

TO: GARY SPACKMAN

FROM: DANIEL A. NELSON

DATE: 8/22/08

SUBJECT: CUB RIVER ACRES INC. / JAY MC KINZIE INVESTIGATION

I met with Jay McKinzie, and a member of the Cub River Acres Water Users Association (Water Association). The main concern of the Water Association and Mr. McKinzie was the possibility of damage to the spring once David Danforth (Danforth) perfects his water right permit 13-7719.

Danforth is planning on putting a modular home on top of a mountain above the subdivision in question. He filed water right 13-7719 to use water from the same spring used by the Water Association. The Water Association didn't file a protest of the water right, because this is a summer home type subdivision and most of the members do not get the local paper. There is some concern that the construction required to develop the spring might damage the spring or harm their water rights.

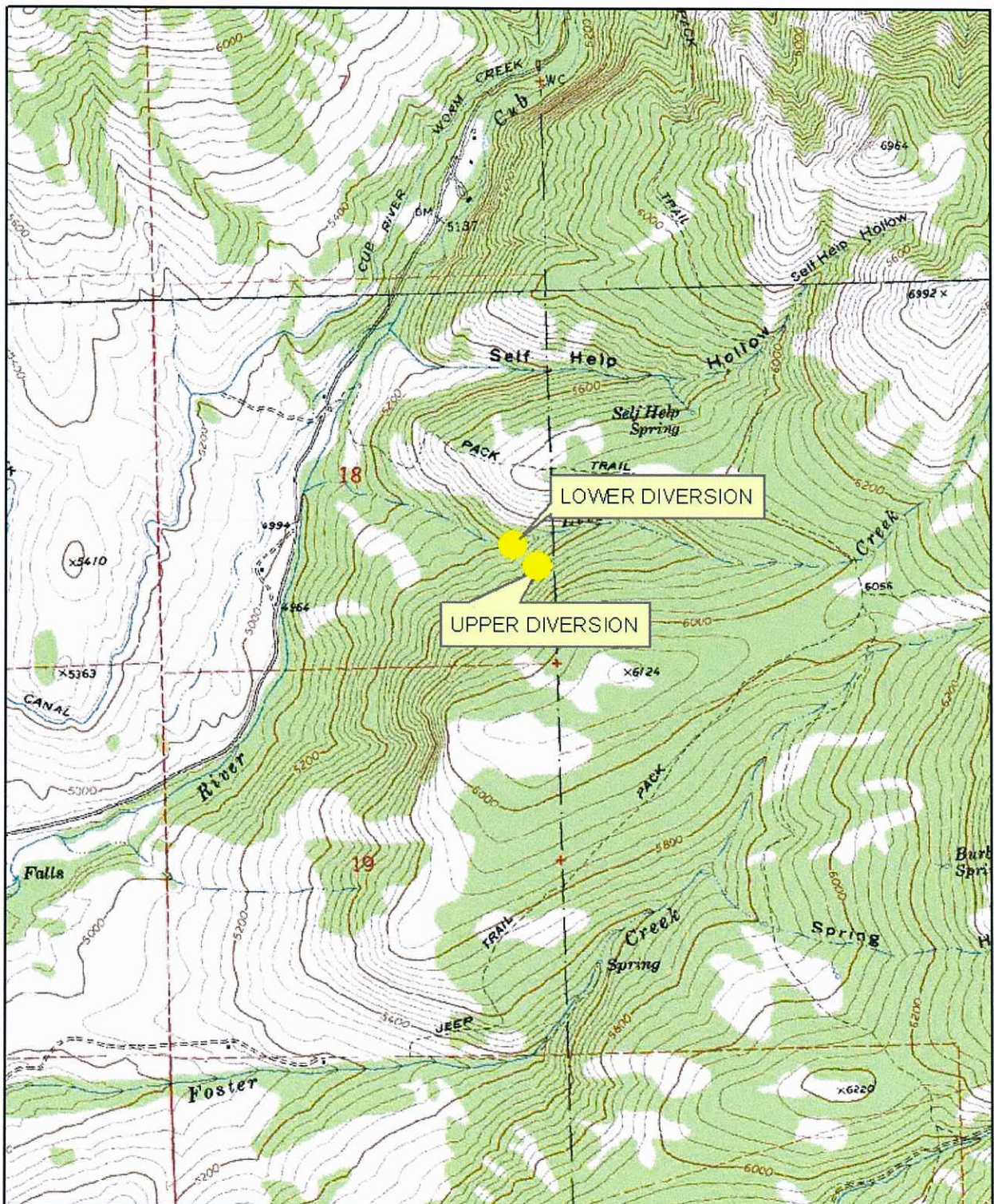
In order for Danforth to put in his home, he will also need to widen the road that is owned by the Water Association. The two parties are currently in negotiations to widen the road and to ensure the spring or the Water Association water rights are not harmed.

I visited the site, and could not give any significant recommendations or advice. The spring box is buried without any visible sign of the diversion other than three PVC pipe with control valves sticking out of the ground. The spring will need to be excavated to determine what can be done to alter or change the diversion. This is considered a single spring, but the water is actually diverted at two locations. The spring runs down a draw on the northeast side of a hill that is southwest of where Litz Creek discharges into the Cub River. The upper spring is midway up the hill and the lower diversion is between 425 to 450 feet down hill to the northwest just above Litz Creek. Both of these springs could be supplemented by runoff during the spring and periodic rainstorm events. The lower spring is the spring that Danforth plans to use for his water right.

The only recommendations or information that I could give Mr. McKinzie or the Water Association, was to work with Danforth to ensure that any construction followed an engineered plan. I informed them that everyone concerned would be better off if an engineer or engineering firm designed a diversion system that included the Water Association and Danforth that could easily be controlled and monitored if needed. I also informed them that it would be beneficial to work through the road issue and water issues together in a single agreement. Mr. McKinzie told me that this was the path they were taking, but they wanted to make sure they weren't missing anything.

The Water Association appears to be on the proper path. There does not appear to be any need for further intervention from our office. Once Danforth constructs his diversion, there could be some follow up to ensure that the construction will not harm the Water Association.

CUB RIVER ACRES WATER USERS ASSOCIATION
SPRING DIVERSIONS FOR WATER RIGHTS 13-7018 AND 13-7514
APPROXIMATE SPRING LOCATIONS
T15S R41E S18



IDAHO DEPARTMENT OF WATER RESOURCES

Water Permit Report 13-7514

WATER RIGHT NUMBER: 13-7514

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	CUB RIVER ACRES INC C/O WALTER ROSS PO BOX 208 PRESTON, ID 83263-0208 (208)852-0155

Priority Date: 12/22/1993

Basis:

Status: Active

<u>Source</u>	<u>Tributary</u>
SPRING	LITZ CREEK

<u>Beneficial Use</u>	<u>From</u> <u>To</u>	<u>Diversion Rate</u>	<u>Annual Volume</u>
DOMESTIC	1/01 to 12/31	0.200 CFS	
	<u>Total Diversion:</u>	0.200 CFS	

Location of Point(s) of Diversion

SPRING	SE1/4NE1/4SE1/4	Sec. 18, Twp 15S, Rge 41E, B.M.
FRANKLIN County		

Place of Use

DOMESTIC

Twp	Rge	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
15S	41E	18									X	X	X	X					
													L3	L4					
15S	41E	19					X	X	X										
								L1	L2										

Conditions of Approval:

- 01J Prior to diversion of water under this right, the right holder shall install and maintain a measuring device and lockable controlling works of a type acceptable to the Department as part of the diverting works.

IDAHO DEPARTMENT OF WATER RESOURCES

Water Permit Report 13-7514

2. This right is diverted from the same spring as Right 13-07028 and when combined with Right 13-07028 shall not exceed a diversion rate of 0.20 cfs.
Whenever the flow in the Cub River Drainage is not sufficient to fill all rights prior in time to this right, groundwater must be pumped and diverted into Cub River under Right No. 13-07021 to allow the continued diversion from the spring.
Place of use is located within Lots 1-4, 6, 8, 11-13, 21, 29-33, 40-42, 46, 52, 55, 65, 73, 75, 79-82, 101, 105, 107-108, 110-111, Cub River Subdivision #1; and Lots 22-23, 25-27, 45, 47-50, 86, 88-91, 104, 112-118, 120-126, Cub River Subdivision #2.
Domestic use is for 15 homes and 47 campsites.
Domestic use does not include lawn, garden, landscape, or other types of irrigation.
3. 020 Use of water under this right may be affected by an agreement between the protestant and the right holder.
4. 005 Use of water under this right is subject to control by the watermaster of State Water District No. &DISTRICT.
5. 004 The issuance of this right does not grant any right-of-way or easement across the land of another.

Remarks:Comments:

1. CHAPMAN 12/22/1993 ADDITIONAL INFORMATION

Comment: This application does not seek additional water. The system can adequately supply the needs. The additional sites should have been listed on the original application and were not.

2. CZIMMERM 4/17/1996 CORPORATE OFFICERS

Comment: The officers of Cub River Acres Inc. are: Walter Ross, President; Mervin Palmer, Secretary; and, Larry Beckstead, Watermaster.

3. SCURTIS 4/30/1996 Proof of Beneficial Use Rcvd

Comment: Proof of Beneficial Use Rcvd

Dates and Other Information:

Permit Proof Due Date: 5/1/1997
 Permit Proof Made Date: 4/29/1996
 Permit Approved Date: 4/22/1996
 Permit Moratorium Expiration Date:
 Enlargement Use Priority Date:
 Enlargement Statute Priority Date:
 Field Exam Date: 6/4/1998
 Date Sent to State Office: 4/19/2007
 Date Received at State Office: 4/23/2007
 State or Federal:
 Owner Name Connector:
 Water District Number: 13A
 Generic Max Rate Per Acre:
 Generic Max Volume Per Acre:
 Swan Falls Trust or Nontrust:
 Swan Falls Dismissed:
 DLE Act Number:
 Carey Act Number:
 Mitigation Plan: False

Combined Use Limits:

IDAHO DEPARTMENT OF WATER RESOURCES
Water Permit Report 13-7514

Water Supply Bank:

IDAHO DEPARTMENT OF WATER RESOURCES

Water Right Report 13-7028

WATER RIGHT NUMBER: 13-7028

<u>Owner Type</u>	<u>Name and Address</u>
Original Owner	THOMAS A ROBINSON RT 3 BOX 607C PRESTON, ID 83263 (208)852-2962
Current Owner	CUB RIVER ACRES INC C/O WALTER ROSS PO BOX 208 PRESTON, ID 83263-0208 (208)852-0155

Priority Date: 03/27/1972

Basis: License

Status: Active

<u>Source</u>	<u>Tributary</u>
SPRING	LITZ CREEK

<u>Beneficial Use</u>	<u>From</u> <u>To</u>	<u>Diversion Rate</u>	<u>Annual Volume</u>
DOMESTIC	1/01 to 12/31	0.200 CFS	10.80 AF
<u>Total Diversion:</u>		0.200 CFS	10.80 AF

Location of Point(s) of Diversion

SPRING	SE1/4NE1/4SE1/4	Sec. 18, Twp 15S, Rge 41E, B.M.
FRANKLIN County		

Place of Use

DOMESTIC

Twp	Rge	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
15S	41E	18									X	X	X	X					
15S	41E	19					X	X	X										

Conditions of Approval:

- Whenever the flow in the Cub River Drainage is not sufficient to fill all rights prior in time to this right, groundwater must be pumped and diverted into Cub River under Right No. 13-07021 to allow the continued diversion from the spring.
Domestic use is for 6 homes and 12 campsites.

Remarks:

IDAHO DEPARTMENT OF WATER RESOURCES
Water Right Report 13-7028

Comments:

Dates and Other Information:

Licensed Date: 4/23/1994
Decreed Date:
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:
Decree Plaintiff:
Civil Case Number:
Judicial District:
Swan Falls Trust or Nontrust:
Swan Falls Dismissed:
DLE Act Number:
Carey Act Number:
Mitigation Plan: False

Combined Use Limits:

Water Supply Bank:

08/18/2008

IDAHO DEPARTMENT OF WATER RESOURCES

Water Permit Report 13-7719

WATER RIGHT NUMBER: 13-7719

Owner Type

Current Owner

Name and Address

DAVID DANFORTH
31238 8TH AVE SW
FEDERAL WAY, WA 98023
(253) 874-3200

Priority Date: 11/01/2007

Basis:

Status: Active

Source

SPRING

Tributary

LITZ CREEK

Beneficial Use

DOMESTIC

From To
01/01 to 12/31

Diversion Rate

0.040 CFS

Annual VolumeTotal Diversion: 0.040 CFSLocation of Point(s) of Diversion

SPRING

SE1/4NE1/4SE1/4

Sec. 18, Twp 15S, Rge 41E, B.M.

FRANKLIN County

Place of Use

DOMESTIC

Twp	Rge	Sec	NE				NW				SW				SE				Totals
15S	41E	18	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
															X				

Conditions of Approval:

1. 071 The domestic use authorized under this right shall not exceed 13,000 gallons per day per home.
2. 26A Project construction shall commence within one year from the date of permit issuance and shall proceed diligently to completion unless it can be shown to the satisfaction of the Director of the Department of Water Resources that delays were due to circumstances over which the permit holder had no control.
3. 187 The irrigation occurring under this domestic use shall not exceed 1/2 acre.
4. X01 Domestic use is for 1 home.

Remarks:

ROD
FAISLER
CARE TAKER / son in law
925 N
Bonneville
RD
203
852-7359
Lives in
CUB ACRES

IDAHO DEPARTMENT OF WATER RESOURCES
Water Permit Report 13-7719

Comments:

1. scox 1/11/2008 POD
Comment: Updated shape

2. scox 1/11/2008 POU
Comment: Updated Shape

Dates and Other Information:

Permit Proof Due Date: 2/1/2013
Permit Proof Made Date:
Permit Approved Date: 2/15/2008
Permit Moratorium Expiration Date:
Enlargement Use Priority Date:
Enlargement Statute Priority Date:
Field Exam Date:
Date Sent to State Office:
Date Received at State Office:
State or Federal:
Owner Name Connector:
Water District Number:
Generic Max Rate Per Acre:
Generic Max Volume Per Acre:
Swan Falls Trust or Nontrust:
Swan Falls Dismissed:
DLE Act Number:
Carey Act Number:
Mitigation Plan: False

Combined Use Limits:

Water Supply Bank:

WATER DISTRIBUTION BUREAU
322 EAST FRONT STREET
PO BOX 83720
BOISE, ID 83720-0098
TELEPHONE NUMBER – (208) 287-4918
FAX NUMBER – (208) 287-6700

**IDAHO DEPT OF
WATER RESOURCES**

Fax

To: Jay R. McKenzie

From: Daniel A. Nelson

McKenzie & McKenzie, P.A.

Fax: (208) 852-3502

Pages: 3 PAGES PLUS COVER PAGE

Phone:

Date: 8/22/2008

Re: Cub River Acres Inc.

CC:

● **Comments:**

Enclosed you will find the conditional Withdrawal of Protest of Application for Water Permit notice for water right permit 13-7514. I was unable to find the actual protest agreement in the file, but it appears as though this notice provides all of the pertinent information. The protest was not filed by Mr. Danforth, but supposedly your clients are suppose to have installed a measurement device for the system and maintained records showing the total amounts diverted under there water rights. This will come in handy during any negotiations you may have with Mr. Danforth, and will also be helpful to the engineer who will design the system.

If you have any further questions or would like to discuss this matter further please contact me at the above address.

Thank you



Daniel A. Nelson
Staff Hydrologist
Water Distribution Bureau

RECEIVED

DEC 11 1995

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

ALSO, MEMBER OF UTAH BAR

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

December 7, 1995

TO: ATTN: RITA
DEPARTMENT OF WATER RES.
EASTERN REGION
900 NORTH SKYLINE
IDHAO FALLS ID 83402

Please Note:

This form letter is used to expedite communications. You need direct your attention only to the items marked.

RE: CUB RIVER ACRES, INC./WATER PROTEST

- ☒ Enclosed is information/pleadings relating to the above matter.
- ☐ For your information.
- ☐ Please review and file in your records.
- ☐ Please record in the county records and return.
- ☐ Please file in the court record of the above case.
- ☐ Please review and call us to discuss over the telephone.
- ☐ Please sign and return ☐ all but one copy.
☐ all copies.
- ☐ Enclosed is the information you requested.

Enclosures: CONDITIONAL WITHDRAWAL OF PROTEST OF APPLICATION FOR WATER PERMIT BY PRESTON WHITNEY IRRIGATION COMPANY.

DEC 29 1995

RECEIVED

DEC 11 1995

Department of Water Resources
Eastern District Office

CONDITIONAL WITHDRAWAL OF PROTEST
OF APPLICATION FOR WATER PERMIT

To: Director, Idaho Department of Water Resources
Eastern Region
900 North Skyline
Idaho Falls, ID 83402

Re: Application for Water Right No. 13-07514
by Cub River Acres, Inc.

Preston Whitney Irrigation Company, Inc. as Protestant, hereby conditionally withdraws its protest for the above application for water right upon the following terms:

1. It is the understanding of Protestant that Cub River Acres, Inc. has installed a measuring device on their water system which can be monitored by the Cub River Water Master.

According to officials of Cub River Acres, Inc., Application for Water Right No. 13-07514 was to be an amendment to License No. 13-07028 done for the purpose of correcting the original License to include additional camp sites which were omitted in the original filing.

2. It is further the understanding of Protestants that the Application for Water Right No. 13-07514 was not intended as an application for additional water right beyond the 0.20 cfs water right license granted to Cub River Acres, Inc. in water right License No. 13-07028.

3. Protestant does not object to the amendment of the original License No. 13-07028 so long as the total appropriation under License No. 13-07028 and Application for Water Right No. 13-07514 does not exceed 0.20 cfs and the prior rights of Protestants are not impaired.

DEC 29 1996

Dated this 1 day of December, 1995.

Preston Whitney Irrigation Co.

By: R. Carl Swannick
Title: President

cc: Cub River Acres, Inc.
c/o Walt Ross

RECEIVED

APR 29 1996