



State of Idaho

DEPARTMENT OF WATER RESOURCES

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C.L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

July 26, 2017

HEATH MARSHALL INC
PO BOX 250
POCATELLO ID 83204-0250

RE: Water Appropriation Permit 37-8856

Notice of Intent to Void Permit

Dear Permit Holder:

On January 9 1997, the Idaho Department of Water Resources (IDWR) issued permit 37-8856 in the name of Heath Marshall Inc. to appropriate ground water for industrial purposes within the NESW, SWSW, and SESW of Section 13, Township 01 North, Range 18 East within Blaine County. The permit included two points of diversion with a total diversion rate of 1.15 cfs. Because the original permit application was filed to divert ground water from the "Eastern Snake Plain Aquifer" at the time a moratorium order was in place, the applicant submitted a mitigation plan to offset injury to other rights. IDWR approved the permit contingent upon the implementation of the specific mitigation requirements stated in the approval conditions of the permit.

Under the terms of permit 37-8856, proof of the development and extent of beneficial use was to be submitted to IDWR by December 1, 1999. On October 22, 1999, IDWR received a "Proof of Beneficial Use" statement submitted by Glen Marshall. On October 15, 2014, IDWR staff visited the permitted place of use to initiate the collection of information for a beneficial use field examination. The purpose of IDWR's examination is to verify the extent of beneficial use of water established in accordance with the permit during the authorized development period, which ended when Glen Marshall submitted the Proof of Beneficial Use statement to IDWR in 1999. As the original permit owner (Heath Marshall Inc.) had sold and split the property, the visit was coordinated with the two new owners, Walters Ready Mix and Anderson Asphalt Paving. Both of the new property owners submitted change in water right ownership notices, supported by warranty deeds showing the conveyance of real property, to IDWR. However, a permit to appropriate water is considered personal property that must be assigned from one owner to another. Therefore, the ownership change notices cannot be processed at this time. Both of the ownership change notices are currently on hold at IDWR pending the outcome of the beneficial use examination. If IDWR issues a water right license confirming the establishment of a water right, IDWR may be able to process the ownership change notices at that time.

In October of 2016, I attempted to contact both of the new owners of the permitted place of use to collect more information related to the conditions of approval listed on permit 37-8856. The specific conditions of concern require mitigation measures to reduce the impacts of the permitted water use on prior surface and ground water rights. 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.”

On December 7, 2016, Roger Warner with Rocky Mountain Environmental Associates, Inc., a certified water right examiner, contacted IDWR and stated that Walters Ready Mix had requested his services to complete the beneficial use field examination on behalf of both of the new property owners. On March 17, 2017, Roger Warner, IDWR Water Rights Section Manager Shelley Keen, and I held a conference call to discuss specific concerns and agree upon reasonable deadlines for submittal of the beneficial use examination field report. As IDWR was understanding of the challenges related to obtaining information, it was agreed upon that July 15, 2017, was the required deadline for Rocky Mountain Environmental Associates to submit a beneficial use examination field report for permit 37-8856.

During the conference call on March 17, 2017, Roger Warner mentioned that his clients now had a better understanding of the permit and were considering renting water from the Water Supply Bank. Shelley Keen made it very clear that if Roger’s clients were to rent water, it may show “good intention” however, it would not rectify any permit conditions that were not fulfilled. On June 9, 2017, Walters Ready Mix entered into an agreement with the Water Supply Bank to rent 2.5 AF of ground water for the beneficial use of “Mitigation by Non-Use” for the 2017 season from 4/15 through 10/31. As this rental agreement of water may have shown “good intention”, it does not fulfill the specific requirements of the conditions listed on the permit, which were to have been implemented when water was first diverted and put to beneficial use.

The final step in the water appropriation process is the issuance of a Water Right License. A Water Right License is based on the beneficial use field report, including whether the permit holder complied with the conditions of approval. By issuing a license, IDWR recognizes that you have met the requirements for establishing a water right. The agreed-upon deadline of July 15, 2017, has passed, and IDWR has not received a beneficial use field report from Rocky Mountain Environmental. **Therefore, no evidence has been provided to confirm that the permit holder has complied with the laws and conditions of the permit.**

If you believe a water right should be issued in connection with permit 37-8856, please supply information to demonstrate that the permitted beneficial use was developed during the authorized development period for the permit. The information must also demonstrate compliance with the conditions of approval listed on the permit. If IDWR does not receive the requested information from you within thirty days, I will take action to void your permit under the provision of Section 42-219(8) of the Idaho Code. If you agree that no beneficial use of water occurred including compliance of the conditions of approval listed on permit 37-8856, you can shorten the voiding process by completing the enclosed relinquishment form and returning it to IDWR.

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

Respectfully,

A handwritten signature in black ink, appearing to read 'Steven Visosky', with a stylized flourish at the end.

Steven Visosky
Water Resource Agent, Sr.

Cc: Heath Marshall Inc
Walters Ready Mix, Douglas Walters
Davis Walters and Charlene Walters
Anderson Asphalt Paving, Larry Anderson
Rocky Mountain Environmental, Roger Warner

Mailings for Intent to Void 37-8856

HEATH MARSHALL INC
PO BOX 250
POCATELLO ID 83204-0250

LARRY ANDERSON
ANDERSON ASPHALT PAVING INC
PO BOX 759
HAILEY ID 83333

DOUGLAS WALTERS
10820 HWY 75
PO BOX 66
BELLEVUE ID 83313

DAVID AND CHARLENE WALTERS
PO BOX 390
REXBURG ID 83440

ROGER WARNER
ROCKY MOUNTAIN ENVIRONMENTAL
482 CONSTITUTION WAY SUITE 303
IDAHO FALLS ID 83402