

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF PERMIT)
NO. 63-12550 IN THE NAME)
OF RICHARD PORTER &/OR)
ROBERT HOROWITZ)
_____)

**ORDER REMOVING
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 as follows:

FINDINGS OF FACT

1. On March 24, 2000, the Department issued Permit 63-12550 (permit) to Richard Porter & Robert Horowitz (permit holders) with a condition of approval requiring that a measuring device be permanently installed and maintained where water is discharged to the Boise River. This condition was added to ensure that water diverted under this right is non-consumptive by demonstrating that outflows were equal to inflows.

2. On March 27, 2001, the Department received a proof of beneficial use statement for the permit.

3. On August 23, 2007, the Department conducted a field examination to verify the beneficial use of water developed in connection with the permit. The field examiner reported that a measuring device was not installed at the point of discharge.

4. On September 05, 2007, the Department corresponded with the permit holder and requested information regarding compliance with the condition of approval on the permit.

5. On October 16, 2007, the Department received a request from the permit holder to remove the measuring device condition at the point of discharge from the permit.

6. On October 16, 2007, the Department received a recommendation from the watermaster of Water District No. 63 that the measuring device requirement at the point of discharge be waived for the permit.

CONCLUSIONS OF LAW

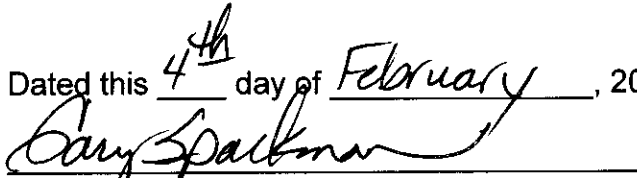
1. Beneficial Use Examination Rule 35.02.d. (IDAPA 37.03.02.35.02.d.) provides for the waiver of measuring device requirements by the Department.

2. At this time, the installation of a measuring device at the point of discharge is not necessary to ensure that the use of water authorized by the permit is non-consumptive.

ORDER

IT IS HEREBY ORDERED that the condition of approval requiring the installation of a measuring device at the point of discharge for Permit 63-12550 is **MODIFIED** as follows:

At such time in the future as the Director determines necessary to protect the prior rights of other users, the Director may require installation of a measuring device at the point of discharge or an alternative procedure to determine the rate of loss within the system, and the right holder may be required to mitigate for all system losses.

Dated this 4th day of February, 2008.

GARY SPACKMAN