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WATER RESOURCES
WESTERN REGION

September 18, 2008

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

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

Re: Resolution of Transfer #70887 & 70890 – Approval

Dear Mr. Westra and Mr. Honsinger:

I am concerned that we have yet to come up with a resolution and final terms and conditions of approval with respect to Mr. Brackett's transfers above referenced. I believe that we have reached a tentative agreement with respect to some of the provisions and particularly those set forth as conditions 1, 2, 4, 5, and 8 based upon conversations I have had with each of you over the course of the last several weeks. Conditions 9, 10, 11, and 12 remain the subject matter of some discussion and disagreement. You have made reference to the fact that those conditions are identical or very similar to conditions set forth in the Brackett Transfer #70694. There should be no mistake that any terms and conditions set forth in that transfer previously processed by the Bracketts or their related entities have no bearing on the conditions as they relate to the pending transfers above referenced. What Mr. Brackett or his related entity may or may not have agreed to with respect to terms and conditions of other water rights and related applications for transfer or modifications of a water right have absolutely no bearing or relevance with respect to the transfers above referenced. Specifically, what may have been agreeable to or reluctantly agreeable to by Mr. Brackett in an unrelated situation has absolutely no relevance with respect to these discussions concerning the above-referenced applications.

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Secondly, the allegations by Mr. Honsinger on behalf of his client as memorialized in early correspondence concerning these transfer applications dating back to last fall are not supportable, do not reflect reality and in any event do not constitute any justification for the restrictive provisions of the "proposed" conditions of approval. Mr. Honsinger in his letter to Mr. Brackett of October 1 of last year makes assumptions and conclusions which are not sustainable as a matter of fact. Specifically, Mr. Honsinger alleges that an expansion of the number of troughs or tanks will by definition and in fact result in an increase in diversion of water. First, there is no evidence to support such a conclusion. Further, there is no evidence that Mr. Brackett has ever diverted or is currently diverting more water in his pipeline system than he is entitled to, and in fact, due to the nature and sophistication of the system installed by Mr. Brackett, it is much more efficient and results in a more conservative use of the water. There is no evidence that the diversion has or at any time in the foreseeable future will result in the diversion of more water than the Brackett operation is legally entitled to under its decreed water rights.

The proposed provisions are onerous and not necessary. The Director has the authority to regulate and monitor, if appropriate, diversions within the State of Idaho and to the extent that a district is formed, the manager of the district certainly has statutory discretion over diversions and beneficial use of water within that district. There is absolutely no evidence of over diversion of these water rights now or at any time in the history of the operation of the Brackett ranching operations. To the contrary, one would be hard pressed to find a system as sophisticated and fully integrated as that which has been installed primarily at the expense of the Brackett ranching entities over the period of forty-two years which is designed to conserve water and to more effectively beneficially use that water.

As noted in Mr. Westra's letter of August 18th, "the Director cannot single out certain rights/situations/individuals for mandates in a water district." Unless Mr. Brackett waives protections which current law provides, I cannot advise him to accept the current language set forth in conditions 10, 11 and 12. Mr. Westra also acknowledges that conditions 10, 11 and 12 may be susceptible to revision, modification or the formation of other "approaches/variations." Clearly, under Idaho law, the Department has and regardless of the terms and conditions of the actual "CONDITIONS OF APPROVAL" will continue to have jurisdiction over all of the water rights within the Basin which is the subject matter of these discussions. Likewise, a reactivated or new water district would through its manager be empowered to take action as provided under Idaho law and the regulations promulgated thereunder in the event that there is a need to regulate and/or monitor diversions within the District. Accordingly, it is my position and most strongly the position of Mr. Brackett that such provisions and restrictions not be incorporated in the conditions to the approval of the referenced transfers.

Accordingly, Mr. Brackett has authorized and instructed me to suggest the following

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additional modifications or revisions to the "CONDITIONS OF APPROVAL":

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

2. Paragraph 6 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 and is not appealable at this point by anyone.

3. 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. Further, there is no agreement at this time.

4. I suggest the following modifications to paragraph 9:

"[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."

5. I would make the following modification to the provision of paragraph 10 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 Department or Watermaster of any such new Water District; provided however, that the owners of all downstream diversions from the Bracketts shall also be required to install such measuring devices and file the necessary reports to the Department" as provided in I.C. 42-700 et. seq.

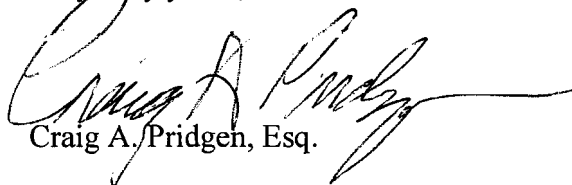
6. The provisions of paragraph 11 should be deleted in view of the changes to paragraph 10.

7. Paragraph 12 does not apply and 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 pursuant to applicable provisions of I.C. 42-600 et. seq. and 42.700 et. seq. and we have addressed the matter in paragraph 10.

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Finally, I sincerely want to resolve this matter. Bert Brackett does not want to be perceived as being anything other than interested in preserving the integrity and the efficient use of water rights within his ranch and the Basin. Accordingly, I sincerely hope that we can modify the terms and conditions and finally resolve the "CONDITIONS OF APPROVAL" with respect to the referenced transfers. It is in this spirit that I will look forward to a favorable response to this correspondence. I will work diligently in order to achieve a resolution which is acceptable to the parties and consistent with and subject to the laws and regulations of the State of Idaho.

Very truly yours,

A handwritten signature in black ink, appearing to read "Craig A. Pridgen", with a long horizontal flourish extending to the right.

Craig A. Pridgen, Esq.

CAP/ech
cc Bert Brackett