

State of Idaho
Department of Water Resources
Permit to Appropriate Water

NO. 91-07903

Priority: July 06, 2015

Maximum Diversion Rate: 0.20 CFS

This is to certify, that KENNETH A MUELLER And/Or
CONNIE E MUELLER
PO BOX 613
SAINT MARIES ID 83861

has applied for a permit to appropriate water from:

Source: ST JOE RIVER

Tributary: COEUR D ALENE LAKE

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>
FIRE PROTECTION	01/01 to 12/31	0.20 CFS
IRRIGATION	04/01 to 10/31	0.03 CFS

LOCATION OF POINT(S) OF DIVERSION:

ST JOE RIVER L1 (NE1/4NE1/4) Sec. 15, Twp 45N, Rge 05E, B.M. SHOSHONE County

PLACE OF USE: IRRIGATION AND FIRE PROTECTION

Twp Rge Sec	NE				NW				SW				SE				Totals
	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
45N 05E 15	.9	.1															1.0
	X	X															
	L1	L2															

Total Acres: 1

CONDITIONS OF APPROVAL

1. Proof of application of water to beneficial use shall be submitted on or before **October 01, 2020**.
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. This right when combined with all other rights shall provide no more than 0.03 cfs per acre nor more than 3.0 afa per acre at the field headgate for irrigation of the place of use.
6. Water shall not be diverted for fire protection use under this right except to fight or repel an existing fire.
7. Water shall not be diverted under this right when flows in the St. Joe River are below established minimum flow amounts as defined by Right 91-7122.
8. 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 Section 42-204, Idaho Code. Witness the signature of the Director, affixed at Coeur d' Alene, this 18 day of September, 2015.


For, GARY SPACKMAN, Director



State of Idaho

DEPARTMENT OF WATER RESOURCES

Northern Region, 7600 Mineral Drive, Suite 100, Coeur d'Alene, Idaho 83815

Phone: (208) 762-2800 FAX: (208) 762-2819 www.idwr.idaho.gov

September 24, 2015

C.L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

KENNETH A MUELLER
PO BOX 613
SAINT MARIES ID 83861

CONNIE E MUELLER
PO BOX 613
SAINT MARIES ID 83861

RE: Permit No.91-7903

Permit Approval Notice

Dear Permit Holder:

The Department of Water Resources has issued the enclosed permit authorizing you to establish a new water right. Please be sure to thoroughly review the conditions of approval and remarks listed on your permit.

The permit 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 by the Department unless a party petitions for reconsideration or files an exception and/or brief within fourteen (14) days of the service date as described in the enclosed information sheet.

As a permit owner you must commence the excavation or construction of the diverting works within one year of the date the permit was issued, and you must proceed diligently until the project is completed. The date shown under condition no. 1 is the date when the project must be completed.

The Department will send you a 'Proof Due Notice' approximately 60 days prior to the above referenced date requesting you to file either a Proof of Beneficial Use form or a Request for Extension of Time form.

Please note that a separate stream channel alteration permit must be obtained from the Department prior to any activity in the stream channel other than construction or maintenance of the diversion structure for your water right(s). Applications for stream channel alteration permits must be filed at least sixty days prior to the commencement of work in the stream.

Also, please note that water right owners are required to report any change of water right 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. Contact any office of the Department or visit the Department's homepage on the Internet to obtain the proper forms and instructions.

If you have any questions, please contact me at (208) 762-2800.

Sincerely,

A handwritten signature in black ink that reads "Keith E. Franklin". The signature is written in a cursive style with a large, stylized "K" and "F".

Keith E. Franklin
Program Manager

Enclosure(s)

CERTIFICATE OF SERVICE

I hereby certify that on September 24, 2015 I mailed a true and correct copy, postage prepaid, of the foregoing PRELIMINARY ORDER(Approved Permit) to the person(s) listed below:

RE: WATER RIGHT NO.

91-7903

**CONNIE E MUELLER
PO BOX 613
SAINT MARIES ID 83861**

**KENNETH A MUELLER
PO BOX 613
SAINT MARIES ID 83861**



**Carolyn Monitz
Technical Records Specialist**

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.



IDAHO DEPARTMENT OF FISH AND GAME

PANHANDLE REGION

2885 West Kathleen Avenue
Coeur d'Alene, Idaho 83815

C.L. "Butch" Otter/Governor
Virgil Moore/Director

September 4, 2015

Mr. Keith Franklin
Idaho Department of Water Resources
Northern Region
7600 Mineral Drive, Ste 100
Coeur d'Alene, ID 83815

RECEIVED

SEP - 9 2015

IDWR/NORTHERN

Dear Keith:

REFERENCE: 94-9412, 91-7903, 91-7904

We have reviewed the above-named applications to divert water from the St. Joe River (91-7903: 0.2 cfs & 91-7904: 0.04 cfs) and North Fork Coeur d'Alene River (94-9412: 0.04 cfs) for domestic use, irrigation, and fire protection. 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.

IDFG manages popular fisheries in both the North Fork Coeur d'Alene and St. Joe river systems for species including westslope cutthroat and rainbow trout, which require adequate amounts of cold, clean water to sustain productive populations. The St. Joe River and floodplain between Marble Creek and Falls Creek are among the state's top 20 priority wetland areas identified by the Idaho Wetland Conservation Prioritization Plan due to the high combined ecological significance, recreational value, and anthropogenic threats.

Although the amounts requested are relatively small, we are concerned about the cumulative effects property owners applying for diversions may have on fishing opportunities and fish habitat. There is a minimum stream flow on the St. Joe River (WR 91-7122) of 470 cfs from August 1 to October 31, and 941 cfs from November 1 through July 31. Provisional data from the U.S. Geological Survey indicates that the St. Joe River at Calder has been below this minimum flow since June 16th of this year (Gage#12414500). There is also a minimum stream flow established on the Coeur d'Alene River (WR 94-7341) of 413.0 cfs from July 1 to October 31, and 1018.0 cfs from November 1 through June 30. The applicants should be made aware that their diversion cannot negatively impact the established minimum flow for the river they are diverting from.

Keeping Idaho's Wildlife Heritage

Equal Opportunity Employer • 208-769-1414 • Fax: 208-769-1418 • Idaho Relay (TDD) Service: 1-800-377-3529 • <http://fishandgame.idaho.gov>

Mr. Keith Franklin – Page 2
September 4, 2015

Last, because water right diversions allow water users to manipulate streams, we recommend this permit be conditioned to require no disturbance to the stream channel. The pumps identified in the applications should be adequately screened to prevent entrainment and /or impingement of juvenile trout (we recommend $\leq 0.25''$ mesh, with approach velocity of ≤ 0.5 feet per second).

Thank you for this opportunity to comment.

Sincerely,

A handwritten signature in black ink, appearing to read 'Chip Corsi', with a stylized, flowing script.

Chip Corsi
Regional Supervisor

CEC:KJS:njk

C: Sharon Kiefer, IDFG Boise

File: 949412_917903_917904_Combined.docx

RECEIVED

AUG 28 2015

IDAHO // NORTH

AFFIDAVIT OF PUBLICATION

STATE OF IDAHO, } ss.
County of Shoshone }

Jamie Rawley being first duly sworn
upon oath deposes and says:

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 "Shoshone News Press", a newspaper printed and published daily except Sunday and Monday in Kellogg, Shoshone 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 two consecutive weeks commencing on the 20th day of August, 20 15, 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 Shoshone County, during a period of more then seventy-eight consecutive weeks immediately prior to the first publication of said notice Jamie Rawley.

On this 27th day of August in the year of 2015, before me, a Notary Public, personally appeared Jamie Rawley, 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 8/29/17

RECEIVED

AUG 28 2015

IDWR / NORTH

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

91-7903

KENNETH A MUELLER
CONNIE E MUELLER
PO BOX 613

SAINT MARIES, ID 83861

Point of Diversion L1(NENE) S15 T45N R05E SHOSHONE CO

Source ST JOE RIVER tributary COEUR D ALENE LAKE

Use: FIRE PROTECTION 01/01 to 12/31 0.2 CFS

Use: IRRIGATION 04/01 to 10/31 0.03 CFS

Total Diversion: 0.2 CFS

Date Filed: 7/6/2015

Place of Use: IRRIGATION/T45N R05E S15 L1(NENE) L2(NWNE)

Place of Use: FIRE PROTECTION same as IRRIGATION

Total Acres: 1

91-7904

DAVE TREJBAL
KAREN TREJBAL
PO BOX 67

ROCKFORD, WA 99030

Point of Diversion L9(SWSW) S31 T46N R02E SHOSHONE CO

Source ST JOE RIVER tributary COEUR D ALENE LAKE

Use: DOMESTIC 01/01 to 12/31 0.04 CFS

Total Diversion: 0.04 CFS

Date Filed: 7/20/2015

Place of Use: DOMESTIC T46N R02E S31 L9(SWSW) L9(SESW)

Domestic use is for 1 home.

94-9412

GREGORY B HART
STARLENE HART
4180 E EVERGREEN DR
POST FALLS, ID 83854

Point of Diversion L4(SESW) S24 T50N R02E SHOSHONE CO

Source COEUR D ALENE River tributary COEUR D ALENE Lake

Use: DOMESTIC 01/01 to 12/31 0.04 CFS

Total Diversion: 0.04 CFS

Date Filed: 8/13/2015

Place of Use: DOMESTIC T50N R02E S24 L4(SESW)

Domestic use is for 2 homes (includes RVs or Camp Trailers)

Permits will be subject to all prior water rights. For additional information concerning the property location, contact Northern Region office at (208) 762-2800; or for a full description of the right(s), please see:

www.idwr.idaho.gov/apps/ExtSearch/WRFiling.asp.

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 Mineral Drive, Suite 100, Coeur D'Alene ID 83815 together with a protest fee of \$25.00 for each application on or before 9/8/2015. The protestant must also send a copy of the protest to the applicant.

GARY SPACKMAN, Director

Published on 8/20/2015 and 8/27/2015

LEGAL 1132

AUGUST 20, 27, 2015

Ball, Dianne

From: Jim Brady [jbrady@idl.idaho.gov]
Sent: Monday, August 24, 2015 2:38 PM
To: Ball, Dianne
Subject: FW: RE: Application for Permit No. 91-7903 St Joe River, 91-7904 St Joe River, 94-9412 CDA River
Attachments: App-and-map-etc-91-7904.pdf; App-and-map-etc-91-7903.pdf; App-and-map-etc-94-9412.pdf

Hi Dianne,

All of these applications are for diversions that are upstream from IDL regulatory authority. We have no objection to these as long as BMP's are used to install them to reduce impacts.

Thanks for the opportunity to comment. Tiny is busy with fires so asked me to respond to these notices.

Have a good day.

Jim Brady,
Resource Supervisor - Lands and Waterways
Idaho Department of Lands
Mica/Cataldo Supervisory Area
3258 W. Industrial Loop
Coeur d'Alene, ID 83815
(208) 769-1577
(208) 769-1597 Fax

"It always seems impossible until it's done." Nelson Mandela

From: Richard Furman
Sent: Monday, August 24, 2015 12:40 PM
To: Jim Brady
Subject: FW: RE: Application for Permit No. 91-7903 St Joe River, 91-7904 St Joe River, 94-9412 CDA River

Jim: Between fires I do occasionally look at all the other normal work that has been piling up! Here are some Water-Resources diversion requests. 7904 is between St. Joe City & Calder (St. Joe River) and 7903 is between Marble Ck. & Avery. 9412 is on the Cda River and out of my life-zone.

I Think 7904 might qualify as needing an encroachment or which appropriate instrument from us. 7903 seem to be too far up river for our normal sphere of concern?

Thanks; Tiny

From: Ball, Dianne [<mailto:Dianne.Ball@idwr.idaho.gov>]
Sent: Monday, August 24, 2015 10:44 AM
To: Richard Furman
Subject: FW: RE: Application for Permit No. 91-7903 St Joe River, 91-7904 St Joe River, 94-9412 CDA River

Richard – it appears I left off attachment for 94-9412 – so here it is, along with the others.
Sorry about that.
Dianne

From: Ball, Dianne
Sent: Friday, August 21, 2015 1:27 PM

To: charles.corsi@idfg.idaho.gov; Richard Furman rfurman@idl.idaho.gov

Subject: RE: Application for Permit No. 91-7903 St Joe River, 91-7904 St Joe River, 94-9412 CDA River

Dear Chip and Richard:

The Department of Water Resources is seeking written comment and/or recommendations from your agency regarding the above referenced water right application. A copy of the application is enclosed for your reference.

Richard, I'm not sure who would handle the CDA River area. If it isn't you, would you please forward this on to the proper person. "T'would be greatly appreciated. Thanks.

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 this 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.

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

Sincerely,

Dianne Ball

Administrative Assistant
Idaho Department of Water Resources
7600 N Mineral Dr., Ste. 100
Coeur d'Alene, ID 83815
208-762-2800 Fax 208-762-2819

Ball, Dianne

From: Thiel, Sandra
Sent: Thursday, August 20, 2015 9:09 AM
To: Ball, Dianne
Cc: Palmer, Cherie; Miller, Neeley; Clark, Cynthia (Bridge)
Subject: Applicaiton for permit
Attachments: Memo91-7904.docx; Memo96-9576.docx; Memo96-9583.docx; Memo91-7903.docx

Hi Dianne, the attached documents have the Planning Section's comments on **four** applications for permit.

Sandra Beer Thiel
Idaho Department of Water Resources
322 East Front Street
Boise, Idaho 83720-0098
(208)287-4881
sandra.thiel@idwr.idaho.gov

To: Dianne Ball

From: Sandra Thiel

Subject: Water right application 91-7903

Date: August 20, 2015

The purpose of this memo is to provide the Planning Section's comments on the application for permit 91-7903. Kenneth and Connie Mueller of St Maries submitted an application for permit on July 6, 2015. They plan to divert 0.2 cfs from the St Joe River for irrigation of one acre and for fire protection from a point of diversion at T45N R5E Section 15 L1(NENE) in Shoshone County.

The applicant should be aware that the Idaho Water Resource Board holds minimum stream flow (MSF) water right 91-7122 on the St Joe River, downstream from the proposed diversion. This right has a priority date of June 15, 1992, for the protection of fish and wildlife habitat, aquatic life, and recreational values. From August 1 through October 31 the MSF is 470 cfs; from November 1 through July 31 the MSF is 941 cfs. The Idaho Water Resource Board would like assurance that this water right will be actively administered to protect the Board's minimum stream flow right.