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RECEIVED

JAN 20 2005

WATER RESOURCES
WESTERN REGION

January 18, 2005

Charles L. Honsinger
Ringert Clark Chtd.
455 S. Third St.
Boise, Idaho 83701-2773

Josephine Beeman
Beeman & Assoc.
409 W. Jefferson St.
Boise, Idaho 83702

Walter Wells
782 East 3200 North
Buhl, Idaho 83316

RE: Application for Transfer No. 70694 (Brackett)

Dear Charlie, Jo, and Mr. Wells:

As you may be aware, our firm entered a notice of appearance for Mr. Brackett in the above-referenced proceeding currently pending before IDWR. This letter concerns that transfer and proposes a settlement to resolve your clients' outstanding protests and other water issues associated with Big Flat Creek and the upper Bruneau River watershed.

Mr. Brackett filed the transfer to ensure that the acres irrigated under water right nos. 51-07085, 51-00096, and 51-07267 would match the place of use and number of acres that are irrigated by his pivots in Section 13. The transfer also matches the place of use and number of acres for those water rights as decreed by the SRBA Court on November 17, 2000.

Although the parties can proceed to determine the issues involved with this transfer on its own, Mr. Brackett would prefer to settle all outstanding issues with your clients involving water diversions out of Big Flat Creek. Apparently, one primary concern with the transfer involves Mr. Brackett's diversion of water right no. 51-00096 (April 15, 1906 priority date). Your clients contend this water right should be curtailed when their prior rights are not being satisfied. Setting aside the water right administration issues, i.e. defenses to such a call, conjunctive management of all rights tributary to the Bruneau River, etc.; Mr. Brackett is willing to amend his transfer to alleviate your clients' concerns and work toward accomplishing a long-term water right solution for the benefit of all parties.

First, because of concerns raised at the settlement conferences, Mr. Brackett purposes to return water right no. 51-00096 to its original place of use adjacent to Big Flat Creek (place of use prior to transfer by previous owner) and transfer a portion of water right no. 51-10346 (April 1, 1885 priority date) to the pivots located in Section 13. When the water supply in Big Flat Creek is limited later in the irrigation season, this will allow Mr. Brackett to voluntarily curtail water right no. 51-00096 for the benefit of your clients.

Second, in addition to transferring water right no. 51-00096 back to its original place of use, Mr. Brackett will agree to consider curtailing irrigation as has been done at times in the past (see attached letter from Russ Kvanvig dated 9/11/1992) to help alleviate stock water shortages in the Echo Water System when the water supply in the East Fork of the Bruneau River is limited. When requested, Mr. Brackett will consider voluntarily curtailing irrigation at his discretion similar to historic practice. It is understood that this neighborly act is strictly permissive and is in no way a basis for a prescriptive right.

Finally, Mr. Brackett will agree to withdraw application for transfer no. 70885. Finally, Mr. Brackett will agree not to protest the proposed transfer by Mr. Bachman of some of his 1885 priority date water to the Echo Water Users, provided the water right remains in private ownership.

Mr. Brackett is hopeful this proposal will continue the dialogue between the parties to reach a long-term solution to the water right issues associated with Big Flat Creek. Mr. Brackett would like to work together with your clients to avoid similar disputes in the future. Maintaining a working relationship between the water users would certainly be the most productive way to administer water use on the Bruneau River. Although this transfer may stand on its own and this contested case may continue, Mr. Brackett would prefer to resolve all of the overarching issues related to water use on Big Flat Creek to avoid future conflict.

Please call me at (208) 733-0700 if you have any questions. If the terms of this proposal are acceptable to your clients perhaps we can set up a meeting sometime in the near future.

Sincerely,

BARKER ROSHOLT & SIMPSON LLP



Travis L. Thompson

cc: Bert Brackett
John Westra (IDWR)

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September 11, 1992

Owen Ranches
c/o Richard Owen
P. O. Box 590
Bruneau, ID 83604

COPY

Re: Water Rights on Big Flat Creek

Dear Mr. Owen:

The water in Big Flat Creek is much lower than normal due to the drought. Brackett Livestock is not getting its early priority date water rights of 19.2 c.f.s. from the creek. You have asked Brackett Livestock to shut down their irrigation system early so that you might have a little more water for your cattle. In the spirit of being a good neighbor Brackett Livestock is willing to do this on a temporary basis. We understand your dilemma but Brackett Livestock should not do anything to jeopardize their longstanding decree for water rights up stream from you. If it ever appeared necessary to help you on a regular basis in the future we would ask that you enter into an agreement with Brackett Livestock making it clear that you would not claim any priority over Brackett Livestock's existing water right.

We thank you for your courteous attention to our concerns.

Sincerely,

STEPHAN, KVANVIG, GREENWOOD,
STONE & TRAINOR

Russell G. Kvanvig

RGK:dmg

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