

State of Idaho
Department of Water Resources
Permit to Appropriate Water
No. 86-12096

Priority: November 05, 2020

Maximum Diversion Volume: 5.0 AF

This is to certify that

DAVID SALMERI 3108 HIGHWAY 3 DEARY ID 83823-9603

has applied for a permit to appropriate water from:

Source : UNNAMED STREAM

Tributary: PINE 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	0.1 AF
STOCKWATER FROM STORAGE	01/01 to 12/31	0.1 AF
WILDLIFE STORAGE	01/01 to 12/31	4.9 AF
RECREATION STORAGE	01/01 to 12/31	4.9 AF
FIRE PROTECTION STORAGE	01/01 to 12/31	4.9 AF

Location of Point(s) of Diversion

UNNAMED STREAM SE¼ SW¼, Sec. 23, Twp 40N, Rge 02W, B.M. LATAH County
UNNAMED STREAM SE¼ SW¼, Sec. 23, Twp 40N, Rge 02W, B.M. LATAH County

Place of Use: STOCKWATER STORAGE, WILDLIFE 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	
40N	02W	23												X					

Place of Use: STOCKWATER FROM 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	
40N	02W	23											X	X					

Conditions of Approval

1. Proof of application of water to beneficial use shall be submitted on or before **December 01, 2025**.
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. The two (2) ponds established by the storage of water under this right shall not exceed a total capacity of 3.1 acre-feet or a total surface area of 0.6 acres.
5. Right 86-12096 authorizes the storage of an annual total of 5.0 acre-feet, comprised of 3.1 acre-feet to be used for the initial filling or carryover storage of the ponds, 1.8 acre-feet for the replacement of losses due to seepage and evaporation, and up to 0.1 acre-feet for additional refills for stockwater from storage use.

State of Idaho
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6. Stockwater use is for 10 head of mixed stock.
7. Water shall not be diverted from fire protection storage except to fight or repel an existing fire.
8. Pond(s) storage is for wildlife and recreation uses.
9. Water shall not be diverted under this right when flows in the Clearwater River are below minimum flow amounts as defined by Right 86-7345. The right holder shall be responsible for monitoring the daily flow of the Clearwater River using real-time data and shall cease diverting water when flows in the Clearwater River 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 Spalding gauging station, No. 13342500, may be used for purposes of determining the daily flow amounts.
10. 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 14th day of December, 2020.



ADAM FREDERICK
Water Rights Supervisor

State of Idaho
Department of Water Resources

Attachment to Permit to Appropriate Water

86-12096

This map depicts the STOCKWATER STORAGE, WILDLIFE 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.

02W



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

0 0.035 0.07 0.14 Miles



State of Idaho
Department of Water Resources

Attachment to Permit to Appropriate Water

86-12096

This map depicts the STOCKWATER FROM 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.



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

0 0.045 0.09 0.18 Miles





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

Brad Little
Governor

Gary Spackman
Director

December 14, 2020

DAVID SALMERI
3108 HIGHWAY 3
DEARY ID 83823-9603

RE: Permit No. 86-12096

Permit Approval Notice

Dear Permit Holder:

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 December 14, 2020, I served a true and correct copy of Permit to Appropriate Water No. 86-12096 by U.S. Mail, postage prepaid, to the following:

DAVID SALMERI (Current Owner)
3108 HIGHWAY 3
DEARY ID 83823-9603



Tammy Allen
Administrative Assistant 1

MEMORANDUM

To: Water Right Application 86-12096

From: Luke Bates 

Date: 12/08/2020

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 should be available from the unnamed stream source.

Good Faith, Delay, or Speculative Information

The applicant plans to use water from an unnamed stream on the applicant's property. There are no known issues with any other party.

Financial Resources Information

The two ponds associated with this water permit are existing ponds, and it appears the applicant has the resources needed for the stockwater from storage development of this project.

Local Public Interest

The Idaho Department of Fish & Game (F & G) and the Department of Environmental Quality (DEQ) have been asked to comment by the Idaho Department of Water Resources. DEQ commented recommending that water withdrawals from the unnamed stream be made during periods of seasonal high flow, and that at no time should the stream be allowed to go dry as a result of withdrawals. F & G commented asserting that the wildlife storage beneficial use component be removed from the permit, as the applicant did not specify the types of wildlife that will benefit from the impoundment of water in the ponds. There were no other known issues with this application as no protests were received.

Injury to Other Water Rights

Water from the Unnamed Stream source subordinates the Potlatch River, but does not subordinate the Clearwater River, thus Condition 227 was added to prescribe this permit's minimum stream flow requirements for Right 86-7345 associated with the Clearwater River.

Recommendation

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

NEWS REVIEW PUBLISHING COMPANY

The Moscow-Pullman Daily News

P.O.Box 957

Lewiston, Idaho 83501

(208) 743-9411

Date:

11/26/2020

INVOICE NO.

160852

Account No.

964750

Description

160852 NOTICE O

Times

2

Lines

171

Tab. lines

\$ 243.67

**LEGAL ADVERTISING
INVOICE**

Sold To: ID DEPT. OF WATER RESOURCES
7600 MINERAL DR #100
COEUR D ALENE ID 83814

PO#

Alleman, Tammy

NOTICE: This is a invoice of Purchase made by you. Statement will be rendered the first of the month
Please Retain This Invoice as Your Statement Will Refer to Invoice by No. Only.

**NOTICE OF PROPOSED
CHANGE OF WATER
RIGHT**

TRANSFER NO. 84493

CITY OF GENESEE, PO
BOX 38, GENESEE, ID
83832 has filed Application
No. 84493 for changes to the
following water rights within
LATAH County(s): Right
No(s). 87-10413, 87-7150,
87-7151; to see a full descrip-
tion of these rights and the
proposed transfer, please see
<https://research.idwr.idaho.gov/apps/waterrights/querynewtransfers>. The purpose
of the transfer is to change a
portion of the above rights as
follows:

*This transfer proposes to
add four (4) new groundwa-
ter points of diversion to the
City of Genesee's existing
water system.*

For additional information
concerning the property
location, contact Northern
Region office at (208)762-
2800. Protests may be sub-
mitted based on the criteria
of Idaho Code Sec. 42-222.
Any protest against the pro-
posed change must be filed
with the Department of Wa-
ter Resources, Northern Re-
gion, 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
12/7/2020. The protestant
must also send a copy of the
protest to the applicant
GARY SPACKMAN, Direc-
tor

Published on 11/19/2020 and
11/26/2020

AFFIDAVIT OF PUBLICATION

Hollie K Vance, Legal Clerk
being first duly sworn, on oath deposes
and says: I am the printer of
Moscow-Pullman Daily News, a newspaper
of general circulation, published daily
except Sunday at Moscow, Latah County,
Idaho, in compliance with Sections 60-106,
60-107, and 60-108 of the Idaho Code and the
amendments thereto; and an official newspaper
for Whitman County, Washington as required
by R.C.W. 36.72.071 and other provisions of
the Revised Code of Washington and the
amendments thereto: that the notice of which the
annexed is a full, true and correct printed
copy was published in the regular and entire
issues of said newspaper and not in a
supplement thereto, upon the following dates:

Nov. 19, 26, 2020

the same being the date designated for
the publication of said notice.

Hollie K Vance

On this 30th day of November
in the year of 2020, before me, a Notary Public,
personally appeared Hollie K Vance,
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.

Barb Marsh

Notary Public for Idaho,
Residing at Lewiston, Idaho
My Commission Expires 2.14.25

RECEIVED

DEC 03 2020

IDWR / NORTH



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

86-12095
DAVID SALMERI
3108 HIGHWAY 3
DEARY, ID 83823-9603
Point of Diversion SESW
S23 T40N R02W
LATAH County
Source GROUND WATER
Use: DOMESTIC
01/01 to 12/31
Total Diversion: 0.04 CFS
Date Filed: 11-05-2020
Place Of Use: DOMESTIC
T40N R02W S23
SWSW, SESW
Place Of Use: DOMESTIC
T40N R02W S26 NENW

86-12096
DAVID SALMERI
3108 HIGHWAY 3
DEARY, ID 83823-9603
Point of Diversion SESW
S23 T40N R02W
LATAH County
Source UNNAMED
STREAM
Tributary PINE CREEK
Point of Diversion SESW
S23 T40N R02W
LATAH County
Source UNNAMED
STREAM
Tributary PINE CREEK
Use: FIRE PROTECTION
STORAGE
01/01 to 12/31 4.9 AF
Use: WILDLIFE STORAGE
01/01 to 12/31 4.9 AF
Use: STOCKWATER FROM
STORAGE
01/01 to 12/31 0.1 AF
Use: RECREATION STORAGE
01/01 to 12/31 4.9 AF
Use: STOCKWATER STORAGE
01/01 to 12/31 0.1 AF
Total Diversion: 5 AF
Date Filed: 11-05-2020
Place Of Use: FIRE PROTECTION STORAGE, RECREATION STORAGE, STOCKWATER FROM STORAGE, STOCKWATER STORAGE, WILDLIFE STORAGE
T40N R02W S23 SESW
Place Of Use: STOCKWATER FROM STORAGE
T40N R02W S23 SWSW

87-12246
NANCY DERNELL
WILLIAM DERNELL
1164 SUNSET LN
POTLATCH, ID 83855-1101
Point of Diversion NWNE
S21 T41N R04W
LATAH County
Source SURFACE RUNOFF
Tributary SINKS
Use: WILDLIFE STORAGE
01/01 to 12/31 2.4 AF
Use: RECREATION STORAGE
01/01 to 12/31 2.4 AF
Use: FIRE PROTECTION STORAGE
01/01 to 12/31 2.4 AF
Total Diversion: 2.4 AF
Date Filed: 10-30-2020
Place Of Use: FIRE PROTECTION STORAGE, RECREATION STORAGE, WILDLIFE STORAGE
T41N R04W S21 NWNE

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/WRApplicationResults/>. 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 12/7/2020. The protestant must also send a copy of the protest to the applicant.
GARY SPACKMAN, Director
Published on 11/19/2020 and 11/26/2020

Alleman, Tammy

From: Swearingen,Zachary <zachary.swearingen@idfg.idaho.gov>
Sent: Thursday, November 19, 2020 11:28 AM
To: Alleman, Tammy
Subject: RE: Request for Comments for WR#86-12096

Hi Tammy,

Thank you for the opportunity to review application 86-12096.

The application lists wildlife storage as one of the intended purposes for the water right. It is our opinion that to be beneficial to wildlife, diverted or impounded water must be managed with the primary purpose of developing habitat that corresponds to the range of characteristics required by a targeted species. IDFG contends that in order to benefit wildlife, diverted or stored water should primarily be managed to enhance the stability or growth of the targeted wildlife population(s). As written, the application only mention wildlife storage and does not describe which wildlife it is intended to benefit or management actions necessary to create habitat that would increase survival or productivity rates of the targeted population(s). IDFG contends that water storage is not required for wildlife within the application area and we recommend wildlife storage be removed as a purpose for the water appropriation.

Thank you,

Zach Swearingen
Environmental Staff Biologist
Idaho Department of Fish and Game - Clearwater Region
3316 16th St
Lewiston, ID 83501
208-799-5010



From: Alleman, Tammy <Tammy.Alleman@idwr.idaho.gov>
Sent: Tuesday, November 10, 2020 3:34 PM
To: Swearingen,Zachary <zachary.swearingen@idfg.idaho.gov>; Sujata.Connell@deq.idaho.gov; Kara Egan <kegan@latah.id.us>; commissioners <bocc@latah.id.us>; Michelle Fuson <MFuson@latah.id.us>
Subject: Request for Comments for WR#86-12096

Dear Interested Agencies:

The Department of Water Resources is seeking written comment and/or recommendations from your agency regarding the above referenced Water Right applications. You can find copies of the applications at: <http://www.idwr.idaho.gov/apps/ExtSearch/WRAJSearch/WRADJSearch.aspx>.



STATE OF IDAHO
DEPARTMENT OF
ENVIRONMENTAL QUALITY

1118 F Street • Lewiston, ID 83501 • (208) 799-4370
www.deq.idaho.gov

Brad Little, Governor
Jess Byrne, Director

November 19, 2020

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

Subject: Water Right Application #86-12096

DEQ has received a request for comment on the approval of a water right application to withdraw 4.9 acre feet from an unnamed tributary to Pine Creek. The applicant has two existing ponds and will use the water for fire protection and stockwater/wildlife watering. The withdrawals will occur from January 1 through December 31.

The pond is in Township 40N, Range 02W, and Section 23. The unnamed tributary is in the Pine Creek assessment unit ID17060306CL055_02. This assessment unit is listed in Category 4a/4c of Idaho's 2018/2020 Integrated Report as not supporting the beneficial uses of cold water aquatic life and salmonid spawning due to nutrient, temperature, and sediment impairment. DEQ visited a downstream site in 2015 on Pine Creek, near the confluence with the Potlatch River, which was dry. DEQ has no flow data on the unnamed tributary.

Based on previous site visits and the information in water quality reports, we are concerned that there may not be sufficient flow outside the seasonal high flow period to support the beneficial uses. We recommend that the legally appropriated withdrawal be made during periods of seasonal high flow or at a minimum, flows greater than 1 cubic foot per second. 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: David Salmeri, Deary, ID
EDMS

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.