

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF WATER RIGHT NOS.)
13-26C, 13-26D, 13-34A, AND 13-34B AS)
MODIFIED BY TRANSFER NOS. 65416,)
65886, AND 68302)

**ORDER GRANTING PETITIONS
FOR RECONSIDERATION**

This matter having come before the Department of Water Resources (Department) as a petition to reconsider the approval of water right transfers, the Department makes the following Findings of Fact, Conclusions of Law, and Order:

FINDINGS OF FACT

1. On November 9, 2001 the Department approved Water Right Transfer Nos. 65416, 65886, and 68302 (transfers) in the form of preliminary orders (orders). Copies of the orders were mailed to the applicants and the associated water right holders on November 13, 2001.
2. On November 27, 2001, the Department received Petitions for Reconsideration (petitions) in connection with the orders from Josephine P. Beeman of Beeman & Associates, P.C. on behalf of the City of Preston (petitioner). The petitioner seeks clarification and revision of several items related to the approval of the transfers.

CONCLUSIONS OF LAW

1. Section 67-5243(3), *Idaho Code*, provides in pertinent part as follows:

Unless otherwise provided by statute or rule, any party may file a motion for reconsideration of a recommended order or a preliminary order within fourteen (14) days of the issuance of that order. The presiding officer shall render a written order disposing of the petition.

2. The petition was filed timely.
3. The Department should grant the petitions pursuant to Section 67-5243(3), *Idaho Code*, so that it can review the issues raised by the petitioner and make any changes to the transfers, if necessary, by amending the transfers and re-issuing as new preliminary orders.

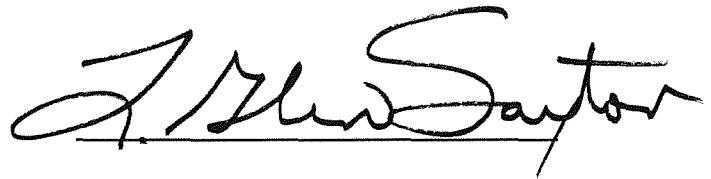
SUPPORT DATA *also*

IN FILE # 13-26a

ORDER

IT IS HEREBY ORDERED that the petitions are **GRANTED** pursuant to Section 67-5243(3), *Idaho Code*, so that the Department can review the issues raised by the petitioner in the petitions.

Dated this 28th day of November, 2001.

A handwritten signature in black ink, reading "L. Glen Saxton". The signature is written in a cursive style with a horizontal line underneath the name.

L. GLEN SAXTON
Chief, Water Allocation Bureau

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
TRANSFER OF WATER RIGHT
TRANSFER NO. 65886

This is to certify that: CITY OF PRESTON
70 W ONEIDA
PRESTON ID 83263

has requested a change to the water right(s) listed below. This change in water right(s) is authorized pursuant to the provisions of Section 42-222, Idaho Code. The authorized change for each affected water right, including conditions of approval, is shown on the following pages of this document.

Summary of Water Rights Before the Proposed Change

<u>Right</u>	<u>Origin/Basis</u>	<u>Priority</u>	<u>Rate</u>	<u>Volume</u>	<u>Acres</u>	<u>Total</u>	<u>Source</u>
13-26C	WR/Decreed	04/01/1880	2.50 cfs		101.7	N/A	CUB RIVER

Purpose of Transfer (Changes Proposed)

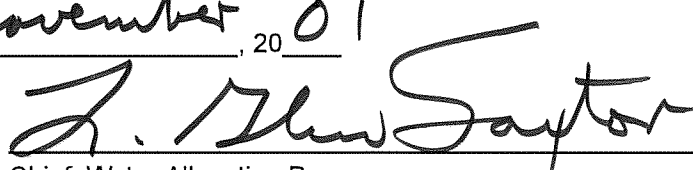
<u>Current Number</u>	<u>Split</u>	<u>POD</u>	<u>POU</u>	<u>Add POD</u>	<u>Period of Use</u>	<u>Nature of Use</u>
13-26C	NO	YES	YES	NO	NO	YES

Summary of Water Rights After the Approved Change

<u>Existing Right</u>	<u>New No. (changed portion)</u>	<u>Transfer Rate</u>	<u>Transfer Volume</u>	<u>Acre Limit</u>	<u>Total Acres</u>	<u>New No. (remaining portion)</u>	<u>Remaining Rate</u>	<u>Remaining Volume</u>	<u>Remaining Acre Limit</u>	<u>Remaining Total Acres</u>
13-26C	13-26C	2.50 cfs	356.0 af	N/A	N/A		N/A	N/A	N/A	N/A
TOTALS		2.50 cfs	356.0 af	N/A	N/A		N/A	N/A	N/A	N/A

Detailed Water Right Description(s) attached

Dated this 9th day of November, 2001


Chief, Water Allocation Bureau

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WATER RIGHT NO. 13-26C
As Modified by Transfer No. 65886

In accordance with the approval of Transfer No. 65886, Water Right No. 13-26C is now described as follows.

Right Holder: CUB RIVER IRRIGATION CO
PO BOX 215
LEWISTON UT 84320

Priority Date: 04/01/1880

Source: BERGQUIST SPRINGS

Tributary: CUB RIVER

<u>BENEFICIAL USE</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
MUNICIPAL	04/01 to	10/31	2.50 CFS	356.0 AF

LOCATION OF POINT(S) OF DIVERSION:

BERGQUIST SPRINGS SENENE Sec. 10 Twp 15S Rge 41E FRANKLIN County

CONDITIONS OF APPROVAL

1. Use of water under this right may be affected by an agreement between the protestant and the right holder.
2. Use of water under this water right will be regulated by the watermaster of State Water District No. 13-A, Cub River.
3. The right holder shall maintain a measuring device and lockable controlling works of a type approved by the Department in a manner that will provide the watermaster suitable control of the diversion.
4. Diversion of water from Berquist Springs is limited to those times water is available for diversion under this right and priority from Cub River.
5. 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.
6. Approval of Transfer 65886 does not grant any right-of-way or easement for use of a delivery system owned by person(s) other than the right owner.
7. Place of use is located within the City of Preston and surrounding service area.

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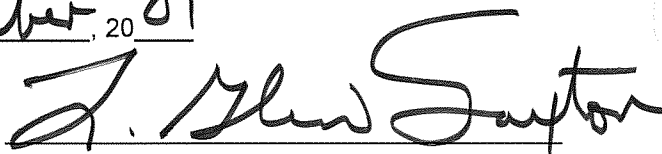
WATER RIGHT NO. 13-26C
As Modified by Transfer No. 65886

CONDITIONS OF APPROVAL

8. The right holder shall accomplish the change authorized by this transfer within one (1) year of the date of this approval.
9. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.

This water right is subject to all prior water rights and shall be administered in accordance with Idaho law and applicable rules of the Department of Water Resources.

Dated this 9th day of November, 2001


Chief, Water Allocation Bureau



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STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
TRANSFER OF WATER RIGHT
TRANSFER NO. 65416

This is to certify that: CUB RIVER IRRIGATION CO
PO BOX 215
LEWISTON UT 84320
(208)258-2371

has requested a change to the water right(s) listed below. This change in water right(s) is authorized pursuant to the provisions of Section 42-222, Idaho Code. The authorized change for each affected water right, including conditions of approval, is shown on the following pages of this document.

Summary of Water Rights Before the Proposed Change

<u>Right</u>	<u>Origin/Basis</u>	<u>Priority</u>	<u>Rate</u>	<u>Volume</u>	<u>Acres</u>	<u>Total</u>	<u>Source</u>
13-26A	WR/Decreed	04/01/1880	6.64 cfs			N/A	
13-34A	WR/Decreed	01/01/1880	9.50 cfs			N/A	

Purpose of Transfer (Changes Proposed)

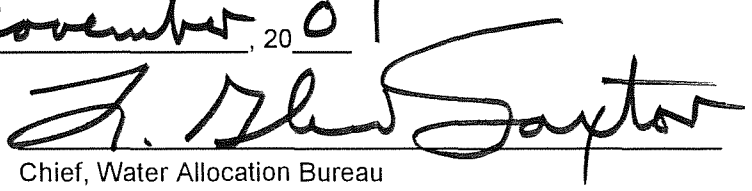
<u>Current Number</u>	<u>Split</u>	<u>POD</u>	<u>POU</u>	<u>Add POD</u>	<u>Period of Use</u>	<u>Nature of Use</u>
13-26A	YES	YES	YES	NO	NO	YES
13-34A	NO	YES	YES	NO	NO	YES

Summary of Water Rights After the Approved Change

<u>Existing Right</u>	<u>New No. (changed portion)</u>	<u>Transfer Rate</u>	<u>Transfer Volume</u>	<u>Acre Limit</u>	<u>Total Acres</u>	<u>New No. (remaining portion)</u>	<u>Remaining Rate</u>	<u>Remaining Volume</u>	<u>Remaining Acre Limit</u>	<u>Remaining Total Acres</u>
13-26A	13-26D	4.14 cfs	589.0 af	N/A	N/A	13-26C	2.50 cfs	N/A	101.7	N/A
13-34A	13-34A	0.30 cfs	N/A	N/A	N/A		N/A	N/A	N/A	N/A
TOTALS		4.44 cfs	678.8 af	N/A	N/A		N/A	N/A	N/A	N/A

Detailed Water Right Description(s) attached

Dated this 9th day of November, 2001


Chief, Water Allocation Bureau

SUPPORT DATA

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IN FILE # 13-26a

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WATER RIGHT NO. 13-26C
As Modified by Transfer No. 65416

In accordance with the approval of Transfer No. 65416, Water Right No. 13-26C is now described as follows.

Right Holder: CUB RIVER IRRIGATION CO
PO BOX 215
LEWISTON UT 84320

Priority Date: 04/01/1880

Source: CUB RIVER

Tributary: BEAR RIVER

<u>BENEFICIAL USE</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
IRRIGATION	04/01	to 10/31	2.50 CFS	
			2.50 CFS	

LOCATION OF POINT(S) OF DIVERSION:
CUB RIVER

PLACE OF USE: IRRIGATION

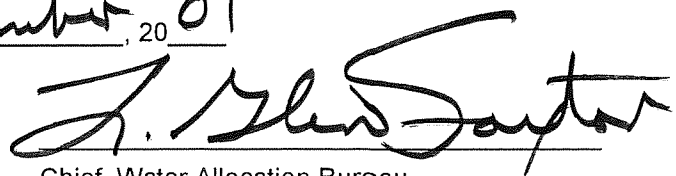
Twp 16S, Rge 39E, Sec 1, 2, 3, 10, 11, 12, 13, 14, 15, 21, 22, 23, 24, 25, 26, 27 & 28.

CONDITIONS OF APPROVAL

1. Right 13-26C is authorized diversion of 7/100ths of stream in excess or high water right up to a maximum of 8.90 cfs when combined with primary right of 2.50 cfs.
2. Point of diversion was not specified in decree.
3. Right 13-26C is limited to the irrigation of 101.7 acres in the place of use described above, and lands located in Utah.
4. Approval of Transfer 65416 is not a confirmation of the validity of this water right.

This water right is subject to all prior water rights and shall be administered in accordance with Idaho law and applicable rules of the Department of Water Resources.

Dated this 9th day of November, 2001


Chief, Water Allocation Bureau

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WATER RIGHT NO. 13-26D
As Modified by Transfer No. 65416

In accordance with the approval of Transfer No. 65416, Water Right No. 13-26D is now described as follows.

Right Holder: CUB RIVER IRRIGATION CO
PO BOX 215
LEWISTON UT 84320

Priority Date: 04/01/1880

Source: BERGQUIST SPRINGS

Tributary: CUB RIVER

<u>BENEFICIAL USE</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
MUNICIPAL	04/01	to 10/31	4.14 CFS	589.0 AF
			4.14 CFS	589.0 AF

LOCATION OF POINT(S) OF DIVERSION:

BERGQUIST SPRINGS SENENE Sec. 10 Twp 15S Rge 41E FRANKLIN County

CONDITIONS OF APPROVAL

1. Rights 13-26D and 13-34A when combined shall not exceed a total annual maximum diversion volume of 678.8 af.
2. Use of water under this right may be affected by an agreement between the protestant and the right holder.
3. Use of water under this water right will be regulated by the watermaster of State Water District No. 13-A, Cub River.
4. The right holder shall maintain a measuring device and lockable controlling works of a type approved by the Department in a manner that will provide the watermaster suitable control of the diversion.
5. Diversion of water from Berquist Springs is limited to those times water is available for diversion under this right and priority from Cub River.
6. 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.
7. Approval of Transfer 65416 does not grant any right-of-way or easement for use of a delivery system owned by person(s) other than the right owner.
8. Place of use is located within the City of Preston and surrounding service area.

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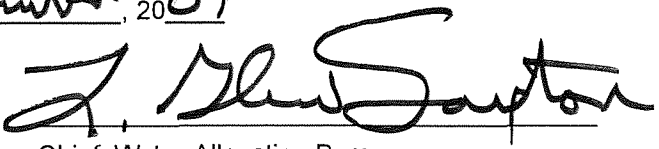
WATER RIGHT NO. 13-26D
As Modified by Transfer No. 65416

CONDITIONS OF APPROVAL

9. The right holder shall accomplish the change authorized by this transfer within one (1) year of the date of this approval.
10. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.

This water right is subject to all prior water rights and shall be administered in accordance with Idaho law and applicable rules of the Department of Water Resources.

Dated this 9th day of November, 2001


Chief, Water Allocation Bureau

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WATER RIGHT NO. 13-34A
As Modified by Transfer No. 65416

In accordance with the approval of Transfer No. 65416, Water Right No. 13-34A is now described as follows.

Right Holder: CUB RIVER IRRIGATION CO
PO BOX 215
LEWISTON UT 84320

Priority Date: 01/01/1880

Source: BERGQUIST SPRINGS

Tributary: CUB RIVER

<u>BENEFICIAL USE</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
MUNICIPAL	11/01	to 03/31	0.30 CFS	
			0.30 CFS	

LOCATION OF POINT(S) OF DIVERSION:

BERGQUIST SPRINGS SENENE Sec. 10 Twp 15S Rge 41E FRANKLIN County

CONDITIONS OF APPROVAL

1. Rights 13-26D and 13-34A when combined shall not exceed a total annual maximum diversion volume of 678.8 af.
2. The portion of Right 13-34A in excess of this transfer approval in the amount of 9.20 cfs shall be considered forfeited through approval of Transfer 65416.
3. Use of water under this right may be affected by an agreement between the protestant and the right holder.
4. Use of water under this water right will be regulated by the watermaster of State Water District No. 13-A, Cub River.
5. The right holder shall maintain a measuring device and lockable controlling works of a type approved by the Department in a manner that will provide the watermaster suitable control of the diversion.
6. Diversion of water from Berquist Springs is limited to those times water is available for diversion under this right and priority from Cub River.
7. 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.
8. Approval of Transfer 65416 does not grant any right-of-way or easement for use of a delivery system owned by person(s) other than the right owner.
9. Place of use is located within the City of Preston and surrounding service area.

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NOV 13 2001

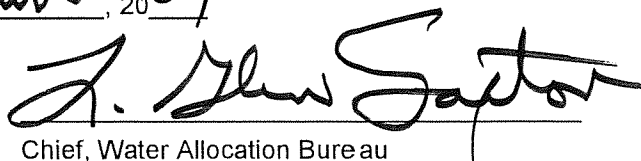
WATER RIGHT NO. 13-34A
As Modified by Transfer No. 65416

CONDITIONS OF APPROVAL

10. The right holder shall accomplish the change authorized by this transfer within one (1) year of the date of this approval.
11. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.

This water right is subject to all prior water rights and shall be administered in accordance with Idaho law and applicable rules of the Department of Water Resources.

Dated this 9th day of November, 2001


Chief, Water Allocation Bureau

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RECEIVED

FEB 22 2000

APPLICATION FOR TRANSFER OF WATER RIGHT

PART 1

Department of Water Resources

Name of applicant City of Preston Phone (208) 547-2135
 Post 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 for the record a use of water agreed to by Cub River Irrig. Camp and the City of Preston on Feb. 27, 1920.

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

1. Right Number 13-00026(C) Priority 4-01-1880 Amount (cfs/ac-ft) 2.50 cfs Nature of Use Municipal Period of Use 4-01 to 10-31
2. Total amount of water being transferred 2.50 cubic feet per second and/or _____ acre-feet per annum.
3. Source of water Bergquist Springs tributary to Cub River
4. Point(s) of Diversion:

Lot	¼	¼	¼	Sec.	Twp.	Rge.	County	Local name for diversion
	SE	NE	NE	10	15S	41E	Franklin	Bergquist Springs

5. Lands irrigated or place of use:

City of Preston

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	

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PART 1

6. General Information:

a. Description of diversion system

Pipeline from spring through existing hydropower plant with overflow to Preston-Whitney reservoir and continuous pipeline to City of Preston for municipal 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 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:

d. Remarks:

Water use is per agreement of Feb. 27, 1920, a copy of which is attached, between Cub River Irrigation and City of Preston.

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 _____

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NOV 13 2001

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. _____ Decreed to _____
in case of _____ vs. _____
dated _____ in _____ county of _____
- 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. 2753/13-00026 (C) 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 4-01-1880

5. Water is used for the following purpose:

amount 2.50 cfs for Irrigation purposes from 4-01 to 10-31
(cfs/ac-ft)
amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)
amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)

6. Total amount of water under right 3.50 cubic feet per second and/or _____ acre-feet per annum.

7. Point(s) of Diversion:

Not Listed

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

8. 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	

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Total acres _____

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

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

_____ 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	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 _____ 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	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	

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Total acres _____

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.

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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.

(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 _____

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NOV 13 2001

FEB 2 1984

FEB 2 1984

*See Agreement sent to Preston City by Cub River
Irrigation Co.*

AGREEMENT.

THIS AGREEMENT, Made and entered into this 27th day of February, A.D., 1920, by and between the CUB RIVER IRRIGATION COMPANY, an Idaho corporation, hereinafter called the first party, and the CITY OF PRESTON, a Municipal Corporation, of Franklin County, Idaho, hereinafter called the second party, WITNESSETH:

The second party is a Municipal Corporation of Franklin County, Idaho, and is in need of an additional supply of water for culinary and domestic use of its inhabitants and for municipal purposes.

The first party is the owner of a decreed water right in Cub River in Franklin County, Idaho, as appears from a decree made and entered in the District Court of the Fifth Judicial District of the State of Idaho, in and for the County of Oneida, on January 26th, 1906, in an action therein pending in which the first party was the plaintiff and The Cub River Middle Ditch Company, a corporation, was defendant, and The Franklin Cub River Canal Company, a corporation, et al., were intervenors, which decree is recorded in Record Book "B" of said District Court on page 418, which right entitles the first party to the use at all times of forty-five cubic feet per second of time of all waters of Cub River aforesaid herein referred to as its primary right in addition to certain rights to the high waters of said stream as mentioned in said decree, which primary right was granted a priority as of the year 1880.

The second party heretofore brought an action in the District Court of the Fifth Judicial District of the State of Idaho in and for Franklin County, against the first party seeking to condemn the right of the first party to the water of Ranger Station Spring, a tributary of said Cub River, for the use and benefit of the inhabitants of said city for domestic and culinary purposes, which action is still pending.

A settlement of the said controversies out of court being desired

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NOV 13 2001

Exhibit #2

by the parties hereto, they do hereby mutually covenant and agree as follows:

The first party will execute and deliver to the second party, upon the execution and delivery by it of the deed and the payment by it of the sum hereinafter mentioned, a good and sufficient conveyance of the right to use at all times one-eighteenth (1/18) of the waters of said Cub River to which the first party is entitled under its said primary right, reserving and excepting however all its right to use the excess on high water of said stream, the water to be measured at the intake to be hereafter constructed by the second party either at the said spring or between the spring and Cub River at the option of the second party. The second party will pay to the first party for such conveyance on the delivery thereof the sum of Twenty-eight Thousand Five Hundred (\$28,500.) Dollars, lawful money of the United States of America, and at the same time will execute and deliver to the first party a good and sufficient conveyance of the right at all times to use all of the waters which now flow, and which may hereafter flow out of the sewer and underground drainage systems of the second party as now constructed, and as the same may be re-constructed, enlarged or extended hereafter.

Ranger

Before the second party diverts any of the waters hereby agreed to be conveyed, it will at its own expense, construct and install at the intake of its water system as above stated, an adequate and suitable measuring device for the measuring of the said waters, and it will at all times hereafter maintain such device in good condition for the accomplishment of such measurement, which device shall at all times be kept by the second party under lock and key. The first party shall be allowed a key thereto, and shall at all times have right of access for the purpose of determining the sufficiency of the device and the quantity of water flowing into the second party's water system.

The second party will proceed at once to the construction of a suitable and adequate filter for the filtration of all the waters flowing or to flow out of its sewer and underground drainage systems, as above stated, and at all times it will cause all of such waters to be so filter

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ed that they will be free from offensive odors and from disease producing bacteria, and collect such waters at the filter in a pipe not less than twelve (12) inches in diameter after the waters have been so filtered, and conduct them by such pipe to, and discharge them into the west canal of the first party immediately above the headgate in the William Tanner field, all at the expense of the second party. The second party will also at all times keep such waters free from poisonous constituents and properties.

The above mentioned condemnation proceedings shall be dismissed forthwith upon the merits neither party to recover costs against the other.

The first party heretofore brought an action in the same court against the second party upon the alleged wrongful use, by the second party, of the waters of a certain spring known as Birch Spring alleged to be a tributary of Cub River. The said action shall be dismissed forthwith without a determination by the court or the parties thereto as to whether the second party, either by adverse user of the waters of said spring, or by estoppel, or otherwise, has acquired title to any part of the water right heretofore owned by the first party. Neither party to such action shall recover costs against the other.

The conveyance to be made by the first party to the second party as above provided, shall recite that it is made subject to the fluctuations in the flow of said river, so that should the flow at any time be less than sufficient to supply the full forty-five second feet upon the primary right hereinbefore mentioned, then the party of the second part herein shall be entitled hereunder to one-eighteenth only of the flow available on the said right.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed by their respective officers thereto duly authorized

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STATE OF Utah)
County of Cache) SS.

On this 27th day of February, in the year 1920,
before me Christian Jacobsen, a Notary Public in and for
said County, personally appeared George Harner
and Marion Swinson known to me to be the President
and Secretary, respectively, of the corporation that executed the fore-
going instrument and acknowledged to me that such corporation executed
the same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day
and year first above written.

My commission expires:

Feb. 19, 1921

Christian Jacobsen
NOTARY PUBLIC.

Residing at Logan, Utah

STATE OF IDAHO,)
County of Franklin.) SS.

On this 27th day of February, in the year 1920,
before me W. Brown, a notary public in and for
said County, personally appeared J. S. Marron and W. Chatterton,
known to me to be the MAYOR and CITY CLERK, respectively, of the City
of Preston, a Municipal Corporation that executed the foregoing instru-
ment and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day
and year first above written.

My commission expires:

2/2/22.

W. Brown
NOTARY PUBLIC.

Residing at: Preston, Idaho

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NOV 13 2001

this 27th day of February, A.D., 1920.

Signed in the presence of

Christian Jacobsen

R. P. Evans

CUB RIVER IRRIGATION COMPANY.

By George Warren
PRESIDENT.

ATTEST:

Morris J. Swinney
SECRETARY.

CITY OF PRESTON

By J. T. Morron
MAYOR.

ATTEST:

M. C. ...
CITY CLERK.

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NOV 13 2001

Water Right No. 13-0026

~~13-0023~~ (3223)

STATE OF IDAHO

DEPARTMENT OF WATER RESOURCES

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 842-1817

Post 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 _____
1880
4. Date of priority _____
5. Water is used for the following purposes:
amount 2.5 cfs for municipal purposes from January 1 to Dec. 31
amount 1/18 of 45/100 for municipal purposes from April 1 to Oct. 31
of excess water of stream
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 _____ 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.	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 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
b. _____ &/or _____ acre feet per annum
- 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.

TWP.	RANGE	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 number of acres to be irrigated _____

C. DESCRIPTION OF RIGHT OR PORTION THEREOF, AFTER THE REQUESTED CHANGE

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 1/4 NE 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

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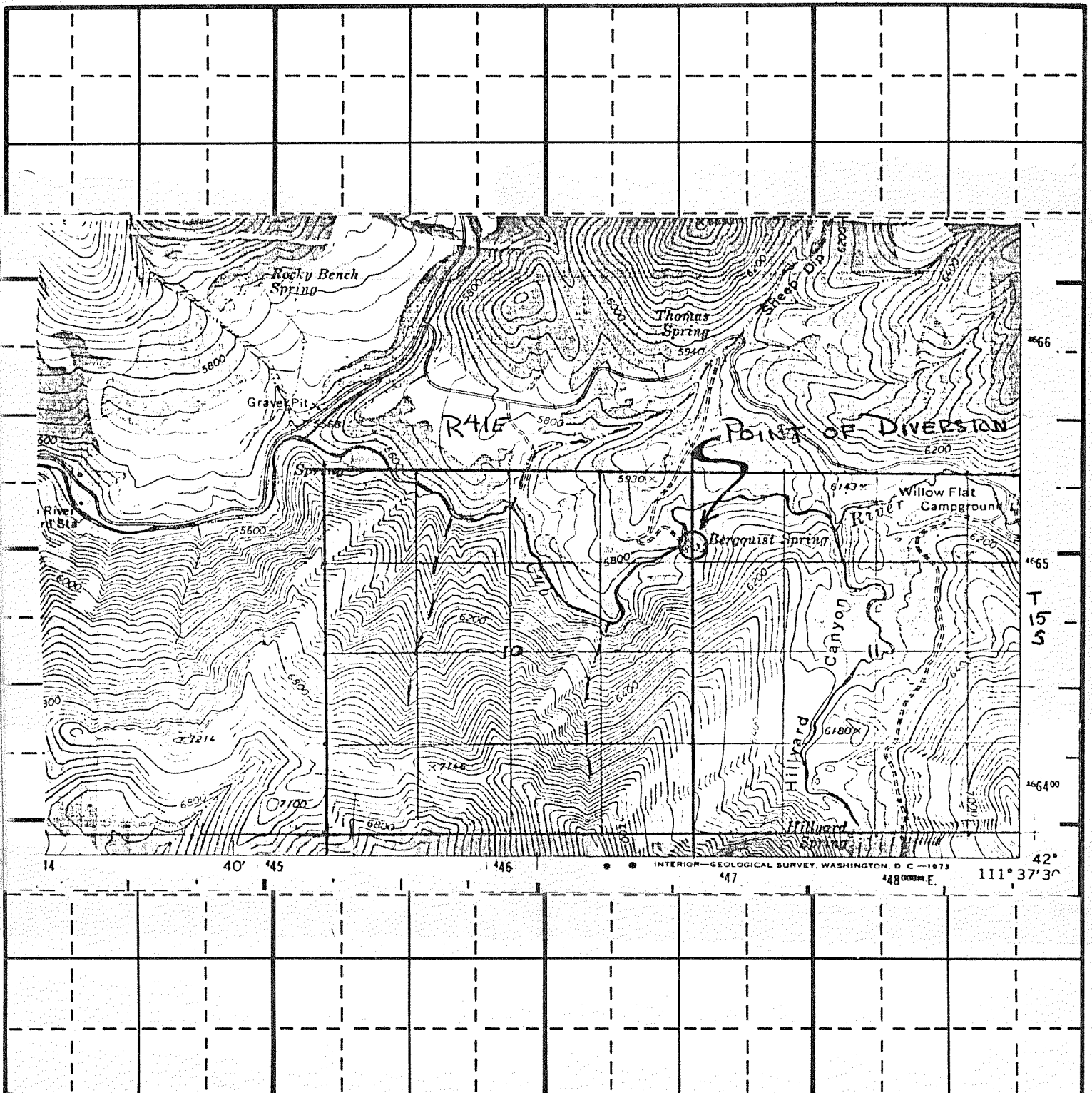
c. Describe the lands place of use to which the right will be transferred:

*To be used within city limits of Preston, ID. 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 _____

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.

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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.

Subscribed and sworn to before me this 10 day of January, 19 84

Reid Breuchley
(Signature of Applicant)

Nanette Coburn
(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 <u>OW</u>	Date <u>1-12-84</u>	Protest filed by <u>US Forest Service</u>
Prelim. check by <u>KCW</u>	Fee <u>\$50.00</u>	
Receipted by <u>BP</u>	Date <u>1-12-84</u> # <u>33405</u>	
Published in <u>THE PRESTON CITIZEN</u>	Copies of protest forwarded by <u>OW</u>	
Pub. dates <u>10/17/85 & 10/24/85</u>	Hearing held by _____ Date _____	
Watermaster recommendation requested on <u>10-11-85</u>	Recommended for <u>approval</u> denial	
<u>WD #138</u> rec'd. <u>10-24-85</u>	by <u>RPC</u>	

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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.

NO.

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NOV 13 2001

BEEMAN & ASSOCIATES, P.C.

Counselors and Attorneys at Law
409 West Jefferson Street
Boise, Idaho 83702

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FEB 14 2002

Department of Water Resources

Josephine P. Beeman
jbeeman@micron.net
Deborah E. Nelson
debnelson@micron.net

Telephone
(208) 331-0950
Facsimile
(208) 331-0954

February 12, 2002

ms

Glen Saxton
Idaho Department of Water Resources
1301 North Orchard Street
Boise, ID 83706

Re: City of Preston / Petitions for Reconsideration
Our File No. 1777

Dear Glen:

We have received the responses of Preston-Whitney Irrigation Company and the Cub River Irrigation Company to the City of Preston's Petitions for Reconsideration. I am not aware that any formal reply is required, but I would expect that the responses will be included in the City's continuing work with Jeff Peppersack at the IDWR state office in Boise. It is also the City's intent to work directly with Kent Foster and Randy Budge during this process. At present, the City is focused on providing historical documents to IDWR on the issue of whether a diverted volume should apply to the water purchased by the City in its 1920 Agreement with Cub River Irrigation Company.

I plan next to meet with Jeff Peppersack the first part of March after I return from my out-of-town work through the end of February.

Sincerely,

BEEMAN & ASSOCIATES, P.C.

Jo Beeman
Josephine P. Beeman

JPB:ja
cc: Clyde Nelson
Kent Foster
Randy Budge
Z:\1777\5188

RECEIVED

FEB - 6 2002

LAW OFFICES OF

**RACINE, OLSON, NYE, BUDGE & BAILEY
CHARTERED**

Department of Water Resources

LOUIS F. RACINE, JR.
WILLIAM D. OLSON
W. MARCUS W. NYE
RANDALL C. BUDGE
JOHN A. BAILEY, JR.
JOHN R. GOODELL
JOHN B. INGELSTROM
DANIEL C. GREEN
BRENT O. ROCHE
KIRK B. HADLEY
FRED J. LEWIS
MITCHELL W. BROWN
ERIC S. HUNN
DAVID E. ALEXANDER
LISA M. CHRISTON
RICHARD A. HEARN, M.D.
ERIC L. OLSEN
LANE V. ERICKSON
PATRICK N. GEORGE
SCOTT J. SMITH

CENTER PLAZA-CORNER FIRST & CENTER
POST OFFICE BOX 1391
POCATELLO, IDAHO 83204-1391

TELEPHONE (208) 232-6101
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SENDER'S E-MAIL ADDRESS: rcb@racinelaw.net

BOISE OFFICE

CONRAD J. AIKEN

101 SOUTH CAPITOL
BOULEVARD
U.S. BANK PLAZA, SUITE 202
BOISE, IDAHO 83702
TELEPHONE: (208) 395-0011
FACSIMILE: (208) 433-0167

February 4, 2002

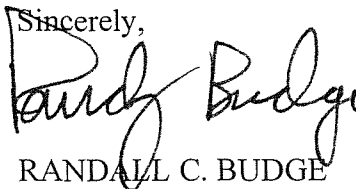
Glen Saxton
Idaho Department of Water Resources
1301 N. Orchard Street
Boise, Idaho 83706

*Re: Transfer Nos. 65416, 65886, 68302
Water Right Nos. 13-00026C, 13-00026D, 13-00034A, 13-00034B
City of Preston - Preston Whitney Irrigation Company -
Cub River Irrigation Company*

Dear Mr. Saxton:

Please consider this letter Cub River Irrigation Company's response to the Petition for Reconsideration of the City of Preston in the above-entitled matters.

Cub River concurs with and adopts by reference the responses filed in behalf of Preston-Whitney Irrigation Company to the Petition for Reconsideration of the City of Preston.

Sincerely,

RANDALL C. BUDGE

RCB:rr

cc: Josephine Beeman
Clyde G. Nelson
Kent Foster
Reagan Wheeler
Gale Moser

Law Offices
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.

KENT W. FOSTER
ROBERT E. FARNAM
WILLIAM D. FALER
CHARLES A. HOMER
GARY L. MEIKLE
DONALD L. HARRIS
DALE W. STORER
MARIE T. TYLER
ROBERT M. FOLLETT
FREDERICK J. HAHN, III
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SHAN B. PERRY
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US BANK BUILDING
330 SHOUP AVENUE, THIRD FLOOR
P.O. BOX 50130
IDAHO FALLS, IDAHO 83405

TE (208) 523-0620
FACSIMILE (208) 523-9518
E-MAIL KFOSTER@HOLDENLEGAL.COM

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JAN - 9 2002

Idaho Department of Water Resources

Arthur W. Holden
(1877-1967)
Robert B. Holden
(1911-1971)
Terry L. Crapo
(1939-1982)
William S. Holden
(1907-1988)

Of Counsel
Fred J. Hahn

January 7, 2002

Idaho Department of Water Resources
1301 N. Orchard Street
P.O. Box 83720
Boise, Idaho 83720-0098

RE: *Transfer No. 65416, 65886, 68302*

Dear Ladies and Gentlemen:

Enclosed for filing in the above referenced matters are responses in behalf of Preston-Whitney Irrigation Company to the Petitions for Reconsideration of the City of Preston.

Very truly yours,



Kent W. Foster

Cc: Josephine Beeman
Clyde G. Nelson
Randall C. Budge
Carl Swainston

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JAN - 9 2002

Department of Water Resources

Kent W. Foster ISB No. 1198
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.
330 Shoup Avenue, Third Floor
P.O. Box 50130
Idaho Falls, Idaho 83405
Telephone: 208-523-0620
Facsimile: 208-523-9518

Attorneys for Preston-Whitney Irrigation Company

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

IN THE MATTER OF WATER
RIGHT NO. 13-00026C,
AS MODIFIED BY TRANSFER NOS.
65886 AND 65416

Water Right No. 13-00026C

**PRESTON- WHITNEY
IRRIGATION COMPANY'S
RESPONSE TO CITY OF
PRESTON'S PETITION FOR
RECONSIDERATION**

The Preston-Whitney Irrigation Company hereby responds to the Petition for Reconsideration of the City of Preston in the above entitled matter as follows:

Under paragraph two of the City's Petition for Reconsideration, Preston Whitney questions the reference to "the non-consumptive nature of the municipal use."

With respect to the statement in paragraph number three of the Petition for Reconsideration, Preston-Whitney wishes only to express its belief that there is substantial need for accurate measurements.

Throughout the Petition For Reconsideration, the references to "Bergquist Springs" imply there is more than one spring, but the officers and directors of Preston-Whitney have always understood that there is just one "Bergquist Spring" and not plural springs.

In paragraph six of the City's Petition for Reconsideration, there is a reference to a water right no. "36-00026C." We assume that reference should be to Basin 13 rather than 36.

With respect to paragraph number seven of the Petition for Reconsideration, the officers and directors of Preston-Whitney do not perceive a need for mentioning the City's hydropower plant, the Preston-Whitney Irrigation Company reservoir system, or the lands within the Preston-Whitney Irrigation Company.

Dated this 7th day of January, 2002.

Holden, Kidwell, Hahn & Crapo, P.L.L.C.



Kent W. Foster

CERTIFICATE OF SERVICE

I hereby certify that I am a duly licensed attorney in the State of Idaho, resident of and with my office in Idaho Falls, Idaho; that I served a copy of the following described pleading or document on the attorneys listed below by hand delivering, by mailing or by facsimile, with the correct postage thereon, a true and correct copy thereof.

DOCUMENT SERVED: PRESTON-WHITNEY IRRIGATION COMPANY'S
RESPONSE TO CITY OF PRESTON'S PETITION FOR
RECONSIDERATION

ATTORNEYS AND OTHERS SERVED:

Glen Saxton *[First Class Mail]*
Idaho Department of Water Resources
1301 North Orchard Street
Boise, ID 83706

Randall C. Budge *[First Class Mail]*
Racine Olson Nye Cooper & Budge
P.O. Box 1391
Pocatello, Idaho 83204-1391

Clyde G. Nelson *[First Class Mail]*
City Attorney
P.O. Box 797
Soda Springs, Idaho 83276

Josephine P. Beeman *[First Class Mail]*
Beeman & Associates, P.C.
409 West Jefferson Street
Boise, Idaho 83702

Dated: 1/7/02


Kent W. Foster



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Boise, ID 83706 - P.O. Box 83720, Boise, ID 83720-0098

Phone: (208) 327-7900 Fax: (208) 327-7866 Web Site: www.idwr.state.id.us

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

December 4, 2001

JOSEPHINE P BEEMAN
BEEMAN & ASSOCIATES P C
409 W JEFFERSON ST
BOISE ID 83702

RE: Order In the Matter of Transfer Nos. 65416, 65886 & 68302

Dear Water Right Holder(s):

Enclosed please find Order Granting Petitions for Reconsideration issued
by the department in reference to the above listed information.

If you have any questions regarding this matter, please call me at 327-7940.

Sincerely,

Jeff Peppersack, Manager
Water Right Permits Section

JP:klt

Enclosure

cc: City of Preston
Kent W. Foster, Holden Kidwell
Randall C. Budge, Racine Olson Nye Cooper & Budge
Clyde G. Nelson, City Attorney, Soda Springs
Cub River Irrigation Co.

BEEMAN & ASSOCIATES, P.C.

Counselors and Attorneys at Law
409 West Jefferson Street
Boise, Idaho 83702

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Deborah E. Nelson
debnelson@micron.net

Telephone
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Facsimile
(208) 331-0954

November 27, 2001

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NOV 28 2001

Jeff Peppersack
Idaho Department of Water Resources
1301 North Orchard Street
Boise, ID 83706

Department of Water Resources

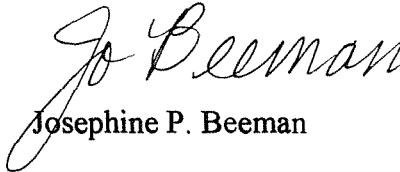
Re: City of Preston / Petitions for Reconsideration
Our File No. 1777

Dear Jeff:

Enclosed are four original Petitions for Reconsideration filed on behalf of the City of Preston, regarding Water Right Nos. 13-00026C, 13-00026D, 13-00034A, and 13-00034B. We faxed these same four Petitions at the end of the day on Tuesday, November 27, 2001. Jean Masi helped us and may have already provided you with the faxes. Due to a problem with our fax machine, some of the pages sent to IDWR transmitted slowly and were illegible. Jean was courteous enough to inform us which pages to resend. Please let us know if the time of arrival for any of the original or resent documents is an issue that needs to be discussed.

Sincerely,

BEEMAN & ASSOCIATES, P.C.



Josephine P. Beeman

JPB:ja
Enclosures
D:\1777\5123

Josephine P. Beeman
BEEMAN & ASSOCIATES, P.C.
409 West Jefferson Street
Boise, ID 83702
Phone: (208) 331-0950
Fax: (208) 331-0954
Idaho State Bar No: 1806

Attorneys for City of Preston

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NOV 23 2001

Department of Water Resources

Faxed in 11-27-01

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

IN THE MATTER OF WATER
RIGHT NO. 13-00026C,
AS MODIFIED BY TRANSFER NOS.
65886 and 65416

Water Right No. 13-00026C

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

The City of Preston respectfully submits the following Petition for Reconsideration regarding Transfer Approval Nos. 65886 and 65416, dated November 9, 2001, for water right no. 13-00026C. The approved transfers are preliminary orders and the Petition is filed pursuant to Rule 730, IDAPA 37.01.01.

The City seeks clarification and revision of the following terms and conditions in these transfers.

Transfer 65886

1. Pursuant to a February 1920 agreement, the City of Preston purchased what is now water right no. 13-00026C from the Cub River Irrigation Company. Approved Transfer 65886 lists this water right in the name of the Cub River Irrigation Company. The City of Preston should be the named owner.

2. The City of Preston is entitled to 1/18th of the Cub River Irrigation Company's primary right, up to 2.5 cfs, under water right no. 13-00026C. The diverted volume limit of 356 AF for the irrigation season would reduce the City's historic diversions (since the 1920's) by as much as 66%. It is not apparent that the diverted volume is appropriate given the historic use and

the nonconsumptive nature of the municipal use. Also, there is no indication that the diverted volume is necessary to prevent injury or expansion from the transfer.

3. 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."

4. 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 the Cub River Irrigation Company.

5. The legal description of Bergquist Springs needs to be consistent. Transfers for three water rights at issue (nos. 13-00026C, 13-00026D, and 13-00034A) identify the following 10-acre tract as the point of diversion for Bergquist Springs: SENENE Sec. 10, T15S R41E, Franklin County. Water right no. 13-00034B lists two 40-acre tracts as the points of diversion for Bergquist Springs: (1) NENE Sec. 10, T15S R41E, Franklin County (the 10-acre tract for 13-00026D, 13-00034A, and 13-00026C is within this 40-acre tract) and (2) NWNW Sec. 11 T15S R41E, Franklin County.

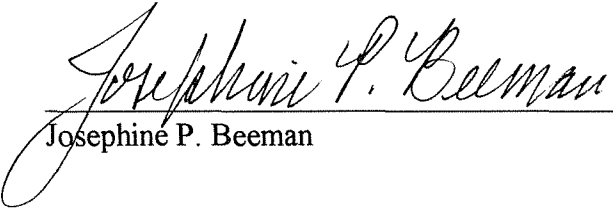
6. Condition for Approval No. 1 on Transfer 65416 provides, "Right 13-26C is authorized diversion of 7/100ths of stream in excess of high water right up to a maximum of 8.90 cfs when combined with primary right of 2.5 cfs." This condition is not included with the approval for 13-00026C in Transfer 65886.

7. The City of Preston's transfer application included purposes of use and places of use not addressed in the transfer approval for 13-00026C. 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.

RESPECTFULLY SUBMITTED this 27th day of November, 2001.

BEEMAN & ASSOCIATES, P.C.



Josephine P. Beeman

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 27th day of November, 2001, I caused a true copy of the foregoing **CITY OF PRESTON'S PETITION FOR RECONSIDERATION** to be served on the following:

Original (via fax):

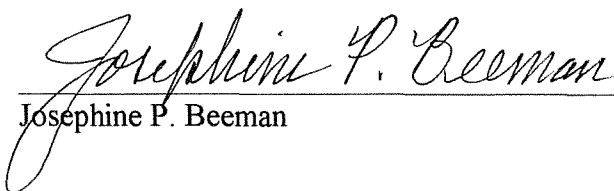
Glen Saxton
Idaho Department of Water Resources
1301 North Orchard Street
Boise, ID 83706

Copies (via U.S. Mail):

Kent W. Foster, Esq.
Holden Kidwell
P. O. Box 50130
Idaho Falls, ID 83405-0130

Randall C. Budge, Esq.
Racine Olson Nye Cooper & Budge
P.O. Box 1391
Pocatello, Idaho 83204-1391

Clyde G. Nelson
City Attorney
P.O. Box 797
Soda Spring, ID 83276



Josephine P. Beeman

Z:\1777\5116



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Boise, ID 83706 - P.O. Box 83720, Boise, ID 83720-0098
Phone: (208) 327-7900 Fax: (208) 327-7866 Web Site: www.idwr.state.id.us

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

November 13, 2001

CITY OF PRESTON
70 W ONEIDA
PRESTON ID 83263

CUB RIVER IRRIGATION CO
PO BOX 215
LEWISTON UT 83420

RE: Transfer No.: 65886 - Water Right 13-26C - Transfer Approval Notice

Dear Water Right Holder(s):

The Department of Water Resources has issued the enclosed approved Transfer of Water Right(s). Please be sure to thoroughly review the conditions of approval and remarks listed on the approval document.

The Transfer of Water Right(s) is a PRELIMINARY ORDER issued by the Department pursuant to section 67-5243, Idaho Code. It can and will become a final order without further action by the Department unless the APPLICANT petitions for reconsideration or files an exception and/or brief within fourteen (14) days of the service date as described in the enclosed information sheet.

ANY PERSON aggrieved by any decision, determination, order or action of the Department and who has not previously been afforded an opportunity for a hearing on the matter may request a hearing pursuant to section 42-1701A(3), Idaho Code. A written petition contesting the action of the Department and requesting a hearing shall be filed within fifteen (15) days after receipt of the denial or conditional approval.

Please note that water right owners are required to report any change of water right ownership and/or mailing address to the Department within 120 days of the change. Failure to report these changes could result in a \$100 late filing fee. Contact any office of the Department or visit the Department's homepage on the Internet to obtain the proper forms and instructions.

If you have any questions, please contact me at 208-327-7940.

Sincerely,

for Jeff Peppersack, Manager
Water Rights Permits Section

JP:klt

Enclosure(s)

MICROFILMED
NOV 13 2001

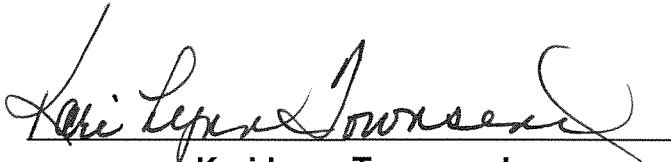
CERTIFICATE OF MAILING

I hereby certify that on November 13, 2001 I mailed a true and correct copy, postage prepaid, of the foregoing TRANSFER APPROVAL to the person(s) listed below:

RE: TRANSFER NO. 65886 - WATER RIGHT 13-26C

**CITY OF PRESTON
70 W ONEIDA
PRESTON ID 83263**

**CUB RIVER IRRIGATION CO
PO BOX 215
LEWISTON UT 84320**


Kari Lynn Townsend
Secretary

MICROFILMED
NOV 13 2001

**EXPLANATORY INFORMATION
TO ACCOMPANY A
PRELIMINARY ORDER**

The accompanying order or approved document is a "**Preliminary Order**" issued by the department pursuant to section 67-5243, Idaho Code. It can and will become a final order without further action of the Department of Water Resources (department) unless a party petitions for reconsideration, files an exception and brief, or requests a hearing as further described below:

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a preliminary order with the department within fourteen (14) days of the service date of this order. The department will act on a petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See Section 67-5243(3) Idaho Code.

EXCEPTIONS AND BRIEFS

Within fourteen (14) days after (a) the service date of a preliminary order, (b) the service date of a denial of a petition for reconsideration from this preliminary order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this preliminary order, 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, this preliminary order will become a final order of the agency.

REQUEST FOR HEARING

Unless a right to a hearing before the department or the Idaho Water Resource Board (Board) is otherwise provided by statute, any person aggrieved by any final decision, determination, order or action of the Director of the department and who has not previously been afforded an opportunity for a hearing on the matter may request a hearing pursuant to section 42-1701A(3), Idaho Code. A written petition contesting the action of the Director and requesting a hearing shall be filed within fifteen (15) days after receipt of the denial or conditional approval.

ORAL ARGUMENT

If the Director grants a petition to review the preliminary order, the Director shall allow all parties an opportunity to file briefs in support of or taking exceptions to the preliminary order and may schedule oral argument in the matter before issuing a final order. If oral arguments are to be heard, the Director will within a reasonable time period notify each party of the place, date and hour for the argument of the case. Unless the Director orders otherwise, all oral arguments will be heard in Boise, Idaho.

CERTIFICATE OF SERVICE

All exceptions, briefs, requests for oral argument and any other matters filed with the Director in connection with the preliminary order shall be served on all other parties to the proceedings in accordance with IDAPA Rules 37.01.01302 and 37.01.01303 (Rules of Procedure 302 and 303).

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NOV 13 2001

FINAL ORDER

The Director will issue a final order within fifty-six (56) days of receipt of the written briefs, oral argument or response to briefs, whichever is later, unless waived by the parties or for good cause shown. The Director may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order. The department will serve a copy of the final order on all parties of record.

Section 67-5246(5), Idaho Code, provides as follows:

Unless a different date is stated in a final order, the order is effective fourteen (14) days after its issuance if a party has not filed a petition for reconsideration. If a party has filed a petition for reconsideration with the agency head, the final order becomes effective when:

- (a) the petition for reconsideration is disposed of; or
- (b) the petition is deemed denied because the agency head did not dispose of the petition within twenty-one (21) days.

APPEAL OF FINAL ORDER TO DISTRICT COURT

Pursuant to sections 67-5270 and 67-5272, Idaho Code, if this preliminary order becomes final, any party aggrieved by the final order or orders previously issued in this case may appeal the final order and all previously issued orders in this case to district court by filing a petition in the district court of the county in which:

- i. A hearing was held,
- ii. The final agency action was taken,
- iii. The party seeking review of the order resides, or
- iv. The real property or personal property that was the subject of the agency action is located.

The appeal must be filed within twenty-eight (28) days of this preliminary order becoming final. See section 67-5273, Idaho Code. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal.

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NOV 13 2001



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Boise, ID 83706 - P.O. Box 83720, Boise, ID 83720-0098
Phone: (208) 327-7900 Fax: (208) 327-7866 Web Site: www.idwr.state.id.us

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

November 13, 2001

CONAN FOSTER
ASSISTANT WATERMASTER
1508 S 2400 E
PRESTON ID 83263

RE: TRANSFER OF WATER RIGHTS 13-26C (Transfer 65886)

Dear Conan:

Enclosed is a copy of the recently approved Transfer of Water Right for the
above referenced water right (Transfer 65886) in the name of Cub River Irrigation
Co.

If you have any questions, please call me at 208-327-7940.

Sincerely,

for Jeff Peppersack, Manager
Water Right Permits Section

JP:klt

Enclosure

MICROFILMED

NOV 13 2001



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Boise, ID 83706 - P.O. Box 83720, Boise, ID 83720-0098
Phone: (208) 327-7900 Fax: (208) 327-7866 Web Site: www.idwr.state.id.us

October 24, 2001

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

City of Preston
70 W Oneida
Preston, ID 83263

Cub River Irrigation Co.
P.O. Box 215
Lewiston, UT 84320

Josephine Beeman
409 W. Jefferson
Boise, ID 83702

Randall Budge
P.O. Box 1391
Pocatello, ID 83204-1391

Kent Foster
Preston-Whitney Irrigation Co
P.O. Box 50130
Idaho Falls, ID 83405

RE: Draft Transfer Approvals

Transfer 4596 renumbered to 68302, City of Preston
Transfer 2753 renumbered to 65416, Cub River Irrigation Co.
Transfer 3223 renumbered to 65886, City of Preston

Dear Interested Parties:

Final review of the above referenced transfers has been completed and draft approvals prepared. Copies have been sent to you for comment before the transfers are forwarded for approval. Please respond within 14 days with any comments you may have regarding these transfer approvals.

If you require additional information regarding this matter, please call me directly at (208) 327-7943, e-mail me at pskaggs@idwr.state.id.us or contact me by mail, and I will be happy to assist you.

Sincerely,

Pamela S. Skaggs
Sr. Water Rights Agent

Enclosures

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NOV 13 2001

TRANSFER REVIEW SHEET

(05-01)

TRANSFER # 3223/105886

DATE REVIEWED 10-23-2001 Q8

SPLIT___ POD ☒ ADD POD___ POU ☒ PERIOD___ or NATURE ☒ of USE

ALL OF RIGHT(S) (W=Water Right C=SRBA Claim R=SRBA Recommendation

<u>W/13-26C</u>	/	/	/	/
/	/	/	/	/
/	/	/	/	/
/	/	/	/	/

PART OF RIGHTS(S)

(Unchanged)

(Changed)

/	to	/	/
/	to	/	/
/	to	/	/
/	to	/	/
/	to	/	/
/	to	/	/
/	to	/	/
/	to	/	/
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/	to	/	/
/	to	/	/

Standard Season per decree
4-1 to 10-31

Standard Volume 3.5/2.5

(1) ☒ Priority (2) ___ Use (3) ☒ Season/W61 (4) ☒ Rate (5) ___ Volume
per decree & app.

(6) ___ Source (7) ___ P/D (8) ___ P/U (9) ☒ Proof/Owner (10) ☒ Map

(11) 13A Water District (12) NO Pertinent Conditions (13) No Expansion
WM/Rcvd 10-24-1985 w/limits

(2) Change from IRR of 101.7 acres to Municipal

(5) Vol. limited from IRR use = $3.5 \times 101.7 = 356.0$ ac

(6) Cub River to Berquist Springs trib. to Cub River

(7) Change P/D

(8) Change P/U to City of Preston

Conditions/Remarks 020, R04, R43, W53, W49, W57, W260, T07, T08

WRs for Update Comments NA -

Database Updated to Reflect Final Action 11-9-2001 Q8

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
TRANSFER ANALYSIS SHEET

RECEIVED
 FEB 22 2000

INITIAL REVIEW BY: KEITH C WILSON

Department of Water Resources

1. Right number 13-0026 Applicant City of Preston 3223/65886

2. Type of right: ☒ Decree ☐ License ☐ Claim

3. Purpose of transfer: ☒ Change point of diversion ☐ Add diversion point(s) ☐ Change place of use

☒ Other Change in Period of Use

4. Check:

a. ☒ Source ☒ Priority ☐ Amount ☒ Purpose ☐ Period of use

b. ☒ Description of original point of diversion.

c. ☐ Description of original place of use.

Should reflect total right not just portion

should be addressed on a change in nature of use (ie. Period of Use)

Should reflect decree p/u

5. Amount of land &/or water transferred:

a. ☒ All of right.

b. ☒ Part of right (NOTE! Part B should be filled in only if part of the right is owned by the applicant).

c. ☒ Check description of point(s) of diversion.

d. ☒ Check description of place of use.

e. ☒ Check map (shows p.d. and p.u. after transfer).

f. ☒ Check for correct signature, notarization, and fee.

g. ☐ Check proof of ownership of right &/or land from which water is transferred.

Apparently agreement of Feb 27, 1920 would show ownership.

h. ☒ Check for expansion in use of right. Comments Change in period of use to year round should not cause injury due to the change. Reduction in rate may be necessary - see attached calculations

i. ☒ Check for existing water rights from same source, on land water is being transferred to.

Right number(s) 13-0027 / 13-0028

j. ☒ Is use within a Watermaster District? ☒ Yes ☐ No

If yes, what district? 13-A

11-04-85

FINAL PROCESSING REVIEW BY: _____

1. Watermaster recommendation requested on 10-11-85 Received on 10-24-85

2. Is transfer published correctly? ☒ Yes ☐ No

3. Protest received? ☒ Yes ☐ No

LAST DATE of PROTEST

RECOMMENDED ACTION

1. ☒ Approve

2. ☐ Deny

3. Conditions* _____

11/04/85

4. By RDC Date 2/16/00



State of Idaho

DEPARTMENT OF WATER RESOURCES

900 N. Skyline Dr., Suite A, Idaho Falls, Idaho 83402-1718 - (208) 525-7161- Fax (208) 525-7177

EASTERN REGION

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

February 16, 2000

KENT FOSTER
%PRESTON-WHTNEY IRRIGATION COMPANY
PO BOX 50130
IDAHO FALLS ID 83405

RE: Withdrawal of protest on Application for Transfer No.: 3223

Dear Protestants:

This Department has received your withdrawal of protest against the application of City of Preston. This withdrawal was sent to us in 1998. This transfer is ready to be sent to our State Office in Boise for final approval.

If you have any questions, please call our office.

Sincerely,

Harold W Jones
Water Rights Supervisor

HWJ/sc

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NOV 13 2001

Right #	NAME	PRIORITY	USE and Amt	PERIOD OF USE	Point of Div and Source	PLACE OF USE
13-7283 Permit	City of Preston		Hydropower 13 cfs	1-1 to 12-31	NENE Sect. 10 NW NW Sect. 11 TISS R41E Bergquist Spr.	SWSW Sect. 8 TISS R40E
B-0027 Decree	City of Preston	1879	Municipal 1.0 cfs	1-1 to 12-31	SE SE Sect. 4 SWSW Sect. 3 TISS R41E Ranger Springs	City of Preston
13-0028 Decree	City of Preston	1882	Municipal "ALL"	1-1 to 12-31	Not specified in Decree. Birch Springs	City of Preston
13-0024 Decree	Cub River Irrigation Comp.	1880	Irrigation 45 cfs	4-1 to 10-31	Not specified Cub River	Varied Across in many sections. By agreement City of Preston was allowed to use $\frac{1}{18}$ of right for City use or 2.5 cfs Diverted from Ranger Springs
						In actual practice all the water used for Municipal purposes comes from Bergquist Springs
13-0026 Decree	Cub River Irrigation Comp.	1880	Irrigation 45 cfs	4-1 to 10-31	Not specified Cub River	Trans. applic. on file for 2.82 cfs that City of Preston implies it owns based on G.S.S shares. City has of Cub River Irrig. Proposes to change P.D. from Cub River to Bergquist Springs

RECORDED
DEC 06 1997

October 20, 1986

RE: Applications for Transfers 13-0026

City of Preston
City Hall
Preston, ID 83263

Gentlemen:

We are holding in our files two applications for transfer numbered 13-0026. Both of these applications carry the same number because they both seek to change right No. 13-0026 which was decreed to Cub River Irrigation Company in the case of Henry T. McEwan -vs- Franklin Sugar Company.

The first application, which requests the transfer of 2.50 cfs from Cub River to the City's pipeline on Bergquist Springs, is actually a right acquired through purchase from Cub River Irrigation in 1920 and then approved by the court, subject to certain performance by the city, in 1924.

This right appears to be incorrectly described on the application. First, the amount being transferred is not 2.50 cfs but rather one eighteenth (1/18) of the flow of Cub River with a maximum rate of 2.50 cfs. This right is only valid between April 1 and October 31, not the full year indicated in your application. Based upon the rights granted by the Cub River Decree, the City could possibly claim up to 0.67 cfs under right number 13-0034 which would be one-eighteenth of the 12.0 cfs decreed to Cub River Irrigation's for culinary, domestic, and stockwater purposes during the non-irrigation season.

It is our understanding that the reason the City of Preston initiated these transfers was to have an adequate water supply for the City's hydropower project. It, therefore, appears that the application should indicate a change in nature of use from irrigation to hydropower.

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DEC 08 1997

City of Preston
October 20, 1986
Page 2

The second application, which requests the transfer of 2.82 cfs from Cub River to Berquiel Springs, reflects those portions of right 13-0026 the City has purchased from individuals within the Cub River Irrigation Company. While it appears that Cub River rights were exchanged for shares of stock in Preston-Whitney Irrigation Company, we have no indication that this agreement was ever consummated and find no identification of the lands from which the Cub River water will be removed in your application. Again, it appears the intent of this application is to change the nature of the use of these rights from irrigation to power purposes.

It is my conclusion, from our review, that these applications will require amendment before they can receive further processing. If you have any questions about the necessary changes please feel free to contact me.

Very truly yours,

RONALD D. CARLSON
Eastern Regional Supervisor

RDC:ow

MICROFILMED
DEC 08 1997

BEEMAN & HOFSTETTER, P.C.

Counselors and Attorneys at Law

608 West Franklin Street

P. O. Box 1427

Boise, Idaho 83701-1427

Josephine P. Beeman

Dana L. Hofstetter

Telephone: (208) 388-8900

Facsimile: (208) 388-8400

E-mail: beehof@micron.net

August 27, 1998

RECEIVED

AUG 31 1998

Department of Water Resources
Eastern District Office

Mr. Harold Jones
Idaho Department of Water Resources
900 North Skyline Drive, Suite A
Idaho Falls, ID 83402

Re: Agreement Among the City of Preston, the Cub River Irrigation Company,
and the Preston-Whitney Irrigation Company Regarding the Municipal
Water Rights for the City of Preston

Dear Skip:

I enclose an agreement signed by the City of Preston, the Cub River Irrigation Company, and the Preston-Whitney Irrigation Company which 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).

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 and in any subsequent court review of the transfers.

We would anticipate that the agreement will facilitate the approval of the transfers in accordance with *Idaho Code* § 42-222. I know that Randy Budge, Kent Foster, or I would be willing to answer any questions that you may have.

Sincerely,

BEEMAN & HOFSTETTER, P.C.

Jo Beeman
Josephine P. Beeman

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NOV 13 2001

JPB:ja

Enclosure

cc w/o enc: Mayor Heusser (City of Preston)

Clyde Nelson (City of Preston)

Randy Budge (Cub River)

Kent Foster (Preston-Whitney)

D:\1777\2349

201089-7

APR 28 1998

**AGREEMENT AMONG THE CITY OF PRESTON,
THE CUB RIVER IRRIGATION COMPANY, AND THE PRESTON-WHITNEY
IRRIGATION COMPANY REGARDING THE MUNICIPAL
WATER RIGHTS FOR THE CITY OF PRESTON**

This agreement reports the results of negotiations and sets forth the settlement agreement among the City of Preston, the Cub River Irrigation Company and the Preston-Whitney Irrigation Company arising from municipal water use by the City of Preston, Idaho.

In 1983 and 1984, the City of Preston (the "City") applied to the Idaho Department of Water Resources, ("IDWR") to confirm changes in points of diversion and nature of use for three municipal water rights. A transfer application initiates an administrative process for the approval of a change in point of diversion, place of use, or nature of use of an existing water right.

The City has also sought to increase its municipal water supply by purchasing stock from the Cub River Irrigation Company and the Preston-Whitney Irrigation Company ("Preston-Whitney"), and in 1982, Cub River Irrigation Company applied to IDWR to confirm changes in points of diversion and nature of use for 65.5 shares of Cub River Irrigation Company stock purchased by the City to be diverted at Bergquist Springs. In 1995, Cub River Irrigation Company refiled its transfer applications to reflect that the City has purchased a total of 96¼ shares. Preston-Whitney has protested the City's and Cub River Irrigation Company's transfer applications.

CITY OF PRESTON MUNICIPAL WATER RIGHTS

The City of Preston, the Cub River Irrigation Company, and the Preston-Whitney Irrigation Company hereby agree as follows respecting the proposed transfers as they relate to the municipal needs of the City of Preston during the irrigation and non-irrigation seasons.

Municipal Rights During the Irrigation Season (April 1 - October 31):

The City of Preston's municipal water rights during the irrigation season include:

1. 1 cfs from Ranger Springs with priority date of 1879, all of which is legally diverted from Bergquist Spring. Since the 1 cfs with priority date 1879 comes from 1 cfs of the Cub River decreed to Elmer S. Merrill (.67 cfs) and Caroline Allred (.33 cfs), the flow at Ranger Springs does not limit the right. The Merrill and Allred rights from the Cub

River were transferred to the City in 1920 at which time the City of Preston was diverting from Ranger Springs. The source of the Merrill and Allred decreed water rights is the Cub River. This 1 cfs water right has a senior priority date to any rights held by others on the Cub River, including the Cub River Irrigation Company and the Preston-Whitney Irrigation Company.

2. All of the flows of Birch Spring with a priority date of 1882, all of which is also legally diverted from Bergquist Springs. Birch Spring flows directly into the Preston-Whitney canal. The Cub River watermaster measures the flow at Birch Springs on a year round basis and accounts for that flow at the City's Bergquist Spring diversion.
3. One-eighteenth of the primary right of the Cub River Irrigation Company (water right No. 13-00026 for 45 cfs with a priority date of 1880) up to 2.5 cfs is owned by the City in accordance with the February 1920 Agreement between the City of Preston and the Cub River Irrigation Company. For many years, water under this right has been diverted by the City through its pipeline at Bergquist Spring which is a tributary of the Cub River. The approval of the City's pending transfer (No. 3223) would formally confirm the practice of diverting this portion of the Cub River Irrigation Company's water right No. 13-00026 through the City's pipeline at Bergquist Spring.
4. The City's proportionate share of the irrigation season rights of the Cub River Irrigation Company's rights as represented by the shares of the Cub River Irrigation Company held by the City of Preston. At present, the City owns 96 and 1/4 shares of the Cub River Irrigation Company stock which would entitle it to a maximum diversion of 4.14 cfs. In times of shortage, the City's rate of diversion would be prorated based on its shares and the flow of the Cub River. The City's point of diversion is Bergquist Springs and the water is delivered in accordance with the 1880 priority date of the Cub River Irrigation Company's primary irrigation right (13-00026) from the Cub River.
5. The City's proportionate share of the Cub River Irrigation Company's "excess of high waters right" described in the 1924 Henry R. McEwan v. Franklin County Sugar Company decree as represented by the shares of the Cub River Irrigation Company held by the City of Preston. At present, the City owns 96 and 1/4 shares which is 3.2% of the shares of the Cub River Irrigation Company.

201089 3-7

Municipal Rights During the Non-irrigation Season (November 1 - March 31)

The City of Preston's municipal rights during the non-irrigation season include:

1. 1.0 cfs from Ranger Springs, year round, with priority date of 1879. This right is actually a Cub River right, as explained above.
2. All of the flows of Birch Spring with priority date of 1882.
- TV. 4596 — 3. 2.5 cfs of right No. 13-00034 with priority date April 1, 1880.
- TV. 2753 — 4. The right to divert .3 cfs of right No. 13-00034 with priority date of April 1, 1880 based upon the City's ownership of 96 1/4 shares of stock in Cub River Irrigation Company. This right is diverted from Bergquist Springs.

Overflow Into Glendale Reservoir and Foster Reservoir

Water diverted at Bergquist Spring, but not used by the City for municipal purposes, is rediverted to the Preston-Whitney reservoir system through the overflow structures below the City's hydropower plant into Glendale Reservoir and Foster Reservoir. Preston-Whitney Irrigation Company agrees that the City's diversion of water from Bergquist Springs and use of said water for hydropower purposes as a sole use or as use in addition to municipal use does not adversely impact the water rights of the Preston-Whitney Irrigation Company, so long as the water diverted in excess of the City's municipal use is delivered into the reservoirs of the Preston-Whitney Irrigation Company via the above described overflow structures. The Cub River Irrigation Company agrees that the City's diversion of water from Bergquist Springs and use of said water for hydropower purposes as a sole use or as use in addition to municipal use does not adversely impact the water rights of the Cub River Irrigation Company during the non-irrigation season.

The City of Preston shall maintain, repair and replace the existing pipeline and slide from the City's hydropower facility into Glendale Reservoir and shall fix and maintain the existing overflow from the City's storage tanks into Foster Reservoir and will haul in riprap to repair the channel from the overflow. If the City of Preston or the Preston-Whitney Irrigation Company wants to relocate either pipeline, each ought to first give notice to, consult with, and obtain the consent of the other and do the relocation or modification at its own expense. Beyond the point of discharge from the City's pipelines, the Preston-Whitney Irrigation Company shall be

201089

responsible for maintenance, replacement and repair of any facilities of the Preston-Whitney Irrigation Company.

MEASURING DEVICES FOR THE OVERFLOW INTO GLENDALE RESERVOIR AND FOSTER RESERVOIR

The cost of the installation, repair or replacement of appropriate meters or measuring devices at the two overflow structures (into Glendale and Foster reservoirs) below the City power plant shall be borne equally by the Cub River Irrigation Company, the Preston-Whitney Irrigation Company and the City of Preston. The City of Preston did install and will continue to bear all expenses related to the meter at the Albert Moser campground and the meters in the new and old chlorine houses.

FORMATION OF ICE CAP

The City has installed a valve upon its water pipeline from Bergquist Springs which serves the City's municipal system. During winter months, Preston-Whitney Irrigation Company runs water through its canal to form an ice cap or to maintain an open tunnel within the ice which provides a channel for water to be delivered to Preston-Whitney Irrigation Company's reservoirs for partial filling of those reservoirs prior to the time the entire canal is cleared of snow in the spring months. The City agrees that Preston-Whitney Irrigation Company canal shall be entitled to have open said valve to allow water to flow into the Preston-Whitney Irrigation Company canal for 25 days during the winter months, consecutively or intermittently, or for such additional times as necessary depending on weather conditions or emergencies, for the purpose of forming an ice cap within the canal, subject to the following conditions:

1. The opening, closing, and operation of said valve shall be made only by the Mayor and/or Public Works Director or other designee of the City of Preston upon written request of the Preston-Whitney Irrigation Company. The watermaster may accompany the representative of the City of Preston. The opening and closing of said valve shall be accomplished in such a manner so as not to damage any portion of the City of Preston's pipeline or hydroelectric generating facilities.
2. The flow from the valve shall be regulated by the City and the watermaster in such a manner as to most effectively accomplish the purposes stated above and shall be

restricted to an amount which will cause a minimum reduction in electrical generating production at the City's hydroelectric plant located upon the culinary pipeline which in turn will protect the structure and mechanics of the hydroelectric plant.

3. The use of the valve shall be regulated by the City and the watermaster in such a manner as to most effectively accomplish the purposes stated above and shall be restricted to the minimal number of days which will cause a minimum reduction in electrical generating production at the City's hydroelectric plant.

STATUS OF WATER RIGHTS FOLLOWING APPROVAL OF CITY OF PRESTON AND CUB RIVER IRRIGATION COMPANY TRANSFERS

Water Right No. 13-00026 in the amount of 45 cfs with priority date of April 1, 1880 is reduced by the 2.5 cfs under the City of Preston's transfer.

Tr. 4596

Water Right No. 13-00034 in the amount of 12 cfs with a priority date of April 1, 1880 is reduced by the 2.5 cfs in the City of Preston's transfer and the 0.3 cfs in the Cub River Irrigation Company's transfer. The remainder of Water Right No. 13-00034 (9.2 cfs) is forfeited for nonuse following the closure of the sugar company in 1968. 0.3 cfs of Water Right No. 13-00034 with a priority date of April 1, 1880 is based upon the City's ownership of 98-1/4 shares of stock in Cub River Irrigation Company. This right is diverted from Bergquist Springs.

Tr. 2753

WITHDRAWAL OF OBJECTIONS

Preston-Whitney Irrigation Company agrees to withdraw its objections to the transfers of the water rights for the City of Preston and the Cub River Irrigation Company. The following table lists the water right and transfer numbers. 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.

	Water Right Number and Original Source	Transfer Number
City of Preston	13-00026 / Cub River	3223
City of Preston	13-00034 / Cub River	4596
Cub River Irrig. Co.	13-00026 / Cub River	2753
Cub River Irrig. Co.	13-00034 / Cub River	2753

201089

THIS AGREEMENT SHALL BE BINDING UPON THE HEIRS, SUCCESSORS
AND ASSIGNS OF THE PARTIES HERETO.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals this
12th day of January, 1998. Cyz

CITY OF PRESTON, IDAHO

ATTEST:

By Jay B. Hemmick
MAYOR

Gerry C. Larsen
CITY CLERK

CUB RIVER IRRIGATION COMPANY

ATTEST:

By Gale C. Moen
PRESIDENT

Mary M. Gilbert
SECRETARY

PRESTON-WHITNEY IRRIGATION COMPANY

ATTEST:

By R. Carl Swenson
PRESIDENT

Margie Haddoups
SECRETARY

201089²²

recorded at the request of

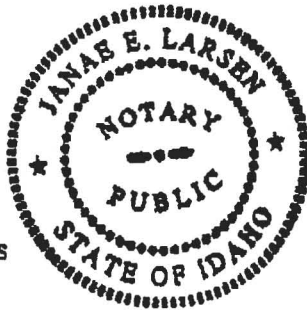
City of Preston

9:40 a.m. JAN 13 1998 p.m.

STATE OF IDAHO)
)ss
 County of Franklin)

V. ELLIOTT LARSEN, RECORDER
 By Janet E. Larsen Deputy
 FRANKLIN COUNTY, IDAHO

On this 12th day of January, 1998, before me, the undersigned Notary Public, personally appeared Jay B. Heusser and Jerry C. Larsen, known to me to be the Mayor and City Clerk of the City of Preston, Idaho, whose names are subscribed to the foregoing instrument and acknowledged to me that they executed the same on behalf of said city.



Janet E. Larsen
 NOTARY PUBLIC FOR IDAHO
 Residing at Preston
 Commission Expires 4-1-2002

STATE OF IDAHO)
)ss
 County of Franklin)

On this 12th day of January, 1998, before me, the undersigned Notary Public, personally appeared Gale C. Moser and Max M. Gilbert, known to me to be the President and Secretary of the Cub River Irrigation Company, whose names are subscribed to the foregoing instrument and acknowledged to me that they executed the same on behalf of said city.



Janet E. Larsen
 NOTARY PUBLIC FOR IDAHO
 Residing at Preston
 Commission Expires 4-1-2002

STATE OF IDAHO)
)ss
 County of Franklin)

On this 12th day of January, 1998, before me, the undersigned Notary Public, personally appeared R. Carl Swainston and Maxine Waddoups, known to me to be the President and Secretary of the Preston-Whitney Irrigation Company, whose names are subscribed to the foregoing instrument and acknowledged to me that they executed the same on behalf of said city.



Janet E. Larsen
 NOTARY PUBLIC FOR IDAHO
 Residing at Preston
 Commission Expires 4-1-2002

d:\1777\1460

AGREEMENT, Page 7

MICROFILMED
 NOV 13 2001

City meter at Point Mer

		<u>Totalizer</u>		
Jan 16	Meter 4:30 PM	173430	-	4400 GPM - 9.77 CFS
Jan 17	Meter	not taken	-	4400 CPM - 9.77 CFS
Jan 18			-	
Jan 19	Meter		-	4425 GPM - 9.83 GFS
Jan 20	Meter 3:00 PM	490348	-	4425 GPM - 9.83 CFS
Jan 21	Meter	not read		
Jan 22	Meter 9:30 AM	500506	-	4425 CPM 9.83 CFS
Jan 23				
Jan 24	Meter 2:15 PM	51310.7	-	4425 GPM 9.83 CFS
Jan 25				
Jan 26	Meter 1:45 PM	52448.3	-	4425 CPM 9.83 CFS
Jan 30	Meter 11:00 AM	54680.6		4425 GPM 9.83 CFS
Jan 31				
Feb 1	Meter 9:30 AM	55808.8	-	4425 GPM 9.83 CFS
Feb 2		not read		
Feb 3	Meter 10:30 AM	56962.8	-	4425 GPM - 9.83 CFS
Feb 4		not read		
Feb 5	Meter 5:10 PM	58275.7	-	4425 GPM - 9.83 CFS
Feb 6		not read		
Feb 7	Meter 10:30 AM	592640		4425 GPM - 9.83 CFS
Feb 8		not read		
Feb 9	Meter 11:30 AM	604403		4425 GPM - 9.83 CFS
Feb 10		not read		
Feb 11	Meter 1:00 PM	616203		4425 GPM = 9.83 CFS
Feb 12				
Feb 13	Meter 12:30 PM	627587		4425 GPM = 9.83 CFS
Feb 14				
Feb 15				
Feb 16	Meter 12:05 PM	644141		4325 GPM = 9.61 CFS
Feb 17				
Feb 18	Meter 12:05 PM	655351		4300 GPM = 9.56 CFS

MICROFILMED
NOV 13 2001

over

City Meter about noon

1120 11425 AM - 666108 = 4450 RPM = 9.89 CFS
1121

1122 11400 PM - 678063 = 4425 RPM = 9.83 CFS

NOV 13 2001

RECEIVED

Dutch Spring

Birch

Jan 16	Ha 30 = 1.10 CFS	
Jan 17	Ha 30 = 1.10 CFS	
Jan 18		not read
Jan 19	Ha 30 = 1.10 CFS	
Jan 20	Ha 30 = 1.10 CFS	
Jan 21		not read
Jan 22	Ha 29 = 1.04 CFS	
Jan 23		
Jan 24	Ha 30 = 1.10 CFS	
Jan 25		
Jan 26	Ha 30 = 1.10 CFS	
Jan 30	Ha 33 = 1.27 CFS	
Jan 31	~~Ha 40 = 1.69 CFS~~	not read
Feb 1	Ha 40 = 1.69 CFS	
Feb 2		
Feb 3	Ha 164 = 3.45 CFS	
Feb 4		
Feb 5	Ha 168 = 3.79 CFS	
Feb 6		
Feb 7	Ha 168 = 3.79 CFS	
Feb 8		
Feb 9	Ha 166 = 3.61 CFS	
Feb 10		
Feb 11	Ha 164 = 3.45 CFS	
Feb 12		
Feb 13	Ha 149 = 2.30 CFS	
Feb 14		
Feb 15		
Feb 16	Ha 42 = 1.82 CFS	
Feb 17		
Feb 18	Ha 43 = 1.89 CFS	

MICROFILMED
NOV 13 2001

over

Meter Below tank
to City

Jan 30 Meter ^{10:20 AM} 387864 - 2050 RPM = 4.55 CFS

Jan 31

Feb 1 Meter 9:30 AM 388383 = 2008 RPM = 4.44 CFS

Feb 2

Feb 3

Feb 4

Feb 5

Feb 6

Feb 7

Feb 8 Meter 10:00 AM 390106 = 1925 RPM = 4.28 CFS

Feb 15 Meter 10:00 AM 391743 = 1825 RPM = 4.05 CFS

Feb 22 Meter 10:00 AM 393608 = 1860 RPM = 4.13 CFS

MICROFILMED
NOV 13 2001

2 ft rectangles

Anger Spring Jan 26

Jan 26 Ma 39 = 1.57 CFS
Feb 10 Ma 68 = 3.56 CFS
Feb 20 Ma 54 = 2.53 CFS

MICROFILMED

NOV 13 2001

13-0026, 13-0027, 13-0028 - City of Preston

Ag Room, Franklin County Courthouse, Preston, ID
Tuesday, November 19, 1985 - 1:00 p.m.

ROSTER OF ATTENDANCE

Hearing Officer: Bob Fleener

<u>Name</u>	<u>Representing</u>	<u>Address</u>
KEN SPIERS	CITY OF PRESTON	
Clyde Nelson	" "	Box 797 - Soda Springs Idaho
Glen Nelson	City of Preston	R3 Preston Id
Angus Condie	Preston Whiskey Dist	
Blaine Hamble	Preston Whiskey Dist	
Frank & Beitia	US Forest Service	Pocatello, Ida.
Tim Burton	US Forest Service	Pocatello, Ida.
Ryan Whelan	Ant River Irrigation Co.	Lawton Utah
Waseel John	Forest Service	Montpelier
Corbin John	River Water Master	Preston
J.R. Williams	Preston City	City Hall - Preston
Ronald Carlson	IDWR	Idaho Falls

MICROFILMED
NOV 13 2001

* 13-0026.

10/30/85

Cub River Irrigation Co.

PROTESTANTS.

IP. DEPT. F&G.

Issue - MAINTENANCE OF MINIMUM FLOW OF 19 CFS.

QUESTION - IS THERE ANY LAND BEING DEWATERED?

HOW LONG HAS CITY OWNED SHARES?

Capacity of system with new hydro plant is 10 cfs.
Water has been diverted by City by around 40 yrs.
Preston actually owns 3.12 ~~25.5 shares~~ 3.25 cfs.
10.5 shares 3.03 cfs.

Initial ³⁶⁵ shares were traded from Preston Whitney to
Cub River. Land under Cub River initially irrigated
under Cub River was picked up by Preston Whitney.

- Recent purchase of 5 shares actually devalued
land at time of purchase.

All 3000 shares of stock in Cub River Irrigation
have the same weight.

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NOV 13 2001

Water master reduces water right delivered to C&B
River Irrigation by the amount delivered to the City of Lester.

Cities use 15 C.C.f/s in summer
6cc5 f/s in winter.

MICROFILMED
NOV 13 2001

Law Offices
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.

FRED J. HAHN
KENT W. FOSTER
ROBERT E. FARNAM
WILLIAM D. FALER
STEPHEN E. MARTIN
CHARLES A. HOMER
GARY L. MEIKLE
GAYLE A. SORENSON, P.A.
DONALD L. HARRIS, P.A.
DALE W. STORER
MARIE T. TYLER
JOHN G. SIMMONS
ROBERT M. FOLLETT
FREDERICK J. HAHN, III

WEST ONE BANK BLDG.
330 SHOUP AVENUE, THIRD FLOOR
P.O. BOX 50130
IDAHO FALLS, IDAHO 83405

TELEPHONE (208) 523-0620
TELEFAX (208) 523-9518

Arthur W. Holden
(1877-1967)
Robert B. Holden
(1911-1971)
Terry L. Crapo
(1939-1982)
William S. Holden
(1907-1988)

RECEIVED

NOV 16 1995

Department of Water Resources

November 14, 1995

Bobby D. Fleenor, Hearing Officer
IDAHO DEPARTMENT OF
WATER RESOURCES
1301 North Orchard Street
Statehouse Mail
Boise, Idaho 83720

Re: Application for Transfer of City of Preston, No. 3223

Dear Mr. Fleenor:

Enclosed is a discovery request which encompasses interrogatories, requests for production of documents and a request for an order authorizing our expert to make an investigation and examination of the City of Preston's municipal water supply system. We have discussed this previously with counsel for the City of Preston but so far have not received any response. We thought perhaps it would be well to have a formal motion in the file which could potentially be discussed at the pre-hearing conference scheduled for December 12 in Pocatello.

Very truly yours,



Kent W. Foster

Enclosure

pc. Josephine P. Beeman
Randall C. Budge

G:\WPDATA\KWF\7206\UDWR\1114.LTR.sjw

REPROFILMED

DEC 08 1997

Kent W. Foster, Esq.
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.
P.O. Box 50130
330 Shoup Avenue, Third Floor
Idaho Falls, Idaho 83405
Telephone: (208) 523-0620
Telefax: (208) 523-9518

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION)
FOR TRANSFER NO. 3223 OF (FOR)
WATER RIGHT NO. 13-0026) IN THE)
NAME OF THE CITY OF PRESTON.)
_____)

**INTERROGATORIES AND
REQUESTS FOR PRODUCTION**

Protestant, Preston-Whitney Irrigation Company, requests that you answer the following interrogatories and produce copies of the documents requested herein within such time as may be permitted or directed by the hearing officer in this matter:

1. State the name, address and position of the person providing the answers to these interrogatories.
2. State whether applicant has a distribution map, or other document or documents, showing the municipal water supply distribution system, including the locations, lengths and sizes of mainlines, lateral lines, hydrants and control facilities and measuring devices. If such a map or other document exists, please provide a copy or copies, and if not, please provide a written description and list of all such facilities.
3. State whether applicant has a "service area map" showing all service areas, including parks, recreation areas, general residential areas and commercial or business or

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DEC 08 1997

other areas. If such a map or other document exists, please provide a copy or copies, and if not, please provide a written description of all areas.

4. State the number of residential customers, commercial customers, industrial customers and any other categories of customers or water users served by the City's municipal water supply system. Please show how such customers or users are categorized and the number of each such category or type of user or customer as well as the total.

5. Please describe the rate structure including the base rates and declining block structure if applicable.

6. Please describe the historical use of water by the City of Preston in as much detail as possible. Please include all measurements from all sources, especially measurements of average daily and peak daily use. If there are any documents which describe or are relevant to historical water use or which contain measurements, please produce copies of the same.

7. Please state whether there have been any feasibility and/or reconnaissance studies of the City's water distribution system, demand estimates, water system plans, or fire and domestic demand estimates. If written documents containing any such system evaluation exist, please provide copies.

8. Please describe and list all water measurement equipment and describe all flow measurement device specifications and calibrations. If any documents containing such information exist, please provide copies.

9. Please state whether any water quality reports, including bacterial or chemical reports from DEQ or a health district or private laboratories, exist. If written reports or other documents containing any such water quality data exist, please provide copies.

10. Please state the current insurance rating for the City of Preston and the basis for such rating. If such information is contained in reports or other documents please provide copies of the same.

DATED this 14th day of November, 1995.



Kent W. Foster, Esq.
Holden, Kidwell, Hahn & Crapo, P.L.L.C.

CERTIFICATE OF SERVICE

I hereby certify that I am a duly licensed attorney in the State of Idaho, resident of and with my office in Idaho Falls, Idaho; that I served a copy of the following described pleading or document on the attorneys listed below by hand delivering, by mailing or by facsimile, with the correct postage thereon, a true and correct copy thereof on this 14th day of November, 1995.

DOCUMENT SERVED:

INTERROGATORIES AND REQUESTS FOR PRODUCTION

ATTORNEYS SERVED:

Josephine P. Beeman, Esq.
DILLION, BOSCH, DAW
& BOCK, CHTD.
Fidelity Building
242 N. 8th Street, Ste. 200
Boise, Idaho 83702

(Mail)

Randall C. Budge, Esq.
RACINE, OLSON, NYE, COOPER
& BUDGE, CHARTERED
P.O. Box 1391
Pocatello, Idaho 83204-1391

(Mail)



Kent W. Foster, Esq.
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.

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DEC 08 1997

Kent W. Foster, Esq.
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.
P.O. Box 50130
330 Shoup Avenue, Third Floor
Idaho Falls, Idaho 83405
Telephone: (208) 523-0620
Telefax: (208) 523-9518

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION)
FOR TRANSFER NO. 3223 OF (FOR) **MOTION TO COMPEL**
WATER RIGHT NO. 13-0026) IN THE) **DISCOVERY**
NAME OF THE CITY OF PRESTON.)
_____)

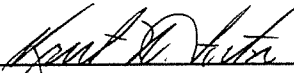
Protestant, Preston-Whitney Irrigation Company, hereby moves Idaho Department of
Water Resources for an Order directing the following:

1. That applicant, City of Preston, answer the attached interrogatories and requests for production within such time as the hearing officer may deem appropriate.
2. That applicant, City of Preston, produce copies of any and all documents referenced in said attached interrogatories and requests for production with the answers to said interrogatories.
3. That applicant, City of Preston, permit and cooperate in the conducting of an inspection and examination of its municipal water supply system by protestant, Preston-Whitney Irrigation Company's expert, Dr. Charles E. Brockway, to include providing access for Dr. Brockway to all regulating and measuring devices used to control and measure the

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DEC 08 1997

water introduced into the applicant's municipal water supply system and used by residents, businesses, governmental units and all who receive water from said system for any purpose.

DATED this 14th day of November, 1995.



Kent W. Foster, Esq.

CERTIFICATE OF SERVICE

I hereby certify that I am a duly licensed attorney in the State of Idaho, resident of and with my office in Idaho Falls, Idaho; that I served a copy of the following described pleading or document on the attorneys listed below by hand delivering, by mailing or by facsimile, with the correct postage thereon, a true and correct copy thereof on this 12/14 day of November, 1995.

DOCUMENT SERVED:

MOTION TO COMPEL DISCOVERY

ATTORNEYS SERVED:

Josephine P. Beeman, Esq.
DILLION, BOSCH, DAW
& BOCK, CHTD.
Fidelity Building
242 N. 8th Street, Ste. 200
Boise, Idaho 83702

(Mail)

Randall C. Budge, Esq.
RACINE, OLSON, NYE, COOPER
& BUDGE, CHARTERED
P.O. Box 1391
Pocatello, Idaho 83204-1391

(Mail)



Kent W. Foster, Esq.
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.

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MICROFILMED
DEC 08 1997

DILLION:
B O S C H
D A W
BOCK &
c h a r t e r e d

Attorneys

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

November 9, 1995

VIA FACSIMILE

Bobby D. Fleenor
Idaho Department of Water
Resources, State Office
1301 N. Orchard Street
Boise, ID 83706

Kent Foster
HOLDEN KIDWELL HAHN
& CRAPO
P.O. Box 50130
Idaho Falls, ID 83405

Randall C. Budge
RACINE OLSON NYE COOPER
& BUDGE
P.O. Box 1391
Pocatello, ID 83204-1391

Re: City of Preston Pre-hearing Conferences
Transfer Applications by City of Preston and Cub River Irrigation Co.
DBD&B File No. 1777-WA01

Dear Gentlemen:

The Idaho Department of Water Resources has issued a notice setting the pre-hearing conference on December 12, 1995 in Pocatello. Today I received notice from Mr. Brent Spronk, the consulting engineer for the City of Preston, that he would not be able to attend the pre-hearing conference on December 12 due to a prior commitment. Mr. Spronk will be attending meetings on December 11 and 12 connected with ongoing litigation in the U.S. Supreme Court.

The City of Preston is willing to go forward with the pre-hearing conference, but is concerned that Mr. Spronk will not be present to discuss the technical work he has done for the City which is so important to this matter.

Please call me if you have any questions or comments.

Sincerely,

Dillion, Bosch, Daw & Bock, Chtd.

By:

Jo Beeman
Josephine P. Beeman

cc: Arlene Nash
Clyde Nelson
Brent Spronk

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

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NOV 17 1995
Department of Water Resources

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DEC 08 1997

DILLION BOSCH DAW & BOCK Chtd.

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

FAX COVER SHEET

PLEASE DELIVER THE FOLLOWING PAGES TO:

BOBBY D. FLEENOR, IDWR
 KENT FOSTER
 RANDALL C. BUDGE
 ARLENE NASH
 CLYDE NELSON
 BRENT SPRONK

FAX: (208) 327-7866
 (208) 523-9518
 (208) 232-6109
 (208) 852-1820
 (208) 547-2136
 (303) 861-9700

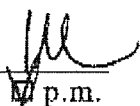
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FROM: Josephine P. Beeman

DBDB FILE NO.: 1777-WA01

NUMBER OF PAGES BEING TRANSMITTED (INCLUDING THIS PAGE) = 2

IF ALL PAGES ARE NOT RECEIVED, PLEASE TELEPHONE (208) 344-8990.

FACSIMILE OPERATOR: 

Time Sent: 510 ☐ a.m. ☒ p.m.

A DUPLICATE OF THIS FACSIMILE WILL NOT BE SENT BY REGULAR MAIL
 UNLESS REQUESTED BY THE RECIPIENT.

MICROFILMED
 DEC 08 1997

**DILLION:
B O S C H
D A W
BOCK** 
c h a r t e r e d

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

November 9, 1995

VIA FACSIMILE

Bobby D. Fleenor
Idaho Department of Water
Resources, State Office
1301 N. Orchard Street
Boise, ID 83706

Randall C. Budge
RACINE OLSON NYE COOPER
& BUDGE
P.O. Box 1391
Pocatello, ID 83204-1391

Kent Foster
HOLDEN KIDWELL HAHN
& CRAPO
P.O. Box 50130
Idaho Falls, ID 83405

Re: City of Preston Pre-hearing Conferences
Transfer Applications by City of Preston and Cub River Irrigation Co.
DBD&B File No. 1777-WA01

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Please call me if you have any questions or comments.

Sincerely,

Dillion, Bosch, Daw & Bock, Chtd.

By:


Josephine P. Beeman

cc: Arlene Nash
Clyde Nelson
Brent Spronk

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

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DEC 08 1995

- SENDER: Complete Items 1, 2, 3, and 4.
Add your address in the "RETURN TO" space on reverse.

(CONSULT POSTMASTER FOR FEES)

1. The following service is requested (check one).
☒ Show to whom and date delivered
☐ Show to whom, date, and address of delivery ..
 2. ☐ RESTRICTED DELIVERY
 (The restricted delivery fee is charged in addition to the return receipt fee.)

TOTAL \$

3. ARTICLE ADDRESSED TO:

Williams, Castleton
P.O. Box 191
Preston Id 83265

4. TYPE OF SERVICE:

- ☐ REGISTERED ☐ INSURED
☒ CERTIFIED ☐ COD
☐ EXPRESS MAIL

ARTICLE NUMBER

13334

(Always obtain signature of addressee or agent)

I have received the article described above.

SIGNATURE ☐ Addressee ☐ Authorized agent

Jennifer Williams

5. DATE OF DELIVERY

11-6-85

POSTMARK
(may be on reverse side)

6. ADDRESSEE'S ADDRESS (Only if requested)

7. UNABLE TO DELIVER BECAUSE:

7a. EMPLOYEE'S INITIALS

CWR

★ GPO: 1982-379-593

- SENDER: Complete Items 1, 2, 3, and 4.
Add your address in the "RETURN TO" space on reverse.

(CONSULT POSTMASTER FOR FEES)

1. The following service is requested (check one).
☒ Show to whom and date delivered
☐ Show to whom, date, and address of delivery ..
 2. ☐ RESTRICTED DELIVERY
 (The restricted delivery fee is charged in addition to the return receipt fee.)

TOTAL \$

3. ARTICLE ADDRESSED TO:

Angus Cordie
Preston - Whitney
Rt 3 Preston Id 83265

4. TYPE OF SERVICE:

- ☐ REGISTERED ☐ INSURED
☒ CERTIFIED ☐ COD
☐ EXPRESS MAIL

ARTICLE NUMBER

13336

(Always obtain signature of addressee or agent)

I have received the article described above.

SIGNATURE ☐ Addressee ☐ Authorized agent

Angus Cordie

5. DATE OF DELIVERY

11-7-85

POSTMARK
(may be on reverse side)

6. ADDRESSEE'S ADDRESS (Only if requested)

7. UNABLE TO DELIVER BECAUSE:

7a. EMPLOYEE'S INITIALS

★ GPO: 1982-379-593

- SENDER: Complete Items 1, 2, 3, and 4.
Add your address in the "RETURN TO" space on reverse.

(CONSULT POSTMASTER FOR FEES)

1. The following service is requested (check one).
☒ Show to whom and date delivered
☐ Show to whom, date, and address of delivery ..
 2. ☐ RESTRICTED DELIVERY
 (The restricted delivery fee is charged in addition to the return receipt fee.)

TOTAL \$

3. ARTICLE ADDRESSED TO:

Kegan Wheeler
Cody River Inn
Preston, UT 84328

4. TYPE OF SERVICE:

- ☐ REGISTERED ☐ INSURED
☒ CERTIFIED ☐ COD
☐ EXPRESS MAIL

ARTICLE NUMBER

13338

(Always obtain signature of addressee or agent)

I have received the article described above.

SIGNATURE ☐ Addressee ☐ Authorized agent

Kegan Wheeler

5. DATE OF DELIVERY

11-8-85

POSTMARK
(may be on reverse side)

6. ADDRESSEE'S ADDRESS (Only if requested)

7. UNABLE TO DELIVER BECAUSE:

7a. EMPLOYEE'S INITIALS

★ GPO: 1982-379-593

- SENDER: Complete Items 1, 2, 3, and 4.
Add your address in the "RETURN TO" space on reverse.

(CONSULT POSTMASTER FOR FEES)

1. The following service is requested (check one).
☒ Show to whom and date delivered
☐ Show to whom, date, and address of delivery ..
 2. ☐ RESTRICTED DELIVERY
 (The restricted delivery fee is charged in addition to the return receipt fee.)

TOTAL \$

3. ARTICLE ADDRESSED TO:

U.S. Forest Service
324 25th St
Preston, UT 84401

4. TYPE OF SERVICE:

- ☐ REGISTERED ☐ INSURED
☒ CERTIFIED ☐ COD
☐ EXPRESS MAIL

ARTICLE NUMBER

13335

(Always obtain signature of addressee or agent)

I have received the article described above.

SIGNATURE ☐ Addressee ☐ Authorized agentRegional Forester
U.S. Forest Service
Federal Office Building

5. DATE OF DELIVERY

11-9-85

POSTMARK
(may be on reverse side)

6. ADDRESSEE'S ADDRESS (Only if requested)

7. UNABLE TO DELIVER BECAUSE:

7a. EMPLOYEE'S INITIALS

★ GPO: 1982-379-593

- SENDER: Complete Items 1, 2, 3, and 4.
Add your address in the "RETURN TO" space on reverse.

(CONSULT POSTMASTER FOR FEES)

1. The following service is requested (check one).
☐ Show to whom and date delivered
☐ Show to whom, date, and address of delivery ..
 2. ☐ RESTRICTED DELIVERY
 (The restricted delivery fee is charged in addition to the return receipt fee.)

TOTAL \$

3. ARTICLE ADDRESSED TO:

City of Preston
City Hall
Preston Id

4. TYPE OF SERVICE:

- ☐ REGISTERED ☐ INSURED
☒ CERTIFIED ☐ COD
☐ EXPRESS MAIL

ARTICLE NUMBER

13333

(Always obtain signature of addressee or agent)

I have received the article described above.

SIGNATURE ☐ Addressee ☐ Authorized agent

Ethel Johnson

5. DATE OF DELIVERY

11-6-85

POSTMARK
(may be on reverse side)

6. ADDRESSEE'S ADDRESS (Only if requested)

7. UNABLE TO DELIVER BECAUSE:

7a. EMPLOYEE'S INITIALS

★ GPO: 1982-379-593

- SENDER: Complete Items 1, 2, 3, and 4.
Add your address in the "RETURN TO" space on reverse.

(CONSULT POSTMASTER FOR FEES)

1. The following service is requested (check one).
☒ Show to whom and date delivered
☐ Show to whom, date, and address of delivery ..
 2. ☐ RESTRICTED DELIVERY
 (The restricted delivery fee is charged in addition to the return receipt fee.)

TOTAL \$

3. ARTICLE ADDRESSED TO:

Wade Nelson
P.O. Box 797
Soda Springs, Id 83276

4. TYPE OF SERVICE:

- ☐ REGISTERED ☐ INSURED
☒ CERTIFIED ☐ COD
☐ EXPRESS MAIL

ARTICLE NUMBER

13337

(Always obtain signature of addressee or agent)

I have received the article described above.

SIGNATURE ☐ Addressee ☐ Authorized agent

J. Stewart

5. DATE OF DELIVERY

11-6-85

POSTMARK
(may be on reverse side)

6. ADDRESSEE'S ADDRESS (Only if requested)

7. UNABLE TO DELIVER BECAUSE:

7a. EMPLOYEE'S INITIALS

★ GPO: 1982-379-593

UNITED STATES POSTAL SERVICE
OFFICIAL BUSINESS

SENDER INSTRUCTIONS

- Print your name, address, and ZIP Code in the space below.
- Complete items 1, 2, 3, and 4 on the reverse.
 - Attach to front of article if space permits, otherwise affix to back of article.
 - Endorse article "Return Receipt Requested" adjacent to number.



NOV 12 1985
PENALTY FOR PRIVATE USE, \$300

RETURN
TO



DEPARTMENT OF WATER RESOURCES
EASTERN DISTRICT OFFICE
150 SHOUP AVE. Suite 15
IDAHO FALLS, IDAHO 83401

(Name of Sender)
(Street or P.O. Box)
(City, State, and ZIP Code)

UNITED STATES POSTAL SERVICE
OFFICIAL BUSINESS

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OFFICIAL BUSINESS

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DEPARTMENT OF WATER RESOURCES
EASTERN DISTRICT OFFICE
150 SHOUP AVE. Suite 15
IDAHO FALLS, IDAHO 83401

(Name of Sender)
(Street or P.O. Box)
(City, State, and ZIP Code)

DEPARTMENT OF WATER RESOURCES

EASTERN DISTRICT OFFICE

150 SHOUP AVE.

IDAHO FALLS, IDAHO 83401

NAME AND
ADDRESS
OF SENDER

Indicate type of mail

- ☐ Registered
☐ Insured
☐ COD
☒ Certified

I certify that we have

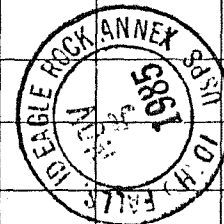
- ☐ Commercial Insurance
☐ A deductible clause of
 \$

Affix stamp here if issued as
certificate of mailing or for
additional copies of this bill.

POSTMARK AND DATE OF RECEIPT

1 No	NUMBER OF ARTICLE	NAME OF ADDRESSEE, STREET, AND POST-OFFICE ADDRESS	POSTAGE	FEE	Handling Charge	Actual Value (If Registered)	DUE SENDER IF C.O.D.	R. R. FEE	S.D. FEE	S. H. FEE	REST. DEL. FEE REMARKS
1	13333	City of Pocatello City Hall Pocatello	22	75				70			13-0026 13-0027 13-0028
2	13334	William & Cathleen PO Box 191 Pocatello									
3	13335	J. J. Fisher, 324 25 th St, Ogden, Utah									
4	13336	James Campbell Pocatello Whitney St Pocatello									
5	13337	Myrtle M. Lane PO Box 797 Soda Springs									
6	13338	Raymond Wheeler Sub River Dring, Pocatello									
7											
8											
9											
10											
11											
12											
13											
14											
15											

\$ 10.00

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NOV 13 2001TOTAL NUMBER OF
PIECES LISTED BY
SENDER

6

TOTAL NUMBER OF
PIECES RECEIVED
AT POST OFFICE

6

POSTMASTER, PER (Name of receiving employee)

T. J. Jorgensen

The full declaration of value is required on all domestic and international registered mail. Commercial Insurance—Payment of the full registry fee is required on articles valued up to \$1,000 or the full amount of the deductible if the deductible exceeds \$1,000. The maximum indemnity payable is \$25,000 for registered mail, \$400 for COD and \$400 for insured mail. Special handling charges apply only to third- and fourth-class parcels. Special delivery service also includes special handling service.

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR)
TRANSFER NO. 13-0026, 13-0027)
AND 13-0028 IN THE NAME OF) NOTICE OF HEARING
CITY OR PRESTON) AND/OR CONFERENCE
_____)

On September 19, 1983 the City of Preston filed with the Department of Water Resources two applications (No. 13-0027 and 13-0028) to transfer the public waters of the State of Idaho.

On January 3, 1984 the Department received protests against approval of said applications from Preston-Whitney Irrigation Company and Cub River Irrigation Company. On January 12, 1984 the City of Preston filed an additional application (No. 13-0026) to transfer said waters of the State of Idaho. On November 4, 1985 the Department of Water Resources received a protest against approval of said application from the U. S. Forest Service.

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The Department has set the matter of protest for hearing for 1:00 p.m., Tuesday, November 19, 1985 in the Ag Room, Franklin County Courthouse, Preston, Idaho. The hearing will be held in accordance with provisions of Chapter 2 and 17, Title 42 and Chapter 52, Title 67, of the Idaho Code and adopted Rules of Practice and Procedure of the Department of Water Resources. Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved.

Dated this 5th day of November, 1985.



for RONALD D. CARLSON

Eastern Regional Supervisor

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NOV 13 2001



United States
Department of
Agriculture

Forest
Service

Intermountain
Region

324 25th Street
Ogden, UT 84401

Reply to: 2540

Date: NOV 1 1985

Mr. Ronald D. Carlson
Eastern Region Supervisor
Idaho Department of Water Resources
150 Shoup Avenue, Suite 15
Idaho Falls, ID 83401

RECEIVED

NOV 4 1985

Dear Mr. Carlson:

Department of Water Resources
Eastern District Office

We are writing regarding Application for Permit No. 13-0026 filed by the city of Preston to change the point of diversion and period of use of the waters of the Cub River. The right sought to be changed is evidenced by a decree to Cub River Irrigation Company, in the case of Henry T. McEwain vs Franklin Sugar Company, dated July 9, 1924, in the Fifth Judicial District Court, County of Franklin. An identical proposal was advanced in 1982 which we protested in letters dated December 3, 1982, and January 13, 1983. This letter reaffirms our earlier protest.

In resolving an earlier protest of Application for Permit No. 13-7283, a Stipulation and Agreement was signed by the city of Preston, Cub River Irrigation Company, and the Forest Service. The Stipulation and Agreement stated in part, "It is further understood that other items of contention will be covered by such additional agreements as may be deemed necessary." Subsequently, the city of Preston and the Forest Service have reached an agreement that the city will maintain the flow at the USGS Station in Cub River at 19 cfs. In addition, no water diversion in excess of the historical culinary use of 4.5 cfs will be diverted from Berquist Spring when flow at the USGS Station is less than 19 cfs.

The current proposal to divert an additional 2.82 cfs from Berquist Spring would frustrate our agreement with the city of Preston and hinder our ability to manage this valuable public resource.

For the reasons given above, we request that the application to change the point of diversion be denied.

Sincerely,

Randall R. Hall
for J. S. TIXIER
Regional Forester

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NOV 13 2001



M E M O

TO: File

FROM: Ernie Carlsen *Enc*

RE: Application for Transfer No. 13-0026
Cub River Irrigation

DATE: November 1, 1985

The protestants met with representatives of the City of Preston on October 28, 1985 and negotiated a tentative resolution to the protests. The protests would be withdrawn provided the city agreed to maintain a minimum flow of 19.0 cfs in Cub River.

Representatives of the Department of Water Resources were notified of the above meeting during the conference held on October 30, 1985. Representatives for the protestants did not attend the Department's conference. Representatives for the City of Preston expressed reluctance to comply with the 19.0 cfs minimum flow because they felt it was discriminatory. They were advised that the hearing would be rescheduled for November 19, 1985 if the protest was not resolved.

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NOV 13 2001

May 4, 1995

CITY OF PRESTON
CITY HALL
PRESTON ID 83263

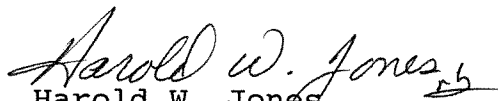
RE: Application for Transfer No. 13-0026

Dear Applicant:

This letter is to advise you that the protest filed by the ID Fish & Game gainst approval of the above referenced application has been withdrawn.

If you have any questions, please feel free to contact this office.

Very truly yours,


Harold W. Jones
Water Right Supervisor

HWJ/rb

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NOV 13 2001

May 4, 1995

GREG TOURTLOTTE
REGIONAL SUPERVISOR
ID FISH & GAME
1345 BARTON RD
POCATELLO ID 83204-1819

RE: Application for Transfer No. 13-00026
City of Preston

Dear Mr. Tourtlotte:

This letter acknowledges receipt of the withdrawal of protest
against the above referenced application.

If you have any questions, please feel free to contact this office.

Very truly yours,


Harold W. Jones
Water Right Supervisor

HWJ/rb

MICROFILMED

NOV 13 2001



IDAHO FISH & GAME

SOUTHEAST REGION
1345 Barton Road
Pocatello, Idaho 83204-1819

Phil Batt / Governor
Jerry M. Conley / Director

May 1, 1995

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MAY 02 1995

Department of Water Resources
Eastern District Office

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

Re: Water right transfer application 13-00034 - City of Preston

Dear Harold,

After considering information presented at the recent prehearing conference, we have decided to withdraw our protest to the transfer of 2.5 cfs during the non-irrigation season from the Cub River Irrigation Company to the City of Preston. We recognize that this transfer will result in no "new" water diverted from Berquist Springs and that this transfer will formalize a situation that has occurred for approximately fifty years.

We would also like to withdraw our protest to the transferral of this water during the irrigation season (13-0026).

We appreciate the opportunity to have input to this water right transfer application.

Sincerely:

Greg Tourtlotte
Regional Supervisor

GT/JL/jl

cc: Jim Lukens
Dick Scully
Tom Lucia
Natural resources Policy Bureau
Caribou National Forest, Supervisor's Office

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NOV 13 2001

April 25, 1995

CLYDE NELSON
PO BOX 797
SODA SPRINGS ID 83276

Mr. Nelson:

I received your letter of March 28, 1995 expressing your concerns about the conversations that took place at the Cub River Water District meeting on March 6, 1995. Also addressed was the handling of the transfers on right 13-00026 made by the City of Preston and Cub River Irrigation Company.

I'll start with the Cub River Water District meeting. A number of issues were covered at the meeting. I was mainly an observer and did not comment on most issues. It was necessary to provide some additional information when a statement was made by the City of Preston representatives which implied the Department of Water Resources had somehow conspired with the Preston-Whitney Canal Company to restrict the City's Municipal supply. In response, I reminded the City that the Department's Nov. 15, 1994 letter from Tim Luke was necessary to instruct the watermaster because the transfers on water right 13-00026 had not been approved. I told them it was the responsibility of the applicant, City of Preston, to diligently pursue these transfers and it did not appear to me that this was done. The mayor of Preston responded that he was not in office during much of the time the transfer applications were filed and was not familiar with the issues surrounding them.

In characterizing this history, I stated that the track record to date was that neither the City nor their representative have shown an inclination to resolve this matter in a timely manner. This may have been an understatement, since 9 years have elapsed from the time the applications were filed.

The watermaster is responsible to deliver water as decreed or as the decree has been modified by approved transfers. At no time since I began corresponding with you has any representative of the City of Preston made an attempt to come to this office and resolve the problems we have identified in these transfers until Jo Beeman came to Idaho Falls a few weeks ago.

These applications belong to the applicants, not the Department. The applicants need to continue to vigorously pursue the

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NOV 13 2001

application they filed and resolve the problems, if possible. The Department is willing to assist in finding ways to resolve objections to proposed changes outside the formal hearing process when possible. However when the applicant does not respond to our letters and requests for information we have limited ability to proceed.

At this point, there is still an outstanding protest by the Idaho Fish and Game Department that needs to be withdrawn and two modified transfers that are being reviewed by the applicants.

I look forward to seeing the final drafts of these transfers and to resolve this to the satisfaction of the parties involved.

Sincerely,

Harold W. Jones
Water Resource Supervisor

HWJ:lk

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NOV 13 2001

April 20, 1995

JOSEPHINE P. BEEMAN
PO BOX 829
BOISE ID 83701

Dear Jo:

I have received your modified transfer application for water right 13-00034 for the City of Preston and have been instructed to process it as is.

As per your request, I am reviewing the City of Preston's original transfer application of water right 13-00026. At this point, Idaho Fish and Game Department has not withdrawn its protest and this needs to be resolved.

I have also been in contact with the USFS via Lee Leifert at the Caribou National Forest in Pocatello, ID. It appears the U. S. Forest Service withdrew their protest in exchange for a special use permit condition (see enclosed) that implies minimum flow regulation on the Cub River. It is doubtful that the City has the authority to guarantee the flows implied.

Finally, the original decree for right 13-00026 implies an irrigated land use for Cub River Irrigation of 1800 acres. Since the City of Preston has stated it owns 2.50 cfs of this right, then there must be a reflected reduction in irrigated acres under the Cub River System. I will need to see what acres were deleted or a land list less than 1800 acres that reflects the current Cub River irrigation practices.

If you have any questions, please give me a call on this.

Sincerely,

Harold W. Jones
Water Resource Supervisor

CC: Lee Leifert - Caribou National Forest
Dick Sculley - Idaho Fish and Game, Pocatello ID

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NOV 13 2001

Skip Jones

LAW OFFICE

MOFFATT, THOMAS, BARRETT, ROCK & FIELDS
CHARTERED

Eugene C. Thomas
John W. Barrett
R. B. Rock
Richard C. Fields
Robert E. Bakes
Paul S. Street
Larry C. Hunter
Glenna M. Christensen
Mark S. Prusynski
Morgan W. Richards, Jr.
Michael G. McPeck
Stephen R. Thomas
Jon S. Gorski
Gary T. Dance
Gerald T. Husch
Kirk R. Helvie
Thomas C. Morris

Michael E. Thomas
James C. deGlee
Patricia M. Olsson
Grant T. Burgoyne
Stephen J. Olson
Patrick J. Kole
Andrew P. Doman
David S. Jensen
Ray E. Smith
Allen K. Davis
Bradley J. Williams
Mark A. Ellison
James L. Martin
Josephine P. Beeman
Kelly Greene McConnell
Jacque L. Palmer

FIRST SECURITY BUILDING
911 WEST IDAHO
POST OFFICE BOX 829
BOISE, IDAHO 83701

Telephone (208) 345-2000

Facsimile (208) 385-5384

April 7, 1995

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APR 10 1995

Department of Water Resources
Eastern District Office

Willis C. Moffatt
(1907-1980)

E. Renn Yorgason
Office Administrator

Gary T. Dance
Partner in Charge
Eastern Idaho Offices

IDAHO FALLS, IDAHO
525 Park Avenue, Suite 2D
Post Office Box 1367
83403

Telephone (208) 522-6700
Facsimile (208) 522-5111

POCATELLO, IDAHO
845 West Center, Suite C
Post Office Box 4941
83201

Telephone (208) 233-2001

Idaho WATS: 1 (800) 422-2889
ABA Net 010

Randall C. Budge
P.O. Box 1391
Pocatello, Idaho 83204-1391

Re: City of Preston Transfer Water Right No. 13-0034
MTBR&F File No. 16-832

Dear Randy:

Enclosed is a draft of an Application for Transfer of Water Right No. 13-00034 for the City of Preston. The Mayor of Preston will sign the application the week of April 10. Also enclosed is a letter to Skip Jones providing additional information about the transfer application.

Please review these documents and let me know if you have any comments.

Sincerely,

Josephine P. Beeman

Josephine P. Beeman

JPB/dc

Enclosures

cc: Jim Lukens, Idaho Dept. of Fish & Game
Lee Leffert, Caribou National Forest

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NOV 13 2001

RECEIVED

MAR 27 1995

LAW OFFICE

MOFFATT, THOMAS, BARRETT, ROCK & FIELDS
CHARTERED

Department of Water Resources

Eugene C. Thomas
John W. Barrett
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Kelly Greene McConnell
Jacque L. Palmer

FIRST SECURITY BUILDING
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BOISE, IDAHO 83701

Telephone (208) 345-2000

Facsimile (208) 385-5384

March 24, 1995

Willis C. Moffatt
(1907-1980)

E. Renn Yorgason
Office Administrator

Gary T. Dance
Partner in Charge
Eastern Idaho Offices

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525 Park Avenue, Suite 2D
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83403

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POCATELLO, IDAHO
845 West Center, Suite C
Post Office Box 4941
83201

Telephone (208) 233-2001

Idaho WATS: 1 (800) 422-2889
ABA Net 010

Mr. Gary Spackman
Hearing Officer
Idaho Department of Water Resources
P.O. Box 83720
Boise, ID 83720-0098

Re: Transfer Application No. 3223, City of Preston (Water Right No. 13-0026) and
Proposed Transfer in the Name of the City of Preston (Water Right No. 13-0034)
MTBR&F File No. 16-832

Dear Mr. Spackman:

The City of Preston wants to advise the Idaho Department of Water Resources (IDWR) and all other interested parties of its efforts regarding transfer application No. 3223 which your post pre-hearing conference order (March 9, 1995) states must be amended on or before April 1, 1995. Since I will be out of my office the week of March 27 until April 3, the City of Preston would like to request that they be able to file their transfer application No. 13-0034 no later than Monday, April 10, 1995.

On March 9, 1995 I met with Ron Carlson, Regional Supervisor for IDWR in Idaho Falls, and Harold Jones, Senior Water Resource Agent at IDWR in Idaho Falls, to discuss amendment of transfer application No. 3223. The application was signed January 10, 1984 and describes that water will be used for municipal purposes year round. Actually, the City of Preston has diverted the water from Bergquist Springs for more than fifty years through the Preston city waterline. The 1984 transfer application lists water right No. 13-0026 which in IDWR records is a right out of the Cub River held by Cub River Irrigation Company for the irrigation season (April 1 to October 31). The non-irrigation season water right for the Cub River Irrigation Company is water right No. 13-0034. Since the 1984 transfer application only mentions water right No. 13-0026, a transfer filing with IDWR should also reflect the involvement of water right No. 13-0034.

MICROFILMED
DEC 08 1997

Mr. Gary Spackman
March 24, 1995
Page 2

During our meeting on March 9, I indicated that the City of Preston would prefer to leave the 1984 transfer unamended and file a new transfer application for No. 13-0034. The City realizes that IDWR in acting on the 1984 transfer on No. 13-0026 (which lists January 1 - December 31 as the season of use) can limit the approved transfer to April 1 to October 31. Mr. Carlson and Mr. Jones stated their preference that an entire new transfer application be prepared covering both water right No. 13-0026 and No. 13-0034.

On March 13, I received a draft consolidated transfer application from Mr. Jones for both water right No. 13-0026 and No. 13-0034. I sent the draft transfer application to Arlene Nash, City Clerk for Preston, and Clyde Nelson, City Attorney for Preston. The City Council met Monday, March 20 and I have since spoken with both Arlene Nash and Clyde Nelson who confirmed that it is the City's desire to leave the 1984 transfer on 13-0026 in its original form and to submit an additional transfer on 13-0034.

I have tried to reach Kent Foster, counsel for Preston-Whitney Irrigation Company, and Randy Budge, counsel for the Cub River Irrigation Company, to discuss the City's decision regarding the form of its transfer applications. I will send the amended transfer application to them before I leave town on March 26, but, the City would like to have the opportunity to discuss any questions they may have before they sign the transfer application.

I have discussed all of these matters with Harold Jones at the IDWR office in Idaho Falls and by copy of this letter am notifying Dick Sculley and Jim Lukens of the Idaho Department of Fish & Game.

Sincerely,

JP Beeman
By W. Cline

Josephine P. Beeman

JPB/dc

cc: Arlene Nash, Preston City Clerk
Clyde Nelson, Preston City Attorney
Kent Foster, Counsel for Preston-Whitney Irrigation Co.
Carl Swainston
Reagan Wheller
Randall C. Budge, Counsel for Cub River Irrigation Co.
Dick Skulley
Jim Lukens

MICROFILMED
DEC 08 1997

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATION)
FOR TRANSFER NO. 2753 (FOR WATER)
RIGHT NO. 13-0026) IN THE NAME OF)
CUB RIVER IRRIGATION COMPANY AND)
APPLICATION FOR TRANSFER NO. 3223)
OF (FOR WATER RIGHT NO. 13-0026))
IN THE NAME OF THE CITY OF PRESTON)
_____)

**POST PRE-HEARING
CONFERENCE ORDER**

A pre-hearing conference was conducted on February 24, 1995, at the Preston City Hall, Preston, Idaho. The applicant Preston City was represented by Clyde G. Nelson, Attorney at Law, and Josephine Beeman, Attorney at Law. Cub River Irrigation Company was represented by Randall Budge, Attorney at Law. Protestant Idaho Department of Fish & Game attended and were represented by Fish & Game employees, Dick Sculley and Jim Lukens:

At the pre-hearing conference, Preston-Whitney Irrigation Company, represented by Kent W. Foster, Attorney at Law, filed a petition to intervene as a party opposing both applications for transfer.

After discussing the issues, both Preston City and Cub River stated that the applications for transfer must be amended.

ORDER

IT IS HEREBY ORDERED that the City of Preston must amend Application for Transfer No. 3223 on or before April 1, 1995.

IT IS FURTHER ORDERED that Cub River Irrigation Company shall amend Application for Transfer No. 2753 prior to April 1, 1995.

MICROFILMED

DEC 08 1997

IT IS FURTHER ORDERED that if the City of Preston and Cub River Irrigation Company fail to amend the Applications for Transfer, a hearing regarding protests against the applications will set for hearing as soon as possible.

IT IS FURTHER ORDERED that the petition to intervene, filed by Preston-Whitney Irrigation Company, will be held without action in the department files until after April 1, 1995.

IT IS FURTHER ORDERED that any deadlines associated with the petition to intervene are waived by the parties, and no response will be required until after April 1, 1995.

Dated this 9th day of March, 1995.



GARY SPACKMAN, Hearing Officer

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 9th day of March, 1995, I mailed a true and correct copy, postage prepaid, of the foregoing **POST PRE-HEARING CONFERENCE ORDER** to the following:

Josephine P. Beeman
MOFFATT THOMAS BARRETT
ROCK & FIELDS
911 W. Idaho
P.O. Box 829
Boise, ID 83701

Kent W. Foster
HOLDEN KIDWELL HAHN & CRAPO
330 Shoup Ave. 3rd Floor
P.O. Box 50130
Idaho Falls, ID 83405

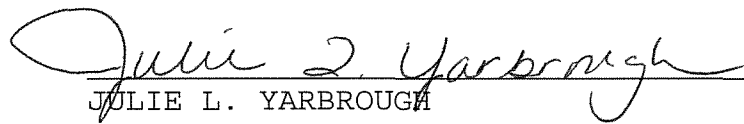
Carl Swainston
Preston-Whitney Irrigation Co.
942 N 800 E
Preston, ID 83263

Idaho Dept. of Fish & Game
Southeast Region
1345 Barton Rd.
Pocatello, ID 83204-1819

Reagan Wheeler, President
Cub River Irrigation Company
45 N. Main
Lewiston, UT 84320

Randall C. Budge
RACINE OLSON NYE COOPER
& BUDGE
P.O. Box 1391
Pocatello, ID 83204

City of Preston
Clyde G. Nelson
P.O. Box 797
Soda Springs, ID 83276



JULIE L. YARBROUGH
Senior Secretary

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

RECEIVED

FEB 27 1995

Department of Water Resources

IN THE MATTER OF TRANSFERS	)	
NO. 2353 IN THE NAME OF	)	PETITION FOR ORDER GRANTING
CUB RIVER IRRIGATION	)	INTERVENTION TO BECOME
COMPANY AND 3223 IN THE	)	A PARTY
NAME OF CITY OF PRESTON,	)	
IDAHO, REGARDING WATER	)	
RIGHT NO. 13-0026.	)	
_____	)	

Petitioner, Preston-Whitney Irrigation Company, by and through Kent W. Foster of Holden, Kidwell, Hahn & Crapo, P.L.L.C., Idaho Falls, Idaho, its attorneys herein, hereby petitions the presiding officer for an order granting intervention to said irrigation company to become a party in the above entitled matters, pursuant to the Rules of Procedure of the Department of Water Resources, Rule 350(IDAPA 37.01.01.350.), and in support of this petition, hereby alleges as follows:

1. Petitioner is a corporation duly organized and existing under and by virtue of the laws of the State of Idaho, having its principal place of business in Franklin County, Idaho, near the City of Preston, Idaho.

2. Petitioner is an "operating company" as that term is defined in Idaho Code, Title 42, Chapter 22, and is the owner and holder of irrigation and storage water rights and a diversion, storage and delivery system, for the purpose of diverting water from Cub River and its tributaries and delivering the same during the irrigation season to the lands of its

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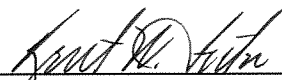
DEC 08 1997

stockholders for the proper irrigation thereof, and storing of water during the non-irrigation season in its reservoir storage system to be used to augment natural flow supplies during the irrigation season.

3. Applicants and each of them also claim to be the holders of water rights, the subject of the above referenced Applications for Transfer, to divert water from Cub River or its tributaries, both during the irrigation and non-irrigation seasons, the water under which rights are sought to be diverted at Bergquist Springs into and through a pipeline which carries water to the City of Preston for hydro power and municipal uses. The excess of such diversions, after use for hydro power production and for municipal domestic purposes by the City of Preston is, and has been, directed into petitioner's storage water facilities. Petitioner has a direct and substantial interest in the characterization and quantification of the water rights which are the subject of the referenced transfers, and hence in these proceedings.

WHEREFORE, petitioner prays for the order of the presiding officer granting the intervention by petitioner to become a party to each of the above referenced pending transfer proceedings.

DATED this 25th day of January, 1995.



Kent W. Foster
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.

CERTIFICATE OF SERVICE

I hereby certify that I am a duly licensed attorney in the State of Idaho, resident of and with my office in Idaho Falls, Idaho; that I served a copy of the following described pleading or document on the attorneys listed below by hand delivering, by mailing or by facsimile, with the correct postage thereon, a true and correct copy thereof on this 23rd day of ^{February}~~January~~, 1995.

DOCUMENT SERVED:

PETITION FOR ORDER GRANTING
INTERVENTION TO BECOME A PARTY

ATTORNEYS SERVED:

IDAHO DEPARTMENT OF
WATER RESOURCES
1301 North Orchard Street
Statehouse Mail
Boise, Idaho 83720

(Mail)

Josephine P. Beeman, Esq.
MOFFATT, THOMAS, BARRETT
ROCK & FIELDS
P.O. Box 829
Boise, Idaho 83701

(Mail)

Randall C. Budge, Esq.
RACINE, OLSON, NYE, COOPER
& BUDGE, CHARTERED
P.O. Box 1391
Pocatello, ID 83204-1391

(Mail)



Kent W. Foster
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.

G:\WPDATA\KWF\7206\PW0125.PET:sjw

Law Offices
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.

COPY

FRED J. HAHN
KENT W. FOSTER
ROBERT E. FARNAM
WILLIAM D. FALER
STEPHEN E. MARTIN
CHARLES A. HOMER
GARY L. MEIKLE
GAYLE A. SORENSON, P.A.
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Arthur W. Holden
(1877-1967)
Robert B. Holden
(1911-1971)
Terry L. Crapo
(1939-1982)
William S. Holden
(1907-1988)

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Department of Water Resources
Eastern District Office

December 28, 1994

Josephine P. Beeman, Esq.
MOFFATT, THOMAS, BARRETT
ROCK & FIELDS
P.O. Box 829
Boise, Idaho 83701

Re: Preston-Whitney Irrigation Company Petition to Extend Water Master's Term of
Service MTBR&F File No. 16-832

Dear Jo:

We have visited briefly with the president of Preston-Whitney Irrigation Company regarding the contents of your letter of December 22, 1994, and have been instructed to respond as follows.

First, the company officers will be pleased to meet and/or have us meet with you to discuss the matters pertaining to the transfers and any other issues regarding the City of Preston. We understand, as you do, that the company has not protested the City's Application for Transfer Right No. 13-0026. From previous work we did for the company several years ago, however, we understood that the amount to which the city is entitled under the old contract is not 2.5cfs but rather 1/18th of the amount to which Cub River Irrigation Company is entitled, not to exceed 2.5cfs.

In any event, Preston-Whitney has been confident that Idaho Department of Water Resources would deal with the Application for Transfer justly and correctly. Will IDWR permit the diversion and use of the 2.5cfs before the proposed transfer is approved? And would Preston-Whitney's consent be relevant?

We are not authorized to agree to the interim delivery of any amount. We feel the Board of Directors would be remiss in doing so. How then would they defend themselves from claims of stockholders, to whom they owe a fiduciary duty, that they failed to take appropriate action to see that all water to which the company is entitled by its water rights is diverted and stored during the nonirrigation season?

That is, of course the reason for the petition requesting extension of water masters term of service was filed in the first place. We think the company's Board of Directors must insist and do all it reasonably can to persuade IDWR to grant that petition at the earliest possible moment.

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Josephine P. Beeman, Esq.
December 28, 1994
Page 2

The company does not have an official position as to the correct amount of water to which the City may be entitled under its existing rights during the nonirrigation season. Some of the officers have heard that measurements of springs recently made totalled 2.18cfs under the approved transfers. If so, the company has no other information with which to contest such a delivery by the State's water master.

We will certainly look forward to working with you toward an informal resolution as you suggest. In the meantime, we perceive the company officers to be fairly adamant that IDWR should do its duty.

Very truly yours,



Kent W. Foster

pc. Randy Budge, Cub Irrigation Company
Tim Luke, IDWR Boise office
Harold Jones, IDWR Idaho Falls office
Phil Racier, IDWR Boise office

G:\WPDATA\KWF\7206\JO1228.LTR:sjw

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Glenna M. Christensen
Mark S. Prusynski
Morgan W. Richards, Jr.
Michael G. McPeck
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Jon S. Gorski
Gary T. Dance
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Thomas V. Munson
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Michael E. Thomas
James C. deGlee
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December 27, 1994

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Department of Water Resources
Eastern District Office

R. Keith Higginson, Director
Idaho Department of Water Resources
1301 N. Orchard
Boise, Idaho 83706-2237

RE: Administration of Water District 13-A, Cub River and Tributaries
MTBR&F File No. 16-832

Dear Mr. Higginson:

Enclosed herewith for filing is the original of the CITY OF PRESTON'S PROTEST TO PRESTON-WHITNEY IRRIGATION COMPANY'S PETITION TO EXTEND WATERMASTER'S TERM OF SERVICE. Also enclosed is a copy of the City's Protest to be conformed for my files.

The Petition involves the City of Preston, the Preston-Whitney Irrigation Company and the Cub River Irrigation Company. I have spoken with Randy Budge and am serving him on behalf of the Cub River Irrigation Company. I am also serving Kent Foster, who filed the Petition on behalf of the Preston-Whitney Irrigation Company.

Sincerely,

Josephine P. Beeman
Josephine P. Beeman

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NOV 13 2001

R. Keith Higginson, Director
December 27, 1994
Page - 2

JPB/vr

cc (w/enc.): Arlene Nash, City of Preston Clerk
Walter Ross, City of Preston Mayor
Clyde Nelson, City of Preston Attorney
Kent Foster (for Preston-Whitney Irrigation Company)
Randy Budge (for Cub River Irrigation Company)
Harold Jones, IDWR Idaho Falls

jpb/49620

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NOV 13 2001

Department of Water Resources

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Department of Water Resources
Eastern District Office

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

**CITY OF PRESTON'S PROTEST
TO PRESTON-WHITNEY
IRRIGATION COMPANY'S PETITION
TO EXTEND WATERMASTER'S
TERM OF SERVICE**

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The following numbered paragraphs are the allegations in the Preston-Whitney Irrigation Company's petition. The City of Preston's answers appear below each numbered paragraph:

1. Petitioner is a duly organized corporation, created and existing under and by virtue of the laws of the state of Idaho, with its principal place of business in Franklin County, Idaho. Petitioner is an operating company, as defined and described in Idaho Code, Section 42-2201, and as such, is the owner and holder of water rights and a diversion and delivery system by means of which water is diverted and conveyed to the lands of the petitioner's shareholders for the irrigation thereof.

ANSWER: The City of Preston admits that the Preston-Whitney Irrigation Company is a corporation in good standing with the State of Idaho. The City of Preston does not have sufficient information and therefore denies any allegations about the water rights and delivery system.

2. The source of water supply under petitioner's water rights is the Cub River and tributaries. There are other water users who also hold rights to divert water from such source and apply the same to beneficial uses, and to accommodate the proper administration of such water rights, a water district, No. 13A, was created many years ago and now exists pursuant to applicable state law.

ANSWER: The City of Preston admits that it has been a member of Water District 13A since the early 1980's, but denies that the Water District, which was created about 1917, was created to administer the City's water rights.

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3. One of the other holders of water rights in said water district is the City of Preston, which diverts water year round for municipal and hydropower uses. Petitioner is the holder of right Nos. 13-02108, 13-02291, and 13-02298, all of which are rights to divert water during the non-irrigation season and store the same in its reservoirs for irrigation use during the summer. There is a present need, as well as a need each year, for watermaster services to continue during the non-irrigation season for the proper administration of the above described rights.

ANSWER: The City of Preston admits that it diverts water year round for municipal and hydropower uses. The City does not have sufficient information to confirm which water rights petitioner Preston-Whitney holds to divert water during the non-irrigation season: it appears that right 13-02108 is from Worm Creek and right 13-02298 can only be exercised between April 1 and November 1. The City of Preston does not have sufficient information and therefore denies the allegation that there is a present need, as well as a need each year, for watermaster services to continue during the non-irrigation season.

4. At the annual meeting of Water District 13A held in Preston, Idaho, on March 7, 1994, Mr. Conan Foster was elected watermaster of said water district. The petition for watermaster's services, signed by representatives of petitioner, the City of Preston, and Cub River Irrigation Company, the three main water users within Water District 13A, sought to have said watermaster appointed for the entire year. Historically, it has been common to employ the watermaster year round in order to have administration of the non-irrigation season water diversions as well as the diversions for irrigation. However, at the 1994 annual meeting, the water users inadvertently omitted to adopt a formal resolution to such effect, and petitioner was

recently advised that said watermaster's formal appointment expired at the end of the 1994 irrigation season.

ANSWER: The City of Preston admits that Conan Foster is watermaster of Water District 13-A. The City of Preston admits that Mayor Walter Ross signed the March 1994 petition for watermaster services which is a separate and distinct document from the December 1994 Petition to extend the watermaster term of service which the City of Preston did not sign and which presents different legal and administrative issues from the March petition. The City denies that it has been common to employ the watermaster year round in order to have administration of the non-irrigation season water diversions. The minutes for Water District 13-A for March 6, 1989 appear to be the first and only minutes in which the water district resolved to have the watermaster serve year round.

AFFIRMATIVE DEFENSES

The City of Preston (protestant) asserts the following affirmative defenses against the Preston-Whitney Irrigation Company (petitioner) petition:

1. **Failure to state a claim for relief:** The petition fails to state sufficient facts under Idaho Code 42-608 to support a determination by the director of the department of water resources that it is necessary to extend the watermaster's term of service.
2. **Estoppel:** Petitioner is estopped from requesting that the watermaster's term of service be extended for the sole purpose of regulating the City of Preston. The November 15 letter from the Idaho Department of Water Resources to Conan Foster, watermaster for Water District 13-A, states, "If your term of service is extended, you will be directed to limit the City's municipal diversion from Bergquist Springs to 1 cfs plus the flow of

Birch Springs." The City initiated and continued its water use from Bergquist Springs since 1920 with full knowledge by petitioner, and petitioner's knowing acquiescence estops it from seeking to have the watermaster's term of service extended to prevent the City of Preston's historic, 50-year + diversion level from Bergquist Springs.

(a) Petitioner has knowingly acquiesced in the City of Preston's use and enjoyment of the waters of Bergquist Springs.

(b) The City of Preston has relied upon this acquiescence by the Preston-Whitney Irrigation Company.

(c) The City of Preston has pending transfers to confirm its water right use for 50-years + from Bergquist Springs. Two of those transfers have been approved and a third transfer is unprotested. The approved transfers plus the unobjected transfers total 4.5 cfs for the City of Preston, depending upon the flow from Birch Springs.

(d) The City of Preston has been misled, to its injury, by the failure of Preston-Whitney Irrigation Company to question the City of Preston's water rights prior to the expenditure of substantial time, effort, and funds in developing the City's use of water from Bergquist Springs.

3. **Laches:** The City of Preston's 50-year + history of diversions from Bergquist Springs has occurred without intervention or complaint from the Preston-Whitney Irrigation Company and, as a result, the Preston-Whitney Irrigation Company has lost the ability to seek to limit the City's water use through a request to extend the term of service for the watermaster. The Preston-Whitney Irrigation Company has lost the ability to state this claim for failure to act on it sooner.

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4. **Waiver:** The Preston-Whitney Irrigation Company has waived its right to seek to change the historic non-irrigation season diversions of the City of Preston because of the passage of time since the City of Preston began its diversions from Bergquist Springs in 1920.

5. **Abandonment and/or Forfeiture:** The Preston-Whitney Irrigation Company has abandoned and/or forfeited its non-irrigation season water rights (including the point of diversion for those water rights) which are in conflict with the City of Preston's diversion of water during the non-irrigation season.

WHEREFORE, the City of Preston prays that the Director of the Department of Water Resources of the State of Idaho:

1. Deny the relief requested by petitioner and therefore not extend the watermaster's term of service;
2. Stay this petition until the City of Preston's unobjected transfer proceeding is completed before the Department of Water Resources; or
3. In the alternative, to a dismissal or stay, not issue a decision on this petition until after a hearing is held; and
4. Grant such other and further relief as the Director deems just and proper.

DATED this 27th day of December, 1994.

MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHARTERED

By Josephine P. Beeman
Josephine P. Beeman - Of the Firm
Attorneys for the City of Preston

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NOV 13 2001

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27th day of December, 1994, I caused to be served a true copy of the foregoing **CITY OF PRESTON'S PROTEST TO PRESTON-WHITNEY IRRIGATION COMPANY'S PETITION TO EXTEND WATERMASTER'S TERM OF SERVICE** by the method indicated below.

Kent E. Foster
HOLDEN, KIDWELL, HAHN & CRAPO
Post Office Box 50130
Idaho Falls, Idaho 83405
Fax: (208) 523-9518

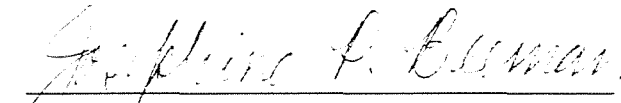
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Josephine P. Beeman
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December 22, 1994

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ABA Net C/O

Kent W. Foster
Post Office Box 50130
Idaho Falls, Idaho 83405-0130

Re: Preston-Whitney Irrigation Company Petition
To Extend Watermaster's Term of Service
MTBR&F File No. 16-832

Dear Kent:

The City of Preston would like to stop formal proceedings on this petition until the Preston-Whitney Irrigation Company, the Cub River Irrigation Company, and the City of Preston can meet informally to discuss the water delivery and water right issues arising from the petition and the City of Preston's pending transfer to divert from Bergquist Springs.

As we discussed in our phone conversation on December 15, the City began diverting from Bergquist Springs in 1920 with a 12" diameter pipe. These diversions continued until the 12" pipe was completely replaced by an 18" pipe in 1979. Our best estimate from the City is that these historic uninterrupted diversions for culinary use were 4.5 to 5 cfs. Yesterday, I learned from Tim Luke at the Idaho Department of Water Resources (IDWR) that Conan Foster made a one time measurement in November of 1300 gal/min (approximately 3 cfs) on the City line between the hydropower facility and the City storage tanks.

If the City of Preston and the Preston-Whitney Irrigation Company can agree upon a minimum figure for the City's Bergquist Springs diversions until the Preston-Whitney Irrigation Company, the Cub River Irrigation Company, and the City of Preston can meet to discuss the situation with IDWR, we could decide during that meeting what matters are appropriate for formal resolution. I would suggest 4.5 cfs as the interim figure.

The Preston-Whitney Irrigation Company has not objected to the City of Preston's 2.5 cfs transfer (13-0026) to Bergquist Springs. Two other transfers (13-0027 and 13-0028) for

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Kent W. Foster
December 22, 1994
Page 2

Bergquist Springs are already approved, and IDWR is scheduling a prehearing conference as soon as possible on the remaining transfer (and a transfer by Cub River Irrigation Co), though it appears it may be late January or February before that conference can occur. We would be happy to have one meeting in Preston with everyone, even those who have not objected to the City's transfer, to discuss the facts as we understand them and a possible long-term resolution of the water delivery situation. We appreciate that the water district provides a very necessary ministerial function to confirm the delivery of established water rights for all of these water users.

Due to the holiday season, I realize it may not be possible to have a response to this informal proposal before the filing deadline to the petition. Since the petition was received by IDWR on December 6, I calculate the 21-day response period to end on December 27. If I need to file the response to honor that deadline, it in no way precludes the informal resolution suggested in this letter.

I look forward to your early response.

Sincerely,



Josephine P. Beeman

JPB/sy
Enclosure

cc: Arlene Nash, City of Preston
Walter Ross, City of Preston
Clyde Nelson (for City of Preston)
Randy Budge (for Cub River Irrigation Co.)
Tim Luke, IDWR
Harold Jones, IDWR
Phil Rassier, IDWR

JPB 49216

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State of Idaho
DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720-9000
Phone: (208) 327-7900 FAX: (208) 327-7866

November 15, 1994

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

Conan Foster
Watermaster, Water District 13-A
1508 S. 2400 E.
Preston, ID 83263

Re: Watermaster's Term of Service and Delivery of Water Right No.s
13-0027 and 13-0028 owned by the City of Preston

Dear Conan:

This letter is being sent to you in response to questions which we received last week from you, the City of Preston and other water users within Water District 13-A. The questions we received concerned: 1) the watermaster's appointment and term of service, 2) the extent of regulation of rights 13-0027 and 13-0028 owned by the City of Preston, and 3) the status of pending transfer applications for water right no. 13-0026.

1) Watermasters Term of Service:

The certificate of watermaster appointment which was issued to you in 1994 specifically states that your term of service was limited to the end of the 1994 irrigation season. This officially means that you do not at this time have authority to regulate diversions within Water District 13-A. Department staff reviewed the minutes of the 1994 annual water users meeting and did not find any adopted resolution which called for the watermaster to serve throughout the year. Although Department staff did find that such a resolution was adopted in 1989, minutes of annual meetings from subsequent years were silent in regards to the watermaster's term of service. In order to be appointed as a full year watermaster each year, the water users must pass a resolution at each annual meeting which specifically calls for the watermaster to serve the full year.

While your 1994 term of service has ended, you should be aware that Section 42-608(5), Idaho Code does provide authority for the Director of the Department to extend the watermaster's term of service. This authority is contingent upon receipt of a petition requesting such an extension from the holder of a water right for the diversion of storage water during the time period for which the extension is sought and upon a determination of necessity by the Director. A copy of Section 42-608 is attached to this letter.

2) Regulation of Rights 13-0027 and 13-0028:

Water rights 13-0027 and 13-0028 were decreed to the City of Preston in McEwan vs. Franklin County Sugar Co., dated July 9, 1927. Right 13-0027 allowed for the diversion of 1 cfs from Ranger Spring at all times for municipal purposes. Right 13-0028 provided

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for 'the use of all the waters of Birch Springs, at all times, to be diverted through the pipe line and diverting works operated and maintained by said City.' The Department approved water right transfer applications in 1991 which formally transferred these rights from their decreed sources to Bergquist Springs. The transfers were originally protested by Cub River Irrigation Co. and Preston Whitney Irrigation Co. and then later withdrawn on the grounds that the City of Preston install adequate measuring devices on Birch and Bergquist Springs. A letter submitted in support of the transfer applications from City of Preston attorney Clyde Nelson claims that under right 13-0028, the City is only entitled to divert from Bergquist Springs the amount of water which Birch Springs produces.

Based on our review of the records, the City is entitled to divert from Bergquist Springs 1 cfs of water under right 13-0027. The amount of water which the City can divert under right 13-0028 is limited to the measured flow of Birch Springs.

3) Status of Transfer Application for Right 13-0026:

The Department is aware that the City of Preston and Cub River Irrigation Company each have a pending transfer application on file for a portion of water right 13-0026. These transfers respectively seek to change 2.5 cfs and 2.82 cfs of right 13-0026 held by Cub River Irrigation Co. from the Cub River to Bergquist Springs. The basis of these transfers seem to stem from a contract between the City of Preston and Cub River Irrigation Co. which provides for the City's use of up to 2.5 cfs of one of the Cub River Irrigation Co. rights. This contract is referenced in the McEwan decree under the same paragraph which describes rights 13-0027 and 13-0028 owned by the City. Ranger Spring, tributary to the Cub River, is named in both the decree and the contract as the actual source of water for the 2.5 cfs to be used by the City.

The transfer applications are pending as a result of unresolved protests and amendments which were required by the Department. Given the recent attention concerning the City's Bergquist Springs diversion, the Department plans to hold a conference or hearing on these transfers as soon as possible. Since the applications are still pending, the City can not at this time divert any water under right 13-0026 from Bergquist Springs.

Department Direction to Watermaster:

Since your appointment as watermaster has officially ended, you are advised at this time to refrain from regulating any diversions on the Cub River or its tributaries, including Bergquist Springs. The Department will consider extending your term of service for the 1994-1995 non-irrigation season upon receiving a petition from a valid storage right holder.

If your term of service is extended, you will be directed to limit the City's municipal diversion from Bergquist Springs to 1 cfs plus

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DEC 22 1997

the flow of Birch Springs. The City's hydropower diversion from Bergquist Springs under permit 13-7283, which authorizes diversion of up to 13 cfs, can be delivered as long as it does not interfere with the delivery of senior priority rights during the non-irrigation season.

If you have questions concerning this matter, please contact me directly at 327-7864.

Sincerely,



Tim Luke
Hydrologist, Water Allocations

cc: Clyde Nelson, Attorney, City of Preston
Carl Swainston, Preston Whitney Irrigation Company
Mervin Bodily, Cub River Irrigation Company
Angus Condie, Water District 13-A Secretary
Eastern Region, IDWR

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DEC 08 1997

TO: TIM LUKE
FROM: NORM *NJ*
RE: CITY OF PRESTON USE OF WATER
DATE: NOVEMBER 11, 1994

I am not sure I understand the questions that are being asked about the use of the City's rights. Let's discuss.

Some observations from a quick look at the files:

1. The two transfers involving right 13-00026 appear to be still pending. If so, the City has no right to divert under this right from the spring.
2. The transfers approved on 13-00027 and 13-00028 allow diversion for municipal purposes. Ron Carlson advised the City's attorney that hydropower use would require a change in nature of use and asked for the applications to be changed. Apparently they were not. The municipal uses must be sufficient to require diversion or the water should not be diverted if it is only needed for hydropower.
*900 permits
for hydropower - 13-00027
from Berquist Spring.*
3. The City's attorney acknowledged that the diversion from Berquist spring under the Birch Creek right could not exceed the actual flow of Birch Creek. See marker in file #13-00027.
4. In the same letter the attorney argues for year around use of water under the 1906 decree. Carlson indicated the use would be limited to the irrigation season. I agree with Ron, but cannot find a basis for doing so.
*Decree 5
says 'at all times'
for Preston City*

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DEC 08 1997

MEMORANDUM

To: Tim Luke
From: L. Glen Saxton *LS*
RE: CITY OF PRESTON TRANSFERS OF RTS 13-00027 & 13-00028
Date: November 10, 1994

After briefly reviewing this matter, my response would be that the city would be entitled to its full rate of diversion from Bergquist Springs (due to the long history of use) if the flow to which the city was entitled to under each right is known. In this case the flow from Birch Spring has never been identified.

Hence my thought is that the city is entitled to 1.0 cfs from Bergquist Spring under right no. 13-00027, no matter how much flow there is discharging from Ranger Springs. With respect to right 13-00028 which describes the right as "all" of the flow of Birch Spring, it appears the water should not be diverted from Bergquist Spring in an amount larger than the actual discharge of Birch Spring. Hence the flow from Birch Spring would need to be periodically determined.

Norm Young received a phone call on this matter today so we need to involve him in the process including the department's response to this matter. I believe the call was from Preston Whitney Irrigation district who wants a copy of any dept correspondence sent to the City of Preston.

Norm

*- your comments before
taking any action?*

Tim

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DEC 08 1997

MEMORANDUM

TO: Glen Saxton

FROM: TIM LUKE

DATE: November 9, 1994

RE: City of Preston Water Rights 13-00027 & 13-00028, Approved Transfers

=====

On November 8, Skip Jones and I each received a call from the City of Preston's attorney, Clyde Nelson, regarding the above rights. Skip also received a call from the Cub River watermaster, Conan Foster. We were told that the watermaster was planning to regulate the City's spring diversion, Bergquist Springs. Questions were raised about the watermaster's term of service and the extent of regulation on Bergquist Springs.

The above rights have long been diverted from Bergquist Springs by the City, but the rights were originally decreed from Ranger and Birch Springs respectively. The City filed transfers in 1983 to make the changes formal. The transfers were finally approved in 1991. You will note from review of attached files that right 13-0028 does not have a rate of diversion associated with it. The decree simply stated that the City had the right to divert all of the flow of Birch Springs.

The watermaster and several canal companies who divert Cub River water for storage purposes are under the belief that the City's diversion from Bergquist Springs is to be limited to the flow of water from Ranger and Birch Springs. However, the approved transfers do not contain any specific conditions or language about such limitations. The watermaster reports that the combined flow of Ranger and Birch Springs right now is considerably less than what the City is diverting from Bergquist Springs.

Skip and I have informed Nelson and Foster that we would look into this matter further and try to provide some direction to the watermaster. We further informed Foster not to regulate Bergquist Springs until this direction was provided. We also found that Foster's term of service under the 1994 Certificate of Appointment from the Department was for the irrigation season only. This was probably an error since the Water District adopted a resolution in 1989 that called for the watermaster to serve year round. I advised Nelson and Skip that a formal order may be needed to appoint Foster for the remainder of this year if we determine that there is a need for regulation.

I would like your comments or direction regarding limitation of use from Bergquist Springs. I believe Skip has discussed with you the pending transfer of the City of Preston. That transfer on right 13-0026 also involves Bergquist Springs.

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DEC 08 1997

October 20, 1986

RE: Applications for Transfers 13-0026

City of Preston
City Hall
Preston, ID 83263

Gentlemen:

We are holding in our files two applications for transfer numbered 13-0026. Both of these applications carry the same number because they both seek to change right No. 13-0026 which was decreed to Cub River Irrigation Company in the case of Henry T. McEwan -vs- Franklin Sugar Company.

The first application, which requests the transfer of 2.50 cfs from Cub River to the City's pipeline on Bergquist Springs, is actually a right acquired through purchase from Cub River Irrigation in 1920 and then approved by the court, subject to certain performance by the city, in 1924.

This right appears to be incorrectly described on the application. First, the amount being transferred is not 2.50 cfs but rather one eighteenth ($1/18$) of the flow of Cub River with a maximum rate of 2.50 cfs. This right is only valid between April 1 and October 31, not the full year indicated in your application. Based upon the rights granted by the Cub River Decree, the City could possibly claim up to 0.67 cfs under right number 13-0034 which would be one-eighteenth of the 12.0 cfs decreed to Cub River Irrigation's for culinary, domestic, and stockwater purposes during the non-irrigation season.

It is our understanding that the reason the City of Preston initiated these transfers was to have an adequate water supply for the City's hydropower project. It, therefore, appears that the application should indicate a change in nature of use from irrigation to hydropower.

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NOV 13 2001

City of Preston
October 20, 1986
Page 2

The second application, which requests the transfer of 2.82 cfs from Cub River to Bergquist Springs, reflects those portions of right 13-0026 the City has purchased from individuals within the Cub River Irrigation Company. While it appears that Cub River rights were exchanged for shares of stock in Preston-Whitney Irrigation Company, we have no indication that this agreement was ever consummated and find no identification of the lands from which the Cub River water will be removed in your application. Again, it appears the intent of this application is to change the nature of the use of these rights from irrigation to power purposes.

It is my conclusion, from our review, that these applications will require amendment before they can receive further processing. If you have any questions about the necessary changes please feel free to contact me.

Very truly yours,

RONALD D. CARLSON
Eastern Regional Supervisor

RDC:cw

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NOV 13 2001

September 18, 1986

RE: Application for Transfer No. 13-0026

City of Preston
City Hall
Preston, ID 83263

Gentlemen:

This letter is to inform you that the U.S. Forest Service has withdrawn their protest against the above referenced application. The Department has now resumed the processing of this application.

If you have any questions, please feel free to contact this office.

Very truly yours,

ERNEST CARLSEN
Assistant Regional Supervisor

EC:cw

cc: Clyde G. Nelson, Attorney

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NOV 13 2001

September 18, 1986

RE: Application for Transfer No. 13-0026
City of Preston
Cub River Irrigation

Mr. J. S. Tixier
Regional Forester
U.S. Forest Service
324 25th Street
Ogden, UT 84401

Dear Mr. Tixier:

This letter is to acknowledge receipt of your withdrawal of protest against the above referenced applications.

If you have any questions, please feel free to contact this office.

Very truly yours,

ERNEST CARLSEN
Assistant Regional Supervisor

EC: CW

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NOV 13 2001



United States
Department of
Agriculture

Forest
Service

Intermountain
Region

324 25th Street
Ogden, UT 84401

Reply to: 2540

Date: **SEP 10 1986**

Mr. Ronald D. Carlson
Eastern Region Supervisor
Idaho Department of Water Resources
150 Shoup Avenue, Suite 15
Idaho Falls, ID 83401

Dear Mr. Carlson:

Reference is made to our protest of Application for Transfer No. 13-0026 in the name of Preston City. As evidenced by the enclosed Water Right Resolution, the City of Preston and the Forest Service have resolved their differences. Please attach this Resolution as part of the official file for Application No. 13-0026. The Forest Service also withdraws its protest.

Sincerely,

for *Randall R. Hall*
J. S. TIXIER
Regional Forester

Enclosure

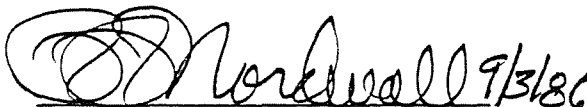
MICROFILMED
NOV 13 2001



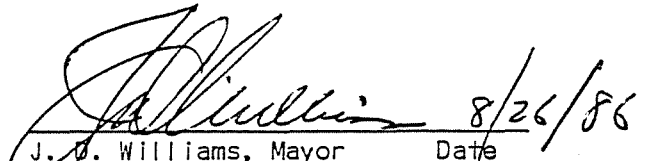
WATER RIGHT RESOLUTION
between
City of Preston, Idaho
and
United States of America - USDA Forest Service

In resolution of the USDA-Forest Service protest of Applications for Transfer of Water Right Nos. 13-0026, as submitted by Cub River Irrigation Co. for the City of Preston, and 13-0026 as submitted by the City of Preston, the two parties have come to the following agreement:

1. The applicant agrees to abide by the terms of US Forest Service Special Use Permit for the City of Preston dated 11-1-77 as amended on 12-22-82 which permits a maximum pipe flow of no more than 4.5 cubic feet per second unless the instream flow rate as measured at the Cub River USGS gaging station is at or exceeds 19 cubic feet per second. Maximum permitted pipe flow is 13 cubic feet per second.
2. The USDA-Forest Service agrees to withdraw its protests of Applications for Transfer of Water Right Nos. 13-0026 and 13-0026.
3. Both parties agree to submit this Water Right Resolution to the State of Idaho, Department of Water Resources and to inform the State that both parties have come to agreement.
4. 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.

 9/3/86

PAUL R. NORDWALL
Forest Supervisor
USDA - Forest Service
Caribou National Forest
250 South Fourth Ave
Pocatello, Idaho 83201

 8/26/86

J. D. Williams, Mayor
City of Preston
City Hall,
Preston, Id. 83263

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NOV 13 2001

November 15, 1985

Clyde G. Nelson
172 So. Main St.
P.O. Box 797
Soda Springs, Idaho 83276

Re: Water rights for Preston Whitney Irrigation Company.

Dear Mr. Nelson:

Examination of the records for the Department of Water Resources revealed several water rights in the name of Preston Whitney Irrigation Company.

The water rights I was able to identify are summarized below:

Right No.:	13-0143
Priority Date:	4-1-1929
Point of Diversion:	SWSW Sec 8 T 15S R 40E
Amount:	5.0 cfs 2133.0 AF/ANN
Source:	Larsen Spring

Right No.:	13-0271
Priority Date:	5-7-1880
Point of Diversion:	SESW Sec 8 T 15S R 40E
Amount:	50.0 cfs 2000.0 AF/ANN
Source:	Worm Creek

Right No.:	13-2103
Priority Date:	3-14-1924
Point of Diversion:	SESW Sec 8 T 15S R 40E
Amount:	25.0 cfs 10662.0 AF/ANN
Source:	Worm Creek
Remarks:	Place of use same as 13-0271

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NOV 13 2001

Clyde G. Nelson
November 15, 1985
Page 2

Right No.: 13-2104
Priority Date: 3-14-1924
Point of Diversion: NWSE Sec 8 T 15S R 41E
Amount: 25.0 cfs
Source: Cub River
Remarks: Originally held by Cub River Worm
Creek Canal Co.

Right No.: 13-2108/13-2288
Priority Date: 12-15-1924
Point of Diversion: SESW Sec 8 T 15S R 40E
Amount: 6000.0 AF
Source: Glendale Reservoir
Remarks: Originally held by Franklin Sugar
Co.

Right No.: 13-2291
Priority Date: 6-30-1947
Point of Diversion: SWNW Sec 20 T 15S R 40E
Amount: 2407.5 AF
Source: Cub River
Remarks: Storage in Lamont Reservoir

Right No.: 13-2298
Priority Date: 2-11-1957
Point of Diversion: NENW Sec 8 T 15S R 41E
Amount: 3355.0 AF
Source: Cub River
Remarks: Storage in Foster Reservoir

In addition I have enclosed a copy of correspondence sent to Mr Angus Condie of the Department on January 23, 1979. This letter identifies water rights for Cub River Irrigation Co. & Preston-Riverdale Mink Creek Company along with Preston Whitney Irrigation Co. Information on these water rights is available upon request.

Respectfully submitted,

Ernest Carlsen
Assistant Regional Supervisor

EC/md

Enclosure

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NOV 13 2001

November 13, 1985

Ag Room
Franklin County Courthouse
Preston, ID 83263

Gentlemen:

This is to confirm the use of the Ag Room for water right hearings to be held by this Department on November 19, 1985 beginning at 1:00 p.m.

Thank you for your cooperation in this matter.

Very truly yours,

COLLEEN WRAY
Adm. Secretary

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NOV 13 2001

#875
OCT 24 1985

No 2376

AFFIDAVIT OF PUBLICATION

STATE OF IDAHO, }

ss.

County of Franklin }

J. Walter Ross

being duly sworn,

deposes and says:

That he is the Co-Publisher of THE PRESTON CITIZEN, a weekly newspaper published at Preston, in the County of Franklin and State of Idaho; that said paper has been and is in general circulation in the county aforesaid, and in the vicinity of Preston; that the advertisement, a copy of which is attached hereto, was published in said newspaper once a week for 2 consecutive weeks in the regular and entire issue of said paper during the period of time of publication, and was published in the newspaper proper and not a supplement; that said paper has been established and regularly published for more than seventy-eight consecutive weeks prior to the date of first publication of said advertisement.

Such notice was published in the issue beginning with

Oct 17, 1985, and ending

with the issue of Oct 24, 1985.

Fee \$ 35.88

Subscribed and sworn to before me this 31st day of Oct, 1985.

K. D. Allen

Notary Public, Residing at Preston, Idaho

My Commission Expires June 7, 1986.

NOTICE OF PROPOSED CHANGE OF WATER RIGHT NO. 13-0026

NOTICE IS HEREBY given that 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. The right sought to be changed is evidenced by decree to Cub River Irrigation Co., in the Case of Henry T. McEwain vs. Franklin Sugar Co., dated on July 9, 1924 in Fifth Judicial District Court, County of Franklin and is recorded as follows:
AMOUNT: 2.5 cfs for Municipal purposes 1/1 to 12/31 and 1/18 of 45/100 of excess water of stream 4/1 to 10/31

DECREED POINT OF DIVERSION: Not specified.

The water is used for municipal purposes within the City of Preston.

TO BE CHANGED AS FOLLOWS

2.5 cfs will be diverted within NE 1/4 NE 1/4, Sec. 10, T. 15S, R. 41E; NW 1/4 NW 1/4, Sec. 11, T. 15S, R. 43 E, B.M. (Bergquist Springs) Franklin County.

Any protest against approval of the above proposed change of water rights must be filed with the Idaho Department of Water Resources, 150 Shoup, Suite 15, Idaho Falls, Idaho 83402, on or before November 4, 1985.

A. KENNETH DUNN
Director

Legal No. 2376 —41L— Publish Oct. 17, 24, 1985.

RECEIVED

MICROFILMED NOV 6 1985

NOV 13 2001
Department of Water Resources
Eastern District Office

November 5, 1985

RE: Application for Transfer No. 13-0026

City of Preston
City Hall
Preston, ID 83263

Gentlemen:

Enclosed please find a copy of the protest filed against the above referenced application. You should be aware that the following are the items we can consider at a conference and/or hearing in either approving or denying an application for transfer:

1. Are other water rights injured by the transfer?
2. Does the change constitute an enlargement in the use of the original right?
3. Will the proposed use under this transfer conflict with the local public interest?

You will be notified at a later date as to the time and place set for conference and/or hearing. Legal counsel is not mandatory at an proceeding before the Department, although you may desire to employ an attorney in your behalf.

If we may be of further assistance, please contact us.

Very truly yours,

RONALD D. CARLSON
Eastern Regional Supervisor

RDC:cw

Enclosure

cc: IDWR - State Office
Clyde Nelson, Attorney

MICROFILMED

NOV 13 2001

November 5, 1985

RE: Application for Transfer No. 13-0026 CITY OF PRESTON

Mr. J. S. Tixier
Regional Forester
U.S. Forest Service
324 25th Street
Ogden, UT 84401

Dear Mr. Tixier:

This is to acknowledge receipt of the protest filed against the above referenced application for transfer. The following are the principle items we can consider at a conference and/or hearing in either approving or denying an application for transfer:

1. Are other water rights injured by the transfer?
2. Does the change constitute an enlargement in the use of the original right?
3. Will the proposed use under this transfer conflict with the local public interest?

You will be notified at a later date as to the time and place set for conference and/or hearing.

If we may be of further assistance, please contact us.

Very truly yours,

RONALD D. CARLSON
Eastern Regional Supervisor

RDC:cw

cc: IDWR - State Office

MICROFILMED

NOV 13 2001

November 4, 1985

The Preston Citizen
P.O. Box 472
Preston, ID 83263

RE: Notice of Application for Transfer of Water Right No.
13-0026 CITY OF PRESTON.

Gentlemen:

Would you please submit an affidavit of publication and certified bill in connection with the above referenced Application. The legal notice was to have been published in your paper on October 17, and 24, 1985.

Your cooperation in this matter is greatly appreciated.

Very truly yours,

MICHELE DAVIS
Office Secretary

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NOV 13 2001



United States
Department of
Agriculture

Forest
Service

Intermountain
Region

324 25th Street
Ogden, UT 84401

Reply to: 2540

Date: NOV 1 1985

Mr. Ronald D. Carlson
Eastern Region Supervisor
Idaho Department of Water Resources
150 Shoup Avenue, Suite 15
Idaho Falls, ID 83401

RECEIVED

NOV 4 1985

Dear Mr. Carlson:

Department of Water Resources
Eastern District Office

We are writing regarding Application for Permit No. 13-0026 filed by the city of Preston to change the point of diversion and period of use of the waters of the Cub River. The right sought to be changed is evidenced by a decree to Cub River Irrigation Company, in the case of Henry T. McEwain vs Franklin Sugar Company, dated July 9, 1924, in the Fifth Judicial District Court, County of Franklin. An identical proposal was advanced in 1982 which we protested in letters dated December 3, 1982, and January 13, 1983. This letter reaffirms our earlier protest.

In resolving an earlier protest of Application for Permit No. 13-7283, a Stipulation and Agreement was signed by the city of Preston, Cub River Irrigation Company, and the Forest Service. The Stipulation and Agreement stated in part, "It is further understood that other items of contention will be covered by such additional agreements as may be deemed necessary." Subsequently, the city of Preston and the Forest Service have reached an agreement that the city will maintain the flow at the USGS Station in Cub River at 19 cfs. In addition, no water diversion in excess of the historical culinary use of 4.5 cfs will be diverted from Berquist Spring when flow at the USGS Station is less than 19 cfs.

The current proposal to divert an additional 2.82 cfs from Berquist Spring would frustrate our agreement with the city of Preston and hinder our ability to manage this valuable public resource.

For the reasons given above, we request that the application to change the point of diversion be denied.

Sincerely,

for *Randall R. Hill*
J. S. TIXIER
Regional Forester

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DEC 08 1987



FS-6200-28(7-82)

APPLICATION FOR TRANSFER OF
WATER RIGHT NO. 13-0026

RECEIVED

OCT 24 1985

Department of Water Resources
Eastern District Office

WATER DISTRICT _____

WATERMASTER Conan Foster

DATE: Oct. 23, 1985

COMMENTS: stated below

____ I do endorse approval of this change.

____ I do not endorse approval of this change.

I recommend the following conditions of approval:

I call attention to the fact that during the non irrigation season the primary right is for 12 cfs. One eighteenth of this amount is .67 cfs or the amount being transferred to the city. The 1.83cfs is claimed by irrigation storage rights.

Conan Foster

Watermaster

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NOV 13 2001

October 11, 1985

RE: Application for Transfer No. 13-0026 CITY OF PRESTON

Mr. Conan Foster, Watermaster
Water District 13-A
Rt. #3
Preston, ID 83263

Dear Mr. Foster:

Please find enclosed a copy of the above referenced application(s) and water recommendation form(s). Please review the application(s) and complete the form(s), returning it to this office on or before November 4, 1985.

Thank you for your cooperation in this matter.

Very truly yours,

ERNEST CARLSEN
Assistant Regional Supervisor

EC:CW

Enclosure

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NOV 13 2001

Nelson & Harding

ATTORNEYS AT LAW

172 SOUTH MAIN STREET
P.O. Box 797
SODA SPRINGS, IDAHO 83276

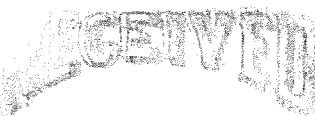
CLYDE G. NELSON
DON L. HARDING

GARY L. SPACKMAN

October 9, 1985

TELEPHONE
(208) 547-2135

Mr. Ernest Carlson
Assistant Regional Supervisor
Department of Water Resources
150 Shoup - Suite 15
Idaho Falls, ID. 83402



OCT 10 1985

Department of Water Resources
Eastern District Office

Dear Ernie:

I am enclosing a copy of the Decree wherein the various rights to Cub River were established. I assume that you have a copy of this Decree, but I thought I would enclose the same for your convenience. You will note that various rights to different entities and individuals have been decreed. I would be interested in knowing if Cub River Irrigation Company has acquired any of the other rights set forth in the Decree as listed in paragraphs Fourth through Twenty-Fourth. I am aware that the Cub River Middle Ditch Company (paragraph Fourth), the Cub River and Worm Creek Canal Company (paragraph Fifth), and the Franklin Cub River Canal Company (paragraph Sixth) are all defunct corporations in the State of Idaho.

If you are able to locate any such information for me, I would appreciate receiving any documentation that you might possess showing the acquisition by Cub River Irrigation Company of any other decreed water rights or documents showing the transfer of the same to Cub River Irrigation Company. It would be very helpful to me to receive these prior to our hearing on October 29, 1985, and your consideration in this matter is greatly appreciated. If there is any cost or expense incurred in obtaining this information for me, please enclose a copy of your billing.

Sincerely,

A handwritten signature in cursive script, appearing to read "Clyde Nelson".

CLYDE G. NELSON

CGN:js
Enc.

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NOV 13 2001

various appropriators for irrigation purposes, exclusive of the excess or high water rights awarded to Cub River Irrigation Company, a corporation, Cub River Middle Ditch Company, a corporation, and Cub River & Worm Creek Canal Company, a corporation, in Paragraphs Third and Fourth and Fifth hereof.

Excess or high water rights are defined to be the right to use by defendants, Cub River Irrigation Company, Cub River Middle Ditch Company, and Cub River Worm Creek Canal Company, a corporation, during the irrigation season, for irrigation purposes, in the amounts, and with the priorities in said Paragraphs Third, Fourth and Fifth hereof specifically set out, all waters flowing in the said Cub River and its tributaries in excess of the amount of water necessary to satisfy the primary irrigation rights as herein allotted.

13-0026 THIRD: That the defendant, Cub River Irrigation Company, a corporation, is the owner of a primary right to the use, at all times during the irrigation season, of 45 cubic feet per second of time of all the waters of said Cub River and in excess or high water right to the use of 45/100ths of said stream after the primary irrigation rights herein decreed are satisfied, up to a total of 158 cubic feet per second of time, its rights to the use of said water to date from the year A.D. 1880; said water to be measured at the waste gate in said Company's canal at a point where the same is now situated and about a mile below the headgate of said canal, and to be used for the irrigation of 1800 acres of land lying in Sections 1, 2, 3, 10, 11, 12, 13, 14, 15, 21, 22, 23, 24, 25, 26, 27, and 28, Township 16 South of Range 39 East of the Boise Meridian in Franklin County, Idaho, and sections 35 and 36, Township 15 of Range 1 West of the Salt Lake Meridian, Cache County, Utah, and Sections 1, 2, 3, 11, 12, 13, 14, 15, 22, 23, 24, 25, and 26, Township 14 North of Range 1 West of the Salt Lake Meridian, Cache County, Utah, and Sections 3, 4, 5, 6, 7, 8, 9, 10, 15, 16, 17, 18, 19, 20, 21, 28, 29, 30, 31, and 32, Township 14 North of Range 1 East of the Salt Lake Meridian in Cache County, Utah.

13-0002 FOURTH: That the defendant Cub River Middle Ditch Company is the owner of a primary right to the use, at all times during the irrigation season, of 30 cubic feet per second of time of all of the waters of said Cub River, and of an excess or high water right in the order of its priority of 30/100ths of the waters of said stream, after the primary rights herein allotted for irrigation purposes are specified, up to the extent of 69.9 second feet, its right to the use of said waters to date from the year A.D. 1882; said water to be measured at the waste gate in said Company's canal, at a point where it is now situated below the headgate of said canal.

13-0003 FIFTH: That the Cub River and Worm Creek Canal Company is the owner of a primary right to the use at all times during the irrigation season of 25 cubic feet per second of time of all of the waters of said Cub River, and is also the owner of an excess or high water right in the order of its priority to the extent of $\frac{1}{4}$ of the waters of said stream, after the primary rights herein decreed are fully satisfied. The total right of said Company, nevertheless, not to exceed 85 cubic feet per second of time. The right to the use of the said waters by said Company to date from the year 1882, and the said water to be measured at the headgate of said canal company, where said canal intercepts said stream,

13-0004 SIXTH: That the defendant, Franklin Cub River Canal Company, is the owner of a primary right to use, at all times during the irrigation season, five cubic feet per second of time of all of the waters of said Cub River, its rights to the use thereof to date from the year 1882, and the said water to be measured at the headgate of said Company's canal, where the same intercepts said Cub river.

13-0005 SEVENTH: That as between the said Cub River Middle Ditch Company and the said Cub River and Worm Creek Canal Company, the rights herein decreed to them shall be of equal

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dignity as to priority, and prior to July 1st, each season the Cub River Middle Ditch Company shall use 4/9ths of the water herein decreed to both Companies and the said Cub River and Worm Creek Canal Company shall use 5/9ths of the same; and after said first day of July, of each year, said water herein allotted to said Companies shall be used jointly by them, share and share alike.

13-0027 EIGHTH: That the defendant, Preston City, is the owner of the right to use, at all times for municipal purposes, one cubic foot per second of time of the Waters of said Cub River to be diverted from Ranger Spring, one of the tributaries of said Cub River, through the diverting works and pipe line now maintained and operated by said City, said right to date from the year A.D. 1879, and is entitled to the further right, at all times,

13-0028 to the use of all of the waters of Birch Springs, formerly a tributary of said Cub River, said right to date from the year A.D. 1882, the said water to be diverted through the pipe line and diverting works now operated and maintained by said City. Said City, subject to the completion of the terms of the contract between it and the Cub River Irrigation Company, is entitled to use from Ranger Spring, during the whole of each and every year, such quantity of the waters of Cub River as may be conveyed to it by said Cub River Irrigation Company, pursuant to said contract, not exceeding at any time two and one-half cu. ft. per second.

13-0029 NINTH: That defendants, B. M. Burbank and Caroline J. Allred are the owners of a primary right to the use of two cubic feet per second of time of the waters of Cub River, their right to the use of the same to date from the year A.D. 1882; said water to be diverted and measured at the headgate of the Cub River Middle Ditch Company's canal, and to be used upon and for the irrigation of lands belonging to said parties, lying within Sections 26 and 27 of Township 15 South of Range 40 East of the Boise Meridian.

13-0009 TENTH: That defendant Grace H. Woolley is the owner of a primary right to the use at all times during the irrigation season of all of the waters flowing in the silver creek, a tributary of Cub River, her right to the use of the same, to date from the year A. D. 1879; said water to be measured at the point of diversion from said Silver Creek and her said rights to be confined to the waters of said Creek, and use for the irrigation of the following described lands, to-wit:

Commencing at a point at the Northeast corner of the Southeast quarter of Section 24, Township 15 South of Range 40 East of the Boise Meridian, thence running East 1320' 5280' 1320' 5280' 80 rods; thence South 320 rods; thence West 80 rods; thence North 320 rods, to the place of beginning.

Also the East half of the Southeast quarter of Section 24, and the East half of the Northeast quarter of Section 25, and the West half of the Southeast quarter of Section 24, all in Township 15 South of Range 40 East of the Boise Meridian.

That except for such rights as the defendant Virgil L. Nelson may have under agreement with the said Grace H. Woolley in and to the use of the waters herein allotted to said Grace H. Woolley, the said defendant Virgil L. Nelson has no right, title, or interest in or to the waters or the use of the rights of said Cub River or its tributaries. ~~rights of said Cub River or its tributaries.~~

13-0010 ELEVENTH: That the defendants, Henry F. Bennett, Merlin Perkins, James Perkins and James Keller, Jr., are owners of a primary right to the use, at all times during the irrigation season, of 7 1/5 cubic feet per second of time of the waters of Sugar Creek, a tributary of said Cub River, and the Defendant Joseph Sharp is the owner of a primary right

13-0011 to the use, at all times during the irrigation seasons, to 2 2/5 cubic feet per second of time of the waters of said Sugar Creek, the right of said parties to date from the year A.D. 1879, and to be of equal dignity with respect to date of appropriation, and to be measured at the respective headgates of the said parties, ~~MICROFILMED~~ respective points of diversion

Discussion Notes
from 4/19/83

CUB RIVER IRR. CO.

a) IRRIGATION SEASON (APR - OCT) : 45 CFS

b) NON-IRRIGATION SEASON (NOV - MAR) : 12 CFS

1. PRESTON HAS RIGHT TO $\frac{1}{18}$ OF 45 CFS (2.5 CFS) YEAR ROUND (REFER TO PARA. 33 $\frac{1}{2}$ 24 OF 1924 DECREE & DEED TO PRESTON FROM CUB RIVER IRR. CO. ALSO SEE DEFINITION OF PRIMARY RIGHT - 1924 DECREE)
2. SINCE DEED REQUIRES 2.5 CFS BE DIVERTED FROM RANGER SPRING, HOW DOES THE TRADE TO DIVERT FROM BERGQUIST SPRING AFFECT THE 1.0 CFS FROM RANGER SPRING?
3. DEEDS (2) ~~FROM~~ TO PRESTON CITY FROM BURBANK ($\frac{2}{3}$ CFS) & ALLRED ($\frac{1}{3}$ CFS) - DOES NOT SHOW UP IN DECREE - IS IT RANGER SPRING? YEAR OF RIGHT (1879) IS SAME - NEED TO PLOT OUT DESCRIPTION TO SEE IF IT IS RANGER SPRING.
4. CRIC (OCT. 82) HAS APPLIED FOR CHANGE IN POINT OF DIVERSION FOR 2.82 CFS FROM CUB RIVER TO BERGQUIST SPRING (IRR. SEASON)

65 $\frac{1}{2}$ shares of 3,000 outstanding

2.82 cfs ~~for 0.62~~ or 0.062 of river when flow 45 cfs

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	1921	NON-1921
DEED FROM CRIC	2.5	2.5
CRIC SHARES	2.82	(0.75?)
BIRCH SPRING	1.6 ±	4.0 ±
RANGER SPRING	1.0	1.0
DEEDS FROM BURBANK / ALLIED	1.0	1.0
? ESTABLISHED RIGHT - BERGQUIST	4.5	4.5 (12)

BON SAYS
NO ??

PWIC 6,000 ac-ft Dec. 15, 1924 priority date

1. Make application to transfer point of division on 2.5 cfs during non-irrigation

2. ~~13~~

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STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
Eastern Region

150 Shoup Ave., Suite 15
Idaho Falls, Idaho 83402
(208) 525-7161

OCTOBER 9, 1985

The Preston Citizen
P. O. Box 472
Preston, Idaho 83263

Gentlemen:

Enclosed you will find a legal notice which we wish to have published on the dates indicated (once a week for two consecutive weekly issues) in your newspaper. We have allowed ample time for you to submit a galley proof to this office for review before the first publication date. If you cannot publish the notice on the proposed dates, please contact us immediately.

An affidavit of publication must be submitted to the Department along with the publication bill. Your cooperation is appreciated.

Please send the affidavit of publication and publication billing to this office before NOVEMBER 04, 1985.

Yours truly,

RONALD D. CARLSON
Supervisor
Eastern Region

Encl.

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NOTICE OF PROPOSED CHANGE OF WATER RIGHT

NO. 13-0026

Notice is hereby given that 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. The right sought to be changed is evidenced by decree to Cub River Irrigation Co., in the Case of Henry T. McEwain vs. Franklin Sugar Co., dated in July 9, 1924 in Fifth Judicial District Court, County of Franklin and is recorded as follows:

AMOUNT: 2.5 cfs for Municipal purposes 1/1 to 12/31
and 1/18 of 45/100 of excess water of stream 4/1 to 10/31

DECREED POINT OF DIVERSION: Not Specified.

The water is used for municipal purposes within the City of Preston.

TO BE CHANGED AS FOLLOWS

2.5 cfs will be diverted within NE1/4NE1/4, Sec. 10, T. 15S, R 41E;
NW1/4NW1/4, Sec. 11, T.15S, R. 43E, B.M. (Bergquist Springs) Franklin County.

Any protest against approval of the above proposed change of water rights must be filed with the Idaho Department of Water Resources, 150 Shoup, Suite 15, Idaho Falls, Idaho 83402, on or before November 4, 1985.

A. Kenneth Dunn
Director

Published in the Preston Citizen, Preston Idaho, on Oct. 17 and Oct. 24, 1985.

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NOV 12 1985

CONVERSATION MEMORANDUM

DATE October 8, 1985FILE 13-0026NAME OF PARTY Clyde NelsonEMPLOYEE Ernest Carlsen *EMC*

RE: Clyde Nelson telephoned this morning to advise me that he had reviewed the
amended application for transfer 13-0026 prepared by K. Wilson and has
decided not to submit it. He stated the City of Preston prefers to proceed
with the processing of the initial application. Though it is our position
the initial application does not properly describe the parent right, the
description of the portion being changed after the transfer is the same on
both applications. We should proceed with processing, and if it is decided
later to require amending the application, then the applicant will have to
pay the \$20.00 amendment fee.

Mr. Nelson also explained why both the city and Cub River Irrigation have
filed transfer applications of decreed right 13-0026. C.R.I.C. has filed an
application to transfer water based on the number of C.R.I.C. stocks owned
by the city. While the city's application is to transfer water based on
agreement between the two parties dated 2/27/1920.

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INTER-DEPARTMENT MEMO — 1

FROM KEITH C. WILSON

DATE October 7, 1985

TO FILE

SUBJECT Initial Review of Application for Transfer Water Right 13-0026

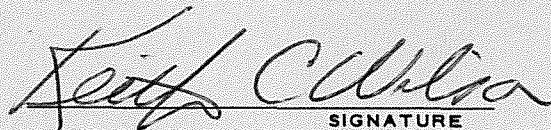
Purpose of Application includes a change in point of diversion & period of use. An expansion may occur by changing the period of use but should not cause injury as the basic right is already used during the irrigation season.

Section A: Description of Right as recorded accounts for only that portion of the water right under agreement between Cub River Irrigation Co and the City of Preston, and also includes a change in period and place of use.

NOTE: Municipal use also includes irrigation; therefore, to address the Change in Nature of use would involve that water used during the non-irrigation period.

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SIGNATURE

DATE *Sept 13, 85*

FROM

TO *13-4026*

SUBJECT

*Called Alvaro Mack in Boston concerning that citation
amended application for transfer. He was fairly certain that
~~nothing had been done by Clyde Nelson that failed to take~~
~~action~~ not done anything to obtain the necessary signature.
Because she was going to pick up on the matter &
agreed to the delay regarding their money for 2 more
weeks.*

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SIGNATURE

[Signature]

M E M O

TO: File
FROM: Ernie Carlsen *EC*
RE: 13-0026
DATE: August 6, 1985

In response to my letter of July 19, 1985, both Arlene Nash and Clyde Nelson called to make arrangements for continuing to hold this application.

Mrs. Nash stated the city lost track of the application as a result of a frequent turn over of mayors. Mr. Nelson has not been the city's attorney for three years and his impression was the new attorney would follow-up.

Mr. Nelson has been asked to finish with properly recording the water rights. He promised to have something submitted no later than August 23, 1985. I agreed to continue holding the filing fee for that period; but, I also indicated the filing fee would be returned if it appeared there was going to be an extended delay in returning the amended application.

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July 19, 1985

Mayor J. D. Williams
City of Preston
70 West Oneida
Preston, ID 83263

Your Honorable Mayor:

In January 1984 the City of Preston submitted an application for transfer for part of water right #13-0026 decreed to Cub River Irrigation Co. Apparently the application was filed to record the City's practice of diverting its entitlement from Bergquist Spring.

Review of the application by Department staff revealed it was not in form to advertise so a revised application was prepared and sent to Clyde Nelson. We have tried on several occasions to find out the status of this application and still do not know why it was not returned.

In addition to that application we are also holding two other applications by the city involving the transfer of rights 13-0027 and 13-0028. Both these applications also identify Bergquist Spring as the new point of diversion. They have been advertised and both were protested. However administrative consideration of the protests was being postponed until all three applications could be considered.

The Department does have an obligation to proceed with processing in a diligent manner. We are reluctant therefore, to continue the postponement unless advised that some aspect of the proposed change is involved in litigation or that the revised application on 13-0026 will be returned for processing. If it is not returned

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Honorable Mayor Williams
July 19, 1985
Page 2

by August 5, 1985 the original application will be sent back to you and a refund request will be forwarded to the State Auditors office for returning the \$50.00 filing fee. Transfer applications on rights 13-0027 and 13-0028 will then be considered for the next hearing schedule to cover the Preston area.

Please feel free to contact me if you have questions concerning the revised application on right 13-0026.

Respectfully submitted,

ERNEST CARLSEN
Assistant Regional Supervisor

EMC/ct

cc: Clyde Nelson

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CONVERSATION MEMORANDUM

DATE 12-6-1984

FILE 13-0026

NAME OF PARTY Clyde Nelson

EMPLOYEE Keith C Wilson

RE: Called Mr Nelson's Office he was not in, left message
for him to call me in reference to 13-0026

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Change in Nature of Use

$$2.5 \text{ cfs} \times 1.9835 \times 213 \text{ days} = 1056.2 \text{ afa}$$

$$\text{Total rate} = 2.5 \text{ cfs}$$

$$\text{Total volume diverted} = 1056.2 \text{ afa}$$

(annually in 213 days)

Determine rate of flow for year (365 days) to give same total volume

$$(\# \text{ cfs}) (1.9835) (365 \text{ days/yr}) = 1056.2 \text{ afa}$$

$$\# \text{ cfs} = \frac{1056.2 \text{ afa}}{(1.9835) (365)} = 1.458 \text{ cfs} = 1.46 \text{ cfs}$$

Therefore: To deliver the same volume over a 365-day period
the rate would be reduced to 1.46 cfs.

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October 10, 1984

Clyde Nelson
Box 797
Soda Springs, ID 83276

RE: Application for Transfer #13-0026, Change in Nature of Use

Dear Sir:

Enclosed is a copy of a letter from this office dated 5 Sept. 1984 and a copy of a change in nature of use transfer for water right number 13-0026. As of the date of this letter we have received no correspondence pertaining to the above referenced application. The requested information and completed transfer application that was sent must be completed and returned to this office within 30 days of the date of this letter so that final processing can be completed. Your cooperation will be appreciated.

Sincerely,

KEITH C. WILSON
Senior Resource Agent

KCW/cz

Enc.

cc: City of Preston

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NOV 13 2001

September 5, 1984

Clyde Nelson
Box 797
Soda Springs, ID 83276

RE: Application for Transfer No. 13-0026

Dear Sir:

Enclosed is a copy of the original Application for Transfer of water right and a retyped transfer application. The retyped transfer is necessary to make corrections in part A which describes the original right in its entirety, and to include a change in nature of use provision on the transfer (NOTE: top of first page and part C 1, new period of use). To submit the transfer, complete the accompanying change in nature of use supplement form, review the transfer application, sign in front of a notary and return to this office with all attachments, including a copy of the agreement dated February 27, 1920 between Cub River Irrigation Company and the City of Preston. A copy of the agreement is mandatory for the review process.

Your prompt reply will be appreciated.

Sincerely,

KEITH C. WILSON
Senior Resource Agent

KCW/cz

Encs.

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INTER-DEPARTMENT MEMO — 1

FROM KEITH

DATE 29 Aug 84

TO File

SUBJECT Progress on City of Preston Trans 13-0026

29 AUG 1984 GAVE TYPING TO SEC 1500 hrs
5 SEPT 84 " " of letter to Sec at 1105 RTN 200 ~~hrs~~ 45
SENT LETTER AND REQUESTED TRANS APP.

MICROFILMED

NOV 13 2001

SIGNATURE