

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF PERMIT NO. 71-7178)	
IN THE NAME OF PATRICK W. LEE)	
AND/OR JOHN T. BROWN)	
_____)	

**ORDER MODIFYING MEASURING
DEVICE REQUIREMENT**

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

FINDINGS OF FACT

1. On June 30, 2006, the Department issued Permit 71-7178 (permit) authorizing Patrick W. Lee and/or John T. Brown (permit holders) to store 5.5 af for wildlife storage purposes on Lost Creek.
2. Approval condition no. 5 of the permit required the permit holders to install a lockable device to allow the watermaster suitable control of the diversion. Approval condition no. 6 required the permit holders to install means to measure the water entering the reservoirs and the amount of water released from the reservoirs.
3. On August 27, 2008, a Department field examiner reported that the permit holders were diverting and using water in connection with the permit, but that the required lockable device and measuring device before and after the reservoirs had not been installed. It was also noted by the field examiner that there was no need to install a measurement device or lockable device on the outflow of the reservoirs, since no water is released from the reservoirs.
4. On November 22, 2008, the Department received photos from the right holder showing a measurement device had been installed on the inflow of the reservoir.
5. Use of water in connection with the permit is regulated by the watermaster of Water district 170. The watermaster does not oppose the removal of the lockable device and measurement device on the outflow, and the use of water in connection with this permit.

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 remove the lockable device and measurement device requirement for the outflow of the reservoirs for Permit 71-7178, and replace it with a requirement that the permit holders maintain a permanent measurement device to allow the amount of water entering the reservoirs to be measured.

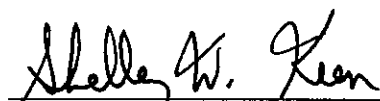
ORDER

Approval condition no. 5 on Permit No. 71-7178 is **WAIVED**.

Approval condition no. 6 on Permit No. 71-7178 is **MODIFIED** as follows:

The right holder shall maintain a permanent measuring device in such a manner that the amount of water entering the reservoir can be measured.

Dated this 5th day of December, 2008.



SHELLEY KEEN, Manager
Water Rights Section