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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**

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

**MOTION FOR LEAVE TO FILE
AMENDED COMPLAINT**

Plaintiff, the Idaho Department of Water Resources (“Department”) moves this Court for leave to amend its complaint pursuant to I.R.C.P. 15(a)(2). This motion is supported by the Department’s contemporaneously filed *Memorandum in Support of Motion for Leave to File Amended Complaint*. The Department has attached its amended complaint to this motion.

Pursuant to I.R.C.P. 7(b)(3)(D), Plaintiff requests oral argument on its Motion for Leave to File 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 *Motion for Leave to File Amended Complaint* via iCourt E-File and Serve, upon the following:

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AMENDED COMPLAINT

Plaintiff, the Idaho Department of Water Resources (“the Department”), through the Office of the Idaho Attorney General, makes this complaint and claim for relief against Defendants Laurent Comte and PantherC LLC, asserting and alleging as follows:

NATURE OF ACTION

1. The Department initiates this action pursuant to Idaho Code §§ 42-1701B, 42-3809, and 42-3803 for Defendants' alteration of Panther Creek in Lemhi County without a permit from the Department. The Department seeks a civil penalty of \$10,000 and an order requiring the Defendants complete restoration and mitigation measures.

2. The Department further initiates this action pursuant to Idaho Code §§ 42-1701B and 42-351 for Defendants' diversion of water without a water right to do so. The Department seeks an additional civil penalty of \$50,000.

PARTIES

3. Plaintiff, the Idaho Department of Water Resources, is an executive department established under the laws of the state of Idaho, pursuant to Idaho Code § 42-1701, with its primary state office located in Ada County, Idaho at 322 E. Front St., Boise, ID 83720.

4. The Department is authorized by Idaho Code §§ 42-1701B and 42-1805(9) to file suit by and through the Idaho Attorney General to compel compliance with the provisions of Title 42, Idaho Code, and seek civil penalties.

5. Defendant, Laurent Comte, is an individual, who, upon information and belief, is an owner of PantherC, LLC.

6. Defendant, PantherC, LLC, is an Idaho limited liability company, with its principal address 784 S. Clearwater Loop, Ste B, Post Falls, ID 83854.

7. According to tax parcel data available to the Department, Defendant PantherC, LLC owns the land where the portion of Panther Creek at issue was altered.

8. Upon information and belief, Defendant Laurent Comte is a Manager of PantherC, LLC.

JURISDICTION AND VENUE

9. This Court has subject matter jurisdiction over this action pursuant to Idaho Code §§ 42-1701B(5)(a) and 1-705.

10. This Court has personal jurisdiction over Defendants pursuant to Idaho Code § 5-514 because, upon information and belief, Defendants are transacting or have transacted business within the State of Idaho, the wrongful acts and omissions giving rise to this cause of action occurred within the State of Idaho, and Defendants own and/or use the real property within the State of Idaho that is at issue in this cause of action.

11. Venue is proper in the District Court of the Seventh Judicial District, State of Idaho, in and for Lemhi County, pursuant to Idaho Code §§ 42-1701B(5)(a), 5-401, 5-402, and 5-404 because the violations, acts, and omissions alleged herein occurred and the action arose in Lemhi County, Idaho.

FACTS

12. This Complaint is supported by the Affidavit of David T. Graybill, Declaration of David T. Graybill and Affidavit of Jeffery E. Richards. The Affidavits and Declaration, as well as their respective exhibits, are incorporated by this reference.

13. Panther Creek is a tributary of the Salmon River, located in Lemhi County. Graybill Aff. ¶ 7.

14. Panther Creek runs through an 88-acre property owned by PantherC, LLC., located at 18N 18E Sec 3 NESW, NWSE and Sec 10 NWNE in Lemhi County, Idaho. Graybill Aff. ¶¶ 8, 11.

15. This section of Panther Creek supports steelhead trout (*Oncorhynchus mykiss*) and bull trout (*Salvelinus confluentus*) and is designated as critical habitat for Endangered Species Act (“ESA”) listed Chinook salmon (*Oncorhynchus tshawytscha*), steelhead, and bull trout, respectively. Richards Aff. ¶ 6.

16. On June 20, 2023, the Department was informed of a potential violation of the Stream Channel Protection Act (Title 42, Chapter 38, Idaho Code) at the Defendants’ property along Panther Creek. Graybill Aff. ¶ 6.

17. On June 22, 2023, representatives from the Department and Idaho Fish & Game (“IDFG”) conducted a site visit, with Mr. Comte present. Graybill Aff. ¶ 9.

18. The site visit revealed extensive earth work had been done below the high watermark of Panther Creek. At one location, an earthen dam consisting of materials spanning the natural Panther Creek channel resulted in all the water from Panther Creek being diverted into Mr. Comte’s trench, leaving the creek dry. Further investigation revealed that the man-made trench cuts into the natural Panther Creek channel in many locations, intercepting the complex and dynamic meandering, braided and fingered stream hydrology. Each time the trench intercepts 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. Graybill Aff. ¶ 11; Graybill Aff. Exs. 1, 3.

19. During the site visit the flow of Panther Creek was estimated to be at least 20 cfs, based on the size of the trench and the velocity of the water. Graybill Dec. ¶ 5.

20. Mr. Comte admitted to the Department and IDFG employees that he dug the trenches to drain the property for development. Graybill Aff. ¶ 10.

21. Mr. Comte also stated the excavation was not related to his irrigation water right. *Id.*

22. The water diverted into the trench was not being used to irrigate any of the PantherC, LLC property. Graybill Dec. ¶ 4.

23. Mr. Comte's excavation and vegetation removal activities resulted in the realignment of approximately 4800 feet (0.9 miles) of Panther Creek, the obliteration and severance of crucial riparian and wetland habitats, the release of extensive amount of sediment, and the dewatering of critical ESA-listed fish habitat and entrainment of ESA-listed fish species. Richards Aff. ¶ 11.

24. At the June 22, 2023 site visit, the Department hand delivered Mr. Comte a cease and desist request. Graybill Aff. Ex. 2.

25. Further site visits revealed water flow had caused significant and ongoing trench edge sloughing and trench bank erosion. Graybill Aff. ¶ 15.

26. The sloughing and erosion increased sedimentation and water turbidity downstream. Further, negative effects from Mr. Comte's actions were documented beyond the impact area such as increasing turbidity at least 2.5 miles downstream. Richards Aff. ¶ 14.

27. Severe sedimentation deposits observed at the site and the turbidity readings recorded below the site have negative impacts on ESA-listed fish food sources and spawning habitat. Richards Aff. ¶ 15.

28. On October 30 and 31, 2023, Mr. Comte and PantherC, LLC implemented temporary remediation measures to return flow to Panther Creek. Graybill Dec. ¶ 6.

29. Without permanent measures that stabilize the disturbed soil, the remedial measures implemented by PantherC, LLC and Mr. Comte will fail causing further erosion and sediment transport. In addition, the river habitat will remain degraded. Graybill Dec. ¶ 7.

30. Further erosion will have compounding effects (i.e., disconnected floodplains, perched wetlands, increase in water temperatures, obstruction to fish passage and changed hydrologic process), increasing dewatering occurrences of the disconnected Panther Creek channel, decrease or loss of aquatic habitat function and altered water table. Richards Aff. ¶ 18.

31. On November 11, 2023, the Department took a flow measurement of Panther Creek on the PantherC, LLC property. Graybill Dec. ¶ 8. Panther Creek was flowing at 11.7 cfs. *Id.*

32. The November 11, 2023 flow measurement is a good approximation of the lowest flows in Panther Creek. *Id.*

COUNT I

(Alteration of a stream channel without a permit, Idaho Code § 42-3803)

33. The allegations of all preceding paragraphs of this Complaint are incorporated by this reference.

34. Idaho Code § 42-3803 states “No person shall engage in any project or activity which will alter a stream channel without first applying to and receiving a permit therefor from the director [of the Department].”

35. Alter “means to obstruct, diminish, destroy, alter, modify, relocate, or change the natural existing shape or direction of water flow of any stream channel within or below the mean high watermark thereof.” I.C. § 42-3802(b).

36. Stream channel “means a natural watercourse of perceptible extent, with definite bed and banks, which confines and conducts continuously flowing water.” I.C. § 42-3802(d).

37. Defendants obstructed, diminished, altered, modified, relocated, and changed the natural existing shape of Panther Creek below the mean high watermark when he conducted his excavation activities.

38. Defendants did not first apply to and receive a permit for the alteration of Panther Creek from the Department.

39. Defendants violated Idaho Code § 42-3803.

40. The Department is entitled to a civil penalty of up to \$10,000 or \$150 per day for a continuing violation, whichever is greater; pursuant to Idaho Code § 42-1701B(6)(a).

41. Pursuant to Idaho Code § 42-1701B(2), Defendants are liable for restoration of Panther Creek and mitigation measures to compensate for altering Panther Creek.

42. The Department has incurred and will incur costs, expenses, and attorney fees in the prosecution of the violation alleged above. The Department is entitled to recover reasonable expenses and attorney fees pursuant to Idaho Code § 12-117 and costs pursuant to Idaho Code § 12-101 and I.R.C.P. 54.

COUNT II

(Illegal Diversion of Water, Idaho Code § 42-351)

43. The allegations of all preceding paragraphs of this Complaint are incorporated by this reference.

44. Idaho Code § 42-351(1) states “It is unlawful for any person to divert or use water from a natural watercourse or from a ground water source without having obtained a valid water right to do so, or to divert or use water not in conformance with a valid water right.”

45. Panther Creek is a natural watercourse.

46. Defendants’ diversion of water from Panther Creek to the newly excavated trench was not authorized by a water right.

47. Defendants violated Idaho Code § 42-351(1).

48. Defendants illegally diverted water for at least 132 days from the date the Department first investigated Mr. Comte’s activities (June 22, 2023) to the last date of temporary remediation efforts (October 31, 2023).

49. Defendants illegally diverted at least 11.7 cfs per day, the measured low flow of Panther Creek.

50. The Department is entitled to a civil penalty of \$50 per 0.1 cfs of water diverted per day up to a maximum of \$50,000 per year; pursuant to Idaho Code § 42-1701B(6)(a)(i).

51. The Department has incurred and will incur costs, expenses, and attorney fees in the prosecution of the violation alleged above. The Department is entitled to recover reasonable expenses and attorney fees pursuant to Idaho Code § 12-117 and costs pursuant to Idaho Code § 12-101 and I.R.C.P. 54.

PRAYER FOR RELIEF

Plaintiff respectfully requests this Court grant the following relief:

52. Issue an order as authorized by Idaho Code §§ 42-1701B(5)(a) and 42-3809 requiring the Defendants to restore Panther Creek pursuant to Title 42, Chapter 38, Idaho Code.

53. Assess against the Defendants statutory penalties as authorized by Idaho Code § 42-1701B(6) in an amount of up to \$10,000.00.

54. Issue an injunctive order as authorized by Idaho Code § 42-1701B(5)(b) prohibiting the Defendants from diverting water not in conformance with a valid water right.

55. Assess against the Defendants statutory penalties as authorized by Idaho Code § 42-1701B(6)(i) in an amount of up to \$50,000.00.

56. Award attorney fees, costs, and reasonable expenses pursuant to Idaho Code § 12-117 and Idaho Rule of Civil Procedure 54.

57. Grant other such relief as the Court deems equitable and just.

Dated _____, 2024.

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL

MEGHAN M. CARTER
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on _____, 2024, I caused to be served a true and correct copy of the foregoing *Amended Complaint* via iCourt E-File and Serve, upon the following:

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