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ADAM R.F. GUSTAFSON
Principal Deputy Assistant Attorney General
EMMI BLADES
HILLARY HOFFMAN
Trial Attorneys
U.S. Department of Justice
Environment & Natural Resources Division
Tribal Resources Section
P.O. Box 7611
Ben Franklin Station Washington, D.C. 20044-7611
Phone: (202) 598-0661 (Blades)
Phone: (202) 598-3147 (Hoffman)
Fax: (202) 353-1156
Emmi.blades@usdoj.gov
Hillary.hoffman@usdoj.gov

By _____
Clerk
Deputy Clerk

Attorneys for the United States

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

IN RE: PRBA

CASE NO. 59576

)
) Subcase Nos. 87-12015
) and 87-12088
)
) **UNITED STATES'**
) **MEMORANDUM IN SUPPORT OF**
) **MOTION TO AMEND CLAIMS**
)

The United States of America ("United States"), as trustee for the Nez Perce Tribe ("Tribe") of the Nez Perce Indian Reservation and individual Indian allottees, hereby submits this Memorandum in support of the *United States' Motion to Amend Claims* ("Motion") filed concurrently in the above-captioned subcases.

BACKGROUND

I. Procedural Background

On December 27, 2019, the United States filed 177 claims in the Palouse River Basin Adjudication (“PRBA”) on behalf of the Tribe and individual Indian allottees. *See* Cover Letter from USDOJ to IDWR (Dec. 27, 2019). These claims included the two springs and fountains claims that are the subject of this Memorandum and corresponding Motion. On October 8, 2024, the United States filed a *Motion to Enter Litigation Schedule for Federal Claims*, which requested that the Court bifurcate the entitlement issues from quantification of the instream flow claims. The Court granted that Motion on December 12, 2024. This phase of the litigation regarding the federal claims therefore seeks to resolve the entitlement and quantification of the United States’ allotments and springs and fountains claims and the entitlement portion of the United States’ instream flow claims. Under the Court’s December 12, 2025, *Order on Stipulation to Stay*, discovery on these issues closes on June 2, 2026.

II. The Claims and Claim Amendments

In 2019, the United States filed 152 springs and fountains claims pursuant to Article VIII of the Treaty of June 9, 1863, between the United States and Tribe (“1863 Treaty”). *See* Cover Letter from DOJ to IDWR at 3 (Dec. 27, 2019). That provision of the 1863 Treaty states in part that the United States “agrees to reserve all springs or fountains not adjacent to, or directly connected with, the streams or rivers within the lands hereby relinquished . . . for the use in common of both whites and Indians.” 14 Stat. 647. The springs claims filed by the United States as trustee for the Tribe are based on this “in common” language, with the United States claiming up to half the natural flow of each claimed spring or fountain within the territory that was ceded

by the Tribe through the 1863 Treaty and is now within the boundaries of the PRBA. *See* Cover Letter from DOJ to IDWR at 3 (Dec. 27, 2019).

The claims subject to this Memorandum and corresponding Motion, Subcase Nos. 87-12015 (Fed ID # 1010) and 87-12088 (Fed ID # 1083), are two of the 152 springs and fountains claims originally filed by the United States in 2019. Both claims identify springs as the source of water supply, with a priority date of time immemorial and use *in situ*. Both claims are for springs within Latah County and within the territory ceded by the Tribe through the 1863 Treaty. Parties, including the State of Idaho, have objected to these claims.

To support its litigation positions in the PRBA, the United States has contracted with hydrology and Geographic Information System experts to assist in specifying the location of springs within the Palouse River Basin as well as confirming the springs claimed by the United States meet the technical criteria of a spring. The United States' experts have collected information about the springs from Idaho Department of Water Resources and United States Geological Survey online resources, along with field visits to the springs. In the Fall of 2025, the United States' experts conducted further field visits of certain springs, including the two springs at issue in this Memorandum and corresponding Motion, to gather additional information. After those field visits, on December 19, 2025, the United States produced to the parties a supplemental expert report titled *Palouse River Basin Adjudication Supplemental Spring Data Summary*.

The claim amendments that are the subject of this Memorandum and corresponding Motion are based off information discovered during the United States' experts' Fall 2025 field visits. Namely, for Subcase No. 87-12015, the amendment makes changes to Point of Diversion, Sec. 4, and Place of Use, Sec. 5 of the Notice of Claim, from Township 41N, R 6W, Sec. 36,

SWNE, to Township 41N, R 5W, Sec. 31, NENW. The amendment also deletes the second row of the tables in Sections 4 and 5 of the Notice, which included a second spring location. When the United States originally filed its Notice of Claim in Subcase No. 87-12015 in 2019, it had reason to believe that there were two springs at this location that were part of one spring complex, and for that reason claimed a multisource spring with two locations in its Notice of Claim. However, after a site visit in October of 2025, it was uncovered that the two spring locations listed in the Notice of Claim in Subcase No. 87-12015 are not two springs part of a multisource complex but are instead two separate springs. As such, Subcase No. 87-12015 should only include one spring location, as reflected in the Amended Notice of Claim, and the United States has moved to file a Late Notice of Claim for the second spring location. *See United States Motion to File Late Notice of Claim*, Subcase No. 87-12406 (filed Jan. 29, 2026).

For Subcase No. 87-12088, which is a multisource spring claim, the amendment also makes changes to the Point of Diversion, Sec. 4, and Place of Use, Sec. 5 of the Notice of Claim, updating the Quarter-Quarter information for each spring to more accurately reflect the location of those water sources. The United States is not seeking to amend any of the other sections in the Notices of Claims for these two subcases.

LEGAL STANDARD

Idaho Code provides that “[a] claimant may amend a notice of claim or file a late notice of claim . . . for *good cause* shown to the district court or the director.” Idaho Code § 42-1409A(3) (emphasis added). PRBA Administrative Order 1 (“AO1”) provides that “[l]eave to amend a notice of claim shall be freely given *when justice so requires*.” AO1 4(d)(2)(d) (emphasis added); *see also* Idaho R. Civ. P. 15(a)(2) (“In all other cases, a party may amend its pleading only with the opposing party’s written consent or the court’s leave. The court should

freely give leave *when justice so requires.*”) (emphasis added). PRBA Standard Form 3 (SF3) provides the format for parties to file a *Motion to File Amended Notice of Claim* and repeats the AO1 standard that “[l]eave to amend a claim shall be freely given when justice so requires.” See SF3.

The “freely given when justice so requires” standard is a liberal one. See *Eagle Rock Timber, Inc. v. Teton County*, 531 P.3d 488, 502 (Idaho 2023). The right to amend claims is freely given “to allow the best chance for each claim to be determined on its merits rather than on some procedural technicality and to relegate pleadings to the limited role of providing parties with notice of the nature of the pleader’s claim and the facts that have been called into question.” *Zeyen v. Pocatello/Chubbuck Sch. Dist. No. 25*, 451 P.3d 25, 30 (Idaho 2019) (citing *Clark v. Olsen*, 715 P.2d 993, 996 (Idaho 1986)) (internal quotation marks omitted). Thus,

[i]n the absence of any apparent or declared reason - such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc. - the leave sought should, as the rules require, ‘be freely given’.

Clark, 715 P.2d at 996 (quoting *Foman v. Davis*, 371 U.S. 178, 182 (1962)).

Likewise, the “good cause” standard is leniently applied in Idaho to allow cases to be decided on their merits, rather than for procedural reasons. See, e.g., *Dorion v. Keane*, 283 P.3d 118, 120 (Idaho 2012) (“Because judgments by default are not favored, a trial court should grant relief in doubtful cases in order to decide the case on the merits.” (citation omitted)), *Id.* at 122

([T]he required *good cause* showing to set aside a default under Rule 55(c) is lower or more lenient than that required to set aside a default judgment under Rule 60(b). This more lenient approach in setting aside a default, as opposed to a default judgment, is consistent with an application of the policy that cases should be decided on their merits.

(citations and internal quotation marks omitted)). In applying the good cause standard, similar to the “justice so requires” standard, courts look to whether there was: (1) undue delay; (2) whether the delay was unduly prejudicial; and whether (3) a meritorious position, or justiciable controversy, is present. *See id.* at 121; *see also Kirby v. Scotton*, 415 P.3d 960 (Idaho Ct. App. 2018) (citing *Dorion*, 283 P.3d at 121); *see, e.g., Order Granting Motion(s) to File Amended Notice of Claim, In re SRBA Case No. 39576*, Subcase No. 57-00001B, et al. (2001).

ARGUMENT

The proposed claim amendments satisfy the good cause standard in Idaho Code § 42-1409A(3), and the “justice so requires” standard in AO1 4(d)(2)(d). The amendments are timely, will not prejudice the other parties, and present a justiciable controversy for the Court. Each of these points is addressed below.

I. The Amendments are Timely and Not Unduly Delayed

The United States’ amended claims are timely, particularly considering the current litigation schedule. After filing claims in 2019, the United States’ experts continued to gather data regarding the springs and fountains claims. Gathering such information through site visits requires coordination with private landowners, the United States’ experts, and the Tribe. One set of such site visits occurred in the Fall of 2025 in anticipation of the litigation schedule’s deadline for Claimants’ supplemental reports regarding springs. These site visits uncovered more information regarding the two claims at issue here. The United States worked diligently to incorporate the new data into its amended claims, and that process is now complete and is reflected in the amended claims.

These amendments comport with the current litigation schedule and allow ample time for the parties to review the amendments and seek discovery on these amended claims. Under the

Court's December 12, 2025, *Order on Stipulation to Stay*, discovery on the springs and fountains claims closes on June 2, 2026. The United States already produced to the parties its supplemental expert report titled *Palouse River Basin Adjudication Supplemental Spring Data Summary*, on December 19, 2025, which gave the parties notice of the new data underlying these two amendments. As such, the parties still have many months to seek discovery on these amendments before summary judgment briefing commences. These amendments, which are made merely to more accurately reflect the locations of these springs, are thus timely and not unduly delayed.

II. The Amendments are Not Unduly Prejudicial

Relatedly, the parties are not unduly prejudiced by the timing of the United States' amended claims. The Idaho Supreme Court has limited undue prejudice to the situations that affected the outcome of a case in some unfair or improper way. *Godspeed v. Shippen*, 303 P.3d 225, 232 (Idaho 2013); *see also*, Clifford S. Fishman, et al., JONES ON EVIDENCE § 11:14 (7th ed. 2023) (“*unfair prejudice* ‘means an undue tendency to suggest decision on an improper basis, commonly, though not necessarily, an emotional one.’”). Importantly, “[t]o be prejudicial, the setting aside of a judgment must result in greater harm than simply delaying resolution of the case.” *Dorian*, 283 P.3d at 123 (quoting *TCI Group Life Ins. Plan v. Knoebber*, 244 F.3d 691, 701 (9th Cir. 2001)).

The amendments only make changes to the Point of Use and Point of Diversion Sections of the Notice of Claims to more accurately reflect where the springs are located. These amendments do not interfere with any litigation deadlines, and the parties still have months to seek discovery on these two claims. *See Order on Stipulation to Stay* (Dec. 12, 2025). And the parties were made aware of these factual updates in December of 2025, when the United States

disclosed its supplemental springs report. These amendments will not deprive any party of the opportunity to fully assess and litigate the substance of these claims on their merits.

III. There is a Meritorious Position and Justiciable Controversy

There is a live justiciable controversy in this case because the Court must determine, among other things, the entitlement and quantification of the United States' springs and fountains claims made as trustee on behalf of the Tribe. The United States' amended claims are meritorious as they address both entitlement and quantification of two of the United States' springs claims.

IV. There is Good Cause for the Amendments


Good cause exists to amend the two springs claims to incorporate updated data gathered by the United States' experts. As explained above, the amendments for both Subcase Nos. 87-12015 and 87-12088 change the Point of Use and Diversion locations for the springs claims to account for the updated information gathered by the United States' experts when doing field visits. With these amendments, the United States conforms its claims to the updated factual data gathered through its experts' investigations. Justice requires that these claims be amended to incorporate this updated data while the PRBA is ongoing, and with ample time remaining in the litigation schedule for further discovery.

CONCLUSION

For these reasons, the United States respectfully requests the Court grant the United States' *Motion to Amend Claims* for Subcase Nos. 87-12015 and 87-12088.

DATED this 29th day of January 2026.

Respectfully submitted,
Adam R.F. Gustafson
Principal Deputy Assistant Attorney General

A handwritten signature in black ink, appearing to read "Emmi Blades". The signature is written in a cursive, flowing style.

Emmi Blades
Hillary Hoffman
Trial Attorneys, Tribal Resources Section
Environment & Natural Resources Division
United States Department of Justice

CERTIFICATE OF SERVICE

I certify that an original copy of the *United States' Memorandum in Support of Motion to Amend Claims* was sent via FedEx this 29th day of January 2026 to:

Clerk of the District Court, Twin Falls County
Palouse River Basin Adjudication
253 Third Avenue North
Twin Falls, ID 83303

I certify that true and correct copies of the document listed above were sent via electronic mail and/or U.S. Post to the parties below on this 29th day of January 2026.

STATE OF IDAHO

Represented by:

Chief Natural Resources Division
Office of the Attorney General
PO BOX 83720
Boise, ID 83720-0010
Scott.Campbell@ag.idaho.gov
joy.vega@ag.idaho.gov
David.Perkins@ag.idaho.gov
Rowdy.keller@ag.idaho.gov

Norman M. Semanko
Parsons Behle & Latimer
800 W. Main Street, Ste 1300
Boise, ID 83702
NSemanko@parsonsbehle.com

Michael P. Lawrence
Charlie S. Baser
601 W. Bannock St.
Boise, ID 83701
mpl@givenspursley.com
charliebaser@givenspursley.com

NEZ PERCE TRIBE OF THE UNITED STATES OF AMERICA

Represented by:

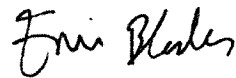
Michael A. Lopez
Nez Perce Tribe Legal Counsel
100 Agency Rd.
Lapwai, ID 83540
mlopez@nezperce.org

Director of IDWR
P.O. Box 83720
Boise, ID 83720
courtesy e-mail:
Lacey.rammell-obrien@idwr.idaho.gov

NEZ PERCE TRIBE OF THE UNITED STATES OF AMERICA

Represented by:

Thomas L. Murphy
Steven C. Moore
Native American Rights Fund
250 Arapahoe Ave
Boulder, CO 80302
murphy@narf.org



Emmi Blades