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DEPARTMENT OF
NATURAL RESOURCES

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Counsel for the Nez Perce Tribe

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

IN RE: PRBA

CASE NO: 59576

)
) **SUBCASE NO. 87-10601**
)

) **NEZ PERCE TRIBE'S JOINDER**
) **IN UNITED STATES' OBJECTION TO**
) **AMENDED DIRECTOR'S REPORT**
)
)
)

Pursuant to the Order Granting Motion to File Amended Claim and Setting Deadlines,
entered on June 20, 2024, the United States of America ("United States"), as trustee on behalf of
the Nez Perce Tribe, acting through Regional Director, Northwest Region Department of the
Interior, Bureau of Indian Affairs, 911 N.E. 11th Avenue, Portland, OR 97232, filed an objection
to claim 87-10601 on August 21, 2024, for a right under State of Idaho law to use of a spring on

lands purportedly owned by Claimants. By way of this filing, and for the reasons stated herein, the Nez Perce Tribe joins in the August 21, 2024, objection of the United States.

The land on which the spring, which is the basis for the claimed right under state law, is found is within Basin 87, and said spring is subject to the Palouse River Basin Adjudication. *In Re PRBA*, Case No. 59576 (D. Ct. 5th Jud. Dist. Idaho, April 10, 2019). A large portion of the Palouse River Basin includes lands ceded by the Nez Perce Tribe ("Tribe") in the Treaty of 1863 between the United States of America and the Nez Perce Indians, June 9, 1863, 14 Stat. 647 ("1863 Treaty"). In Article VIII of the 1863 Treaty, the United States and Tribe reserved the use of the springs and fountains on the ceded lands as follows:

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

Based on the "in common" language in Article VIII, the United States, as trustee for the Tribe, has claimed up to half the natural spring flow with a priority date of time immemorial based on the Tribe's aboriginal use of springs. On that basis the United States objects to this claim to the extent it fails to recognize the corresponding federal claim for up to half of natural spring flow expressly reserved for the use of the Tribe and its members.

The Tribe herein joins the United States in objecting to the claim.

DATED this 22nd day of August, 2024.

NEZ PERCE TRIBE
OFFICE OF LEGAL COUNSEL



Michael A. Lopez
Senior Staff Attorney
Local Counsel

NATIVE AMERICAN RIGHTS
FUND



Thomas L. Murphy
Staff Attorney
Pro Hac Vice Counsel

CERTIFICATE OF SERVICE

I certify that on August 22, 2024, I served true and correct copies of the NEZ PERCE TRIBE'S JOINDER IN UNITED STATES' OBJECTION TO AMENDED DIRECTOR'S REPORT with the Clerk of the District Court at the address listed below via UPS shipping service.

Original to:

Clerk of the District Court
Palouse River Basin Adjudication
253 Third Avenue North
Twin Falls, ID 83303-2707
Fax: (208) 736-2121

I further certify that on August 22, 2024, Native American Rights Fund legal staff served a true and correct copy of the foregoing to the addresses below via U.S. Postal Service:
True and correct copies were sent via U.S. Mail to and the following parties:

IDWR Director
P.O. Box 83720
Boise, ID 83720-0098

U.S. Department of Justice
Environment & Natural Resources Division
550 W. Fort St., MSC 033
Boise, ID 83724

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
P.O. Box 83720
Boise, ID 83720-0010

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By: _____



Thomas L. Murphy
Staff Attorney
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