

BEFORE THE DEPARTMENT OF WATER RESOURCES  
OF THE STATE OF IDAHO

IN THE MATTER OF PERMIT NO. 65-13738 )    **ORDER MODIFYING MEASURING**  
IN THE NAME OF SABALA WHITETAIL    )    **DEVICE REQUIREMENT**  
LLC. \_\_\_\_\_ )

This matter having come before the Department of Water Resources (Department) to modify measuring device requirements, the Department finds, concludes, and orders:

**FINDINGS OF FACT**

1. On July, 18, 1997, the Department received an Application for Permit (application) from M Resorts (applicant) to appropriate 2.35 cfs of water from ground water and from an unnamed stream that is tributary to Williams Creek. The applicant proposed to divert 2.35 cfs of water for storage purposes and store 20.0 af of water for stockwater, wildlife, recreation, and aesthetic purposes in a pond that is also known as Betsey Pond within Valley County.

2. On August 7, 1997, the Department received a Recommendation of Watermaster from the watermaster of water district no. 65 regarding the application. In the recommendation, the watermaster states, "The Department may require that any consumptive use of water from the ponds in question, such as evaporation, be mitigated through rental of storage water from the water district no. 65 rental pool. If mitigation is required, then installation of suitable measuring devices upstream from the ponds' inlet, on the well head servicing the pond, and downstream from the ponds' outlet should be required as well in order to quantify consumptive losses incurred."

3. On October 23, 1997, the Department issued permit no. 65-13738 (permit) to the applicant with condition of approval nos. 8 and 9 that state:

Condition no. 8: The permit holder shall install permanent measuring devices as approved by the Department in a manner to assure that water in the channel upstream from the pond will not be impounded when prior downstream water rights are not being filled. The right holder shall provide reasonable access to the pond and measuring devices.

Condition no. 9: Prior to impoundment under terms of this right the right holder shall annually rent 4.0 af of water from the water district 65 rental pool to mitigate evaporation losses from the pond. If the right holder does not replace evaporation losses until all prior downstream storage rights are filled the requirement for mitigation is waived.

4. On October 17, 2001, the Department received a Proof of Beneficial Use statement (proof) from the applicant for the permit.

5. On February 1, 2010, the Department received an Assignment of Permit from the applicant that assigned the permit to Sabala Whitetail LLC (permit holder).

6. On July 30, 2010, a field examination was conducted to confirm the beneficial use of water that had been developed in connection with the permit. The field examiner reported that the unnamed stream was not developed pursuant to the permit and that the permit holder had developed only ground water under this permit.

7. In his report, the field examiner stated that measuring devices are no longer necessary pursuant to permit condition no. 8 because the unnamed stream is not a source of water for the permit.

### **CONCLUSIONS OF LAW**

1. Beneficial Use Examination Rule 35.02.d. (IDAPA 37.03.02.35.02.d.) provides for the waiver of a measuring device requirement by the Department.

2. Water district no. 65 regulates surface water diversions from the Payette River drainage basin and its tributaries. Because the permit did not develop a surface water source, this permit is not subject to water district no. 65 regulation at this time.

3. Water was not developed from the unnamed stream. Therefore, permit condition of approval nos. 8 and 9 are no longer applicable.

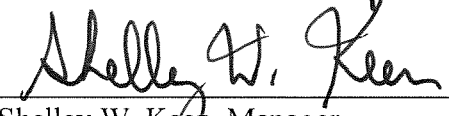
### **ORDER**

IT IS, HEREBY ORDERED that condition of approval no. 8 requiring the installation of a measuring device for permit no. 65-13738 is **MODIFIED** as follows:

**When notified by the Department, the right holder shall install and maintain a measuring device and lockable controlling works of a type acceptable to the Department as part of the diverting works.**

IT IS, FURTHER HEREBY ORDERED that condition of approval no. 9 of permit no. 65-13738 is **DELETED**.

Dated this 10<sup>th</sup> day of April, 2012.

  
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Shelley W. Keen, Manager  
Water Right Permits Section