

Allison Lebeda
Water Rights Program Coordinator
Water Resources Division
NEZ PERCE TRIBE
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RECEIVED
FEB 12 2026
IDWR / NORTH

Representative for Protestant Nez Perce Tribe

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

IN THE MATTER OF APPLICATION)
FOR PERMIT NO. 86-12191)
In the name of William R. Powell)
)

NOTICE OF PROTEST

Protestant NEZ PERCE TRIBE (“Tribe”) hereby files this *Notice of Protest* to the approval of WILLIAM R. POWELL’s (“Applicant”) Application for Permit No. 86-12191, by and through its Water Resources Division and pursuant to Idaho Code § 42-203A(4) and the Idaho Department of Water Resources’ Rules of Procedure § 37.01.01.

The Tribe is a federally-recognized Indian tribe whose aboriginal homeland encompasses millions of acres in what is today the northwestern United States. In its 1855 and 1863 treaties with the United States, the Tribe reserved a land base and inherent, sovereign rights, held since time immemorial, including its right to manage its natural resources throughout its aboriginal territory.¹

¹ Treaty with the Nez Percés, June 11, 1855, 12 Stat. 957; Treaty with the Nez Percés, June 9, 1863, 14 Stat. 647.

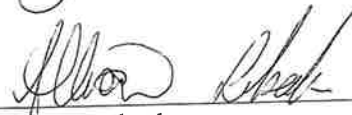
2.12.26 N045816 KH 25.00

The initial legal bases for the Tribe's protest are as follows:

1. Applicant's application will conflict with the requirements of Idaho Code § 42-203A(5).
2. For such other and further reasons as may be discovered or set forth at a hearing on this matter.

To resolve this protest, the Protestant requests that Applicant's application be withdrawn, denied, or conditioned with appropriate terms as may be necessary to protect the public interest.

DATED this 11th day of February, 2026.



Allison Lebeda
Water Rights Program Coordinator
Nez Perce Tribe Water Resources Division

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 11th day of February, 2026, served true and correct copies of the foregoing by mail to the following:

Applicant:
William R. Powell
641 Freeman Creek Rd
Kendrick, ID 83537-5022



Allison Lebeda
Water Rights Program Coordinator
Nez Perce Tribe Water Resources Division

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Rev. 04/2022

Filing Fee: \$25.00

FEB 12 2026

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

IDWR / NORTH

NOTICE OF PROTEST

This form may be used to file a protest under Sections 42-203A, 42-203C, 42-211, 42-222 or 42-240, Idaho Code. The Department will also accept a timely protest completed in a different format if it contains the same information requested on this form. Each protestant must provide a separate \$25 filing fee for each application protested. The Department's Rules of Procedure (IDAPA 37.01.01) require the protestant to **send a copy of the protest to the applicant.**

1. Matter protested. Application for Permit Amendment of Permit Transfer Exchange
No. 86-12191 in the name of WILLIAM R POWELL

2. Protestant's Name: NEZ PERCE TRIBE WATER RESOURCES DIVISION
Address: P.O. BOX 365, LAPWAI, ID 83540
Telephone: 208-843-7368 Email: _____

3. Protestant's Representative: ALLISON LEBEDA
Address: P.O. BOX 365, LAPWAI, ID 83540
Telephone: 208-843-7368 Email: ALLISONL@NEZPERCE.ORG

4. Basis of protest. Clearly state your objections to approval of the application and identify the applicable review criteria. See Instructions for Filing a Notice of Protest for the relevant review criteria.
Applicant's application will conflict with the requirements of Idaho Code 42-2023A(5). Specifically, the water supply is insufficient for the purpose for which this application seeks to appropriate it, the application conflicts with the local public interest as defined in section 42-202B of Idaho Code, the application is contrary to the conservation of water resources within the state of Idaho, and for such other and further reasons as may be discovered or set forth at a hearing on this matter.

(Additional pages may be attached to describe the basis of your protest.)

Identify any review criteria that are not a basis for your protest:

5. Check here if Protestant and Representative will accept service of documents by email at the email address(es) listed under Item #2 and #3 above.

I acknowledge that if I, or my designated representative, fail to appear at any regularly scheduled conference or hearing in the matter, of which I have been properly notified, the Department may issue a notice of proposed default against me in this matter for failure to appear. **I also verify that I have served a copy of this protest upon the applicant.**


Protestant's or Representative's Signature

Allison Lebeda, Water Rights Program Coordinator
Printed Name and Title (if applicable)

2-11-2026
Date

FOR DEPARTMENT USE ONLY

\$25.00 fee received by _____ Receipt # _____ Date _____

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

INSTRUCTIONS FOR FILING A NOTICE OF PROTEST

5. In a case where the place of use is outside the watershed or local area containing the source of water, whether the proposed change will adversely affect the local economy of the watershed or local area within which the source of water originates.
6. In a case where the nature of use is changing from agricultural use, whether the proposed nature of use change will significantly affect the agricultural base of the local area.
7. In a case where the water right is for municipal purposes, whether the proposed change is consistent with the requirements for municipal providers.

The criteria the Department must consider when evaluating an application for amendment of permit are set forth in Idaho Code § 42-211.

1. Whether the proposed amendment will result in the diversion and use of more water than originally permitted.
2. Whether the proposed amendment will adversely affect the water rights of others. (Whether the proposed amendment will injure existing water rights.)

The criteria the Department must consider when evaluating an application for exchange are set forth in Idaho Code § 42-240(5).

1. Whether the proposed exchange will injure other water rights.
 2. Whether the proposed exchange will result in an enlargement in use under existing rights.
 3. Whether the proposed exchange is contrary to the conservation of water resources within the state of Idaho.
 4. Whether the proposed change will conflict with the local public interest. (“Local public interest” is defined as the interests of the people in the area directly affected by the proposed use and it’s effects on the public water resource.)
 5. In a case where the place of use is outside the watershed or local area containing the source of water, whether the proposed exchange will adversely affect the local economy of the watershed or local area within which the source of water originates.
5. Pursuant to IDAPA 37.01.01.053.02.b, the Department may authorize parties to serve documents via email rather than mail or personal service. Check the box if you will accept service of documents, including notices and orders, by email. Please be sure to provide your email address(es) in Item #2 and #3.

RECEIVED
FEB 12 2026
SOUTH/NORTH

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

CONSENT TO EMAIL SERVICE

Water Right Application for Permit/Transfer No. 86-12191

As provided in IDAPA 37.01.01.053.02 and .03, I consent to service of documents, including notices and orders, by email in this contested case as an alternative to service by mail or personal service at the following email address:

allisonl@nezperce.org
Email Address


Signature

2-11-2026
Date

Allison Lebeda
Printed Name

representative
Relationship to Party

Nez Perce Tribe Water Resources Division
Party Name

For IDWR Office Use Only

Received By _____ Date _____ Updated By _____ Date _____

INFORMAL SETTLEMENT CONFERENCE PROCEDURE
APPLICATION FOR PERMIT

ISSUES

Applications to appropriate the water of the state of Idaho are referred to as applications for permit and are for the development of new water rights. Section 42-203A, Idaho Code, requires the Idaho Department of Water Resources (Department) to consider the following issues in connection with an application for permit:

1. Will the proposed appropriation reduce the quantity of water under existing water rights?
2. Is the water supply sufficient for the purpose for which it is sought to be appropriated?
3. Was the application made in good faith or for delay or speculative purposes?
4. Does the applicant have sufficient financial resources with which to complete the proposed project?
5. Will the proposed use conflict with the local public interest, where local public interest is defined as interests that the people in the area directly affected by a proposed water use have in the effects of such use on the public water resource?
6. Will the proposed use be contrary to the conservation of water resources within the State of Idaho?
7. Will the proposed use adversely affect the local economy of the watershed or local area within which the source of water for the proposed use originates, in the case where the place of use is outside of the watershed or local area where the source of water originates?

BURDEN OF PROOF

The applicant has the initial burden of proof for issues 1, 2, 3, 4, 6, and 7 above and must provide evidence for the Department to evaluate these criteria.

The initial burden of proof on issue 5 lies with both the applicant and protestant as to factors of which they are most knowledgeable and cognizant. The applicant has the ultimate burden of persuasion, however, for all of these issues.

PROCEDURE

The Department generally conducts an informal settlement conference with the parties to determine the issues and to try to settle a protested matter before the formal hearing process starts. The formal hearing process commences with a prehearing conference, which may require parties to be represented by an attorney.

INFORMAL SETTLEMENT CONFERENCE

The purpose of an informal settlement conference is to provide the opportunity for the parties and the Department to familiarize themselves with a protested matter and to attempt to resolve the matter. At the conference, the Department and the parties will discuss the application and protests, explore settlement options, discuss additional informational needs, evaluate the need for additional informal proceedings or alternative dispute resolution options such as mediation, and discuss the commencement of formal proceedings. When attending the conference, please bring a calendar with your schedule for the next two–six month period from the date of the informal settlement conference for the purpose of scheduling follow-up conferences, if needed.

HEARING

If the parties do not resolve the matter at the informal settlement conference, a formal hearing process may be commenced according to Sections 42-1701A(1) and (2), Idaho Code and the Department's Rules of Procedure. Copies of Idaho Code and the Department's rules are available upon request or by accessing the Department's website at: www.idwr.idaho.gov. The Department records formal hearings, and copies of a hearing recording are available upon request. There may be a charge for reproducing the recording.

If necessary, the hearing will likely be conducted by a hearing officer appointed by the Director rather than by the Director himself. The hearing officer will be designated in a notice of prehearing conference that commences the formal hearing process.

AMERICANS WITH DISABILITIES ACT

Any scheduled conferences or hearing will be conducted in a facility which meets the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations in order to attend, participate in or understand the hearing, please notify the Department no later than ten (10) days prior to the conference or hearing.