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January 4, 2008

RECEIVED

JAN 07 2008

DEPARTMENT OF
WATER RESOURCES

Clerk of District Court
SNAKE RIVER BASIN ADJUDICATION
253 3rd Ave. N.
P.O. Box 2707
Twin Falls ID 83303-2707

Re: **Elkhorn Golf Course** - Water Rights
SRBA #39576 / Subcase #37-21468

Dear Clerk:

Enclosed herewith for filing please find STANDARD FORM 2 RESPONSE TO
OBJECTION.

Thank you.

Sincerely,



Patrick D. Brown

/cb

Enc.

cc: Albert Barker, w/enc.
Craig Hobdey, w/enc.
Scott Campbell, w/enc.
IDWR Document Depository, w/enc.
Chief, Natural Resources Div., w/enc.
Environment & Natural Resource Div., w/enc.
CG-Elkhorn Golf LLC, w/enc.

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: 37-21468

Case No. 39576

**STANDARD FORM 2
RESPONSE TO OBJECTION**

Please **print or type** the following information:

B. NAME AND ADDRESS OF PERSON RESPONDING

Name: CG- Elkhorn Golf LLC

Address: P.O. Box 2720
Ketchum ID 83340-2720

Daytime Phone: (208) 725-2256

Name & Address of Attorney, if any:

Patrick D. Brown
Hutchinson & Brown LLP
P.O. Box 207
Twin Falls ID 83303-0207
208-733-9300

**C. NAME AND ADDRESS OF PERSON WHO FILED THE OBJECTION TO
WHICH YOU ARE RESPONDING**

Name: Tom O’Gara
John F. Stevenson
Bill Molyneux
Pete Van Der Meulen
Grace Eakin
Rocky Sherbine
Gerald Bashaw
Pepin Corso-Harris

Big Wood Canal Company

Albert P. Barker
BARKER, ROSHOLT & SIMPSON, LLP
P.O. Box 2139
Boise, ID 83701
(208) 336-0700

Craig Hobdey
HOBDEY & HOBDEY
P.O. Box 176
Gooding, ID 83330
(208) 934-4420

For O’Gara, Stevenson, Molyneux,
Van Der Meulen, Eakin, Sherbine &
Bashaw

For Big Wood Canal Company

D. I am responding to the objections to the following elements. .

1. ☐ Name and Address
2. ☐ Source
3. ☐ Quantity
4. ☒ Priority Date
5. ☐ Point(s) of Diversion
6. ☐ Instream Flow Description
7. ☒ YES Purpose(s) of Use
8. ☐ Period of Year
9. ☐ Place of Use
11. ☐ Recommendation

☒ This water right should not exist. (This water right should exist).

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

Reasons for Response:

1. **Failure to Properly Serve:** The Big Wood Canal Company did not verify their objection as required by law, so its objection should be dismissed. The “Concerned Water Users” failed to sign the objection in its name, so its objection should be dismissed. Also, the Objectors failed to serve both owners of the water right.
2. **Lack of Standing:** The so-called “Concerned Water Users” are not claimants in the SRBA, so its objection should be dismissed. Upon information and belief, the claimant also maintains the objectors are unaffected and are not injured in fact by the claims.
3. **Res Judicata, Collateral Estoppel, Judicial Estoppel, Administrative Estoppel, Waiver and Estoppel:** “Aesthetic, wildlife and recreation” uses have been decreed in the SRBA court, without objection of the Objectors in this case, so they are foreclosed through all claim preclusion theories, including, but not limited to, res judicata, collateral estoppel, judicial estoppel, administrative estoppel and estoppel and from asserting these issues or in the alternative, the Objectors have waived their right to object on this basis or they are estopped from raising such objections including but not limited to by their failure to object to the licensing, transfer and adjudication of this and other rights.

4. **Failure to State a Claim:** The Objectors relied on Idaho Code §42-1501. §42-1501 addresses only minimum stream flows and, therefore, is not applicable to whether or not the claimed uses for this right exists. The Objectors further argue that a right water right cannot be appropriated unless the Idaho legislature or Constitution declares sue to be beneficial. Contrary to the Objectors' argument, there is nothing in the state constitution or statutes that limit or define the term "beneficial use." The Objectors' argument is in direct contravention of the Idaho Supreme Court's holding in *State, Department of Parks v. Idaho Department of Water Resources*, 96 Idaho 440, 530 P.2d 924 (1974), wherein the Court held that "[w]hile it is well established in western water law that an application of water must be made for a 'beneficial use,' nevertheless in Idaho at least the generic term 'beneficial use' has never been judicially or statutorily defined." To the extent that the Objectors assert that a beneficial use must be defined by the legislature or constitution, the argument lacks a basis in law or fact and, therefore, is subject to sanctions under I.R.C.P. Rule 11(a)(1). Nevertheless, the Idaho Department of Water Resources ("IDWR") has allowed "aesthetic, wildlife and recreation uses" and their agency determination is entitled to great deference. For this and other reasons, the Objectors have failed to state a claim.
5. The claimant is entitled to costs and attorney fees under Idaho law, including but not limited to under the Idaho Rules of Civil Procedure, IC 12-121 and 12-123.

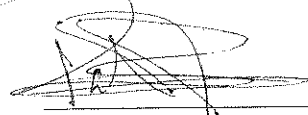
E.

VERIFICATION

State of Idaho)
(ss.
County of Twin Falls)

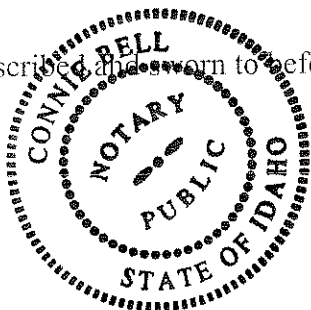
Patrick D. Brown, duly sworn upon oath, deposes and says:

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



Patrick D. Brown, Attorney for Elkhorn

Subscribed and sworn to before me on: January 2, 2008.



Notary Public for Idaho
Residing at Twin Falls
My Commission Expires: 11-24-12

F.

CERTIFICATE OF MAILING

I certify that on the 4th day of January, 2008, I mailed the original and copies of this response, 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:

CG- Elkhorn Golf LLC
P.O. Box 2720
Ketchum, ID 83340-2720

3. One copy to the party who filed the objection at the following address:

Albert P. Barker	Craig Hobdey
BARKER, ROSHOLT & SIMPSON, LLP	HOBDEY & HOBDEY
P.O. Box 2139	P.O. Box 176
Boise, ID 83701	Gooding, ID 83330
Tel: (208) 336-0700	Tel: (208) 934-4420
For O'Gara, Stevenson, Molyneux,	For: Big Wood Canal Company
Van Der Meulen, Eakin	
Sherbine & Bashaw	

4. Copies to:

IDWR Document Depository
P.O. Box 83720
Boise ID 83720-0098

Chief, Natural Resources Div.
IDAHO ATTORNEY GENERAL
P.O. Box 44449
Boise ID 83711-4449

Scott Campbell
MOFFATT, THOMAS, et al
101 S. Capitol Blvd., 10th Floor
P.O. Box 829
Boise ID 83701-0829
(for Sinclair Oil / Sun Valley Co.)

Environment & Natural Resource Div.
U.S. DEPT. OF JUSTICE
550 W. Fort St., MSC 033
Boise ID 83724

