

MEMORANDUM

Date: June 1, 2005

To: T65416, 65886 and 68302 – City of Preston and Cub River Irrigation

From: Jeff Peppersack

Re: Meeting with Jo Beeman, Attorney and Norm Young, Consultant

Discussed the potential to maintain the use under the transferred rights as irrigation use (not municipal). The reason for doing so would be to avoid the volume limits associated with a change in nature of use. A change in nature of use requires a determination of historic beneficial use and the approved transfer would be limited to the consumptive amount. A transfer from irrigation to irrigation would not require the volume limitation and acres could not be increased. The concept allowing irrigation diversions through a municipal system has been described in a letter from the Director to Michael Creamer dated April 7, 1998 (see attached).

I indicated that the concept may be acceptable. IDWR will need to determine if the application should be amended and if advertising would be required. Norm Young indicated that they would begin review of the place of use to determine irrigation use (agricultural use vs domestic and open spaces).

Also discussed the "high water" flows and Norm indicated that they would look at the application of high water flows to the spring source.

*probably no need to re-advertise since
reducing extent of change - original
use was irrigation*

JP

Post-It® Fax Note 7671		Date 3/18	# of pages 3
To Norm Young		From Shelley Keen	
Co./Dept. ERO		Co. IDWR	
Phone #		Phone #	
Fax # 373-7985		Fax #	



State of Idaho
DEPARTMENT OF WATER RESOURCES
 1301 North Orchard Street, P.O. Box 3421
 Phone: (208) 327-7900 FAX: (208) 341-1806

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

April 7, 1998

Michael C. Creamer, Esq
 GIVENS PURSLEY & HUNTLEY LLP
 277 N. 6th Street, Suite 200
 Boise, ID 83701

Re: Irrigation Water Right Use by a Municipal Provider

Dear Mr. Creamer:

This letter is in response to your correspondence of November 3, 1997, on behalf of United Water Idaho ("UWID") regarding alternatives for meeting UWID's need for additional water supplies to meet summer irrigation demands within its service area. Your letter indicates that up to half of UWID's current municipal water demand during the summer months is used for irrigation purposes. The numbers you provide indicate that UWID's current average daily demand is approximately 37 million gallons per day ("mgd"). This average daily demand is contrasted with a peak demand of 77 mgd during the summer months when water is being used to irrigate lawns, gardens, parks and landscaping. You state the demand for irrigation water through UWID's delivery system is expected to increase substantially over the next fifteen to twenty years as a result of further population growth and urbanization of agricultural lands.

Your letter suggests that one potentially feasible method of meeting UWID's summer irrigation water demand is to recognize that the use of water delivered through UWID's municipal delivery system for the irrigation of lawns, gardens, parks and landscaping remains an irrigation purpose of use even though the delivery system is different than the system previously used to deliver water to the same lands for irrigated agricultural purposes. According to your letter, recognition by the Department of Water Resources ("IDWR") of this principle would allow UWID to contract with the U.S. Bureau of Reclamation for use of a portion of the 111,950 acre-feet of irrigation water authorized to be stored in Lucky Peak Reservoir pursuant to State of Idaho Water Right Permit No. 63-03618.

The issue raised by your letter is whether any change in Water Right Permit No. 63-03618 is required under Idaho Code § 42-211 to authorize water stored and released pursuant

Michael C. Creamer, Esq

April 7, 1998

Page 2

the permit to be used by UWID to meet summer irrigation demands within its municipal delivery system. The issue is unique in that no case law has been identified addressing this issue aside from the unreported district court decision from Colorado cited in your letter, In re: Concerning the Application for Water Rights of the City of Arvada in Jefferson and Adams Counties, Case Nos. W-8083-75 and W-8762-77 (Colo. Dist. Court, Water Division No. 1, Sept. 9, 1992). Although the question may be unique, determination of the applicability of Idaho Code § 42-211 to the situation described does not appear difficult.

Idaho Code § 42-211 provides that when a permit holder desires to change the place, period, or nature of the intended use, or make other substantial changes in the method of diversion or proposed use or uses of the water, the permit holder shall file an application for amendment with IDWR. The filing requirement under Idaho Code § 42-211 is similar to that under Idaho Code § 42-222 which requires a person entitled to the use of water under a license, decree or beneficial use claim to obtain the approval of IDWR before changing the point of diversion, place of use, period of use or nature of use of all or part of the water right.

Under the factual scenario described in your letter, UWID proposes contracting with the U.S. Bureau of Reclamation for the use of a portion of the water authorized to be diverted under permit no. 63-03618 without seeking any change in the point of diversion, place of use, period of use or nature of use under the water right. Under this factual scenario, the permit amendment requirements of Idaho Code § 42-211 would not pertain.

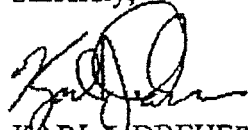
IDWR has long recognized that a water right with an irrigation purpose of use may be used for the irrigation of lawns, gardens, parks and landscaping. The fact that the irrigation water may be commingled and distributed through a municipal system that also delivers water for other municipal purposes, does not alone necessitate a change in the nature of use of the water right from irrigation to municipal. A key factor in not requiring a change in the nature of use of the water right from irrigation to municipal is that UWID provide annual reporting of appropriate measurements and accounting procedures to demonstrate that the additional water diverted is necessary to satisfy increased summer demand for irrigation water through the municipal system on lands for which the permit is authorized to be used. In order to satisfy this accounting requirement, it may be necessary for UWID to demonstrate through representative metering the amount of commingled irrigation water that is withdrawn from its municipal delivery system for irrigation use on lands authorized under the permit.

In conclusion, IDWR shares the view expressed in your letter that provided an appropriate accounting is made of the amounts of water diverted and used for irrigation, a municipal water provider may divert irrigation water into its common municipal delivery system and deliver the irrigation component for irrigation purposes. While no change in the irrigation water right would be required under the provisions of Idaho Code §§ 42-211 or 42-222, it would

Michael C. Creamer, Esq
April 7, 1998
Page 3

be necessary to establish an appropriate measurement and accounting procedure in accordance with the policies and provisions of chapters 6 and 7, title 42, Idaho Code.

Sincerely,



KARL J. DREHER
Director

cc: John W. Keys, III
Tony Sullins
Gary Spackman

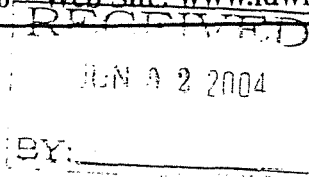


State of Idaho

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

May 28, 2004



DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

NORMAN C YOUNG
EPO RESOURCES CORP.
1126 N COLE RD SUITE C
BOISE ID 83704-8661

Disposition of Petition for Reconsideration

RE Petition for Reconsideration of the Preliminary Order Approving Transfer 70974
Hayden Lake Irrigation District

Dear Mr. Young:

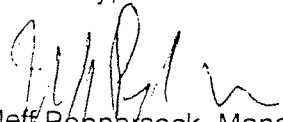
The Department of Water Resources (IDWR) has received your petition for reconsideration of the preliminary order approving Transfer No. 70974. The petition requested that the transfer approval be amended to show additional volume under licensed right 95-8581.

The request to amend the approval for additional volume appears to be justified; however, review of the approval resulted in a question regarding the municipal use as proposed in the transfer application. Section 42-202B(6), *Idaho Code* defines municipal purposes as "... water for residential, commercial, industrial, irrigation of parks and open space, and related purposes, ..." The statutory definition of municipal purposes does not appear to provide for irrigation of cropland for agricultural production. Consequently, Transfer No. 70974, as approved in the preliminary order, would not allow for irrigation of cropland within the service area of Hayden Lake Irrigation District. Your petition also requested additional time to accomplish the transfer. Additional time can be approved and may provide some flexibility to transition irrigated cropland to municipal irrigation use, but it is doubtful that the applicant intended such a transition within 5 years. The applicant may want to consider maintaining irrigation use to some extent as part of the water rights.

In response to your petition, IDWR grants 30 days to allow the applicant time to review the issue identified and provide a response to IDWR with submittal of any additional information necessary to support the application as proposed. Additional time may be granted upon a written request and justification for the extension. IDWR will evaluate your information when determining whether to grant or deny your petition for reconsideration or amend the transfer approval.

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

Sincerely,


Jeff Peppersack, Manager
Water Right Permits Section

JP:kit



ERO Resources Corp.
1106 N. Cole Rd. Suite C
Boise, ID 83704-8661
(208) 373-7983
Fax: 373-7985
Denver • Boise
www.eroresources.com
eroboise@eroresources.com

RECEIVED

JUN 28 2004

DEPARTMENT OF
WATER RESOURCES June 28, 2004

Jeff Peppersack, Manager
Idaho Department of Water Resources
1301 North Orchard Street
Boise, Idaho 83706
HAND DELIVERED

Re: Transfer No. 70974 (Hayden Lake Irrigation District)

Jeff:
Dear Mr. Peppersack:

Your letter of May 28, 2004, suggests that Hayden Lake Irrigation District (HLID) consider retaining "irrigation" as a purpose of use on Water Right No. 95-8581 because the definition of "municipal" purposes in Section 42-202B(6), Idaho Code, may not include irrigation of cropland for agricultural purposes. As you and I concluded in discussing this matter, whether or not the interpretation presented in your letter is accurate concerning the scope of uses included under a municipal use, retaining an increment of the right as irrigation will not disadvantage HLID even if the service area is fully converted from agricultural land to urban, suburban, commercial and industrial uses. When fully converted from agricultural land, water from the municipal system will undoubtedly continue to be used on lawns, gardens, landscaping and other small acreages. These small irrigation uses are within the scope of "municipal purposes" even under your more limited definition; but these small irrigation uses can also be recognized as "irrigation purpose."

HLID has determined that there is about 266 acres of irrigation of crop and pasture land now practiced within its service area. Of this amount, about 100 acres is actual cropland. As you can see, the character of land use in the area is rapidly changing. Because of this rapid conversion of agricultural land to municipal uses, it is unlikely that irrigation of pasture and crop land will exceed about 100 acres by the end of the 5-year period requested for implementation of the transfer approval. Water use on small parcels scattered over the entire service, as discussed in the previous paragraph, can be expected to always exceed 100 acres and will be recognized as either a municipal purpose or an irrigation purpose as needed to allow HLID to service these uses without having to file additional transfers as conversion from agricultural land to municipal uses diminishes the amount of agricultural land to less than 100 acres.

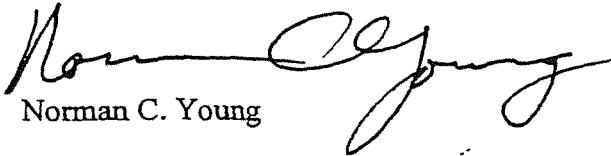
Based upon this understanding, HLID agrees that the application for transfer can be approved with a purpose of use for irrigation of 100 acres with a diversion rate of 2 cfs (0.02 cfs per acre) and a diversion volume of 300 afa. We understand that for municipal purposes, the rate would be 10.92 cfs and a diversion volume of 4237 afa. It is also my understanding that further notice of the transfer application is not needed because the

Mr. Jeff Peppersack
June 28, 2004
Page 2

approval is within the scope of the notice that has been published and the change simply recognizes the ongoing authorized use of water under this right.

I appreciate your responsiveness to the Petition for Reconsideration filed in this matter. Please contact me if there is anything further that needs to be done to allow an amended decision to be issued approving the application for transfer.

Sincerely,

A handwritten signature in black ink, appearing to read "Norman C. Young", with a stylized, flowing script.

Norman C. Young

cc: Paul Klatt, J-U-B Engineers
HLID
Bob Haynes, IDWR Northern Region

Peppersack, Jeff

From: Peppersack, Jeff
Sent: Thursday, April 21, 2005 2:09 PM
To: 'Jo Beeman'
Subject: RE: City of Preston - transfer proceedings

Jo,
Thanks for the update on this. I do plan to keep this moving forward, so I'll put this on my calendar to issue a preliminary order after May 30 if I don't hear anything further before that time.

Jeff

-----Original Message-----

From: Jo Beeman [mailto:jo.beeman@beemanlaw.com]
Sent: Friday, April 08, 2005 2:53 PM
To: Jeff Peppersack
Subject: City of Preston - transfer proceedings

Jeff,

I appreciate the additional time afforded the City of Preston to work with IDWR regarding the December 2004 draft amendments to the transfer approvals for pending transfers of the City of Preston and the Cub River Irrigation Company.

The City of Preston authorized the services of a water rights engineer to examine the physical facts related to the City's municipal diversions under 13-00026C and 13-00026D at Bergquist Springs. The City is concerned about IDWR's proposed diverted volumes for those two rights, as part of the transfer proceedings related to Preston's 1880 priority diversions from Bergquist Springs. This is a primary issue for the City, although there are other issues, such as high water allocations, and additional purposes of use and places of use, to be addressed following the immediate diverted volume matter.

I am providing a report today to Clyde Nelson, the municipal attorney for the City of Preston. I will probably meet with you once I hear from the City. The City Council meets Monday April 11.
Jo

Josephine P. Beeman
Beeman & Associates, P.C.
Phone: 208-331-0950
Fax: 208-331-0954
jo.beeman@beemanlaw.com

CONFIDENTIALITY NOTICE: This transmission is intended only for the use of the individual(s) named as recipients. It may contain information that is privileged, confidential and/or protected from disclosure under applicable law including, but not limited to, the attorney client privilege and/or work product doctrine. If you are not the intended recipient of this transmission, please notify the sender immediately by telephone. Do not deliver, distribute or copy this transmission, disclose its contents, or take any action in reliance on the information it contains.

4/21/2005

Peppersack, Jeff

From: Jo Beeman [jo.beeman@beemanlaw.com]
Sent: Friday, April 08, 2005 2:53 PM
To: Jeff Peppersack
Subject: City of Preston - transfer proceedings

Jeff,

I appreciate the additional time afforded the City of Preston to work with IDWR regarding the December 2004 draft amendments to the transfer approvals for pending transfers of the City of Preston and the Cub River Irrigation Company.

The City of Preston authorized the services of a water rights engineer to examine the physical facts related to the City's municipal diversions under 13-00026C and 13-00026D at Bergquist Springs. The City is concerned about IDWR's proposed diverted volumes for those two rights, as part of the transfer proceedings related to Preston's 1880 priority diversions from Bergquist Springs. This is a primary issue for the City, although there are other issues, such as high water allocations, and additional purposes of use and places of use, to be addressed following the immediate diverted volume matter.

I am providing a report today to Clyde Nelson, the municipal attorney for the City of Preston. I will probably meet with you once I hear from the City. The City Council meets Monday April 11.

Jo

Josephine P. Beeman
Beeman & Associates, P.C.
Phone: 208-331-0950
Fax: 208-331-0954
jo.beeman@beemanlaw.com

CONFIDENTIALITY NOTICE: This transmission is intended only for the use of the individual(s) named as recipients. It may contain information that is privileged, confidential and/or protected from disclosure under applicable law including, but not limited to, the attorney client privilege and/or work product doctrine. If you are not the intended recipient of this transmission, please notify the sender immediately by telephone. Do not deliver, distribute or copy this transmission, disclose its contents, or take any action in reliance on the information it contains.

4/8/2005

Peppersack, Jeff

From: Jo Beeman [jo.beeman@beemanlaw.com]
Sent: Monday, February 28, 2005 5:20 PM
To: Jeff Peppersack
Cc: Clyde Nelson; Clyde Nelson (secretary)
Subject: City of Preston

Jeff,

The mayor and city council of the City of Preston are meeting with me by phone in a few minutes to discuss the letter I wrote their attorney Clyde Nelson following my meeting with you on February 15. I will inform you by letter of the City's decision.

Jo

Josephine P. Beeman
Beeman & Associates, P.C.
Phone: 208-331-0950
Fax: 208-331-0954
jo.beeman@beemanlaw.com

CONFIDENTIALITY NOTICE: This transmission is intended only for the use of the individual(s) named as recipients. It may contain information that is privileged, confidential and/or protected from disclosure under applicable law including, but not limited to, the attorney client privilege and/or work product doctrine. If you are not the intended recipient of this transmission, please notify the sender immediately by telephone. Do not deliver, distribute or copy this transmission, disclose its contents, or take any action in reliance on the information it contains.

Jo called 3/15/05 to say City
of Preston is gathering data
about system, overflows, waste treatment
etc to support how the diversion
& system works to document file.



2/28/2005

MEMORANDUM

Date: February 15, 2005

To: T65416, 65886 and 68302 – City of Preston and Cub River Irrigation

From: Jeff Peppersack

Re: Meeting with Jo Beeman, attorney

Jo and I discussed the concern she has about the volume limitation for rights 13-26C and D. Jo described the system to include diversion at the spring to a pipeline and excess water overflow to Preston-Whitney and Cub River Irrigation Co. systems. Wastewater from the city's use also goes to the irrigation company systems. Though the rate authorized for diversion by the city may not be exceeded, a volume limit would be exceeded unless counted as part of the irrigation company rights.

Jo understood the enlargement issue and acknowledged that the volume issue had not come up in discussions between the parties leading up to the agreements and transfers. Jo also described the sensitive agreement between the parties involved in the transfer and needed more time to decide how to proceed with the city and others. Since I had planned to issue the preliminary order approving the transfer, I asked Jo to send me an update of her plans and ask for additional time as necessary. I indicated that I would provide additional time if requested, but would proceed with the preliminary order if I did not hear back from her in a week or so.

MEMORANDUM

Date: February 11, 2005

To: T65416, 65886 and 68302 – City of Preston and Cub River Irrigation

From: Jeff Peppersack

Re: Phone Call from Jo Beeman, attorney, on February 10, 2005

Discussed items related to latest draft approvals for these transfers. First item relates to the desire to include irrigation and power uses on the transfers. This issue has been discussed in the past. Jo indicated that she has verification of a fax amending the original application(s) to include the uses in addition to municipal use. I reiterated that I could not find amended applications to include those uses in IDWR files. Amendments would require additional review and possible re-advertising. Jo indicated that they may not need to pursue the amendments based on her current understanding of municipal use.

Second item relates to transfer 65416; Jo asked how the 101.7 acres were determined under 13-26C since the parent right (13-26A) did not list any acres. The historic acreage is the basis for the volume limit on the City's portion of the right changed to municipal (13-26D) and Jo believes that no volume should be shown under the municipal right. I indicated that I would review the rights to find out how acreage was determined.

My further review finds that 13-26 was decreed for 45 cfs for use on 1800 acres. Previously approved transfer 5010 split 13-26 and part B was approved for 38.36 cfs on 1530 acres. The balance under part A would have been 6.64 cfs. The proportional acres for 6.64 cfs would be $6.64/45 * 1800 = 265.6$ acres. However, the IDWR database for 13-26A listed 270 acres as the balance because part B was approved for 1530 acres (1800 minus 1530 = 270). Transfer 65416 splits 13-26A into parts C and D. The C part for 2.5 cfs equates to 101.7 acres ($2.5/6.64 * 270 = 101.7$).

Jo also argues that previous transfer approvals (filed after 65416, 65886 and 68302) for the city in 1991 on decreed rights 13-27 and 13-28 allowed changes to the rights without volume limits. She thinks IDWR should be held to the same standard for current transfers. Jo plans to meet with me to provide additional support for her argument.

My further review finds that the 1991 transfer approvals for 13-27 and 13-28 did not address a change in nature of use, just a change in point of diversion. Municipal use was already provided in the decree.

Third item is the condition on all three transfers that limits diversion from the spring to times water is available under the right and priority from Cub River. I indicated that the condition prevents additional use from the spring source that may not have been allowed under regulation of Cub River. Jo believes the condition is not necessary, especially since the spring has been used for the last 50 years.

Peppersack, Jeff

From: Jo Beeman [jo.beeman@beemanlaw.com]
Sent: Friday, January 14, 2005 5:00 PM
To: 'Peppersack, Jeff'
Subject: RE: City of Preston

Thank you so much. I have been swamped today. Jo

Josephine P. Beeman
Beeman & Associates, P.C.
Phone: 208-331-0950
Fax: 208-331-0954
jo.beeman@beemanlaw.com

-----Original Message-----

From: Peppersack, Jeff [mailto:Jeff.Peppersack@idwr.idaho.gov]
Sent: Friday, January 14, 2005 4:48 PM
To: 'Jo Beeman'
Subject: RE: City of Preston

Jo,
I don't have a problem waiting another 30 days to send out the transfer approval. I'll wait until February 21 before I continue processing.

Jeff

-----Original Message-----

From: Jo Beeman [mailto:jo.beeman@beemanlaw.com]
Sent: Thursday, January 13, 2005 6:20 PM
To: Jeff Peppersack
Subject: City of Preston

Jeff,

I will also try to call you Friday. Clyde Nelson, city attorney for the City of Preston, called this afternoon and would like me to request an additional 30 days for review of the draft transfer decision. I believe the original 30 days ends January 20.

In part, the request is due to my immediate schedule at the SRBA court related to the City of Pocatello, as well as my work since last Friday arising from the canal companies' call. The Pocatello matter has a January 18 summary judgment deadline which will pre-empt me and my office until sometime on January 19. In addition, the City of Preston wanted to review the draft transfer decisions this last Monday but had to reschedule to January 18 due to the regional snow storm.

I wanted to talk with you first. Thanks.

Jo

Josephine P. Beeman
Beeman & Associates, P.C.
Phone: 208-331-0950
Fax: 208-331-0954
jo.beeman@beemanlaw.com

CONFIDENTIALITY NOTICE: This transmission is intended only for the use of the individual(s) named as recipients. It may contain information that is privileged, confidential and/or protected from disclosure under applicable law including, but not limited to, the attorney client privilege and/or work product doctrine. If you are not the intended recipient of this transmission, please notify the sender immediately by telephone. Do not deliver, distribute or copy this transmission, disclose its contents, or take any action in reliance on the information it contains.



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street, P.O. Box 83720, Boise, ID 83720-0098

Phone: (208) 287-4800 Fax: (208) 287-6700 Web Site: www.idwr.idaho.gov

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

December 21, 2004

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

Re: City of Preston's Petition for Reconsideration
Water Right Transfer Nos. 65416, 65886 and 68302

Dear Ms. Beeman:

The Department of Water Resources granted the Petitions for Reconsideration for the transfer approvals referenced above in November 2001 to review the issues raised in the petitions. Our last meeting regarding the transfers was held on December 6, 2001. At that time, you indicated that you would try to schedule another meeting to finish reviewing the transfers. I would like to finalize these transfers and have enclosed some amended approvals in draft form to facilitate the completion of the approvals.

The draft amendments address many of the items raised in the petitions. The issue of additional shares purchased by the City of Preston should be covered in a future transfer application since the shares apply to Water Right 13-26B which was not the subject of the transfers.

In addition, you had indicated that amended transfer applications were submitted to include irrigation and power uses in addition to municipal uses. There is no indication in the Department's files that amended applications were received. The inclusion of additional uses would require amended applications, additional review and possibly re-advertisement in order to be processed.

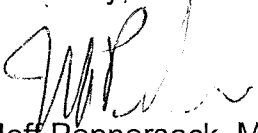
Volume limits were included on certain rights where changes in nature of use from irrigation to municipal were proposed. The limits are necessary to ensure that enlargement of the rights will not occur under the new use. You may want to consider filing a statutory claim for any uses developed beyond the existing recorded water rights.

The excess or high water quantities authorized in the original decree would only apply to Cub River as a source. It is unclear how the high water quantities decreed for Cub River could be applied to Berquist Spring as a source.

I plan to issue the amended approvals as preliminary orders after 30 days. If you have additional information or justification, you can submit it for consideration before that time or file a new petition for reconsideration once the preliminary orders amending the transfers are issued.

If you have any questions or concerns regarding this matter, please feel free to contact the Department.

Sincerely,

A handwritten signature in black ink, appearing to read 'JP', with a stylized flourish at the end.

Jeff Peppersack, Manager
Water Right Permits Section

JP:klt

Enclosures

cc: (with enclosures to the following):
City of Preston – City Attorney
Kent W. Foster
Randall C. Budge
Cub River Irrigation Company

DRAFT

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

AMENDED**TRANSFER OF WATER RIGHT*****AMENDED***

TRANSFER NO. 68302

Right Holder: 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. A summary of the changes is also listed below. 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>Acre Limit</u>	<u>Total Acres</u>	<u>Source</u>
13-34	WR/Decreed	01/01/1880	12 cfs	N/A	N/A	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>
13-34	YES	YES	YES	YES	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>
-----------------------	----------------------------------	----------------------	------------------------	-------------------	--------------------	------------------------------------	-----------------------	-------------------------	-----------------------------	------------------------------

13-34	13-34B	2.5 cfs	N/A	N/A	N/A	13-34A	9.5 cfs	N/A	N/A	N/A
-------	---------------	---------	-----	-----	-----	---------------	---------	-----	-----	-----

COMBINED

TOTALS		2.5 cfs	N/A	N/A	N/A		N/A	N/A	N/A	N/A
---------------	--	----------------	------------	------------	------------	--	------------	------------	------------	------------

Detailed Water Right Description(s) attached

Dated this _____ day of _____, 20_____

 Chief, Water Allocation Bureau

WATER RIGHT NO. 13-34A
As Modified by Transfer No. 68302

DRAFT

In accordance with the approval of Transfer No. 68302, Water Right No. 13-34A is now described as follows.

Right Holder: CUB RIVER IRRIGATION CO
C/O MERVIN J BODILY
PO BOX 215
LEWISTON UT 84320

Priority Date: January 1, 1880

<u>BENEFICIAL USE</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
DOMESTIC	11/01	to 03/31	9.50 CFS	
STOCKWATER	11/01	to 03/31	9.50 CFS	
			9.50 CFS	

LOCATION OF POINT(S) OF DIVERSION:
CUB RIVER

CONDITIONS OF APPROVAL

1. The point of diversion, and month and day of priority date were not specified in decree.
2. Approval of Transfer 68302 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 _____ day of _____, 20____

Chief, Water Allocation Bureau

DRAFT

WATER RIGHT NO. 13-34B
As Modified by Transfer No. 68302

In accordance with the approval of Transfer No. 68302, Water Right No. 13-34B is now described as follows.

Right Holder: CITY OF PRESTON
70 W ONEIDA
PRESTON ID 83263

Priority Date: January 1, 1880

Source: BERGQUIST SPRING

Tributary: CUB RIVER

<u>BENEFICIAL USE</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
MUNICIPAL	11/01 to	3/31	2.50 CFS	

LOCATION OF POINT(S) OF DIVERSION:

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

CONDITIONS OF APPROVAL

1. The diversion and use of water described in Transfer 65416 may be subject to additional conditions and limitations agreed to by the protestant(s) and the right holder under separate agreement to which the Department is not a party and which may be enforceable by a court of law.
2. Use of water under this right will be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within 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 Spring is limited to those times water is available for diversion under this right and priority from Cub River.
5. Approval of Transfer 68302 does not grant any right-of-way or easement for use of a delivery system owned by person(s) other than the right owner.
6. Place of use is within the service area of the City of Preston municipal water supply system as provided for under Idaho Law.
7. The right holder shall accomplish the change authorized by this transfer within one (1) year of the date of this approval.
8. The point of diversion location described above is in an unsurveyed area and may fall within the NWNW of Sec. 11, T15S, R41E.

WATER RIGHT NO. 13-34B
As Modified by Transfer No. 68302

DRAFT

CONDITIONS OF 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 _____ day of _____, 20____

Chief, Water Allocation Bureau

DRAFT

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

AMENDED**TRANSFER OF WATER RIGHT*****AMENDED*****TRANSFER NO. 65416**

This is to certify that: CUB RIVER IRRIGATION CO
C/O MERVIN J BODILY
PO BOX 215
LEWISTON UT 84320

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. A summary of the changes is also listed below. 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>Acre Limit</u>	<u>Total Acres</u>	<u>Source</u>
13-34A	WR/Decreed	01/01/1880	9.50 cfs	N/A	N/A	N/A	N/A
13-26A	WR/Decreed	04/01/1880	6.64 cfs	N/A	N/A	N/A	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>
13-34A	NO	YES	YES	NO	NO	YES
13-26A	YES	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>
13-34A	13-34A	0.30 cfs	N/A	N/A	N/A		N/A	N/A	N/A	N/A
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

Detailed Water Right Description(s) attached

Dated this _____ day of _____, 20____

Chief, Water Allocation Bureau

DRAFT

**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
C/O MERVIN J BODILY
PO BOX 215
LEWISTON UT 84320

Priority Date: January 1, 1880

Source: BERGQUIST SPRING

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	

LOCATION OF POINT(S) OF DIVERSION:

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

CONDITIONS OF APPROVAL

1. 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.
2. The diversion and use of water described in Transfer 65416 may be subject to additional conditions and limitations agreed to by the protestant(s) and the right holder under separate agreement to which the Department is not a party and which may be enforceable by a court of law.
3. Use of water under this right will be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within 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 Spring is limited to those times water is available for diversion under this right and priority from Cub River.
6. 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.
7. Place of use is within the service area of the City of Preston municipal water supply system as provided for under Idaho Law.
8. Municipal use is authorized under this right so long as shares of water from Cub River Irrigation Co., in an amount representing the authorized diversion rate, are held by a qualified municipal provider.

DRAFT

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

CONDITIONS OF APPROVAL

9. The point of diversion location described above is in an unsurveyed area and may fall within the NWNW of Sec. 11, T15S, R41E.
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 _____ day of _____, 20____

Chief, Water Allocation Bureau

DRAFT

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
C/O MERVIN J BODILY
PO BOX 215
LEWISTON UT 84320

Priority Date: April 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	

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 _____ day of _____, 20_____

Chief, Water Allocation Bureau

DRAFT

**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
C/O MERVIN J BODILY
PO BOX 215
LEWISTON UT 84320

Priority Date: April 01, 1880

Source: BERGQUIST SPRING

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

LOCATION OF POINT(S) OF DIVERSION:

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

CONDITIONS OF APPROVAL

1. The diversion and use of water described in Transfer 65416 may be subject to additional conditions and limitations agreed to by the protestant(s) and the right holder under separate agreement to which the Department is not a party and which may be enforceable by a court of law.
2. Use of water under this right will be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within 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 Spring is limited to those times water is available for diversion under this right and priority from Cub River.
5. 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.
6. Place of use is within the service area of the City of Preston municipal water supply system as provided for under Idaho Law.
7. The point of diversion location described above is in an unsurveyed area and may fall within the NWNW of Sec. 11, T15S, R41E.
8. Municipal use is authorized under this right so long as shares of water from Cub River Irrigation Co., in an amount representing the authorized diversion rate, are held by a qualified municipal provider.

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

DRAFT

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 _____ day of _____, 20_____

Chief, Water Allocation Bureau

DRAFT

Page 1 of 3

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

AMENDED

TRANSFER OF WATER RIGHT

AMENDED

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. A summary of the changes is also listed below. 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>Acre Limit</u>	<u>Total Acres</u>	<u>Source</u>
13-26C	WR/Decreed	04/01/1880	2.50 cfs	N/A	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 af	N/A	N/A		N/A	N/A	N/A	N/A
COMBINED										
TOTALS		2.50 cfs	356 af	N/A	N/A		N/A	N/A	N/A	N/A

Detailed Water Right Description(s) attached

Dated this _____ day of _____, 20____

Chief, Water Allocation Bureau

DRAFT

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: CITY OF PRESTON
70 W ONEIDA
PRESTON ID 83263

Priority Date: April 01, 1880

Source: BERGQUIST SPRING

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

CONDITIONS OF APPROVAL

1. The diversion and use of water described in Transfer 65416 may be subject to additional conditions and limitations agreed to by the protestant(s) and the right holder under separate agreement to which the Department is not a party and which may be enforceable by a court of law.
2. Use of water under this right will be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within 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 Spring is limited to those times water is available for diversion under this right and priority from Cub River.
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 within the service area of the City of Preston municipal water supply system as provided for under Idaho Law.
8. The point of diversion location described above is in an unsurveyed area and may fall within the NWNW of Sec. 11, T15S, R41E.

DRAFT

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

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 _____ day of _____, 20_____

Chief, Water Allocation Bureau

MEMORANDUM

To: Water Right Files 13-26C, 13-26D, 13-34A, and 13-34B
Transfer Nos. 65416, 65886, and 68302

From: Jeff Peppersack

Re: Meeting with Jo Beeman - Petitions for Reconsideration from City of Preston

Date: December 6, 2001 + mtg notes from 12/6/01
+ edits from 12/04 JF

This memo summarizes my meeting with Jo Beeman regarding the petitions for reconsideration related to the transfer approvals. The attached draft memo dated December 5, 2001 provided a framework for the meeting. I have made notations on the draft indicating some of our discussion points.

Regarding item 5 under the heading "13-34B as modified by T68302", Jo showed me copies of a cover letter addressed to Harold Jones at Eastern Region and an amended application to include power and irrigation uses on the transfer. Jo also had documentation that the amendment was faxed to the Department in 1995. There is no indication in the file that the documents were ever received by the Department. Jo indicated that she would investigate further the possibility that the additional uses are covered under "municipal" and "service area."

Regarding item 1 under the heading "13-26D as modified by T65416", Jo provided a copy of a letter from Randy Budge dated April 11, 1997 (copy attached) confirming the additional shares acquired by the City of Preston. I indicated to Jo that a new transfer from 13-26B would be required to change the point of diversion of those shares from Cub River to the City's diversion at the springs.

Regarding item 2 under the heading "13-26D as modified by T65416", Jo indicated that she will try to summarize her argument or provide material with permission from the City of Preston that will give us a basis to make a decision regarding the volume under the municipal uses for both 13-26 D and C. This item may need legal review by the Department.

12/6/01 mtg with
Jo Beeman JP

MEMORANDUM

To: Water Right Files 13-26C, 13-26D, 13-34A, and 13-34B
Transfer Nos. 65416, 65886, and 68302

From: Jeff Peppersack

Re: Petitions for Reconsideration from City of Preston

Date: December 5, 2001 (DRAFT)

Review of the petitions for reconsideration from City of Preston results in the following recommended changes to the transfer approvals.

13-34B as modified by T68302

1. Per 1998 agreement (Preston, Cub River, and Preston-Whitney) and based on the 1920 agreement between City of Preston and Cub River Irr. Co. (see file 13-26 for copy), the City of Preston owns 2.5 cfs of water right no. 13-34, now designated as 13-34B. The transfer approval should be changed to reflect the City of Preston as the owner of 13-34B.
2. The original decree does not list the point of diversion. Based on water right file review, the historical point of diversion from Cub River is downstream from the confluence with Bergquist Springs. Apparently the city has diverted from the springs for the past 50+ years under this water right. There doesn't appear to be a need for measurement at the historical point of diversion to regulate the diversion from the spring. Condition No. 5 should be removed from the transfer approval. *no other WR listed on Bergquist Spring*
3. Condition No. 7 should be replaced with our new standard, "Place of use within service area of the City of Preston municipal water supply system as provided for under Idaho Law".
4. The proposed point of diversion is listed on the application as two points. It is apparent from the application that there is only one diversion proposed (the one used for the last 50+ years). Based on the related application nos. 65886 and 65416, the diversion is located in the SENENE of Sec. 10. The transfer approval should be changed to reflect that location.
Add remark: unsurveyed - could be in NWNW sec 11
5. The transfer application for transfer no. 68302 lists only "municipal" as the intended use. Additional uses may require an amendment to the application and readvertising. Water right no. 13-34 is a non-irrigation season water right and should not include any irrigation season uses. Hydropower use and water use by Whitney-Preston Irrigation Co., including their place of use, may be covered under the "municipal" and "service area" definitions provided under Section 42-202B, *Idaho Code*. Special conditions on power use? This item may need administrative review.

if covered under definitions:

- 1) add conditions/remarks to approval (power + irr)
- 2) power conditions - subordinate?
limit to municipal flows?

right 13-7283 covers power

if not covered under definitions:

- 1) amend application
- 2) decision to readvertise?
- 3) conditions

12/3/04
Irr ok
Ag laws
not "municipal"

13-26D as modified by T65416

add middle ditch as P/D for
Cub River Irr in the amount
of 38.36 cfs leaving

- City of Preston
- Jo provided 1997 letter from Budge [2 shares from 26B to 26D]
- end of mty
1. Transfer no. 5010 was approved in 1997 to ~~move~~ 2.5 cfs and 96.25 shares (4.14 cfs) to the springs. The transfer split 13-26 into parts A and B (part A represented the new record at the springs). The transfer was approved as proposed and the approval became a final order of the Department since no petition for reconsideration was filed. Jo Beeman's letter of January 21, 2000 references a 1998 letter confirming the additional shares. The additional shares would be part of 13-26B which is not the subject of Transfer no. 65416. The city would need to file a new transfer application to move additional shares to the springs. Transfer would move
 2. Volume limit is necessary to prevent enlargement of the original irrigation right after the change in nature of use to municipal. Applicant should investigate the possibility that a beneficial use right was established for additional volume. Jo will provide information or request mty. with Phil/Norm
 3. The original decree does not list the point of diversion. Based on water right file review, the historical point of diversion from Cub River is downstream from the confluence with Bergquist Springs. Apparently water has been diverted from the springs for use by the city for many years. There doesn't appear to be a need for measurement at the historical point of diversion to regulate the diversion from the spring. Condition No. 6 should be removed from the transfer approval. no other WRs listed @ springs
 4. Condition No. 8 should be replaced with our new standard, "Place of use within service area of the City of Preston municipal water supply system as provided for under Idaho Law".
 5. The proposed point of diversion is listed on the application as SENENE of Sec. 10. Based on the application and related application no. 65886, the approved location is correct. Related transfer approval(s) should be changed to reflect that location.
 6. This item may need administrative review because there is a question regarding the applicability of the high water right to be moved to the spring source. If approvable, a condition should be added to read: "An excess or high water right is authorized in conjunction with Right 13-26D up to a maximum of 14.74 cfs when combined with Right 13-26D." This would leave a high water right of 8.90 cfs for 13-26C. left ok for now

13-34A as modified by T65416

1. It is unclear how this quantity is related to the number of shares owned by the city. The amount approved was based on the amount used by the city with the remainder being forfeited through non-use.
2. Right no. 13-26D is limited to use during the irrigation season and right no. 13-34A is limited to use during the non-irrigation season. There is no reason for a combined use limitation. Condition no. 1 should be removed from the transfer approval. Similar condition should be removed from right no. 13-26D in this transfer approval.

3. The original decree does not list the point of diversion. Based on water right file review, the historical point of diversion from Cub River is downstream from the confluence with Bergquist Springs. Apparently water has been diverted from the springs for use by the city for many years under this water right. There doesn't appear to be a need for measurement at the historical point of diversion to regulate the diversion from the spring. Condition No. 7 should be removed from the transfer approval.
4. Condition No. 9 should be replaced with our new standard, "Place of use within service area of the City of Preston municipal water supply system as provided for under Idaho Law".
5. The proposed point of diversion is listed on the application as SENENE of Sec. 10. Based on the application and related application no. 65886, the approved location is correct. Related transfer approval(s) should be changed to reflect that location.

13-26C as modified by T65886

1. Per 1998 agreement (Preston, Cub River, and Preston-Whitney) and based on the 1920 agreement between City of Preston and Cub River Irr. Co., the City of Preston owns 2.5 cfs of water right no. 13-26, now designated as 13-26C. The transfer approval should be changed to reflect the City of Preston as the owner of 13-26C.
2. Volume limit is necessary to prevent enlargement of the original irrigation right after the change in nature of use to municipal. Applicant should investigate the possibility that a beneficial use right was established for additional volume.
3. The original decree does not list the point of diversion. Based on water right file review, the historical point of diversion from Cub River is downstream from the confluence with Bergquist Springs. Apparently the city has diverted from the springs for the past 50+ years under this water right. There doesn't appear to be a need for measurement at the historical point of diversion to regulate the diversion from the spring. Condition No. 5 should be removed from the transfer approval.
4. Condition No. 7 should be replaced with our new standard, "Place of use within service area of the City of Preston municipal water supply system as provided for under Idaho Law".
5. The proposed point of diversion is listed on the application as SENENE of Sec. 10. Based on the application and related application no. 65416, the approved location is correct. Related transfer approval(s) should be changed to reflect that location.
6. This item may need administrative review because there is a question regarding the applicability of the high water right to be moved to the spring source. If approvable, a condition should be added to read: "An excess or high water right is authorized in conjunction with Right 13-26C up to a maximum of 8.90 cfs when combined with Right 13-26C." This would leave a high water right of 14.74 cfs for 13-26D.

leave cfb
for now

7. The transfer application for transfer no. 65886 lists only "municipal" as the intended use. Additional uses may require an amendment to the application and readvertising. Hydropower use and water use by Whitney-Preston Irrigation Co., including their place of use, may be covered under the "municipal" and "service area" definitions provided under Section 42-202B, *Idaho Code*. Special conditions on power use? This item may need administrative review.

Hydro under 13-7283

Ag irr not covered under municipal

gpp 12/3/04

LAW OFFICES OF
RACINE, OLSON, NYE, COOPER & BUDGE

CHARTERED

CENTER PLAZA-CORNER FIRST & CENTER

POST OFFICE BOX 1391

POCATELLO, IDAHO 83204-1391

TELEPHONE (208) 232-6101

FAX (208) 232-6109

ASSOCIATED WITH
McGRATH, MAROTZ
& SMITH

414 SHOUP
P. O. BOX 50731
IDAHO FALLS, ID 83405
TEL (208) 524-0731
FAX (208) 529-4166

STEPHEN J. McGRATH
SCOTT W. MAROTZ
BRYAN D. SMITH†
†ALSO ADMITTED IN CA

LOUIS F. RACINE, JR.
WILLIAM D. OLSON
W. MARCUS W. NYE
GARY L. COOPER
RANDALL C. BUDGE
JOHN A. BAILEY, JR.
JOHN R. GOODELL*
JOHN B. INGELSTROM
DANIEL C. GREEN
REED W. LARSEN
BRENT O. ROCHE
KIRK B. HADLEY
FRED J. LEWIS
MITCHELL W. BROWN
ERIC S. HUNN
DAVID E. ALEXANDER**
JAMES P. PRICE***
LISA M. CHRISTON****
BRENT R. KING

*ALSO MEMBER IL & WY BARS
**ALSO MEMBER MO BAR
***ALSO MEMBER CO BAR
****ALSO MEMBER IL BAR

April 11, 1997

Clyde G. Nelson
City Attorney
P.O. Box 797
Soda Springs, Idaho 83276

Josephine P. Beeman
Beeman & Hofstetter, P.C.
608 W. Franklin Street
Boise, Idaho 83702

Re: City of Preston - Cub River - Preston Whitney

Dear Clyde & Jo:

The following sets forth the changes requested by Cub River Irrigation Company to the most recent draft agreement between the parties under date of October 9, 1996:

1. Historical Chronology Pages 1-3. While the historical chronology is of interest, Cub River believes that it adds irrelevant and unnecessary information and therefore, should be simply deleted all together. Further, apparently there are also certain historical facts which neither irrigation company concurs with.
2. Municipal Rights to Irrigation Season Pages 4-5. In Item No. 3, Page 4, the priority date of 1880 apparently has been questioned by Preston Whitney which asserts it should be 1882. Cub River believes the 1880 priority date is correct as that is the priority date specified in the 1906 Alfred Budge Decree. Next, in the second sentence of Item No. 3, the "50 years" the City claims to have been diverting is questioned. Accordingly, Cub River suggest that the language "for more than 50 years" be deleted and replaced with the language "for many years."

In Item No. 5, Page 5, the City's proportionate share set forth in the last sentence is not accurate. The City's proportionate share should be based upon the number of shares it owns in Cub River, i.e. 96¼ shares of the 3,000 total equals 3.2%. The last sentence should read: "The City's proportionate share is 3.2% [96¼ Shares divided by 3,000 shares]." (If the City agrees to the changes discussed in this letter, Cub

4-14-97

River would agree to add the additional two shares recently acquired by the City making Cub River's share 3.275%.)

Footnote No. 1 on the bottom of Page 5 should be revised to 2.5 CFS, rather than 4.14 CFS. The 2.5 CFS is the amount purchased by the City from Cub River, while any remaining quantities the City is entitled to as a shareholder would simply be the City's proportionate share of whatever water rights are available to Cub River at a particular point in time. This delivery would be made to the City in the same manner as the delivery to any other shareholder. For example, Bear Lake Storage Water delivered to Cub River by Pacificorp is subject to shrink as well as curtailment in times of shortage.

3. ^{Over flow} Into Glendale Reservoir and Foster Reservoir. On the top of Page 6, the first full sentence indicating that there is no adverse impact to either company by the City's diversions so long as the excess is delivered to the Preston/Whitney Reservoirs is not correct. This sentence either needs to be deleted or further narrowed and limited in scope. Cub River believes that a diversion by the City of an unlimited amount of water, above their entitlement in this Agreement, could cause injury to Cub River. Excess water diverted into the reservoirs would diminish the natural flow of the Bear River available for Cub River to divert downstream. or
curtailed?
4. Preston and Cub River Irrigation Company Transfers. On the top of Page 8, Cub River's Summer Right No. 13-0026 in the amount of 45 CFS and its Winter Right No. 13-0034 in the amount of 12 CFS should only be reduced by the 2.5 CFS purchased by the City to 42.5 and 9.5 CFS, respectively. The remaining right owned by Cub River should not be reduced as none is transferred to the City and the City is simply entitled to its proportionate share of whatever water may be available under either right at a particular point in time based on its shares. if any
season
5. Next Possible Scenarios. Cub River believes the possible scenarios discussed on Page 8 and Tables 1 and 2 on Pages 10 and 11 are unnecessary and should be eliminated all together. Alternatively, they would need to be revised in accordance with the changes discussed above. does Randy
really want
this in the
winter?
6. Additional Stock Purchases. Since negotiations began, the City has recently acquired 2 additional shares and now owns a total of $98\frac{1}{4}$ or 3.275% of the total 3,000 Cub River shares. If the above changes are acceptable, Cub River would propose that the additional shares be included in the transfer as well as the agreement to reflect the City's current stock ownership. In the future Cub River is not going to bear the time or expense involved in handling necessary transfer applications before the

Clyde G. Nelson
April 11, 1997
Page 3

Department when the City or any other person or entity, buys stock and wishes to change the point aversion or place of use. Furthermore, Cub River is in the process of amending its Bylaws and implementing policies which would impose reasonable restrictions on any transfer that would move the place of use of water outside of their existing system. These restrictions may include a requirement that consent be obtained from the Board, which would not be unreasonably withheld, and/or a restriction that any shareholder must first offer his shares to the company and/or the shareholders before they could be sold for use off system. As a condition of such a transfer, Cub River may require the transferor or transferee to pay a reasonable transfer fee and bear the expense of administrative proceedings before the Department to accomplish the transfer.

Finally, I must convey the Cub River Board's frustration arising by reason of its involvement in this transfer and the delay and inability so far to finalize and implement the tentative settlement agreement initially reached at the Department's pre-hearing conference in December of 1995. The Cub River Board has instructed me to advise the City and Preston/Whitney of their insistence that the settlement agreement be completed and signed by all parties by May 15, 1997. Thereafter, all offers by Cub River are withdrawn.

Sincerely,



RANDALL C. BUDGE

RCB:rr

cc: Kent Foster
Reagan Wheeler, Manager, Cub River Irrigation Company
#18926\01Nelson Beeman.Ltr

13-26

T5010
1997

~~11B~~ A

B

CUB RIVER IRR.

38.36 cfs

1530 acres

6.64 cfs

2.50 + 4.14

↓
city

↓
96.25 shares
for city

T65416
(2753)

need 2 more
shares transferred
to springs

C

D

2.5 cfs

City of Preston

101.7 acres

4.14 cfs

Cub River Irr.

168.3 acres

x 3.5 = 589 AF