

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

In re SRBA
Case No. 39576

NOTICE OF CLAIM FOR
Federal Reserved Water Right 85-15593

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- 1. Name and address of owner:** UNITED STATES OF AMERICA, as trustee for the benefit of the NEZ PERCE TRIBE, acting through the AREA DIRECTOR, PORTLAND AREA OFFICE
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232
 - 2. Source of water** Surface water sources within the mainstem Clearwater River Subbasin of Basin 85 and groundwater sources hydrologically connected thereto.
 - 3. Annual diversion volume** 11745 acre-feet per year (AFY)
 - 4. Diversion rate** Diversion rates will depend on the purpose for which this water is used in accordance with the Tribal Water Code
 - 5. Priority date** June 11, 1855
 - 6. Points of diversion** Points of diversion may be developed to serve lands reserved in the Treaty of June 9, 1863 that are, at the time of use, held in tribal trust or tribal fee, or allotted lands held in trust or under restrictions against alienation
 - 7. Purpose of use** Irrigation, domestic, commercial, municipal, industrial, hatchery, cultural, and other uses in accordance with the Tribal Water Code.
 - 8. Period of use** January 1 to December 31, or as appropriate for the specific use in accordance with the Tribal Water Code.
 - 9. Place of use** Lands reserved in the Treaty of June 9, 1863 that are, at the time of use, held in tribal trust or tribal fee, or allotted lands held in trust or under restrictions against alienation.
 - 10. Basis of right** The legal basis for this water right is the doctrine of reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny.
 - 11. Other provisions**
 - a. The mainstem Clearwater River Subbasin of Basin 85 includes all lands draining into the mainstem Clearwater River

**necessary for
definition or
administration of
this water right**

within Basin 85. The area included within this subbasin is depicted on a map entitled “Clearwater River subbasin within IDWR Basin 85,” on file with the Director of the Idaho Department of Water Resources.

b. For groundwater wells in the vicinity of the Clearwater River, a hydrological connection to the Clearwater River is presumed when well levels respond to changes in the flow of the Clearwater River. Further, wells within 500 feet of the ordinary high water mark or within 200 feet of the 100-year flood plain of the Clearwater River and drilled and sealed to a depth below the bed of the Clearwater River are presumed to be connected to the Clearwater River. These presumptions do not preclude demonstration of a hydrological connection using other methods.

c. For groundwater wells in the Lapwai Creek subbasin in or north of the town of Lapwai, and in that section of the Tom Beall Creek subbasin that is within Section 35, Township 36N, Range 4W, there is a presumption that the well is hydrologically connected to the Clearwater River when well levels respond to changes in the flow of the Clearwater River. Further, for wells in the Lapwai Creek valley north of the town of Lapwai, wells are presumed to be connected to the Clearwater River when the well is drilled to at least the following depths, expressed as elevation above mean sea level, and physically sealed in a manner to prevent drawing from any aquifer above the specified depth:

Well location (all within Township 36N, Range 4W, Boise Meridian)	Well depth (MSL)
South of the Clearwater River and north of a line running between the NE corner of the NW ¹ / ₄ NW ¹ / ₄ SW ¹ / ₄ Section 23 and the NW corner of the SW ¹ / ₄ SW ¹ / ₄ Section 22	700 feet
South of a line running between the NE corner of the NW ¹ / ₄ NW ¹ / ₄ SW ¹ / ₄ Section 23 and the NW corner of the SW ¹ / ₄ SW ¹ / ₄ Section 22 and north of the southernmost quarter-quarter sections of sections 22 and 23	550 feet
Within the southernmost quarter-quarter sections of Sections 22 and 23	500 feet
Within Sections 26 and 27	475 feet
Within Section 35	450 feet

These presumptions do not preclude demonstration of a hydrological connection using other methods.

d. This water right will be administered by the Nez Perce Tribe in accordance with the Tribal Water Code. Specific locations for Points of Diversion or Place of Use shall be determined pursuant to the Tribal Water Code.

e. Notwithstanding the Priority Date of this water right, changes in Points of Diversion to other water sources shall not injure the legal entitlement to water of those persons lawfully diverting water prior to the time of the change to the Point of Diversion. Any such proposed changes in Points of Diversion will be jointly reviewed by an intergovernmental board consisting of one representative of the Nez Perce Tribe, one representative of the Idaho Department of Water Resources, and one representative jointly appointed by the Tribe and the State of Idaho. The intergovernmental board will determine whether injury to other water users will result from the proposed change, and may examine other related issues regarding the interpretation of the 2004 settlement agreement on which this water right is based. The intergovernmental board will provide appropriate public notice and meet in open session to consider all relevant data, including, where appropriate, testimony from any person claiming that the proposed change will injure such person's water rights. In the event the intergovernmental board determines that the proposed change would injure the legal entitlements to water of those persons lawfully diverting water prior to the time of the proposed change or makes other related determinations, it shall make appropriate recommendations to the Tribe of the actions necessary to avoid such injury. This intergovernmental board's authority and review process is advisory only and shall not inhibit any party from seeking judicial enforcement of this decree.