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WATER RESOURCES
WESTERN REGION

Attorneys for Applicant Wilderness Ranch Owners Association, Inc.

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

**IN THE MATTER OF APPLICATION
FOR EXCHANGE OF WATER IN THE
NAME OF WILDERNESS RANCH
OWNERS ASSOCIATION, INC., AND
THE U.S. BUREAU OF RECLAMATION**

**APPLICANT WILDERNESS RANCH
OWNERS ASSOCIATION, INC.'S
PETITION FOR RECONSIDERATION
AND CLARIFICATION**

Applicant Wilderness Ranch Owners Association, Inc. ("WROA"), by and through its counsel of record, Givens Pursley LLP, and pursuant to IDAPA 37.01.01.711, hereby petitions the Idaho Department of Water Resources ("Department") to reconsider and revise and/or clarify its June 7, 2011 *Preliminary Order Authorizing Exchange* ("Preliminary Order"). WROA requests that Condition 2(a) contained in the Preliminary Order be revised to be consistent with Condition 4 of the Preliminary Order. The grounds for this Petition are as follows:

The intent of WROA's and the U.S. Bureau of Reclamation's Application for Exchange ("Application") is that WROA's contracted 200 acre-feet of Lucky Peak storage may be used via the requested exchange to mitigate any out-of-priority diversions WROA may make under its water right nos. 63-4269A, 63-10318 and 63-31336 ("WROA Rights") *to the extent that* an equivalent quantity of storage water is available in WROA's storage account to be exchanged, but not more than 200 acre-feet in a given year. For example, if WROA's storage is depleted to

zero and fails to refill or only partially refills, then any out-of-priority diversions under the WROA Rights that could be mitigated by the exchange would be limited to no more than the amount of actual refill (i.e., the amount actually in storage) that is available to be exchanged in the year in which an out-of-priority diversion occurs. Condition 4 of the Preliminary Order is consistent with the above-stated intent. Condition 2(a) is not necessarily consistent, and by not including the “to the extent” language used on Condition 4, could be misinterpreted to mean that WROA may exchange its storage water to mitigate any out-of-priority diversions under the WROA rights *only if and when there is 200 acre-feet of water in its storage account*. This would be inconsistent with the intent of the Application, and for practical purposes could nullify the operation of the exchange altogether.

WROA understands that the Department intends its approval should contain two distinct conditions—one identifying a “criteria” for operation of the exchange, and another stating a limitation on the operation of the exchange. WROA understands that the criteria for operation of the exchange is that WROA have storage water available, and the limitation on the exchange is 200 acre-feet per year.¹ WROA has no objection to the use of two conditions. But use of the “to the extent” phrase contained in Condition 4 would serve both functions if included in Condition 2(a). Condition 2(a) should read:

“When, and to the extent that, Wilderness Ranch Owners Association, Inc. has water accrued and available in its Lucky Peak storage account.”

If there is a reason for the current inconsistency in the language used in the two conditions in the Preliminary Order, it is not apparent, which can only give rise to future speculation about the reason for the inconsistency and to potential misinterpretation.

¹ WROA appreciates that the WROA Rights authorize a maximum annual combined diversion of up to 315 acre-feet. It also appreciates that the exchange would provide mitigation of a maximum of only 200 acre-feet of out-of-priority diversions per year under the WROA Rights.

In the event WROA's request for reconsideration is not granted, WROA requests specific clarification of the intent of, and reason for, the different language used in condition 2(a) and 4.

Respectfully submitted this 21st day of June, 2011.

GIVENS PURSLEY LLP

By: 
Michael C. Creamer
Attorneys for Wilderness Ranch Owners
Association, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of June, 2011, a true and correct copy of the foregoing was served upon the following individual(s) by the means indicated:

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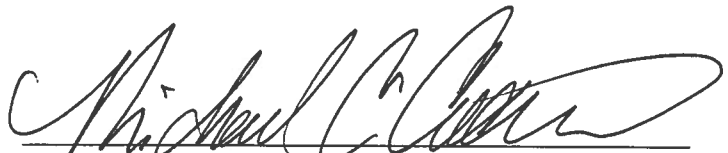
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