

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF PERMIT NO. 75-7601	)	
IN THE NAME OF PAT AND JAY HART	)	ORDER MODIFYING MEASURING
	)	DEVICE REQUIREMENT

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

FINDINGS OF FACT

1. On July 1, 2007, the Department issued permit 75-7601 (permit) to Jay and Pat Hart (permit holders).

2. Approval condition no. 4 of the permit reads:

Prior to the diversion and use of water under this approval, the right holder shall install and maintain acceptable measuring device(s), including data logger(s), at the authorized point(s) of diversion, in accordance with Department specifications.

3. On March 31, 2011, the Department notified the permit holder by certified mail that proof of beneficial use was due on or before July 1, 2011, and instructed the permit holder of the steps to be taken to submit the proof of beneficial use.

4. On May 25, 2011, the Department received a proof of beneficial use statement submitted by the permit holder. Included with that statement was a request to waive the measuring device requirement.

5. The *Stipulation and Joint Motion for Order Approving Stipulation and Entry of Partial Decrees*, filed in 2004, on page 5, states, "IDWR will condition each water right permit or license issued after the effective date of this Stipulation for non-de minimis water right upstream from the ending point of the Wild and Scenic River as set forth in this Stipulation to require that each diversion is equipped with lockable controlling works, a measuring device, and a data logger or other suitable device..."

6. The Salmon River was designated a Wild and Scenic River, and new appropriations of water from the Salmon River are subject to the stipulation. The waters of North Fork Salmon River are tributary to the Salmon River and so are also subject to the stipulation's requirements.

7. The Department has not yet established a water district to administer water rights in the North Fork Salmon River.

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.

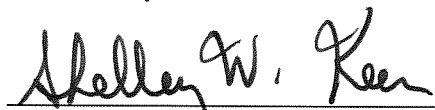
2. Installation of a measuring device is not necessary for administration of the diversion of water under permit 75-7601 at this time, but it may be necessary in the future.

ORDER

IT IS, THEREFORE, HEREBY ORDERED that approval condition no. 4 requiring the permanent installation of a measuring device as part of the diversion works for permit no. 75-7601 is **MODIFIED** as follows:

Upon specific notification by the Department, the right holder shall install and maintain acceptable measuring device(s), including data logger(s), at the authorized point(s) of diversion, in accordance with Department specifications.

Dated this 16th day of June, 2011.



SHELLEY W. KEEN, Manager
Water Rights Section