

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 85-15597

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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 Sweetwater Creek Subbasin of Basin 85 |
| 3. Annual diversion volume | 290 acre-feet per year (AFY) |
| 4. Diversion rate | Not to exceed 4 cfs |
| 5. Priority date | June 11, 1855 |
| 6. Points of diversion | Points of diversion may be developed from ground water sources within the Sweetwater Creek Subbasin of Basin 85 |
| 7. Purpose of use | Fish propagation purposes. |
| 8. Period of use | January 1 to December 31. |
| 9. Place of use | Tribal trust, tribal fee, or allotted land held in trust or under restrictions against alienation within the Sweetwater Creek 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 this water right | <p>a. The Sweetwater Creek Subbasin of Basin 85 includes all lands draining into Sweetwater Creek, a tributary of Lapwai Creek. The area included within the Sweetwater Creek Subbasin of Basin 85 is depicted on a map entitled "Sweetwater Creek subbasin within IDWR Basin 85," on file with the Director of the Idaho Department of Water Resources.</p> <p>b. Notwithstanding the Priority Date of this water right, the Tribe and the United States shall exercise this water right in a</p> |

manner that ensures persons lawfully diverting water prior to April 20, 2004, will continue to receive their full legal entitlement under state law.

c. The purpose of this water right is for fish propagation purposes. The consumptive use of this water right is limited to evaporation and leakage from fish propagation facilities and shall not exceed 5% of the volume of water diverted. Return flows from this water right shall be returned to Sweetwater Creek.

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 groundwater 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 groundwater 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.