

NOTICE OF ERROR
REPLY

Water Right No.: 37-892

Upper Wood River Water Users Association, Inc.
153 Baseline Rd
Bellevue, Idaho 83313
Telephone: 208-731-5114

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JAN 23 2007
DEPARTMENT OF
WATER RESOURCES

1. Describe the portion of the proposed recommendation with which you disagree (e.g., priority date, period of use, source):
Disallowal of claim ("no lawful appropriation shown; insufficient evidence of delivery of the water right")
2. Describe the changes you wish to make in the proposed recommendation:
Claim 37-892 should have been recommended as claimed.
3. Give a brief explanation as to why you disagree with these portions.

(A) This right has been used. The claim is supported by the following IDWR/ Water District 37 records:

1. The Water District 37 decree book for the Big Wood River above Magic Reservoir ("decree book") shows that IDWR and Water District 37 recognized the water rights decreed in the Chapman and Coffin decrees.
2. Internal delivery records, based on the decree book, recognize the split between UWRWUA and private users. The UWRWUA claims are consistent with this recognized split.
3. Water District 37 delivery records have evidence of UWRWUA individual shareholders, showing updates to the shareholder list.
4. Preliminary review of the 1985-1989 bound water master records for Water District 37 show routine delivery of these saved water rights, including delivery to UWRWUA shareholders.
5. 2002-2005 water master records for Water District 37 have a supplemental sheet documenting delivery of saved water.

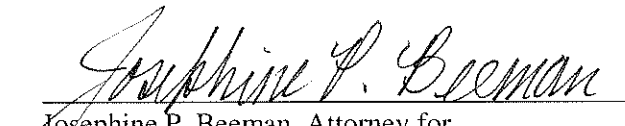
(B) Even if the right had not been used, it is an independent source not subject to forfeiture.

The source of the water right is water savings from constructing, maintaining and operating the Baseline Bypass Canal to circumvent a losing reach of the Big Wood River downstream from Bellevue. The saved water was originally part of the Big Wood water system that was lost, not due to diversion, and is added back into the Big Wood water system; the saved water has a priority independent of the Big Wood water system.

(C) Even if the right were subject to forfeiture, the Peiper decision precludes forfeiture.

Even if the right were subject to forfeiture, Water District 37 documents and attachments to the SRBA claim demonstrate that the bypass canal is used in accordance with the decree to generate the saved water. In accordance with the Peiper decision (Aberdeen-Springfield Canal Co. v. Peiper, 133 Idaho 82), because it is beyond the control of the UWRWUA whether the saved water is used, there can be no forfeiture from actions of the shareholders in the UWRWUA.

DATE: January 19, 2007


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