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DEPARTMENT OF
WATER RESOURCES

Attorneys for Protestants Eldon and Mary Ann Golightly,
individually and as Trustees of E & M Trust; Grant Chadwick,
Trustee of the Chadwick Trust; Bert and Laura Wheatley,
Seth and Beth Wheatley, and Wheatley Properties, LLC

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Andrew J. Waldera, ISB No. 6608
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23868.0000

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF TRANSFER NO.
75705 IN THE NAME OF PRESTON-
WHITNEY IRRIGATION CO.

MOTION FOR STATUS CONFERENCE

COME NOW the Protestants Eldon and Mary Ann Golightly, individually and as Trustees of E & M Trust; Grant Chadwick, Trustee of the Chadwick Trust; Bert and Laura Wheatley, Seth and Beth Wheatley, and Wheatley Properties, LLC (collectively "Golightly"), by and through undersigned counsel of record and pursuant to Idaho Department of Water Resources ("Department") Rule of Procedure ("Rule") 260 (IDAPA 37.01.01260), and hereby request the Interim Director to schedule a status conference as soon as practicable to discuss and

consider the impacts of recent amendments to the above-captioned application upon the existing hearing schedule and corresponding prehearing deadlines in this matter.

On or about October 18, 2010, the Preston-Whitney Irrigation Company (“Applicant”) submitted amended application pages to the Department for inclusion within the pending transfer application. The proposed amendments related to Place of Use revisions, and the Applicant’s amendment submittal also included revised Place of Use maps. For reference and convenience, a copy of the Applicant’s correspondence, dated October 18, 2010, is attached hereto as Exhibit A.

On or about October 25, 2010, the Department acknowledged receipt of Applicant’s amendment request, and of the corresponding amended materials. The Department also advised the parties that the proposed application amendments required the re-publication of the application within certain periodicals and on various dates as identified by the Department. For reference and convenience, a copy of the Department’s correspondence is attached hereto as Exhibit B. According to the Department’s correspondence, final publication of the amended application occurred in the Idaho Statesman and the Lewiston Tribune on November 4, 2010, and this final (second) publication then re-opened a ten (10) day protest period which expires on November 14, 2010.

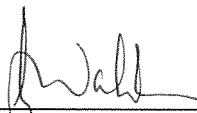
At a minimum, the Applicant’s amendments required the subsequent re-publication of the pending transfer application. This evidences the Department’s view that the Applicant’s Place of Use revisions were “significant,” and “warrant[ed] re-notice” in accordance with Section 4 (pp. 15-16) of the Department’s Transfer Processing Memorandum No. 24, dated December 21, 2009 (“Transfer Memo”).

The application also finds itself in the midst of a presently open/pending protest period. Golightly questions whether the Department will be able to gather information and process the amended transfer application in accordance with Section 5 of the Transfer Memo in sufficient time to preserve the current hearing setting in this matter. Moreover, the protest period, which expires on November 14, 2010, expires *after* the existing written discovery completion deadline of November 12, 2010. This discovery/protest period timing raises additional questions regarding prehearing procedure in this matter.

For the foregoing, Golightly respectfully requests that a status conference be scheduled as soon as possible to discuss these matters. Golightly is amenable to conducting the requested status conference via telephone conference call if that method proves acceptable to the Department and to the Applicant.

DATED this 5th day of November, 2010.

MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHARTERED

By 

Andrew J. Waldera – Of the Firm
Attorneys for Protestants
Eldon and Mary Ann Golightly,
individually and as Trustees of
E & M Trust; Grant Chadwick, Trustee
of the Chadwick Trust; Bert and Laura
Wheatley, Seth and Beth Wheatley, and
Wheatley Properties, LLC

CERTIFICATE OF SERVICE

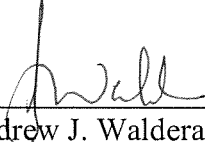
I HEREBY CERTIFY that on this 5th day of November, 2010, I caused a true and correct copy of the foregoing **MOTION FOR STATUS CONFERENCE** to be served by the method indicated below, and addressed to the following:

Robert Harris
HOLDEN KIDWELL HAHN & CRAPO
P.O. Box 50130
Idaho Falls, ID 83405

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile

UNITED STATES DEPARTMENT OF THE INTERIOR
Bureau of Land Management
ATTN: Fredric W. Price
1387 S. Vinnell Way
Boise, ID 83709

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile



Andrew J. Waldera



**Holden Kidwell
Hahn & Crapo** P.L.L.C.
L A W O F F I C E S

1000 Riverwalk Drive, Suite 200
PO Box 50130
Idaho Falls, Idaho 83405

Tel: (208) 523-0620
Fax: (208) 523-9518
www.holdenlegal.com
E-mail: rharris@holdenlegal.com

October 18, 2010

VIA EMAIL AND FIRST CLASS MAIL

Pam Skaggs
Idaho Department of Water Resources
PO Box 83720
Boise, ID 83720-0098
Email: pam.skaggs@idwr.idaho.gov

RE: Amended Application for Transfer No. 75705, in the Name of Preston-Whitney
Irrigation Company.

Dear Pam:

Thank you for your follow-up regarding our Amended Transfer Application for Transfer No. 75705, which did not include a correct legal description for the heading of the Middle Ditch. Additionally, at the time we submitted our Amended Application for Transfer, we did not have in our personal knowledge a methodology for clipping out the roads from our GIS shapefile for the total irrigated acres for the Preston-Whitney area. Since the submission of that document, we have finally figured out how to clip the state's road inventory shape from the initially amended number of irrigated acres. We also removed portions of downtown Preston, which we know will never be irrigated. Doing so has reduced our original acreage from 17,665 acres to 16,545.1 acres. In some initial correspondence we had with the Department, we noted that we did not have the ability to clip out the roads, and anticipated that the final shape file would exclude these roads. Having now determined how to perform the GIS function, we believe that the amended acreage of 16,545.1 acres is even more accurate. There is no doubt that upon very careful review of the aerial photography of the Preston area, there may be house footprints and other things that could be omitted, and we anticipate that should the transfer be approved, that IDWR would assist in any further refinement of the GIS shapefile. Given that the Department's Application for Transfer filings generally only require some type of a USGS map, we believe we have certainly exceeded that minimum standard, and hope the information we have provided is as accurate as possible with the tools that we have.

Therefore, enclosed please find an amended page 2 and page 3 of our amended application, which we would request you simply substitute into the amended transfer application we previously submitted. We have also included two new copies of the GIS maps, and ask that they be substituted for Parts 7A and 7B of the attachments to the transfer.

Established in 1896

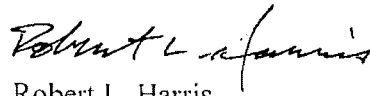
Exhibit A

Pam Skaggs
Idaho Department of Water Resources
October 18, 2010
Page 2 of 2

We will also provide the amended shapefile to you via email for your staff to utilize as necessary.

Lastly, we have enclosed our check in the amount of \$50.00 for the Amended Transfer fee. If you have any questions or any additional concerns, please let us know. We appreciate your attention to this matter.

Best Regards,



Robert L. Harris
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.

Enclosures

c: Andrew Waldera

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STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR TRANSFER OF WATER RIGHT PART 1 Continued

B. DESCRIPTION OF RIGHTS AFTER THE REQUESTED CHANGES. IF THE RIGHTS ARE BEING SPLIT, DESCRIBE PORTIONS TO BE CHANGED AS THEY WOULD APPEAR AFTER THE REQUESTED CHANGES.

1.	<u>Right Number</u>	<u>Amount</u> (cfs/ac-ft)	<u>Nature of Use</u>	<u>Period of Use</u>	<u>Source & Tributary</u>
All or Part					
✓	☐ 13-2	30 cfs	Irrigation	04/01 to 10/31	Cub River/Bear River
✓	☐ 13-3	25 cfs	Irrigation	04/01 to 10/31	Cub River/Bear River
✓	☐ 13-2104	25 cfs	Irrigation	04/01 to 10/31	Cub River/Bear River
Total:		80 cfs and/or	ac-ft.		

2. Total amount of water being transferred or changed 80 Cubic feet per second and/or _____ acre-feet annum.

3. Point(s) of diversion:

- ☐ No changes to point(s) of diversion are proposed - the following chart is therefore not completed. (Proceed to #4.)
- ☐ Attach Eastern Snake Plain Aquifer analysis if this transfer proposes to change a point of diversion affecting the ESPA. Label it **Attachment #5.**

Points of Diversion:

New ?	Lot	1/4	1/4	1/4	Sec.	Twp.	Rge.	County	Source	Local name for diversion
No		NW	NE	NW	8	15S	41E	FRANKLIN	CUB RIVER	CUB RIVER/GLENDALE CANAL
No		NW	NW	SE	24	15S	40E	FRANKLIN	CUB RIVER	MIDDLE DITCH

Points of Injection/Rediversion:

Lot	1/4	1/4	1/4	Sec.	Twp.	Rge.	County	Source	Local name for diversion
	SW	NE	SE	10	15S	40E	FRANKLIN	INJECTION INTO WORM CREEK	
	NE	SW	SW	8	15S	40E	FRANKLIN	INJECTION INTO WORM CREEK	
	NE	SW	SW	8	15S	40E	FRANKLIN	REDIVERSION FROM WORM CREEK	
	SE	NW	SE	10	15S	40E	FRANKLIN	REDIVERSION FROM WORM CREEK	
	NE	NE	SE	13	15S	39E	FRANKLIN	REDIVERSION FROM WORM CREEK	
	NW	NE	SW	24	15S	39E	FRANKLIN	REDIVERSION FROM WORM CREEK	
	NW	NE	NW	25	15S	39E	FRANKLIN	REDIVERSION FROM WORM CREEK	
	SE	NE	SW	30	15S	40E	FRANKLIN	INJECTION INTO UNNAMED BRANCH OF SPRING CREEK	
	SE	SE	NE	36	15S	39E	FRANKLIN	REDIVERSION FROM SPRING CREEK	

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

4. Place of use: (If irrigation, identify with number of acres irrigated per ¼ ¼ tract.)
☐ No changes to place of use are proposed - the following chart is therefore not completed. (Proceed to #5).

Twp	Rge	Sec	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Acre Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
			GIS data for irrigated acres and service area are on attached CD. Irrigation is for 16,545.1 acres within the proposed service area, which does not include federal public lands (BLM land).																

Total Acres (for irrigation use) 16,545.1

5. General Information:

- a. Describe the complete diversion system, including how you will accommodate a measuring device and lockable controlling works should they be required now or in the future. Middle Ditch: Two screw operated steel headgates, each approximately 4.5' wide, one of which is operated by remote control, mounted on a concrete pad perpendicularly adjacent to a concrete diversion check in the Cub River, which diverts into a 12' x 8' canal. The measuring device is situated some 75' downstream. Cub River/Glendale Canal: Two screw operated wood clad headgates, each approximately 6' wide, mounted on a concrete pad adjacent to a diversion check made of rock with concrete wings, in the Cub River, which diverts into a 12' x 25' canal. The measuring device is a concrete Parshall flume approximately 1000' downstream from the diversion.

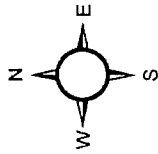
- b. Who owns the property at the point(s) of diversion? Max Sharp (Middle Ditch) US Forest Service (Glendale Canal)

If other than the applicant, describe the arrangement enabling the applicant to access the property for the diversion system:

Middle Ditch: The diversion works are located on land owned by Max Sharp and the company has a prescriptive easement for the use thereof, which is documented in an agreement with Cub River Irrigation Co. Cub River/Glendale Canal: The company has a permit from the US Forest Service for its right-of-way.

- c. Are the lands from which you propose to transfer the water right subject to any liens, deeds of trust, mortgages, or contracts? No.
 If yes, ☐ Attach a notarized statement from the holder of the lien, deed of trust, mortgage or contract agreeing to the proposed changes on official letterhead signed by an authorized representative. Label it **Attachment #6**. List the name of the entity and type of lien: _____

PRESTON-WHITNEY AMENDED TRANSFER



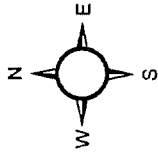
- Legend**
- Service Area
 - Preston-Whitney_Irrigated_Acres
 - Points_of_Diversion
 - Points_of_Injection
 - Points_of_Rediversion
 - Cub_River
 - Worm_Creek
 - Spring_Creek
 - Glendale_Canal
 - Lamont-Johnson_Ditch
 - Middle_Ditch
 - gcdb_tr
 - gcdb_sections



16545.1 Total Acres

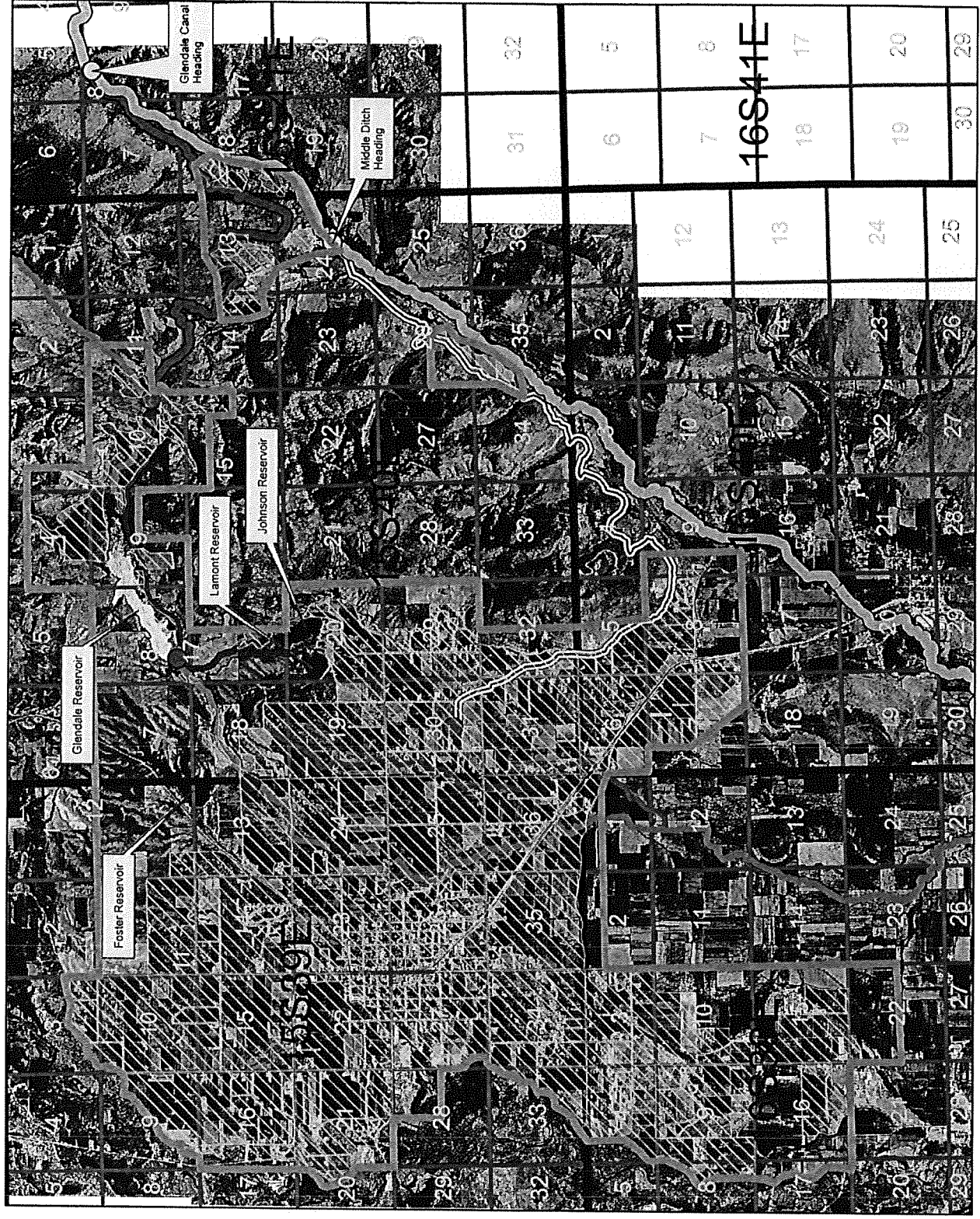
2006 NAIP Aerial Photo

PRESTON-WHITNEY AMENDED TRANSFER



Legend

-  Service Area
-  Preston-Whitney_Irrigated_Acres
-  Points_of_Diversion
-  Points_of_Injection
-  Points_of_Rediversion
-  Cub_River
-  Worm_Creek
-  Spring_Creek
-  Glendale_Canal
-  Lamont-Johnson_Ditch
-  Middle_Ditch
-  gcdb_tr
-  gcdb_sections



16545.1 Total Acres

2006 NAIP Aerial Photo



State of Idaho

DEPARTMENT OF WATER RESOURCES

Eastern Region, 900 North Skyline Drive, Suite A • Idaho Falls, Idaho 83402-1718

Phone: (208) 525-7161 • Fax: (208) 525-7177 • Web Site: www.idwr.idaho.gov

October 10, 2010
~~June 9, 2010~~

C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Interim Director

Holden Kidwell Hahn & Crapo
Robert L. Harris
PO Box 50130
Idaho Falls ID 83405-0130

RECEIVED

OCT 25 2010

MOFFATT, THOMAS, BARRETT,
ROCK & FIELDS, CHTD.

RE: Amended Application for Transfer No. 75705

Dear Applicant:

The Department of Water Resources has received your amended water right transfer application. Please refer to the transfer number referenced above in all future correspondence regarding this transfer.

A legal notice of the application has been prepared and is scheduled for publication in the Preston Citizen on October 27 and November 3, 2010, and in the Post Register, Times News, Idaho Statesman and the Lewiston Tribune on October 28 and November 4, 2010. ~~Protests~~ Protests to this application may be submitted for a period ending ten (10) days after the second publication.

Please note, that the original application is already protested. The protestants below do not need to protest this application again. Those previous protests still are active in this application. If a protestant feels that this amended application resolves their protest, they may withdraw their protest by sending a withdrawal letter to the Department.

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

Respectfully submitted,

Sharla Cox
Administrative Assistant

CC: Moffatt Thomas Barrett Rock & Field Chtd
C/O Scott L. Campbell
PO Box 829
Boise ID 83701-0829