

**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

CIVIL CASE NUMBER: 79576

Claim ID: 13-26D

Date Received: 7/29/25

Receipt No: P002000

Claim Fee: 470.00 By: MB

IDWR/Preston

**NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW**

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) Bergquist Spring
which is tributary to (b) Cub River
4. a. Location of point of diversion is: Township 15S, Range 41E, Section 10,
NE 1/4 of NE 1/4, Govt. Lot _____, BM, County of Franklin
Parcel no. Unknown
Additional points of diversion, if any: _____
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.
Developed spring with collection box that collects water in an enclosed cement structure
with a head gate into a pipe that delivers water to Preston City. The remainder overflows out
and down to Cub River.

6. Water is claimed for the following purposes:

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

For Municipal purposes from 04/01 to 10/31 amount 4.14 or 589.0

For _____ purposes from _____ to _____ amount _____ or _____

For _____ purposes from _____ to _____ amount _____ or _____

For _____ purposes from _____ to _____ amount _____ or _____

7. Total quantity claimed (a) 4.14 (cfs) and/or (b) 589.0 (acre-feet)

8. Non-irrigation uses; describe fully (e.g., Domestic: Give number of households served; Stockwater: Type and number of livestock, etc.) Municipal

9. Description of place of use:

- a. If water is for irrigation, indicate acreage in each subdivision in the tabulation below.
- b. 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	

Parcel no(s). Unknown Total number of acres irrigated NA

10. In which county(ies) are lands listed above as place of use located? Franklin

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.
13-34A, and April 1, 1880 water right from Bergquist Spring or None ()

13. Remarks (Include an explanation of the priority date selected):
This claim is based on decreed water right no. 13-26D. The City of Preston is a stockholder in Cub River Irrigation Company. Water available under the City's shares of stock are delivered via Bergquist Spring.

Attachments:

1. IDWR Water Right Report 13-26D

2. Current POU & POD

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 13-26D

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: 2

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 Karra Date 7-25-25
Printed Name of Authorized Agent Christopher Karra

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 7-20-25

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.

Close

Water Right Report : 13-26-D (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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BERGQUIST SPRING		CUB 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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BERGQUIST SPRING	15S	41E	10	0	SE	NE	NE	FRANKLIN	
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Water Uses

Beneficial Use	From	To	Diversion Rate	Volume
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MUNICIPAL	04/01	10/31	4.14 CFS	589.00 AFA
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TOTAL			4.14 CFS	589.00 AFA
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Places of Use

Printable View

Paged View

Conditions

Code Condtions

Rights 13-26D and 13-34A when combined shall not exceed a total annual maximum volume of 678.8 af.

Use of water under this right may be affected aby an agreement between the protestant and the right holder.

R05 Use of water under this right will be regulated by the watermaster of State Water District No. 13-A, Cub River.

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.

X53 Diversion of water from Berquist Spring is limited to those times water is available for diversion under this right and priority from Cub River.

Prior to diversion of water under this approval, the right holder shall provide a means of measurement acceptable to the watermaster for measuring the flow in Cub River at the oiriginal point of diversion.

X57 Approval of Transfer 65416 does not grant any right-of-way or easement for use of a delivery system owned by person(s) other than the right owner.

Place of use is located within the City of Preston and surrounding service area.

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.

Dates

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:

Other Information

State or Federal :
Water District Number: 13A
Generic Max Rate Per Acre : 0
Generic Max Volume Per Acre : 3.5
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

1/23/2025

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.



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

Cub River Irrigation Company Municipal POU



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



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