

JAN 16 2025

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

Subcase No. 97-9896

RECEIVED
JAN 16 2025
DEPARTMENT OF WATER RESOURCES

1. Name and address of claimant:

UNITED STATES OF AMERICA, as trustee on behalf of the KALISPEL TRIBE OF INDIANS of the KALISPEL INDIAN RESERVATION acting through the NORTHWEST REGIONAL DIRECTOR
Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave
Portland, OR 97232

2. Date of Priority: Time Immemorial

3. Source: Middle Fork East River (Water Right # 97-9896) (Fed. ID # 317)

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 – Headwaters

Table with 8 columns: Water Right, Federal I.D., Township, Range, Section, Q in the Q, Meridian, County. Row 1: 97-9896, 317, 58N, 2W, 18, NESW, BM, Bonner

Downstream Boundary – NF/MF East River Confluence

Table with 8 columns: Water Right, Federal I.D., Township, Range, Section, Q in the Q, Meridian, County. Row 1: 97-9896, 317, 58N, 4W, 23, NENW, 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 Reservation - as a component of water rights necessary to fulfill the homeland purpose of the Kalispel 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
44.9	48	83.4	205	307	245
July	August	September	October	November	December
61.3	20	15.8	17.9	37.2	42.3

**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. Kapler, Indian Affairs: Laws and Treaties 1051 (Vol. 4, 1927).

**10. Other Provisions:**

a. This claim is one in a series the United States is making for waters from surface water sources within the Clark Fork-Pend-Oreille Rivers Water System Adjudication in the State of Idaho to fulfill the permanent homeland purpose of the Kalispel Indian Reservation, including the present and future fishing purpose.

b. 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. *C.f.*, *In re CSRBA Case No. 49576 Subcase No. 91-7755*, 165 Idaho 517, 548–49, 448 P.3d 322 (2019).

c. 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.*

d. In order to comply with Idaho Code § 42-1409(1), the United States 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 either the United States or the Kalispel Tribe’s 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.

**11. Signatures:**

(a) By signing below, I acknowledge that I have received, read, and understand the form entitled “How you will received notices in the Clark Fork-Pend Oreille River Basin Adjudication.”

(b) I do \_\_\_ do not  X  wish to received and pay a small annual fee for monthly copies of the docket sheet.

For Organizations:

I do solemnly swear and affirm that I am Rudy Peone, Acting Northwest Regional Director, U.S. Bureau of Indian Affairs, that I have signed the foregoing document in the space below as Regional Director, U.S. Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.

Signature of Authorized Agent:



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Acting Northwest Regional Director  
U.S. Bureau of Indian Affairs

Dated this 15 day of January 2025.

Notice is hereby given that the United States Department of Justice will represent the United States of America, including, but not limited to the U.S. Department of the Interior, Bureau of Indian Affairs, 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 the United States Department of Justice at the address set forth below:



Vanessa Boyd Willard  
Marisa J. Hazell  
United States Department of Justice  
Environment and Natural Resources Division  
Tribal Resources Section  
999 18<sup>th</sup> Street, Suite 370  
Denver, CO 80202

*Attorneys for the United States of America*

Dates this 15 day of January 2025.

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

