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DEPARTMENT OF
WATER RESOURCES

Attorney for the Legg Family Trust, Petitioner

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

In the Matter of Water Users' Association)
of the Grays Creek Ditch Lateral)
_____)

PETITION FOR
RECONSIDERATION

Petitioner, Legg Family Trust, 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 file this Petition for Reconsideration of the Preliminary Order Appointing Lateral Manager for Grays Creek Ditch. This Petition is supported by the following Memorandum, the Second Affidavit of Marion Ogle and other matters of record with the Department.

Memorandum

I. Factual Background.

On March 26, 2012, after notice mailed by counsel for the Legg Family Trust on March 13, 2012, to all property owners receiving water from the Grays Creek Ditch Lateral, the annual meeting of the Grays Creek Ditch Lateral was held. At such annual meeting, a lateral manager and three directors were duly elected by the water users for the entire Grays Creek Ditch Lateral

in attendance and assessments to pay for such lateral manager were approved. On or about March 27, 2012, the elected lateral manager resigned for personal reasons. On or about, May 10, 2012, after many years of not receiving their water, the Legg Family Trust filed a Petition requesting appointment of a lateral manager replacement for the elected lateral manager who resigned on the same terms that were approved at the March 26, 2012, meeting of the Grays Creek Ditch users. *See Second Affidavit of Marion Ogle*

In its June 13, 2012, Preliminary Order in this matter, the Idaho Department of Water Resources (“IDWR”) appointed a lateral manager only for the lower Grays Creek Ditch beginning at Location No. 13, altered the employment terms for the lateral manager and provided for additional assessments of the water users at the lower end of the Ditch to pay for the lateral manager. As discussed below, in order for water to be properly distributed on the Grays Creek Ditch, a single lateral manager with authority for the entire Ditch is necessary, and such lateral manager should be employed and paid according to the same terms approved at the March 26, 2012, meeting.

II. The lateral manager should be appointed for the entire Grays Creek Ditch to ensure proper distribution of water along the entire Ditch, as approved at the March 26, 2012, meeting.

There are numerous diversions from the Grays Creek Ditch above Location No. 13 that are unregulated and unmeasured. *Second Affidavit of Marion Ogle*. Areas have been flooded out from excessive unregulated diversions from the Grays Creek Ditch above Location No. 13. *Id.* Also, new areas that have been recently cleared and that were not previously irrigated are now being irrigated along with historically irrigated areas from the Grays Creek Ditch above Location No. 13, long after flood water is no longer available. *Id.*

Accordingly, a single Lateral Manager with jurisdiction over the entire Grays Creek Ditch is needed to ensure consistent and appropriate deliveries to all water users in accordance with

their respective rights and priorities. Without consistent regulation and distribution of water by the same Lateral Manager, at the upper end of the Grays Creek Ditch, the regulation and distribution of water to the lower end of the ditch is doomed to failure.

III. The lateral manager should be employed and paid on the same terms and using the same assessment funds as was approved at the March 26, 2012, meeting of Ditch users.

The lateral manager for the Grays Creek Ditch should receive the same compensation approved by the membership at the March 26, 2012, meeting, as reflected in the draft Minutes of that meeting. *See Exhibit C to Petition.* At that meeting (which was held for all users of the Grays Creek Ditch), assessments were approved for paying a lateral manager for the entire Ditch. *Id.* Thus, the assessments that were collected and paid after that March 26, 2012, meeting are designated to be used to pay the lateral manager for the entire Grays Creek Ditch.

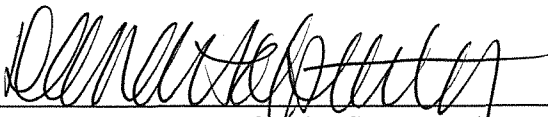
In view of the prior collection of assessments from all water users on the Ditch, collecting additional assessments from those at the lower end of the Grays Creek Ditch is expected to be difficult. *Second Affidavit of Marion Ogle.* Also, the appointed Lateral Manager likely will not desire to serve when her pay and hours have been reduced and the source of payment is questionable. *Id.*

IV. Conclusion.

For the foregoing reasons, the Lateral Manager should be appointed for the entire Ditch, on the same terms and paid with the assessments, as approved at the March 26, 2012, meeting.

DATED this 27th day of June, 2012.

HOFSTETTER LAW OFFICE, LLC

By 
Dana L. Hofstetter, for the firm
Attorney for Legg Family Trust

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 27th day of June, 2012, I caused the foregoing **PETITION FOR RECONSIDERATION** (with any attachments) to be served by the pre-paid method(s) indicated on the following:

Facsimile Original to:

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Acting Director
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