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Attorneys for the City of Preston

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

IN THE MATTER OF APPLICATION
FOR TRANSFER NOS. 68302 AND
65886 IN THE NAME OF CITY OF
PRESTON

**CITY OF PRESTON'S PETITION FOR
RECONSIDERATION OF IDWR'S
SEPTEMBER 6, 2012 ORDER
GRANTING REQUEST FOR
HEARING, ORDER DENYING
PETITION FOR RECONSIDERATION,
AND ORDER STAYING
PRELIMINARY ORDERS**

The City of Preston, by and through its attorneys, Beeman & Associates, P.C., respectfully submits the following Petition for Reconsideration of IDWR's September 6, 2012 *Order Granting Request For Hearing, Order Denying Petition For Reconsideration, And Order Staying Preliminary Orders.*

THE CITY OF PRESTON'S AMENDED TRANSFER APPLICATIONS OF DECEMBER 19, 1995 HAVE NEVER BEEN ADVERTISED AND MUST BE ADVERTISED BEFORE IDWR CAN PROCEED TO ANY PRELIMINARY OR FINAL ORDERS

The following findings of fact -- interlineated in bold with the Findings of Fact from the September 6, 2012 IDWR Order -- document the party status of the City of Preston.

FINDINGS OF FACT

New #1 Cub River Irrigation Co. ("Cub River") filed an Application for Transfer No. 65416 (formerly number 2753) ("Cub River 1982 application") on October 28, 1982. The purpose of the application was to change the point of diversion, place of use,

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SEP 24 2012

DEPARTMENT OF
WATER RESOURCES

Attorneys for the City of Preston

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THE CITY OF PRESTON'S AMENDED TRANSFER APPLICATIONS OF DECEMBER 8, 1995 HAVE NEVER BEEN ADVERTISED AND MUST BE ADVERTISED BEFORE IDWR CAN PROCEED TO ANY PRELIMINARY OR FINAL ORDERS

The following findings of fact -- interlineated in **bold** with the Findings of Fact from the September 6, 2012 IDWR Order -- document the party status of the City of Preston.

FINDINGS OF FACT

New #1 **Cub River Irrigation Co. ("Cub River") filed an Application for Transfer No. 65416 (formerly number 2753) ("Cub River 1982 application") on October 28, 1982. The purpose of the application was to change the point of diversion, place of use,**

and nature of use for portions of Water Rights 13-26 and 13-34, because “the City of Preston has purchased Cub River shares and wants to use the flow of Bergquist Springs as the source and use the water for municipal purposes.” Further, “the City of Preston has owned shares in Cub River since 1980 and has used the water for municipal use ever since.” The amount of 2.82 cfs in the transfer represented 65.5 shares of Cub River stock owned by the City of Preston.

New #2 Notice of the Cub River 1982 application was published in the *Preston Citizen* on November 18 and 25, 1982. The Cub River 1982 application was protested by the Idaho Department of Fish & Game and the United States Forest Service. No other protests were received. The notice states, “2.82 cfs of water will be diverted within the NENE Section 10, NWNW Section 11, T15S, R41E, Boise Meridian, Franklin County, and used to irrigate lands within the city limits of Preston, Idaho.”

New #3 The City of Preston filed an Application for Transfer No. 65886 (formerly number 3223) (“Preston 1984 application”) on January 10, 1984. The Preston 1984 application was based on a purchase of water in 1920.

New #4 Notice of the Preston 1984 application was published in the *Preston Citizen* on October 17 and 24, 1985. The Preston 1984 application was protested by the United States Forest Service. The legal notice states, “The City of Preston, Preston, Idaho, has applied to the Department of Water Resources for a change in the point of diversion and period of use of the waters of Cub River . . . evidenced by the decree . . . in the amount of 2.5 cfs for municipal purposes 1/1 to 12/31. . . . The water is used for municipal purposes within the City of Preston.”

New #5 The matter of the protest against the Cub River 1982 application was heard on October 30, 1985, in the Ag Room, Franklin County Courthouse, Preston, Idaho. The hearing on the protest against the Preston 1984 application was heard on December 19, 1985, in the Ag Room, Franklin County Courthouse, Preston, Idaho.

New #6 By letter of September 10, 1986, the United States Forest Service withdrew its protest of “Applications for Transfer of Water Right Nos. 13-26 as submitted by Cub River Irrigation Company for the City of Preston, and 13-26 as submitted by the City of Preston.” The document entitled “Water Right Resolution Between City of Preston, Idaho, and United States of America – USDA Forest Service” was signed by the Forest Service and the Mayor of the City of Preston. In addition, the resolution states, “Both parties agree to recommend to the State of Idaho, Department of Water Resources, that this Water Right Resolution be attached to the subject applications for transfer of water right.”

New #7 By date of February 2, 1995, the Department issued a NOTICE OF PRE-HEARING CONFERENCE for February 24, 1995 in Preston, Idaho, at the Preston City Hall in the Council Chambers IN THE MATTER OF APPLICATION FOR TRANSFER NO. 13-00026 IN THE NAME OF THE CITY OF PRESTON AND CUB RIVER IRRIGATION.

New #8 By date of March 9, 1995, the Department issued a POST PRE-HEARING CONFERENCE ORDER for the Prehearing Conference conducted on FEBRUARY 24, 1995 at the Preston City Hall, Preston, Idaho. The matter was entitled IN THE MATTER OF APPLICATION FOR TRANSFER NO. 2753 (FOR WATER RIGHT NO. 13-00026) IN THE NAME OF CUB RIVER IRRIGATION COMPANY AND APPLICATION FOR TRANSFER NO. 3223 (FOR WATER RIGHT NO. 13-00026) IN THE NAME OF THE CITY OF PRESTON. The Department ordered the City of Preston to amend Application 3223 on or before April 1, 1995, and Cub River Irrigation Co. to amend Application 2753 prior to April 1, 1995. It was further ordered that if the City of Preston and Cub River failed to amend the applications for transfer, a hearing regarding protest against the applications would be set for hearing as soon as possible.

New #9 By date of April 14, 1995, in response to the March 9, 1995 IDWR Post Pre-Hearing Conference Order, the City of Preston submitted the original Transfer Application on Water Right 13-34. In the transmittal letter, the City of Preston states that the only appropriate changes for its pending transfer on Water Right 13-26 is “(1) the season of use should correspond to the irrigation season on the Cub River and not a year round use; and (2) the point of diversion for Bergquist has a typographical error on the second legal description which should be T41E, not T43E. The map attached to the original application confirms the location in T41E.”

New #10 (Old 1.) Pursuant to the March 9, 1995 Post-Prehearing Conference Order, Cub River Irrigation Co. (“Cub River”) filed its Amended Application for Transfer No. 65416 (formerly number 2753) (“Cub River 1995 amended application”) in May of 1995. The purpose of the application was to change the point of diversion, place of use and nature of use for Water Right No. 13-34A and a portion of Water Right No. 13-26A. The transmittal letter with the Cub River 1995 amended application states, “The quantity being transferred represents the City of Preston’s proportionate share of the Cub River water rights commonly known as their ‘summer’ and ‘winter’ water rights based upon . . . shares of stock currently owned by the city.”

New #11 (Old 2.) Notice of the Cub River 1995 amended application was published in the *Preston Citizen* in May and June, 1995. The application was protested by Preston-Whitney Irrigation Company (“Preston-Whitney”). No other protests were received and the Idaho Department of Water Resources (“Department”) did not receive any petitions for intervention in the contested case.

New #12 The City of Preston’s Transfer Application for Water Right 13-34 was advertised April 26 and May 3, 1995 in the *Preston Citizen*. The notice states that this is a water right for the non-irrigation season (11-1 to 3-31), that 2.5 cfs is owned by the City of Preston and is diverted from Bergquist Springs and used within the City limits.

New #13 The November 6, 1995 notice of prehearing conference for Transfer 4596 states that it is to replace the City of Preston’s Transfer Application 3223. The prehearing conference was set for December 12, 1995, at the Pocatello Airport, in

Pocatello, Idaho.

New #14 (Old 3.) The Department scheduled the matter for a pre-hearing conference on December 12, 1995. **This is for the Cub River 1995 amended application for Transfer 65416 (formerly number 2753).**

New #15 By letter of December 8, 1995, the City of Preston fax filed its amended transfers on Water Rights 13-26 and 13-34B. The letter states that the City of Preston will proceed with the December 12 prehearing conference although there would not have been time to accommodate advertising of the amended transfers. The December 8, 1995 letter, amended transfers, and fax confirmations to the parties and IDWR are appended to this Petition.

New #16 The City of Preston's Amended Transfer Applications which were filed with IDWR on December 8, 1995, were never advertised.

New #17 On February 22, 1997, and March 5, 1997, the following legal advertisement was published in the *Preston Citizen* at the request of IDWR (excerpted quotes):

Cub River Irrigation Company . . . has applied the Department of Water Resources to add a point of diversion of the waters of Cub River tributary to Bear River. The right sought to be changed is . . . 13-26 . . . TO BE CHANGED AS FOLLOWS: . . . The total cfs amount that will be diverted at both diversions has been reduced . . . to reflect pending transfers 2753 and 3223 for the City of Preston.

New #18 (Old 4.) On August 31, 1998, a document titled *Agreement among the City of Preston, the Cub River Irrigation Company, and Preston-Whitney Irrigation Company Regarding the Municipal Water Rights for the City of Preston* ("agreement") was submitted to the Department. Preston-Whitney withdrew its protest of the application as part of the agreement. The transmittal letter received by IDWR on August 31, 1998, states that the agreement "affects three pending transfers on the Cub River: 2753 (in the name of the Cub River Irrigation Company), 3223 (in the name of the City of Preston), and 4596 (in the name of the City of Preston)." Further, "As part of the agreement, the City of Preston, the Cub River Irrigation Company, and the Preston-Whitney Irrigation Company agree to support approval of these transfers before the Idaho Department of Water Resources. . . ."

New #19 On October 24, 2001, draft transfer approvals for 4596, 2753, and 3223 were sent to counsel for the City of Preston, Cub River Irrigation Company, and Preston-Whitney Irrigation Company "for comment before the transfers are forwarded for approval." The letter is addressed as "Dear Interested Parties".

New #20 (Old 5.) On November 9, 2001, the Department issued an approval of the application as a preliminary order ("preliminary order"). **Orders of the same date were issued for Transfers 4596, 2753, and 3223.**

New #21 (Old 6.) The preliminary order was served by mail to Cub River on November 13, 2001. **Although the parties (City of Preston, Cub River, Preston-Whitney Irrigation Company) were represented by attorneys throughout these proceedings, none of the attorneys were served with any of the November 9, 2001 preliminary orders.**

New #22 (Old 7.) On November 27, 2001, the City of Preston filed *City of Preston's Petition for Reconsideration* of the preliminary orders **for Transfers 4596, 2753, and 3223**. Cub River did not file a petition for reconsideration, exceptions or a request for hearing to review the preliminary order.

New #23 (Old 8.) On November 28, 2001, the Department granted *City of Preston's Petitions for Reconsideration* to review the issues raised by City of Preston **for all three transfers**.

New #24 (Old 9.) On January 9, 2002, Preston-Whitney filed *Preston-Whitney Irrigation Company's Response to City of Preston's Petitions for Reconsideration*.

New #25 (Old 10.) On February 6, 2001 (sic), Cub River filed a response to *City of Preston's Petition for Reconsideration*.

New #26 By date of February 12, 2002, the City of Preston (through its counsel Jo Beeman) advised IDWR that it had received the responses of Preston-Whitney Irrigation Company and the Cub River Irrigation Company to the City of Preston's Petitions for Reconsideration. Further, the letter explained that although a formal reply is not required for responses to petitions for reconsideration, the City expected that the responses would be included in the City's continuing work with Jeff Peppersack at the IDWR State Office in Boise.

New #27 (Old 11.) On August 13, 2012, the Department issued a preliminary order amending approval of Transfer No. 65416 ("amended preliminary order"). The amended preliminary order was served by mail to Cub River, City of Preston and Preston-Whitney on August 14, 2012.

New #28 (Old 12.) On August 28, 2012, City of Preston filed *City of Preston's Petition for Reconsideration* ("August 28, 2012 petition for reconsideration") of the amended preliminary order. On August 29, 2012, City of Preston filed *City of Preston's Request for Hearing* ("request for hearing"). Cub River did not file a petition for reconsideration or a request for hearing to review the amended preliminary order.

New #29 The IDWR personnel involved in 2012 on these transfers are the same individuals that the City of Preston, Cub River, and Preston-Whitney were working with in 2001 and 2002.

CONCLUSION

The City of Preston's Amended Applications transmitted to the parties and IDWR by fax on December 8, 1995 must be advertised before IDWR can to submit any preliminary or final orders.

The City of Preston respectfully incorporates all of its previous petitions for reconsideration and/or hearing related to the transfers arising from parent rights 13-26 and 13-34.

RESPECTFULLY SUBMITTED this 20th day of September 2012.

BEEMAN & ASSOCIATES, P.C.

By Josephine P. Beeman
Josephine P. Beeman

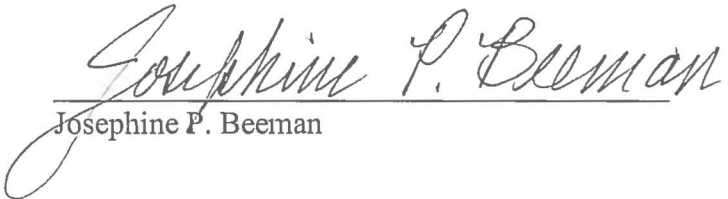
CERTIFICATE OF SERVICE

I certify that this 20th day of September 2012, I caused a true and correct copy of the foregoing document to be served on the following by U.S. Mail.

Robert Harris
Holden Kidwell
1000 Riverwalk Drive, Suite 200
P.O. Box 50130
Idaho Falls, ID 83405-0130

Randy Budge
Racine Olson
201 E Center, Suite A2
PO Box 1391
Pocatello, ID 83204

Jeff Peppersack
IDWR
322 E. Front Street
P. O. Box 83720
Boise, ID 83720-00098



Josephine P. Beeman

December 8, 1995

COPY

VIA FACSIMILE

Attorneys

Josephine P. Beeman
Les Bock
Allan R. Bosch
C. A. Daw
Lee B. Dillion
Dana L. Hofstetter
Robert Wreggelsworth

Mr. Harold Jones
Idaho Department of Water
Resources, Eastern Region
900 N. Skyline Drive
Idaho Falls, ID 83402

Re: City of Preston Amended Application of Transfer
Water Right Nos. 13-00026 and 13-00034B
DBD&B File No. 1777-WA01

Dear Mr. Jones:

This letter is to inform the parties and the Idaho Department of Water Resources that the City of Preston is amending its pending transfers on water rights 13-00026 and 13-00034B. Enclosed are copies of the amended transfer applications. The amendments list additional changes in nature of use (hydropower, irrigation storage, and irrigation) and add as a place of use the City's hydropower plant and the lands within the Preston-Whitney Irrigation Company.

The City of Preston wonders whether the prehearing conference set for December 12 should be rescheduled to accommodate advertising of the amended transfers. However, if the parties wish to proceed with the December 12 prehearing conference, it will be an opportunity to discuss the amendments.

Sincerely,

Dillion, Bosch, Daw & Bock, Chtd.

By:



Josephine P. Beeman

JPB:dc

Enclosure

cc: Kent Foster w/enc. (Via facsimile)
Randy Budge w/enc. (Via facsimile)

E:\1777\AMENDTRN.LTR

Fidelity Building
242 N. 8th St.
Suite 200
Boise, ID 83702

tel (208) 344-8990
fax (208) 344-9140

Internet E-mail to:
dbdb@micron.net

Transfer No. 3223Water Right No. 13-0026STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

AMENDED APPLICATION FOR TRANSFER OF WATER RIGHT

To Change the Point of Diversion and/or the Place of Use

Name of applicant City of Preston, Idaho Phone 842-1817Post Office address City Hall, Preston, ID. 83263

A. DESCRIPTION OF RIGHT AS RECORDED

1. Right evidenced by:

a. Decree No. 13-0026 Decreed to Cub River Irrigation Company
(Name)
in case of Henry T. McEwain vs Franklin Sugar Co.
dated in July 9, 1924 in 5th Judicial Dist. county of Franklin
(Name of court)

b. License No. _____ Issued by the Idaho Department of Water Resources

c. Claim No. _____ on file with the Idaho Department of Water Resources

2. If applicant is not the original holder of this right, explain how it was acquired and attach a copy of the deed
or other evidence of ownership of the land to which the right is appurtenant _____

3. Source of water Cub River tributary to _____4. Date of priority April 1, 1880

5. Water is used for the following purposes: hydropower, irrigation storage, irrigation from storage,
amount 2.5 cfs for municipal and irrigation purposes from April 1 to Oct. 31
amount 1/18 of 45/100 for hydropower, irrigation storage, irrigation from storage purposes from April 1 to Oct. 31
excess water of stream for municipal purposes from April 1 to Oct. 31
amount _____ for _____ purposes from _____ to _____
(month/day — both dates inclusive)

6. Total amount of water under right: a. 2.5 cubic feet per second
&/or
b. _____ acre feet per annum

7. Location of original point of diversion is NOT SPECIFIED 1/4 of Section _____

Township _____ Range _____, B.M., in _____ County

Additional points of diversion, if any _____

8. Lands irrigated or place of use: *Place of use is within city limits of
Preston, Idaho and with contractees of City

TWP.	RANGE	SEC.	NE¼				NW¼				SW¼				SE¼				TOTALS
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
*																			

Total number of acres to be irrigated _____

9. Describe any other water rights used for the same purpose as described above 13-0027;
13-0028

10. To your knowledge, has any portion of this water right undergone a period of five or more consecutive years
of nonuse? No If yes, describe in item D. REMARKS.

B. DESCRIPTION OF PORTION OF RIGHT OWNED BY APPLICANT (If the entire right is owned by the applicant, omit part B).

1. Amount of water: a. 2.5 cfs cubic feet per second
&/or
b. _____ acre feet per annum
2. Point of diversion NOT SPECIFIED 1/4 _____ 1/4, Section _____ Township _____
Range _____, B.M., _____ County

Additional points Water right is per agreement of February 27, 1920.,
a copy of which is attached, between Cub River Irrigation Company
and City of Preston

3. Place of use: * Place of use is within city limits of Preston, Idaho and with contractees of the City. (continued below)

[illegible]

3. (Cont.) Place of use also includes the City's ^{Total number of acres to be irrigated} _____
hydropower plant, the Preston-Whitney Irr. Co. reservoir system and the
lands within the Preston-Whitney Irr. Co. which can be lawfully irrigated

C. DESCRIPTION OF RIGHT OR PORTION THEREOF, AFTER THE REQUESTED CHANGE
under its water rights.

- ## 1. General Information

- a. Amount of water to be diverted 2.5 c.f.s. &/or _____ acre feet
- b. Description of diverting works headgate and city pipeline at Bergquist Springs
- c. Describe the reasons for the proposed changes to establish point of diversion at Bergquist Springs (actual point of diversion for more than 50 years) to facilitate delivery of water to City of Preston for municipal use. Bergquist Springs is tributary to Cub River.

2. Change In point of diversion

Point of diversion NE $\frac{1}{4}$ NE $\frac{1}{4}$, Section 10 Township 15 S.
Range 41 E., B.M., Franklin County

Additional points NW 1/4 NW 1/4, Section 11, Township 15 South,
Range 43 East, B.M., Franklin County - point of diversion is
known as Bergquist Springs.

- ### 3. Change In place of use

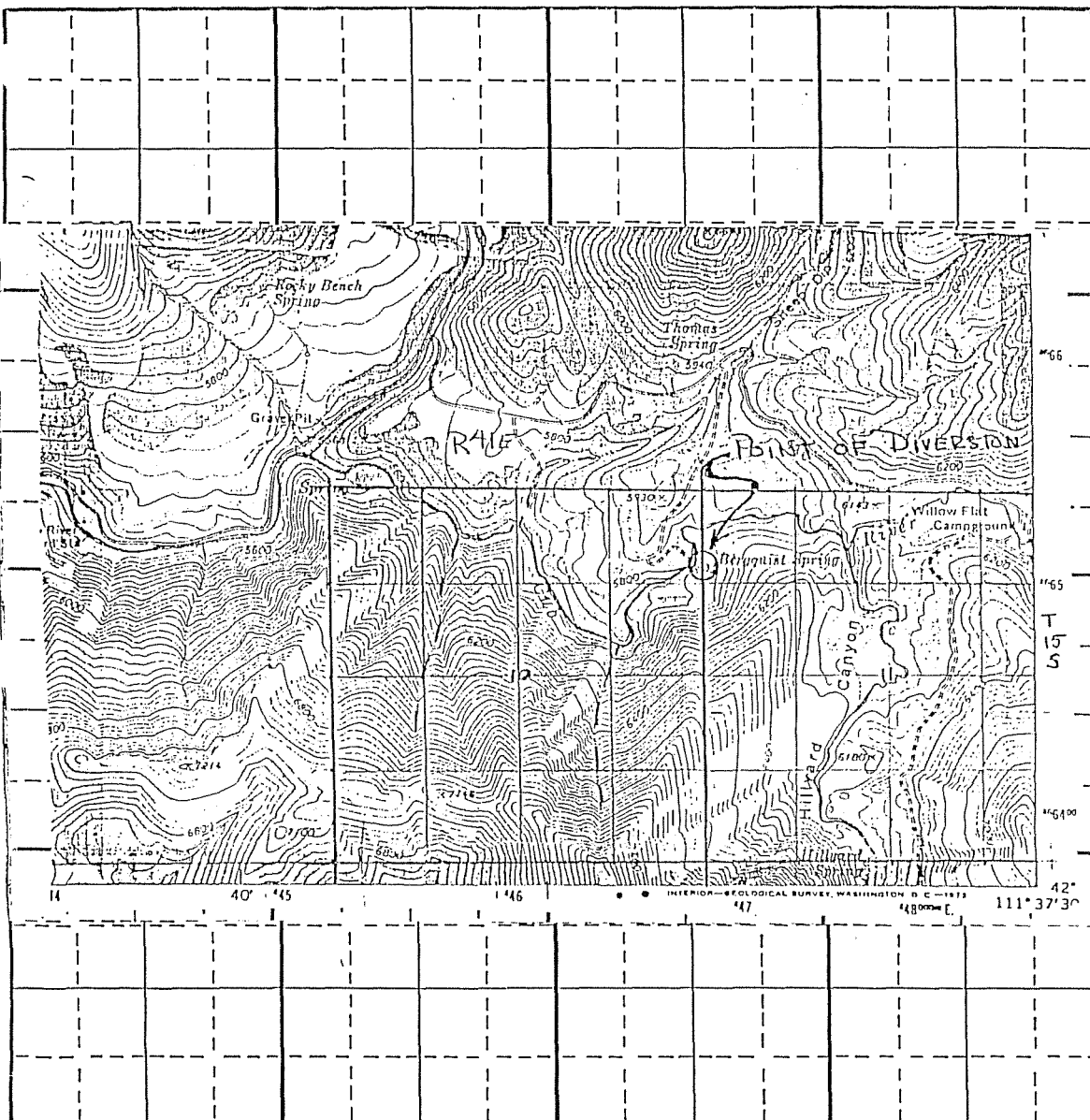
- a. Are there liens, mortgages, or contracts on the lands from which you propose to transfer the water right which limit your authority to make the proposed change? Yes _____ No x If yes, provide a statement agreeing to the proposed change from the holder of the lien, mortgage or contract.
- b. Describe the affect on the land now irrigated if the place of use is changed pursuant to this transfer
- None

*To be used within city limits of Preston, ID. and with contractees of City.

[illegible]

4. Describe any other water rights used for the same purpose as described above. 13-0027;
13-0028

5. Draw a map indicating the new point(s) of diversion and/or the new land to be irrigated. Show clearly the land involved by section, township and range number.



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

D. REMARKS

See attached

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 willfull misrepresentations made in this application may result in voiding its approval.

Reed Breuchley
(Signature of Applicant)

Subscribed and sworn to before me this 10 day of

January, 19 84

Nanette Coduron
(Notary Public)

My commission expires lifetime

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____.

FOR DEPARTMENT USE ONLY

Received by DW Date 1-12-84 Protest filed by _____

Prelim. check by KCW Fee \$50.00 _____

Receipted by BP Date 1-12-84 # 33405

Published In THE PRESTON CITIZEN Copies of protest forwarded by _____

Pub. dates 10/17/85 + 10/24/85 Hearing held by _____ Date _____

Watermaster recommendation requested on _____ Recommended for _____ approval _____ denial _____

_____ rec'd. _____ by _____

ATTACHMENT

The water right claimed by the City of Preston, Idaho, is contained in that agreement of February 27, 1920, between Cub River Irrigation Company and the City of Preston in which the City was granted by the Irrigation Company the right to use at all times 1/18 of the waters of Cub River to which the Irrigation Company was entitled to use under its primary right. The Irrigation Company is entitled to 45 cfs of water under its primary right and, pursuant to the decree, 12 cfs of water for culinary purposes during the winter months from November 1 to April 1. Consequently, the City is entitled to 2.5 cfs of water during the entire year, that being 1/18 of the Cub River Irrigation Company's primary right. Water has been diverted pursuant to this right from Bergquist Springs for more than 50 years through the Preston City water line.

Page _____ of _____

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

Transfer No. _____

AMENDED

APPLICATION FOR TRANSFER OF WATER RIGHT
PART 1Name of applicant CITY OF PRESTON Phone (208) 547-2135Post Office address CITY HALL, PRESTON ID 83263

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 TO ESTABLISH POINT OF DIVERSION AT BERGQUIST SPRINGS
(ACTUAL POINT OF DIVERSION FOR MORE THAN 50 YEARS) TO FACILITATE DELIVERY OF WATER TO
CITY OF PRESTON FOR MUNICIPAL USE

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>13-00034B</u> | <u>4-1-1880</u> | <u>2.50 cfs</u> | <u>MUNICIPAL</u> | <u>11-1</u> to <u>3-31</u> |
| _____ | _____ | _____ | <u>HYDROPOWER</u> | <u>11-1</u> to <u>3-31</u> |
| _____ | _____ | _____ | <u>IRRIGATION</u> | <u>11-1</u> to <u>3-31</u> |
| _____ | _____ | _____ | <u>STORAGE</u> | _____ to _____ |
2. Total amount of water being transferred 2.50 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:

Lot	¼	¼	¼	Sec.	Twp.	Rge.	County	Local name for diversion
		NE	NE	10	15S	41E	FRANKLIN	BERGQUIST SPRINGS
		NW	NW	11	15S	41E	FRANKLIN	BERGQUIST SPRINGS

5. Lands irrigated or place of use: CITY OF PRESTON (lands within City limits as those City limits may change over time) and with contractors of the City.

Twp.	Rge.	Sec.	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	

5. (Cont.) Place of use also includes City of Preston hydropower plant and the
Preston-Whitney Irr. Co. reservoir system. Total acres _____

PART 1

6. General Information:

The approximately 12 mile long pipeline from Bergquist Springs through hydropower plant to City of Preston for municipal use has the following characteristics: (1) private users take water from the pipeline between the City's meter box (at Albert Moser Campground) and the hydropower plant; (2) between the City's hydropower plant and the City's municipal system, water can overflow into the Preston-Whitney reservoir system (pursuant to a 1937 agreement between the City of Preston and the Preston-Whitney Irrigation Company)

b. Are the lands from which you propose to transfer the water right subject to any liens, deeds of trust, mortgages, or contracts? _____ Yes X 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:

NONE - THE CITY HAS USED THE WATER FOR MUNICIPAL USE FROM BERGQUIST SPRINGS FOR MORE THAN 50 years

d. Remarks:

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 2

(Attach one copy for each right)

A. DESCRIPTION OF RIGHT AS RECORDED

1. Right evidenced by:

- a. Decree No. 13-00034 Decreed to CUB RIVER IRRIGATION COMPANY
in case of HENRY T. MCEWAN vs. FRANKLIN COUNTY SUGAR COMPANY
dated July 9, 1924 in 5th Judicial District county of Franklin
- b. License No. _____ issued by the Idaho Department of Water Resources.
- c. Claim No. _____ on file with the Idaho Department of Water Resources.
- d. Transfer No. _____ which produced this right.

2. Attach a copy of last year's tax notice for the property to which the water right is appurtenant or other documents which show ownership. Label document as attachment A. Check appropriate box below:

☐ Tax Notice ☐ Warranty Deed ☐ Other _____

3. Source of water Cub River tributary to Bear River

4. Date or priority 4-1-1880 PRIORITY MONTH AND DAY NOT LISTED IN DECREE

5. Water is used for the following purpose:

amount 12.00 cfs for DOMESTIC purposes from 11-1 to 3-31
(cfs/ac-ft)
amount 12.00 cfs for STOCKWATER purposes from 11-1 to 3-31
(cfs/ac-ft)
amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)

6. Total amount of water under right _____ cubic feet per second and/or _____ acre-feet per annum.

7. Point(s) of Diversion: NOT LISTED

Lot	¼	¼	¼	Sec.	Twp.	Rge.	County	Local name for diversion

8. Lands irrigated or place of use: NOT LISTED

Twp.	Rge.	Sec.	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	

Total acres _____

9. Describe any other water rights used for the same purpose as described above NA

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 2.50 cfs for DOMESTIC/STOCK purposes from 11-1 to 3-31
 (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	¼	¼	¼	Sec.	Twp.	Rge.	County	Local name for diversion

3. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	

Total acres _____

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

1. amount 9.50 cfs for DOMESTIC/STOCK purposes from 11-1 to 3-31
 (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	¼	¼	¼	Sec.	Twp.	Rge.	County	Local name for diversion

3. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	

Total acres _____

Water Right Number - 13-00034

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 - - + + - - Region - - - + + - - Stage - - - + + - - Status - - - +
04/01/1882 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.+ - - - - - - - - - - - - - - - Water Use - - - - - +
Code Description Period From Period To Diversion Rate Diversion Volume
04 - STOCKWATER 11/01 12/31~ 12.000
43 - DOMESTIC 11/01 12/31~ 12.000
3~31 3~31+ - Total Div. Rate - + + - Total Div. Volume - + + - Total Div. Capacity - +
12.000+ - - - - - - - - - - - - - - - Place of Use - - - - - +
Twn Rng Sec Tract Lot Acres Code Description County

+ - - Diversion Means -

+ - - Non-Irrigation Use -

+ - - Other Rights for Same Use -

+ - - - - - - - - - - - - - - - Remarks - - - - - +
P/D, NOT SPECIFIED IN DECREE.
PRIORITY, MONTH AND DAY NOT SPECIFIED IN DECREE.+ - - - - - - - - - - - - - - - Old Water Right Numbers - - - - - +
No Old Water Right Numbers found.+ - - - - - - - - - - - - - - - Conditions of Approval - - - - - +
No Conditions of Approval found.

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

HENRY T. MCEWAN

FRANKLIN COUNTY SUGAR CO.

07/09/1924

03/09/95 16:18:47
Page 2

Prefix Translation: WATER RIGHT

+ - - - - - 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 | - | 00/00/0000 | 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 | - | 02/28/1986 | 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 | Name Connector | - | | POU Ownership Flag | - | |
| Presumption Flag | - | | | | | | | |

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.

151

(Signature of Applicant)

Subscribed and sworn to before me this _____ day of _____, 19 _____.

(Notary Public)

My commission expires _____

FOR DEPARTMENT USE ONLY

Transfer contains _____ pages and _____ attachments

Received by _____ Date _____ Protest filed by _____

Prelim. check by _____ Fee _____

Receipted by _____ Date _____

Published in _____ Copies of protest forwarded by _____

Pub. dates _____ Hearing held by _____ Date _____

Watermaster recommendation requested on _____ Recommended for ☐ approval ☐ denial

_____ rec'd. _____ by _____

Copy of transfer sent to lien holder _____

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.

DILLION BOSCH DAW & BOCK Chtd.

Fidelity Building
242 North 8th Street, Suite 200
Boise, Idaho 83702
Phone: (208) 344-8990
Fax: (208) 344-9140

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| NO. | COM | SPEED NO | STATION NAME/
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| 001 | INC | 2 | 17005257177 | 010 |
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-DILLION, BOSCH, DAW & BOCK -

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***** -COMM. JOURNAL- ***** DATE 12-08-1993 ***** TIME 12:27PM *** P.1

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END=12-08 12:27PM

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***** -COMM. JOURNAL- ***** DATE 12-08-155 ***** TIME 12:42PM ** P.1

MODE = TRANSMISSION

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| 001 | OK | 2 | 17005239518 | 002 |
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***** (FAX-200 U2.17) * - 208 344 9140- *****

***** -COMM. JOURNAL- ***** DATE 12-08-1995 TIME 01:03PM ** P.1

MODE = TRANSMISSION

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-DILLION, BOSCH, DAW & BOCK -

***** (FAX-200 02.17)* - 208 344 9140- *****

***** (FAX-200 02.17)* - 208 344 9140- *****

-DILLION, BOSCH, DAW & BOCK -

013

170085239518

OK 2

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PAGES

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TELEPHONE NO.

COM SPEED NO

NO.

END=12-08 12:48PM

START=12-08 12:42PM

MODE = TRANSMISSION

***** -COMM. JOURNAL- ***** DATE 12-08-1995 TIME 12:45PM ** P.1

***** -COMM. JOURNAL- ***** DATE 12-08-15 05 ***** TIME 01:27PM ** P.1

MODE = TRANSMISSION

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END=12-08 01:27PM

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***** -COMM. JOURNAL- ***** DATE 12-08-1555 ***** TIME 03:45PM ok P.1

MODE = TRANSMISSION

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END=12-08 03:45PM

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| 001 | OK | 2 | 17005472136 | 015 |
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***** -COMM. JOURNAL- ***** DATE 12-10-1995 ***** TIME 08:03PM ** P.1

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END=12-10 08:03PM

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| 001 | INC | 2 | 13038619759 | 001 |

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| 001 | INC | 2 | 13038619799 | 011 |
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