

11/21/2006

NOTICE OF ERROR
REPLY

11/30/2006
DEPARTMENT OF
WATER RESOURCES

Please type or print clearly, fill out this form completely and mail.

Return this reply form to IDWR by the deadline date printed below if you want IDWR to change your recommendation or you want to let IDWR know that you agree with its recommendation.

YOUR DEADLINE FOR RETURNING A NOTICE OF ERROR REPLY IS: 12/13/2006

Water right number: 37-7880

LITTLE WOOD RIVER CANAL CO

PO BOX 212

CAREY ID 83320

Telephone Number: (208)823-4404

LITTLE WOOD RIVER IRRIGATION DIST

PO BOX ~~204~~ 355

CAREY ID 83320

Telephone Number: (208)~~823-4478~~

823 4014

See merger agreement
enclosed -

1. Describe the portion of the proposed recommendation with which you disagree (e.g. priority date, period of use, source):

2. Describe the changes you wish to make in the proposed recommendation:

3. Give a brief explanation as to why you disagree with these portions:

☒ I AGREE with this proposed recommendation: no changes need to be made.

DATE: 11/28/06 SIGNATURE: Kathi Peck Secretary

Please print your name: KATHI PECK

IDWR Regional Office, 322 E Front St
PO Box 83720, Boise, ID 83720-0098, 2082874800

AGREEMENT

THIS AGREEMENT made and entered into this 8th day of March, 2000, at Carey, Blaine County, Idaho, by and between the LITTLE WOOD RIVER IRRIGATION DISTRICT (hereafter "District"), an irrigation district organized and existing under and by virtue of the laws of the State of Idaho, party of the first part, and the LITTLE WOOD RIVER CANAL COMPANY (hereafter "Company"), a corporation organized and existing under the laws of the State of Idaho, party of the second part, the two entities acting by their respective boards of directors and sometimes collectively referred to as the "constituent organizations."

WHEREAS, the District and the Company serve substantially the same lands situated in Blaine County, Idaho, with irrigation water, and

WHEREAS, District is an irrigation district organized and existing under Title 43 of the Laws of the State of Idaho, having been organized on or about February 11, 1935. District's principal office and place of business for the operation of a reservoir for water storage for supplemental irrigation to lands served by the distribution system of the Company is located at Carey, Blaine County, Idaho, and

WHEREAS, Idaho Code 43-304 of the Idaho Irrigation District Law confers upon Little Wood River Irrigation District the power to contract with Little Wood River Canal Company and manage and conduct the business and affairs of the district and make and execute all necessary contracts and do any and every lawful act necessary to be done that sufficient water may be furnished to the lands in the district for irrigation purposes.

WHEREAS, Company is a corporation organized and existing under the Laws of the State of Idaho, having been incorporated on July 10, 1899. Company's resident agent in charge is

Kathi Peck, upon whom legal process against Little Wood River Canal Company may be served in the State of Idaho. Company's principal office and place of business for the operation and maintenance of canals and distribution works for diverting water from Little Wood River for the irrigation of lands lying and being in what is known as the Little Wood River Valley, in Blaine County, Idaho, and its vicinity, and

WHEREAS, Idaho Code 30-1-302 of the Idaho General Corporation Law confers upon Little Wood River Canal Company the power to contract with Little Wood River Irrigation District and do any and all business necessary for that purpose, and

WHEREAS, the Company owns the distribution system for the distribution of natural flow waters from Little Wood River to the shareholders of stock in Little Wood River Canal Company, holders of decrees for natural flow rights from Little Wood River in the area of Carey, Idaho and for the distribution of stored water from Little Wood River Reservoir to land owners within Little Wood River Irrigation District, and

WHEREAS, the respective boards of directors of Little Wood River Irrigation District and Little Wood River Canal Company deem it desirable and in the best interest of the organizations and their stockholders and landowners that the constituent organizations enter into this Agreement.

FOR AND IN CONSIDERATION of the covenants and agreements herein contained, the Little Wood River Irrigation District and Little Wood River Canal Company hereby agree as follows:

(1) That the District assumes and agrees to perform all of the duties and functions heretofore performed by the Company including but not limited to the maintenance operation and repair of all of the diversion works of the Company for the diversion of irrigation and stock water from Little Wood River and all canals, laterals and other structures used in connection with the

delivery of water for irrigation purposes from Little Wood River to the stockholders of the Little Wood River Canal Company, and to assume the obligations of Little Wood River Canal Company to deliver decreed rights in Little Wood River, to the holders of such rights. The District agrees to perpetually maintain the canals, laterals and diversion works in perpetuity and to maintain its records in such a manner as to charge for maintenance and operation assessments upon the persons entitled to receive water therefrom in accordance with the amount of water each person, individual or firm is entitled to receive through the system,

(2) That the Company shall transfer to the District all of its assets and liabilities including but not limited to all diversion works, canals, laterals and rights-of-way, together with all other structures located therein used for and in connection with the diversion and delivery of water from Little Wood River for irrigation purposes, and all of its right, title, and interest in and to the Little Wood River hydroelectric plant located at the base of the Little Wood River Reservoir, together with all of the interest of the Company in all licenses, permits, and contracts pertaining to said hydroelectric plant.

(3) That all real, personal, and mixed property, and all debts due to either of the constituent organizations shall be assumed by and deemed to be transferred to and vested in the District without further act or deed. All property and every other interest shall be as effectually the property of the District as it was of the respective constituent organizations. The title to any real estate or any interest, whether vested by deed or otherwise, in either of the constituent organizations shall not revert to any party or parties other than the District or be in any way impaired by reason of the dissolution. However, all rights of creditors and all liens upon the property of either of the constituent organizations shall be preserved unimpaired. All debts, liabilities, obligations and duties of the respective constituent organizations shall attach to District and may be enforced against it to

the same extent as if the debts, liabilities, obligations and duties had been incurred or contracted by it. Any action or proceeding pending by or against either of the constituent organizations may be prosecuted to judgment as if the dissolution had not taken place, or District may be submitted in place of either of the constituent organizations.

(4) That all water rights of the stockholders of Little Wood River Canal Company shall be unaffected by the transfer of all obligations to the Little Wood River Irrigation District from the Little Wood River Canal Company,

(5) It is recognized that the Company has heretofore been delivering water to persons holding decreed rights in Little Wood River, which persons do not likewise own stock in the Company. The district agrees to assume the obligation of the Company for the delivery of such water in the same manner as has been delivered by the Company. The District assumes and agrees to perform all of the duties and obligations heretofore assumed by the Company in connection with all contracts, agreements and decrees pertaining to the delivery of irrigation water from Little Wood River in Blaine County, Idaho.

(6) That any and all debts for repayment of contract obligations or otherwise of the constituent organizations shall remain unaffected by the transfer of all duties, functions, assets and liabilities from the Little Wood River Canal Company to the Little Wood River Irrigation District. That debts currently borne by the District and its members for repayment of the 1958 Contract with the United States Department of Interior Bureau of Reclamation for enlargement of the dam and reservoir shall not be shared or assumed by Canal Company stockholders or holders of Decreed Rights who heretofore did not share in that debt.

(7) That operation and maintenance costs shall be fairly assessed against Little Wood River Irrigation District landowners and Little Wood River Canal Company stockholders upon

completion of the Agreement in the same manner as operation and maintenance assessments have been assessed by the individual constituent organizations heretofore.

(8) This Agreement, shall be submitted for adoption and approval by the stockholders of each of the constituent organizations held in accordance with applicable state and organizational law. Only upon proper approval of this Agreement by both organizations shall it become binding upon them.

(9) Upon the adoption and approval of this Agreement by the respective shareholders of the constituent organizations, the facts shall be certified on this Agreement and this Agreement shall be signed, acknowledged, filed and recorded in the manner required by law.

(10) The number of directors and director divisions in the District upon the consummation of this Agreement shall be five (5).

(11) It is agreed that upon the approval of this Agreement by the District landowners and by the Stockholders of the Company, the District shall then petition the District Court of the Fifth Judicial District for the confirmation of this contract.

(12) Upon the entry of a decree by the District Court of the Fifth Judicial District of the State of Idaho in and for Blaine County, approving and ratifying this contract, the Company shall at that point effect a dissolution of its corporate charter.

(13) The District's name, identity, existence, purposes, powers, objects, franchises, rights and immunities shall continue unaffected and unimpaired by the Agreement. The corporate identity, existence, purposes, powers, objects, franchises, rights and immunities of Company shall be wholly assumed by District. Accordingly, on the dissolution date the separate existence of Company, except insofar as continued by statute, shall cease.

(14) As stated, Title 43 of the Idaho Code shall govern the surviving organization.

From and after the decree of the Court confirming this Agreement and all its contingencies, this Agreement shall be and become a binding agreement into perpetuity on the District.

(15) From and after the decree of the Court confirming the Agreement the present bylaws of the District except as modified, changed or amended by this Agreement shall be and continue to be the bylaws governing the District. These bylaws may be altered, amended or repealed, or new bylaws adopted, in accordance with law.

(16) If this Agreement is completed and ratified, all expenses incurred in consummating the Agreement shall, except as otherwise agreed in writing between the constituent organizations, be borne by District.

(17) In the event any provision of this Agreement is prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without affecting the remainder of such provision or the remaining provisions of this Agreement which shall continue in full force and effect.

(18) This Agreement constitutes the entire agreement of the parties with respect to the subject matters discussed. No oral or written agreements prior or contemporaneous with this contract are or shall be valid.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first above written.

LITTLE WOOD RIVER IRRIGATION DISTRICT,
Party of the First Part

By Mike Muehan
Mike Muehan Its President

ATTEST:

Kathi Peck
Its Secretary

LITTLE WOOD RIVER CANAL COMPANY,
Party of the Second Part

By Darwin M. Parke
Its President

ATTEST:

Kathi Peck
Its Secretary

STATE OF IDAHO)
) ss.
County of Blaine)

On this 8th day of March, 2000, before me, the undersigned, a Notary Public in and for the said County and State, personally appeared Milo Meckam and Kathi Peck, known to me to be the ^{Vice Chair} President and Secretary of the Little Wood River Irrigation District, an organization that executed the within instrument, and acknowledged to me that such organization executed the same, and Darwin M. Parke and Kathi Peck, known to me to be the President and Secretary of the Little Wood River Canal Company, a corporation that executed the within instrument, and acknowledged to me that such corporation executed the same.

IN WITNESS THEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.



David A. Coleman
NOTARY PUBLIC
Residing at Twin Falls, Idaho
My Commission expires 4-17-2004