



State of Idaho
DEPARTMENT OF WATER RESOURCES

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CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

July 28, 1994

David Sellgren
PO Box 2810
Sun Valley, ID 83353

Re: Saved Water Rights Pursuant to Chapman and Coffin Decrees

Dear Mr. Sellgren:

I have reviewed the questions from your correspondence of July 22, 1994. Listed below are my responses to your questions. Enclosed are copies of the Chapman and Coffin decrees.

Question No. 1: Is the June 15, 1883 priority mentioned in the Chapman decree?

- The Department's records only include a copy of the order from the Chapman decree (Upper Big Wood River Water Users' Association v. S. H. Chapman, August 28, 1922). Our records do not include any of the findings of fact from this case. The final order contains no reference to the June 15, 1883 priority date that is found in the Coffin Decree (Hughes et. al. v. Mans H. Coffin, July 18, 1941).

Question No. 2: If the June 15, 1883 date is not mentioned in the Chapman decree, how do you arrive at your interpretation that Chapman decree water is affected by the June 15, 1883 cutoff date, or any other date for that matter?

- A careful reading of my memo to Lee Peterson dated August 20, 1992, which is the subject of your inquiry, does seem to imply that the 'saved water' rights under the Chapman decree is affected by the June 15, 1883 priority date referenced in the Coffin decree. Upon review of both the Chapman and Coffin decrees, I believe that the 1883 date applies only to the saved water rights under the Coffin decree.

Question No. 3: Does the Coffin decree mention the Chapman decree of 1922 and change the Chapman water rights and/or obligations?

- The Coffin decree (findings of fact, conclusions of law and order) does mention and describe the Chapman decree of 1922. Based on my reading of the Coffin decree, I do not believe the Chapman decree rights are changed or superseded by the Coffin decree.

Question No. 4: If there is no mention of the 1883 date in the Chapman decree and the Chapman water is independent of the river and is 'saved water', how can any regular river water, e.g. the

Stewart 80, 81, and 82 rights be senior to an independent source?

- It is clear from the Coffin decree that some of the Stewart rights must be delivered along with the delivery of the 18 cfs of saved water under the Coffin decree. In respect to the saved water under the Chapman decree, it seems that this water is delivered whenever the By-Pass canal is operated.

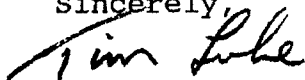
The Chapman decree awarded 18 cfs of water saved and developed by the plaintiff Upper Big Wood Water Users' Association "during the irrigation season of each year when the aforesaid 'By-pass' is operated." The decree further states that the Base Line By-Pass canal "has a capacity of 150 to 200 cfs and is sufficient in size to divert all of the waters of the Big Wood River during its normal flow." Reference to the By-Pass canal in the Coffin decree includes the following:

'In the practical administration of the waters of the Big Wood River, water has been and is turned into the Base Line By-Pass whenever the flow in the river above the dry beds has diminished to the point where the capacity of the by-pass is sufficient to carry the entire flow of the river.

Upon further review of both the Chapman and Coffin decrees, I conclude that 18 cfs of saved water under the Chapman decree is delivered when the flow of the Big Wood River is turned into the Base Line By-Pass. It would seem appropriate that the full 18 cfs is deliverable as long as the By-Pass operates at its 150 to 200 cfs capacity. The Chapman decree does not specifically state when the 18 cfs is not deliverable, or whether any of the 18 cfs is cut back according to the diminishing flow of the river that is turned into the By-Pass. If the natural flow of the river at the By-Pass is only 10 to 20 cfs, as it is now and as it was in early August of 1992, and if there are documented losses within the By-Pass, then obviously no water is being saved and no saved water can be delivered as provided under the Chapman decree.

I hope that these responses have adequately addressed your questions. Please contact me again if you have additional questions or concerns.

Sincerely,



Tim Luke
Water Allocations

cc: Lee Peterson, Watermaster
Otis Disbennet, Deputy Watermaster
Southern Region