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Attorney for Plaintiff

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT**

**OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

JOHN HASTINGS, Jr.,  
Plaintiff,

vs.

THE STATE OF IDAHO DEPARTMENT  
OF WATER RESOURCES, a Political  
Subdivision of the STATE OF IDAHO

Defendant.

Case No. CV01-21-17825

**FIRST SET OF DISCOVERY TO  
IDAHO DEPARTMENT OF  
WATER RESOURCES**

Pursuant to Rules of the Idaho Rules of Civil Procedure 26, 33(a), 34(a)&(b), and 36 Plaintiffs, by and through their attorney J. Kahle Becker, requests that Defendant answer the following Interrogatories, Requests for Production of Documents, and Requests for Admission fully in writing and under oath within thirty (30) days after service hereof.

## DEFINITIONS

As used in these Interrogatories, the terms listed below are defined as follows:

(A) "You", "Your", "Yourself", any synonym thereof, or Defendant, State of Idaho Department of Water Resources., and all agents, servants, employees, representatives and individuals acting on its behalf and others who are in possession of or who have obtained information on behalf of State of Idaho Department of Water Resources regarding matters surrounding this lawsuit.

(B) "Document", or "Documents" means any writing of any kind, including originals and all nonincidental copies (whether different from the originals by reason of any notation made on such copies or otherwise), including without limitation, correspondence, emails, memoranda, notes, desk calendars, diaries, statistics, letters, telegrams, minutes, contracts, surveys, maps, reports, studies, checks, invoices, statements, receipts, returns, intraoffice communications, offers, notations or any sort of conversations, telephone calls, meetings, or other communications, bulletins, magazines, publications, printed matter, photographs, computer printouts, teletypes, telefax, invoices, worksheets and all drafts, alterations, modifications, changes and amendments of any of the foregoing, tapes, tape recordings, transcripts, graphic or aural records or representations of any kind, any electronic, mechanical or electrical records or representations of any kind, of which you have knowledge or which are now or were formerly in your actual or constructive possession, custody or control.

(C) "Possession", "Custody", or "Control" includes the joint or several possession, custody or control not only by the person to whom these Interrogatories or requests are addressed, but also the joint or several possession, custody or control by each

or any other person acting or purporting to act on behalf of Defendants, whether as employee, attorney, investigator, agent, sponsor, spokesman, or otherwise.

(D) "Relates to" or "Relate to" means supports, evidences, describes, mentions, refers to, contradicts or comprises.

(E) "Person" or "Individual" means any natural person, firm, corporation, partnership, proprietorship, joint venture, organization, state agency or board, group of natural persons, or other association separately identifiable whether or not such association has a separate juristic existence in its own right.

(F) "Identify", "Identity" and "Identification", when used to refer to an entity other than a natural person, means to state its full name, the present or last known address of its principal office or place of doing business, and the type of entity (e.g., corporation, partnership, unincorporated association).

(G) "Identify", "Identity" and "Identification", when used to refer to a natural person means to state the following:

- (1) the person's full name and present or last known home and business address and home and business telephone numbers;
- (2) the person's present title, employer and other business affiliation; and,
- (3) the person's home address, home telephone number, business address and business telephone number at the time of the actions at which each interrogatory is directed.

(H) "Identify", "Identity" and "Identification" when used to refer to a document means to state the following:

- (1) the subject of the document;

- (2) the title of the document;
- (3) the type of document (e.g., letter, memorandum, telegram, chart);
- (4) the date of the document, or if the specific date thereof is unknown, the month and year or other best approximation of such date;
- (5) the identity of the person or persons who wrote, contributed to, prepared or originated such document;
- (6) the present or last known location and custody of the document; and,
- (7) any other descriptive information necessary in order to adequately describe such document in a subpoena *duces tecum* or in a motion or request for production thereof.

(I) "His" means his and/or her and/or its and "he" means he and/or she and/or it.

(J) "Representative" means any person acting or purporting to act on behalf of any other person.

(K) The "Incident" means the erosion of Plaintiff's property which is alleged to have occurred during the summer of 2017, Plaintiff's remediation of the erosion, as well as Defendant's subsequent discovery and investigation of the same, and the subsequent negotiations and execution of the Consent Order as alleged in Plaintiff's Complaint.

### **INSTRUCTIONS**

(A) With respect to each Interrogatory, in addition to supplying the information asked for and identifying the specific documents referred to, identify all

documents which were referred to in preparing your answer thereto.

(B) If any document identified in an answer to an Interrogatory was, but is no longer in your possession or subject to your custody or control, or was known to you, but is no longer in existence, state what disposition was made of it or what became of it.

(C) These Interrogatories are continuing in character so as to require Defendant to file supplemental answers if they obtain further or different information prior to trial. Such supplemental answers may be filed from time to time but not later than thirty (30) days after such information is received.

(D) Each Interrogatory is to be answered separately and as completely as possible. The fact that investigation is continuing or that discovery is not complete shall not be used as an excuse for failure to answer each Interrogatory based on the knowledge you currently have.

(E) In answering these Interrogatories, furnish such information as is available to you, not merely such information as is within your knowledge. This means you are to furnish information which is known by or in the possession of your employees, representatives or agents, including your attorneys.

(F) Whenever any objection is made to any part of any Interrogatory, an answer shall be furnished to any part of such Interrogatory as to which there is no objection.

(G) If you contend that any information sought in these discovery requests is protected from discovery because of the attorney-client privilege, because it was prepared in anticipation of litigation or in preparation for trial, or because of any other privilege or protection, you are to provide the following information in each such instance in lieu of

setting forth the information sought: the privilege or protection that you contend applies; every fact upon which you rely in support of your contention that the privilege or protection applies; the form in which the information is contained (e.g., document, recollection of the defendants, etc.); the author, recipient, and date of the document, if the information is contained in a document; and, the persons involved in and the date of the communication giving rise to the privilege or protection that you claim, if the information is not contained in a document.

(H) Whenever in these Interrogatories the information requested is contained in or may otherwise be derived or ascertained from a document, you are to identify the document(s) from which the answer may be derived or ascertained and to produce the document(s) for inspection and copying or deliver a copy of the document to Plaintiff's counsel at the time the answers hereto are filed, but nothing herein shall call for the production of documents not so identified, produced or delivered.

(I) Unless otherwise indicated, these Interrogatories refer to the time, place and circumstances of the occurrences complained of in the Plaintiff's Complaint.

### **INTERROGATORIES**

**INTERROGATORY NO. 1:** Set forth the names, phone numbers and current addresses of any persons who have knowledge of any facts, events, conditions or circumstances concerning the incident as known to you, your attorneys, agents, investigators or other representatives.

#### **ANSWER TO INTERROGATORY NO. 1:**

**INTERROGATORY NO. 2:** For each person named in answers to

Interrogatories Number 1, please state whether you, your attorneys, agents, investigators or other representatives have a statement signed, adopted or approved by such person, and indicate by name each person from whom you have a signed, adopted or approved statement. Furthermore, as to each statement referred to in your answer, please state:

- a. Whether the statement was oral or written;
- b. Whether the statement is in question and answer or in narrative form;
- c. Whether the person giving it received a copy of the statement;
- d. Whether the statement was signed;
- e. If the statement was not signed, the method by which it was adopted or approved
- f. The name and present address of the person by whom the statement was taken;
- g. The date and place where the statement was taken; and
- h. Please attach said statement(s) to these interrogatories.

**ANSWER TO INTERROGATORY NO. 2:**

**INTERROGATORY NO. 3:** Do you, your attorneys, agents, investigators or other representatives have any plans, drawings, maps, surveys, models, computer simulations, photographs or films relating to the claims or defenses at issue in this case? If so, please provide the following information with respect to each responsive document:

- a. Whether it is a plan, drawing, map, model, survey, photograph or film;
- b. When it was made;
- c. By whom it was made;
- d. What scene or objects it shows or portrays;

- e. Who has possession of it; and
- f. Please attach same to these Interrogatories.

**ANSWER TO INTERROGATORY NO. 3:**

**INTERROGATORY NO. 4:** Set forth the names, phone numbers and current addresses of all investigators, representatives or employees of Defendant who have investigated the incident. As to each person named herein, state:

- a. The employment affiliation at the time of the investigation;
- b. The current employment affiliation;
- c. The names, phone numbers and current addresses of each person contacted by the investigator, representative or employee;
- d. The date when the contact was made;
- e. Whether an effort was made to procure a statement in any form, and the results of such attempt; and
- f. Whether the investigator or representative or employee submitted a report to counsel for Plaintiff or to any other person, company or organization regarding the investigation or contact.

**ANSWER TO INTERROGATORY NO. 4:**

**INTERROGATORY NO. 5:** Set forth the name, phone number and address of each person whom Defendant expects to call as an expert witness on the issue of liability, statutory or administrative authority, or damages, including but not limited to surveyors, hydrologists, biologists, ecologists, engineers, construction workers, and real estate valuation or ownership witnesses, at trial, and for each such expert witness, please state precisely:



- a. The subject matter on which the expert is expected to testify;
- b. The substance of the facts and opinions to which the expert is expected to testify; and
- c. A summary of the grounds for each expert opinion.

**ANSWER TO INTERROGATORY NO. 5:**

**INTERROGATORY NO. 6:** Set forth any expert witness who has been retained or specially employed by Defendant in anticipation of litigation or preparation of trial and who is not expected to be called as a witness at trial.

**ANSWER TO INTERROGATORY NO. 6:**

**INTERROGATORY NO. 7:** List each and every exhibit you plan to mark or offer at trial.

**ANSWER TO INTERROGATORY NO. 7:**

**INTERROGATORY NO. 8** With regard to the Answers to the foregoing and any subsequently delivered Interrogatories, state:

- a. The name, address and phone number of the person answering same;
- b. The position or capacity of the person answering same;
- c. Whether the person answering same has personal knowledge of the circumstances and events forming the basis of the present action;
- d. Whether the person answering same was employed by you throughout the period of events described in the Complaint; and
- e. The name, address, phone number and capacity of each person, other than your attorney, who was consulted in connection with these Answers and the number of each Interrogatory with respect to which the person was consulted.

**ANSWER TO INTERROGATORY NO. 8:**

**INTERROGATORY NO. 9:** Please state any act or omission you are claiming against the Plaintiff which you maintain either caused or contributed to the incident complained of and for each such claim please identify the documents and/or witnesses who will support this position.

**ANSWER TO INTERROGATORY NO. 9**

**INTERROGATORY NO. 10:** Please state the complete factual basis for each denial contained in your Answer to the Complaint and the evidence you will rely upon at trial to support said denial.

**ANSWER TO INTERROGATORY NO. 10:**

**INTERROGATORY NO. 11:** Please state the complete factual basis for each affirmative defense you will rely upon at trial or in a dispositive motion.

**ANSWER TO INTERROGATORY NO. 11:**

**INTERROGATORY NO. 12:** Please state your complete version of the events giving rise to the incident, subsequent negotiations between Plaintiff and Defendant, as well as your position as to if and when the statute of limitations contained in I.C. 42-3809 has or will expire and provide the names of any individuals or entities who participated or were involved in any way in the events or meetings referred to in your answer to this interrogatory.

**ANSWER TO INTERROGATORY NO. 12:**

**INTERROGATORY NO. 13:** If your responses to any of Plaintiff's Requests for Admissions are anything other than an unqualified "admit," please provide the factual basis for your response.

**ANSWER TO INTERROGATORY NO. 13:**

**REQUESTS FOR PRODUCTION OF DOCUMENTS**

Claims of Privilege

Any Document that is withheld on the ground that it is privileged or that it constitutes an attorney work product or for any other reason, shall be identified by stating:

1. The type of Document;
2. The date of the Document;
3. The name and address of the author of the Document;
4. The name and address of each recipient of the Document;
5. The general subject matter of the Document;
6. The name and address of the custodian of the Document and the designation of the file(s) in which the Document is located;
7. The precise basis on which the Document is being withheld.

This Request for Production of Documents is deemed to be continuing to the fullest extent provided in Idaho Rules of Civil Procedure.

**INSTRUCTIONS**

1. The following Requests call for all documents that are known or

available to defendants, including all documents in possession of your agents, attorneys, accountants, or other experts, and any investigator or any person acting on Defendant(s)' behalf or under their attorneys' employment, direction and/or control.

2. A request for documents within a particular time period shall be deemed to include all documents that were dated, prepared, sent, received or otherwise originated during that time period.

3. If Defendant(s) cannot produce any Documents responsive to a Request or otherwise respond fully and completely after exercising due diligence to make inquiry into and to secure documents requested therein, please so state providing such Request to the extent that Defendant(s) are able, and further specify the facts relied on to support that Defendant(s) are unable to provide the document fully and completely. State the knowledge, information or belief you possess concerning the portion not provided of such Request and fully detail the acts done and the inquiries made which demonstrate that Defendant has exercised due diligence to secure the requested information.

4. If Defendant contends that any information or document may be withheld upon any claim or privilege, identify any such information or document, and with respect to said information or document, state:

- (a) The basis of that claim;
- (b) The name of any and all persons who have seen this document;
- (c) The author(s) and addressee(s) of the document; and
- (d) The date and subject matter of the document.

5. With respect to the production of any category of documents which Defendant contends is in some way burdensome or oppressive, state the specific reason for

the objection and produce examples of the documentation in question.

6. All documents called for by this request as to which the Defendant claims a privilege, regulatory, or statutory authority as a ground for non-production shall be listed chronologically as follows:

- (a) date;
- (b) title;
- (c) type of document (e.g. memorandum, report, charge, etc.);
- (d) subject matter (without revealing the information as to which privilege or statutory authority is claimed); and
- (e) factual and legal basis for claim, privilege or specific statutory or regulatory authority which provides the claimed ground for nonproduction.

7. This request is continuing and requires supplemental response as you, your attorneys or representatives obtain any additional documents of the categories requested herein prior to the time of trial.

### **REQUESTS FOR PRODUCTION OF DOCUMENTS**

**REQUEST FOR PRODUCTION NO. 1:** Any and all statements concerning this action or its subject matter made by any party, a witness, or potential witness. For the purposes of this request, "statement" is a written statement signed or otherwise adopted or approved by the person making it, or a stenographic, mechanical, electrical or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement of the person making it and contemporaneously recorded.

**REQUEST FOR PRODUCTION NO. 2:** All statements, surveys, bills, models, correspondence, and reports from anyone investigating this incident.

**REQUEST FOR PRODUCTION NO. 3:** Reports of any and all experts who will testify at trial on behalf of the Defendant.

**REQUEST FOR PRODUCTION NO. 4:** All photographs, pictures, videotapes, surveys, or maps relating to the properties which are the subject to this action, including but not limited to photographs of the river, Ordinary High-Water Mark, river bank armoring, or vegetation surrounding Plaintiff's property, and property surveys taken either before or after the date of the accident.

**REQUEST FOR PRODUCTION NO. 5:** Copies of all reports completed by Defendant(s) regarding the incident.

**REQUEST FOR PRODUCTION NO. 6:** All letters, emails, notes or other documents pertaining to any contact by a party, their attorney, investigator or representative, with any witness or potential witness to the incident.

**REQUEST FOR PRODUCTION NO. 7:** Produce copies of all documents responsive to Plaintiff's First Set of Interrogatories Directed to this Defendant.

**REQUEST FOR PRODUCTION NO. 8:** Produce copies of all documents evidencing any certifications, training, or professional accreditation you or any individual who participated or attended the incident on your behalf have obtained.

**REQUEST FOR PRODUCTION NO. 9:** Produce all letters, notes or other documents pertaining to the correspondence with Plaintiff or any prior owners of Plaintiff's property.

**REQUEST FOR PRODUCTION NO. 10:** Produce a complete list of rivers in Idaho which you consider to be navigable and which you consider the State of Idaho to own the beds and banks of. When providing your response, please identify the furthest downstream point and furthest upstream point of said ownership claim.

**REQUEST FOR PRODUCTION NO. 11:** Produce all letters, notes or other documents pertaining to the owners of any riparian lands adjacent to or directly across the river from Plaintiff's property.

**REQUEST FOR PRODUCTION NO. 12:** Produce all letters, notes, surveys or other documents relating to the claim of ownership by Ernest Hemingway, his estate, or any successor in interest thereto to the beds and banks of the Big Wood River discussed in the Complaint.

**REQUEST FOR PRODUCTION NO. 13:** Produce all letters, notes, legislative reports, Executive Orders, Bulletins or other documents relating to the enactment or reauthorization of any administrative rule, temporary rule, emergency rule, or any other authority Defendant is relying upon to assert a right to initiate and/or maintain any type of administrative proceeding to which Plaintiff is a party.

### **REQUESTS FOR ADMISSION**

COMES NOW the above-named Plaintiff, by and through his undersigned counsel, and pursuant to Rules 26 and 36 of the Idaho Rules of Civil Procedure, hereby requests that Defendant answer the following Requests for Admission within thirty (30) days from the date of service herein, in conformance with the provisions of the Idaho

Rules of Civil Procedure.

NOTICE IS FURTHER GIVEN that if these matters are not admitted, but the same are proved during trial, the Plaintiff will apply to the Court for an order for reimbursement from the Defendant for the reasonable expenses incurred in making that proof, including reasonable attorney fees.

REQUEST FOR ADMISSION NO. 1: Admit that the 2021 Idaho legislature did not reauthorize the Idaho Department of Water Resources' administrative rules pursuant to Idaho Code 67-5292.

ANSWER TO REQUEST FOR ADMISSIONS NO. 1:

REQUEST FOR ADMISSION NO.2: Admit that the statute of limitations contained in Idaho Code 42-3809 has expired as to your right to bring an enforcement action against Plaintiff for any alleged violation of the Consent Order at issue in this case.

ANSWER TO REQUEST FOR ADMISSIONS NO. 2:

REQUEST FOR ADMISSION NO. 3: Admit that the statute of limitations contained in Idaho Code 42-3809 expired in May of 2021 as to your right to bring an enforcement action against Plaintiff for any alleged violation of the Consent Order at issue in this case.

ANSWER TO REQUEST FOR ADMISSIONS NO. 3:

REQUEST FOR ADMISSION NO. 4: Admit that the Plaintiff did not authorize you to enter his property for any inspection at any time during 2017.

ANSWER TO REQUEST FOR ADMISSIONS NO. 4:

REQUEST FOR ADMISSION NO. 5: Admit that Plaintiff acted reasonably in



installing bank armoring along his property in 2017.

ANSWER TO REQUEST FOR ADMISSIONS NO. 5:

REQUEST FOR ADMISSION NO. 6: Admit that Plaintiff installing bank armoring along his property in 2017 saved the Warm Springs Road bridge downstream of his property.

ANSWER TO REQUEST FOR ADMISSIONS NO. 6:

REQUEST FOR ADMISSION NO. 7: Admit that Plaintiff's installation of bank armoring along his property in 2017 did not take place below the Ordinary High Water Mark.

ANSWER TO REQUEST FOR ADMISSIONS NO. 7:

REQUEST FOR ADMISSION NO. 8: Admit that the flood in 2017 which eroded Plaintiff's property was an avulsive event.

ANSWER TO REQUEST FOR ADMISSIONS NO. 8:

REQUEST FOR ADMISSIONS NO. 9: Admit that the flood in 2017 which eroded Plaintiff's property was avulsion and not accretion.

ANSWER TO REQUEST FOR ADMISSIONS NO. 9:

REQUEST FOR ADMISSIONS NO. 10: Admit that you have no authority to regulate construction activities on Plaintiff's private property.

ANSWER TO REQUEST FOR ADMISSIONS NO. 10:

REQUEST FOR ADMISSIONS NO. 11: Admit that you have no authority to bring an enforcement action for construction activities which occurred solely on Plaintiff's private property.

ANSWER TO REQUEST FOR ADMISSIONS NO. 11:

REQUEST FOR ADMISSIONS NO. 12: Admit that you have no ownership interest in the beds and banks of the Big Wood River adjacent to Plaintiff's property.

ANSWER TO REQUEST FOR ADMISSIONS NO. 12:

REQUEST FOR ADMISSIONS NO. 13: Admit that you will not allow the bank armoring Plaintiff caused to be placed along his property in 2017 to remain in place.

ANSWER TO REQUEST FOR ADMISSIONS NO. 13:

REQUEST FOR ADMISSIONS NO. 14: Admit that you will not allow Plaintiff to remove the bank armoring Plaintiff caused to be placed along his property in 2017.

ANSWER TO REQUEST FOR ADMISSIONS NO. 14:

REQUEST FOR ADMISSIONS NO. 15: Admit that you will not allow Plaintiff to pay you to conduct whatever river restoration activities you deem necessary to remedy the violations alleged in the September 11, 2017 Notice of Violation at issue in this case.

ANSWER TO REQUEST FOR ADMISSIONS NO. 15:

REQUEST FOR ADMISSIONS NO. 16: Admit that you have refused to quiet title to the beds and banks of the Big Wood River adjacent to Plaintiff's property.

ANSWER TO REQUEST FOR ADMISSIONS NO. 16:

REQUEST FOR ADMISSION NO.17: Admit that the statute of limitations contained in Idaho Code 42-3809 has expired as to your right to bring an enforcement action against Plaintiff for any alleged violation contained in the September 11, 2017 Notice of Violation at issue in this case.

ANSWER TO REQUEST FOR ADMISSIONS NO. 17:

REQUEST FOR ADMISSION NO.18: Admit that you have no legal authority

to compel Plaintiff to indemnify a third party who claims an ownership interest in the beds and banks of the Big Wood River adjacent to Plaintiff's property.

ANSWER TO REQUEST FOR ADMISSIONS NO. 18:

REQUEST FOR ADMISSION NO.19: Admit the actions of Aaron Golart have violated Plaintiff's rights protected under the Idaho Constitution.

ANSWER TO REQUEST FOR ADMISSIONS NO. 19:

REQUEST FOR ADMISSION NO.20: Admit the actions of Aaron Golart have violated Plaintiff's rights protected under the United States Constitution.

ANSWER TO REQUEST FOR ADMISSIONS NO. 20:

DATED this 9<sup>th</sup> day of December, 2021.

LAW OFFICES OF J. KAHLE BECKER

By: \_\_\_\_\_ /s/ J. Kahle Becker  
J. KAHLE BECKER  
Attorney for Plaintiff

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 9<sup>th</sup> day of December, 2021, I caused to be served the foregoing First Set of Discovery to Idaho Department of Water Resources to the following persons by email:

Meghan Carter and Garrick Baxter  
Attorney for Defendant,  
Idaho Department of Water Resources

via I-Court/Odyssey

/s/ J. Kahle Becker

J. KAHLE BECKER

Attorney for the Plaintiff