

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

IN RE THE GENERAL ADJUDICATION
OF RIGHTS TO THE USE OF WATER FROM
THE BEAR RIVER BASIN WATER SYSTEM

RECEIVED

JUL 29 2025

IDWR/Preston

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

CIVIL CASE NUMBER: 79576

Claim ID: 13-26B

Date Received: 7/29/25

Receipt No: P002060

Claim Fee: 2590.00 By: MB

Please type or print clearly

1. Name of claimant(s) Cub River Irrigation Company Phone (435) 760-8325
Mailing address PO Box 215, Lewiston, Utah Zip 84320
Street or Box City State
Email address (optional) cubriverirrigation@gmail.com
2. Date of priority: (Only one per claim) April 1, 1880 (Explain priority date selected in Remarks)
Month/Day/Year (YYYY)
3. Source of water supply (Check one) Ground Water () or Other (☒) (a) Cub River
which is tributary to (b) Bear River
4. a. Location of point of diversion is: Township 15S, Range 40E, Section 24,
NW 1/4 of SE 1/4, Govt. Lot _____, BM, County of Franklin
Parcel no. RP02206.01 and RP02767.00
Additional points of diversion, if any: NWNE of Section 3, T16S, R40E
If available, GPS Coordinates _____
- b. If instream flow, beginning point of claimed instream flow is:
Township _____, Range _____, Section _____, _____ 1/4 of _____ 1/4,
Govt. Lot _____, BM, County of _____
Ending point is: Township _____, Range _____, Section _____, _____ 1/4 of _____ 1/4,
Govt. Lot _____, BM, County of _____
5. Description of existing diversion works (dams, reservoirs, ditches, wells, pumps, pipelines, headgates, etc.),
including the dates of any changes or enlargements in use, the dimensions of the diversion works as
constructed and as enlarged and the depth of each well.
Upper diversion is a concrete headgate with fish screen that diverts into a pipe known as the
Canyon Pipe. Lower diversion is headgate with fish screen that diverts into an open canal
known as the Cub River main canal.

6. Water is claimed for the following purposes:

(dates are inclusive MM-DD) (cfs) (acre-feet)

For Irrigation (primary) purposes from 04/01 to 10/31 amount 38.36 or _____

For Irrigation (high water) purposes from 04/01 to 10/31 amount 158 or _____

For Stockwater purposes from 01/01 to 12/31 amount 10 or _____

For _____ purposes from _____ to _____ amount _____ or _____

7. Total quantity claimed (a) 38.36/158 (cfs) and/or (b) _____ (acre-feet)

8. Non-irrigation uses; describe fully (e.g., Domestic: Give number of households served; Stockwater: Type and number of livestock, etc.) Stockwater: (number determined by Cub River Irrigation Company Shareholders)

9. Description of place of use:

- If water is for irrigation, indicate acreage in each subdivision in the tabulation below.
- If water is used for other purposes, place a symbol of use (example: D for Domestic) in the corresponding place of use below. See instructions for standard symbols.

TWP	RGE	SEC	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	

PLACE OF USE LOCATED WITHIN THE SERVICE AREA OF CUB RIVER IRRIGATION COMPANY (SEE ATTACHED MAP)

Parcel no(s) Unknown Total number of acres irrigated 1,530 acres

10. In which county(ies) are lands listed above as place of use located? Franklin County, Idaho, Cache County, Utah

11. Do you own the property listed above as place of use? Yes () No (☒)
If your answer is No, describe in Remarks below the authority you have to claim this water right.

12. Describe any other water rights used at the same place and for the same purposes as described above.
13-222, 13-2066, 13-7279, beneficial use claims, and Bear Lake Storage Water or None ()

13. Remarks (Include an explanation of the priority date selected):

This claim is based on decreed water right no. 13-26B. Irrigated lands within the place of use is owned by shareholders of the Company. Cub River Irrigation Company's irrigation water rights collectively authorize the irrigation of 24,656 acres within its service area. The "high water" diversion rate is subordinate to other "primary" rights pursuant to the McEwan Decree.

Attachments:

1. IDWR Water Right Report 13-26B; 2. IDWR Map 13-26B; 3. Narrative history of Water Right Nos. 13-26B and 13-26D; 4. Map of current POD; 5. Maps of Idaho and Utah POU (served acres); 6. Idaho and Utah Service Area Map; 7. Agreement dated February 27, 1920, between Cub River Irrigation Company and the City of Preston; 8. 1998 Agreement between Cub River Irrigation Company, the City of Preston, and Preston Whitney Irrigation Company

Name of claimant(s) Cub River Irrigation Company

Claim ID _____

14. Basis of claim (Check one) Beneficial Use () Posted Notice () License () Permit () Decree (✓)

Court _____ Decree Date July 9, 1924 Plaintiff v. Defendant Henry T. McEwan v.
Franklin County Sugar Co.
If applicable provide IDWR Water Right Number 13-26B

15. Signature(s)

- (a.) By signing below, I/We acknowledge that I/We have received, read and understand the form entitled "How you will receive notices in the Bear River Basin Water System Adjudication."
(b.) I/We do () do not (✓) wish to receive and pay a small annual fee for monthly copies of the docket sheet.

Number of attachments: 6

For Individuals: I/We do solemnly swear or affirm under penalty of perjury that the statements contained in the foregoing document are true and correct.

Signature of Claimant (s) _____ Date: _____
_____ Date: _____

For Organizations: I do solemnly swear or affirm under penalty of perjury that I am, and that I have signed the foregoing document in the space below as the

President _____ of Cub River Irrigation Company
Agent's title (Please print) Name of organization (Please print)

and that the statements contained in the foregoing document are true and correct.

Signature of Authorized Agent Christopher Karr Date 7-25-25
Printed Name of Authorized Agent Christopher Karr

16. Notice of Appearance:

Notice is hereby given that I, (please print) Thomas J. Budge, Attorney, will be acting as attorney at law on behalf of the claimant signing above, and that all notices required by law to be mailed by the director to the claimant signing above should be mailed to me at the address listed below.

Signature Thomas J. Budge Date 7-28-25
Address PO Box 1391, Pocatello, Idaho 83204-1391, tj@racineolson.com

Name of claimant(s) Cub River Irrigation Company Claim ID _____

HOW YOU WILL RECEIVE NOTICES IN THE BEAR RIVER BASIN WATER SYSTEM ADJUDICATION

All documents filed in the Bear River Basin Water System Adjudication, other than notices of claim, are filed with the court. Notices of claim to water rights filed in the Bear River Basin Water System Adjudication are filed with the Idaho Department of Water Resources (IDWR). Copies of all documents filed in the Bear River Basin Water System Adjudication will not be mailed to all parties (claimants) in the adjudication. Any document filed with the court will be mailed only to those parties who may be directly affected by it.

A monthly docket sheet is prepared by the court, which contains a summary of all documents filed with the court in the previous month and the dates and locations of hearings scheduled for the following three months. The docket sheet will be filed with the district court clerk in each county within the Bear River Basin Water System Adjudication. Copies of a monthly docket sheet may be obtained from any of the offices of IDWR; a small fee may be charged to cover the cost of mailing and/or copying. If you wish to receive an annual subscription of the docket sheet printed each month, you should mark the appropriate place on your notice of claim form. You will be charged a small annual subscription fee by the court to cover the cost of copying and mailing. The docket sheet is also available on the court's web site at:

<http://www.srba.idaho.gov/BRBA20.HTM>

Copies of any document listed on the docket sheet may be obtained from any of the IDWR offices or the court and a small fee may be charged to cover the cost of mailing and/or copying the document.

Copies of all notices of claim filed with IDWR will be available for inspection at all IDWR offices. You may also obtain copies of the notices of claim filed by other claimants, but you may be charged for the cost of copying and mailing. A claimant will not be charged for a copy of his or her own notice of claim, and a person who acquires property with water rights for which a notice of claim was filed will not be charged for a copy of the notice of claim filed by the previous owner.

After the notices of claim have been reviewed, the director will prepare and file a Director's report with the court that will contain the Director's recommendations as to each water right claimed under state law and a copy of each federal reserved water right claimed. A Director's report will be prepared for all claims filed in the Bear River Basin Water System Adjudication. When this report is filed with the court, you will be mailed a notice informing you that the report has been filed. The notice will be sent to the most recent address shown by IDWR's files. Attached to the notice will be a copy of those portions of the report describing the water rights you have claimed. If you do not agree with the way your water right is described, you may file an objection to the report with the court. You can also file an objection if you disagree with the way another claimant's water rights are described, and the notice will tell you where a copy of the full report is available for inspection. The notice will tell you when and where to file your objection.

It is very important that you inform IDWR in writing of any change in your address. This is to make sure that you receive the notices affecting your water rights that are to be mailed by IDWR or the court.

If you are acquiring property with water rights within the boundaries of the Bear River Basin Water System Adjudication in Idaho (either by purchase, gift, inheritance, or other means), it is very important that you inquire of IDWR whether a notice of claim has been filed. If you fail to file a required notice of claim for a water right, that water right may be determined to no longer exist.

If a notice of claim has been filed, it is very important that you file a written notice of change in ownership with IDWR. You may contact IDWR regional offices or the IDWR web site <http://www.idwr.idaho.gov/> for change of ownership forms. The notice of change in ownership form must be accompanied by evidence of the ownership of the property. Again, this is to make sure that you receive the notices affecting your water rights that are to be mailed by IDWR or the court.

Narrative History of Water Right Nos. 13-26B & 13-26D

Water right no. 13-26 was decreed to Cub River Irrigation Company in the so-called McEwen Decree, which granted to the Company a “primary” right to 45 cfs and a “high water” right to 45% of the remaining flow of Cub River (not to exceed 158 cfs) after all primary rights are fill.

Under a 1920 Agreement between the Company and the City of Preston, the Company sold 2.5 cfs of its primary right to the City, leaving the Company with a primary right for 42.5 cfs. In the 1920 Agreement, the Company retained its entire high water right (158 cfs).

The 2.5 cfs sold to the City is currently identified as water right no. 13-26C. The City changed the source, point of diversion, and beneficial use of water right no. 13-26C to Bergquist Springs for municipal use.

In order to increase the amount of water the City can divert from Bergquist Springs for municipal use, the City acquired 96 ¼ shares of stock in the Company, and in 1998 the Company agreed¹ to change the source, point of diversion, and beneficial use of a 4.14 cfs portion of its primary right and a 3.2% portion of its high water right (5.06 cfs) to Bergquist Springs for municipal use. This reduced the Company’s primary right from 42.5 cfs to 38.36 cfs, and it reduced the Company’s high water right from 158 cfs to 152.94 cfs.

The transactions set forth in the 1920 agreement and the 1998 agreement were formally approved by IDWR through a series of water right transfers which were filed in the 1980s and 1990s. The transfer applications were protested, resulting in the 1998 agreement. Following the 1998 agreement, IDWR approved the transfers in accordance with that agreement.

Water right reports issued by IDWR have historically listed only the primary right cfs under the “diversion rate” element of the water right. Current IDWR water right reports accurately reflect ownership of the splits of the primary right component of water right no. 13-26, as follows:

Water right no.	Owner	Primary cfs
13-26C	City of Preston	2.5
13-26B	Cub River Irrigation	38.36
13-26D	Cub River Irrigation	4.14
Total		45

Pursuant to the 1920 agreement and the 1998 agreement, the high water right component of water right no. 13-26 was split as follows:

Water right no.	Owner	High water cfs
13-26C	City of Preston	0
13-26B	Cub River Irrigation	158
13-26D	Cub River Irrigation	0
Total		158

¹ Agreement Among the City of Preston, The Cub River Irrigation Company, and The Preston-Whitney Irrigation Company Regarding the Municipal Water Rights for The City of Preston dated January 12, 1998.

Water right reports issued by IDWR have not historically listed the high water right cfs under the “diversion rate” element of the water right. Some IDWR water right reports and transfer approvals list the high water right cfs in the conditions of the water right, while others do not. For example, the IDWR water right report for 13-26B includes a condition listing the high water right cfs, while the report for 13-26D does not.

There are also errors in some of the past transfer conditions related to the high water cfs. For example, transfer no. 65416 assigned to water right no. 13-26C “7/100ths of stream in excess of high water right up to a maximum of 8.9 cfs.” This is mistaken because the 1920 agreement conveyed only the primary right to the City, “reserving and excepting however all [Cub River Irrigatino Company’s] right to use the excess on high water of said stream.” The Company has not found anything in its records or in the backfiles of IDWR showing a conveyance of 7% of the high water right from the Company to the City. There are other incongruities in IDWR water right reports and transfers concerning the high water cfs. The Company’s claims reflect its ownership of high water cfs as defined in the 1920 agreement and the 1998 agreement.

The incongruities in IDWR backfiles related to the high water cfs is likely due, at least in part, to the high water cfs not being addressed on conditions rather than being defined as part of the “diversion rate” element of the water rights. The Company desires that partial decrees issued in the Bear River Basin Adjudication include both the primary right cfs and the high water right cfs in the “diversion rate” element of the water right, with a condition stating that the high water right diversion rate is subordinate to the other primary rights decreed in the McEwen Decree.

Close

Water Right Report : 13-26-B (Decreed/Active)

Water Right Owners

Owner Type	Name	Address	City	State	Postal Code
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Current Owner	CUB RIVER IRRIGATION CO	PO BOX 215	LEWISTON	UT	84320
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Water Right Status

Priority Date : 4/1/1880

Basis : Decreed

Status : Active

Water Source

Source	Source Qualifier	Tributary	Tributary Qualifier
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CUB RIVER		BEAR RIVER	
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Points Of Diversion (Location)

Source	Township	Range	Section	Govt. Lot	QQQ	QQ	Q	County	Diversion Type
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CUB RIVER	15S	40E	24	0				NW SE FRANKLIN	
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CUB RIVER	16S	40E	3	0				NW NE FRANKLIN	
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Water Uses

Beneficial Use	From	To	Diversion Rate	Volume
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IRRIGATION	4/01	10/31	38.36 CFS	
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TOTAL			38.36 CFS	
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Places of Use

This water right has a [Large Place Of Use](#) 

Irrigation Totals

Total Acres	Acre Limit
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1530.00	
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Conditions

Code Conditions

X27 This right is limited to the irrigation of 1530.0 acres within the authorized place of use in a single irrigation season.

The total instantaneous diversion of water from all points of diversion under Transfer 81841 shall not exceed 38.36 cfs or a total of 134.36 cfs when diversion includes 38% of available high water.

A portion of the place of use is located within Sections 35 and 36, T15N, RR01W; Sections 1, 2, 3, 11, 12, 13, 14, 15, 22, 23, 24, 25 and 26, T14N, R01W; Sections 3, 4, 5, 6, 7, 8, 9, 10, 15, 16, 17, 18, 19, 20, 21, 28, 29, 30, 31 and 32, T14N, R01E, of the Salt Lake Meridian in Cache County, Utah.

R05 Use of water under this right may be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No. 13A.

R43 The right holder shall maintain a measuring device and lockable controlling works of a type approved by the Department in a manner that will provide the watermaster suitable control of the diversion(s).

R59 This right when combined with all other rights shall provide no more than 3.5 afa per acre at the field headgate for irrigation of the place of use.

020 The diversion and use of water described in transfer 5010 may be subject to additional conditions and limitations agreed to by the protestant and the right holder under a separate agreement to which the Department is not a party. Because the Department is not a party, the Department is not responsible for enforcement of any aspect of the agreement not specifically addressed in other conditions herein. Enforcement of those portions of the agreement not specifically addressed in other conditions shall be the responsibility of the protestant and the water right holder.

004 This right does not grant any right-of-way or easement across the land of another.

T07 The right holder shall accomplish the change authorized by this transfer within one (1) year of the date of this approval.

T08 Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.

Licensed Date :
Decreed Date : 7/9/1924
Permit Proof Due Date :
Permit Proof Made Date :
Permit Approved Date :
Permit Moratorium Expiration Date :
Enlargement Use Priority Date :
Enlargement Statute Priority Date :
Application Received Date:
Protest Deadline Date:

State or Federal :
Water District Number : 13A
Generic Max Rate Per Acre : 0
Generic Max Volume Per Acre : 0
Civil Case Number :
Decree Plaintiff :
Decree Defendant :
Swan Falls Trust or Nontrust :
Swan Falls Dismissed :
DLE Act Number :
Cary Act Number :
Mitigation Plan: False

IDAHO DEPARTMENT OF WATER RESOURCES

2/20/2025

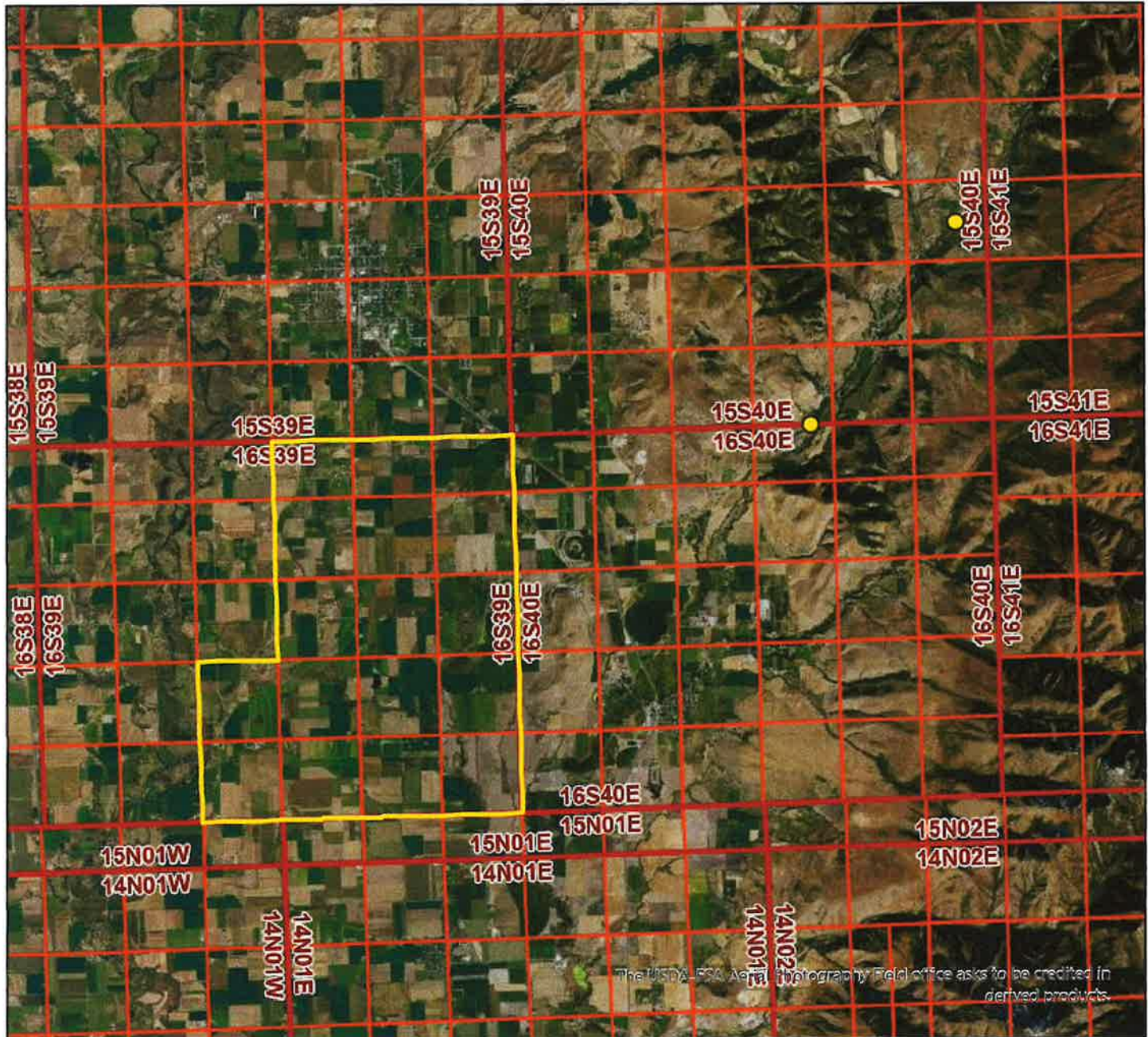
State of Idaho
Department of Water Resources

Water Right

13-26B

IRRIGATION

The map depicts the place of use for the water use listed above and point(s) of diversion of this right as currently derived from interpretations of the paper records and is used solely for illustrative purposes. Discrepancies between the computer representation and the permanent document file will be resolved in favor of the actual water right documents in the water right file.



Date created: 2/20/2025



Cub River Irrigation Company

Legend

- PLS Sections
- Townships
- Place of Use Boundary
- Point of Diversion



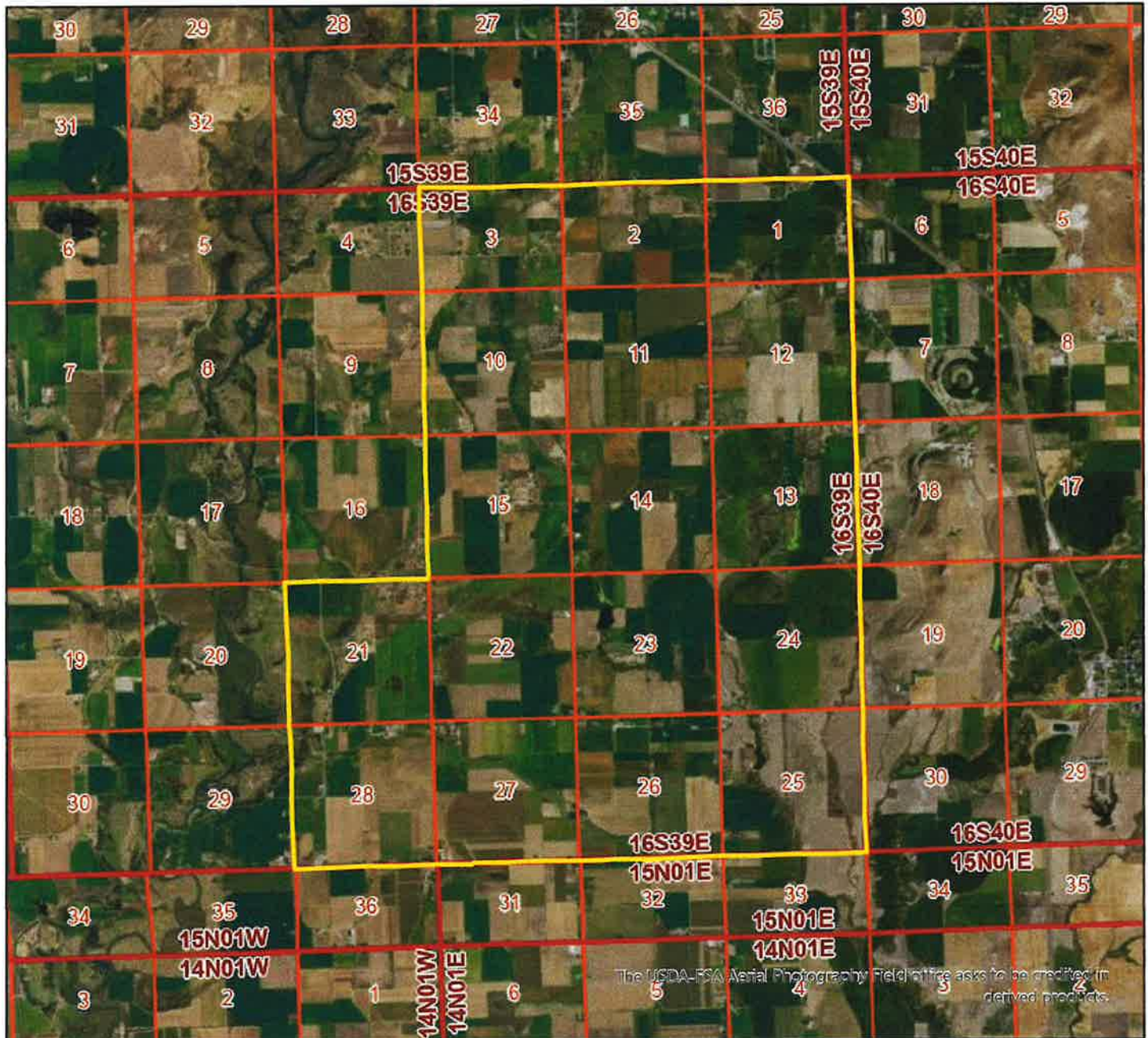
State of Idaho
Department of Water Resources

Water Right

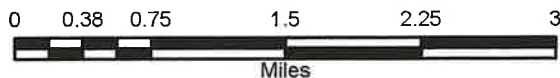
13-26B

IRRIGATION

The map depicts the place of use for the water use listed above and point(s) of diversion of this right as currently derived from interpretations of the paper records and is used solely for illustrative purposes. Discrepancies between the computer representation and the permanent document file will be resolved in favor of the actual water right documents in the water right file.



Date created: 2/20/2025



Cub River Irrigation Company

Legend

- PLS Sections
- Townships
- Place of Use Boundary

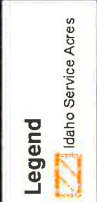


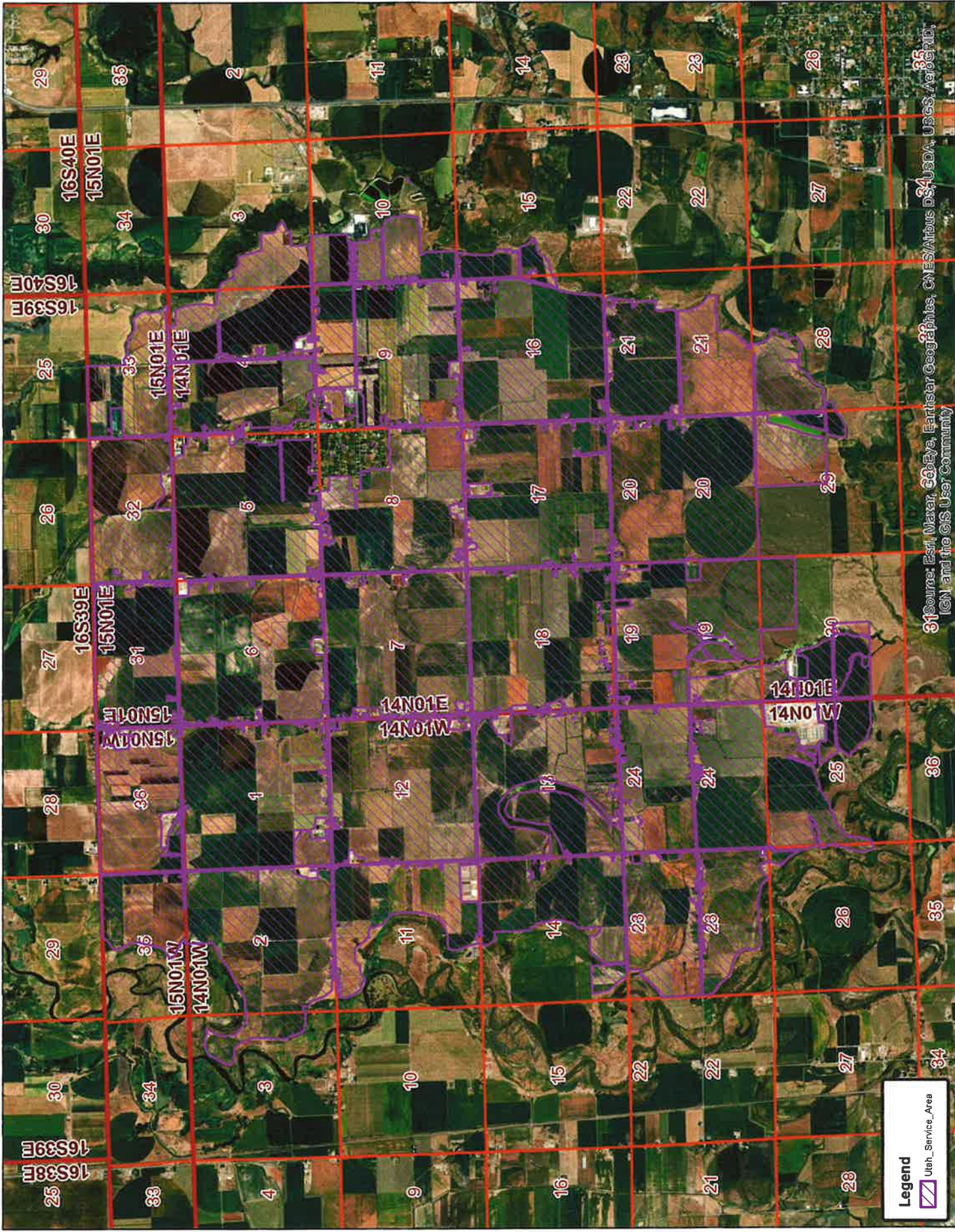
Source: Esri, Maxar, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community, BLM, IDL, IDWR

Source: Esri, Maxar, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community, BLM, IDL, IDWR

Legend
Idaho Service Acres

Source: Esri, Maxar, GeoEye, Earthstar Geographics, CNES/Airbus DS, IGN, and the GIS User Community, BLM, IDL, IDWR

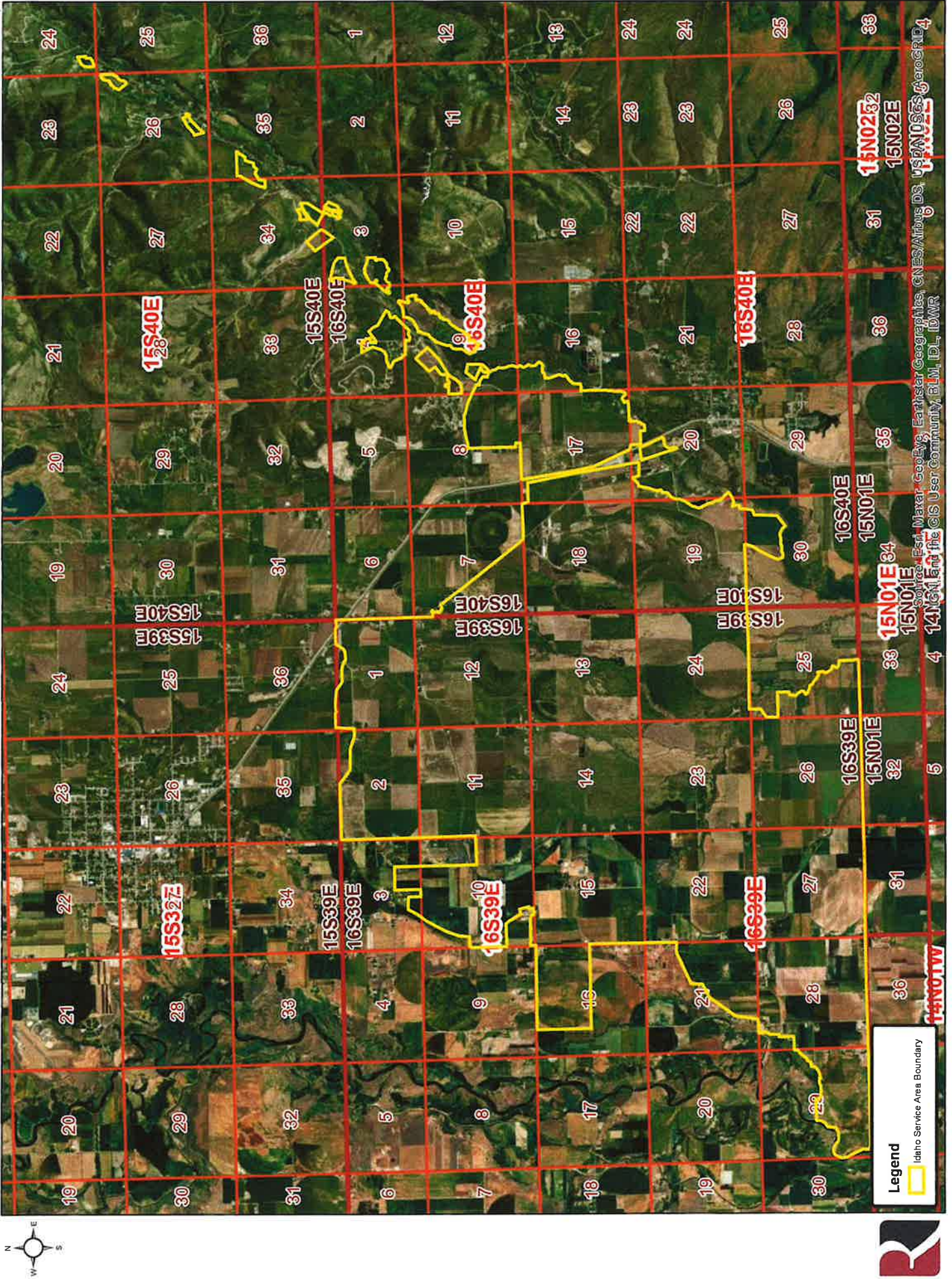




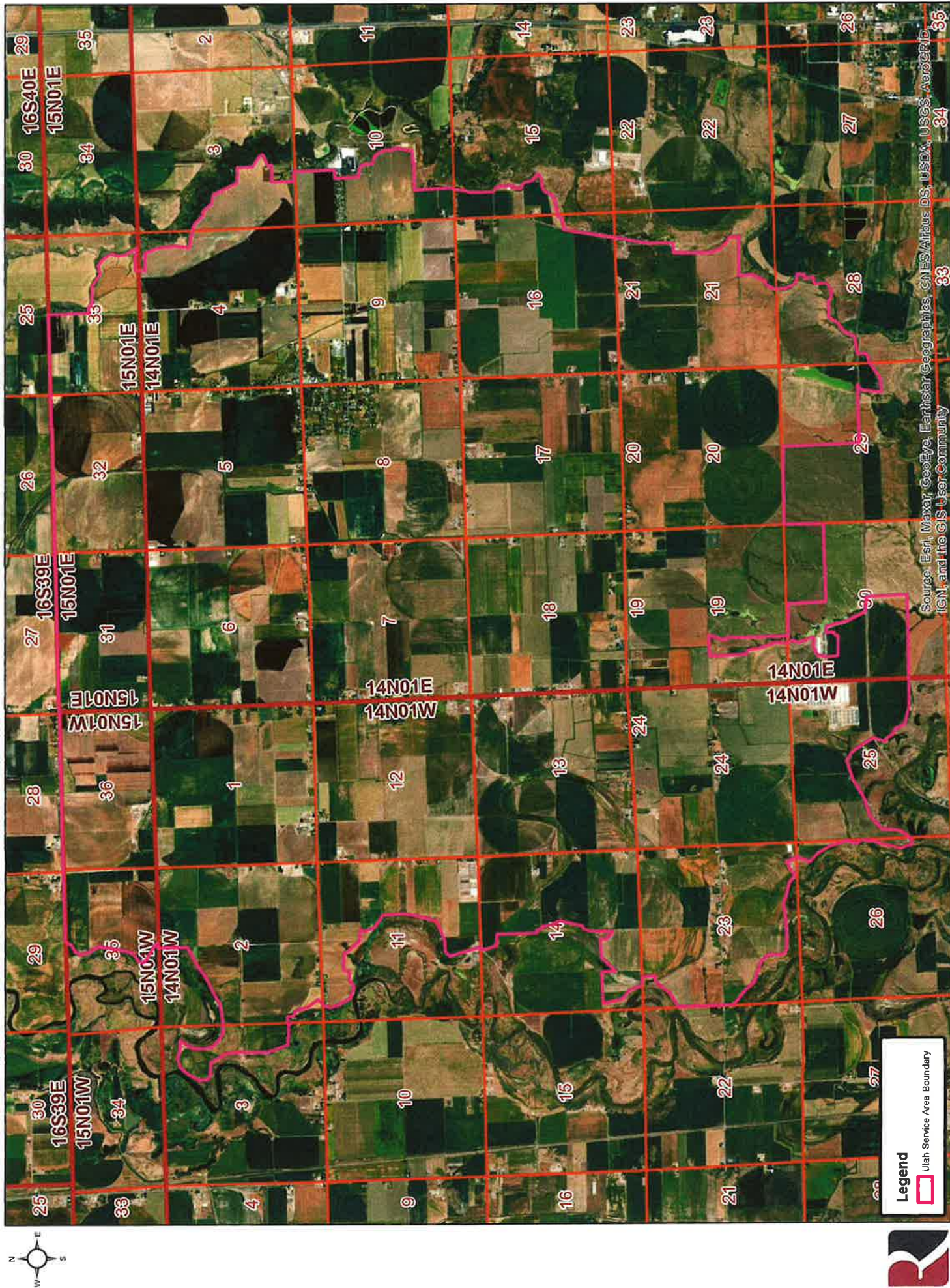
Utah_Service_Area

31Source: Esri, Maxar, GeoEye, Earthstar Geographics, CNES/Airbus DS³⁴USDA, USGS, AeroGRID, IGN, and the GIS User Community

Cub River Irrigation Company - Idaho Service Area Boundary



Cub River Irrigation Company - Utah Service Area Boundary



FEB 2 1984
FEB 2 1984

*See Agreement sent to Preston City by Cub River
Irrigation Co.*

AGREEMENT.

THIS AGREEMENT, Made and entered into this 27th day of February, A.D., 1920, by and between the CUB RIVER IRRIGATION COMPANY, an Idaho corporation, hereinafter called the first party, and the CITY OF PRESTON, a Municipal Corporation, of Franklin County, Idaho, hereinafter called the second party, WITNESSETH:

The second party is a Municipal Corporation of Franklin County, Idaho, and is in need of an additional supply of water for culinary and domestic use of its inhabitants and for municipal purposes.

The first party is the owner of a decreed water right in Cub River in Franklin County, Idaho, as appears from a decree made and entered in the District Court of the Fifth Judicial District of the State of Idaho, in and for the County of Oneida, on January 26th, 1906, in an action therein pending in which the first party was the plaintiff and The Cub River Middle Ditch Company, a corporation, was defendant, and The Franklin Cub River Canal Company, a corporation, et al., were intervenors, which decree is recorded in Record Book "B" of said District Court on page 418, which right entitles the first party to the use at all times of forty-five cubic feet per second of time of all waters of Cub River aforesaid herein referred to as its primary right in addition to certain rights to the high waters of said stream as mentioned in said decree, which primary right was granted a priority as of the year 1880.

The second party heretofore brought an action in the District Court of the Fifth Judicial District of the State of Idaho in and for Franklin County, against the first party seeking to condemn the right of the first party to the water of Ranger Station Spring, a tributary of said Cub River, for the use and benefit of the inhabitants of said city for domestic and culinary purposes, which action is still pending.

A settlement of the said controversies out of court being desired

MICROFILMED
NOV 13 2001

Exhibit #2

by the parties hereto, they do hereby mutually covenant and agree as follows:

Ranger { The first party will execute and deliver to the second party, upon the execution and delivery by it of the deed and the payment by it of the sum hereinafter mentioned, a good and sufficient conveyance of the right to use at all times one-eighteenth (1/18) of the waters of said Cub River to which the first party is entitled under its said primary right, reserving and excepting however all its right to use the excess on high water of said stream, the water to be measured at the intake to be hereafter constructed by the second party either at the said spring or between the spring and Cub River at the option of the second party. The second party will pay to the first party for such conveyance on the delivery thereof the sum of Twenty-eight Thousand Five Hundred (\$28,500.) Dollars, lawful money of the United States of America, and at the same time will execute and deliver to the first party a good and sufficient conveyance of the right at all times to use all of the waters which now flow, and which may hereafter flow out of the sewer and underground drainage systems of the second party as now constructed, and as the same may be re-constructed, enlarged or extended hereafter.

Before the second party diverts any of the waters hereby agreed to be conveyed, it will at its own expense, construct and install at the intake of its water system as above stated, an adequate and suitable measuring device for the measuring of the said waters, and it will at all times hereafter maintain such device in good condition for the accomplishment of such measurement, which device shall at all times be kept by the second party under lock and key. The first party shall be allowed a key thereto, and shall at all times have right of access for the purpose of determining the sufficiency of the device and the quantity of water flowing into the second party's water system.

The second party will proceed at once to the construction of a suitable and adequate filter for the filtration of all the waters flowing or to flow out of its sewer and underground drainage systems, as above stated, and at all times it will cause all of such waters to be so filter

NOV 13 2001

ed that they will be free from offensive odors and from disease producing bacteria, and collect such waters at the filter in a pipe not less than twelve (12) inches in diameter after the waters have been so filtered, and conduct them by such pipe to, and discharge them into the west canal of the first party immediately above the headgate in the William Tanner field, all at the expense of the second party. The second party will also at all times keep such waters free from poisonous constituents and properties.

The above mentioned condemnation proceedings shall be dismissed forthwith upon the merits neither party to recover costs against the other.

The first party heretofore brought an action in the same court against the second party upon the alleged wrongful use, by the second party, of the waters of a certain spring known as Birch Spring alleged to be a tributary of Cub River. The said action shall be dismissed forthwith without a determination by the court or the parties thereto as to whether the second party, either by adverse user of the waters of said spring, or by estoppel, or otherwise, has acquired title to any part of the water right heretofore owned by the first party. Neither party to such action shall recover costs against the other.

The conveyance to be made by the first party to the second party as above provided, shall recite that it is made subject to the fluctuations in the flow of said river, so that should the flow at any time be less than sufficient to supply the full forty-five second feet upon the primary right hereinbefore mentioned, then the party of the second part herein shall be entitled hereunder to one-eighteenth only of the flow available on the said right.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed by their respective officers thereto duly authorized

WITNESSED
NOTARIAL

NOV 13 2001

STATE OF Utah }
County of Cache } SS.

On this 27th day of February, in the year 1920,
before me Christian Jacobson, a Notary Public in and for
said County, personally appeared George Warren
and Marion Leonard known to me to be the President
and Secretary, respectively, of the corporation that executed the fore-
going instrument and acknowledged to me that such corporation executed
the same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day
and year first above written.

My commission expires:

6/19/1921

Christian Jacobson
NOTARY PUBLIC.

Residing at Mountain View

STATE OF IDAHO, }
County of Franklin. } SS.

On this 27th day of February, in the year 1920,
before me W. Brown, a notary public in and for
said County, personally appeared J. S. Marron and W. Chatterton,
known to me to be the MAYOR and CITY CLERK, respectively, of the City
of Preston, a Municipal Corporation that executed the foregoing instru-
ment and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day
and year first above written.

My commission expires:

2/2/22.

W. Brown
NOTARY PUBLIC.

Residing at: Preston, Idaho

MICHO
NOV 13 2011

this 27th day of February, A.D., 1920.

Signed in the presence of

Christian Jacobson

P. J. Evans

CUB RIVER IRRIGATION COMPANY.

By George Warren
PRESIDENT.

ATTEST:

Morris J. Swinyard
SECRETARY.

CITY OF PRESTON

By J. H. Brown
MAYOR.

ATTEST:

M. C. ...
CITY CLERK.

MICROFILMED

NOV 13 2001

201089¹⁻⁷

APR 20 1998

**AGREEMENT AMONG THE CITY OF PRESTON,
THE CUB RIVER IRRIGATION COMPANY, AND THE PRESTON-WHITNEY
IRRIGATION COMPANY REGARDING THE MUNICIPAL
WATER RIGHTS FOR THE CITY OF PRESTON**

This agreement reports the results of negotiations and sets forth the settlement agreement among the City of Preston, the Cub River Irrigation Company and the Preston-Whitney Irrigation Company arising from municipal water use by the City of Preston, Idaho.

In 1983 and 1984, the City of Preston (the "City") applied to the Idaho Department of Water Resources, ("IDWR") to confirm changes in points of diversion and nature of use for three municipal water rights. A transfer application initiates an administrative process for the approval of a change in point of diversion, place of use, or nature of use of an existing water right.

The City has also sought to increase its municipal water supply by purchasing stock from the Cub River Irrigation Company and the Preston-Whitney Irrigation Company ("Preston-Whitney"), and in 1982, Cub River Irrigation Company applied to IDWR to confirm changes in points of diversion and nature of use for 65.5 shares of Cub River Irrigation Company stock purchased by the City to be diverted at Bergquist Springs. In 1995, Cub River Irrigation Company refiled its transfer applications to reflect that the City has purchased a total of 96¼ shares. Preston-Whitney has protested the City's and Cub River Irrigation Company's transfer applications.

CITY OF PRESTON MUNICIPAL WATER RIGHTS

The City of Preston, the Cub River Irrigation Company, and the Preston-Whitney Irrigation Company hereby agree as follows respecting the proposed transfers as they relate to the municipal needs of the City of Preston during the irrigation and non-irrigation seasons.

Municipal Rights During the Irrigation Season (April 1 - October 31):

The City of Preston's municipal water rights during the irrigation season include:

1. 1 cfs from Ranger Springs with priority date of 1879, all of which is legally diverted from Bergquist Spring. Since the 1 cfs with priority date 1879 comes from 1 cfs of the Cub River decreed to Elmer S. Merrill (.67 cfs) and Caroline Allred (.33 cfs), the flow at Ranger Springs does not limit the right. The Merrill and Allred rights from the Cub

River were transferred to the City in 1920 at which time the City of Preston was diverting from Ranger Springs. The source of the Merrill and Allred decreed water rights is the Cub River. This 1 cfs water right has a senior priority date to any rights held by others on the Cub River, including the Cub River Irrigation Company and the Preston-Whitney Irrigation Company.

2. All of the flows of Birch Spring with a priority date of 1882, all of which is also legally diverted from Bergquist Springs. Birch Spring flows directly into the Preston-Whitney canal. The Cub River watermaster measures the flow at Birch Springs on a year round basis and accounts for that flow at the City's Bergquist Spring diversion.
3. One-eighteenth of the primary right of the Cub River Irrigation Company (water right No. 13-00026 for 45 cfs with a priority date of 1880) up to 2.5 cfs is owned by the City in accordance with the February 1920 Agreement between the City of Preston and the Cub River Irrigation Company. For many years, water under this right has been diverted by the City through its pipeline at Bergquist Spring which is a tributary of the Cub River. The approval of the City's pending transfer (No. 3223) would formally confirm the practice of diverting this portion of the Cub River Irrigation Company's water right No. 13-00026 through the City's pipeline at Bergquist Spring.
4. The City's proportionate share of the irrigation season rights of the Cub River Irrigation Company's rights as represented by the shares of the Cub River Irrigation Company held by the City of Preston. At present, the City owns 96 and 1/4 shares of the Cub River Irrigation Company stock which would entitle it to a maximum diversion of 4.14 cfs. In times of shortage, the City's rate of diversion would be prorated based on its shares and the flow of the Cub River. The City's point of diversion is Bergquist Springs and the water is delivered in accordance with the 1880 priority date of the Cub River Irrigation Company's primary irrigation right (13-00026) from the Cub River.
5. The City's proportionate share of the Cub River Irrigation Company's "excess of high waters right" described in the 1924 Henry R. McEwan v. Franklin County Sugar Company decree as represented by the shares of the Cub River Irrigation Company held by the City of Preston. At present, the City owns 96 and 1/4 shares which is 3.2% of the shares of the Cub River Irrigation Company.

Tr. 2753 —

Municipal Rights During the Non-Irrigation Season (November 1 - March 31)**The City of Preston's municipal rights during the non-irrigation season include:**

1. 1.0 cfs from Ranger Springs, year round, with priority date of 1879. This right is actually a Cub River right, as explained above.
2. All of the flows of Birch Spring with priority date of 1882.
3. 2.5 cfs of right No. 13-00034 with priority date April 1, 1880.
4. The right to divert .3 cfs of right No. 13-00034 with priority date of April 1, 1880 based upon the City's ownership of 96 1/4 shares of stock in Cub River Irrigation Company. This right is diverted from Bergquist Springs.

Tv. 4596 —

Tv. 2753 —

Overflow Into Glendale Reservoir and Foster Reservoir

Water diverted at Bergquist Spring, but not used by the City for municipal purposes, is rediverted to the Preston-Whitney reservoir system through the overflow structures below the City's hydropower plant into Glendale Reservoir and Foster Reservoir. Preston-Whitney Irrigation Company agrees that the City's diversion of water from Bergquist Springs and use of said water for hydropower purposes as a sole use or as use in addition to municipal use does not adversely impact the water rights of the Preston-Whitney Irrigation Company, so long as the water diverted in excess of the City's municipal use is delivered into the reservoirs of the Preston-Whitney Irrigation Company via the above described overflow structures. The Cub River Irrigation Company agrees that the City's diversion of water from Bergquist Springs and use of said water for hydropower purposes as a sole use or as use in addition to municipal use does not adversely impact the water rights of the Cub River Irrigation Company during the non-irrigation season.

The City of Preston shall maintain, repair and replace the existing pipeline and slide from the City's hydropower facility into Glendale Reservoir and shall fix and maintain the existing overflow from the City's storage tanks into Foster Reservoir and will haul in riprap to repair the channel from the overflow. If the City of Preston or the Preston-Whitney Irrigation Company wants to relocate either pipeline, each ought to first give notice to, consult with, and obtain the consent of the other and do the relocation or modification at its own expense. Beyond the point of discharge from the City's pipelines, the Preston-Whitney Irrigation Company shall be

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responsible for maintenance, replacement and repair of any facilities of the Preston-Whitney Irrigation Company.

MEASURING DEVICES FOR THE OVERFLOW INTO GLENDALE RESERVOIR AND FOSTER RESERVOIR

The cost of the installation, repair or replacement of appropriate meters or measuring devices at the two overflow structures (into Glendale and Foster reservoirs) below the City power plant shall be borne equally by the Cub River Irrigation Company, the Preston-Whitney Irrigation Company and the City of Preston. The City of Preston did install and will continue to bear all expenses related to the meter at the Albert Moser campground and the meters in the new and old chlorine houses.

FORMATION OF ICE CAP

The City has installed a valve upon its water pipeline from Bergquist Springs which serves the City's municipal system. During winter months, Preston-Whitney Irrigation Company runs water through its canal to form an ice cap or to maintain an open tunnel within the ice which provides a channel for water to be delivered to Preston-Whitney Irrigation Company's reservoirs for partial filling of those reservoirs prior to the time the entire canal is cleared of snow in the spring months. The City agrees that Preston-Whitney Irrigation Company canal shall be entitled to have open said valve to allow water to flow into the Preston-Whitney Irrigation Company canal for 25 days during the winter months, consecutively or intermittently, or for such additional times as necessary depending on weather conditions or emergencies, for the purpose of forming an ice cap within the canal, subject to the following conditions:

1. The opening, closing, and operation of said valve shall be made only by the Mayor and/or Public Works Director or other designee of the City of Preston upon written request of the Preston-Whitney Irrigation Company. The watermaster may accompany the representative of the City of Preston. The opening and closing of said valve shall be accomplished in such a manner so as not to damage any portion of the City of Preston's pipeline or hydroelectric generating facilities.
2. The flow from the valve shall be regulated by the City and the watermaster in such a manner as to most effectively accomplish the purposes stated above and shall be

restricted to an amount which will cause a minimum reduction in electrical generating production at the City's hydroelectric plant located upon the culinary pipeline which in turn will protect the structure and mechanics of the hydroelectric plant.

3. The use of the valve shall be regulated by the City and the watermaster in such a manner as to most effectively accomplish the purposes stated above and shall be restricted to the minimal number of days which will cause a minimum reduction in electrical generating production at the City's hydroelectric plant.

STATUS OF WATER RIGHTS FOLLOWING APPROVAL OF CITY OF PRESTON AND CUB RIVER IRRIGATION COMPANY TRANSFERS

Water Right No. 13-00026 in the amount of 45 cfs with priority date of April 1, 1880 is reduced by the 2.5 cfs under the City of Preston's transfer.

Tr. 4596 Water Right No. 13-00034 in the amount of 12 cfs with a priority date of April 1, 1880 is reduced by the 2.5 cfs in the City of Preston's transfer and the 0.3 cfs in the Cub River Irrigation Company's transfer. The remainder of Water Right No. 13-00034 (9.2 cfs) is forfeited for nonuse following the closure of the sugar company in 1968. 0.3 cfs of Water Right No. 13-00034 with a priority date of April 1, 1880 is based upon the City's ownership of 98-1/4 shares of stock in Cub River Irrigation Company. This right is diverted from Bergquist Springs.

Tr. 2753

WITHDRAWAL OF OBJECTIONS

Preston-Whitney Irrigation Company agrees to withdraw its objections to the transfers of the water rights for the City of Preston and the Cub River Irrigation Company. The following table lists the water right and transfer numbers. All parties agree to support the approval of these transfers before the Idaho Department of Water Resources and in any subsequent court review of the transfers.

	Water Right Number and Original Source	Transfer Number
City of Preston	13-00026 / Cub River	3223
City of Preston	13-00034 / Cub River	4596
Cub River Irrig. Co.	13-00026 / Cub River	2753
Cub River Irrig. Co.	13-00034 / Cub River	2753

201089

THIS AGREEMENT SHALL BE BINDING UPON THE HEIRS, SUCCESSORS
AND ASSIGNS OF THE PARTIES HERETO.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals this
12th day of January, 1998. *[Signature]*

CITY OF PRESTON, IDAHO

ATTEST:

By *Jay B. Hemmick*
MAYOR

Gerry C. Larsen
CITY CLERK

CUB RIVER IRRIGATION COMPANY

ATTEST:

By *Gale C. Mason*
PRESIDENT

Max M. Gilbert
SECRETARY

PRESTON-WHITNEY IRRIGATION COMPANY

ATTEST:

By *R. Cal. [Signature]*
PRESIDENT

Marlene Waddoups
SECRETARY

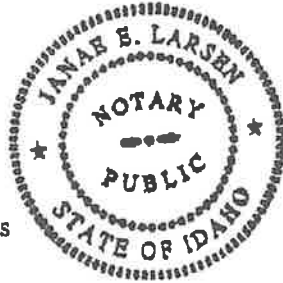
recorded at the request of
City of Preston

STATE OF IDAHO)
)ss
County of Franklin)

9:40 a.m. JAN 13 1998 p.m.

V. ELLIOTT LARSEN, RECORDER
By Larson Deputy
FRANKLIN COUNTY, IDAHO

On this 12th day of January, 1998, before me, the undersigned Notary Public, personally appeared Jay B. Heusser and Jerry C. Larsen, known to me to be the Mayor and City Clerk of the City of Preston, Idaho, whose names are subscribed to the foregoing instrument and acknowledged to me that they executed the same on behalf of said city.



NOTARY PUBLIC FOR IDAHO
Residing at Preston
Commission Expires 4-1-2002

STATE OF IDAHO)
) ss
County of Franklin)

On this 12th day of January, 1998, before me, the undersigned Notary Public, personally appeared Gale C. Moser and Max M. Gilbert, known to me to be the President and Secretary of the Cub River Irrigation Company, whose names are subscribed to the foregoing instrument and acknowledged to me that they executed the same on behalf of said city.



NOTARY PUBLIC FOR IDAHO
Residing at Pratt
Commission Expires 4-1-2002

STATE OF IDAHO)
) ss
County of Franklin)

On this 12th day of January, 1998, before me, the undersigned Notary Public, personally appeared R. Carl Swainston and Maxine Waddoups, known to me to be the President and Secretary of the Preston-Whitney Irrigation Company, whose names are subscribed to the foregoing instrument and acknowledged to me that they executed the same on behalf of said city.



NOTARY PUBLIC FOR IDAHO
Residing at Princeton
Commission Expires 4-6-2002

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AGREEMENT, Page 7



RECEIVED
JUL 29 2025
IDWR/Preston

July 28, 2025

Idaho Dept. of Water Resources
325 East 600 South, Ste 300
Preston, Idaho 83263-4921
marion.beck@idwr.idaho.gov

Sent via Email & U.S. Mail

**Re: Cub River Irrigation Company
Notices of Claims to Water Rights
Bear River Basin Adjudication**

To whom it may concern:

Enclosed please find for filing the originals of twelve (12) Notices of Claims to Water Rights filed on behalf of Cub River Irrigation Company. A check in the amount of \$26,706.00 for the filing fees will be hand delivered to the IDWR office. The fees are broken down as follows:

Claim 1 (13-26D): \$50 flat fee + \$420 (\$100.00 per cfs x 4.14 cfs) = \$470

Claim 2 (13-34A): \$50 flat fee + \$30 (\$100.00 per cfs x 0.3 cfs) = \$80

Claim 3 (13-26B): \$50 flat fee + \$1,530 (\$1.00 per acre x 1,530) + \$1,000 (\$100 per cfs x 10 cfs) for stockwater = \$2,580

Claim 4 (13-222): \$50 flat fee + \$5,560 (\$1.00 per acre x 5,560 acres) = \$5,610

Claim 5 (13-2066): \$50 flat fee + \$6,280 (\$1.00 per acre x 6,280 acres) = \$6,330

Claim 6 (13-7279): \$50 flat fee + (no variable fee for acreage as already claimed) = \$50

Claim 7 (Enlargement): \$50 flat fee + \$11,286 (\$1.00 per acre x 11,286 acres) = \$11,336

Claim 8: \$50 flat fee + (no variable fee for acreage as already claimed) = \$50.00

Claim 9 (Storage Water): \$50 flat fee + (no variable fee for acreage as already claimed) = \$50.00

Claim 10 (Storage Water): \$50 flat fee + (no variable fee for acreage as already claimed) = \$50.00

Claim 11 (Storage Water): \$50 flat fee + (no variable fee for acreage as already claimed) = \$50.00

Claim 12 (Storage Water): \$50 flat fee + (no variable fee for acreage as already claimed) = \$50.00

Total: \$26,706

Please file the originals and email the claim numbers assigned to tessa@racineolson. Thank you for your assistance. Please contact us if you have any questions.

Sincerely,

TESSA SPARROW
Paralegal

Enclosure

c: Cub River Irrigation Company