

Conference Notes

Brackett Transfer 70887 & 70890

Date: 5/8/08

From: J. Westra, Western

Attendance: See attached roster

-As this were only 3 parties involve with the conference, much formality and procedure was dispensed. Mr. Honsinger asked several questions of the applicant related to the troughs, pumping, and pipeline. The watering system actually serves several property owners of the Brackett Family and neighbors. Water is comingled from several rights as Department records state. Mr. Brackett indicated that not all the stockwater troughs are in operation at once. Much depends on the rotation of stock and feed availability. The additional troughs and location changes are a result of a stipulation agreement with the BLM and Airforce.

-The protestant express concerns about the issue of expansion and injury to downstream senior right holders. The diversion should be regulated. It was argued by the applicant that the number of head of cattle was not changing or the grazing time period--- no change in beneficial use. I stated this creek system to the Snake River is not a regulated drainage by the Dept. One can not single one user out and require measurement/regulation. A water district is the only tool that can implement regulation. Parties can certainly agree on some type of control but it would be between them.

-After a request by Mr. Honsinger for a short recess, the protestant suggested a settlement could be considered if the following conditions were placed on the transfer approval:

Conditions of approval from transfer #70694 WR 51-7085

Numbers 4, 5, 6, 7,

-It was agreed the Dept. would prepare a draft transfer approval and send it to parties for review. If it was acceptable to both parties, the protestant would withdraw the protest by stipulation. The transfer would then be signed by the Dept. A 60 day window was set to keep the process moving.

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RINGERT CLARK CHARTERED
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Attorneys for Protestant Bruneau
Buckaroo Cooperative Ditch Company

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AUG 2 2007

DEPARTMENT OF
WATER RESOURCES

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AUG 22 2007

WATER RESOURCES
WESTERN REGION

BEFORE THE DEPARTMENT OF WATER RESOURCES OF
THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR)
TRANSFER NO. 70887 IN THE NAME OF) PROTEST
BRACKETT RANCHES, LTD)
)
)
)

Conference
Handout
5/8/08

COMES NOW, the Protestant, Bruneau Buckaroo Cooperative Ditch Company
(hereinafter BBCDC) by and through its counsel Ringert Clark, Chartered and, in conformance
with and pursuant to I.C. §42-222 and IDAPA 37.01.01.250, hereby protests the Application for
Transfer No. 70887 filed by Brackett Ranches, Ltd.

The basis for this protest is that BBCDC owns water right numbers 51-00002, 51-00003,
51-00005, 51-10271, 51-10350, and 51-10351 that are diverted from the Bruneau River at T07S
R06E Section 26 SWSW. Protestant is concerned that the proposed transfer does not comply
with the requirements of I.C. §42-222 in that it may: (1) result in injury to existing water rights,
including those held by Protestant; (2) result in an enlargement in the use of existing water rights;
(3) conflict with the local public interest as defined in Idaho Code Section 42-202B; and (4) be
contrary to the conservation of water resources within the state of Idaho. BBCDC proposes that,

PROTEST TO APPLICATION FOR TRANSFER NO. 70887 IN THE NAME OF BRACKETT
RANCHES, LTD - Page 1

SCANNED

SEP 05 2007

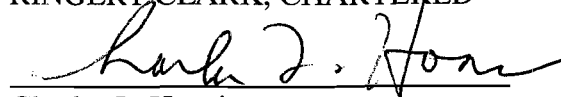
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should IDWR and/or the parties determine that all or any portion of the permit proposed pursuant to the above-captioned application must be limited or denied to meet the requirements of I.C.

§42-222, such limitations be imposed and/or such denial be issued.

Dated this 20th day of August, 2007.

RINGERT CLARK, CHARTERED

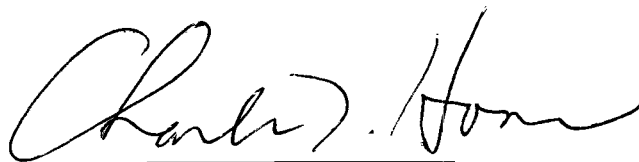


Charles L. Honsinger
Attorney for Bruneau Buckaroo Cooperative
Ditch Company

CERTIFICATE OF SERVICE

The undersigned does hereby certify that on August 20, 2007, he caused a true and correct copy of the within and foregoing document to be transmitted by U.S. mail to the following

Brackett Ranches, Ltd.
Flat Creek Ranch
Rogerson, ID 83302



Charles L. Honsinger

#25 - received 8/20/07 #C084776 (S.O.)

PROTEST TO APPLICATION FOR TRANSFER NO. 70887 IN THE NAME OF BRACKETT RANCHES, LTD - Page 2

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Idaho Statutes

TITLE 42 IRRIGATION AND DRAINAGE -- WATER RIGHTS AND RECLAMATION CHAPTER 2

APPROPRIATION OF WATER -- PERMITS, CERTIFICATES, AND LICENSES -- SURVEY

42-222. CHANGE IN POINT OF DIVERSION, PLACE OF USE, PERIOD OF USE, OR NATURE OF USE OF WATER UNDER ESTABLISHED RIGHTS -- FORFEITURE AND EXTENSION -- APPEALS. (1) Any person, entitled to the use of water whether represented by license issued by the department of water resources, by claims to water rights by reason of diversion and application to a beneficial use as filed under the provisions of this chapter, or by decree of the court, who shall desire to change the point of diversion, place of use, period of use or nature of use of all or part of the water, under the right shall first make application to the department of water resources for approval of such change. Such application shall be upon forms furnished by the department and shall describe the right licensed, claimed or decreed which is to be changed and the changes which are proposed, and shall be accompanied by the statutory filing fee as in this chapter provided. Upon receipt of such application it shall be the duty of the director of the department of water resources to examine same, obtain any consent required in section 42-108, Idaho Code, and if otherwise proper to provide notice of the proposed change in a similar manner as applications under section 42-203A, Idaho Code. Such notice shall advise that anyone who desires to protest the proposed change shall file notice of protests with the department within ten (10) days of the last date of publication. Upon the receipt of any protest, accompanied by the statutory filing fee as provided in section 42-221, Idaho Code, it shall be the duty of the director of the department of water resources to investigate the same and to conduct a hearing thereon. He shall also advise the watermaster of the district in which such water is used of the proposed change and the watermaster shall notify the director of the department of water resources of his recommendation on the application, and the director of the department of water resources shall not finally determine the action on the application for change until he has received from such watermaster his recommendation thereof, which action of the watermaster shall be received and considered as other evidence. For applications proposing to change only the point of diversion or place of use of a water right in a manner that will not change the effect on the source for the right and any other hydraulically-connected sources from the effect resulting under the right as previously approved, and that will not affect the rights of other water users, the director of the department of water resources shall give only such notice to other users as he deems appropriate.

When the nature of use of the water right is to be changed to municipal purposes and some or all of the right will be held by a municipal provider to serve reasonably anticipated future needs, the municipal provider shall provide to the department sufficient information and documentation to establish that the applicant qualifies as a municipal provider and that the reasonably anticipated future needs, the service area and the planning horizon are consistent with the definitions and requirements specified in this chapter. The service area need not be described by legal description nor by description of every intended use in detail, but the area must be described with sufficient information to identify the general location where the water under the water right is to be used and the types and quantity of uses that generally will be made.

When a water right or a portion thereof to be changed is held by a municipal provider for municipal purposes, as defined in section 42-202B,

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Idaho Code, that portion of the right held for reasonably anticipated future needs at the time of the change shall not be changed to a place of use outside the service area, as defined in section 42-202B, Idaho Code, or to a new nature of use.

→ 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. A copy of the approved application for change shall be returned to the applicant and he shall be authorized upon receipt thereof to make the change and the original water right shall be presumed to have been amended by reason of such authorized change. In the event the director of the department of water resources determines that a proposed change shall not be approved as provided in this section, he shall deny the same and forward notice of such action to the applicant by certified mail, which decision shall be subject to judicial review as hereafter set forth. Provided however, minimum stream flow water rights may not be established under the local public interest criterion, and may only be established pursuant to chapter 15, title 42, Idaho Code.

(2) All rights to the use of water acquired under this chapter or otherwise shall be lost and forfeited by a failure for the term of five (5) years to apply it to the beneficial use for which it was appropriated and when any right to the use of water shall be lost through nonuse or forfeiture such rights to such water shall revert to the state and be again subject to appropriation under this chapter; except that any right to the use of water shall not be lost through forfeiture by the failure to apply the water to beneficial use under certain circumstances as specified in section 42-223, Idaho Code.

(3) Upon proper showing before the director of the department of water resources of good and sufficient reason for nonapplication to beneficial use of such water for such term of five (5) years, the director of the department of water resources is hereby authorized to grant an extension of time extending the time for forfeiture of title for nonuse thereof, to such waters for a period of not to exceed five (5) additional years.

(4) Application for an extension shall be made before the end of the five (5) year period upon forms to be furnished by the department of water resources and shall fully describe the right on which an extension of time to resume the use is requested and the reasons for such nonuse and shall be accompanied by the statutory filing fee; provided that water rights protected from forfeiture under the provisions of section 42-223, Idaho Code, are exempt from this requirement.

(a) Upon the receipt of such application it shall be the duty of the director of the department of water resources to examine the same and to provide notice of the application for an extension in the same manner as

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applications under section 42-203A, Idaho Code. The notice shall fully describe the right, the extension which is requested and the reason for such nonuse and shall state that any person desiring to object to the requested extension may submit a protest, accompanied by the statutory filing fee as provided in section 42-221, Idaho Code, to the director of the department of water resources within ten (10) days of the last date of publication.

(b) Upon receipt of a protest it shall be the duty of the director of the department of water resources to investigate and conduct a hearing thereon as in this chapter provided.

(c) The director of the department of water resources shall find from the evidence presented in any hearing, or from information available to the department, the reasons for such nonuse of water and where it appears to the satisfaction of the director of the department of water resources that other rights will not be impaired by granting an extension of time within which to resume the use of the water and good cause appearing for such nonuse, he may grant one (1) extension of five (5) years within which to resume such use.

(d) In his approval of the application for an extension of time under this section the director of the department of water resources shall set the date when the use of water is to be resumed. Sixty (60) days before such date the director of the department of water resources shall forward to the applicant at his address of record a notice by certified mail setting forth the date on which the use of water is to be resumed and a form for reporting the resumption of the use of the water right. If the use of the water has not been resumed and report thereon made on or before the date set for resumption of use such right shall revert to the state and again be subject to appropriation, as provided in this section.

(e) In the event the director of the department of water resources determines that a proposed extension of time within which to resume use of a water right shall not be approved as provided in this section, he shall deny same and forward notice of such action to the applicant by certified mail, which decision shall be subject to judicial review as hereafter provided.

(5) Any person or persons feeling themselves aggrieved by the determination of the department of water resources in approving or rejecting an application to change the point of diversion, place, period of use or nature of use of water under an established right or an application for an extension of time within which to resume the use of water as provided in this section, may, if a protest was filed and a hearing held thereon, seek judicial review pursuant to section 42-1701A(4), Idaho Code. If no protest was filed and no hearing held, the applicant may request a hearing pursuant to section 42-1701A(3), Idaho Code, for the purpose of contesting the action of the director and may seek judicial review of the final order of the director following the hearing pursuant to section 42-1701A(4), Idaho Code.

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Available Reference: *Search Instructions*.

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TABLE NO. 6

$$\#HD \times .0134 = \text{VOLUME AFA}$$

$$CFS \times 1.98 \times \#DAYS USE = \text{VOLUME AFA}$$

ANNUAL USE OF WATER FOR STOCKWATER PURPOSES

No. of Stock (head)	RANGE CATTLE		DAIRY CATTLE	
	Rate* c.f.s. (1)	Volume AF/yr. (1)	Rate* c.f.s. (2)	Volume AF/yr. (2)
0 - 10	0.02	0.2	0.02	0.4
11 - 25	0.02	0.4	0.02	1.0
26 - 50	0.02	0.7	0.04	2.0
51 - 100	0.03	1.4	0.07	4.0
101 - 200	0.05	2.7	0.13	7.9
201 - 300	0.07	4.1	0.20	12.0
301 - 400	0.09	5.4	0.26	16.0
401 - 500	0.12	6.7	0.33	20.0
501 - 600	0.14	8.1	0.39	24.0
601 - 700	0.16	9.4	0.46	28.0
701 - 800	0.19	11.0	0.52	32.0
801 - 900	0.20	12.0	0.58	36.0
901 - 1000	0.23	14.0	0.65	40.0
1001 - up (3)				

1. The amounts shown are based on 12 gpd/head with a 12 month period of use. (i.e. for range cattle, horses and mules). The amount does not include a loss (i.e. thru conveyance, etc.)

2. The amounts shown are based on 35 gpd/head with a 12 month period of use. (i.e. for dairy cattle). The amount does not include a loss. (i.e. thru conveyance, etc.).

3. For annual use calculations which involve more than 1000 head, round the number of head up to the next even one hundred, and

Volume

a) for livestock use @ 12 gpd/hd, N (0.0134).

b) for dairy use @ 35 gpd/hd, N (0.0391).

Rate

a) for livestock use @ 12 gpd/hd, N (0.00022).

b) for dairy use @ 35 gpd/hd, N (0.00065).

The answer should be rounded up to the nearest whole acre-foot.

*The rate is based upon approx. 2 hr/day diversion to obtain daily requirement.