

84072

Ident. No. 85-15811

APR 22 2020

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR PERMIT
To appropriate the public waters of the State of Idaho

IDWR / NORTH

1. Name of applicant(s) Nez Perce Tribe Phone 208-843-2253
Name connector (check one): ☐ and ☐ or ☐ and/or
Mailing address P.O. Box 365 City Lapwai
State ID ZIP 83540 Email _____
2. Name of representative, if any Bobby Hills, DFRM Water Exchange Project Leader Phone 208-621-3537
Mailing address P.O. Box 365 City Lapwai
State ID ZIP 83540 Email bobbyh@nezperce.org
 - a. ☐ Send all correspondence for this application to the representative and not to the applicant OR
☒ Send original correspondence to the applicant and copies to the representative.
 - b. ☒ The representative may submit information for the applicant but is not authorized to sign for the applicant OR
☐ The representative is authorized to sign for the applicant. Attach a Power of Attorney or other documentation.
3. Source of water supply Lapwai Creek which is a tributary of Clearwater River
4. Location of point(s) of diversion:

Twp	Rge	Sec	Govt Lot	1/4	1/4	1/4	County	Source	Local name or tag #
36N	4W	26		NW	NW		Nez Perce	Lapwai Creek	

5. Water will be used for the following purposes:
Amount 55 cfs for Recreation purposes from 1/1 to 12/31 (both dates inclusive)
(cfs or acre-feet per year)
Amount 55 cfs for Fish, Wildlife purposes from 1/1 to 12/31 (both dates inclusive)
(cfs or acre-feet per year)
Amount 55 cfs for Aesthetic purposes from 1/1 to 12/31 (both dates inclusive)
(cfs or acre-feet per year)
Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per year)
6. Total quantity to be appropriated is (a) 55 cubic feet per second (cfs) and/or (b) _____ acre-feet per year (af).
7. Proposed diverting works:
 - a. Describe type and size of devices used to divert water from the source. A ten foot wide by seven feet tall opening will be created in an existing levee. Invert elevation will be controlled through hardened riffle crests.
 - b. Height of storage dam _____ feet; active reservoir capacity _____ acre-feet; total reservoir capacity _____ acre-feet. If the reservoir will be filled more than once each year, describe the refill plan in item 12. For dams 10 feet or more in height AND having a storage capacity of 50 acre-feet or more, submit a separate [Application for Construction or Enlargement of a New or Existing Dam](#). Application required? ☐ Yes ☐ No
 - c. Proposed well diameter is _____ inches; proposed depth of well is _____ feet.
 - d. Is ground water with a temperature of greater than 85°F being sought? ☐ Yes ☐ No
 - e. If well is already drilled, when? _____; drilling firm _____; well was drilled for (well owner) _____; Drilling Permit No. _____

For Department Use

Received by _____ Date _____ Time _____ Preliminary check by _____
Fee \$ 1,710.00 Received by Ja Receipt No. N036023 Date 4-22-2020

8. Description of proposed uses (if irrigation only, go to item 9):
- Hydropower; show total feet of head and proposed capacity in kW. _____
 - Stockwatering; list number and kind of livestock. _____
 - Municipal; must complete and attach the Municipal Water Right Application Checklist.
 - Domestic; show number of households _____
 - Other; describe fully. Recreation (R), Fish, Wildlife (W), Aesthetic (J)
9. Description of place of use:
- If water is for irrigation, indicate acreage in each subdivision in the tabulation below.
 - If water is used for other purposes, place a symbol of the use (example: D for Domestic) in the corresponding place of use below. See instructions for standard symbols.

TWP	RGE	SEC	NE				NW				SW				SE				TOTALS
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
36N	4W	26						RWJ											
36N	4W	27	RWJ																
36N	4W	22																RWJ	

Total number of acres to be irrigated: _____

10. Describe any other water rights used for the same purposes as described above. Include water delivered by a municipality, canal company, or irrigation district. If this application is for domestic purposes, do you intend to use this water, water from another source, or both, to irrigate your lawn, garden, and/or landscaping? _____
See item 12 narrative regarding Lewiston Orchards Project Water Rights (85-16, 85-2049, 85-2063, 85-2065, 85-2146, 85-2147, 85-4483, 85-11087, 85-15424).
11. a. Who owns the property at the point of diversion? Bureau of Indian Affairs is trust owner /NPT is beneficial owner.
b. Who owns the land to be irrigated or place of use? Bureau of Indian Affairs is trust owner /NPT is beneficial owner.
c. If the property is owned by a person other than the applicant, describe the arrangement enabling the applicant to make this filing: Nez Perce Tribe is the beneficial owner of the property. See Attachment 3 "Title Status Report".
12. Describe your proposal in narrative form, and provide additional explanation for any of the items above. Attach additional pages if necessary. See attached.
13. Time required for completion of works and application of water to proposed beneficial use is 5 years (minimum 1 year).
14. **MAP OF PROPOSED PROJECT REQUIRED** - Attach an 8½" x 11" map or maps clearly identifying the proposed point of diversion, place of use, section #, township & range. The map scale shall not be less than two (2) inches equal to one (1) mile.

The information contained in this application is true to the best of my knowledge. I understand that any willful misrepresentations made in this application may result in rejection of the application or cancellation of an approval.

Signature of Applicant

Shannon F. Wheeler
Print Name (and title, if applicable)

Signature of Applicant

Chantel Greene
Print Name (and title, if applicable)

IDWR Permit Application Section 12: Describe your proposal in narrative form, and provide additional explanation for any of the items above.

This application is part of a suite of actions undertaken to implement a comprehensive settlement developed by the Lewiston Orchards Irrigation District (LOID), the Nez Perce Tribe, the Bureau of Reclamation, and the Bureau of Indian Affairs (BIA), in consultation with local stakeholders, including the City of Lewiston, Nez Perce County, and the Lewis Clark Valley Chamber of Commerce. To permanently resolve long-standing issues, the settlement meets three critical objectives: (1) it provides critical habitat for ESA-listed steelhead, (2) it protects natural and cultural resources important to the Nez Perce Tribe, and (3) it provides LOID patrons with a long-term reliable water supply.

These three settlement objectives are to be satisfied through full implementation of a water exchange project commonly referred to as the Lewiston Orchards Project (LOP) Water Exchange and Title Transfer Project, which involves construction of a deep aquifer well field to provide LOID with a groundwater supply that will replace its current use of the LOP surface and storage water rights.¹ Surface water flows – which have, and will continue to, become available as LOID transitions to a groundwater supply – are intended to be used by the Tribe for culturally appropriate beneficial uses consistent with state law.

Consistent with the foregoing settlement objectives, this application for permit is being filed to secure a right to the surface water flows made available, in part, by the water exchange project for uses culturally appropriate to the Nez Perce people and consistent with state law. Once approved, this permit will allow for development and use of water diverted from Lapwai Creek by the Tribe that will fulfill an indispensable purpose of the project.

Lapwai Creek is the heart of the Nez Perce Reservation – an area occupied by Nez Perce people for many thousands of years. The dewatering of Lapwai Creek over the last 110 plus years has been a continuing injury for the Tribe and its people. The water uses applied for will end that dewatering and be non-consumptive: water will be diverted from Lapwai Creek into a side channel then returned to Lapwai Creek. The place of use is land owned by the Tribe. It is the location of the current construction of a long-awaited Nez Perce Long House – a cultural-religious structure of enormous significance to Nez Perce people. It is a location that will provide convenient access into the future for all Nez Perce people, including children and elders.

The water uses will be of a community significance to the Nez Perce that will include but extend far beyond conventional recreational concepts. The water use will provide cultural experiences for Nez Perce, and others, associated with new Long House; it will provide recreational experiences for Nez Perce, and others, associated with the Long House; it will create and enhance fish habitat in a reach that is designated critical habitat for listed Snake River steelhead; it will provide habitat for wildlife including deer, waterfowl, beaver, and muskrat. The water use will also create numerous ancillary benefits: it will create and enhance macroinvertebrate habitat; it will increase vegetation diversity; it will reduce sediment transport; it will help mitigate flooding on downstream landowners; and the increased flows will provide

¹ The LOP water rights are identified in Section 10 of this Application.

cooler water for the Tribe's downstream fish acclimation facility, which has historically been impacted from high temperature flows.

The water quantity applied for will only become fully available through convergence with the completion of the water exchange project and the resulting termination of surface water diversions from the LOP. As LOID continues its transition to a groundwater supply, the resulting unused portions of the LOP water rights will be transacted through the Idaho Water Resource Board's Water Supply Bank to support the purposes of use identified in this application. After LOID has fully transitioned to a groundwater supply, the Tribe and BIA will apply for a transfer to change in whole, or in part, the LOP water rights to this location and these purposes. As a result, this application for permit is essential to full implementation of the parties' comprehensive settlement.

Water right location 2" : 1 mile

R. 04 W.

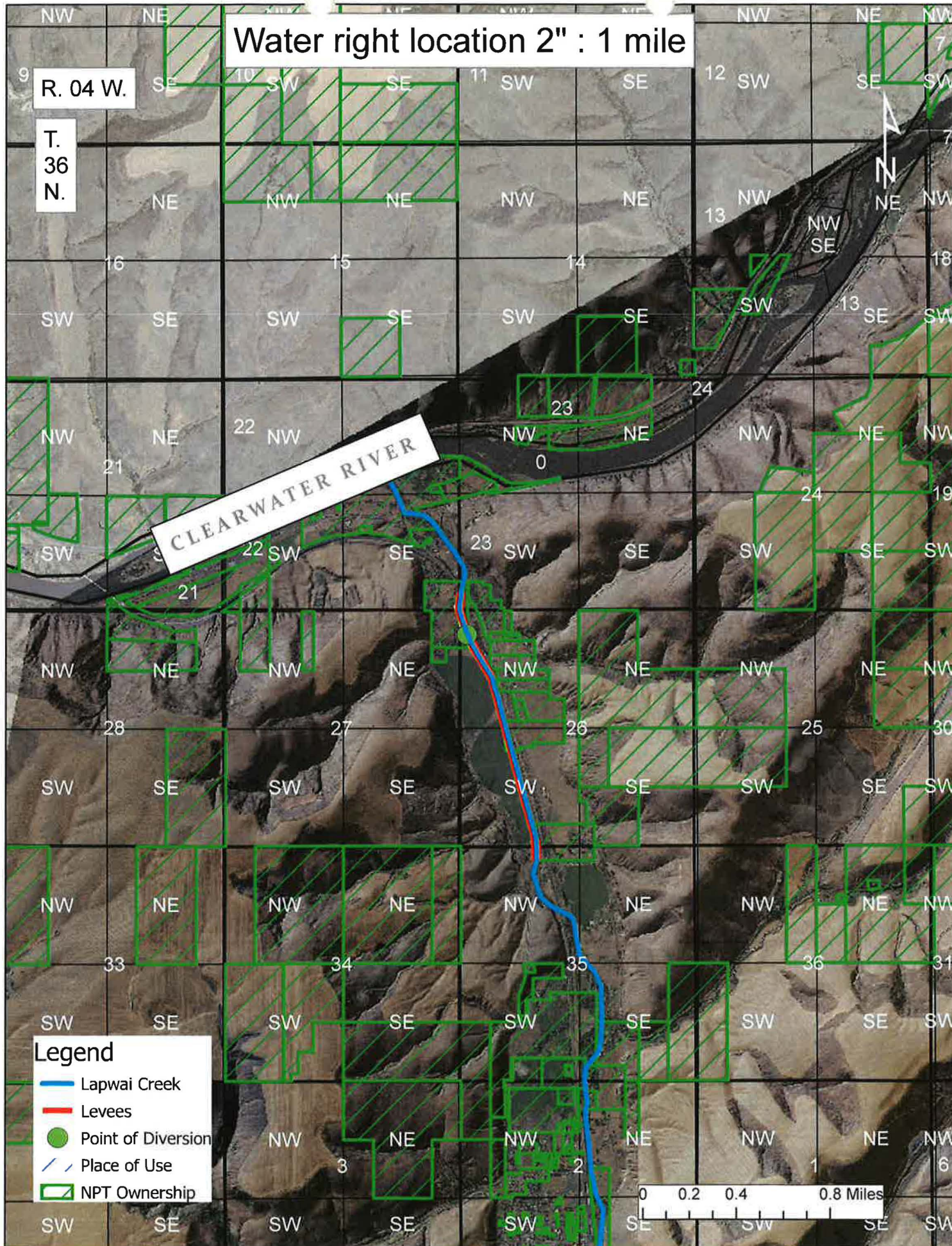
T. 36 N.

CLEARWATER RIVER

Legend

- Lapwai Creek
- Levees
- Point of Diversion
- Place of Use
- NPT Ownership

0 0.2 0.4 0.8 Miles



Water right location zoom

R. 04 W.

T.
36
N.



22

SE

23

SW

HIGHWAY 95

27

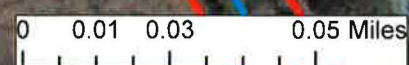
NE

26

NW

Legend

- Lapwai Creek
- Point of Diversion
- Levees
- Place of Use
- NPT Ownership



IDAPA 37.03.08

Subsection 035.03

05. Additional Information Requirements

IDAPA 37.03.08

Subsection 035.03

05. Additional Information Requirements

d. Information relative to sufficiency of water supply

- i. The peak diversion rate will be 55 cfs. 55 cfs will provide enough flow in a side channel to provide habitat for upstream migrating anadromous fish, summer rearing habitat for anadromous fish, and habitat for native fish species present in Lapwai Creek. The beneficial use of fish/wildlife, recreation/cultural, and aesthetics use is not expected to be consumptive use. Evaporation is the only expected consumptive use and will be negligible.
- ii. See Section 12 of Application for Permit. See USGS Mean Monthly Flow summary (Attachment 1) for the Lapwai Creek Gage and LOID Sweetwater Canal Diversion summary (Attachment 2) for the Sweetwater Diversion. The LOID Sweetwater Canal Diversion summary does not distinguish if the flow being diverted is natural stream flow or flows from released storage water.

e. Information relative to good faith, delay, or speculative purposes of the applicant

- i. Bureau of Indian Affairs Title Status Report (Attachment 3)
- ii. All NEPA, ESA, and Section 106 compliance will be completed upon final design and prior to construction.

f. Information Relative to Financial Resources

- i. The Department of Fisheries Resources Management (DFRM) Watershed Division has been successfully implementing watershed restoration projects since 1999. The current annual operating budget is \$6.1 million. Funding is provided from a variety of sources including but not limited to: BPA, Idaho OSC PCSRF, USFW, Bureau of Reclamation, and Bureau of Indian Affairs, and the Nez Perce Tribe.
- ii. A 30% conceptual design completed in September 2019, funded by the Bureau of Reclamation (Attachment 4). The Tribe envisions a concrete head gate with a rated opening leading into a 10-15 feet wide channel that is approximately 900 feet long with a depth to provide fish habitat. Conceptual design costs are less than \$50,000. The anticipated cost to implement the project is less than \$500,000. The DFRM Watershed Division has implemented a restoration project in the Lapwai basin similar to this project of which the cost was under \$500,000.

g. Information Relative to Conflict with the Local Public Interest.

See Section 12 of Application for Permit. Enclosed as Attachment 5 are letters of support for the LOP Water Exchange and Title Transfer Project, from which this application stems, as well as a letter from NOAA acknowledging the benefits to ESA-listed species that are expected to accrue upon completion of the side channel

Tribal staff, along with LOID and Lower Clearwater Exchange Project staff, continue to coordinate with local stakeholders and provide them with updates as we continue to work towards full implementation of the LOP Exchange Project.

ATTACHMENT 1

Nez Perce County, Idaho	Output formats
Hydrologic Unit Code 17060306	HTML table of all data
Latitude 46°25'35", Longitude 116°48'22" NAD83	Tab-separated data
Drainage area 264 square miles	Reselect output format
Gage datum 864.64 feet above NGVD29	

00060, Discharge, cubic feet per second, Monthly mean in ft3/s (Calculation Period: 1974-10-01 -> 2018-12-31)												
YEAR	Calculation period restricted by USGS staff due to special conditions at/near site											
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
1974										12.6	15	14.4
1975	47.2	66.3	139.3	197.7	292.9	45.4	17.1	8.82	13.8	34.5	32.6	357.5
1976	263.1	83.7	158.1	546.4	146.7	56.2	13.2	16.3	9.35	10.4	15.2	18.6
1977	18.2	15	18.9	49.7	34.1	14.3	3.18	2.27	11.5	17.7	32.7	193.4
1978	169.5	241.9	304.7	205	178.3	39.8	18.6	11	15.1	15.4	17.2	39.7
1979	22.2	153.2	417.7	501.4	368.2	28.1	12.7	8.54	8.89	12.9	17.8	29.7
1980	54.2	94.7	132.3	135.8	164.9	101.4	20.9	6.85	10.5	12.9	21.3	36.2
1981	32.6	77.7	69.1	104.7	68.2	137.2	34.8	7.5	7.39	14.7	23.5	47.7
1982	129.9	439.1	361.4	440.7	194.4	37.9	42.7	14.9	14.2	29.5	35.8	55.5
1983	90.3	111.3	184.5	100.6	57.6	20.4	23.7	10.5	17.9	16.8	23.8	24.4
1984	113.4	66.8	324.7	334	198.4	139.9	20	9.17	18.2	23.5	37	40
1985	28.1	47.3	145.9	351.9	70.1	55.9	3.74	6.35	13.2	15.7	21.2	22.6
1986	72.1	347.9	212.5	112.5	82.1	16.9	12.3	5.91	13.4	15.3	45.4	37.3
1987	34.1	116.2	197.4	76.8	27.6	20.5	12.4	5.75	6.65	8.63	11.4	12.8
1988	17.5	30.8	46.9	75.2	55.2	26.5	8.41	2.32	4.12	7.67	13.9	20.3
1989	33.5	35.9	405.2	280	95.1	68.7	8.78	7.38	10.4	15.7	21	21.6
1990	33.4	51.8	111.4	54.6	145.9	124	9.8	4.6	4.83	9.91	25.8	30.2
1991	52.1	58.6	100.2	142	133.4	54.7	9.63	2.92	3.39	5.71	17.5	32.9
1992	23.6	37.2	23.5	26.7	8.98	3	3.59	1.91	4.73	6.74	10	12.6
1993	14.9	19.4	111	200.8	194.4	33.6	17.7	8.1	5.15	6.2	8.68	13
1994	21.9	16.1	63.3	57.4	24.5	9.89	2.96	1.68	3.05	4.14	11.7	35.4
1995	39.2	130.2	165.1	179	226.5	57	14	6.14	4.35	22.3	62.6	129.6
1996	214.1	674.7	279.2	540	324.2	57.5	19.6	11.2	11.1	19.5	38.9	70.9
1997	333.4	317.5	486.9	495.8	223.8	51.2	25.5	14.4	17.8	25.4	31.1	34.6
1998	57.8	64.6	75.7	119	127.5	52	21.2	7.15	12	20.4	74.1	128.5
1999	113.2	94.9	380.9	299.4	114.1	26.8	8.61	6.83	5.89	9.92	22.5	41.2

YEAR	Monthly mean in ft3/s (Calculation Period: 1974-10-01 -> 2018-12-31)											
	Calculation period restricted by USGS staff due to special conditions at/near site											
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2000	31.9	130.7	177.5	118.9	65.9	25.5	6.32	3.49	8.09	20.3	20.1	21.5
2001	26.5	41.5	180.1	208.8	91.5	15.3	5.44	2.47	2.53	6.7	14.5	21
2002	37.2	48	189.5	222.8	43.6	43.1	5.88	2.36	2.78	6.07	11.4	13.8
2003	53.6	148.1	403.9	206.1	145.7	19.8	3.41	1.77	2.34			
2004	25.2	57.6	97.6	30.7	159	71.7	5.81	2.85	6.87			
2006												33.1
2007	19.1	89.7	172.7	95	24.4	8.62	2.59	1.91	2.34	4.88	9.23	15.6
2008	14.3	27.9	93.1	167	118.6	88.6	5.81	4.81	5.09	8.72	13.3	15.9
2009	93.5	51.8	251.6	465.3	140.3	15.6	5.64	5.46	4.57	6.85	11.1	12
2010	57.3	41.3	47.6	72.5	111.4	199.3	16.7	7.69	8.5	10.3	15.2	53.1
2011	227	141.3	482.4	655.8	380.2	202	27.3	14.8	12.2	17	22.5	21.4
2012	33.1	77.8	311.7	306.1	77.6	57.6	21.3	12.9	11.1	15.2	31.7	48
2013	43.7	89.7	201.2	123.4	32.4	21	9.54	6.06	7.9	10.8	13.1	17.8
2014	35.4	109.1	328.5	146.1	51.7	17.3	9.02	8.09	6.55	8.94	19.3	50.8
2015	129.4	120.6	115	93.7	29.3	19.5	4.41	4	5.6	6.59	14.4	32
2016	39.3	117.6	250.4	102.5	59.2	20.8	10.3	7.59	10.9	20.7	17	16.5
2017	18.4	210.4	605.9	310.4	194.9	50	16.7	12.5	13.4	19.4	37.4	78.4
2018	239.5	237.1	265	428.3	96.4	46.4	22	13.9	15.1	21.4	24.8	28.3
Mean of monthly Discharge	75	122	216	223	128	52	13	7.2	8.9	14	23	47

** No Incomplete data have been used for statistical calculation

ATTACHMENT 2

Lewiston Orchards Irrigation District: Sweetwater Canal nr Headworks (SWCI QJ)

Monthly mean in ft³/s (Calculation Period: 10/1/2002 to 12/31/2018)

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2002										4.78	0.00	0.00
2003	0.00	8.13	12.40	2.73	9.53	13.62	23.58	29.41	25.38	4.65	0.00	0.00
2004		1.77	21.18	19.25	10.35	13.27	24.30	23.94	6.30	10.99	0.00	0.00
2005	0.00	0.00	9.07	19.55	8.02	14.00	24.52	28.80	11.94	9.76	2.25	0.00
2006		0.00	8.38	11.88	7.46	15.96	18.01	17.67	9.02	1.88	0.00	0.00
2007	0.00	2.01	14.19	18.59	7.66	19.01	21.70	16.87	6.23	0.00	0.00	0.00
2008	0.00	0.13	4.72	14.13	23.49	21.86	20.56	18.93	14.58	0.00	0.00	0.00
2009	0.00	0.00	6.56	19.24	12.53	15.23	20.54	19.86	15.57	1.30	0.00	0.00
2010	0.00	0.00	1.24	14.93	23.54	10.51	9.72	16.36	11.77	0.59	0.01	0.03
2011	0.02	0.00	12.82	9.99	14.82	6.44	15.77	20.38	13.06	2.64	0.00	0.00
2012	0.00	0.00	5.30	18.12	17.90	12.84	13.22	18.13	8.19	2.70	0.00	0.00
2013	0.00	0.00	10.03	19.44	13.37	12.26	15.80	13.17	7.37	0.55	0.00	0.00
2014	0.00	0.00	19.25	26.54	13.46	12.91	14.18	14.72	9.61	0.35	0.12	0.00
2015	0.00	8.63	9.65	12.09	13.99	15.32	9.83	6.88	5.12	0.24	0.00	0.00
2016	0.00	16.85	20.98	7.93	6.72	7.75	13.50	12.24	2.85	1.54	0.00	0.00
2017	0.00	0.00	12.03	21.84	3.59	12.79	14.31	17.25	8.25	0.00	0.00	0.00
2018	0.00	4.89	15.63	13.12	7.17	9.72	11.16	15.05	8.06	0.01	0.00	0.00
2019	0.00	0.00	3.31	19.02	20.96	14.45	6.12	18.37				
Mean of monthly discharge	0.00	2.50	10.99	15.79	12.62	13.41	16.28	18.12	10.21	2.47	0.14	0.00

* Negative values have been assumed as 0

** No Incomplete data have been used for statistical calculation

*** Based on Raw data from USBR Hydromet system

ATTACHMENT 3

**United States Department of the Interior
Bureau of Indian Affairs
Title Status Report**

Report Certification Time and Date: 05/18/1999 08:00:00 PM

Requestor: MANKNEY Date/Time: 09/03/2019 14:15:10

<u>Land Area</u>	<u>Land Area Name</u>	<u>Tract Number</u>	<u>LTRO</u>	<u>Region</u>	<u>Agency</u>	<u>Resources</u>
182	NEZ PERCE	T 606	PORTLAND, OR	NORTHWEST REGIONAL OFFICE	NORTHERN IDAHO AGENCY	Both

Original Allottee: MAHTOENO

See Appendix A for Land Legal Descriptions

Title Status

Tract 182 T 606 is held by the United States of America in trust for the land owner(s) with trust interests and/or by the land owner(s) with restricted interests and/or fee simple interests, as listed in Appendix "B" attached to and incorporated in this Title Status Report.

The title to Tract 182 T 606 is current, complete, correct, and without defect. Ownership is in unity and interests are owned in the following title status: trust.

The tract ownership is encumbered by the title documents which have been approved by a properly delegated Federal official and are required to be recorded by law, regulation, or Bureau policy as listed on Appendix "C" attached to and incorporated in this Title Status Report.

See Appendix D for all other documents that are required to be recorded by law, regulation or Bureau policy.

No Tract Notes or Coded Remarks for this tract.

This report does not cover encroachments nor any other rights that might be disclosed by a physical inspection of the premises, nor questions of location or boundary that an accurate survey may disclose. This Report also does not cover encumbrances, including but not limited to irrigation charges, unpaid claims, not filed or recorded in this Land Titles and Records Office. This report does not state the current ownership of the interests owned in fee simple but states the ownership at the time the interest ceased to be held in trust or restricted ownership status.

This Title Status Report is a true and correct report of the status of title to the real estate described herein according to the official land records recorded and maintained in this office.

Appendix "A"

<u>Land Area</u>	<u>Land Area Name</u>	<u>Tract Number</u>	<u>LTRO</u>	<u>Region</u>	<u>Agency</u>	<u>Resources</u>	
182	NEZ PERCE	T 606	PORTLAND, OR	NORTHWEST REGIONAL OFFICE	NORTHERN IDAHO AGENCY	Both	
Land Legal Descriptions							
<u>Section</u>	<u>Township</u>	<u>Range</u>	<u>State</u>	<u>County</u>	<u>Meridian</u>	<u>Legal Description</u>	<u>Acres</u>
22	036.00N	004.00W	IDAHO	NEZ PERCE	Boise	LOT 13=SE SE SE LOT 14=E E SW SE SE	10.000 2.500
23	036.00N	004.00W	IDAHO	NEZ PERCE	Boise	W W SW SW SW	2.500
26	036.00N	004.00W	IDAHO	NEZ PERCE	Boise	LOT 08=NW NW	3.125
W½W½N½ AND N½W½N½W½S½ OF LOT 8							
27	036.00N	004.00W	IDAHO	NEZ PERCE	Boise	LOT 33=E NE NE	12.450
TOTAL TRACT ACRES:							30.575

Appendix "B"

<u>Land Area</u> 182	<u>Land Area Name</u> NEZ PERCE	<u>Tract Number</u> T 606	<u>LTRO</u> PORTLAND, OR	<u>Region</u> NORTHWEST REGIONAL OFFICE	<u>Agency</u> NORTHERN IDAHO AGENCY	<u>Resources</u> Both
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Effective Ownership as of 11/19/2004

----- OWNER -----				---- DOCUMENT ----		NAME IN WHICH	FRACTION TRACT	AGGREGATE SHARE	AGGREGATE
Tribe	Indian / NonIndian	Title	Interest*	Class	Type	SURNAME/FIRST NAME	AS ACQUIRED	CONVERTED TO LCD	DECIMAL
NEZ PERCE	Tribe	Trust	All	Prob Mod	SPEC AUT	NEZ PERCE TRIBE	1		
- ID							2		
		Trust	All	Prob Mod	SPEC AUT	NEZ PERCE TRIBE	1	2	
							2		2 1.0000000000

* "All" means the equitable beneficial interest and the legal title interest merged together.

IN TRUST:		2	
		2	1.0000000000
IN FEE:		0	
		2	.0000000000
TOTAL:		2	
		2	1.0000000000

Appendix "C"

<u>Land Area</u>	<u>Land Area Name</u>	<u>Tract Number</u>	<u>LTRO</u>	<u>Region</u>	<u>Agency</u>	<u>Resources</u>
182	NEZ PERCE	T 606	PORTLAND, OR	NORTHWEST REGIONAL OFFICE	NORTHERN IDAHO AGENCY	Both

Ownership of Tract 182 T 606 is encumbered by the following:

NO REALTY DOCUMENTS FOUND

Type of

Encumbrance	Encumbrance Holder	Expiration	Document	Description and Explanation
CERTIFICATE OF SURVEY	BLM		15375	BLM DEPENDENT RESURVEY APPROVED JULY 1, 1982 CHANGES THE LEGAL DESCRIPTION AND/OR ACREAGE OF SUBJECT PROPERTY. SEE DOCUMENT FOR PARTICULARS.
CERTIFICATE OF SURVEY	BLM		15734	BLM DEPENDENT RESURVEY APPROVED MAY 15, 2012, CHANGES THE LEGAL DESCRIPTION AND OR ACREAGE OF SUBJECT PROPERTY. SEE DOCUMENT FOR PARTICULARS.
MISCELLANEOUS	NP TRIBAL HATCHERY	09/30/2027	14928	FISH HATCHERY LEASE NO. 5-09502-02-27, FOR A TERM OF 25 YEARS, BEGINNING ON 10/01/2002, WITH/OPTION TO RENEW ADD. 25 YRS., CONTAINING 11.0 ACRES M/LAPPROVED ON 05/01/2003.
HOMESITE LEASE	YVONNE N. WEBB	11/09/2023	15037	HOMESITE LEASE NO. 5-06656-98-23, FOR A TERM OF 25 YEARS, BEGINNING ON 11/11/1998, APPROVED ON 08/25/2003.
DITCHES & CANALS	IRWIN & CONNIE WATERS	PERPETUAL	2155	R/W FOR DITCHES OR CANALS CONSTRUCTED BY THE AUTHORITY OF THE U.S. ARE PROVIDED BY THE ACT OF 8-30-90 (26 STAT. 391). SOLICITOR HAS CONSTRUED THIS RESERVATION AS BEING INAPPLICABLE FROM LAND OF INDIAN RESERVATIONS. SEE 58 I.D. 319, 59 I.D. 461.
RIGHTS OF WAY	STATE OF ID, DEPT OF HWYS	PERPETUAL	8516	R/W FOR U.S. HIGHWAY 95, VARIABLE IN WIDTH, OVER & ACROSS SEVERAL LOTS IN SECTIONS 22, 23, 26 AND 35, TOWNSHIP 36 NORTH, RANGE 4 WEST. APPROVED 03-02-1962 PURSUANT TO THE ACT OF 02-05-1948 (62 STAT. 17). SEE DOCUMENT FOR PARTICULARS.

Appendix "D"

<u>Land Area</u>	<u>Land Area Name</u>	<u>Tract Number</u>	<u>LTRO</u>	<u>Region</u>	<u>Agency</u>	<u>Resources</u>
182	NEZ PERCE	T 606	PORTLAND, OR	NORTHWEST REGIONAL OFFICE	NORTHERN IDAHO AGENCY	Both

No Contracts to list for Appendix D

No Encumbrances to list for Appendix D

ATTACHMENT 4



EXISTING CONDITIONS OVERVIEW MAP

- LEGEND**
- Existing Major Contour (5' Interval)
 - Existing Minor Contour (1' Interval)
 - Existing Fence
 - GIS Parcel Data
 - Ordinary High Water

- NOTES:**
- No boundary survey was provided for this project. Property lines from GIS parcel data and are approximate.
 - Existing topographic surface was established by LIDAR from 2016 and topographic survey by USBR, August, 2019. Additional topographic survey is necessary to validate existing conditions prior to final design and construction.
 - Prior to construction control points to be established by contracting agency.



NOTES:

1. Temporary access routes are approximate. Some routes are existing roads. Others are shown as potential roads and subject to approval by the C.O.
2. Haul all excess materials from alcove and pool grading to staging and stockpile areas as directed by C.O. Excess materials may be used in habitat structures or wasted on site as directed by C.O.
3. Control dust throughout duration of the construction period. Spray access routes with water as needed to prevent dust generation.
4. Where access routes cross depressions or wet areas 8"-10" logs or other woody debris will be used to stabilize access route.
5. At project completion, temporary access routes and staging areas shall be removed in accordance with note 5 on sheet G-3.
6. Pools and alcoves shall be excavated in the dry or use coffer dams as directed by the C.O.
7. See note 7 on sheet G-3 for allowable uses of staging/stockpile areas and construction equipment storage/fueling areas.
8. LWM and streambank treatments are approximately located.

LEGEND

- Existing Major Contour (5' Interval)
- Existing Minor Contour (1' Interval)
- Existing Access Road
- Existing Thaliweg
- Existing Major Contour (5' Interval)
- Existing Minor Contour (1' Interval)
- Temporary Access Route
- Fueling/Equipment Staging Area
- Stockpile/Staging Area
- Potential Fill Area
- Type A-1 Large Apex Jam Structure (See Sheet D-1)
- Type A-2 Small Apex Jam Structure (See Sheet D-2)
- Type B-1 Large Habitat Structure (See Sheet D-3)
- Type B-2 Small Habitat Structure (See Sheet D-4)
- Type B-3 Pocket Jam Structure (See Sheet D-5)
- Type E-1 Cover Log (See Sheet D-5)
- Type F Floodplain Roughness (See Sheet D-7)
- Brush Bank Treatment (See Sheet D-9)
- Roughened Edge (See Sheet D-8)
- Constructed Riffle
- Roughened Channel (See Sheet D-12)
- Excavated Pool
- Ordinary High Water

RECLAMATION
Managing Water as a Resource

ALWAYS THINK SAFETY

U.S. DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
LAPWAL CREEK SIDE CHANNEL IMPROVEMENTS
DIVISION
NEZ PERCE TRIBE DFRM WATERSHED
DIVISION
CLEARWATER SUBBASIN

DESIGNED: _____
DRAWN: _____
CHECKED: _____
TECH. APPROV: _____
APPROVED: _____
DATE: _____

STATION NAME (CITY, ST) DEER 09-00

PROPOSED CONDITIONS

PLAN

C-2

SHEET 1

ATTACHMENT 5



C.L. "BUTCH" OTTER
GOVERNOR

June 21, 2010

The Honorable Joe Stegner
Idaho State Senate
216 Prospect Blvd.
Lewiston, ID 83501

The Honorable John Rusche
Idaho House of Representatives
1405 27th Ave.
Lewiston, ID 83501

The Honorable Liz Chavez
Idaho House of Representatives
1521 15th Ave.
Lewiston, ID 83501

Dear Senator and Representatives,

Thank you for your letter regarding the Lower Clearwater Exchange Project. Issues surrounding this exchange project have been a cause of concern for many years and I assure you I fully support finding a solution.

As a resolution, I believe the Lewiston Orchards Irrigation District would be better served if it would change its point of diversion from the Sweetwater drainage to the Clearwater River. As a result, the Sweetwater system could then focus on resident and anadromous fish production and related habitat improvements, resolving existing ESA legal conflicts. These two actions would increase economic activity and be welcomed not only by the area but by all of Idaho.

I understand such a collaborative undertaking requires extensive engineering and environmental studies. Furthermore, funding will be problematic for the State of Idaho and the United States Congress. I want to emphasize again that the concept is agreeable, but during the current economic climate and competing priorities for state funding, I can offer no guarantee of State money or current funding sources. That being said, I am willing to work with you to explore alternative funding sources for the project.

As Always – Idaho, "Esto Perpetua"

A handwritten signature in black ink, appearing to read "C.L. Butch Otter".

C.L. "Butch" Otter
Governor of Idaho

Bobby Hills

From: Bob Ries - NOAA Federal <bob.ries@noaa.gov>
Sent: Friday, October 11, 2019 3:18 PM
To: Bobby Hills
Subject: Lapwai Creek side channel improvements

Bobby,

Thanks for sending me the conceptual design and water rights information for the Lapwai Creek side channel improvements.

From the drawings, it looks like the side channel in Lapwai Creek might be activated under all but the lowest flow conditions. This would likely improve lost floodplain function with beneficial effects to stream flows and water temperatures. The side channel may also provide potential spawning and rearing for steelhead if flows are sustained in the channel through June and early July.

The conceptual plan is consistent with one of the Recovery Plan goals for the Lower Clearwater steelhead population group to: *Preserve, restore, or rehabilitate natural habitat-forming processes in areas with high suitability for steelhead by reestablishing riparian areas and reconnecting floodplains ...* This project is a unique opportunity since there are limited opportunities in Lapwai Creek to regain lost side channels and floodplains. The constructed side channel would improve habitat-forming processes by reducing excessive water velocities in Lapwai Creek, and creating a side channel where more-natural gravel deposition may occur.

Please keep me up to date on this project as it develops.

Bob

--
Bob Ries
NOAA Fisheries West Coast Region
Interior Columbia Basin Area Office
U.S. Department of Commerce

208-882-6148
bob.ries@noaa.gov





Idaho Rivers United - PO Box 633 - Boise, ID 83701 - (208) 343-7481 - idahorivers.org

Protecting and Restoring the Rivers and Fish of Idaho

October 7, 2019

Mr. Jerry Klemm
Chairman
Lower Clearwater Exchange Project

Dear Jerry,

Idaho Rivers United writes to show our strong support for the Lewiston Orchards Project Water Exchange and Title Transfer Project (LOP).

Founded in 1990, Idaho Rivers United (IRU) is Idaho's only statewide river conservation organization. IRU's mission is "To protect and restore the rivers of Idaho." IRU directly represents the interest of our 3,500 members as well as the interest of thousands of additional supporters across Idaho and the nation.

For over 25 years, one of IRU's highest priorities has been the recovery of Idaho's endangered wild salmon and steelhead species. Restoring connectivity and critically needed streamflows to tributary streams of Lapwai Creek would greatly improve spawning and rearing habitat to those streams and downstream in Lapwai Creek to its confluence with the Clearwater River.

The above-mentioned tributary streams are unique in that they will supply water that is lower in temperature than normally occurs at this elevation. This is of great importance as a buffer to rising water temperatures throughout the region.

Idaho's populations of wild salmon and steelhead are declining at a rapid rate and, with adequate funding, implementation of the remainder of the LOP would provide timely relief for this stressed watershed. IRU applauds the time and energy that you, the Nez Perce Tribe, the Lewiston Orchards Irrigation District, and the Bureau of Reclamation have devoted to finding a path forward that meets the needs of the community and fish and wildlife.

Respectfully,

Kevin Lewis, Conservation Director
Idaho Rivers United
P.O. Box 633
Boise, ID 83701
kevin@idahorivers.org



Kira Finkler
Idaho Water Project Director
Western Water and Habitat Program

December 7, 2017

Mr. Jerry Klemm
Chairman
Lower Clearwater Exchange Project

Dear Jerry,

On behalf of Trout Unlimited and its 300,000 members and supporters nationwide, I am writing to express our support for the Lewiston Orchards Project Water Exchange and Title Transfer.

Communities across the west are seeking ways to bridge the gap between increasing demands for water with decreasing water availability. The Lewiston Orchards Project Water Exchange and Title Transfer represents an excellent example of the type of process that we have found achieves the most successful and long-lasting results, namely, a collaborative one where all stakeholders come together to craft a solution that works for everyone. We applaud the time and energy that the Nez Perce Tribe, the Lewiston Orchards Irrigation District, the Bureau of Reclamation and you devoted to developing an innovative path forward.

The water exchange and title transfer involves incrementally exchanging the existing surface water system with an off-reservation groundwater-pumped system consisting of multiple wells. The wells will be constructed in phases as funding becomes available. Each well will be connected to the Lewiston Orchards Project system in exchange for an equal amount of surface water returned to streams. The completed well field will provide the patrons of the Lewiston Orchards Irrigation District with a reliable water source resilient to climate change.

This project will restore flow reliability to streams in the Lapwai Watershed, including Sweetwater Creek. Because of the unique characteristics of Sweetwater Springs, the biological value of these streams for steelhead is likely very high and the project will contribute to increasing the resilience of steelhead to climate change impacts. The restoration of these biological values will resolve the project's effects on the Nez Perce Tribe and its people, including impacts to natural and to cultural and religious water uses.

We look forward to working with you and your partners to complete the exchange and title transfer. As always, please contact me anytime if you have questions or need additional information.

Sincerely,

Kira Finkler

Trout Unlimited: America's Leading Coldwater Fisheries Conservation Organization

910 W Main Street, Suite 342, Boise, ID 83702

(208) 345-9800 • Fax: (208) 345-6766 • kfinkler@tu.org • www.tu.org

January 31, 2012

Lorri Gray-Lee
Pacific Northwest Regional Director
Bureau of Reclamation
1150 North Curtis Road Suite 100
Boise Idaho 83706-1234
Attention Carri Hessman 2012 LCEP Basin Study Letter of Interest

College of Graduate Studies
Environmental Science & Water Resources
P.O. Box 443006
Moscow, ID 83844-3006
Tel (208) 885-6113

Dear Ms. Gray-Lee:

I am writing on behalf of the Waters of the West program at the University of Idaho in support of the Lower Clearwater Exchange Project (LCEP) seeking funding under the Reclamation's 2012 Basin Study Program.

Faculty and students from the Waters of the West have been working with LCEP partners for the past several years in the area of water resources, bringing together an integrated approach to researching and solving issues within the Lapwai Creek watershed and the surrounding areas. The LCEP is one of those issues where we have great interest to contribute with our diverse faculty and student team, where and when appropriate. Our interests in climate change risk and adaptation and mitigation of such risks are very much in line with the proposed LCEP. We very much look forward to continue our partnerships in the region through this project.

If you have any questions regarding our involvement with area partners, please do not hesitate to contact me at jboll@uidaho.edu.

Sincerely,



Jan Boll
Director, Environmental Science, Water Resources and Professional Science Master Programs
Waters of the West
Professor, Biological & Agricultural Engineering

cc. Professor Barbara Cosens, College of Law



International Union of Operating Engineers/Local 370

P.O. Box 3386 • 510 SOUTH ELM • SPOKANE, WA 99220 • (509) 624-5365 • FAX (509) 624-5554

Affiliated with
AFL-CIO

Jurisdiction
Eastern Washington
And
State of Idaho



CURT KOEGEN
Business Manager

January 17, 2012

Lori Gray-Lee
Pacific Northwest Regional Director
Bureau of Reclamation
1150 North Curtis Road Suite 100
Boise Idaho 83706-1234
Attn: Carri Hessman 2012 LCEP Basin Study Coordinator

Re: 2012 Basin Study Program; LCEP Letter of Support

Dear Lori:

Operating Engineers Local 370 fully supports the LCEP partners in their effort to gain funding thru the Basin Study Program so that they can move on to the Feasibility Study and ultimately make this project a reality. This project will not only bring much needed stability to this system it will also bring economic stimulus through the many jobs that will be created thru the construction of this project.

Sincerely,

Jim Arnett
Financial Secretary
IUOE Local 370



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

May 27, 2020

NEZ PERCE TRIBE
PO BOX 365
LAPWAI, ID 83540-0365

RE: Application for Permit No. 85-15811

Dear Applicant(s):

The Department of Water Resources has received your water right application. Please refer to the number referenced above in all future correspondence regarding this application.

A legal notice of the application has been prepared and is scheduled for publication in the TIMES NEWS, IDAHO STATESMAN, LEWISTON TRIBUNE, POST REGISTER on 6/4/2020 and 6/11/2020. Protests to this application may be submitted for a period ending ten (10) days after the second publication.

If the application is protested, you will be sent a copy of each protest. All protests must be resolved before the application can be considered for approval. If the protest(s) cannot be resolved voluntarily, the Department will conduct a conference and/or hearing on the matter.

If the application is not protested, the Department will process your application and notify you of any action taken on the application. If your application is approved, the Department will send you a copy of the permit.

Please contact this office if you have any questions regarding the application.

Sincerely,

Tammy Alleman
Administrative Assistant

CC:
BOBBY HILLS
PO BOX 365
LAPWAI, ID 83540-0365

Alleman, Tammy

From: Alleman, Tammy
Sent: Wednesday, May 27, 2020 12:20 PM
To: 'Sujata.Connell@deq.idaho.gov'; 'Swearingen,Zachary'; Skoro, Emily; Golden, Kala; 'alisont@co.nezperce.id.us'
Subject: Request for Comments for WR#85-15811

Dear Interested Agencies:

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

This office can publish notice of the application as soon as the initial review is completed; therefore, your prompt response to this request is appreciated. If your agency desires to formally protest the approval of the application, you may do so after the notice is published by filing a written protest along with a \$25.00 filing fee within 10 days after final publication. **The deadline for comments on the application is June 22, 2020.**

Please contact the Northern Region Office at (208) 762-2800 if you have any questions regarding the application.

Thank you,

Tammy

*Tammy Alleman
Administrative Assistant
Idaho Department of Water Resources
7600 N Mineral Drive, Suite 100
Coeur d'Alene, ID 83815-7763
Phone: (208) 762-2800
Fax (208) 762-2819*

Alleman, Tammy

From: Alleman, Tammy
Sent: Wednesday, May 27, 2020 12:11 PM
To: 'legals@lmtribune.com'
Subject: Legal Notice for WR#85-15811
Attachments: 85-15811 Legal Notice.docx

Please publish the enclosed legal notice in the **Lewiston Tribune** on the dates indicated **June 4th & June 11th, 2020** (once a week for two consecutive weekly issues). If you cannot publish the notice on the proposed dates, please contact us immediately. Please send a proof once you have the article ready for print for our review.

An affidavit of publication must be submitted to the Department along with the publication bill. Please send the affidavit and bill to this office before **June 22, 2020**. Your cooperation is appreciated.

Thank you,

Tammy

*Tammy Alleman
Administrative Assistant
Idaho Department of Water Resources
7600 N Mineral Drive, Suite 100
Coeur d'Alene, ID 83815-7763
Phone: (208) 762-2800
Fax (208) 762-2819*

Alleman, Tammy

From: Alleman, Tammy
Sent: Wednesday, May 27, 2020 12:12 PM
To: 'BOI Legals'
Subject: Legal Notice for WR#85-15811
Attachments: 85-15811 Legal Notice.docx

Please publish the enclosed legal notice in the **Idaho Statesman** on the dates indicated **June 4th & June 11th, 2020** (once a week for two consecutive weekly issues). If you cannot publish the notice on the proposed dates, please contact us immediately. Please send a proof once you have the article ready for print for our review.

An affidavit of publication must be submitted to the Department along with the publication bill. Please send the affidavit and bill to this office before **June 22, 2020**. Your cooperation is appreciated.

Thank you,

Tammy

*Tammy Alleman
Administrative Assistant
Idaho Department of Water Resources
7600 N Mineral Drive, Suite 100
Coeur d'Alene, ID 83815-7763
Phone: (208) 762-2800
Fax (208) 762-2819*

Alleman, Tammy

From: Alleman, Tammy
Sent: Wednesday, May 27, 2020 12:13 PM
To: 'LEGALNOTICES@POSTREGISTER.COM'
Subject: Legal Notice for WR#85-15811
Attachments: 85-15811 Legal Notice.docx

Please publish the enclosed legal notice in the **Post Register** on the dates indicated **June 4th & June 11th, 2020** (once a week for two consecutive weekly issues). If you cannot publish the notice on the proposed dates, please contact us immediately. Please send a proof once you have the article ready for print for our review.

An affidavit of publication must be submitted to the Department along with the publication bill. Please send the affidavit and bill to this office before **June 22, 2020**. Your cooperation is appreciated.

Thank you,

Tammy

*Tammy Alleman
Administrative Assistant
Idaho Department of Water Resources
7600 N Mineral Drive, Suite 100
Coeur d'Alene, ID 83815-7763
Phone: (208) 762-2800
Fax (208) 762-2819*

Alleman, Tammy

From: Alleman, Tammy
Sent: Wednesday, May 27, 2020 12:14 PM
To: 'TWF Legals'
Subject: Legal Notice for WR#85-15811
Attachments: 85-15811 Legal Notice.docx

Please publish the enclosed legal notice in the **Times News** on the dates indicated **June 4th & June 11th, 2020** (once a week for two consecutive weekly issues). If you cannot publish the notice on the proposed dates, please contact us immediately. Please send a proof once you have the article ready for print for our review.

An affidavit of publication must be submitted to the Department along with the publication bill. Please send the affidavit and bill to this office before **June 22, 2020**. Your cooperation is appreciated.

Thank you,

Tammy

*Tammy Alleman
Administrative Assistant
Idaho Department of Water Resources
7600 N Mineral Drive, Suite 100
Coeur d'Alene, ID 83815-7763
Phone: (208) 762-2800
Fax (208) 762-2819*

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

85-15811

NEZ PERCE TRIBE

PO BOX 365

LAPWAI, ID 83540-0365

Point of Diversion L8(NWNW)

S26 T36N R04W

NEZ PERCE County

Source LAPWAI CREEK

Tributary CLEARWATER RIVER

Use: RECREATION

01/01 to 12/31 55 CFS

Use: WILDLIFE

01/01 to 12/31 55 CFS

Use: AESTHETIC

01/01 to 12/31 55 CFS

Total Diversion: 55 CFS

Date Filed: 04-22-2020

Place Of Use: AESTHETIC,RECREATION,WILDLIFE

T36N R04W S22

L13(SESE)

Place Of Use: AESTHETIC,RECREATION,WILDLIFE

T36N R04W S26

L8(NWNW)

Place Of Use: AESTHETIC,RECREATION,WILDLIFE

T36N R04W S27

L1(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 6/22/2020. The protestant must also send a copy of the protest to the applicant.

GARY SPACKMAN, Director

Published on 6/4/2020 and 6/11/2020