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Attorneys for Defendant

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

Defendant, the STATE OF IDAHO DEPARTMENT OF WATER RESOURCES,
through its counsel of record, MEGHAN M. CARTER and GARRICK L. BAXTER,
Deputy Attorneys General for the Idaho Department of Water Resources ("IDWR"),
pursuant to the I.R.C.P. Rule 26(b) and (f), Rule 33(b) and (e)(1), Rule 34(b) and (d)(1),

and Rule 36(a) and (e)(1), herby responds to Plaintiff's *First Set of Discovery to Idaho Department of Water Resources* as follows:

As a preliminary matter and without waiver of other objections set forth hereinafter, Defendant objects generally to the purported "definitions" and "instructions" set forth by Plaintiff. They are improper to the extent that such definitions and instructions conflict with or go beyond the following discovery provisions of the Idaho Rules of Civil Procedure: Rule 26, Rule 33, Rule 34, and Rule 36.

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: The following IDWR employees have or may have information concerning the incident: Aaron Golart, Tim Luke, and Cherie Palmer. All may be reached through the IDWR's main office at: Idaho Water Center, 322 E. Front St. Ste. 648, Boise ID, 83702-7371; Mailing Address, Idaho Department of Water Resources, P.O. Box 83720, Boise, ID 83720-0098; Phone: (208) 287-4800.

The following individuals outside the IDWR have or may have information concerning the incident:

- Robert Brochu—retired US Army Corp of Engineers, Walla Walla District, Idaho Falls Regulatory Office, 900 N. Skyline Rd., Ste. A, Idaho Falls, ID 83402; Phone: (208) 522-1645.
- Greg Martinez—retired Deputy Chief of the Walla Walla District Regulatory Division, US Army Corp of Engineers, Boise Office, 10095 W. Emerald St. Boise, Idaho 83704; Phone: (208) 433-4465.

- Brittany Skelton— (former employee of the City of Ketchum), P.O. Box 416, 81 Elkhorn Rd., Sun Valley, ID 83353; Phone: (208) 622-4438.
- Zach Latham and Charles G. Brockway—Brockway Engineering, P.L.L.C., 2016 Washington St. N., Ste. 4, Twin Falls, ID 83301; Phone: (208) 736-8543.
- Kristine Hilt—Certified Floodplain Manager, Code Compliance Specialist, Blaine County Land Use & Bldg. Services; 219 South First Avenue, Suite 208, Hailey, ID 83333; Phone: (208) 788-5570.
- Chris M. Bromley—McHugh Bromley; 380 South 4th Street, Suite 103, Boise, Idaho 83702; Phone: (208) 287-0991.
- Andrea Courtney—(former attorney for IDWR) District Judge, Idaho Third Judicial District; 1115 Albany Street, Caldwell, ID 83605; Phone: 208-454-7319.

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: Neither IDWR, its attorneys, agents, investigators, nor other representatives have signed, adopted or approved statements from the individuals listed in Answer to Interrogatory No. 1.

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: IDWR objects to this interrogatory as it seeks to invade the attorney-client privilege and/or attorney-work product doctrine. However, without waiving said objection, IDWR has the following photographs produced herewith:

- IMG_3513 – Photograph of streambank taken on September 7, 2017, at 15:24:32 by Aaron Golart. Location 43° 41'14 N, 114° 22'21 W
- PowerPoint presentation with photos of streambank developed by Chris Bromley.
- E2017-1236 Hastings – aerial imagery of the Hastings' property and surrounding area with approximate location of riprap placed in 2017. Imagery obtained through google earth and annotated by Aaron Golart in 2017.
- IMG_4875 – photo of streambank provided by Zach Latham in Plaintiff's Emergency SAP Application.

- IMG_4877 – photo of streambank provided by Zach Latham in Plaintiff’s Emergency SAP Application.

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: Aaron Golart was the sole IDWR employee who investigated the incident. He is still an IDWR employee. During his investigation he contacted the following individuals in August and September of 2017: Zach Latham, Charles G. Brockway, Robert Brochu, Greg Martinez, Brittany Skelton, and Kristine Hilt. The contact information for these individuals is produced in Answer to Interrogatory No. 1. Most of the communication was verbal, though some occurred via e-mail. Any e-mail communication that was retained is produced in response to Request for

Production No. 2. No statements or reports other than the Notice of Violation were produced.

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: IDWR has not yet identified any expert witnesses. However, discovery is ongoing and IDWR reserves the right to call an expert. As such this answer may be supplemented.

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: IDWR has not retained or employed any expert in anticipation of litigation or in preparation for trial. However, the case is in early stages and IDWR reserves the right to employ an expert. As such, this answer may be supplemented.

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

ANSWER TO INTERROGATORY NO. 7: IDWR has not yet identified exhibits for trial since the case is in the early stages and discovery is not yet complete. As such, this answer may be supplemented.

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: Aaron Golart, IDWR Stream Channel Coordinator, contact information provided in Answer to Interrogatory No. 1, answered or contributed to the answers of the following interrogatories: 1–4, 10, 12, and 13.

Cheri Palmer, IDWR Analyst 4, contact information provided in Answer to Interrogatory No. 1, answered or contributed to the answers of the following interrogatories: 1–3.

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: IDWR objects to this interrogatory as it seeks information that is not consistent with the claims of this case. However, without waiving the objection, IDWR in its counterclaim seeks specific performance of the January 26, 2018 Consent Order and Agreement, since Plaintiff has not complied with all of its terms. The Consent Order and Agreement is attached to Plaintiff's *Action for Declaratory Judgment and First Amended Action for Declaratory Judgment*. In addition, Aaron Golart and Cheri Palmer will support this position as witnesses.

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: The bases for IDWR's denial of the following paragraphs in the Complaint are contained in *Defendant's Answer to First Amended Action for Declaratory Judgment and Counterclaim*: 3, 4, 8, 42, 43, 44, 45, 46, 47, 48, and 70.

The bases for IDWR's denial of the following paragraphs in the Complaint are based on legal theory and reasoning, therefore, no factual basis is needed: 11, 41, 49, 50, 57, 65, and 69.

The basis for IDWR's denial of the following paragraphs in the Complaint is lack of sufficient knowledge and therefore IDWR cannot provide a factual basis: 10, 12, 13, 14, 15, 16, 17, 23, 29, 40, 52, 53, 54, 55, 56, and 60.

The basis for IDWR's denial of the following paragraphs is the Consent Order and Agreement: 24, 26, 30, and 39.

The basis for IDWR's denial of paragraph 62 is IDWR's documentation of its restoration requests.

The basis for IDWR's denial of paragraphs 68 and 71 can be found in *Defendant's Answer to First Amended Action for Declaratory Judgment and Counterclaim*, paragraph 70 of the "General Denial."

The basis for IDWR's denial of paragraph 78 is the temporary rules published in the July 2021 Idaho Administrative Bulletin.

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: IDWR's bases for its two affirmative defenses are contained in *Defendant's Answer to First Amended Action for Declaratory Judgment and Counterclaim*, sections IV and V of the "General Denial."

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: Objection. With respect to negotiations, Interrogatory No. 12 seeks information that could be subject to Rule 408 of the Rules of Evidence and thus beyond the scope of permissible discovery. Without waiving the objection, IDWR answers as follows. IDWR received an e-mail from Brockway Engineering (Brockway) on August 30, 2017, notifying IDWR that spring and summer runoff in the Big Wood River had eroded a large portion of the property on the west bank of the river; an emergency stream alteration permit was granted by the City of Ketchum; and Plaintiff had performed emergency armament of the eroded streambank upstream of the bridge. Attached to the August 30, 2017 e-mail was an IDWR emergency stream alteration permit application in the name of John Hastings Jr., owner/president of Embassy Auditoriums INC, which sought to perform approximately 75-feet of streambank stabilization from the point where the previous construction stopped downstream to the Warm Springs Road bridge abutment. Additionally, Brockway indicated they would submit a Joint Application for Permits to formalize the emergency work that was done without IDWR approval.

IDWR conducted a site inspection on September 7, 2017, accessing the river channel from Warm Springs Road Bridge. On September 8, 2017, IDWR inquired of Brockway about site conditions and whether the 2014 permit S37-20362 was ever constructed, which was similar to the emergency proposal. On September 11, 2017, Brockway notified IDWR that the 2014 project was never constructed, the current emergency proposal was not meant to be a long-term solution, and that a permanent plan would be submitted to IDWR shortly. On September 11, 2017, IDWR notified Brockway

by email that IDWR was planning to initiate an enforcement action regarding the unauthorized work that occurred late July.

The decision to issue a Notice of Violation (NOV) was based on the following:

- Plaintiff was aware of the permitting process, having received permits from IDWR in the past;
- Neither Plaintiff nor Brockway requested an Emergency Waiver from IDWR for the work conducted without a permit;
- During IDWR's September 7, 2017 site inspection, it was confirmed that work occurred without a permit;
- It was determined that an emergency situation did not exist during the end of July 2017 when the work was conducted. At Plaintiff's location, the hydrograph for that period showed the flows on the Big Wood River were approximately 300 cfs. The peak in the 2017 hydrograph occurred May 7, 2017 at approximately 3,200 cfs.

IDWR sent the NOV (E2017-1236) on September 12, 2017. On September 14, 2017, McHugh Bromley, PLLC (MB) filed a Notice of Appearance and Request for Compliance Conference in Case No. E2017-1236. Various emails occurred after September 14 to schedule the October 3 Compliance Conference.

During the October 3, 2017, Compliance Conference MB presented Power Point slides and described site conditions leading up to and including the work conducted without a permit. The presentation showed photographs documenting site conditions from October 13, 2009, April 9, 2013, July 25, 2017, August 2, 2017, and September 27, 2017.

Following the presentation, a conversation occurred where the Department communicated that the photo documentation from July 25, 2017, confirmed that some erosion had occurred along the streambank but the Department disagreed that the condition at that time represented an emergency situation and the issuance of the NOV was justified. It was mutually agreed that the Department would move forward with drafting a Consent Order and Agreement for review by the Plaintiff. On January 26, 2018, the Department met at

the office of MB and shared the final draft COA with the Plaintiff to review and comment. Some minor edits were requested by the Plaintiff and the Department agreed on the edits. After the edits were made the Plaintiff and the Department both signed the COA on January 26, 2018. The Department confirmed by email on February 13, 2018, that the \$10,000 penalty was received and receipted.

IDWR further objects to the request to interpret the statute of limitations in Idaho Code § 42-3809 as it calls for a legal conclusion and seeks the mental impressions of counsel. Without waiving the objection, to the extent properly discoverable, IDWR's position is that Idaho Code § 42-3809's statute of limitation does not apply in this situation.

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: Regarding Request for Admission Nos. 2 and 3, IDWR denies the statute of limitations in Idaho Code § 42-3809 has expired as to its right to bring an enforcement action against Plaintiff for any violation of the Consent Order and Agreement because that statute applies to violations of rules, permits, and orders not a Consent Order and Agreement.

Regarding Request for Admission No. 5, IDWR determined based on observation that Plaintiff removed riparian vegetation and discharged fill below the mean high-water mark of the Big Wood River in violation of Idaho Code §§ 42-3801 and 42-3803(a). In addition, Plaintiff admitted to such violation in the Consent Order and Agreement.

Regarding Request for Admission No. 7, IDWR determined based on observation that Plaintiff discharged fill below the mean high-water mark of the Big Wood River in

violation of Idaho Code §§ 42-3801 and 42-3803(a). In addition, Plaintiff admitted to such violation in the Consent Order and Agreement.

Regarding Request for Admission Nos. 13 and 14, IDWR expects Plaintiff to comply with the terms of the Consent Order and Agreement, which includes remediation of the stream bank pursuant to Stream Channel Alteration Permit S37-20565.

Regarding Request for Admission Nos. 19 and 20, IDWR is unaware of what rights Plaintiff alleges IDWR violated.

REQUESTS FOR PRODUCTION OF DOCUMENTS

All documents produced herewith, in response to Plaintiff's *First Set of Discovery to Idaho Department of Water Resources*, are available for download on IDWR's public website at <https://idwr.idaho.gov/legal-actions/district-court-actions/hastings-v-idwr/>. After clicking on the above link, follow your browser's document download procedure to obtain a copy of the discovery documents produced after expanding the accordion labeled "Documents Produced in Response to Plaintiff's First Set of Discovery to Idaho Department of Water Resources" and clicking on the zipped file that appears below.

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.

RESPONSE TO REQUEST NO. 1: A copy of an e-mail from Aaron Golart to Cherie Palmer dated 9/11/2017, a copy of the City of Ketchum Emergency Streambank

Stabilization Permit, and a copy of the City of Ketchum Emergency Streambank Stabilization Permit Addendum No. 1 are included with the response.

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

RESPONSE TO REQUEST NO. 2: Please see Answer to Interrogatory No. 4. All such statements, surveys, bills, models, and correspondence, that are knowingly in the possession of Aaron Golart regarding the incident, are included in the response.

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

RESPONSE TO REQUEST NO. 3: IDWR has no such reports at this time.

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.

RESPONSE TO REQUEST NO. 4: IDWR has attached a copy of the photographs it has related to the Hastings property: 1) IMG_3513; 2) PowerPoint presentation containing multiple photos; 3) E2017-1236 Hastings; 4) IMG_4875; and 5) IMG_4877.

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

RESPONSE TO REQUEST NO. 5: IDWR has included the following documents in its response: 1) e-mail from Aaron Golart to Cherie Palmer dated 9/11/2017 and 2)

September 11, 2017, Notice of Violation Case E2017-1236. These can be found in IDWR's response to Request for Production No. 1.

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.

RESPONSE TO REQUEST NO. 6: All responsive documents can be found in response to Request Nos. 1 and 2.

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

RESPONSE TO REQUEST NO. 7: The photos discussed in Interrogatory No. 3 are included in the response to Request for Production No.4.

Documents discussed in Interrogatory No. 10 related to IDWR's denial of Paragraph 62 of the complaint are included in the response. The documents are letters: 1) Re: Terms of Notice of Violation E2017-1236; Restoration Plan and Bank Stabilization Project, March 8, 2018, and 2) Re: Terms of Notice of Violation E2017-1236; Revised Restoration Plan and Bank Stabilization Project, October 11, 2018.

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.

RESPONSE TO REQUEST NO. 8: A copy of Aaron Golart's Bachelor of Science Diploma, Certificate of Completion of Streambank Soil Bioengineering Technical Training Course, Certificate of Completion of HEC-RAS 1D/2D Workshop, Certificate of Completion of Geomorphic Assessment and Modeling, and US Army Corps of Engineers

Certificate of Appreciation are attached to this response. In addition, IDWR is providing a list of Aaron Golart's work history:

- Stream Channel Coordinator, State: Idaho Department of Water Resources, Boise, Idaho. (October 2008-Present).
- Stream Channel Protection Specialist: Idaho Department of Water Resources, Boise, Idaho. (April 2007-October 2008).
- Water Resource Agent: Idaho Department of Water Resources, Idaho Falls, Idaho. (May 2006-April 2007).
- Laboratory/Field Assistant: Idaho Department of Fish and Game Eagle Fish Health Laboratory, Eagle, Idaho. (March 2004 – October 2005).
- Fisheries Technician: University of Idaho/ U.S. Forest Service Rocky Mountain Research Station, Boise, Idaho. (July 2003-October 2003).
- Field Supervisor: Henry's Fork Foundation, Ashton, Idaho. (May 2002-September 2002).
- Laboratory Assistant: Idaho State University, Pocatello, Idaho. (January 2002-May 2002).

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.

RESPONSE TO REQUEST NO. 9: All responsive documents can be found in response to Request Nos. 1, 2, and 7.

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.

RESPONSE TO REQUEST NO. 10: IDWR objects to this request as the information sought is irrelevant, and the discovery of which is not likely to lead to

information that would be admissible at the trial of this matter. Furthermore, IDWR does not maintain such a list.

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.

RESPONSE TO REQUEST NO. 11: IDWR does not have any letters, notes or other documents responsive to this request.

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.

RESPONSE TO REQUEST NO. 12: IDWR does not have any letters, notes or other documents responsive to this request.

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.

RESPONSE TO REQUEST NO. 13: IDWR is not asserting a right to initiate or maintain any type of administrative proceeding to which Plaintiff is a party. Plaintiff requested a hearing from the Idaho Water Resource Board (Board) on Stream Channel Alteration Permit S37-20565, not IDWR. The Board's Rules of Procedure have been published as temporary rules in the July 21, 2021, Idaho Administrative Bulletin. The

Bulletin can be viewed and downloaded here:

<https://adminrules.idaho.gov/bulletin/2021/07SE.pdf>

REQUESTS FOR ADMISSION

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: Admit.

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: Objection. The request calls for a legal conclusion and seeks the mental impressions of counsel. Without waiving any objections, IDWR denies the request.

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: Objection. The request calls for a legal conclusion and seeks the mental impressions of counsel. Without waiving any objections, IDWR denies the request.

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: Admit.

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: IDWR denies that Plaintiff acted in accordance with statutory permit requirements when placing rock in the stream channel in 2017. IDWR denies that acting without a required permit is reasonable.

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: IDWR objects to Request for Admission No. 6 because it asks IDWR to speculate on events beyond IDWR's knowledge. Because it asks for speculation, IDWR denies the request.

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: Deny.

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: IDWR does not have sufficient information to make such a determination.

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: IDWR does not have sufficient information to make such a determination.

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: Admit to the extent construction activities remain on Plaintiff's private property and do not occur within or below the ordinary high-water mark.

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: Admit to the extent construction activities remain on Plaintiff's private property and do not occur within or below the ordinary high-water mark.

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: Admit to the extent that IDWR's governing statutes do not allow or require it to assert or maintain ownership interest in the beds and banks of any stream or river. However, other agencies of the State of Idaho may have an ownership interest in the beds and banks of the Big Wood River.

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: IDWR admits this to the extent that it will not allow the unauthorized stream channel alteration to remain in place without remediation to restore the streambank.

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: Objection. The Request is vague and ambiguous regarding what “will not allow” means. Without waiving any objection, IDWR denies this to the extent that it will allow Plaintiff to remove the discharged fill material with remediation to restore the streambank pursuant to a valid Stream Channel Alteration Permit.

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: Admit.

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: Admit.

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: Objection. The request calls for a legal conclusion and seeks the mental impressions of counsel. Without waiving any objections, IDWR denies that there may not be a set of circumstances by which IDWR may bring an enforcement action against the Plaintiff for violations that occurred in 2017. IDWR can also enforce the Consent Order and Agreement.

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: Objection. The phrase "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" is vague and ambiguous and calls for a legal conclusion and seeks the legal impressions of counsel. Without waiving any objections, IDWR denies that it has tried 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.

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: Deny.

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: Deny.

DATED this 10th day of January 2022.



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

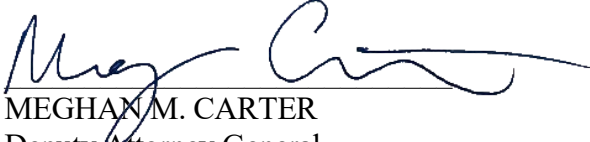
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th day of January 2022, I caused to be served a true and correct copy of the foregoing *Defendant's Answers to First Set of Discovery to Idaho Department of Water Resources* via iCourt 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 Serve

Attorney for Plaintiff John Hastings



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