

BEFORE THE DEPARTMENT OF WATER RESOURCES  
OF THE STATE OF IDAHO

IN THE MATTER OF PERMIT NO. 81-11925 ) **ORDER MODIFYING MEASURING**  
IN THE NAME OF KENNETH & MONA ) **DEVICE REQUIREMENT**  
DUHON )

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 March 17, 2005, the Department issued Permit 81-11925 (permit) to Kenneth and Mona Duhon (permit holders) to divert 0.2 cfs to storage from Big Smith Creek within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ , Section 32, Township 33 North, Range 6 East, B. M., and to store 1.0 acre-foot for Fire Protection Storage and Fire Protection from Storage.

2. Approval condition no. 8 of the permit reads:

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

3. 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..."

4. The Middle Fork Clearwater River was designated a Wild and Scenic River, and new appropriations of water from the Middle Fork Clearwater River are subject to the stipulation. The waters of Big Smith Creek are tributary to the Middle Fork Clearwater River and so are also subject to the stipulation's requirements.

5. On October 20, 2008, a Department field examiner reported that the permit holders were diverting and using water in connection with the permit and that a lockable controlling works had been installed, but condition no. 8 on the permit, which required installation of a measuring device and data logger, had not been met. The examiner also reported that there is no water district in this area and there is no watermaster to regulate diversions.

6. On March 12, 2009, the Department received the permit holders' request to remove the requirement for installation of a measuring device and data logger from permit 81-11978 which shares the same condition as 81-11925 requiring installation of a measuring device and data logger. Water right 81-11978 shares the same point of diversion and diversion works as permit 81-11925.

7. On September 10, 2010, the Department issued an Order Modifying Measuring Device Requirement for 81-11978.

### CONCLUSIONS

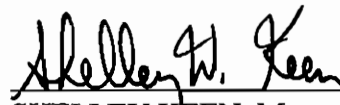
1. No protests or complains have been filed with the Department.
2. The permit holders' request to remove the requirement for installation of a measuring device and data logger from permit 81-11978 can be extended to permit 81-11925 since both rights share the same point of diversion and diversion works.
3. The point of diversion is not currently located within a water district and there is no watermaster to regulate diversions.
4. The installed lockable controlling works provides a means for administration of the diversion of water under Permit No. 81-11925.
5. Installation of a measuring device at this time would not provide any benefit for administration of the diversion of water under Permit No. 81-11925 at this time, but it may be necessary in the future.
6. The Department should modify condition no. 8 on Permit No. 81-11925 to allow for installation of a measuring device and data logger upon notification by the Department.

### ORDER

IT IS, THEREFORE, HEREBY ORDERED that approval condition no. 8 requiring the permanent installation of a measuring device as part of the diversion works for the permit 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 18<sup>th</sup> day of October, 2010.

  
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SHELLEY KEEN, Manager  
Water Rights Section