

State of Idaho
Department of Water Resources
Water Right License
WATER RIGHT NO. 37-23100

PRIORITY: July 15, 1996

Maximum Diversion Rate: 0.92 CFS

Maximum Diversion Volume: 4.1 AF

It is hereby certified that:

CHARLENE B WALTERS PO BOX 390 REXBURG ID 83440-0390 And

DAVID WALTERS PO BOX 390 REXBURG ID 83440-0390

has complied with the terms and conditions of the permit, issued pursuant to Application for Permit dated July 15, 1996, and has submitted Proof of Beneficial Use on October 22, 1999. An examination confirms water is diverted from:

SOURCE:
GROUND WATER

and a water right has been established as follows:

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>DIVERSION RATE</u>	<u>ANNUAL DIVERSION VOLUME</u>
INDUSTRIAL	01/01 to 12/31	0.92 CFS	4.1 AF

LOCATION OF POINT(S) OF DIVERSION:

GROUND WATER SE¼SW¼ Sec. 13, Twp 01N, Rge 18E, B.M. BLAINE County

GROUND WATER SE¼SW¼ Sec. 13, Twp 01N, Rge 18E, B.M. BLAINE County

PLACE OF USE: INDUSTRIAL

Twp	Rge	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
01N	18E	13											X						

CONDITIONS OF APPROVAL

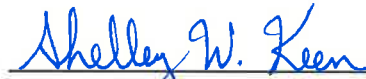
1. Use of water under this right may be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No. 37.
2. The right holder shall maintain a measuring device and lockable controlling works of a type approved by the Department in a manner that will provide the watermaster suitable control of the diversion.
3. Industrial use is for a concrete plant.
4. Use of water under this right shall be non-consumptive.

State of Idaho
Department of Water Resources
Water Right License
WATER RIGHT NO. 37-23100

5. This right is for the use of trust water, and it is subject to review 20 years after its initial date of permit approval to re-evaluate the availability of trust water for the authorized use and to re-evaluate the public interest criteria for reallocating trust water.
6. Use of water pursuant to this right is either nonconsumptive or the right holder is required to provide ongoing mitigation to offset the depletion of water resulting from the use of this right. Regulation of this right to satisfy the minimum stream flow water rights in the Snake River at Murphy Gage shall not be required.

This license is issued pursuant to the provisions of Section 42-219, Idaho Code. The water right confirmed by this license is subject to all prior water rights and shall be used in accordance with Idaho law and applicable rules of the Department of Water Resources.

Signed this 17th day of September, 2018.



SHELLEY W. KEEN
Water Allocation Bureau Chief

State of Idaho
Department of Water Resources
Attachment to Water Right License
37-23100

This map depicts the INDUSTRIAL 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.



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

0 0.045 0.09 0.18 Miles





State of Idaho

DEPARTMENT OF WATER RESOURCES

322 E FRONT ST STE 648 PO BOX 83720 • BOISE, ID 83720-0098

Phone: (208)287-4800 • Fax: (208)287-6700 • Website: www.idwr.idaho.gov

C.L. "Butch" Otter
Governor

Gary Spackman
Director

September 17, 2018

DAVID WALTERS
CHARLENE B WALTERS
PO BOX 390
REXBURG ID 83440-0390

RE: License No. 37-23100

Issuance of License

Dear Water Right Holder(s):

The Department of Water Resources ("Department") has issued the enclosed Water Right License confirming that a water right has been established in accordance with your permit. Please be sure to thoroughly review all the conditions of approval listed on your license. The conditions may include ongoing requirements, such as maintenance of a measuring device or implementation of mitigation, as well as information about how your water use may be administered, such as regulation by a watermaster in a water district. Also enclosed is a copy of the approved application for amendment.

The license is a PRELIMINARY ORDER issued by the Department 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.

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. Water right forms are available from any office of the Department or on the Department's website at idwr.idaho.gov

If you have any questions concerning the enclosed information, please contact me at (208) 287-4951.

Sincerely,

A handwritten signature in blue ink that reads "Pamela S Skaggs".

Pamela S Skaggs, Manager
Water Rights Section

Enclosure(s)

CERTIFICATE OF SERVICE

I hereby certify that on September 18, 2018, I served a true and correct copy of Water Right License No. 37-23100 by U.S. Mail, postage prepaid, to the following:

DAVID WALTERS (Current Owner)
PO BOX 390
REXBURG ID 83440-0390

CHARLENE B WALTERS (Current Owner)
PO BOX 390
REXBURG ID 83440-0390

RIGBY ANDRUS & RIGBY LAW PLLC (Attorney)
PO BOX 250
REXBURG ID 83440

ROCKY MOUNTAIN ENVIRONMENTAL ASSOC (Representative)
C/O KEITH C WILSON
482 CONSTITUTION WAY STE 303
IDAHO FALLS ID 83402

WATER DISTRICT #37
KEVIN D LAKEY (Watermaster)
107 W 1ST
SHOSHONE ID 83352



Darla Block
Technical Records Specialist I

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.

State of Idaho
Department of Water Resources
APPLICATION FOR AMENDMENT
(For Licensing Purposes)
WATER RIGHT NO. 37-23100

RECEIVED
AUG 30 2018
DEPARTMENT OF
WATER RESOURCES

PRIORITY: July 15, 1996

Maximum Diversion Rate: 0.92 CFS

Maximum Diversion Volume: 4.1 AF

Comes now

HEATH MARSHALL INC PO BOX 250 POCATELLO ID 83204-0250

and represents to the Idaho Department of Water Resources that he is the owner and holder of Permit to Appropriate the Public Waters of the State of Idaho No. 37-23100, and requests that the permit be changed as follows:

SOURCE:
GROUND WATER

BENEFICIAL USE
INDUSTRIAL

PERIOD OF USE
01/01 to 12/31

DIVERSION RATE
0.92 CFS

ANNUAL
DIVERSION VOLUME
4.1 AF

LOCATION OF POINT(S) OF DIVERSION:

GROUND WATER SE¼SW¼ Sec. 13, Twp 01N, Rge 18E, B.M. BLAINE County

GROUND WATER SE¼SW¼ Sec. 13, Twp 01N, Rge 18E, B.M. BLAINE County

PLACE OF USE: INDUSTRIAL

Twp	Rge	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
01N	18E	13											X						

Permit holder asserts that no one will be injured by such change and that such change will be made at permit holder's own risk. Signed this 28 day of August, 2018.


(Signature)

State of Idaho
Department of Water Resources
APPLICATION FOR AMENDMENT
(For Licensing Purposes)
WATER RIGHT NO. 37-23100

FOR DEPARTMENT USE ONLY

Preliminary check by _____ Fee = 100 Received by W # C105585 Date 9.30.18

ACTION OF THE DEPARTMENT OF WATER RESOURCES

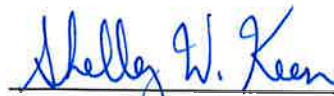
The Idaho Department of Water Resources hereby approves the above Application for Amendment for Permit No. 37-23100 with the following:

CONDITIONS OF APPROVAL

1. 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. 37.
2. 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.
3. Industrial use is for a concrete plant.
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6. Use of water pursuant to this right is either nonconsumptive or the right holder is required to provide ongoing mitigation to offset the depletion of water resulting from the use of this right. Regulation of this right to satisfy the minimum stream flow water rights in the Snake River at Murphy Gage shall not be required.

This amendment is issued pursuant to the provisions of Section 42-211, Idaho Code.

Signed this 17th day of September, 2018.



SHELLEY W. KEEN
Water Allocation Bureau Chief

Nelson, Dan

From: Roger Warner <rog.rmea@gmail.com>
Sent: Friday, August 24, 2018 1:16 PM
To: 'jrigby'; 'James James walters'
Cc: Nelson, Dan
Subject: FW: 37-23100 WaterRightLicenseAmendment
Attachments: 37-23100 WaterRightLicenseAmendment.docx

Thank you Dan.

For the purpose of response to your email, I am forwarding this to James Walters of Walters Ready Mix and their Attorney, Jerry Rigby. I have discussed this with them in more detail in a separate email.

Have a good weekend...

Roger

W. Roger Warner, Hydrologist

Vice-President

482 Suite 303 Constitution Way Idaho Falls, ID 83402

E-Mail: rog.rmea@gmail.com

VOICE: 208-524-2353 ||| FAX: 208-524-1795 ||| Cell: 208-390-3521



Rocky Mountain
ENVIRONMENTAL
ASSOCIATES, INC.

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Check out our Rocky Mountain Environmental Associates Facebook page!

From: Nelson, Dan [mailto:Dan.Nelson@idwr.idaho.gov]

Sent: Friday, August 24, 2018 11:57 AM

To: Roger Warner <rog.rmea@gmail.com>

Cc: Keen, Shelley <Shelley.Keen@idwr.idaho.gov>

Subject: 37-23100 WaterRightLicenseAmendment

Hello Roger,

Per our discussion today, I agree the condition on the amendment for 37-23100 (Walter's Ready Mix Cement Plant) that required all water diverted through the Asphalt Plant (Permit 37-8856) to be discharged in the surrounding gravel pit is not pertinent to the water right for the cement plant and shouldn't be on water right permit 37-23100. The Asphalt Plant will have its own water right, and it will have its own conditions regarding the diversion of water for their use under permit 37-8856. I have attached an updated version of the amendment to this email. You informed me that you would distribute the email to Mr. Walter's and his attorney Mr. Rigby.

If Mr. Walters, Mr. Rigby, or yourself have any further questions, I would be happy to discuss them with you.

Since I am resending this corrected amendment, I am asking if your client could send the amendment and the \$100 fee within the next 14 days.

Thank you.

Daniel Nelson
Water Right Analyst 3
Idaho Department of Water Resources
Telephone (208) 287-4856
Fax (208) 287-6700 (attn: Dan Nelson)