

RECEIVED

OCT 29 2012

DEPARTMENT OF
WATER RESOURCES

Fax received

10-26-12
SN

Josephine P. Beeman (#1806)
Jane M. Newby (#2848)
BEEMAN & ASSOCIATES, P.C.
409 W. Jefferson St.
Boise, ID 83702
Phone: (208) 331-0950
Fax: (208) 331-0954
jo.beeman@beemanlaw.com

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. 65416 IN THE
NAME OF CUB RIVER IRRIGATION
CO.

**CITY OF PRESTON'S EXCEPTIONS
AND BRIEF FOLLOWING DENIAL OF
CITY'S PETITION FOR
RECONSIDERATION OF IDWR'S
SEPTEMBER 6, 2012 ORDER
WITHDRAWING ORDER GRANTING
PETITION FOR RECONSIDERATION,
WITHDRAWING AMENDED
TRANSFER APPROVAL AND
DENYING PETITION FOR
RECONSIDERATION AND REQUEST
FOR HEARING**

The City of Preston, by and through its attorneys, Beeman & Associates, P.C., respectfully submits the following Exceptions and Brief regarding the Idaho Department of Water Resources (IDWR) September 6, 2012 *Order Withdrawing Order Granting Petition For Reconsideration, Withdrawing Amended Transfer Approval And Denying Petition For Reconsideration And Request For Hearing* ("September 6, 2012 IDWR Order").

The City of Preston filed a Petition for Reconsideration on September 21, 2012, as to the September 6, 2012 IDWR Order regarding transfer 65416. Cub River Irrigation Company (Cub River I.C.) filed transfer 65416, affecting water rights 13-26 and 13-34, to address changes to the point of diversion, place of use, and nature of use of 4.14 cfs of water right 13-26 and .3 cfs of water right 13-34 based on Cub River I.C. shares purchased by the City of Preston for municipal use. IDWR did not respond within 21 days (October 12, 2012), so the City's Petition for

Reconsideration is deemed denied by operation of law. The City files these exceptions and brief under the provision that within 14 days (October 26, 2012), “any party may in writing support or take exceptions to any part of a preliminary order and may file briefs in support of the Party’s position on any issue in the proceeding with the Director. Otherwise the preliminary order will become a final order of the agency.” The September 6, 2012 IDWR Order concludes that the City of Preston was never a party to Cub River I.C. transfer 65416 (dating from 1982) and therefore lacked standing to file its November 27, 2001 petition for reconsideration of IDWR’s preliminary order served November 13, 2001; therefore, IDWR lacked authority to issue its August 13, 2012 amended preliminary order and the preliminary order in 2001 became final in 2001. The City of Preston filed a Petition for Reconsideration on September 21, 2012 for the purpose of providing IDWR a detailed history of transfers 65416 (Cub River), 68302 (Preston), and 658886 (Preston), all affecting water rights 13-26 and 13-34.

The City of Preston files these exceptions and brief because IDWR did not respond to the detailed history from the IDWR files for water rights 13-26, 13-34, and transfers 65416, 68302, and 65886. In particular, the history demonstrates that the City of Preston and Cub River I.C. were both involved in transfers at the same time affecting water rights 13-26 and 13-34; all transfers arose from the City’s purchase of water rights out right or purchase of Cub River I.C. shares for the same water rights. The City’s money and water use were common to the three transfers. A single agreement, signed by Cub River I.C. and Preston, was filed to resolve protests in all three proceedings. IDWR issued common orders for all proceedings and held joint proceedings. *Laughy v. Idaho Department of Transportation*, 149 Idaho 867, 874, 243 P.3d 1055, 1062 (2010) addressed a single proceeding, not joint proceedings with the same *gravamen* – water rights 13-26 and 13-34.

CONCLUSION

The City of Preston was and is a party to all three transfer proceedings.

RESPECTFULLY SUBMITTED this 26th day of October 2012.

BEEMAN & ASSOCIATES, P.C.

By Josephine P. Beeman
Josephine P. Beeman

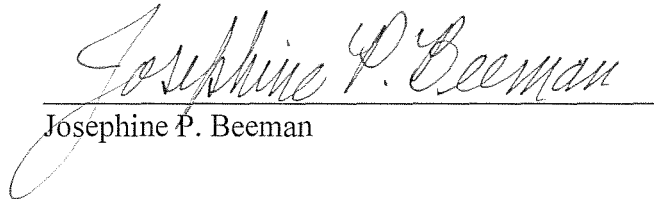
CERTIFICATE OF SERVICE

I certify that this 26th day of October 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