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November 28, 1994

VIA FACSIMILE

Harold Jones
Idaho Department of Water Resources
900 N. Skyline Drive
Idaho Falls, Idaho 83402

RE: City of Preston transfer 13-0026

Dear Mr. Jones,

As a follow-up to our phone conversation this afternoon, I enclose the November 21 letter from Clyde Nelson, City Attorney for the City of Preston, which responds to Tim Luke's letter of November 15 regarding delivery of water rights to the City of Preston, pending final action on transfer 13-0026. Transfer 13-0026 covers the City of Preston's contractual right to 1/18 of the Cub River Irrigation Company's 1880 right.

Mr. Nelson's letter asks that the hearing on the transfer be held, and I understand the Idaho Department of Water Resources (IDWR) Idaho Falls office would like to schedule a pre-hearing conference as soon as possible to allow the City and the protestants to meet informally to discuss their positions. Mr. Nelson and I will both respond to any suggested dates.

From my earlier conversation with Tim Luke, I know that IDWR has not yet received, but expects to receive, a request to extend the term of service for the watermaster for Water District 13-A (which includes the City of Preston's diversions) beyond the end of the 1994

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irrigation season. The City is understandably concerned about any instructions to the watermaster which would disrupt the City's history of uninterrupted non-irrigation season diversions from Bergquist Springs.

Sincerely,


JOSEPHINE P. BEEMAN

JPB:dc

cc: Clyde G. Nelson
Tim Luke, IDWR state office, Boise

jpb/47057

CITY OF PRESTON

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November 21, 1994

State of Idaho
Department of Water Resources
1301 North Orchard Street
Statehouse Mail
Boise, ID 83720-9000

Attention: Tim Luke
Hydrologist, Water Allocations

Dear Mr. Luke:

Thank you for the copy of your letter to Conan Foster, dated November 15, 1994. In reviewing that letter, I would like to comment that the City has historically used 5 cfs of water from Bergquist Springs for approximately 50 to 60 years. That amount has never been decreased. The original applications for transfer of water rights from Ranger and Birch to Bergquist have been approved. The 13-0026 applications constitute an application by Cub River Irrigation Company to transfer 2.5 cfs of water pursuant to paragraph 8 of the decree, which provides that the City is entitled to 2.5 cfs of water from the amount of water to which Cub River Irrigation Company is entitled. As Cub River Irrigation Company is entitled to 45 cfs during the irrigation season, and 12 cfs during the winter season, the City is therefore entitled to 2.5 cfs of water during the winter season from the river.

As to the transfer of the water stock rights to Bergquist Springs, the City filed that sometime ago. It originally called for transfer of 2.82 cfs of water right, which I now believe is in excess of 3 cfs. Again, this includes the water to which Cub River Irrigation has a right during the winter (12 cfs) which the City has historically used, and is therefore entitled to.

Your notation in the letter to Conan Foster that his term may be extended is objectionable to the City. We do feel that a neutral arbiter in this particular case is necessary as the irrigation company feels it has the right to dictate to Conan Foster as to what terms he is to follow. We do not feel that in

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Department of Water Resources

Attn: Tim Luke

his situation he can provide a fair distribution of water. Furthermore, Preston-Whitney Irrigation Company is not going to be hurt by any continuation of the water flowing to City. The overflow from the City's water tanks feeds into Preston-Whitney Irrigation Company's reservoirs. Also, Preston-Whitney generally waits until the spring of the year to accept water into its reservoirs in order to avoid over flooding the reservoir.

Your statement that the water rights of the City may be limited would be contrary to its historical use of water, would be severely detrimental to the City and its residents, and would create extreme damages to the City residents as well as to the City. We would ask that you not allow any such action to be taken, especially where Preston-Whitney is not suffering any damages as a result of the City's diversion, without taking court action upon the same. At least, the hearing which was requested sometime ago should be held as is required.

Sincerely,



CLYDE G. NELSON

CGN:js

c: Jo Beeman w/enc.
City of Preston