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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

**DEFENDANT’S MEMORANDUM IN
SUPPORT OF CROSS-MOTION FOR
SUMMARY JUDGMENT AND IN
OPPOSITION TO PLAINTIFF’S
MOTION FOR SUMMARY
JUDGMENT**

Defendant, the STATE OF IDAHO DEPARTMENT OF WATER RESOURCES,
 (“Department”), through its counsel of record, and pursuant to the *Scheduling Order* filed
 in this matter on February 9, 2022, I.R.C.P. 56 and 7(b)(3), and Local Rules 8.1, 8.2, and
 8.4, and § C(1)–(3) of the Order for Scheduling Conference and Order Re: Motion Practice
 filed in this matter on December 15, 2021, submits the following *Defendant’s*

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Memorandum in Support of Cross-Motion for Summary Judgment and in Opposition to Plaintiff's Motion for Summary Judgment (“*Memorandum in Support*”). Filed concurrently with this *Memorandum in Support* are *Defendant's Cross-Motion for Summary Judgment* and *Defendant's Statement of Facts in Support of Cross-Motion for Summary Judgment and in Opposition to Plaintiff's Motion for Summary Judgment*.

I. INTRODUCTION

The issue in this case is whether the Department is time barred from enforcing the January 26, 2018 Consent Order and Agreement (“Consent Order”). First Am. Action for Decl’ry J. Ex. A. The Department asks the Court to grant summary judgment in its favor on the grounds that the Department is not time barred from enforcing the Consent Order. The Department is entitled to judgment as a matter of law because the earliest a cause of action accrued was November 15, 2021, the date Mr. Hastings filed the *Action for Declaratory Judgment* in this matter. Further, the Department is entitled to judgment as a matter of law because the controlling statute of limitation does not time bar the Department’s counterclaim.

II. STANDARD OF REVIEW

Summary judgment is appropriate only when the pleadings, depositions, affidavits, and admissions on file show that there is no genuine issue of material fact, and the movant is entitled to judgment as a matter of law. I.R.C.P. 56(c); *see also Indep. Sch. Dist. Boise City v. Harris Family Ltd. P'ship*, 150 Idaho 583, 587, 249 P.3d 382, 386 (2011) (citing I.R.C.P. 56(c)). In a summary judgment motion “the non-moving party is entitled to have all inferences from the record viewed in his favor.” *Young v. City of Ketchum*, 137 Idaho 102, 104, 44 P.3d 1157, 1159 (2002). Where, as in this matter, “an action will be tried

before the court without a jury, the judge is not constrained to draw inferences in favor of the party opposing the motion for summary judgment but rather the trial judge is free to arrive at the most probable inference to be drawn from uncontroverted evidentiary facts.” *Loomis v. City of Hailey*, 119 Idaho 434, 437, 807 P.2d 1272, 1275 (1991).

“The fact that the parties have filed cross-motions for summary judgment does not change the applicable standard of review, and this Court must evaluate each party’s motion on its own merits.” *McFadden v. Sein*, 139 Idaho 921, 923, 88 P.3d 740, 742 (2004) (quoting *Intermountain Forest Mgmt., Inc. v. Louisiana Pacific Corp.*, 136 Idaho 233, 235, 31 P.3d 921, 923 (2001)).

III. ARGUMENT

There are no genuine issues of material fact regarding the statute of limitations issue raised by Mr. Hastings. The narrow question of law presented here is whether the statute of limitations in Idaho Code § 42-3809 bars the Department from enforcing the Consent Order. “A cause of action accrues and the statute of limitations begins to run when a cause of action exists.” *Lido Van & Storage, Inc. v. Kuck*, 110 Idaho 939, 942, 719 P.2d 1199, 1202 (1986). A cause of action on the Consent Order accrues when a party does not comply with the terms of the consent order. *See* I.C. § 42-1701B (“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.”).

Mr. Hastings claims he violated the Consent Order, thereby triggering the running of the statute of limitations under Idaho Code § 42-3809, when he did not complete the required stream bank restoration by December 31, 2018. Mem. Supp. Mot. for Summ. J. at

9 [hereinafter Memo]. However, the plain language of the Consent Order does not support Mr. Hasting's assertion that December 31, 2018, was the deadline to complete restoration work. The Consent Order states "[t]he Department agrees to refund [Mr. Hastings] \$7,500 of the civil penalty if [Mr. Hastings] successfully completes the restoration plan by December 31, 2018 and meets the requirements of Order paragraph 1-3." Consent Order at 2. The December 31, 2018 deadline was for Mr. Hastings to receive a partial refund of the penalty for completing the work by a date certain. This financial incentive to get the work done sooner does not constitute a final deadline for the work to be completed and cannot be construed to mean that Mr. Hastings would be in violation of the Consent Order by not completing all restoration work by December 31, 2018. Therefore, it is not reasonable for Mr. Hastings to claim that he is relieved of his obligation to complete the restoration work simply because more than two years have passed since the expiration of the Department's financial incentive deadline.

Mr. Hastings also claims he violated the Consent Order by objecting to the terms of Stream Channel Alteration Permit (S37-20565) ("Permit") and requesting a hearing.

Memo at 10–11. The Consent Order states Mr. Hastings "shall comply with the terms and conditions of any permit the Department issues subsequent to the submittal of an acceptable application and restoration plan." Consent Order at 2. Mr. Hastings states his objection to the Permit accrued a cause of action "when Plaintiff gave notice that he objected to the terms of the permit instead of simply 'comply[ing] with the terms and conditions' thereof." *Memo* at 13. Mr. Hastings' argument seems to imply that, through the Consent Order, he signed away his right to request a hearing on any eventual permit and that's why requesting a hearing was a violation of the Consent Order. However, the

Consent order says nothing of the kind. The plain language of the Consent Order merely requires a permit application, which by law allows for a hearing on any subsequent permit.

Mr. Hasting's request for hearing on the Permit, therefore, cannot be a violation of the Consent Order. The Permit was issued pursuant to Idaho Code § 42-3805. *Permit* at 1. In addition to providing the Department authority to issue a stream channel alteration permit, Idaho Code § 42-3805 allows the applicant to request a hearing before the Idaho Water Resource Board in accordance with Chapter 52, Title 67, of Idaho Code. Mr. Hastings requested a hearing pursuant to Idaho Code § 42-3805. First Am. Action for Decl'ry J. Ex. B at 1.

Mr. Hastings' hearing request is statutorily authorized, and the Department is statutorily obligated to provide a hearing on a stream channel alteration permit when an applicant timely requests one. I.C. § 42-3805. Asserting the legal right to have a hearing is not and cannot be a breach of the Consent Order. Further, despite Mr. Hastings' implications, any limitation on Mr. Hastings' rights to a hearing in the Consent Order would be void. *See* I.C. § 29-110(1) ("Every stipulation or condition in a contract, by which any party thereto is restricted from enforcing his rights under the contract in Idaho tribunals, or which limits the time within which he may thus enforce his rights, is void as it is against the public policy of Idaho."). The Permit informed Mr. Hastings he could request a hearing. *Permit* at 5. Mr. Hastings has voluntarily taken advantage of a statutorily authorized option to request a hearing before the Idaho Water Resource Board on the approved permit.¹ Such a request does not violate the Consent Order.

¹ The request for hearing is an open and pending administrative matter before the Idaho Water Resource Board.

Furthermore, the Consent Order does not have a specified time for full performance. “Where no time is expressed in a contract for its performance, the law implies that it shall be performed within a reasonable time as determined by the subject matter of the contract, the situation of the parties, and the circumstances attending the performance.” *Curzon v. Wells Cargo, Inc.*, 86 Idaho 38, 43, 382 P.2d 906, 908 (1963). When Mr. Hastings filed his request for hearing, it was reasonable for the Department to believe that Mr. Hastings intended to complete the stream channel restoration pursuant to the Consent Order once a hearing had been held on the Permit.

While the actions Mr. Hastings cites did not accrue a cause of action, a cause of action *did* accrue when Mr. Hastings’ filed his *Action for Declaratory Judgment* on November 15, 2021. Until the *Action for Declaratory Judgment*, the Department reasonably believed Mr. Hastings was participating in the process to get resolution on the Permit and complete the required restoration. The *Action for Declaratory Judgment* was the first official statement by Mr. Hastings that he did not intend to perform the stream channel restoration as required by the Consent Order. By affirmatively stating his intent to defy the Consent Order in the *Action for Declaratory Judgment*, he has breached the agreement. Thirty-six days passed between accrual of a cause of action on November 15, 2021, and the Department filing its counterclaim on December 21, 2021. Thirty-six days is well within any applicable statute of limitations.

IV. CONCLUSION

The earliest a cause of action could have accrued on the Consent Order was when Mr. Hastings filed his *Action for Declaratory Judgment* on November 15, 2021.

Therefore, no statute of limitations has tolled, and the Department asks the court to deny

Mr. Hastings' summary judgment motion and instead grant the Department's cross-motion for summary judgment.

DATED this 5th day of April 2022.

A handwritten signature in black ink, appearing to read "Meghan M. Carter", written over a horizontal line.

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


CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 5th day of April 2022, I caused to be served a true and correct copy of the foregoing *Defendant's Memorandum in Support of Cross-Motion for Summary Judgment and in Opposition to Plaintiff's Motion for Summary Judgment* via iCourt E-File and Serve, upon the following:

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- Overnight Mail
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Attorney for Plaintiff John Hastings



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