

State of Idaho
Department of Water Resources
Permit to Appropriate Water
No. 85-15849

Priority: July 07, 2023

Maximum Diversion Volume: 1.0 AF

This is to certify that

DOMINIC PONOZZO 33906 ANGEL ACRES LEWISTON ID 83501-7014 AND/OR
KATHY PONOZZO 33906 ANGEL ACRES LEWISTON ID 83501-7014

has applied for a permit to appropriate water from:

Source : TAMMANY CREEK

Tributary: SNAKE RIVER

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

<u>Beneficial Use</u>	<u>Period of Use</u>	<u>Rate of Diversion</u>	<u>Annual Volume</u>
STOCKWATER STORAGE	01/01 to 12/31		1.0 AF

Location of Point(s) of Diversion

TAMMANY CREEK L3 (NW¼ SW¼), Sec. 7, Twp 34N, Rge 04W, B.M.	NEZ PERCE County
TAMMANY CREEK L3 (NW¼ SW¼), Sec. 7, Twp 34N, Rge 04W, B.M.	NEZ PERCE County
TAMMANY CREEK L2 (SW¼ NW¼), Sec. 7, Twp 34N, Rge 04W, B.M.	NEZ PERCE County
TAMMANY CREEK L2 (SW¼ NW¼), Sec. 7, Twp 34N, Rge 04W, B.M.	NEZ PERCE County
TAMMANY CREEK L1 (NW¼ NW¼), Sec. 7, Twp 34N, Rge 04W, B.M.	NEZ PERCE County

Place of Use: STOCKWATER 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	
34N	04W	7						X L1	X L2			X L3							

Conditions of Approval

1. Proof of application of water to beneficial use shall be submitted on or before **February 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 Director retains jurisdiction to require a bypass flow for maintenance of fish, wildlife, riparian and aquatic habitat.
5. Right 85-15849 authorizes a total annual storage volume of 1.0 acre-feet, 0.5 acre-feet to be used for the initial filling or carryover storage of the five (5) ponds and 0.5 acre-feet for the replacement of losses caused by seepage and evaporation.
6. The five (5) ponds established by the storage of water under this right shall not exceed a total capacity of 0.5 acre-feet or a total surface area of 0.2 acres.
7. Stockwater use is for 20 head mixed stock.
8. This right does not grant any right-of-way or easement across the land of another.

State of Idaho
Department of Water Resources
Permit to Appropriate Water
No. 85-15849

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

Signed this 19th day of January, 20 24.

Michelle Richman

MICHELLE RICHMAN
Northern Regional Manager



State of Idaho
Department of Water Resources

Attachment to Permit to Appropriate Water

85-15849

This map depicts the STOCKWATER 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.



- 05W
- 0 0.05 0.1 0.2 Miles
- 04W
- Place Of Use Boundary
 - Townships
 - PLS Sections
 - Quarter Quarters
 - Point of Diversion



IDAHO DEPARTMENT OF
WATER RESOURCES

322 E Front Street, Suite 648, Boise ID 83702 • PO Box 83720, Boise ID 83720-0098
Phone: 208-287-4800 • Fax: 208-287-6700 • Email: idwrinfo@idwr.idaho.gov • Website: idwr.idaho.gov

Governor Brad Little

Director Mathew Weaver

January 22, 2024

KATHY PONOZZO
DOMINIC PONOZZO
33906 ANGEL ACRES
LEWISTON ID 83501-7014

RE: Permit No. 85-15849

Permit Approval Notice

Dear Permit Holder(s):

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.

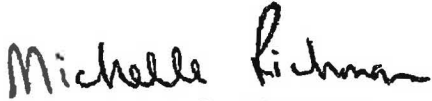
The final step in the water right process is issuance of a water right license. To receive a water right license, you must divert and use water to the full extent intended and submit a *Statement of Completion for Submitting Proof of Beneficial Use* by the date shown in condition no. 1 of your permit. 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 me at (208) 762-2803.

Sincerely,

A handwritten signature in black ink that reads "Michelle Richman". The signature is written in a cursive, flowing style.

Michelle Richman
Northern Regional Manager

Enclosure(s)

CERTIFICATE OF SERVICE

I hereby certify that on January 22, 2024, I served a true and correct copy of Permit to Appropriate Water No. 85-15849 by U.S. Mail, postage prepaid, to the following:

KATHY PONOZZO (Current Owner)
33906 ANGEL ACRES
LEWISTON ID 83501-7014

DOMINIC PONOZZO (Current Owner)
33906 ANGEL ACRES
LEWISTON ID 83501-7014



Jean Hersley
Technical Records Specialist 2

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 Application 85-15849

From: Luke Bates *JSB 11/8/23*

Date: 11/8/2023

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 Tammany Creek to fill the five (5) small ponds during early season peak runoff periods and provide adequate flow into summer months for stockwater usage. This reach of Tammany Creek is intermittent during parts of the year, but the small ponds will likely enable the applicant to maintain water sufficient for up to 20 head mixed stock.

Good Faith, Delay, or Speculative Information

The applicant plans to use water for stockwater uses. There are no known issues with any other party.

Financial Resources Information

No resources are needed by the applicant as the pond(s) construction pre-dates this filing.

Local Public Interest

The Idaho Department of Fish & Game (F & G) & Department of Environmental Quality (DEQ), Water Resource Board (WB), and the US Department of Commerce (NOAA) have been asked to comment by the Idaho Department of Water Resources. An initial 30-day agency comment period was provided between the applicant and respective agencies intended to mitigate any concerns fielded by agencies prior to the mandatory two-week public advertising period.

DEQ is the only agency to comment in both the 30-day period and two-week advertisement period. DEQ comments provided information related to Tammany Creek and assert that in past site visits this reach of the creek was dry during the summer. DEQ recommends legally appropriated withdrawals be made during periods of high flow & managed to not allow the creek to dry up because of water withdrawals. IDWR staff has added condition X13 to the permit notifying the applicant that the Director retains the jurisdiction to require a bypass flow. There were no other known issues with this application as no protests were received.

Injury to Other Water Rights

The applicant's proposed use from Tammany Creek is junior to multiple downstream senior Right holders, but these Right holders are in the reach of the creek that benefits from perennial flows. Injury is not anticipated.

Recommendation

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

MEMORANDUM

To: Water Right Application 85-15849

From: Luke Bates *LB 9/15/23*

Date: 9/15/2023

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

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DEQ is the only agency to comment in both the 30-day period and two-week advertisement period. DEQ comments provided information related to Tammany Creek and assert that in past site visits this reach of the creek was dry during the summer. DEQ recommends legally appropriated withdrawals be made during periods of high flow & managed to not allow the creek to dry up because of water withdrawals. IDWR staff has added condition X13 to the permit notifying the applicant that the Director retains the jurisdiction to require a bypass flow. There were no other known issues with this application as no protests were received.

Injury to Other Water Rights

The applicant's proposed use from Tammany Creek is junior to multiple downstream senior Right holders, but these Right holders are in the reach of the creek that benefits from perennial flows. The Tammany Creek basin is not within a designated surface water district currently, but IDAPA 37.03.11, Rules for Conjunctive Management of Surface and Ground Water Resources details Water Delivery Call procedures in the event of future injury from this source. There is no other known injury to other water rights.

Injury is not anticipated

Recommendation

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

TRIBUNE PUBLISHING COMPANY, INC
The Lewiston Tribune
505 C St., P.O.Box 957
Lewiston, Idaho 83501
(208) 743-9411

LEGAL ADVERTISING
INVOICE

Sold To: IDAHO DEPT OF WATER RESOURCES
7600 MINERAL DR #100
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Date:	08/24/2023	INVOICE NO.	175235
Account No.	964750		
Description	175235 The foll		
Times	2	Lines	41
		Tab. lines	
		\$	129.92

RECEIVED

AUG 30 2023

PO#

IDWA / NORTH

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.

175235
The following application(s) have been filed to appropriate the public waters of the State of Idaho:
85-15849
DOMINIC PONOZZO KATHY PONOZZO
33906 ANGEL ACRES LEWISTON, ID 83501-7014
Point of Diversion L3 (NWSW) S7 T34N R04W
NEZ PERCE County Source TAMMANY CREEK
Tributary SNAKE RIVER Point of Diversion L3 (NWSW)
S7 T34N R04W
NEZ PERCE County Source TAMMANY CREEK
Tributary SNAKE RIVER Point of Diversion L2 (SWNW)
S7 T34N R04W
NEZ PERCE County Source TAMMANY CREEK
Tributary SNAKE RIVER Point of Diversion L2 (SWNW)
S7 T34N R04W
NEZ PERCE County Source TAMMANY CREEK
Tributary SNAKE RIVER Point of Diversion L1 (NWNW)
S7 T34N R04W
NEZ PERCE County Source TAMMANY CREEK
Tributary SNAKE RIVER
Use: STOCKWATER STORAGE 01/01 to 12/31 1 AF
Total Diversion: 1 AF Date Filed: 07-07-2023
Place Of Use: STOCKWATER STORAGE
T34N R04W S7 L1 (NWNW), L3 (NWSW), L2 (SWNW)

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 9/5/2023. The protestant must also send a copy of the protest to the applicant.

GARY SPACKMAN, Director
Published on 8/17/2023 and 8/24/2023

AFFIDAVIT OF PUBLICATION

S KELLAM , being duly sworn, deposes and says, I am the Legal Clerk of the Tribune Publishing Company, a corporation organized and existing under and by virtue of the laws of the State of Idaho and under and by virtue of the laws of the State of Washington, publishers of the Lewiston Tribune, a newspaper of general circulation published at Lewiston, Nez Perce County, Idaho; That the said Lewiston Tribune is an established newspaper and has been published regularly and issued regularly at least once a day for more than 105 consecutive years next immediately preceding the first publication of this notice, and has been so published uninterrupted for said period; that the 175235 The foll attached hereto and which is made a part of this affidavit was published in the said Lewiston Tribune,

2 time(s). Publication being on 08/17, or once a week for 2 consecutive weeks, the first publication thereof being on the 08/17/2023, and the last publication thereof being on the 08/24/2023, and said 175235 The foll was so published in the regular and entire issue of said newspaper and was not in a supplement thereof and was so published in every issue and number of the said paper, during the period and times of publication as set forth above.

Skellam

State of Idaho

S.S.

County of Nez Perce

On this 25 day of Aug in the year of 2023, before me, a Notary Public, personally appeared S KELLAM, 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.



Notary Public in and for the State of Idaho,
residing at Lewiston, therein
Commission Expires 1/23/28

Sharp, Taya

From: Sujata Connell
Sent: Thursday, August 10, 2023 4:19 PM
To: Sharp, Taya
Subject: RE: Request for Comments for Water Right 85-15849
Attachments: WATER RIGHT PONOZZO 07-25-2023.PDF

Hi Taya,

Comments are attached. We did send them to the applicant on 7/25 and I am not seeing anything changed so hopefully these still work.

Thanks,
Sujata

Sujata Connell | Water Quality Manager
Idaho Department of Environmental Quality
1118 F Street, Lewiston, ID 83501
Office: (208) 799-4370
www.deq.idaho.gov/

Our mission: To protect human health and the quality of Idaho's air, land, and water.

From: Sharp, Taya <Taya.Sharp@idwr.idaho.gov>
Sent: Thursday, August 10, 2023 9:12 AM
To: Sujata Connell <Sujata.Connell@deq.idaho.gov>; Hickey, Clay <clay.hickey@idfg.idaho.gov>; kenneth.troyer <kenneth.troyer@noaa.gov>; nmfswcr.srbo@noaa.gov; IWRB Water Use Reviews <WaterUseApprovalReviews@idahogov.onmicrosoft.com>
Subject: Request for Comments for Water Right 85-15849

The Department of Water Resources is seeking written comment and/or recommendations from your agency regarding the above referenced Water Right Permit application. You can find copies of the application at: <https://research.idwr.idaho.gov/apps/waterrights/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(s), 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 applications is September 5th, 2023.

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

Thank you,



Taya Sharp | Administrative Assistant
Idaho Department of Water Resources
Northern Regional Office
7600 N Mineral Drive, Suite 100
Coeur d'Alene, ID 83815-7763
Phone: (208)762-2800

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



Brad Little, Governor
Jess Byrne, Director

July 25, 2023

Dominic & Kathy Ponozzo
33906 Angle Acres
Lewiston, ID 83501

Subject: Water Right Application #85-15849

Dear Dominic and Kathy Ponozzo:

The Department of Environmental Quality (DEQ) has received a request for comment on the approval of a water right application to withdraw 1 acre foot for stockwater storage from Tammany Creek in Nez Perce County.

Tammany Creek is a 2nd order tributary to the Snake River. It has been assessed as not supporting the beneficial use of cold water aquatic life due to nutrients and sediment, and not supporting of secondary contact recreation due to bacteria (*Escherichia coli*). The Tammany Creek watershed is subject to an EPA-approved Total Maximum Daily Load (TMDL) for nitrate, phosphorus, sediment, and *E. coli* (Tammany Creek Watershed (HUC 17060103) TMDL Addendum, 2010).

DEQ has previously visited sites in the assessment unit where the water right is being sought and they were dry during summer. DEQ recognizes that these ponds have been there for many years and recommends that the legally appropriated withdrawal be made during periods of seasonal high flow and managed such that the stream is not allowed to go dry as a result of water withdrawals.

Thank you for the opportunity to comment on your application. If you have any questions regarding the Idaho Water Quality Standards, please call 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
Water Quality Manager

c: EDMS