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FEB 14 2015
DEPARTMENT OF
WATER RESOURCES

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA)

A. Subcase 63-31976
(Insert water right number)

Case No. 39576)
_____)

STANDARD FORM 1
OBJECTION

Please fill in the following information:

B. NAME AND ADDRESS OF PERSON OBJECTING

Name: RANDY FOWERS PRESIDENT PHOA
Address: 10071 MARTINGALE DR.
BOISE, ID. 83709
Daytime Phone: 208 322 5408

Name & Address of Attorney, if any:

C. CLAIMANT OF WATER RIGHT AS LISTED IN DIRECTOR'S REPORT

Name: BOESIGER FAMILY CABIN TRUST
Address: 131 E. WELLEAMS ST.
BOISE, ID. 83701

D. I object to the following elements as recommended in the Director's Report. (Please check the appropriate box(es)).

1. ☐ **Name and Address**
Should be: _____
2. ☐ **Source**
Should be: _____
3. ☐ **Quantity**
Should be: _____
4. ☐ **Priority Date**
Should be: _____
5. ☐ **Point of Diversion**
Should be: _____
6. ☐ **Instream Flow Beginning and Ending Point**
Should be: _____
7. ☐ **Purpose(s) of Use**
Should be: _____
8. ☐ **Period of Year**
Should be: _____
9. ☐ **Place of Use**
Should be: _____
10. ☐ **I object because:**
☒ This water right Should not exist.

☐ This water right was not recommended, but Should be recommended with the elements described above.

E. **REASONS SUPPORTING OBJECTIONS(S):** PLEASE SEE ATTACHED LETTER
DATED 1-4-05 SENT TO IDWR, COPY OF CCR FOR WELLES CHARGE'S
PARADISE SUBDIVISION (PAGE 4 ITEM H.)

F.

VERIFICATION (must be completed)

RECEIVED
DEPARTMENT OF
WATER RESOURCES

State of IDAHO)
)ss.

County of ADA)

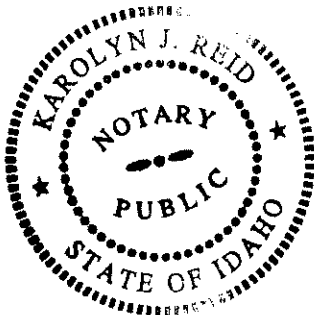
RANDY FOWERS, duly sworn, upon oath, deposes and says:
(Name of person filing objection)

That I am the party/claimant filing this objection, as defined by I.C. §§ 42-1401A(1) and (6) or that I am the attorney for the party/claimant objecting and that I have read this objection, know its contents and believe that the statements are true to the best of my knowledge.

Randy Fowers
(Signature of person filing objection)

(Attorney signing in representative capacity)

Subscribed and sworn to before me on: 14th day of December, 2006



Karolyn J. Reid
Notary Public for State of Idaho
Residing at: 8896 Northview, Boise, ID, 83704
My Commission Expires: 6/15/2011

INSTRUCTIONS FOR MAILING

You must mail the objection, to the Clerk of the court. **FAX filings will not be accepted.** You must also send a copy to all the parties listed below in the Certificate of Mailing.

G. CERTIFICATE OF MAILING

I certify that on DECEMBER 15, 2006, I mailed the original and copies of this objection, including all attachments, to the following persons:

1. Original to:

Clerk of the District court
Snake River Basin Adjudication
253 Third Avenue North
PO Box 2707
Twin Falls, ID 83303-2707

2. One copy to the claimant of the water right at the following address:

Name: BOESEGER FAMILY CABEN TRUST
Address: 131 E WELLES ST.
BOISE, ID 83706

3. Copies to:

IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

United States Department of Justice
Environment & Nat'l Resources Div
550 W Fort Street, MSC 033
Boise, ID 83724

Chief, Natural Resources Division
Office of Attorney General
PO Box 44449
Boise, ID 83711-4449



Signature of objector or attorney
mailing on Objector's behalf

January 4, 2005

Department of Water Resources
Attn. Lori Graves
2735 Airport Way
Boise, Idaho 83705-5082

RECEIVED
JAN 11 2005
DEPARTMENT OF
WATER RESOURCES

Dear Lori:

It has come to my attention that an application for water right (number 63-31976) has been filed with the Idaho Department of Water Resources and that this application is of interest to the Paradise Homeowners Association (PHOA). Please accept this letter as the position of PHOA in regard to this application.

PHOA is the current owners of the parcel of land were the diversion occurs. PHOA does not recognize and easement for the access to this diversion and will not willingly grant such an easement.

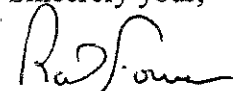
The cabin site referred to by this application is part of a legally plated subdivision and as such is subject to the By Laws and covenants of that subdivision. They state that no single lot within the subdivision may develop or use a water system other than the common system developed and provided to the lot by PHOA.

As a result of demand and planning by PHOA an application for the complex of springs, of which the spring referred to by 63-31976 is part, has been filed with Idaho Department of Water Resources (number 63-31526). The application has an earlier filling date than 63-31976 and was the result of a study conducted by the Board of PHOA concerning geothermal resources available to PHOA and their uses. This study did recognize the concrete basin that had been installed as a diversion but found that it had not been in use for a number of years and finds no agreement that allows its existence on PHOA property.

The beneficial uses identified by 63-31976 are part of the uses that PHOA identifies for its various licenses and permits in supplying water to its members. The applicant and place of use are members of PHOA.

Thanks you for your help in this matter.

Sincerely your,



Randy Fowers
President PHOA

**RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:**

James P. Speck, Esq.
Hogue, Speck & Aanestad, P.A.
Post Office Box 987
Ketchum, Idaho 83340
(space above line for Recorder's Use)

**AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS:
WILLIS CARRIE'S PARADISE SUBDIVISION**

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS: WILLIS CARRIE'S PARADISE SUBDIVISION is made and entered into by the undersigned who constitute the record owners of Lot 38, Block 1 and more than 75% of the remaining Lots, all within the Willis Carrie's Paradise Subdivision (the "Subdivision").

RECITALS

A. Paradise Resort, Inc. established the Declaration of Covenants, Conditions and Restrictions of Willis Carrie's Paradise Subdivision, recorded as Instrument No. 193442, records of Elmore County, Idaho (the "Declaration").

B. The Declaration was amended by that certain Amendment to Declaration of Covenants, Conditions and Restrictions of Willis Carrie's Paradise Subdivision recorded as Instrument No. 195095, records of Elmore County, Idaho

C. Article VIII of the Declaration provides for amendments by an instrument in writing signed and acknowledged by the record owners of Lot 38, Block 1 and more than 75% of the remaining Lots, all within the Subdivision. The undersigned who meet this requirement desire to amend and restate all of the provisions of the Declaration so that all of the restrictions may be found in a single recorded instrument.

THE DECLARATION

All of the property within the Subdivision, specifically including Lot 16 which had previously been excluded from the coverage of this Declaration, is and shall be held, conveyed, encumbered, leased and used subject to the following uniform covenants, conditions, restrictions and equitable servitude in furtherance of a plan for the Subdivision, improvements and to enhance the

value, desirability and attractiveness of such property. The restrictions set forth herein shall run with the real property, shall be binding upon all persons having or acquiring any interest in such real property or any part thereof; shall inure to the benefit of every portion of such real property and any interest therein, and shall inure to the benefit of and be binding upon each Owner and his respective successors in interest, and may be enforced by any Owner or his successors in interest, or by the Association.

ARTICLE I

DEFINITIONS

Definitions of the terms that are used in this Declaration shall be defined as follows unless the context clearly indicates a different meaning:

A. "Declaration" shall mean this instrument by which the within covenants, conditions and restrictions have been imposed upon the Property as defined below.

B. "Owner" shall mean a person or entity with an ownership interest in any Lot. In the event any Lot shall be conveyed pursuant to an escrow contract wherein the seller of said Lot retains record title as security, "Owner" shall mean that person or entity buying the Lot under said escrow contract, or his successors or assigns.

C. "Association" shall refer to the Paradise Homeowners' Association, a non-profit Idaho Corporation, who does own and shall be responsible for the maintenance and improvements of the roads, water system (s), and the sewerage system located on or within the vicinity of the Property.

D. "Committee" shall refer to the Architectural Committee, Maintenance Committee, or any other Committee established in the Bylaws of the Association or as deemed necessary by the Board of Directors of the Association.

E. "Subdivision" shall mean and refer to the Willis Carrie's Paradise Subdivision, as depicted on the Plat recorded as Instrument No. _____, records of Elmore County, Idaho.

F. "Lot" shall mean and refer to any of the lots within the Subdivision except Lots 36, 37, 54, 55 and 56, and including any new lots created by the permitted division of Lot 16 into two (2) lots or the single platted lot known as Lot 29 and 30, Block 1 into two (2) lots.

G. "Lot 38" shall mean and refer to Lot 38, Block 1 of the Subdivision.

H. "Declaration and Acceptance" shall mean and refer to the Declaration and Acceptance of the Association Members as to Their Rights, Duties Responsibilities and Liabilities to the Paradise Homeowners Association, Inc., Elmore County, Idaho, dated May 1, 1980, and recorded May 9, 1980 as Instrument No. 195096, records of Elmore County, Idaho.

ARTICLE II

USE OF PROPERTY

A. All of the Lots, except for Lot 38, may only be used for recreational/residential purposes and for no other purpose. No more than one main dwelling house and one guest house may be built, constructed or placed upon, or moved upon any one Lot. However, outbuildings used in connection with each building site may also be built thereon, subject to the restrictions of any applicable zoning, subdivision or other similar land use ordinances or regulations. Except as herein after set forth, no Lot may be divided into smaller parcels or lots. However, two main dwelling houses may be built, constructed or placed upon, or moved upon the single platted lot known as Lot 29 and 30, Block 1, or Lot 29 and 30 may be divided into two lots, all in accordance with any applicable zoning, subdivision or other similar land use ordinances or regulations. Furthermore, Lot 16 may be divided into two lots in accordance with any applicable zoning, subdivision or other similar land use ordinances or regulations.

B. Lot 38 shall ~~or~~ may be used for recreational and/or commercial uses.

C. Prior to the building, constructing or placing of any major improvements or structures on a Lot, and/or the construction of any fences, written plans shall be submitted to the appropriate Committee for its approval. In the event such plans are disapproved, said structures or improvements may not be constructed, built, or placed upon said Lot. The Committee shall have the option of permitting variances to the building restrictions set forth herein where size or shape of Lot or topography make strict application of the restrictions impractical or difficult. The prime concern of the Committee shall be that the design and location harmonize and compliment the natural environment to the extent practicable. Requests for variances shall be made to the Committee in writing, and the Committee's decision shall be made in writing within thirty (30) days of the request.

D. All structures shall be in accordance and compliance with any applicable zoning, subdivision or other similar land use ordinances or regulations. The set backs, lot coverage, and any other applicable building restrictions required by such ordinances or regulations shall apply and a signed and dated building permit from Elmore County will be required prior to any construction or modification of structures. Fences shall be set back a minimum of five (5) feet from property lines fronting on roads or access travel-ways to facilitate snow removal and utility maintenance. No buildings or other permanent improvements shall be placed on the utility easements, without first obtaining written consent from the owner of the easement. All permanent housing shall be a minimum of 750 square feet in area for a one-story dwelling, and a minimum of 900 square feet in area for a two-story dwelling. Sundecks, carports, patios and other enclosed or unroofed areas are not to be included in the computation of building area. No dwelling shall be erected or placed on any Lot that does not meet the building code for Elmore County which is in effect at the time said proposed building is to be erected or placed on a Lot.

E. When the construction of any building is begun, work thereon must be prosecuted diligently and the exterior must be tight and dry within two (2) years after construction is begun.

F. No basement, tent, shack, garage, barn or other out building erected on any Lot or any building site thereof shall be used at any time as a residence, temporary or permanent. No structure of a temporary character shall be used at any time as a residence. Except as set forth below, a trailer house may be used as a residence for up to two (2) years, during the construction of a permanent dwelling.

G. No mobile homes, manufactured homes or trailers shall be allowed for longer than two (2) years while a permanent structure is being constructed within the residential area.

H. No individual water or sewage disposal systems shall be permitted on any building site.

I. All wood, coal or pellet burning chimneys shall be equipped with spark screens approved by the appropriate Committee.

J. No noxious or offensive activities shall be carried on within the Subdivision nor shall anything be done therein which may be or become an annoyance or nuisance to any of the surrounding Owners. Motorcycles, all terrain vehicles or similar motorized recreational vehicles may be operated on the roads within the Subdivision only if the noise and dust generated by such use does not become noxious or offensive to any Owner and only for ingress to and egress from a Lot. Continuous or repetitive operation of any such motorized recreational vehicle on roads within the Subdivision is prohibited and shall be deemed a nuisance. The term noxious or offensive shall also apply to the open storage of disabled vehicles, trash, rubbish, garbage, other waste or other forms of bulk storage not normally associated with the recreational/residential use of property. Trash, garbage or other waste shall be kept in sanitary containers. All equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition. Incinerators and/or open burning of trash, garbage, rubbish or other waste shall not be allowed. Discharge of firearms, including, but not limited to, air rifles, pellet or BB guns, within the Subdivision is prohibited and shall be deemed a nuisance.

K. None of the property described above, except for Lot 38, shall be used for the purposes of carrying on or maintaining any business, commercial or industrial activities.

L. No animals, livestock or poultry of any kind shall be raised, bred, or kept on any Lot, except dogs or cats. All dogs shall be on a leash or otherwise restrained. No dog shall be permitted to disturb the peace and quiet of the Subdivision.

M. No cutting of trees will be allowed on any Lot except as necessary for clearing building sites, utilities, other necessary type development and diseased or dying trees.

N. No more than one (1) sign of any kind shall be displayed to the public view from any Lot, except for Lot 38, and this one sign shall not exceed two (2) feet in overall dimension.

O. No excavation for stone, sand, gravel, earth or mineral shall be made upon a building site unless such excavation is necessary in connection with the erection of an approved structure thereon.

ARTICLE III

PARADISE HOMEOWNERS' ASSOCIATION

The Association owns certain water and sewerage facilities, together with certain roads, located and situated within the Subdivision. Every Owner of a Lot which is subject to assessment pursuant to this Declaration, shall be a member of the Association. Membership be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment. The Association shall have the responsibility for maintaining and improving said water and sewerage facilities and said roads.

ARTICLE IV

COVENANT FOR MAINTENANCE ASSESSMENTS

The Owner of any Lot, by acceptance of title thereto, whether by deed or sales agreement, and whether or not it shall be so expressed in such deed or sales agreement, is deemed to covenant and agree to pay to the Association:

A. Annual assessment or charges as determined by the Board of Directors of the Association.

B. Special assessments for capital improvements, such assessments to be established and collected as provided in the Declaration and Acceptance.

C. The annual and special assessments, together with penalties and interest costs, and reasonable attorney's fees, shall be a charge on the land and shall be made a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time the assessment fell due.

D. The lien of the assessment provided for herein shall be subordinate to the lien of any first mortgage or first deed of trust. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to foreclosure of a first mortgage or first deed of trust or any proceeding in lieu thereof, shall extinguish the lien of such assessment as to the payments which become due prior to such sale or transfer. However, the obligation for payment of the assessment, together with penalties, interest, and other costs, shall continue to be the personal obligation of the person who was the Owner of said Lot at the time when the assessment fell due. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereon after a sale or transfer of any such Lot pursuant to foreclosure of a mortgage or deed of trust as above set forth.

ARTICLE V

COVENANTS AND RESTRICTIONS; CONSTRUCTION AND ENFORCEABILITY

A. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating mutually beneficial plans for the development of a recreational residential subdivision. Failure to enforce any provision hereof shall not constitute a waiver of the right to enforce said provision or any other provision hereof.

B. All of the covenants, restrictions, reservations and servitude set forth herein shall run with the land and the grantee, by accepting the deed to such premises, accepts the same subject to such covenant, restrictions, reservations and servitude and agrees for himself, his heirs, administrators, and assigns to be bound by each of such covenants, restrictions, reservations and servitude jointly, separately and severally.

C. Each and every of the covenants, restrictions, reservations and servitude contained herein shall be considered to be an independent and separate covenant and agreement and in the event any one or more of such covenants, restrictions, reservations, and servitude shall for any reason be held to be invalid or unenforceable, all remaining covenants, restrictions, reservations and servitude shall nevertheless remain in full force and effect.

D. The Association shall have all of the powers of an Idaho non-profit corporation, subject only to such limitations upon the exercise of such powers as are expressly set forth in this Declaration, the Declaration and Acceptance, the Articles of Incorporation and the Bylaws of the Association, and any rules or regulations duly adopted by the Association, all as may be amended from time to time (hereinafter collectively referred to as the "Restrictions"). The Association shall have the power to do any, and all lawful things which may be authorized, required or permitted to be done by the Association under and by virtue of the Restrictions, and to do and perform any and all acts which may be necessary or proper for or incidental to the exercise of any of the express powers of the Association. Without in any way limiting the generality of any of the foregoing provisions, the Association shall have the power and authority at any time:

1. Right of Entry and Enforcement. After twenty-four (24) hours written notice, to enter, without being liable to any Owner, upon any Lot for the purpose of enforcing by peaceful means the provisions of the Restrictions, or for the purpose of maintaining or repairing any such area if for any reason whatsoever the Owner thereof fails to maintain or repair any such area as required by said Restrictions. The Association shall also have the power and authority from time to time in its own name on its own behalf or on behalf of any Owner or Owners who consent and enjoin any breach or threatened breach of the Restrictions and to enforce, by mandatory injunctions or otherwise all of the provisions of said Restrictions.

2. Repair and Maintenance of Association Property. To paint, maintain, provide snow removal service for, and repair any real or personal property owned the Association and any improvements thereto.

ARTICLE VI

MODIFICATION AND AMENDMENT

The provisions of this Declaration may be altered and modified or amended by an instrument in writing signed and acknowledged by the Owners of two-thirds (2/3) of the Lots; provided, however, no such alteration, modification or amendment which adversely affects Lot 38 or its Owner shall be made unless it is signed and acknowledged by such Owner of Lot 38. Said alterations, modifications or amendments shall be effective upon recordation in the Office of the Recorder of Elmore County, State of Idaho.

IN WITNESS WHEREOF the undersigned have executed this Amended and Restated Declaration of Covenants, Conditions and Restrictions of Willis Carrie's Paradise Subdivision as of the dates set on the following counterpart signature pages adjacent to their signatures.

(THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK)