State of Idaho
DEPARTMENT OF WATER RESOURCES
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C. L. "BUTCH" OTTER
Governor

DAVID R. TUTHILL, JR.
Director

August 28, 2008

Eldon Golightly
2414 S 1600 E
Preston, ID 83263

Re: Your Prior Correspondence Regarding Delivery of Water Rights from Spring Creek, and Follow-up to IDWR Visit with you on July 18, 2008

Dear Mr. Golightly,

I am finally writing you as a follow-up to the visit that Ernie Carlsen, Troy Foster and I made with you at your residence on the morning of July 18, 2008. Ernie, Troy and I also inspected most of Spring Creek between Lamont/Johnson Reservoirs and your point of diversion at Whitney along Highway 91. We also toured portions of the diversion/delivery systems and service areas of Cub River Irrigation Company (Cub River Irrigation), the Preston-Whitney Irrigation Co and the Preston-Whitney Reservoir Company (collectively referred to herein as Preston-Whitney). We also toured other parts of the Cub River water district with the Cub River watermaster, Troy Foster. Ernie and I appreciated the time you provided us to explain your concerns about the lack of delivery of Spring Creek water rights that you currently hold.

Before getting into much detail about our visit of July 18th, I wish to raise a few questions or findings concerning the water rights in which you claim to have an interest. Your correspondence to the Idaho Department of Water Resources (Department) dated July 25, 2007 only referenced water right no. 13-62, which is a 1902 priority decreed right from Spring Creek, tributary to Worm Creek. The owners of record for this right as per the Department's records are Donald G and Nona Golightly. This water right is appurtenant to 114 acres in the E1/2NE, the E1/2SE of Section 12, Township 16 South (T16S), Range 39 East (R39E), and the W1/2SW of Section 7, T16S, R40E. Water right 13-216 is a 1903 priority decreed right from Spring Creek, tributary to Worm Creek, and water right 13-217 is an 1872 priority decreed right from an unnamed stream tributary to Worm Creek. Rights 13-216 and 13-217 also show Donald G and Nona Golightly as the owners of record, and both rights are also appurtenant to the same lands as right 13-62. All three rights have a condition that limits the combined annual diversion of water under the three rights to no more than 400 acre-feet per year.

As per the Franklin County Assessor's office, the E1/2SE of Section 12, T16S, R39E is owned by Wheatley Properties LLC. As a result, at least 64 of the 114 acres under the above three water rights are owned by Wheatley Properties. The Franklin County Assessors office further documented that the remaining lands under the water rights in the NE of Section 12, T16S, R39E and the NW of Section 7, T16S, R40E, are owned by E&M Trust, with the co-trustees being Patricia Vaughn and James Townsend of Preston, Idaho. As per our telephone discussion on August 20, 2008 regarding ownership of the rights, you acknowledged that Wheatley Properties owns a portion of the three water rights appurtenant to the E1/2SE Section 12, T16S, R39E. You also advised me that you have a personal interest in the E&M Trust but that Patricia Vaughn and James Townsend are no longer representatives of the trust.

Given the above findings concerning the ownership of the rights and lands, the Department recommends that you update the ownership of water rights 13-62, 13-216 and 13-217 by filing a Notice of Change in Water Right Ownership with the Department. Ownership change forms can be downloaded from the Department's web site using the following address: http://www.idwr.idaho.gov/water/rights/water_rights_forms.htm .

Concerning our visit with you on July 18, 2008, I understood some of your concerns to be as follows:

- You allege that your water rights from Spring Creek are not delivered or satisfied at your point of diversion from Spring Creek.

- You believe that the earthen ditch, identified as the Middle Ditch on the local United States Geological Survey (USGS ) topographical map, which formerly conveyed water from the Lamont and Johnson Reservoirs and which was replaced by a pipeline last year by Preston-Whitney, is a natural channel.

- You allege that the construction of the Preston-Whitney pipeline that replaced the earthen ditch from the reservoirs constitutes an illegal action by Preston-Whitney and interferes with your ability to divert your Spring Creek water rights.

- You allege that a second pipeline installed by Cub River Irrigation, known locally as the Palmer pipeline, out of a ditch from the Cub River that is also identified as the Middle Ditch on the local USGS topo map, was installed without "filing" with the Department.

- You alleged during our visit on July 18th that water from Preston-Whitney that is conveyed through the pipeline that was installed last year is being delivered outside of Preston-Whitney's service area and/or to water users in the Cub River Irrigation Company.

- You alleged during our visit on July 18th and it is implied in your correspondence dated November 19, 2007 to Cindy Bird of the Department that the Johnson and Lamont Reservoirs intercept or interfere with the flow of water to Spring Creek.

- During our phone conversation of August 20, 2008, you stated that water from Preston-Whitney was being injected or discharged to Spring Creek and re-diverted from Spring Creek "around your diversion" this season to satisfy another water user.

I offer the following observations and responses based on our visit of the area on July 18, 2008.

- During our visit we confirmed that there was very little water available to divert at your diversion on Spring Creek. There may have been just a few inches going to your ditch but that quantity would provide little if any beneficial use under your rights. The lack of available water at this location is consistent with Troy Foster's observations over the past few years as well as the observations of IDWR staff member Cindy Bird who visited your Spring Creek diversion last summer. During our visit on July 18, 2008, we found very little water in any portion or reach of Spring Creek above your diversion (note: our

definition of Spring Creek is the creek as located in IDWR water rights and the USGS topo map). This observation is again consistent with the observations of Troy Foster over recent years. The Department understands that very little waste water or return flow from Cub River Irrigation and Preston-Whitney irrigation delivery systems enters Spring Creek above your diversion. The lack of return flow or waste water that may enter Spring Creek appears to be directly related to the general transition of flood irrigation to pressurized sprinkler irrigation within the Cub River Irrigation and Preston-Whitney delivery systems, as well as the installation of pipelines that convey water from Cub River Irrigation's Middle Ditch and from Preston-Whitney's Lamont and Johnson Reservoirs. The Department further understands that the amount of waste water or flow returning to Spring Creek from these irrigation systems was greater before irrigation practices changed and/or irrigation system efficiencies were made starting some ten to fifteen years ago. We believe that the reduction in return flow or waste water to Spring Creek from the Cub River and Preston-Whitney service areas is the primary reason your Spring Creek water rights are not being satisfied.

- The Department does not agree that the earthen ditch used by Preston-Whitney to convey water from the Lamont and Johnson Reservoirs, and identified as the Middle Ditch on the local USGS topo map, is a natural channel or a natural tributary to Spring Creek. This is a man made ditch constructed by Preston-Whitney for purposes of conveying stored water from the Lamont and Johnson reservoirs as well as natural flow that Preston-Whitney diverts from the Cub River and Worm Creek.

- It is the Department's position that Preston-Whitney, or any canal or irrigation company in Idaho, is entitled to pipe or tile their privately constructed delivery ditches. No "filing" with, or authorization from the Department is required for a canal or irrigation company to replace a privately constructed ditch with a pipeline. The Department does not agree with your position that the installation of the pipeline replacing the Preston-Whitney Middle Ditch or the installation of the Palmer pipeline by Cub River Irrigation required a 'filing' with the Department, nor does the Department believe that either pipeline was somehow installed illegally.

- We learned from our visit with the watermaster and subsequent review of water district reports and other documents that you forwarded to the Department that Preston-Whitney uses its' upper Cub River diversion located near the Albert Moser Campground, or the Cub River-Worm Creek Canal (aka the Upper Fill Ditch), to deliver its' 1882 Cub River natural flow priority right no. 13-2. The legal point of diversion for this right is the Middle Ditch from Cub River that Cub River Irrigation now uses under agreement with Preston-Whitney to deliver a portion of Cub River Irrigation's water rights. It is our understanding from the watermaster that Preston-Whitney still uses the Middle Ditch but typically diverts most or all of right 13-2 to the Cub River - Worm Creek Canal, which is then injected to Worm Creek and re-diverted through the Lamont and Johnson Reservoirs to Preston-Whitney's service area. Although Cub River Irrigation obtained an approved water right transfer to add the Middle Ditch as a point of diversion to its' water rights, Preston-Whitney has never filed a water right transfer to add the Cub River - Worm Creek Canal has a legal point of diversion to right 13-2. Preston-Whitney therefore should file a water right transfer to add the Cub River - Worm Creek Canal as a legal point of diversion to right 13-2, update the place of use for the right, and update the

ownership of the right from the Middle Ditch Company to Preston-Whitney Irrigation Company.

- Our visit on July 18, 2008 with Troy Foster also revealed that Preston-Whitney and Cub River Irrigation sometimes engage in a water right exchange. Preston-Whitney water is delivered to certain Cub River Irrigation users at certain times when Cub River is short of water in exchange for an equal amount or volume of water from Cub River Irrigation being delivered to certain Preston-Whitney users at times when Preston-Whitney is short of water. We understood from explanation of Conan Foster, ditch rider for Cub River Irrigation and Preston-Whitney, that the exchange may total a few hundred acre feet of water per year. The details of this exchange are not entirely clear yet to the Department but the Department does not believe that authorization exists for such an exchange nor is there any pending application for exchange of water on file with the Department. The Department therefore intends to instruct the watermaster to discontinue this exchange until the two companies file an Application for Exchange of Water and subsequently receive approval from the Department.

- Relative to your concern about where water is delivered by Preston-Whintey and Cub River Irrigation, the Department has found that Cub River may indeed be delivering water to lands outside of the place of use described under its water rights. In fact we found that Cub River Irrigation delivers shares to a portion of your land in Section 7, T16S, R40E that is not covered by Cub River's water rights. The Department believes that Cub River, and possibly Preston-Whitney may be delivering water to lands that is not consistent with the places of use described by their water rights even though such delivery may have occurred for many years. To this end, the Department will request that both Preston-Whitney and Cub River review their actual service area boundaries with the boundaries identified by their water rights and file any water right transfers, if necessary, to update their respective service areas. The Department will request that Preston-Whitey file a water right transfer at least to update the place of use and ownership for right 13-2.

- We observed no direct diversions of water from Spring Creek during our visit of the creek on July 18, 2008. Since you were not able to physically accompany us on our tour of the creek we could not review with you in the field all of the sites referenced in your November 19, 2007 letter. We did not observe any direct diversion of water from Spring Creek to the Moser pond at the time of our visit. We understand from a previous investigation by Cindy Bird and reports made to her by another local water user that there may have been and perhaps continues to be some unauthorized or out-of-priority diversion on Spring Creek in the vicinity of this pond, and another pond located at or near the Petterborg residence. Although there may be little water to divert in Spring Creek, the Department believes that the creek should be regulated. The Department is prepared to take steps to assure that both Spring Creek and Worm Creek are regulated by the watermaster of Water District 13-A in subsequent years.

- Regarding your allegations that Johnson and Lamont Reservoirs intercept or interfere with the flow of water to Spring Creek. We have no evidence that springs exist in either reservoir but we agree that all or portions of the reservoirs are within the Spring Creek drainage area. We are troubled however that you claim these reservoirs interfere with

your Spring Creek water rights nearly thirty years after the Worm Creek Basin Adjudication and Final Decree. We are not aware that such complaints or objections were raised during the Worm Creek Adjudication and there is no guidance or direction from the Worm Creek Decree regarding this issue.

- Regarding your complaint on August 20, 2008 about the delivery of water from Preston-Whitney to and from Spring Creek. I contacted watermaster Troy Foster who confirmed that storage water from Preston-Whitney was being delivered to and re-diverted from Spring Creek by a Preston-Whitney shareholder along Spring Creek. The irrigated land in question is located within Preston-Whitney's water rights service area. It is the Department's position that Preston-Whitney's water rights do not authorize them to use Spring Creek to convey their water to any of their patrons, even if the water is used within the place of use authorized by Preston-Whitney's water rights. Preston-Whitney's rights do not authorize them to inject and re-divert their water to or from Spring Creek Creek. Consequently, I verbally directed Troy Foster on August 20, 2008 to prohibit Preston-Whitney from using Spring Creek to deliver any portion of their water or water rights.

- During our site visit on July 18, 2008 we identified several concerns regarding administration of water rights in Water District 13-A that are unrelated to any of the issues raised in our meeting with you or in your previous letters. The Department intends to address these other concerns via separate communication directly with the Water District 13-A watermaster and water users between now and the next annual water district meeting.

In summary, I believe the reduced flows in Spring Creek are due primarily to changes in local irrigation practices. Piping private irrigation ditches and converting irrigation systems from flood irrigation to pressurized sprinklers are not actions that require authorization by the Department. The Department will instruct the watermaster, Preston-Whitney and Cub River Irrigation to discontinue the exchange of Cub River water rights until proper authorization is obtained by the Department. We do not believe that discontinuing the exchange will result in additional water to Spring Creek.

The Department will also instruct the companies to review their water rights place of use and file water right transfers to correct their places of use if necessary. Preston-Whitney must file a water right transfer to add the Cub River-Worm Creek Canal as a point of diversion to water right 13-2. All water right transfers are subject to public notification and may be protested by concerned water users or the public. Water right ownership updates must also be filed for the rights formerly held by Donald and Nona Golightly so that the rights are properly split between Eldon Golightly and Wheatly Properties.

The Department will further instruct the watermaster of Water District 13-A that he immediately begin some regular monitoring and regulation of water use on Spring Creek, tributary to Worm Creek. The Department has already instructed the watermaster to prohibit use of Spring Creek to convey Preston-Whitney project water. While these actions are necessary, we do not anticipate that they will result in improving the water supply of Spring Creek.

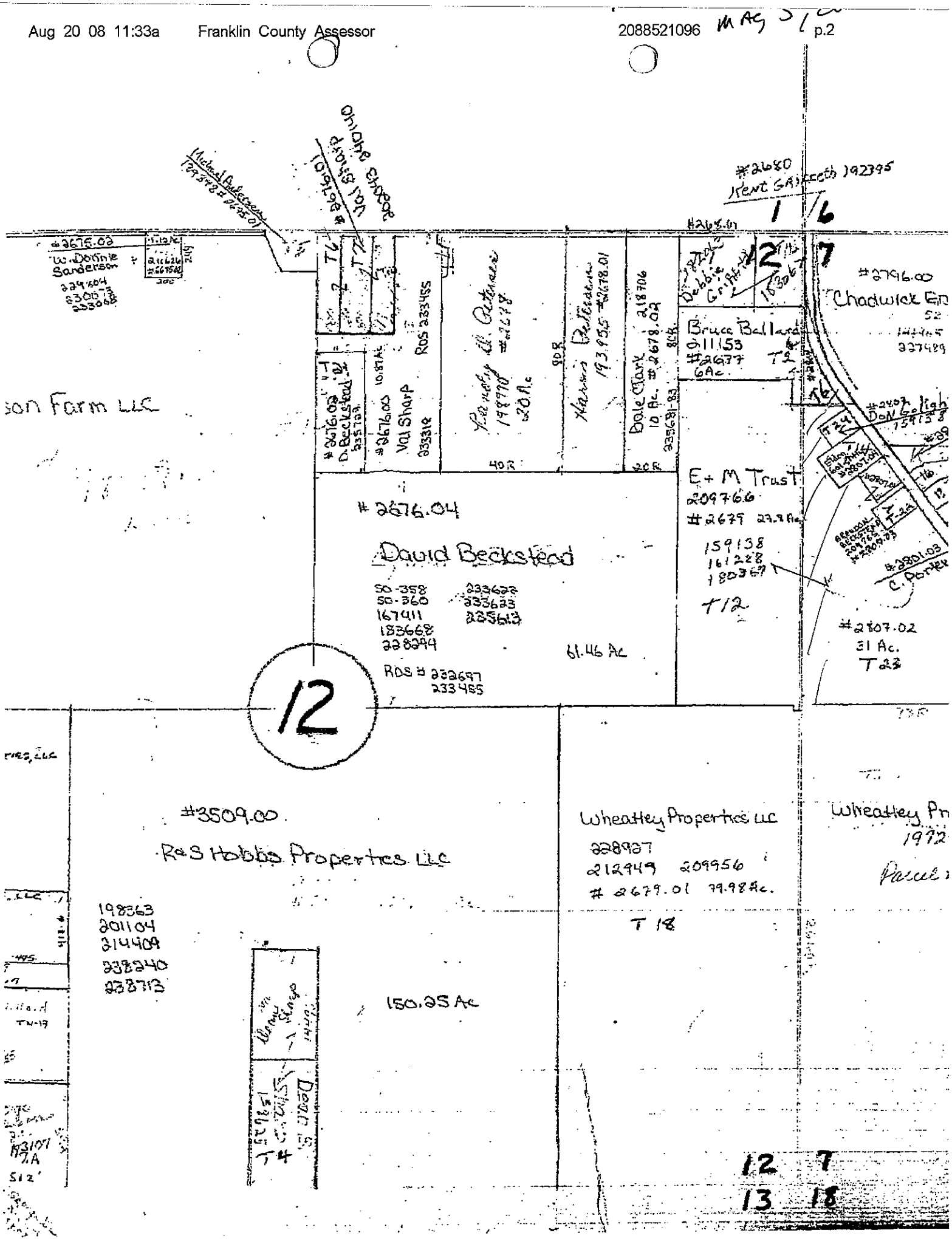
Worm Creek and tributaries were added to Water District 13-A by Order of the Director dated February 25, 1983. The Department therefore will advise the watermaster and water users within the Worm Creek drainage that they are subject to regulation and assessments by Water District13-A. The Department will send notice of the 2009 Water District 13-A annual meeting to right holders within the Worm Creek drainage, as well as other tributaries in the Cub River that are not directly regulated by the watermaster. The Department intends to send one or more orders requiring installation and/or improvement of measuring devices and headgates in the water district.

Please contact Ernie Carlsen or me if you have additional questions related to these issues.

Respectfully,

Tim Luke
Water Distribution Section

Cc: Troy Foster, Water District 13-A Watermaster
Ernie Carlsen, IDWR Eastern Region
Gary Spackman, IDWR Administrator
Cub River Irrigation Company
Preston-Whitney Irrigation Company
Preston-Whitney Reservoir Company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