



State of Idaho
DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720-9000

Phone: (208) 327-7900 FAX: (208) 327-7866

November 15, 1994

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

Conan Foster
Watermaster, Water District 13-A
1508 S. 2400 E.
Preston, ID 83263

Re: Watermaster's Term of Service and Delivery of Water Right No.s
13-0027 and 13-0028 owned by the City of Preston

Dear Conan:

This letter is being sent to you in response to questions which we received last week from you, the City of Preston and other water users within Water District 13-A. The questions we received concerned: 1) the watermaster's appointment and term of service, 2) the extent of regulation of rights 13-0027 and 13-0028 owned by the City of Preston, and 3) the status of pending transfer applications for water right no. 13-0026.

1) Watermasters Term of Service:

The certificate of watermaster appointment which was issued to you in 1994 specifically states that your term of service was limited to the end of the 1994 irrigation season. This officially means that you do not at this time have authority to regulate diversions within Water District 13-A. Department staff reviewed the minutes of the 1994 annual water users meeting and did not find any adopted resolution which called for the watermaster to serve throughout the year. Although Department staff did find that such a resolution was adopted in 1989, minutes of annual meetings from subsequent years were silent in regards to the watermaster's term of service. In order to be appointed as a full year watermaster each year, the water users must pass a resolution at each annual meeting which specifically calls for the watermaster to serve the full year.

While your 1994 term of service has ended, you should be aware that Section 42-608(5), Idaho Code does provide authority for the Director of the Department to extend the watermaster's term of service. This authority is contingent upon receipt of a petition requesting such an extension from the holder of a water right for the diversion of storage water during the time period for which the extension is sought and upon a determination of necessity by the Director. A copy of Section 42-608 is attached to this letter.

2) Regulation of Rights 13-0027 and 13-0028:

Water rights 13-0027 and 13-0028 were decreed to the City of Preston in McEwan vs. Franklin County Sugar Co., dated July 9, 1927. Right 13-0027 allowed for the diversion of 1 cfs from Ranger Spring at all times for municipal purposes. Right 13-0028 provided

for 'the use of all the waters of Birch Springs, at all times, to be diverted through the pipe line and diverting works operated and maintained by said City.' The Department approved water right transfer applications in 1991 which formally transferred these rights from their decreed sources to Bergquist Springs. The transfers were originally protested by Cub River Irrigation Co. and Preston Whitney Irrigation Co. and then later withdrawn on the grounds that the City of Preston install adequate measuring devices on Birch and Bergquist Springs. A letter submitted in support of the transfer applications from City of Preston attorney Clyde Nelson claims that under right 13-0028, the City is only entitled to divert from Bergquist Springs the amount of water which Birch Springs produces.

Based on our review of the records, the City is entitled to divert from Bergquist Springs 1 cfs of water under right 13-0027. The amount of water which the City can divert under right 13-0028 is limited to the measured flow of Birch Springs.

3) Status of Transfer Application for Right 13-0026:

The Department is aware that the City of Preston and Cub River Irrigation Company each have a pending transfer application on file for a portion of water right 13-0026. These transfers respectively seek to change 2.5 cfs and 2.82 cfs of right 13-0026 held by Cub River Irrigation Co. from the Cub River to Bergquist Springs. The basis of these transfers seem to stem from a contract between the City of Preston and Cub River Irrigation Co. which provides for the City's use of up to 2.5 cfs of one of the Cub River Irrigation Co. rights. This contract is referenced in the McEwan decree under the same paragraph which describes rights 13-0027 and 13-0028 owned by the City. Ranger Spring, tributary to the Cub River, is named in both the decree and the contract as the actual source of water for the 2.5 cfs to be used by the City.

The transfer applications are pending as a result of unresolved protests and amendments which were required by the Department. Given the recent attention concerning the City's Bergquist Springs diversion, the Department plans to hold a conference or hearing on these transfers as soon as possible. Since the applications are still pending, the City can not at this time divert any water under right 13-0026 from Bergquist Springs.

Department Direction to Watermaster:

Since your appointment as watermaster has officially ended, you are advised at this time to refrain from regulating any diversions on the Cub River or its tributaries, including Bergquist Springs. The Department will consider extending your term of service for the 1994-1995 non-irrigation season upon receiving a petition from a valid storage right holder.

If your term of service is extended, you will be directed to limit the City's municipal diversion from Bergquist Springs to 1 cfs plus

the flow of Birch Springs. The City's hydropower diversion from Bergquist Springs under permit 13-7283, which authorizes diversion of up to 13 cfs, can be delivered as long as it does not interfere with the delivery of senior priority rights during the non-irrigation season.

If you have questions concerning this matter, please contact me directly at 327-7864.

Sincerely,



Tim Luke
Hydrologist, Water Allocations

cc: Clyde Nelson, Attorney, City of Preston
Carl Swainston, Preston Whitney Irrigation Company
Mervin Bodily, Cub River Irrigation Company
Angus Condie, Water District 13-A Secretary
Eastern Region, IDWR