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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/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

**DEFENDANT’S OPPOSITION TO
PLAINTIFF’S MOTION TO STRIKE
AND MOTION TO CONTINUE IN
THE ALTERNATIVE**

Defendant/Counterclaimant, the State of Idaho Department of Water Resources (“Department”), through its counsel of record, pursuant to I.R.C.P. 7(b)(3)(B) submits *Defendant’s Opposition to Plaintiff’s Motion to Strike and Motion to Continue in the Alternative.*

BACKGROUND

The Department and Plaintiff, John Hastings Jr. (“Mr. Hastings”), filed a stipulated statement of facts in this case on February 8, 2022. The Facts specifically discuss the stream channel permit conditionally approved by the Department— “On May 17, 2019, the Department issued its Conditional Approval of Joint Application for Permits (S37-20565) [(“Permit”)].” Stip. Facts for Mot. Prac. Re: Statute Limits ¶ 18 [hereinafter Facts]. The Facts also note that Mr. Hastings objected to some aspects of the Permit. *See Facts* ¶ 19.

On March 8, 2022, Mr. Hastings filed a *Motion for Summary Judgment* and *Memorandum in Support of Summary Judgment*. On March 28, 2022, the parties entered into a stipulation giving the Department a one-week extension to “file any response brief and opposing memoranda.” Stip. & Joint Mot. for Extension Time to File Brs. & Vacate & Reset Hr’g at 2 [hereinafter Stipulation].

On April 5, 2022, the Department filed, among other documents, *Defendant’s Statement of Facts in Support of Cross-Motion for Summary Judgment and in Opposition to Plaintiff’s Motion for Summary Judgment* (“Defendant’s SOF”). In Defendant’s SOF, the Department requested that the Court take judicial notice of the Permit discussed in the Facts. *Defendant’s SOF* at 2. The Department attached a certified copy of the Permit to Defendant’s SOF. *Id.*

In response to the Department’s request that the Court take judicial notice of the Permit, on April 26, 2022, Mr. Hastings filed a *Motion to Strike and Objection to Defendant’s Request to Take Judicial Notice* (“Strike Motion”) and a *Motion to Continue – Filed in the Alternative* (“Continue Motion”). In support of his Strike Motion, Mr.

Hastings also filed a *Memorandum in Support of Motion to Strike and Objection to Defendant's Request to Take Judicial Notice* (“Memo”) and a *Declaration of Counsel*.

ARGUMENT

Mr. Hastings contends that the Permit is extraneous to the Facts and its consideration at this phase in the case is barred by the parties’ various stipulations. *Memo* at 10. The Department disagrees. Through his filings, Mr. Hastings fully admits the Permit exists and was issued to him. *See* First Amended Action for Decl’y. J. ¶¶ 38–40; *Facts* ¶¶ 18, 19; Mem. Supp. Mot. for Summ. J. at 10–14. Yet, Mr. Hastings claims the Department is attempting “to pad the record with complex factual assertions, while denying Plaintiff the ability to conduct discovery into those assertions, and to have the case decided by a jury of Plaintiff’s peers.”¹ *Memo* at 7. The “complex factual assertions” Mr. Hastings refers to are simply the Permit, the Permit Mr. Hastings agrees exists and was issued to him.²

The Department wholeheartedly agrees with Mr. Hastings’ arguments that the Facts and Stipulation are binding on the parties. The Idaho Supreme Court has held that parties to a stipulation “are not in a position to later challenge those facts or evidence.” *Firmage v. Snow*, 158 Idaho 343, 348, 347 P.3d 191, 196 (2015). Further, “[a]s a general rule,

¹ The current issue before the court is a question of law and a jury does not make determinations on questions of law. *See Question of Law, Black’s Law Dictionary* (11th ed. 2019) (“An issue to be decided by the judge, concerning the application or interpretation of the law <a jury cannot decide questions of law, which are reserved for the court>”).

² Mr. Hastings refers to “documents” several times in his *Memo*. *Memo* at 1,3, 15. However, there is only one document at issue, the Permit. The Permit includes a copy of portions of IDAPA 37.03.07, Mr. Hastings’ application for permit, and the restoration plan submitted with the application. *See Defendant’s SOF* attach. (Permit in its entirety). Those separate pieces are all part of the whole Permit.

stipulations of parties or counsel made in pending proceedings are conclusive as to all matters properly contained or included therein.” *Koron v. Myers*, 87 Idaho 567, 573, 394 P.2d 634, 638 (1964). The Department is not challenging any stipulated facts. The Department is supplementing those facts with the actual Permit both parties agree exists and have discussed in their filings. Mr. Hastings is the one challenging the stipulated facts by claiming the Permit is extraneous evidence and seeking to have it stricken from the record. Judicially noticing the Permit would not be in contravention to the parties’ stipulations.

To the extent the Court wants to rely on the Permit when deciding the narrow legal question regarding statute of limitations, it is proper for the Court to do so. I.R.E. 201(b) says “the court may judicially notice a fact that is not subject to reasonable dispute because it . . . (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.” I.R.E. 902 provides a list of items of evidence that are self-authenticating and require no extrinsic evidence of authenticity to be admitted. A copy of an official record that is certified as correct by a person authorized to make the certification is number four on that list. *See* I.R.E. 902(4).

Mr. Hastings argues that the Permit is not within the scope of I.R.E. 201 and does “not meet other evidentiary standards governing the admission of evidence at the summary judgment stage.” *Memo* at 12. The copy of the Permit the Department provided with Defendant’s SOF was certified by the Department’s State Coordinator for the Stream Protection Program, the person who issued the permit. Despite Mr. Hastings’ accusations in footnote 2 of the Memo, certification of the Permit was proper. It was certified by the

custodian of the Document in the manner normally used by the Department. The authenticity of the provided copy of the Permit has been established and the requirements of I.R.E. 201(b) and I.R.E. 902 have been met. Therefore, pursuant to I.R.E. 201(c) the Court must take judicial notice of the Permit.

In his Continue Motion, Mr. Hastings asks the Court to grant a continuance for limited discovery if the Court takes judicial notice of the Permit. *Continue Motion* at 2. Mr. Hastings seeks to determine how the Permit “relate[s] to the applicability of the Statute of Limitations found in I.C. § 42-3809.” *Id.* This motion should be denied. The Permit was mentioned in the Facts and was discussed in Mr. Hastings’ *Memorandum in Support of Motion for Summary Judgment*. See *Facts* ¶¶ 18, 19; Mem. Supp. Mot. for Summ. J. at 10–14. If Mr. Hastings thought there were additional details contained in the Permit relevant to the statute of limitations, he had many opportunities to explore those details already and should not need additional discovery at this stage. Any issues Mr. Hastings has related to the circumstances leading up to issuance of the Permit can be explored in the second phase of this litigation. The Permit speaks for itself, and further discovery is not needed.

CONCLUSION

Taking judicial notice of the Department’s May 17, 2019 Conditional Approval of Joint Application for Permits (S37-20565) would be in accordance with I.R.E. 201 and 902. Should the Court take judicial notice of the Conditional Approval of Joint Application for Permits (S37-20565), additional time for discovery would not be warranted before a determination is made on this limited issue. The Department respectfully asks the

Court to deny Mr. Hastings' *Motion to Strike and Objection to Defendant's Request to Take Judicial Notice and Motion to Continue – Filed in the Alternative.*

DATED this 3rd day of May 2022.

A handwritten signature in black ink, appearing to read "Meghan 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 3rd day of May 2022, I caused to be served a true and correct copy of the foregoing *Defendant's Opposition to Plaintiff's Motion to Strike and Motion to Continue in the Alternative* via iCourt E-File and Serve, upon the following:

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- U.S. Mail, postage prepaid
- Hand Delivery
- Overnight Mail
- Facsimile
- iCourt E-File and Serve

*Attorney for Plaintiff/Counterdefendant
John Hastings*



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