

T5010 CUB RIVER IRRIGATION

Eastern

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
TRANSFER OF WATER RIGHT

RECEIVED

NOV 20 1997

TRANSFER NO. 5010
WATER RIGHT NO. 13-00026B

Department of Water Resources
Eastern Region

This is to certify that: **CUB RIVER IRRIGATION CO**
PO BOX 215
LEWISTON UT 84320

has requested a change to the above captioned water right(s). This change in water right(s) is authorized pursuant to the provisions of Section 42-222, Idaho Code, provided the conditions listed below are met.

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>DIVERSION RATE</u>
IRRIGATION	04/15 to 10/15	** 38.36 CFS

<u>SOURCE</u>	<u>TRIBUTARY OF</u>
CUB RIVER	BEAR RIVER

Priority: 04/01/1880

LOCATION OF POINT(S) OF DIVERSION:
NWSE , Sec. 24, Township 15S, Range 40E
NWNE , Sec. 3, Township 16S, Range 40E
FRANKLIN County

PLACE OF USE: IRRIGATION *

TWN RGE SEC

16S 39E 1, 2, 3, 10, 11, 12, 13, 14, 15, 21, 22, 23, 24, 25, 26, 27, 28
FRANKLIN County

CONDITIONS OF APPROVAL AND REMARKS

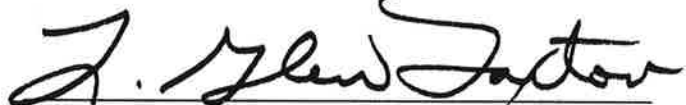
1. A portion of the place of use is located within Sections 35 and 36, T15N, R01W; Sections 1, 2, 3, 11, 12, 13, 14, 15, 22, 23, 24, 25 and 26, T14N, R01W; Sections 3, 4, 5, 6, 7, 8, 9, 10, 15, 16, 17, 18, 19, 20, 21, 28, 29, 30, 31 and 32, T14N, R01E, of the Salt Lake Meridian in Cache County, Utah.
- * 2. Right 13-00026B is limited to the irrigation of 1530.0 acres in the place of use described above in a single irrigation season.
3. Use of water under this water right will be regulated by the watermaster of State Water District No. 13A.
4. Use of water under this right may be affected by an agreement between the protestant and the right holder.

TRANSFER NO. 5010
WATER RIGHT NO. 13-00026B

CONDITIONS OF APPROVAL AND REMARKS

5. The right holder shall accomplish the change authorized by this transfer within one (1) year of the date of this approval.
6. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.
7. Prior to diversion of water under this approval, the right holder shall provide a means of measurement and lockable controlling works from all authorized points of diversion that is acceptable to the watermaster and will provide suitable control of the diversions.
- ** 8. The total instantaneous diversion of water from all points of diversion under Transfer 5010 shall not exceed 38.36 cfs or a total of 134.36 cfs when diversion includes 38% of available high water.
9. This right when combined with all other rights shall provide no more than 3.5 afa per acre at the field headgate for irrigation of the lands above.
10. Approval of Transfer 5010 does not grant any right-of-way or easement for use of a delivery system owned by person(s) other than the right owner.

Dated this 12th day of November, 1997.


Chief, Water Allocation Bureau

MEMORANDUM

TO: FILE 13-00026

FROM: PAM SKAGGS/STATE OFFICE

SUBJECT: TRANSFER 5010

DATE: October 30, 1997

=====

Transfer 5010 adds a point of diversion under a portion of Right 13-00026, splitting the right into parts A & B. The remaining unchanged portion of this right is identified under two pending/protested transfers, 2753 and 3223.

The transfer is proposed by the irrigation company to identify a diversion canal leased from the Preston Whitney Irrigation Company that will allow for more efficient delivery of water to their shareholders. The use of this new ditch was protested and subsequently settled through an agreement of the parties.

Season of use and was adjusted to current standards. Place of use was identified in remarks to include the portion located in Utah. Recommended conditions include measuring devices/lockable controlling works, watermaster control, subject to protest agreement, permissible place of use, total authorized diversion, irrigation overlap, right-of-way and standard transfer conditions.

10. To your knowledge, has any portion of this water right undergone a period of five or more consecutive years of non-use?

No _____ If yes, describe _____

B. DESCRIPTION OF PORTION OF RIGHT BEING TRANSFERRED

(If the entire right is to be changed by the applicant, omit part B and C.)

1. amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)

2. Point(s) of Diversion:

Lot	1/4	1/4	1/4	Sec.	Twp.	Rge.	County	Local name for diversion

3. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	

Total acres _____

C. DESCRIPTION OF UNCHANGED PORTION OF RIGHT (omit if there is no change)

1. amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)

2. Point(s) of Diversion:

Lot	1/4	1/4	1/4	Sec.	Twp.	Rge.	County	Local name for diversion

3. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	

Total acres _____

PART 2

A. DESCRIPTION OF RIGHT AS RECORDED:

Water Right No. 13-00026

STAGE: DECREED

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>DIVERSION RATE</u>
IRRIGATION	04/01 to 10/31	45.00 CFS

<u>SOURCE</u>	<u>TRIBUTARY OF</u>
CUB RIVER	BEAR RIVER

Priority: 04/01/1880

PLACE OF USE: IRRIGATION

<u>TWN</u>	<u>RGE</u>	<u>SEC</u>	<u>ACRES</u>	<u>ACRES</u>	<u>ACRES</u>	<u>TOTAL</u>
16S	39E	1				
		2				
		3				
		10				
		11				
		12				
		13				
		14				
		15				
		21				
		22				
		23				
		24				
		25				
		26				
		27				
		28				

CONDITIONS/REMARKS:

1. P/D, NOT SPECIFIED IN DECREE
P/U, AC IRR=1800, PART OF LAND IS IN UTAH.
2. THIS RT. HAS TWO PROTESTED TRANS. APPLICATIONS PENDING.
3. TRANSFER IS CHANGE P/D FOR 2.5 CFS FROM CUB RIVER TO
BERGQUIST SPRING.

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

RECEIVED
Trans

Transfer No. 5010

JAN 14 1997

APPLICATION FOR TRANSFER OF WATER RIGHT

Department of Water Resources

Eastern District Office

PART 1

COPY

Name of applicant Cub River Irrigation Co. Phone (801) 258-2371

Post Office address P. O. Box 215, Lewiston, Utah

A. PURPOSE OF TRANSFER

1. ☐ Change point of diversion ☒ Add diversion point(s) ☐ Change place of use
☐ Change nature of use ☐ Change period of use ☐ Other _____

2. Describe the reason for the proposed changes Cub River Irrigation Co. is leasing a canal from the Preston Whitney Irrigation Company. This lease will allow us to provide water in a more efficient fashion to our shareholders. See copy of lease - attached to this transfer application.

B. DESCRIPTION OF RIGHT(S) OR PORTION THEREOF, AFTER THE REQUESTED CHANGE

1. Right Number	Priority	Amount (cfs/ac-ft)	Nature of Use	Period of Use
<u>13-00026 B</u>	<u>4/1/1880</u>	<u>~~45.0 cfs~~</u>	<u>irrigation</u>	<u>4/1</u> to <u>10/31</u>
<u> </u>	<u> </u>	<u>38.36 cfs</u>	<u> </u>	<u> </u> to <u> </u>
<u> </u>	<u> </u>	<u> </u>	<u> </u>	<u> </u> to <u> </u>
<u> </u>	<u> </u>	<u> </u>	<u> </u>	<u> </u> to <u> </u>

2. Total amount of water being transferred _____ cubic feet per second and/or _____ acre-feet per annum.

3. Source of water Cub River tributary to Bear River

4. Point(s) of Diversion: See Attachment #2 (lease) $45.0 - 2.5 \text{ cfs} = 42.5 - 4.14 = 38.36 \text{ cfs}$

Lot	¼	¼	¼	Sec.	Twp.	Rge.	County	Local name for diversion
	~~E½~~	~~SW¼~~		5	16S	40E	Franklin	~~middle ditch~~
	NE	NW	NE	3	16S	40E	Franklin	
	NW	NW	SE	24	15S	40E	" "	Middle Ditch

5. Lands irrigated or place of use: See attached Proof Reading Report (Attachment #1)

[illegible]

Total acres 1800

PART 1

6. General Information:

- a. Description of diversion system See attached lease (Attachment #2). Cub River Irrigation will be providing water to some of its shareholders through this new point of diversion. "Middle ditch" is an existing ditch within the Cub River Irrigation place of use.
- b. Are the lands from which you propose to transfer the water right subject to any liens, deeds of trust, mortgages, or contracts? _____ Yes _____ No. If yes, provide a notarized statement from the holder of the lien, deed of trust, mortgage or contract agreeing to the proposed changes.
- c. Describe the affect on the land now irrigated if the place of use is changed pursuant to this transfer:
This is simply adding a new point of diversion. No transfer to new lands is anticipated; this lease simply provides an efficient additional delivery system within our place of use.
- d. Remarks:
Pending transfers #2753 & #3223 use 2.50 cfs & 4.14 cfs to be used for City of Preston. This amount has been deducted from 45 cfs to yield 38.36 cfs for this transfer application.

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

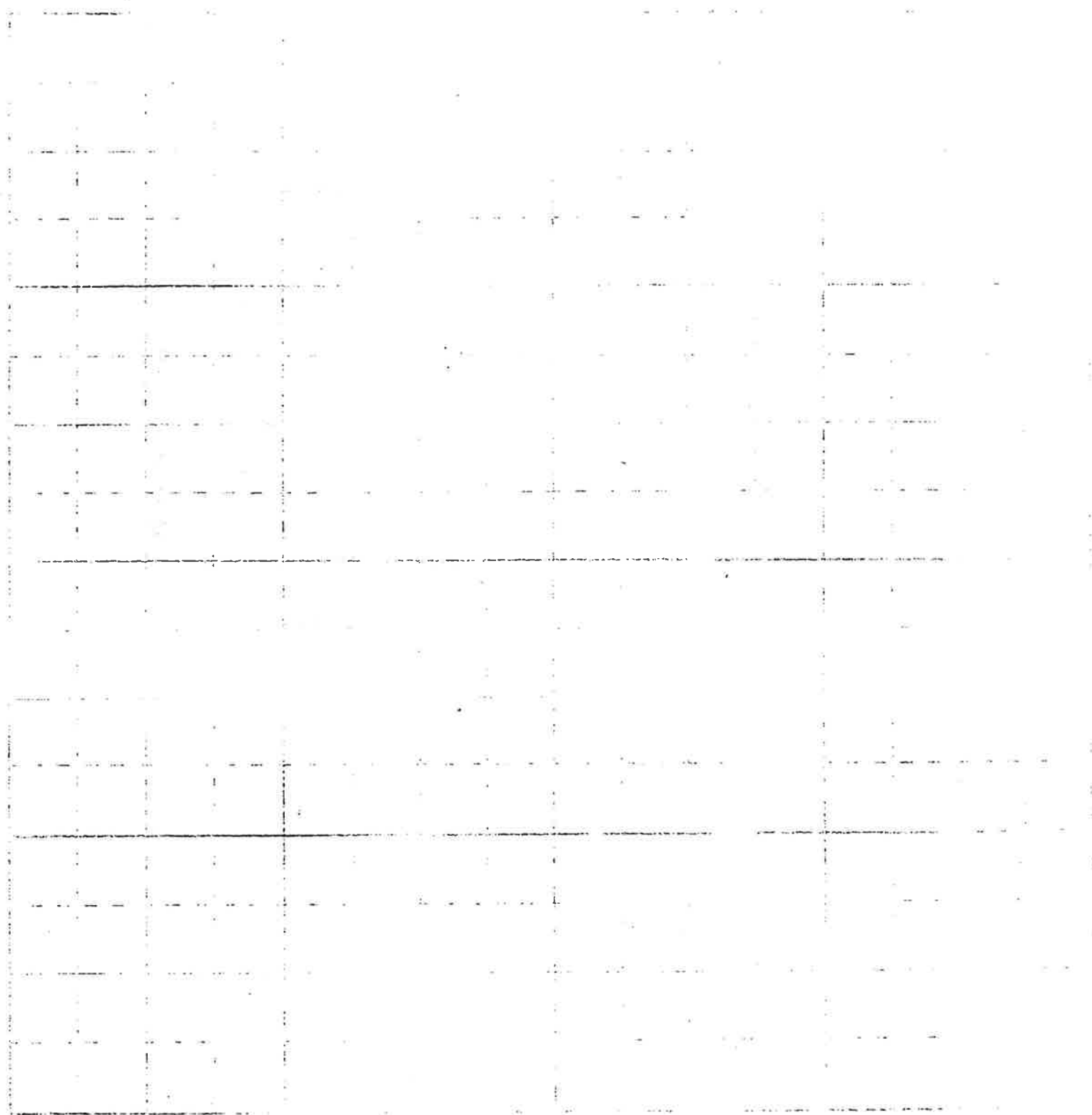
This is to certify that I have examined Application for Transfer of Water Rights No. _____

And said application is hereby _____, subject to the following limitations and conditions:

Witness my hand this _____ day of _____, 19 _____.

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR TRANSFER OF WATER RIGHT
PART 3

- A. Draw a map or attach a USGS map indicating the new point(s) of diversion and/or the new place of use for rights described in part 1. Clearly depict the land by section, township and range number.**



SCALE: 2 inches equal 1 mile. Draw plan in ink.

PART 3**B. CHANGES IN NATURE OF USE**

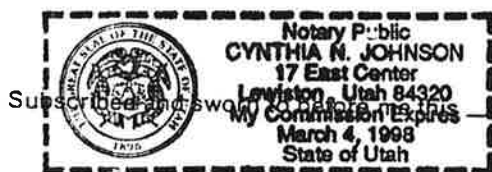
1.

<u>New Nature of Use</u>	<u>Amount (cfs/ac-ft)</u>	<u>Hours/days/year</u>	<u>Period of Use</u>
_____	_____	_____	_____ to _____
_____	_____	_____	_____ to _____
2. Quantity and quality of return flows and location of discharge:

3. Describe effects on other water uses resulting from the proposed change:

I hereby assert that no one will be injured by such change and that the change does not constitute an enlargement in use of the original right. The information contained in this application is true to the best of my knowledge.

I understand that any willful misrepresentations made in this application may result in voiding its approval.



Regan Wheeler
 (Signature of Applicant)
6th day of Jan, 1997

Cynthia N. Johnson
 (Notary Public)

My commission expires 3-4-98

FOR DEPARTMENT USE ONLY

Transfer contains 6 pages and 3 attachments

Received by HWT Date 1-14-97 Protest filed by _____

Prelim. check by _____ Fee \$100

Received by HWT #E022890 Date 1-15-97

Published in Preston Citizen & statewide

Pub. dates Feb 27 & March 6, 1997

Copies of protest forwarded by _____

Hearing held by _____ Date _____

Watermaster recommendation requested on Feb 20, 1997

Water Dist 13A, Cub River

Recommended for ☐ approval ☐ denial

Troy Foster rec'd. _____ by _____

Copy of transfer sent to lien holder _____

Water Right Number - T13-00026

Prefix Translation: TRANSFER

Old (D) Number -

+ - - - - Last Name - - - - + + - First Name - - + + - - - - - Address - - - - - +

*** O - ORIGINAL OWNER ***

CUB RIVER IRRIGATION CO

1 - PO BOX 215

2 -

3 -

City- LEWISTON

State- UT Zip-

Phone - 801-258-2371

+ - - Priority Date - - + + - - Region - - - + + - - Stage - - - + + - - Status - - - +
04/01/1880 15 EASTERN D - DECREED+ - - - - Source - - - - - + + - - - - Tributary - - - - - +
CUB RIVER BEAR RIVER+ - - - - Point of Diversion - - - - - +
Twn Rng Sec Tract Lot RFlg County Diversion Name Diversion Rate Diversion No.15S 40E 24 NW NW SE (41) FRANKLIN MIDDLE DITCH
16S 40E 3 NE NW NE (41) FRANKLIN+ - - - - Water Use - - - - - +
Code Description Period From Period To Diversion Rate Diversion Volume

01 - IRRIGATION 04/01 10/31 38.360

+ - Total Div. Rate - + + - Total Div. Volume - + + - Total Div. Capacity - +
38.360+ - - - - Place of Use - - - - - +
Twn Rng Sec Tract Lot Acres Code Description County

16S	39E	1				01	IRRIGATION	(41) FRANKLIN
16S	39E	2				01	IRRIGATION	(41) FRANKLIN
16S	39E	3				01	IRRIGATION	(41) FRANKLIN
16S	39E	10				01	IRRIGATION	(41) FRANKLIN
16S	39E	11				01	IRRIGATION	(41) FRANKLIN
16S	39E	12				01	IRRIGATION	(41) FRANKLIN
16S	39E	13				01	IRRIGATION	(41) FRANKLIN
16S	39E	14				01	IRRIGATION	(41) FRANKLIN
16S	39E	15				01	IRRIGATION	(41) FRANKLIN
16S	39E	21				01	IRRIGATION	(41) FRANKLIN
16S	39E	22				01	IRRIGATION	(41) FRANKLIN
16S	39E	23				01	IRRIGATION	(41) FRANKLIN
16S	39E	24				01	IRRIGATION	(41) FRANKLIN
16S	39E	25				01	IRRIGATION	(41) FRANKLIN
16S	39E	26				01	IRRIGATION	(41) FRANKLIN
16S	39E	27				01	IRRIGATION	(41) FRANKLIN
16S	39E	28				01	IRRIGATION	(41) FRANKLIN

+ - - Diversion Means -

+ - - Non-Irrigation Use -

Prefix Translation: TRANSFER

+ Remarks +

+-----Old Water Right Numbers-----+

+ - - - - - Conditions of Approval - - - - - +

+ - - - Decree Plaintiff - - - + + - - - Decree Defendant - - - + + - Decree Date - +

07/09/1924

+ -Comments- +

+ - - Audit Fields - 02/19/97 RBODELL

+ - - - - - Water Rights Dates and Flags Area - - - - - +

Proof Due Date	-	00/00/0000	Field Exam Made	-	00/00/0000	Field Exam Fee	-	
Approved/Denied	-	00/00/0000	Protested Date	-	12/07/1982	Swan Falls	-	
Proof Made Date	-	00/00/0000	Hearing Date	-	00/00/0000	Temporary Right	-	P
Exam to S.O. Date	-	00/00/0000	Verified Date	-	04/11/1986	DLE/Carey Act	-	
Order Show Cause	-	00/00/0000	Receipt Number	-		Water District	-	13A
Licensed Date	-	00/00/0000	Appl Received	-	00/00/0000	Transfer/Amended	-	C
Decree Date	-	07/09/1924	Name Connector	-		POU Ownership Flag	-	
Presumption Flag	-							

ATTACHMENT #1

WR5808NP
(00-26)

IDAHO DEPARTMENT OF WATER RESOURCES
WATER RIGHT PROOF READING REPORT

01/28/93 13:51:55
Page 1

Water Right Number - 13-00026

Prefix Translation: WATER RIGHT

Old (D) Number -

+ - - - - Last Name - - - - +

+ - First Name - - +

+ - - - - Address - - - - - +

*** C - CURRENT OWNER ***
CUB RIVER IRRIGATION CO

1 -

2 -

3 -

City-

Phone -

State-

Zip-

+ - - Priority Date - - +
04/01/1880

+ - - Region - - - +
15 EASTERN

+ - - Stage - - - +
D - DECREED

+ - - Status - - - +

+ - - Source - - - - - +
CUB RIVER

+ - - Tributary - - - - - +
BEAR RIVER

+ - - Point of Diversion - - - - - +
Twn Rng Sec Tract Lot RFlg County Stream Index (Blank if no Index Code)

+ - - Code Description Period From Water Use Period To Diversion Rate Diversion Volume
01 - IRRIGATION 04/01 10/31 45.000

+ - Total Div. Rate - + 45.000
+ - Total Div. Volume - +
+ - Total Div. Capacity - +

Twn	Rng	Sec	Tract	Lot	Acres	Place of Use Code	Description	County
16S	39E	1				01	IRRIGATION	(41) FRANKLIN
16S	39E	2				01	IRRIGATION	(41) FRANKLIN
16S	39E	3				01	IRRIGATION	(41) FRANKLIN
16S	39E	10				01	IRRIGATION	(41) FRANKLIN
16S	39E	11				01	IRRIGATION	(41) FRANKLIN
16S	39E	12				01	IRRIGATION	(41) FRANKLIN
16S	39E	13				01	IRRIGATION	(41) FRANKLIN
16S	39E	14				01	IRRIGATION	(41) FRANKLIN
16S	39E	15				01	IRRIGATION	(41) FRANKLIN
16S	39E	21				01	IRRIGATION	(41) FRANKLIN
16S	39E	22				01	IRRIGATION	(41) FRANKLIN
16S	39E	23				01	IRRIGATION	(41) FRANKLIN
16S	39E	24				01	IRRIGATION	(41) FRANKLIN
16S	39E	25				01	IRRIGATION	(41) FRANKLIN
16S	39E	26				01	IRRIGATION	(41) FRANKLIN
16S	39E	27				01	IRRIGATION	(41) FRANKLIN
16S	39E	28				01	IRRIGATION	(41) FRANKLIN

+ - - Diversion Means -

+ - - Non-Irrigation Use -

+ - - Other Rights for Same Use -

☐ Sign Here
☐ Initial Here
☐ Notarize Here
☐ Return

Post-It[®] signature request pad 7669

WR5808NP
(00-26)IDAHO DEPARTMENT OF WATER RESOURCES
WATER RIGHT PROOF READING REPORT01/28/93 13:51:55
Page 2

Water right number - 13-00026

Prefix Translation: WATER RIGHT

+ - - - - - Remarks - - - - - +
P/D, NOT SPECIFIED IN DECREE
P/U, AC IRR=1800, PART OF LAND IS IN UTAH.
THIS RT. HAS TWO PROTESTED TRANS. APPLICATIONS PENDING.
TRANSFER IS CHANGE P/D FOR 2.5 CFS FROM CUB RIVER TO
BERGQUIST SPRING.

+ - - - - - Old Water Right Numbers - - - - - +
No Old Water Right Numbers found.

+ - - - - - Conditions of Approval - - - - - +
No Conditions of Approval found.

+ - - - - Decree Plaintiff - - - +
HENRY T. MCEWAN

+ - - - - Decree Defendant - - - +
FRANKLIN COUNTY SUGAR CO.

+ - - - - Decree Date - +
07/09/1924

+ - - - - Comments - - - - - +
No Comments Found

+ - - Audit Fields - 01/13/88 05/21/88 CONVERT

+ - - - - - Water Rights Dates and Flags Area - - - - - +

Proof Due Date - 00/00/0000	Field Exam Made - 00/00/0000	Field Exam Fee -
Approved/Denied - 00/00/0000	Protested Date - 12/07/1982	Swan Falls -
Proof Made Date - 00/00/0000	Hearing Date - 00/00/0000	Temporary Right - P
Exam to S.O. Date - 00/00/0000	Verified Date - 04/11/1986	DLE/Carey Act -
Order Show Cause - 00/00/0000	Receipt Number -	Water District - 13A
Licensed Date - 00/00/0000	Appl Received - 00/00/0000	Transfer/Amended -
Decree Date - 07/09/1924	Presumption Flag -	

ATTACHMENT #2

CANAL LEASE

This Lease Agreement made and entered into this 26th day of September, 1996, between PRESTON WHITNEY IRRIGATION COMPANY, an Idaho Corporation, (hereinafter LESSOR), and CUB RIVER IRRIGATION COMPANY, an Idaho Corporation, (hereinafter LESSEE).

WHEREAS, the LESSEE is in need of a method of conveying irrigation water to some of its shareholders, which shareholders can be serviced by an existing canal or ditch (hereinafter "Middle Ditch") owned by LESSOR; and

WHEREAS, the number of shareholders of LESSOR using the Middle Ditch are insufficient to make efficient use of its capacity; and

WHEREAS, the cost of maintenance of the Middle Ditch by the LESSOR could be borne by the LESSEE.

NOW, THEREFORE, for and in exchange of the mutual covenants, promises and conditions set forth herein, the parties hereto agree as follows:

1. LEASED PREMISES. LESSOR agrees to lease to LESSEE the diversion works and that portion of the canal known as the Middle Ditch, from the diversion works on Cub River to a point located in the E $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 5, Township 16 South, Range 40 East of the Boise Meridian, more particularly described and marked in green on the map attached hereto and incorporated herein by reference as Exhibit "A".

2. TERM. The term of this lease shall be without time limitation unless terminated by mutual agreement of the parties or by breach of any of the covenants contained herein.

3. CONSIDERATION. LESSEE agrees as consideration for the lease of the diversion works and Middle Ditch to do all maintenance and repairs to said the diversion works and the Middle Ditch in order to maintain the free flow of water in a reasonable and efficient fashion. Further, the LESSEE agrees to convey water to the stockholders of LESSOR who currently use said Middle Ditch in the amounts and in the manner prescribed by LESSOR. LESSEE shall provide the services of LESSEE'S water master to regulate and provide said irrigation water to the LESSOR'S stockholders using the Middle Ditch.

4. EMERGENCY USE BY LESSOR. Should an emergency arise, including but not limited to a canal rupture or an inability to deliver water from LaMont Reservoir to the LESSOR'S stockholders currently using water from the LaMont Reservoir, which circumstances are outside the control of LESSOR, the LESSOR may declare such condition an emergency and shall have the right to the use of the Middle Ditch up to whatever amount is needed in order to convey water to LESSOR'S stockholders who have been deprived of their irrigation water by such emergency until such emergency no longer exists.

5. RIGHT OF ACCESS. LESSEE shall have those same rights of access and use of easements (whether created by use or conveyance) to the Middle Ditch which LESSOR enjoys, in order to regulate water usage, make repairs, maintenance and whatever other tasks necessary to keep the irrigation system of the Middle Ditch operating properly.

6. DECREEED WATER RIGHTS. It is understood between the parties that there exists certain users of the Middle Ditch who have decreed water rights but whom are not stockholders of either LESSOR or LESSEE. The LESSEE agrees not to interfere with their continued use of the Middle Ditch for their decreed water rights

and shall assist in servicing said users of the Middle Ditch in the same fashion as the LESSOR has done in the past.

7. CLEANING AND ENLARGEMENT. Should the Middle Ditch or the diversion works require repair, cleaning out or enlargement, in order to efficiently and properly convey irrigation water, LESSEE shall be responsible for the costs and expense of such projects.

8. INDEMNITY. LESSEE agrees to indemnify and hold harmless the LESSOR from any accidents, damages, claims or other liability which may arise from the LESSEE'S use and maintenance of the Middle Ditch and diversion works.

9. DEFAULT. Should LESSEE breach any of the terms of this agreement, LESSOR may declare the LESSEE to be in default and LESSOR shall give LESSEE written notice of term of this lease which has been breached by LESSEE and LESSEE shall have sixty (60) days from the date said notice is received to correct said default or breach and if such correction is made, the lease shall continue. In the event a default or breach is declared and notice is given but no correction is made by LESSEE within sixty (60) days from the receipt of said notice by LESSEE, LESSOR may declare this lease to be forfeited and retake possession of the property leased hereunder together with any improvements and additions made by LESSEE to the leased premises.

10. ATTORNEYS FEES. Should either party be required to engage the services of an attorney in order to enforce the provisions of this lease, with or without suit, in bankruptcy or appellate courts, the prevailing party shall be entitled to a reasonable attorneys fee for having to enforce the terms of this agreement.

11. MISCELLANEOUS.

(a) The LESSEE may not sublet the leased premises or any part thereof, without the express written consent of LESSOR.

(b) This agreement shall be binding upon the successors and assigns of each of the parties hereto.

(c) Each of the parties represent that each of their respective Board of Directors have passed the necessary approvals, resolutions or other agreements to authorize the execution of this agreement by their representatives who have affixed their signatures hereto.

DATED this 26th day of September, 1996.

PRESTON WHITNEY IRRIGATION COMPANY

By: R. Carl Swannick
President

By: Marianne Stoddards
Secretary

CUB RIVER IRRIGATION COMPANY

By: Dele C. Maer
President

By: May M. Gilbert
Secretary

STATE OF IDAHO)

County of Franklin)

On this 26th day of September, 1996, before me, a Notary Public in and for said State, personally appeared R. Carl Swainston and Maxine Waddoups known or identified to me to be the President and Secretary of the PRESTON WHITNEY IRRIGATION COMPANY that executed the instrument or the persons who executed the instrument on behalf of said PRESTON WHITNEY IRRIGATION COMPANY, and acknowledged to me that such PRESTON WHITNEY IRRIGATION COMPANY executed the same.

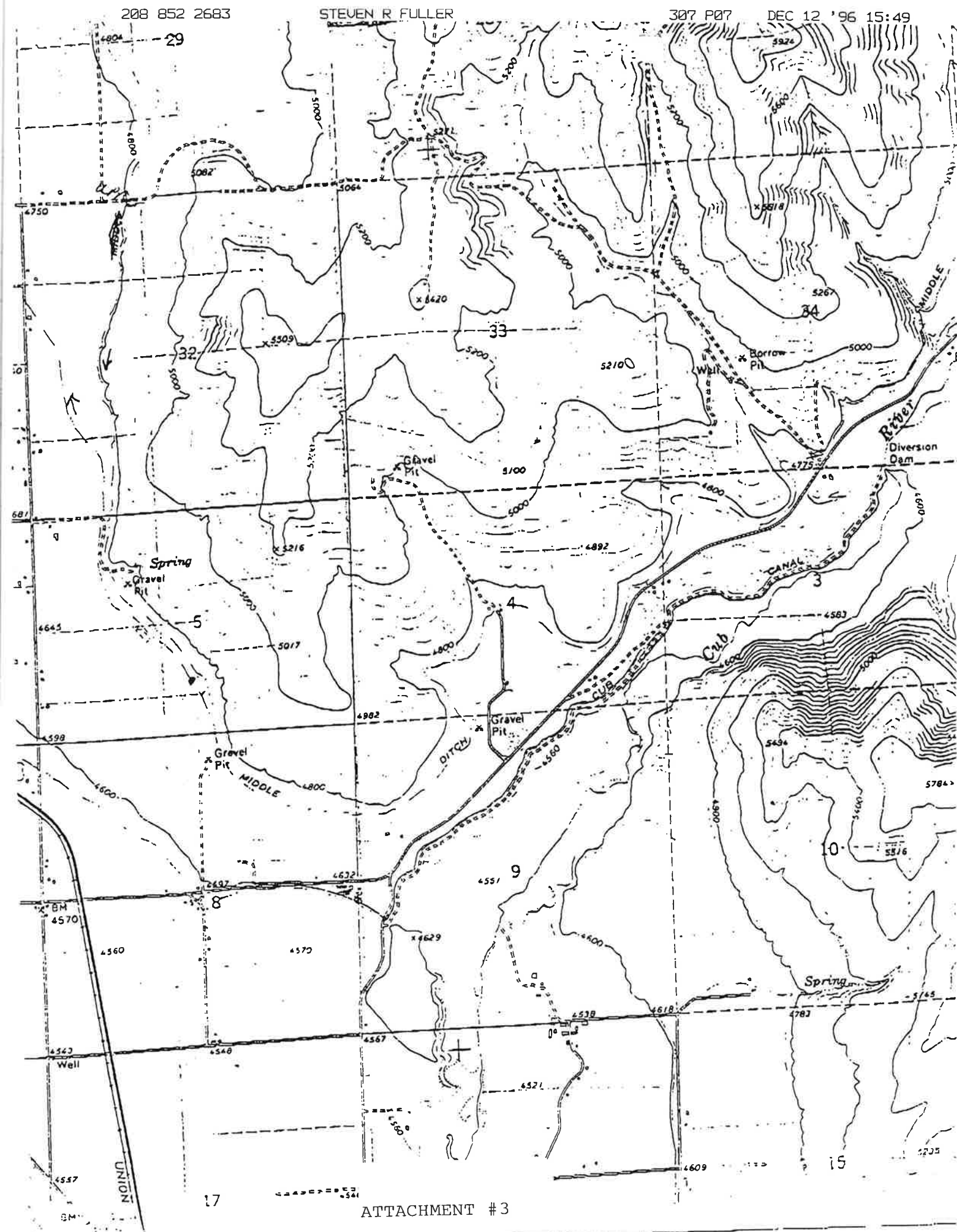
Steven R. Fuller
NOTARY PUBLIC for State of Idaho
Residing at: Preston, ID
Comm. Expires: 2/19/99

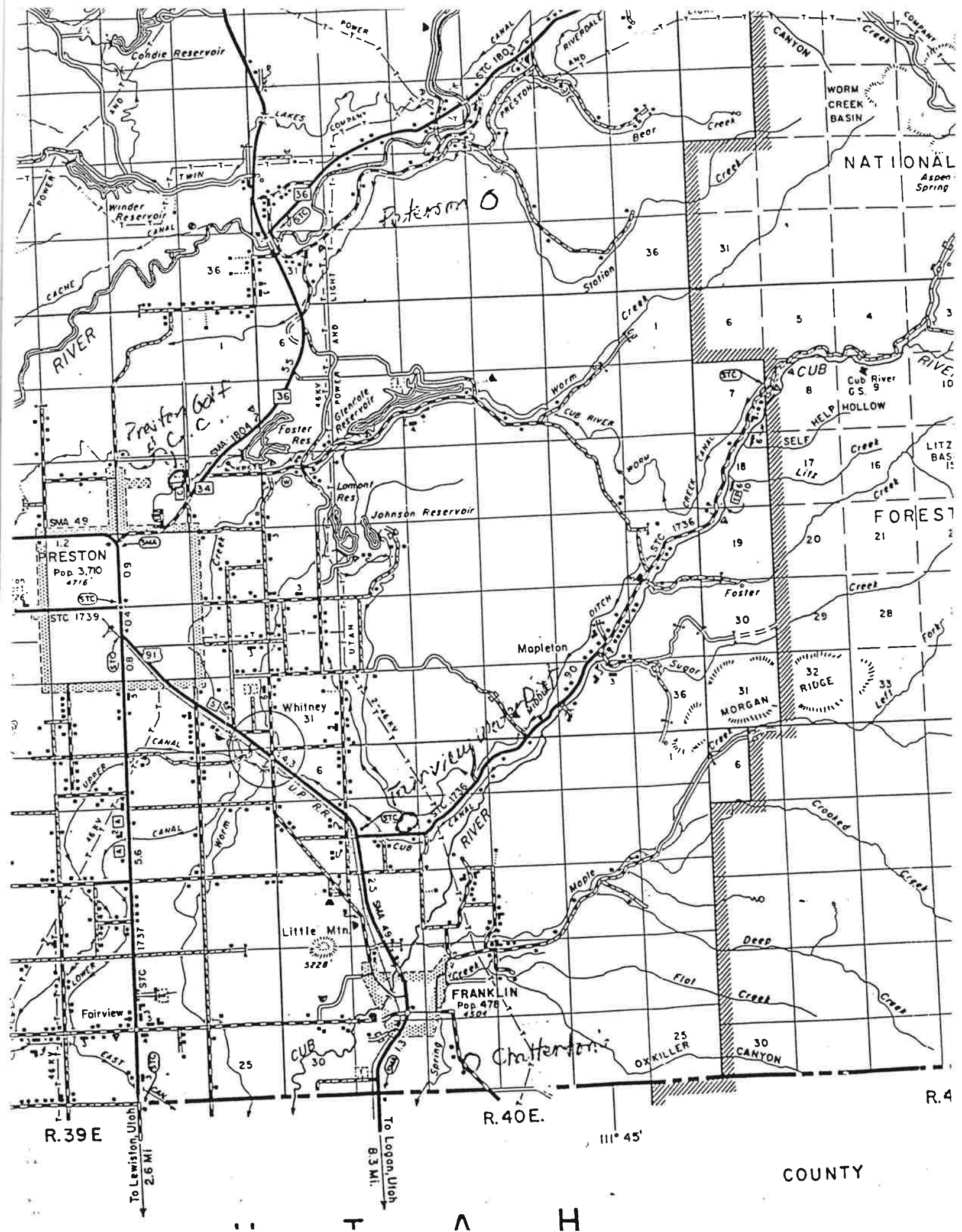
STATE OF IDAHO)

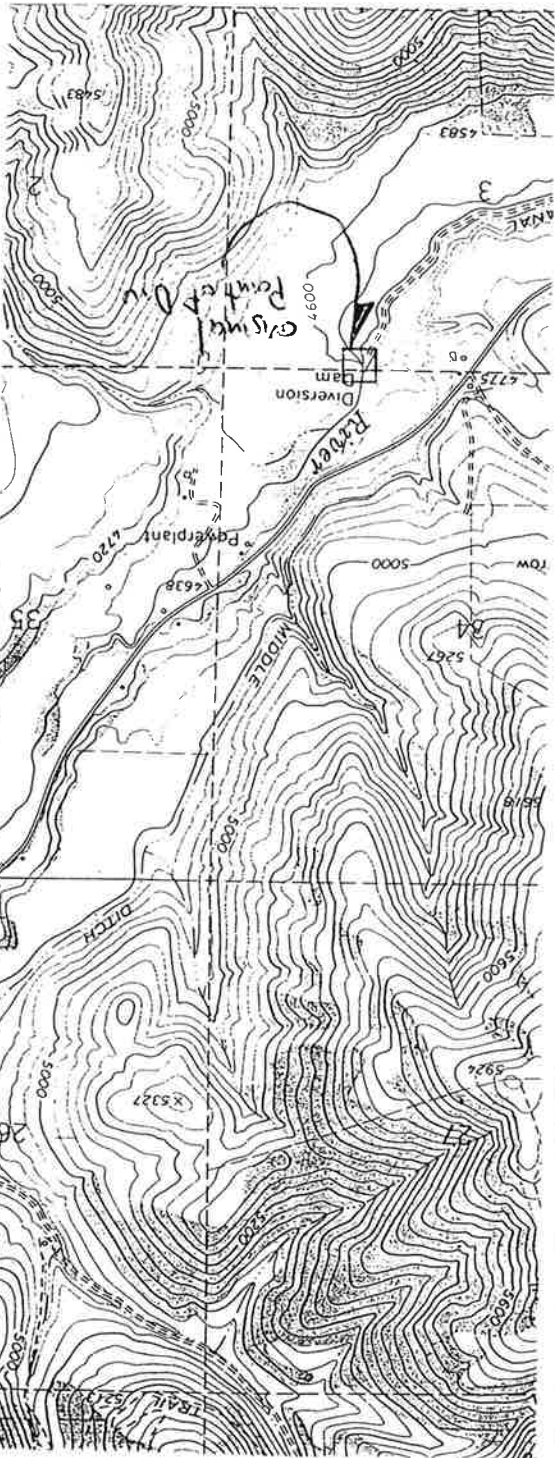
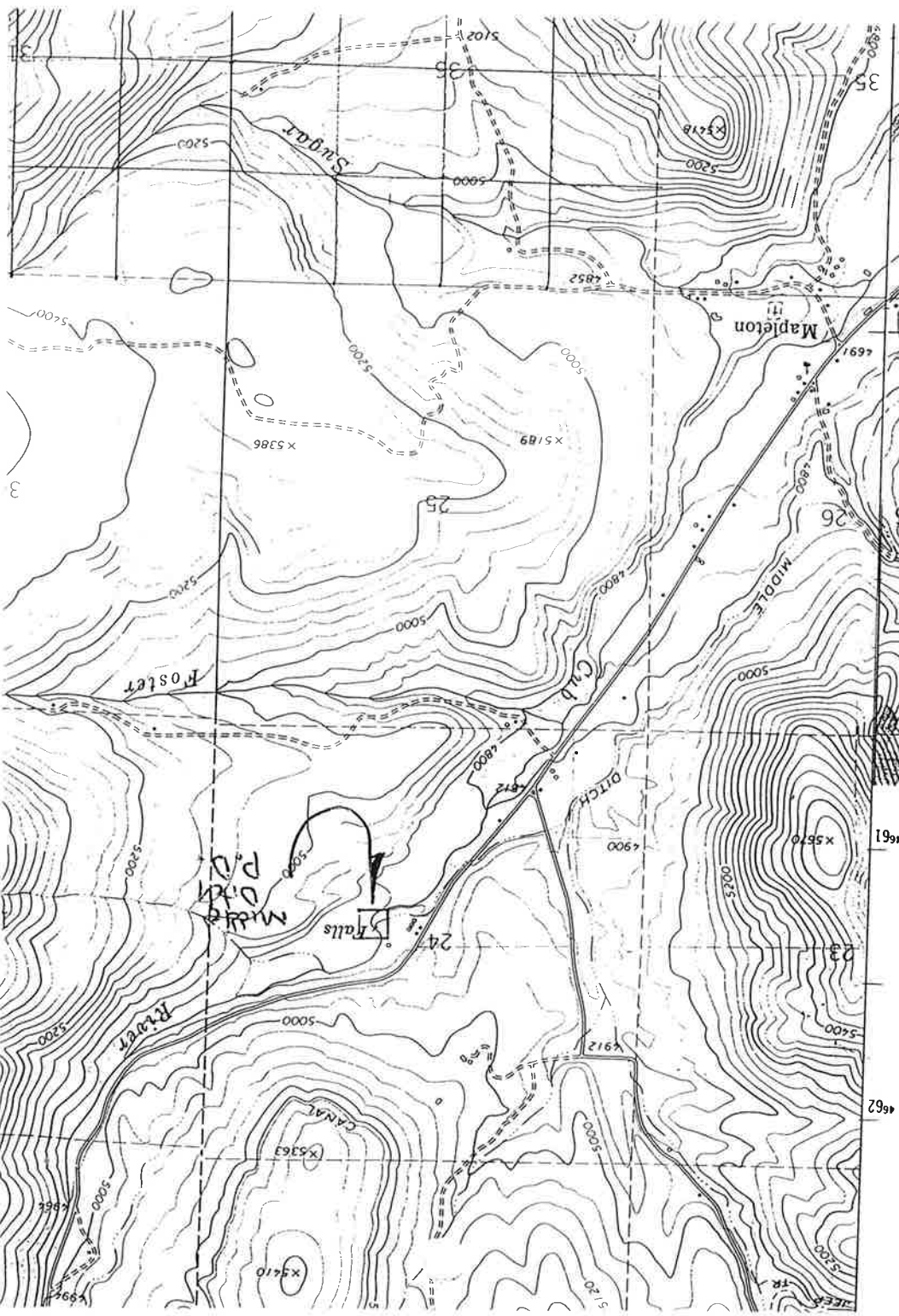
County of Franklin)

On this 26th day of September, 1996, before me, a Notary Public in and for said State, personally appeared ~~R. Carl Swainston~~ Gale C. Moser and Max M. Gilbert, known or identified to me to be the President and Secretary of the CUB RIVER IRRIGATION COMPANY that executed the instrument or the persons who executed the instrument on behalf of said CUB RIVER IRRIGATION COMPANY, and acknowledged to me that such CUB RIVER IRRIGATION COMPANY executed the same.

Steven R. Fuller
NOTARY PUBLIC for State of Idaho
Residing at: Preston, ID
Comm. Expires: 2/19/99







T16S

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15S

R40E



IDAHO FISH & GAME

SOUTHEAST REGION
1345 Barton Road
Pocatello, Idaho 83204-1819

March 13, 1997

Philip E. Batt/Governor
Stephen P. Mealey/Director

Harold W. Jones
Water Right Supervisor
Idaho Department of Water Resources
900 N. Skyline Dr.
Idaho Falls, Idaho 83402-1718

RECEIVED
MAR 13 1997
Department of Water Resources
Eastern Region

Re: Transfer Application 5010 - Cub River Irrigation Company

Dear Skip,

Department personnel have reviewed the application to add a point of diversion to the current Cub River Irrigation Company (CRIC) diversion point, have visited the site with the applicant and a representative of the Preston Whitney Irrigation Company (PWIC) and have some comments. The proposed new point of diversion is the PWIC Middle Ditch. The Cub River supports Bonneville cutthroat trout (BCT) and since the proposed additional diversion point is approximately 4 miles upstream from the existing diversion point, we are concerned with potential adverse impacts to this portion of the river, particularly during low flow periods. During our site visit, Mr. Regan Wheeler of CRIC stated that the upstream diversion would be utilized primarily during high flows to relieve pressure on the lower ditch and would divert no more than 25 cfs of CRIC water. At lower stream flows (less than 60 cfs), CRIC proposes to divert between one third of the total flow and 5 cfs into the Middle Ditch. Under this mode of operation, impacts to BCT habitat should be minimized.

We appreciate the opportunity to review this proposal and provide comments.

Sincerely,

Dexter R. Pitman
Regional Supervisor

DRP/JRL/jrl

cc: Jim Lukens
Tom Lucia
Natural Resources Policy Bureau
Regan Wheeler

MICROFILMED
DEC 08 1997

RECEIVED

MAR 17 1997

Department of Water Resources
Eastern Region

14 March, 1997
J. Reed Long
4768E Cub River Rd
Preston, Id 83263

Letter of Protest

Idaho Dept. of Water Resources
900 North Skyline Dr.
Idaho Falls, ID 83402

Dear Sirs:

This is a letter of protest over the proposed diversion of water by the Cub River irrigation company into the middle ditch as published in the March 5 edition of the Preston Citizen. This letter is late in being filed because I am doing it on behalf of my father, J. Reed Long, who is currently residing in Mexico but will be returning about 1 May. He just received the paper and called me and directed me to file this protest.

The history of this ditch has expanded from a horse-drawn plowed ditch to a ditch that is 9 to 15 feet wide and 3 to 4.5 feet deep. Over the years the canal gets larger and is cut deeper. The canal cuts through our property where we summer cattle. We have never had trouble crossing the canal until last year. The potential additional water the proposal could cause will make crossing the canal impossible for 4-wheelers & trucks we use to check cattle and to spray our range land. It also makes it very difficult for us to cross with our tractors.

Therefore until such time as we have assurances, in writing, that we can cross the canal with our vehicles, or until other means of crossing with these vehicles has been settled, we request this action be denied.

Thank You

David R. Long
David R. Long for
J. Reed Long

MICROFILMED
DEC 08 1997

14 March, 1997
Glen T. Bowman
5887E Cub River Rd
Preston, Id 83263

Letter of Protest
Idaho Dept. of Water Resources
900 North Skyline Dr.
Idaho Falls, ID 83402

RECEIVED

Dept. of Water Resources
Eastern Region

Dear Sirs:

This is a letter of protest over the proposed diversion of water by the Cub River irrigation company into the middle ditch as published in the March 5 edition of the Preston Citizen.

We do not want any increased or possible increase of water in the Middle ditch for the following reasons.

The history of this ditch has expanded from a horse-drawn plowed ditch to a ditch that is 9 to 15 feet wide and 3 to 4.5 feet deep. Additionally the ditch company has contaminated water by spraying and has weakened the existing bank of the canal. The weak spot is just outside the diversion point, before it crosses the Cub River Road. Additionally Cub River is eroding into the area of the bank and we are unsure if the ditch can handle the increased possible water flows.

Water erosion to the ditch bank and bottom of the canal occurs regularly in the area of our property. The ditch runs fast through this area and has a tendency to erode both the banks and bottom of the canal. The ditch company in the past has fixed the problems when it has brought to their attention.

Our understanding is that if there are problems with the Lewiston ditch there would be a dramatic increase flow in the middle ditch. This would cause erosion problems and increase the problems of subbage that we presently experience.

Thank You
Glen T. Bowman
Glen T. Bowman

MICROFILMED
DEC 08 1997

June 1, 1997

Glen T. Bowman
5887 E. Cub River Rd.
Preston, ID 83263

Gary G. Bowman
5924 E. Cub River Rd.
Preston, ID 83263

Idaho Dept. of Water Resources
900 North Skyline Dr.
Idaho Falls, ID 83402

Dear Sirs:

Since our protest over the proposed diversion of water by the Cub River irrigation company, an agreement has been approved of the maintenance through our property with Gale Moser and Max Gilbert of the Cub River Irrigation Company. At this time we withdraw our protest.

Thank You,

Glen T. Bowman
Gary G. Bowman

Glen T. Bowman
Gary G. Bowman

RECEIVED

JUN 13 1997

Department of Water Resources
Eastern Region

MICROFILMED
DEC 08 1997

2 May, 1997
J. Reed Long
4768E Cub River Rd
Preston, Id 83263

Letter of Protest

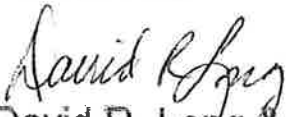
Idaho Dept. of Water Resources
900 North Skyline Dr.
Idaho Falls, ID 83402

Dear Sirs:

Based upon an agreement with the Cub River irrigation company to place a culvert in the canal for us to cross before water is placed in the ditch or within 10 days thereafter we, David and Reed Long, hereby rescind our letter of protest dated 14 March, 1997 over the proposed diversion of water by the Cub River irrigation company into the middle ditch.

If these conditions are met as met forth in the agreement in the specified time frame we have not further protests against this proposal.

Thank You


David R. Long &

J. Reed Long



MICROFILMED
DEC 8 8 1997