MEMORANDUM IN SUPPORT OF OBJECTION

RE: Federal Reserved Water Right Claim No. 97-09893

Clark Fork-Pend Oreille River Basin Adjudication (CFPRBA)

Prepared by: Colin Summers

Property: 4251 Squaw Valley Road, Priest River, Idaho 83856

Section 21, T59N, R05W, Bonner County, Idaho

Affected Water Right: No. 97-07485

Date: June 12, 2026

Objection Deadline: June 25, 2026

I. SUMMARY OF POSITION

Colin Summers, holder of *Water Right No. 97-07485 on the Upper West Branch Priest River, objects to* Federal Reserved Water Right Claim No. 97-09893 as filed by the United States as trustee on behalf of the Kalispel Tribe of Indians. The claim seeks instream flow rights on the Upper West Branch Priest River with a priority date of "Time Immemorial" and monthly flow demands ranging from 24.30 CFS to 323.00 CFS.

Hydrological analysis based on USGS LiDAR elevation data, field measurements taken on three separate dates spanning multiple flow conditions, and over a decade of on-site observation demonstrates that the claimed instream flow quantities are not physically supportable by the Upper West Branch Priest River. The stream carries approximately 9 to 12 CFS during summer low-flow conditions. The claim demands 24 to 26 CFS during August and September — approximately 260% of the water physically present in the stream during those months. Field measurements on April 9, 2026, showed actual spring flow of approximately 70 to 116 CFS, well below the 275 CFS claimed for April. Measurements on June 12, 2026, showed actual flow of approximately 39 to 48 CFS, well below the 182 CFS claimed for June. The peak May claim of 323.00 CFS represents only 32% of the maximum flood flow observed at the property in over a decade of continuous observation.

If decreed as filed, this claim would effectively prohibit all existing and future beneficial use of water on the Upper West Branch Priest River — not because diversions harm fish habitat, but because the claimed quantities exceed the stream's physical capacity. The existing diversion under Water Right 97-07485 (0.05 CFS) represents less than one-half of one percent of summer low flow and has negligible impact on fish habitat or streamflow.

Additionally, on-site observations over a decade of continuous residence, supported by published fisheries science from Idaho Department of Fish and Game and peer-reviewed literature, indicate that the primary constraints on fish habitat in this reach are sedimentation and water temperature — not insufficient streamflow. Reserving water in excess of the stream's capacity will not address these actual habitat limitations.

The property owner requests that claimed instream flow quantities be reduced to levels consistent with the actual hydrology of the Upper West Branch Priest River, and that existing and reasonably foreseeable beneficial uses be accommodated.

II. BACKGROUND

A. The Affected Water Right

Water Right No. 97-07485 was licensed by the Idaho Department of Water Resources on February 23, 2015, with a priority date of May 7, 2009. The right authorizes diversion of 0.05 CFS (approximately 22.4 gallons per minute) from the Upper West Branch Priest River for irrigation of 1.5 acres, with a maximum annual diversion volume of 4.5 acre-feet. The period of use is April 1 through October 31. The point of diversion is at NE1/4NW1/4, Section 21, T59N, R05W, Bonner County. The right was originally issued to Glen Frachiseur and has since been transferred to Colin Summers, current owner of the property. The IDWR Adjudication Claim Right Report dated April 9, 2026, confirms Colin Summers as the current owner with an active license.

B. The Federal Reserved Claim

Claim 97-09893 was filed on March 31, 2026, as part of the Director's Report for Federal Reserved Water Right Claims in Basins 96 and 97. The claim asserts an instream flow right on the Upper West Branch Priest River (tributary to Priest River) for fish habitat purposes, specifically "fish habitat for fish species harvested within the Kalispel Reservation — as a component of water rights necessary to fulfill the homeland purpose of the Kalispel Reservation." The claimed priority date is "Time Immemorial." The instream flow boundary points are located at T59N R05W S07 and S36, bracketing the point of diversion for Water Right 97-07485 at Section 21.

The claimed monthly instream flow quantities are as follows:

Month	Claimed Flow (CFS)
January	65.60
February	65.20
March	145.00
April	275.00
May	323.00
June	182.00
July	40.90
August	26.00
September	24.30
October	32.80
November	53.60
December	60.90

C. Geographic Context

The Upper West Branch Priest River flows through a remote valley in Bonner County. Upstream of the Summers property, the stream flows entirely through United States government land (Idaho Panhandle National Forest). The parcel immediately east of the Summers property is owned by the Kalispel Tribe of Indians. Water Right 97-07485 is believed to be the only active private surface water right on the Upper West Branch Priest River. The property owner's domestic water is supplied by a separate deep well producing approximately 2.5 gallons per minute — a flow rate insufficient to operate even a single garden sprinkler. All agricultural use of the 16-acre property is entirely dependent on the surface water supply from the Upper West Branch Priest River.

III. EVIDENCE: STREAM HYDROLOGY

A. Data Sources

Stream gradient was determined from USGS LiDAR point cloud data (dataset ID_NorthernID_2_2019, collected 2019, apparent late-summer low-flow conditions based on visible exposed sandbar features). Multiple elevation readings were taken along the stream channel within the Summers property.

Bridge deck elevation of 2,496.2 feet above sea level was confirmed by licensed surveyor in 2026.

Streambed depth and water depth were measured by physical field observation at the bridge on two dates: April 9, 2026, and June 12, 2026, using tape measure and probe rod at multiple cross-section points beneath the bridge.

Bridge opening width of 32.5 feet (footing to footing) was measured from Bonner County GIS aerial imagery (2025) and confirmed by field observation.

Summer low-flow channel dimensions (approximately 8 feet wide, 1 foot deep) are based on the property owner's observations over more than a decade of continuous residence (2016 to present).

Maximum flood stage was observed on April 20, 2017, when floodwaters rose to within approximately 1 inch of the bottom of the bridge I-beams.

Discharge was estimated using Manning's equation for open-channel flow with a roughness coefficient (n) of 0.035, appropriate for a natural channel with sandy bottom and moderate vegetation.

B. Stream Gradient

LiDAR elevation readings along the stream channel over the measured reach showed an elevation drop of 0.74 meters (2.43 feet) over a straight-line distance of 527.7 meters. Applying an estimated sinuosity factor of 1.3 for the meandering channel yields a channel distance of approximately 686 meters (2,251 feet) and a calculated slope of 0.001079 ft/ft (5.70 feet per mile).

C. Bridge Cross-Section Measurements

Measurement	April 9, 2026	June 12, 2026
Bridge opening width	32.5 ft	32.5 ft
Bridge deck elevation	2,496.2 ft	2,496.2 ft
Deck to water surface	70 in (5.83 ft)	80 in (6.67 ft)
Streambed depth 1	104 in (8.67 ft)	93 in (7.75 ft)
Streambed depth 2	108 in (9.00 ft)	100 in (8.33 ft)
Streambed depth 3	114 in (9.50 ft)	106 in (8.83 ft)

Average deck to streambed	108.7 in (9.06 ft)	99.7 in (8.31 ft)
Calculated water depth	38.7 in (3.22 ft)	19.7 in (1.64 ft)
Observed stream width	Est. 10–15 ft	~17 ft

The variation in average deck-to-streambed depth between measurements (approximately 9 inches shallower in June) is consistent with sediment shifting within the channel between measurement dates and with slight differences in measurement points across the channel cross-section.

IV. FLOW CALCULATIONS

A. Summer Drought Low Flow

At observed summer low-flow conditions (width 8 feet, depth 1 foot), Manning's equation yields a calculated discharge of approximately 9.6 CFS (4,309 gallons per minute) with a velocity of 1.20 feet per second.

B. Spring Flow (April 9, 2026)

At measured depth of 3.22 feet with an estimated channel width of 10 to 15 feet, the calculated discharge ranges from approximately 70 to 116 CFS. This measured spring flow — taken during the month of April when snowmelt contributes to elevated streamflow — is less than half of the 275 CFS claimed for April under claim 97-09893.

C. Early Summer Flow (June 12, 2026)

At measured depth of 1.64 feet with an observed channel width of approximately 17 feet (15 to 17 feet effective flow width accounting for shallow margins), the calculated discharge ranges from approximately 39 to 48 CFS. The claim demands 182 CFS for June — approximately 4.2 times more water than the stream physically contains on this date.

D. Maximum Observed Flood (April 20, 2017)

At flood stage, all flow was confined to the 32.5-foot bridge opening with a water depth of approximately 7.47 feet (water surface within 1 inch of the bottom of the I-beams). The calculated discharge under these conditions is approximately 1,008 CFS with a velocity of 4.15 feet per second. This represents the highest water level observed in over a decade of property ownership and corresponds to an exceptional snowmelt event.

V. ANALYSIS: CLAIMED FLOWS VERSUS ACTUAL STREAM CAPACITY

The claimed instream flow quantities in 97-09893 are not consistent with the physical hydrology of the Upper West Branch Priest River. Field measurements taken across three different dates and flow conditions consistently demonstrate that the claimed quantities exceed the stream's actual capacity.

Month	Claimed (CFS)	Est. Low Flow (CFS)	Measured Flow (CFS)	Max Flood (CFS)	Claim as % of Available
Jan	65.60	9.6	—	1,008	683% of low
Feb	65.20	9.6	—	1,008	679% of low
Mar	145.00	9.6	—	1,008	1,510% of low
Apr	275.00	9.6	70–116*	1,008	237–393% of measured*
May	323.00	9.6	—	1,008	32% of max flood

Jun	182.00	9.6	39–48**	1,008	379–467% of measured**
Jul	40.90	9.6	—	1,008	426% of low
Aug	26.00	9.6	—	1,008	271% of low
Sep	24.30	9.6	—	1,008	253% of low
Oct	32.80	9.6	—	1,008	342% of low
Nov	53.60	9.6	—	1,008	558% of low
Dec	60.90	9.6	—	1,008	634% of low

** Measured April 9, 2026. ** Measured June 12, 2026. Low flow estimated from observed summer drought conditions. Max flood observed April 20, 2017.*

The claim cannot be satisfied during the summer and fall months when diversions would most affect fish habitat, regardless of whether any water is diverted. During August and September, the claim demands 24.30 to 26.00 CFS while the stream carries approximately 9.6 CFS — the claimed quantity represents approximately 253% to 271% of the water physically present in the stream.

Even during months of elevated flow, the claim substantially exceeds actual conditions. Spring flow measured on April 9, 2026, was approximately 70 to 116 CFS — less than half the 275 CFS claimed for April. Early summer flow measured on June 12, 2026, was approximately 39 to 48 CFS — less than one-quarter of the 182 CFS claimed for June.

The peak May claim of 323.00 CFS represents 32% of the maximum flood flow (1,008 CFS) ever observed at the property in over a decade. A sustained flow of 323 CFS on this stream would represent an extraordinary high-water event, not a baseline condition suitable for defining instream flow habitat requirements.

VI. IMPACT ON EXISTING AND FUTURE BENEFICIAL USE

The existing licensed diversion of 0.05 CFS under Water Right 97-07485 represents 0.52% of the stream's summer low-flow discharge, leaving 99.5% of streamflow undisturbed for fish habitat and other instream uses. Even at current June flow levels, the diversion represents approximately 0.12% of streamflow.

The property is zoned Agricultural/Forestry 20 (AF-20). Even if the property owner were to obtain additional water rights consistent with the agricultural zoning and productive capacity of the 16-acre parcel, the total diversion would remain a small fraction of streamflow. The property owner's domestic well produces only 2.5 gallons per minute and cannot support agricultural use; all productive development of the parcel depends on surface water from the Upper West Branch Priest River.

Water diverted for irrigation on the Summers property is applied to land that drains back to the Upper West Branch Priest River through the shallow water table. The porous alluvial soils in the valley facilitate rapid infiltration. In standard irrigation hydrology, actual consumptive use (water permanently lost to evaporation and plant transpiration) typically represents only 30 to 50 percent of the total diversion, with the remainder returning to the water table and ultimately to the stream as return flow. The net impact on streamflow is therefore significantly smaller than the gross diversion rate.

If claim 97-09893 is decreed as filed, it would effectively prohibit all current and future diversions from the Upper West Branch Priest River, because the claimed instream flow exceeds the stream's physical capacity. This result would extinguish the only private water right on the stream and foreclose future beneficial use of this water source on a parcel zoned for agriculture, without any corresponding benefit

to fish habitat — since the stream cannot deliver the claimed flows regardless of whether diversions occur.

VII. OBSERVATIONS REGARDING FISH HABITAT CONDITIONS

The property owner offers the following factual observations based on continuous residence at the property since summer 2016, which bear on the stated purpose of claim 97-09893 (fish habitat for fish species harvested within the Kalispel Reservation). The property owner distinguishes between direct personal observations and information received from others.

A. Observed Sedimentation (Direct Observation)

A large pool feature immediately south of the bridge on the Summers property, visible in both 2021 and 2025 Bonner County aerial imagery, has experienced substantial sedimentation since 2016. When the property owner moved to the property in summer 2016, the pool was deep enough that a 5'9" adult could not wade across it and could dive into it. As of recent years, the same pool can be waded across at approximately waist depth. This represents a significant accumulation of sediment in a single pool feature over less than a decade.

The streambed throughout the property reach consists predominantly of gravel and fine sediment, ranging from fingertip-sized gravel down to very fine particles. This material shifts with flow events, filling in pools and deeper channel features. The variation in streambed depth measurements between April and June 2026 (approximately 9 inches difference in average depth) is consistent with active sediment transport and redistribution.

B. Upstream Logging Activity (Direct Observation and Estimate)

During the property owner's early years of residence, substantial commercial timber hauling occurred on Squaw Valley Road, with heavy logging trucks frequently transporting logs south from the national forest upstream. The property owner's best recollection, corroborated by his wife, is that this activity occurred primarily in the summer of 2017 and may have continued into 2018. Logged areas are visible in aerial imagery of the upper watershed, particularly in the 2021 Bonner County imagery.

After the timber hauling was completed, the dirt portion of Squaw Valley Road (approximately 2.5 miles) was substantially rebuilt with additional road material. The property owner observed this reconstruction but cannot state the exact amount of material added.

The property owner notes the temporal correlation between the upstream logging activity and the accelerated sedimentation of the swimming hole and streambed, but acknowledges he is not a hydrologist or forestry expert and cannot establish a direct causal link without professional analysis.

C. Observed Fish Populations (Direct Observation)

The property owner has actively looked for fish in the stream throughout his decade of residence. The largest fish observed near the bridge footings have been approximately finger-length.

D. Reported Historical Fishing Conditions (Information from Others)

Long-time local residents have told the property owner that the Upper West Branch was historically a productive fishing stream, and that the area near the Squaw Valley Road crossing downstream of the Summers property was a locally known fishing spot. These same residents report that the stream is no longer a productive fishery. The property owner has not independently verified these historical

accounts.

E. Published Fisheries Science

The native fish species in the Priest River system relevant to claim 97-09893 are westslope cutthroat trout, bull trout, and mountain whitefish. Published scientific literature establishes that westslope cutthroat trout are particularly sensitive to fine sediment accumulation (generally defined as particles 6.3 millimeters or less) and require deep pool habitat with cover for adult survival. These fish have declined across their range due in part to historic logging practices and the lingering impact of forest roads.

Idaho Department of Fish and Game has identified that the primary factor limiting native coldwater fish survival in the Priest River system is water temperature — not water quantity — and that habitat degradation from land use activities has altered natural conditions. IDFG has stated that if summer water temperatures were cooler, the Priest River could support much higher trout densities even without improving other habitat conditions.

F. Relevance to Claim 97-09893

The observations and published findings described above indicate that the primary constraints on fish habitat in the Upper West Branch Priest River are sedimentation and water temperature rather than insufficient streamflow. The only active private diversion on the stream (0.05 CFS) represents less than one-half of one percent of streamflow. Reserving instream flow quantities that exceed the physical capacity of the stream would not address the factors that published science identifies as limiting fish populations, and would not serve the stated purpose of the claim.

VIII. REQUEST

The property owner respectfully requests that: (1) the claimed instream flow quantities in 97-09893 be adjusted to reflect the actual hydrology of the Upper West Branch Priest River; and (2) the decree accommodate existing and reasonably foreseeable future beneficial uses that do not materially impact fish habitat or streamflow.

APPENDIX A: DATA SOURCES

USGS LiDAR point cloud: Dataset ID_NorthernID_2_2019, accessed via usgs.entwine.io, collected 2019.

Bridge elevation: Licensed surveyor confirmation, 2026.

Field measurements: Property owner (Colin Summers), April 9, 2026, and June 12, 2026.

GIS aerial imagery: Bonner County Public Mapping Application, 2021 and 2025 imagery.

Federal claim data: Idaho Water Adjudication Court, srba.idaho.gov, accessed April 9, 2026.

Water Right Record: IDWR Adjudication Claim Right Report for 97-7485, showing current owner Summers, Colin, accessed April 9, 2026.

Fisheries references: Idaho Department of Fish and Game, Priest River Fisheries FAQ (idfg.idaho.gov/priest-river-fisheries-faqs); Montana Field Guide, Westslope Cutthroat Trout species account (fieldguide.mt.gov); Montana Chapter American Fisheries Society, Westslope Cutthroat Trout status account; Idaho Fish and Game, "North Idaho's Priest River: A River of Potential" (December 6, 2022).