

MEMORANDUM

TO: LEE PETERSON, DISTRICT 37 WATERMASTER

FROM: TIM LUKE

THRU: GARY SPACKMAN

DATE: August 20, 1992

RE: DECREED BIG WOOD RIVER BY-PASS RIGHTS

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This memo summarizes our understanding of certain decrees recognizing rights to water which was 'saved and developed' due to construction of the By-pass canal and the By-pass canal extension both located south of Bellevue. This summary follows our review of the decrees and a conference phone call with you concerning delivery of the so called 'saved water rights' given the present priority cuts and low flow conditions of the Big Wood River. The decrees in question are: 1) Upper Big Wood River Water Users' Association, et. al. vs. S.H. Chapman, dated August 28, 1922; and 2) Hughes, et. al. vs. Mans H. Coffin, dated July 18, 1941.

The 1922 Chapman Decree awarded 18 cfs of 'saved water' resulting from the construction of the By-pass Canal to be divided among three parties (see decree for proportionate shares among the three parties). The decree specified that this 18 cfs right has a priority date of September 1, 1920. The 1941 Coffin Decree appears to grant an additional 18 cfs of 'saved water' over and above the 18 cfs granted by the 1922 Chapman Decree. This additional 18 cfs of 'saved water' resulted from the construction of the By-pass extension and was also divided among three parties identified as plaintiffs (see decree for pro-rated shares). The 1941 Coffin Decree specifies that the additional 18 cfs 'saved water' right has a priority date of July 24, 1924.

When we discussed the by-pass situation on July 31, you indicated that there was only 11 cfs of natural flow available in the river at the point of diversion for the by-pass and that the priority cut at that time was somewhere in 1883. You further said that about only 1 cfs was reaching Hadley Stewart and that there were no other diversions on the by-pass between the by-pass headgate and Stewart's point of diversion. This indicates that there was a 10 cfs loss in the by-pass. At this particular low flow, there appears to be no 'saved water' as a result of diverting water through the by-pass.

Stewart holds the early priority rights identified on paragraph 7, page 5 of the Coffin decree. These rights include 1880, 1881 and 1882 priorities. The Coffin decree indicates that the priorities of the Stewart rights are not to be impaired or affected. The

Coffin decree further states that the rights granted under this decree only become effective when water rights in the river with priority of June 15, 1883 are shut off. We interpret this language to mean that the Stewart rights with priority dates before June 15, 1883 must be delivered before any 'saved water' (By-pass or Extension By-pass) can be allocated. Since Stewart was not getting all of his early priority rights delivered then certainly no water could be delivered to the holders of the saved water rights identified in the Coffin and Chapman Decrees. In fact, depending on Stewart's call on his senior rights, further priority cuts on the river may have been necessary.

It is our understanding that despite the rather junior priority dates listed for the saved rights in the Chapman and Coffin decrees, that Water District 37 has traditionally treated the 'saved water' as a source of water independent from the Big Wood River. Both decrees actually state that the 'saved water' is an independent source. As a result, the saved water has been delivered even though 1920 and 1924 natural flow river rights have been cut. We also understand based on conversations with you and your deputy watermaster, Otis Disbennet, that the By-pass saved water is never delivered until the river is considered separated at the dry-beds. Also, the Extension By-pass saved water is not delivered until water is actually in the extension and rights with priority of 6/15/1883 are cut.

Until all the saved water rights are adjudicated in the ongoing Snake River Basin Adjudication, we do not wish to recommend any changes in the way the saved water rights have been administered by the District in the past. However, we do wish to make clear that none of the saved rights should be delivered when the senior priority Stewart rights (i.e.; prior to 6/15/1883) can not be delivered.

If you or district members have questions or comments concerning this matter, please contact us. We realize that the By-pass rights and decrees are complex.

cc: Southern Region