

State of Idaho
Department of Water Resources
Permit to Appropriate Water

NO. 98-07907

Priority: October 14, 2010

Maximum Diversion Rate: 0.11 CFS

This is to certify, that CAROL NICHOLS
606 N CORBIN RD
POST FALLS ID 83854
(208) 818-9684

has applied for a permit to appropriate water from:

Source: MOYIE RIVER

Tributary: KOOTENAI 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>
IRRIGATION	04/15 to 10/31	0.11 CFS

LOCATION OF POINT(S) OF DIVERSION:

MOYIE RIVER, SW1/4NE1/4, Sec. 3, Twp 64N, Rge 02E, B.M., BOUNDARY County

PLACE OF USE: IRRIGATION

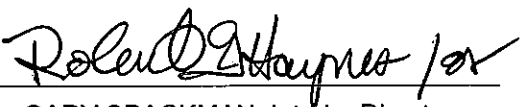
Twp	Rge	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
64N	02E	3			4.1	1.4													5.5

Total Acres: 5.5

CONDITIONS OF APPROVAL

1. Proof of application of water to beneficial use shall be submitted on or before **March 01, 2016**.
2. Subject to all prior water rights.
3. This right does not grant any right-of-way or easement across the land of another.
4. Project construction shall commence within one year from the date of permit issuance and shall proceed diligently to completion unless it can be shown to the satisfaction of the Director of the Department of Water Resources that delays were due to circumstances over which the permit holder had no control.
5. 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.
6. A fish screen of 0.25 inch or smaller mesh shall be installed and maintained at the point of diversion.
7. The approach velocity at the point of diversion shall not exceed 0.5 feet per second.
8. Water shall not be diverted under this right when flows in the Moyie River between the NW1/4NE1/4NW1/4 of Section 11, Township 62 North, Range 2 East, B.M. and the SW1/4SW1/4SW1/4 of Section 12, Township 63 North, Range 2 East, B.M. are below 354 cfs between 4/01 to 7/31 and 149 cfs between 8/01 to 3/31, which are established minimum stream flow amounts as per water right No. 98-7704.

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 3rd day of March, 2011.


GARY SPACKMAN, Interim Director



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

Phone: (208) 762-2800 • Fax: (208) 762-2819 • Web Site: www.idwr.idaho.gov

C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Interim Director

March 3, 2011

CAROL NICHOLS
606 N CORBIN RD
POST FALLS ID 83854

RE: Permit No.98-7907

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, appearing to read "Keith E. Franklin". The signature is fluid and cursive, with the first name "Keith" being more prominent.

Keith E. Franklin

Sr. Water Resource Agent

Enclosure(s)

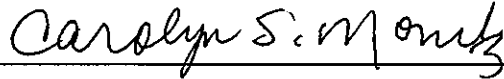
CERTIFICATE OF SERVICE

I hereby certify that on March 4, 2011 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.

98-7907

**CAROL NICHOLS
606 N CORBIN RD
POST FALLS ID 83854**

A handwritten signature in cursive script, reading "Carolyn S. Monitz", is written over a horizontal line.

**Carolyn S. Monitz
Technical Records Specialist**

Statement of Available Procedures and Applicable Time Limits

RESPONDING TO PRELIMINARY ORDERS ISSUED BY THE IDAHO DEPARTMENT OF WATER RESOURCES (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 issuance 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 WATER RESOURCES
APPROPRIATION APPLICATION ANALYSIS SHEET

W.R. # 98-7907

APPLICATION ID # 76968

ENT. 10/14 BCA 12/29 OK to Publish 12/29/10

APPLICANT: Carol Nichols

INITIAL REVIEW

BY: KJ DATE: 10/14/2010

ITEM REQUIRED INFORMATION

1. ☒ Name and Address
2. ☒ Source
3. ☒ Point of Diversion & County
4. ☒ Quantity
5. ☒ Nature of Proposed Use
6. ☒ Period of Use
7. ☒ Total Quantity
8. ☒ Description of diverting works
9. ☒ Time required for b/u
10. ☒ Proposed use
11. ☒ Place of use or acres irrigated
12. ☒ Other water Rights
13. ☒ Ownership
14. ☒ Map
15. ☒ Signature
16. ☐ Fee (Amt, receipt, acknowledgement)

*** Send info sheet Y() N()

ADDITIONAL INFORMATION

(Yes)(No)
☒ Shape File Created Date 10/14 By: KJ
☐ Field check: by _____
☐ Field report attached
☐ Analysis Supp. attached(>5cfs/500af)
☐ Water delivered by water master? Water District # _____

PROCESSING

(Yes)(No) PRIORITY DATE: 10/14/2010

☐ (Include Moratorium Remark)
☐ Statewide Advertising: (Diversion rate greater than 10 cfs or 1,000 af).

ADVERTISE IN: Boundary County

Newspaper: BF News

Dates scheduled for publication 1/6 & 13/10

Affidavit of Publication received: 2/4/11

Dates actually published: 1/6 & 13/10

Application published correctly. Yes ☒ No ☐

If not, action taken: _____

Final Date for Protest: _____

Protests Received: Yes _____ No ☒

LETTERS SENT REQUESTING:

() Dam Information () Fish Information
 () Power Information () Other: _____

INFORMATION RECEIVED:

() Dam Information () Fish Information
 () Power Information () Other: _____

GROUNDWATER SECTION

WD Permit No.'s:	Tag #	Type:	Fees	Receipt No.	Upgrade Needed?
_____	_____	Dom. _____ Non-Dom. _____	Paid \$ _____	_____	Y() N()
_____	_____	Dom. _____ Non-Dom. _____	Paid \$ _____	_____	Y() N()
_____	_____	Dom. _____ Non-Dom. _____	Paid \$ _____	_____	Y() N()

- ☐ Groundwater management area
- ☐ Critical ground water area
- ☐ Well Drilling Permit required
- ☐ Well Drilling Application and Fees received
- ☐ Well Drilling Application approved?

Remarks: _____

FINAL REGIONAL PROCESSING/REVIEW

(Yes)(No)
☒ Notice of pending void order issued. Final order response date: _____/_____/_____
☒ Further information required from applicant

- ☒ Measuring device required
- ☒ Measuring port required
- ☒ Special conditions: Min. Stream Flow May 1st River
- ☒ Special conditions of approval supplement and/or cover letter attached: _____

Approval Recommended by: Keith L. Ladd Date: 2/17/2011 Sr. Agent initial KJ

AFFIDAVIT OF PUBLICATION

State of Idaho

ss

County of Boundary, Jennifer Albert
being first duly sworn on oath deposes and says that
he/she is bookkeeper of the
Bonners Ferry Herald, a newspaper printed and
published at Bonners Ferry, Boundary County, Idaho;
that the said newspaper has been continuously and
uninterruptedly published in said Boundary County
during a period of 12 months prior to the first publication
of the hereto attached notice of publication in the case
of:

application
_____ as it

was published in the regular and entire issue of the said
paper for a period of 2 consecutive weeks,
commencing on 6th day of January, 2011 and
ending on the 13th day of January, 2011 and
that said notice was published in said newspaper.

Jennifer Albert

SUBSCRIBED AND SWORN TO before me, this
13th day of January, 2011.

Carolyn L. Sage

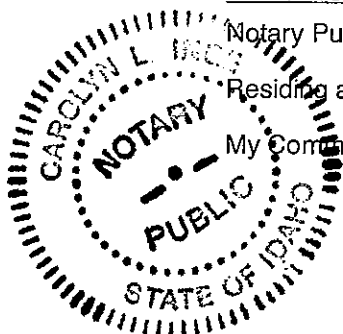
Notary Public-State of Idaho

Residing at:

Sanpaul

My Commission Expires:

8-7-12



RECEIVED
FEB 04 2011
IDWR / NORTH

RECEIVED
FEB 04 2011
IDWR / NORTH

RECEIVED
FEB 04 2011
IDWR / NORTH

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

98-7907

CAROL NICHOLS

606 N CORBIN RD

POST FALLS, ID 83854

Point of Diversion SWNE S3 T64N R02E BOUNDARY CO

Source MOYIE RIVER Tributary KOOTENAI RIVER

Use: IRRIGATION 04/15 to 10/31 0.11 CFS

Total Diversion: 0.11 CFS

Date Filed: 10/14/2010

Place Of Use: IRRIGATION T64N R02E S3 SWNE SENE

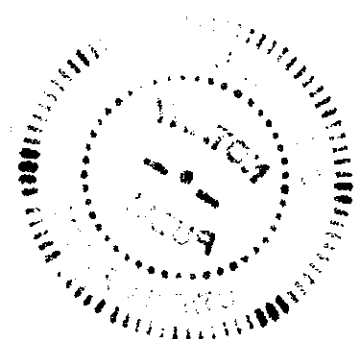
Total Acres: 5.5

Permits will be subject to all prior water rights. 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 1/24/2011. The protestant must also send a copy of the protest to the applicant.

GARY SPACKMAN, Interim Director

BFH Legal 8158

January 6, 13, 2011



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

98-7907

CAROL NICHOLS

606 N CORBIN RD

POST FALLS, ID 83854

Point of Diversion SWNE S3 T64N R02E BOUNDARY CO

Source MOYIE RIVER Tributary KOOTENAI RIVER

Use: IRRIGATION 04/15 to 10/31 0.11 CFS

Total Diversion: 0.11 CFS

Date Filed: 10/14/2010

Place Of Use: IRRIGATION T64N R02E S3 SWNE SENE

Total Acres: 5.5

Permits will be subject to all prior water rights. 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 1/24/2011. The protestant must also send a copy of the protest to the applicant.

GARY SPACKMAN, Interim Director

Legal #

Published on 1/6/2011 and 1/13/2011

Ball, Dianne

From: Ball, Dianne
Sent: Wednesday, December 29, 2010 2:58 PM
To: Legal Notices-BFHerald (screenshaw@bonnersferryherald.com)
Subject: Legal notice for publication 1/6 and 1/13, 2011

Good afternoon, Shirley,

Please publish the enclosed legal notice on the dates indicated, January 6 and 13, 2011, (once a week for two consecutive weekly issues). If you cannot publish the notice on the proposed dates, please contact us immediately.

Please submit a proof/preview copy for my review before this goes to press.

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 1/24/2011. Your cooperation is greatly appreciated, as always.



LegalNotice
2-29-10 BFH e-mai.

If you have any questions, please call or reply to this e-mail.

Have a great day and rest of the year! ☺

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



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

Phone: (208) 762-2800 • Fax: (208) 762-2819 • Web Site: www.idwr.idaho.gov

December 29, 2010

C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Interim Director

CAROL NICHOLS
606 N CORBIN RD
POST FALLS, ID 83854

Application For Permit No. 98-7907

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 BONNERS FERRY HERALD on 1/6/2011 and 1/13/2011. 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,

Keith Franklin
Sr. Water Resource Agent

Enc., Receipt No. N026355

Ball, Dianne

From: Jim Brady [jbrady@idl.idaho.gov]
Sent: Thursday, December 30, 2010 8:06 AM
To: Ball, Dianne; Eric Besaw
Subject: RE: Application for Permit No. 98-7907

Dianne, thanks. If it isn't too much trouble, for Kootenai Valley applications, if in the future you could send these to Eric and I, it would be appreciated for now. As to this particular application, it does not appear there is any action required by the applicant with IDL for this project.
Thank you and have a safe and Happy New Year....

Jim Brady
IDL
263-5104

From: Ball, Dianne [mailto:Dianne.Ball@idwr.idaho.gov]
Sent: Wednesday, December 29, 2010 1:38 PM
To: Jim Brady; Eric Besaw
Subject: Application for Permit No. 98-7907

Jim and Eric,

I originally sent this to Loretta Hunsaker, IDL Bonners Ferry, because the source is the Moyie River. She responded requesting that I send this to each of you, so I am doing as requested.

Have a great rest of the day.

Don't count the days, let the days count.

Dianne

~~~~~

Diane,

Please forward your request to Eric Besaw and Jim Brady. Their email addresses are:

[ebesaw@idl.idaho.gov](mailto:ebesaw@idl.idaho.gov)

[jbrady@idl.idaho.gov](mailto:jbrady@idl.idaho.gov)

Thank you.

*Loretta Hunsaker, Admin Assist*

*Kootenai Valley Area*

## Ball, Dianne

---

**From:** Ball, Dianne  
**Sent:** Wednesday, December 29, 2010 11:06 AM  
**To:** mary.terra-berns@idfg.idaho.gov; LHunsaker@idl.idaho.gov  
**Subject:** RE: Application for Permit No. 98-7907

Dear Mary and Loretta:

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 attached for your reference. An encroachment permit might be needed if not already in existence.



98-7907 Nichols.pdf

This is for withdrawal 0.11 cfs from the Moyie River, and is being prepared for publication in the Bonners Ferry Herald on January 6 and 13, 2011 with final date for protests to be received in our office on January 24, 2011.

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 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



RECEIVED

JAN - 5 2011

IDWR/NORTHERN

**IDAHO DEPARTMENT OF FISH AND GAME**

PANHANDLE REGION

2885 West Kathleen Avenue

Coeur d'Alene, Idaho 83815

C.L. "Butch" Otter/Governor

January 3, 2011

Cal Groen/Director

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

Dear Keith:

REFERENCE: 98-7907: NICHOLS

We have reviewed the above-named application by Carol Nichols to divert 0.11 cfs from the Moyie River for irrigation.

The Moyie River is managed by IDFG as a wild trout fishery and it is becoming increasingly popular with sport fishing anglers. The Moyie River provides spawning and rearing habitat for wild rainbow trout and mountain whitefish. We are concerned that the cumulative effects of individual owners applying for diversions for water rights may be harmful to this increasingly popular fishery.

The State of Idaho has recognized the importance of this fishery by instituting a Minimum Stream Flow (98-7704) to prevent the degradation of instream habitat. Water shall not be diverted under this right when flows in the Moyie River are below 354.00 cfs from April 1<sup>st</sup> through July 31<sup>st</sup> and 149.00 cfs from August 1<sup>st</sup> through March 31<sup>st</sup> (Reach beginning at Sec. 12, Twp 63N, Rge 02E, B.M. and ending at Sec. 11, Twp 62N, Rge 02E, B.M.), which is a short distance downstream of the applicants' property.

Unless otherwise specified by the Director of IDWR, flow data from the City of Moyie Power Plant at Moyie Falls, may be used for purposes of determining the flows in the Moyie River pursuant to this provision.

We are concerned that the cumulative effects of recreational lot owners applying for diversions will decrease stream flows, particularly during the low flow summer months, which can be harmful to this popular fishery and have negative impacts on riparian vegetation. IDFG recommends the following conditions listed below be reflected in the permit.

1. The water intake will be screened to prevent entrainment or impingement of fish. The maximum screen mesh size should be 0.25 inches; intake approach velocities should not exceed 0.5 ft/second to prevent losses of juvenile fish.

*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>

2. Water use will occur between April 15 and October 31 unless the Minimum Stream Flow (WR 98-7704), discussed above, takes precedence.
3. Beneficial uses will include Diversion for Irrigation at 0.03 cfs per acre

In addition to the above listed application, IDFG requests that all future applications for water diversions from the Moyie River be conditioned with the above listed conditions.

Thank you for your attention to this matter.

Sincerely,



Charles E. "Chip" Corsi  
Regional Supervisor

CEC:MTB

C: Sharon Kiefer, IDFG, Boise  
Walt Poole, IDFG, Boise  
David Stanish, AG, Boise