



State of Idaho

DEPARTMENT OF WATER RESOURCES

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Governor

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Director

December 7, 2017

PAUL SCORESBY

ROCKY MOUNTAIN ENVIRONMENTAL ASSOCIATES INC

482 CONSTITUTION WAY SUITE 303

IDAHO FALLS IDAHO 83402

RE: Water Appropriation Permit 37-8856

Dear Mr. Scoresby:

I have been asked to review the Beneficial Use Field Report you submitted for permit 37-8856. There are a couple of issues I need clarification on before I can determine whether the field report confirms beneficial use consistent with the permit and supports issuance of a water right license. I will discuss each issue below:

Insufficient evidence of the implementation of required mitigation measures listed in the condition during the development period of the permit:

The specific mitigation measures listed on the permit include:

- "The right holder shall discontinue the irrigation of one acre within the NWSE, S13, T01N, R18E, under Rights 37-00235A, 37-00236, and 37-00308."
- "The water normally diverted for the irrigation of one acre, currently estimated by the applicant to be 0.224 cfs, shall be diverted into a gravel pit located in Sec. 13 to compensate for the annual consumption of approximately 2.5 acre feet of water under this right."
- "Diversion and use of water under this right may occur only if the right holder has annually diverted 2.5 AF of water to the gravel pit under rights 37-00235A, 37-00236, and 37-00308 as mitigation for the industrial use."

Because there is a moratorium on development of new consumptive uses of water from the permitted water source, these mitigation measures were necessary conditions of permit approval. Without them, the permit would not have been approvable. As stated in the permit's conditions of approval, the "use of water . . . is contingent upon the implementation" of the mitigation measures.

The field report does not include evidence to clearly confirm the permit holder annually diverted 2.5 AF of water to the gravel pit **during the development period of the permit.**

The field report also does not include evidence confirming the permit holder discontinued the irrigation

of one acre within the NW 1/4, S13, T01N, R18E, under rights 37-235C, 37-236A, and 37-308A (the splits of the rights originally described in the condition). Aerial imagery (see attached photo image) indicates the entire 27.4 acres of permitted irrigation under water rights 37-235C, 37-236A, and 37-308A was put to beneficial use in 2006.

Idaho Code § 42-219(8) states the following:

In the event that the department shall find that the applicant has not fully complied with the law and the conditions of permit, it may issue a license for that portion of the use which is in accordance with the permit, or may refuse issuance of a license and void the permit. Notice of such action shall be forwarded to the permit holder by certified mail. The applicant may contest such action by the department pursuant to section 42-1701A(3), Idaho Code.

Without evidence showing the conditions of the permit were clearly met **during the authorized development period**, IDWR may not issue a license in connection with the permit.

Volume calculation missing:

The field exam report does not provide a recommended annual diversion volume in Section H, as is required. IDAPA Beneficial Use Examination Rule 37.03.02.035.01.j states the following:

For each use of water the examiner shall report an annual diversion volume based on actual beneficial use during the development period for the permit. The method of determining the annual diversion volume shall be shown. The annual diversion volume shall account for seasonal variations in factors affecting water use, including seasonal variations in water availability. For irrigation, the volume shall be based on the field headgate requirements in the map titled Irrigation Field Headgate Requirement appended to these rules (see Appendix A located at the end of this chapter). Annual diversion volumes for heating and cooling uses may be adjusted to account for documented weather conditions during any single heating or cooling season from among the fifty (50) years immediately prior to submitting proof of beneficial use for the permit. For storage uses that include filling the reservoir and periodically replenishing evaporation and seepage losses throughout the year, the annual diversion volume shall be the sum of the amounts used for filling and for replenishment. Volumes may include reasonable conveyance losses actually incurred by the water user....

Some volume calculations for the concrete batch plant were submitted using 27 gal/yard and 30 gal/yard. I am not sure which volume amount should be used. No volume calculation was stated for the Asphalt Plant. A total volume calculation for all uses covered under the permit is not listed (including the non-consumptive portion used at the Asphalt Plant).

Without a recommended volume on the field report showing the entire amount of water annually diverted from the points of diversion and beneficially used during the authorized development period for the permit, this field report is not complete.

Rate clarification:

There is a difference between the maximum diversion rate you observed during your field examination

and the maximum diversion rate observed by Idaho Department of Water Resources ("IDWR") staff on 11/15/2014. In your report, you stated the McCrometer flowmeter read 1.84 cfs with "valves entirely open." On 11/15/2014, IDWR staff recorded a maximum flow rate of 0.82 cfs. However this rate only accounted for the maximum flow rate at the Asphalt Plant.

I understand the difference between the rate you observed and the rate IDWR observed may be the result of IDWR's rate not including the Concrete Batch Plant. However, my concern is your wording of "valves entirely open." IDAPA Beneficial Use Examination Rule 37.03.05.040.02 states the following:

Rate of Diversion. The rate of diversion measurement shall be conducted as close as reasonably possible to the source of supply and shall be measured with the project works fully in place operating at normal capacity. For example, if a sprinkler system is used for irrigation purposes, discharge from the pump must be measured with the sprinkler system connected.

We need to ensure that the 1.15 cfs recommended is the maximum diversion rate under **normal operating conditions**. Please give a brief description of how the 1.15 cfs is used under the normal operations of the plant and how often those maximum conditions are applied to the normal daily operation of the plant.

Place of Use overlap:

In your field report, you stated "N/A" to other water rights with the same place of use, same source, or same point of diversion. Records of IDWR indicate water right 37-12966 overlaps the Place of Use of this permit. Water right 37-12966 is for domestic use, owned by Larry and Lexie Anderson, with a source from ground water. Could you please clarify any interconnection / relationship between permit 37-8856 and water right 37-12966 as it relates to the industrial process at the Asphalt Plant? IDAPA Beneficial Use Examination Rule 37.03.05.035.01.d states the following:

Any interconnection of the water use being examined with other water rights or with other conveyance systems shall be described on the field report. Interconnection includes, but is not limited to, sharing the same point of diversion, distribution system, place of use, or beneficial use. The examination report shall also include an evaluation of how the water use being examined is distinct from prior existing water rights and provides an alternate source of water or increment of beneficial use not authorized by prior existing water rights.

Aerial imagery available to the Department suggests that this site has been used for gravel extraction since the 1980's, so we need to know how right 37-12966 was used on the site, and if it is still being used. If it is still being used, we will need a detailed description of what it is used for and if it is connected into the industrial use for this facility.

Conclusion:

Idaho Code and the IDAPA Beneficial Use Rules are very clear about what is required to complete a beneficial use field report and to confirm beneficial use. Without the required information, IDWR cannot confirm the beneficial use of water was established as authorized by the permit. Your field report is being returned to you pursuant to IDAPA Beneficial Use Examination Rule 35.02.b because it does

not include the required annual diversion volume recommendation based on actual beneficial use. In addition, IDWR is requesting the following information pursuant to IDAPA Beneficial Use Examination Rule 35.02.c to clarify your beneficial use field report for permit 37-8856:

1. Submit clear evidence that the permit holder has annually delivered at least 2.5 AF of water to the gravel pit under water rights 37-235C, 37-236A, and 37-308A (the splits of the rights originally described in the condition) during the development period of the permit.
2. Submit clear evidence the right holder discontinued the irrigation of one acre within the NWSE, S13, T01N, R18E, under Rights 37-235C, 37-236A, and 37-308A (the splits of the rights originally described in the condition).
3. For the total annual volume recommendation based on actual diversion and beneficial use, specify the amounts associated with the consumptive and the non-consumptive portions.
4. Clarify the "valves entirely open" when you obtained the diversion rate for the Concrete Batch Plant.
5. Clarify any interconnection / relationship with overlapping water right 37-12966.

The Department will hold permit 37-8856 an additional 30 days for you to supply a complete beneficial use field report and the clarifying information requested in this letter. If the field report and requested information are not received, IDWR will be unable to confirm that the permit requirements were met during the authorized development period for the permit, and IDWR will move forward with voiding the permit pursuant to Idaho Code § 42-219(8). If your client is no longer interested in this permit, I have enclosed relinquishment form to be completed and returned to IDWR.

If you have any questions, please contact me at 208-287-4933.

Respectfully,



Steven Visosky
Water Resource Agent, Sr.

Enclosure – Relinquishment of Permit Form

Cc: Heath Marshall Inc.
David Walters and Charlene Walters
Anderson Asphalt Paving, Inc.

