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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

ANSWER TO COUNTERCLAIM

COMES NOW the above-named Plaintiff, by and through his attorney of record, J. Kahle Becker, Defendant having asserted a Counterclaim, and files his Answer thereto, and also, Pursuant to IRCP 38 and 39, hereby demands a jury trial in this matter. Plaintiff/Counterdefendant will not stipulate to a jury less than 12 people.

1. Counterdefendant denies each and every allegation of the Counterclaim not otherwise specifically admitted herein.

2. Counterdefendant denies the allegations contained in paragraph 1 “Nature of the Action” of the Counterclaim.

3. With respect to the allegations in Paragraph 2 of the Counterclaim, Counterdefendant admits Counterclaimant is an executive agency of the State of Idaho

authorized to file suit under certain statutes such as Idaho Code § 42-1701B. However, Counterdefendant denies Counterclaimant has the legal or factual basis to do so as to Counterdefendant, in the Counterclaim asserted herein.

4. With respect to the allegations in Paragraph 3 of the Counterclaim, Counterdefendant admits he owns a lot located at 1200 Warm Spring Rd. Ketchum, ID which is along the Big Wood River. Counterdefendant is without information or belief as to the remaining allegations in paragraph 3 of the Counterclaim and therefore denies the same.

5. Counterdefendant admits this Court has subject matter jurisdiction to hear this Counterclaim. Counterdefendant denies there have been any violations of any rules (to the extent they are valid – an issue specifically contested in the Complaint) or applicable statutes. Therefore, Counterdefendant denies the remaining allegations contained in Paragraph 4 of the Counterclaim.

6. Counterdefendant admits this court has personal jurisdiction over him as is alleged in paragraph 5 of the Counterclaim.

7. Counterdefendant admits venue is proper in the Fourth Judicial District in Ada County Idaho, as is alleged in paragraph 6 of the Counterclaim.

8. Counterdefendant admits he was issued a Notice of Violation by Counterclaimant which was received by Counterdefendant's engineer on or about September 12, 2017. The Notice of Violation was issued after Counterdefendant was assured by Counterclaimant that it would not do so in light of the emergency nature of the work Counterdefendant caused to be performed at the request of the City of Ketchum, a

political subdivision of the State of Idaho. With respect to the remaining allegations in Paragraph 7 of the Counterclaim, Counterdefendant denies the same.

9. Counterdefendant admits the allegations contained in paragraph 8 of the Counterclaim.

10. With respect to the allegations in Paragraph 9 of the Counterclaim, Counterdefendant admits on January 26, 2018, Counterdefendant and his attorney met with Mr. Golart, Ms. Palmer, and others from IDWR to review and then sign the Consent Order, which speaks for itself. This was the first time Counterdefendant had seen the Consent Order. With respect to the remaining allegations in Paragraph 9 of the Counterclaim, Counterdefendant denies the same.

11. With respect to the allegations in Paragraph 10 of the Counterclaim, Counterdefendant admits the Consent Order speaks for itself. With respect to the remaining allegations in Paragraph 10 of the Counterclaim, Counterdefendant denies the same.

12. With respect to the allegations in Paragraph 11 of the Counterclaim, Counterdefendant admits the Consent Order speaks for itself. With respect to the remaining allegations in Paragraph 11 of the Counterclaim, Counterdefendant denies the same.

13. With respect to the allegations in Paragraph 12 of the Counterclaim, Counterdefendant admits the Counterclaimant acted in a dilatory and obstructive manner in rejecting prior applications made on behalf of Counterdefendant, each of which was in full compliance with the terms of the aforementioned Consent Order, before finally receiving a Third Revised Plan on December 14, 2018, verbally approving the Third

Revised Plan, and thereafter unilaterally including 13 Special Conditions, which came as a complete surprise to Counterdefendant, in a permit which was issued by Counterclaimant on or about May 17, 2019. With respect to the remaining allegations in Paragraph 12 of the Counterclaim, Counterdefendant denies the same.

14. With respect to the allegations in Paragraph 13 of the Counterclaim, Counterdefendant admits the Counterclaimant acted in a dilatory and obstructive manner in rejecting prior applications made on behalf of Counterdefendant, each of which was in full compliance with the terms of the aforementioned Consent Order, before finally receiving a Third Revised Plan on December 14, 2018, verbally approving the Third Revised Plan, which then caused Counterdefendant to have his application submitted to Counterclaimant on or about March 15, 2019, following additional discussions between Counterclaimant and Counterdefendant's engineer.

15. With respect to the allegations in Paragraph 14 of the Counterclaim, Counterdefendant admits the Counterclaimant acted in a dilatory and obstructive manner in rejecting prior applications made on behalf of Counterdefendant, each of which was in full compliance with the terms of the aforementioned Consent Order, before finally receiving a Third Revised Plan on December 14, 2018, verbally approving the Third Revised Plan, and thereafter unilaterally including 13 Special Conditions, which came as a complete surprise to Counterdefendant, in a permit which was issued by Counterclaimant on or about May 17, 2019. With respect to the remaining allegations in Paragraph 14 of the Counterclaim, Counterdefendant denies the same.

16. With respect to the allegations in Paragraph 15 of the Counterclaim, Counterdefendant admits on May 21, 2019, a *Petition for Hearing* ("Petition") was

mailed to the Idaho Water Resource Board on behalf of Counterdefendant, objecting to aspects of the Conditional Approval that were inconsistent with the Consent Order. With respect to the remaining allegations in Paragraph 15 of the Counterclaim, Counterdefendant is without information or belief as to the date his Petition for Hearing was received by Counterclaimant, therefore, Counterdefendant denies the same.

17. With respect to the allegations in Paragraph 16 of the Counterclaim, Counterdefendant admits his legal counsel has engaged in additional IRE 408 settlement discussions with Counterclaimant since the time Counterclaimant filed his Petition for Hearing. Counterdefendant denies the remaining allegations in Paragraph 16 of the Counterclaim.

18. With respect to the allegations in Paragraph 17 of the Counterclaim, Counterdefendant denies the same.

19. With respect to the allegations in Paragraph 18 of the Counterclaim, Counterdefendant is unaware of Counterclaimants thought process, nor its rationale for disregarding the two-year statute of limitations contained in I.C. 42-3809, and therefore denies the allegations contained in Paragraph 18 of the Counterclaim

20. With respect to the allegations in Paragraph 19 of the Counterclaim, Counterdefendant is unaware of Counterclaimants thought process, nor its rationale for disregarding the two-year statute of limitations contained in I.C. 42-3809, and therefore denies the allegations contained in Paragraph 19 of the Counterclaim.

21. Paragraph 20 of the Counterclaim is an incorporation paragraph and therefore Counterdefendant incorporates his admissions and denials stated above when responding to Paragraph 20 of the Counterclaim.

22. With respect to the allegations in Paragraph 21 of the Counterclaim, Counterdefendant admits he formally objected on May 21, 2019 and that date is the date upon which the director had knowledge or ought reasonably to have had knowledge of the violations alleged in the Counterclaim, which was then filed over two and a half years later, on December 21, 2021. With respect to the remaining allegations in Paragraph 21 of the Counterclaim, Counterdefendant denies the same.

23. With respect to the allegations in Paragraph 22 of the Counterclaim, Counterdefendant admits Counterclaimant is authorized to file suit under certain statutes such as Idaho Code § 42-1701B. However, Counterdefendant denies Counterclaimant has the legal or factual basis to do so as to Counterdefendant, in the Counterclaim asserted herein.

24. With respect to the allegations in Paragraph 23 of the Counterclaim, Counterdefendant denies the same and further denies Counterclaimant is entitled to any relief whatsoever.

25. With respect to the allegations in Paragraph 24 of the Counterclaim, Counterdefendant denies the same.

26. With respect to the allegations made in the Request for Relief section of the Counterclaim, Counterdefendant denies that Counterclaimant is entitled to any relief whatsoever as to Counterdefendant.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

Counterclaimant's Counterclaim fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Counterclaimant's claims are barred by application of the doctrine of estoppel, judicial estoppel, and equitable quasi-estoppel.

THIRD AFFIRMATIVE DEFENSE

Counterclaimant's claims and damages, if any, are barred or reduced by Counterclaimant's failure to exercise its duty under Idaho law to mitigate or reduce their damages. In asserting this defense, Counterdefendant does not admit any fault or responsibility, or that Counterclaimant has suffered any damages.

FOURTH AFFIRMATIVE DEFENSE

Counterclaimant's damages, if any, are barred and/or reduced in that the damages sought by Plaintiffs could have been avoided if Counterclaimant had acted reasonably prior to filing this action. In asserting this defense, Counterdefendant does not admit any fault or responsibility, or that Counterclaimant has suffered any damages.

FIFTH AFFIRMATIVE DEFENSE

Counterclaimant's claims, if any, are barred or reduced by the doctrine of Waiver.

SIXTH AFFIRMATIVE DEFENSE

Counterclaimant's claims, if any, are barred or reduced by the two-year statute of limitations contained in I.C. 42-3809.

SEVENTH AFFIRMATIVE DEFENSE

Counterclaimant's claims, if any, are barred or reduced by the application of Article III Section 29 of the Idaho Constitution and/or Idaho Code 67-5292.

EIGHTH AFFIRMATIVE DEFENSE

Counterclaimant's claims, if any, are barred or reduced by the application of Article I Section 1 of Idaho's Constitution as it relates to the inalienable right to protect private property.

NINTH AFFIRMATIVE DEFENSE

Counterclaimant's claims, if any, are barred or reduced by the application of Article I Section 14 of Idaho's Constitution.

TENTH AFFIRMATIVE DEFENSE

Counterclaimant's claims, if any, are barred or reduced because the conduct complained of was authorized under the emergency powers act I.C. 46-1008.

ELEVENTH AFFIRMATIVE DEFENSE

Counterclaimant's claims, if any, are barred or reduced because the conduct complained of was authorized under 42 U.S.C. §§ 5121-5207 (the Stafford Act) and there is federal preemption.

TWELFTH AFFIRMATIVE DEFENSE

Counterclaimant's damages, if any, are barred or reduced by the application of the doctrine of unclean hands.

THIRTEENTH AFFIRMATIVE DEFENSE

Counterdefendant asserts the affirmative defense of *in pari delicto*, in equal fault or wrong. By making this defense Counterdfendant does not hereby admit to any

wrongdoing.

FOURTEENTH AFFIRMATIVE DEFENSE

Counterclaimant's claims, if any, are barred or reduced by the doctrine of bad faith.

FIFTEENTH AFFIRMATIVE DEFENSE

Counterclaimant's claims, if any, are barred or reduced by the doctrine of Laches.

As discovery in this matter has only just begun, Counterdefendant specifically reserves the right to amend his Answer to Defendant's *Counterclaim* and to assert additional affirmative defenses as the same may become known.

WHEREFORE, Counterdefendant prays:

- 1) Counterclaimant takes nothing and its Counterclaim be dismissed.
- 2) Counterdefendant is entitled to recover his cost of suit pursuant to Idaho Rule of Civil Procedure 54, and Idaho Code §§ 10-1210 and 12-117.
- 3) Counterdefendant also asks this Court award Counterdefendant any other and further relief as the Court deems just and equitable.

DATED this 29th day of December, 2021.

LAW OFFICES OF J. KAHLE BECKER

By: _____/s/ J. Kahle Becker
J. KAHLE BECKER
Attorney for Plaintiff/Counterdefendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 29th day of December, 2021, I caused to be served the foregoing First Amended Action for Declaratory Judgment 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/Counterdefendant