

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF PERMIT NO. 45-7659) **ORDER MODIFYING MEASURING**
IN THE NAME OF FRANK GILLETTE) **AND LOCKABLE DEVICE**
_____) **REQUIREMENT**

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

FINDINGS OF FACT

1. On May 29, 1991, the Department issued Permit 45-7659 (permit) to Frank Gillette (permit holder) to develop a right to divert 1.22 cfs from springs tributary to Marsh Creek for stockwater and irrigation purposes within Cassia County. The permitted place of use is within water district no. 45F, Marsh Creek. Condition of approval #5 of the permit states:

A measuring device and lockable controlling works of a type acceptable to the Department shall be permanently installed and maintained as part of the diverting works prior to diversion of water under this permit.

2. On June 14, 1993, the Department received the Proof of Beneficial Use statement (proof) for the permit.

3. On August 5, 1999, a Department field examiner reported that the permit holder had used water in connection with the permit. In her report, the field examiner was unclear on whether measuring and lockable devices had been installed as required by condition of approval #5.

4. On April 6, 2011, the Department sent a letter to the permit holder giving him thirty (30) days to notify the Department that he has complied with condition of approval #5 or to request removal of the measuring and lockable device requirement.

5. On April 20, 2011, Department staff had a phone conversation with Kerry Bowen. During the conversation, Mr. Bowen disclosed that he now owns the permitted place of use and that no measuring or lockable devices had been installed as required. Mr. Bowen asked if the device requirement could be deferred for a year while he worked towards complying with condition of approval #5.

6. On May 17, 2011, the Department received an electronic mail (email) from the watermaster for water district no. 45F. In the email, the watermaster notified the Department and Mr. Bowen that water district no. 45F does not actively regulate the area where the permit's point of diversion is located.

CONCLUSIONS OF LAW

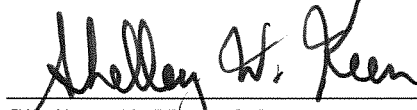
1. Beneficial Use Examination Rule 35.02.d. (IDAPA 37.03.02.35.02.d.) provides for the waiver of a measuring device requirement by the Department.
2. Installation of a measuring device and lockable controlling works is not necessary for administration of the diversion of water by the holder of Permit 45-7659 at this time, but it may be necessary in the future.

ORDER

IT IS, THEREFORE, HEREBY ORDERED that approval condition #5 requiring the permanent installation of a measuring and lockable device as part of the diversion works for the permit 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.

Dated this 13th day of July, 2011.



Shelley W. Keen, Manager
Water Right Permits Section