

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 82-12219

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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** Ground water sources within the South Fork Clearwater River Subbasin of Basin 82 that are not hydrologically connected with the South Fork Clearwater River.
- 3. Annual diversion volume** 53 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 from ground water sources within the South Fork Clearwater River Subbasin of Basin 82.
- 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** Tribal trust, tribal fee, or allotted land held in trust or under restrictions against alienation within the South Fork Clearwater River Subbasin of Basin 82.
- 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 necessary for definition or administration of**
- a. The South Fork Clearwater River Subbasin of Basin 82 includes all lands draining into the South Fork Clearwater River, which is a tributary to the mainstem Clearwater River. The area included within this subbasin is depicted on a map entitled "South Fork Clearwater River subbasin within IDWR Basin 82," on file

this water right

with the Director of the Idaho Department of Water Resources.

b. Notwithstanding the Priority Date of this water right, the Tribe and the United States shall exercise this water right in a manner that ensures persons lawfully diverting water prior to April 20, 2004, will continue to receive their full legal entitlement under state law.

c. To the extent that groundwater sources within the South Fork Clearwater River Subbasin of Basin 82 are hydrologically connected to the South Fork Clearwater River, diversions from those sources shall be considered to be exercise of water right 82-12218 and not a part of this water right. The presumptions regarding connectivity in water right 82-12218 apply to determinations of whether a diversion is part of this water right.

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. The Tribal Water Code shall be no less protective of the ground water resource than is state law governing the use of aquifers, including those state laws restricting the depletion of groundwater resources and the lowering of the pumping level of other ground water users.

e. Notwithstanding the Priority Date of this water right, changes in Points of Diversion or Place of Use to locations outside of this subbasin shall not injure the legal entitlement to water of those persons lawfully diverting water prior to the time of the change to the Points of Diversion or Place of Use. Any proposed changes in Points of Diversion or Places of Use to locations outside of this subbasin 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.

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 85-15596

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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. 11 th Ave.
Portland, OR 97232 |
| 2. Source of water | Ground water sources within the South Fork Clearwater River Subbasin of Basin 85 that are not hydrologically connected with the South Fork Clearwater River. |
| 3. Annual diversion volume | 114 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 from ground water sources within the South Fork Clearwater River Subbasin of Basin 85. |
| 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 | Tribal trust, tribal fee, or allotted land held in trust or under restrictions against alienation within the South Fork Clearwater River Subbasin of Basin 85. |
| 10. Basis of right | The legal basis for this water right is the doctrine of reserved water rights articulated in <i>Winters v. United States</i> , 207 U.S. 564 (1908), and its progeny. |
| 11. Other provisions necessary for definition or administration of | a. The South Fork Clearwater River Subbasin of Basin 85 includes all lands draining into the South Fork Clearwater River, which is a tributary to the mainstem Clearwater River. The area included within this subbasin is depicted on a map entitled "South Fork Clearwater River subbasin within IDWR Basin 85," on file |

this water right

with the Director of the Idaho Department of Water Resources.

b. Notwithstanding the Priority Date of this water right, the Tribe and the United States shall exercise this water right in a manner that ensures persons lawfully diverting water prior to April 20, 2004, will continue to receive their full legal entitlement under state law.

c. To the extent that groundwater sources within the South Fork Clearwater River Subbasin of Basin 85 are hydrologically connected to the South Fork Clearwater River, diversions from those sources shall be considered to be exercise of water right 85-15595 and not a part of this water right. The presumptions regarding connectivity in water right 85-15595 apply to determinations of whether a diversion is part of this water right.

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. The Tribal Water Code shall be no less protective of the ground water resource than is state law governing the use of aquifers, including those state laws restricting the depletion of groundwater resources and the lowering of the pumping level of other ground water users.

e. Notwithstanding the Priority Date of this water right, changes in Points of Diversion or Place of Use to locations outside of this subbasin shall not injure the legal entitlement to water of those persons lawfully diverting water prior to the time of the change to the Points of Diversion or Place of Use. Any proposed changes in Points of Diversion or Places of Use to locations outside of this subbasin 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.