

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF TRANSFER)	
NO. 75705 IN THE NAME OF PRESTON-)	FINAL ORDER
WHITNEY IRRIGATION CO)	

On June 15, 2009, Preston-Whitney Irrigation Co. (“applicant” or “Preston-Whitney”) filed Application for Transfer No. 75705 (“application”) with the Idaho Department of Water Resources (“Department” or “IDWR”). Protests were filed by USDI Bureau of Reclamation, Grant Chadwick, Eldon Golightly, and Bert Wheatley. Amended Notices of Protest were filed by Bert and Laura Wheatley, Seth and Beth Wheatley and Wheatley Properties, LLC (“Wheatley”); Grant Chadwick as Trustee of Chadwick Trust (“Chadwick”); and Eldon and Mary Ann Golightly, individually and as Trustees of the E & M Trust (“Golightly”).

On August 17, 2010, Preston-Whitney filed an amended application. Notice of the amended application was published and the protest period ended on November 15, 2010. No additional protests were filed. USDI Bureau of Reclamation withdrew its protest to the original application on September 29, 2010.

On March 23, 24, and 25, 2011, the Director conducted a hearing for the protests at the Franklin County Courthouse, in Preston, Idaho. Robert L. Harris, attorney at law, appeared for Preston-Whitney. Scott L. Campbell and Andrew J. Waldera, attorneys at law, appeared for Wheatley, Chadwick, and Golightly (“the protestants”). After considering the evidence presented, the Director finds, concludes, and orders as follows:

FINDINGS OF FACT

1. Preston-Whitney holds the following water rights authorizing diversion for irrigation (excluding storage rights) from Cub River:

Water Right No.	Point of Diversion	Place of Use
13-2	NW NW SE ¹ Sec 24 of Township 15 South Range 40 East (Cub River – lower diversion at Middle Ditch)	
13-3	NW NE NW Sec 8 of Township 15 South Range 41 East (Cub River – upper diversion at Glendale Canal)	
13-2104	NW NE NW Sec 8 of Township 15 South Range 41 East (Cub River – upper diversion at Glendale Canal)	<p>Sections 2, 3, 9, 10, 21, 22, 23, 26, 27, 28, 34 and 35 of Township 15 South Range 39 East</p> <p>S1/2 NE, S1/2 NW, N1/2 SW, and SE Sec 14 of Township 15 South Range 39 East</p> <p>SE NE, SW NE, SE NW and SE SW Sec 15 of Township 15 South Range 39 East</p>

2. The application proposes to change the place of use by identifying a service area for Preston-Whitney and adding points of diversion so each of the rights authorize diversion from both the Glendale Canal heading and the Middle Ditch heading. In addition, the application proposes to add points of injection and rediversion in the Worm Creek drainage for each right. Proposed changes are summarized below:

¹ In this decision, the public land survey numeric descriptor “1/4” is assumed to follow each two alpha character public land survey locator when the numeric descriptor is missing. For instance, in this example, the full description would be the NW1/4NW1/4SE1/4, Section 24, Township 15 South, Range 40 East, Boise Meridian.

Water Right No.	Point of Diversion	Place of Use
13-2, 13-3, and 13-2104	<p>NW NE NW Sec 8 of Township 15 South Range 41 East (Cub River – upper diversion at Glendale Canal)</p> <p>NW NW SE Sec 24 of Township 15 South Range 40 East (Cub River – lower diversion at Middle Ditch)</p> <p>SW NE SE Sec 10 of Township 15 South Range 40 East (injection into Worm Creek)</p> <p>NE SW SW Sec 8 of Township 15 South Range 40 East (injection into Worm Creek)</p> <p>NE SW SW Sec 8 of Township 15 South Range 40 East (rediversion from Worm Creek)</p> <p>SE NW SE Sec 10 of Township 15 South Range 40 East (rediversion from Worm Creek)</p> <p>NE NE SE Sec 13 of Township 15 South Range 39 East (rediversion from Worm Creek)</p> <p>NW NE SW Sec 24 of Township 15 South Range 39 East (rediversion from Worm Creek)</p> <p>NW NE NW Sec 25 of Township 15 South Range 39 East (rediversion from Worm Creek)</p> <p>SE NE SW Sec 30 of Township 15 South Range 40 East (injection into unnamed tributary to Spring Creek)</p> <p>SE SE NE Sec 36 of Township 15 South Range 39 East (rediversion from Spring Creek)</p>	Up to 16,545.1 acres within a defined boundary for Preston-Whitney

Formation of Preston-Whitney

3. Water right nos. 13-2 and 13-3 were decreed in the case of *Henry T. McEwan v. Franklin County Sugar Company* (Franklin Co., 1924). The decree will be referred to as the McEwan Decree in this order. Both water rights bear a priority date of April 1, 1882.

4. Water right no. 13-2 was decreed to the Cub River Middle Ditch Company. Water right no. 13-2 authorizes a diversion into the Middle Ditch, or Preston-Whitney's lower point of diversion on Cub River. The Middle Ditch parallels Cub River in the Cub River Canyon and gains elevation above the river on the contour until the Cub River Canyon broadens and flattens out into Cache Valley at a location south and east of Whitney, Idaho. From the point where the Middle Ditch enters Cache Valley, the ditch curls northwest. The ditch historically delivered water to lands along the Middle Ditch and lands in and around Whitney and east of Preston, Idaho.

5. Water right no. 13-2 authorizes diversion of 30 cfs as a "primary" water right. When all primary water rights decreed by the McEwan Decree are satisfied and there is excess flow, water right no. 13-2 authorizes the additional diversion of 30% of the flow exceeding what is necessary to satisfy the primary water rights, up to a total of 69.9 cfs.

6. Water right no. 13-3 was decreed to the Cub River and Worm Creek Canal Company. Water right no. 13-3 authorizes diversion into what is now known as the Glendale Canal, or Preston-Whitney's upper point of diversion on Cub River. Water users diverted water directly out of the Glendale Canal. In addition, the Glendale Canal delivered water into the headwaters of Worm Creek, and water users rediverted the Cub River water injected into Worm Creek downstream of the point of injection.

7. Water right number 13-3 authorizes diversion of 25 cfs as a "primary" water right. When all primary water rights decreed by the McEwan Decree are satisfied and there is excess flow, water right no. 13-3 authorizes the additional diversion of 25% of the flow exceeding what is necessary to satisfy the primary water rights, up to a total of 85 cfs.

8. In July of 1926, the Cub River and Worm Creek Canal Company and the Cub River Middle Ditch Company merged and formed the Preston-Whitney Irrigation Company. Water right nos. 13-2 and 13-3 were conveyed to Preston-Whitney as part of the merger.

9. Prior to the merger, the Cub River and Worm Creek Canal Company filed application to appropriate water no. 13-2104. The filing was perfected and became the property of Preston-Whitney after the merger of Cub River and Worm Creek Canal Company and the Cub River Middle Ditch Company into Preston-Whitney. Water right no. 13-2104 was licensed in July, 1930 to Preston-Whitney and authorizes diversion of 25 cfs into the Glendale Canal from the Cub River for irrigation purposes.

10. License no. 13-2104 identified a place of use by public land survey description without a numerical total of acres. The entire place of use was located within Township 39 East, Range 15 South. The smallest refinement of the place of use description was a 40 acre parcel

(quarter-quarter). Many of the irrigated parcels were identified as full sections. Except for a small piece of land along the east side of Section 26, the entire place of use was located on the west side of Worm Creek.

Preston-Whitney Storage Reservoirs

11. The primary purpose of the merger creating Preston-Whitney was to construct a reservoir for the storage of Worm Creek and Cub River water (in a reservoir known as Glendale Reservoir). Storage in the reservoir would provide a more reliable source of water for irrigating crops throughout the entire growing season. The primary full season crop to be grown was sugar beets. The Franklin County Sugar Company promoted and financed the construction of the dam. Construction of Glendale Dam and Reservoir was completed in 1929.

12. Glendale Reservoir is an on-stream storage reservoir located near the headwaters of Worm Creek. Cub River water is diverted from Preston-Whitney's upper diversion through the Glendale Canal and injected into Worm Creek. Downstream of the point of injection, the water diverted from Cub River and water from Worm Creek is impounded in Glendale Reservoir. During the irrigation season, water is released from Glendale Reservoir and delivered to various shareholders of Preston-Whitney. Water rights nos. 13-2108, 13-2288 and 13-2288A authorize storage from Worm Creek and Cub River in Glendale Reservoir. The three rights, in combination, authorize storage of 6,000 acre feet in Glendale Reservoir for irrigation use.

13. The historical method of delivering water to the shareholders of Preston-Whitney was through gravity canals and ditches. Shareholders in the northern and central portions of the Preston-Whitney service area received water from Glendale Reservoir, from natural flows out of Worm Creek, and from the Glendale Canal diverting Cub River water. Shareholders in the southeast portion of the Preston-Whitney service area received water from Cub River through the Middle Ditch.

14. In 1947, Preston-Whitney filed application to appropriate water no. 13-2291 for the construction of Lamont Reservoir. Lamont Reservoir was constructed in a geographic depression located in the headwaters of Spring Creek, a tributary to Worm Creek. The depression where Lamont Reservoir was constructed did not contain any defined stream channel.

15. Lamont Reservoir was constructed adjacent to Johnson Reservoir owned by Preston & Whitney Reservoir Company. Preston & Whitney Reservoir Company agreed to share a delivery canal with Preston-Whitney to convey water from Cub River in the Glendale Canal to the adjacent reservoirs. Once constructed, water stored in Lamont Reservoir was discharged into the Worm Creek drainage, adding additional supply for the water users of Preston-Whitney. Water right no. 13-2291 authorizes storage of 2,407.5 acre feet in Lamont Reservoir for irrigation use.

16. In 1957, Preston-Whitney filed application to appropriate water no. 13-2298 for the construction of another reservoir (Foster Reservoir) west of Lamont Reservoir and southwest of Glendale Reservoir. Foster Reservoir is an off-stream reservoir located in a depression west of Worm Creek. Water is delivered from Cub River into Glendale Reservoir and then through a

canal to Foster Reservoir. Water right no. 13-2298 authorizes storage of an additional 3,355 acre feet of Cub River water for irrigation use by Preston-Whitney.

Changes to Irrigation Systems and Practices by Preston-Whitney and its Water Users

17. In the 1960's and 1970's, Preston-Whitney water users began converting their irrigation systems from flood irrigation to gravity pressurized sprinkler systems. Use of the Middle Ditch to deliver water diminished over time because water diverted into Glendale Canal was delivered at a higher elevation. The hydraulic "head" or elevation energy converts into gravity pressure that distributes water through pipelines and applies irrigation water through sprinkler nozzles.

18. Water right no. 13-226, held by Cub River Irrigation Company, is the oldest priority water right diverting water from Cub River. Originally, water right no. 13-226 authorized diversion from Cub River into the Cub River Irrigation Company's Upper Canal at a point of diversion downstream from Preston-Whitney's Middle Ditch. The Cub River Irrigation Company Upper Canal parallels the Middle Ditch in the Cub River Canyon but at a lower elevation.

19. The Cub River Irrigation Company's Upper Canal was difficult to maintain and subject to failure in the first few miles of the canal. In the 1990's, the canal bank failed on July 3 of a very warm year preventing Cub River Irrigation Company from diverting its water. Preston-Whitney offered space in the Middle Ditch to Cub River Irrigation Company for delivery of its water during the emergency repair. Cub River Irrigation Company diverted water through Preston-Whitney's Middle Ditch for approximately 10 days. During this period of time, Preston-Whitney was able to continue delivering water to its patrons through both the Middle Ditch and through the Glendale Canal.

20. Following the cooperative effort resulting in the delivery of Cub River Irrigation Company water through the Middle Ditch, Preston-Whitney and Cub River Irrigation Company negotiated an agreement for the increased use of the Middle Ditch by Cub River Irrigation Company. Cub River Irrigation Company filed an application for transfer to add a point of diversion at the Middle Ditch heading for water right no. 13-226. The Department approved transfer no. 5010 in 1997 authorizing Cub River Irrigation District's diversion of water into the Middle Ditch. Following approval of the transfer, Cub River Irrigation Company constructed the Bradford and Palmer pipelines to convey water from the Middle Ditch to its delivery system.

21. Cub River Irrigation Company leased a portion of the carrying capacity of the Middle ditch for several years. Preston-Whitney conveyed ownership of the upper two-thirds of the Middle Ditch to Cub River Irrigation Company. The conveyance was recorded in 2009. Ownership of the lower one-third of the Middle Ditch is jointly held by Preston-Whitney and Cub River Irrigation Company. Cub River Irrigation Company presently delivers most of its water diverted from Cub River through the Middle Ditch point of diversion.

22. Preston-Whitney currently diverts approximately 0.5 cfs of water into the Middle Ditch heading to one remaining patron located in the upper portion of Middle Ditch. Preston-

Whitney maintains the lower portion of the Middle Ditch for emergencies and for delivery to one user with water derived from the Lamont-Johnson pipeline (*see* below for discussion of the Lamont-Johnson Pipeline). The remainder of the water authorized for diversion by Preston-Whitney's Cub River water rights has been diverted from Cub River at the Glendale Canal diversion.

23. The Middle Ditch ends in a swale east of Spring Creek. Tail water waste from the Middle Ditch historically flowed through the swale and into Spring Creek. The diminished use of the Middle Ditch by Preston-Whitney reduced the amount of tail water waste that historically flowed into Spring Creek.

24. Beginning in 2000, Preston-Whitney began piping water instead of delivering the water through open ditches. The East Lateral Pipeline was constructed to deliver water from just below Glendale Reservoir to Preston-Whitney shareholders with irrigated lands located on the north and east sides of Preston, Idaho. The North Lateral Pipeline starts in the same location as the East Lateral Pipeline and runs in a westerly direction, then turns south and serves lands in the northwestern portion of Preston-Whitney irrigated lands. The Johnson-Lamont Pipeline was constructed to deliver water directly from Lamont and Johnson Reservoirs to various users of Preston-Whitney and Preston & Whitney Reservoir Company on the east side of Worm Creek. Finally, the Fairview Pipeline was constructed out of Foster Reservoir and runs in between the North Lateral Pipeline and the City of Preston to the south. The Fairview Pipeline delivers water to irrigated lands south of the City of Preston around the community of Fairview.

25. The pipelines were constructed for the dual purpose of saving water lost in ditches due to seepage and operational spills and to maintain the hydraulic head available at the elevation of the reservoirs. The pipelines now deliver water to most of the Preston-Whitney users under hydraulic pressure. The pressure delivers water through and operates sprinkler lines, saving the Preston-Whitney water users the cost of electricity to pump water to operate their sprinkler systems. Almost all Preston-Whitney shareholders have converted from flood irrigation to sprinkler irrigation.

26. The combination of conversion to sprinklers, diminished use of the Middle Ditch, and installation of pipelines reduced percolation into the ground during flood irrigation and prevented losses in ditches and tail water waste into drainages. These changes in irrigation systems and practices reduced the amount of water discharging into several drainages within the Preston-Whitney service area, including the Worm Creek drainage.

Protests to Preston-Whitney Changes in Point of Diversion

27. The protestants hold water rights authorizing diversion from sources within the Worm Creek drainage including Worm Creek, Spring Creek, Kirby Pond, and other unnamed streams and drains. Water rights in the Worm Creek drainage were decreed *In the Matter of the General Determination of the Rights to the Surface and Groundwaters of the Worm Creek Drainage Basin* (Franklin Co., 1981). This order refers to the decree as the Worm Creek Decree.

28. The protestants claim that their water rights in the Worm Creek drainage have been injured and will continue to be injured if a transfer is approved to change Preston-Whitney's point of diversion from the Middle Ditch to the Glendale Canal under water right no. 13-2. The protestants assert a change in point of diversion enabling Preston-Whitney to deliver Cub River water through its pipelines may reduce wastewater flows that have been relied on by the protestants as part of their historical water supply in the Worm Creek drainage.

29. The protestants' claim of injury is based, in part, on their belief that water imported from Cub River to the Worm Creek drainage becomes part of the common water supply available to all water right holders using water in the Worm Creek drainage. At the hearing, Golightly asserted that the Middle Ditch is part of the Spring Creek drainage and water diverted into the Middle Ditch becomes part of the natural supply for Spring Creek water rights. The protestants assert that a change in point of diversion away from the Middle Ditch inappropriately alters the location where imported Cub River water, including wastewater, has historically been available for their use. The protestants assert that the Worm Creek Decree provides the basis for their claim of injury.

30. The Worm Creek Decree contains findings of fact, including the following:

Findings of Fact no. 2 – The water supply of Worm Creek Basin is augmented by importation of water from Cub River Basin and Mink Creek Basin. The imported water is commingled with the waters of Worm Creek and its tributaries, and the natural channel of Worm Creek and tributaries is used to convey the commingled water to the intended place of use.

31. The Worm Creek Decree contains conclusions of law, including the following:

Conclusions of Law no. 3 - Natural channels may be used to convey commingled water pursuant to the provisions of Section 42-105, Idaho Code. Such use shall not reduce the quantity of water available to which other appropriators are entitled and allowance shall be made for loss by evaporation and seepage.

32. The Worm Creek Decree also contains a tabulation of water rights grouped by source. The tabulation is preceded by the following:

The following tabulation of recommended rights are grouped by source. For example, rights to use the waters of the main stem of Worm Creek and minor streams and springs directly tributary are in the first part of the report. Then, rights on major tributary streams (those on which a number of rights are claimed) are listed in downstream order. Rights from miscellaneous named and unnamed sources are listed as a final tabulation. Within each list the rights are tabulated in chronological order by priority of use.

For distribution purposes, however, the rights described in this decree shall be considered part of the same system, and shall be distributed as one (1) system when physically practical.

33. The protestants argue that the statement preceding the tabulation of water rights in the Worm Creek Decree requires all water rights in the Worm Creek drainage, including water rights imported from Cub River, to be distributed on a priority basis as one system.

34. Golightly alleges that storage of Cub River inflow to Johnson and Lamont Reservoirs during the irrigation season is not authorized when senior rights on Worm Creek and Spring Creek are not satisfied. The allegation regarding Johnson Reservoir is irrelevant because Preston-Whitney does not own or have water rights to divert and store water in Johnson Reservoir. Preston-Whitney is authorized to divert and store water from Cub River in Lamont Reservoir. This application for transfer does not propose a change in water rights authorizing storage of water in Lamont Reservoir. Preston-Whitney's transfer application proposes to divert water under water right no. 13-2 through the Glendale Canal to its delivery system.

35. Water diverted into the Glendale Canal under water right no. 13-2 must pass through Preston-Whitney's reservoirs to be delivered to the majority of water users in the Preston-Whitney service area. The use of water under water right no. 13-2 could be enlarged if the water is diverted and then stored in the reservoirs during the irrigation season at times when it is not immediately needed by the water users.

36. Golightly also alleges that storage of inflows to Johnson and Lamont Reservoirs in the form of precipitation, runoff, and spring flows are not authorized and must be bypassed for the benefit of Spring Creek rights. Preston-Whitney does not own or have water rights to divert and store water in Johnson Reservoir. A source of water supply in the form of precipitation runoff or spring flow originating in the Worm Creek drainage for either Johnson or Lamont Reservoirs is not relevant to this transfer proceeding.

37. Golightly also alleges that Cub River Irrigation Company's use of its Palmer pipeline causes injury by reducing the water supply from the Middle Ditch that would otherwise flow into Spring Creek. The use of the Palmer pipeline by Cub River Irrigation Company is not relevant to this transfer proceeding.

Preston-Whitney Service Area

38. The protestants' witnesses testified that Preston-Whitney's transfer application identifying irrigated acres within a service area represents an enlargement or expansion of acres over the historic acres irrigated under Preston-Whitney water rights.

39. Preston-Whitney's transfer application identifies 16,545.1 irrigated acres within a larger service area boundary. With the exception of one water user along the Middle Ditch, Preston-Whitney can serve all of its water users by diverting water into the Glendale Canal. Preston-Whitney owns water rights diverted within the Worm Creek drainage in addition to the rights for Glendale Reservoir. The rights are diverted from Worm Creek just below Glendale Reservoir. Those rights serve shareholders within a common service area with Preston-Whitney's Cub River water rights. The transfer application seeks to identify an updated service area for all of Preston-Whitney's water rights.

Preston-Whitney's Natural Flow Water Rights – Places of Use

40. The McEwan Decree did not describe a place of use or an acre limit for water right no. 13-2. At the hearing, Scott King testified as an expert witness on behalf of the protestants. King prepared a report summarizing a review of Preston-Whitney's transfer application (Exhibit 106) that included a review of Preston-Whitney's historic service area. In King's opinion, the historic place of use for water right no. 13-2 would have been limited by major canals and streams and would not have included higher elevation ground that could not be irrigated under a gravity flow system. Delivery boundaries would have included Cub River, the Cub River Irrigation Company Upper Canal, the Preston-Whitney Middle Ditch and Spring Creek. King estimated the delivery area would have been limited to about 2,230 acres. King's estimate of 2,230 acres assumed no water would have been conveyed from the Middle Ditch across Spring Creek or the Cub River Irrigation Company Upper Canal.

41. Lyle Porter, President of Preston-Whitney, testified that water was historically conveyed across Spring Creek, either by flume or by injection into and rediversion from Spring Creek, from the Middle Ditch to irrigate approximately 300 acres on the west side of Spring Creek. Mr. Porter also testified that water has historically been delivered through the Middle Ditch and injected into Spring Creek, then rediverted from Spring Creek for delivery to a shareholder south of Highway 91, across the Cub River Irrigation Company Upper Canal (located in parts of Sections 6, 7 and 8, Township 16 South Range 40 East). Those deliveries would increase the number of acres above that estimated by King as the acres historically irrigated by Preston-Whitney through the Middle Ditch.

42. Preston-Whitney's transfer application includes a GIS shape file identifying approximately 570 acres irrigated in Sections 6, 7, and 8, Township 16 South, Range 40 East located south of Highway 91 and across the Cub River Irrigation Company Upper Canal.

43. Preston-Whitney's historical delivery of water through the Middle Ditch under water right no. 13-2 was limited to 3,100 acres, which is the sum of the number of acres estimated by King, plus 870 acres identified as lands irrigated across Spring Creek and the Cub River Irrigation Company Upper Canal.

44. Preston-Whitney currently delivers water right nos. 13-2, 13-3, and 13-2104 during the early part of the irrigation season and does not begin delivering storage water until later in the season after water right nos. 13-2, 13-3 and 13-2104 are reduced or unavailable due to priority cuts on Cub River. The change in point of diversion for water right no. 13-2 to the Glendale Canal heading makes it possible for Preston-Whitney to deliver water to its entire service area with the exception of one water user still relying on water diverted at the Middle Ditch heading.

45. The McEwan Decree did not describe a place of use or an acre limit for water right no. 13-3. By diverting water under water right no. 13-3 through the Glendale Canal, Preston-Whitney's predecessor, the Cub River and Worm Creek Canal Company, was historically able to deliver water to a large portion of Preston-Whitney's present service area.

46. The water right application and permit for water right no. 13-2104 included a land list of public land survey quarter-quarter sections identifying a place of use totaling 8,410 acres within Townships 15 and 16 South, Range 39 East. A map submitted with the application also depicted a place of use totaling 8,410 acres; however, the acres were all shown on the map within Township 15 South, Range 39 East. The permit was amended to clarify that all the acres were within Township 15 South, Range 39 East, consistent with the map. Water right no. 13-2104 was licensed for a place of use in Township 15 South, Range 39 East within the same quarter-quarters and sections identified by the amended permit. The lands identified by the license are almost entirely located west of Worm Creek. The lands do not overlap lands irrigated with Cub River water diverted under water right no. 13-2.

47. The deposition of Samuel Chadwick for Proof of Completion of Works for permit no. 13-2104 states that the 8,410 acres irrigated by water diverted pursuant to water right 13-2104 are located on the "Preston Flat." The deposition of Joseph Jensen for Proof of Completion of Works states that the 8,410 acres irrigated by water diverted pursuant to water right 13-2104 are located on the "Preston Flat."

48. The place of use identified by the application and permit for water right no. 13-2104 did not include lands irrigated from the Glendale Ditch above the present location of the Glendale Reservoir and geographically above what would reasonably be interpreted as the "Preston Flat."

49. Scott King testified at the hearing that it is unlikely that all the acres identified by the license for water right no. 13-2104 could have been irrigated because some of the parcels to the north are above the elevation of Preston-Whitney's delivery canals. Mr. King suggested that a more reasonable and contiguous place of use might have included lands further south in Township 16 South, Range 39 East. Nonetheless, lands in Township 16 South, Range 39 East were purposely excluded from the land list by amendment of application no. 13-2104.

50. The application for permit for water right no. 13-2104 includes a statement in remarks below the description of the place of use and acres:

A decree was entered in the District Court of the Fifth Judicial District of the State of Idaho, in and for Oneida (now Franklin) County, on the 26th day of January, 1906, wherein there was decreed to applicant 25 second feet of the date of 1882 and of the flood and freshet waters $\frac{1}{4}$ thereof; capacity of canal 85 cubic feet per second [identified by the Department as water right no. 13-3]. This application is for twenty-five cubic feet per second of the time in addition to the waters decreed to applicant aforesaid, and is to be used on the same lands for an additional water supply and is to be carried in the same ditch as is now used, conveying said water from Cub River near southeast corner of NW $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 8, T. 15 S., R. 41 E., to Preston (emphasis added).

51. The above statement in the application could be interpreted to mean that the places of use for water right no. 13-3 and water right 13-2104 were identical. The language could also be interpreted to mean that some lands irrigated by water diverted under water right no. 13-3 located in the "Preston Flat" were also irrigated by water diverted pursuant to permit no. 13-2104.

52. Application for water right no. 13-2104 was filed just prior to the merger of Cub River and Worm Creek Canal Company and the Cub River Middle Ditch Company into Preston-Whitney. The purpose of the merger was to provide a full season supply of water for irrigation of sugar beets during the entire irrigation season. The focus of the merger was to build Glendale Reservoir, but the proof affidavits from Samuel Chadwick and Joseph Jensen both state the purpose of 13-2104 was to provide a full irrigation season supply.

53. In 1996, Preston-Whitney adopted bylaws for operation of the company. The bylaws include attachments labeled as Exhibit "A" and Exhibit "B" identifying lands of Preston-Whitney shareholders. The lands identified by Exhibit "B" include lands irrigated with natural flow water and/or storage water. The storage water use on these lands is discussed later in these findings of fact.

54. The Exhibit "B" map does not include some lands along the Glendale Canal identified as lands receiving "contract water" from Preston-Whitney.

55. "Contract water" is water that was historically delivered by the Cub River and Worm Creek Canal Company and the Cub River Middle Ditch Company under water right nos. 13-2 and 13-3 prior to the merger of the companies. The portion of the natural flow water right appurtenant to these lands was not converted to shares in Preston-Whitney at the time of the merger. Preston-Whitney agreed to continue delivering water on a contract basis to those users who were opposed to the merger. Water users receiving "contract water" were not shareholders of Preston-Whitney. Over time, some of the water users receiving "contract water" converted their water allotment to shares and became regular shareholders of Preston-Whitney. The remaining water users receiving "contract water" are located along the Glendale Canal. Those water users would not benefit from conversion of their water allotment to shares because they cannot receive storage water from Preston-Whitney. Preston-Whitney did not identify all the acres receiving "contract water" along the Glendale Canal when it prepared Exhibit "B" of its bylaws because the lands were difficult to identify and could not be confirmed at Preston-Whitney's shareholder meetings.

56. Undisputed testimony at the hearing established that lands located in the vicinity of the Glendale Reservoir and in the area known as the "Glendale Flats" are part of the historic system of the Cub River and Worm Creek Canal Company and received water under water right no. 13-3.

57. Irrigated lands along the Glendale Canal and vicinity upstream of the outlet at Glendale Dam are part of the historical place of use for water right no. 13-3 and are additional to the 8,410 acre limit established using water right no. 13-2104. Preston-Whitney's transfer

application includes a GIS shape file identifying approximately 921 acres above the Glendale dam outlet.

58. Preston-Whitney's historical delivery of natural flow water through the Glendale Canal under water right no. 13-3 was limited to 9,331 acres, which is the sum of the number of acres established using water right no. 13-2104 and the acres irrigated above the Glendale dam outlet.

59. The total land base authorized for irrigation with natural flow water diverted pursuant to water rights 13-2, 13-3, and 13-2104 is 12,431 acres. These acres are comprised of the following component parts: Right 13-2: 3,100 acres; Right 13-3: 9,331 acres; Right 13-2104: 8,410 acres (wholly contained within the 9,331 acre place of use for right no. 13-3).

Preston-Whitney's Storage Water Rights – Place of Use

60. Preston-Whitney's application for transfer only seeks to change points of diversion, the place of use, and add points of injection and rediversion for its three natural flow water rights. Because Preston-Whitney is seeking authorization to irrigate a larger area than the 12,431 acres authorized to be irrigated by its natural flow water rights, the Director will review the rights authorizing storage in reservoirs to determine whether a larger number of acres can be irrigated.

61. The water right application and permit for water right no. 13-2108 (Glendale Reservoir) included a land list of public land survey quarter-quarter sections identifying a place of use totaling 13,766 acres within Preston-Whitney's service area. The license issued for water right no. 13-2108 included a land list similar to, but not exactly the same as, the land list identified by the application and permit. The license did not include an acre limit. The area described on the license covers most of the area presently served by Preston-Whitney, including acres along the Middle Ditch which could not receive water through the Glendale Reservoir. The license did not describe lands along the Glendale Canal and vicinity that could not be irrigated with water stored in Glendale Reservoir.

62. Water right no. 13-2288 authorized the construction and use of Glendale Reservoir in conjunction with water right no. 13-2108. Water right nos. 13-2108 and 13-2288 were decreed in the Worm Creek Decree for a place of use totaling 10,449 acres. The lands listed in the Worm Creek Decree for water right nos. 13-2108 and 13-2288 and Preston-Whitney's other Worm Creek drainage water rights identified a common place of use of 10,449 acres. The place of use did not include lands within the Preston-Whitney service area along the Glendale Canal and vicinity or lands along the upper portion of the Middle Ditch. Those lands were likely not included because they could not be irrigated with water originating from the Worm Creek drainage.

63. Water right license no. 13-2288A was issued by the Department after the Worm Creek Decree with the same place of use and acres authorized for water right nos. 13-2108 and 13-2288 in the Worm Creek Decree. The license was issued to confirm authorization and use of storage in Glendale Reservoir with a source of supply from the Cub River.

64. The license issued for water right no. 13-2291 (Lamont Reservoir) described a place of use as follows:

Lands within the boundary of the Preston-Whitney Irrigation Company, located in Sections 15, 16, 22, 23, 24, 34, 35 and 36, Twp. 15 South, Range 39 East, B.M. and Sections 30 and 31, Twp. 15 South, Range 40 East, B.M.

65. The place of use described by the license for water right no. 13-2291 extends into portions of the northern and central parts of Preston-Whitney's present service area. Water from Lamont Reservoir is generally delivered to shareholders on the east side of Worm Creek and south of the reservoir.

66. The license issued for water right no. 13-2298 (Foster Reservoir) described a place of use limited to 10,720 acres. The area described on the license covers most of the area presently served by Preston-Whitney including some acres along the Middle Ditch that could not receive water through Preston-Whitney's reservoir delivery system. The license did not describe lands along the Glendale Canal and vicinity that could not be irrigated with water stored in Preston-Whitney's reservoirs.

67. In 1996, Preston-Whitney adopted bylaws for operation of the company. The bylaws include attachments labeled as Exhibit "A" and Exhibit "B" identifying lands of Preston-Whitney shareholders. The bylaws also provide that additional lands may be irrigated through Preston-Whitney's system by agreement or otherwise. Exhibit "A" is a list of acres per quarter-quarter section identified by Preston-Whitney's water rights. Exhibit "A" lists 13,733 acres authorized for irrigation. Exhibit "A" does not include lands along the Glendale Canal and vicinity or lands along the upper portion of the Middle Ditch. Exhibit "B" is a map prepared by Preston-Whitney showing acres irrigated per quarter-quarter section by shareholders of Preston-Whitney. Preston-Whitney utilized field measurements from Farm Service Agency (formerly ASCS) aerial photos to prepare the Exhibit "B" maps. Preston-Whitney did not include lands irrigated by the City of Preston, schools, churches, and other nonagricultural lands on its Exhibit "B" map because those areas were not measured by the Farm Service Agency. Exhibit "B" does not show a total for the number of acres irrigated in the service area.

68. King's report summarizing a review of Preston-Whitney's transfer application (Exhibit 106) included a summation of the acres identified in the Exhibit "B" map and indicated a total of 14,784 acres. The Exhibit "B" map does not include some lands along the Glendale Canal identified as lands receiving "contract water" from Preston-Whitney.

69. Preston-Whitney's transfer application identifies a service area of 16,545.1 irrigated acres within its larger service area boundary. Lyle Porter testified at the hearing that the application attempts to identify the total irrigated acreage within the entire Preston-Whitney service area, but the calculations included many small non-irrigated areas around homes and farmsteads. Mr. Porter also testified that the acreage calculations included acres within the City of Preston that were not irrigated. The City of Preston owns a significant number of shares of Preston-Whitney stock, but does not currently utilize the majority of those shares. At the

hearing, Mr. Porter described a more recent effort to clarify total acres and offered the revised estimate of 15,919.3 acres (Exhibit 30) to replace the 16,545.1 acres provided with the transfer application. The effort removed non-irrigated acres around homes and farmsteads. Exhibit 30 still includes lands within the City of Preston that are not currently irrigated with Preston-Whitney water.

Other Water Rights

70. Preston-Whitney's service area overlaps with service areas of other canal companies. The Preston Riverdale and Mink Creek Canal Company injects water from Mink Creek, a tributary of Bear River, into Worm Creek above Glendale Reservoir and delivers water through the Preston-Whitney system to shareholders on the west side of Worm Creek. The lands irrigated by the Preston Riverdale and Mink Creek Canal Company are almost entirely contained within Preston-Whitney shareholder lands.

71. The Preston & Whitney Reservoir Company diverts water through Johnson Reservoir and into the Johnson-Lamont pipeline that they own with Preston-Whitney. The lands irrigated by Preston & Whitney Reservoir Company are almost entirely contained within Preston-Whitney shareholder lands.

72. The Preston-Whitney service area also overlaps with a small portion of the Cub River Irrigation Company. Both companies deliver water to common shareholders in Sections 15 and 16 of Township 16 South, Range 39 East. Preston-Whitney no longer delivers water to some land along the Middle Ditch because it exchanged shares with the Cub River Canal Company and added land in Section 3 of Township 16 South, Range 39 East.

73. The exact extent of overlap of all of Preston-Whitney's water rights with each other and with other canal company water rights is not known due to the imprecise descriptions for many of those water rights. In addition, the water entitlement represented by some Preston-Whitney shares has been removed from historically irrigated lands and applied to different locations due to development and other property transactions over time. Preston-Whitney's Exhibit "A" of its bylaws identified a maximum of 13,733 acres under all of its water rights. The 13,733 acres would not include acreage along the Glendale Canal and vicinity or acreage along the upper portion of the Middle Ditch because those areas were irrigated exclusively under water right nos. 13-2 and 13-3 with an undefined place of use. As discussed in an earlier finding, the irrigated area along the Glendale Canal is approximately 921 acres. The area along the upper portion of the Middle Ditch has not been determined, but would likely be less than 100 acres based on Preston-Whitney's Exhibit "B" of its bylaws. Adding Preston-Whitney's Exhibit "A" acreage of 13,733 plus 921 acres along the Glendale Canal and 100 acres from the Middle Ditch gives 14,754 acres. That value is significantly less than Preston-Whitney's revised service area value of 15,919.3 acres. If non-irrigated areas in the City of Preston are subtracted from Preston-Whitney's alleged irrigation of 15,919.3 acres, the remainder would be closer to the computed total irrigated acreage of 14,754 acres (the sum of Preston-Whitney's water rights including extra lands irrigated along the Glendale Canal and the Middle Ditch).

CONCLUSIONS OF LAW

1. Idaho Code § 42-222 states, in pertinent part:

The director of the department of water resources shall examine all the evidence and available information and shall approve the change in whole, or in part, or upon conditions, provided no other water rights are injured thereby, the change does not constitute an enlargement in use of the original right, the change is consistent with the conservation of water resources within the state of Idaho and is in the local public interest as defined in section 42-202B, Idaho Code, the change will not adversely affect the local economy of the watershed or local area within which the source of water for the proposed use originates, in the case where the place of use is outside of the watershed or local area where the source of water originates, and the new use is a beneficial use, which in the case of a municipal provider shall be satisfied if the water right is necessary to serve reasonably anticipated future needs as provided in this chapter. The director may consider consumptive use, as defined in section 42-202B, Idaho Code, as a factor in determining whether a proposed change would constitute an enlargement in use of the original water right. The director shall not approve a change in the nature of use from agricultural use where such change would significantly affect the agricultural base of the local area. The transfer of the right to the use of stored water for irrigation purposes shall not constitute an enlargement in use of the original right even though more acres may be irrigated, if no other water rights are injured thereby.

2. The applicant bears the burden of proof for all of the factors listed in Idaho Code § 42-222.

Injury

3. The Idaho Supreme Court has confirmed that appropriators of wastewater are subject to the rights of the owners to cease wasting, or change the place or manner of wasting it, or to recapture and apply the waste to beneficial use. See *Hidden Springs Trout Ranch, Inc. v. Hagerman Water Users, Inc.*, 101 Idaho 677, 619 P.2d 1130 (1980); *Sebern v. Moore*, 44 Idaho 410, 258 P. 176 (1927); *Colthorp v. Mountain Home Irrigation Dist.*, 66 Idaho 173, 157 P.2d 1005 (1945).

4. The protestants argue that the statement preceding the tabulation of water rights in the Worm Creek Decree requires all water rights in the Worm Creek drainage, including water rights imported from Cub River, to be distributed on a priority basis as one system.

5. The Director disagrees and finds that the statement refers to the tabulated water rights that only include water from sources within the Worm Creek drainage. Rights with water solely from the Cub River are not described in the Worm Creek Decree. Furthermore, the protestants' interpretation of language in the decree is not consistent with Idaho Code § 42-105(1), which provides:

The water that a person is entitled to divert by reason of a valid water right may be turned into the channel of a natural waterway and mingled with its water, and then reclaimed, but in reclaiming the water so mingled, the amount of water to which prior appropriators may be entitled shall not be diminished and due allowance shall be made for loss by evaporation and seepage...(emphasis added).

6. Idaho law provides that appropriators of wastewater are subject to the rights of the owners to cease wasting, or change the place or manner of wasting it, or to recapture and apply the waste to beneficial use. The reduction in wastewater flows available to the protestants that have occurred and will occur are the result of changes and improvements made by Preston-Whitney to cease wasting, change the place or manner of wasting, or to recapture and apply the waste to beneficial use. These water saving actions, including changes in points of diversion for imported water, are recognized and acceptable conservation practices. The changes in points of diversion on the Cub River sought by the transfer application for water right nos. 13-2, 13-3 and 13-2104 will not injure other water rights.

7. Idaho Code § 42-105 provides that water may be turned into a natural channel, mingled and then reclaimed as long as the water of prior appropriators of the natural channel is not diminished. The changes sought by the transfer application to describe points of injection and rediversion on Worm Creek and Spring Creek will not injure other water rights if water injected and rediverted is properly measured and any losses between the injection points and rediversion points are accounted for.

8. The changes sought by the transfer application to describe the service area of water right nos. 13-2, 13-3 and 13-2104 will not injure other water rights provided the total number of acres irrigated under those rights is not increased.

Enlargement

9. The use of water under water right no. 13-2 could be enlarged if the water is diverted and then stored in Preston-Whitney's reservoirs during the irrigation season at times when it is not immediately needed by Preston-Whitney's water users. The changes in points of diversion on Cub River and the changes describing the points of injection and rediversion on Worm Creek and Spring Creek sought by the transfer application for water right nos. 13-2, 13-3 and 13-2104 will not enlarge the water rights if the water diverted, injected and rediverted is properly measured and accounted for in Preston-Whitney's system. Preston-Whitney may have developed beneficial use rights for storage purposes with a source of Cub River in addition to its rights identified at the hearing. Any additional storage rights that Preston-Whitney may have developed by beneficial use are not the subject of this transfer proceeding.

10. Identification of a service area for water right nos. 13-2, 13-3, and 13-2104 will not result in enlargement if those rights are limited to the acres originally irrigated under each right and in combination. Water right no. 13-2 is limited to 3,100 acres. Water right no. 13-3 is limited to 9,331 acres. Water right no. 13-2104 is limited to 8,410 acres. Water right nos. 13-3 and 13-2104 are limited, in combination, to 9,331 acres. A total of 12,431 acres may be irrigated

with natural flow pursuant to Preston-Whitney's natural flow water rights from Cub River. Preston-Whitney may have developed beneficial use rights for irrigation purposes for additional acres with a source of Cub River in addition to its rights identified at the hearing. Any additional irrigation rights that Preston-Whitney may have developed are not the subject of this transfer proceeding.

11. Preston-Whitney seeks to identify a service area boundary with an acre limitation for all of its rights and the flexibility to irrigate the authorized number of acres using any of its water rights. An increase in the number of acres irrigated, if any, within Preston-Whitney's service area under its water right portfolio cannot be determined from information in the hearing record or from any water right files of the Department.

12. Idaho Code § 42-222 provides that a transfer that would result in an increase in the number of acres irrigated from stored water does not constitute an enlargement, if no other water rights are injured. An increase in the number of acres irrigated using storage water originating from Cub River cannot injure water users in the Worm Creek drainage because the water would not otherwise be available in the Worm Creek drainage except as wastewater. An increase in the number of acres irrigated using storage water originating in the Worm Creek drainage could injure water users in the Worm Creek drainage in limited circumstances. For example, if the increased irrigated acreage requires an increase in the use of storage water that results in refilling Glendale Reservoir with water from Worm Creek at times when other water users are relying on the source for irrigation use, then injury could occur. Preston-Whitney's storage rights from Worm Creek for Glendale Reservoir are not used until the latter part of the irrigation season and cannot be refilled under their existing recorded storage rights due to limits on the volume authorized for storage.

13. Identification of a service area for Preston-Whitney that includes more acres than originally irrigated under Preston-Whitney's storage rights will not injure other water rights and does not constitute an enlargement of the rights. Irrigation within the service area of Preston-Whitney Irrigation Company is limited to 15,919.3 acres.

Local Public Interest

14. A change in point of diversion that provides for delivery of water through pipelines pressurized by gravity, resulting in flexibility in water delivery and greater efficiencies for water users of Preston-Whitney, is in the local public interest.

15. It is in the local public interest to provide an accurate description of all points of diversion, injection, and redirection for water right nos. 13-2, 13-3 and 13-2104 and an accurate description of Preston-Whitney's service area to enable better administration of the water rights.

Conservation

16. Delivery of water through pipelines pressurized by gravity will result in conservation of the waters of the State of Idaho.

Effect on economy

17. The Preston-Whitney service area has always included water imported from Cub River. The place of use is not outside the local area where the source of water originates, so effects to the local economy are not applicable.

ANALYSIS

Preston-Whitney's increased use of the Glendale Canal to divert water under water right no. 13-2 and its expanded conveyance system developed to deliver water from its storage reservoirs provided the opportunity to irrigate new lands and expand existing acreage within the Preston-Whitney service area. The evolution of Preston-Whitney's growing service area under its storage rights resulted in the inevitable expansion of the number of acres irrigated under water right nos. 13-2, 13-3, and 13-2104 because of the common delivery system. Preston-Whitney's water right nos. 13-2, 13-3, and 13-2104 should be limited to the historic number of acres irrigated and recognized as a place of use by the water rights prior to the transition of the point of diversion under water right no. 13-2 from the Middle Ditch to the Glendale Canal and prior to the development and use of storage water by Preston-Whitney.

Early in the irrigation season, Preston-Whitney currently irrigates all or most lands within its service area with natural flow water diverted under water right nos. 13-2, 13-3 and 13-2104. Preston-Whitney delays use of its storage water until needed later in the season when flows in Cub River are insufficient to fully fill water right nos. 13-2, 13-3 and 13-2104. Limitation of the place of use for water right nos. 13-2, 13-3 and 13-2104 to a maximum of 12,431 acres will require Preston-Whitney to reduce the number of acres irrigated with natural flow at the beginning of the irrigation season. To ensure water right nos. 13-2, 13-3, and 13-2104 are not enlarged by approval of transfer no. 75705, Preston-Whitney should be required to annually determine and maintain records of acres irrigated under water right nos. 13-2, 13-3 and 13-2104 up to a limit of 12,431 acres, Preston-Whitney should also be required to annually determine and maintain records of acres irrigated solely by storage water up to a total of 3,488.3 acres (15,919.3 acres minus 12,431 acres). Direct deliveries of natural flow, primarily for irrigation of lands along the Glendale Ditch above Glendale Reservoir and lands irrigated with water diverted into the Middle Ditch, must be measured and recorded. These lands must be subtracted from the total 12,431 acres authorized to be irrigated with natural flow water. Remaining deliveries from commingled natural flow and storage water in Glendale Reservoir or other reservoirs must be released from the reservoirs as natural flow and as storage water in proportion to the remaining acres irrigated with natural flow and the acres irrigated solely with storage water, respectively.

Preston-Whitney may have developed a beneficial use right(s) for natural flow from Cub River, bearing a later priority date that could authorize irrigation of the 3,488.3 acres that presently can only be irrigated with storage water. However, the Department has no record of a beneficial use right, and a beneficial use right is not the subject of the transfer application. Preston-Whitney would need to identify other rights and demonstrate how water right nos. 13-2, 13-3 and 13-2104 would not be enlarged in order to irrigate the 3,488.3 storage water acres early in the irrigation season using natural flow.

Preston-Whitney's use of storage water earlier in the season to irrigate the 3,488.3 storage water acres will likely deplete storage reserves needed to irrigate all of Preston-Whitney's service area throughout the irrigation season. Volume limits associated with Preston-Whitney's recorded storage rights eliminates the possibility to refill the reservoirs under those rights. Preston-Whitney may have developed a beneficial use right(s) under a later priority date from Cub River for storage to refill its reservoirs; however, a beneficial use right is not the subject of the transfer application. Preston-Whitney would need to identify other storage rights in order to allow refill of their reservoirs to provide water for irrigation throughout the irrigation season.

ORDER

IT IS HEREBY ORDERED that application for transfer no. 75705 is **Approved** subject to the following conditions:

Water Rights Nos. 13-2, 13-3, and 13-2104

Prior to diversion and use of water under Transfer approval 75705, the right holder shall install and maintain acceptable measuring device(s) at the authorized point(s) of diversion, in accordance with Department specifications.

Prior to the diversion and use of water under transfer approval 75705, the right holder shall install and maintain acceptable measuring devices at all points of injection into and rediversions from Worm Creek and Spring Creek.

The boundary encompassing the place of use for this water right is described with a digital boundary as authorized by Idaho law. The data comprising the digital boundary are stored in the electronic document management system of the Department and are incorporated into this approval by this reference. A map depicting the place of use will be attached to the transfer approval document to illustrate the place of use described by the digital boundary.

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

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

Place of use is within the area served by Preston-Whitney Irrigation Company. Irrigation with water diverted under rights 13-2, 13-3, and 13-2104 within the service area of Preston-Whitney Irrigation Company is limited to 12,431 acres.

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.

Use of water under this right will 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.

The right holder shall keep records identifying the specific locations where water under rights 13-2, 13-3 and 13-2104 is used during each irrigation season and shall make those records available for inspection by the watermaster and/or the Department. To ensure that enlargement does not occur under rights 13-2, 13-3 and 13-2104, the right holder shall limit the number of acres irrigated within its service area to 12,431 acres until such time that delivery of storage water is commenced to provide water to the remaining acres within the service area of Preston-Whitney Irrigation Company. As an alternative, the right holder shall identify other water rights that are sufficient to irrigate the remaining acres within the service area of Preston-Whitney Irrigation Company during the early part of the irrigation season and shall prepare a plan of operation, approved by the Department, to demonstrate that enlargement of rights 13-2, 13-3, and 13-2104 will not occur.

Right 13-2

This right is limited to the irrigation of 3,100 acres within the authorized place of use in a single irrigation season.

This right authorizes diversion of 30 cfs as a “primary” water right. When all primary water rights decreed by the McEwan Decree are satisfied and there is excess flow, water right no. 13-2 authorizes the additional diversion of 30% of the flow exceeding what is necessary to satisfy the primary water rights, up to a total of 69.9 cfs

Right 13-3

This right is limited to the irrigation of 9,331 acres within the authorized place of use in a single irrigation season.

This right authorizes diversion of 25 cfs as a “primary” water right. When all primary water rights decreed by the McEwan Decree are satisfied and there is excess flow, water right no. 13-3 authorizes the additional diversion of 25% of the flow exceeding what is necessary to satisfy the primary water rights, up to a total of 85 cfs

Right 13-2104

This right is limited to the irrigation of 8,410 acres within the authorized place of use in a single irrigation season.

Rights 13-3 & 13-2104

Rights 13-3 and 13-2104 when combined shall not exceed the irrigation of 9,331 acres.

Dated this 21st day of June, 2011.

A handwritten signature in cursive script that reads "Gary Spackman". The signature is written in black ink and is positioned above a horizontal line.

Gary Spackman
Interim Director

CERTIFICATE OF SERVICE

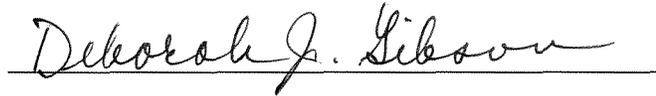
I HEREBY CERTIFY that on this 21st day of June, 2011, a true and correct copy of the documents described below were served by placing a copy of the same in the United States mail, postage prepaid and properly addressed to the following:

Document Served: FINAL ORDER and Explanatory Information

ROBERT L. HARRIS
HOLDEN KIDWELL HAHN & CRAPO PLLC
PO BOX 50130
IDAHO FALLS, ID 83405

PRESTON-WHITNEY IRRIGATION CO
PO BOX 311
PRESTON, ID 83263

SCOTT L CAMPBELL
ANDREW WALDERA
MOFFATT THOMAS BARRETT ROCK & FIELD CHTD
PO BOX 829
BOISE, ID 83701-0829



Deborah Gibson
Administrative Assistant II