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**IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF LEMHI**

THE IDAHO DEPARTMENT OF
WATER RESOURCES,

Plaintiff,

vs.

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

Defendants.

Case No. CV30-23-0191

**MEMORANDUM IN SUPPORT OF
MOTION FOR LEAVE TO FILE
AMENDED COMPLAINT**

Plaintiff, the Idaho Department of Water Resources (“Department”) submits the following Memorandum in Support of Plaintiff’s Motion for Leave to File Amended Complaint pursuant to I.R.C.P 15(a)(2) and 7(b). This Motion is supported by the previously filed Affidavit of David T. Graybill and Affidavit of Jeffery E. Richards as well as the contemporaneously filed Declaration of David T. Graybill.

I. BACKGROUND

The Department filed its Complaint in this matter on August 17, 2023. Along with its Complaint, the Department filed a Motion for Mandatory Preliminary Injunction (“PI Motion”). The PI Motion sought an order from this Court mandating the Defendants complete a temporary remediation plan on Panther Creek. The temporary remediation plan was necessary because Defendant Laurent Comte had excavated a trench that intersected and fully dewatered almost a mile of Panther Creek. Richards Aff. ¶¶ 9 and 11; Graybill Aff. ¶ 12. Mr. Comte’s activities damaged the stream channel and fish habitat. Richards Aff. ¶¶ 11-14. The Parties entered into a settlement agreement regarding the PI Motion and the Department withdrew the PI Motion. *Notice of Withdrawal of Motion for Mandatory Preliminary Injunction*. This Court set a status conference for March 19, 2024.

II. ARGUMENT

The Department seeks leave from the Court to amend the Complaint to add another cause of action for a violation of Idaho Code § 42-351, illegal diversion of water. Idaho Rule of Civil Procedure 15(a)(2) provides that the Court’s leave is required to amend a complaint more than 21 days after the initial complaint is served unless written consent is provided by the opposing party. “The court should freely give leave when justice so requires.” *Id.* The Idaho Supreme Court has specified that:

If the underlying facts or circumstances relied upon by a plaintiff may be a proper subject of relief, he ought to be afforded an opportunity to test his claim on the merits. In the absence of any apparent or declared reason—such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of the allowance of the amendment, futility of amendment, etc.—the leave sought should, as the rules require, ‘be freely given.’

Clark v. Olsen, 110 Idaho 323, 326, 715 P.2d 993, 996 (1986) (citing *Foman v. Davis*, 371 U.S. 178, 182 (1962)). Rule 15(a) serves a dual purpose “to allow claims to be determined on the merits rather than technicalities and to make pleadings serve the limited role of providing notice of the nature of the claim and the facts that are at issue.” *Thomas v. Med. Ctr. Physicians, P.A.*, 138 Idaho 200, 210, 61 P.3d 557, 567 (2002). Further, “[a] court may consider whether the allegations sought to be added to the complaint state a valid claim in determining whether to grant leave to amend the complaint.” *Id.*

The Department has not unduly delayed seeking leave of the Court to amend its Complaint. The Department initiated its suit in August of 2023 to urgently address a threat to a precious Idaho resource, Panther Creek and its habitat. Between August and October 2023, the Department’s focus was to implement a temporary remediation plan that would return flow to Panther Creek and stabilize the disturbed areas until a more complete and permanent remediation plan could be developed and implemented. The work under the temporary remediation plan was subsequently completed. Graybill Dec. ¶ 6. Once the temporary remediation plan was implemented, the Department had time to more fully evaluate Mr. Comte’s activities in and around Panther Creek and now seeks to add a claim against the Defendants for an illegal diversion of water. This claim is supported by the facts presented and the Department’s statutory authorities.

The Department does not file its Motion to Amend with bad faith or dilatory motive. Discovery has not been initiated, a scheduling order has not been issued, and during the first months of the suit the Parties were focused on negotiating and implementing the temporary remediation plan. Further, the Defendants will not be prejudiced by the Department’s

amendment since the case is in its infancy with little activity thus far. The Court should freely grant the Department leave to amend its Complaint.

III. CONCLUSION

The Rules of Civil Procedure direct the Court to freely give leave to amend a complaint. The Department has not unduly delayed filing an amended complaint and the Defendants will not be prejudiced. Therefore, the Department requests the Court for leave to file an amended complaint.

Dated March 5, 2024.

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL




MEGHAN M. CARTER
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on March 5, 2024, I caused to be served a true and correct copy of the foregoing *Memorandum in Support of Motion for Leave to File Amended Complaint* via iCourt E-File and Serve, upon the following:

Robert L. Harris
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