

**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.)
_____)**

**PRELIMINARY ORDER
APPROVING APPLICATION**

PROCEDURAL HISTORY

On December 21, 2009, Elk Creek Corp. (“Elk Creek” or “Applicant”) submitted an application to appropriate ground water for domestic use on land in Boise County. The Department of Water Resources (“Department”) designated the application no. 63-33321 (“application”).

On April 16, 2010, the Department wrote the applicant a letter requesting additional information in support of the application. On April 30, 2010, the applicant supplied the requested information.

The Department caused the application to be published in *The Idaho World* on May 19 and May 26, 2010, in accordance with Idaho Code § 42-203A(2) and Rule 40.02.a.i of the Water Appropriation Rules (IDAPA 37.03.08.040.02.a.i). The published protest deadline was June 7, 2010. The Department received a timely protest against the application from the City of Idaho City (“Idaho City” or “City” or “Protestant”).

On December 17, 2010, the Department held a pre-hearing conference attended by representatives of Elk Creek and Idaho City. On June 21, 2011, the Department issued an order setting hearing dates in connection with the application and naming Jeff Peppersack to be the hearing officer. On October 27, 2011, the Department appointed Shelley Keen to replace Jeff Peppersack as the hearing officer.

On October 24, 2011, the Department received the City’s *Motion for Issuance of Subpoena* to compel employees of the Idaho Department of Environmental Quality (IDEQ) to testify at the hearing. On October 28, 2011, the hearing officer denied the City’s motion.

On November 8 and 9, 2011, at the Department’s State Office in Boise, Idaho, the hearing officer conducted a hearing to address the protest filed against the application.

Grant Hawk and attorney Barry Marcus represented Elk Creek at the hearing. Attorney Richard Linville represented the City at the hearing.

The issues raised by the Protestant include:

- The potential for the diversion of ground water proposed in the application to diminish the supply of water available for prior, existing ground water rights.
- The sufficiency of the supply of ground water for the proposed water use.
- The potential for the proposed water use to conflict with the local public interest.

The following witnesses testified at the hearing:

- Terry Scanlan, P.E., P.G., of SPF Water Engineering, LLC
- Grant Hawk
- Gavin Hawk
- Roland “Butch” Anderson
- Mayor Jackie Bridwell of Idaho City

At the hearing, the hearing officer admitted the following items into evidence:

Exhibit No.	Exhibit Description
A 1	Terry Scanlan’s resume (4 pgs)
A 2	Map <i>Geology of the Boise Basin Vicinity, Boise, Ada, and Elmore Counties, Idaho</i>
A 3	An enlarged photocopy of a portion of A 2 with the caption <i>Elk Creek Corporation – Local Geology</i>
A 4	Photocopy of the application prior to its submittal to the Department
A 5	Listing of driller reports for Sections 23 and 26, T6N, R5E, B.M.
A 6	Well driller’s reports for Kuwahara, Sparks, Canady, and Secor
A 7	A printout of Water Right 63-2627 from the Department’s database and photocopies or scanned images from the file for Water Right 63-2627
A 13	Certificate of Incorporation for Elk Creek Corporation
A 14	Warranty deed for property conveyed from the Estate of Winifred Proffer to Elk Creek Corporation.
A 15	12/10/2009 Letter from Idaho City to Mr. Hawk and attachments
A 16	10/31/2011 Letter from Idaho City to Mr. Hawk and attachments
A 18	City of Idaho City Waterline Easement
A 20	Boise County Ordinance 3-2000
A 24	Map titled <i>Northern Portion of Idaho City</i>
A	Printout of Idaho Code § 50-606
B	City of Idaho City Ordinance 9-1-35 regarding private wells
E	Chapter 8 of Idaho City Code regarding area of impact

The hearing officer also indicated for the record that he may rely on:

- Water right records maintained by the Department for water rights that may be affected by the proposed water use.
- The cumulative file for the application.

- Water District records to the extent they may be useful for evaluating whether the proposed use will cause injury to other water users and whether the water supply is sufficient for the proposed use.
- Well driller reports in Department files for the purpose of evaluating the sufficiency of the water supply for the proposed use.

At the conclusion of the hearing, the hearing officer granted Elk Creek 14 days to brief the hearing officer on the issue of Idaho City's authority to annex property. The hearing officer granted 14 additional days for Idaho City to respond to Elk Creek's brief.

On November 10, 2011, the Department received Elk Creek's *Applicant's Post Hearing Brief*.

On November 30, 2011, the Department received *Idaho City's Post Hearing Response Brief*.

Based on the record, including the file for the application, evidence and testimony presented at the hearing, and post-hearing briefs, the hearing officer finds, concludes, and orders as follows:

FINDINGS OF FACT

1. The application proposes the appropriation of 0.20 cubic feet per second (cfs) of ground water for year-round domestic use on land in the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 26, Township 6 North, Range 5 East, B.M., in Boise County. Water for the domestic use would be diverted from a point of diversion (well) also located in the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 26, Township 6 North, Range 5 East, B.M., in Boise County.
2. The proposed domestic use is for internal use in 14 existing mobile homes. The application does not propose an irrigation component for the domestic use. At the hearing, testimony indicated that water diverted from the proposed point of diversion might also be used in Elk Creek's machine shop, but use of water in the machine shop is not described in the application.
3. Pursuant to longstanding practice, Elk Creek's 16 mobile homes currently pay for and receive municipal water from Idaho City for their domestic water use. Elk Creek intends to either retain Idaho City water service for two mobile homes or reduce its total number of mobile homes so that the domestic water use proposed in the application would not exceed 14 connections.
4. Metering shows the residents of Elk Creek's mobile homes use about 250 gallons per day per unit in the summer and slightly more in the winter. The slight wintertime increase is necessary to prevent water pipes from freezing. Allowing for a diversion of 250 gallons per day per unit for the 214-day irrigation season in the Idaho City area and 300 gallons per day per unit for the 151-day non-irrigation season, the total annual use for the 14 mobile homes is about 4.2 acre-feet ("af" or "AF").

5. A continuous flow of 2 to 3 gallons per minute (gpm) would be sufficient to provide 14 mobile homes with 250 to 300 gallons per day each. However, water demand in a community tends to be concentrated during certain times of the day (peak hourly demand) and certain times of the year (peak day demand). A flow exceeding 2.5 gpm is needed to meet demand during the peak usage times. A flow of 0.06 cfs, or about 27 gpm, would be sufficient to meet the peak day demand for the 14 mobile homes. If a well yield of 0.06 cfs is not achieved, Elk Creek could provide a storage tank as part of the water distribution system to meet peak day demand and peak hour demand.
6. The place of use consists of two contiguous parcels of land owned by Elk Creek. The parcels of land are adjacent to the City of Idaho City but are not within Idaho City's corporate limits.
7. Idaho City is located in a narrow valley between Elk Creek and Mores Creek. Elk Creek is tributary to Mores Creek. Mores Creek is tributary to the Boise River upstream from Lucky Peak dam.
8. Since 1980 the Department has considered water in the Boise River basin upstream from Lucky Peak dam to be fully appropriated from June 15 to November 1 each year. Due to the insufficiency of the water supply, the Department does not issue new permits for the use of surface water or ground water in the Boise River basin upstream from Lucky Peak dam unless the use occurs between November 1 and June 15, the use is non-consumptive, or the consumptive use can be mitigated to prevent injury to senior water right holders. By longstanding practice, domestic uses in the Boise River basin and elsewhere are typically considered essentially non-consumptive if they do not include an irrigation component.
9. Because the proposed domestic use does not include an irrigation component, the proposed use of water would be essentially non-consumptive.
10. IDEQ regulates Public Water Supply systems to ensure they provide adequate water quality, system pressure, and continuity of service. Public Water Supply systems have 15 or more service connections or serve 25 or more people at least 60 days per year. Because it proposes only 14 service connections serving fewer than 25 people, Elk Creek's proposed water use would not be subject to regulation as a Public Water Supply by IDEQ. Therefore, the water diverted and delivered to the mobile home residents may not be monitored or regulated for quality, pressure, or continuity of service.
11. Granitic bedrock underlies Idaho City and the surrounding area. Sediments of the Payette Formation overlie the granitic bedrock. The Payette Formation is more than 200 feet thick in some places. Aquifers form in the sand, gravel, and clay layers of the Payette Formation. Along the valley floor, mined sediments overlie the Payette Formation.
12. The aquifers within the Payette Formation are the sources of water for many of the domestic wells in the vicinity of Idaho City.
13. Well driller reports for wells drilled in Sections 23 and 26, Township 6 North, Range 5 East, B.M., show water-bearing zones within the Payette Formation to depths exceeding 300 feet below ground surface. The well driller reports typically show yields of less than 27 gallons

per minute. However, the wells tend to be for single-family domestic uses, and flows exceeding a few gallons per minute may not have been sought. A small number of wells in the area show yields exceeding 27 gallons per minute. A small minority of wells in the area also show no yield at all.

14. As stated in its application, Elk Creek proposes diverting ground water from a water bearing zone of the Payette Formation 195 feet to 210 feet below ground surface. However, testimony at the hearing indicated water may be sought from approximately 100 feet to approximately 200 feet below ground surface. Well driller reports in the area indicate water may or may not be available in the 195 to 200 foot range but is very likely in the 100 to 210 foot range.
15. Well driller reports for wells drilled into the Payette Formation in Sections 23 and 26, Township 6 North, Range 5 East, B.M., show clay layers deeper than 30 feet and shallower than 60 feet below ground surface. These clay layers are not significant sources of water, and they likely serve as aquitards restricting the movement of water from the surface downward and vice-versa.
16. Idaho City diverts water from Elk Creek and from ground water pursuant to water right no. 63-2627 for its municipal water supply. Ground water is diverted from two collection wells located adjacent to Elk Creek. The collection wells are approximately 30 feet deep.
17. Idaho City's collection wells are located approximately 1000 feet from Elk Creek's proposed point of diversion.
18. Elk Creek's owner plans to pay the estimated \$30,000 in construction costs for the well from the proceeds of his machining business, which is also located at the proposed place of use.
19. Elk Creek already has three-phase electric power sufficient to operate a well pump.
20. The proposed point of diversion is approximately 300 feet east of the stream called Elk Creek.
21. Idaho City's water system is regulated by IDEQ as a Public Water Supply system. Consequently, its water is regularly tested for a number of water quality parameters.
22. Idaho City's municipal water system struggles to meet water quality standards, particularly during springtime high runoff periods, and it sometimes issues boil advisories to its customers, including those in the Elk Creek mobile homes.
23. At least some of Elk Creek's mobile home tenants drink bottled water to avoid the taste of chlorine, a water sanitation agent, in the Idaho City municipal water supply.
24. Idaho City struggles to maintain adequate water pressure in the service lines to its municipal water customers, including those in the Elk Creek mobile homes, and there are occasional service interruptions in the Idaho City water system.

25. Idaho City's municipal water system has approximately 275 service connections. *Exhibit A 16.*
26. Idaho City has incurred more than \$2 million of debt for past and future upgrades to its municipal water system. *Exhibit A 16.*
27. Water distribution lines from Idaho City's water system to Elk Creek's mobile homes are undersized and damaged. They are in urgent need of repair.
28. Elk Creek mobile home residents pay for and receive sewer services from Idaho City.
29. The sewer lines from the Elk Creek mobile homes to Idaho City's sewer main are badly damaged. Leakage of ground water into the sewer lines significantly increases the flow to Idaho City's wastewater treatment plant and increases the cost of treatment.
30. The water and sewer lines serving Elk Creek run together through a ten foot wide easement. Without special techniques, IDEQ requires more separation between water lines and sewer lines than is possible within the ten foot wide easement. To meet the IDEQ separation requirement, replacing the damaged sewer lines would require either removing the water lines and reconstructing them through a longer, more costly, route or possibly replacing the sewer line through the easement with a costly pressurized sewer line or pressure-rated sewer pipe.
31. Idaho City has informed Elk Creek that it must either agree to a significant rate increase or agree to annexation into the City of Idaho City. As stated by Idaho City, "The mayor and city council do not believe that all of the city's water customers should pay for replacement of lines that provide service to a property that is not within city limits." *Exhibit A 15.* Estimates for replacing the water and sewer lines for Elk Creek exceed \$40,000. *Exhibit A 15.*
32. Each well drilled into an aquifer is a potential conduit for contaminants to migrate into an aquifer. The Department regulates well construction pursuant to its Well Construction Standards Rules (IDAPA 37.03.09) to minimize the contamination potential.
33. The water system proposed by Elk Creek would not be sufficient for firefighting purposes on the Elk Creek property. Firefighters would have to pump water from Elk Creek. Improving Idaho City's water service to Elk Creek would provide adequate flows for firefighting purposes.
34. Health hazards such as arsenic occur in the ground water in the vicinity of Idaho City.

ANALYSIS

Idaho Code § 42-203A directs the Department to review a number of criteria when evaluating an application to appropriate water. Among the criteria is whether the proposed water use "will conflict with the local public interest as defined in section 42-202B, Idaho Code." Idaho Code § 42-202B defines local public interest as "the interests that the people in the area directly affected

by a proposed water use have in the effects of such use on the public water resource.” This public interest review is the crux of this case.

Idaho City’s public interest argument has four main thrusts. First, Idaho City believes Elk Creek’s continued participation in the municipally owned and operated water system is vital to the long-term integrity of the system. Idaho City has incurred substantial debt to make repairs and upgrades to its water system so it can comply with IDEQ water quality and water pressure requirements for public water systems. History shows that without the repairs and upgrades, Idaho City will struggle to remain in compliance. Providing water of sufficient quality and pressure to its customers is an important public value for any public water supply system. To pay off the debt incurred for repairs and upgrades, Idaho City has increased its water service fees. The service fee increases are not insubstantial to the individual customers, in part because Idaho City is a relatively small community, and the economies of scale that apply to utility projects serving larger populations do not arise in Idaho City. Idaho City believes that its water system is a “public water resource” because it is publicly owned and operated. Idaho City also believes that it is in the best interest of its customers, who are “the people in the area directly affected by the proposed water use”, for Elk Creek to remain an active participant in the municipal water system.

Second, Idaho City believes that Elk Creek’s mobile home tenants are also “people in the area affected by a proposed water use” and that it would not be in their interest to be removed from the Idaho City water system. Health hazards such as arsenic occur in the ground water in the vicinity of Idaho City. Idaho City argues that the Elk Creek mobile home tenants will be better protected from public health hazards by a system regulated by IDEQ as a public water supply than by an unregulated system operated by Elk Creek.

Third, Idaho City suggests that Elk Creek’s proposed well would be a potential conduit for the introduction of contaminants into the ground water it uses to supply its municipal water customers.

Fourth, Idaho City fears Elk Creek’s residents will cross-connect the proposed water system with the City’s municipal water system and introduce contaminants into the City water system. Idaho City believes cross-connection is more likely because Elk Creek plans to use both water from its own water system and water from the Idaho City municipal water system on its property.

In contrast to Idaho City, Elk Creek believes the public water resource at question is Idaho City’s natural source of supply, the stream of water called Elk Creek. Elk Creek postulates that its well construction techniques will prevent its proposed diversion of ground water from depleting the flow of water in Elk Creek. From the applicant’s perspective, if the flow of water in Elk Creek is not diminished by the proposed diversion and use of water, there is no public interest issue for Idaho City or any other people in the local area.

Idaho City is correct that the citizens of Idaho City and Elk Creek’s tenants are the people in the area affected by the proposed water use. However, the determination of the public interest in this case depends on the definition of “the public water resource.” The term “public water resource” is not defined specifically in the Water Appropriation Rules (IDAPA 37.03.08) or in Idaho Code. However, there are clues in both rule and statute as to what is meant by “public water.”

Water Appropriation Rule 10.18 (IDAPA 37.03.08.10.18) defines “Unappropriated Water” as:

The *public water* of the state of Idaho in streams, rivers, lakes, springs or groundwater in excess of that necessary to satisfy prior rights including prior rights reserved by federal law. [Emphasis added.]

Water Appropriation Rules 35.01.a (IDAPA 37.03.08.035.01.a) states:

No person shall commence the construction of any project works or commence the diversion of the *public water* or trust water of the state of Idaho from any source or change the point of diversion, place, period or nature of use of any existing water right without first having filed an application for permit to appropriate the water or other appropriate form with the department and received approval from the Director, unless exempted by these rules or by statute. [Emphasis added.]

Idaho Code § 42-101 states, in pertinent part:

All the waters of the state, when flowing in their natural channels, including the waters of all natural springs and lakes within the boundaries of the state are declared to be the property of the state, whose duty it shall be to supervise their appropriation and allotment to those diverting the same therefrom for any beneficial purpose

Idaho Code § 42-201(2) states, in pertinent part:

No person shall use the *public waters* of the state of Idaho except in accordance with the laws of the state of Idaho. No person shall divert any water from a natural watercourse or apply water to land without having obtained a valid water right to do so, or apply it to purposes for which no valid water right exists. [Emphasis added.]

Idaho Code § 42-202(1) states, in pertinent part:

For the purpose of regulating the use of the *public waters* and of establishing by direct means the priority right to such use, any person, association or corporation hereafter intending to acquire the right to the beneficial use of the waters of any natural streams, springs or seepage waters, lakes or ground water, or other *public waters* in the state of Idaho, shall, before commencing of the construction, enlargement or extension of the ditch, canal, well, or other distributing works, or performing any work in connection with said construction or proposed appropriation or the diversion of any waters into a natural channel, make an application to the department of water resources for a permit to make such appropriation. [Emphasis added.]

The common theme in these two rules and three sections of Idaho Code is the linkage of “public water” or “public waters” or “property of the state” to water in its natural circumstances. From these references, it is clear that the term “public water” throughout the portion of Idaho law administered by the Department refers to water in its natural state in streams, springs, lakes, or ground water, etc. It follows that when considering the public interest criteria for applications to appropriate water, the Department is to look at the effects of the proposed water use on the water in its natural state.

Idaho City’s argument that Elk Creek’s proposed appropriation is not in the public interest because it may harm the City’s publicly owned water system is not consistent with the scope of the statutorily mandated public interest review. The City’s water system is not representative of water in its natural state. Therefore, it is not public water subject to the Department’s public interest review. This is true for the funding issue, the cross-connection issue, and the issue of protecting the Elk Creek tenants from an unregulated water supply. Moreover, Idaho City’s assertion that Elk Creek’s tenants could be harmed by the proposed water use is also speculation. Idaho City asserts that the Elk Creek mobile home tenants would not be able to protect themselves if Elk Creek provides poorer quality water than Idaho City does. Yet, the Elk Creek tenants are already protecting themselves by drinking bottled water instead of drinking Idaho City’s chlorinated water supply. Elk Creek’s system, were it built, might possibly provide better quality water on a more regular basis at a lower price than Idaho City’s system. Also, the regulation of public drinking water systems is the purview of the Idaho legislature and the IDEQ, not the Department. If the legislature has not seen fit to assign IDEQ to regulate water systems serving fewer than 15 connections or fewer than 25 people as public drinking water systems, it is not for the Department to assert authority in that void. In short, Idaho City’s concerns about effects on its publicly owned water system and about who is best qualified to provide water to Elk Creek’s tenants do not fit within the narrow scope of the Department’s public interest review.

As for whether the proposed well would allow the introduction of contaminants into the local ground water, which is a public water resource, proper well construction techniques mandated by the Department will minimize the potential.

CONCLUSIONS OF LAW

Governing Statutes and Rules

1. Idaho Code § 42-203A states in pertinent part:

In all applications whether protested or not protested, where the proposed use is such (a) that it will reduce the quantity of water under existing water rights, or (b) that the water supply itself is insufficient for the purpose for which it is sought to be appropriated, or (c) where it appears to the satisfaction of the director that such application is not made in good faith, is made for delay or speculative purposes, or (d) that the applicant has not sufficient financial resources with which to complete the work involved therein, or (e) that it will conflict with the local public interest as defined in section 42-202B, Idaho Code, or (f) that it is contrary to conservation of water resources within the state of Idaho, or (g) that it will

adversely affect the local economy of the watershed or local area within which the source of water for the proposed use originates, in the case where the place of use is outside of the watershed or local area where the source of water originates; the director of the department of water resources may reject such application and refuse issuance of a permit therefor, or may partially approve and grant a permit for a smaller quantity of water than applied for, or may grant a permit upon conditions.

2. Idaho Code § 42-202B(3) states:

"Local public interest" is defined as the interests that the people in the area directly affected by a proposed water use have in the effects of such use on the public water resource.

3. Idaho Code § 42-226 states in pertinent part:

The traditional policy of the state of Idaho, requiring the water resources of this state to be devoted to beneficial use in reasonable amounts through appropriation, is affirmed with respect to the ground water resources of this state as said term is hereinafter defined and, while the doctrine of "first in time is first in right" is recognized, a reasonable exercise of this right shall not block full economic development of underground water resources. Prior appropriators of underground water shall be protected in the maintenance of reasonable ground water pumping levels as may be established by the director of the department of water resources as herein provided.

4. Idaho Code § 42-229 applies Idaho Code § 42-226 retroactively to non-excepted ground water rights: "the administration of all rights to the use of ground water, whenever or however acquired or to be acquired, shall, unless specifically excepted herefrom, be governed by the provisions of this act."

5. Idaho Code § 42-231 states in pertinent part:

In addition to other duties prescribed by law, it shall be the duty of the director of the department of water resources ... to control the appropriation and use of the ground water of this state as in this act provided and to do all things reasonably necessary or appropriate to protect the people of the state from depletion of ground water resources contrary to the public policy expressed in this act.

6. The Water Appropriation Rules, IDAPA 37.03.08, apply to all applications to appropriate water, including Elk Creek's application.

Burden of Proof

7. The applicant bears the ultimate burden of proof regarding all the factors set forth in Idaho Code § 42-203A.

Satisfaction of Idaho Code § 42-203A Review Criteria

A. Potential to Reduce the Quantity of Water under Existing Rights (Injury)

8. Drilling Elk Creek's well to at least 100 feet and sealing it to at least 60 feet below the ground surface will prevent its diversion of water from causing injury to other water users through the depletion of flow in Elk Creek or through well interference.
9. By limiting its proposed water use to essentially non-consumptive uses, Elk Creek will prevent injury to senior surface water appropriators within the Boise River basin.

B. Sufficiency of the Water Supply

10. The supply of water in the Payette Formation underlying Idaho City is sufficient for the proposed use.

Satisfaction of Additional Idaho Code § 42-203A Review Criteria

C. Application is Made in Good Faith and is not Speculative

11. The proposed beneficial use, the 14 mobile homes on Elk Creek's property, already exist.
12. Maintaining sewer and water service from Idaho City to the 14 mobile homes may cost more than \$40,000 in repairs, and there will be monthly service fees as well. The application attempts to find an alternative water supply for the mobile homes at a lower cost.
13. Elk Creek already has the three-phase power necessary to operate a well pump.
14. The application is made in good faith.

D. Sufficiency of the Applicant's Financial Resources

15. The applicant has sufficient resources to complete the project.

E. Local Public Interest

16. When evaluating the local public interest, the Department must evaluate the impact of the proposed use on the public water resource. The public water resource is the water in its natural state prior to being appropriated for a private purpose.
17. If the well proposed as the point of diversion is constructed in accordance with the Department's Well Construction Standards Rules (IDAPA 37.03.09), the proposed water use will have no impact on the public water resource. Therefore, the proposed water use does not conflict with the local public interest.

F. Conservation of Water Resources within the State of Idaho

18. The application, as proposed, is not wasteful. In-house domestic uses consume only very small amounts of water relative to the overall diversion amount. Nearly all of the water diverted will be returned to the Boise River basin's water supply. Therefore, the application is not inconsistent with the conservation of water resources within Idaho.

G. Potential to Impact the Local Economy if Water is Transferred outside the Local Area or Watershed

19. The applicant does not propose to divert water from the Boise River basin to another area or watershed. Therefore, this review criterion is not applicable to the application.

Overall

20. The application should be approved with conditions.

ORDER

IT IS HEREBY ORDERED that application to appropriate water no. 63-33321 is **APPROVED** for the proposed domestic use.

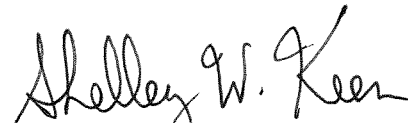
IT IS FURTHER ORDERED that permit no. 63-33321 is subject to the following conditions:

1. Proof of application of water to beneficial use shall be submitted on or before January 1, 2017.
2. Subject to all prior water rights.
3. Right holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code, and applicable Well Construction Rules of the Department.
4. The issuance of this right does not grant any right-of-way or easement across the land of another.
5. Domestic use is for internal use for 14 mobile homes and does not include lawn, garden, landscape, or other types of irrigation.
6. Diversion and use of water under this right shall not exceed 0.06 cfs or 4.2 acre-feet per year.
7. After specific notification by the Department, the right holder shall install a suitable measuring device or shall enter into an agreement with the Department to use power records to determine the amount of water diverted and shall annually report the information to the Department.
8. Project construction shall commence within one year from the date of permit issuance and

shall proceed diligently to completion unless it can be shown to the satisfaction of the Director of the Department of Water Resources that delays were due to circumstances over which permit holder had no control.

9. The well to be constructed as a point of diversion for this right shall be cased and sealed to a depth of at least 60 feet below ground surface.
10. Water bearing zone to be appropriated is from 100 feet to 210 feet below ground surface.

Dated this 5th day of January, 2012.

A handwritten signature in black ink, reading "Shelley W. Keen". The signature is written in a cursive style with a horizontal line underneath the name.

Shelley W. Keen
Hearing Officer

CERTIFICATE OF SERVICE

I hereby certify that on January 6, 2012, a true and correct copy of the document described below was served by placing the same in the United States mail, postage prepaid and properly addressed to the following:

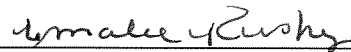
Document Served: Preliminary Order Approving Application for Permit No. 63-33321

ELK CREEK CORP
PO BOX 401
IDAHO CITY ID 83631

BARRY L MARCUS
MARCUS MERRICK CHRISTIAN & HARDEE LLP
737 N 7TH ST
BOISE ID 83702

TERRY SCANLAN
SPF WATER ENGINEERING LLC
300 E MALLARD DR STE 350
BOISE ID 83706

RICHARD K LINVILLE, ATTY
CITY OF IDAHO CITY
PO BOX 671
EMMETT ID 83617



Emalee Rushing
Administrative Assistant