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WATER RESOURCES
WESTERN REGION

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June 9, 2008

John Westra, Manager Western Region
Department of Water Resources
2735 Airport Way
Boise, Idaho 83705-5082

Charles Honsinger, Esquire
Buckaroo Cooperative Ditch Company
c/o Ringert Clark Chtd
PO Box 2773
Boise, Idaho 83701

Re: **Contested Transfers #70887 and 70890 - Brackett Ranches - Proposed "CONDITIONS OF APPROVAL"**

Dear Mr. Westra and Mr. Honsinger:

Bert Brackett has asked me to review and comment on the "CONDITIONS OF APPROVAL" with respect to Transfer Nos. 70887 and 70890. In this regard, I have reviewed the CONDITIONS OF APPROVAL set forth in Transfer No. 70887 as prepared and forwarded by Mr. Westra under cover letter of May 13, 2008. For the sake of full disclosure, I have discussed the contents of the referenced CONDITIONS OF APPROVAL with not only Mr. Brackett but each of you. Based upon my review of the relevant Idaho code sections and regulations, as well as my discussions with Mr. Brackett and general knowledge concerning the history and background of the diversion which is the subject matter of these current transfers, I make the following comments and suggested changes and modifications to the "CONDITIONS OF APPROVAL" indicated specifically below. Please be advised that Mr. Brackett has authorized me to present these modifications and changes in the spirit of a compromise and in order to effectuate a resolution of these matters. Please keep in mind that these water rights have been finally decreed in the SRBA. Also please keep in mind that notwithstanding a compromise resulting in a decreed water right, the Bracketts have been diverting water from the source which

is the subject matter of these discussions for several decades.

Accordingly, Mr. Brackett has authorized and instructed me to suggest the following modifications to the "CONDITIONS OF APPROVAL":

3. Since these water rights have been decreed in the "SRBA" Court, I am not sure that the provisions of paragraph 3 are either necessary or appropriate. Paragraph 3 should be deleted.

6. This paragraph should be deleted in its entirety as being moot in view of the fact that the water right has been decreed by the SRBA Court.

7. I believe that the language in paragraph 7 is unnecessary because the parties, subject to approval by the State, can basically enter into any agreements that they wish to and accordingly, I am not sure that it adds anything.

9. I would suggest the following modifications:

> "[A]t the time of this approval, this water right is within State Water District No. 51A which is currently inactive. If said District is reactivated, the future use of water under this right may be regulated by a Water Master with responsibility for the distribution of water among appropriators within the Water District or any subsequent Water District that may replace or supersede District No. 51A."

10. I would make the following modification to the provision as follows:

> "Upon reactivation or creation of a new Water District (I.C. 42-604) or a Water Management District (I.C. 42-706), and only after specific notification by the Department, the water right holder shall install a suitable measuring device and shall annually report the information to the Watermaster of the new Water District."

11. The provisions of paragraph 11 should be modified to read as follows:

> "[W]hen notified by the Department or by a Watermaster with regulatory authority over this right, the right holder shall report the

amount of water diverted in connection with this right."

12. This provision should be eliminated in its entirety. The regulation of water diversions within a District are already subject to the jurisdiction of the Watermaster in the event that a District is recreated or by the Department. It is my understanding that a decision to install such a device would be within the discretion of the Watermaster for the District.

If you have any questions or comments with respect to my input, kindly feel free to contact me. I must admonish you both however that I believe some of the provisions suggested are beyond the scope of requirements imposed by either the State law or related regulations. My client wants to be a good neighbor and a to cooperate with all of the downstream users; however, we cannot agree to the imposition or requirement of devices which will regulate the amount of diversion from the source under circumstances where a downstream user has the unilateral authority to impose such requirements or restrictions. It is my sincere desire that we reach an amicable agreement with respect to these applications for transfer and I will accordingly look forward to a favorable response to my suggestions as articulated above.

Very truly yours,

Craig A. Pridgen

CAP/mb

cc: Bert Brackett