

Nelson, Dan

From: Nelson, Dan
Sent: Monday, August 13, 2018 9:31 AM
To: 'Roger Warner'
Subject: Amendment for Permit 37-23100
Attachments: 37-23100 Amendment and letter.pdf

Hello Roger,

I have attached the amendment for permit 37-23100. The amendment is needed to list 2 points of diversion in the same legal description. The permit had two points of diversion in separate legal descriptions. We need the amendment to fix this.

This is another opportunity for you and your client to request any changes or additions if needed. We want to make sure and get it right before we mail it out. I understand that you spoke briefly with James Cefalo at our Eastern Region office concerning this permit, and discussed a couple of different proposals. There is still time to submit any additional information to me you wish to have on the permit.

I have also sent a copy of the letter to the permit holder's attorney, Jerry Rigby. You may want to contact Mr. Rigby and discuss the amendment with him. I didn't email the amendment to Mr. Rigby, but you can do that if you wish.

Thank you.

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



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street • P.O. Box 83720 • Boise, Idaho 83720-0098

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

C.L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

August 13, 2018

DAVID AND CHARLENE WALTERS
PO BOX 390
REXBURG ID 83440

RE: Water Right Permit No. 37-23100

Dear Permit Holder:

The Idaho Department of Water Resources (Department) is reviewing the permit referenced above prior to issuing a water right license. By issuing a license, the Department confirms the extent of development that has been established in compliance with the terms of the permit.

On June 18, 2018, the Department determined that order to void Permit 37-23100 should be withdrawn and the portion of this permit that is considered non-consumptive should be licensed. Before the Department can move forward with the licensing of this permit, the permit must be amended to correctly reflect what was developed.

The field report submitted by Paul H. Scoresby states the legal description for the two points of diversion were developed in a differently than permitted. The permit shows a Points of diversion NE $\frac{1}{4}$ SW $\frac{1}{4}$ and the SE $\frac{1}{4}$ SW $\frac{1}{4}$ in Section 13 in Township 1 North, Range 18 East. The field report describes the two points of diversion as both being in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ in Section 13 in Township 1 North, Range 18 East.

If the legal description on the permit does not match the legal description developed, then an amendment of the permit is required prior to licensing the permit. Therefore, an amendment is required to change the point of diversion on the permit before we can move forward with licensing the water right permit 37-23100.

You will also notice that the amendment is in the name of the previous owner. You were not able to attain an assignment of permit from the previous owner, so we are required to maintain that ownership until the permit is licensed. Once the permit is licensed, we can then change the name of the license into the name of David S. Walters and Charlene B. Walters.

The enclosed Application for Amendment form depicts the elements of the water right as they will appear on the license when issued. Please review the amendment form carefully. If you concur with the information presented, please sign and return the form with the \$100.00 filing fee within 14 days.

If you have any questions, please don't hesitate to contact me.

Sincerely,

A handwritten signature in dark ink, appearing to read "Daniel A. Nelson", with a long horizontal flourish extending to the right.

Daniel A. Nelson

Analyst 3

Water Right Section

Idaho Department of Water Resources

Telephone # (208) 287-4856

Email – dan.nelson@idwr.idaho.gov

Enclosure(s): Application for Amendment with maps

cc Roger Warner - Rocky Mountain Environmental by email
 Jerry Rigby – Rigby Andrus & Moeller CHTD

Nelson, Dan

From: Nelson, Dan
Sent: Friday, July 06, 2018 11:12 AM
To: 'Roger Warner'
Subject: RE: Permit 37-23100

Hello Roger,

I have been instructed that we must strictly adhere to the hearing record and the water right records. I have not listened to the hearing recordings, so I do not know all that was said by the hearing officer. At this point, I can only go off of the records available to me, which are the order and the exhibits. We can review the recorded minutes of the hearing if needed, so you can supply a written proposal based on a conversation held during the hearing.

This is the information I currently have available to me based on the written records. The original permit was for 1.15 cfs, which is the amount we are proposing to license (0.23 cfs asphalt plant + 0.92 cfs cement plant = 1.15 cfs total). The application for permit (Exhibit 2) states that the asphalt plant will divert 0.23 cfs and the cement plant will divert 0.92 cfs (see section 1 - Mitigation Plan in Addendum to Application for Permit). The field report (Exhibit 6) shows that the well capacity is 1.84 cfs. That easily allows the full diversion rate authorized by the permit of 1.15 cfs. The field report also recommends separating out the diversion rates to 0.92 cfs for the cement plant and 0.23 cfs for the asphalt plant (See Section H Recommendations). The permit was split to show the two separate water systems and separate ownership according to the division provided in the application for permit and the field report. The addendum (Exhibit 3) also states that the permit limits the use of the asphalt plant diversion to 0.23 cfs.

We are bound to the limits addressed in the application for permit, permit, hearing exhibits, and the field report. When I spoke earlier with Shelley, he did state that the Department is reluctant to include combined limitations for water rights on separate systems with separate owners. The reason the Department tries very hard to avoid combined limitation conditions with these circumstances is due to the difficulty of regulating combined conditions on separate systems with separate owners. I am not saying it cannot be done, but we would need a convincing written argument why combined limitations is necessary and how they can be regulated.

I can see a couple of additional options that may be available to your clients, and there could be more. The first possible option would be for the licenses to be issued as discussed, and then the asphalt plant would need to file a new application for permit to increase the diversion rate to the amount developed in excess of the original system design. As long as the asphalt plant can prove their use is non-consumptive, they should be able to acquire a new permit without mitigation. The cement plant is going to need to attain authorization of some sort to cover their consumptive use, and they could request to increase the diversion rate through the new authorization to cover their diversion rate needs. They will need this authorization before the permits are licensed, so they should be working on that issue already.

The second possible option is for you to provide information that shows that only a portion of the 0.92 cfs rate that is proposed to be licensed for the cement plant is used for the cement plant's non-consumptive needs. We may be able to authorize the portion that is reduced from the original 0.92 cfs rate for the cement plant to increase the diversion rate for the asphalt plant up to the capacity of asphalt plant system to the 0.40 cfs stated in the addendum (Exhibit 3). For example, you could provide proof that the non-consumptive use for the cement plant is run through a pipeline or hose at a rate of 0.75 cfs, so the 0.17 cfs additional water needed for the consumptive portion of the cement plant can be diverted by the asphalt plant at a rate of 0.40 cfs instead of the

0.23 cfs limitation proposed in the application for permit and the original field report. The new authorization required for the consumptive use could request a diversion rate of 0.69 cfs, which would authorize the total diversions from the two wells at the 1.84 cfs measured during the field exam (0.40 cfs asphalt plant + 0.75 cfs non-consumptive use cement plant + 0.69 cfs consumptive use for the cement plant = 1.84 cfs system capacity). This would allow 0.40 cfs for the asphalt plant, and 1.44 cfs for the cement plant once the new authorization is approved. This option would also prevent the asphalt plant from filing a second permit to increase their diversion rate. This would only work if the cement plant can divert their non-consumptive water use requirements with a diversion rate less than 0.92 cfs.

The above two options are just personal thoughts and suggestions that may or may not be approved. I can assure you that we cannot exceed the 1.15 cfs authorized by the original permit. There could be other options that I have not thought of that may also be considered. **The Department is willing to review any written proposal that you present.** Please keep in mind what I stated in my earlier email, that each proposal should provide a justification why it was not presented in the hearing and why it should be considered beyond the scope of the information already provided in the hearing. Since a hearing was held on this permit, the Department will be reviewing anything submitted to ensure it doesn't conflict with the existing order or the information provided in the hearing. You should also keep in mind that the Department is also reluctant to allow combined limitations on water rights for separate systems with separate owners, so if you send us a written proposal to have combined limitation conditions, you may also want to provide a plan on how it can be successfully regulated.

I hope this information helps you, and if you have any further questions, please don't hesitate to contact me. I have already submitted the license for permit 37-8856 (asphalt plant) and the amendment for permit 37-23100 (cement plant) for final review, but I can pull them back if we receive a written proposal. I doubt we will issue the license for permit 37-8856 until we receive a signed amendment for 37-23100. For your information, permit 37-23100 will need to be amended because the original permit showed two points of diversion in separate 40 acre tracts, and the field report shows two points of diversion are in the same 40 acre tract. The amendment will need to be signed before we can license 37-23100, so there is a bit of time before we get to the licensing stage. As I stated earlier, we will not send out the amendment for 37-23100 or the license for 37-8856 until the order can no longer be contested, which should be after July 30, 2018. This should give you time to submit a written proposal if you feel it is necessary.

Respectfully,

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

From: Roger Warner [mailto:rog.rmea@gmail.com]
Sent: Thursday, July 05, 2018 6:45 PM
To: Nelson, Dan <Dan.Nelson@idwr.idaho.gov>
Cc: Kristin Moore <kristin.rmea@gmail.com>
Subject: Re: Permit 37-23100

Dan,

Thank you for your response. I am writing to share with you that during the oral record there was a discussion from the hearing officer about the possibility of providing for a combined diversion rate based upon the system serving both entities simultaneously. The system cannot presently accommodate independent usage. I feel it is a good idea that would serve both water users well.

Let us know if this is something we can further discuss or maybe you might discuss with Mr. Cefalo.

warm regards,

Roger Warner, VP
Rocky Mountain Environmental Associates, Inc.

On Jul 3, 2018, at 8:29 AM, Nelson, Dan <Dan.Nelson@idwr.idaho.gov> wrote:

Hello Kristin,

I did get a chance to speak with Shelley briefly this morning. We are going to move forward with preparing the license for water right 37-23100 and 37-8856, but we do not feel it is appropriate to issue the licenses until the order for water right 37-23100 has become final.

I wanted to provide the following information, so you will know how the two permits will be licensed. I have included the location in the hearing records where the information being used to determine the amounts to be licensed are located.

We will license 37-23100 as follows:

Diversion rate will be limited to 0.92 cfs as recommended in the original field report (Exhibit 6 in the Hearing Record).

The volume will be limited to 4.1 af as determined in the hearing in Exhibit 7A provided by Rocky Mountain Environmental Associates.

We will license 37-8856 as follows:

Diversion rate will be limited to 0.23 cfs as recommended in the original file report (Exhibit 6 in the Hearing Record).

The volume will be limited to 3.1 af as determined in the Addendum to the field report (Exhibit 3 in the Hearing Record).

Both water rights will be limited to non-consumptive use only.

Both water rights will be licensed based on the information provided in the hearing, so we shouldn't need any further information from you to move forward with licensing. Any information that you would provide outside of the hearing records could be considered, but you would need to provide justification why it was not presented in the hearing and why it should be considered beyond the scope of the information already provided in the hearing. The hearing records and exhibits have been scanned to the water right back file and can be accessed in the water right search on our webpage. The link is <http://www.idwr.idaho.gov/apps/ExtSearch/RelatedDocs.asp?Basin=37&Sequence=23100&SplitSuffix=>

If you have any questions or concerns, please don't hesitate to contact me.

Respectfully,

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

From: Nelson, Dan
Sent: Monday, July 02, 2018 5:02 PM
To: 'Kristin Moore' <kristin.rmea@gmail.com>
Subject: RE: Permit 37-23100

Kristin,

At this point, I am waiting on Shelley to give me the go ahead to start working on this permit again. The order hasn't become final yet, so I don't know if we are going to wait until it is a final order before we start processing the permit or not. As soon as I find out what the plan is, I will let you know.

Thank you.

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

From: Kristin Moore [<mailto:kristin.rmea@gmail.com>]
Sent: Monday, July 02, 2018 4:47 PM
To: Nelson, Dan <Dan.Nelson@idwr.idaho.gov>
Cc: 'Warner, Roger' <rog.rmea@gmail.com>
Subject: Permit 37-23100

Dan,

We received a copy of the most recent order for permit 37-23100. It appears that this has been placed back in your hands for licensing. What do you need us to provide to enable this permit to be licensed for all of the non-consumptive uses, including the concrete batch plant at the Walter Ready Mix plant in Bellevue?

Thanks,

Kristin Moore

Senior Water Rights Analyst

482 Constitution Way, Ste 303, Idaho Falls, ID 83402

E-Mail: kristin.rmea@gmail.com

VOICE: 208-524-2353 ||| FAX: 208-524-1795

<image001.gif>

CONFIDENTIALITY NOTICE: This message is intended only for the use of the individual or entity to which it is addressed and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination or distribution of this communication to other than the intended recipient is strictly prohibited. If you have received this communication in error, please notify us immediately by reply email to the sender or collect telephone call to (208) 524-2353. *Thank you.*

MEMORANDUM

TO: Water Right File 37-8856 and 37-23100

FROM: Daniel Nelson – Analyst 3

DATE: July 3, 2018

SUBJECT: Review of Order Withdrawing Preliminary Order for Licensing of Permits 37-8856 and 37-23100

Permit 37-8856 was filed to provide water to an asphalt plant and a cement plant under single ownership in Basin 37. A portion of permit 37-8856 was considered non-consumptive and a portion of the permit was considered to be a consumptive use. Permits issued in Basin 37 requires mitigation for all consumptive uses. The property was subsequently sold to two separate owners, so permit 37-8856 was split into two portions. The portion of the original permit for the asphalt plant retained the permit number 37-8856, and the portion of the original permit for the cement plant was given a new water right number, 37-23100.

On February 28, 2018, the Idaho Dept. of Water Resources (Department) issued a preliminary order voiding permit 37-23100. The order stated that the uses described in the field report for water right 37-23100 were consumptive, and the mitigation needed to authorize the consumptive use had not been accomplished.

In response to a petition for reconsideration, on June 18, 2018, a preliminary order was issued stating that a portion of the water use authorized by permit 37-23100 should be considered non-consumptive. Therefore, the preliminary order voiding the permit has been withdrawn and a license should be issued for permit 37-23100. Since the issue with permit 37-23100 appears to have been resolved, we can also move forward with the licensing of permit 37-8856.

Whereas a hearing has been held, both water rights should be licensed based on the information provided in the hearing. The following is the recommended diversion rates and volumes included in the hearing record. I have included the location in the hearing record of each recommendation.

37-23100 should be licensed as follows:

Diversion rate will be limited to 0.92 cfs as recommended in the original field report (Exhibit 6 in the Hearing Record).

The volume will be limited to 4.1 af as determined in the hearing in Exhibit 7A provided by Rocky Mountain Environmental Associates.

37-8856 should be licensed as follows:

Diversion rate will be limited to 0.23 cfs as recommended in the original file report (Exhibit 6 in the Hearing Record).

The volume will be limited to 3.1 af as determined in the Addendum to the field report (Exhibit 3 in the Hearing Record).

Conditions:

Conditions for 37-8856 were addressed in Daniel Nelson's review memo dated February 15, 2018. Whereas permit 37-23100 was included with permit 37-8856 at one time, the same conditions would apply to both rights. The only difference would be that 37-8856 would describe an asphalt batch plant, and permit 37-23100 would describe a cement plant.

Nelson, Dan

From: Nelson, Dan
Sent: Tuesday, July 03, 2018 9:31 AM
To: 'Kristin Moore'; 'Roger Warner'
Subject: RE: Permit 37-23100

Hello Kristin,

I did get a chance to speak with Shelley briefly this morning. We are going to move forward with preparing the license for water right 37-23100 and 37-8856, but we do not feel it is appropriate to issue the licenses until the order for water right 37-23100 has become final.

I wanted to provide the following information, so you will know how the two permits will be licensed. I have included the location in the hearing records where the information being used to determine the amounts to be licensed are located.

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The volume will be limited to 4.1 af as determined in the hearing in Exhibit 7A provided by Rocky Mountain Environmental Associates.

We will license 37-8856 as follows:

Diversion rate will be limited to 0.23 cfs as recommended in the original field report (Exhibit 6 in the Hearing Record).

The volume will be limited to 3.1 af as determined in the Addendum to the field report (Exhibit 3 in the Hearing Record).

Both water rights will be limited to non-consumptive use only.

Both water rights will be licensed based on the information provided in the hearing, so we shouldn't need any further information from you to move forward with licensing. Any information that you would provide outside of the hearing records could be considered, but you would need to provide justification why it was not presented in the hearing and why it should be considered beyond the scope of the information already provided in the hearing. The hearing records and exhibits have been scanned to the water right back file and can be accessed in the water right search on our webpage. The link is

<http://www.idwr.idaho.gov/apps/ExtSearch/RelatedDocs.asp?Basin=37&Sequence=23100&SplitSuffix=>

If you have any questions or concerns, please don't hesitate to contact me.

Respectfully,

Daniel Nelson
Water Right Analyst 3
Idaho Department of Water Resources
Telephone (208) 287-4856

Fax (208) 287-6700 (attn: Dan Nelson)

From: Nelson, Dan
Sent: Monday, July 02, 2018 5:02 PM
To: 'Kristin Moore' <kristin.rmea@gmail.com>
Subject: RE: Permit 37-23100

Kristin,

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Thank you.

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

From: Kristin Moore [<mailto:kristin.rmea@gmail.com>]
Sent: Monday, July 02, 2018 4:47 PM
To: Nelson, Dan <Dan.Nelson@idwr.idaho.gov>
Cc: 'Warner, Roger' <rog.rmea@gmail.com>
Subject: Permit 37-23100

Dan,

We received a copy of the most recent order for permit 37-23100. It appears that this has been placed back in your hands for licensing. What do you need us to provide to enable this permit to be licensed for all of the non-consumptive uses, including the concrete batch plant at the Walter Ready Mix plant in Bellevue?

Thanks,

Kristin Moore
Senior Water Rights Analyst
482 Constitution Way, Ste 303, Idaho Falls, ID 83402
E-Mail: kristin.rmea@gmail.com
VOICE: 208-524-2353 ||| FAX: 208-524-1795

