

MEMORANDUM

TO: Glen Saxton

FROM: TIM LUKE

DATE: November 9, 1994

RE: City of Preston Water Rights 13-00027 & 13-00028, Approved Transfers

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On November 8, Skip Jones and I each received a call from the City of Preston's attorney, Clyde Nelson, regarding the above rights. Skip also received a call from the Cub River watermaster, Conan Foster. We were told that the watermaster was planning to regulate the City's spring diversion, Bergquist Springs. Questions were raised about the watermaster's term of service and the extent of regulation on Bergquist Springs.

The above rights have long been diverted from Bergquist Springs by the City, but the rights were originally decreed from Ranger and Birch Springs respectively. The City filed transfers in 1983 to make the changes formal. The transfers were finally approved in 1991. You will note from review of attached files that right 13-0028 does not have a rate of diversion associated with it. The decree simply stated that the City had the right to divert all of the flow of Birch Springs.

The watermaster and several canal companies who divert Cub River water for storage purposes are under the belief that the City's diversion from Bergquist Springs is to be limited to the flow of water from Ranger and Birch Springs. However, the approved transfers do not contain any specific conditions or language about such limitations. The watermaster reports that the combined flow of Ranger and Birch Springs right now is considerably less than what the City is diverting from Bergquist Springs.

Skip and I have informed Nelson and Foster that we would look into this matter further and try to provide some direction to the watermaster. We further informed Foster not to regulate Bergquist Springs until this direction was provided. We also found that Foster's term of service under the 1994 Certificate of Appointment from the Department was for the irrigation season only. This was probably an error since the Water District adopted a resolution in 1989 that called for the watermaster to serve year round. I advised Nelson and Skip that a formal order may be needed to appoint Foster for the remainder of this year if we determine that there is a need for regulation.

I would like your comments or direction regarding limitation of use from Bergquist Springs. I believe Skip has discussed with you the pending transfer of the City of Preston. That transfer on right 13-0026 also involves Bergquist Springs.

MEMORANDUM

To: Tim Luke  
From: L. Glen Saxton *WLS*  
RE: CITY OF PRESTON TRANSFERS OF RTS 13-00027 & 13-00028  
Date: November 10, 1994

After briefly reviewing this matter, my response would be that the city would be entitled to its full rate of diversion from Bergquist Springs (due to the long history of use) if the flow to which the city was entitled to under each right is known. In this case the flow from Birch Spring has never been identified.

Hence my thought is that the city is entitled to 1.0 cfs from Bergquist Spring under right no. 13-00027, no matter how much flow there is discharging from Ranger Springs. With respect to right 13-00028 which describes the right as "all" of the flow of Birch Spring, it appears the water should not be diverted from Bergquist Spring in an amount larger than the actual discharge of Birch Spring. Hence the flow from Birch Spring would need to be periodically determined.

Norm Young received a phone call on this matter today so we need to involve him in the process including the department's response to this matter. I believe the call was from Preston Whitney Irrigation district who wants a copy of any dept correspondence sent to the City of Preston.

*Norm*  
*- your comments before*  
*taking any action?*  
*Tim*

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