

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF PERMIT NO. 92-7209) **ORDER GRANTING PETITION**
IN THE NAME OF EMERALD CREEK) **TO REMOVE MEANS OF**
GARNET, CO) **MEASUREMENT REQUIREMENT**
_____)

This matter having come before the Department of Water Resources (Department) as a request to remove a requirement for a means of measurement at all points of diversion which will allow the determination of the total rate of diversion, the Department makes the following Findings of Fact, Conclusions of Law, and Order:

FINDINGS OF FACT

1. On July 12, 1994, the Department issued Permit 92-7208 (permit) to Emerald Creek Garnet, Co. (permit holder) with a condition of approval requiring the permit holder to provide a means of measurement acceptable to the Department at all authorized points of diversion which will allow determination of the total rate of diversion.
2. On February 27, 2009, the Department received the permit holder's petition to waive the permit condition requiring a means of measurement at all authorized points of diversion.
3. On March 3, 2009, the Department's Field Examiner for Permit 92-7209 recommended that the petition be granted because the permit holder uses small portable water pumps with a defined diversion capacity at each authorized point of diversion and because calculation of the total rate of diversion can be accomplished by other means.
4. The diversion and use of water in accordance with the permit is not currently regulated by a watermaster to prevent injury to holders of senior water rights.

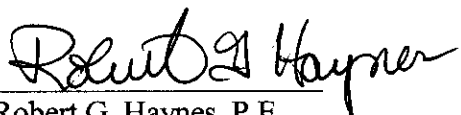
CONCLUSIONS OF LAW

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. The Department should waive the requirement for a means of measurement at all points of diversion which will allow the determination of the total rate of diversion.
3. Installation of a means of measurement at all points of diversion which will allow the determination of the total rate of diversion is not necessary.

ORDER

The condition of approval (condition no. 4), which requires a means of measurement at all points of diversion which will allow the determination of the total rate of diversion, is **WAIVED**.

Dated this 6th day of March, 2009.


Robert G. Haynes, P.E.
Regional Manager, Northern Region