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AUG 28 2012

DEPARTMENT OF
WATER RESOURCES

Attorneys for the City of Preston

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

IN THE MATTER OF WATER RIGHT
NOS. 13-34, 13-34A, 13-26A & 13-26C AS
MODIFIED BY TRANSFER NOS. 68302,
65886 and 65416

Water Right Nos. 13-34, 13-34A,
13-26A & 13-26C

**CITY OF PRESTON'S PETITION
FOR RECONSIDERATION**

The City of Preston, by and through its attorneys, Beeman & Associates, P.C., respectfully submits the following Petition for Reconsideration regarding Transfer Approval Nos. 68302, 65886 and 65416, dated August 13, 2012 for Water Right Nos. 13-34, 13-34A, 13-26A and 13-26C. The City seeks clarification and revision of the following terms and conditions in these transfers.

Transfer 65302 (Water Right 13-34)

1. Condition for Approval #9 on Transfer 65416 provides, "The point of diversion described above is an unsurveyed area and may fall within the NWNW of Sec. 11, T15S, R41E." This Condition is not included with the approval for 13-34B in Transfer 68302.

2. Should a condition related to high water rights be included as it is for the irrigation season rights?

Transfer 65886 (Water Right 13-26C)

3. The City of Preston purchased 2.5 cfs as a continuous year-round flow and, thus, Water Right No. 13-00026C should not be subject to any diverted volume limit. The 356 AFA was added for the first time in the draft transfer approval and is based upon 101.7 acres of Cub River Irrigation Company land being taken out of production.

4. The point of diversion was not specified in the decree upon which the original right is based, and the original point of diversion on the Cub River is believed to be downstream of the confluence with Bergquist Springs. This puts in doubt Condition No. 5, which states, "Prior to diversion of water under this approval, the right holder shall provide a means of measurement acceptable to the watermaster for measuring the flow in Cub River at the original point of diversion."

5. The word "municipal" should be added to Condition No. 7 as follows: "Place of use is located within the City of Preston and surrounding municipal service area." This will clarify that the service area is for the City of Preston and not for Cub River Irrigation Company.

6. Condition for Approval No. 1 on Transfer 65416 provides, "Right 13-26C is authorized diversion of 7/100ths of stream in excess of high water right up to a maximum of 8.90 cfs when combined with primary right of 2.5 cfs." However, this condition is not included, and should be included, as a condition of approval for 13-00026C in Transfer 65886.

7. The City of Preston's transfer application included purposes of use and places of use not addressed in the transfer approval for 13-000026C. Specifically, the City's application on 13-00026C includes the following purposes during the irrigation season: hydropower, irrigation storage, irrigation from storage, and irrigation. The City's application on 13-00026C also included in the place of use the City's hydropower plant, the Preston-Whitney Irrigation Company reservoir system, and the lands within the Preston-Whitney Irrigation Company which can be lawfully irrigated under its water rights. The January 12, 1998 Agreement among the City of Preston, the Cub River Irrigation District, and the Preston-Whitney Irrigation Company regarding the municipal water rights for the City of Preston states: "All parties agree to support the approval of these transfers before the Idaho Department of Water Resources and in any subsequent court review of the transfers." (Agreement, p. 5) IDWR has provided no explanation why the transfer approvals list only "municipal use" and uniformly describe the place of use without mention of the City's hydropower plant, the Preston-Whitney Irrigation Company's reservoir system, or the lands within the Preston-Whitney Irrigation Company.

Transfer No. 65416 (Water Right Nos. 13-34A, 13-26A)

8. There is no explanation for the origin of 13-34A. If 13-34 was split into 13-34A and 13-34B by Transfer 68302, then Transfer 65416 should show a split of 13-34A into 13-34C for .3 cfs and 13-34D for 9.2 cfs (to be forfeited per the 1998 Agreement).

9. There is no explanation of the origin of 13-26A. It appears that Transfer 5010 by Cub River affected 13-26B. However, there is no explanation of how 13-26 became 13-26A and 13-26B. Transfer 65416 says 13-26A is 6.64 cfs and is going to be split into 13-26B for 4.14 cfs and a diverted volume of 589 acre-feet (Cub River shares owned by the City of Preston) and 13-26C for 2.5 cfs (Cub River) with an acre limit of 101.7 acres.

10. The City of Preston purchased 2.5 cfs as a continuous year-round flow and, thus, Water Right No. 13-00026C should not be subject to any diverted volume limit. The 356 AFA was added for the first time in the draft transfer approval and is based upon 101.7 acres of Cub River Irrigation Company land being taken out of production.

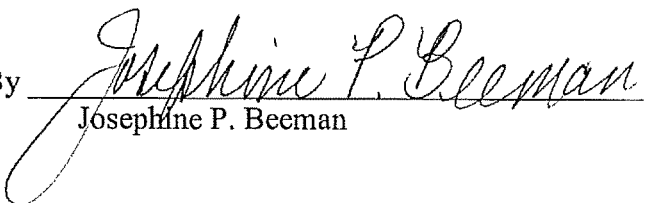
11. The point of diversion was not specified in the decree upon which the original right is based, and the original point of diversion on the Cub River is believed to be downstream of the confluence with Bergquist Springs. This puts in doubt Condition No. 5, which states, "Prior to diversion of water under this approval, the right holder shall provide a means of measurement acceptable to the watermaster for measuring the flow in Cub River at the original point of diversion."

12. The word "municipal" should be added to Condition No. 7 as follows: "Place of use is located within the City of Preston and surrounding municipal service area." This will clarify that the service area is for the City of Preston and not for Cub River Irrigation Company.

13. Condition for Approval No. 1 on Transfer 65416 provides, "Right 13-26C is authorized diversion of 7/100ths of stream in excess of high water right up to a maximum of 8.90 cfs when combined with primary right of 2.5 cfs." A similar condition for water right 13-26D under Transfer 65416 should be included for the non-irrigation season with the appropriate high water limits: "Right 13-26D is authorized diversion of (percentage) of stream in excess of high water right up to a maximum of (amount) cfs when combined with primary right of 4.14 cfs."

RESPECTFULLY SUBMITTED this 28th day of August 2012.

BEEMAN & ASSOCIATES, P.C.

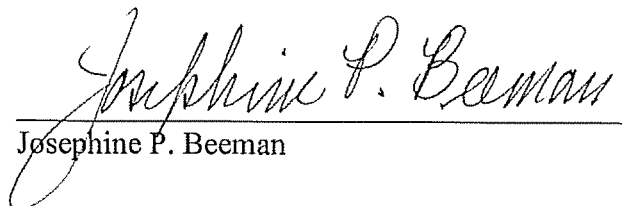
By 
Josephine P. Beeman

CERTIFICATE OF SERVICE

I certify that this 28th day of August 2012, I caused a true and correct copy of the foregoing document to be served on the following by U.S. Mail.

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70 W ONEIDA
PRESTON ID 83263

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LEWISTON UT 84320



Josephine P. Beeman