

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,

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 ENTRY OF PARTIAL
JUDGMENT AND FOR PERMISSIVE
APPEAL**

Comes now Plaintiff, John Hastings, Jr. through his undersigned attorney of record, in accordance with I.R.C.P. Rule 7, IRCP 54(b), and IAR 12(a) to move the Court for the entry of a partial Judgment and to initiate a permissive appeal as follows:

The Joint Motion and Stipulation, filed February 3, 2022, provided:

The parties believe that it is the economic interest of the parties and the court to rule on the applicability of the two-year statute of limitations contained in Idaho Code § 42-3809 to this matter before moving forward with a trial on the other issues. Thereafter, should either party decide to appeal the Court's decision on the applicability of the two-year statute of limitations contained in Idaho Code § 42-3809, the parties agree the Court can issue an IRCP 54(b) Certificate of Partial Judgment as to its ruling. In the event of an appeal, all other matters would be stayed pending a decision on said appeal.

On August 24, 2022 this Court issued its *Memorandum Decision and Orders on Cross Motions for Summary Judgment* which held:

Based on the foregoing analysis, the Court finds the Department timely filed its enforcement action under Idaho Code § 42-3809 within the two-year statute of limitations. Therefore, Plaintiffs Motion for Summary Judgment, filed March 8, 2022, is DENIED. Defendant's Cross-Motion for Summary Judgment, filed April 5, 2022, is GRANTED. August 24, 2022 *Memorandum Decision and Orders on Cross Motions for Summary Judgment* at 18.

The actions contemplated by the parties *Joint Motion and Stipulation to Bifurcate* have now occurred and it is appropriate to permit an appeal of this novel issue of law, regarding the application of the two-year statute of limitations in Idaho Code § 42-3809, to the Idaho Supreme Court.

Consistent with the February 3, 2022 Joint Motion and Stipulation, the parties filed a *Stipulation for Entry of Partial Judgment* on August 31, 2022. However, the Court has yet to act upon the Stipulation or enter a Partial Judgment as requested by the parties.

The Court has itself recognized this case involves a novel issue regarding the application of the two-year Statute of Limitations found in Idaho Code § 42-3809. This novel issue, along with the Stipulations of the parties acknowledging the same, constitutes ample grounds for granting this Motion, as contemplated by IAR 12(a) which requires a case to “involve[] a controlling question of law as to which there is substantial grounds for difference of opinion and in which an immediate appeal from the order or decree may materially advance the orderly resolution of the litigation.”

The remaining portions of this case will involve expert witness testimony from experts in a variety of fields. Numerous depositions will need to be conducted. Continuing this litigation without guidance from the Supreme Court as to the application of the two-year

Statute of Limitations found in Idaho Code § 42-3809 could result in the unnecessary expenditure of enormous sums of money, a waste of judicial resources, as well as the time of at least 12 jurors.

Oral argument is requested on this Motion Entry of Partial Judgment and for Permissive Appeal.

WHEREFORE, pursuant to IRCP 54(b), IAR 12(a) and (b) and the Stipulations of the Parties, the Plaintiff requests the Court:

- 1) Enter Partial Judgment with an accompanying IRCP 54(b) certificate.
- 2) Stay the remaining portions of this case pending disposition on appeal.

DATED this 6th day of September 2022.

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 6th day of September 2022, I caused to be served a true and correct copy of the foregoing *Motion for Entry of Partial Judgment and for Permissive Appeal* via iCourt E-File and Serve, upon the following:

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