

BROCKWAY
ENGINEERING
P.L.L.C.

Hydraulics

Hydrology

Water Resources

July 23, 2013

Mr. Allen Merritt
Idaho Department of Water Resources
1341 Fillmore Street, Suite 200
Twin Falls, ID 83301

RECEIVED
JUL 24 2013
DEPT. OF WATER RESOURCES
SOUTHERN REGION

Re: Petition for Waiver of Measuring Device, Permit 37-22354
By E-Mail, Original to follow by U.S. Mail

Dear Allen:

On March 25, 2013 I requested a waiver of condition No. 9, of approved Permit 37-22354 which requires an approved discharge measuring device be installed at the outlet of the pond. You responded with an order denying the waiver request on May 8, 2013. I believe the basis for denial of the request was a response from the Watermaster District 37 which implied that the Hiawatha Canal Company may require the measuring device for administration of the water rights in the canal. Also, I believe that you conversed with Dave Cropper, President of the Hiawatha Canal Co. who, at that time indicated that the measuring device was necessary.

I have subsequently met with the Hiawatha Canal Co Board of Directors and their consultant, Fritz Haemmerle, to discuss the pond rehabilitation project and explain the plan for operation of the pond and adjacent lateral. I recently received the enclosed letter(s) from Mr. Cropper and from Mr. Haemmerle which, after Board deliberation, indicate that the Hiawatha Canal no longer believes the outflow measuring device is necessary for their operation. As you and I discussed, the Company, in the wintertime, closes the gate in the Hiawatha Canal just below the diversion to the lateral which prevents Indian Creek water from entering the Hiawatha Canal and proceeding on down to the City of Hailey where flooding can occur from ice and lack of capacity. This forces all of the Indian Creek water into the lateral, some of which is diverted from the lateral, passes through the pond, and returns to the lateral upstream of the Buttercup Road culverts. Additional inflow to the pond occurs from a small ditch on the northeast corner of the pond which conveys Hiawatha Canal water through two small ponds on neighboring lots and thence into and through the Damasco pond. The flow in this ditch is not measured. The rehabilitation project planned for the Damasco pond will include lining of the pond after sediment removal which will further reduce any losses. Therefore, measurement of the outflow of the pond will not provide meaningful data for

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the Hiawatha Canal Co nor will it provide a true indication of losses or gains in the pond.

The pond was built by the then current owner of the subdivision in 1974 and has been operated by the lot owners and the Hiawatha Canal Co for some 40 years and the outflow has not been measured.

It appears now that the Hiawatha Canal Company has no need for a measuring device and outflow discharge data would not be useful for documenting operational characteristics of the pond. The installation of a measuring device at the outlet of the Damasco pond will not provide any useful information relative to the adherence to conditions of the permit. The mitigation plan is essentially the dry up of 1.0 acres of irrigated land under water rights 37-297D and 37-20359 which provides 1.3 acre-feet per year for evaporative loss mitigation and decreases the Damasco irrigation diversion from the pond. The mitigation adequacy is verifiable by GIS means. I am therefore, requesting reconsideration of the order of May 8th, 2013 denying the request for a waiver of the pond outflow measuring device requirement under Condition 9 of permit 37-22354.

The Damasco's desire to begin construction on the pond rehabilitation project in August and are requesting a decision on the measuring device waiver to allow completion of the design components. Please contact me if you have further questions.

Sincerely,



Charles E. Brockway P.E., Ph.D.

Encls: Letter from David Cropper
Letter from Fritz Haemmerle

cc: Jude and Julia Damasco
Kevin Lakey, Watermaster District 37

HAEMMERLE & HAEMMERLE, P.L.L.C.

Attorneys & Counselors at Law

Fritz X. Haemmerle
Jennifer L. K. Haemmerle

P. O. Box 1800
Hailey, ID 83333

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DEPT. OF WATER RESOURCES
SOUTHERN REGION

Re: (Revised Letter) Damasco Permit No. 37-22354 (Indian Creek Water Right)

Dear Chuck:

As you know, I represent the Hiawatha Canal Water Users Association of Lateral or Laterals ("Hiawatha Canal" or "Canal"). The purpose of this letter is to convey the Board's understanding and requirements to allow the Damascos to divert their water into, down and out of the Hiawatha Canal.

First, the Board does not believe a measuring device is required. The Board is aware that the Idaho Department of Water Resources (IDWR) has previously required a measuring device at the outflow of the pond, and it has stood by those requirements. The Board has considered this issue and has decided that with respect to the Hiawatha Canal, a measuring device at the outflow of the pond is not needed. However, the Canal reserves the right to require a measuring device at their head gate on the Canal and at the point where Indian Creek enters the Canal.

Second, the Board will require the Damascos to pay an assessment for the Indian Creek which is diverted down the Canal. Under the Canal's by-laws, users pay a pro rata assessment for Canal costs, with a minimum payment of \$50.00 per year. Last year, I believe the Canal's budget was approximately \$12,000.00. There are approximately 65 cfs of water in the Canal. At a per cfs basis, the assessment is about \$184.00 per cfs. For the Damasco's Indian Creek rights, the approximate yearly assessment would be \$138.00.

Finally, the Damasco's right, along with several of the City of Hailey's water rights, are the only rights taken from Indian Creek year around. The City of Hailey diverts Indian Creek water, but the delivery is taken out of a spring complex and is diverted into pipes and then into a large tank. When the City of Hailey's tank is full, overflow water is allowed to discharge into Indian Creek. The Demascos are the only other user who takes water from Indian Creek in the winter months on a regular basis. As the only party who owns a water right in the Canal in the winter months, the Damascos are solely responsible for the maintenance of the Canal from the point Indian Creek enters the Canal until the Damascos' point of diversion from the Canal. Again, it is necessary for the Damascos to maintain the Canal during the non-irrigation season (November 1st through April 14th) because the Canal does not employ anyone to look

Charles E. Brockway, Ph.D., P.E.
July 22, 2013
Page 2

after the Canal during the non-irrigation season. Once the Indian Creek water is diverted out of the Canal, the Canal does not control the water. Any ditch or ditch system which flows from the Canal where the Damasos take their water is not included in the Canal's ditch system. The Canal does not control or claim jurisdiction over these ditches.

In fact, historically, the Hiawatha Canal has only allowed Big Wood River water to be diverted into its Canal, and then only during the irrigation season. No Big Wood River water rights are diverted into the Canal the winter months. This fact is important because the Damasos, as I understand their system, would discharge water out of their pond and into a ditch which leads to the west side of Buttercup Road and along the east side of Northridge Subdivisions. The Hiawatha Canal does not claim jurisdiction over this ditch. The Damasos are going to have to figure out how to discharge water safely in the winter months once the water leaves the pond and goes into the ditch which then goes to the west side of Buttercup Road.

No party has formally assumed the responsibility for the Indian Creek water which flows in the winter months. As you know, water flows out of Indian Creek, but it does not return to any natural channel. Currently, the Indian Creek water runs into a bypass canal located on the west side of Buttercup Road near West Meadow Drive, which is a road located in the Northridge Subdivisions in Hailey. There is potential icing near this diversion, and some party needs to make sure that debris does not clog the diversion structure. As the potential of winter time diversions out of Indian Creek grow, people like the Damasos need to assume control and take responsibility of their diversions and discharges to make sure that water does not harm other property owners. Other entities who might be interested in keeping the bypass structure clean and ice free include the City of Hailey and Blaine County. Perhaps you should contact them about this issue. Please note that this letter has been copied to both entities.

Please feel free to contact me if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "D. L. Cropper", with a long, sweeping horizontal line extending to the right.

David L. Cropper, President
Hiawatha Canal

DLH: dlc
cc: City of Hailey
Blaine County

HIAWATHA CANAL

P.O. Box 1604 • Hailey, ID 83333

July 18, 2013

Charles E. Brockway, Ph.D., P.E.
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2016 Washington St. N., Suite 4
Twin Falls, ID 83301

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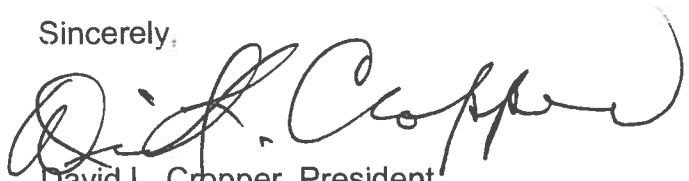
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Sincerely,

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David L. Cropper, President
Hiawatha Canal

DLH: dlc

cc: City of Hailey
Blaine County