



State of Idaho

DEPARTMENT OF WATER RESOURCES

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C. L. "BUTCH" OTTER
Governor

DAVID R. TUTHILL, JR.
Director

August 18, 2008

Charles Honsinger, Attorney
Buckaroo Cooperative Ditch Co.
C/O Ringert Clark Chtd
PO Box 2773
Boise ID 83701

Craig Pridgen, Attorney
Brackett Ranches LTD
3000 North Lake Blvd Suite 4
Tahoe City
CA 96145

RE: Transfers #70887 & 70890 (draft conditions) Brackett Ranches LTD

Dear Mr. Honsinger & Mr. Pridgen:

As you are aware, parties agreed at the pre-hearing conference, I was to prepare transfer condition drafts with normal approval conditions and conditions #9, #10, #11, and #12 from a previous Brackett transfer # 70694 for review by parties. The draft was sent to parties on May 13th.

Since, I have had discussions with both of you resulting in some excellent questions regarding the draft transfer conditions. The following are my thoughts, (drafts are attached):

- Condition #3,-These water rights have been partially decreed by the SRBA Court, however the Court has not issued a final decree for the entire basin. General decree provisions and how the decreed rights will be administered have yet to be finalized by the court. Yes, this condition is needed.
- Condition #6 -Although the right has been decreed, historic stockwater use is difficult to quantify in some cases, a disclaimer.
- Condition #7 would only be included if the applicant and protestant had a separate agreement, for reference only. Remove if there is no agreement.
- Normally, IDWR would place a condition similar to #9 that would state the right is located presently in an inactive water district which may be reactivated or superseded in the future.

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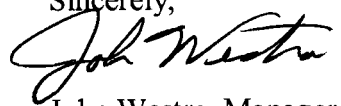
-Again Conditions #9, 10, #11, #12 have specific language resulting from the settlement of transfer #70694 (irrigation). Other conditions listed are fairly standard for this type of surface water transfer.

To reactivate, supercede, or form a new water district, the Director will issue an order forming the entity. The order may also mandate measurement/lockable diversion devices for regulation or may require the reporting of use by district waterusers. Please know, the Director can not single out certain rights/ situations/individuals for mandates in a water district, ref. IC 42-604, 42-607, & 42-701. It appears conditions #10, #11, #12 address these possibilities, but there may be other approaches/variations.

Examples:

- This water right is subject to control by the Department and any appointed watermaster within an applicable water district.
- The right holder shall install a suitable measuring device or lockable structure at the point of diversion as may be directed by the Department or watermaster of an applicable water district. Upon notification the right holder shall annually submit a report of water use.

I hope this will help clarify questions and be of value to parties. Feel free to contact me, phone 334-2190. Keep in touch!

Sincerely,

John Westra, Manager

Enclosures: Transfer Draft conditions

WATER RIGHT NO. 51-12898A
As Modified by Transfer No. 70887

CONDITIONS OF APPROVAL

1. The right holder shall accomplish the change authorized by this transfer within one (1) year of the date of this approval.
2. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.
3. Pursuant to Section 42-1412(6), Idaho Code, this water right is subject to such general provisions necessary for the definition of the rights or for the efficient administration of water rights as may be determined by the Snake River Basin Adjudication court at a point in time no later than the entry of the final unified decree.
4. This right does not grant any right-of-way or easement across the land of another.
5. The quantity of water under this right shall not exceed 13,000 gallons per day.
6. The quantity of water decreed for this water right is not a determination of historical beneficial use.
7. The diversion and use of water described in Transfer 70887 may be subject to additional limitations agreed to by the protestant and the right holder under separate agreement to which the Department is not a party and which may be enforceable by a court of law.
8. Conveyance facilities necessary for the delivery of this right are located as follows:
T13S R09E S35 SESW (tank)
T14S R09E S25 SWNW (reservoir)
T14S R09E S26 SESE (reservoir)
9. At the time of this approval, this water right is within State Water District No. 51A. In the future use of water under this right may be regulated by a watermaster with responsibility for the distribution of water among appropriators within the water district or any subsequent water district that may supercede 51A.
10. Upon reactivation or creation of a new water district (I.C. 42-604) or a water management district (I.C. 42-706), and after specific notification by the Department, right holders shall install a suitable measuring device and shall annually report the information to the Department.
11. When 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. The report shall be submitted in the manner and frequency specified by the Department or the watermaster.
12. When actively regulated by a Water District, a lockable device subject to the approval of the Department shall be maintained on the diverting works in a manner that will provide the watermaster suitable control of the diversion.
13. Stockwater use is for 1000 range cattle.

This water right is subject to all prior water rights and shall be administered in accordance with Idaho law and applicable rules of the Department of Water Resources.

Dated this _____ day of _____, 20____

Chief, Water Allocation Bureau

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WATER RIGHT NO. 51-12895A
As Modified by Transfer No. 70890

CONDITIONS OF APPROVAL

1. The right holder shall accomplish the change authorized by this transfer within one (1) year of the date of this approval.
2. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.
3. Pursuant to Section 42-1412(6), Idaho Code, this water right is subject to such general provisions necessary for the definition of the rights or for the efficient administration of water rights as may be determined by the Snake River Basin Adjudication court at a point in time no later than the entry of the final unified decree.
4. This right does not grant any right-of-way or easement across the land of another.
5. The quantity of water under this right shall not exceed 13,000 gallons per day.
6. The quantity of water decreed for this water right is not a determination of historical beneficial use.
7. The diversion and use of water described in Transfer 70890 may be subject to additional limitations agreed to by the protestant and the right holder under separate agreement to which the Department is not a party and which may be enforceable by a court of law.
8. Conveyance facilities necessary for the delivery of this right are located as follows:
T13S R09E S02 SENE (reservoir)
T13S R09E S13 NESE (tank)
T14S R09E S25 SWNW (reservoir)
T14S R09E S26 SENE (reservoir)
9. At the time of this approval, this water right is within State Water District No. 51A. In the future use of water under this right may be regulated by a watermaster with responsibility for the distribution of water among appropriators within the water district or any subsequent water district that may supercede 51A.
10. Upon reactivation or creation of a new water district (I.C. 42-604) or a water management district (I.C. 42-706), and after specific notification by the Department, right holders shall install a suitable measuring device and shall annually report the information to the Department.
11. When 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. The report shall be submitted in the manner and frequency specified by the Department or the watermaster.
12. When actively regulated by a Water District, a lockable device subject to the approval of the Department shall be maintained on the diverting works in a manner that will provide the watermaster suitable control of the diversion.
13. Stockwater use is for 1000 range cattle.

This water right is subject to all prior water rights and shall be administered in accordance with Idaho law and applicable rules of the Department of Water Resources.

Dated this _____ day of _____, 20_____

Chief, Water Allocation Bureau

DRAFT