

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

87-11982

IN RE: THE GENERAL ) Case No.: 59576  
 ADJUDICATION OF RIGHTS )  
 TO THE USE OF WATER FROM ) **NOTICE OF CLAIM**  
 THE PALOUSE RIVER BASIN )  
 WATER SYSTEM ) **Federal Reserved Water Right**  
 )  
 )  
 )

RECEIVED  
 DEC 30 2019  
 DEPARTMENT OF  
 WATER RESOURCES

**1. Name and address of claimant:**

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the REGIONAL DIRECTOR, NORTHWEST REGION  
 Department of the Interior  
 Bureau of Indian Affairs  
 911 N.E. 11<sup>th</sup> Ave.  
 Portland, OR 97232

**2. Date of Priority:** Time Immemorial

**3. Source:** North Fork Palouse River (Federal I.D. # 101)

**4. Point of Diversion:** Not applicable: Instream flow

Upstream Boundary – Headwaters

Township:	Range:	Section:	Q in the Q:	Meridian:	County:
42N	1W	5	NESE	Boise	Latah

Downstream Boundary - Mouth

Township:	Range:	Section:	Q in the Q:	Meridian:	County:
42N	2W	22	SESE	Boise	Latah

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

**5. Place of Use:**

At all points along the stream reach located between the boundaries listed above.

**6. Purpose of Water Use:**

To provide instream flows to sustain fish within the described Place of Use and to support hunting, gathering, and pasturing upon open and unclaimed lands.

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

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

January	February	March	April	May	June
12	68	72	36	16	12

July	August	September	October	November	December
4.8	3.4	2.7	2.9	5.9	4.7

**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 of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, 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. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

**10. Other Provisions:**

- a. The United States has asserted other claims in the Palouse River Basin Adjudication. 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 Palouse River Basin Adjudication. 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 fountains flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; 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 the 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 Nez Perce Treaty of 1863 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 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 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 Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.



Signature of Authorized Agent:

Title and Organization:

---

Northwest Regional Director  
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

Notice is hereby given that the United States Department of Justice will represent the United States of America, including the U.S. Department of the Interior, Bureau of Indian Affairs, in all matters pertaining to the Palouse River Basin Adjudication.

All notices, filings and correspondence concerning this matter should be mailed to the United States Department of Justice at the address set forth below:



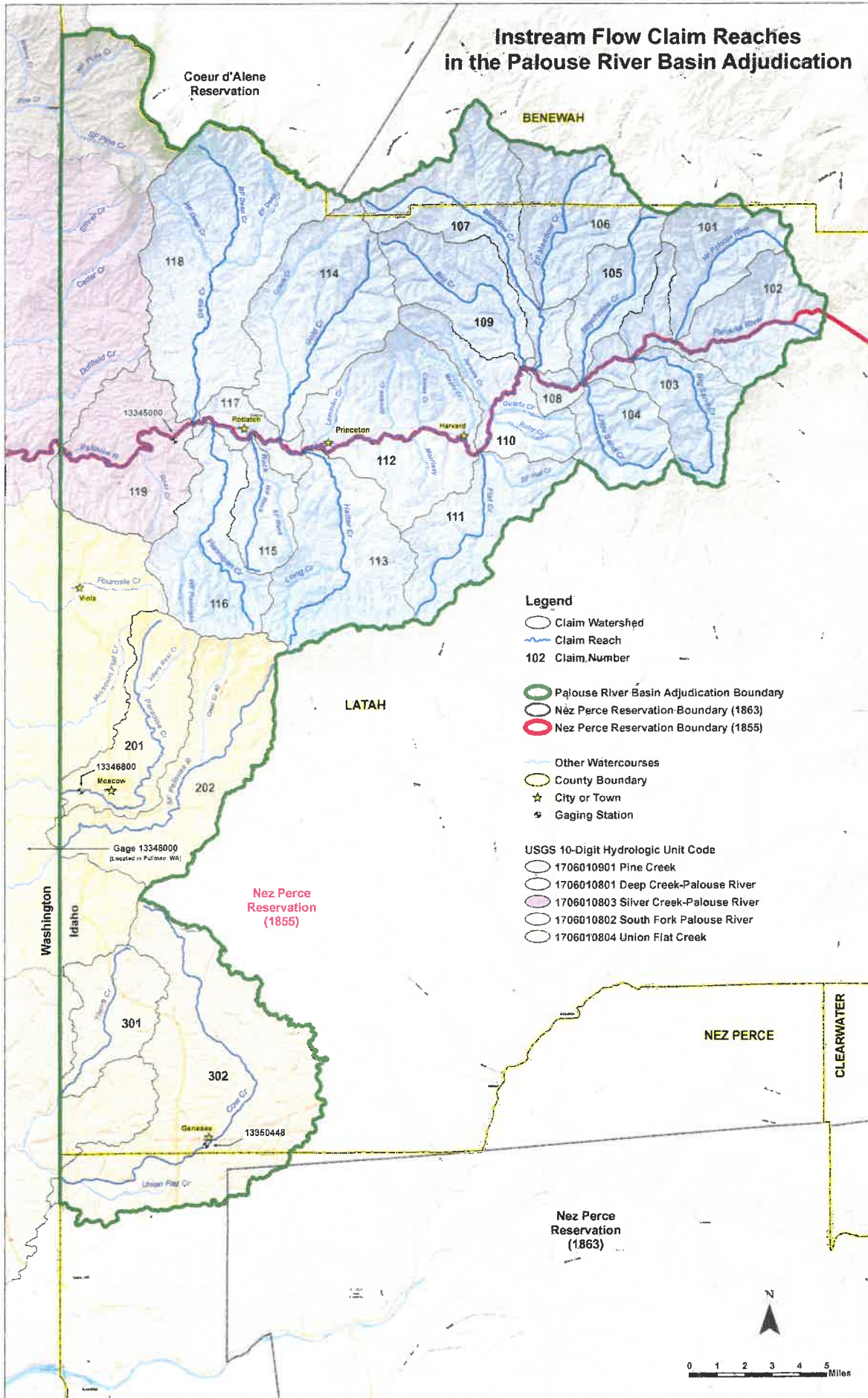
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Katherine M. Kane  
United States Department of Justice  
Indian Resources Division  
Natural Resources Section  
999 18<sup>th</sup> Street  
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

# Instream Flow Claim Reaches in the Palouse River Basin Adjudication



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

87-11983

RECEIVED

DEC 30 2019

DEPARTMENT OF  
WATER RESOURCES

IN RE: THE GENERAL ) Case No.: 59576  
ADJUDICATION OF RIGHTS )  
TO THE USE OF WATER FROM ) **NOTICE OF CLAIM**  
THE PALOUSE RIVER BASIN )  
WATER SYSTEM ) **Federal Reserved Water Right**  
)  
)  
)

**1. Name and address of claimant:**

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the REGIONAL DIRECTOR, NORTHWEST REGION

Department of the Interior  
Bureau of Indian Affairs  
911 N.E. 11<sup>th</sup> Ave.  
Portland, OR 97232

- 2. Date of Priority:** Time Immemorial
- 3. Source:** Palouse River (Federal I.D. # 102)
- 4. Point of Diversion:** Not applicable: Instream flow

Upstream Boundary – Headwaters

Township:	Range:	Section:	Q in the Q:	Meridian:	County:
42N	1W	22	NWSW	Boise	Latah

Downstream Boundary - Big Sand Creek

Township:	Range:	Section:	Q in the Q:	Meridian:	County:
42N	2W	28	NESW	Boise	Latah

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

**5. Place of Use:**

At all points along the stream reach located between the boundaries listed above.

**6. Purpose of Water Use:**

To provide instream flows to sustain fish within the described Place of Use and to support hunting, gathering, and pasturing upon open and unclaimed lands.

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

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

January	February	March	April	May	June
36	162	186	113	43	24

July	August	September	October	November	December
8.6	5.1	4.3	5.2	12	13

**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 of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, 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. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

**10. Other Provisions:**

- a. The United States has asserted other claims in the Palouse River Basin Adjudication. 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 Palouse River Basin Adjudication. 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 fountains flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; 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 the 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 Nez Perce Treaty of 1863 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 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 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 Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.



Signature of Authorized Agent:

Title and Organization:

---

Northwest Regional Director  
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

Notice is hereby given that the United States Department of Justice will represent the United States of America, including the U.S. Department of the Interior, Bureau of Indian Affairs, in all matters pertaining to the Palouse River Basin Adjudication.

All notices, filings and correspondence concerning this matter should be mailed to the United States Department of Justice at the address set forth below:



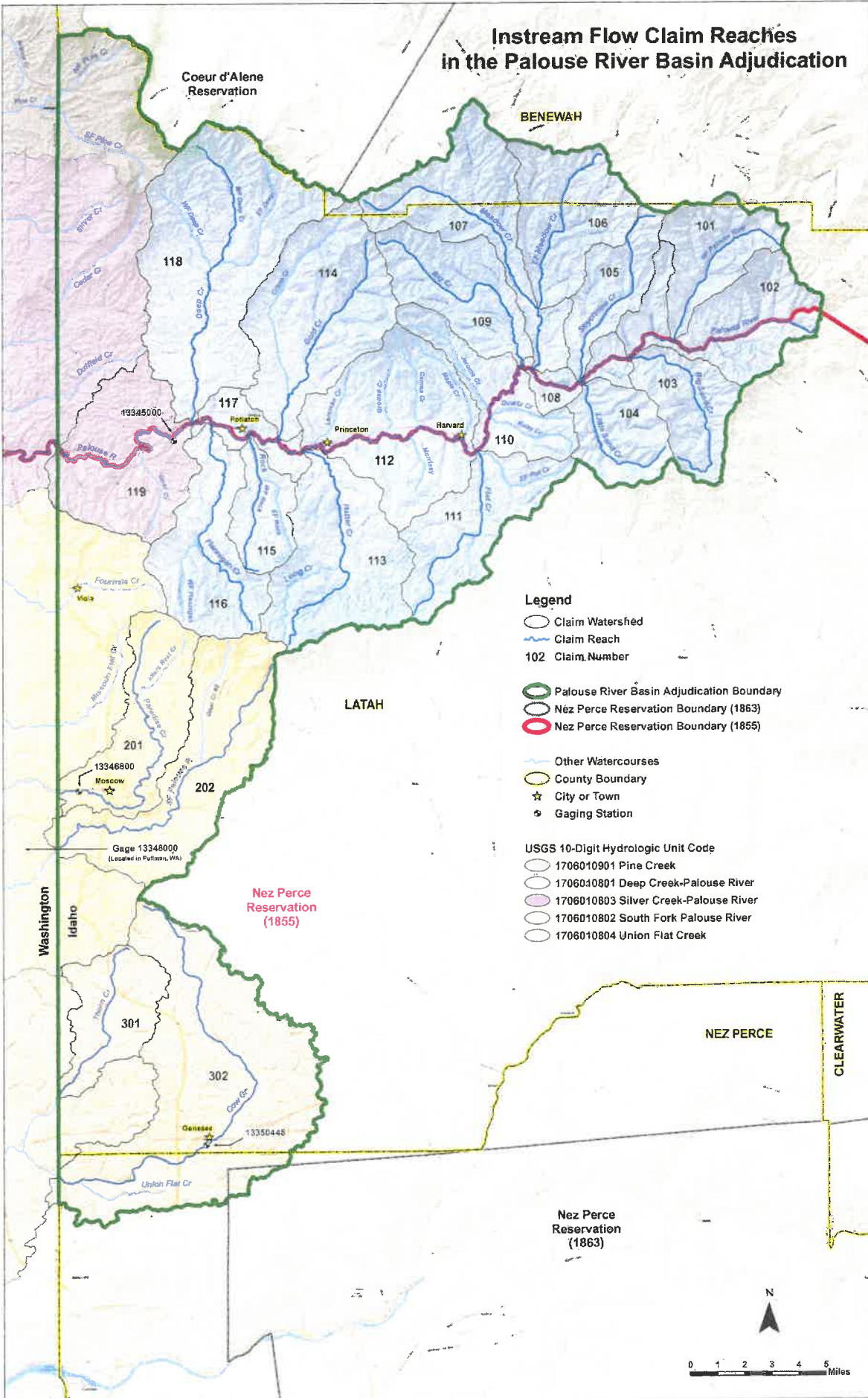
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Katherine M. Kane  
United States Department of Justice  
Indian Resources Division  
Natural Resources Section  
999 18<sup>th</sup> Street  
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

# Instream Flow Claim Reaches in the Palouse River Basin Adjudication



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

87-11984

IN RE: THE GENERAL )  
ADJUDICATION OF RIGHTS )  
TO THE USE OF WATER FROM )  
THE PALOUSE RIVER BASIN )  
WATER SYSTEM )  
)  
)  
)

Case No.: 59576  
**NOTICE OF CLAIM**  
**Federal Reserved Water Right**

**RECEIVED**  
**DEC 30 2019**  
DEPARTMENT OF  
WATER RESOURCES

**1. Name and address of claimant:**

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the REGIONAL DIRECTOR, NORTHWEST REGION  
Department of the Interior  
Bureau of Indian Affairs  
911 N.E. 11<sup>th</sup> Ave.  
Portland, OR 97232

- 2. Date of Priority:** Time Immemorial
- 3. Source:** Big Sand Creek (Federal I.D. # 103)
- 4. Point of Diversion:** Not applicable: Instream flow

Upstream Boundary – Headwaters

Township:	Range:	Section:	Q in the Q:	Meridian:	County:
41N	2W	14	NWNW	Boise	Latah

Downstream Boundary - Mouth

Township:	Range:	Section:	Q in the Q:	Meridian:	County:
42N	2W	28	NESW	Boise	Latah

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

- 5. Place of Use:**  
At all points along the stream reach located between the boundaries listed above.

**6. Purpose of Water Use:**

To provide instream flows to sustain fish within the described Place of Use and to support hunting, gathering, and pasturing upon open and unclaimed lands.

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

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

January	February	March	April	May	June
12	51	54	25	10	6.5

July	August	September	October	November	December
2.9	2.1	1.7	1.8	3.9	3.9

**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 of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, 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. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

**10. Other Provisions:**

- a. The United States has asserted other claims in the Palouse River Basin Adjudication. 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 Palouse River Basin Adjudication. 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 fountains flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; 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 the 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 Nez Perce Treaty of 1863 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 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 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 Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.



Signature of Authorized Agent:

Title and Organization:

---

Northwest Regional Director  
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.



Notice is hereby given that the United States Department of Justice will represent the United States of America, including the U.S. Department of the Interior, Bureau of Indian Affairs, in all matters pertaining to the Palouse River Basin Adjudication.

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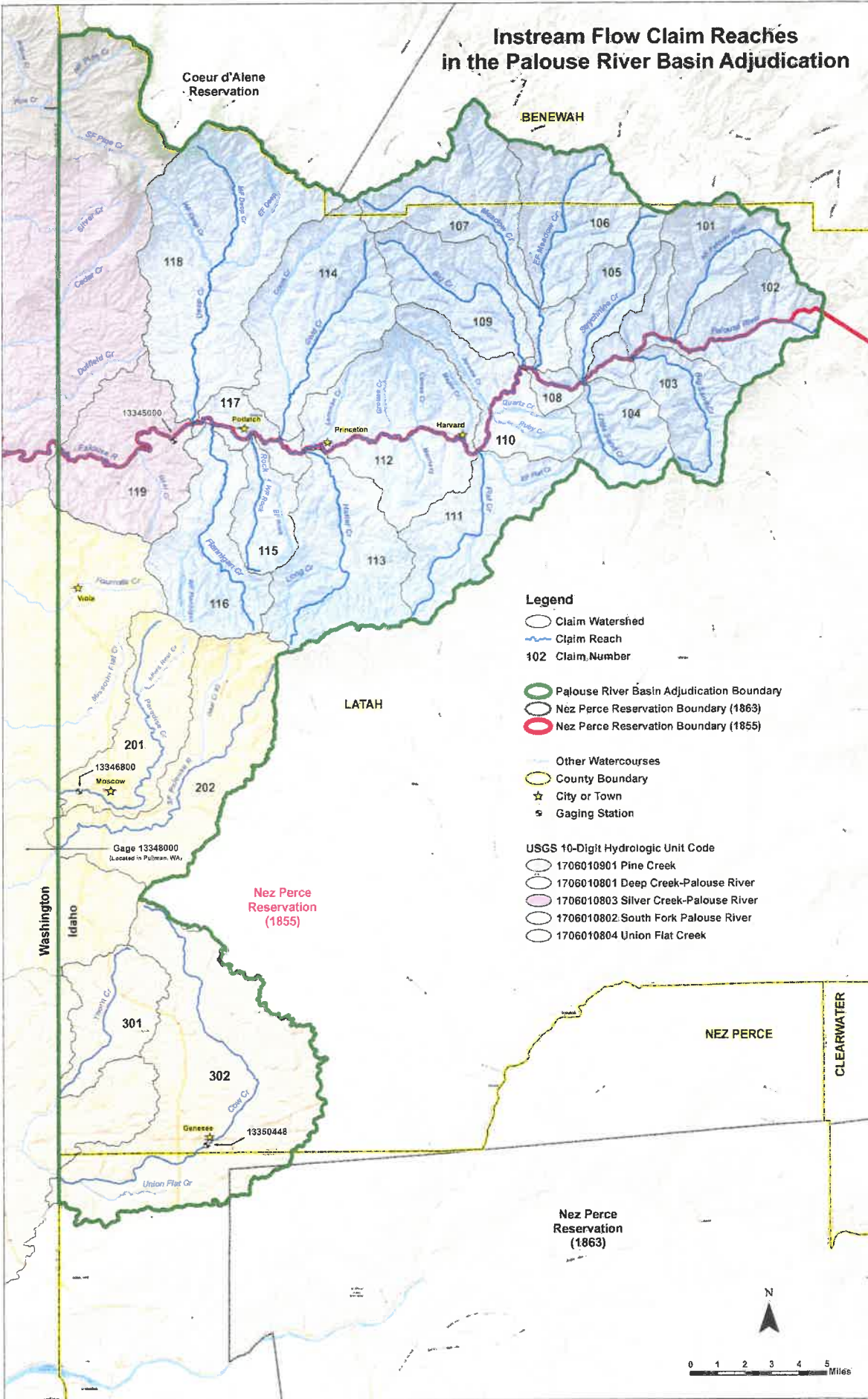
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Katherine M. Kane  
United States Department of Justice  
Indian Resources Division  
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999 18<sup>th</sup> Street  
Denver, CO 80202

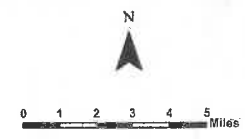
Attorney for the United States of America

Dated this 26th day of December, 2019.

# Instream Flow Claim Reaches in the Palouse River Basin Adjudication



- Legend**
- Claim Watershed
  - Claim Reach
  - 102 Claim Number
  - Palouse River Basin Adjudication Boundary
  - Nez Perce Reservation Boundary (1863)
  - Nez Perce Reservation Boundary (1855)
  - Other Watercourses
  - County Boundary
  - ☆ City or Town
  - ⊛ Gaging Station
- 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



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

87-11985

RECEIVED

DEC 30 2018

DEPARTMENT OF  
WATER RESOURCES

IN RE: THE GENERAL ) Case No.: 59576  
ADJUDICATION OF RIGHTS )  
TO THE USE OF WATER FROM ) **NOTICE OF CLAIM**  
THE PALOUSE RIVER BASIN )  
WATER SYSTEM ) **Federal Reserved Water Right**  
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**1. Name and address of claimant:**

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the REGIONAL DIRECTOR, NORTHWEST REGION

Department of the Interior  
Bureau of Indian Affairs  
911 N.E. 11<sup>th</sup> Ave.  
Portland, OR 97232

- 2. Date of Priority:** Time Immemorial
- 3. Source:** Little Sand Creek (Federal I.D. # 104)
- 4. Point of Diversion:** Not applicable: Instream flow

Upstream Boundary – Headwaters

Township:	Range:	Section:	Q in the Q:	Meridian:	County:
41N	2W	10	SWSE	Boise	Latah

Downstream Boundary - Mouth

Township:	Range:	Section:	Q in the Q:	Meridian:	County:
42N	2W	31	NWSE	Boise	Latah

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

- 5. Place of Use:**  
At all points along the stream reach located between the boundaries listed above.

**6. Purpose of Water Use:**

To provide instream flows to sustain fish within the described Place of Use and to support hunting, gathering, and pasturing upon open and unclaimed lands.

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

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

January	February	March	April	May	June
11	38	41	18	9.9	6.6

July	August	September	October	November	December
2.9	2.2	1.8	1.9	3.9	3.6

**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 of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, 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. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

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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 the 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 Nez Perce Treaty of 1863 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 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 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 Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.



Signature of Authorized Agent:

Title and Organization:

---

Northwest Regional Director  
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

Notice is hereby given that the United States Department of Justice will represent the United States of America, including the U.S. Department of the Interior, Bureau of Indian Affairs, in all matters pertaining to the Palouse River Basin Adjudication.

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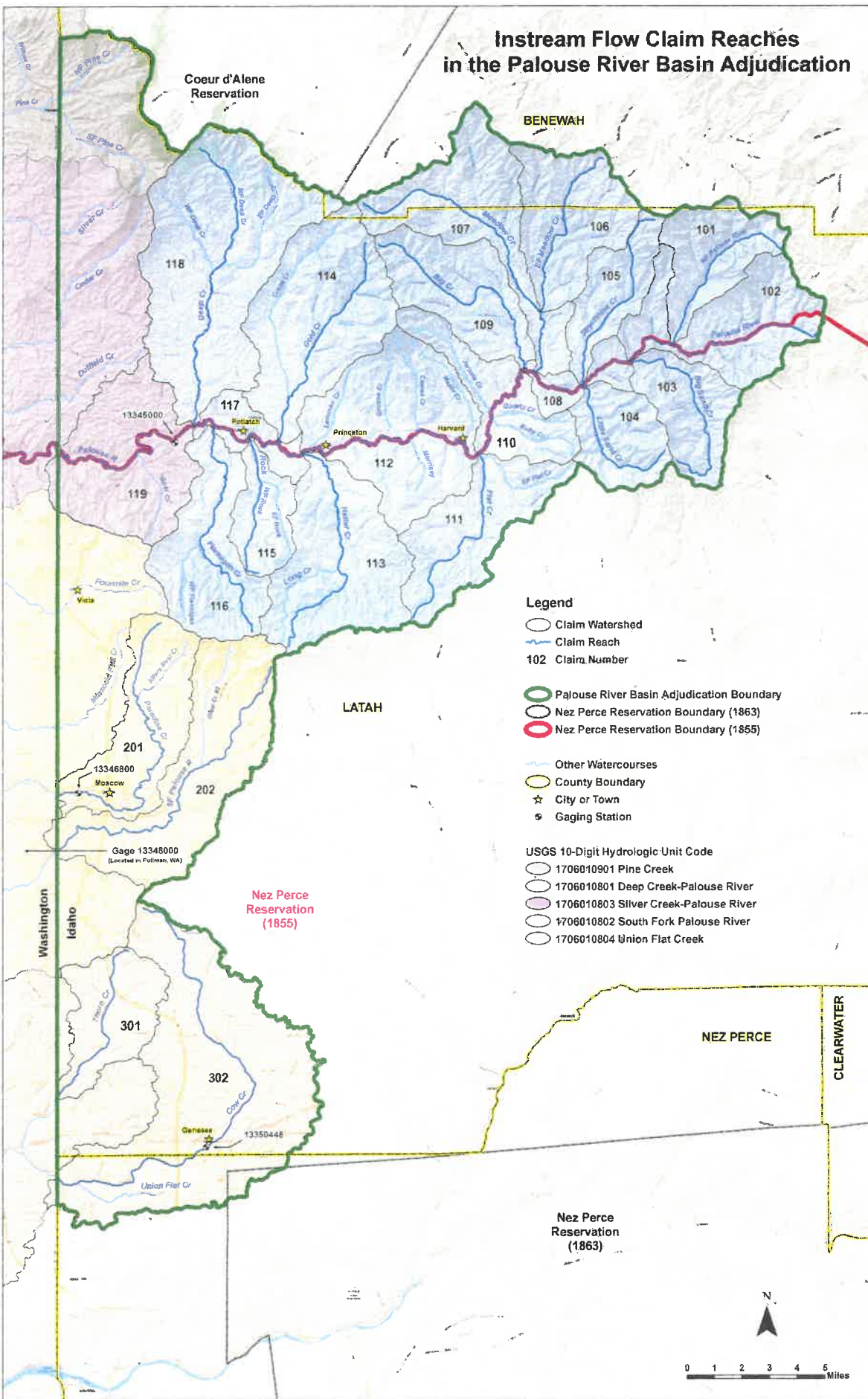
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Katherine M. Kane  
United States Department of Justice  
Indian Resources Division  
Natural Resources Section  
999 18<sup>th</sup> Street  
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

# Instream Flow Claim Reaches in the Palouse River Basin Adjudication





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

87-11986

IN RE: THE GENERAL )  
ADJUDICATION OF RIGHTS )  
TO THE USE OF WATER FROM )  
THE PALOUSE RIVER BASIN )  
WATER SYSTEM )  
)  
)  
)  
)  
)

Case No.: 59576  
**NOTICE OF CLAIM**  
**Federal Reserved Water Right**

**RECEIVED**  
**DEC 30 2019**  
DEPARTMENT OF  
WATER RESOURCES

**1. Name and address of claimant:**

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the REGIONAL DIRECTOR, NORTHWEST REGION  
Department of the Interior  
Bureau of Indian Affairs  
911 N.E. 11<sup>th</sup> Ave.  
Portland, OR 97232

**2. Date of Priority:** Time Immemorial

**3. Source:** Strychnine Creek (Federal I.D. # 105)

**4. Point of Diversion:** Not applicable: Instream flow

Upstream Boundary – Headwaters

Township:	Range:	Section:	Q in the Q:	Meridian:	County:
43N	2W	34	SE	Boise	Latah

Downstream Boundary - Mouth

Township:	Range:	Section:	Q in the Q:	Meridian:	County:
42N	2W	31	SW	Boise	Latah

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

**5. Place of Use:**

At all points along the stream reach located between the boundaries listed above.

**6. Purpose of Water Use:**

To provide instream flows to sustain fish within the described Place of Use and to support hunting, gathering, and pasturing upon open and unclaimed lands.

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

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

January	February	March	April	May	June
11	39	41	18	6.4	3.9

July	August	September	October	November	December
1.8	1.4	1.2	1.2	2.7	3.1

**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 of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, 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. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

**10. Other Provisions:**

- a. The United States has asserted other claims in the Palouse River Basin Adjudication. 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 Palouse River Basin Adjudication. 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 fountains flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; 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 the 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 Nez Perce Treaty of 1863 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 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 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 Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.



Signature of Authorized Agent:  
Title and Organization:

---

Northwest Regional Director  
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

Notice is hereby given that the United States Department of Justice will represent the United States of America, including the U.S. Department of the Interior, Bureau of Indian Affairs, in all matters pertaining to the Palouse River Basin Adjudication.

All notices, filings and correspondence concerning this matter should be mailed to the United States Department of Justice at the address set forth below:



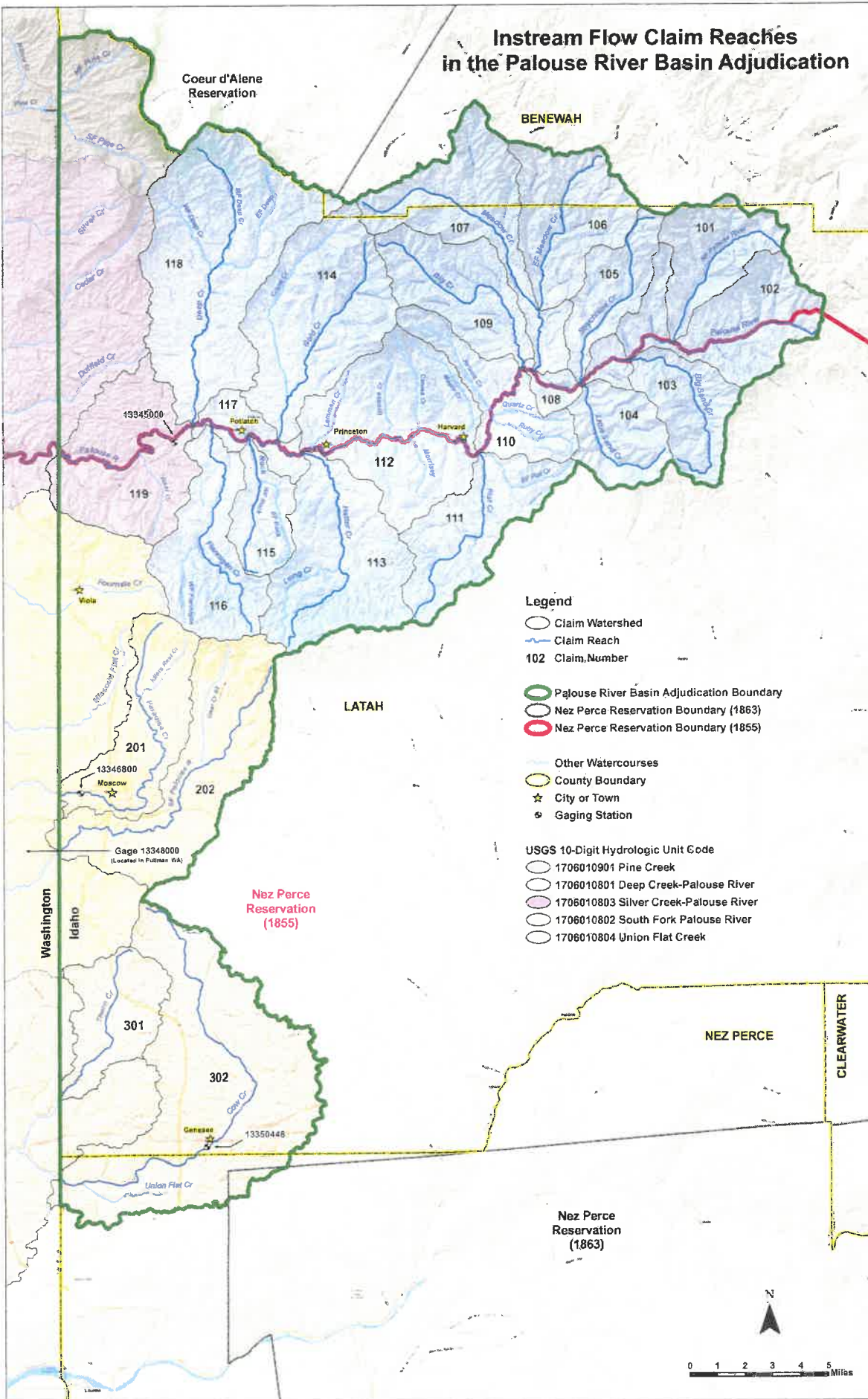
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Katherine M. Kane  
United States Department of Justice  
Indian Resources Division  
Natural Resources Section  
999 18<sup>th</sup> Street  
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

# Instream Flow Claim Reaches in the Palouse River Basin Adjudication



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

87-11987

RECEIVED

IN RE: THE GENERAL )  
ADJUDICATION OF RIGHTS )  
TO THE USE OF WATER FROM )  
THE PALOUSE RIVER BASIN )  
WATER SYSTEM )  
)  
)  
)

Case No.: 59576

**NOTICE OF CLAIM**

**Federal Reserved Water Right**

DEC 30 2019

DEPARTMENT OF  
WATER RESOURCES

**1. Name and address of claimant:**

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the REGIONAL DIRECTOR, NORTHWEST REGION

Department of the Interior  
Bureau of Indian Affairs  
911 N.E. 11<sup>th</sup> Ave.  
Portland, OR 97232

**2. Date of Priority:** Time Immemorial

**3. Source:** East Fork Meadow Creek (Federal I.D. # 106)

**4. Point of Diversion:** Not applicable: Instream flow

Upstream Boundary – Headwaters

Township:	Range:	Section:	Q in the Q:	Meridian:	County:
43N	2W	20	NENW	Boise	Benewah

Downstream Boundary - Mouth

Township:	Range:	Section:	Q in the Q:	Meridian:	County:
42N	3W	13	SWSW	Boise	Latah

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

**5. Place of Use:**

At all points along the stream reach located between the boundaries listed above.

**6. Purpose of Water Use:**

To provide instream flows to sustain fish within the described Place of Use and to support hunting, gathering, and pasturing upon open and unclaimed lands.

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

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

January	February	March	April	May	June
21	57	64	31	11	5.9

July	August	September	October	November	December
2.6	1.8	1.5	1.8	4.1	5.9

**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 of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, 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. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

**10. Other Provisions:**

- a. The United States has asserted other claims in the Palouse River Basin Adjudication. 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 Palouse River Basin Adjudication. 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 fountains flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; 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 the 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 Nez Perce Treaty of 1863 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 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 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 Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.



Signature of Authorized Agent:

Title and Organization:

---

Northwest Regional Director  
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

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---

Katherine M. Kane  
United States Department of Justice  
Indian Resources Division  
Natural Resources Section  
999 18<sup>th</sup> Street  
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

# Instream Flow Claim Reaches in the Palouse River Basin Adjudication



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

87-11988

IN RE: THE GENERAL )  
ADJUDICATION OF RIGHTS )  
TO THE USE OF WATER FROM )  
THE PALOUSE RIVER BASIN )  
WATER SYSTEM )  
)  
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Case No.: 59576  
**NOTICE OF CLAIM**  
**Federal Reserved Water Right**

RECEIVED  
DEC 30 2019  
DEPARTMENT OF  
WATER RESOURCES

**1. Name and address of claimant:**

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and  
ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the  
REGIONAL DIRECTOR, NORTHWEST REGION  
Department of the Interior  
Bureau of Indian Affairs  
911 N.E. 11<sup>th</sup> Ave.  
Portland, OR 97232

- 2. **Date of Priority:** Time Immemorial
- 3. **Source:** Meadow Creek (Federal I.D. # 107)
- 4. **Point of Diversion:** Not applicable: Instream flow

Upstream Boundary – Headwaters

Township:	Range:	Section:	Q in the Q:	Meridian:	County:
43N	4W	26	SESW	Boise	Benewah

Downstream Boundary - Mouth

Township:	Range:	Section:	Q in the Q:	Meridian:	County:
42N	3W	26	SESE	Boise	Latah

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

- 5. **Place of Use:**  
At all points along the stream reach located between the boundaries listed above.

**6. Purpose of Water Use:**

To provide instream flows to sustain fish within the described Place of Use and to support hunting, gathering, and pasturing upon open and unclaimed lands.

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

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

January	February	March	April	May	June
52	120	145	84	35	16

July	August	September	October	November	December
5.9	3.4	3	3.9	9.7	16

**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 of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, 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. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

**10. Other Provisions:**

- a. The United States has asserted other claims in the Palouse River Basin Adjudication. 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 Palouse River Basin Adjudication. 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 fountains flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; and consumptive use claims on two allotments held in trust by the United States.
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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 the 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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- 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 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 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:**

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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 Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.



Signature of Authorized Agent:

Title and Organization:

---

Northwest Regional Director  
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.



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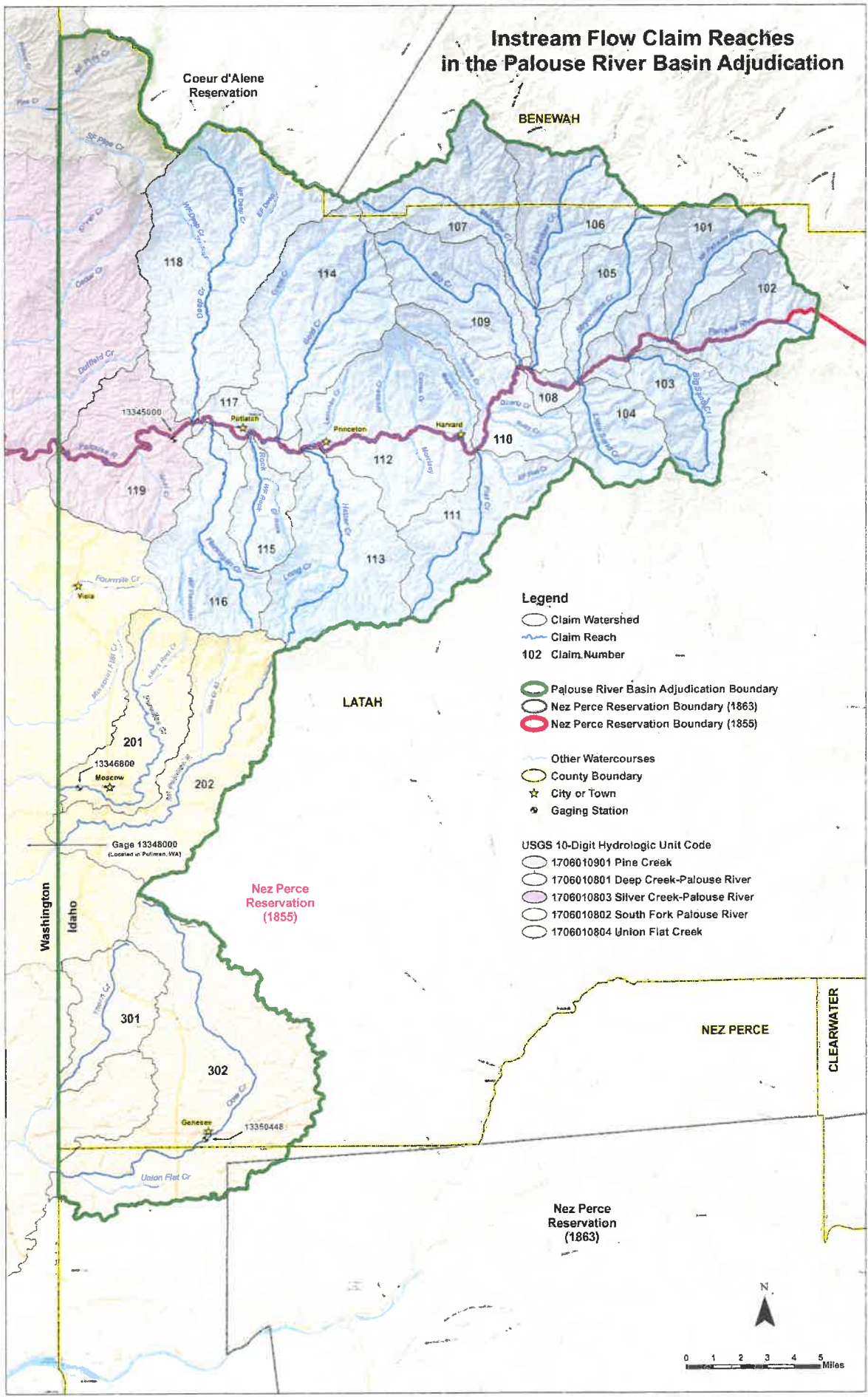
---

Katherine M. Kane  
United States Department of Justice  
Indian Resources Division  
Natural Resources Section  
999 18<sup>th</sup> Street  
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

# Instream Flow Claim Reaches in the Palouse River Basin Adjudication



Coeur d'Alene Reservation

BENEWAH

LATAH

NEZ PERCE

CLEARWATER

Washington

Idaho

Nez Perce Reservation (1863)

Nez Perce Reservation (1855)

### Legend

- Claim Watershed
- Claim Reach
- 102 Claim Number
- Palouse River Basin Adjudication Boundary
- Nez Perce Reservation Boundary (1863)
- Nez Perce Reservation Boundary (1855)
- Other Watercourses
- County Boundary
- City or Town
- Gaging Station
- 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

Gage 13348000  
(Located in Pullman, WA)

Moscow

Geneese

302

301

202

201

13346800

13345000

119

117

118

116

115

114

113

112

111

110

109

108

107

106

105

104

103

102

101



0 1 2 3 4 5 Miles

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

87-11989

IN RE: THE GENERAL )  
ADJUDICATION OF RIGHTS )  
TO THE USE OF WATER FROM )  
THE PALOUSE RIVER BASIN )  
WATER SYSTEM )  
)  
)  
)

Case No.: 59576  
**NOTICE OF CLAIM**  
**Federal Reserved Water Right**

RECEIVED  
DEC 30 2019  
DEPARTMENT OF  
WATER RESOURCES

**1. Name and address of claimant:**

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the REGIONAL DIRECTOR, NORTHWEST REGION

Department of the Interior  
Bureau of Indian Affairs  
911 N.E. 11<sup>th</sup> Ave.  
Portland, OR 97232

- 2. Date of Priority:** Time Immemorial
- 3. Source:** Palouse River (Federal I.D. # 108)
- 4. Point of Diversion:** Not applicable: Instream flow

Upstream Boundary – Big Sand Creek

Township:	Range:	Section:	Q in the Q:	Meridian:	County:
42N	2W	28	NESW	Boise	Latah

Downstream Boundary - Big Creek

Township:	Range:	Section:	Q in the Q:	Meridian:	County:
42N	3W	26	SESW	Boise	Latah

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

**5. Place of Use:**

At all points along the stream reach located between the boundaries listed above.

**6. Purpose of Water Use:**

To provide instream flows to sustain fish within the described Place of Use and to support hunting, gathering, and pasturing upon open and unclaimed lands.

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

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

January	February	March	April	May	June
147	422	543	415	186	78

July	August	September	October	November	December
23	11	9.6	14	37	56

**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 of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, 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. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

**10. Other Provisions:**

- a. The United States has asserted other claims in the Palouse River Basin Adjudication. 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 Palouse River Basin Adjudication. 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 fountains flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; 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 the 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 Nez Perce Treaty of 1863 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 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 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 Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.



Signature of Authorized Agent:

Title and Organization:

---

Northwest Regional Director  
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

Notice is hereby given that the United States Department of Justice will represent the United States of America, including the U.S. Department of the Interior, Bureau of Indian Affairs, in all matters pertaining to the Palouse River Basin Adjudication.

All notices, filings and correspondence concerning this matter should be mailed to the United States Department of Justice at the address set forth below:



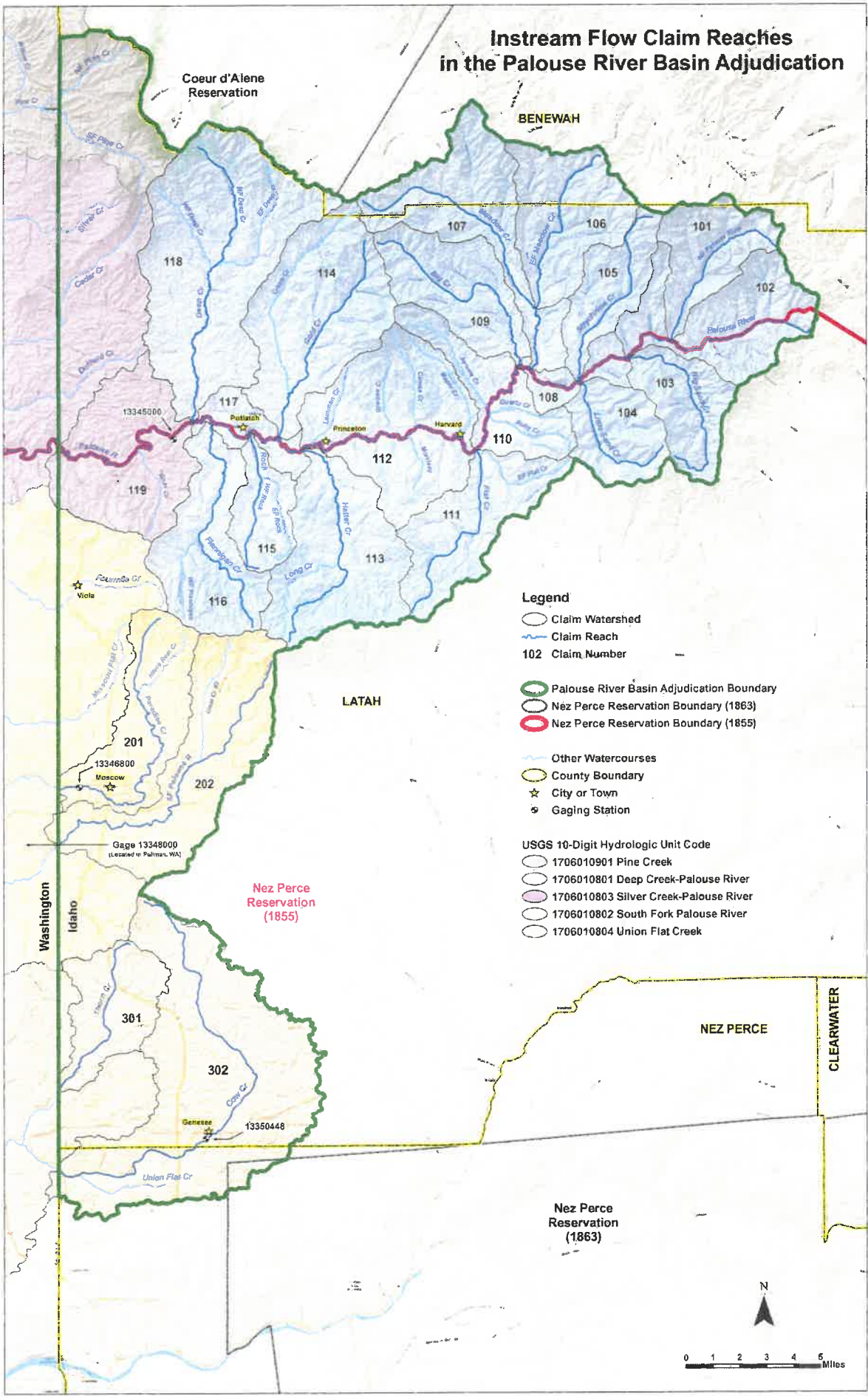
---

Katherine M. Kane  
United States Department of Justice  
Indian Resources Division  
Natural Resources Section  
999 18<sup>th</sup> Street  
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

# Instream Flow Claim Reaches in the Palouse River Basin Adjudication





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

87-11990

IN RE: THE GENERAL )  
ADJUDICATION OF RIGHTS )  
TO THE USE OF WATER FROM )  
THE PALOUSE RIVER BASIN )  
WATER SYSTEM )  
)  
)  
)

Case No.: 59576  
**NOTICE OF CLAIM**  
**Federal Reserved Water Right**

RECEIVED  
DEC 30 2019  
DEPARTMENT OF  
WATER RESOURCES

**1. Name and address of claimant:**

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the REGIONAL DIRECTOR, NORTHWEST REGION

Department of the Interior  
Bureau of Indian Affairs  
911 N.E. 11<sup>th</sup> Ave.  
Portland, OR 97232

- 2. Date of Priority:** Time Immemorial
- 3. Source:** Big Creek (Federal I.D. # 109)
- 4. Point of Diversion:** Not applicable: Instream flow

Upstream Boundary – Headwaters

Township:	Range:	Section:	Q in the Q:	Meridian:	County:
43N	4W	35	SESE	Boise	Latah

Downstream Boundary - Mouth

Township:	Range:	Section:	Q in the Q:	Meridian:	County:
42N	3W	26	SESW	Boise	Latah

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

**5. Place of Use:**

At all points along the stream reach located between the boundaries listed above.

**6. Purpose of Water Use:**

To provide instream flows to sustain fish within the described Place of Use and to support hunting, gathering, and pasturing upon open and unclaimed lands.

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

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

January	February	March	April	May	June
37	57	82	74	35	10

July	August	September	October	November	December
2.3	0.61	0.54	1.3	4.9	12

**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 of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, 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. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

**10. Other Provisions:**

- a. The United States has asserted other claims in the Palouse River Basin Adjudication. 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 Palouse River Basin Adjudication. 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 fountains flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; 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 the 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 Nez Perce Treaty of 1863 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 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 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 Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.



Signature of Authorized Agent:

Title and Organization:

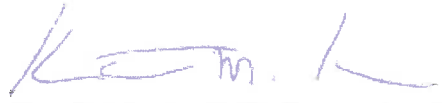
---

Northwest Regional Director  
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

Notice is hereby given that the United States Department of Justice will represent the United States of America, including the U.S. Department of the Interior, Bureau of Indian Affairs, in all matters pertaining to the Palouse River Basin Adjudication.

All notices, filings and correspondence concerning this matter should be mailed to the United States Department of Justice at the address set forth below:



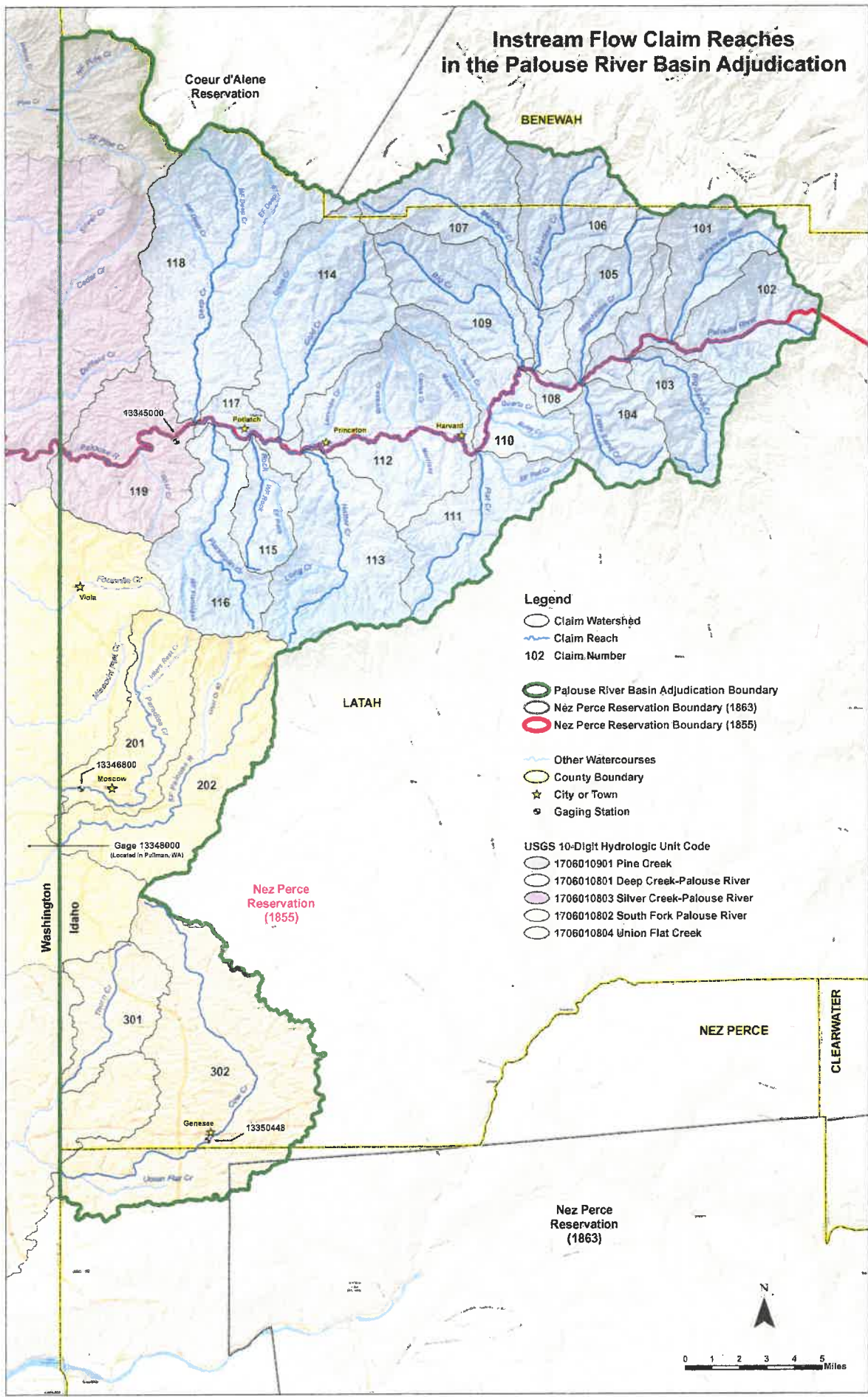
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Katherine M. Kane  
United States Department of Justice  
Indian Resources Division  
Natural Resources Section  
999 18<sup>th</sup> Street  
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

# Instream Flow Claim Reaches in the Palouse River Basin Adjudication



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

87-11991

RECEIVED  
DEC 30 2019  
DEPARTMENT OF  
WATER RESOURCES

IN RE: THE GENERAL	)	Case No.: 59576
ADJUDICATION OF RIGHTS	)	
TO THE USE OF WATER FROM	)	<b>NOTICE OF CLAIM</b>
THE PALOUSE RIVER BASIN	)	
WATER SYSTEM	)	<b>Federal Reserved Water Right</b>
	)	
	)	

**1. Name and address of claimant:**

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the REGIONAL DIRECTOR, NORTHWEST REGION

Department of the Interior  
Bureau of Indian Affairs  
911 N.E. 11<sup>th</sup> Ave.  
Portland, OR 97232

- 2. Date of Priority:** Time Immemorial
- 3. Source:** Palouse River (Federal I.D. # 110)
- 4. Point of Diversion:** Not applicable: Instream flow

Upstream Boundary – Big Creek

Township:	Range:	Section:	Q in the Q:	Meridian:	County:
42N	3W	26	SESW	Boise	Latah

Downstream Boundary - Flat Creek

Township:	Range:	Section:	Q in the Q:	Meridian:	County:
41N	3W	9	SESE	Boise	Latah

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

**5. Place of Use:**

At all points along the stream reach located between the boundaries listed above.

**6. Purpose of Water Use:**

To provide instream flows to sustain fish within the described Place of Use and to support hunting, gathering, and pasturing upon open and unclaimed lands.

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

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

January	February	March	April	May	June
197	497	655	521	225	87

July	August	September	October	November	December
25	11	10	15	42	72

**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 of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, 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. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

**10. Other Provisions:**

- a. The United States has asserted other claims in the Palouse River Basin Adjudication. 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 Palouse River Basin Adjudication. 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 fountains flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; 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 the 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 Nez Perce Treaty of 1863 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 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 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 Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.



Signature of Authorized Agent:

Title and Organization:

---

Northwest Regional Director  
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

Notice is hereby given that the United States Department of Justice will represent the United States of America, including the U.S. Department of the Interior, Bureau of Indian Affairs, in all matters pertaining to the Palouse River Basin Adjudication.

All notices, filings and correspondence concerning this matter should be mailed to the United States Department of Justice at the address set forth below:



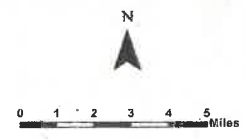
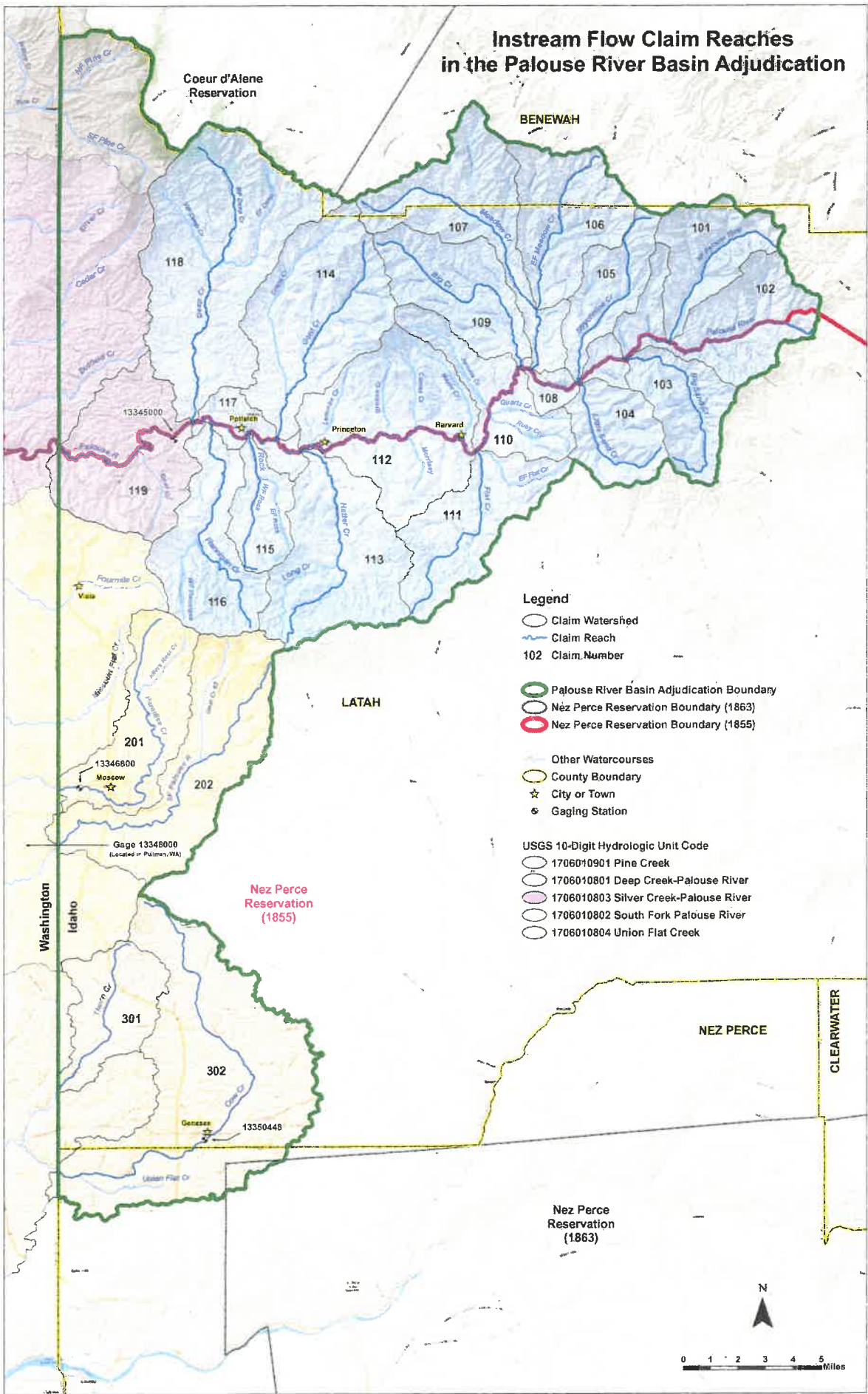
---

Katherine M. Kane  
United States Department of Justice  
Indian Resources Division  
Natural Resources Section  
999 18<sup>th</sup> Street  
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

# Instream Flow Claim Reaches in the Palouse River Basin Adjudication



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

87-11992

IN RE: THE GENERAL )  
ADJUDICATION OF RIGHTS )  
TO THE USE OF WATER FROM )  
THE PALOUSE RIVER BASIN )  
WATER SYSTEM )  
)  
)  
)  
)  
)  
)

Case No.: 59576

NOTICE OF CLAIM

Federal Reserved Water Right

RECEIVED

DEC 30 2019

DEPARTMENT OF  
WATER RESOURCES

1. Name and address of claimant:

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and  
ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the  
REGIONAL DIRECTOR, NORTHWEST REGION

Department of the Interior  
Bureau of Indian Affairs  
911 N.E. 11<sup>th</sup> Ave.  
Portland, OR 97232

2. Date of Priority: Time Immemorial

3. Source: Flat Creek (Federal I.D. # 111)

4. Point of Diversion: Not applicable: Instream flow

Upstream Boundary – Headwaters

Township:	Range:	Section:	Q in the Q:	Meridian:	County:
40N	3W	7	NWSW	Boise	Latah

Downstream Boundary - Mouth

Township:	Range:	Section:	Q in the Q:	Meridian:	County:
41N	3W	9	SESE	Boise	Latah

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

5. Place of Use:

At all points along the stream reach located between the boundaries listed above.

**6. Purpose of Water Use:**

To provide instream flows to sustain fish within the described Place of Use and to support hunting, gathering, and pasturing upon open and unclaimed lands.

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

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

January	February	March	April	May	June
23	37	43	19	7.2	3.3

July	August	September	October	November	December
1.6	1.1	0.97	1.1	2.7	5.2

**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 of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, 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. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

**10. Other Provisions:**

- a. The United States has asserted other claims in the Palouse River Basin Adjudication. 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 Palouse River Basin Adjudication. 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 fountains flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; 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 the 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 Nez Perce Treaty of 1863 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 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 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 Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.



Signature of Authorized Agent:

Title and Organization:

---

Northwest Regional Director  
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.



Notice is hereby given that the United States Department of Justice will represent the United States of America, including the U.S. Department of the Interior, Bureau of Indian Affairs, in all matters pertaining to the Palouse River Basin Adjudication.

All notices, filings and correspondence concerning this matter should be mailed to the United States Department of Justice at the address set forth below:



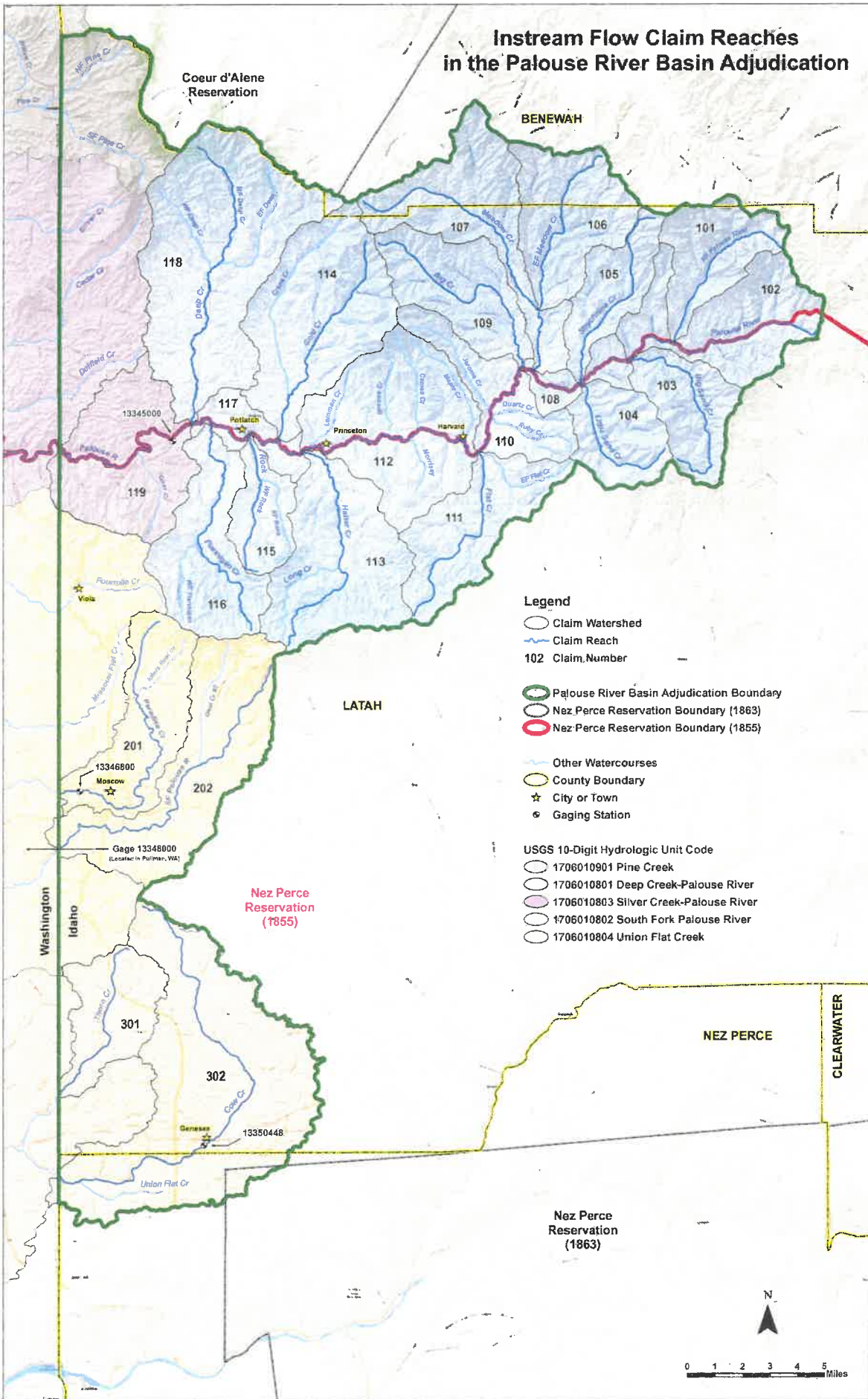
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Katherine M. Kane  
United States Department of Justice  
Indian Resources Division  
Natural Resources Section  
999 18<sup>th</sup> Street  
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

# Instream Flow Claim Reaches in the Palouse River Basin Adjudication



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

87-11993

IN RE: THE GENERAL )  
ADJUDICATION OF RIGHTS )  
TO THE USE OF WATER FROM )  
THE PALOUSE RIVER BASIN )  
WATER SYSTEM )  
)  
)  
)  
)

Case No.: 59576  
**NOTICE OF CLAIM**  
**Federal Reserved Water Right**

RECEIVED  
DEC 30 2019  
DEPARTMENT OF  
WATER RESOURCES

**1. Name and address of claimant:**

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the REGIONAL DIRECTOR, NORTHWEST REGION

Department of the Interior  
Bureau of Indian Affairs  
911 N.E. 11<sup>th</sup> Ave.  
Portland, OR 97232

- 2. Date of Priority:** Time Immemorial
- 3. Source:** Palouse River (Federal I.D. # 112)
- 4. Point of Diversion:** Not applicable: Instream flow

Upstream Boundary – Flat Creek

Township:	Range:	Section:	Q in the Q:	Meridian:	County:
41N	3W	9	SESE	Boise	Latah

Downstream Boundary - Hatter Creek

Township:	Range:	Section:	Q in the Q:	Meridian:	County:
41N	4W	9	NWSW	Boise	Latah

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

**5. Place of Use:**

At all points along the stream reach located between the boundaries listed above.

**6. Purpose of Water Use:**

To provide instream flows to sustain fish within the described Place of Use and to support hunting, gathering, and pasturing upon open and unclaimed lands.

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

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

January	February	March	April	May	June
281	551	750	618	282	99

July	August	September	October	November	December
28	12	11	17	49	99

**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 of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, 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. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

**10. Other Provisions:**

a. The United States has asserted other claims in the Palouse River Basin Adjudication. 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 Palouse River Basin Adjudication. 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 fountains flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; 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 the 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 Nez Perce Treaty of 1863 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 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 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 Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.



Signature of Authorized Agent:

Title and Organization:

---

Northwest Regional Director  
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

Notice is hereby given that the United States Department of Justice will represent the United States of America, including the U.S. Department of the Interior, Bureau of Indian Affairs, in all matters pertaining to the Palouse River Basin Adjudication.

All notices, filings and correspondence concerning this matter should be mailed to the United States Department of Justice at the address set forth below:



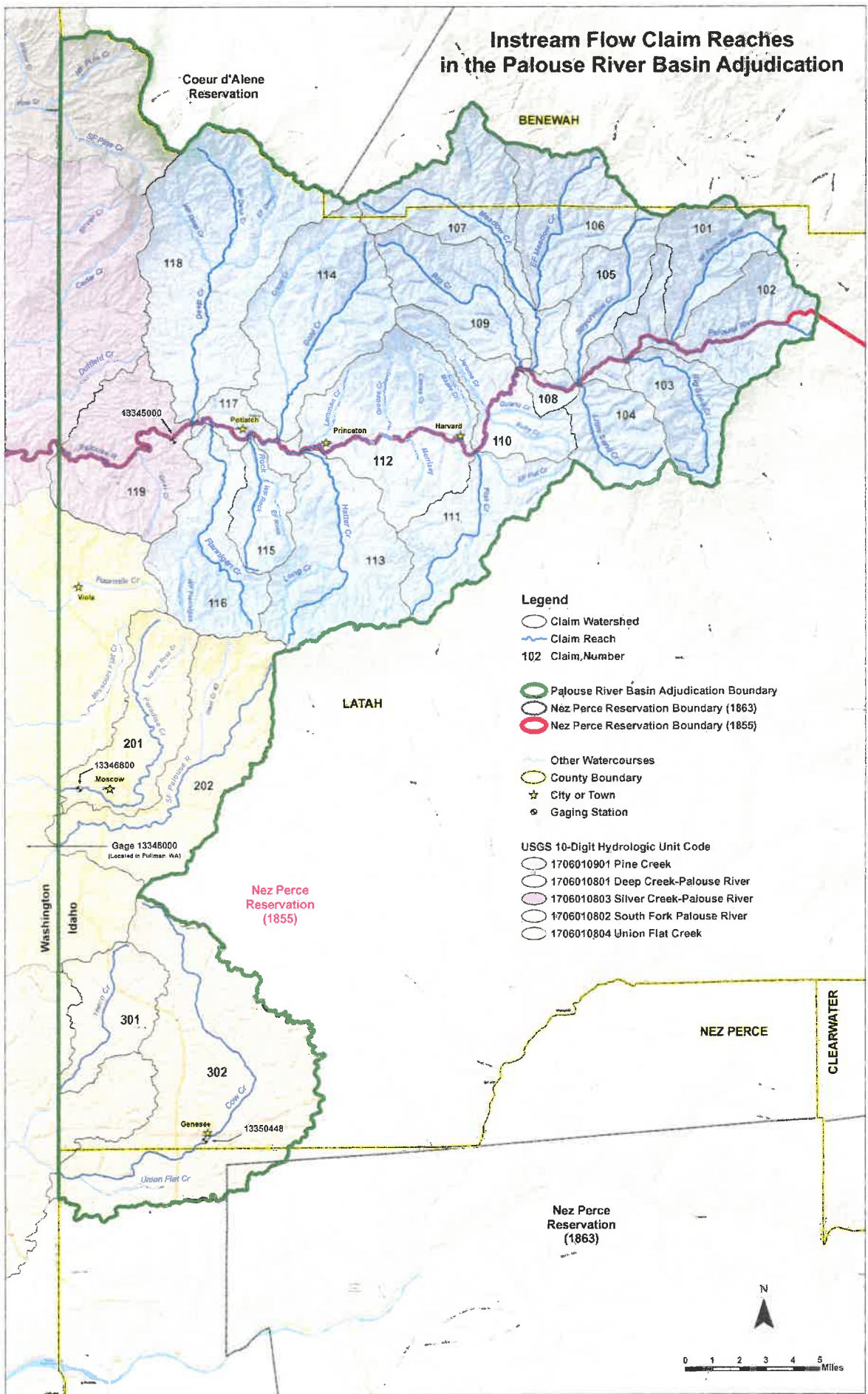
---

Katherine M. Kane  
United States Department of Justice  
Indian Resources Division  
Natural Resources Section  
999 18<sup>th</sup> Street  
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

# Instream Flow Claim Reaches in the Palouse River Basin Adjudication



### Legend

- Claim Watershed
- Claim Reach
- 102 Claim, Number
- Palouse River Basin Adjudication Boundary
- Nez Perce Reservation Boundary (1863)
- Nez Perce Reservation Boundary (1855)
- Other Watercourses
- County Boundary
- ☆ City or Town
- ⊙ Gaging Station

### 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





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

87-11994

RECEIVED

IN RE: THE GENERAL )  
ADJUDICATION OF RIGHTS )  
TO THE USE OF WATER FROM )  
THE PALOUSE RIVER BASIN )  
WATER SYSTEM )  
)  
)  
)  
)  
)  
)

Case No.: 59576

**NOTICE OF CLAIM**

**Federal Reserved Water Right**

DEC 30 2019

DEPARTMENT OF  
WATER RESOURCES

**1. Name and address of claimant:**

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and  
ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the  
REGIONAL DIRECTOR, NORTHWEST REGION  
Department of the Interior  
Bureau of Indian Affairs  
911 N.E. 11<sup>th</sup> Ave.  
Portland, OR 97232

**2. Date of Priority:** Time Immemorial

**3. Source:** Hatter Creek (Federal I.D. # 113)

**4. Point of Diversion:** Not applicable: Instream flow

Upstream Boundary – Headwaters

Township:	Range:	Section:	Q in the Q:	Meridian:	County:
40N	4W	17	NWSE	Boise	Latah

Downstream Boundary - Mouth

Township:	Range:	Section:	Q in the Q:	Meridian:	County:
41N	4W	9	NWSW	Boise	Latah

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

**5. Place of Use:**

At all points along the stream reach located between the boundaries listed above.

**6. Purpose of Water Use:**

To provide instream flows to sustain fish within the described Place of Use and to support hunting, gathering, and pasturing upon open and unclaimed lands.

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

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

January	February	March	April	May	June
31	46	67	60	28	8.7
July	August	September	October	November	December
2.2	0.88	0.82	1.4	4.3	10

**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 of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, 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. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

**10. Other Provisions:**

- a. The United States has asserted other claims in the Palouse River Basin Adjudication. 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 Palouse River Basin Adjudication. 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 fountains flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; 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 the 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 Nez Perce Treaty of 1863 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 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 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  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 Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.



Signature of Authorized Agent:

Title and Organization:

---

Northwest Regional Director  
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

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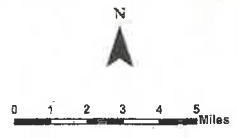
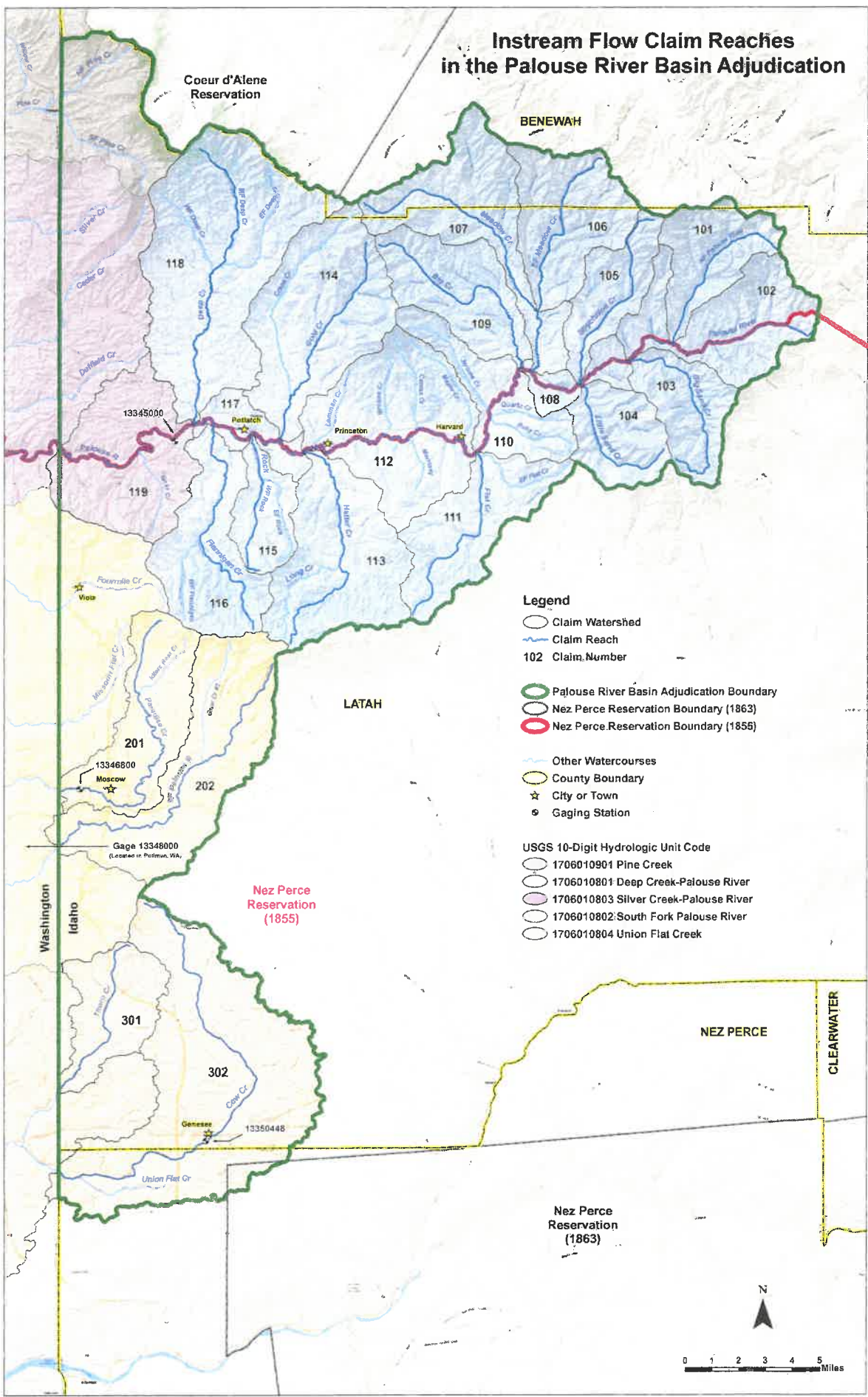
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Katherine M. Kane  
United States Department of Justice  
Indian Resources Division  
Natural Resources Section  
999 18<sup>th</sup> Street  
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

# Instream Flow Claim Reaches in the Palouse River Basin Adjudication



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

87-11995

IN RE: THE GENERAL )  
ADJUDICATION OF RIGHTS )  
TO THE USE OF WATER FROM )  
THE PALOUSE RIVER BASIN )  
WATER SYSTEM )  
)  
)  
)

Case No.: 59576  
**NOTICE OF CLAIM**  
**Federal Reserved Water Right**

**RECEIVED**  
**DEC 30 2019**  
DEPARTMENT OF  
WATER RESOURCES

**1. Name and address of claimant:**

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the REGIONAL DIRECTOR, NORTHWEST REGION  
Department of the Interior  
Bureau of Indian Affairs  
911 N.E. 11<sup>th</sup> Ave.  
Portland, OR 97232

- 2. Date of Priority:** Time Immemorial
- 3. Source:** Gold Creek (Federal I.D. # 114)
- 4. Point of Diversion:** Not applicable: Instream flow

Upstream Boundary – Headwaters

Township:	Range:	Section:	Q in the Q:	Meridian:	County:
43N	4W	35	SWSE	Boise	Latah

Downstream Boundary - Mouth

Township:	Range:	Section:	Q in the Q:	Meridian:	County:
41N	4W	8	NENW	Boise	Latah

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

**5. Place of Use:**

At all points along the stream reach located between the boundaries listed above.

**6. Purpose of Water Use:**

To provide instream flows to sustain fish within the described Place of Use and to support hunting, gathering, and pasturing upon open and unclaimed lands.

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

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

January	February	March	April	May	June
18	28	40	36	17	5.2

July	August	September	October	November	December
1.3	0.52	0.49	0.83	2.6	6.2

**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 of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, 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. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

**10. Other Provisions:**

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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 the 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 Nez Perce Treaty of 1863 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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**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 Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.



Signature of Authorized Agent:

Title and Organization:

---

Northwest Regional Director  
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

Notice is hereby given that the United States Department of Justice will represent the United States of America, including the U.S. Department of the Interior, Bureau of Indian Affairs, in all matters pertaining to the Palouse River Basin Adjudication.

All notices, filings and correspondence concerning this matter should be mailed to the United States Department of Justice at the address set forth below:



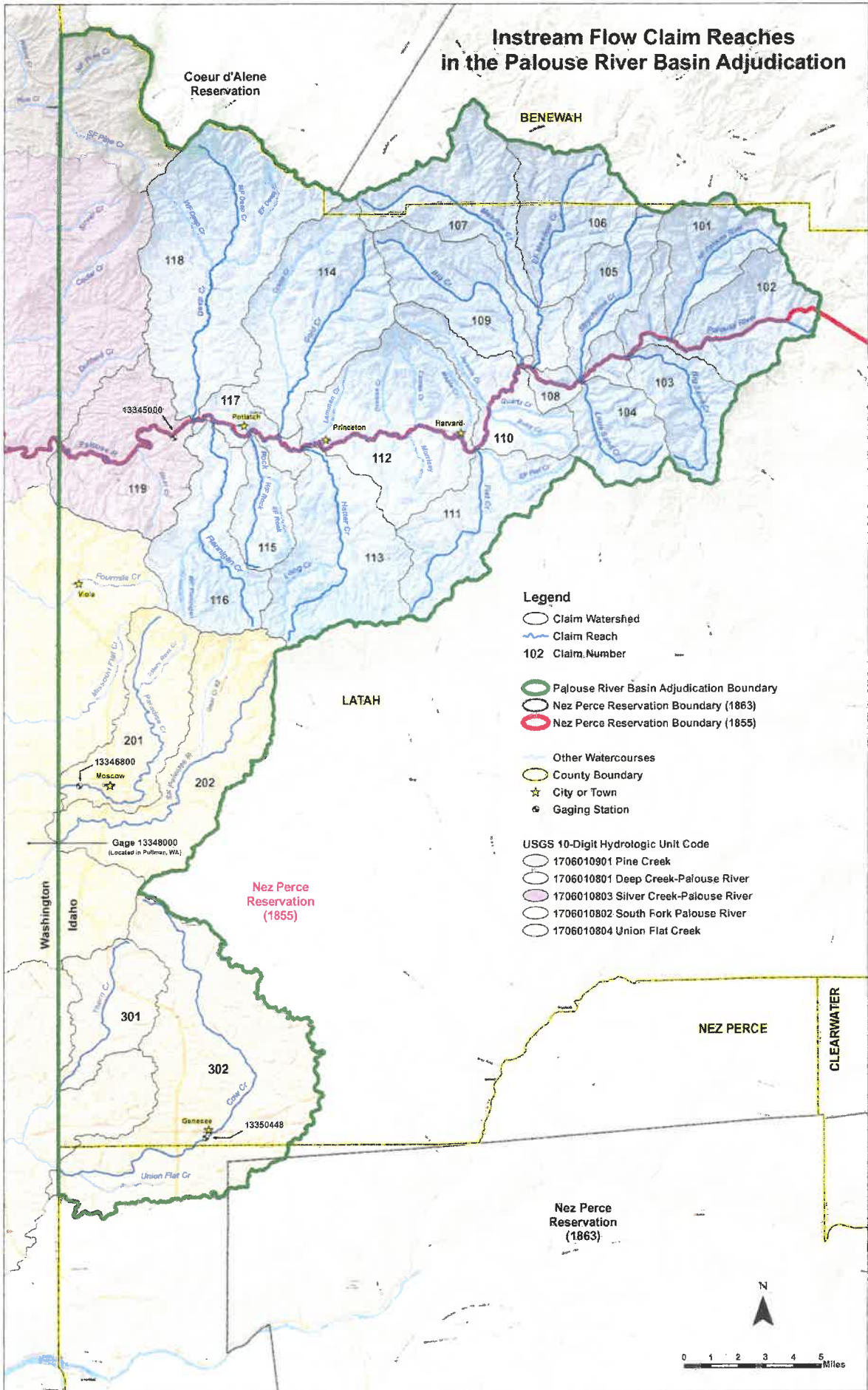
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Katherine M. Kane  
United States Department of Justice  
Indian Resources Division  
Natural Resources Section  
999 18<sup>th</sup> Street  
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

# Instream Flow Claim Reaches in the Palouse River Basin Adjudication



### Legend

- Claim Watershed
  - Claim Reach
  - 102 Claim Number
  - Palouse River Basin Adjudication Boundary
  - Nez Perce Reservation Boundary (1863)
  - Nez Perce Reservation Boundary (1855)
  - Other Watercourses
  - County Boundary
  - ☆ City or Town
  - ⊙ Gaging Station
- 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



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

87-11996

RECEIVED  
DEC 30 2019  
DEPARTMENT OF  
WATER RESOURCES

IN RE: THE GENERAL	)	Case No.: 59576
ADJUDICATION OF RIGHTS	)	
TO THE USE OF WATER FROM	)	<b>NOTICE OF CLAIM</b>
THE PALOUSE RIVER BASIN	)	
WATER SYSTEM	)	<b>Federal Reserved Water Right</b>
	)	
	)	

**1. Name and address of claimant:**

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the REGIONAL DIRECTOR, NORTHWEST REGION  
 Department of the Interior  
 Bureau of Indian Affairs  
 911 N.E. 11<sup>th</sup> Ave.  
 Portland, OR 97232

- 2. Date of Priority:** Time Immemorial
- 3. Source:** Rock Creek (Federal I.D. # 115)
- 4. Point of Diversion:** Not applicable: Instream flow

Upstream Boundary – Headwaters

Township:	Range:	Section:	Q in the Q:	Meridian:	County:
41N	4W	31	SESW	Boise	Latah

Downstream Boundary - Mouth

Township:	Range:	Section:	Q in the Q:	Meridian:	County:
41N	4W	6	SWSW	Boise	Latah

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

- 5. Place of Use:**  
At all points along the stream reach located between the boundaries listed above.

**6. Purpose of Water Use:**

To provide instream flows to sustain fish within the described Place of Use and to support hunting, gathering, and pasturing upon open and unclaimed lands.

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

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

January	February	March	April	May	June
10	13	15	5.4	2	1

July	August	September	October	November	December
0.56	0.47	0.41	0.43	1	2

**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 of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, 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. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

**10. Other Provisions:**

- a. The United States has asserted other claims in the Palouse River Basin Adjudication. 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 Palouse River Basin Adjudication. 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 fountains flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; 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 the 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 Nez Perce Treaty of 1863 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 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 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 Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.



Signature of Authorized Agent:

Title and Organization:

---

Northwest Regional Director  
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.



Notice is hereby given that the United States Department of Justice will represent the United States of America, including the U.S. Department of the Interior, Bureau of Indian Affairs, in all matters pertaining to the Palouse River Basin Adjudication.

All notices, filings and correspondence concerning this matter should be mailed to the United States Department of Justice at the address set forth below:



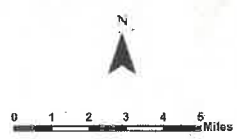
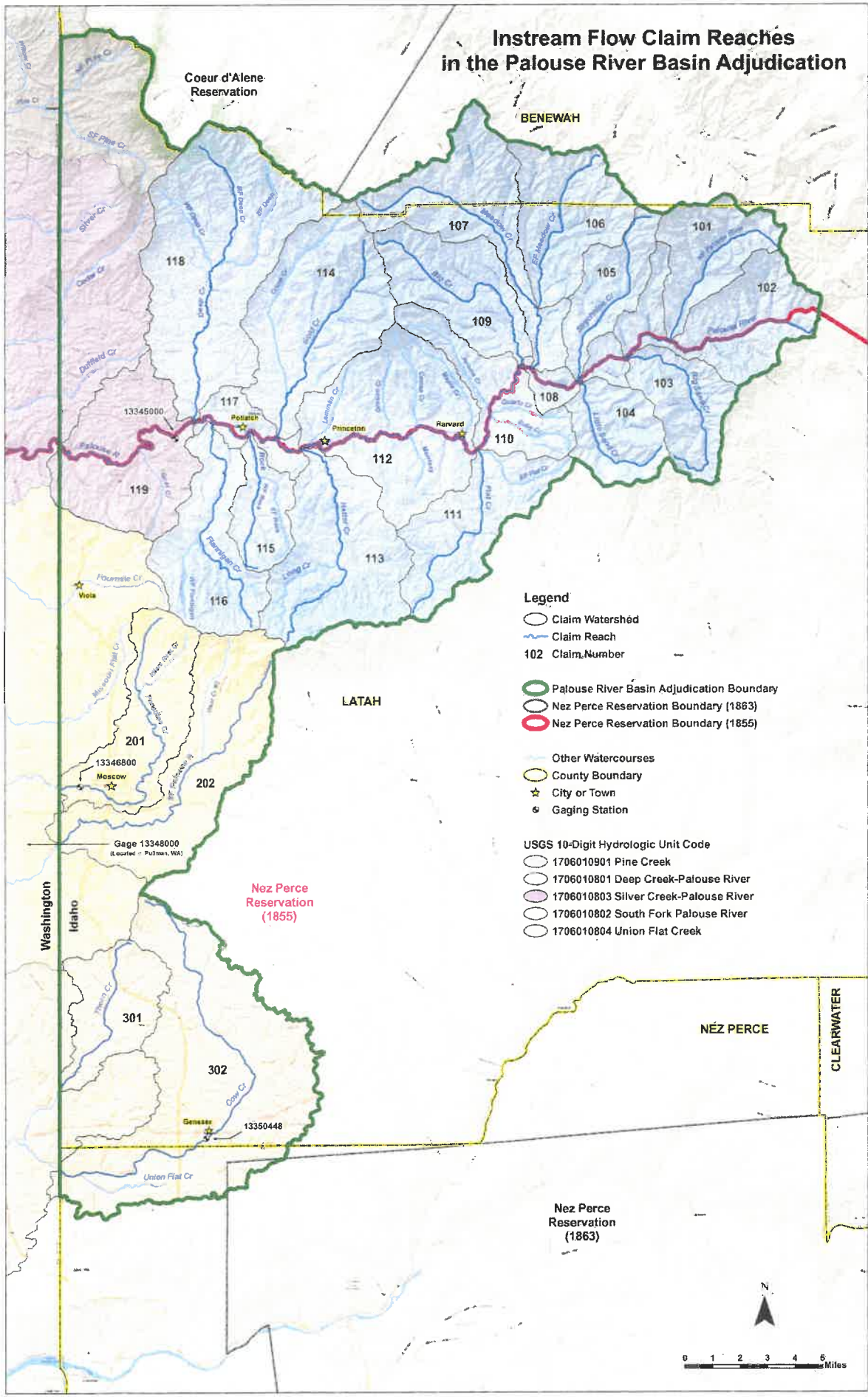
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Katherine M. Kane  
United States Department of Justice  
Indian Resources Division  
Natural Resources Section  
999 18<sup>th</sup> Street  
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

# Instream Flow Claim Reaches in the Palouse River Basin Adjudication



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

87-11997

IN RE: THE GENERAL )  
ADJUDICATION OF RIGHTS )  
TO THE USE OF WATER FROM )  
THE PALOUSE RIVER BASIN )  
WATER SYSTEM )  
)  
)  
)

---

Case No.: 59576  
**NOTICE OF CLAIM**  
**Federal Reserved Water Right**

RECEIVED  
DEC 30 2019  
DEPARTMENT OF  
WATER RESOURCES

**1. Name and address of claimant:**

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the REGIONAL DIRECTOR, NORTHWEST REGION

Department of the Interior  
Bureau of Indian Affairs  
911 N.E. 11<sup>th</sup> Ave.  
Portland, OR 97232

- 2. Date of Priority:** Time Immemorial  
**3. Source:** Flannigan Creek (Federal I.D. # 116)  
**4. Point of Diversion:** Not applicable: Instream flow

Upstream Boundary -- Headwaters

Township:	Range:	Section:	Q in the Q:	Meridian:	County:
40N	4W	18	NWNW	Boise	Latah

Downstream Boundary - Mouth

Township:	Range:	Section:	Q in the Q:	Meridian:	County:
41N	5W	2	NESE	Boise	Latah

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

**5. Place of Use:**

At all points along the stream reach located between the boundaries listed above.

**6. Purpose of Water Use:**

To provide instream flows to sustain fish within the described Place of Use and to support hunting, gathering, and pasturing upon open and unclaimed lands.

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

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

January	February	March	April	May	June
13	19	28	25	12	3.6

July	August	September	October	November	December
0.92	0.36	0.34	0.58	1.8	4.3

**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 of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, 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. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

**10. Other Provisions:**

- a. The United States has asserted other claims in the Palouse River Basin Adjudication. 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 Palouse River Basin Adjudication. 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 fountains flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; 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 the 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 Nez Perce Treaty of 1863 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 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 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 Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.



Signature of Authorized Agent:

Title and Organization:

---

Northwest Regional Director  
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

Notice is hereby given that the United States Department of Justice will represent the United States of America, including the U.S. Department of the Interior, Bureau of Indian Affairs, in all matters pertaining to the Palouse River Basin Adjudication.

All notices, filings and correspondence concerning this matter should be mailed to the United States Department of Justice at the address set forth below:



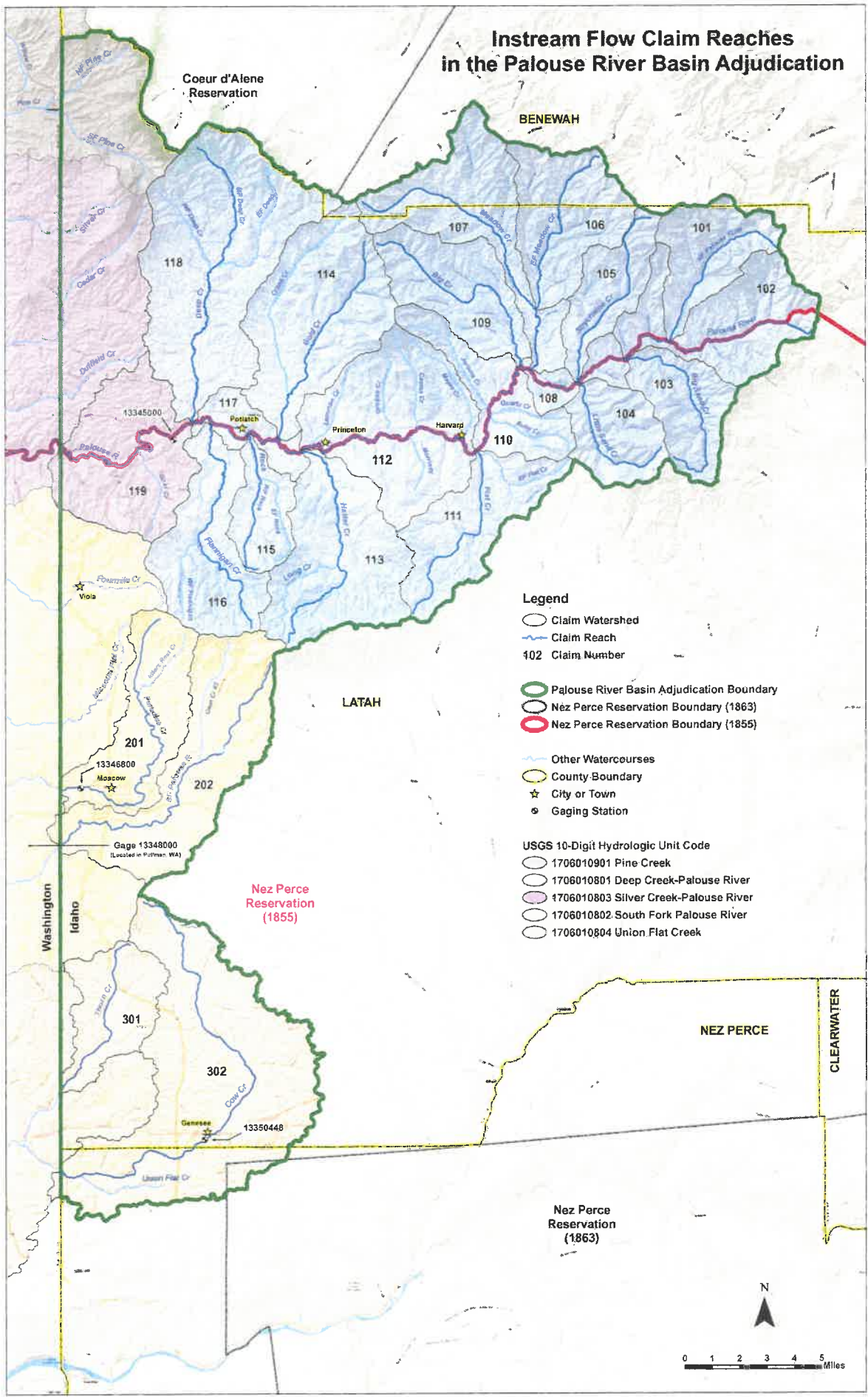
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Katherine M. Kane  
United States Department of Justice  
Indian Resources Division  
Natural Resources Section  
999 18<sup>th</sup> Street  
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

# Instream Flow Claim Reaches in the Palouse River Basin Adjudication





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

87-11998

RECEIVED

DEC 30 2019

DEPARTMENT OF  
WATER RESOURCES

IN RE: THE GENERAL )  
ADJUDICATION OF RIGHTS ) Case No.: 59576  
TO THE USE OF WATER FROM ) **NOTICE OF CLAIM**  
THE PALOUSE RIVER BASIN )  
WATER SYSTEM ) **Federal Reserved Water Right**  
)  
)  
)  
)  
)  
)

**1. Name and address of claimant:**

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the REGIONAL DIRECTOR, NORTHWEST REGION  
Department of the Interior  
Bureau of Indian Affairs  
911 N.E. 11<sup>th</sup> Ave.  
Portland, OR 97232

- 2. Date of Priority:** Time Immemorial
- 3. Source:** Palouse River (Federal I.D. # 117)
- 4. Point of Diversion:** Not applicable: Instream flow

Upstream Boundary – Hatter Creek

Township:	Range:	Section:	Q in the Q:	Meridian:	County:
41N	4W	9	NWSW	Boise	Latah

Downstream Boundary - Deep Creek

Township:	Range:	Section:	Q in the Q:	Meridian:	County:
41N	5W	2	NWSW	Boise	Latah

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

- 5. Place of Use:**  
At all points along the stream reach located between the boundaries listed above.

**6. Purpose of Water Use:**

To provide instream flows to sustain fish within the described Place of Use and to support hunting, gathering, and pasturing upon open and unclaimed lands.

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

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

January	February	March	April	May	June
440	748	1060	937	421	134

July	August	September	October	November	December
35	14	13	22	67	152

**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 of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, 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. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

**10. Other Provisions:**

- a. The United States has asserted other claims in the Palouse River Basin Adjudication. 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 Palouse River Basin Adjudication. 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 fountains flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; 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 the 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 Nez Perce Treaty of 1863 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 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 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:**

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- (b) I do  do not  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 Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.



Signature of Authorized Agent:

Title and Organization:

---

Northwest Regional Director  
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

Notice is hereby given that the United States Department of Justice will represent the United States of America, including the U.S. Department of the Interior, Bureau of Indian Affairs, in all matters pertaining to the Palouse River Basin Adjudication.

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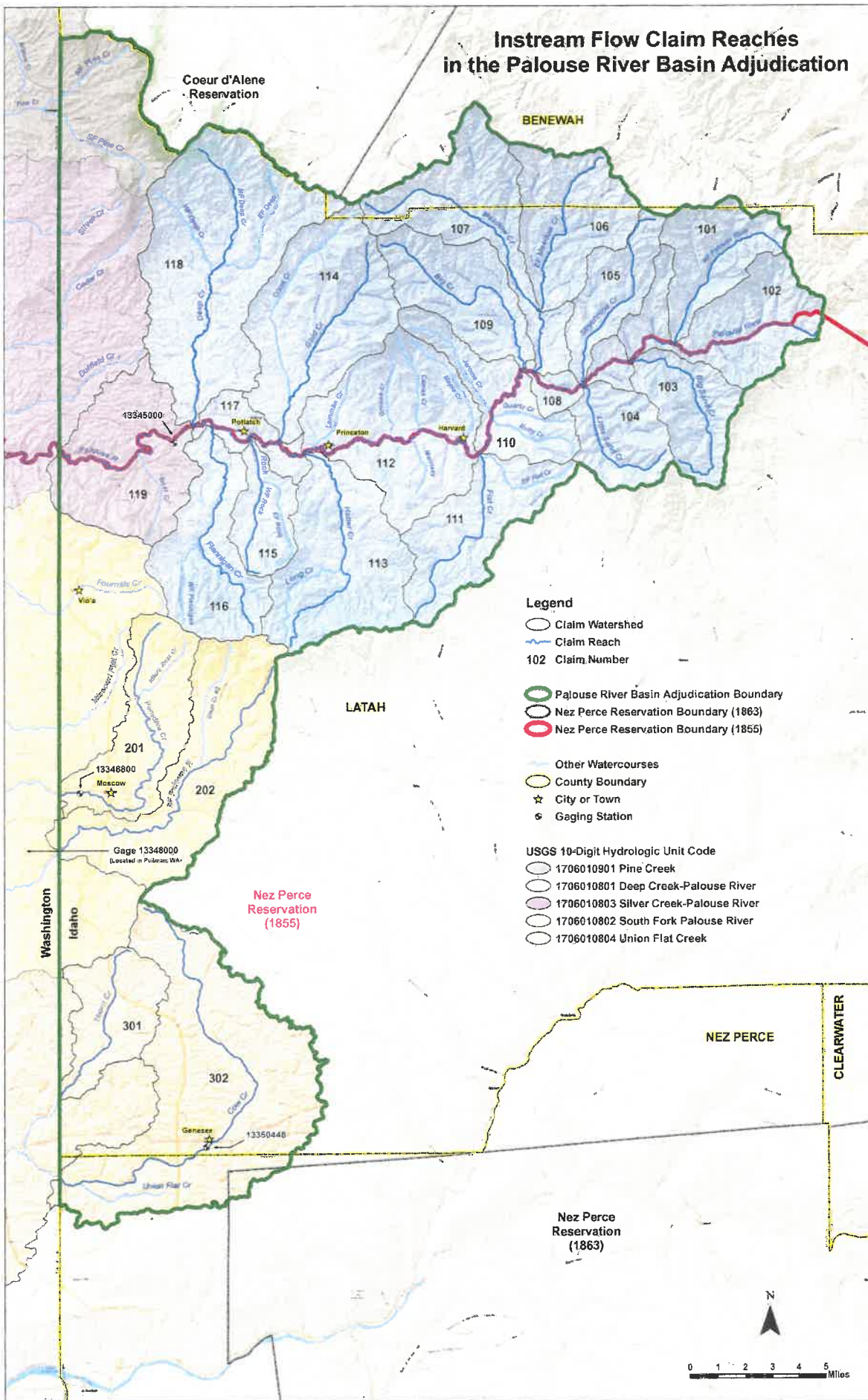
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Katherine M. Kane  
United States Department of Justice  
Indian Resources Division  
Natural Resources Section  
999 18<sup>th</sup> Street  
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

# Instream Flow Claim Reaches in the Palouse River Basin Adjudication



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

87-11999

RECEIVED

DEC 30 2019

DEPARTMENT OF  
WATER RESOURCES

IN RE: THE GENERAL ) Case No.: 59576  
 ADJUDICATION OF RIGHTS )  
 TO THE USE OF WATER FROM ) **NOTICE OF CLAIM**  
 THE PALOUSE RIVER BASIN )  
 WATER SYSTEM ) **Federal Reserved Water Right**  
 )  
 )  
 )

**1. Name and address of claimant:**

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the REGIONAL DIRECTOR, NORTHWEST REGION  
 Department of the Interior  
 Bureau of Indian Affairs  
 911 N.E. 11<sup>th</sup> Ave.  
 Portland, OR 97232

- 2. Date of Priority:** Time Immemorial
- 3. Source:** Deep Creek (Federal I.D. # 118)
- 4. Point of Diversion:** Not applicable: Instream flow

Upstream Boundary – Headwaters

Township:	Range:	Section:	Q in the Q:	Meridian:	County:
43N	5W	14	NESW	Boise	Latah

Downstream Boundary - Mouth

Township:	Range:	Section:	Q in the Q:	Meridian:	County:
41N	5W	2	NWSW	Boise	Latah

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

**5. Place of Use:**

At all points along the stream reach located between the boundaries listed above.

**6. Purpose of Water Use:**

To provide instream flows to sustain fish within the described Place of Use and to support hunting, gathering, and pasturing upon open and unclaimed lands.

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

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

January	February	March	April	May	June
61	93	133	120	57	17

July	August	September	October	November	December
4.4	1.7	1.6	2.8	8.6	21

**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 of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, 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. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

**10. Other Provisions:**

- a. The United States has asserted other claims in the Palouse River Basin Adjudication. 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 Palouse River Basin Adjudication. 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 fountains flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; and consumptive use claims on two allotments held in trust by the United States.
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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 the 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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- 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 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 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 Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.



Signature of Authorized Agent:

Title and Organization:

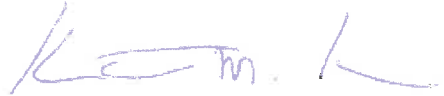
---

Northwest Regional Director  
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

Notice is hereby given that the United States Department of Justice will represent the United States of America, including the U.S. Department of the Interior, Bureau of Indian Affairs, in all matters pertaining to the Palouse River Basin Adjudication.

All notices, filings and correspondence concerning this matter should be mailed to the United States Department of Justice at the address set forth below:



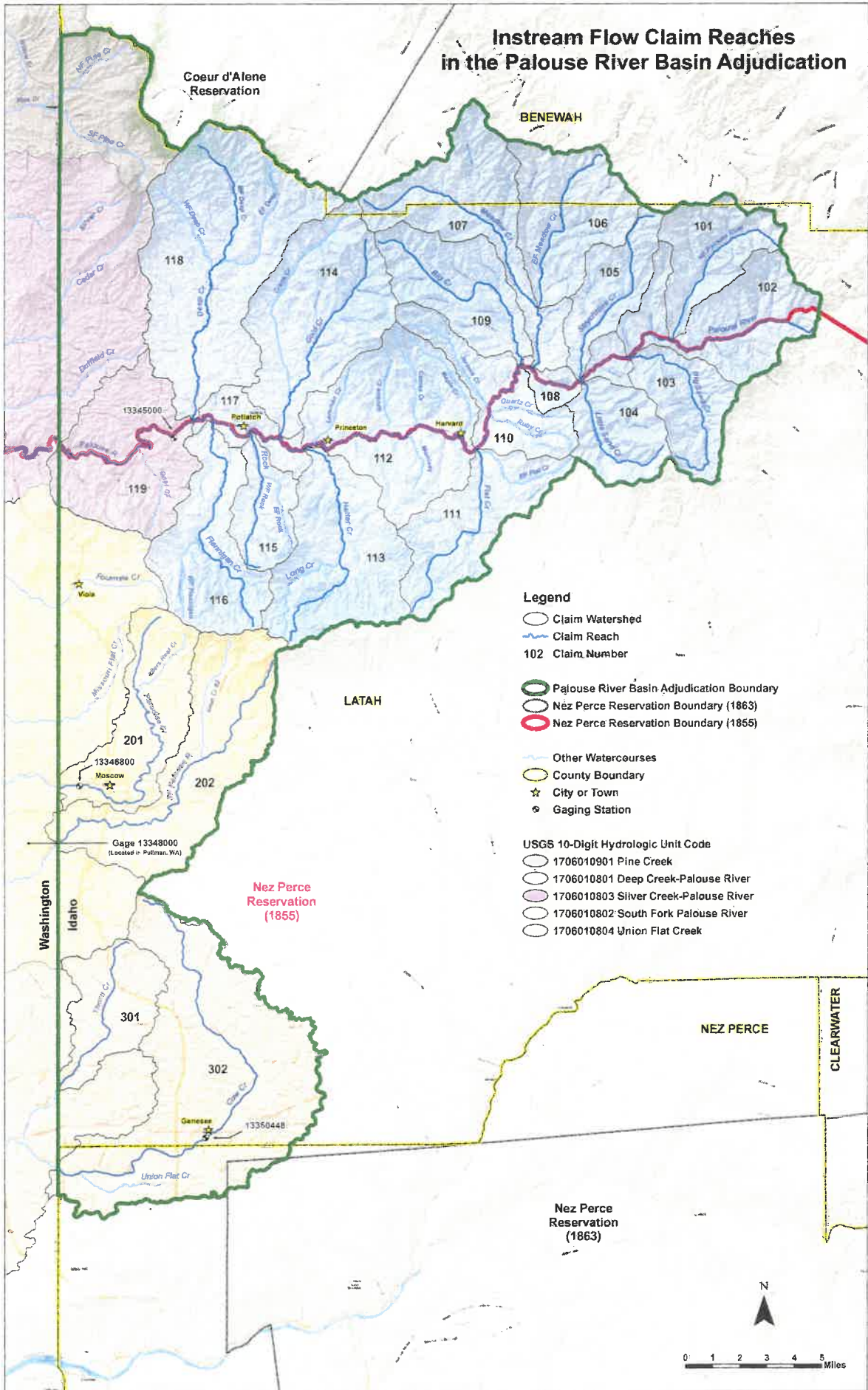
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Katherine M. Kane  
United States Department of Justice  
Indian Resources Division  
Natural Resources Section  
999 18<sup>th</sup> Street  
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

## Instream Flow Claim Reaches in the Palouse River Basin Adjudication



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

87-12000

RECEIVED

DEC 30 2019

DEPARTMENT OF  
WATER RESOURCES

IN RE: THE GENERAL ) Case No.: 59576  
ADJUDICATION OF RIGHTS )  
TO THE USE OF WATER FROM ) **NOTICE OF CLAIM**  
THE PALOUSE RIVER BASIN )  
WATER SYSTEM ) **Federal Reserved Water Right**  
)  
)  
)

**1. Name and address of claimant:**

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the REGIONAL DIRECTOR, NORTHWEST REGION

Department of the Interior  
Bureau of Indian Affairs  
911 N.E. 11<sup>th</sup> Ave.  
Portland, OR 97232

- 2. Date of Priority:** Time Immemorial  
**3. Source:** Palouse River (Federal I.D. # 119)  
**4. Point of Diversion:** Not applicable: Instream flow

Upstream Boundary – Deep Creek

Township:	Range:	Section:	Q in the Q:	Meridian:	County:
41N	5W	2	NWSW	Boise	Latah

Downstream Boundary - WA/ID State Line

Township:	Range:	Section:	Q in the Q:	Meridian:	County:
41N	6W	12	SWNW	Boise	Latah

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

**5. Place of Use:**

At all points along the stream reach located between the boundaries listed above.

**6. Purpose of Water Use:**

To provide instream flows to sustain fish within the described Place of Use and to support hunting, gathering, and pasturing upon open and unclaimed lands.

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

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

January	February	March	April	May	June
573	799	1160	1050	508	151

July	August	September	October	November	December
39	15	14	24	76	193

**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 of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, 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. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

**10. Other Provisions:**

a. The United States has asserted other claims in the Palouse River Basin Adjudication. 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 Palouse River Basin Adjudication. 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 fountains flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; 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 the 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 Nez Perce Treaty of 1863 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 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 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 Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.



Signature of Authorized Agent:

Title and Organization:

---

Northwest Regional Director  
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.



Notice is hereby given that the United States Department of Justice will represent the United States of America, including the U.S. Department of the Interior, Bureau of Indian Affairs, in all matters pertaining to the Palouse River Basin Adjudication.

All notices, filings and correspondence concerning this matter should be mailed to the United States Department of Justice at the address set forth below:



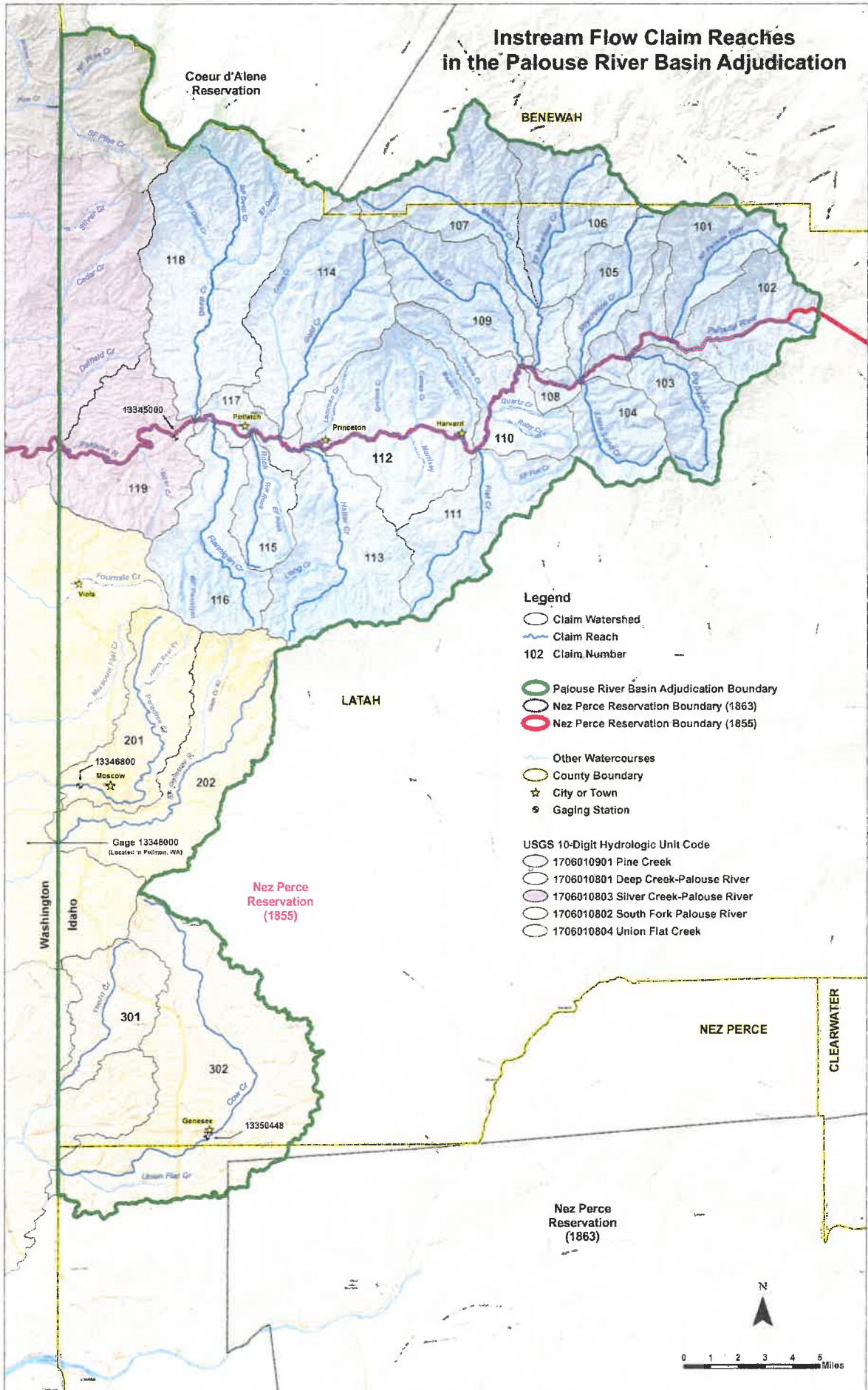
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Katherine M. Kane  
United States Department of Justice  
Indian Resources Division  
Natural Resources Section  
999 18<sup>th</sup> Street  
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

# Instream Flow Claim Reaches in the Palouse River Basin Adjudication



Coeur d'Alene  
Reservation

BENEWAH

LATAH

NEZ PERCE

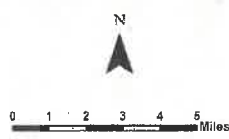
**Legend**

- Claim Watershed
  - Claim Reach
  - 102 Claim Number
  - Palouse River Basin Adjudication Boundary
  - Nez Perce Reservation Boundary (1863)
  - Nez Perce Reservation Boundary (1855)
  - Other Watercourses
  - County Boundary
  - ☆ City or Town
  - ⊙ Gaging Station
- 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

Gage 13348000  
(Located in Polston, WA)

Nez Perce  
Reservation  
(1855)

Nez Perce  
Reservation  
(1863)



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

87-12001

RECEIVED  
DEC 30 2019  
DEPARTMENT OF  
WATER RESOURCES

IN RE: THE GENERAL	)	Case No.: 59576
ADJUDICATION OF RIGHTS	)	
TO THE USE OF WATER FROM	)	<b>NOTICE OF CLAIM</b>
THE PALOUSE RIVER BASIN	)	
WATER SYSTEM	)	<b>Federal Reserved Water Right</b>
	)	
	)	

**1. Name and address of claimant:**

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the REGIONAL DIRECTOR, NORTHWEST REGION  
 Department of the Interior  
 Bureau of Indian Affairs  
 911 N.E. 11<sup>th</sup> Ave.  
 Portland, OR 97232

- 2. Date of Priority:** Time Immemorial
- 3. Source:** Paradise Creek (Federal I.D. # 201)
- 4. Point of Diversion:** Not applicable: Instream flow

Upstream Boundary – Headwaters

Township:	Range:	Section:	Q in the Q:	Meridian:	County:
40N	5W	9	NESE	Boise	Latah

Downstream Boundary - WA/ID State Line

Township:	Range:	Section:	Q in the Q:	Meridian:	County:
39N	6W	12	SWSW	Boise	Latah

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

- 5. Place of Use:**  
At all points along the stream reach located between the boundaries listed above.

**6. Purpose of Water Use:**

To provide instream flows to sustain fish within the described Place of Use and to support hunting, gathering, and pasturing upon open and unclaimed lands.

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

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

January	February	March	April	May	June
19	28	33	16	6.7	3.2

July	August	September	October	November	December
0.91	0.69	0.67	1.3	3.3	5.9

**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 of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, 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. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

**10. Other Provisions:**

- a. The United States has asserted other claims in the Palouse River Basin Adjudication. 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 Palouse River Basin Adjudication. 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 fountains flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; 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 the 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 Nez Perce Treaty of 1863 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 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 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 Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.



Signature of Authorized Agent:

Title and Organization:

---

Northwest Regional Director  
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

Notice is hereby given that the United States Department of Justice will represent the United States of America, including the U.S. Department of the Interior, Bureau of Indian Affairs, in all matters pertaining to the Palouse River Basin Adjudication.

All notices, filings and correspondence concerning this matter should be mailed to the United States Department of Justice at the address set forth below:



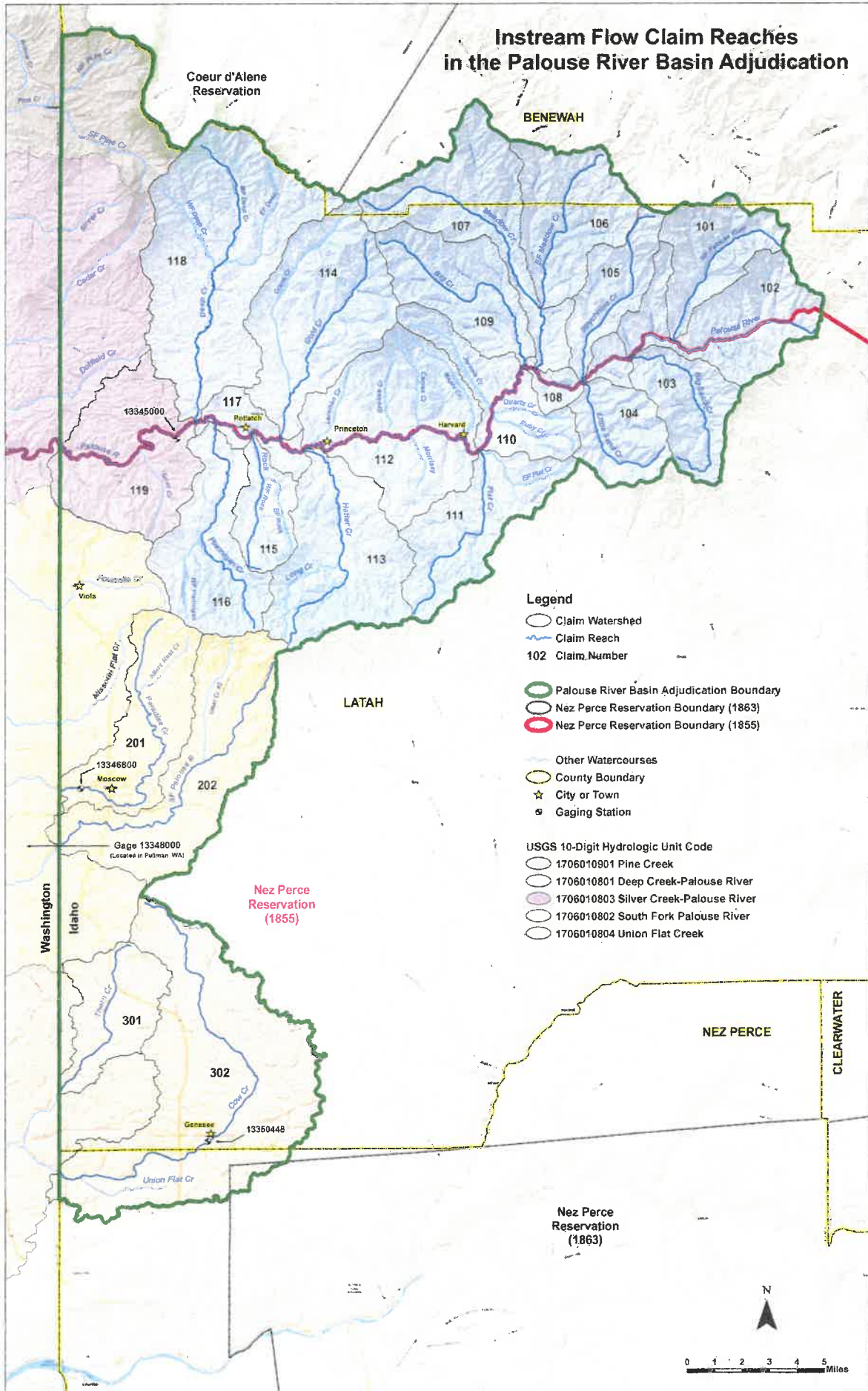
---

Katherine M. Kane  
United States Department of Justice  
Indian Resources Division  
Natural Resources Section  
999 18<sup>th</sup> Street  
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

# Instream Flow Claim Reaches in the Palouse River Basin Adjudication





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

87-12002

IN RE: THE GENERAL )  
ADJUDICATION OF RIGHTS )  
TO THE USE OF WATER FROM )  
THE PALOUSE RIVER BASIN )  
WATER SYSTEM )  
)  
)  
)  
)

---

Case No.: 59576  
**NOTICE OF CLAIM**  
**Federal Reserved Water Right**

RECEIVED  
DEC 30 2019  
DEPARTMENT OF  
WATER RESOURCES

**1. Name and address of claimant:**

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the REGIONAL DIRECTOR, NORTHWEST REGION  
Department of the Interior  
Bureau of Indian Affairs  
911 N.E. 11<sup>th</sup> Ave.  
Portland, OR 97232

**2. Date of Priority:** Time Immemorial

**3. Source:** South Fork Palouse River (Federal I.D. # 202)

**4. Point of Diversion:** Not applicable: Instream flow

Upstream Boundary – Headwaters

Township:	Range:	Section:	Q in the Q:	Meridian:	County:
40N	4W	19	SENE	Boise	Latah

Downstream Boundary - WA/ID State Line

Township:	Range:	Section:	Q in the Q:	Meridian:	County:
39N	6W	24	SWSW	Boise	Latah

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

**5. Place of Use:**

At all points along the stream reach located between the boundaries listed above.

**6. Purpose of Water Use:**

To provide instream flows to sustain fish within the described Place of Use and to support hunting, gathering, and pasturing upon open and unclaimed lands.

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

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

January	February	March	April	May	June
19	35	39	15	7.6	4.7

July	August	September	October	November	December
1.9	1.7	2.1	2.2	3.5	6.2

**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 of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, 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. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

**10. Other Provisions:**

- a. The United States has asserted other claims in the Palouse River Basin Adjudication. 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 Palouse River Basin Adjudication. 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 fountains flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; 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 the 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 Nez Perce Treaty of 1863 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.
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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 Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.



Signature of Authorized Agent:

Title and Organization:

---

Northwest Regional Director  
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

Notice is hereby given that the United States Department of Justice will represent the United States of America, including the U.S. Department of the Interior, Bureau of Indian Affairs, in all matters pertaining to the Palouse River Basin Adjudication.

All notices, filings and correspondence concerning this matter should be mailed to the United States Department of Justice at the address set forth below:



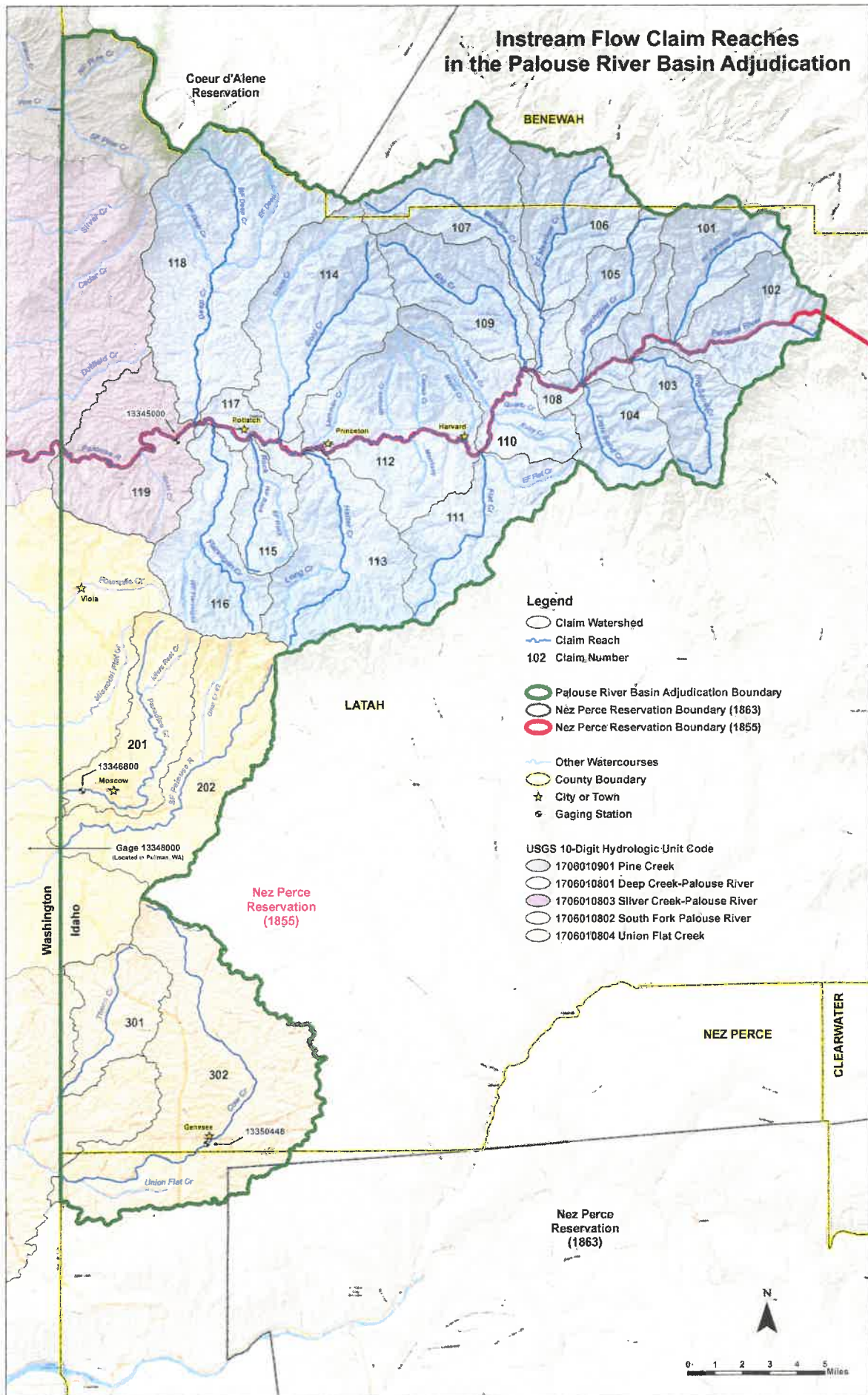
---

Katherine M. Kane  
United States Department of Justice  
Indian Resources Division  
Natural Resources Section  
999 18<sup>th</sup> Street  
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

# Instream Flow Claim Reaches in the Palouse River Basin Adjudication



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

87-12003

IN RE: THE GENERAL )  
ADJUDICATION OF RIGHTS )  
TO THE USE OF WATER FROM )  
THE PALOUSE RIVER BASIN )  
WATER SYSTEM )  
)  
)  
)

Case No.: 59576  
**NOTICE OF CLAIM**  
**Federal Reserved Water Right**

RECEIVED  
DEC 30 2019  
DEPARTMENT OF  
WATER RESOURCES

**1. Name and address of claimant:**

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the REGIONAL DIRECTOR, NORTHWEST REGION  
Department of the Interior  
Bureau of Indian Affairs  
911 N.E. 11<sup>th</sup> Ave.  
Portland, OR 97232

- 2. Date of Priority:** Time Immemorial
- 3. Source:** Thorn Creek (Federal I.D. # 301)
- 4. Point of Diversion:** Not applicable: Instream flow

Upstream Boundary – Headwaters

Township:	Range:	Section:	Q in the Q:	Meridian:	County:
38N	5W	8	NESE	Boise	Latah

Downstream Boundary - WA/ID State Line

Township:	Range:	Section:	Q in the Q:	Meridian:	County:
37N	6W	1	SWSW	Boise	Latah

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

**5. Place of Use:**

At all points along the stream reach located between the boundaries listed above.

**6. Purpose of Water Use:**

To provide instream flows to sustain fish within the described Place of Use and to support hunting, gathering, and pasturing upon open and unclaimed lands.

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

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

January	February	March	April	May	June
7.2	25	19	6.9	1.9	0.81

July	August	September	October	November	December
0.21	0.04	0.15	0.24	0.63	1.5

**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 of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, 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. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

**10. Other Provisions:**

- a. The United States has asserted other claims in the Palouse River Basin Adjudication. 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 Palouse River Basin Adjudication. 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 fountains flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; 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 the 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 Nez Perce Treaty of 1863 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 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 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  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 Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.



Signature of Authorized Agent:

Title and Organization:

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Northwest Regional Director  
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.

Notice is hereby given that the United States Department of Justice will represent the United States of America, including the U.S. Department of the Interior, Bureau of Indian Affairs, in all matters pertaining to the Palouse River Basin Adjudication.

All notices, filings and correspondence concerning this matter should be mailed to the United States Department of Justice at the address set forth below:



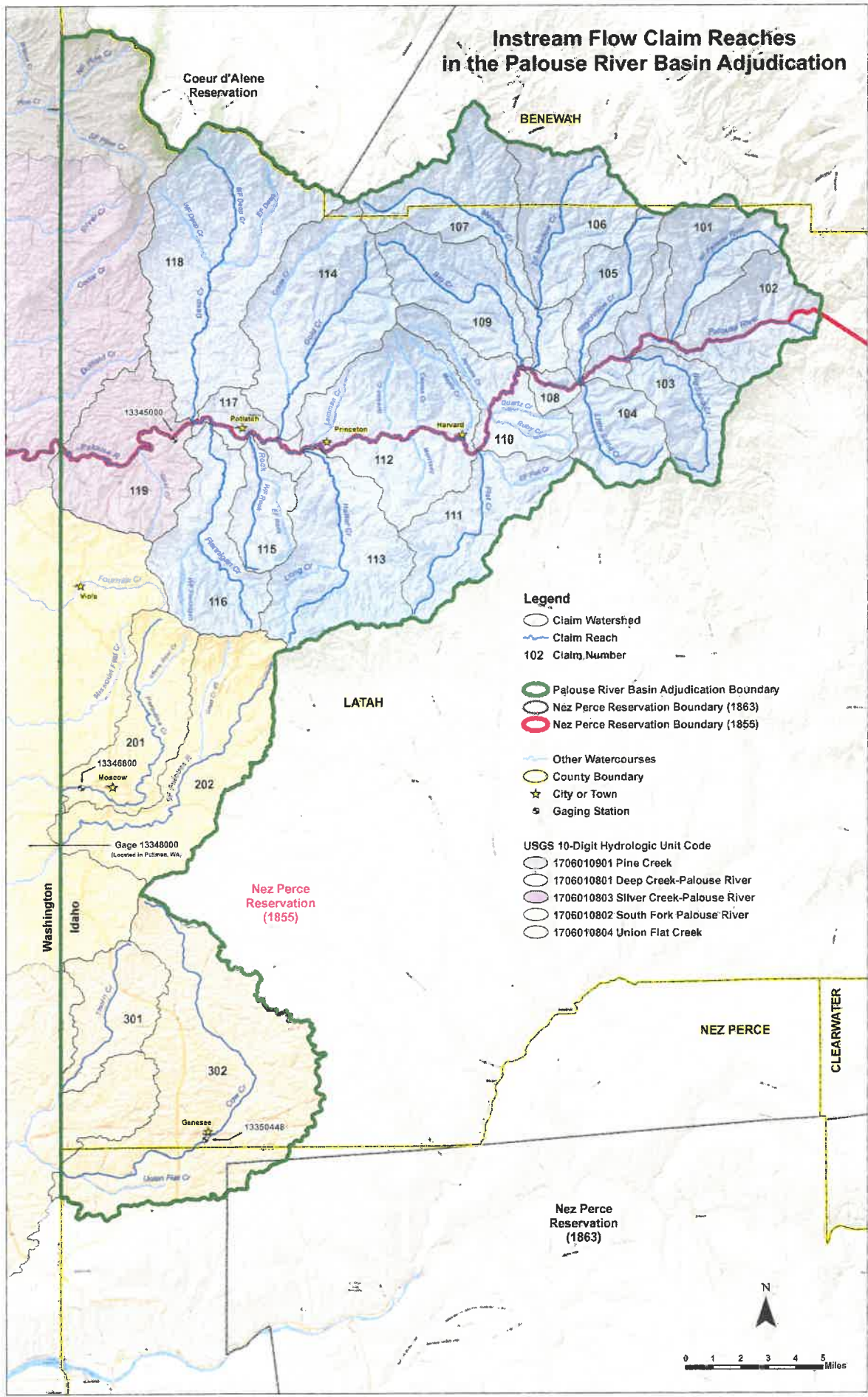
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Katherine M. Kane  
United States Department of Justice  
Indian Resources Division  
Natural Resources Section  
999 18<sup>th</sup> Street  
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

# Instream Flow Claim Reaches in the Palouse River Basin Adjudication



**Legend**

- Claim Watershed
  - Claim Reach
  - 102 Claim Number
  - Palouse River Basin Adjudication Boundary
  - Nez Perce Reservation Boundary (1863)
  - Nez Perce Reservation Boundary (1855)
  - Other Watercourses
  - County Boundary
  - ☆ City or Town
  - ⊙ Gaging Station
- 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



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

87-12004

IN RE: THE GENERAL )  
ADJUDICATION OF RIGHTS )  
TO THE USE OF WATER FROM )  
THE PALOUSE RIVER BASIN )  
WATER SYSTEM )  
)  
)  
)

Case No.: 59576  
**NOTICE OF CLAIM**  
**Federal Reserved Water Right**

RECEIVED  
DEC 30 2019  
DEPARTMENT OF  
WATER RESOURCES

**1. Name and address of claimant:**

UNITED STATES OF AMERICA, as trustee on behalf of the NEZ PERCE TRIBE and ALLOTTEES of the NEZ PERCE INDIAN RESERVATION acting through the REGIONAL DIRECTOR, NORTHWEST REGION  
Department of the Interior  
Bureau of Indian Affairs  
911 N.E. 11<sup>th</sup> Ave.  
Portland, OR 97232

- 2. Date of Priority:** Time Immemorial
- 3. Source:** Union Flat Creek (Federal I.D. # 302)
- 4. Point of Diversion:** Not applicable: Instream flow

Upstream Boundary – Headwaters

Township:	Range:	Section:	Q in the Q:	Meridian:	County:
38N	5W	4	NENW	Boise	Latah

Downstream Boundary - WA/ID State Line

Township:	Range:	Section:	Q in the Q:	Meridian:	County:
37N	6W	24	SWSW	Boise	Nez Perce

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

**5. Place of Use:**

At all points along the stream reach located between the boundaries listed above.

**6. Purpose of Water Use:**

To provide instream flows to sustain fish within the described Place of Use and to support hunting, gathering, and pasturing upon open and unclaimed lands.

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

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

January	February	March	April	May	June
30	83	67	29	10	3.7

July	August	September	October	November	December
0.8	0.12	0.49	0.91	2.5	6.7

**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 of 1855 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, June 11, 1855, 12 Stat. 957 (“1855 Treaty”); the Treaty of 1863 between the United States of America and the Nez Perce Indians, U.S.-Nez Perce Indians, 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. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979), and its progeny.

**10. Other Provisions:**

- a. The United States has asserted other claims in the Palouse River Basin Adjudication. 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 Palouse River Basin Adjudication. 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 fountains flows pursuant to Article VIII of the 1863 Treaty between the United States of America and the Nez Perce Tribe; 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 the 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 Nez Perce Treaty of 1863 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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- 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 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 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 Bryan Mercier, and that I have signed the foregoing document in the space below as Regional Director, Northwest Region, Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.



Signature of Authorized Agent:

Title and Organization:

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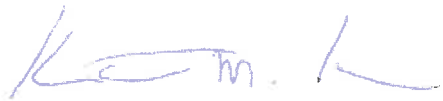
Northwest Regional Director  
U.S. Bureau of Indian Affairs

Dated this 26th day of December, 2019.



Notice is hereby given that the United States Department of Justice will represent the United States of America, including the U.S. Department of the Interior, Bureau of Indian Affairs, in all matters pertaining to the Palouse River Basin Adjudication.

All notices, filings and correspondence concerning this matter should be mailed to the United States Department of Justice at the address set forth below:



---

Katherine M. Kane  
United States Department of Justice  
Indian Resources Division  
Natural Resources Section  
999 18<sup>th</sup> Street  
Denver, CO 80202

Attorney for the United States of America

Dated this 26th day of December, 2019.

# Instream Flow Claim Reaches in the Palouse River Basin Adjudication

