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May 15, 2024

To: Mayor and Councilmembers, City of Ketchum
Delivered electronically

From: Brian O'Bannon, White Peterson

Re: Warm Springs Preserve Water Rights

The Warm Springs Preserve Master Plan was approved by the City Council in April 2023. The City has partnered with the Wood River Land Trust to implement the Master Plan. The Warm Springs Preserve has three appurtenant water rights:

- Water Right 37-212A, the primary water right, has a priority date of 6/23/1888 and authorizes diversion of 1.12 cfs for irrigation of 27.9 acres between April 15 and October 31.
- Water Right 37-2621 has a priority date of 8/6/1959 and a diversion rate of 0.48 cfs.
- Water Right 37-20381 has a priority date of 11/12/1936 and a diversion rate of 0.50 cfs.

These are "stacked" water rights, which means they are approved for use for the same beneficial use at the same place of use. Together, the water rights are approved for irrigation of up to 27.9 acres and a flow rate of up to 1.12 cfs.

The Master Plan proposes the installation of an updated, more efficient irrigation system that will reduce usage of irrigation water. It is also anticipated that irrigated acreage will be reduced, with only approximately 10.5 acres under irrigation. This means that the water rights will not be put to their full approved beneficial use for irrigation of up to 27.9 acres.

Legal Considerations:

Under I.C. § 42-222(2), a water right that is not applied to the beneficial use for which it was appropriated for a period of five consecutive years may be subject to forfeiture. The Idaho Supreme Court has recognized the concept of partial forfeiture of water rights that are not

applied to their full authorized beneficial use.¹ Thus, the irrigation of only 10.5 acres out of the 27.9 acres authorized under the water rights places these rights at risk of partial forfeiture.

Forfeiture of water rights can be avoided by placing the rights in the state Water Supply Bank during periods of nonuse.² The Wood River Land Trust has proposed placing a portion of the Warm Springs Preserve water rights in the Water Supply Bank for a period of five years to protect these rights against partial forfeiture. The Land Trust's memo and recommendations are attached to this memo. While it is anticipated that the full water rights may be needed temporarily for restoration projects in the future, it would be possible to lease back these rights during periods that the water is needed. This would permit the water rights to be used as needed, while avoiding the possibility of partial forfeiture during periods when the water rights are not fully utilized. Because the water rights are stacked, state regulations require all three water rights to be included in the application.

The proposed lease of water rights to the Water Supply Bank would provide for leasing sufficient water rights to irrigate up to 17.4 acres, the number of acres authorized for irrigation under the water rights but not currently being irrigated. The non-leased portion of the water rights would continue to be used for irrigation at Warm Springs Preserve, including the supplemental water rights (37-2621 and 37-20381) that provide water when Water Right 37-212A is out of priority and undeliverable. This would ensure sufficient water supply to irrigate the 10.5 acres currently being irrigated at Warm Springs Preserve throughout the irrigation season.

Conclusion:

It is recommended that the Resolution authorizing the filing of applications to lease a portion of Water Rights 37-212A, 37-2621, and 37-20381 to the Water Supply Bank be approved.

¹ See *State v. Hagerman Water Rights Owners, Inc.*, 130 Idaho 727, 947 P.2d 400 (1997).

² See I.C. § 42-223(5).

WOOD RIVER LAND TRUST



Federal ID: 82-0474191

Date: June 20, 2023
To: Ketchum City Council
From: Wood River Land Trust
Re: Leasing Unused Portions of the WSP Water Rights

Board of Directors

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Vice Chair:

Bob Ordal

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Sue Orb

Jeff Johnson

Executive Director

Scott Boettger



119 E. Bullion Street
Hailey, Idaho 83333
Phone: 208.788.3947

WoodRiverLandTrust.org

Dear Ketchum City Council,

The local community and conservation organizations are interested in updating the irrigation system and reducing water usage at the Warm Springs Preserve. Three water rights are stacked and have a combined use limitation of 27.9 acres and a combined diversion rate of 1.12 cfs. The primary water right, 37-212A, has a priority date of 6/23/1888 and authorizes diversion of 1.12 cfs from Warm Springs Creek for irrigation of 27.9 acres between April 15 and October 31. The other two water rights, 37-2621 and 37-20381, are supplemental water rights for irrigation at the same place of use. Water right 37-2621 has a priority date of 8/6/1959 and authorizes diversion of 0.48 cfs from three (3) springs to irrigate 24 acres within the 27.9 acre place of use. Water right 37-20381 has a priority date of 11/12/1936 and authorizes diversion of 0.50 cfs from Warm Springs Creek Water **ONLY** when: (1) all other rights diverted from Warm Springs Creek that are senior to November 18, 1987 have been curtailed. The stacked rights and have a combined use limitation of 27.9 acres and a combined diversion rate of 1.12 cfs. According to the previous water master of district 37, 37-212A (1888) and 37-2621 (1959) are valuable because of the amount of water that is allotted. These water rights allow for the irrigation of the entire grassy area to be pulled from sources other than municipal water.

Currently, roughly 10.5 acres is irrigated out of the potential 27.9 acres. Under Idaho law, forfeiture may occur when a water right, in part or in full, is not used for five consecutive years. Several avenues provide means to avoid forfeiture for unused water rights, such as water rights placed in the state water supply bank. The Wood River Land Trust supports placing unused water rights into the water supply bank as soon as possible.

Implementation of the Master Plan will require those water rights be rented back to supplement new plantings for 1-2 years, following restoration. This strategy will mitigate the risk of a third party renting unused water rights for purposes that may not align with the guiding principles of the Preserve.

Thank you for your time and consideration on the matter.

Sincerely,

Cory McCaffrey
River Program Director

Water Right	Rate (CFS)	Volume (AF)	Acres	Rate/Acre	Volume/Acre		
37-212A	1.12	97.7	27.9	0.04	3.5		
37-20381	0.5	97.7	27.9	0.02	3.5		
37-2621	0.48	84	24	0.02	3.5		
Combined Limit	1.12	97.7	27.9	0.04	3.5	Portion	Remaining
Acres Irrigated (Not Leased)	0.42	36.8	10.5			37.63%	62.37%

Portions Remianing

For Lease

37-212A	0.70	60.9	17.4
37-20381	0.31	60.9	17.4
37-2621	0.30	52.4	15.0
Combined Limit	0.70	60.9	17.4

CITY OF KETCHUM
RESOLUTION NO. 24-___

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KETCHUM, BLAINE COUNTY, STATE OF IDAHO, MAKING CERTAIN FINDINGS; AUTHORIZING THE CITY ADMINISTRATOR TO EXECUTE AN APPLICATION TO LEASE CERTAIN WATER RIGHTS TO THE WATER SUPPLY BANK; DIRECTING THE CITY CLERK; AND PROVIDING AN EFFECTIVE DATE.

BE IT RESOLVED by the City Council of the City of Ketchum, Blaine County, State of Idaho:

Section 1. Findings

1. In 2021, the City completed its purchase of the Warm Springs Preserve.
2. As part of the acquisition of the Warm Springs Preserve, the City acquired three water rights appurtenant to the property, which are designated by the Idaho Department of Water Resources as Water Right 37-212A, Water Right 37-2621, and Water Right 37-20381.
3. These water rights are stacked, with Water Right 37-212A as the primary right and Water Rights 37-2621 and 37-20381 as supplemental water rights. Stacked water rights must be used together at the same place of use to accomplish the same beneficial use.
4. In April 2023, the City approved the Warm Springs Preserve Master Plan.
5. The Wood River Land Trust has partnered with the City in implementing the Warm Springs Preserve Master Plan.
6. Under the conservation plan for the Warm Springs Preserve, the Warm Springs Water Rights will not be applied to their full authorized beneficial use for irrigation of 27.9 acres.
7. The Wood River Land Trust expects 10.5 acres of the Warm Springs Preserve to require regular irrigation during the irrigation season.
8. Partial forfeiture of water rights is possible when water rights are not fully utilized for their authorized beneficial use.
9. Partial forfeiture can be avoided by leasing the unused portion of water rights to the Idaho Water Supply Bank.
10. The proposed applications to lease water rights to the Water Supply Bank provide for a lease of portions of the stacked water rights sufficient to irrigate 17.4 acres.
11. It is in the best interests of the City to lease a portion of the Warm Springs Water Rights to the Idaho Water Supply Bank for a period of up to five years to avoid partial forfeiture of the said water rights.

Section 2. Authorizing the Water Division Supervisor

Jade Riley, City Administrator of the City of Ketchum, is hereby authorized to sign applications to lease water rights to the Water Supply Bank on behalf of the City of Ketchum for the purpose of leasing portions of Water Right No. 37-212A, Water Right 37-2621, and Water Right 37-20381 to the Water Supply Bank, and to represent the City of Ketchum in all matters related to said Applications.

Section 3. Directing the City Clerk

The City Clerk is hereby directed to file this Resolution forthwith in the official records of this City.

Section 4. Effective Date

This resolution shall be in full force and effect upon its passage.

PASSED AND ADOPTED by the Council of the City of Ketchum this ____ day of _____, 2024.

ATTEST

Neil Bradshaw, Mayor
City of Ketchum

Trent Donat, City Clerk