

Keen, Shelley

From: Westra, John
Sent: Monday, June 29, 2009 1:46 PM
To: Keen, Shelley
Subject: FW: Brackett Transfer #70887 Water Right #51-12898A

Attachments: 51-12898A_Protest-70887-withdrawal-letter.pdf; 51-12898A--Stip-Jt-Mot-for-Ord-App-Stip.pdf



51-12898A_Protest-70887-withdr...
51-12898A--Stip-Jt-Mot-for-Ord...

Shelley:

Looks like we are good to go
on this

John

-----Original Message-----

From: Fredric_Price@blm.gov [mailto:Fredric_Price@blm.gov]
Sent: Monday, June 29, 2009 1:12 PM
To: Westra, John
Cc: Linda_Buck@blm.gov
Subject: Re: Brackett Transfer #70887 Water Right #51-12898A

John

RE: Transfer 70887, 51-12898A, Brackett Ranches, Ltd.

Attached is a letter withdrawing BLM's protest based on the transfer amendment which removes the place of use described as NWNW, S11, T14S, R10E. Hard copy original is in the mail.

Fred

(See attached file: 51-12898A_Protest-70887-withdrawal-letter.pdf)
(See attached file: 51-12898A--Stip-Jt-Mot-for-Ord-App-Stip.pdf)

"Westra, John"
<John.Westra@idwr
.idaho.gov>

05/26/2009 03:55
PM

<Fredric_Price@blm.gov>

To

cc

Subject

Brackett Transfer #70887 Water
Right #51-12898A

Mr. Price:

This is an old transfer that has been around for several years.

The BLM protested the transfer because of a 40 ac. BLM tract listed on the place of use. Mr. Brackett amended the application to remove it.

We are in the process of writing a decision on this application and would like to get it wrapped up. Appreciate if you would consider withdrawing the protest. See attachment.

Thank you,

John Westra, IDWR Western Reg.
334-2190

<<Brackett Letter.pdf>> [attachment "Brackett Letter.pdf" deleted by Fredric Price/IDSO/ID/BLM/DOI]



United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Idaho State Office
1387 South Vinnell Way
Boise, Idaho 83709
<http://www.id.blm.gov>



In Reply Refer To:
7250 (933b)

June 29, 2009

John Westra
IDWR, Western Regional Office
2735 Airport Way
Boise, ID 83705-5082

**RE: Withdrawal of Protest
Transfer #70887, Brackett Ranches, Ltd.
51-12898A**

Dear Mr. Westra:

By this letter I state that I have the authority to act on behalf of the United States, Dept. of Interior, Bureau of Land Management (U.S.D.I., BLM), with myself as its agent, to the matters discussed herein. BLM filed the protest because the original application for transfer included a place of use (NWNW, S11, T14S, R10E) that was inconsistent with the SRBA settlement agreement by the parties (Stipulation and Joint Motion for Order Approving Stipulation, Subcase No. 51-02281 et. al.).

It is my understanding that Brackett Ranches, Ltd. has since amended its Application for transfer to exclude the place of use within NWNW, S11, T14S, R10E and include a place of use that is in the settlement agreement (NENW, S11, T14S R10E). The "details" page on IDWR's website for Transfer #70887 is consistent with this understanding.

Based upon the amendment of the transfer as described above, I do hereby withdraw the protest filed by BLM.

If there are questions regarding any statements above, please do not hesitate to contact me at (208) 373-3831 or at the address provided above.

Sincerely,

Fredric Price
Water Rights Specialist

FILE

RECEIVED
NOV 06 2002
12-3-02

Names of Parties Serving Document:

UNITED STATES OF AMERICA

C.E. BRACKETT CATTLE CO.
BERT & PAULA BRACKETT
BRACKETT LIVESTOCK, INC.
BRACKETT RANCHES, LTD

Attorneys' Names and Addresses:

THOMAS L. SANSONETTI
United States Department of Justice
Assistant Attorney General
Environment and Natural Resources Division

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McQuaid, Metzler, Bedford, & Van Zandt
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ROGER D. LING
Ling, Nielsen & Robinson
P.O. Box 396
Rupert, Idaho 83350
Ph: (208) 436-4717
FAX: (208) 436-6804

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS**

In Re SRBA

Case No. 39576

) Subcase Numbers: See Attached Exhibits
) A, B, C, and D 51-00081
)
) **STIPULATION AND JOINT MOTION**
) **FOR ORDER APPROVING**
) **STIPULATION**

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STIPULATION

The United States of America, by and through the United States Department of the Interior, Bureau of Land Management (hereinafter "BLM) and, C.E. Brackett Cattle Co., Bert and Paula Brackett, Brackett Livestock, Inc., and Brackett Ranches, Ltd., by and through their respective undersigned counsel, hereby stipulate and agree as follows:

1. C.E. Brackett Cattle Co., Bert and Paula Brackett, Brackett Livestock, Inc., and Brackett Ranches, Ltd., stipulate and agree to dismiss objections, motions to file late objections, and/or motions to set-aside partial decree in all subcases listed on attached Exhibit A.

2. The BLM stipulates and agrees that Bert and Paula Brackett shall have Water Right Number 51-12895A with a priority date not earlier than September 14, 1966; that C.E. Brackett Cattle Co. shall have Water Right Number 51-12896A with a priority date not earlier than September 14 1966; that Brackett Livestock, Inc. shall have Water Right Number 51-12897A with a priority date not earlier than September 14, 1966; and that Brackett Ranches, Ltd. shall have Water Right Number 51-12898A with a priority date not earlier than September 14, 1966. The parties to this stipulation agree that, subject to approval by the parties of the legal descriptions of the places of use, and subject to concurrence by the Idaho Department of Water Resources, the parties shall sign and file with the Snake River Basin Adjudication (hereinafter "SRBA") District Court Standard Forms 5 that will describe stipulated elements of Water Right Numbers 51-12895A, 51-12896A, 51-12897A, and 51-12898A.

3. The BLM agrees that all pipelines, pipeline connections, engineering devices, troughs, reservoirs, and tanks located on the federal public land encompassed by the legal descriptions contained in the Standard Forms 5 for Water Right Numbers 51-12895A, 51-12896A,

51-12897A, and 51-12898A are authorized under existing Cooperative Range Improvement Agreements and the Three Creek Allotment Management Plan (amended May 1973). The BLM further agrees that the pipelines and troughs located on the federal public land within the following legal descriptions are authorized under existing Cooperative Range Improvement Agreements:

T.13S., R.09E., Section 25, NWSW

The BLM further agrees that pipelines and troughs are proposed to be installed and are currently authorized to be located upon the public land within the following legal descriptions under existing Cooperative Range Improvement Agreements:

T.11S., R.08E., Section 10, SENE

T.11S., R.08E., Section 12, SWSW

T.11S., R.08E., Section 15, NWNE

T.11S., R.09E., Section 18, NESW

T.12S., R.09E., Section 25, NWSW

T.12S., R.10E., Section 32, SENW

T.13S., R.10E., Section 31, NENE

T.13S., R.10E., Section 33, SESE

T.13S., R.10E., Section 35, SWSE

T.14S., R.10E., Section 13, NWNW

T.14S., R.10E., Section 24, NENW

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4. In accordance with I. C. § 42-222, Bracketts shall apply to the Idaho Department of Water Resources for a transfer for water rights to use water from the source known as Pence Spring, located at T15S, R10E, Section 26, SENENE at the following places of use:

T.11S., R.08E., Section 10, SENE

T.11S., R.08E., Section 12, SWSW

T.11S., R.08E., Section 15, NWNE

T.11S., R.09E., Section 18, NESW

T.12S., R.10E., Section 32, SENW

T.13S., R.09E., Section 25, NWSW

T.13S., R.10E., Section 31, NENE

T.13S., R.10E., Section 33, SESE

T.13S., R.10E., Section 34, SESE

T.13S., R.10E., Section 35, SWSE

T.14S., R.10E., Section 02, NWNW

T.14S., R.10E., Section 11, NENW

T.14S., R.10E., Section 13, NWSW

T.14S., R.10E., Section 13, NWNW

T.14S., R.10E., Section 14, NESE

T.14S., R.10E., Section 23, NENW

T.14S., R.10E., Section 24, NENW

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The BLM stipulates and agrees not to protest such transfer; *provided* the transfer is in accordance with State law, and conforms to this stipulation.

5. The parties agree that the definition of "range improvement" shall be the definition given in 43 C.F.R. § 4100.0-5 (1995).

6. C.E. Brackett Cattle Co. stipulates and agrees to dismiss, with prejudice, all federal public land places of use claimed by C.E. Brackett Cattle Co. in Water Right Number 51-12957, and that no partial decree or final decree for Water Right Number 51-12957 shall contain any place of use that describes federal public land.

7. C.E. Brackett Cattle Co., Bert and Paula Brackett, Brackett Livestock, Inc., and Brackett Ranches, Ltd. stipulate and agree to dismiss, with prejudice, all public land places of use described in the water right claims listed on Exhibit B. Private land places of use described in water right claim 51-12918 shall be retained by C.E. Brackett Cattle Co.; private land places of use described in water right claim 51-12933 shall be retained by Brackett Ranches, Ltd.; and, private land places of use described in water right claim 51-12942, 51-12943 and 51-12944 shall be retained by Brackett Livestock, Inc.

8. The BLM and C.E. Brackett Cattle Co., Bert and Paula Brackett, Brackett Livestock, Inc., and Brackett Ranches, Ltd. agree and stipulate that, subject to approval by the parties of the legal descriptions of the points of diversion and places of use, and approval of the priority date, and subject to concurrence by the Idaho Department of Water Resources, the parties shall sign and file with the SRBA District Court Standard Forms 5 that will describe stipulated elements of Water Right Numbers listed on Exhibit C, provided:

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a. The public land places of use described in the water rights listed on Exhibit C, and public land places of use described in water rights resulting from a split of water rights listed on Exhibit C, would be for the purpose of providing water to livestock duly permitted by the BLM to use United States' property for the purpose of livestock grazing pursuant to a valid grazing permit;

b. The use of water for the public land places of use described in the water rights listed on Exhibit C, and public land places of use described in water rights resulting from a split of water rights listed on Exhibit C, shall remain *in situ*; and

c. Partial decrees or final decrees for the public land places of use described in the water rights listed on Exhibit C, and public land places of use described in water rights resulting from a split of water rights listed on Exhibit C, shall not alter in any way the rights of C.E. Brackett Cattle Co., Bert and Paula Brackett, Brackett Livestock, Inc., and Brackett Ranches, Ltd., or their successors in interest, heirs, or assigns under a valid BLM issued grazing permit nor impede the authority of the United States to manage federal public lands.

9. The parties agree that the points of diversion for Water Right Numbers 51-12711, 51-12891, 51-12925 and 51-12954 are located in the State of Nevada. The parties agree that the State of Nevada has commenced the Jarbidge General Stream Adjudication (hereinafter "Jarbidge Adjudication"), and that the points of diversion for Water Right Numbers 51-12711, 51-12891, 51-12925 and 51-12954 are encompassed by the boundary of the Jarbidge Adjudication. The parties stipulate and agree that court proceedings for Water Right Numbers 51-12711, 51-12891, 51-12925 and 51-12954 should be stayed pending adjudication of issues within the jurisdiction of the Nevada State Engineer in the Jarbidge Adjudication. The parties stipulate and agree to join in

a motion to stay SRBA proceedings in Subcase Numbers 51-12711, 51-12891, 51-12925 and 51-12954.

10. The parties stipulate and agree to support the Joint Motion for Order Approving Stipulation set forth below. If for any reason the Court does not approve the Stipulation and issue partial and final decrees for any of the water rights as described above, and as described in the Standard Forms 5 to be filed at a later date, this Stipulation is null and void and shall have no effect, and the parties shall proceed with a determination of their water rights and/or objections under applicable law.

11. The parties agree that this Stipulation has been entered into based upon good faith negotiations for the purpose of resolving legal disputes, including pending litigation, by compromise and settlement and that nothing in this Stipulation, or any offers or compromises made in the course of negotiating this Stipulation, shall be construed as admissions against interest or tendered or used as evidence to show the validity or invalidity of any water right claims made by the parties, or as an admission or concession of wrongdoing or liability, or shall be used in any manner by any party in the SRBA in any future proceedings in the SRBA, in any appellate proceedings concerning the SRBA, or in any other proceeding, other than those seeking approval of this Stipulation by the SRBA Court, for interpretation or enforcement of this Stipulation, or for a purpose contemplated by Idaho Rule of Evidence 408. Nothing in this Stipulation shall be construed to commit any federal official to expend funds not appropriated by Congress.

12. This Stipulation was entered into and executed voluntarily by the parties in good faith, and without any fraud, misunderstanding, overreaching, misrepresentation, duress, or undue influence. This Stipulation comprises the entire agreement and no promise, inducement, or

representation other than herein set forth has been made, offered, and/or agreed upon, and the terms of this Stipulation are contractual and not merely a recital.

13. This Stipulation shall be binding upon any and all successors, assigns, heirs, executors, and administrators of each of the parties.

14. Each party shall bear their own costs and attorney fees.

15. This Stipulation shall become effective upon execution by all of the Parties.

JOINT MOTION FOR ORDER APPROVING STIPULATION

The United States and C.E. Brackett Cattle Co., Bert and Paula Brackett, Brackett Livestock, Inc., and Brackett Ranches, Ltd. request the Court to approve the foregoing Stipulation, and to Order that subcases, places of use, objections, motions to file late objections, and motions to set-aside partial decrees be dismissed with prejudice in accordance with this Stipulation and its exhibits.

The Order sought by this motion is fully in accordance with Idaho law. Such an Order would serve to facilitate the settlement between the BLM and C.E. Brackett Cattle Co., Bert and Paula Brackett, Brackett Livestock, Inc., and Brackett Ranches, Ltd., thus streamlining the SRBA process. The provisions of Idaho Rule of Evidence 408, as well as the policy underlying that rule and the policy of the SRBA Court, are directed at furthering the strong public policy favoring out-of-court settlement of disputes over litigation.

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Wherefore, the United States and C.E. Brackett Cattle Co., Bert and Paula Brackett, Brackett Livestock, Inc., and Brackett Ranches, Ltd. respectfully request that this Court grant this motion in all respects. The United States and C.E. Brackett Cattle Co., Bert and Paula Brackett, Brackett Livestock, Inc., and Brackett Ranches, Ltd. further request oral argument of this matter.

DATED this 31st day of October 2002.

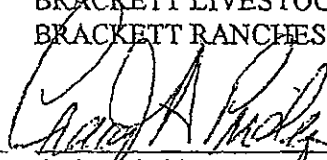
Respectfully submitted:

UNITED STATES OF AMERICA



Larry A. Brown
Of Attorneys for the United States

C.E. BRACKETT CATTLE CO.
BERT & PAULA BRACKETT
BRACKETT LIVESTOCK, INC.
BRACKETT RANCHES, LTD



Craig A. Pridgen
Of Attorneys for Bracketts



Roger D. Ling
Of Attorneys for Bracketts

State of Idaho)
) ss.
County of Ada)

LARRY A. BROWN, duly sworn, upon oath, deposes and says:

That I am the party filing this Stipulation, and/or that I am the attorney for the party, and that I have read this Stipulation, know its contents and believe that the statements are true to the best of my knowledge.

Larry A. Brown

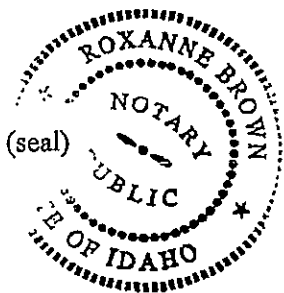
Larry A. Brown
United States Department of Justice
Environment and Natural Resources Division
General Litigation Section
550 West Fort Street, MSC 033
Boise, Idaho 83724
(202) 305-0435

Counsel for the United States of America

Subscribed and sworn before me on: October 31st, 2007

Roxanne Brown

Notary Public for: State of Idaho
Residing at: Boise, ID
Commission expires: 5/11/2008



State of Idaho)
) ss.
County of Ada)

CRAIG A. PRIDGEN, duly sworn, upon oath, deposes and says:

That I am the party filing this Stipulation, and/or that I am the attorney for the party, and that I have read this Stipulation, know its contents and believe that the statements are true to the best of my knowledge.

Dated October 31, 2002

Craig A. Pridgen

Craig A. Pridgen
McQuaid, Metzler, Bedford, & Van Zandt, LLP
221 Main Street, Seventh Floor
San Francisco, CA 94105-1936
Ph: (415) 905-0200
Counsel for C.E. Brackett Cattle Co., Bert and
Paula Brackett, Brackett Livestock, Inc., and
Brackett Ranches, Ltd.

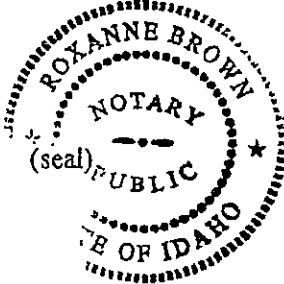
Subscribed and sworn before me on: October 31, 2002

Roxanne Brown
(name of notary)

Notary Public for: State of Idaho

Residing at: Boise, ID

Commission expires: 5/11/2008



State of Idaho)
) ss.

County of M. Walker

JASON D. WALKER

ROGER D. LING, duly sworn, upon oath, deposes and says:

That I am the party filing this Stipulation, and/or that I am the attorney for the party, and that I have read this Stipulation, know its contents and believe that the statements are true to the best of my knowledge.

Dated 11/1/02

[Signature]
Roger D. Ling Jason D. Walker

Ling, Nielsen & Robinson

P.O. Box 396

Rupert, ID 83350

Ph: (208) 436-4717

Counsel for C.E. Brackett Cattle Co., Bert and

Paula Brackett, Brackett Livestock, Inc., and

Brackett Ranches, Ltd.

Subscribed and sworn before me on:

November 1, 2002

[Signature]
(name of notary)

Notary Public for:

Residing at:

Commission expires:

Rupert
11-24-06

LUEDEAN REICHERT
NOTARY PUBLIC
STATE OF IDAHO

The Idaho Department of Water Resources **CONCURS** in this Stipulation.

Dated: 10/31/02

Roxanne Brown
Roxanne Brown
Senior Water Rights Agent

Approved as to form:

Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this Nov. 1 day of ~~October~~ 2002, I served a true and correct copy of the foregoing **STIPULATION AND JOINT MOTION FOR ORDER APPROVING STIPULATION**, by depositing a copy thereof in the U.S. mail, postage prepaid, or via hand delivery or facsimile where indicated, upon the following:

Original to:

Clerk of the Court
Snake River Basin Adjudication
P.O. Box 2707
Twin Falls, ID 83303-2707

Copies to:

U.S. Department of Justice
General Litigation Section
Environment and Natural Resource Division
550 West Fort Street, MSC 033
Boise, ID 83724

IDWR Document Depository
P.O. Box 83720
Boise, ID 83720-0098

Craig A. Pridgen
McQuaid, Metzler, Bedford, & Van Zandt, LLP
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San Francisco, CA 94105-1936

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
P.O. Box 44449
Boise, ID 83711-4449

David J. Barber, Deputy Attorney General
Office of the Attorney General
State of Idaho
P.O. Box 44449
Boise, ID 83711-4449

Roger D. Ling
Ling, Nielsen & Robinson
P.O. Box 396
Rupert, ID 83350

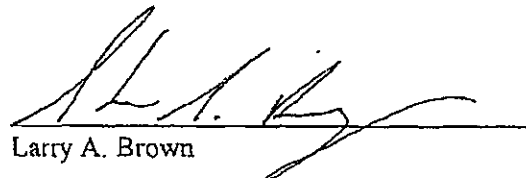

Larry A. Brown

EXHIBIT A

51-02281	51-11904	51-12091	51-12485
51-02283	51-11905	51-12904	51-12491
51-02289	51-11907	51-12097	51-12495
51-02299	51-11908	51-12108	51-12499
51-02300	51-11911	51-12109	51-12501
51-02301	51-11912	51-12114	51-12502
51-02302	51-11915	51-12115	51-12503
51-02313	51-11919	51-12117	51-12504
51-02317	51-11920	51-12118	51-12508
51-02318	51-11921	51-12167	51-12511
51-02326	51-11922	51-12347A	51-12515
51-02328	51-11925	51-12347B	51-12516
51-02356	51-11926	51-12348	51-12517
51-02358	51-11928	51-12349	51-12543
51-02360	51-11931	51-12350	51-12715
51-02361	51-11933	51-12352	51-12823
51-02393	51-11936	51-12353B	51-12826
51-04062	51-11939	51-12360	51-12834
51-04063	51-11941	51-12369	51-12835
51-04064	51-11945	51-12372	
51-04065	51-11950	51-12374	
51-04066	51-11953	51-12375	
51-04067	51-11954	51-12376	
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51-04079	51-11969	51-12434	
51-04082	51-11971	51-12436	
51-07171	51-11972	51-12437	
51-11290	51-11974	51-12438	
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51-11886	51-11976	51-12440	
51-11888	51-11979	51-12442	
51-11889	51-11980	51-12443	
51-11890	51-11981	51-12448	
51-11891	51-11984	51-12449	
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51-11901	51-12079	51-12453	
51-11902	51-12088	51-12460	
51-11903	51-12090	51-12484	

EXHIBIT B

51-04097
51-04099
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51-12951

EXHIBIT D

51-12711
51-12891
51-12895A
51-12896A
51-12897A
51-12898A
51-12925
51-12954
51-12957