

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF PERMIT NO. 37-22354) **ORDER MODIFYING MEASURING**
IN THE NAME OF JUDE P. AND JULIA) **DEVICE REQUIREMENT**
MANDEVILLE DAMASCO TRUST)

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

FINDINGS OF FACT

1. On September 25, 2012, the Department issued Permit 37-22354 (permit) to Jude P. and Julia Mandeville Damasco Trust (permit holder) with a condition of approval requiring the installation of flow measurement devices and lockable controlling works as part of the diverting works. Condition #9 of the Permit provides:

“Prior to diversion of water under this right, the right holder shall install and maintain measuring devices and lockable controlling works of a type acceptable to the Department as part of the diverting works. Measuring devices shall be installed at the location where water is diverted from Indian Creek into the Hiawatha Canal, at the location where water is diverted from the Hiawatha canal for conveyance to the pond, and at the discharge location from the pond.”

2. After a request by the permit holder’s representative, Charles E. Brockway, with supporting documentation, the Department on October 23, 2012 issued “Order Modifying Measuring Device Requirement” (first order). Condition #9 was modified as follows:

“Prior to diversion of water under this right, the right holder shall install and maintain measuring devices and lockable controlling works of a type acceptable to the Department as part of the diverting works. A measuring device with control works shall be installed at the location where water is diverted from the Hiawatha canal for conveyance to the pond. A measuring device shall also be installed and maintained at the location of discharge from the pond. When notified by the Department or the watermaster, the right holder shall install and maintain a measuring device or rated section, subject to approval by the Department, at the mouth of Indian Creek where water from Indian Creek discharges into the Hiawatha Canal.”

3. After a second request by the permit holder’s representative, Charles E. Brockway, with limited documentation, the Department on May 8, 2013 issued “Order Denying Second Request To Modify Measuring Device Requirement” (second order). The second order was based on statements from the Hiawatha Canal Company that the measuring device on the outflow from the pond was necessary to administer the right.

4. On July 24, 2013 the permit holder's representative, Charles E. Brockway, submitted a third request to modify the condition by removing the requirement to measure the outflow from the pond. Included with the request is a letter from the Hiawatha Canal Company that a measuring device at the outflow of the pond is not needed however the Hiawatha Canal Company reserves the right to require a measuring device at the headgate on the canal and at the point where Indian Creek enters the canal.

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 at the outflow from the pond is not necessary for administration of the diversion of water by the holder of Permit 37-22354 at this time, but it may be necessary in the future.

ORDER

Approval condition #9 requiring the permanent installation of a measuring device and lockable controlling works as part of the diversion works for the permit is **MODIFIED** as follows:

Prior to diversion of water under this right, the right holder shall install and maintain a measuring device and lockable controlling works of a type acceptable to the Department as part of the diverting works. A measuring device with control works shall be installed at the location where water is diverted from the Hiawatha canal for conveyance to the pond. When notified by the Department or the watermaster, the right holder shall install and maintain a measuring device or rated section, subject to approval by the Department, at the mouth of Indian Creek where water from Indian Creek discharges into the Hiawatha Canal or at the location of discharge from the pond or both.

Dated this 2nd day of August, 2013



Allen Merritt, PE
Southern Region Manager

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of August, 2013, I mailed a true and correct copy, postage prepaid, of the foregoing **ORDER MODIFYING MEASURING DEVICE REQUIREMENT** to the person(s) listed below:

**Documents Enclosed: Order Modifying Measuring Device Requirement for Permit
No. 37-22354, in the name of Jude P & Julia Mandeville Damasco
Trust**

JUDE P AND JULIA MANDEVILLE DAMASCO TRUST
700 MONTE VISTA WAY
HALF MOON BAY CA 94019

BROCKWAY ENGINEERING PLLC
C/O CHARLES E BROCKWAY
2016 WASHINGTON ST N, STE 4
TWIN FALLS ID 83301

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JAMES P SPECK
PO BOX 987
KETCHUM ID 83340

KEVIN LAKEY, WATERMASTER
WATER DISTRICT 37
107 W 1ST ST
SHOSHONE, ID 83352

A handwritten signature in black ink, reading "Denise Maline", written over a horizontal line.

Denise Maline
Administrative Assistant