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**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

**DEFENDANT’S ANSWER TO FIRST
AMENDED ACTION FOR
DECLARATORY JUDGMENT AND
COUNTERCLAIM**

Defendant, Idaho Department of Water Resources, (“Department”), answers Plaintiff John Hastings Jr.’s (“Hastings”) *Action for Declaratory Judgement and First Amended Action for Declaratory Judgment* (together referred to as “Complaint”) as follows.

GENERAL DENIAL

The Department denies all allegations set forth in the Complaint unless any allegation is expressly admitted.

I. PARTIES

1. Answering paragraph 1, the Department admits that Hastings is an individual and that Blaine County records showed he owned property along the Big Wood River in 2017 and now in 2021.

2. The Department admits the allegations in paragraph 2.

II. JURISDICTION AND VENUE

3. Answering paragraph 3, the Department denies the Court has subject matter jurisdiction pursuant to Idaho Code § 67-5278. The Department affirmatively avers that Idaho Code § 67-5278 is limited to allowing a petitioner to challenge the validity or applicability of a rule through an action for declaratory judgment. The Complaint seeks a determination that the Department is barred from pursuing an enforcement action pursuant to Idaho Code § 42-3809 or a signed consent order and agreement. Neither Idaho Code § 42-3809 or the signed consent order and agreement implicate a rule, therefore the Complaint does not establish subject matter jurisdiction. Answering further, the Department denies that any of the cited authority establishes the Court has personal jurisdiction over the Department. Answering further, the Department admits that Article V, Section 20, of the Idaho Constitution sets forth a general statement of the original jurisdiction of District Courts in the State of Idaho but denies that it confers subject matter or personal jurisdiction over this particular matter. Answering further, the Department admits that Idaho Code § 1-705 sets forth a general statement of the original and appellate

jurisdiction of the District Court of the State of Idaho but denies that it confers subject matter or personal jurisdiction over this particular matter. Answering further, the Department admits that Idaho Code § 10-1201 confers authority to the District Courts of the State of Idaho to enter declaratory judgments. With respect to the remaining allegations of Paragraph 3 of the Complaint, the Department is without sufficient knowledge or information to identify “other applicable laws and rules” which may confer subject matter or personal jurisdiction over this action and therefore denies the same.

4. Answering paragraph 4, the Department denies that Idaho Code § 67-5272(1)(b) establishes the appropriate venue for this action. The Department affirmatively avers that Idaho Code § 67-5272(1)(b) establishes the appropriate venue where a final agency action was taken. The Complaint does not claim any final action was taken by the Department, nor has there been a final agency action in this matter. Answering further, the Department admits that its principal place of business is in Ada County and that Idaho Code § 5-404 sets forth the requirements for venue to be determined, among which is—venue is proper in the County in which the Defendant resides or has its principal place of business.

III. ACTION FOR DECLARATORY RELIEF

5. Answering paragraph 5, the Department restates and realleges its responses in paragraphs 1–4 of its Answer.

6. The Department admits the allegations in paragraph 6.

7. The Department admits the allegations in paragraph 7.

8. Answering paragraph 8, the Department admits Governor Little included Blaine County in a State Disaster Declaration. Answering further, the Department admits the link

included in the Complaint is the news release announcing Governor Little's State Disaster Declaration. Answering further, the Department denies Governor Little declared a state of emergency in Blaine County.

9. Answering paragraph 9, the Department admits the allegations. Answering further, the Department admits the link included in the Complaint is news coverage of President Trump signing a disaster declaration.

10. The Department is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 10 of the Complaint. Therefore, the Department denies all allegations in paragraph 10.

11. Answering paragraph 11, the Department denies the first sentence to the extent it characterizes the holding in *Aldape v. Akins*, and the application of that holding to this matter. Answering further, the Department admits the language quoted from *Milbert v. Carl Carbon, Inc.*, in the second sentence is accurate. Answering further, the Department denies the implications Hastings places on the quoted language.

12. Answering paragraph 12, the Department is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 12 of the Complaint. Therefore, the Department denies all allegations in paragraph 12.

13. Answering paragraph 13, the Department is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 13 of the Complaint. Therefore, the Department denies all allegations in paragraph 13.

14. Answering paragraph 14, the Department admits that rock was placed on the bank of the Warm Springs Property and below the ordinary high-water mark of the Big Wood River. Answering further, the Department is without knowledge or information

sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 14 of the Complaint. Therefore, the Department denies all remaining allegations in paragraph 14.

15. Answering paragraph 15, the Department is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in the first sentence of paragraph 15 of the Complaint. Therefore, the Department denies the same. Answering further, the Department admits that Idaho Code § 58-1203(2)(c) is a law of the State of Idaho which speaks for itself. The Department denies the applicability of Idaho Code § 58-1203(2)(c) to this matter.

16. Answering paragraph 16, the Department admits the City of Ketchum issued a permit on July 31, 2017. The permit is a document, the terms of which speak for itself. Answering further, the Department admits that Stream Channel Alteration Permit No. S37-20362 expired December 31, 2015. Answering further, the Department is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 16 of the Complaint. Therefore, the Department denies all remaining allegations in paragraph 16.

17. Answering paragraph 17, the Department admits Aaron Golart had conversations with Rob Brochu and Brockway Engineering in 2017 concerning a Joint Application for Permits. Answering further, the Department is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 17 of the Complaint. Therefore, the Department denies all remaining allegations in paragraph 17.

18. The Department admits the allegations in paragraph 18.

19. The Department admits the allegations in paragraph 19.

20. Answering paragraph 20, the Department admits it issued Hastings a Notice of Violation on September 11, 2017, and emailed a courtesy copy to the same on September 12, 2017. The Department also copied Brockway Engineering, among others on the email. Answering further, the Department denies the remaining allegations in paragraph 20.

21. The Department admits the allegations in paragraph 21.

22. Answering paragraph 22, the Department admits that a draft Consent Order was issued on January 12, 2018, and that there was communication leading up to its issuance. Answering further, the Department denies the remaining allegations in paragraph 22.

23. Answering paragraph 23, the Department admits that Hastings and his attorney met with the Department to review and sign the Consent Order on January 26, 2018. Answering further, the Department admits a copy of the Consent Order is produced in Exhibit A to the Complaint. Answering further, the Department is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 23 of the Complaint. Therefore, the Department denies all remaining allegations in paragraph 23.

24. Answering paragraph 24, the Department admits the language quoted by Hastings is from the Consent Order. Answering further, the Department denies the bolded items in the quoted language were bolded in the Consent Order.

25. The Department admits the allegations in paragraph 25.

26. Answering paragraph 26, the Department admits Mr. Golart and Hastings' engineer had phone calls to discuss the Restoration Plan. Answering further, the Department admits it requested additional items in the Restoration Plan. Answering

further, the Department denies that the Restoration Plan was in full compliance with the Consent Order. Answering further, the Department denies all remaining allegations in paragraph 26.

27. Answering paragraph 27, the Department admits it received a Revised Plan on March 22, 2018.

28. Answering paragraph 28, the Department admits it requested additional modifications to the Revised Plan because it did not meet the requirements of the Consent Order. The Department denies all remaining allegations in paragraph 28.

29. Answering paragraph 29, the Department admits it received the Second Revised Plan on October 31, 2018. Answering further, the Department is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 29. Therefore, the Department denies all remaining allegations in paragraph 29.

30. The Department denies the allegations in paragraph 30.

31. The Department admits the allegations in paragraph 31.

32. Answering paragraph 32, the Department admits that an amended or new consent order was not signed. However, an amended or new consent order was not required because the Department considered Mr. Golart's email an official extension of the construction deadline in the Consent Order.

33. Answering paragraph 33, the Department admits it sought changes to the Second Revised Plan. Answering further, the Department denies all remaining allegations in paragraph 33.

34. The Department admits the allegations in paragraph 34.

35. The Department admits the allegations in paragraph 35.

36. The Department admits the allegations in paragraph 36.

37. The Department admits the allegations in paragraph 37.

38. The Department admits the allegations in paragraph 38.

39. Answering paragraph 39, the Department admits the Third Revised Plan and Joint Application fulfilled the portion of the Consent Order requiring a restoration plan. Answering further, the Department denies the remaining allegations in paragraph 39.

40. Answering paragraph 40, the Department admits there were fourteen Special Conditions in the Conditional Approval, including the expiration date. Answering further, the Department is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 40 of the Complaint. Therefore, the Department denies all remaining allegations in paragraph 40.

41. The Department denies the allegations in paragraph 41.

42. Answering paragraph 42, the Department admits it received, on behalf of the Idaho Water Resource Board, a copy of the Petition for Hearing on May 23, 2019. Answering further, the Department admits a copy of the Petition is produced in Exhibit B to the Complaint. Answering further, the Department cannot confirm the date the Petition for Hearing was mailed and therefore denies it was mailed May 21, 2019.

43. Answering paragraph 43, the Department admits that Paragraph 43 quotes the Petition but denies that the statement quoted is legally or factually correct.

44. Answering paragraph 44, the Department admits that it has been in continued discussions with Hastings and his counsel to resolve Hastings' objections to the

Conditional Approval. Answering further, the Department denies all remaining allegations in paragraph 44.

45. Answering paragraph 45, the Department admits that it has continued to insist that Hastings comply with the terms of the Consent Order and complete the required remediation, not just remove the rock. Answering further, the Department denies Hastings' characterization of the Department's position.

46. Answering paragraph 46, the Department admits that it has continued to insist that Hastings comply with the terms of the Consent Order and complete the required remediation, and not leave the rock in place. Answering further, the Department denies Hastings' characterization of the Department's position.

47. Answering paragraph 47, the Department admits it will not simply accept payment for the restoration work. The Department has continued to insist that Hastings comply with the terms of the Consent Order and complete the required remediation. Answering further, the Department denies the remaining allegations in paragraph 47.

48. Answering paragraph 48, the Department admits it has continued to insist that Hastings comply with the terms of the Consent Order and complete the required remediation, or it will seek other available legal remedies. Answering further, the Department denies the remaining allegations in paragraph 48.

49. Answering paragraph 49, the Department admits Idaho Code § 42-3809 contains a two-year statute of limitations. Answering further, the Department denies that statute of limitations applies in this matter.

50. Answering paragraph 50, the Department admits that the statute of limitations contained in Idaho Code § 42-3809 applies to initiating a civil or administrative proceeding

in certain circumstances. Answering further, the Department denies that it cannot pursue compliance with the Consent Order beyond May 21, 2021.

51. The Department admits the allegations in paragraph 51.

52. Answering paragraph 52, the Department denies the work required under the terms of the Consent Order is overly burdensome. Answering further, the Department is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 52. Therefore, the Department denies the remaining allegations in paragraph 52.

53. The Department is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 53 of the Complaint. Therefore, the Department denies all allegations in paragraph 53.

54. The Department is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 54 of the Complaint. Therefore, the Department denies all allegations in paragraph 54.

55. Answering paragraph 55, the Department denies that the City of Ketchum requiring consent of landowners for the City's permitting is a conflicting requirement to the Consent Order. Answering further, the Department is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 55. Therefore, the Department denies the remaining allegations in paragraph 55.

56. The Department is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 56 of the Complaint. Therefore, the Department denies all allegations in paragraph 56.

57. Answering paragraph 57, the Department denies that the Court in *Campion v. Simpson*, 104 Idaho 413, 659 P.2d 766 (1983) adjudicated the Big Wood River as Navigable.

The Big Wood River has been adjudicated as navigable, and consequently subject to State regulation, downstream of the confluence of Warm Springs Creek. *Campion v. Simpson*, 104 Idaho 413, 659 P.2d 766 (1983).

First Am. Action for Declaratory J. ¶ 57.

58. The Department admits the allegations in paragraph 58.

59. Answering paragraph 59, the Department admits it has not attempted to clear title to the beds and banks of the Big Wood River. Answering further, the Department denies the remaining allegations in paragraph 59.

60. Answering paragraph 60, the Department is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 60 of the Complaint. Therefore, the Department denies all allegations in paragraph 60.

61. Answering paragraph 61, the Department admits the permit is a written document the terms of which speak for themselves. The Department denies all remaining allegations in paragraph 61.

62. Answering paragraph 62, the Department denies that its preferred restoration methodology has shifted. Answering further, the Department is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 62 of the Complaint. Therefore, the Department denies all remaining allegations in paragraph 62.

63. The Department admits the allegations in paragraph 63.

64. Answering paragraph 64, the Department admits Idaho Code § 10-1203 is accurately quoted. Answering further, the Department avers that Idaho Code § 10-1203 speaks for itself.

65. Answering paragraph 65, the Department denies that Idaho Code § 5-216 imposes a five-year statute of limitations on the State of Idaho for actions upon written contracts. Answering further, the Department denies the remaining allegations of paragraph 65.

66. Answering paragraph 66, the Department admits Idaho Code § 5-216 is accurately quoted. Answering further, the Department avers that Idaho Code § 5-216 speaks for itself.

67. Answering paragraph 67, the Department admits paragraph 67 explains the purpose of Hastings suit as stated in Hastings' Complaint. Answering further, the Department denies all other allegations in paragraph 67.

68. Answering paragraph 68, the Department denies it has threatened to pursue an enforcement action against Hastings pursuant to IDAPA 37.03.07.045.02. Answering further, the remaining allegations of this paragraph are denied.

69. Answering paragraph 69, the Department denies that Idaho Code §§ 67-5278 and 42-3809 apply in this matter. Answering further, the remaining allegations of this paragraph are denied.

70. Answering paragraph 70, the Department denies that it initiated an administrative proceeding against Hastings in *In the Matter of Application for Stream Channel Alteration Permit No. S37-20565*. The Department affirmatively avers that Hastings requested a hearing regarding the terms of the Conditional Permit. *See First Am.*

Action for Declaratory J., Ex. B. Through a resolution, the Idaho Water Resource Board granted the request for hearing and appointed a hearing officer on November 19, 2021, to provide the requested hearing. A copy of the Idaho Water Resource Board resolution is attached as Exhibit 1.

71. The Department denies the allegations in paragraph 71.

72. The Department admits paragraph 72 quotes Article III Section 29 of the Idaho Constitution. Answering further, the Department avers that Article III Section 29 of the Idaho Constitution speaks for itself.

73. The Department admits paragraph 73 quotes Idaho Code § 67-5292. Answering further, the Department avers that Idaho Code § 67-5292 speaks for itself.

74. Answering paragraph 74, the Department admits the Idaho Legislature did not reauthorize any administrative rules in 2019, 2020, and 2021. However, the Department ensured temporary rules were adopted to ensure there were no gaps in the effectiveness of the rules. Temporary rules were published in the July 2021 Idaho Administrative Bulletin and are currently in full force and effect.

75. The Department admits paragraph 75 quotes the Legislature's Sine Die report. Answering further, the Department avers the report speaks for itself.

76. It appears paragraph 76 and 77 of the Complaint should have been one paragraph. The Department answers both paragraphs in the Department's paragraph 77.

77. The Department admits paragraphs 76 and 77 quote the Legislature's Sine Die report. Answering further, the Department avers the report speaks for itself.

78. The Department denies the allegations in paragraph 78.

79. The Department admits Title 10, Chapter 12 of Idaho Code and Idaho Rule of

Civil Procedure 57 govern declaratory judgments. Answering further, the Department denies Idaho Code § 67-5278 is applicable to this matter.

IV. FIRST AFFIRMATIVE DEFENSE

Hastings has failed to exhaust his administrative remedies. Pursuant to Idaho Code § 42-3805, IDAPA 37.03.07.070, and Title 67, Chapter 52, Idaho Code Hastings is entitled to a hearing on his conditioned stream channel alteration permit. Hastings timely requested a hearing but has not moved forward with that request.

V. SECOND AFFIRMATIVE DEFENSE

Hastings has not established this Court has subject matter jurisdiction.

VI. REQUEST FOR RELIEF

The Department respectfully requests the Court grant the following relief:

1. For an order dismissing this matter with prejudice and that the Plaintiff take nothing thereby.
2. For reasonable costs and attorney's fees pursuant to Idaho Code §§ 10-1210 and 12-117, and Idaho Rule of Civil Procedure 54.
3. For such other and further relief as the Court deems just and proper.

COUNTERCLAIM

The Defendant/Counterclaimant, the Idaho Department of Water Resources ("Department"), by and through the Office of the Idaho Attorney General makes this complaint and claim for relief against Plaintiff/Counterclaim Defendant John Hastings, Jr. ("Hastings"), asserting and alleging as follows:

I. NATURE OF ACTION

1. The Department seeks an order of specific performance pursuant to Idaho Code §§ 42-1701B(4) and 42-3809 requiring Hastings to comply with the terms of the January, 26, 2018 Consent Order and Agreement (“Consent Order”). *See* First Am. Action for Declaratory J., Ex. A.

II. PARTIES

2. Defendant/Counterclaim Plaintiff, the Department, is an executive agency of the State of Idaho authorized by Idaho Code § 42-1701B to file suit by and through the Idaho Attorney General to compel specific performance of a consent order.

3. Plaintiff/Counterclaim Defendant, John Hastings, Jr., is an individual, who owns real property adjacent to the Big Wood River located within the SW1/4SE1/4 of Section 12, Township 04 North, Range 17 East in Blaine County, Idaho, specifically known as 1200 Warm Spring Rd., Ketchum, Idaho.

III. JURISDICTION

4. The Court has subject matter jurisdiction over this matter pursuant to Idaho Code §§ 42-1701B(4) and 1-705 because the violations and the cause of action alleged arose in Idaho.

5. The Court has personal jurisdiction over Hastings pursuant to Idaho Code § 5-514 because he owns real property within the State of Idaho and has agreed to personal jurisdiction by filing his Complaint.

IV. VENUE

6. Venue is proper in the District Court of the Fourth Judicial District, State of Idaho, in Ada County pursuant to Idaho Code §§ 42-1701B(4) and 5-404 because the

violations and the causes of action arose in Idaho, and through the Complaint Hastings chose Ada County for the venue.

V. FACTS

7. On September 11, 2017, pursuant to Idaho Code §§ 42-1701B and 42-3809(2), the Department issued a *Notice of Violation and Order to Cease and Desist the Unauthorized Alteration of the Big Wood River* (“NOV”) to John Hastings Jr., for “removal of riparian vegetation and the discharge of fill material below the mean high-water mark of the Big Wood River” without a permit from the Department. *NOV* at 1. A copy of the NOV is attached as Exhibit 2.

8. A compliance conference was held October 3, 2017.

9. On January 26, 2018, Hastings and the Department entered into the Consent Order as authorized by Idaho Code § 42-1701B.

10. In the Consent Order, Hastings “confirmed that he altered the stream channel without a permit from the Department.” First Am. Action for Declaratory J., Ex. A ¶ 10.

11. The Consent Order required Hastings to submit a Joint Application for Permit and a restoration plan and complete the work proposed in the restoration plan in compliance with any permit the Department issued.

12. The Department approved Hasting’s third revised restoration plan (“Third Revised Plan”).

13. A Joint Application for Permits based on the Third Revised Plan was submitted to the Department on March 15, 2019.

14. On May 17, 2019, the Department issued its Conditional Approval of Joint Application for Permits (537-20565) in the matter of Consent Order and Agreement and of

Notice of Violation No. 82017-1236 Big Wood River - 1200 Warm Springs Road
Restoration (“Conditional Approval”).

15. On May 23, 2019, Hastings timely filed a Petition for Hearing with the Idaho Water Resource Board regarding the Conditional Approval.

16. Since that time the Department and counsel for both parties have been in discussions regarding the conditions of the Conditional Approval.

17. In September 2021, Hastings’ counsel asserted that Hastings’ would not be performing the required streambank restoration.

18. In October 2021, the Department, realizing further discussions with Hastings were futile, asked the Idaho Water Resource Board to place appointing a hearing officer for Hastings’ requested hearing on its November agenda.

19. On November 19, 2021, the Idaho Water Resource Board approved a resolution appointing a hearing officer for Hastings’ requested hearing.

**VI. COUNT 1
(Specific Performance)**

20. The allegations of paragraphs 1–19 of this Counterclaim are hereby incorporated by reference as though fully set forth herein.

21. Hastings has stated he will not comply with the terms of the Consent Order requiring restoration of the streambank of the Big Wood River.

22. Idaho Code § 42-1701B allows the Department to seek specific performance of a consent order if a party does not comply with its terms.

23. The Department is entitled to an order of specific performance requiring Hastings to complete the work proposed in the restoration plan consistent with the terms

and conditions of the permit the Department approved.


24. The Department has incurred and will incur costs, expenses and attorney fees in the prosecution of this matter in an amount to be proved at trial or in the event of default the amount of \$5,000. The Department is entitled to recover its attorney fees and costs pursuant to Idaho Code § 12-117 and Idaho Rule of Civil Procedure 54.

VII. REQUEST FOR RELIEF

The Department respectfully requests the Court grant the following relief:

1. For an Order of specific performance directing Hastings to comply with the terms of the Consent Order.
2. For reasonable costs and attorney's fees pursuant to Idaho Code § 12-117 and Idaho Rule of Civil Procedure 54.
3. For such other and further relief as the Court deems just and proper.

DATED this 21st day of December 2021.



MEGHAN M. CARTER
Deputy Attorney General
Idaho Department of Water Resources

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21st day of December 2021, I caused to be served a true and correct copy of the foregoing *Defendant's Answer to First Amended Action for Declaratory Judgment and Counterclaim* via iCourt E-File and Serve, upon the following:

J. KAHLE BECKER
Attorney at Law
223 N. 6th St., Suite 325
Boise, Idaho 83702
kahle@kahlebeckerlaw.com

- U.S. Mail, postage prepaid
- Hand Delivery
- Overnight Mail
- Facsimile
- iCourt E-File and Serve

Attorney for Plaintiff John Hastings



MEGHAN M. CARTER
Deputy Attorney General
Idaho Department of Water Resources

BEFORE THE IDAHO WATER RESOURCE BOARD

IN THE MATTER OF APPLICATION)
FOR STREAM CHANNEL ALTERATION)
PERMIT NO. S37-20565)
_____)

RESOLUTION

1 WHEREAS, on March 15, 2019, the Idaho Department of Water Resources (“IDWR”)
2 received Joint Application for Permits No. S37-20565 (“Application”) filed by John Hastings, Jr.
3 and Embassy Auditoriums, Inc. (“Hastings”) for a stream channel alteration permit for bank
4 stabilization, in response to a notice of violation; and
5

6 WHEREAS, on May 17, 2019, IDWR issued a Conditional Approval of Joint
7 Application for Permits (S37-20565) (“Permit”); and
8

9 WHEREAS, Hastings requested, in writing within fifteen days after service of the Permit,
10 a hearing before the Idaho Water Resource Board (“IWRB”) on IDWR’s conditional approval;
11 and
12

13 WHEREAS, IDWR and Hastings have been in discussions on the conditional terms of
14 the Permit since Hastings’ request for hearing but have reached an impasse;
15

16 WHEREAS, it is necessary for the IWRB to appoint a hearing officer to preside over the
17 hearing requested by Hastings and issue a recommended order or preliminary order in
18 accordance with Idaho Code §§ 67-5243(1) and 67-5248;
19

20 NOW THEREFORE BE IT RESOLVED, the IWRB hereby appoints Shelley Keen,
21 Water Allocation Bureau Chief, as the hearing officer in the above-captioned proceedings.

Adopted this 19th day of November 2021.



Jeff Raybould, Chairman
Idaho Water Resource Board

ATTEST: 
Jo Ann Cole-Hansen, Secretary



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street • P.O. Box 83720 • Boise, Idaho 83720-0098

Phone: (208) 287-4800 • Fax: (208) 287-6700 • Website: www.idwr.idaho.gov

C.L. "BUTCH" OTTIE
Governor

GARY SPACKMAN
Director

September 11, 2017

JOHN HASTINGS JR.
EMBASSY AUDITORIUMS INC.
1200 WARM SPRINGS ROAD
KETCHUM IDAHO 83340

CERTIFIED MAIL

**NOTICE OF VIOLATION AND ORDER TO CEASE AND DESIST
THE UNAUTHORIZED ALTERATION OF THE BIG WOOD RIVER**

Case No. E2017-1236

Dear Mr. Hastings:

The purpose of this letter is to notify you that a violation of State Law is hereby attributed to you by the Idaho Department of Water Resources ("Department"). This Notice of Violation ("NOV") is issued pursuant to Idaho Code §§42-1701B and 42-3809(2). Specifically, this violation is associated with removal of riparian vegetation and the discharge of fill material below the mean high water mark of the Big Wood River. The unauthorized work occurred at a location within Section 12, Township 04 North, Range 17 East, Blaine County, Idaho ("subject land").

The violations of Title 42, Idaho Code attributed to you are listed below:

1. Idaho Code §§42-3801 and 42-3803(a) – Altering a stream channel without the required approval and permit.

As authorized by Idaho Code §42-3809(2), and in accordance with Idaho Code §42-1701B, the Department requires the following immediate redress and payment of civil penalties associated with the violations:

1. Cease and desist all unauthorized work below the mean high water mark at the subject land and within the Big Wood River.
2. On or before October 1, 2017, prepare and submit a streambank bioengineering plan to restore the Big Wood River, the plan must include measures for replanting the riparian area(s) with native trees/shrubs/forbs and measures to restore fish and wildlife habitat.
3. Pay a civil penalty in the amount of \$10,000 on or before November 1, 2017.

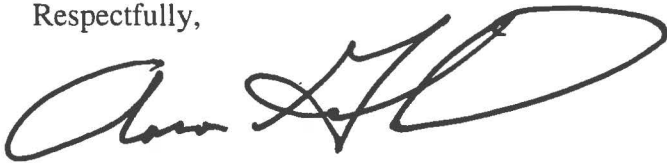
You may submit any objections to the provisions of this NOV at a compliance conference. Pursuant to Idaho Code §42-1701B, **a compliance conference must be requested within 14 days of receiving this notice.**

The compliance conference provides the recipient of a NOV the opportunity to explain the alleged violations and present a plan to assure future compliance through an agreement. Resolution of this NOV will be formalized through a Consent Order and Agreement.

Failure to comply with these requirements may be cause for the Department to seek curtailment of the unauthorized activity and/or initiate a civil action through the attorney general's office in district court.

Please contact me at (208) 287-4941 or aaron.golart@idwr.idaho.gov if you have questions regarding this notice or to schedule a compliance conference.

Respectfully,



Aaron Golart
Water Compliance Bureau

cc

Andrea Courtney, Deputy Attorney General, Boise
Greg Martinez, U.S. Army Corps of Engineers, Boise
Mike McDonald, Idaho Department of Fish and Game, Jerome
Balthasar Buhidar, Idaho Department of Environmental Quality, Twin Falls
Cherie Palmer, Water Compliance Bureau, Boise
Charles G. Brockway, Brockway Engineering, Twin Falls
Brittany Skelton, City of Ketchum

Enclosure - Site Photo and Map

Hastings/Embassy Auditoriums, Inc.(E2017-1236)

Write a description for your map

Legend

 Riprap Approx. 200-feet



09/07/2017 15:24:32 • 11T QJ 11743 40501 • 43° 41' 14" N, 114° 22' 21" W • T 176° S / MILS 3123

