

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

**IN THE MATTER OF APPLICATION)
FOR TRANSFER NO. 89863 IN THE)
NAME OF DEREK NICHOLS)**

**PRELIMINARY ORDER
CORRECTING TRANSFER
APPROVAL**

This matter having come before the Idaho Department of Water Resources (“Department”) as the result of clerical errors discovered in a transfer approval, the Department finds, concludes, and orders as follows:

FINDINGS OF FACT

1. On June 3, 2025, Derek Nichols (“Nichols”) filed Application for Transfer 89863, proposing to change the point of diversion and place of use for a 31-acre portion of water right 34-2408A and to change the place of use for a 31-acre portion of water right 34-12366. Water rights 34-2408A and 34-12366 are combined on the 31 acres proposed to be transferred.

2. Application 89863 proposed to reduce the irrigated acres from 31 acres to 26 acres but proposed to maintain the full diversion rates for the transferred portions of water rights 34-2408A and 34-12366. This would result in a water supply of 0.83 cubic feet per second (“cfs”) for the irrigation of 26 acres (0.032 cfs/acre). This amount exceeds the standard water supply in Idaho (0.02 cfs/acre). Application 89863 did not include any information to support the increased diversion rate per acre.

3. Based on the lack of information in support of the increased diversion rate per acre, the Department approved Application 89863 with a smaller combined diversion rate: 0.69 cfs.

4. On August 18, 2025, the Department issued Transfer Approval 89863. The approval contained an error in the diversion rate element for water right 34-14969 (the split portion of water right 34-2408A). The diversion rate was listed as 0.54 cfs and the total diversion rate was listed as 0.65 cfs. The approval also contained an error in the diversion rate element for water right 34-14970 (the split portion of water right 34-12366). The diversion rate was listed as 0.59 cfs but should have been 0.58 cfs, based on a proportional split of water right 34-12366. These errors could create uncertainty for the water right holder and confusion for the watermaster.

ANALYSIS

Because Application 89863 proposed to consolidate acres without reducing diversion rate and because Application 89863 did not include evidence supporting the proposed increased diversion rate per acre, the Department could not approve Application 89863 as proposed by Nichols. The Department had two options for approval: (1) The Department could reduce the

combined diversion rate for the two water rights to match the water supply (rate/acre) that existed for the 31 acres prior to the transfer; or (2) The Department could limit the approval to 26 acres, leaving 5.0 acres at the original place of use for the water rights. The errors in the diversion rates for water rights 34-14969 and 34-14970 make it unclear which option the Department employed. The Department should correct the transfer approval to clearly identify what portions of water rights 34-12366 and 34-2408A were moved to the proposed place of use and what portions of the water rights, if any, were left behind at the existing place of use for the rights.

CONCLUSIONS OF LAW

Pursuant to Idaho Code § 42-222, the Department has a duty to accurately describe each of the water rights changed as part of a transfer application. The Department did not accurately describe water rights 34-2408A, 34-12366, 34-14969 or 34-14970 in Transfer Approval 89863. The Department has the authority to issue Corrected Transfer Approval 89863, correcting the errors described above.

ORDER

IT IS HEREBY ORDERED that Transfer Approval 89863 is CORRECTED as set forth in the Corrected Transfer Approval 89863 issued in conjunction with this order.

Dated this 12th day of March, 2026.



James Cefalo
Eastern Regional Manager

CERTIFICATE OF MAILING

I hereby certify that on the 12th day of March 2026, I mailed a true and correct copy of the foregoing PRELIMINARY ORDER CORRECTING TRANSFER APPROVAL to the person(s) listed below:

**DEREK NICHOLS
PO BOX 606
MOORE, ID 83255**

**KRISTIN MOORE
ROCKY MOUNTAIN ENVIRONMENTAL ASSOC.
482 CONSTITUTION WAY, STE 303
IDAHO FALLS, ID 83402**



Christina Henman
Administrative Assistant

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

CORRECTED

TRANSFER OF WATER RIGHT
TRANSFER NO. 89863

This is to certify that: DEREK A NICHOLS
PO BOX 606
MOORE, ID 83255-0606

has requested a change to the water right(s) listed below. This change in water right(s) is authorized pursuant to the provisions of Section 42-222, Idaho Code. A summary of the changes is also listed below. The authorized change for each affected water right, including conditions of approval, is shown on the following pages of this document.

Summary of Water Rights Before the Proposed Changes

<u>Water Right</u>	<u>Origin/Basis</u>	<u>Priority Date</u>	<u>Diversion Rate</u>	<u>Diversion Volume</u>	<u>Acre Limit</u>	<u>Total Acres</u>	<u>Source</u>
34-12366	WR/DECREED	3/2/1887	3.200 cfs	N/A	N/A	143.0	BIG LOST RIVER
34-2408A	WR/DECREED	4/5/1961	2.980 cfs	500.5 af	N/A	143.0	GROUND WATER

Purpose of Transfer (Changes Proposed)

<u>Current Number</u>	<u>Split</u>	<u>POD</u>	<u>POU</u>	<u>Add POD</u>	<u>Period of Use</u>	<u>Nature of Use</u>
34-12366	YES	NO	YES	NO	NO	NO
34-2408A	YES	YES	YES	NO	NO	NO

Summary Of Water Rights After the Approved Change

<u>Existing Right</u>	<u>New No. (Changed Portion)</u>	<u>Transfer Rate</u>	<u>Transfer Volume</u>	<u>Acre Limit</u>	<u>Total Acres</u>	<u>New No. (remaining portion)</u>	<u>Remaining Rate</u>	<u>Remaining Volume</u>	<u>Remaining Acre Limit</u>	<u>Remaining Total Acres</u>
34-12366	34-14970	0.580 cfs	N/A	N/A	26.0	34-12366	2.620 cfs	N/A	N/A	117.0
34-2408A	34-14969	0.540 cfs	91.0 af	N/A	26.0	34-2408A	2.440 cfs	409.5 af	N/A	117.0
COMBINED TOTALS		0.690 cfs	N/A	N/A	26.0		N/A	N/A	N/A	N/A

This water right(s) is subject to all prior water rights and shall be administered in accordance with Idaho law and applicable rules of the Department of Water Resources. Detailed Water Right Description(s) attached.

Dated this 12th day of March, 2026.



Regional Manager

Transfer No. 89863

Support Data
In File # 34-2408A

WATER RIGHT NO. 34-2408A

As Modified by Transfer No. 89863

In accordance with the approval of Transfer No. 89863, Water Right No. 34-2408A is now described as follows:

Right Holder: DEREK NICHOLS AND
CHLOE NICHOLS
1681 COUNTY ROAD 320
EL CAMPO, TX 77437-5667

Priority Date: 4/5/1961

Source: GROUND WATER

<u>BENEFICIAL USE</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Diversion Volume</u>
IRRIGATION	4/01	to 10/31	2.440 cfs	409.5 af
			2.440 cfs	409.5 af

LOCATION OF POINT(S) OF DIVERSION

GROUND WATER NWNWNW Sec 10 Twp 04N Rge 26E BUTTE County

PLACE OF USE: IRRIGATION

			NE				NW				SW				SE				Totals
Twp	Rng	Sec	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
04N	26E	10					19.0	37.0	37.0	24.0									117.0

POU Total Acres: 117.0

CONDITIONS OF APPROVAL

1. Rights 34-2408A and 34-12366 when combined shall not exceed a total diversion rate of 3.13 cfs and the irrigation of 117 acres.
2. This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Idaho Code § 42-1412(6).

WATER RIGHT NO. 34-14969

As Modified by Transfer No. 89863

In accordance with the approval of Transfer No. 89863, Water Right No. 34-14969 is now described as follows:

Right Holder: DEREK NICHOLS AND
CHLOE NICHOLS
1681 COUNTY ROAD 320
EL CAMPO, TX 77437-5667

Priority Date: 4/5/1961

Source: GROUND WATER

<u>BENEFICIAL USE</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Diversion Volume</u>
IRRIGATION	4/01	to 10/31	0.540 cfs	91.0 af
			0.540 cfs	91.0 af

LOCATION OF POINT(S) OF DIVERSION

GROUND WATER NWSW Sec 28 Twp 05N Rge 26E BUTTE County

PLACE OF USE: IRRIGATION

			NE				NW				SW				SE				Totals
Twp	Rng	Sec	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
05N	26E	28										26.0							26.0

POU Total Acres: 26.0

CONDITIONS OF APPROVAL

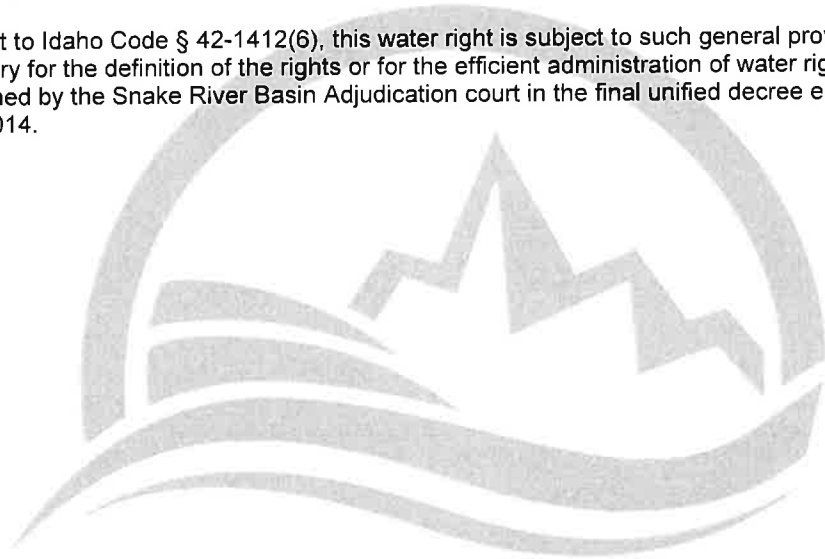
1. Rights 34-14969 and 34-14970 when combined shall not exceed a total diversion rate of 0.69 cfs and the irrigation of 26 acres.
2. Prior to diversion and use of water under Transfer approval 89863, the right holder shall install and maintain acceptable measuring device(s) at the authorized point(s) of diversion, in accordance with Department specifications.
3. Upon specific notification of the Department, the right holder shall install and maintain data loggers to record water usage information at the authorized point(s) of diversion in accordance with Department specifications.
4. A lockable device subject to the approval of the Department shall be maintained on the diverting works in a manner that will provide the watermaster suitable control of the diversion.
5. Use of water under this right may be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No. 34.

Transfer No. 89863

WATER RIGHT NO. 34-14969
As Modified by Transfer No. 89863

CONDITIONS OF APPROVAL

6. This right when combined with all other rights shall provide no more than 3.5 afa per acre at the field headgate for irrigation of the place of use.
7. The right holder shall accomplish the change authorized by this transfer within one year of the date of this approval.
8. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.
9. Pursuant to Idaho Code § 42-1412(6), this water right is subject to such general provisions necessary for the definition of the rights or for the efficient administration of water rights as determined by the Snake River Basin Adjudication court in the final unified decree entered 08/26/2014.



WATER RIGHT NO. 34-12366
As Modified by Transfer No. 89863

In accordance with the approval of Transfer No. 89863, Water Right No. 34-12366 is now described as follows:

Right Holder: DEREK NICHOLS AND
 CHLOE NICHOLS
 1681 COUNTY ROAD 320
 EL CAMPO, TX 77437-5667

Priority Date: 3/2/1887

Source: BIG LOST RIVER

Tributary: SINKS

<u>BENEFICIAL USE</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>
IRRIGATION	5/01	to 10/15	2.620 cfs 2.620 cfs

LOCATION OF POINT(S) OF DIVERSION

BIG LOST RIVER NWSESE Sec 4 Twp 05N Rge 26E BUTTE County

PLACE OF USE: IRRIGATION

			NE				NW				SW				SE				Totals
Twp	Rng	Sec	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
04N	26E	10					19.0	37.0	37.0	24.0									117.0

POU Total Acres: 117.0

CONDITIONS OF APPROVAL

1. Rights 34-2408A and 34-12366 when combined shall not exceed a total diversion rate of 3.13 cfs and the irrigation of 117 acres.
2. The period of use for irrigation described above may be extended in seasons of unusual characteristics to a beginning date of 04-20 and an ending date of 10-31 at the discretion of the Director of the Idaho Department of Water Resources.
3. Water is delivered through West Side Canal.
4. This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Idaho Code § 42-1412(6).

Transfer No. 89863

WATER RIGHT NO. 34-14970
As Modified by Transfer No. 89863

In accordance with the approval of Transfer No. 89863, Water Right No. 34-14970 is now described as follows:

Right Holder: DEREK NICHOLS AND
 CHLOE NICHOLS
 1681 COUNTY ROAD 320
 EL CAMPO, TX 77437-5667

Priority Date: 3/2/1887

Source: BIG LOST RIVER

Tributary: SINKS

BENEFICIAL USE
 IRRIGATION

From
 5/01

To
 to 10/15

Diversion Rate
 0.580 cfs
 0.580 cfs

LOCATION OF POINT(S) OF DIVERSION

BIG LOST RIVER NWSESE Sec 4 Twp 05N Rge 26E BUTTE County

PLACE OF USE: IRRIGATION

			NE				NW				SW				SE				Totals
Twp	Rng	Sec	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
05N	26E	28										26.0							26.0

POU Total Acres: 26.0

CONDITIONS OF APPROVAL

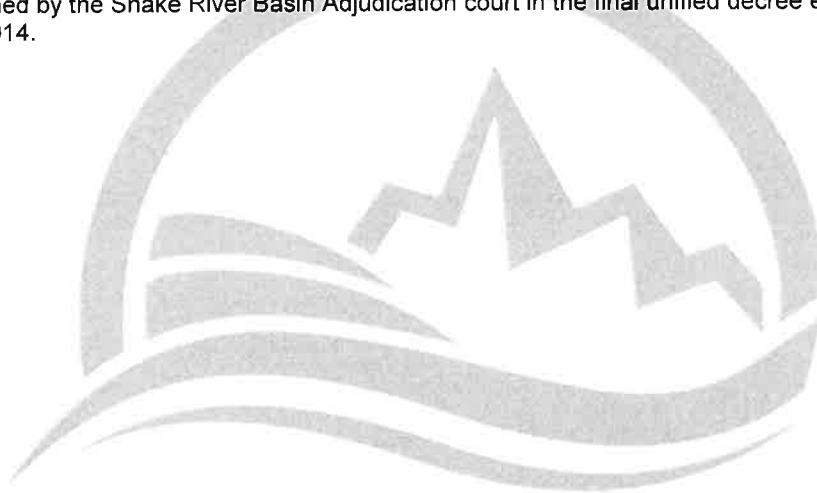
1. Rights 34-14969 and 34-14970 when combined shall not exceed a total diversion rate of 0.69 cfs and the irrigation of 26 acres.
2. Use of water under this right may be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No. 34.
3. The right holder shall maintain a measuring device and lockable controlling works of a type approved by the Department in a manner that will provide the watermaster suitable control of the diversion(s).
4. This right when combined with all other rights shall provide no more than 3.5 afa per acre at the field headgate for irrigation of the place of use.
5. The period of use for irrigation described above may be extended in seasons of unusual characteristics to a beginning date of 04-20 and an ending date of 10-31 at the discretion of the Director of the Idaho Department of Water Resources.

Transfer No. 89863

WATER RIGHT NO. 34-14970
As Modified by Transfer No. 89863

CONDITIONS OF APPROVAL

6. Water is delivered through the Moore Canal.
7. The right holder shall accomplish the change authorized by this transfer within one year of the date of this approval.
8. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.
9. Pursuant to Idaho Code § 42-1412(6), this water right is subject to such general provisions necessary for the definition of the rights or for the efficient administration of water rights as determined by the Snake River Basin Adjudication court in the final unified decree entered 08/26/2014.



Attachment to Corrected Transfer Approval 89863

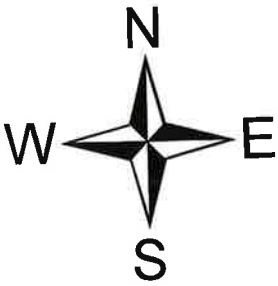
This map depicts the place of use boundary at the time of this transfer approval and is attached to the approval document solely for illustrative purposes.



Legend

- Water Right POU
- Township/Range
- Sections
- QQ

0 125 250 500 Feet





IDAHO DEPARTMENT OF
WATER RESOURCES

Eastern Region • 900 N Skyline Drive, Suite A • Idaho Falls, ID 83402-1718

Phone: 208-525-7161 • Fax: 208-525-7177 • Email: easterninfo@idwr.idaho.gov • Web: idwr.idaho.gov

Governor Brad Little

Director Mathew Weaver

March 12, 2026

DEREK A NICHOLS
PO BOX 606
MOORE ID 83255-0606

Re: Transfer No: 89863
Water Right No(s): 34-2408A , 34-12366, 34-14969, 34-14970

Corrected Transfer Approval Notice

Dear Water Right Holder:

The Department of Water Resources has issued the enclosed approved Corrected Transfer of Water Right(s). Please be sure to thoroughly review the conditions of approval and remarks listed on the approval document.

The Corrected Transfer of Water Right(s) 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 the APPLICANT 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.

ANY PERSON aggrieved by any decision, determination, order or action 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 Department and requesting a hearing shall be filed within fifteen (15) days after receipt of the denial or conditional approval.

If the corrected transfer approval includes a condition requiring measuring and recording devices, such devices shall comply with specifications established by the Department. Detailed specifications are available on the Department's home page on the Internet, or you can request a copy by contacting any office of the Department. Please be sure to thoroughly review the specifications to avoid unnecessary costs for reinstallation or modification due to non-conforming or improperly installed devices.

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) 525-7161.

Sincerely,



Christina Henman
Administrative Assistant

Enclosure
CC:

ROCKY MOUNTAIN ENVIRONMENTAL ASSOC INC
482 CONSTITUTION WAY STE 303
IDAHO FALLS ID 83402-3552

DEREK NICHOLS
CHLOE NICHOLS
1681 COUNTY ROAD 320
EL CAMPO TX 77437-5667

CERTIFICATE OF SERVICE

I hereby certify that on March 12, 2026 I mailed a true and correct copy, postage prepaid, of the foregoing PRELIMINARY ORDER (Approved Corrected Transfer) to the person(s) listed below:

Re: Corrected Transfer No.: 89863

Water Right No(s): 34-2408A , 34-12366, 34-14969, 34-14970

**DEREK A NICHOLS
PO BOX 606
MOORE ID 83255-0606**

**ROCKY MOUNTAIN ENVIRONMENTAL ASSOC INC
482 CONSTITUTION WAY STE 303
IDAHO FALLS ID 83402-3552**

**DEREK NICHOLS
CHLOE NICHOLS
1681 COUNTY ROAD 320
EL CAMPO TX 77437-5667**

A handwritten signature in black ink, appearing to read 'Chen', is written over a horizontal line.

**Christina Henman
Administrative Assistant**

EXPLANATORY INFORMATION TO ACCOMPANY A PRELIMINARY ORDER

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

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

PETITION FOR RECONSIDERATION

(See Idaho Code § 67-5243(3))

Any party may file a petition for reconsideration of this preliminary order with the Department within fourteen (14) days of the service date of this order as shown on the certificate of service. **Note: the petition must be received by the Department within this fourteen (14) day period.** The presiding officer 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.

PETITION FOR REVIEW (EXCEPTIONS)

(See Idaho Code § 67-5245)

Within fourteen (14) days after: (a) the service date of this preliminary order, (b) the service date of a denial of a petition for reconsideration of this preliminary order, or (c) the failure within twenty-one (21) days of the presiding officer to act on a petition for reconsideration of this preliminary order, any party may petition the Director in writing to review any part of this preliminary order by filing exceptions, and any supporting brief, with the Department.¹ Any parties opposing the exceptions shall have fourteen (14) days from the service date of the exceptions to file a brief. If the Director determines that oral argument is to be heard, the Director will provide reasonable notice to the parties of the place, date, and hour for the argument.

The Director will issue a final order on exceptions within fifty-six (56) days of receipt of the written briefs or oral argument, whichever is later, unless extended for good cause. The Director may remand the matter for or hold an evidentiary hearing if further factual development of the record is necessary before issuing a final order.

REQUEST FOR HEARING

(See Idaho Code § 42-1701A(3))

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 Idaho Code § 42-1701A(3). A written petition to the Director contesting the preliminary order and requesting a hearing must be filed with the Department

¹ The Director may decide to review this preliminary order upon his own motion. Should the Director decide to do so, the Director will provide written notice to the parties within the period the parties are allowed to petition the director for review of the preliminary order.

by any aggrieved person **within fifteen (15) days after service of this preliminary order.**

CERTIFICATE OF SERVICE

(See IDAPA 37.01.01.053, 37.01.01.202)

All documents filed with the Department in connection with a petition for reconsideration, petition for review, or a request for hearing of this preliminary order shall be served on all other parties to the proceedings in accordance with Rules of Procedure 53 and 202.