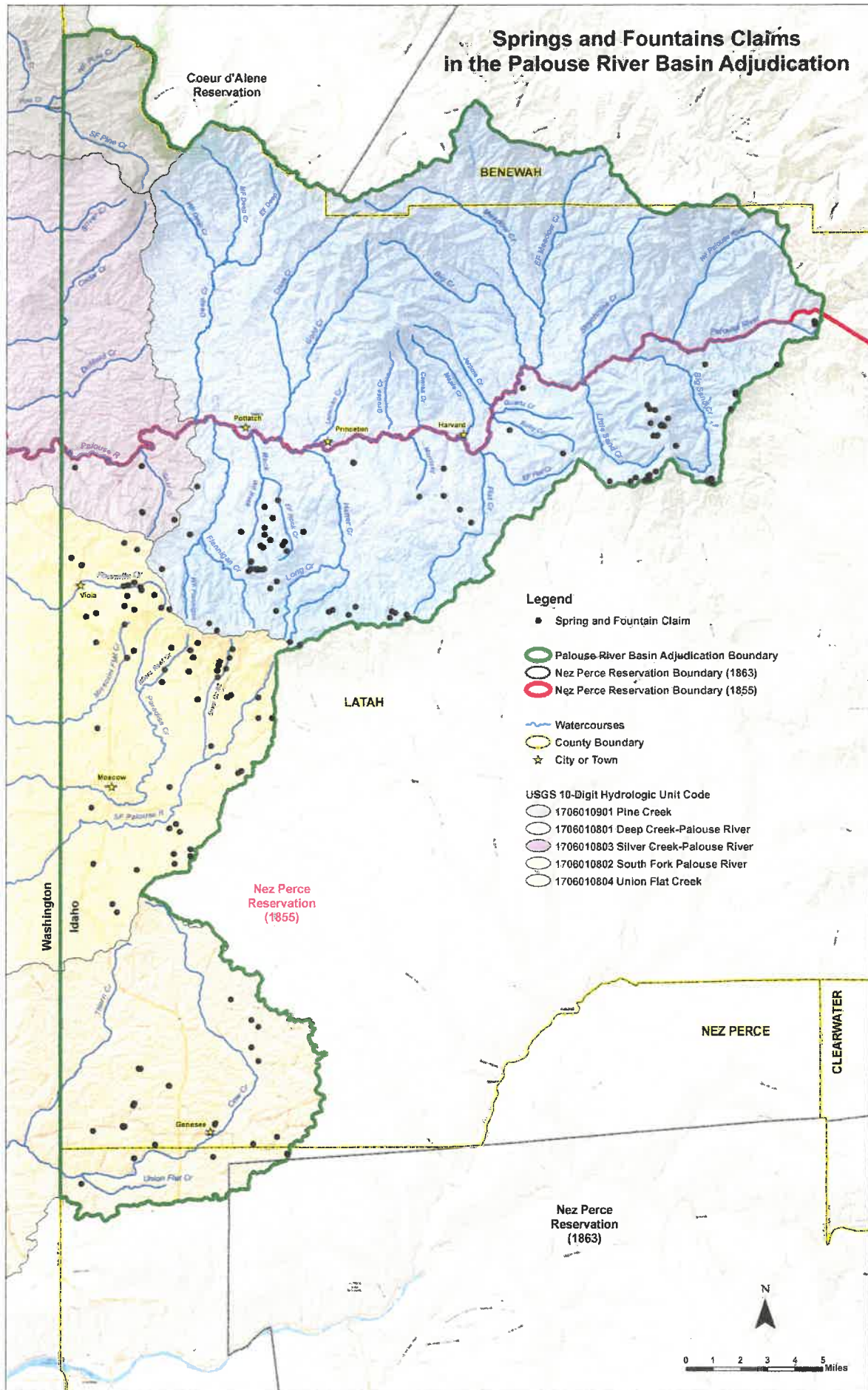
A handwritten signature in blue ink, appearing to read "K.M. Kane", is written over a horizontal line.

Katherine M. Kane
United States Department of Justice
Indian Resources Division
Natural Resources Section
999 18th Street
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

Springs and Fountains Claims in the Palouse River Basin Adjudication



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

87-12018

IN RE: THE GENERAL)
ADJUDICATION OF RIGHTS)
TO THE USE OF WATER FROM)
THE PALOUSE RIVER BASIN)
WATER SYSTEM)
)
)
)

Case No.: 59576

NOTICE OF CLAIM

Federal Reserved Water Right

RECEIVED

DEC 30 2019

DEPARTMENT OF
WATER RESOURCES

1. Name and address of claimant:

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and
ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the
REGIONAL DIRECTOR, NORTHWEST REGION

Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

2. Date of Priority: Time Immemorial

3. a. Source of water supply: Spring (Federal I.D. #1013)

b. which is a tributary to: Palouse River

4. Point of Diversion: This claim is for a spring and/or fountain *in situ* including sufficient groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or fountains.

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1013	41N	3W	19	NWSE	Boise	Latah

See Attached Map.

5. Place of Use:

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1013	41N	3W	19	NWSE	Boise	Latah

See Attached Map.

6. Purpose of Water Use:

The purpose of use includes the full range of uses to which the Tribe and its members have always put the springs and fountains, including as a water source for consumptive use, for wildlife and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce Reservation pursuant to the documents referenced in Section 9 and the provisions in Section 10, *infra*.

7. Period of Use: January 1 through December 31.

8. Quantity Reserved (In cfs): Half the natural flow.

9. Basis of Claim:

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

10. Other Provisions:

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- g. In order to comply with Idaho Code § 42-1409(1), the United States has designated “places of use,” “points of diversion,” and “purposes of use” in submitting this water rights claim. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe’s future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Reservation. The statute’s terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.

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- (b) I do ___ do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

For Organizations:

I do solemnly swear and affirm that I am Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.

Signature of Authorized Agent:
Title and Organization:



Northwest Regional Director
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

Notice is hereby given that the United States Department of Justice will represent the United States of America, including the U.S. Department of the Interior, Bureau of Indian Affairs, in all matters pertaining to the Palouse River Basin Adjudication.

All notices, filings and correspondence concerning this matter should be mailed to the United States Department of Justice at the address set forth below:

A handwritten signature in blue ink, appearing to read "K.M. Kane", is written over a horizontal line.

Katherine M. Kane
United States Department of Justice
Indian Resources Division
Natural Resources Section
999 18th Street
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

**Springs and Fountains Claims
in the Palouse River Basin Adjudication**

Coeur d'Alene
Reservation

BENEWAH

LATAH

NEZ PERCE

Washington

Idaho

Clearwater

Nez Perce
Reservation
(1855)

Nez Perce
Reservation
(1863)

Legend

- Spring and Fountain Claim
- Palouse River Basin Adjudication Boundary
- Nez Perce Reservation Boundary (1863)
- Nez Perce Reservation Boundary (1855)
- Watercourses
- County Boundary
- City or Town


USGS 10-Digit Hydrologic Unit Code

- 1706010901 Pine Creek
- 1706010801 Deep Creek-Palouse River
- 1706010803 Silver Creek-Palouse River
- 1706010802 South Fork Palouse River
- 1706010804 Union Flat Creek

0 1 2 3 4 5
Miles

- **Spring and Fountain Claim**

○ Nez Perce Reservation Boundary (1863)

 Watercourses County Boundary

☆ City or Town

USGS 10-Digit Hydrologic Unit Code

1706010901 Pine Creek

1706010801 Deep Creek-Palouse River

1706010803 Silver Creek-Palouse River

1706010802 South Fork Palouse River

1706010804 Union Flat Creek

Nez Perce
Reservation
(1855)

**Nez Perce
Reservation
(1863)**

0 1 2 3 4 5 Miles

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

87-12019

RECEIVED

DEC 30 2019

DEPARTMENT OF
WATER RESOURCES

IN RE: THE GENERAL) Case No.: 59576
ADJUDICATION OF RIGHTS)
TO THE USE OF WATER FROM) NOTICE OF CLAIM
THE PALOUSE RIVER BASIN)
WATER SYSTEM) Federal Reserved Water Right
)
)
)
)

1. Name and address of claimant:

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and
ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the
REGIONAL DIRECTOR, NORTHWEST REGION

Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

2. Date of Priority: Time Immemorial

3. a. Source of water supply: Spring (Federal I.D. #1014)

b. which is a tributary to: West Fork Rock Creek

4. Point of Diversion: This claim is for a spring and/or fountain *in situ* including sufficient
groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or
fountains.

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1014	41N	5W	25	NESE	Boise	Latah

See Attached Map.

5. Place of Use:

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1014	41N	5W	25	NESE	Boise	Latah

See Attached Map.

6. Purpose of Water Use:

The purpose of use includes the full range of uses to which the Tribe and its members have always put the springs and fountains, including as a water source for consumptive use, for wildlife and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce Reservation pursuant to the documents referenced in Section 9 and the provisions in Section 10, *infra*.

7. Period of Use: January 1 through December 31.

8. Quantity Reserved (In cfs): Half the natural flow.

9. Basis of Claim:

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

10. Other Provisions:

- a. The United States has asserted other claims in the Palouse River Basin Adjudication. Paragraphs 10(a) – (g) express assertions applicable to all claims filed by the Bureau of Indian Affairs in its capacity as trustee for the Nez Perce Tribe in the Palouse River Basin Adjudication. The United States claims waters from groundwater and surface water sources within the Palouse River Basin in the state of Idaho to satisfy the rights reserved to the Nez Perce Tribe by the 1855 Treaty and the 1863 Treaty and to fulfill the permanent homeland purpose of the Nez Perce Reservation. Such present and future purposes include: instream flows for fish habitat; hunting, gathering, and pasturing; spring and fountains flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; and consumptive use claims on two allotments held in trust by the United States.
- b. The Nez Perce Tribe has occupied a territory in what is now central Idaho, southeastern Washington, and northeastern Oregon since time immemorial. *United States v. Webb*, 219 F.3d 1127, 1129 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). The Palouse River Basin is within the Tribe’s traditional lands.
- c. There is a complex history of the United States’ establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing

rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the “exclusive right to fish in all streams running through or bordering” the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the “right of taking fish at all usual and accustomed places in common with the citizens of the Territory” to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.

- d. Article III of the 1855 Treaty further reserves to the Tribe “the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land.”
- e. Article VIII of the Nez Perce Treaty of 1863 includes a unique provision reserving to the Nez Perce Tribe the use of “springs and fountains” within the area ceded under Article I of the 1863 Treaty. For purposes of the priority date of the springs and fountains claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.
- f. Pursuant to the General Allotment Act of 1887, Act of February 8, 1887, 24 Stat. 388, *amended*, Act of February 28, 1891, 26 Stat. 794, there are two allotments (Allotments 182-43 and 182-45) held in trust by the United States located within the boundaries of the Palouse River Basin and the northwestern corner of the Nez Perce Reservation. For purposes of the priority date of the domestic and stock watering claims for these two allotments, the United States claims June 11, 1855 pursuant to the 1855 Treaty.
- g. In order to comply with Idaho Code § 42-1409(1), the United States has designated “places of use,” “points of diversion,” and “purposes of use” in submitting this water rights claim. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe’s future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Reservation. The statute’s terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.

11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled “How you will receive notices in the Palouse River Basin Adjudication.”
- (b) I do ☐ do not ☒ wish to receive and pay a small annual fee for monthly copies of the docket sheet.

For Organizations:

I do solemnly swear and affirm that I am Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.

Signature of Authorized Agent:
Title and Organization:



Northwest Regional Director
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

Notice is hereby given that the United States Department of Justice will represent the United States of America, including the U.S. Department of the Interior, Bureau of Indian Affairs, in all matters pertaining to the Palouse River Basin Adjudication.

All notices, filings and correspondence concerning this matter should be mailed to the United States Department of Justice at the address set forth below:

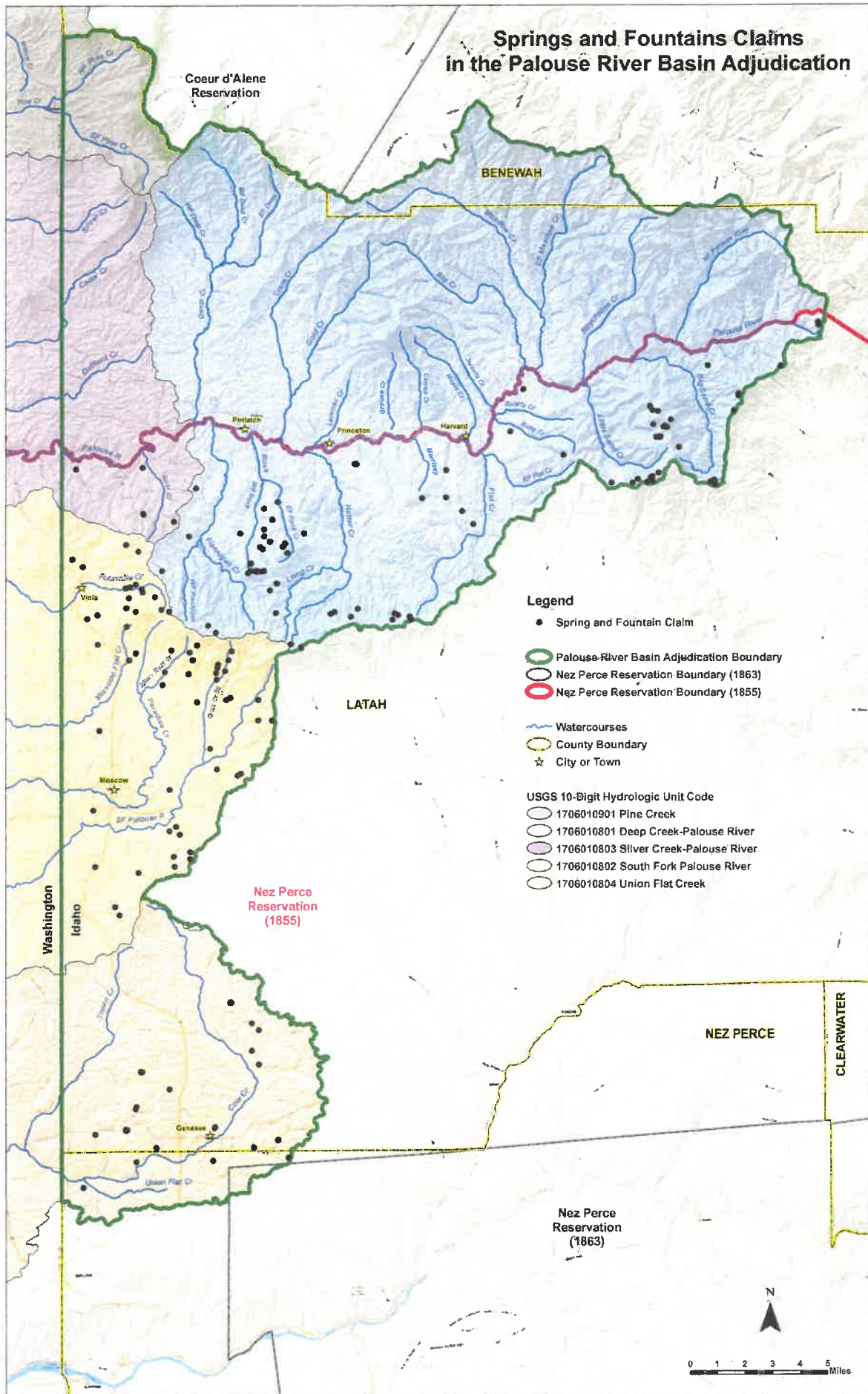


Katherine M. Kane
United States Department of Justice
Indian Resources Division
Natural Resources Section
999 18th Street
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

Springs and Fountains Claims in the Palouse River Basin Adjudication



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

87-17070

RECEIVED

DEC 30 2019

DEPARTMENT OF
WATER RESOURCES

IN RE: THE GENERAL) Case No.: 59576
ADJUDICATION OF RIGHTS)
TO THE USE OF WATER FROM) **NOTICE OF CLAIM**
THE PALOUSE RIVER BASIN)
WATER SYSTEM) **Federal Reserved Water Right**
)
)
)

1. **Name and address of claimant:**

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and
ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the
REGIONAL DIRECTOR, NORTHWEST REGION

Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

2. **Date of Priority:** Time Immemorial

3. **a. Source of water supply:** Spring (Federal I.D. #1015)

b. which is a tributary to: Fourmile Creek

4. **Point of Diversion:** This claim is for a spring and/or fountain *in situ* including sufficient groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or fountains.

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1015	40N	5W	8	NWNE	Boise	Latah

See Attached Map.

5. **Place of Use:**

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1015	40N	5W	8	NWNE	Boise	Latah

See Attached Map.

6. Purpose of Water Use:

The purpose of use includes the full range of uses to which the Tribe and its members have always put the springs and fountains, including as a water source for consumptive use, for wildlife and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce Reservation pursuant to the documents referenced in Section 9 and the provisions in Section 10, *infra*.

7. Period of Use: January 1 through December 31.

8. Quantity Reserved (In cfs): Half the natural flow.

9. Basis of Claim:

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

10. Other Provisions:

- a. The United States has asserted other claims in the Palouse River Basin Adjudication. Paragraphs 10(a) – (g) express assertions applicable to all claims filed by the Bureau of Indian Affairs in its capacity as trustee for the Nez Perce Tribe in the Palouse River Basin Adjudication. The United States claims waters from groundwater and surface water sources within the Palouse River Basin in the state of Idaho to satisfy the rights reserved to the Nez Perce Tribe by the 1855 Treaty and the 1863 Treaty and to fulfill the permanent homeland purpose of the Nez Perce Reservation. Such present and future purposes include: instream flows for fish habitat; hunting, gathering, and pasturing; spring and fountains flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; and consumptive use claims on two allotments held in trust by the United States.
- b. The Nez Perce Tribe has occupied a territory in what is now central Idaho, southeastern Washington, and northeastern Oregon since time immemorial. *United States v. Webb*, 219 F.3d 1127, 1129 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). The Palouse River Basin is within the Tribe’s traditional lands.
- c. There is a complex history of the United States’ establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing

rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the "exclusive right to fish in all streams running through or bordering" the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the "right of taking fish at all usual and accustomed places in common with the citizens of the Territory" to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.

- d. Article III of the 1855 Treaty further reserves to the Tribe "the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land."
- e. Article VIII of the Nez Perce Treaty of 1863 includes a unique provision reserving to the Nez Perce Tribe the use of "springs and fountains" within the area ceded under Article I of the 1863 Treaty. For purposes of the priority date of the springs and fountains claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.
- f. Pursuant to the General Allotment Act of 1887, Act of February 8, 1887, 24 Stat. 388, *amended*, Act of February 28, 1891, 26 Stat. 794, there are two allotments (Allotments 182-43 and 182-45) held in trust by the United States located within the boundaries of the Palouse River Basin and the northwestern corner of the Nez Perce Reservation. For purposes of the priority date of the domestic and stock watering claims for these two allotments, the United States claims June 11, 1855 pursuant to the 1855 Treaty.
- g. In order to comply with Idaho Code § 42-1409(1), the United States has designated "places of use," "points of diversion," and "purposes of use" in submitting this water rights claim. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe's future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Reservation. The statute's terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.

11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled "How you will receive notices in the Palouse River Basin Adjudication."
- (b) I do ☐ do not ☒ wish to receive and pay a small annual fee for monthly copies of the docket sheet.

For Organizations:

I do solemnly swear and affirm that I am Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.



Signature of Authorized Agent:
Title and Organization:

Northwest Regional Director
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

Notice is hereby given that the United States Department of Justice will represent the United States of America, including the U.S. Department of the Interior, Bureau of Indian Affairs, in all matters pertaining to the Palouse River Basin Adjudication.

All notices, filings and correspondence concerning this matter should be mailed to the United States Department of Justice at the address set forth below:

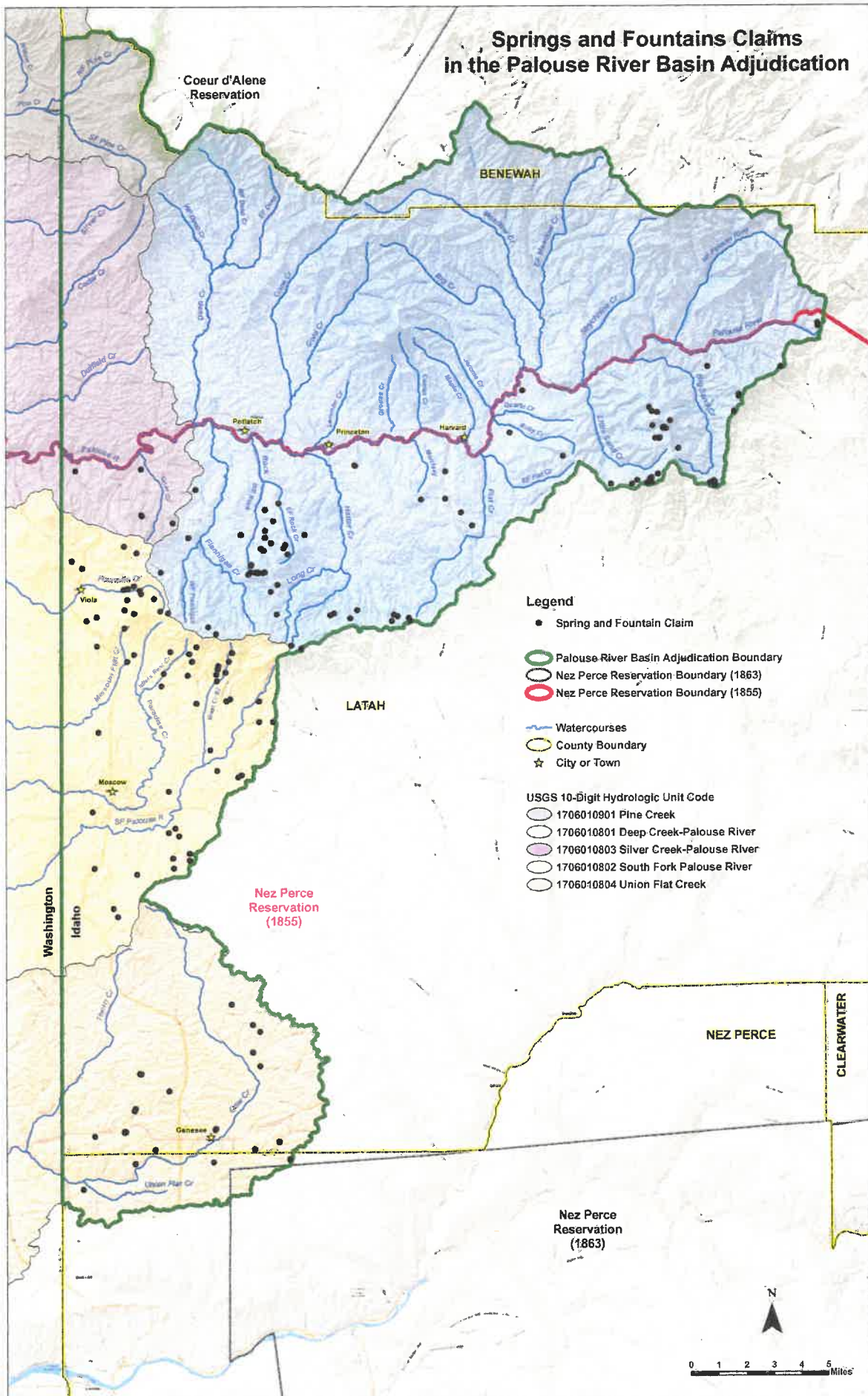
A handwritten signature in blue ink, appearing to read "K.M. Kane", is written over a horizontal line.

Katherine M. Kane
United States Department of Justice
Indian Resources Division
Natural Resources Section
999 18th Street
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

Springs and Fountains Claims in the Palouse River Basin Adjudication



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

87-17021

IN RE: THE GENERAL
ADJUDICATION OF RIGHTS
TO THE USE OF WATER FROM
THE PALOUSE RIVER BASIN
WATER SYSTEM

)
)
)
)
)
)
)

Case No.: 59576

NOTICE OF CLAIM

Federal Reserved Water Right

RECEIVED

DEC 30 2019

DEPARTMENT OF
WATER RESOURCES

1. Name and address of claimant:

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and
ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the
REGIONAL DIRECTOR, NORTHWEST REGION
Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

2. Date of Priority: Time Immemorial

3. a. Source of water supply: Spring (Federal I.D. #1016)

b. which is a tributary to: Cow Creek

4. Point of Diversion: This claim is for a spring and/or fountain *in situ* including sufficient groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or fountains.

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1016	37N	4W	18	SWSW	Boise	Latah

See Attached Map.

5. Place of Use:

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1016	37N	4W	18	SWSW	Boise	Latah

See Attached Map.

6. **Purpose of Water Use:**

The purpose of use includes the full range of uses to which the Tribe and its members have always put the springs and fountains, including as a water source for consumptive use, for wildlife and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce Reservation pursuant to the documents referenced in Section 9 and the provisions in Section 10, *infra*.

7. **Period of Use:** January 1 through December 31.

8. **Quantity Reserved (In cfs):** Half the natural flow.

9. **Basis of Claim:**

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

10. **Other Provisions:**

- a. The United States has asserted other claims in the Palouse River Basin Adjudication. Paragraphs 10(a) – (g) express assertions applicable to all claims filed by the Bureau of Indian Affairs in its capacity as trustee for the Nez Perce Tribe in the Palouse River Basin Adjudication. The United States claims waters from groundwater and surface water sources within the Palouse River Basin in the state of Idaho to satisfy the rights reserved to the Nez Perce Tribe by the 1855 Treaty and the 1863 Treaty and to fulfill the permanent homeland purpose of the Nez Perce Reservation. Such present and future purposes include: instream flows for fish habitat; hunting, gathering, and pasturing; spring and fountains flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; and consumptive use claims on two allotments held in trust by the United States.
- b. The Nez Perce Tribe has occupied a territory in what is now central Idaho, southeastern Washington, and northeastern Oregon since time immemorial. *United States v. Webb*, 219 F.3d 1127, 1129 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). The Palouse River Basin is within the Tribe’s traditional lands.
- c. There is a complex history of the United States’ establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing

rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the "exclusive right to fish in all streams running through or bordering" the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the "right of taking fish at all usual and accustomed places in common with the citizens of the Territory" to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.

- d. Article III of the 1855 Treaty further reserves to the Tribe "the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land."
- e. Article VIII of the Nez Perce Treaty of 1863 includes a unique provision reserving to the Nez Perce Tribe the use of "springs and fountains" within the area ceded under Article I of the 1863 Treaty. For purposes of the priority date of the springs and fountains claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.
- f. Pursuant to the General Allotment Act of 1887, Act of February 8, 1887, 24 Stat. 388, *amended*, Act of February 28, 1891, 26 Stat. 794, there are two allotments (Allotments 182-43 and 182-45) held in trust by the United States located within the boundaries of the Palouse River Basin and the northwestern corner of the Nez Perce Reservation. For purposes of the priority date of the domestic and stock watering claims for these two allotments, the United States claims June 11, 1855 pursuant to the 1855 Treaty.
- g. In order to comply with Idaho Code § 42-1409(1), the United States has designated "places of use," "points of diversion," and "purposes of use" in submitting this water rights claim. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe's future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Reservation. The statute's terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.

11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled "How you will receive notices in the Palouse River Basin Adjudication."
- (b) I do do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

For Organizations:

I do solemnly swear and affirm that I am Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.



Signature of Authorized Agent:
Title and Organization:

Northwest Regional Director
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

Notice is hereby given that the United States Department of Justice will represent the United States of America, including the U.S. Department of the Interior, Bureau of Indian Affairs, in all matters pertaining to the Palouse River Basin Adjudication.

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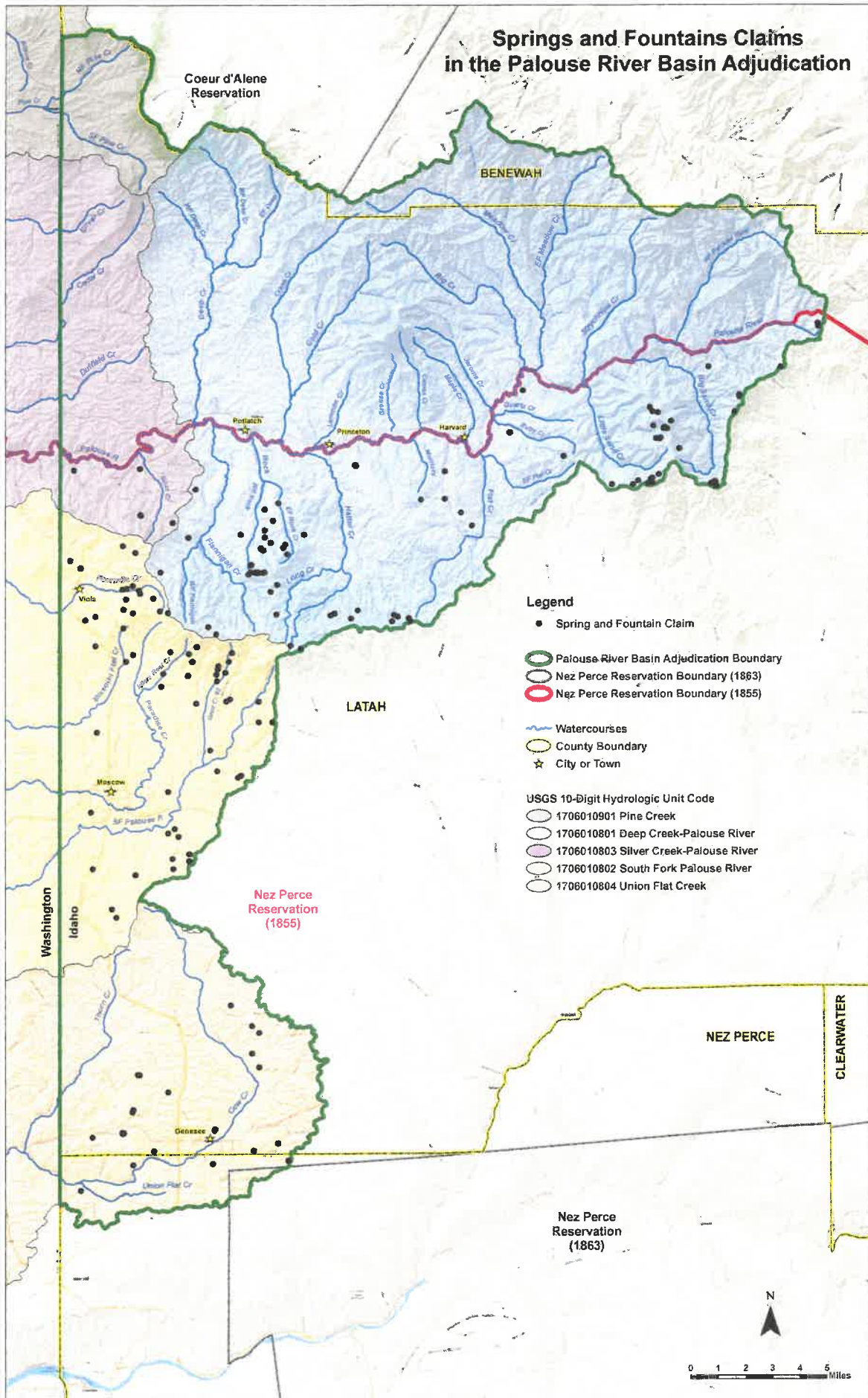


Katherine M. Kane
United States Department of Justice
Indian Resources Division
Natural Resources Section
999 18th Street
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

Springs and Fountains Claims in the Palouse River Basin Adjudication



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

87-12022

IN RE: THE GENERAL)
ADJUDICATION OF RIGHTS)
TO THE USE OF WATER FROM)
THE PALOUSE RIVER BASIN)
WATER SYSTEM)

Case No.: 59576

NOTICE OF CLAIM

Federal Reserved Water Right

RECEIVED

DEC 30 2019

DEPARTMENT OF
WATER RESOURCES

1. Name and address of claimant:

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and
ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the
REGIONAL DIRECTOR, NORTHWEST REGION

Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

2. Date of Priority: Time Immemorial

3. a. Source of water supply: Spring (Federal I.D. #1017)

b. which is a tributary to: Palouse River

4. Point of Diversion: This claim is for a spring and/or fountain *in situ* including sufficient groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or fountains.

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1017	41N	5W	16	NWNW	Boise	Latah

See Attached Map.

5. Place of Use:

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1017	41N	5W	16	NWNW	Boise	Latah

See Attached Map.

6. Purpose of Water Use:

The purpose of use includes the full range of uses to which the Tribe and its members have always put the springs and fountains, including as a water source for consumptive use, for wildlife and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce Reservation pursuant to the documents referenced in Section 9 and the provisions in Section 10, *infra*.

7. Period of Use: January 1 through December 31.

8. Quantity Reserved (In cfs): Half the natural flow.

9. Basis of Claim:

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

10. Other Provisions:

- a. The United States has asserted other claims in the Palouse River Basin Adjudication. Paragraphs 10(a) – (g) express assertions applicable to all claims filed by the Bureau of Indian Affairs in its capacity as trustee for the Nez Perce Tribe in the Palouse River Basin Adjudication. The United States claims waters from groundwater and surface water sources within the Palouse River Basin in the state of Idaho to satisfy the rights reserved to the Nez Perce Tribe by the 1855 Treaty and the 1863 Treaty and to fulfill the permanent homeland purpose of the Nez Perce Reservation. Such present and future purposes include: instream flows for fish habitat; hunting, gathering, and pasturing; spring and fountains flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; and consumptive use claims on two allotments held in trust by the United States.
- b. The Nez Perce Tribe has occupied a territory in what is now central Idaho, southeastern Washington, and northeastern Oregon since time immemorial. *United States v. Webb*, 219 F.3d 1127, 1129 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). The Palouse River Basin is within the Tribe’s traditional lands.
- c. There is a complex history of the United States’ establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing

rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the “exclusive right to fish in all streams running through or bordering” the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the “right of taking fish at all usual and accustomed places in common with the citizens of the Territory” to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.

- d. Article III of the 1855 Treaty further reserves to the Tribe “the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land.”
- e. Article VIII of the Nez Perce Treaty of 1863 includes a unique provision reserving to the Nez Perce Tribe the use of “springs and fountains” within the area ceded under Article I of the 1863 Treaty. For purposes of the priority date of the springs and fountains claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.
- f. Pursuant to the General Allotment Act of 1887, Act of February 8, 1887, 24 Stat. 388, *amended*, Act of February 28, 1891, 26 Stat. 794, there are two allotments (Allotments 182-43 and 182-45) held in trust by the United States located within the boundaries of the Palouse River Basin and the northwestern corner of the Nez Perce Reservation. For purposes of the priority date of the domestic and stock watering claims for these two allotments, the United States claims June 11, 1855 pursuant to the 1855 Treaty.
- g. In order to comply with Idaho Code § 42-1409(1), the United States has designated “places of use,” “points of diversion,” and “purposes of use” in submitting this water rights claim. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe’s future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Reservation. The statute’s terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.

11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled “How you will receive notices in the Palouse River Basin Adjudication.”
- (b) I do ___ do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

For Organizations:

I do solemnly swear and affirm that I am Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.



Signature of Authorized Agent:

Title and Organization:

Northwest Regional Director
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

Notice is hereby given that the United States Department of Justice will represent the United States of America, including the U.S. Department of the Interior, Bureau of Indian Affairs, in all matters pertaining to the Palouse River Basin Adjudication.

All notices, filings and correspondence concerning this matter should be mailed to the United States Department of Justice at the address set forth below:

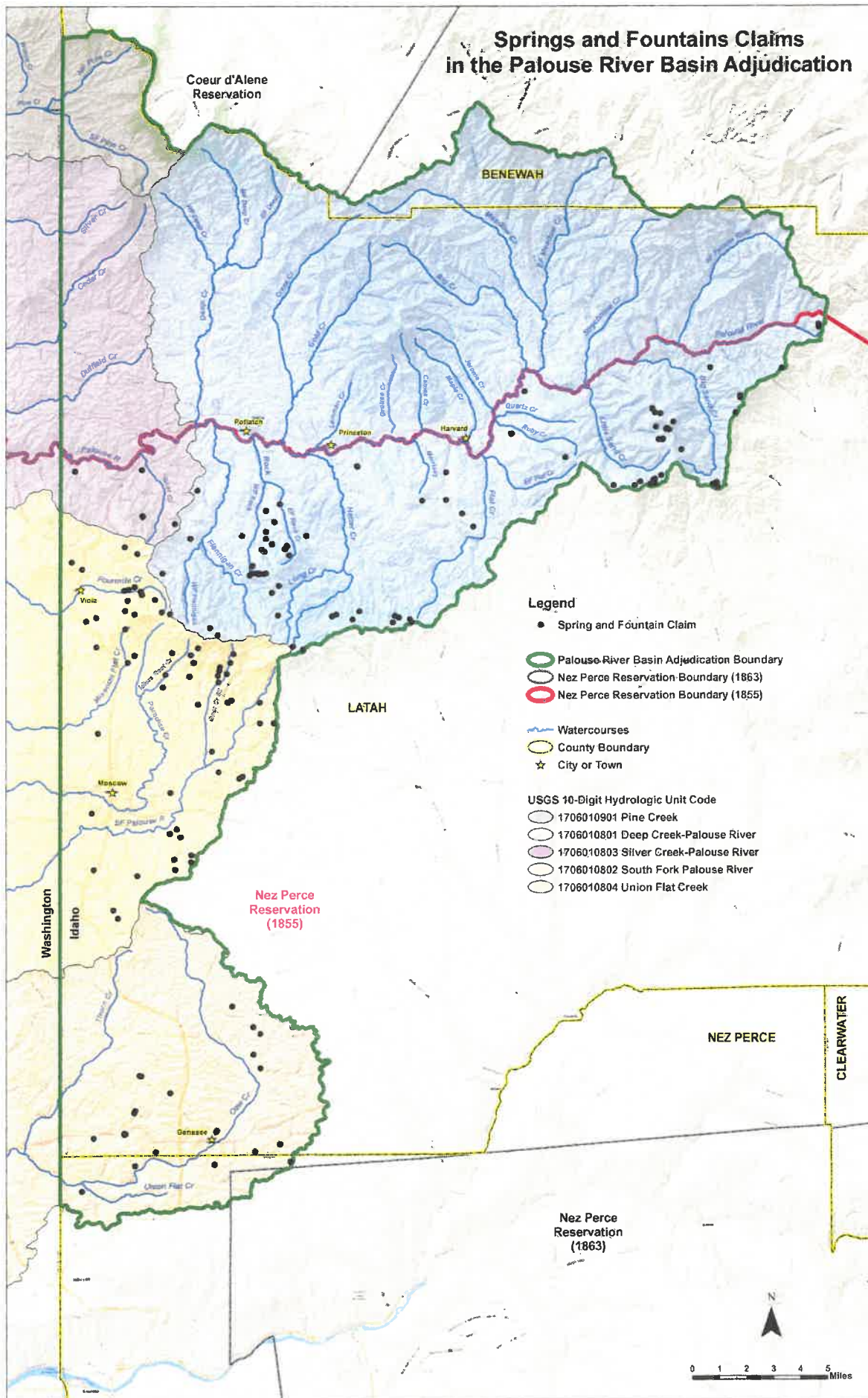


Katherine M. Kane
United States Department of Justice
Indian Resources Division
Natural Resources Section
999 18th Street
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

Springs and Fountains Claims in the Palouse River Basin Adjudication



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

87-12023

IN RE: THE GENERAL
ADJUDICATION OF RIGHTS
TO THE USE OF WATER FROM
THE PALOUSE RIVER BASIN
WATER SYSTEM

) Case No.: 59576
)
) **NOTICE OF CLAIM**
)
) **Federal Reserved Water Right**
)
)
)

RECEIVED
DEC 30 2019
DEPARTMENT OF
WATER RESOURCES

1. **Name and address of claimant:**

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and
ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the
REGIONAL DIRECTOR, NORTHWEST REGION

Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

2. **Date of Priority:** Time Immemorial

3. **a. Source of water supply:** Spring (Federal I.D. #1018)

b. which is a tributary to: Cow Creek

4. **Point of Diversion:** This claim is for a spring and/or fountain *in situ* including sufficient groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or fountains.

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1018	37N	5W	16	SWSE	Boise	Latah

See Attached Map.

5. **Place of Use:**

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1018	37N	5W	16	SWSE	Boise	Latah

See Attached Map.

6. Purpose of Water Use:

The purpose of use includes the full range of uses to which the Tribe and its members have always put the springs and fountains, including as a water source for consumptive use, for wildlife and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce Reservation pursuant to the documents referenced in Section 9 and the provisions in Section 10, *infra*.

7. Period of Use: January 1 through December 31.

8. Quantity Reserved (In cfs): Half the natural flow.

9. Basis of Claim:

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

10. Other Provisions:

- a. The United States has asserted other claims in the Palouse River Basin Adjudication. Paragraphs 10(a) – (g) express assertions applicable to all claims filed by the Bureau of Indian Affairs in its capacity as trustee for the Nez Perce Tribe in the Palouse River Basin Adjudication. The United States claims waters from groundwater and surface water sources within the Palouse River Basin in the state of Idaho to satisfy the rights reserved to the Nez Perce Tribe by the 1855 Treaty and the 1863 Treaty and to fulfill the permanent homeland purpose of the Nez Perce Reservation. Such present and future purposes include: instream flows for fish habitat; hunting, gathering, and pasturing; spring and fountains flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; and consumptive use claims on two allotments held in trust by the United States.
- b. The Nez Perce Tribe has occupied a territory in what is now central Idaho, southeastern Washington, and northeastern Oregon since time immemorial. *United States v. Webb*, 219 F.3d 1127, 1129 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). The Palouse River Basin is within the Tribe’s traditional lands.
- c. There is a complex history of the United States’ establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing

rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the “exclusive right to fish in all streams running through or bordering” the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the “right of taking fish at all usual and accustomed places in common with the citizens of the Territory” to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.

- d. Article III of the 1855 Treaty further reserves to the Tribe “the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land.”
- e. Article VIII of the Nez Perce Treaty of 1863 includes a unique provision reserving to the Nez Perce Tribe the use of “springs and fountains” within the area ceded under Article I of the 1863 Treaty. For purposes of the priority date of the springs and fountains claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.
- f. Pursuant to the General Allotment Act of 1887, Act of February 8, 1887, 24 Stat. 388, *amended*, Act of February 28, 1891, 26 Stat. 794, there are two allotments (Allotments 182-43 and 182-45) held in trust by the United States located within the boundaries of the Palouse River Basin and the northwestern corner of the Nez Perce Reservation. For purposes of the priority date of the domestic and stock watering claims for these two allotments, the United States claims June 11, 1855 pursuant to the 1855 Treaty.
- g. In order to comply with Idaho Code § 42-1409(1), the United States has designated “places of use,” “points of diversion,” and “purposes of use” in submitting this water rights claim. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe’s future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Reservation. The statute’s terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.

11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled “How you will receive notices in the Palouse River Basin Adjudication.”
- (b) I do ___ do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

For Organizations:

I do solemnly swear and affirm that I am Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.



Signature of Authorized Agent:

Title and Organization:

Northwest Regional Director
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

Notice is hereby given that the United States Department of Justice will represent the United States of America, including the U.S. Department of the Interior, Bureau of Indian Affairs, in all matters pertaining to the Palouse River Basin Adjudication.

All notices, filings and correspondence concerning this matter should be mailed to the United States Department of Justice at the address set forth below:



Katherine M. Kane
United States Department of Justice
Indian Resources Division
Natural Resources Section
999 18th Street
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

**Springs and Fountains Claims
in the Palouse River Basin Adjudication**

Legend

- Spring and Fountain Claim
- Palouse River Basin Adjudication Boundary
- Nez Perce Reservation Boundary (1863)
- Nez Perce Reservation Boundary (1855)
- Watercourses
- County Boundary
- ☆ City or Town

USGS 10-Digit Hydrologic Unit Code

- 1706010901 Pine Creek
- 1706010801 Deep Creek-Palouse River
- 1706010803 Silver Creek-Palouse River
- 1706010802 South Fork Palouse River
- 1706010804 Union Flat Creek

Nez Perce Reservation (1855)

Nez Perce Reservation (1863)

Scale: 0 1 2 3 4 5 Miles

- **Spring and Fountain Claim**

○ Nez Perce Reservation Boundary (1863)

Nez Perce Reservation Boundary (1855)

 Watercourses County Boundary

★ City or Town

USGS 10-Digit Hydrologic Unit Code

1706010901 Pine Creek

1706010801 Deep Creek-Palouse River

1706010803 Silver Creek-Palouse River

1706010802 South Fork Palouse River

1706010804 Union Flat Creek

NEZ PERCE

CLEARWATER

Nez Perce
Reservation
(1863)



0 1 2 3 4 5 Miles

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

87-12024

IN RE: THE GENERAL)
ADJUDICATION OF RIGHTS)
TO THE USE OF WATER FROM)
THE PALOUSE RIVER BASIN)
WATER SYSTEM)
)
)
)

Case No.: 59576

NOTICE OF CLAIM

Federal Reserved Water Right

RECEIVED
DEC 30 2019
DEPARTMENT OF
WATER RESOURCES

1. Name and address of claimant:

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and
ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the
REGIONAL DIRECTOR, NORTHWEST REGION

Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

2. Date of Priority: Time Immemorial

3. a. Source of water supply: Springs (Federal I.D. #1019)

b. which is a tributary to: East or West Fork Rock Creek

4. Point of Diversion: This claim is for a spring and/or fountain *in situ* including sufficient groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or fountains.

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1019-1	41N	4W	29	SESW	Boise	Latah
1019-2	41N	4W	32	NENW	Boise	Latah
1019-3	41N	4W	29	SESW	Boise	Latah

See Attached Map.

5. Place of Use:

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1019-1	41N	4W	29	SESW	Boise	Latah
1019-2	41N	4W	32	NENW	Boise	Latah
1019-3	41N	4W	29	SESW	Boise	Latah

See Attached Map.

6. Purpose of Water Use:

The purpose of use includes the full range of uses to which the Tribe and its members have always put the springs and fountains, including as a water source for consumptive use, for wildlife and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce Reservation pursuant to the documents referenced in Section 9 and the provisions in Section 10, *infra*.

7. Period of Use: January 1 through December 31.

8. Quantity Reserved (In cfs): Half the natural flow.

9. Basis of Claim:

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

10. Other Provisions:

- a. The United States has asserted other claims in the Palouse River Basin Adjudication. Paragraphs 10(a) – (g) express assertions applicable to all claims filed by the Bureau of Indian Affairs in its capacity as trustee for the Nez Perce Tribe in the Palouse River Basin Adjudication. The United States claims waters from groundwater and surface water sources within the Palouse River Basin in the state of Idaho to satisfy the rights reserved to the Nez Perce Tribe by the 1855 Treaty and the 1863 Treaty and to fulfill the permanent homeland purpose of the Nez Perce Reservation. Such present and future purposes include: instream flows for fish habitat; hunting, gathering, and pasturing; spring and fountains flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; and consumptive use claims on two allotments held in trust by the United States.
- b. The Nez Perce Tribe has occupied a territory in what is now central Idaho, southeastern Washington, and northeastern Oregon since time immemorial. *United States v. Webb*, 219 F.3d 1127, 1129 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). The Palouse River Basin is within the Tribe’s traditional lands.
- c. There is a complex history of the United States’ establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the “exclusive

right to fish in all streams running through or bordering” the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the “right of taking fish at all usual and accustomed places in common with the citizens of the Territory” to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.

- d. Article III of the 1855 Treaty further reserves to the Tribe “the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land.”
- e. Article VIII of the Nez Perce Treaty of 1863 includes a unique provision reserving to the Nez Perce Tribe the use of “springs and fountains” within the area ceded under Article I of the 1863 Treaty. For purposes of the priority date of the springs and fountains claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.
- f. Pursuant to the General Allotment Act of 1887, Act of February 8, 1887, 24 Stat. 388, *amended*, Act of February 28, 1891, 26 Stat. 794, there are two allotments (Allotments 182-43 and 182-45) held in trust by the United States located within the boundaries of the Palouse River Basin and the northwestern corner of the Nez Perce Reservation. For purposes of the priority date of the domestic and stock watering claims for these two allotments, the United States claims June 11, 1855 pursuant to the 1855 Treaty.
- g. In order to comply with Idaho Code § 42-1409(1), the United States has designated “places of use,” “points of diversion,” and “purposes of use” in submitting this water rights claim. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe’s future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Reservation. The statute’s terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.

11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled “How you will receive notices in the Palouse River Basin Adjudication.”
- (b) I do ___ do not **X** wish to receive and pay a small annual fee for monthly copies of the docket sheet.

For Organizations:

I do solemnly swear and affirm that I am Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.



Signature of Authorized Agent:

Title and Organization:

Northwest Regional Director
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

Notice is hereby given that the United States Department of Justice will represent the United States of America, including the U.S. Department of the Interior, Bureau of Indian Affairs, in all matters pertaining to the Palouse River Basin Adjudication.

All notices, filings and correspondence concerning this matter should be mailed to the United States Department of Justice at the address set forth below:

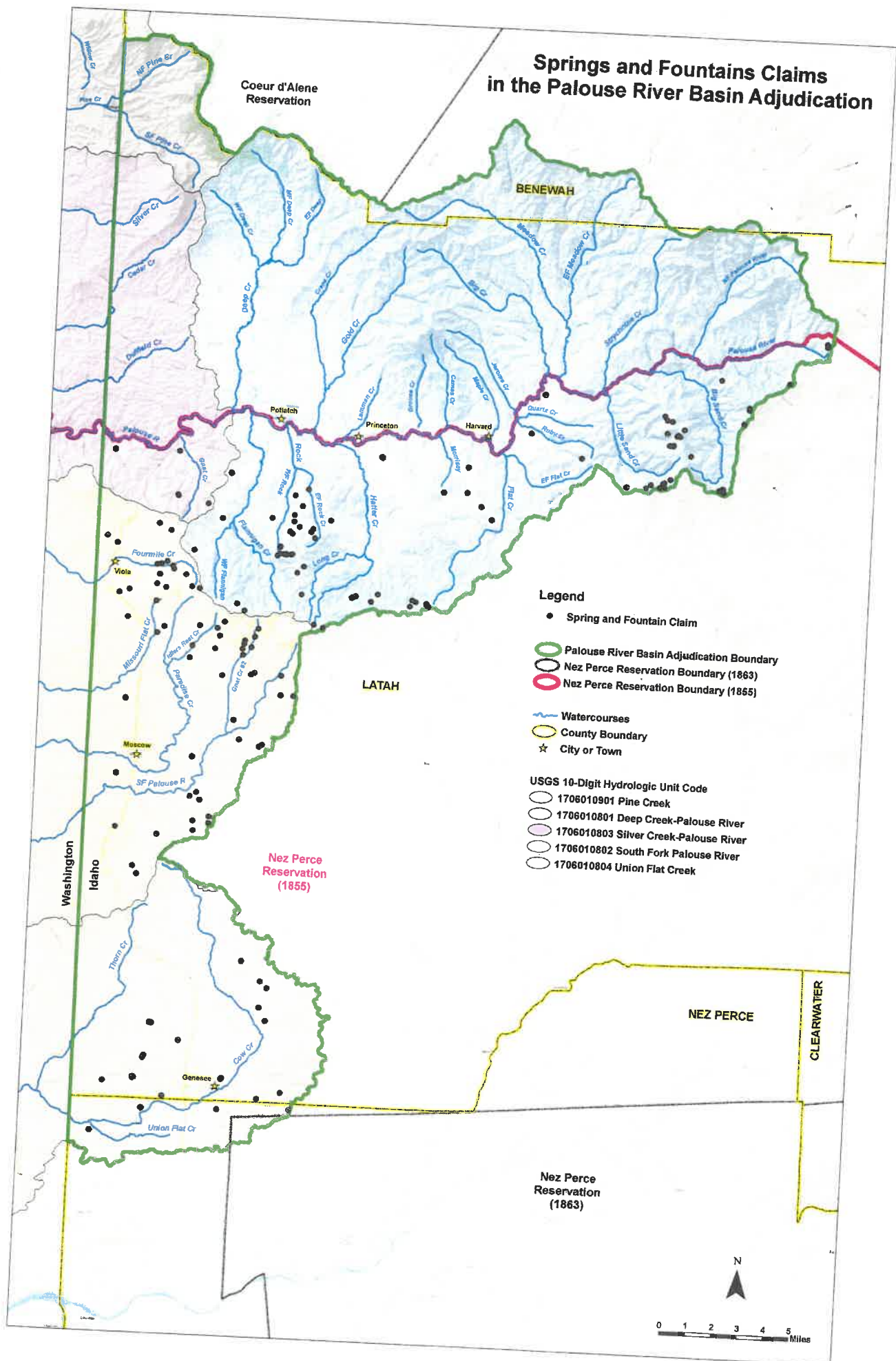


Katherine M. Kane
United States Department of Justice
Indian Resources Division
Natural Resources Section
999 18th Street
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

Springs and Fountains Claims in the Palouse River Basin Adjudication



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

87-17026

IN RE: THE GENERAL
ADJUDICATION OF RIGHTS
TO THE USE OF WATER FROM
THE PALOUSE RIVER BASIN
WATER SYSTEM

Case No.: 59576

NOTICE OF CLAIM

Federal Reserved Water Right

RECEIVED
DEC 30 2019
DEPARTMENT OF
WATER RESOURCES

1. Name and address of claimant:

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and
ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the
REGIONAL DIRECTOR, NORTHWEST REGION
Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

2. Date of Priority: Time Immemorial

3. a. Source of water supply: Spring (Federal I.D. #1020)

b. which is a tributary to: South Fork Palouse River

4. Point of Diversion: This claim is for a spring and/or fountain *in situ* including sufficient groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or fountains.

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1020	39N	5W	10	SWSW	Boise	Latah

See Attached Map.

5. Place of Use:

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1020	39N	5W	10	SWSW	Boise	Latah

See Attached Map.

6. **Purpose of Water Use:**

The purpose of use includes the full range of uses to which the Tribe and its members have always put the springs and fountains, including as a water source for consumptive use, for wildlife and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce Reservation pursuant to the documents referenced in Section 9 and the provisions in Section 10, *infra*.

7. **Period of Use:** January 1 through December 31.

8. **Quantity Reserved (In cfs):** Half the natural flow.

9. **Basis of Claim:**

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

10. **Other Provisions:**

- a. The United States has asserted other claims in the Palouse River Basin Adjudication. Paragraphs 10(a) – (g) express assertions applicable to all claims filed by the Bureau of Indian Affairs in its capacity as trustee for the Nez Perce Tribe in the Palouse River Basin Adjudication. The United States claims waters from groundwater and surface water sources within the Palouse River Basin in the state of Idaho to satisfy the rights reserved to the Nez Perce Tribe by the 1855 Treaty and the 1863 Treaty and to fulfill the permanent homeland purpose of the Nez Perce Reservation. Such present and future purposes include: instream flows for fish habitat; hunting, gathering, and pasturing; spring and fountains flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; and consumptive use claims on two allotments held in trust by the United States.
- b. The Nez Perce Tribe has occupied a territory in what is now central Idaho, southeastern Washington, and northeastern Oregon since time immemorial. *United States v. Webb*, 219 F.3d 1127, 1129 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). The Palouse River Basin is within the Tribe’s traditional lands.
- c. There is a complex history of the United States’ establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing

rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the "exclusive right to fish in all streams running through or bordering" the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the "right of taking fish at all usual and accustomed places in common with the citizens of the Territory" to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.

- d. Article III of the 1855 Treaty further reserves to the Tribe "the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land."
- e. Article VIII of the Nez Perce Treaty of 1863 includes a unique provision reserving to the Nez Perce Tribe the use of "springs and fountains" within the area ceded under Article I of the 1863 Treaty. For purposes of the priority date of the springs and fountains claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.
- f. Pursuant to the General Allotment Act of 1887, Act of February 8, 1887, 24 Stat. 388, *amended*, Act of February 28, 1891, 26 Stat. 794, there are two allotments (Allotments 182-43 and 182-45) held in trust by the United States located within the boundaries of the Palouse River Basin and the northwestern corner of the Nez Perce Reservation. For purposes of the priority date of the domestic and stock watering claims for these two allotments, the United States claims June 11, 1855 pursuant to the 1855 Treaty.
- g. In order to comply with Idaho Code § 42-1409(1), the United States has designated "places of use," "points of diversion," and "purposes of use" in submitting this water rights claim. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe's future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Reservation. The statute's terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.

11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled "How you will receive notices in the Palouse River Basin Adjudication."
- (b) I do do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

For Organizations:

I do solemnly swear and affirm that I am Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.



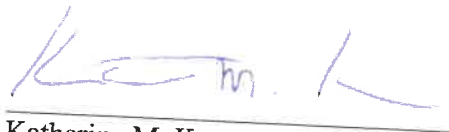
Signature of Authorized Agent:
Title and Organization:

Northwest Regional Director
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

Notice is hereby given that the United States Department of Justice will represent the United States of America, including the U.S. Department of the Interior, Bureau of Indian Affairs, in all matters pertaining to the Palouse River Basin Adjudication.

All notices, filings and correspondence concerning this matter should be mailed to the United States Department of Justice at the address set forth below:

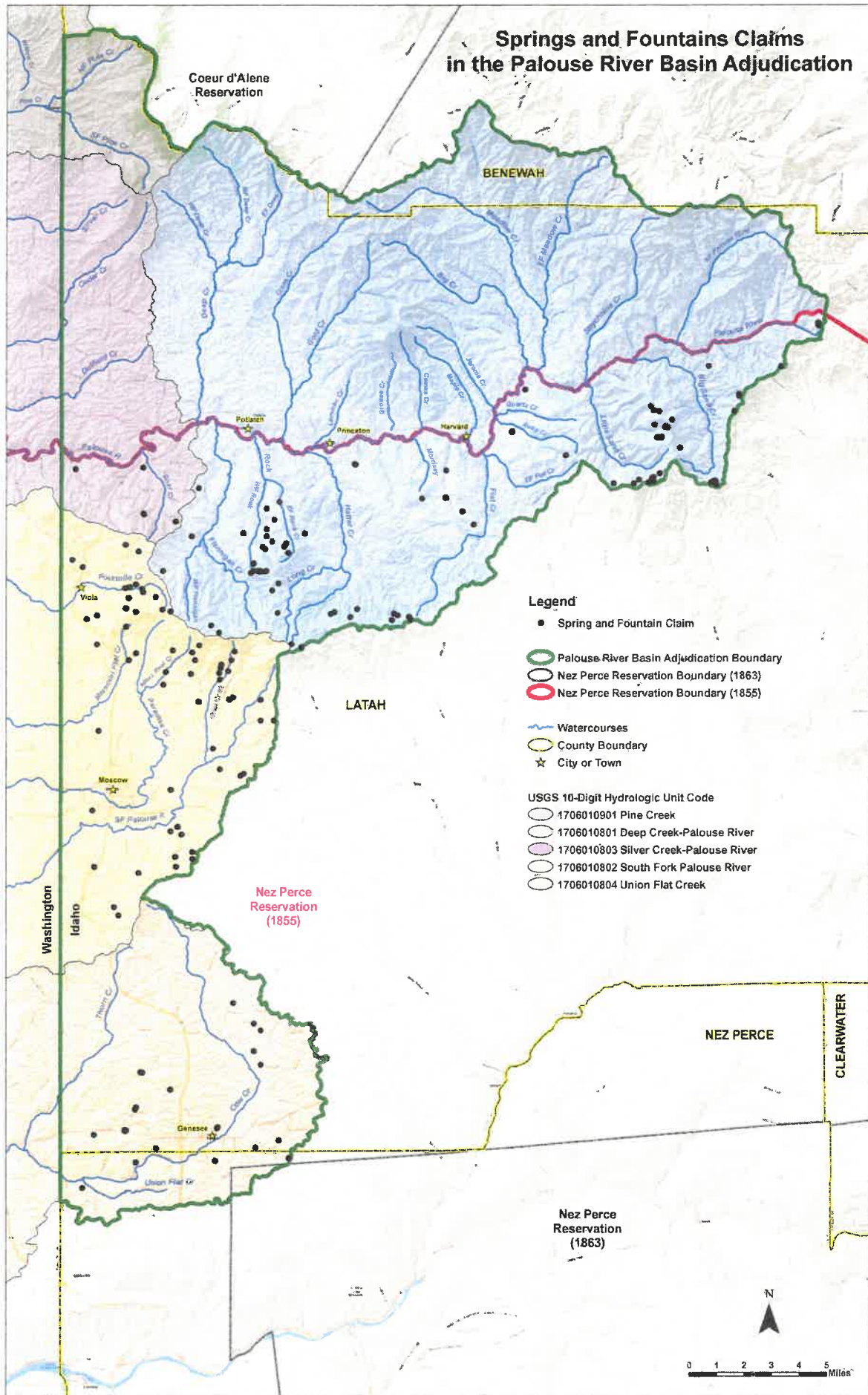


Katherine M. Kane
United States Department of Justice
Indian Resources Division
Natural Resources Section
999 18th Street
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

Springs and Fountains Claims in the Palouse River Basin Adjudication



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

87-12026

RECEIVED

IN RE: THE GENERAL
ADJUDICATION OF RIGHTS
TO THE USE OF WATER FROM
THE PALOUSE RIVER BASIN
WATER SYSTEM

) Case No.: 59576
)
) **NOTICE OF CLAIM**
)
) **Federal Reserved Water Right**
)
)
)

DEC 30 2019

DEPARTMENT OF
WATER RESOURCES

1. **Name and address of claimant:**

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and
ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the
REGIONAL DIRECTOR, NORTHWEST REGION
Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

2. **Date of Priority:** Time Immemorial

3. **a. Source of water supply:** Springs (Federal I.D. #1021)

b. which is a tributary to: Fourmile Creek

4. **Point of Diversion:** This claim is for a spring and/or fountain *in situ* including sufficient groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or fountains.

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1021	40N	5W	5	NWSW, NESW, SWSW, SESW, SWSE	Boise	Latah

See Attached Map.

5. **Place of Use:**

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1021	40N	5W	5	NWSW, NESW, SWSW, SESW, SWSE	Boise	Latah

See Attached Map.

6. Purpose of Water Use:

The purpose of use includes the full range of uses to which the Tribe and its members have always put the springs and fountains, including as a water source for consumptive use, for wildlife and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce Reservation pursuant to the documents referenced in Section 9 and the provisions in Section 10, *infra*.

7. Period of Use: January 1 through December 31.

8. Quantity Reserved (In cfs): Half the natural flow.

9. Basis of Claim:

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

10. Other Provisions:

- a. The United States has asserted other claims in the Palouse River Basin Adjudication. Paragraphs 10(a) – (g) express assertions applicable to all claims filed by the Bureau of Indian Affairs in its capacity as trustee for the Nez Perce Tribe in the Palouse River Basin Adjudication. The United States claims waters from groundwater and surface water sources within the Palouse River Basin in the state of Idaho to satisfy the rights reserved to the Nez Perce Tribe by the 1855 Treaty and the 1863 Treaty and to fulfill the permanent homeland purpose of the Nez Perce Reservation. Such present and future purposes include: instream flows for fish habitat; hunting, gathering, and pasturing; spring and fountains flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; and consumptive use claims on two allotments held in trust by the United States.
- b. The Nez Perce Tribe has occupied a territory in what is now central Idaho, southeastern Washington, and northeastern Oregon since time immemorial. *United States v. Webb*, 219 F.3d 1127, 1129 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). The Palouse River Basin is within the Tribe’s traditional lands.
- c. There is a complex history of the United States’ establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing

rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the “exclusive right to fish in all streams running through or bordering” the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the “right of taking fish at all usual and accustomed places in common with the citizens of the Territory” to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.

- d. Article III of the 1855 Treaty further reserves to the Tribe “the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land.”
- e. Article VIII of the Nez Perce Treaty of 1863 includes a unique provision reserving to the Nez Perce Tribe the use of “springs and fountains” within the area ceded under Article I of the 1863 Treaty. For purposes of the priority date of the springs and fountains claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.
- f. Pursuant to the General Allotment Act of 1887, Act of February 8, 1887, 24 Stat. 388, *amended*, Act of February 28, 1891, 26 Stat. 794, there are two allotments (Allotments 182-43 and 182-45) held in trust by the United States located within the boundaries of the Palouse River Basin and the northwestern corner of the Nez Perce Reservation. For purposes of the priority date of the domestic and stock watering claims for these two allotments, the United States claims June 11, 1855 pursuant to the 1855 Treaty.
- g. In order to comply with Idaho Code § 42-1409(1), the United States has designated “places of use,” “points of diversion,” and “purposes of use” in submitting this water rights claim. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe’s future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Reservation. The statute’s terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.

11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled “How you will receive notices in the Palouse River Basin Adjudication.”
- (b) I do do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

For Organizations:

I do solemnly swear and affirm that I am Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.



Signature of Authorized Agent:
Title and Organization:

Northwest Regional Director
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

Notice is hereby given that the United States Department of Justice will represent the United States of America, including the U.S. Department of the Interior, Bureau of Indian Affairs, in all matters pertaining to the Palouse River Basin Adjudication.

All notices, filings and correspondence concerning this matter should be mailed to the United States Department of Justice at the address set forth below:

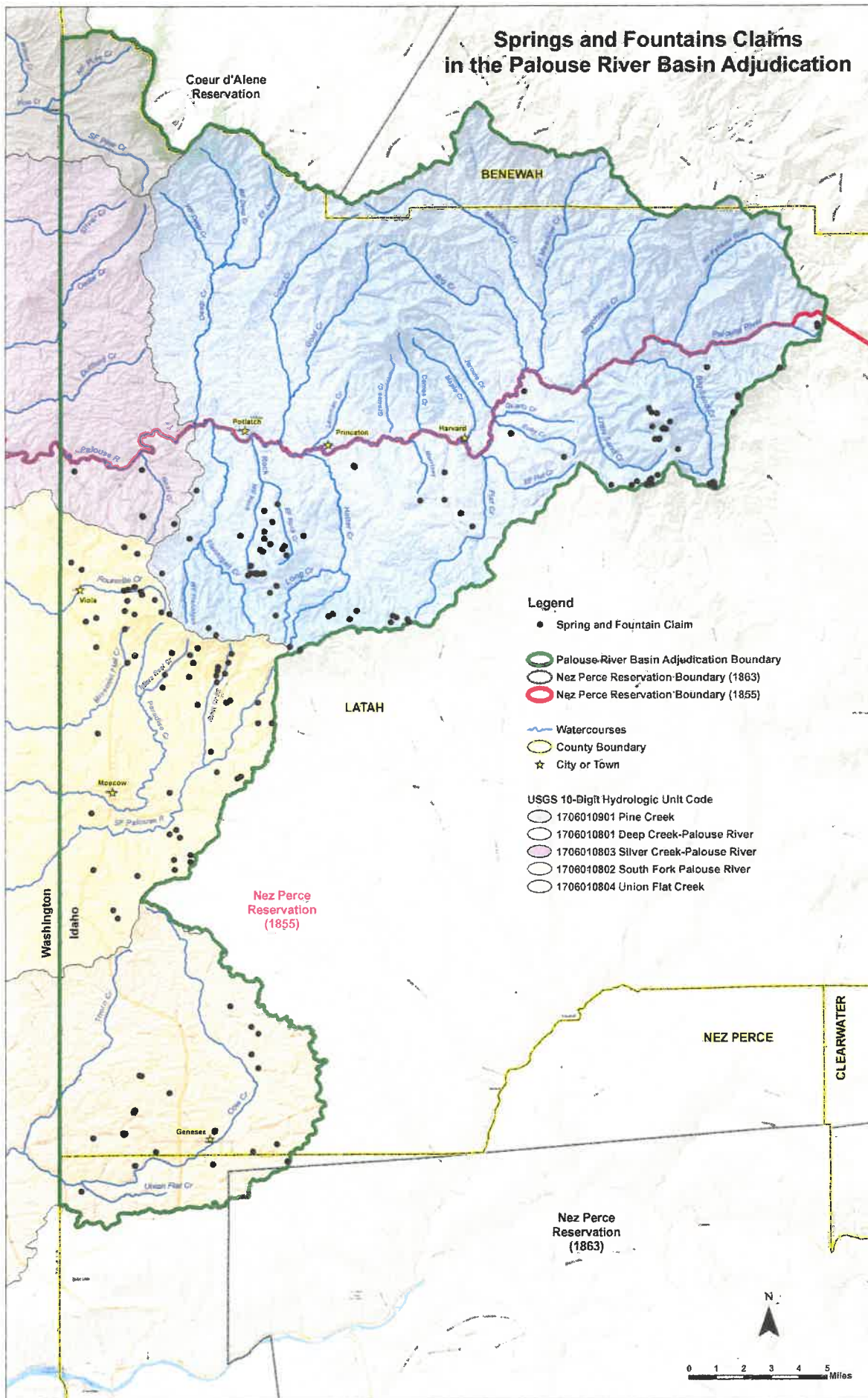


Katherine M. Kane
United States Department of Justice
Indian Resources Division
Natural Resources Section
999 18th Street
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

Springs and Fountains Claims in the Palouse River Basin Adjudication



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

87-12027

IN RE: THE GENERAL
ADJUDICATION OF RIGHTS
TO THE USE OF WATER FROM
THE PALOUSE RIVER BASIN
WATER SYSTEM

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Case No.: 59576

NOTICE OF CLAIM

Federal Reserved Water Right

RECEIVED

DEC 30 2019

DEPARTMENT OF
WATER RESOURCES

1. Name and address of claimant:

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and
ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the
REGIONAL DIRECTOR, NORTHWEST REGION
Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

2. Date of Priority: Time Immemorial

3. a. Source of water supply: Spring (Federal I.D. #1022)

b. which is a tributary to: West Fork Rock Creek

4. Point of Diversion: This claim is for a spring and/or fountain *in situ* including sufficient
groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or
fountains.

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1022	41N	4W	31	NWSW	Boise	Latah

See Attached Map.

5. Place of Use:

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1022	41N	4W	31	NWSW	Boise	Latah

See Attached Map.

6. **Purpose of Water Use:**
The purpose of use includes the full range of uses to which the Tribe and its members have always put the springs and fountains, including as a water source for consumptive use, for wildlife and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce Reservation pursuant to the documents referenced in Section 9 and the provisions in Section 10, *infra*.
7. **Period of Use:** January 1 through December 31.
8. **Quantity Reserved (In cfs):** Half the natural flow.
9. **Basis of Claim:**
The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.
10. **Other Provisions:**
 - a. The United States has asserted other claims in the Palouse River Basin Adjudication. Paragraphs 10(a) – (g) express assertions applicable to all claims filed by the Bureau of Indian Affairs in its capacity as trustee for the Nez Perce Tribe in the Palouse River Basin Adjudication. The United States claims waters from groundwater and surface water sources within the Palouse River Basin in the state of Idaho to satisfy the rights reserved to the Nez Perce Tribe by the 1855 Treaty and the 1863 Treaty and to fulfill the permanent homeland purpose of the Nez Perce Reservation. Such present and future purposes include: instream flows for fish habitat; hunting, gathering, and pasturing; spring and fountains flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; and consumptive use claims on two allotments held in trust by the United States.
 - b. The Nez Perce Tribe has occupied a territory in what is now central Idaho, southeastern Washington, and northeastern Oregon since time immemorial. *United States v. Webb*, 219 F.3d 1127, 1129 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). The Palouse River Basin is within the Tribe’s traditional lands.
 - c. There is a complex history of the United States’ establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing

rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the "exclusive right to fish in all streams running through or bordering" the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the "right of taking fish at all usual and accustomed places in common with the citizens of the Territory" to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.

- d. Article III of the 1855 Treaty further reserves to the Tribe "the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land."
- e. Article VIII of the Nez Perce Treaty of 1863 includes a unique provision reserving to the Nez Perce Tribe the use of "springs and fountains" within the area ceded under Article I of the 1863 Treaty. For purposes of the priority date of the springs and fountains claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.
- f. Pursuant to the General Allotment Act of 1887, Act of February 8, 1887, 24 Stat. 388, *amended*, Act of February 28, 1891, 26 Stat. 794, there are two allotments (Allotments 182-43 and 182-45) held in trust by the United States located within the boundaries of the Palouse River Basin and the northwestern corner of the Nez Perce Reservation. For purposes of the priority date of the domestic and stock watering claims for these two allotments, the United States claims June 11, 1855 pursuant to the 1855 Treaty.
- g. In order to comply with Idaho Code § 42-1409(1), the United States has designated "places of use," "points of diversion," and "purposes of use" in submitting this water rights claim. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe's future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Reservation. The statute's terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.

11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled "How you will receive notices in the Palouse River Basin Adjudication."
- (b) I do do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

For Organizations:

I do solemnly swear and affirm that I am Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.

Signature of Authorized Agent:
Title and Organization:



Northwest Regional Director
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

Notice is hereby given that the United States Department of Justice will represent the United States of America, including the U.S. Department of the Interior, Bureau of Indian Affairs, in all matters pertaining to the Palouse River Basin Adjudication.

All notices, filings and correspondence concerning this matter should be mailed to the United States Department of Justice at the address set forth below:



Katherine M. Kane
United States Department of Justice
Indian Resources Division
Natural Resources Section
999 18th Street
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

**Springs and Fountains Claims
in the Palouse River Basin Adjudication**

Coeur d'Alene
Reservation

BENEWAH

LATAH

Washington

Idaho

Nez Perce
Reservation
(1855)

Nez Perce
Reservation
(1863)

CLEARWATER

Legend

- Spring and Fountain Claim
- Palouse River Basin Adjudication Boundary
- Nez Perce Reservation Boundary (1863)
- Nez Perce Reservation Boundary (1855)
- Watercourses
- County Boundary
- ☆ City or Town

USGS 10-Digit Hydrologic Unit Code

- 1706010901 Pine Creek
- 1706010801 Deep Creek-Palouse River
- 1706010803 Silver Creek-Palouse River
- 1706010802 South Fork Palouse River
- 1706010804 Union Flat Creek

0 1 2 3 4 5
Miles

- **Spring and Fountain Claim**

○ Nez Perce Reservation Boundary (1863)

Nez Perce Reservation Boundary (1855)

 County Boundary

1706010901 Pine Creek

1706010803 Silver Cree

1706010802 South Fork Palouse River

1706010804 Union Flat Creek

Nez Perce
Reservation
(1855)

Nez Perce
Reservation
(1863)

CLEARWATER

2

0 1 2 3 4 5 Miles

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

87-17028

IN RE: THE GENERAL
ADJUDICATION OF RIGHTS
TO THE USE OF WATER FROM
THE PALOUSE RIVER BASIN
WATER SYSTEM

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Case No.: 59576

NOTICE OF CLAIM

Federal Reserved Water Right

RECEIVED

DEC 30 2019

DEPARTMENT OF
WATER RESOURCES

1. **Name and address of claimant:**

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and
ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the
REGIONAL DIRECTOR, NORTHWEST REGION

Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

2. **Date of Priority:** Time Immemorial

3. **a. Source of water supply:** Spring (Federal I.D. #1023)

b. which is a tributary to: West Fork Rock Creek

4. **Point of Diversion:** This claim is for a spring and/or fountain *in situ* including sufficient groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or fountains.

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1023	41N	4W	31	SWSE	Boise	Latah

See Attached Map.

5. **Place of Use:**

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1023	41N	4W	31	SWSE	Boise	Latah

See Attached Map.

6. **Purpose of Water Use:**

The purpose of use includes the full range of uses to which the Tribe and its members have always put the springs and fountains, including as a water source for consumptive use, for wildlife and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce Reservation pursuant to the documents referenced in Section 9 and the provisions in Section 10, *infra*.

7. **Period of Use:** January 1 through December 31.

8. **Quantity Reserved (In cfs):** Half the natural flow.

9. **Basis of Claim:**

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

10. **Other Provisions:**

- a. The United States has asserted other claims in the Palouse River Basin Adjudication. Paragraphs 10(a) – (g) express assertions applicable to all claims filed by the Bureau of Indian Affairs in its capacity as trustee for the Nez Perce Tribe in the Palouse River Basin Adjudication. The United States claims waters from groundwater and surface water sources within the Palouse River Basin in the state of Idaho to satisfy the rights reserved to the Nez Perce Tribe by the 1855 Treaty and the 1863 Treaty and to fulfill the permanent homeland purpose of the Nez Perce Reservation. Such present and future purposes include: instream flows for fish habitat; hunting, gathering, and pasturing; spring and fountains flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; and consumptive use claims on two allotments held in trust by the United States.
- b. The Nez Perce Tribe has occupied a territory in what is now central Idaho, southeastern Washington, and northeastern Oregon since time immemorial. *United States v. Webb*, 219 F.3d 1127, 1129 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). The Palouse River Basin is within the Tribe’s traditional lands.
- c. There is a complex history of the United States’ establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing

rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the "exclusive right to fish in all streams running through or bordering" the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the "right of taking fish at all usual and accustomed places in common with the citizens of the Territory" to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.

- d. Article III of the 1855 Treaty further reserves to the Tribe "the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land."
- e. Article VIII of the Nez Perce Treaty of 1863 includes a unique provision reserving to the Nez Perce Tribe the use of "springs and fountains" within the area ceded under Article I of the 1863 Treaty. For purposes of the priority date of the springs and fountains claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.
- f. Pursuant to the General Allotment Act of 1887, Act of February 8, 1887, 24 Stat. 388, *amended*, Act of February 28, 1891, 26 Stat. 794, there are two allotments (Allotments 182-43 and 182-45) held in trust by the United States located within the boundaries of the Palouse River Basin and the northwestern corner of the Nez Perce Reservation. For purposes of the priority date of the domestic and stock watering claims for these two allotments, the United States claims June 11, 1855 pursuant to the 1855 Treaty.
- g. In order to comply with Idaho Code § 42-1409(1), the United States has designated "places of use," "points of diversion," and "purposes of use" in submitting this water rights claim. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe's future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Reservation. The statute's terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.

11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled "How you will receive notices in the Palouse River Basin Adjudication."
- (b) I do ___ do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

For Organizations:

I do solemnly swear and affirm that I am Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.

Signature of Authorized Agent:
Title and Organization:



Northwest Regional Director
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

Notice is hereby given that the United States Department of Justice will represent the United States of America, including the U.S. Department of the Interior, Bureau of Indian Affairs, in all matters pertaining to the Palouse River Basin Adjudication.

All notices, filings and correspondence concerning this matter should be mailed to the United States Department of Justice at the address set forth below:



Katherine M. Kane
United States Department of Justice
Indian Resources Division
Natural Resources Section
999 18th Street
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

**Springs and Fountains Claims
in the Palouse River Basin Adjudication**

Coeur d'Alene Reservation

BENEWAH

LATAH

NEZ PERCE

Washington

Idaho

Clearwater

Nez Perce Reservation (1855)

Nez Perce Reservation (1863)

Legend

- Spring and Fountain Claim
- Palouse River Basin Adjudication Boundary
- Nez Perce Reservation Boundary (1863)
- Nez Perce Reservation Boundary (1855)
- Watercourses
- County Boundary
- City or Town

USGS 10-Digit Hydrologic Unit Code

- 1706010901 Pine Creek
- 1706010801 Deep Creek-Palouse River
- 1706010803 Silver Creek-Palouse River
- 1706010802 South Fork Palouse River
- 1706010804 Union Flat Creek

0 1 2 3 4 5 Miles

N

- Spring and Fountain Claim
- Palouse River Basin Adjudication Boundary
- Nez Perce Reservation Boundary (1863)
- Nez Perce Reservation Boundary (1855)
- Watercourses
- County Boundary
- ☆ City or Town

USGS 10-Digit Hydrologic Unit Code

- 1706010901 Pine Creek
- 1706010801 Deep Creek-Palouse River
- 1706010803 Silver Creek-Palouse River
- 1706010802 South Fork Palouse River
- 1706010804 Union Flat Creek

☐ 1706010901 Pine Creek
☐ 1706010801 Deep Creek-Palouse River
☒ 1706010803 Silver Creek-Palouse River
☐ 1706010802 South Fork Palouse River
☐ 1706010804 Union Flat Creek

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

87-12029

RECEIVED

IN RE: THE GENERAL
ADJUDICATION OF RIGHTS
TO THE USE OF WATER FROM
THE PALOUSE RIVER BASIN
WATER SYSTEM

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Case No.: 59576

NOTICE OF CLAIM

Federal Reserved Water Right

DEC 30 2019

DEPARTMENT OF
WATER RESOURCES

1. Name and address of claimant:

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and
ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the
REGIONAL DIRECTOR, NORTHWEST REGION

Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

2. Date of Priority: Time Immemorial

3. a. Source of water supply: Spring (Federal I.D. #1024)

b. which is a tributary to: WF Rock Creek or Flannigan Creek

4. Point of Diversion: This claim is for a spring and/or fountain *in situ* including sufficient
groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or
fountains.

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1024	41N	4W	31	SESW	Boise	Latah

See Attached Map.

5. Place of Use:

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1024	41N	4W	31	SESW	Boise	Latah

See Attached Map.

6. Purpose of Water Use:

The purpose of use includes the full range of uses to which the Tribe and its members have always put the springs and fountains, including as a water source for consumptive use, for wildlife and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce Reservation pursuant to the documents referenced in Section 9 and the provisions in Section 10, *infra*.

7. Period of Use: January 1 through December 31.

8. Quantity Reserved (In cfs): Half the natural flow.

9. Basis of Claim:

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

10. Other Provisions:

- a. The United States has asserted other claims in the Palouse River Basin Adjudication. Paragraphs 10(a) – (g) express assertions applicable to all claims filed by the Bureau of Indian Affairs in its capacity as trustee for the Nez Perce Tribe in the Palouse River Basin Adjudication. The United States claims waters from groundwater and surface water sources within the Palouse River Basin in the state of Idaho to satisfy the rights reserved to the Nez Perce Tribe by the 1855 Treaty and the 1863 Treaty and to fulfill the permanent homeland purpose of the Nez Perce Reservation. Such present and future purposes include: instream flows for fish habitat; hunting, gathering, and pasturing; spring and fountain flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; and consumptive use claims on two allotments held in trust by the United States.
- b. The Nez Perce Tribe has occupied a territory in what is now central Idaho, southeastern Washington, and northeastern Oregon since time immemorial. *United States v. Webb*, 219 F.3d 1127, 1129 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). The Palouse River Basin is within the Tribe’s traditional lands.
- c. There is a complex history of the United States’ establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing

rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the “exclusive right to fish in all streams running through or bordering” the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the “right of taking fish at all usual and accustomed places in common with the citizens of the Territory” to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.

- d. Article III of the 1855 Treaty further reserves to the Tribe “the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land.”
- e. Article VIII of the Nez Perce Treaty of 1863 includes a unique provision reserving to the Nez Perce Tribe the use of “springs and fountains” within the area ceded under Article I of the 1863 Treaty. For purposes of the priority date of the springs and fountains claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.
- f. Pursuant to the General Allotment Act of 1887, Act of February 8, 1887, 24 Stat. 388, *amended*, Act of February 28, 1891, 26 Stat. 794, there are two allotments (Allotments 182-43 and 182-45) held in trust by the United States located within the boundaries of the Palouse River Basin and the northwestern corner of the Nez Perce Reservation. For purposes of the priority date of the domestic and stock watering claims for these two allotments, the United States claims June 11, 1855 pursuant to the 1855 Treaty.
- g. In order to comply with Idaho Code § 42-1409(1), the United States has designated “places of use,” “points of diversion,” and “purposes of use” in submitting this water rights claim. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe’s future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Reservation. The statute’s terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.

11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled “How you will receive notices in the Palouse River Basin Adjudication.”
- (b) I do ___ do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

For Organizations:

I do solemnly swear and affirm that I am Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.



Signature of Authorized Agent:
Title and Organization:

Northwest Regional Director
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

Notice is hereby given that the United States Department of Justice will represent the United States of America, including the U.S. Department of the Interior, Bureau of Indian Affairs, in all matters pertaining to the Palouse River Basin Adjudication.

All notices, filings and correspondence concerning this matter should be mailed to the United States Department of Justice at the address set forth below:

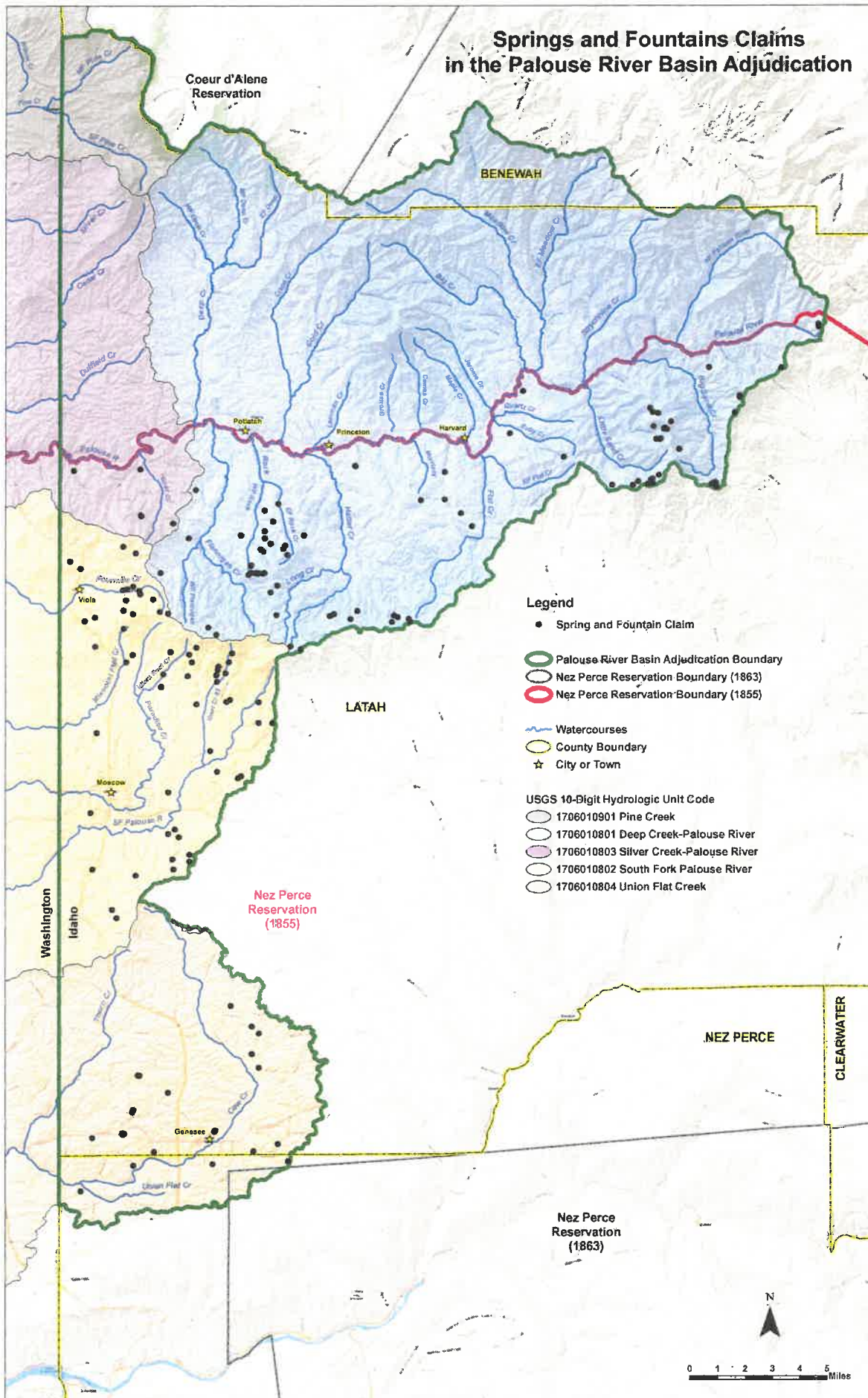


Katherine M. Kane
United States Department of Justice
Indian Resources Division
Natural Resources Section
999 18th Street
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

Springs and Fountains Claims in the Palouse River Basin Adjudication



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

87-12030

IN RE: THE GENERAL)
ADJUDICATION OF RIGHTS)
TO THE USE OF WATER FROM)
THE PALOUSE RIVER BASIN)
WATER SYSTEM)

Case No.: 59576

NOTICE OF CLAIM

Federal Reserved Water Right

RECEIVED

DEC 30 2019

DEPARTMENT OF
WATER RESOURCES

1. Name and address of claimant:

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and
ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the
REGIONAL DIRECTOR, NORTHWEST REGION

Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

2. Date of Priority: Time Immemorial

3. a. Source of water supply: Spring (Federal I.D. #1025)

b. which is a tributary to: WF Rock Creek or Flannigan Creek

4. Point of Diversion: This claim is for a spring and/or fountain *in situ* including sufficient
groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or
fountains.

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1025	41N	4W	31	SWSW	Boise	Latah

See Attached Map.

5. Place of Use:

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1025	41N	4W	31	SWSW	Boise	Latah

See Attached Map.

6. Purpose of Water Use:

The purpose of use includes the full range of uses to which the Tribe and its members have always put the springs and fountains, including as a water source for consumptive use, for wildlife and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce Reservation pursuant to the documents referenced in Section 9 and the provisions in Section 10, *infra*.

7. Period of Use: January 1 through December 31.

8. Quantity Reserved (In cfs): Half the natural flow.

9. Basis of Claim:

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

10. Other Provisions:

- a. The United States has asserted other claims in the Palouse River Basin Adjudication. Paragraphs 10(a) – (g) express assertions applicable to all claims filed by the Bureau of Indian Affairs in its capacity as trustee for the Nez Perce Tribe in the Palouse River Basin Adjudication. The United States claims waters from groundwater and surface water sources within the Palouse River Basin in the state of Idaho to satisfy the rights reserved to the Nez Perce Tribe by the 1855 Treaty and the 1863 Treaty and to fulfill the permanent homeland purpose of the Nez Perce Reservation. Such present and future purposes include: instream flows for fish habitat; hunting, gathering, and pasturing; spring and fountains flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; and consumptive use claims on two allotments held in trust by the United States.
- b. The Nez Perce Tribe has occupied a territory in what is now central Idaho, southeastern Washington, and northeastern Oregon since time immemorial. *United States v. Webb*, 219 F.3d 1127, 1129 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). The Palouse River Basin is within the Tribe’s traditional lands.
- c. There is a complex history of the United States’ establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing

rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the “exclusive right to fish in all streams running through or bordering” the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the “right of taking fish at all usual and accustomed places in common with the citizens of the Territory” to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.

- d. Article III of the 1855 Treaty further reserves to the Tribe “the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land.”
- e. Article VIII of the Nez Perce Treaty of 1863 includes a unique provision reserving to the Nez Perce Tribe the use of “springs and fountains” within the area ceded under Article I of the 1863 Treaty. For purposes of the priority date of the springs and fountains claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.
- f. Pursuant to the General Allotment Act of 1887, Act of February 8, 1887, 24 Stat. 388, *amended*, Act of February 28, 1891, 26 Stat. 794, there are two allotments (Allotments 182-43 and 182-45) held in trust by the United States located within the boundaries of the Palouse River Basin and the northwestern corner of the Nez Perce Reservation. For purposes of the priority date of the domestic and stock watering claims for these two allotments, the United States claims June 11, 1855 pursuant to the 1855 Treaty.
- g. In order to comply with Idaho Code § 42-1409(1), the United States has designated “places of use,” “points of diversion,” and “purposes of use” in submitting this water rights claim. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe’s future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Reservation. The statute’s terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.

11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled “How you will receive notices in the Palouse River Basin Adjudication.”
- (b) I do ___ do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

For Organizations:

I do solemnly swear and affirm that I am Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.



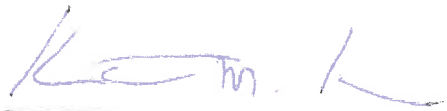
Signature of Authorized Agent:
Title and Organization:

Northwest Regional Director
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

Notice is hereby given that the United States Department of Justice will represent the United States of America, including the U.S. Department of the Interior, Bureau of Indian Affairs, in all matters pertaining to the Palouse River Basin Adjudication.

All notices, filings and correspondence concerning this matter should be mailed to the United States Department of Justice at the address set forth below:

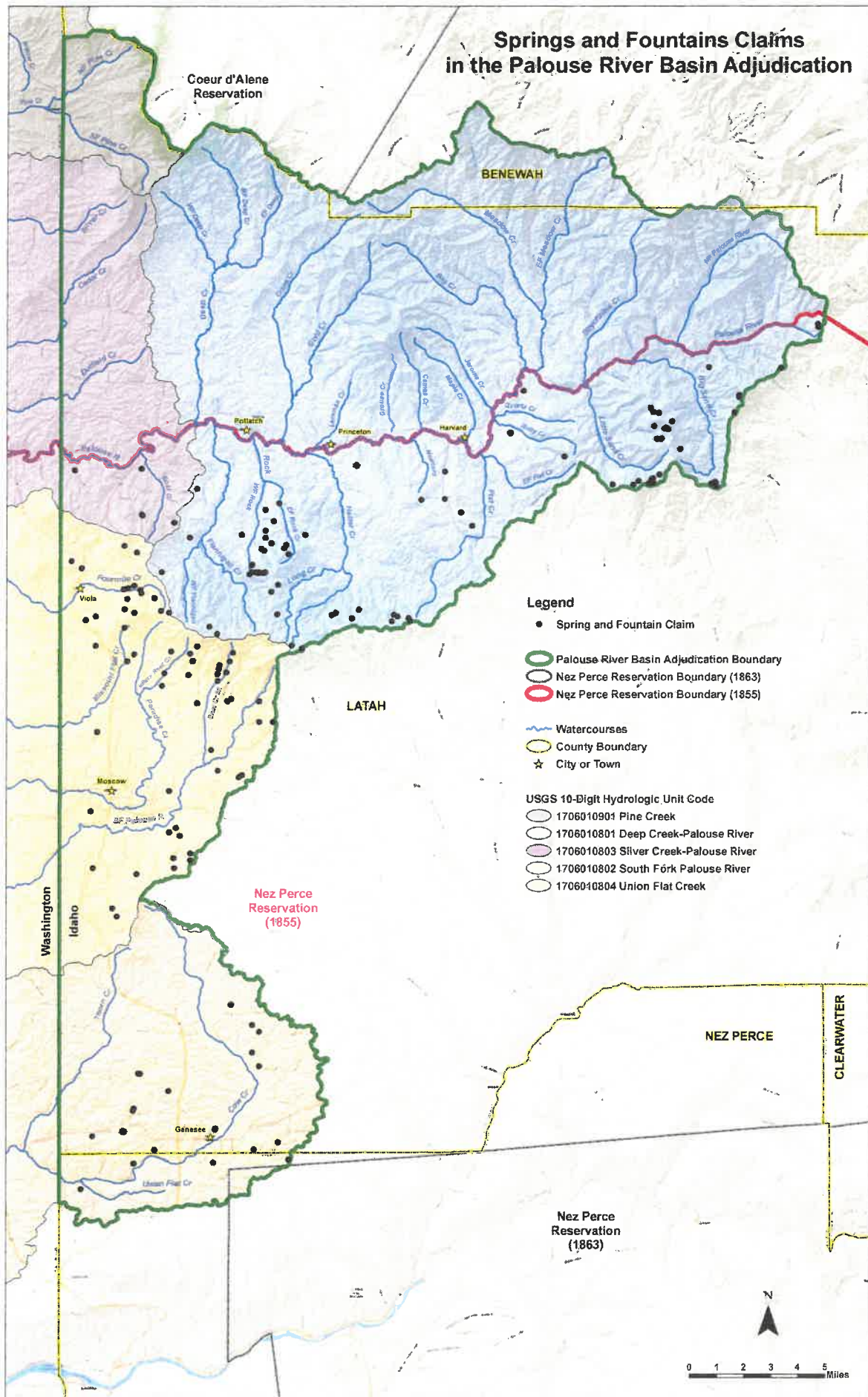


Katherine M. Kane
United States Department of Justice
Indian Resources Division
Natural Resources Section
999 18th Street
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

Springs and Fountains Claims in the Palouse River Basin Adjudication



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

87-12031

RECEIVED

IN RE: THE GENERAL)
ADJUDICATION OF RIGHTS)
TO THE USE OF WATER FROM)
THE PALOUSE RIVER BASIN)
WATER SYSTEM)

Case No.: 59576

NOTICE OF CLAIM

Federal Reserved Water Right

DEC 30 2019

DEPARTMENT OF
WATER RESOURCES

1. Name and address of claimant:

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and
ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the
REGIONAL DIRECTOR, NORTHWEST REGION

Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

2. Date of Priority: Time Immemorial

3. a. Source of water supply: Springs (Federal I.D. #1026)

b. which is a tributary to: Palouse River or Flat Creek

4. Point of Diversion: This claim is for a spring and/or fountain *in situ* including sufficient groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or fountains.

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1026-1	41N	3W	17	NWSW, NESW, SWSW, SESW	Boise	Latah
1026-2	41N	3W	20	NWNW, NENW, SWNW, SENW	Boise	Latah

See Attached Map.

5. Place of Use:

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1026	41N	3W	17	NWSW, NESW, SWSW, SESW	Boise	Latah
1026-2	41N	3W	20	NWNW, NENW, SWNW, SENW	Boise	Latah

See Attached Map.

6. Purpose of Water Use:

The purpose of use includes the full range of uses to which the Tribe and its members have always put the springs and fountains, including as a water source for consumptive use, for wildlife and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce Reservation pursuant to the documents referenced in Section 9 and the provisions in Section 10, *infra*.

7. Period of Use: January 1 through December 31.

8. Quantity Reserved (In cfs): Half the natural flow.

9. Basis of Claim:

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

10. Other Provisions:

- a. The United States has asserted other claims in the Palouse River Basin Adjudication. Paragraphs 10(a) – (g) express assertions applicable to all claims filed by the Bureau of Indian Affairs in its capacity as trustee for the Nez Perce Tribe in the Palouse River Basin Adjudication. The United States claims waters from groundwater and surface water sources within the Palouse River Basin in the state of Idaho to satisfy the rights reserved to the Nez Perce Tribe by the 1855 Treaty and the 1863 Treaty and to fulfill the permanent homeland purpose of the Nez Perce Reservation. Such present and future purposes include: instream flows for fish habitat; hunting, gathering, and pasturing; spring and fountains flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; and consumptive use claims on two allotments held in trust by the United States.
- b. The Nez Perce Tribe has occupied a territory in what is now central Idaho, southeastern Washington, and northeastern Oregon since time immemorial. *United States v. Webb*, 219 F.3d 1127, 1129 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). The Palouse River Basin is within the Tribe’s traditional lands.
- c. There is a complex history of the United States’ establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing

rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the “exclusive right to fish in all streams running through or bordering” the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the “right of taking fish at all usual and accustomed places in common with the citizens of the Territory” to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.

- d. Article III of the 1855 Treaty further reserves to the Tribe “the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land.”
- e. Article VIII of the Nez Perce Treaty of 1863 includes a unique provision reserving to the Nez Perce Tribe the use of “springs and fountains” within the area ceded under Article I of the 1863 Treaty. For purposes of the priority date of the springs and fountains claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.
- f. Pursuant to the General Allotment Act of 1887, Act of February 8, 1887, 24 Stat. 388, *amended*, Act of February 28, 1891, 26 Stat. 794, there are two allotments (Allotments 182-43 and 182-45) held in trust by the United States located within the boundaries of the Palouse River Basin and the northwestern corner of the Nez Perce Reservation. For purposes of the priority date of the domestic and stock watering claims for these two allotments, the United States claims June 11, 1855 pursuant to the 1855 Treaty.
- g. In order to comply with Idaho Code § 42-1409(1), the United States has designated “places of use,” “points of diversion,” and “purposes of use” in submitting this water rights claim. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe’s future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Reservation. The statute’s terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.

11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled “How you will receive notices in the Palouse River Basin Adjudication.”
- (b) I do ___ do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

For Organizations:

I do solemnly swear and affirm that I am Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.



Signature of Authorized Agent:
Title and Organization:

Northwest Regional Director
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

Notice is hereby given that the United States Department of Justice will represent the United States of America, including the U.S. Department of the Interior, Bureau of Indian Affairs, in all matters pertaining to the Palouse River Basin Adjudication.

All notices, filings and correspondence concerning this matter should be mailed to the United States Department of Justice at the address set forth below:



Katherine M. Kane
United States Department of Justice
Indian Resources Division
Natural Resources Section
999 18th Street
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

**Springs and Fountains Claims
in the Palouse River Basin Adjudication**

Legend

- Spring and Fountain Claim
- Palouse River Basin Adjudication Boundary
- Nez Perce Reservation Boundary (1863)
- Nez Perce Reservation Boundary (1855)
- Watercourses
- County Boundary
- ★ City or Town

USGS 10-Digit Hydrologic Unit Code

- 1706010901 Pine Creek
- 1706010801 Deep Creek-Palouse River
- 1706010803 Silver Creek-Palouse River
- 1706010802 South Fork Palouse River
- 1706010804 Union Flat Creek


Nez Perce Reservation (1855)

Nez Perce Reservation (1863)

Scale: 0 1 2 3 4 5 Miles

North Arrow

- **Spring and Fountain Claim**

 Nez Perce Reservation Boundary (1863)

 Watercourses County Boundary

★ City or Town

USGS 10-Digit Hydrologic Unit Code

1706010901 Pine Creek

1706010801 Deep Creek-Palouse River

1706010803 Silver Creek-Palouse River

1706010802 South Fork Palouse River

170601.0804 Union Flat Creek

**Nez Perce
Reservation
(1855)**

NEZ PERCE

CLEARWATER

Nez Perce
Reservation
(1863)

N

0 1 2 3 4 5 Miles

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

87-12032

RECEIVED

DEC 30 2019

DEPARTMENT OF
WATER RESOURCES

IN RE: THE GENERAL) Case No.: 59576
ADJUDICATION OF RIGHTS)
TO THE USE OF WATER FROM) NOTICE OF CLAIM
THE PALOUSE RIVER BASIN)
WATER SYSTEM) Federal Reserved Water Right
)
)
)

1. Name and address of claimant:

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and
ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the
REGIONAL DIRECTOR, NORTHWEST REGION

Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

2. Date of Priority: Time Immemorial

3. a. Source of water supply: Spring (Federal I.D. #1027)

b. which is a tributary to: Gnat Creek

4. Point of Diversion: This claim is for a spring and/or fountain *in situ* including sufficient
groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or
fountains.

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1027	40N	5W	24	NENW	Boise	Latah

See Attached Map.

5. Place of Use:

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1027	40N	5W	24	NENW	Boise	Latah

See Attached Map.

6. **Purpose of Water Use:**

The purpose of use includes the full range of uses to which the Tribe and its members have always put the springs and fountains, including as a water source for consumptive use, for wildlife and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce Reservation pursuant to the documents referenced in Section 9 and the provisions in Section 10, *infra*.

7. **Period of Use:** January 1 through December 31.

8. **Quantity Reserved (In cfs):** Half the natural flow.

9. **Basis of Claim:**

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

10. **Other Provisions:**

- a. The United States has asserted other claims in the Palouse River Basin Adjudication. Paragraphs 10(a) – (g) express assertions applicable to all claims filed by the Bureau of Indian Affairs in its capacity as trustee for the Nez Perce Tribe in the Palouse River Basin Adjudication. The United States claims waters from groundwater and surface water sources within the Palouse River Basin in the state of Idaho to satisfy the rights reserved to the Nez Perce Tribe by the 1855 Treaty and the 1863 Treaty and to fulfill the permanent homeland purpose of the Nez Perce Reservation. Such present and future purposes include: instream flows for fish habitat; hunting, gathering, and pasturing; spring and fountains flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; and consumptive use claims on two allotments held in trust by the United States.
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rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the “exclusive right to fish in all streams running through or bordering” the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the “right of taking fish at all usual and accustomed places in common with the citizens of the Territory” to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.

- d. Article III of the 1855 Treaty further reserves to the Tribe “the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land.”
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11. Signatures:

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- (b) I do ___ do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

For Organizations:

I do solemnly swear and affirm that I am Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.



Signature of Authorized Agent:
Title and Organization:

Northwest Regional Director
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

Notice is hereby given that the United States Department of Justice will represent the United States of America, including the U.S. Department of the Interior, Bureau of Indian Affairs, in all matters pertaining to the Palouse River Basin Adjudication.

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Katherine M. Kane
United States Department of Justice
Indian Resources Division
Natural Resources Section
999 18th Street
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

**Springs and Fountains Claims
in the Palouse River Basin Adjudication**

Coeur d'Alene Reservation

BENEWAH

LATAH

Washington

Idaho

Nez Perce Reservation (1855)

Genesee

Union Flat Cr.

Nez Perce Reservation (1863)

CLEARWATER

Legend

- Spring and Fountain Claim
- Palouse River Basin Adjudication Boundary
- Nez Perce Reservation Boundary (1863)
- Nez Perce Reservation Boundary (1855)
- Watercourses
- County Boundary
- ☆ City or Town

USGS 10-Digit Hydrologic Unit Code

- 1706010901 Pine Creek
- 1706010801 Deep Creek-Palouse River
- 1706010803 Silver Creek-Palouse River
- 1706010802 South Fork Palouse River
- 1706010804 Union Flat Creek

Scale: 0 1 2 3 4 5 Miles

N

CLEARWATER

Nez Perce
Reservation
(1863)



0 1 2 3 4 5 Miles

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

87-12033

IN RE: THE GENERAL) Case No.: 59576
ADJUDICATION OF RIGHTS)
TO THE USE OF WATER FROM) NOTICE OF CLAIM
THE PALOUSE RIVER BASIN)
WATER SYSTEM) Federal Reserved Water Right
)
)
)

RECEIVED
DEC 30 2019
DEPARTMENT OF
WATER RESOURCES

1. Name and address of claimant:

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and
ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the
REGIONAL DIRECTOR, NORTHWEST REGION

Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

2. Date of Priority: Time Immemorial

3. a. Source of water supply: Spring (Federal I.D. #1028)

b. which is a tributary to: West Fork Flannigan Creek

4. Point of Diversion: This claim is for a spring and/or fountain *in situ* including sufficient
groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or
fountains.

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1028	41N	5W	33	SESE	Boise	Latah

See Attached Map.

5. Place of Use:

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1028	41N	5W	33	SESE	Boise	Latah

See Attached Map.

6. Purpose of Water Use:

The purpose of use includes the full range of uses to which the Tribe and its members have always put the springs and fountains, including as a water source for consumptive use, for wildlife and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce Reservation pursuant to the documents referenced in Section 9 and the provisions in Section 10, *infra*.

7. Period of Use: January 1 through December 31.

8. Quantity Reserved (In cfs): Half the natural flow.

9. Basis of Claim:

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

10. Other Provisions:

- a. The United States has asserted other claims in the Palouse River Basin Adjudication. Paragraphs 10(a) – (g) express assertions applicable to all claims filed by the Bureau of Indian Affairs in its capacity as trustee for the Nez Perce Tribe in the Palouse River Basin Adjudication. The United States claims waters from groundwater and surface water sources within the Palouse River Basin in the state of Idaho to satisfy the rights reserved to the Nez Perce Tribe by the 1855 Treaty and the 1863 Treaty and to fulfill the permanent homeland purpose of the Nez Perce Reservation. Such present and future purposes include: instream flows for fish habitat; hunting, gathering, and pasturing; spring and fountains flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; and consumptive use claims on two allotments held in trust by the United States.
- b. The Nez Perce Tribe has occupied a territory in what is now central Idaho, southeastern Washington, and northeastern Oregon since time immemorial. *United States v. Webb*, 219 F.3d 1127, 1129 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). The Palouse River Basin is within the Tribe’s traditional lands.
- c. There is a complex history of the United States’ establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing

rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the “exclusive right to fish in all streams running through or bordering” the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the “right of taking fish at all usual and accustomed places in common with the citizens of the Territory” to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.

- d. Article III of the 1855 Treaty further reserves to the Tribe “the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land.”
- e. Article VIII of the Nez Perce Treaty of 1863 includes a unique provision reserving to the Nez Perce Tribe the use of “springs and fountains” within the area ceded under Article I of the 1863 Treaty. For purposes of the priority date of the springs and fountains claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.
- f. Pursuant to the General Allotment Act of 1887, Act of February 8, 1887, 24 Stat. 388, *amended*, Act of February 28, 1891, 26 Stat. 794, there are two allotments (Allotments 182-43 and 182-45) held in trust by the United States located within the boundaries of the Palouse River Basin and the northwestern corner of the Nez Perce Reservation. For purposes of the priority date of the domestic and stock watering claims for these two allotments, the United States claims June 11, 1855 pursuant to the 1855 Treaty.
- g. In order to comply with Idaho Code § 42-1409(1), the United States has designated “places of use,” “points of diversion,” and “purposes of use” in submitting this water rights claim. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe’s future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Reservation. The statute’s terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.

11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled “How you will receive notices in the Palouse River Basin Adjudication.”
- (b) I do ___ do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

For Organizations:

I do solemnly swear and affirm that I am Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.

Signature of Authorized Agent:
Title and Organization:



Northwest Regional Director
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

Notice is hereby given that the United States Department of Justice will represent the United States of America, including the U.S. Department of the Interior, Bureau of Indian Affairs, in all matters pertaining to the Palouse River Basin Adjudication.

All notices, filings and correspondence concerning this matter should be mailed to the United States Department of Justice at the address set forth below:

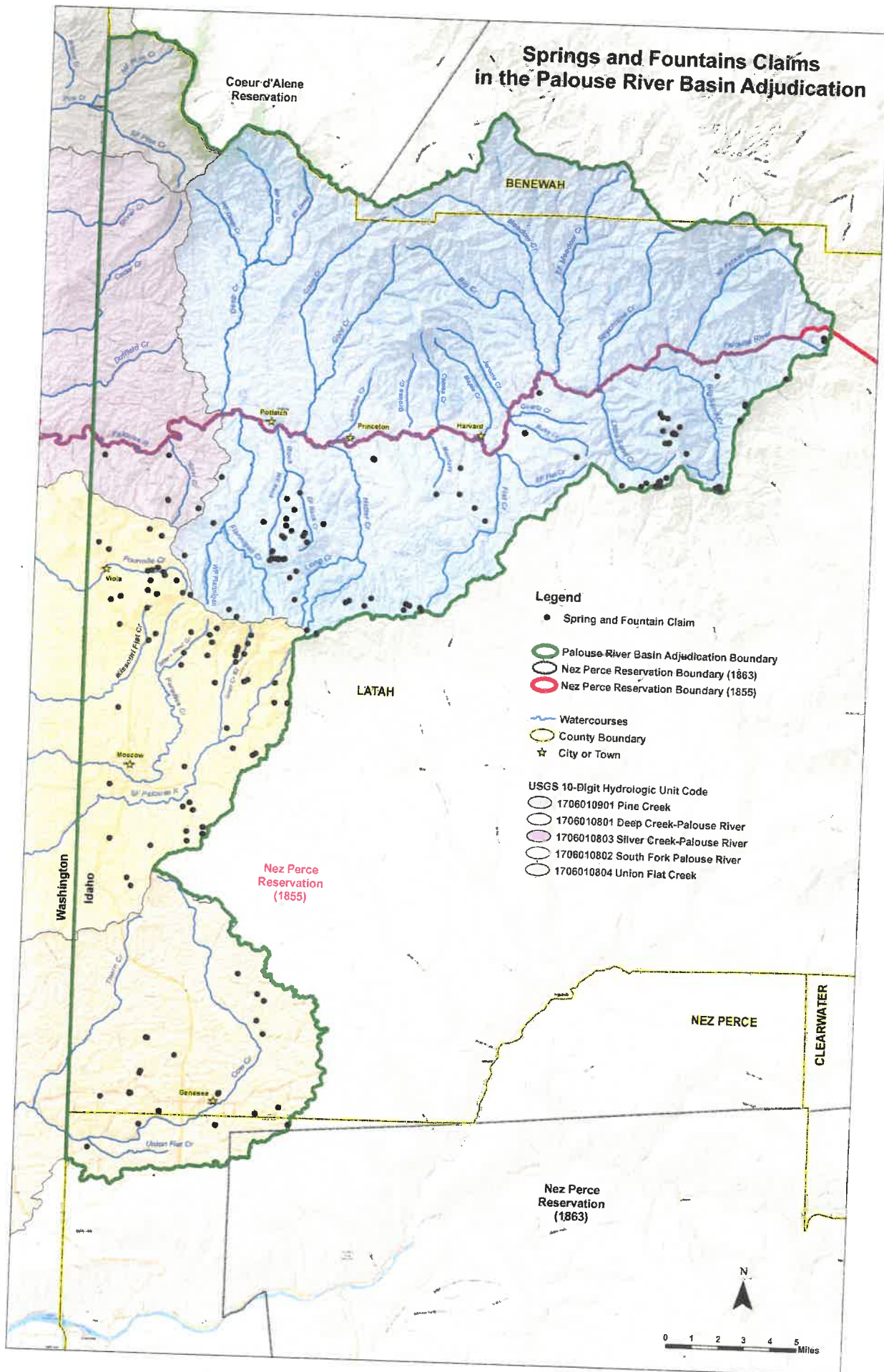


Katherine M. Kane
United States Department of Justice
Indian Resources Division
Natural Resources Section
999 18th Street
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

Springs and Fountains Claims in the Palouse River Basin Adjudication



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 PALOUSE RIVER BASIN
WATER SYSTEM

Case No.: 59576

NOTICE OF CLAIM

Federal Reserved Water Right

87-1203

RECEIVED
DEC 30 2019
DEPARTMENT OF
WATER RESOURCES

1. Name and address of claimant:

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and
ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the
REGIONAL DIRECTOR, NORTHWEST REGION
Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

2. Date of Priority: Time Immemorial

3. a. Source of water supply: Springs (Federal I.D. #1029)

b. which is a tributary to: Thorn Creek

4. Point of Diversion: This claim is for a spring and/or fountain *in situ* including sufficient groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or fountains.

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1029-1	37N	5W	17	NENW	Boise	Latah
1029-2	37N	5W	17	NENW	Boise	Latah

See Attached Map.

5. Place of Use:

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1029-1	37N	5W	17	NENW	Boise	Latah
1029-2	37N	5W	17	NENW	Boise	Latah

See Attached Map.

6. **Purpose of Water Use:**

The purpose of use includes the full range of uses to which the Tribe and its members have always put the springs and fountains, including as a water source for consumptive use, for wildlife and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce Reservation pursuant to the documents referenced in Section 9 and the provisions in Section 10, *infra*.

7. **Period of Use:** January 1 through December 31.

8. **Quantity Reserved (In cfs):** Half the natural flow.

9. **Basis of Claim:**

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

10. **Other Provisions:**

- a. The United States has asserted other claims in the Palouse River Basin Adjudication. Paragraphs 10(a) – (g) express assertions applicable to all claims filed by the Bureau of Indian Affairs in its capacity as trustee for the Nez Perce Tribe in the Palouse River Basin Adjudication. The United States claims waters from groundwater and surface water sources within the Palouse River Basin in the state of Idaho to satisfy the rights reserved to the Nez Perce Tribe by the 1855 Treaty and the 1863 Treaty and to fulfill the permanent homeland purpose of the Nez Perce Reservation. Such present and future purposes include: instream flows for fish habitat; hunting, gathering, and pasturing; spring and fountains flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; and consumptive use claims on two allotments held in trust by the United States.
- b. The Nez Perce Tribe has occupied a territory in what is now central Idaho, southeastern Washington, and northeastern Oregon since time immemorial. *United States v. Webb*, 219 F.3d 1127, 1129 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). The Palouse River Basin is within the Tribe’s traditional lands.
- c. There is a complex history of the United States’ establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing

rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the "exclusive right to fish in all streams running through or bordering" the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the "right of taking fish at all usual and accustomed places in common with the citizens of the Territory" to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.

- d. Article III of the 1855 Treaty further reserves to the Tribe "the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land."
- e. Article VIII of the Nez Perce Treaty of 1863 includes a unique provision reserving to the Nez Perce Tribe the use of "springs and fountains" within the area ceded under Article I of the 1863 Treaty. For purposes of the priority date of the springs and fountains claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.
- f. Pursuant to the General Allotment Act of 1887, Act of February 8, 1887, 24 Stat. 388, *amended*, Act of February 28, 1891, 26 Stat. 794, there are two allotments (Allotments 182-43 and 182-45) held in trust by the United States located within the boundaries of the Palouse River Basin and the northwestern corner of the Nez Perce Reservation. For purposes of the priority date of the domestic and stock watering claims for these two allotments, the United States claims June 11, 1855 pursuant to the 1855 Treaty.
- g. In order to comply with Idaho Code § 42-1409(1), the United States has designated "places of use," "points of diversion," and "purposes of use" in submitting this water rights claim. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe's future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Reservation. The statute's terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.


11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled "How you will receive notices in the Palouse River Basin Adjudication."
- (b) I do do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

For Organizations:

I do solemnly swear and affirm that I am Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.

Signature of Authorized Agent:
Title and Organization:

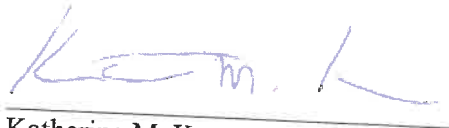


Northwest Regional Director
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

Notice is hereby given that the United States Department of Justice will represent the United States of America, including the U.S. Department of the Interior, Bureau of Indian Affairs, in all matters pertaining to the Palouse River Basin Adjudication.

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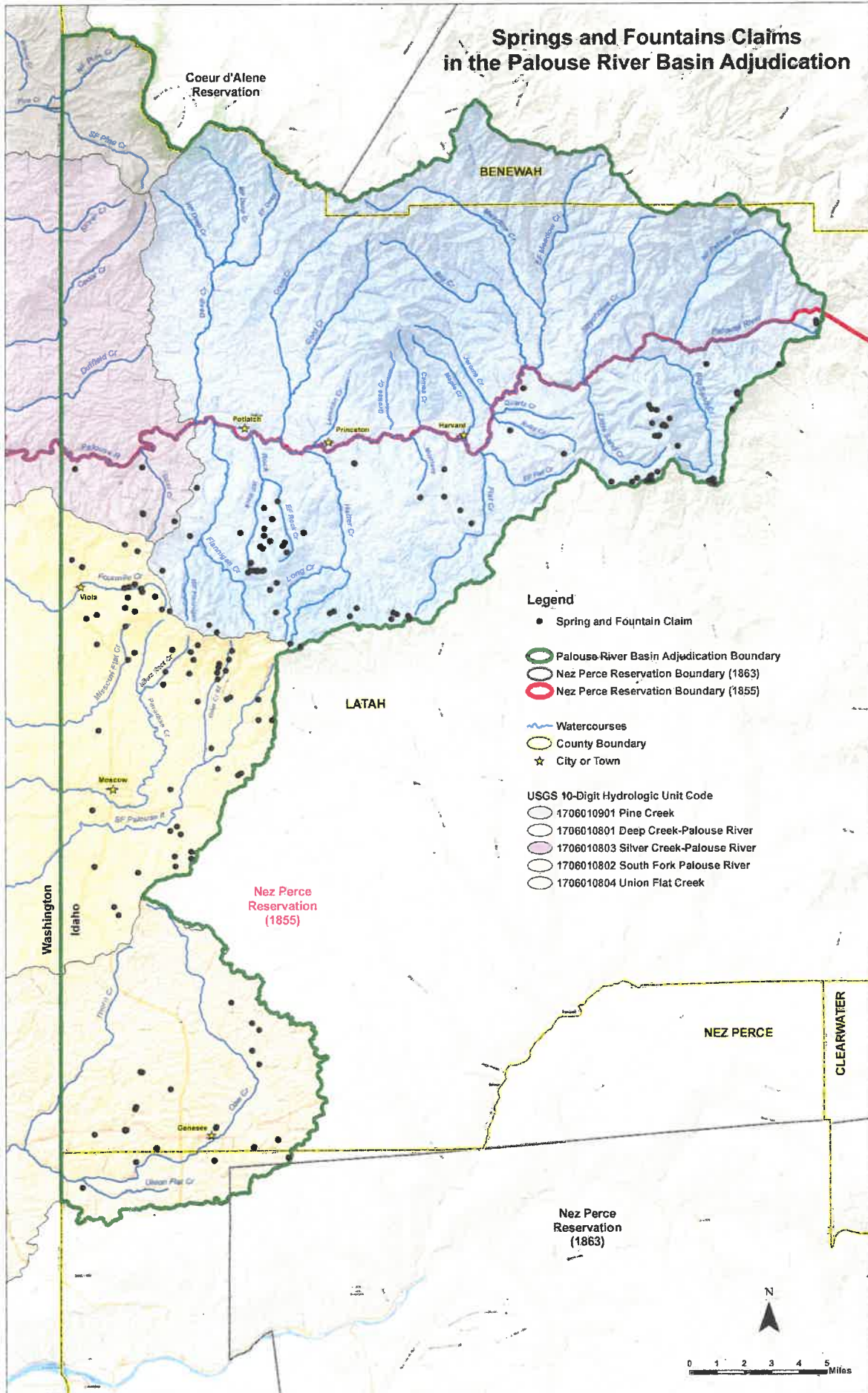


Katherine M. Kane
United States Department of Justice
Indian Resources Division
Natural Resources Section
999 18th Street
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

Springs and Fountains Claims in the Palouse River Basin Adjudication



87-12035

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 PALOUSE RIVER BASIN
WATER SYSTEM

) Case No.: 59576
)
) **NOTICE OF CLAIM**
)
) **Federal Reserved Water Right**
)
)

RECEIVED
DEC 30 2019
DEPARTMENT OF
WATER RESOURCES

1. **Name and address of claimant:**

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and
ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the
REGIONAL DIRECTOR, NORTHWEST REGION
Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

2. **Date of Priority:** Time Immemorial

3. **a. Source of water supply:** Spring (Federal I.D. #1030)

b. which is a tributary to: Thorn Creek

4. **Point of Diversion:** This claim is for a spring and/or fountain *in situ* including sufficient groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or fountains.

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1030	37N	5W	17	NWNE	Boise	Latah

See Attached Map.

5. **Place of Use:**

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1030	37N	5W	17	NWNE	Boise	Latah

See Attached Map.

6. **Purpose of Water Use:**

The purpose of use includes the full range of uses to which the Tribe and its members have always put the springs and fountains, including as a water source for consumptive use, for wildlife and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce Reservation pursuant to the documents referenced in Section 9 and the provisions in Section 10, *infra*.

7. **Period of Use:** January 1 through December 31.

8. **Quantity Reserved (In cfs):** Half the natural flow.

9. **Basis of Claim:**

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

10. **Other Provisions:**

- a. The United States has asserted other claims in the Palouse River Basin Adjudication. Paragraphs 10(a) – (g) express assertions applicable to all claims filed by the Bureau of Indian Affairs in its capacity as trustee for the Nez Perce Tribe in the Palouse River Basin Adjudication. The United States claims waters from groundwater and surface water sources within the Palouse River Basin in the state of Idaho to satisfy the rights reserved to the Nez Perce Tribe by the 1855 Treaty and the 1863 Treaty and to fulfill the permanent homeland purpose of the Nez Perce Reservation. Such present and future purposes include: instream flows for fish habitat; hunting, gathering, and pasturing; spring and fountains flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; and consumptive use claims on two allotments held in trust by the United States.
- b. The Nez Perce Tribe has occupied a territory in what is now central Idaho, southeastern Washington, and northeastern Oregon since time immemorial. *United States v. Webb*, 219 F.3d 1127, 1129 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). The Palouse River Basin is within the Tribe’s traditional lands.
- c. There is a complex history of the United States’ establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing

rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the “exclusive right to fish in all streams running through or bordering” the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the “right of taking fish at all usual and accustomed places in common with the citizens of the Territory” to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.

- d. Article III of the 1855 Treaty further reserves to the Tribe “the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land.”
- e. Article VIII of the Nez Perce Treaty of 1863 includes a unique provision reserving to the Nez Perce Tribe the use of “springs and fountains” within the area ceded under Article I of the 1863 Treaty. For purposes of the priority date of the springs and fountains claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.
- f. Pursuant to the General Allotment Act of 1887, Act of February 8, 1887, 24 Stat. 388, *amended*, Act of February 28, 1891, 26 Stat. 794, there are two allotments (Allotments 182-43 and 182-45) held in trust by the United States located within the boundaries of the Palouse River Basin and the northwestern corner of the Nez Perce Reservation. For purposes of the priority date of the domestic and stock watering claims for these two allotments, the United States claims June 11, 1855 pursuant to the 1855 Treaty.
- g. In order to comply with Idaho Code § 42-1409(1), the United States has designated “places of use,” “points of diversion,” and “purposes of use” in submitting this water rights claim. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe’s future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Reservation. The statute’s terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.

11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled “How you will receive notices in the Palouse River Basin Adjudication.”
- (b) I do ___ do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

For Organizations:

I do solemnly swear and affirm that I am Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.

Signature of Authorized Agent:
Title and Organization:

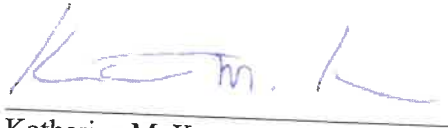


Northwest Regional Director
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

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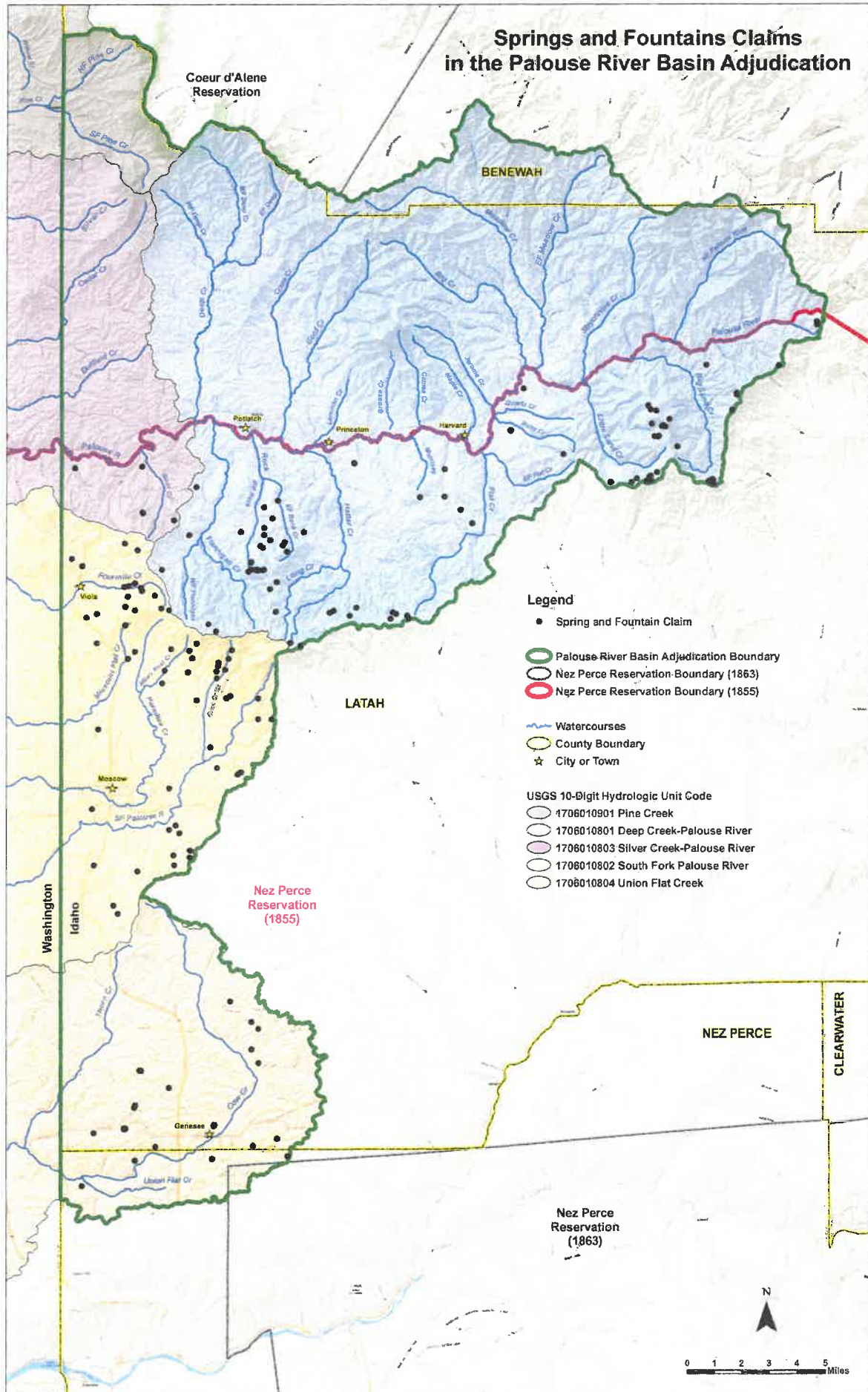
A handwritten signature in blue ink, appearing to read 'K.M. Kane', is written over a horizontal line.

Katherine M. Kane
United States Department of Justice
Indian Resources Division
Natural Resources Section
999 18th Street
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

Springs and Fountains Claims in the Palouse River Basin Adjudication



87-12036

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 PALOUSE RIVER BASIN
WATER SYSTEM

) Case No.: 59576
)
) **NOTICE OF CLAIM**
)
) **Federal Reserved Water Right**
)
)

RECEIVED
DEC 30 2019
DEPARTMENT OF
WATER RESOURCES

1. **Name and address of claimant:**

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and
ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the
REGIONAL DIRECTOR, NORTHWEST REGION
Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

2. **Date of Priority:** Time Immemorial

3. **a. Source of water supply:** Spring (Federal I.D. #1031)

b. which is a tributary to: West Fork Rock Creek

4. **Point of Diversion:** This claim is for a spring and/or fountain *in situ* including sufficient groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or fountains.

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1031	41N	4W	19	NWSE	Boise	Latah

See Attached Map.

5. **Place of Use:**

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1031	41N	4W	19	NWSE	Boise	Latah

See Attached Map.

6. **Purpose of Water Use:**

The purpose of use includes the full range of uses to which the Tribe and its members have always put the springs and fountains, including as a water source for consumptive use, for wildlife and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce Reservation pursuant to the documents referenced in Section 9 and the provisions in Section 10, *infra*.

7. **Period of Use:** January 1 through December 31.

8. **Quantity Reserved (In cfs):** Half the natural flow.

9. **Basis of Claim:**

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

10. **Other Provisions:**

- a. The United States has asserted other claims in the Palouse River Basin Adjudication. Paragraphs 10(a) – (g) express assertions applicable to all claims filed by the Bureau of Indian Affairs in its capacity as trustee for the Nez Perce Tribe in the Palouse River Basin Adjudication. The United States claims waters from groundwater and surface water sources within the Palouse River Basin in the state of Idaho to satisfy the rights reserved to the Nez Perce Tribe by the 1855 Treaty and the 1863 Treaty and to fulfill the permanent homeland purpose of the Nez Perce Reservation. Such present and future purposes include: instream flows for fish habitat; hunting, gathering, and pasturing; spring and fountains flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; and consumptive use claims on two allotments held in trust by the United States.
- b. The Nez Perce Tribe has occupied a territory in what is now central Idaho, southeastern Washington, and northeastern Oregon since time immemorial. *United States v. Webb*, 219 F.3d 1127, 1129 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). The Palouse River Basin is within the Tribe’s traditional lands.
- c. There is a complex history of the United States’ establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing

rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the "exclusive right to fish in all streams running through or bordering" the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the "right of taking fish at all usual and accustomed places in common with the citizens of the Territory" to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.

- d. Article III of the 1855 Treaty further reserves to the Tribe "the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land."
- e. Article VIII of the Nez Perce Treaty of 1863 includes a unique provision reserving to the Nez Perce Tribe the use of "springs and fountains" within the area ceded under Article I of the 1863 Treaty. For purposes of the priority date of the springs and fountains claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.
- f. Pursuant to the General Allotment Act of 1887, Act of February 8, 1887, 24 Stat. 388, *amended*, Act of February 28, 1891, 26 Stat. 794, there are two allotments (Allotments 182-43 and 182-45) held in trust by the United States located within the boundaries of the Palouse River Basin and the northwestern corner of the Nez Perce Reservation. For purposes of the priority date of the domestic and stock watering claims for these two allotments, the United States claims June 11, 1855 pursuant to the 1855 Treaty.
- g. In order to comply with Idaho Code § 42-1409(1), the United States has designated "places of use," "points of diversion," and "purposes of use" in submitting this water rights claim. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe's future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Reservation. The statute's terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.

11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled "How you will receive notices in the Palouse River Basin Adjudication."
- (b) I do ___ do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

For Organizations:

I do solemnly swear and affirm that I am Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.

Signature of Authorized Agent:
Title and Organization:



Northwest Regional Director
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

Notice is hereby given that the United States Department of Justice will represent the United States of America, including the U.S. Department of the Interior, Bureau of Indian Affairs, in all matters pertaining to the Palouse River Basin Adjudication.

All notices, filings and correspondence concerning this matter should be mailed to the United States Department of Justice at the address set forth below:

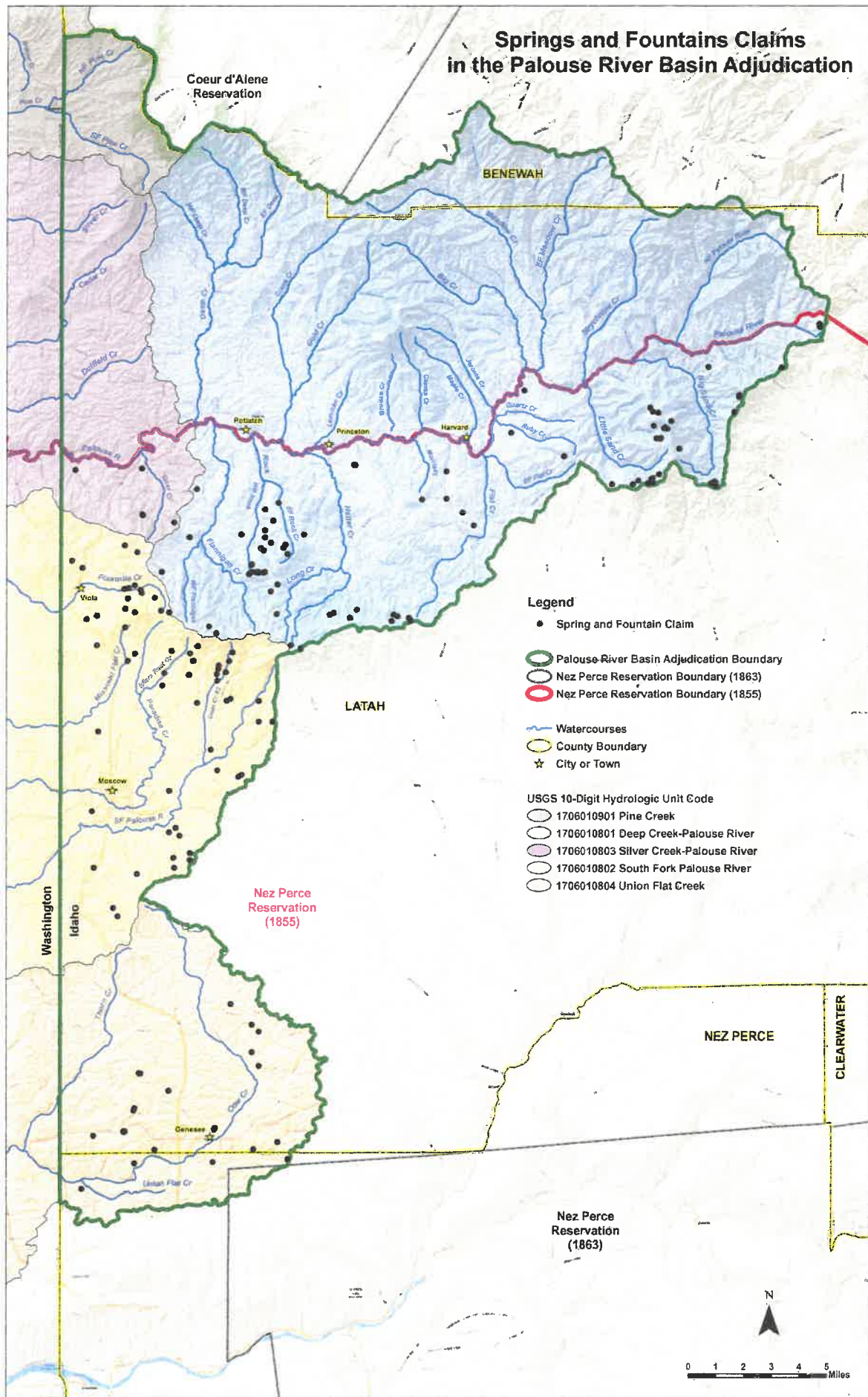


Katherine M. Kane
United States Department of Justice
Indian Resources Division
Natural Resources Section
999 18th Street
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

Springs and Fountains Claims in the Palouse River Basin Adjudication



87-12037

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 PALOUSE RIVER BASIN
WATER SYSTEM

) Case No.: 59576
)
)
)
)
)
)
)

NOTICE OF CLAIM

Federal Reserved Water Right

RECEIVED
DEC 30 2019
DEPARTMENT OF
WATER RESOURCES

1. **Name and address of claimant:**

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and
ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the
REGIONAL DIRECTOR, NORTHWEST REGION

Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

2. **Date of Priority:** Time Immemorial

3. **a. Source of water supply:** Spring (Federal I.D. #1032)

b. which is a tributary to: Missouri Flat or Paradise Creek

4. **Point of Diversion:** This claim is for a spring and/or fountain *in situ* including sufficient groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or fountains.

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1032	40N	5W	17	SESE	Boise	Latah

See Attached Map.

5. **Place of Use:**

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1032	40N	5W	17	SESE	Boise	Latah

See Attached Map.

6. **Purpose of Water Use:**

The purpose of use includes the full range of uses to which the Tribe and its members have always put the springs and fountains, including as a water source for consumptive use, for wildlife and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce Reservation pursuant to the documents referenced in Section 9 and the provisions in Section 10, *infra*.

7. **Period of Use:** January 1 through December 31.

8. **Quantity Reserved (In cfs):** Half the natural flow.

9. **Basis of Claim:**

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

10. **Other Provisions:**

- a. The United States has asserted other claims in the Palouse River Basin Adjudication. Paragraphs 10(a) – (g) express assertions applicable to all claims filed by the Bureau of Indian Affairs in its capacity as trustee for the Nez Perce Tribe in the Palouse River Basin Adjudication. The United States claims waters from groundwater and surface water sources within the Palouse River Basin in the state of Idaho to satisfy the rights reserved to the Nez Perce Tribe by the 1855 Treaty and the 1863 Treaty and to fulfill the permanent homeland purpose of the Nez Perce Reservation. Such present and future purposes include: instream flows for fish habitat; hunting, gathering, and pasturing; spring and fountains flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; and consumptive use claims on two allotments held in trust by the United States.
- b. The Nez Perce Tribe has occupied a territory in what is now central Idaho, southeastern Washington, and northeastern Oregon since time immemorial. *United States v. Webb*, 219 F.3d 1127, 1129 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). The Palouse River Basin is within the Tribe’s traditional lands.
- c. There is a complex history of the United States’ establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing

rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the “exclusive right to fish in all streams running through or bordering” the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the “right of taking fish at all usual and accustomed places in common with the citizens of the Territory” to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.

- d. Article III of the 1855 Treaty further reserves to the Tribe “the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land.”
- e. Article VIII of the Nez Perce Treaty of 1863 includes a unique provision reserving to the Nez Perce Tribe the use of “springs and fountains” within the area ceded under Article I of the 1863 Treaty. For purposes of the priority date of the springs and fountains claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.
- f. Pursuant to the General Allotment Act of 1887, Act of February 8, 1887, 24 Stat. 388, *amended*, Act of February 28, 1891, 26 Stat. 794, there are two allotments (Allotments 182-43 and 182-45) held in trust by the United States located within the boundaries of the Palouse River Basin and the northwestern corner of the Nez Perce Reservation. For purposes of the priority date of the domestic and stock watering claims for these two allotments, the United States claims June 11, 1855 pursuant to the 1855 Treaty.
- g. In order to comply with Idaho Code § 42-1409(1), the United States has designated “places of use,” “points of diversion,” and “purposes of use” in submitting this water rights claim. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe’s future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Reservation. The statute’s terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.

11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled “How you will receive notices in the Palouse River Basin Adjudication.”
- (b) I do do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

For Organizations:

I do solemnly swear and affirm that I am Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.

Signature of Authorized Agent:
Title and Organization:



Northwest Regional Director
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

Notice is hereby given that the United States Department of Justice will represent the United States of America, including the U.S. Department of the Interior, Bureau of Indian Affairs, in all matters pertaining to the Palouse River Basin Adjudication.

All notices, filings and correspondence concerning this matter should be mailed to the United States Department of Justice at the address set forth below:



Katherine M. Kane
United States Department of Justice
Indian Resources Division
Natural Resources Section
999 18th Street
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

87-17038

**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)	Case No.: 59576
ADJUDICATION OF RIGHTS)	
TO THE USE OF WATER FROM)	NOTICE OF CLAIM
THE PALOUSE RIVER BASIN)	
WATER SYSTEM)	Federal Reserved Water Right
)	
)	

RECEIVED
DEC 30 2019
DEPARTMENT OF
WATER RESOURCES

1. Name and address of claimant:

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the REGIONAL DIRECTOR, NORTHWEST REGION

Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

2. Date of Priority: Time Immemorial

3. a. Source of water supply: Spring (Federal I.D. #1033)

b. which is a tributary to: Missouri Flat or Paradise Creek

4. Point of Diversion: This claim is for a spring and/or fountain *in situ* including sufficient groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or fountains.

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1033	40N	5W	17	SESE	Boise	Latah

See Attached Map.

5. Place of Use:

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1033	40N	5W	17	SESE	Boise	Latah

See Attached Map.

6. Purpose of Water Use:

The purpose of use includes the full range of uses to which the Tribe and its members have always put the springs and fountains, including as a water source for consumptive use, for wildlife and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce Reservation pursuant to the documents referenced in Section 9 and the provisions in Section 10, *infra*.

7. Period of Use: January 1 through December 31.

8. Quantity Reserved (In cfs): Half the natural flow.

9. Basis of Claim:

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

10. Other Provisions:

- a. The United States has asserted other claims in the Palouse River Basin Adjudication. Paragraphs 10(a) – (g) express assertions applicable to all claims filed by the Bureau of Indian Affairs in its capacity as trustee for the Nez Perce Tribe in the Palouse River Basin Adjudication. The United States claims waters from groundwater and surface water sources within the Palouse River Basin in the state of Idaho to satisfy the rights reserved to the Nez Perce Tribe by the 1855 Treaty and the 1863 Treaty and to fulfill the permanent homeland purpose of the Nez Perce Reservation. Such present and future purposes include: instream flows for fish habitat; hunting, gathering, and pasturing; spring and fountains flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; and consumptive use claims on two allotments held in trust by the United States.
- b. The Nez Perce Tribe has occupied a territory in what is now central Idaho, southeastern Washington, and northeastern Oregon since time immemorial. *United States v. Webb*, 219 F.3d 1127, 1129 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). The Palouse River Basin is within the Tribe’s traditional lands.
- c. There is a complex history of the United States’ establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing

rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the "exclusive right to fish in all streams running through or bordering" the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the "right of taking fish at all usual and accustomed places in common with the citizens of the Territory" to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.

- d. Article III of the 1855 Treaty further reserves to the Tribe "the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land."
- e. Article VIII of the Nez Perce Treaty of 1863 includes a unique provision reserving to the Nez Perce Tribe the use of "springs and fountains" within the area ceded under Article I of the 1863 Treaty. For purposes of the priority date of the springs and fountains claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.
- f. Pursuant to the General Allotment Act of 1887, Act of February 8, 1887, 24 Stat. 388, *amended*, Act of February 28, 1891, 26 Stat. 794, there are two allotments (Allotments 182-43 and 182-45) held in trust by the United States located within the boundaries of the Palouse River Basin and the northwestern corner of the Nez Perce Reservation. For purposes of the priority date of the domestic and stock watering claims for these two allotments, the United States claims June 11, 1855 pursuant to the 1855 Treaty.
- g. In order to comply with Idaho Code § 42-1409(1), the United States has designated "places of use," "points of diversion," and "purposes of use" in submitting this water rights claim. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe's future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Reservation. The statute's terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.

11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled "How you will receive notices in the Palouse River Basin Adjudication."
- (b) I do do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

For Organizations:

I do solemnly swear and affirm that I am Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.

Signature of Authorized Agent:
Title and Organization:



Northwest Regional Director
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

Notice is hereby given that the United States Department of Justice will represent the United States of America, including the U.S. Department of the Interior, Bureau of Indian Affairs, in all matters pertaining to the Palouse River Basin Adjudication.

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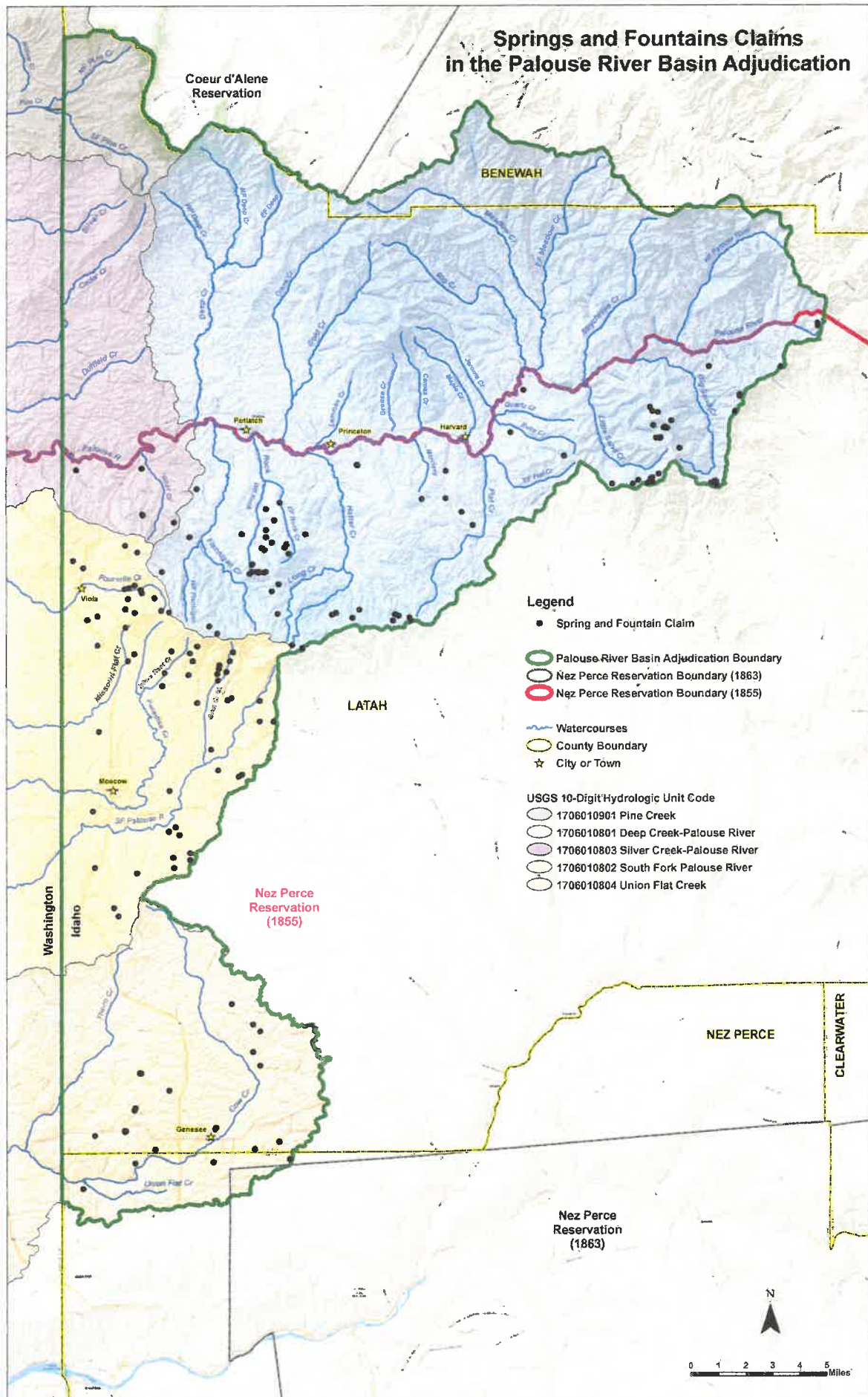


Katherine M. Kane
United States Department of Justice
Indian Resources Division
Natural Resources Section
999 18th Street
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

Springs and Fountains Claims in the Palouse River Basin Adjudication



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

87-12039

IN RE: THE GENERAL
ADJUDICATION OF RIGHTS
TO THE USE OF WATER FROM
THE PALOUSE RIVER BASIN
WATER SYSTEM

)
)
)
)
)
)
)

Case No.: 59576

NOTICE OF CLAIM

Federal Reserved Water Right

RECEIVED
DEC 30 2019
DEPARTMENT OF
WATER RESOURCES

1. **Name and address of claimant:**

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and
ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the
REGIONAL DIRECTOR, NORTHWEST REGION

Department of the Interior

Bureau of Indian Affairs

911 N.E. 11th Ave.

Portland, OR 97232

2. **Date of Priority:** Time Immemorial

3. **a. Source of water supply:** Spring (Federal I.D. #1034)

b. which is a tributary to: Missouri Flat Creek

4. **Point of Diversion:** This claim is for a spring and/or fountain *in situ* including sufficient
groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or
fountains.

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1034	40N	5W	20	NWNE	Boise	Latah

See Attached Map.

5. **Place of Use:**

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1034	40N	5W	20	NWNE	Boise	Latah

See Attached Map.

6. **Purpose of Water Use:**

The purpose of use includes the full range of uses to which the Tribe and its members have always put the springs and fountains, including as a water source for consumptive use, for wildlife and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce Reservation pursuant to the documents referenced in Section 9 and the provisions in Section 10, *infra*.

7. **Period of Use:** January 1 through December 31.

8. **Quantity Reserved (In cfs):** Half the natural flow.

9. **Basis of Claim:**

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

10. **Other Provisions:**

- a. The United States has asserted other claims in the Palouse River Basin Adjudication. Paragraphs 10(a) – (g) express assertions applicable to all claims filed by the Bureau of Indian Affairs in its capacity as trustee for the Nez Perce Tribe in the Palouse River Basin Adjudication. The United States claims waters from groundwater and surface water sources within the Palouse River Basin in the state of Idaho to satisfy the rights reserved to the Nez Perce Tribe by the 1855 Treaty and the 1863 Treaty and to fulfill the permanent homeland purpose of the Nez Perce Reservation. Such present and future purposes include: instream flows for fish habitat; hunting, gathering, and pasturing; spring and fountains flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; and consumptive use claims on two allotments held in trust by the United States.
- b. The Nez Perce Tribe has occupied a territory in what is now central Idaho, southeastern Washington, and northeastern Oregon since time immemorial. *United States v. Webb*, 219 F.3d 1127, 1129 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). The Palouse River Basin is within the Tribe’s traditional lands.
- c. There is a complex history of the United States’ establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing

rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the "exclusive right to fish in all streams running through or bordering" the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the "right of taking fish at all usual and accustomed places in common with the citizens of the Territory" to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.

- d. Article III of the 1855 Treaty further reserves to the Tribe "the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land."
- e. Article VIII of the Nez Perce Treaty of 1863 includes a unique provision reserving to the Nez Perce Tribe the use of "springs and fountains" within the area ceded under Article I of the 1863 Treaty. For purposes of the priority date of the springs and fountains claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.
- f. Pursuant to the General Allotment Act of 1887, Act of February 8, 1887, 24 Stat. 388, *amended*, Act of February 28, 1891, 26 Stat. 794, there are two allotments (Allotments 182-43 and 182-45) held in trust by the United States located within the boundaries of the Palouse River Basin and the northwestern corner of the Nez Perce Reservation. For purposes of the priority date of the domestic and stock watering claims for these two allotments, the United States claims June 11, 1855 pursuant to the 1855 Treaty.
- g. In order to comply with Idaho Code § 42-1409(1), the United States has designated "places of use," "points of diversion," and "purposes of use" in submitting this water rights claim. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe's future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Reservation. The statute's terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.

11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled "How you will receive notices in the Palouse River Basin Adjudication."
- (b) I do do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

For Organizations:

I do solemnly swear and affirm that I am Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.

Signature of Authorized Agent:
Title and Organization:



Northwest Regional Director
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

Notice is hereby given that the United States Department of Justice will represent the United States of America, including the U.S. Department of the Interior, Bureau of Indian Affairs, in all matters pertaining to the Palouse River Basin Adjudication.

All notices, filings and correspondence concerning this matter should be mailed to the United States Department of Justice at the address set forth below:

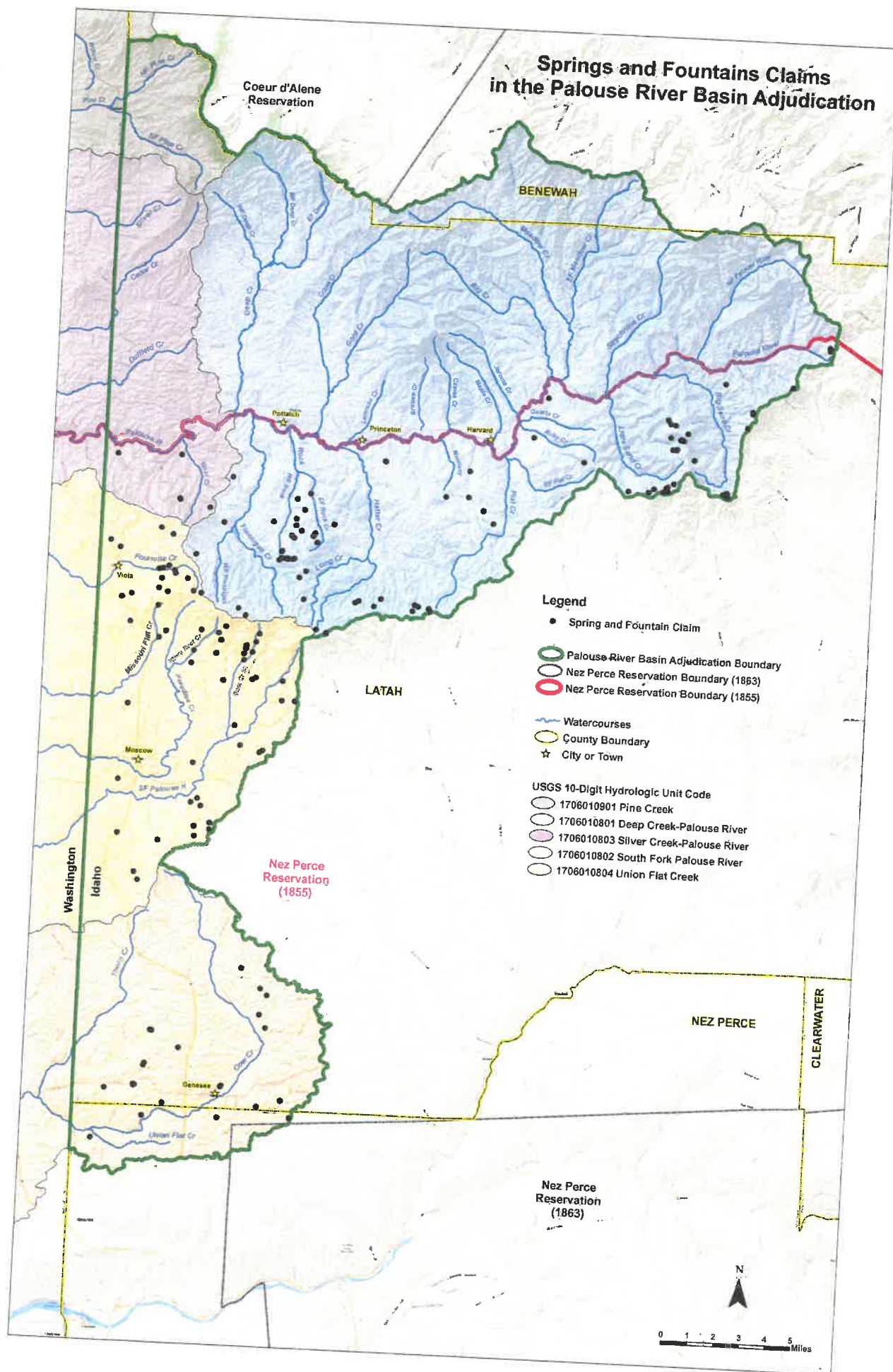
A handwritten signature in blue ink, appearing to read 'K M Kane', is written over a horizontal line.

Katherine M. Kane
United States Department of Justice
Indian Resources Division
Natural Resources Section
999 18th Street
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

Springs and Fountains Claims in the Palouse River Basin Adjudication



87-12040

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 PALOUSE RIVER BASIN
WATER SYSTEM

) Case No.: 59576

) **NOTICE OF CLAIM**

) **Federal Reserved Water Right**

RECEIVED

DEC 30 2019

DEPARTMENT OF
WATER RESOURCES

1. **Name and address of claimant:**

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and
ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the
REGIONAL DIRECTOR, NORTHWEST REGION
Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

2. **Date of Priority:** Time Immemorial

3. **a. Source of water supply:** Spring (Federal I.D. #1035)

b. which is a tributary to: Gnat Creek or SF Palouse River

4. **Point of Diversion:** This claim is for a spring and/or fountain *in situ* including sufficient groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or fountains.

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1035	39N	5W	2	SWNE	Boise	Latah

See Attached Map.

5. **Place of Use:**

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1035	39N	5W	2	SWNE	Boise	Latah

See Attached Map.

6. **Purpose of Water Use:**
The purpose of use includes the full range of uses to which the Tribe and its members have always put the springs and fountains, including as a water source for consumptive use, for wildlife and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce Reservation pursuant to the documents referenced in Section 9 and the provisions in Section 10, *infra*.
7. **Period of Use:** January 1 through December 31.
8. **Quantity Reserved (In cfs):** Half the natural flow.
9. **Basis of Claim:**
The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.
10. **Other Provisions:**
 - a. The United States has asserted other claims in the Palouse River Basin Adjudication. Paragraphs 10(a) – (g) express assertions applicable to all claims filed by the Bureau of Indian Affairs in its capacity as trustee for the Nez Perce Tribe in the Palouse River Basin Adjudication. The United States claims waters from groundwater and surface water sources within the Palouse River Basin in the state of Idaho to satisfy the rights reserved to the Nez Perce Tribe by the 1855 Treaty and the 1863 Treaty and to fulfill the permanent homeland purpose of the Nez Perce Reservation. Such present and future purposes include: instream flows for fish habitat; hunting, gathering, and pasturing; spring and fountains flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; and consumptive use claims on two allotments held in trust by the United States.
 - b. The Nez Perce Tribe has occupied a territory in what is now central Idaho, southeastern Washington, and northeastern Oregon since time immemorial. *United States v. Webb*, 219 F.3d 1127, 1129 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). The Palouse River Basin is within the Tribe’s traditional lands.
 - c. There is a complex history of the United States’ establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing

- rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the "exclusive right to fish in all streams running through or bordering" the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the "right of taking fish at all usual and accustomed places in common with the citizens of the Territory" to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.
- d. Article III of the 1855 Treaty further reserves to the Tribe "the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land."
 - e. Article VIII of the Nez Perce Treaty of 1863 includes a unique provision reserving to the Nez Perce Tribe the use of "springs and fountains" within the area ceded under Article I of the 1863 Treaty. For purposes of the priority date of the springs and fountains claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.
 - f. Pursuant to the General Allotment Act of 1887, Act of February 8, 1887, 24 Stat. 388, *amended*, Act of February 28, 1891, 26 Stat. 794, there are two allotments (Allotments 182-43 and 182-45) held in trust by the United States located within the boundaries of the Palouse River Basin and the northwestern corner of the Nez Perce Reservation. For purposes of the priority date of the domestic and stock watering claims for these two allotments, the United States claims June 11, 1855 pursuant to the 1855 Treaty.
 - g. In order to comply with Idaho Code § 42-1409(1), the United States has designated "places of use," "points of diversion," and "purposes of use" in submitting this water rights claim. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe's future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Reservation. The statute's terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.

11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled "How you will receive notices in the Palouse River Basin Adjudication."
- (b) I do do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

For Organizations:

I do solemnly swear and affirm that I am Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.

Signature of Authorized Agent:
Title and Organization:




Northwest Regional Director
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

Notice is hereby given that the United States Department of Justice will represent the United States of America, including the U.S. Department of the Interior, Bureau of Indian Affairs, in all matters pertaining to the Palouse River Basin Adjudication.

All notices, filings and correspondence concerning this matter should be mailed to the United States Department of Justice at the address set forth below:

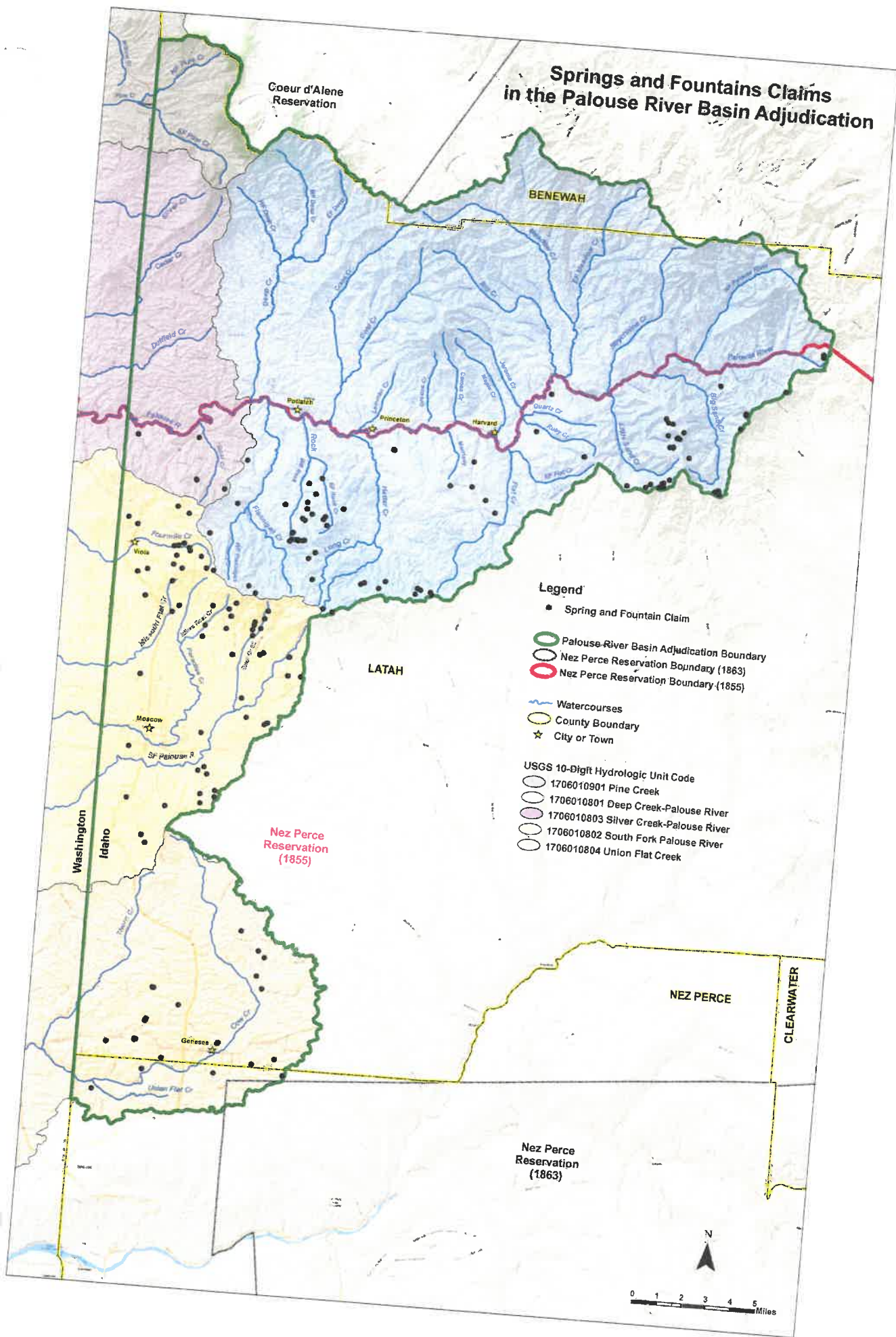


Katherine M. Kane
United States Department of Justice
Indian Resources Division
Natural Resources Section
999 18th Street
Denver, CO 80202

Attorney for the United States of America

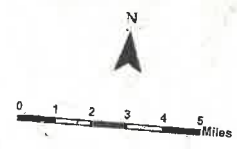
Dated this 26th day of December, 2019.

Springs and Fountains Claims in the Palouse River Basin Adjudication



Legend

- Spring and Fountain Claim
 - Palouse River Basin Adjudication Boundary
 - Nez Perce Reservation Boundary (1863)
 - Nez Perce Reservation Boundary (1855)
 - Watercourses
 - County Boundary
 - ★ City or Town
- USGS 10-Digit Hydrologic Unit Code
- 1706010901 Pine Creek
 - 1706010801 Deep Creek-Palouse River
 - 1706010803 Silver Creek-Palouse River
 - 1706010802 South Fork Palouse River
 - 1706010804 Union Flat Creek



87-12041

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 PALOUSE RIVER BASIN
WATER SYSTEM

) Case No.: 59576
)
) **NOTICE OF CLAIM**
)
) **Federal Reserved Water Right**
)
)

RECEIVED
DEC 30 2019
DEPARTMENT OF
WATER RESOURCES

1. **Name and address of claimant:**

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and
ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the
REGIONAL DIRECTOR, NORTHWEST REGION
Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

2. **Date of Priority:** Time Immemorial

3. **a. Source of water supply:** Springs, Unnamed Stream (Federal I.D. #1036)

b. which is a tributary to: Gnat Creek

4. **Point of Diversion:** This claim is for a spring and/or fountain *in situ* including sufficient groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or fountains.

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1036-1	40N	5W	23	SESE	Boise	Latah
1036-2	40N	5W	23	SESE	Boise	Latah

See Attached Map.

5. **Place of Use:**

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1036-1	40N	5W	23	SESE	Boise	Latah
1036-2	40N	5W	23	SESE	Boise	Latah

See Attached Map.

6. **Purpose of Water Use:**

The purpose of use includes the full range of uses to which the Tribe and its members have always put the springs and fountains, including as a water source for consumptive use, for wildlife and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce Reservation pursuant to the documents referenced in Section 9 and the provisions in Section 10, *infra*.

7. **Period of Use:** January 1 through December 31.

8. **Quantity Reserved (In cfs):** Half the natural flow.

9. **Basis of Claim:**

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

10. **Other Provisions:**

- a. The United States has asserted other claims in the Palouse River Basin Adjudication. Paragraphs 10(a) – (g) express assertions applicable to all claims filed by the Bureau of Indian Affairs in its capacity as trustee for the Nez Perce Tribe in the Palouse River Basin Adjudication. The United States claims waters from groundwater and surface water sources within the Palouse River Basin in the state of Idaho to satisfy the rights reserved to the Nez Perce Tribe by the 1855 Treaty and the 1863 Treaty and to fulfill the permanent homeland purpose of the Nez Perce Reservation. Such present and future purposes include: instream flows for fish habitat; hunting, gathering, and pasturing; spring and fountains flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; and consumptive use claims on two allotments held in trust by the United States.
- b. The Nez Perce Tribe has occupied a territory in what is now central Idaho, southeastern Washington, and northeastern Oregon since time immemorial. *United States v. Webb*, 219 F.3d 1127, 1129 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). The Palouse River Basin is within the Tribe’s traditional lands.
- c. There is a complex history of the United States’ establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing

rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the "exclusive right to fish in all streams running through or bordering" the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the "right of taking fish at all usual and accustomed places in common with the citizens of the Territory" to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.

- d. Article III of the 1855 Treaty further reserves to the Tribe "the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land."
- e. Article VIII of the Nez Perce Treaty of 1863 includes a unique provision reserving to the Nez Perce Tribe the use of "springs and fountains" within the area ceded under Article I of the 1863 Treaty. For purposes of the priority date of the springs and fountains claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.
- f. Pursuant to the General Allotment Act of 1887, Act of February 8, 1887, 24 Stat. 388, *amended*, Act of February 28, 1891, 26 Stat. 794, there are two allotments (Allotments 182-43 and 182-45) held in trust by the United States located within the boundaries of the Palouse River Basin and the northwestern corner of the Nez Perce Reservation. For purposes of the priority date of the domestic and stock watering claims for these two allotments, the United States claims June 11, 1855 pursuant to the 1855 Treaty.
- g. In order to comply with Idaho Code § 42-1409(1), the United States has designated "places of use," "points of diversion," and "purposes of use" in submitting this water rights claim. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe's future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Reservation. The statute's terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.

11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled "How you will receive notices in the Palouse River Basin Adjudication."
- (b) I do do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

For Organizations:

I do solemnly swear and affirm that I am Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.



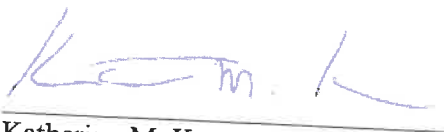
Signature of Authorized Agent:
Title and Organization:

Northwest Regional Director
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

Notice is hereby given that the United States Department of Justice will represent the United States of America, including the U.S. Department of the Interior, Bureau of Indian Affairs, in all matters pertaining to the Palouse River Basin Adjudication.

All notices, filings and correspondence concerning this matter should be mailed to the United States Department of Justice at the address set forth below:



Katherine M. Kane
United States Department of Justice
Indian Resources Division
Natural Resources Section
999 18th Street
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

**Springs and Fountains Claims
in the Palouse River Basin Adjudication**

Coeur d'Alene
Reservation

BENEWAH

Potlatch

Princeton

Harvard

Viola

Moscow

Genesee

LATAH

Washington

Idaho

Nez Perce
Reservation
(1855)

NEZ PERCE

CLEARWATER

Nez Perce
Reservation
(1863)

Legend

- Spring and Fountain Claim
- Palouse River Basin Adjudication Boundary
- Nez Perce Reservation Boundary (1863)
- Nez Perce Reservation Boundary (1855)
- Watercourses
- County Boundary
- ☆ City or Town

USGS 10-Digit Hydrologic Unit Code

- 1706010901 Pine Creek
- 1706010801 Deep Creek-Palouse River
- 1706010803 Silver Creek-Palouse River
- 1706010802 South Fork Palouse River
- 1706010804 Union Flat Creek

0 1 2 3 4 5 Miles

Nez Perce
Reservation
(1863)

1706010804 Union Flat Creek



87-12042

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 PALOUSE RIVER BASIN
WATER SYSTEM

Case No.: 59576

NOTICE OF CLAIM

Federal Reserved Water Right

RECEIVED
DEC 30 2019
DEPARTMENT OF
WATER RESOURCES

1. Name and address of claimant:

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and
ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the
REGIONAL DIRECTOR, NORTHWEST REGION
Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

2. Date of Priority: Time Immemorial

3. a. Source of water supply: Spring (Federal I.D. #1037)

b. which is a tributary to: Flat Creek

4. Point of Diversion: This claim is for a spring and/or fountain *in situ* including sufficient groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or fountains.

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1037	41N	3W	28	SWNW, NWNE	Boise	Latah

See Attached Map.

5. Place of Use:

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1037	41N	3W	28	SWNW, NWNE	Boise	Latah

See Attached Map.

6. **Purpose of Water Use:**
The purpose of use includes the full range of uses to which the Tribe and its members have always put the springs and fountains, including as a water source for consumptive use, for wildlife and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce Reservation pursuant to the documents referenced in Section 9 and the provisions in Section 10, *infra*.
7. **Period of Use:** January 1 through December 31.
8. **Quantity Reserved (In cfs):** Half the natural flow.
9. **Basis of Claim:**
The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.
10. **Other Provisions:**
 - a. The United States has asserted other claims in the Palouse River Basin Adjudication. Paragraphs 10(a) – (g) express assertions applicable to all claims filed by the Bureau of Indian Affairs in its capacity as trustee for the Nez Perce Tribe in the Palouse River Basin Adjudication. The United States claims waters from groundwater and surface water sources within the Palouse River Basin in the state of Idaho to satisfy the rights reserved to the Nez Perce Tribe by the 1855 Treaty and the 1863 Treaty and to fulfill the permanent homeland purpose of the Nez Perce Reservation. Such present and future purposes include: instream flows for fish habitat; hunting, gathering, and pasturing; spring and fountains flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; and consumptive use claims on two allotments held in trust by the United States.
 - b. The Nez Perce Tribe has occupied a territory in what is now central Idaho, southeastern Washington, and northeastern Oregon since time immemorial. *United States v. Webb*, 219 F.3d 1127, 1129 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). The Palouse River Basin is within the Tribe’s traditional lands.
 - c. There is a complex history of the United States’ establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing

rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the "exclusive right to fish in all streams running through or bordering" the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the "right of taking fish at all usual and accustomed places in common with the citizens of the Territory" to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.

- d. Article III of the 1855 Treaty further reserves to the Tribe "the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land."
- e. Article VIII of the Nez Perce Treaty of 1863 includes a unique provision reserving to the Nez Perce Tribe the use of "springs and fountains" within the area ceded under Article I of the 1863 Treaty. For purposes of the priority date of the springs and fountains claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.
- f. Pursuant to the General Allotment Act of 1887, Act of February 8, 1887, 24 Stat. 388, *amended*, Act of February 28, 1891, 26 Stat. 794, there are two allotments (Allotments 182-43 and 182-45) held in trust by the United States located within the boundaries of the Palouse River Basin and the northwestern corner of the Nez Perce Reservation. For purposes of the priority date of the domestic and stock watering claims for these two allotments, the United States claims June 11, 1855 pursuant to the 1855 Treaty.
- g. In order to comply with Idaho Code § 42-1409(1), the United States has designated "places of use," "points of diversion," and "purposes of use" in submitting this water rights claim. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe's future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Reservation. The statute's terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.

11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled "How you will receive notices in the Palouse River Basin Adjudication."
- (b) I do ___ do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

For Organizations:

I do solemnly swear and affirm that I am Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.

Signature of Authorized Agent:
Title and Organization:

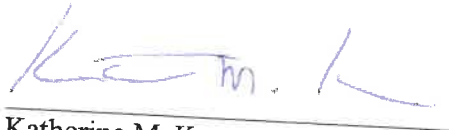


Northwest Regional Director
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

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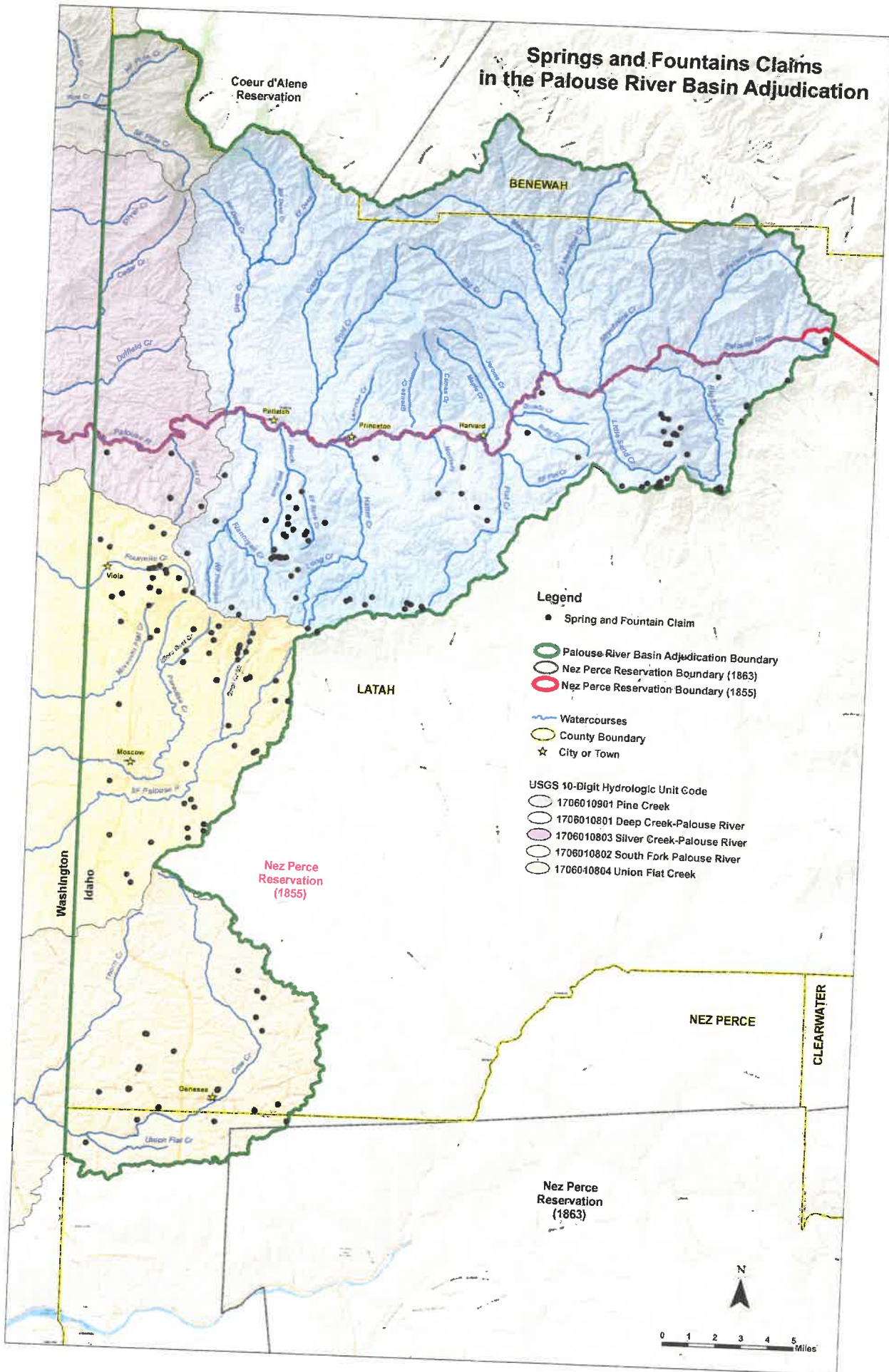


Katherine M. Kane
United States Department of Justice
Indian Resources Division
Natural Resources Section
999 18th Street
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

Springs and Fountains Claims in the Palouse River Basin Adjudication



87-12043

**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 PALOUSE RIVER BASIN
WATER SYSTEM

) Case No.: 59576
)
) **NOTICE OF CLAIM**
)
) **Federal Reserved Water Right**
)
)

RECEIVED
DEC 30 2019
DEPARTMENT OF
WATER RESOURCES

1. Name and address of claimant:

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and
ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the
REGIONAL DIRECTOR, NORTHWEST REGION
Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

2. Date of Priority: Time Immemorial

3. a. Source of water supply: Spring (Federal I.D. #1038)

b. which is a tributary to: Fourmile Creek

4. Point of Diversion: This claim is for a spring and/or fountain *in situ* including sufficient groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or fountains.

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1038	40N	5W	5	SWSE	Boise	Latah

See Attached Map.

5. Place of Use:

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1038	40N	5W	5	SWSE	Boise	Latah

See Attached Map.

6. **Purpose of Water Use:**

The purpose of use includes the full range of uses to which the Tribe and its members have always put the springs and fountains, including as a water source for consumptive use, for wildlife and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce Reservation pursuant to the documents referenced in Section 9 and the provisions in Section 10, *infra*.

7. **Period of Use:** January 1 through December 31.

8. **Quantity Reserved (In cfs):** Half the natural flow.

9. **Basis of Claim:**

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

10. **Other Provisions:**

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- c. There is a complex history of the United States’ establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing

rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the “exclusive right to fish in all streams running through or bordering” the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the “right of taking fish at all usual and accustomed places in common with the citizens of the Territory” to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.

- d. Article III of the 1855 Treaty further reserves to the Tribe “the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land.”
- e. Article VIII of the Nez Perce Treaty of 1863 includes a unique provision reserving to the Nez Perce Tribe the use of “springs and fountains” within the area ceded under Article I of the 1863 Treaty. For purposes of the priority date of the springs and fountains claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.
- f. Pursuant to the General Allotment Act of 1887, Act of February 8, 1887, 24 Stat. 388, *amended*, Act of February 28, 1891, 26 Stat. 794, there are two allotments (Allotments 182-43 and 182-45) held in trust by the United States located within the boundaries of the Palouse River Basin and the northwestern corner of the Nez Perce Reservation. For purposes of the priority date of the domestic and stock watering claims for these two allotments, the United States claims June 11, 1855 pursuant to the 1855 Treaty.
- g. In order to comply with Idaho Code § 42-1409(1), the United States has designated “places of use,” “points of diversion,” and “purposes of use” in submitting this water rights claim. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe’s future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Reservation. The statute’s terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.

11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled “How you will receive notices in the Palouse River Basin Adjudication.”
- (b) I do ___ do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

For Organizations:

I do solemnly swear and affirm that I am Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.



Signature of Authorized Agent:
Title and Organization:

Northwest Regional Director
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

Notice is hereby given that the United States Department of Justice will represent the United States of America, including the U.S. Department of the Interior, Bureau of Indian Affairs, in all matters pertaining to the Palouse River Basin Adjudication.

All notices, filings and correspondence concerning this matter should be mailed to the United States Department of Justice at the address set forth below:

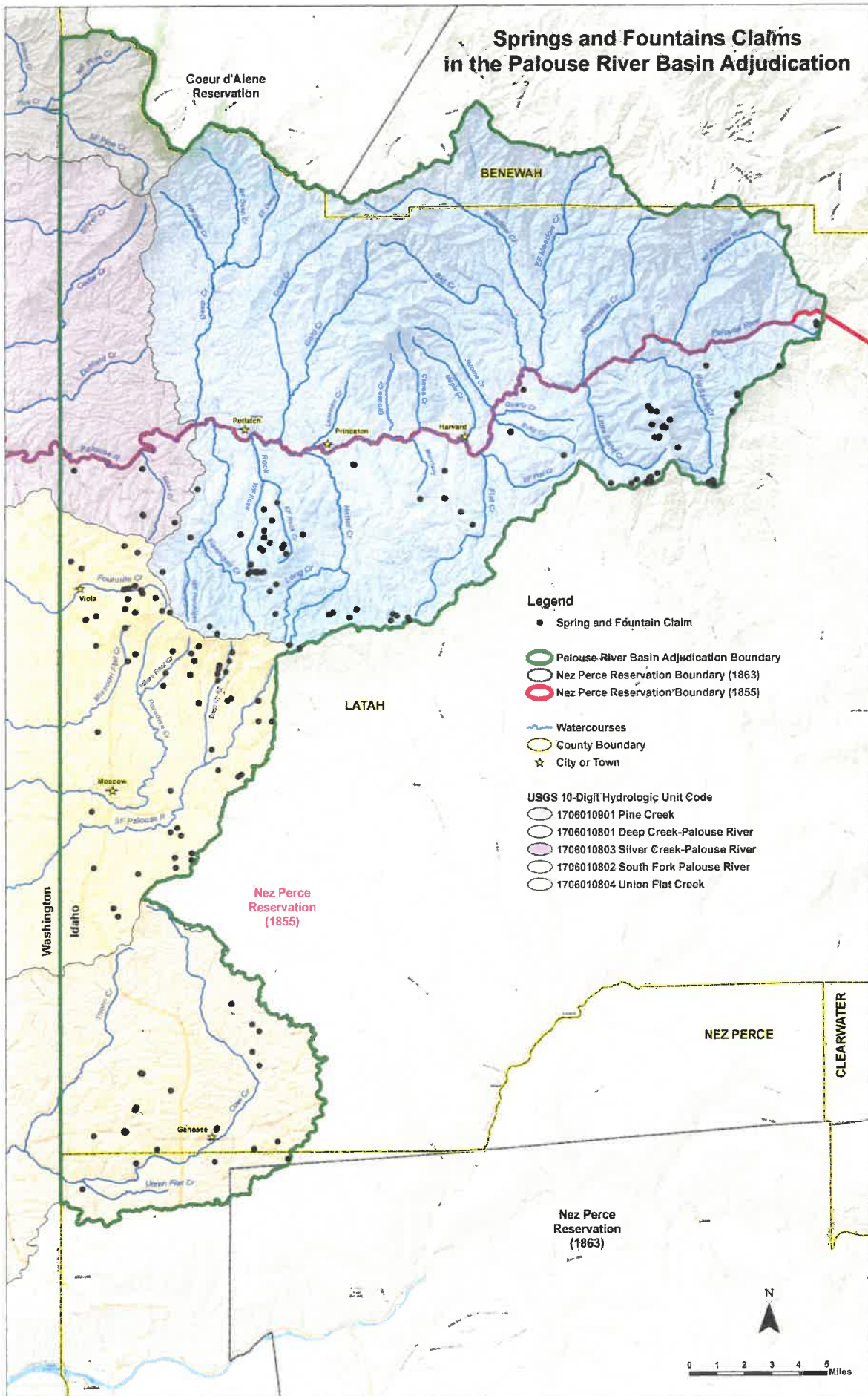


Katherine M. Kane
United States Department of Justice
Indian Resources Division
Natural Resources Section
999 18th Street
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

Springs and Fountains Claims in the Palouse River Basin Adjudication



87-12044

**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 PALOUSE RIVER BASIN
WATER SYSTEM

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Case No.: 59576

NOTICE OF CLAIM**Federal Reserved Water Right**

RECEIVED
DEC 30 2019
DEPARTMENT OF
WATER RESOURCES

1. Name and address of claimant:

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and
ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the
REGIONAL DIRECTOR, NORTHWEST REGION
Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

2. Date of Priority: Time Immemorial**3. a. Source of water supply:** Spring (Federal I.D. #1039)**b. which is a tributary to:** Fourmile Creek**4. Point of Diversion:** This claim is for a spring and/or fountain *in situ* including sufficient groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or fountains.

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1039	40N	5W	8	SENE	Boise	Latah

See Attached Map.

5. Place of Use:

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1039	40N	5W	8	SENE	Boise	Latah

See Attached Map.

6. **Purpose of Water Use:**

The purpose of use includes the full range of uses to which the Tribe and its members have always put the springs and fountains, including as a water source for consumptive use, for wildlife and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce Reservation pursuant to the documents referenced in Section 9 and the provisions in Section 10, *infra*.

7. **Period of Use:** January 1 through December 31.

8. **Quantity Reserved (In cfs):** Half the natural flow.

9. **Basis of Claim:**

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

10. **Other Provisions:**

- a. The United States has asserted other claims in the Palouse River Basin Adjudication. Paragraphs 10(a) – (g) express assertions applicable to all claims filed by the Bureau of Indian Affairs in its capacity as trustee for the Nez Perce Tribe in the Palouse River Basin Adjudication. The United States claims waters from groundwater and surface water sources within the Palouse River Basin in the state of Idaho to satisfy the rights reserved to the Nez Perce Tribe by the 1855 Treaty and the 1863 Treaty and to fulfill the permanent homeland purpose of the Nez Perce Reservation. Such present and future purposes include: instream flows for fish habitat; hunting, gathering, and pasturing; spring and fountains flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; and consumptive use claims on two allotments held in trust by the United States.
- b. The Nez Perce Tribe has occupied a territory in what is now central Idaho, southeastern Washington, and northeastern Oregon since time immemorial. *United States v. Webb*, 219 F.3d 1127, 1129 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). The Palouse River Basin is within the Tribe’s traditional lands.
- c. There is a complex history of the United States’ establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing

rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the “exclusive right to fish in all streams running through or bordering” the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the “right of taking fish at all usual and accustomed places in common with the citizens of the Territory” to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.

- d. Article III of the 1855 Treaty further reserves to the Tribe “the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land.”
- e. Article VIII of the Nez Perce Treaty of 1863 includes a unique provision reserving to the Nez Perce Tribe the use of “springs and fountains” within the area ceded under Article I of the 1863 Treaty. For purposes of the priority date of the springs and fountains claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.
- f. Pursuant to the General Allotment Act of 1887, Act of February 8, 1887, 24 Stat. 388, *amended*, Act of February 28, 1891, 26 Stat. 794, there are two allotments (Allotments 182-43 and 182-45) held in trust by the United States located within the boundaries of the Palouse River Basin and the northwestern corner of the Nez Perce Reservation. For purposes of the priority date of the domestic and stock watering claims for these two allotments, the United States claims June 11, 1855 pursuant to the 1855 Treaty.
- g. In order to comply with Idaho Code § 42-1409(1), the United States has designated “places of use,” “points of diversion,” and “purposes of use” in submitting this water rights claim. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe’s future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Reservation. The statute’s terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.

11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled “How you will receive notices in the Palouse River Basin Adjudication.”
- (b) I do ___ do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

For Organizations:

I do solemnly swear and affirm that I am Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.



Signature of Authorized Agent:
Title and Organization:

Northwest Regional Director
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

Notice is hereby given that the United States Department of Justice will represent the United States of America, including the U.S. Department of the Interior, Bureau of Indian Affairs, in all matters pertaining to the Palouse River Basin Adjudication.

All notices, filings and correspondence concerning this matter should be mailed to the United States Department of Justice at the address set forth below:

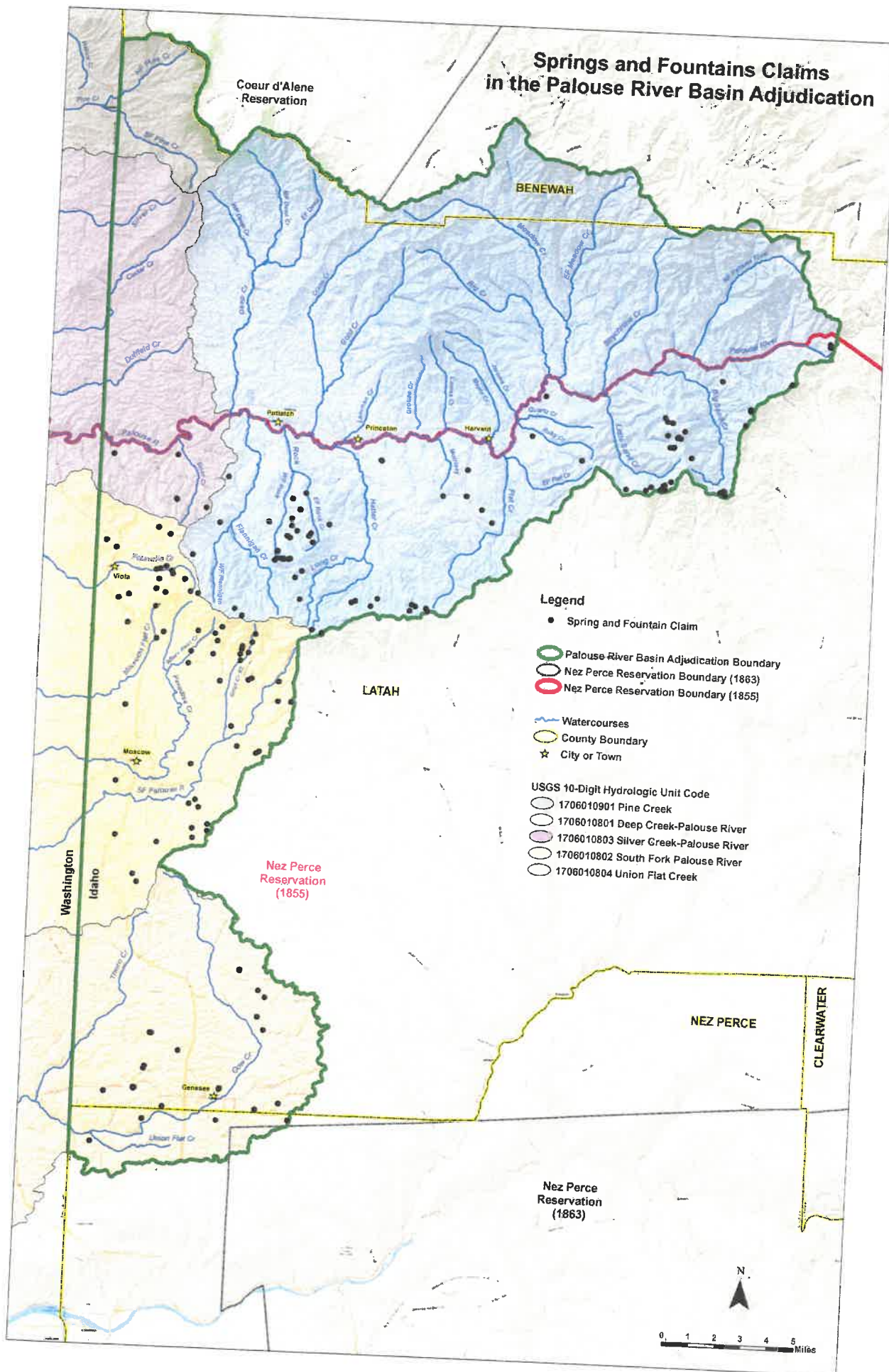
A handwritten signature in blue ink, appearing to read "K.M. Kane", is written over a horizontal line.

Katherine M. Kane
United States Department of Justice
Indian Resources Division
Natural Resources Section
999 18th Street
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

Springs and Fountains Claims in the Palouse River Basin Adjudication



87-17045

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 PALOUSE RIVER BASIN
WATER SYSTEM

Case No.: 59576

NOTICE OF CLAIM

Federal Reserved Water Right

RECEIVED
DEC 30 2019
DEPARTMENT OF
WATER RESOURCES

1. **Name and address of claimant:**

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and
ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the
REGIONAL DIRECTOR, NORTHWEST REGION
Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

2. **Date of Priority:** Time Immemorial

3. **a. Source of water supply:** Spring (Federal I.D. #1040)

b. which is a tributary to: Cow Creek

4. **Point of Diversion:** This claim is for a spring and/or fountain *in situ* including sufficient groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or fountains.

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1040	38N	4W	31	SWNW	Boise	Latah

See Attached Map.

5. **Place of Use:**

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1040	38N	4W	31	SWNW	Boise	Latah

See Attached Map.

6. **Purpose of Water Use:**

The purpose of use includes the full range of uses to which the Tribe and its members have always put the springs and fountains, including as a water source for consumptive use, for wildlife and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce Reservation pursuant to the documents referenced in Section 9 and the provisions in Section 10, *infra*.

7. **Period of Use:** January 1 through December 31.

8. **Quantity Reserved (In cfs):** Half the natural flow.

9. **Basis of Claim:**

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

10. **Other Provisions:**

- a. The United States has asserted other claims in the Palouse River Basin Adjudication. Paragraphs 10(a) – (g) express assertions applicable to all claims filed by the Bureau of Indian Affairs in its capacity as trustee for the Nez Perce Tribe in the Palouse River Basin Adjudication. The United States claims waters from groundwater and surface water sources within the Palouse River Basin in the state of Idaho to satisfy the rights reserved to the Nez Perce Tribe by the 1855 Treaty and the 1863 Treaty and to fulfill the permanent homeland purpose of the Nez Perce Reservation. Such present and future purposes include: instream flows for fish habitat; hunting, gathering, and pasturing; spring and fountains flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; and consumptive use claims on two allotments held in trust by the United States.
- b. The Nez Perce Tribe has occupied a territory in what is now central Idaho, southeastern Washington, and northeastern Oregon since time immemorial. *United States v. Webb*, 219 F.3d 1127, 1129 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). The Palouse River Basin is within the Tribe’s traditional lands.
- c. There is a complex history of the United States’ establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing

rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the "exclusive right to fish in all streams running through or bordering" the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the "right of taking fish at all usual and accustomed places in common with the citizens of the Territory" to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.

- d. Article III of the 1855 Treaty further reserves to the Tribe "the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land."
- e. Article VIII of the Nez Perce Treaty of 1863 includes a unique provision reserving to the Nez Perce Tribe the use of "springs and fountains" within the area ceded under Article I of the 1863 Treaty. For purposes of the priority date of the springs and fountains claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.
- f. Pursuant to the General Allotment Act of 1887, Act of February 8, 1887, 24 Stat. 388, *amended*, Act of February 28, 1891, 26 Stat. 794, there are two allotments (Allotments 182-43 and 182-45) held in trust by the United States located within the boundaries of the Palouse River Basin and the northwestern corner of the Nez Perce Reservation. For purposes of the priority date of the domestic and stock watering claims for these two allotments, the United States claims June 11, 1855 pursuant to the 1855 Treaty.
- g. In order to comply with Idaho Code § 42-1409(1), the United States has designated "places of use," "points of diversion," and "purposes of use" in submitting this water rights claim. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe's future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Reservation. The statute's terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.

11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled "How you will receive notices in the Palouse River Basin Adjudication."
- (b) I do ___ do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

For Organizations:

I do solemnly swear and affirm that I am Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.

Signature of Authorized Agent:
Title and Organization:



Northwest Regional Director
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

Notice is hereby given that the United States Department of Justice will represent the United States of America, including the U.S. Department of the Interior, Bureau of Indian Affairs, in all matters pertaining to the Palouse River Basin Adjudication.

All notices, filings and correspondence concerning this matter should be mailed to the United States Department of Justice at the address set forth below:

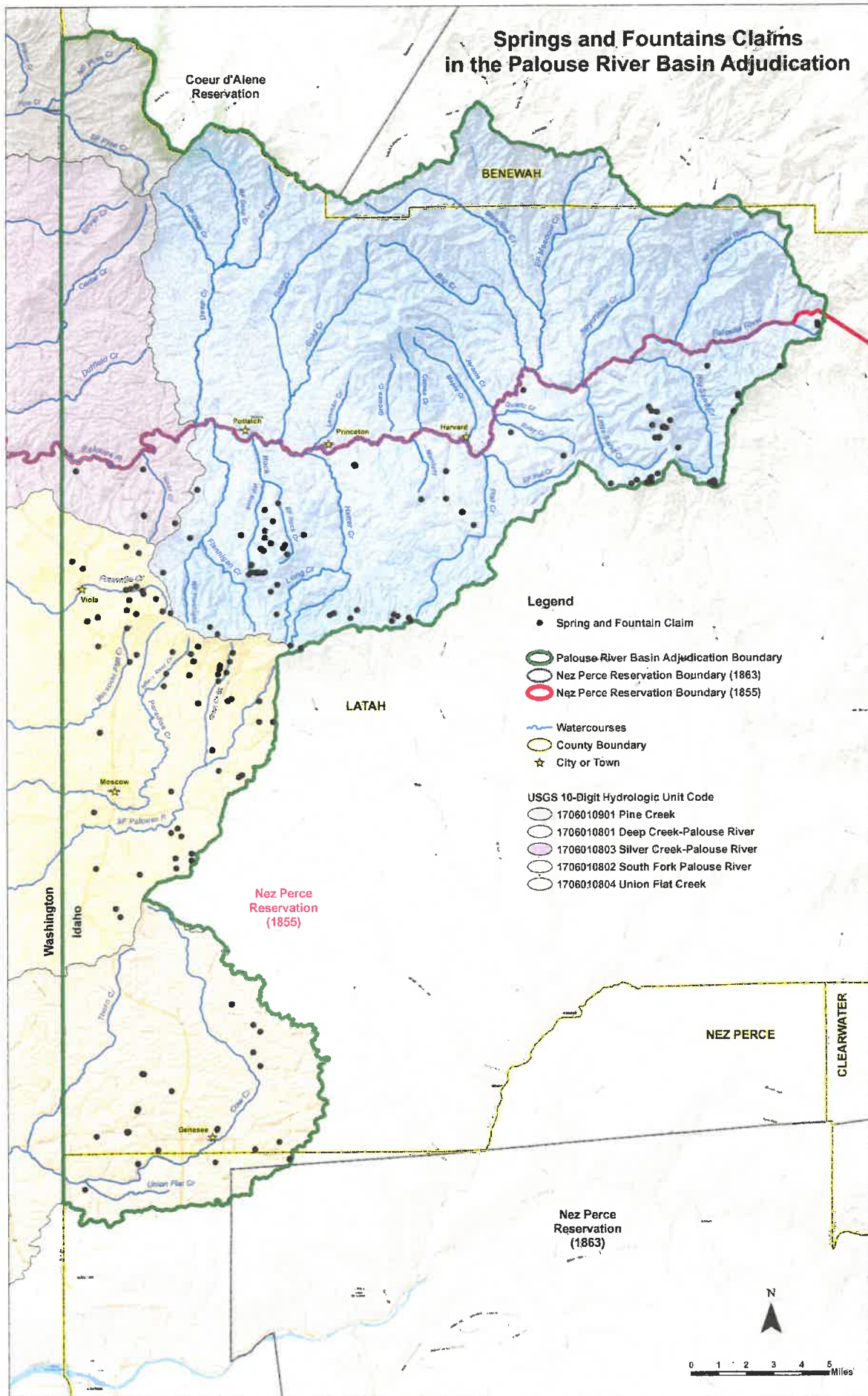


Katherine M. Kane
United States Department of Justice
Indian Resources Division
Natural Resources Section
999 18th Street
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

Springs and Fountains Claims in the Palouse River Basin Adjudication



87-12046

**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)	Case No.: 59576
ADJUDICATION OF RIGHTS)	
TO THE USE OF WATER FROM)	NOTICE OF CLAIM
THE PALOUSE RIVER BASIN)	
WATER SYSTEM)	Federal Reserved Water Right
)	
)	

REC
DEC 30 2019
DEPARTMENT OF
WATER RESOURCES

1. Name and address of claimant:

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the REGIONAL DIRECTOR, NORTHWEST REGION

Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

2. Date of Priority: Time Immemorial

3. a. Source of water supply: Spring (Federal I.D. #1041)

b. which is a tributary to: Cow Creek

4. Point of Diversion: This claim is for a spring and/or fountain *in situ* including sufficient groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or fountains.

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1041	38N	4W	30	NESW	Boise	Latah

See Attached Map.

5. Place of Use:

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1041	38N	4W	30	NESW	Boise	Latah

See Attached Map.

6. Purpose of Water Use:

The purpose of use includes the full range of uses to which the Tribe and its members have always put the springs and fountains, including as a water source for consumptive use, for wildlife and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce Reservation pursuant to the documents referenced in Section 9 and the provisions in Section 10, *infra*.

7. Period of Use: January 1 through December 31.

8. Quantity Reserved (In cfs): Half the natural flow.

9. Basis of Claim:

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

10. Other Provisions:

- a. The United States has asserted other claims in the Palouse River Basin Adjudication. Paragraphs 10(a) – (g) express assertions applicable to all claims filed by the Bureau of Indian Affairs in its capacity as trustee for the Nez Perce Tribe in the Palouse River Basin Adjudication. The United States claims waters from groundwater and surface water sources within the Palouse River Basin in the state of Idaho to satisfy the rights reserved to the Nez Perce Tribe by the 1855 Treaty and the 1863 Treaty and to fulfill the permanent homeland purpose of the Nez Perce Reservation. Such present and future purposes include: instream flows for fish habitat; hunting, gathering, and pasturing; spring and fountains flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; and consumptive use claims on two allotments held in trust by the United States.
- b. The Nez Perce Tribe has occupied a territory in what is now central Idaho, southeastern Washington, and northeastern Oregon since time immemorial. *United States v. Webb*, 219 F.3d 1127, 1129 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). The Palouse River Basin is within the Tribe’s traditional lands.
- c. There is a complex history of the United States’ establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing

rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the “exclusive right to fish in all streams running through or bordering” the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the “right of taking fish at all usual and accustomed places in common with the citizens of the Territory” to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.

- d. Article III of the 1855 Treaty further reserves to the Tribe “the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land.”
- e. Article VIII of the Nez Perce Treaty of 1863 includes a unique provision reserving to the Nez Perce Tribe the use of “springs and fountains” within the area ceded under Article I of the 1863 Treaty. For purposes of the priority date of the springs and fountains claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.
- f. Pursuant to the General Allotment Act of 1887, Act of February 8, 1887, 24 Stat. 388, *amended*, Act of February 28, 1891, 26 Stat. 794, there are two allotments (Allotments 182-43 and 182-45) held in trust by the United States located within the boundaries of the Palouse River Basin and the northwestern corner of the Nez Perce Reservation. For purposes of the priority date of the domestic and stock watering claims for these two allotments, the United States claims June 11, 1855 pursuant to the 1855 Treaty.
- g. In order to comply with Idaho Code § 42-1409(1), the United States has designated “places of use,” “points of diversion,” and “purposes of use” in submitting this water rights claim. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe’s future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Reservation. The statute’s terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.

11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled “How you will receive notices in the Palouse River Basin Adjudication.”
- (b) I do ___ do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

For Organizations:

I do solemnly swear and affirm that I am Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.



Signature of Authorized Agent:
Title and Organization:

Northwest Regional Director
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

Notice is hereby given that the United States Department of Justice will represent the United States of America, including the U.S. Department of the Interior, Bureau of Indian Affairs, in all matters pertaining to the Palouse River Basin Adjudication.

All notices, filings and correspondence concerning this matter should be mailed to the United States Department of Justice at the address set forth below:

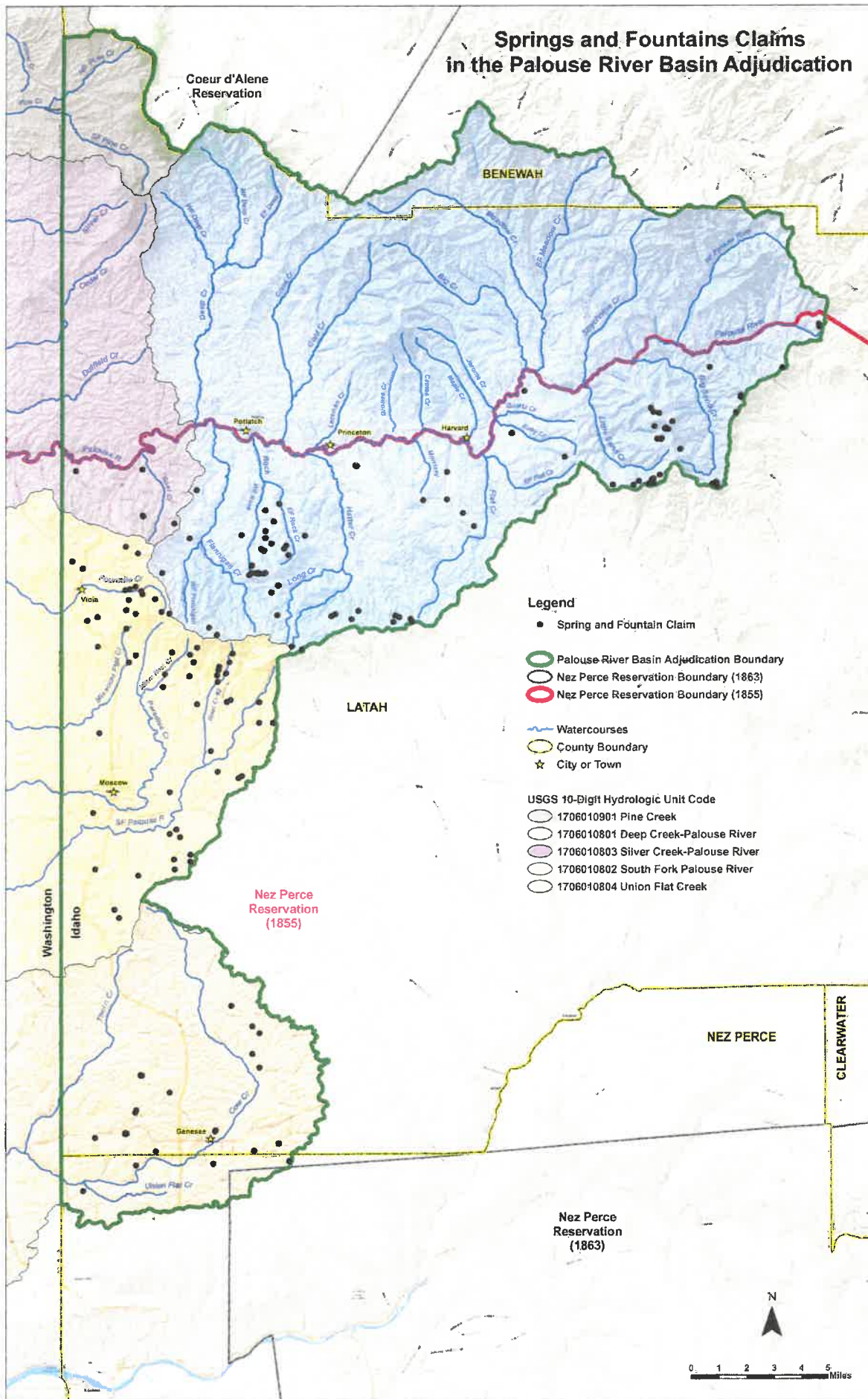


Katherine M. Kane
United States Department of Justice
Indian Resources Division
Natural Resources Section
999 18th Street
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

Springs and Fountains Claims in the Palouse River Basin Adjudication



87-12047

**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 PALOUSE RIVER BASIN
WATER SYSTEM

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)
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)
)

Case No.: 59576

NOTICE OF CLAIM

Federal Reserved Water Right

RECEIVED
DEC 30 2019
DEPARTMENT OF
WATER RESOURCES

1. Name and address of claimant:

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and
ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the
REGIONAL DIRECTOR, NORTHWEST REGION
Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

2. Date of Priority: Time Immemorial

3. a. Source of water supply: Spring (Federal I.D. #1042)

b. which is a tributary to: Cow Creek

4. Point of Diversion: This claim is for a spring and/or fountain *in situ* including sufficient groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or fountains.

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1042	38N	4W	31	SESW	Boise	Latah

See Attached Map.

5. Place of Use:

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1042	38N	4W	31	SESW	Boise	Latah

See Attached Map.

6. **Purpose of Water Use:**

The purpose of use includes the full range of uses to which the Tribe and its members have always put the springs and fountains, including as a water source for consumptive use, for wildlife and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce Reservation pursuant to the documents referenced in Section 9 and the provisions in Section 10, *infra*.

7. **Period of Use:** January 1 through December 31.

8. **Quantity Reserved (In cfs):** Half the natural flow.

9. **Basis of Claim:**

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

10. **Other Provisions:**

- a. The United States has asserted other claims in the Palouse River Basin Adjudication. Paragraphs 10(a) – (g) express assertions applicable to all claims filed by the Bureau of Indian Affairs in its capacity as trustee for the Nez Perce Tribe in the Palouse River Basin Adjudication. The United States claims waters from groundwater and surface water sources within the Palouse River Basin in the state of Idaho to satisfy the rights reserved to the Nez Perce Tribe by the 1855 Treaty and the 1863 Treaty and to fulfill the permanent homeland purpose of the Nez Perce Reservation. Such present and future purposes include: instream flows for fish habitat; hunting, gathering, and pasturing; spring and fountains flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; and consumptive use claims on two allotments held in trust by the United States.
- b. The Nez Perce Tribe has occupied a territory in what is now central Idaho, southeastern Washington, and northeastern Oregon since time immemorial. *United States v. Webb*, 219 F.3d 1127, 1129 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). The Palouse River Basin is within the Tribe’s traditional lands.
- c. There is a complex history of the United States’ establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing

rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the “exclusive right to fish in all streams running through or bordering” the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the “right of taking fish at all usual and accustomed places in common with the citizens of the Territory” to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.

- d. Article III of the 1855 Treaty further reserves to the Tribe “the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land.”
- e. Article VIII of the Nez Perce Treaty of 1863 includes a unique provision reserving to the Nez Perce Tribe the use of “springs and fountains” within the area ceded under Article I of the 1863 Treaty. For purposes of the priority date of the springs and fountains claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.
- f. Pursuant to the General Allotment Act of 1887, Act of February 8, 1887, 24 Stat. 388, *amended*, Act of February 28, 1891, 26 Stat. 794, there are two allotments (Allotments 182-43 and 182-45) held in trust by the United States located within the boundaries of the Palouse River Basin and the northwestern corner of the Nez Perce Reservation. For purposes of the priority date of the domestic and stock watering claims for these two allotments, the United States claims June 11, 1855 pursuant to the 1855 Treaty.
- g. In order to comply with Idaho Code § 42-1409(1), the United States has designated “places of use,” “points of diversion,” and “purposes of use” in submitting this water rights claim. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe’s future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Reservation. The statute’s terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.

11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled “How you will receive notices in the Palouse River Basin Adjudication.”
- (b) I do ___ do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

For Organizations:

I do solemnly swear and affirm that I am Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.



Signature of Authorized Agent:
Title and Organization:

Northwest Regional Director
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

Notice is hereby given that the United States Department of Justice will represent the United States of America, including the U.S. Department of the Interior, Bureau of Indian Affairs, in all matters pertaining to the Palouse River Basin Adjudication.

All notices, filings and correspondence concerning this matter should be mailed to the United States Department of Justice at the address set forth below:

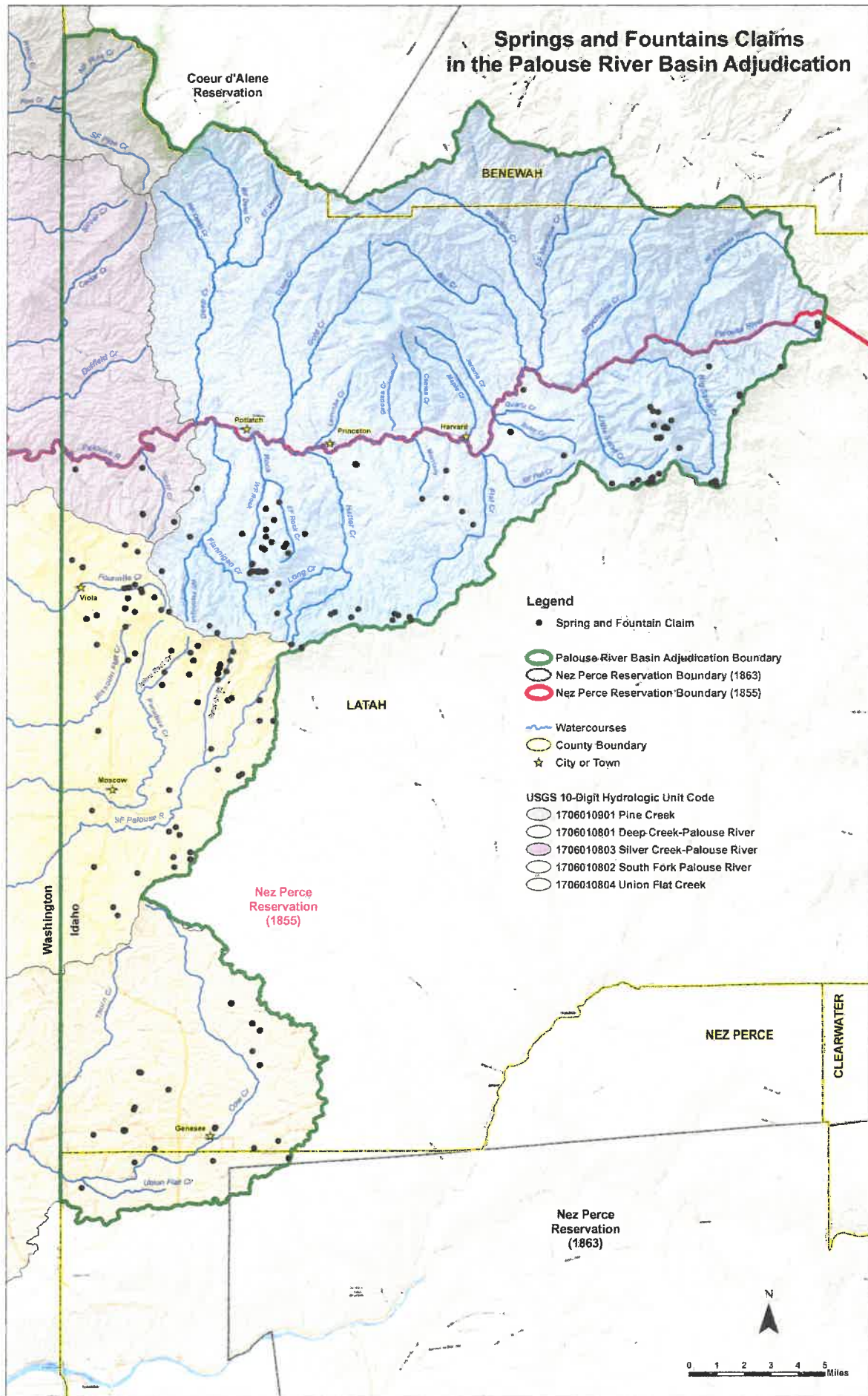


Katherine M. Kane
United States Department of Justice
Indian Resources Division
Natural Resources Section
999 18th Street
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

Springs and Fountains Claims in the Palouse River Basin Adjudication



87-12048

**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 PALOUSE RIVER BASIN
WATER SYSTEM

) Case No.: 59576
)
) **NOTICE OF CLAIM**
)
) **Federal Reserved Water Right**
)
)

RECEIVED
DEC 30 2019
DEPARTMENT OF
WATER RESOURCES

1. Name and address of claimant:

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and
ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the
REGIONAL DIRECTOR, NORTHWEST REGION
Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

2. Date of Priority: Time Immemorial

3. a. Source of water supply: Spring Fed Pond (Federal I.D. #1043)

b. which is a tributary to: Cow Creek

4. Point of Diversion: This claim is for a spring and/or fountain *in situ* including sufficient groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or fountains.

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1043	38N	5W	24	NESW	Boise	Latah

See Attached Map.

5. Place of Use:

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1043	38N	5W	24	NESW	Boise	Latah

See Attached Map.

6. **Purpose of Water Use:**

The purpose of use includes the full range of uses to which the Tribe and its members have always put the springs and fountains, including as a water source for consumptive use, for wildlife and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce Reservation pursuant to the documents referenced in Section 9 and the provisions in Section 10, *infra*.

7. **Period of Use:** January 1 through December 31.

8. **Quantity Reserved (In cfs):** Half the natural flow.

9. **Basis of Claim:**

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

10. **Other Provisions:**

- a. The United States has asserted other claims in the Palouse River Basin Adjudication. Paragraphs 10(a) – (g) express assertions applicable to all claims filed by the Bureau of Indian Affairs in its capacity as trustee for the Nez Perce Tribe in the Palouse River Basin Adjudication. The United States claims waters from groundwater and surface water sources within the Palouse River Basin in the state of Idaho to satisfy the rights reserved to the Nez Perce Tribe by the 1855 Treaty and the 1863 Treaty and to fulfill the permanent homeland purpose of the Nez Perce Reservation. Such present and future purposes include: instream flows for fish habitat; hunting, gathering, and pasturing; spring and fountains flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; and consumptive use claims on two allotments held in trust by the United States.
- b. The Nez Perce Tribe has occupied a territory in what is now central Idaho, southeastern Washington, and northeastern Oregon since time immemorial. *United States v. Webb*, 219 F.3d 1127, 1129 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). The Palouse River Basin is within the Tribe’s traditional lands.
- c. There is a complex history of the United States’ establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing

rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the “exclusive right to fish in all streams running through or bordering” the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the “right of taking fish at all usual and accustomed places in common with the citizens of the Territory” to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.

- d. Article III of the 1855 Treaty further reserves to the Tribe “the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land.”
- e. Article VIII of the Nez Perce Treaty of 1863 includes a unique provision reserving to the Nez Perce Tribe the use of “springs and fountains” within the area ceded under Article I of the 1863 Treaty. For purposes of the priority date of the springs and fountains claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.
- f. Pursuant to the General Allotment Act of 1887, Act of February 8, 1887, 24 Stat. 388, *amended*, Act of February 28, 1891, 26 Stat. 794, there are two allotments (Allotments 182-43 and 182-45) held in trust by the United States located within the boundaries of the Palouse River Basin and the northwestern corner of the Nez Perce Reservation. For purposes of the priority date of the domestic and stock watering claims for these two allotments, the United States claims June 11, 1855 pursuant to the 1855 Treaty.
- g. In order to comply with Idaho Code § 42-1409(1), the United States has designated “places of use,” “points of diversion,” and “purposes of use” in submitting this water rights claim. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe’s future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Reservation. The statute’s terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.

11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled “How you will receive notices in the Palouse River Basin Adjudication.”
- (b) I do do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

For Organizations:

I do solemnly swear and affirm that I am Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.



Signature of Authorized Agent:
Title and Organization:

Northwest Regional Director
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

Notice is hereby given that the United States Department of Justice will represent the United States of America, including the U.S. Department of the Interior, Bureau of Indian Affairs, in all matters pertaining to the Palouse River Basin Adjudication.

All notices, filings and correspondence concerning this matter should be mailed to the United States Department of Justice at the address set forth below:

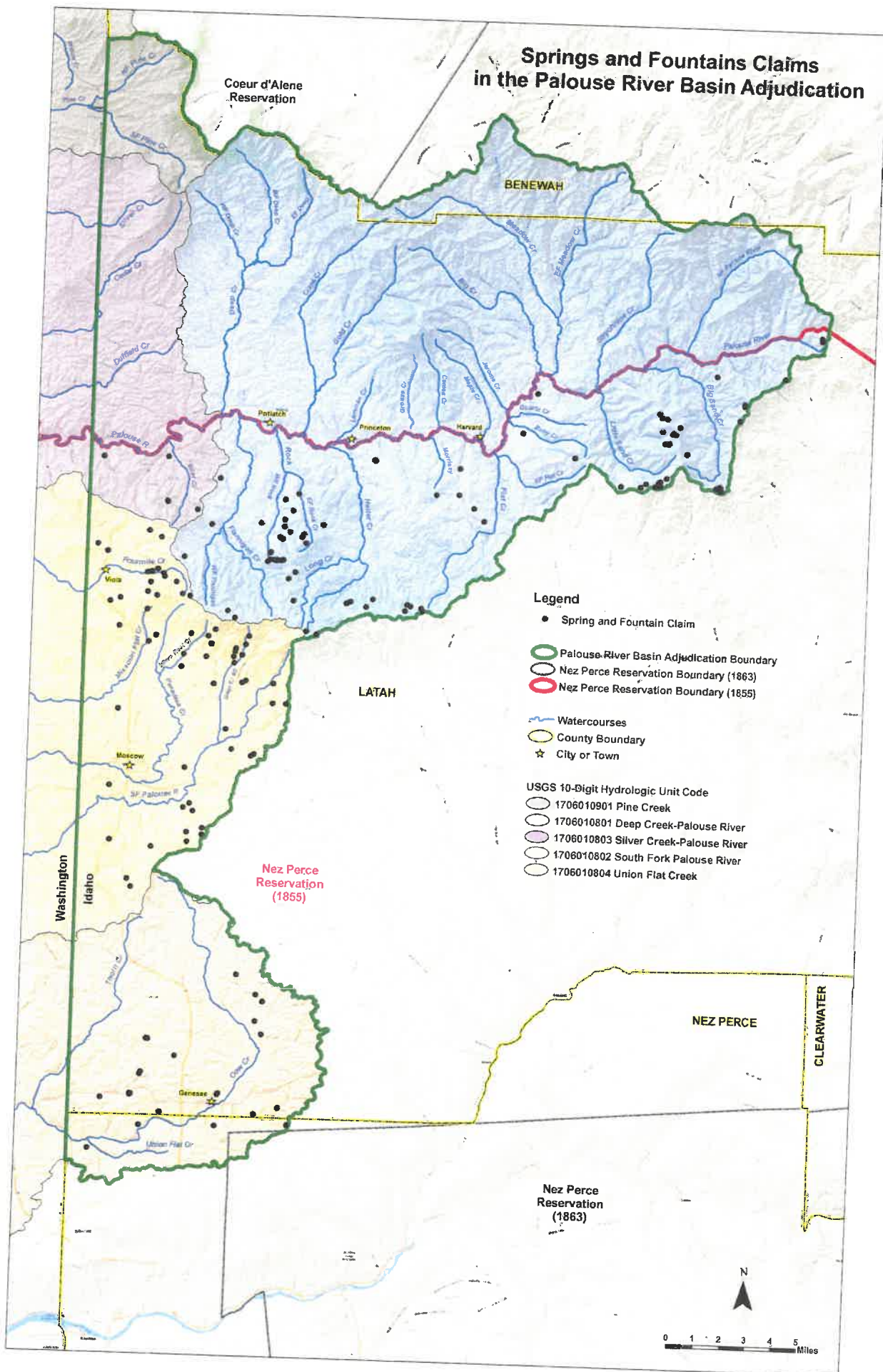


Katherine M. Kane
United States Department of Justice
Indian Resources Division
Natural Resources Section
999 18th Street
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

Springs and Fountains Claims in the Palouse River Basin Adjudication



87-12049

**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 PALOUSE RIVER BASIN
WATER SYSTEM

Case No.: 59576

NOTICE OF CLAIM

Federal Reserved Water Right

RECEIVED
DEC 30 2019
DEPARTMENT OF
WATER RESOURCES

1. Name and address of claimant:

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and
ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the
REGIONAL DIRECTOR, NORTHWEST REGION

Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

2. Date of Priority: Time Immemorial

3. a. Source of water supply: Spring (Federal I.D. #1044)

b. which is a tributary to: Flat Creek

4. Point of Diversion: This claim is for a spring and/or fountain *in situ* including sufficient groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or fountains.

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1044	41N	3W	28	NWNW	Boise	Latah

See Attached Map.

5. Place of Use:

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1044	41N	3W	28	NWNW	Boise	Latah

See Attached Map.

6. Purpose of Water Use:

The purpose of use includes the full range of uses to which the Tribe and its members have always put the springs and fountains, including as a water source for consumptive use, for wildlife and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce Reservation pursuant to the documents referenced in Section 9 and the provisions in Section 10, *infra*.

7. Period of Use: January 1 through December 31.

8. Quantity Reserved (In cfs): Half the natural flow.

9. Basis of Claim:

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

10. Other Provisions:

- a. The United States has asserted other claims in the Palouse River Basin Adjudication. Paragraphs 10(a) – (g) express assertions applicable to all claims filed by the Bureau of Indian Affairs in its capacity as trustee for the Nez Perce Tribe in the Palouse River Basin Adjudication. The United States claims waters from groundwater and surface water sources within the Palouse River Basin in the state of Idaho to satisfy the rights reserved to the Nez Perce Tribe by the 1855 Treaty and the 1863 Treaty and to fulfill the permanent homeland purpose of the Nez Perce Reservation. Such present and future purposes include: instream flows for fish habitat; hunting, gathering, and pasturing; spring and fountains flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; and consumptive use claims on two allotments held in trust by the United States.
- b. The Nez Perce Tribe has occupied a territory in what is now central Idaho, southeastern Washington, and northeastern Oregon since time immemorial. *United States v. Webb*, 219 F.3d 1127, 1129 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). The Palouse River Basin is within the Tribe’s traditional lands.
- c. There is a complex history of the United States’ establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing

rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the “exclusive right to fish in all streams running through or bordering” the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the “right of taking fish at all usual and accustomed places in common with the citizens of the Territory” to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.

- d. Article III of the 1855 Treaty further reserves to the Tribe “the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land.”
- e. Article VIII of the Nez Perce Treaty of 1863 includes a unique provision reserving to the Nez Perce Tribe the use of “springs and fountains” within the area ceded under Article I of the 1863 Treaty. For purposes of the priority date of the springs and fountains claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.
- f. Pursuant to the General Allotment Act of 1887, Act of February 8, 1887, 24 Stat. 388, *amended*, Act of February 28, 1891, 26 Stat. 794, there are two allotments (Allotments 182-43 and 182-45) held in trust by the United States located within the boundaries of the Palouse River Basin and the northwestern corner of the Nez Perce Reservation. For purposes of the priority date of the domestic and stock watering claims for these two allotments, the United States claims June 11, 1855 pursuant to the 1855 Treaty.
- g. In order to comply with Idaho Code § 42-1409(1), the United States has designated “places of use,” “points of diversion,” and “purposes of use” in submitting this water rights claim. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe’s future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Reservation. The statute’s terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.

11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled “How you will receive notices in the Palouse River Basin Adjudication.”
- (b) I do ___ do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

For Organizations:

I do solemnly swear and affirm that I am Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.



Signature of Authorized Agent:
Title and Organization:

Northwest Regional Director
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

Notice is hereby given that the United States Department of Justice will represent the United States of America, including the U.S. Department of the Interior, Bureau of Indian Affairs, in all matters pertaining to the Palouse River Basin Adjudication.

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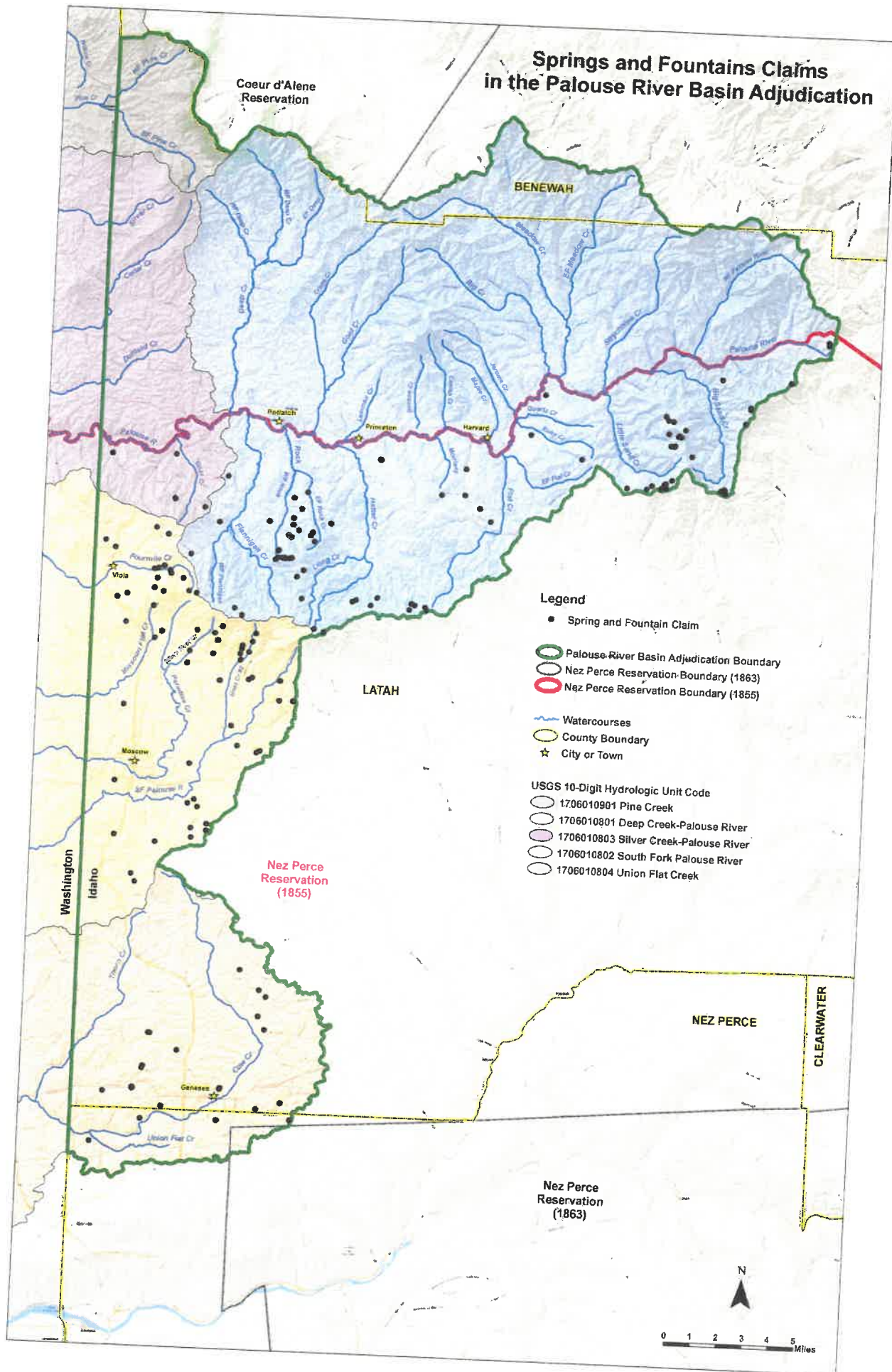
A handwritten signature in blue ink, appearing to read 'K.M. Kane', is written over a horizontal line.

Katherine M. Kane
United States Department of Justice
Indian Resources Division
Natural Resources Section
999 18th Street
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

Springs and Fountains Claims in the Palouse River Basin Adjudication



87-12050

**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)	Case No.: 59576
ADJUDICATION OF RIGHTS)	
TO THE USE OF WATER FROM)	NOTICE OF CLAIM
THE PALOUSE RIVER BASIN)	
WATER SYSTEM)	Federal Reserved Water Right
)	
)	

RECEIVED
DEC 30 2019
DEPARTMENT OF
WATER RESOURCES

1. Name and address of claimant:

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the REGIONAL DIRECTOR, NORTHWEST REGION
 Department of the Interior
 Bureau of Indian Affairs
 911 N.E. 11th Ave.
 Portland, OR 97232

2. Date of Priority: Time Immemorial

3. a. Source of water supply: Spring (Federal I.D. #1045)

b. which is a tributary to: West Fork Rock Creek

4. Point of Diversion: This claim is for a spring and/or fountain *in situ* including sufficient groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or fountains.

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1045	41N	4W	31	NWNE	Boise	Latah

See Attached Map.

5. Place of Use:

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1045	41N	4W	31	NWNE	Boise	Latah

See Attached Map.

6. Purpose of Water Use:

The purpose of use includes the full range of uses to which the Tribe and its members have always put the springs and fountains, including as a water source for consumptive use, for wildlife and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce Reservation pursuant to the documents referenced in Section 9 and the provisions in Section 10, *infra*.

7. Period of Use: January 1 through December 31.

8. Quantity Reserved (In cfs): Half the natural flow.

9. Basis of Claim:

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

10. Other Provisions:

- a. The United States has asserted other claims in the Palouse River Basin Adjudication. Paragraphs 10(a) – (g) express assertions applicable to all claims filed by the Bureau of Indian Affairs in its capacity as trustee for the Nez Perce Tribe in the Palouse River Basin Adjudication. The United States claims waters from groundwater and surface water sources within the Palouse River Basin in the state of Idaho to satisfy the rights reserved to the Nez Perce Tribe by the 1855 Treaty and the 1863 Treaty and to fulfill the permanent homeland purpose of the Nez Perce Reservation. Such present and future purposes include: instream flows for fish habitat; hunting, gathering, and pasturing; spring and fountains flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; and consumptive use claims on two allotments held in trust by the United States.
- b. The Nez Perce Tribe has occupied a territory in what is now central Idaho, southeastern Washington, and northeastern Oregon since time immemorial. *United States v. Webb*, 219 F.3d 1127, 1129 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). The Palouse River Basin is within the Tribe’s traditional lands.
- c. There is a complex history of the United States’ establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing

rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the “exclusive right to fish in all streams running through or bordering” the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the “right of taking fish at all usual and accustomed places in common with the citizens of the Territory” to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.

- d. Article III of the 1855 Treaty further reserves to the Tribe “the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land.”
- e. Article VIII of the Nez Perce Treaty of 1863 includes a unique provision reserving to the Nez Perce Tribe the use of “springs and fountains” within the area ceded under Article I of the 1863 Treaty. For purposes of the priority date of the springs and fountains claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.
- f. Pursuant to the General Allotment Act of 1887, Act of February 8, 1887, 24 Stat. 388, *amended*, Act of February 28, 1891, 26 Stat. 794, there are two allotments (Allotments 182-43 and 182-45) held in trust by the United States located within the boundaries of the Palouse River Basin and the northwestern corner of the Nez Perce Reservation. For purposes of the priority date of the domestic and stock watering claims for these two allotments, the United States claims June 11, 1855 pursuant to the 1855 Treaty.
- g. In order to comply with Idaho Code § 42-1409(1), the United States has designated “places of use,” “points of diversion,” and “purposes of use” in submitting this water rights claim. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe’s future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Reservation. The statute’s terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.

11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled “How you will receive notices in the Palouse River Basin Adjudication.”
- (b) I do do not **X** wish to receive and pay a small annual fee for monthly copies of the docket sheet.

For Organizations:

I do solemnly swear and affirm that I am Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.

Signature of Authorized Agent:
Title and Organization:



Northwest Regional Director
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

Notice is hereby given that the United States Department of Justice will represent the United States of America, including the U.S. Department of the Interior, Bureau of Indian Affairs, in all matters pertaining to the Palouse River Basin Adjudication.

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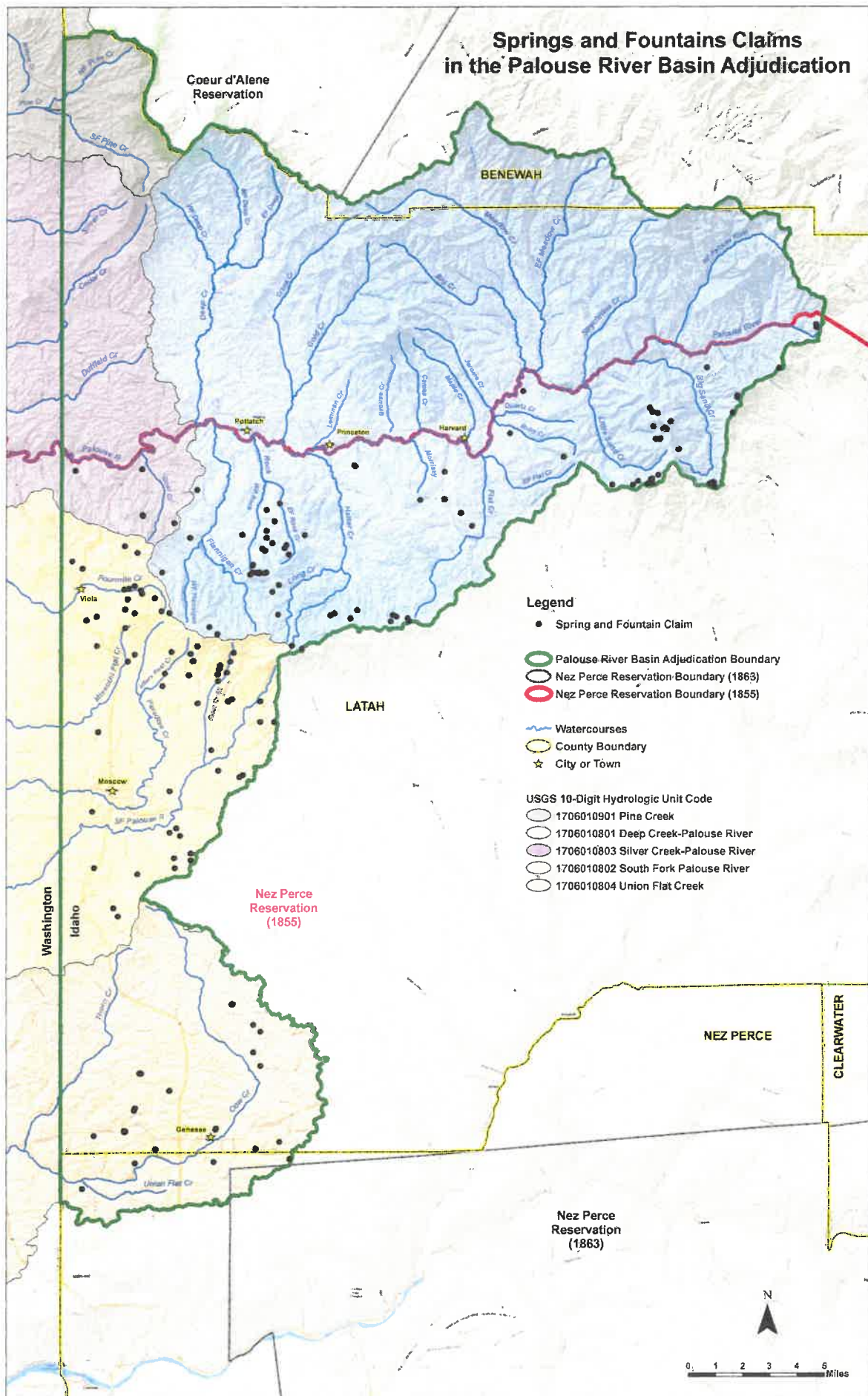


Katherine M. Kane
United States Department of Justice
Indian Resources Division
Natural Resources Section
999 18th Street
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

Springs and Fountains Claims in the Palouse River Basin Adjudication



87-17051

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 PALOUSE RIVER BASIN
WATER SYSTEM

) Case No.: 59576
)
) **NOTICE OF CLAIM**
)
) **Federal Reserved Water Right**
)
)

RECEIVED
DEC 30 2019
DEPARTMENT OF
WATER RESOURCES

1. **Name and address of claimant:**

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and
ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the
REGIONAL DIRECTOR, NORTHWEST REGION
Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

2. **Date of Priority:** Time Immemorial

3. **a. Source of water supply:** Spring (Federal I.D. #1046)

b. which is a tributary to: East Fork Rock Creek

4. **Point of Diversion:** This claim is for a spring and/or fountain *in situ* including sufficient groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or fountains.

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1046	41N	4W	20	SWNW	Boise	Latah

See Attached Map.

5. **Place of Use:**

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1046	41N	4W	20	SWNW	Boise	Latah

See Attached Map.

6. **Purpose of Water Use:**

The purpose of use includes the full range of uses to which the Tribe and its members have always put the springs and fountains, including as a water source for consumptive use, for wildlife and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce Reservation pursuant to the documents referenced in Section 9 and the provisions in Section 10, *infra*.

7. **Period of Use:** January 1 through December 31.

8. **Quantity Reserved (In cfs):** Half the natural flow.

9. **Basis of Claim:**

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

10. **Other Provisions:**

- a. The United States has asserted other claims in the Palouse River Basin Adjudication. Paragraphs 10(a) – (g) express assertions applicable to all claims filed by the Bureau of Indian Affairs in its capacity as trustee for the Nez Perce Tribe in the Palouse River Basin Adjudication. The United States claims waters from groundwater and surface water sources within the Palouse River Basin in the state of Idaho to satisfy the rights reserved to the Nez Perce Tribe by the 1855 Treaty and the 1863 Treaty and to fulfill the permanent homeland purpose of the Nez Perce Reservation. Such present and future purposes include: instream flows for fish habitat; hunting, gathering, and pasturing; spring and fountains flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; and consumptive use claims on two allotments held in trust by the United States.
- b. The Nez Perce Tribe has occupied a territory in what is now central Idaho, southeastern Washington, and northeastern Oregon since time immemorial. *United States v. Webb*, 219 F.3d 1127, 1129 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). The Palouse River Basin is within the Tribe’s traditional lands.
- c. There is a complex history of the United States’ establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing

rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the “exclusive right to fish in all streams running through or bordering” the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the “right of taking fish at all usual and accustomed places in common with the citizens of the Territory” to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.

- d. Article III of the 1855 Treaty further reserves to the Tribe “the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land.”
- e. Article VIII of the Nez Perce Treaty of 1863 includes a unique provision reserving to the Nez Perce Tribe the use of “springs and fountains” within the area ceded under Article I of the 1863 Treaty. For purposes of the priority date of the springs and fountains claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.
- f. Pursuant to the General Allotment Act of 1887, Act of February 8, 1887, 24 Stat. 388, *amended*, Act of February 28, 1891, 26 Stat. 794, there are two allotments (Allotments 182-43 and 182-45) held in trust by the United States located within the boundaries of the Palouse River Basin and the northwestern corner of the Nez Perce Reservation. For purposes of the priority date of the domestic and stock watering claims for these two allotments, the United States claims June 11, 1855 pursuant to the 1855 Treaty.
- g. In order to comply with Idaho Code § 42-1409(1), the United States has designated “places of use,” “points of diversion,” and “purposes of use” in submitting this water rights claim. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe’s future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Reservation. The statute’s terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.

11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled “How you will receive notices in the Palouse River Basin Adjudication.”
- (b) I do do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

For Organizations:

I do solemnly swear and affirm that I am Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.

Signature of Authorized Agent:
Title and Organization:

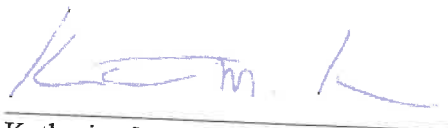


Northwest Regional Director
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

Notice is hereby given that the United States Department of Justice will represent the United States of America, including the U.S. Department of the Interior, Bureau of Indian Affairs, in all matters pertaining to the Palouse River Basin Adjudication.

All notices, filings and correspondence concerning this matter should be mailed to the United States Department of Justice at the address set forth below:

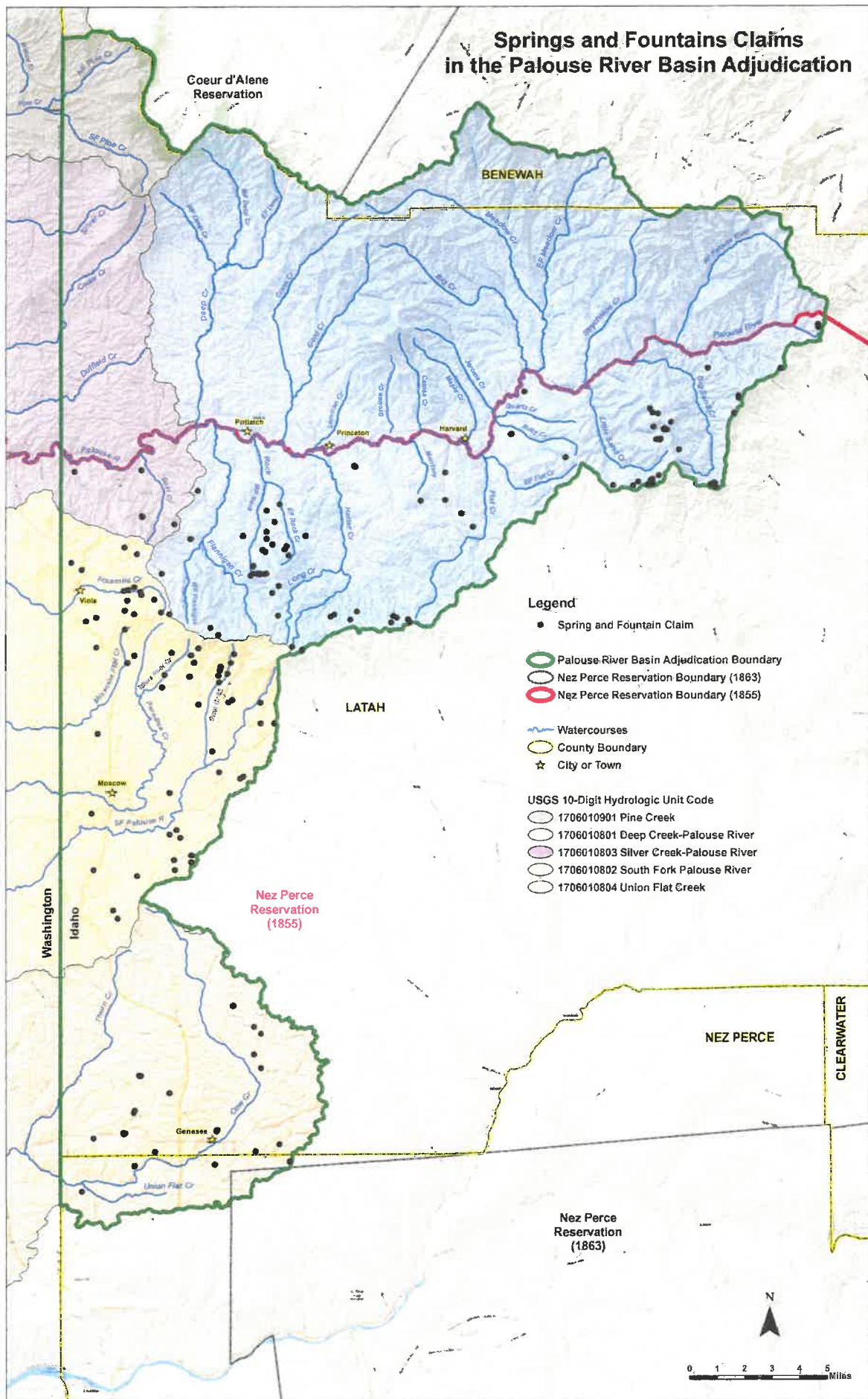
A handwritten signature in blue ink, appearing to read 'K.M. Kane', is written over a horizontal line.

Katherine M. Kane
United States Department of Justice
Indian Resources Division
Natural Resources Section
999 18th Street
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

Springs and Fountains Claims in the Palouse River Basin Adjudication



87-12052

**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)	Case No.: 59576
ADJUDICATION OF RIGHTS)	
TO THE USE OF WATER FROM)	NOTICE OF CLAIM
THE PALOUSE RIVER BASIN)	
WATER SYSTEM)	Federal Reserved Water Right
)	
)	

RECEIVED
DEC 30 2019
DEPARTMENT OF
WATER RESOURCES

1. Name and address of claimant:

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the REGIONAL DIRECTOR, NORTHWEST REGION

Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

2. Date of Priority: Time Immemorial

3. a. Source of water supply: Spring (Federal I.D. #1047)

b. which is a tributary to: Fourmile Creek

4. Point of Diversion: This claim is for a spring and/or fountain *in situ* including sufficient groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or fountains.

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1047	40N	5W	5	SENE	Boise	Latah

See Attached Map.

5. Place of Use:

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1047	40N	5W	5	SENE	Boise	Latah

See Attached Map.

6. Purpose of Water Use:

The purpose of use includes the full range of uses to which the Tribe and its members have always put the springs and fountains, including as a water source for consumptive use, for wildlife and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce Reservation pursuant to the documents referenced in Section 9 and the provisions in Section 10, *infra*.

7. Period of Use: January 1 through December 31.

8. Quantity Reserved (In cfs): Half the natural flow.

9. Basis of Claim:

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

10. Other Provisions:

- a. The United States has asserted other claims in the Palouse River Basin Adjudication. Paragraphs 10(a) – (g) express assertions applicable to all claims filed by the Bureau of Indian Affairs in its capacity as trustee for the Nez Perce Tribe in the Palouse River Basin Adjudication. The United States claims waters from groundwater and surface water sources within the Palouse River Basin in the state of Idaho to satisfy the rights reserved to the Nez Perce Tribe by the 1855 Treaty and the 1863 Treaty and to fulfill the permanent homeland purpose of the Nez Perce Reservation. Such present and future purposes include: instream flows for fish habitat; hunting, gathering, and pasturing; spring and fountains flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; and consumptive use claims on two allotments held in trust by the United States.
- b. The Nez Perce Tribe has occupied a territory in what is now central Idaho, southeastern Washington, and northeastern Oregon since time immemorial. *United States v. Webb*, 219 F.3d 1127, 1129 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). The Palouse River Basin is within the Tribe’s traditional lands.
- c. There is a complex history of the United States’ establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing

rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the “exclusive right to fish in all streams running through or bordering” the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the “right of taking fish at all usual and accustomed places in common with the citizens of the Territory” to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.

- d. Article III of the 1855 Treaty further reserves to the Tribe “the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land.”
- e. Article VIII of the Nez Perce Treaty of 1863 includes a unique provision reserving to the Nez Perce Tribe the use of “springs and fountains” within the area ceded under Article I of the 1863 Treaty. For purposes of the priority date of the springs and fountains claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.
- f. Pursuant to the General Allotment Act of 1887, Act of February 8, 1887, 24 Stat. 388, *amended*, Act of February 28, 1891, 26 Stat. 794, there are two allotments (Allotments 182-43 and 182-45) held in trust by the United States located within the boundaries of the Palouse River Basin and the northwestern corner of the Nez Perce Reservation. For purposes of the priority date of the domestic and stock watering claims for these two allotments, the United States claims June 11, 1855 pursuant to the 1855 Treaty.
- g. In order to comply with Idaho Code § 42-1409(1), the United States has designated “places of use,” “points of diversion,” and “purposes of use” in submitting this water rights claim. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe’s future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Reservation. The statute’s terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.

11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled “How you will receive notices in the Palouse River Basin Adjudication.”
- (b) I do ___ do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

For Organizations:

I do solemnly swear and affirm that I am Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.



Signature of Authorized Agent:
Title and Organization:

Northwest Regional Director
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

Notice is hereby given that the United States Department of Justice will represent the United States of America, including the U.S. Department of the Interior, Bureau of Indian Affairs, in all matters pertaining to the Palouse River Basin Adjudication.

All notices, filings and correspondence concerning this matter should be mailed to the United States Department of Justice at the address set forth below:

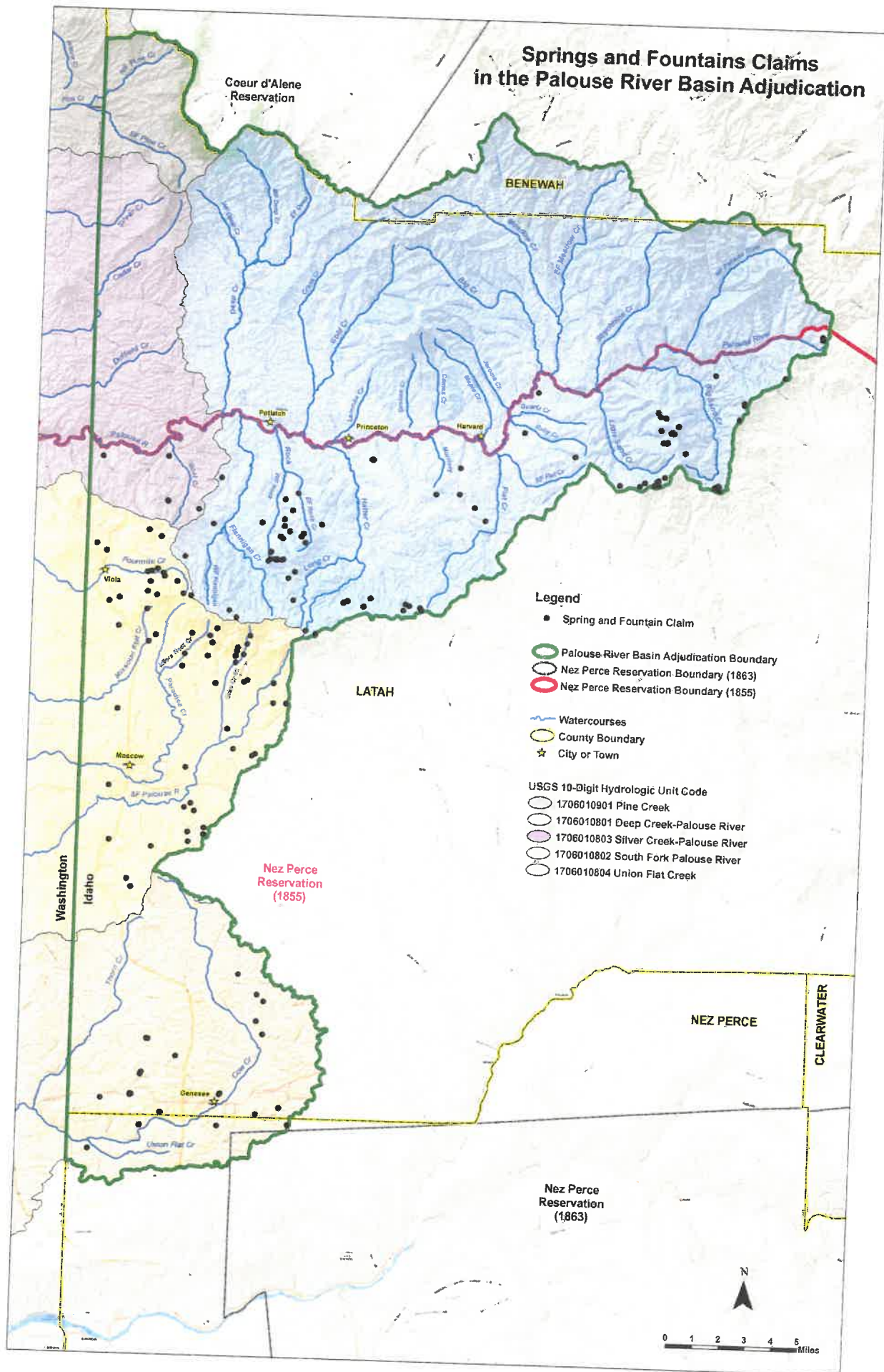
A handwritten signature in blue ink, appearing to read 'K.M. Kane', is written over a horizontal line.

Katherine M. Kane
United States Department of Justice
Indian Resources Division
Natural Resources Section
999 18th Street
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

Springs and Fountains Claims in the Palouse River Basin Adjudication



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

87-12053

IN RE: THE GENERAL
ADJUDICATION OF RIGHTS
TO THE USE OF WATER FROM
THE PALOUSE RIVER BASIN
WATER SYSTEM

Case No.: 59576

NOTICE OF CLAIM

Federal Reserved Water Right

RECEIVED
DEC 30 2019
DEPARTMENT OF
WATER RESOURCES

1. **Name and address of claimant:**

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and
ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the
REGIONAL DIRECTOR, NORTHWEST REGION
Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

2. **Date of Priority:** Time Immemorial

3. **a. Source of water supply:** Spring (Federal I.D. #1048)

b. which is a tributary to: Cow Creek

4. **Point of Diversion:** This claim is for a spring and/or fountain *in situ* including sufficient groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or fountains.

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1048	37N	5W	20	SENE	Boise	Nez Perce

See Attached Map.

5. **Place of Use:**

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1048	37N	5W	20	SENE	Boise	Nez Perce

See Attached Map.

6. **Purpose of Water Use:**
The purpose of use includes the full range of uses to which the Tribe and its members have always put the springs and fountains, including as a water source for consumptive use, for wildlife and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce Reservation pursuant to the documents referenced in Section 9 and the provisions in Section 10, *infra*.
7. **Period of Use:** January 1 through December 31.
8. **Quantity Reserved (In cfs):** Half the natural flow.
9. **Basis of Claim:**
The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.
10. **Other Provisions:**
 - a. The United States has asserted other claims in the Palouse River Basin Adjudication. Paragraphs 10(a) – (g) express assertions applicable to all claims filed by the Bureau of Indian Affairs in its capacity as trustee for the Nez Perce Tribe in the Palouse River Basin Adjudication. The United States claims waters from groundwater and surface water sources within the Palouse River Basin in the state of Idaho to satisfy the rights reserved to the Nez Perce Tribe by the 1855 Treaty and the 1863 Treaty and to fulfill the permanent homeland purpose of the Nez Perce Reservation. Such present and future purposes include: instream flows for fish habitat; hunting, gathering, and pasturing; spring and fountains flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; and consumptive use claims on two allotments held in trust by the United States.
 - b. The Nez Perce Tribe has occupied a territory in what is now central Idaho, southeastern Washington, and northeastern Oregon since time immemorial. *United States v. Webb*, 219 F.3d 1127, 1129 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). The Palouse River Basin is within the Tribe’s traditional lands.
 - c. There is a complex history of the United States’ establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing

rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the “exclusive right to fish in all streams running through or bordering” the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the “right of taking fish at all usual and accustomed places in common with the citizens of the Territory” to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.

- d. Article III of the 1855 Treaty further reserves to the Tribe “the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land.”
- e. Article VIII of the Nez Perce Treaty of 1863 includes a unique provision reserving to the Nez Perce Tribe the use of “springs and fountains” within the area ceded under Article I of the 1863 Treaty. For purposes of the priority date of the springs and fountains claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.
- f. Pursuant to the General Allotment Act of 1887, Act of February 8, 1887, 24 Stat. 388, *amended*, Act of February 28, 1891, 26 Stat. 794, there are two allotments (Allotments 182-43 and 182-45) held in trust by the United States located within the boundaries of the Palouse River Basin and the northwestern corner of the Nez Perce Reservation. For purposes of the priority date of the domestic and stock watering claims for these two allotments, the United States claims June 11, 1855 pursuant to the 1855 Treaty.
- g. In order to comply with Idaho Code § 42-1409(1), the United States has designated “places of use,” “points of diversion,” and “purposes of use” in submitting this water rights claim. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe’s future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Reservation. The statute’s terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.

11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled “How you will receive notices in the Palouse River Basin Adjudication.”
- (b) I do ___ do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

For Organizations:

I do solemnly swear and affirm that I am Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.

Signature of Authorized Agent:
Title and Organization:



Northwest Regional Director
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

Notice is hereby given that the United States Department of Justice will represent the United States of America, including the U.S. Department of the Interior, Bureau of Indian Affairs, in all matters pertaining to the Palouse River Basin Adjudication.

All notices, filings and correspondence concerning this matter should be mailed to the United States Department of Justice at the address set forth below:

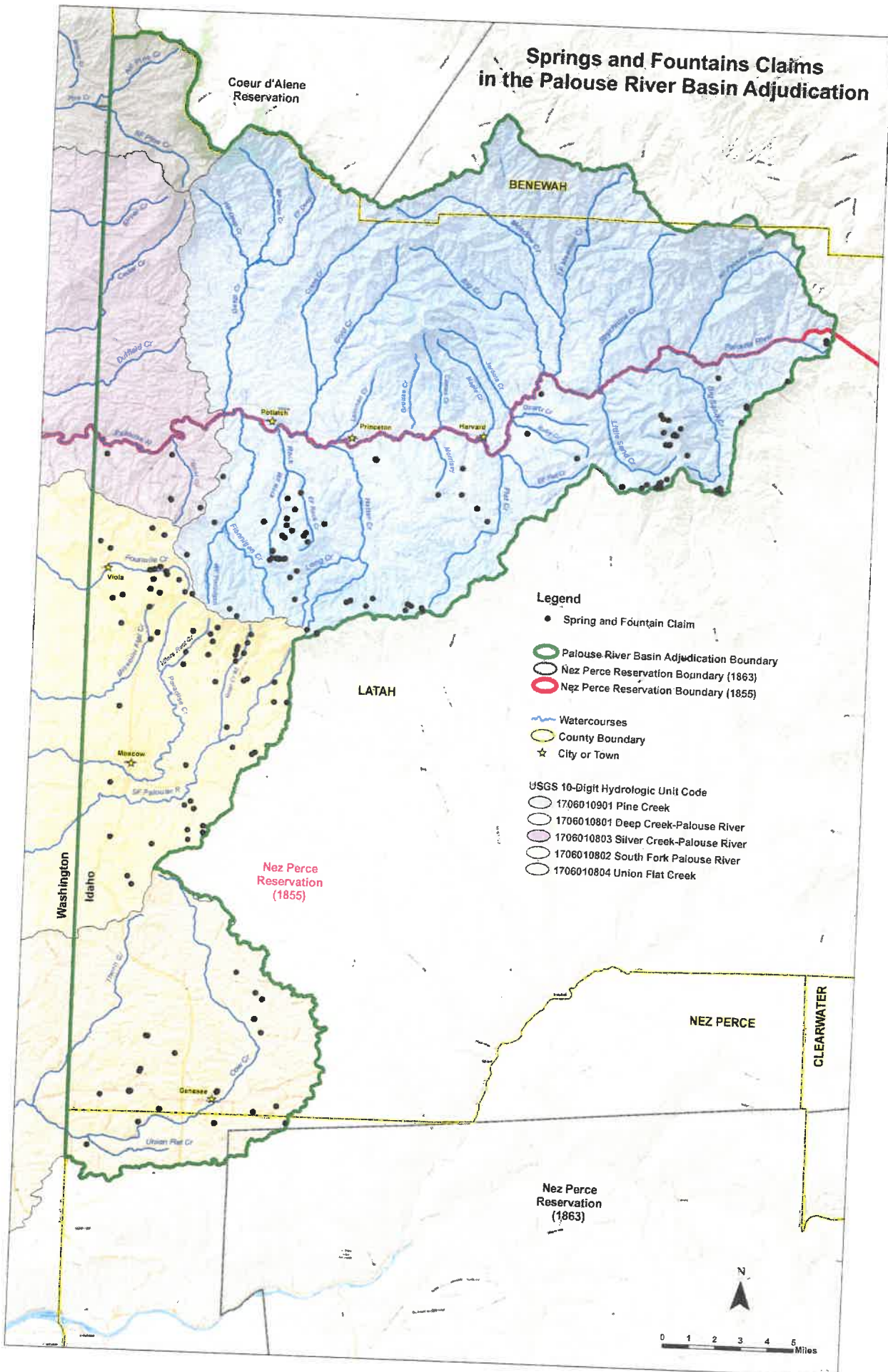


Katherine M. Kane
United States Department of Justice
Indian Resources Division
Natural Resources Section
999 18th Street
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

Springs and Fountains Claims in the Palouse River Basin Adjudication



87-170541

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 PALOUSE RIVER BASIN
WATER SYSTEM

) Case No.: 59576

) NOTICE OF CLAIM

) Federal Reserved Water Right

RECEIVED

DEC 30 2019

DEPARTMENT OF
WATER RESOURCES

1. Name and address of claimant:

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and
ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the
REGIONAL DIRECTOR, NORTHWEST REGION
Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

2. Date of Priority: Time Immemorial

3. a. Source of water supply: Spring (Federal I.D. #1049)

b. which is a tributary to: Cow Creek

4. Point of Diversion: This claim is for a spring and/or fountain *in situ* including sufficient groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or fountains.

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1049	38N	4W	30	SWNW	Boise	Latah

See Attached Map.

5. Place of Use:

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1049	38N	4W	30	SWNW	Boise	Latah

See Attached Map.

6. **Purpose of Water Use:**

The purpose of use includes the full range of uses to which the Tribe and its members have always put the springs and fountains, including as a water source for consumptive use, for wildlife and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce Reservation pursuant to the documents referenced in Section 9 and the provisions in Section 10, *infra*.

7. **Period of Use:** January 1 through December 31.

8. **Quantity Reserved (In cfs):** Half the natural flow.

9. **Basis of Claim:**

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

10. **Other Provisions:**

- a. The United States has asserted other claims in the Palouse River Basin Adjudication. Paragraphs 10(a) – (g) express assertions applicable to all claims filed by the Bureau of Indian Affairs in its capacity as trustee for the Nez Perce Tribe in the Palouse River Basin Adjudication. The United States claims waters from groundwater and surface water sources within the Palouse River Basin in the state of Idaho to satisfy the rights reserved to the Nez Perce Tribe by the 1855 Treaty and the 1863 Treaty and to fulfill the permanent homeland purpose of the Nez Perce Reservation. Such present and future purposes include: instream flows for fish habitat; hunting, gathering, and pasturing; spring and fountains flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; and consumptive use claims on two allotments held in trust by the United States.
- b. The Nez Perce Tribe has occupied a territory in what is now central Idaho, southeastern Washington, and northeastern Oregon since time immemorial. *United States v. Webb*, 219 F.3d 1127, 1129 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). The Palouse River Basin is within the Tribe’s traditional lands.
- c. There is a complex history of the United States’ establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing

rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the “exclusive right to fish in all streams running through or bordering” the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the “right of taking fish at all usual and accustomed places in common with the citizens of the Territory” to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.

- d. Article III of the 1855 Treaty further reserves to the Tribe “the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land.”
- e. Article VIII of the Nez Perce Treaty of 1863 includes a unique provision reserving to the Nez Perce Tribe the use of “springs and fountains” within the area ceded under Article I of the 1863 Treaty. For purposes of the priority date of the springs and fountains claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.
- f. Pursuant to the General Allotment Act of 1887, Act of February 8, 1887, 24 Stat. 388, *amended*, Act of February 28, 1891, 26 Stat. 794, there are two allotments (Allotments 182-43 and 182-45) held in trust by the United States located within the boundaries of the Palouse River Basin and the northwestern corner of the Nez Perce Reservation. For purposes of the priority date of the domestic and stock watering claims for these two allotments, the United States claims June 11, 1855 pursuant to the 1855 Treaty.
- g. In order to comply with Idaho Code § 42-1409(1), the United States has designated “places of use,” “points of diversion,” and “purposes of use” in submitting this water rights claim. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe’s future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Reservation. The statute’s terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.

11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled “How you will receive notices in the Palouse River Basin Adjudication.”
- (b) I do do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

For Organizations:

I do solemnly swear and affirm that I am Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.

Signature of Authorized Agent:
Title and Organization:



Northwest Regional Director
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

Notice is hereby given that the United States Department of Justice will represent the United States of America, including the U.S. Department of the Interior, Bureau of Indian Affairs, in all matters pertaining to the Palouse River Basin Adjudication.

All notices, filings and correspondence concerning this matter should be mailed to the United States Department of Justice at the address set forth below:

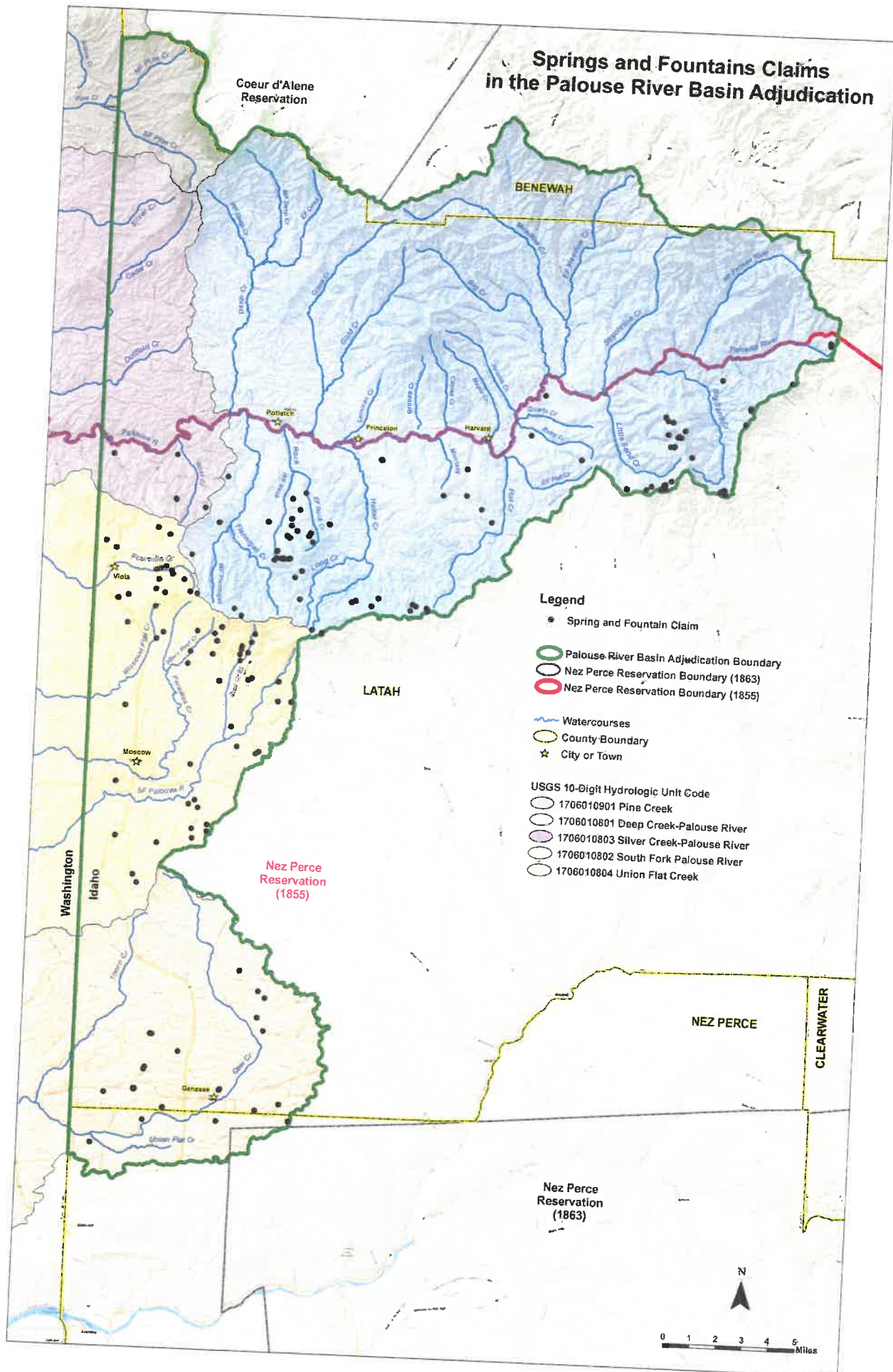


Katherine M. Kane
United States Department of Justice
Indian Resources Division
Natural Resources Section
999 18th Street
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

Springs and Fountains Claims in the Palouse River Basin Adjudication



87-17055

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 PALOUSE RIVER BASIN
WATER SYSTEM

) Case No.: 59576
)
)
)
)
)
)

NOTICE OF CLAIM

Federal Reserved Water Right

RECEIVED
DEC 30 2019
DEPARTMENT OF
WATER RESOURCES

1. Name and address of claimant:

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and
ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the
REGIONAL DIRECTOR, NORTHWEST REGION
Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

2. Date of Priority: Time Immemorial

3. a. Source of water supply: Spring (Federal I.D. #1050)

b. which is a tributary to: Union Flat Creek

4. Point of Diversion: This claim is for a spring and/or fountain *in situ* including sufficient groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or fountains.

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1050	37N	6W	25	SENE	Boise	Nez Perce

See Attached Map.

5. Place of Use:

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1050	37N	6W	25	SENE	Boise	Nez Perce

See Attached Map.

6. **Purpose of Water Use:**

The purpose of use includes the full range of uses to which the Tribe and its members have always put the springs and fountains, including as a water source for consumptive use, for wildlife and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce Reservation pursuant to the documents referenced in Section 9 and the provisions in Section 10, *infra*.

7. **Period of Use:** January 1 through December 31.

8. **Quantity Reserved (In cfs):** Half the natural flow.

9. **Basis of Claim:**

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

10. **Other Provisions:**

- a. The United States has asserted other claims in the Palouse River Basin Adjudication. Paragraphs 10(a) – (g) express assertions applicable to all claims filed by the Bureau of Indian Affairs in its capacity as trustee for the Nez Perce Tribe in the Palouse River Basin Adjudication. The United States claims waters from groundwater and surface water sources within the Palouse River Basin in the state of Idaho to satisfy the rights reserved to the Nez Perce Tribe by the 1855 Treaty and the 1863 Treaty and to fulfill the permanent homeland purpose of the Nez Perce Reservation. Such present and future purposes include: instream flows for fish habitat; hunting, gathering, and pasturing; spring and fountains flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; and consumptive use claims on two allotments held in trust by the United States.
- b. The Nez Perce Tribe has occupied a territory in what is now central Idaho, southeastern Washington, and northeastern Oregon since time immemorial. *United States v. Webb*, 219 F.3d 1127, 1129 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). The Palouse River Basin is within the Tribe’s traditional lands.
- c. There is a complex history of the United States’ establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing

rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the “exclusive right to fish in all streams running through or bordering” the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the “right of taking fish at all usual and accustomed places in common with the citizens of the Territory” to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.

- d. Article III of the 1855 Treaty further reserves to the Tribe “the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land.”
- e. Article VIII of the Nez Perce Treaty of 1863 includes a unique provision reserving to the Nez Perce Tribe the use of “springs and fountains” within the area ceded under Article I of the 1863 Treaty. For purposes of the priority date of the springs and fountains claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.
- f. Pursuant to the General Allotment Act of 1887, Act of February 8, 1887, 24 Stat. 388, *amended*, Act of February 28, 1891, 26 Stat. 794, there are two allotments (Allotments 182-43 and 182-45) held in trust by the United States located within the boundaries of the Palouse River Basin and the northwestern corner of the Nez Perce Reservation. For purposes of the priority date of the domestic and stock watering claims for these two allotments, the United States claims June 11, 1855 pursuant to the 1855 Treaty.
- g. In order to comply with Idaho Code § 42-1409(1), the United States has designated “places of use,” “points of diversion,” and “purposes of use” in submitting this water rights claim. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe’s future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Reservation. The statute’s terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.

11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled “How you will receive notices in the Palouse River Basin Adjudication.”
- (b) I do do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

For Organizations:

I do solemnly swear and affirm that I am Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.



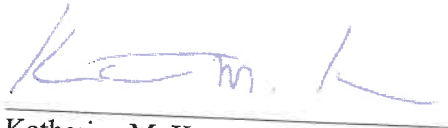
Signature of Authorized Agent:
Title and Organization:

Northwest Regional Director
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

Notice is hereby given that the United States Department of Justice will represent the United States of America, including the U.S. Department of the Interior, Bureau of Indian Affairs, in all matters pertaining to the Palouse River Basin Adjudication.

All notices, filings and correspondence concerning this matter should be mailed to the United States Department of Justice at the address set forth below:

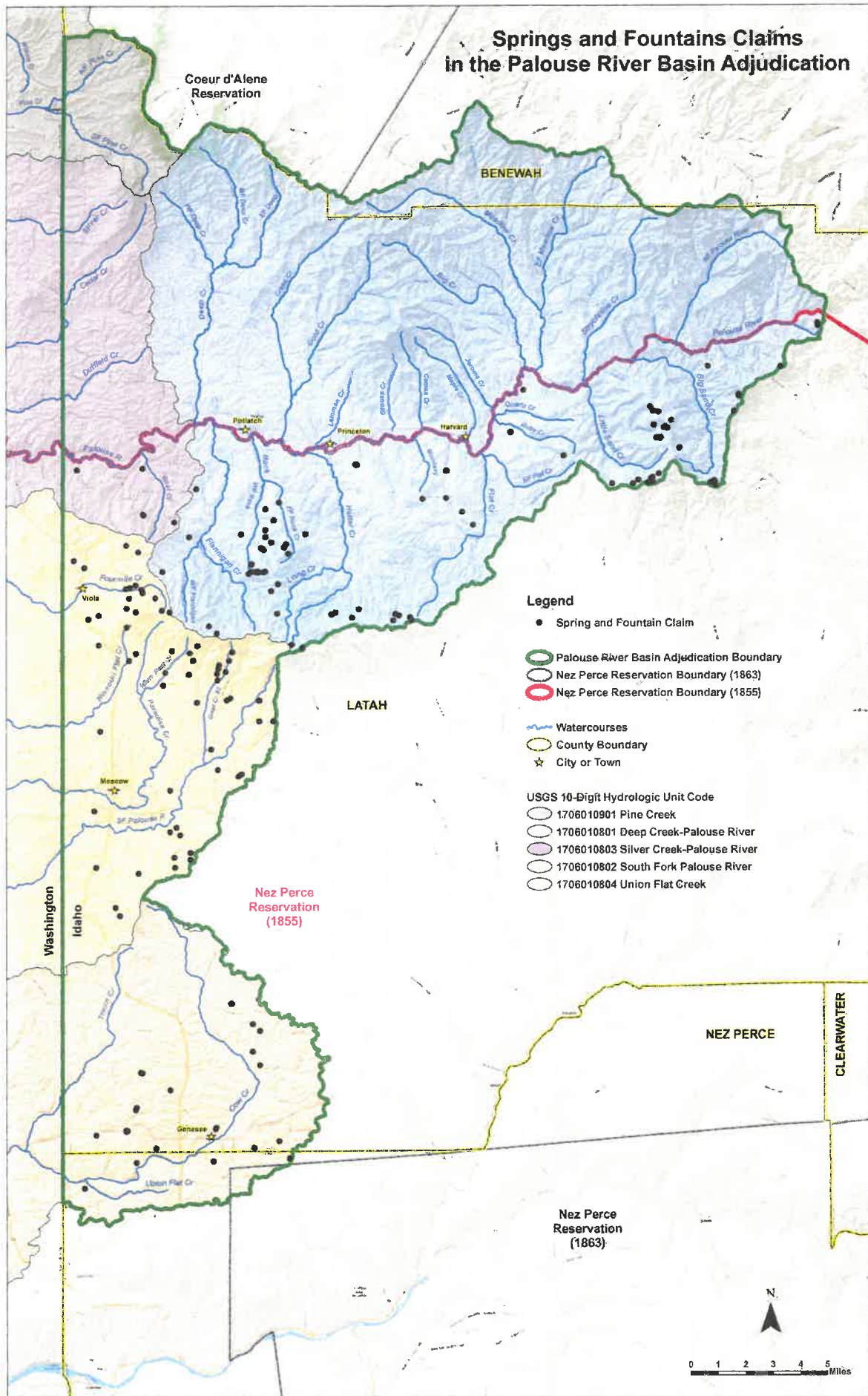


Katherine M. Kane
United States Department of Justice
Indian Resources Division
Natural Resources Section
999 18th Street
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

Springs and Fountains Claims in the Palouse River Basin Adjudication



87-12056
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 PALOUSE RIVER BASIN
WATER SYSTEM

) Case No.: 59576
)
)
)
)
)
)

NOTICE OF CLAIM

Federal Reserved Water Right

RECEIVED
DEC 30 2019
DEPARTMENT OF
WATER RESOURCES

1. Name and address of claimant:

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and
ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the
REGIONAL DIRECTOR, NORTHWEST REGION
Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

2. Date of Priority: Time Immemorial

3. a. Source of water supply: Spring (Federal I.D. #1051)

b. which is a tributary to: South Fork Palouse River

4. Point of Diversion: This claim is for a spring and/or fountain *in situ* including sufficient groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or fountains.

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1051	39N	5W	27	SENE	Boise	Latah

See Attached Map.

5. Place of Use:

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1051	39N	5W	27	SENE	Boise	Latah

See Attached Map.

6. **Purpose of Water Use:**

The purpose of use includes the full range of uses to which the Tribe and its members have always put the springs and fountains, including as a water source for consumptive use, for wildlife and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce Reservation pursuant to the documents referenced in Section 9 and the provisions in Section 10, *infra*.

7. **Period of Use:** January 1 through December 31.

8. **Quantity Reserved (In cfs):** Half the natural flow.

9. **Basis of Claim:**

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

10. **Other Provisions:**

- a. The United States has asserted other claims in the Palouse River Basin Adjudication. Paragraphs 10(a) – (g) express assertions applicable to all claims filed by the Bureau of Indian Affairs in its capacity as trustee for the Nez Perce Tribe in the Palouse River Basin Adjudication. The United States claims waters from groundwater and surface water sources within the Palouse River Basin in the state of Idaho to satisfy the rights reserved to the Nez Perce Tribe by the 1855 Treaty and the 1863 Treaty and to fulfill the permanent homeland purpose of the Nez Perce Reservation. Such present and future purposes include: instream flows for fish habitat; hunting, gathering, and pasturing; spring and fountains flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; and consumptive use claims on two allotments held in trust by the United States.
- b. The Nez Perce Tribe has occupied a territory in what is now central Idaho, southeastern Washington, and northeastern Oregon since time immemorial. *United States v. Webb*, 219 F.3d 1127, 1129 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). The Palouse River Basin is within the Tribe’s traditional lands.
- c. There is a complex history of the United States’ establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing

rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the “exclusive right to fish in all streams running through or bordering” the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the “right of taking fish at all usual and accustomed places in common with the citizens of the Territory” to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.

- d. Article III of the 1855 Treaty further reserves to the Tribe “the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land.”
- e. Article VIII of the Nez Perce Treaty of 1863 includes a unique provision reserving to the Nez Perce Tribe the use of “springs and fountains” within the area ceded under Article I of the 1863 Treaty. For purposes of the priority date of the springs and fountains claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.
- f. Pursuant to the General Allotment Act of 1887, Act of February 8, 1887, 24 Stat. 388, *amended*, Act of February 28, 1891, 26 Stat. 794, there are two allotments (Allotments 182-43 and 182-45) held in trust by the United States located within the boundaries of the Palouse River Basin and the northwestern corner of the Nez Perce Reservation. For purposes of the priority date of the domestic and stock watering claims for these two allotments, the United States claims June 11, 1855 pursuant to the 1855 Treaty.
- g. In order to comply with Idaho Code § 42-1409(1), the United States has designated “places of use,” “points of diversion,” and “purposes of use” in submitting this water rights claim. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe’s future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Reservation. The statute’s terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.

11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled “How you will receive notices in the Palouse River Basin Adjudication.”
- (b) I do do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

For Organizations:

I do solemnly swear and affirm that I am Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.



Signature of Authorized Agent:
Title and Organization:

Northwest Regional Director
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

Notice is hereby given that the United States Department of Justice will represent the United States of America, including the U.S. Department of the Interior, Bureau of Indian Affairs, in all matters pertaining to the Palouse River Basin Adjudication.

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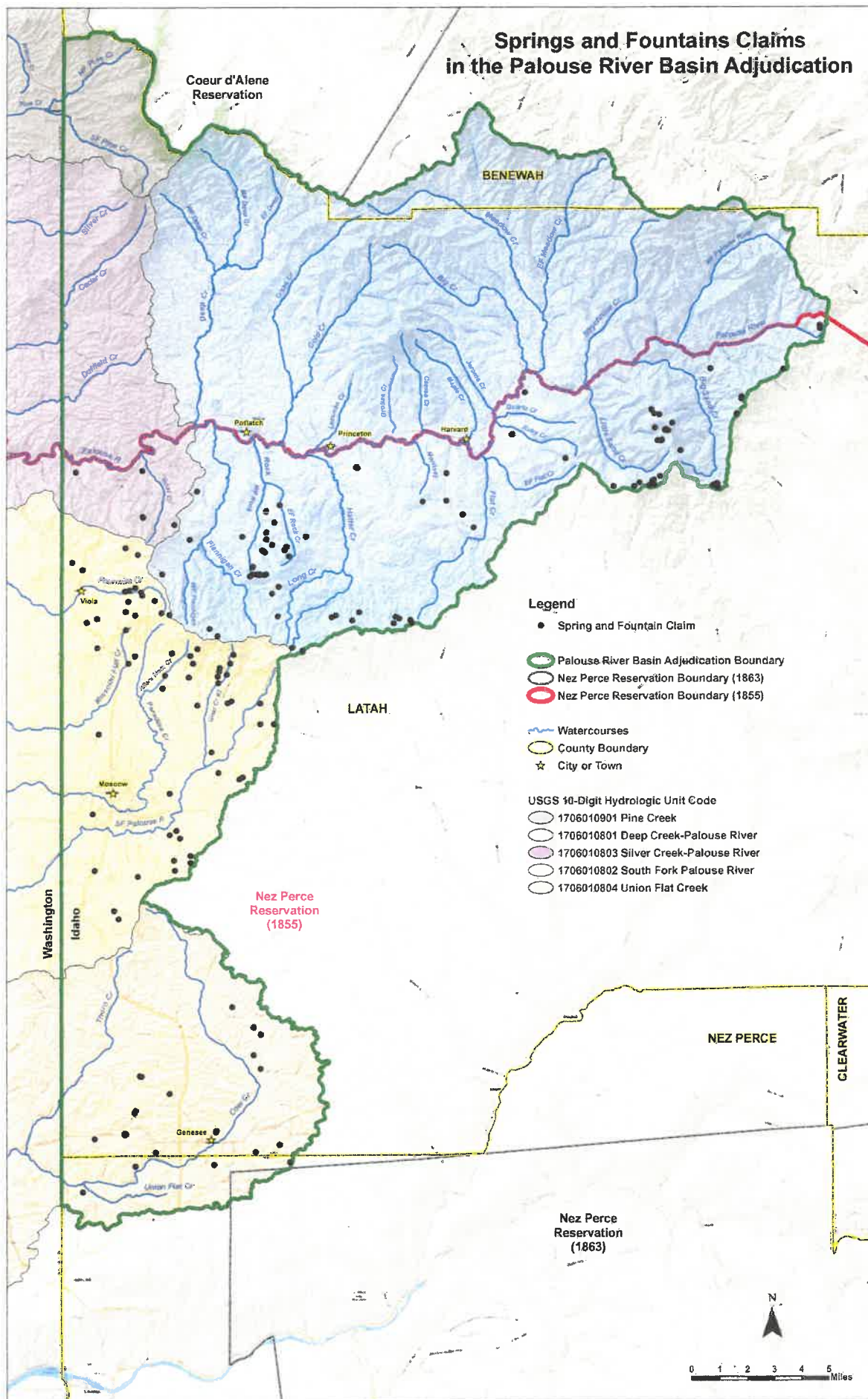


Katherine M. Kane
United States Department of Justice
Indian Resources Division
Natural Resources Section
999 18th Street
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

Springs and Fountains Claims in the Palouse River Basin Adjudication



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

87-12057

IN RE: THE GENERAL
ADJUDICATION OF RIGHTS
TO THE USE OF WATER FROM
THE PALOUSE RIVER BASIN
WATER SYSTEM

) Case No.: 59576
)
) **NOTICE OF CLAIM**
)
) **Federal Reserved Water Right**
)
)

RECEIVED
DEC 30 2019
DEPARTMENT OF
WATER RESOURCES

1. **Name and address of claimant:**

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and
ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the
REGIONAL DIRECTOR, NORTHWEST REGION
Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

2. **Date of Priority:** Time Immemorial

3. **a. Source of water supply:** Spring (Federal I.D. #1052)

b. which is a tributary to: South Fork Palouse River

4. **Point of Diversion:** This claim is for a spring and/or fountain *in situ* including sufficient groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or fountains.

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1052	39N	5W	27	NENE	Boise	Latah

See Attached Map.

5. **Place of Use:**

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1052	39N	5W	27	NENE	Boise	Latah

See Attached Map.

6. **Purpose of Water Use:**

The purpose of use includes the full range of uses to which the Tribe and its members have always put the springs and fountains, including as a water source for consumptive use, for wildlife and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce Reservation pursuant to the documents referenced in Section 9 and the provisions in Section 10, *infra*.

7. **Period of Use:** January 1 through December 31.

8. **Quantity Reserved (In cfs):** Half the natural flow.

9. **Basis of Claim:**

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

10. **Other Provisions:**

- a. The United States has asserted other claims in the Palouse River Basin Adjudication. Paragraphs 10(a) – (g) express assertions applicable to all claims filed by the Bureau of Indian Affairs in its capacity as trustee for the Nez Perce Tribe in the Palouse River Basin Adjudication. The United States claims waters from groundwater and surface water sources within the Palouse River Basin in the state of Idaho to satisfy the rights reserved to the Nez Perce Tribe by the 1855 Treaty and the 1863 Treaty and to fulfill the permanent homeland purpose of the Nez Perce Reservation. Such present and future purposes include: instream flows for fish habitat; hunting, gathering, and pasturing; spring and fountains flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; and consumptive use claims on two allotments held in trust by the United States.
- b. The Nez Perce Tribe has occupied a territory in what is now central Idaho, southeastern Washington, and northeastern Oregon since time immemorial. *United States v. Webb*, 219 F.3d 1127, 1129 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). The Palouse River Basin is within the Tribe’s traditional lands.
- c. There is a complex history of the United States’ establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing

rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the “exclusive right to fish in all streams running through or bordering” the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the “right of taking fish at all usual and accustomed places in common with the citizens of the Territory” to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.

- d. Article III of the 1855 Treaty further reserves to the Tribe “the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land.”
- e. Article VIII of the Nez Perce Treaty of 1863 includes a unique provision reserving to the Nez Perce Tribe the use of “springs and fountains” within the area ceded under Article I of the 1863 Treaty. For purposes of the priority date of the springs and fountains claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.
- f. Pursuant to the General Allotment Act of 1887, Act of February 8, 1887, 24 Stat. 388, *amended*, Act of February 28, 1891, 26 Stat. 794, there are two allotments (Allotments 182-43 and 182-45) held in trust by the United States located within the boundaries of the Palouse River Basin and the northwestern corner of the Nez Perce Reservation. For purposes of the priority date of the domestic and stock watering claims for these two allotments, the United States claims June 11, 1855 pursuant to the 1855 Treaty.
- g. In order to comply with Idaho Code § 42-1409(1), the United States has designated “places of use,” “points of diversion,” and “purposes of use” in submitting this water rights claim. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe’s future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Reservation. The statute’s terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.

11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled “How you will receive notices in the Palouse River Basin Adjudication.”
- (b) I do do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

For Organizations:

I do solemnly swear and affirm that I am Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.



Signature of Authorized Agent:
Title and Organization:

Northwest Regional Director
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

Notice is hereby given that the United States Department of Justice will represent the United States of America, including the U.S. Department of the Interior, Bureau of Indian Affairs, in all matters pertaining to the Palouse River Basin Adjudication.

All notices, filings and correspondence concerning this matter should be mailed to the United States Department of Justice at the address set forth below:



Katherine M. Kane
United States Department of Justice
Indian Resources Division
Natural Resources Section
999 18th Street
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

**Springs and Fountains Claims
in the Palouse River Basin Adjudication**

Coeur d'Alene Reservation

BENEWAH

LATAH

Washington

Idaho

Nez Perce Reservation (1855)

Nez Perce Reservation (1863)

CLEARWATER

Legend

- Spring and Fountain Claim
- Palouse River Basin Adjudication Boundary
- Nez Perce Reservation Boundary (1863)
- Nez Perce Reservation Boundary (1855)
- Watercourses
- County Boundary
- City or Town

USGS 10-Digit Hydrologic Unit Code

- 1706010901 Pine Creek
- 1706010801 Deep Creek-Palouse River
- 1706010803 Silver Creek-Palouse River
- 1706010802 South Fork Palouse River
- 1706010804 Union Flat Creek

Scale: 0 1 2 3 4 5 Miles

North Arrow

- **Spring and Fountain Claim**

○ Nez Perce Reservation Boundary (1863)

 Watercourses

☆ City or Town

1706010901 Pine Creek

1706010801 Deep Creek-Palouse River

1706010803 Silver Creek-Palouse River

1706010802 South Fork Palouse River

1706010804 Union Flat Creek

Nez Perce
Reservation
(1855)

Nez Perce
Reservation
(1863)

NEZ PERCE

CLEARWATER

N

0 1 2 3 4 5 Miles

87-12058

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 PALOUSE RIVER BASIN
WATER SYSTEM

) Case No.: 59576
)
) NOTICE OF CLAIM
)
) Federal Reserved Water Right
)
)

RECEIVED
DEC 30 2019
DEPARTMENT OF
WATER RESOURCES

1. Name and address of claimant:

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and
ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the
REGIONAL DIRECTOR, NORTHWEST REGION
Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

2. Date of Priority: Time Immemorial

3. a. Source of water supply: Spring (Federal I.D. #1053)

b. which is a tributary to: South Fork Palouse River

4. Point of Diversion: This claim is for a spring and/or fountain *in situ* including sufficient groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or fountains.

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1053	40N	4W	31	SENW	Boise	Latah

See Attached Map.

5. Place of Use:

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1053	40N	4W	31	SENW	Boise	Latah

See Attached Map.

6. **Purpose of Water Use:**

The purpose of use includes the full range of uses to which the Tribe and its members have always put the springs and fountains, including as a water source for consumptive use, for wildlife and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce Reservation pursuant to the documents referenced in Section 9 and the provisions in Section 10, *infra*.

7. **Period of Use:** January 1 through December 31.

8. **Quantity Reserved (In cfs):** Half the natural flow.

9. **Basis of Claim:**

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

10. **Other Provisions:**

- a. The United States has asserted other claims in the Palouse River Basin Adjudication. Paragraphs 10(a) – (g) express assertions applicable to all claims filed by the Bureau of Indian Affairs in its capacity as trustee for the Nez Perce Tribe in the Palouse River Basin Adjudication. The United States claims waters from groundwater and surface water sources within the Palouse River Basin in the state of Idaho to satisfy the rights reserved to the Nez Perce Tribe by the 1855 Treaty and the 1863 Treaty and to fulfill the permanent homeland purpose of the Nez Perce Reservation. Such present and future purposes include: instream flows for fish habitat; hunting, gathering, and pasturing; spring and fountains flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; and consumptive use claims on two allotments held in trust by the United States.
- b. The Nez Perce Tribe has occupied a territory in what is now central Idaho, southeastern Washington, and northeastern Oregon since time immemorial. *United States v. Webb*, 219 F.3d 1127, 1129 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). The Palouse River Basin is within the Tribe’s traditional lands.
- c. There is a complex history of the United States’ establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing

rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the “exclusive right to fish in all streams running through or bordering” the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the “right of taking fish at all usual and accustomed places in common with the citizens of the Territory” to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.

- d. Article III of the 1855 Treaty further reserves to the Tribe “the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land.”
- e. Article VIII of the Nez Perce Treaty of 1863 includes a unique provision reserving to the Nez Perce Tribe the use of “springs and fountains” within the area ceded under Article I of the 1863 Treaty. For purposes of the priority date of the springs and fountains claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.
- f. Pursuant to the General Allotment Act of 1887, Act of February 8, 1887, 24 Stat. 388, *amended*, Act of February 28, 1891, 26 Stat. 794, there are two allotments (Allotments 182-43 and 182-45) held in trust by the United States located within the boundaries of the Palouse River Basin and the northwestern corner of the Nez Perce Reservation. For purposes of the priority date of the domestic and stock watering claims for these two allotments, the United States claims June 11, 1855 pursuant to the 1855 Treaty.
- g. In order to comply with Idaho Code § 42-1409(1), the United States has designated “places of use,” “points of diversion,” and “purposes of use” in submitting this water rights claim. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe’s future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Reservation. The statute’s terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.

11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled “How you will receive notices in the Palouse River Basin Adjudication.”
- (b) I do ___ do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

For Organizations:

I do solemnly swear and affirm that I am Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.



Signature of Authorized Agent:
Title and Organization:

Northwest Regional Director
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

Notice is hereby given that the United States Department of Justice will represent the United States of America, including the U.S. Department of the Interior, Bureau of Indian Affairs, in all matters pertaining to the Palouse River Basin Adjudication.

All notices, filings and correspondence concerning this matter should be mailed to the United States Department of Justice at the address set forth below:

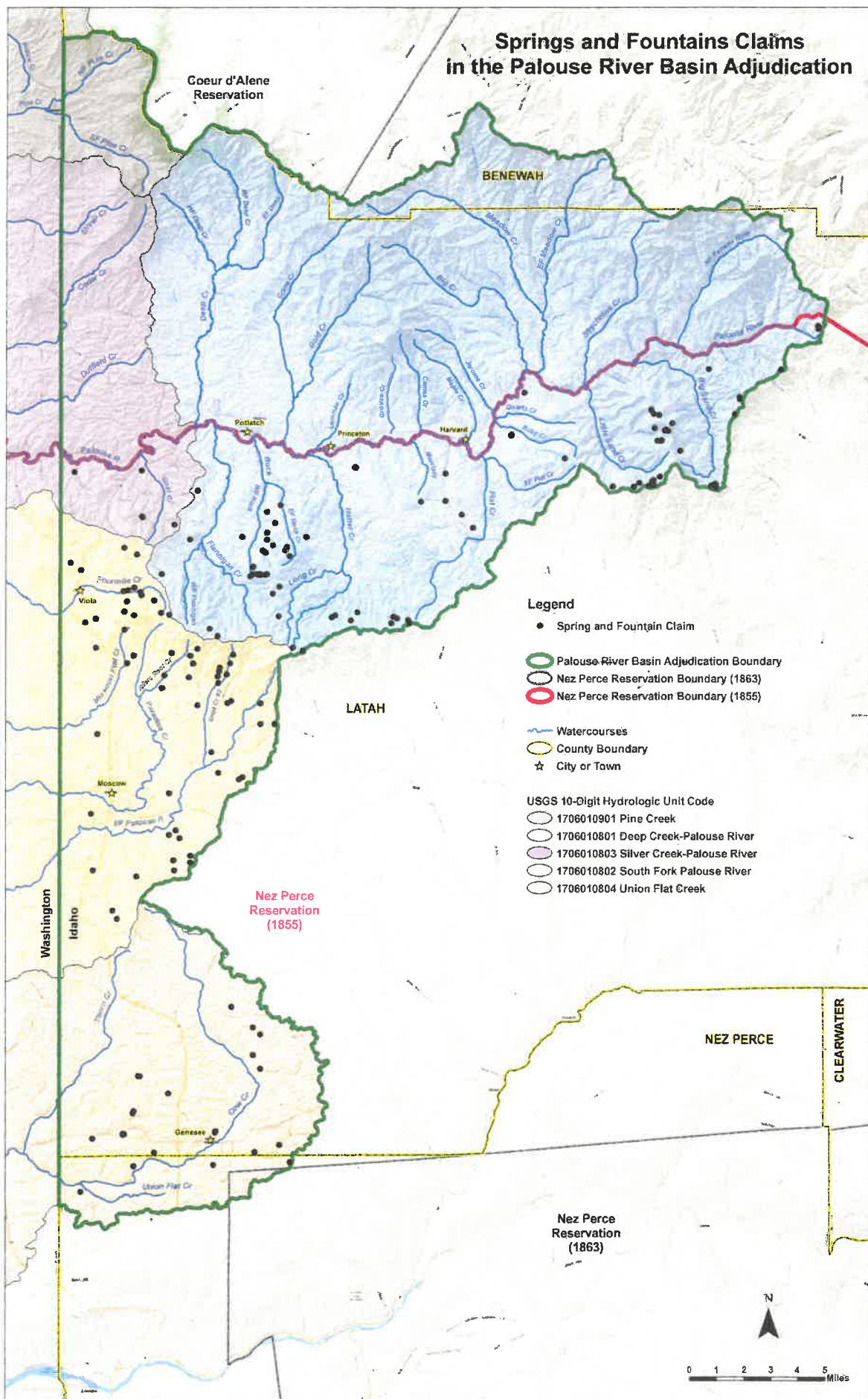
A handwritten signature in blue ink, appearing to read "K.M. Kane", is written over a horizontal line.

Katherine M. Kane
United States Department of Justice
Indian Resources Division
Natural Resources Section
999 18th Street
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

Springs and Fountains Claims in the Palouse River Basin Adjudication



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

87-12059

IN RE: THE GENERAL
ADJUDICATION OF RIGHTS
TO THE USE OF WATER FROM
THE PALOUSE RIVER BASIN
WATER SYSTEM

Case No.: 59576

NOTICE OF CLAIM

Federal Reserved Water Right

RECEIVED
DEC 30 2019
DEPARTMENT OF
WATER RESOURCES

1. Name and address of claimant:

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and
ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the
REGIONAL DIRECTOR, NORTHWEST REGION
Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

2. Date of Priority: Time Immemorial

3. a. Source of water supply: Spring (Federal I.D. #1054)

b. which is a tributary to: Cow Creek

4. Point of Diversion: This claim is for a spring and/or fountain *in situ* including sufficient groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or fountains.

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1054	37N	5W	23	SWNE	Boise	Nez Perce

See Attached Map.

5. Place of Use:

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1054	37N	5W	23	SWNE	Boise	Nez Perce

See Attached Map.

6. **Purpose of Water Use:**
The purpose of use includes the full range of uses to which the Tribe and its members have always put the springs and fountains, including as a water source for consumptive use, for wildlife and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce Reservation pursuant to the documents referenced in Section 9 and the provisions in Section 10, *infra*.
7. **Period of Use:** January 1 through December 31.
8. **Quantity Reserved (In cfs):** Half the natural flow.
9. **Basis of Claim:**
The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.
10. **Other Provisions:**
 - a. The United States has asserted other claims in the Palouse River Basin Adjudication. Paragraphs 10(a) – (g) express assertions applicable to all claims filed by the Bureau of Indian Affairs in its capacity as trustee for the Nez Perce Tribe in the Palouse River Basin Adjudication. The United States claims waters from groundwater and surface water sources within the Palouse River Basin in the state of Idaho to satisfy the rights reserved to the Nez Perce Tribe by the 1855 Treaty and the 1863 Treaty and to fulfill the permanent homeland purpose of the Nez Perce Reservation. Such present and future purposes include: instream flows for fish habitat; hunting, gathering, and pasturing; spring and fountains flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; and consumptive use claims on two allotments held in trust by the United States.
 - b. The Nez Perce Tribe has occupied a territory in what is now central Idaho, southeastern Washington, and northeastern Oregon since time immemorial. *United States v. Webb*, 219 F.3d 1127, 1129 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). The Palouse River Basin is within the Tribe’s traditional lands.
 - c. There is a complex history of the United States’ establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing

rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the “exclusive right to fish in all streams running through or bordering” the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the “right of taking fish at all usual and accustomed places in common with the citizens of the Territory” to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.

- d. Article III of the 1855 Treaty further reserves to the Tribe “the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land.”
- e. Article VIII of the Nez Perce Treaty of 1863 includes a unique provision reserving to the Nez Perce Tribe the use of “springs and fountains” within the area ceded under Article I of the 1863 Treaty. For purposes of the priority date of the springs and fountains claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.
- f. Pursuant to the General Allotment Act of 1887, Act of February 8, 1887, 24 Stat. 388, *amended*, Act of February 28, 1891, 26 Stat. 794, there are two allotments (Allotments 182-43 and 182-45) held in trust by the United States located within the boundaries of the Palouse River Basin and the northwestern corner of the Nez Perce Reservation. For purposes of the priority date of the domestic and stock watering claims for these two allotments, the United States claims June 11, 1855 pursuant to the 1855 Treaty.
- g. In order to comply with Idaho Code § 42-1409(1), the United States has designated “places of use,” “points of diversion,” and “purposes of use” in submitting this water rights claim. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe’s future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Reservation. The statute’s terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.

11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled “How you will receive notices in the Palouse River Basin Adjudication.”
- (b) I do ___ do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

For Organizations:

I do solemnly swear and affirm that I am Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.

Signature of Authorized Agent:
Title and Organization:

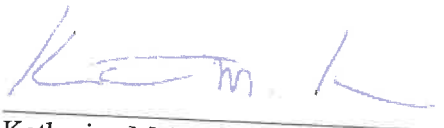


Northwest Regional Director
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

Notice is hereby given that the United States Department of Justice will represent the United States of America, including the U.S. Department of the Interior, Bureau of Indian Affairs, in all matters pertaining to the Palouse River Basin Adjudication.

All notices, filings and correspondence concerning this matter should be mailed to the United States Department of Justice at the address set forth below:

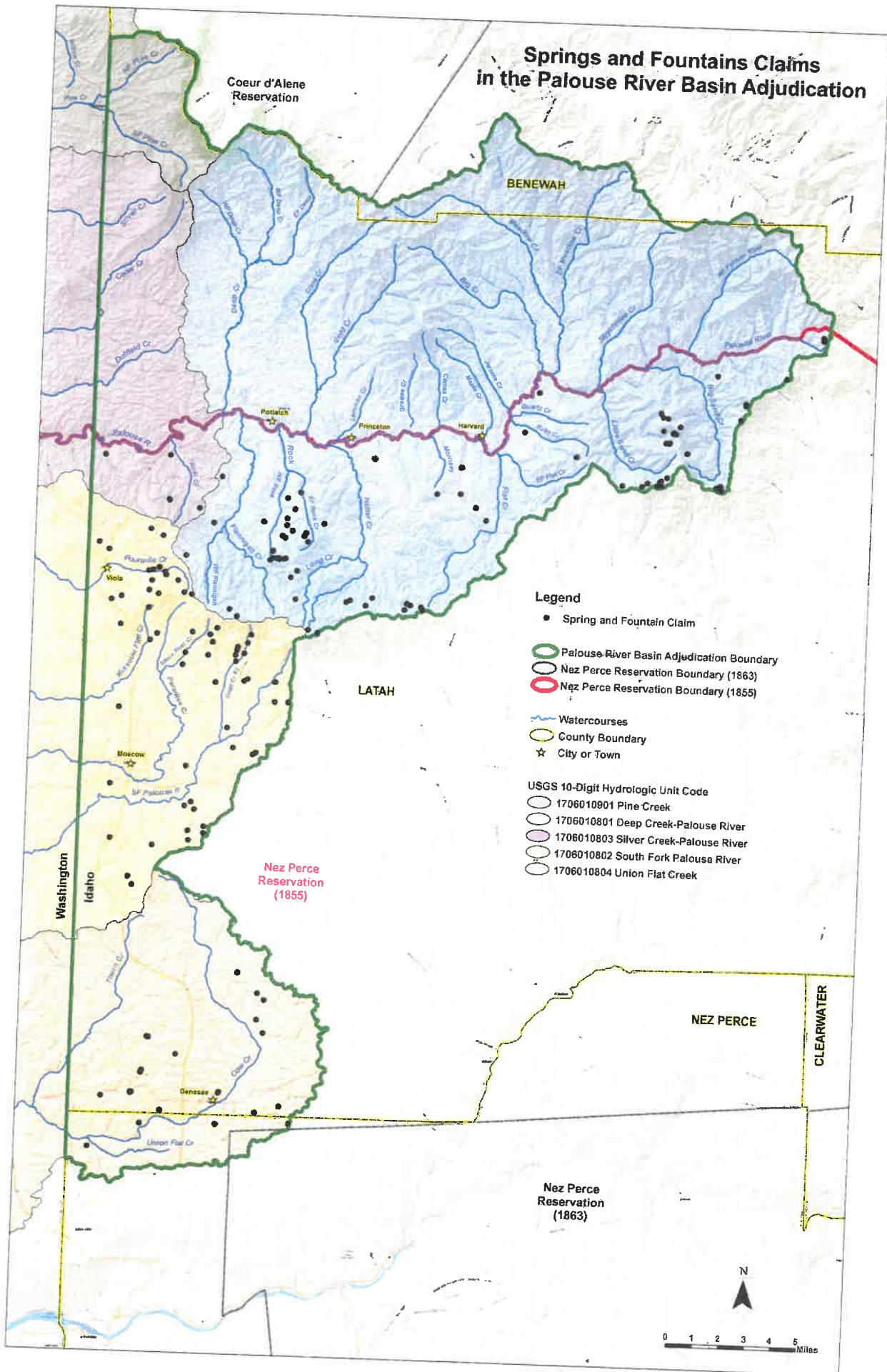


Katherine M. Kane
United States Department of Justice
Indian Resources Division
Natural Resources Section
999 18th Street
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

Springs and Fountains Claims in the Palouse River Basin Adjudication



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

87-12060

IN RE: THE GENERAL
ADJUDICATION OF RIGHTS
TO THE USE OF WATER FROM
THE PALOUSE RIVER BASIN
WATER SYSTEM

) Case No.: 59576
)
) NOTICE OF CLAIM
)
) Federal Reserved Water Right
)
)
)

RECEIVED
DEC 30 2019
DEPARTMENT OF
WATER RESOURCES

1. Name and address of claimant:

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and
ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the
REGIONAL DIRECTOR, NORTHWEST REGION
Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

2. Date of Priority: Time Immemorial

3. a. Source of water supply: Spring (Federal I.D. #1055)

b. which is a tributary to: Long Creek

4. Point of Diversion: This claim is for a spring and/or fountain *in situ* including sufficient groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or fountains.

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1055	40N	4W	8	SWNW	Boise	Latah

See Attached Map.

5. Place of Use:

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1055	40N	4W	8	SWNW	Boise	Latah

See Attached Map.

6. **Purpose of Water Use:**

The purpose of use includes the full range of uses to which the Tribe and its members have always put the springs and fountains, including as a water source for consumptive use, for wildlife and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce Reservation pursuant to the documents referenced in Section 9 and the provisions in Section 10, *infra*.

7. **Period of Use:** January 1 through December 31.

8. **Quantity Reserved (In cfs):** Half the natural flow.

9. **Basis of Claim:**

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

10. **Other Provisions:**

- a. The United States has asserted other claims in the Palouse River Basin Adjudication. Paragraphs 10(a) – (g) express assertions applicable to all claims filed by the Bureau of Indian Affairs in its capacity as trustee for the Nez Perce Tribe in the Palouse River Basin Adjudication. The United States claims waters from groundwater and surface water sources within the Palouse River Basin in the state of Idaho to satisfy the rights reserved to the Nez Perce Tribe by the 1855 Treaty and the 1863 Treaty and to fulfill the permanent homeland purpose of the Nez Perce Reservation. Such present and future purposes include: instream flows for fish habitat; hunting, gathering, and pasturing; spring and fountains flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; and consumptive use claims on two allotments held in trust by the United States.
- b. The Nez Perce Tribe has occupied a territory in what is now central Idaho, southeastern Washington, and northeastern Oregon since time immemorial. *United States v. Webb*, 219 F.3d 1127, 1129 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). The Palouse River Basin is within the Tribe’s traditional lands.
- c. There is a complex history of the United States’ establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing

rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the "exclusive right to fish in all streams running through or bordering" the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the "right of taking fish at all usual and accustomed places in common with the citizens of the Territory" to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.

- d. Article III of the 1855 Treaty further reserves to the Tribe "the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land."
- e. Article VIII of the Nez Perce Treaty of 1863 includes a unique provision reserving to the Nez Perce Tribe the use of "springs and fountains" within the area ceded under Article I of the 1863 Treaty. For purposes of the priority date of the springs and fountains claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.
- f. Pursuant to the General Allotment Act of 1887, Act of February 8, 1887, 24 Stat. 388, *amended*, Act of February 28, 1891, 26 Stat. 794, there are two allotments (Allotments 182-43 and 182-45) held in trust by the United States located within the boundaries of the Palouse River Basin and the northwestern corner of the Nez Perce Reservation. For purposes of the priority date of the domestic and stock watering claims for these two allotments, the United States claims June 11, 1855 pursuant to the 1855 Treaty.
- g. In order to comply with Idaho Code § 42-1409(1), the United States has designated "places of use," "points of diversion," and "purposes of use" in submitting this water rights claim. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe's future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Reservation. The statute's terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.

11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled "How you will receive notices in the Palouse River Basin Adjudication."
- (b) I do do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

For Organizations:

I do solemnly swear and affirm that I am Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.



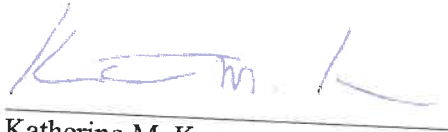
Signature of Authorized Agent:
Title and Organization:

Northwest Regional Director
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

Notice is hereby given that the United States Department of Justice will represent the United States of America, including the U.S. Department of the Interior, Bureau of Indian Affairs, in all matters pertaining to the Palouse River Basin Adjudication.

All notices, filings and correspondence concerning this matter should be mailed to the United States Department of Justice at the address set forth below:




Katherine M. Kane
United States Department of Justice
Indian Resources Division
Natural Resources Section
999 18th Street
Denver, CO 80202


Attorney for the United States of America


Dated this 26th day of December, 2019.


[illegible]


● Spring and Fountain Claim


 Palouse River Basin Adjudication Boundary

 Nez Perce Reservation Boundary (1863)


 Nez Perce Reservation Boundary (1855)


 Watercourses


 County Boundary


 City or Town


USGS 10-Digit Hydrologic Unit Code

 1706010901 Pine Creek

 1706010801 Deep Creek-Palouse River

 1706010803 Silver Creek-Palouse River

 1706010802 South Fork Palouse River

 1706010804 Union Flat Creek

- ☐ 1706010901 Pine Creek
- ☐ 1706010801 Deep Creek-Palouse River
- ☒ 1706010803 Silver Creek-Palouse River
- ☐ 1706010802 South Fork Palouse River
- ☐ 1706010804 Union Flat Creek

NEZ PERCE

Nez Perce
Reservation
(1863)

CLEARWATER

0 1 2 3 4 5 Miles

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

87-12061

IN RE: THE GENERAL
ADJUDICATION OF RIGHTS
TO THE USE OF WATER FROM
THE PALOUSE RIVER BASIN
WATER SYSTEM

Case No.: 59576

NOTICE OF CLAIM

Federal Reserved Water Right

RECEIVED
DEC 30 2019
DEPARTMENT OF
WATER RESOURCES

1. Name and address of claimant:

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and
ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the
REGIONAL DIRECTOR, NORTHWEST REGION
Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

2. Date of Priority: Time Immemorial

3. a. Source of water supply: Spring (Federal I.D. #1056)

b. which is a tributary to: Thorn Creek

4. Point of Diversion: This claim is for a spring and/or fountain *in situ* including sufficient groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or fountains.

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1056	37N	5W	18	SEnw	Boise	Latah

See Attached Map.

5. Place of Use:

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1056	37N	5W	18	SEnw	Boise	Latah

See Attached Map.

6. **Purpose of Water Use:**
The purpose of use includes the full range of uses to which the Tribe and its members have always put the springs and fountains, including as a water source for consumptive use, for wildlife and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce Reservation pursuant to the documents referenced in Section 9 and the provisions in Section 10, *infra*.
7. **Period of Use:** January 1 through December 31.
8. **Quantity Reserved (In cfs):** Half the natural flow.
9. **Basis of Claim:**
The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.
10. **Other Provisions:**
 - a. The United States has asserted other claims in the Palouse River Basin Adjudication. Paragraphs 10(a) – (g) express assertions applicable to all claims filed by the Bureau of Indian Affairs in its capacity as trustee for the Nez Perce Tribe in the Palouse River Basin Adjudication. The United States claims waters from groundwater and surface water sources within the Palouse River Basin in the state of Idaho to satisfy the rights reserved to the Nez Perce Tribe by the 1855 Treaty and the 1863 Treaty and to fulfill the permanent homeland purpose of the Nez Perce Reservation. Such present and future purposes include: instream flows for fish habitat; hunting, gathering, and pasturing; spring and fountains flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; and consumptive use claims on two allotments held in trust by the United States.
 - b. The Nez Perce Tribe has occupied a territory in what is now central Idaho, southeastern Washington, and northeastern Oregon since time immemorial. *United States v. Webb*, 219 F.3d 1127, 1129 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). The Palouse River Basin is within the Tribe’s traditional lands.
 - c. There is a complex history of the United States’ establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing

rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the “exclusive right to fish in all streams running through or bordering” the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the “right of taking fish at all usual and accustomed places in common with the citizens of the Territory” to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.

- d. Article III of the 1855 Treaty further reserves to the Tribe “the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land.”
- e. Article VIII of the Nez Perce Treaty of 1863 includes a unique provision reserving to the Nez Perce Tribe the use of “springs and fountains” within the area ceded under Article I of the 1863 Treaty. For purposes of the priority date of the springs and fountains claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.
- f. Pursuant to the General Allotment Act of 1887, Act of February 8, 1887, 24 Stat. 388, *amended*, Act of February 28, 1891, 26 Stat. 794, there are two allotments (Allotments 182-43 and 182-45) held in trust by the United States located within the boundaries of the Palouse River Basin and the northwestern corner of the Nez Perce Reservation. For purposes of the priority date of the domestic and stock watering claims for these two allotments, the United States claims June 11, 1855 pursuant to the 1855 Treaty.
- g. In order to comply with Idaho Code § 42-1409(1), the United States has designated “places of use,” “points of diversion,” and “purposes of use” in submitting this water rights claim. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe’s future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Reservation. The statute’s terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.

11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled “How you will receive notices in the Palouse River Basin Adjudication.”
- (b) I do ___ do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

For Organizations:

I do solemnly swear and affirm that I am Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.

Signature of Authorized Agent:
Title and Organization:




Northwest Regional Director
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

Notice is hereby given that the United States Department of Justice will represent the United States of America, including the U.S. Department of the Interior, Bureau of Indian Affairs, in all matters pertaining to the Palouse River Basin Adjudication.

All notices, filings and correspondence concerning this matter should be mailed to the United States Department of Justice at the address set forth below:

A handwritten signature in blue ink, appearing to read "K.M. Kane", is written over a horizontal line.

Katherine M. Kane
United States Department of Justice
Indian Resources Division
Natural Resources Section
999 18th Street
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

**Springs and Fountains Claims
in the Palouse River Basin Adjudication**

Legend

- Spring and Fountain Claim
- Palouse River Basin Adjudication Boundary
- Nez Perce Reservation Boundary (1863)
- Nez Perce Reservation Boundary (1855)
- Watercourses
- County Boundary
- City or Town

USGS 10-Digit Hydrologic Unit Code

- 1706010901 Pine Creek
- 1706010801 Deep Creek-Palouse River
- 1706010803 Silver Creek-Palouse River
- 1706010802 South Fork Palouse River
- 1706010804 Union Flat Creek

Nez Perce Reservation (1855)

Nez Perce Reservation (1863)


Scale: 0 1 2 3 4 5 Miles

- **Spring and Fountain Claim**

 Palouse River Basin Adjudication Boundary

○ Nez Perce Reservation Boundary (1863)

Nez Perce Reservation Boundary (1855)

 Watercourses County Boundary

★ City or Town

USGS 10-Digit Hydrologic Unit Code

1706010901 Pine Creek

1706010801 Deep Creek-Palouse River

1706010803 Silver Creek-Palouse River

1706010802 South Fork Palouse River

1706010804 Union Flat Creek

Washington

Idaho

Nez Perce
Reservation
(1855)

LATAH

BENEWAH

NEZ PERCE

CLEARWATER

Nez Perce
Reservation
(1863)

N

0 1 2 3 4 5 Miles

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

87-12062

IN RE: THE GENERAL
ADJUDICATION OF RIGHTS
TO THE USE OF WATER FROM
THE PALOUSE RIVER BASIN
WATER SYSTEM

) Case No.: 59576
)
) NOTICE OF CLAIM
)
) Federal Reserved Water Right
)
)

RECEIVED
DEC 30 2019
DEPARTMENT OF
WATER RESOURCES

1. Name and address of claimant:

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and
ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the
REGIONAL DIRECTOR, NORTHWEST REGION
Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

2. Date of Priority: Time Immemorial

3. a. Source of water supply: Spring Fed Pond (Federal I.D. #1057)

b. which is a tributary to: Palouse River

4. Point of Diversion: This claim is for a spring and/or fountain *in situ* including sufficient groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or fountains.

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1057	42N	3W	35	NESW	Boise	Latah

See Attached Map.

5. Place of Use:

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1057	42N	3W	35	NESW	Boise	Latah

See Attached Map.

6. **Purpose of Water Use:**
The purpose of use includes the full range of uses to which the Tribe and its members have always put the springs and fountains, including as a water source for consumptive use, for wildlife and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce Reservation pursuant to the documents referenced in Section 9 and the provisions in Section 10, *infra*.
7. **Period of Use:** January 1 through December 31.
8. **Quantity Reserved (In cfs):** Half the natural flow.
9. **Basis of Claim:**
The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.
10. **Other Provisions:**
 - a. The United States has asserted other claims in the Palouse River Basin Adjudication. Paragraphs 10(a) – (g) express assertions applicable to all claims filed by the Bureau of Indian Affairs in its capacity as trustee for the Nez Perce Tribe in the Palouse River Basin Adjudication. The United States claims waters from groundwater and surface water sources within the Palouse River Basin in the state of Idaho to satisfy the rights reserved to the Nez Perce Tribe by the 1855 Treaty and the 1863 Treaty and to fulfill the permanent homeland purpose of the Nez Perce Reservation. Such present and future purposes include: instream flows for fish habitat; hunting, gathering, and pasturing; spring and fountains flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; and consumptive use claims on two allotments held in trust by the United States.
 - b. The Nez Perce Tribe has occupied a territory in what is now central Idaho, southeastern Washington, and northeastern Oregon since time immemorial. *United States v. Webb*, 219 F.3d 1127, 1129 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). The Palouse River Basin is within the Tribe’s traditional lands.
 - c. There is a complex history of the United States’ establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing

rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the “exclusive right to fish in all streams running through or bordering” the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the “right of taking fish at all usual and accustomed places in common with the citizens of the Territory” to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.

- d. Article III of the 1855 Treaty further reserves to the Tribe “the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land.”
- e. Article VIII of the Nez Perce Treaty of 1863 includes a unique provision reserving to the Nez Perce Tribe the use of “springs and fountains” within the area ceded under Article I of the 1863 Treaty. For purposes of the priority date of the springs and fountains claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.
- f. Pursuant to the General Allotment Act of 1887, Act of February 8, 1887, 24 Stat. 388, *amended*, Act of February 28, 1891, 26 Stat. 794, there are two allotments (Allotments 182-43 and 182-45) held in trust by the United States located within the boundaries of the Palouse River Basin and the northwestern corner of the Nez Perce Reservation. For purposes of the priority date of the domestic and stock watering claims for these two allotments, the United States claims June 11, 1855 pursuant to the 1855 Treaty.
- g. In order to comply with Idaho Code § 42-1409(1), the United States has designated “places of use,” “points of diversion,” and “purposes of use” in submitting this water rights claim. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe’s future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Reservation. The statute’s terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.

11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled “How you will receive notices in the Palouse River Basin Adjudication.”
- (b) I do ___ do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

For Organizations:

I do solemnly swear and affirm that I am Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.

Signature of Authorized Agent:
Title and Organization:

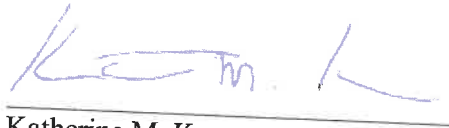


Northwest Regional Director
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

Notice is hereby given that the United States Department of Justice will represent the United States of America, including the U.S. Department of the Interior, Bureau of Indian Affairs, in all matters pertaining to the Palouse River Basin Adjudication.

All notices, filings and correspondence concerning this matter should be mailed to the United States Department of Justice at the address set forth below:



Katherine M. Kane
United States Department of Justice
Indian Resources Division
Natural Resources Section
999 18th Street
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

Springs and Fountains Claims in the Palouse River Basin Adjudication

Legend

- Spring and Fountain Claim
- Palouse River Basin Adjudication Boundary
- Nez Perce Reservation Boundary (1863)
- Nez Perce Reservation Boundary (1855)
- Watercourses
- County Boundary
- City or Town

USGS 10-Digit Hydrologic Unit Code

- 1706010901 Pine Creek
- 1706010801 Deep Creek-Palouse River
- 1706010803 Silver Creek-Palouse River
- 1706010802 South Fork Palouse River
- 1706010804 Union Flat Creek

Nez Perce Reservation (1855)

Nez Perce Reservation (1863)

Scale: 0 1 2 3 4 5 Miles

North Arrow: N

- **Spring and Fountain Claim**

Palouse River Basin Adjudication Boundary

○ Nez Perce Reservation Boundary (1863)

Watercourses

 County Boundary

☆ City or Town

USGS 10-Digit Hydrologic Unit Code

☐ 1706010901 Pine Creek

☐ 1706010801 Deep Creek-Palouse River

☒ 1706010803 Silver Creek-Palouse River

☐ 1706010802 South Fork Palouse River

1706010804 Union Flat Creek

Nez Perce
Reservation
(1855)

NEZ PERCE

CLEARWATER

Nez Perce
Reservation
(1863)



0 1 2 3 4 5 Miles

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

87-12063

IN RE: THE GENERAL
ADJUDICATION OF RIGHTS
TO THE USE OF WATER FROM
THE PALOUSE RIVER BASIN
WATER SYSTEM

) Case No.: 59576
)
) **NOTICE OF CLAIM**
)
) **Federal Reserved Water Right**
)
)
)

RECEIVED
DEC 30 2019
DEPARTMENT OF
WATER RESOURCES

1. **Name and address of claimant:**

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and
ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the
REGIONAL DIRECTOR, NORTHWEST REGION

Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

2. **Date of Priority:** Time Immemorial

3. **a. Source of water supply:** Spring (Federal I.D. #1058)

b. which is a tributary to: Hatter Creek

4. **Point of Diversion:** This claim is for a spring and/or fountain *in situ* including sufficient groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or fountains.

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1058	41N	4W	28	NWSW	Boise	Latah

See Attached Map.

5. **Place of Use:**

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1058	41N	4W	28	NWSW	Boise	Latah

See Attached Map.

6. **Purpose of Water Use:**

The purpose of use includes the full range of uses to which the Tribe and its members have always put the springs and fountains, including as a water source for consumptive use, for wildlife and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce Reservation pursuant to the documents referenced in Section 9 and the provisions in Section 10, *infra*.

7. **Period of Use:** January 1 through December 31.

8. **Quantity Reserved (In cfs):** Half the natural flow.

9. **Basis of Claim:**

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

10. **Other Provisions:**

- a. The United States has asserted other claims in the Palouse River Basin Adjudication. Paragraphs 10(a) – (g) express assertions applicable to all claims filed by the Bureau of Indian Affairs in its capacity as trustee for the Nez Perce Tribe in the Palouse River Basin Adjudication. The United States claims waters from groundwater and surface water sources within the Palouse River Basin in the state of Idaho to satisfy the rights reserved to the Nez Perce Tribe by the 1855 Treaty and the 1863 Treaty and to fulfill the permanent homeland purpose of the Nez Perce Reservation. Such present and future purposes include: instream flows for fish habitat; hunting, gathering, and pasturing; spring and fountains flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; and consumptive use claims on two allotments held in trust by the United States.
- b. The Nez Perce Tribe has occupied a territory in what is now central Idaho, southeastern Washington, and northeastern Oregon since time immemorial. *United States v. Webb*, 219 F.3d 1127, 1129 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). The Palouse River Basin is within the Tribe’s traditional lands.
- c. There is a complex history of the United States’ establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing

rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the “exclusive right to fish in all streams running through or bordering” the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the “right of taking fish at all usual and accustomed places in common with the citizens of the Territory” to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.

- d. Article III of the 1855 Treaty further reserves to the Tribe “the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land.”
- e. Article VIII of the Nez Perce Treaty of 1863 includes a unique provision reserving to the Nez Perce Tribe the use of “springs and fountains” within the area ceded under Article I of the 1863 Treaty. For purposes of the priority date of the springs and fountains claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.
- f. Pursuant to the General Allotment Act of 1887, Act of February 8, 1887, 24 Stat. 388, *amended*, Act of February 28, 1891, 26 Stat. 794, there are two allotments (Allotments 182-43 and 182-45) held in trust by the United States located within the boundaries of the Palouse River Basin and the northwestern corner of the Nez Perce Reservation. For purposes of the priority date of the domestic and stock watering claims for these two allotments, the United States claims June 11, 1855 pursuant to the 1855 Treaty.
- g. In order to comply with Idaho Code § 42-1409(1), the United States has designated “places of use,” “points of diversion,” and “purposes of use” in submitting this water rights claim. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe’s future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Reservation. The statute’s terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.

11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled “How you will receive notices in the Palouse River Basin Adjudication.”
- (b) I do ___ do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

For Organizations:

I do solemnly swear and affirm that I am Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.

Signature of Authorized Agent:
Title and Organization:

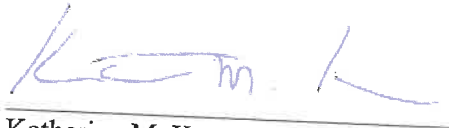


Northwest Regional Director
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

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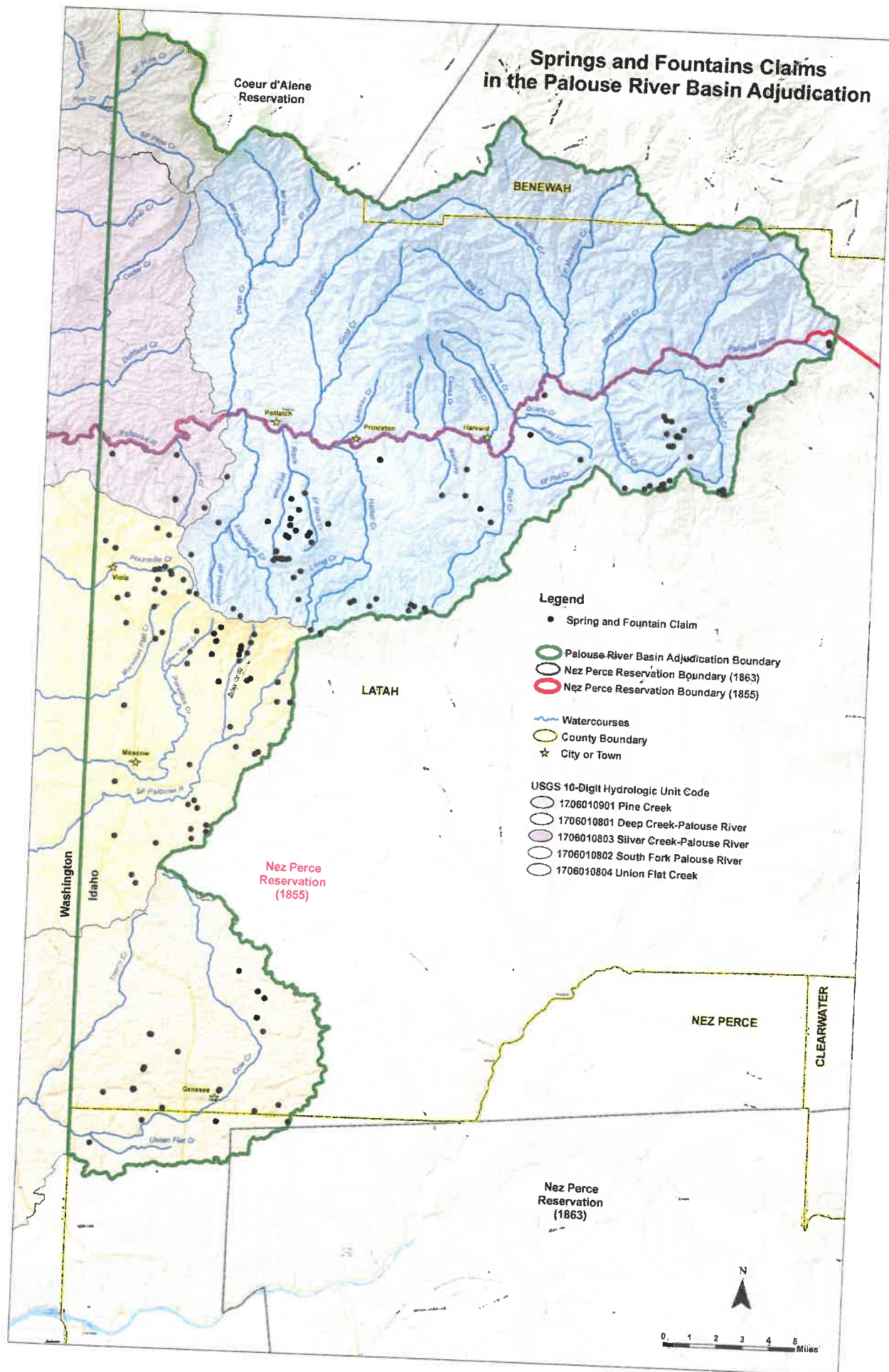
A handwritten signature in blue ink, appearing to read "K.M. Kane", is written over a horizontal line.

Katherine M. Kane
United States Department of Justice
Indian Resources Division
Natural Resources Section
999 18th Street
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

Springs and Fountains Claims in the Palouse River Basin Adjudication



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

87-12064

IN RE: THE GENERAL
ADJUDICATION OF RIGHTS
TO THE USE OF WATER FROM
THE PALOUSE RIVER BASIN
WATER SYSTEM

) Case No.: 59576
)
) NOTICE OF CLAIM
)
) Federal Reserved Water Right
)
)
)

RECEIVED
DEC 30 2019
DEPARTMENT OF
WATER RESOURCES

1. Name and address of claimant:

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and
ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the
REGIONAL DIRECTOR, NORTHWEST REGION

Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

2. Date of Priority: Time Immemorial

3. a. Source of water supply: Spring (Federal I.D. #1059)

b. which is a tributary to: South Fork Palouse River

4. Point of Diversion: This claim is for a spring and/or fountain *in situ* including sufficient groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or fountains.

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1059	40N	4W	30	NESW	Boise	Latah

See Attached Map.

5. Place of Use:

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1059	40N	4W	30	NESW	Boise	Latah

See Attached Map.

6. **Purpose of Water Use:**

The purpose of use includes the full range of uses to which the Tribe and its members have always put the springs and fountains, including as a water source for consumptive use, for wildlife and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce Reservation pursuant to the documents referenced in Section 9 and the provisions in Section 10, *infra*.

7. **Period of Use:** January 1 through December 31.

8. **Quantity Reserved (In cfs):** Half the natural flow.

9. **Basis of Claim:**

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

10. **Other Provisions:**

- a. The United States has asserted other claims in the Palouse River Basin Adjudication. Paragraphs 10(a) – (g) express assertions applicable to all claims filed by the Bureau of Indian Affairs in its capacity as trustee for the Nez Perce Tribe in the Palouse River Basin Adjudication. The United States claims waters from groundwater and surface water sources within the Palouse River Basin in the state of Idaho to satisfy the rights reserved to the Nez Perce Tribe by the 1855 Treaty and the 1863 Treaty and to fulfill the permanent homeland purpose of the Nez Perce Reservation. Such present and future purposes include: instream flows for fish habitat; hunting, gathering, and pasturing; spring and fountains flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; and consumptive use claims on two allotments held in trust by the United States.
- b. The Nez Perce Tribe has occupied a territory in what is now central Idaho, southeastern Washington, and northeastern Oregon since time immemorial. *United States v. Webb*, 219 F.3d 1127, 1129 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). The Palouse River Basin is within the Tribe’s traditional lands.
- c. There is a complex history of the United States’ establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing

rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the “exclusive right to fish in all streams running through or bordering” the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the “right of taking fish at all usual and accustomed places in common with the citizens of the Territory” to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.

- d. Article III of the 1855 Treaty further reserves to the Tribe “the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land.”
- e. Article VIII of the Nez Perce Treaty of 1863 includes a unique provision reserving to the Nez Perce Tribe the use of “springs and fountains” within the area ceded under Article I of the 1863 Treaty. For purposes of the priority date of the springs and fountains claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.
- f. Pursuant to the General Allotment Act of 1887, Act of February 8, 1887, 24 Stat. 388, *amended*, Act of February 28, 1891, 26 Stat. 794, there are two allotments (Allotments 182-43 and 182-45) held in trust by the United States located within the boundaries of the Palouse River Basin and the northwestern corner of the Nez Perce Reservation. For purposes of the priority date of the domestic and stock watering claims for these two allotments, the United States claims June 11, 1855 pursuant to the 1855 Treaty.
- g. In order to comply with Idaho Code § 42-1409(1), the United States has designated “places of use,” “points of diversion,” and “purposes of use” in submitting this water rights claim. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe’s future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Reservation. The statute’s terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.

11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled “How you will receive notices in the Palouse River Basin Adjudication.”
- (b) I do ___ do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

For Organizations:

I do solemnly swear and affirm that I am Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.

Signature of Authorized Agent:
Title and Organization:



Northwest Regional Director
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

Notice is hereby given that the United States Department of Justice will represent the United States of America, including the U.S. Department of the Interior, Bureau of Indian Affairs, in all matters pertaining to the Palouse River Basin Adjudication.

All notices, filings and correspondence concerning this matter should be mailed to the United States Department of Justice at the address set forth below:



Katherine M. Kane
United States Department of Justice
Indian Resources Division
Natural Resources Section
999 18th Street
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

**Springs and Fountains Claims
in the Palouse River Basin Adjudication**

Legend

- Spring and Fountain Claim
- Palouse River Basin Adjudication Boundary
- Nez Perce Reservation Boundary (1863)
- Nez Perce Reservation Boundary (1855)
- Watercourses
- County Boundary
- ☆ City or Town

USGS 10-Digit Hydrologic Unit Code

- 1706010901 Pine Creek
- 1706010801 Deep Creek-Palouse River
- 1706010803 Silver Creek-Palouse River
- 1706010802 South Fork Palouse River
- 1706010804 Union Flat Creek

Nez Perce Reservation (1855)

Nez Perce Reservation (1863)

Scale: 0 1 2 3 4 5 Miles

North Arrow: N

- **Spring and Fountain Claim**

○ Nez Perce Reservation Boundary (1863)

 Watercourses

☆ City or Town

1706010901 Pine Creek

1706010801 Deep Creek-Palouse River

1706010803 Silver Creek-Palouse River

1706010802 South Fork Palouse River

1706010804 Union Flat Creek

1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 2533, 2534, 2535, 2536, 2537, 2538, 2539, 2540, 2541, 2542, 2543, 2544, 2545, 2546, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559, 2560, 2561, 2562, 2563, 2564, 2565, 2566, 2567, 2568, 2569, 2570, 2571, 2572, 2573, 2574, 2575, 2576, 2577, 2578, 2579, 2580, 2581, 2582, 2583, 2584, 2585, 2586, 2587, 2588, 2589, 2590, 2591, 2592, 2593, 2594, 2595, 2596, 2597, 2598, 2599, 2600, 2601, 2602, 2603, 2604, 2605, 2606, 2607, 2608, 2609, 2610, 2611, 2612, 2613, 2614, 2615, 2616, 2617, 2618, 2619, 2620, 2621, 2622, 2623, 2624, 2625, 2626, 2627, 2628, 2629, 2630, 2631, 2632, 2633, 2634, 2635, 2636, 2637, 2638, 2639, 2640, 2641, 2642, 2643, 2644, 2645, 2646, 2647, 2648, 2649, 2650, 2651, 2652, 2653, 2654, 2655, 2656, 2657, 2658, 2659, 2660, 2661, 2662, 2663, 2664, 2665, 2666, 2667, 2668, 2669, 2670, 2671, 2672, 2673, 2674, 2675, 2676, 2677, 2678, 2679, 26

NEZ PERCE

CLEARWATER

Nez Perce
Reservation
(1863)



A horizontal scale bar with markings at 0, 1, 2, 3, 4, and 5. The word "Miles" is written at the right end of the bar.

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

87-170 65

IN RE: THE GENERAL
ADJUDICATION OF RIGHTS
TO THE USE OF WATER FROM
THE PALOUSE RIVER BASIN
WATER SYSTEM

) Case No.: 59576
)
) **NOTICE OF CLAIM**
)
) **Federal Reserved Water Right**
)
)
)

RECEIVED
DEC 30 2019
DEPARTMENT OF
WATER RESOURCES

1. **Name and address of claimant:**

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and
ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the
REGIONAL DIRECTOR, NORTHWEST REGION

Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

2. **Date of Priority:** Time Immemorial

3. **a. Source of water supply:** Spring (Federal I.D. #1060)

b. which is a tributary to: South Fork Palouse River

4. **Point of Diversion:** This claim is for a spring and/or fountain *in situ* including sufficient groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or fountains.

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1060	39N	5W	30	NESW	Boise	Latah

See Attached Map.

5. **Place of Use:**

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1060	39N	5W	30	NESW	Boise	Latah

See Attached Map.

6. Purpose of Water Use:

The purpose of use includes the full range of uses to which the Tribe and its members have always put the springs and fountains, including as a water source for consumptive use, for wildlife and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce Reservation pursuant to the documents referenced in Section 9 and the provisions in Section 10, *infra*.

7. Period of Use: January 1 through December 31.

8. Quantity Reserved (In cfs): Half the natural flow.

9. Basis of Claim:

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

10. Other Provisions:

- a. The United States has asserted other claims in the Palouse River Basin Adjudication. Paragraphs 10(a) – (g) express assertions applicable to all claims filed by the Bureau of Indian Affairs in its capacity as trustee for the Nez Perce Tribe in the Palouse River Basin Adjudication. The United States claims waters from groundwater and surface water sources within the Palouse River Basin in the state of Idaho to satisfy the rights reserved to the Nez Perce Tribe by the 1855 Treaty and the 1863 Treaty and to fulfill the permanent homeland purpose of the Nez Perce Reservation. Such present and future purposes include: instream flows for fish habitat; hunting, gathering, and pasturing; spring and fountains flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; and consumptive use claims on two allotments held in trust by the United States.
- b. The Nez Perce Tribe has occupied a territory in what is now central Idaho, southeastern Washington, and northeastern Oregon since time immemorial. *United States v. Webb*, 219 F.3d 1127, 1129 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). The Palouse River Basin is within the Tribe’s traditional lands.
- c. There is a complex history of the United States’ establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing

rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the "exclusive right to fish in all streams running through or bordering" the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the "right of taking fish at all usual and accustomed places in common with the citizens of the Territory" to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.

- d. Article III of the 1855 Treaty further reserves to the Tribe "the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land."
- e. Article VIII of the Nez Perce Treaty of 1863 includes a unique provision reserving to the Nez Perce Tribe the use of "springs and fountains" within the area ceded under Article I of the 1863 Treaty. For purposes of the priority date of the springs and fountains claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.
- f. Pursuant to the General Allotment Act of 1887, Act of February 8, 1887, 24 Stat. 388, *amended*, Act of February 28, 1891, 26 Stat. 794, there are two allotments (Allotments 182-43 and 182-45) held in trust by the United States located within the boundaries of the Palouse River Basin and the northwestern corner of the Nez Perce Reservation. For purposes of the priority date of the domestic and stock watering claims for these two allotments, the United States claims June 11, 1855 pursuant to the 1855 Treaty.
- g. In order to comply with Idaho Code § 42-1409(1), the United States has designated "places of use," "points of diversion," and "purposes of use" in submitting this water rights claim. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe's future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Reservation. The statute's terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.

11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled "How you will receive notices in the Palouse River Basin Adjudication."
- (b) I do do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

For Organizations:

I do solemnly swear and affirm that I am Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.

Signature of Authorized Agent:
Title and Organization:

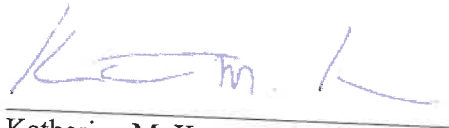


Northwest Regional Director
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

Notice is hereby given that the United States Department of Justice will represent the United States of America, including the U.S. Department of the Interior, Bureau of Indian Affairs, in all matters pertaining to the Palouse River Basin Adjudication.

All notices, filings and correspondence concerning this matter should be mailed to the United States Department of Justice at the address set forth below:

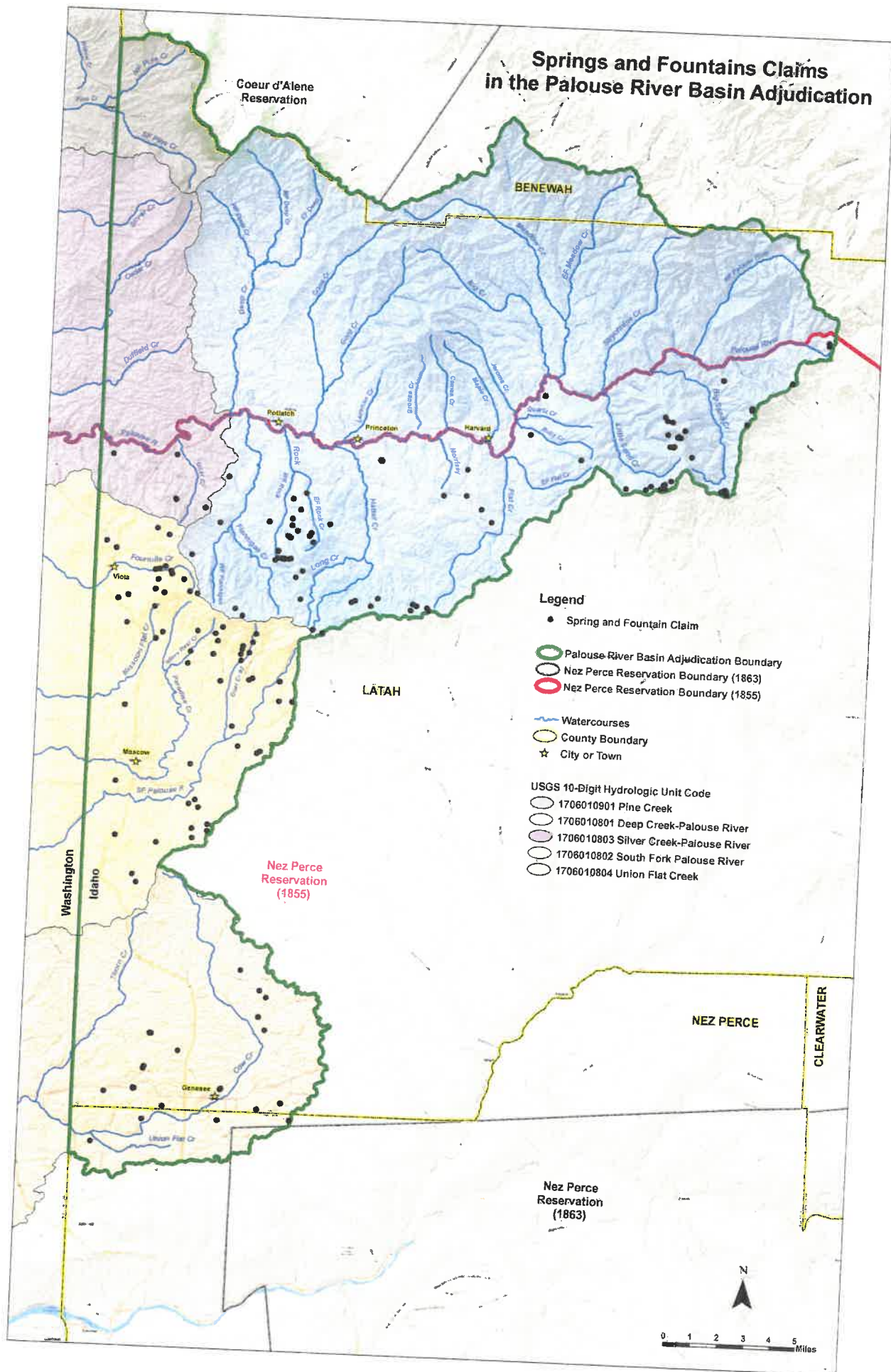
A handwritten signature in blue ink, appearing to read 'K.M. Kane', is written over a horizontal line.

Katherine M. Kane
United States Department of Justice
Indian Resources Division
Natural Resources Section
999 18th Street
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

Springs and Fountains Claims in the Palouse River Basin Adjudication



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

87-12066

IN RE: THE GENERAL)
ADJUDICATION OF RIGHTS)
TO THE USE OF WATER FROM)
THE PALOUSE RIVER BASIN)
WATER SYSTEM)

Case No.: 59576

NOTICE OF CLAIM

Federal Reserved Water Right

RECEIVED
DEC 30 2019
DEPARTMENT OF
WATER RESOURCES

1. Name and address of claimant:

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and
ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the
REGIONAL DIRECTOR, NORTHWEST REGION

Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

2. Date of Priority: Time Immemorial

3. a. Source of water supply: Spring (Federal I.D. #1061)

b. which is a tributary to: Ruby Creek

4. Point of Diversion: This claim is for a spring and/or fountain *in situ* including sufficient groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or fountains.

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1061	41N	3W	10	NENE	Boise	Latah

See Attached Map.

5. Place of Use:

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1061	41N	3W	10	NENE	Boise	Latah

See Attached Map.

6. **Purpose of Water Use:**

The purpose of use includes the full range of uses to which the Tribe and its members have always put the springs and fountains, including as a water source for consumptive use, for wildlife and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce Reservation pursuant to the documents referenced in Section 9 and the provisions in Section 10, *infra*.

7. **Period of Use:** January 1 through December 31.

8. **Quantity Reserved (In cfs):** Half the natural flow.

9. **Basis of Claim:**

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

10. **Other Provisions:**

- a. The United States has asserted other claims in the Palouse River Basin Adjudication. Paragraphs 10(a) – (g) express assertions applicable to all claims filed by the Bureau of Indian Affairs in its capacity as trustee for the Nez Perce Tribe in the Palouse River Basin Adjudication. The United States claims waters from groundwater and surface water sources within the Palouse River Basin in the state of Idaho to satisfy the rights reserved to the Nez Perce Tribe by the 1855 Treaty and the 1863 Treaty and to fulfill the permanent homeland purpose of the Nez Perce Reservation. Such present and future purposes include: instream flows for fish habitat; hunting, gathering, and pasturing; spring and fountains flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; and consumptive use claims on two allotments held in trust by the United States.
- b. The Nez Perce Tribe has occupied a territory in what is now central Idaho, southeastern Washington, and northeastern Oregon since time immemorial. *United States v. Webb*, 219 F.3d 1127, 1129 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). The Palouse River Basin is within the Tribe’s traditional lands.
- c. There is a complex history of the United States’ establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing

rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the “exclusive right to fish in all streams running through or bordering” the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the “right of taking fish at all usual and accustomed places in common with the citizens of the Territory” to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.

- d. Article III of the 1855 Treaty further reserves to the Tribe “the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land.”
- e. Article VIII of the Nez Perce Treaty of 1863 includes a unique provision reserving to the Nez Perce Tribe the use of “springs and fountains” within the area ceded under Article I of the 1863 Treaty. For purposes of the priority date of the springs and fountains claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.
- f. Pursuant to the General Allotment Act of 1887, Act of February 8, 1887, 24 Stat. 388, *amended*, Act of February 28, 1891, 26 Stat. 794, there are two allotments (Allotments 182-43 and 182-45) held in trust by the United States located within the boundaries of the Palouse River Basin and the northwestern corner of the Nez Perce Reservation. For purposes of the priority date of the domestic and stock watering claims for these two allotments, the United States claims June 11, 1855 pursuant to the 1855 Treaty.
- g. In order to comply with Idaho Code § 42-1409(1), the United States has designated “places of use,” “points of diversion,” and “purposes of use” in submitting this water rights claim. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe’s future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Reservation. The statute’s terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.

11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled “How you will receive notices in the Palouse River Basin Adjudication.”
- (b) I do ___ do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

For Organizations:

I do solemnly swear and affirm that I am Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.

Signature of Authorized Agent:
Title and Organization:

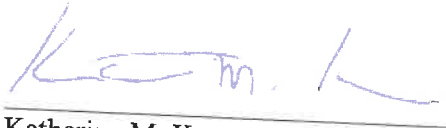


Northwest Regional Director
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

Notice is hereby given that the United States Department of Justice will represent the United States of America, including the U.S. Department of the Interior, Bureau of Indian Affairs, in all matters pertaining to the Palouse River Basin Adjudication.

All notices, filings and correspondence concerning this matter should be mailed to the United States Department of Justice at the address set forth below:

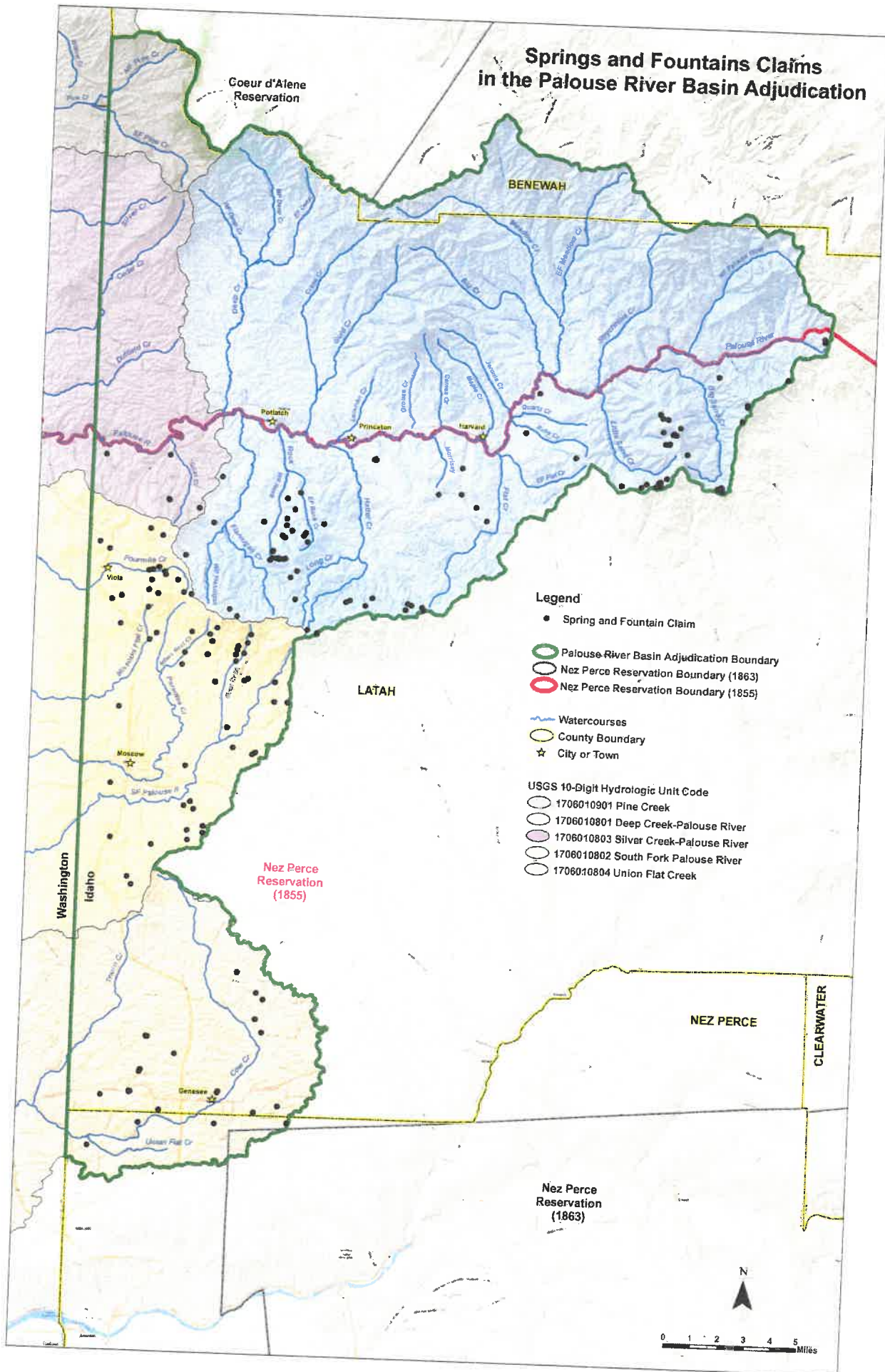


Katherine M. Kane
United States Department of Justice
Indian Resources Division
Natural Resources Section
999 18th Street
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

Springs and Fountains Claims in the Palouse River Basin Adjudication



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

87-12067

IN RE: THE GENERAL
ADJUDICATION OF RIGHTS
TO THE USE OF WATER FROM
THE PALOUSE RIVER BASIN
WATER SYSTEM

Case No.: 59576

NOTICE OF CLAIM

Federal Reserved Water Right

RECEIVED
DEC 30 2019
DEPARTMENT OF
WATER RESOURCES

1. Name and address of claimant:

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and
ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the
REGIONAL DIRECTOR, NORTHWEST REGION
Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

2. Date of Priority: Time Immemorial

3. a. Source of water supply: Spring (Federal I.D. #1062)

b. which is a tributary to: Flannigan Creek

4. Point of Diversion: This claim is for a spring and/or fountain *in situ* including sufficient
groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or
fountains.

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1062	41N	5W	14	SWSW	Boise	Latah

See Attached Map.

5. Place of Use:

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1062	41N	5W	14	SWSW	Boise	Latah

See Attached Map.

6. **Purpose of Water Use:**

The purpose of use includes the full range of uses to which the Tribe and its members have always put the springs and fountains, including as a water source for consumptive use, for wildlife and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce Reservation pursuant to the documents referenced in Section 9 and the provisions in Section 10, *infra*.

7. **Period of Use:** January 1 through December 31.

8. **Quantity Reserved (In cfs):** Half the natural flow.

9. **Basis of Claim:**

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

10. **Other Provisions:**

- a. The United States has asserted other claims in the Palouse River Basin Adjudication. Paragraphs 10(a) – (g) express assertions applicable to all claims filed by the Bureau of Indian Affairs in its capacity as trustee for the Nez Perce Tribe in the Palouse River Basin Adjudication. The United States claims waters from groundwater and surface water sources within the Palouse River Basin in the state of Idaho to satisfy the rights reserved to the Nez Perce Tribe by the 1855 Treaty and the 1863 Treaty and to fulfill the permanent homeland purpose of the Nez Perce Reservation. Such present and future purposes include: instream flows for fish habitat; hunting, gathering, and pasturing; spring and fountains flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; and consumptive use claims on two allotments held in trust by the United States.
- b. The Nez Perce Tribe has occupied a territory in what is now central Idaho, southeastern Washington, and northeastern Oregon since time immemorial. *United States v. Webb*, 219 F.3d 1127, 1129 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). The Palouse River Basin is within the Tribe’s traditional lands.
- c. There is a complex history of the United States’ establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing

rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the “exclusive right to fish in all streams running through or bordering” the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the “right of taking fish at all usual and accustomed places in common with the citizens of the Territory” to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.

- d. Article III of the 1855 Treaty further reserves to the Tribe “the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land.”
- e. Article VIII of the Nez Perce Treaty of 1863 includes a unique provision reserving to the Nez Perce Tribe the use of “springs and fountains” within the area ceded under Article I of the 1863 Treaty. For purposes of the priority date of the springs and fountains claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.
- f. Pursuant to the General Allotment Act of 1887, Act of February 8, 1887, 24 Stat. 388, *amended*, Act of February 28, 1891, 26 Stat. 794, there are two allotments (Allotments 182-43 and 182-45) held in trust by the United States located within the boundaries of the Palouse River Basin and the northwestern corner of the Nez Perce Reservation. For purposes of the priority date of the domestic and stock watering claims for these two allotments, the United States claims June 11, 1855 pursuant to the 1855 Treaty.
- g. In order to comply with Idaho Code § 42-1409(1), the United States has designated “places of use,” “points of diversion,” and “purposes of use” in submitting this water rights claim. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe’s future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Reservation. The statute’s terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.

11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled “How you will receive notices in the Palouse River Basin Adjudication.”
- (b) I do ___ do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

For Organizations:

I do solemnly swear and affirm that I am Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.

Signature of Authorized Agent:
Title and Organization:

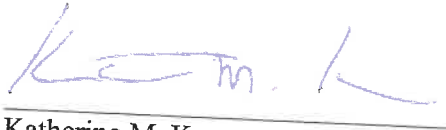


Northwest Regional Director
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

Notice is hereby given that the United States Department of Justice will represent the United States of America, including the U.S. Department of the Interior, Bureau of Indian Affairs, in all matters pertaining to the Palouse River Basin Adjudication.

All notices, filings and correspondence concerning this matter should be mailed to the United States Department of Justice at the address set forth below:

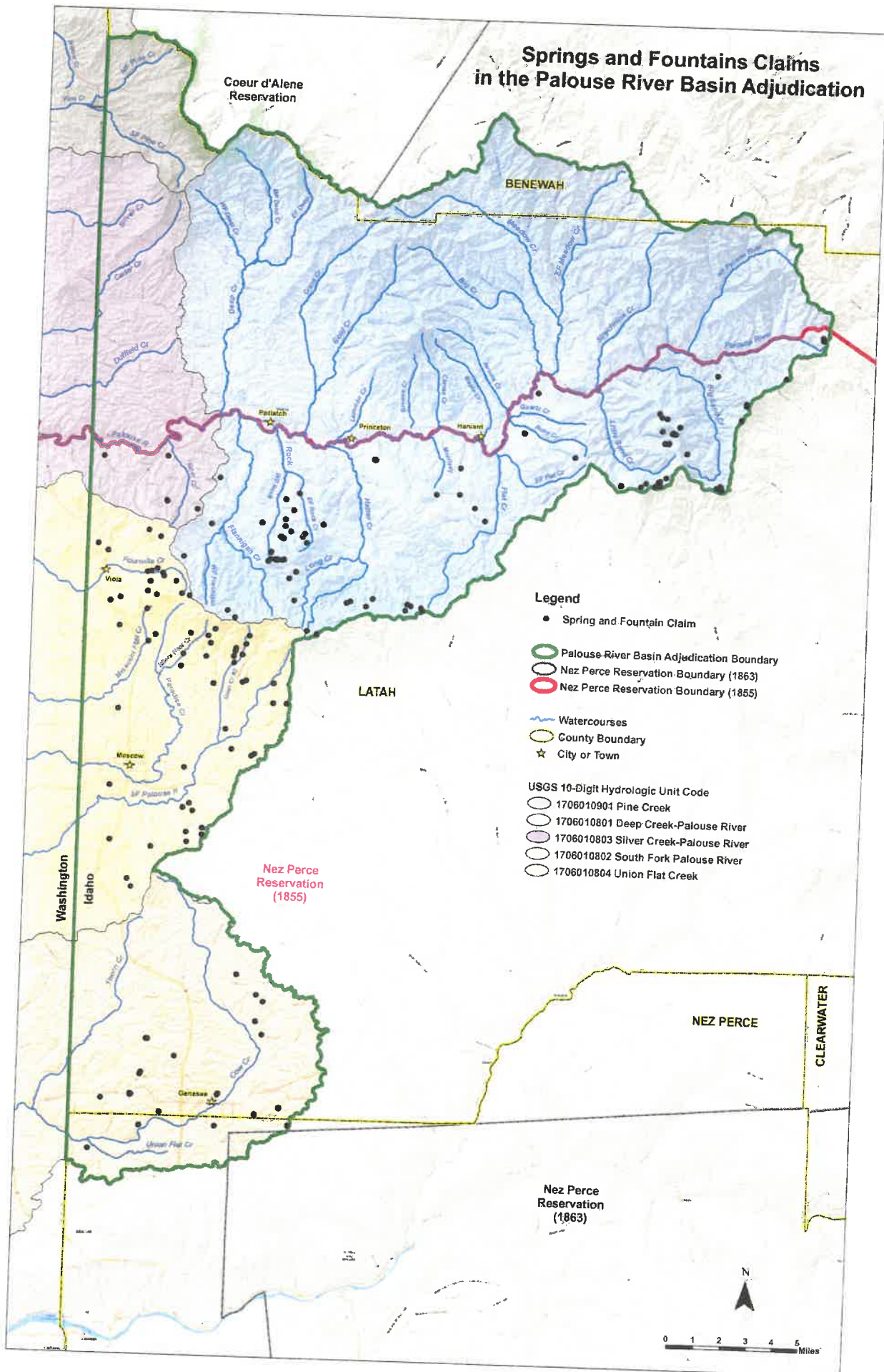


Katherine M. Kane
United States Department of Justice
Indian Resources Division
Natural Resources Section
999 18th Street
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

Springs and Fountains Claims in the Palouse River Basin Adjudication



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

87-12068

IN RE: THE GENERAL
ADJUDICATION OF RIGHTS
TO THE USE OF WATER FROM
THE PALOUSE RIVER BASIN
WATER SYSTEM

Case No.: 59576

NOTICE OF CLAIM

Federal Reserved Water Right

RECEIVED
DEC 30 2019
DEPARTMENT OF
WATER RESOURCES

1. **Name and address of claimant:**

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and
ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the
REGIONAL DIRECTOR, NORTHWEST REGION
Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

2. **Date of Priority:** Time Immemorial

3. **a. Source of water supply:** Ground Water, Spring (Federal I.D. #1063)

b. which is a tributary to: Long Creek or Flannigan Creek

4. **Point of Diversion:** This claim is for a spring and/or fountain *in situ* including sufficient groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or fountains.

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1063	40N	4W	6	NESE	Boise	Latah

See Attached Map.

5. **Place of Use:**

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1063	40N	4W	6	NESE	Boise	Latah

See Attached Map.

6. **Purpose of Water Use:**

The purpose of use includes the full range of uses to which the Tribe and its members have always put the springs and fountains, including as a water source for consumptive use, for wildlife and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce Reservation pursuant to the documents referenced in Section 9 and the provisions in Section 10, *infra*.

7. **Period of Use:** January 1 through December 31.

8. **Quantity Reserved (In cfs):** Half the natural flow.

9. **Basis of Claim:**

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

10. **Other Provisions:**

- a. The United States has asserted other claims in the Palouse River Basin Adjudication. Paragraphs 10(a) – (g) express assertions applicable to all claims filed by the Bureau of Indian Affairs in its capacity as trustee for the Nez Perce Tribe in the Palouse River Basin Adjudication. The United States claims waters from groundwater and surface water sources within the Palouse River Basin in the state of Idaho to satisfy the rights reserved to the Nez Perce Tribe by the 1855 Treaty and the 1863 Treaty and to fulfill the permanent homeland purpose of the Nez Perce Reservation. Such present and future purposes include: instream flows for fish habitat; hunting, gathering, and pasturing; spring and fountains flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; and consumptive use claims on two allotments held in trust by the United States.
- b. The Nez Perce Tribe has occupied a territory in what is now central Idaho, southeastern Washington, and northeastern Oregon since time immemorial. *United States v. Webb*, 219 F.3d 1127, 1129 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). The Palouse River Basin is within the Tribe’s traditional lands.
- c. There is a complex history of the United States’ establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing

rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the “exclusive right to fish in all streams running through or bordering” the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the “right of taking fish at all usual and accustomed places in common with the citizens of the Territory” to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.

- d. Article III of the 1855 Treaty further reserves to the Tribe “the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land.”
- e. Article VIII of the Nez Perce Treaty of 1863 includes a unique provision reserving to the Nez Perce Tribe the use of “springs and fountains” within the area ceded under Article I of the 1863 Treaty. For purposes of the priority date of the springs and fountains claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.
- f. Pursuant to the General Allotment Act of 1887, Act of February 8, 1887, 24 Stat. 388, *amended*, Act of February 28, 1891, 26 Stat. 794, there are two allotments (Allotments 182-43 and 182-45) held in trust by the United States located within the boundaries of the Palouse River Basin and the northwestern corner of the Nez Perce Reservation. For purposes of the priority date of the domestic and stock watering claims for these two allotments, the United States claims June 11, 1855 pursuant to the 1855 Treaty.
- g. In order to comply with Idaho Code § 42-1409(1), the United States has designated “places of use,” “points of diversion,” and “purposes of use” in submitting this water rights claim. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe’s future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Reservation. The statute’s terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.

11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled “How you will receive notices in the Palouse River Basin Adjudication.”
- (b) I do ___ do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

For Organizations:

I do solemnly swear and affirm that I am Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.

Signature of Authorized Agent:
Title and Organization:



Northwest Regional Director
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

Notice is hereby given that the United States Department of Justice will represent the United States of America, including the U.S. Department of the Interior, Bureau of Indian Affairs, in all matters pertaining to the Palouse River Basin Adjudication.

All notices, filings and correspondence concerning this matter should be mailed to the United States Department of Justice at the address set forth below:

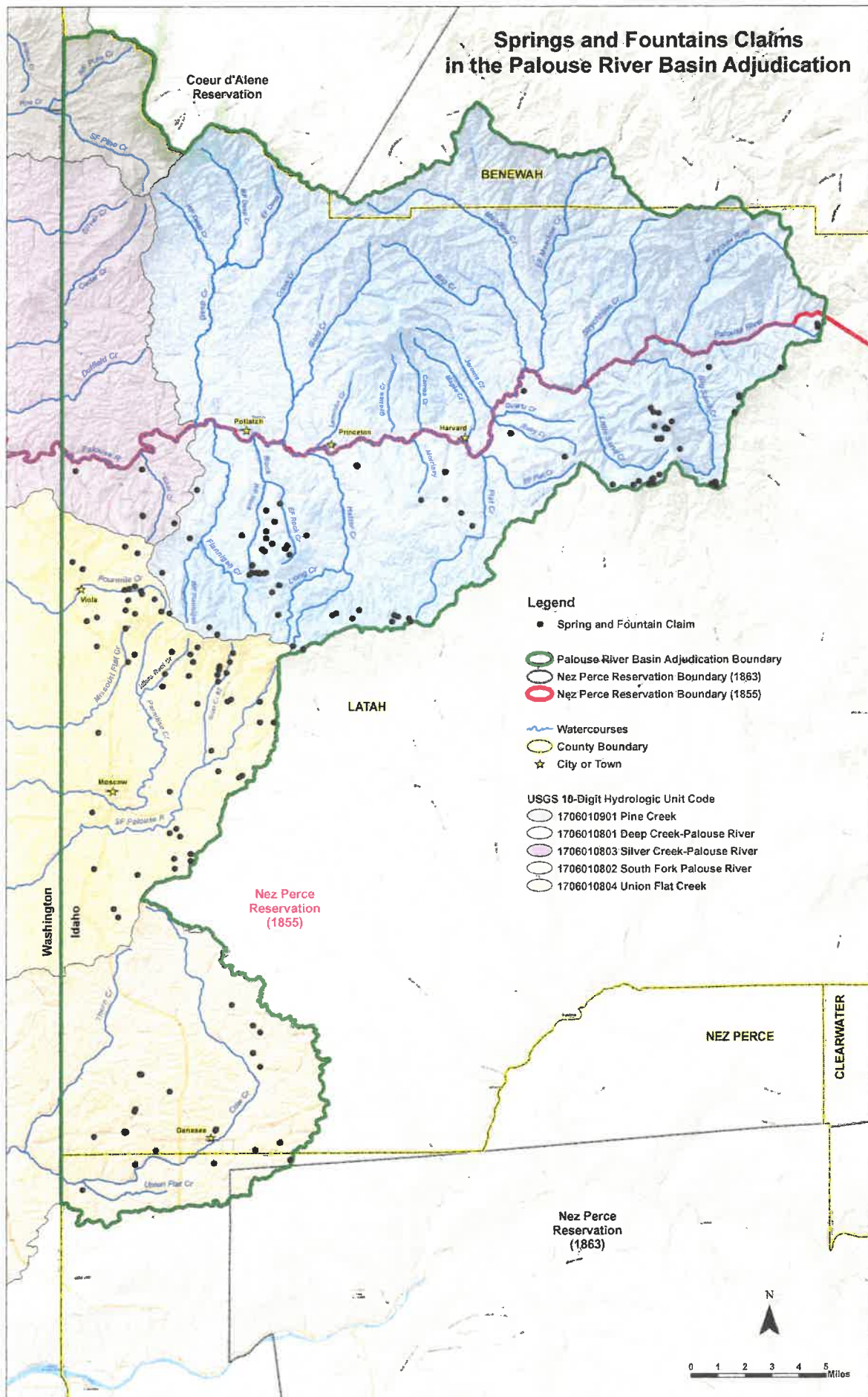


Katherine M. Kane
United States Department of Justice
Indian Resources Division
Natural Resources Section
999 18th Street
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

Springs and Fountains Claims in the Palouse River Basin Adjudication



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

87-12069

IN RE: THE GENERAL
ADJUDICATION OF RIGHTS
TO THE USE OF WATER FROM
THE PALOUSE RIVER BASIN
WATER SYSTEM

Case No.: 59576

NOTICE OF CLAIM

Federal Reserved Water Right

RECEIVED
DEC 30 2019
DEPARTMENT OF
WATER RESOURCES

1. Name and address of claimant:

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and
ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the
REGIONAL DIRECTOR, NORTHWEST REGION
Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

2. Date of Priority: Time Immemorial

3. a. Source of water supply: Ground Water, Spring (Federal I.D. #1064)

b. which is a tributary to: Long Creek

4. Point of Diversion: This claim is for a spring and/or fountain *in situ* including sufficient groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or fountains.

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1064	40N	4W	5	SWNW	Boise	Latah

See Attached Map.

5. Place of Use:

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1064	40N	4W	5	SWNW	Boise	Latah

See Attached Map.

6. Purpose of Water Use:

The purpose of use includes the full range of uses to which the Tribe and its members have always put the springs and fountains, including as a water source for consumptive use, for wildlife and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce Reservation pursuant to the documents referenced in Section 9 and the provisions in Section 10, *infra*.

7. Period of Use: January 1 through December 31.

8. Quantity Reserved (In cfs): Half the natural flow.

9. Basis of Claim:

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

10. Other Provisions:

- a. The United States has asserted other claims in the Palouse River Basin Adjudication. Paragraphs 10(a) – (g) express assertions applicable to all claims filed by the Bureau of Indian Affairs in its capacity as trustee for the Nez Perce Tribe in the Palouse River Basin Adjudication. The United States claims waters from groundwater and surface water sources within the Palouse River Basin in the state of Idaho to satisfy the rights reserved to the Nez Perce Tribe by the 1855 Treaty and the 1863 Treaty and to fulfill the permanent homeland purpose of the Nez Perce Reservation. Such present and future purposes include: instream flows for fish habitat; hunting, gathering, and pasturing; spring and fountains flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; and consumptive use claims on two allotments held in trust by the United States.
- b. The Nez Perce Tribe has occupied a territory in what is now central Idaho, southeastern Washington, and northeastern Oregon since time immemorial. *United States v. Webb*, 219 F.3d 1127, 1129 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). The Palouse River Basin is within the Tribe’s traditional lands.
- c. There is a complex history of the United States’ establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing

rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the “exclusive right to fish in all streams running through or bordering” the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the “right of taking fish at all usual and accustomed places in common with the citizens of the Territory” to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.

- d. Article III of the 1855 Treaty further reserves to the Tribe “the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land.”
- e. Article VIII of the Nez Perce Treaty of 1863 includes a unique provision reserving to the Nez Perce Tribe the use of “springs and fountains” within the area ceded under Article I of the 1863 Treaty. For purposes of the priority date of the springs and fountains claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.
- f. Pursuant to the General Allotment Act of 1887, Act of February 8, 1887, 24 Stat. 388, *amended*, Act of February 28, 1891, 26 Stat. 794, there are two allotments (Allotments 182-43 and 182-45) held in trust by the United States located within the boundaries of the Palouse River Basin and the northwestern corner of the Nez Perce Reservation. For purposes of the priority date of the domestic and stock watering claims for these two allotments, the United States claims June 11, 1855 pursuant to the 1855 Treaty.
- g. In order to comply with Idaho Code § 42-1409(1), the United States has designated “places of use,” “points of diversion,” and “purposes of use” in submitting this water rights claim. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe’s future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Reservation. The statute’s terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.

11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled “How you will receive notices in the Palouse River Basin Adjudication.”
- (b) I do ___ do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

For Organizations:

I do solemnly swear and affirm that I am Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.

Signature of Authorized Agent:
Title and Organization:



Northwest Regional Director
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

Notice is hereby given that the United States Department of Justice will represent the United States of America, including the U.S. Department of the Interior, Bureau of Indian Affairs, in all matters pertaining to the Palouse River Basin Adjudication.

All notices, filings and correspondence concerning this matter should be mailed to the United States Department of Justice at the address set forth below:



Katherine M. Kane
United States Department of Justice
Indian Resources Division
Natural Resources Section
999 18th Street
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

**Springs and Fountains Claims
in the Palouse River Basin Adjudication**

Legend

- Spring and Fountain Claim
- Palouse River Basin Adjudication Boundary
- Nez Perce Reservation Boundary (1863)
- Nez Perce Reservation Boundary (1855)
- Watercourses
- County Boundary
- City or Town

USGS 10-Digit Hydrologic Unit Code

- 1706010901 Pine Creek
- 1706010801 Deep Creek-Palouse River
- 1706010803 Silver Creek-Palouse River
- 1706010802 South Fork Palouse River
- 1706010804 Union Flat Creek

Nez Perce Reservation (1855)

Nez Perce Reservation (1863)

Scale: 0 1 2 3 4 5 Miles

North Arrow

CLEARWATER

Nez Perce
Reservation
(1863)



0 1 2 3 4 5 Miles

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

27-12070

IN RE: THE GENERAL
ADJUDICATION OF RIGHTS
TO THE USE OF WATER FROM
THE PALOUSE RIVER BASIN
WATER SYSTEM

Case No.: 59576

NOTICE OF CLAIM

Federal Reserved Water Right

RECEIVED
DEC 30 2019
DEPARTMENT OF
WATER RESOURCES

1. Name and address of claimant:

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and
ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the
REGIONAL DIRECTOR, NORTHWEST REGION

Department of the Interior

Bureau of Indian Affairs

911 N.E. 11th Ave.

Portland, OR 97232

2. Date of Priority: Time Immemorial

3. a. Source of water supply: Ground Water, Spring (Federal I.D. #1065)

b. which is a tributary to: Idlers Rest Creek

4. Point of Diversion: This claim is for a spring and/or fountain *in situ* including sufficient
groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or
fountains.

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1065	40N	5W	15	SESE	Boise	Latah

See Attached Map.

5. Place of Use:

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1065	40N	5W	15	SESE	Boise	Latah

See Attached Map.

6. **Purpose of Water Use:**
The purpose of use includes the full range of uses to which the Tribe and its members have always put the springs and fountains, including as a water source for consumptive use, for wildlife and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce Reservation pursuant to the documents referenced in Section 9 and the provisions in Section 10, *infra*.
7. **Period of Use:** January 1 through December 31.
8. **Quantity Reserved (In cfs):** Half the natural flow.
9. **Basis of Claim:**
The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.
10. **Other Provisions:**
 - a. The United States has asserted other claims in the Palouse River Basin Adjudication. Paragraphs 10(a) – (g) express assertions applicable to all claims filed by the Bureau of Indian Affairs in its capacity as trustee for the Nez Perce Tribe in the Palouse River Basin Adjudication. The United States claims waters from groundwater and surface water sources within the Palouse River Basin in the state of Idaho to satisfy the rights reserved to the Nez Perce Tribe by the 1855 Treaty and the 1863 Treaty and to fulfill the permanent homeland purpose of the Nez Perce Reservation. Such present and future purposes include: instream flows for fish habitat; hunting, gathering, and pasturing; spring and fountains flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; and consumptive use claims on two allotments held in trust by the United States.
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 - c. There is a complex history of the United States’ establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing

rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the “exclusive right to fish in all streams running through or bordering” the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the “right of taking fish at all usual and accustomed places in common with the citizens of the Territory” to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.

- d. Article III of the 1855 Treaty further reserves to the Tribe “the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land.”
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- f. Pursuant to the General Allotment Act of 1887, Act of February 8, 1887, 24 Stat. 388, *amended*, Act of February 28, 1891, 26 Stat. 794, there are two allotments (Allotments 182-43 and 182-45) held in trust by the United States located within the boundaries of the Palouse River Basin and the northwestern corner of the Nez Perce Reservation. For purposes of the priority date of the domestic and stock watering claims for these two allotments, the United States claims June 11, 1855 pursuant to the 1855 Treaty.
- g. In order to comply with Idaho Code § 42-1409(1), the United States has designated “places of use,” “points of diversion,” and “purposes of use” in submitting this water rights claim. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe’s future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Reservation. The statute’s terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.

11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled “How you will receive notices in the Palouse River Basin Adjudication.”
- (b) I do do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

For Organizations:

I do solemnly swear and affirm that I am Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.



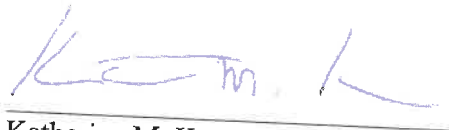
Signature of Authorized Agent:
Title and Organization:

Northwest Regional Director
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

Notice is hereby given that the United States Department of Justice will represent the United States of America, including the U.S. Department of the Interior, Bureau of Indian Affairs, in all matters pertaining to the Palouse River Basin Adjudication.

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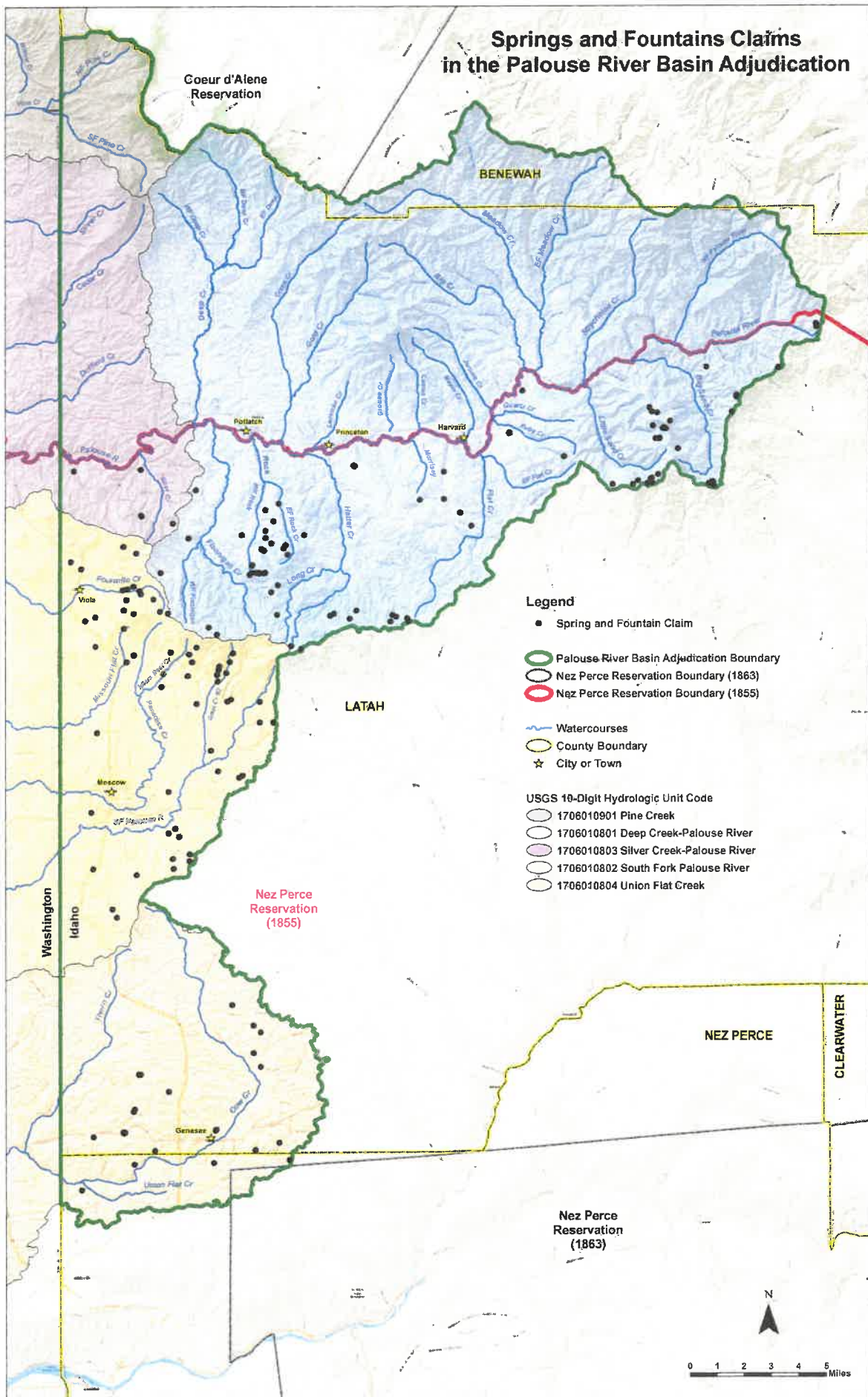


Katherine M. Kane
United States Department of Justice
Indian Resources Division
Natural Resources Section
999 18th Street
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

Springs and Fountains Claims in the Palouse River Basin Adjudication



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

87-12071

IN RE: THE GENERAL
ADJUDICATION OF RIGHTS
TO THE USE OF WATER FROM
THE PALOUSE RIVER BASIN
WATER SYSTEM

) Case No.: 59576
)
) **NOTICE OF CLAIM**
)
) **Federal Reserved Water Right**
)
)

RECEIVED
DEC 30 2019
DEPARTMENT OF
WATER RESOURCES

1. **Name and address of claimant:**

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and
ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the
REGIONAL DIRECTOR, NORTHWEST REGION
Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

2. **Date of Priority:** Time Immemorial

3. **a. Source of water supply:** Spring (Federal I.D. #1066)

b. which is a tributary to: Idlers Rest or Howard Creek

4. **Point of Diversion:** This claim is for a spring and/or fountain *in situ* including sufficient groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or fountains.

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1066	40N	5W	14	NWSW	Boise	Latah

See Attached Map.

5. **Place of Use:**

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1066	40N	5W	14	NWSW	Boise	Latah

See Attached Map.

6. **Purpose of Water Use:**

The purpose of use includes the full range of uses to which the Tribe and its members have always put the springs and fountains, including as a water source for consumptive use, for wildlife and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce Reservation pursuant to the documents referenced in Section 9 and the provisions in Section 10, *infra*.

7. **Period of Use:** January 1 through December 31.

8. **Quantity Reserved (In cfs):** Half the natural flow.

9. **Basis of Claim:**

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

10. **Other Provisions:**

- a. The United States has asserted other claims in the Palouse River Basin Adjudication. Paragraphs 10(a) – (g) express assertions applicable to all claims filed by the Bureau of Indian Affairs in its capacity as trustee for the Nez Perce Tribe in the Palouse River Basin Adjudication. The United States claims waters from groundwater and surface water sources within the Palouse River Basin in the state of Idaho to satisfy the rights reserved to the Nez Perce Tribe by the 1855 Treaty and the 1863 Treaty and to fulfill the permanent homeland purpose of the Nez Perce Reservation. Such present and future purposes include: instream flows for fish habitat; hunting, gathering, and pasturing; spring and fountains flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; and consumptive use claims on two allotments held in trust by the United States.
- b. The Nez Perce Tribe has occupied a territory in what is now central Idaho, southeastern Washington, and northeastern Oregon since time immemorial. *United States v. Webb*, 219 F.3d 1127, 1129 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). The Palouse River Basin is within the Tribe’s traditional lands.
- c. There is a complex history of the United States’ establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing

rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the “exclusive right to fish in all streams running through or bordering” the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the “right of taking fish at all usual and accustomed places in common with the citizens of the Territory” to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.

- d. Article III of the 1855 Treaty further reserves to the Tribe “the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land.”
- e. Article VIII of the Nez Perce Treaty of 1863 includes a unique provision reserving to the Nez Perce Tribe the use of “springs and fountains” within the area ceded under Article I of the 1863 Treaty. For purposes of the priority date of the springs and fountains claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.
- f. Pursuant to the General Allotment Act of 1887, Act of February 8, 1887, 24 Stat. 388, *amended*, Act of February 28, 1891, 26 Stat. 794, there are two allotments (Allotments 182-43 and 182-45) held in trust by the United States located within the boundaries of the Palouse River Basin and the northwestern corner of the Nez Perce Reservation. For purposes of the priority date of the domestic and stock watering claims for these two allotments, the United States claims June 11, 1855 pursuant to the 1855 Treaty.
- g. In order to comply with Idaho Code § 42-1409(1), the United States has designated “places of use,” “points of diversion,” and “purposes of use” in submitting this water rights claim. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe’s future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Reservation. The statute’s terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.

11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled “How you will receive notices in the Palouse River Basin Adjudication.”
- (b) I do ___ do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

For Organizations:

I do solemnly swear and affirm that I am Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.



Signature of Authorized Agent:
Title and Organization:

Northwest Regional Director
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

Notice is hereby given that the United States Department of Justice will represent the United States of America, including the U.S. Department of the Interior, Bureau of Indian Affairs, in all matters pertaining to the Palouse River Basin Adjudication.

All notices, filings and correspondence concerning this matter should be mailed to the United States Department of Justice at the address set forth below:

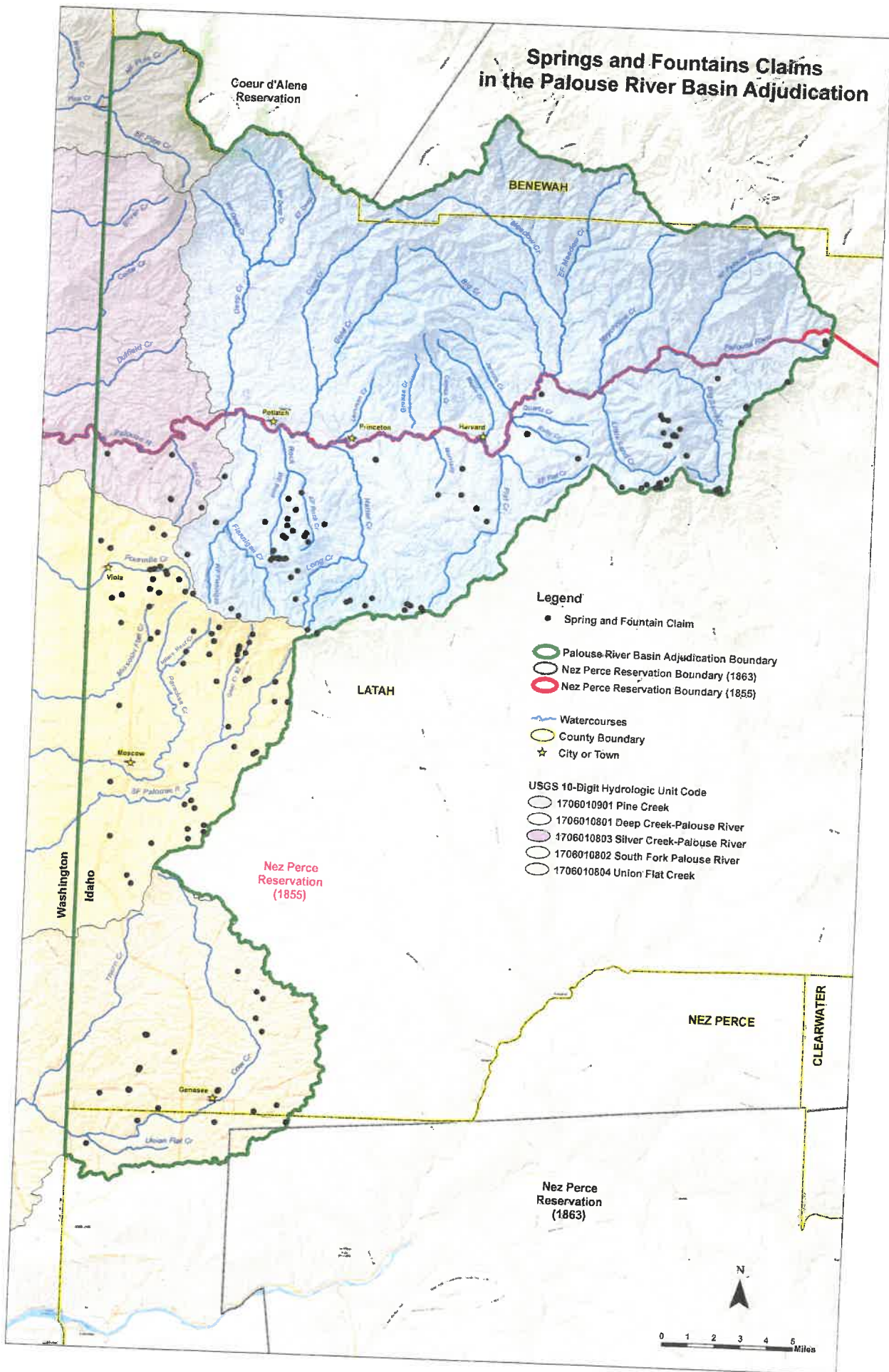


Katherine M. Kane
United States Department of Justice
Indian Resources Division
Natural Resources Section
999 18th Street
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

Springs and Fountains Claims in the Palouse River Basin Adjudication



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 PALOUSE RIVER BASIN
WATER SYSTEM

Case No.: 59576

NOTICE OF CLAIM

Federal Reserved Water Right

87-17072
RECEIVED
DEC 30 2009
DEPARTMENT OF
WATER RESOURCES

1. **Name and address of claimant:**

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and
ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the
REGIONAL DIRECTOR, NORTHWEST REGION
Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

2. **Date of Priority:** Time Immemorial

3. **a. Source of water supply:** Spring (Federal I.D. #1067)

b. which is a tributary to: Thorn Creek

4. **Point of Diversion:** This claim is for a spring and/or fountain *in situ* including sufficient groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or fountains.

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1067	37N	5W	8	SENE	Boise	Latah

See Attached Map.

5. **Place of Use:**

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1067	37N	5W	8	SENE	Boise	Latah

See Attached Map.

6. **Purpose of Water Use:**

The purpose of use includes the full range of uses to which the Tribe and its members have always put the springs and fountains, including as a water source for consumptive use, for wildlife and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce Reservation pursuant to the documents referenced in Section 9 and the provisions in Section 10, *infra*.

7. **Period of Use:** January 1 through December 31.

8. **Quantity Reserved (In cfs):** Half the natural flow.

9. **Basis of Claim:**

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

10. **Other Provisions:**

- a. The United States has asserted other claims in the Palouse River Basin Adjudication. Paragraphs 10(a) – (g) express assertions applicable to all claims filed by the Bureau of Indian Affairs in its capacity as trustee for the Nez Perce Tribe in the Palouse River Basin Adjudication. The United States claims waters from groundwater and surface water sources within the Palouse River Basin in the state of Idaho to satisfy the rights reserved to the Nez Perce Tribe by the 1855 Treaty and the 1863 Treaty and to fulfill the permanent homeland purpose of the Nez Perce Reservation. Such present and future purposes include: instream flows for fish habitat; hunting, gathering, and pasturing; spring and fountains flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; and consumptive use claims on two allotments held in trust by the United States.
- b. The Nez Perce Tribe has occupied a territory in what is now central Idaho, southeastern Washington, and northeastern Oregon since time immemorial. *United States v. Webb*, 219 F.3d 1127, 1129 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). The Palouse River Basin is within the Tribe’s traditional lands.
- c. There is a complex history of the United States’ establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing

rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the “exclusive right to fish in all streams running through or bordering” the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the “right of taking fish at all usual and accustomed places in common with the citizens of the Territory” to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.

- d. Article III of the 1855 Treaty further reserves to the Tribe “the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land.”
- e. Article VIII of the Nez Perce Treaty of 1863 includes a unique provision reserving to the Nez Perce Tribe the use of “springs and fountains” within the area ceded under Article I of the 1863 Treaty. For purposes of the priority date of the springs and fountains claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.
- f. Pursuant to the General Allotment Act of 1887, Act of February 8, 1887, 24 Stat. 388, *amended*, Act of February 28, 1891, 26 Stat. 794, there are two allotments (Allotments 182-43 and 182-45) held in trust by the United States located within the boundaries of the Palouse River Basin and the northwestern corner of the Nez Perce Reservation. For purposes of the priority date of the domestic and stock watering claims for these two allotments, the United States claims June 11, 1855 pursuant to the 1855 Treaty.
- g. In order to comply with Idaho Code § 42-1409(1), the United States has designated “places of use,” “points of diversion,” and “purposes of use” in submitting this water rights claim. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe’s future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Reservation. The statute’s terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.

11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled “How you will receive notices in the Palouse River Basin Adjudication.”
- (b) I do do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

For Organizations:

I do solemnly swear and affirm that I am Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.

Signature of Authorized Agent:
Title and Organization:

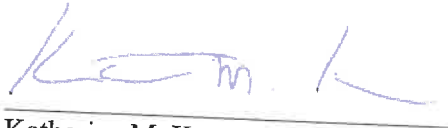


Northwest Regional Director
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

Notice is hereby given that the United States Department of Justice will represent the United States of America, including the U.S. Department of the Interior, Bureau of Indian Affairs, in all matters pertaining to the Palouse River Basin Adjudication.

All notices, filings and correspondence concerning this matter should be mailed to the United States Department of Justice at the address set forth below:

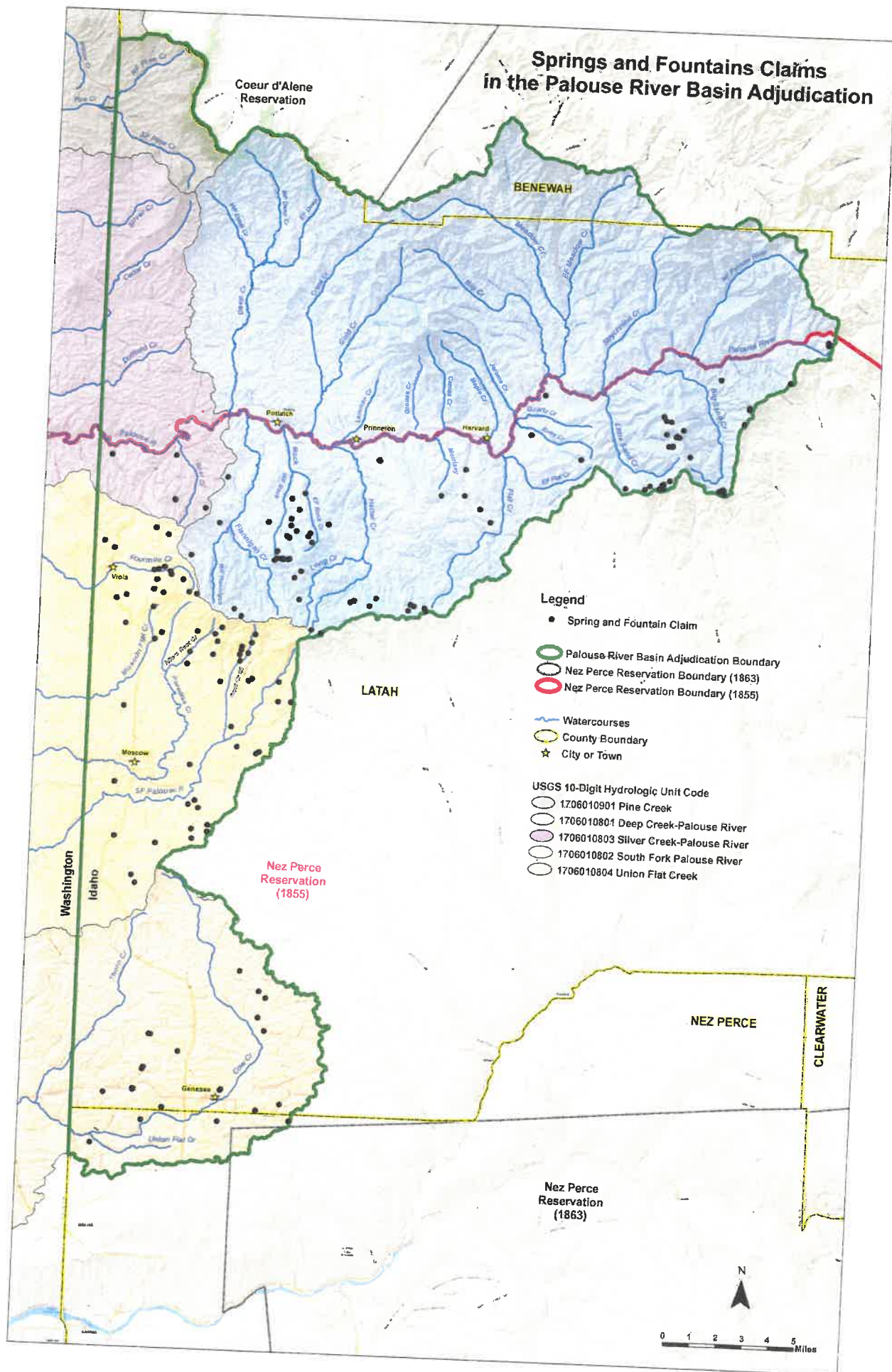
A handwritten signature in blue ink, appearing to read "K.M. Kane", is written over a horizontal line.

Katherine M. Kane
United States Department of Justice
Indian Resources Division
Natural Resources Section
999 18th Street
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

Springs and Fountains Claims in the Palouse River Basin Adjudication



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

87-12073

IN RE: THE GENERAL) Case No.: 59576
ADJUDICATION OF RIGHTS)
TO THE USE OF WATER FROM) NOTICE OF CLAIM
THE PALOUSE RIVER BASIN)
WATER SYSTEM) Federal Reserved Water Right
)
)
)

RECEIVED
DEC 30 2019
DEPARTMENT OF
WATER RESOURCES

1. Name and address of claimant:

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and
ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the
REGIONAL DIRECTOR, NORTHWEST REGION

Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

2. Date of Priority: Time Immemorial

3. a. Source of water supply: Springs, Unnamed Stream (Federal I.D. #1068)

b. which is a tributary to: West Fork Rock Creek

4. Point of Diversion: This claim is for a spring and/or fountain *in situ* including sufficient
groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or
fountains.

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1068-1	41N	4W	30	SWNE	Boise	Latah
1068-2	41N	4W	30	SWNE	Boise	Latah
1068-3	41N	4W	30	NWSE	Boise	Latah
1068-4	41N	4W	30	NWSE	Boise	Latah
1068-5	41N	4W	30	NWSE	Boise	Latah

See Attached Map.

5. Place of Use:

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1068-1	41N	4W	30	SWNE	Boise	Latah
1068-2	41N	4W	30	SWNE	Boise	Latah
1068-3	41N	4W	30	NWSE	Boise	Latah
1068-4	41N	4W	30	NWSE	Boise	Latah

1068-5	41N	4W	30	NWSE	Boise	Latah
--------	-----	----	----	------	-------	-------

See Attached Map.

6. Purpose of Water Use:

The purpose of use includes the full range of uses to which the Tribe and its members have always put the springs and fountains, including as a water source for consumptive use, for wildlife and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce Reservation pursuant to the documents referenced in Section 9 and the provisions in Section 10, *infra*.

7. Period of Use: January 1 through December 31.

8. Quantity Reserved (In cfs): Half the natural flow.

9. Basis of Claim:

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

10. Other Provisions:

- a. The United States has asserted other claims in the Palouse River Basin Adjudication. Paragraphs 10(a) – (g) express assertions applicable to all claims filed by the Bureau of Indian Affairs in its capacity as trustee for the Nez Perce Tribe in the Palouse River Basin Adjudication. The United States claims waters from groundwater and surface water sources within the Palouse River Basin in the state of Idaho to satisfy the rights reserved to the Nez Perce Tribe by the 1855 Treaty and the 1863 Treaty and to fulfill the permanent homeland purpose of the Nez Perce Reservation. Such present and future purposes include: instream flows for fish habitat; hunting, gathering, and pasturing; spring and fountains flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; and consumptive use claims on two allotments held in trust by the United States.
- b. The Nez Perce Tribe has occupied a territory in what is now central Idaho, southeastern Washington, and northeastern Oregon since time immemorial. *United States v. Webb*, 219 F.3d 1127, 1129 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). The Palouse River Basin is within the Tribe’s traditional lands.

- c. There is a complex history of the United States' establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the "exclusive right to fish in all streams running through or bordering" the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the "right of taking fish at all usual and accustomed places in common with the citizens of the Territory" to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.
- d. Article III of the 1855 Treaty further reserves to the Tribe "the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land."
- e. Article VIII of the Nez Perce Treaty of 1863 includes a unique provision reserving to the Nez Perce Tribe the use of "springs and fountains" within the area ceded under Article I of the 1863 Treaty. For purposes of the priority date of the springs and fountains claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.
- f. Pursuant to the General Allotment Act of 1887, Act of February 8, 1887, 24 Stat. 388, *amended*, Act of February 28, 1891, 26 Stat. 794, there are two allotments (Allotments 182-43 and 182-45) held in trust by the United States located within the boundaries of the Palouse River Basin and the northwestern corner of the Nez Perce Reservation. For purposes of the priority date of the domestic and stock watering claims for these two allotments, the United States claims June 11, 1855 pursuant to the 1855 Treaty.
- g. In order to comply with Idaho Code § 42-1409(1), the United States has designated "places of use," "points of diversion," and "purposes of use" in submitting this water rights claim. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe's future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Reservation. The statute's terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.

11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled "How you will receive notices in the Palouse River Basin Adjudication."
- (b) I do do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

For Organizations:

I do solemnly swear and affirm that I am Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.



Signature of Authorized Agent:

Title and Organization:

Northwest Regional Director
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

Notice is hereby given that the United States Department of Justice will represent the United States of America, including the U.S. Department of the Interior, Bureau of Indian Affairs, in all matters pertaining to the Palouse River Basin Adjudication.

All notices, filings and correspondence concerning this matter should be mailed to the United States Department of Justice at the address set forth below:



Katherine M. Kane
United States Department of Justice
Indian Resources Division
Natural Resources Section
999 18th Street
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

**Springs and Fountains Claims
in the Palouse River Basin Adjudication**

Coeur d'Alene
Reservation

BENEWAH

LATAH

Washington

Idaho

Nez Perce
Reservation
(1855)

NEZ PERCE

CLEARWATER

Nez Perce
Reservation
(1863)

Legend

- Spring and Fountain Claim
- Palouse-River Basin Adjudication Boundary
- Nez Perce Reservation Boundary (1863)
- Nez Perce Reservation Boundary (1855)
- Watercourses
- County Boundary
- ☆ City or Town

USGS 10-Digit Hydrologic Unit Code

- 1706010901 Pine Creek
- 1706010801 Deep Creek-Palouse River
- 1706010803 Silver Creek-Palouse River
- 1706010802 South Fork Palouse River
- 1706010804 Union Flat Creek

Scale: 0 1 2 3 4 5 Miles

North Arrow

- Spring and Fountain Claim
- Palouse River Basin Adjudication Boundary
- Nez Perce Reservation Boundary (1863)
- Nez Perce Reservation Boundary (1855)
- Watercourses
- County Boundary
- City or Town

0 1 2 3 4 5 Miles

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

87-12074

IN RE: THE GENERAL
ADJUDICATION OF RIGHTS
TO THE USE OF WATER FROM
THE PALOUSE RIVER BASIN
WATER SYSTEM

) Case No.: 59576
)
) **NOTICE OF CLAIM**
)
) **Federal Reserved Water Right**
)
)
)

RECEIVED
DEC 30 2019
DEPARTMENT OF
WATER RESOURCES

1. **Name and address of claimant:**

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and
ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the
REGIONAL DIRECTOR, NORTHWEST REGION

Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

2. **Date of Priority:** Time Immemorial

3. **a. Source of water supply:** Spring (Federal I.D. #1069)

b. which is a tributary to: South Fork Palouse River

4. **Point of Diversion:** This claim is for a spring and/or fountain *in situ* including sufficient
groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or
fountains.

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1069	39N	5W	22	SWNW	Boise	Latah

See Attached Map.

5. **Place of Use:**

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1069	39N	5W	22	SWNW	Boise	Latah

See Attached Map.

6. Purpose of Water Use:

The purpose of use includes the full range of uses to which the Tribe and its members have always put the springs and fountains, including as a water source for consumptive use, for wildlife and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce Reservation pursuant to the documents referenced in Section 9 and the provisions in Section 10, *infra*.

7. Period of Use: January 1 through December 31.

8. Quantity Reserved (In cfs): Half the natural flow.

9. Basis of Claim:

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

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- c. There is a complex history of the United States’ establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing

rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the “exclusive right to fish in all streams running through or bordering” the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the “right of taking fish at all usual and accustomed places in common with the citizens of the Territory” to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.

- d. Article III of the 1855 Treaty further reserves to the Tribe “the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land.”
- e. Article VIII of the Nez Perce Treaty of 1863 includes a unique provision reserving to the Nez Perce Tribe the use of “springs and fountains” within the area ceded under Article I of the 1863 Treaty. For purposes of the priority date of the springs and fountains claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.
- f. Pursuant to the General Allotment Act of 1887, Act of February 8, 1887, 24 Stat. 388, *amended*, Act of February 28, 1891, 26 Stat. 794, there are two allotments (Allotments 182-43 and 182-45) held in trust by the United States located within the boundaries of the Palouse River Basin and the northwestern corner of the Nez Perce Reservation. For purposes of the priority date of the domestic and stock watering claims for these two allotments, the United States claims June 11, 1855 pursuant to the 1855 Treaty.
- g. In order to comply with Idaho Code § 42-1409(1), the United States has designated “places of use,” “points of diversion,” and “purposes of use” in submitting this water rights claim. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe’s future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Reservation. The statute’s terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.

11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled “How you will receive notices in the Palouse River Basin Adjudication.”
- (b) I do___ do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

For Organizations:

I do solemnly swear and affirm that I am Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.



Signature of Authorized Agent:

Title and Organization:

Northwest Regional Director
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

Notice is hereby given that the United States Department of Justice will represent the United States of America, including the U.S. Department of the Interior, Bureau of Indian Affairs, in all matters pertaining to the Palouse River Basin Adjudication.

All notices, filings and correspondence concerning this matter should be mailed to the United States Department of Justice at the address set forth below:

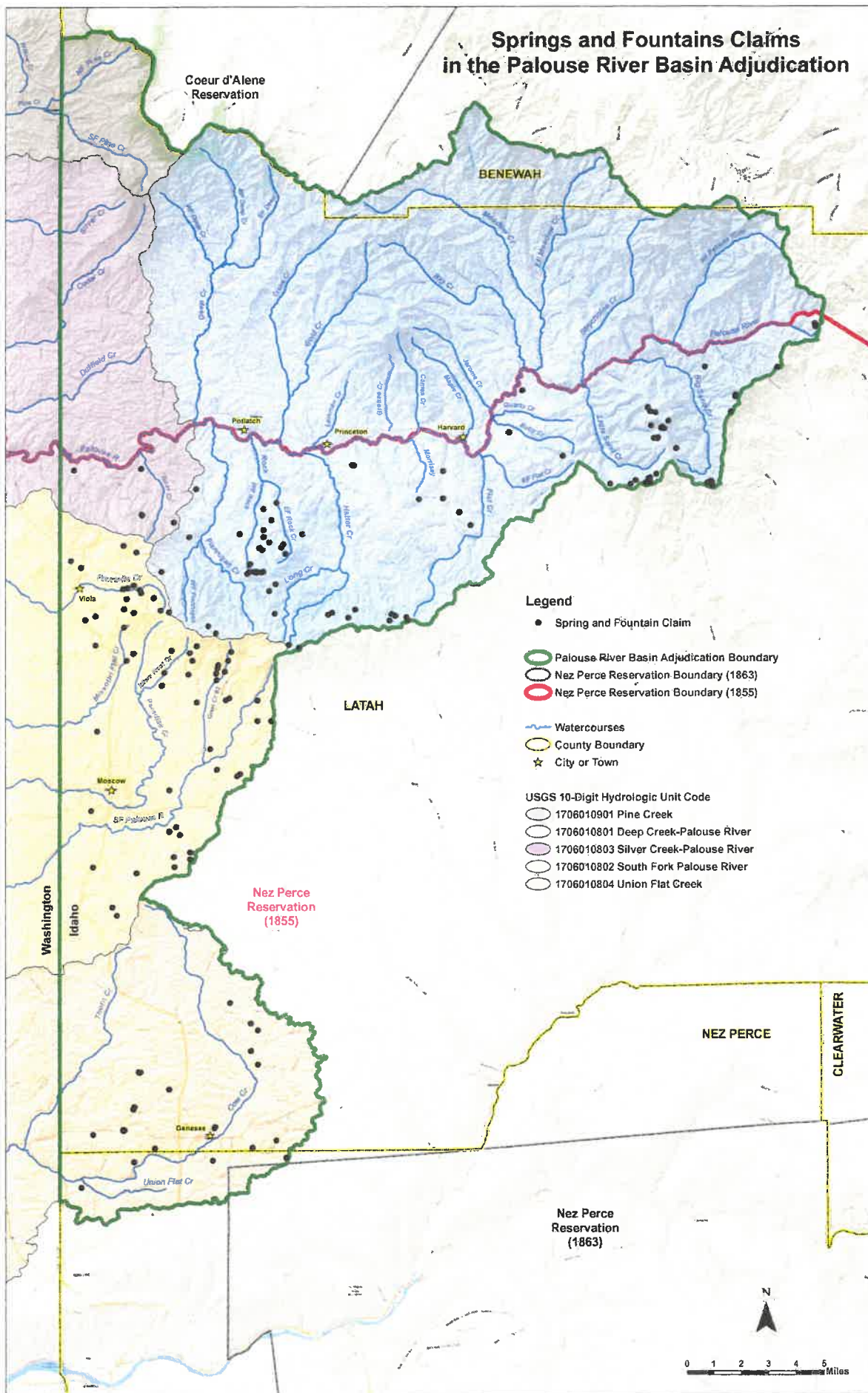


Katherine M. Kane
United States Department of Justice
Indian Resources Division
Natural Resources Section
999 18th Street
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

Springs and Fountains Claims in the Palouse River Basin Adjudication



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

87-12075

IN RE: THE GENERAL
ADJUDICATION OF RIGHTS
TO THE USE OF WATER FROM
THE PALOUSE RIVER BASIN
WATER SYSTEM

) Case No.: 59576
)
) **NOTICE OF CLAIM**
)
) **Federal Reserved Water Right**
)
)
)

RECEIVED
DEC 30 2019
DEPARTMENT OF
WATER RESOURCES

1. **Name and address of claimant:**

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and
ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the
REGIONAL DIRECTOR, NORTHWEST REGION

Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

2. **Date of Priority:** Time Immemorial

3. **a. Source of water supply:** Spring (Federal I.D. #1070)

b. which is a tributary to: South Fork Palouse River

4. **Point of Diversion:** This claim is for a spring and/or fountain *in situ* including sufficient
groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or
fountains.

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1070	38N	5W	5	NWNW	Boise	Latah

See Attached Map.

5. **Place of Use:**

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1070	38N	5W	5	NWNW	Boise	Latah

See Attached Map.

6. Purpose of Water Use:

The purpose of use includes the full range of uses to which the Tribe and its members have always put the springs and fountains, including as a water source for consumptive use, for wildlife and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce Reservation pursuant to the documents referenced in Section 9 and the provisions in Section 10, *infra*.

7. Period of Use: January 1 through December 31.

8. Quantity Reserved (In cfs): Half the natural flow.

9. Basis of Claim:

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

10. Other Provisions:

- a. The United States has asserted other claims in the Palouse River Basin Adjudication. Paragraphs 10(a) – (g) express assertions applicable to all claims filed by the Bureau of Indian Affairs in its capacity as trustee for the Nez Perce Tribe in the Palouse River Basin Adjudication. The United States claims waters from groundwater and surface water sources within the Palouse River Basin in the state of Idaho to satisfy the rights reserved to the Nez Perce Tribe by the 1855 Treaty and the 1863 Treaty and to fulfill the permanent homeland purpose of the Nez Perce Reservation. Such present and future purposes include: instream flows for fish habitat; hunting, gathering, and pasturing; spring and fountains flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; and consumptive use claims on two allotments held in trust by the United States.
- b. The Nez Perce Tribe has occupied a territory in what is now central Idaho, southeastern Washington, and northeastern Oregon since time immemorial. *United States v. Webb*, 219 F.3d 1127, 1129 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). The Palouse River Basin is within the Tribe’s traditional lands.
- c. There is a complex history of the United States’ establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing

rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the “exclusive right to fish in all streams running through or bordering” the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the “right of taking fish at all usual and accustomed places in common with the citizens of the Territory” to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.

- d. Article III of the 1855 Treaty further reserves to the Tribe “the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land.”
- e. Article VIII of the Nez Perce Treaty of 1863 includes a unique provision reserving to the Nez Perce Tribe the use of “springs and fountains” within the area ceded under Article I of the 1863 Treaty. For purposes of the priority date of the springs and fountains claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.
- f. Pursuant to the General Allotment Act of 1887, Act of February 8, 1887, 24 Stat. 388, *amended*, Act of February 28, 1891, 26 Stat. 794, there are two allotments (Allotments 182-43 and 182-45) held in trust by the United States located within the boundaries of the Palouse River Basin and the northwestern corner of the Nez Perce Reservation. For purposes of the priority date of the domestic and stock watering claims for these two allotments, the United States claims June 11, 1855 pursuant to the 1855 Treaty.
- g. In order to comply with Idaho Code § 42-1409(1), the United States has designated “places of use,” “points of diversion,” and “purposes of use” in submitting this water rights claim. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe’s future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Reservation. The statute’s terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.

11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled “How you will receive notices in the Palouse River Basin Adjudication.”
- (b) I do do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

For Organizations:

I do solemnly swear and affirm that I am Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.



Signature of Authorized Agent:

Title and Organization:

Northwest Regional Director
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

Notice is hereby given that the United States Department of Justice will represent the United States of America, including the U.S. Department of the Interior, Bureau of Indian Affairs, in all matters pertaining to the Palouse River Basin Adjudication.

All notices, filings and correspondence concerning this matter should be mailed to the United States Department of Justice at the address set forth below:

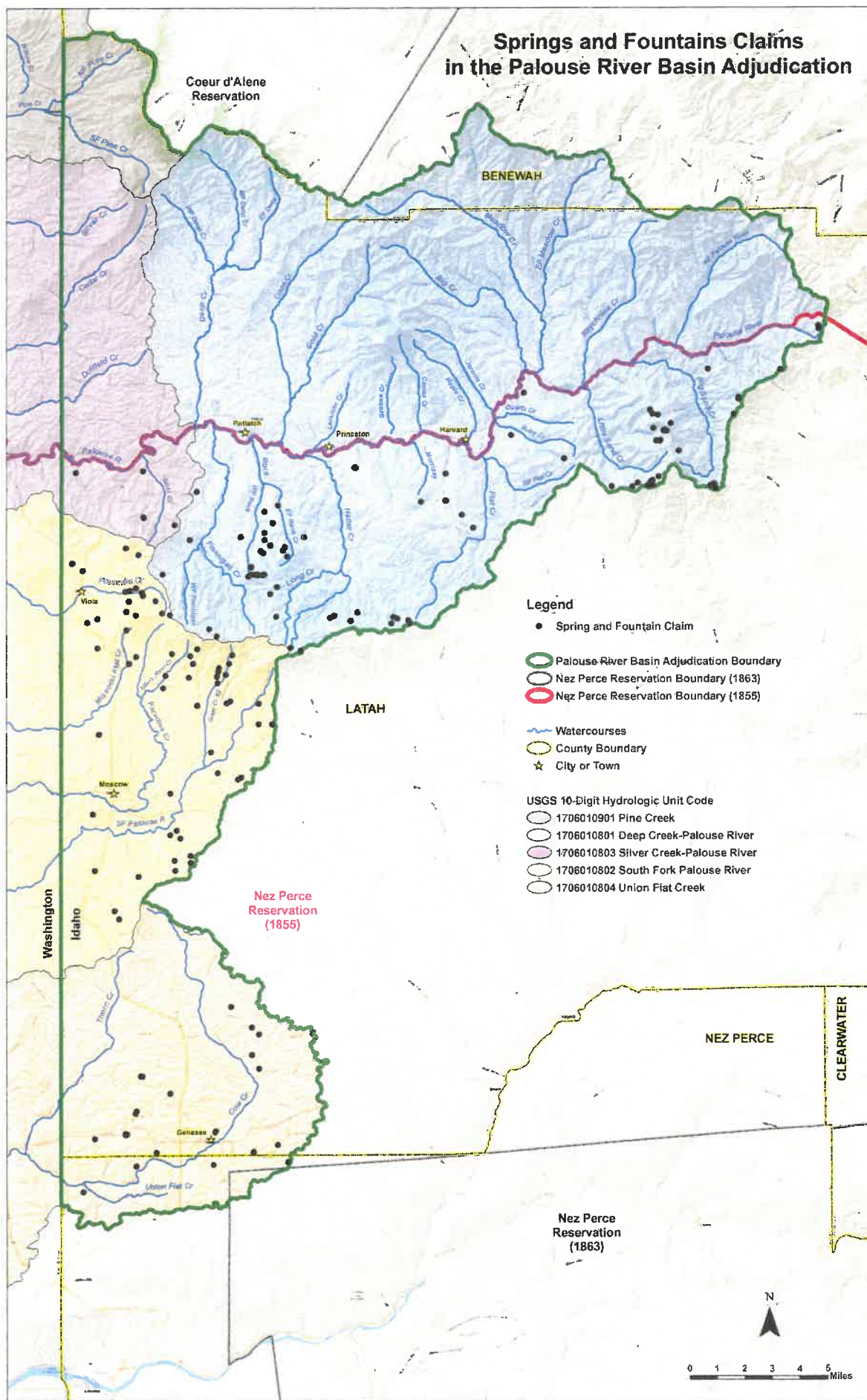


Katherine M. Kane
United States Department of Justice
Indian Resources Division
Natural Resources Section
999 18th Street
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

Springs and Fountains Claims in the Palouse River Basin Adjudication



87-12076

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WATER RESOURCES

6. Purpose of Water Use:

The purpose of use includes the full range of uses to which the Tribe and its members have always put the springs and fountains, including as a water source for consumptive use, for wildlife and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce Reservation pursuant to the documents referenced in Section 9 and the provisions in Section 10, *infra*.

7. Period of Use: January 1 through December 31.

8. Quantity Reserved (In cfs): Half the natural flow.

9. Basis of Claim:

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

10. Other Provisions:

- a. The United States has asserted other claims in the Palouse River Basin Adjudication. Paragraphs 10(a) – (g) express assertions applicable to all claims filed by the Bureau of Indian Affairs in its capacity as trustee for the Nez Perce Tribe in the Palouse River Basin Adjudication. The United States claims waters from groundwater and surface water sources within the Palouse River Basin in the state of Idaho to satisfy the rights reserved to the Nez Perce Tribe by the 1855 Treaty and the 1863 Treaty and to fulfill the permanent homeland purpose of the Nez Perce Reservation. Such present and future purposes include: instream flows for fish habitat; hunting, gathering, and pasturing; spring and fountains flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; and consumptive use claims on two allotments held in trust by the United States.
- b. The Nez Perce Tribe has occupied a territory in what is now central Idaho, southeastern Washington, and northeastern Oregon since time immemorial. *United States v. Webb*, 219 F.3d 1127, 1129 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). The Palouse River Basin is within the Tribe’s traditional lands.
- c. There is a complex history of the United States’ establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing

rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the “exclusive right to fish in all streams running through or bordering” the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the “right of taking fish at all usual and accustomed places in common with the citizens of the Territory” to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.

- d. Article III of the 1855 Treaty further reserves to the Tribe “the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land.”
- e. Article VIII of the Nez Perce Treaty of 1863 includes a unique provision reserving to the Nez Perce Tribe the use of “springs and fountains” within the area ceded under Article I of the 1863 Treaty. For purposes of the priority date of the springs and fountains claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.
- f. Pursuant to the General Allotment Act of 1887, Act of February 8, 1887, 24 Stat. 388, *amended*, Act of February 28, 1891, 26 Stat. 794, there are two allotments (Allotments 182-43 and 182-45) held in trust by the United States located within the boundaries of the Palouse River Basin and the northwestern corner of the Nez Perce Reservation. For purposes of the priority date of the domestic and stock watering claims for these two allotments, the United States claims June 11, 1855 pursuant to the 1855 Treaty.
- g. In order to comply with Idaho Code § 42-1409(1), the United States has designated “places of use,” “points of diversion,” and “purposes of use” in submitting this water rights claim. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe’s future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Reservation. The statute’s terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.

11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled “How you will receive notices in the Palouse River Basin Adjudication.”
- (b) I do ___ do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

For Organizations:

I do solemnly swear and affirm that I am Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.



Signature of Authorized Agent:

Title and Organization:

Northwest Regional Director
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

Notice is hereby given that the United States Department of Justice will represent the United States of America, including the U.S. Department of the Interior, Bureau of Indian Affairs, in all matters pertaining to the Palouse River Basin Adjudication.

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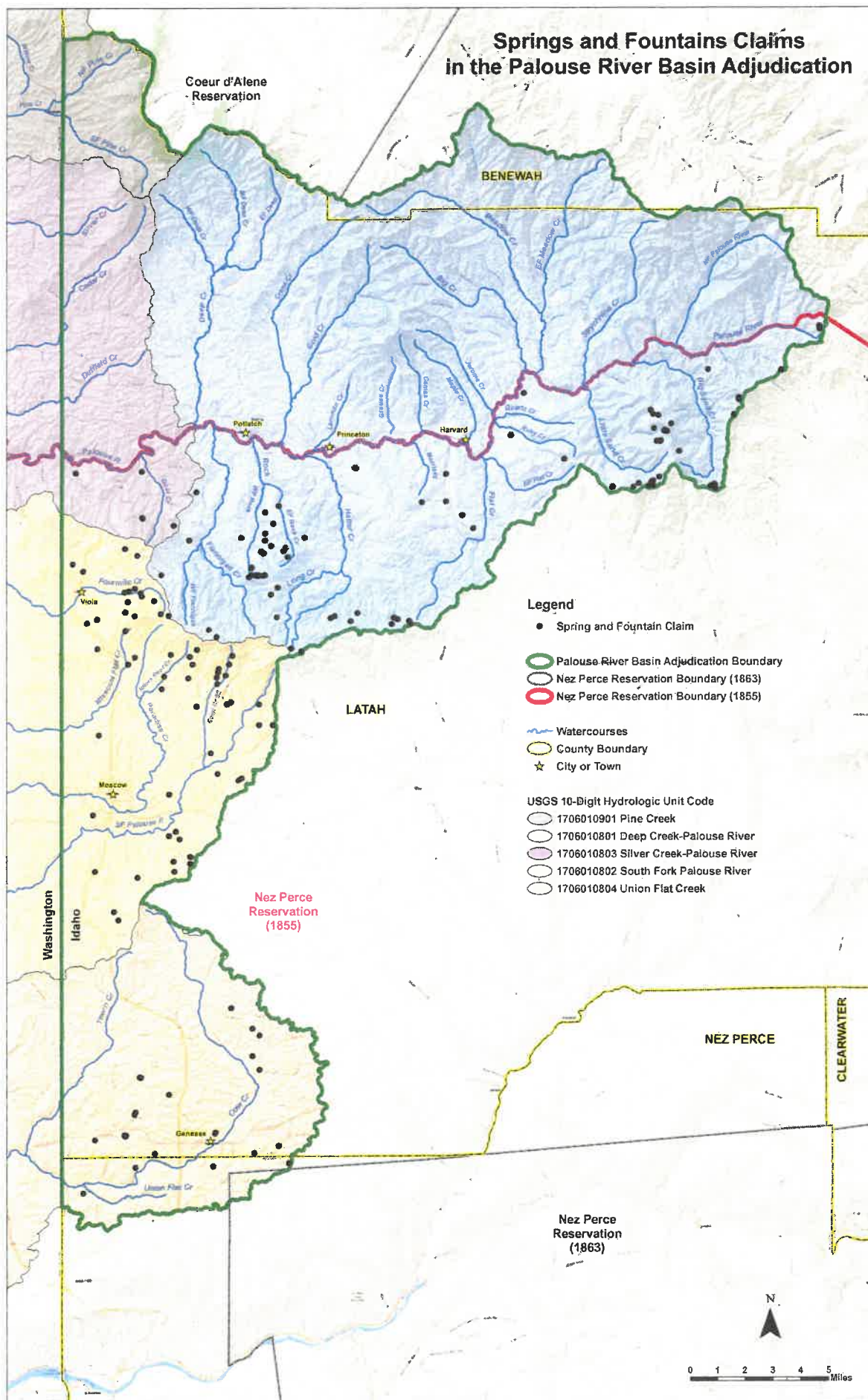


Katherine M. Kane
United States Department of Justice
Indian Resources Division
Natural Resources Section
999 18th Street
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

Springs and Fountains Claims in the Palouse River Basin Adjudication



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

87-12077

IN RE: THE GENERAL
ADJUDICATION OF RIGHTS
TO THE USE OF WATER FROM
THE PALOUSE RIVER BASIN
WATER SYSTEM

) Case No.: 59576
)
) **NOTICE OF CLAIM**
)
) **Federal Reserved Water Right**
)
)
)

RECEIVED
DEC 30 2019
DEPARTMENT OF
WATER RESOURCES

1. **Name and address of claimant:**

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and
ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the
REGIONAL DIRECTOR, NORTHWEST REGION

Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

2. **Date of Priority:** Time Immemorial

3. **a. Source of water supply:** Unnamed Stream (Federal I.D. #1072)

b. which is a tributary to: South Fork Palouse River

4. **Point of Diversion:** This claim is for a spring and/or fountain *in situ* including sufficient
groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or
fountains.

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1072	39N	5W	12	SWNE	Boise	Latah

See Attached Map.

5. **Place of Use:**

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1072	39N	5W	12	SWNE	Boise	Latah

See Attached Map.

6. Purpose of Water Use:

The purpose of use includes the full range of uses to which the Tribe and its members have always put the springs and fountains, including as a water source for consumptive use, for wildlife and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce Reservation pursuant to the documents referenced in Section 9 and the provisions in Section 10, *infra*.

7. Period of Use: January 1 through December 31.

8. Quantity Reserved (In cfs): Half the natural flow.

9. Basis of Claim:

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

10. Other Provisions:

- a. The United States has asserted other claims in the Palouse River Basin Adjudication. Paragraphs 10(a) – (g) express assertions applicable to all claims filed by the Bureau of Indian Affairs in its capacity as trustee for the Nez Perce Tribe in the Palouse River Basin Adjudication. The United States claims waters from groundwater and surface water sources within the Palouse River Basin in the state of Idaho to satisfy the rights reserved to the Nez Perce Tribe by the 1855 Treaty and the 1863 Treaty and to fulfill the permanent homeland purpose of the Nez Perce Reservation. Such present and future purposes include: instream flows for fish habitat; hunting, gathering, and pasturing; spring and fountains flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; and consumptive use claims on two allotments held in trust by the United States.
- b. The Nez Perce Tribe has occupied a territory in what is now central Idaho, southeastern Washington, and northeastern Oregon since time immemorial. *United States v. Webb*, 219 F.3d 1127, 1129 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). The Palouse River Basin is within the Tribe’s traditional lands.
- c. There is a complex history of the United States’ establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing

rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the “exclusive right to fish in all streams running through or bordering” the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the “right of taking fish at all usual and accustomed places in common with the citizens of the Territory” to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.

- d. Article III of the 1855 Treaty further reserves to the Tribe “the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land.”
- e. Article VIII of the Nez Perce Treaty of 1863 includes a unique provision reserving to the Nez Perce Tribe the use of “springs and fountains” within the area ceded under Article I of the 1863 Treaty. For purposes of the priority date of the springs and fountains claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.
- f. Pursuant to the General Allotment Act of 1887, Act of February 8, 1887, 24 Stat. 388, *amended*, Act of February 28, 1891, 26 Stat. 794, there are two allotments (Allotments 182-43 and 182-45) held in trust by the United States located within the boundaries of the Palouse River Basin and the northwestern corner of the Nez Perce Reservation. For purposes of the priority date of the domestic and stock watering claims for these two allotments, the United States claims June 11, 1855 pursuant to the 1855 Treaty.
- g. In order to comply with Idaho Code § 42-1409(1), the United States has designated “places of use,” “points of diversion,” and “purposes of use” in submitting this water rights claim. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe’s future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Reservation. The statute’s terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.

11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled “How you will receive notices in the Palouse River Basin Adjudication.”
- (b) I do ___ do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

For Organizations:

I do solemnly swear and affirm that I am Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.



Signature of Authorized Agent:

Title and Organization:

Northwest Regional Director
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

Notice is hereby given that the United States Department of Justice will represent the United States of America, including the U.S. Department of the Interior, Bureau of Indian Affairs, in all matters pertaining to the Palouse River Basin Adjudication.

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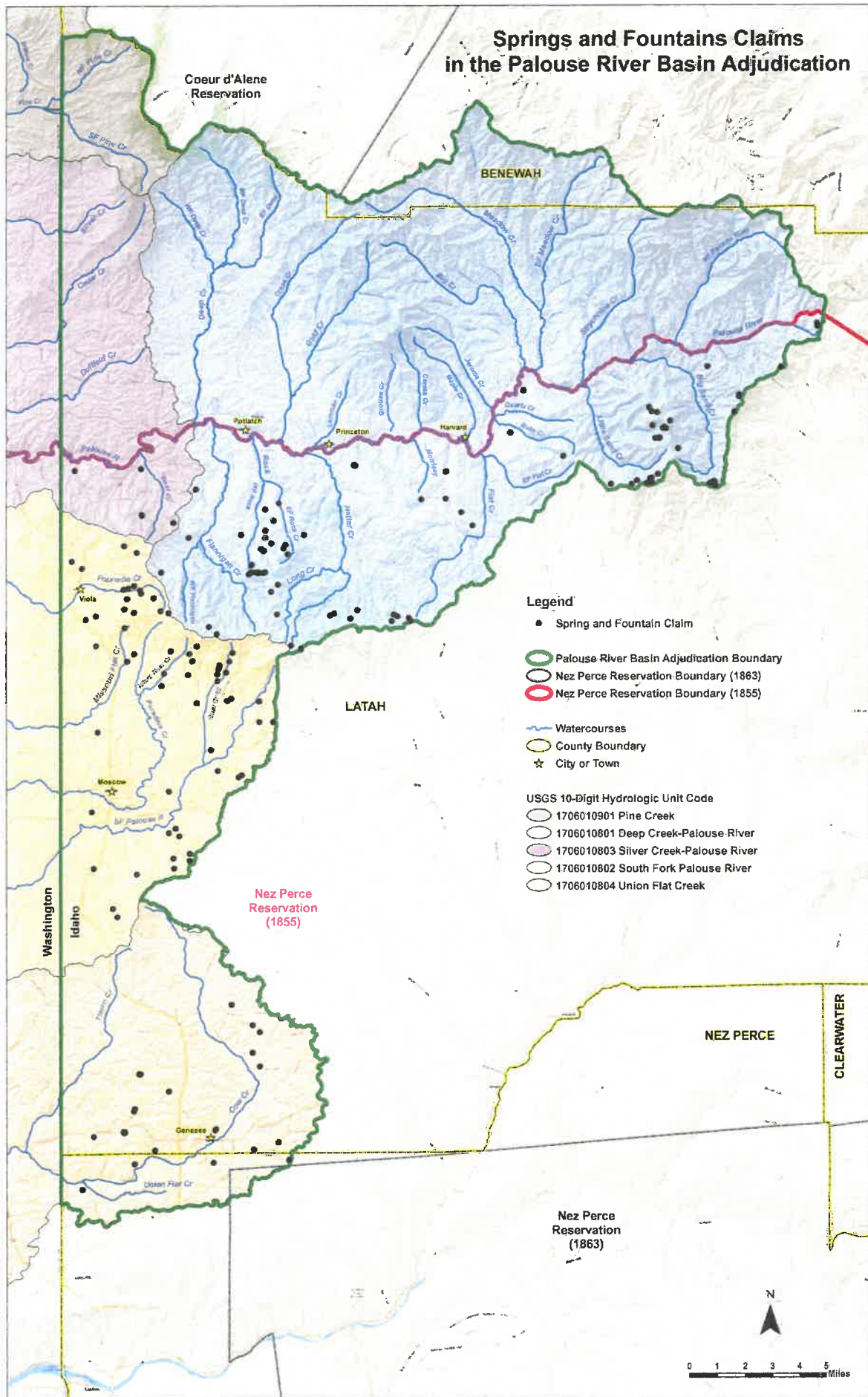


Katherine M. Kane
United States Department of Justice
Indian Resources Division
Natural Resources Section
999 18th Street
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

Springs and Fountains Claims in the Palouse River Basin Adjudication



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE 87-17078
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

IN RE: THE GENERAL) Case No.: 59576
ADJUDICATION OF RIGHTS)
TO THE USE OF WATER FROM) **NOTICE OF CLAIM**
THE PALOUSE RIVER BASIN)
WATER SYSTEM) **Federal Reserved Water Right**
)
)
)

RECEIVED
DEC 30 2019
DEPARTMENT OF
WATER RESOURCES

1. **Name and address of claimant:**

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and
ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the
REGIONAL DIRECTOR, NORTHWEST REGION
Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

2. **Date of Priority:** Time Immemorial

3. **a. Source of water supply:** Spring (Federal I.D. #1073)

b. which is a tributary to: Paradise Creek

4. **Point of Diversion:** This claim is for a spring and/or fountain *in situ* including sufficient groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or fountains.

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1073	40N	5W	31	NWSE	Boise	Latah

See Attached Map.

5. **Place of Use:**

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1073	40N	5W	31	NWSE	Boise	Latah

See Attached Map.

6. Purpose of Water Use:

The purpose of use includes the full range of uses to which the Tribe and its members have always put the springs and fountains, including as a water source for consumptive use, for wildlife and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce Reservation pursuant to the documents referenced in Section 9 and the provisions in Section 10, *infra*.

7. Period of Use: January 1 through December 31.

8. Quantity Reserved (In cfs): Half the natural flow.

9. Basis of Claim:

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

10. Other Provisions:

- a. The United States has asserted other claims in the Palouse River Basin Adjudication. Paragraphs 10(a) – (g) express assertions applicable to all claims filed by the Bureau of Indian Affairs in its capacity as trustee for the Nez Perce Tribe in the Palouse River Basin Adjudication. The United States claims waters from groundwater and surface water sources within the Palouse River Basin in the state of Idaho to satisfy the rights reserved to the Nez Perce Tribe by the 1855 Treaty and the 1863 Treaty and to fulfill the permanent homeland purpose of the Nez Perce Reservation. Such present and future purposes include: instream flows for fish habitat; hunting, gathering, and pasturing; spring and fountains flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; and consumptive use claims on two allotments held in trust by the United States.
- b. The Nez Perce Tribe has occupied a territory in what is now central Idaho, southeastern Washington, and northeastern Oregon since time immemorial. *United States v. Webb*, 219 F.3d 1127, 1129 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). The Palouse River Basin is within the Tribe’s traditional lands.
- c. There is a complex history of the United States’ establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing

rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the “exclusive right to fish in all streams running through or bordering” the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the “right of taking fish at all usual and accustomed places in common with the citizens of the Territory” to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.

- d. Article III of the 1855 Treaty further reserves to the Tribe “the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land.”
- e. Article VIII of the Nez Perce Treaty of 1863 includes a unique provision reserving to the Nez Perce Tribe the use of “springs and fountains” within the area ceded under Article I of the 1863 Treaty. For purposes of the priority date of the springs and fountains claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.
- f. Pursuant to the General Allotment Act of 1887, Act of February 8, 1887, 24 Stat. 388, *amended*, Act of February 28, 1891, 26 Stat. 794, there are two allotments (Allotments 182-43 and 182-45) held in trust by the United States located within the boundaries of the Palouse River Basin and the northwestern corner of the Nez Perce Reservation. For purposes of the priority date of the domestic and stock watering claims for these two allotments, the United States claims June 11, 1855 pursuant to the 1855 Treaty.
- g. In order to comply with Idaho Code § 42-1409(1), the United States has designated “places of use,” “points of diversion,” and “purposes of use” in submitting this water rights claim. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe’s future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Reservation. The statute’s terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.

11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled “How you will receive notices in the Palouse River Basin Adjudication.”
- (b) I do do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

For Organizations:

I do solemnly swear and affirm that I am Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.



Signature of Authorized Agent:

Title and Organization:

Northwest Regional Director
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

Notice is hereby given that the United States Department of Justice will represent the United States of America, including the U.S. Department of the Interior, Bureau of Indian Affairs, in all matters pertaining to the Palouse River Basin Adjudication.

All notices, filings and correspondence concerning this matter should be mailed to the United States Department of Justice at the address set forth below:



Katherine M. Kane
United States Department of Justice
Indian Resources Division
Natural Resources Section
999 18th Street
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

**Springs and Fountains Claims
in the Palouse River Basin Adjudication**

Coeur d'Alene Reservation

BENEWAH

LATAH

Washington

Idaho

Oregon

Nevada

Nez Perce Reservation (1855)

Nez Perce Reservation (1863)

CLEARWATER

Legend

- Spring and Fountain Claim
- [Green outline] Palouse-River Basin Adjudication Boundary
- [Black outline] Nez Perce Reservation Boundary (1863)
- [Red outline] Nez Perce Reservation Boundary (1855)
- (Blue wavy line) Watercourses
- (Yellow outline) County Boundary
- ☆ City or Town

USGS 10-Digit Hydrologic Unit Code

(Light blue circle)	1706010901 Pine Creek
(Medium blue circle)	1706010801 Deep Creek-Palouse River
(Dark blue circle)	1706010803 Silver Creek-Palouse River
(Purple circle)	1706010802 South Fork Palouse River
(Pink circle)	1706010804 Union Flat Creek

Scale: 0 1 2 3 4 5 Miles

North Arrow

7

0 1 2 3 4 5 Miles

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

87-12079

IN RE: THE GENERAL) Case No.: 59576
ADJUDICATION OF RIGHTS)
TO THE USE OF WATER FROM) NOTICE OF CLAIM
THE PALOUSE RIVER BASIN)
WATER SYSTEM) Federal Reserved Water Right
)
)
)

RECEIVED
DEC 30 2019
DEPARTMENT OF
WATER RESOURCES

1. Name and address of claimant:

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and
ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the
REGIONAL DIRECTOR, NORTHWEST REGION

Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

2. Date of Priority: Time Immemorial

3. a. Source of water supply: Spring (Federal I.D. #1074)

b. which is a tributary to: West Fork Flannigan Creek

4. Point of Diversion: This claim is for a spring and/or fountain *in situ* including sufficient groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or fountains.

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1074	41N	5W	27	NESE	Boise	Latah

See Attached Map.

5. Place of Use:

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1074	41N	5W	27	NESE	Boise	Latah

See Attached Map.

6. Purpose of Water Use:

The purpose of use includes the full range of uses to which the Tribe and its members have always put the springs and fountains, including as a water source for consumptive use, for wildlife and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce Reservation pursuant to the documents referenced in Section 9 and the provisions in Section 10, *infra*.

7. Period of Use: January 1 through December 31.

8. Quantity Reserved (In cfs): Half the natural flow.

9. Basis of Claim:

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

10. Other Provisions:

- a. The United States has asserted other claims in the Palouse River Basin Adjudication. Paragraphs 10(a) – (g) express assertions applicable to all claims filed by the Bureau of Indian Affairs in its capacity as trustee for the Nez Perce Tribe in the Palouse River Basin Adjudication. The United States claims waters from groundwater and surface water sources within the Palouse River Basin in the state of Idaho to satisfy the rights reserved to the Nez Perce Tribe by the 1855 Treaty and the 1863 Treaty and to fulfill the permanent homeland purpose of the Nez Perce Reservation. Such present and future purposes include: instream flows for fish habitat; hunting, gathering, and pasturing; spring and fountains flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; and consumptive use claims on two allotments held in trust by the United States.
- b. The Nez Perce Tribe has occupied a territory in what is now central Idaho, southeastern Washington, and northeastern Oregon since time immemorial. *United States v. Webb*, 219 F.3d 1127, 1129 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). The Palouse River Basin is within the Tribe’s traditional lands.
- c. There is a complex history of the United States’ establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing

rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the “exclusive right to fish in all streams running through or bordering” the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the “right of taking fish at all usual and accustomed places in common with the citizens of the Territory” to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.

- d. Article III of the 1855 Treaty further reserves to the Tribe “the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land.”
- e. Article VIII of the Nez Perce Treaty of 1863 includes a unique provision reserving to the Nez Perce Tribe the use of “springs and fountains” within the area ceded under Article I of the 1863 Treaty. For purposes of the priority date of the springs and fountains claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.
- f. Pursuant to the General Allotment Act of 1887, Act of February 8, 1887, 24 Stat. 388, *amended*, Act of February 28, 1891, 26 Stat. 794, there are two allotments (Allotments 182-43 and 182-45) held in trust by the United States located within the boundaries of the Palouse River Basin and the northwestern corner of the Nez Perce Reservation. For purposes of the priority date of the domestic and stock watering claims for these two allotments, the United States claims June 11, 1855 pursuant to the 1855 Treaty.
- g. In order to comply with Idaho Code § 42-1409(1), the United States has designated “places of use,” “points of diversion,” and “purposes of use” in submitting this water rights claim. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe’s future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Reservation. The statute’s terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.

11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled “How you will receive notices in the Palouse River Basin Adjudication.”
- (b) I do ___ do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

For Organizations:

I do solemnly swear and affirm that I am Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.



Signature of Authorized Agent:

Title and Organization:

Northwest Regional Director
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

Notice is hereby given that the United States Department of Justice will represent the United States of America, including the U.S. Department of the Interior, Bureau of Indian Affairs, in all matters pertaining to the Palouse River Basin Adjudication.

All notices, filings and correspondence concerning this matter should be mailed to the United States Department of Justice at the address set forth below:

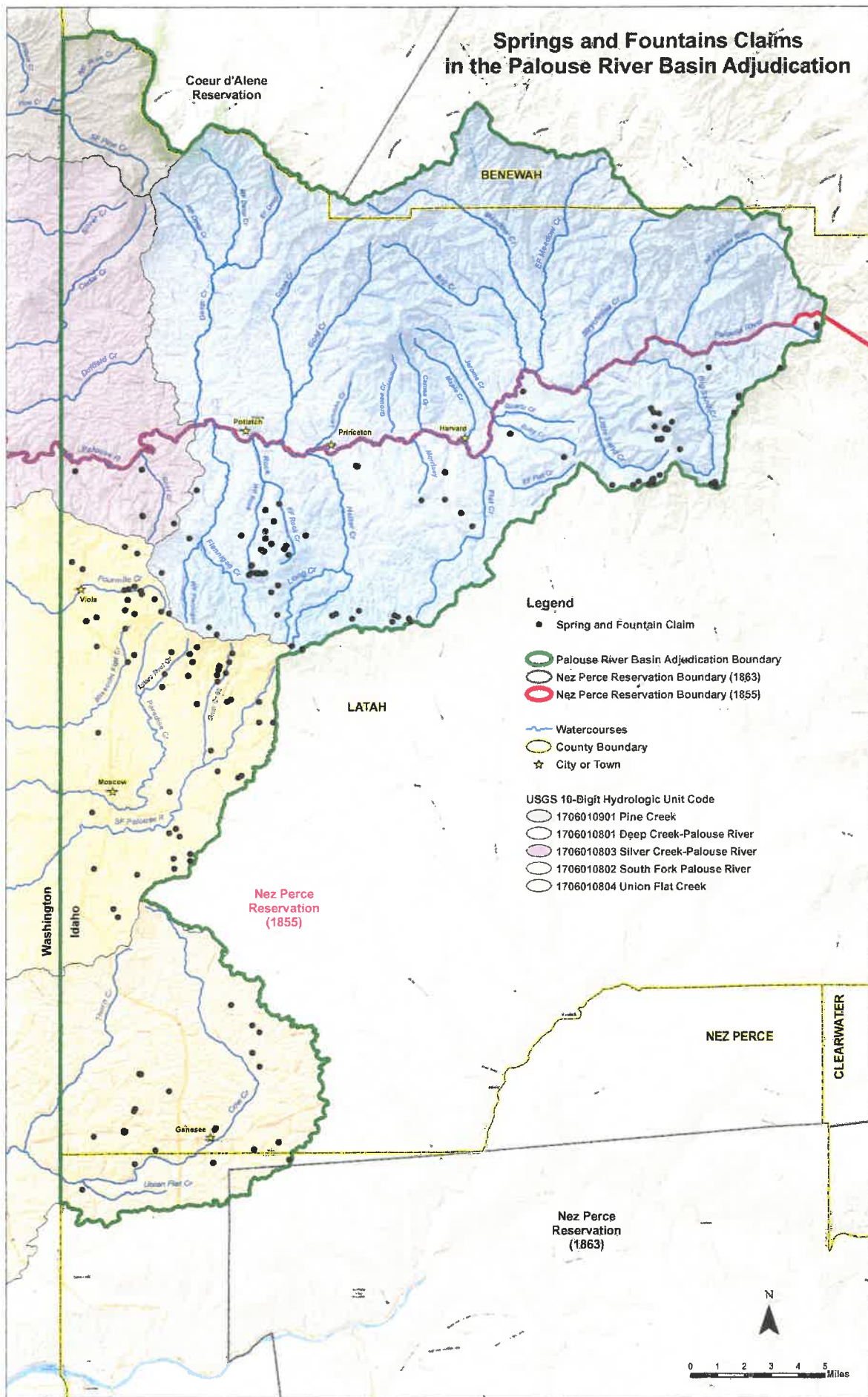
A handwritten signature in blue ink, appearing to read "K.M. Kane", is written over a horizontal line.

Katherine M. Kane
United States Department of Justice
Indian Resources Division
Natural Resources Section
999 18th Street
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

Springs and Fountains Claims in the Palouse River Basin Adjudication



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

87-12080

IN RE: THE GENERAL)
ADJUDICATION OF RIGHTS)
TO THE USE OF WATER FROM)
THE PALOUSE RIVER BASIN)
WATER SYSTEM)

Case No.: 59576

NOTICE OF CLAIM

Federal Reserved Water Right

RECEIVED
DEC 30 2019
DEPARTMENT OF
WATER RESOURCES

1. Name and address of claimant:

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and
ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the
REGIONAL DIRECTOR, NORTHWEST REGION

Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

2. Date of Priority: Time Immemorial

3. a. Source of water supply: Spring Fed Pond (Federal I.D. #1075)

b. which is a tributary to: Fourmile Creek

4. Point of Diversion: This claim is for a spring and/or fountain *in situ* including sufficient groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or fountains.

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1075	40N	5W	7	NWSW	Boise	Latah

See Attached Map.

5. Place of Use:

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1075	40N	5W	7	NWSW	Boise	Latah

See Attached Map.

6. Purpose of Water Use:

The purpose of use includes the full range of uses to which the Tribe and its members have always put the springs and fountains, including as a water source for consumptive use, for wildlife and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce Reservation pursuant to the documents referenced in Section 9 and the provisions in Section 10, *infra*.

7. Period of Use: January 1 through December 31.

8. Quantity Reserved (In cfs): Half the natural flow.

9. Basis of Claim:

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

10. Other Provisions:

- a. The United States has asserted other claims in the Palouse River Basin Adjudication. Paragraphs 10(a) – (g) express assertions applicable to all claims filed by the Bureau of Indian Affairs in its capacity as trustee for the Nez Perce Tribe in the Palouse River Basin Adjudication. The United States claims waters from groundwater and surface water sources within the Palouse River Basin in the state of Idaho to satisfy the rights reserved to the Nez Perce Tribe by the 1855 Treaty and the 1863 Treaty and to fulfill the permanent homeland purpose of the Nez Perce Reservation. Such present and future purposes include: instream flows for fish habitat; hunting, gathering, and pasturing; spring and fountains flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; and consumptive use claims on two allotments held in trust by the United States.
- b. The Nez Perce Tribe has occupied a territory in what is now central Idaho, southeastern Washington, and northeastern Oregon since time immemorial. *United States v. Webb*, 219 F.3d 1127, 1129 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). The Palouse River Basin is within the Tribe’s traditional lands.
- c. There is a complex history of the United States’ establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing

rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the “exclusive right to fish in all streams running through or bordering” the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the “right of taking fish at all usual and accustomed places in common with the citizens of the Territory” to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.

- d. Article III of the 1855 Treaty further reserves to the Tribe “the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land.”
- e. Article VIII of the Nez Perce Treaty of 1863 includes a unique provision reserving to the Nez Perce Tribe the use of “springs and fountains” within the area ceded under Article I of the 1863 Treaty. For purposes of the priority date of the springs and fountains claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.
- f. Pursuant to the General Allotment Act of 1887, Act of February 8, 1887, 24 Stat. 388, *amended*, Act of February 28, 1891, 26 Stat. 794, there are two allotments (Allotments 182-43 and 182-45) held in trust by the United States located within the boundaries of the Palouse River Basin and the northwestern corner of the Nez Perce Reservation. For purposes of the priority date of the domestic and stock watering claims for these two allotments, the United States claims June 11, 1855 pursuant to the 1855 Treaty.
- g. In order to comply with Idaho Code § 42-1409(1), the United States has designated “places of use,” “points of diversion,” and “purposes of use” in submitting this water rights claim. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe’s future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Reservation. The statute’s terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.

11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled “How you will receive notices in the Palouse River Basin Adjudication.”
- (b) I do do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

For Organizations:

I do solemnly swear and affirm that I am Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.



Signature of Authorized Agent:

Title and Organization:

Northwest Regional Director
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

Notice is hereby given that the United States Department of Justice will represent the United States of America, including the U.S. Department of the Interior, Bureau of Indian Affairs, in all matters pertaining to the Palouse River Basin Adjudication.

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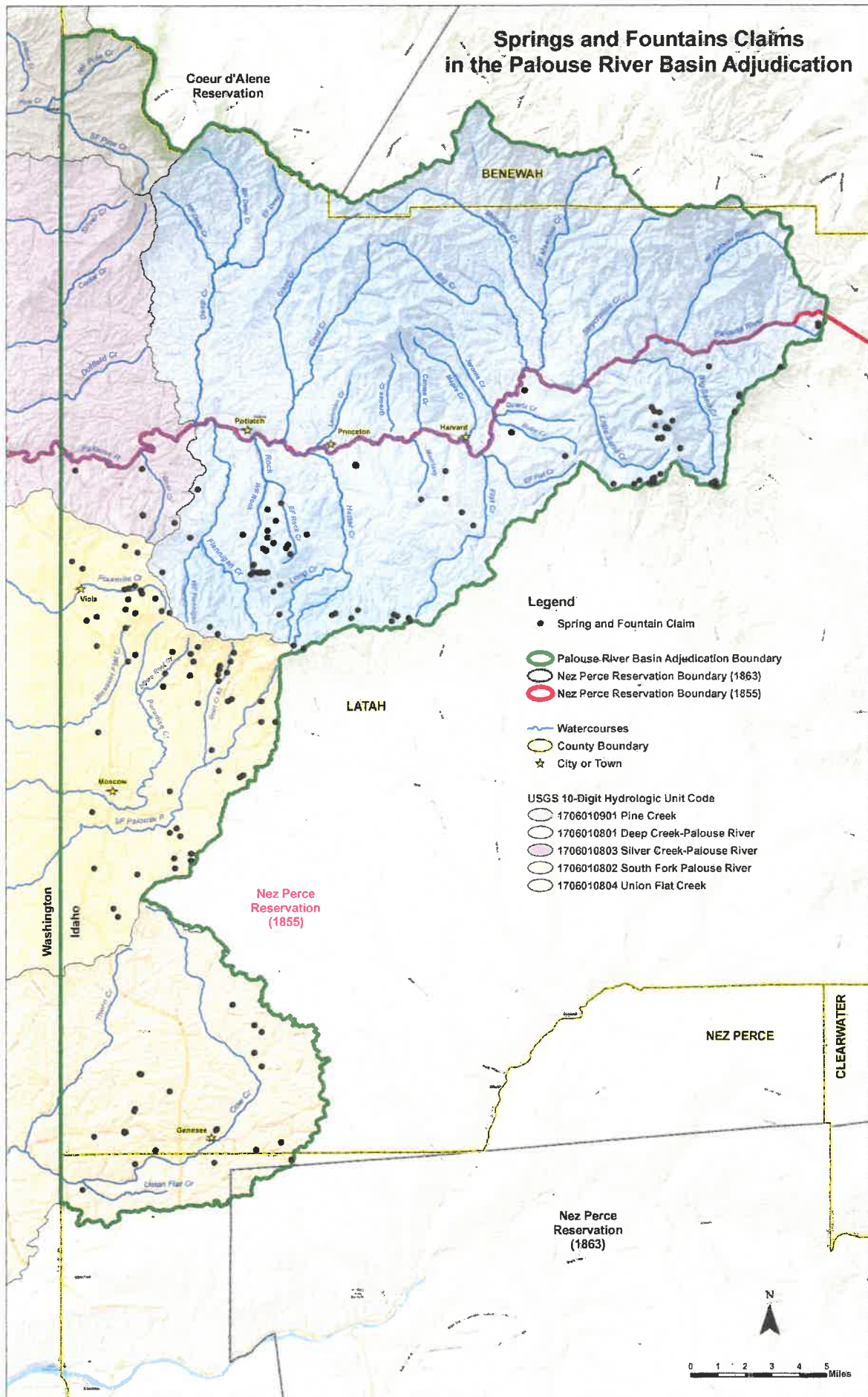


Katherine M. Kane
United States Department of Justice
Indian Resources Division
Natural Resources Section
999 18th Street
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

Springs and Fountains Claims in the Palouse River Basin Adjudication



87-12081

REC'D
DEC 30 2019
DEPARTMENT OF
WATER RESOURCES

6. Purpose of Water Use:

The purpose of use includes the full range of uses to which the Tribe and its members have always put the springs and fountains, including as a water source for consumptive use, for wildlife and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce Reservation pursuant to the documents referenced in Section 9 and the provisions in Section 10, *infra*.

7. Period of Use: January 1 through December 31.

8. Quantity Reserved (In cfs): Half the natural flow.

9. Basis of Claim:

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

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- d. Article III of the 1855 Treaty further reserves to the Tribe “the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land.”
- e. Article VIII of the Nez Perce Treaty of 1863 includes a unique provision reserving to the Nez Perce Tribe the use of “springs and fountains” within the area ceded under Article I of the 1863 Treaty. For purposes of the priority date of the springs and fountains claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.
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- g. In order to comply with Idaho Code § 42-1409(1), the United States has designated “places of use,” “points of diversion,” and “purposes of use” in submitting this water rights claim. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe’s future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Reservation. The statute’s terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.

11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled “How you will receive notices in the Palouse River Basin Adjudication.”
- (b) I do ___ do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

For Organizations:

I do solemnly swear and affirm that I am Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.



Signature of Authorized Agent:

Title and Organization:

Northwest Regional Director
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

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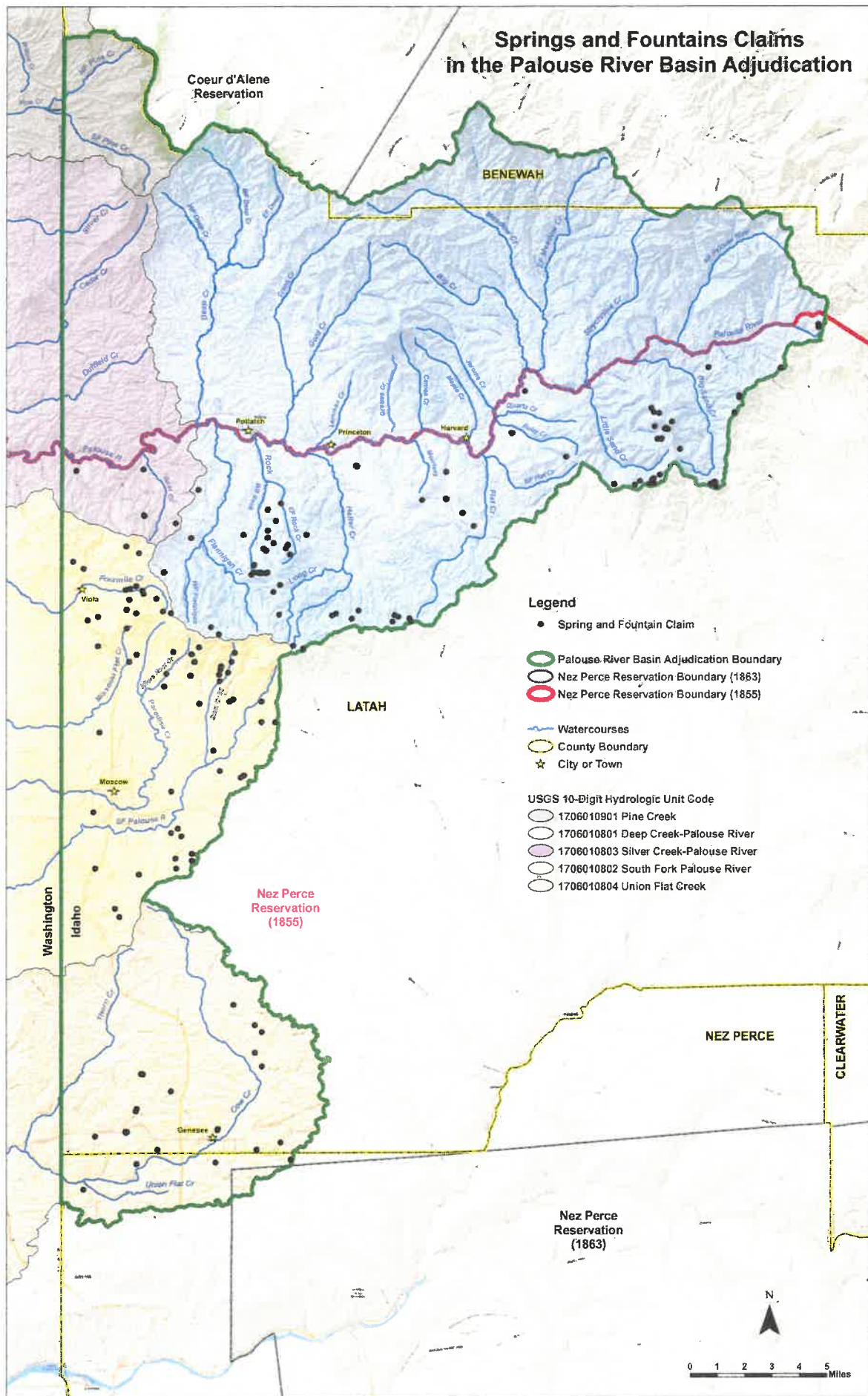


Katherine M. Kane
United States Department of Justice
Indian Resources Division
Natural Resources Section
999 18th Street
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

Springs and Fountains Claims in the Palouse River Basin Adjudication



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

87-12082

IN RE: THE GENERAL)
ADJUDICATION OF RIGHTS)
TO THE USE OF WATER FROM)
THE PALOUSE RIVER BASIN)
WATER SYSTEM)

Case No.: 59576

NOTICE OF CLAIM

Federal Reserved Water Right

RECEIVED
DEC 30 2013
DEPARTMENT OF
WATER RESOURCES

1. Name and address of claimant:

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and
ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the
REGIONAL DIRECTOR, NORTHWEST REGION

Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

2. Date of Priority: Time Immemorial

3. a. Source of water supply: Spring (Federal I.D. #1077)

b. which is a tributary to: Idlers Rest Creek

4. Point of Diversion: This claim is for a spring and/or fountain *in situ* including sufficient groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or fountains.

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1077	40N	5W	15	SWSW	Boise	Latah

See Attached Map.

5. Place of Use:

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1077	40N	5W	15	SWSW	Boise	Latah

See Attached Map.

6. Purpose of Water Use:

The purpose of use includes the full range of uses to which the Tribe and its members have always put the springs and fountains, including as a water source for consumptive use, for wildlife and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce Reservation pursuant to the documents referenced in Section 9 and the provisions in Section 10, *infra*.

7. Period of Use: January 1 through December 31.

8. Quantity Reserved (In cfs): Half the natural flow.

9. Basis of Claim:

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

10. Other Provisions:

- a. The United States has asserted other claims in the Palouse River Basin Adjudication. Paragraphs 10(a) – (g) express assertions applicable to all claims filed by the Bureau of Indian Affairs in its capacity as trustee for the Nez Perce Tribe in the Palouse River Basin Adjudication. The United States claims waters from groundwater and surface water sources within the Palouse River Basin in the state of Idaho to satisfy the rights reserved to the Nez Perce Tribe by the 1855 Treaty and the 1863 Treaty and to fulfill the permanent homeland purpose of the Nez Perce Reservation. Such present and future purposes include: instream flows for fish habitat; hunting, gathering, and pasturing; spring and fountain flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; and consumptive use claims on two allotments held in trust by the United States.
- b. The Nez Perce Tribe has occupied a territory in what is now central Idaho, southeastern Washington, and northeastern Oregon since time immemorial. *United States v. Webb*, 219 F.3d 1127, 1129 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). The Palouse River Basin is within the Tribe’s traditional lands.
- c. There is a complex history of the United States’ establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing

rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the “exclusive right to fish in all streams running through or bordering” the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the “right of taking fish at all usual and accustomed places in common with the citizens of the Territory” to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.

- d. Article III of the 1855 Treaty further reserves to the Tribe “the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land.”
- e. Article VIII of the Nez Perce Treaty of 1863 includes a unique provision reserving to the Nez Perce Tribe the use of “springs and fountains” within the area ceded under Article I of the 1863 Treaty. For purposes of the priority date of the springs and fountains claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.
- f. Pursuant to the General Allotment Act of 1887, Act of February 8, 1887, 24 Stat. 388, *amended*, Act of February 28, 1891, 26 Stat. 794, there are two allotments (Allotments 182-43 and 182-45) held in trust by the United States located within the boundaries of the Palouse River Basin and the northwestern corner of the Nez Perce Reservation. For purposes of the priority date of the domestic and stock watering claims for these two allotments, the United States claims June 11, 1855 pursuant to the 1855 Treaty.
- g. In order to comply with Idaho Code § 42-1409(1), the United States has designated “places of use,” “points of diversion,” and “purposes of use” in submitting this water rights claim. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe’s future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Reservation. The statute’s terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.

11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled “How you will receive notices in the Palouse River Basin Adjudication.”
- (b) I do ___ do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

For Organizations:

I do solemnly swear and affirm that I am Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.



Signature of Authorized Agent:

Title and Organization:

Northwest Regional Director
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

Notice is hereby given that the United States Department of Justice will represent the United States of America, including the U.S. Department of the Interior, Bureau of Indian Affairs, in all matters pertaining to the Palouse River Basin Adjudication.

All notices, filings and correspondence concerning this matter should be mailed to the United States Department of Justice at the address set forth below:

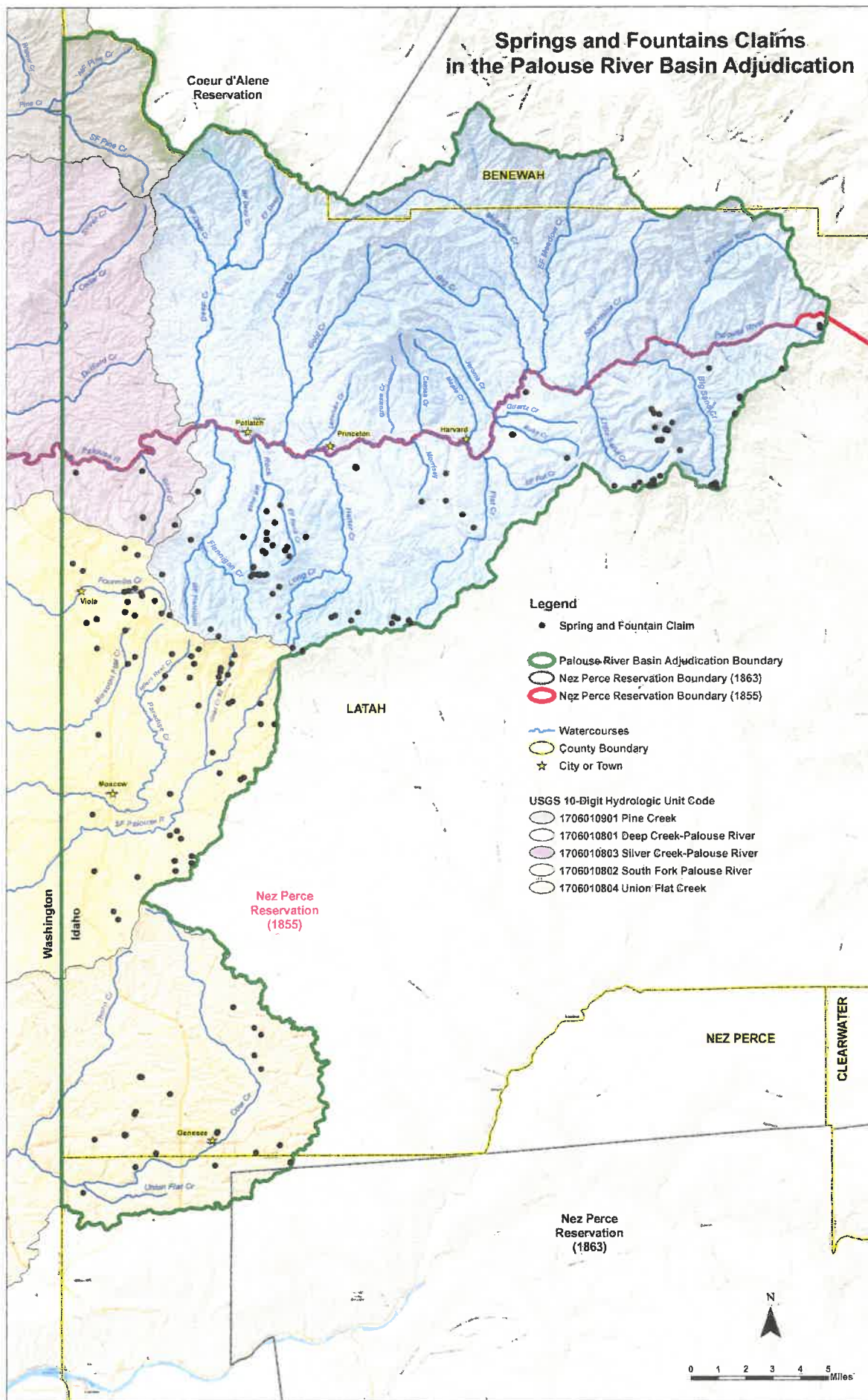
A handwritten signature in blue ink, appearing to read 'K.M. Kane', is written over a horizontal line.

Katherine M. Kane
United States Department of Justice
Indian Resources Division
Natural Resources Section
999 18th Street
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

Springs and Fountains Claims in the Palouse River Basin Adjudication



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

87-12083

IN RE: THE GENERAL)
ADJUDICATION OF RIGHTS)
TO THE USE OF WATER FROM)
THE PALOUSE RIVER BASIN)
WATER SYSTEM)

Case No.: 59576

NOTICE OF CLAIM

Federal Reserved Water Right

RECEIVED
DEC 30 2019
DEPARTMENT OF
WATER RESOURCES

1. Name and address of claimant:

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and
ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the
REGIONAL DIRECTOR, NORTHWEST REGION

Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

2. Date of Priority: Time Immemorial

3. a. Source of water supply: Spring (Federal I.D. #1078)

b. which is a tributary to: Gnat Creek

4. Point of Diversion: This claim is for a spring and/or fountain *in situ* including sufficient
groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or
fountains.

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1078	41N	5W	21	SWSW	Boise	Latah

See Attached Map.

5. Place of Use:

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1078	41N	5W	21	SWSW	Boise	Latah

See Attached Map.

6. Purpose of Water Use:

The purpose of use includes the full range of uses to which the Tribe and its members have always put the springs and fountains, including as a water source for consumptive use, for wildlife and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce Reservation pursuant to the documents referenced in Section 9 and the provisions in Section 10, *infra*.

7. Period of Use: January 1 through December 31.

8. Quantity Reserved (In cfs): Half the natural flow.

9. Basis of Claim:

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

10. Other Provisions:

- a. The United States has asserted other claims in the Palouse River Basin Adjudication. Paragraphs 10(a) – (g) express assertions applicable to all claims filed by the Bureau of Indian Affairs in its capacity as trustee for the Nez Perce Tribe in the Palouse River Basin Adjudication. The United States claims waters from groundwater and surface water sources within the Palouse River Basin in the state of Idaho to satisfy the rights reserved to the Nez Perce Tribe by the 1855 Treaty and the 1863 Treaty and to fulfill the permanent homeland purpose of the Nez Perce Reservation. Such present and future purposes include: instream flows for fish habitat; hunting, gathering, and pasturing; spring and fountains flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; and consumptive use claims on two allotments held in trust by the United States.
- b. The Nez Perce Tribe has occupied a territory in what is now central Idaho, southeastern Washington, and northeastern Oregon since time immemorial. *United States v. Webb*, 219 F.3d 1127, 1129 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). The Palouse River Basin is within the Tribe’s traditional lands.
- c. There is a complex history of the United States’ establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing

rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the “exclusive right to fish in all streams running through or bordering” the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the “right of taking fish at all usual and accustomed places in common with the citizens of the Territory” to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.

- d. Article III of the 1855 Treaty further reserves to the Tribe “the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land.”
- e. Article VIII of the Nez Perce Treaty of 1863 includes a unique provision reserving to the Nez Perce Tribe the use of “springs and fountains” within the area ceded under Article I of the 1863 Treaty. For purposes of the priority date of the springs and fountains claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.
- f. Pursuant to the General Allotment Act of 1887, Act of February 8, 1887, 24 Stat. 388, *amended*, Act of February 28, 1891, 26 Stat. 794, there are two allotments (Allotments 182-43 and 182-45) held in trust by the United States located within the boundaries of the Palouse River Basin and the northwestern corner of the Nez Perce Reservation. For purposes of the priority date of the domestic and stock watering claims for these two allotments, the United States claims June 11, 1855 pursuant to the 1855 Treaty.
- g. In order to comply with Idaho Code § 42-1409(1), the United States has designated “places of use,” “points of diversion,” and “purposes of use” in submitting this water rights claim. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe’s future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Reservation. The statute’s terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.

11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled “How you will receive notices in the Palouse River Basin Adjudication.”
- (b) I do ___ do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

For Organizations:

I do solemnly swear and affirm that I am Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.



Signature of Authorized Agent:

Title and Organization:

Northwest Regional Director
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

Notice is hereby given that the United States Department of Justice will represent the United States of America, including the U.S. Department of the Interior, Bureau of Indian Affairs, in all matters pertaining to the Palouse River Basin Adjudication.

All notices, filings and correspondence concerning this matter should be mailed to the United States Department of Justice at the address set forth below:



Katherine M. Kane
United States Department of Justice
Indian Resources Division
Natural Resources Section
999 18th Street
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

**Springs and Fountains Claims
in the Palouse River Basin Adjudication**

Coeur d'Alene
Reservation

BENEWAH

LATAH

Washington

Idaho

NEZ PERCE

CLEARWATER

Palouse River

Snake River

Deep Creek

Silver Creek

South Fork Palouse River

Union Flat Creek

Pocatello

Princeton

Harvard

Moscow

Genesee

Nez Perce
Reservation
(1855)

Nez Perce
Reservation
(1863)

Legend

- Spring and Fountain Claim
- Palouse River Basin Adjudication Boundary
- Nez Perce Reservation Boundary (1863)
- Nez Perce Reservation Boundary (1855)
- Watercourses
- County Boundary
- City or Town

USGS 10-Digit Hydrologic Unit Code

- 1706010901 Pine Creek
- 1706010801 Deep Creek-Palouse River
- 1706010803 Silver Creek-Palouse River
- 1706010802 South Fork Palouse River
- 1706010804 Union Flat Creek

0 1 2 3 4 5 Miles

N

- Spring and Fountain Claim
- Palouse River Basin Adjudication Boundary
- Nez Perce Reservation Boundary (1863)
- Nez Perce Reservation Boundary (1855)
- Watercourses
- County Boundary
- ★ City or Town

- ☐ 1706010901 Pine Creek
- ☐ 1706010801 Deep Creek-Palouse River
- ☒ 1706010803 Silver Creek-Palouse River
- ☐ 1706010802 South Fork Palouse River
- ☐ 1706010804 Union Flat Creek

CLEARWATER

0 1 2 3 4 5 Miles

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

87-12084

IN RE: THE GENERAL
ADJUDICATION OF RIGHTS
TO THE USE OF WATER FROM
THE PALOUSE RIVER BASIN
WATER SYSTEM

) Case No.: 59576
)
) **NOTICE OF CLAIM**
)
) **Federal Reserved Water Right**
)
)
)

RECEIVED
DEC 30 2019
DEPARTMENT OF
WATER RESOURCES

1. **Name and address of claimant:**

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and
ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the
REGIONAL DIRECTOR, NORTHWEST REGION
Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

2. **Date of Priority:** Time Immemorial

3. **a. Source of water supply:** Spring (Federal I.D. #1079)

b. which is a tributary to: Howard Creek

4. **Point of Diversion:** This claim is for a spring and/or fountain *in situ* including sufficient groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or fountains.

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1079	40N	5W	26	NWSW	Boise	Latah

See Attached Map.

5. **Place of Use:**

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1079	40N	5W	26	NWSW	Boise	Latah

See Attached Map.

6. Purpose of Water Use:

The purpose of use includes the full range of uses to which the Tribe and its members have always put the springs and fountains, including as a water source for consumptive use, for wildlife and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce Reservation pursuant to the documents referenced in Section 9 and the provisions in Section 10, *infra*.

7. Period of Use: January 1 through December 31.

8. Quantity Reserved (In cfs): Half the natural flow.

9. Basis of Claim:

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

10. Other Provisions:

- a. The United States has asserted other claims in the Palouse River Basin Adjudication. Paragraphs 10(a) – (g) express assertions applicable to all claims filed by the Bureau of Indian Affairs in its capacity as trustee for the Nez Perce Tribe in the Palouse River Basin Adjudication. The United States claims waters from groundwater and surface water sources within the Palouse River Basin in the state of Idaho to satisfy the rights reserved to the Nez Perce Tribe by the 1855 Treaty and the 1863 Treaty and to fulfill the permanent homeland purpose of the Nez Perce Reservation. Such present and future purposes include: instream flows for fish habitat; hunting, gathering, and pasturing; spring and fountains flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; and consumptive use claims on two allotments held in trust by the United States.
- b. The Nez Perce Tribe has occupied a territory in what is now central Idaho, southeastern Washington, and northeastern Oregon since time immemorial. *United States v. Webb*, 219 F.3d 1127, 1129 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). The Palouse River Basin is within the Tribe’s traditional lands.
- c. There is a complex history of the United States’ establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing

rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the “exclusive right to fish in all streams running through or bordering” the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the “right of taking fish at all usual and accustomed places in common with the citizens of the Territory” to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.

- d. Article III of the 1855 Treaty further reserves to the Tribe “the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land.”
- e. Article VIII of the Nez Perce Treaty of 1863 includes a unique provision reserving to the Nez Perce Tribe the use of “springs and fountains” within the area ceded under Article I of the 1863 Treaty. For purposes of the priority date of the springs and fountains claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.
- f. Pursuant to the General Allotment Act of 1887, Act of February 8, 1887, 24 Stat. 388, *amended*, Act of February 28, 1891, 26 Stat. 794, there are two allotments (Allotments 182-43 and 182-45) held in trust by the United States located within the boundaries of the Palouse River Basin and the northwestern corner of the Nez Perce Reservation. For purposes of the priority date of the domestic and stock watering claims for these two allotments, the United States claims June 11, 1855 pursuant to the 1855 Treaty.
- g. In order to comply with Idaho Code § 42-1409(1), the United States has designated “places of use,” “points of diversion,” and “purposes of use” in submitting this water rights claim. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe’s future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Reservation. The statute’s terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.

11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled “How you will receive notices in the Palouse River Basin Adjudication.”
- (b) I do ___ do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

For Organizations:

I do solemnly swear and affirm that I am Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.



Signature of Authorized Agent:

Title and Organization:

Northwest Regional Director
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

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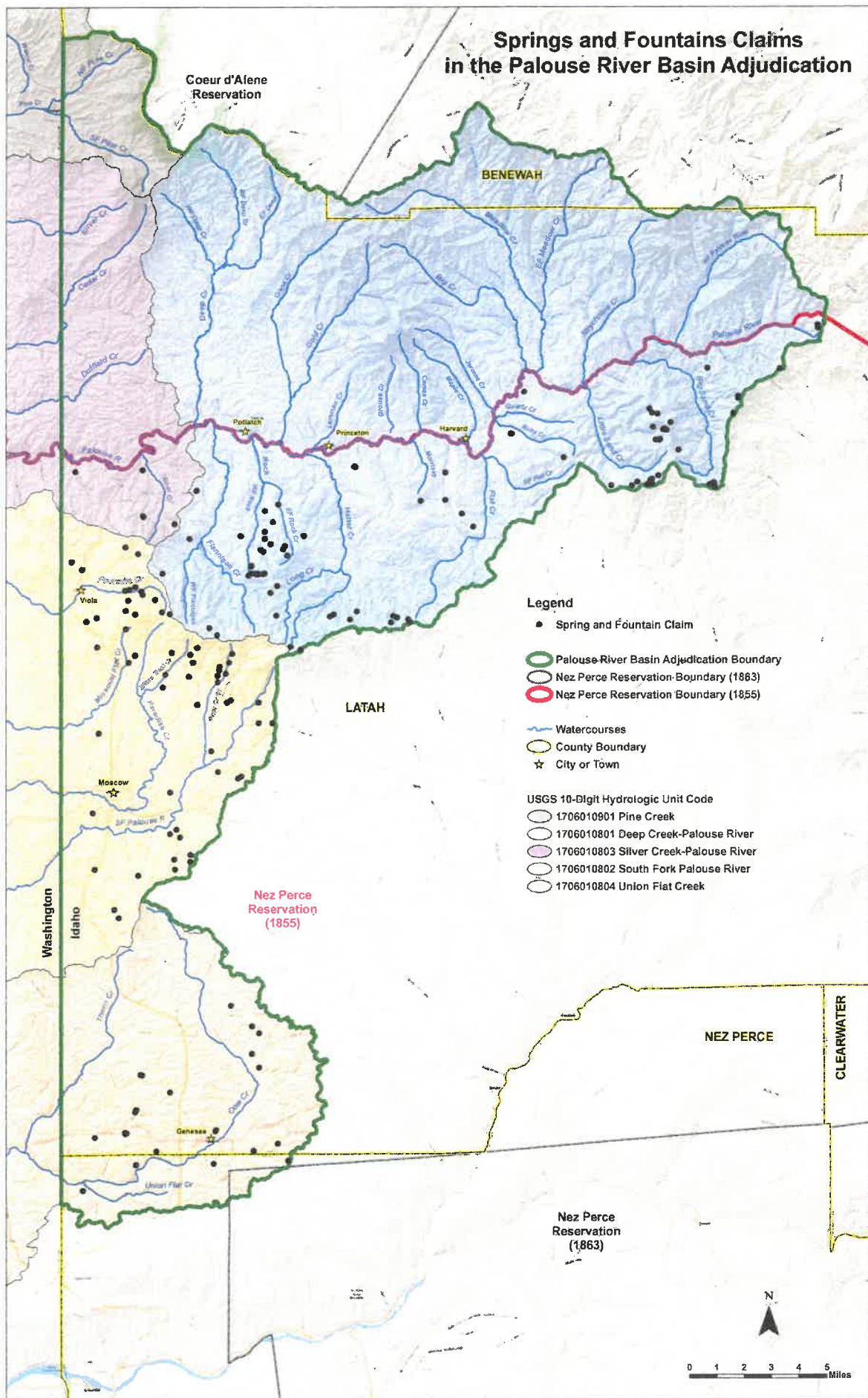


Katherine M. Kane
United States Department of Justice
Indian Resources Division
Natural Resources Section
999 18th Street
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

Springs and Fountains Claims in the Palouse River Basin Adjudication



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

87-12085

IN RE: THE GENERAL)
ADJUDICATION OF RIGHTS)
TO THE USE OF WATER FROM)
THE PALOUSE RIVER BASIN)
WATER SYSTEM)

Case No.: 59576

NOTICE OF CLAIM

Federal Reserved Water Right

RECEIVED
DEC 30 2019
DEPARTMENT OF
WATER RESOURCES

1. Name and address of claimant:

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and
ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the
REGIONAL DIRECTOR, NORTHWEST REGION

Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

2. Date of Priority: Time Immemorial

3. a. Source of water supply: Spring (Federal I.D. #1080)

b. which is a tributary to: South Fork Palouse River

4. Point of Diversion: This claim is for a spring and/or fountain *in situ* including sufficient
groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or
fountains.

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1080	39N	5W	27	NESW	Boise	Latah

See Attached Map.

5. Place of Use:

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1080	39N	5W	27	NESW	Boise	Latah

See Attached Map.

6. Purpose of Water Use:

The purpose of use includes the full range of uses to which the Tribe and its members have always put the springs and fountains, including as a water source for consumptive use, for wildlife and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce Reservation pursuant to the documents referenced in Section 9 and the provisions in Section 10, *infra*.

7. Period of Use: January 1 through December 31.

8. Quantity Reserved (In cfs): Half the natural flow.

9. Basis of Claim:

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

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- c. There is a complex history of the United States’ establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing

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- d. Article III of the 1855 Treaty further reserves to the Tribe “the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land.”
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11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled “How you will receive notices in the Palouse River Basin Adjudication.”
- (b) I do___ do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

For Organizations:

I do solemnly swear and affirm that I am Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.



Signature of Authorized Agent:

Title and Organization:

Northwest Regional Director
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

Notice is hereby given that the United States Department of Justice will represent the United States of America, including the U.S. Department of the Interior, Bureau of Indian Affairs, in all matters pertaining to the Palouse River Basin Adjudication.

All notices, filings and correspondence concerning this matter should be mailed to the United States Department of Justice at the address set forth below:

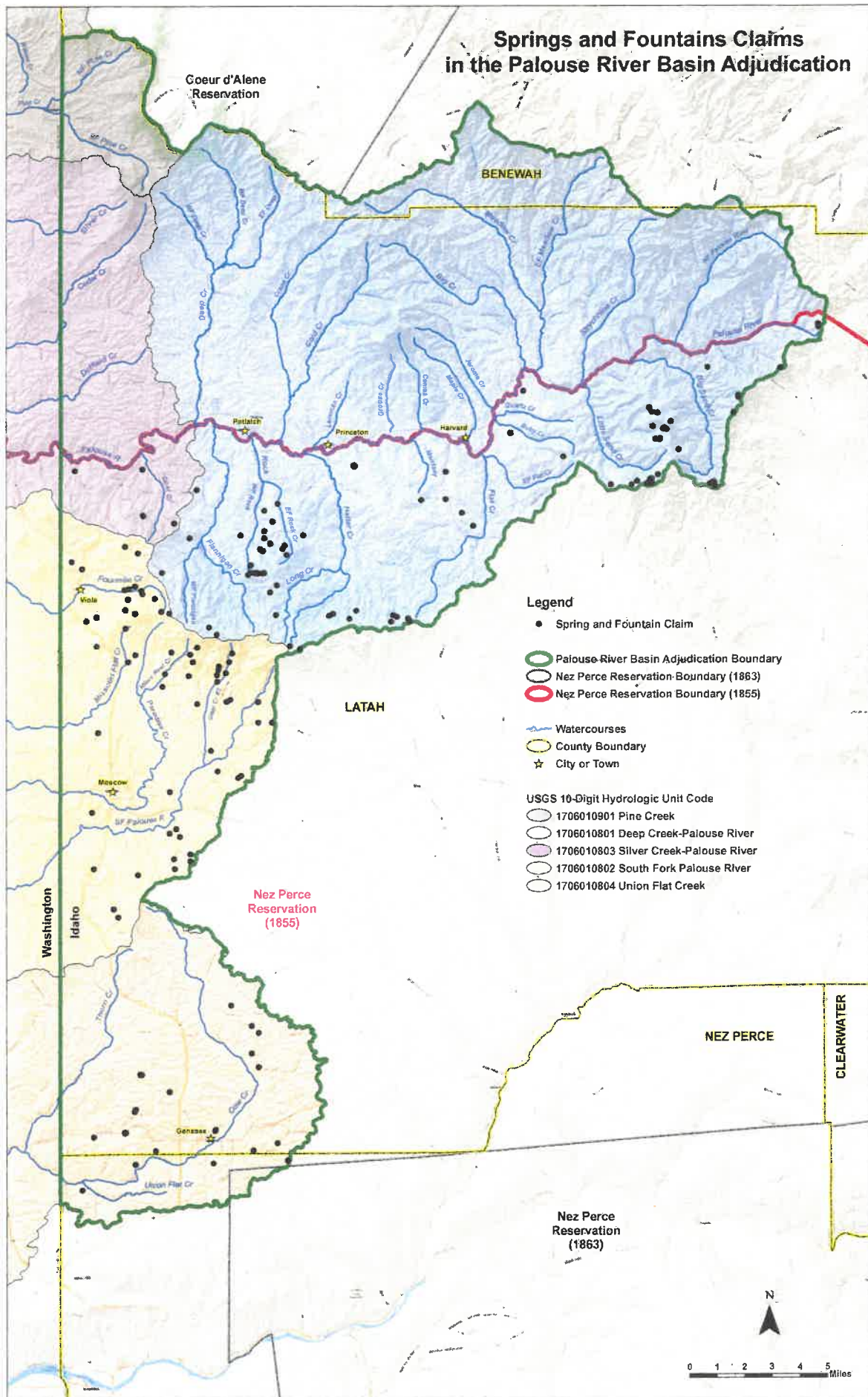


Katherine M. Kane
United States Department of Justice
Indian Resources Division
Natural Resources Section
999 18th Street
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

Springs and Fountains Claims in the Palouse River Basin Adjudication



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

87-12086

IN RE: THE GENERAL) Case No.: 59576
ADJUDICATION OF RIGHTS)
TO THE USE OF WATER FROM) **NOTICE OF CLAIM**
THE PALOUSE RIVER BASIN)
WATER SYSTEM) **Federal Reserved Water Right**
)
)
)

RECEIVED
DEC 30 2019
DEPARTMENT OF
WATER RESOURCES

1. **Name and address of claimant:**

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and
ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the
REGIONAL DIRECTOR, NORTHWEST REGION

Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

2. **Date of Priority:** Time Immemorial

3. **a. Source of water supply:** Spring (Federal I.D. #1081)

b. which is a tributary to: Fourmile Creek

4. **Point of Diversion:** This claim is for a spring and/or fountain *in situ* including sufficient groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or fountains.

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1081	40N	5W	10	SWNW	Boise	Latah

See Attached Map.

5. **Place of Use:**

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1081	40N	5W	10	SWNW	Boise	Latah

See Attached Map.

6. Purpose of Water Use:

The purpose of use includes the full range of uses to which the Tribe and its members have always put the springs and fountains, including as a water source for consumptive use, for wildlife and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce Reservation pursuant to the documents referenced in Section 9 and the provisions in Section 10, *infra*.

7. Period of Use: January 1 through December 31.

8. Quantity Reserved (In cfs): Half the natural flow.

9. Basis of Claim:

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

10. Other Provisions:

- a. The United States has asserted other claims in the Palouse River Basin Adjudication. Paragraphs 10(a) – (g) express assertions applicable to all claims filed by the Bureau of Indian Affairs in its capacity as trustee for the Nez Perce Tribe in the Palouse River Basin Adjudication. The United States claims waters from groundwater and surface water sources within the Palouse River Basin in the state of Idaho to satisfy the rights reserved to the Nez Perce Tribe by the 1855 Treaty and the 1863 Treaty and to fulfill the permanent homeland purpose of the Nez Perce Reservation. Such present and future purposes include: instream flows for fish habitat; hunting, gathering, and pasturing; spring and fountains flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; and consumptive use claims on two allotments held in trust by the United States.
- b. The Nez Perce Tribe has occupied a territory in what is now central Idaho, southeastern Washington, and northeastern Oregon since time immemorial. *United States v. Webb*, 219 F.3d 1127, 1129 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). The Palouse River Basin is within the Tribe’s traditional lands.
- c. There is a complex history of the United States’ establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing

rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the “exclusive right to fish in all streams running through or bordering” the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the “right of taking fish at all usual and accustomed places in common with the citizens of the Territory” to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.

- d. Article III of the 1855 Treaty further reserves to the Tribe “the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land.”
- e. Article VIII of the Nez Perce Treaty of 1863 includes a unique provision reserving to the Nez Perce Tribe the use of “springs and fountains” within the area ceded under Article I of the 1863 Treaty. For purposes of the priority date of the springs and fountains claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.
- f. Pursuant to the General Allotment Act of 1887, Act of February 8, 1887, 24 Stat. 388, *amended*, Act of February 28, 1891, 26 Stat. 794, there are two allotments (Allotments 182-43 and 182-45) held in trust by the United States located within the boundaries of the Palouse River Basin and the northwestern corner of the Nez Perce Reservation. For purposes of the priority date of the domestic and stock watering claims for these two allotments, the United States claims June 11, 1855 pursuant to the 1855 Treaty.
- g. In order to comply with Idaho Code § 42-1409(1), the United States has designated “places of use,” “points of diversion,” and “purposes of use” in submitting this water rights claim. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe’s future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Reservation. The statute’s terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.

11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled “How you will receive notices in the Palouse River Basin Adjudication.”
- (b) I do ___ do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

For Organizations:

I do solemnly swear and affirm that I am Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.



Signature of Authorized Agent:

Title and Organization:

Northwest Regional Director
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

Notice is hereby given that the United States Department of Justice will represent the United States of America, including the U.S. Department of the Interior, Bureau of Indian Affairs, in all matters pertaining to the Palouse River Basin Adjudication.

All notices, filings and correspondence concerning this matter should be mailed to the United States Department of Justice at the address set forth below:

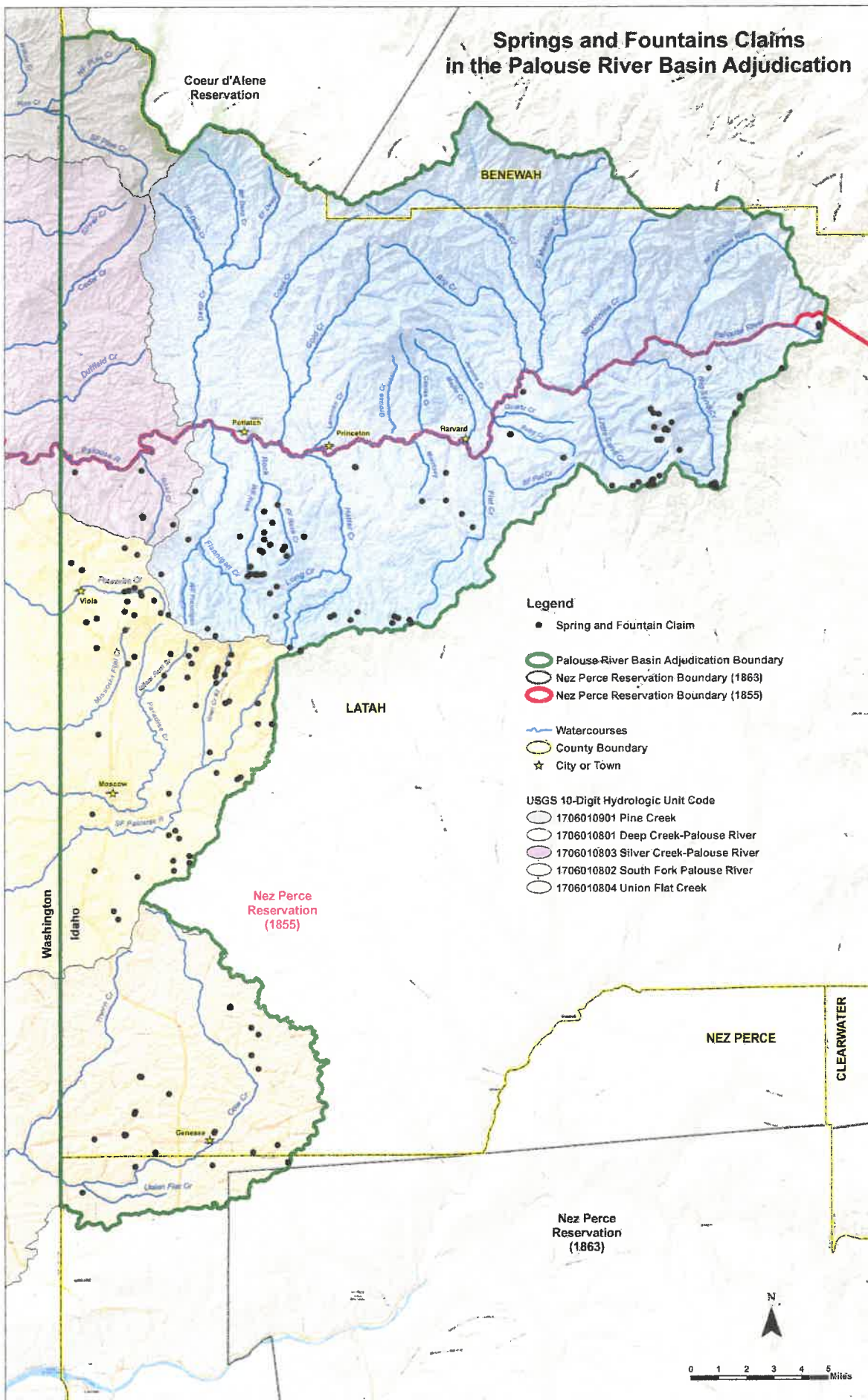


Katherine M. Kane
United States Department of Justice
Indian Resources Division
Natural Resources Section
999 18th Street
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

Springs and Fountains Claims in the Palouse River Basin Adjudication



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

87-12087

IN RE: THE GENERAL) Case No.: 59576
ADJUDICATION OF RIGHTS)
TO THE USE OF WATER FROM) **NOTICE OF CLAIM**
THE PALOUSE RIVER BASIN)
WATER SYSTEM) **Federal Reserved Water Right**
)
)
)

RECEIVED
DEC 30 2019
DEPARTMENT OF
WATER RESOURCES

1. **Name and address of claimant:**

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and
ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the
REGIONAL DIRECTOR, NORTHWEST REGION

Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

2. **Date of Priority:** Time Immemorial

3. **a. Source of water supply:** Spring (Federal I.D. #1082)

b. which is a tributary to: South Fork Palouse River

4. **Point of Diversion:** This claim is for a spring and/or fountain *in situ* including sufficient
groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or
fountains.

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1082	39N	5W	12	SWNE	Boise	Latah

See Attached Map.

5. **Place of Use:**

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1082	39N	5W	12	SWNE	Boise	Latah

See Attached Map.

6. Purpose of Water Use:

The purpose of use includes the full range of uses to which the Tribe and its members have always put the springs and fountains, including as a water source for consumptive use, for wildlife and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce Reservation pursuant to the documents referenced in Section 9 and the provisions in Section 10, *infra*.

7. Period of Use: January 1 through December 31.

8. Quantity Reserved (In cfs): Half the natural flow.

9. Basis of Claim:

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

10. Other Provisions:

- a. The United States has asserted other claims in the Palouse River Basin Adjudication. Paragraphs 10(a) – (g) express assertions applicable to all claims filed by the Bureau of Indian Affairs in its capacity as trustee for the Nez Perce Tribe in the Palouse River Basin Adjudication. The United States claims waters from groundwater and surface water sources within the Palouse River Basin in the state of Idaho to satisfy the rights reserved to the Nez Perce Tribe by the 1855 Treaty and the 1863 Treaty and to fulfill the permanent homeland purpose of the Nez Perce Reservation. Such present and future purposes include: instream flows for fish habitat; hunting, gathering, and pasturing; spring and fountains flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; and consumptive use claims on two allotments held in trust by the United States.
- b. The Nez Perce Tribe has occupied a territory in what is now central Idaho, southeastern Washington, and northeastern Oregon since time immemorial. *United States v. Webb*, 219 F.3d 1127, 1129 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). The Palouse River Basin is within the Tribe’s traditional lands.
- c. There is a complex history of the United States’ establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing

rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the “exclusive right to fish in all streams running through or bordering” the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the “right of taking fish at all usual and accustomed places in common with the citizens of the Territory” to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.

- d. Article III of the 1855 Treaty further reserves to the Tribe “the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land.”
- e. Article VIII of the Nez Perce Treaty of 1863 includes a unique provision reserving to the Nez Perce Tribe the use of “springs and fountains” within the area ceded under Article I of the 1863 Treaty. For purposes of the priority date of the springs and fountains claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.
- f. Pursuant to the General Allotment Act of 1887, Act of February 8, 1887, 24 Stat. 388, *amended*, Act of February 28, 1891, 26 Stat. 794, there are two allotments (Allotments 182-43 and 182-45) held in trust by the United States located within the boundaries of the Palouse River Basin and the northwestern corner of the Nez Perce Reservation. For purposes of the priority date of the domestic and stock watering claims for these two allotments, the United States claims June 11, 1855 pursuant to the 1855 Treaty.
- g. In order to comply with Idaho Code § 42-1409(1), the United States has designated “places of use,” “points of diversion,” and “purposes of use” in submitting this water rights claim. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe’s future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Reservation. The statute’s terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.

11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled “How you will receive notices in the Palouse River Basin Adjudication.”
- (b) I do ___ do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

For Organizations:

I do solemnly swear and affirm that I am Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.



Signature of Authorized Agent:


Title and Organization:

Northwest Regional Director
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

Notice is hereby given that the United States Department of Justice will represent the United States of America, including the U.S. Department of the Interior, Bureau of Indian Affairs, in all matters pertaining to the Palouse River Basin Adjudication.

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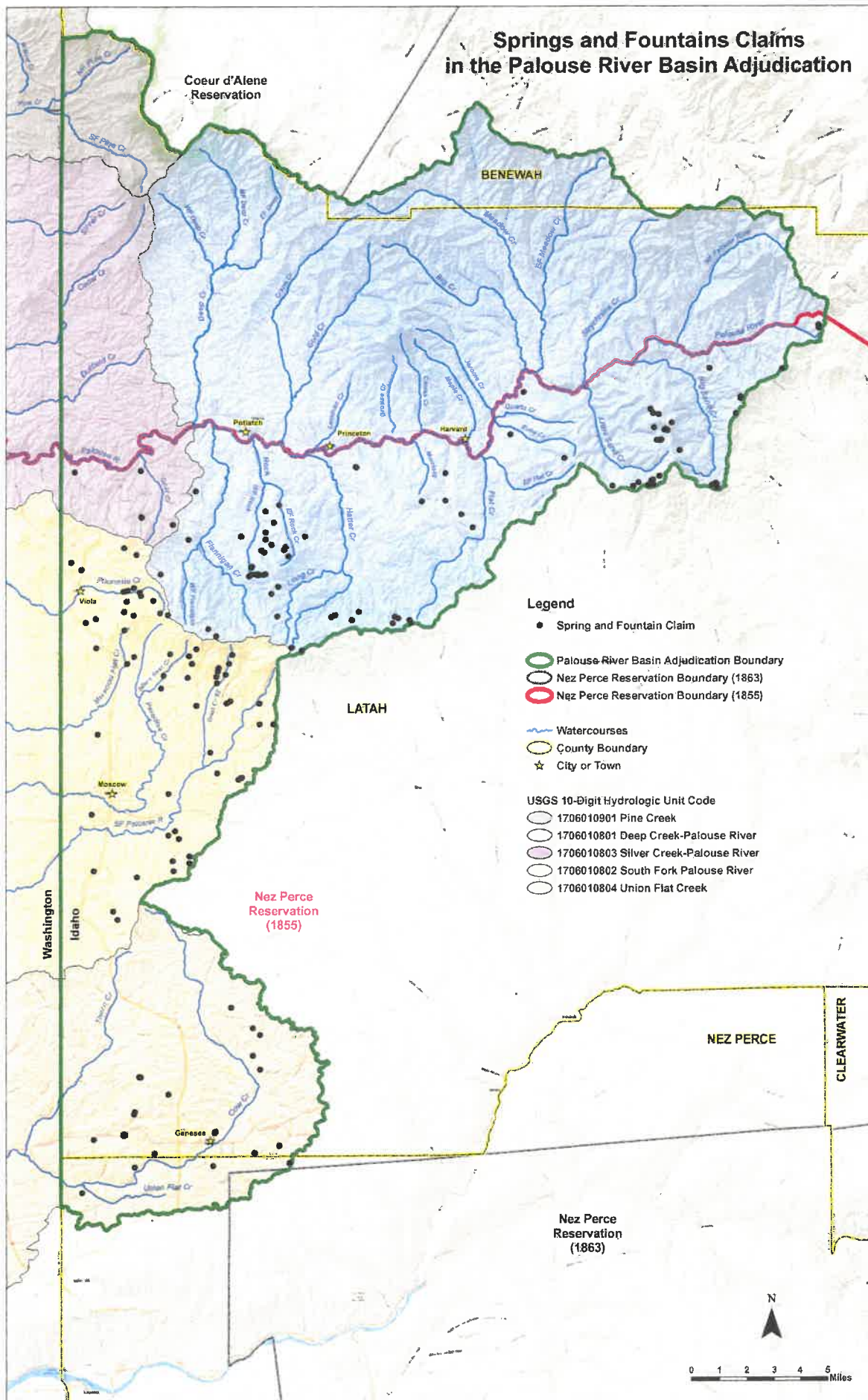


Katherine M. Kane
United States Department of Justice
Indian Resources Division
Natural Resources Section
999 18th Street
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

Springs and Fountains Claims in the Palouse River Basin Adjudication



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

87-12098

IN RE: THE GENERAL)
ADJUDICATION OF RIGHTS)
TO THE USE OF WATER FROM)
THE PALOUSE RIVER BASIN)
WATER SYSTEM)
)
)
)

Case No.: 59576

NOTICE OF CLAIM

Federal Reserved Water Right

RECEIVED
DEC 30 2019
DEPARTMENT OF
WATER RESOURCES

1. Name and address of claimant:

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and
ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the
REGIONAL DIRECTOR, NORTHWEST REGION

Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

2. Date of Priority: Time Immemorial

3. a. Source of water supply: Springs (Federal I.D. #1083)

b. which is a tributary to: Flannigan Creek or West Fork Rock Creek

4. Point of Diversion: This claim is for a spring and/or fountain *in situ* including sufficient groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or fountains.

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1083-1	41N	4W	31	SWSW	Boise	Latah
1083-2	41N	4W	31	NWSW	Boise	Latah
1083-3	41N	4W	31	SESW	Boise	Latah
1083-4	41N	4W	31	SWSE	Boise	Latah

See Attached Map.

5. Place of Use:

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1083-1	41N	4W	31	SWSW	Boise	Latah
1083-2	41N	4W	31	NWSW	Boise	Latah
1083-3	41N	4W	31	SESW	Boise	Latah
1083-4	41N	4W	31	SWSE	Boise	Latah

See Attached Map.

6. Purpose of Water Use:

The purpose of use includes the full range of uses to which the Tribe and its members have always put the springs and fountains, including as a water source for consumptive use, for wildlife and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce Reservation pursuant to the documents referenced in Section 9 and the provisions in Section 10, *infra*.

7. Period of Use: January 1 through December 31.

8. Quantity Reserved (In cfs): Half the natural flow.

9. Basis of Claim:

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

10. Other Provisions:

- a. The United States has asserted other claims in the Palouse River Basin Adjudication. Paragraphs 10(a) – (g) express assertions applicable to all claims filed by the Bureau of Indian Affairs in its capacity as trustee for the Nez Perce Tribe in the Palouse River Basin Adjudication. The United States claims waters from groundwater and surface water sources within the Palouse River Basin in the state of Idaho to satisfy the rights reserved to the Nez Perce Tribe by the 1855 Treaty and the 1863 Treaty and to fulfill the permanent homeland purpose of the Nez Perce Reservation. Such present and future purposes include: instream flows for fish habitat; hunting, gathering, and pasturing; spring and fountains flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; and consumptive use claims on two allotments held in trust by the United States.
- b. The Nez Perce Tribe has occupied a territory in what is now central Idaho, southeastern Washington, and northeastern Oregon since time immemorial. *United States v. Webb*, 219 F.3d 1127, 1129 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). The Palouse River Basin is within the Tribe’s traditional lands.
- c. There is a complex history of the United States’ establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing

rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the “exclusive right to fish in all streams running through or bordering” the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the “right of taking fish at all usual and accustomed places in common with the citizens of the Territory” to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.

- d. Article III of the 1855 Treaty further reserves to the Tribe “the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land.”
- e. Article VIII of the Nez Perce Treaty of 1863 includes a unique provision reserving to the Nez Perce Tribe the use of “springs and fountains” within the area ceded under Article I of the 1863 Treaty. For purposes of the priority date of the springs and fountains claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.
- f. Pursuant to the General Allotment Act of 1887, Act of February 8, 1887, 24 Stat. 388, *amended*, Act of February 28, 1891, 26 Stat. 794, there are two allotments (Allotments 182-43 and 182-45) held in trust by the United States located within the boundaries of the Palouse River Basin and the northwestern corner of the Nez Perce Reservation. For purposes of the priority date of the domestic and stock watering claims for these two allotments, the United States claims June 11, 1855 pursuant to the 1855 Treaty.
- g. In order to comply with Idaho Code § 42-1409(1), the United States has designated “places of use,” “points of diversion,” and “purposes of use” in submitting this water rights claim. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe’s future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Reservation. The statute’s terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.

11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled “How you will receive notices in the Palouse River Basin Adjudication.”
- (b) I do ___ do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

For Organizations:

I do solemnly swear and affirm that I am Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.



Signature of Authorized Agent:

Title and Organization:

Northwest Regional Director
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

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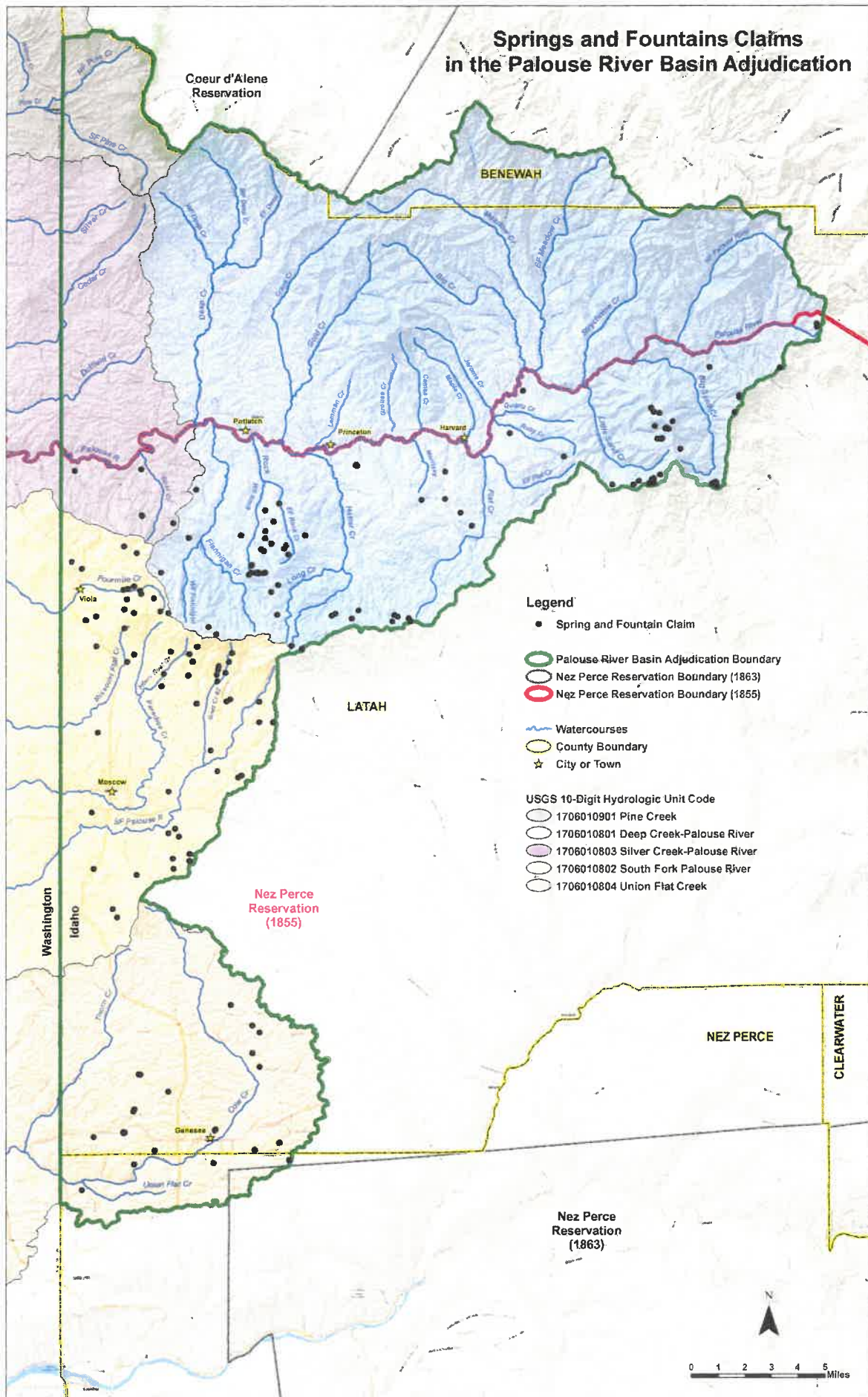


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United States Department of Justice
Indian Resources Division
Natural Resources Section
999 18th Street
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Attorney for the United States of America

Dated this 26th day of December, 2019.

Springs and Fountains Claims in the Palouse River Basin Adjudication



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

87-12089

IN RE: THE GENERAL)
ADJUDICATION OF RIGHTS)
TO THE USE OF WATER FROM)
THE PALOUSE RIVER BASIN)
WATER SYSTEM)
)
)
)

Case No.: 59576

NOTICE OF CLAIM

Federal Reserved Water Right

RECEIVED
DEC 30 2019
DEPARTMENT OF
WATER RESOURCES

1. Name and address of claimant:

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and
ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the
REGIONAL DIRECTOR, NORTHWEST REGION

Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

2. Date of Priority: Time Immemorial

3. a. Source of water supply: Spring (Federal I.D. #1084)

b. which is a tributary to: South Fork Palouse River

4. Point of Diversion: This claim is for a spring and/or fountain *in situ* including sufficient groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or fountains.

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1084	40N	4W	31	SENE	Boise	Latah

See Attached Map.

5. Place of Use:

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1084	40N	4W	31	SENE	Boise	Latah

See Attached Map.

6. Purpose of Water Use:

The purpose of use includes the full range of uses to which the Tribe and its members have always put the springs and fountains, including as a water source for consumptive use, for wildlife and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce Reservation pursuant to the documents referenced in Section 9 and the provisions in Section 10, *infra*.

7. Period of Use: January 1 through December 31.

8. Quantity Reserved (In cfs): Half the natural flow.

9. Basis of Claim:

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

10. Other Provisions:

- a. The United States has asserted other claims in the Palouse River Basin Adjudication. Paragraphs 10(a) – (g) express assertions applicable to all claims filed by the Bureau of Indian Affairs in its capacity as trustee for the Nez Perce Tribe in the Palouse River Basin Adjudication. The United States claims waters from groundwater and surface water sources within the Palouse River Basin in the state of Idaho to satisfy the rights reserved to the Nez Perce Tribe by the 1855 Treaty and the 1863 Treaty and to fulfill the permanent homeland purpose of the Nez Perce Reservation. Such present and future purposes include: instream flows for fish habitat; hunting, gathering, and pasturing; spring and fountains flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; and consumptive use claims on two allotments held in trust by the United States.
- b. The Nez Perce Tribe has occupied a territory in what is now central Idaho, southeastern Washington, and northeastern Oregon since time immemorial. *United States v. Webb*, 219 F.3d 1127, 1129 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). The Palouse River Basin is within the Tribe’s traditional lands.
- c. There is a complex history of the United States’ establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing

rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the “exclusive right to fish in all streams running through or bordering” the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the “right of taking fish at all usual and accustomed places in common with the citizens of the Territory” to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.

- d. Article III of the 1855 Treaty further reserves to the Tribe “the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land.”
- e. Article VIII of the Nez Perce Treaty of 1863 includes a unique provision reserving to the Nez Perce Tribe the use of “springs and fountains” within the area ceded under Article I of the 1863 Treaty. For purposes of the priority date of the springs and fountains claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.
- f. Pursuant to the General Allotment Act of 1887, Act of February 8, 1887, 24 Stat. 388, *amended*, Act of February 28, 1891, 26 Stat. 794, there are two allotments (Allotments 182-43 and 182-45) held in trust by the United States located within the boundaries of the Palouse River Basin and the northwestern corner of the Nez Perce Reservation. For purposes of the priority date of the domestic and stock watering claims for these two allotments, the United States claims June 11, 1855 pursuant to the 1855 Treaty.
- g. In order to comply with Idaho Code § 42-1409(1), the United States has designated “places of use,” “points of diversion,” and “purposes of use” in submitting this water rights claim. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe’s future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Reservation. The statute’s terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.

11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled “How you will receive notices in the Palouse River Basin Adjudication.”
- (b) I do do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

For Organizations:

I do solemnly swear and affirm that I am Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.



Signature of Authorized Agent:

Title and Organization:

Northwest Regional Director
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

Notice is hereby given that the United States Department of Justice will represent the United States of America, including the U.S. Department of the Interior, Bureau of Indian Affairs, in all matters pertaining to the Palouse River Basin Adjudication.

All notices, filings and correspondence concerning this matter should be mailed to the United States Department of Justice at the address set forth below:

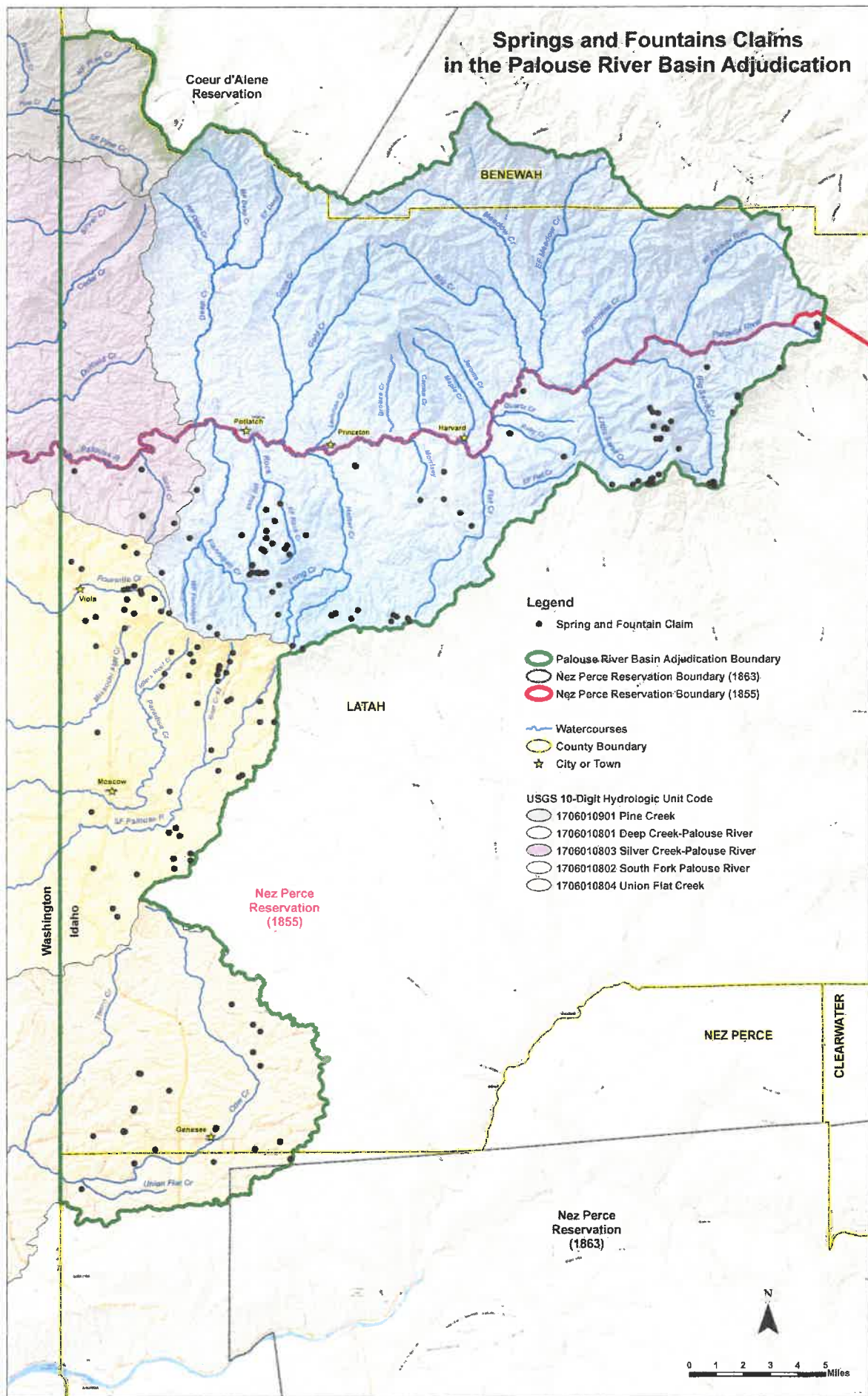
A handwritten signature in blue ink, appearing to read 'K.M. Kane', is written over a horizontal line.

Katherine M. Kane
United States Department of Justice
Indian Resources Division
Natural Resources Section
999 18th Street
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

Springs and Fountains Claims in the Palouse River Basin Adjudication



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

87-12090

IN RE: THE GENERAL) Case No.: 59576
ADJUDICATION OF RIGHTS)
TO THE USE OF WATER FROM) **NOTICE OF CLAIM**
THE PALOUSE RIVER BASIN)
WATER SYSTEM) **Federal Reserved Water Right**
)
)
)

RECEIVED
DEC 30 2019
DEPARTMENT OF
WATER RESOURCES

1. **Name and address of claimant:**

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and
ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the
REGIONAL DIRECTOR, NORTHWEST REGION

Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

2. **Date of Priority:** Time Immemorial

3. **a. Source of water supply:** Spring (Federal I.D. #1085)

b. which is a tributary to: South Fork Palouse River

4. **Point of Diversion:** This claim is for a spring and/or fountain *in situ* including sufficient groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or fountains.

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1085	39N	5W	27	SENW	Boise	Latah

See Attached Map.

5. **Place of Use:**

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1085	39N	5W	27	SENW	Boise	Latah

See Attached Map.

6. Purpose of Water Use:

The purpose of use includes the full range of uses to which the Tribe and its members have always put the springs and fountains, including as a water source for consumptive use, for wildlife and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce Reservation pursuant to the documents referenced in Section 9 and the provisions in Section 10, *infra*.

7. Period of Use: January 1 through December 31.

8. Quantity Reserved (In cfs): Half the natural flow.

9. Basis of Claim:

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

10. Other Provisions:

- a. The United States has asserted other claims in the Palouse River Basin Adjudication. Paragraphs 10(a) – (g) express assertions applicable to all claims filed by the Bureau of Indian Affairs in its capacity as trustee for the Nez Perce Tribe in the Palouse River Basin Adjudication. The United States claims waters from groundwater and surface water sources within the Palouse River Basin in the state of Idaho to satisfy the rights reserved to the Nez Perce Tribe by the 1855 Treaty and the 1863 Treaty and to fulfill the permanent homeland purpose of the Nez Perce Reservation. Such present and future purposes include: instream flows for fish habitat; hunting, gathering, and pasturing; spring and fountains flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; and consumptive use claims on two allotments held in trust by the United States.
- b. The Nez Perce Tribe has occupied a territory in what is now central Idaho, southeastern Washington, and northeastern Oregon since time immemorial. *United States v. Webb*, 219 F.3d 1127, 1129 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). The Palouse River Basin is within the Tribe’s traditional lands.
- c. There is a complex history of the United States’ establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing

rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the “exclusive right to fish in all streams running through or bordering” the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the “right of taking fish at all usual and accustomed places in common with the citizens of the Territory” to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.

- d. Article III of the 1855 Treaty further reserves to the Tribe “the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land.”
- e. Article VIII of the Nez Perce Treaty of 1863 includes a unique provision reserving to the Nez Perce Tribe the use of “springs and fountains” within the area ceded under Article I of the 1863 Treaty. For purposes of the priority date of the springs and fountains claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.
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- g. In order to comply with Idaho Code § 42-1409(1), the United States has designated “places of use,” “points of diversion,” and “purposes of use” in submitting this water rights claim. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe’s future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Reservation. The statute’s terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.

11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled “How you will receive notices in the Palouse River Basin Adjudication.”
- (b) I do ___ do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

For Organizations:

I do solemnly swear and affirm that I am Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.



Signature of Authorized Agent:

Title and Organization:

Northwest Regional Director
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

Notice is hereby given that the United States Department of Justice will represent the United States of America, including the U.S. Department of the Interior, Bureau of Indian Affairs, in all matters pertaining to the Palouse River Basin Adjudication.

All notices, filings and correspondence concerning this matter should be mailed to the United States Department of Justice at the address set forth below:



Katherine M. Kane
United States Department of Justice
Indian Resources Division
Natural Resources Section
999 18th Street
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

**Springs and Fountains Claims
in the Palouse River Basin Adjudication**

Coeur d'Alene
Reservation

BENEWAH

LATAH

Washington
Idaho

Nez Perce
Reservation
(1855)

Nez Perce
Reservation
(1863)

NEZ PERCE

CLEARWATER

Legend

- Spring and Fountain Claim
- Palouse River Basin Adjudication Boundary
- Nez Perce Reservation Boundary (1863)
- Nez Perce Reservation Boundary (1855)
- Watercourses
- County Boundary
- City or Town

USGS 10-Digit Hydrologic Unit Code

- 1706010901 Pine Creek
- 1706010801 Deep Creek-Palouse River
- 1706010803 Silver Creek-Palouse River
- 1706010802 South Fork Palouse River
- 1706010804 Union Flat Creek

0 1 2 3 4 5
Miles

CLEARWATER

0 1 2 3 4 5 Miles

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

87-12091

IN RE: THE GENERAL)
ADJUDICATION OF RIGHTS)
TO THE USE OF WATER FROM)
THE PALOUSE RIVER BASIN)
WATER SYSTEM)

Case No.: 59576

NOTICE OF CLAIM

Federal Reserved Water Right

RECEIVED
DEC 30 2019
DEPARTMENT OF
WATER RESOURCES

1. Name and address of claimant:

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and
ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the
REGIONAL DIRECTOR, NORTHWEST REGION

Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

2. Date of Priority: Time Immemorial

3. a. Source of water supply: Spring (Federal I.D. #1086)

b. which is a tributary to: Missouri Flat Creek

4. Point of Diversion: This claim is for a spring and/or fountain *in situ* including sufficient groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or fountains.

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1086	40N	5W	8	SWSE	Boise	Latah

See Attached Map.

5. Place of Use:

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1086	40N	5W	8	SWSE	Boise	Latah

See Attached Map.

6. Purpose of Water Use:

The purpose of use includes the full range of uses to which the Tribe and its members have always put the springs and fountains, including as a water source for consumptive use, for wildlife and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce Reservation pursuant to the documents referenced in Section 9 and the provisions in Section 10, *infra*.

7. Period of Use: January 1 through December 31.

8. Quantity Reserved (In cfs): Half the natural flow.

9. Basis of Claim:

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

10. Other Provisions:

- a. The United States has asserted other claims in the Palouse River Basin Adjudication. Paragraphs 10(a) – (g) express assertions applicable to all claims filed by the Bureau of Indian Affairs in its capacity as trustee for the Nez Perce Tribe in the Palouse River Basin Adjudication. The United States claims waters from groundwater and surface water sources within the Palouse River Basin in the state of Idaho to satisfy the rights reserved to the Nez Perce Tribe by the 1855 Treaty and the 1863 Treaty and to fulfill the permanent homeland purpose of the Nez Perce Reservation. Such present and future purposes include: instream flows for fish habitat; hunting, gathering, and pasturing; spring and fountains flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; and consumptive use claims on two allotments held in trust by the United States.
- b. The Nez Perce Tribe has occupied a territory in what is now central Idaho, southeastern Washington, and northeastern Oregon since time immemorial. *United States v. Webb*, 219 F.3d 1127, 1129 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). The Palouse River Basin is within the Tribe’s traditional lands.
- c. There is a complex history of the United States’ establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing

rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the “exclusive right to fish in all streams running through or bordering” the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the “right of taking fish at all usual and accustomed places in common with the citizens of the Territory” to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.

- d. Article III of the 1855 Treaty further reserves to the Tribe “the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land.”
- e. Article VIII of the Nez Perce Treaty of 1863 includes a unique provision reserving to the Nez Perce Tribe the use of “springs and fountains” within the area ceded under Article I of the 1863 Treaty. For purposes of the priority date of the springs and fountains claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.
- f. Pursuant to the General Allotment Act of 1887, Act of February 8, 1887, 24 Stat. 388, *amended*, Act of February 28, 1891, 26 Stat. 794, there are two allotments (Allotments 182-43 and 182-45) held in trust by the United States located within the boundaries of the Palouse River Basin and the northwestern corner of the Nez Perce Reservation. For purposes of the priority date of the domestic and stock watering claims for these two allotments, the United States claims June 11, 1855 pursuant to the 1855 Treaty.
- g. In order to comply with Idaho Code § 42-1409(1), the United States has designated “places of use,” “points of diversion,” and “purposes of use” in submitting this water rights claim. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe’s future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Reservation. The statute’s terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.

11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled “How you will receive notices in the Palouse River Basin Adjudication.”
- (b) I do do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

For Organizations:

I do solemnly swear and affirm that I am Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.



Signature of Authorized Agent:

Title and Organization:

Northwest Regional Director
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

Notice is hereby given that the United States Department of Justice will represent the United States of America, including the U.S. Department of the Interior, Bureau of Indian Affairs, in all matters pertaining to the Palouse River Basin Adjudication.

All notices, filings and correspondence concerning this matter should be mailed to the United States Department of Justice at the address set forth below:

A handwritten signature in blue ink, appearing to read "K.M. Kane", is written over a horizontal line.

Katherine M. Kane
United States Department of Justice
Indian Resources Division
Natural Resources Section
999 18th Street
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

**Springs and Fountains Claims
in the Palouse River Basin Adjudication**

Coeur d'Alene
Reservation

BENEWAH

LATAH

Washington
Idaho

Nez Perce
Reservation
(1855)

Genesee

Union Flat Cr.

Nez Perce
Reservation
(1863)

CLEARWATER

Legend

- Spring and Fountain Claim
- Palouse River Basin Adjudication Boundary
- Nez Perce Reservation Boundary (1863)
- Nez Perce Reservation Boundary (1855)
- Watercourses
- County Boundary
- ☆ City or Town

USGS 10-Digit Hydrologic Unit Code

- 1706010901 Pine Creek
- 1706010801 Deep Creek-Palouse River
- 1706010803 Silver Creek-Palouse River
- 1706010802 South Fork Palouse River
- 1706010804 Union Flat Creek

Scale: 0 1 2 3 4 5 Miles

N

N



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

87-12092

IN RE: THE GENERAL)
ADJUDICATION OF RIGHTS)
TO THE USE OF WATER FROM)
THE PALOUSE RIVER BASIN)
WATER SYSTEM)
)
)
)

Case No.: 59576

NOTICE OF CLAIM

Federal Reserved Water Right

RECEIVED
DEC 30 2019
DEPARTMENT OF
WATER RESOURCES

1. Name and address of claimant:

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and
ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the
REGIONAL DIRECTOR, NORTHWEST REGION

Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

2. Date of Priority: Time Immemorial

3. a. Source of water supply: Spring (Federal I.D. #1087)

b. which is a tributary to: South Fork Palouse River

4. Point of Diversion: This claim is for a spring and/or fountain *in situ* including sufficient groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or fountains.

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1087	40N	4W	30	NESW	Boise	Latah

See Attached Map.

5. Place of Use:

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1087	40N	4W	30	NESW	Boise	Latah

See Attached Map.

6. Purpose of Water Use:

The purpose of use includes the full range of uses to which the Tribe and its members have always put the springs and fountains, including as a water source for consumptive use, for wildlife and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce Reservation pursuant to the documents referenced in Section 9 and the provisions in Section 10, *infra*.

7. Period of Use: January 1 through December 31.

8. Quantity Reserved (In cfs): Half the natural flow.

9. Basis of Claim:

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

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For Organizations:

I do solemnly swear and affirm that I am Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.



Signature of Authorized Agent:


Title and Organization:

Northwest Regional Director
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

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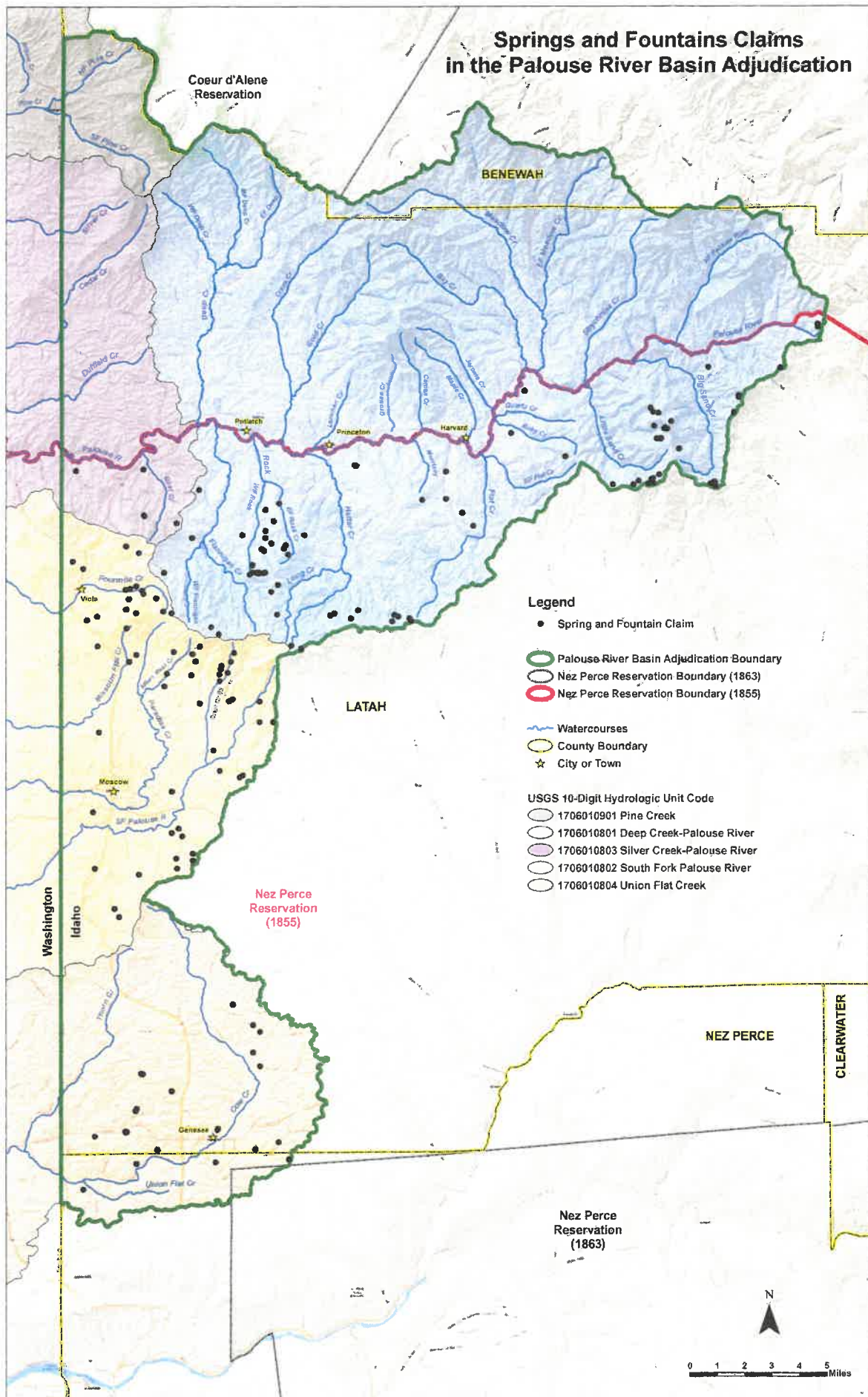


Katherine M. Kane
United States Department of Justice
Indian Resources Division
Natural Resources Section
999 18th Street
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

Springs and Fountains Claims in the Palouse River Basin Adjudication



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

87-12093

IN RE: THE GENERAL) Case No.: 59576
ADJUDICATION OF RIGHTS)
TO THE USE OF WATER FROM) **NOTICE OF CLAIM**
THE PALOUSE RIVER BASIN)
WATER SYSTEM) **Federal Reserved Water Right**
)
)
)

RECEIVED
DEC 30 2019
DEPARTMENT OF
WATER RESOURCES

1. **Name and address of claimant:**

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and
ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the
REGIONAL DIRECTOR, NORTHWEST REGION

Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

2. **Date of Priority:** Time Immemorial

3. **a. Source of water supply:** Spring (Federal I.D. #1088)

b. which is a tributary to: Cow Creek

4. **Point of Diversion:** This claim is for a spring and/or fountain *in situ* including sufficient
groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or
fountains.

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1088	37N	5W	3	NWSW	Boise	Latah

See Attached Map.

5. **Place of Use:**

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1088	37N	5W	3	NWSW	Boise	Latah

See Attached Map.

6. Purpose of Water Use:

The purpose of use includes the full range of uses to which the Tribe and its members have always put the springs and fountains, including as a water source for consumptive use, for wildlife and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce Reservation pursuant to the documents referenced in Section 9 and the provisions in Section 10, *infra*.

7. Period of Use: January 1 through December 31.

8. Quantity Reserved (In cfs): Half the natural flow.

9. Basis of Claim:

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

10. Other Provisions:

- a. The United States has asserted other claims in the Palouse River Basin Adjudication. Paragraphs 10(a) – (g) express assertions applicable to all claims filed by the Bureau of Indian Affairs in its capacity as trustee for the Nez Perce Tribe in the Palouse River Basin Adjudication. The United States claims waters from groundwater and surface water sources within the Palouse River Basin in the state of Idaho to satisfy the rights reserved to the Nez Perce Tribe by the 1855 Treaty and the 1863 Treaty and to fulfill the permanent homeland purpose of the Nez Perce Reservation. Such present and future purposes include: instream flows for fish habitat; hunting, gathering, and pasturing; spring and fountains flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; and consumptive use claims on two allotments held in trust by the United States.
- b. The Nez Perce Tribe has occupied a territory in what is now central Idaho, southeastern Washington, and northeastern Oregon since time immemorial. *United States v. Webb*, 219 F.3d 1127, 1129 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). The Palouse River Basin is within the Tribe’s traditional lands.
- c. There is a complex history of the United States’ establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing

rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the “exclusive right to fish in all streams running through or bordering” the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the “right of taking fish at all usual and accustomed places in common with the citizens of the Territory” to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.

- d. Article III of the 1855 Treaty further reserves to the Tribe “the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land.”
- e. Article VIII of the Nez Perce Treaty of 1863 includes a unique provision reserving to the Nez Perce Tribe the use of “springs and fountains” within the area ceded under Article I of the 1863 Treaty. For purposes of the priority date of the springs and fountains claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.
- f. Pursuant to the General Allotment Act of 1887, Act of February 8, 1887, 24 Stat. 388, *amended*, Act of February 28, 1891, 26 Stat. 794, there are two allotments (Allotments 182-43 and 182-45) held in trust by the United States located within the boundaries of the Palouse River Basin and the northwestern corner of the Nez Perce Reservation. For purposes of the priority date of the domestic and stock watering claims for these two allotments, the United States claims June 11, 1855 pursuant to the 1855 Treaty.
- g. In order to comply with Idaho Code § 42-1409(1), the United States has designated “places of use,” “points of diversion,” and “purposes of use” in submitting this water rights claim. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe’s future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Reservation. The statute’s terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.

11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled “How you will receive notices in the Palouse River Basin Adjudication.”
- (b) I do do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

For Organizations:

I do solemnly swear and affirm that I am Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.



Signature of Authorized Agent:

Title and Organization:

Northwest Regional Director
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

Notice is hereby given that the United States Department of Justice will represent the United States of America, including the U.S. Department of the Interior, Bureau of Indian Affairs, in all matters pertaining to the Palouse River Basin Adjudication.

All notices, filings and correspondence concerning this matter should be mailed to the United States Department of Justice at the address set forth below:



Katherine M. Kane
United States Department of Justice
Indian Resources Division
Natural Resources Section
999 18th Street
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

**Springs and Fountains Claims
in the Palouse River Basin Adjudication**

Legend

- Spring and Fountain Claim
- Palouse River Basin Adjudication Boundary
- Nez Perce Reservation Boundary (1863)
- Nez Perce Reservation Boundary (1855)
- Watercourses
- County Boundary
- ☆ City or Town

USGS 10-Digit Hydrologic Unit Code







- 1706010901 Pine Creek
- 1706010801 Deep Creek-Palouse River
- 1706010803 Silver Creek-Palouse River
- 1706010802 South Fork Palouse River
- 1706010804 Union Flat Creek

Nez Perce Reservation (1855)






Nez Perce Reservation (1863)

Scale: 0 1 2 3 4 5 Miles

North Arrow: N

- Spring and Fountain Claim
-  Palouse River Basin Adjudication Boundary
-  Nez Perce Reservation Boundary (1863)
-  Nez Perce Reservation Boundary (1855)
-  Watercourses
-  County Boundary
-  City or Town

USGS 10-Digit Hydrologic Unit Code

-  1706010901 Pine Creek
-  1706010801 Deep Creek-Palouse River
-  1706010803 Silver Creek-Palouse River
-  1706010802 South Fork Palouse River
-  1706010804 Union Flat Creek

- ☐ 1706010901 Pine Creek
- ☐ 1706010801 Deep Creek-Palouse River
- ☒ 1706010803 Silver Creek-Palouse River
- ☐ 1706010802 South Fork Palouse River
- ☐ 1706010804 Union Flat Creek

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

87-12094

IN RE: THE GENERAL)
ADJUDICATION OF RIGHTS)
TO THE USE OF WATER FROM)
THE PALOUSE RIVER BASIN)
WATER SYSTEM)
)
)
)

Case No.: 59576

NOTICE OF CLAIM

Federal Reserved Water Right

RECEIVED
DEC 30 2019
DEPARTMENT OF
WATER RESOURCES

1. Name and address of claimant:

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and
ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the
REGIONAL DIRECTOR, NORTHWEST REGION

Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

2. Date of Priority: Time Immemorial

3. a. Source of water supply: Spring (Federal I.D. #1089)

b. which is a tributary to: Cow Creek

4. Point of Diversion: This claim is for a spring and/or fountain *in situ* including sufficient
groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or
fountains.

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1089	37N	4W	20	SEnw	Boise	Nez Perce

See Attached Map.

5. Place of Use:

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1089	37N	4W	20	SEnw	Boise	Nez Perce

See Attached Map.

6. Purpose of Water Use:

The purpose of use includes the full range of uses to which the Tribe and its members have always put the springs and fountains, including as a water source for consumptive use, for wildlife and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce Reservation pursuant to the documents referenced in Section 9 and the provisions in Section 10, *infra*.

7. Period of Use: January 1 through December 31.

8. Quantity Reserved (In cfs): Half the natural flow.

9. Basis of Claim:

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

10. Other Provisions:

- a. The United States has asserted other claims in the Palouse River Basin Adjudication. Paragraphs 10(a) – (g) express assertions applicable to all claims filed by the Bureau of Indian Affairs in its capacity as trustee for the Nez Perce Tribe in the Palouse River Basin Adjudication. The United States claims waters from groundwater and surface water sources within the Palouse River Basin in the state of Idaho to satisfy the rights reserved to the Nez Perce Tribe by the 1855 Treaty and the 1863 Treaty and to fulfill the permanent homeland purpose of the Nez Perce Reservation. Such present and future purposes include: instream flows for fish habitat; hunting, gathering, and pasturing; spring and fountains flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; and consumptive use claims on two allotments held in trust by the United States.
- b. The Nez Perce Tribe has occupied a territory in what is now central Idaho, southeastern Washington, and northeastern Oregon since time immemorial. *United States v. Webb*, 219 F.3d 1127, 1129 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). The Palouse River Basin is within the Tribe’s traditional lands.
- c. There is a complex history of the United States’ establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing

rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the “exclusive right to fish in all streams running through or bordering” the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the “right of taking fish at all usual and accustomed places in common with the citizens of the Territory” to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.

- d. Article III of the 1855 Treaty further reserves to the Tribe “the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land.”
- e. Article VIII of the Nez Perce Treaty of 1863 includes a unique provision reserving to the Nez Perce Tribe the use of “springs and fountains” within the area ceded under Article I of the 1863 Treaty. For purposes of the priority date of the springs and fountains claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.
- f. Pursuant to the General Allotment Act of 1887, Act of February 8, 1887, 24 Stat. 388, *amended*, Act of February 28, 1891, 26 Stat. 794, there are two allotments (Allotments 182-43 and 182-45) held in trust by the United States located within the boundaries of the Palouse River Basin and the northwestern corner of the Nez Perce Reservation. For purposes of the priority date of the domestic and stock watering claims for these two allotments, the United States claims June 11, 1855 pursuant to the 1855 Treaty.
- g. In order to comply with Idaho Code § 42-1409(1), the United States has designated “places of use,” “points of diversion,” and “purposes of use” in submitting this water rights claim. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe’s future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Reservation. The statute’s terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.

11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled “How you will receive notices in the Palouse River Basin Adjudication.”
- (b) I do___ do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

For Organizations:

I do solemnly swear and affirm that I am Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.



Signature of Authorized Agent:

Title and Organization:

Northwest Regional Director
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

Notice is hereby given that the United States Department of Justice will represent the United States of America, including the U.S. Department of the Interior, Bureau of Indian Affairs, in all matters pertaining to the Palouse River Basin Adjudication.

All notices, filings and correspondence concerning this matter should be mailed to the United States Department of Justice at the address set forth below:

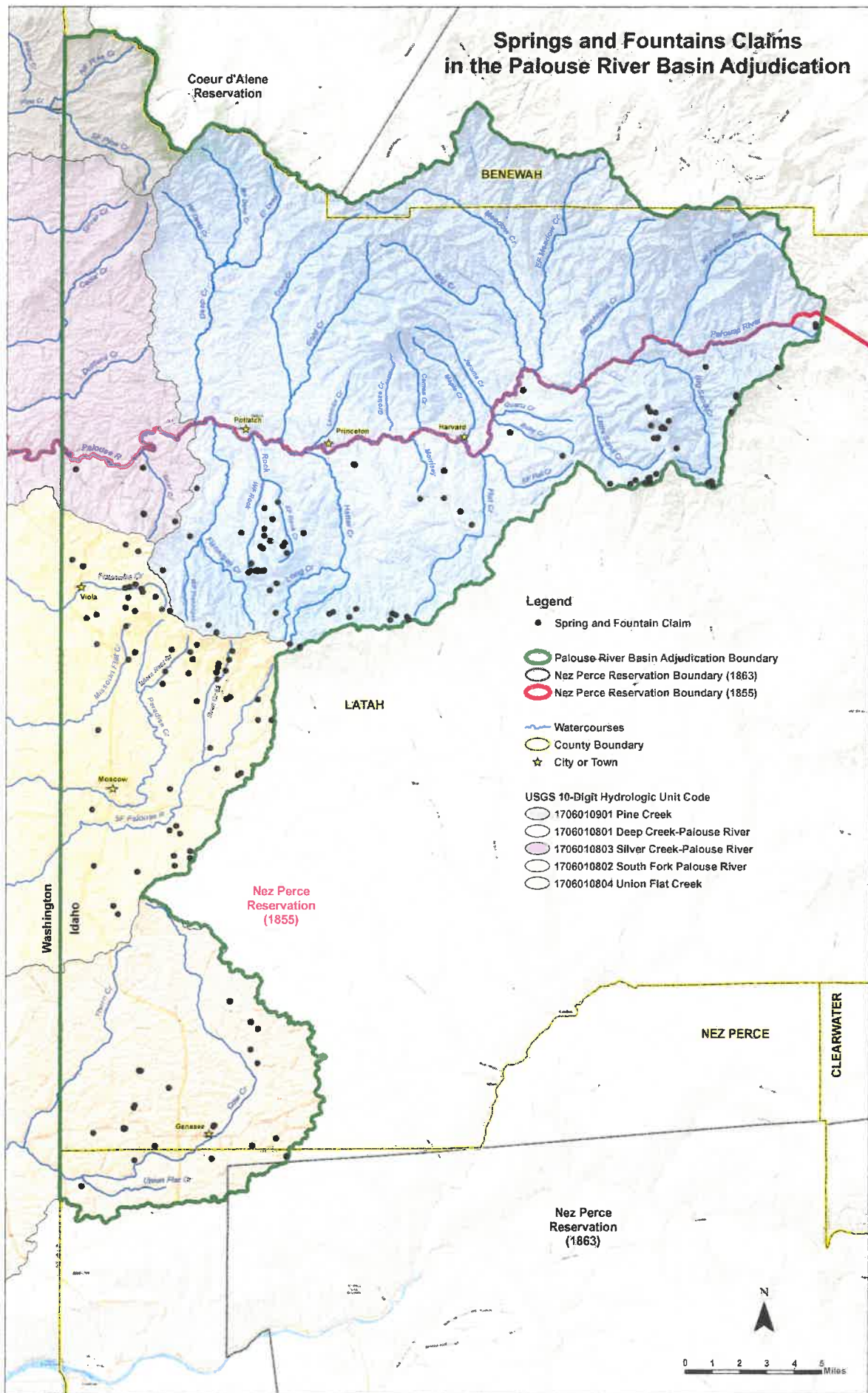


Katherine M. Kane
United States Department of Justice
Indian Resources Division
Natural Resources Section
999 18th Street
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

Springs and Fountains Claims in the Palouse River Basin Adjudication



87-17095

Federal Reserved Water Right

RECEIVED
DEC 30 2010
DEPARTMENT OF
NATURAL RESOURCES

Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

2. Date of Priority: Time Immemorial

3. a. Source of water supply: Spring (Federal I.D. #1090)

b. which is a tributary to: Crumarine Creek

4. **Point of Diversion:** This claim is for a spring and/or fountain *in situ* including sufficient groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or fountains.

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1090	40N	5W	25	NWSW	Boise	Latah

See Attached Map.

5. Place of Use:

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1090	40N	5W	25	NWSW	Boise	Latah

See Attached Map.

6. Purpose of Water Use:

The purpose of use includes the full range of uses to which the Tribe and its members have always put the springs and fountains, including as a water source for consumptive use, for wildlife and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce Reservation pursuant to the documents referenced in Section 9 and the provisions in Section 10, *infra*.

7. Period of Use: January 1 through December 31.

8. Quantity Reserved (In cfs): Half the natural flow.

9. Basis of Claim:

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

10. Other Provisions:

- a. The United States has asserted other claims in the Palouse River Basin Adjudication. Paragraphs 10(a) – (g) express assertions applicable to all claims filed by the Bureau of Indian Affairs in its capacity as trustee for the Nez Perce Tribe in the Palouse River Basin Adjudication. The United States claims waters from groundwater and surface water sources within the Palouse River Basin in the state of Idaho to satisfy the rights reserved to the Nez Perce Tribe by the 1855 Treaty and the 1863 Treaty and to fulfill the permanent homeland purpose of the Nez Perce Reservation. Such present and future purposes include: instream flows for fish habitat; hunting, gathering, and pasturing; spring and fountains flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; and consumptive use claims on two allotments held in trust by the United States.
- b. The Nez Perce Tribe has occupied a territory in what is now central Idaho, southeastern Washington, and northeastern Oregon since time immemorial. *United States v. Webb*, 219 F.3d 1127, 1129 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). The Palouse River Basin is within the Tribe’s traditional lands.
- c. There is a complex history of the United States’ establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing

rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the “exclusive right to fish in all streams running through or bordering” the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the “right of taking fish at all usual and accustomed places in common with the citizens of the Territory” to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.

- d. Article III of the 1855 Treaty further reserves to the Tribe “the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land.”
- e. Article VIII of the Nez Perce Treaty of 1863 includes a unique provision reserving to the Nez Perce Tribe the use of “springs and fountains” within the area ceded under Article I of the 1863 Treaty. For purposes of the priority date of the springs and fountains claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.
- f. Pursuant to the General Allotment Act of 1887, Act of February 8, 1887, 24 Stat. 388, *amended*, Act of February 28, 1891, 26 Stat. 794, there are two allotments (Allotments 182-43 and 182-45) held in trust by the United States located within the boundaries of the Palouse River Basin and the northwestern corner of the Nez Perce Reservation. For purposes of the priority date of the domestic and stock watering claims for these two allotments, the United States claims June 11, 1855 pursuant to the 1855 Treaty.
- g. In order to comply with Idaho Code § 42-1409(1), the United States has designated “places of use,” “points of diversion,” and “purposes of use” in submitting this water rights claim. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe’s future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Reservation. The statute’s terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.

11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled “How you will receive notices in the Palouse River Basin Adjudication.”
- (b) I do ☐ do not ☒ wish to receive and pay a small annual fee for monthly copies of the docket sheet.

For Organizations:

I do solemnly swear and affirm that I am Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.



Signature of Authorized Agent:

Title and Organization:

Northwest Regional Director
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

Notice is hereby given that the United States Department of Justice will represent the United States of America, including the U.S. Department of the Interior, Bureau of Indian Affairs, in all matters pertaining to the Palouse River Basin Adjudication.

All notices, filings and correspondence concerning this matter should be mailed to the United States Department of Justice at the address set forth below:

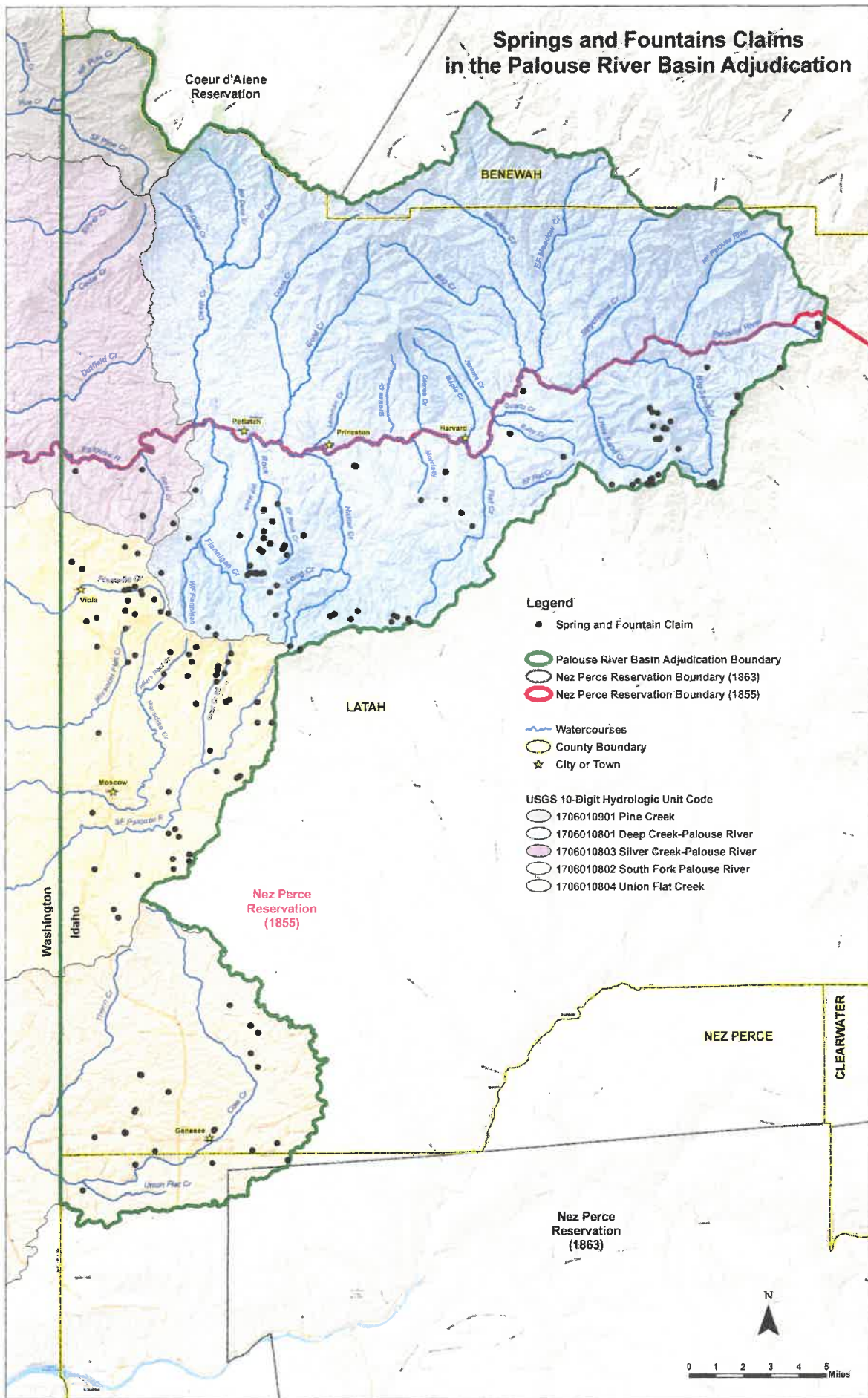


Katherine M. Kane
United States Department of Justice
Indian Resources Division
Natural Resources Section
999 18th Street
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

Springs and Fountains Claims in the Palouse River Basin Adjudication



87-17096

**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)	Case No.: 59576
ADJUDICATION OF RIGHTS)	
TO THE USE OF WATER FROM)	NOTICE OF CLAIM
THE PALOUSE RIVER BASIN)	
WATER SYSTEM)	Federal Reserved Water Right
)	
)	

RECEIVED
 DEC 30 2019
 DEPARTMENT OF
 WATER RESOURCES

1. Name and address of claimant:

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the REGIONAL DIRECTOR, NORTHWEST REGION
 Department of the Interior
 Bureau of Indian Affairs
 911 N.E. 11th Ave.
 Portland, OR 97232

2. Date of Priority: Time Immemorial

3. a. Source of water supply: Springs (Federal I.D. #1091)

b. which is a tributary to: Fourmile Creek

4. Point of Diversion: This claim is for a spring and/or fountain *in situ* including sufficient groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or fountains.

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1091-1	40N	5W	4	NWSW	Boise	Latah
1091-2	40N	5W	4	SWSE	Boise	Latah
1091-3	40N	5W	4	NWSW	Boise	Latah

See Attached Map.

5. Place of Use:

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1091-1	40N	5W	4	NWSW	Boise	Latah
1091-2	40N	5W	4	SWSE	Boise	Latah
1091-3	40N	5W	4	NWSW	Boise	Latah

See Attached Map.

6. Purpose of Water Use:

The purpose of use includes the full range of uses to which the Tribe and its members have always put the springs and fountains, including as a water source for consumptive use, for wildlife and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce Reservation pursuant to the documents referenced in Section 9 and the provisions in Section 10, *infra*.

7. Period of Use: January 1 through December 31.

8. Quantity Reserved (In cfs): Half the natural flow.

9. Basis of Claim:

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

10. Other Provisions:

- a. The United States has asserted other claims in the Palouse River Basin Adjudication. Paragraphs 10(a) – (g) express assertions applicable to all claims filed by the Bureau of Indian Affairs in its capacity as trustee for the Nez Perce Tribe in the Palouse River Basin Adjudication. The United States claims waters from groundwater and surface water sources within the Palouse River Basin in the state of Idaho to satisfy the rights reserved to the Nez Perce Tribe by the 1855 Treaty and the 1863 Treaty and to fulfill the permanent homeland purpose of the Nez Perce Reservation. Such present and future purposes include: instream flows for fish habitat; hunting, gathering, and pasturing; spring and fountains flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; and consumptive use claims on two allotments held in trust by the United States.
- b. The Nez Perce Tribe has occupied a territory in what is now central Idaho, southeastern Washington, and northeastern Oregon since time immemorial. *United States v. Webb*, 219 F.3d 1127, 1129 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). The Palouse River Basin is within the Tribe’s traditional lands.
- c. There is a complex history of the United States’ establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing

rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the “exclusive right to fish in all streams running through or bordering” the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the “right of taking fish at all usual and accustomed places in common with the citizens of the Territory” to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.

- d. Article III of the 1855 Treaty further reserves to the Tribe “the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land.”
- e. Article VIII of the Nez Perce Treaty of 1863 includes a unique provision reserving to the Nez Perce Tribe the use of “springs and fountains” within the area ceded under Article I of the 1863 Treaty. For purposes of the priority date of the springs and fountains claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.
- f. Pursuant to the General Allotment Act of 1887, Act of February 8, 1887, 24 Stat. 388, *amended*, Act of February 28, 1891, 26 Stat. 794, there are two allotments (Allotments 182-43 and 182-45) held in trust by the United States located within the boundaries of the Palouse River Basin and the northwestern corner of the Nez Perce Reservation. For purposes of the priority date of the domestic and stock watering claims for these two allotments, the United States claims June 11, 1855 pursuant to the 1855 Treaty.
- g. In order to comply with Idaho Code § 42-1409(1), the United States has designated “places of use,” “points of diversion,” and “purposes of use” in submitting this water rights claim. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe’s future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Reservation. The statute’s terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.

11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled “How you will receive notices in the Palouse River Basin Adjudication.”
- (b) I do ___ do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

For Organizations:

I do solemnly swear and affirm that I am Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.



Signature of Authorized Agent:

Title and Organization:

Northwest Regional Director
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

Notice is hereby given that the United States Department of Justice will represent the United States of America, including the U.S. Department of the Interior, Bureau of Indian Affairs, in all matters pertaining to the Palouse River Basin Adjudication.

All notices, filings and correspondence concerning this matter should be mailed to the United States Department of Justice at the address set forth below:

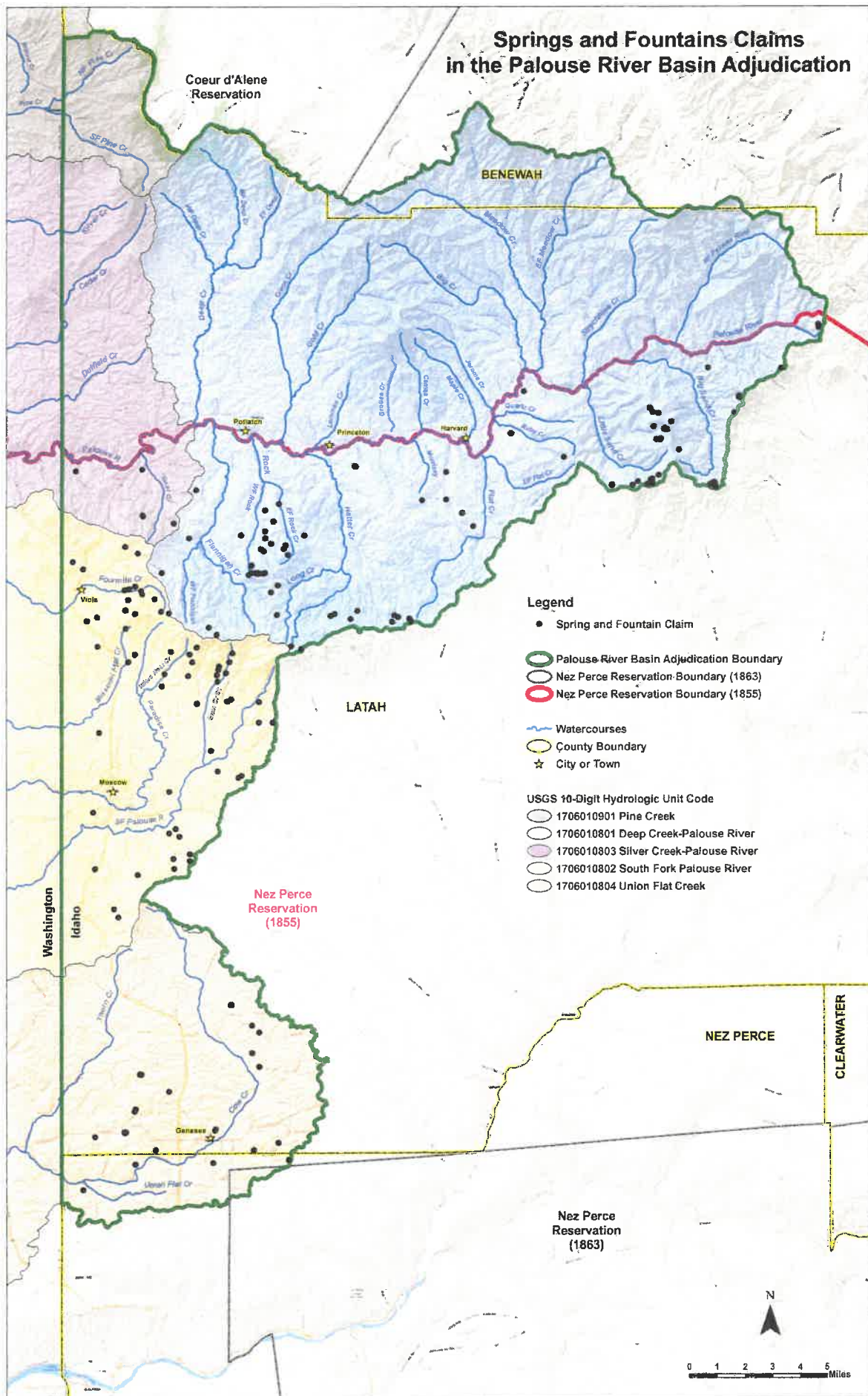


Katherine M. Kane
United States Department of Justice
Indian Resources Division
Natural Resources Section
999 18th Street
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

Springs and Fountains Claims in the Palouse River Basin Adjudication



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

87-12097

IN RE: THE GENERAL) Case No.: 59576
ADJUDICATION OF RIGHTS)
TO THE USE OF WATER FROM) **NOTICE OF CLAIM**
THE PALOUSE RIVER BASIN)
WATER SYSTEM) **Federal Reserved Water Right**
)
)
)

RECEIVED
DEC 30 2019
DEPARTMENT OF
WATER RESOURCES

1. **Name and address of claimant:**

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and
ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the
REGIONAL DIRECTOR, NORTHWEST REGION

Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

2. **Date of Priority:** Time Immemorial

3. **a. Source of water supply:** Spring (Federal I.D. #1092)

b. which is a tributary to: Paradise Creek

4. **Point of Diversion:** This claim is for a spring and/or fountain *in situ* including sufficient groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or fountains.

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1092	40N	5W	22	NENE	Boise	Latah

See Attached Map.

5. **Place of Use:**

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1092	40N	5W	22	NENE	Boise	Latah

See Attached Map.

6. Purpose of Water Use:

The purpose of use includes the full range of uses to which the Tribe and its members have always put the springs and fountains, including as a water source for consumptive use, for wildlife and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce Reservation pursuant to the documents referenced in Section 9 and the provisions in Section 10, *infra*.

7. Period of Use: January 1 through December 31.

8. Quantity Reserved (In cfs): Half the natural flow.

9. Basis of Claim:

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

10. Other Provisions:

- a. The United States has asserted other claims in the Palouse River Basin Adjudication. Paragraphs 10(a) – (g) express assertions applicable to all claims filed by the Bureau of Indian Affairs in its capacity as trustee for the Nez Perce Tribe in the Palouse River Basin Adjudication. The United States claims waters from groundwater and surface water sources within the Palouse River Basin in the state of Idaho to satisfy the rights reserved to the Nez Perce Tribe by the 1855 Treaty and the 1863 Treaty and to fulfill the permanent homeland purpose of the Nez Perce Reservation. Such present and future purposes include: instream flows for fish habitat; hunting, gathering, and pasturing; spring and fountains flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; and consumptive use claims on two allotments held in trust by the United States.
- b. The Nez Perce Tribe has occupied a territory in what is now central Idaho, southeastern Washington, and northeastern Oregon since time immemorial. *United States v. Webb*, 219 F.3d 1127, 1129 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). The Palouse River Basin is within the Tribe’s traditional lands.
- c. There is a complex history of the United States’ establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing

rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the “exclusive right to fish in all streams running through or bordering” the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the “right of taking fish at all usual and accustomed places in common with the citizens of the Territory” to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.

- d. Article III of the 1855 Treaty further reserves to the Tribe “the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land.”
- e. Article VIII of the Nez Perce Treaty of 1863 includes a unique provision reserving to the Nez Perce Tribe the use of “springs and fountains” within the area ceded under Article I of the 1863 Treaty. For purposes of the priority date of the springs and fountains claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.
- f. Pursuant to the General Allotment Act of 1887, Act of February 8, 1887, 24 Stat. 388, *amended*, Act of February 28, 1891, 26 Stat. 794, there are two allotments (Allotments 182-43 and 182-45) held in trust by the United States located within the boundaries of the Palouse River Basin and the northwestern corner of the Nez Perce Reservation. For purposes of the priority date of the domestic and stock watering claims for these two allotments, the United States claims June 11, 1855 pursuant to the 1855 Treaty.
- g. In order to comply with Idaho Code § 42-1409(1), the United States has designated “places of use,” “points of diversion,” and “purposes of use” in submitting this water rights claim. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe’s future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Reservation. The statute’s terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.

11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled “How you will receive notices in the Palouse River Basin Adjudication.”
- (b) I do ___ do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

For Organizations:

I do solemnly swear and affirm that I am Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.



Signature of Authorized Agent:

Title and Organization:

Northwest Regional Director

U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

Notice is hereby given that the United States Department of Justice will represent the United States of America, including the U.S. Department of the Interior, Bureau of Indian Affairs, in all matters pertaining to the Palouse River Basin Adjudication.

All notices, filings and correspondence concerning this matter should be mailed to the United States Department of Justice at the address set forth below:

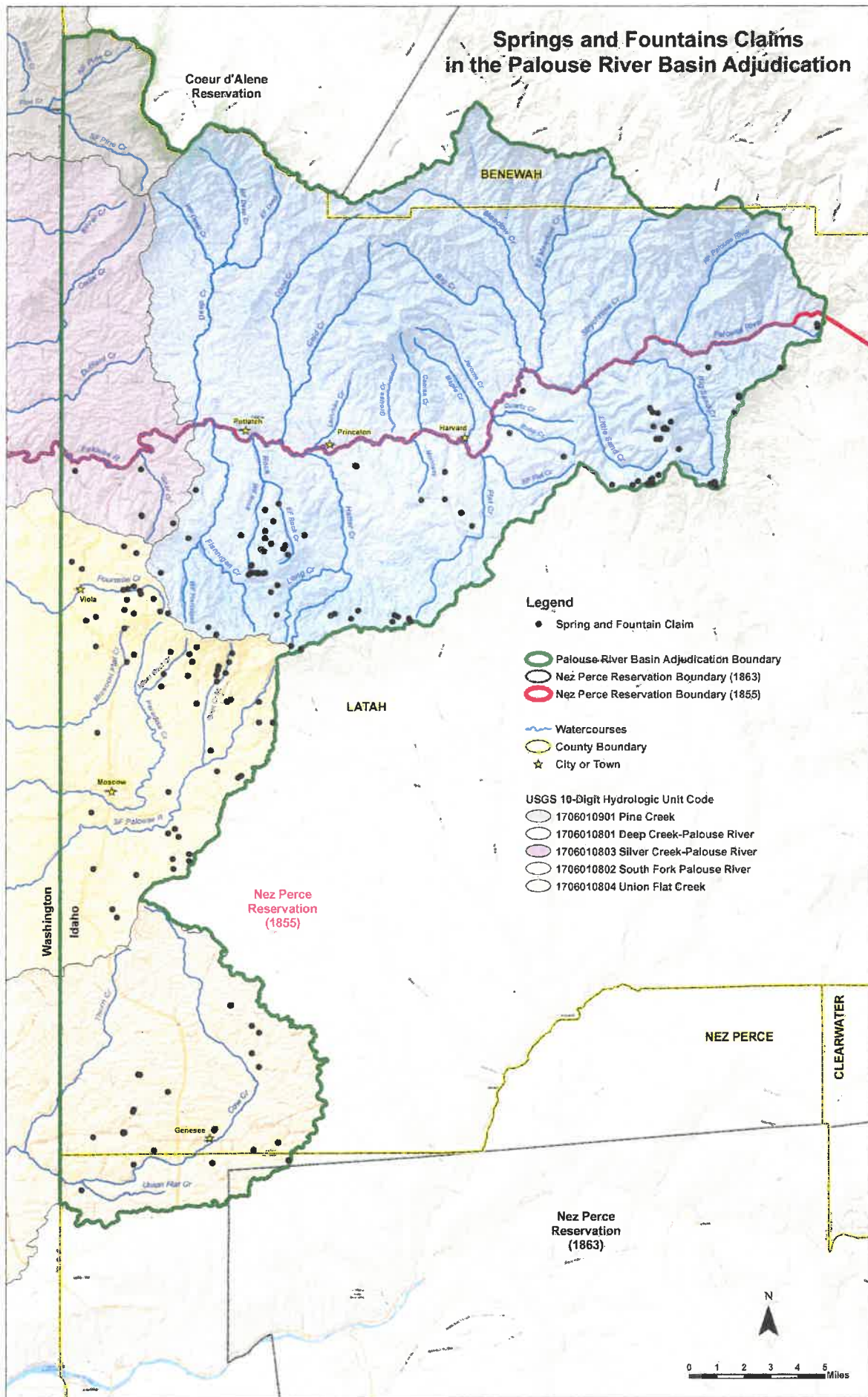


Katherine M. Kane
United States Department of Justice
Indian Resources Division
Natural Resources Section
999 18th Street
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

Springs and Fountains Claims in the Palouse River Basin Adjudication



87-12098

Federal Reserved Water Right

RECEIVED
DEC 30 2019
DEPARTMENT OF
WATER RESOURCES

Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

2. Date of Priority: Time Immemorial

3. a. **Source of water supply:** Spring (Federal I.D. #1093)

b. which is a tributary to: Gnat Creek

4. **Point of Diversion:** This claim is for a spring and/or fountain *in situ* including sufficient groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or fountains.

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1093	41N	5W	27	NENW	Boise	Latah

See Attached Map.

5. Place of Use:

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1093	41N	5W	27	NENW	Boise	Latah

See Attached Map.

6. Purpose of Water Use:

The purpose of use includes the full range of uses to which the Tribe and its members have always put the springs and fountains, including as a water source for consumptive use, for wildlife and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce Reservation pursuant to the documents referenced in Section 9 and the provisions in Section 10, *infra*.

7. Period of Use: January 1 through December 31.

8. Quantity Reserved (In cfs): Half the natural flow.

9. Basis of Claim:

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

10. Other Provisions:

- a. The United States has asserted other claims in the Palouse River Basin Adjudication. Paragraphs 10(a) – (g) express assertions applicable to all claims filed by the Bureau of Indian Affairs in its capacity as trustee for the Nez Perce Tribe in the Palouse River Basin Adjudication. The United States claims waters from groundwater and surface water sources within the Palouse River Basin in the state of Idaho to satisfy the rights reserved to the Nez Perce Tribe by the 1855 Treaty and the 1863 Treaty and to fulfill the permanent homeland purpose of the Nez Perce Reservation. Such present and future purposes include: instream flows for fish habitat; hunting, gathering, and pasturing; spring and fountains flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; and consumptive use claims on two allotments held in trust by the United States.
- b. The Nez Perce Tribe has occupied a territory in what is now central Idaho, southeastern Washington, and northeastern Oregon since time immemorial. *United States v. Webb*, 219 F.3d 1127, 1129 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). The Palouse River Basin is within the Tribe’s traditional lands.
- c. There is a complex history of the United States’ establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing

rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the “exclusive right to fish in all streams running through or bordering” the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the “right of taking fish at all usual and accustomed places in common with the citizens of the Territory” to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.

- d. Article III of the 1855 Treaty further reserves to the Tribe “the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land.”
- e. Article VIII of the Nez Perce Treaty of 1863 includes a unique provision reserving to the Nez Perce Tribe the use of “springs and fountains” within the area ceded under Article I of the 1863 Treaty. For purposes of the priority date of the springs and fountains claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.
- f. Pursuant to the General Allotment Act of 1887, Act of February 8, 1887, 24 Stat. 388, *amended*, Act of February 28, 1891, 26 Stat. 794, there are two allotments (Allotments 182-43 and 182-45) held in trust by the United States located within the boundaries of the Palouse River Basin and the northwestern corner of the Nez Perce Reservation. For purposes of the priority date of the domestic and stock watering claims for these two allotments, the United States claims June 11, 1855 pursuant to the 1855 Treaty.
- g. In order to comply with Idaho Code § 42-1409(1), the United States has designated “places of use,” “points of diversion,” and “purposes of use” in submitting this water rights claim. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe’s future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Reservation. The statute’s terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.

11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled “How you will receive notices in the Palouse River Basin Adjudication.”
- (b) I do ___ do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

For Organizations:

I do solemnly swear and affirm that I am Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.



Signature of Authorized Agent:

Title and Organization:

Northwest Regional Director
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

Notice is hereby given that the United States Department of Justice will represent the United States of America, including the U.S. Department of the Interior, Bureau of Indian Affairs, in all matters pertaining to the Palouse River Basin Adjudication.

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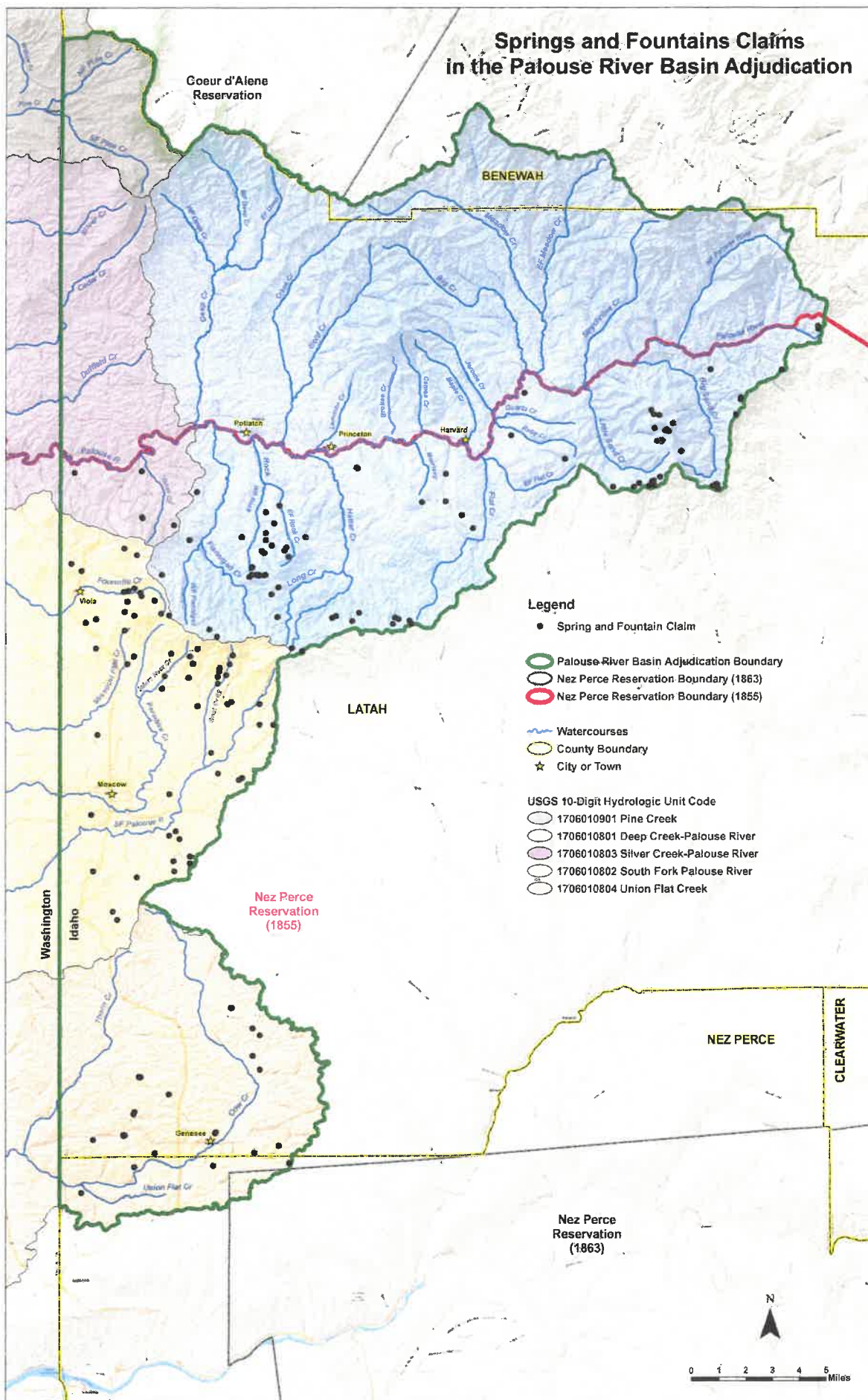


Katherine M. Kane
United States Department of Justice
Indian Resources Division
Natural Resources Section
999 18th Street
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

Springs and Fountains Claims in the Palouse River Basin Adjudication



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

27-12099

IN RE: THE GENERAL) Case No.: 59576
ADJUDICATION OF RIGHTS)
TO THE USE OF WATER FROM) **NOTICE OF CLAIM**
THE PALOUSE RIVER BASIN)
WATER SYSTEM) **Federal Reserved Water Right**
)
)
)

RECEIVED
DEC 30 2010
DEPARTMENT OF
WATER RESOURCES

1. **Name and address of claimant:**

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and
ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the
REGIONAL DIRECTOR, NORTHWEST REGION

Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

2. **Date of Priority:** Time Immemorial

3. **a. Source of water supply:** Springs (Federal I.D. #1094)

b. which is a tributary to: Gnat Creek

4. **Point of Diversion:** This claim is for a spring and/or fountain *in situ* including sufficient groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or fountains.

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1094	41N	5W	21	SWSW	Boise	Latah

See Attached Map.

5. **Place of Use:**

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1094	41N	5W	21	SWSW	Boise	Latah

See Attached Map.

6. Purpose of Water Use:

The purpose of use includes the full range of uses to which the Tribe and its members have always put the springs and fountains, including as a water source for consumptive use, for wildlife and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce Reservation pursuant to the documents referenced in Section 9 and the provisions in Section 10, *infra*.

7. Period of Use: January 1 through December 31.

8. Quantity Reserved (In cfs): Half the natural flow.

9. Basis of Claim:

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

10. Other Provisions:

- a. The United States has asserted other claims in the Palouse River Basin Adjudication. Paragraphs 10(a) – (g) express assertions applicable to all claims filed by the Bureau of Indian Affairs in its capacity as trustee for the Nez Perce Tribe in the Palouse River Basin Adjudication. The United States claims waters from groundwater and surface water sources within the Palouse River Basin in the state of Idaho to satisfy the rights reserved to the Nez Perce Tribe by the 1855 Treaty and the 1863 Treaty and to fulfill the permanent homeland purpose of the Nez Perce Reservation. Such present and future purposes include: instream flows for fish habitat; hunting, gathering, and pasturing; spring and fountain flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; and consumptive use claims on two allotments held in trust by the United States.
- b. The Nez Perce Tribe has occupied a territory in what is now central Idaho, southeastern Washington, and northeastern Oregon since time immemorial. *United States v. Webb*, 219 F.3d 1127, 1129 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). The Palouse River Basin is within the Tribe’s traditional lands.
- c. There is a complex history of the United States’ establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing

rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the “exclusive right to fish in all streams running through or bordering” the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the “right of taking fish at all usual and accustomed places in common with the citizens of the Territory” to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.

- d. Article III of the 1855 Treaty further reserves to the Tribe “the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land.”
- e. Article VIII of the Nez Perce Treaty of 1863 includes a unique provision reserving to the Nez Perce Tribe the use of “springs and fountains” within the area ceded under Article I of the 1863 Treaty. For purposes of the priority date of the springs and fountains claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.
- f. Pursuant to the General Allotment Act of 1887, Act of February 8, 1887, 24 Stat. 388, *amended*, Act of February 28, 1891, 26 Stat. 794, there are two allotments (Allotments 182-43 and 182-45) held in trust by the United States located within the boundaries of the Palouse River Basin and the northwestern corner of the Nez Perce Reservation. For purposes of the priority date of the domestic and stock watering claims for these two allotments, the United States claims June 11, 1855 pursuant to the 1855 Treaty.
- g. In order to comply with Idaho Code § 42-1409(1), the United States has designated “places of use,” “points of diversion,” and “purposes of use” in submitting this water rights claim. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe’s future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Reservation. The statute’s terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.

11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled “How you will receive notices in the Palouse River Basin Adjudication.”
- (b) I do ___ do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

For Organizations:

I do solemnly swear and affirm that I am Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.



Signature of Authorized Agent:

Title and Organization:

Northwest Regional Director
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

Notice is hereby given that the United States Department of Justice will represent the United States of America, including the U.S. Department of the Interior, Bureau of Indian Affairs, in all matters pertaining to the Palouse River Basin Adjudication.

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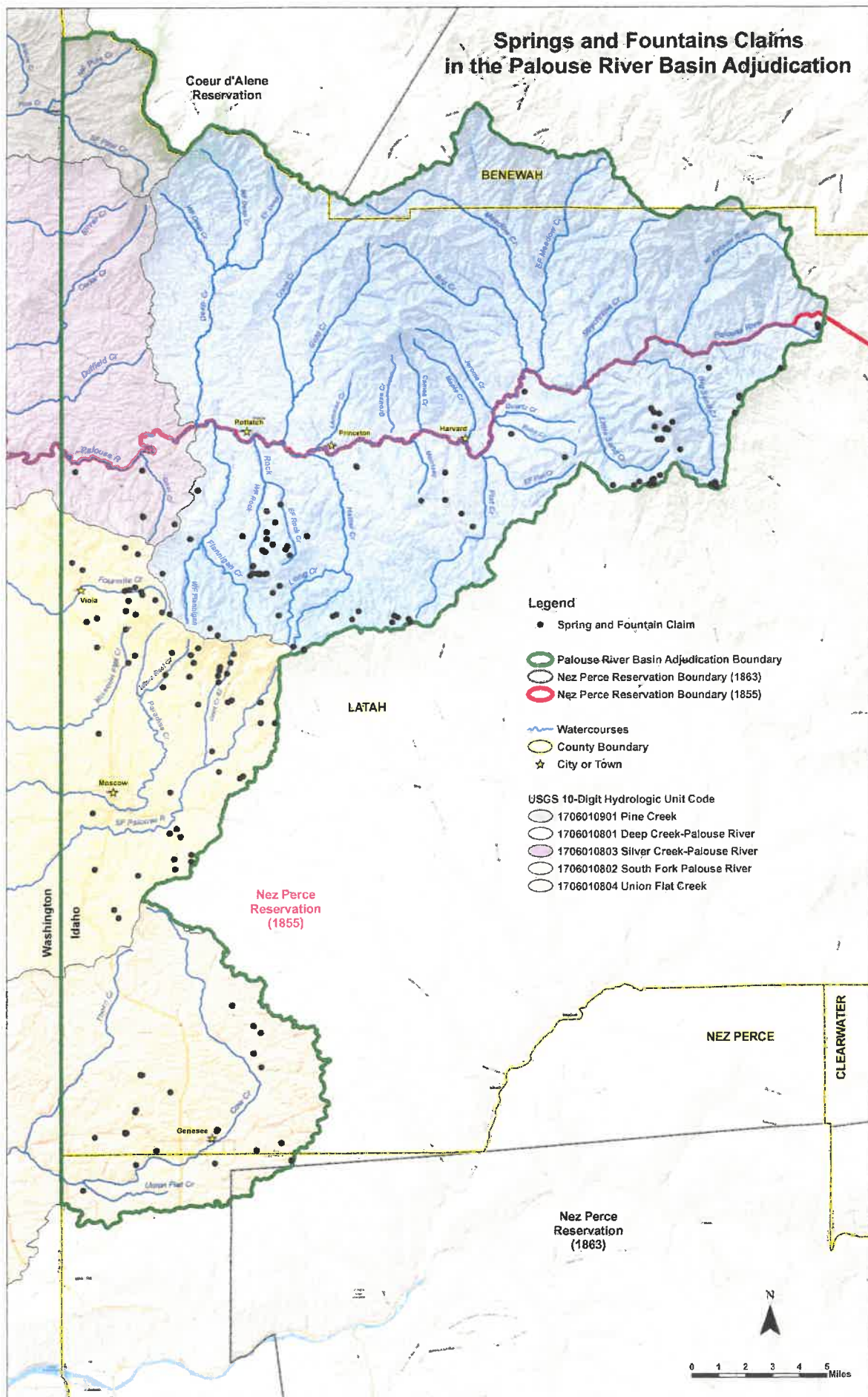


Katherine M. Kane
United States Department of Justice
Indian Resources Division
Natural Resources Section
999 18th Street
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

Springs and Fountains Claims in the Palouse River Basin Adjudication



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

87-170100

IN RE: THE GENERAL)
ADJUDICATION OF RIGHTS)
TO THE USE OF WATER FROM)
THE PALOUSE RIVER BASIN)
WATER SYSTEM)
)
)
)

Case No.: 59576

NOTICE OF CLAIM

Federal Reserved Water Right

RECEIVED
DEC 30 2019
DEPARTMENT OF
WATER RESOURCES

1. Name and address of claimant:

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and
ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the
REGIONAL DIRECTOR, NORTHWEST REGION

Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

2. Date of Priority: Time Immemorial

3. a. Source of water supply: Springs (Federal I.D. #1095)

b. which is a tributary to: Crumarine Creek

4. Point of Diversion: This claim is for a spring and/or fountain *in situ* including sufficient groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or fountains.

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1095	40N	5W	25	NESW	Boise	Latah

See Attached Map.

5. Place of Use:

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1095	40N	5W	25	NESW	Boise	Latah

See Attached Map.

6. Purpose of Water Use:

The purpose of use includes the full range of uses to which the Tribe and its members have always put the springs and fountains, including as a water source for consumptive use, for wildlife and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce Reservation pursuant to the documents referenced in Section 9 and the provisions in Section 10, *infra*.

7. Period of Use: January 1 through December 31.

8. Quantity Reserved (In cfs): Half the natural flow.

9. Basis of Claim:

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

10. Other Provisions:

- a. The United States has asserted other claims in the Palouse River Basin Adjudication. Paragraphs 10(a) – (g) express assertions applicable to all claims filed by the Bureau of Indian Affairs in its capacity as trustee for the Nez Perce Tribe in the Palouse River Basin Adjudication. The United States claims waters from groundwater and surface water sources within the Palouse River Basin in the state of Idaho to satisfy the rights reserved to the Nez Perce Tribe by the 1855 Treaty and the 1863 Treaty and to fulfill the permanent homeland purpose of the Nez Perce Reservation. Such present and future purposes include: instream flows for fish habitat; hunting, gathering, and pasturing; spring and fountains flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; and consumptive use claims on two allotments held in trust by the United States.
- b. The Nez Perce Tribe has occupied a territory in what is now central Idaho, southeastern Washington, and northeastern Oregon since time immemorial. *United States v. Webb*, 219 F.3d 1127, 1129 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). The Palouse River Basin is within the Tribe’s traditional lands.
- c. There is a complex history of the United States’ establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing

rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the “exclusive right to fish in all streams running through or bordering” the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the “right of taking fish at all usual and accustomed places in common with the citizens of the Territory” to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.

- d. Article III of the 1855 Treaty further reserves to the Tribe “the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land.”
- e. Article VIII of the Nez Perce Treaty of 1863 includes a unique provision reserving to the Nez Perce Tribe the use of “springs and fountains” within the area ceded under Article I of the 1863 Treaty. For purposes of the priority date of the springs and fountains claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.
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- g. In order to comply with Idaho Code § 42-1409(1), the United States has designated “places of use,” “points of diversion,” and “purposes of use” in submitting this water rights claim. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe’s future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Reservation. The statute’s terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.

11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled “How you will receive notices in the Palouse River Basin Adjudication.”
- (b) I do do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

For Organizations:

I do solemnly swear and affirm that I am Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.



Signature of Authorized Agent:

Title and Organization:

Northwest Regional Director
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

Notice is hereby given that the United States Department of Justice will represent the United States of America, including the U.S. Department of the Interior, Bureau of Indian Affairs, in all matters pertaining to the Palouse River Basin Adjudication.

All notices, filings and correspondence concerning this matter should be mailed to the United States Department of Justice at the address set forth below:

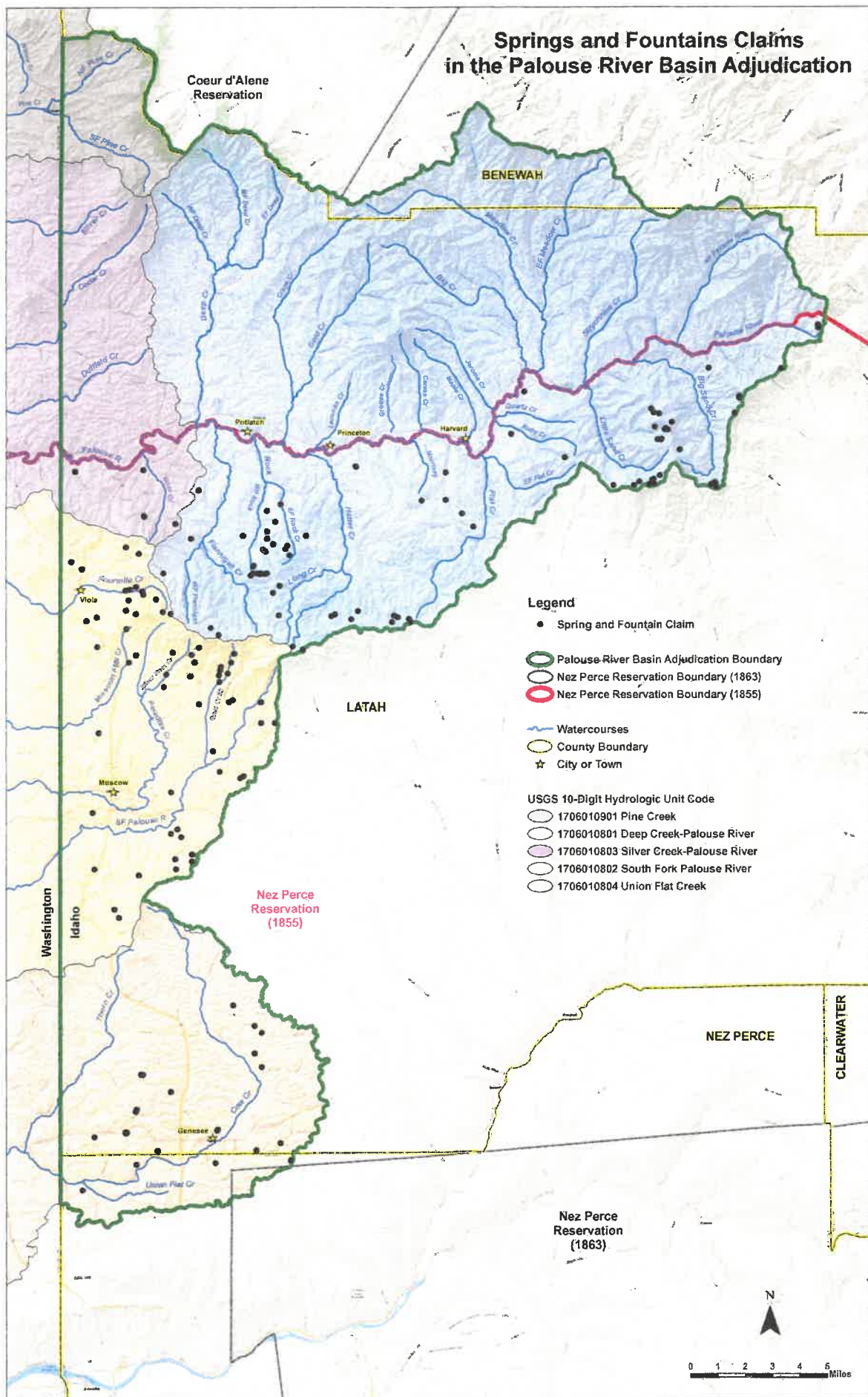


Katherine M. Kane
United States Department of Justice
Indian Resources Division
Natural Resources Section
999 18th Street
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

Springs and Fountains Claims in the Palouse River Basin Adjudication



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

87-12101

IN RE: THE GENERAL)
ADJUDICATION OF RIGHTS)
TO THE USE OF WATER FROM)
THE PALOUSE RIVER BASIN)
WATER SYSTEM)
)
)
)

Case No.: 59576

NOTICE OF CLAIM

Federal Reserved Water Right

RECEIVED
DEC 30 2019
DEPARTMENT OF
WATER RESOURCES

1. Name and address of claimant:

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and
ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the
REGIONAL DIRECTOR, NORTHWEST REGION

Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

2. Date of Priority: Time Immemorial

3. a. Source of water supply: Spring (Federal I.D. #1096)

b. which is a tributary to: Fourmile Creek

4. Point of Diversion: This claim is for a spring and/or fountain *in situ* including sufficient groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or fountains.

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1096	41N	5W	29	SWSE	Boise	Latah

See Attached Map.

5. Place of Use:

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1096	41N	5W	29	SWSE	Boise	Latah

See Attached Map.

6. Purpose of Water Use:

The purpose of use includes the full range of uses to which the Tribe and its members have always put the springs and fountains, including as a water source for consumptive use, for wildlife and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce Reservation pursuant to the documents referenced in Section 9 and the provisions in Section 10, *infra*.

7. Period of Use: January 1 through December 31.

8. Quantity Reserved (In cfs): Half the natural flow.

9. Basis of Claim:

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

10. Other Provisions:

- a. The United States has asserted other claims in the Palouse River Basin Adjudication. Paragraphs 10(a) – (g) express assertions applicable to all claims filed by the Bureau of Indian Affairs in its capacity as trustee for the Nez Perce Tribe in the Palouse River Basin Adjudication. The United States claims waters from groundwater and surface water sources within the Palouse River Basin in the state of Idaho to satisfy the rights reserved to the Nez Perce Tribe by the 1855 Treaty and the 1863 Treaty and to fulfill the permanent homeland purpose of the Nez Perce Reservation. Such present and future purposes include: instream flows for fish habitat; hunting, gathering, and pasturing; spring and fountains flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; and consumptive use claims on two allotments held in trust by the United States.
- b. The Nez Perce Tribe has occupied a territory in what is now central Idaho, southeastern Washington, and northeastern Oregon since time immemorial. *United States v. Webb*, 219 F.3d 1127, 1129 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). The Palouse River Basin is within the Tribe’s traditional lands.
- c. There is a complex history of the United States’ establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing

rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the “exclusive right to fish in all streams running through or bordering” the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the “right of taking fish at all usual and accustomed places in common with the citizens of the Territory” to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.

- d. Article III of the 1855 Treaty further reserves to the Tribe “the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land.”
- e. Article VIII of the Nez Perce Treaty of 1863 includes a unique provision reserving to the Nez Perce Tribe the use of “springs and fountains” within the area ceded under Article I of the 1863 Treaty. For purposes of the priority date of the springs and fountains claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.
- f. Pursuant to the General Allotment Act of 1887, Act of February 8, 1887, 24 Stat. 388, *amended*, Act of February 28, 1891, 26 Stat. 794, there are two allotments (Allotments 182-43 and 182-45) held in trust by the United States located within the boundaries of the Palouse River Basin and the northwestern corner of the Nez Perce Reservation. For purposes of the priority date of the domestic and stock watering claims for these two allotments, the United States claims June 11, 1855 pursuant to the 1855 Treaty.
- g. In order to comply with Idaho Code § 42-1409(1), the United States has designated “places of use,” “points of diversion,” and “purposes of use” in submitting this water rights claim. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe’s future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Reservation. The statute’s terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.

11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled “How you will receive notices in the Palouse River Basin Adjudication.”
- (b) I do ___ do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

For Organizations:

I do solemnly swear and affirm that I am Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.



Signature of Authorized Agent:

Title and Organization:

Northwest Regional Director
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

Notice is hereby given that the United States Department of Justice will represent the United States of America, including the U.S. Department of the Interior, Bureau of Indian Affairs, in all matters pertaining to the Palouse River Basin Adjudication.

All notices, filings and correspondence concerning this matter should be mailed to the United States Department of Justice at the address set forth below:



Katherine M. Kane
United States Department of Justice
Indian Resources Division
Natural Resources Section
999 18th Street
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

**Springs and Fountains Claims
in the Palouse River Basin Adjudication**

Coeur d'Alene
Reservation

BENEWAH

Pocatello
Princeton
Harvart
Pinesburg
Moscow
Genesee

LATAH

Washington
Idaho
NEZ PERCE
CLEARWATER

Nez Perce
Reservation
(1855)

Nez Perce
Reservation
(1863)







Legend

- Spring and Fountain Claim
- Palouse River Basin Adjudication Boundary
- Nez Perce Reservation Boundary (1863)
- Nez Perce Reservation Boundary (1855)
- Watercourses
- County Boundary
- ☆ City or Town






USGS 10-Digit Hydrologic Unit Code

- 1706010901 Pine Creek
- 1706010801 Deep Creek-Palouse River
- 1706010803 Silver Creek-Palouse River
- 1706010802 South Fork Palouse River
- 1706010804 Union Flat Creek

0 1 2 3 4 5 Miles

- Spring and Fountain Claim
-  Palouse River Basin Adjudication Boundary
-  Nez Perce Reservation Boundary (1863)
-  Nez Perce Reservation Boundary (1855)
-  Watercourses
-  County Boundary
-  City or Town

USGS 10-Digit Hydrologic Unit Code

-  1706010901 Pine Creek
-  1706010804 Deep Creek-Palouse River
-  1706010803 Silver Creek-Palouse River
-  1706010802 South Fork Palouse River
-  1706010804 Union Flat Creek

USGS 10-Digit Hydrologic Unit Code

<input type="radio"/>	1706010901 Pine Creek
<input type="radio"/>	1706010801 Deep Creek-Palouse River
<input checked="" type="radio"/>	1706010803 Silver Creek-Palouse River
<input type="radio"/>	1706010802 South Fork Palouse River
<input type="radio"/>	1706010804 Union Flat Creek

NEZ PERCE

Nez Perce
Reservation
(1863)

CLEARWATER

T

0 1 2 3 4 5

87-12102

**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)	Case No.: 59576
ADJUDICATION OF RIGHTS)	
TO THE USE OF WATER FROM)	NOTICE OF CLAIM
THE PALOUSE RIVER BASIN)	
WATER SYSTEM)	Federal Reserved Water Right
)	
)	

RECEIVED
 DEC 30 2019
 DEPARTMENT OF
 WATER RESOURCES

1. Name and address of claimant:

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the REGIONAL DIRECTOR, NORTHWEST REGION
 Department of the Interior
 Bureau of Indian Affairs
 911 N.E. 11th Ave.
 Portland, OR 97232

2. Date of Priority: Time Immemorial

3. a. Source of water supply: Spring (Federal I.D. #1097)

b. which is a tributary to: West Fork Rock Creek

4. Point of Diversion: This claim is for a spring and/or fountain *in situ* including sufficient groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or fountains.

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1097	41N	4W	31	SESW	Boise	Latah

See Attached Map.

5. Place of Use:

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1097	41N	4W	31	SESW	Boise	Latah

See Attached Map.

6. Purpose of Water Use:

The purpose of use includes the full range of uses to which the Tribe and its members have always put the springs and fountains, including as a water source for consumptive use, for wildlife and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce Reservation pursuant to the documents referenced in Section 9 and the provisions in Section 10, *infra*.

7. Period of Use: January 1 through December 31.

8. Quantity Reserved (In cfs): Half the natural flow.

9. Basis of Claim:

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

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rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the “exclusive right to fish in all streams running through or bordering” the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the “right of taking fish at all usual and accustomed places in common with the citizens of the Territory” to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.

- d. Article III of the 1855 Treaty further reserves to the Tribe “the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land.”
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For Organizations:

I do solemnly swear and affirm that I am Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.



Signature of Authorized Agent:

Title and Organization:

Northwest Regional Director
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

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United States Department of Justice
Indian Resources Division
Natural Resources Section
999 18th Street
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

**Springs and Fountains Claims
in the Palouse River Basin Adjudication**

Coeur d'Alene Reservation

BENEWAH

LATAH

NEZ PERCE

Washington

Idaho

CLEARWATER

Nez Perce Reservation (1855)

Nez Perce Reservation (1863)

Legend

- Spring and Fountain Claim
- Palouse River Basin Adjudication Boundary
- Nez Perce Reservation Boundary (1863)
- Nez Perce Reservation Boundary (1855)
- Watercourses
- County Boundary
- City or Town

USGS 10-Digit Hydrologic Unit Code

- 1706010901 Pine Creek
- 1706010801 Deep Creek-Palouse River
- 1706010803 Silver Creek-Palouse River
- 1706010802 South Fork Palouse River
- 1706010804 Union Flat Creek

Scale: 0 1 2 3 4 5 Miles

North Arrow

- **Spring and Fountain Claim**

 Nez Perce Reservation Boundary (1863)

 **Watercourses**

 County Boundary

☆ City or Town

USGS 10-Digit Hydrologic Unit Code

1706010901 Pine Creek

1706010801 Deep Creek-Palouse River

1706010803 Silver Creek-Palouse River

1706010802 South Fork Palouse River

1706010804 Union Flat Creek

**Nez Perce
Reservation
(1855)**

NEZ PERÇE

Nez Perce
Reservation
(1863)

7

0 1 2 3 4 5 Miles

**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)	Case No.: 59576
ADJUDICATION OF RIGHTS)	
TO THE USE OF WATER FROM)	NOTICE OF CLAIM
THE PALOUSE RIVER BASIN)	
WATER SYSTEM)	Federal Reserved Water Right
)	
)	

RECEIVED
DEC 30 2019
DEPARTMENT OF
WATER RESOURCES

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UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the REGIONAL DIRECTOR, NORTHWEST REGION

Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

2. Date of Priority: Time Immemorial

3. a. Source of water supply: Springs (Federal I.D. #1098)

b. which is a tributary to: West Fork Rock Creek

4. Point of Diversion: This claim is for a spring and/or fountain *in situ* including sufficient groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or fountains.

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1098-1	41N	4W	31	NENW	Boise	Latah
1098-2	41N	4W	31	NENW	Boise	Latah

See Attached Map.

5. Place of Use:

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
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6. Purpose of Water Use:

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- e. Article VIII of the Nez Perce Treaty of 1863 includes a unique provision reserving to the Nez Perce Tribe the use of “springs and fountains” within the area ceded under Article I of the 1863 Treaty. For purposes of the priority date of the springs and fountains claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.
- f. Pursuant to the General Allotment Act of 1887, Act of February 8, 1887, 24 Stat. 388, *amended*, Act of February 28, 1891, 26 Stat. 794, there are two allotments (Allotments 182-43 and 182-45) held in trust by the United States located within the boundaries of the Palouse River Basin and the northwestern corner of the Nez Perce Reservation. For purposes of the priority date of the domestic and stock watering claims for these two allotments, the United States claims June 11, 1855 pursuant to the 1855 Treaty.
- g. In order to comply with Idaho Code § 42-1409(1), the United States has designated “places of use,” “points of diversion,” and “purposes of use” in submitting this water rights claim. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe’s future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Reservation. The statute’s terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.

11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled “How you will receive notices in the Palouse River Basin Adjudication.”
- (b) I do do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

For Organizations:

I do solemnly swear and affirm that I am Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.



Signature of Authorized Agent:

Title and Organization:

Northwest Regional Director
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

Notice is hereby given that the United States Department of Justice will represent the United States of America, including the U.S. Department of the Interior, Bureau of Indian Affairs, in all matters pertaining to the Palouse River Basin Adjudication.

All notices, filings and correspondence concerning this matter should be mailed to the United States Department of Justice at the address set forth below:



Katherine M. Kane
United States Department of Justice
Indian Resources Division
Natural Resources Section
999 18th Street
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

**Springs and Fountains Claims
in the Palouse River Basin Adjudication**

Coeur d'Alene
Reservation

BENEWAH

LATAH

IDAHO

WASHINGTON

NEZ PERCE

CLEARWATER

Palouse R.

Routte

Pattlatch

Princeton

Harvard

Violet

Moscow

Genesee

Nez Perce
Reservation
(1855)

Nez Perce
Reservation
(1863)

Legend

- Spring and Fountain Claim
- Palouse-River Basin Adjudication Boundary
- Nez Perce Reservation Boundary (1863)
- Nez Perce Reservation Boundary (1855)
- Watercourses
- County Boundary
- ☆ City or Town

USGS 10-Digit Hydrologic Unit Code

- 1706010901 Pine Creek
- 1706010804 Deep Creek-Palouse River
- 1706010803 Silver Creek-Palouse River
- 1706010802 South Fork Palouse River
- 1706010804 Union Flat Creek

0 1 2 3 4 5 Miles

N

- **Spring and Fountain Claim**

○ Nez Perce Reservation Boundary (1863)

Nez Perce Reservation Boundary (1855)

 Watercourses County Boundary

★ City or Town

USGS 10-Digit Hydrologic Unit Code

1706010901 Pine Creek

1706010801 Deep Creek-Palouse River

1706010803 Silver Creek-Palouse River

1706010802 South Fork Palouse River

1706010804 Union Flat Creek

© 1999 John Wiley & Sons, Inc.

Nez Perce
Reservation
(1855)

NEZ PERCE

CLEARWATER

**Nez Perce
Reservation
(1863)**



0 1 2 3 4 5 Miles

**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)	Case No.: 59576
ADJUDICATION OF RIGHTS)	
TO THE USE OF WATER FROM)	NOTICE OF CLAIM
THE PALOUSE RIVER BASIN)	
WATER SYSTEM)	Federal Reserved Water Right
)	
)	

RECEIVED
DEC 30 2019
DEPARTMENT OF
WATER RESOURCES

1. Name and address of claimant:

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and
ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the
REGIONAL DIRECTOR, NORTHWEST REGION

Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

2. Date of Priority: Time Immemorial

3. a. Source of water supply: Spring (Federal I.D. #1099)

b. which is a tributary to: Gnat Creek

4. Point of Diversion: This claim is for a spring and/or fountain *in situ* including sufficient groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or fountains.

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1099	40N	5W	24	NWSW	Boise	Latah

See Attached Map.

5. Place of Use:

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1099	40N	5W	24	NWSW	Boise	Latah

See Attached Map.

6. Purpose of Water Use:

The purpose of use includes the full range of uses to which the Tribe and its members have always put the springs and fountains, including as a water source for consumptive use, for wildlife and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce Reservation pursuant to the documents referenced in Section 9 and the provisions in Section 10, *infra*.

7. Period of Use: January 1 through December 31.

8. Quantity Reserved (In cfs): Half the natural flow.

9. Basis of Claim:

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

10. Other Provisions:

- a. The United States has asserted other claims in the Palouse River Basin Adjudication. Paragraphs 10(a) – (g) express assertions applicable to all claims filed by the Bureau of Indian Affairs in its capacity as trustee for the Nez Perce Tribe in the Palouse River Basin Adjudication. The United States claims waters from groundwater and surface water sources within the Palouse River Basin in the state of Idaho to satisfy the rights reserved to the Nez Perce Tribe by the 1855 Treaty and the 1863 Treaty and to fulfill the permanent homeland purpose of the Nez Perce Reservation. Such present and future purposes include: instream flows for fish habitat; hunting, gathering, and pasturing; spring and fountains flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; and consumptive use claims on two allotments held in trust by the United States.
- b. The Nez Perce Tribe has occupied a territory in what is now central Idaho, southeastern Washington, and northeastern Oregon since time immemorial. *United States v. Webb*, 219 F.3d 1127, 1129 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). The Palouse River Basin is within the Tribe’s traditional lands.
- c. There is a complex history of the United States’ establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing

rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the “exclusive right to fish in all streams running through or bordering” the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the “right of taking fish at all usual and accustomed places in common with the citizens of the Territory” to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.

- d. Article III of the 1855 Treaty further reserves to the Tribe “the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land.”
- e. Article VIII of the Nez Perce Treaty of 1863 includes a unique provision reserving to the Nez Perce Tribe the use of “springs and fountains” within the area ceded under Article I of the 1863 Treaty. For purposes of the priority date of the springs and fountains claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.
- f. Pursuant to the General Allotment Act of 1887, Act of February 8, 1887, 24 Stat. 388, *amended*, Act of February 28, 1891, 26 Stat. 794, there are two allotments (Allotments 182-43 and 182-45) held in trust by the United States located within the boundaries of the Palouse River Basin and the northwestern corner of the Nez Perce Reservation. For purposes of the priority date of the domestic and stock watering claims for these two allotments, the United States claims June 11, 1855 pursuant to the 1855 Treaty.
- g. In order to comply with Idaho Code § 42-1409(1), the United States has designated “places of use,” “points of diversion,” and “purposes of use” in submitting this water rights claim. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe’s future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Reservation. The statute’s terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.

11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled “How you will receive notices in the Palouse River Basin Adjudication.”
- (b) I do ___ do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

For Organizations:

I do solemnly swear and affirm that I am Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.



Signature of Authorized Agent:

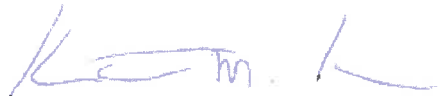
Title and Organization:

Northwest Regional Director
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

Notice is hereby given that the United States Department of Justice will represent the United States of America, including the U.S. Department of the Interior, Bureau of Indian Affairs, in all matters pertaining to the Palouse River Basin Adjudication.

All notices, filings and correspondence concerning this matter should be mailed to the United States Department of Justice at the address set forth below:

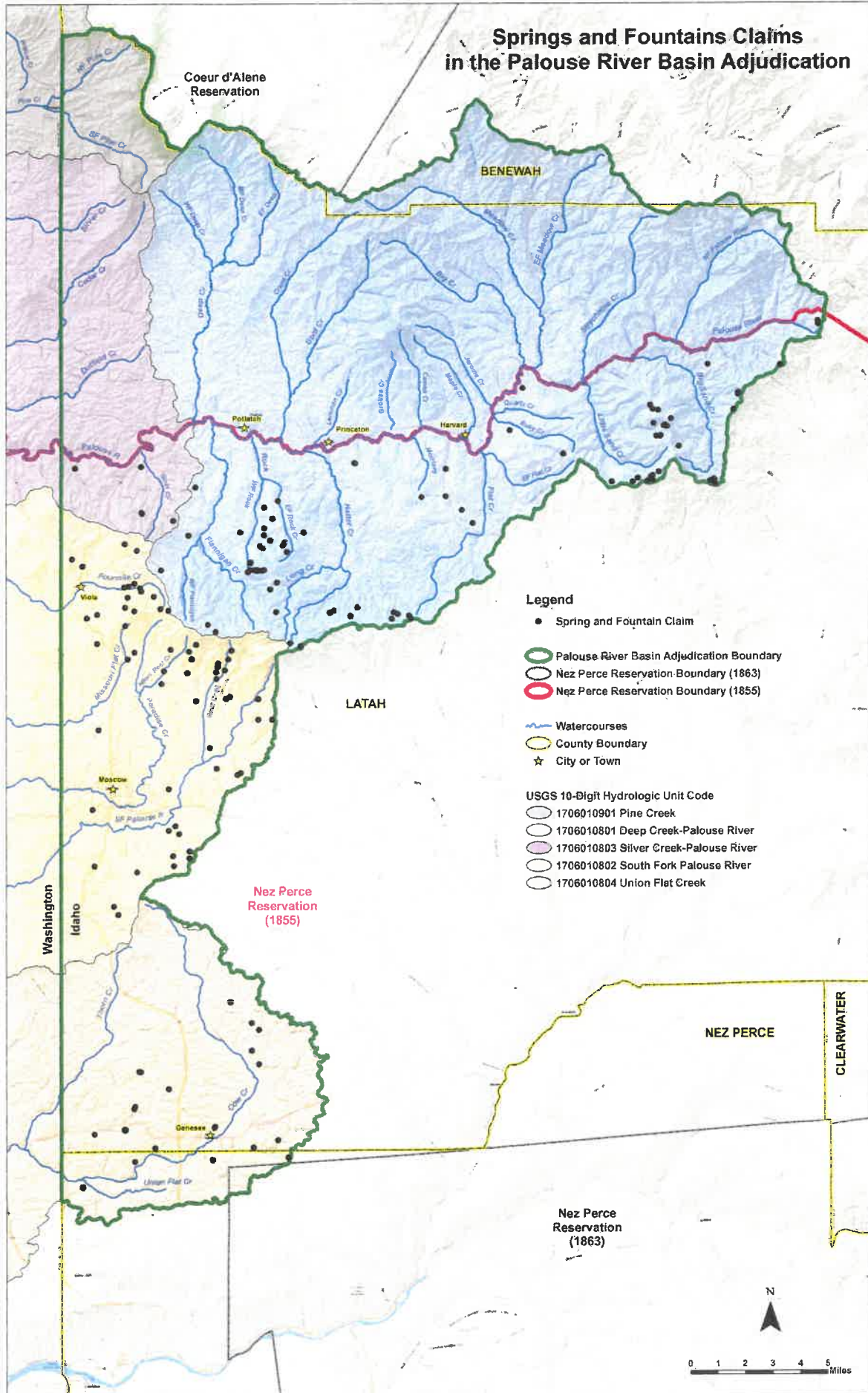


Katherine M. Kane
United States Department of Justice
Indian Resources Division
Natural Resources Section
999 18th Street
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

Springs and Fountains Claims in the Palouse River Basin Adjudication



**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)	Case No.: 59576
ADJUDICATION OF RIGHTS)	
TO THE USE OF WATER FROM)	NOTICE OF CLAIM
THE PALOUSE RIVER BASIN)	
WATER SYSTEM)	Federal Reserved Water Right
)	
)	

RECEIVED
 DEC 30 2019
 DEPARTMENT OF
 WATER RESOURCES

1. Name and address of claimant:

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and
 ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the
 REGIONAL DIRECTOR, NORTHWEST REGION

Department of the Interior
 Bureau of Indian Affairs
 911 N.E. 11th Ave. ,
 Portland, OR 97232

2. Date of Priority: Time Immemorial

3. a. Source of water supply: Springs (Federal I.D. #1100)

b. which is a tributary to: Gnat Creek

4. Point of Diversion: This claim is for a spring and/or fountain *in situ* including sufficient groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or fountains.

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1100-1	40N	5W	23	SENE	Boise	Latah
1100-2	40N	5W	23	SENE	Boise	Latah

See Attached Map.

5. Place of Use:

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1100-1	40N	5W	23	SENE	Boise	Latah
1100-2	40N	5W	23	SENE	Boise	Latah

See Attached Map.

6. Purpose of Water Use:

The purpose of use includes the full range of uses to which the Tribe and its members have always put the springs and fountains, including as a water source for consumptive use, for wildlife and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce Reservation pursuant to the documents referenced in Section 9 and the provisions in Section 10, *infra*.

7. Period of Use: January 1 through December 31.

8. Quantity Reserved (In cfs): Half the natural flow.

9. Basis of Claim:

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

10. Other Provisions:

- a. The United States has asserted other claims in the Palouse River Basin Adjudication. Paragraphs 10(a) – (g) express assertions applicable to all claims filed by the Bureau of Indian Affairs in its capacity as trustee for the Nez Perce Tribe in the Palouse River Basin Adjudication. The United States claims waters from groundwater and surface water sources within the Palouse River Basin in the state of Idaho to satisfy the rights reserved to the Nez Perce Tribe by the 1855 Treaty and the 1863 Treaty and to fulfill the permanent homeland purpose of the Nez Perce Reservation. Such present and future purposes include: instream flows for fish habitat; hunting, gathering, and pasturing; spring and fountains flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; and consumptive use claims on two allotments held in trust by the United States.
- b. The Nez Perce Tribe has occupied a territory in what is now central Idaho, southeastern Washington, and northeastern Oregon since time immemorial. *United States v. Webb*, 219 F.3d 1127, 1129 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). The Palouse River Basin is within the Tribe’s traditional lands.
- c. There is a complex history of the United States’ establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing

rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the “exclusive right to fish in all streams running through or bordering” the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the “right of taking fish at all usual and accustomed places in common with the citizens of the Territory” to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.

- d. Article III of the 1855 Treaty further reserves to the Tribe “the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land.”
- e. Article VIII of the Nez Perce Treaty of 1863 includes a unique provision reserving to the Nez Perce Tribe the use of “springs and fountains” within the area ceded under Article I of the 1863 Treaty. For purposes of the priority date of the springs and fountains claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.
- f. Pursuant to the General Allotment Act of 1887, Act of February 8, 1887, 24 Stat. 388, *amended*, Act of February 28, 1891, 26 Stat. 794, there are two allotments (Allotments 182-43 and 182-45) held in trust by the United States located within the boundaries of the Palouse River Basin and the northwestern corner of the Nez Perce Reservation. For purposes of the priority date of the domestic and stock watering claims for these two allotments, the United States claims June 11, 1855 pursuant to the 1855 Treaty.
- g. In order to comply with Idaho Code § 42-1409(1), the United States has designated “places of use,” “points of diversion,” and “purposes of use” in submitting this water rights claim. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe’s future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Reservation. The statute’s terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.

11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled “How you will receive notices in the Palouse River Basin Adjudication.”
- (b) I do ___ do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

For Organizations:

I do solemnly swear and affirm that I am Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.



Signature of Authorized Agent:

Title and Organization:

Northwest Regional Director
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

Notice is hereby given that the United States Department of Justice will represent the United States of America, including the U.S. Department of the Interior, Bureau of Indian Affairs, in all matters pertaining to the Palouse River Basin Adjudication.

All notices, filings and correspondence concerning this matter should be mailed to the United States Department of Justice at the address set forth below:



Katherine M. Kane
United States Department of Justice
Indian Resources Division
Natural Resources Section
999 18th Street
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

**Springs and Fountains Claims
in the Palouse River Basin Adjudication**

Legend

- Spring and Fountain Claim
- Palouse River Basin Adjudication Boundary
- Nez Perce Reservation Boundary (1863)
- Nez Perce Reservation Boundary (1855)
- Watercourses
- County Boundary
- ★ City or Town

USGS 10-Digit Hydrologic Unit Code

- 1706010904 Pine Creek
- 1706010801 Deep Creek-Palouse River
- 1706010803 Silver Creek-Palouse River
- 1706010802 South Fork Palouse River
- 1706010804 Union Flat Creek

Nez Perce Reservation (1855)

Nez Perce Reservation (1863)

Scale: 0 1 2 3 4 5 Miles

North Arrow

- **Spring and Fountain Claim**

○ Nez Perce Reservation Boundary (1863)

 Watercourses

★ City or Town

1706010901 Pine Creek

1706010801 Deep Creek-Palouse River

1706010803 Silver Creek-Palouse River

1706010802 South Fork Palouse River

1706010804 Union Flat Creek

**Nez Perce
Reservation
(1855)**

NEZ PERCE

CLEARWATER

**Nez Perce
Reservation
(1863)**



0 1 2 3 4 5 Miles

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS**

RECEIVED

IN RE: THE GENERAL)
ADJUDICATION OF RIGHTS)
TO THE USE OF WATER FROM)
THE PALOUSE RIVER BASIN)
WATER SYSTEM)

Case No.: 59576

DEC 30 2019

NOTICE OF CLAIMDEPARTMENT OF
WATER RESOURCES**Federal Reserved Water Right****1. Name and address of claimant:**

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and
ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the
REGIONAL DIRECTOR, NORTHWEST REGION

Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

2. Date of Priority: Time Immemorial**3. a. Source of water supply:** Spring (Federal I.D. #1101)**b. which is a tributary to:** Idlers Rest Creek**4. Point of Diversion:** This claim is for a spring and/or fountain *in situ* including sufficient groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or fountains.

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1101	40N	5W	28	NENE	Boise	Latah

See Attached Map.

5. Place of Use:

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1101	40N	5W	28	NENE	Boise	Latah

See Attached Map.

6. Purpose of Water Use:

The purpose of use includes the full range of uses to which the Tribe and its members have always put the springs and fountains, including as a water source for consumptive use, for wildlife and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce Reservation pursuant to the documents referenced in Section 9 and the provisions in Section 10, *infra*.

7. Period of Use: January 1 through December 31.

8. Quantity Reserved (In cfs): Half the natural flow.

9. Basis of Claim:

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

10. Other Provisions:

- a. The United States has asserted other claims in the Palouse River Basin Adjudication. Paragraphs 10(a) – (g) express assertions applicable to all claims filed by the Bureau of Indian Affairs in its capacity as trustee for the Nez Perce Tribe in the Palouse River Basin Adjudication. The United States claims waters from groundwater and surface water sources within the Palouse River Basin in the state of Idaho to satisfy the rights reserved to the Nez Perce Tribe by the 1855 Treaty and the 1863 Treaty and to fulfill the permanent homeland purpose of the Nez Perce Reservation. Such present and future purposes include: instream flows for fish habitat; hunting, gathering, and pasturing; spring and fountains flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; and consumptive use claims on two allotments held in trust by the United States.
- b. The Nez Perce Tribe has occupied a territory in what is now central Idaho, southeastern Washington, and northeastern Oregon since time immemorial. *United States v. Webb*, 219 F.3d 1127, 1129 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). The Palouse River Basin is within the Tribe’s traditional lands.
- c. There is a complex history of the United States’ establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing

rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the “exclusive right to fish in all streams running through or bordering” the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the “right of taking fish at all usual and accustomed places in common with the citizens of the Territory” to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.

- d. Article III of the 1855 Treaty further reserves to the Tribe “the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land.”
- e. Article VIII of the Nez Perce Treaty of 1863 includes a unique provision reserving to the Nez Perce Tribe the use of “springs and fountains” within the area ceded under Article I of the 1863 Treaty. For purposes of the priority date of the springs and fountains claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.
- f. Pursuant to the General Allotment Act of 1887, Act of February 8, 1887, 24 Stat. 388, *amended*, Act of February 28, 1891, 26 Stat. 794, there are two allotments (Allotments 182-43 and 182-45) held in trust by the United States located within the boundaries of the Palouse River Basin and the northwestern corner of the Nez Perce Reservation. For purposes of the priority date of the domestic and stock watering claims for these two allotments, the United States claims June 11, 1855 pursuant to the 1855 Treaty.
- g. In order to comply with Idaho Code § 42-1409(1), the United States has designated “places of use,” “points of diversion,” and “purposes of use” in submitting this water rights claim. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe’s future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Reservation. The statute’s terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.

11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled “How you will receive notices in the Palouse River Basin Adjudication.”
- (b) I do ___ do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

For Organizations:

I do solemnly swear and affirm that I am Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.



Signature of Authorized Agent:

Title and Organization:

Northwest Regional Director
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

Notice is hereby given that the United States Department of Justice will represent the United States of America, including the U.S. Department of the Interior, Bureau of Indian Affairs, in all matters pertaining to the Palouse River Basin Adjudication.

All notices, filings and correspondence concerning this matter should be mailed to the United States Department of Justice at the address set forth below:



Katherine M. Kane
United States Department of Justice
Indian Resources Division
Natural Resources Section
999 18th Street
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

**Springs and Fountains Claims
in the Palouse River Basin Adjudication**

Coeur d'Alene
Reservation

BENEWAH

LATAH

Washington

Idaho

Nez Perce
Reservation
(1855)

Nez Perce
Reservation
(1863)

CLEARWATER

Legend

- Spring and Fountain Claim
- Palouse River Basin Adjudication Boundary
- Nez Perce Reservation Boundary (1863)
- Nez Perce Reservation Boundary (1855)
- Watercourses
- County Boundary
- City or Town

USGS 10-Digit Hydrologic Unit Code

- 1706010901 Pine Creek
- 1706010801 Deep Creek-Palouse River
- 1706010803 Silver Creek-Palouse River
- 1706010802 South Fork Palouse River
- 1706010804 Union Flat Creek

0 1 2 3 4 5 Miles

- **Spring and Fountain Claim**

 Palouse River Basin Adjudication Boundary

○ Nez Perce Reservation Boundary (1863)

 Nez Perce Reservation Boundary (1855) Watercourses County Boundary

★ City or Town

USGS 10-Digit Hydrologic Unit Code

1706010901 Pine Creek

☐ 1706010801 Deep Creek-Palouse River

1706010803 Silver Creek-Palouse River

1706010802 South Fork Palouse River

1706010804 Union Flat Creek

© 1999 Blackwell Science Ltd, *Journal of Clinical Pharmacy and Therapeutics*, 24, 121-126

Nez Perce
Reservation
(1855)

NEZ PERCE

Nez Perce
Reservation
(1863)

Z

0 1 2 3 4 5 Miles

87-12107

**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 PALOUSE RIVER BASIN)
WATER SYSTEM)

Case No.: 59576

NOTICE OF CLAIM**Federal Reserved Water Right****RECEIVED****DEC 30 2019**DEPARTMENT OF
WATER RESOURCES**1. Name and address of claimant:**

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and
ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the
REGIONAL DIRECTOR, NORTHWEST REGION

Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

2. Date of Priority: Time Immemorial**3. a. Source of water supply:** Spring (Federal I.D. #1102)**b. which is a tributary to:** Idlers Rest Creek**4. Point of Diversion:** This claim is for a spring and/or fountain *in situ* including sufficient groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or fountains.

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1102	40N	5W	21	NESE	Boise	Latah

See Attached Map.

5. Place of Use:

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1102	40N	5W	21	NESE	Boise	Latah

See Attached Map.

6. Purpose of Water Use:

The purpose of use includes the full range of uses to which the Tribe and its members have always put the springs and fountains, including as a water source for consumptive use, for wildlife and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce Reservation pursuant to the documents referenced in Section 9 and the provisions in Section 10, *infra*.

7. Period of Use: January 1 through December 31.

8. Quantity Reserved (In cfs): Half the natural flow.

9. Basis of Claim:

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

10. Other Provisions:

- a. The United States has asserted other claims in the Palouse River Basin Adjudication. Paragraphs 10(a) – (g) express assertions applicable to all claims filed by the Bureau of Indian Affairs in its capacity as trustee for the Nez Perce Tribe in the Palouse River Basin Adjudication. The United States claims waters from groundwater and surface water sources within the Palouse River Basin in the state of Idaho to satisfy the rights reserved to the Nez Perce Tribe by the 1855 Treaty and the 1863 Treaty and to fulfill the permanent homeland purpose of the Nez Perce Reservation. Such present and future purposes include: instream flows for fish habitat; hunting, gathering, and pasturing; spring and fountains flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; and consumptive use claims on two allotments held in trust by the United States.
- b. The Nez Perce Tribe has occupied a territory in what is now central Idaho, southeastern Washington, and northeastern Oregon since time immemorial. *United States v. Webb*, 219 F.3d 1127, 1129 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). The Palouse River Basin is within the Tribe’s traditional lands.
- c. There is a complex history of the United States’ establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing

rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the “exclusive right to fish in all streams running through or bordering” the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the “right of taking fish at all usual and accustomed places in common with the citizens of the Territory” to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.

- d. Article III of the 1855 Treaty further reserves to the Tribe “the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land.”
- e. Article VIII of the Nez Perce Treaty of 1863 includes a unique provision reserving to the Nez Perce Tribe the use of “springs and fountains” within the area ceded under Article I of the 1863 Treaty. For purposes of the priority date of the springs and fountains claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.
- f. Pursuant to the General Allotment Act of 1887, Act of February 8, 1887, 24 Stat. 388, *amended*, Act of February 28, 1891, 26 Stat. 794, there are two allotments (Allotments 182-43 and 182-45) held in trust by the United States located within the boundaries of the Palouse River Basin and the northwestern corner of the Nez Perce Reservation. For purposes of the priority date of the domestic and stock watering claims for these two allotments, the United States claims June 11, 1855 pursuant to the 1855 Treaty.
- g. In order to comply with Idaho Code § 42-1409(1), the United States has designated “places of use,” “points of diversion,” and “purposes of use” in submitting this water rights claim. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe’s future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Reservation. The statute’s terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.

11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled “How you will receive notices in the Palouse River Basin Adjudication.”
- (b) I do ___ do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

For Organizations:

I do solemnly swear and affirm that I am Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.



Signature of Authorized Agent:

Title and Organization:

Northwest Regional Director
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

Notice is hereby given that the United States Department of Justice will represent the United States of America, including the U.S. Department of the Interior, Bureau of Indian Affairs, in all matters pertaining to the Palouse River Basin Adjudication.

All notices, filings and correspondence concerning this matter should be mailed to the United States Department of Justice at the address set forth below:

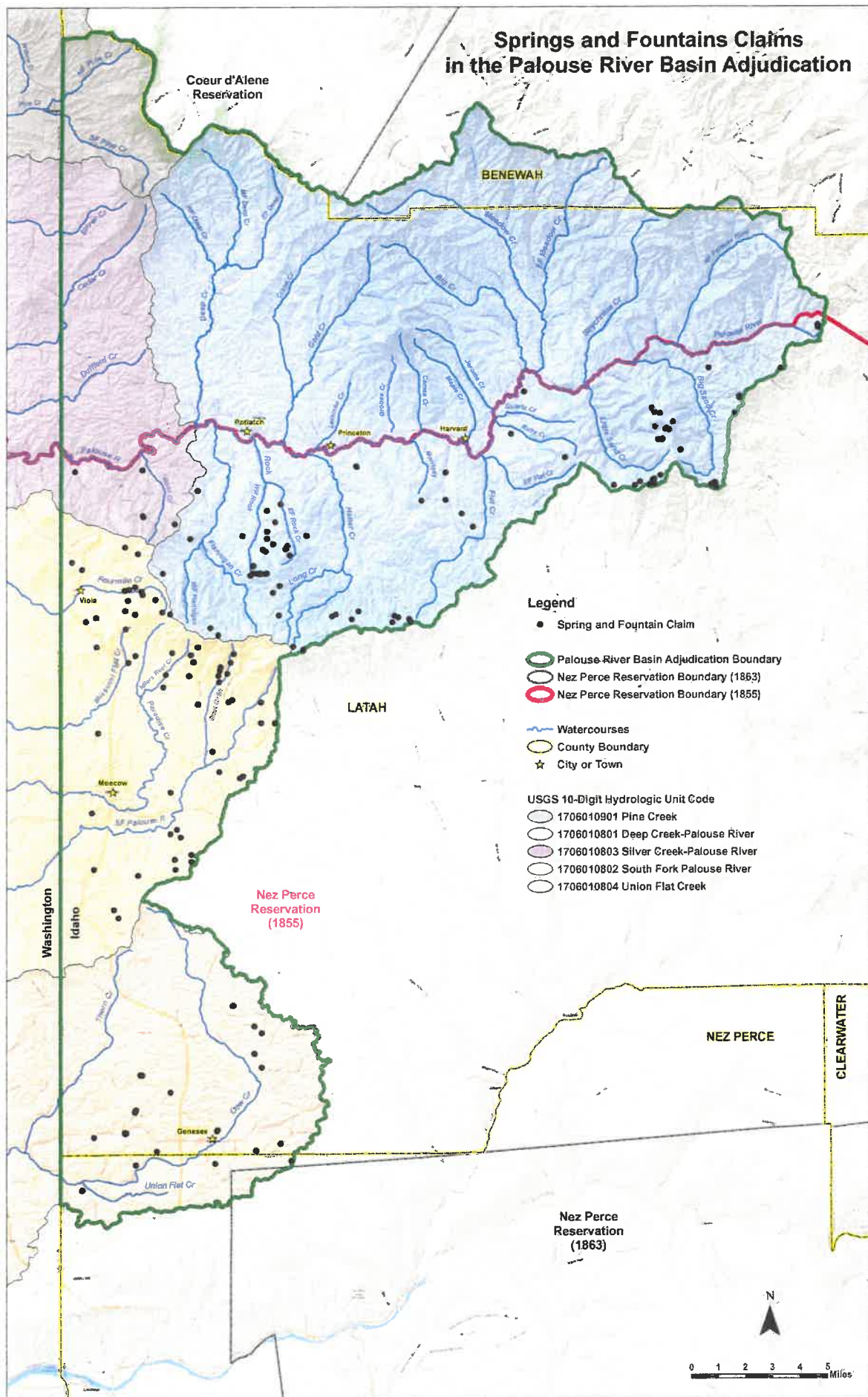


Katherine M. Kane
United States Department of Justice
Indian Resources Division
Natural Resources Section
999 18th Street
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

Springs and Fountains Claims in the Palouse River Basin Adjudication



**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 PALOUSE RIVER BASIN)
WATER SYSTEM)

Case No.: 59576

NOTICE OF CLAIM

Federal Reserved Water Right

RECEIVED

DEC 30 2019

DEPARTMENT OF
WATER RESOURCES

1. Name and address of claimant:

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and
ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the
REGIONAL DIRECTOR, NORTHWEST REGION

Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

2. Date of Priority: Time Immemorial

3. a. Source of water supply: Springs (Federal I.D. #1103)

b. which is a tributary to: Thorn Creek

4. Point of Diversion: This claim is for a spring and/or fountain *in situ* including sufficient groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or fountains.

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1103-1	37N	5W	4	NWNW	Boise	Latah
1103-2	37N	5W	4	NWNW	Boise	Latah
1103-3	37N	5W	4	NWNW	Boise	Latah

See Attached Map.

5. Place of Use:

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1103-1	37N	5W	4	NWNW	Boise	Latah
1103-2	37N	5W	4	NWNW	Boise	Latah
1103-3	37N	5W	4	NWNW	Boise	Latah

See Attached Map.

6. Purpose of Water Use:

The purpose of use includes the full range of uses to which the Tribe and its members have always put the springs and fountains, including as a water source for consumptive use, for wildlife and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce Reservation pursuant to the documents referenced in Section 9 and the provisions in Section 10, *infra*.

7. Period of Use: January 1 through December 31.

8. Quantity Reserved (In cfs): Half the natural flow.

9. Basis of Claim:

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

10. Other Provisions:

- a. The United States has asserted other claims in the Palouse River Basin Adjudication. Paragraphs 10(a) – (g) express assertions applicable to all claims filed by the Bureau of Indian Affairs in its capacity as trustee for the Nez Perce Tribe in the Palouse River Basin Adjudication. The United States claims waters from groundwater and surface water sources within the Palouse River Basin in the state of Idaho to satisfy the rights reserved to the Nez Perce Tribe by the 1855 Treaty and the 1863 Treaty and to fulfill the permanent homeland purpose of the Nez Perce Reservation. Such present and future purposes include: instream flows for fish habitat; hunting, gathering, and pasturing; spring and fountains flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; and consumptive use claims on two allotments held in trust by the United States.
- b. The Nez Perce Tribe has occupied a territory in what is now central Idaho, southeastern Washington, and northeastern Oregon since time immemorial. *United States v. Webb*, 219 F.3d 1127, 1129 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). The Palouse River Basin is within the Tribe’s traditional lands.
- c. There is a complex history of the United States’ establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing

rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the “exclusive right to fish in all streams running through or bordering” the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the “right of taking fish at all usual and accustomed places in common with the citizens of the Territory” to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.

- d. Article III of the 1855 Treaty further reserves to the Tribe “the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land.”
- e. Article VIII of the Nez Perce Treaty of 1863 includes a unique provision reserving to the Nez Perce Tribe the use of “springs and fountains” within the area ceded under Article I of the 1863 Treaty. For purposes of the priority date of the springs and fountains claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.
- f. Pursuant to the General Allotment Act of 1887, Act of February 8, 1887, 24 Stat. 388, *amended*, Act of February 28, 1891, 26 Stat. 794, there are two allotments (Allotments 182-43 and 182-45) held in trust by the United States located within the boundaries of the Palouse River Basin and the northwestern corner of the Nez Perce Reservation. For purposes of the priority date of the domestic and stock watering claims for these two allotments, the United States claims June 11, 1855 pursuant to the 1855 Treaty.
- g. In order to comply with Idaho Code § 42-1409(1), the United States has designated “places of use,” “points of diversion,” and “purposes of use” in submitting this water rights claim. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe’s future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Reservation. The statute’s terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.

11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled “How you will receive notices in the Palouse River Basin Adjudication.”
- (b) I do ___ do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

For Organizations:

I do solemnly swear and affirm that I am Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.



Signature of Authorized Agent:

Title and Organization:

Northwest Regional Director
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

Notice is hereby given that the United States Department of Justice will represent the United States of America, including the U.S. Department of the Interior, Bureau of Indian Affairs, in all matters pertaining to the Palouse River Basin Adjudication.

All notices, filings and correspondence concerning this matter should be mailed to the United States Department of Justice at the address set forth below:

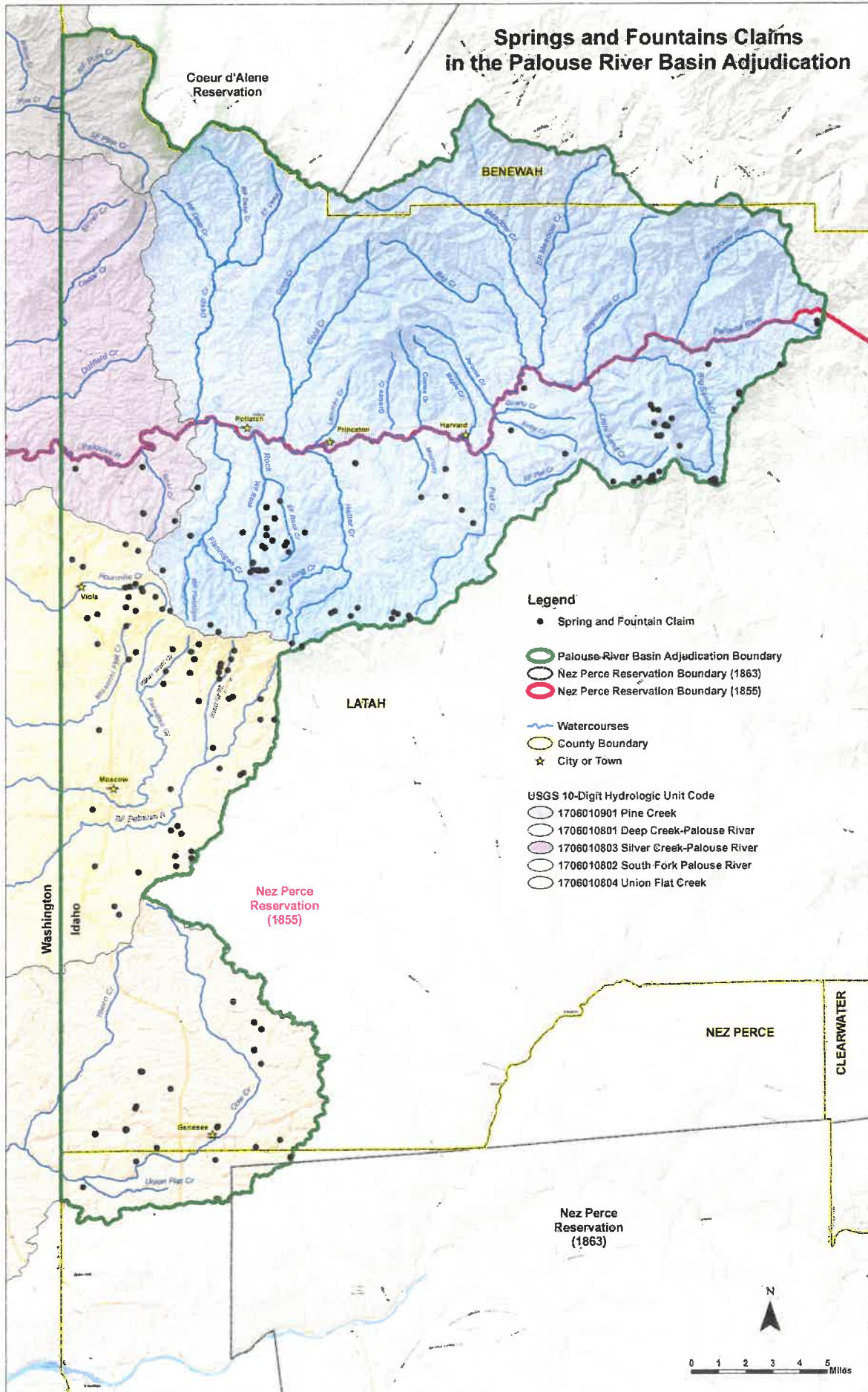


Katherine M. Kane
United States Department of Justice
Indian Resources Division
Natural Resources Section
999 18th Street
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

Springs and Fountains Claims in the Palouse River Basin Adjudication



87-12109

**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 PALOUSE RIVER BASIN)
WATER SYSTEM)

Case No.: 59576

NOTICE OF CLAIM

Federal Reserved Water Right

RECEIVED

DEC 30 2019

DEPARTMENT OF
WATER RESOURCES

1. Name and address of claimant:

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the REGIONAL DIRECTOR, NORTHWEST REGION

Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

2. Date of Priority: Time Immemorial

3. a. Source of water supply: Spring (Federal I.D. #1104)

b. which is a tributary to: South Fork Palouse River

4. Point of Diversion: This claim is for a spring and/or fountain *in situ* including sufficient groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or fountains.

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1104	39N	5W	18	NESW	Boise	Latah

See Attached Map.

5. Place of Use:

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1104	39N	5W	18	NESW	Boise	Latah

See Attached Map.

6. Purpose of Water Use:

The purpose of use includes the full range of uses to which the Tribe and its members have always put the springs and fountains, including as a water source for consumptive use, for wildlife and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce Reservation pursuant to the documents referenced in Section 9 and the provisions in Section 10, *infra*.

7. Period of Use: January 1 through December 31.

8. Quantity Reserved (In cfs): Half the natural flow.

9. Basis of Claim:

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

10. Other Provisions:

- a. The United States has asserted other claims in the Palouse River Basin Adjudication. Paragraphs 10(a) – (g) express assertions applicable to all claims filed by the Bureau of Indian Affairs in its capacity as trustee for the Nez Perce Tribe in the Palouse River Basin Adjudication. The United States claims waters from groundwater and surface water sources within the Palouse River Basin in the state of Idaho to satisfy the rights reserved to the Nez Perce Tribe by the 1855 Treaty and the 1863 Treaty and to fulfill the permanent homeland purpose of the Nez Perce Reservation. Such present and future purposes include: instream flows for fish habitat; hunting, gathering, and pasturing; spring and fountains flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; and consumptive use claims on two allotments held in trust by the United States.
- b. The Nez Perce Tribe has occupied a territory in what is now central Idaho, southeastern Washington, and northeastern Oregon since time immemorial. *United States v. Webb*, 219 F.3d 1127, 1129 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). The Palouse River Basin is within the Tribe’s traditional lands.
- c. There is a complex history of the United States’ establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing

rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the “exclusive right to fish in all streams running through or bordering” the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the “right of taking fish at all usual and accustomed places in common with the citizens of the Territory” to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.

- d. Article III of the 1855 Treaty further reserves to the Tribe “the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land.”
- e. Article VIII of the Nez Perce Treaty of 1863 includes a unique provision reserving to the Nez Perce Tribe the use of “springs and fountains” within the area ceded under Article I of the 1863 Treaty. For purposes of the priority date of the springs and fountains claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.
- f. Pursuant to the General Allotment Act of 1887, Act of February 8, 1887, 24 Stat. 388, *amended*, Act of February 28, 1891, 26 Stat. 794, there are two allotments (Allotments 182-43 and 182-45) held in trust by the United States located within the boundaries of the Palouse River Basin and the northwestern corner of the Nez Perce Reservation. For purposes of the priority date of the domestic and stock watering claims for these two allotments, the United States claims June 11, 1855 pursuant to the 1855 Treaty.
- g. In order to comply with Idaho Code § 42-1409(1), the United States has designated “places of use,” “points of diversion,” and “purposes of use” in submitting this water rights claim. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe’s future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Reservation. The statute’s terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.

11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled “How you will receive notices in the Palouse River Basin Adjudication.”
- (b) I do ___ do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

For Organizations:

I do solemnly swear and affirm that I am Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.



Signature of Authorized Agent:

Title and Organization:

Northwest Regional Director
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

Notice is hereby given that the United States Department of Justice will represent the United States of America, including the U.S. Department of the Interior, Bureau of Indian Affairs, in all matters pertaining to the Palouse River Basin Adjudication.

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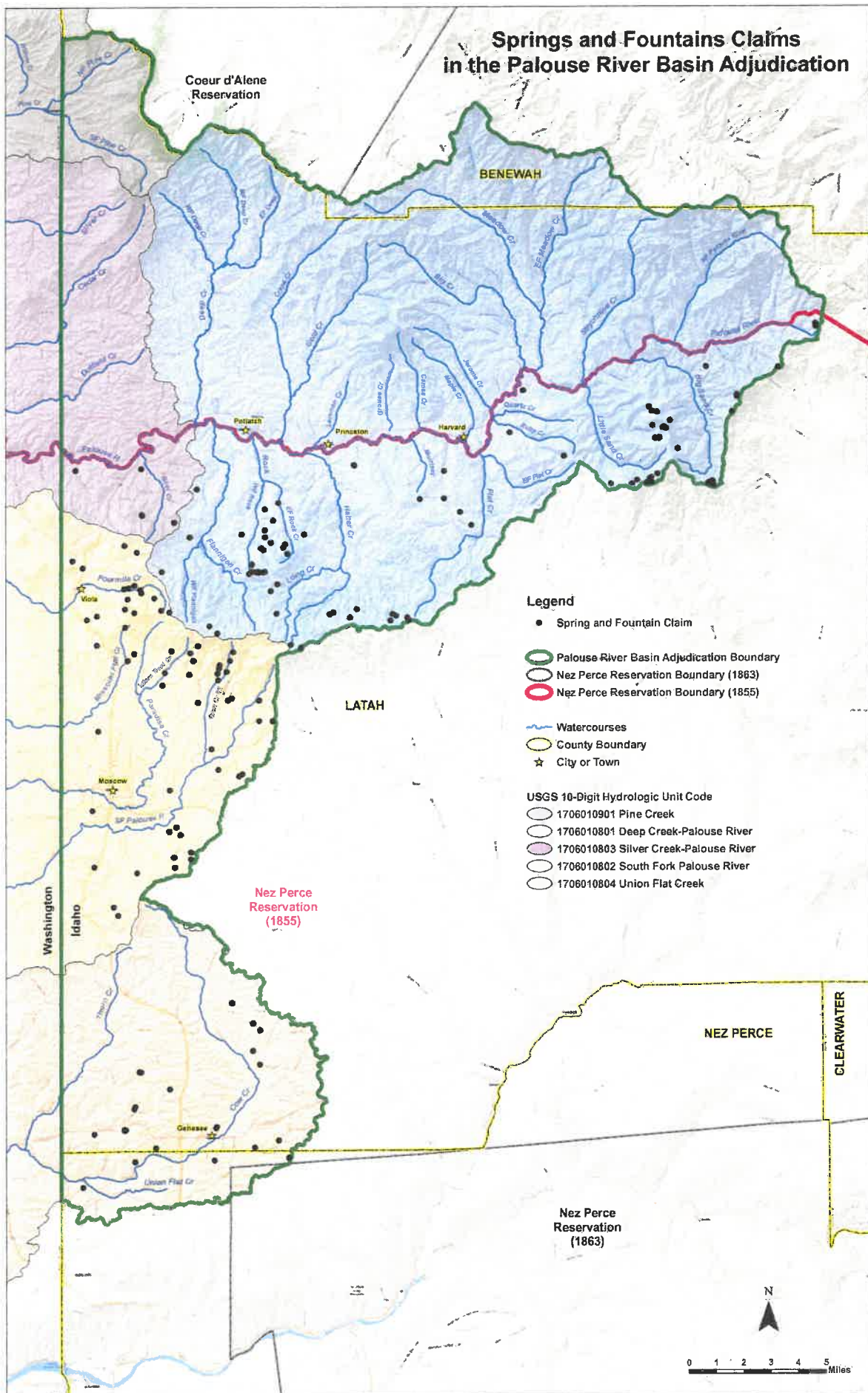


Katherine M. Kane
United States Department of Justice
Indian Resources Division
Natural Resources Section
999 18th Street
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

Springs and Fountains Claims in the Palouse River Basin Adjudication



**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 PALOUSE RIVER BASIN)
WATER SYSTEM)

Case No.: 59576

NOTICE OF CLAIM

Federal Reserved Water Right

RECEIVED

DEC 30 2019

DEPARTMENT OF
WATER RESOURCES

1. Name and address of claimant:

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and
ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the
REGIONAL DIRECTOR, NORTHWEST REGION

Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

2. Date of Priority: Time Immemorial

3. a. Source of water supply: Spring (Federal I.D. #1105)

b. which is a tributary to: Fourmile Creek

4. Point of Diversion: This claim is for a spring and/or fountain *in situ* including sufficient groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or fountains.

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1105	40N	5W	5	SWNE	Boise	Latah

See Attached Map.

5. Place of Use:

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1105	40N	5W	5	SWNE	Boise	Latah

See Attached Map.

6. Purpose of Water Use:

The purpose of use includes the full range of uses to which the Tribe and its members have always put the springs and fountains, including as a water source for consumptive use, for wildlife and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce Reservation pursuant to the documents referenced in Section 9 and the provisions in Section 10, *infra*.

7. Period of Use: January 1 through December 31.

8. Quantity Reserved (In cfs): Half the natural flow.

9. Basis of Claim:

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

10. Other Provisions:

- a. The United States has asserted other claims in the Palouse River Basin Adjudication. Paragraphs 10(a) – (g) express assertions applicable to all claims filed by the Bureau of Indian Affairs in its capacity as trustee for the Nez Perce Tribe in the Palouse River Basin Adjudication. The United States claims waters from groundwater and surface water sources within the Palouse River Basin in the state of Idaho to satisfy the rights reserved to the Nez Perce Tribe by the 1855 Treaty and the 1863 Treaty and to fulfill the permanent homeland purpose of the Nez Perce Reservation. Such present and future purposes include: instream flows for fish habitat; hunting, gathering, and pasturing; spring and fountains flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; and consumptive use claims on two allotments held in trust by the United States.
- b. The Nez Perce Tribe has occupied a territory in what is now central Idaho, southeastern Washington, and northeastern Oregon since time immemorial. *United States v. Webb*, 219 F.3d 1127, 1129 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). The Palouse River Basin is within the Tribe’s traditional lands.
- c. There is a complex history of the United States’ establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing

rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the “exclusive right to fish in all streams running through or bordering” the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the “right of taking fish at all usual and accustomed places in common with the citizens of the Territory” to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.

- d. Article III of the 1855 Treaty further reserves to the Tribe “the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land.”
- e. Article VIII of the Nez Perce Treaty of 1863 includes a unique provision reserving to the Nez Perce Tribe the use of “springs and fountains” within the area ceded under Article I of the 1863 Treaty. For purposes of the priority date of the springs and fountains claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.
- f. Pursuant to the General Allotment Act of 1887, Act of February 8, 1887, 24 Stat. 388, *amended*, Act of February 28, 1891, 26 Stat. 794, there are two allotments (Allotments 182-43 and 182-45) held in trust by the United States located within the boundaries of the Palouse River Basin and the northwestern corner of the Nez Perce Reservation. For purposes of the priority date of the domestic and stock watering claims for these two allotments, the United States claims June 11, 1855 pursuant to the 1855 Treaty.
- g. In order to comply with Idaho Code § 42-1409(1), the United States has designated “places of use,” “points of diversion,” and “purposes of use” in submitting this water rights claim. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe’s future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Reservation. The statute’s terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.

11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled “How you will receive notices in the Palouse River Basin Adjudication.”
- (b) I do ___ do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

For Organizations:

I do solemnly swear and affirm that I am Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.



Signature of Authorized Agent:

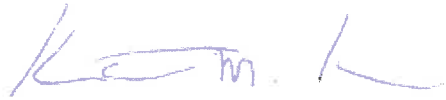
Title and Organization:

Northwest Regional Director
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

Notice is hereby given that the United States Department of Justice will represent the United States of America, including the U.S. Department of the Interior, Bureau of Indian Affairs, in all matters pertaining to the Palouse River Basin Adjudication.

All notices, filings and correspondence concerning this matter should be mailed to the United States Department of Justice at the address set forth below:

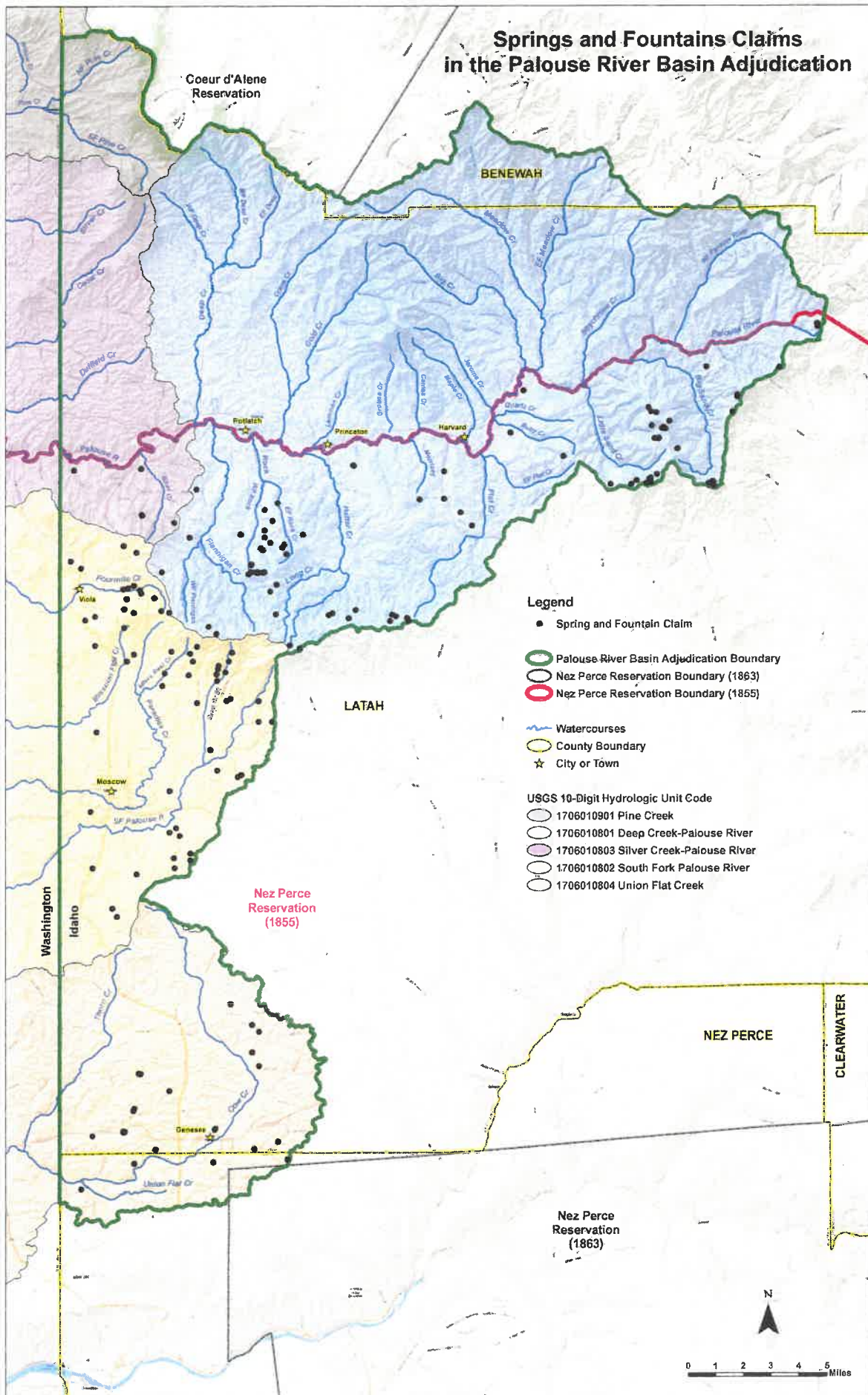


Katherine M. Kane
United States Department of Justice
Indian Resources Division
Natural Resources Section
999 18th Street
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

Springs and Fountains Claims in the Palouse River Basin Adjudication



**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 PALOUSE RIVER BASIN)
WATER SYSTEM)
)
)
)
)

Case No.: 59576
NOTICE OF CLAIM
Federal Reserved Water Right

RECEIVED

DEC 30 2019

DEPARTMENT OF
WATER RESOURCES

1. Name and address of claimant:

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and
ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the
REGIONAL DIRECTOR, NORTHWEST REGION

Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

2. Date of Priority: Time Immemorial

3. a. Source of water supply: Spring (Federal I.D. #1106)

b. which is a tributary to: Gnat Creek

4. Point of Diversion: This claim is for a spring and/or fountain *in situ* including sufficient groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or fountains.

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1106	40N	5W	13	SESW	Boise	Latah

See Attached Map.

5. Place of Use:

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1106	40N	5W	13	SESW	Boise	Latah

See Attached Map.

6. Purpose of Water Use:

The purpose of use includes the full range of uses to which the Tribe and its members have always put the springs and fountains, including as a water source for consumptive use, for wildlife and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce Reservation pursuant to the documents referenced in Section 9 and the provisions in Section 10, *infra*.

7. Period of Use: January 1 through December 31.

8. Quantity Reserved (In cfs): Half the natural flow.

9. Basis of Claim:

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

10. Other Provisions:

- a. The United States has asserted other claims in the Palouse River Basin Adjudication. Paragraphs 10(a) – (g) express assertions applicable to all claims filed by the Bureau of Indian Affairs in its capacity as trustee for the Nez Perce Tribe in the Palouse River Basin Adjudication. The United States claims waters from groundwater and surface water sources within the Palouse River Basin in the state of Idaho to satisfy the rights reserved to the Nez Perce Tribe by the 1855 Treaty and the 1863 Treaty and to fulfill the permanent homeland purpose of the Nez Perce Reservation. Such present and future purposes include: instream flows for fish habitat; hunting, gathering, and pasturing; spring and fountains flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; and consumptive use claims on two allotments held in trust by the United States.
- b. The Nez Perce Tribe has occupied a territory in what is now central Idaho, southeastern Washington, and northeastern Oregon since time immemorial. *United States v. Webb*, 219 F.3d 1127, 1129 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). The Palouse River Basin is within the Tribe’s traditional lands.
- c. There is a complex history of the United States’ establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing

rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the “exclusive right to fish in all streams running through or bordering” the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the “right of taking fish at all usual and accustomed places in common with the citizens of the Territory” to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.

- d. Article III of the 1855 Treaty further reserves to the Tribe “the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land.”
- e. Article VIII of the Nez Perce Treaty of 1863 includes a unique provision reserving to the Nez Perce Tribe the use of “springs and fountains” within the area ceded under Article I of the 1863 Treaty. For purposes of the priority date of the springs and fountains claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.
- f. Pursuant to the General Allotment Act of 1887, Act of February 8, 1887, 24 Stat. 388, *amended*, Act of February 28, 1891, 26 Stat. 794, there are two allotments (Allotments 182-43 and 182-45) held in trust by the United States located within the boundaries of the Palouse River Basin and the northwestern corner of the Nez Perce Reservation. For purposes of the priority date of the domestic and stock watering claims for these two allotments, the United States claims June 11, 1855 pursuant to the 1855 Treaty.
- g. In order to comply with Idaho Code § 42-1409(1), the United States has designated “places of use,” “points of diversion,” and “purposes of use” in submitting this water rights claim. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe’s future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Reservation. The statute’s terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.

11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled “How you will receive notices in the Palouse River Basin Adjudication.”
- (b) I do ___ do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

For Organizations:

I do solemnly swear and affirm that I am Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.



Signature of Authorized Agent:

Title and Organization:

Northwest Regional Director
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

Notice is hereby given that the United States Department of Justice will represent the United States of America, including the U.S. Department of the Interior, Bureau of Indian Affairs, in all matters pertaining to the Palouse River Basin Adjudication.

All notices, filings and correspondence concerning this matter should be mailed to the United States Department of Justice at the address set forth below:

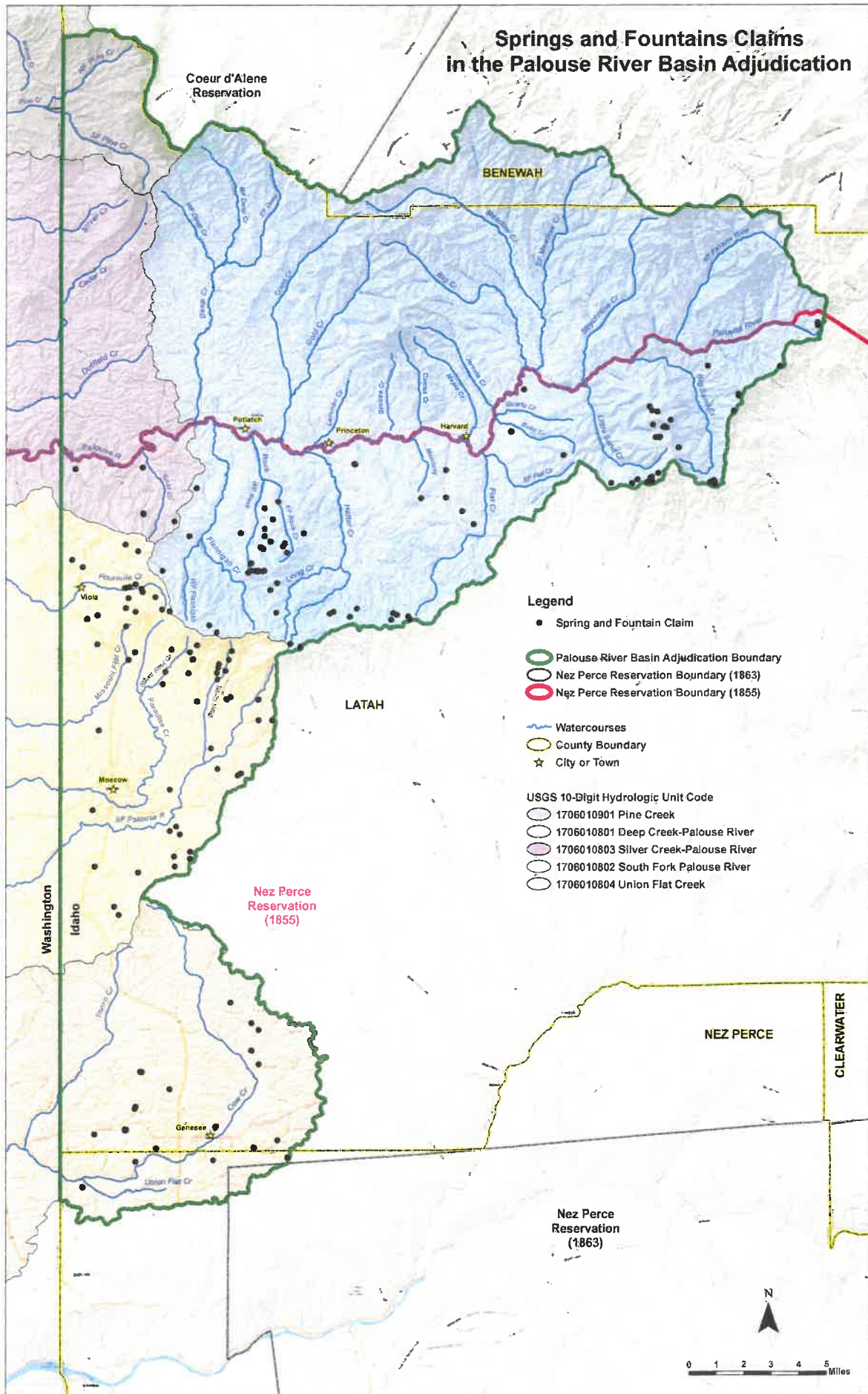


Katherine M. Kane
United States Department of Justice
Indian Resources Division
Natural Resources Section
999 18th Street
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

Springs and Fountains Claims in the Palouse River Basin Adjudication



**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 PALOUSE RIVER BASIN)
WATER SYSTEM)
)
)
)

Case No.: 59576

NOTICE OF CLAIM

Federal Reserved Water Right

RECEIVED

DEC 30 2019

DEPARTMENT OF
WATER RESOURCES

1. Name and address of claimant:

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and
ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the
REGIONAL DIRECTOR, NORTHWEST REGION

Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

2. Date of Priority: Time Immemorial

3. a. Source of water supply: Spring (Federal I.D. #1107)

b. which is a tributary to: Palouse River

4. Point of Diversion: This claim is for a spring and/or fountain *in situ* including sufficient groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or fountains.

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1107	41N	4W	15	NENE	Boise	Latah

See Attached Map.

5. Place of Use:

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1107	41N	4W	15	NENE	Boise	Latah

See Attached Map.

6. Purpose of Water Use:

The purpose of use includes the full range of uses to which the Tribe and its members have always put the springs and fountains, including as a water source for consumptive use, for wildlife and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce Reservation pursuant to the documents referenced in Section 9 and the provisions in Section 10, *infra*.

7. Period of Use: January 1 through December 31.

8. Quantity Reserved (In cfs): Half the natural flow.

9. Basis of Claim:

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

10. Other Provisions:

- a. The United States has asserted other claims in the Palouse River Basin Adjudication. Paragraphs 10(a) – (g) express assertions applicable to all claims filed by the Bureau of Indian Affairs in its capacity as trustee for the Nez Perce Tribe in the Palouse River Basin Adjudication. The United States claims waters from groundwater and surface water sources within the Palouse River Basin in the state of Idaho to satisfy the rights reserved to the Nez Perce Tribe by the 1855 Treaty and the 1863 Treaty and to fulfill the permanent homeland purpose of the Nez Perce Reservation. Such present and future purposes include: instream flows for fish habitat; hunting, gathering, and pasturing; spring and fountains flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; and consumptive use claims on two allotments held in trust by the United States.
- b. The Nez Perce Tribe has occupied a territory in what is now central Idaho, southeastern Washington, and northeastern Oregon since time immemorial. *United States v. Webb*, 219 F.3d 1127, 1129 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). The Palouse River Basin is within the Tribe’s traditional lands.
- c. There is a complex history of the United States’ establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing

rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the “exclusive right to fish in all streams running through or bordering” the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the “right of taking fish at all usual and accustomed places in common with the citizens of the Territory” to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.

- d. Article III of the 1855 Treaty further reserves to the Tribe “the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land.”
- e. Article VIII of the Nez Perce Treaty of 1863 includes a unique provision reserving to the Nez Perce Tribe the use of “springs and fountains” within the area ceded under Article I of the 1863 Treaty. For purposes of the priority date of the springs and fountains claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.
- f. Pursuant to the General Allotment Act of 1887, Act of February 8, 1887, 24 Stat. 388, *amended*, Act of February 28, 1891, 26 Stat. 794, there are two allotments (Allotments 182-43 and 182-45) held in trust by the United States located within the boundaries of the Palouse River Basin and the northwestern corner of the Nez Perce Reservation. For purposes of the priority date of the domestic and stock watering claims for these two allotments, the United States claims June 11, 1855 pursuant to the 1855 Treaty.
- g. In order to comply with Idaho Code § 42-1409(1), the United States has designated “places of use,” “points of diversion,” and “purposes of use” in submitting this water rights claim. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe’s future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Reservation. The statute’s terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.

11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled “How you will receive notices in the Palouse River Basin Adjudication.”
- (b) I do ___ do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

For Organizations:

I do solemnly swear and affirm that I am Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.



Signature of Authorized Agent:

Title and Organization:

Northwest Regional Director
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

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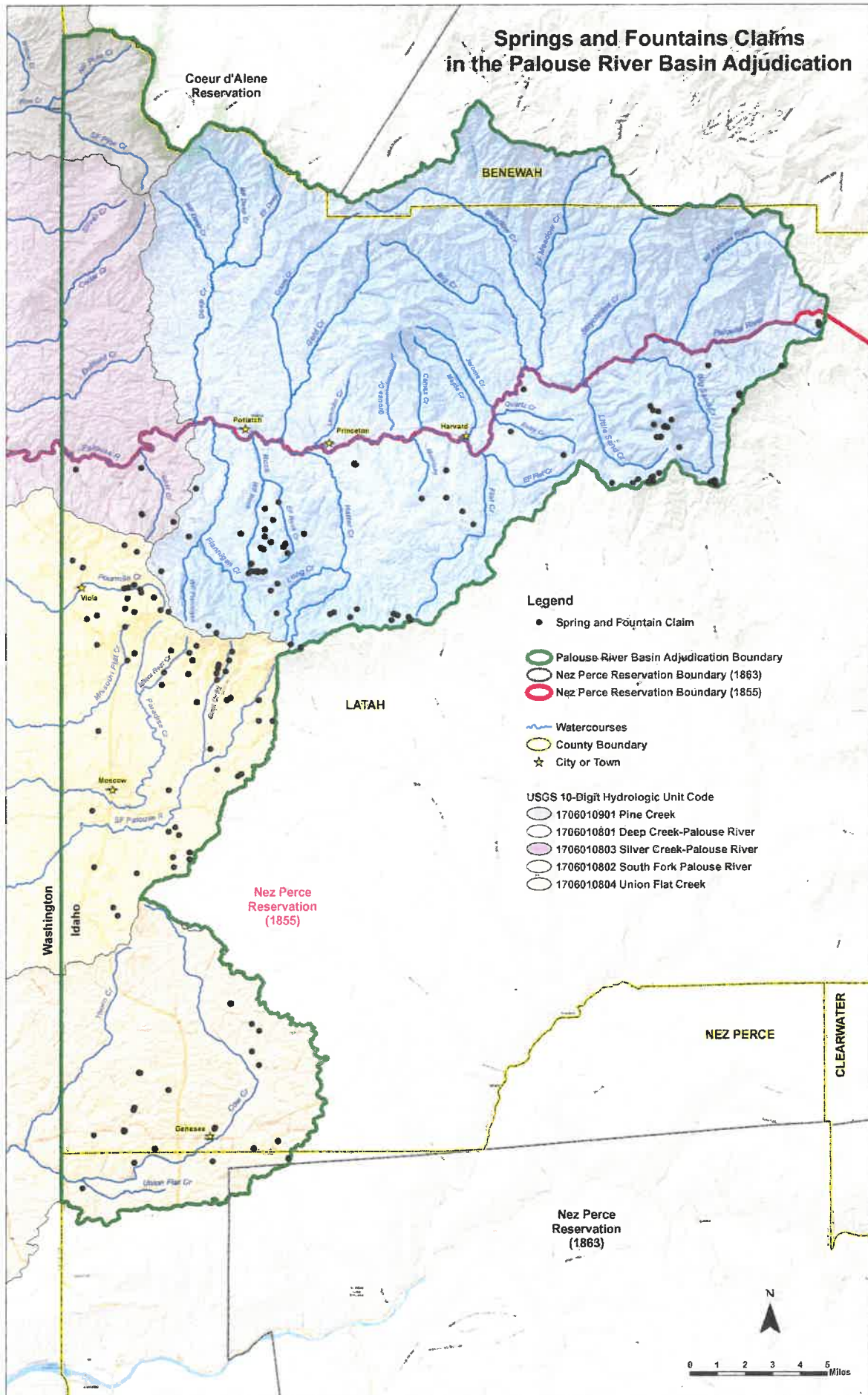


Katherine M. Kane
United States Department of Justice
Indian Resources Division
Natural Resources Section
999 18th Street
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

Springs and Fountains Claims in the Palouse River Basin Adjudication



87-12113

**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)	Case No.: 59576
ADJUDICATION OF RIGHTS)	
TO THE USE OF WATER FROM)	NOTICE OF CLAIM
THE PALOUSE RIVER BASIN)	
WATER SYSTEM)	Federal Reserved Water Right
)	
)	

1. Name and address of claimant:

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the REGIONAL DIRECTOR, NORTHWEST REGION

Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

RECEIVED
DEC 30 2019
DEPARTMENT OF
WATER RESOURCES

2. Date of Priority: Time Immemorial

3. a. Source of water supply: Spring (Federal I.D. #1108)

b. which is a tributary to: Palouse River

4. Point of Diversion: This claim is for a spring and/or fountain *in situ* including sufficient groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or fountains.

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1108	41N	4W	15	NENE	Boise	Latah

See Attached Map.

5. Place of Use:

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1108	41N	4W	15	NENE	Boise	Latah

See Attached Map.

6. Purpose of Water Use:

The purpose of use includes the full range of uses to which the Tribe and its members have always put the springs and fountains, including as a water source for consumptive use, for wildlife and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce Reservation pursuant to the documents referenced in Section 9 and the provisions in Section 10, *infra*.

7. Period of Use: January 1 through December 31.

8. Quantity Reserved (In cfs): Half the natural flow.

9. Basis of Claim:

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

10. Other Provisions:

- a. The United States has asserted other claims in the Palouse River Basin Adjudication. Paragraphs 10(a) – (g) express assertions applicable to all claims filed by the Bureau of Indian Affairs in its capacity as trustee for the Nez Perce Tribe in the Palouse River Basin Adjudication. The United States claims waters from groundwater and surface water sources within the Palouse River Basin in the state of Idaho to satisfy the rights reserved to the Nez Perce Tribe by the 1855 Treaty and the 1863 Treaty and to fulfill the permanent homeland purpose of the Nez Perce Reservation. Such present and future purposes include: instream flows for fish habitat; hunting, gathering, and pasturing; spring and fountains flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; and consumptive use claims on two allotments held in trust by the United States.
- b. The Nez Perce Tribe has occupied a territory in what is now central Idaho, southeastern Washington, and northeastern Oregon since time immemorial. *United States v. Webb*, 219 F.3d 1127, 1129 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). The Palouse River Basin is within the Tribe’s traditional lands.
- c. There is a complex history of the United States’ establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing

rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the “exclusive right to fish in all streams running through or bordering” the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the “right of taking fish at all usual and accustomed places in common with the citizens of the Territory” to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.

- d. Article III of the 1855 Treaty further reserves to the Tribe “the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land.”
- e. Article VIII of the Nez Perce Treaty of 1863 includes a unique provision reserving to the Nez Perce Tribe the use of “springs and fountains” within the area ceded under Article I of the 1863 Treaty. For purposes of the priority date of the springs and fountains claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.
- f. Pursuant to the General Allotment Act of 1887, Act of February 8, 1887, 24 Stat. 388, *amended*, Act of February 28, 1891, 26 Stat. 794, there are two allotments (Allotments 182-43 and 182-45) held in trust by the United States located within the boundaries of the Palouse River Basin and the northwestern corner of the Nez Perce Reservation. For purposes of the priority date of the domestic and stock watering claims for these two allotments, the United States claims June 11, 1855 pursuant to the 1855 Treaty.
- g. In order to comply with Idaho Code § 42-1409(1), the United States has designated “places of use,” “points of diversion,” and “purposes of use” in submitting this water rights claim. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe’s future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Reservation. The statute’s terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.

11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled “How you will receive notices in the Palouse River Basin Adjudication.”
- (b) I do do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

For Organizations:

I do solemnly swear and affirm that I am Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.



Signature of Authorized Agent:

Title and Organization:

Northwest Regional Director
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

Notice is hereby given that the United States Department of Justice will represent the United States of America, including the U.S. Department of the Interior, Bureau of Indian Affairs, in all matters pertaining to the Palouse River Basin Adjudication.

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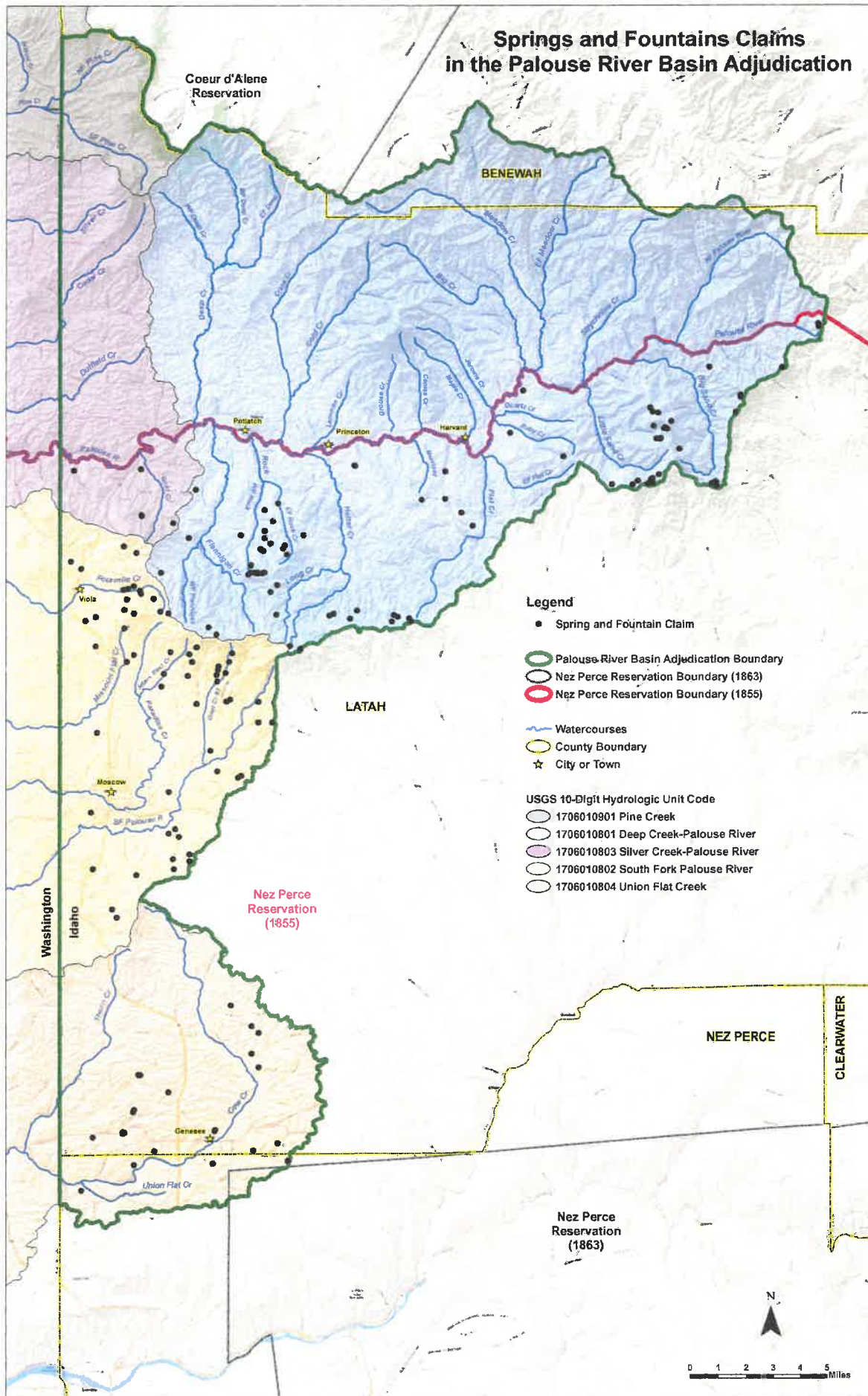


Katherine M. Kane
United States Department of Justice
Indian Resources Division
Natural Resources Section
999 18th Street
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

Springs and Fountains Claims in the Palouse River Basin Adjudication



87-12114

**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 PALOUSE RIVER BASIN)
WATER SYSTEM)

Case No.: 59576

NOTICE OF CLAIM

Federal Reserved Water Right

RECEIVED
DEC 30 2019

DEPARTMENT OF
WATER RESOURCES

1. Name and address of claimant:

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and
ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the
REGIONAL DIRECTOR, NORTHWEST REGION

Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

2. Date of Priority: Time Immemorial

3. a. Source of water supply: Spring (Federal I.D. #1109)

b. which is a tributary to: West Fork Rock Creek

4. Point of Diversion: This claim is for a spring and/or fountain *in situ* including sufficient groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or fountains.

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1109	41N	4W	30	NENE	Boise	Latah

See Attached Map.

5. Place of Use:

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1109	41N	4W	30	NENE	Boise	Latah

See Attached Map.

6. Purpose of Water Use:

The purpose of use includes the full range of uses to which the Tribe and its members have always put the springs and fountains, including as a water source for consumptive use, for wildlife and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce Reservation pursuant to the documents referenced in Section 9 and the provisions in Section 10, *infra*.

7. Period of Use: January 1 through December 31.

8. Quantity Reserved (In cfs): Half the natural flow.

9. Basis of Claim:

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

10. Other Provisions:

- a. The United States has asserted other claims in the Palouse River Basin Adjudication. Paragraphs 10(a) – (g) express assertions applicable to all claims filed by the Bureau of Indian Affairs in its capacity as trustee for the Nez Perce Tribe in the Palouse River Basin Adjudication. The United States claims waters from groundwater and surface water sources within the Palouse River Basin in the state of Idaho to satisfy the rights reserved to the Nez Perce Tribe by the 1855 Treaty and the 1863 Treaty and to fulfill the permanent homeland purpose of the Nez Perce Reservation. Such present and future purposes include: instream flows for fish habitat; hunting, gathering, and pasturing; spring and fountains flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; and consumptive use claims on two allotments held in trust by the United States.
- b. The Nez Perce Tribe has occupied a territory in what is now central Idaho, southeastern Washington, and northeastern Oregon since time immemorial. *United States v. Webb*, 219 F.3d 1127, 1129 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). The Palouse River Basin is within the Tribe’s traditional lands.
- c. There is a complex history of the United States’ establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing

rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the “exclusive right to fish in all streams running through or bordering” the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the “right of taking fish at all usual and accustomed places in common with the citizens of the Territory” to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.

- d. Article III of the 1855 Treaty further reserves to the Tribe “the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land.”
- e. Article VIII of the Nez Perce Treaty of 1863 includes a unique provision reserving to the Nez Perce Tribe the use of “springs and fountains” within the area ceded under Article I of the 1863 Treaty. For purposes of the priority date of the springs and fountains claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.
- f. Pursuant to the General Allotment Act of 1887, Act of February 8, 1887, 24 Stat. 388, *amended*, Act of February 28, 1891, 26 Stat. 794, there are two allotments (Allotments 182-43 and 182-45) held in trust by the United States located within the boundaries of the Palouse River Basin and the northwestern corner of the Nez Perce Reservation. For purposes of the priority date of the domestic and stock watering claims for these two allotments, the United States claims June 11, 1855 pursuant to the 1855 Treaty.
- g. In order to comply with Idaho Code § 42-1409(1), the United States has designated “places of use,” “points of diversion,” and “purposes of use” in submitting this water rights claim. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe’s future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Reservation. The statute’s terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.

11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled “How you will receive notices in the Palouse River Basin Adjudication.”
- (b) I do ___ do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

For Organizations:

I do solemnly swear and affirm that I am Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.



Signature of Authorized Agent:

Title and Organization:

Northwest Regional Director
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

Notice is hereby given that the United States Department of Justice will represent the United States of America, including the U.S. Department of the Interior, Bureau of Indian Affairs, in all matters pertaining to the Palouse River Basin Adjudication.

All notices, filings and correspondence concerning this matter should be mailed to the United States Department of Justice at the address set forth below:

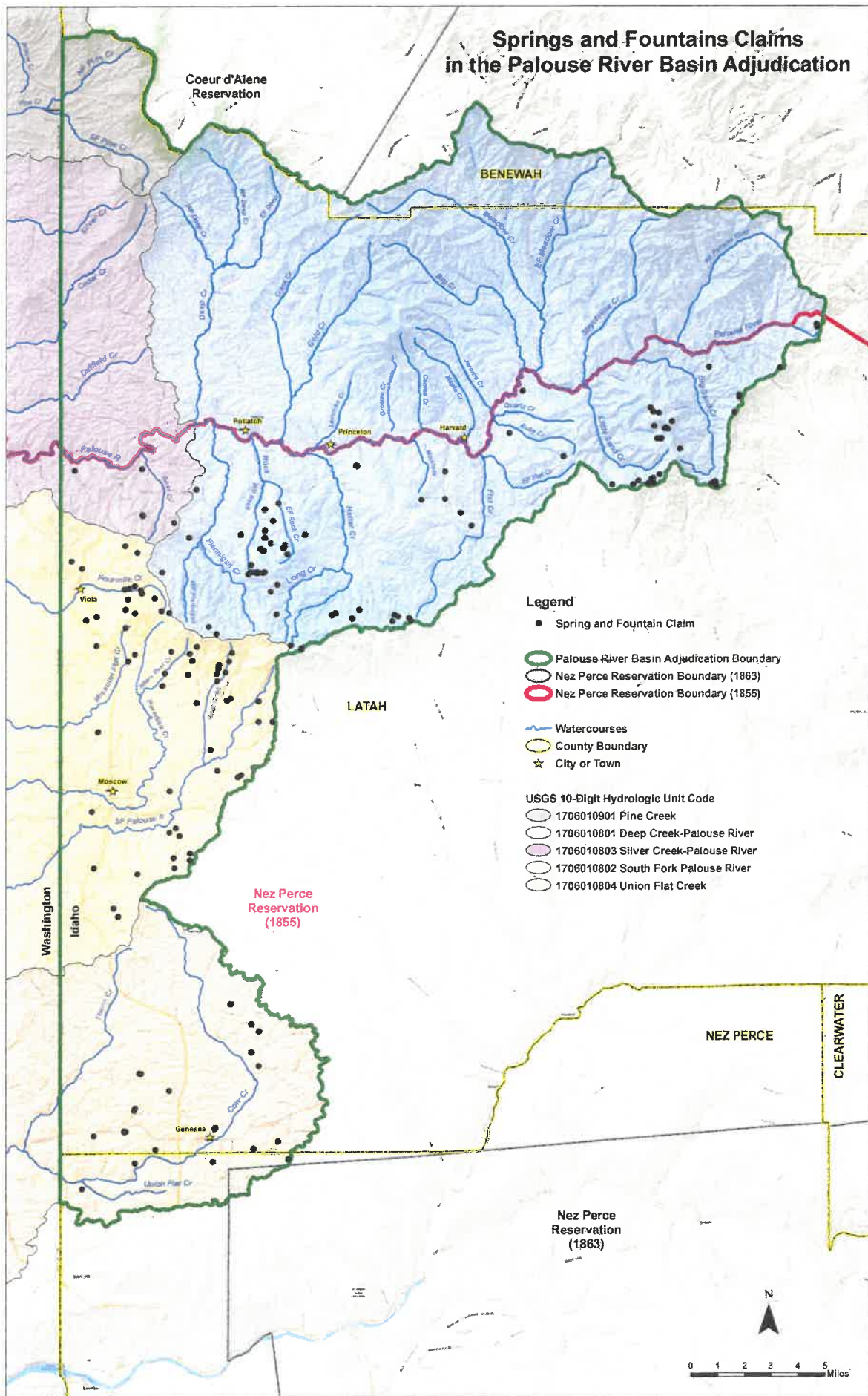


Katherine M. Kane
United States Department of Justice
Indian Resources Division
Natural Resources Section
999 18th Street
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

Springs and Fountains Claims in the Palouse River Basin Adjudication



87-12115

**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)	Case No.: 59576
ADJUDICATION OF RIGHTS)	
TO THE USE OF WATER FROM)	NOTICE OF CLAIM
THE PALOUSE RIVER BASIN)	
WATER SYSTEM)	Federal Reserved Water Right
)	
)	

RECEIVED

DEC 30 2019

DEPARTMENT OF
WATER RESOURCES

1. Name and address of claimant:

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and
ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the
REGIONAL DIRECTOR, NORTHWEST REGION

Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

2. Date of Priority: Time Immemorial

3. a. Source of water supply: Spring (Federal I.D. #1110)

b. which is a tributary to: Fourmile Creek

4. Point of Diversion: This claim is for a spring and/or fountain *in situ* including sufficient groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or fountains.

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1110	40N	5W	18	NESW	Boise	Latah

See Attached Map.

5. Place of Use:

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
1110	40N	5W	18	NESW	Boise	Latah

See Attached Map.

6. Purpose of Water Use:

The purpose of use includes the full range of uses to which the Tribe and its members have always put the springs and fountains, including as a water source for consumptive use, for wildlife and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce Reservation pursuant to the documents referenced in Section 9 and the provisions in Section 10, *infra*.

7. Period of Use: January 1 through December 31.

8. Quantity Reserved (In cfs): Half the natural flow.

9. Basis of Claim:

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

10. Other Provisions:

- a. The United States has asserted other claims in the Palouse River Basin Adjudication. Paragraphs 10(a) – (g) express assertions applicable to all claims filed by the Bureau of Indian Affairs in its capacity as trustee for the Nez Perce Tribe in the Palouse River Basin Adjudication. The United States claims waters from groundwater and surface water sources within the Palouse River Basin in the state of Idaho to satisfy the rights reserved to the Nez Perce Tribe by the 1855 Treaty and the 1863 Treaty and to fulfill the permanent homeland purpose of the Nez Perce Reservation. Such present and future purposes include: instream flows for fish habitat; hunting, gathering, and pasturing; spring and fountain flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; and consumptive use claims on two allotments held in trust by the United States.
- b. The Nez Perce Tribe has occupied a territory in what is now central Idaho, southeastern Washington, and northeastern Oregon since time immemorial. *United States v. Webb*, 219 F.3d 1127, 1129 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). The Palouse River Basin is within the Tribe’s traditional lands.
- c. There is a complex history of the United States’ establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing

rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the “exclusive right to fish in all streams running through or bordering” the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the “right of taking fish at all usual and accustomed places in common with the citizens of the Territory” to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.

- d. Article III of the 1855 Treaty further reserves to the Tribe “the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land.”
- e. Article VIII of the Nez Perce Treaty of 1863 includes a unique provision reserving to the Nez Perce Tribe the use of “springs and fountains” within the area ceded under Article I of the 1863 Treaty. For purposes of the priority date of the springs and fountains claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.
- f. Pursuant to the General Allotment Act of 1887, Act of February 8, 1887, 24 Stat. 388, *amended*, Act of February 28, 1891, 26 Stat. 794, there are two allotments (Allotments 182-43 and 182-45) held in trust by the United States located within the boundaries of the Palouse River Basin and the northwestern corner of the Nez Perce Reservation. For purposes of the priority date of the domestic and stock watering claims for these two allotments, the United States claims June 11, 1855 pursuant to the 1855 Treaty.
- g. In order to comply with Idaho Code § 42-1409(1), the United States has designated “places of use,” “points of diversion,” and “purposes of use” in submitting this water rights claim. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe’s future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Reservation. The statute’s terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.

11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled “How you will receive notices in the Palouse River Basin Adjudication.”
- (b) I do ___ do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

For Organizations:

I do solemnly swear and affirm that I am Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.



Signature of Authorized Agent:

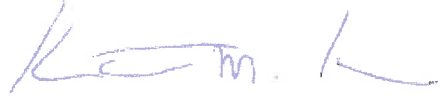
Title and Organization:

Northwest Regional Director
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

Notice is hereby given that the United States Department of Justice will represent the United States of America, including the U.S. Department of the Interior, Bureau of Indian Affairs, in all matters pertaining to the Palouse River Basin Adjudication.

All notices, filings and correspondence concerning this matter should be mailed to the United States Department of Justice at the address set forth below:

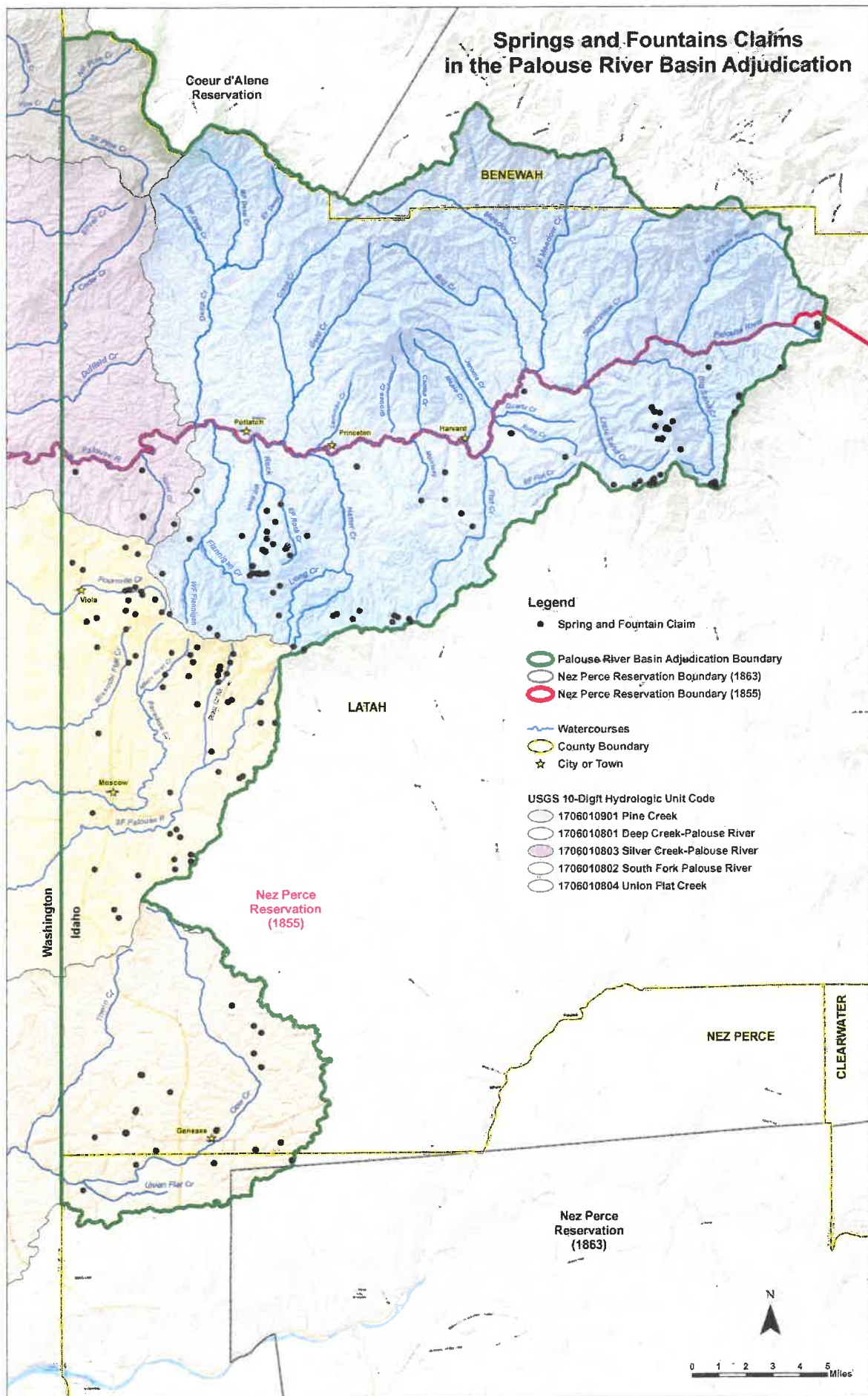


Katherine M. Kane
United States Department of Justice
Indian Resources Division
Natural Resources Section
999 18th Street
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

Springs and Fountains Claims in the Palouse River Basin Adjudication



87-12116

**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 PALOUSE RIVER BASIN)
WATER SYSTEM)
_____)

Case No.: 59576

NOTICE OF CLAIM

Federal Reserved Water Right

RECEIVED

DEC 30 2019

DEPARTMENT OF
WATER RESOURCES

1. Name and address of claimant:

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and
ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the
REGIONAL DIRECTOR, NORTHWEST REGION

Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

2. Date of Priority: Time Immemorial

3. a. Source of water supply: Spring (Federal I.D. #2000)

b. which is a tributary to: West Fork Rock Creek

4. Point of Diversion: This claim is for a spring and/or fountain *in situ* including sufficient groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or fountains.

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
2000	41N	4W	30	SESE	Boise	Latah

See Attached Map.

5. Place of Use:

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
2000	41N	4W	30	SESE	Boise	Latah

See Attached Map.

6. Purpose of Water Use:

The purpose of use includes the full range of uses to which the Tribe and its members have always put the springs and fountains, including as a water source for consumptive use, for wildlife and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce Reservation pursuant to the documents referenced in Section 9 and the provisions in Section 10, *infra*.

7. Period of Use: January 1 through December 31.

8. Quantity Reserved (In cfs): Half the natural flow.

9. Basis of Claim:

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

10. Other Provisions:

- a. The United States has asserted other claims in the Palouse River Basin Adjudication. Paragraphs 10(a) – (g) express assertions applicable to all claims filed by the Bureau of Indian Affairs in its capacity as trustee for the Nez Perce Tribe in the Palouse River Basin Adjudication. The United States claims waters from groundwater and surface water sources within the Palouse River Basin in the state of Idaho to satisfy the rights reserved to the Nez Perce Tribe by the 1855 Treaty and the 1863 Treaty and to fulfill the permanent homeland purpose of the Nez Perce Reservation. Such present and future purposes include: instream flows for fish habitat; hunting, gathering, and pasturing; spring and fountains flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; and consumptive use claims on two allotments held in trust by the United States.
- b. The Nez Perce Tribe has occupied a territory in what is now central Idaho, southeastern Washington, and northeastern Oregon since time immemorial. *United States v. Webb*, 219 F.3d 1127, 1129 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). The Palouse River Basin is within the Tribe’s traditional lands.
- c. There is a complex history of the United States’ establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing

rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the “exclusive right to fish in all streams running through or bordering” the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the “right of taking fish at all usual and accustomed places in common with the citizens of the Territory” to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.

- d. Article III of the 1855 Treaty further reserves to the Tribe “the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land.”
- e. Article VIII of the Nez Perce Treaty of 1863 includes a unique provision reserving to the Nez Perce Tribe the use of “springs and fountains” within the area ceded under Article I of the 1863 Treaty. For purposes of the priority date of the springs and fountains claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.
- f. Pursuant to the General Allotment Act of 1887, Act of February 8, 1887, 24 Stat. 388, *amended*, Act of February 28, 1891, 26 Stat. 794, there are two allotments (Allotments 182-43 and 182-45) held in trust by the United States located within the boundaries of the Palouse River Basin and the northwestern corner of the Nez Perce Reservation. For purposes of the priority date of the domestic and stock watering claims for these two allotments, the United States claims June 11, 1855 pursuant to the 1855 Treaty.
- g. In order to comply with Idaho Code § 42-1409(1), the United States has designated “places of use,” “points of diversion,” and “purposes of use” in submitting this water rights claim. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe’s future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Reservation. The statute’s terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.

11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled “How you will receive notices in the Palouse River Basin Adjudication.”
- (b) I do ___ do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

For Organizations:

I do solemnly swear and affirm that I am Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.



Signature of Authorized Agent:


Title and Organization:

Northwest Regional Director
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

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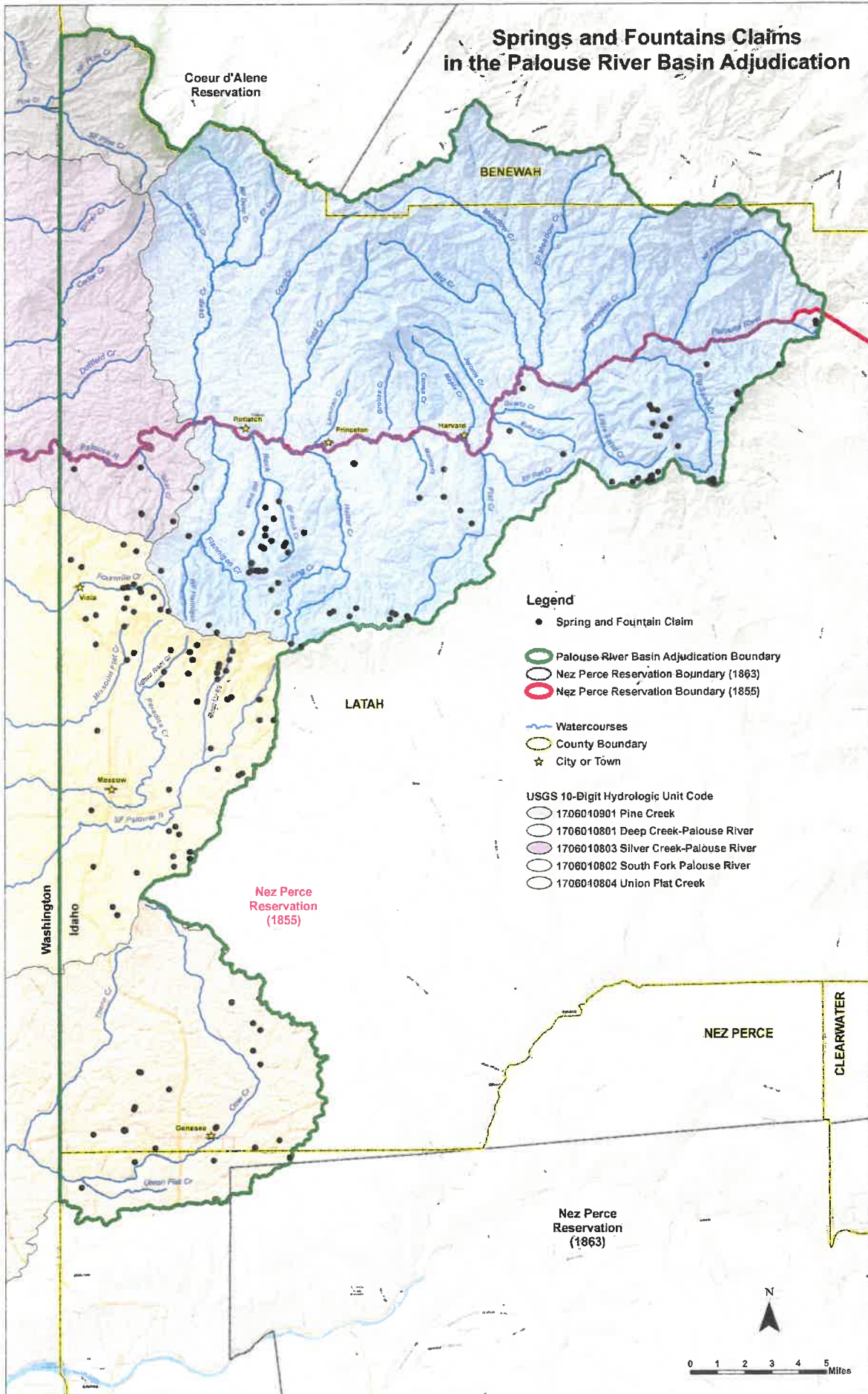


Katherine M. Kane
United States Department of Justice
Indian Resources Division
Natural Resources Section
999 18th Street
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

Springs and Fountains Claims in the Palouse River Basin Adjudication



87-12117

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) Case No.: 59576
ADJUDICATION OF RIGHTS)
TO THE USE OF WATER FROM) **NOTICE OF CLAIM**
THE PALOUSE RIVER BASIN)
WATER SYSTEM) **Federal Reserved Water Right**
)
)
)

RECEIVED

DEC 30 2019

DEPARTMENT OF
WATER RESOURCES

1. **Name and address of claimant:**

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and
ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the
REGIONAL DIRECTOR, NORTHWEST REGION

Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

2. **Date of Priority:** Time Immemorial

3. **a. Source of water supply:** SpringSeep (Federal I.D. #2001)

b. which is a tributary to: Hatter Creek

4. **Point of Diversion:** This claim is for a spring and/or fountain *in situ* including sufficient groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or fountains.

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
2001	40N	4W	17	NWSE	Boise	Latah

See Attached Map.

5. **Place of Use:**

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
2001	40N	4W	17	NWSE	Boise	Latah

See Attached Map.

6. Purpose of Water Use:

The purpose of use includes the full range of uses to which the Tribe and its members have always put the springs and fountains, including as a water source for consumptive use, for wildlife and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce Reservation pursuant to the documents referenced in Section 9 and the provisions in Section 10, *infra*.

7. Period of Use: January 1 through December 31.

8. Quantity Reserved (In cfs): Half the natural flow.

9. Basis of Claim:

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

10. Other Provisions:

- a. The United States has asserted other claims in the Palouse River Basin Adjudication. Paragraphs 10(a) – (g) express assertions applicable to all claims filed by the Bureau of Indian Affairs in its capacity as trustee for the Nez Perce Tribe in the Palouse River Basin Adjudication. The United States claims waters from groundwater and surface water sources within the Palouse River Basin in the state of Idaho to satisfy the rights reserved to the Nez Perce Tribe by the 1855 Treaty and the 1863 Treaty and to fulfill the permanent homeland purpose of the Nez Perce Reservation. Such present and future purposes include: instream flows for fish habitat; hunting, gathering, and pasturing; spring and fountains flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; and consumptive use claims on two allotments held in trust by the United States.
- b. The Nez Perce Tribe has occupied a territory in what is now central Idaho, southeastern Washington, and northeastern Oregon since time immemorial. *United States v. Webb*, 219 F.3d 1127, 1129 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). The Palouse River Basin is within the Tribe’s traditional lands.
- c. There is a complex history of the United States’ establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing

rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the “exclusive right to fish in all streams running through or bordering” the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the “right of taking fish at all usual and accustomed places in common with the citizens of the Territory” to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.

- d. Article III of the 1855 Treaty further reserves to the Tribe “the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land.”
- e. Article VIII of the Nez Perce Treaty of 1863 includes a unique provision reserving to the Nez Perce Tribe the use of “springs and fountains” within the area ceded under Article I of the 1863 Treaty. For purposes of the priority date of the springs and fountains claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.
- f. Pursuant to the General Allotment Act of 1887, Act of February 8, 1887, 24 Stat. 388, *amended*, Act of February 28, 1891, 26 Stat. 794, there are two allotments (Allotments 182-43 and 182-45) held in trust by the United States located within the boundaries of the Palouse River Basin and the northwestern corner of the Nez Perce Reservation. For purposes of the priority date of the domestic and stock watering claims for these two allotments, the United States claims June 11, 1855 pursuant to the 1855 Treaty.
- g. In order to comply with Idaho Code § 42-1409(1), the United States has designated “places of use,” “points of diversion,” and “purposes of use” in submitting this water rights claim. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe’s future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Reservation. The statute’s terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.

11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled “How you will receive notices in the Palouse River Basin Adjudication.”
- (b) I do ___ do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

For Organizations:

I do solemnly swear and affirm that I am Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.



Signature of Authorized Agent:

Title and Organization:

Northwest Regional Director
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

Notice is hereby given that the United States Department of Justice will represent the United States of America, including the U.S. Department of the Interior, Bureau of Indian Affairs, in all matters pertaining to the Palouse River Basin Adjudication.

All notices, filings and correspondence concerning this matter should be mailed to the United States Department of Justice at the address set forth below:

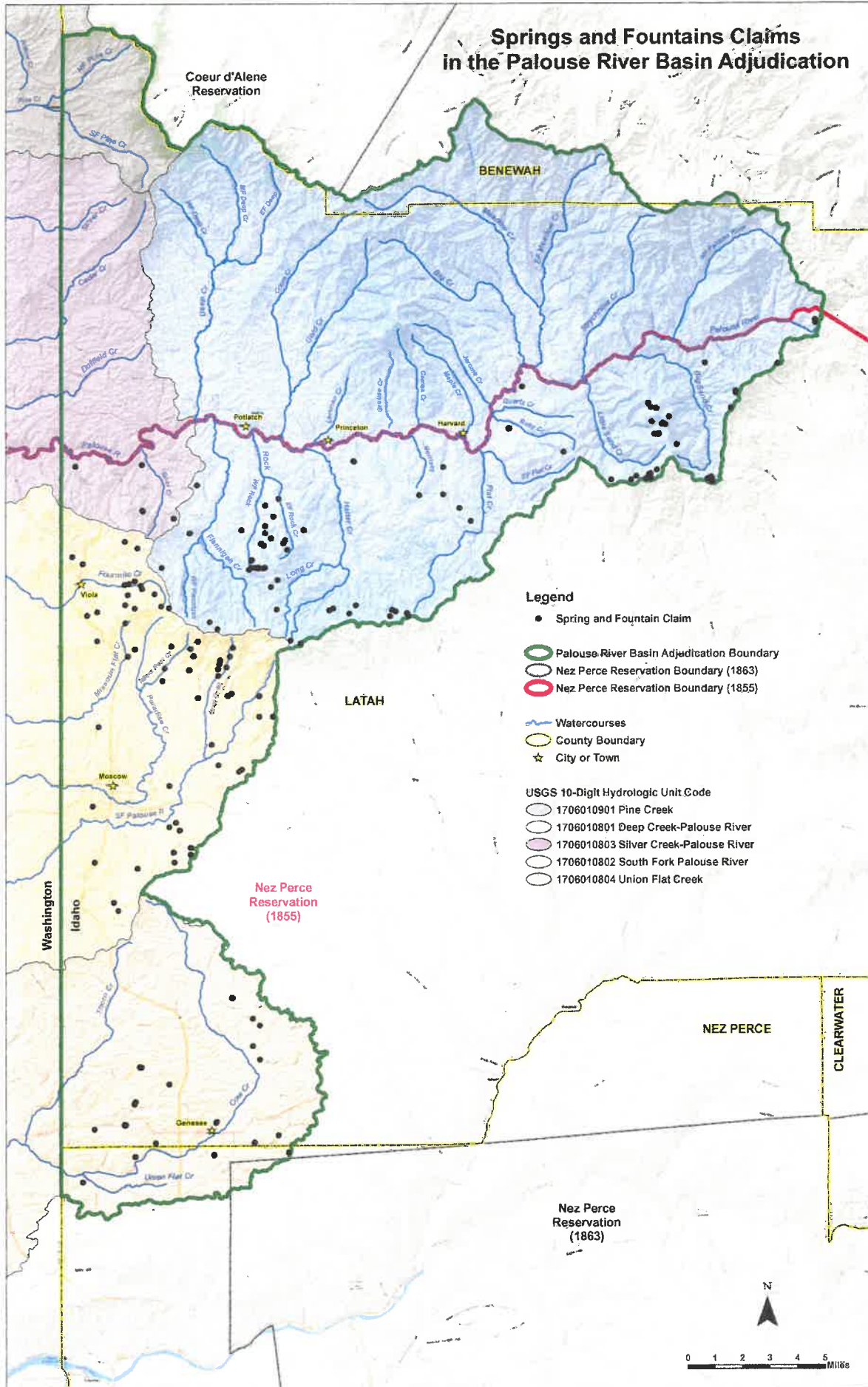


Katherine M. Kane
United States Department of Justice
Indian Resources Division
Natural Resources Section
999 18th Street
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

Springs and Fountains Claims in the Palouse River Basin Adjudication



87-12118

**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 PALOUSE RIVER BASIN)
WATER SYSTEM)

Case No.: 59576

NOTICE OF CLAIM

Federal Reserved Water Right

RECEIVED

DEC 30 2019

DEPARTMENT OF
WATER RESOURCES

1. Name and address of claimant:

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and
ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the
REGIONAL DIRECTOR, NORTHWEST REGION

Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

2. Date of Priority: Time Immemorial

3. a. Source of water supply: SpringSeep (Federal I.D. #2002)

b. which is a tributary to: Fourmile Creek

4. Point of Diversion: This claim is for a spring and/or fountain *in situ* including sufficient groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or fountains.

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
2002	40N	5W	9	SENE	Boise	Latah

See Attached Map.

5. Place of Use:

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
2002	40N	5W	9	SENE	Boise	Latah

See Attached Map.

6. Purpose of Water Use:

The purpose of use includes the full range of uses to which the Tribe and its members have always put the springs and fountains, including as a water source for consumptive use, for wildlife and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce Reservation pursuant to the documents referenced in Section 9 and the provisions in Section 10, *infra*.

7. Period of Use: January 1 through December 31.

8. Quantity Reserved (In cfs): Half the natural flow.

9. Basis of Claim:

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

10. Other Provisions:

- a. The United States has asserted other claims in the Palouse River Basin Adjudication. Paragraphs 10(a) – (g) express assertions applicable to all claims filed by the Bureau of Indian Affairs in its capacity as trustee for the Nez Perce Tribe in the Palouse River Basin Adjudication. The United States claims waters from groundwater and surface water sources within the Palouse River Basin in the state of Idaho to satisfy the rights reserved to the Nez Perce Tribe by the 1855 Treaty and the 1863 Treaty and to fulfill the permanent homeland purpose of the Nez Perce Reservation. Such present and future purposes include: instream flows for fish habitat; hunting, gathering, and pasturing; spring and fountains flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; and consumptive use claims on two allotments held in trust by the United States.
- b. The Nez Perce Tribe has occupied a territory in what is now central Idaho, southeastern Washington, and northeastern Oregon since time immemorial. *United States v. Webb*, 219 F.3d 1127, 1129 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). The Palouse River Basin is within the Tribe’s traditional lands.
- c. There is a complex history of the United States’ establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing

rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the “exclusive right to fish in all streams running through or bordering” the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the “right of taking fish at all usual and accustomed places in common with the citizens of the Territory” to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.

- d. Article III of the 1855 Treaty further reserves to the Tribe “the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land.”
- e. Article VIII of the Nez Perce Treaty of 1863 includes a unique provision reserving to the Nez Perce Tribe the use of “springs and fountains” within the area ceded under Article I of the 1863 Treaty. For purposes of the priority date of the springs and fountains claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.
- f. Pursuant to the General Allotment Act of 1887, Act of February 8, 1887, 24 Stat. 388, *amended*, Act of February 28, 1891, 26 Stat. 794, there are two allotments (Allotments 182-43 and 182-45) held in trust by the United States located within the boundaries of the Palouse River Basin and the northwestern corner of the Nez Perce Reservation. For purposes of the priority date of the domestic and stock watering claims for these two allotments, the United States claims June 11, 1855 pursuant to the 1855 Treaty.
- g. In order to comply with Idaho Code § 42-1409(1), the United States has designated “places of use,” “points of diversion,” and “purposes of use” in submitting this water rights claim. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe’s future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Reservation. The statute’s terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.

11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled “How you will receive notices in the Palouse River Basin Adjudication.”
- (b) I do ___ do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

For Organizations:

I do solemnly swear and affirm that I am Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.



Signature of Authorized Agent:

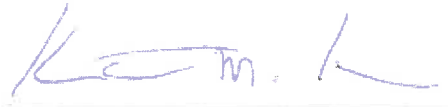
Title and Organization:

Northwest Regional Director
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

Notice is hereby given that the United States Department of Justice will represent the United States of America, including the U.S. Department of the Interior, Bureau of Indian Affairs, in all matters pertaining to the Palouse River Basin Adjudication.

All notices, filings and correspondence concerning this matter should be mailed to the United States Department of Justice at the address set forth below:

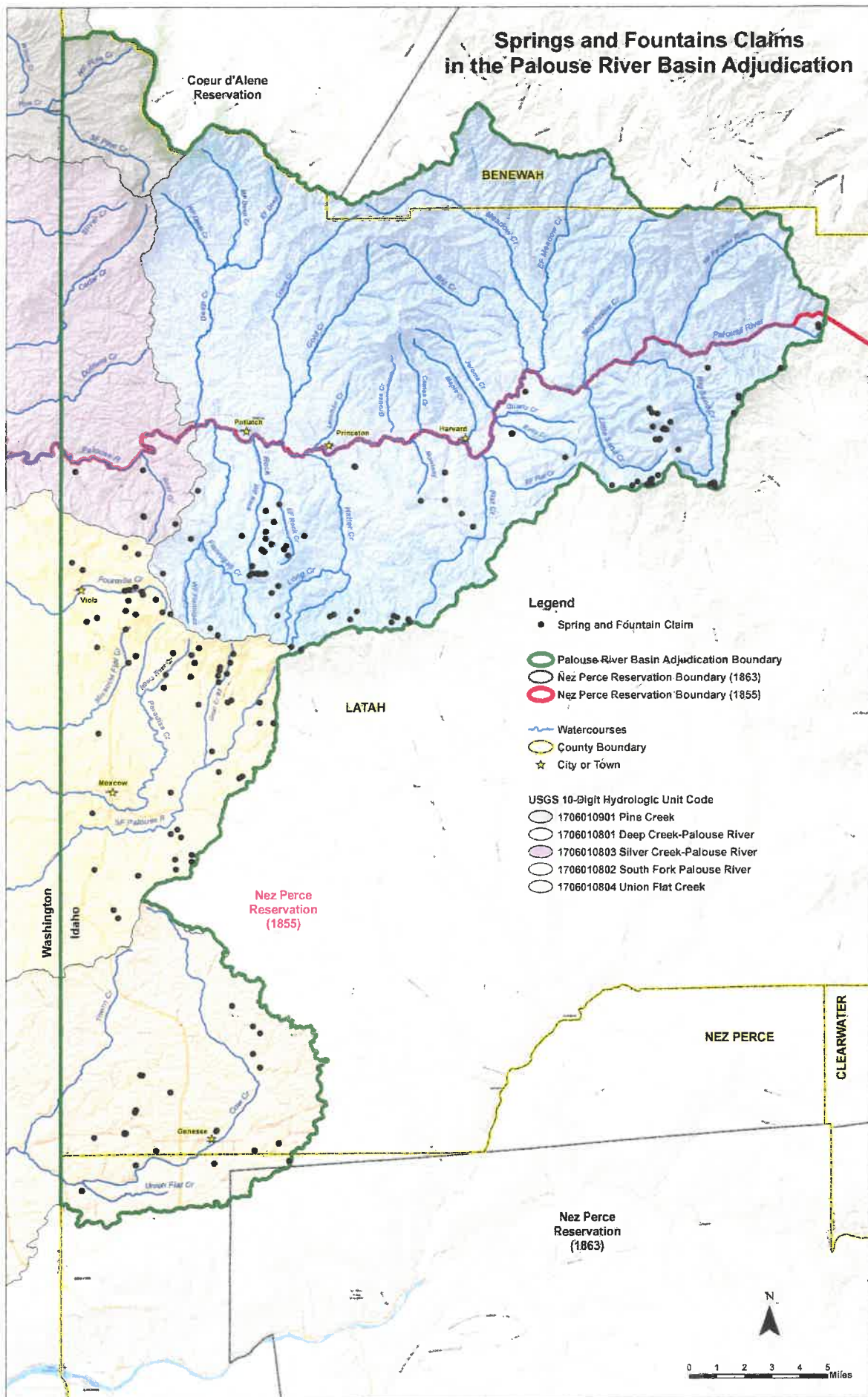


Katherine M. Kane
United States Department of Justice
Indian Resources Division
Natural Resources Section
999 18th Street
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

Springs and Fountains Claims in the Palouse River Basin Adjudication



87-12119

**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 PALOUSE RIVER BASIN)
WATER SYSTEM)

Case No.: 59576

NOTICE OF CLAIM**Federal Reserved Water Right**

RECEIVED

DEC 30 2019

DEPARTMENT OF
WATER RESOURCES**1. Name and address of claimant:**

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and
ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the
REGIONAL DIRECTOR, NORTHWEST REGION

Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

2. Date of Priority: Time Immemorial**3. a. Source of water supply:** SpringSeep (Federal I.D. #2003)**b. which is a tributary to:** Hatter Creek**4. Point of Diversion:** This claim is for a spring and/or fountain *in situ* including sufficient groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or fountains.

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
2003	40N	4W	12	SENW	Boise	Latah

See Attached Map.

5. Place of Use:

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
2003	40N	4W	12	SENW	Boise	Latah

See Attached Map.

6. Purpose of Water Use:

The purpose of use includes the full range of uses to which the Tribe and its members have always put the springs and fountains, including as a water source for consumptive use, for wildlife and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce Reservation pursuant to the documents referenced in Section 9 and the provisions in Section 10, *infra*.

7. Period of Use: January 1 through December 31.

8. Quantity Reserved (In cfs): Half the natural flow.

9. Basis of Claim:

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

10. Other Provisions:

- a. The United States has asserted other claims in the Palouse River Basin Adjudication. Paragraphs 10(a) – (g) express assertions applicable to all claims filed by the Bureau of Indian Affairs in its capacity as trustee for the Nez Perce Tribe in the Palouse River Basin Adjudication. The United States claims waters from groundwater and surface water sources within the Palouse River Basin in the state of Idaho to satisfy the rights reserved to the Nez Perce Tribe by the 1855 Treaty and the 1863 Treaty and to fulfill the permanent homeland purpose of the Nez Perce Reservation. Such present and future purposes include: instream flows for fish habitat; hunting, gathering, and pasturing; spring and fountain flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; and consumptive use claims on two allotments held in trust by the United States.
- b. The Nez Perce Tribe has occupied a territory in what is now central Idaho, southeastern Washington, and northeastern Oregon since time immemorial. *United States v. Webb*, 219 F.3d 1127, 1129 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). The Palouse River Basin is within the Tribe’s traditional lands.
- c. There is a complex history of the United States’ establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing

rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the “exclusive right to fish in all streams running through or bordering” the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the “right of taking fish at all usual and accustomed places in common with the citizens of the Territory” to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.

- d. Article III of the 1855 Treaty further reserves to the Tribe “the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land.”
- e. Article VIII of the Nez Perce Treaty of 1863 includes a unique provision reserving to the Nez Perce Tribe the use of “springs and fountains” within the area ceded under Article I of the 1863 Treaty. For purposes of the priority date of the springs and fountains claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.
- f. Pursuant to the General Allotment Act of 1887, Act of February 8, 1887, 24 Stat. 388, *amended*, Act of February 28, 1891, 26 Stat. 794, there are two allotments (Allotments 182-43 and 182-45) held in trust by the United States located within the boundaries of the Palouse River Basin and the northwestern corner of the Nez Perce Reservation. For purposes of the priority date of the domestic and stock watering claims for these two allotments, the United States claims June 11, 1855 pursuant to the 1855 Treaty.
- g. In order to comply with Idaho Code § 42-1409(1), the United States has designated “places of use,” “points of diversion,” and “purposes of use” in submitting this water rights claim. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe’s future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Reservation. The statute’s terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.

11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled “How you will receive notices in the Palouse River Basin Adjudication.”
- (b) I do ___ do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

For Organizations:

I do solemnly swear and affirm that I am Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.



Signature of Authorized Agent:

Title and Organization:

Northwest Regional Director
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

Notice is hereby given that the United States Department of Justice will represent the United States of America, including the U.S. Department of the Interior, Bureau of Indian Affairs, in all matters pertaining to the Palouse River Basin Adjudication.

All notices, filings and correspondence concerning this matter should be mailed to the United States Department of Justice at the address set forth below:



Katherine M. Kane
United States Department of Justice
Indian Resources Division
Natural Resources Section
999 18th Street
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

**Springs and Fountains Claims
in the Palouse River Basin Adjudication**

Coeur d'Alene
Reservation

BENEWAH

POTLATCH

PRINCETON

HARVARD

VIOLE

MOSCOW

GENESEE

LATAH

Washington

Idaho

Nez Perce
Reservation
(1855)

Nez Perce
Reservation
(1863)

NEZ PERCE

CLEARWATER

Legend

- Spring and Fountain Claim
- Palouse River Basin Adjudication Boundary
- Nez Perce Reservation Boundary (1863)
- Nez Perce Reservation Boundary (1855)
- ~ Watercourses
- County Boundary
- ★ City or Town

USGS 10-Digit Hydrologic Unit Code

- 1706010901 Pine Creek
- 1706010801 Deep Creek-Palouse River
- 1706010803 Silver Creek-Palouse River
- 1706010802 South Fork Palouse River
- 1706010804 Union Flat Creek

0 1 2 3 4 5 Miles

- **Spring and Fountain Claim**

○ Nez Perce Reservation Boundary (1863)

 Nez Perce Reservation Boundary (1855) **Watercourses** County Boundary

☆ City or Town

USGS 10-Digit Hydrologic Unit Code

1706010901 Pine Creek

1706010801 Deep Creek-Palouse River

1706010803 Silver Creek-Palouse River

1706010802 South Fork Palouse River

1706010804 Union Flat Creek

Nez Perce
Reservation
(1855)

NEZ PERCE

Nez Perce
Reservation
(1863)

CLEARWATER

0 1 2 3 4 5 Miles

87.12120

**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 PALOUSE RIVER BASIN)
WATER SYSTEM)
)
)
)

Case No.: 59576

NOTICE OF CLAIM**Federal Reserved Water Right**

RECEIVED

DEC 30 2019

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UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and
ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the
REGIONAL DIRECTOR, NORTHWEST REGION

Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

2. Date of Priority: Time Immemorial**3. a. Source of water supply:** Spring (Federal I.D. #2004)**b. which is a tributary to:** Hatter Creek**4. Point of Diversion:** This claim is for a spring and/or fountain *in situ* including sufficient groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or fountains.

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
2004	40N	4W	17	NESE	Boise	Latah

See Attached Map.

5. Place of Use:

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
2004	40N	4W	17	NESE	Boise	Latah

See Attached Map.

6. Purpose of Water Use:

The purpose of use includes the full range of uses to which the Tribe and its members have always put the springs and fountains, including as a water source for consumptive use, for wildlife and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce Reservation pursuant to the documents referenced in Section 9 and the provisions in Section 10, *infra*.

7. Period of Use: January 1 through December 31.

8. Quantity Reserved (In cfs): Half the natural flow.

9. Basis of Claim:

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

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- d. Article III of the 1855 Treaty further reserves to the Tribe “the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land.”
- e. Article VIII of the Nez Perce Treaty of 1863 includes a unique provision reserving to the Nez Perce Tribe the use of “springs and fountains” within the area ceded under Article I of the 1863 Treaty. For purposes of the priority date of the springs and fountains claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.
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For Organizations:

I do solemnly swear and affirm that I am Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.



Signature of Authorized Agent:

Title and Organization:

Northwest Regional Director
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

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United States Department of Justice
Indian Resources Division
Natural Resources Section
999 18th Street
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

**Springs and Fountains Claims
in the Palouse River Basin Adjudication**

Coeur d'Alene Reservation

BENEWAH

LATAH

NEZ PERCE

CLEARWATER

Washington

Idaho

Nez Perce Reservation (1855)

Nez Perce Reservation (1863)

Legend

- Spring and Fountain Claim
- Palouse River Basin Adjudication Boundary
- Nez Perce Reservation Boundary (1863)
- Nez Perce Reservation Boundary (1855)
- Watercourses
- County Boundary
- City or Town

USGS 10-Digit Hydrologic Unit Code

- 1706010901 Pine Creek
- 1706010801 Deep Creek-Palouse River
- 1706010803 Silver Creek-Palouse River
- 1706010802 South Fork Palouse River
- 1706010804 Union Flat Creek

Scale: 0 1 2 3 4 5 Miles

North Arrow

- **Spring and Fountain Claim**

○ Nez Perce Reservation Boundary (1863)

 Watercourses

★ City or Town

1706010901 Pine Creek

1706010801 Deep Creek

1706010803 Silver Creek-Palouse River

1706010802 South Fork Palouse River

1706010804 Union Flat Creek

Nez Perce
Reservation
(1855)

NEZ PERCE

**Nez Perce
Reservation
(1863)**

N

0 1 2 3 4 5 Miles

87-12121

**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)	Case No.: 59576
ADJUDICATION OF RIGHTS)	
TO THE USE OF WATER FROM)	NOTICE OF CLAIM
THE PALOUSE RIVER BASIN)	
WATER SYSTEM)	Federal Reserved Water Right
)	
)	

RECEIVED

DEC 30 2019

DEPARTMENT OF
WATER RESOURCES

1. Name and address of claimant:

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and
ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the
REGIONAL DIRECTOR, NORTHWEST REGION

Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

2. Date of Priority: Time Immemorial

3. a. Source of water supply: Spring (Federal I.D. #2005)

b. which is a tributary to: Hatter Creek

4. Point of Diversion: This claim is for a spring and/or fountain *in situ* including sufficient groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or fountains.

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
2005	40N	4W	10	NESE	Boise	Latah

See Attached Map.

5. Place of Use:

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
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6. Purpose of Water Use:

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10. Other Provisions:

- a. The United States has asserted other claims in the Palouse River Basin Adjudication. Paragraphs 10(a) – (g) express assertions applicable to all claims filed by the Bureau of Indian Affairs in its capacity as trustee for the Nez Perce Tribe in the Palouse River Basin Adjudication. The United States claims waters from groundwater and surface water sources within the Palouse River Basin in the state of Idaho to satisfy the rights reserved to the Nez Perce Tribe by the 1855 Treaty and the 1863 Treaty and to fulfill the permanent homeland purpose of the Nez Perce Reservation. Such present and future purposes include: instream flows for fish habitat; hunting, gathering, and pasturing; spring and fountains flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; and consumptive use claims on two allotments held in trust by the United States.
- b. The Nez Perce Tribe has occupied a territory in what is now central Idaho, southeastern Washington, and northeastern Oregon since time immemorial. *United States v. Webb*, 219 F.3d 1127, 1129 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). The Palouse River Basin is within the Tribe’s traditional lands.
- c. There is a complex history of the United States’ establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing

rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the “exclusive right to fish in all streams running through or bordering” the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the “right of taking fish at all usual and accustomed places in common with the citizens of the Territory” to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.

- d. Article III of the 1855 Treaty further reserves to the Tribe “the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land.”
- e. Article VIII of the Nez Perce Treaty of 1863 includes a unique provision reserving to the Nez Perce Tribe the use of “springs and fountains” within the area ceded under Article I of the 1863 Treaty. For purposes of the priority date of the springs and fountains claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.
- f. Pursuant to the General Allotment Act of 1887, Act of February 8, 1887, 24 Stat. 388, *amended*, Act of February 28, 1891, 26 Stat. 794, there are two allotments (Allotments 182-43 and 182-45) held in trust by the United States located within the boundaries of the Palouse River Basin and the northwestern corner of the Nez Perce Reservation. For purposes of the priority date of the domestic and stock watering claims for these two allotments, the United States claims June 11, 1855 pursuant to the 1855 Treaty.
- g. In order to comply with Idaho Code § 42-1409(1), the United States has designated “places of use,” “points of diversion,” and “purposes of use” in submitting this water rights claim. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe’s future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Reservation. The statute’s terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.

11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled “How you will receive notices in the Palouse River Basin Adjudication.”
- (b) I do ___ do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

For Organizations:

I do solemnly swear and affirm that I am Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.



Signature of Authorized Agent:

Title and Organization:

Northwest Regional Director
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

Notice is hereby given that the United States Department of Justice will represent the United States of America, including the U.S. Department of the Interior, Bureau of Indian Affairs, in all matters pertaining to the Palouse River Basin Adjudication.

All notices, filings and correspondence concerning this matter should be mailed to the United States Department of Justice at the address set forth below:

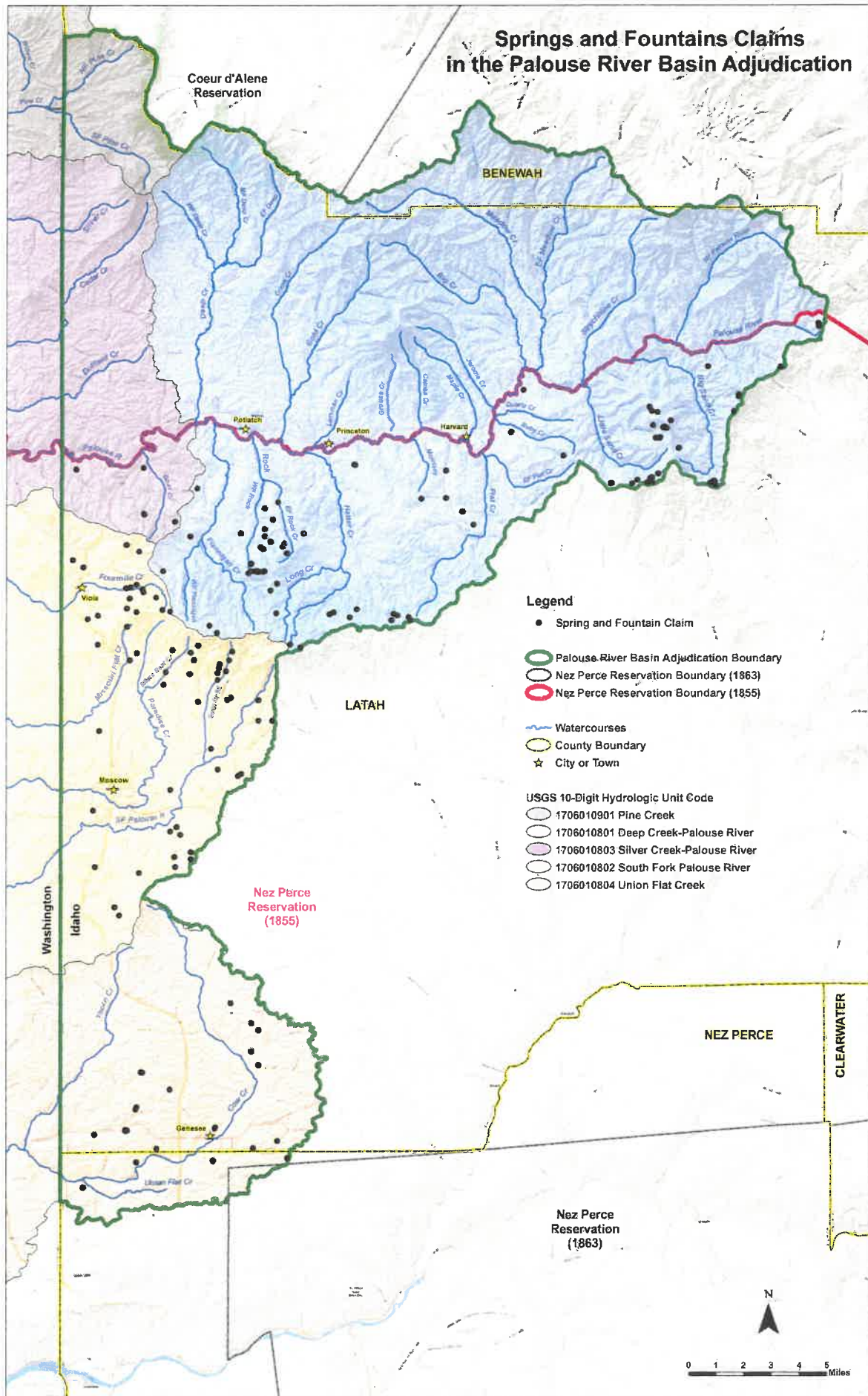


Katherine M. Kane
United States Department of Justice
Indian Resources Division
Natural Resources Section
999 18th Street
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

Springs and Fountains Claims in the Palouse River Basin Adjudication



87-12/22

**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 PALOUSE RIVER BASIN)
WATER SYSTEM)
)
)
)

Case No.: 59576

NOTICE OF CLAIM**Federal Reserved Water Right**

RECEIVED

DEC 30 2019

DEPARTMENT OF
WATER RESOURCES**1. Name and address of claimant:**

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and
ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the
REGIONAL DIRECTOR, NORTHWEST REGION

Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

2. Date of Priority: Time Immemorial**3. a. Source of water supply:** Spring (Federal I.D. #2006)**b. which is a tributary to:** Hatter Creek**4. Point of Diversion:** This claim is for a spring and/or fountain *in situ* including sufficient groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or fountains.

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
2006	40N	4W	11	SWNW	Boise	Latah

See Attached Map.

5. Place of Use:

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
2006	40N	4W	11	SWNW	Boise	Latah

See Attached Map.

6. Purpose of Water Use:

The purpose of use includes the full range of uses to which the Tribe and its members have always put the springs and fountains, including as a water source for consumptive use, for wildlife and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce Reservation pursuant to the documents referenced in Section 9 and the provisions in Section 10, *infra*.

7. Period of Use: January 1 through December 31.

8. Quantity Reserved (In cfs): Half the natural flow.

9. Basis of Claim:

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

10. Other Provisions:

- a. The United States has asserted other claims in the Palouse River Basin Adjudication. Paragraphs 10(a) – (g) express assertions applicable to all claims filed by the Bureau of Indian Affairs in its capacity as trustee for the Nez Perce Tribe in the Palouse River Basin Adjudication. The United States claims waters from groundwater and surface water sources within the Palouse River Basin in the state of Idaho to satisfy the rights reserved to the Nez Perce Tribe by the 1855 Treaty and the 1863 Treaty and to fulfill the permanent homeland purpose of the Nez Perce Reservation. Such present and future purposes include: instream flows for fish habitat; hunting, gathering, and pasturing; spring and fountains flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; and consumptive use claims on two allotments held in trust by the United States.
- b. The Nez Perce Tribe has occupied a territory in what is now central Idaho, southeastern Washington, and northeastern Oregon since time immemorial. *United States v. Webb*, 219 F.3d 1127, 1129 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). The Palouse River Basin is within the Tribe’s traditional lands.
- c. There is a complex history of the United States’ establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing

rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the “exclusive right to fish in all streams running through or bordering” the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the “right of taking fish at all usual and accustomed places in common with the citizens of the Territory” to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.

- d. Article III of the 1855 Treaty further reserves to the Tribe “the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land.”
- e. Article VIII of the Nez Perce Treaty of 1863 includes a unique provision reserving to the Nez Perce Tribe the use of “springs and fountains” within the area ceded under Article I of the 1863 Treaty. For purposes of the priority date of the springs and fountains claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.
- f. Pursuant to the General Allotment Act of 1887, Act of February 8, 1887, 24 Stat. 388, *amended*, Act of February 28, 1891, 26 Stat. 794, there are two allotments (Allotments 182-43 and 182-45) held in trust by the United States located within the boundaries of the Palouse River Basin and the northwestern corner of the Nez Perce Reservation. For purposes of the priority date of the domestic and stock watering claims for these two allotments, the United States claims June 11, 1855 pursuant to the 1855 Treaty.
- g. In order to comply with Idaho Code § 42-1409(1), the United States has designated “places of use,” “points of diversion,” and “purposes of use” in submitting this water rights claim. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe’s future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Reservation. The statute’s terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.

11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled “How you will receive notices in the Palouse River Basin Adjudication.”
- (b) I do ___ do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

For Organizations:

I do solemnly swear and affirm that I am Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.



Signature of Authorized Agent:

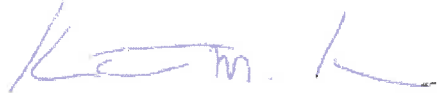
Title and Organization:

Northwest Regional Director
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

Notice is hereby given that the United States Department of Justice will represent the United States of America, including the U.S. Department of the Interior, Bureau of Indian Affairs, in all matters pertaining to the Palouse River Basin Adjudication.

All notices, filings and correspondence concerning this matter should be mailed to the United States Department of Justice at the address set forth below:

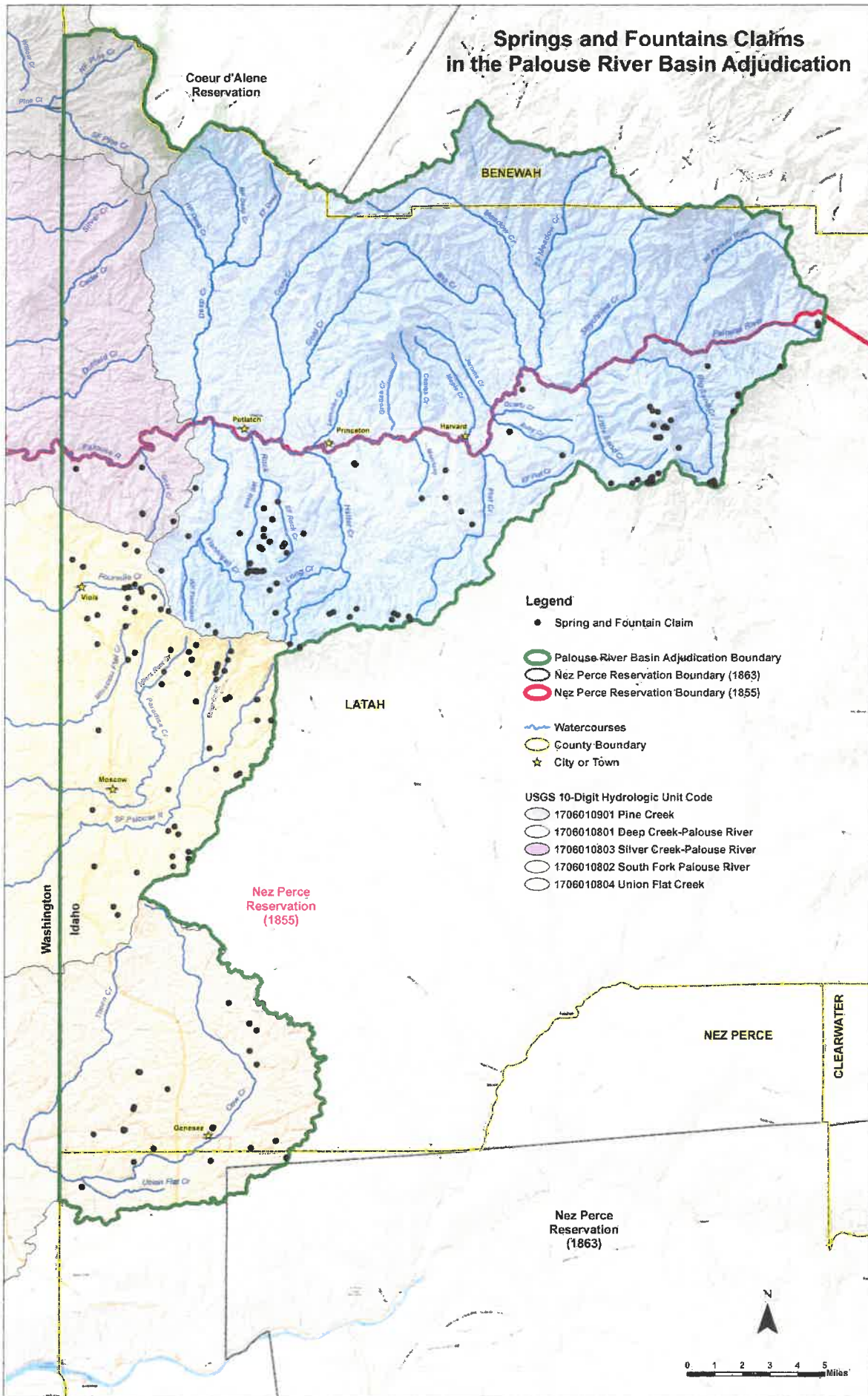


Katherine M. Kane
United States Department of Justice
Indian Resources Division
Natural Resources Section
999 18th Street
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

Springs and Fountains Claims in the Palouse River Basin Adjudication



87-12123

**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 PALOUSE RIVER BASIN)
WATER SYSTEM)

Case No.: 59576

NOTICE OF CLAIM

Federal Reserved Water Right

RECEIVED

DEC 30 2019

DEPARTMENT OF
WATER RESOURCES

1. Name and address of claimant:

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and
ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the
REGIONAL DIRECTOR, NORTHWEST REGION

Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

2. Date of Priority: Time Immemorial

3. a. Source of water supply: Spring (Federal I.D. #2007)

b. which is a tributary to: Ruby Creek

4. Point of Diversion: This claim is for a spring and/or fountain *in situ* including sufficient groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or fountains.

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
2007	41N	3W	13	NENE	Boise	Latah

See Attached Map.

5. Place of Use:

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
2007	41N	3W	13	NENE	Boise	Latah

See Attached Map.

6. Purpose of Water Use:

The purpose of use includes the full range of uses to which the Tribe and its members have always put the springs and fountains, including as a water source for consumptive use, for wildlife and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce Reservation pursuant to the documents referenced in Section 9 and the provisions in Section 10, *infra*.

7. Period of Use: January 1 through December 31.

8. Quantity Reserved (In cfs): Half the natural flow.

9. Basis of Claim:

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

10. Other Provisions:

- a. The United States has asserted other claims in the Palouse River Basin Adjudication. Paragraphs 10(a) – (g) express assertions applicable to all claims filed by the Bureau of Indian Affairs in its capacity as trustee for the Nez Perce Tribe in the Palouse River Basin Adjudication. The United States claims waters from groundwater and surface water sources within the Palouse River Basin in the state of Idaho to satisfy the rights reserved to the Nez Perce Tribe by the 1855 Treaty and the 1863 Treaty and to fulfill the permanent homeland purpose of the Nez Perce Reservation. Such present and future purposes include: instream flows for fish habitat; hunting, gathering, and pasturing; spring and fountains flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; and consumptive use claims on two allotments held in trust by the United States.
- b. The Nez Perce Tribe has occupied a territory in what is now central Idaho, southeastern Washington, and northeastern Oregon since time immemorial. *United States v. Webb*, 219 F.3d 1127, 1129 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). The Palouse River Basin is within the Tribe’s traditional lands.
- c. There is a complex history of the United States’ establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing

rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the “exclusive right to fish in all streams running through or bordering” the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the “right of taking fish at all usual and accustomed places in common with the citizens of the Territory” to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.

- d. Article III of the 1855 Treaty further reserves to the Tribe “the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land.”
- e. Article VIII of the Nez Perce Treaty of 1863 includes a unique provision reserving to the Nez Perce Tribe the use of “springs and fountains” within the area ceded under Article I of the 1863 Treaty. For purposes of the priority date of the springs and fountains claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.
- f. Pursuant to the General Allotment Act of 1887, Act of February 8, 1887, 24 Stat. 388, *amended*, Act of February 28, 1891, 26 Stat. 794, there are two allotments (Allotments 182-43 and 182-45) held in trust by the United States located within the boundaries of the Palouse River Basin and the northwestern corner of the Nez Perce Reservation. For purposes of the priority date of the domestic and stock watering claims for these two allotments, the United States claims June 11, 1855 pursuant to the 1855 Treaty.
- g. In order to comply with Idaho Code § 42-1409(1), the United States has designated “places of use,” “points of diversion,” and “purposes of use” in submitting this water rights claim. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe’s future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Reservation. The statute’s terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.

11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled “How you will receive notices in the Palouse River Basin Adjudication.”
- (b) I do do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

For Organizations:

I do solemnly swear and affirm that I am Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.



Signature of Authorized Agent:

Title and Organization:

Northwest Regional Director
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

Notice is hereby given that the United States Department of Justice will represent the United States of America, including the U.S. Department of the Interior, Bureau of Indian Affairs, in all matters pertaining to the Palouse River Basin Adjudication.

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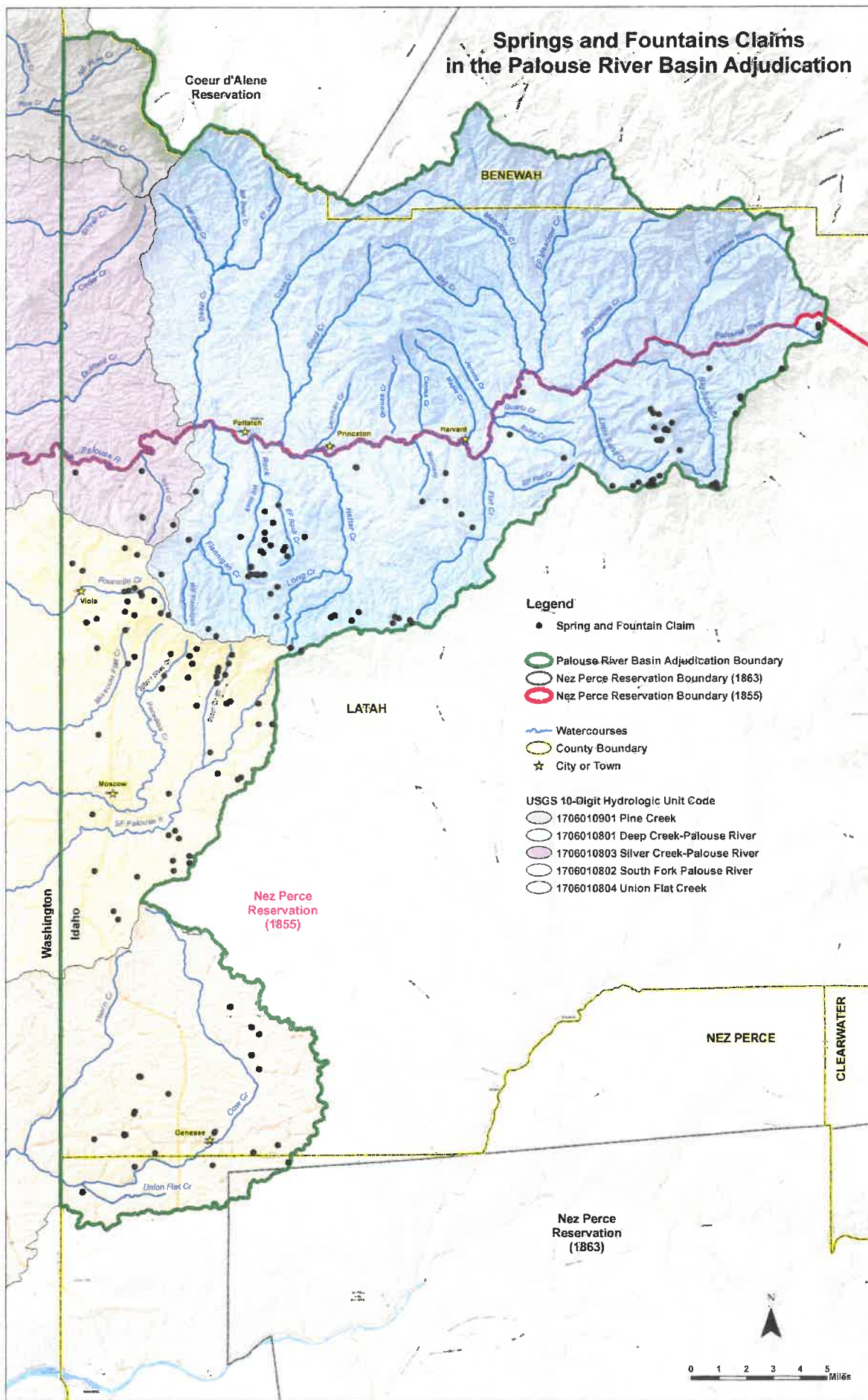


Katherine M. Kane
United States Department of Justice
Indian Resources Division
Natural Resources Section
999 18th Street
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

Springs and Fountains Claims in the Palouse River Basin Adjudication



87-12124

**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 PALOUSE RIVER BASIN)
WATER SYSTEM)

Case No.: 59576

NOTICE OF CLAIM**Federal Reserved Water Right**

RECEIVED

DEC 30 2019

DEPARTMENT OF
WATER RESOURCES**1. Name and address of claimant:**

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and
ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the
REGIONAL DIRECTOR, NORTHWEST REGION

Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

2. Date of Priority: Time Immemorial**3. a. Source of water supply:** Spring (Federal I.D. #2008)**b. which is a tributary to:** Hatter Creek**4. Point of Diversion:** This claim is for a spring and/or fountain *in situ* including sufficient groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or fountains.

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
2008	40N	4W	12	NESW	Boise	Latah

See Attached Map.

5. Place of Use:

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
2008	40N	4W	12	NESW	Boise	Latah

See Attached Map.

6. Purpose of Water Use:

The purpose of use includes the full range of uses to which the Tribe and its members have always put the springs and fountains, including as a water source for consumptive use, for wildlife and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce Reservation pursuant to the documents referenced in Section 9 and the provisions in Section 10, *infra*.

7. Period of Use: January 1 through December 31.

8. Quantity Reserved (In cfs): Half the natural flow.

9. Basis of Claim:

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

10. Other Provisions:

- a. The United States has asserted other claims in the Palouse River Basin Adjudication. Paragraphs 10(a) – (g) express assertions applicable to all claims filed by the Bureau of Indian Affairs in its capacity as trustee for the Nez Perce Tribe in the Palouse River Basin Adjudication. The United States claims waters from groundwater and surface water sources within the Palouse River Basin in the state of Idaho to satisfy the rights reserved to the Nez Perce Tribe by the 1855 Treaty and the 1863 Treaty and to fulfill the permanent homeland purpose of the Nez Perce Reservation. Such present and future purposes include: instream flows for fish habitat; hunting, gathering, and pasturing; spring and fountain flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; and consumptive use claims on two allotments held in trust by the United States.
- b. The Nez Perce Tribe has occupied a territory in what is now central Idaho, southeastern Washington, and northeastern Oregon since time immemorial. *United States v. Webb*, 219 F.3d 1127, 1129 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). The Palouse River Basin is within the Tribe’s traditional lands.
- c. There is a complex history of the United States’ establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing

rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the “exclusive right to fish in all streams running through or bordering” the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the “right of taking fish at all usual and accustomed places in common with the citizens of the Territory” to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.

- d. Article III of the 1855 Treaty further reserves to the Tribe “the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land.”
- e. Article VIII of the Nez Perce Treaty of 1863 includes a unique provision reserving to the Nez Perce Tribe the use of “springs and fountains” within the area ceded under Article I of the 1863 Treaty. For purposes of the priority date of the springs and fountains claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.
- f. Pursuant to the General Allotment Act of 1887, Act of February 8, 1887, 24 Stat. 388, *amended*, Act of February 28, 1891, 26 Stat. 794, there are two allotments (Allotments 182-43 and 182-45) held in trust by the United States located within the boundaries of the Palouse River Basin and the northwestern corner of the Nez Perce Reservation. For purposes of the priority date of the domestic and stock watering claims for these two allotments, the United States claims June 11, 1855 pursuant to the 1855 Treaty.
- g. In order to comply with Idaho Code § 42-1409(1), the United States has designated “places of use,” “points of diversion,” and “purposes of use” in submitting this water rights claim. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe’s future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Reservation. The statute’s terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.

11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled “How you will receive notices in the Palouse River Basin Adjudication.”
- (b) I do do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

For Organizations:

I do solemnly swear and affirm that I am Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.



Signature of Authorized Agent:

Title and Organization:

Northwest Regional Director
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

Notice is hereby given that the United States Department of Justice will represent the United States of America, including the U.S. Department of the Interior, Bureau of Indian Affairs, in all matters pertaining to the Palouse River Basin Adjudication.

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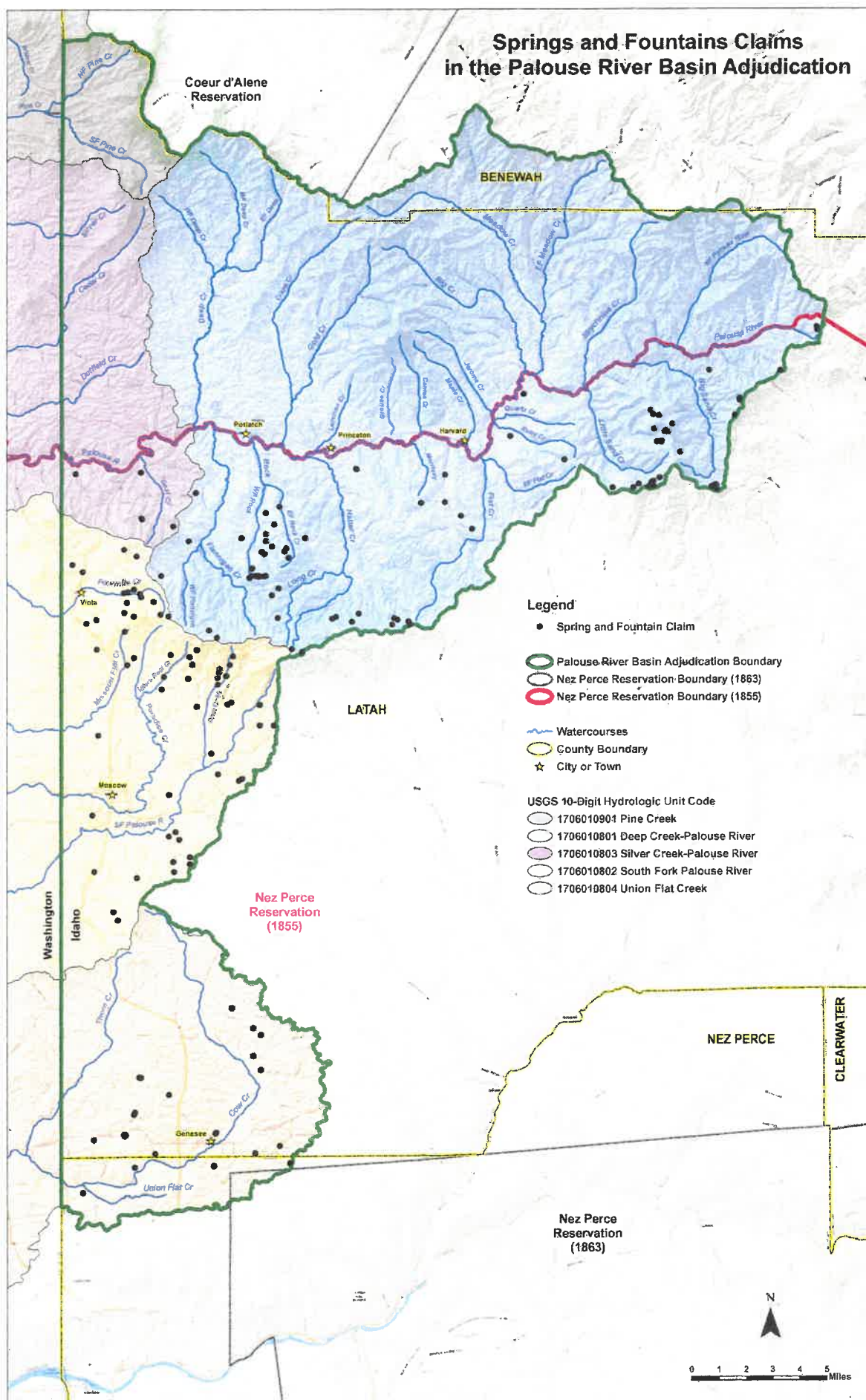


Katherine M. Kane
United States Department of Justice
Indian Resources Division
Natural Resources Section
999 18th Street
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

Springs and Fountains Claims in the Palouse River Basin Adjudication



87-12125

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS**

RECEIVED

IN RE: THE GENERAL)
ADJUDICATION OF RIGHTS)
TO THE USE OF WATER FROM)
THE PALOUSE RIVER BASIN)
WATER SYSTEM)
)
)
)

Case No.: 59576

DEC 30 2019

NOTICE OF CLAIM

DEPARTMENT OF
WATER RESOURCES

Federal Reserved Water Right

1. Name and address of claimant:

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and
ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the
REGIONAL DIRECTOR, NORTHWEST REGION

Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

2. Date of Priority: Time Immemorial

3. a. Source of water supply: Spring (Federal I.D. #2009)

b. which is a tributary to: Bonami Creek

4. Point of Diversion: This claim is for a spring and/or fountain *in situ* including sufficient groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or fountains.

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
2009	41N	2W	3	SWNW	Boise	Latah

See Attached Map.

5. Place of Use:

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
2009	41N	2W	3	SWNW	Boise	Latah

See Attached Map.

6. Purpose of Water Use:

The purpose of use includes the full range of uses to which the Tribe and its members have always put the springs and fountains, including as a water source for consumptive use, for wildlife and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce Reservation pursuant to the documents referenced in Section 9 and the provisions in Section 10, *infra*.

7. Period of Use: January 1 through December 31.

8. Quantity Reserved (In cfs): Half the natural flow.

9. Basis of Claim:

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

10. Other Provisions:

- a. The United States has asserted other claims in the Palouse River Basin Adjudication. Paragraphs 10(a) – (g) express assertions applicable to all claims filed by the Bureau of Indian Affairs in its capacity as trustee for the Nez Perce Tribe in the Palouse River Basin Adjudication. The United States claims waters from groundwater and surface water sources within the Palouse River Basin in the state of Idaho to satisfy the rights reserved to the Nez Perce Tribe by the 1855 Treaty and the 1863 Treaty and to fulfill the permanent homeland purpose of the Nez Perce Reservation. Such present and future purposes include: instream flows for fish habitat; hunting, gathering, and pasturing; spring and fountains flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; and consumptive use claims on two allotments held in trust by the United States.
- b. The Nez Perce Tribe has occupied a territory in what is now central Idaho, southeastern Washington, and northeastern Oregon since time immemorial. *United States v. Webb*, 219 F.3d 1127, 1129 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). The Palouse River Basin is within the Tribe’s traditional lands.
- c. There is a complex history of the United States’ establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing

rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the “exclusive right to fish in all streams running through or bordering” the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the “right of taking fish at all usual and accustomed places in common with the citizens of the Territory” to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.

- d. Article III of the 1855 Treaty further reserves to the Tribe “the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land.”
- e. Article VIII of the Nez Perce Treaty of 1863 includes a unique provision reserving to the Nez Perce Tribe the use of “springs and fountains” within the area ceded under Article I of the 1863 Treaty. For purposes of the priority date of the springs and fountains claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.
- f. Pursuant to the General Allotment Act of 1887, Act of February 8, 1887, 24 Stat. 388, *amended*, Act of February 28, 1891, 26 Stat. 794, there are two allotments (Allotments 182-43 and 182-45) held in trust by the United States located within the boundaries of the Palouse River Basin and the northwestern corner of the Nez Perce Reservation. For purposes of the priority date of the domestic and stock watering claims for these two allotments, the United States claims June 11, 1855 pursuant to the 1855 Treaty.
- g. In order to comply with Idaho Code § 42-1409(1), the United States has designated “places of use,” “points of diversion,” and “purposes of use” in submitting this water rights claim. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe’s future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Reservation. The statute’s terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.

11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled “How you will receive notices in the Palouse River Basin Adjudication.”
- (b) I do___ do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

For Organizations:

I do solemnly swear and affirm that I am Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.



Signature of Authorized Agent:

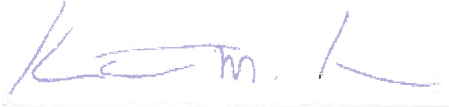
Title and Organization:

Northwest Regional Director
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

Notice is hereby given that the United States Department of Justice will represent the United States of America, including the U.S. Department of the Interior, Bureau of Indian Affairs, in all matters pertaining to the Palouse River Basin Adjudication.

All notices, filings and correspondence concerning this matter should be mailed to the United States Department of Justice at the address set forth below:

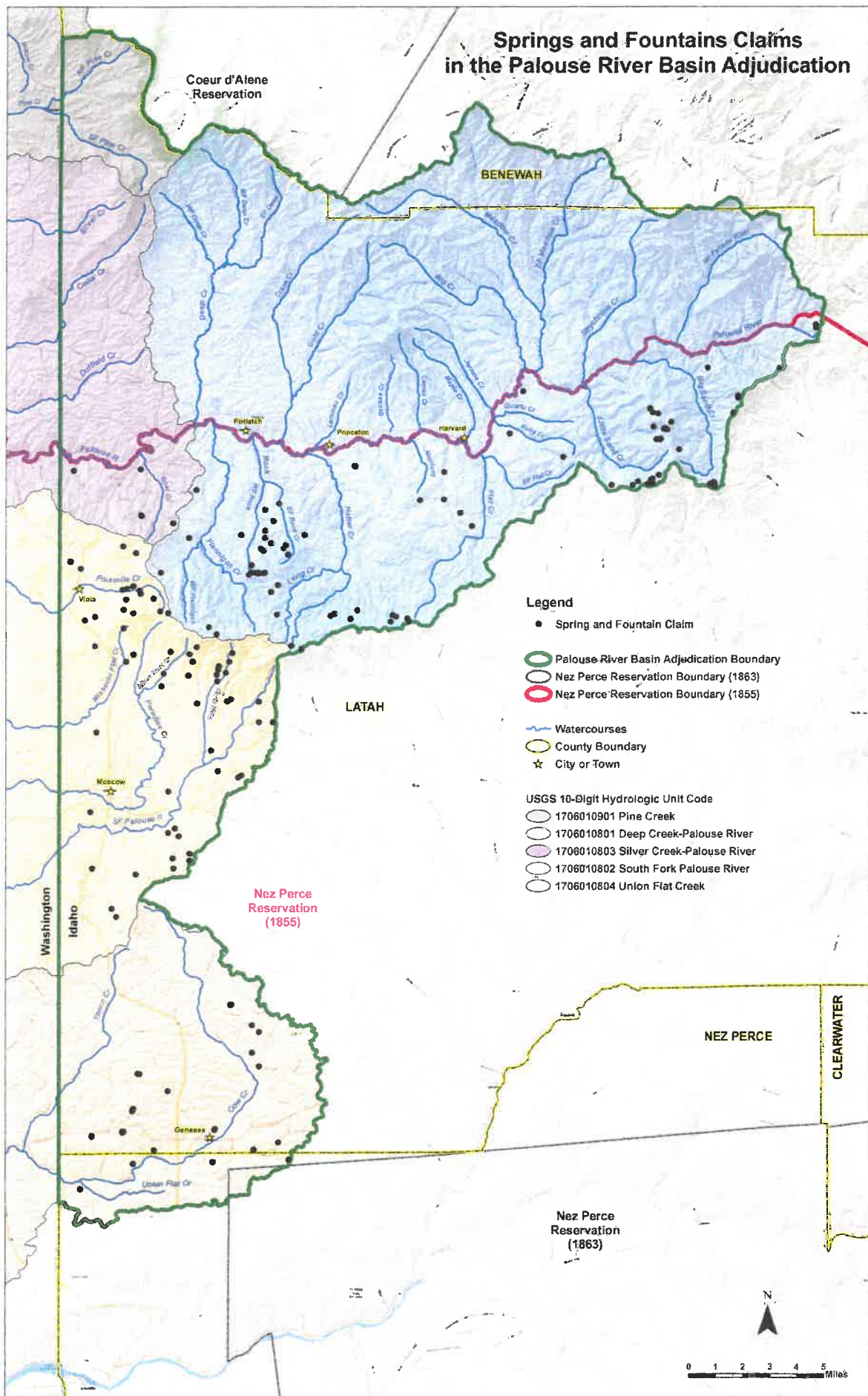


Katherine M. Kane
United States Department of Justice
Indian Resources Division
Natural Resources Section
999 18th Street
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

Springs and Fountains Claims in the Palouse River Basin Adjudication



**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 PALOUSE RIVER BASIN)
WATER SYSTEM)

Case No.: 59576

NOTICE OF CLAIM

Federal Reserved Water Right

RECEIVED

DEC 30 2019

DEPARTMENT OF
WATER RESOURCES

1. Name and address of claimant:

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and
ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the
REGIONAL DIRECTOR, NORTHWEST REGION

Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

2. Date of Priority: Time Immemorial

3. a. Source of water supply: Spring (Federal I.D. #3000)

b. which is a tributary to: Little Sand Creek

4. Point of Diversion: This claim is for a spring and/or fountain *in situ* including sufficient groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or fountains.

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
3000	41N	2W	20	NWNE	Boise	Latah

See Attached Map.

5. Place of Use:

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
3000	41N	2W	20	NWNE	Boise	Latah

See Attached Map.

6. Purpose of Water Use:

The purpose of use includes the full range of uses to which the Tribe and its members have always put the springs and fountains, including as a water source for consumptive use, for wildlife and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce Reservation pursuant to the documents referenced in Section 9 and the provisions in Section 10, *infra*.

7. Period of Use: January 1 through December 31.

8. Quantity Reserved (In cfs): Half the natural flow.

9. Basis of Claim:

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

10. Other Provisions:

- a. The United States has asserted other claims in the Palouse River Basin Adjudication. Paragraphs 10(a) – (g) express assertions applicable to all claims filed by the Bureau of Indian Affairs in its capacity as trustee for the Nez Perce Tribe in the Palouse River Basin Adjudication. The United States claims waters from groundwater and surface water sources within the Palouse River Basin in the state of Idaho to satisfy the rights reserved to the Nez Perce Tribe by the 1855 Treaty and the 1863 Treaty and to fulfill the permanent homeland purpose of the Nez Perce Reservation. Such present and future purposes include: instream flows for fish habitat; hunting, gathering, and pasturing; spring and fountains flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; and consumptive use claims on two allotments held in trust by the United States.
- b. The Nez Perce Tribe has occupied a territory in what is now central Idaho, southeastern Washington, and northeastern Oregon since time immemorial. *United States v. Webb*, 219 F.3d 1127, 1129 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). The Palouse River Basin is within the Tribe’s traditional lands.
- c. There is a complex history of the United States’ establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing

rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the “exclusive right to fish in all streams running through or bordering” the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the “right of taking fish at all usual and accustomed places in common with the citizens of the Territory” to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.

- d. Article III of the 1855 Treaty further reserves to the Tribe “the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land.”
- e. Article VIII of the Nez Perce Treaty of 1863 includes a unique provision reserving to the Nez Perce Tribe the use of “springs and fountains” within the area ceded under Article I of the 1863 Treaty. For purposes of the priority date of the springs and fountains claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.
- f. Pursuant to the General Allotment Act of 1887, Act of February 8, 1887, 24 Stat. 388, *amended*, Act of February 28, 1891, 26 Stat. 794, there are two allotments (Allotments 182-43 and 182-45) held in trust by the United States located within the boundaries of the Palouse River Basin and the northwestern corner of the Nez Perce Reservation. For purposes of the priority date of the domestic and stock watering claims for these two allotments, the United States claims June 11, 1855 pursuant to the 1855 Treaty.
- g. In order to comply with Idaho Code § 42-1409(1), the United States has designated “places of use,” “points of diversion,” and “purposes of use” in submitting this water rights claim. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe’s future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Reservation. The statute’s terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.

11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled “How you will receive notices in the Palouse River Basin Adjudication.”
- (b) I do ___ do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

For Organizations:

I do solemnly swear and affirm that I am Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.



Signature of Authorized Agent:

Title and Organization:

Northwest Regional Director
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

Notice is hereby given that the United States Department of Justice will represent the United States of America, including the U.S. Department of the Interior, Bureau of Indian Affairs, in all matters pertaining to the Palouse River Basin Adjudication.

All notices, filings and correspondence concerning this matter should be mailed to the United States Department of Justice at the address set forth below:

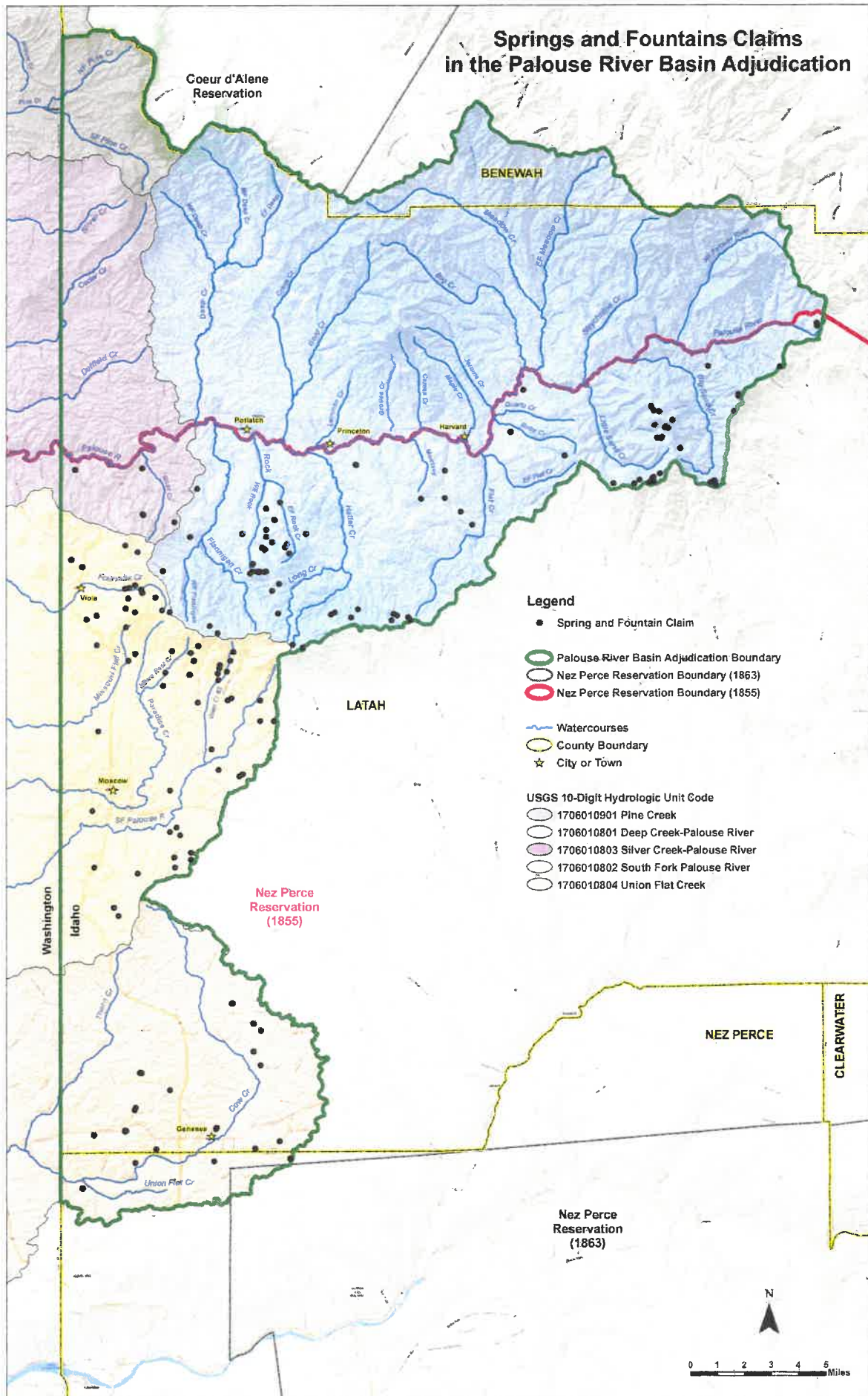


Katherine M. Kane
United States Department of Justice
Indian Resources Division
Natural Resources Section
999 18th Street
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

Springs and Fountains Claims in the Palouse River Basin Adjudication



87-12127

**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)	Case No.: 59576
ADJUDICATION OF RIGHTS)	
TO THE USE OF WATER FROM)	NOTICE OF CLAIM
THE PALOUSE RIVER BASIN)	
WATER SYSTEM)	Federal Reserved Water Right
)	
)	

RECEIVED

DEC 30 2019

DEPARTMENT OF
WATER RESOURCES

1. Name and address of claimant:

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and
ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the
REGIONAL DIRECTOR, NORTHWEST REGION

Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

2. Date of Priority: Time Immemorial

3. a. Source of water supply: Spring (Federal I.D. #3001)

b. which is a tributary to: Hatter Creek

4. Point of Diversion: This claim is for a spring and/or fountain *in situ* including sufficient groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or fountains.

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
3001	40N	4W	12	NWSW	Boise	Latah

See Attached Map.

5. Place of Use:

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
3001	40N	4W	12	NWSW	Boise	Latah

See Attached Map.

6. Purpose of Water Use:

The purpose of use includes the full range of uses to which the Tribe and its members have always put the springs and fountains, including as a water source for consumptive use, for wildlife and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce Reservation pursuant to the documents referenced in Section 9 and the provisions in Section 10, *infra*.

7. Period of Use: January 1 through December 31.

8. Quantity Reserved (In cfs): Half the natural flow.

9. Basis of Claim:

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

10. Other Provisions:

- a. The United States has asserted other claims in the Palouse River Basin Adjudication. Paragraphs 10(a) – (g) express assertions applicable to all claims filed by the Bureau of Indian Affairs in its capacity as trustee for the Nez Perce Tribe in the Palouse River Basin Adjudication. The United States claims waters from groundwater and surface water sources within the Palouse River Basin in the state of Idaho to satisfy the rights reserved to the Nez Perce Tribe by the 1855 Treaty and the 1863 Treaty and to fulfill the permanent homeland purpose of the Nez Perce Reservation. Such present and future purposes include: instream flows for fish habitat; hunting, gathering, and pasturing; spring and fountains flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; and consumptive use claims on two allotments held in trust by the United States.
- b. The Nez Perce Tribe has occupied a territory in what is now central Idaho, southeastern Washington, and northeastern Oregon since time immemorial. *United States v. Webb*, 219 F.3d 1127, 1129 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). The Palouse River Basin is within the Tribe’s traditional lands.
- c. There is a complex history of the United States’ establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing

rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the “exclusive right to fish in all streams running through or bordering” the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the “right of taking fish at all usual and accustomed places in common with the citizens of the Territory” to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.

- d. Article III of the 1855 Treaty further reserves to the Tribe “the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land.”
- e. Article VIII of the Nez Perce Treaty of 1863 includes a unique provision reserving to the Nez Perce Tribe the use of “springs and fountains” within the area ceded under Article I of the 1863 Treaty. For purposes of the priority date of the springs and fountains claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.
- f. Pursuant to the General Allotment Act of 1887, Act of February 8, 1887, 24 Stat. 388, *amended*, Act of February 28, 1891, 26 Stat. 794, there are two allotments (Allotments 182-43 and 182-45) held in trust by the United States located within the boundaries of the Palouse River Basin and the northwestern corner of the Nez Perce Reservation. For purposes of the priority date of the domestic and stock watering claims for these two allotments, the United States claims June 11, 1855 pursuant to the 1855 Treaty.
- g. In order to comply with Idaho Code § 42-1409(1), the United States has designated “places of use,” “points of diversion,” and “purposes of use” in submitting this water rights claim. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe’s future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Reservation. The statute’s terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.

11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled “How you will receive notices in the Palouse River Basin Adjudication.”
- (b) I do ___ do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

For Organizations:

I do solemnly swear and affirm that I am Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.



Signature of Authorized Agent:

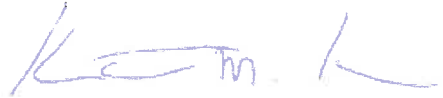
Title and Organization:

Northwest Regional Director
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

Notice is hereby given that the United States Department of Justice will represent the United States of America, including the U.S. Department of the Interior, Bureau of Indian Affairs, in all matters pertaining to the Palouse River Basin Adjudication.

All notices, filings and correspondence concerning this matter should be mailed to the United States Department of Justice at the address set forth below:

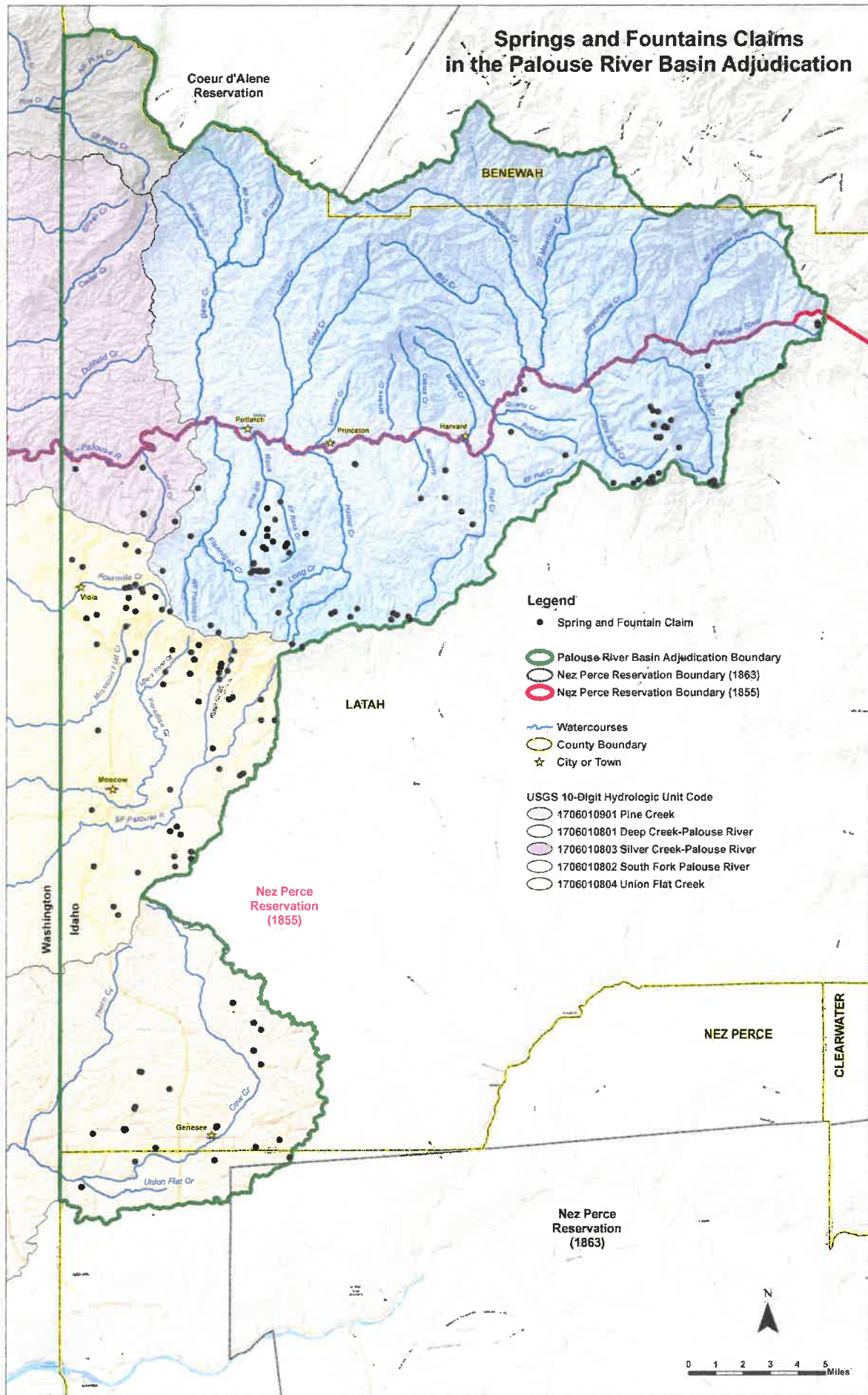


Katherine M. Kane
United States Department of Justice
Indian Resources Division
Natural Resources Section
999 18th Street
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

Springs and Fountains Claims in the Palouse River Basin Adjudication



87-12128

**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)	Case No.: 59576
ADJUDICATION OF RIGHTS)	
TO THE USE OF WATER FROM)	NOTICE OF CLAIM
THE PALOUSE RIVER BASIN)	
WATER SYSTEM)	Federal Reserved Water Right
)	
)	

RECEIVED

DEC 30 2019

DEPARTMENT OF
WATER RESOURCES

1. Name and address of claimant:

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and
ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the
REGIONAL DIRECTOR, NORTHWEST REGION

Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

2. Date of Priority: Time Immemorial

3. a. Source of water supply: Spring (Federal I.D. #3002)

b. which is a tributary to: Hatter Creek

4. Point of Diversion: This claim is for a spring and/or fountain *in situ* including sufficient groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or fountains.

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
3002	40N	4W	12	NESE	Boise	Latah

See Attached Map.

5. Place of Use:

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
3002	40N	4W	12	NESE	Boise	Latah

See Attached Map.

6. Purpose of Water Use:

The purpose of use includes the full range of uses to which the Tribe and its members have always put the springs and fountains, including as a water source for consumptive use, for wildlife and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce Reservation pursuant to the documents referenced in Section 9 and the provisions in Section 10, *infra*.

7. Period of Use: January 1 through December 31.

8. Quantity Reserved (In cfs): Half the natural flow.

9. Basis of Claim:

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

10. Other Provisions:

- a. The United States has asserted other claims in the Palouse River Basin Adjudication. Paragraphs 10(a) – (g) express assertions applicable to all claims filed by the Bureau of Indian Affairs in its capacity as trustee for the Nez Perce Tribe in the Palouse River Basin Adjudication. The United States claims waters from groundwater and surface water sources within the Palouse River Basin in the state of Idaho to satisfy the rights reserved to the Nez Perce Tribe by the 1855 Treaty and the 1863 Treaty and to fulfill the permanent homeland purpose of the Nez Perce Reservation. Such present and future purposes include: instream flows for fish habitat; hunting, gathering, and pasturing; spring and fountains flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; and consumptive use claims on two allotments held in trust by the United States.
- b. The Nez Perce Tribe has occupied a territory in what is now central Idaho, southeastern Washington, and northeastern Oregon since time immemorial. *United States v. Webb*, 219 F.3d 1127, 1129 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). The Palouse River Basin is within the Tribe’s traditional lands.
- c. There is a complex history of the United States’ establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing

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- d. Article III of the 1855 Treaty further reserves to the Tribe “the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land.”
- e. Article VIII of the Nez Perce Treaty of 1863 includes a unique provision reserving to the Nez Perce Tribe the use of “springs and fountains” within the area ceded under Article I of the 1863 Treaty. For purposes of the priority date of the springs and fountains claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.
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- g. In order to comply with Idaho Code § 42-1409(1), the United States has designated “places of use,” “points of diversion,” and “purposes of use” in submitting this water rights claim. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe’s future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Reservation. The statute’s terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.

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- (b) I do ___ do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

For Organizations:

I do solemnly swear and affirm that I am Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.



Signature of Authorized Agent:

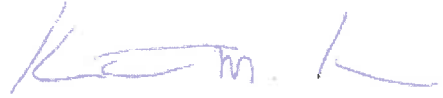
Title and Organization:

Northwest Regional Director
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

Notice is hereby given that the United States Department of Justice will represent the United States of America, including the U.S. Department of the Interior, Bureau of Indian Affairs, in all matters pertaining to the Palouse River Basin Adjudication.

All notices, filings and correspondence concerning this matter should be mailed to the United States Department of Justice at the address set forth below:

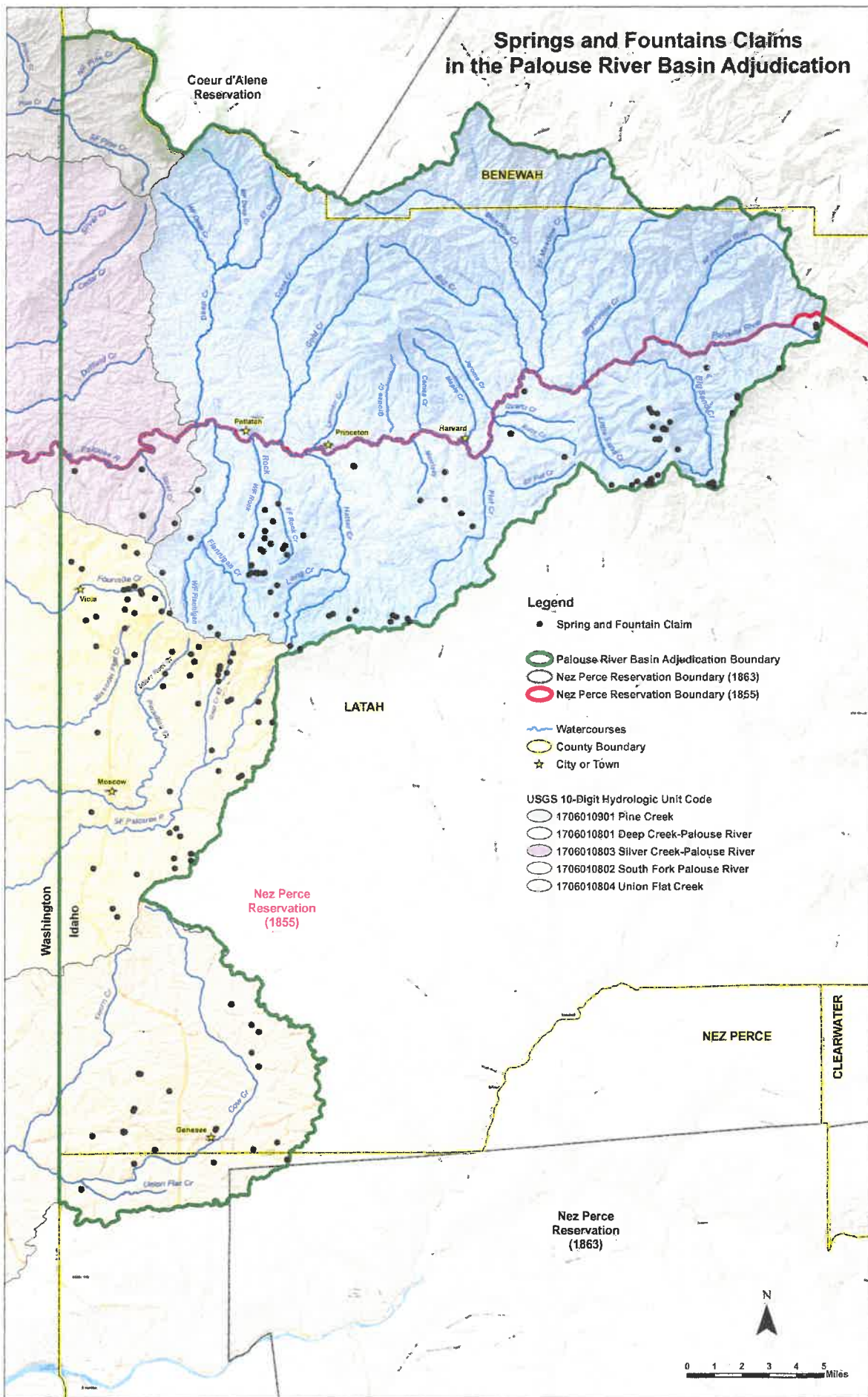


Katherine M. Kane
United States Department of Justice
Indian Resources Division
Natural Resources Section
999 18th Street
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

Springs and Fountains Claims in the Palouse River Basin Adjudication



**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)	Case No.: 59576
ADJUDICATION OF RIGHTS)	
TO THE USE OF WATER FROM)	NOTICE OF CLAIM
THE PALOUSE RIVER BASIN)	
WATER SYSTEM)	Federal Reserved Water Right
)	
)	

RECEIVED
DEC 30 2019
DEPARTMENT OF
WATER RESOURCES

1. Name and address of claimant:

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the REGIONAL DIRECTOR, NORTHWEST REGION

Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

2. Date of Priority: Time Immemorial

3. a. Source of water supply: Spring (Federal I.D. #3003)

b. which is a tributary to: Hatter Creek

4. Point of Diversion: This claim is for a spring and/or fountain *in situ* including sufficient groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or fountains.

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
3003	40N	4W	12	NESE	Boise	Latah

See Attached Map.

5. Place of Use:

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
3003	40N	4W	12	NESE	Boise	Latah

See Attached Map.

6. Purpose of Water Use:

The purpose of use includes the full range of uses to which the Tribe and its members have always put the springs and fountains, including as a water source for consumptive use, for wildlife and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce Reservation pursuant to the documents referenced in Section 9 and the provisions in Section 10, *infra*.

7. Period of Use: January 1 through December 31.

8. Quantity Reserved (In cfs): Half the natural flow.

9. Basis of Claim:

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

10. Other Provisions:

- a. The United States has asserted other claims in the Palouse River Basin Adjudication. Paragraphs 10(a) – (g) express assertions applicable to all claims filed by the Bureau of Indian Affairs in its capacity as trustee for the Nez Perce Tribe in the Palouse River Basin Adjudication. The United States claims waters from groundwater and surface water sources within the Palouse River Basin in the state of Idaho to satisfy the rights reserved to the Nez Perce Tribe by the 1855 Treaty and the 1863 Treaty and to fulfill the permanent homeland purpose of the Nez Perce Reservation. Such present and future purposes include: instream flows for fish habitat; hunting, gathering, and pasturing; spring and fountains flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; and consumptive use claims on two allotments held in trust by the United States.
- b. The Nez Perce Tribe has occupied a territory in what is now central Idaho, southeastern Washington, and northeastern Oregon since time immemorial. *United States v. Webb*, 219 F.3d 1127, 1129 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). The Palouse River Basin is within the Tribe’s traditional lands.
- c. There is a complex history of the United States’ establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing

rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the “exclusive right to fish in all streams running through or bordering” the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the “right of taking fish at all usual and accustomed places in common with the citizens of the Territory” to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.

- d. Article III of the 1855 Treaty further reserves to the Tribe “the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land.”
- e. Article VIII of the Nez Perce Treaty of 1863 includes a unique provision reserving to the Nez Perce Tribe the use of “springs and fountains” within the area ceded under Article I of the 1863 Treaty. For purposes of the priority date of the springs and fountains claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.
- f. Pursuant to the General Allotment Act of 1887, Act of February 8, 1887, 24 Stat. 388, *amended*, Act of February 28, 1891, 26 Stat. 794, there are two allotments (Allotments 182-43 and 182-45) held in trust by the United States located within the boundaries of the Palouse River Basin and the northwestern corner of the Nez Perce Reservation. For purposes of the priority date of the domestic and stock watering claims for these two allotments, the United States claims June 11, 1855 pursuant to the 1855 Treaty.
- g. In order to comply with Idaho Code § 42-1409(1), the United States has designated “places of use,” “points of diversion,” and “purposes of use” in submitting this water rights claim. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe’s future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Reservation. The statute’s terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.

11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled “How you will receive notices in the Palouse River Basin Adjudication.”
- (b) I do ___ do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

For Organizations:

I do solemnly swear and affirm that I am Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.



Signature of Authorized Agent:

Title and Organization:

Northwest Regional Director
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

Notice is hereby given that the United States Department of Justice will represent the United States of America, including the U.S. Department of the Interior, Bureau of Indian Affairs, in all matters pertaining to the Palouse River Basin Adjudication.

All notices, filings and correspondence concerning this matter should be mailed to the United States Department of Justice at the address set forth below:

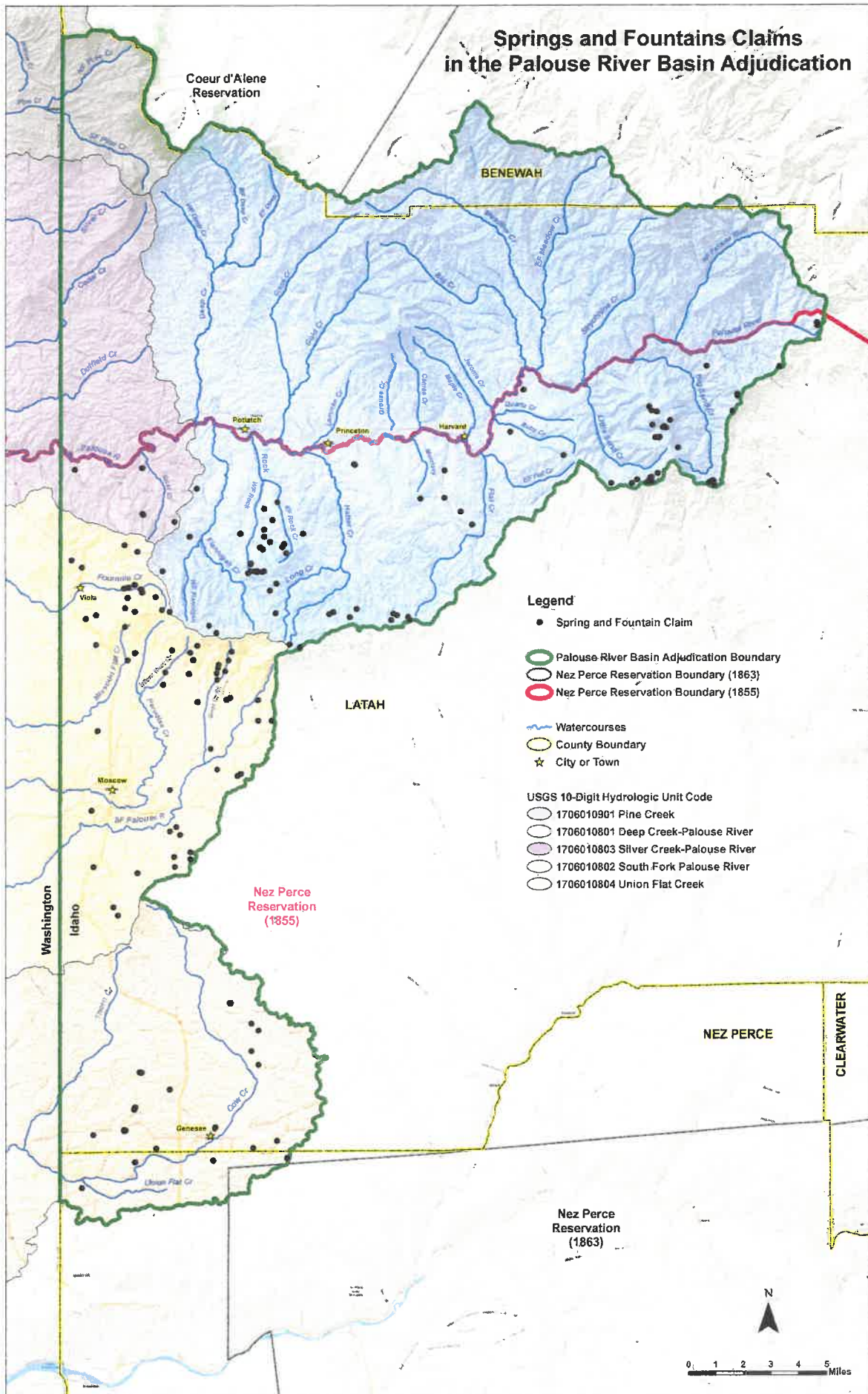


Katherine M. Kane
United States Department of Justice
Indian Resources Division
Natural Resources Section
999 18th Street
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

Springs and Fountains Claims in the Palouse River Basin Adjudication



87-12130

**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)	Case No.: 59576
ADJUDICATION OF RIGHTS)	
TO THE USE OF WATER FROM)	NOTICE OF CLAIM
THE PALOUSE RIVER BASIN)	
WATER SYSTEM)	Federal Reserved Water Right
)	
)	

RECEIVED
DEC 30 2019
DEPARTMENT OF
WATER RESOURCES

1. Name and address of claimant:

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the REGIONAL DIRECTOR, NORTHWEST REGION

Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

2. Date of Priority: Time Immemorial

3. a. Source of water supply: Spring (Federal I.D. #3004)

b. which is a tributary to: Johnson Creek

4. Point of Diversion: This claim is for a spring and/or fountain *in situ* including sufficient groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or fountains.

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
3004	42N	1W	29	SWSE	Boise	Latah

See Attached Map.

5. Place of Use:

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
3004	42N	1W	29	SWSE	Boise	Latah

See Attached Map.

6. Purpose of Water Use:

The purpose of use includes the full range of uses to which the Tribe and its members have always put the springs and fountains, including as a water source for consumptive use, for wildlife and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce Reservation pursuant to the documents referenced in Section 9 and the provisions in Section 10, *infra*.

7. Period of Use: January 1 through December 31.

8. Quantity Reserved (In cfs): Half the natural flow.

9. Basis of Claim:

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

10. Other Provisions:

- a. The United States has asserted other claims in the Palouse River Basin Adjudication. Paragraphs 10(a) – (g) express assertions applicable to all claims filed by the Bureau of Indian Affairs in its capacity as trustee for the Nez Perce Tribe in the Palouse River Basin Adjudication. The United States claims waters from groundwater and surface water sources within the Palouse River Basin in the state of Idaho to satisfy the rights reserved to the Nez Perce Tribe by the 1855 Treaty and the 1863 Treaty and to fulfill the permanent homeland purpose of the Nez Perce Reservation. Such present and future purposes include: instream flows for fish habitat; hunting, gathering, and pasturing; spring and fountains flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; and consumptive use claims on two allotments held in trust by the United States.
- b. The Nez Perce Tribe has occupied a territory in what is now central Idaho, southeastern Washington, and northeastern Oregon since time immemorial. *United States v. Webb*, 219 F.3d 1127, 1129 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). The Palouse River Basin is within the Tribe’s traditional lands.
- c. There is a complex history of the United States’ establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing

rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the “exclusive right to fish in all streams running through or bordering” the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the “right of taking fish at all usual and accustomed places in common with the citizens of the Territory” to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.

- d. Article III of the 1855 Treaty further reserves to the Tribe “the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land.”
- e. Article VIII of the Nez Perce Treaty of 1863 includes a unique provision reserving to the Nez Perce Tribe the use of “springs and fountains” within the area ceded under Article I of the 1863 Treaty. For purposes of the priority date of the springs and fountains claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.
- f. Pursuant to the General Allotment Act of 1887, Act of February 8, 1887, 24 Stat. 388, *amended*, Act of February 28, 1891, 26 Stat. 794, there are two allotments (Allotments 182-43 and 182-45) held in trust by the United States located within the boundaries of the Palouse River Basin and the northwestern corner of the Nez Perce Reservation. For purposes of the priority date of the domestic and stock watering claims for these two allotments, the United States claims June 11, 1855 pursuant to the 1855 Treaty.
- g. In order to comply with Idaho Code § 42-1409(1), the United States has designated “places of use,” “points of diversion,” and “purposes of use” in submitting this water rights claim. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe’s future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Reservation. The statute’s terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.

11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled “How you will receive notices in the Palouse River Basin Adjudication.”
- (b) I do ___ do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

For Organizations:

I do solemnly swear and affirm that I am Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.



Signature of Authorized Agent:

Title and Organization:

Northwest Regional Director
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

Notice is hereby given that the United States Department of Justice will represent the United States of America, including the U.S. Department of the Interior, Bureau of Indian Affairs, in all matters pertaining to the Palouse River Basin Adjudication.

All notices, filings and correspondence concerning this matter should be mailed to the United States Department of Justice at the address set forth below:



Katherine M. Kane
United States Department of Justice
Indian Resources Division
Natural Resources Section
999 18th Street
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

**Springs and Fountains Claims
in the Palouse River Basin Adjudication**

Coeur d'Alene Reservation

BENEWAH

LATAH

Washington

Idaho

Nez Perce Reservation (1855)

Nez Perce Reservation (1863)

CLEARWATER

Vernon

Legend

- Spring and Fountain Claim
- Palouse River Basin Adjudication Boundary
- Nez Perce Reservation Boundary (1863)
- Nez Perce Reservation Boundary (1855)
- Watercourses
- County Boundary
- ☆ City or Town

USGS 10-Digit Hydrologic Unit Code

- 1706010901 Pine Creek
- 1706010801 Deep Creek-Palouse River
- 1706010803 Silver Creek-Palouse River
- 1706010802 South Fork Palouse River
- 1706010804 Union Flat Creek

Scale: 0 1 2 3 4 5 Miles

BENEWAH

LATAH

**Nez Perce
Reservation
(1855)**

NEZ PERCE

**Nez Perce
Reservation
(1863)**

CLEARWATER

7

0 1 2 3 4 5 Miles

87-12131

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

RECEIVED

IN RE: THE GENERAL)
ADJUDICATION OF RIGHTS)
TO THE USE OF WATER FROM)
THE PALOUSE RIVER BASIN)
WATER SYSTEM)

Case No.: 59576

NOTICE OF CLAIM

Federal Reserved Water Right

DEC 30 2019

DEPARTMENT OF
WATER RESOURCES

1. Name and address of claimant:

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and
ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the
REGIONAL DIRECTOR, NORTHWEST REGION

Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

2. Date of Priority: Time Immemorial

3. a. Source of water supply: Spring (Federal I.D. #3005)

b. which is a tributary to: Palouse River

4. Point of Diversion: This claim is for a spring and/or fountain *in situ* including sufficient groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or fountains.

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
3005	42N	1W	22	SWNW	Boise	Latah

See Attached Map.

5. Place of Use:

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
3005	42N	1W	22	SWNW	Boise	Latah

See Attached Map.

6. Purpose of Water Use:

The purpose of use includes the full range of uses to which the Tribe and its members have always put the springs and fountains, including as a water source for consumptive use, for wildlife and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce Reservation pursuant to the documents referenced in Section 9 and the provisions in Section 10, *infra*.

7. Period of Use: January 1 through December 31.

8. Quantity Reserved (In cfs): Half the natural flow.

9. Basis of Claim:

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

10. Other Provisions:

- a. The United States has asserted other claims in the Palouse River Basin Adjudication. Paragraphs 10(a) – (g) express assertions applicable to all claims filed by the Bureau of Indian Affairs in its capacity as trustee for the Nez Perce Tribe in the Palouse River Basin Adjudication. The United States claims waters from groundwater and surface water sources within the Palouse River Basin in the state of Idaho to satisfy the rights reserved to the Nez Perce Tribe by the 1855 Treaty and the 1863 Treaty and to fulfill the permanent homeland purpose of the Nez Perce Reservation. Such present and future purposes include: instream flows for fish habitat; hunting, gathering, and pasturing; spring and fountains flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; and consumptive use claims on two allotments held in trust by the United States.
- b. The Nez Perce Tribe has occupied a territory in what is now central Idaho, southeastern Washington, and northeastern Oregon since time immemorial. *United States v. Webb*, 219 F.3d 1127, 1129 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). The Palouse River Basin is within the Tribe’s traditional lands.
- c. There is a complex history of the United States’ establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing

rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the “exclusive right to fish in all streams running through or bordering” the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the “right of taking fish at all usual and accustomed places in common with the citizens of the Territory” to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.

- d. Article III of the 1855 Treaty further reserves to the Tribe “the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land.”
- e. Article VIII of the Nez Perce Treaty of 1863 includes a unique provision reserving to the Nez Perce Tribe the use of “springs and fountains” within the area ceded under Article I of the 1863 Treaty. For purposes of the priority date of the springs and fountains claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.
- f. Pursuant to the General Allotment Act of 1887, Act of February 8, 1887, 24 Stat. 388, *amended*, Act of February 28, 1891, 26 Stat. 794, there are two allotments (Allotments 182-43 and 182-45) held in trust by the United States located within the boundaries of the Palouse River Basin and the northwestern corner of the Nez Perce Reservation. For purposes of the priority date of the domestic and stock watering claims for these two allotments, the United States claims June 11, 1855 pursuant to the 1855 Treaty.
- g. In order to comply with Idaho Code § 42-1409(1), the United States has designated “places of use,” “points of diversion,” and “purposes of use” in submitting this water rights claim. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe’s future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Reservation. The statute’s terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.

11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled “How you will receive notices in the Palouse River Basin Adjudication.”
- (b) I do ___ do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

For Organizations:

I do solemnly swear and affirm that I am Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.



Signature of Authorized Agent:

Title and Organization:

Northwest Regional Director
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

Notice is hereby given that the United States Department of Justice will represent the United States of America, including the U.S. Department of the Interior, Bureau of Indian Affairs, in all matters pertaining to the Palouse River Basin Adjudication.

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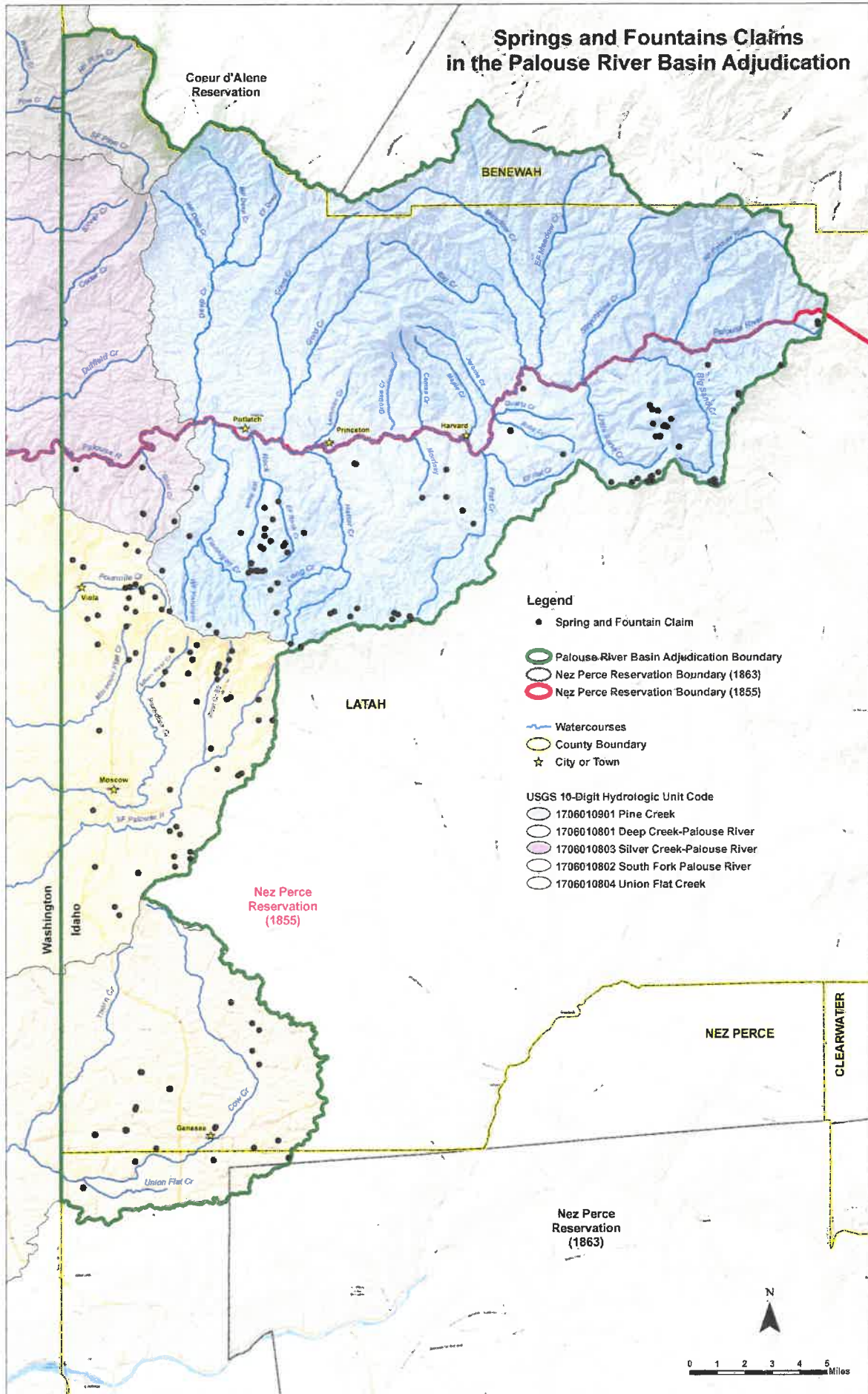


Katherine M. Kane
United States Department of Justice
Indian Resources Division
Natural Resources Section
999 18th Street
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

Springs and Fountains Claims in the Palouse River Basin Adjudication



**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)	Case No.: 59576
ADJUDICATION OF RIGHTS)	
TO THE USE OF WATER FROM)	NOTICE OF CLAIM
THE PALOUSE RIVER BASIN)	
WATER SYSTEM)	Federal Reserved Water Right
)	
)	

RECEIVED
DEC 30 2019
DEPARTMENT OF
WATER RESOURCES

1. Name and address of claimant:

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the REGIONAL DIRECTOR, NORTHWEST REGION

Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

2. Date of Priority: Time Immemorial

3. a. Source of water supply: Spring (Federal I.D. #3006)

b. which is a tributary to: Palouse River

4. Point of Diversion: This claim is for a spring and/or fountain *in situ* including sufficient groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or fountains.

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
3006	42N	1W	22	SWNW	Boise	Latah

See Attached Map.

5. Place of Use:

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
3006	42N	1W	22	SWNW	Boise	Latah

See Attached Map.

6. Purpose of Water Use:

The purpose of use includes the full range of uses to which the Tribe and its members have always put the springs and fountains, including as a water source for consumptive use, for wildlife and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce Reservation pursuant to the documents referenced in Section 9 and the provisions in Section 10, *infra*.

7. Period of Use: January 1 through December 31.

8. Quantity Reserved (In cfs): Half the natural flow.

9. Basis of Claim:

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

10. Other Provisions:

- a. The United States has asserted other claims in the Palouse River Basin Adjudication. Paragraphs 10(a) – (g) express assertions applicable to all claims filed by the Bureau of Indian Affairs in its capacity as trustee for the Nez Perce Tribe in the Palouse River Basin Adjudication. The United States claims waters from groundwater and surface water sources within the Palouse River Basin in the state of Idaho to satisfy the rights reserved to the Nez Perce Tribe by the 1855 Treaty and the 1863 Treaty and to fulfill the permanent homeland purpose of the Nez Perce Reservation. Such present and future purposes include: instream flows for fish habitat; hunting, gathering, and pasturing; spring and fountains flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; and consumptive use claims on two allotments held in trust by the United States.
- b. The Nez Perce Tribe has occupied a territory in what is now central Idaho, southeastern Washington, and northeastern Oregon since time immemorial. *United States v. Webb*, 219 F.3d 1127, 1129 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). The Palouse River Basin is within the Tribe’s traditional lands.
- c. There is a complex history of the United States’ establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing

rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the “exclusive right to fish in all streams running through or bordering” the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the “right of taking fish at all usual and accustomed places in common with the citizens of the Territory” to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.

- d. Article III of the 1855 Treaty further reserves to the Tribe “the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land.”
- e. Article VIII of the Nez Perce Treaty of 1863 includes a unique provision reserving to the Nez Perce Tribe the use of “springs and fountains” within the area ceded under Article I of the 1863 Treaty. For purposes of the priority date of the springs and fountains claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.
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- g. In order to comply with Idaho Code § 42-1409(1), the United States has designated “places of use,” “points of diversion,” and “purposes of use” in submitting this water rights claim. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe’s future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Reservation. The statute’s terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.

11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled “How you will receive notices in the Palouse River Basin Adjudication.”
- (b) I do ☐ do not ☒ wish to receive and pay a small annual fee for monthly copies of the docket sheet.

For Organizations:

I do solemnly swear and affirm that I am Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.



Signature of Authorized Agent:

Title and Organization:

Northwest Regional Director
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

Notice is hereby given that the United States Department of Justice will represent the United States of America, including the U.S. Department of the Interior, Bureau of Indian Affairs, in all matters pertaining to the Palouse River Basin Adjudication.

All notices, filings and correspondence concerning this matter should be mailed to the United States Department of Justice at the address set forth below:

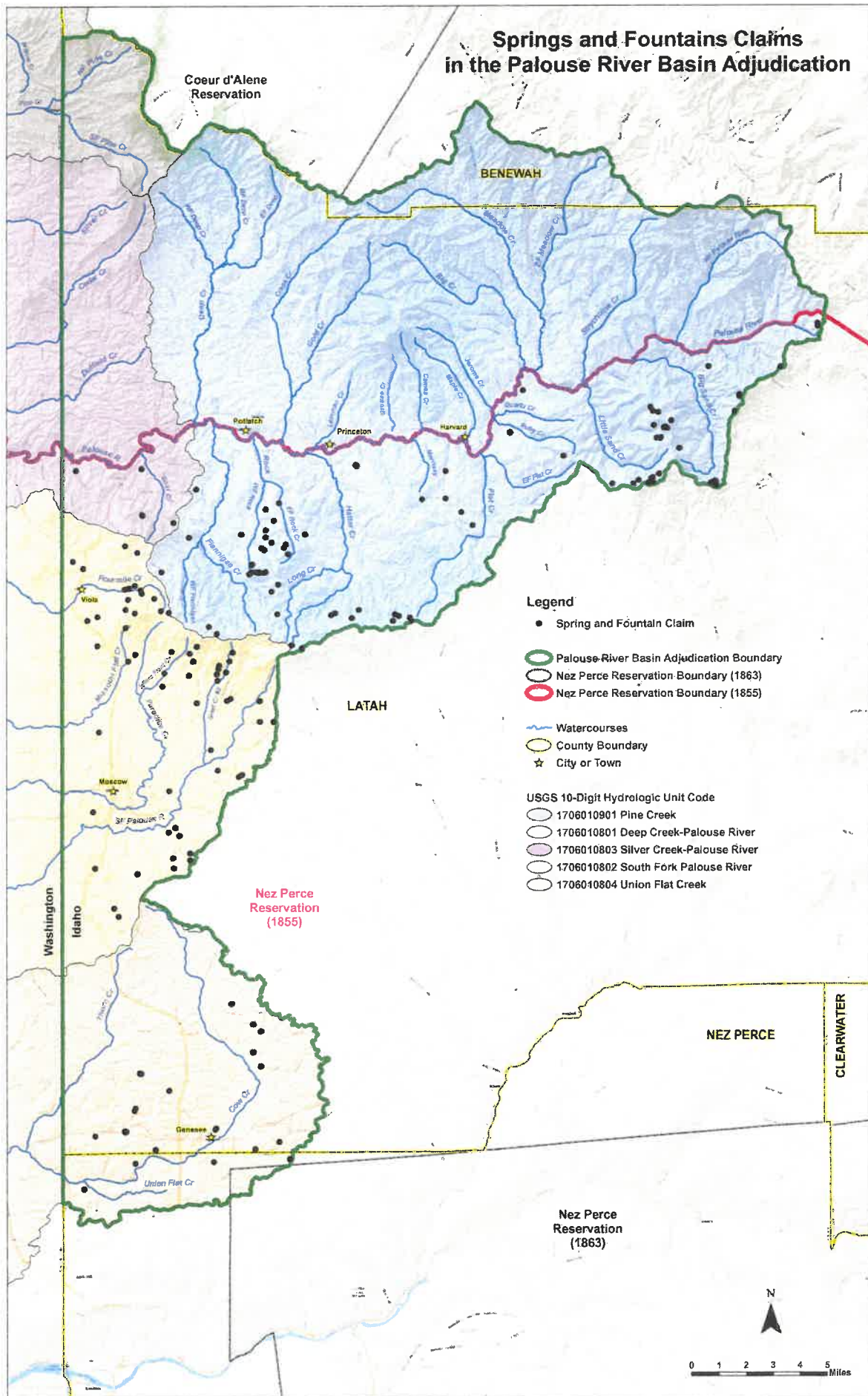


Katherine M. Kane
United States Department of Justice
Indian Resources Division
Natural Resources Section
999 18th Street
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

Springs and Fountains Claims in the Palouse River Basin Adjudication



**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 PALOUSE RIVER BASIN)
WATER SYSTEM)

Case No.: 59576

NOTICE OF CLAIM

Federal Reserved Water Right

RECEIVED

DEC 30 2019

DEPARTMENT OF
WATER RESOURCES

1. Name and address of claimant:

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and
ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the
REGIONAL DIRECTOR, NORTHWEST REGION

Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

2. Date of Priority: Time Immemorial

3. a. Source of water supply: Spring (Federal I.D. #3007)

b. which is a tributary to: Big Sand Creek

4. **Point of Diversion:** This claim is for a spring and/or fountain *in situ* including sufficient groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or fountains.

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
3007	41N	2W	24	NENW	Boise	Latah

See Attached Map.

5. Place of Use:

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
3007	41N	2W	24	NENW	Boise	Latah

See Attached Map.

6. Purpose of Water Use:

The purpose of use includes the full range of uses to which the Tribe and its members have always put the springs and fountains, including as a water source for consumptive use, for wildlife and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce Reservation pursuant to the documents referenced in Section 9 and the provisions in Section 10, *infra*.

7. Period of Use: January 1 through December 31.

8. Quantity Reserved (In cfs): Half the natural flow.

9. Basis of Claim:

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

10. Other Provisions:

- a. The United States has asserted other claims in the Palouse River Basin Adjudication. Paragraphs 10(a) – (g) express assertions applicable to all claims filed by the Bureau of Indian Affairs in its capacity as trustee for the Nez Perce Tribe in the Palouse River Basin Adjudication. The United States claims waters from groundwater and surface water sources within the Palouse River Basin in the state of Idaho to satisfy the rights reserved to the Nez Perce Tribe by the 1855 Treaty and the 1863 Treaty and to fulfill the permanent homeland purpose of the Nez Perce Reservation. Such present and future purposes include: instream flows for fish habitat; hunting, gathering, and pasturing; spring and fountains flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; and consumptive use claims on two allotments held in trust by the United States.
- b. The Nez Perce Tribe has occupied a territory in what is now central Idaho, southeastern Washington, and northeastern Oregon since time immemorial. *United States v. Webb*, 219 F.3d 1127, 1129 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). The Palouse River Basin is within the Tribe’s traditional lands.
- c. There is a complex history of the United States’ establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing

rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the “exclusive right to fish in all streams running through or bordering” the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the “right of taking fish at all usual and accustomed places in common with the citizens of the Territory” to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.

- d. Article III of the 1855 Treaty further reserves to the Tribe “the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land.”
- e. Article VIII of the Nez Perce Treaty of 1863 includes a unique provision reserving to the Nez Perce Tribe the use of “springs and fountains” within the area ceded under Article I of the 1863 Treaty. For purposes of the priority date of the springs and fountains claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.
- f. Pursuant to the General Allotment Act of 1887, Act of February 8, 1887, 24 Stat. 388, *amended*, Act of February 28, 1891, 26 Stat. 794, there are two allotments (Allotments 182-43 and 182-45) held in trust by the United States located within the boundaries of the Palouse River Basin and the northwestern corner of the Nez Perce Reservation. For purposes of the priority date of the domestic and stock watering claims for these two allotments, the United States claims June 11, 1855 pursuant to the 1855 Treaty.
- g. In order to comply with Idaho Code § 42-1409(1), the United States has designated “places of use,” “points of diversion,” and “purposes of use” in submitting this water rights claim. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe’s future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Reservation. The statute’s terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.

11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled “How you will receive notices in the Palouse River Basin Adjudication.”
- (b) I do ___ do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

For Organizations:

I do solemnly swear and affirm that I am Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.



Signature of Authorized Agent:

Title and Organization:

Northwest Regional Director
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

Notice is hereby given that the United States Department of Justice will represent the United States of America, including the U.S. Department of the Interior, Bureau of Indian Affairs, in all matters pertaining to the Palouse River Basin Adjudication.

All notices, filings and correspondence concerning this matter should be mailed to the United States Department of Justice at the address set forth below:



Katherine M. Kane
United States Department of Justice
Indian Resources Division
Natural Resources Section
999 18th Street
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

**Springs and Fountains Claims
in the Palouse River Basin Adjudication**

Coeur d'Alene
Reservation

BENEWAH

LATAH

Washington Idaho

Nez Perce
Reservation
(1855)

Genesee

Union Flat Cr.

Nez Perce
Reservation
(1863)

CLEARWATER

Legend

- Spring and Fountain Claim
- Palouse River Basin Adjudication Boundary
- Nez Perce Reservation Boundary (1863)
- Nez Perce Reservation Boundary (1855)
- Watercourses
- County Boundary
- ☆ City or Town

USGS 10-Digit Hydrologic Unit Code


- 1706010901 Pine Creek
- 1706010801 Deep Creek-Palouse River
- 1706010803 Silver Creek-Palouse River
- 1706010802 South Fork Palouse River
- 1706010804 Union Flat Creek

N

0 1 2 3 4 5 Miles

- **Spring and Fountain Claim**

○ Nez Perce Reservation Boundary (1863)

 Nez Perce Reservation Boundary (1855)

 **Watercourses** County Boundary

★ City or Town

USGS 10-Digit Hydrologic Unit Code

1706010901 Pine Creek

1706010801 Deep Creek-Palouse River

1706010803 Silver Creek-Palouse River

1706010802 South Fork Palouse River

1706010804 Union Flat Creek

**Nez Perce
Reservation
(1855)**

NEZ PERCE

Nez Perce
Reservation
(1863)

CLEARWATER

0 1 2 3 4 5 Miles

**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 PALOUSE RIVER BASIN)
WATER SYSTEM)
)
)
)

Case No.: 59576

NOTICE OF CLAIM

Federal Reserved Water Right

RECEIVED

DEC 30 2019

DEPARTMENT OF
WATER RESOURCES

1. Name and address of claimant:

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and
ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the
REGIONAL DIRECTOR, NORTHWEST REGION

Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

2. Date of Priority: Time Immemorial

3. a. Source of water supply: Springs (Federal I.D. #3008)

b. which is a tributary to: Big Sand Creek

4. Point of Diversion: This claim is for a spring and/or fountain *in situ* including sufficient groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or fountains.

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
3008-1	41N	2W	13	SESW	Boise	Latah
3008-2	41N	2W	13	SESW	Boise	Latah
3008-3	41N	2W	24	NWNW	Boise	Latah

See Attached Map.

5. Place of Use:

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
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3008-2	41N	2W	13	SESW	Boise	Latah
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See Attached Map.

6. Purpose of Water Use:

The purpose of use includes the full range of uses to which the Tribe and its members have always put the springs and fountains, including as a water source for consumptive use, for wildlife and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce Reservation pursuant to the documents referenced in Section 9 and the provisions in Section 10, *infra*.

7. Period of Use: January 1 through December 31.

8. Quantity Reserved (In cfs): Half the natural flow.

9. Basis of Claim:

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

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- (b) I do ___ do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

For Organizations:

I do solemnly swear and affirm that I am Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.



Signature of Authorized Agent:

Title and Organization:

Northwest Regional Director
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

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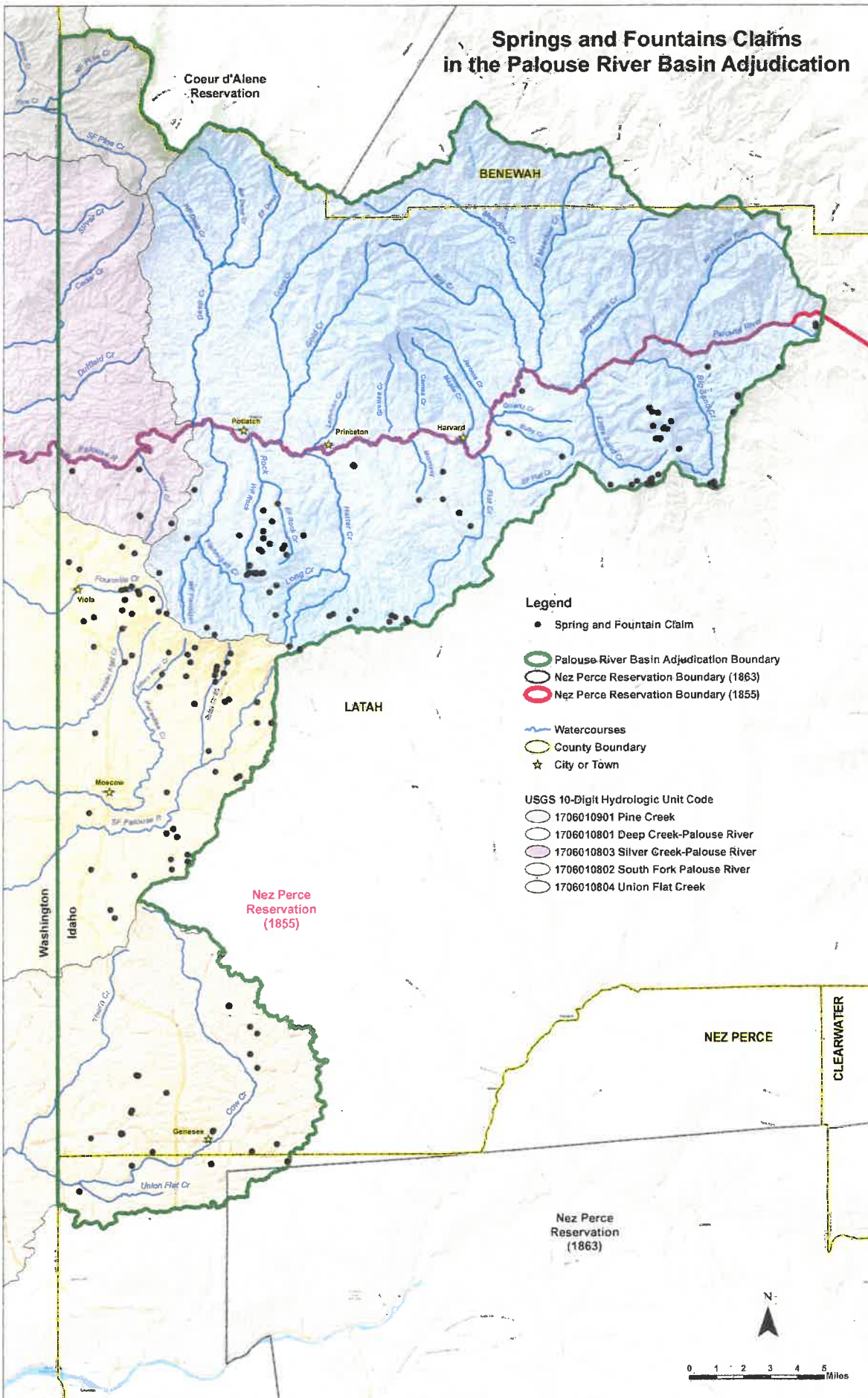


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United States Department of Justice
Indian Resources Division
Natural Resources Section
999 18th Street
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

Springs and Fountains Claims in the Palouse River Basin Adjudication



**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS**

RECEIVED

DEC 30 2019

DEPARTMENT OF
WATER RESOURCES

IN RE: THE GENERAL)	Case No.: 59576
ADJUDICATION OF RIGHTS)	
TO THE USE OF WATER FROM)	NOTICE OF CLAIM
THE PALOUSE RIVER BASIN)	
WATER SYSTEM)	Federal Reserved Water Right
)	
)	

1. Name and address of claimant:

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and
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REGIONAL DIRECTOR, NORTHWEST REGION

Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

2. Date of Priority: Time Immemorial

3. a. Source of water supply: Spring (Federal I.D. #3009)

b. which is a tributary to: Big Sand Creek

4. Point of Diversion: This claim is for a spring and/or fountain *in situ* including sufficient groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or fountains.

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
3009	41N	2W	24	NWNW	Boise	Latah

See Attached Map.

5. Place of Use:

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
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See Attached Map.

6. Purpose of Water Use:

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7. Period of Use: January 1 through December 31.

8. Quantity Reserved (In cfs): Half the natural flow.

9. Basis of Claim:

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

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For Organizations:

I do solemnly swear and affirm that I am Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.



Signature of Authorized Agent:

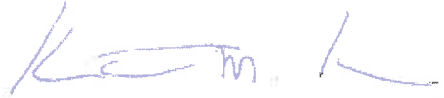
Title and Organization:

Northwest Regional Director
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

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Natural Resources Section
999 18th Street
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

**Springs and Fountains Claims
in the Palouse River Basin Adjudication**

Coeur d'Alene
Reservation

BENEWAH

LATAH

Washington

Idaho

Nez Perce
Reservation
(1855)

Nez Perce
Reservation
(1863)

NEZ PERCE

CLEARWATER

Legend

- Spring and Fountain Claim
- Palouse River Basin Adjudication Boundary
- Nez Perce Reservation Boundary (1863)
- Nez Perce Reservation Boundary (1855)
- Watercourses
- County Boundary
- ★ City or Town

USGS 10-Digit Hydrologic Unit Code

- 1706010901 Pine Creek
- 1706010801 Deep Creek-Palouse River
- 1706010803 Silver Creek-Palouse River
- 1706010802 South Fork Palouse River
- 1706010804 Union Flat Creek

0 1 2 3 4 5 Miles

N

N

0 1 2 3 4 5 Miles

**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 PALOUSE RIVER BASIN)
WATER SYSTEM)
)
)
)

Case No.: 59576

NOTICE OF CLAIM

Federal Reserved Water Right

RECEIVED

DEC 30 2019

DEPARTMENT OF
WATER RESOURCES

1. Name and address of claimant:

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and
ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the
REGIONAL DIRECTOR, NORTHWEST REGION

Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

2. Date of Priority: Time Immemorial

3. a. Source of water supply: Spring (Federal I.D. #3010)

b. which is a tributary to: Ipsoot Creek

4. Point of Diversion: This claim is for a spring and/or fountain *in situ* including sufficient groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or fountains.

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
3010	41N	1W	6	SWNW	Boise	Latah

See Attached Map.

5. Place of Use:

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
3010	41N	1W	6	SWNW	Boise	Latah

See Attached Map.

6. Purpose of Water Use:

The purpose of use includes the full range of uses to which the Tribe and its members have always put the springs and fountains, including as a water source for consumptive use, for wildlife and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce Reservation pursuant to the documents referenced in Section 9 and the provisions in Section 10, *infra*.

7. Period of Use: January 1 through December 31.

8. Quantity Reserved (In cfs): Half the natural flow.

9. Basis of Claim:

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

10. Other Provisions:

- a. The United States has asserted other claims in the Palouse River Basin Adjudication. Paragraphs 10(a) – (g) express assertions applicable to all claims filed by the Bureau of Indian Affairs in its capacity as trustee for the Nez Perce Tribe in the Palouse River Basin Adjudication. The United States claims waters from groundwater and surface water sources within the Palouse River Basin in the state of Idaho to satisfy the rights reserved to the Nez Perce Tribe by the 1855 Treaty and the 1863 Treaty and to fulfill the permanent homeland purpose of the Nez Perce Reservation. Such present and future purposes include: instream flows for fish habitat; hunting, gathering, and pasturing; spring and fountains flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; and consumptive use claims on two allotments held in trust by the United States.
- b. The Nez Perce Tribe has occupied a territory in what is now central Idaho, southeastern Washington, and northeastern Oregon since time immemorial. *United States v. Webb*, 219 F.3d 1127, 1129 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). The Palouse River Basin is within the Tribe’s traditional lands.
- c. There is a complex history of the United States’ establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing

rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the “exclusive right to fish in all streams running through or bordering” the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the “right of taking fish at all usual and accustomed places in common with the citizens of the Territory” to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.

- d. Article III of the 1855 Treaty further reserves to the Tribe “the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land.”
- e. Article VIII of the Nez Perce Treaty of 1863 includes a unique provision reserving to the Nez Perce Tribe the use of “springs and fountains” within the area ceded under Article I of the 1863 Treaty. For purposes of the priority date of the springs and fountains claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.
- f. Pursuant to the General Allotment Act of 1887, Act of February 8, 1887, 24 Stat. 388, *amended*, Act of February 28, 1891, 26 Stat. 794, there are two allotments (Allotments 182-43 and 182-45) held in trust by the United States located within the boundaries of the Palouse River Basin and the northwestern corner of the Nez Perce Reservation. For purposes of the priority date of the domestic and stock watering claims for these two allotments, the United States claims June 11, 1855 pursuant to the 1855 Treaty.
- g. In order to comply with Idaho Code § 42-1409(1), the United States has designated “places of use,” “points of diversion,” and “purposes of use” in submitting this water rights claim. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe’s future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Reservation. The statute’s terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.

11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled “How you will receive notices in the Palouse River Basin Adjudication.”
- (b) I do do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

For Organizations:

I do solemnly swear and affirm that I am Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.



Signature of Authorized Agent:

Title and Organization:

Northwest Regional Director
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

Notice is hereby given that the United States Department of Justice will represent the United States of America, including the U.S. Department of the Interior, Bureau of Indian Affairs, in all matters pertaining to the Palouse River Basin Adjudication.

All notices, filings and correspondence concerning this matter should be mailed to the United States Department of Justice at the address set forth below:



Katherine M. Kane
United States Department of Justice
Indian Resources Division
Natural Resources Section
999 18th Street
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

[illegible]

- **Spring and Fountain Claim**

 Nez Perce Reservation Boundary (1863)

 **Watercourses**

 County Boundary

★ City or Town

USGS 10-Digit Hydrologic Unit Code

1706010901 Pine Creek

1706010801 Deep Creek-Palouse River

1706010803 Silver Creek-Palouse River

1706010802 South Fork Palouse River
1706010804 Union Flat Creek

1706010804 Union Flat Creek

Nez Perce
Reservation
(1855)

NEZ PERCE

CLEARWATER

Nez Perce
Reservation
(1863)

2

0 1 2 3 4 5 Miles

**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)	Case No.: 59576
ADJUDICATION OF RIGHTS)	
TO THE USE OF WATER FROM)	NOTICE OF CLAIM
THE PALOUSE RIVER BASIN)	
WATER SYSTEM)	Federal Reserved Water Right
)	
)	

RECEIVED
DEC 30 2019
DEPARTMENT OF
WATER RESOURCES

1. Name and address of claimant:

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the REGIONAL DIRECTOR, NORTHWEST REGION

Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

2. Date of Priority: Time Immemorial

3. a. Source of water supply: Springs (Federal I.D. #3011)

b. which is a tributary to: Yakala Creek

4. Point of Diversion: This claim is for a spring and/or fountain *in situ* including sufficient groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or fountains.

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
3011-1	42N	1W	31	SWSW	Boise	Latah
3011-2	42N	1W	31	SWSW	Boise	Latah

See Attached Map.

5. Place of Use:

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
3011-1	42N	1W	31	SWSW	Boise	Latah
3011-2	42N	1W	31	SWSW	Boise	Latah

See Attached Map.

6. Purpose of Water Use:

The purpose of use includes the full range of uses to which the Tribe and its members have always put the springs and fountains, including as a water source for consumptive use, for wildlife and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce Reservation pursuant to the documents referenced in Section 9 and the provisions in Section 10, *infra*.

7. Period of Use: January 1 through December 31.

8. Quantity Reserved (In cfs): Half the natural flow.

9. Basis of Claim:

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

10. Other Provisions:

- a. The United States has asserted other claims in the Palouse River Basin Adjudication. Paragraphs 10(a) – (g) express assertions applicable to all claims filed by the Bureau of Indian Affairs in its capacity as trustee for the Nez Perce Tribe in the Palouse River Basin Adjudication. The United States claims waters from groundwater and surface water sources within the Palouse River Basin in the state of Idaho to satisfy the rights reserved to the Nez Perce Tribe by the 1855 Treaty and the 1863 Treaty and to fulfill the permanent homeland purpose of the Nez Perce Reservation. Such present and future purposes include: instream flows for fish habitat; hunting, gathering, and pasturing; spring and fountains flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; and consumptive use claims on two allotments held in trust by the United States.
- b. The Nez Perce Tribe has occupied a territory in what is now central Idaho, southeastern Washington, and northeastern Oregon since time immemorial. *United States v. Webb*, 219 F.3d 1127, 1129 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). The Palouse River Basin is within the Tribe’s traditional lands.
- c. There is a complex history of the United States’ establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing

rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the “exclusive right to fish in all streams running through or bordering” the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the “right of taking fish at all usual and accustomed places in common with the citizens of the Territory” to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.

- d. Article III of the 1855 Treaty further reserves to the Tribe “the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land.”
- e. Article VIII of the Nez Perce Treaty of 1863 includes a unique provision reserving to the Nez Perce Tribe the use of “springs and fountains” within the area ceded under Article I of the 1863 Treaty. For purposes of the priority date of the springs and fountains claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.
- f. Pursuant to the General Allotment Act of 1887, Act of February 8, 1887, 24 Stat. 388, *amended*, Act of February 28, 1891, 26 Stat. 794, there are two allotments (Allotments 182-43 and 182-45) held in trust by the United States located within the boundaries of the Palouse River Basin and the northwestern corner of the Nez Perce Reservation. For purposes of the priority date of the domestic and stock watering claims for these two allotments, the United States claims June 11, 1855 pursuant to the 1855 Treaty.
- g. In order to comply with Idaho Code § 42-1409(1), the United States has designated “places of use,” “points of diversion,” and “purposes of use” in submitting this water rights claim. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe’s future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Reservation. The statute’s terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.

11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled “How you will receive notices in the Palouse River Basin Adjudication.”
- (b) I do___ do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

For Organizations:

I do solemnly swear and affirm that I am Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.



Signature of Authorized Agent:

Title and Organization:

Northwest Regional Director
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

Notice is hereby given that the United States Department of Justice will represent the United States of America, including the U.S. Department of the Interior, Bureau of Indian Affairs, in all matters pertaining to the Palouse River Basin Adjudication.

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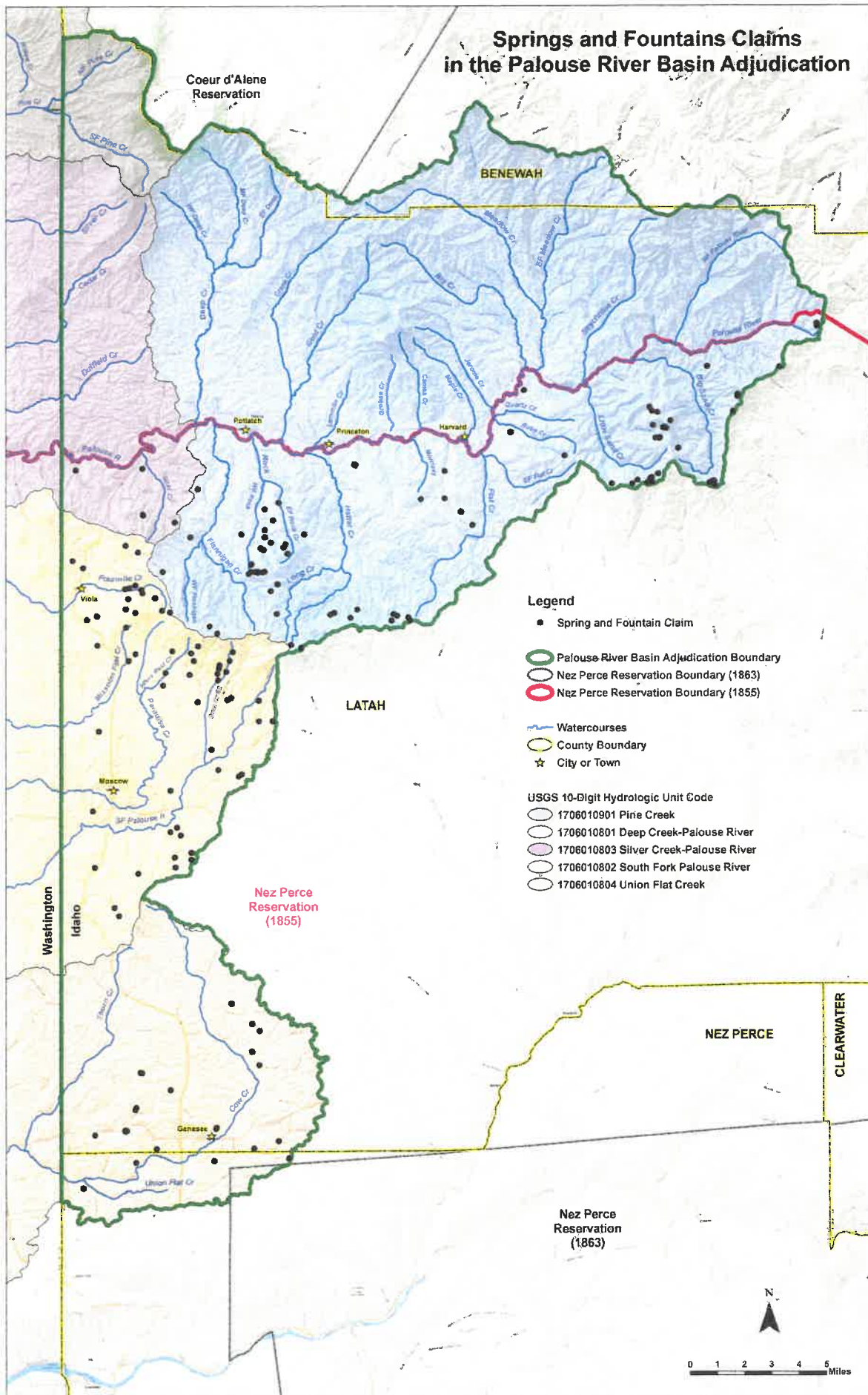


Katherine M. Kane
United States Department of Justice
Indian Resources Division
Natural Resources Section
999 18th Street
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

Springs and Fountains Claims in the Palouse River Basin Adjudication



**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) Case No.: 59576
ADJUDICATION OF RIGHTS)
TO THE USE OF WATER FROM) **NOTICE OF CLAIM**
THE PALOUSE RIVER BASIN) **Federal Reserved Water Right**
WATER SYSTEM)
)
)
)

RECEIVED
DEC 30 2019
DEPARTMENT OF
WATER RESOURCES

1. Name and address of claimant:

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the REGIONAL DIRECTOR, NORTHWEST REGION

Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

2. Date of Priority: Time Immemorial

3. a. Source of water supply: Spring (Federal I.D. #3012)

b. which is a tributary to: Bonami Creek

4. Point of Diversion: This claim is for a spring and/or fountain *in situ* including sufficient groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or fountains.

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
3012	41N	2W	3	SWSW	Boise	Latah

See Attached Map.

5. Place of Use:

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
3012	41N	2W	3	SWSW	Boise	Latah

See Attached Map.

6. Purpose of Water Use:

The purpose of use includes the full range of uses to which the Tribe and its members have always put the springs and fountains, including as a water source for consumptive use, for wildlife and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce Reservation pursuant to the documents referenced in Section 9 and the provisions in Section 10, *infra*.

7. Period of Use: January 1 through December 31.

8. Quantity Reserved (In cfs): Half the natural flow.

9. Basis of Claim:

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

10. Other Provisions:

- a. The United States has asserted other claims in the Palouse River Basin Adjudication. Paragraphs 10(a) – (g) express assertions applicable to all claims filed by the Bureau of Indian Affairs in its capacity as trustee for the Nez Perce Tribe in the Palouse River Basin Adjudication. The United States claims waters from groundwater and surface water sources within the Palouse River Basin in the state of Idaho to satisfy the rights reserved to the Nez Perce Tribe by the 1855 Treaty and the 1863 Treaty and to fulfill the permanent homeland purpose of the Nez Perce Reservation. Such present and future purposes include: instream flows for fish habitat; hunting, gathering, and pasturing; spring and fountains flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; and consumptive use claims on two allotments held in trust by the United States.
- b. The Nez Perce Tribe has occupied a territory in what is now central Idaho, southeastern Washington, and northeastern Oregon since time immemorial. *United States v. Webb*, 219 F.3d 1127, 1129 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). The Palouse River Basin is within the Tribe’s traditional lands.
- c. There is a complex history of the United States’ establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing

rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the “exclusive right to fish in all streams running through or bordering” the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the “right of taking fish at all usual and accustomed places in common with the citizens of the Territory” to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.

- d. Article III of the 1855 Treaty further reserves to the Tribe “the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land.”
- e. Article VIII of the Nez Perce Treaty of 1863 includes a unique provision reserving to the Nez Perce Tribe the use of “springs and fountains” within the area ceded under Article I of the 1863 Treaty. For purposes of the priority date of the springs and fountains claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.
- f. Pursuant to the General Allotment Act of 1887, Act of February 8, 1887, 24 Stat. 388, *amended*, Act of February 28, 1891, 26 Stat. 794, there are two allotments (Allotments 182-43 and 182-45) held in trust by the United States located within the boundaries of the Palouse River Basin and the northwestern corner of the Nez Perce Reservation. For purposes of the priority date of the domestic and stock watering claims for these two allotments, the United States claims June 11, 1855 pursuant to the 1855 Treaty.
- g. In order to comply with Idaho Code § 42-1409(1), the United States has designated “places of use,” “points of diversion,” and “purposes of use” in submitting this water rights claim. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe’s future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Reservation. The statute’s terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.

11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled “How you will receive notices in the Palouse River Basin Adjudication.”
- (b) I do ___ do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

For Organizations:

I do solemnly swear and affirm that I am Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.



Signature of Authorized Agent:

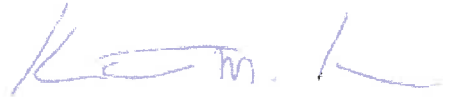
Title and Organization:

Northwest Regional Director
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

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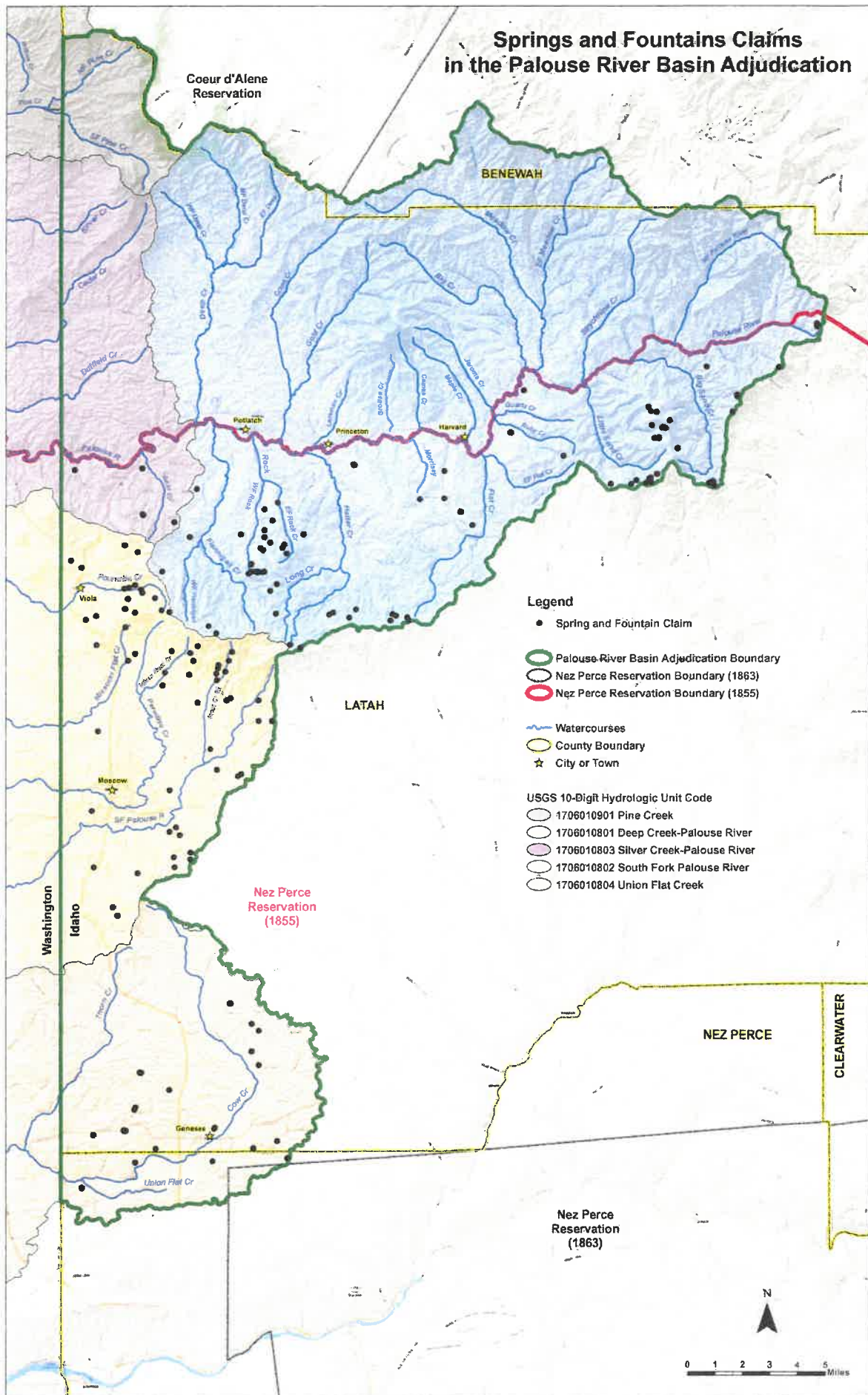


Katherine M. Kane
United States Department of Justice
Indian Resources Division
Natural Resources Section
999 18th Street
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

Springs and Fountains Claims in the Palouse River Basin Adjudication



**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 PALOUSE RIVER BASIN)
WATER SYSTEM)

Case No.: 59576

NOTICE OF CLAIM

Federal Reserved Water Right

RECEIVED

DEC 30 2019

DEPARTMENT OF
WATER RESOURCES

1. Name and address of claimant:

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and
ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the
REGIONAL DIRECTOR, NORTHWEST REGION

Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

2. Date of Priority: Time Immemorial

3. a. Source of water supply: Spring (Federal I.D. #3013)

b. which is a tributary to: Bonami Creek

4. Point of Diversion: This claim is for a spring and/or fountain *in situ* including sufficient groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or fountains.

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
3013	41N	2W	3	SWNW	Boise	Latah

See Attached Map.

5. Place of Use:

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
3013	41N	2W	3	SWNW	Boise	Latah

See Attached Map.

6. Purpose of Water Use:

The purpose of use includes the full range of uses to which the Tribe and its members have always put the springs and fountains, including as a water source for consumptive use, for wildlife and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce Reservation pursuant to the documents referenced in Section 9 and the provisions in Section 10, *infra*.

7. Period of Use: January 1 through December 31.

8. Quantity Reserved (In cfs): Half the natural flow.

9. Basis of Claim:

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

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- b. The Nez Perce Tribe has occupied a territory in what is now central Idaho, southeastern Washington, and northeastern Oregon since time immemorial. *United States v. Webb*, 219 F.3d 1127, 1129 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). The Palouse River Basin is within the Tribe’s traditional lands.
- c. There is a complex history of the United States’ establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing

rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the “exclusive right to fish in all streams running through or bordering” the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the “right of taking fish at all usual and accustomed places in common with the citizens of the Territory” to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.

- d. Article III of the 1855 Treaty further reserves to the Tribe “the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land.”
- e. Article VIII of the Nez Perce Treaty of 1863 includes a unique provision reserving to the Nez Perce Tribe the use of “springs and fountains” within the area ceded under Article I of the 1863 Treaty. For purposes of the priority date of the springs and fountains claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.
- f. Pursuant to the General Allotment Act of 1887, Act of February 8, 1887, 24 Stat. 388, *amended*, Act of February 28, 1891, 26 Stat. 794, there are two allotments (Allotments 182-43 and 182-45) held in trust by the United States located within the boundaries of the Palouse River Basin and the northwestern corner of the Nez Perce Reservation. For purposes of the priority date of the domestic and stock watering claims for these two allotments, the United States claims June 11, 1855 pursuant to the 1855 Treaty.
- g. In order to comply with Idaho Code § 42-1409(1), the United States has designated “places of use,” “points of diversion,” and “purposes of use” in submitting this water rights claim. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe’s future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Reservation. The statute’s terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.

11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled “How you will receive notices in the Palouse River Basin Adjudication.”
- (b) I do___ do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

For Organizations:

I do solemnly swear and affirm that I am Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.



Signature of Authorized Agent:

Title and Organization:

Northwest Regional Director
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

Notice is hereby given that the United States Department of Justice will represent the United States of America, including the U.S. Department of the Interior, Bureau of Indian Affairs, in all matters pertaining to the Palouse River Basin Adjudication.

All notices, filings and correspondence concerning this matter should be mailed to the United States Department of Justice at the address set forth below:



Katherine M. Kane
United States Department of Justice
Indian Resources Division
Natural Resources Section
999 18th Street
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

**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)	Case No.: 59576
ADJUDICATION OF RIGHTS)	
TO THE USE OF WATER FROM)	NOTICE OF CLAIM
THE PALOUSE RIVER BASIN)	
WATER SYSTEM)	Federal Reserved Water Right
)	
)	

RECEIVED
DEC 30 2019
DEPARTMENT OF
WATER RESOURCES

1. Name and address of claimant:

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the REGIONAL DIRECTOR, NORTHWEST REGION
Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

2. Date of Priority: Time Immemorial

3. a. Source of water supply: Spring (Federal I.D. #3014)

b. which is a tributary to: Bonami Creek

4. Point of Diversion: This claim is for a spring and/or fountain *in situ* including sufficient groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or fountains.

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
3014	41N	2W	4	SENE	Boise	Latah

See Attached Map.

5. Place of Use:

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
3014	41N	2W	4	SENE	Boise	Latah

See Attached Map.

6. Purpose of Water Use:

The purpose of use includes the full range of uses to which the Tribe and its members have always put the springs and fountains, including as a water source for consumptive use, for wildlife and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce Reservation pursuant to the documents referenced in Section 9 and the provisions in Section 10, *infra*.

7. Period of Use: January 1 through December 31.

8. Quantity Reserved (In cfs): Half the natural flow.

9. Basis of Claim:

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

10. Other Provisions:

- a. The United States has asserted other claims in the Palouse River Basin Adjudication. Paragraphs 10(a) – (g) express assertions applicable to all claims filed by the Bureau of Indian Affairs in its capacity as trustee for the Nez Perce Tribe in the Palouse River Basin Adjudication. The United States claims waters from groundwater and surface water sources within the Palouse River Basin in the state of Idaho to satisfy the rights reserved to the Nez Perce Tribe by the 1855 Treaty and the 1863 Treaty and to fulfill the permanent homeland purpose of the Nez Perce Reservation. Such present and future purposes include: instream flows for fish habitat; hunting, gathering, and pasturing; spring and fountains flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; and consumptive use claims on two allotments held in trust by the United States.
- b. The Nez Perce Tribe has occupied a territory in what is now central Idaho, southeastern Washington, and northeastern Oregon since time immemorial. *United States v. Webb*, 219 F.3d 1127, 1129 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). The Palouse River Basin is within the Tribe’s traditional lands.
- c. There is a complex history of the United States’ establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing

rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the “exclusive right to fish in all streams running through or bordering” the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the “right of taking fish at all usual and accustomed places in common with the citizens of the Territory” to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.

- d. Article III of the 1855 Treaty further reserves to the Tribe “the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land.”
- e. Article VIII of the Nez Perce Treaty of 1863 includes a unique provision reserving to the Nez Perce Tribe the use of “springs and fountains” within the area ceded under Article I of the 1863 Treaty. For purposes of the priority date of the springs and fountains claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.
- f. Pursuant to the General Allotment Act of 1887, Act of February 8, 1887, 24 Stat. 388, *amended*, Act of February 28, 1891, 26 Stat. 794, there are two allotments (Allotments 182-43 and 182-45) held in trust by the United States located within the boundaries of the Palouse River Basin and the northwestern corner of the Nez Perce Reservation. For purposes of the priority date of the domestic and stock watering claims for these two allotments, the United States claims June 11, 1855 pursuant to the 1855 Treaty.
- g. In order to comply with Idaho Code § 42-1409(1), the United States has designated “places of use,” “points of diversion,” and “purposes of use” in submitting this water rights claim. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe’s future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Reservation. The statute’s terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.

11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled “How you will receive notices in the Palouse River Basin Adjudication.”
- (b) I do ___ do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

For Organizations:

I do solemnly swear and affirm that I am Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.



Signature of Authorized Agent:

Title and Organization:

Northwest Regional Director
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

Notice is hereby given that the United States Department of Justice will represent the United States of America, including the U.S. Department of the Interior, Bureau of Indian Affairs, in all matters pertaining to the Palouse River Basin Adjudication.

All notices, filings and correspondence concerning this matter should be mailed to the United States Department of Justice at the address set forth below:



Katherine M. Kane
United States Department of Justice
Indian Resources Division
Natural Resources Section
999 18th Street
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

**Springs and Fountains Claims
in the Palouse River Basin Adjudication**

Coeur d'Alene
Reservation

BENEWAH

LATAH

Washington

Idaho

Nez Perce
Reservation
(1855)

Nez Perce
Reservation
(1863)

CLEARWATER

Legend

- Spring and Fountain Claim
- Palouse River Basin Adjudication Boundary
- Nez Perce Reservation Boundary (1863)
- Nez Perce Reservation Boundary (1855)
- Watercourses
- County Boundary
- ☆ City or Town

USGS 10-Digit Hydrologic Unit Code

- 1706010901 Pine Creek
- 1706010804 Deep Creek-Palouse River
- 1706010803 Silver Creek-Palouse River
- 1706010802 South Fork Palouse River
- 1706010804 Union Flat Creek

0 1 2 3 4 5 Miles

- **Spring and Fountain Claim**

○ Nez Perce Reservation Boundary (1863)

Nez Perce Reservation Boundary (1855)

 Watercourses

 County Boundary

★ City or Town

USGS 10-Digit Hydrologic Unit Code

1706010901 Pine Creek

1706010801 Deep Creek-Palouse River

1706010803 Silver Creek-Palouse River

1706010802 South Fork Palouse River

1706010804 Union Flat Creek

Nez Perce
Reservation
(1855)

NEZ PERCE

Nez Perce
Reservation
(1863)

CLEARWATER

N
A

0 1 2 3 4 5 Miles

**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)	Case No.: 59576
ADJUDICATION OF RIGHTS)	
TO THE USE OF WATER FROM)	NOTICE OF CLAIM
THE PALOUSE RIVER BASIN)	
WATER SYSTEM)	Federal Reserved Water Right
)	
)	

RECEIVED

DEC 30 2019

DEPARTMENT OF
WATER RESOURCES

1. Name and address of claimant:

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and
ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the
REGIONAL DIRECTOR, NORTHWEST REGION

Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

2. Date of Priority: Time Immemorial

3. a. Source of water supply: Spring (Federal I.D. #3015)

b. which is a tributary to: Triplet Creek

4. Point of Diversion: This claim is for a spring and/or fountain *in situ* including sufficient groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or fountains.

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
3015	41N	2W	11	SWSW	Boise	Latah

See Attached Map.

5. Place of Use:

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
3015	41N	2W	11	SWSW	Boise	Latah

See Attached Map.

6. Purpose of Water Use:

The purpose of use includes the full range of uses to which the Tribe and its members have always put the springs and fountains, including as a water source for consumptive use, for wildlife and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce Reservation pursuant to the documents referenced in Section 9 and the provisions in Section 10, *infra*.

7. Period of Use: January 1 through December 31.

8. Quantity Reserved (In cfs): Half the natural flow.

9. Basis of Claim:

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

10. Other Provisions:

- a. The United States has asserted other claims in the Palouse River Basin Adjudication. Paragraphs 10(a) – (g) express assertions applicable to all claims filed by the Bureau of Indian Affairs in its capacity as trustee for the Nez Perce Tribe in the Palouse River Basin Adjudication. The United States claims waters from groundwater and surface water sources within the Palouse River Basin in the state of Idaho to satisfy the rights reserved to the Nez Perce Tribe by the 1855 Treaty and the 1863 Treaty and to fulfill the permanent homeland purpose of the Nez Perce Reservation. Such present and future purposes include: instream flows for fish habitat; hunting, gathering, and pasturing; spring and fountains flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; and consumptive use claims on two allotments held in trust by the United States.
- b. The Nez Perce Tribe has occupied a territory in what is now central Idaho, southeastern Washington, and northeastern Oregon since time immemorial. *United States v. Webb*, 219 F.3d 1127, 1129 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). The Palouse River Basin is within the Tribe’s traditional lands.
- c. There is a complex history of the United States’ establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing

rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the “exclusive right to fish in all streams running through or bordering” the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the “right of taking fish at all usual and accustomed places in common with the citizens of the Territory” to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.

- d. Article III of the 1855 Treaty further reserves to the Tribe “the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land.”
- e. Article VIII of the Nez Perce Treaty of 1863 includes a unique provision reserving to the Nez Perce Tribe the use of “springs and fountains” within the area ceded under Article I of the 1863 Treaty. For purposes of the priority date of the springs and fountains claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.
- f. Pursuant to the General Allotment Act of 1887, Act of February 8, 1887, 24 Stat. 388, *amended*, Act of February 28, 1891, 26 Stat. 794, there are two allotments (Allotments 182-43 and 182-45) held in trust by the United States located within the boundaries of the Palouse River Basin and the northwestern corner of the Nez Perce Reservation. For purposes of the priority date of the domestic and stock watering claims for these two allotments, the United States claims June 11, 1855 pursuant to the 1855 Treaty.
- g. In order to comply with Idaho Code § 42-1409(1), the United States has designated “places of use,” “points of diversion,” and “purposes of use” in submitting this water rights claim. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe’s future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Reservation. The statute’s terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.

11. Signatures:

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- (b) I do ___ do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

For Organizations:

I do solemnly swear and affirm that I am Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.



Signature of Authorized Agent:

Title and Organization:

Northwest Regional Director
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

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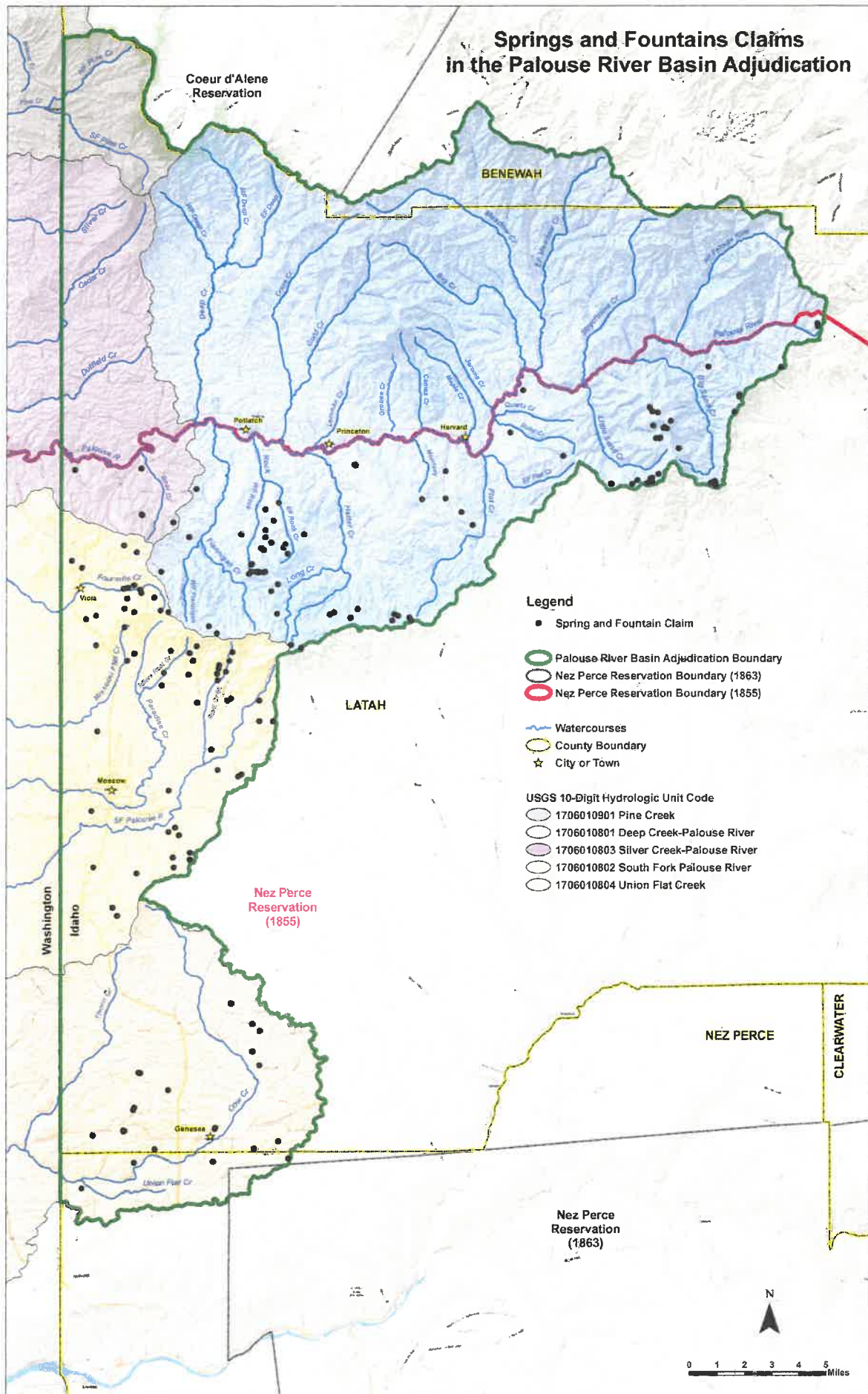


Katherine M. Kane
United States Department of Justice
Indian Resources Division
Natural Resources Section
999 18th Street
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

Springs and Fountains Claims in the Palouse River Basin Adjudication



**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)	Case No.: 59576
ADJUDICATION OF RIGHTS)	
TO THE USE OF WATER FROM)	NOTICE OF CLAIM
THE PALOUSE RIVER BASIN)	
WATER SYSTEM)	Federal Reserved Water Right
)	
)	

RECEIVED

DEC 30 2019

DEPARTMENT OF
WATER RESOURCES

1. Name and address of claimant:

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the REGIONAL DIRECTOR, NORTHWEST REGION

Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

2. Date of Priority: Time Immemorial

3. a. Source of water supply: Spring (Federal I.D. #3016)

b. which is a tributary to: Little Sand Creek

4. Point of Diversion: This claim is for a spring and/or fountain *in situ* including sufficient groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or fountains.

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
3016	41N	2W	21	NENW	Boise	Latah

See Attached Map.

5. Place of Use:

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
3016	41N	2W	21	NENW	Boise	Latah

See Attached Map.

6. Purpose of Water Use:

The purpose of use includes the full range of uses to which the Tribe and its members have always put the springs and fountains, including as a water source for consumptive use, for wildlife and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce Reservation pursuant to the documents referenced in Section 9 and the provisions in Section 10, *infra*.

7. Period of Use: January 1 through December 31.

8. Quantity Reserved (In cfs): Half the natural flow.

9. Basis of Claim:

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

10. Other Provisions:

- a. The United States has asserted other claims in the Palouse River Basin Adjudication. Paragraphs 10(a) – (g) express assertions applicable to all claims filed by the Bureau of Indian Affairs in its capacity as trustee for the Nez Perce Tribe in the Palouse River Basin Adjudication. The United States claims waters from groundwater and surface water sources within the Palouse River Basin in the state of Idaho to satisfy the rights reserved to the Nez Perce Tribe by the 1855 Treaty and the 1863 Treaty and to fulfill the permanent homeland purpose of the Nez Perce Reservation. Such present and future purposes include: instream flows for fish habitat; hunting, gathering, and pasturing; spring and fountains flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; and consumptive use claims on two allotments held in trust by the United States.
- b. The Nez Perce Tribe has occupied a territory in what is now central Idaho, southeastern Washington, and northeastern Oregon since time immemorial. *United States v. Webb*, 219 F.3d 1127, 1129 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). The Palouse River Basin is within the Tribe’s traditional lands.
- c. There is a complex history of the United States’ establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing

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- d. Article III of the 1855 Treaty further reserves to the Tribe “the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land.”
- e. Article VIII of the Nez Perce Treaty of 1863 includes a unique provision reserving to the Nez Perce Tribe the use of “springs and fountains” within the area ceded under Article I of the 1863 Treaty. For purposes of the priority date of the springs and fountains claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.
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- g. In order to comply with Idaho Code § 42-1409(1), the United States has designated “places of use,” “points of diversion,” and “purposes of use” in submitting this water rights claim. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe’s future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Reservation. The statute’s terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.

11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled “How you will receive notices in the Palouse River Basin Adjudication.”
- (b) I do do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

For Organizations:

I do solemnly swear and affirm that I am Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.



Signature of Authorized Agent:

Title and Organization:

Northwest Regional Director
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

Notice is hereby given that the United States Department of Justice will represent the United States of America, including the U.S. Department of the Interior, Bureau of Indian Affairs, in all matters pertaining to the Palouse River Basin Adjudication.

All notices, filings and correspondence concerning this matter should be mailed to the United States Department of Justice at the address set forth below:



Katherine M. Kane
United States Department of Justice
Indian Resources Division
Natural Resources Section
999 18th Street
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

**Springs and Fountains Claims
in the Palouse River Basin Adjudication**

Legend

- Spring and Fountain Claim
- Palouse River Basin Adjudication Boundary
- Nez Perce Reservation Boundary (1863)
- Nez Perce Reservation Boundary (1855)
- Watercourses
- County Boundary
- ★ City or Town

USGS 10-Digit Hydrologic Unit Code

- 1706010901 Pine Creek
- 1706010801 Deep Creek-Palouse River
- 1706010803 Silver Creek-Palouse River
- 1706010802 South Fork Palouse River
- 1706010804 Union Flat Creek

Nez Perce Reservation (1855)

Nez Perce Reservation (1863)

Scale: 0 1 2 3 4 5 Miles


North Arrow

- **Spring and Fountain Claim**

○ Nez Perce Reservation Boundary (1863)

 Nez Perce Reservation Boundary (1855)

Watercourses

 County Boundary

★ City or Town

USGS 10-Digit Hydrologic Unit Code

1706010901 Pine Creek

1706010801 Deep Creek-Palouse River

1706010803 Silver Creek-Palouse River

1706010802 South Fork Palouse River

1706010804 Union Flat Creek

Nez Perce
Reservation
(1855)

NEZ PERCE

CLEARWATER

**Nez Perce
Reservation
(1863)**

7

0 1 2 3 4 5 Miles

**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 PALOUSE RIVER BASIN)
WATER SYSTEM)
)
)
)

Case No.: 59576

NOTICE OF CLAIM

Federal Reserved Water Right

RECEIVED

DEC 30 2019

DEPARTMENT OF
WATER RESOURCES

1. Name and address of claimant:

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and
ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the
REGIONAL DIRECTOR, NORTHWEST REGION

Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

2. Date of Priority: Time Immemorial

3. a. Source of water supply: Spring (Federal I.D. #3017)

b. which is a tributary to: Little Sand Creek

4. **Point of Diversion:** This claim is for a spring and/or fountain *in situ* including sufficient groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or fountains.

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
3017	41N	2W	16	SWSE	Boise	Latah

See Attached Map.

5. Place of Use:

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
3017	41N	2W	16	SWSE	Boise	Latah

See Attached Map.

6. Purpose of Water Use:

The purpose of use includes the full range of uses to which the Tribe and its members have always put the springs and fountains, including as a water source for consumptive use, for wildlife and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce Reservation pursuant to the documents referenced in Section 9 and the provisions in Section 10, *infra*.

7. Period of Use: January 1 through December 31.

8. Quantity Reserved (In cfs): Half the natural flow.

9. Basis of Claim:

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

10. Other Provisions:

- a. The United States has asserted other claims in the Palouse River Basin Adjudication. Paragraphs 10(a) – (g) express assertions applicable to all claims filed by the Bureau of Indian Affairs in its capacity as trustee for the Nez Perce Tribe in the Palouse River Basin Adjudication. The United States claims waters from groundwater and surface water sources within the Palouse River Basin in the state of Idaho to satisfy the rights reserved to the Nez Perce Tribe by the 1855 Treaty and the 1863 Treaty and to fulfill the permanent homeland purpose of the Nez Perce Reservation. Such present and future purposes include: instream flows for fish habitat; hunting, gathering, and pasturing; spring and fountains flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; and consumptive use claims on two allotments held in trust by the United States.
- b. The Nez Perce Tribe has occupied a territory in what is now central Idaho, southeastern Washington, and northeastern Oregon since time immemorial. *United States v. Webb*, 219 F.3d 1127, 1129 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). The Palouse River Basin is within the Tribe’s traditional lands.
- c. There is a complex history of the United States’ establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing

rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the “exclusive right to fish in all streams running through or bordering” the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the “right of taking fish at all usual and accustomed places in common with the citizens of the Territory” to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.

- d. Article III of the 1855 Treaty further reserves to the Tribe “the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land.”
- e. Article VIII of the Nez Perce Treaty of 1863 includes a unique provision reserving to the Nez Perce Tribe the use of “springs and fountains” within the area ceded under Article I of the 1863 Treaty. For purposes of the priority date of the springs and fountains claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.
- f. Pursuant to the General Allotment Act of 1887, Act of February 8, 1887, 24 Stat. 388, *amended*, Act of February 28, 1891, 26 Stat. 794, there are two allotments (Allotments 182-43 and 182-45) held in trust by the United States located within the boundaries of the Palouse River Basin and the northwestern corner of the Nez Perce Reservation. For purposes of the priority date of the domestic and stock watering claims for these two allotments, the United States claims June 11, 1855 pursuant to the 1855 Treaty.
- g. In order to comply with Idaho Code § 42-1409(1), the United States has designated “places of use,” “points of diversion,” and “purposes of use” in submitting this water rights claim. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe’s future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Reservation. The statute’s terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.

11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled “How you will receive notices in the Palouse River Basin Adjudication.”
- (b) I do ___ do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

For Organizations:

I do solemnly swear and affirm that I am Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.



Signature of Authorized Agent:

Title and Organization:

Northwest Regional Director
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

Notice is hereby given that the United States Department of Justice will represent the United States of America, including the U.S. Department of the Interior, Bureau of Indian Affairs, in all matters pertaining to the Palouse River Basin Adjudication.

All notices, filings and correspondence concerning this matter should be mailed to the United States Department of Justice at the address set forth below:



Katherine M. Kane
United States Department of Justice
Indian Resources Division
Natural Resources Section
999 18th Street
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

**Springs and Fountains Claims
in the Palouse River Basin Adjudication**

Coeur d'Alene
Reservation

BENEWAH

LATAH

Washington
Idaho

Nez Perce
Reservation
(1855)

Nez Perce
Reservation
(1863)

CLEARWATER

Legend

- Spring and Fountain Claim
- Palouse River Basin Adjudication Boundary
- Nez Perce Reservation Boundary (1863)
- Nez Perce Reservation Boundary (1855)
- Watercourses
- County Boundary
- City or Town

USGS 10-Digit Hydrologic Unit Code

- 1706010901 Pine Creek
- 1706010801 Deep Creek-Palouse River
- 1706010803 Silver Creek-Palouse River
- 1706010802 South Fork Palouse River
- 1706010804 Union Flat Creek

0 1 2 3 4 5
Miles

- **Spring and Fountain Claim**

○ Nez Perce Reservation Boundary (1863)

 Watercourses

★ City or Town

1706010901 Pine Creek

1706010803 Silver Creek-Palouse River

1706010804 Union Flat Creek

Washington

Idaho

1

—

1. The first step is to identify the problem or question that needs to be answered. This involves understanding the context and the specific requirements of the task.

1



Nez Perce
Reservation
(1863)

0 1 2 3 4 5 Miles

87-12144

**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) Case No.: 59576
ADJUDICATION OF RIGHTS)
TO THE USE OF WATER FROM) **NOTICE OF CLAIM**
THE PALOUSE RIVER BASIN)
WATER SYSTEM) **Federal Reserved Water Right**
)
)
)

RECEIVED

DEC 30 2019

DEPARTMENT OF
WATER RESOURCES

1. Name and address of claimant:

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and
ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the
REGIONAL DIRECTOR, NORTHWEST REGION

Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

2. Date of Priority: Time Immemorial

3. a. Source of water supply: Spring (Federal I.D. #3018)

b. which is a tributary to: Little Sand Creek

4. Point of Diversion: This claim is for a spring and/or fountain *in situ* including sufficient groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or fountains.

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
3018	41N	2W	21	NENE	Boise	Latah

See Attached Map.

5. Place of Use:

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
3018	41N	2W	21	NENE	Boise	Latah

See Attached Map.

6. Purpose of Water Use:

The purpose of use includes the full range of uses to which the Tribe and its members have always put the springs and fountains, including as a water source for consumptive use, for wildlife and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce Reservation pursuant to the documents referenced in Section 9 and the provisions in Section 10, *infra*.

7. Period of Use: January 1 through December 31.

8. Quantity Reserved (In cfs): Half the natural flow.

9. Basis of Claim:

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

10. Other Provisions:

- a. The United States has asserted other claims in the Palouse River Basin Adjudication. Paragraphs 10(a) – (g) express assertions applicable to all claims filed by the Bureau of Indian Affairs in its capacity as trustee for the Nez Perce Tribe in the Palouse River Basin Adjudication. The United States claims waters from groundwater and surface water sources within the Palouse River Basin in the state of Idaho to satisfy the rights reserved to the Nez Perce Tribe by the 1855 Treaty and the 1863 Treaty and to fulfill the permanent homeland purpose of the Nez Perce Reservation. Such present and future purposes include: instream flows for fish habitat; hunting, gathering, and pasturing; spring and fountains flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; and consumptive use claims on two allotments held in trust by the United States.
- b. The Nez Perce Tribe has occupied a territory in what is now central Idaho, southeastern Washington, and northeastern Oregon since time immemorial. *United States v. Webb*, 219 F.3d 1127, 1129 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). The Palouse River Basin is within the Tribe’s traditional lands.
- c. There is a complex history of the United States’ establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing

rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the “exclusive right to fish in all streams running through or bordering” the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the “right of taking fish at all usual and accustomed places in common with the citizens of the Territory” to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.

- d. Article III of the 1855 Treaty further reserves to the Tribe “the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land.”
- e. Article VIII of the Nez Perce Treaty of 1863 includes a unique provision reserving to the Nez Perce Tribe the use of “springs and fountains” within the area ceded under Article I of the 1863 Treaty. For purposes of the priority date of the springs and fountains claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.
- f. Pursuant to the General Allotment Act of 1887, Act of February 8, 1887, 24 Stat. 388, *amended*, Act of February 28, 1891, 26 Stat. 794, there are two allotments (Allotments 182-43 and 182-45) held in trust by the United States located within the boundaries of the Palouse River Basin and the northwestern corner of the Nez Perce Reservation. For purposes of the priority date of the domestic and stock watering claims for these two allotments, the United States claims June 11, 1855 pursuant to the 1855 Treaty.
- g. In order to comply with Idaho Code § 42-1409(1), the United States has designated “places of use,” “points of diversion,” and “purposes of use” in submitting this water rights claim. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe’s future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Reservation. The statute’s terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.

11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled “How you will receive notices in the Palouse River Basin Adjudication.”
- (b) I do do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

For Organizations:

I do solemnly swear and affirm that I am Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.



Signature of Authorized Agent:

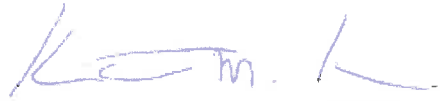
Title and Organization:

Northwest Regional Director
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

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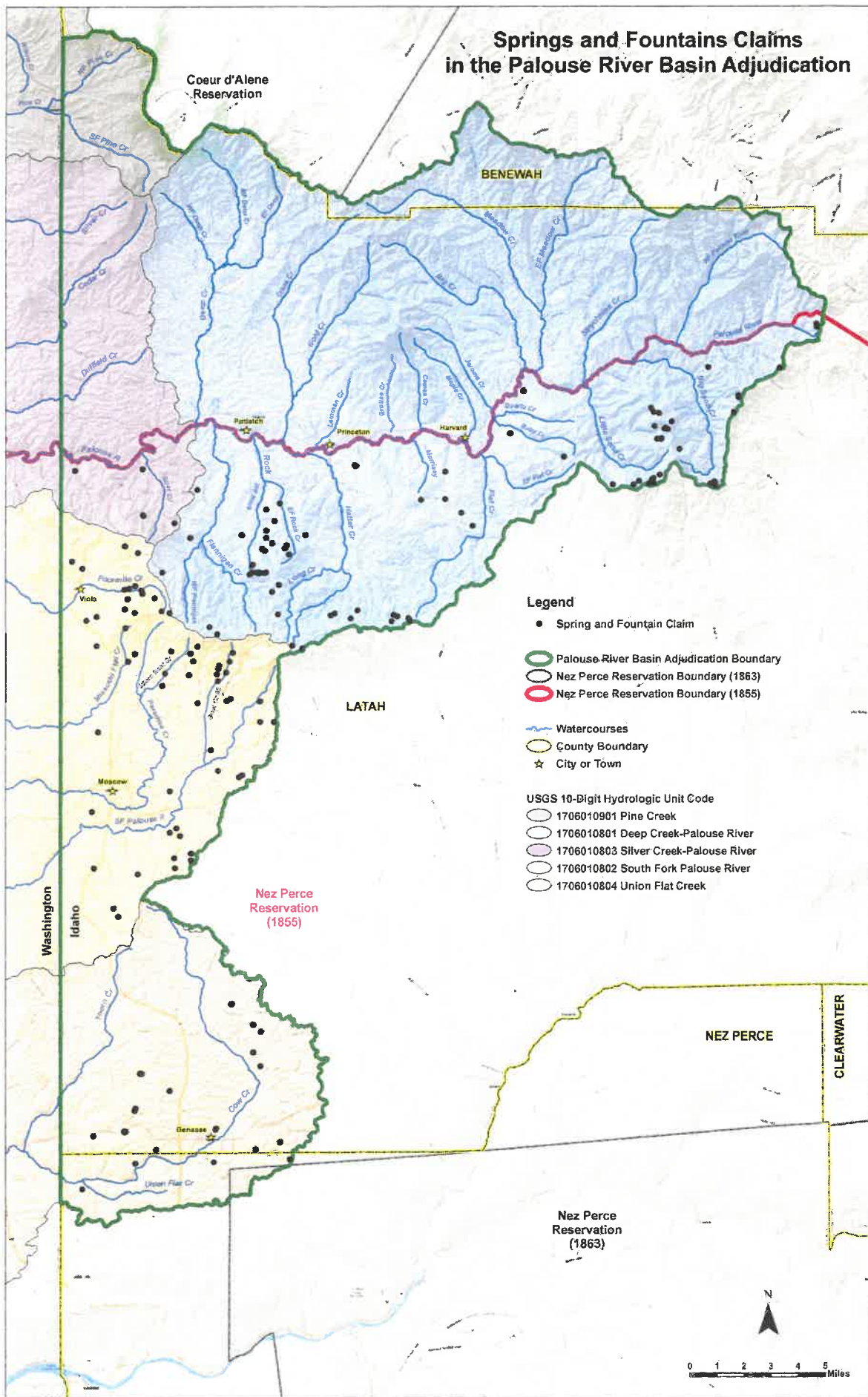


Katherine M. Kane
United States Department of Justice
Indian Resources Division
Natural Resources Section
999 18th Street
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

Springs and Fountains Claims in the Palouse River Basin Adjudication



**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)	Case No.: 59576
ADJUDICATION OF RIGHTS)	
TO THE USE OF WATER FROM)	NOTICE OF CLAIM
THE PALOUSE RIVER BASIN)	
WATER SYSTEM)	Federal Reserved Water Right
)	
)	

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DEC 30 2019
DEPARTMENT OF
WATER RESOURCES

1. Name and address of claimant:

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the REGIONAL DIRECTOR, NORTHWEST REGION

Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

2. Date of Priority: Time Immemorial

3. a. Source of water supply: Spring (Federal I.D. #3019)

b. which is a tributary to: Little Sand Creek

4. Point of Diversion: This claim is for a spring and/or fountain *in situ* including sufficient groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or fountains.

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
3019	41N	2W	22	NWNW	Boise	Latah

See Attached Map.

5. Place of Use:

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
3019	41N	2W	22	NWNW	Boise	Latah

See Attached Map.

6. Purpose of Water Use:

The purpose of use includes the full range of uses to which the Tribe and its members have always put the springs and fountains, including as a water source for consumptive use, for wildlife and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce Reservation pursuant to the documents referenced in Section 9 and the provisions in Section 10, *infra*.

7. Period of Use: January 1 through December 31.

8. Quantity Reserved (In cfs): Half the natural flow.

9. Basis of Claim:

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

10. Other Provisions:

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- c. There is a complex history of the United States’ establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing

rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the “exclusive right to fish in all streams running through or bordering” the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the “right of taking fish at all usual and accustomed places in common with the citizens of the Territory” to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.

- d. Article III of the 1855 Treaty further reserves to the Tribe “the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land.”
- e. Article VIII of the Nez Perce Treaty of 1863 includes a unique provision reserving to the Nez Perce Tribe the use of “springs and fountains” within the area ceded under Article I of the 1863 Treaty. For purposes of the priority date of the springs and fountains claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.
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- (b) I do ___ do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

For Organizations:

I do solemnly swear and affirm that I am Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.



Signature of Authorized Agent:

Title and Organization:

Northwest Regional Director
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

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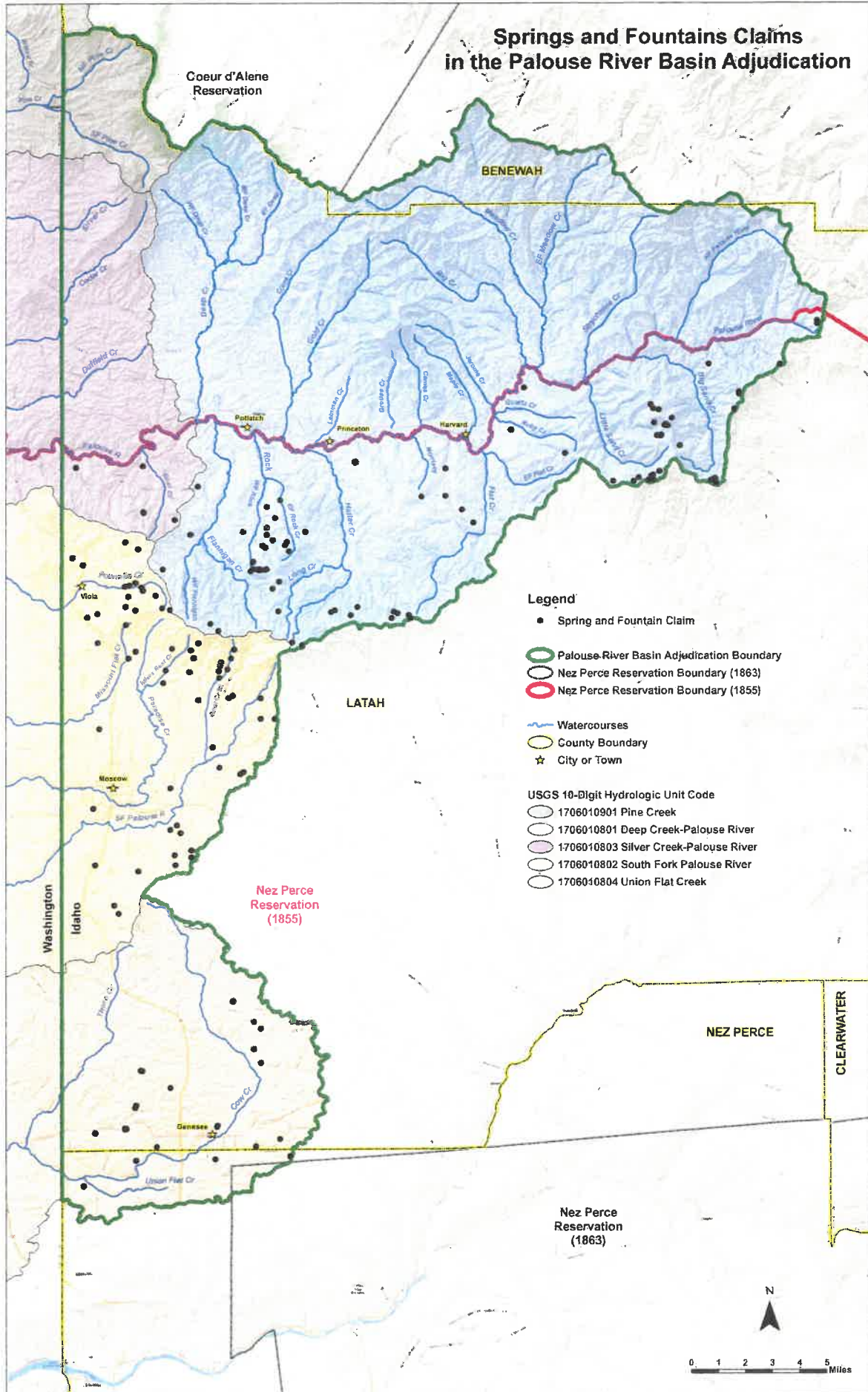


Katherine M. Kane
United States Department of Justice
Indian Resources Division
Natural Resources Section
999 18th Street
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

Springs and Fountains Claims in the Palouse River Basin Adjudication



**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 PALOUSE RIVER BASIN)
WATER SYSTEM)

Case No.: 59576

NOTICE OF CLAIM

Federal Reserved Water Right

RECEIVED
DEC 30 2019
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WATER RESOURCES

1. Name and address of claimant:

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and
ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the
REGIONAL DIRECTOR, NORTHWEST REGION

Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

2. Date of Priority: Time Immemorial

3. a. Source of water supply: Springs (Federal I.D. #3020)

b. which is a tributary to: Little Sand Creek

4. Point of Diversion: This claim is for a spring and/or fountain *in situ* including sufficient groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or fountains.

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
3020-1	41N	2W	16	SESE	Boise	Latah
3020-2	41N	2W	15	SWSW	Boise	Latah

See Attached Map.

5. Place of Use:

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
3020-1	41N	2W	16	SESE	Boise	Latah
3020-2	41N	2W	15	SWSW	Boise	Latah

See Attached Map.

6. Purpose of Water Use:

The purpose of use includes the full range of uses to which the Tribe and its members have always put the springs and fountains, including as a water source for consumptive use, for wildlife and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce Reservation pursuant to the documents referenced in Section 9 and the provisions in Section 10, *infra*.

7. Period of Use: January 1 through December 31.

8. Quantity Reserved (In cfs): Half the natural flow.

9. Basis of Claim:

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

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right to fish in all streams running through or bordering” the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the “right of taking fish at all usual and accustomed places in common with the citizens of the Territory” to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.

- d. Article III of the 1855 Treaty further reserves to the Tribe “the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land.”
- e. Article VIII of the Nez Perce Treaty of 1863 includes a unique provision reserving to the Nez Perce Tribe the use of “springs and fountains” within the area ceded under Article I of the 1863 Treaty. For purposes of the priority date of the springs and fountains claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.
- f. Pursuant to the General Allotment Act of 1887, Act of February 8, 1887, 24 Stat. 388, *amended*, Act of February 28, 1891, 26 Stat. 794, there are two allotments (Allotments 182-43 and 182-45) held in trust by the United States located within the boundaries of the Palouse River Basin and the northwestern corner of the Nez Perce Reservation. For purposes of the priority date of the domestic and stock watering claims for these two allotments, the United States claims June 11, 1855 pursuant to the 1855 Treaty.
- g. In order to comply with Idaho Code § 42-1409(1), the United States has designated “places of use,” “points of diversion,” and “purposes of use” in submitting this water rights claim. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe’s future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Reservation. The statute’s terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.

11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled “How you will receive notices in the Palouse River Basin Adjudication.”
- (b) I do ___ do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

For Organizations:

I do solemnly swear and affirm that I am Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.



Signature of Authorized Agent:

Title and Organization:

Northwest Regional Director
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

Notice is hereby given that the United States Department of Justice will represent the United States of America, including the U.S. Department of the Interior, Bureau of Indian Affairs, in all matters pertaining to the Palouse River Basin Adjudication.

All notices, filings and correspondence concerning this matter should be mailed to the United States Department of Justice at the address set forth below:

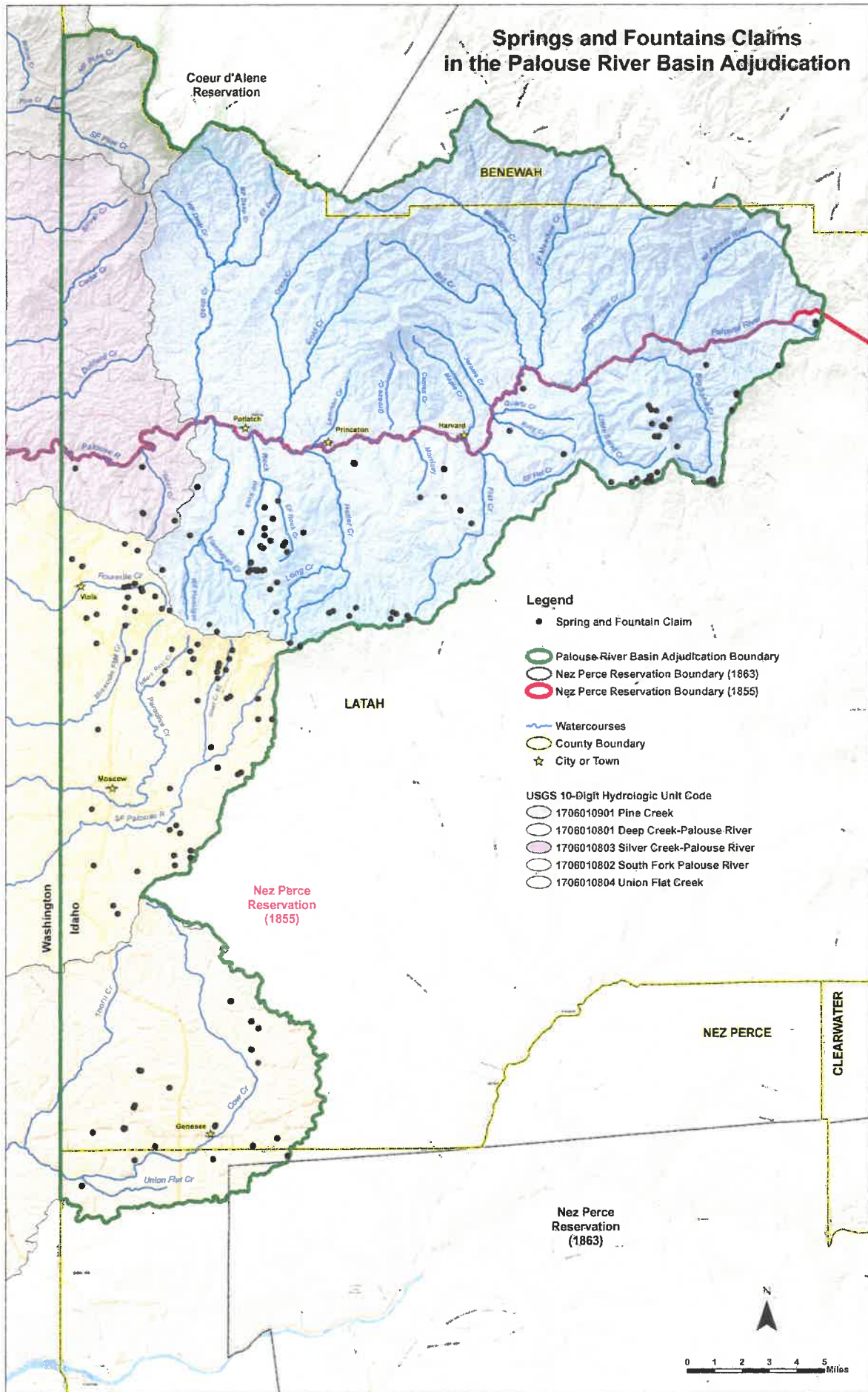


Katherine M. Kane
United States Department of Justice
Indian Resources Division
Natural Resources Section
999 18th Street
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

Springs and Fountains Claims in the Palouse River Basin Adjudication



**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)	Case No.: 59576
ADJUDICATION OF RIGHTS)	
TO THE USE OF WATER FROM)	NOTICE OF CLAIM
THE PALOUSE RIVER BASIN)	
WATER SYSTEM)	Federal Reserved Water Right
)	
)	

RECEIVED
DEC 30 2019
DEPARTMENT OF
WATER RESOURCES

1. Name and address of claimant:

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the REGIONAL DIRECTOR, NORTHWEST REGION

Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

2. Date of Priority: Time Immemorial

3. a. Source of water supply: Spring (Federal I.D. #3021)

b. which is a tributary to: Little Sand Creek

4. Point of Diversion: This claim is for a spring and/or fountain *in situ* including sufficient groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or fountains.

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
3021	41N	2W	15	NESW	Boise	Latah

See Attached Map.

5. Place of Use:

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
3021	41N	2W	15	NESW	Boise	Latah

See Attached Map.

6. Purpose of Water Use:

The purpose of use includes the full range of uses to which the Tribe and its members have always put the springs and fountains, including as a water source for consumptive use, for wildlife and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce Reservation pursuant to the documents referenced in Section 9 and the provisions in Section 10, *infra*.

7. Period of Use: January 1 through December 31.

8. Quantity Reserved (In cfs): Half the natural flow.

9. Basis of Claim:

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

10. Other Provisions:

- a. The United States has asserted other claims in the Palouse River Basin Adjudication. Paragraphs 10(a) – (g) express assertions applicable to all claims filed by the Bureau of Indian Affairs in its capacity as trustee for the Nez Perce Tribe in the Palouse River Basin Adjudication. The United States claims waters from groundwater and surface water sources within the Palouse River Basin in the state of Idaho to satisfy the rights reserved to the Nez Perce Tribe by the 1855 Treaty and the 1863 Treaty and to fulfill the permanent homeland purpose of the Nez Perce Reservation. Such present and future purposes include: instream flows for fish habitat; hunting, gathering, and pasturing; spring and fountains flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; and consumptive use claims on two allotments held in trust by the United States.
- b. The Nez Perce Tribe has occupied a territory in what is now central Idaho, southeastern Washington, and northeastern Oregon since time immemorial. *United States v. Webb*, 219 F.3d 1127, 1129 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). The Palouse River Basin is within the Tribe’s traditional lands.
- c. There is a complex history of the United States’ establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing

rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the “exclusive right to fish in all streams running through or bordering” the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the “right of taking fish at all usual and accustomed places in common with the citizens of the Territory” to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.

- d. Article III of the 1855 Treaty further reserves to the Tribe “the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land.”
- e. Article VIII of the Nez Perce Treaty of 1863 includes a unique provision reserving to the Nez Perce Tribe the use of “springs and fountains” within the area ceded under Article I of the 1863 Treaty. For purposes of the priority date of the springs and fountains claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.
- f. Pursuant to the General Allotment Act of 1887, Act of February 8, 1887, 24 Stat. 388, *amended*, Act of February 28, 1891, 26 Stat. 794, there are two allotments (Allotments 182-43 and 182-45) held in trust by the United States located within the boundaries of the Palouse River Basin and the northwestern corner of the Nez Perce Reservation. For purposes of the priority date of the domestic and stock watering claims for these two allotments, the United States claims June 11, 1855 pursuant to the 1855 Treaty.
- g. In order to comply with Idaho Code § 42-1409(1), the United States has designated “places of use,” “points of diversion,” and “purposes of use” in submitting this water rights claim. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe’s future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Reservation. The statute’s terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.

11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled “How you will receive notices in the Palouse River Basin Adjudication.”
- (b) I do ___ do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

For Organizations:

I do solemnly swear and affirm that I am Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.



Signature of Authorized Agent:

Title and Organization:

Northwest Regional Director
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

Notice is hereby given that the United States Department of Justice will represent the United States of America, including the U.S. Department of the Interior, Bureau of Indian Affairs, in all matters pertaining to the Palouse River Basin Adjudication.

All notices, filings and correspondence concerning this matter should be mailed to the United States Department of Justice at the address set forth below:

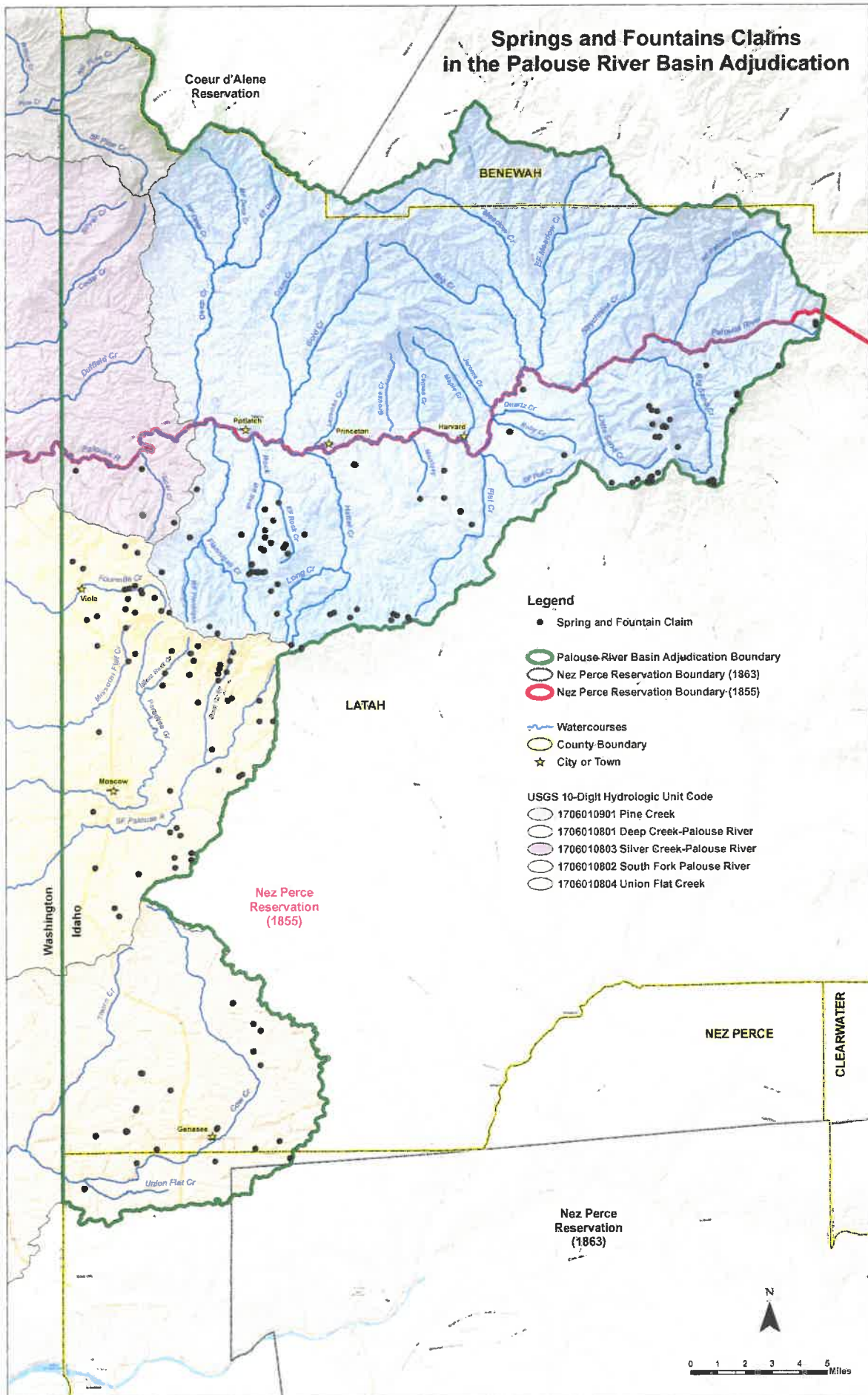


Katherine M. Kane
United States Department of Justice
Indian Resources Division
Natural Resources Section
999 18th Street
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

Springs and Fountains Claims in the Palouse River Basin Adjudication



6. Purpose of Water Use:

The purpose of use includes the full range of uses to which the Tribe and its members have always put the springs and fountains, including as a water source for consumptive use, for wildlife and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce Reservation pursuant to the documents referenced in Section 9 and the provisions in Section 10, *infra*.

7. Period of Use: January 1 through December 31.

8. Quantity Reserved (In cfs): Half the natural flow.

9. Basis of Claim:

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

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- b. The Nez Perce Tribe has occupied a territory in what is now central Idaho, southeastern Washington, and northeastern Oregon since time immemorial. *United States v. Webb*, 219 F.3d 1127, 1129 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). The Palouse River Basin is within the Tribe’s traditional lands.
- c. There is a complex history of the United States’ establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the “exclusive

right to fish in all streams running through or bordering” the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the “right of taking fish at all usual and accustomed places in common with the citizens of the Territory” to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.

- d. Article III of the 1855 Treaty further reserves to the Tribe “the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land.”
- e. Article VIII of the Nez Perce Treaty of 1863 includes a unique provision reserving to the Nez Perce Tribe the use of “springs and fountains” within the area ceded under Article I of the 1863 Treaty. For purposes of the priority date of the springs and fountains claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.
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- g. In order to comply with Idaho Code § 42-1409(1), the United States has designated “places of use,” “points of diversion,” and “purposes of use” in submitting this water rights claim. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe’s future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Reservation. The statute’s terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.

11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled “How you will receive notices in the Palouse River Basin Adjudication.”
- (b) I do ___ do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

For Organizations:

I do solemnly swear and affirm that I am Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.



Signature of Authorized Agent:

Title and Organization:

Northwest Regional Director
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

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All notices, filings and correspondence concerning this matter should be mailed to the United States Department of Justice at the address set forth below:



Katherine M. Kane
United States Department of Justice
Indian Resources Division
Natural Resources Section
999 18th Street
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

**Springs and Fountains Claims
in the Palouse River Basin Adjudication**

Coeur d'Alene
Reservation

BENEWAH

LATAH

Washington
Idaho

NEZ PERCE

CLEARWATER

Nez Perce
Reservation
(1855)

Nez Perce
Reservation
(1863)

Legend

- Spring and Fountain Claim
- Palouse River Basin Adjudication Boundary
- Nez Perce Reservation Boundary (1863)
- Nez Perce Reservation Boundary (1855)
- Watercourses
- County Boundary
- City or Town

USGS 10-Digit Hydrologic Unit Code

- 1706010901 Pine Creek
- 1706010801 Deep Creek-Palouse River
- 1706010803 Silver Creek-Palouse River
- 1706010802 South Fork Palouse River
- 1706010804 Union Flat Creek

0 1 2 3 4 5
Miles

- **Spring and Fountain Claim**

○ Nez Perce Reservation Boundary (1863)

Watercourses

 County Boundary

☆ City or Town

USGS 10-Digit Hydrologic Unit Code

1706010901 Pine Creek

1706010801 Deep Creek-Palouse River

1706010803 Silver Creek-Palouse River

1706010802 South Fork Palouse River

1706010804 Union Flat Creek

**Nez Perce
Reservation
(1855)**

NEZ PERCE

CLEARWATER

Nez Perce
Reservation
(1863)

N

0 1 2 3 4 5 Miles

87-12149

**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)	Case No.: 59576
ADJUDICATION OF RIGHTS)	
TO THE USE OF WATER FROM)	NOTICE OF CLAIM
THE PALOUSE RIVER BASIN)	
WATER SYSTEM)	Federal Reserved Water Right
)	
)	

RECEIVED
DEC 30 2019
DEPARTMENT OF
WATER RESOURCES

1. Name and address of claimant:

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the REGIONAL DIRECTOR, NORTHWEST REGION

Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

2. Date of Priority: Time Immemorial

3. a. Source of water supply: Spring (Federal I.D. #3023)

b. which is a tributary to: Big Sand Creek

4. Point of Diversion: This claim is for a spring and/or fountain *in situ* including sufficient groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or fountains.

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
3023	42N	2W	25	SWSW	Boise	Latah

See Attached Map.

5. Place of Use:

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
3023	42N	2W	25	SWSW	Boise	Latah

See Attached Map.

6. Purpose of Water Use:

The purpose of use includes the full range of uses to which the Tribe and its members have always put the springs and fountains, including as a water source for consumptive use, for wildlife and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce Reservation pursuant to the documents referenced in Section 9 and the provisions in Section 10, *infra*.

7. Period of Use: January 1 through December 31.

8. Quantity Reserved (In cfs): Half the natural flow.

9. Basis of Claim:

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

10. Other Provisions:

- a. The United States has asserted other claims in the Palouse River Basin Adjudication. Paragraphs 10(a) – (g) express assertions applicable to all claims filed by the Bureau of Indian Affairs in its capacity as trustee for the Nez Perce Tribe in the Palouse River Basin Adjudication. The United States claims waters from groundwater and surface water sources within the Palouse River Basin in the state of Idaho to satisfy the rights reserved to the Nez Perce Tribe by the 1855 Treaty and the 1863 Treaty and to fulfill the permanent homeland purpose of the Nez Perce Reservation. Such present and future purposes include: instream flows for fish habitat; hunting, gathering, and pasturing; spring and fountains flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; and consumptive use claims on two allotments held in trust by the United States.
- b. The Nez Perce Tribe has occupied a territory in what is now central Idaho, southeastern Washington, and northeastern Oregon since time immemorial. *United States v. Webb*, 219 F.3d 1127, 1129 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). The Palouse River Basin is within the Tribe’s traditional lands.
- c. There is a complex history of the United States’ establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing

rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the “exclusive right to fish in all streams running through or bordering” the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the “right of taking fish at all usual and accustomed places in common with the citizens of the Territory” to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.

- d. Article III of the 1855 Treaty further reserves to the Tribe “the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land.”
- e. Article VIII of the Nez Perce Treaty of 1863 includes a unique provision reserving to the Nez Perce Tribe the use of “springs and fountains” within the area ceded under Article I of the 1863 Treaty. For purposes of the priority date of the springs and fountains claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.
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For Organizations:

I do solemnly swear and affirm that I am Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.



Signature of Authorized Agent:

Title and Organization:

Northwest Regional Director
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

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All notices, filings and correspondence concerning this matter should be mailed to the United States Department of Justice at the address set forth below:

A handwritten signature in blue ink, appearing to read 'K.M. Kane', is written over a horizontal line.

Katherine M. Kane
United States Department of Justice
Indian Resources Division
Natural Resources Section
999 18th Street
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

**Springs and Fountains Claims
in the Palouse River Basin Adjudication**

Legend

- Spring and Fountain Claim
- Palouse River Basin Adjudication Boundary
- Nez Perce Reservation Boundary (1863)
- Nez Perce Reservation Boundary (1855)
- Watercourses
- County Boundary
- ★ City or Town

USGS 10-Digit Hydrologic Unit Code

- 1706010901 Pine Creek
- 1706010801 Deep Creek-Palouse River
- 1706010803 Silver Creek-Palouse River
- 1706010802 South Fork Palouse River
- 1706010804 Union Flat Creek

Nez Perce Reservation (1855)

Nez Perce Reservation (1863)

Scale: 0 1 2 3 4 5 Miles

North Arrow

N

0 1 2 3 4 5 Miles

6. Purpose of Water Use:

The purpose of use includes the full range of uses to which the Tribe and its members have always put the springs and fountains, including as a water source for consumptive use, for wildlife and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce Reservation pursuant to the documents referenced in Section 9 and the provisions in Section 10, *infra*.

7. Period of Use: January 1 through December 31.

8. Quantity Reserved (In cfs): Half the natural flow.

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The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

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- b. The Nez Perce Tribe has occupied a territory in what is now central Idaho, southeastern Washington, and northeastern Oregon since time immemorial. *United States v. Webb*, 219 F.3d 1127, 1129 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). The Palouse River Basin is within the Tribe’s traditional lands.
- c. There is a complex history of the United States’ establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing

rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the “exclusive right to fish in all streams running through or bordering” the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the “right of taking fish at all usual and accustomed places in common with the citizens of the Territory” to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.

- d. Article III of the 1855 Treaty further reserves to the Tribe “the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land.”
- e. Article VIII of the Nez Perce Treaty of 1863 includes a unique provision reserving to the Nez Perce Tribe the use of “springs and fountains” within the area ceded under Article I of the 1863 Treaty. For purposes of the priority date of the springs and fountains claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.
- f. Pursuant to the General Allotment Act of 1887, Act of February 8, 1887, 24 Stat. 388, *amended*, Act of February 28, 1891, 26 Stat. 794, there are two allotments (Allotments 182-43 and 182-45) held in trust by the United States located within the boundaries of the Palouse River Basin and the northwestern corner of the Nez Perce Reservation. For purposes of the priority date of the domestic and stock watering claims for these two allotments, the United States claims June 11, 1855 pursuant to the 1855 Treaty.
- g. In order to comply with Idaho Code § 42-1409(1), the United States has designated “places of use,” “points of diversion,” and “purposes of use” in submitting this water rights claim. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe’s future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Reservation. The statute’s terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.

11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled “How you will receive notices in the Palouse River Basin Adjudication.”
- (b) I do ___ do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

For Organizations:

I do solemnly swear and affirm that I am Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.



Signature of Authorized Agent:

Title and Organization:

Northwest Regional Director
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

Notice is hereby given that the United States Department of Justice will represent the United States of America, including the U.S. Department of the Interior, Bureau of Indian Affairs, in all matters pertaining to the Palouse River Basin Adjudication.

All notices, filings and correspondence concerning this matter should be mailed to the United States Department of Justice at the address set forth below:

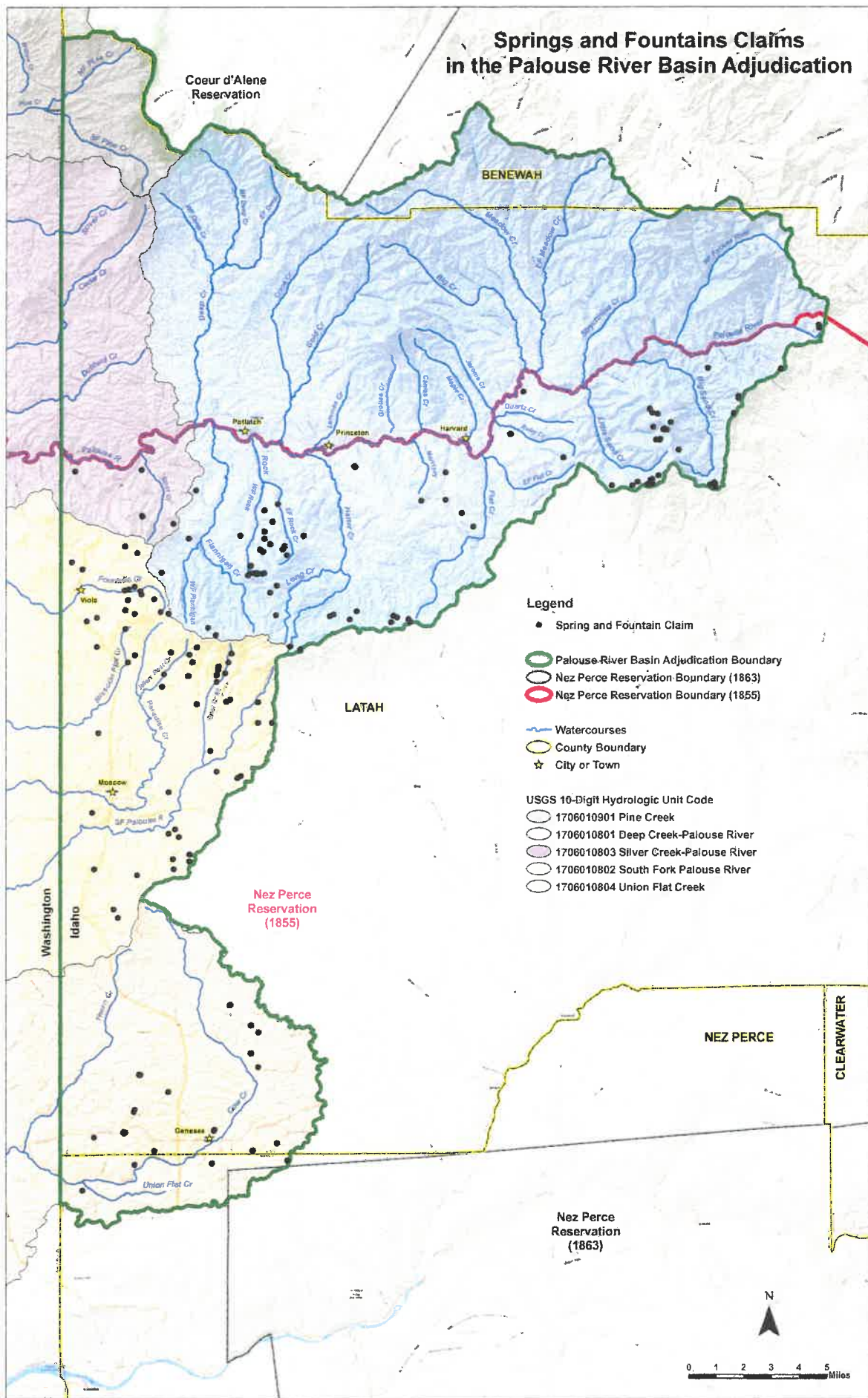


Katherine M. Kane
United States Department of Justice
Indian Resources Division
Natural Resources Section
999 18th Street
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

Springs and Fountains Claims in the Palouse River Basin Adjudication



87-12151

**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)	Case No.: 59576
ADJUDICATION OF RIGHTS)	
TO THE USE OF WATER FROM)	NOTICE OF CLAIM
THE PALOUSE RIVER BASIN)	
WATER SYSTEM)	Federal Reserved Water Right
)	
)	

RECEIVED
DEC 30 2019
DEPARTMENT OF
WATER RESOURCES

1. Name and address of claimant:

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the REGIONAL DIRECTOR, NORTHWEST REGION

Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

2. Date of Priority: Time Immemorial

3. a. Source of water supply: Springs (Federal I.D. #3025)

b. which is a tributary to: Bonami Creek

4. Point of Diversion: This claim is for a spring and/or fountain *in situ* including sufficient groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or fountains.

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
3025-1	41N	2W	10	SENW	Boise	Latah
3025-2	41N	2W	10	SENW	Boise	Latah

See Attached Map.

5. Place of Use:

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
3025-1	41N	2W	10	SENW	Boise	Latah
3025-2	41N	2W	10	SENW	Boise	Latah

See Attached Map.

6. Purpose of Water Use:

The purpose of use includes the full range of uses to which the Tribe and its members have always put the springs and fountains, including as a water source for consumptive use, for wildlife and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce Reservation pursuant to the documents referenced in Section 9 and the provisions in Section 10, *infra*.

7. Period of Use: January 1 through December 31.

8. Quantity Reserved (In cfs): Half the natural flow.

9. Basis of Claim:

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

10. Other Provisions:

- a. The United States has asserted other claims in the Palouse River Basin Adjudication. Paragraphs 10(a) – (g) express assertions applicable to all claims filed by the Bureau of Indian Affairs in its capacity as trustee for the Nez Perce Tribe in the Palouse River Basin Adjudication. The United States claims waters from groundwater and surface water sources within the Palouse River Basin in the state of Idaho to satisfy the rights reserved to the Nez Perce Tribe by the 1855 Treaty and the 1863 Treaty and to fulfill the permanent homeland purpose of the Nez Perce Reservation. Such present and future purposes include: instream flows for fish habitat; hunting, gathering, and pasturing; spring and fountains flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; and consumptive use claims on two allotments held in trust by the United States.
- b. The Nez Perce Tribe has occupied a territory in what is now central Idaho, southeastern Washington, and northeastern Oregon since time immemorial. *United States v. Webb*, 219 F.3d 1127, 1129 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). The Palouse River Basin is within the Tribe’s traditional lands.
- c. There is a complex history of the United States’ establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing

rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the “exclusive right to fish in all streams running through or bordering” the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the “right of taking fish at all usual and accustomed places in common with the citizens of the Territory” to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.

- d. Article III of the 1855 Treaty further reserves to the Tribe “the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land.”
- e. Article VIII of the Nez Perce Treaty of 1863 includes a unique provision reserving to the Nez Perce Tribe the use of “springs and fountains” within the area ceded under Article I of the 1863 Treaty. For purposes of the priority date of the springs and fountains claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.
- f. Pursuant to the General Allotment Act of 1887, Act of February 8, 1887, 24 Stat. 388, *amended*, Act of February 28, 1891, 26 Stat. 794, there are two allotments (Allotments 182-43 and 182-45) held in trust by the United States located within the boundaries of the Palouse River Basin and the northwestern corner of the Nez Perce Reservation. For purposes of the priority date of the domestic and stock watering claims for these two allotments, the United States claims June 11, 1855 pursuant to the 1855 Treaty.
- g. In order to comply with Idaho Code § 42-1409(1), the United States has designated “places of use,” “points of diversion,” and “purposes of use” in submitting this water rights claim. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe’s future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Reservation. The statute’s terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.

11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled “How you will receive notices in the Palouse River Basin Adjudication.”
- (b) I do ___ do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

For Organizations:

I do solemnly swear and affirm that I am Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.



Signature of Authorized Agent:

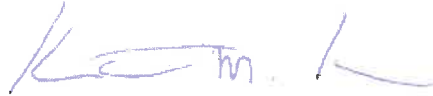
Title and Organization:

Northwest Regional Director
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

Notice is hereby given that the United States Department of Justice will represent the United States of America, including the U.S. Department of the Interior, Bureau of Indian Affairs, in all matters pertaining to the Palouse River Basin Adjudication.

All notices, filings and correspondence concerning this matter should be mailed to the United States Department of Justice at the address set forth below:



Katherine M. Kane
United States Department of Justice
Indian Resources Division
Natural Resources Section
999 18th Street
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

**Springs and Fountains Claims
in the Palouse River Basin Adjudication**

Legend

- Spring and Fountain Claim
- Palouse River Basin Adjudication Boundary
- Nez Perce Reservation Boundary (1863)
- Nez Perce Reservation Boundary (1855)
- Watercourses
- County Boundary
- ★ City or Town

USGS 10-Digit Hydrologic Unit Code

- 1706010901 Pine Creek
- 1706010801 Deep Creek-Palouse River
- 1706010803 Silver Creek-Palouse River
- 1706010802 South Fork Palouse River
- 1706010804 Union Flat Creek

Nez Perce Reservation (1855)

Nez Perce Reservation (1863)

Washington

Idaho

BENEWAH

LATAH

NEZ PERCE

CLEARWATER

0 1 2 3 4 5 Miles

N

- **Spring and Fountain Claim**

○ Nez Perce Reservation Boundary (1863)

 **Watercourses**

★ City or Town

1706010901 Pine Creek

1706010803 Silver Creek-Palouse River

1706010802 South Fork Palouse River

1706010804 Union Flat Creek

Nez Perce
Reservation
(1855)

NEZ PERCE

**Nez Perce
Reservation
(1863)**

CLEARWATER

N
A

0 1 2 3 4 5 Miles

**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)	Case No.: 59576
ADJUDICATION OF RIGHTS)	
TO THE USE OF WATER FROM)	NOTICE OF CLAIM
THE PALOUSE RIVER BASIN)	
WATER SYSTEM)	Federal Reserved Water Right
)	
)	

RECEIVED
DEC 30 2019
DEPARTMENT OF
WATER RESOURCES

1. Name and address of claimant:

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the REGIONAL DIRECTOR, NORTHWEST REGION

Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

2. Date of Priority: Time Immemorial

3. a. Source of water supply: Spring (Federal I.D. #3026)

b. which is a tributary to: Dual Creek

4. Point of Diversion: This claim is for a spring and/or fountain *in situ* including sufficient groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or fountains.

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
3026	41N	2W	3	SWSE	Boise	Latah

See Attached Map.

5. Place of Use:

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
3026	41N	2W	3	SWSE	Boise	Latah

See Attached Map.

6. Purpose of Water Use:

The purpose of use includes the full range of uses to which the Tribe and its members have always put the springs and fountains, including as a water source for consumptive use, for wildlife and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce Reservation pursuant to the documents referenced in Section 9 and the provisions in Section 10, *infra*.

7. Period of Use: January 1 through December 31.

8. Quantity Reserved (In cfs): Half the natural flow.

9. Basis of Claim:

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

10. Other Provisions:

- a. The United States has asserted other claims in the Palouse River Basin Adjudication. Paragraphs 10(a) – (g) express assertions applicable to all claims filed by the Bureau of Indian Affairs in its capacity as trustee for the Nez Perce Tribe in the Palouse River Basin Adjudication. The United States claims waters from groundwater and surface water sources within the Palouse River Basin in the state of Idaho to satisfy the rights reserved to the Nez Perce Tribe by the 1855 Treaty and the 1863 Treaty and to fulfill the permanent homeland purpose of the Nez Perce Reservation. Such present and future purposes include: instream flows for fish habitat; hunting, gathering, and pasturing; spring and fountains flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; and consumptive use claims on two allotments held in trust by the United States.
- b. The Nez Perce Tribe has occupied a territory in what is now central Idaho, southeastern Washington, and northeastern Oregon since time immemorial. *United States v. Webb*, 219 F.3d 1127, 1129 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). The Palouse River Basin is within the Tribe’s traditional lands.
- c. There is a complex history of the United States’ establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing

rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the “exclusive right to fish in all streams running through or bordering” the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the “right of taking fish at all usual and accustomed places in common with the citizens of the Territory” to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.

- d. Article III of the 1855 Treaty further reserves to the Tribe “the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land.”
- e. Article VIII of the Nez Perce Treaty of 1863 includes a unique provision reserving to the Nez Perce Tribe the use of “springs and fountains” within the area ceded under Article I of the 1863 Treaty. For purposes of the priority date of the springs and fountains claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.
- f. Pursuant to the General Allotment Act of 1887, Act of February 8, 1887, 24 Stat. 388, *amended*, Act of February 28, 1891, 26 Stat. 794, there are two allotments (Allotments 182-43 and 182-45) held in trust by the United States located within the boundaries of the Palouse River Basin and the northwestern corner of the Nez Perce Reservation. For purposes of the priority date of the domestic and stock watering claims for these two allotments, the United States claims June 11, 1855 pursuant to the 1855 Treaty.
- g. In order to comply with Idaho Code § 42-1409(1), the United States has designated “places of use,” “points of diversion,” and “purposes of use” in submitting this water rights claim. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe’s future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Reservation. The statute’s terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.

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- (b) I do ___ do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

For Organizations:

I do solemnly swear and affirm that I am Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.



Signature of Authorized Agent:

Title and Organization:

Northwest Regional Director
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

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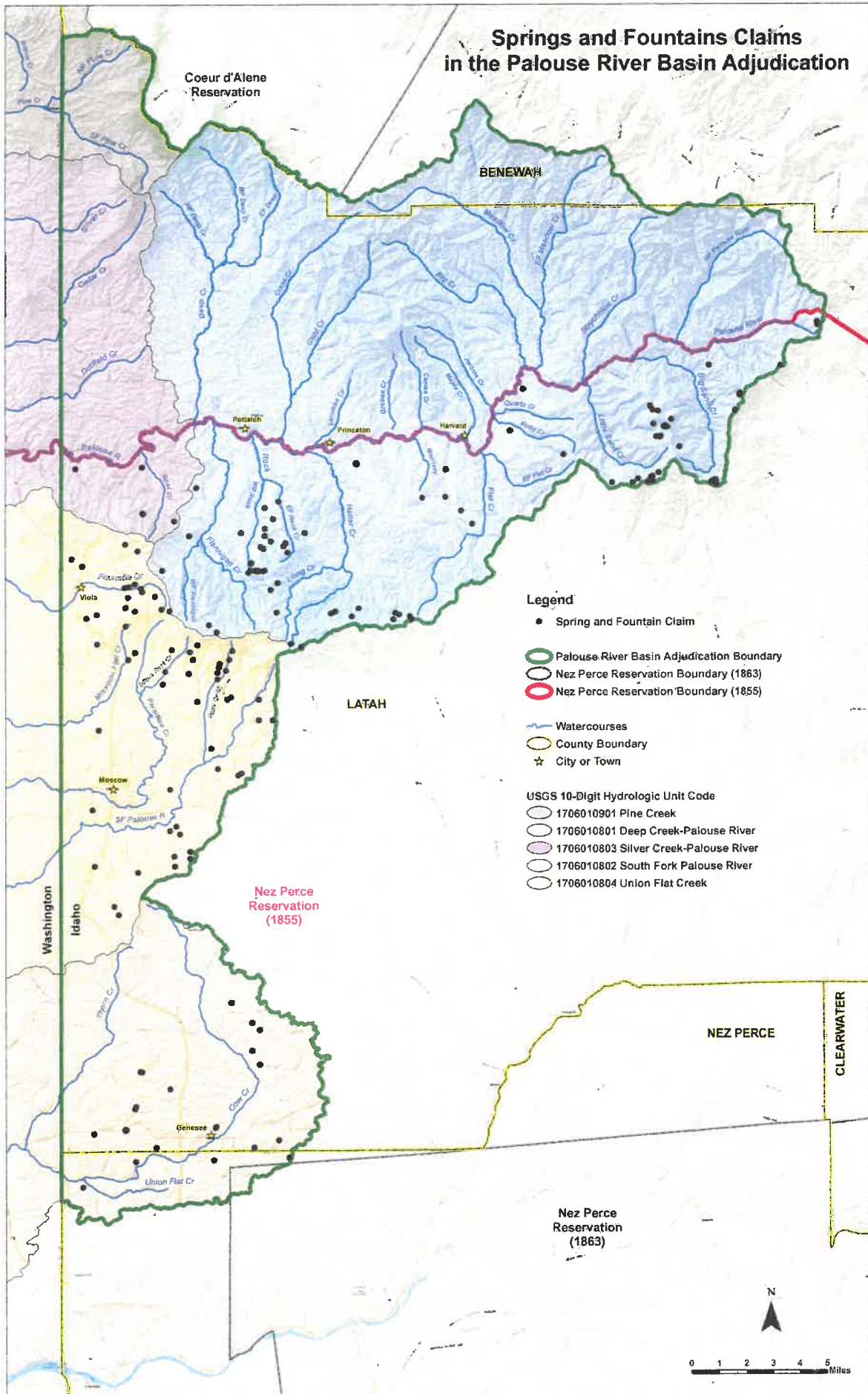
A handwritten signature in blue ink, appearing to read "K.M. Kane", is written over a horizontal line.

Katherine M. Kane
United States Department of Justice
Indian Resources Division
Natural Resources Section
999 18th Street
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

Springs and Fountains Claims in the Palouse River Basin Adjudication



**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)	Case No.: 59576
ADJUDICATION OF RIGHTS)	
TO THE USE OF WATER FROM)	NOTICE OF CLAIM
THE PALOUSE RIVER BASIN)	
WATER SYSTEM)	Federal Reserved Water Right
)	
)	

RECEIVED
DEC 30 2019
DEPARTMENT OF
WATER RESOURCES

1. Name and address of claimant:

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the REGIONAL DIRECTOR, NORTHWEST REGION

Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

2. Date of Priority: Time Immemorial

3. a. Source of water supply: Spring (Federal I.D. #3027)

b. which is a tributary to: Hatter Creek

4. Point of Diversion: This claim is for a spring and/or fountain *in situ* including sufficient groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or fountains.

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
3027	40N	4W	10	SWNW	Boise	Latah

See Attached Map.

5. Place of Use:

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
3027	40N	4W	10	SWNW	Boise	Latah

See Attached Map.

6. Purpose of Water Use:

The purpose of use includes the full range of uses to which the Tribe and its members have always put the springs and fountains, including as a water source for consumptive use, for wildlife and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce Reservation pursuant to the documents referenced in Section 9 and the provisions in Section 10, *infra*.

7. Period of Use: January 1 through December 31.

8. Quantity Reserved (In cfs): Half the natural flow.

9. Basis of Claim:

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

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11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled “How you will receive notices in the Palouse River Basin Adjudication.”
- (b) I do ___ do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

For Organizations:

I do solemnly swear and affirm that I am Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.



Signature of Authorized Agent:

Title and Organization:

Northwest Regional Director
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

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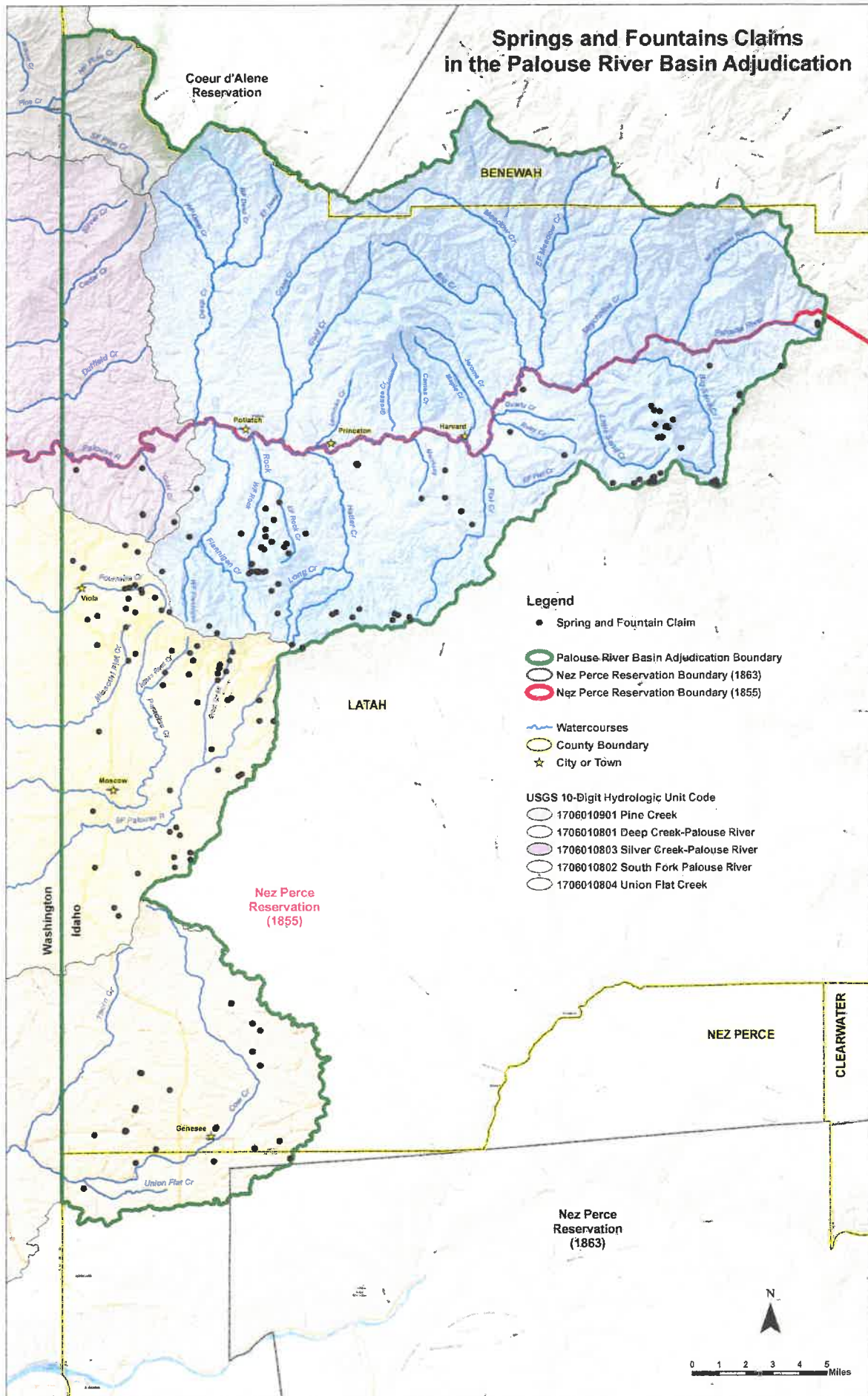


Katherine M. Kane
United States Department of Justice
Indian Resources Division
Natural Resources Section
999 18th Street
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

Springs and Fountains Claims in the Palouse River Basin Adjudication



**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)	Case No.: 59576
ADJUDICATION OF RIGHTS)	
TO THE USE OF WATER FROM)	NOTICE OF CLAIM
THE PALOUSE RIVER BASIN)	
WATER SYSTEM)	Federal Reserved Water Right
)	
)	

RECEIVED
DEC 30 2019
DEPARTMENT OF
WATER RESOURCES

1. Name and address of claimant:

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the REGIONAL DIRECTOR, NORTHWEST REGION

Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

2. Date of Priority: Time Immemorial

3. a. Source of water supply: Spring (Federal I.D. #3028)

b. which is a tributary to: Hatter Creek

4. Point of Diversion: This claim is for a spring and/or fountain *in situ* including sufficient groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or fountains.

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
3028	40N	4W	10	SWNW	Boise	Latah

See Attached Map.

5. Place of Use:

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
3028	40N	4W	10	SWNW	Boise	Latah

See Attached Map.

6. Purpose of Water Use:

The purpose of use includes the full range of uses to which the Tribe and its members have always put the springs and fountains, including as a water source for consumptive use, for wildlife and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce Reservation pursuant to the documents referenced in Section 9 and the provisions in Section 10, *infra*.

7. Period of Use: January 1 through December 31.

8. Quantity Reserved (In cfs): Half the natural flow.

9. Basis of Claim:

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

10. Other Provisions:

- a. The United States has asserted other claims in the Palouse River Basin Adjudication. Paragraphs 10(a) – (g) express assertions applicable to all claims filed by the Bureau of Indian Affairs in its capacity as trustee for the Nez Perce Tribe in the Palouse River Basin Adjudication. The United States claims waters from groundwater and surface water sources within the Palouse River Basin in the state of Idaho to satisfy the rights reserved to the Nez Perce Tribe by the 1855 Treaty and the 1863 Treaty and to fulfill the permanent homeland purpose of the Nez Perce Reservation. Such present and future purposes include: instream flows for fish habitat; hunting, gathering, and pasturing; spring and fountains flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; and consumptive use claims on two allotments held in trust by the United States.
- b. The Nez Perce Tribe has occupied a territory in what is now central Idaho, southeastern Washington, and northeastern Oregon since time immemorial. *United States v. Webb*, 219 F.3d 1127, 1129 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). The Palouse River Basin is within the Tribe’s traditional lands.
- c. There is a complex history of the United States’ establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing

rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the “exclusive right to fish in all streams running through or bordering” the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the “right of taking fish at all usual and accustomed places in common with the citizens of the Territory” to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.

- d. Article III of the 1855 Treaty further reserves to the Tribe “the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land.”
- e. Article VIII of the Nez Perce Treaty of 1863 includes a unique provision reserving to the Nez Perce Tribe the use of “springs and fountains” within the area ceded under Article I of the 1863 Treaty. For purposes of the priority date of the springs and fountains claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.
- f. Pursuant to the General Allotment Act of 1887, Act of February 8, 1887, 24 Stat. 388, *amended*, Act of February 28, 1891, 26 Stat. 794, there are two allotments (Allotments 182-43 and 182-45) held in trust by the United States located within the boundaries of the Palouse River Basin and the northwestern corner of the Nez Perce Reservation. For purposes of the priority date of the domestic and stock watering claims for these two allotments, the United States claims June 11, 1855 pursuant to the 1855 Treaty.
- g. In order to comply with Idaho Code § 42-1409(1), the United States has designated “places of use,” “points of diversion,” and “purposes of use” in submitting this water rights claim. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe’s future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Reservation. The statute’s terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.

11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled “How you will receive notices in the Palouse River Basin Adjudication.”
- (b) I do ___ do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

For Organizations:

I do solemnly swear and affirm that I am Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.



Signature of Authorized Agent:

Title and Organization:

Northwest Regional Director
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

Notice is hereby given that the United States Department of Justice will represent the United States of America, including the U.S. Department of the Interior, Bureau of Indian Affairs, in all matters pertaining to the Palouse River Basin Adjudication.

All notices, filings and correspondence concerning this matter should be mailed to the United States Department of Justice at the address set forth below:

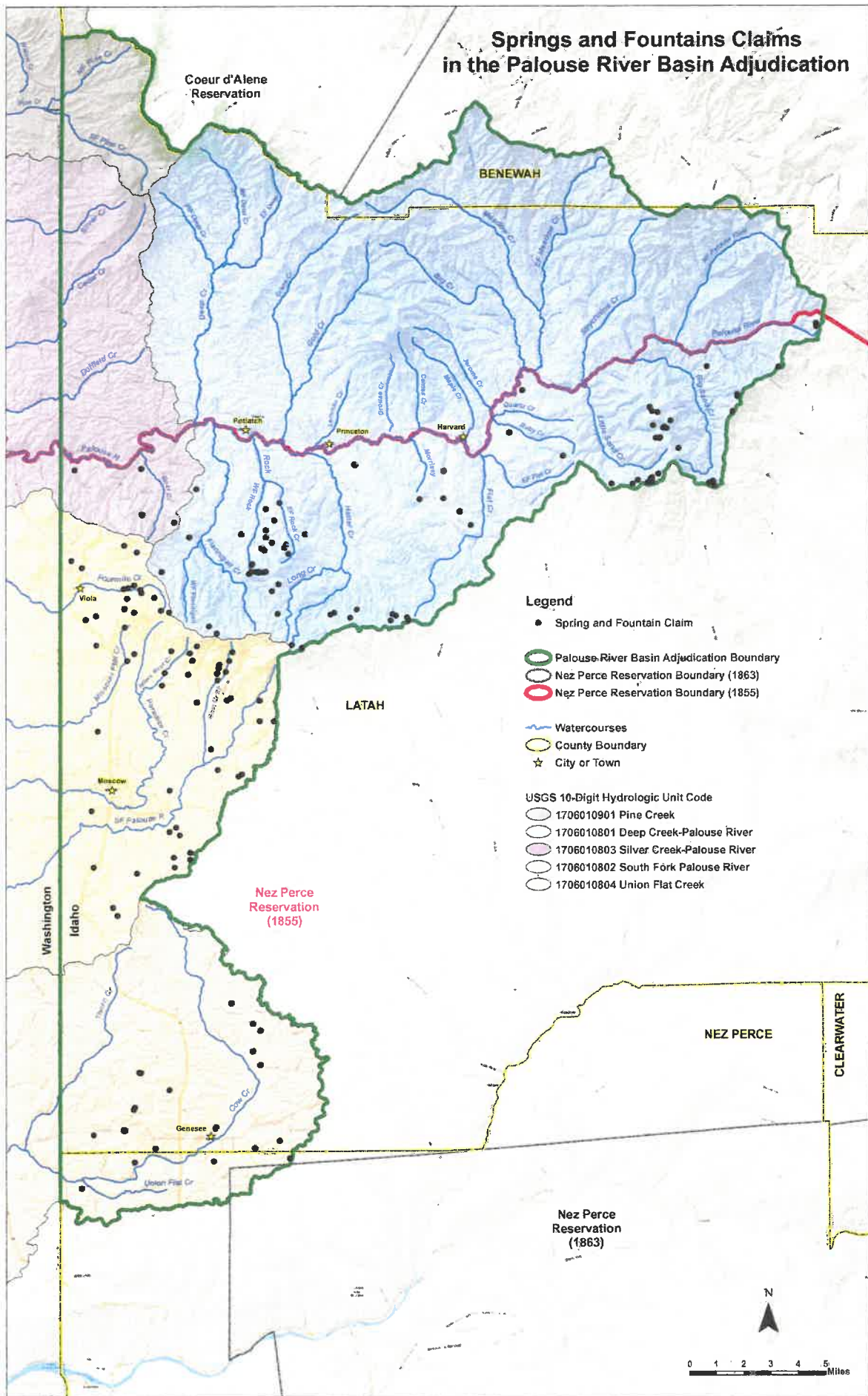


Katherine M. Kane
United States Department of Justice
Indian Resources Division
Natural Resources Section
999 18th Street
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

Springs and Fountains Claims in the Palouse River Basin Adjudication



**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)	Case No.: 59576
ADJUDICATION OF RIGHTS)	
TO THE USE OF WATER FROM)	NOTICE OF CLAIM
THE PALOUSE RIVER BASIN)	
WATER SYSTEM)	Federal Reserved Water Right
)	
)	

RECEIVED
DEC 30 2019
DEPARTMENT OF
WATER RESOURCES

1. Name and address of claimant:

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the REGIONAL DIRECTOR, NORTHWEST REGION

Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

2. Date of Priority: Time Immemorial

3. a. Source of water supply: Spring (Federal I.D. #4001)

b. which is a tributary to: South Fork Palouse River

4. Point of Diversion: This claim is for a spring and/or fountain *in situ* including sufficient groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or fountains.

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
4001	39N	5W	22	NENW	Boise	Latah

See Attached Map.

5. Place of Use:

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
4001	39N	5W	22	NENW	Boise	Latah

See Attached Map.

6. Purpose of Water Use:

The purpose of use includes the full range of uses to which the Tribe and its members have always put the springs and fountains, including as a water source for consumptive use, for wildlife and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce Reservation pursuant to the documents referenced in Section 9 and the provisions in Section 10, *infra*.

7. Period of Use: January 1 through December 31.

8. Quantity Reserved (In cfs): Half the natural flow.

9. Basis of Claim:

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

10. Other Provisions:

- a. The United States has asserted other claims in the Palouse River Basin Adjudication. Paragraphs 10(a) – (g) express assertions applicable to all claims filed by the Bureau of Indian Affairs in its capacity as trustee for the Nez Perce Tribe in the Palouse River Basin Adjudication. The United States claims waters from groundwater and surface water sources within the Palouse River Basin in the state of Idaho to satisfy the rights reserved to the Nez Perce Tribe by the 1855 Treaty and the 1863 Treaty and to fulfill the permanent homeland purpose of the Nez Perce Reservation. Such present and future purposes include: instream flows for fish habitat; hunting, gathering, and pasturing; spring and fountains flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; and consumptive use claims on two allotments held in trust by the United States.
- b. The Nez Perce Tribe has occupied a territory in what is now central Idaho, southeastern Washington, and northeastern Oregon since time immemorial. *United States v. Webb*, 219 F.3d 1127, 1129 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). The Palouse River Basin is within the Tribe’s traditional lands.
- c. There is a complex history of the United States’ establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing

rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the “exclusive right to fish in all streams running through or bordering” the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the “right of taking fish at all usual and accustomed places in common with the citizens of the Territory” to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.

- d. Article III of the 1855 Treaty further reserves to the Tribe “the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land.”
- e. Article VIII of the Nez Perce Treaty of 1863 includes a unique provision reserving to the Nez Perce Tribe the use of “springs and fountains” within the area ceded under Article I of the 1863 Treaty. For purposes of the priority date of the springs and fountains claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.
- f. Pursuant to the General Allotment Act of 1887, Act of February 8, 1887, 24 Stat. 388, *amended*, Act of February 28, 1891, 26 Stat. 794, there are two allotments (Allotments 182-43 and 182-45) held in trust by the United States located within the boundaries of the Palouse River Basin and the northwestern corner of the Nez Perce Reservation. For purposes of the priority date of the domestic and stock watering claims for these two allotments, the United States claims June 11, 1855 pursuant to the 1855 Treaty.
- g. In order to comply with Idaho Code § 42-1409(1), the United States has designated “places of use,” “points of diversion,” and “purposes of use” in submitting this water rights claim. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe’s future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Reservation. The statute’s terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.

11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled “How you will receive notices in the Palouse River Basin Adjudication.”
- (b) I do ___ do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

For Organizations:

I do solemnly swear and affirm that I am Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.



Signature of Authorized Agent:

Title and Organization:

Northwest Regional Director
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

Notice is hereby given that the United States Department of Justice will represent the United States of America, including the U.S. Department of the Interior, Bureau of Indian Affairs, in all matters pertaining to the Palouse River Basin Adjudication.

All notices, filings and correspondence concerning this matter should be mailed to the United States Department of Justice at the address set forth below:

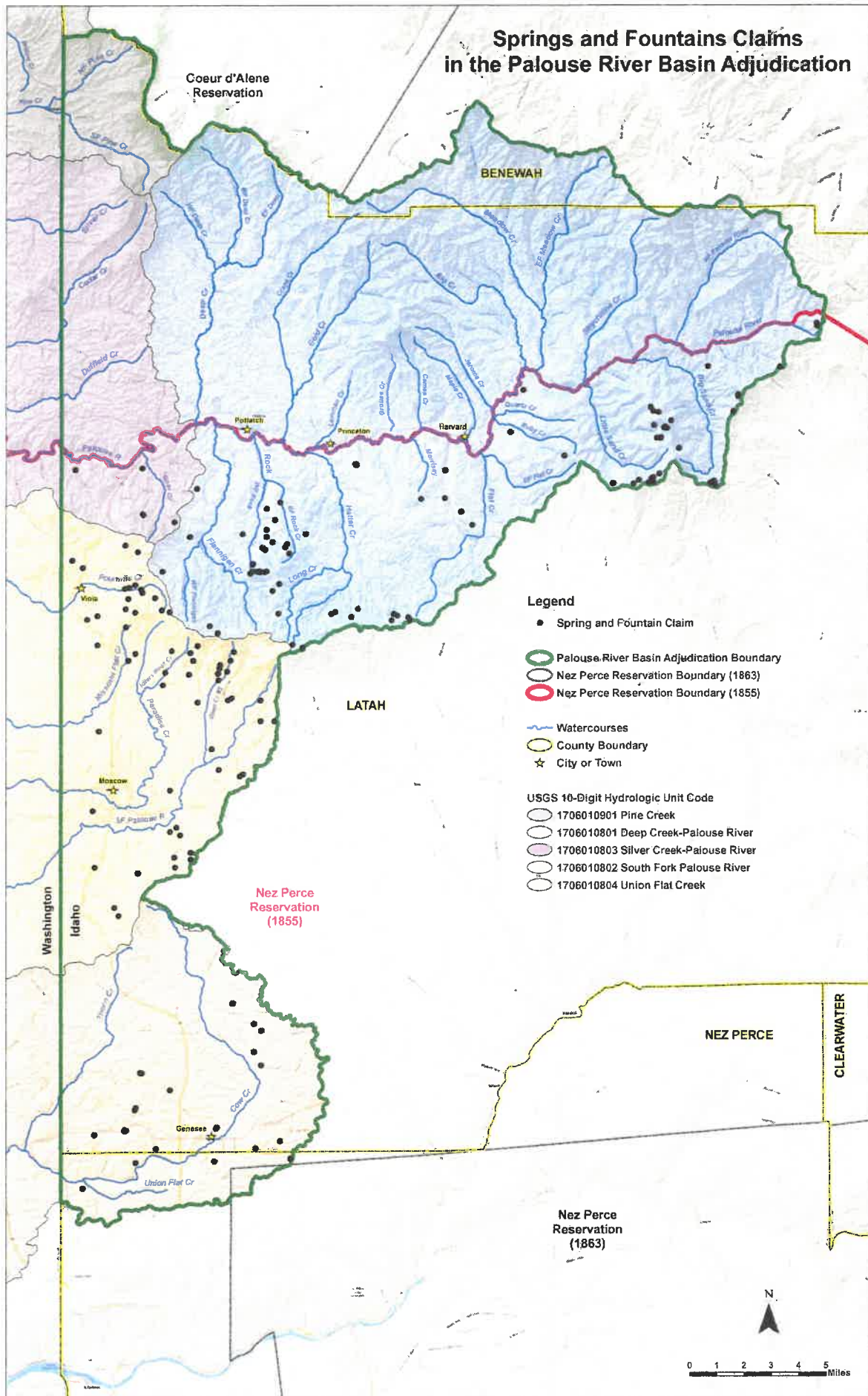
A handwritten signature in blue ink, appearing to read 'K.M. Kane', is written over a horizontal line.

Katherine M. Kane
United States Department of Justice
Indian Resources Division
Natural Resources Section
999 18th Street
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

Springs and Fountains Claims in the Palouse River Basin Adjudication



**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)	Case No.: 59576
ADJUDICATION OF RIGHTS)	
TO THE USE OF WATER FROM)	NOTICE OF CLAIM
THE PALOUSE RIVER BASIN)	
WATER SYSTEM)	Federal Reserved Water Right
)	
)	

RECEIVED
DEC 30 2019
DEPARTMENT OF
WATER RESOURCES

1. Name and address of claimant:

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the REGIONAL DIRECTOR, NORTHWEST REGION

Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

2. Date of Priority: Time Immemorial

3. a. Source of water supply: Spring (Federal I.D. #4002)

b. which is a tributary to: South Fork Palouse River

4. Point of Diversion: This claim is for a spring and/or fountain *in situ* including sufficient groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or fountains.

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
4002	38N	5W	5	SEnw	Boise	Latah

See Attached Map.

5. Place of Use:

Federal I.D.	Township:	Range:	Section:	Q in the Q:	Meridian:	County:
4002	38N	5W	5	SEnw	Boise	Latah

See Attached Map.

6. Purpose of Water Use:

The purpose of use includes the full range of uses to which the Tribe and its members have always put the springs and fountains, including as a water source for consumptive use, for wildlife and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce Reservation pursuant to the documents referenced in Section 9 and the provisions in Section 10, *infra*.

7. Period of Use: January 1 through December 31.

8. Quantity Reserved (In cfs): Half the natural flow.

9. Basis of Claim:

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

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- c. There is a complex history of the United States’ establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing

rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the “exclusive right to fish in all streams running through or bordering” the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the “right of taking fish at all usual and accustomed places in common with the citizens of the Territory” to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855 pursuant to the 1855 Treaty.

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- g. In order to comply with Idaho Code § 42-1409(1), the United States has designated “places of use,” “points of diversion,” and “purposes of use” in submitting this water rights claim. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe’s future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Reservation. The statute’s terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.

11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled “How you will receive notices in the Palouse River Basin Adjudication.”
- (b) I do ___ do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

For Organizations:

I do solemnly swear and affirm that I am Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.



Signature of Authorized Agent:

Title and Organization:

Northwest Regional Director
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

Notice is hereby given that the United States Department of Justice will represent the United States of America, including the U.S. Department of the Interior, Bureau of Indian Affairs, in all matters pertaining to the Palouse River Basin Adjudication.

All notices, filings and correspondence concerning this matter should be mailed to the United States Department of Justice at the address set forth below:



Katherine M. Kane
United States Department of Justice
Indian Resources Division
Natural Resources Section
999 18th Street
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

Springs and Fountains Claims in the Palouse River Basin Adjudication

