

CITY OF PRESTON

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Department of Water Resources

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March 28, 1995

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Mr. Harold W. "Skip" Jones
Sr. Water Resource Agent
State of Idaho
Department of Water Resources
800 N. Skyline Dr.
Idaho Falls, ID 83402

Re: City of Preston - Transfer Water Right
No. 13-0026

Dear Mr. Jones:

The Mayor and City Clerk of Preston, Idaho, as well as Jo Beeman, attorney for the City, have all indicated that you were extremely vocal and very critical of my "failure to timely process" the applications in regard to 13-0026 at the meeting on March 6, 1995. I do not mind taking a little heat on this matter, but I would expect you, as well as other representatives of the Department of Water Resources, to live up to any fault that they may have in the failure to process the applications as required by statute and as requested by the City. I would also expect that you would confront me with your concerns prior to voicing the same to representatives of the irrigation companies, the city and Jo Beeman. I find it disturbing that you would not take up those matters with me at our meeting earlier at the City Hall, when we were discussing the course of action to be taken on the applications, but decided to wait until I was not present to launch your attack.

In any case, you are incorrect in your allegations. First, I would direct you to the letter from Ron Carlson, dated October 20, 1986. That letter was in error in its assumption that the water rights to which we were referring involved hydro power resources. The letter was also incorrect in assuming that the water rights of the City was reduced to .67 cfs during the winter months. If you will look at the 1906 decree, from which the 1920 agreement was drafted between Cub River and the City, you can see that the City is entitled to a full 2.5 cfs of water on a year around basis. The 1924 decree does not change any terms of that agreement. In any case, I do not think it appropriate for the Department of Water Resources to adopt Preston-Whitney's position in opposition to the City's application without there having been a hearing on this matter or a judicial determination of the same.

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I discussed this matter with Ron Carlson at the time of receipt of his letter. Also, the Department was in receipt of a Brief which I prepared, listing the water rights of the City of Preston. That document consists of 5 pages and exhibits. I am enclosing a copy of that Brief without the exhibits. The Brief is very clear as to the City's position on water rights No. 13-0026 (both the City's and the Stock rights) and No. 13-0027 and 13-0028.

The Department was well aware, through J. D. Williams and me, that the Canal Companies and the City were attempting to settle these matters. J. D. Williams represented the Canal Companies at that time. Unfortunately, we could not settle the same. In November, 1990, you wrote me to request information as to the processing of the 13-0026 applications. We discussed this matter by telephone following that letter, and I wrote you concerning the same. Your attention was directed to my Brief, and you were aware that the applications had no bearing on the hydro power permit. I further advised you that we were in the process of hiring an attorney who specialized in water rights to advise us as to the City's position. The City did hire Josephine Beeman in February, 1991 and she commenced her study of the water rights.

The most inaccurate part of your statement to those assembled at the meeting on March 6, 1995, is that neither the City nor I requested that you continue to process the applications on water rights No. 13-0026. I refer you to the letter from Josephine Beeman, dated August 14, 1991, which is addressed to Ron Carlson. Pursuant to the provisions of that letter, and at my request, Jo directed the Department to complete the transfer process on all pending applications. The Department took no action after receipt of that letter, except to direct Conan Foster in November, 1994, to shut off the City's water supply at the request of Preston-Whitney Irrigation Company. I am enclosing a copy of Jo Beeman's letter to Ron Carlson for your information.

I think that you can understand why the City feels that the Department is siding with the Preston-Whitney Canal Company in this matter. First, the letter in 1986 seems to adopt Preston-Whitney's position without hearing or judicial determination. Second, the applications were never processed. Third, we did not hear from the Department of Water Resources until we were contacted by a representative of your Department in Boise who advised us that he has authorized the "watermaster" to shut off the City's water supply above a certain limit. With what authority that representative was acting, I do not know. Furthermore, he was incorrect. There was no "watermaster" at that particular time. Also, the canal company had more than adequate water to fill its

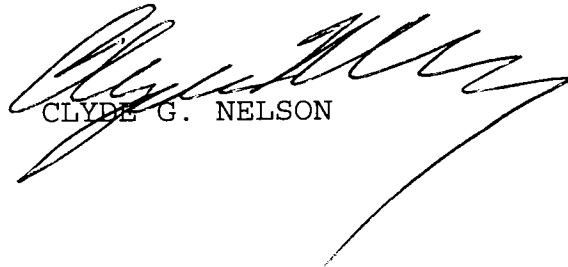
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storage rights. The reservoirs are overflowing, and the Department's action would have merely shut off a water supply to residents within the city who require the same for culinary, domestic and municipal purposes. I do not understand why the Department acted so rashly without first consulting with the City as to the its position, and to the effect that such an action by the Department of Water Resources would have upon the City.

If you have any questions concerning this letter, please call. If you have any comments about how I am handling these applications or the method by which Jo Beeman is handling the applications, please address us first and not the public at large.

Thank you for your consideration in this matter.

Sincerely,



CLYDE G. NELSON

CGN:js
Enc.

c: Mayor and City Council
Josephine Beeman
Dept. of Water Resources