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DEPT. OF WATER RESOURCES

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Counsel for Kalispel Tribe of Indians

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

IN RE THE GENERAL ADJUDICATION)
OF RIGHTS TO THE USE OF WATER)
FROM THE CLARK FORK – PEND)
OREILLE RIVER BASINS)
WATER SYSTEM)

Case No. 69576)

NOTICE OF CLAIM

Federal Reserved Water Right

WR # 96-17110

Introduction

The Kalispel Tribe of Indians (“Kalispel Tribe”) submits this federal reserved water right claim as a claimant in the Clark Fork – Pend Oreille River Basin Adjudication. The Kalispel Tribe hereby adopts the United States claims for the same date of priority, sources, points of diversion, places of use, purposes of use, periods of use, basis of claims, and other provisions stated in the United States’ claims submitted in this adjudication as trustee on behalf of the Kalispel Tribe. In addition, the Kalispel Tribe hereby claims additional quantities of surface water, as described in section 8, *infra*, as a separate and independent claim for the month of August. The Tribe adopts the United States’ claims as its own claims and files these separate and additional claims as a claimant in the CFPRBA and without prejudice to its ability to amend any of its claims or to file additional claims in the future.

In addition, the Tribe provides a limited waiver of sovereign immunity for the *sole* purpose of judicial resolution of the United States’ claims and the Tribe’s separate claims in the

CFPRBA. The Tribe does not waive its sovereign immunity beyond this limited purpose or for any other purpose including but not limited to the imposition of any fees or judgment for costs or award of attorney fees. The Tribe's limited waiver of sovereign immunity does not extend to any other claim in the CFPRBA, or any other pending or future case and the Tribe reserves all rights of sovereign immunity not expressly waived herein to the full extent of the law.

1. Name and address of claimant:

KALISPEL TRIBE OF INDIANS, acting through the Kalispel Business Committee
 Contact Person: Glen Nenema, Chairman
 Kalispel Tribe of Indians
 P.O. Box 39
 Usk, Washington
 99180

2. Date of Priority: Time Immemorial

3. Source: Clark Fork River (Water Right # 96-17106) (Fed. ID # 401)

4. Point of Diversion: Not applicable; Instream flow

5. Place of Use:

At all points along the stream reach located between the following boundaries

Upstream Boundary – Montana Stateline

Water Right	Federal I.D.	Township	Range	Section	Q in the Q	Meridian	County
96-17106	401	55N	3E	26	SWNW	BM	Bonner

Downstream Boundary – Above Lightning Creek

Water Right	Federal I.D.	Township	Range	Section	Q in the Q	Meridian	County
96-17106	401	55N	2E	3	SWSE	BM	Bonner

Legal descriptions are based on current mapping but are subject to refinement to best reflect on-the-ground stream locations. See Attached Map.

6. Purpose of Water Use:

Fish habitat for fish species harvested within the Kalispel Indian Reservation – as a component of the water necessary to fulfill the homeland purpose of the Kalispel Indian Reservation pursuant to the documents referenced in Section 9 and the provisions in Section 10, *infra*.

7. **Period of Use:** January 1 through December 31, as further detailed in Section 8, *infra*.

8. **Quantity Reserved (In cfs):**

January	February	March	April	May	June
6590	7280	9070	13200	13200	13200

July	August	September	October	November	December
13200	15600	9110	7040	7230	6940

9. **Basis of Claim:**

The legal basis for this water right claim stems from the doctrine of federal reserved water rights articulated by the United States Supreme Court in *Winters v. United States*, 207 U.S. 564 (1908) and its progeny, as well as the operative documents and circumstances surrounding the creation of the Kalispel Reservation, including but not limited to, the Executive Order signed by President Wilson on March 23, 1914, C. Kappler, Indian Affairs: Laws and Treaties 1051 (Vol. 4, 1927).

10. **Other Provisions:**

- a. The United States has asserted other claims in the Clark Fork – Pend Oreille River Basin Adjudication. Paragraphs 10(a) – (d) express assertions applicable to all claims filed by the Bureau of Indian Affairs in its capacity as trustee for the Kalispel Tribe in the Clark Fork – Pend Oreille River Adjudication. This is one of three separate and independent claims that the Kalispel Tribe is filing. The United States claims waters from surface water sources within the Clark Fork-Pend Oreille River Basin Adjudication in the State of Idaho to fulfill the permanent homeland purpose of the Kalispel Indian Reservation, including the present and future fishing purpose.
- a. Prior to the creation of the Reservation in 1914, the Kalispel Tribe held aboriginal title to certain lands “within the United States in what are now the States of Washington, Idaho and Montana.” *The Lower Pend D’Oreille or Kalispel Tribe of Indians v. United States of America*, Docket No. 94, 12 Ind. Cl. Comm. 141 (1963). The Kalispel Reservation is located on the mainstem Pend Oreille River because fishing is central to the Tribe’s history, culture and use of resources. The Tribe never agreed to cede right, title or interest outside the Reservation. *Cf., In re CSRBA Case No. 49576 Subcase No. 91-7755*, 165 Idaho 517, 548–49, 448 P.3d 322 (2019).
- b. This water right claim is for a traditional use of water that predates the creation of the Kalispel Reservation. This right was not created but was instead confirmed by the executive order outlined in section 9, *supra*. *United States v. Adair*, 723 F.2d 1394, 1414 (9th Cir. 1984). Therefore, pursuant to federal law, the priority date of this water right is time immemorial. *Id.*

- c. In order to comply with Idaho Code § 42-1409(1), the Kalispel Tribe has designated “places of use,” “points of diversion,” and “purposes of use” in submitting this water rights claim. This proposed water right claim form has been developed in conjunction with, and at the request of, the Idaho Department of Water Resources (“IDWR”). The use of this format as required by Idaho Code, and as requested by IDWR, should not be construed to limit the Kalispel Tribe or the United States’ future use of water at other points of diversion, places of use or for other purposes within the boundaries of the Reservation. The statute’s terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to achieve the purpose of the Reservation as a homeland for the Kalispel Tribe.

b. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled “How you will receive notices in the Clark Fork-Pend Oreille River Basin Adjudication.”
- (b) I do ___ do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

For Organizations:

I do solemnly swear and affirm that I am Glen Nenema, Chairman of the Kalispel Tribe of Indians, that I have signed the foregoing document in the space below, as Chairman of the Kalispel Tribe of Indians, and the statements contained in the foregoing document are true and correct.

Signature of Authorized Agent:


Glen Nenema (Apr 16, 2025 17:22 PST)
Chairman, Kalispel Tribe of Indians

Dated this 16th day of 2025.

Notice is hereby given that Kanji & Katzen, Dylan Hedden-Nicely will represent the Kalispel Tribe of Indians in all matters pertaining to the Clark Fork Pend Oreille River Basin Adjudication.

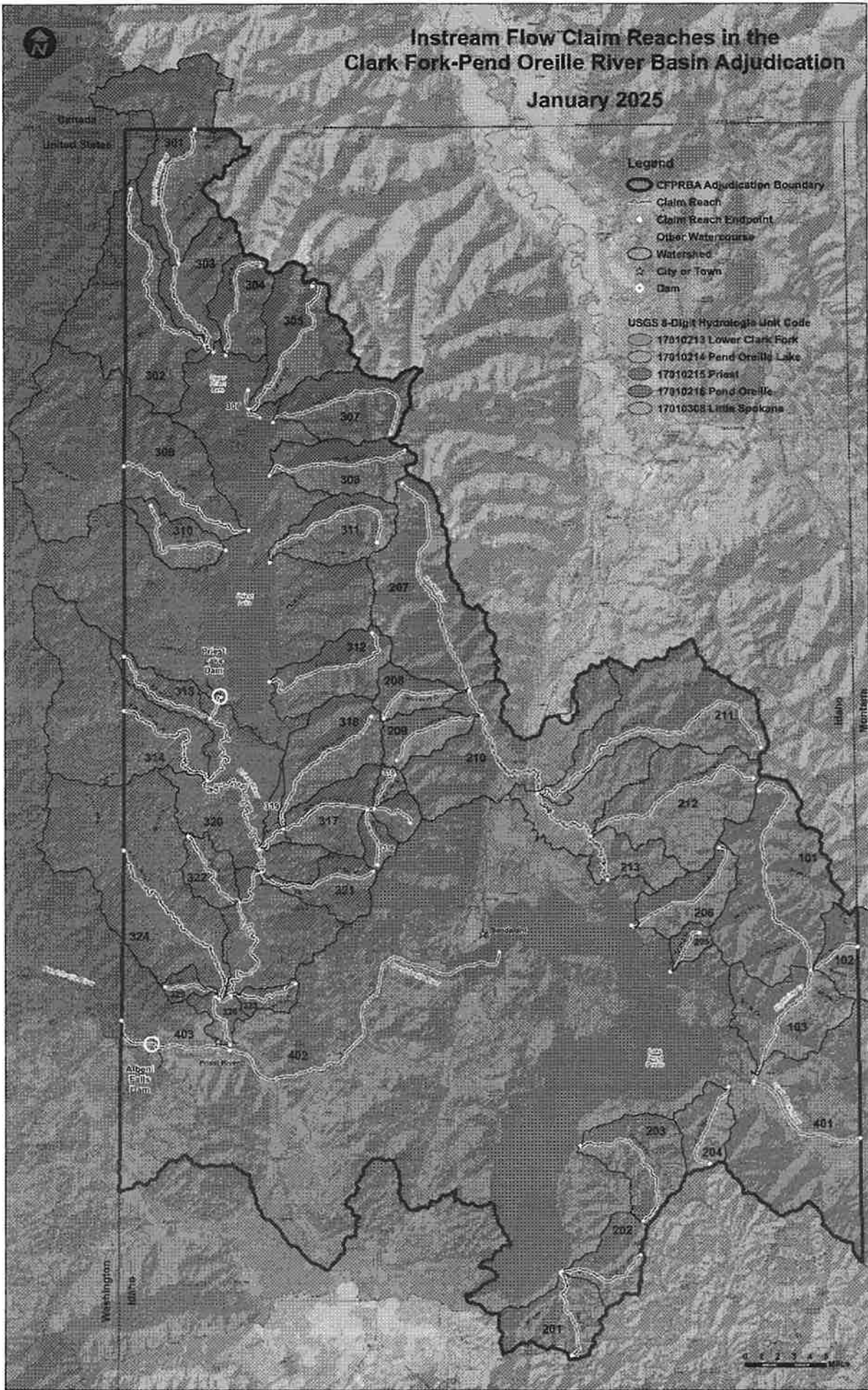
All notices, filings and correspondence concerning this matter should be mailed to Claire R. Newman, Dylan Hedden-Nicely, and the Kalispel Tribe Legal Department at the addresses set forth below:

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934 S. Garfield Road
Airway Heights, WA
99001-9030

Instream Flow Claim Reaches in the Clark Fork-Pend Oreille River Basin Adjudication January 2025



Attachment II - Cover Letter from United States to IDWR re: Claims on behalf of Kalispel Tribe (01/15/2025)

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APPENDIX B