

WD 37-2002



State of Idaho

DEPARTMENT OF WATER RESOURCES

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Department of Water Resources

August 6, 2002

Lee Peterson
Watermaster District 37
PO Box P
Shoshone, ID 83352

SUBJECT: "Saved Water" rights on Big Wood River involving Baseline Bypass and Extension Bypass Canals

Dear Lee:

Thank you for meeting with Bill Sherbine, Bill Yager, Tim Luke and me on July 16th to discuss the issues involving "saved water" that was decreed years ago as a result of development of the "Baseline Bypass" and "Extension Bypass" canals. As promised, this letter is in response to the July 16th meeting and subsequent discussions and is intended to augment or clarify past instructions provided by the department to you as watermaster for delivery of these "saved water" rights.

This same subject was addressed in a memo dated 8/20/1992 to you from Tim Luke thru Gary Spackman and in a letter dated 7/24/1994 to Dave Sellgren from Tim Luke. From the discussion on July 16th, it appears there is general agreement when the "saved water" becomes good (deliverable); however, there is not agreement as to when the "save water" is to be curtailed or trimmed back relative to delivery of senior priority rights through the Baseline Bypass and Extension Bypass canals.

This letter provides some explanation and analysis concerning the Chapman and Coffin decree "saved water" rights. Attached to this letter is an Outline of Watermaster Instructions concerning distribution of these rights.

Initiation of "saved water":

As documented in the 1992 memo, it has been the practice that when the flow of the Big Wood River at the head of the Baseline Bypass canal has diminished so that all of the flow can be safely diverted into the Baseline Bypass canal then the river is considered separated. At this time the Chapman decree "saved water" is understood to be deliverable. Similarly the Coffin decree "saved water" is deliverable when the 6/15/1883 priority water rights are completely curtailed under a priority call. This latter interpretation is based on the Coffin decree findings and descriptions of the historic methods of distributing "saved water" from

conversations with you and your deputy, Otis (Tinker) Disbennett. The Coffin decree of 7/18/1941 says: *"It being difficult accurately to fix the time when the flow of the river above and into the Dry Beds becomes an independent source of supply non-tributary to the stream below the Dry Beds, during the existence of prior rights diverted in the Dry Beds the time during any irrigation season when the right herein adjudicated becomes effective shall be deemed to be when water rights in said stream with priority of June 15, 1883 are shut off;...."* This statement supports the practice for initiation of delivery of the Coffin decree "saved water" rights but it has not generally been the element to make the Chapman decree "saved water" rights deliverable. Logically, the Chapman decree "saved water" is only good when water is flowing through the Baseline Bypass canal to make delivery of rights in the "dry beds" or below. Chapman decree "saved water" rights should continue to be initiated upon separation of the river as described above.

It is our understanding from our meeting on July 16 that the June 15, 1883 priority rights were fully curtailed just within the previous day or two of our visit. We agreed that the Coffin decree "saved water" rights were on and that the Chapman "saved rights" had been on since the time that the entire flow of the river was dammed and turned into the Baseline Bypass canal near the Glendale Bridge. We noted also that a significant portion of the flow in the Baseline Bypass continued past the canal heading for the Extension Bypass and was returning to the river (lower portion of the dry beds). We understand that this lower reach of the Baseline Bypass canal that runs westerly toward the river (lower portion of the dry beds) is frequently dammed off and all of the flow is put into the Extension Bypass canal. The lower reach of the Baseline Bypass canal apparently had not been dammed off yet because there was more flow available at this point than could be placed entirely in the Extension Bypass canal. The additional flow returning to the river was being used to satisfy some of the rights senior to 6/15/1883 at Canal 61 and the Wood River Ranches' diversion. I understand from recent discussion with you that the lower reach of the Baseline Bypass canal may soon be dammed off if not already.

Curtailment of "saved water":

The more difficult issue to address is when to curtail delivery of the "saved water".

The Coffin decree findings states that: *"Nothing in these findings or in this decree is intended to impair or affect said priorities through Canal No. 61."* The Coffin decree findings list rights ranging from 7/10/1880 to 10/28/1886 totaling 39.7 cfs at Canal 61. Those senior to 6/15/1883 total 30.2 cfs with priorities ranging from 7/10/1880 to 5/15/1883 at Canal No. 61. The Coffin decree findings also indicate that the capacity of the Extension Bypass is 35 cfs. These Coffin decree findings have been the basis for the 8/20/1992 memo statement that; *"We interpret this language to mean that the Stewart rights (Those at Canal No. 61) with priority dates before June 15, 1883 must be delivered before any "saved water" (By-pass or Extension By-pass) can be allocated."* And *"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."* These instructions still appear to be valid regarding the Coffin decreed "saved water" rights. In other words, the

Coffin decree "saved water" should be curtailed when any of the Canal 61 rights below the Extension Bypass prior to 6/15/1883 are called for and cannot be fully delivered. The capacity of Extension Bypass canal and the amount of water called for at this location are factors that should also be considered when delivering the 18 cfs of the Coffin decreed "saved water" rights. For example, if the capacity or the amount called for at Canal 61 is less than the sum of the priority rights that can be delivered to it then the remaining flow within the Bypass Extension should accrue toward the 18 cfs of "saved water" but delivery of the Coffin "saved water" must be limited to 18 cfs.

As for the Chapman decree "saved water" rights, the statement in the 7/24/1994 letter to Sellgren also appears valid which states: *"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 Bypass."* Logically, if you take the negative of the statement above then "saved water" is **not** good when water is **not** flowing through the Baseline Bypass canal to make delivery of rights in the "dry beds" or below. It is not reasonable to conclude that the most senior rights should be continuously cut in order to deliver "saved water" with a 1920 priority. Similarly, it is not reasonable to conclude that all "saved water" should be continuously cut in order to deliver senior priority rights that may have been cut absent the construction of the "bypass" system. Noting that the Chapman decree is not clear, it appears most appropriate that full delivery of the 18 cfs Chapman "saved water" can only be made to the extent that such savings exist by use of the Baseline Bypass canal in fully delivering the senior priority rights, including those senior rights at Canal No. 61 as well as senior rights delivered to several other diversions on the Baseline Bypass and Extension Bypass canals. Since the Chapman decree lacks clear direction concerning any potential curtailment or reduction of the Chapman "saved water" rights, IDWR believes that an equitable approach for distribution of this "saved water" and the most senior priority rights must be established when flows in the Baseline Bypass are inadequate to provide delivery of water to rights with priorities senior to 6/15/1883. IDWR believes the most equitable approach of distribution during these critical river stages is to proportionately reduce delivery of both the Chapman decree "saved water" and water rights senior to 6/15/1883. IDWR therefore directs the watermaster to proportionately reduce delivery as outlined below.

As we understand your records indicate that in addition to the Canal 61 rights, there is a total of 25.94 cfs of water rights with priorities senior to 6/15/1883 diverted through the Baseline Bypass and Extension Bypass system (including the Baseline Canal, Dittoe Ditch, McGonigle Ditch and the Brown/Blincoe/Wood River Ranches diversions and below). The sum of all the priority rights prior to 6/15/1883 below the heading of the Baseline Bypass is 58.84 cfs. In periods of extreme drought it is known there are times when the most senior priority water rights along the Baseline Bypass/Extension Bypass system and Canal 61 are either partially filled or cannot be satisfied even after turning all the remaining flow of the Baseline Bypass into the Extension Bypass. As stated above the Chapman decree "saved water" rights should be diminished any time the flow at the head of the Baseline Bypass is less than required to fill these senior priority rights off of the Baseline Bypass and Extension Bypass system. For example, if the rights senior to 6/15/1883 which are delivered in the

Baseline Bypass and Extension Bypass system are diminished by 5 cfs then it is equitable that the Chapman decree "saved water" be diminished or curtailed by 8% (5 / 58.84).

Delivery of "saved water" during non-irrigation season

In reading the Chapman decree there appears to be some provision for "winter saved water". This letter is not intended to provide direction for delivery of this water. If called for by the Big Wood Canal Company the department will provide further direction to you if requested after further study of this issue.

Other Issues:

Equally important to the issue of initiating and/or curtailing the "saved water" is how to deliver it to the proper users. As the decrees and your records indicate the largest portion of the "saved water" is in the name of the Upper Big Wood River Water Users Assn. (UBWRWUA). Please note that review of our records finds that UBWRWUA has failed to file claims in the Snake River Basin Adjudication. It is understood that this entity is a shareholder type organization that distributes their water based on shares in the association to their shareholders up and down the Big Wood River. I've been told that in the past UBWRWUA has annually provided a list to the watermaster so that distribution can be made. I understand that the latest list of shareholders was provided by the UBWRWUA in 1994. I understand that updates have been requested by you but have not been provided. You indicate your inspection of the 1994 list reveals numerous holdings are by either people that have died or by people with numerous diversions and you do not currently know where to deliver all of the water. During the July 16th meeting it was evident a dispute exists on whose responsibility (watermaster or association) it is to keep track of the UBWRWUA's shares and where it is to be delivered.

It is a reasonable expectation that it is the responsibility of the UBWRWUA to annually report to the watermaster where it's rights are to be delivered identifying the number of inches at the headgates of its shareholders. If they fail to do so, then the watermaster should refuse delivery. Once identified, the shareholders should then call for water when it is available. If not called for the watermaster should not deliver the water.

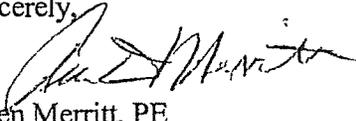
In the past it may have been the practice to rotate blocks of shares though the Big Wood River system above Magic Reservoir. This practice appears inconsistent with the local public interest and statutes requiring transfers. This practice should not continue unless the Department or the SRBA court provides further approval or direction.

These shares cannot be "wild cards" allowed to move at will. The 1969 transfer act requires processing of an application for transfer if a change in use is made of these rights. These rights are not grandfathered from this requirement anymore than any other right existing before 1969. The UBWRWUA should at least annually, but actually anytime a change is made in shareholders, notify the watermaster of the change. If any change of shareholders or change by shareholder results in a change in element of the right [point of

diversion, place of use, nature of use, etc.] an application for transfer is to be filed by the association. The watermaster should not distribute such changes without an approved transfer. Although filing of an SRBA claim at this point in time is not a prerequisite for delivery of the rights, SRBA claims need to be filed to tie down the elements of the "saved water" rights that may be owned by the association. The claims should reflect use in 1987 and if any changes have been made since 1987 appropriate transfers should be considered.

Hopefully this letter provides sufficient direction for your delivery. I expect that these issues may be taken up for further determination by the SRBA court as that process continues. The direction provided under this letter and attached outline should be followed until further direction is provided by the Department or upon further determination by the SRBA court. If you have questions please feel free to contact this office.

Sincerely,



Allen Merritt, PE
Southern Region Manager

Attachment

CC: William Sherbine, 153 Baseline Rd, Bellevue, ID 83313
Harold Drussell, 152 Baseline Rd, Bellevue, ID 83313
Tim Luke and Norm Young – IDWR State Office
Doug Jones – IDWR SRBA
Jo Beeman – 409 W. Jefferson St, Boise, ID 83702