

State of Idaho
Department of Water Resources
Permit to Appropriate Water
No. 81-12031

Priority: July 12, 2021

Maximum Diversion Volume: 7.5 AF

This is to certify that

DOUG HICKS 545 RED FIR RD KOOSKIA ID 83539-5135 AND/OR
MARLOUS HICKS 545 RED FIR RD KOOSKIA ID 83539-5135

has applied for a permit to appropriate water from:

Source : UNNAMED STREAM

Tributary: LITTLE CEDAR CREEK

and a permit is APPROVED for development of water as follows:

<u>Beneficial Use</u>	<u>Period of Use</u>	<u>Annual Volume</u>
STOCKWATER STORAGE	01/01 to 12/31	1.3 AF
RECREATION STORAGE	01/01 to 12/31	6.2 AF
FIRE PROTECTION STORAGE	01/01 to 12/31	6.2 AF

Location of Point(s) of Diversion

UNNAMED STREAM SE¼ NW¼, Sec. 22, Twp 32N, Rge 05E, B.M. IDAHO County
UNNAMED STREAM SE¼ NW¼, Sec. 22, Twp 32N, Rge 05E, B.M. IDAHO County

Place of Use: STOCKWATER STORAGE, RECREATION STORAGE, and FIRE PROTECTION STORAGE

Twp	Rng	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
32N	05E	22								X									

Conditions of Approval

1. Proof of application of water to beneficial use shall be submitted on or before **September 01, 2023**.
2. Subject to all prior water rights.
3. Prior to the diversion and use of water under this approval, the right holder shall comply with all fish screening and/or fish passage requirements of the Idaho Department of Fish and Game.
4. Prior to diversion of water under this right, the right holder shall provide a means acceptable to the department to measure the amount of water entering the reservoir and the amount of water released from the reservoir.
5. Prior to diversion of water under this right, the right holder shall install a lockable device, subject to the approval of the Department, in a manner that will provide suitable control of the diversion.
6. Water shall not be diverted from fire protection storage except to fight or repel an existing fire.
7. Right 81-12031 authorizes the storage of an annual total of 7.5 acre-feet, comprised of 4.8 acre-feet to be used for the initial filling or carryover storage of the ponds, 1.4 acre-feet for the replacement of losses due to seepage and evaporation, and up to 1.3 acre-feet for additional refills for stockwater storage use.
8. The two (2) pond(s) established by the storage of water under this right shall not exceed a total capacity of 4.8 acre-feet or a total surface area of 0.6 acres.

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9. Recreation storage is for swimming and boating.
10. Water shall not be diverted under this right when flows in Clear Creek are below minimum flow amounts as defined by Right 81-11957. The right holder shall be responsible for monitoring the daily flow of Clear Creek using real-time data and shall cease diverting water when flows in Clear Creek are below established minimum flow amounts. Unless otherwise specified by the Director of the Department of Water Resources, data from the U.S. Geological Survey Clear Creek at Kooskia National Fish Hatchery gauging station, No. 13337099, may be used for purposes of determining the daily flow amounts.
11. Water shall not be diverted under this right when flows in the Middle Fork Clearwater River or the Clearwater River are below minimum flow amounts as defined by Right(s) 81-7162 & 85-7583.
12. This right does not grant any right-of-way or easement across the land of another.

This permit is issued pursuant to the provisions of Idaho Code § 42-204.

Signed this 18th day of August, 2021.



ADAM FREDERICK
Water Rights Supervisor

State of Idaho
Department of Water Resources

Attachment to Permit to Appropriate Water

81-12031

This map depicts the STOCKWATER STORAGE, RECREATION STORAGE, and FIRE PROTECTION STORAGE place of use boundary for this water right at the time of this approval and is attached to the approval document solely for illustrative purposes.

05E



-  Point of Diversion
-  Place Of Use Boundary
-  Townships
-  PLS Sections
-  Quarter Quarters

0 0.035 0.07 0.14 Miles





Brad Little
Governor

State of Idaho

DEPARTMENT OF WATER RESOURCES

Northern Region • 7600 N MINERAL DR STE 100 • COEUR D ALENE, ID 83815-7763
Phone: (208)762-2800 • Fax: (208)769-2819 • Website: www.idwr.idaho.gov

Gary Spackman
Director

August 19, 2021

MARLOUS HICKS
DOUG HICKS
545 RED FIR RD
KOOSKIA ID 83539-5135

RE: Permit No. 81-12031

Permit Approval Notice

Dear Permit Holders:

The Department of Water Resources ("Department") has issued the enclosed permit authorizing you to establish a new water right. Please be sure to thoroughly review all the conditions of approval listed on your permit. The conditions include requirements that you must accomplish, such as timely submittal of proof of beneficial use or installation of a measuring device, as well as information about how your water use may be administered, such as regulation by a watermaster in a water district. Failure to comply with the conditions of approval may result in your permit lapsing or being canceled.

The permit is a PRELIMINARY ORDER issued pursuant to Rule 730 of the Department's Rules of Procedure (IDAPA 37.01.01.730). It can and will become a final order without further action by the Department unless a party petitions for reconsideration, files exceptions, or requests a hearing as described in the enclosed information sheet.

The final step in the water right process is issuance of a water right license. To receive a water right license, you must divert and use water to the full extent intended and submit a *Statement of Completion for Submitting Proof of Beneficial Use* by the date shown in condition no. 1 of your permit. The Department will send you a *Proof Due Notice* approximately 60 days prior to the date listed in condition no. 1 of your permit.

You may also require approvals from other Department programs, such as Ground Water Protection, Safety of Dams, or Stream Channel Protection, to accomplish your proposed development. Please call or visit any Department office or see the Department's website at idwr.idaho.gov for more information about these programs.

Please be advised that Idaho Code § 42-248, requires you or the owner of this water permit to maintain current ownership and address records on file with the Department. Forms to file an assignment of permit and/or a change in the address of the permit owner are available from any Department office or at the Department's website at www.idwr.idaho.gov.

If you have any questions concerning the enclosed information, please contact the Northern Region Office at (208) 762-2800.

Sincerely,



Adam Frederick
Water Rights Supervisor

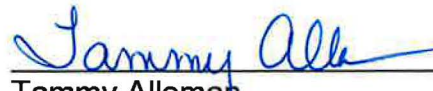
Enclosure(s)

CERTIFICATE OF SERVICE

I hereby certify that on August 19, 2021, I served a true and correct copy of Permit to Appropriate Water No. 81-12031 by U.S. Mail, postage prepaid, to the following:

MARLOUS HICKS (Current Owner)
545 RED FIR RD
KOOSKIA ID 83539-5135

DOUG HICKS (Current Owner)
545 RED FIR RD
KOOSKIA ID 83539-5135



Tammy Alleman
Administrative Assistant 1

EXPLANATORY INFORMATION TO ACCOMPANY A PRELIMINARY ORDER

(To be used in connection with actions when a hearing was **not** held)

(Required by Rule of Procedure 730.02)

The accompanying order or approved document is a "Preliminary Order" issued by the department pursuant to section 67-5243, Idaho Code. **It can and will become a final order without further action of the Department of Water Resources ("department") unless a party petitions for reconsideration, files an exception and brief, or requests a hearing as further described below:**

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a preliminary order with the department within fourteen (14) days of the service date of this order. **Note: the petition must be received by the department within this fourteen (14) day period.** The department will act on a petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See Section 67-5243(3) Idaho Code.

EXCEPTIONS AND BRIEFS

Within fourteen (14) days after: (a) the service date of a preliminary order, (b) the service date of a denial of a petition for reconsideration from this preliminary order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this preliminary order, any party may in writing support or take exceptions to any part of a preliminary order and may file briefs in support of the party's position on any issue in the proceeding with the Director. Otherwise, this preliminary order will become a final order of the agency.

REQUEST FOR HEARING

Unless a right to a hearing before the Department or the Water Resource Board is otherwise provided by statute, any person aggrieved by any final decision, determination, order or action of the Director of the Department and who has not previously been afforded an opportunity for a hearing on the matter may request a hearing pursuant to section 42-1701A(3), Idaho Code. A written petition contesting the action of the Director and requesting a hearing shall be filed within fifteen (15) days after receipt of the denial or conditional approval.

ORAL ARGUMENT

If the Director grants a petition to review the preliminary order, the Director shall allow all parties an opportunity to file briefs in support of or taking exceptions to the preliminary order and may schedule oral argument in the matter before issuing a final order. If oral arguments are to be heard, the Director will within a reasonable time period notify each party of the place, date and hour for the argument of the case. Unless the Director orders otherwise, all oral arguments will be heard in Boise, Idaho.

CERTIFICATE OF SERVICE

All exceptions, briefs, requests for oral argument and any other matters filed with the Director in connection with the preliminary order shall be served on all other parties to the proceedings in accordance with IDAPA Rules 37.01.01302 and 37.01.01303 (Rules of Procedure 302 and 303).

FINAL ORDER

The Director will issue a final order within fifty-six (56) days of receipt of the written briefs, oral argument or response to briefs, whichever is later, unless waived by the parties or for good cause shown. The Director may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order. The department will serve a copy of the final order on all parties of record.

Section 67-5246(5), Idaho Code, provides as follows:

Unless a different date is stated in a final order, the order is effective fourteen (14) days after its service date if a party has not filed a petition for reconsideration. If a party has filed a petition for reconsideration with the agency head, the final order becomes effective when:

- (a) The petition for reconsideration is disposed of; or
- (b) The petition is deemed denied because the agency head did not dispose of the petition within twenty-one (21) days.

APPEAL OF FINAL ORDER TO DISTRICT COURT

Pursuant to sections 67-5270 and 67-5272, Idaho Code, if this preliminary order becomes final, any party aggrieved by the final order or orders previously issued in this case may appeal the final order and all previously issued orders in this case to district court by filing a petition in the district court of the county in which:

- i. A hearing was held,
- ii. The final agency action was taken,
- iii. The party seeking review of the order resides, or
- iv. The real property or personal property that was the subject of the agency action is located.

The appeal must be filed within twenty-eight (28) days of this preliminary order becoming final. See section 67-5273, Idaho Code. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal.

MEMORANDUM

To: Water Right Applications 81-12031

From: Luke Bates 

Date: 8/18/2021

Re: Application for a Permit to Appropriate Water within the Salmon and Clearwater River Basins.

Re: Regional Analysis and Recommendation in accordance with Water Appropriation Rules (IDAPA 37.03.08.040.05).

Water Supply Information

Water supply from an unnamed stream, which is a tributary of Little Cedar Creek, should be available at the applicant's property. The withdrawals for this application has been entered into the Wild & Scenic accounting system, but equates to zero as this is an on-stream storage right that does not affect the Wild & Scenic limitations. Minimum stream flow to protect Water Right(s) 81-1111957 (Clear Creek MSF), and 81-7162 (Middle Fork Clearwater River MSF), and 85-7583 (Clearwater River MSF) have been added to this permit, with U.S. Geological Survey Clear Creek gauging station identified for monitoring MSF conditions.

Good Faith, Delay, or Speculative Information

The applicant plans to divert water for his/her own use on property that he/she owns and there are no known issues with any other party.

Financial Resources Information

No significant resources are anticipated as the two storage ponds are existing and used for stockwatering, recreation storage, and fire protection storage.

Local Public Interest

The Idaho Department of Fish & Game (IDFG), Department of Environmental Quality (DEQ), and the Idaho Water Resource Board have been asked for comments on the proposed projects. IDFG and the Idaho Water Resource Board did not respond. DEQ responded that the proposed withdrawals should not be allowed to dry up the Creek.

Injury to Other Water Rights

None anticipated.

Recommendation

The Northern Region recommends proceeding with the processing of this water right application.

Legal Notice

The following application(s) have been filed to appropriate the public waters of the State of Idaho:

81-12031
DOUG HICKS
MARLOUS HICKS
545 RED FIR RD
KOOSKIA, ID 83539-5135
Point of Diversion SENW
S22 T32N R05E
IDAHO County
Source UNNAMED STREAM
Tributary LITTLE CEDAR

CREEK
Point of Diversion SENW
S22 T32N R05E
IDAHO County
Source UNNAMED STREAM
Tributary LITTLE CEDAR

CREEK
Use: FIRE, PROTECTION
STORAGE

01/01 to 12/31 6.2 AF
Use: RECREATION STORAGE
01/01 to 12/31 6.2 AF
Use: STOCKWATER STORAGE
01/01 to 12/31 1.3 AF
Total Diversion: 7.5 AF
Date Filed: 07-12-2021
Place Of Use: FIRE PROTECTION STORAGE, RECREATION STORAGE, STOCKWATER STORAGE

T32N R05E S22 SENW
The application proposes the diversion and use of water from an Unnamed Stream tributary to a Wild & Scenic River, the Middle Fork Clearwater River. The decreed minimum stream flow rights for the federal Wild & Scenic Rivers are subordinate to certain categories of water use and to specific amounts of water use established after the minimum stream flow. The water uses proposed in these applications will benefit from the subordination provision because the diversion rate and acres will be applied to the subordination amounts specified in the decree for the Wild & Scenic River listed above.

82-12290
JOSHUA Z CROSBY
VERENA C CROSBY
176 HAWTHORN
KOOSKIA, ID 83539-5175
Point of Diversion SWNENE
S16 T28N R10E
IDAHO County
Source SPRING
Tributary SINKS
Point of Diversion SWNENE
S16 T28N R10E
IDAHO County
Source SPRING
Tributary SINKS
Point of Diversion NENE
S16 T28N R10E
IDAHO County
Source GROUND WATER

Use: DIVERSION TO STORAGE

01/01 to 12/31 0.2 CFS
Use: AESTHETIC STORAGE
01/01 to 12/31 5 AF
Use: FIRE PROTECTION
STORAGE
01/01 to 12/31 5 AF
Total Diversion: 0.2 CFS
Date Filed: 07-01-2021
Place Of Use: AESTHETIC STORAGE, FIRE PROTECTION STORAGE

T28N R10E S16 NENE
Permits will be subject to all prior water rights. For additional information concerning the property location, contact the Northern office at (208)762-2800; or for a full description of the right(s), please see <https://idwr.idaho.gov/apps/ExtSearch/WRAApplicationResults/>. Protests may be submitted based on the criteria of Idaho Code § 42-203A. Any protest against the approval of this application must be filed with the Director, Dept. of Water Resources, Northern Region, 7600 N MINERAL DR STE 100, COEUR D'ALENE ID 83815-7763 together with a protest fee of \$25.00 for each application on or before 8/9/2021. The protestant must also send a copy of the protest to the applicant.

GARY SPACKMAN, Director
Published on 7/21/2021 and
7/28/2021
(JY21-JY28)

AFFIDAVIT OF PUBLICATION

STATE OF IDAHO

County of Idaho - ss.

Sarah Klement, being first duly sworn, says she is the Publisher of the IDAHO COUNTY FREE PRESS, a weekly newspaper published and issued weekly at Grangeville, Idaho County, State of Idaho, and is of general circulation in said county and state, that the said legal notice, of which the one hereto attached is a true copy, was published in said paper for two weeks, being published two times, the first publication being on the 21st day of July, 2021 and the last publication on the 28th day of July, 2021 and that the said legal notice was published in the newspaper proper and not a supplement; that said newspaper has been continuously and uninterruptedly published in said county during a period of seventy-eight consecutive weeks prior to the publication of said legal notice of advertisement.

STATE OF IDAHO)

COUNTY OF IDAHO)

On this 28th day of July in the year of 2021, before me a Notary Public personally appeared Sarah Klement, known or identified to me to be the person whose name subscribed to the within instrument, and being by me first duly sworn, declared that the statements therein are true, and acknowledged to me that he executed the same.

Shayla M. Kaschmitter

Notary Public for Idaho

Residing at Grangeville, ID

My commission expires: 07-12-2025

RECEIVED

AUG 02 2021

IDWR / NORTH

SHAYLA M. KASCHMITTER
COMMISSION NO. 20191336
NOTARY PUBLIC
STATE OF IDAHO



STATE OF IDAHO
DEPARTMENT OF
ENVIRONMENTAL QUALITY

RECEIVED

JUL 23 2021

LEWISTON NORTH

1118 F Street, Lewiston, ID 83501
(208) 799-4370

Brad Little, Governor
Jess Byrne, Director

July 23, 2021

Idaho Department of Water Resources
7600 North Mineral Drive, Suite 100
Coeur d'Alene, Idaho 83815

Subject: Water Right Permit # 81-12031

We received a request for comment on an application for a water appropriation permit for 6.2 acre-feet per year from an unnamed tributary to Little Cedar Creek and surface water runoff for two existing ponds for fire protection, recreation, and stockwater storage from January 1 to December 31. Assuming all federal, state and local permits have been obtained, regulations met, and reviews completed, we offer the following comments.

The unnamed tributary at the point of diversion is included in assessment unit ID17060304CL002_02, and is protected for the beneficial uses of cold water aquatic life and salmonid spawning. DEQ stream monitoring data from this assessment unit showed a flow of 0.85 cubic feet per second (cfs) in July 2016.

Based on the flow data alone, we are concerned that there may not be sufficient flow outside the seasonal high flow period to support the beneficial uses. However, the application indicates that these ponds already exist and are managed to allow overflow to discharge back into the stream channel. We recommend that the legally appropriated withdrawal be made during periods of seasonal high flow or at a minimum, flows greater than 1 cfs and managed so that at no time should the stream be allowed to go dry as a result of legally appropriated and allowable water withdrawals.

Thank you for the opportunity to comment on your application. If you have any questions regarding the Idaho Water Quality Standards, please contact us at (208)-799-4370, or by email at Sujata.Connell@deq.idaho.gov

Sincerely,

A handwritten signature in cursive script that reads "Sujata Connell".

Sujata Connell
Surface Water Quality Manager

c: Doug & Marlous Hicks, Kooskia, ID
EDMS