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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

**STIPULATION OF FACTS FOR  
MOTION PRACTICE RE: STATUTE  
OF LIMITATIONS**

The parties, through their undersigned attorneys of record, having stipulated to bifurcate this matter so that the applicability of the statute of limitations found in Idaho Code § 42-3809 can be determined separately and apart from all other matters which remain before this court, hereby further stipulate and agree as follows.

1. This stipulation is only to be used for motion practice in this case on the issue of the statute of limitations Idaho Code § 42-3809. This two-year statute of limitations has been asserted as an affirmative claim in Plaintiff's *First Amended Action for Declaratory Judgment* and as an Affirmative Defense by Plaintiff to Defendant's enforcement action, which is asserted as a Counterclaim herein.

2. On September 11, 2017, as authorized under 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 alleged "removal of riparian vegetation and the discharge of fill material below the mean high-water mark of the Big Wood River" which allegedly occurred without a permit from the Department. A true and correct copy of the NOV is attached as Exhibit 2 to *Defendant's Answer to First Amended Action for Declaratory Judgment and Counterclaim*.

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

4. On January 26, 2018, Mr. Hastings and the Department entered into a Consent Order and Agreement ("Consent Order") as authorized by Idaho Code § 42-1701B. A true and correct copy of the Consent Order is attached as Exhibit A to the *First Amended Action for Declaratory Judgment* Plaintiff filed in this matter.

5. Pursuant to the Consent Order, Mr. Hastings paid \$10,000 to the Department on February 13, 2018.

6. The Department has not refunded any portion of the \$10,000 to Mr. Hastings.

7. On February 14, 2018, Brockway Engineering filed a *Restoration Plan and Bank Stabilization Project for 1200 Warm Springs, Ketchum, Idaho*, on behalf of Mr. Hastings, in response to the January 26, 2018 Consent Order.

8. The Department rejected this plan and contends it was not in compliance with the terms of the Consent Order. Mr. Hastings disputes this and asserts his plan was compliant with terms of the Consent Order.

9. A revised plan was filed with the Department on behalf of Mr. Hastings by Brockway Engineering on March 22, 2018.

10. The Department rejected this revised plan and contends it was not in compliance with the terms of the Consent Order. Mr. Hastings disputes this and asserts his revised plan was compliant with the terms of the Consent Order.

11. On October 30, 2018, Brockway Engineering filed a second revised plan with the Department on behalf of Mr. Hastings.

12. The Department rejected this revised plan and contends it was not in compliance with the terms of the Consent Order. Mr. Hastings disputes this and asserts his second revised plan was compliant with the terms of the Consent Order.

13. On November 2, 2018, the Department's Stream Channel Coordinator, Aaron Golart, granted an extension stating in an email to Plaintiff's former attorney Chris Bromley, "With respect to the time extension you have requested, IDWR is willing to grant the request to extend the time to complete construction on the restoration until March 15, 2019."

14. The actual terms of the Consent Order were not modified, nor was a new consent order signed.

15. The Department contends 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.

16. On December 14, 2018, Brockway Engineering filed a third revised restoration plan (“Third Revised Plan”) on behalf of Mr. Hastings.


17. A Joint Application for Permits based on a Third Revised Plan was submitted to the Department on March 15, 2019 on behalf of Mr. Hastings.

18. On May 17, 2019, the Department issued its Conditional Approval of Joint Application for Permits (S37-20565) (“Conditional Approval”).

19. On May 21, 2019, a *Petition for Hearing* (“Petition”) was mailed to and received by the Idaho Water Resource Board, on behalf of Mr. Hastings, by his former attorney Chris Bromley, objecting to aspects of the Conditional Approval that Mr. Hastings contends were inconsistent with the terms of the Consent Order. A true and correct copy of the Petition is attached as Exhibit B to the *First Amended Action for Declaratory Judgment*.

20. Mr. Hastings has not commenced restoration of the streambank, as contemplated by the Consent Order, from the date it was signed through time this litigation was filed on November 15, 2021.

DATED this 8th day of February 2022.

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

DATED this 8th day of February 2022.

/s/ J. Kahle Becker  
J. KAHLE BECKER  
Attorney at Law  
Attorney for Plaintiff

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 8th day of February 2022, I caused to be served a true and correct copy of the foregoing *Stipulation of Facts for Motion Practice re: Statute of Limitations* via iCourt E-File and Serve, upon the following:

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

*Attorney for Plaintiff John Hastings, Jr.*



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Idaho Department of Water Resources