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DEPARTMENT OF
WATER RESOURCES

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	)	APPLICANT'S PRE HEARING BRIEF
OF ELK CREEK CORP.	)	
	)	
	)	
	/	

Elk Creek Corp., an Idaho corporation ("Applicant"), owns approximately fifteen acres located near Elk Creek north of Idaho City. The property is outside the city limits of Idaho City. The property contains a small trailer park rented to low income persons, some of whom are typically welfare recipients. Applicant purchased the property in 1989. At that time the trailer park was in operation and receiving sewer and water service from Idaho City. Applicant has paid the City for its sewer and water service each year since it acquired the property.¹ Applicant has been notified by the City that its charges for water service to Applicant's property will be increased to \$63.40 per month per trailer space plus \$1.35 per thousand gallons of water used. This is the third increase since 2001. The average

¹ Even though the water service is provided through only one meter, the city charges Applicant a base rate service for each trailer space, whether it is occupied or vacant.

summer usage is approximately 250 gallons per trailer per day.² The cost of the City's water service per space during the summer is \$73.40 per month. This is an excessive cost for most of the people living in Applicant's trailer park. The estimated operating cost of water service from Applicant's well is less than \$20 per month.

Applicant has applied to IDWR for authorization to drill a well on its property and to appropriate ground water for service to its trailer park. Its property is served with three phase power. The proposed well will be drilled near the middle of its property. The cost of the well and pump will be approximately \$30,000. The projected depth of the well is approximately 200 feet. Applicant is financially able to pay for this well. Applicant will be able to provide more reliable water service to its tenants, at a lower cost, with its own well.³

The source of Idaho City's water system is surface water pumped from shallow wells located near Elk Creek downstream approximately 500 feet from the location of Applicant's proposed well.⁴ There is no evidence that the subsurface aquifer which will supply Applicant's well is directly connected to the Elk Creek surface water that supplies Idaho City's water system. There is sufficient hydraulic separation between Applicant's source of supply and the City's source of supply to insure that Applicant's well will not adversely affect the source of water utilized by the City.

The City argues that the Application conflicts with the local public interest, presumably because Applicant will reduce the amount of water it purchases from the City if it drills its own well. The term "local public interest" is defined in Idaho Code Section 42-202B as the interests that the people in the

² Water use in winter is further increased by the need to prevent freezing of water pipes.

³ The City's water system is burdened with approximately \$2 million of debt. It has less than 275 customers. Its current debt load alone exceeds \$7000.00 per customer. On the other hand, Applicant's water service will have a total capital cost of approximately \$2,048 per customer. It will recoup the capital cost of its well in less than 7 years. The City's water is surface water which is susceptible to contamination and must be heavily chlorinated. Because of the poor taste many of Applicant's tenants drink only bottled water. The electric power to Idaho City is sometimes disrupted in the winter. Applicant will be able to maintain a backup generator to insure better continuity of service with its own well. The City water is delivered to Applicant at low pressure, typically well below the required pressure for public water systems.

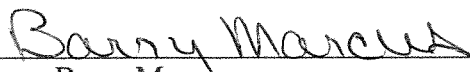
⁴ IDWR Water Right Nos. 63-2627 and 63-15422. Both designate Elk Creek as the source and point of diversion.

area directly affected by a proposed water use have in the effects of such use on the public water resource.⁵ In this case Applicant's proposed water use has no affect on the public water resource. It is a domestic non consumptive use. The City appropriates surface water from Elk Creek whereas Applicant's well will appropriate ground water 100 to 200 feet below the surface. Total use of the water within the Mores Creek Watershed will be unchanged. Applicant will simply switch its use from a surface water source to a deep ground water source. The City's public water resource will actually be improved by Applicant's well because it will decrease the demand on that resource thereby increasing the supply available for water service to the City's other customers. The financial impact to the City of Applicant's reduction in water service is an issue that is unrelated to the integrity of the City's public water resource.

The City has also objected to the Application based on a provision in its ordinance which prohibits the drilling of private wells. Idaho City Ordinance 9-1-35. However, this prohibition is expressly limited to wells drilled within the City's municipal boundaries. Since Applicant's property is located outside of the territorial boundary of the City, the well prohibition does not apply.⁶

For the foregoing reasons Applicant respectfully requests approval of its Application.

MARCUS, CHRISTIAN & HARDEE


Barry Marcus

CERTIFICATE OF SERVICE

⁵ In 2003 the legislature significantly narrowed the definition of "local public interest" as it was stated in I.C. sec. 42-222, Chisholm v. Idaho Department of Water Resources, 142 Idaho 159, 125 P. 3d 515 (Idaho 2005). The agency's inquiry is now limited to the affect that the proposed water use has on the public water resource. The financial aspects of City's use of its public water resource is beyond the scope of this inquiry.

⁶ A city's exercise of jurisdiction beyond its territorial limits is prohibited by Article XII, section 2 of the Idaho Constitution. Reardon v. Magic Valley Sand and Gravel Inc., 140 Idaho 115, 90 P. 3d 340 (Idaho 2004).

I hereby certify that on this 7th day of November, 2011, I caused to be served a true and correct copy of the foregoing **PRE HEARING BRIEF**, in the above-referenced matter by the method indicated below, and addressed to the following:

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

_____ *HAND DELIVER*
_____ *U.S. MAIL*
_____ *OVERNIGHT MAIL*
☒ *TELECOPY (FAX)*
: _____

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