

J. KAHLE BECKER (ISB # 7408)

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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

**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, and pursuant to IRCP 56 Plaintiff files his Motion for Summary Judgment as follows.

1. This Motion is supported by a Memorandum filed concurrently herewith, the *Stipulation on Facts for Motion Practice Re: Statute of Limitations* filed herein on February 8, 2022, and the record in this case.

2. Plaintiff’s alleged violation of the Stream Channel Alteration Act, which is the subject of this litigation, occurred in the summer of 2017.

3. The Consent Order in this matter and IDWR's purported extension thereof, indicated Mr. Hastings should complete construction of a streambank restoration project on or before March 15, 2019.

4. By May 21, 2019 Plaintiff had not completed the construction of the streambank restoration.

5. Also, on May 21, 2019 Plaintiff gave formal notice that he objected to certain requirements in the Conditional Approval of Joint Application for Permits issued by IDWR.

6. The statute of limitations for IDWR to commence an enforcement action pursuant to Idaho Code § 42-1701B or Idaho Code § 42-3809 is two years after the date the director had knowledge or ought reasonably to have had knowledge of the violation of the consent order. Idaho Code § 42-3809.

7. IDWR was aware, or should have been aware, that Plaintiff would not complete the streambank restoration on or before May 21, 2019.

8. IDWR did not bring an enforcement action pursuant to Idaho Code § 42-1701B or Idaho Code § 42-3809 against Plaintiff until it filed its counterclaim in this matter on December 21, 2021, approximately 7 months after the statute of limitations expired.

9. Therefore, IDRW did not timely file its Idaho Code § 42-3809 enforcement action.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 8th day of March, 2022, I caused to be served the foregoing 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