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July 25, 2007

Dave Carlson
Idaho Department of Water Resources
900 N. Skyline Dr., Ste. A
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RECEIVED
JUL 25 2007
Department of Water Resources
Eastern Region

Re: Transfer Application for Crystal Springs Land & Cattle Co., Inc.

Dear Dave:

Enclosed please find a completed transfer application for Water Right No. 22-164. A few weeks ago, we had a pre-application meeting and discussed various aspects of this transfer application. Our firm has been asked to represent Crystal Springs Land & Cattle with respect to this transfer application, and we are signing it in our representative capacity.

Generally speaking, this transfer application is being submitted in order to allow Crystal Springs to construct a number of ponds and wildlife sloughs, and to perform stream restoration activities on land located just south of the Driggs in Teton County. The land had been historically grazed with cattle, and is extremely degraded due to the presence of cattle on the property. Crystal Springs has been working with the Idaho Fish & Game, the Army Corps of Engineers, and Mr. Tom Bassista of your office regarding any stream channel alterations that are being proposed. We request that a copy of this transfer application be provided to him for his information as he is intimately familiar with the project.

Enclosed with this transfer application is a CAD drawing showing the location of the proposed ponds and wetland sloughs. Generally speaking, four ponds and one stand-alone wetland slough will be constructed on the property. In addition, there are a number of stream channel alterations which will widen the stream channel to its original configuration. As you can see on the transfer application, we are proposing to change the nature of use for 0.15 cfs of water right no. 22-164, to allow for the storage of 24.3 acre feet of water on the property. Based on our calculations, in order to allow this change, approximately 12.5 acres of land

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under Water Right No. 22-164 will be dried up as mitigation for the proposed changes. At Attachment 1, we have provided a map showing the approximate location of the property boundary, the place of use for Water Right No. 22-164, and those acres which we propose to dry up in order to mitigate for the proposed change. Our analysis for this acreage amount is set forth below.

Generally speaking, there are four areas we considered in this transfer that must be mitigated for. Those areas are: (1) pond surface area evaporation, (2) pond volume, (3) stream surface area evaporation, and (4) stream volume. Each of these areas will be discussed in turn below. However, for the record, we wish to voice our objection to the Department's new policy that initial fill for ponds must be mitigated for with the drying up of acres. In my conversations with you and Mr. Jeff Peppersack, you have indicated that the initial fill volume must be mitigated for in transfers such as this. Generally speaking, initial fill of ponds would take place early in the year, well before irrigation is likely to take place by senior water right holders. Therefore, we do not perceive nor agree that any injury to these water users would occur by simply allowing these ponds to initially fill in the spring time. Thus, in our view, the proper analysis for the Department would be to require mitigation for the increased evaporation caused by the increased surface area of the ponds. Nevertheless, in the interests of finalizing this transfer, we have submitted a mitigation plan which considers the increased pond and stream volume proposed by Crystal Springs.

In addition, we wish to note one additional point which we would seek further clarification. As you are well aware, the Department's policy in reviewing historic consumptive use in various locations throughout Idaho has been based on the Allen and Brockway Report. In April of this year, a new study was performed by Mr. Allen and another colleague, wherein they had provided additional information and updated historic consumptive use calculations at those same weather stations. This information is found at the same website as the Allen & Brockway Report, and we note that the website actually states that the new information supersedes the old Allen & Brockway information. By using this information, which includes an evaporation component for shallow ponds, we note that the evaporation is much lower than IDWR's current rule of thumb that there is a one-to-one ratio with alfalfa hay for evaporation. Thus, with this information, it appears that our mitigation plan would overly compensate for the proposed changes we wish to make. We would simply request further information from the Department on use of this new information, and herein specifically reserve our right to amend our mitigation plan should the new numbers be adopted by the Department.

With that being said, we wish to discuss each aspect of our mitigation plan. As you can see on the CAD drawing, as to the large ponds and wetland sloughs that are to be constructed, those ponds and sloughs will cover an area of approximately 3.08 acres. At Attachment 2 to the transfer application, we have provided a copy of the pond consumptive use calculation spreadsheet which was provided to us by the Department. As you can see on the proposed spreadsheet, we have used the crop of pasture grasses as the historic crop on the property. The property actually has both pasture and alfalfa hay, but pursuant to your instructions, we have used the higher consumptive crop. As you can see, this means that historically on the property we have consumptively used 2.05 acre feet per acre per year. As shown on the spreadsheet, in order to mitigate for the 3.08 acres of pond, we must dry up 2.61 acres of property in order to mitigate for just the pond surface area.

At Attachment 3, we have included information provided to us by Crystal Springs explaining the waterfowl sloughs and ponds to be constructed on the property. At the bottom of each sheet, you can see that there is a total volume in cubic yards of the material that is to be removed at each site, in addition, on some of the ponds, there is additional fill that will actually go back into the ponds. Based on our calculations, we have calculated that there will be approximately 27,614.53 cubic yards of material removed for pond construction. We have presumed that 1,613.33 cubic yards is equivalent to an acre foot of volume, and based on our calculations, we have concluded that approximately 17.12 acre feet of volume will be stored in the constructed ponds. Based on the historic consumptive use of the property, we have calculated that approximately 8.95 acres will need to be dried up in order to mitigate for the 17.12 acre feet.

As to the stream surface area, as we have stated before, there will be a number of stream channel alterations on the channel itself to allow for improved fish and wildlife habitat. A summary of the work descriptions on each creek is included at Attachment 4. As we have discussed with you earlier, we will need to mitigate for the increased surface area of the stream. While it is our opinion that any evaporation would be *de minimus* simply because the water in the stream channel is moving, we nevertheless have included a mitigation component for the increased channel width. Included at Attachment 4 is a spreadsheet we have prepared where we have calculated the square footage of the increased surface area dimensions based on the attachment at Attachment 4. You will note that there are some cells that are colored gray and red. Those that are colored gray relate to the specific stream work description site that does not give an exact dimension, we have presumed a dimension similar to other slot and pool creations that have similar excavation amounts listed

in this particular summary. Thus, those cells highlighted gray have presumed amounts, but we nevertheless feel that they are accurate and can be relied upon for purposes of this transfer application.

In addition, as to the red filled cells, these areas note specific dimensions, however, the work description is simply to loosen spawning gravel. Therefore, while there is a dimension to such work, the work does not involve excavation, and we do not feel it is appropriate to have to mitigate for that work. Based on our calculations, we have concluded that there is approximately 15,800.53 square feet of increased surface area, which equals approximately 0.36 acres. At Attachment 4, we have included another pond consumptive use calculation spreadsheet provided to us by the Department for the 0.36 acre increase. As you can see, for the increased 0.36 acres of surface area from the stream channel alterations, the spreadsheet informs us that we are to dry up 0.3 acres for the pond use. Therefore, in our mitigation plan we propose to cease irrigating the 0.3 acres called for.

Lastly, as to the stream volume, at Attachment 5, we have provided another copy of the work descriptions to take place at individual locations along the stream channel. As to this calculation we have focused on the excavation part of the description. For each sheet there is a total excavation and fill amount. After considering all of the excavation and fill to be provided with the stream channel work, we have calculated approximately 1,982.5 cubic yards of material will be removed from the stream channel. At 1,613.33 cubic yards per acre foot, we calculate approximately 1.23 acre feet of water that will need to be provided for to mitigate for the increased stream volume. At 2.05 acre feet per year per acre, we have calculated that an additional 0.6 acres will need to be dried up in order to allow for this increased volume.

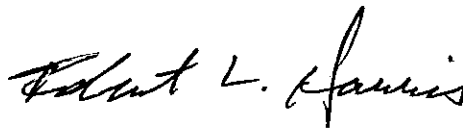
In summary, after considering all aspects of increased surface area and increased volume due to the stream channel alterations and pond creations, we have calculated that approximately 12.5 acres must be dried up in order to allow for the 24.3 acre feet of use related to our project. As we stated above, Attachment 1 shows the map of those acres we propose to dry up in order to allow for the project. You will note that some of those areas we have proposed for mitigation are the approximate locations of some of the ponds. The bulk mitigation site is found on the upper southeast portion of the property, which is a historic highland area which we propose to cease irrigating. A summary of our calculations is at Attachment 6.

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In sum, it is our opinion that we have proposed a mitigation plan that adequately protects downstream water users, and indeed, we would argue that the mitigation is in excess of the changes we propose. We propose that the attached transfer application be approved along with the proposed mitigation plan. As you may know, pond and wetland creation, and stream channel alteration construction typically takes place in the Fall, around October 1st of each year. While we understand that the Department still has a large transfer application backlog, to the extent possible, we request the Department put this transfer application on its fast track for approval. We believe we have provided as much information and in as much detail as possible, and we believe that because of this level of detail, this application should be processed quickly. If possible, we could begin construction in October of this year, and would prefer to begin construction on that date. Otherwise, we will be until the Fall of 2008 before we can begin any construction.

We appreciate your time and attention to this matter, and are certainly happy to answer any questions regarding our analysis of this transfer and its mitigation plan. Please contact us with any questions you may have.

Sincerely,



Robert L. Harris
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.

Enclosures