



## State of Idaho

# DEPARTMENT OF WATER RESOURCES

322 East Front Street • P.O. Box 83720 • Boise, Idaho 83720-0098

Phone: (208) 287-4800 • Fax: (208) 287-6700 • Web Site: [www.idwr.idaho.gov](http://www.idwr.idaho.gov)

November 15, 2007

Eldon Golightly  
2414 S 1600 E  
Preston, ID 83263

C. L. "BUTCH" OTTER  
Governor

DAVID R. TUTHILL, JR.  
Director

Re: Your Correspondence Dated July 25, 2007

Dear Mr. Golightly,

Thank you for visiting Cindy Bird in our Soda Springs field office earlier today to discuss your concerns about the delivery of your water rights on Spring Creek in the Worm Creek drainage. The issue is somewhat complicated but I think we gained a better understanding of your situation and water rights. I apologize for not responding sooner to your correspondence although we have made some attempt to gather additional information and understand this matter further. It is my understanding that the next steps toward resolving your inquiry are as follows:

- You will investigate the Spring Creek drainage to determine if and how the source might have some connection to Worm Creek. I understand you may do this on your own although I think it might be a good idea to include in your visit both Cindy Bird and Troy Foster, Watermaster for Water District 13-A.
- Cindy Bird will contact and arrange a meeting with Troy Foster in an attempt to gain an understanding of how water from the Johnson and Lamont Reservoirs are delivered to patrons of the Preston Whitney Irrigation Company using the "second" pipeline from the "Upper Ditch" to the Cub River Canal. Perhaps Troy can provide further explanation and/or visit several sites with you relative to this inquiry. If Troy is not knowledgeable about this subject matter than Cindy will contact Preston Whitney Irrigation Company representatives. Troy and/or these representatives may also provide further information or knowledge about other aspects of water diversions and delivery in the Worm Creek and Cub River drainages that may help us address your questions.

Cindy will contact you after we meet with Mr. Foster and/or other representatives so that we can follow up with your questions. I assume this will be done after you make your investigation of Spring Creek either with or without Cindy. In the interim, please call Cindy or I if you need further assistance.

Respectfully,

Tim Luke

Water Distribution Section

Cc: Cindy Bird, IDWR Soda Springs  
Ernie Carlsen, IDWR Eastern Region  
Gary Spackman, IDWR Administrator

Gary

RECEIVED

JUL 27 2007

DEPARTMENT OF  
WATER RESOURCES

July 25, 2007

Idaho Department of Water Resources  
322 E. Front St.  
PO Box 83720  
Boise, Idaho 83720-0098

Gentlemen:

It has been suggested to me that I correspond with you regarding my water rights from the Worm Creek Decree.

I have been involved in these rights since 1977 when I found that two neighbors, through their attorney, had filed incorrect dates which led to one of my neighbor's, Mr. Moser, filing on our water right #13-0062. We were able to get these corrected in 1977.

Again in 1995, two neighbors diverted a share of my water into the Cub Canal. Attorney Randy Budge was retained to stop the Moser's from taking my water. By mid summer 1997 we were receiving our water again.

Our water rights once again were being diverted into the Lewiston Canal. This time it was through a Lease Agreement dated September 26, 1996 between Lewiston Canal and Cub River Irrigation Company. This agreement was signed by both irrigation companies. Paragraph 6 of that agreement states that it is understood between the parties that there exists certain users of the Middle Ditch who have decreed water rights but whom are not stockholders 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. The agreement seemed to work so good that in 1999 Lewiston Canal installed their second pipe. This one from the Middle Ditch and could take the 5 to 10 plus feet of water and drop it into the Cub Canal (no filing has been done to divert their water). They were able to divert a large share of our "Worm Creek Decree" water into the Lewiston Cub Canal.

I, again, went to Randy Budge to help me get my water back. He reviewed my paper work, which included copies of proposed findings of water rights - "Worm Creek drainage" colored maps of Preston/Whitney Irrigation Company Ditches that also included the beginning of the Worm Creek Drainage Basin. The diversion pipe was installed under agreement with Preston/Whitney Irrigation Company and Lewiston Canal/Cub Irrigation Company. This first pipe was filed with Department of Water Resources with what appeared to be proper paperwork. However, the second pipe from the Middle Ditch of Preston/Whitney had no filing. Mr. Budge acknowledged my rights and called the Department of Water and set up an appointment with Roger W. Jones, which enabled me to drive on to Idaho Falls.

I have had meetings with the Department of Water, also Pete Peterson, when he was Bear River Water Master. This year I have had the help of Cindy Bird from the Department of Water.

It has been difficult to try to get my water back as decreed under the Worm Creek Basin Decree. It has been difficult to believe that my attorney, Randy Budge, would write in his letter of June 20, 2005 that they could take "waste water" from Preston/Whitney system pursuant to exchange agreement between these two parties and deliver it to the Cub Canal/Lewiston Irrigation Company. I would welcome any help or assistance you can give me in getting my decreed Worm Creek drainage water delivered. I have many documents and letters. They are also on file with the Department of Water in Idaho Falls.

Sincerely,



Eldon C. Golightly  
2414 S. 1600 E.  
Preston, ID 83263

EG/ab

Enclosure: Letter dated April 15, 2005 to Cub River Irrigation Co. from Barker Law Office

cc: Gary Spackman, Administrator  
Tim Luke  
Cindy Bird

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:

**DECREEED 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

208-339-5953  
Troy Foster  
08/15/2007

IDAHO DEPARTMENT OF WATER RESOURCES  
Water Right Report 13-62

WATER RIGHT NUMBER: 13-62

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	DONALD D GOLIGHTLY RT 1 PRESTON, ID 83263
Current Owner	NONA GOLIGHTLY RT 1 PRESTON, ID 83263

Priority Date: 05/15/1902  
Basis: Decreed  
Status: Active

<u>Source</u>	<u>Tributary</u>
SPRING CREEK	CUB RIVER

<u>Beneficial Use</u>	<u>From</u> <u>To</u>	<u>Diversion Rate</u>	<u>Annual Volume</u>
IRRIGATION	4/01 to 7/01	0.200 CFS	36.00 AF
	<u>Total Diversion:</u>	0.200 CFS	36.00 AF

Location of Point(s) of Diversion

SPRING CREEK L4 (NW1/4NW1/4) Sec. 6, Twp 16S, Rge 40E, B.M.  
FRANKLIN County

Place of Use

IRRIGATION

Twp	Rge	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
16S	39E	12	6.0			19.0								40.0			24.0	89.0	
16S	40E	7					2.0	23.0										25.0	
							L1	L2											

Total Acres: 114

Conditions of Approval:

- THIS DECREEED RT. WAS MODIFIED BY THE FINAL WORM CREEK DECREE.  
THIS RT. WHEN COMBINED WITH RTS. 13-0216 & 13-0217 SHALL NOT EXCEED 400.0 AF/YR.

Remarks:

Comments:

IDAHO DEPARTMENT OF WATER RESOURCES

Water Right Report 13-62

Dates and Other Information:

Licensed Date:  
Decreed Date: 5/21/1981  
Enlargement Use Priority Date:  
Enlargement Statute Priority Date:  
State or Federal:  
Owner Name Connector:  
Water District Number:  
Generic Max Rate Per Acre:  
Generic Max Volume Per Acre:  
Decree Defendant: Margurett D Ainscough, et al  
Decree Plaintiff: State of Idaho  
Civil Case Number: 3236  
Judicial District: Sixth District  
Swan Falls Trust or Nontrust:  
Swan Falls Dismissed:  
DLE Act Number:  
Carey Act Number:  
Mitigation Plan: False

Combined Use Limits:

Water Supply Bank:



IDAHO DEPARTMENT OF WATER RESOURCES  
Water Right Report 13-216

WATER RIGHT NUMBER: 13-216

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	NONA GOLIGHTLY RT 1 PRESTON, ID 83263
Current Owner	DONALD D GOLIGHTLY RT 1 PRESTON, ID 83263

Priority Date: 08/31/1903  
Basis: Decreed  
Status: Active

<u>Source</u>	<u>Tributary</u>
SPRING CREEK	CUB RIVER

<u>Beneficial Use</u>	<u>From</u> <u>To</u>	<u>Diversion Rate</u>	<u>Annual Volume</u>
IRRIGATION	4/01 to 11/01	1.800 CFS	400.00 AF
	<u>Total Diversion:</u>	1.800 CFS	400.00 AF

Location of Point(s) of Diversion

SPRING CREEK L4 (NW1/4NW1/4) Sec. 6, Twp 16S, Rge 40E, B.M.  
FRANKLIN County

Place of Use

IRRIGATION

Twp	Rge	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
16S	39E	12	6.0			19.0								40.0			24.0		89.0
16S	40E	7					2.0	23.0											25.0
							L 1	L 2											

Total Acres: 114

Conditions of Approval:

- THIS DECREEED RT. WAS MODIFIED BY THE FINAL WORM CREEK DECREE.  
THIS RT. WHEN COMBINED WITH RTS. 13-0062 & 13-0217 SHALL NOT EXCEED 400.0 AF/YR.

Remarks:

Comments:

IDAHO DEPARTMENT OF WATER RESOURCES

Water Right Report 13-216

Dates and Other Information:

Licensed Date:  
Decreed Date: 5/21/1981  
Enlargement Use Priority Date:  
Enlargement Statute Priority Date:  
State or Federal:  
Owner Name Connector:  
Water District Number:  
Generic Max Rate Per Acre:  
Generic Max Volume Per Acre:  
Decree Defendant: Margurett D Ainscough, et al  
Decree Plaintiff: State of Idaho  
Civil Case Number: 3236  
Judicial District: Sixth District  
Swan Falls Trust or Nontrust:  
Swan Falls Dismissed:  
DLE Act Number:  
Carey Act Number:  
Mitigation Plan: False

Combined Use Limits:

Water Supply Bank:

IDAHO DEPARTMENT OF WATER RESOURCES

Water Right Report 13-217

WATER RIGHT NUMBER: 13-217

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	NONA GOLIGHTLY RT 1 PRESTON, ID 83263
Current Owner	DONALD D GOLIGHTLY RT 1 PRESTON, ID 83263

Priority Date: 04/01/1872

Basis: Decreed

Status: Active

<u>Source</u>	<u>Tributary</u>
UNNAMED STREAMS	WORM CREEK

<u>Beneficial Use</u>	<u>From</u> <u>To</u>	<u>Diversion Rate</u>	<u>Annual Volume</u>
IRRIGATION	4/01 to 11/01	0.430 CFS	184.00 AF
	<u>Total Diversion:</u>	0.430 CFS	184.00 AF

Location of Point(s) of Diversion

UNNAMED STREAMS                      L2 (SW1/4NW1/4)                      Sec. 7,    Twp 16S,    Rge 40E, B.M.  
FRANKLIN County

Place of Use

IRRIGATION

Twp Rge Sec	NE	NW	SW	SE	Totals
16S 39E 12	NE   NW   SW   SE	NE   NW   SW   SE	NE   NW   SW   SE	NE   NW   SW   SE	40.0   40.0   80.0

Total Acres: 80

Conditions of Approval:

1. THIS RT. WHEN COMBINED WITH RT. 13-0216 SHALL NOT EXCEED 400.0 AF/YR. THIS DECREED RT. WAS MODIFIED BY THE FINAL WORM CREEK DECREE.

Remarks:

Comments:

Dates and Other Information:

IDAHO DEPARTMENT OF WATER RESOURCES

Water Right Report 13-217

Licensed Date:

Decreed Date: 5/21/1981

Enlargement Use Priority Date:

Enlargement Statute Priority Date:

State or Federal:

Owner Name Connector:

Water District Number:

Generic Max Rate Per Acre:

Generic Max Volume Per Acre:

Decree Defendant: Margurett D Ainscough, et al

Decree Plaintiff: State of Idaho

Civil Case Number: 3236

Judicial District: Sixth District

Swan Falls Trust or Nontrust:

Swan Falls Dismissed:

DLE Act Number:

Carey Act Number:

Mitigation Plan: False

Combined Use Limits:

Water Supply Bank:

## CANAL LEASE

This Lease Agreement made and entered into this 21<sup>st</sup> day of September, 1996, between PRESTON WHITNEY IRRIGATION COMPANY, an Idaho Corporation, (hereinafter LESSOR), and CUB RIVER IRRIGATION COMPANY, an Idaho Corporation, (hereinafter LESSEE).

WHEREAS, the LESSEE is in need of a method of conveying irrigation water to some of its shareholders, which shareholders can be serviced by an existing canal or ditch (hereinafter "Middle Ditch") owned by LESSOR; and

WHEREAS, the number of shareholders of LESSOR using the Middle Ditch are insufficient to make efficient use of its capacity; and

WHEREAS, the cost of maintenance of the Middle Ditch by the LESSOR could be borne by the LESSEE.

NOW, THEREFORE, for and in exchange of the mutual covenants, promises and conditions set forth herein, the parties hereto agree as follows:

1. LEASED PREMISES. LESSOR agrees to lease to LESSEE the diversion works and that portion of the canal known as the Middle Ditch, from the diversion works on Cub River to a point located in the E $\frac{1}{2}$ SW $\frac{1}{4}$  of Section 5, Township 16 South, Range 40 East of the Boise Meridian, more particularly described and marked in green on the map attached hereto and incorporated herein by reference as Exhibit "A".

2. TERM. The term of this lease shall be without time limitation unless terminated by mutual agreement of the parties or by breach of any of the covenants contained herein.

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208 852 2683

STEVEN R FULLER

3. CONSIDERATION. LESSEE agrees as consideration for the lease of the diversion works and Middle Ditch to do all maintenance and repairs to said the diversion works and the Middle Ditch in order to maintain the free flow of water in a reasonable and efficient fashion. Further, the LESSEE agrees to convey water to the stockholders of LESSOR who currently use said Middle Ditch in the amounts and in the manner prescribed by LESSOR. LESSEE shall provide the services of LESSEE'S water master to regulate and provide said irrigation water to the LESSOR'S stockholders using the Middle Ditch.

4. EMERGENCY USE BY LESSOR. Should an emergency arise, including but not limited to a canal rupture or an inability to deliver water from LaMont Reservoir to the LESSOR'S stockholders currently using water from the LaMont Reservoir, which circumstances are outside the control of LESSOR, the LESSOR may declare such condition an emergency and shall have the right to the use of the Middle Ditch up to whatever amount is needed in order to convey water to LESSOR'S stockholders who have been deprived of their irrigation water by such emergency until such emergency no longer exists.

5. RIGHT OF ACCESS. LESSEE shall have those same rights of access and use of easements (whether created by use or conveyance) to the Middle Ditch which LESSOR enjoys, in order to regulate water usage, make repairs, maintenance and whatever other tasks necessary to keep the irrigation system of the Middle Ditch operating properly.

6. DECREED WATER RIGHTS. It is understood between the parties that there exists certain users of the Middle Ditch who have decreed water rights but whom are not stockholders of either LESSOR/OR LESSEE. The LESSEE agrees not to interfere with their continued use of the Middle Ditch for their decreed water rights

LEASE - PAGE 2

.208 852 2683

STEVEN R FULLER

and shall assist in servicing said users of the Middle Ditch in the same fashion as the LESSOR has done in the past.

7. CLEANING AND ENLARGEMENT. Should the Middle Ditch or the diversion works require repair, cleaning out or enlargement, in order to efficiently and properly convey irrigation water, LESSEE shall be responsible for the costs and expense of such projects.

8. INDEMNITY. LESSEE agrees to indemnify and hold harmless the LESSOR from any accidents, damages, claims or other liability which may arise from the LESSEE'S use and maintenance of the Middle Ditch and diversion works.

9. DEFAULT. Should LESSEE breach any of the terms of this agreement, LESSOR may declare the LESSEE to be in default and LESSOR shall give LESSEE written notice of term of this lease which has been breached by LESSEE and LESSEE shall have sixty (60) days from the date said notice is received to correct said default or breach and if such correction is made, the lease shall continue. In the event a default or breach is declared and notice is given but no correction is made by LESSEE within sixty (60) days from the receipt of said notice by LESSEE, LESSOR may declare this lease to be forfeited and retake possession of the property leased hereunder together with any improvements and additions made by LESSEE to the leased premises.

10. ATTORNEYS FEES. Should either party be required to engage the services of an attorney in order to enforce the provisions of this lease, with or without suit, in bankruptcy or appellate courts, the prevailing party shall be entitled to a reasonable attorneys fee for having to enforce the terms of this agreement.

LEASE - PAGE 3

11. MISCELLANEOUS.

(a) The LESSEE may not sublet the leased premises or any part thereof, without the express written consent of LESSOR.

(b) This agreement shall be binding upon the successors and assigns of each of the parties hereto.

(c) Each of the parties represent that each of their respective Board of Directors have passed the necessary approvals, resolutions or other agreements to authorize the execution of this agreement by their representatives who have affixed their signatures hereto.

DATED this 26<sup>th</sup> day of September, 1996.

PRESTON WHITNEY IRRIGATION COMPANY

By: R. Carl Swain  
President

By: Marianne Stoddard  
Secretary

CUB RIVER IRRIGATION COMPANY

By: Edie C. Maier  
President

By: May M. Gilbert  
Secretary



208 852 2683

STEWEN R FULLER

STATE OF IDAHO )  
 )  
County of Franklin )

On this 26<sup>th</sup> day of September, 1996, before me, a Notary Public in and for said State, personally appeared R. Carl Swainston and Maxine Waddups known or identified to me to be the President and Secretary of the PRESTON WHITNEY IRRIGATION COMPANY that executed the instrument or the persons who executed the instrument on behalf of said PRESTON WHITNEY IRRIGATION COMPANY, and acknowledged to me that such PRESTON WHITNEY IRRIGATION COMPANY executed the same.

Stewen R. Fuller  
NOTARY PUBLIC for State of Idaho  
Residing at: Preston, ID  
Comm. Expires: 2/19/99

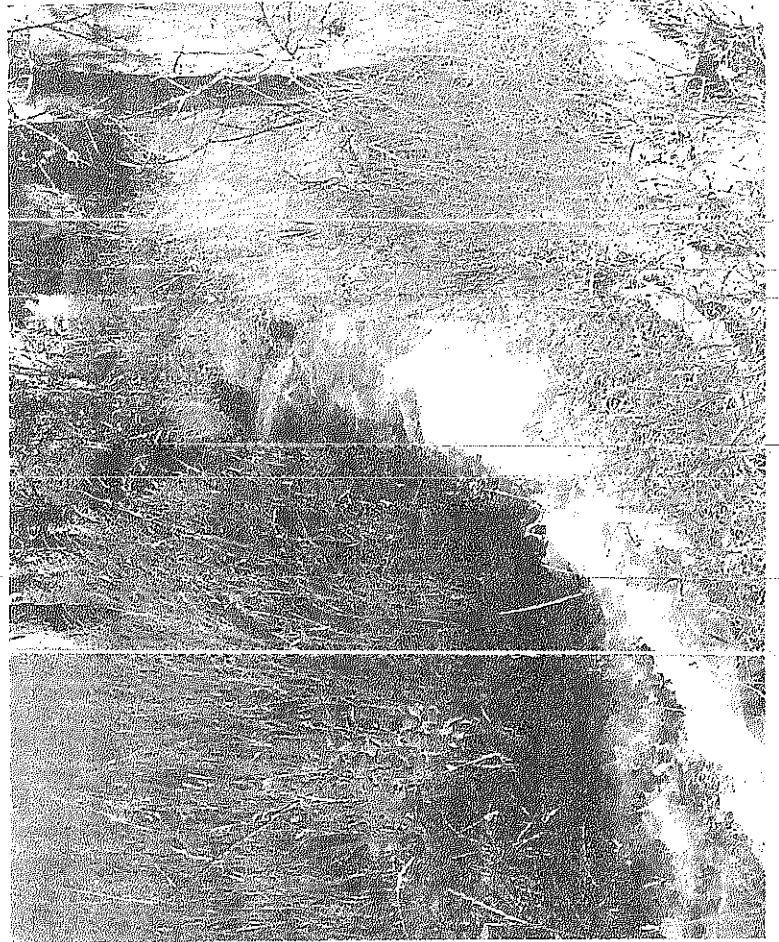
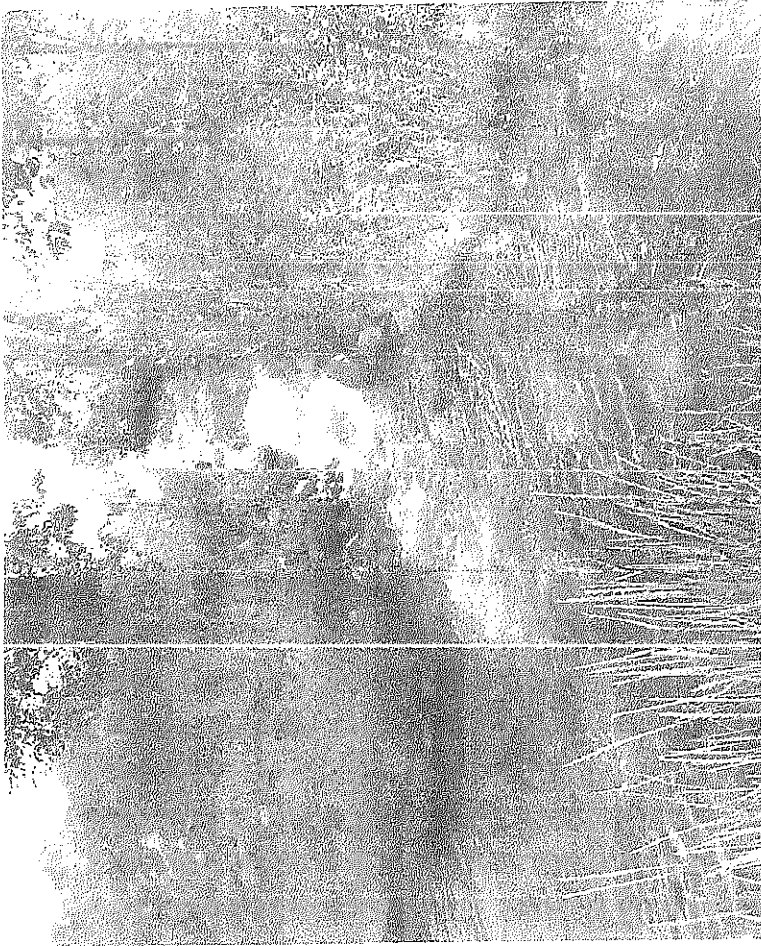
STATE OF IDAHO )  
 )  
County of Franklin )

On this 26<sup>th</sup> day of September, 1996, before me, a Notary Public in and for said State, personally appeared R. Carl Swainston and Max M. Gilbert, known or identified to me to be the President and Secretary of the CUB RIVER IRRIGATION COMPANY that executed the instrument or the persons who executed the instrument on behalf of said CUB RIVER IRRIGATION COMPANY, and acknowledged to me that such CUB RIVER IRRIGATION COMPANY executed the same.

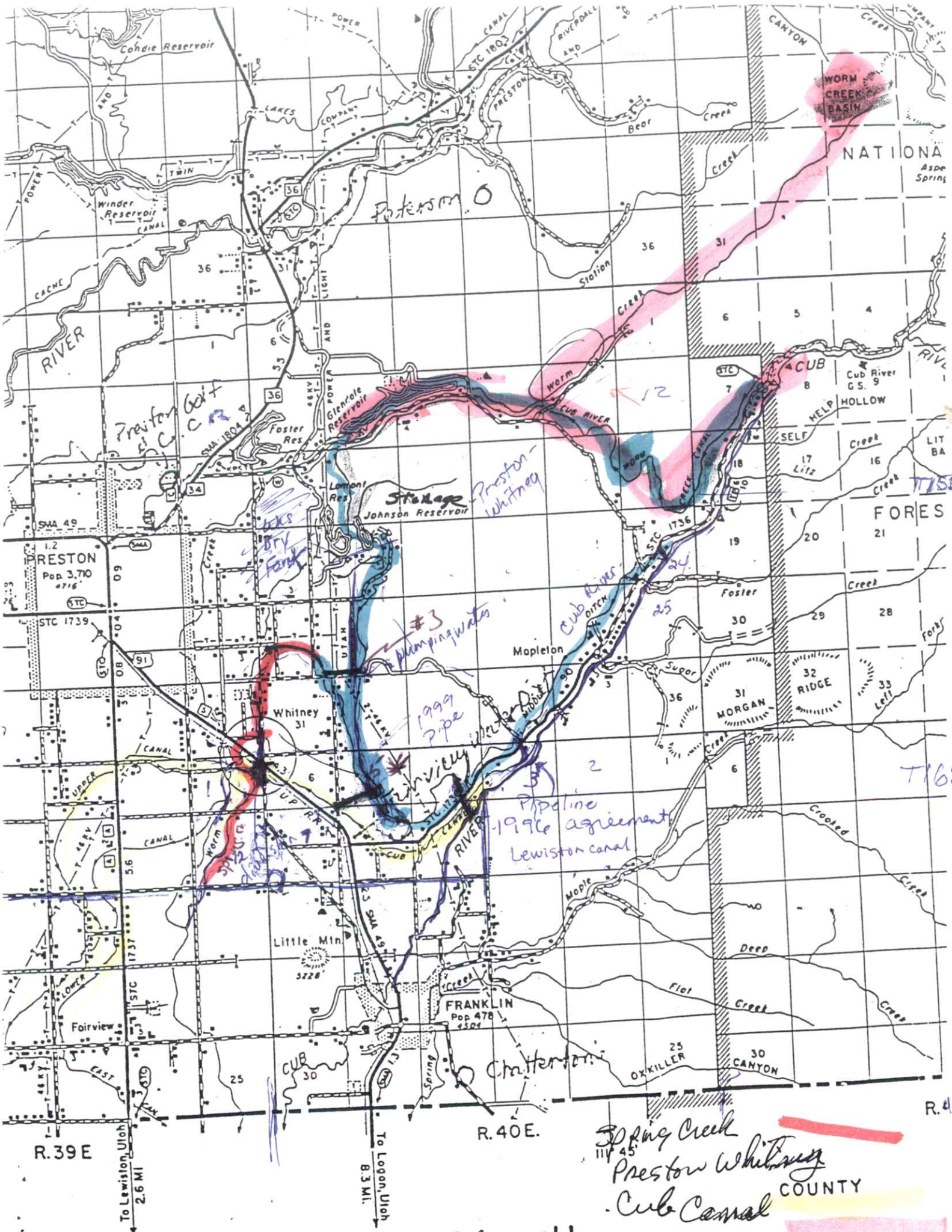
Stewen R. Fuller  
NOTARY PUBLIC for State of Idaho  
Residing at: Preston, ID  
Comm. Expires: 2/19/99

LEASE - PAGE 5

upper ditch  
dropping into  
lower ditch







WORM CREEK BASIN  
NATIONAL ASPE SPRINGS

Preston

Storage Preston-Whitney

#3 Pumping water

1999 pipe

Pipeline 1996 agreement  
Lewiston canal

Spring Creek  
Preston-Whitney  
Cub Canal  
COUNTY

R.39E

R.40E

R.41

To Lewiston, Utah  
2.6 MI

To Logan, Utah  
8.3 MI

PRESTON  
Pop. 3,710  
4716

FRANKLIN  
Pop. 478  
4504

MORGAN

Little Min

Mopleton

Whitney

Johnson Reservoir

Lamon Res.

Foster Res.

Glenale Reservoir

Power and Light

Canal

Power

Lakes

Cowdery

STC 1802

RIVERDALL AND

STC 1803

STC 1804

STC 1805

STC 1806

STC 1807

STC 1808

STC 1809

STC 1810

STC 1811

STC 1812

STC 1813

STC 1814

STC 1815

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