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DEC - 2 2005

DEPARTMENT OF
WATER RESOURCES

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

IN THE MATTER OF APPLICATION	)	
FOR PERMIT NO. 45-13852	)	PETITION FOR RECONSIDERATION
(in the name of Six S Ranch LLC)	)	AND EXCEPTIONS TO PERMIT
	)	
_____	)	

SIX S RANCH LLC (hereinafter "Six S Ranch"), by and through their attorneys of record, BARKER ROSHOLT & SIMPSON LLP, hereby file this *Petition for Reconsideration and Exceptions to Permit* to the approval of the above-numbered application for permit filed by Six S Ranch on September 8, 2004. Six S Ranch takes exception to the following conditions in the notice of permit approval issued on November 17, 2005 for the following initial reasons:

CONDITIONS FOR RECONSIDERATION / EXCEPTION

8. The channels, ponds and conveyance works authorized by this permit and any subsequent license shall be constructed and maintained to provide fish passage in Marsh Creek between the lower and upper ends of the proposed project to the satisfaction of the Idaho Department of Fish and Game.

Six S Ranch objects to the above condition on the basis that the existing diversion weir in Marsh Creek has completely blocked fish passage for well over fifty years. The condition now makes Six S Ranch responsible for providing fish passage at a point in Marsh Creek where such

makes Six S Ranch responsible for providing fish passage at a point in Marsh Creek where such passage has historically been blocked. The stream reach in question is entirely located on Six S Ranch's property and the existing diversion, which blocks the stream, has been in place for decades. The proposed project will enhance fish habitat below the diversion and improve water quality. The condition as written is overly burdensome and requires Six S Ranch to create conditions in Marsh Creek that would not otherwise exist. Six S Ranch further objects to the condition as it is vague and does not specify what sort of passage structure would be required. Six S Ranch objects to the condition as written but is willing to discuss reasonable alternatives with the Department if feasible.

9. The Director retains jurisdiction to require a bypass flow for maintenance of fish, wildlife, riparian, and aquatic habitat.

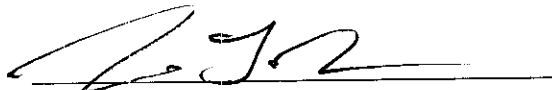
Six S Ranch objects to the above condition on the basis that it is vague and non-specific as to why such flows may be necessary. In addition, Six S Ranch objects to this condition in that it may defeat the entire purpose of the project. Six S Ranch's sediment catchment basins are designed to divert the entire flow of Marsh Creek, up to 30 cfs, to improve water quality and fish and wildlife habitat below the project. If the Director, at some point in the future, requires a bypass flow, either for a specific time, or year round, it is possible Six S Ranch will not be able to divert any water under its water right and the project will not be usable. Accordingly, Six S Ranch will have spent thousands of dollars to improve the water quality and fish and wildlife habitat in the lower Marsh Creek watershed for nothing. In other words, the condition may operate to prevent the enhancement of several miles of Marsh Creek's water quality and habitat in exchange for the short segment between the project diversion and its outlet back to Marsh Creek. Six S Ranch objects to the condition as written but is willing to discuss reasonable alternatives with the Department if feasible.

REQUEST FOR RELIEF

1. Six S Ranch requests reconsideration of the above-captioned permit approval notice so that Conditions #8 and #9 are removed.
2. Alternatively, Six S Ranch requests the opportunity to meet with the Department and/or representatives from the Idaho Department of Fish and Game and discuss language for alternative conditions to address the concerns stated.
3. Six S Ranch requests additional time to submit further legal briefing or explanation if requested (counsel for Six S Ranch was out of the office November 18th through November 27th and did not review the Department's approval until November 28th).

DATED this 30th day of November 2005.

BARKER ROSHOLT & SIMPSON LLP



Travis L. Thompson

Attorneys for Six S Ranch LLC