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DEC 30 2019

DEPARTMENT OF
WATER RESOURCES

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Attorneys for the Nez Perce Tribe

**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)

) **NOTICE OF PROVISIONAL CLAIM**

Case No.: 59576)

) **Federal Reserved Water Right**

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87-12159

Preliminary statement:

The Nez Perce Tribe submits this provisional federal reserved water right claim based on surveys performed in the late 19th and early 20th centuries by teams sent by the Commissioner of the General Land Office (GLO) of the United States Department of the Interior, pursuant to Congressional authorization, to survey the Nez Perce Reservation and surrounding territory. See 43 U.S.C. 751, *et seq.*, derived from acts of May 18, 1796, ch. 29, §2, 1 Stat. 465; May 10, 1800, ch. 55, §3, 2 Stat. 73; May 30, 1862, 12 Stat. 409; Mar. 3, 1877, ch. 105, 19 Stat. 348. The United States' survey teams took copious and detailed notes of their work and produced detailed maps of the land surveyed. Those notes and maps indicated the presence of springs in the area now identified as Basin 87 in the Palouse River Basin Adjudication (PRBA). Said notes and maps are public documents and readily available in the federal archives.

The Nez Perce Tribe made reasonable efforts to corroborate the existence today of the springs identified through the GLO surveying and mapping efforts from the 19th and early 20th centuries. This included reviewing all available hydrologic or other data sources such as Historic United States Geological Survey Topo maps; National Hydrography data set; United States Fish & Wildlife Wetland Inventory; Farm Services National Agricultural Imagery Program 2006-2017; University of Idaho Water Research Maps by Jones & Ross; Washington National Guard black and white aerial imagery flown in 1933-1934; and University of Idaho Historical Aerial imagery and photo collections. The Nez Perce Tribe's review also included careful examination of satellite imagery found on Google Earth; Farm Service National Agricultural Imagery Program from years 2004 to current imagery from 2017; available Lidar imagery; and City of Moscow 3-inch pixel color digital aerial imagery flown in 2018.

The Nez Perce Tribe submits this and other provisional claims to springs on private land on its belief that these provisional claims have a reasonable basis in fact; i.e., that these springs in fact exist on these parcels of land. However, these provisional spring locations are neither the subject of existing water rights found on the Idaho Department of Water Resources (IDWR) database for Basin 87, nor are they the subject of claims filed by the end of August 2019 in the PRBA. These data sources, then, could not serve as the basis from which the Nez Perce Tribe could file a claim pursuant to its expressly reserved rights under Article VIII of the Nez Perce Treaty of June 9, 1863, 14 Stat. 647, with the United States, described in more detail below in Paragraphs 9 and 10. In addition, private land owners, the United States as trustee, and the Nez Perce Tribe are not required to have filed all claims by August 31, 2019. *See In Re PRBA*, No. 59576 (D. Idaho March 1, 2017)(*Order Granting Motion to File Stipulation* for establishment of procedure for adjudication of de minimis domestic and stock water claims).

Accordingly, at the appropriate time in the adjudication of the claims to springs in the PRBA, the Nez Perce Tribe will seek an order and leave of court for permission to gain access to the private parcels of land that are the subject of its provisional claims to verify the existence of said springs. If, following field verification, a spring is not identified on those lands, then no claim will be pursued. The Nez Perce Tribe is not aware of any other acceptable means to verify these claims but is open to discussion of same with the Court and representatives of IDWR.

1. Name and address of claimant:

NEZ PERCE TRIBE, acting through the Nez Perce Tribal Executive Committee
Contact Person: Shannon F. Wheeler, Chairman
Nez Perce Tribal Executive Committee
Nez Perce Tribe
P.O. Box 305
Lapwai, ID 83540

2. Date of Priority: Time Immemorial

3. Source: Spring and/or fountain (ID #5000-1)

4. **Point of Diversion:** This claim is for a spring and/or fountain *in situ* including sufficient groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or fountain.

Township: 42N Range: 02W Section: 36 Q: Boise QQ: SWSW *See Attached Map.*

5. **Place of Use:**

The approximate center point is located with UTM Coordinates:

Zone: 11N; 525125, 5198226; which is located in:

Township: 42N Range: 02W Section: 36 Q: Boise QQ: SWSW *See Attached Map.*

6. **Purpose of Water Use:**

The purpose of use includes the full range which the Nez Perce Tribe and its members have always used life and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce 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.

8. **Quantity Reserved (In cfs):** Half the natural flow.

9. **Basis of Claim:**

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty with the Nez Percés, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty with the Nez Percés, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Washington State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658, *modified sub nom. Washington v. United States*, 444 U.S. 816 (1979), and its progeny.

10. **Other Provisions:**

- a. The United States has asserted other claims in the PRBA. Paragraphs 10(a) – (g) express assertions applicable to all claims filed by the Bureau of Indian Affairs in its capacity as trustee for the Nez Perce Tribe in the PRBA. The United States claims waters from groundwater and surface water sources within the Palouse River Basin in the state of Idaho to satisfy the rights reserved to the Nez Perce Tribe by the 1855 Treaty and the 1863 Treaty and to fulfill the permanent homeland purpose of the Nez Perce Reservation. Such present and future purposes include: instream flows for fish habitat; hunting, gathering, and pasturing; spring and fountain flows pursuant to Article VIII of the 1863 Treaty; and consumptive use claims on two allotments held in trust by the United States.

- b. The Nez Perce Tribe has occupied a territory in what is now central Idaho, southeastern Washington, and northeastern Oregon since time immemorial. *United States v. Webb*, 219 F.3d 1127, 1129 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). The Palouse River Basin is within the Tribe's traditional lands.
- c. There is a complex history of the United States' establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the "exclusive right to fish in all streams running through or bordering" the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the "right of taking fish at all usual and accustomed places in common with citizens of the Territory" to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855, pursuant to the 1855 Treaty.
- d. Article III of the 1855 Treaty further reserves to the Tribe "the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land."
- e. Article VIII of the 1863 Treaty includes a unique provision reserving to the Nez Perce Tribe the use of "springs and fountains" within the area ceded under Article I of the 1863 Treaty. For purposes of the priority date of the springs and fountains claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855, pursuant to the 1855 Treaty.
- f. Pursuant to the General Allotment Act of 1887, Act of February 8, 1887, 24 Stat. 388, *amended*, Act of February 28, 1891, 26 Stat. 794, there are two allotments (Allotments 182-43 and 182-45) held in trust by the United States located within the boundaries of the Palouse River Basin and the northwestern corner of the Nez Perce Reservation. For purposes of the priority date of the domestic and stock watering claims for these two allotments, the United States claims June 11, 1855, pursuant to the 1855 Treaty.
- g. 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. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe's future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Nez Perce Reservation. The statute's terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Nez Perce Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.

11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled "How you will receive notices in the Palouse 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 Shannon F. Wheeler, and as Chairman of the Nez Perce Tribal Executive Committee that I have signed the foregoing document in the space below as duly authorized on behalf of the Nez Perce Tribe, and that the statements contained in the foregoing document are true and correct.

Signature of Authorized Agent:
Title and Organization:

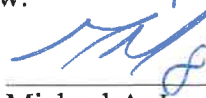


Shannon F. Wheeler, Chairman
Nez Perce Tribe

Dated this 27th day of December, 2019.

Notice is hereby given that the Nez Perce Tribe Office of Legal Counsel and Native American Rights Fund will represent the Nez Perce Tribe, in all matters pertaining to the PRBA.

All notices, filings, and correspondence concerning this matter should be mailed to the Nez Perce Tribe at the address set forth below:



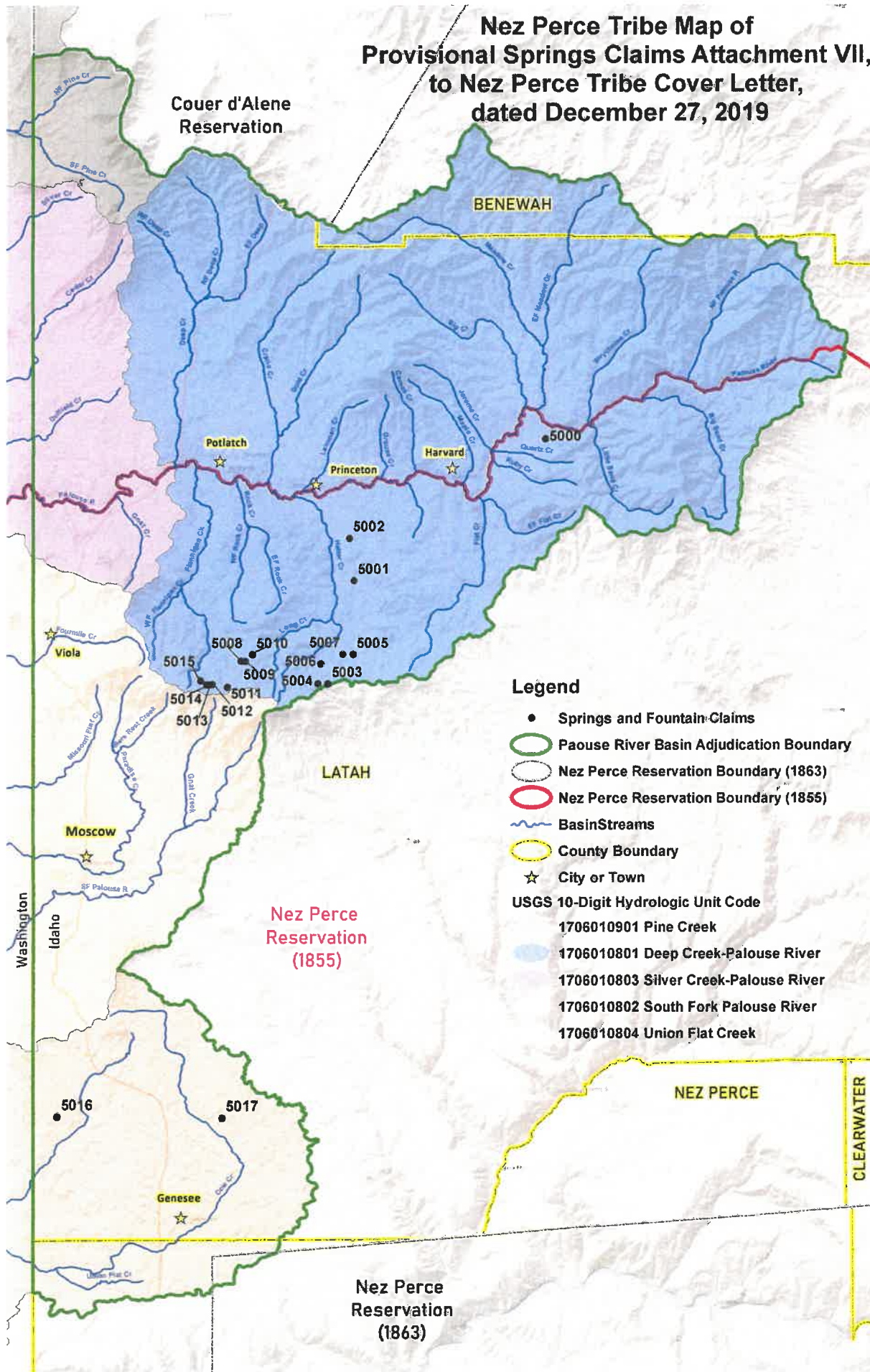
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P.O. Box 305
Lapwai, ID 83540

Steven C. Moore, *pro hac vice*
Senior Staff Attorney
Native American Rights Fund
1506 Broadway
Boulder, CO 80302

Attorneys for the Nez Perce Tribe

Dated this 27th day of December, 2019.

**Nez Perce Tribe Map of
Provisional Springs Claims Attachment VII,
to Nez Perce Tribe Cover Letter,
dated December 27, 2019**



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**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)

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NOTICE OF PROVISIONAL CLAIM

Case No.: 59576)

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Federal Reserved Water Right

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87-12160

Preliminary statement:

The Nez Perce Tribe submits this provisional federal reserved water right claim based on surveys performed in the late 19th and early 20th centuries by teams sent by the Commissioner of the General Land Office (GLO) of the United States Department of the Interior, pursuant to Congressional authorization, to survey the Nez Perce Reservation and surrounding territory. *See* 43 U.S.C. 751, *et seq.*, derived from acts of May 18, 1796, ch. 29, §2, 1 Stat. 465; May 10, 1800, ch. 55, §3, 2 Stat. 73; May 30, 1862, 12 Stat. 409; Mar. 3, 1877, ch. 105, 19 Stat. 348. The United States' survey teams took copious and detailed notes of their work and produced detailed maps of the land surveyed. Those notes and maps indicated the presence of springs in the area now identified as Basin 87 in the Palouse River Basin Adjudication (PRBA). Said notes and maps are public documents and readily available in the federal archives.

The Nez Perce Tribe made reasonable efforts to corroborate the existence today of the springs identified through the GLO surveying and mapping efforts from the 19th and early 20th centuries. This included reviewing all available hydrologic or other data sources such as Historic United States Geological Survey Topo maps; National Hydrography data set; United States Fish & Wildlife Wetland Inventory; Farm Services National Agricultural Imagery Program 2006-2017; University of Idaho Water Research Maps by Jones & Ross; Washington National Guard black and white aerial imagery flown in 1933-1934; and University of Idaho Historical Aerial imagery and photo collections. The Nez Perce Tribe's review also included careful examination of satellite imagery found on Google Earth; Farm Service National Agricultural Imagery Program from years 2004 to current imagery from 2017; available Lidar imagery; and City of Moscow 3-inch pixel color digital aerial imagery flown in 2018.

The Nez Perce Tribe submits this and other provisional claims to springs on private land on its belief that these provisional claims have a reasonable basis in fact; i.e., that these springs in fact exist on these parcels of land. However, these provisional spring locations are neither the subject of existing water rights found on the Idaho Department of Water Resources (IDWR) database for Basin 87, nor are they the subject of claims filed by the end of August 2019 in the PRBA. These data sources, then, could not serve as the basis from which the Nez Perce Tribe could file a claim pursuant to its expressly reserved rights under Article VIII of the Nez Perce Treaty of June 9, 1863, 14 Stat. 647, with the United States, described in more detail below in Paragraphs 9 and 10. In addition, private land owners, the United States as trustee, and the Nez Perce Tribe are not required to have filed all claims by August 31, 2019. *See In Re PRBA*, No. 59576 (D. Idaho March 1, 2017)(*Order Granting Motion to File Stipulation* for establishment of procedure for adjudication of de minimis domestic and stock water claims).

Accordingly, at the appropriate time in the adjudication of the claims to springs in the PRBA, the Nez Perce Tribe will seek an order and leave of court for permission to gain access to the private parcels of land that are the subject of its provisional claims to verify the existence of said springs. If, following field verification, a spring is not identified on those lands, then no claim will be pursued. The Nez Perce Tribe is not aware of any other acceptable means to verify these claims but is open to discussion of same with the Court and representatives of IDWR.

1. Name and address of claimant:

NEZ PERCE TRIBE, acting through the Nez Perce Tribal Executive Committee
Contact Person: Shannon F. Wheeler, Chairman
Nez Perce Tribal Executive Committee
Nez Perce Tribe
P.O. Box 305
Lapwai, ID 83540

2. Date of Priority: Time Immemorial

3. Source: Spring and/or fountain (ID #5001-1)

4. **Point of Diversion:** This claim is for a spring and/or fountain *in situ* including sufficient groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or fountain.

Township: 41N Range: 04W Section: 26 Q: Boise QQ: SWNW *See Attached Map.*

5. **Place of Use:**

The approximate center point is located with UTM Coordinates:

Zone: 11N; 514560, 5190471; which is located in:

Township: 41N Range: 04W Section: 26 Q: Boise QQ: SWNW *See Attached Map.*

6. **Purpose of Water Use:**

The purpose of use includes the full range which the Nez Perce Tribe and its members have always used life and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce 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.

8. **Quantity Reserved (In cfs):** Half the natural flow.

9. **Basis of Claim:**

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty with the Nez Percés, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty with the Nez Percés, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Washington State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658, *modified sub nom. Washington v. United States*, 444 U.S. 816 (1979), and its progeny.

10. **Other Provisions:**

- a. The United States has asserted other claims in the PRBA. Paragraphs 10(a) – (g) express assertions applicable to all claims filed by the Bureau of Indian Affairs in its capacity as trustee for the Nez Perce Tribe in the PRBA. The United States claims waters from groundwater and surface water sources within the Palouse River Basin in the state of Idaho to satisfy the rights reserved to the Nez Perce Tribe by the 1855 Treaty and the 1863 Treaty and to fulfill the permanent homeland purpose of the Nez Perce Reservation. Such present and future purposes include: instream flows for fish habitat; hunting, gathering, and pasturing; spring and fountain flows pursuant to Article VIII of the 1863 Treaty; and consumptive use claims on two allotments held in trust by the United States.

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- c. There is a complex history of the United States' establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the "exclusive right to fish in all streams running through or bordering" the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the "right of taking fish at all usual and accustomed places in common with citizens of the Territory" to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855, pursuant to the 1855 Treaty.
- d. Article III of the 1855 Treaty further reserves to the Tribe "the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land."
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- f. Pursuant to the General Allotment Act of 1887, Act of February 8, 1887, 24 Stat. 388, *amended*, Act of February 28, 1891, 26 Stat. 794, there are two allotments (Allotments 182-43 and 182-45) held in trust by the United States located within the boundaries of the Palouse River Basin and the northwestern corner of the Nez Perce Reservation. For purposes of the priority date of the domestic and stock watering claims for these two allotments, the United States claims June 11, 1855, pursuant to the 1855 Treaty.
- g. 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. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe's future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Nez Perce Reservation. The statute's terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Nez Perce Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.

11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled "How you will receive notices in the Palouse 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 Shannon F. Wheeler, and as Chairman of the Nez Perce Tribal Executive Committee that I have signed the foregoing document in the space below as duly authorized on behalf of the Nez Perce Tribe, and that the statements contained in the foregoing document are true and correct.

Signature of Authorized Agent:
Title and Organization:




Shannon F. Wheeler, Chairman
Nez Perce Tribe

Dated this 27th day of December, 2019.

Notice is hereby given that the Nez Perce Tribe Office of Legal Counsel and Native American Rights Fund will represent the Nez Perce Tribe, in all matters pertaining to the PRBA.

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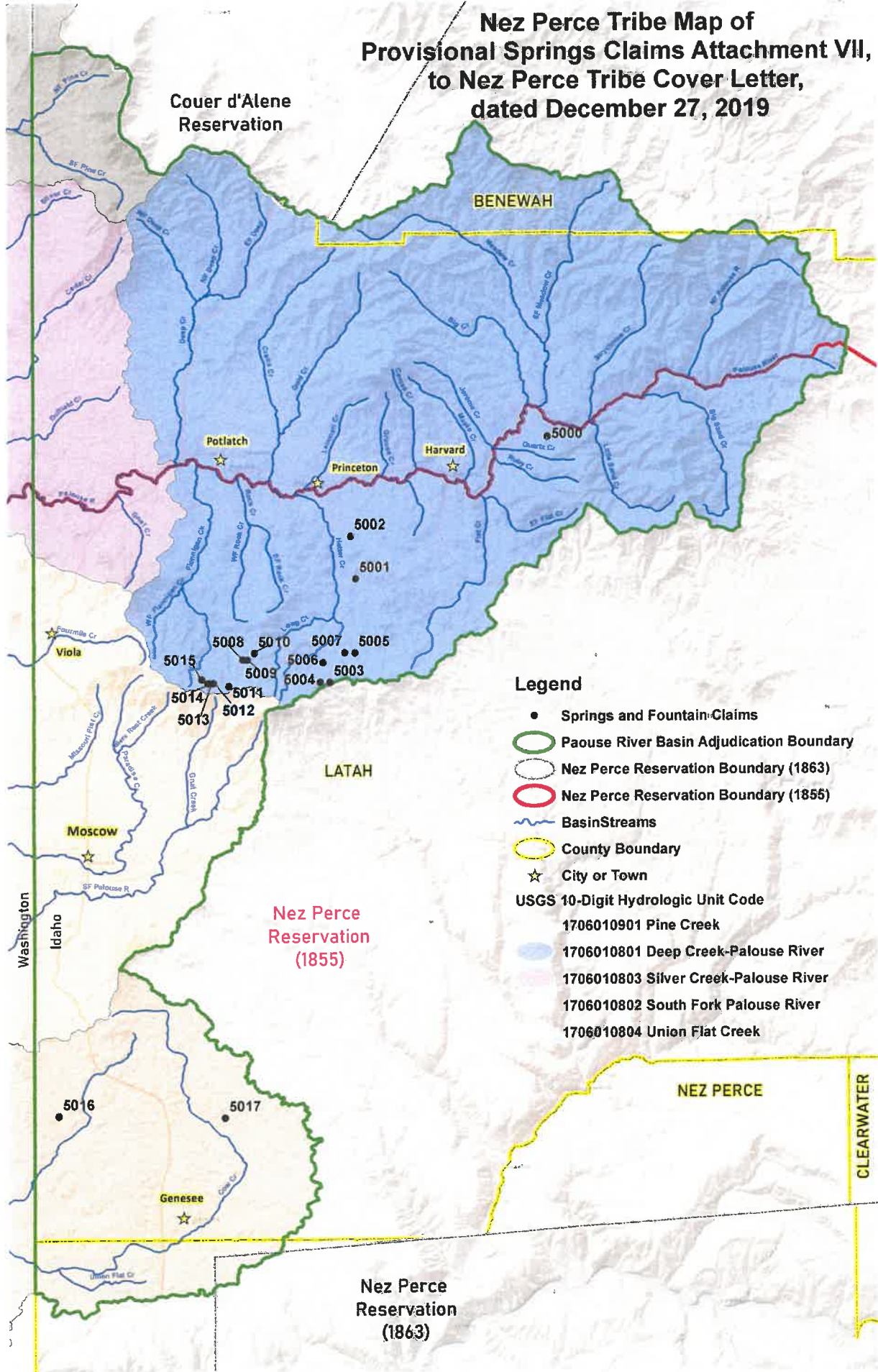
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Attorneys for the Nez Perce Tribe

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IN RE: PRBA)

Case No.: 59576)

) **NOTICE OF PROVISIONAL CLAIM**

) **Federal Reserved Water Right**

) *87-12161*

Preliminary statement:

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Contact Person: Shannon F. Wheeler, Chairman
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Nez Perce Tribe
P.O. Box 305
Lapwai, ID 83540

2. Date of Priority: Time Immemorial

3. Source: Spring and/or fountain (ID #5002-1)

4. **Point of Diversion:** This claim is for a spring and/or fountain *in situ* including sufficient groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or fountain.

Township: 41N Range: 04W Section: 23 Q: Boise QQ: NWNW *See Attached Map.*

5. **Place of Use:**

The approximate center point is located with UTM Coordinates:

Zone: 11N; 514293, 5192776; which is located in:

Township: 41N Range: 04W Section: 23 Q: Boise QQ: NWNW *See Attached Map.*

6. **Purpose of Water Use:**

The purpose of use includes the full range which the Nez Perce Tribe and its members have always used life and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce 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.

8. **Quantity Reserved (In cfs):** Half the natural flow.

9. **Basis of Claim:**

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty with the Nez Percés, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty with the Nez Percés, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Washington State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658, *modified sub nom. Washington v. United States*, 444 U.S. 816 (1979), and its progeny.

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- b. The Nez Perce Tribe has occupied a territory in what is now central Idaho, southeastern Washington, and northeastern Oregon since time immemorial. *United States v. Webb*, 219 F.3d 1127, 1129 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). The Palouse River Basin is within the Tribe's traditional lands.
- c. There is a complex history of the United States' establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the "exclusive right to fish in all streams running through or bordering" the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the "right of taking fish at all usual and accustomed places in common with citizens of the Territory" to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855, pursuant to the 1855 Treaty.
- d. Article III of the 1855 Treaty further reserves to the Tribe "the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land."
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- f. Pursuant to the General Allotment Act of 1887, Act of February 8, 1887, 24 Stat. 388, *amended*, Act of February 28, 1891, 26 Stat. 794, there are two allotments (Allotments 182-43 and 182-45) held in trust by the United States located within the boundaries of the Palouse River Basin and the northwestern corner of the Nez Perce Reservation. For purposes of the priority date of the domestic and stock watering claims for these two allotments, the United States claims June 11, 1855, pursuant to the 1855 Treaty.
- g. 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. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe's future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Nez Perce Reservation. The statute's terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Nez Perce Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.


11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled "How you will receive notices in the Palouse 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 Shannon F. Wheeler, and as Chairman of the Nez Perce Tribal Executive Committee that I have signed the foregoing document in the space below as duly authorized on behalf of the Nez Perce Tribe, and that the statements contained in the foregoing document are true and correct.

Signature of Authorized Agent:
Title and Organization:



Shannon F. Wheeler, Chairman
Nez Perce Tribe

Dated this 27th day of December, 2019.

Notice is hereby given that the Nez Perce Tribe Office of Legal Counsel and Native American Rights Fund will represent the Nez Perce Tribe, in all matters pertaining to the PRBA.

All notices, filings, and correspondence concerning this matter should be mailed to the Nez Perce Tribe at the address set forth below:



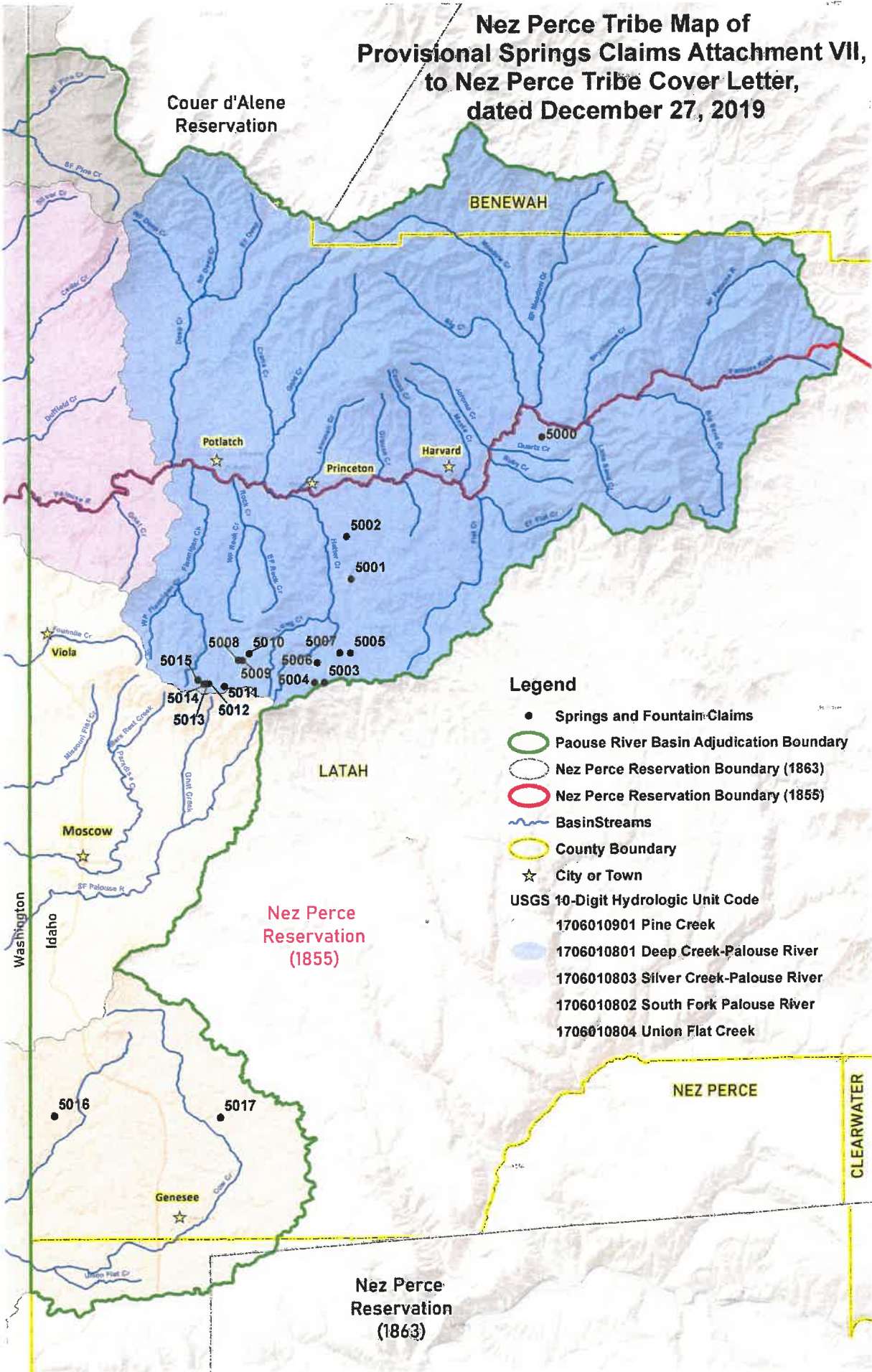
Michael A. Lopez, ISB #8356
Senior Staff Attorney
Nez Perce Tribe
Office of Legal Counsel
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Lapwai, ID 83540

Steven C. Moore, *pro hac vice*
Senior Staff Attorney
Native American Rights Fund
1506 Broadway
Boulder, CO 80302

Attorneys for the Nez Perce Tribe

Dated this 27th day of December, 2019.

**Nez Perce Tribe Map of
Provisional Springs Claims Attachment VII,
to Nez Perce Tribe Cover Letter,
dated December 27, 2019**



Legend

- Springs and Fountain-Claims
- Paouse River Basin Adjudication Boundary
- Nez Perce Reservation Boundary (1863)
- Nez Perce Reservation Boundary (1855)
- ~ BasinStreams
- County Boundary
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Attorneys for the Nez Perce Tribe

**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) **NOTICE OF PROVISIONAL CLAIM**
) **Federal Reserved Water Right**
)
)
)
) *87-12162*

Preliminary statement:

The Nez Perce Tribe submits this provisional federal reserved water right claim based on surveys performed in the late 19th and early 20th centuries by teams sent by the Commissioner of the General Land Office (GLO) of the United States Department of the Interior, pursuant to Congressional authorization, to survey the Nez Perce Reservation and surrounding territory. *See* 43 U.S.C. 751, *et seq.*, derived from acts of May 18, 1796, ch. 29, §2, 1 Stat. 465; May 10, 1800, ch. 55, §3, 2 Stat. 73; May 30, 1862, 12 Stat. 409; Mar. 3, 1877, ch. 105, 19 Stat. 348. The United States' survey teams took copious and detailed notes of their work and produced detailed maps of the land surveyed. Those notes and maps indicated the presence of springs in the area now identified as Basin 87 in the Palouse River Basin Adjudication (PRBA). Said notes and maps are public documents and readily available in the federal archives.

The Nez Perce Tribe made reasonable efforts to corroborate the existence today of the springs identified through the GLO surveying and mapping efforts from the 19th and early 20th centuries. This included reviewing all available hydrologic or other data sources such as Historic United States Geological Survey Topo maps; National Hydrography data set; United States Fish & Wildlife Wetland Inventory; Farm Services National Agricultural Imagery Program 2006-2017; University of Idaho Water Research Maps by Jones & Ross; Washington National Guard black and white aerial imagery flown in 1933-1934; and University of Idaho Historical Aerial imagery and photo collections. The Nez Perce Tribe's review also included careful examination of satellite imagery found on Google Earth; Farm Service National Agricultural Imagery Program from years 2004 to current imagery from 2017; available Lidar imagery; and City of Moscow 3-inch pixel color digital aerial imagery flown in 2018.

The Nez Perce Tribe submits this and other provisional claims to springs on private land on its belief that these provisional claims have a reasonable basis in fact; i.e., that these springs in fact exist on these parcels of land. However, these provisional spring locations are neither the subject of existing water rights found on the Idaho Department of Water Resources (IDWR) database for Basin 87, nor are they the subject of claims filed by the end of August 2019 in the PRBA. These data sources, then, could not serve as the basis from which the Nez Perce Tribe could file a claim pursuant to its expressly reserved rights under Article VIII of the Nez Perce Treaty of June 9, 1863, 14 Stat. 647, with the United States, described in more detail below in Paragraphs 9 and 10. In addition, private land owners, the United States as trustee, and the Nez Perce Tribe are not required to have filed all claims by August 31, 2019. *See In Re PRBA, No. 59576 (D. Idaho March 1, 2017)(Order Granting Motion to File Stipulation for establishment of procedure for adjudication of de minimis domestic and stock water claims).*

Accordingly, at the appropriate time in the adjudication of the claims to springs in the PRBA, the Nez Perce Tribe will seek an order and leave of court for permission to gain access to the private parcels of land that are the subject of its provisional claims to verify the existence of said springs. If, following field verification, a spring is not identified on those lands, then no claim will be pursued. The Nez Perce Tribe is not aware of any other acceptable means to verify these claims but is open to discussion of same with the Court and representatives of IDWR.

1. Name and address of claimant:

NEZ PERCE TRIBE, acting through the Nez Perce Tribal Executive Committee
Contact Person: Shannon F. Wheeler, Chairman
Nez Perce Tribal Executive Committee
Nez Perce Tribe
P.O. Box 305
Lapwai, ID 83540

2. Date of Priority: Time Immemorial

3. Source: Spring and/or fountain (ID #5003-1)

4. **Point of Diversion:** This claim is for a spring and/or fountain *in situ* including sufficient groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or fountain.

Township: 40N Range: 04W Section: 15 Q: Boise QQ: NENW *See Attached Map.*

5. **Place of Use:**

The approximate center point is located with UTM Coordinates:

Zone: 11N; 513067, 5184803; which is located in:

Township: 40N Range: 04W Section: 15 Q: Boise QQ: NENW *See Attached Map.*

6. **Purpose of Water Use:**

The purpose of use includes the full range which the Nez Perce Tribe and its members have always used life and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce 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.

8. **Quantity Reserved (In cfs):** Half the natural flow.

9. **Basis of Claim:**

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty with the Nez Percés, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty with the Nez Percés, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Washington State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658, *modified sub nom. Washington v. United States*, 444 U.S. 816 (1979), and its progeny.

10. **Other Provisions:**

- a. The United States has asserted other claims in the PRBA. Paragraphs 10(a) – (g) express assertions applicable to all claims filed by the Bureau of Indian Affairs in its capacity as trustee for the Nez Perce Tribe in the PRBA. The United States claims waters from groundwater and surface water sources within the Palouse River Basin in the state of Idaho to satisfy the rights reserved to the Nez Perce Tribe by the 1855 Treaty and the 1863 Treaty and to fulfill the permanent homeland purpose of the Nez Perce Reservation. Such present and future purposes include: instream flows for fish habitat; hunting, gathering, and pasturing; spring and fountain flows pursuant to Article VIII of the 1863 Treaty; and consumptive use claims on two allotments held in trust by the United States.

- b. The Nez Perce Tribe has occupied a territory in what is now central Idaho, southeastern Washington, and northeastern Oregon since time immemorial. *United States v. Webb*, 219 F.3d 1127, 1129 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). The Palouse River Basin is within the Tribe's traditional lands.
- c. There is a complex history of the United States' establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the "exclusive right to fish in all streams running through or bordering" the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the "right of taking fish at all usual and accustomed places in common with citizens of the Territory" to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855, pursuant to the 1855 Treaty.
- d. Article III of the 1855 Treaty further reserves to the Tribe "the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land."
- e. Article VIII of the 1863 Treaty includes a unique provision reserving to the Nez Perce Tribe the use of "springs and fountains" within the area ceded under Article I of the 1863 Treaty. For purposes of the priority date of the springs and fountains claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855, pursuant to the 1855 Treaty.
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- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled "How you will receive notices in the Palouse 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 Shannon F. Wheeler, and as Chairman of the Nez Perce Tribal Executive Committee that I have signed the foregoing document in the space below as duly authorized on behalf of the Nez Perce Tribe, and that the statements contained in the foregoing document are true and correct.

Signature of Authorized Agent:
Title and Organization:


Shannon F. Wheeler, Chairman
Nez Perce Tribe

Dated this 27th day of December, 2019.

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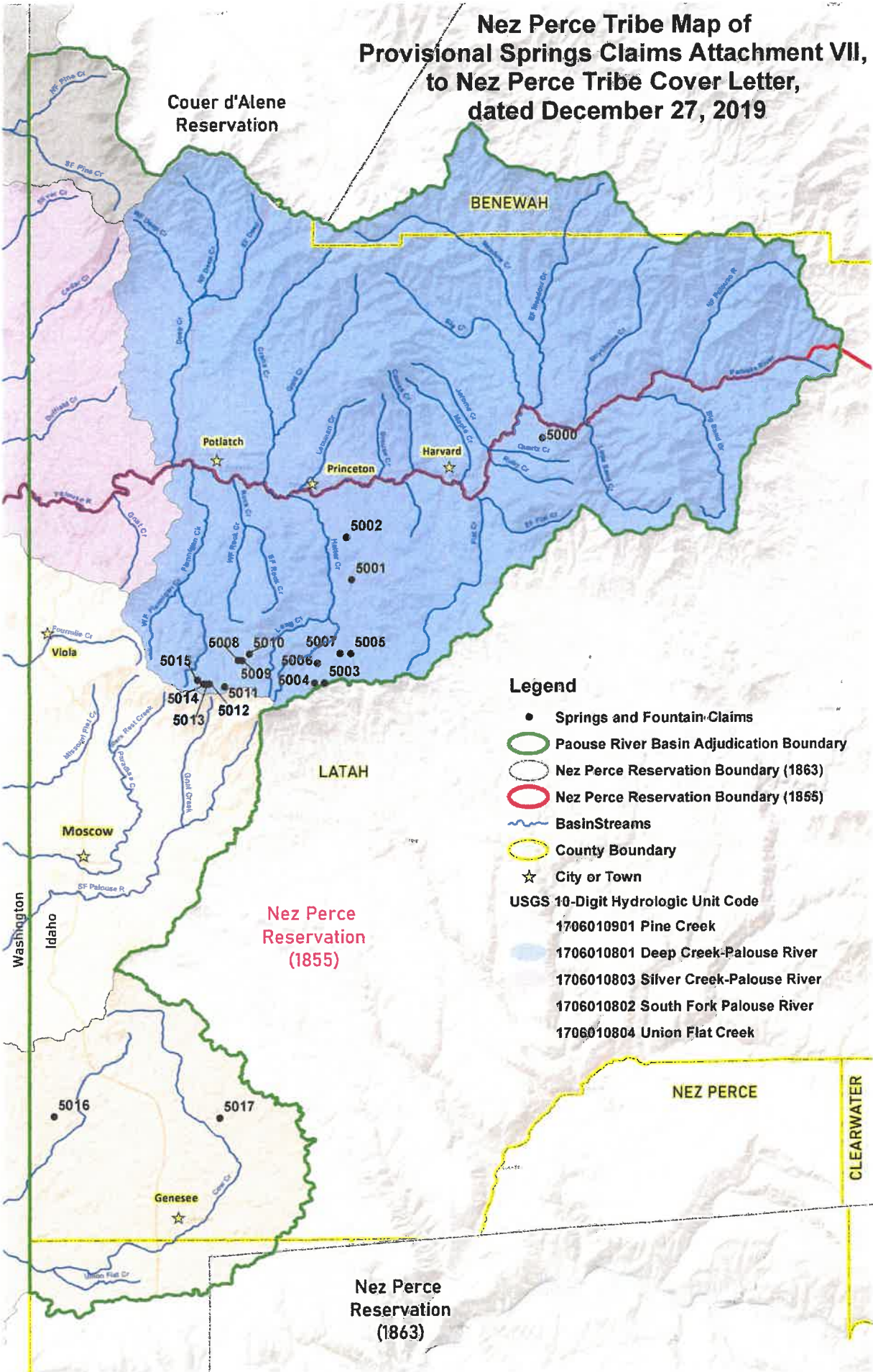
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Steven C. Moore, *pro hac vice*
Senior Staff Attorney
Native American Rights Fund
1506 Broadway
Boulder, CO 80302

Attorneys for the Nez Perce Tribe

Dated this 27th day of December, 2019.

**Nez Perce Tribe Map of
Provisional Springs Claims Attachment VII,
to Nez Perce Tribe Cover Letter,
dated December 27, 2019**



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Attorneys for the Nez Perce Tribe

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)	
)	NOTICE OF PROVISIONAL CLAIM
Case No.: 59576)	
)	Federal Reserved Water Right
)	
)	87 - 12163
)	

Preliminary statement:

The Nez Perce Tribe submits this provisional federal reserved water right claim based on surveys performed in the late 19th and early 20th centuries by teams sent by the Commissioner of the General Land Office (GLO) of the United States Department of the Interior, pursuant to Congressional authorization, to survey the Nez Perce Reservation and surrounding territory. *See* 43 U.S.C. 751, *et seq.*, derived from acts of May 18, 1796, ch. 29, §2, 1 Stat. 465; May 10, 1800, ch. 55, §3, 2 Stat. 73; May 30, 1862, 12 Stat. 409; Mar. 3, 1877, ch. 105, 19 Stat. 348. The United States’ survey teams took copious and detailed notes of their work and produced detailed maps of the land surveyed. Those notes and maps indicated the presence of springs in the area now identified as Basin 87 in the Palouse River Basin Adjudication (PRBA). Said notes and maps are public documents and readily available in the federal archives.

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NEZ PERCE TRIBE, acting through the Nez Perce Tribal Executive Committee
Contact Person: Shannon F. Wheeler, Chairman
Nez Perce Tribal Executive Committee
Nez Perce Tribe
P.O. Box 305
Lapwai, ID 83540

2. Date of Priority: Time Immemorial

3. Source: Spring and/or fountain (ID #5004-1)

4. **Point of Diversion:** This claim is for a spring and/or fountain *in situ* including sufficient groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or fountain.

Township: 40N Range: 04W Section: 16 Q: Boise QQ: NENE *See Attached Map.*

5. **Place of Use:**

The approximate center point is located with UTM Coordinates:

Zone: 11N; 512535, 5184805; which is located in:

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6. **Purpose of Water Use:**

The purpose of use includes the full range which the Nez Perce Tribe and its members have always used life and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce 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.

8. **Quantity Reserved (In cfs):** Half the natural flow.

9. **Basis of Claim:**

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty with the Nez Percés, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty with the Nez Percés, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Washington State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658, *modified sub nom. Washington v. United States*, 444 U.S. 816 (1979), and its progeny.

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For Organizations:

I do solemnly swear and affirm that I am Shannon F. Wheeler, and as Chairman of the Nez Perce Tribal Executive Committee that I have signed the foregoing document in the space below as duly authorized on behalf of the Nez Perce Tribe, and that the statements contained in the foregoing document are true and correct.

Signature of Authorized Agent:
Title and Organization:



Shannon F. Wheeler, Chairman
Nez Perce Tribe

Dated this 27th day of December, 2019.

Notice is hereby given that the Nez Perce Tribe Office of Legal Counsel and Native American Rights Fund will represent the Nez Perce Tribe, in all matters pertaining to the PRBA.

All notices, filings, and correspondence concerning this matter should be mailed to the Nez Perce Tribe at the address set forth below:



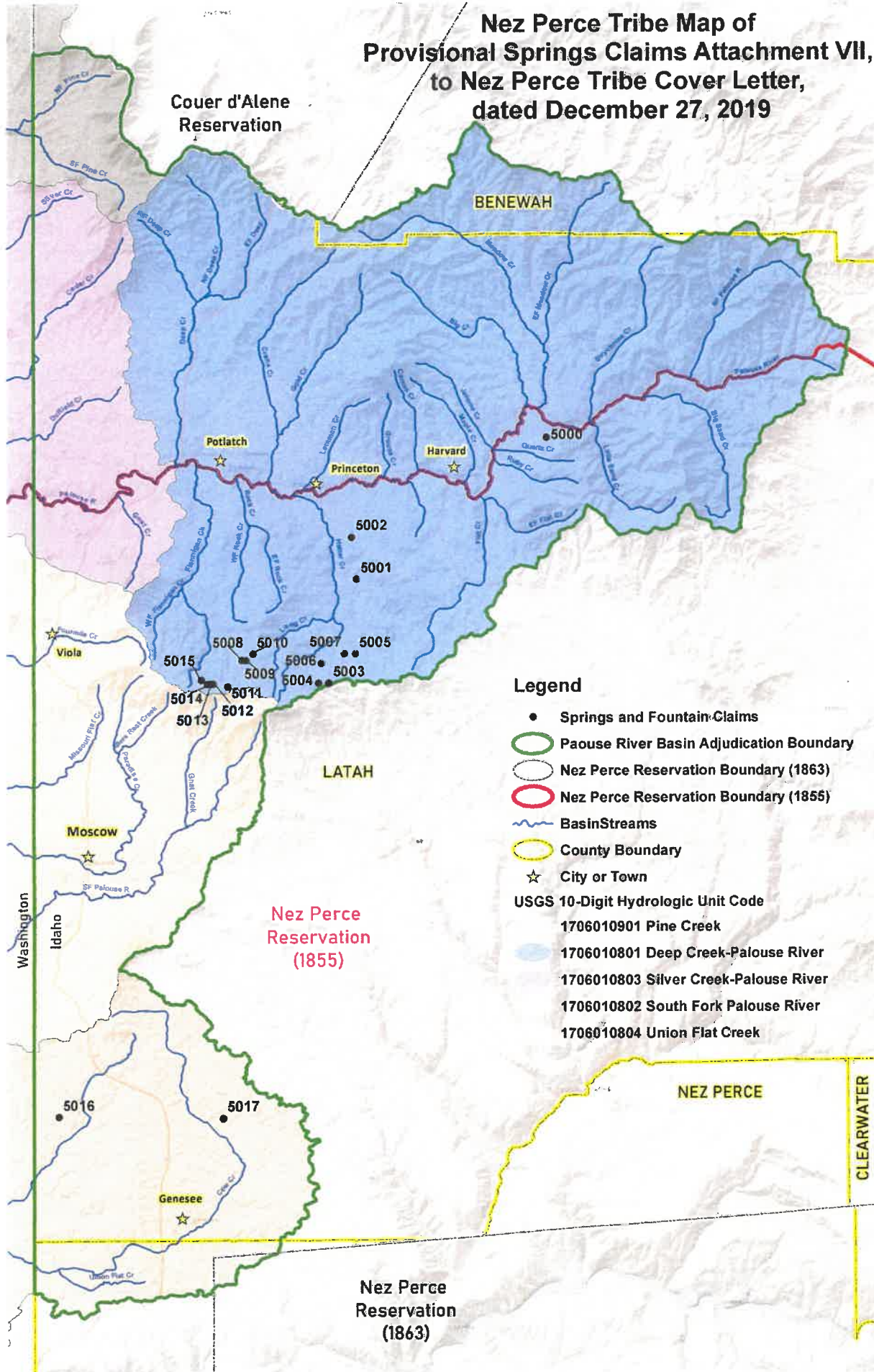
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Steven C. Moore, *pro hac vice*
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1506 Broadway
Boulder, CO 80302

Attorneys for the Nez Perce Tribe

Dated this 27th day of December, 2019.

**Nez Perce Tribe Map of
Provisional Springs Claims Attachment VII,
to Nez Perce Tribe Cover Letter,
dated December 27, 2019**



Legend

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- Paouse River Basin Adjudication Boundary
- Nez Perce Reservation Boundary (1863)
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**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)

)

NOTICE OF PROVISIONAL CLAIM

Case No.: 59576)

)

Federal Reserved Water Right

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87-12164

Preliminary statement:

The Nez Perce Tribe submits this provisional federal reserved water right claim based on surveys performed in the late 19th and early 20th centuries by teams sent by the Commissioner of the General Land Office (GLO) of the United States Department of the Interior, pursuant to Congressional authorization, to survey the Nez Perce Reservation and surrounding territory. *See* 43 U.S.C. 751, *et seq.*, derived from acts of May 18, 1796, ch. 29, §2, 1 Stat. 465; May 10, 1800, ch. 55, §3, 2 Stat. 73; May 30, 1862, 12 Stat. 409; Mar. 3, 1877, ch. 105, 19 Stat. 348. The United States' survey teams took copious and detailed notes of their work and produced detailed maps of the land surveyed. Those notes and maps indicated the presence of springs in the area now identified as Basin 87 in the Palouse River Basin Adjudication (PRBA). Said notes and maps are public documents and readily available in the federal archives.

The Nez Perce Tribe made reasonable efforts to corroborate the existence today of the springs identified through the GLO surveying and mapping efforts from the 19th and early 20th centuries. This included reviewing all available hydrologic or other data sources such as Historic United States Geological Survey Topo maps; National Hydrography data set; United States Fish & Wildlife Wetland Inventory; Farm Services National Agricultural Imagery Program 2006-2017; University of Idaho Water Research Maps by Jones & Ross; Washington National Guard black and white aerial imagery flown in 1933-1934; and University of Idaho Historical Aerial imagery and photo collections. The Nez Perce Tribe's review also included careful examination of satellite imagery found on Google Earth; Farm Service National Agricultural Imagery Program from years 2004 to current imagery from 2017; available Lidar imagery; and City of Moscow 3-inch pixel color digital aerial imagery flown in 2018.

The Nez Perce Tribe submits this and other provisional claims to springs on private land on its belief that these provisional claims have a reasonable basis in fact; i.e., that these springs in fact exist on these parcels of land. However, these provisional spring locations are neither the subject of existing water rights found on the Idaho Department of Water Resources (IDWR) database for Basin 87, nor are they the subject of claims filed by the end of August 2019 in the PRBA. These data sources, then, could not serve as the basis from which the Nez Perce Tribe could file a claim pursuant to its expressly reserved rights under Article VIII of the Nez Perce Treaty of June 9, 1863, 14 Stat. 647, with the United States, described in more detail below in Paragraphs 9 and 10. In addition, private land owners, the United States as trustee, and the Nez Perce Tribe are not required to have filed all claims by August 31, 2019. *See In Re PRBA*, No. 59576 (D. Idaho March 1, 2017)(*Order Granting Motion to File Stipulation* for establishment of procedure for adjudication of de minimis domestic and stock water claims).

Accordingly, at the appropriate time in the adjudication of the claims to springs in the PRBA, the Nez Perce Tribe will seek an order and leave of court for permission to gain access to the private parcels of land that are the subject of its provisional claims to verify the existence of said springs. If, following field verification, a spring is not identified on those lands, then no claim will be pursued. The Nez Perce Tribe is not aware of any other acceptable means to verify these claims but is open to discussion of same with the Court and representatives of IDWR.

1. Name and address of claimant:

NEZ PERCE TRIBE, acting through the Nez Perce Tribal Executive Committee
Contact Person: Shannon F. Wheeler, Chairman
Nez Perce Tribal Executive Committee
Nez Perce Tribe
P.O. Box 305
Lapwai, ID 83540

2. Date of Priority: Time Immemorial

3. Source: Spring and/or fountain (ID #5005-1)

4. **Point of Diversion:** This claim is for a spring and/or fountain *in situ* including sufficient groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or fountain.

Township: 40N Range: 04W Section: 11 Q: Boise QQ: NWNW *See Attached Map.*

5. **Place of Use:**

The approximate center point is located with UTM Coordinates:

Zone: 11N; 514486, 5186385; which is located in:

Township: 40N Range: 04W Section: 11 Q: Boise QQ: NWNW *See Attached Map.*

6. **Purpose of Water Use:**

The purpose of use includes the full range which the Nez Perce Tribe and its members have always used life and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce 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.

8. **Quantity Reserved (In cfs):** Half the natural flow.

9. **Basis of Claim:**

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty with the Nez Percés, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty with the Nez Percés, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Washington State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658, *modified sub nom. Washington v. United States*, 444 U.S. 816 (1979), and its progeny.

10. **Other Provisions:**

- a. The United States has asserted other claims in the PRBA. Paragraphs 10(a) – (g) express assertions applicable to all claims filed by the Bureau of Indian Affairs in its capacity as trustee for the Nez Perce Tribe in the PRBA. The United States claims waters from groundwater and surface water sources within the Palouse River Basin in the state of Idaho to satisfy the rights reserved to the Nez Perce Tribe by the 1855 Treaty and the 1863 Treaty and to fulfill the permanent homeland purpose of the Nez Perce Reservation. Such present and future purposes include: instream flows for fish habitat; hunting, gathering, and pasturing; spring and fountain flows pursuant to Article VIII of the 1863 Treaty; and consumptive use claims on two allotments held in trust by the United States.

- b. The Nez Perce Tribe has occupied a territory in what is now central Idaho, southeastern Washington, and northeastern Oregon since time immemorial. *United States v. Webb*, 219 F.3d 1127, 1129 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). The Palouse River Basin is within the Tribe's traditional lands.
- c. There is a complex history of the United States' establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the "exclusive right to fish in all streams running through or bordering" the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the "right of taking fish at all usual and accustomed places in common with citizens of the Territory" to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855, pursuant to the 1855 Treaty.
- d. Article III of the 1855 Treaty further reserves to the Tribe "the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land."
- e. Article VIII of the 1863 Treaty includes a unique provision reserving to the Nez Perce Tribe the use of "springs and fountains" within the area ceded under Article I of the 1863 Treaty. For purposes of the priority date of the springs and fountains claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855, pursuant to the 1855 Treaty.
- f. Pursuant to the General Allotment Act of 1887, Act of February 8, 1887, 24 Stat. 388, *amended*, Act of February 28, 1891, 26 Stat. 794, there are two allotments (Allotments 182-43 and 182-45) held in trust by the United States located within the boundaries of the Palouse River Basin and the northwestern corner of the Nez Perce Reservation. For purposes of the priority date of the domestic and stock watering claims for these two allotments, the United States claims June 11, 1855, pursuant to the 1855 Treaty.
- g. 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. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe's future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Nez Perce Reservation. The statute's terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Nez Perce Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.

11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled "How you will receive notices in the Palouse 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 Shannon F. Wheeler, and as Chairman of the Nez Perce Tribal Executive Committee that I have signed the foregoing document in the space below as duly authorized on behalf of the Nez Perce Tribe, and that the statements contained in the foregoing document are true and correct.

Signature of Authorized Agent:
Title and Organization:


Shannon F. Wheeler, Chairman
Nez Perce Tribe

Dated this 27th day of December, 2019.

Notice is hereby given that the Nez Perce Tribe Office of Legal Counsel and Native American Rights Fund will represent the Nez Perce Tribe, in all matters pertaining to the PRBA.

All notices, filings, and correspondence concerning this matter should be mailed to the Nez Perce Tribe at the address set forth below:



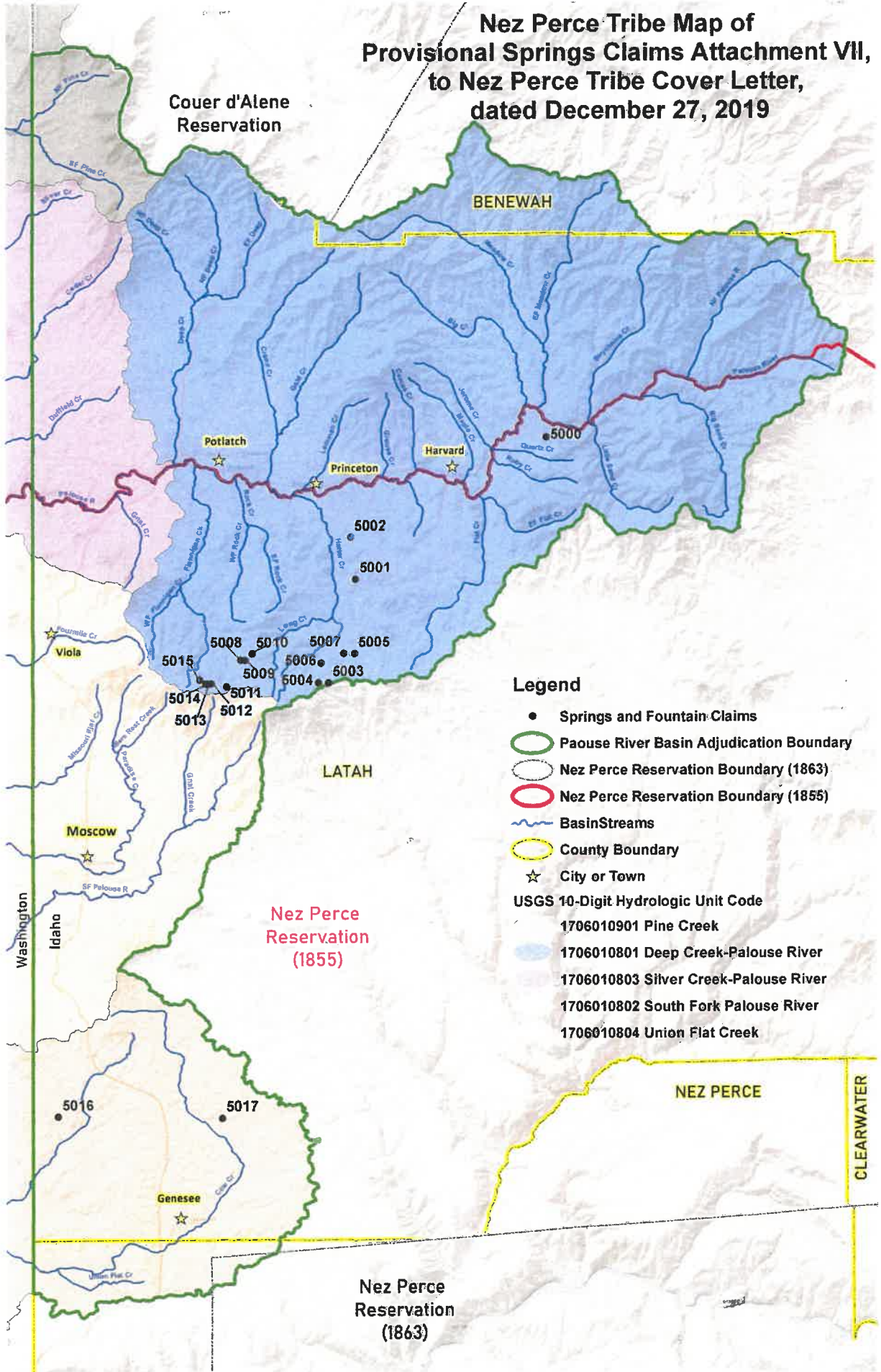
Michael A. Lopez, ISB #8356
Senior Staff Attorney
Nez Perce Tribe
Office of Legal Counsel
P.O. Box 305
Lapwai, ID 83540

Steven C. Moore, *pro hac vice*
Senior Staff Attorney
Native American Rights Fund
1506 Broadway
Boulder, CO 80302

Attorneys for the Nez Perce Tribe

Dated this 27th day of December, 2019.

**Nez Perce Tribe Map of
Provisional Springs Claims Attachment VII,
to Nez Perce Tribe Cover Letter,
dated December 27, 2019**



Legend

- Springs and Fountain Claims
 - Paouse River Basin Adjudication Boundary
 - Nez Perce Reservation Boundary (1863)
 - Nez Perce Reservation Boundary (1855)
 - ~ BasinStreams
 - County Boundary
 - ☆ City or Town
- USGS 10-Digit Hydrologic Unit Code**
- 1706010901 Pine Creek
 - 1706010801 Deep Creek-Palouse River
 - 1706010803 Silver Creek-Palouse River
 - 1706010802 South Fork Palouse River
 - 1706010804 Union Flat Creek

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Attorneys for the Nez Perce Tribe

**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) **NOTICE OF PROVISIONAL CLAIM**
) **Federal Reserved Water Right**
)
) *87-12165*
)
)

Preliminary statement:

The Nez Perce Tribe submits this provisional federal reserved water right claim based on surveys performed in the late 19th and early 20th centuries by teams sent by the Commissioner of the General Land Office (GLO) of the United States Department of the Interior, pursuant to Congressional authorization, to survey the Nez Perce Reservation and surrounding territory. *See* 43 U.S.C. 751, *et seq.*, derived from acts of May 18, 1796, ch. 29, §2, 1 Stat. 465; May 10, 1800, ch. 55, §3, 2 Stat. 73; May 30, 1862, 12 Stat. 409; Mar. 3, 1877, ch. 105, 19 Stat. 348. The United States' survey teams took copious and detailed notes of their work and produced detailed maps of the land surveyed. Those notes and maps indicated the presence of springs in the area now identified as Basin 87 in the Palouse River Basin Adjudication (PRBA). Said notes and maps are public documents and readily available in the federal archives.

The Nez Perce Tribe made reasonable efforts to corroborate the existence today of the springs identified through the GLO surveying and mapping efforts from the 19th and early 20th centuries. This included reviewing all available hydrologic or other data sources such as Historic United States Geological Survey Topo maps; National Hydrography data set; United States Fish & Wildlife Wetland Inventory; Farm Services National Agricultural Imagery Program 2006-2017; University of Idaho Water Research Maps by Jones & Ross; Washington National Guard black and white aerial imagery flown in 1933-1934; and University of Idaho Historical Aerial imagery and photo collections. The Nez Perce Tribe's review also included careful examination of satellite imagery found on Google Earth; Farm Service National Agricultural Imagery Program from years 2004 to current imagery from 2017; available Lidar imagery; and City of Moscow 3-inch pixel color digital aerial imagery flown in 2018.

The Nez Perce Tribe submits this and other provisional claims to springs on private land on its belief that these provisional claims have a reasonable basis in fact; i.e., that these springs in fact exist on these parcels of land. However, these provisional spring locations are neither the subject of existing water rights found on the Idaho Department of Water Resources (IDWR) database for Basin 87, nor are they the subject of claims filed by the end of August 2019 in the PRBA. These data sources, then, could not serve as the basis from which the Nez Perce Tribe could file a claim pursuant to its expressly reserved rights under Article VIII of the Nez Perce Treaty of June 9, 1863, 14 Stat. 647, with the United States, described in more detail below in Paragraphs 9 and 10. In addition, private land owners, the United States as trustee, and the Nez Perce Tribe are not required to have filed all claims by August 31, 2019. *See In Re PRBA, No. 59576 (D. Idaho March 1, 2017)(Order Granting Motion to File Stipulation for establishment of procedure for adjudication of de minimis domestic and stock water claims).*

Accordingly, at the appropriate time in the adjudication of the claims to springs in the PRBA, the Nez Perce Tribe will seek an order and leave of court for permission to gain access to the private parcels of land that are the subject of its provisional claims to verify the existence of said springs. If, following field verification, a spring is not identified on those lands, then no claim will be pursued. The Nez Perce Tribe is not aware of any other acceptable means to verify these claims but is open to discussion of same with the Court and representatives of IDWR.

1. Name and address of claimant:

NEZ PERCE TRIBE, acting through the Nez Perce Tribal Executive Committee
Contact Person: Shannon F. Wheeler, Chairman
Nez Perce Tribal Executive Committee
Nez Perce Tribe
P.O. Box 305
Lapwai, ID 83540

2. Date of Priority: Time Immemorial

3. Source: Spring and/or fountain (ID #5006-1)

4. **Point of Diversion:** This claim is for a spring and/or fountain *in situ* including sufficient groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or fountain.

Township: 40N Range: 04W Section: 10 Q: Boise QQ: SWNW *See Attached Map.*

5. **Place of Use:**

The approximate center point is located with UTM Coordinates:

Zone: 11N; 512674, 5185863; which is located in:

Township: 40N Range: 04W Section: 10 Q: Boise QQ: SWNW *See Attached Map.*

6. **Purpose of Water Use:**

The purpose of use includes the full range which the Nez Perce Tribe and its members have always used life and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce 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.

8. **Quantity Reserved (In cfs):** Half the natural flow.

9. **Basis of Claim:**

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty with the Nez Percés, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty with the Nez Percés, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Washington State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658, *modified sub nom. Washington v. United States*, 444 U.S. 816 (1979), and its progeny.

10. **Other Provisions:**

- a. The United States has asserted other claims in the PRBA. Paragraphs 10(a) – (g) express assertions applicable to all claims filed by the Bureau of Indian Affairs in its capacity as trustee for the Nez Perce Tribe in the PRBA. The United States claims waters from groundwater and surface water sources within the Palouse River Basin in the state of Idaho to satisfy the rights reserved to the Nez Perce Tribe by the 1855 Treaty and the 1863 Treaty and to fulfill the permanent homeland purpose of the Nez Perce Reservation. Such present and future purposes include: instream flows for fish habitat; hunting, gathering, and pasturing; spring and fountain flows pursuant to Article VIII of the 1863 Treaty; and consumptive use claims on two allotments held in trust by the United States.

- b. The Nez Perce Tribe has occupied a territory in what is now central Idaho, southeastern Washington, and northeastern Oregon since time immemorial. *United States v. Webb*, 219 F.3d 1127, 1129 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). The Palouse River Basin is within the Tribe's traditional lands.
- c. There is a complex history of the United States' establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the "exclusive right to fish in all streams running through or bordering" the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the "right of taking fish at all usual and accustomed places in common with citizens of the Territory" to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855, pursuant to the 1855 Treaty.
- d. Article III of the 1855 Treaty further reserves to the Tribe "the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land."
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- f. Pursuant to the General Allotment Act of 1887, Act of February 8, 1887, 24 Stat. 388, *amended*, Act of February 28, 1891, 26 Stat. 794, there are two allotments (Allotments 182-43 and 182-45) held in trust by the United States located within the boundaries of the Palouse River Basin and the northwestern corner of the Nez Perce Reservation. For purposes of the priority date of the domestic and stock watering claims for these two allotments, the United States claims June 11, 1855, pursuant to the 1855 Treaty.
- g. 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. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe's future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Nez Perce Reservation. The statute's terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Nez Perce Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.

11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled "How you will receive notices in the Palouse 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 Shannon F. Wheeler, and as Chairman of the Nez Perce Tribal Executive Committee that I have signed the foregoing document in the space below as duly authorized on behalf of the Nez Perce Tribe, and that the statements contained in the foregoing document are true and correct.


Signature of Authorized Agent:
Title and Organization:


Shannon F. Wheeler, Chairman
Nez Perce Tribe

Dated this 27th day of December, 2019.

Notice is hereby given that the Nez Perce Tribe Office of Legal Counsel and Native American Rights Fund will represent the Nez Perce Tribe, in all matters pertaining to the PRBA.

All notices, filings, and correspondence concerning this matter should be mailed to the Nez Perce Tribe at the address set forth below:



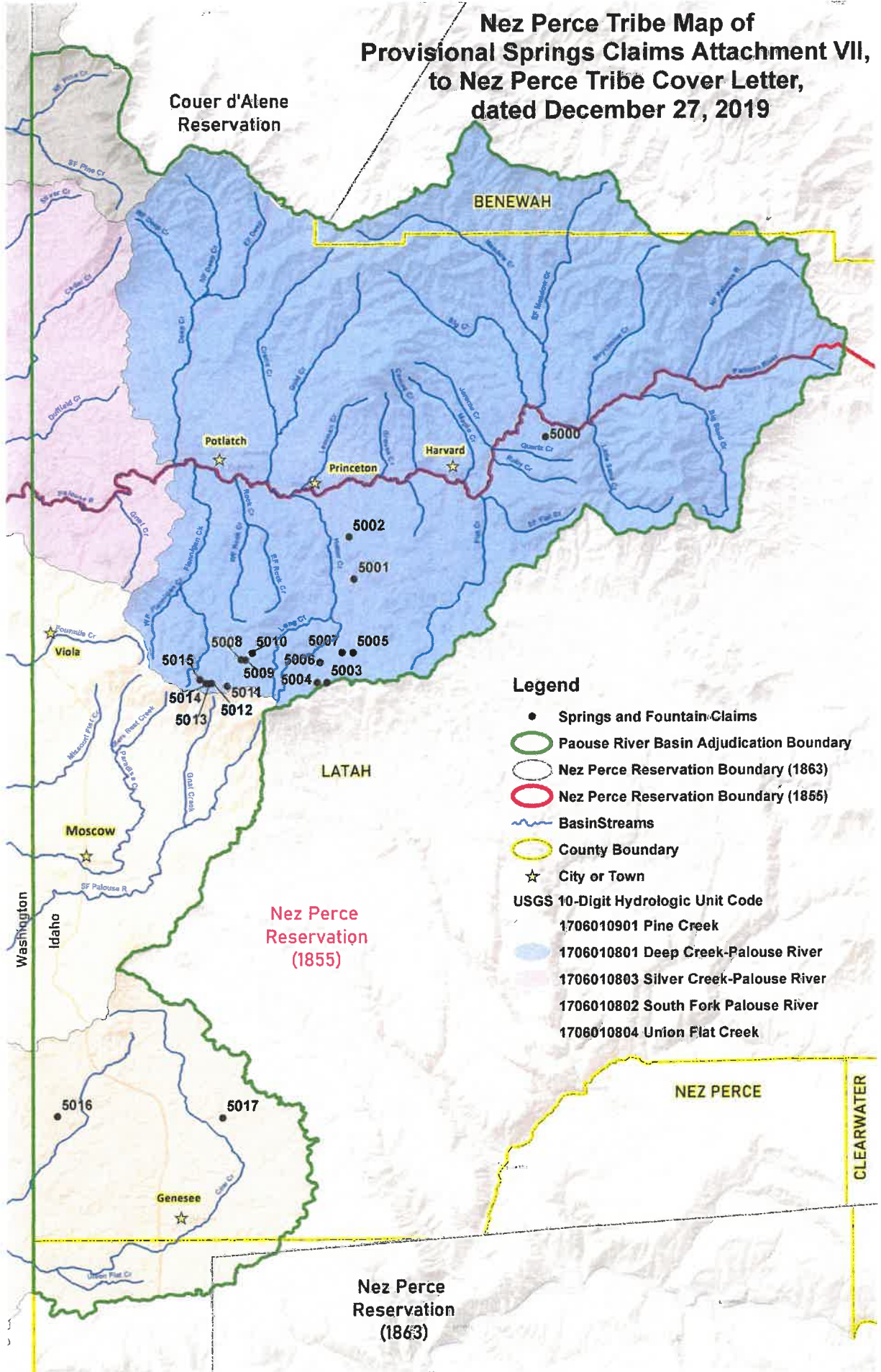
Michael A. Lopez, ISB #8356
Senior Staff Attorney
Nez Perce Tribe
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P.O. Box 305
Lapwai, ID 83540

Steven C. Moore, *pro hac vice*
Senior Staff Attorney
Native American Rights Fund
1506 Broadway
Boulder, CO 80302

Attorneys for the Nez Perce Tribe

Dated this 27th day of December, 2019.

**Nez Perce Tribe Map of
Provisional Springs Claims Attachment VII,
to Nez Perce Tribe Cover Letter,
dated December 27, 2019**



Legend

- Springs and Fountain Claims
- Paouse River Basin Adjudication Boundary
- Nez Perce Reservation Boundary (1863)
- Nez Perce Reservation Boundary (1855)
- ~ Basin Streams
- ▭ County Boundary
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DEPARTMENT OF
WATER RESOURCES

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1506 Broadway
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Attorneys for the Nez Perce Tribe

**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)

) **NOTICE OF PROVISIONAL CLAIM**

) **Federal Reserved Water Right**

) *87-12166*

)

Preliminary statement:

The Nez Perce Tribe submits this provisional federal reserved water right claim based on surveys performed in the late 19th and early 20th centuries by teams sent by the Commissioner of the General Land Office (GLO) of the United States Department of the Interior, pursuant to Congressional authorization, to survey the Nez Perce Reservation and surrounding territory. *See* 43 U.S.C. 751, *et seq.*, derived from acts of May 18, 1796, ch. 29, §2, 1 Stat. 465; May 10, 1800, ch. 55, §3, 2 Stat. 73; May 30, 1862, 12 Stat. 409; Mar. 3, 1877, ch. 105, 19 Stat. 348. The United States' survey teams took copious and detailed notes of their work and produced detailed maps of the land surveyed. Those notes and maps indicated the presence of springs in the area now identified as Basin 87 in the Palouse River Basin Adjudication (PRBA). Said notes and maps are public documents and readily available in the federal archives.

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Accordingly, at the appropriate time in the adjudication of the claims to springs in the PRBA, the Nez Perce Tribe will seek an order and leave of court for permission to gain access to the private parcels of land that are the subject of its provisional claims to verify the existence of said springs. If, following field verification, a spring is not identified on those lands, then no claim will be pursued. The Nez Perce Tribe is not aware of any other acceptable means to verify these claims but is open to discussion of same with the Court and representatives of IDWR.

1. Name and address of claimant:

NEZ PERCE TRIBE, acting through the Nez Perce Tribal Executive Committee
Contact Person: Shannon F. Wheeler, Chairman
Nez Perce Tribal Executive Committee
Nez Perce Tribe
P.O. Box 305
Lapwai, ID 83540

2. Date of Priority: Time Immemorial

3. Source: Spring and/or fountain (ID #5007-1)

4. **Point of Diversion:** This claim is for a spring and/or fountain *in situ* including sufficient groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or fountain.

Township: 40N Range: 04W Section: 10 Q: Boise QQ: NENE *See Attached Map.*

5. **Place of Use:**

The approximate center point is located with UTM Coordinates:

Zone: 11N; 513887, 5186396; which is located in:

Township: 40N Range: 04W Section: 10 Q: Boise QQ: NENE *See Attached Map.*

6. **Purpose of Water Use:**

The purpose of use includes the full range which the Nez Perce Tribe and its members have always used life and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce 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.

8. **Quantity Reserved (In cfs):** Half the natural flow.

9. **Basis of Claim:**

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty with the Nez Percés, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty with the Nez Percés, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Washington State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658, *modified sub nom. Washington v. United States*, 444 U.S. 816 (1979), and its progeny.

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- b. The Nez Perce Tribe has occupied a territory in what is now central Idaho, southeastern Washington, and northeastern Oregon since time immemorial. *United States v. Webb*, 219 F.3d 1127, 1129 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). The Palouse River Basin is within the Tribe's traditional lands.
- c. There is a complex history of the United States' establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the "exclusive right to fish in all streams running through or bordering" the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the "right of taking fish at all usual and accustomed places in common with citizens of the Territory" to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855, pursuant to the 1855 Treaty.
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11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled "How you will receive notices in the Palouse 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 Shannon F. Wheeler, and as Chairman of the Nez Perce Tribal Executive Committee that I have signed the foregoing document in the space below as duly authorized on behalf of the Nez Perce Tribe, and that the statements contained in the foregoing document are true and correct.

Signature of Authorized Agent:
Title and Organization:



Shannon F. Wheeler, Chairman
Nez Perce Tribe

Dated this 27th day of December, 2019.

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All notices, filings, and correspondence concerning this matter should be mailed to the Nez Perce Tribe at the address set forth below:



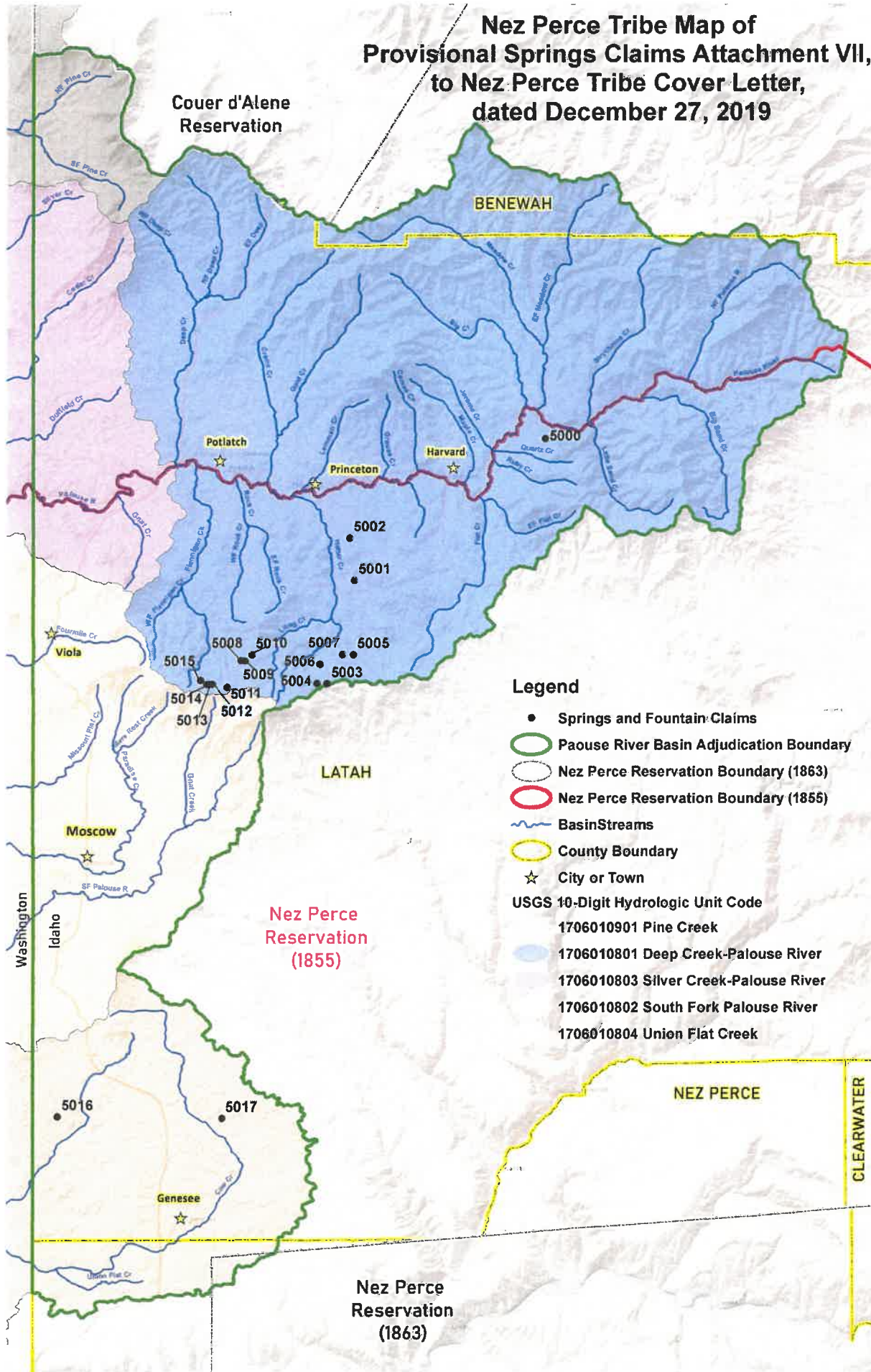
Michael A. Lopez, ISB #8356
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Nez Perce Tribe
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P.O. Box 305
Lapwai, ID 83540

Steven C. Moore, *pro hac vice*
Senior Staff Attorney
Native American Rights Fund
1506 Broadway
Boulder, CO 80302

Attorneys for the Nez Perce Tribe

Dated this 27th day of December, 2019.

**Nez Perce Tribe Map of
Provisional Springs Claims Attachment VII,
to Nez Perce Tribe Cover Letter,
dated December 27, 2019**



Legend

- Springs and Fountain Claims
- Paouse River Basin Adjudication Boundary
- Nez Perce Reservation Boundary (1863)
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- ▭ County Boundary
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DEC 30 2019

DEPARTMENT OF
WATER RESOURCES

Michael Lopez (ISB No. 8356)
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Attorneys for the Nez Perce Tribe

**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)

) **NOTICE OF PROVISIONAL CLAIM**

) **Federal Reserved Water Right**

) *87-12167*

Preliminary statement:

The Nez Perce Tribe submits this provisional federal reserved water right claim based on surveys performed in the late 19th and early 20th centuries by teams sent by the Commissioner of the General Land Office (GLO) of the United States Department of the Interior, pursuant to Congressional authorization, to survey the Nez Perce Reservation and surrounding territory. *See* 43 U.S.C. 751, *et seq.*, derived from acts of May 18, 1796, ch. 29, §2, 1 Stat. 465; May 10, 1800, ch. 55, §3, 2 Stat. 73; May 30, 1862, 12 Stat. 409; Mar. 3, 1877, ch. 105, 19 Stat. 348. The United States' survey teams took copious and detailed notes of their work and produced detailed maps of the land surveyed. Those notes and maps indicated the presence of springs in the area now identified as Basin 87 in the Palouse River Basin Adjudication (PRBA). Said notes and maps are public documents and readily available in the federal archives.

The Nez Perce Tribe made reasonable efforts to corroborate the existence today of the springs identified through the GLO surveying and mapping efforts from the 19th and early 20th centuries. This included reviewing all available hydrologic or other data sources such as Historic United States Geological Survey Topo maps; National Hydrography data set; United States Fish & Wildlife Wetland Inventory; Farm Services National Agricultural Imagery Program 2006-2017; University of Idaho Water Research Maps by Jones & Ross; Washington National Guard black and white aerial imagery flown in 1933-1934; and University of Idaho Historical Aerial imagery and photo collections. The Nez Perce Tribe's review also included careful examination of satellite imagery found on Google Earth; Farm Service National Agricultural Imagery Program from years 2004 to current imagery from 2017; available Lidar imagery; and City of Moscow 3-inch pixel color digital aerial imagery flown in 2018.

The Nez Perce Tribe submits this and other provisional claims to springs on private land on its belief that these provisional claims have a reasonable basis in fact; i.e., that these springs in fact exist on these parcels of land. However, these provisional spring locations are neither the subject of existing water rights found on the Idaho Department of Water Resources (IDWR) database for Basin 87, nor are they the subject of claims filed by the end of August 2019 in the PRBA. These data sources, then, could not serve as the basis from which the Nez Perce Tribe could file a claim pursuant to its expressly reserved rights under Article VIII of the Nez Perce Treaty of June 9, 1863, 14 Stat. 647, with the United States, described in more detail below in Paragraphs 9 and 10. In addition, private land owners, the United States as trustee, and the Nez Perce Tribe are not required to have filed all claims by August 31, 2019. *See In Re PRBA*, No. 59576 (D. Idaho March 1, 2017)(*Order Granting Motion to File Stipulation* for establishment of procedure for adjudication of de minimis domestic and stock water claims).

Accordingly, at the appropriate time in the adjudication of the claims to springs in the PRBA, the Nez Perce Tribe will seek an order and leave of court for permission to gain access to the private parcels of land that are the subject of its provisional claims to verify the existence of said springs. If, following field verification, a spring is not identified on those lands, then no claim will be pursued. The Nez Perce Tribe is not aware of any other acceptable means to verify these claims but is open to discussion of same with the Court and representatives of IDWR.

1. Name and address of claimant:

NEZ PERCE TRIBE, acting through the Nez Perce Tribal Executive Committee
Contact Person: Shannon F. Wheeler, Chairman
Nez Perce Tribal Executive Committee
Nez Perce Tribe
P.O. Box 305
Lapwai, ID 83540

2. Date of Priority: Time Immemorial

3. Source: Spring and/or fountain (ID #5008-1)

4. **Point of Diversion:** This claim is for a spring and/or fountain *in situ* including sufficient groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or fountain.

Township: 40N Range: 04W Section: 7 Q: Boise QQ: NENW *See Attached Map.*

5. **Place of Use:**

The approximate center point is located with UTM Coordinates:

Zone: 11N; 508365, 5186041; which is located in:

Township: 40N Range: 04W Section: 7 Q: Boise QQ: NENW *See Attached Map.*

6. **Purpose of Water Use:**

The purpose of use includes the full range which the Nez Perce Tribe and its members have always used life and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce 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.

8. **Quantity Reserved (In cfs):** Half the natural flow.

9. **Basis of Claim:**

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty with the Nez Percés, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty with the Nez Percés, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Washington State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658, *modified sub nom. Washington v. United States*, 444 U.S. 816 (1979), and its progeny.

10. **Other Provisions:**

- a. The United States has asserted other claims in the PRBA. Paragraphs 10(a) – (g) express assertions applicable to all claims filed by the Bureau of Indian Affairs in its capacity as trustee for the Nez Perce Tribe in the PRBA. The United States claims waters from groundwater and surface water sources within the Palouse River Basin in the state of Idaho to satisfy the rights reserved to the Nez Perce Tribe by the 1855 Treaty and the 1863 Treaty and to fulfill the permanent homeland purpose of the Nez Perce Reservation. Such present and future purposes include: instream flows for fish habitat; hunting, gathering, and pasturing; spring and fountain flows pursuant to Article VIII of the 1863 Treaty; and consumptive use claims on two allotments held in trust by the United States.

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- c. There is a complex history of the United States' establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the "exclusive right to fish in all streams running through or bordering" the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the "right of taking fish at all usual and accustomed places in common with citizens of the Territory" to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855, pursuant to the 1855 Treaty.
- d. Article III of the 1855 Treaty further reserves to the Tribe "the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land."
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- (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 Shannon F. Wheeler, and as Chairman of the Nez Perce Tribal Executive Committee that I have signed the foregoing document in the space below as duly authorized on behalf of the Nez Perce Tribe, and that the statements contained in the foregoing document are true and correct.

Signature of Authorized Agent:
Title and Organization:



Shannon F. Wheeler, Chairman
Nez Perce Tribe

Dated this 27th day of December, 2019.

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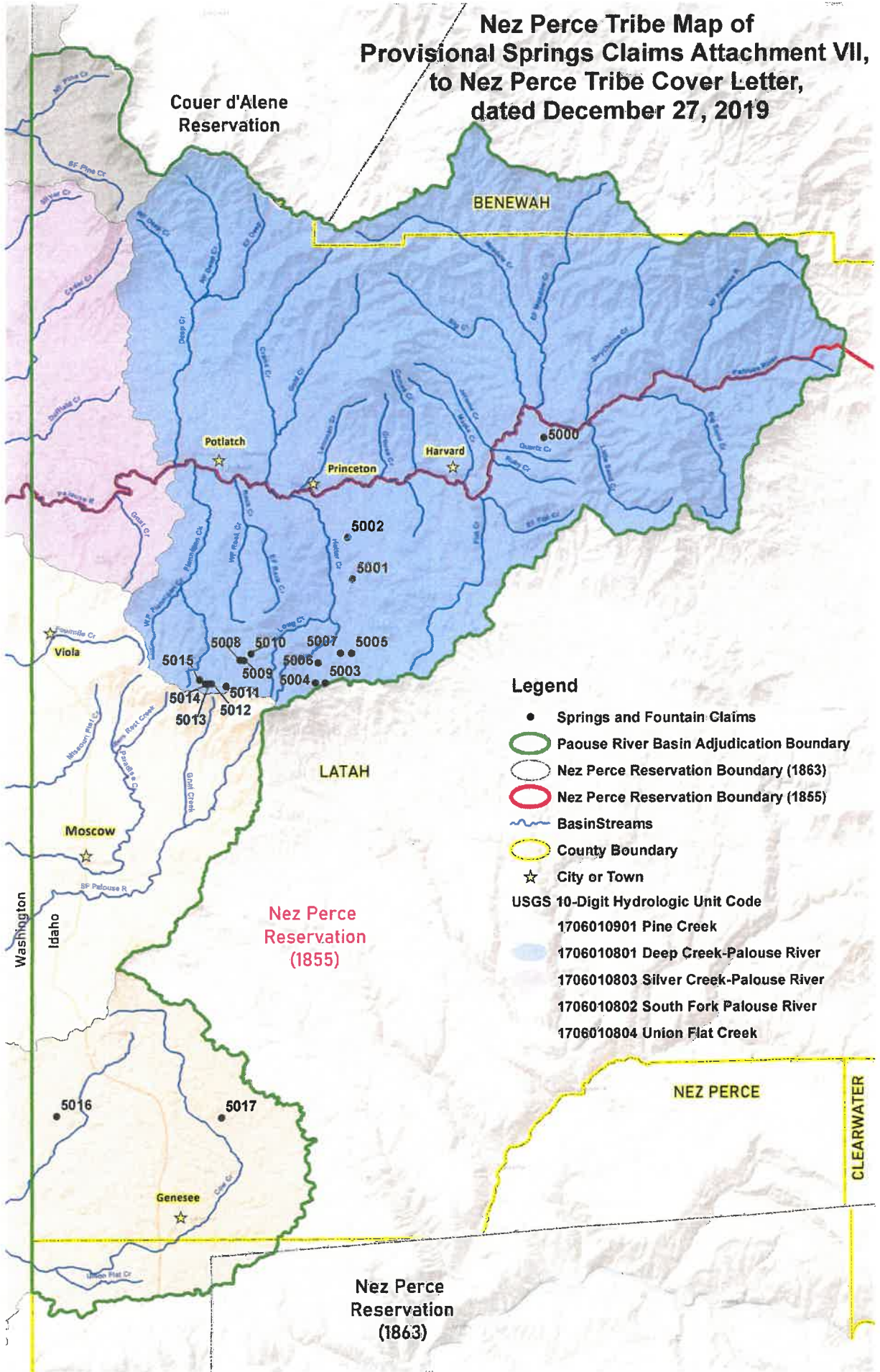
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Steven C. Moore, *pro hac vice*
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1506 Broadway
Boulder, CO 80302

Attorneys for the Nez Perce Tribe

Dated this 27th day of December, 2019.

Nez Perce Tribe Map of Provisional Springs Claims Attachment VII, to Nez Perce Tribe Cover Letter, dated December 27, 2019



Legend

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Attorneys for the Nez Perce Tribe

**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)

) **NOTICE OF PROVISIONAL CLAIM**

Case No.: 59576)

) **Federal Reserved Water Right**

) *87-12168*

Preliminary statement:

The Nez Perce Tribe submits this provisional federal reserved water right claim based on surveys performed in the late 19th and early 20th centuries by teams sent by the Commissioner of the General Land Office (GLO) of the United States Department of the Interior, pursuant to Congressional authorization, to survey the Nez Perce Reservation and surrounding territory. *See* 43 U.S.C. 751, *et seq.*, derived from acts of May 18, 1796, ch. 29, §2, 1 Stat. 465; May 10, 1800, ch. 55, §3, 2 Stat. 73; May 30, 1862, 12 Stat. 409; Mar. 3, 1877, ch. 105, 19 Stat. 348. The United States' survey teams took copious and detailed notes of their work and produced detailed maps of the land surveyed. Those notes and maps indicated the presence of springs in the area now identified as Basin 87 in the Palouse River Basin Adjudication (PRBA). Said notes and maps are public documents and readily available in the federal archives.

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1. Name and address of claimant:

NEZ PERCE TRIBE, acting through the Nez Perce Tribal Executive Committee
Contact Person: Shannon F. Wheeler, Chairman
Nez Perce Tribal Executive Committee
Nez Perce Tribe
P.O. Box 305
Lapwai, ID 83540

2. Date of Priority: Time Immemorial

3. Source: Spring and/or fountain (ID #5009-1)

4. **Point of Diversion:** This claim is for a spring and/or fountain *in situ* including sufficient groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or fountain.

Township: 40N Range: 04W Section: 7 Q: Boise QQ: NENW See Attached Map.

5. **Place of Use:**

The approximate center point is located with UTM Coordinates:

Zone: 11N; 508580, 5186037; which is located in:

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6. **Purpose of Water Use:**

The purpose of use includes the full range which the Nez Perce Tribe and its members have always used life and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce 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.

8. **Quantity Reserved (In cfs):** Half the natural flow.

9. **Basis of Claim:**

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty with the Nez Percés, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty with the Nez Percés, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Washington State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658, *modified sub nom. Washington v. United States*, 444 U.S. 816 (1979), and its progeny.

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Signature of Authorized Agent:

Title and Organization:


Shannon F. Wheeler, Chairman
Nez Perce Tribe

Dated this 27th day of December, 2019.

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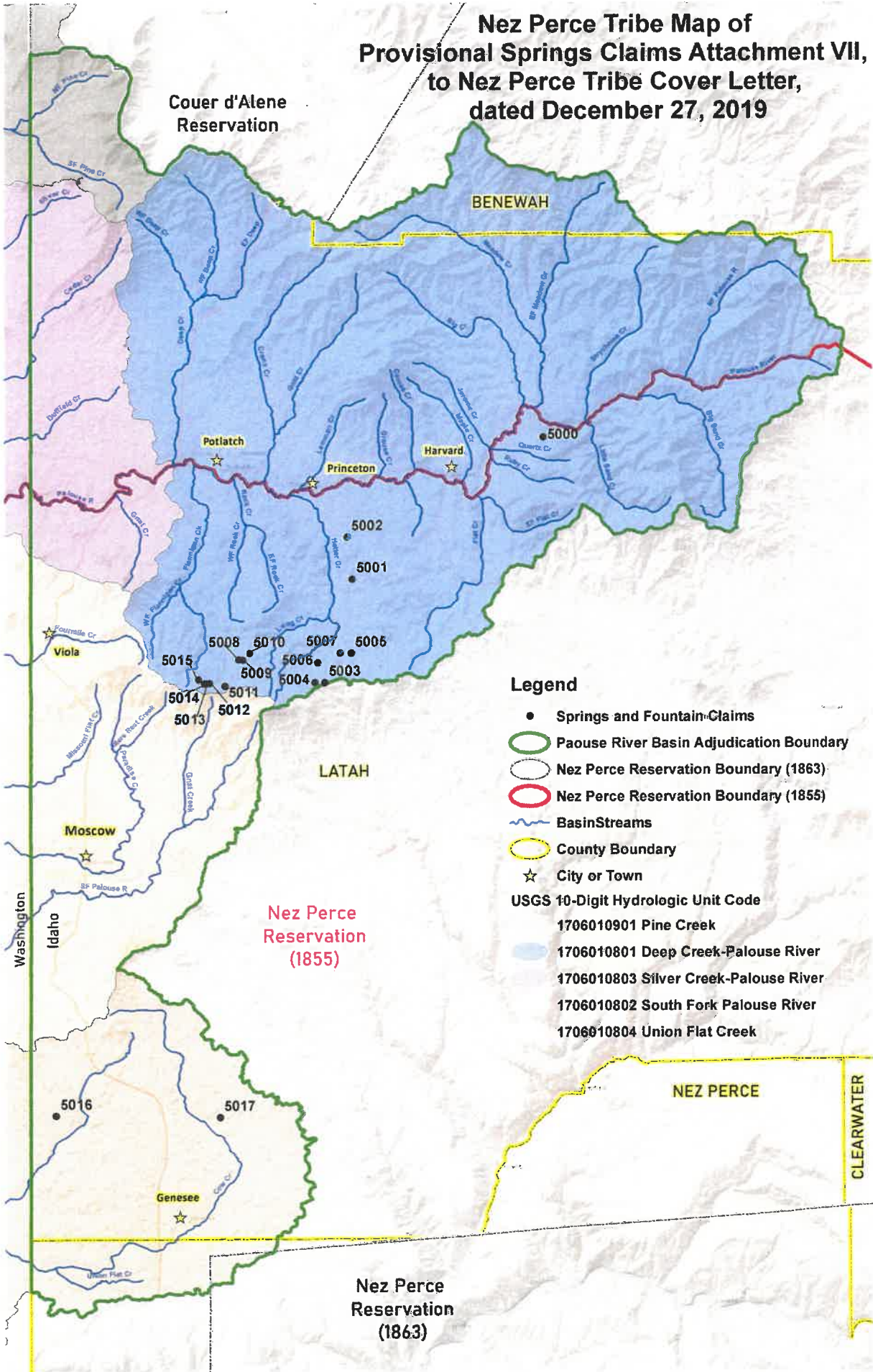
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1506 Broadway
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Attorneys for the Nez Perce Tribe

Dated this 27th day of December, 2019.

**Nez Perce Tribe Map of
Provisional Springs Claims Attachment VII,
to Nez Perce Tribe Cover Letter,
dated December 27, 2019**



The Nez Perce Tribe made reasonable efforts to corroborate the existence today of the springs identified through the GLO surveying and mapping efforts from the 19th and early 20th centuries. This included reviewing all available hydrologic or other data sources such as Historic United States Geological Survey Topo maps; National Hydrography data set; United States Fish & Wildlife Wetland Inventory; Farm Services National Agricultural Imagery Program 2006-2017; University of Idaho Water Research Maps by Jones & Ross; Washington National Guard black and white aerial imagery flown in 1933-1934; and University of Idaho Historical Aerial imagery and photo collections. The Nez Perce Tribe's review also included careful examination of satellite imagery found on Google Earth; Farm Service National Agricultural Imagery Program from years 2004 to current imagery from 2017; available Lidar imagery; and City of Moscow 3-inch pixel color digital aerial imagery flown in 2018.

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Accordingly, at the appropriate time in the adjudication of the claims to springs in the PRBA, the Nez Perce Tribe will seek an order and leave of court for permission to gain access to the private parcels of land that are the subject of its provisional claims to verify the existence of said springs. If, following field verification, a spring is not identified on those lands, then no claim will be pursued. The Nez Perce Tribe is not aware of any other acceptable means to verify these claims but is open to discussion of same with the Court and representatives of IDWR.

1. Name and address of claimant:

NEZ PERCE TRIBE, acting through the Nez Perce Tribal Executive Committee
Contact Person: Shannon F. Wheeler, Chairman
Nez Perce Tribal Executive Committee
Nez Perce Tribe
P.O. Box 305
Lapwai, ID 83540

2. Date of Priority: Time Immemorial

3. Source: Spring and/or fountain (ID #5010-1)

4. **Point of Diversion:** This claim is for a spring and/or fountain *in situ* including sufficient groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or fountain.

Township: 40N Range: 04W Section: 7 Q: Boise QQ: NWNE *See Attached Map.*

5. **Place of Use:**

The approximate center point is located with UTM Coordinates:

Zone: 11N; 508972, 5186383; which is located in:

Township: 40N Range: 04W Section: 7 Q: Boise QQ: NWNE *See Attached Map.*

6. **Purpose of Water Use:**

The purpose of use includes the full range which the Nez Perce Tribe and its members have always used life and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce 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.

8. **Quantity Reserved (In cfs):** Half the natural flow.

9. **Basis of Claim:**

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty with the Nez Percés, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty with the Nez Percés, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Washington State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658, *modified sub nom. Washington v. United States*, 444 U.S. 816 (1979), and its progeny.

10. **Other Provisions:**

- a. The United States has asserted other claims in the PRBA. Paragraphs 10(a) – (g) express assertions applicable to all claims filed by the Bureau of Indian Affairs in its capacity as trustee for the Nez Perce Tribe in the PRBA. The United States claims waters from groundwater and surface water sources within the Palouse River Basin in the state of Idaho to satisfy the rights reserved to the Nez Perce Tribe by the 1855 Treaty and the 1863 Treaty and to fulfill the permanent homeland purpose of the Nez Perce Reservation. Such present and future purposes include: instream flows for fish habitat; hunting, gathering, and pasturing; spring and fountain flows pursuant to Article VIII of the 1863 Treaty; and consumptive use claims on two allotments held in trust by the United States.

- b. The Nez Perce Tribe has occupied a territory in what is now central Idaho, southeastern Washington, and northeastern Oregon since time immemorial. *United States v. Webb*, 219 F.3d 1127, 1129 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). The Palouse River Basin is within the Tribe's traditional lands.
- c. There is a complex history of the United States' establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the "exclusive right to fish in all streams running through or bordering" the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the "right of taking fish at all usual and accustomed places in common with citizens of the Territory" to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855, pursuant to the 1855 Treaty.
- d. Article III of the 1855 Treaty further reserves to the Tribe "the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land."
- e. Article VIII of the 1863 Treaty includes a unique provision reserving to the Nez Perce Tribe the use of "springs and fountains" within the area ceded under Article I of the 1863 Treaty. For purposes of the priority date of the springs and fountains claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855, pursuant to the 1855 Treaty.
- f. Pursuant to the General Allotment Act of 1887, Act of February 8, 1887, 24 Stat. 388, *amended*, Act of February 28, 1891, 26 Stat. 794, there are two allotments (Allotments 182-43 and 182-45) held in trust by the United States located within the boundaries of the Palouse River Basin and the northwestern corner of the Nez Perce Reservation. For purposes of the priority date of the domestic and stock watering claims for these two allotments, the United States claims June 11, 1855, pursuant to the 1855 Treaty.
- g. 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. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe's future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Nez Perce Reservation. The statute's terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Nez Perce Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.


11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled "How you will receive notices in the Palouse 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 Shannon F. Wheeler, and as Chairman of the Nez Perce Tribal Executive Committee that I have signed the foregoing document in the space below as duly authorized on behalf of the Nez Perce Tribe, and that the statements contained in the foregoing document are true and correct.

Signature of Authorized Agent:
Title and Organization:


Shannon F. Wheeler, Chairman
Nez Perce Tribe

Dated this 27th day of December, 2019.

Notice is hereby given that the Nez Perce Tribe Office of Legal Counsel and Native American Rights Fund will represent the Nez Perce Tribe, in all matters pertaining to the PRBA.

All notices, filings, and correspondence concerning this matter should be mailed to the Nez Perce Tribe at the address set forth below:



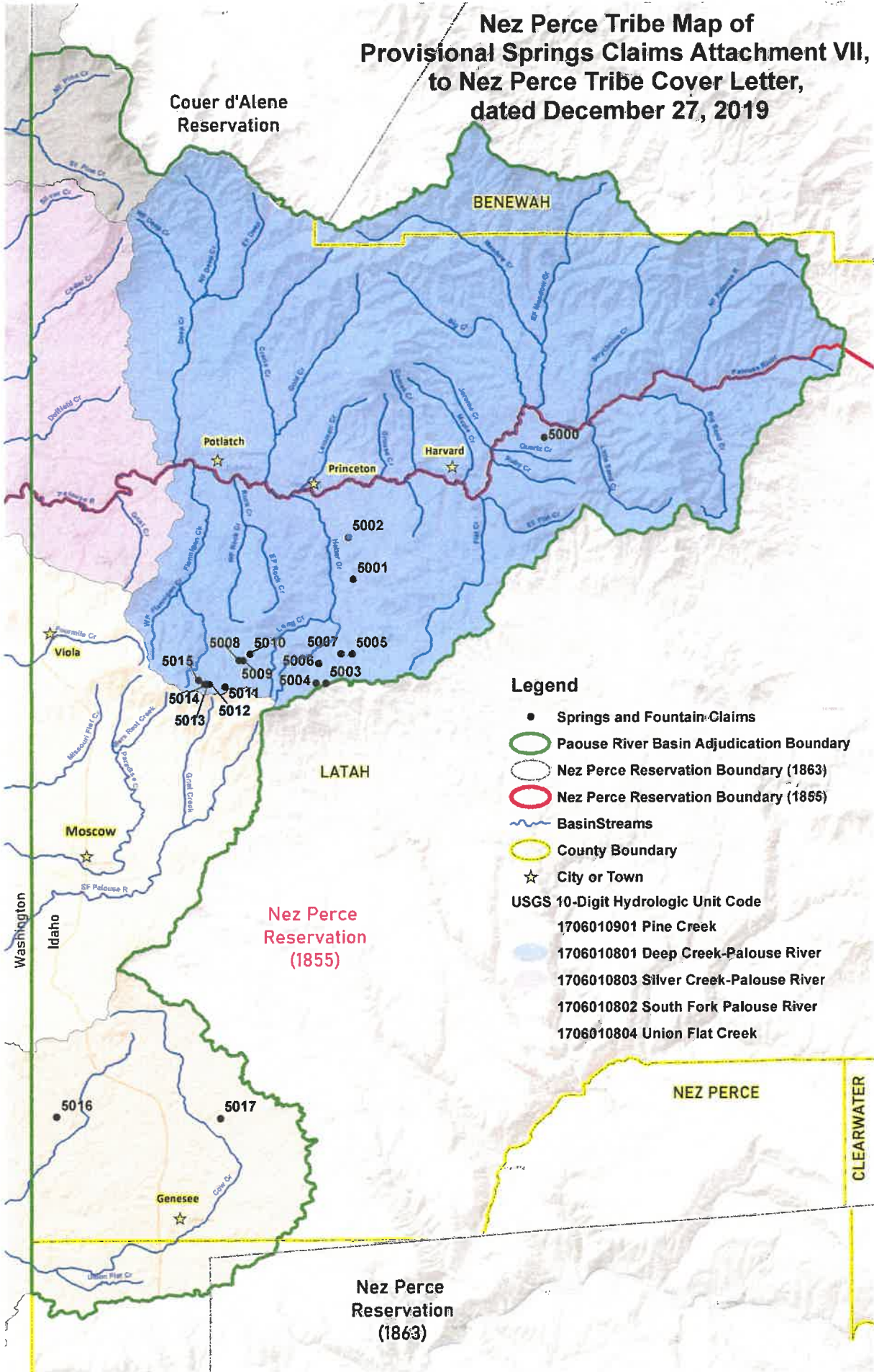
Michael A. Lopez, ISB #8356
Senior Staff Attorney
Nez Perce Tribe
Office of Legal Counsel
P.O. Box 305
Lapwai, ID 83540

Steven C. Moore, *pro hac vice*
Senior Staff Attorney
Native American Rights Fund
1506 Broadway
Boulder, CO 80302

Attorneys for the Nez Perce Tribe

Dated this 27th day of December, 2019.

**Nez Perce Tribe Map of
Provisional Springs Claims Attachment VII,
to Nez Perce Tribe Cover Letter,
dated December 27, 2019**



Legend

- Springs and Fountain-Claims
- Paouse River Basin Adjudication Boundary
- Nez Perce Reservation Boundary (1863)
- Nez Perce Reservation Boundary (1855)
- ~ BasinStreams
- ▭ County Boundary
- ☆ City or Town
- USGS 10-Digit Hydrologic Unit Code
 - 1706010901 Pine Creek
 - 1706010801 Deep Creek-Palouse River
 - 1706010803 Silver Creek-Palouse River
 - 1706010802 South Fork Palouse River
 - 1706010804 Union Flat Creek

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DEC 30 2019

DEPARTMENT OF
WATER RESOURCES

Michael Lopez (ISB No. 8356)
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(303) 447-8760
(303) 443-7776 (fax)
smoore@narf.org

Attorneys for the Nez Perce Tribe

**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)

) **NOTICE OF PROVISIONAL CLAIM**

Case No.: 59576)

) **Federal Reserved Water Right**

) *87-12170*

Preliminary statement:

The Nez Perce Tribe submits this provisional federal reserved water right claim based on surveys performed in the late 19th and early 20th centuries by teams sent by the Commissioner of the General Land Office (GLO) of the United States Department of the Interior, pursuant to Congressional authorization, to survey the Nez Perce Reservation and surrounding territory. *See* 43 U.S.C. 751, *et seq.*, derived from acts of May 18, 1796, ch. 29, §2, 1 Stat. 465; May 10, 1800, ch. 55, §3, 2 Stat. 73; May 30, 1862, 12 Stat. 409; Mar. 3, 1877, ch. 105, 19 Stat. 348. The United States' survey teams took copious and detailed notes of their work and produced detailed maps of the land surveyed. Those notes and maps indicated the presence of springs in the area now identified as Basin 87 in the Palouse River Basin Adjudication (PRBA). Said notes and maps are public documents and readily available in the federal archives.

The Nez Perce Tribe made reasonable efforts to corroborate the existence today of the springs identified through the GLO surveying and mapping efforts from the 19th and early 20th centuries. This included reviewing all available hydrologic or other data sources such as Historic United States Geological Survey Topo maps; National Hydrography data set; United States Fish & Wildlife Wetland Inventory; Farm Services National Agricultural Imagery Program 2006-2017; University of Idaho Water Research Maps by Jones & Ross; Washington National Guard black and white aerial imagery flown in 1933-1934; and University of Idaho Historical Aerial imagery and photo collections. The Nez Perce Tribe's review also included careful examination of satellite imagery found on Google Earth; Farm Service National Agricultural Imagery Program from years 2004 to current imagery from 2017; available Lidar imagery; and City of Moscow 3-inch pixel color digital aerial imagery flown in 2018.

The Nez Perce Tribe submits this and other provisional claims to springs on private land on its belief that these provisional claims have a reasonable basis in fact; i.e., that these springs in fact exist on these parcels of land. However, these provisional spring locations are neither the subject of existing water rights found on the Idaho Department of Water Resources (IDWR) database for Basin 87, nor are they the subject of claims filed by the end of August 2019 in the PRBA. These data sources, then, could not serve as the basis from which the Nez Perce Tribe could file a claim pursuant to its expressly reserved rights under Article VIII of the Nez Perce Treaty of June 9, 1863, 14 Stat. 647, with the United States, described in more detail below in Paragraphs 9 and 10. In addition, private land owners, the United States as trustee, and the Nez Perce Tribe are not required to have filed all claims by August 31, 2019. *See In Re PRBA*, No. 59576 (D. Idaho March 1, 2017)(*Order Granting Motion to File Stipulation* for establishment of procedure for adjudication of de minimis domestic and stock water claims).

Accordingly, at the appropriate time in the adjudication of the claims to springs in the PRBA, the Nez Perce Tribe will seek an order and leave of court for permission to gain access to the private parcels of land that are the subject of its provisional claims to verify the existence of said springs. If, following field verification, a spring is not identified on those lands, then no claim will be pursued. The Nez Perce Tribe is not aware of any other acceptable means to verify these claims but is open to discussion of same with the Court and representatives of IDWR.

1. Name and address of claimant:

NEZ PERCE TRIBE, acting through the Nez Perce Tribal Executive Committee
Contact Person: Shannon F. Wheeler, Chairman
Nez Perce Tribal Executive Committee
Nez Perce Tribe
P.O. Box 305
Lapwai, ID 83540

2. Date of Priority: Time Immemorial

3. Source: Spring and/or fountain (ID #5011-1)

4. **Point of Diversion:** This claim is for a spring and/or fountain *in situ* including sufficient groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or fountain.

Township: 40N Range: 05W Section: 13 Q: Boise QQ: NENE *See Attached Map.*

5. **Place of Use:**

The approximate center point is located with UTM Coordinates:

Zone: 11N; 507611, 5184614; which is located in:

Township: 40N Range: 05W Section: 13 Q: Boise QQ: NENE *See Attached Map.*

6. **Purpose of Water Use:**

The purpose of use includes the full range which the Nez Perce Tribe and its members have always used life and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce 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.

8. **Quantity Reserved (In cfs):** Half the natural flow.

9. **Basis of Claim:**

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty with the Nez Percés, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty with the Nez Percés, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Washington State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658, *modified sub nom. Washington v. United States*, 444 U.S. 816 (1979), and its progeny.

10. **Other Provisions:**

- a. The United States has asserted other claims in the PRBA. Paragraphs 10(a) – (g) express assertions applicable to all claims filed by the Bureau of Indian Affairs in its capacity as trustee for the Nez Perce Tribe in the PRBA. The United States claims waters from groundwater and surface water sources within the Palouse River Basin in the state of Idaho to satisfy the rights reserved to the Nez Perce Tribe by the 1855 Treaty and the 1863 Treaty and to fulfill the permanent homeland purpose of the Nez Perce Reservation. Such present and future purposes include: instream flows for fish habitat; hunting, gathering, and pasturing; spring and fountain flows pursuant to Article VIII of the 1863 Treaty; and consumptive use claims on two allotments held in trust by the United States.

- b. The Nez Perce Tribe has occupied a territory in what is now central Idaho, southeastern Washington, and northeastern Oregon since time immemorial. *United States v. Webb*, 219 F.3d 1127, 1129 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). The Palouse River Basin is within the Tribe's traditional lands.
- c. There is a complex history of the United States' establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the "exclusive right to fish in all streams running through or bordering" the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the "right of taking fish at all usual and accustomed places in common with citizens of the Territory" to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855, pursuant to the 1855 Treaty.
- d. Article III of the 1855 Treaty further reserves to the Tribe "the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land."
- e. Article VIII of the 1863 Treaty includes a unique provision reserving to the Nez Perce Tribe the use of "springs and fountains" within the area ceded under Article I of the 1863 Treaty. For purposes of the priority date of the springs and fountains claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855, pursuant to the 1855 Treaty.
- f. Pursuant to the General Allotment Act of 1887, Act of February 8, 1887, 24 Stat. 388, *amended*, Act of February 28, 1891, 26 Stat. 794, there are two allotments (Allotments 182-43 and 182-45) held in trust by the United States located within the boundaries of the Palouse River Basin and the northwestern corner of the Nez Perce Reservation. For purposes of the priority date of the domestic and stock watering claims for these two allotments, the United States claims June 11, 1855, pursuant to the 1855 Treaty.
- g. 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. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe's future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Nez Perce Reservation. The statute's terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Nez Perce Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.

11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled "How you will receive notices in the Palouse 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 Shannon F. Wheeler, and as Chairman of the Nez Perce Tribal Executive Committee that I have signed the foregoing document in the space below as duly authorized on behalf of the Nez Perce Tribe, and that the statements contained in the foregoing document are true and correct.

Signature of Authorized Agent:
Title and Organization:


Shannon F. Wheeler, Chairman
Nez Perce Tribe

Dated this 27th day of December, 2019.

Notice is hereby given that the Nez Perce Tribe Office of Legal Counsel and Native American Rights Fund will represent the Nez Perce Tribe, in all matters pertaining to the PRBA.

All notices, filings, and correspondence concerning this matter should be mailed to the Nez Perce Tribe at the address set forth below:



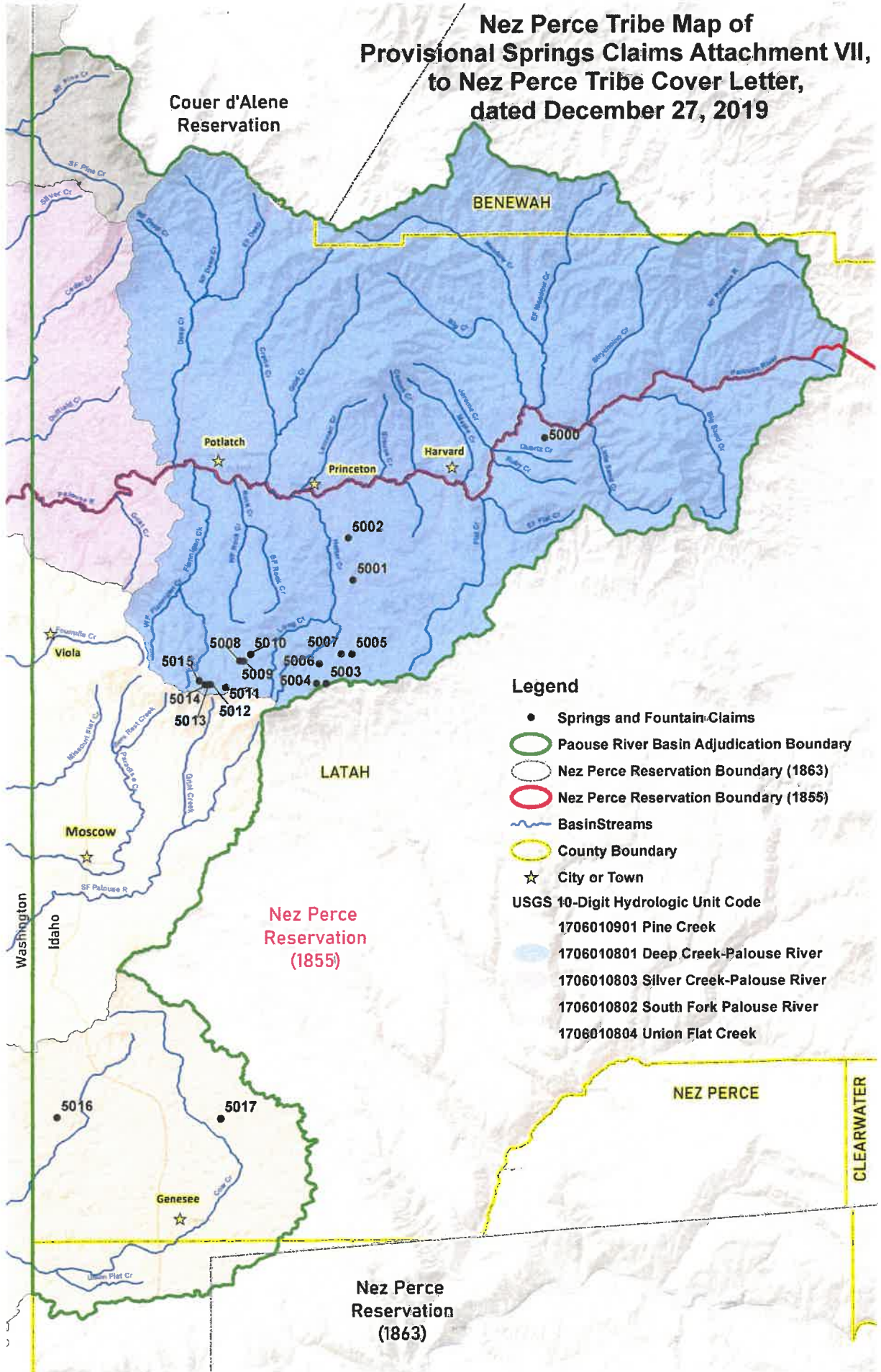
Michael A. Lopez, ISB #8356
Senior Staff Attorney
Nez Perce Tribe
Office of Legal Counsel
P.O. Box 305
Lapwai, ID 83540

Steven C. Moore, *pro hac vice*
Senior Staff Attorney
Native American Rights Fund
1506 Broadway
Boulder, CO 80302

Attorneys for the Nez Perce Tribe

Dated this 27th day of December, 2019.

**Nez Perce Tribe Map of
Provisional Springs Claims Attachment VII,
to Nez Perce Tribe Cover Letter,
dated December 27, 2019**



Legend

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- Paouse River Basin Adjudication Boundary
- Nez Perce Reservation Boundary (1863)
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DEC 30 2019

DEPARTMENT OF
WATER RESOURCES

Michael Lopez (ISB No. 8356)
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Attorneys for the Nez Perce Tribe

**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)

)

NOTICE OF PROVISIONAL CLAIM

Case No.: 59576)

)

Federal Reserved Water Right

)

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87-12171

Preliminary statement:

The Nez Perce Tribe submits this provisional federal reserved water right claim based on surveys performed in the late 19th and early 20th centuries by teams sent by the Commissioner of the General Land Office (GLO) of the United States Department of the Interior, pursuant to Congressional authorization, to survey the Nez Perce Reservation and surrounding territory. *See* 43 U.S.C. 751, *et seq.*, derived from acts of May 18, 1796, ch. 29, §2, 1 Stat. 465; May 10, 1800, ch. 55, §3, 2 Stat. 73; May 30, 1862, 12 Stat. 409; Mar. 3, 1877, ch. 105, 19 Stat. 348. The United States' survey teams took copious and detailed notes of their work and produced detailed maps of the land surveyed. Those notes and maps indicated the presence of springs in the area now identified as Basin 87 in the Palouse River Basin Adjudication (PRBA). Said notes and maps are public documents and readily available in the federal archives.

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The Nez Perce Tribe submits this and other provisional claims to springs on private land on its belief that these provisional claims have a reasonable basis in fact; i.e., that these springs in fact exist on these parcels of land. However, these provisional spring locations are neither the subject of existing water rights found on the Idaho Department of Water Resources (IDWR) database for Basin 87, nor are they the subject of claims filed by the end of August 2019 in the PRBA. These data sources, then, could not serve as the basis from which the Nez Perce Tribe could file a claim pursuant to its expressly reserved rights under Article VIII of the Nez Perce Treaty of June 9, 1863, 14 Stat. 647, with the United States, described in more detail below in Paragraphs 9 and 10. In addition, private land owners, the United States as trustee, and the Nez Perce Tribe are not required to have filed all claims by August 31, 2019. *See In Re PRBA, No. 59576 (D. Idaho March 1, 2017)(Order Granting Motion to File Stipulation for establishment of procedure for adjudication of de minimis domestic and stock water claims).*

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1. Name and address of claimant:

NEZ PERCE TRIBE, acting through the Nez Perce Tribal Executive Committee
Contact Person: Shannon F. Wheeler, Chairman
Nez Perce Tribal Executive Committee
Nez Perce Tribe
P.O. Box 305
Lapwai, ID 83540

2. Date of Priority: Time Immemorial

3. Source: Spring and/or fountain (ID #5012-1)

4. **Point of Diversion:** This claim is for a spring and/or fountain *in situ* including sufficient groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or fountain.

Township: 40N Range: 05W Section: 13 Q: Boise QQ: NENW *See Attached Map.*

5. **Place of Use:**

The approximate center point is located with UTM Coordinates:

Zone: 11N; 506770, 5184758; which is located in:

Township: 40N Range: 05W Section: 13 Q: Boise QQ: NENW *See Attached Map.*

6. **Purpose of Water Use:**

The purpose of use includes the full range which the Nez Perce Tribe and its members have always used life and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce 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.

8. **Quantity Reserved (In cfs):** Half the natural flow.

9. **Basis of Claim:**

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty with the Nez Percés, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty with the Nez Percés, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Washington State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658, *modified sub nom. Washington v. United States*, 444 U.S. 816 (1979), and its progeny.

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- a. The United States has asserted other claims in the PRBA. Paragraphs 10(a) – (g) express assertions applicable to all claims filed by the Bureau of Indian Affairs in its capacity as trustee for the Nez Perce Tribe in the PRBA. The United States claims waters from groundwater and surface water sources within the Palouse River Basin in the state of Idaho to satisfy the rights reserved to the Nez Perce Tribe by the 1855 Treaty and the 1863 Treaty and to fulfill the permanent homeland purpose of the Nez Perce Reservation. Such present and future purposes include: instream flows for fish habitat; hunting, gathering, and pasturing; spring and fountain flows pursuant to Article VIII of the 1863 Treaty; and consumptive use claims on two allotments held in trust by the United States.

- b. The Nez Perce Tribe has occupied a territory in what is now central Idaho, southeastern Washington, and northeastern Oregon since time immemorial. *United States v. Webb*, 219 F.3d 1127, 1129 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). The Palouse River Basin is within the Tribe's traditional lands.
- c. There is a complex history of the United States' establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the "exclusive right to fish in all streams running through or bordering" the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the "right of taking fish at all usual and accustomed places in common with citizens of the Territory" to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855, pursuant to the 1855 Treaty.
- d. Article III of the 1855 Treaty further reserves to the Tribe "the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land."
- e. Article VIII of the 1863 Treaty includes a unique provision reserving to the Nez Perce Tribe the use of "springs and fountains" within the area ceded under Article I of the 1863 Treaty. For purposes of the priority date of the springs and fountains claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855, pursuant to the 1855 Treaty.
- f. Pursuant to the General Allotment Act of 1887, Act of February 8, 1887, 24 Stat. 388, *amended*, Act of February 28, 1891, 26 Stat. 794, there are two allotments (Allotments 182-43 and 182-45) held in trust by the United States located within the boundaries of the Palouse River Basin and the northwestern corner of the Nez Perce Reservation. For purposes of the priority date of the domestic and stock watering claims for these two allotments, the United States claims June 11, 1855, pursuant to the 1855 Treaty.
- g. 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. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe's future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Nez Perce Reservation. The statute's terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Nez Perce Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.


11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled "How you will receive notices in the Palouse 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 Shannon F. Wheeler, and as Chairman of the Nez Perce Tribal Executive Committee that I have signed the foregoing document in the space below as duly authorized on behalf of the Nez Perce Tribe, and that the statements contained in the foregoing document are true and correct.

Signature of Authorized Agent:
Title and Organization:


Shannon F. Wheeler, Chairman
Nez Perce Tribe

Dated this 27th day of December, 2019.

Notice is hereby given that the Nez Perce Tribe Office of Legal Counsel and Native American Rights Fund will represent the Nez Perce Tribe, in all matters pertaining to the PRBA.

All notices, filings, and correspondence concerning this matter should be mailed to the Nez Perce Tribe at the address set forth below:



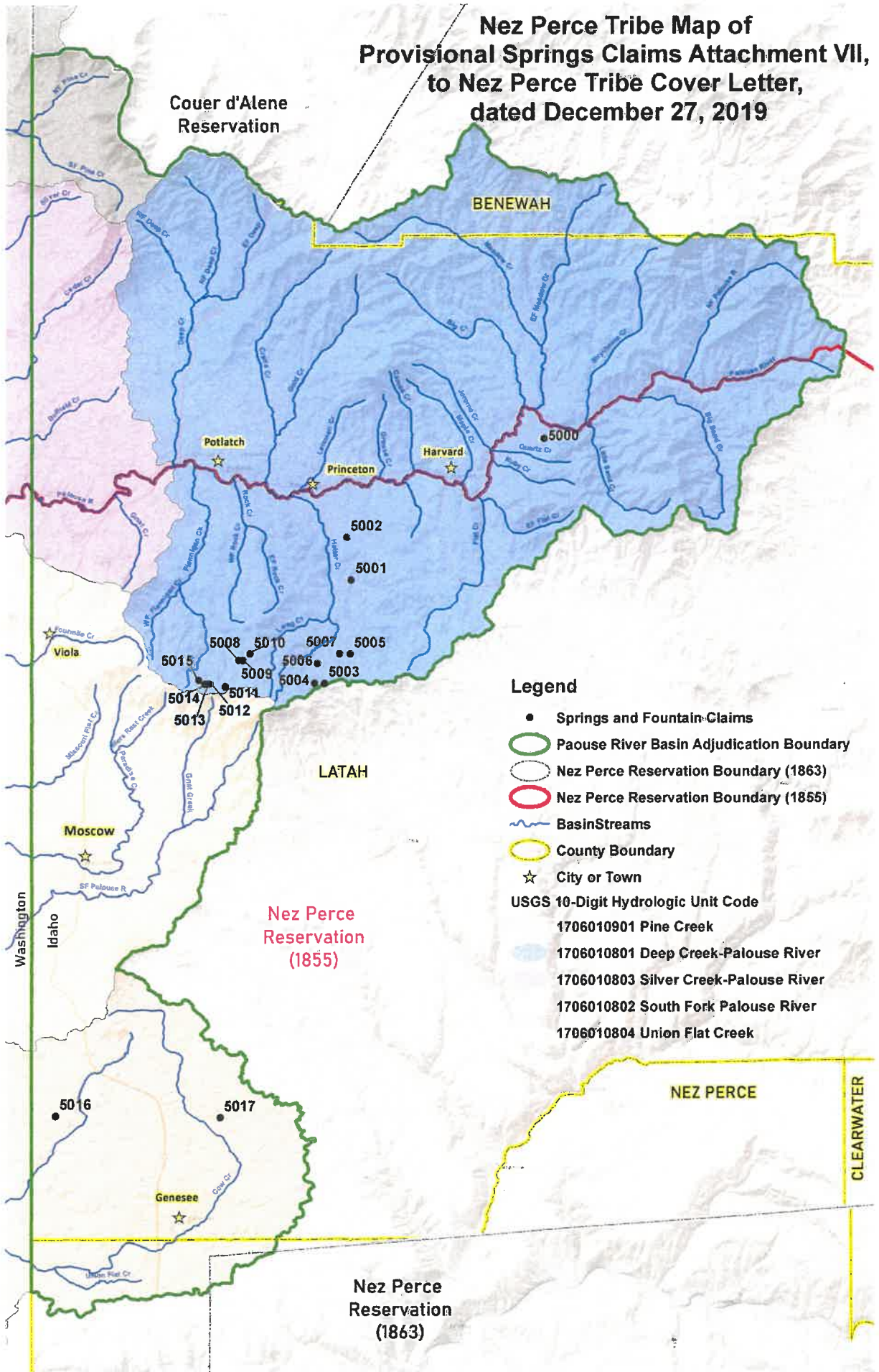
Michael A. Lopez, ISB #8356
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Nez Perce Tribe
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Lapwai, ID 83540

Steven C. Moore, *pro hac vice*
Senior Staff Attorney
Native American Rights Fund
1506 Broadway
Boulder, CO 80302

Attorneys for the Nez Perce Tribe

Dated this 27th day of December, 2019.

Nez Perce Tribe Map of Provisional Springs Claims Attachment VII, to Nez Perce Tribe Cover Letter, dated December 27, 2019



Couer d'Alene
Reservation

BENEWAH

LATAH

NEZ PERCE

CLEARWATER

Nez Perce
Reservation
(1855)

Nez Perce
Reservation
(1863)

Legend

- Springs and Fountain-Claims
- Paouse River Basin Adjudication Boundary
- Nez Perce Reservation Boundary (1863)
- Nez Perce Reservation Boundary (1855)
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 - 1706010804 Union Flat Creek

Washington

Idaho

Moscow

Genesee

Potlatch

Princeton

Harvard

5000

5002

5001

5015

5014

5013

5008

5010

5009

5011

5007

5005

5006

5004

5003

5016

5017

Washington

Idaho

Moscow

Genesee

Potlatch

Princeton

Harvard

5000

5002

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5011

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5016

5017

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DEC 30 2019

DEPARTMENT OF
WATER RESOURCES

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Attorneys for the Nez Perce Tribe

**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)

) **NOTICE OF PROVISIONAL CLAIM**

) **Federal Reserved Water Right**

) *87-12172*

)

Preliminary statement:

The Nez Perce Tribe submits this provisional federal reserved water right claim based on surveys performed in the late 19th and early 20th centuries by teams sent by the Commissioner of the General Land Office (GLO) of the United States Department of the Interior, pursuant to Congressional authorization, to survey the Nez Perce Reservation and surrounding territory. *See* 43 U.S.C. 751, *et seq.*, derived from acts of May 18, 1796, ch. 29, §2, 1 Stat. 465; May 10, 1800, ch. 55, §3, 2 Stat. 73; May 30, 1862, 12 Stat. 409; Mar. 3, 1877, ch. 105, 19 Stat. 348. The United States' survey teams took copious and detailed notes of their work and produced detailed maps of the land surveyed. Those notes and maps indicated the presence of springs in the area now identified as Basin 87 in the Palouse River Basin Adjudication (PRBA). Said notes and maps are public documents and readily available in the federal archives.

The Nez Perce Tribe made reasonable efforts to corroborate the existence today of the springs identified through the GLO surveying and mapping efforts from the 19th and early 20th centuries. This included reviewing all available hydrologic or other data sources such as Historic United States Geological Survey Topo maps; National Hydrography data set; United States Fish & Wildlife Wetland Inventory; Farm Services National Agricultural Imagery Program 2006-2017; University of Idaho Water Research Maps by Jones & Ross; Washington National Guard black and white aerial imagery flown in 1933-1934; and University of Idaho Historical Aerial imagery and photo collections. The Nez Perce Tribe's review also included careful examination of satellite imagery found on Google Earth; Farm Service National Agricultural Imagery Program from years 2004 to current imagery from 2017; available Lidar imagery; and City of Moscow 3-inch pixel color digital aerial imagery flown in 2018.

The Nez Perce Tribe submits this and other provisional claims to springs on private land on its belief that these provisional claims have a reasonable basis in fact; i.e., that these springs in fact exist on these parcels of land. However, these provisional spring locations are neither the subject of existing water rights found on the Idaho Department of Water Resources (IDWR) database for Basin 87, nor are they the subject of claims filed by the end of August 2019 in the PRBA. These data sources, then, could not serve as the basis from which the Nez Perce Tribe could file a claim pursuant to its expressly reserved rights under Article VIII of the Nez Perce Treaty of June 9, 1863, 14 Stat. 647, with the United States, described in more detail below in Paragraphs 9 and 10. In addition, private land owners, the United States as trustee, and the Nez Perce Tribe are not required to have filed all claims by August 31, 2019. *See In Re PRBA, No. 59576 (D. Idaho March 1, 2017)(Order Granting Motion to File Stipulation for establishment of procedure for adjudication of de minimis domestic and stock water claims).*

Accordingly, at the appropriate time in the adjudication of the claims to springs in the PRBA, the Nez Perce Tribe will seek an order and leave of court for permission to gain access to the private parcels of land that are the subject of its provisional claims to verify the existence of said springs. If, following field verification, a spring is not identified on those lands, then no claim will be pursued. The Nez Perce Tribe is not aware of any other acceptable means to verify these claims but is open to discussion of same with the Court and representatives of IDWR.

1. Name and address of claimant:

NEZ PERCE TRIBE, acting through the Nez Perce Tribal Executive Committee
Contact Person: Shannon F. Wheeler, Chairman
Nez Perce Tribal Executive Committee
Nez Perce Tribe
P.O. Box 305
Lapwai, ID 83540

2. Date of Priority: Time Immemorial

3. Source: Spring and/or fountain (ID #5013-1)

4. **Point of Diversion:** This claim is for a spring and/or fountain *in situ* including sufficient groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or fountain.

Township: 40N Range: 05W Section: 13 Q: Boise QQ: NWNW *See Attached Map.*

5. **Place of Use:**

The approximate center point is located with UTM Coordinates:

Zone: 11N; 506605, 5184751; which is located in:

Township: 40N Range: 05W Section: 13 Q: Boise QQ: NWNW *See Attached Map.*

6. **Purpose of Water Use:**

The purpose of use includes the full range which the Nez Perce Tribe and its members have always used life and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce 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.

8. **Quantity Reserved (In cfs):** Half the natural flow.

9. **Basis of Claim:**

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty with the Nez Percés, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty with the Nez Percés, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Washington State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658, *modified sub nom. Washington v. United States*, 444 U.S. 816 (1979), and its progeny.

10. **Other Provisions:**

- a. The United States has asserted other claims in the PRBA. Paragraphs 10(a) – (g) express assertions applicable to all claims filed by the Bureau of Indian Affairs in its capacity as trustee for the Nez Perce Tribe in the PRBA. The United States claims waters from groundwater and surface water sources within the Palouse River Basin in the state of Idaho to satisfy the rights reserved to the Nez Perce Tribe by the 1855 Treaty and the 1863 Treaty and to fulfill the permanent homeland purpose of the Nez Perce Reservation. Such present and future purposes include: instream flows for fish habitat; hunting, gathering, and pasturing; spring and fountain flows pursuant to Article VIII of the 1863 Treaty; and consumptive use claims on two allotments held in trust by the United States.

- b. The Nez Perce Tribe has occupied a territory in what is now central Idaho, southeastern Washington, and northeastern Oregon since time immemorial. *United States v. Webb*, 219 F.3d 1127, 1129 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). The Palouse River Basin is within the Tribe's traditional lands.
- c. There is a complex history of the United States' establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the "exclusive right to fish in all streams running through or bordering" the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the "right of taking fish at all usual and accustomed places in common with citizens of the Territory" to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855, pursuant to the 1855 Treaty.
- d. Article III of the 1855 Treaty further reserves to the Tribe "the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land."
- e. Article VIII of the 1863 Treaty includes a unique provision reserving to the Nez Perce Tribe the use of "springs and fountains" within the area ceded under Article I of the 1863 Treaty. For purposes of the priority date of the springs and fountains claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855, pursuant to the 1855 Treaty.
- f. Pursuant to the General Allotment Act of 1887, Act of February 8, 1887, 24 Stat. 388, *amended*, Act of February 28, 1891, 26 Stat. 794, there are two allotments (Allotments 182-43 and 182-45) held in trust by the United States located within the boundaries of the Palouse River Basin and the northwestern corner of the Nez Perce Reservation. For purposes of the priority date of the domestic and stock watering claims for these two allotments, the United States claims June 11, 1855, pursuant to the 1855 Treaty.
- g. 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. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe's future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Nez Perce Reservation. The statute's terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Nez Perce Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.

11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled "How you will receive notices in the Palouse 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 Shannon F. Wheeler, and as Chairman of the Nez Perce Tribal Executive Committee that I have signed the foregoing document in the space below as duly authorized on behalf of the Nez Perce Tribe, and that the statements contained in the foregoing document are true and correct.

Signature of Authorized Agent:
Title and Organization:



Shannon F. Wheeler, Chairman
Nez Perce Tribe

Dated this 27th day of December, 2019.

Notice is hereby given that the Nez Perce Tribe Office of Legal Counsel and Native American Rights Fund will represent the Nez Perce Tribe, in all matters pertaining to the PRBA.

All notices, filings, and correspondence concerning this matter should be mailed to the Nez Perce Tribe at the address set forth below:



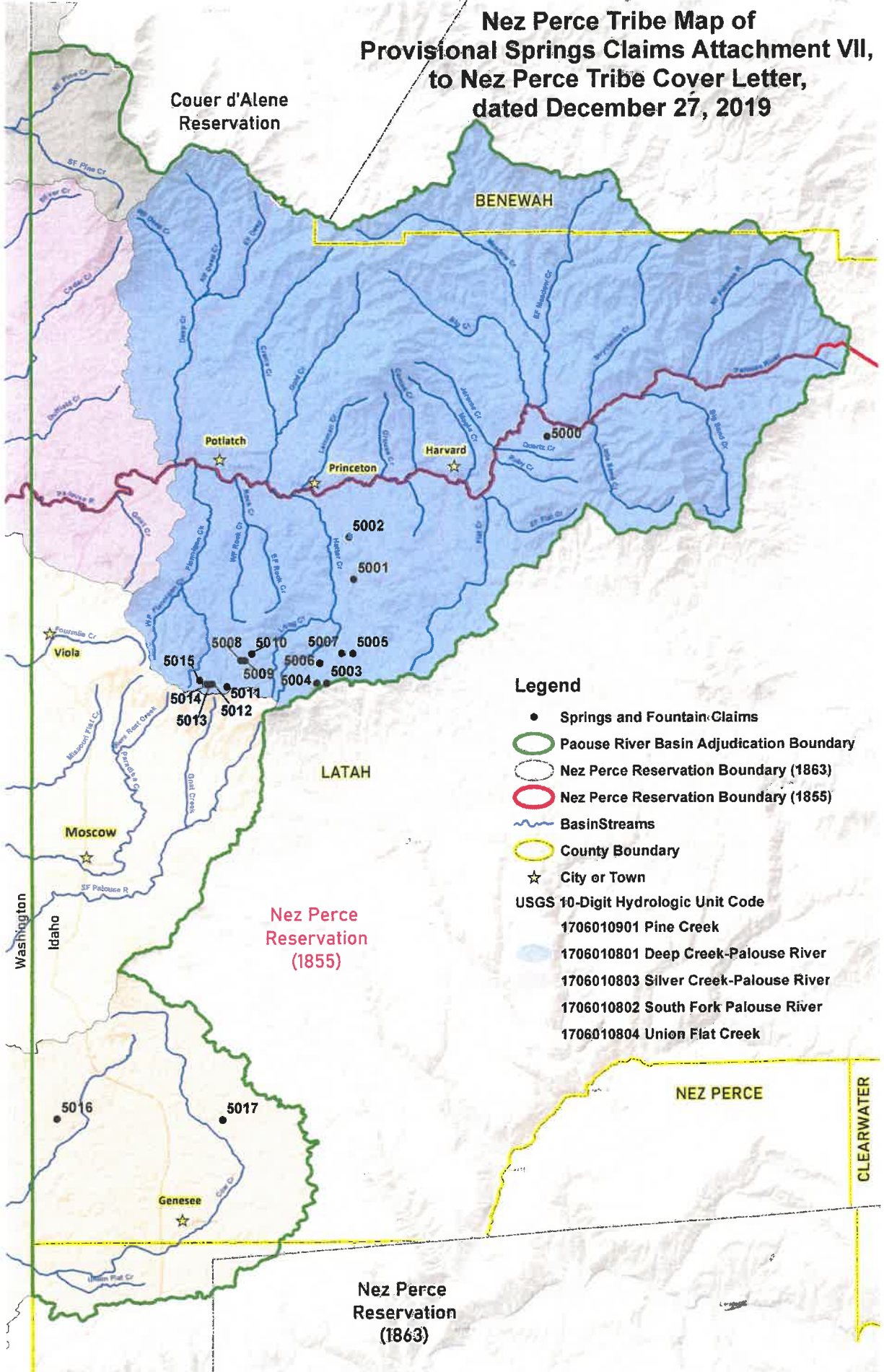
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Nez Perce Tribe
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Lapwai, ID 83540

Steven C. Moore, *pro hac vice*
Senior Staff Attorney
Native American Rights Fund
1506 Broadway
Boulder, CO 80302

Attorneys for the Nez Perce Tribe

Dated this 27th day of December, 2019.

**Nez Perce Tribe Map of
Provisional Springs Claims Attachment VII,
to Nez Perce Tribe Cover Letter,
dated December 27, 2019**



Legend

- Springs and Fountain Claims
- Paouse River Basin Adjudication Boundary
- Nez Perce Reservation Boundary (1863)
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Attorneys for the Nez Perce Tribe

**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)

) **NOTICE OF PROVISIONAL CLAIM**
)
) **Federal Reserved Water Right**
)

87-12173

Preliminary statement:

The Nez Perce Tribe submits this provisional federal reserved water right claim based on surveys performed in the late 19th and early 20th centuries by teams sent by the Commissioner of the General Land Office (GLO) of the United States Department of the Interior, pursuant to Congressional authorization, to survey the Nez Perce Reservation and surrounding territory. *See* 43 U.S.C. 751, *et seq.*, derived from acts of May 18, 1796, ch. 29, §2, 1 Stat. 465; May 10, 1800, ch. 55, §3, 2 Stat. 73; May 30, 1862, 12 Stat. 409; Mar. 3, 1877, ch. 105, 19 Stat. 348. The United States' survey teams took copious and detailed notes of their work and produced detailed maps of the land surveyed. Those notes and maps indicated the presence of springs in the area now identified as Basin 87 in the Palouse River Basin Adjudication (PRBA). Said notes and maps are public documents and readily available in the federal archives.

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Accordingly, at the appropriate time in the adjudication of the claims to springs in the PRBA, the Nez Perce Tribe will seek an order and leave of court for permission to gain access to the private parcels of land that are the subject of its provisional claims to verify the existence of said springs. If, following field verification, a spring is not identified on those lands, then no claim will be pursued. The Nez Perce Tribe is not aware of any other acceptable means to verify these claims but is open to discussion of same with the Court and representatives of IDWR.

1. Name and address of claimant:

NEZ PERCE TRIBE, acting through the Nez Perce Tribal Executive Committee
Contact Person: Shannon F. Wheeler, Chairman
Nez Perce Tribal Executive Committee
Nez Perce Tribe
P.O. Box 305
Lapwai, ID 83540

2. Date of Priority: Time Immemorial

3. Source: Spring and/or fountain (ID #5014-1)

4. **Point of Diversion:** This claim is for a spring and/or fountain *in situ* including sufficient groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or fountain.

Township: 40N Range: 05W Section: 13 Q: Boise QQ: NWNW *See Attached Map.*

5. **Place of Use:**

The approximate center point is located with UTM Coordinates:

Zone: 11N; 506447, 5184747; which is located in:

Township: 40N Range: 05W Section: 13 Q: Boise QQ: NWNW *See Attached Map.*

6. **Purpose of Water Use:**

The purpose of use includes the full range which the Nez Perce Tribe and its members have always used life and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce 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.

8. **Quantity Reserved (In cfs):** Half the natural flow.

9. **Basis of Claim:**

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty with the Nez Percés, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty with the Nez Percés, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Washington State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658, *modified sub nom. Washington v. United States*, 444 U.S. 816 (1979), and its progeny.

10. **Other Provisions:**

- a. The United States has asserted other claims in the PRBA. Paragraphs 10(a) – (g) express assertions applicable to all claims filed by the Bureau of Indian Affairs in its capacity as trustee for the Nez Perce Tribe in the PRBA. The United States claims waters from groundwater and surface water sources within the Palouse River Basin in the state of Idaho to satisfy the rights reserved to the Nez Perce Tribe by the 1855 Treaty and the 1863 Treaty and to fulfill the permanent homeland purpose of the Nez Perce Reservation. Such present and future purposes include: instream flows for fish habitat; hunting, gathering, and pasturing; spring and fountain flows pursuant to Article VIII of the 1863 Treaty; and consumptive use claims on two allotments held in trust by the United States.

- b. The Nez Perce Tribe has occupied a territory in what is now central Idaho, southeastern Washington, and northeastern Oregon since time immemorial. *United States v. Webb*, 219 F.3d 1127, 1129 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). The Palouse River Basin is within the Tribe's traditional lands.
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- f. Pursuant to the General Allotment Act of 1887, Act of February 8, 1887, 24 Stat. 388, *amended*, Act of February 28, 1891, 26 Stat. 794, there are two allotments (Allotments 182-43 and 182-45) held in trust by the United States located within the boundaries of the Palouse River Basin and the northwestern corner of the Nez Perce Reservation. For purposes of the priority date of the domestic and stock watering claims for these two allotments, the United States claims June 11, 1855, pursuant to the 1855 Treaty.
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11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled "How you will receive notices in the Palouse 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 Shannon F. Wheeler, and as Chairman of the Nez Perce Tribal Executive Committee that I have signed the foregoing document in the space below as duly authorized on behalf of the Nez Perce Tribe, and that the statements contained in the foregoing document are true and correct.

Signature of Authorized Agent:
Title and Organization:




Shannon F. Wheeler, Chairman
Nez Perce Tribe

Dated this 27th day of December, 2019.

Notice is hereby given that the Nez Perce Tribe Office of Legal Counsel and Native American Rights Fund will represent the Nez Perce Tribe, in all matters pertaining to the PRBA.

All notices, filings, and correspondence concerning this matter should be mailed to the Nez Perce Tribe at the address set forth below:



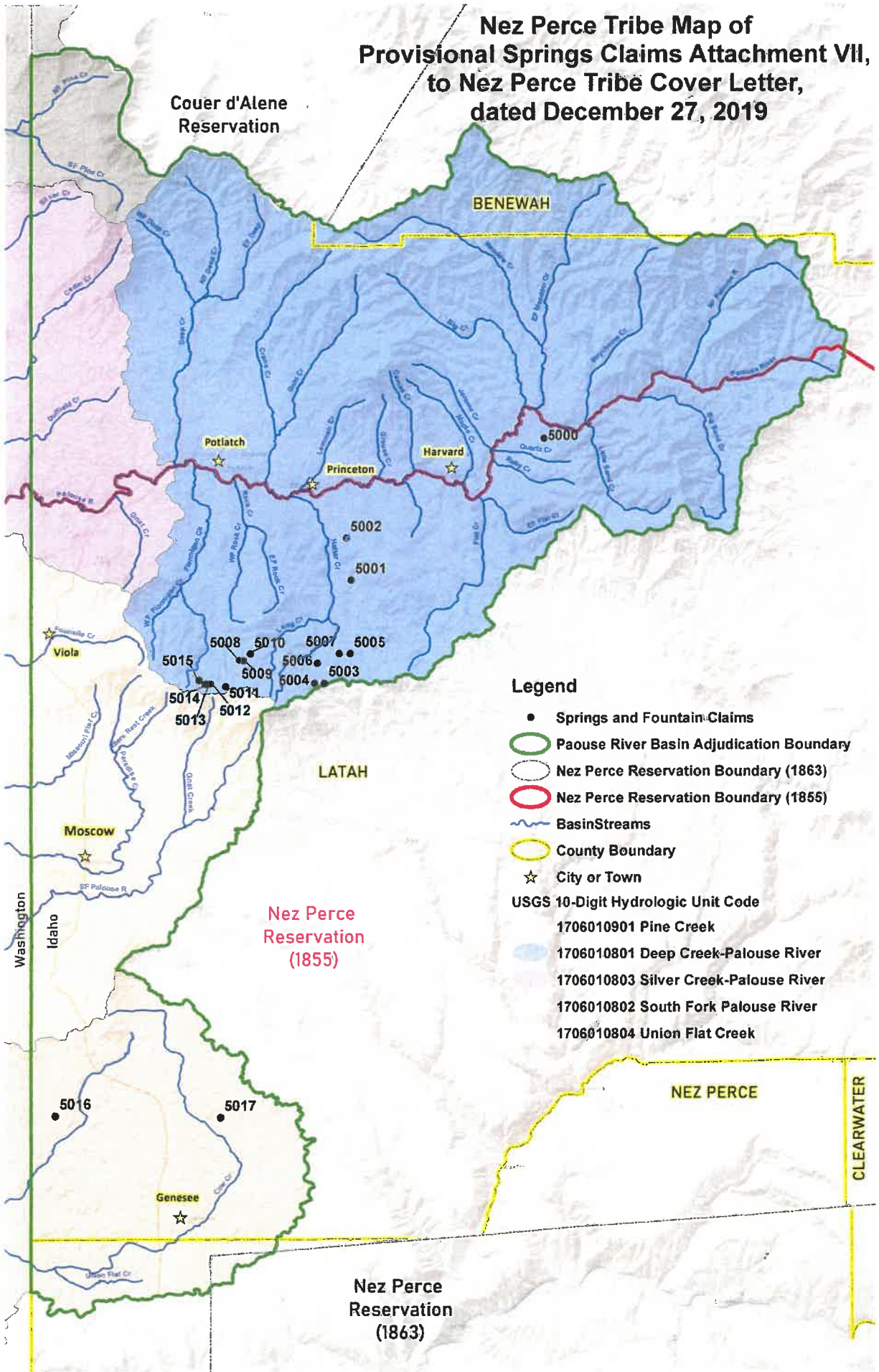
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Lapwai, ID 83540

Steven C. Moore, *pro hac vice*
Senior Staff Attorney
Native American Rights Fund
1506 Broadway
Boulder, CO 80302

Attorneys for the Nez Perce Tribe

Dated this 27th day of December, 2019.

Nez Perce Tribe Map of Provisional Springs Claims Attachment VII, to Nez Perce Tribe Cover Letter, dated December 27, 2019



Legend

- Springs and Fountain Claims
- Paouse River Basin Adjudication Boundary
- Nez Perce Reservation Boundary (1863)
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**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)

) **NOTICE OF PROVISIONAL CLAIM**

) **Federal Reserved Water Right**

)
) *87-12174*
)

Preliminary statement:

The Nez Perce Tribe submits this provisional federal reserved water right claim based on surveys performed in the late 19th and early 20th centuries by teams sent by the Commissioner of the General Land Office (GLO) of the United States Department of the Interior, pursuant to Congressional authorization, to survey the Nez Perce Reservation and surrounding territory. *See* 43 U.S.C. 751, *et seq.*, derived from acts of May 18, 1796, ch. 29, §2, 1 Stat. 465; May 10, 1800, ch. 55, §3, 2 Stat. 73; May 30, 1862, 12 Stat. 409; Mar. 3, 1877, ch. 105, 19 Stat. 348. The United States' survey teams took copious and detailed notes of their work and produced detailed maps of the land surveyed. Those notes and maps indicated the presence of springs in the area now identified as Basin 87 in the Palouse River Basin Adjudication (PRBA). Said notes and maps are public documents and readily available in the federal archives.

The Nez Perce Tribe made reasonable efforts to corroborate the existence today of the springs identified through the GLO surveying and mapping efforts from the 19th and early 20th centuries. This included reviewing all available hydrologic or other data sources such as Historic United States Geological Survey Topo maps; National Hydrography data set; United States Fish & Wildlife Wetland Inventory; Farm Services National Agricultural Imagery Program 2006-2017; University of Idaho Water Research Maps by Jones & Ross; Washington National Guard black and white aerial imagery flown in 1933-1934; and University of Idaho Historical Aerial imagery and photo collections. The Nez Perce Tribe's review also included careful examination of satellite imagery found on Google Earth; Farm Service National Agricultural Imagery Program from years 2004 to current imagery from 2017; available Lidar imagery; and City of Moscow 3-inch pixel color digital aerial imagery flown in 2018.

The Nez Perce Tribe submits this and other provisional claims to springs on private land on its belief that these provisional claims have a reasonable basis in fact; i.e., that these springs in fact exist on these parcels of land. However, these provisional spring locations are neither the subject of existing water rights found on the Idaho Department of Water Resources (IDWR) database for Basin 87, nor are they the subject of claims filed by the end of August 2019 in the PRBA. These data sources, then, could not serve as the basis from which the Nez Perce Tribe could file a claim pursuant to its expressly reserved rights under Article VIII of the Nez Perce Treaty of June 9, 1863, 14 Stat. 647, with the United States, described in more detail below in Paragraphs 9 and 10. In addition, private land owners, the United States as trustee, and the Nez Perce Tribe are not required to have filed all claims by August 31, 2019. *See In Re PRBA, No. 59576 (D. Idaho March 1, 2017)(Order Granting Motion to File Stipulation for establishment of procedure for adjudication of de minimis domestic and stock water claims).*

Accordingly, at the appropriate time in the adjudication of the claims to springs in the PRBA, the Nez Perce Tribe will seek an order and leave of court for permission to gain access to the private parcels of land that are the subject of its provisional claims to verify the existence of said springs. If, following field verification, a spring is not identified on those lands, then no claim will be pursued. The Nez Perce Tribe is not aware of any other acceptable means to verify these claims but is open to discussion of same with the Court and representatives of IDWR.

1. Name and address of claimant:

NEZ PERCE TRIBE, acting through the Nez Perce Tribal Executive Committee
Contact Person: Shannon F. Wheeler, Chairman
Nez Perce Tribal Executive Committee
Nez Perce Tribe
P.O. Box 305
Lapwai, ID 83540

2. Date of Priority: Time Immemorial

3. Source: Spring and/or fountain (ID #5015-1)

4. **Point of Diversion:** This claim is for a spring and/or fountain *in situ* including sufficient groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or fountain.

Township: 40N Range: 05W Section: 11 Q: Boise QQ: SESE *See Attached Map.*

5. **Place of Use:**

The approximate center point is located with UTM Coordinates:

Zone: 11N; 506110, 5184962; which is located in:

Township: 40N Range: 05W Section: 11 Q: Boise QQ: SESE *See Attached Map.*

6. **Purpose of Water Use:**

The purpose of use includes the full range which the Nez Perce Tribe and its members have always used life and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce 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.

8. **Quantity Reserved (In cfs):** Half the natural flow.

9. **Basis of Claim:**

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty with the Nez Percés, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty with the Nez Percés, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Washington State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658, *modified sub nom. Washington v. United States*, 444 U.S. 816 (1979), and its progeny.

10. **Other Provisions:**

- a. The United States has asserted other claims in the PRBA. Paragraphs 10(a) – (g) express assertions applicable to all claims filed by the Bureau of Indian Affairs in its capacity as trustee for the Nez Perce Tribe in the PRBA. The United States claims waters from groundwater and surface water sources within the Palouse River Basin in the state of Idaho to satisfy the rights reserved to the Nez Perce Tribe by the 1855 Treaty and the 1863 Treaty and to fulfill the permanent homeland purpose of the Nez Perce Reservation. Such present and future purposes include: instream flows for fish habitat; hunting, gathering, and pasturing; spring and fountain flows pursuant to Article VIII of the 1863 Treaty; and consumptive use claims on two allotments held in trust by the United States.

- b. The Nez Perce Tribe has occupied a territory in what is now central Idaho, southeastern Washington, and northeastern Oregon since time immemorial. *United States v. Webb*, 219 F.3d 1127, 1129 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). The Palouse River Basin is within the Tribe's traditional lands.
- c. There is a complex history of the United States' establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the "exclusive right to fish in all streams running through or bordering" the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the "right of taking fish at all usual and accustomed places in common with citizens of the Territory" to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855, pursuant to the 1855 Treaty.
- d. Article III of the 1855 Treaty further reserves to the Tribe "the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land."
- e. Article VIII of the 1863 Treaty includes a unique provision reserving to the Nez Perce Tribe the use of "springs and fountains" within the area ceded under Article I of the 1863 Treaty. For purposes of the priority date of the springs and fountains claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855, pursuant to the 1855 Treaty.
- f. Pursuant to the General Allotment Act of 1887, Act of February 8, 1887, 24 Stat. 388, *amended*, Act of February 28, 1891, 26 Stat. 794, there are two allotments (Allotments 182-43 and 182-45) held in trust by the United States located within the boundaries of the Palouse River Basin and the northwestern corner of the Nez Perce Reservation. For purposes of the priority date of the domestic and stock watering claims for these two allotments, the United States claims June 11, 1855, pursuant to the 1855 Treaty.
- g. 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. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe's future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Nez Perce Reservation. The statute's terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Nez Perce Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.

11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled "How you will receive notices in the Palouse 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 Shannon F. Wheeler, and as Chairman of the Nez Perce Tribal Executive Committee that I have signed the foregoing document in the space below as duly authorized on behalf of the Nez Perce Tribe, and that the statements contained in the foregoing document are true and correct.

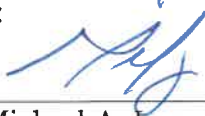
Signature of Authorized Agent:
Title and Organization:


Shannon F. Wheeler, Chairman
Nez Perce Tribe

Dated this 27th day of December, 2019.

Notice is hereby given that the Nez Perce Tribe Office of Legal Counsel and Native American Rights Fund will represent the Nez Perce Tribe, in all matters pertaining to the PRBA.

All notices, filings, and correspondence concerning this matter should be mailed to the Nez Perce Tribe at the address set forth below:



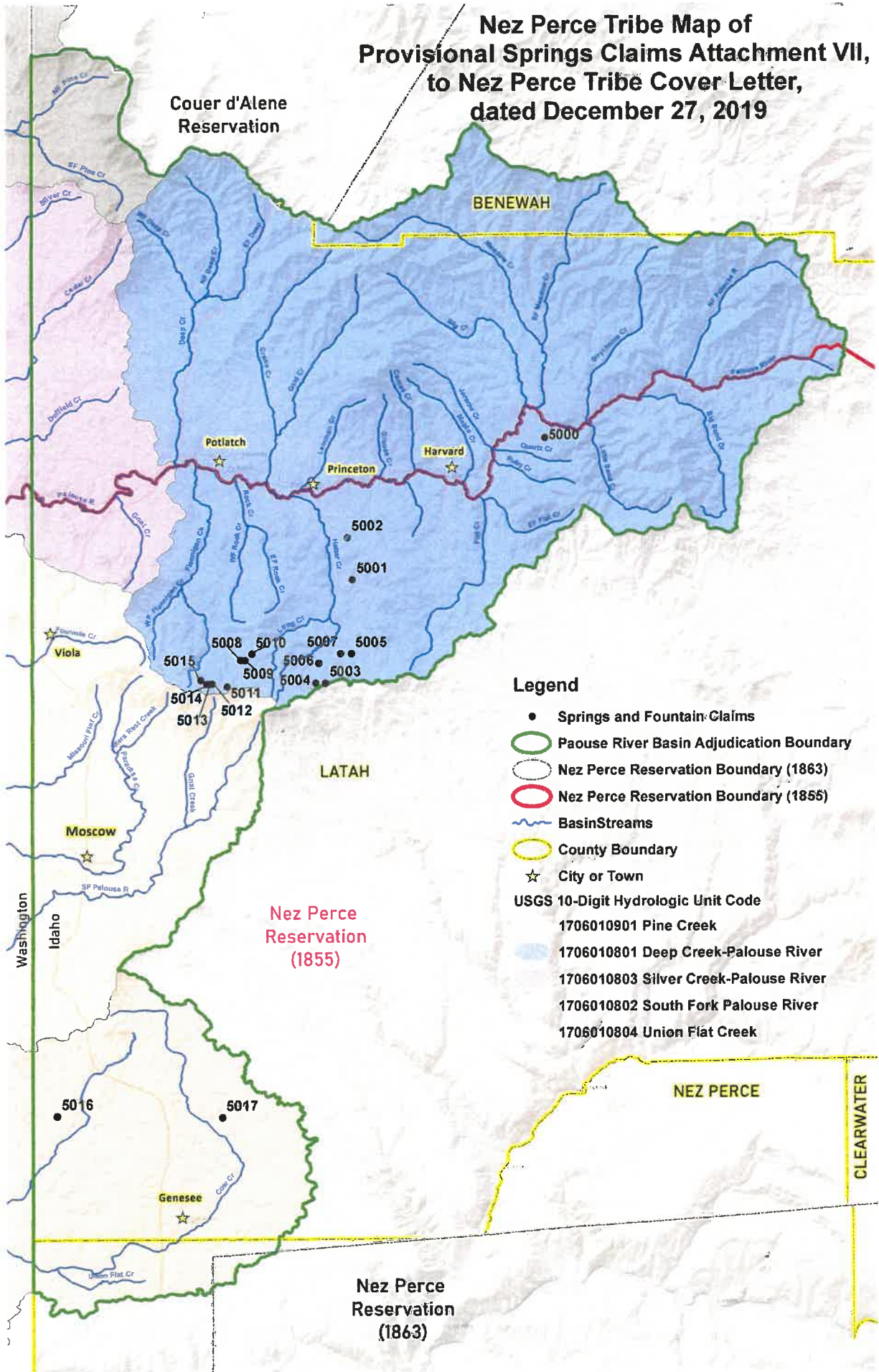
Michael A. Lopez, ISB #8356
Senior Staff Attorney
Nez Perce Tribe
Office of Legal Counsel
P.O. Box 305
Lapwai, ID 83540

Steven C. Moore, *pro hac vice*
Senior Staff Attorney
Native American Rights Fund
1506 Broadway
Boulder, CO 80302

Attorneys for the Nez Perce Tribe

Dated this 27th day of December, 2019.

Nez Perce Tribe Map of Provisional Springs Claims Attachment VII, to Nez Perce Tribe Cover Letter, dated December 27, 2019



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DEC 30 2019

DEPARTMENT OF
WATER RESOURCES

Michael Lopez (ISB No. 8356)
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smoore@narf.org

Attorneys for the Nez Perce Tribe

**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)

) **NOTICE OF PROVISIONAL CLAIM**

) **Federal Reserved Water Right**

) *87-12175*

Preliminary statement:

The Nez Perce Tribe submits this provisional federal reserved water right claim based on surveys performed in the late 19th and early 20th centuries by teams sent by the Commissioner of the General Land Office (GLO) of the United States Department of the Interior, pursuant to Congressional authorization, to survey the Nez Perce Reservation and surrounding territory. *See* 43 U.S.C. 751, *et seq.*, derived from acts of May 18, 1796, ch. 29, §2, 1 Stat. 465; May 10, 1800, ch. 55, §3, 2 Stat. 73; May 30, 1862, 12 Stat. 409; Mar. 3, 1877, ch. 105, 19 Stat. 348. The United States' survey teams took copious and detailed notes of their work and produced detailed maps of the land surveyed. Those notes and maps indicated the presence of springs in the area now identified as Basin 87 in the Palouse River Basin Adjudication (PRBA). Said notes and maps are public documents and readily available in the federal archives.

The Nez Perce Tribe made reasonable efforts to corroborate the existence today of the springs identified through the GLO surveying and mapping efforts from the 19th and early 20th centuries. This included reviewing all available hydrologic or other data sources such as Historic United States Geological Survey Topo maps; National Hydrography data set; United States Fish & Wildlife Wetland Inventory; Farm Services National Agricultural Imagery Program 2006-2017; University of Idaho Water Research Maps by Jones & Ross; Washington National Guard black and white aerial imagery flown in 1933-1934; and University of Idaho Historical Aerial imagery and photo collections. The Nez Perce Tribe's review also included careful examination of satellite imagery found on Google Earth; Farm Service National Agricultural Imagery Program from years 2004 to current imagery from 2017; available Lidar imagery; and City of Moscow 3-inch pixel color digital aerial imagery flown in 2018.

The Nez Perce Tribe submits this and other provisional claims to springs on private land on its belief that these provisional claims have a reasonable basis in fact; i.e., that these springs in fact exist on these parcels of land. However, these provisional spring locations are neither the subject of existing water rights found on the Idaho Department of Water Resources (IDWR) database for Basin 87, nor are they the subject of claims filed by the end of August 2019 in the PRBA. These data sources, then, could not serve as the basis from which the Nez Perce Tribe could file a claim pursuant to its expressly reserved rights under Article VIII of the Nez Perce Treaty of June 9, 1863, 14 Stat. 647, with the United States, described in more detail below in Paragraphs 9 and 10. In addition, private land owners, the United States as trustee, and the Nez Perce Tribe are not required to have filed all claims by August 31, 2019. *See In Re PRBA, No. 59576 (D. Idaho March 1, 2017)(Order Granting Motion to File Stipulation for establishment of procedure for adjudication of de minimis domestic and stock water claims).*

Accordingly, at the appropriate time in the adjudication of the claims to springs in the PRBA, the Nez Perce Tribe will seek an order and leave of court for permission to gain access to the private parcels of land that are the subject of its provisional claims to verify the existence of said springs. If, following field verification, a spring is not identified on those lands, then no claim will be pursued. The Nez Perce Tribe is not aware of any other acceptable means to verify these claims but is open to discussion of same with the Court and representatives of IDWR.

1. Name and address of claimant:

NEZ PERCE TRIBE, acting through the Nez Perce Tribal Executive Committee
Contact Person: Shannon F. Wheeler, Chairman
Nez Perce Tribal Executive Committee
Nez Perce Tribe
P.O. Box 305
Lapwai, ID 83540

2. Date of Priority: Time Immemorial

3. Source: Spring and/or fountain (ID #5016-1)

4. **Point of Diversion:** This claim is for a spring and/or fountain *in situ* including sufficient groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or fountain.

Township: 38N Range: 05W Section: 30 Q: Boise QQ: SESW *See Attached Map.*

5. **Place of Use:**

The approximate center point is located with UTM Coordinates:

Zone: 11N; 498279, 5161076; which is located in:

Township: 38N Range: 05W Section: 30 Q: Boise QQ: SESW *See Attached Map.*

6. **Purpose of Water Use:**

The purpose of use includes the full range which the Nez Perce Tribe and its members have always used life and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce 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.

8. **Quantity Reserved (In cfs):** Half the natural flow.

9. **Basis of Claim:**

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty with the Nez Percés, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty with the Nez Percés, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Washington State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658, *modified sub nom. Washington v. United States*, 444 U.S. 816 (1979), and its progeny.

10. **Other Provisions:**

- a. The United States has asserted other claims in the PRBA. Paragraphs 10(a) – (g) express assertions applicable to all claims filed by the Bureau of Indian Affairs in its capacity as trustee for the Nez Perce Tribe in the PRBA. The United States claims waters from groundwater and surface water sources within the Palouse River Basin in the state of Idaho to satisfy the rights reserved to the Nez Perce Tribe by the 1855 Treaty and the 1863 Treaty and to fulfill the permanent homeland purpose of the Nez Perce Reservation. Such present and future purposes include: instream flows for fish habitat; hunting, gathering, and pasturing; spring and fountain flows pursuant to Article VIII of the 1863 Treaty; and consumptive use claims on two allotments held in trust by the United States.

- b. The Nez Perce Tribe has occupied a territory in what is now central Idaho, southeastern Washington, and northeastern Oregon since time immemorial. *United States v. Webb*, 219 F.3d 1127, 1129 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). The Palouse River Basin is within the Tribe's traditional lands.
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- d. Article III of the 1855 Treaty further reserves to the Tribe "the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land."
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11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled "How you will receive notices in the Palouse 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 Shannon F. Wheeler, and as Chairman of the Nez Perce Tribal Executive Committee that I have signed the foregoing document in the space below as duly authorized on behalf of the Nez Perce Tribe, and that the statements contained in the foregoing document are true and correct.

Signature of Authorized Agent:

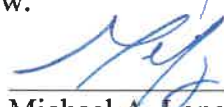
Title and Organization:


Shannon F. Wheeler, Chairman
Nez Perce Tribe

Dated this 27th day of December, 2019.

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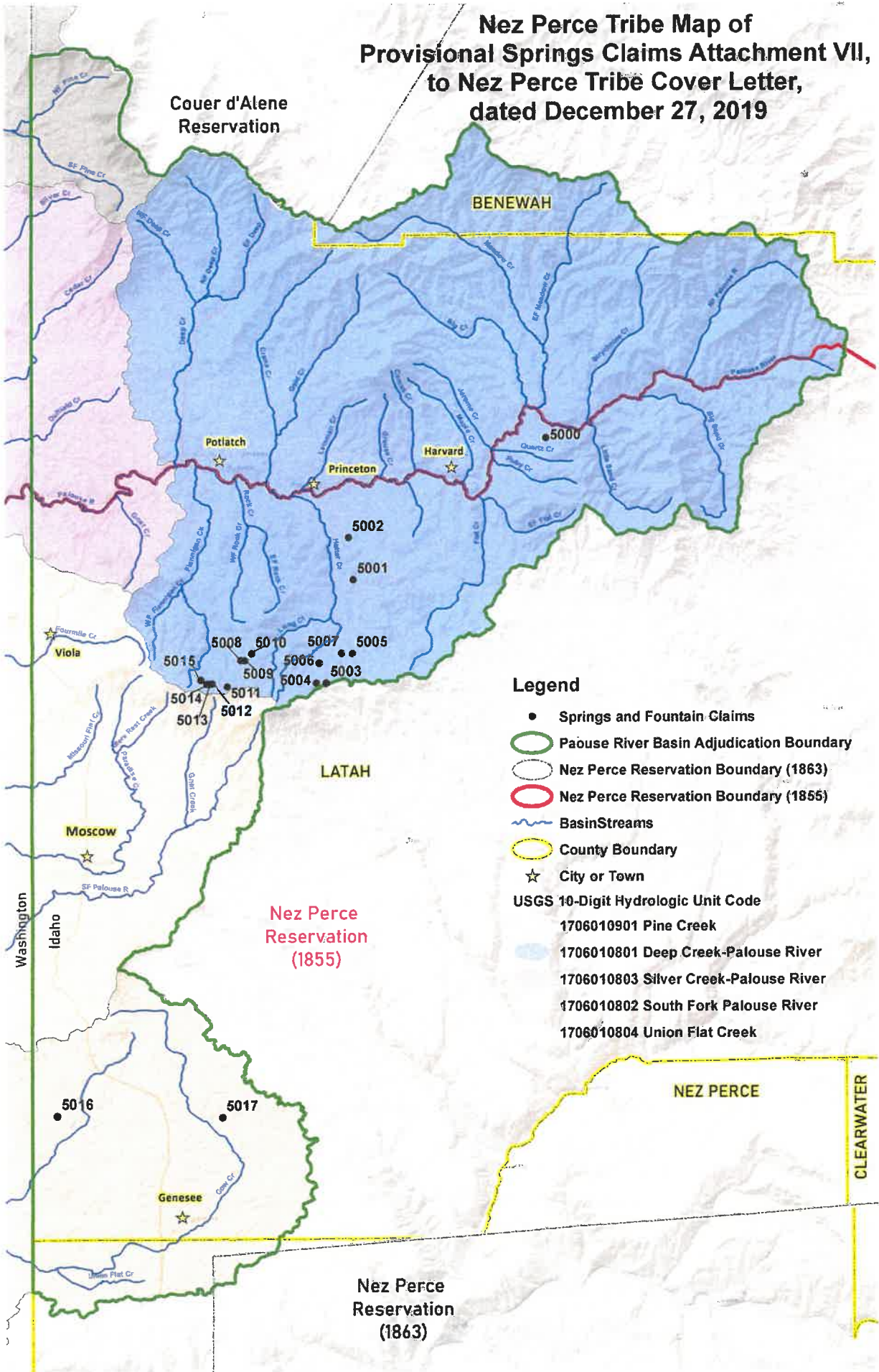
Michael A. Lopez, ISB #8356
Senior Staff Attorney
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Office of Legal Counsel
P.O. Box 305
Lapwai, ID 83540

Steven C. Moore, *pro hac vice*
Senior Staff Attorney
Native American Rights Fund
1506 Broadway
Boulder, CO 80302

Attorneys for the Nez Perce Tribe

Dated this 27th day of December, 2019.

Nez Perce Tribe Map of Provisional Springs Claims Attachment VII, to Nez Perce Tribe Cover Letter, dated December 27, 2019



Legend

- Springs and Fountain Claims
- Paouse River Basin Adjudication Boundary
- Nez Perce Reservation Boundary (1863)
- Nez Perce Reservation Boundary (1855)
- ~ BasinStreams
- County Boundary
- ☆ City or Town
- USGS 10-Digit Hydrologic Unit Code
 - 1706010901 Pine Creek
 - 1706010801 Deep Creek-Palouse River
 - 1706010803 Silver Creek-Palouse River
 - 1706010802 South Fork Palouse River
 - 1706010804 Union Flat Creek

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DEPARTMENT OF
WATER RESOURCES

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(303) 447-8760
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Attorneys for the Nez Perce Tribe

**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)

) **NOTICE OF PROVISIONAL CLAIM**

) **Federal Reserved Water Right**

) *87-12176*

Preliminary statement:

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NEZ PERCE TRIBE, acting through the Nez Perce Tribal Executive Committee
Contact Person: Shannon F. Wheeler, Chairman
Nez Perce Tribal Executive Committee
Nez Perce Tribe
P.O. Box 305
Lapwai, ID 83540

2. Date of Priority: Time Immemorial

3. Source: Spring and/or fountain (ID #5017-1)

4. **Point of Diversion:** This claim is for a spring and/or fountain *in situ* including sufficient groundwater to maintain the wetland and/or riparian habitat surrounding the spring and/or fountain.

Township: 38N Range: 05W Section: 25 Q: Boise QQ: SWSE *See Attached Map.*

5. **Place of Use:**

The approximate center point is located with UTM Coordinates:

Zone: 11N; 507336, 5160973; which is located in:

Township: 38N Range: 05W Section: 25 Q: Boise QQ: SWSE *See Attached Map.*

6. **Purpose of Water Use:**

The purpose of use includes the full range which the Nez Perce Tribe and its members have always used life and plant habitat for hunting and gathering uses, as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as components of a water right necessary to fulfill the homeland purpose of the Nez Perce 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.

8. **Quantity Reserved (In cfs):** Half the natural flow.

9. **Basis of Claim:**

The legal basis for this water right includes the following: the reservation of aboriginal rights recognized in *United States v. Winans*, 198 U.S. 371 (1907), and its progeny; the Treaty with the Nez Percés, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty with the Nez Percés, June 9, 1863, 14 Stat. 647 (“1863 Treaty”); the circumstances surrounding the establishment of the Nez Perce Reservation; the doctrine of federal reserved water rights articulated in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny; and the interpretation of treaties in *Washington v. Washington State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658, *modified sub nom. Washington v. United States*, 444 U.S. 816 (1979), and its progeny.

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- a. The United States has asserted other claims in the PRBA. Paragraphs 10(a) – (g) express assertions applicable to all claims filed by the Bureau of Indian Affairs in its capacity as trustee for the Nez Perce Tribe in the PRBA. The United States claims waters from groundwater and surface water sources within the Palouse River Basin in the state of Idaho to satisfy the rights reserved to the Nez Perce Tribe by the 1855 Treaty and the 1863 Treaty and to fulfill the permanent homeland purpose of the Nez Perce Reservation. Such present and future purposes include: instream flows for fish habitat; hunting, gathering, and pasturing; spring and fountain flows pursuant to Article VIII of the 1863 Treaty; and consumptive use claims on two allotments held in trust by the United States.

- b. The Nez Perce Tribe has occupied a territory in what is now central Idaho, southeastern Washington, and northeastern Oregon since time immemorial. *United States v. Webb*, 219 F.3d 1127, 1129 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). The Palouse River Basin is within the Tribe's traditional lands.
- c. There is a complex history of the United States' establishment of the Nez Perce Reservation, including negotiations of treaties and agreements. Regarding fishing rights, Article III of the 1855 Treaty reserves to the Nez Perce Tribe the "exclusive right to fish in all streams running through or bordering" the Reservation created by the 1855 Treaty. Article III of the 1855 Treaty also guaranteed the "right of taking fish at all usual and accustomed places in common with citizens of the Territory" to the Nez Perce. For purposes of the priority date of the instream flow claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855, pursuant to the 1855 Treaty.
- d. Article III of the 1855 Treaty further reserves to the Tribe "the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land."
- e. Article VIII of the 1863 Treaty includes a unique provision reserving to the Nez Perce Tribe the use of "springs and fountains" within the area ceded under Article I of the 1863 Treaty. For purposes of the priority date of the springs and fountains claims, the United States claims Time Immemorial, but in the alternative, claims a priority date of June 11, 1855, pursuant to the 1855 Treaty.
- f. Pursuant to the General Allotment Act of 1887, Act of February 8, 1887, 24 Stat. 388, *amended*, Act of February 28, 1891, 26 Stat. 794, there are two allotments (Allotments 182-43 and 182-45) held in trust by the United States located within the boundaries of the Palouse River Basin and the northwestern corner of the Nez Perce Reservation. For purposes of the priority date of the domestic and stock watering claims for these two allotments, the United States claims June 11, 1855, pursuant to the 1855 Treaty.
- g. 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. The use of this format as required by Idaho Code should not be construed to limit either the United States or the Nez Perce Tribe's future use of water at other points of diversion, places of use, or for other purposes within the boundaries of the Nez Perce Reservation. The statute's terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to fulfill the treaty rights of the Nez Perce Tribe and achieve the purpose of the Nez Perce Reservation as a homeland for the Nez Perce Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Nez Perce Tribe.

11. Signatures:

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled "How you will receive notices in the Palouse 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 Shannon F. Wheeler, and as Chairman of the Nez Perce Tribal Executive Committee that I have signed the foregoing document in the space below as duly authorized on behalf of the Nez Perce Tribe, and that the statements contained in the foregoing document are true and correct.

Signature of Authorized Agent:
Title and Organization:



Shannon F. Wheeler, Chairman
Nez Perce Tribe

Dated this 27th day of December, 2019.

Notice is hereby given that the Nez Perce Tribe Office of Legal Counsel and Native American Rights Fund will represent the Nez Perce Tribe, in all matters pertaining to the PRBA.

All notices, filings, and correspondence concerning this matter should be mailed to the Nez Perce Tribe at the address set forth below:



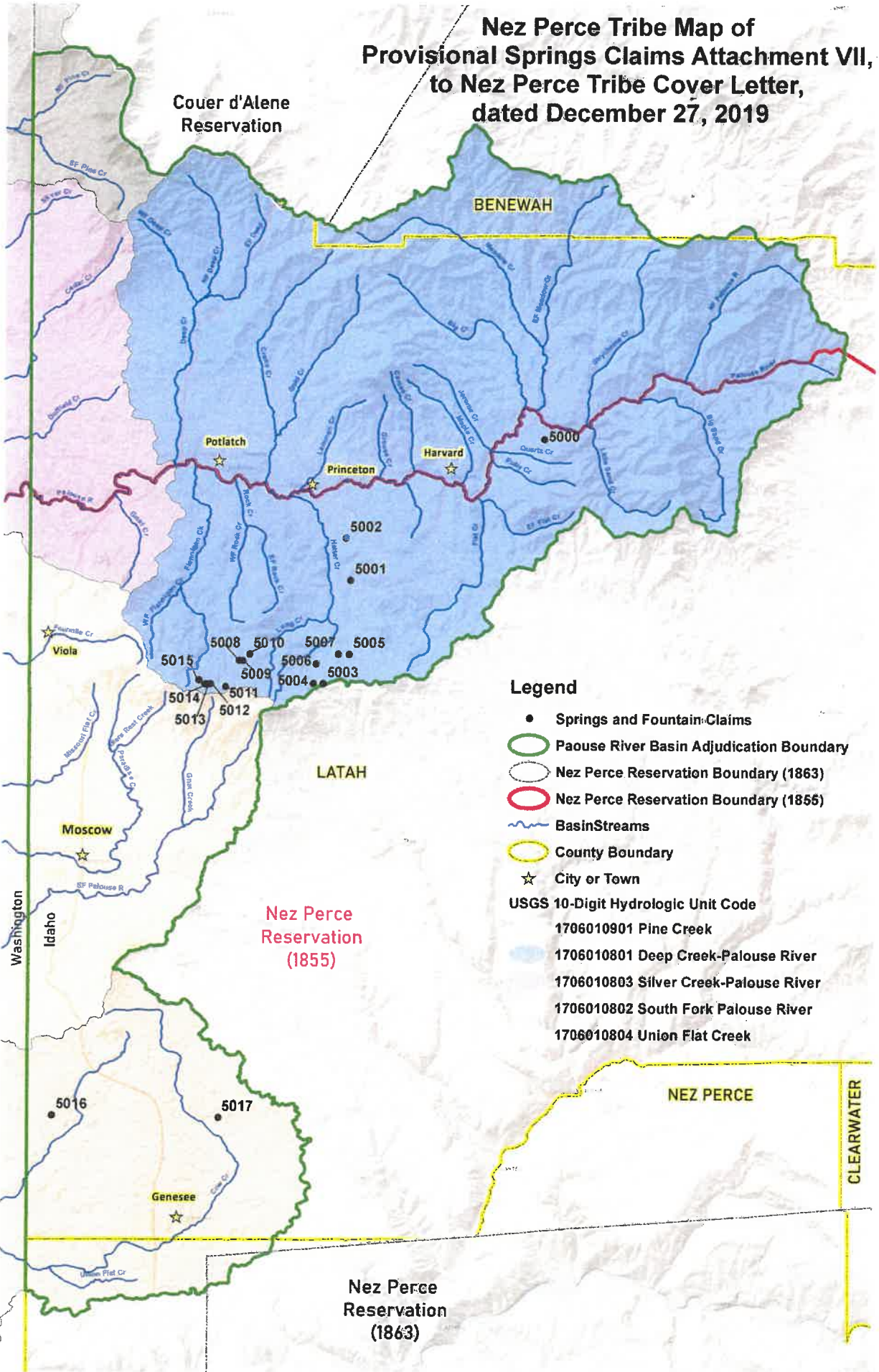
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Attorneys for the Nez Perce Tribe

Dated this 27th day of December, 2019.

**Nez Perce Tribe Map of
Provisional Springs Claims Attachment VII,
to Nez Perce Tribe Cover Letter,
dated December 27, 2019**



Legend

- Springs and Fountain-Claims
- Paouse River Basin Adjudication Boundary
- Nez Perce Reservation Boundary (1863)
- Nez Perce Reservation Boundary (1855)
- ~ BasinStreams
- ▭ County Boundary
- ☆ City or Town
- USGS 10-Digit Hydrologic Unit Code
 - 1706010901 Pine Creek
 - 1706010801 Deep Creek-Palouse River
 - 1706010803 Silver Creek-Palouse River
 - 1706010802 South Fork Palouse River
 - 1706010804 Union Flat Creek