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By _____ Clerk
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Attorneys for the United States

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

IN RE: PRBA

CASE NO: 59576

)
) **UNITED STATES' MOTION TO FILE**
) **LATE NOTICE OF CLAIM**
)
) **Subcase No. 87-12406**
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Pursuant to Idaho Code § 42-1409A(3), and in conformance with the procedures outlined in Standard Form 4, the United States, as Trustee for the Nez Perce Tribe ("Tribe") of the Nez Perce Indian Reservations and individual Indian allottees, hereby files this *Motion to File Late Notice of Claim*. This motion provides the factual background and legal basis supporting one additional claim for "springs or fountains" on behalf of the Tribe. See Treaty of June 9, 1863, Article VIII, 14 Stat. 647, 651 ("1863 Treaty"). This additional claim ("Additional Claim") is filed by the United States Department of Justice, on behalf of the United States Department of

Interior, Bureau of Indian Affairs, in its role as Trustee for the Tribe. This Motion is filed pursuant to the *Order on Motion to Enter Litigation Schedule for Federal Claims*, dated December 12, 2024, and the *Order on Stipulation to Stay*, dated December 12, 2025, and is supported by the information below and the information included in the corresponding Standard Form 4 and Late Notice of Claim. For the reasons explained in this filing, this motion is well-grounded in fact, is warranted by existing law, and is not filed for any improper purpose, and should thus be granted.

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). This included 152 springs and fountains claims based on Article VIII of the 1863 Treaty. 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. By this Motion, the United States seeks to bring the Additional Claim for a spring for the benefit of the Tribe. Like the United States’ previous claims of this type/category, the Additional Claim is based on federal law and the Tribe’s rights under Article VIII of the 1863 Treaty.

II. Background for the United States' Tribal Water Rights Claims for Springs and Fountains

Prior to non-Indian settlement, the Tribe occupied approximately 13 million acres in central Idaho, southeastern Washington, and northeastern Oregon, including the Palouse River Basin. The Tribe entered into three treaties with the United States. Two of these treaties directly relate to all categories of water rights filed by the United States for the benefit of the Tribe: one in 1855 and the other in 1863.¹ The Treaty of June 11, 1855, 12 Stat. 957 (“1855 Treaty”), established a reservation for the Tribe of 7.5 million acres.

However, continued encroachment by non-Indian settlers led to the 1863 Treaty which reduced the Nez Perce Reservation (“Reservation”) to 784,996 acres. The Tribe’s ceded area of 6,932,270 acres is now known colloquially as “the donut area.” The Indian Claims Commission ruled that the northern boundary of the ceded land in the Palouse River Basin follows the Palouse River. *Nez Perce Tribe of Indians v. United States*, 8 Ind. Cl. Comm. 271, 272 (1959). The Preamble to the 1863 Treaty provides that its articles are “supplementary and amendatory to the treaty made between the United States and said tribe on the 11th day of June, 1855.” 14 Stat. 647. While the current Reservation boundaries are defined by the 1863 Treaty and only intersect with a small portion of the area at issue in the PRBA, a large portion of the Palouse River Basin lies within the Tribe’s ceded lands. Importantly, the Tribe preserved for itself certain rights in and to the ceded territory, or the donut area, when it entered the 1863 Treaty with the United States.

Article VIII of the 1863 Treaty provides in relevant part:

¹ In 1868 the United States and Tribe negotiated a third treaty which amended portions of the 1863 Treaty. Treaty of August 13, 1868, 15 Stat. 693. The 1868 Treaty is not directly relevant to the Additional Claim that is the subject of this motion.

The United States also agree to reserve all springs or fountains not adjacent to, or directly connected with, the streams or rivers within the lands hereby relinquished, and to keep back from settlement or entry so much of the surrounding land as may be necessary to prevent the said springs or fountains being enclosed; and, further, to preserve a perpetual right of way to and from the same, as watering places, for the use in common of both whites and Indians.

14 Stat. at 651. Article VIII was one of the unique provisions in the 1863 Treaty that induced the Tribe to agree to the significant reduction of their reservation from approximately 7.5 million acres to 784,996 acres. Accordingly, at present, the United States maintains numerous claims for off reservation, non-exclusive use of springs and fountains pursuant to Article VIII of the 1863 Treaty. Based on the “in common” language, the United States claims half the natural spring flow. The priority date of these springs and fountains claims is time immemorial based on the Tribe’s aboriginal use of springs.

On May 1, 1893, the Federal Government and Tribe entered into an agreement (“1893 Agreement”) that provided for the United States to purchase from the Tribe certain unreserved and unallotted lands within the reservation boundaries and the eventual opening of these ceded lands to settlement by non-Indians. Agreement with the Nez Perce Indians in Idaho, 28 Stat. at 326-331. Article XI of the 1893 agreement provides: “The existing provisions of all former treaties with said Nez Perce Indians not inconsistent with the provisions of this agreement are hereby continued in full force and effect.” 28 Stat. at 331. *See United States v. Webb*, 219 F.3d 1127, 1130 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001) (United States commissioners added Article XI as a “savings clause designed to preserve all of the tribe’s treaty rights not inconsistent with the sale of surplus lands.”).

III. The Additional Claim

In 2019, the United States filed 152 springs and fountains claims pursuant to Article VIII of the 1863 Treaty, in response to the Commencement Notice for this adjudication. *In Re PRBA*, Case No. 59576 (D. Ct. 5th Jud. Dist. Idaho, April 10, 2019); *see also* Cover Letter from DOJ to IDWR at 3 (Dec. 27, 2019). To prepare these claims, the United States reviewed the IDWR database of springs claims and other publicly available data indicating the existence of a spring meeting certain criteria within the “donut area.” Because many of these springs and fountains claims are on private land, the United States and Tribe were not able to gain access to verify the existence and details of the springs prior to filing the claims.

When the United States filed its original 152 springs claims in 2019, it included a spring claim for Subcase No. 87-12015 (Fed ID # 1010). That claim was a mirror claim to Subcase No. 87-10198, which was a private spring claim.² The Notice of Claim for Subcase No. 87-10198 included two springs locations. The United States therefore had reason to believe that the two springs were part of one spring complex, and for that reason claimed a multisource spring with two locations in its Notice of Claim for Subcase No. 87-12015. *See* United States Notice of Claim, Subcase No. 87-12015 at p. 1, Sub. 4 & 5 (filed Dec. 27, 2019). The parties to this federal sub-proceeding have thus been aware of these two springs locations since late 2019.

After filing claims in 2019, the United States’ experts continued to gather data regarding its springs and fountains claims. Gathering such information through site visits required coordination with private landowners, the United States’ experts, and the Tribe. One set of such site visits occurred in October of 2025 in anticipation of the litigation schedule’s deadline for

² This private spring claim has lapsed and is not being pursued in the PRBA.

Claimants' supplemental reports regarding springs.³ This site visit uncovered more information regarding Subcase No. 87-12015 (Fed ID # 1010) and the Additional Claim. Namely, 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. Because these are two distinct springs, the United States has moved to amend the Notice of Claim in Subcase No. 87-12015 to, among other things, remove the second spring location, *see United States' Motion to Amend Claims*, Subcase No. 87-12015 (filed Jan. 29, 2026), and now moves to add this Additional Claim to account for that second distinct spring location.

Therefore, as to the spring referenced in the Additional Claim, the United States seeks half of the natural flow of the spring as required to protect the Tribe's rights under the 1863 Treaty. This proposed Additional Claim is well-grounded in fact and is warranted by existing law. The United States incorporates by reference the qualifications for its claims, including limitations provided by the McCarran Amendment, 43 U.S.C. § 666 (1952), outlined in the Cover Letter dated December 27, 2019, that accompanied its original 177 claims made on behalf of the Tribe in the PRBA. Those qualifications apply to this Additional Claim in the same manner as they applied to the springs and fountains claims filed in 2019.

IV. Conclusion

For these reasons, the United States respectfully requests the Court grant the United States' *Motion to File Late Notice of Claim* for Subcase No. 87-12406.

³ The United States' initial expert report regarding the springs and fountains claims disclosed to the parties in the federal subcases in April 2025 identified that claim number 87-12015 was potentially two separate springs based on topography, but that could not be confirmed without a site visit.

DATED this 29th day of January 2026.

Respectfully submitted,
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CERTIFICATE OF SERVICE

I certify that an original copy of the *United States' Motion to File Late Notice of Claim* 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.

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