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DEPARTMENT OF  
WATER RESOURCES

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BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION )  
FOR PERMIT TO APPROPRIATE )  
WATER NO. 63-33321 IN THE NAME )  
OF ELK CREEK CORP. )  
\_\_\_\_\_ )

**IDAHO CITY'S POST  
HEARING RESPONSE BRIEF**

Idaho City maintains that Elk Creek's application should be denied on the basis that it will conflict with the local public interest. I.C. § 42-203A(5)(e).

While Idaho City's ordinance requiring city property to be connected to the city water system may not apply to the Elk Creek property, it highlights the local public interest in this case. Idaho City's ordinance contemplates the protection of drinking water in the area by limiting the number of wells that can be drilled into the aquifer. Elk Creek wants to use its proposed well for less than fourteen connections so that the well need not comply with public drinking water standards. Drilling an individual well not constructed to DEQ public drinking water standards carries with it the potential for contamination of the aquifer. Idaho City is already drilling new wells to augment its existing water system that will be constructed to DEQ public drinking water standards. It would therefore not be in the public interest to risk drilling another well into the aquifer when the property is already being serviced by city water and sewer services. Keeping

the residents on Elk Creek's property connected to the city water system also protects them and provides safe drinking water.

The drilling of an additional well conflicts with the local public interest because it would be for the purpose of allowing property owners to withdraw from Idaho City's water system. Water systems are expensive to install and operate, and the one serving this property is already in place. The costs are shouldered by property owners within the city. Property owners withdrawing from the system would make it more expensive for the remaining property owners.

As to the issue of annexation, Elk Creek argues that the property could not be annexed because Idaho City has no authority to annex. It points to Boise County's area of impact ordinance where the ordinance states that Idaho City had voluntarily limited its annexation authority and would not annex property without a request for annexation by the property owner. Elk Creek refuses to request annexation.

Idaho City maintains that it has the authority to annex. Annexation is governed by state statute. See I.C. § 50-222. Idaho City's authority to annex is not governed by Boise County's ordinance. Boise County's ordinance provides for the application of plans and ordinances to the area of city impact as required by I.C. § 67-6526. That statute does not require that the ordinance adopt a term governing Idaho City's authority to annex. Such term was voluntarily placed in the ordinance. The ordinance itself states that Idaho City *voluntarily* limited its authority to annex to situations where the property owner requests annexation. Idaho City also adopted a similar ordinance pursuant to I.C. § 67-6526 where it *voluntarily* limited its annexation authority. However, the city repealed that voluntary limitation by Ordinance No. 319 (attached).

Elk Creek argues that Idaho City cannot unilaterally change the area of impact agreement. There is no indication in the ordinance that the section on annexation was a part of any agreement with the county. Furthermore, the adoption of Ordinance 319 relating to annexation does not change the agreement as to the "areas of city impact, plan, and ordinance requirements." I.C. § 67-6526(d). It merely removes a voluntary restriction related to annexation. Idaho City therefore is now authorized to annex whether requested by property owners or not. This leaves the potential for annexation of

Elk Creek's property, in which case drilling a well not up to DEQ public drinking water standards is not in the public interest.

For the above reasons, Elk Creek's application for water permit should be denied.



Richard K. Linville, Idaho City Attorney

CERTIFICATE OF SERVICE

I hereby certify that on the 29<sup>th</sup> day of November, 2011, I served a true and correct copy of the foregoing upon:

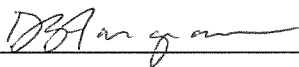
Barry Marcus  
MARCUS, CHRISTIAN & HARDEE  
737 North 7<sup>th</sup> Street  
Boise, Idaho 83702  
Fax: 208-342-2170

by:

☐ United States Mail, postage prepaid, at above address

☐ hand delivery

☒ fax



David B. Hargraves

**ORDINANCE NO. 319****AN ORDINANCE OF THE CITY OF IDAHO CITY, BOISE COUNTY, IDAHO, REPEALING SECTION 3, CHAPTER 8, TITLE 1 OF THE IDAHO CITY CODE, PERMITTING VOLUNTARY ANNEXATION ONLY, AND PROVIDING FOR AN EFFECTIVE DATE.**

WHEREAS, The City Council has determined that it is in the interest of the people of the city of Idaho City, and in order to protect the health, safety and welfare of the citizens of Idaho City and visitors to Idaho City,

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF IDAHO CITY, IDAHO:

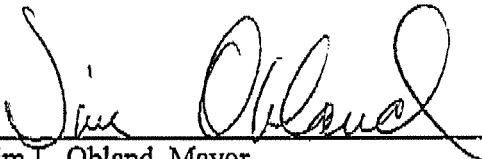
That Section 3, Chapter 8, Title 1 of the Idaho City Code is hereby **repealed**.

**EFFECTIVE DATE:**

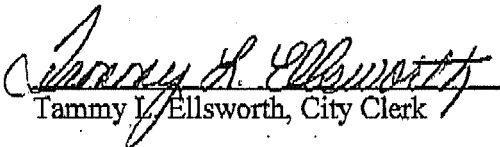
That this ordinance shall be in full force and effect upon passage, approval and publication according to law.

PASSED BY THE COUNCIL of the City of Idaho City this 24<sup>th</sup> day of June, 2008.

APPROVED BY THE MAYOR of the City of Idaho City this 24<sup>th</sup> day of June, 2008.

  
Jim L. Obland, Mayor

ATTEST:

  
Tammy L. Ellsworth, City Clerk

## CHAPTER 8

**AREA OF CITY IMPACT**

## SECTION:

- 1-8-1: Applicable County Plans And Ordinances
- 1-8-2: County Enforcement
- 1-8-3: City Limitation On Annexation Authority (Rep. by Ord. 319, 6-24-2008)
- 1-8-4: Impact Area Map

**1-8-1: APPLICABLE COUNTY PLANS AND ORDINANCES:**

- A. Enumerated: Within the area of city impact identified by ordinance 279, the following plans, codes and ordinances shall apply whenever development within the area of city impact is being considered by the city or the county:
  - 1. Boise County comprehensive plan.
  - 2. Boise County subdivision ordinance.
  - 3. Boise County zoning and development ordinance.
  - 4. Boise County code ordinance.
  - 5. Boise County building permit ordinance.
  - 6. Boise County road standards ordinance.
  - 7. All other standards of and applicable Boise County codes and ordinances.
- B. Notice From County: Boise County agrees to notify Idaho City of any land development proposals, considerations, applications, new ordinances or changes to existing ordinances, or any other considerations or proposals that will affect land use within the agreed upon

area of city impact. The county will take into consideration any comments offered by the city concerning these issues. (Ord. 280, 12-14-1999)

1-8-2:       **COUNTY ENFORCEMENT:** Boise County shall be responsible for the administration and enforcement of all ordinances applicable within the area of city impact. (Ord. 280, 12-14-1999)

1-8-3:       **CITY LIMITATION ON ANNEXATION AUTHORITY:** (Rep. by Ord. 319, 6-24-2008)

1-8-4:       **IMPACT AREA MAP:** The Idaho City area of impact shall be the area defined by the map attached to ordinance 279 as exhibit A, on file in the office of the city clerk, and incorporated herein by reference. (Ord. 279, 12-14-1999)