

# Moffatt Thomas

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Robert E. Bakes, *of counsel*

*Willis C. Moffatt, 1907-1980*  
*Eugene C. Thomas, 1931-2010*  
*Kirk R. Helvie, 1956-2003*

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DEPARTMENT OF  
WATER RESOURCES

June 22, 2011

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Gary Spackman  
Director  
Idaho Department of Water Resources  
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**Re: Preston Whitney Canal Company Transfer Application No. 75705**  
MTBR&F File No. 23868.0000

Dear Gary:

I am writing concerning two items. First, the clients I represent have inquired concerning the status of a decision on the transfer application of Preston Whitney Canal Company. On June 24, 2011, approximately 90 days will have passed since the conclusion of the hearing on this transfer application. My clients would like to know when they can expect a decision.

The second issue is related to the first. My clients have provided me with significant detailed information indicating that the Preston Whitney Canal Company and individual shareholders have continued to improperly expand the number of irrigated acres and place of use of the water rights of the Company. These apparently illegal expansions of the water rights add additional evidence to the historical pattern of ignoring Idaho water law. The factual evidence supporting these concerns are described as follows.

I have enclosed a copy of a hand marked map of the Worm and Cub River drainages, creeks, and laterals, which is similar to the documentation provided during the transfer hearing. The map numbers marking locations correspond to the following narrative.

**Number 1.** The location of water which is flowing from the south and east area of Johnson Reservoir. The flow is approximately 1.5 cfs into Spring Creek Basin.

**Number 2.** An outlet from the Johnson Lamont pipeline which has a headgate capable of discharging approximately 3 – 5 cfs water into Spring Creek. As of June 13, 2011, that discharge was approximately 2 cfs.

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**Number 3.** The outlet on the south end of Johnson Lamont pipeline. That outlet has been open and discharging approximately 12 cfs into Spring Creek. This water measurement was provided to my clients by Kirk Iverson, the watermaster.

Based upon these figures, there is approximately 15.5 cfs of water discharging into Spring Creek from these three sources.

**Number 4.** The location of the Fill Canal that provides water to Johnson/Lamont Reservoirs from the Worm Creek drainage area. The flow in this canal is approximately 6 cfs. Mr. Eldon Golightly checked the flow in this canal during the first week of June and estimated that the flow was 4 cfs.

The difference between 14 cfs discharging from the Johnson Lamont pipeline and the 6 cfs of water coming from the Worm Creek drainage through the Fill Canal to supply the Johnson/Lamont Reservoirs is 8 cfs. This quantity of water should be released to the Spring Creek drainage because no other water is flowing into the Johnson/Lamont Reservoirs except the 6 cfs coming from the Worm Creek drainage via the Fill Canal to Johnson/Lamont Reservoirs.

**Number 5.** The area where two center pivots and one wheel line are being installed to irrigate lands which have never been irrigated previously. Seth and Bert Wheatley, Eldon Golightly, and an elderly neighbor who has lived in the area for his entire life are confident of this fact.

Additionally, my clients have anecdotal information which confirms their belief that the Preston Whitney Irrigation Company and its various shareholders have expanded the place of use of the Preston Whitney water over approximately the last 40 years.

Apparently, cooperation between the Preston Whitney Canal and the Cub River Canal Company has resulted in additional water being provided from the Idaho and Fairview laterals to irrigate several hundred acres of dry farm land which previously did not have irrigation water.

Finally, Eldon Golightly is personally aware of Preston Whitney Canal Company selling shares of water to residential property owners for lawn and pasture irrigation. He is aware of three neighbors located on his street south of his residence which have been offered Preston Whitney water to irrigate their yards. These property owners have connected onto a private pressure line and have run individual lines to their yards. Their names are Keith Porter, Kent Porter, and Casey Porter. This constitutes additional expansion of the place of use of the Preston Whitney Canal Company.

My clients request that the Department undertake a detailed review of these matters and determine the legality of these actions. The level of frustration continues to grow, particularly

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given the substantial amounts of money my clients have invested in the effort to achieve some level of justice in the administration of the water resources of this basin.

I appreciate your attention to this matter and look forward to your response.

Very truly yours,



Scott L. Campbell

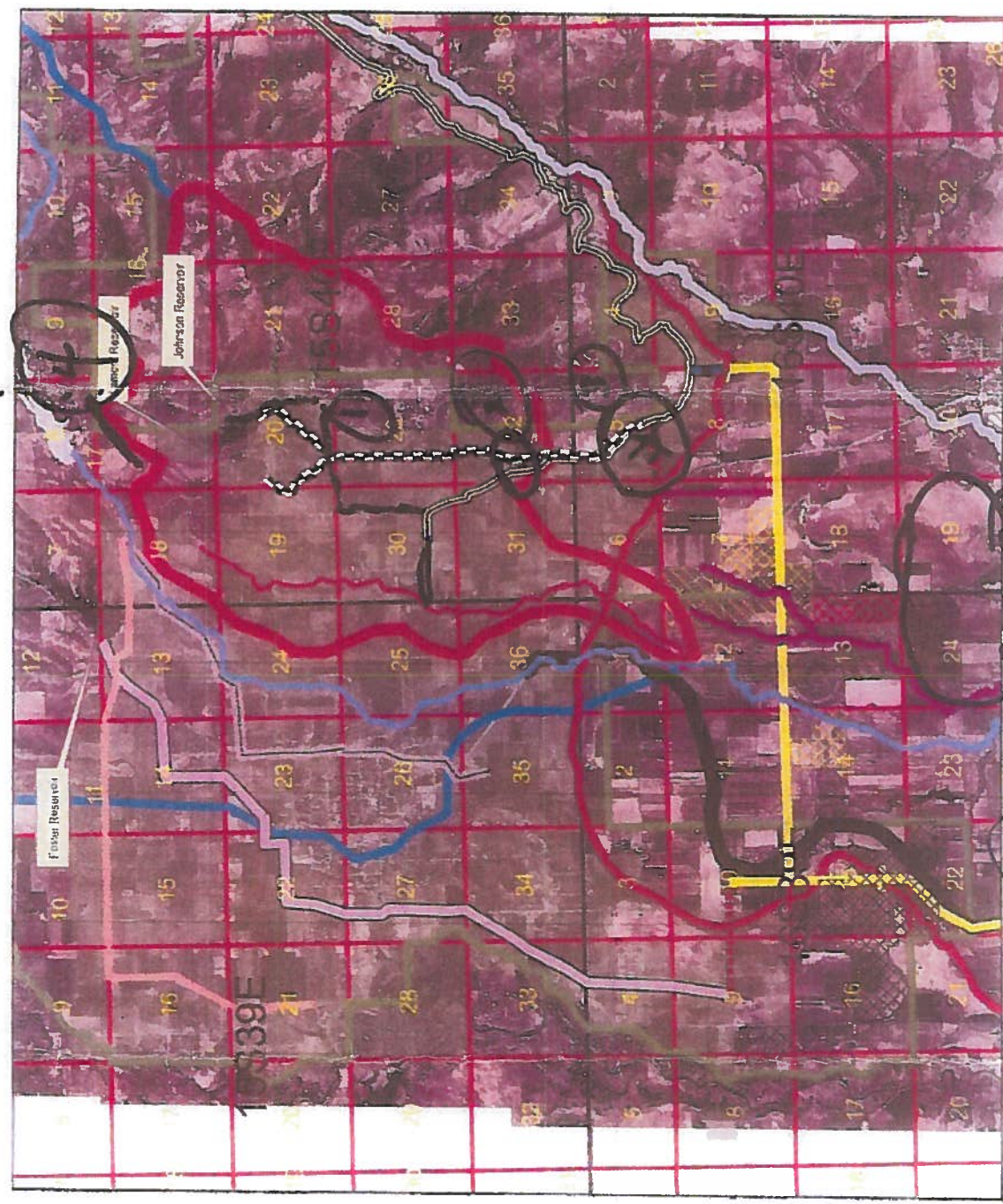
SLC/dbl  
Enclosure

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# WORM AND CUB RIVER DRAINAGES CREEKS AND LATERALS

*Fill ditch*



- Legend**
- PW&CR Stockholders
  - Cub River
  - Worm Creek
  - Spring Creek
  - Kutby Unnamed Stream
  - Idaho Pipe
  - North Lateral
  - Bradford Pipe
  - Johnson Lateral
  - Middle Ditch
  - Connection Pipeline
  - Palmer Pipe
  - Fairview Lateral
  - East Lateral
  - Webster Pipe
  - Cub River Upper Canal
  - Cub River Lower Canal
  - Spring Creek Drainage
  - Worm Creek Drainage
  - Service Area
  - Bert Wheatley WR
  - Gallagher WR
  - Gamble WR
  - May Chadwick
  - CR Bear River Pump St
  - godb. Ir
  - godb. sections
  - PW Water Rights

5 26 27 28 29 30 31 32 33 34 35 36

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