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February 23, 2009

RECEIVED
FEB 24 2009
DEPARTMENT OF
WATER RESOURCES

Idaho Department of Water Resources
P.O. Box 83720
Boise, Idaho 83720-0098

Re: In the Matter of Water Right License No. 37-8873

Dear Sir/Madam:

Enclosed are the original and a copy of *Petition for Reconsideration* that I filed by facsimile in the above-referenced matter today.

Please file the enclosed original in the above-referenced file and conform the copy and return the conformed copy to me in the enclosed addressed and stamped envelope. Please contact me if you have any questions about this matter. Thank you for your assistance with this matter.

Done
SR

Sincerely,

HOFSTETTER LAW OFFICE, L.L.C.



Dana L. Hofstetter

Enclosures
4082.4/8407

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Attorney for Indian Creek Ranch
Owners Association, Inc., Petitioner

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FEB 24 2009

DEPARTMENT OF
WATER RESOURCES

ORIGINAL

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

In the Matter of License No. 37-8873

PETITION FOR RECONSIDERATION

Petitioner, Indian Creek Ranch Owners Association, Inc., by and through its counsel of record, Dana L. Hofstetter of Hofstetter Law Office, LLC, pursuant to Title 67, Chapter 52, Idaho Code and IDAPA 37.01.01 respectfully files this Petition for Reconsideration of License No. 37-8873. This Petition is supported by the following Memorandum and other matters of record with the Department.

Memorandum

I. The Pond, as Designed and Constructed, is Free-Flowing and, Accordingly, More than 0.9 Acre Feet is Diverted into the Pond Annually.

The License identifies a maximum diversion volume of 0.9 acre feet per annum (“AFA”) in the quantity element. Additionally, Condition No. 5 provides as follows:

Wildlife storage is for one pond with a total capacity of 0.5 AF.
This right authorizes the annual diversion of 0.5 AF to fill the
ponds and 0.4 AF to replace evaporation losses from the pond.

The 0.9 AFA maximum diversion volume figure apparently does not account for the fact that this is a continuously flowing pond. Instead, Condition No. 5 suggests that once the pond is filled it is provided additional water periodically to make up only for evaporative losses. The 0.9 AFA quantity does not reflect the continuous diversions into the pond year around.

II. Indian Creek is Designated as a “Separate Stream,” and Is Not Managed as a Tributary to the Big Wood River.

The Idaho Department of Water Resources has identified Indian Creek as a “separate stream” in the Snake River Basin Adjudication (“SRBA”) that is to be managed as separate from the Big Wood River. Accordingly, Indian Creek should not be identified as tributary to the Big Wood River on the License and Condition Nos. 1 and 2 of the License should be deleted.

III. The Pond is Used for Aesthetic and Recreational Purposes, Along with Wildlife Purposes.

The pond is located within the Indian Creek Ranch Subdivision and was designed to provide visual enhancement benefits along with recreational opportunities for fishing and otherwise. The pond contains naturally present trout, without the need for stocking. Subdivision residents may fish at the pond. Thus, recreational and aesthetic uses should be added to the License along with the wildlife use.

IV. The Place of Use and Points of Diversion should Include the NW1/4SW1/4 of Section 23, Township 3 North, Range 18E as the Pond was Designed and Constructed Also to Be Partially Within this Location and Indian Springs also Feed the Pond and Should be Added as a Source.

The Permit identified as points of diversion and as the place of use, the two quarter-quarter sections in which the pond was to be located. However, for some reason, the License excludes the point of diversion and the portion of the place of use that were to be located in Section 23. It is also noted that there are numerous springs at this location which could underlie the pond and feed the pond. Accordingly, Section 23 should also be added as point of diversion and place of use locations and Indian Springs should be added as a source.

V. Conclusion.

For the foregoing reasons, the License should be amended as described above.

DATED this 23rd day of February, 2009.

HOFSTETTER LAW OFFICE, LLC

By 
Dana L. Hofstetter, for the firm
Attorney for Greg and Ann Obendorf

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 23rd day of February, 2009, I caused a true copy of the foregoing **PETITION FOR RECONSIDERATION** to be served by the method(s) indicated on the following:

Original to:

David R. Tuthill, Director
Idaho Department of Water Resources
The Idaho Water Center
322 East Front Street
Boise, Idaho 83702
☐ U.S. Mail ☐ Fed Ex ☐ Hand ☒ Fax

Copies to:

Gary Spackman
Idaho Department of Water Resources
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Shelley Keen
Idaho Department of Water Resources
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DANA L. HOFSTETTER

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