

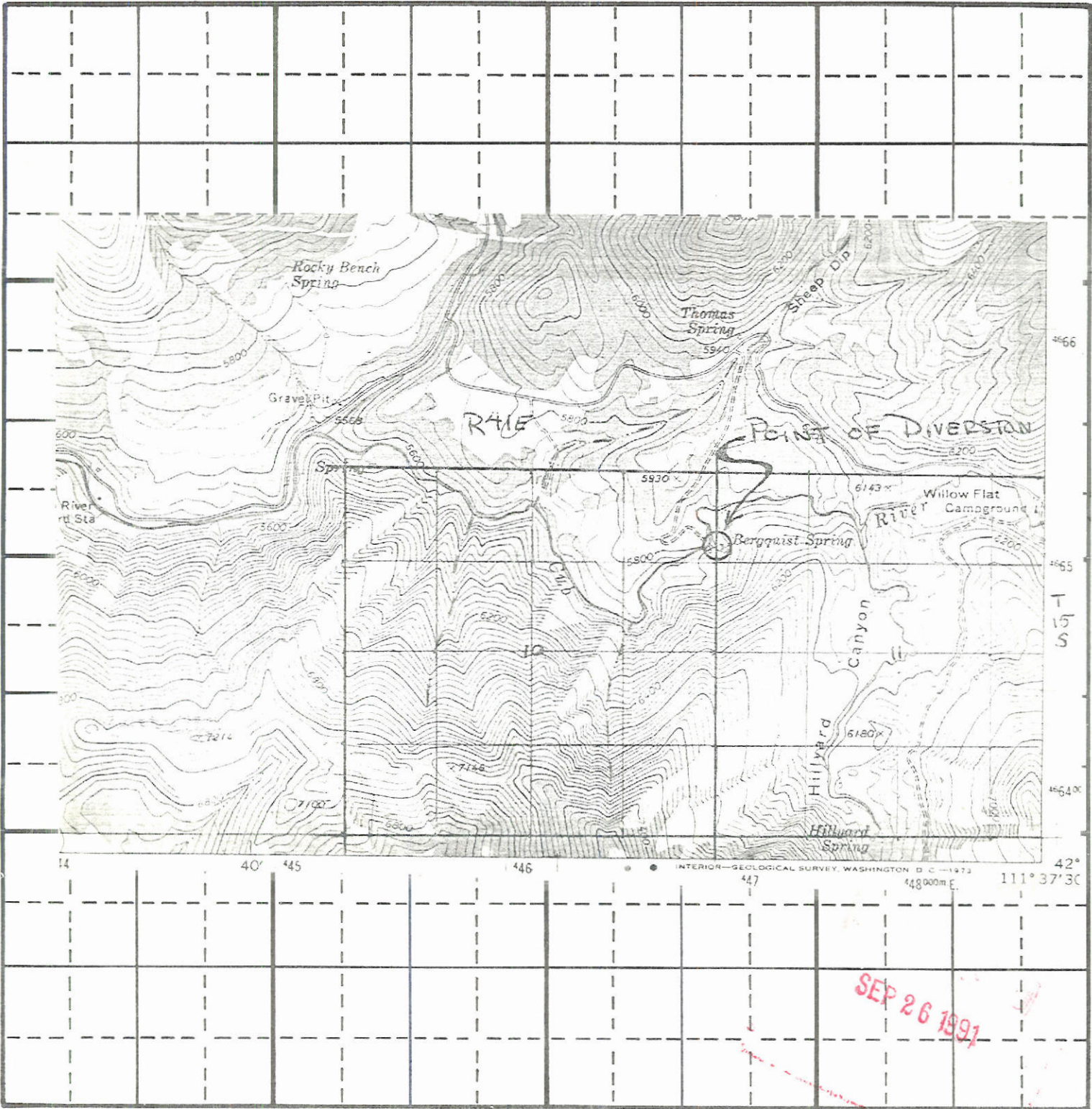
c. Describe the lands or place of use to which the right will be transferred:

*To be used within city limits of Preston, Idaho, and with contractees of City

TWP.	RANGE	SEC.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				TOTALS
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	
*																			

Total number of acres to be irrigated _____

4. Describe any other water rights used for the same purpose as described above. _____
13-0016; 13-0027
5. Draw a map indicating the new point(s) of diversion and/or the new land to be irrigated. Show clearly the land involved by section, township and range number.



c. Describe the lands or place of use to which the right will be transferred:
*To be used within City Limits of Preston, Idaho and with contractees of City

Total number of acres to be irrigated _____

-

SCALE: 2 inches equal 1 mile. Draw plan in ink.

#875
DEC 28 1983

No 2023

RECEIVED
JAN 1 1984

AFFIDAVIT OF PUBLICATION

Department of Water Resources
Eastern District Office

STATE OF IDAHO, }
County of Franklin } ss.

J. Warren Ross

being duly sworn,

deposes and says:

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

Such notice was published in the issue beginning with

Dec. 15, 1983, and ending

with the issue of Dec. 22, 1983

Fee \$ 24.38

Subscribed and sworn to before me this 31st day

of Dec., 1983.

Ken O. Allen

Notary Public, Residing at Preston, Idaho

My Commission Expires June 7, 1986

NOTICE OF PROPOSED CHANGE OF WATER RIGHT NO. 13-0028

Notice is hereby given that the City of Preston, Idaho, has applied to the Dept. of Water Resources for a change in the point of diversion and source of the waters of Birch Spring tributary to Cub River. The right sought to be changed is evidenced by Decree No. 13-0028 to City of Preston, Idaho, in case of Henry T. McEwain vs. Franklin Sugar Co., dated in July 9, 1924 in Fifth Judicial District Court, Franklin County, and is recorded as follows:

AMOUNT: All
PRIORITY: 1882

POINT OF DIVERSION: Not specified in Decree

The water is used for municipal purposes within the city limits of Preston, Idaho.

TO BE CHANGED AS FOLLOWS

All (est. 1.6-4) cfs of water will be diverted within the NE $\frac{1}{4}$ NE $\frac{1}{4}$ Sec. 10, NW $\frac{1}{4}$ NW $\frac{1}{4}$ Sec. 11, T. 15S, R. 41E, B.M. Franklin County and the source will be changed from Birch Springs to Bergquist Springs tributary to Cub River.

Any protests against the above proposed change of water right must be filed with the Dept. of Water Resources, 150 Shoup Ave., Suite 15, Idaho Falls, Idaho, on or before January 3, 1984.

A. KENNETH DUNN
Director

Published in the Preston Citizen on 12/15 & 12/22/83.

Legal No. 2023 -39L- Published Dec. 15, 22, 1983.

SEP 26 1991

APPROVED

Transfer No. 2975

Water Right No. 13-0028

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR TRANSFER OF WATER RIGHT
To Change the Point of Diversion and/or the Place of Use

Name of applicant City of Preston Phone 852-1817
Post Office address City Hall Preston, ID. 83263

A. DESCRIPTION OF RIGHT AS RECORDED

1. Right evidenced by:

a. Decree No. 13-0028 Decreed to City of Preston, Idaho
(Name)
in case of Henry T. McEwain vs Franklin Sugar Co.
dated in July 9, 1924 in 5th Judicial District County of Franklin
(Name of court)

b. License No. issued by the Idaho Department of Water Resources

c. Claim No. on file with the Idaho Department of Water Resources

2. If applicant is not the original holder of this right, explain how it was acquired and attach a copy of the deed or other evidence of ownership of the land to which the right is appurtenant

3. Source of water Birch Spring tributary to Cub River

4. Date of priority 1882

5. Water is used for the following purposes:

amount all for municipal purposes from January 1 to December 31
amount for purposes from to
amount for purposes from to
(month/day — both dates inclusive)

6. Total amount of water under right: a. all cubic feet per second
&/or
b. acre feet per annum

7. Location of original point of diversion is ¼ of ¼ of Section
NOT SPECIFIED IN DECREE -- SEE REMARKS
Township Range, B.M., in County

Additional points of diversion, if any

8. Lands irrigated or place of use: * Place of use is within city limits of Preston, Idaho and with contractees of City.

TWP.	RANGE	SEC.	NE¼				NW¼				SW¼				SE¼				TOTALS
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
*																			

Total number of acres to be irrigated

9. Describe any other water rights used for the same purpose as described above 13-0027
13-0026

10. To your knowledge, has any portion of this water right undergone a period of five or more consecutive years of nonuse? No If yes, describe in item D, REMARKS.

B. DESCRIPTION OF PORTION OF RIGHT OWNED BY APPLICANT (If the entire right is owned by the applicant, omit part B).

1. Amount of water: a. _____ cubic feet per second
&/or
b. _____ acre feet per annum
2. Point of diversion _____ ¼ _____ ¼, Section _____ Township _____
Range _____, B.M., _____ County
Additional points _____

3. Place of use: * Place of use is within city limits of Preston, Idaho
and with contractees of the City

TWP.	RANGE	SEC.	NE¼				NW¼				SW¼				SE¼				TOTALS
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	

Total number of acres to be irrigated _____

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

1. General Information
- a. Amount of water to be diverted all-1.6-4 c.f.s. &/or _____ acre feet
- b. Description of diverting works headgate and city pipeline at Bergquist Spring
- c. Describe the reasons for the proposed changes Changes in point of diversion from Birch Spring to Bergquist Spring (tributary to Cub River) to facilitate delivery of water to City of Preston for culinary and municipal use.

2. Change in point of diversion
- Point of diversion NE ¼ NE ¼, Section 10 Township 15 S
Range 41 East, B.M., Franklin County
Additional points NW 1/4 NW 1/4; Sec. 11, T 15 S., R. 41 E., B.M. Franklin County

3. Change in place of use
- a. Are there liens, mortgages, or contracts on the lands from which you propose to transfer the water right which limit your authority to make the proposed change? Yes _____ No X. If yes, provide a statement agreeing to the proposed change from the holder of the lien, mortgage or contract.
- b. Describe the affect on the land now irrigated if the place of use is changed pursuant to this transfer None

SEP 26 1991

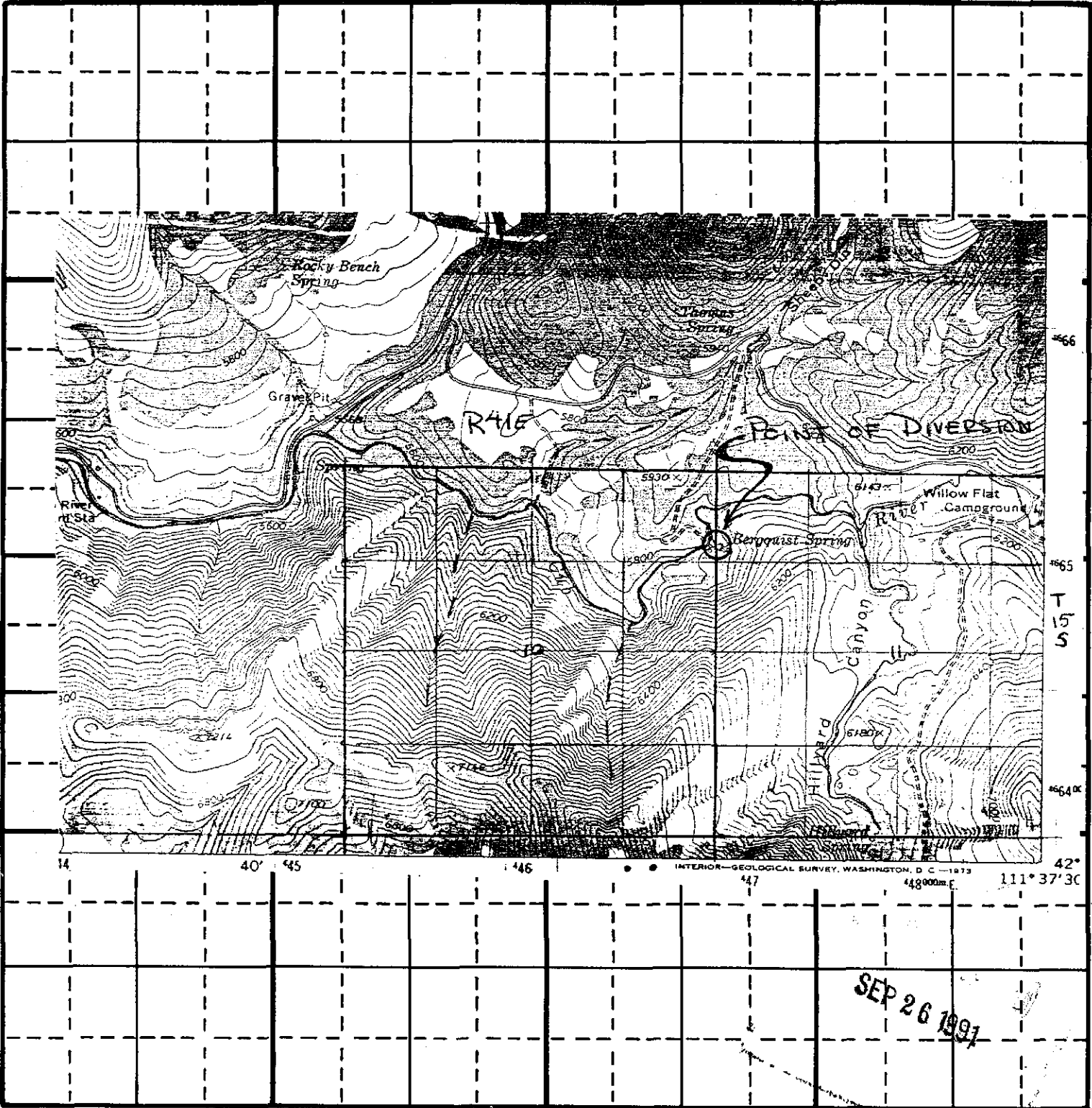
c. Describe the lands or place of use to which the right will be transferred:

*To be used within city limits of Preston, Idaho, and with contractees of City

TWP.	RANGE	SEC.	NE¼				NW¼				SW¼				SE¼				TOTALS
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
*																			

Total number of acres to be irrigated _____

4. Describe any other water rights used for the same purpose as described above. 13-0016; 13-0027
00 26
5. Draw a map indicating the new point(s) of diversion and/or the new land to be irrigated. Show clearly the land involved by section, township and range number.



SCALE: 2 inches equal 1 mile. Draw plan in ink.

D. REMARKS

1. Water has been diverted pursuant to this right from Bergquist Spring for approximately 50 years through Preston City Water lines.
2. (A.6.) Water has been measured at 1.6-4 cfs
3. (A.7.) Point of diversion in NW 1/4 NW 1/4, Sec. 8, T 15 S., R. 41 E., B.M., Franklin County, Birch Springs

I hereby assert that no one will be injured by such change and that the change does not constitute an enlargement in use of the original right. The information contained in this application is true to the best of my knowledge.

I understand that any willfull misrepresentations made in this application may result in voiding its approval.

Reed Bruchley
(Signature of Applicant)

Subscribed and sworn to before me this 22 day of November, 19 83

Nanette Coburn
(Notary Public)

My commission expires lifetime

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Application for Transfer of Water Rights No. 13-0028 and said application is hereby APPROVED, subject to the following limitations and conditions:

1. A measuring device of a type approved by this Department shall be maintained as a part of the diverting works.
2. Use of water under this water right is subject to control by the watermaster of State Water District No. 13-A, Cub River.

Witness my hand this 12th day of September, 19 91

J. Glen Saylor
Chief, Water Allocation Bureau

FOR DEPARTMENT USE ONLY

Received by CW Date 9-19-83 Protest filed by Cub River Irrigation
Prelim. check by KCW Fee ~~430.00~~ 5000 Preston Whitney Irig.
Receipted by BP Date 9/19/83 #29685
Published in Preston City News Copies of protest forwarded by CW
Pub. dates 12/15 - 12/22/83 Hearing held by _____ Date _____
Watermaster recommendation requested on 12-12-83 Recommended for approval denial _____
WD 13-A rec'd. 1-03-84 by Roe

SEP 26 1991

VOID

Transfer No. _____

Water Right No. _____

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR TRANSFER OF WATER RIGHT
To Change the Point of Diversion and/or the Place of Use

Name of applicant City of Preston Phone 852-1817

Post Office address City Hall Preston, ID. 83263

A. DESCRIPTION OF RIGHT AS RECORDED

1. Right evidenced by:

a. Decree No. 13-0028 Decreed to City of Preston, Idaho
(Name)
in case of Henry T. McEwain vs Franklin Sugar Co.
dated in July 9, 1924 in 5th Judicial Dist. county of Franklin
(Name of court)

b. License No. _____ issued by the Idaho Department of Water Resources

c. Claim No. _____ on file with the Idaho Department of Water Resources

2. If applicant is not the original holder of this right, explain how it was acquired and attach a copy of the deed or other evidence of ownership of the land to which the right is appurtenant _____

3. Source of water Birch Spring tributary to Cub River

4. Date of priority 1882

5. Water is used for the following purposes:

amount all for culinary & municipal purposes from January 1 to December 31
amount _____ for _____ purposes from _____ to _____
amount _____ for _____ purposes from _____ to _____
(month/day -- both dates inclusive)

6. Total amount of water under right: a. all-1.6-4 cubic feet per second
&/or
b. _____ acre feet per annum

7. Location of original point of diversion is NW $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 8
Township 15 South Range 41 East, B.M., in Franklin County

Additional points of diversion, if any _____

8. Lands irrigated or place of use:

* Place of use is within city limits of Preston, Idaho and with contractees of City

TWP.	RANGE	SEC.	NE $\frac{1}{4}$				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 to be irrigated _____

9. Describe any other water rights used for the same purpose as described above 13-0027
13-0026

10. To your knowledge, has any portion of this water right undergone a period of five or more consecutive years of nonuse? No If yes, describe in item D, REMARKS.

B. DESCRIPTION OF PORTION OF RIGHT OWNED BY APPLICANT (If the entire right is owned by the applicant, omit part B).

1. Amount of water: a all 1.6-4 cubic feet per second
&/or
b. _____ acre feet per annum

✓ Point of diversion NW $\frac{1}{4}$ NW $\frac{1}{4}$, Section 8 Township 15 South
Range 41 East, B.M., Franklin County
Additional points _____

3. Place of use:
*Place of use is within city limits of Preston, Idaho and with contractees of the City

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 to be irrigated _____

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

1. General Information

- a. Amount of water to be diverted all-1.6-4 c.f.s. &/or _____ acre feet
- b. Description of diverting works headgate and city pipeline at Bergquist Spring
- c. Describe the reasons for the proposed changes Changes in point of diversion from Birch Spring to Bergquist Spring (tributary to Cub River) to facilitate delivery of water to City of Preston for culinary and municipal use.

2. Change in point of diversion

Point of diversion NE $\frac{1}{4}$ NE $\frac{1}{4}$, Section 10 Township 15 S
Range 41 East B.M., Franklin County
Additional points NW $\frac{1}{4}$ NW $\frac{1}{4}$; Sec. 11, T. 15 S., R. 41 E., B.M.
Franklin County

3. Change in place of use

- a. Are there liens, mortgages, or contracts on the lands from which you propose to transfer the water right which limit your authority to make the proposed change? Yes _____ No X _____. If yes, provide a statement agreeing to the proposed change from the holder of the lien, mortgage or contract.
- b. Describe the affect on the land now irrigated if the place of use is changed pursuant to this transfer
None

SEP 26 1991

*To be used within City Limits of Preston, Idaho and with contractees of City

Total number of acres to be irrigated _____

- [illegible]

SCALE: 2 inches equal 1 mile. Draw plan in ink.

D. REMARKS

Water has been diverted pursuant to this right from Bergquist Spring
for approximately 50 years through Preston City Water lines.

I hereby assert that no one will be injured by such change and that the change does not constitute an enlargement
in use of the original right. The information contained in this application is true to the best of my knowledge.

I understand that any willfull misrepresentations made in this application may result in voiding its approval.

ATTEST:

CITY OF PRESTON, IDAHO

[Signature]

By: *[Signature]*
Mayor (Signature of Applicant)

City Clerk

Subscribed and sworn to before me this _____ day of _____, 19 _____

(Notary Public)

My commission expires _____

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Application for Transfer of Water Rights No. _____
and said application is hereby _____, subject to the following limitations and conditions:

Witness my hand this _____ day of _____, 19 _____

FOR DEPARTMENT USE ONLY

Received by <u>CW</u>	Date <u>9-19-83</u>	Protest filed by _____
Prelim. check by _____	Fee <u>50⁰⁰</u>	_____
Receipted by <u>BP</u>	Date <u>9/19/83 #29680</u>	_____
Published in _____	Copies of protest forwarded by _____	
Pub. dates _____	Hearing held by _____ Date _____	
Watermaster recommendation requested on _____	Recommended for <u>approval</u> <u>denial</u>	
_____ rec'd. _____	by <u>[Signature]</u> <u>9-11-91</u>	

SEP 26 1991

#875

DEC 28 1983

No 2023

RECEIVED
JAN 1 1984

AFFIDAVIT OF PUBLICATION

STATE OF IDAHO, }
County of Franklin } ss.

J. Warren Ross

being duly sworn,

deposes and says:

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

Such notice was published in the issue beginning with

Dec. 15

19 83, and ending

with the issue of Dec. 22, 19 83.

J. Warren Ross

Fee \$ 24.38

Subscribed and sworn to before me this 31st day

of Dec., 19 83.

Ken O. Allen

Notary Public, Residing at Preston, Idaho

My Commission Expires June 7, 19 86

Department of Water Resources
Eastern District Office

NOTICE OF PROPOSED CHANGE
OF WATER RIGHT

Notice is hereby given that the City of Preston, Idaho, has applied to the Dept. of Water Resources for a change in the point of diversion and source of the waters of Birch Springs tributary to Cub River. The point of diversion to be changed is evidenced by Record No. 13-028 to City of Preston, Idaho, in case of Henry T. McGowan vs. Preston Irr. Sugar Co., dated July 1, 1978, Fifth Judicial District Court, Blaine County, and is recorded as follows: AMOUNT: All the water of said CUB RIVER. PRIORITY: 1982

PORTION DIVERSION: Not recorded in Dec. 1983

The water is used for municipal purposes within the city limits of Preston, Idaho.

TO BE CHANGED AS FOLLOWS

All (est. 1.3-9) cfs of water will be diverted within the NE 1/4 NE 1/4 Sec. 10, NW 1/4 NW 1/4 Sec. 11, T. 15S, R. 41E, B.M. Franklin County and the source will be changed from Birch Springs to Bergquist Springs tributary to Cub River.

Any protests against the above proposed change of water right must be filed with the Dept. of Water Resources, 150 Shoup Ave., Suite 15, Idaho Falls, Idaho, on or before January 3, 1984.

A. KENNETH DUNN
Director

Published in the Preston Citizen on 12/15 & 12/22/83.

Legal No. 2023 -391- Published Dec. 15, 22, 1983.

SEP 26 1991

SEP 26 1991

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

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

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

13-0029 NINTH: That defendants, B. M. Burbank and Caroline J. Allred are the owners of a primary right to the use of two cubic feet per second of time of the waters of Cub River, their right to the use of the same to date from



State of Idaho
DEPARTMENT OF WATER RESOURCES

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

November 15, 1994

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

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

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

Dear Conan:

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

1) Watermasters Term of Service:

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

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

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

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

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

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

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

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

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

Department Direction to Watermaster:

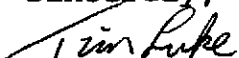
Since your appointment as watermaster has officially ended, you are advised at this time to refrain from regulating any diversions on the Cub River or its tributaries, including Bergquist Springs. The Department will consider extending your term of service for the 1994-1995 non-irrigation season upon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

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

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

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

Sincerely,



Tim Luke
Hydrologist, Water Allocations

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

September 16, 1991

RE: Transfer of Water Right No. 13-0028

City of Preston
City Hall
Preston ID 83263

Dear Water Right Holder(s):

Enclosed is a copy of your approved Application for Transfer of the above referenced water right (Transfer No. 2975). Be sure to note any conditions of approval as listed on the second page.

Sincerely,

JIM JOHNSON
Water Rights Supervisor

JJ:blm

Enclosure

RECEIVED
SEP 26 1991

MEMORANDUM

TO: FILE

FROM: TIM LUKE

DATE: September 11, 1991

RE: TRANSFER NO. 2974/RIGHT NO. 13-0027
TRANSFER NO. 2975/RIGHT NO. 13-0028

=====

These transfers were filed in 1983. Protests received by the department delayed action on these transfers. The protests have only recently been withdrawn. The transfers seek to change the decreed points of diversion and water sources to one point of diversion and source. Specifically, the City of Preston is changing the decreed rights from Ranger and Birch Springs (rights 13-0027 and 13-0028 respectively) to Bergquist Spring. Remarks on both transfers state that the change was actually accomplished some 50 years prior to the filing of the transfer application. All of the springs are tributary to the Cub River.

Approval of the transfers is recommended subject to conditions below. The condition requiring adequate measuring devices is recommended since the city's lack of measuring devices on the spring was an issue of protest.

1) <<R01>> A measuring device of a type approved by this Department shall be maintained as a part of the diverting works.

2) <<R04>> Use of water under this water right is subject to control by the watermaster of State Water District No. 13-A, Cub River.

SEP 26 1991

DAVIS WRIGHT TREMAINE

LAW OFFICES

702 WEST IDAHO STREET • SUITE 700 • BOISE, IDAHO 83702
(208) 338-8200

RECEIVED

AUG 15 1991

Department of Water Resources
Eastern District Office

JOSEPHINE BEEMAN
(208) 338-8233

August 14, 1991

Mr. Ronald D. Carlson
Regional Manager
Eastern Region
Idaho Department of Water Resources
150 Shoup
Idaho Falls, Idaho 83401

Re: City of Preston Applications for Transfer of Water Rights 13-0026, 13-0027 and 13-0028

Dear Mr. Carlson:

This letter will confirm my conversations with you and Harold Jones, on August 2, 1991, regarding three transfer applications filed by the City of Preston which are pending at the Idaho Falls regional office of Water Resources.

The transfer affecting water right 13-0026 has been held by Water Resources at the request of the City of Preston while they were obtaining independent review of the underlying water right. Recently, the protests filed to the transfers for water rights 13-0027 and 13-0028 were withdrawn. Accordingly, these two transfer applications were put on your desk for further action, now that they are not protested.

I began a review of the City of Preston's water rights in the Cub River drainage in February, 1991. The City obtained additional information pursuant to that review which was made available to me in June, 1991. I am now completing my review of the City's water rights.

I have talked with the City of Preston's attorney, Clyde Nelson. The City wishes to complete the transfer process for these pending applications. It is not necessary to hold this processing pending my review of the underlying water rights.

SEP 26 1991

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SEP 06 1991

Department of Water Resources

FAX: (208) 338-8299

ANCHORAGE, ALASKA • BELLEVUE, WASHINGTON • LOS ANGELES, CALIFORNIA • PORTLAND, OREGON
RICHLAND, WASHINGTON • SEATTLE, WASHINGTON • WASHINGTON, D.C.

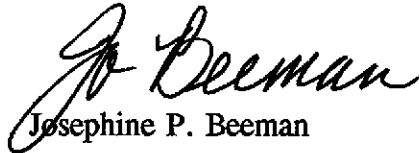
Davis Wright Tremaine

Ronald D. Carlson
August 14, 1991
Page 2

Thank you for your help in this matter.

Sincerely,

DAVIS WRIGHT TREMAINE


Josephine P. Beeman

JPB:md

cc: Clyde G. Nelson, Esq.
P.O. Box 797
Soda Springs, ID 83276

MAILED
SEP 26 1991



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

EASTERN REGION

CECIL D. ANDRUS
GOVERNOR
R. KEITH HIGGINSON
DIRECTOR

July 29, 1991

RE: Application for Transfer No. 13-0027 & No. 13-0028
CITY OF PRESTON

Mr. Steven R. Fuller
Attorney at Law
PO Box 191
Preston, ID 83263

Dear Mr. Fuller:

This letter acknowledges receipt of the withdrawal of protest against the above referenced applications. The Department has now resumed processing of these applications.

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

Very truly yours,

HAROLD W. JONES
Water Rights Supervisor

HWJ:CW

pc: Carl Swainston, Pres.
Preston Whitney Irrigation Company
Preston, ID 83263

Regan Wheeler, Pres.
Cub River Irrigation Dist.
Lewiston, Utah

SEP 26 1991

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JUL 29 1991

STEVEN R. FULLER
ATTORNEY AND COUNSELOR AT LAW
24 NORTH STATE • P.O. BOX 191 • PRESTON, IDAHO 83263

Department of Water Resources
Eastern District Office

TELEPHONE
(208) 852-2680
FAX (208) 852-2683

ALSO, MEMBER OF UTAH BAR

July 26, 1991

Mr. Ron Carlson
Idaho Department of Water Resources
150 Shupe Ave., Suite 15
Idaho Falls, ID 83402

Re: Withdrawals of Protest/Application Nos. 13-0027 and 13-0028

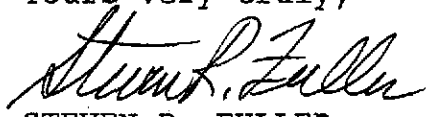
Dear Ron:

Please find the enclosed Withdrawals of Protest by Preston Whitney Irrigation Company and Cub River Irrigation Company to Applications Nos. 13-0027 and 13-0028 filed by Preston City.

The original protests were made by these Irrigation Companies because of the lack of an adequate measuring device to the City's water system. The Canal Companies have informed me that such devices are now in place and are being monitored by Conan Foster, water master.

If you have any questions, please let me know.

Yours very truly,



STEVEN R. FULLER
Attorney at Law

SRF/sh

MICROFILMED
SEP 26 1991

RECEIVED

BEFORE THE DEPARTMENT OF WATER RESOURCES OF
THE STATE OF IDAHO

JUL 29 1991

Department of Water Resources
Eastern District Office

IN THE MATTER OF THE APPLICATION OF
THE CITY OF PRESTON, APPLICATION
NO. 13-0028 TO CHANGE THE POINT OF
DIVERSION OF BIRTH SPRING ON
CUB RIVER

WITHDRAWAL OF PROTEST OF
PRESTON WHITNEY IRRIGATION COMPANY

Application No. 13-0028
To Change point of diversion

COMES NOW, the Preston Whitney Irrigation Company, a Corporation organized and existing under the laws of the State of Idaho, and whose address is c/o Steven R. Fuller, Attorney at Law, P.O. Box 191, Preston, Idaho 83263; and does hereby withdraw its protest to the granting of Application 13-0028 of the City of Preston, Idaho, to transfer the point of diversion of Birch Springs on Cub River to Berquist Springs, based upon the following:

The protest of the Preston Whitney Irrigation Company was made for the reason that the City of Preston had not yet installed an adequate measuring device on its culinary water line at Berquist Springs. Based upon the fact that such a measuring device has been installed and the flow of water from Birch Springs and Berquist Springs is now and will be continually measured and monitored by the Water Master, the Preston Whitney Irrigation Company hereby withdraws its protest.

DATED this 23 day of July, 1991.

PRESTON WHITNEY IRRIGATION COMPANY

By:

Carl Swainston
CARL SWAINSTON, President

RECEIVED

SEP 26 1991

STATE OF IDAHO

County of Franklin

On this 23rd day of July, 1991, before me, the undersigned, a Notary Public in and for said State personally appeared CARL SWAINSTON, known to me to be the President of the Corporation that executed the foregoing instrument, and acknowledged to me that such Corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 23rd day of July, 1991.

Starr R. Fuller
NOTARY PUBLIC for State of Idaho
Residing at: Preston, ID
Comm. Expires: 2/19/93

RECEIVED
SEP 26 1991

RECEIVED

JUL 29 1991

BEFORE THE DEPARTMENT OF WATER RESOURCES OF
THE STATE OF IDAHO

Department of Water Resources
Eastern District Office

IN THE MATTER OF THE APPLICATION OF
THE CITY OF PRESTON, APPLICATION
NO. 13-0028 TO CHANGE THE POINT OF
DIVERSION OF BIRCH SPRING ON CUB
RIVER

WITHDRAWAL OF PROTEST OF
CUB RIVER IRRIGATION COMPANY
Applicatoin No. 13-0028
To Change Point of Diversion

COMES NOW, the Cub River Irrigation Company, a Corporation organized and existing under the laws of the State of Idaho, and whose address is c/o Steven R. Fuller, Attorney at Law, P.O. Box 191, Preston, Idaho 83263; and does hereby withdraw its protest to the granting of Application 13-0028 of the City of Preston, Idaho, to transfer the point of diversion of Birch Springs on Cub River to Berquist Springs, based upon the following:

The protest of Cub River Irrigation Company was made for the reason that the City of Preston had not yet installed an adequate measuring device on its culinary water line at Berquist Springs. Based upon the fact that such a measuring device has been installed and the flow of water from Birch Springs and Berquist Springs is now and will be continually measured and monitored by the water master, the Cub River Irrigation Company hereby withdraws its protest.

DATED this 18th day of July, 1991.

CUB RIVER IRRIGATION COMPANY

By:

Regan Wheeler
REGAN WHEELER, President

RECEIVED

SEP 26 1991

STATE OF UTAH)
County of CACHE)

On this 18th day of July, 1991, before me, the undersigned, a Notary Public in and for said State personally appeared REGAN WHEELER, President of the Corporation that executed the foregoing instrument, and acknowledged to me that such Corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 18th day of July, 1991.

Muzanne H. Spencer
NOTARY PUBLIC for State of UTAH
Residing at: LEWISTON
Comm. Expires: 1/27/92

SEP 26 1991



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

EASTERN REGION

CECIL D. ANDRUS
GOVERNOR
R. KEITH HIGGINSON
DIRECTOR

January 22, 1991

Clyde Nelson
Preston City Attorney
Box 797
Soda Springs ID 83276

RE: Applications for Transfer for Rights ¹³~~12~~-00027 & 13-00028

Mr. Nelson:

Enclosed are copies of the above transfer applications filed by the City of Preston. It appears there was a conference set on March 16, 1988 to address protests filed on these applications. This conference never took place and the issues have never been resolved.

I would ask that you advise me if your client, the City of Preston, is still interested in pursuing these applications or withdraw the same. If you could contact me within thirty (30) days I would appreciate it.

Sincerely,

Harold W. Jones
Water Resource Supervisor

HWJ:lk
Encs.

MICROFILMED

SEP 26 1991

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

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

On September 19, 1983, the City of Preston filed with the Department of Water Resources an application to transfer the public waters of the State of Idaho. On January 3, 1984, the Department received protests against approval of said application from Preston Whitney Irrigation Company and Cub River River Irrigation Company.

The Department has set the matter of protests for conference and/or hearing for 1:00 p.m., Wednesday, March 16, 1988, in the Ag Room, Franklin County Courthouse, Preston, Idaho. The hearing will be held in accordance with provisions of Chapters 2 and 17, Title 42 and Chapter 52, Title 67 of the Idaho Code and adopted Rules of Practice and Procedure of the Department of Water Resources. Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved.

Dated this 29th day of February, 1988.



RONALD D. CARLSON
Eastern Regional Manager

RECEIVED

SEP 26 1991

January 11, 1984

RE: Application for Transfer No. 13-0027 and 13-0028 ✓

City of Preston
City Hall
Preston, ID 83263

Gentlemen:

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

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

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

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

Very truly yours,

RONALD D. CARLSON
Eastern Regional Supervisor

SEP 26 1991

RDC:cw

Enclosure

cc: IDWR - State Office

January 11, 1984

January 11, 1984

RE: Application for Transfer No. 13-0028 CITY OF PRESTON
13-0027

Angus Carroll
District Engineer, Salt Lake City

Regan Wheeler, President
Cub River Irrigation Company
Lewiston, Idaho
Utah 84320

Gentlemen: application for transfer of water right from the City of Preston to the Cub River Irrigation Company, Lewiston, Idaho, for the purpose of irrigating the City of Preston, Idaho.

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

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

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

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

Very truly yours,

Ronald D. Carlson
District Engineer, Salt Lake City

RONALD D. CARLSON
Eastern Regional Supervisor

RDC:cw

cc: IDWR - State Office

SEP 26 1984

OF January 11, 1984

FROM: IDWR - State Office

RE: Application for Transfer No. 13-0028 CITY OF PRESTON
13-0027

TO: Angus Condie

Preston Whitney Irrigation District
Preston, ID 83263

Dear Mr. Condie:

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

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

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

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

Very truly yours,

RONALD D. CARLSON
Eastern Regional Supervisor

RDC:cw

cc: IDWR - State Office
Williams & Castleton, Attornies

SEP 26 1991

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

Department of Water Resources
Eastern District Office

IN THE MATTER OF THE APPLICATION
OF THE CITY OF PRESTON, APPLICA-
TION NO. 13-0028 TO CHANGE
THE POINT OF DIVERSION OF BIRCH
SPRING ON CUB RIVER.

PROTEST OF PRESTON WHITNEY
IRRIGATION COMPANY
Application No. 13-0028
To Change Point of Diversion

COMES NOW, the PRESTON WHITNEY IRRIGATION COMPANY, a Corporation organized and existing under the laws of the State of Idaho, and whose address is c/o Angus Condie, Preston, Idaho; that pursuant to the provisions of Idaho law, and any and all other pertinent statutes and rules of the Department it does hereby protest the granting of an application no. 13-0028, of Preston City to change the point of diversion of Birch Springs on Cub River to Berquist Springs. As reasons and grounds for such protest it admits and alleges as follows:

1. That protestant is an irrigation company organized for the purpose of distributing its irrigation waters to its members for the purpose of irrigating land in Franklin County, Idaho.

2. That the PRESTON WHITNEY IRRIGATION COMPANY is the owner and successor in interest to decreed water rights in Cub River as provided in the Decree issued by the Fifth Judicial District in the case of McEwan vs. Franklin County Sugar Company, et al dated July 9, 1924.

3. That the said company protests the application to change the point of diversion filed by Preston City for the reasons that the City has not yet installed an adequate measuring device on its culinary water line at Berquist Springs and also the Company believes that the City has overestimated the minimum flow of Birch Springs since at times the Spring only flows at about 1.0 cfs.

SEP 26 1991

DATED This 30th day of December, 1983.

PRESTON WHITNEY IRRIGATION COMPANY

By

Blaine J. Gamble, President

Counsel for Protestants

Williams; Costerton

has Offices

P.O. Box 191

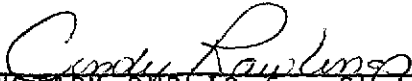
Preston, Idaho

83263

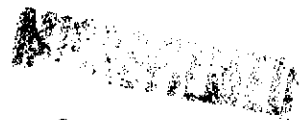
STATE OF IDAHO)
)
County of Franklin)

On this 30th day of December, 1983, before me, the undersigned, a Notary Public in and for said State, personally appeared BLAINE GAMBLE, known to me to be the President of the corporation that exeucted the foregoing instrument, an acknowledged to me that such corporation executed the same.

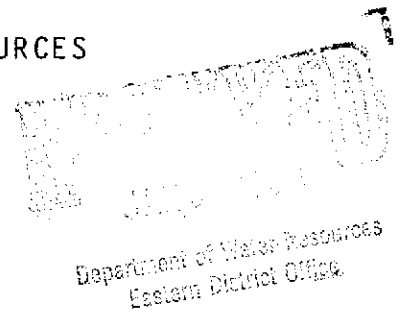
IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year in this certificate first above written.



NOTARY PUBLIC for State of Idaho
Residing at Preston, Idaho


SEP 26 1991

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO



IN THE MATTER OF THE APPLICATION
OF THE CITY OF PRESTON, APPLICA-
TION NO. 13-0028 TO CHANGE
THE POINT OF DIVERSION OF BIRCH
SPRING ON CUB RIVER.

PROTEST OF CUB RIVER
IRRIGATION COMPANY
Application No. 13-0028
To Change Point of Diversion

COMES NOW, the CUB RIVER IRRIGATION COMPANY, a Corporation organized and existing under the laws of the State of Idaho, and whose address is Lewiston, Utah; that pursuant to the provisions of Idaho law, and any and all other pertinent statutes and rules of the Department it does hereby protest the granting of an application no. 13-0028, of Preston City to change the point of diversion of Birch Springs on Cub River to Berquist Springs. As reasons and grounds for such protest it admits and alleges as follows:

1. That protestant is an irrigation company organized for the purpose of distributing its irrigation waters to its members for the purpose of irrigating land in Franklin County, Idaho, and Cache County, Utah, and has been so engaged for more than 104 years last past.

2. That the CUB RIVER IRRIGATION COMPANY is the owner of a decreed water rights in Cub River as provided in the Decree issued by the Fifth Judicial District in the case of McEwan vs. Franklin County Sugar Company, et al dated July 9, 1924.

3. That the said company protests the application to change the point of diversion filed by Preston City for the reasons that the City has not yet installed an adequate measuring device on its culinary water line at Berquist Springs and also the Company believes that the City has overestimated the minimum flow of Birch Springs since at times the Spring only flows at about 1.0 cfs.

SEP 26 1991

DATED This 30th day of December, 1983.

CUB RIVER IRRIGATION COMPANY

By Regan Wheeler
REGAN WHEELER, President

STATE OF IDAHO)
County of Franklin)

On this 30th day of December, 1983, before me, the undersigned, a Notary Public in and for said State, personally appeared REGAN WHEELER, known to me to be the President of the corporation that exeucted the foregoing instrument, an acknowledged to me that such corporation executed the same.

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



NOTARY PUBLIC for State of Idaho
Residing at Preston, Idaho

RECEIVED
SEP 26 1991

T 13-0028 - CITY OF PRESTON

Ag Room, Franklin County Courthouse, Preston, Idaho
Wednesday, March 16, 1988 - 1:00 p.m.

ROSTER OF ATTENDANCE

Hearing Officer: _____

<u>Name</u>	<u>Representing</u>	<u>Address</u>
-------------	---------------------	----------------

RECEIVED
SEP 26 1991

March 8, 1988

Ag Room
Franklin County Courthouse
Preston, ID 83263

Dear Secretary:

This is to confirm the use of the Ag Room in the Franklin County Courthouse, Preston, Idaho, for water right hearings and/or conferences to be held by this Department on Tuesday, March 15, 1988, beginning at 1:00 p.m. and on Wednesday, March 16 beginning at 9:30 a.m.

Thank you for your cooperation in this matter.

Very truly yours,

COLLEEN WRAY
Adm. Secretary

SEP 26 1991

NAME AND
ADDRESS
OF SENDER

DEPARTMENT OF WATER RESOURCES

EASTERN DISTRICT OFFICE

150 SHoup AVE.

IDAHO FALLS, IDAHO 83401

Indicate type of mail:

☐ Registered☐ Insured☐ COD☒ Certified ☐ Express Mail

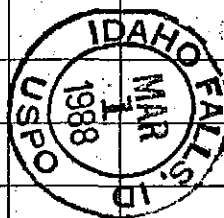
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certificate of mailing or for
additional copies of this bill:

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2	0152	✓ Laine Harper St Rt Box 62 Preston	22									13-7449
3	0153	✓ J. L. Williams P.O. Box 191 Preston										11-0600/0602
4	0154	✓ L. J. (White) 15516 N Cleveland Rd Preston										" "
5	0155	✓ Copenhagen Steels John Wilson 24120001 1/2 Rd Idaho Falls										11-7367
6	0156	✓ Edward Shepherd 445 So 7th Montpel	22									"
7	0157	✓ Clyde Nelson P.O. Box 197 Soda Spr	39									11-7367 13-0027/0028
8	0158	✓ City of Preston City Hall Preston	22									13-0027/0028
9	0159	✓ Pub. Lewis Drug Buviestry Id.										" "
10	0160	✓ Angus Corbace Preston. Whitman St. 3 Preston										" "
11	0161	✓ Williams & Co. Ltd P.O. Box 191 Preston										" "
12	0162	✓ Mitt Campbell Box 60 Lava										29-7837
13	0163	✓ Archie Service P.O. Box 4883 Poca										"
14	0164	✓ Stephen Harsen P.O. Box 845 Poca										"
15	0165	✓ William Tucker P.O. Box 1725 Lava	22									29-78.37
Total Number of Pieces Listed by Sender		Total Number of Pieces Received at Post Office		POSTMASTER, PER (Name of receiving employee)		The full declaration of value is required on all domestic and international registered mail. The maximum indemnity payable for nonnegotiable documents under Express Mail document reconstruction insurance is \$50,000 per piece subject to a limit of \$500,000 per occurrence. The maximum indemnity payable on Express Mail merchandise insurance is \$500. The maximum indemnity payable is \$25,000 for Registered Mail, \$400 for COD and \$400 for Insured Mail. Special handling charges apply only to Third- and Fourth-Class parcels. Special delivery service also includes special handling service.						
16		16		J. L. Williams								



RECEIVED

SEP 26 1991

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR	)	
TRANSFER NO. 13-0028 IN THE	)	NOTICE OF HEARING
NAME OF CITY OF PRESTON	)	&/OR CONFERENCE
	)	

On September 19, 1983, the City of Preston filed with the Department of Water Resources an application to transfer the public waters of the State of Idaho. On January 3, 1984, the Department received protests against approval of said application from Preston Whitney Irrigation Company and Cub River River Irrigation Company.

The Department has set the matter of protests for conference and/or hearing for 1:00 p.m., Wednesday, March 16, 1988, in the Ag Room, Franklin County Courthouse, Preston, Idaho. The hearing will be held in accordance with provisions of Chapters 2 and 17, Title 42 and Chapter 52, Title 67 of the Idaho Code and adopted Rules of Practice and Procedure of the Department of Water Resources. Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved.

Dated this 29th day of February, 1988.



RONALD D. CARLSON
Eastern Regional Manager

RECEIVED

SEP 26 1991

DEPARTMENT OF WATER RESOURCES

EASTERN DISTRICT OFFICE

150 SHOUP AVE.

IDAHO FALLS, IDAHO 83401

NAME AND
ADDRESS
OF SENDER

Indicate type of mail

☐ Registered☐ Insured☐ COD☒ Certified

I certify that we have

☐ Commercial Insurance☐ A deductible clause of

\$

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

POSTMARK AND DATE OF RECEIPT

NO	NUMBER OF ARTICLE	NAME OF ADDRESSEE, STREET, AND POST-OFFICE ADDRESS	POSTAGE	FEE	Handling Charge	Actual Value (If Registered)	DUE SENDER IF C.O.D.	R. R. FEE	S.D. FEE	S. H. FEE	REST. DEL. FEE REMARKS
1	13333	City of Preston, City Hall, Preston	22	75				70			13-0026 13-0027 13-0028
2	13334	William V. Casthore, PO Box 191, Preston									
3	13335	J. J. Fifer, 324 25 th St, Ogden, Utah									
4	13336	Angus Candier, Preston, Highway 813, Preston									
5	13337	Charles Nelson, PO Box 797, Soda Springs									
6	13338	Reginald Wheeler, Sub River Dring, Riverfront									
7											
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14											
15											

TOTAL NUMBER OF
PIECES LISTED BY
SENDERTOTAL NUMBER OF
PIECES RECEIVED
AT POST OFFICE

POSTMASTER, PER (Name of receiving employee)

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

September 27, 1985

RE: Application for Transfer Nos. 13-0027 & 13-0028
CITY OF PRESTON

Mr. Angus Condie
Preston-Whitney Irrigation District
Preston, ID 83263

Gentlemen:

To recommend final action on the above captioned applications a conference and/or administrative hearing must be held to examine the issues of protest against granting the transfers. October 29, 1985 has initially been selected as the date for conducting this meeting which will be held in Preston.

To provide adequate time for implementing a change to this schedule, please advise this office of your availability to be present on the above date.

Certified notices confirming the date, place, and time must be mailed ten (10) days prior to the conference and/or hearing. Once the certified notices are mailed, a postponement will require prior consent of the applicant.

Respectfully submitted,

ERNEST CARLSEN
Assistant Regional Supervisor

EC:cw

cc: Williams & Castleton

SEP 26 1991

September 27, 1985

RE: Application for Transfer Nos. 13-0027 & 13-0028
CITY OF PRESTON

Mr. Regan Wheeler, President
Cub River Irrigation Company
Lewiston, UT 84320

Gentlemen:

To recommend final action on the above captioned applications a conference and/or administrative hearing must be held to examine the issues of protest against granting the transfers. October 29, 1985 has initially been selected as the date for conducting this meeting which will be held in Preston.

To provide adequate time for implementing a change to this schedule, please advise this office of your availability to be present on the above date.

Certified notices confirming the date, place, and time must be mailed ten (10) days prior to the conference and/or hearing. Once the certified notices are mailed, a postponement will require prior consent of the applicant.

Respectfully submitted,

ERNEST CARLSEN
Assistant Regional Supervisor

EC:cw

cc: Williams & Castleton

RECEIVED

SEP 26 1991

POOR QUALITY

September 27, 1985

RE: Application for Transfer Nos. 13-0027 & 13-0028

City of Preston
City Hall
Preston, ID 83263

Gentlemen:

To recommend final action on the above captioned applications a conference and/or administrative hearing must be held to examine the issues of protest against granting the transfers. October 29, 1985 has initially been selected as the date for conducting this meeting which will be held in Preston.

To provide adequate time for implementing a change to this schedule, please advise this office of your availability to be present on the above date.

Certified notices confirming the date, place, and time must be mailed ten (10) days prior to the conference and/or hearing. Once the certified notices are mailed, a postponement will require prior consent of the applicant.

Respectfully submitted,

ERNEST CARLSEN
Assistant Regional Supervisor

EC:cw

cc: Clyde Nelson, Attorney

SEP 28 1985
10 11 AM '85

POOR QUALITY

October 11, 1985

RE: Application for Transfer No. 13-0027 & 13-0028
CITY OF PRESTON

City of Preston
City Hall
Preston, ID 83263

Gentlemen:

The hearing on the above referenced transfers, tentatively scheduled for October 29, 1985, has been postponed until November 19, 1985.

If you have any questions concerning this matter, please feel free to contact me.

Respectfully submitted,

ERNEST CARLSEN
Assistant Regional Supervisor

EC:cw

Copy to: Clyde Nelson
Cub River Irrigation
Williams & Castleton
Preston-Whitney Irrigation District

SEP 26 1991

July 19, 1985

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

Your Honorable Mayor:

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

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

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

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

SEP 26 1991

Honorable Mayor Williams

July 19, 1985

Page 2

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

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

Respectfully submitted,

ERNEST CARLSEN

Assistant Regional Supervisor

EMC/ct

cc: Clyde Nelson

RECEIVED

SEP 26 1985

CONVERSATION MEMORANDUM

DATE Feb. 21, 1984FILE City of Preston TransfersNAME OF PARTY Clyde Nelson, Atty.EMPLOYEE Ernest Carlsen *enc*RE: Applications for Transfer No.'s 13-0026/13-0027/13-0028

Mr. Nelson was contacted by telephone this afternoon to determine if he would be available for water right hearings during the first week of March, 1984. He indicated he would not be available for hearings at that time and that it may be better to postpone these hearings until a fourth application for transfer has been processed. This application is being prepared and he suspects will be submitted in the near future.

Since all four applications are related to the operation of Preston's municipal system for power generation and for supplying water to the city, its logical to delay scheduling a hearing until we can consider all four applications at the same time.

Mr. Nelson asked that these hearings be set as soon as possible after the fourth application has been processed. I indicated that if processing of the application proceeded smoothly, we might be able to schedule the hearing for April.

SEP 26 1981

January 11, 1984

RE: Application for Transfer No. 13-0027 and 13-0028

City of Preston
City Hall
Preston, ID 83263

Gentlemen:

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

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

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

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

Very truly yours,

RONALD D. CARLSON
Eastern Regional Supervisor

RDC:cm

Enclosure

cc: IDWR - State Office

SEP 26 1991

January 11, 1984

RE: Application for Transfer No. 13-0028 CITY OF PRESTON
13-0028 "

Angus Condie
Preston Whitney Irrigation District
Preston, ID 83263

Dear Mr. Condie:

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

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

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

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

Very truly yours,

RONALD D. CARLSON
Eastern Regional Supervisor

RDC:cw

cc: IDWR - State Office
Williams & Castleton, Attornies

RECEIVED
SEP 28 1991

January 11, 1984

RE: Application for Transfer No. 13-0028 CITY OF PRESTON
13-0027 "

Regan Wheeler, President
Cub River Irrigation Company
Lewiston,
Utah 84320

Gentlemen:

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

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

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

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

Very truly yours,

RONALD D. CARLSON
Eastern Regional Supervisor

RDC:cw

cc: IDWR - State Office

SEP 26 1991

APPLICATION FOR TRANSFER OF WATER RIGHT

NO. 13-0028

RECOMMENDATION OF WATERMASTER

Department of Water Resources
Eastern District Office

I, CONAN FOSTER, watermaster of the Cub River Water,

District _____ County of Franklin, State of Idaho,

whose address is Preston, Idaho

have read the attached copy of the application for transfer of water right for Preston

City, and to the best of my knowledge believe the
(name)

application to be true.

A. I hereby endorse the above numbered Application for Transfer and recommend that the Director of the Department of Water Resources approve the transfer subject to the following conditions: _____

OR

B. I do not endorse approval of the above numbered Application for Transfer as requested for the following reasons: The City has not installed a measuring device on the culinary water line at Berquist Springs to adequately supervise this diversion. Also Birch Springs runs below 1.6 cfs. at times.

Dated at Preston, Idaho, this 29th day of December 19 83.

RECEIVED
SEP 26 1991

Conan Foster
(signature)



STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
EASTERN REGION

John V. Evans
Governor

A. Kenneth Dunn
Director

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

January 4, 1984

RE: Application for Transfer No. 13-0027 CITY OF PRESTON
13-0028 "

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

Gentlemen:

Would you please submit an affidavit of publication and certified bill in connection with the above referenced application(s). The legal notice was to have been published in your paper on December 15 and 22, 1983.

Your cooperation in this matter is greatly appreciated.

Very truly yours,

COLLEEN WRAY
Adm. Secretary

RECEIVED

SEP 26 1984

December 12, 1983

RE: Applications for Transfer 13-0027 & 13-0028
CITY OF PRESTON

Conan Foster, Watermaster
Water District No. 13-A
Rt. 3
Preston, ID 83263

Dear Mr. Foster:

Please find enclosed a copy of the above referenced applications and watermaster recommendation forms. Please review the applications and complete the forms, returning them to this office on or before January 3, 1983.

Thank you for your cooperation in this matter.

Sincerely,

BARBARA L. POWERS
Secretary

Enclosures

SEP 26 1981

NOTICE OF PROPOSED CHANGE OF WATER RIGHT

NO. 13-0028

Notice is hereby given that the City of Preston, Idaho, has applied to the Dept. of Water REsources for a change in the point of diversion and source of the waters of Birch Spring tributary to Cub River. The right sought to be changed is evidenced by Decree No. 13-0028 to City of Preston, Idaho in case of Henry T. McEwain vs. Franklin Sugar Co. dated in July 9, 1924 in Fifth Judicial District Court, Franklin County and is recorded as follows:

AMOUNT: All

PRIORITY: 1882

POINT OF DIVERSION: Not specified in Decree

The water is used for municipal purposes within the city limits of Preston, Idaho.

TO BE CHANGED AS FOLLOWS

All (est. 1.6-4) cfs of water will be diverted within the NE $\frac{1}{4}$ NE $\frac{1}{4}$ Sec. 10, NW $\frac{1}{4}$ NW $\frac{1}{4}$ Sec. 11, T. 15S, R. 41E, B.M. Franklin County and the source will be changed from Birch Springs to Bergquist Springs tributary to Cub River.

Any protests against the above proposed change of water right must be filed with the Dept. of Water Resources 150 Shoup Ave., Suite 15, Idaho Falls, Idaho, on or before January 3, 1984.

A. KENNETH DUNN

Director

Published in the Preston Citizen on 12/15 & 12/22/83.

RECORDED
SEP 26 1991

Proofed
12/13/83
BP

STATE OF IDAHO

No 29680

Department of Water Resources

Boise, Idaho,

Sept 19, 1983

RECEIVED
FROMCity of Preston \$100.00
One hundred and no/100 DOLLARS

FOR

2 Transfers	\$ 100	00
	\$	
	\$	
	\$	
	\$	
TOTAL . . .	\$ 100	00

SEP 26 1991

Barbara L. Powers

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
TRANSFER ANALYSIS SHEET

INITIAL REVIEW BY: KEITH C WILSON

1. Right number 13-0028 Applicant City of Preston
2. Type of right: ☒ Decree ☐ License ☐ Claim
3. Purpose of transfer: ☒ Change point of diversion ☐ Add diversion point(s) ☐ Change place of use
☒ Other Change Source from Birch Springs to Bergquist Springs
4. Check:
- a. ☒ Source ☒ Priority ☒ Amount ☒ Purpose ☒ Period of use
- b. ☒ Description of original point of diversion.
- c. ☒ Description of original place of use.
5. Amount of land &/or water transferred:
- a. ☒ All of right.
- b. ☒ Part of right (NOTE! Part B should be filled in only if part of the right is owned by the applicant).
- c. ☒ Check description of point(s) of diversion.
- d. ☒ Check description of place of use.
- e. ☒ Check map (shows p.d. and p.u. after transfer).
- f. ☒ Check for correct signature, notarization, and fee.
- g. ☒ Check proof of ownership of right &/or land from which water is transferred.
- h. ☒ Check for expansion in use of right. Comments _____
- i. ☒ Check for existing water rights from same source, on land water is being transferred to.
Right number(s) _____
- j. ☒ Is use within a Watermaster District? ☒ Yes ☐ No
If yes, what district? 13-A

FINAL PROCESSING REVIEW BY: _____

1. Watermaster recommendation requested on 12-12-83 Received on 1-03-84
2. Is transfer published correctly? ☒ Yes ☐ No
3. Protest received? ☒ Yes ☐ No

RECOMMENDED ACTION

1. ☒ Approve
2. ☐ Deny
3. Conditions* Control of watermaster water Dist 13-A
Adequate measuring device
4. By RDC Date 9/3/91

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF THE APPLICATION	)	
OF THE CITY OF PRESTON, APPLICA-	)	PROTEST OF CUB RIVER
TION NO. 13-0028 TO CHANGE	)	IRRIGATION COMPANY
THE POINT OF DIVERSION OF BIRCH	)	Application No. 13-0028
SPRING ON CUB RIVER.	)	To Change Point of Diversion

COMES NOW, the CUB RIVER IRRIGATION COMPANY, a Corporation organized and existing under the laws of the State of Idaho, and whose address is Lewiston, Utah; that pursuant to the provisions of Idaho law, and any and all other pertinent statutes and rules of the Department it does hereby protest the granting of an application no. 13-0028, of Preston City to change the point of diversion of Birch Springs on Cub River to Berquist Springs. As reasons and grounds for such protest it admits and alleges as follows:

1. That protestant is an irrigation company organized for the purpose of distributing its irrigation waters to its members for the purpose of irrigating land in Franklin County, Idaho, and Cache County, Utah, and has been so engaged for more than 104 years last past.

2. That the CUB RIVER IRRIGATION COMPANY is the owner of a decreed water rights in Cub River as provided in the Decree issued by the Fifth Judicial District in the case of McEwan vs. Franklin County Sugar Company, et al dated July 9, 1924.

3. That the said company protests the application to change the point of diversion filed by Preston City for the reasons that the City has not yet installed an adequate measuring device on its culinary water line at Berquist Springs and also the Company believes that the City has overestimated the minimum flow of Birch Springs since at times the Spring only flows at about 1.0 cfs.

DATED This 30th day of December, 1983.

SEP 26 1991

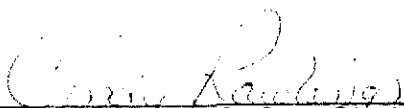
CUB RIVER IRRIGATION COMPANY

By Regan Wheeler
REGAN WHEELER, President

STATE OF IDAHO)
)
County of Franklin)

On this 30th day of December, 1983, before me, the undersigned, a Notary Public in and for said State, personally appeared REGAN WHEELER, known to me to be the President of the corporation that executed the foregoing instrument, an acknowledged to me that such corporation executed the same.

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



NOTARY PUBLIC for State of Idaho
Residing at Preston, Idaho

RECORDED
SEP 26 1991

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF THE APPLICATION OF THE CITY OF PRESTON, APPLICA- TION NO. 13-0028 TO CHANGE THE POINT OF DIVERSION OF BIRCH SPRING ON CUB RIVER.	} } } } } }	PROTEST OF PRESTON WHITNEY IRRIGATION COMPANY Application No. 13-0028 To Change Point of Diversion
---	----------------------------	---

COMES NOW, the PRESTON WHITNEY IRRIGATION COMPANY, a Corporation organized and existing under the laws of the State of Idaho, and whose address is c/o Angus Condie, Preston, Idaho; that pursuant to the provisions of Idaho law, and any and all other pertinent statutes and rules of the Department it does hereby protest the granting of an application no. 13-0028, of Preston City to change the point of diversion of Birch Springs on Cub River to Berquist Springs. As reasons and grounds for such protest it admits and alleges as follows:

1. That protestant is an irrigation company organized for the purpose of distributing its irrigation waters to its members for the purpose of irrigating land in Franklin County, Idaho.

2. That the PRESTON WHITNEY IRRIGATION COMPANY is the owner and successor in interest to decreed water rights in Cub River as provided in the Decree issued by the Fifth Judicial District in the case of McEwan vs. Franklin County Sugar Company, et al dated July 9, 1924.

3. That the said company protests the application to change the point of diversion filed by Preston City for the reasons that the City has not yet installed an adequate measuring device on its culinary water line at Berquist Springs and also the Company believes that the City has overestimated the minimum flow of Birch Springs since at times the Spring only flows at about 1.0 cfs.

DATED This 30th day of December, 1983.

RECORDED
SEP 26 1991

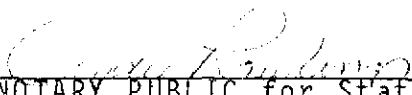
PRESTON WHITNEY IRRIGATION COMPANY

By Blaine J. Gamble
BLAINE GAMBLE, President

STATE OF IDAHO)
)
County of Franklin)

On this 30th day of December, 1983, before me, the undersigned, a Notary Public in and for said State, personally appeared BLAINE GAMBLE, known to me to be the President of the corporation that exeucted the foregoing instrument, an acknowledged to me that such corporation executed the same.

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



NOTARY PUBLIC for State of Idaho
Residing at Preston, Idaho

RECORDED
SEP 26 1991

October 6, 1983

City of Preston, Idaho
City Hall
Preston, ID 83263

Dear Sir:

Enclosed are two typed applications to transfer water rights #13-0027 and 13-0028 that were compiled from information on the original applications that were submitted to this office and the decree.

The original transfer application for Birch Springs (13-0028) had in item A.6a and C.1a "all - 1.6-4" for amount. If this means that the flow of Birch Springs range from 1.6cfs to 4.0cfs then in remarks, instead, it should be noted that 1.6cfs - 4.0cfs represents that flow.

To clarify the transfers it would be helpful to include either a copy of the agreement or an explanation of the agreement with Cub River Irrigation Company that is referred to in the decree.

Please review the typed applications for transfer, sign in front of a notary (the applications must be notarized) and return to this office as soon as possible. Upon receipt of the completed applications for transfer, processing will begin.

Sincerely,

KEITH C. WILSON
Sr. Resource Agent

KCW:jk

Enclosures

RECEIVED

SEP 26 1991