

State of Idaho
Department of Water Resources
Permit to Appropriate Water
No. 95-17841

Priority: July 02, 2019

Maximum Diversion Rate: 0.12 CFS

This is to certify that

FACELESS CEDAR LLC 17859 S HIGHWAY 97 HARRISON ID 83833-6033

has applied for a permit to appropriate water from:

Source : UNNAMED STREAM

Tributary: TURNER CREEK

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

Beneficial Use

IRRIGATION

Period of Use

03/15 to 11/15

Rate of Diversion

0.12 CFS

Location of Point(s) of Diversion

UNNAMED STREAM SW $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 20, Twp 49N, Rge 03W, B.M. KOOTENAI County

Place of Use: IRRIGATION

Twp	Rng	Sec	NE				NW				SW				SE				No QQ	Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE		
49N	03W	20										1.0	5.0							6.0

Total Acres: 6.0

Conditions of Approval

1. Proof of application of water to beneficial use shall be submitted on or before **September 01, 2024**.
2. Subject to all prior water rights.
3. A fish screen of 1/4 inch or smaller mesh shall be installed and maintained at the point of diversion.
4. The approach velocity at the point of diversion shall not exceed 0.5 feet per second.
5. 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.
6. This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 3.0 afa per acre at the field headgate for irrigation of the place of use.
7. 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 25th day of August, 2019.


DOUGLAS JONES
Northern Regional Manager

State of Idaho
Department of Water Resources

Attachment to Permit to Appropriate Water

95-17841

This map depicts the IRRIGATION 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.

03W



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

0 0.05 0.1 0.2 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

August 27, 2019

FACELESS CEDAR LLC
17859 S HIGHWAY 97
HARRISON ID 83833-6033

RE: Permit No. 95-17841

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.

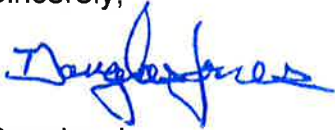
The final step in the water right process is issuance of a water right license. To receive a water right license, you must first commence the excavation or construction of your diverting works within one year of the date the permit was issued, and you must proceed diligently until the project is complete. In addition, 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.

Also, please note that permit holders are required to report any change of ownership and/or mailing address to the Department within 120 days of the change. Failure to report these changes could result in a \$100 late filing fee. Forms to assign ownership or update your address are available from any office of the Department or on the Department's website.

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

Sincerely,



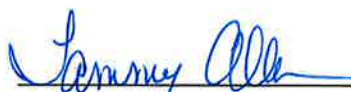
Douglas Jones
Northern Regional Manager

Enclosure(s)

CERTIFICATE OF SERVICE

I hereby certify that on August 27, 2019, I served a true and correct copy of Permit to Appropriate Water No. 95-17841 by U.S. Mail, postage prepaid, to the following:

FACELESS CEDAR LLC (Current Owner)
17859 S HIGHWAY 97
HARRISON ID 83833-6033



Tammy Alleman
Administrative Assistant 1

EXPLANATORY INFORMATION TO ACCOMPANY A PRELIMINARY ORDER

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

(Required by Rule of Procedure 730.02)

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

PETITION FOR RECONSIDERATION

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

EXCEPTIONS AND BRIEFS

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

REQUEST FOR HEARING

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

ORAL ARGUMENT

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

CERTIFICATE OF SERVICE

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

FINAL ORDER

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

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

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

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

APPEAL OF FINAL ORDER TO DISTRICT COURT

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

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

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

August 10, 2019

To: Tammy Alleman
Idaho Department of Water Resources

From: Tom and Kathy Flint

Re: Right Number 95-8398
T49N RO3W S19 NWSE

RE: Water Right No. 95-17841

We would like to add a comment to our previous submission regarding Water Right #95-17841 application for irrigation diversion of Turner Creek tributary. Upon reflection it has occurred to us that the planned diversion is for commercial purposes thus requiring high maintenance. In addition to excessive water use, successful maintenance of the lawns, gardens, and trees will also require substantial quantities of fertilizer, herbicides, and pesticides. While we understand that the Idaho Department of Water Resources will certainly be taking this factor into consideration, we feel it is important to emphasize that these fertilizers, herbicides, and pesticides will immediately, directly, and accumulatively run off into the very nearby Turner Creek. Thus, there is a strong likelihood that in due time our downstream domestic water supply will become contaminated and poisoned by these chemicals. Further, we already have algae growth in our small pond, which uses Turner Creek water. The fertilizer load will likely promote extreme summer algae blooms, clogging low water pools and suffocating cutthroat trout that live in Turner Creek. Fertilizer and chemical runoff will also end up in Turner Bay, exacerbating already strong weed growth in the bay. Moreover, this seems to us to be an extreme hazard associated with this irrigation of 6 acres, which by itself in our opinion should be sufficient grounds to deny the water application. Again, thank you for your attention and consideration of this serious issue with the application.

August 7, 2019

To: Tammy Alleman
Idaho Department of Water Resources

From: Tom and Kathy Flint
Right Number 95-8398
T49N RO3W S19 NWSE

RE: Water Right No. 95-17841

We are writing to express our concerns about Faceless Cedar, LLC, Water Right No. 95-17841 Application for a substantial water diversion from the Turner Creek drainage. As we do not subscribe to the Coeur d'Alene Press, we were unaware of the application for this water diversion, and so have missed the deadline to file a protest. To our knowledge, none of the other 3 or 4 downstream parties affected by this diversion were aware of it either. We coincidentally and indirectly learned of this application from a Conditional Use Permit application submitted to the Kootenai County Community Development Department and subsequently circulated to various agencies. These agencies have 30 days to submit comments to the KCCD Department, and it is in this context that we are expressing our concerns to the Idaho Dept. of Water Resources, in lieu of a formal protest of the Faceless Cedar, LLC water diversion application. While we understand the necessary limits and constraints on public notice procedures, we also hope that though we have missed the protest deadline, you will take our concerns and comments under serious consideration to inform your deliberations during your 30-day departmental comment period.

We live on a 36-acre property through which the last $\frac{3}{4}$ mile of Turner Creek flows before debouching into Lake Coeur d'Alene's Turner Bay. We have lived here for over 45 years and are intimately familiar with the seasonal 'behavior' of Turner Creek, its ebbs and flows. During July-early October the water flow is at its minimum. And while it has never gone dry, during extreme dry spells the water flow and level can get quite low. During the summer of 1977 it was reduced to small puddles between the rocks. As we will inevitably be affected by climate change, these dry periods are very likely to become both more frequent and more extreme.

We currently irrigate about 1 acre, mostly for numerous fruit and nut trees, and a small garden, at a permitted rate of .020 cfs (likely less in actual use). Though even during dry periods our diversion places no strain on Turner Creek's water, when our pump is at full discharge its effect on the water flow is noticeable. For example, today 8/7/19, running our pump at full discharge lowered our small reservoir by $\frac{1}{4}$ ". Faceless Cedar's proposed diversion rate of .12 cfs is 6 times ours, and at full discharge would presumably lower our reservoir by 1.5", which would in effect dry up Turner Creek at our location during an extreme dry spell. This would result in the death of our fruit trees, or worthless fruit at a minimum, and could potentially dry up our domestic water as well, which is also drawn from the Turner Creek drainage. Needless to say, this would potentially imperil our ability to live on our property.

Further, our pump is about .4 miles from the lake, so we are gaining the near maximum flow of the creek. Faceless Cedar is another mile or more further upstream, and they claim to be diverting from a nameless stream that feeds into Turner Creek. So, they will have even less water available for their irrigation. In their water application, Faceless Cedar "...plans to divert water from an unnamed stream for irrigation of 6 acres." They do not specify what they plan to irrigate, but given the nature of their "Place of Assembly" business, it is reasonable to assume that they will be irrigating 6 acres of gardens, trees, and lawns, which will require a lot of water to maintain during the dry north Idaho summers. Moreover, it is reasonable to believe that prolonged diversion and discharge of this amount of water from the Turner Creek drainage during dry spells will have catastrophic effects on Faceless Cedar's own venue, as well as everyone else drawing water downstream.

To summarize our concerns, first, though we are not hydrologists and have no clear idea of how much water diversion is constituted by .12 cfs, given the nature of the proposed irrigation it is possible that this is a serious underestimate of the actual amount of water they will need and use. Second, in any case there is a high probability that this actual amount of water diversion will have disastrous effects on our life and property. Indeed, even a significant reduction in their proposed application may still have significant negative effects on us and others living downstream from Faceless Cedar. Therefore, we respectfully protest this irrigation project, and request that the Idaho Department of Water Resources deny their application. Thank you.

Respectfully,

Tom and Kathy Flint
28454 S Hwy 97
Harrison, ID 83833
208-667-5034
tnkflint@gmail.com
kafflint@gmail.com

AFFIDAVIT OF PUBLICATION

STATE OF IDAHO)
) ss.
County of Kootenai)

Ashley Kinzer, being first duly sworn upon oath, deposes and states:

1. I am now and at all times hereinafter mentioned was a citizen of the United States, resident of the State of Idaho, over the age of twenty-one years and not a party of the above entitled action.

2. I am now and at all times hereinafter mentioned was the printer (principal clerk) of the "Coeur d'Alene Press", a newspaper printed and published daily in Coeur d'Alene, Kootenai County, Idaho, and having a general circulation in said county.

3. The Legal Notice of which the annexed is a printed copy, was published in the regular Thursday issue of said newspaper for 2 consecutive week commencing on the 18 day of July, 2019, and ending on the 25 day of July, 2019, and such publication was made as often during said period as said daily newspaper was regularly issued.

4. That said newspaper has been continuously and uninterruptedly published in said Kootenai County, during a period of more than seventy-eight consecutive weeks immediately prior to the first publication of said notice

Ashley Kf
On this 25 day of July in the year of 2019 before me, a Notary Public, personally appeared Ashley Kinzer, 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.



Katrina George
Notary Public for the State of Idaho
Residing in Coeur d'Alene, Idaho

MY COMMISSION EXPIRES 6/25/23

PUBLIC NOTICE

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

95-17832

DENNIS A WILSON
KATHERINE S WILSON
6816 W HALF CIRCLE LOOP
WORLEY, ID 83876-8678
Point of Diversion NESE
S20 T48N R04W
KOOTENAI County
Source COEUR D ALENE LAKE
Tributary SPOKANE RIVER
Use: DOMESTIC
01/01 to 12/31 0.04 CFS
Total Diversion: 0.04 CFS
Date Filed: 6/18/2019

Place Of Use: DOMESTIC
T48N R04W S20
L5(NESE)

95-17841

FACELESS CEDAR LLC
17859 S HIGHWAY 97
HARRISON, ID 83833-6033
Point of Diversion SWSW
S20 T49N R03W
KOOTENAI County
Source UNNAMED STREAM
Tributary TURNER CREEK
Use: IRRIGATION
03/15 to 11/15 0.12 CFS
Total Diversion: 0.12 CFS
Date Filed: 7/2/2019
Place Of Use: IRRIGATION
T49N R03W S20
NWSW SWSW

95-17844

NICHOLAS J MECHIKOFF
JULIE MECHIKOFF
805 E BRUNNER RD
ATHOL, ID 83801-9752
Point of Diversion SWSE
S25 T53N R04W
KOOTENAI County
Source GROUND WATER
Use: DOMESTIC
01/01 to 12/31 0.06 CFS
Total Diversion: 0.06 CFS
Date Filed: 7/9/2019
Place Of Use: DOMESTIC
T53N R04W S25 SWSE
Permits will be subject to all prior water rights. For additional information concerning the property location, contact Northern Region office at (208) 762-2800. Protests may be submitted based on the criteria of Idaho Code § 42-203A. Any protest against the approval of this application must be filed with the Director, Dept. of Water Resources, Northern Region, 7600 N MINERAL DR STE 100, COEUR D ALENE ID 83815-7763 together with a protest fee of \$25.00 for each application on or before 8/5/2019. The protestant must also send a copy of the protest to the applicant.
GARY SPACKMAN,
Director

CDA LEGAL 1995
AD# 309535
JULY 18, 25, 2019

RECEIVED

AUG 05 2019

IDWR / NORTH



RECEIVED

JUL 30 2019

IDAHO DEPARTMENT OF FISH AND GAME

PANHANDLE REGION

2885 West Kathleen Avenue

Coeur d'Alene, Idaho 83815

Brad Little / Governor

Ed Schriever / Director

July 26, 2019

Mr. Adam Frederick
Idaho Department of Water Resources
7600 N Mineral Drive, Suite 100
Coeur d'Alene, ID 83815

Dear Adam,

REFERENCE: Application 95-17841 – Faceless Cedar, LLC

We have reviewed the application by Faceless Cedar, LLC to appropriate 0.12 cfs for irrigation of 6 acres from an unnamed tributary to Turner Creek, a tributary to Coeur d'Alene Lake. The purpose of these comments is to assist the decision-making authority by providing technical information addressing potential effects on wildlife and wildlife habitat and how any adverse effects might be mitigated. It is not the purpose of Idaho Department of Fish and Game to support or oppose this proposal.

This tributary is a perennial stream included in the Coeur d'Alene Lake and River Sub-basin DEQ-approved TMDL. This TMDL is in place for sediment/siltation. The applicant states that they plan to gravity feed water from the creek but do not specify how that will be done. We suggest that they take great care in how they divert water so as not to add unnecessary siltation to an already impaired stream. According to Idaho Code 36-906, a diversion must be properly screened in order to prevent fish entrainment. We recommend **less than 0.25" mesh screen** and **approach velocity of less than 0.5 feet per second** in order to protect juvenile fish from the proposed diversion.

No flow monitoring data exists to evaluate how the loss of 0.12 cfs will potentially affect aquatic biota in this small tributary. Furthermore, small tributaries such as these are used by migratory cutthroat trout in the spring and early summer before flows drop in the summer months. In the summer of 2017 Turner Creek was sampled by IDFG and found to hold westslope cutthroat trout at a density of 17 fish/100m². Idaho Code 36-906 stipulates that no person shall construct a dam which restricts free and uninterrupted passage of fish without an approved fishway. This law includes seasonal fish movements.

Mr. Adam Frederick – Page 2
July 26, 2019

Using USGS estimations for streamflow at ungauged sites data, Turner Creek drains 6.27 square miles of land, and has an average mean flow of approximately 3.5 cfs. The unnamed tributary to Turner Creek where the applicant proposes to divert 0.12cfs drains 0.69 square miles with average mean flow of just 0.364 cfs. The applicant runs the risk of totally dewatering a portion of the creek on low water years and possibly disconnecting it from the Turner Creek system over time. We are concerned that the cumulative loss of flow from private diversions may negatively impact habitat availability for these native species.

Thank you for the opportunity to comment.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Charles E. Corsi', with a stylized, cursive script.

Charles E. Corsi
Regional Supervisor

CEC:MH:lat

C: Paul Kline, Director's Office