



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

WAE  
WD  
**RECEIVED**

**FEB 22 2011**

DEPARTMENT OF  
WATER RESOURCES

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

February 17, 2011

Tim Luke

Shelley Keen

Idaho Department of Water Resources  
PO Box 83720  
Boise, Idaho 83720-00098

*RE: Request for License Amendment for Water Right 13-2288A, owned by the Preston-Whitney Irrigation Company, to Correct An Apparent Clerical Error*

Dear Mr. Luke and Mr. Keen:

This letter is intended to formally address a matter that my client, Preston-Whitney Irrigation Company, thought had been resolved in the early 1990's. My understanding is that there was some discussions with Keith Higginson and Ron Carlson of the Eastern Region office of IDWR to clarify what appears to be a clerical mistake on the water right license issued for Water Right No. 13-2288A on May 5, 1995. A copy of this license is attached hereto as Exhibit 1. This license documents the development of a storage water right for the diversion of storage water from Cub River to what is known locally as the Glendale Reservoir. The condition we request be amended is condition No. 5, which states the following:

"This right when combined with rights 13-2108, 13-2288 and 13-2298 shall not exceed an annual storage volume of 6,000 acre-feet."

After reviewing the water right back files for these referenced water rights, it is certainly understandable where some confusion may have been injected into the licensing of this particular water right. At the end of the day, however, the Glendale Reservoir has a capacity of 6,000 acre-feet, and only the Glendale Reservoir water rights should be subject to that limitation. Water Right No. 13-2298 is a licensed water right that was developed for another reservoir, that was constructed in the 1960s known as the Foster Reservoir. Proof of beneficial use of Water Right No. 13-2288A was submitted on May 2, 1930, more than sixty years after proof of beneficial use had been submitted on the Glendale Reservoir for 6,000 acre-feet.

We believe the confusion stems from the fact that water in Glendale Reservoir can be diverted from either Worm Creek or the Cub River. Based upon our review of Idaho Department of Water Resources files, there are actually two water rights that authorize the diversion of water out of Worm Creek into Foster Reservoir. They are Water Right Nos. 13-2108 and 13-2288. It is

unclear from my review of the Department's files why there are two water rights that essentially document the same water use and diversion. My best estimation is that Water Right No. 22-2108 was decreed in the Worm Creek decree, but the subsequent licensing of Water Right No. 13-2288 led to a designation of another water right number, 13-2288A. Perhaps you could shed some light on this particular administrative action, nevertheless, it does not appear at this point to be significant as both water rights authorize the diversion of water from Worm Creek in the Glendale Reservoir.

Therefore, we believe that condition No. 5 should read:

"This right when combined with rights 13-2108 and 13-2288 shall not exceed an annual storage volume of 6,000 acre-feet."

Our request to have the license formally amended as set forth above is based upon the following documentation.

Attached as Exhibit 2 is the application for a permit to construct the Worm Creek Reservoir, which was filed on December 15, 1924. As you can see from the application, it states very clearly that the available capacity of the reservoir to be developed is 6,000 acre-feet. While this reservoir was originally called the Worm Creek Reservoir, the name was later changed to the Glendale Reservoir. You will note that there is no reference to construction of multiple reservoirs that would equal 6,000 acre-feet. After the application was submitted, based upon our review of the water right back file, proof of beneficial use was submitted on May 2, 1930 that the Glendale Reservoir had a storage capacity of 6,000 acre-feet.

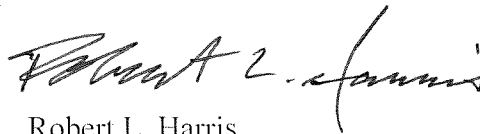
At the time proof of beneficial use was submitted for the Glendale Reservoir, Preston-Whitney Irrigation Company had not yet even constructed the Foster Reservoir. On March 1, 1957, Preston-Whitney Irrigation Company submitted an application for permit for a water right that was eventually renumbered to be 13-2298. A copy of this application is attached hereto as Exhibit 3. As you can see from the application, under part 6b, the application for permit indicates that the reservoir capacity of the Foster Reservoir is 3,500 acre-feet. In reviewing the application for permit, there is no reference to the Glendale Reservoir, and any request to combine the particular water right with the 6,000 acre-feet stored in Glendale Reservoir. Had there been such language, then the condition discussed above may have some merit. However, it appears rather clear from the documentation that Foster Reservoir was to be constructed as a separate reservoir and separate water right. This is made further evident by the license for Water Right No. 13-2298, which was issued on February 1, 1972. A copy of that license is attached hereto as Exhibit 4. As you can see from the license issued by Director Higginson, the water right allows for the diversion and use of 3,355 acre-feet. Importantly, there is no limiting condition on this particular license which limits its diversion in combination with the Glendale water rights to 6,000 acre-feet.

Tim Luke & Shelley Keen  
February 17, 2011  
Page 3

Attached hereto as Exhibit 5 is a letter written by you dated March 31, 1992 to Carl Swainston who was then the President of Preston-Whitney Irrigation Company. The letter appears to reference the total amount of storage in the Glendale and Foster Reservoir, and my understanding is that upon receipt of this letter, there was a meeting between Preston-Whitney representatives and the Director of IDWR to discuss the matter further. You may have better notes or recollection as to the impetus of this letter, but nevertheless, we submit that Glendale Reservoir does have a capacity of 6,000 acre-feet, and that Foster Reservoir has a capacity of 3,355 acre-feet. Therefore, there is 9,355 acre-feet of water stored between these two reservoirs. We suppose that the condition at issue could be amended to increase the volume reference of 6,000 acre-feet to 9,355 acre-feet, but would much rather prefer that there be no reference to Water Right No. 13-2298 because it is not stored in Glendale Reservoir. Indeed, Condition No. 7 of Exhibit 1 states very clearly that the storage facility for Water Right No. 13-2288A is known as Glendale Reservoir. It does not appear that there should be a reference to another reservoir when one of the conditions of the water right states clearly that the storage facility it is referring to is the Glendale Reservoir.

In sum, we request the Department review the attached documentation and any other documentation it may have regarding the above referenced water rights. We request that an amended license be issued in which condition No. 5 of the license for Water Right No. 13-2288A would remove any reference to 13-2298. To the extent that you have any questions or concerns, please do not hesitate to contact me. We appreciate your attention to this matter.

Best Regards,

A handwritten signature in black ink, appearing to read "Robert L. Harris", written in a cursive style.

Robert L. Harris

Enclosures

State of Idaho  
Department of Water Resources

# WATER RIGHT LICENSE

WATER RIGHT NO. 13-02288A

Priority: December 15, 1924

Maximum Storage Volume:

6000.0 AF

This is to certify, that PRESTON WHITNEY IRRIGATION CO

PRESTON ID 83263

has complied with the terms and conditions of the permit, issued pursuant to Application for Permit dated December 15, 1924; and has submitted Proof of Beneficial Use on May 2, 1930. An examination indicates that the works have a storage capacity of 6000.000 af of water from:

CUB RIVER

tributary to BEAR RIVER

source, and a water right has been established as follows:

| <u>BENEFICIAL USE</u>   | <u>PERIOD OF USE</u> | <u>RATE OF DIVERSION</u> | <u>ANNUAL VOLUME</u> |
|-------------------------|----------------------|--------------------------|----------------------|
| IRRIGATION STORAGE      | 01/01 to 12/31       |                          | 6000.0 AF            |
| IRRIGATION FROM STORAGE | 04/01 to 11/01       |                          | 6000.0 AF            |
| DIVERSION TO STORAGE    | 11/01 to 06/15       | 215.00 CFS               |                      |
|                         | Totals               |                          | 6000.0 AF            |

LOCATION OF POINT(S) OF DIVERSION:

NENW Sec. 8, Township 15S, Range 41E  
FRANKLIN County

PLACE OF USE: IRRIGATION FROM STORAGE

| <u>TWN</u> | <u>RGE</u> | <u>SEC</u> | <u>ACRES</u> | <u>ACRES</u> | <u>ACRES</u> | <u>TOTAL</u> |
|------------|------------|------------|--------------|--------------|--------------|--------------|
| 15S        | 39E        | 9          | SWNE 8       | SENE 34      | NESW 8       |              |
|            |            |            | SESW 32      | NESE 38      | NWSE 37      |              |
|            |            |            | SWSE 32      | SESE 36      |              | 215          |
|            |            | 10         | NWNW 28      | SWNW 32      | SENE 36      |              |
|            |            |            | NESW 33      | NWSE 38      | SWSW 36      |              |
|            |            |            | SESW 31      | NESE 34      | NWSE 36      |              |
|            |            |            | SWSE 37      | SESE 38      |              | 384          |
|            |            | 11         | NESW 40      | NWSW 40      | SWSW 35      |              |
|            |            |            | SESW 40      | NESE 40      | NWSE 40      |              |
|            |            |            | SWSE 34      | SESE 39      |              | 308          |
|            |            | 12         | SWSW 29      |              |              | 29           |
|            |            | 13         | NWNW 37      | SWNW 4       | NESW 8       |              |
|            |            |            | NWSW 36      | SWSW 34      | SESW 8       |              |
|            |            |            | NESE 7       | SWSE 20      | SESE 29      | 183          |
|            |            | 14         | NENE 40      | NWNE 23      | SWNE 36      |              |
|            |            |            | SENE 33      | NENW 15      | NWNW 20      |              |
|            |            |            | SWNW 39      | SENE 31      | NESW 39      |              |
|            |            |            | NWSW 35      | SWSW 24      | SESW 39      |              |
|            |            |            | NESE 26      | NWSE 38      | SWSE 35      |              |
|            |            |            | SESE 21      |              |              | 494          |

RECORDED

MAY 16 1995

EXHIBIT

1

State of Idaho  
Department of Water Resources

# WATER RIGHT LICENSE

WATER RIGHT NO. 13-02288A

PLACE OF USE: IRRIGATION FROM STORAGE

| <u>TWN</u> | <u>RGE</u> | <u>SEC</u> | <u>ACRES</u> | <u>ACRES</u> | <u>ACRES</u> | <u>TOTAL</u> |
|------------|------------|------------|--------------|--------------|--------------|--------------|
| 15         |            |            | NENE 15      | NWNE 38      | SWNE 39      |              |
|            |            |            | SENE 37      | NENW 37      | NWNW 35      |              |
|            |            |            | SWNW 39      | SENW 34      | NESW 40      |              |
|            |            |            | NWSW 39      | SWSW 32      | SESW 35      |              |
|            |            |            | NESE 37      | NWSE 40      | SWSE 35      |              |
|            |            |            | SESE 32      |              |              | 564          |
| 16         |            |            | NENE 38      | NWNE 33      | SWNE 37      |              |
|            |            |            | SENE 39      | NENW 37      | SENW 39      |              |
|            |            |            | NESW 39      | NWSW 7       | SWSW 13      |              |
|            |            |            | SESW 26      | NESE 37      | NWSE 15      |              |
|            |            |            | SWSE 52      | SESE 34      |              | 427          |
| 21         |            |            | NENE 35      | NWNE 39      | SWNE 39      |              |
|            |            |            | SENE 32      | NENW 15      | NWNW 10      |              |
|            |            |            | SWNW 24      | SENW 8       | NESW 12      |              |
|            |            |            | NESE 34      | NWSE 39      | SWSE 21      |              |
|            |            |            | SESE 22      |              |              | 330          |
| 22         |            |            | NENE 26      | NWNE 39      | SWNE 39      |              |
|            |            |            | SENE 33      | NENW 35      | NWNW 35      |              |
|            |            |            | SWNW 39      | SENW 32      | NESW 29      |              |
|            |            |            | NWSW 39      | SWSW 19      | SESW 22      |              |
|            |            |            | NESE 8       | NWSE 30      | SWSE 3       | 428          |
| 23         |            |            | NENE 36      | NWNE 34      | SWNE 39      |              |
|            |            |            | SENE 29      | NENW 28      | NWNW 33      |              |
|            |            |            | SWNW 26      | SENW 39      | NESW 20      |              |
|            |            |            | NWSW 7       | SESW 12      | NESE 30      |              |
|            |            |            | NWSE 23      | SWSE 22      | SESE 27      | 410          |
| 24         |            |            | NENE 39      | NWNE 38      | SWNE 38      |              |
|            |            |            | SENE 34      | NENW 28      | NWNW 36      |              |
|            |            |            | SWNW 39      | SENW 36      | NESW 31      |              |
|            |            |            | NWSW 27      | SWSW 38      | SESW 37      |              |
|            |            |            | NESE 38      | NWSE 37      | SWSE 37      |              |
|            |            |            | SESE 38      |              |              | 571          |
| 25         |            |            | NENE 40      | NWNE 39      | SWNE 38      |              |
|            |            |            | SENE 39      | NENW 34      | NWNW 36      |              |
|            |            |            | SWNW 38      | SENW 40      | NESW 33      |              |
|            |            |            | NWSW 6       | SWSW 14      | SESW 28      |              |
|            |            |            | NESE 19      | NWSE 39      | SWSE 35      |              |
|            |            |            | SESE 26      |              |              | 504          |
| 26         |            |            | NENE 17      | NWNE 14      | SWNE 16      |              |
|            |            |            | SENE 18      | SENW 10      | NESW 18      |              |
|            |            |            | SWSW 26      | SESW 29      | NESE 12      |              |
|            |            |            | NWSE 28      | SWSE 35      | SESE 39      | 262          |

MAY 16 1995

State of Idaho  
Department of Water Resources

## WATER RIGHT LICENSE

WATER RIGHT NO. 13-02288A

PLACE OF USE: IRRIGATION FROM STORAGE

| <u>TWN</u> | <u>RGE</u>   | <u>SEC</u> | <u>ACRES</u> | <u>ACRES</u> | <u>ACRES</u> | <u>TOTAL</u> |
|------------|--------------|------------|--------------|--------------|--------------|--------------|
| 27         |              |            | NENE 4       | NWNE 10      | SWNE 12      |              |
|            |              |            | NENW 32      | NWNW 36      | SWNW 38      |              |
|            |              |            | SENW 31      | NESW 34      | NWSW 15      |              |
|            |              |            | SWSW 38      | SESW 35      | NESE 24      |              |
|            |              |            | NWSE 26      | SWSE 36      | SESE 33      | 404          |
| 33         |              |            | NENE 3       | SENE 18      | NESE 36      |              |
|            |              |            | NWSE 19      | SWSE 30      | SESE 38      | 144          |
| 34         |              |            | NENE 3       | NWNE 24      | SWNE 2       |              |
|            |              |            | NENW 34      | NWNW 31      | SWNW 32      |              |
|            |              |            | SENW 27      | NESW 5       | NWSW 18      |              |
|            |              |            | SWSW 38      | SESW 37      | NESE 16      |              |
|            |              |            | NWSE 2       | SWSE 39      | SESE 39      | 349          |
| 35         |              |            | NENE 32      | NWNE 27      | SWNE 39      |              |
|            |              |            | SENE 33      | NENW 34      | NWNW 4       |              |
|            |              |            | SWNW 18      | SENW 34      | NESW 34      |              |
|            |              |            | NWSW 24      | SESW 12      | NESE 37      |              |
|            |              |            | NWSE 38      | SWSE 33      | SESE 31      | 428          |
| 36         |              |            | NENE 28      | NWNE 39      | SWNE 39      |              |
|            |              |            | SENE 27      | NENW 33      | NWNW 32      |              |
|            |              |            | SWNW 35      | SENW 33      | NESW 24      |              |
|            |              |            | NWSW 37      | SWSW 38      | SESW 20      |              |
|            |              |            | NESE 29      | NWSE 33      | SWSE 5       | 480          |
|            |              |            | SESE 28      |              |              |              |
| 40E 18     |              |            | NWNE 3       | SWNE 7       | NENW 2       |              |
|            | Lot 2 (SWNW) | 1          |              | SENW 4       | NESW 21      |              |
|            | Lot 3 (NWSW) | 19         | Lot 4 (SWSW) | 27           | SESW 33      | 135          |
|            |              |            | NWSE 8       |              |              |              |
| 19         |              |            | NWNE 13      | SWNE 38      | NENW 39      |              |
|            | Lot 1 (NWNW) | 35         | Lot 2 (SWNW) | 39           | SENW 40      |              |
|            |              |            | NESW 40      | Lot 3 (NWSW) | 39           | Lot 4 (SWSW) |
|            |              |            | SESW 34      | NESE 5       | SWSE 35      | 429          |
|            |              |            | SESE 38      |              |              |              |
| 20         |              |            | SWNE 8       | SENE 4       | SWNW 6       |              |
|            |              |            | SENW 16      | NESW 40      | NWSW 40      |              |
|            |              |            | SWSW 38      | SESW 36      | NWSE 35      | 227          |
|            |              |            | SWSE 4       |              |              |              |
| 29         |              |            | NENW 20      | NWNW 39      | SWNW 39      |              |
|            |              |            | SENW 4       | NESW 20      | NWSW 39      |              |
|            |              |            | SWSW 37      | SESW 19      |              | 217          |
|            |              |            | NENE 36      | NWNE 40      | SWNE 38      |              |
| 30         |              |            | SENE 35      | NENW 36      | Lot 1 (NWNW) | 36           |
|            | Lot 2 (SWNW) | 27         |              | SENW 35      |              |              |
|            | Lot 3 (NWSW) | 24         | Lot 4 (SWSW) | 33           | SESW 37      |              |
|            |              |            | NESE 39      | NWSE 40      | SWSE 36      |              |
|            |              |            | SESE 39      |              |              |              |

MAY 16 1995 566

State of Idaho  
Department of Water Resources

## WATER RIGHT LICENSE

WATER RIGHT NO. 13-02288A

**PLACE OF USE:** IRRIGATION FROM STORAGE

| TWN     | RGE | SEC         | ACRES   |             | ACRES   | ACRES          | TOTAL |
|---------|-----|-------------|---------|-------------|---------|----------------|-------|
| 31      |     |             | NENE 35 |             | NWNE 38 | SWNE 39        |       |
|         |     |             | SENE 39 |             | NENW 39 | Lot 1(NWNW) 37 |       |
|         |     | Lot 2(SWNW) | 37      |             | SENE 40 | NESW 39        |       |
|         |     | Lot 3(NWSW) | 39      | Lot 4(SWSW) | 27      | SESW 39        |       |
|         |     | NESE 37     |         | NWSE 40     |         | SWSE 39        |       |
|         |     | SESE 38     |         |             |         |                | 602   |
| 32      |     |             | NENW 12 |             | NWNW 38 | SWNW 38        |       |
|         |     | SENE 3      |         |             | NWSW 31 | SWSW 32        | 154   |
| 16S 39E | 1   | Lot 1(NENE) | 25      | Lot 2(NWNE) | 19      |                | 44    |
|         | 2   | Lot 4(NWNW) | 33      |             |         |                | 33    |
|         | 3   | Lot 2(NWNE) | 12      | Lot 3(NENW) | 36      | Lot 4(NWNW) 32 |       |
|         |     | NESW 37     |         | SESW 21     |         | NWSE 6         | 144   |
|         | 4   | Lot 1(NENE) | 25      | Lot 2(NWNE) | 28      | Lot 3(NENW) 6  |       |
|         |     | NESW 11     |         | SWSW 6      |         | SESW 37        |       |
|         |     | SWSE 15     |         | SESE 6      |         |                | 137   |
| 8       |     | SENE 8      |         | SENE 20     |         |                | 28    |
| 9       |     | NWNE 24     |         | SWNE 12     |         | SENE 7         |       |
|         |     | NENW 31     |         | NWNW 8      |         | SWNW 25        |       |
|         |     | SENE 11     |         | NESE 40     |         | NWSE 40        |       |
|         |     | SWSE 8      |         | SESE 26     |         |                | 233   |
| 10      |     | NWNW 16     |         | SWNW 20     |         | NWSW 20        |       |
|         |     | SWSW 36     |         |             |         |                | 94    |
| 40E     | 5   | Lot 4(NWNW) | 32      | NESW 14     |         | NWSW 39        |       |
|         |     | SWSW 38     |         | SESW 37     |         |                | 160   |
|         | 6   | Lot 1(NENE) | 36      | Lot 2(NWNE) | 14      | Lot 3(NENW) 32 |       |
|         |     | Lot 4(NWNW) | 23      | NESW 34     |         | NWSW 30        |       |
|         |     | NESE 37     |         | NWSE 15     |         | SWSE 12        |       |
|         |     | SESE 34     |         |             |         |                | 267   |
| 8       |     | NENW 39     |         | NWNW 26     |         |                | 65    |

Total number of acres irrigated: 10449

**CONDITIONS/REMARKS:**

1. This water right is appurtenant to the described place of use.
2. This right is subject to all prior water rights and may be forfeited by five years of non-use.
3. Modifications to or variance from this license must be made within the limits of Section 42-222, Idaho Code, or the applicable Idaho law.
4. Use of water under this water right will be regulated by the watermaster of State Water District No. 13A.

RECORDED

MAY 16 1995

State of Idaho  
Department of Water Resources

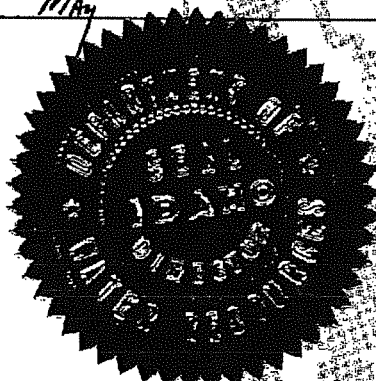
# WATER RIGHT LICENSE

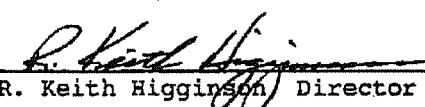
WATER RIGHT NO. 13-02288A

CONDITIONS/REMARKS:

5. This right when combined with Rights 13-02108, 13-02288 and 13-02298 shall not exceed an annual storage volume of 6000.0 acre feet.
6. The combined rate of diversion to storage going into Glendale Reservoir from Cub River and Worm Creek shall not exceed 215.0 cfs.
7. Storage facility is known as Glendale Reservoir.

This license is issued pursuant to the provisions of Section 42-219, Idaho Code. Witness the seal and signature of the Director, affixed at Boise, this 5<sup>TH</sup> day of May, 1995.



  
R. Keith Higgins Director

WR

RECEIVED

MAY 16 1995

Superseded  
in part

364

# Application for a Permit to Construct the 13-2288 WORM CREEK Reservoir

And to Store the Unappropriated Waters of the State of Idaho

Application No. R22956  
Permit No. R 364  
District No. 5-H

1. Name of Applicant: Franklin County Sugar Company

Postoffice Address: Preston County: Franklin State: Idaho

I. If applicant is a corporation, give:

- (a) Date and place of incorporation: April 28, 1922, Ogden, Utah
- (b) Amount of capital stock: \$ 1,000,000.00
- (c) Amount paid in: \$ 1,000,000.00
- (d) Names and addresses of directors: H. A. Benning, P. T. Wright, Charles Ziemer, Ogden, Utah; A. L. Hoppaugh, Salt Lake City, Utah; E. A. Nickerson, San Francisco, Calif.; Henry C. Vidal, Denver, Colorado; A. C. Lighthall, Colorado Springs, Colorado.

- II. The financial resources of the applicant are: (a) Cash on hand: \$ 50,000.00  
(b) Treasury stock: \$ none (c) Bonds to be issued: \$ none  
(d) Other resources: Sugar at present market value \$420,000.00; plant and equipment investment \$1,000,000.00

2. Quantity of water to be stored 6000 acre feet per annum.

3. Source of water supply Cub River and Worm Creek, which is a tributary of Bear River

4. Water is to be used for: Irrigation and domestic purposes

5. The outlet of the proposed reservoir is located in the SW $\frac{1}{4}$  SW $\frac{1}{4}$  of Sec. 8, T. 15 S., R. 40 E., B. M.

feet distant from the corner of Section , T. , R. ,

B. M., and is in the of Section , T. , R. B. M., County of Franklin

6. Fill out either (a) or (b).

(a) The reservoir is located in the channel of Worm Creek

(b) The reservoir is to be filled through the Cub River-Worm Creek

which has a width at bottom of 10 ft, width at top of 20 ft, depth of 5 ft, average grade per mile 2.64 ft, capacity 21.2 cubic feet per second.

7. (a) The area of the high water line of the reservoir is 260 acres.

(b) The available capacity of the reservoir is 6000 acre feet.

8. Height of dam: 80 feet; length of dam at top 560 feet; length of dam at bottom 110 feet.

Material used in dam: Selected earth

9. The estimated cost of proposed reservoir is \$ 117,000.00

10. Amount of land to be irrigated 13,766 acres; said land being described in Use Permit mentioned in

Paragraph 13 herein, which Use Permit is hereby referred to and made a part hereof.

11. The time required for the completion of such work is two years.

13. The water stored in accordance with this permit will be conducted to the place of use through the Franklin County Sugar

Co. canal, constructed under the terms of Permit No. 16174, filed by Franklin County Sugar Co.

on December 15, 1924

BE IT KNOWN That the undersigned hereby makes application for permit to construct a reservoir and to store the unappropriated waters of the State of Idaho as herein set forth.

Franklin County Sugar Company, Applicant.

By H. A. Benning, Vice-Pres., Agent.

EXHIBIT

2

## Commissioner of Reclamation

Date of first receipt at office of ~~State Engineer~~ 9 A.M., December 15, 1924

Returned to applicant for correction

Corrected application received

COMMISSIONER OF RECLAMATION

Approval of ~~State Engineer~~

The number of this Permit is R 364

Recorded in book R 2

Page 364

Approved December 26, 1924

This is to certify that I have examined the within application for a permit to construct a reservoir and to store the unappropriated public waters of the State of Idaho, and hereby approve the same, subject to the following limitations and conditions:

Bond in the sum of \$ to be filed on or before

Work to begin on or before February 24, 1925

and to continue diligently and

uninterruptedly to completion, unless temporarily interrupted by circumstances over which the permit holder has no control.

One-fifth of the work above specified to be completed on or before December 26, 1925

The whole of said work to be completed on or before December 26, 1926

Beneficial use of water stored in accordance herewith, to be made on or before December 26, 1931

as set out in Permit No. 16174 for the appropriation of the public waters of the State of Idaho, which is hereby referred to and made a part hereof.

Witness my hand this 26th day of December, 1924.

W. G. SWENDSEN

~~State Engineer~~  
Commissioner of Reclamation

Remarks:

EXTENSION OF TIME  
PERMIT NO. R-364  
APPROVAL OF COMMISSIONER OF RECLAMATION

I, W. G. Swendsen, Commissioner of Reclamation of the State of Idaho, hereby extend the time for the completion of construction work under Reservoir Permit No. 364 to December 26, 1929.

WITNESS My hand this 23rd day of April, 1926.

W. G. SWENDSEN  
Commissioner of Reclamation

By Geo. N. Carter  
Assistant.

# APPLICATION FOR PERMIT

13-2298

To Construct a Reservoir and Appropriate and Store  
The Public Waters of the State of Idaho

Application No. R 34689  
Permit No. R 1009

Preston Whitney Irrigation Co.  
Angus Condle, Secretary  
Preston, Idaho

1. Name of Applicant: Preston-Whitney Irrigation Co.

Post office address: Preston

County Franklin

State Idaho

I. If applicant is a corporation, give:

(a) Date and place of incorporation: July 9, 1926  
Preston, Idaho

(b) Amount of Capital Stock: \$ 300,000.00

(c) Amount paid in: \$ 242,000.00

(d) Names and addresses of directors: Cecil Foster, Paul K. Smith,  
J. Virgil Jensen, George C. Peterson, Ray S. Ransbottom,  
Fenton A. Larsen, Ralph Esplin. All addresses: Preston, Ida.

II. The financial resources of the corporation are:

(a) Cash on hand: \$ 940.57

(b) Treasury Stock: \$ 58,000.00

(c) Bonds to be issued: \$

(d) Other resources: two other reservoirs, Cap 8400AF. Decead  
water rights & canals

2. Quantity of water to be stored: 3500

acre feet per annum.

3. Source of water supply is Cub River (Creek) (River) (Spring), a tributary of Bear River.

4. The outlet of the proposed reservoir is located 1600 feet, distant from the NE corner of Section 13, Township 15 S., Range 39 E., B.M. and is in the NE 1/4 of NE 1/4 of Section 13, Township 15 S., Range 39 E., B.M. County of Franklin

6. Fill out either (a) or (b).

(a) The reservoir is located in the channel of (Creek) (River).

(b) The reservoir is to be filled through a feeder canal, the point of diversion for which is located feet distant from the corner of Section 8, Township 15 S., Range 41 E., B.M., and is in the NE 1/4 of NW 1/4 of Section 8, Township 15 S., Range 41 E., B.M.; width at bottom 16 feet, width at top 25 feet, depth of water 4 1/2 feet; average grade per mile 100 feet; Capacity 150 cubic feet per second

6. (a) The area of the high water line of the reservoir is 145 acres.

(b) The reservoir capacity is 3500 acre feet.

7. Height of reservoir dam 75 feet, length at top 700 feet, length at bottom 390 feet, size of outlet 3 1/2 feet by 3 1/2 feet. The dam is to be constructed of materials as follows: Dirt fill

(If height will exceed 10 feet, plans must be approved by Department of Reclamation, before beginning construction.)

8. (a) Will water stored in reservoir be diverted to canal or aqueduct, thence to land to be irrigated without commingling with natural flow of

(Creek) (River)? Yes.

(b) Water stored in reservoir will be carried in the channel of (Creek) (River) a distance of miles to point of diversion located (bearing) feet, distant from the corner of Section Township, Range, B.M., and in the 1/4 of 1/4 of Section Township, Range, B.M.

9. (a) Area of watershed above dam site square miles.

(b) Estimated maximum flow of stream cubic feet per second.

10. Water is to be used for Irrigation purposes.

11. If for mining, milling, power or manufacturing purposes give:

(a) Point of use of water feet, distant from Corner of Section, Township, Range, B.M., and is in the 1/4 of 1/4 of Section, Township, Range, B.M.

(b) Amount of power generated: H.P., under feet head.

(c) Water is to be returned to (Creek) (River) (Spring) at a point feet distant from the corner of Section, Township, Range, B.M. in the 1/4 of 1/4 of Section, Township, Range, B.M.

12. Water stored in accordance with this Permit will be carried to place of use through a canal heretofore constructed under the terms of Permit No. , which is hereby referred to and made a part hereof.

13. Kind of diversion works: (Dam, canal, flume, pipe, etc.)

14. Height of diversion dam: feet, length at top feet, length at bottom feet. The dam is to of materials as follows:

(If height will exceed 10 feet, plans must be approved by Department of Reclamation, before beginning construction.)



(Give Irrigable acreage in each 40-acre subdivision.)

1 1882 prior-  
1 water.

for the purpose  
can be used

COUNTERSIGNED

**Governor.**

LICENSE ISSUED FOR 3,355 SEC. FT.  
LICENSE PAGE NO.

15. Size of

16. Diver

17. Estim

18. Time

19. Time

20. The l

(d) Names and addresses of directors:  
(b) Amount of Capital stock: \$  
(a) Date and Place of Incorporation:  
If applicant is a corporation, give:

Post Office address: State County  
Name of Applicant:

District No.  
Permit No.  
Application No.

TO APPROPRIATE THE PUBLIC WATERS OF THE STATE OF IDAHO

## APPLICATION FOR PERMIT

| 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

21. Existing rights and/or valid permits appurtenant to lands described above are Decreed right for 55. second feet from Cub River with 1882 priority during the irrigation season with additional rights not to exceed 154.9 second feet during high water.  
REMARKS: License No. 16174 for 215 second feet from Cub River with priority January 1, 1929.

The proposed dam is located on one of the main laterals of the company's present system and will be built for the purpose of storing additional water for the water users of the company, and as a regulating reservoir so that water can be used to better advantage during the irrigation season.

BE IT KNOWN That the undersigned hereby makes application for permit to construct a reservoir and appropriate and store the public waters of Idaho as herein set forth, and that the enclosed map is hereby made a part of this application.

Kreston-Whitney Irrigation Co., Applicant.

By /s/ Angus Condie, Agent.  
Secretary-Treasurer

Date of first receipt at Department of Reclamation: 8:00 A. M. February 11, 1957

Returned to applicant for correction:

Corrected application received:

## APPROVAL OF STATE RECLAMATION ENGINEER

The number of this permit is R 1009

Recorded in book R 4, page 1009. Approved March 1, 1957

This is to certify that I have examined the within application for a permit to construct a reservoir and appropriate and store the public waters of the State of Idaho, and hereby approve the same, subject to the following limitations and conditions:

Bond in the sum of \$, to be filed on or before

Work to begin on or before May 1, 1957 and to continue diligently and uninterruptedly to completion, unless temporarily interrupted by circumstances over which the permit holder has no control.

One-fifth of the work above specified to be completed on or before September 1, 1959

The whole of said work to be completed on or before March 1, 1962.

Beneficial use of water stored in accordance herewith, to be made on or before March 1, 1967

Witness my hand this First day of March, 1957.

MARK R. KULP  
State Reclamation Engineer.

IN TESTIMONY WHEREOF, We, ROBERT E. SMYLTIE, Governor of the State of Idaho, and JAS. H. YOUNG, Secretary of State of the State of Idaho, have caused this instrument to be executed in the name of the State of Idaho, and caused the Great Seal of the State of Idaho to be hereunto affixed, this First day of March, 1957.

COUNTERSIGNED

STATE OF IDAHO

By JAS. H. YOUNG, Secretary of State.

By ROBERT E. SMYLTIE, Governor.

(SEAL)

LICENSE ISSUED FOR 3,355 SEC. FT.  
LICENSE PAGE NO.

State of Idaho  
Department of Water Administration

LICENSE OF WATER RIGHT

License of Water Right No. R-1009/13-2298 Priority Feb. 11, 1957 Amount 3,355 af

THIS IS TO CERTIFY, that Preston - Whitney Irrigation Co.  
of Preston, Idaho, has complied with the terms and conditions of Permit  
No. R-1009/13-2298 issued pursuant to Application for Permit dated February 11, 1957  
and has submitted proof to the Department of Water Administration on March 1, 1967  
that he has applied water to a beneficial use; an examination by the Department indicates that the  
works have a capacity of 3,355 af, and that the water has in fact been applied to a  
beneficial use; a right to the use of water from the Cub River  
tributary of the Bear River, is hereby confirmed in the following amounts:  
Amount 3,355 af for irrigation from April 1 to Nov. 1 (both dates inclusive)  
Amount \_\_\_\_\_ for \_\_\_\_\_ from \_\_\_\_\_ to \_\_\_\_\_ (both dates inclusive)  
Amount \_\_\_\_\_ for \_\_\_\_\_ from \_\_\_\_\_ to \_\_\_\_\_ (both dates inclusive)  
Subject, however, to the condition that no more than 3,355 af of water be diverted at  
any one time, said waters to be diverted within the \_\_\_\_\_

NE $\frac{1}{4}$ NW $\frac{1}{4}$  Sec. 8, Twp. 15 S, Rge. 41 E, B.M.

In the county of Franklin, and that the amount of water so diverted and to which such  
right is entitled and confirmed is for the purposes aforesaid and is limited to the amount which can  
actually be beneficially used and shall not exceed 3,355 acre feet per year or  
3.5 acre feet per acre.

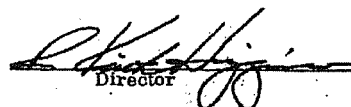
Description and location of place of use: See Land List Attachments

| TWP. | RANGE | SEC. | NE $\frac{1}{4}$ |                  |                  |                  | NW $\frac{1}{4}$ |                  |                  |                  | SW $\frac{1}{4}$ |                  |                  |                  | SE $\frac{1}{4}$ |                  |                  |                  | TOTALS |
|------|-------|------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|--------|
|      |       |      | NE $\frac{1}{4}$ | NW $\frac{1}{4}$ | SW $\frac{1}{4}$ | SE $\frac{1}{4}$ | NE $\frac{1}{4}$ | NW $\frac{1}{4}$ | SW $\frac{1}{4}$ | SE $\frac{1}{4}$ | NE $\frac{1}{4}$ | NW $\frac{1}{4}$ | SW $\frac{1}{4}$ | SE $\frac{1}{4}$ | NE $\frac{1}{4}$ | NW $\frac{1}{4}$ | SW $\frac{1}{4}$ | SE $\frac{1}{4}$ |        |
|      |       |      |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |        |
|      |       |      |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |        |
|      |       |      |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |        |
|      |       |      |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |        |
|      |       |      |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |        |

Total number of acres irrigated 10,720

The right to the use of the water hereby confirmed is restricted and appurtenant to the lands  
or place of use herein described, as provided by the laws of Idaho.

Witness the seal and signature of the Director, affixed at Boise, Idaho, this 1 day of  
February, 19 72.

  
Director

13 2298

EXHIBIT

4

## LAND LIST ATTACHMENT

Description and location of place of use:

| 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 |        |
| 15 S | 39 E  | 9    |        |        | 8      | 34     |        |        |        |        | 8      |        |        | 32     | 38     | 37     | 32     | 26     | 215    |
|      |       | 10   |        |        |        |        | 28     | 37     | 36     | 33     | 38     | 36     | 31     |        | 36     | 37     | 38     |        | 350    |
|      |       | 11   |        |        |        |        |        |        |        |        |        | 35     |        |        |        |        |        |        | 35     |
|      |       | 13   | 11     | 22     | 39     | 39     | 13     | 37     | 12     | 38     | 39     | 36     | 35     | 39     | 38     | 37     | 39     | 31     | 505    |
|      |       | 14   |        | 23     | 36     | 33     | 35     | 20     | 39     | 31     | 39     | 35     | 24     | 39     | 26     | 38     | 35     | 25     | 478    |
|      |       | 15   | 15     | 38     | 39     | 37     | 37     | 35     | 39     | 34     | 40     | 39     | 32     | 37     | 37     | 40     | 35     | 32     | 566    |
|      |       | 16   | 38     | 33     | 37     | 39     | 37     |        |        | 39     | 39     | 7      | 13     | 26     | 37     | 15     | 33     | 34     | 427    |
|      |       | 21   | 35     | 39     | 39     | 32     | 6      |        |        | 8      |        |        |        |        | 34     | 39     | 21     | 22     | 275    |
|      |       | 22   | 29     | 39     | 39     | 33     | 37     | 35     | 39     | 32     | 29     | 39     | 19     | 22     | 8      | 30     | 3      |        | 433    |
|      |       | 23   | 36     | 38     | 39     | 29     | 37     | 32     | 26     | 39     | 20     | 7      |        | 12     | 30     | 33     | 22     | 27     | 427    |
|      |       | 24   | 39     | 38     | 38     | 34     | 28     | 36     | 39     | 36     | 20     | 27     | 38     | 23     | 38     | 37     | 37     | 31     | 539    |
|      |       | 25   | 39     | 39     | 37     | 39     | 34     | 25     | 34     | 39     | 31     | 6      | 14     | 28     | 19     | 39     | 35     | 26     | 484    |
|      |       | 26   | 17     | 14     | 16     | 18     |        |        |        | 10     | 18     |        | 26     | 29     | 12     | 37     | 35     | 39     | 271    |
|      |       | 27   | 4      | 10     | 12     |        | 32     |        | 23     | 31     | 34     |        | 17     | 35     | 24     | 26     | 36     | 33     | 317    |
|      |       | 33   | 3      |        |        | 15     |        |        |        |        |        |        |        |        | 36     | 19     | 34     | 38     | 145    |
|      |       | 34   | 5      | 32     | 28     |        | 34     | 34     | 32     | 27     | 5      | 22     | 38     | 37     | 16     | 2      | 39     | 39     | 390    |
|      |       | 35   | 32     | 27     | 39     | 33     | 34     | 4      | 16     | 34     | 30     | 22     | 9      | 25     | 37     | 38     | 31     | 33     | 444    |
|      |       | 36   | 28     | 39     | 39     | 27     | 33     | 21     | 29     | 30     | 21     | 37     | 38     | 20     | 29     | 31     | 5      | 28     | 455    |
| 15 S | 40 E  | 18   |        |        |        |        | 27     | 33     |        | 39     | 38     | 34     | 37     |        | 8      |        |        |        | 216    |
|      |       | 19   |        | 13     | 38     | 32     | 39     | 33     | 39     | 40     | 14     | 39     | 34     | 31     | 38     | 28     | 38     | 38     | 494    |
|      |       | 20   |        |        |        | 26     |        | 5      |        |        | 23     |        | 38     | 39     |        | 35     |        |        | 166    |
|      |       | 29   |        |        |        |        | 35     | 39     | 39     | 37     | 39     | 39     | 32     | 34     |        |        |        |        | 294    |
|      |       | 30   | 36     | 36     | 38     | 35     | 27     | 33     | 16     | 33     | 35     | 24     | 33     | 27     | 37     | 38     | 36     | 12     | 496    |
|      |       | 31   | 35     | 38     | 26     | 39     | 39     | 37     | 37     | 38     | 39     | 35     | 25     | 39     | 34     | 37     | 39     | 38     | 575    |
|      |       | 32   |        |        |        |        | 38     | 35     |        |        | 31     | 30     |        |        |        |        |        |        | 134    |
| 16 S | 39 E  | 1    |        |        | 16     | 25     |        |        |        |        |        |        |        |        |        |        |        |        | 41     |
|      |       | 2    |        |        |        |        |        | 37     |        |        |        |        |        |        |        |        |        |        | 37     |
|      |       | 3    |        |        | 12     |        |        |        | 25     | 36     | 37     |        |        | 28     |        | 20     |        |        | 158    |
|      |       | 4    |        |        | 21     | 28     |        |        |        | 6      | 30     |        | 15     | 37     | 39     | 32     |        |        | 208    |
|      |       | 9    |        |        |        |        | 28     | 19     | 12     | 2      |        |        | 29     | 14     | 37     |        | 9      | 26     | 176    |

Total number of acres irrigated con'd.

LAND LIST ATTACHMENT

[illegible]

13 2298



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

March 31, 1992

CECIL D. ANDRUS  
GOVERNOR

R. KEITH HIGGINSON  
DIRECTOR

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

Re: Cub River storage water diversions  
Water right no.s 13-2291, 13-2298 & 13-2302

Dear Mr. Swainston:

The Bear River watermaster has informed the department that the Preston-Whitney Irrigation Co. may have exceeded its Cub River storage water diversion allotment for the current year.

I have reviewed the above Preston-Whitney Cub River storage rights with the Bear River watermaster, Pete Peterson. Mr. Peterson receives diversion data under these rights from the Cub River watermaster. According to the rights in our records, the total annual volume allotted under the three rights is 6,492.5 acre-feet. The diversion data received by Mr. Peterson indicates that the amount of water diverted from the Cub River under these rights during the current non-irrigation season is significantly greater than 6,492 acre-feet.

Please be advised that if the storage capacity of the Irrigation Company's reservoirs is greater than 6,492.5 acre-feet, then the Company should file an additional application to divert additional volume from the Cub River. Storage rights from other sources tributary to the same reservoirs do not account for additional diversions from the Cub River.

If you have questions regarding this matter and/or questions regarding the Company's water rights, please contact me directly at 327-7864. I would encourage you to first discuss this matter with both the Bear River and Cub River watermasters.

Respectfully,

Tim Luke  
Hydrologist In Training

cc: Region  
Pete Peterson, District 11 Watermaster  
Conan Foster, District 13-A Watermaster

