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Case No. _____ Inst. No. _____
Filed _____ A.M. _____ P.M.

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF VALLEY

SNOWDON WILDLIFE
SANCTUARY; LINDA DeEULIS; and
SARAH POKART,

Plaintiffs,

vs.

MCCALL RANCH, LLC; JUDD
DEBOER; and IDAHO DEPARTMENT
OF WATER RESOURCES.

Defendants.

Case No.: CV 2011-62C

COMPLAINT

COME NOW the Plaintiffs above-named, and as and for cause of action against
the Defendants, state and allege as follows:

PARTIES AND JURISDICTION

1. Plaintiff Snowdon Wildlife Sanctuary, Inc (hereafter Snowdon) is, and was at all time relevant herein, an Idaho Corporation formed pursuant to the Idaho Nonprofit Corporation Act for the purpose of rescuing and rehabilitating injured wildlife.
2. Plaintiff Linda DeEulis is, and was at all times relevant herein, a resident of Valley County, Idaho.

3. Plaintiff Sarah Pokart is and was at all times relevant herein, residing in Valley County, Idaho.
4. Defendant McCall Ranch, LLC is an Idaho limited liability company with an ownership interest in a dam on Lake Fork Creek near McCall, Idaho, known as the Brown-Cruzen dam and identified in the Idaho Department of Water Resources records as D55-2952.
5. Defendant Judd DeBoer is the managing member of McCall Ranch, LLC and is a resident of the state of Idaho.
6. Defendant Idaho Department of Water Resources (IDWR) is a Department of the state of Idaho vested with the authority to supervise the maintenance and operation of dams in the state of Idaho in such manner as will safeguard life and property from injury that would result from a dam's failure.
7. Does 1 through 10 are persons yet unknown to the Plaintiff who have ownership interests in the Brown-Cruzen Dam, maintain and operate the dam, inspect the dam and its outlet works, or analyze and evaluate the capacity and safety of the dam.

GENERAL ALLEGATIONS

8. On or about the 4th day of June, 2010, the Brown-Cruzen Dam failed.
9. At the time of the dam's failure, the reservoir was at or near capacity.
10. The dam's failure, or breach, occurred suddenly and without any warning to the Plaintiffs.
11. At the time of the breach, Plaintiff Snowdon was operating its wildlife sanctuary on its property downstream from the dam.

12. At the time of the breach, Plaintiff Linda DeEulis was at her home on the grounds of the Snowdon Wildlife Sanctuary.
13. At the time of the breach, Plaintiff Sarah Pokart was living on the Sanctuary grounds in a cabin provided by Snowdon. Sarah was at Snowdon as a volunteer for the Sanctuary.
14. When the dam failed, it caused a significant amount of water to suddenly rush downstream, flooding an area that included the Snowdon Wildlife Sanctuary.
15. The flood caused Lake Fork Creek to rise to a level that it would never had reached naturally.
16. The flood inundated the Snowdon Wildlife Sanctuary and the property of Linda DeEulis destroying or damaging buildings and property belonging to the Plaintiffs.
17. Each of the three Plaintiffs has suffered damages in excess of the jurisdictional minimum of the District Court.
18. The Brown-Cruzen Dam is currently owned by McCall Ranch, LLC.
19. The dam was constructed around 1960, and was approved to impound water on January 1, 1969.
20. Since that time, the dam has been in continuous operation.
21. The IDWR approved the original plans for the dam.
22. The IDWR has the authority to authorize a dam owner to store water.
23. The IDWR has the authority to direct a dam owner to remove a dam if the dam does not meet the safety standards established by the IDWR or if a dam owner fails to maintain the dam in the manner directed by the IDWR.

24. The IDWR certified the Browns-Cruzen dam to be safe to store water and, consequently, issued Certificates of Approval approximately every two years since 1969 when the dam began operation. The last Certificate of Approval was issued after an inspection on 8/28/2008 and was for two years.

The Dam's History of Failed Maintenance

25. Since the dam's construction and throughout the dam's history of operation, the IDWR has cited numerous deficiencies in the maintenance of the dam beginning with the inspection of the dam in 1970.
26. The deficiencies found by the IDWR are various, and many of the citations are for conditions that could compromise the structural integrity of an earthen dam. Those deficiencies include:
- a. Growth of pine trees, willow trees, brush and woody growth on the upstream slope, downstream slope, and top of the dam;
 - b. Erosion of the toe of the downstream slope;
 - c. Damage by rodents;
 - d. Erosion of the upstream slope because of wave action;
 - e. Erosion of the crest of the dam by wave action; and
 - f. Settling of the crest with a resultant reduction in dam height at the point of the settling.
27. Various agents and employees of the dam owners, including Defendant Judd DeBoer, made statements to the IDWR regarding the dam owner's intention to remedy deficiencies found by the IDWR. The actions necessary to adequately remediate the deficiencies were frequently not completed.

28. Prior to the dam's breach, the IDWR issued certificates of approval to the dam owners and allowed the dam to continue to operate even though the dam owners had frequently failed to take action to remedy the safety deficiencies noted by the IDWR Dam Safety Inspectors.

The Dam's Inadequate Discharge Capacity

29. The IDWR determines whether or not a dam under its jurisdiction has adequate discharge capacity to ensure the dam is safe.
30. The IDWR promulgates standards for required discharge capacity for dam owners pursuant to Idaho Code Section 42-1714. Those rules were promulgated pursuant to the Idaho Administrative Procedures Act and are titled "Safety of Dam Rules."
31. Under the Safety of Dam Rules, the Brown-Cruzen dam was required to have a discharge capacity equal to or exceeding the maximum inflow that could be expected once every 500 years.
32. The dam owners failed to meet the requirements of the Idaho Department of Water Resources, Safety of Dams Rules. These failures include:
- a. Failing to operate and maintain the dam to retain the embankment dimensions and hydraulic capacity of the outlet works and spillway as required by the Safety of Dam Rules (IDAPA 37.03.06. Rule 55); and
 - b. Failing to operate and maintain the dam to provide release capacity equal to or exceeding an inflow design flood of Q500. (IDAPA 37.03.06. Rule 55 and Rule 50.d.11).
33. Although the IDWR issued Certificates of Approval to the dam owners, the condition of the dam was such that the dam did not meet the IDWR's Dam Safety Rules.

34. The owners of the dam continued to operate the dam even though they had not maintained the dam as directed by the IDWR Dam Safety Section.
35. The owners of the dam, and Judd DeBower failed to ensure the outlet gate was open in the winter and spring as required by the IDWR.
36. The owners of the dam and Judd DeBoer allowed the outlet gate to be in the closed position prior to and at the time of the breach.
37. IDWR's prior analysis of the discharge capacity of the dam specified the discharge capacity was calculated with the outlet gate open.
38. The IDWR calculated the outlet gate, when open, provided approximately 400 cubic feet per second of outflow.

COUNT 1—McCall Ranch, LLC, Negligence

39. Plaintiffs hereby incorporate those allegations set for in those paragraphs under the heading "General Allegations" as if set out in full herein.
40. Defendant McCall Ranch, LLC (McCall Ranch) had a duty to downstream residents and land owners to operate and maintain the Brown-Cruzen dam in such manner as to prevent a failure of the dam.
41. Defendant McCall Ranch breached its duty by allowing the dam to remain in a condition that was inadequate to prevent a breach during anticipated inflow.
42. As a direct and proximate cause of this Defendant's negligence, Plaintiffs have been damaged in an amount to be proven at trial. Those damages exceed the amount necessary to vest the District Court with jurisdiction.

COUNT II—McCall Ranch LLC, Negligence Per Se

43. Plaintiffs hereby incorporate those allegations set for in those paragraphs under the heading "General Allegations" as if set out in full herein.
44. Defendant McCall Ranch LLC had a statutory duty to operate and maintain the Brown-Cruzen in such manner as to avoid injury to downstream land owners.
45. The minimum standard of care for operation and maintenance is established by the Safety of Dam Rules.
46. Defendant McCall Ranch breached its duty of care by failing to maintain and operate its dam in accordance with the Dam Safety Rules of the IDWR.
47. Defendant McCall Ranch LLC's failure to maintain and operate its dam in such manner as to meet the IDWR Dam Safety Rules was a direct and proximate cause of the breach of the dam and the resulting damage to the Plaintiffs.
48. Defendant McCall Ranch had a duty to comply with the Safety of Dam Rules whether or not Defendant McCall Ranch was given any notice of its violation of those rules from IDWR.

COUNT III McCall Ranch, Negligence Per Se

49. Plaintiffs hereby incorporate those allegations set for in those paragraphs under the heading "General Allegations" as if set out in full herein.
50. The IDWR inspected the Brown-Cruzen dam on numerous occasions and found the maintenance and condition of the dam needed maintenance, repair, or improvement.
51. The IDWR notified the owners of the Brown-Cruzen dam of the dam's deficiencies and directed the owners to complete the needed repairs, maintenance or improvements.

52. Defendant McCall Ranch, LLC had a duty to complete the maintenance and repairs as directed by the IDWR.
53. Defendant McCall Ranch and the dam's successor owners failed to fully complete the repairs, maintenance, and improvements as directed by the IDWR.
54. Defendant McCall Ranch LLC's failure to fully complete the repair, maintenance and improvement to the dam as directed by IDWR was a direct and proximate cause of the dam's breach and the resulting damage to the Plaintiffs

COUNT IV Judd DeBoer, Negligence

55. Defendant Judd DeBoer was the managing member of McCall Ranch, LLC at the time of the dam's failure.
56. Defendant Judd DeBoer has been actively involved in the management of the Brown-Cruzen dam since 1987.
57. Defendant Judd DeBoer made statements to IDWR representatives assuring those representatives that specified maintenance and repairs would be completed.
58. Defendant Judd DeBoer had a duty to ensure his statements and the statements of the agents and employees of the dam to the IDWR were true and accurate.
59. Defendant DeBoer breached that duty by failing to ensure his statements to the IDWR regarding repairs and maintenance were actually accomplished.
60. As a direct and proximate cause of this Defendant's negligence, Plaintiffs have been damaged in an amount to be proven at trial. Those damages exceed the amount necessary to vest the District Court with jurisdiction.

COUNT V Idaho Department of Water Resources, Gross Negligence

61.

The IDWR's Failure To Require Adequate Discharge Capacity

62. The Idaho Department Water Resources has an a duty to ensure that dams in the state of Idaho that are subject to the IDWR's authority are safe.
63. The IDWR had a statutory obligation to ensure the Brown-Cruzen dam was maintained and operated in such manner and condition as would safeguard life and property from injury from failure of the dam.
64. The IDWR has a statutory obligation to ensure the Brown-Cruzen dam met the Dam Safety Rules promulgated by the IDWR.
65. The IDWR had a duty to order the dam owners to remove the dam if the dam was unsafe.
66. The IDWR failed to properly exercise or discharge its statutory authority to order the removal or improvement of the dam for not meeting the Safety of Dam Rules.
67. The IDWR's failure to order the dam to be removed or improved so as to meet an inflow design flood of Q500 constitutes gross negligence.

IDWR's Failure to Enforce Safety Violations

68. The IDWR Dam Safety Rules classify dams by size and risk category.
69. At the time of its breach, the Brown-Cruzen dam was classified as an Intermediate sized dam with Significant risk in the event of its breach.
70. Under the IDWR Dam Safety Rules, an Intermediate dam with a Significant risk is required to have a release capacity that is equal to or exceeds an inflow design flood of a 500 year flood event.
71. The IDWR calculated that a 500 year flood inflow would be 3900 cubic feet per second (cfs).

72. The IDWR calculated that a 100 year flood inflow would be 3200 cfs.
73. The IDWR calculated that Brown-Cruzen dam and a maximum discharge capacity of 2650 cfs.
74. Although the IDWR's calculations determined that the Brown-Cruzen dam was inadequate to withstand a 500 year inflow event (as required under the IDWR's Dam Safety Rules), the IDWR did not order the dam to be removed.
75. The IDWR also has a statutory duty to inspect dams in the state to ensure they are maintained so as to prevent injury to people or property.
76. The IDWR inspected the Brown-Cruzen dam periodically from the 1969 until the dam's breach.
77. During almost every inspection, the IDWR noted deficiencies in the maintenance of the dam.
78. The deficiencies in the maintenance and condition of the dam ultimately may have compromised its structural integrity.
79. Although the IDWR noted the same sorts of deficiencies on many of its inspections, IDWR continued to accept the dam owners' assurances that those deficiencies would be remedied. IDWR generally did not conduct any follow up inspection to ensure the deficiencies were actually remediated.
80. The IDWR's continued reliance on the dam owners' assurances that the problems would be cured, was grossly negligent in light of the dam owner's history of failing to follow through with promised maintenance and repairs.
81. The IDWR's failure to order the dam removed constitutes gross negligence as defined in Idaho Code Section 6-904C.

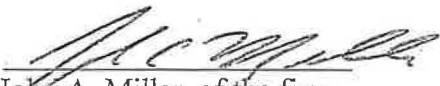
82. The IDWR's gross negligence was a direct and proximate cause of the dam's breach and the resulting damage to the Plaintiffs.

WHEREFORE, each of the Plaintiffs herein prays for the following relief:

1. For a judgment against McCall Ranch, LLC for such damages as each Plaintiff proves at trial;
2. For a judgment against Judd DeBoer for such damages as each Plaintiff proves at trial;
3. For an judgment against the Idaho Department of Water Resources for such damages as each Plaintiff proves at trial;
4. For an award of attorneys fees and costs against each of the named Defendants; and
5. For such other and further relief as the Court deems just and reasonable under the premises.

DATED this 17th day of February, 2011.

MILLER & HARR
Attorneys for the Plaintiffs

By: 
John A. Miller, of the firm