

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/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

**MOTION TO CONTINUE –
FILED IN THE ALTERNATIVE**

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 filed certain documents into the record in violation of several stipulations and joint motions of the parties in an attempt to oppose Plaintiff’s *Motion for Summary Judgment* and in support of IDWR’s *Cross Motion for Summary Judgment*, Plaintiff having Objected pursuant to IRE 201(e), 602, 802, 901(b)(7), and IRCP 56(c)(2) and Moved to Strike those documents and any reference to the contents thereof pursuant to IRCP 12(f)(2), now files its Motion to Continue the Hearing on Plaintiff’s Motion for Summary Judgment and Defendant’s Cross Motion for Summary Judgment pursuant to IRCP 56(d) – in the Alternative, as follows:

This Motion is supported by the *Declaration of Counsel* and *Memorandum in Support* filed concurrently herewith, as well as the record in this case.

- 1) Defendant has precluded Plaintiff from a) introducing its own evidence beyond the factual record referenced in the parties' *Stipulation on Facts for Motion Practice Re: Statute of Limitations* filed on February 8, 2022; and b) conducting discovery on matters related to the documents Defendant attached to *Defendant's Statement of Facts in Support of Cross-Motion for Summary Judgment and in Opposition to Plaintiff's Motion for Summary Judgment*. Defendant also convinced Plaintiff to waive his right to a jury trial on the issue of the applicability of the Statute of Limitations in I.C. § 42-3809. *See also Declaration of Counsel*.
- 2) Should the Court grant Defendant's request to take judicial notice of the documents Defendant attached to *Defendant's Statement of Facts in Support of Cross-Motion for Summary Judgment and in Opposition to Plaintiff's Motion for Summary Judgment* and not strike them or any reference thereto from the record in this case, Plaintiff hereby requests this Court continue the hearing on Plaintiff's *Motion for Summary Judgment* as well as *Defendant's Cross Motion for Summary Judgment* until such time as Plaintiff has completed its discovery regarding the documents attached to *Defendant's Statement of Facts in Support of Cross-Motion for Summary Judgment and in Opposition to Plaintiff's Motion for Summary Judgment* as they relate to the applicability of the Statute of Limitations found in I.C. § 42-3809. *See Declaration of Counsel ¶ 31 & 32*.

3) Plaintiff further requests Defendant IDWR bear the costs associated with the limited discovery due to its violation of the stipulations of the parties pursuant to IRCP 11(b), 11(c)(1) and 11(c)(3).

WHEREFORE: Pursuant to IRCP 56(d), Plaintiff Moves this Court to grant a continuance in order to allow Plaintiff to conduct limited discovery and, if not ordered on the Court's own initiative pursuant to IRCP 11(c)(3), provide Plaintiff the opportunity to file a Motion pursuant to IRCP 11(c)(2) seeking an order directing IDWR to pay for the costs and legal fees associated therewith.

DATED this 26th day of April, 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 26th day of April, 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