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## Lake

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

IN RE THE GENERAL ADJUDICATION )  
OF RIGHTS TO THE USE OF WATER )  
FROM THE COEUR D'ALENE- )  
SPOKANE RIVER BASIN )  
WATER SYSTEM )  
CASE NO. 49576 )

**NOTICE OF CLAIM**

**Federal Reserved Water Right**

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

UNITED STATES OF AMERICA, as trustee on behalf of the COEUR D'ALENE  
TRIBE of the COEUR D'ALENE INDIAN RESERVATION acting through the  
NORTHWEST REGIONAL DIRECTOR  
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:** Lake Coeur d'Alene and its tributary sources, including surface water and groundwater.

*See Section 10 below for further discussion of Source.*

**4. Point of Diversion:** Not Applicable – This claim is for *in situ* maintenance of the Lake's natural elevation.

**5. Place of Use:** That portion of Lake Coeur d'Alene and its related waters that are located within the boundary of the Coeur d'Alene Reservation.

*See Section 10 below for further discussion of Place of Use.*

**6. Purpose of Water Use:** Present and future uses, including but not limited to: food; fiber; transportation; recreation; religious, cultural, and ceremonial; fish and wildlife habitat; lake level and wetland maintenance; water storage; power generation; and aesthetics – as a component of a water right necessary to fulfill the homeland purpose of the Coeur d'Alene Reservation pursuant to the documents referenced in Section 9 and the provisions in Section 10, *infra*. In addition, “a purpose of the 1873 Executive reservation was to retain the submerged lands for the benefit of the Tribe.” *United States and Coeur d'Alene Tribe v. Idaho*, 95 F.Supp.2d 1094 (D. Idaho 1998) (*aff'd*, *Idaho v. United States*, 533 U.S. 262 (2001)).

7. **Period of Use:** January 1 through December 31

8. **Quantity Reserved:** A sufficient flow into Lake Coeur d'Alene to maintain the monthly elevations and outflows found in the table below, subject to section 10(a), *infra*.

MONTH	LAKE ELEVATION (feet) <sup>1</sup>	OUTFLOW (cfs) <sup>2</sup>
January	2,124.2	7,470
February	2,124.7	8,550
March	2,125.8	11,900
April	2,128.5	20,000
May	2,129.6	23,000
June	2,127.2	15,900
July	2,122.8	4,520
August	2,120.9	1,420
September	2,120.4	974
October	2,120.6	1,240
November	2,121.9	2,920
December	2,123.6	5,680

9. **Basis of Claim:** The legal basis for this water right claim stems from the doctrine of federal reserved water rights articulated by the United States Supreme Court in *Winters v. United States*, 207 U.S. 564 (1908) and its progeny, as well as the operative documents and circumstances surrounding the creation of the Coeur d'Alene Reservation, including but not limited to, the Agreement dated July 28, 1873 between the United States and the Coeur d'Alene Tribe, the Executive Order signed by President Grant on November 8, 1873, 1 C. Kapler, Indian Affairs: Laws and Treaties 837 (1904), and the Agreement dated March 26, 1887 between the United States and the Coeur d'Alene Tribe, ratified by Act of Congress dated March 3, 1891, 26 Stat. 1027.

10. **Other Provisions:**

a. This claim is for a sufficient flow into Lake Coeur d'Alene to result in the Lake elevations and outflows found in Section 8 *supra*. The United States recognizes that Lake elevation is currently regulated by dam operations at Post Falls, Idaho, which is governed by Federal Energy Regulatory Commission (FERC) License No. 2545-091. This claim does not seek to affect present licensed operations at Post Falls. Since the water rights claim must address the possibility that the dam will be removed or altered, the intent is to claim sufficient water to reflect the natural Lake processes prior to Post Falls dam – consistent with the federal and tribal intent as it was understood in 1873. So long as there is a sufficient flow into the Lake to maintain those Lake levels found in Section 8 *and* the minimum outflow in Section 8 *could be met* but for

<sup>1</sup> Local datum of 2100 ft plus gage height as measured by the United States Geological Survey gage located on Coeur d'Alene Lake at Coeur d'Alene, ID (Site # 12415500).

<sup>2</sup> As measured by the United States Geological Survey gage located on the Spokane River near Post Falls, ID (Site # 12419000).

operations at Post Falls, the outflows will not be required during the effective period of the FERC license.

b. This claim is one in a series the United States is making for waters from groundwater and surface water sources within the North Idaho Adjudication in the State of Idaho to fulfill the permanent homeland purpose of the Coeur d'Alene Indian Reservation. Such present and future purposes include but are not limited to: DCMI (domestic, commercial, municipal, and industrial); irrigated agriculture; fish and wildlife habitat; fish propagation; lake level maintenance; water storage; power generation; religious, cultural, and ceremonial; transportation; stockwater and wildlife; aesthetics; and recreation.

c. The complex history of the establishment of the Coeur d'Alene Reservation, including the operative documents, surrounding circumstances, negotiations, agreements, executive orders and statutes, was analyzed by the United States Supreme Court in *Idaho v. United States*, 533 U.S. 262 (2001) (*Idaho II*), the Ninth Circuit in *United States and the Coeur d'Alene Tribe v. Idaho*, 210 F.3d 1067 (9th Cir. 2000), and the United States District Court for the District of Idaho in *United States and Coeur d'Alene Tribe v. Idaho*, 95 F.Supp.2d 1094 (D. Idaho 1998).

d. In *Idaho II*, the Supreme Court held that the United States reserved in trust for the benefit of the Tribe the submerged lands of southern third of Lake Coeur d'Alene and the St. Joe River within the current boundaries of the Reservation. 533 U.S. 262 (2001). In so holding, the Supreme Court affirmed the opinion of the district court, which had found that "a purpose of the 1873 Executive reservation was to retain the submerged lands for the benefit of the Tribe." 95 F.Supp.2d 1094, 1102 (D. Idaho 1998).

e. Prior to the creation of the Reservation in 1873, the Coeur d'Alene Tribe held aboriginal title to "more than 3.5 million acres in what is now northern Idaho and northeastern Washington, including the area of Lake Coeur d'Alene and the St. Joe River." *Idaho II*, 533 U.S. 262, 265 (2001). "Tribal members traditionally used the [L]ake and its related waterways for food, fiber, transportation, recreation and cultural activities." *Id.* at 265. "A right to control the lakebed and adjacent waters was traditionally important to the Tribe . . ." *Id.* at 274.

f. This water right claim is for a traditional use of water that predates the creation of the Coeur d'Alene Reservation. This right was not created but was instead confirmed by the agreements and executive order outlined in section 9, *supra*. *United States v. Adair*, 723 F.2d 1394, 1414 (9th Cir. 1984). Therefore, pursuant to federal law, the priority date of this water right is time immemorial. *Id.*

g. The place of use in this claim is limited to those submerged lands where title is quieted in favor of the United States for the benefit of the Coeur d'Alene Tribe. *See Idaho v. United States*, 533 U.S. 262 (2001). This claim and other documents provided herein are not intended and shall not be construed to apply to, address or resolve, or submit to the jurisdiction of the State of Idaho, or otherwise waive the sovereign immunity of the United States or the Coeur d'Alene Tribe respecting the title to any lands on or off the Coeur d'Alene Reservation.

h. This claim and any other documents provided herein, are not intended to establish or modify the ordinary high water mark of Lake Coeur d'Alene.

i. In order to comply with Idaho Code § 42-1409(1), the United States has designated "places of use," "points of diversion," and "purposes of use" in submitting this water rights claim. This proposed water right claim form has been developed in conjunction with, and at the request of the Idaho Department of Water Resources ("IDWR"). The use of this format as required by Idaho Code, and as requested by IDWR, should not be construed to limit either the United States or the Coeur d'Alene Tribe's future use of water at other points of diversion, places of use or for other purposes within the boundaries of the Reservation. The statute's terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to achieve the purpose of the Reservation as a homeland for the Coeur d'Alene Tribe. The quantification standards used in no way constitute a limitation on the use of the water by the United States or the Coeur d'Alene Tribe.

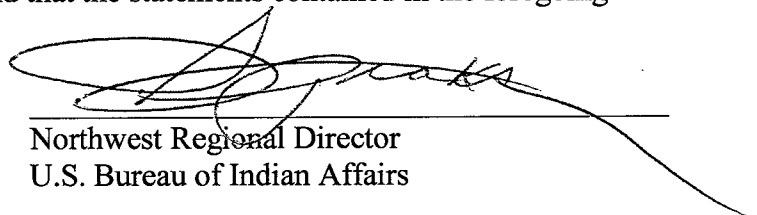
**11. Signatures:**

- (a) By signing below, I acknowledge that I have received, read, and understand the form entitled "How you will receive notices in the Coeur d'Alene-Spokane 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 Stanley Speaks, Regional Director, U.S. Bureau of Indian Affairs, that I have signed the foregoing document in the space below as Regional Director, U.S. Bureau of Indian Affairs, and that the statements contained in the foregoing document are true and correct.

Signature of Authorized Agent:  
Title and Organization:



Northwest Regional Director  
U.S. Bureau of Indian Affairs

Dated this 30th day of January, 2014.

Notice is hereby given that the United States Department of Justice will represent the United States of America, including, but not limited to the U.S. Department of the Interior, Bureau of Indian Affairs, in all matters pertaining to the Coeur d'Alene-Spokane River Basin Adjudication.

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

*Vanessa Boyd Willard*

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Vanessa Boyd Willard  
United States Department of Justice  
Environment & Natural Resources Division  
Indian Resources Section  
550 W. Fort Street, MSC 033  
Boise, Idaho 83724

Attorney for the United States of America

Dated this 30th day of January, 2014.