

J. KAHLE BECKER (ISB # 7408)
Attorney at Law
223 N. 6th St., Suite 325
Boise, Idaho 83702
Phone: (208) 345-5183
Fax: (208) 906-8663
Email: kahle@kahlebeckerlaw.com
Attorney for Plaintiff/Counterdefendant

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

**MEMORANDUM IN SUPPORT
OF MOTION FOR SUMMARY
JUDGMENT**

COMES NOW the above-named Plaintiff/Counterdefendant, by and through his attorney of record, J. Kahle Becker, Defendant/Counterclaimant Idaho Department of Water Resources (“IDWR”) having asserted an Idaho Code § 42-3809 enforcement action as a Counterclaim, Plaintiff having filed his Motion for Summary Judgment on that Counterclaim pursuant to IRCP 56, and files his Memorandum in Support thereof as follows.

INTRODUCTION

This case involves a novel question regarding the applicability of the statute of limitations found in Idaho Code § 42-3809. The Idaho Supreme Court has never interpreted the application of the two-year statute of limitations found therein. Idaho

Code § 42-3809 requires IDWR to commence an enforcement action “after the date the director had knowledge or ought reasonably to have had knowledge of the violation” of “any rule permit or order...” Here, the Department created a deadline for compliance with a Consent Order, which expired without action from Plaintiff, in the spring of 2019. Additionally, Plaintiff provided notice that he objected to a permit, issued by IDWR, pursuant to the terms of the Consent Order, in May of 2019. This objection was made by Mr. Hastings despite a commitment in the Consent Order to comply with the terms of any permit issued by IDWR.

Despite being made aware of Plaintiff’s lack of compliance with the terms of the Consent Order as well as his formal objection to the Permit issued pursuant thereto, the Department took no action to enforce or otherwise remedy the violation(s) of the Consent Order, until it filed its enforcement action as a counterclaim herein on December 21, 2021. IDWR did so under the authority granted in Idaho Code § 42-3809, the exact same statute containing the aforementioned two-year statute of limitations. Therefore, Plaintiff contends IDWR missed the statute of limitations to bring an enforcement action by approximately 7 months. Consequently, IDWR’s enforcement action must be dismissed, and Summary Judgment should be granted in favor of Plaintiff.

PROCEDURAL & FACTUAL HISTORY

The *Stipulation on Facts for Motion Practice Re: Statute of Limitations* provides the relevant factual and procedural history for purposes of Plaintiff’s *Motion*. The *Stipulation* provides in pertinent part:

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 Alternation 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.

Plaintiff filed his *Action for Declaratory Judgment*, seeking a judicial interpretation of the application of the statute of limitations contained in I.C. § 42-3809 to the facts of this case, on November 15, 2021. The Department then initiated an administrative proceeding naming Mr. Hastings as a party on November 19, 2021. *First Amended Action for Declaratory Judgment* at 11, ¶ 71. This caused Plaintiff to file his *First Amended Action for Declaratory Judgment* on December 6, 2021, as permitted by to IRCP 15(a), prior to IDWR filing a responsive pleading.

IDWR filed its *Defendant's Answer to First Amended Action for Declaratory Judgment and Counterclaim* on December 21, 2021. The Counterclaim was an Enforcement Action, pursuant to I.C. § 42-3809, seeking specific performance of the January 26, 2018 Consent Order.

LEGAL ARGUMENT

1. This Case Presents a Novel Question of Law which Requires an Analysis of Judicial Decisions Interpreting Statutes of Limitations found in Analogous Sections of Idaho Code.

This is a case of first impression on the applicability of the two-year statute of limitations contained in Idaho Code § 42-3809. Therefore, the analysis below will draw from Idaho's Courts' interpretation and application of similar and analogous statutes of limitation.

Typically, parties look to Chapter 2 Title 5 of the Idaho Code to determine the applicable statute of limitations governing a particular cause of action. In this case, IDWR's statutory authority to bring an enforcement action is grounded in the same statutory authority which also limits the time frame under which IDWR may commence an enforcement action. Indeed, IDWR alleges in its Counterclaim:

1. The Department seeks an order of specific performance pursuant to Idaho Code §§ 42-1701B(4)¹ **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.
Defendant's Answer to First Amended Action for Declaratory Judgment and Counterclaim at p. 15. (Emphasis added).

Idaho Code § 42-3809 provides:

42-3809. ENFORCEMENT PROCEDURE — INJUNCTIVE RELIEF. The director of the department of water resources is hereby vested with the power and authority to enforce the provisions of this chapter and rules and regulations promulgated pursuant to it. When the director of the department of water resources determines that any person is in substantial violation of any provision of this chapter or any rule, permit, certificate, condition of approval **or order issued or promulgated pursuant to this chapter**, the director may commence an administrative enforcement action by issuing a written notice of violation in accordance with the provisions of section 42-1701B, Idaho

¹ Idaho Code 42-1701B(4) provides the authority for IDWR to enter into Consent Orders, such as the Order at the center of this dispute.

Code. **Provided however, that no civil or administrative proceeding may be brought to recover for a violation of any provision of this chapter or a violation of any rule, permit or order issued or promulgated pursuant to this chapter more than two (2) years after the director had knowledge or ought reasonably to have had knowledge of the violation.** The director shall have authority and it shall be his duty to seek a temporary injunction from the appropriate district court to restrain a person from altering a stream channel until approval therefor has been obtained by the person as provided in this act. (Emphasis added)

Since there are no cases addressing the application of the two-year statute of limitations found in I.C. § 42-3809, the most analogous statute of limitations would seem to be Idaho Code § 5-218(1), which contains generalized three-year statute of limitations for actions founded upon a liability created by statute. Likewise, Idaho Code § 5-218(4) contains language similar to that found in I.C. 42-3809, regarding the plaintiff's discovery of the underlying conduct, which gives rise to a cause of action for fraud.

5-218. STATUTORY LIABILITIES, TRESPASS, TROVER, REPLEVIN, AND FRAUD. Within three (3) years:

1. **An action upon a liability created by statute**, other than a penalty or forfeiture. The cause of action in favor of the state of Idaho or any political subdivision thereof, upon a surety bond or undertaking provided for or required by statute shall not be deemed to have accrued against any surety on such bond or undertaking **until the discovery** by the state of Idaho or any political subdivision thereof **of the facts constituting the liability...**

4. An action for relief on the ground of fraud or mistake. The cause of action in such case not to be deemed to have accrued until the **discovery, by the aggrieved party, of the facts** constituting the fraud or mistake. (Emphasis added).

Cases interpreting I.C. § 5-218(1) have held that the generalized three-year statute of limitations found therein is only applicable to actions upon a liability created by statute, when a more specific statute of limitations is not prescribed by another statute.

The Beales contend that the lien filed by the Department was barred by Idaho Code § 5-218 (1), which provides that "an action upon a liability created by statute, other than a penalty or forfeiture" must be commenced within three years. That statute is included in Chapter 2 of Title 5, Idaho

Code. Chapter Two only provides time limitations for the commencement of civil actions. Idaho Code § 5-201 provides: "Civil actions can only be commenced within the periods prescribed in this chapter after the cause of action shall have accrued, **except when, in special cases, a different limitation is prescribed by statute.**" The reference to "civil actions" means proceedings instituted in a court of law.

Idaho Code § 5-228 provides, "An action is commenced within the meaning of the chapter when the complaint is filed."

Beale v. State, 139 Idaho 356, 358-359, 79 P.3d 715, 717-718, (2003 Ida.). (Emphasis added).

Here we are presented with a special case, outside the purview of I.C. 5-218(1), as contemplated by I.C. § 5-201, in which a different limitations period is prescribed by statute, i.e. I.C. § 42-3809. "There is no exception to this plainly worded mandate [found in I.C. 5-201]." *Ada Cty. v. Browning*, 489 P.3d 443, 448, 2021 Ida. LEXIS 101, *13. Yet IDWR paradoxically disputes that the two-year statute of limitations, found in I.C. 42-3809, applies to IDWR's I.C. 42-3809 enforcement action in this case.

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.** *Defendant's Answer to First Amended Action for Declaratory Judgment and Counterclaim* at 9. (Emphasis added).

In its discovery responses, which are not before the Court due to the nature of the stipulated facts presented for purposes of the present motion practice, IDWR declined to provide any factual or legal reasoning which would permit Plaintiff to understand IDWR's position as to which, if any, statutes of limitation would govern its ability to bring an I.C. 42-3809 enforcement action. IDWR instead contends this position is a matter of impression of counsel, which is protected from disclosure.

It seems rather apparent from the plain language of I.C. § 42-3809 that the statute of limitations contained in the exact same statute IDWR is relying upon as authority to

pursue its counterclaim enforcement action herein would be the most logical limitations period to apply. Likewise, while the Consent Order may have elements akin to a contractual relationship, which would be governed by the 5-year statute of limitations found in I.C. § 5-216, that statute is inapplicable by its plain terms. Idaho Code § 5-216 explicitly provides:

...The limitations prescribed by this section shall never apply to actions in the name or for the benefit of the state and shall never be asserted nor interposed as a defense to any action in the name or for the benefit of the state although such limitations may have become fully operative as a defense prior to the adoption of this amendment. I.C. § 5-216.

Thus, at this time Plaintiff is left to guess as to IDWR's position. When IDWR files its Response to Plaintiff's *Motion for Summary Judgment*, this undisclosed alternate theory will be addressed by Plaintiff.

2. The Two-Year Statute of Limitations for IDWR to Commence an in I.C. § 42-3809 Enforcement Action Began to Run in May 2019.

From Plaintiff's perspective, the only conceivable dispute seems to be when the two-year period prescribed in I.C. § 42-3809 began to run. As this is a case of first impression, cases interpreting the "discovery" component of the analogous I.C. § 5-218(4) and in cases interpreting other statutes of limitation, such as I.C. §§ 5-216 and 5-219, are instructive for purposes of this analysis.

First, there is no need to address the fact that the underlying conduct giving rise to the original Notice of Violation allegedly occurred in the summer of 2017, i.e. over 4 years prior to IDWR's initiation of the instant Enforcement Action in late December 2021. A suit to address violations of any applicable rules or statutes which Mr. Hastings allegedly violated in 2017 would clearly be time barred.

Instead, the Department and Mr. Hastings entered into a Consent Order in January

2018, as permitted by I.C. 42-1701B(4), to attempt to resolve the alleged 2017 violations.

Idaho Code § 42-1701B(4) states:

The consent order shall be effective immediately upon signing by both parties and shall preclude a civil enforcement action for the same alleged violation. If a party does not comply with the terms of the consent order, the director may seek and obtain in any appropriate district court, specific performance of the consent order and other relief as authorized by law.

Thus, the 2017 alleged violations were subsumed into the Consent Order and deadlines and statutes of limitation were reset as specified therein.

Therefore, the January 26, 2018 Consent Order is the Order to focus on for purposes of the analysis of when IDWR “had knowledge or ought reasonably to have had knowledge of the violation” of the “order” in the context of I.C. § 42-3809. The provision containing the deadline in the January 26, 2018 Consent Order states:

- 4) The Department agrees to refund Respondent \$7,500 of the civil penalty if the Respondent successfully completes the restoration plan by **December 31, 2018**, and meets the requirements of Order paragraph 1-3. If there are circumstances beyond the control of Respondent, he will contact the Department by November 30, 2018, **to request an extension of the deadline stated above.**

Consent Order at 2 attached as Exhibit A to *First Amended Action for Declaratory Judgment*.

Unfortunately, IDWR and Plaintiff went back and forth on the details of the restoration plan for an extended period of time. *See Stipulation on Facts for Motion Practice Re: Statute of Limitations ¶¶ 4-13.* That delay resulted in IDWR providing the following extension:

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.**” *Stipulation on Facts for Motion Practice Re: Statute of Limitations.* (Emphasis added).

IDWR stipulated that it considered this email to be an official extension of the construction deadline in the Consent Order. *Stipulation on Facts for Motion Practice Re: Statute of Limitations* ¶ 14 & 15. IDWR also stipulated:

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. *Id.*

Mr. Hastings' inability to complete the restoration of the streambank by March 15, 2019 should have put IDWR on notice of a violation of the Consent Order, as modified by IDWR through Mr. Golart's November 2, 2018 email.

Therefore, under the plain language of I.C. § 42-3809, IDWR should have filed an enforcement action on or before March 15, 2021, i.e. two years after the March 15, 2019 deadline was missed. Instead IDWR waited until December 2021 to file an I.C. § 42-3809 enforcement action. This delay of 7 months is fatal to IDWR's position and should result in a dismissal of its counterclaim.

3. IDWR was Placed on Reasonable Notice of Plaintiff's Violation of the Terms of the Consent Order When Plaintiff Objected to the Terms of the Permit Issued Pursuant to the Consent Order in May of 2019.

In May of 2019 IDWR finally approved the fourth river restoration plan submitted by Plaintiff's engineer. However, coming as a complete surprise to Plaintiff were the inclusion of 13 special conditions which had not been previously discussed and which were contrary to representations made by IDWR when it induced Plaintiff to enter into the Consent Order. *See Petition for Hearing* attached as Exhibit B to *First Amended Action for Declaratory Judgment*. Plaintiff filed a formal objection to the permit with IDWR on May 21, 2019 and sought an administrative hearing. *Id.*

When viewed in light of the March 15, 2019 deadline IDWR had imposed for

Plaintiff to “complete construction of the restoration work,” this objection should have placed IDWR on notice that Plaintiff had violated the terms of the Consent Order. *See Stipulation on Facts for Motion Practice Re: Statute of Limitations* ¶ 13. Specifically, with the addition of these terms to the permit, Plaintiff did not intend to move forward with the restoration project on terms required by the Department. This formal objection was contrary to the second term of the Consent Order which stated:

2) Respondent **shall comply with the terms and conditions of any permit the Department issues** subsequent to the submittal of an acceptable application and restoration plan pursuant to Order Paragraph 1. January 26, 2019 Consent Order attached as Exhibit A to *First Amended Action for Declaratory Judgment*. (Emphasis added).

This Objection should have triggered the running of the two-year statute of limitations in I.C. § 42-3809 for the Department to commence an I.C. § 42-3809 enforcement action. Instead, the Department waited two years and 7 months to file its I.C. § 42-3809 enforcement action on December 21, 2021. *See Defendant’s Answer to First Amended Action for Declaratory Judgment and Counterclaim*.

Cases interpreting I.C. § 5-216, as to when an action for breach of contract arose for purposes of determining the commencement of the 5-year statute of limitations contained therein, hold that the period begins to run as soon as the right to institute a lawsuit arises.

Like in Idaho, Pennsylvania holds that the running of the limitations period starts when a cause of action arises:

“Unless a statute provides otherwise, the statute of limitations begins to run at the time when a complete cause or right of action accrues or arises, which occurs as soon as the right to institute and maintain a suit arises.”

...

Therefore, applying these general contract principles to the enforcement of an insured's UM/UIM claim, the statute of limitations would begin to run when the insured's cause of action accrued, i.e., when the insurer is alleged to have breached its duty under the insurance contract.

Id. at 585-86 (emphasis in original) (quoting 54 C.J.S. *Limitations of Actions*, § 81).
Klein v. Farmers Ins. Co., 165 Idaho 832, 835-836, 453 P.3d 266, 269-270, 2019 Ida. LEXIS 211, *12, 2019 WL 6315012

Similarly, cases interpreting the discovery rule under I.C. § 5-218(4) (and earlier versions of it) have held:

"Against an express and continuing trust time does not run until repudiation or adverse possession by the trustee and knowledge thereof on the part of the cestui." (Perry on Trusts, sec. 863; *Jones v. Henderson*, 149 Ind. 461, 49 N.E. 443; 13 Am. & Eng. Ency. of Law, 688; 5 Pomeroy's Eq. Jur., sec. 28.)

Olympia Mining & Milling Co. v. Kerns, 24 Idaho 481, 486, 135 P. 255, 256, 1913 Ida. LEXIS 172, *4

More recently, the Idaho Supreme Court analyzed the discovery rule in I.C. § 5-218(4) and held:

As noted in I.C. § 5-218, the statute does not begin to run in fraud cases "until the discovery" of the fraud. However, actual knowledge of the fraud will be inferred if the allegedly aggrieved party could have discovered it by the exercise of due diligence. It is unnecessary to consider the issue of whether or not there was any fraud (actual or constructive) in this case. If there was any fraud it could have been discovered in the exercise of reasonable diligence at the time it was alleged to have been committed.

The reasoning of the Washington Supreme Court in *Davis v. Harrison* is applicable in this case:

"We hold that this action was barred by the three year statute of limitations, whether appellants had actual knowledge of the various transactions or not, for the reason that the facts were open and appeared upon the records of the corporation, subject to inspection by stockholders. If the stockholders failed to examine the corporate records, they must have been negligent and careless of their own interests. The means of knowledge were open to them, and means of knowledge are equivalent to actual knowledge."

In the present case the intervenors-appellants represent a group who were stockholders in Nancy Lee Mines, Inc. at the time of Assessment Sales 9A and 10A. From the record it appears that these stockholders were notified

of the assessments and of the subsequent assessment sales. The exhibits show that written notices of the assessments and sale upon non-payment were mailed to the last known post office addresses of each and every stockholder of record of the corporation. Notice concerning the assessments was also given by publication. Intervenor-appellants had access to the corporate records by authority of I.C. § 30-144

Nancy Lee Mines v. Harrison, 95 Idaho 546, 547-548, 511 P.2d 828, 829-830, 1973 Ida. LEXIS 308, *4-6.

Here, IDWR could have filed an enforcement action 1) when the March 15, 2019 deadline IDWR had imposed for Plaintiff to “complete construction of the restoration work” lapsed and 2) when Plaintiff gave notice that he objected to the terms of the permit instead of simply “comply[ing] with the terms and conditions” thereof. These actions, or inaction, by Plaintiff should have put a reasonable person on notice of the existence of a claim under I.C. § 42-3809 for violation of the Consent Order.

Likewise, as in *Klein v. Farmers Ins. Co.*, IDWR had a cause of action upon receipt of the Objection. IDWR could have immediately proceeded on an administrative enforcement track, once it was initiated by Plaintiff’s Objection. See I.C. § 42-1701A(3), I.C. § 42-3805, and IDAPA 37.03.07.070. Specifically, once in the administrative track, IDWR could have taken the action authorized under IDAPA 37.03.07.045.02:

02. Failure to Comply with Stream Protection Act. Failure to comply with any of the provisions of the Stream Protection Act (Chapter 38, Title 42, Idaho Code), may result in issuance of an Idaho uniform citation and/ or the cancellation of any permit by the Director without further notice and the pursuit in a court of competent jurisdiction, such civil or criminal remedies as may be appropriate and provided by law. The Director may allow reasonable time for an applicant to complete stabilization and restoration work.

Yet IDWR did not schedule an administrative hearing until November 19, 2021. *See First Amended Action for Declaratory Judgment* ¶ 71. The Enforcement action was initiated over a month later as a counterclaim herein. Both proceedings were well over the two years prescribed in I.C. § 42-3809.

CONCLUSION

Mr. Hastings sought to protect private property from erosion caused by a massive flooding event in 2017, as authorized in *Milbert v. Carl Carbon, Inc.*, 89 Idaho 471, 478, 406 P.2d 113, 117, 1965 Ida. LEXIS 389, *13. He did so in consultation with and at the direction of the local authorities due to a risk of failure to the Warm Springs Bridge just downstream of his property. IDWR represented that an after the fact permit would be summarily issued, as was done for property owners up and down the Big Wood River who suffered similar damage to their property as a result of the same flood. Instead, IDWR singled out Mr. Hastings for a Notice of Violation and dragged him around for years through a bureaucratic morass. However, in this overwhelming and unjustified use of governmental resources, IDWR apparently lost track of its own self-imposed deadlines and the applicable statute of limitations. Therefore, the final step to put this matter to rest is a Judgment informing IDWR that its years of harassment of Mr. Hastings must now come to a close.

DATED this 8th day of March, 2022.

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 8th day of March, 2022, I caused to be served the foregoing Memorandum in Support of Motion for Summary 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