

BEFORE DEPARTMENT OF WATER RESOURCES  
OF THE STATE OF IDAHO

IN THE MATTER OF LICENSE NO.       )  
13-2288A IN THE NAME OF            )  
PRESTON WHITNEY IRRIGATION CO.   )  
\_\_\_\_\_)

**PRELIMINARY ORDER  
CORRECTING LICENSE**

This matter having come before the Department of Water Resources (Department), as a result of the filing of a petition to correct a water right license, the Department finds, concludes, and orders:

**FINDINGS OF FACT**

1. On December 26, 1924, pursuant to application No. 22956, the Department issued permit R-364, in the name of Franklin County Sugar Co., authorizing the construction of Worm Creek Reservoir, now known as the Glendale Reservoir. The permit authorized construction of a reservoir on Worm Creek with a storage capacity of 6,000 acre-feet to store the waters of Cub River and Worm Creek to be used for domestic and irrigation purposes. The outlet of the proposed reservoir was to be located in the SW¼SW¼ of Section 8, Township 15 South, Range 40 East, B.M.
2. On December 26, 1924, pursuant to application No. 22955, the Department issued a permit to appropriate the public waters of the State of Idaho, no. 16174, in the name of Franklin County Sugar Company authorizing diversion of 215 cubic feet per second (cfs) of water from Cub River, Worm Creek, and Worm Creek Reservoir for irrigation and domestic purposes.
3. On November 10, 1927, Franklin County Sugar Co. assigned permits R-364 and 16174 to Preston Whitney Irrigation Co.
4. On June 10, 1930, the Department conducted a field examination to verify the extent of completion of works developed under permit R-364 and permit 16174. The field examination reports confirmed completion of diversion works to divert water from Cub River to Worm Creek and construction of a dam and reservoir on Worm Creek. The examiner reported that the capacity of the reservoir was slightly in excess of 6,000 acre-feet.
5. On July 28, 1930, the Department issued a certificate of completion of reservoir and right to store water for permit R-364 in the amount of 6,000 acre-feet with a priority date of December 15, 1924.
6. On January 5, 1939, the Department conducted a field examination to verify the extent of beneficial use developed under permit R-364 and permit 16174. The exam confirmed diversion of water from Cub River, Worm Creek, and Worm Creek Reservoir in the SW¼SW¼ of Section 8, Township 15 South, Range 40 East, B.M. (dam outlet) and in the NE¼NW¼ of Section 8, Township 15 South, Range 41 East, B.M. (Cub River).

7. On January 17, 1939, the Department issued license 16174 authorizing use of 215 cfs of water from Cub River, Worm Creek, and Worm Creek Reservoir for irrigation and domestic purposes. A separate license for permit R-364 was not issued. The water uses authorized by license 16174 and the certificate of completion of reservoir and right to store water for permit R-364 were later identified by the Department as licenses 13-2108 and 13-2288.

8. Water rights in the Worm Creek drainage were decreed *In the Matter of the General Determination of the Rights to the Surface and Groundwaters of the Worm Creek Drainage Basin* (Franklin Co., 1981). The Worm Creek Decree superseded the portion of licenses 13-2108 and 13-2288 authorizing use of water from Worm Creek but did not address the use from Cub River. Rights 13-2108 and 13-2288 were decreed for irrigation, irrigation from storage, and diversion to storage, with an authorized annual diversion volume of 6,000 acre-feet to be stored in Glendale Reservoir. The decree also states that diversion from storage is limited to a total of 215 cfs when combined with the diversions from Worm Creek and Cub River.

9. On March 1, 1957, pursuant to application no. 34689, the Department issued permit R-1009, later renumbered by the Department as 13-2298, in the name of Preston-Whitney Irrigation Co., authorizing the construction of Foster Reservoir and the use of water from Cub River. The permit authorized storage of 3,500 acre-feet of the waters of Cub River to be used for irrigation purposes. The outlet of the proposed reservoir was to be located in the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 13, Township 15 South, Range 39 East, B.M. The application stated that the proposed dam "...will be built for the purpose of storing additional water for the water users of the company..."

10. On October 1, 1963, the Department conducted a field examination to verify the extent of completion of works developed under permit R-1009 (13-2298). The field examination report confirmed completion of the diversion works from Cub River and a dam located in Section 13, Township 15 South, Range 39 East, B.M. for storage (Foster Reservoir).

11. On September 16, 1971, the Department conducted a field examination to verify the completion of works and extent of beneficial use developed under permit 13-2298. The field examiner confirmed a storage volume of 3,355 acre-feet for the reservoir.

12. On February 1, 1972, the Department issued license 13-2298 authorizing storage of 3,355 acre-feet of water from Cub River for irrigation purposes. License 13-2298 did not include any conditions limiting the use of water with other rights.

13. On May 5, 1995, the Department issued license 13-2288A to Preston Whitney Irrigation Co. The source of water authorized under license 13-2288A is Cub River. The license represents the residual portion of 13-2108 and 13-2288 not superseded by the Worm Creek Decree. License 13-2288A authorizes diversion to storage, irrigation storage, and irrigation from storage. The license authorizes a storage volume of 6,000 acre-feet in Glendale Reservoir. The priority date on the license is December 15, 1924, the same priority date on decreed rights 13-2108 and 13-2288.

14. Condition #5 on license 13-2288A limited its use when combined with rights 13-2108, 13-2288 and 13-2298 to an annual storage volume of 6,000 acre-feet:

This right when combined with Rights 13-02108, 13-02288 and 13-02298 shall not exceed an annual storage volume of 6,000 acre feet.

15. On February 22, 2011, Preston Whitney Irrigation Company submitted a request to

amend license 13-2288A (petition) to remove the reference to license 13-2298 from Condition #5 on license 13-2288A.

## ANALYSIS

Water Rights for Glendale Reservoir were limited to 6,000 acre-feet and 215 cfs from Worm Creek and Cub River.<sup>1</sup> When the Glendale Reservoir rights were decreed in the Worm Creek Decree, the rights only recognized the Worm Creek source because Cub River rights were not part of the adjudication. After the Worm Creek Decree was issued, license 13-2288A was issued by the Department to clarify the residual portion of licenses 13-2288 and 13-2108 from Cub River that was not decreed in the Worm Creek Decree.

When license 13-2288A was issued, it was appropriate to limit the right to 6,000 acre-feet in combination with rights 13-2288 and 13-2108 to recognize the historic use authorized under the combined rights. It was not appropriate to include right 13-2298 in the combined limit because Foster Reservoir did not exist at the time rights 13-2288 and 13-2108 were developed and also because the right for Foster Reservoir represented an authorization for additional storage from Cub River without any combined limits with other rights.

The Department erred when it included right 13-2298 in Condition #5 in the issuance of license 13-2288A.

## CONCLUSIONS

1. Under Section 42-219, *Idaho Code*, the Department has a statutory obligation to issue a water right license that accurately portrays the extent of beneficial use of water developed in accordance with the permit.
2. Because water right 13-2288A represents the residual use which was licensed under rights 13-2108 and 13-2288 but not superseded by the Worm Creek Decree, a combined use limit with 13-2298 is not applicable or appropriate because 13-2298 was not developed until after the use of water represented by water right 13-2288A had been established and because license 13-2298 authorized additional storage from Cub River without any combined limits with other rights.
3. The Department erred when it included water right 13-2298 in condition #5 on license 13-2288A limiting its use and the use of rights 13-2108, 13-2288, and 13-2298 to a combined total annual storage volume of 6,000 acre-feet.
4. Condition #5 on license 13-2288A should be modified to remove reference to license 13-2298.

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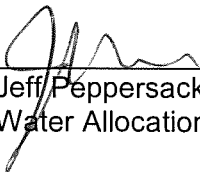
<sup>1</sup> There is some confusion regarding the meaning and intent of the 215 cfs quantity licensed under rights 13-2288 and 13-2108. The Worm Creek Decree confirms that 215 cfs is a limit of the amount that can be diverted from storage under the rights. The Department does not typically quantify a diversion rate from storage on water right licenses. The Worm Creek Decree does not quantify the rate that can be diverted to storage for rights 13-2288 and 13-2108. The applicability of the 215 cfs quantity for license 13-2288A as a quantity authorized from storage or to storage was not the subject of the petition and will not be addressed in this order.

**ORDER**

IT IS THEREFORE HEREBY ORDERED that condition #5 on license 13-2288A is **CORRECTED** to read:

This right when combined with rights 13-02108 and 13-02288 shall not exceed an annual storage volume of 6,000 acre feet.

DATED this 7<sup>th</sup> day of July, 2011.

  
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Jeff Peppersack, Chief  
Water Allocation Bureau