

COPY

HUTCHINSON

&

BROWN, LLP

ATTORNEYS AT LAW

Keith E. Hutchinson, Esq.
Patrick D. Brown, Esq.

PHONE: (208) 733-9300
WATS: (800) 753-2529
FAX: (208) 733-9343

May 15, 2008

RECEIVED

MAY 19 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

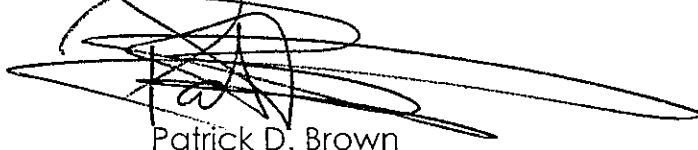
Re: **Elkhorn Golf Course** - Water Rights
SRBA #39576 / Subcase #37-21468

Dear Clerk:

Enclosed herewith for filing please find MOTION FOR PARTIAL SUMMARY
JUDGMENT.

Thank you.

Sincerely,



Patrick D. Brown

/cb

Enc.

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

RECEIVED

MAY 19 2008

DEPARTMENT OF
WATER RESOURCES

Patrick D. Brown, ISB #4413
HUTCHINSON & BROWN, LLP
104 Lincoln St., P.O. Box 207
Twin Falls ID 83303-0207
Telephone: (208) 733-9300
Attorneys for **Claimant CG-Elkhorn Golf LLC**

IN THE DISTRICT COURT OF THE 5th JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

* * * * *

In Re SRBA	)	Subcase No. 37-21468
	)	
Case No. 39576	)	MOTION FOR PARTIAL
	)	SUMMARY JUDGMENT
_____	)	

Comes now Claimant, through its counsel of record, and moves for summary judgment pursuant to I.R.C.P 56(c) with respect to and against the objections filed by Tom O'Gara, John F. Stevenson, Bill Molyneux, Pete Van Der Meulen, Grace Eakin, Rocky Sherbine, Gerald Bashaw, Pepin Corso-Harris, and Big Wood Canal Company.

The basis for this motion is that there are no genuine issues as to any material fact or law, and that Claimant is entitled to judgment as a matter of law. The unsupported basis for the objection is that the water right should not exist or that the priority date should be changed pursuant to I.C. §42-1501. That objection contends that Idaho Code §42-1501 controls, and that, thereunder, aesthetic wildlife and recreation uses are not beneficial uses authorized by the

Legislature or Constitution to be held by private parties. The objection also contends the right cannot have a priority date earlier than the first date the Legislature authorized such beneficial uses to be held by private parties.

The grounds for this motion are that Idaho Code §42-1501 addresses minimum stream flows water rights appropriated by the State Water Board, and does not apply to the licensed right claimed in this case. The right claimed in this case is a right licensed by IDWR to recreation and recreational storage ponds, and any minimum stream flow statute is irrelevant. Further, there is no reasonable basis in the law to contend that recreational and recreational storage rights are precluded by the Constitution or legislation. In fact, the Constitution provides that a water right may be appropriated for any beneficial purpose, legislation provides the same-water rights may be acquired for "any beneficial purpose", I.C. §42-101, and there is no genuine dispute that recreational ponds for a golf course are a beneficial purpose, as the State, IDWR, and this court have recognized, acknowledged and entered partial decrees for such purposes on numerous past occasions.

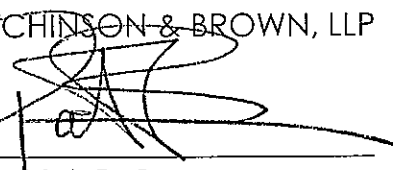
Additionally, the objections should not be tolerated because the objectors have waived the right and are estopped from making such legal objections because they have voluntarily slept on their rights to object by failing to do so with respect to hundreds of rights this court has already decreed for such purposes, and, in fact, by claiming rights for such purposes themselves. This

is supported by this court taking judicial notice of the claims made and those decreed already in this case.

Oral argument is requested on this motion at the earliest convenience of the court.

Dated this 15 day of May, 2008.

HUTCHINSON & BROWN, LLP

By: 

Patrick D. Brown

Attorneys for CG-Elkhorn Golf LLC

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 15th day of May, 2008, (s)he served a true and correct copy of the within and foregoing document upon the following by depositing a copy thereof in the United States mail, postage prepaid, addressed to:

Albert Barker

BARKER ROSHOLT & SIMPSON

1010 W. Jefferson St., #102

P.O. Box 2139

Boise ID 83701-2139

(for O'Gara, Stevenson, Molyneux, VanDerMeulen, Eakin, Sherbine & Bashaw)

Craig Hobdey

HOBDEY & HOBDEY

125 5th Ave. W.

P.O. Box 176

Gooding ID 83330-0176

(for Big Wood Canal Co.)

Scott Campbell

MOFFATT, THOMAS, BARRETT, ROCK & FIELDS

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

James Speck
SPECK & AANESTAD
120 East Ave.
P.O. Box 987
Ketchum ID 83340

(for Barker, Berlow, Chaney, Eagle Creek, ECD, Engl, Foley, Gimlet POA,
Gordon, Gregory Ranch, Lake Creek, Lufkin, Matthiesen, Olmstead, Girton, River
Rock Ranch, Rivers Edge, Holzman, Gulch, Willard, Woods)

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

Director of IDWR
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

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

