

J. KAHLE BECKER (ISB # 7408)

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Attorney for Plaintiff/Counterdefendant/Appellant

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/Counterdefendant,

vs.

THE STATE OF IDAHO DEPARTMENT OF
WATER RESOURCES, a Political
Subdivision of the STATE OF IDAHO

Defendant/Counterclaimant.

Case No. CV01-21-17825

NOTICE OF APPEAL

Supreme Court No. 50273-2022

**TO: THE ABOVE-NAMED DEFENDANT/COUNTERCLAIMANT/
RESPONDENT AND ITS ATTORNEYS OF RECORD, MEGHAN
CARTER AND GARRICK BAXTER OF THE IDAHO OFFICE OF THE
ATTORNEY GENERAL, IDAHO DEPARTMENT OF WATER
RESOURCES, P.O. BOX 83720 BOISE, IDAHO 83720-0098 AND THE
CLERK OF THE ABOVE-ENTITLED COURT.**

NOTICE IS HEREBY GIVEN THAT:

1. The above-named Plaintiff/Counterdefendant/Appellant, John Hastings, Jr. (“Mr. Hastings”), by and through his attorney of record, J. Kahle Becker, appeals against the above-named Respondents, The State of Idaho Department of Water Resources. (“IDWR”), to the Idaho Supreme Court from the district court’s October 3, 2022 IRCP

54(b) *Partial Judgment*, (Attached hereto as Exhibit A) Honorable Lynn Norton presiding.

2. Mr. Hastings has a right to appeal to the Supreme Court, and Judgment described in Paragraph 1, above, is appealable pursuant to Rule 11(a)(3), Idaho Appellate Rules and IRCP 54(b).

3. A preliminary statement of the issues on appeal which Mr. Hastings intends to assert in the appeal (which does not prevent Mr. Hastings from asserting other issues) is as follows:

- a. Whether the district court erred in determining that the two-year statute of limitations in Idaho Code § 42-3809 did not begin to start running as of May 2019.
- b. Whether the district court erred in taking judicial notice of certain records, despite the clear stipulation of the parties to have the issue of the application of the statute of limitations in Idaho Code § 42-3809 decided on a limited record.

4. There is no order sealing any portion of the record in this case.

5. The Appellant requests that a copy of the transcripts, in electronic format, from all hearings and conferences conducted in this matter be prepared. This includes, but is not limited to, copies of the transcripts of the following hearings:

- a. The scheduling conference held 2/8/22
- b. The hearing held 7/12/22
- c. The hearing held 7/25/22

6. The Appellant requests that all pleadings, notices, motions, memoranda, objections, disclosures, affidavits, declarations, exhibits, attachments, stipulations, orders, decisions, and any other documents filed in this case, along with other documents in the clerk's record automatically included Rule 28 of the Idaho Appellate Rules, be made part of the record (Reflected in Exhibit B), in chronological order.

7. I certify:

- a. That a copy of this notice of appeal has been served on each reporter of whom a transcript has been requested as named below at the addresses set out below:

Leigh Regan
3303 S. Saxony Ave.
Eagle, ID 83616
Leigh.Regan@canyoncounty.id.gov

Susan Sims
2867 S. Groom Way,
Meridian, ID 83642
ssims@adacounty.id.gov

- b. That the clerk of the district court has been contacted to request the estimated fee for preparation of the reporter's transcripts and the fee of \$262.75 has been paid.
- c. That the estimated fee of \$100 for preparation of the clerk's record has been paid. The remaining balance will be paid promptly after the amount is provided to me.
- d. That the appellate filing fee of \$129 has been paid.
- e. That service has been made upon all parties required to be served pursuant to Rule 20 of the Idaho Appellate Rules.

DATED this 11th day of November, 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 11th day of November, 2022, I caused to be served the foregoing *Notice of Appeal* the following persons:

Meghan Carter and Garrick Baxter
Attorney for Defendant,
Idaho Department of Water Resources
garrick.baxter@idwr.idaho.gov
meghan.carter@idwr.idaho.gov

via I-Court/Odyssey

/s/ J. Kahle Becker
J. KAHLE BECKER
Attorney for the Plaintiff/Counterdefendant

EXHIBIT A

**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/Counterdefendant,

Case No. CV01-21-17825

vs.

PARTIAL JUDGMENT

THE STATE OF IDAHO DEPARTMENT OF
WATER RESOURCES, a Political
Subdivision of the STATE OF IDAHO

Defendant/Counterclaimant.


JUDGMENT IS ENTERED AS FOLLOWS:

1. Judgment is entered against Plaintiff/Counterdefendant John Hastings, Jr. since the earliest reasonable deadline pursuant to Idaho Code 42-3809 for the State of Idaho Department of Water Resources to file an enforcement action for Plaintiff's/Counterdefendant's alleged violations of the January 26, 2018 Consent Order, when viewed in the light most favorable for the Plaintiff, was December 31, 2021.
2. Judgment is entered in favor of Defendant/Counterclaimant Idaho Department of Water Resources since the earliest reasonable deadline pursuant to Idaho Code 42-3809 for the State of Idaho Department of Water Resources to file an enforcement action for Plaintiff's/Counterdefendant's alleged violations of the January 26, 2018 Consent Order, when viewed in the light most favorable for the Plaintiff, was December 31, 2021.
3. The remaining portions of this case are stayed pending a decision on appeal.

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above partial judgment it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above partial judgment is a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.

DATED this 30th day of September, 2022.



Lynn Norton,
District Judge

CERTIFICATE OF SERVICE


I HEREBY CERTIFY that on **10/3/2022 8:54:52 AM**, I caused to be served the foregoing *Partial Judgment* to the following persons:

Jacob Kahle Becker kahle@kahlebeckerlaw.com E-mail

Garrick L. Baxter garrick.baxter@idwr.idaho.gov E-mail

Meghan M. Carter meghan.carter@idwr.idaho.gov E-mail

Phil McGrane, Clerk of Court

By: 
Janine Korson
Deputy Clerk



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 31st day of August, 2022, I caused to be served the foregoing *Motion to Continue – Filed in the Alternative* to the following persons:

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

EXHIBIT B

Case Information

CV01-21-17825 | John Hastings Plaintiff, vs. Idaho Department of Water Resources Defendant.

Case Number CV01-21-17825	Court Ada County District Court	Judicial Officer Norton, Lynn G.
File Date 11/15/2021	Case Type AA- All Initial District Court Filings (Not E, F, and H1)	Case Status Inactive Pending- (Stay)

Disposition Events

10/03/2022 Judgment ▼

Judicial Officer
Norton, Lynn G.

Judgment Type
Partial Judgment Ordered

Events and Hearings

11/15/2021 New Case - District Civil
11/15/2021 Complaint Filed ▼ Comment Action for Declaratory Judgment
11/15/2021 Civil Case Information Sheet
11/18/2021 Summons Issued ▼ Comment and Filed

11/18/2021 Summons ▼ Served 12/02/2021
11/22/2021 Order of Voluntary Disqualification ▼ Judicial Officer Yee-Wallace, Cynthia
11/23/2021 Notice of Judge Assignment Change ▼ Comment Case Reassigned to Judge Lynn Norton
12/02/2021 Notice of Appearance ▼ Comment (Baxter and Carter for Defendant)
12/02/2021 Acceptance of Service ▼ Comment 12/02/2021
12/06/2021 Amended ▼ Comment First Amended Action for Declaratory Judgment
12/09/2021 Notice of Service of Discovery Requests ▼ Comment First Set of Discovery to IDWR
12/15/2021 Order ▼ Comment for Scheduling Conference & Order Re: Motion Practice
12/20/2021 Stipulation for Scheduling and Planning
12/21/2021 Answer ▼ Comment Defendant's Answer to First Amended Action for Declaratory Judgment and Counterclaim
12/23/2021 Demand for Jury Trial ▼

Comment
& Motion for Amended Scheduling Order & to Continue Scheduling Conference

12/29/2021 Answer ▼

Comment
to Counterclaim

01/04/2022 Scheduling Conference ▼

Original Type
Scheduling Conference

Judicial Officer
Norton, Lynn G.

Hearing Time
2:30 PM

Result
Hearing Continued

01/04/2022 Court Minutes ▼

Judicial Officer
Norton, Lynn G.

01/04/2022 Order ▼

Comment
Resetting Scheduling Conference

01/10/2022 Notice of Service

02/04/2022 Stipulation ▼

Comment
and Joint Motion to Bifurcate Issues and Request for a Briefing Schedule and Oral Argument

02/08/2022 Scheduling Conference ▼

Original Type
Scheduling Conference

Judicial Officer
Norton, Lynn G.

Hearing Time
2:30 PM

Result
Hearing Held

Parties Present ▲
Plaintiff

Attorney of Record: Becker, Jacob Kahle

Defendant

Attorney of Record: Carter, Meghan M.

02/08/2022 Court Minutes ▼

Judicial Officer
Norton, Lynn G.

02/08/2022 Stipulation ▼

Comment
of Facts for Motion Practice Re: Statute of Limitations

02/09/2022 Scheduling Order

03/08/2022 Motion for Summary Judgment

03/08/2022 Memorandum In Support of Motion ▼

Comment
for Summary Judgment

03/28/2022 Motion ▼

Comment
Stipulation and Joint Motion for an Extension of Time to File Briefs and to Vacate and Reset Hearing

04/05/2022 Motion for Summary Judgment ▼

Comment
Defendant's Cross-Motion for Summary Judgment

04/05/2022 Statement ▼

Comment
Defendant's Statement of Facts in Support of Cross-Motion for Summary Judgment and in Opposition to Plaintiff's Motion for Summary Judgment

04/05/2022 Memorandum In Support of Motion ▼

Comment
Defendant's Memorandum in Support of Cross-Motion for Summary Judgment and in Opposition to Plaintiff's Motion for Summary Judgment

04/07/2022 Stipulation ▼

Comment
Second Stipulation and Joint Motion for an Extension of Time to File Briefs and to Vacate and Reset Hearing

04/13/2022 Order ▼

Comment

Granting Second Joint Motion for an Extension of Time to File Briefs and to Vacate and Reset Hearing

04/26/2022 Motion ▼

Comment

to Strike and Objection to Defendants Request to Take Judicial Notice

04/26/2022 Memorandum In Support of Motion ▼

Comment

of Motion to Strike and Objection to Request to Take Judicial Notice

04/26/2022 Notice of Remote Hearing ▼

Comment

(05/10/2022 @ 4:00 PM) Motion to Strike and Objection to Request to Take Judicial Notice

04/26/2022 Motion to Continue ▼

Comment

in the Alternative

04/26/2022 Declaration in Support of Motion ▼

Comment

of Counsel in Support of Motion to Strike

04/26/2022 Notice of Remote Hearing ▼

Comment

(05/10/2022 @ 4:00 PM) Motion to Continue Filed in the Alternative

04/26/2022 Response ▼

Comment

to Defendants Cross Motion for Summary Judgment

05/03/2022 Opposition to ▼

Comment

Defendant's Opposition to Plaintiff's Motion to Strike and Motion to Continue in the Alternative

05/06/2022 Order ▼

Comment

Vacating and Resetting Hearing

05/06/2022 Reply ▼

Comment

Defendant's Reply Brief on Cross-Motion for Summary Judgment

05/09/2022 Order ▼

Comment

Denying Motion to Strike and Granting in Part Motion to Continue

05/10/2022 Motion for Summary Judgment ▼

Judicial Officer

Norton, Lynn G.

Hearing Time

4:00 PM

Cancel Reason

Vacated

05/25/2022 Motion ▼

Comment

for Reconsideration of Motion to Continue - in the Alternative

05/25/2022 Response ▼

Comment

Supp to Def Cross Motion for Summary Judgment

05/25/2022 Notice of Hearing ▼

Comment

6.7.22 @ 4pm

05/25/2022 Miscellaneous ▼

Comment

Amended Action for Dec Jmt Verification

05/25/2022 Miscellaneous ▼

Comment

Answer to Counterclaim Verification

06/01/2022 Opposition to ▼

Comment

to Motion for Reconsideration

06/01/2022 Supplemental Brief Filed ▼

Comment

Defendant's Supplemental Reply Brief in Support of Opposition to Motion for Reconsideration and Defendant's Cross-Motion for Summary Judgment

07/12/2022 Motion for Summary Judgment ▼

Original Type

Motion for Summary Judgment

Judicial Officer

Norton, Lynn G.

Hearing Time

4:00 PM

Result

Hearing Held

07/12/2022 Court Minutes ▼

Judicial Officer

Norton, Lynn G.

07/25/2022 Motion for Summary Judgment ▼

Original Type

Motion for Summary Judgment

Judicial Officer

Norton, Lynn G.

Hearing Time

2:30 PM

Result

Hearing Held

Comment

and Motion to Reconsider

Parties Present ▲

Plaintiff

Attorney of Record: Becker, Jacob Kahle

Defendant

Attorney of Record: Carter, Meghan M.

07/25/2022 Court Minutes ▼

Judicial Officer

Norton, Lynn G.

08/24/2022 Memorandum ▼

Comment Decision and Order on Cross Motions for Summary Judgment
08/24/2022 Scheduling Order ▼ Comment Scheduling Conference Notice
08/31/2022 Stipulation for Entry of Judgment
09/06/2022 Motion ▼ Comment for Entry of Partial Judgment and for Permissive Appeal
09/06/2022 Civil Notice of Hearing ▼ Comment October 4 2022 at 2:30 pm Motion for Entry of Partial Judgment and for Permissive Appeal
09/19/2022 Notice ▼ Comment of Non-opposition
10/03/2022 Partial Judgment Or Opinion Filed
10/04/2022 Scheduling Conference ▼ Judicial Officer Norton, Lynn G. Hearing Time 2:30 PM Cancel Reason Vacated Comment Motion for Entry of Partial Judgment and for Permissive Appeal