

BEFORE THE DEPARTMENT OF WATER RESOURCES  
OF THE STATE OF IDAHO

|                                       |                                  |
|---------------------------------------|----------------------------------|
| IN THE MATTER OF PERMIT NO. 37-7033 ) | <b>ORDER MODIFYING MEASURING</b> |
| IN THE NAME OF 4 BROS DAIRY INC )     | <b>DEVICE REQUIREMENT</b>        |
| _____)                                |                                  |

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

**FINDINGS OF FACT**

1. On November 19, 1968, the Department issued permit 37-7033 (permit) to Jack B. Witherspoon with a condition of approval that states:

**The applicant shall permanently install a measuring device of a type approved by the department as part of the diverting works.**

2. On November 1, 1973, permit 37-7033 lapsed because the Department had not received proof of beneficial use or a request for extension of time from the permit holder.

3. On July, 5, 1988, proof of beneficial use was received by the Department with evidence to confirm that water has been put to beneficial use during the authorized development period. The beneficial use statement incorrectly stated that a measuring device was not required.

4. On December 12, 1988, permit 37-7033 was reinstated with the priority date advanced to July 5, 1988.

5. On July 6, 1993 and on October 21, 1993, Department staff conducted a field examination to verify the water use established in connection with the permit. The examination report did not state if a measuring device had or had not been installed.

6. On September 30, 2011, Department staff confirmed with the watermaster of water district 130, by electronic mail (email), that a measuring device had not been installed. The watermaster stated in the email that she would support changing the measuring device requirement to allow for use of power records to meet the measuring device requirements.

**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.

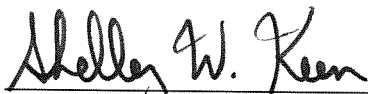
2. Installation of a measuring device is not necessary for administration of the diversion of water by the holder of permit 37-7033 at this time, but it may be necessary in the future.

### ORDER

IT IS, THEREFORE, HEREBY ORDERED that the condition of approval requiring the permanent installation of a measuring device as part of the diversion works for the permit is **MODIFIED** as follows:

**The right holder shall install and maintain an acceptable measuring device at the authorized point of diversion in accordance with Department specifications, or shall obtain an approved variance from the Department to determine the amount of water diverted from power records or to maintain an existing measuring device.**

Dated this 5<sup>th</sup> day of October, 2011.

A handwritten signature in black ink, reading "Shelley W. Keen". The signature is written in a cursive style with a horizontal line underneath.

Shelley W. Keen, Manager  
Water Right Permits Section