

April 15, 2005

CUB RIVER IRRIGATION COMPANY  
45 N. Main Street  
P. O. Box 215  
Lewiston, Utah 84320

Attention: Gail C. Moser, President

and

Gail C. Moser, President  
CUB RIVER IRRIGATION COMPANY  
1864 South 1600 East  
Preston, Idaho 83263

Re: Dispute concerning Water rights to Spring Creek, a tributary to Cub River, which are owned by Eldon C. Golightly, that were formerly owned by Donald D. Golightly (deceased) and Nona Golightly

Gentlemen,

**Golightly's superior water rights**

I have been retained by Eldon C. Golightly to resolve what appears to be a dispute concerning water rights owned by the above-named persons in the Spring Creek. For your convenience I enclose a copy from the Idaho Department of Water Resources of the 5/15/02 and 8/31/03 diversion rights which were formerly owned by Eldon's parents, Donald D. Golightly and Nona Golightly. As you are aware, said water rights are prior and superior to the water rights of substantially all persons who own water rights in the Worm Creek Drainage. For your convenience, I enclose a summary which lists the water rights from the Worm Creek Drainage by priority dates. You will note that the only water rights which are superior to Golightly's rights, are the of 5/07/1880 of Preston Whitney and the and the 2/18/1893 rights of Halls, Tom & Gilbert.

### **Improper diversion pipes**

I am advised that Cub River Irrigation Company installed diversion pipes which seriously interfere with and deprive my clients and about five other nearby farmers of a substantial part of their water and water rights. I understand that the first diversion pipe Cub River installed was authorized by the State of Idaho based on the "Canal Lease" mentioned below, but that the second diversion pipe has not been authorized by the State of Idaho or by my clients.

### **Third-party beneficiary contract**

I have a copy of the 9/26/96 "Canal Lease" between Preston Whitney Irrigation Company and Cub River Irrigation Company, which I understand was filed with the State of Idaho in order for Cub River to obtain permission to install the first of the above-mentioned diversion pipes. I call your attention the Paragraph 6 of that agreement which acknowledges my clients and of said other farmers water rights. In that Paragraph Cub River agreed to "not interfere" with existing water rights and agreed to affirmatively "assist" my clients and said other farmers with respect to their continued to and access to water rights owned by them.

### **Breach of Third-party beneficiary contract**

Paragraph 6 of the "Canal Lease" appears to be a third-party beneficiary contact for the benefit of my clients, the breach of which my clients may be entitled to enforce directly against Cub River. Said Paragraph 6 reads as follows:

**DECREED WATER RIGHTS.** It is understood between the partes that there exists certain users of the Middle Ditch who have decreed water rights but whom are not stockholder of either LESSOR/or LESSEE. The LESSEE **agrees not to interfere with their continued use of the Middle Ditch for their decreed water rights and shall assist in servicing said users of the Middle Ditch** in the same fashion as the LESSOR has done in the past. (Emphasis added).

### **Improper diversion pipes**

I am advised that the diversion pipes installed by Cub River seriously interfere with the water rights of my client and of the other five farmers, and that Cub River appears to not fully recognize and honor the priority of said water rights. Various acts and omissions by Cub River concerning my clients' water rights appear to constitute a breach of my clients' third-party beneficiaries rights under said Canal Lease.

### **Invitation to negotiate a settlement**

I would appreciate your comments and suggestions as to how this apparent dispute can be resolved. When we arrive at terms agreeable to the parties, I suggest that we reduce that agreement to writing. I note that Cub River Irrigation Co. is qualified to do business in Utah. Accordingly, if legal action is necessary to resolve this dispute I expect that it will be filed in the Federal Court in Salt Lake City, Utah.

### **Notice of intent to sue**

I would appreciate a prompt response with your suggestions. If I do not hear from you within 15 days I will assume that you do not intend to negotiate a settlement, in which event I may commence a lawsuit without further notice. I hope this will not be necessary.

Sincerely,

BARKER LAW OFFICE, LLC

By:

\_\_\_\_\_  
Ronald C. Barker

Copy to: Eldon C. Golightly

Enclosures