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ATTORNEY GENERAL

SCOTT L. CAMPBELL
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Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF

THE STATE OF IDAHO, IN AND FOR THE COUNTY OF LEMHI
CV30-23-0191

THE IDAHO DEPARTMENT OF
WATER RESOURCES,

Plaintiff,

vs.

LAURENT COMTE, an individual; and
PANTHERC, LLC, an Idaho limited
liability company,

Defendants.

Case No. _____

**AFFIDAVIT OF DAVID T.
GRAYBILL**

I, David T. Graybill, being first duly sworn upon oath, depose and state as follows:

1. I am over the age of eighteen and I make this affidavit based upon my own personal knowledge regarding the matters addressed herein.

2. I am currently the Technical Hydrologist and Watermaster of the Upper Salmon River Basin Water District 170 for the Idaho Department of Water Resources

("Department"). I am based out of Department's Salmon Office, 1301 Main Street STE 10, Salmon, ID 83467. I have served in this capacity since July 2021.

3. I have a Bachelor of Science in environmental science focused on physical science and hydrogeology from the University of Idaho. I have a Master of Science in soil and land resources from the University of Idaho.

4. Prior to my current positions as a Technical Hydrologist and a Watermaster for the Department, I was employed by the Department as a Water Resource Agent and later a Senior Water Resource Agent and assistant watermaster of the Thousand Springs Area Water District 130 in Twin Falls, Idaho.

5. As part of my duties for the Department, I conduct compliance investigations and provide local support to Department programs including water rights and stream channel protection.

6. On June 20, 2023, the Department was contacted by Kelly Schade with the United States Forest Service ("USFS") regarding a complaint that the USFS received about a landowner on Panther Creek who had reportedly excavated a trench which was then being used to route Panther Creek out of its natural channel. This information was shared with me on June 21, 2023.

7. Panther Creek is a tributary of the Salmon River located in Lemhi County.

8. Tax parcel data available to the Department indicates PantherC, LLC owns an 88-acre property located at 18N 18E Sec 3 NESW, NWSE, SWSE and Sec 10 NWNE, SWNE in Lemhi County, Idaho. Panther Creek runs through this property.

9. On June 22, 2023, I participated in a site visit with representatives from the Department and Idaho Fish & Game ("IDFG").

10. We arrived at the Panther Creek location late morning. When we arrived, Mr.

Laurent Comte was at the south end of the property pulling willows or similar riparian vegetation with an excavator and a large trench traversed the property. Mr. Comte drove his excavator north to meet us. During our discussion with Mr. Comte, he explained that when he bought the property, he did not realize it was so wet and that he personally dug the trench to drain the water from the property to allow him to develop the property. Mr. Comte said the work had nothing to do with his irrigation system or associated water right (75-14226). Mr. Comte then gave us permission to walk the property and perform our investigation.

11. The 88-acre property is narrow (ranging between 0.1 and 0.2 miles) and long (approximately 1 mile). It has almost 1.3 miles of channel running through it which results in significant portions of the acreage containing Panther Creek. The trench runs near a mile along the length of the property.

12. We started our site tour near the South end of the property. At one location we found an earthen dam consisting of earth materials spanning the natural Panther Creek Channel. As a result of the earthen dam all the water from Panther Creek was diverted into Mr. Comte's trench, leaving the creek dry. Further investigation revealed that the man-made trench reconnects with the natural Panther Creek channel in many locations weaving in and out of the complex and dynamic meandering, braided and fingered stream hydrology. Each time the trench went into or out of the natural channel, significant portions of the original stream bank had either been removed or new earthen dams were constructed in or across the stream channel. Photos I took during the investigation are attached as **Exhibit 1**.

13. We also observed that Mr. Comte's point of diversion for his water right had not been disturbed by the excavation work and was functioning normally.

14. At the end of our investigation, Department staff informed Mr. Comte that any activities below the high watermark in the state of Idaho were not authorized without a permit from the Department. Further, all activity on the property needed to stop immediately and we issued a cease and desist letter. A true and correct copy of the cease and desist letter is attached as **Exhibit 2**. We also informed Mr. Comte that ultimately, he was going to have to return all the flow of Panther Creek back into the historic channel.

15. Representatives from IDFG, USFS, and I returned to the site on June 23, 2023, to develop a plan for short term stabilization of the site. Mr. Comte joined our group as we worked from the North end of the property to the South. We observed significant and ongoing trench edge sloughing and trench bank erosion likely resulting in increased sedimentation and water turbidity downstream, both of which are damaging to the resource.

16. At the end of our survey, we determined that it was necessary to immediately open one of the earthen dams to allow 10-15% of the flow to return into Panther creek resulting in rewatering and reconnecting some flow to the bottom .25 miles of Panther Creek. Mr. Comte used his excavator, under our supervision and guidance, to remove a portion of the earthen coffer dam to return some flow. The mitigation effort worked successfully, and we confirmed that flow had been reestablished for the bottom .25 miles of the dewatered reach of Panther Creek.

17. On July 7, 2023, Chad Fealko of the National Marine Fisheries Service and Daniel Bertram of Idaho Governor's Offices of Species Conservation visited the Comte property and collected aerial drone imagery. Using that imagery, they developed a guide map of the site and identified five areas that would benefit from immediate

remediation. The map and associated images were shared with me. A selection of the associated images are attached as **Exhibit 3**. The images reflect my observation of the property.

18. On July 11, 2023, accompanied by Mr. Comte, Chad Fealko, and representatives from IDFG, USFS, OSC and I walked the property. Using the map Mr. Fealko and Mr. Bertram developed, we visited the five remediation areas to evaluate each site in detail and develop recommendations for a short-term stabilization plan.

19. On July 26, 2023, the Department issued a notice of violation (“NOV”) to Mr. Comte. Among other items of redress, the NOV requires Mr. Comte to follow and complete the short-term stabilization plan (“Plan”) developed based on the July 11, 2023 site visit. A true and correct copy of the NOV and Plan are attached as **Exhibit 4**.

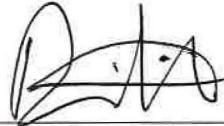
20. On August 11, 2023, Mr. Comte emailed the Department stating he disagreed with the NOV and believes his actions were “granted by the Idaho Code title 42 chapter 38 article 42-3806, with no permit required.” A true and correct copy of Mr. Comte’s email is attached as **Exhibit 5**.

21. The site is extremely unstable, and the banks of the trench will continue to sluff earth material including sediment due to scouring. Without immediate stabilization, spring flows will cause extreme scouring events leading to further and significant degradation of resources.

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I certify and declare under penalty of perjury pursuant to the law of the State of Idaho that the foregoing is true and correct.

DATED this 15 day of August 2023.



DAVID T. GRAYBILL
Technical Hydrologist
Idaho Department of Water Resources

State of Idaho
County of Lemhi

This instrument was signed or acknowledged before me on August 15th 2023

by David T. Graybill



Notary Signature

Printed Name Elizabeth E. Dickens

Commission expires: 6/18/2026

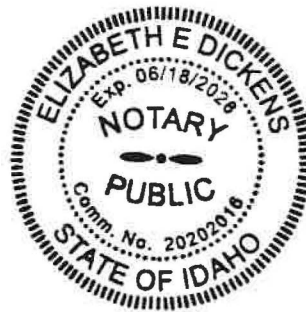


Exhibit 1

Exhibit 1

Photos from June 22, 2023 Site Visit



Photo 1: Earthen dam diverting all water from Panther Creek into man-made channel.

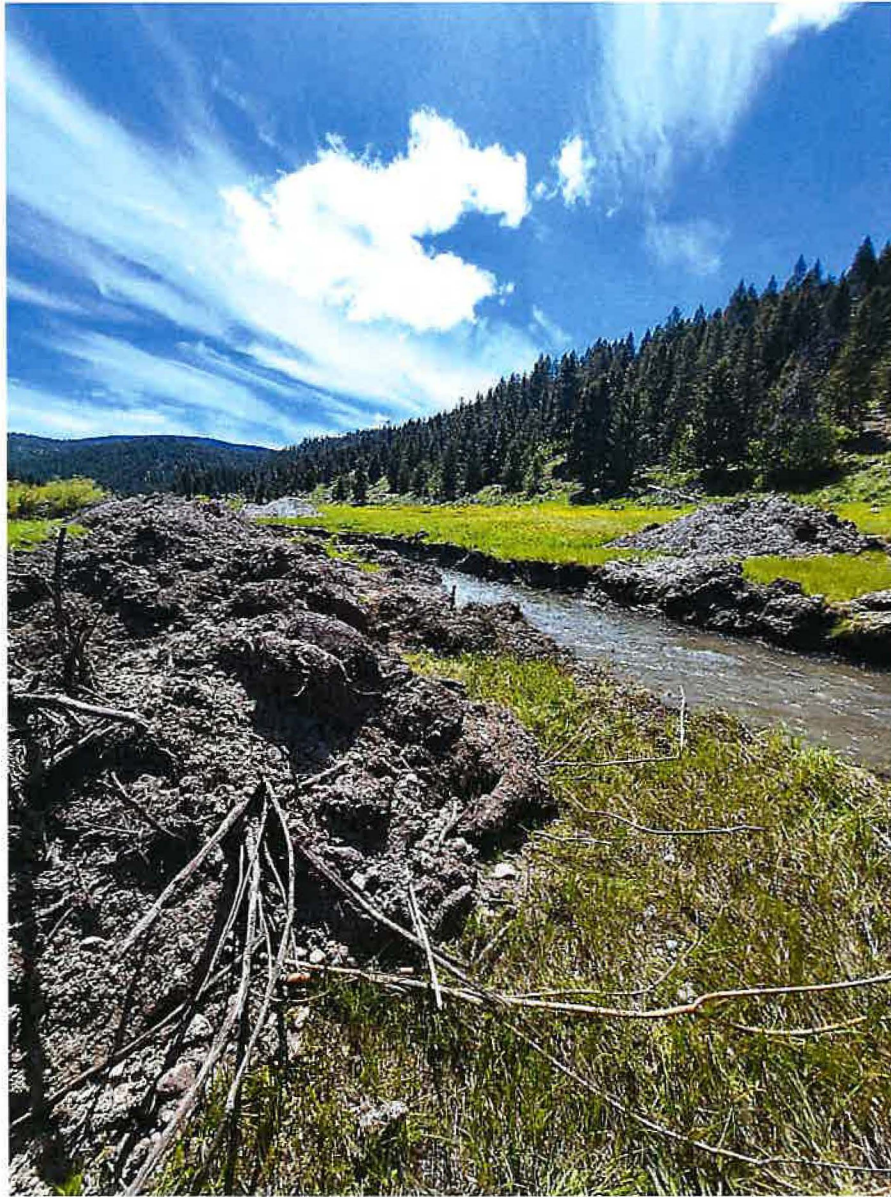


Photo 2: Downstream from merge of man-made channel and Panther Creek.



Photo 3: Man-made channel at end of the braided hydrology.



Photo 4: Excavated earth material piled on top of what was Panther Creek. This occurs in an area of braided hydrology.



Photo 5: Creek disturbance for excavator crossing.

Exhibit 2



June 22, 2023

Larry Comte
PantherC, LLC
784 S Clearwater Loop Ste. B
Post Falls, ID 83854

**RE: Cease and Desist Altering Stream Channels without a Permit
Enforcement Case: E2023-2936 – Larry Comte - Panther Creek**

Dear Mr. Comte,

The Idaho Department of Water Resources (“Department”) is contacting you in regards to the potential unauthorized alteration of Panther Creek. The Department received documentation showing potential alterations to Panther Creek, including rerouting the stream channel, on June 20, 2023. To our knowledge the disturbance occurred recently and is potentially ongoing as of June 21, 2023. According to County records the disturbance is occurring on parcel number RP18N18E101801 in Lemhi County, Idaho (Section 10, Township 18 North, Range 18 East).

The recent stream channel disturbance described above was brought to the Departments attention on June 20, 2023. The Department has checked its records for any stream channel alteration permits authorizing the disturbances and finds no such approvals.

The Department requests your cooperation to resolve this matter by:

1. Ceasing further work in or along Panther Creek unless such work is approved pursuant to a Stream Channel Alteration Permit or valid Water Right;
2. Notifying the Department of your involvement in the stream channel alteration;
3. Immediately coordinating a site inspection with the Department to assess the work; and
4. Working immediately with Lemhi County and the U.S. Army Corps of Engineers to comply with other local and federal rules or laws.

Please note that alteration of a stream channel without proper authorization constitutes a violation of Idaho Code § 42-3803.

Please contact Cass Jones within **14 days** of the date of this letter at 208-287-4897 or cass.jones@idwr.idaho.gov to discuss this matter. Your response will help the Department

determine what actions may be necessary to address the unauthorized stream channel alterations. If you do not respond to this notice or if the Department finds you uncooperative, the Department may initiate a formal enforcement action in accordance with Idaho Code § 42-1701B.

Respectfully,



Cass Jones
Stream Channel Protection
Idaho Department of Water Resources

cc: James Joyner, U.S. Army Corps of Engineers, Idaho Falls
Jeff Richards, Idaho Department of Fish and Game, Salmon
Alex Bell, Idaho Department of Environmental Quality, Idaho Falls
Chad Fealko, National Oceanic and Atmospheric Administration, Salmon
Pat Brown, Idaho Department of Lands, Idaho Falls
Polly Anderson, Lemhi County Floodplain Administrator
Cherie Palmer, Idaho Department of Water Resources, Boise
Aaron Golart, Idaho Department of Water Resources, Boise
Scott Stosich, Idaho Department of Water Resources, Idaho Falls

Exhibit 3

Exhibit 3

Drone photos from July 7, 2023



Photo 1: Aerial imagery showing the entire man-made channel and Panther Creek.



Photo 2: Aerial imagery showing man-made channel in red and Panther Creek in blue.



Photo 3: Looking South man-made channel (right) crosses Panther Creek (center) with a road on the left.



Photo 4: Looking South man-made channel (right) crosses Panther Creek (center) with a road on the left.



Photo 5: Looking South man-made channel (right) crosses Panther Creek (center) near excavator crossing. On the left vehicles, excavator, and an RV.



Photo 6: Confluence of man-made channel (right) and Panther Creek (left).

Exhibit 4



Governor Brad Little

Director Gary Spackman

July 26, 2023

Mr. Laurent Comte
PANTHERC, LLC
784 S Clearwater Loop Ste. B
Post Falls, ID 83854

CERTIFIED MAIL

**NOTICE OF VIOLATION AND ORDER TO CEASE AND DESIST
THE UNAUTHORIZED ALTERATION OF PANTHER CREEK, TRIBUTARY OF
SALMON RIVER**

Case No. E2023-2936

Dear Mr. Comte:

The purpose of this letter is to notify you that a violation of State Law is hereby attributed to you by the Idaho Department of Water Resources (“Department”). This Notice of Violation (“NOV”) is issued pursuant to Idaho Code §§42-1701B and 42-3809(2). Specifically, the violations are associated with the alteration of Panther Creek. On June 22, 2023, the Department delivered a written cease and desist request to you in person. On the same day IDWR staff conducted a site inspection and confirmed alterations below the mean high water mark of Panther Creek. Alterations associated with unauthorized work in Panther Creek include clearing of vegetation, filling sections of the channel, and dewatering approximately 4800 linear feet of the channel. The unauthorized work occurred at a location within Section 10, Township 18 North, Range 18 East in Lemhi County, Idaho (“subject land”).

The violations of Title 42, Idaho Code attributed to you are listed below:

1. Idaho Code §§42-3801 and 42-3803(a) – Altering a stream channel without the required approval and permit.

As authorized by Idaho Code §42-3809(2), and in accordance with Idaho Code §42-1701B, the Department requires the following immediate redress and payment of civil penalties associated with the violations:

1. On or before September 7, 2023, complete construction according to the attached Comte Short-Term Remediation Plan (“Plan”). The Plan was developed to help temporarily restore hydrologic process and aquatic habitat function and shall be implemented by qualified experienced professionals. The qualified consultant and equipment operator(s) will help ensure the project adheres to the Plan while remaining on schedule to meet the September 7, 2023, timeline. You shall obtain IDWR approval of your chosen consultant

and operator(s) prior to construction. Any deviation from the Plan or this NOV could result in additional violations being issued by the Department in accordance with Idaho Code § 42-1701B.

2. Pay a civil penalty in the amount of \$10,000 on or before September 15, 2023.
3. On or before May 15, 2024, prepare and submit a long-term plan to restore the remaining disturbed areas of Panther Creek to the pre-alteration condition. The plan must propose to restore and revegetate all disturbed areas at the subject land and include measures to restore fish and wildlife habitat. The long-term plan shall include professional engineered design plans and must be approved by the Department, and you must obtain a stream channel alteration permit prior to implementing the long-term plan.

You may request a compliance conference to submit and discuss any objections to the provisions of this NOV. Pursuant to Idaho Code §42-1701B, **a compliance conference must be requested within 14 days of receiving this notice.**

The compliance conference provides the recipient of an NOV the opportunity to explain the alleged violations and present a plan to assure future compliance through an agreement. Resolution of this NOV will be formalized through a Consent Order and Agreement.

Failure to comply with the listed requirements may be cause for the Department initiate a civil action through the attorney general's office in district court.

Please contact me at (208) 287-4941 or aaron.golart@idwr.idaho.gov if you have questions regarding this notice or to schedule a compliance conference.

Respectfully,



Aaron Golart
Water Compliance Bureau

cc Meghan Carter, Deputy Attorney General, Boise
Brendan Jones, U.S. Army Corps of Engineers, Idaho Falls
Jeff Richards, Idaho Department of Fish and Game, Salmon
Alex Bell, Idaho Department of Environmental Quality, Idaho Falls
Chad Fealko, National Oceanic and Atmospheric Administration, Salmon
Poly Anderson, Lemhi County, Salmon
Cherie Palmer, IDWR Water Compliance Bureau, Boise
David Graybill, IDWR Water Distribution Section, Salmon

1. Enclosure - Comte Short-Term Remediation Plan

Comte Short-Term Remediation Plan

Developed on-site July 11, 2023:

Chad Fealko (NMFS); Jeff Diluccia and Jeff Richards (IDFG); Justin Saydell (OSC); David Graybill (IDWR); Kelly Schade (SCNF)

Assisted by Larry Comte (landowner)

Proposal was subsequently refined and reviewed by same group between July 17 and 21.

Drone imagery became available July 11 and was reviewed before meeting on site. Drone images are available here:

https://www.dronedeploy.com/app2/sites/64ac7900195a1d5a4d85efa1/maps/64ac7901195a1d5a4d85efa2?jwt_token=eyJ0eXAiOiJKV1QiLCJhbGciOiJIUzUxMiJ9.eyJpZCI6IjY0YWM3OGZiZWMOzYzOTE0NGZhMDIzNSIsInR5cGUiOiJQdWJsaWNTaGFyZVYyIiwiaWF0IjoiYWNjZXNzX3R5cGUiOiJwbGFuLn0.IKfQ1kfJvV8JMXzP-nP4lhfu4pCHMM-e3vhilAUkc4im-nxEKW0Ek0CqR5wYkDD3zNNMcbEgiEGK8v2GCMZblw. Five principle sites were

identified for potential stabilization work. Each site has one or more ditch/channel intercept locations in need of stabilization.

Work is expected to proceed by starting at the downstream end and moving upstream as each site is sufficiently stabilized. This will also reduce downstream turbidity/sedimentation impacts and minimize harm to fish remaining in the project reach.

The proposed work outlined below is recommended by the group as necessary to stabilize the site during the local in-stream work window (July 15 – August 14). The identified work is believed necessary to avoid additional harm to fish that remain in the dewatered channel segments and to prevent additional site destabilization from occurring if subjected to a winter and spring runoff in 2024.

Each of the five principle sites is estimated to require approximately two days of equipment time to stabilize (assuming a competent equipment operator) – 10 days minimum. Additional time may be required if operator has less experience with such work or there are unforeseen complications. There is some potential to perform instream work after the normal work window ends due to substantial downstream distance to known Chinook salmon spawning areas and a large number of beaver dams downstream of the property that should facilitate sediment retention.

Ensure all tracks are obliterated as leaving work areas by 'fluffing' surface/soil slightly with excavator teeth. Salvage wetland sod wherever possible to aid in revegetation of disturbed sites. Wetland sod was observed slumping into excavated ditch, interspersed in disturbed areas

Idaho Department of Water Resources (IDWR) has issued a notice of violation for the dewatering at the site. The IDWR (David Graybill/Aaron Golart) have jurisdiction for requiring the remediation work. The Corps of Engineers and EPA are also expected to have jurisdiction but were not present to confirm.

Endangered Species Act section 7 consultation is anticipated to be covered by utilizing the Idaho Restoration Programmatic with the Corps of Engineers and/or the EPA as the Federal action agencies.

IDWR staff has requested support from the broader agency group to direct remediation work while it is being implemented. All parties in attendance agreed to help as they are able. Communication between parties remains critical to timely completing the recommended work.

Group recommended establishing a mandatory completion date for recommended work. Also recommended establishing a trigger date to require third party assistance to complete the work if not done adequately or quickly enough.

Polygon and line features shown on figures 1-5 denote approximate location of specific work elements identified in the narrative provided for each site.

Teal lines = Face of Revetment Structures;

Orange Polygons = Excavation Areas;

Red Lines = Temporary Cofferdams;

Green Polygons = Ditch Plug Areas

Purple Polygons = Bank Smoothing/Debris Roughness or Ford Restoration Areas

Table 1. Estimated quantity and size of trees w/rootwads and live willow clumps by site.

Site	# Trees w/rootwad	Size of Trees	# Willow Clumps
1	10	12-18" diameter & 20-30' long	3
1a (ditch return to Panther Cr)	5		2
2	25		9
3	0		6 (ford), 3 (bank armor site), 6 (ditch plug)
4	5		2 (additional necessary on ditch plug)
5	15		3 (additional necessary on ditch plug)
<i>Total</i>	60		34 (+ additional in ditch plugs at Sites 4 & 5)



Figure 1. Site 1. Most downstream diversion from Panther Creek. (Return of ditch to channel not shown)

1. Remove material from natural channel entrance in wet¹. Shape geometry of inlet similar to sections of Panther Creek immediately upstream or downstream. Blend channel bottom grade to match above and below plug. Inlet elevation should be established low

¹ Applies to all sites where channel plugs are removed and flow is reintroduced.

enough and with adequate capacity that the entire Panther Cr flow will readily return to the channel when a cofferdam is established in the ditch. Initially, prior to cofferdam, shoot for approximately 70% flow in natural channel and 30% in ditch. This will retain flow in channel and encourage fish in ditch to move out.

- a. Willing to accept some turbidity production from in water work. Extensive beaver ponds downstream expected to settle material.
 - b. Equipment work from the shore only.
 - c. Work from downstream to upstream direction, leaving a small 2' wide segment along active water line. Remove this last after all inlet work is completed,
 - d. Establish point bar elevation while removing material.
 - e. Group recommended this be done as soon as work window opens (July 15).
2. Install coffer Dam off left bank completely diverting flow into historic channel ** See detail in Figure 6 for coffer dam options (applies to all sites).
- a. Cofferdams should be capable of being easily transported to site and readily available.
 - i. Potential to use straw bale, tarp, and native substrate in lieu of bulk bags due to difficulty in transport and number of trips required to haul to each site.
3. Salvage Ditch (IDFG and/or OSC) downstream to end.
4. Install Ditch Plug² – Estimate need ~ 10 trees w/rootwads and 2-3 willow clumps (salvaged on site or from previously removed).
- a. Trees should consist of limby conifers w/rootwad laid into ditch with rootwads at/near desired left bank toe (these are perpendicular to flow). Rootwad should be placed such that low flow surface water elevation is approximately mid-bole.
 - b. Add parallel revetment log(s) on top of boles w/rootwad upstream. May need to anchor.
 - c. Willow clumps (live) and cuttings tucked in behind.
 - d. Fill with native fill. Compact in 1-foot lifts. Extend a minimum of 50' downstream.
 - e. Try to keep topsoil at top of fill.
 - f. Add brush trenches and coarse woody debris behind plug as necessary.
5. Long-term, entire ditch will need to be backfilled.
6. After plugging ditch inlet – Move to bottom end of ditch and stabilize similarly (estimate 5 trees w/rootwads and two willow clumps).³

Long term Needs –

1. Backfill remainder of ditch, keep topsoil and native seedbank close to surface (as possible).

² These general directions apply to all project ditch plugs identified for Sites 1 through 5.

³ Potential to defer this action until end of season if time is limited.

- a. Scatter roughness elements across surface for high flow protection.
2. Ditch excavation currently has active spring/surface water spilling down the cut slope into the ditch. These will need to be stabilized to prevent channelization.

Installing rootwad base



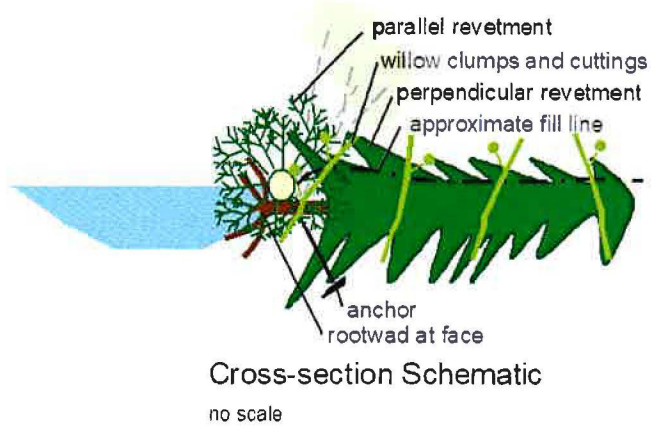
Installing willow clumps



Transporting face revetment



Example of ditch plug process.



Additional examples and schematic of ditch plug revetment.



Figure 2. Site 2 - Second ditch/channel diversion point. Portion of ditch appears to be constructed in historic channel meander (overlaps w/ford location).

1. Excavate channel entrance on right bank in the wet. Establish desired grade similar to Site 1.
2. Install temporary coffer dam to divert flow into natural channel.
3. Salvage short segment of ditch.
4. Reconstruct and armor meander and left bank w/ lwd revetment and native vegetation.

- a. This site has longer bank length than Site 1 and will require at least twice as much material, potentially more.
 - i. Estimate ~25 trees w/rootwads and at least 9 willow clumps.
 - b. Stabilized bank will be slightly straighter than pre-disturbance, retain native vegetation clump at tie in point w/natural channel.
- 5. Extend ditch plug downstream at least 100', attempt to place topsoil and sedge mats at surface, add surface roughness to assist with peak flow stability and reduce potential for channel avulsing into ditch.
- 6. Restore ford crossing.
 - a. Smooth banks to natural contour, place discarded willows along banks to increase roughness and promote stability, place salvaged sedge mats as available or reseed.



Figure 3. Site 3 – Main Ford Crossing and secondary ford upstream. Extensive discarded willows on west bank (between ditch and natural channel).

1. Site 3A (discarded willow clumps b/w ditch and historic channel)
 - a. Grade disturbed soils, knocking down high areas and blending with the natural contour,
 - b. Scatter willow clumps for surface roughness along affected area, focus on channel's left bank to assist with sediment control; embed some willow in floodplain to increase stability of roughened area.
2. Mr. Comte does wish to retain one ford crossing⁴. Potential to use some of the larger excavated/sorted material to temporarily harden preferred crossing. Do so prior to rewatering natural channel. Long-term plan for the ford and road approach should be developed. Likely need some monitoring.
3. Stabilize remaining ford crossing banks and channel area (prior to rewatering). Use native willow clumps and available sod/sedge mats;
4. Stabilize ford crossings (smooth to natural floodplain elevation, place willow clumps on banks and floodplain.
5. Upstream ford will need substantial left and right bank stabilization. (assume three willow clumps on each side)
6. After ditch is dewatered, consider using live willow clump transplants (3) and/or willow slash to armor bank where ditch's right bank almost intersects channel.
7. Utilize dead willow clumps as roughness elements in channel plugs and floodplain areas.
8. Fill channel where substrate was excavated with native cobble/gravel to reduce chance of headcut.
9. Restore spoils piles on west floodplain – Long term objective (not displayed on Figure 3).

⁴ Long-term ford construction should be part of future 404 permit. For this action, ford is considered temporary as it is necessary to accomplish the described work elements.



Figure 4. Site 4 – Primary natural channel re-activation area.

1. At a minimum, complete after Site 1; Preferred to complete after Sites 2 and 3 too, but if inadequate time, proceed to this site as second in sequence.

- a. Remove material plugging natural channel leaving a small 2-foot wide segment along active water line. Remove this last after all inlet work is completed.
 - b. Install partial coffer dam to divert all water from ditch into natural channel.
2. Salvage downstream ditch segment to avoid stranding fish (IDFG/OSC).
3. Construct LWD bank revetment on left meander (in dry).
 - a. 10-12 trees w/rootwads and 3 willow clumps.
 - b. Ensure native vegetation incorporated for long-term stability (sod mats).
4. Install willow clumps and roughness elements where ditch encroaches on channel (downstream of inlet 1 meander bend), site 4A.
 - a. Likely need 4-5 trees w/rootwads and two willow clumps
 - b. Install partial cofferdam to deflect water away from left bank where work occurs.
5. Ditch will need to be immediately backfilled beyond Site 4A. (extra day for this element). Should include willow and brush roughness on surface to provide high flow resiliency.
6. Remove excess fill from natural channel.



Figure 5. Site 5 - Multiple ditch/channel intercepts over short distance. Extensive left bank reconstruction likely required.

1. Remove all fill from side channel confluences (~3 sites), likely live water work for expediency.
2. Smooth out surface at downstream left bank area (5A) to floodplain elevation, use willows as surface roughness.
3. Install temporary cofferdam at top of site to rewater natural channel. Leave adequate space to construct new left bank on stream.
4. Salvage downstream ditch.
5. Install coffer dam; install ditch plug. Aerial imagery suggests this site has higher slope and energy and will likely need robust structure to prevent future ditch capture of channel. Extend ditch Plug all the way to natural channel.
 - a. 10-15 trees w/rootwads and 3 willow clumps
 - b. Remove coffer dam when bank complete.
6. Plug entire constructed ditch segment between 5B and 5C
 - a. Ensure adequate surface roughness and willows incorporated along former ditch.

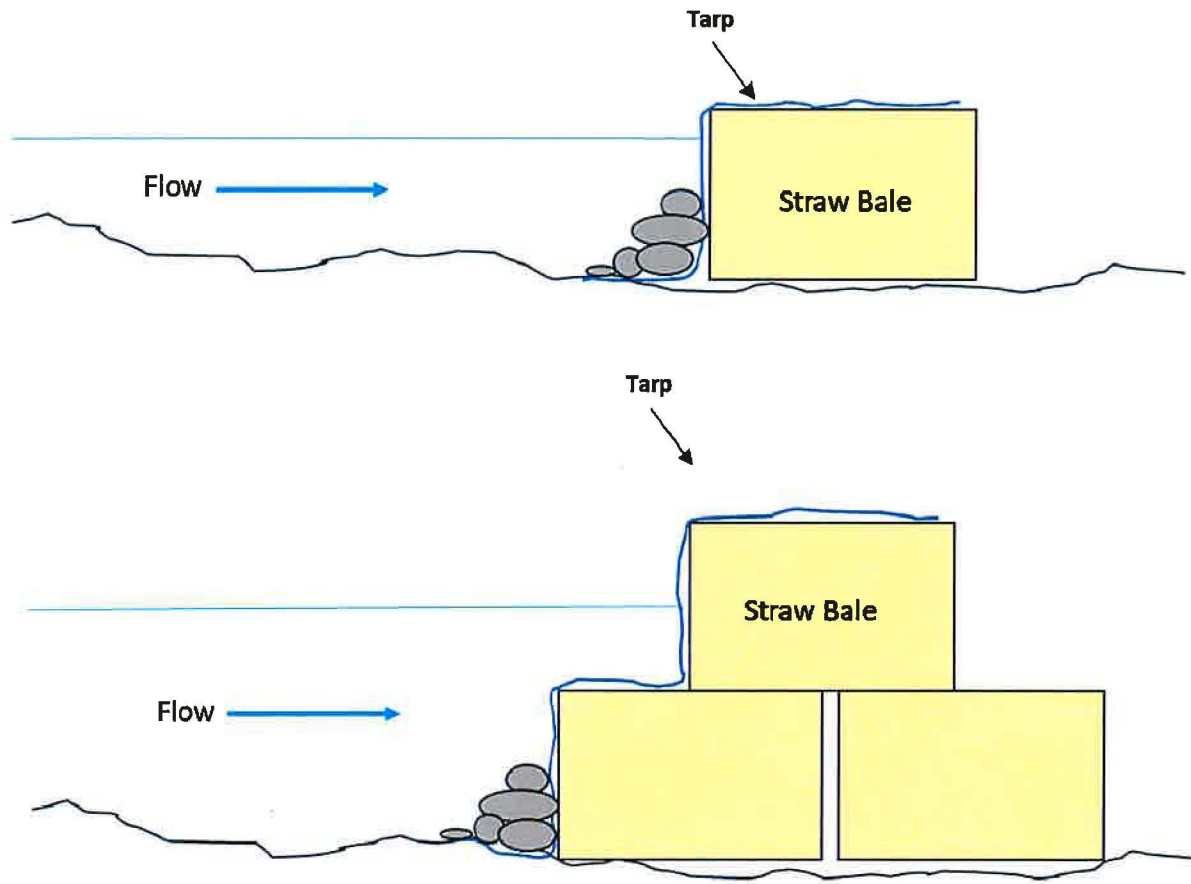
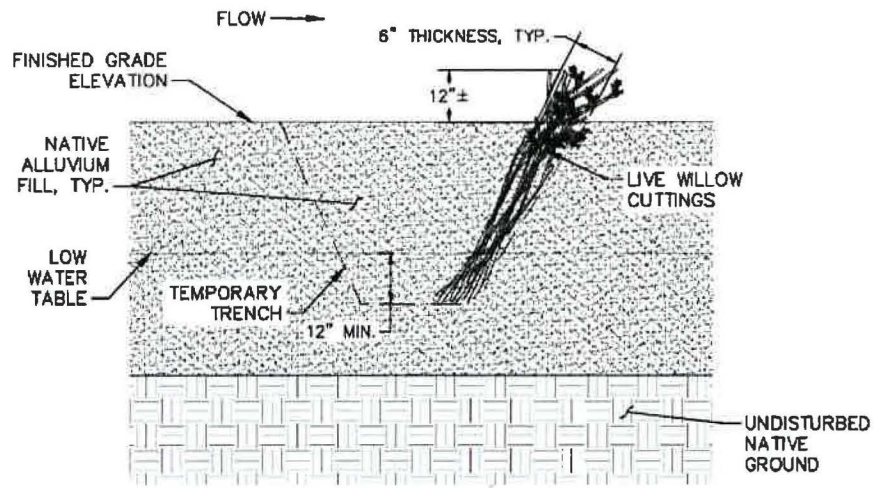
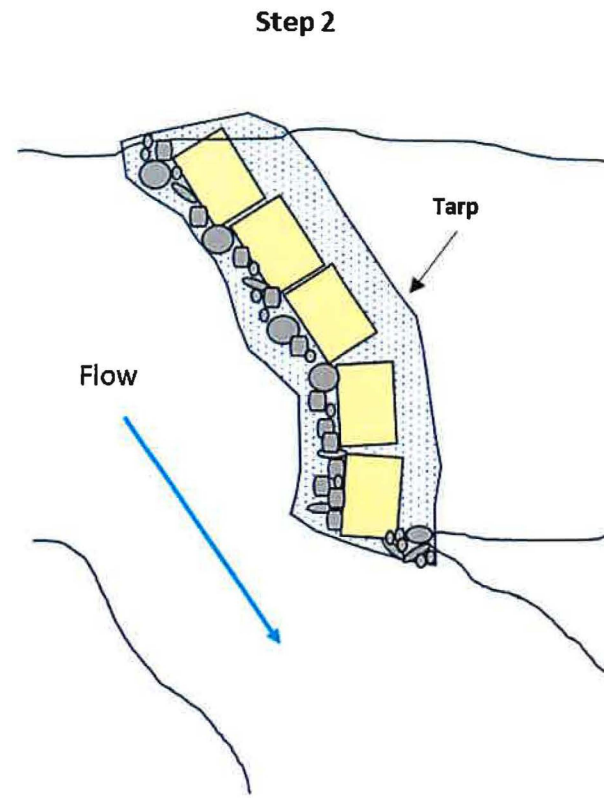
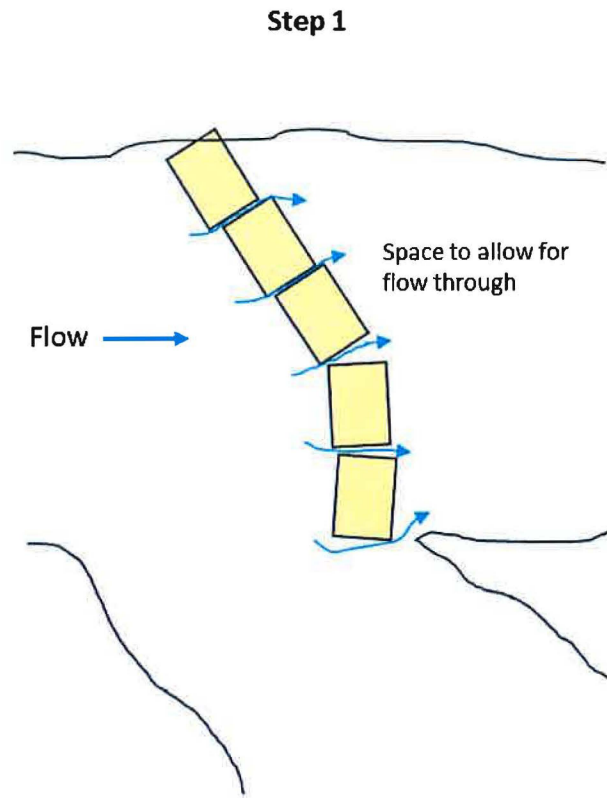


Figure 6. Typical cross section of two cofferdam options. *Second option likely not necessary given predicted flows.



ABOVE: WILLOW TRENCH DURING CONSTRUCTION (LEMHI RIVER, ID)

Figure 7. Typical willow/brush trench. For use on floodplain surfaces and reclaimed ditch segments. Objective is to install where necessary to slow velocities, promote deposition, and reduce erosion.



1. Place bales incrementally starting with left bank to slowly dewater ditch,
2. Construct in "V" configuration, aligning to allow for installation of revetment,
3. Leave space between bales to allow slight flow through,
4. When salvage is complete, position tarp on top of bales,
5. Pull tarp forward in front of bales, having enough length to extend in front of bales ~ 4'
6. Use flow and pressure to pin tarp against bales and ditch bottom,
7. Place clean rock in front of bales to close seal between tarp and ditch bottom.

Exhibit 5

From: [Larry Comte](#)
To: [Golart, Aaron](#)
Cc: [Graybill, David](#); [chad.fealko](#); [Daniel Bertram](#); [Schade, Kelly - FS](#); [Diluccia, Jeff](#); [Richards, Jeff](#); [Whitney, Rob](#); [Justin Saydell](#); [Jones, Brendan V CIV USARMY CENWW \(USA\)](#)
Subject: RE: Panther Creek
Date: Friday, August 11, 2023 1:21:30 PM

CAUTION: This email originated outside the State of Idaho network. Verify links and attachments BEFORE you click or open, even if you recognize and/or trust the sender. Contact your agency service desk with any concerns.

Mr Golart,

We are following up on the Notice of Violation E2023-2936 received July 31st concerning our property in Panther Creek.

With all due respect, and as already mentioned to you last week, we do not agree with your depiction of the situation and with the grounds of the NOV.

Our only intention is to farm the land we own traditionally and the right way, with some fields for livestock, and others producing hay for winter. The property is fitted for this purpose and has been for more than 100 years, with wide open fields and water rights on the 70 acres of meadows.

As it is commonly established, the entity that owns the water is responsible for keeping the stream properly maintained and ensuring it does not interfere with the normal use of the property it passes through and the water rights associated, but also for managing correctly the water resources of the stream.

It was not the current state and these duties were severely neglected.

In terms of our own responsibility, what was done in June was granted by the Idaho Code title 42 chapter 38 article 42-3806, with no permit required. It was a first step to remedy the situation, particularly, but not only, the numerous, detrimental and unauthorized points of diversion and obstruction along the creek inside our property.

Therefore and pursuant to Idaho Code §42-1701B, I respectfully ask you to schedule a compliance conference in order to exchange views on the situation.

With regards,
PantherC llc,
Laurent Comte

Sent from Proton Mail for iOS

On Sun, Aug 6, 2023 at 2:20 PM, Golart, Aaron <Aaron.Golart@idwr.idaho.gov> wrote:

Mr. Comte,

Thank you for responding and acknowledging receipt of the NOV. It is understandable being disappointed, but I am unclear where feelings of betrayal

and deception are coming from. I thought we communicated clearly that IDWR would issue an NOV that would include a civil penalty and restoration of the creek. I appreciate your cooperation to date and look forward to receiving your formal response and working with you to resolve this matter.

Sincerely,

Aaron

From: Larry Comte <larrycomte@protonmail.com>
Sent: Friday, August 4, 2023 10:54 AM
To: Golart, Aaron <Aaron.Golart@idwr.idaho.gov>
Cc: Graybill, David <David.Graybill@idwr.idaho.gov>; chad.fealko <Chad.fealko@noaa.gov>; Daniel Bertram <Daniel.Bertram@osc.idaho.gov>; Schade, Kelly - FS <kelly.schade@usda.gov>; Diluccia, Jeff <jeff.diluccia@idfg.idaho.gov>; Richards, Jeff <jeff.richards@idfg.idaho.gov>; Whitney, Rob <Rob.Whitney@idwr.idaho.gov>; Justin Saydell <Justin.Saydell@osc.idaho.gov>
Subject: Panther Creek

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Dear Aaron,

I am following up on the NOV received July 31st concerning our property in Panther Creek.

I must say that I am very disappointed by the direction you have decided to take and I feel quite betrayed and deceived.

Unfortunately, I see no place for us in your proposed plan which offers no remedies to the state of the stream running in our property.

I have kept trying to make you alert about it since your first visit mid June and asked for a balanced plan that can lead to a reasonable path forward for all parties.

I was hopeful that you would try to understand and take our concerns into consideration but you chose to ignore them and follow a one sided path that allows no viable solution for us, despite our continuous cooperative attitude.

I also wanted to let you know that I am very sad about the whole situation and that I do not agree with your depiction of the facts and the grounds of your notice. I will get back to you next week with a formal response to your notification but for now I wanted to share with you my overall sentiment.

Regards,
Larry.

Sent from Proton Mail for iOS