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Fifth Judicial District, Blaine County
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**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT**

**OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE**

| | |
|---|---|
| JOHN HASTINGS, JR.,<br>Petitioner,<br>vs.<br>IDAHO DEPARTMENT OF WATER RESOURCES, a Political Subdivision of the STATE OF IDAHO; MATHEW WEAVER, Director, and the IDAHO WATER RESOURCE BOARD; JEFF RAYBOULD, Chairman,<br>Respondents. | Case No. CV07-26-00378 |

# SETTLED AGENCY RECORD ON APPEAL

Judicial Review from the Idaho Water Resource Board
Jeff Raybould, Chairman

**RAÚL R. LABRADOR**
ATTORNEY GENERAL

**JOY M. VEGA**
Chief of Energy and Natural Resources Division

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RECEIVED
MAY 23 2019
DEPARTMENT OF
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*Attorneys for Petitioners*

**BEFORE THE IDAHO WATER RESOURCE BOARD**

| | |
|---|---|
| IN THE MATTER OF CONDITIONAL APPROVAL OF JOINT APPLICATION FOR PERMITS (S37-20565) | **PETITION FOR HEARING** |

COMES NOW Embassy Auditoriums, Inc. and John Hastings, Jr. ("Petitioners"), by and through their attorneys of record, McHugh Bromley, PLLC, pursuant to IDAPA 37.01.01 *et seq.*, IDAPA 37.03.07 *et seq.*, I.C. § 42-1701A(3), I.C. § 42-3801 *et seq.*, Chapter 52, Title 67, Idaho Code, and hereby files this Petition for Hearing.

This Petition for Hearing is filed in response to a letter dated May 17, 2019 ("Letter"), whereby the State Coordinator of the Stream Protection Program approved, with conditions, the Petitioners' *Joint Application for Permit* ("Joint Application") received by the Idaho Department of Water Resources on March 15, 2019. Related to the Joint Application is a *Consent Order*, issued on January 26, 2018, and a *Restoration Plan and Bank Stabilization Project for 1200 Warm Springs, Ketchum, Idaho* stamped by Petitioners' engineer on December 26, 2018 ("Restoration Plan").

Certain requirements contained in Letter are inconsistent with the Consent Order and the agreement that led to the filing of the Restoration Plan. As stated in the Letter, "If you object to the decision issuing this permit with the above conditions, you have 15 days in which to notify this office in writing that you request a formal hearing on the matter. If an objection has not been received within 15 days, the decision will be final under the provisions of IDAPA 37.03.07.70 (Rule 70)." *Letter* at 5.

Pursuant to the above-cited authority, Petitioners hereby request a hearing to contest the requirements of the Letter.

In order to avoid unnecessary delay and litigation, and pursuant to IDAPA 37.01.01.100, Petitioners, its engineer, and attorneys are available and would be willing to participate in an informal meeting to discuss resolution of this matter.

DATED this 21st day of May, 2019.

Chris M. Bromley
McHugh Bromley, PLLC
*Attorneys for Petitioners*

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21st day of May, 2019, I served a true and correct copy of the foregoing document on the person(s) whose names and addresses appear below by the method indicated:

IDAHO WATER RESOURCE BOARD
P.O. BOX 83720
BOISE, ID 83720-0098

- ☒ U.S. Mail/Postage Prepaid
- ☐ Facsimile
- ☐ Overnight Mail
- ☐ Hand Delivery
- ☐ E-Mail

Chris M. Bromley

**BEFORE THE IDAHO WATER RESOURCE BOARD**

| | |
|---|---|
| IN THE MATTER OF APPLICATION FOR STREAM CHANNEL ALTERATION PERMIT NO. S37-20565 | **RESOLUTION** |

WHEREAS, on March 15, 2019, the Idaho Department of Water Resources ("IDWR") received Joint Application for Permits No. S37-20565 ("Application") filed by John Hastings, Jr. and Embassy Auditoriums, Inc. ("Hastings") for a stream channel alteration permit for bank stabilization, in response to a notice of violation; and

WHEREAS, on May 17, 2019, IDWR issued a Conditional Approval of Joint Application for Permits (S37-20565) ("Permit"); and

WHEREAS, Hastings requested, in writing within fifteen days after service of the Permit, a hearing before the Idaho Water Resource Board ("IWRB") on IDWR's conditional approval; and

WHEREAS, IDWR and Hastings have been in discussions on the conditional terms of the Permit since Hastings' request for hearing but have reached an impasse;

WHEREAS, it is necessary for the IWRB to appoint a hearing officer to preside over the hearing requested by Hastings and issue a recommended order or preliminary order in accordance with Idaho Code §§ 67-5243(1) and 67-5248;

NOW THEREFORE BE IT RESOLVED, the IWRB hereby appoints Shelley Keen, Water Allocation Bureau Chief, as the hearing officer in the above-captioned proceedings.

Adopted this 19th day of November 2021.

Jeff Raybould, Chairman
Idaho Water Resource Board

ATTEST: _____
Jo Ann Cole-Hansen, Secretary

**BEFORE THE IDAHO WATER RESOURCE BOARD**

| | |
|---|---|
| IN THE MATTER OF APPLICATION FOR STREAM CHANNEL ALTERATION PERMIT NO. S37-20565 | Resolution Appointing Hearing Officer |

WHEREAS, on March 15, 2019, the Idaho Department of Water Resources ("IDWR") received Joint Application for Permits No. S37-20565 ("Application") filed by John Hastings, Jr. and Embassy Auditoriums, Inc. ("Hastings") for a stream channel alteration permit for bank stabilization, in response to a notice of violation; and

WHEREAS, on May 17, 2019, IDWR issued a Conditional Approval of Joint Application for Permits (S37-20565) ("Permit"); and

WHEREAS, Hastings requested a hearing before the Idaho Water Resource Board ("IWRB") on IDWR's conditional approval; and

WHEREAS, IDWR and Hastings were in discussions on the conditional terms of the Permit and reached an impasse in late 2021, and IDWR asked the IWRB to appoint a hearing officer;

WHEREAS, the IWRB appointed Shelley Keen as hearing officer at its November 19, 2021 meeting and Hastings disqualified Mr. Keen as a hearing officer;

WHEREAS, Hastings initiated court proceedings against IDWR related to the matter in November 2021;

WHEREAS, the court proceedings have reached a resolution such that another hearing officer needs to be appointed to issue a recommended order or preliminary order in accordance with Idaho Code §§ 67-5243(1) and 67-5248;

NOW THEREFORE BE IT RESOLVED, the IWRB hereby appoints Pete Wood, an independent hearing officer on contract with IDWR, to serve as the hearing officer in the above captioned matter.

DATED this 26th day of July 2024.

JEFF RAYBOULD, Chairman
Idaho Water Resource Board

ATTEST _____
DEAN STEVENSON, Secretary

**BEFORE THE DEPARTMENT OF WATER RESOURCES**

**OF THE STATE OF IDAHO**

| | |
|---|---|
| IN THE MATTER OF APPLICATION FOR STREAM CHANNEL ALTERATION PERMIT NO. S37-20565 | **NOTICE OF PREHEARING CONFERENCE** |

## BACKGROUND

On March 15, 2019, the Idaho Department of Water Resources (IDWR") received Joint Application for Permits No. S37-20565 ("Application") filed by John Hastings, Jr. and Embassy Auditoriums, Inc. ("Hastings"). Mr. Hasting's Application was for a stream channel alteration permit for bank stabilization filed in response to a notice of violation issued by the Department.

On May 17, 2019, IDWR issued a Conditional Approval of Joint Application for Permits (S37-20565) ("Permit"). Thereafter extensive litigation ensued, including a trip to the Idaho Supreme Court. This matter is now back before the Department for an administrative proceeding as contemplated under I.C. § 42-3809.

On July 26, 2024, the Idaho Water Resource Board appointed Pete Wood to serve as the Hearing Officer in this contested case.

## NOTICE OF PREHEARING CONFERENCE

NOTICE IS HEREBY GIVEN that Hearing Officer Wood will hold a prehearing conference in the above-captioned matter on **September 5, 2024, at 2:00 p.m. (MT)**, at the Department's State Office, located at 322 E. Front Street, 6th Floor, Conference Room 602B, Boise, Idaho. All parties must be present at the prehearing conference in person or by video conference. The parties shall come prepared to discuss any proposed settlement and to identify and discuss issues to be addressed at the hearing.

Agenda items for the prehearing conference will include:

1. Identify counsel representing the parties.
2. Schedule discovery.
3. Address discovery needs.
4. Schedule hearings.
5. Discovery needs.
6. Designate date for identifying witnesses and exhibits.
7. Designate target date for conducting an administrative hearing if resolution is not possible during the prehearing conference; and
8. Address other matters that may expedite orderly conduct and disposition of the contested case.

To join the conference via computer or smartphone, please click the following Webex link and follow the prompts:

https://idahogov.webex.com/idahogov/j.php?MTID=m8d6ea71dfa653812ac601f0b9c33dd19

Meeting number (access code): 2634 077 9482
Meeting password: q6jQgRJnP53

To join the conference via telephone, please dial 1(415) 655-0001 (US Toll) and enter the following meeting access code when prompted: 2634 077 9482

The prehearing conference will be held in accordance with provisions of Chapters 1 and 2, Title 42, Idaho Code, and the Department's Rules of Procedure, IDAPA 37.01.01. A copy of the Rules of Procedure may be obtained from the Department upon request or at https://adminrules.idaho.gov/rules/current/37/370101.pdf.

The conference will be conducted in a manner that meets the accessibility requirements of the Americans with Disabilities Act. If you require special accommodation to attend, participate in, or understand the conference, please advise the Department no later than five (5) days before the conference. Inquiries for special accommodation should be directed to Jean Hersley, Idaho Department of Water Resources, PO Box 83720, Boise, Idaho 83720-0098, telephone (208) 287-4942, or jean.hersley@idwr.idaho.gov.

DATED this 13th day of August, 2024.

Pete Wood
Hearing Officer

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13th day of August, 2024, I served a true and correct copy of the foregoing document on the following by the method(s) indicated below:

J. KAHLE BECKER
223 N 6TH ST STE 325
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kahle@kahlebeckerlaw.com

*Attorney for Applicant*

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- ☐ U.S. Mail, postage prepaid
- ☐ Overnight Mail
- ☐ Facsimile
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Jean Hersley
Technical Records Specialist II

**BEFORE THE DEPARTMENT OF WATER RESOURCES**

**OF THE STATE OF IDAHO**

| | |
|---|---|
| IN THE MATTER OF APPLICATION FOR STREAM CHANNEL ALTERATION PERMIT NO. S37-20565 | **NOTICE OF RESULTS FROM PRE-HEARING CONFERENCE, AND NOTICE OF RE-SCHEDULED PREHEARING HEARING CONFERENCE** |

## BACKGROUND

On March 15, 2019, the Idaho Department of Water Resources (IDWR") received Joint Application for Permits No. S37-20565 ("Application") filed by John Hastings, Jr. and Embassy Auditoriums, Inc. ("Hastings"). Mr. Hasting's Application was for a stream channel alteration permit for bank stabilization filed in response to a notice of violation issued by the Department.

On May 17, 2019, IDWR issued a Conditional Approval of Joint Application for Permits (S37-20565) ("Permit"). Thereafter extensive litigation ensued, including a trip to the Idaho Supreme Court. This matter is now back before the Department for an administrative proceeding as contemplated under I.C. § 42-3809.

The upcoming administrative hearing was requested by Mr. Hastings in a Petition for Hearing filed on May 21, 2019. Mr. Hastings requested the hearing "to contest the requirements" included in the Permit the Department issued on May 15, 2019.

On July 26, 2024, the Idaho Water Resource Board appointed Pete Wood to serve as the Hearing Officer in this contested case.

On September 5, 2024, the Department held a prehearing conference. Mr. Hastings appeared through counsel, Kahle Becker. The Department was represented by Deputy Attorney General Megan Carter. The Department's Stream Protection Coordinator Aaron Golart was also present.

During the prehearing conference it became clear the parties disputed what issues should be addressed at the upcoming administrative hearing. Accordingly, the Hearing Officer requested that each party file a Notice of Issues with the Department by October 4, 2024, at 5:00 P.M. The purpose of the Notice of Issues is to provide the parties an opportunity to articulate what issues they believe should be addressed at the upcoming administrative hearing. The parties should be as specific as possible. The Hearing Officer also requested that the parties articulate who should bear the burden of proof at the hearing and what standard of proof should apply. The parties will have an opportunity to file a written response, which will be due on October 25, 2024, at 5:00 P.M. If necessary the Hearing Officer will issue an order based on the parties' submissions clarifying the precise issues that will be addressed at the administrative hearing.

Additionally, during the pre-hearing conference Mr. Kahle Becker moved to disqualify Hearing Officer Wood after learning that Mr. Wood was previously employed as a Deputy Attorney General assigned to the Department from (approximately) 10/1/2022 – 8/1/2023. The Hearing Officer requested that Mr. Becker file his motion to disqualify in writing by October 4, 2024.

The parties also agreed to reschedule the pre-hearing conference for November 7, 2024, at 2:00 P.M.

**NOTICE OF PRE-HEARING CONFERENCE**

NOTICE IS HEREBY GIVEN that Hearing Officer Wood will hold a prehearing conference in the above-captioned matter on **November 7, 2024, at 2:00 p.m. (MT)**, at the Department's State Office, located at 322 E. Front Street, 6th Floor, Conference Rooms 602C–D, Boise, Idaho.[1] All parties must be present at the prehearing conference in person. The parties shall come prepared to discuss any proposed settlement and to identify and discuss issues to be addressed at the hearing.

Agenda items for the prehearing conference will include:

1. Schedule discovery;
2. Address discovery needs;
3. Schedule hearings;
4. Designate dates for identifying witnesses and exhibits;
5. Designate a target date for conducting the administrative hearing if resolution is not possible during the prehearing conference;
6. Address other matters that may expedite orderly conduct and disposition of the contested case; and
7. The parties should also be prepared to discuss the Notice of Issues.

The prehearing conference will be held in accordance with provisions of Chapters 1 and 2, Title 42, Idaho Code, and the Department's Rules of Procedure, IDAPA 37.01.01. A copy of the Rules of Procedure may be obtained from the Department upon request or at https://adminrules.idaho.gov/rules/current/37/370101.pdf.

[1] Note this date is subject to change in the event Mr. Wood is disqualified as the Hearing Officer.

The conference will be conducted in a manner that meets the accessibility requirements of the Americans with Disabilities Act. If you require special accommodation to attend, participate in, or understand the conference, please advise the Department no later than five (5) days before the conference. Inquiries for special accommodation should be directed to Jean Hersley, Idaho Department of Water Resources, PO Box 83720, Boise, Idaho 83720 0098, telephone (208) 287-4942, or jean.hersley@idwr.idaho.gov.

DATED this 9th day of September, 2024.

Pete Wood
Hearing Officer

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 9th day of September, 2024, I served a true and correct copy of the foregoing document on the following by the method(s) indicated below:

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*Attorney for Applicant*

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RECEIVED
Oct 04, 2024
DEPARTMENT OF
WATER RESOURCES

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*Attorneys for the Idaho Department of Water Resources*

**BEFORE THE IDAHO WATER RESOURCE BOARD**

| | |
|---|---|
| IN THE MATTER OF APPLICATION FOR STREAM CHANNEL ALTERATION PERMIT NO. S37-20565 | **DEPARTMENT'S STATEMENT OF ISSUES** |

## BACKGROUND

On September 11, 2017, the Idaho Department of Water Resources ("Department") issued a *Notice of Violation and Order to Cease and Desist the Unauthorized Alteration of the Big Wood River* ("*Notice of Violation*") to John Hastings Jr. and Embassy Auditoriums, Inc (collectively "Hastings"). The *Notice of Violation* informed Hastings the Department was aware of unauthorized work to the Big Wood River consisting of removing riparian vegetation and discharging fill material below the mean high water mark. *Notice of Violation*, at 1. The *Notice of Violation* required Hastings to (1) cease and desist unauthorized work, (2) submit a restoration plan to repair the area, and (3) pay a civil penalty. *Id.*

On January 26, 2018, the Department issued a *Consent Order and Agreement* ("*Consent Order*") in response to the *Notice of Violation* which was signed by Mr. Hastings as the landowner. The *Consent Order* required Mr. Hastings to (1) pay a civil penalty, (2) submit a stream channel alteration application for permit, (3) submit a restoration plan to repair the area, (4) "comply with the terms and conditions" of the Department's issued permit resulting from the application for permit, and (5) contact the Department after completing the restoration work. *Consent Order*, at 2.

On March 15, 2019, Hastings submitted a Joint Application for Permits containing the restoration plan required by the *Consent Order*. On May 17, 2019, the Department issued the *Conditional Approval of Joint Application for Permits (S37-20565) in the matter of Consent*

*Order and Agreement and of Notice of Violation No. E2017-1236 Big Wood River – 1200 Warm Springs Road Restoration* ("*Permit*") to Hastings. The *Conditional Approval* included 14 special conditions that Hastings must comply with to complete the restoration work on the Big Wood River.

On May 19, 2019, Hastings filed a *Petition for Hearing* ("*Petition*") claiming that the conditions listed in the *Permit* are inconsistent with the *Consent Order*.

On September 9, 2024, the hearing officer issued a *Notice of Results from Pre-Hearing Conference, and Notice of Re-Scheduled Prehearing Conference* requiring the parties to submit a statement of issues to clarify the issues to be considered at the administrative hearing.

## STATEMENT OF ISSUES

The single issue raised in the *Petition* is whether the conditions on the issued *Permit* are consistent with the requirements set forth in the *Consent Order*. The *Petition* provides the following statements of the issues, "Certain requirements contained in [Permit] are inconsistent with the Consent Order and the agreement that led to the filing of the Restoration Plan," and ". . . Petitioners hereby request a hearing to contest the requirements of the [Permit]."

Hastings timely filed the *Petition* pursuant to Idaho Code § 42-3805 and Rule 70 of the Department's Stream Channel Alteration Rules (IDAPA 37.03.07). Idaho Code § 42-3805 states, in relevant part:

> Within fifteen (15) days of the date of mailing of the decision, the applicant shall notify the director if it refuses to modify its plans in accordance with such decision or that it requests a hearing before the board thereon. If requested, such hearing shall be held in accordance with the provisions of chapter 52, title 67, Idaho Code, and rules adopted by the board. . . . Upon the conclusion of the hearing and completion of any investigation conducted by the director the board shall enter its findings in writing approving the decision of the director on the application and plans in whole or in part, or upon conditions, or rejecting the decision of the director on said application and plans for such proposed stream channel alteration.

Rule 70 also governs the *Petition* requirements for stream channel alterations and states:

> Any applicant who is granted a limited or conditioned permit, or who is denied a permit, may seek a hearing on said action of the Director by serving on the Director written notice and request for a hearing before the Board within fifteen (15) days of receipt of the Director's decision. Said hearing will be set, conducted, and notice given as set forth in the Rules promulgated by the Board under the provisions of Title 67, Chapter 52, Idaho Code.

IDAPA 37.03.07.070.

Hearings authorized under each provision must be conducted adhering to the requirements set forth in the Idaho Administrative Procedures Act ("APA"). The APA requires the party requesting a contested case to provide notice of "a short and plain statement of the matters asserted or the issues involved." I.C. § 67-5242(1)(c). The *Petition* plainly states that Hastings requests a hearing "to contest the requirements of the [Permit]." The *Permit* states "[The Department] is permitting the proposal subject to the above conditions in this permit, and not the entire proposal as submitted." *Permit*, at 5. This means that other than the added conditions the Application for Permit was approved in whole. Therefore, the only issue before the Board is whether the conditions on the issued *Permit* are consistent with the requirements set forth in the *Consent Order*.

## BURDEN OF PROOF

The Board's Rules of Procedure (IDAPA 37.01.01) and the APA do not require a specific burden of proof standard on parties requesting a hearing before an agency. However, the APA grants rulemaking authority to the Office of Administrative Hearings to implement hearing requirements for contested cases before an agency. Although the Board conducts its own hearings and has its own rules of procedure, the Office of Administrative Hearings may be used as an example for burden of proof requirements. For instance, the Office of Administrative Hearings places the burden of proof on the party requesting the hearing. *See*, *e.g.*, IDAPA 62.01.01.477 ("[T]he burden of proof is on the party requesting or challenging an agency action or order, or who is otherwise the proponent of an order or position."); *Bennett v. State, Dep't of Transp.*, 147 Idaho 141, 143, 206 P.3d 505, 507 (Ct. App. 2009) (placing the burden of proof on the individual requesting a hearing before the Idaho Transportation Department).

Hastings filed the *Petition for Hearing* challenging the *Permit's* conditions. Therefore, Hastings bears the burden of proof in challenging the *Permit's* conditions.

## CONCLUSION

The hearing officer should only consider the issue presented in Hastings' *Petition for Hearing*. Therefore, the purpose of the hearing will address whether the conditions on the *Permit* are consistent with the *Consent Order*.

DATED this 4th day of October 2024.

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL

MEGHAN M. CARTER
Deputy Attorney General

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 4, 2024, I caused to be served a true and correct copy of the *Department's Statement of Issues* via the method indicated below, upon the following:

| | |
|---|---|
| **J. KAHLE BECKER**<br>Attorney at Law<br>223 N. 6th St., Suite 325<br>Boise, ID 83702<br>kahle@kahlebeckerlaw.com<br><br>*Attorney for Petitioner John Hastings* | ☒ U.S. Mail, postage prepaid<br>☐ Hand Delivery<br>☐ Overnight Mail<br>☒ Email |
| **IDAHO WATER RESOURCE BOARD**<br>file@idwr.idaho.gov<br><br>Pete Wood<br>*Hearing Officer*<br>petewoodlaw@gmail.com | ☐ U.S. Mail, postage prepaid<br>☐ Hand Delivery<br>☐ Overnight Mail<br>☒ Email |

MEGHAN M. CARTER
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RECEIVED
Oct 04, 2024
DEPARTMENT OF
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**BEFORE THE DEPARTMENT OF WATER RESOURCES**
**OF THE STATE OF IDAHO**

| | |
|---|---|
| IN THE MATTER OF APPLICATION FOR STREAM CHANNEL ALTERATION PERMIT NO. S37-20565 | PETITIONER'S BRIEF RE: ISSUES BEFORE THE HEARING OFFICER & MOTION FOR DISQUALIFICATION |

COMES NOW Petitioner, John Hastings by and through his attorney of record, J. Kahle Becker and, at the request of the current hearing officer, provides his Brief regarding the issues to be decided by the Hearing Officer as well as his Motion to Disqualify the Hearing Officer as follows.

## 1. MOTION FOR DISQUALIFICATION

Petitioner is entitled to a hearing by an impartial hearing officer. This includes the right to a hearing at which the hearing officer is not tainted by the appearance of a lack of impartiality. Idaho Code 67-5252 Presiding officer — Disqualification provides in pertinent part:

> 67-5252. Presiding officer — Disqualification. (1) Except as provided in subsection (4) of this section, any party shall have the right to one (1) disqualification without cause of any person serving or designated to serve as presiding officer, and any party shall have a right to move to disqualify for bias, prejudice, interest, substantial prior involvement in the matter other than as a presiding officer, **status as an employee of the**

**agency hearing the contested case**, lack of professional knowledge in the subject matter of the contested case, or any other cause provided in this chapter **or any cause for which a judge is or may be disqualified.**

(2) Any party may petition for the disqualification of a person serving or designated to serve as presiding officer:

(a) Within fourteen (14) days after receipt of notice indicating that the person will preside at the contested case; or

(b) **Promptly upon discovering facts establishing grounds for disqualification, whichever is later.**

Any party may assert a blanket disqualification for cause of all employees of the agency hearing the contested case, other than the agency head, without awaiting designation of a presiding officer.

(3) A person whose disqualification for cause is requested shall determine in writing whether to grant the petition, stating facts and reasons for the determination. (Emphasis added).

This section of Idaho Code has a nearly identical administrative rule known as Rule 412. That Rule provides in pertinent part:

Section 04.11.01.412 - DISQUALIFICATION OF OFFICERS HEARING CONTESTED CASES

02. Disqualification in Other Contested Cases. In other contested cases, any party shall have a right to one (1) disqualification without cause of any person serving or designated to serve as a hearing officer. Any party shall have a right to move to disqualify a hearing officer for bias, prejudice, interest, substantial prior involvement in the case other than as a presiding officer, **status as an employee of the Attorney General**, lack of professional knowledge in the subject matter of the contested case, or any other reason provided by law **or for any cause for which a judge is or may be disqualified**. (1-1-95)

03. Motion for Disqualification. Any party may, within fourteen (14) days, petition for the disqualification of a hearing officer after receiving notice that the officer will preside at a contested case **or promptly upon discovering facts establishing grounds for disqualification, whichever is later.** A hearing officer whose disqualification is requested shall determine in writing whether to grant the motion for disqualification, stating facts and reasons for the hearing officer's determination. Disqualification of the Attorney General is not allowed. See Sections 59-704 and 67-5252(4), Idaho Code. (Emphasis added)

At the initial hearing held in this matter on September 5, 2024, it was revealed for

the first time to Petitioner that the Hearing Officer, IDWR itself appointed, was a Deputy Attorney General, in the Natural Resources Division, assigned to the Idaho Department of Water Resources, in the 2022-2023 timeframe. The hearing officer's prior status as counsel for an opposing party raises a concern regarding the appearance of bias against Petitioner. The reason being, IDWR was actively litigating a case against Petitioner concerning the application of the statute of limitations to bring an enforcement action against Petitioner for the alleged violation of the Permit at issue in this administrative proceeding. *See John Hastings, Jr. v. Idaho Department of Water Resources*, Ada County Case No. CV01-21-17825. This district court case was filed November 15, 2021 (*See Complaint* attached as Exhibit A), went up on an interlocutory appeal to the Idaho Supreme Court (547 P.3d 1190) in November of 2022, and is currently stayed at the District Court level following the issuance of a remittitur on May 16, 2024.

First it is clear that the Department was well aware of the appearance of impropriety that the appointment of Mr. Wood as a hearing officer would pose. Yet, IDWR unilaterally marched forward with this appointment and failed to inform Petitioner of the clear appearance of a conflict of interest by a judicial officer who is supposed to be independent and disinterested. Furthermore, the Hearing Officer did not make a disclosure of this conflict of interest on his own initiative. *See* Idaho Code of Judicial Conduct Rule 2.11 Comment [5]" A judge should disclose on the record information that the judge believes the parties or their lawyers might reasonably consider relevant to a possible motion for disqualification, even if the judge believes there is no basis for disqualification." Instead, this conflict only became apparent to Petitioner upon inquiry by Petitioner's counsel at the initial September 5, 2024 hearing. The hearing officer then

instructed Petitioner to file his Motion for Disqualification on or before October 4, 2024 in preparation for a hearing to be held on November 7, 2024, as permitted by Idaho Code 67-5252(2)(b).

In this situation, Petitioner became aware that the Hearing Officer served in a subsection of the Idaho Office of the Attorney General assigned to the Idaho Department of Water Resources, not by voluntary disclosure – but by making an inquiry on the record at the initial hearing. According to the Hearing Officer, there were 5 Deputy Attorney Generals assigned to the IDWR subsection of the natural resources division, 2 of which had entered their appearance in Ada County Case No. CV01-21-17825. Additionally, in their brief on Appeal to the Idaho Supreme Court, IDWR indicated that it was represented by Raul Labrador (Attorney General), Scott L. Campbell (Chief of Energy and Natural Resources Division), Garrick L. Baxter, and Meghan Carter. (*See cover* page of IDWR's Brief on Appeal attached as Exhibit B). Here, at a minimum, the Hearing Officer's direct co-workers, and two levels of his supervisors appear to have drafted, reviewed, and were named in pleadings IDWR filed which were adverse to Petitioner's interests. However, the full extent of the Hearing Officer's involvement in Ada County Case No. CV01-21-17825, the Consent Order, and permitting process which preceded it, or any other aspect of IDWR's interactions with Petitioner are known only to IDWR, the Office of the Attorney General, and the Hearing Officer.

Idaho's Supreme Court recently had the opportunity to discuss the grounds for disqualification of a judge for a conflict of interest in *Idaho State Appellate Pub. DEF. v. Fourth Jud. Dist. Ct.*, 540 P.3d 311, 329(2023 Ida.).

> "[i]n matters of judicial ethics, appearance and reality often converge as one." *Hepworth Holzer, LLP*, 169 Idaho at 400, 496 P.3d at

886 (citing *Liteky v. United States*, 510 U.S. 540, 565, 114 S. Ct. 1147, 127 L. Ed. 2d 474 (1994) (Kennedy, J., concurring)). Indeed, as Justice Kennedy noted in his concurring opinion, "justice must satisfy the appearance of justice." *Liteky*, 510 U.S. at 565 (citing *Offutt v. United States*, 348 U.S. 11, 14, 75 S. Ct. 11, 99 L. Ed. 11 (1954)).

The Idaho Constitution guarantees that "justice shall be administered without . . . prejudice." Idaho Const. art I, § 18. Indeed, "[i]t is axiomatic that '[a] fair trial in a fair tribunal is a basic requirement of due process.'" *State v. Shackelford*, 155 Idaho 454, 458-59, 314 P.3d 136, 140-41 (2013) (second alteration in original) (quoting *In re Murchison*, 349 U.S. 133, 136, 75 S. Ct. 623, 99 L. Ed. 942 (1955)). Importantly, Canon 2 of the Idaho Code of Judicial Conduct provides that "a judge shall perform the duties of judicial office impartially, competently, and diligently." Idaho Code Jud. Conduct Canon 2. Rule 2.3 of Canon 2 dictates that "a judge shall perform the duties of judicial office, including administrative duties, without bias or prejudice." Idaho Code Jud. Conduct r. 2.3(A). Rule 2.11 of Canon 2 dictates that "[a] judge **shall disqualify** himself or herself in any proceeding in which the judge's impartiality **might reasonably be questioned**. . . ." Idaho Code Jud. Conduct r. 2.11(A). The comment to Rule 2.11 informs this reading, by explaining "[u]nder this Rule, a judge is disqualified whenever the judge's impartiality might reasonably be questioned. . . ." Idaho Code Jud. Conduct r. 2.11 cmt 1. (Emphasis added).

*Idaho State Appellate Pub. DEF. v. Fourth Jud. Dist. Ct.*, 540 P.3d 311, 329, 2023 Ida. LEXIS 160, *44-45, 2023 WL 8705073

Pursuant to I.C. 67-5252, Idaho Supreme Court precedent, and the Idaho Code of Judicial Conduct, disqualification in this matter appears to be governed by Idaho Code of Judicial Conduct Rule 2.11, which provides in pertinent part:

(A) A judge **shall disqualify himself** or herself in any proceeding in which the judge's impartiality* **might reasonably be questioned**, including but not limited to the following circumstances:
(1) The judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge* of facts that are in dispute in the proceeding.
(5) The judge:
(a) served as a lawyer in the matter in controversy, or **was associated with a lawyer who participated substantially as a lawyer in the matter during such association**;
(b) served in governmental employment, and in such capacity participated personally and substantially as a lawyer or public official concerning the

> proceeding, or has publicly expressed in such capacity an opinion concerning the merits of the particular matter in controversy.
> COMMENT
> [1] Under this Rule, **a judge is disqualified whenever the judge's impartiality might reasonably be questioned, regardless of whether any of the specific provisions of paragraphs (A)(l) through (5) apply.** In many jurisdictions, the term "recusal" is used interchangeably with the term "disqualification." (emphasis added).

Here the Hearing Officer's impartiality can reasonably be questioned because it appears he left employment with opposing counsel herein, and almost immediately became a hearing officer in a related mid-litigation administrative hearing. This is not akin to a situation where someone in the US Department of Justice in an east coast office became a hearing officer on a matter unrelated to anything that attorney worked on while in government service, in a new hearing - on the west coast, involving DOJ as counsel for a governmental agency the hearing officer never represented. Rather, this hearing officer was essentially in a small law firm that had a direct and substantial involvement as counsel for a party in years of ongoing litigation, between these same parties, immediately preceding the instant hearing, to which he is assigned.

A federal court remarked on the appearance of impropriety such a situation poses (while denying disqualification of a Judge due to the lack of analogous facts) in *One Unnamed Deputy Dist. Atty. v. County of L.A.*

> This is not a case in which the challenged judge, while in private practice, served as a lawyer in the matter in controversy, nor is it a case in which a partner or associate, with whom Judge Gandhi previously practiced law, served during such association as a lawyer concerning the current matter in controversy. *One Unnamed Deputy Dist. Atty. v. County of L.A.*, 2012 U.S. Dist. LEXIS 195284, *8. *See also Doe v. BSA*, 2020 U.S. Dist. LEXIS 30228, *1 (Recusal of judge in a case involving the Boy Scouts as a party due to the Judge's prior service as a volunteer board member for a chapter of the Boy Scouts).

If nothing else, office chatter about this ongoing dispute or personal relationships with

IDWR's counsel may serve to influence the Hearing Officer's decision due to the temporal proximity of the hearing officer's change in employment. At the very least, there is a clear potential for the appearance of a lack of impartiality based on the Hearing Officer's prior employment with IDWR's present counsel during the pendency of the underlying litigation in this matter. Therefore, out of an abundance of caution, the Hearing Officer should disqualify himself and a new hearing officer, free from bias or the appearance of bias, should be appointed.

**2. MATTERS AT ISSUE IN THIS HEARING**

The following section of this brief should only be assessed following a ruling on Petitioner's Motion for Disqualification.

This Hearing takes place after substantial changes to the facts and law have occurred from the date Petitioner originally requested a hearing on May 21, 2019. The original Petition for Hearing (Attached as Exhibit B to District Court *Complaint*, which is Exhibit A hereto) raised the following issues:

> This Petition for Hearing is filed in response to a letter dated May 17, 2019 ("Letter"), whereby the State Coordinator of the Stream Protection Program approved, with conditions, the Petitioners' *Joint Application for Permit* ("Joint Application") received by the Idaho Department of Water Resources on March 15, 2019. Related to the Joint Application is a *Consent Order*, issued on January 26, 2018, and a *Restoration Plan and Bank Stabilization Project for 1200 Warm Springs, Ketchum, Idaho* stamped by Petitioners' engineer on December 26, 2018 ("Restoration Plan").
>
> Certain requirements contained in Letter are inconsistent with the Consent Order and the agreement that led to the filing of the Restoration Plan. As stated in the Letter, "If you object to the decision issuing this permit with the above conditions, you have 15 days in which to notify this office in writing that you request a formal hearing on the matter. If an objection has not been received within 15 days, the decision will be final under the provisions of IDAPA 37.03.07.70 (Rule 70)." *Letter* at 5.
>
> Pursuant to the above-cited authority [IDAPA 37.01.01 *et seq.*, IDAPA 37.03.07 *et seq.*, I.C. § 42-1701A(3), I.C. § 42-3801 *et seq.*,

> Chapter 52, Title 67, Idaho Code], Petitioners hereby request a hearing to contest the requirements of the Letter.

Thus, the focus of this hearing is on IDWR's attempted imposition of conditions beyond those found in the Consent Order, as well as the changed landscape of facts and law[1] which have arisen due to the passage of time.

**a) Burden of Proof**

The Department's Rules of Practice and Procedure, IDAPA 37.01.01, do not allocate the burden of proof on any issue to either party. Likewise, the Rules do not articulate a standard of proof that is required. This is not a novel issue for IDWR as other rules, such as conjunctive management, do not allocate the burden of proof to either party. The Idaho Supreme Court held in *Am. Falls Reservoir Dist. No. 2 v. Idaho Dep't of Water Res.*:

> ...however now, in the absence of such facts indicating the Director has misapplied the Rules in violation of Idaho law, our analysis is limited to the Rules as written, or "on their face," and the Rules do not permit or direct the shifting of the burden of proof. Therefore, this Court does not find that the failure to explicitly recite certain procedural components such as the burdens of proof makes the CM Rules unconstitutional on their face.
>
> The district court was also concerned that the CM Rules did not specifically articulate an appropriate standard for the Director to apply when responding to a delivery call: that is, should the required proof be clear and convincing, a preponderance of the evidence, or merely what the Director deems "reasonable." Again, the failure to state which standard applies does not mean the CM Rules can never be applied in a constitutional fashion -- and the Rules' incorporation of the Idaho Constitution, statutes and case law would indicate to the contrary. **Requirements pertaining to the standard of proof and who bears it have been developed over the years and are to be read into the CM Rules.** There is simply no basis from which to conclude the Director can never apply the proper evidentiary standard in responding to a delivery call....

[1] Changes in the law from the time a permit is issued and a hearing is held are always relevant to consider. *See* I.C. 67-5279(3)(a) and (b).

> However, as noted above with respect to the burdens of proof and evidentiary standards, it is not necessary that every procedural requirement be recited in the CM Rules, when the Rules clearly have incorporated the provisions of the Idaho Constitution, statutes and case law....
>
> *Am. Falls Reservoir Dist. No. 2 v. Idaho Dep't of Water Res.*, 143 Idaho 862, 874, 154 P.3d 433, 445, 2007 Ida. LEXIS 55, *28-29. (Emphasis added.)

In the absence of a direct indication in Idaho Code or the Rules, of the standard and burden of proof to be applied in this hearing, we must look to other sources in order to discern the applicable burden and standard of proof.

This case is governed by the Idaho Administrative Procedures Act which provides:

> 67-5240. Contested cases. A proceeding by an agency other than the public utilities commission or the industrial commission that may result in the issuance of an order is a contested case and is governed by the provisions of this chapter, except as provided by other provisions of law.

Idaho Code § 67-5242 "Procedure at Hearing" does not discuss the standard or burden of proof to be applied in contested cases. However, the recently enacted I.C. 67-5279(5), indicates that IDWR bears the burden of proof that its permitting requirements are in line with its statutory and regulatory authority. I.C. 67-5279(5) provides:

> I.C. 67-5279 (5) When interpreting the provisions of any state law, this chapter, or any rule, as defined in section 67-5201, Idaho Code, the court shall not defer to an agency's interpretation of the law or rule and shall interpret its meaning and effect de novo. In an action brought by or against an agency, after applying all customary tools of interpretation, the court shall exercise any remaining doubt in favor of a reasonable interpretation that limits agency power and maximizes individual liberty.

In this Hearing, Petitioner's rights to the quiet enjoyment of his property are at stake. Federal caselaw indicates that when individual interests are at risk of being deprived by governmental action the agency bears a heightened burden. The Court in

*Omar v. Kerry* held:

> "The function of a standard of proof, as that concept is embodied in the Due Process Clause and in the realm of factfinding, is to instruct the factfinder concerning the degree of confidence our society thinks he should have in the correctness of factual conclusions for a particular type of adjudication." *Addington v. Texas*, 441 U.S. 418, 423, 99 S. Ct. 1804, 60 L. Ed. 2d 323 (1979) (internal citation and quotation marks omitted). "At one end of the spectrum is the typical civil case involving a monetary dispute between private parties" wherein the "plaintiff's burden of proof is a mere preponderance of the evidence [and] [t]he litigants [] share the risk of error in roughly equal fashion." *Id.* At the other end of the spectrum, in a criminal case, the beyond a reasonable doubt standard applies because "the interests of the defendant are of such magnitude that historically and without any explicit constitutional requirement they have been protected by standards of proof designed to exclude as nearly as possible the likelihood of an erroneous judgment." *Id.* An intermediate "clear" and "convincing" standard applies where the interests at stake "are deemed to be more substantial than mere loss of money" or where "particularly important individual interests" are at stake. *Id.* at 424.
>
> Clear and convincing evidence requires evidence that could "place in the ultimate factfinder an abiding conviction that the truth of its factual contentions are highly probable." *Colorado v. New Mexico*, 467 U.S. 310, 316, 104 S. Ct. 2433, 81 L. Ed. 2d 247 (1984) (internal citation and quotation marks omitted); *see also United States v. Yi*, 704 F.3d 800, 806 (9th Cir. 2013) ("Clear and convincing evidence creates a conviction that the factual contention is highly probable."). In contrast, evidence satisfies the preponderance of the evidence standard if it is "reliable and thoroughly tested." *United States v. Mezas de Jesus*, 217 F.3d 638, 644 (9th Cir. 2000) (internal citation and quotation marks omitted).
>
> While the preponderance of evidence standard generally applies in ordinary civil cases, the Supreme Court has applied the clear and convincing evidence standard when certain fundamental rights are at stake. *See, e.g., Cruzan by Cruzan v. Dir., Missouri Dep't of Health*, 497 U.S. 261, 286, 110 S. Ct. 2841, 111 L. Ed. 2d 224 (1990) (cessation of life support); *Santosky v. Kramer*, 455 U.S. 745, 760-70, 102 S. Ct. 1388, 71 L. Ed. 2d 599 (1982) (termination of parental right); *Addington*, 441 U.S. at 433 (civil commitment); *Woodby v. Immigration & Naturalization Serv.*, 385 U.S. 276, 286, 87 S. Ct. 483, 17 L. Ed. 2d 362 (1966) (deportation); *Chaunt v. United States*, 364 U.S. 350, 353, 81 S. Ct. 147, 5 L. Ed. 2d 120 (1960) (denaturalization). Plaintiff, relying *Kent v. Dulles*, 357 U.S. 116, 78 S. Ct. 1113, 2 L. Ed. 2d 1204 (1958), contends that an individual's right to travel internationally is likewise a fundamental right.

*Omar v. Kerry*, 2016 U.S. Dist. LEXIS 18590, *22-25

The right to be free from governmental intrusion into one's private property has been recognized as a fundamental right by the US Supreme Court.

> [W]e have stated that the right to exclude is "universally held to be a fundamental element of the property right," and is "one of the most essential sticks in the bundle of rights that are commonly characterized as property." *Kaiser Aetna* v. *United States*, 444 U. S. 164, 176, 179-180, 100 S. Ct. 383, 62 L. Ed. 2d 332 (1979); see *Dolan* v. *City of Tigard*, 512 U. S. 374, 384, 393, 114 S. Ct. 2309, 129 L. Ed. 2d 304 (1994); *Nollan* v. *California Coastal Comm'n*, 483 U. S. 825, 831, 107 S. Ct. 3141, 97 L. Ed. 2d 677 (1987); see also Merrill, Property and the Right to Exclude, 77 Neb. L. Rev. 730 (1998) (calling the right to exclude the "*sine qua non*" of property).
>
> Given the central importance to property ownership of the right to exclude, it comes as little surprise that the Court has long treated government-authorized physical invasions as takings requiring just compensation.
> *Cedar Point Nursery v. Hassid*, 594 U.S. 139, 150, 141 S. Ct. 2063, 2072-2073, 210 L. Ed. 2d 369, 382, 2021 U.S. LEXIS 3394, *15, 28 Fla. L. Weekly Fed. S 960, 2021 WL 2557070.

Here, IDWR wants to have free access to Petitioner's property for years to monitor the onerous restoration work it is seeking to have Petitioner perform. The Hearing Officer should place the burden of proof on IDWR, by the clear and convincing evidence standard, that the imposition of its permitting requirements upon Petitioner must be interpreted such that those requirements maximize Petitioner's individual liberty and in such a way as to limit IDWR's power. *See* I.C. 67-5279 (5).

**b) The Permit Must Be Amended So as to Exclude Any Requirements to Perform Work on Lands Owned or Controlled by Embassy Auditoriums, Inc.**

In Ada County Case No. CV01-21-17825, IDWR filed an Enforcement Action Counterclaim against Mr. Hastings alleging as follows:

> 22. Idaho Code § 42-1701B allows the Department to seek specific

> performance of a consent order if a party does not comply with its terms.
> 23. The Department is entitled to an order of specific performance requiring Hastings to complete the work proposed in the restoration plan consistent with the terms and conditions of the permit the Department approved. (Exhibit C)

Importantly, Embassy Auditoriums, Inc., a landowner mentioned in the May 17, 2019 Letter from IDWR (Exhibit D), which is the subject of the Petition for Hearing Mr. Hastings filed (Exhibit B to Exhibit A hereto {District Court Complaint}), is not a party to Ada County Case No. CV01-21-17825 and is not listed in the Consent Order. *See* Exhibits A (Consent Order) to Exhibit A hereto {District Court Complaint} and Exhibit C hereto {IDWR Counterclaim}.

The lack of jurisdiction over Embassy Auditoriums Inc. negates IDWR's ability to compel any work to be done on land owned or controlled by Embassy Auditoriums, Inc. Therefore, according to the precedent set in *Hastings v. Idaho Dep't of Water Res.*, IDWR is now time barred from maintaining an enforcement action against Embassy Auditoriums, Inc. by operation of the two-year statute of limitations in I.C. § 42-3809. (...the earliest possible date that the Department "ought to have reasonably known" that Hastings did not intend to comply with the Consent Order was when he filed the underlying declaratory judgment action on November 15, 2021. *Hastings v. Idaho Dep't of Water Res.*, 547 P.3d 1190, 1199, 2024 Ida. LEXIS 42, *23). Therefore, it is appropriate for the Hearing Officer to consider modifications to the permit based on a lack of jurisdiction over a party which owns land which IDWR's permit contemplates Petitioner performing work upon. Due to the nature of the restoration work IDWR purports to require, it would be futile to issue a permit which is incapable of being performed on lands owned by a 3rd party.

**c) The Permit Must Be Amended So that the Requirements are No More Stringent Than Those Found in the Consent Order.**

In *John Hastings, Jr. v. Idaho Department of Water Resources*, Ada County Case No. CV01-21-17825 IDWR repeatedly referred to the Consent Order as a contract between Mr. Hastings and IDWR. The requirements contemplated by the Consent Order were simple and limited in scope. Specifically, the Consent Order required Mr. Hastings to:

> The restoration plan must be designed to reduce further erosion and help restore more functional riverine conditions and include the following minimum requirements:
>
> a. bioengineering treatments to incorporate large woody material along the streambank (e.g. root wad engineered log jam and brush or tree revetment)
>
> b. a planting plan to help re-establish a native riparian buffer between the Big Wood River and the upland parcel at the subject lands. Consent Order at 2 ¶1. Exhibit A (Consent Order) to Exhibit A hereto (District Court Complaint).

IDWR has sought to unilaterally modify the Consent Order by adding additional cumbersome conditions which go well beyond these limited contractual requirements. The Hearing Officer must issue an Order eliminating any extraneous conditions which go beyond those contemplated in the Consent Order.

**d) The Permit Must Be Amended So that Petitioner is Authorized to Perform Work on the Beds and Banks of a Publicly Owned River.**

The Permit Issued by IDWR contains the following limiting condition, which hampers Petitioner's ability to comply with the Consent Order and perform the stream restoration work contemplated therein:

> 1) This permit does not constitute any of the following:
>
> a. An easement or right-of-way to trespass or work upon property belonging to others.
>
> b. Other approval that may be required by Local, State or Federal Government, unless specifically stated in the special conditions above. Exhibit D at p.5.

In this situation, the beds and banks of the Big Wood River have a cloud on their title. This cloud arises due to the late Ernest Hemingway's quitclaim deed on the river. Exhibit E p. 4-6. Subsequent transfers of this purported interest have taken place to charitable non-profit organizations. Exhibit E. To date, Petitioner has been met with requirements that he agree to defend, indemnify, and hold harmless the "owner" of this section of the Big Wood River before he can commence the stream channel restoration work, IDWR requires. Exhibit E at p. 1 ¶1. Likewise, the City of Ketchum requires Petitioner to obtain the consent of adjoining landowners before Petitioner can commence stream channel restoration work. Exhibit E at p. 1 "Whereas".

This permit condition and local ordinance are problematic because the State of Idaho is disregarding its Public Trust obligations by refusing to recognize its ownership of this section of the Big Wood River.

> Idaho law provides that "a riparian owner (on a navigable river or stream) or a littoral owner (on a navigable lake) takes title down to the natural high water mark." *In re Sanders Beach*, 143 Idaho 443, 453, 147 P.3d 75, 85 (2006) (citing *West v. Smith*, 95 Idaho 550, 554, 511 P.2d 1326, 1330 (1973)). The State of Idaho then owns, "in trust for the public title to the bed of the navigable water below the OHWM as it existed at the time the State was admitted into the Union." *Id. State v. Hudson*, 162 Idaho 888, 892, 407 P.3d 202, 206, 2017 Ida. LEXIS 325, *13, 2017 WL 5992043.

IDWR has also improperly subjugated the State's authority to manage public trust resources to local Ketchum and Blaine County ordinances.

> Article IX, § 7, of the Idaho Constitution establishes the state board of land commissioners "who shall have the direction, control and disposition of the public lands of the state, under such regulations as may be prescribed by law." Article IX, § 8, of the Idaho Constitution defines the duty of the board of land commissioners "to provide for the location, protection, sale or rental of all lands . . . under such regulations as may be prescribed by law, and in such manner as will secure the maximum long-term financial return to the institution . . . . " The constitutional duty of the

> Board has been held to be self-executing, that is, the Board may adopt appropriate procedures to carry out its constitutional duties, if the legislature has not specified the procedure. *Allen v. Smylie*, 92 Idaho 846, 452 P.2d 343 (1969).
>
> The legislature enacted Title 58, Idaho Code, which governs the control of the public lands of the state, through the administration of the Department of Lands. I.C. § 58-101 *et seq*. Pursuant to I.C. § 58-132, the state board of land commissioners has been entrusted with the duty to determine the best use or uses to be made of state land, in order to carry out the constitutional mandate of Section 8, Article IX, to secure from the endowment trust lands the maximum long-term financial return.[2] Chapter 3 of Title 58 provides a procedure for appraisement, lease application and renewal, and the sale of lands, referring to specifically named parcels of endowment lands.
>
> *State ex rel. Kempthorne v. Blaine County*, 139 Idaho 348, 350-351, 79 P.3d 707, 709-710, 2003 Ida. LEXIS 119, *8-9.

Therefore, the permit must be amended to remove these conditions and, more importantly, the State of Idaho must recognize its ownership of this section of the Big Wood River and the obligation of the State to manage its public trust grounds independent of local ordinances.

**e) Any Requirements in the Permit Must be Grounded in Statutory Authority or Administrative Rules which are Construed so as to Minimize IDWR's Authority and to Maximize Petitioner's Individual Liberty, as Required by I.C. 67-5279(5).**

The Idaho Administrative Procedures Act has been amended since the time Petitioner requested a hearing on May 21, 2019. The most pertinent amendment is the addition of section 5 to I.C. 67-5279, which provides:

> I.C. 67-5279 (5) When interpreting the provisions of any state law, this chapter, or any rule, as defined in section 67-5201, Idaho Code, the court shall not defer to an agency's interpretation of the law or rule and shall interpret its meaning and effect de novo. In an action brought by or against an agency, after applying all customary tools of interpretation, the

[2] Petitioner recognizes that the beds and banks of the Big Wood River are not endowment lands. However, the same rationale applies that public trust lands are to be managed by the State, regardless of conflicts with local regulations.

> court shall exercise any remaining doubt in favor of a reasonable interpretation that limits agency power and maximizes individual liberty.

Here, IDWR has not provided statutory or administrative authority for the imposition of many of the onerous conditions it has included in the Permit it issued to Petitioner. Discovery will focus on IDWR's purported authority for the imposition of conditions which exceed its statutory authorization and the terms of the Consent Order. Any conditions which are not grounded in the plain text of IDWR's statutory authority, and instead rely upon administrative rules, must be analyzed in light of the new requirements imposed under I.C. 67-5279(5). Any conflicts or ambiguities must then be resolved in such a way as to maximize Petitioner's individual liberty.

**CONCLUSION**

The Hearing Officer should disqualify himself and hand this brief off to another Hearing Officer who is free from bias or the appearance of bias. Thereafter, IDWR caries the burden on a heightened standard of proof to demonstrate that its permitting conditions are grounded in law and are interpreted so as to maximize Petitioner's individual liberty to manage his property as he sees fit.

October 4, 2024

By: /s/ J. Kahle Becker
J. KAHLE BECKER
LAW OFFICES OF J. KAHLE BECKER
Attorney for Petitioner

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 4th day of October, 2022, I caused to be served the foregoing Motion for Summary Judgment to the following persons by email:

Meghan Carter
Attorney for Defendant,
Idaho Department of Water Resources
meghan.carter@idwr.idaho.gov

via email

/s/ J. Kahle Becker
J. KAHLE BECKER
Attorney for the Petitioner

# EXHIBIT A

Electronically Filed
11/15/2021 11:20 AM
Fourth Judicial District, Ada County
Phil McGrane, Clerk of the Court
By: Lauren Ketchum, Deputy Clerk

**J. KAHLE BECKER (ISB # 7408)**
**Attorney at Law**
223 N. 6th St., Suite 325
Boise, Idaho 83702
Phone: (208) 345-5183
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Email: kahle@kahlebeckerlaw.com
Attorney for Plaintiff

Yee-Wallace, Cynthia

RECEIVED
Oct 04, 2024
DEPARTMENT OF
WATER RESOURCES

**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

**ACTION FOR DECLARATORY JUDGMENT**

COMES NOW the above-named Plaintiff, by and through his attorney of record, J. Kahle Becker, and Pursuant to IRCP 57, I.C. 67-5278(3), and I.C. 10-1201 *et seq* for causes of action against the Defendant, complains and alleges as follows:

**I.**

**PARTIES**

1. Plaintiff John Hastings, Jr. is an individual, who at all times relevant to this action owned real property in Blaine County, Idaho.

2. Defendant Idaho Department of Water Resources is a political subdivision of the State of Idaho with its principal place of business at Idaho Water Center, 322 E Front St. Ste. 648, Boise ID 83702-7371.

## II.

## JURISDICTION AND VENUE

3. This Court has subject matter and personal jurisdiction over this action pursuant to and by virtue of Idaho Code § 67-5278, Article V, Section 20, of the Idaho Constitution, Idaho Code §§ 1-705 and 10-1201 and other applicable laws and rules.

4. Venue is proper in Ada County pursuant to and by virtue of Idaho Code § 67-5272(1) (b), § 5-404, and other applicable laws and rules.

## III.

## ACTION FOR DECLARATORY RELIEF

5. Plaintiff restates and realleges the preceding paragraphs and incorporates them herein by reference as though fully set forth.

6. Plaintiff owns real property along the Big Wood River, upstream of its confluence with Warm Springs Creek. The subject property also immediately upstream of the bridge for Warm Springs Road.

7. There were extremely high runoff events in the spring and summer of 2017 that led to flooding in the Wood River valley.

8. Acting governor Brad Little declared a state of emergency in Blaine County due to these events. https://ioem.idaho.gov/wp-content/uploads/sites/57/2017/05/FLOODING-MAY-ID-04-LEVEL-1-STATE-DECLARATION.pdf.

9. President Donald Trump also signed a disaster declaration as to the flooding in Blaine County. https://www.mtexpress.com/news/blaine_county/trump-signs-

disaster-declaration-for-county/article_eca08bca-8d0a-11e7-9dd9-3b8965bbb412.html

10. On July 25, 2017, as the River continued to erode, with 8-15 feet of riverbank washing away overnight, and with concerns as to what might happen to the bank and Bridge if something was not immediately done, Plaintiff met with Brittany Skelton, Senior Planner with the City of Ketchum, and Ketchum's Fire Chief, Mr. Elle to look at the property.

11. Pursuant to the holding in *Aldape v. Akins*, 105 Idaho 254, 256, 668 P.2d 130, 132, 1983 Ida. App. LEXIS 238, *2, the avulsive event which occurred on Plaintiff's property in 2017, leaves property lines unchanged. Furthermore, "a riparian owner of land abutting upon a stream, whether navigable or non-navigable, has the right to place such barriers as will prevent his land from being overflowed or damaged by the stream, and for the purpose of keeping the same within its natural channel." *Milbert v. Carl Carbon, Inc.*, 89 Idaho 471, 478, 406 P.2d 113, 117, 1965 Ida. LEXIS 389, *13.

12. Verbal emergency approval was given by the City to protect the bank in an effort to protect the Bridge.

13. Also, at the time Plaintiff believed he had existing permitting in place through IDWR and United States Army Corps of Engineers ("USACE") in Permit No. S37-20362.

14. Through the efforts of a contractor, rock armoring was placed on the bank of the Warm Springs Properties. The rock armoring successfully stabilized the bank, protecting the property and the Bridge.

15. Due to the holding in *Aldape v. Akins* the rock armoring appears to have been placed entirely on what was once private upland property. *See also I.C.* 58-1203(2)(c) (Exempting the protection or exercise of private property rights within the state of Idaho from the Public Trust Doctrine).

16. On July 31, 2017, the City issued a written permit, stating additional stream bank approvals were needed from the Department and USACE. Upon receipt of the written approval from the City, and learning that the Permit No. S37-20362 had expired, Plaintiff immediately ceased work on the bank.

17. On August 25, 2017, a representative from Brockway Engineering, who was hired by Plaintiff, spoke on the phone with Aaron Golart, IDWR, and Rob Brochu, USACE, about the property, and the need for additional permitting. Mr. Brochu told Mr. Latham that no civil penalties would be imposed by USACE if a Joint Application for Permits was filed. The representative from Brockway Engineering told Mr. Golart and Mr. Brochu an application would be filed.

18. On August 30, 2017, a representative from Brockway Engineering sent an emergency application to USACE & Defendant.

19. On September 7, 2017, a representative from Brockway Engineering emailed Mr. Golart at IDWR and the City of Ketchum as to the status of the emergency application.

20. On September 12, 2017, Brockway Engineering received a Notice of Violation from Defendant.

21. A compliance conference was held on October 3, 2017.

22. Despite repeated phone calls and emails from Plaintiff's attorney to IDWR over the course of months, it was not until January 12, 2018 that the draft Consent Order was received.

23. On January 26, 2018, Plaintiff and his attorney met with Mr. Golart, Ms. Palmer, and others from IDWR to review and then sign the Consent Order. This was the first time Plaintiff had seen the Consent Order. *See* Exhibit A.

24. The terms relevant to this action are:

1) By **February 15, 2018**, Respondent shall pay a civil penalty in the amount of $10,000 and submit a Joint Application for Permit ("application") to the Department that proposes a plan to restore the streambank at the subject lands. The restoration plan must be designed to reduce further erosion and help restore more functional riverine conditions and include the following minimum requirements:
    a. Bioengineering treatments to incorporate large woody material along the streambank (e.g. root wad engineering log jam and brush or tree revetment)
    b. A planting plan to help re-establish a native riparian buffer between the Big Wood River and the upland parcel at the subject lands.

2) Respondent shall comply with the terms and conditions of any permit the Department issues subsequent to the submittal of an acceptable application and restoration plan pursuant to Order paragraph no. 1.

3) Respondent shall contact the Department immediately after completing the restoration plan at the subject lands. The Department shall inspect the completed work within 14 days after notification of completion to determine if the work meets the criteria and conditions of the restoration plan.

4) The Department agrees to refund Respondent $7,500 of the civil penalty if the Respondent successfully completes the restoration plan by **December 31, 2018**, and meets the requirements of Order paragraph 1-3. If there are circumstances beyond the control of Respondent, he will contact the Department by November 30, 2018, **to request an extension of the deadline stated above**.

5) Upon execution of this agreement, the Department's receipt of the agreed civil penalty described above, and full compliance with the

terms contained herein, NOV no. E2017-1236 will be considered resolved. (Emphasis added).

25. On February 14, 2018, Brockway Engineering filed a *Restoration Plan and Bank Stabilization Project for 1200 Warm Springs, Ketchum, Idaho* ("Restoration Plan"), in response to the January 26, 2018 Consent Order.

26. While preparing the Restoration Plan, Plaintiff's engineer had phone calls with Mr. Golart to seek his input. Unfortunately, with every plan proposed by Plaintiff's engineer, all of which were in full compliance with the terms of the Consent Order, Mr. Golart found items he did not like, with the imposition of new and additional terms.

27. A Revised Plan was filed with the Department on March 22, 2018.

28. This plan was still unacceptable to Mr. Golart and Defendant.

29. Following several calls and meetings, October 30, 2018, and thinking there was an end in sight, Brockway Engineering filed the Second Revised Plan with the Department.

30. The Second Revised Plan was in full compliance with the Consent Order.

31. On November 2, 2018 Mr. Golart granted an extension, stating in an email to Plaintiff's attorney, "With respect to the time extension you have requested, IDWR is willing to grant the request to extend the time to complete construction on the restoration until **March 15, 2019**." (Emphasis added.)

32. However, the actual terms of the Consent Order were not modified, nor was a new consent order signed.

33. Once again Mr. Golart raised new concerns about the application.

34. On December 14, 2018, Brockway Engineering filed a third revised restoration plan ("Third Revised Plan") with the Department, incorporating Mr. Golart's newest concerns.

35. The Third Revised Plan was in full compliance with the Consent Order.

36. Following additional correspondence with Defendant, on March 15, 2019, the Joint Application was filed by Brockway Engineering.

37. On May 14, 2019, USACE issued its approval of the Joint Application.

38. On May 17, 2019, the Department issued a *Conditional Approval of Joint Application for Permits (S37-20565) in the matter of Consent Order and Agreement and of Notice of Violation No. E2017-1236 Big Wood River – 1200 Warm Springs Road Violation* ("Conditional Approval").

39. The Conditional Approval agreed the Third Revised Plan and Joint Application met the requirements of the Consent Order.

40. However, coming as a complete surprise were the inclusion of thirteen (13) "Special Conditions" which had never previously been discussed.

41. These new terms appear to be inconsistent with Idaho Code § 42-3803(c).

42. On **May 21, 2019**, a *Petition for Hearing* ("Petition") was mailed to the Idaho Water Resource Board, objecting to aspects of the Conditional Approval that were inconsistent with the Consent Order. *See* Exhibit B.

43. That objection stated: Certain requirements contained in Letter **are inconsistent with the Consent Order and the agreement that led to the filing of the Restoration Plan**. As stated in the Letter, "If you object to the decision issuing

this permit with the above conditions, you have 15 days in which to notify this office in writing that you request a formal hearing on the matter. (Emphasis added).

44. No action has been taken on the Conditional Approval since this time.

45. Defendant will not allow Plaintiff to simply remove the rock he caused to be placed.

46. Defendant will not permit Plaintiff to allow the rock he caused to be placed to remain undisturbed.

47. Defendant will not simply accept payment from Plaintiff so that Defendant can undertake the restoration work it purports to desire at Plaintiff's reasonable expense.

48. Rather, the Department has now threatened to commence both an administrative and/or district court enforcement action threatening to seek specific performance of work by Plaintiff on land the State may not own, as well as attorney's fees.

49. However, there is a two-year statute of limitations contained in I.C. 42-3809.

50. Plaintiff contends the statute of limitations for Defendant to bring either an enforcement action, either administratively or in district court, expired no later than **May 21, 2021**.

51. This action seeks a declaration as to the applicability of the two-year statute of limitations contained in I.C. 42-3809 with respect to the subject Consent Order and the underlying conduct.

52. One complicating factor rendering the completion of the work demanded by IDWR overly burdensome is the existence of a recorded deed clouding the title to the bed and banks of the Big Wood River adjacent to Plaintiff's property.

53. The deed dates back to a claim made by the late Ernest Hemingway. That purported interest was then transferred to the Nature Conservancy.

54. The present alleged owner of this section of the Big Wood River, as successor in interest, is the Ketchum Community Library Association, Inc.

55. This conflicting claim of ownership has resulted in conflicting requirements from IDWR and the City of Ketchum, the latter of which requires the consent of the party purporting to own the beds and banks of the Big Wood River.

56. To date, that consent has come with a request that Plaintiff indemnify the private party who claims an ownership interest in what appears to be state property, i.e. the beds and banks of the Big Wood River.

57. The Big Wood River has been adjudicated as navigable, and consequently subject to State regulation, downstream of the confluence of Warm Springs Creek. *Campion v. Simpson*, 104 Idaho 413, 659 P.2d 766 (1983).

58. The subject property is upstream of this confluence, along the Big Wood River.

59. However, Defendant and/or the State of Idaho declines to clear title to land which it would seem to own. *See* I.C. 36-901, 36-907, 58-1201,73-116, and *Southern Idaho Fish and Game Association v. Picabo Livestock, Inc.* 96 Idaho 360, 528 P.2d 1295 (1974).

60. This places Plaintiff in the precarious position of picking which conflicting claim of ownership to the beds and banks of the Big Wood River is valid.

61. For example, The May 17, 2019 permit issued to Mr. Hastings states:

> 1) This permit does not constitute any of the following:
> a) An easement or right-of-way to trespass or work upon property belonging to others…

62. These competing claims of ownership, combined with Defendant's ever shifting desires for its preferred restoration methodology, has cost Plaintiff a significant amount of money and seems to have no end in sight.

63. The Department contends the Consent Order constitutes a contract between Plaintiff and Defendant.

64. As permitted by Idaho Code 10-1203 "a contract may be construed either before or after there has been a breach thereof" in an action for declaratory judgment.

65. Defendant further contends the 5-year Statute of Limitations contained in I.C. 5-216, for actions upon written contracts, applies to its ability to bring an enforcement action.

66. However, the plain language of I.C. 5-216 states: "Within five (5) years: An action upon any contract, obligation or liability founded upon an instrument in writing. The limitations prescribed by this section shall never apply to actions in the name or for the benefit of the state and shall never be asserted nor interposed as a defense to any action in the name or for the benefit of the state although such limitations may have become fully operative as a defense prior to the adoption of this amendment."

67. As permitted by I.C. 10-1203, this action seeks a determination as to the applicability of the two-year statute of limitations contained in I.C. 42-3809 as it relates to Plaintiff's alleged violation of the Stream Protection Act (Chapter 38, Title 42, Idaho Code) as well as Plaintiff's alleged violation of the January 26, 2018 Consent Order.

68. Likewise, the threatened application of an enforcement action pursuant to IDAPA 37.03.07.045.02 impairs and interferes with Plaintiff's rights and privileges.

69. As permitted by I.C. 67-5278, Plaintiff seeks a declaration that the Department no longer has the right to pursue an enforcement action against Plaintiff due to the application of the two-year statute of limitations contained in I.C. 42-3809.

70. This is a proper matter to be determined by declaratory judgment pursuant to Idaho Code §§ 10-1201 through 10-1217, I.C. 67-5278, and IRCP 57.

## V.

## PRAYER

WHEREFORE, Plaintiff prays that the Court enter judgment against the Defendant as follows:

1. For an Order declaring the applicable statute of limitations for Defendant to bring an enforcement action, either administratively or in district court, is two years, pursuant to I.C. 42-3809;
2. For an Order declaring the statute of limitations to bring either an administrative or district court enforcement action against Plaintiff, for the allegations of alteration of the channel of the Big Wood River in 2017, has expired;
3. For an Order declaring the statute of limitations to bring either an administrative or

district court an enforcement action against Plaintiff for any violation of the January 26, 2018 Consent Order has expired.

4. For an Order declaring the statute of limitations for the Department to bring either an administrative or district court enforcement action against Plaintiff, for any violations of the Stream Protection Act, expired no later than May 21, 2021;
5. Alternatively, if the Statute of Limitations in I.C. 42-3809 has not expired, for a Declaration as to Plaintiffs rights and obligations under the Consent Order with respect to any obligation to conduct restoration activities on the subject properties.
6. For reasonable costs of suit pursuant to I.C. 10-1210, 12-117, and IRCP 54(d);
7. For such other and further relief as the Court deems just and proper.

DATED this 15th day of November, 2021.

LAW OFFICES OF J. KAHLE BECKER

By: /s/ J. Kahle Becker
J. KAHLE BECKER
Attorney for Plaintiff

**VERIFICATION**

STATE OF IDAHO )
:ss
County of Ada )

JOHN HASTINGS, Jr. . after being first duly sworn, deposes and says as follows:

That he is the Plaintiff in the foregoing ACTION FOR DECLARATORY JUDGMENT, that he has read the foregoing and believes the facts stated therein are true based upon his own information and belief.

IN WITNESS WHEREOF, Plaintiff has set its hand and seal the day and year first above written

JOHN HASTINGS, Jr.

SUBSCRIBED AND SWORN to before me this 10 day of NOVEMBER 2021.

SUSAN ALFS
COMMISSION NO. 15582
NOTARY PUBLIC
STATE OF IDAHO

Notary Public for Idaho
Residing at: Ketchum
Commission expires 12/15/2025

# EXHIBIT A

**BEFORE THE DEPARTMENT OF WATER RESOURCES**

**OF THE STATE OF IDAHO**

**CONSENT ORDER AND AGREEMENT**

RECEIVED
JAN 26 2018
DEPARTMENT OF WATER RESOURCES

In the Matter of Notice of Violation ("NOV") No. E2017-1236
dated September 11, 2017, issued to John Hastings Jr. ("Respondent")

## BACKGROUND

1) Respondent owns land adjacent to the Big Wood River located within the SW¼SE¼ of Section 12, Township 04 North, Range 17 East in Blaine County, Idaho. Respondent's property is specifically known as 1200 Warm Springs Rd in Ketchum, Idaho.

2) Respondent states that on July 25, 2017, the city of Ketchum gave him verbal permission to commence stream channel stabilization work at the subject land. Respondent states that he began work on July 27, 2017.

3) On July 31, 2017, the city of Ketchum (city) signed an Emergency Stream Bank Stabilization Permit to authorize Respondent to stabilize 200 feet of the southerly portion of the streambank at 1200 Warm Springs Rd as Project #17-085 ("subject lands"). However, Condition 9b of Project #17-085 states that:

> The approval is subject to any additional conditions as required by the Idaho Department of Water Resources and the U.S. Army Corps of Engineers; where an outside agency's conditions or standards are more stringent than the city's, the outside agency's conditions or standards apply.

4) On July 31, 2107, Respondent states that he ceased work at the subject lands.

5) On August 30, 2017, Respondent's consultant submitted an Emergency Permit Application to Alter a Stream Channel ("emergency application") to the Idaho Department of Water Resources ("Department") on behalf of Respondent. The application included photographs with the emergency application showing stream channel alterations had taken place at the subject lands. The consultant also stated that they would be "submitting a Joint Application for Permits to formalize the emergency work that was done without IDWR approval…"

6) The Department did not find any current record that authorized the alteration at the subject lands.

7) On September 7, 2017, the Department inspected the subject lands. The Department determined that Respondent caused rock-fill below the ordinary high water mark of the Big Wood River. The Department thereby concluded that Respondent had altered the Big Wood River without the required stream alteration permit.

8) On September 11, 2017, the Department sent an NOV to Respondent for altering a stream channel without the required approval and permit from the Department.

9) On September 14, 2017, Respondent's counsel contacted the Department to request a compliance conference.

10) On October 3, 2017, the Department held a compliance conference concerning the NOV. Respondent confirmed that he altered the stream channel without a permit from the Department.

**APPLICABLE LAW**

1) Idaho Code §§ 42-3801 and 42-3803a require that no alteration of any stream channel be made without approval of the Department. See also I.C. § 42-3802; IDAPA 37.03.07.010.

2) Idaho Code § 42-3809(2) allows the Department to initiate an administrative enforcement action for violation(s) of Idaho Code, Chapter 38, Title 42. The enforcement action must be in accordance with Idaho Code § 42-1701B.

3) Idaho Code § 42-1701B allows the Department to seek civil penalties and other redress pursuant to an NOV and to execute a consent order, formalizing an agreement between the Department and the alleged violator to remedy any damages and assure future compliance.

4) Idaho Code § 42-1701B(6) provides for civil penalties up to ten thousand dollars ($10,000) for violating provision(s) of the Stream Protection Act or administrative rules promulgated pursuant thereto.

**TERMS OF AGREEMENT AND ORDER**

1) By February 15, 2018, Respondent shall pay a civil penalty in the amount of $10,000 and submit a Joint Application for Permit ("application") to the Department that proposes a plan to restore the streambank at the subject lands. The restoration plan must be designed to reduce further erosion and help restore more functional riverine conditions and include the following minimum requirements:
    a. bioengineering treatments to incorporate large woody material along the streambank (e.g. root wad engineered log jam and brush or tree revetment)
    b. a planting plan to help re-establish a native riparian buffer between the Big Wood River and the upland parcel at the subject lands.

2) Respondent shall comply with the terms and conditions of any permit the Department issues subsequent to the submittal of an acceptable application and restoration plan pursuant to Order paragraph no. 1.

3) Respondent shall contact the Department immediately after completing the restoration plan at the subject lands. The Department shall inspect the completed work within 14 days after notification of completion to determine if the work meets the criteria and conditions of the restoration plan.

4) The Department agrees to refund Respondent $7,500 of the civil penalty if the Respondent successfully completes the restoration plan by December 31, 2018, and meets the requirements of Order paragraphs 1-3. If there are circumstances beyond the control of Respondent, he will contact the Department by November 30, 2018, to request an extension of the deadline stated above.

5) Upon execution of this agreement, the Department's receipt of the agreed civil penalty described above, and full compliance with the terms contained herein , NOV no. E2017-1236 will be considered resolved.

Dated this 26th day of January, 2018

CHERIE PALMER
Water Compliance Bureau

**CONSENT**

Respondent accepts fully the terms and conditions of this Order. These terms shall become effective upon execution by the parties. Respondent waives any right to contest this Order and consents to the issue hereof.

Dated this 26TH day of JANUARY, 2018

JOHN HASTINGS JR.
Respondent-Land Owner

# EXHIBIT B

**CHRIS M. BROMLEY**
IDAHO STATE BAR NO. 6530
**CANDICE MCHUGH**
IDAHO STATE BAR NO. 5908
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*Attorneys for Petitioners*

**BEFORE THE IDAHO WATER RESOURCE BOARD**

| | |
|---|---|
| IN THE MATTER OF CONDITIONAL APPROVAL OF JOINT APPLICATION FOR PERMITS (S37-20565) | **PETITION FOR HEARING** |

COMES NOW Embassy Auditoriums, Inc. and John Hastings, Jr. ("Petitioners"), by and through their attorneys of record, McHugh Bromley, PLLC, pursuant to IDAPA 37.01.01 *et seq.*, IDAPA 37.03.07 *et seq.*, I.C. § 42-1701A(3), I.C. § 42-3801 *et seq.*, Chapter 52, Title 67, Idaho Code, and hereby files this Petition for Hearing.

This Petition for Hearing is filed in response to a letter dated May 17, 2019 ("Letter"), whereby the State Coordinator of the Stream Protection Program approved, with conditions, the Petitioners' *Joint Application for Permit* ("Joint Application") received by the Idaho Department of Water Resources on March 15, 2019. Related to the Joint Application is a *Consent Order*, issued on January 26, 2018, and a *Restoration Plan and Bank Stabilization Project for 1200 Warm Springs, Ketchum, Idaho* stamped by Petitioners' engineer on December 26, 2018 ("Restoration Plan").

Certain requirements contained in Letter are inconsistent with the Consent Order and the agreement that led to the filing of the Restoration Plan. As stated in the Letter, "If you object to the decision issuing this permit with the above conditions, you have 15 days in which to notify this office in writing that you request a formal hearing on the matter. If an objection has not been received within 15 days, the decision will be final under the provisions of IDAPA 37.03.07.70 (Rule 70)." *Letter* at 5.

Pursuant to the above-cited authority, Petitioners hereby request a hearing to contest the requirements of the Letter.

In order to avoid unnecessary delay and litigation, and pursuant to IDAPA 37.01.01.100, Petitioners, its engineer, and attorneys are available and would be willing to participate in an informal meeting to discuss resolution of this matter.

DATED this 21st day of May, 2019.

Chris M. Bromley
McHugh Bromley, PLLC
*Attorneys for Petitioners*

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21st day of May, 2019, I served a true and correct copy of the foregoing document on the person(s) whose names and addresses appear below by the method indicated:

IDAHO WATER RESOURCE BOARD
P.O. BOX 83720
BOISE, ID 83720-0098

- ☒ U.S. Mail/Postage Prepaid
- ☐ Facsimile
- ☐ Overnight Mail
- ☐ Hand Delivery
- ☐ E-Mail

Chris M. Bromley

RECEIVED
Oct 04, 2024
DEPARTMENT OF
WATER RESOURCES

# EXHIBIT B

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5/10/2023 6:55 PM
Idaho Supreme Court
Melanie Gagnepain, Clerk of the Court
By: Brad Thies, Clerk

**IN THE SUPREME COURT OF THE STATE OF IDAHO**

JOHN HASTINGS, Jr.,

Plaintiff-Counterdefendant-Appellant,

vs.

IDAHO DEPARTMENT OF WATER RESOURCES, a political subdivision of the STATE OF IDAHO,

Defendant-Counterclaimant-Respondent.

**Supreme Court Docket No. 50273-2022**

Ada County District Court No. CV01-21-17825

# IDWR'S RESPONSE BRIEF

Appeal from the District Court of the Fourth Judicial District for Ada County
Honorable Lynn Norton, District Judge, Presiding

**RAÚL R. LABRADOR**
ATTORNEY GENERAL

**SCOTT L. CAMPBELL**
Chief of Energy and Natural Resources Division

**GARRICK L. BAXTER, ISB No. 6301**
**MEGHAN M. CARTER, ISB No. 8863**
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*Attorneys for Respondent*

**J. KAHLE BECKER**
**Attorney at Law**
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*Attorney for Appellant*

RECEIVED
Oct 04, 2024
DEPARTMENT OF
WATER RESOURCES

# EXHIBIT C

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Fourth Judicial District, Ada County
Phil McGrane, Clerk of the Court
By: Lusina Heiskari, Deputy Clerk

**LAWRENCE G. WASDEN**
ATTORNEY GENERAL

**DARRELL G. EARLY**
Chief of Natural Resources Division

**GARRICK L. BAXTER, ISB No. 6301**
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Attorneys for Defendant

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

| | |
|---|---|
| JOHN HASTINGS, Jr.,<br><br>Plaintiff,<br><br>vs.<br><br>THE STATE OF IDAHO DEPARTMENT OF WATER RESOURCES, a Political Subdivision of the STATE OF IDAHO,<br><br>Defendant. | Case No. CV01-21-17825<br><br>**DEFENDANT'S ANSWER TO FIRST AMENDED ACTION FOR DECLARATORY JUDGMENT AND COUNTERCLAIM** |

Defendant, Idaho Department of Water Resources, ("Department"), answers Plaintiff John Hastings Jr.'s ("Hastings") *Action for Declaratory Judgement* and *First Amended Action for Declaratory Judgment* (together referred to as "Complaint") as follows.

## GENERAL DENIAL

The Department denies all allegations set forth in the Complaint unless any allegation is expressly admitted.

## I. PARTIES

1. Answering paragraph 1, the Department admits that Hastings is an individual and that Blaine County records showed he owned property along the Big Wood River in 2017 and now in 2021.

2. The Department admits the allegations in paragraph 2.

## II. JURISDICTION AND VENUE

3. Answering paragraph 3, the Department denies the Court has subject matter jurisdiction pursuant to Idaho Code § 67-5278. The Department affirmatively avers that Idaho Code § 67-5278 is limited to allowing a petitioner to challenge the validity or applicability of a rule through an action for declaratory judgment. The Complaint seeks a determination that the Department is barred from pursuing an enforcement action pursuant to Idaho Code § 42-3809 or a signed consent order and agreement. Neither Idaho Code § 42-3809 or the signed consent order and agreement implicate a rule, therefore the Complaint does not establish subject matter jurisdiction. Answering further, the Department denies that any of the cited authority establishes the Court has personal jurisdiction over the Department. Answering further, the Department admits that Article V, Section 20, of the Idaho Constitution sets forth a general statement of the original jurisdiction of District Courts in the State of Idaho but denies that it confers subject matter or personal jurisdiction over this particular matter. Answering further, the Department admits that Idaho Code § 1-705 sets forth a general statement of the original and appellate

jurisdiction of the District Court of the State of Idaho but denies that it confers subject matter or personal jurisdiction over this particular matter. Answering further, the Department admits that Idaho Code § 10-1201 confers authority to the District Courts of the State of Idaho to enter declaratory judgements. With respect to the remaining allegations of Paragraph 3 of the Complaint, the Department is without sufficient knowledge or information to identify "other applicable laws and rules" which may confer subject matter or personal jurisdiction over this action and therefore denies the same.

4. Answering paragraph 4, the Department denies that Idaho Code § 67-5272(1)(b) establishes the appropriate venue for this action. The Department affirmatively avers that Idaho Code § 67-5272(1)(b) establishes the appropriate venue where a final agency action was taken. The Complaint does not claim any final action was taken by the Department, nor has there been a final agency action in this matter. Answering further, the Department admits that its principal place of business is in Ada County and that Idaho Code § 5-404 sets forth the requirements for venue to be determined, among which is—venue is proper in the County in which the Defendant resides or has its principal place of business.

## III. ACTION FOR DECLARATORY RELIEF

5. Answering paragraph 5, the Department restates and realleges its responses in paragraphs 1–4 of its Answer.

6. The Department admits the allegations in paragraph 6.

7. The Department admits the allegations in paragraph 7.

8. Answering paragraph 8, the Department admits Governor Little included Blaine County in a State Disaster Declaration. Answering further, the Department admits the link

included in the Complaint is the news release announcing Governor Little's State Disaster Declaration. Answering further, the Department denies Governor Little declared a state of emergency in Blaine County.

9. Answering paragraph 9, the Department admits the allegations. Answering further, the Department admits the link included in the Complaint is news coverage of President Trump signing a disaster declaration.

10. The Department is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 10 of the Complaint. Therefore, the Department denies all allegations in paragraph 10.

11. Answering paragraph 11, the Department denies the first sentence to the extent it characterizes the holding in *Aldape v. Akins*, and the application of that holding to this matter. Answering further, the Department admits the language quoted from *Milbert v. Carl Carbon, Inc.*, in the second sentence is accurate. Answering further, the Department denies the implications Hastings places on the quoted language.

12. Answering paragraph 12, the Department is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 12 of the Complaint. Therefore, the Department denies all allegations in paragraph 12.

13. Answering paragraph 13, the Department is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 13 of the Complaint. Therefore, the Department denies all allegations in paragraph 13.

14. Answering paragraph 14, the Department admits that rock was placed on the bank of the Warm Springs Property and below the ordinary high-water mark of the Big Wood River. Answering further, the Department is without knowledge or information

sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 14 of the Complaint. Therefore, the Department denies all remaining allegations in paragraph 14.

15. Answering paragraph 15, the Department is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in the first sentence of paragraph 15 of the Complaint. Therefore, the Department denies the same. Answering further, the Department admits that Idaho Code § 58-1203(2)(c) is a law of the State of Idaho which speaks for itself. The Department denies the applicability of Idaho Code § 58-1203(2)(c) to this matter.

16. Answering paragraph 16, the Department admits the City of Ketchum issued a permit on July 31, 2017. The permit is a document, the terms of which speak for itself. Answering further, the Department admits that Stream Channel Alteration Permit No. S37-20362 expired December 31, 2015. Answering further, the Department is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 16 of the Complaint. Therefore, the Department denies all remaining allegations in paragraph 16.

17. Answering paragraph 17, the Department admits Aaron Golart had conversations with Rob Brochu and Brockway Engineering in 2017 concerning a Joint Application for Permits. Answering further, the Department is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 17 of the Complaint. Therefore, the Department denies all remaining allegations in paragraph 17.

18. The Department admits the allegations in paragraph 18.

19. The Department admits the allegations in paragraph 19.

20. Answering paragraph 20, the Department admits it issued Hastings a Notice of Violation on September 11, 2017, and emailed a courtesy copy to the same on September 12, 2017. The Department also copied Brockway Engineering, among others on the email. Answering further, the Department denies the remaining allegations in paragraph 20.

21. The Department admits the allegations in paragraph 21.

22. Answering paragraph 22, the Department admits that a draft Consent Order was issued on January 12, 2018, and that there was communication leading up to its issuance. Answering further, the Department denies the remaining allegations in paragraph 22.

23. Answering paragraph 23, the Department admits that Hastings and his attorney met with the Department to review and sign the Consent Order on January 26, 2018. Answering further, the Department admits a copy of the Consent Order is produced in Exhibit A to the Complaint. Answering further, the Department is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 23 of the Complaint. Therefore, the Department denies all remaining allegations in paragraph 23.

24. Answering paragraph 24, the Department admits the language quoted by Hastings is from the Consent Order. Answering further, the Department denies the bolded items in the quoted language were bolded in the Consent Order.

25. The Department admits the allegations in paragraph 25.

26. Answering paragraph 26, the Department admits Mr. Golart and Hastings' engineer had phone calls to discuss the Restoration Plan. Answering further, the Department admits it requested additional items in the Restoration Plan. Answering

further, the Department denies that the Restoration Plan was in full compliance with the Consent Order. Answering further, the Department denies all remaining allegations in paragraph 26.

27. Answering paragraph 27, the Department admits it received a Revised Plan on March 22, 2018.

28. Answering paragraph 28, the Department admits it requested additional modifications to the Revised Plan because it did not meet the requirements of the Consent Order. The Department denies all remaining allegations in paragraph 28.

29. Answering paragraph 29, the Department admits it received the Second Revised Plan on October 31, 2018. Answering further, the Department is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 29. Therefore, the Department denies all remaining allegations in paragraph 29.

30. The Department denies the allegations in paragraph 30.

31. The Department admits the allegations in paragraph 31.

32. Answering paragraph 32, the Department admits that an amended or new consent order was not signed. However, an amended or new consent order was not required because the Department considered Mr. Golart's email an official extension of the construction deadline in the Consent Order.

33. Answering paragraph 33, the Department admits it sought changes to the Second Revised Plan. Answering further, the Department denies all remaining allegations in paragraph 33.

34. The Department admits the allegations in paragraph 34.

35. The Department admits the allegations in paragraph 35.

36. The Department admits the allegations in paragraph 36.

37. The Department admits the allegations in paragraph 37.

38. The Department admits the allegations in paragraph 38.

39. Answering paragraph 39, the Department admits the Third Revised Plan and Joint Application fulfilled the portion of the Consent Order requiring a restoration plan. Answering further, the Department denies the remaining allegations in paragraph 39.

40. Answering paragraph 40, the Department admits there were fourteen Special Conditions in the Conditional Approval, including the expiration date. Answering further, the Department is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 40 of the Complaint. Therefore, the Department denies all remaining allegations in paragraph 40.

41. The Department denies the allegations in paragraph 41.

42. Answering paragraph 42, the Department admits it received, on behalf of the Idaho Water Resource Board, a copy of the Petition for Hearing on May 23, 2019. Answering further, the Department admits a copy of the Petition is produced in Exhibit B to the Complaint. Answering further, the Department cannot confirm the date the Petition for Hearing was mailed and therefore denies it was mailed May 21, 2019.

43. Answering paragraph 43, the Department admits that Paragraph 43 quotes the Petition but denies that the statement quoted is legally or factually correct.

44. Answering paragraph 44, the Department admits that it has been in continued discussions with Hastings and his counsel to resolve Hastings' objections to the

Conditional Approval. Answering further, the Department denies all remaining allegations in paragraph 44.

45. Answering paragraph 45, the Department admits that it has continued to insist that Hastings comply with the terms of the Consent Order and complete the required remediation, not just remove the rock. Answering further, the Department denies Hastings' characterization of the Department's position.

46. Answering paragraph 46, the Department admits that it has continued to insist that Hastings comply with the terms of the Consent Order and complete the required remediation, and not leave the rock in place. Answering further, the Department denies Hastings' characterization of the Department's position.

47. Answering paragraph 47, the Department admits it will not simply accept payment for the restoration work. The Department has continued to insist that Hastings comply with the terms of the Consent Order and complete the required remediation. Answering further, the Department denies the remaining allegations in paragraph 47.

48. Answering paragraph 48, the Department admits it has continued to insist that Hastings comply with the terms of the Consent Order and complete the required remediation, or it will seek other available legal remedies. Answering further, the Department denies the remaining allegations in paragraph 48.

49. Answering paragraph 49, the Department admits Idaho Code § 42-3809 contains a two-year statute of limitations. Answering further, the Department denies that statute of limitations applies in this matter.

50. Answering paragraph 50, the Department admits that the statute of limitations contained in Idaho Code § 42-3809 applies to initiating a civil or administrative proceeding

in certain circumstances. Answering further, the Department denies that it cannot pursue compliance with the Consent Order beyond May 21, 2021.

51. The Department admits the allegations in paragraph 51.

52. Answering paragraph 52, the Department denies the work required under the terms of the Consent Order is overly burdensome. Answering further, the Department is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 52. Therefore, the Department denies the remaining allegations in paragraph 52.

53. The Department is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 53 of the Complaint. Therefore, the Department denies all allegations in paragraph 53.

54. The Department is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 54 of the Complaint. Therefore, the Department denies all allegations in paragraph 54.

55. Answering paragraph 55, the Department denies that the City of Ketchum requiring consent of landowners for the City's permitting is a conflicting requirement to the Consent Order. Answering further, the Department is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 55. Therefore, the Department denies the remaining allegations in paragraph 55.

56. The Department is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 56 of the Complaint. Therefore, the Department denies all allegations in paragraph 56.

57. Answering paragraph 57, the Department denies that the Court in *Campion v. Simpson,* 104 Idaho 413, 659 P.2d 766 (1983) adjudicated the Big Wood River as Navigable.

> The Big Wood River has been adjudicated as navigable, and consequently subject to State regulation, downstream of the confluence of Warm Springs Creek. *Campion v. Simpson*, 104 Idaho 413, 659 P.2d 766 (1983).

First Am. Action for Declaratory J. ¶ 57.

58. The Department admits the allegations in paragraph 58.

59. Answering paragraph 59, the Department admits it has not attempted to clear title to the beds and banks of the Big Wood River. Answering further, the Department denies the remaining allegations in paragraph 59.

60. Answering paragraph 60, the Department is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 60 of the Complaint. Therefore, the Department denies all allegations in paragraph 60.

61. Answering paragraph 61, the Department admits the permit is a written document the terms of which speak for themselves. The Department denies all remaining allegations in paragraph 61.

62. Answering paragraph 62, the Department denies that its preferred restoration methodology has shifted. Answering further, the Department is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 62 of the Complaint. Therefore, the Department denies all remaining allegations in paragraph 62.

63. The Department admits the allegations in paragraph 63.

64. Answering paragraph 64, the Department admits Idaho Code § 10-1203 is accurately quoted. Answering further, the Department avers that Idaho Code § 10-1203 speaks for itself.

65. Answering paragraph 65, the Department denies that Idaho Code § 5-216 imposes a five-year statute of limitations on the State of Idaho for actions upon written contracts. Answering further, the Department denies the remaining allegations of paragraph 65.

66. Answering paragraph 66, the Department admits Idaho Code § 5-216 is accurately quoted. Answering further, the Department avers that Idaho Code § 5-216 speaks for itself.

67. Answering paragraph 67, the Department admits paragraph 67 explains the purpose of Hastings suit as stated in Hastings' Complaint. Answering further, the Department denies all other allegations in paragraph 67.

68. Answering paragraph 68, the Department denies it has threatened to pursue an enforcement action against Hastings pursuant to IDAPA 37.03.07.045.02. Answering further, the remaining allegations of this paragraph are denied.

69. Answering paragraph 69, the Department denies that Idaho Code §§ 67-5278 and 42-3809 apply in this matter. Answering further, the remaining allegations of this paragraph are denied.

70. Answering paragraph 70, the Department denies that it initiated an administrative proceeding against Hastings in *In the Matter of Application for Stream Channel Alteration Permit No. S37-20565*. The Department affirmatively avers that Hastings requested a hearing regarding the terms of the Conditional Permit. *See* First Am.

Action for Declaratory J., Ex. B. Through a resolution, the Idaho Water Resource Board granted the request for hearing and appointed a hearing officer on November 19, 2021, to provide the requested hearing. A copy of the Idaho Water Resource Board resolution is attached as Exhibit 1.

71. The Department denies the allegations in paragraph 71.

72. The Department admits paragraph 72 quotes Article III Section 29 of the Idaho Constitution. Answering further, the Department avers that Article III Section 29 of the Idaho Constitution speaks for itself.

73. The Department admits paragraph 73 quotes Idaho Code § 67-5292. Answering further, the Department avers that Idaho Code § 67-5292 speaks for itself.

74. Answering paragraph 74, the Department admits the Idaho Legislature did not reauthorize any administrative rules in 2019, 2020, and 2021. However, the Department ensured temporary rules were adopted to ensure there were no gaps in the effectiveness of the rules. Temporary rules were published in the July 2021 Idaho Administrative Bulletin and are currently in full force and effect.

75. The Department admits paragraph 75 quotes the Legislature's Sine Die report. Answering further, the Department avers the report speaks for itself.

76. It appears paragraph 76 and 77 of the Complaint should have been one paragraph. The Department answers both paragraphs in the Department's paragraph 77.

77. The Department admits paragraphs 76 and 77 quote the Legislature's Sine Die report. Answering further, the Department avers the report speaks for itself.

78. The Department denies the allegations in paragraph 78.

79. The Department admits Title 10, Chapter 12 of Idaho Code and Idaho Rule of

Civil Procedure 57 govern declaratory judgments. Answering further, the Department denies Idaho Code § 67-5278 is applicable to this matter.

**IV. FIRST AFFIRMATIVE DEFENSE**

Hastings has failed to exhaust his administrative remedies. Pursuant to Idaho Code § 42-3805, IDAPA 37.03.07.070, and Title 67, Chapter 52, Idaho Code Hastings is entitled to a hearing on his conditioned stream channel alteration permit. Hastings timely requested a hearing but has not moved forward with that request.

**V. SECOND AFFIRMATIVE DEFENSE**

Hastings has not established this Court has subject matter jurisdiction.

**VI. REQUEST FOR RELIEF**

The Department respectfully requests the Court grant the following relief:

1. For an order dismissing this matter with prejudice and that the Plaintiff take nothing thereby.

2. For reasonable costs and attorney's fees pursuant to Idaho Code §§ 10-1210 and 12-117, and Idaho Rule of Civil Procedure 54.

3. For such other and further relief as the Court deems just and proper.

**COUNTERCLAIM**

The Defendant/Counterclaimant, the Idaho Department of Water Resources ("Department"), by and through the Office of the Idaho Attorney General makes this complaint and claim for relief against Plaintiff/Counterclaim Defendant John Hastings, Jr. ("Hastings"), asserting and alleging as follows:

## I. NATURE OF ACTION

1. The Department seeks an order of specific performance pursuant to Idaho Code §§ 42-1701B(4) and 42-3809 requiring Hastings to comply with the terms of the January, 26, 2018 Consent Order and Agreement ("Consent Order"). *See* First Am. Action for Declaratory J., Ex. A.

## II. PARTIES

2. Defendant/Counterclaim Plaintiff, the Department, is an executive agency of the State of Idaho authorized by Idaho Code § 42-1701B to file suit by and through the Idaho Attorney General to compel specific performance of a consent order.

3. Plaintiff/Counterclaim Defendant, John Hastings, Jr., is an individual, who owns real property adjacent to the Big Wood River located within the SW1/4SE1/4 of Section 12, Township 04 North, Range 17 East in Blaine County, Idaho, specifically known as 1200 Warm Spring Rd., Ketchum, Idaho.

## III. JURISDICTION

4. The Court has subject matter jurisdiction over this matter pursuant to Idaho Code §§ 42-1701B(4) and 1-705 because the violations and the cause of action alleged arose in Idaho.

5. The Court has personal jurisdiction over Hastings pursuant to Idaho Code § 5-514 because he owns real property within the State of Idaho and has agreed to personal jurisdiction by filing his Complaint.

## IV. VENUE

6. Venue is proper in the District Court of the Fourth Judicial District, State of Idaho, in Ada County pursuant to Idaho Code §§ 42-1701B(4) and 5-404 because the

violations and the causes of action arose in Idaho, and through the Complaint Hastings chose Ada County for the venue.

## V. FACTS

7. On September 11, 2017, pursuant to Idaho Code §§ 42-1701B and 42-3809(2), the Department issued a *Notice of Violation and Order to Cease and Desist the Unauthorized Alternation of the Big Wood River* ("NOV") to John Hastings Jr., for "removal of riparian vegetation and the discharge of fill material below the mean high-water mark of the Big Wood River" without a permit from the Department. *NOV* at 1. A copy of the NOV is attached as Exhibit 2.

8. A compliance conference was held October 3, 2017.

9. On January 26, 2018, Hastings and the Department entered into the Consent Order as authorized by Idaho Code § 42-1701B.

10. In the Consent Order, Hastings "confirmed that he altered the stream channel without a permit from the Department." First Am. Action for Declaratory J., Ex. A ¶ 10.

11. The Consent Order required Hastings to submit a Joint Application for Permit and a restoration plan and complete the work proposed in the restoration plan in compliance with any permit the Department issued.

12. The Department approved Hasting's third revised restoration plan ("Third Revised Plan").

13. A Joint Application for Permits based on the Third Revised Plan was submitted to the Department on March 15, 2019.

14. On May 17, 2019, the Department issued its Conditional Approval of Joint Application for Permits (537-20565) in the matter of Consent Order and Agreement and of

Notice of Violation No. 82017-1236 Big Wood River - 1200 Warm Springs Road Restoration ("Conditional Approval").

15. On May 23, 2019, Hastings timely filed a Petition for Hearing with the Idaho Water Resource Board regarding the Conditional Approval.

16. Since that time the Department and counsel for both parties have been in discussions regarding the conditions of the Conditional Approval.

17. In September 2021, Hastings' counsel asserted that Hastings' would not be performing the required streambank restoration.

18. In October 2021, the Department, realizing further discussions with Hastings were futile, asked the Idaho Water Resource Board to place appointing a hearing officer for Hastings' requested hearing on its November agenda.

19. On November 19, 2021, the Idaho Water Resource Board approved a resolution appointing a hearing officer for Hastings' requested hearing.

## VI. COUNT 1
## (Specific Performance)

20. The allegations of paragraphs 1–19 of this Counterclaim are hereby incorporated by reference as though fully set forth herein.

21. Hastings has stated he will not comply with the terms of the Consent Order requiring restoration of the streambank of the Big Wood River.

22. Idaho Code § 42-1701B allows the Department to seek specific performance of a consent order if a party does not comply with its terms.

23. The Department is entitled to an order of specific performance requiring Hastings to complete the work proposed in the restoration plan consistent with the terms

and conditions of the permit the Department approved.

24. The Department has incurred and will incur costs, expenses and attorney fees in the prosecution of this matter in an amount to be proved at trial or in the event of default the amount of $5,000. The Department is entitled to recover its attorney fees and costs pursuant to Idaho Code § 12-117 and Idaho Rule of Civil Procedure 54.

## VII. REQUEST FOR RELIEF

The Department respectfully requests the Court grant the following relief:

1. For an Order of specific performance directing Hastings to comply with the terms of the Consent Order.

2. For reasonable costs and attorney's fees pursuant to Idaho Code § 12-117 and Idaho Rule of Civil Procedure 54.

3. For such other and further relief as the Court deems just and proper.

DATED this 21st day of December 2021.

MEGHAN M. CARTER
Deputy Attorney General
Idaho Department of Water Resources

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 21st day of December 2021, I caused to be served a true and correct copy of the foregoing *Defendant's Answer to First Amended Action for Declaratory Judgment and Counterclaim* via iCourt E-File and Serve, upon the following:

| | |
|---|---|
| **J. KAHLE BECKER**<br>**Attorney at Law**<br>223 N. 6th St., Suite 325<br>Boise, Idaho 83702<br>kahle@kahlebeckerlaw.com<br><br>*Attorney for Plaintiff John Hastings* | ☐ U.S. Mail, postage prepaid<br>☐ Hand Delivery<br>☐ Overnight Mail<br>☐ Facsimile<br>☒ iCourt E-File and Serve |

MEGHAN M. CARTER
Deputy Attorney General
Idaho Department of Water Resources

**BEFORE THE IDAHO WATER RESOURCE BOARD**

| | |
|---|---|
| IN THE MATTER OF APPLICATION FOR STREAM CHANNEL ALTERATION PERMIT NO. S37-20565 | **RESOLUTION** |

WHEREAS, on March 15, 2019, the Idaho Department of Water Resources ("IDWR") received Joint Application for Permits No. S37-20565 ("Application") filed by John Hastings, Jr. and Embassy Auditoriums, Inc. ("Hastings") for a stream channel alteration permit for bank stabilization, in response to a notice of violation; and

WHEREAS, on May 17, 2019, IDWR issued a Conditional Approval of Joint Application for Permits (S37-20565) ("Permit"); and

WHEREAS, Hastings requested, in writing within fifteen days after service of the Permit, a hearing before the Idaho Water Resource Board ("IWRB") on IDWR's conditional approval; and

WHEREAS, IDWR and Hastings have been in discussions on the conditional terms of the Permit since Hastings' request for hearing but have reached an impasse;

WHEREAS, it is necessary for the IWRB to appoint a hearing officer to preside over the hearing requested by Hastings and issue a recommended order or preliminary order in accordance with Idaho Code §§ 67-5243(1) and 67-5248;

NOW THEREFORE BE IT RESOLVED, the IWRB hereby appoints Shelley Keen, Water Allocation Bureau Chief, as the hearing officer in the above-captioned proceedings.

Adopted this 19th day of November 2021.

Jeff Raybould, Chairman
Idaho Water Resource Board

ATTEST: _____
Jo Ann Cole-Hansen, Secretary

State of Idaho
DEPARTMENT OF WATER RESOURCES
322 East Front Street • P.O. Box 83720 • Boise, Idaho 83720-0098
Phone: (208) 287-4800 • Fax: (208) 287-6700 • Website: www.idwr.idaho.gov

C.L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

September 11, 2017

JOHN HASTINGS JR.
EMBASSY AUDITORIUMS INC.
1200 WARM SPRINGS ROAD
KETCHUM IDAHO 83340

*CERTIFIED MAIL*

**NOTICE OF VIOLATION AND ORDER TO CEASE AND DESIST THE UNAUTHORIZED ALTERATION OF THE BIG WOOD RIVER**

Case No. E2017-1236

Dear Mr. Hastings:

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, this violation is associated with removal of riparian vegetation and the discharge of fill material below the mean high water mark of the Big Wood River. The unauthorized work occurred at a location within Section 12, Township 04 North, Range 17 East, Blaine 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. Cease and desist all unauthorized work below the mean high water mark at the subject land and within the Big Wood River.

2. On or before October 1, 2017, prepare and submit a streambank bioengineering plan to restore the Big Wood River, the plan must include measures for replanting the riparian area(s) with native trees/shrubs/forbs and measures to restore fish and wildlife habitat.

3. Pay a civil penalty in the amount of $10,000 on or before November 1, 2017.

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



**Exhibit 2**

The compliance conference provides the recipient of a 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 these requirements may be cause for the Department to seek curtailment of the unauthorized activity and/or 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.

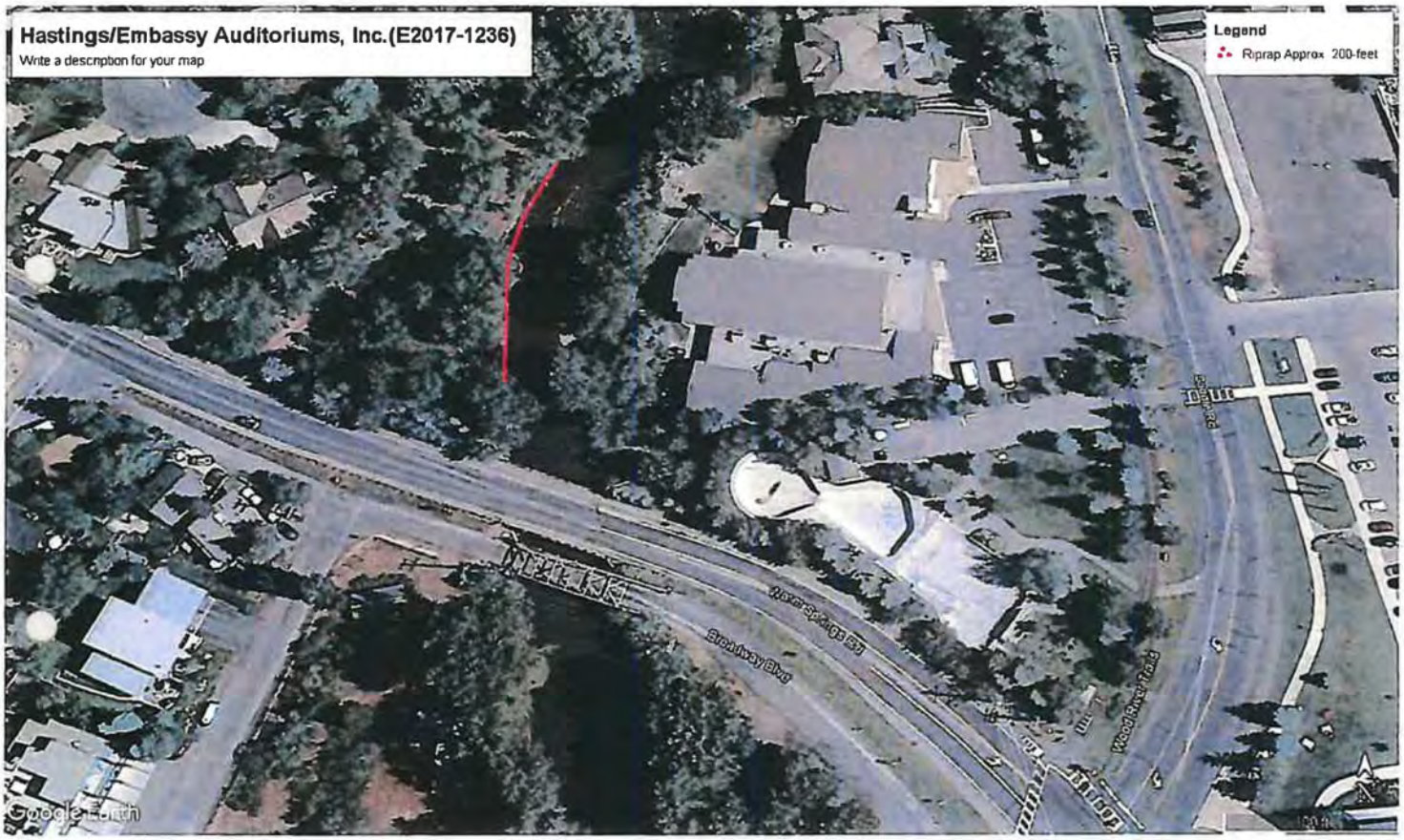
Respectfully,

Aaron Golart
Water Compliance Bureau

cc

Andrea Courtney, Deputy Attorney General, Boise
Greg Martinez, U.S. Army Corps of Engineers, Boise
Mike McDonald, Idaho Department of Fish and Game, Jerome
Balthasar Buhidar, Idaho Department of Environmental Quality, Twin Falls
Cherie Palmer, Water Compliance Bureau, Boise
Charles G. Brockway, Brockway Engineering, Twin Falls
Brittany Skelton, City of Ketchum

Enclosure - Site Photo and Map


Hastings/Embassy Auditoriums, Inc.(E2017-1236)
Write a description for your map
Legend
Riprap Approx 200-feet
Broadway Blvd
Wood River Rapids
Google Earth

09/07/2017 15:24:32 • 11T QJ 11743 40501 • 43° 41' 14" N, 114° 22' 21" W • T 176 S / MILS 3123

RECEIVED
Oct 04, 2024
DEPARTMENT OF
WATER RESOURCES

# EXHIBIT D

**State of Idaho**
**DEPARTMENT OF WATER RESOURCES**
322 E Front Street, Suite 648 • PO Box 83720 • Boise ID 83720-0098
Phone: (208) 287-4800 • Fax: (208) 287-6700
Website: idwr.idaho.gov • Email: idwrinfo@idwr.idaho.gov

**BRAD LITTLE**
Governor

**GARY SPACKMAN**
Director

May 17, 2019

John Hastings, Jr.
P.O. Box 583
Ketchum, ID 83340

Embassy Auditoriums, Inc.
527 S. Burlingame Ave
Los Angeles, CA 90049-4825

RE: Conditional Approval of Joint Application for Permits (S37-20565) in the matter of Consent Order and Agreement and of Notice of Violation No. E2017-1236
Big Wood River – 1200 Warm Springs Road Restoration

Dear Mr. Hastings:

The Idaho Department of Water Resources (IDWR) has reviewed your above referenced Joint Application for Permit (Application) to alter the Big Wood River and has prepared this conditional approval, pursuant to Section 42-3805, Idaho Code. The conditions set forth below are intended to prevent degradation of water quality, minimize impacts to fish and wildlife habitat, and protect the long-term stability of the stream channel. You may consider this conditional approval letter a permit to construct your project as described below.

**Project Background**
On August 30, 2017, IDWR received from you an Emergency Permit Application to Alter a Stream Channel (Emergency Application) to construct one bank barb and riprap downstream of the barb approximately 75-feet to the Warm Springs Road bridge abutment. The Emergency Application stated that a follow-up Application would be submitted to formalize the emergency work that was completed in late July without IDWR approval. IDWR conducted a site inspection on September 7, 2017, and confirmed that the channel had been altered along the western streambank without a permit from IDWR.

IDWR issued a Notice of Violation and Order to Cease and Desist the Unauthorized Alteration of the Big Wood River (NOV) on September 11, 2017. On October 3, 2017, IDWR held a compliance conference regarding the NOV. On January 26, 2018, a Consent Order and Agreement was signed by you and IDWR outlining the terms of the agreement and order. A term of the COA required a streambank stabilization and restoration plan to be submitted.

IDWR received the Application (S37-20565) dated and received on March 15, 2019 and the final Restoration Plan and Bank Stabilization Project for 1200 Warm Springs Rd., Ketchum, Idaho (Final Plan) dated December 26, 2018. The Application and Final Plan resulting from the

NOV and subsequent COA required a restoration plan to be submitted. The Application and Final Plan fulfills this portion of the COA.

**Proposed Project Components**

The six (6) proposed project components include the following:

1. *Retention and completion of existing riprap.*

   Emergency riprap was placed along approximately 193 feet of streambank during 2017 runoff. The riprap in place appears to be smaller than 18-inch stone and should be further stabilized with vegetative plantings and buried toe protection that will include both riprap and longitudinal cottonwood toe logs.

2. *Continuation of riprap upstream and downstream.*

   It is proposed to extend the riprap 35 feet downstream to protect a large cottonwood tree and 84 feet upstream to the end of the eroded reach. These areas will also be protected using vegetative plantings and buried toe protection that will include both riprap and longitudinal cottonwood toe logs.

3. *Bank barbs*

   Four (4) barbs are proposed that are spaced approximately 50-feet apart, angled approximately 30 degrees upstream, and end 12-feet perpendicularly into flow from the OHWM. The barbs will each include an intact cottonwood log as a core, with a rootball protruding into the flow to provide additional roughness and habitat value. The barbs will be low-height features with the elevation at the bank equal to the OHWM. The barbs will be submerged during ordinary high water and mostly submerged during low flow.

4. *Cottonwood toe logs*

   The bioengineering treatment being proposed to provide streambank stability is to place longitudinal toe logs at the toe of the streambank and should increase the stability of the slope. The cottonwood logs will have an intact root ball to provide additional roughness.

5. *Removal of gravel within the channel*

   The removal of gravel is proposed to aid in shifting the thalweg to the center of the channel to help protect the west streambank. This is needed to meet the legal requirement imposed by FEMA and administered by the City of Ketchum. The depth of removal will range from zero to 1.5 feet and the total estimated volume is 197 cubic yards and 0.18 acres.

6. *Vegetation*

   All disturbed areas will be re-graded to remove equipment tracks and to restore the original grade. Vegetation of the streambank will include native riparian grasses, shrubs, and cottonwood seedlings. Native riparian grasses and wild flowers will be planted within an area approximately 15-feet wide measured landward of the OHWM. The estimated area of seeding is approximately 3,100 square feet. Topsoil will also be spread

within the riprap to allow the seeding to extend down the streambank close to the OHWM. Cottonwood seedlings will be planted along the top of the streambank at an irregular spacing of 20 to 40 feet. Woody riparian shrubs will be planted within the zone approximately 15-feet wide measured landward of the OHWM with a target coverage within this area of approximately 6 shrubs per 1000 square feet. Additional woody shrub plantings will be made at the toe of the protected bank between the cottonwood toe log and the riprap. These planting will be spaced approximately 5 feet apart. Keyways of the barbs will be planted with deep rooting native vegetation with the roots within permanent moisture.

**Conditional Approval of Proposed Project Components**

Consistent with the Stream Channel Alteration Rules, IDAPA 37.03.07 (Rules), approval of the proposed project components is provided as follows, subject to the below Minimum Standards, Special Conditions, and General Conditions:

1. Retention and completion of existing riprap (approved).
2. Continuation of riprap upstream and downstream (approved).
3. Bank barbs (approved).
4. Cottonwood toe logs (approved).
5. Removal of gravel within the channel (approved).
6. Vegetation (approved).

The project location is within Section 12, Township 04 North, Range 17 East, Boise Meridian, Blaine County, Idaho.

Failure to adhere to the conditions as set forth herein may result in an enforcement action pursuant to Section 42-3809, Idaho Code. This project is permitted subject to the following Minimum Standards, Special Conditions, and General Conditions.

**Minimum Standards**

These standards are established in the Administrative Rules of the Idaho Water Resources Board; Stream Channel Alteration Rules, IDAPA 37.03.07 and are enclosed with this permit: Rule 59 – Drop Structures, Sills and Barbs

**Special Conditions**

1. **All construction shall be completed in accordance with the descriptions and methods on the attached Application, Final Plan, and permit special conditions. This office must approve, in writing, any changes prior to construction.**

2. **All construction activities shall be conducted in such a manner as to minimize turbidity and comply with Idaho water quality standards. Construction shall take place during low flow to minimize turbidity and protect water quality.**

3. **Prior to any construction authorized by this permit, written approval to work on property belonging to others shall be obtained in writing and a copy of the approval provided to IDWR.**

4. **No in-water construction shall occur between March 15 and July 15.**

5. **Excavated material from the channel (Project Component 5) shall be hauled to an upland location and disposed of properly outside of the floodplain.**

6. **The removal of gravel from within the channel (Project Component 5) shall occur using an excavator or similar equipment and work from a dry location. Heavy equipment shall not enter the active channel or live water.**

7. **Construction of streambank stabilization, including toe logs and bank barbs, shall be conducted from the top of the streambank. Heavy equipment shall not enter the channel below the OHWM to construct streambank stabilization treatment (Project Components 1, 2, 3, 4, and 6).**

8. **Silt fencing or other erosion and sediment control measures shall be installed between any area of earth disturbance and the water. Erosion and sediment control measures shall be installed according to the manufacturer's specifications, during construction, and must be maintained until construction is completed and the disturbed ground is revegetated and stable.**

9. **All fuel, oil, and other hazardous materials shall be stored and equipment refueled away from the stream channel to ensure that a spill will not enter the waterway. Equipment must be free of fuel and lubricant leaks. The operator shall have spill control materials available at all times during this project. These spill control materials shall include, but not be limited to, fuel and/or oil absorbent booms and absorbent pads. In the event of a release greater than 25 gallons of fuel or oil to the ground or to surface waters, the Idaho State EMS Communications Center, or StateComm, shall be contacted at 1-877-554-3367 or 208-846-7610.**

10. **Dormant native woody vegetation shall be planted within the streambank stabilization treatment (Project Components 1, 2, 4, 6) at intervals no greater than 5 feet spacing starting from the toe of slope and extending up slope along the top of bank.**

11. **Permittee shall segregate grasses, forbs, shrubs, and tree plantings to limit competition for nutrients and/or soil moisture, allowing each type of planting optimal success.**

12. **Permittee shall submit an annual report to Aaron Golart, IDWR State Coordinator Stream Protection Program, by December 31 of each year for a minimum of 3 years following initial construction. The report shall describe completed measures, including vegetation planted, and shall address each of the Project Components. By the third report, permittee is required to document that at least 80% survival of each vegetation type is achieved in Project Component 6. If unable to do so, then permittee must submit an additional revegetation plan within three (3) months of the third report that will ensure at least 80% success. Additional annual reports are required until at least 80% survival is achieved. IDWR may seek an enforcement action if such survival rate is not achieved five (5) years from the expiration date of this permit.**

13. **Permittee is responsible for all work done by any contractor or sub-contractor. Permittee shall ensure any contractor or sub-contractor who performs the work follows all the terms and conditions of this authorization.**

14. **This permit shall expire March 15, 2020.**

**General Conditions**

1. This permit does not constitute any of the following:
   a) An easement or right-of-way to trespass or work upon property belonging to others;
   b) Other approval that may be required by local, state, or Federal governments, unless specifically stated in the special conditions above;
   c) Responsibility of IDWR for damage to any properties due to work done;
   d) Compliance with the Federal Flood Insurance Program, FEMA regulations, or approval of the local Planning and Zoning authority.

2. In accordance with Sections 55-2201 - 55-2212, Idaho Code, the permittee and/or contractors must contact Digline statewide phone number 1-800-342-1585 (Boise area 208-342-1585) not less than three working days prior to the start of any excavation for this project.

3. The permittee or operator must have a copy of this permit at the alteration site, available for inspection at all times.

4. IDWR may cancel or amend this permit at any time that it determines such action is necessary to minimize adverse impact on the stream channel.

**IDWR is permitting the proposal subject to the above conditions in this permit, and not the entire proposal as submitted. Failure to adhere to conditions as set forth herein can result in an enforcement action pursuant to Section 42-3809, Idaho Code.**

If you object to the decision issuing this permit with the above conditions, you have 15 days in which to notify this office in writing that you request a formal hearing on the matter. If an objection has not been received within 15 days, the decision will be final under the provisions of IDAPA 37.03.07.70 (Rule 70).

Please contact Aaron Golart 208-287-4941 or aaron.golart@idwr.idaho.gov if you have any questions regarding this matter.

Sincerely,

Aaron Golart
State Coordinator
Stream Protection Program

cc: Charles G. Brockway, Brockway Engineering, Twin Falls
Chris Bromley, McHugh Bromley, Boise
Keri York, Trout Unlimited, Hailey
Balthasar Buhidar, Idaho Department of Environmental Quality, Twin Falls
Brittaney Skelton, City of Ketchum
Meribeth Lomkin, Idaho Department of Lands, Jerome
Frank Edelmann, Idaho Department of Fish and Game, Jerome
Robert Brochu, US Army Corps of Engineers, Idaho Falls (NWW-2017-614-I01)

## 059. DROP STRUCTURES, SILLS AND BARBS (RULE 59).

**01. Drop Structures**. A drop structure shall be constructed of rocks, boulders and/or logs placed within a stream channel to act as a low level dam. Placement of a drop structure perpendicular to stream flow will decrease the stream gradient, dissipate stream energy and decrease stream velocity through an increase in water surface elevation immediately above the structure. Drop structures shall comply with the following criteria: (7-1-93)

**a.** Maximum water surface differential across (upstream water surface elevation minus downstream water surface elevation) a drop structure shall not exceed two (2) feet. The department shall approve the final elevation of any structure. (7-1-93)

**b.** Rock drop structures shall be constructed of clean, sound, dense, durable, angular rock fragments, and/or boulders of size and gradation, such that the stream is incapable of moving the material during peak flows. Rocks shall be keyed into the stream banks to minimize the likelihood of bank erosion, (See Figure 8 in APPENDIX H located at the end of this chapter). (7-1-93)

**c.** Log drop structures are acceptable in four (4) designs including the single log dam, the stacked log dam, the three (3) log dam, and the pyramid log dam. Log ends shall be keyed into both banks at least one-third (1/3) of the channel width or a distance sufficient to prevent end erosion. To prevent undercutting, the bottom log shall be imbedded in the stream bed or hardware cloth, cobbles or boulders shall be placed along the upper edge. Minimum log size for a single log structure shall be determined by on-site conditions and shall be placed to maintain flow over the entire log to prevent decay. Each log drop structure must be accompanied by downstream scour protection, such as a rock apron (See Figure 9 in APPENDIX I located at the end of this chapter. (7-1-93)

**d.** All drop structures shall be constructed to facilitate fish passage and centralized scour pool development. (7-1-93)

**02. Sills**. A sill shall be constructed of the same material and in the same manner as a drop structure. The top of the sill may not exceed the elevation of the bottom of the channel. The purpose of a sill is to halt the upstream movement of a headcut, thus precluding the widening or deepening of the existing channel. (See Figure 10 in APPENDIX J located at the end of this chapter). (7-1-93)

**03. Barb or Partial Drop Structure**. A barb or partial drop structure shall be constructed in the same manner and of the same material as a drop structure and placed into the stream channel to act as a low level dam and grade control structure. The barb will decrease stream gradient, dissipate stream energy and redirect stream flow. (7-1-93)

**a.** Barbs shall be constructed of clean, sound, dense, angular rock fragments, of size and gradation such that the stream is incapable of moving the material during peak flows. (7-1-93)

**b.** Barbs shall be constructed with a downstream angle of no less than one hundred (100) degrees and no greater than one hundred thirty-five (135) degrees unless otherwise specified. (7-1-93)

**c.** Barbs shall "extend" into the channel a distance of not more than twenty percent (20%) of the width of the channel unless otherwise specified by the Director. (7-1-93)

**d.** Barbs shall be keyed into the bank a distance equal to or greater than the width of the structure and down to bed level. Whenever moisture is encountered in the construction of the keyways, willow cuttings or clumps shall be placed before and during rock placement in such a manner that the base of the cutting is in permanent moisture and the top extends a minimum of six (6) inches above grade (see Figure 11 in APPENDIX K located at the end of this chapter). (7-1-93)

# JOINT APPLICATION FOR PERMITS

## U.S. ARMY CORPS OF ENGINEERS - IDAHO DEPARTMENT OF WATER RESOURCES - IDAHO DEPARTMENT OF LANDS

***Authorities:*** The Department of Army Corps of Engineers (Corps), Idaho Department of Water Resources (IDWR), and Idaho Department of Lands (IDL) established a joint process for activities impacting jurisdictional waterways that require review and/or approval of both the Corps and State of Idaho. Department of Army permits are required by Section 10 of the Rivers & Harbors Act of 1899 for any structure(s) or work in or affecting navigable waters of the United States and by Section 404 of the Clean Water Act for the discharge of dredged or fill materials into waters of the United States, including adjacent wetlands. State permits are required under the State of Idaho, Stream Protection Act (Title 42, Chapter 38, Idaho Code and Lake Protection Act (Section 58, Chapter 13 et seq., Idaho Code). In addition the information will be used to determine compliance with Section 401 of the Clean Water Act by the appropriate State, Tribal or Federal entity.

***Joint Application:*** Information provided on this application will be used in evaluating the proposed activities. Disclosure of requested information is voluntary. Failure to supply the requested information may delay processing and issuance of the appropriate permit or authorization. **Applicant will need to send a completed application, along with one (1) set of legible, black and white (8½"x11"), reproducible drawings that illustrate the location and character of the proposed project / activities to both the Corps and the State of Idaho.**

***See Instruction Guide*** for assistance with Application. Accurate submission of requested information can prevent delays in reviewing and permitting your application. Drawings including vicinity maps, plan-view and section-view drawings must be submitted on 8-1/2 x 11 papers.

**Do not start work until you have received all required permits from both the Corps and the State of Idaho**

| FOR AGENCY USE ONLY | | | |
|---|---|---|---|
| USACE NWW- | Date Received: | ☐ Incomplete Application Returned | Date Returned: |
| Idaho Department of Water Resources No. S37-20565 | Date Received: 3/15/2019 | ☐ Fee Received DATE: | Receipt No.: |
| Idaho Department of Lands No: | Date Received: | ☐ Fee Received DATE: | Receipt No.: |

**INCOMPLETE APPLICANTS MAY NOT BE PROCESSED**

| 1. CONTACT INFORMATION - APPLICANT Required: | | | 2. CONTACT INFORMATION - AGENT: | | |
|---|---|---|---|---|---|
| Name: John Hastings, Jr. and Embassy Auditoriums, Inc. | | | Name: Charles G. Brockway, P.E. | | |
| Company: P.O. Box 583, Ketchum ID 83340 (Hastings) | | | Company: Brockway Engineering, PLLC | | |
| Mailing Address: 527 S. Burlingame Ave, Los Angeles CA 90049-4825 (Embassy) | | | Mailing Address: 2016 North Washington St, Ste 4 | | |
| City: | State: | Zip Code: | City: Twin Falls | State: ID | Zip Code: 83301 |
| Phone Number (include area code): | E-mail: | | Phone Number (include area code): 208-736-8543 | E-mail: charles.g.brockway@brockwayeng | |

| 3. PROJECT NAME or TITLE: 1200 Warm Springs Restoration | 4. PROJECT STREET ADDRESS: | | | |
|---|---|---|---|---|
| 5. PROJECT COUNTY: Blaine | 6. PROJECT CITY: Ketchum | 7. PROJECT ZIP CODE: 83340 | | 8. NEAREST WATERWAY/WATERBODY: Big Wood River |
| 9. TAX PARCEL ID#: Tax Lot #8137 and Tax Lot #8138 | 10. LATITUDE: 43.68813 LONGITUDE: -114.37358 | 11a. 1/4: SW | 11b. 1/4: SE | 11c. SECTION: 12 | 11d. TOWNSHIP: 4N | 11e. RANGE: 17E |
| 12a. ESTIMATED START DATE: Sep 1, 2019 | 12b. ESTIMATED END DATE: Dec 31, 2019 | 13a. IS PROJECT LOCATED WITHIN ESTABLISHED TRIBAL RESERVATION BOUNDARIES? ☒ NO ☐ YES Tribe: | | | | |
| 13b. IS PROJECT LOCATED IN LISTED ESA AREA? ☒ NO ☐ YES | | 13c. IS PROJECT LOCATED ON/NEAR HISTORICAL SITE? ☒ NO ☐ YES | | | | |

14. DIRECTIONS TO PROJECT SITE: Include vicinity map with legible crossroads, street numbers, names, landmarks.

Highway 75 to Ketchum, west on Warm Springs Road, then cross bridge and go north on driveway.

15. PURPOSE and NEED: ☐ Commercial ☐ Industrial ☐ Public ☒ Private ☐ Other

Describe the reason or purpose of your project; include a brief description of the overall project. Continue to Block 16 to detail each work activity and overall project.

This project is a bank stabilization plan to address chronic instability of the west river bank which has caused substantial loss of property during the 2017 flood and in prior high water events.

16. DETAILED DESCRIPTION OF EACH ACTIVITY WITHIN OVERALL PROJECT. Specifically indicate portions that take place within waters of the United States, including wetlands: Include dimensions; equipment, construction, methods; erosion, sediment and turbidity controls; hydrological changes: general stream/surface water flows, estimated winter/summer flows; borrow sources, disposal locations etc.

The project consists of two main parts: bank protection and gravel removal. Work will be performed in accordance with a plan approved by the Idaho Department of Water Resources entitled "Restoration Plan and Bank Stabilization Project for 1200 Warm Springs, Ketchum, Idaho" dated December 26, 2018 and attached hereto.

Emergency riprap was placed by a contractor during the 2017 event. This riprap will remain in place with additional riprap extending downstream approximately 35' to protect the cottonwood tree and upstream approximately 84' around the historic bridge abutment. The riprap will extend down the bank and be buried to provide toe protection. Longitudinal cottonwood toe logs will also be included with the toe protection.

Bank barbs will also be included for bank protection and to assist with moving the channel thalweg away from the bank. Four barbs spaced at 50 feet are proposed. The barbs will be angled approximately 30 degrees upstream and extend approximately 12 feet perpendicular from the bank.

See Attachment A for information on fill volumes above and below the ordinary high water for each of the above activities.

Vegetation will be included in the bank restoration. Bank areas will be restored with native riparian grasses and shrubs as well as cottonwood seedlings. Woody shrubs will also be planted at the toe of the bank and barb keyways.

Gravel removal will aid in shifting the thalweg towards the center of the channel and is also needed to meet the no rise requirement for the floodway. Approximately 197 CY of gravel removal is planned.

17. DESCRIBE ALTERNATIVES CONSIDERED to AVOID or MEASURES TAKEN to MINIMIZE and/ or COMPENSATE for IMPACTS to WATERS of the UNITED STATES, INCLUDING WETLANDS: See Instruction Guide for specific details.

This alternative is considered to cause the least impact while adequately protecting the property.

Construction will take place during low flows and a turbidity meter will be utilized during construction activities.

18. PROPOSED MITIGATION STATEMENT or PLAN: If you believe a mitigation plan is not needed, provide a statement and your reasoning why a mitigation plan is NOT required. Or, attach a copy of your proposed mitigation plan

No mitigation plan is needed since the project will cause minimum impacts.

19. TYPE and QUANTITY of MATERIAL(S) to be discharged below the ordinary high water mark and/or wetlands:

| | | |
|---|---|---|
| Dirt or Topsoil: | _____ | cubic yards |
| Dredged Material: | _____ | cubic yards |
| Clean Sand: | _____ | cubic yards |
| Clay: | _____ | cubic yards |
| Gravel, Rock, or Stone: | _____ | cubic yards |
| Concrete: | _____ | cubic yards |
| Other (describe): _____ | _____ | cubic yards |
| Other (describe: _____ | _____ | cubic yards |
| TOTAL: _____ | | cubic yards |

20. TYPE and QUANTITY of impacts to waters of the United States, including wetlands:

| | | | | | |
|---|---|---|---|---|---|
| Filling: | 0.09 | acres | 3,808 | sq ft. | _____ cubic yards |
| Backfill & Bedding: | _____ | acres | _____ | sq ft. | _____ cubic yards |
| Land Clearing: | _____ | acres | _____ | sq ft. | _____ cubic yards |
| Dredging: | _____ | acres | _____ | sq ft. | _____ cubic yards |
| Flooding: | _____ | acres | _____ | sq ft. | _____ cubic yards |
| Excavation: | 0.18 | acres | 7,638 | sq ft. | 197 cubic yards |
| Draining: | _____ | acres | _____ | sq ft. | _____ cubic yards |
| Other: _____ | _____ | acres | _____ | sq ft. | _____ cubic yards |
| TOTALS: | 0.27 | acres | 11,446 | sq ft. | 197 cubic yards |

21. HAVE ANY WORK ACTIVITIES STARTED ON THIS PROJECT? ☐ NO ☒ YES If yes, describe ALL work that has occurred including dates.

Some riprap was placed as emergency bank protection during the 2017 flood event. This riprap will be retained and additional riprap will be placed during construction.

22. LIST ALL PREVIOUSLY ISSUED PERMIT AUTHORIZATIONS:

An emergency permit was issued by the City of Ketchum for riprap placement during the 2017 event.

23. ☐ YES, Alteration(s) are located on Public Trust Lands, Administered by Idaho Department of Lands

24. SIZE AND FLOW CAPACITY OF BRIDGE/CULVERT and DRAINAGE AREA SERVED: n/a Square Miles

25. IS PROJECT LOCATED IN A MAPPED FLOODWAY? ☐ NO ☒ YES If yes, contact the floodplain administrator in the local government jsrisdiction in which the project is located. A Floodplain Development permit and a No-rise Certification may be required.

26a WATER QUALITY CERTIFICATION: Pursuant to the Clean Water Act, anyone who wishes to discharge dredge or fill material into the waters of the United States, either on private or public property, must obtain a Section 401 Water Quality Certification (WQC) from the appropriate water quality certifying government entity.
*See Instruction Guide for further clarification and all contact information.*

The following information is requested by IDEQ and/or EPA concerning the proposed impacts to water quality and anti-degradation.

☐ NO ☐ YES Is applicant willing to assume that the affected waterbody is high quality?
☐ NO ☐ YES Does applicant have water quality data relevant to determining whether the affected waterbody is high quality or not?
☐ NO ☐ YES Is the applicant willing to collect the data needed to determine whether the affected waterbody is high quality or not?

26b. BEST MANAGEMENT PRACTICTES (BMP's). List the Best Management Practices and describe these practices that you will use to minimize impacts on water quality and anti-degradation of water quality. All feasible alternatives should be considered - treatment or otherwise. Select an alternative which will minimize degrading water quality.

Construction will take place during low water. Silt fence or straw wattles will be placed along disturbed banks as necessary.

Through the 401 Certification process, water quality certification will stipulate minimum management practices needed to prevent degradation.

27. LIST EACH IMPACT to stream, river, lake, reservoir, including shoreline: Attach site map with each impact location.

| Activity | Name of Water Body | Intermittent Perennial | Description of Impact and Dimensions | Impact Length Linear Feet |
|---|---|---|---|---|
| Riprap | Big Wood River | Perennial | | 260 |
| Bank Barbs | Big Wood River | Perennial | | 40 |
| Gravel Removal | Big Wood River | Perennial | | 250 |
| | | | | |
| | | | TOTAL STREAM IMPACTS (Linear Feet): | 550 |

28. LIST EACH WETLAND IMPACT include mechanized clearing, fill, excavation, flood, drainage, etc. Attach site map with each impact location.

| Activity | Wetland Type: Emergent, Forested, Scrub/Shrub | Distance to Water Body (linear ft) | Description of Impact Purpose: road crossing, compound, culvert, etc. | Impact Length (acres, square ft linear ft |
|---|---|---|---|---|
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | TOTAL WETLAND IMPACTS (Square Feet): | |



SCANNED
MAY 17 2017

29. ADJACENT PROPERTY OWNERS NOTIFICATION REQUIRED. Provide contact information of ALL adjacent property owners below.

| | |
|---|---|
| Name: | Name: |
| Mailing Address: | Mailing Address: |
| City: State: Zip Code: | City: State: Zip Code: |
| Phone Number (include area code): E-mail: | Phone Number (include area code): E-mail: |
| Name: | Name: |
| Mailing Address: | Mailing Address: |
| City: State: Zip Code: | City: State: Zip Code: |
| Phone Number (include area code): E-mail: | Phone Number (include area code): E-mail |
| Name: | Name: |
| Mailing Address: | Mailing Address: |
| City: State: Zip Code: | City: State: Zip Code: |
| Phone Number (include area code): E-mail: | Phone Number (include area code): E-mail: |
| Name: | Name: |
| Mailing Address: | Mailing Address: |
| City: State: Zip Code: | City: State: Zip Code: |
| Phone Number (include area code): E-mail: | Phone Number (include area code): E-mail: |

30. SIGNATURES: STATEMENT OF AUTHORIZATION / CERTIFICATION OF AGENT / ACCESS

*Application is hereby made for permit, or permits, to authorize the work described in this application and all supporting documentation. I certify that the information in this application is complete and accurate. I further certify that I possess the authority to undertake the work described herein; or am acting as the duly authorized agent of the applicant (Block 2). I hereby grant the agencies to which this application is made, the right to access/come upon the above-described location(s) to inspect the proposed and completed work/activities.*

*Signature of Applicant:* _____ *Date:* _____

*Signature of Applicant:* _____ *Date:* _____

*Signature of Agent:* _____ *Date:* 3/15/2019

This application must be signed by the person who desires to undertake the proposed activity AND signed by a duly authorized agent (see Block 1, 2, 30). Further, 18 USC Section 1001 provides that: "*Whoever, in any manner within the jurisdiction of any department of the United States knowingly and willfully falsifies, conceals, or covers up any trick, scheme, or disguises a material fact or makes any false, fictitious, or fraudulent statements or representations or makes or uses any false writing or document knowing same to contain any false, fictitious or fraudulent statements or entry, shall be fined not more than $10,000 or imprisoned not more than five years or both*".

**Attachment A**
**Fill Volume Tabulation**

Gross fill is total volume of fill below OHW and includes volume placed in excavation of existing bed and banks. Net fill is volume above existing contour.

| Activity | Gross fill below OHW ($yd^3$) | Net fill below OHW ($yd^3$) | Total fill material above and below OHW ($yd^3$) |
|---|---|---|---|
| Riprap | 295 | 148* | 424 |
| Bank barbs | 152 | 72 | 172 |
| TOTAL | 447 | 220 | 596 |

*Riprap will be placed as nearly as possible to original bank contour; however, to be very conservative the net fill was assumed to be 50% of the gross.

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**Attachment B**
**Adjacent Ownership Listing (corresponds to red outlined parcels on attached map)**

| Owner1 | Owner2 | Mail_Adrs1 | Mail_Adrs2 |
|---|---|---|---|
| TAYLOR MICHAEL A | TAYLOR RHONDA L TRUSTEE | 7650 SCENIC DR | YAKIMA WA 98908-0000 |
| WHITE DONALD R | WHITE SANDRA WARDE | 412 N KENTER AVE | LOS ANGELES CA 90049-0000 |
| VILLAS AT THE CROSSING | TOWNHOUSE OWNERS ASSN INC | PO BOX 254 | KETCHUM ID 83340-0000 |
| KETCHUM CITY OF | | PO BOX 2315 | KETCHUM ID 83340-0000 |
| LANGSTON CATHERINE | YOUELL GLEN B TRUSTEE | 16530 ROBINSON RD | SNOHOMISH WA 98296-0000 |
| COMMUNITY LIBRARY ASSOC INC* | | PO BOX 2168 | KETCHUM ID 83340-0000 |
| KETCHUM CITY OF | | BOX 2315 | KETCHUM ID 83340-0000 |

* From Blaine Co. assessor information, "ownership" of streambed may be question but notice provided as a courtesy.

Path: F:\Projects\Hastings-Big w\GIS 2018\Adjacent_Parcels.mxd

0 25 50 100 Feet

# HASTINGS AND EMBASSY AUDITORIUMS

## ADJACENT PARCEL OWNERS

N

Subject property

Adjacent parcels

BROCKWAY ENGINEERING, PLLC.
ICB - Date: 3/7/2019

NAIP 2017 IMAGERY

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# Restoration Plan and Bank Stabilization Project for 1200 Warm Springs, Ketchum, Idaho

Brockway Engineering, PLLC
Revised December 26, 2018

## A. Overview

This report describes a plan for restoration of streambank and implementation of stabilization measures on a reach of the Big Wood River immediately upstream of Warm Springs Road in Ketchum, Idaho. The plan is intended to satisfy one component of the January 26, 2018 *Consent Order and Agreement* (Consent Order) between a landowner (landowner) and the Idaho Department of Water Resources (IDWR). Responsive to the consent order, the project engineer submitted a restoration plan, dated February 14, 2018, to IDWR. The February 14, 2018 plan was consistent with the Consent Order. That plan was revised on multiple occassions, prior to October 30, 2018, in order to satisfy items expressed by IDWR's representative. Letters, emails, and phone calls that led to revisions to the February 14, 2018 plan are summarized in the first paragraph to the October 30, 2018 plan. The October 30, 2018 plan has similarly been revised through correspondence with IDWR's representative. This plan represents the project engineer's understanding of those requirements.

The property is located in a reach of the Big Wood River that is used by the public for recreation, such as swimming and floating. Due to the property's location, public safety is of utmost concern. Because of public safety, the landowners continue to object to certain elements of the plan; particularly some of the requirements below the ordinary high water level, as well as in close proximity above that level that have been imposed. The elements of this plan reflect the requirements of IDWR after the landowner's concerns and objections were presented. In the interest of complying with the new IDWR requirements, protection of the property, and bringing this matter to a close, the plan is submitted.

In speaking with the IDWR representative about project construction and completion schedule, the IDWR representative stated that acceptable project construction should not be undertaken in the Big Wood River between March 15, 2019 and August 31, 2019 due to the likelihood that vegetation will not properly establish; therefore, landowner will construct the project between September 1, 2019 and December 31, 2019. The proposed completion date of all components of the project is December 31, 2019.

Notwithstanding the Consent Order, a bank stabilization plan is needed to address chronic instability of the west river bank which has caused substantial loss of property, both during the 2017 flood and in prior high water events. In addition, the Warm Springs Road bridge at the lower end of the reach, and Warm Springs Road itself, will be

threatened if the reach is not stabilized. The land upon which the Warm Springs Road Bridge sits was gifted to the City of Ketchum by the landowners.

The subject reach begins at the upstream abutment of the Warm Springs Road bridge and extends upstream 325 feet. In this reach the river is generally well-defined and confined to its banks even during flood conditions. The water surface width ranges from 42 to 73 feet at ordinary high water conditions. Over time, the channel has developed a pronounced asymmetrical morphology, with the thalweg lying hard against the west bank with shallow flow occurring over gravel bars on the east. Near the lower end of the reach, the thalweg kicks sharply eastward so that the deepest part of the channel upstream of the bridge is on the east side. One reason for the sharp eastward deviation of the thalweg is a large cottonwood tree which has been severely undercut but is still rooted in the bank and acting as a jetty. Saving this cottonwood tree is a prime objective of the project.

One consequence of the channel asymmetry is that new high velocity flow impinges severely on the west bank. Based on the hydraulic modeling (see below), average channel velocities during the 100-year event are very high, ranging from 8.4 ft/s to 11.3 ft/s. Near-bank velocities would likely be 30 to 50% greater than the average channel velocities. During the flood of 2017, the high velocity caused undercutting and failure of the west bank, leading to a loss of land of up to 25 feet. The erosion threatened to cut under the large cottonwood tree, an occurrence which would certainly have threatened the Warm Springs Road bridge abutment. Riprap was placed along a 193-foot length of the west bank, which effectively halted the erosion. Some reclamation of bank was accomplished by this operation, but no bank not existing prior to the 2017 flood was reclaimed. This conclusion was made by reviewing pre-placement and post-placement photographs, as well as a comparison of the topographic survey performed in October 2017 with a prior survey performed in 2014. In some locations, less bank exists now than before the flood.

To assist with the project evaluation and design, a topographic survey by Benchmark Associates was completed. The survey included four cross-sections of the river, bank topography, and a delineation of the riprapped area.

## B. Proposed project

The high-velocity flow against the west bank continues to persist even after the 2017 flood event and placement of the riprap. Given the likelihood of recurrence of west bank instability, and the need to better align the flow to the Warm Springs Road bridge opening and Warm Springs Road, measures are needed to protect the bank and realign the channel thalweg using a combination of bank barbs and channel excavation. In addition to the proposed structural measures the disturbed riparian areas will be improved and vegetated as follows.

**1. Retention and completion of existing riprap**

Emergency riprap was placed by a contractor during the 2017 high water event consistent with the verbal approval of the City of Ketchum pursuant to its emergency authority. A written emergency permit was issued by the City of Ketchum on July 31, 2017. Based on U. S. Corps of Engineers design procedures with an average channel velocity of 10 ft/s and the prevailing geometric characteristics of the channel, the minimum d30 size should be 18" with a size range from 5" to 32". The riprap in place appears to be mostly smaller than 18" stone, but the above design procedure applies to riprap without any other protection in place. With bank barbs as proposed, velocities against the riprap toe during a flood will be greatly reduced. For example, with only a moderate reduction in velocity to 8 ft/s, the minimum d30 size would be 11" with a size range from 4" to 27". It is concluded that the in-place riprap on the bank should not be removed and replaced, which would be more disturbing to the bank and the river than warranted according to the above analysis. It should be further stabilized with vegetative plantings as described below. Also, additional buried toe protection is warranted as shown on the drawings, which will include both riprap and longitudinal cottonwood toe logs. The bank toe is the most crucial area to protect to reduce the risk of the type of erosion seen in 2017.

**2. Continuation of riprap upstream and downstream**

Riprap placement was halted once the landowner was notified that additional permits were required. It is proposed to extend the riprap 35' downstream to protect the large cottonwood tree, while maintaining the historic beach, and 84' upstream to the upstream end of the eroded reach. This will include the bank around the historic wooden bridge abutment which has experienced erosion. It will also encompass the existing power pole which is extremely close to the water and at risk of failure if further erosion were to occur. The downstream portion will encompass the large cottonwood tree and remedy the severe undercut bank at that location.

**3. Bank barbs**

Four (4) barbs are proposed, spaced at 50 feet, angled at approximately 30° upstream, and extending 12 feet perpendicularly into the flow from the ordinary high water line. According to NRCS and Corps of Engineers guidelines, barbs are an effective method of reducing near-bank velocities, and provide habitat diversity by creating holding locations for aquatic species during high and low flows. These guidelines typically recommend incorporation of woody material in the barb. The barbs as proposed will contain an intact cottonwood log as a core, with a rootball protruding into the flow to provide additional roughness and habitat value; provided, however that the rootball must be well-shaped and relatively compact, without protruding snags or roots that may pose a hazard to the public who use this streatch of the Big Wood River for recreation. If necessary, the rootball will be manually shaped to achieve this goal of public safety. The barbs will be low-height features, with the elevation at the bank equal to the ordinary high water and a sloping top leading to an elevation at the end of 1.5 feet below ordinary high water. The barbs will

thus be submerged during ordinary high water and mostly submerged during lower flow, creating a hydraulic jump downstream of the barb which will act to dissipate energy. The function of the barbs is multifold:

- Reduce the near-bank velocities, providing additional bank protection beyond the riprap alone.
- Create a pool-and-riffle regime to increase habitat value of this reach.
- Protect the large cottonwood tree at the downstream end of the project reach, which is of great value to the landowner and the local community.
- Protect the west bridge abutment.
- Encourage the thalweg to migrate away from the west bank and become better aligned with the bridge.

**4. Cottonwood toe logs**

Part of the Consent Order requires "large woody material along the streambank (e.g. root wad engineered log jam and brush or tree revetment." The recommended bioengineering treatment for this reach that could provide benefit in the form of increased bank stability is the installation of large cottonwood trees embedded longitudinally at the toe of the riprap. This treatment should increase the stability of the toe, which is the most crucial area. The cottonwood logs will have intact root balls; provided, however that the rootball must be well-shaped and relatively compact, without protruding snags or roots that may pose a hazard to the public who use this streatch of the Big Wood River for recreation. If necessary, the rootball will be manually shaped to achieve this goal of public safety.

**5. Removal of gravel within the channel**

This activity is needed for two reasons. First, it will aid in shifting the thalweg to the center of the channel, which is a major goal of the project to protect the west bank and to provide a straight alignment upstream of the bridge. Second, the removal of gravel is needed to meet the legal requirement to demonstrate no rise in the flood height, a requirement imposed by FEMA and administered by the City of Ketchum for any work within the floodway. See the discussion of the HEC-RAS modeling, below. The depth of removal will range from zero to 1.5 feet in accordance with the attached cross-sections. Total estimated volume of removal is 197 cubic yards, all of which will be transported to upland area for disposal. Total plan area of gravel removal is estimated to be 0.18 acres.

**6. Vegetation**

The riparian area was disturbed during the 2017 riprap placement, and further disturbance will occur when the barbs are placed. All disturbance will be re-graded to remove equipment tracks and restore the original grade. Vegetation of the bank area will include native riparian grass and shrub plantings, and plantings of cottonwood seedlings that are "elk friendly" to ensure wildlife that make their way through the property are not harmed.

a) Native riparian grasses and wild flowers will be planted within a zone approximately 15 feet wide measured landward from the ordinary high water line. Planting will occur by the hydroseed method. The estimated area of grass seeding is 3,100 square feet. Prior to seeding, topsoil will be placed and smoothed. Topsoil will also be spread within the riprap stone to allow the grass seeding to extend down the bank close to the ordinary high water level. This will allow grass to establish amongst the riprap stone, leading to a more appealing appearance in addition to increasing the stability of the riprap. The following seed mix is proposed, each species in equal proportions:

Slender Wheatgrass (*Elymus trachycaulus ssp.*)
Streambank Wheatgrass (*Agropyron riparium*)
Big Bluegrass (*Poa secunda ssp. ampla*)
Sandberg Bluegrass (*Poa secunda ssp. sandbergii*)

b) Cottonwood seedlings will be planted along the top of bank at an irregular spacing of 20 to 40 feet. Species will be Siouxland Cottonwood (*Populus deltoides*).

c) Woody riparian shrubs will be planted within a zone approximately 15 feet wide measured landward from the ordinary high water line. Target coverage within this area (based on mature canopy spread) will be approximately 6 shrubs per 1,000 $ft^2$, for a total of approximately 30 shrubs. Planting will be made in an irregular pattern to simulate natural growth. The following species are proposed, in approximately equal proportions:

Golden currant (*Ribes aureum)*
Woods rose (*Rosa woodsia)*
Black Hawthorne (*Crataegus douglasii*)

Proper establishment of the plantings in this zone will require irrigation. It is expected that the grass will require spray irrigation for two seasons, and thereafter will be sustained by natural precipitation. Tree plantings will be irrigated using a drip system in order to ensure long-term establishment. Some of the irrigation infrastructure is in place, but much washed out or was damaged in the 2017 flood. The irrigation system will be repaired and extended to accomplish the vegetation. Willows were not historically part of this environment, and will not be planted.

d) Woody shrub plantings will be made at the toe of the protected bank between the cottonwood toe log and the riprap. These plantings will be placed at a spacing of approximately 5 feet. This planting is required by the Consent Order even though few species can survive under water and thus the planting regime must be limited to those which are likeliest to survive. Survival cannot be guaranteed, and if the plantings fail, such failure shall not be imputed to the landowner. The following species will be planted at the following proportions:

Redosier dogwood (*Cornus sericea*) – 80%
Water birch (shrub) (*Betula occidentalis*) – 10%
Gray alder (shrub) (Alnus incana) – 10%



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The low-growing redosier dogwood is favored, interspersed with the slightly taller water birch and gray alder. Native riparian grasses or sedges, which are favored by the NRCS, may also be placed in this zone at the discretion of the landowner. Willows were not historically part of this environment, and will not be planted.

e) Keyways of barbs will be planted with deep-rooting vegetation situated with roots in permanent moisture. Willows were not historically part of this environment. As a substitute, Redosier dogwood (Cornus sericea) will be used and will be planted as low as possible to increase the moisture contact of the roots.

## C. HEC-RAS Modeling

The proposed project will involve placement of protective structures within the channel of the river, and within the regulatory floodway as established by FEMA. Since encroachment into the floodway will occur, the hydraulic effect of the project must be evaluated and mitigated, if necessary, to ensure that no increase in flood elevation during the 100-year event will occur. This requirement was established by FEMA for the National Flood Insurance Program and is administered by local jurisdictions (the City of Ketchum, in this case).

The cross-sections surveyed in October 2017 were used as the baseline channel geometry. Channel and overbank roughness was set to 0.04 and 0.08, respectively, the same values used in FEMA's effective model. The downstream starting elevation was set equal to the computed 100-year elevation at that point in the FEMA model, or 5814.5 feet. The 100-year discharge 2,880 cfs is the value used by FEMA.

Two post-project models were developed: one with barb placement alone, and the second with barbs plus removal of gravel as mitigation. Barbs were placed at Sections 12, 12.5, and 13. Output from the model as well as channel cross-sections are attached, and a summary is provided in the table below. Zero increase in flood height is predicted to occur with the project.

| Cross Section | River Station (ft) | Existing Conditions (baseline) | | Barbs only | | Barbs + mitigation | |
|---|---|---|---|---|---|---|---|
| | | Water Surface Elev (ft) | Channel velocity (ft/s) | Water Surface Elev (ft) | Channel velocity (ft/s) | Water Surface Elev (ft) | Channel velocity (ft/s) |
| 13 | 1212 | 5816.64 | 8.69 | 5817.05 | 9.04 | 5816.56 | 9.04 |
| 12.5 | 1156.5 | 5816.19 | 8.97 | 5816.63 | 8.96 | 5816.01 | 9.36 |
| 12 | 1101 | 5814.99 | 11.27 | 5815.46 | 11.10 | 5814.88 | 11.16 |
| 11 | 1057 | 5814.68 | 9.28 | 5814.68 | 9.28 | 5814.68 | 9.28 |
| 10 | 1000 | 5814.50 | 8.39 | 5814.50 | 8.39 | 5814.50 | 8.39 |

## Permit-Level Drawings for Proposed Project



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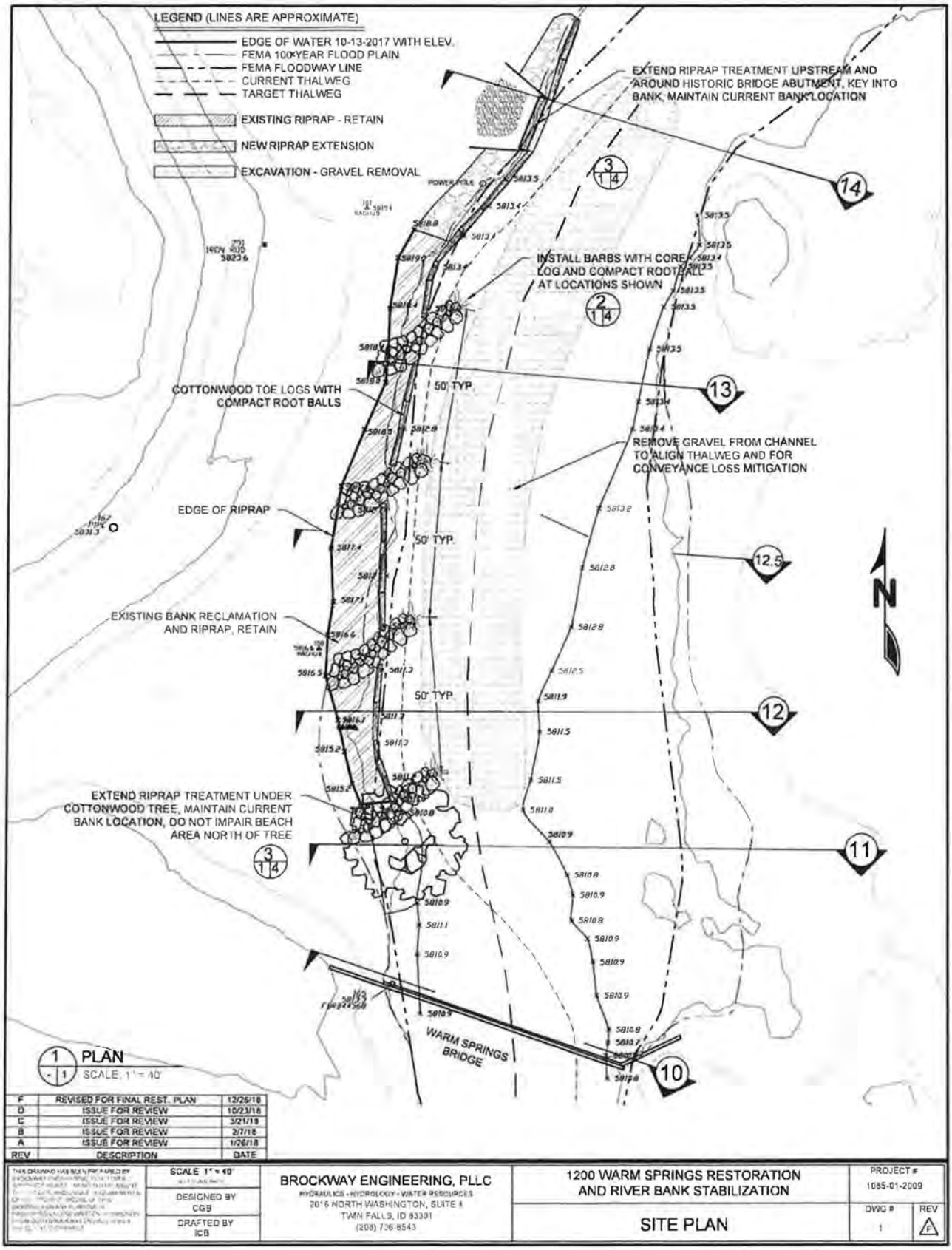



| REV | DESCRIPTION | DATE |
|---|---|---|
| F | REVISED FOR FINAL REST. PLAN | 12/26/18 |
| D | ISSUE FOR REVIEW | 10/23/18 |
| C | ISSUE FOR REVIEW | 3/21/18 |
| B | ISSUE FOR REVIEW | 2/7/18 |
| A | ISSUE FOR REVIEW | 1/26/18 |

THIS DRAWING HAS BEEN PREPARED BY

SCALE: 1" = 40'

DESIGNED BY CGB

DRAFTED BY ICB

BROCKWAY ENGINEERING, PLLC
HYDRAULICS • HYDROLOGY • WATER RESOURCES
2016 NORTH WASHINGTON, SUITE 4
TWIN FALLS, ID 83301
(208) 736-8543

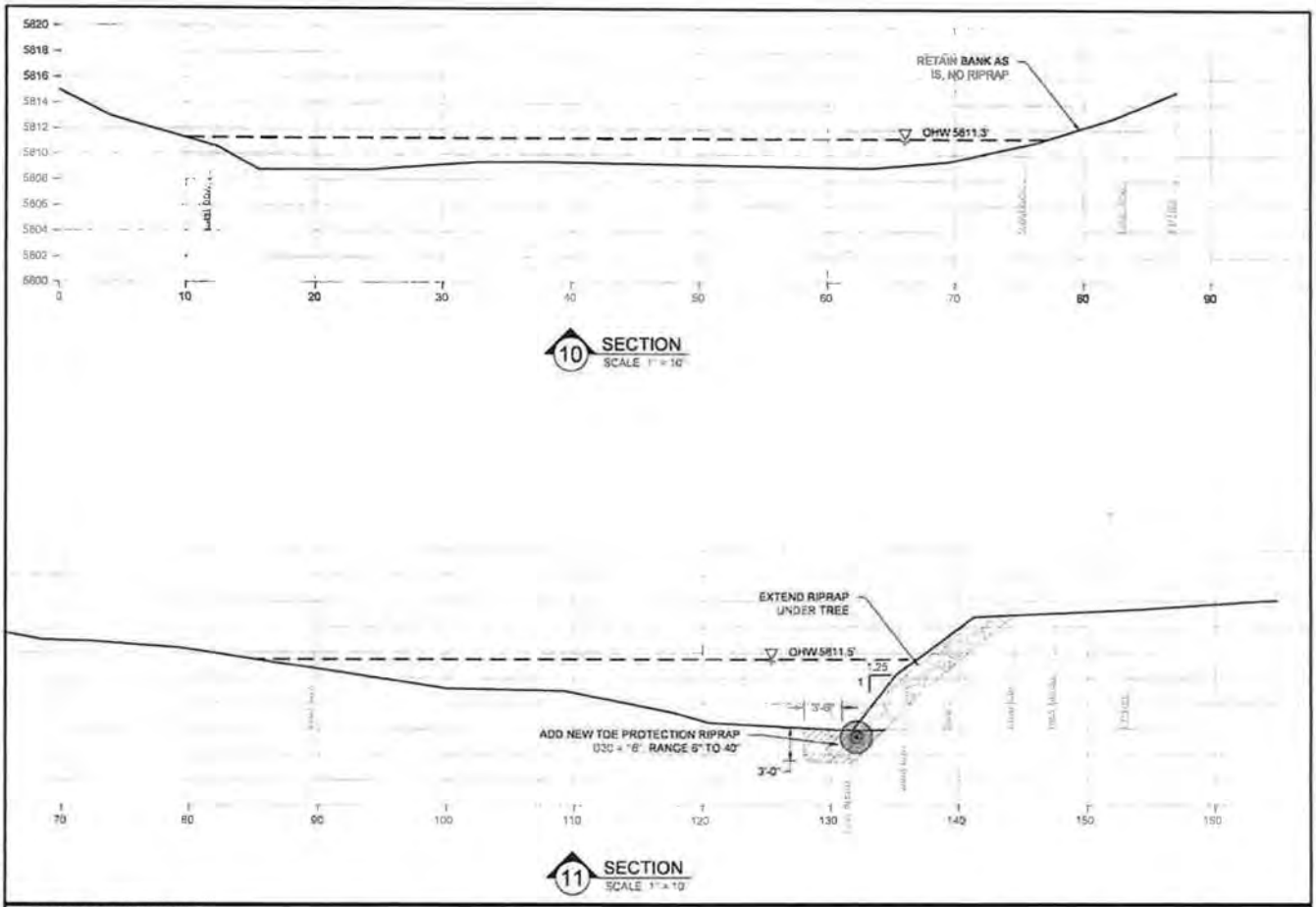
1200 WARM SPRINGS RESTORATION AND RIVER BANK STABILIZATION

SITE PLAN

PROJECT # 1085-01-2009

DWG # 1

REV F




1" = 10' (SCALES FOR 8.5 X 11 DWGS ONLY)

| REV | DESCRIPTION | DATE | APPRO. BY |
|---|---|---|---|
| F | REVISED FOR FINAL REST. PLAN | 12/26/18 | |
| D | ISSUE FOR REVIEW | 10/23/18 | |
| C | ISSUE FOR REVIEW | 5/21/18 | |
| B | ISSUE FOR REVIEW | 3/7/18 | |
| A | ISSUE FOR REVIEW | 1/26/18 | |

DESIGNED BY: CGS
DRAFTED BY: ICB

BROCKWAY ENGINEERING, PLLC
HYDRAULICS • HYDROLOGY • WATER RESOURCES
2215 NORTH WASHINGTON, SUITE A
TWIN FALLS ID 83301
(208) 736-8543

1200 WARM SPRINGS RESTORATION AND RIVER BANK STABILIZATION

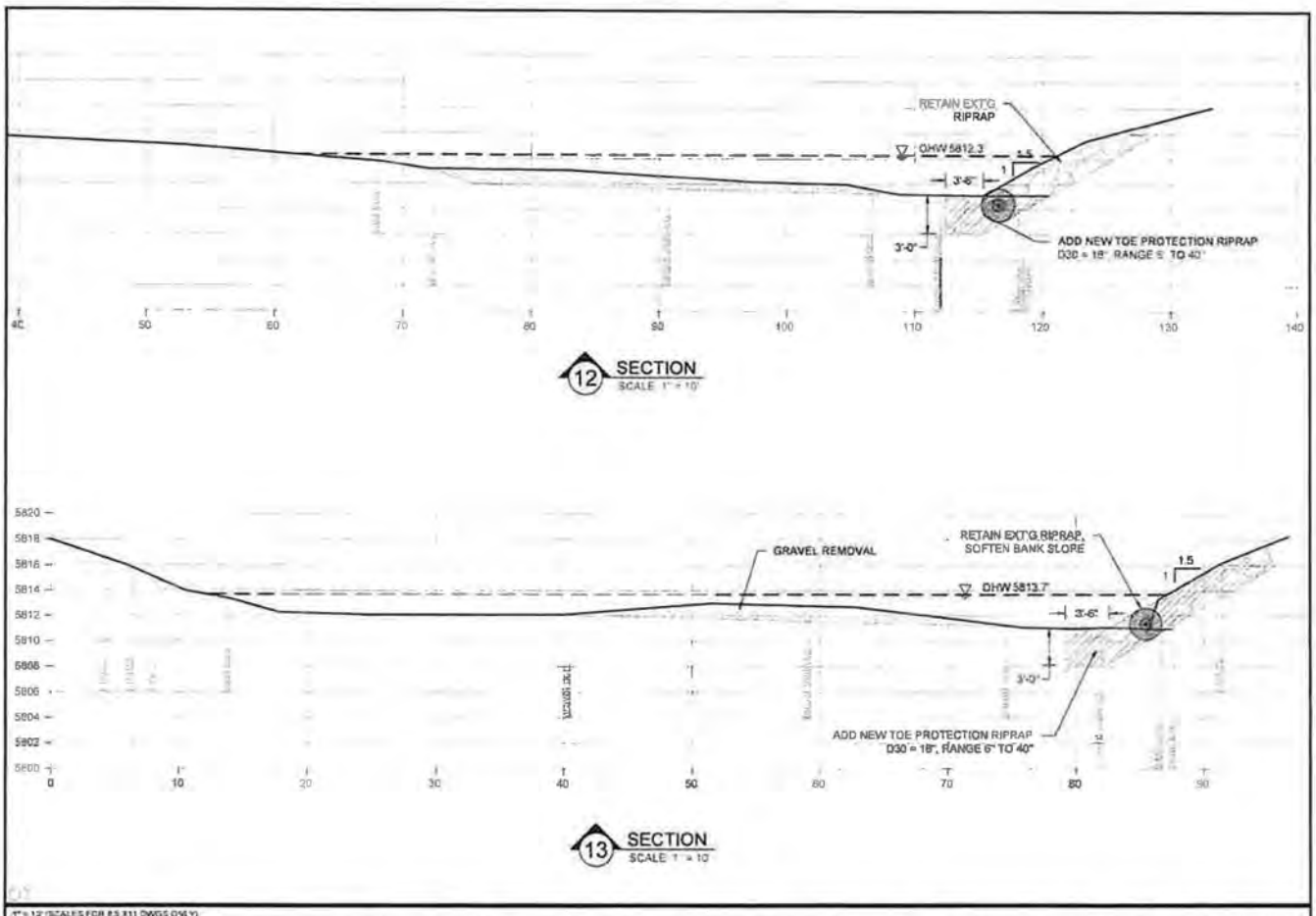
SECTIONS 1

PROJECT # 1365-01-2308

DWG # 2

REV A

SCANNED MAY 17 2019




12 SECTION
SCALE 1" = 10'




13 SECTION
SCALE 1" = 10'

1" = 10' (SCALES FOR 22 X 11 DWGS ONLY)

| REV | DESCRIPTION | DATE | APPRD. BY |
|---|---|---|---|
| E | REVISED FOR FINAL REST. PLAN | 12/20/18 | |
| D | ISSUE FOR REVIEW | 10/23/18 | |
| C | ISSUE FOR REVIEW | 3/21/18 | |
| B | ISSUE FOR REVIEW | 2/7/18 | |
| A | ISSUE FOR REVIEW | 1/26/18 | |

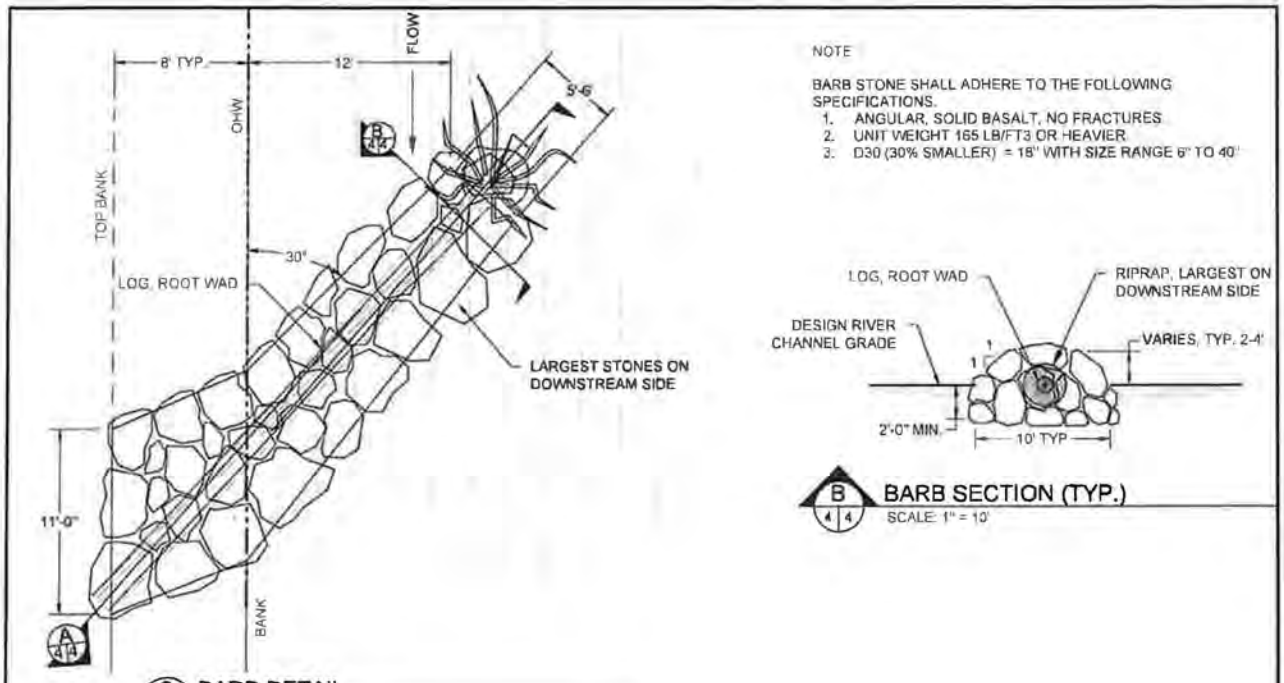
DESIGNED BY: CGS
DRAFTED BY: ICB

BROCKWAY ENGINEERING, PLLC
HYDRAULICS - HYDROLOGY - WATER RESOURCES
2016 NORTH WASHINGTON, SUITE 4
TWIN FALLS, ID 83301
(208) 736-8543

1200 WARM SPRINGS RESTORATION AND RIVER BANK STABILIZATION

SECTIONS 2

PROJECT # 1065-01-2009
DWG # 3
REV A




NOTE

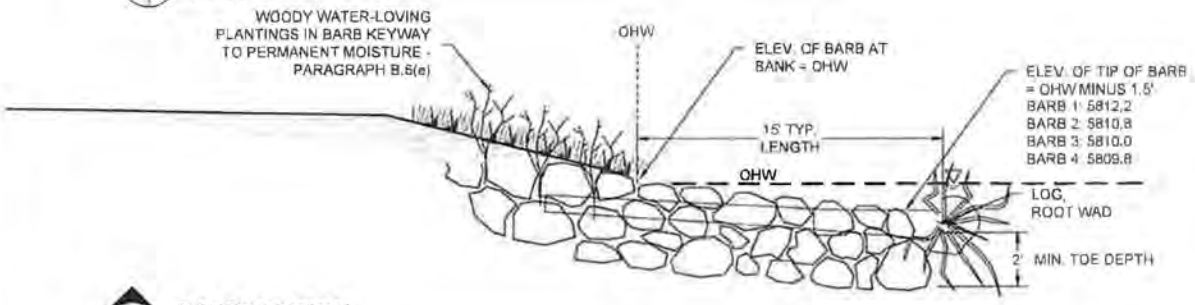
BARB STONE SHALL ADHERE TO THE FOLLOWING SPECIFICATIONS.

1. ANGULAR, SOLID BASALT, NO FRACTURES
2. UNIT WEIGHT 165 LB/FT3 OR HEAVIER
3. D30 (30% SMALLER) = 18" WITH SIZE RANGE 6" TO 40"

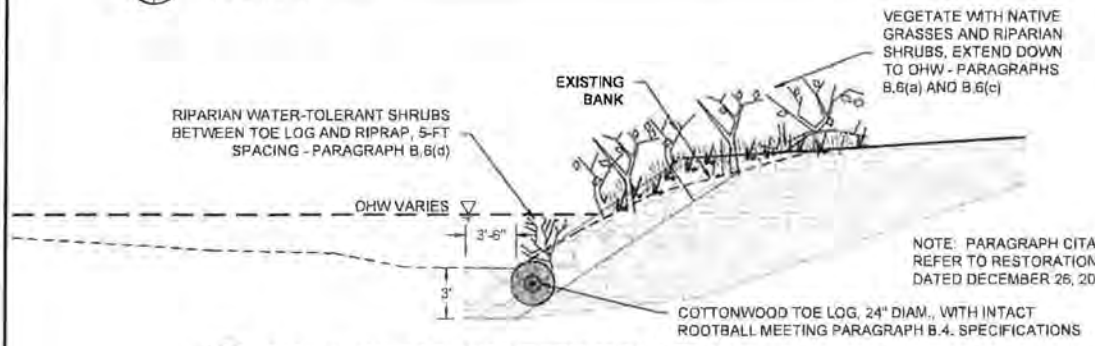



B 4/4 **BARB SECTION (TYP.)**
SCALE: 1" = 10'

2 1/4 **BARB DETAIL**
SCALE: 1"=10'




A 4/4 **BARB SECTION**
SCALE: 1" = 10'




3 1/4 **TYPICAL RIPRAP AND VEGETATION DETAIL**
SCALE: 1"=10'

| REV | DESCRIPTION | DATE |
|---|---|---|
| F | REVISED FOR FINAL REST. PLAN | 12/26/18 |
| D | ISSUE FOR REVIEW | 10/23/18 |
| C | ISSUE FOR REVIEW | 3/21/18 |
| B | ISSUE FOR REVIEW | 2/7/18 |
| A | ISSUE FOR REVIEW | 1/26/18 |

| | | | | |
|---|---|---|---|---|
| | SCALE 1"=10' | BROCKWAY ENGINEERING, PLLC<br>HYDRAULICS - HYDROLOGY - WATER RESOURCES<br>2016 NORTH WASHINGTON, SUITE 4<br>TWIN FALLS, ID 83301<br>(208) 736-8543 | 1200 WARM SPRINGS RESTORATION AND RIVER BANK STABILIZATION | PROJECT # 1085-01-2009 |
| | DESIGNED BY CGB | | TYPICAL BARB & RIPRAP DETAILS & SECTIONS | DWG # 4 / REV F |
| | DRAFTED BY ICB | | | |

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## Photos of Project Reach



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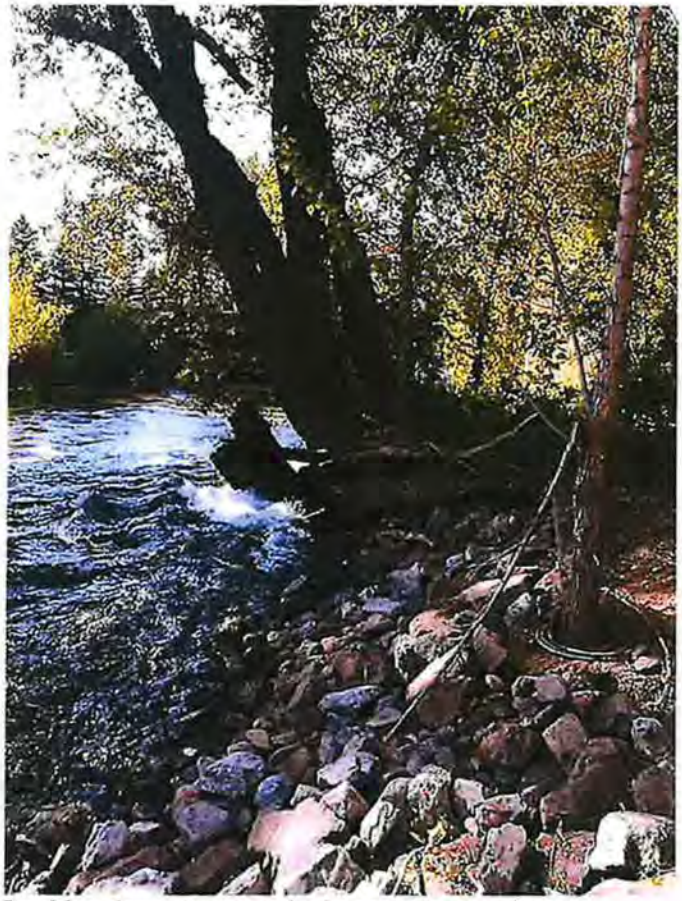
**1200 Warm Springs Restoration Plan – Photo Date August 2, 2017**
River Flow is 233 cfs, ordinary high water level is approximately 0.5 feet above the level on this date.

Looking upstream from near the large cottonwood tree.



Looking downstream at the large cottonwood tree impinged by high-velocity flow

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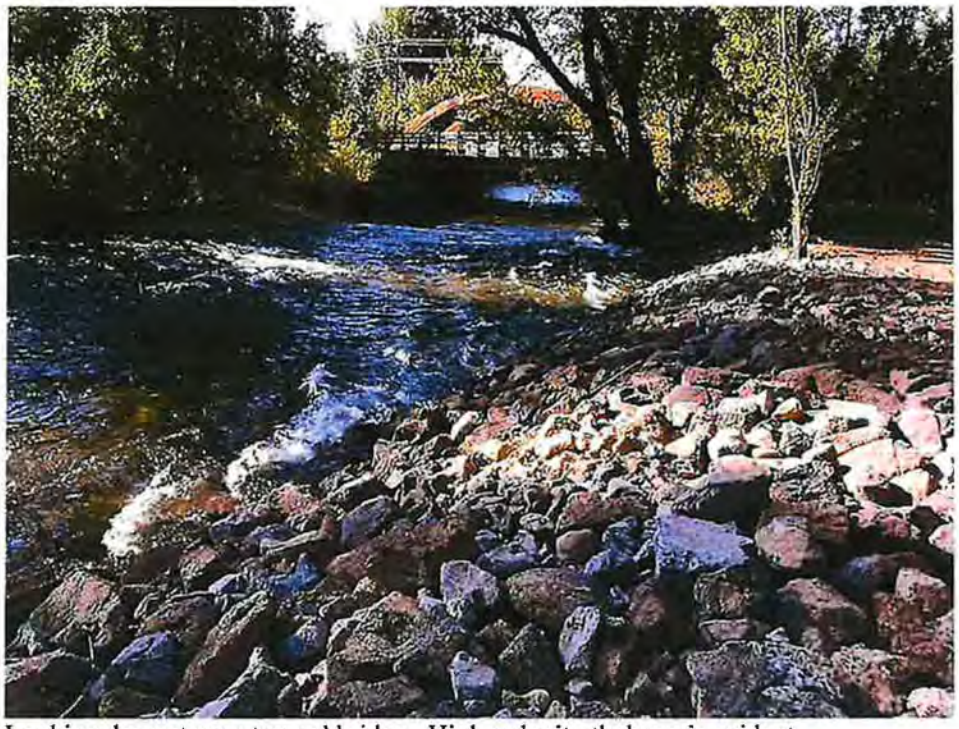
MAY 17 2019



Looking downstream toward bridge. High-velocity thalweg is evident.

Looking downstream showing riprap extent and top of bank.

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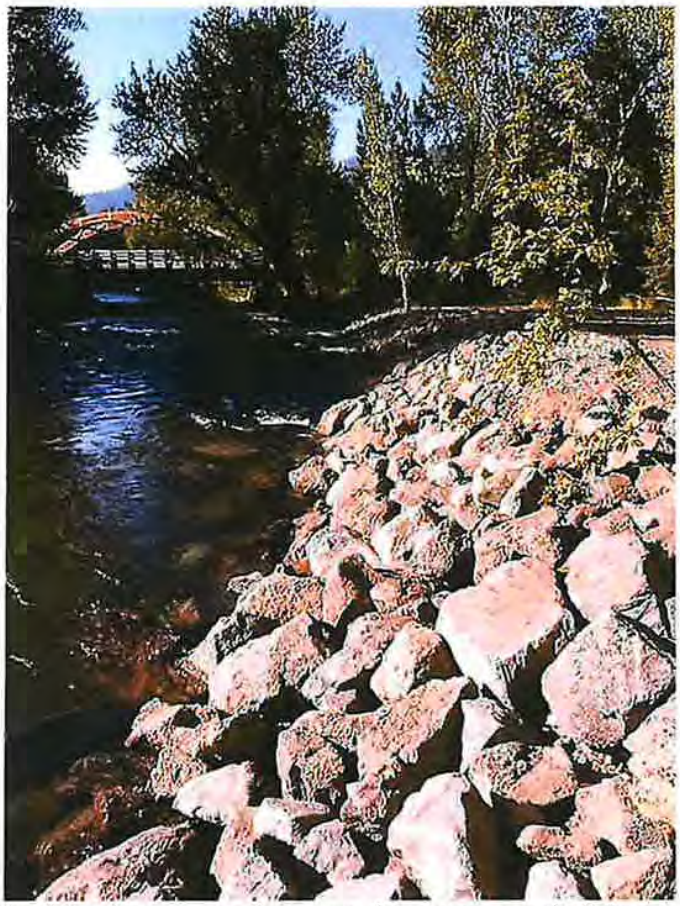

Looking downstream from near the upstream end of riprap.

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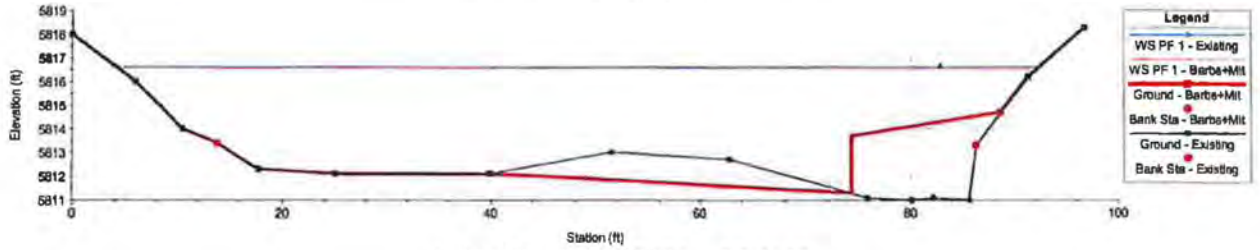
## HEC-RAS Model Output and Cross-Sections

HEC-RAS River: Big Wood Reach: Ketchum Profile: PF 1

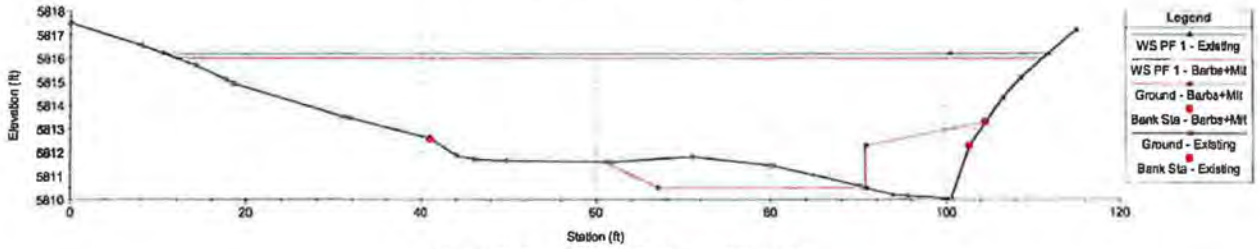
| Reach | River Sta | Profile | Plan | Q Total (cfs) | Min Ch El (ft) | W.S. Elev (ft) | Crit W.S. (ft) | E.G. Elev (ft) | E.G. Slope (ft/ft) | Vel Chnl (ft/s) | Flow Area (sq ft) | Top Width (ft) | Froude # Chl |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Ketchum | 1212 | PF 1 | Existing | 2880.00 | 5811.00 | 5816.64 | | 5817.79 | 0.007696 | 8.69 | 351.96 | 58.43 | 0.72 |
| Ketchum | 1212 | PF 1 | Barbs | 2880.00 | 5811.70 | 5817.05 | | 5818.30 | 0.009502 | 9.04 | 335.67 | 90.75 | 0.79 |
| Ketchum | 1212 | PF 1 | Barbs+Mit | 2880.00 | 5811.30 | 5816.56 | | 5817.81 | 0.009183 | 9.04 | 333.59 | 87.99 | 0.78 |
| Ketchum | 1166.5* | PF 1 | Existing | 2880.00 | 5810.05 | 5816.19 | | 5817.37 | 0.007227 | 8.97 | 376.65 | 101.33 | 0.72 |
| Ketchum | 1166.5* | PF 1 | Barbs | 2880.00 | 5810.80 | 5816.63 | 5815.90 | 5817.79 | 0.008022 | 8.96 | 378.53 | 106.01 | 0.74 |
| Ketchum | 1166.5* | PF 1 | Barbs+Mit | 2880.00 | 5810.50 | 5816.01 | 5815.41 | 5817.30 | 0.008723 | 9.36 | 353.64 | 99.42 | 0.77 |
| Ketchum | 1101 | PF 1 | Existing | 2880.00 | 5809.10 | 5814.99 | 5814.99 | 5816.79 | 0.012428 | 11.27 | 323.18 | 105.21 | 0.93 |
| Ketchum | 1101 | PF 1 | Barbs | 2880.00 | 5810.10 | 5815.46 | 5815.46 | 5817.16 | 0.013673 | 11.10 | 333.33 | 112.03 | 0.96 |
| Ketchum | 1101 | PF 1 | Barbs+Mit | 2880.00 | 5809.50 | 5814.88 | 5814.88 | 5816.67 | 0.012780 | 11.16 | 317.32 | 104.04 | 0.93 |
| Ketchum | 1057 | PF 1 | Existing | 2880.00 | 5805.90 | 5814.68 | | 5815.95 | 0.005566 | 9.28 | 368.72 | 85.65 | 0.64 |
| Ketchum | 1057 | PF 1 | Barbs | 2880.00 | 5805.90 | 5814.68 | | 5815.95 | 0.005566 | 9.28 | 368.72 | 85.65 | 0.64 |
| Ketchum | 1057 | PF 1 | Barbs+Mit | 2880.00 | 5805.90 | 5814.68 | | 5815.95 | 0.005566 | 9.28 | 368.72 | 85.65 | 0.64 |
| Ketchum | 1000 | PF 1 | Existing | 2880.00 | 5808.80 | 5814.50 | 5813.28 | 5815.56 | 0.005727 | 8.39 | 375.26 | 85.05 | 0.65 |
| Ketchum | 1000 | PF 1 | Barbs | 2880.00 | 5808.80 | 5814.50 | 5813.28 | 5815.56 | 0.005727 | 8.39 | 375.26 | 85.05 | 0.65 |
| Ketchum | 1000 | PF 1 | Barbs+Mit | 2880.00 | 5808.80 | 5814.50 | 5813.28 | 5815.56 | 0.005727 | 8.39 | 375.26 | 85.05 | 0.65 |

SCANNED
MAY 17 2019

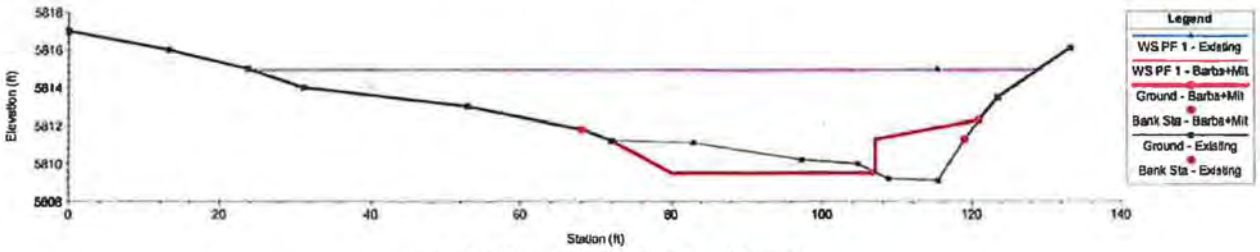
Hastings2018 Plan: 1) Existing 2) Barbs+Mit
RS = 1212 Section 13



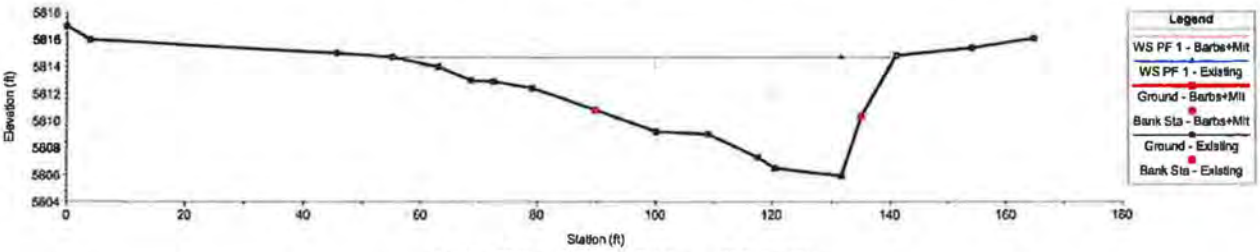

Hastings2018 Plan: 1) Existing 2) Barbs+Mit
RS = 1156.5* Section 12.5 Interpolated



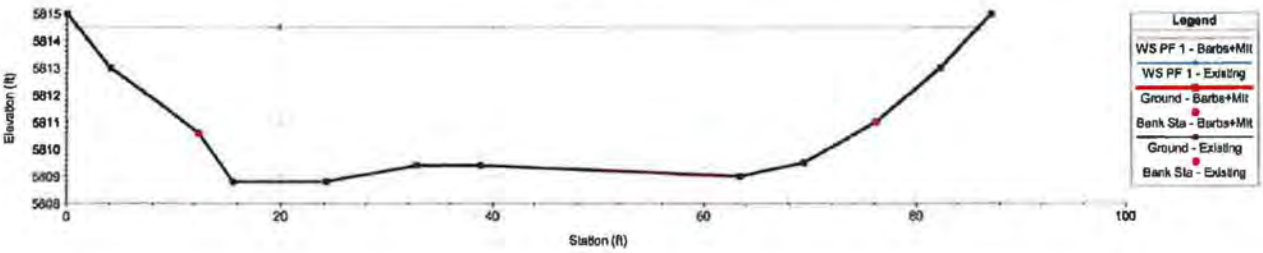

Hastings2018 Plan: 1) Existing 2) Barbs+Mit
RS = 1101 Section 12




Hastings2018 Plan: 1) Existing 2) Barbs+Mit
RS = 1057 Section 11




Hastings2018 Plan: 1) Existing 2) Barbs+Mit
RS = 1000 US of bridge



RECEIVED
Oct 04, 2024
DEPARTMENT OF
WATER RESOURCES

# EXHIBIT E

# AGREEMENT

THIS AGREEMENT is made by and between **JOHN T. HASTINGS, JR.** and **EMBASSY AUDITORIUMS, INC.** (hereinafter collectively referred to as "Hastings"), and **THE NATURE CONSERVANCY OF IDAHO** (hereinafter referred to as "TNC").

WITNESSETH:

WHEREAS, Hastings has filed a joint application for permits with the U.S. Army Corps of Engineers, the Idaho Department of Water Resources, and the Idaho Department of Lands (the "Joint Application") seeking approval of certain stream bank stabilization activities on the Hastings' property adjacent to the Big Wood River in Ketchum, Idaho; and

WHEREAS, Hastings has also filed a required design review application for the same work with the City of Ketchum; and

WHEREAS, pursuant to Idaho Code § 58-104(9), the State Board of Land Commissioners of the State of Idaho possesses the power to regulate and control the use or disposition of lands in the bed of navigable streams to the natural or ordinary high water mark thereof; and

WHEREAS, a quitclaim deed recorded in Blaine County purports to have conveyed certain property to TNC which includes land below the ordinary high water mark of the Big Wood River, and upon which land the stream alteration work is proposed to be undertaken immediately adjacent to the Hastings' property; and

WHEREAS, the City of Ketchum has refused to process the application filed with the City of Ketchum for design review approval without the consent of TNC; and

WHEREAS, the parties hereto desire to allow for TNC's consent in order to allow such work to be accomplished in accordance with the terms and conditions hereof.

NOW, THEREFORE, for and consideration of the mutual covenants contained herein, which the parties agree is good and sufficient consideration, the parties agree as follows:

1. TNC hereby gives its consent for the work to be accomplished as provided in the Joint Application for permits and the design review application. Nothing herein shall be deemed to be construed as TNC's consent to do any additional work on property lying north of the Hastings' property. Hastings agrees to hold TNC harmless from any claim, cause of action, or loss alleged to have occurred or arose as a result of the activities to be undertaken pursuant to the terms of such applications.

2. The City of Ketchum and/or the U.S. Army Corps of Engineers, the Idaho Department of Water Resources, or the Idaho Department of Lands may rely upon this consent in processing the Hastings applications.

3. This Agreement contains the entire agreement of the parties. No promise, inducement, representation or agreement, other than as expressly set forth herein, has been made to or by the parties hereto. The parties warrant that they fully understand, comprehend and agree to the terms and conditions of the Agreement, that their respective attorneys have explained the Agreement to them, and have advised them to enter into it, and they enter into it voluntarily.

4. This Agreement shall be construed under, and interpreted in accordance with, the laws of the State of Idaho.

5. By execution of this Agreement, each person signing on behalf of an entity warrants that this Agreement is executed on behalf of a valid legal entity; that such entity has the full right and authority to undertake any action contemplated by this Agreement; that the execution of this Agreement by the signatory has been duly and properly authorized by the party on whose behalf said Agreement is executed in accordance with all applicable laws, regulations, agreements and procedures governing the authority of such person or entity to execute this Agreement on behalf of such party; and that the consent of all persons or entities whatsoever necessary to the due execution of this Agreement has been obtained.

6. This Agreement and the terms and conditions hereof shall bind and inure to the benefit of the parties' respective executors, administrators, heirs, predecessors, successors, assigns, employees, servants, principals, partners, partnerships, insurers, agents, representatives, attorneys, consultants and beneficiaries.

7. The parties agree to cooperate and execute such other and further instruments as may be deemed reasonably necessary to accomplish the purposes contained herein.

8. If a suit or action is instituted to enforce any of the terms of this Agreement, the prevailing party shall be entitled to recover all costs and attorney's fees from the non-prevailing party.

9. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. Facsimile signatures shall be deemed enforceable in the same manner as an original signature.

"HASTINGS"

Embassy Auditoriums, Inc.

Dated: _____

By: _____
Name: John T. Hastings, Jr.
Title: _____

Dated: _____

_____
Name: John T. Hastings, Jr.

"TNC"
The Nature Conservancy of Idaho

Dated: _____

By: _____
Name: _____
Title: _____

f:\tnc\agccag\consent agmt hastings_TNC

Order # 1.2019

FIRST AMERICAN TITLE CO.

290126

PERSONAL REPRESENTATIVE'S DEED

PURSUANT to the Last Will and Testament of Mary Hemingway, Alfred Rice, as the qualified Personal Representative of the Estate of Mary Hemingway, under Case No. 14211 of the Magistrate Division of the District Court of the Fifth Judicial District of the State of Idaho, in and for the County of Blaine, hereby conveys to THE NATURE CONSERVANCY of Post Office Box 64, Sun Valley, Idaho (88853), any and all interest the Estate of Mary Hemingway has or may have in the improved and unimproved real property particularly described in Exhibit "A" attached hereto.

EXECUTED This 1st day of October, 1987.

ALFRED RICE
Personal Representative of the
Estate of Mary Hemingway

STATE OF NEW YORK )
) ss.
County of New York )

On this 5th day of October, 1987, before me, the undersigned notary public in and for said state, personally appeared ALFRED RICE, known to me to be the person whose name is subscribed to the foregoing instrument, as Personal Representative of the Estate of Mary Hemingway, and acknowledged to me that he executed the same as such Personal Representative.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

Notary Public for New York
Residing at: 56 W. 70th St.
New York, NY 10023

ELISABETH FIGHTEN
Notary Public, State of New York
No. 4718467
Qualified in New York County
Commission Expires November 30, 1988

T15.19

PERSONAL REPRESENTATIVE'S DEED

EXHIBIT "A"

TOWNSHIP 4 NORTH, RANGE 17 EAST, B.M., BLAINE COUNTY, IDAHO.

SECTION 12: Two parcels of land lying within the SE1/4, more particularly described as follows:

PARCEL I

BEGINNING at a point on the North line of Lot 33 of SUN VALLEY SUBDIVISION, which point is N. 54° 05' 30" E., 3279.97 feet from the SW corner of Section 12; thence
S. 66° 17' 00" E., 205.10 feet to the NE corner of said Lot 33; thence
East approximately 540.00 feet to the center of the main channel of the Big Wood River; thence
in a Northwesterly direction following the center of the main channel of the Big Wood River approximately 700.00 feet; thence
West approximately 230.00 feet to a point which is due North of the NE corner of said Lot 33; thence
N. 88° 00' 00" W., 187.89 feet; thence
South 563.21 feet to the TRUE POINT OF BEGINNING.

PARCEL II

BEGINNING at a point which is N. 89° 30' 00" E., 3345.94 feet from the SW corner of Section 12, and which point is on the South line of said Section where said line intersects the North edge of Warm Springs Road; thence
N. 63° 41' 00" W., 40.47 feet along the North edge of Warm Springs Road; thence
Northwest approximately 788.50 feet along the high water mark of the Big Wood River to a NE corner of Lot 38 of SUN VALLEY SUBDIVISION; thence
N. 58° 56' 00" W., 135.30 feet to the other NE corner of Lot 38; thence
N. 15° 18' 00" W., 155.71 feet to the NE corner of Lot 37 of SUN VALLEY SUBDIVISION; thence
N. 06° 03' 00" W., 160.62 feet to the NE corner of Lot 36 of SUN VALLEY SUBDIVISION; thence
N. 04° 19' 00" E., 170.60 feet to the NE corner of Lot 35 of SUN VALLEY SUBDIVISION; thence
N. 07° 43' 00" W., 252.41 feet to the NE corner of Lot 34 of SUN VALLEY SUBDIVISION; thence
N. 32° 01' 00" W., 143.93 feet to an East corner of Lot 33 of SUN VALLEY SUBDIVISION; thence
N. 13° 01' 00" W., 301.40 feet to the NE corner of Lot 33 of SUN VALLEY SUBDIVISION; thence East approximately 540.00 feet to the center of the main channel of the Big Wood
River; thence
South approximately 1812.00 feet to the intersection of the main channel of the Big Wood River and the South line of Section 12; thence
S. 89° 30' 00" W., approximately 45.00 feet along the South line of Section 12 to the TRUE POINT OF BEGINNING.

TOGETHER WITH easements for ingress and egress being fifteen feet (15') in width across Lots 32 and and 33A and twenty-two feet (22') in width across Lot 33B as delineated on the official plat of Lot Line Shift within Lots 32 and 33 of SUN VALLEY SUBDIVISION, recorded as Instrument No. 246077, records of Blaine County, Idaho.

EXCEPTING THEREFROM THE FOLLOWING DESCRIBED PARCELS:

BEGINNING at a point N. 50° 48' 00" E., 52.94 feet from the SE corner of SUN VALLEY SUBDIVISION, according to the official plat on file in the office of the County Recorder of Blaine County, Idaho; thence
N. 50° 48' 00" E., 146.28 feet; thence
N. 27° 39' 00" E., 101.92 feet to the TRUE POINT OF BEGINNING; thence
N. 21° 46' 00" W., 349.35 feet to the Big Wood River; thence
Southeasterly along said Big Wood River approximately 510.50 feet; thence
N. 74° 30' 00" W., 56.20 feet to the TRUE POINT OF BEGINNING.

ALSO BEGINNING at a point N. 50° 48' 00" E., 52.94 feet from the Southeast corner of SUN VALLEY SUBDIVISION as filed; thence
N. 50° 48' 00" E., 146.28 feet along said subdivision; thence
N. 27° 59' 00" E., 101.92 feet along said Subdivision; thence
S. 74° 30' 00" E., 56.20 feet to the Big Wood River; thence
following said River approximately 278.00 feet southerly; thence
N. 63° 41' 00" W., 242.00 feet to the TRUE POINT OF BEGINNING.

# GRANT DEED

**FOR VALUE RECEIVED,** Craig H. Neilsen, an individual, Grantor, of 8620 Titleist Circle, City of Las Vegas, State of Nevada, does hereby grant, bargain, sell and convey unto CHN Properties, LLC, an Idaho limited liability company, Grantee, whose address is 550 Blue Lakes Boulevard North, Twin Falls, Idaho, 83301, the following real property in Blaine County, Idaho, to-wit:

See Exhibit "A" attached hereto

**TOGETHER** with their appurtenances. Grantor covenants and warrants that fee simple title, to the property, is conveyed to Grantee by this Deed, free from all encumbrances except those of record.

**IN WITNESS WHEREOF,** the Grantor, has caused his name to be hereunto subscribed this 26th day of December, 2002.

By: Craig H. Neilsen by JD Sparks
Craig H. Neilsen, by JD Sparks, Attorney-In-Fact

STATE OF IDAHO )
:ss
County of Twin Falls )

Instrument # 476964
HAILEY, BLAINE, IDAHO
2002-12-27 01:07:00 No. of Pages: 5
Recorded for : NEILSEN & COMPANY
MARSHA RIEMANN Fee: 15.00
Ex-Officio Recorder Deputy
Index to: GRANT DEED

On this 26th day of December, 2002, before me, a notary public in and for said State, personally appeared **JD Sparks,** known to me to be Attorney-In-Fact for Craig H. Neilsen, an individual, who executed this instrument on behalf of said individual, and acknowledged to me that such individual executed the same.

**IN WITNESS WHEREOF,** I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

TINA F. LUPER NOTARY PUBLIC STATE OF IDAHO

NOTARY PUBLIC FOR IDAHO
Residing at: Twin Falls, Idaho
My commission expires: 5-27-08

**Exhibit A**

A parcel of land located in a portion of Section 12, Township 4 North, Range 17 East, Boise Meridian, Blaine County, Idaho; lying East of the centerline of the Big Wood River shown on record of survey instrument # 300756 and being more particularly described as follows:

Commencing at the Southeast corner of said Section 12. Thence South 89°24'47" West 1823.75 feet along the South boundary of Section 12 to the center of the Big Wood River and being the REAL POINT OF BEGINNING.

Thence along the center of the Big Wood River as follows:

North 02°46'18" West 248.41 feet,
North 26°00'00" East 185.00 feet,
North 24°00'00" West 115.00 feet,
North 54°00'00" West 158.00 feet,
North 65°30'00" West 180.00 feet,
North 24°15'00" West 162.00 feet,
North 05°00'00" West 160.00 feet,
North 18°15'00" East 135.00 feet,
North 33°45'00" East 350.00 feet,
North 18°00'00" East 200.00 feet,
North 09°00'00" East 215.00 feet,
North 12°52'44" West 133.28 feet,
North 49°00'00" West 110.00 feet,
North 30°00'00" West 85.00 feet,
North 71°15'00" West 215.00 feet,
North 24°30'00" West 170.00 feet,
North 49°30'00" East 213.65 feet,

Thence leaving the centerline of the Big Wood River North 90°00'00" East 31.73 feet,

Thence South 17°19'16" West 33.57 feet,

Thence South 52°31'57" West 172.61 feet,

Thence South 29°30'41" East 182.70 feet,

Thence South 74°48'32" East 156.47 feet,

Thence South 37°59'26" East 347.67 feet,

Thence South 02°21'50" West 121.10 feet,

Thence South 22°15'19" West 374.93 feet,

Thence South 24°43'38" West 167.34 feet,

Thence South 45°45'13" West 214.98 feet,

Thence South 05°12'32" East 352.46 feet,

Thence South 63°34'14" East 188.72 feet,

Thence South 89°05'17" West 30.51 feet,

Thence South 62°37'54" East 191.43 feet,

Thence South 24°11'00" East 183.07 feet,

Thence South 45°00'00" West 49.50 feet,

Thence South 24°47'32" West 173.22 feet,

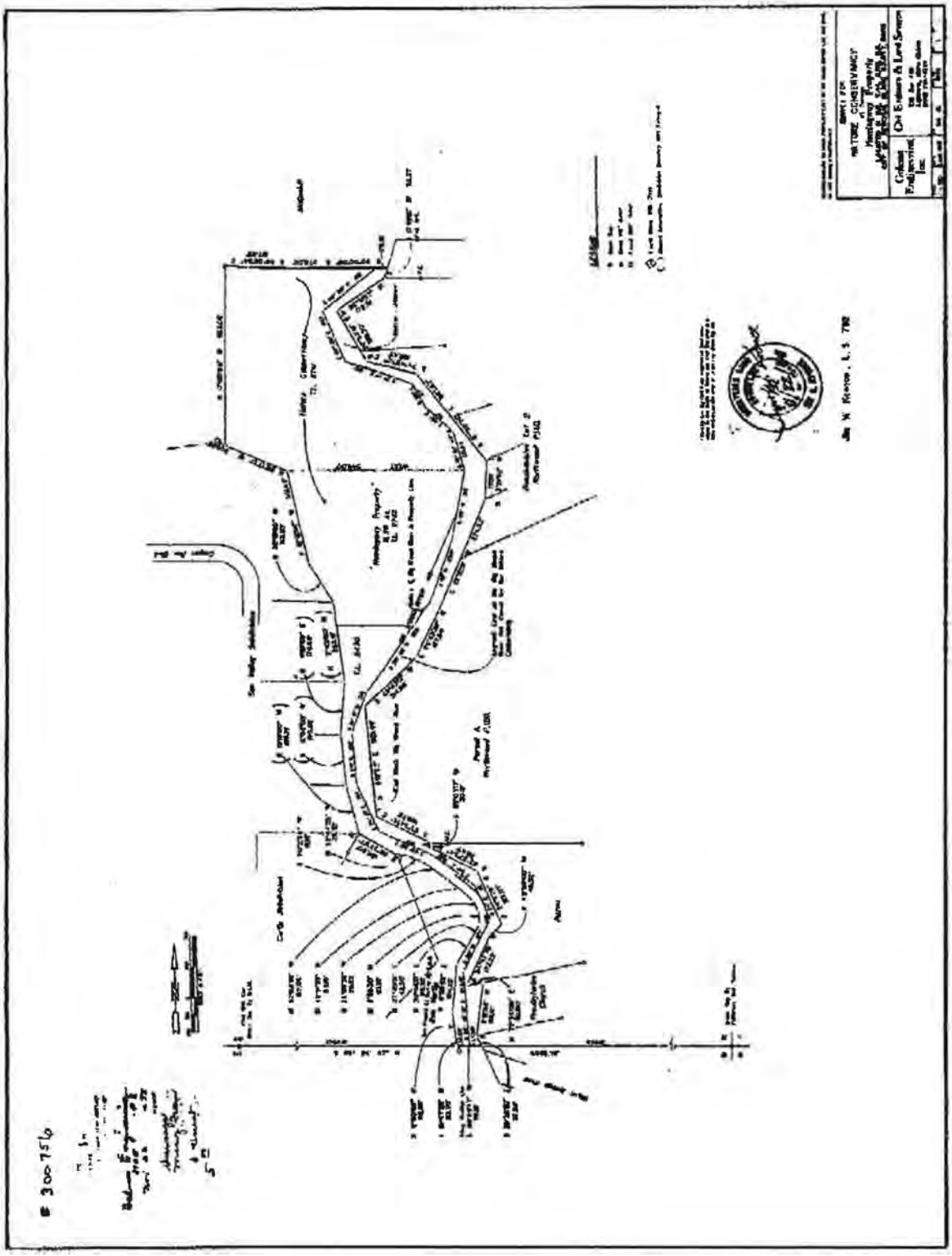
Thence North 78°34'08" East 50.00 feet,

Thence South 06°51'36" West 166.81 feet,

Thence South 25°35'02" East 37.95 feet to a point on the South boundary of Section 12.

Thence South 89°24'47" West 37.59 feet along the South boundary of Section 12 to the REAL POINT OF BEGINNING.

Containing approximately 2.48 acres.



# POWER OF ATTORNEY

I, Craig H. Neilsen, of Las Vegas, Nevada, constitute and appoint JD Sparks as my true and lawful attorney, for me and in my name, place and stead, to do and perform all acts which said attorney in her sole discretion shall deem necessary, expedient or desirable, binding me, as fully to all intents and purposes as I might or could do if personally present, for me and in my behalf, to:

> Enter into and execute all documents, agreements, contracts and instruments and perform all other acts necessary or incidental to the formation of CHN Properties, LLC ( an Idaho limited liability company) including the Articles of Organization and the Operating Agreement.

All persons dealing with said attorney may rely on a photostatic, electrostatic or other similarly produced copy hereof without requiring the production of the original instrument.

Craig H. Neilsen by C. Neilsen 12/20/02

Craig H. Neilsen Date

On this 20th day of December, 2002, Craig H. Neilsen directed Connie Wilson, in his presence as well as our own, to sign the foregoing document as "Craig H. Neilsen". Upon viewing the signature as signed by Connie Wilson and in our presence, Craig H. Neilsen declared that he adopted it as his own signature.

Witness

Witness

STATE OF NEVADA )
) ss.
COUNTY OF CLARK )

I, Margene M. Otten, a Notary Public in and for said county and state, do hereby certify that Craig H. Neilsen personally appeared before me and is known or identified to me to be the person whose name is subscribed to the within instrument. Craig H. Neilsen, who being unable due to physical incapacity to sign his name or offer his mark, did direct Connie Wilson to sign the foregoing document as "Craig H. Neilsen". Craig H. Neilsen, after viewing his name as signed by Connie Wilson thereupon adopted it as his own by acknowledging to me his intention to so adopt as if he had personally executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal this 20th day of December, 2002.

Notary Public

Residing at Las Vegas, Nevada

My Commission Expires

July 23, 2006

**BEFORE THE DEPARTMENT OF WATER RESOURCES**

**OF THE STATE OF IDAHO**

| | |
|---|---|
| IN THE MATTER OF APPLICATION FOR STREAM CHANNEL ALTERATION PERMIT NO. S37-20565 | **ORDER GRANTING PETITIONER'S MOTION TO DISQUALIFY & VACATE THE RENEWED PREHEARING CONFERENCE** |

## BACKGROUND

On March 15, 2019, the Idaho Department of Water Resources ("IDWR") received Joint Application for Permits No. S37-20565 ("Application") filed by John Hastings, Jr. and Embassy Auditoriums, Inc. ("Petitioner" or " Mr. Hastings"). The Petitioner's Application was for a stream channel alteration permit for bank stabilization filed in response to a notice of violation issued by the Department.

On May 17, 2019, IDWR issued a Conditional Approval of Joint Application for Permits (S37-20565) ("Permit"). Thereafter extensive litigation ensued, including a trip to the Idaho Supreme Court. *See Hastings v. Idaho Dept. of Water Res.*, 547 P.3d 1190 (2024). The matter is now back before the Department for an administrative proceeding as contemplated under I.C. § 42-3809.

The Petitioner requested the administrative hearing in a Petition for Hearing filed on May 21, 2019. The Petitioner requested the hearing "to contest the requirements" included in the Permit the Department issued on May 15, 2019.

On July 26, 2024, the Idaho Water Resource Board appointed Pete Wood to serve as the Hearing Officer in this contested case.

On September 5, 2024, the Department held a prehearing conference. During the prehearing conference it became clear the parties were not in agreement concerning what issues should be addressed at the administrative hearing. Accordingly, the hearing officer requested that each party file a Notice of Issues. The purpose of the Notice of Issues was to provide the parties an opportunity to articulate the precise issues they believed should be addressed during the contested hearing. The hearing officer also requested the parties articulate who should bear the burden of proof and what standard of proof should apply.

During the pre-hearing conference counsel for the Petitioner also moved to disqualify the hearing officer after learning that Mr. Wood was previously employed as a Deputy Attorney General assigned to the Department from (approximately) 10/1/2022 – 8/1/2023. The hearing officer requested that the Petitioner put his motion to disqualify in writing. The parties further agreed to schedule a renewed pre-hearing conference for November 7, 2024, at 2:00 P.M.

As requested by the hearing officer, on October 4, 2024, the Petitioner filed his *Brief RE: Issues Before the Hearing Officer & Motion to Disqualify* ("*Petitioner's Briefing on Issues & Motion to DQ*") and the Department filed its *Statements of Issues* ("*Department's Statement of Issues*").

## DISCUSSION

### I. The Petitioner's motion to disqualify the hearing officer will be granted.

IDWR Procedural Rule 411 advises that "[p]residing officers may be disqualified as provided in Section 67-5252, Idaho Code." IDAPA 37.01.01.411.

I.C. § 67-5252(1) & (3) advise in pertinent part that:

> (1) Any party shall have a right to move to disqualify for bias, prejudice, interest, substantial prior involvement in the matter other than as a presiding officer, status as an employee of the agency hearing the contested case, lack of professional knowledge in the subject matter of the contested case, or any other cause provided in this chapter or any cause for which a judge is or may be disqualified.
>
> (3) A person whose disqualification for cause is requested shall determine in writing whether to grant the petition, stating facts and reasons for the determination.

Here, the Petitioner argues there are multiple reasons the undersigned hearing officer should be disqualified owing to his employment with the agency in 2022 – 2023. *Petitioner's Briefing on Issues & Motion to DQ*, at 3-7.

The Petitioner first argues that "the Department was well aware of the appearance of impropriety that the appointment of Mr. Wood as a hearing officer would pose." *Petitioner's Briefing on Issues & Motion to DQ*, at 3. The hearing officer rejects the Petitioner's suggestion that the Department was aware of an "appearance of impropriety." During his employment with the Department Mr. Wood was not involved in the Hastings' matter which was pending before the Idaho Supreme Court on a narrow statute of limitations issue unrelated to the administrative inquiries currently before the Department. *See Hastings*, 547 P.3d at 1193. Moreover, it is common in administrative proceedings for the hearing (or presiding) officer to be an actual Department employee if not the head of the Department itself. Accordingly, it is difficult to understand how past employment creates a per se "appearance of impropriety" as suggested by the Petitioner.

The Petitioner next argues that the hearing officer had an obligation to disclose a "conflict of interest" pursuant to Idaho Cannon of Judicial Ethics 2.11 ("Cannon 2.11"). *Petitioner's Briefing on Issues & Motion to DQ*, at 3. The hearing officer rejects this argument

as well. Cannon 2.11(5)(b) advises that a judge should disqualify him or herself if s/he "served in government employment, and in such capacity participated personally and substantially as a lawyer... in the proceeding." The hearing officer did not serve in *any* capacity in the Petitioner's proceeding before the Idaho Supreme Court, let alone in a substantial capacity.

The Petitioner's final argument is that the hearing officer should be disqualified owing to the "potential for the appearance of a lack of impartiality based on the Hearing Officer's prior employment with IDWR..." *Petitioner's Briefing on Issues & Motion to DQ*, at 7.[1] To support this position the Petitioner advises that "in matters of judicial ethics, appearance and reality often converge" and "justice must satisfy the appearance of justice." *Petitioner's Briefing on Issues & Motion to DQ*, at 4-5 *citing Hepworth Holzer, LLP v. Fourth Judicial Dist. (In re Writ of Mandamus)*, 169 Idaho 387, 400 (2021) *citing Liteky v. United States*, 510 U.S. 540, 565 (1994) (Kennedy, J., concurring).

The hearing officer agrees with the Petitioner that the *appearance of justice* is of the utmost importance. The Petitioner deserves not just a fair hearing, but also to believe he is receiving a fair hearing. The fact that Petitioner filed the pending motion, which was well researched and thorough, supports the Petitioner's subjective contention that the undersigned hearing officer would be impartial given his previous employment with the Department. The hearing officer finds this argument persuasive and sufficient to justify disqualification. Additionally, the timing of the Petitioner's motion to disqualify suggests it was not filed for the purpose of delaying, hindering, or obstructing the proceedings. Thus, the Petitioner's motion to disqualify the hearing officer will be granted.

## II. The undersigned hearing officer will not issue a ruling on the scope of issues for the hearing or the proper burden and standard of proof.

As requested by the hearing officer, both parties filed briefing articulating the issue(s) each contends should be addressed at the contested hearing. *See Petitioner's Issues & Motion to DQ*, at 7-16; and *Department's Statement of Issues*, at 2-3. The parties also submitted briefing addressing which party should bear the burden of proof.[2] *See Petitioner's Issues & Motion to DQ*, at 8-11; and *Department's Statement of Issues*, at 3. The hearing officer appreciates the parties' attention to these salient issues. However, because the Petitioner's motion to disqualify will be granted, it would be improper for this hearing officer to rule on these matters.

---

[1] The Petitioner further contends the hearing officer had an obligation to disclose his previous employment under Comment 5 to Cannon 2.11, which advises that "[a] judge should disclose on the record information that the judge believes the parties or their lawyer might reasonably consider relevant to a possible motion for disqualification, even if the judge believes there is no reason for disqualification." This presents a closer call but does not resolve the ultimate inquiry i.e. whether the hearing officer should be disqualified.

[2] The hearing officer also requested briefing on what standard of proof should be apply. *See Notice of Results From Pre-Hearing Conference*, at 1. The Petitioner submitted briefing on this point but the Department did not. Compare *Hastings Issues & Motion to DQ*, at 8-11 with *Department's Statement of Issues*, at 3.

## III. The re-scheduled prehearing conference previously set for November 7, 2024 will be vacated.

During the September 5, 2024, prehearing conference the hearing officer set a renewed pre-hearing conference for November 7, 2024, at 2:00 P.M. Given that the hearing officer is granting the Petitioner's motion to disqualify, a new hearing officer will need to be appointed. It is unlikely this can be accomplished prior to November 7. Accordingly, the renewed prehearing conference set for November 7, 2024, should be vacated.[3]

## ORDER

IT IS HEREBY ORDERED that:

(1) The Petitioner's *Motion to Disqualify* Hearing Officer Wood is hereby **GRANTED.**

(2) Hearing Officer Wood is hereby disqualified from presiding over *In The Matter Of Application For Stream Channel Alternation Permit No. S37-20565.*

(3) The renewed prehearing conference previously scheduled for November 7, 2024, 2:00 P.M. is hereby **VACATED.**

DATED this 7th day of October, 2024.

PETE WOOD
Hearing Officer

[3] Presumably the new hearing officer will set a prehearing conference after appointment.

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 8th day of October, 2024, I served a true and correct copy of the foregoing document on the following by the method(s) indicated below:

J. KAHLE BECKER
223 N 6TH ST STE 325
BOISE ID 83702
kahle@kahlebeckerlaw.com

*Attorney for Applicant*

- ☐ U.S. Mail, Certified, postage prepaid
- ☐ U.S. Mail, postage prepaid
- ☐ Overnight Mail
- ☐ Facsimile
- ☒ Email

MEGAN M CARTER
DEPUTY ATTORNEY GENERAL
IDAHO DEPT OF WATER RESOURCES
PO BOX 83720
BOISE ID 83720-0098
megan.carter@idwr.idaho.gov

*Attorney for IDWR*

- ☐ U.S. Mail, Certified, postage prepaid
- ☐ U.S. Mail, postage prepaid
- ☐ Overnight Mail
- ☐ Facsimile
- ☒ Email

Jean Hersley
Technical Records Specialist II

RECEIVED
Oct 25, 2024
DEPARTMENT OF
WATER RESOURCES

**RAÚL R. LABRADOR**
ATTORNEY GENERAL

**SCOTT L. CAMPBELL**
Chief of Energy and Natural Resources Division

**MEGHAN M. CARTER, ISB No. 8863**
Deputy Attorney General
Idaho Department of Water Resources
P.O. Box 83720
Boise, Idaho 83720-0098
Telephone: (208) 287-4800
Facsimile: (208) 287-6700
meghan.carter@idwr.idaho.gov

**BEFORE THE IDAHO WATER RESOURCE BOARD**

| | |
|---|---|
| IN THE MATTER OF APPLICATION FOR STREAM CHANNEL ALTERATION PERMIT NO. S37-20565 | **DEPARTMENT'S RESPONSE TO PETITIONER'S BRIEF RE: ISSUES BEFORE THE HEARING OFFICER** |

## Background

On September 9, 2024, the Hearing Officer issued a *Notice of Results from Pre-Hearing Conference, and Notice of Re-Scheduled Prehearing Conference* ("Notice"). The Notice required John Hastings Jr. and the Idaho Department of Water Resources ("Department") to each submit a statement to clarify the issues to be considered at the administrative hearing as well as a discussion about the burden and standard of proof. Further, the Notice allowed the parties to provide a response by October 25, 2024.

On October 4, 2024, the Department filed its *Statement of Issues*. That same day, Mr. Hastings filed *Petitioner's Brief Re: Issues Before the Hearing Officer & Motion for Disqualification* ("*Hastings Brief*").

## Statement of Issues

The Department and Mr. Hastings agree that the issue to be addressed in this hearing is whether the conditions on the Permit are consistent with the requirements set forth in the Consent Order. *Hastings Brief*, at 13; *Department's Statement of Issues*, at 2. However, Mr. Hastings also wants the Idaho Water Resource Board ("Board") to modify the Permit to remove work contemplated on property owned by Embassy Auditoriums, Inc. (*Hastings Brief* at 11-12). Here the Department and Mr. Hastings disagree.

The Board's review of the Permit is limited to "approving the decision of the director on the application and plans in whole or in part, or upon conditions, or rejecting the decision of the director on said application and plans for such proposed stream channel alteration." Idaho Code § 42-3805. The Board does not have the authority to determine whether the Department may or may not require stream channel restoration on land owned by Embassy Auditoriums, Inc. Such a determination is within the jurisdiction of the District Court only. Further, according to the Idaho Administrative Procedures Act ("APA"), an order must contain findings of fact "based exclusively on the evidence in the record of the contested case and on matters officially noticed in that proceeding." Idaho Code § 67-5248. Mr. Hastings' *Petition for Hearing* objects to "certain requirements contained in [the Permit]." Those certain requirements are all that is at issue in this proceeding.

**Burden and Standard of Proof**

Mr. Hastings and the Department agree that the Board's Rules of Procedure (IDAPA 37.01.01) do not specify who bears the burden of proof in this proceeding. *Hastings Brief*, at 8; *Department's Statement of Issues*, at 3. Mr. Hastings, however, misinterprets caselaw and the Idaho Administrative Procedures Act ("APA") in arguing the Department bears the burden of proof under a clear and convincing evidentiary standard.

Mr. Hastings cites the opinion of a federal district court to argue the burden of proof should be placed on the Department under a clear and convincing evidentiary standard because the Permit threatens his quiet enjoyment of property. *Hastings Brief*, at 10–11 (citing *Omar v. Kerry*, No. 15-cv-01760-JSC, at 22–25 (N.D. Cal. Feb. 16, 2016)). The Permit memorializes the stream channel alteration activities as proposed by Mr. Hastings in his application for permit. The Permit outlines the requirements, also called "conditions," imposed on Mr. Hastings if he wants to complete those stream channel alteration activities. The conditions on the Permit do not raise the standard of proof to clear and convincing evidence.

As the Department submits in its *Statement of Issues*, the APA provides the standards and procedures if more specific statutes or rules do not. The APA, in Idaho Code § 67-5279, provides the standard for a court to review an agency action. Since the Board is reviewing the Department's action, it is appropriate to look to Section 67-5279 for guidance. That Statute states the agency's decision must be "supported by substantial evidence on the record as a whole." Idaho Code § 67-5279(3)(d). The applicable evidentiary burden in this matter is the substantial evidence standard.

Mr. Hastings argues Idaho Code § 67-5279(5) establishes the appropriate burden of proof. It states:

> When interpreting the provisions of any state law, this chapter, or any rule, as defined in section 67-5201, Idaho Code, the court shall not defer to an agency's interpretation of the law or rule and shall interpret its meaning and

> effect de novo. In an action brought by or against an agency, after applying all customary tools of interpretation, the court shall exercise any remaining doubt in favor of a reasonable interpretation that limits agency power and maximizes individual liberty.

This statute does not address the applicable burden of proof in an administrative hearing, but instead directs the courts to review an agency interpretation of statutes and law *de novo*. Therefore, Idaho Code § 67-5279(5) is inapplicable to this discussion.

Finally, the Department disagrees with Mr. Hastings that it bears the burden of proof. Mr. Hastings does not explain his reasoning behind asserting the Department bears the burden of proof. The Department's position that Mr. Hastings bears the burden of proof is supported by the Office of Administrative Hearings (IDAPA 62.01.01.477) and case law (*see Bennett v. State, Dep't of Transp.*, 147 Idaho 141, 143, 206 P.3d 505, 507 (Ct. App. 2009)).

**Conclusion**

Therefore, the hearing officer should only consider whether the conditions on the Permit are consistent with the Consent Order, and Mr. Hastings bears the burden of proof as the party requesting the administrative hearing.

DATED October 25, 2024.

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL

MEGHAN M. CARTER
Deputy Attorney General

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 25, 2024, I caused to be served a true and correct copy of the *Department's Statement of Issues* via email, upon the following:

| | |
|---|---|
| **J. KAHLE BECKER**<br>Attorney at Law<br>223 N. 6th St., Suite 325<br>Boise, ID 83702<br>kahle@kahlebeckerlaw.com<br><br>*Attorney for Petitioner John Hastings* | ☒ U.S. Mail, postage prepaid<br>☐ Hand Delivery<br>☐ Overnight Mail<br>☒ Email |
| **IDAHO WATER RESOURCE BOARD**<br>file@idwr.idaho.gov | ☐ U.S. Mail, postage prepaid<br>☐ Hand Delivery<br>☐ Overnight Mail<br>☒ Email |

MEGHAN M. CARTER
Deputy Attorney General
Idaho Department of Water Resources

**BEFORE THE IDAHO WATER RESOURCE BOARD**

| | |
|---|---|
| IN THE MATTER OF APPLICATION FOR STREAM CHANNEL ALTERATION PERMIT NO. S37-20565 | Resolution Appointing Hearing Officer |

WHEREAS, on March 15, 2019, the Idaho Department of Water Resources ("IDWR") received Joint Application for Permits No. S37-20565 ("Application") filed by John Hastings, Jr. and Embassy Auditoriums, Inc. ("Hastings") for a stream channel alteration permit for bank stabilization, in response to a notice of violation; and

WHEREAS, on May 17, 2019, IDWR issued a Conditional Approval of Joint Application for Permits (S37-20565) ("Permit"); and

WHEREAS, Hastings requested a hearing before the Idaho Water Resource Board ("IWRB") on IDWR's conditional approval; and

WHEREAS, IDWR and Hastings were in discussions on the conditional terms of the Permit and reached an impasse in late 2021, and IDWR asked the IWRB to appoint a hearing officer; and

WHEREAS, the IWRB appointed Shelley Keen as hearing officer at its November 19, 2021 meeting and Hastings disqualified Mr. Keen as a hearing officer; and

WHEREAS, Hastings initiated court proceedings against IDWR related to the matter in November 2021; and

WHEREAS, the court proceedings reached a resolution such that another hearing officer needed to be appointed to issue a recommended order or preliminary order in accordance with Idaho Code §§ 67-5243(1) and 67-5248; and

WHEREAS, on July 26, 2024 the IWRB appointed Pete Wood as hearing officer; and

WHEREAS, Pete Wood disqualified himself upon Hastings' request and another hearing officer needs to be appointed; and

NOW THEREFORE BE IT RESOLVED, the IWRB hereby appoints Roger S. Burdick, an independent hearing officer on contract with IDWR, to serve as the hearing officer in the above captioned matter.

DATED November 22, 2024.

JEFF RAYBOULD, Chairman
Idaho Water Resource Board

ATTEST _____
DEAN STEVENSON, Secretary

**BEFORE THE IDAHO WATER RESOURCE BOARD**

| | |
|---|---|
| IN THE MATTER OF APPLICATION FOR STREAM CHANNEL ALTERATION PERMIT NO. S37-20565 | **ORDER SETTING DEADLINES AND AUTHORIZING EMAIL SERVICE** |

## BACKGROUND

On September 11, 2017, the Idaho Department of Water Resources ("Department") issued a notice of violation ("NOV") to John Hastings Jr. for violation of the Stream Protection Act, Title 42, Chapter 38, Idaho Code. On January 26, 2018, pursuant to Idaho Code § 42-1701B, Hastings and the Department entered into a Consent Order and Agreement ("Consent Order") to remedy damages to the Big Wood River and resolve the NOV. Consent Order, at 2–3.

On March 15, 2019, Hastings and Embassy Auditoriums, Inc. ("Embassy") filed a *Joint Application for Permits* ("*Application*"), assigned Permit No. S37-20565 by the Department. The stated purpose of the *Application* was to obtain permits to complete a bank stabilization plan, which noted an intention to partially satisfy the Consent Order as a part of the plan. *See Application*, at 1, 4; *Application* Attach. Restoration Plan, at 1. On May 17, 2019, the Department issued a conditional approval of the *Application* ("Permit"). Hastings and Embassy filed a *Petition for Hearing* contesting the Permit on May 23, 2019, with the Idaho Water Resource Board ("Board").

On November 15, 2021, Hastings filed an *Action for Declaratory Judgment* in Ada County District Court seeking an order from the court declaring that the Department ran the applicable statute of limitations and could no longer pursue either an administrative or district court enforcement action with respect to the Consent Order, or in the alternative, an order from the court clarifying his restoration obligations. *Action for Declaratory J.*, at 11–12, *Hastings v. Department*, No. CV01-21-17825 (Ada Cnty. Dist. Ct. Idaho Nov. 15, 2021).

On November 19, 2021, the Board issued a resolution initiating formal administrative proceedings concerning the contested Permit under the above caption.

On December 21, 2021, the Department filed an enforcement action related to the Consent Order, in the form of a counterclaim to Hastings' declaratory judgment action. *Def.'s Answer & Countercl.*, at 15, 18, *Hastings v. Department*, No. CV01-21-17825. On August 24, 2022, the district court concluded that the Department's counterclaim was timely.[1] *Mem. Decision & Order on Cross Mots. for Summ. J.*, at 18, *Hastings v. Department*, No. CV01-21-17825.

On July 16, 2024, the district court case was stayed to allow the Board time to issue a decision in this matter before taking up remaining issues, including Hastings' request for clarification. *See Order Staying Lawsuit*, *Hastings v. Department*, No. CV01-21-17825.

[1] On appeal, the Idaho Supreme Court affirmed the district court and held that the Department's enforcement action was timely. *Hastings v. Department*, 173 Idaho 630, 547 P.3d 1190, 1202 (2024).

On July 26, 2024, the Board issued a resolution appointing Pete Wood to serve as the hearing officer in this matter. During the September 5, 2024 prehearing conference, Hearing Officer Wood set an October 4, 2024 deadline for the parties to file a notice of issues addressing: 1) what are the issues for hearing, 2) who should bear the burden of proof, and 3) what is the proper standard of proof. *Not. of Results from Prehr'g Conf & Not. of Re-sched. Prehr'g Conf.*, at 1. Additionally, the deadline to file a response was set for October 25, 2024. *Id*.

All parties filed a notice of issues on October 4, 2024. Coupled with their notice, Hastings and Embassy included a motion to disqualify Hearing Officer Wood. On October 8, 2024, Pete Wood issued an order granting the request for disqualification. On October 25, 2024, the Department filed its response to Hastings' and Embassy's notice of issues; however, in lieu of filing a response, counsel for Hastings and Embassy sent an email to the Board's electronic filing email and counsel for the Department providing notice that they would wait to file a response until a new hearing officer was appointed and direction was provided.

On November 22, 2024, the Board issued a resolution appointing Roger S. Burdick, former Idaho Supreme Court Justice, to serve as the hearing officer in this matter.

**ORDER**

IT IS HEREBY ORDERED that Petitioners, Hastings and Embassy Auditoriums, Inc., have until January 7, 2025, to file a written response with the Board to the *Department's Statement of Issues*.

IT IS FURTHER ORDERED that by January 7, 2025, all parties are to notify the Hearing Officer of their *unavailable* times for a prehearing from January 27, 2025 through February 14, 2025, by including Permit No. S37-20565 in the subject line of an email addressed to Sarah Tschohl at sarah.tschohl@idwr.idaho.gov and Hearing Officer Burdick at roburd47@gmail.com.

IT IS FURTHER ORDERED that as of December 30, 2024, and pursuant to IDAPA 37.01.01.053.02–03, the Board and the parties are authorized to serve documents by email as an alternative to service by mail or personal service. The emails included in the certificate of service below are to be used as the official service emails for the parties, unless a notice instructing otherwise is filed with the Board and properly served. The parties shall also serve a copy of all filings in this contested case on Hearing Officer Burdick at roburd47@gmail.com.

DATED this 30th day of December 2024.

ROGER S. BURDICK
Hearing Officer

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 30th day of December 2024, the above and foregoing, was served by the method indicated below, and addressed to the following:

| | |
|---|---|
| J. KAHLE BECKER<br>Attorney at Law<br>kahle@kahlebeckerlaw.com<br>*Attorney for Hastings and Embassy Auditoriums, Inc.* | ☒ Email |
| MEGHAN M. CARTER<br>Deputy Attorney General<br>meghan.carter@idwr.idaho.gov<br>*Attorney for the Idaho Water Resource Board* | ☒ Email |

Sarah Tschohl
Paralegal

**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 Petitioner

RECEIVED
Jan 17, 2025
DEPARTMENT OF
WATER RESOURCES

**BEFORE THE DEPARTMENT OF WATER RESOURCES**
**OF THE STATE OF IDAHO**

| | |
|---|---|
| IN THE MATTER OF APPLICATION FOR STREAM CHANNEL ALTERATION PERMIT NO. S37-20565 | PETITIONER'S RESPONSE TO IDWR'S BRIEF RE: ISSUES BEFORE THE HEARING OFFICER |

COMES NOW Petitioner, John Hastings by and through his attorney of record, J. Kahle Becker and, having filed his Brief regarding the issues to be decided by the Hearing Officer and IDWR having done the same, provides his response to IDWR's brief as follows.

1. **The Department Has Taken an Overly Narrow View of the Matters at Issue in This Hearing.**

The Hearing Officer's role is to issue a decision which evaluates the evidence, takes input from other state agencies, and renders a decision "approving the application in whole or in part or upon conditions, or rejecting the application," as is specified in I.C. 42-3805. Instead of recognizing the breadth of the issues before this Hearing Officer, the Department makes statement on page 2 of its *Response* in an attempt to be coy, improperly narrow these proceedings, and drag them out for years to come:

> The Board does not have the authority to determine whether the

> Department may or may not require stream channel restoration on land owned by Embassy Auditoriums, Inc. Such a determination is within the jurisdiction of the District Court only.

The Hearing Officer is appointed by the Director of the Department and the decision of the Hearing Officer will ultimately go to the Director for review. *See* I.C. 67-5243 and 67-5246. The Director serves at the pleasure of the Water Resources Board. *See* I.C. 42-1701. The Director should be aware that the statute of limitations has expired with respect to the Departments ability to bring an enforcement action against Embassy Auditoriums, Inc. Likewise, the Director is clearly aware that IDWR can not compel Mr. Hastings to trespass on riparian or submerged lands allegedly owned by a third party. The Department should state its position on this issue and not vacillate in order to further delay a resolution of these proceedings.

In this case, the Hearing Officer should either reject the application in its entirety, approve the application in part, or add conditions, such as mandating that the State assert its ownership of the beds and banks of the Big Wood River, prior to requiring Mr. Hastings to do any restoration work on his property. These are the only options available in light of the existing statutory requirements and recent Idaho Supreme Court precedent.

First, no work can be mandated to be performed on land which Embassy Auditoriums, Inc. holds an interest in. This is because the Department has no ability to enforce compliance with any permit, which might be issued, which requires Mr. Hastings to go on someone else's property. The expiration of the statute of limitations found in I.C. § 42-3809, as to Embassy Auditoriums, Inc., absolves Embassy of any obligation to do any restoration whatsoever on property it holds an interest in. *Hastings v. Idaho Dep't of Water Res*., 547 P.3d 1190, 1199, 2024 Ida. LEXIS 42, *23). Therefore, it would be

futile to issue a decision requiring Petitioner Hastings to perform a complex stream channel restoration project which involves land upon which no work would be performed. Doing so without revisions to complex modeling could impact the hydrology of the stream. The permit should only focus on work which may be performed on Mr. Hastings' real property. Any work which might be performed on Mr. Hastings' property must only be done in such a manner and under conditions which maximize Mr. Hastings' personal liberty. *See* I.C. 67-5279 (5). The Departments' indecision on this issue of settled law will likely result in further delays because any permit requiring work on lands owned by third parties would be subject to an appeal and likely a remand for further administrative proceedings. *See* I.C. 67-5279(3).

Second, the State Board of Land Commissioners, by and through the Idaho Department of Lands, is likely a necessary party to these proceedings due to the cloud on the title of this section of the Big Wood River, and the current Permit condition which states:

1) This permit does not constitute any of the following:
   a. An easement or right-of-way to trespass or work upon property belonging to others.
   b. Other approval that may be required by Local, State or Federal Government, unless specifically stated in the special conditions above. Exhibit D at p.5.

Here, the State has refused to clear title to this section of the Big Wood River, despite a clear public trust obligation to do so.

> Pursuant to the public trust doctrine, the State of Idaho owns in trust the beds and banks of navigable waters for the use and benefit of the public, including the uses of navigation, commerce, and fisheries. *Newton v. MJK/BJK, LLC*, 167 Idaho 236, 242, 469 P.3d 23, 29 (2020). The State's ownership of the lakebed extends up to the high water mark, while a littoral (lakeside) owner on a navigable lake takes title down to the high water mark as it existed in 1890 when Idaho was admitted to the Union.

> *Lake CDA Invs., LLC v. Idaho Dep't of Lands*, 149 Idaho 274, 278, 233 P.3d 721, 725 (2010); *Erickson v. State*, 132 Idaho 208, 210, 970 P.2d 1, 3 (1998)….
>
> The State has authority to regulate encroachments below either the ordinary or artificial high water marks. *Id.* at 892, 407 P.3d at 206. This authority is primarily vested in the State of Idaho Board of Land Commissioners, which holds authorization to regulate, control, and permit encroachments in Idaho's navigable lakes. I.C. §§ 58-101, 58-104(9), 58-1303.
> *Byrd v. Idaho State Bd. of Land Comm'Rs*, 169 Idaho 922, 928, 505 P.3d 708, 714, 2022 Ida. LEXIS 22, *13-14.

IDWR can not compel Petitioner Hastings to perform work on land allegedly owned by a third party successor in interest to the Ernest Hemingway deed. Doing so would only create an untenable situation where Mr. Hastings faces the dilemma of either risking a suit for trespassing under I.C. 6-202 or a demand that he indemnifies the purported private owner, of what appears to be a public river. Failing to address this issue herein will only result in additional litigation, which will likely involve third parties.

Therefore, at a minimum, a condition must be added to the Permit which requires the state to clear title to this section of River, prior to requiring Mr. Hastings to perform any restoration work below the ordinary high water mark. Any other requirements or conditions placed in the permit must be grounded in explicit statutory authority and not agency rules which reduce or minimize Mr. Hastings' personal liberty in any way shape or form. I.C. 67-5279 (3)(b) and (5).

**2. The Department Bears the Burden of Proof to Demonstrate that its Selective Prosecution and Imposition of Onerous Conditions do not Violate Mr. Hastings Statutory and Constitutional Rights.**

IDWR makes two inaccurate statements of law in an attempt to shift the burden of proof to Mr. Hastings. The Department has added conditions which go beyond the terms of the Consent Order and which are found nowhere in statutory authority. It is only fair

that the Department bear the burden of proof that its onerous permit requirements have a legal basis. Instead of taking the opportunity to support its position, the Department contends Mr. Hastings bears the burden of proof in seeking to invalidate governmental overreach. The Department does so by citing to an inapplicable administrative rule for the Office of Administrative Hearing Officers and a case which relies on an irrelevant statutory scheme for the Department of Transportation.

It is important to remember this is not a case where Mr. Hastings is proposing a stream alteration project for his own personal desires. He is only applying for a permit under governmental compulsion after another arm of government asked him to place rip rap on his property to save a publicly owned road and bridge during a flood event. Instead of thanking him for preventing the destruction of the Warm Springs bridge, the Department has taken an unreasonable position and is selectively prosecuting Mr. Hastings. The evidence will show that the Department is doing so while apparently ignoring significantly more egregious unauthorized encroachments elsewhere in Idaho.[1]

[1] The photograph included herein is of an unpermitted bridge landing which appears to be below the Ordinary High Water Mark of the Salmon River in Custer County, Idaho. Despite being made aware of this unpermitted encroachment in the fall of 2023, and additional unpermitted fill having been placed since that time, the Department does not appear to have taken any action against the offending party.

The Department also refuses to conduct the restoration work it purports to desire, at Mr. Hastings reasonable expense. In short, this is government run amuck. Petitioner intends to show that the Department has singled him out for selective prosecution, that it seeks to compel him to complete an impossible task, and that the Department's actions are arbitrary and capricious. I.C. 67-5279(3)(e).

The Office of Administrative Hearings IDAPA section the Department cites, 62.01.01.477, has no applicability to the present hearing. The reason being, Idaho Code 67-5280 Creation of Office of Administrative Hearings — powers and duties, explicitly excludes IDWR from the scope of OAH's duties:

> (4) The office of administrative hearings shall not hear and shall not have authority over or oversight of any action by the department of water resources or the water resource board.

Once again, the Department has demonstrated that it is acting outside of its statutory authority by seeking to unlawfully shift its burden of proof to Mr. Hasitngs. I.C. 67-5279(3)(b).

Second, the holding of case the Department cites, *Bennett v. State, Dep't of Transp*., 147 Idaho 141, 143, 206 P.3d 505, 507 (Ct. App. 2009), is based on an inapplicable statutory scheme, which specifically allocates the burden of proof to the individual contesting the governmental license suspension. The statute at issue in *Bennett* states: "The burden of proof shall be on the person requesting the hearing." Idaho Code § 18-8002A. This criminal code section is wholly irrelevant to these administrative proceedings, which are based on a wholly separate statutory scheme – which does not allocate a burden of proof to either party. Again, the Department is acting well beyond its statutory authority. I.C. 67-5279(3)(b).

Here, both Mr. Hastings and the Department cite to I.C. 67-5279 in their discussion of the evidentiary standards at issue in the hearing. The recent addition of section 5 to that statute establishes a clear policy of the state of Idaho to maximize individual liberty and to restrain governmental overreach. Therefore, as a matter of public policy the state should have the burden of proof that each and every action it is demanding Mr. Hastings perform is grounded in explicit statutory authority.

**CONCLUSION**

IDWR caries the burden of proof to demonstrate that its permitting conditions are grounded in law and are interpreted so as to maximize Petitioner's individual liberty to manage his private property as he alone sees fit. The Hearing Officer should modify the permit so that Mr. Hastings can let the river run its natural course and hold that IDWR's selective prosecution and massive governmental overreach is now water under the bridge.

January 7, 2025

By: _____/s/ J. Kahle Becker_____
J. KAHLE BECKER
LAW OFFICES OF J. KAHLE BECKER
Attorney for Petitioner

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the _7th_ day of January, 2025, I caused to be served the foregoing Motion for Summary Judgment to the following persons by email:

Meghan Carter via email
Attorney for Defendant,
Idaho Department of Water Resources
meghan.carter@idwr.idaho.gov

_____/s/ J. Kahle Becker_____
J. KAHLE BECKER
Attorney for the Petitioner

**BEFORE THE IDAHO WATER RESOURCE BOARD**

| | |
|---|---|
| IN THE MATTER OF APPLICATION FOR STREAM CHANNEL ALTERATION PERMIT NO. S37-20565 | **NOTICE OF PREHEARING CONFERENCE** |

## BACKGROUND

On September 11, 2017, the Idaho Department of Water Resources ("Department") issued a notice of violation ("NOV") to John Hastings Jr. for violation of the Stream Protection Act, Title 42, Chapter 38, Idaho Code. On January 26, 2018, pursuant to Idaho Code § 42-1701B, Hastings and the Department entered into a Consent Order and Agreement ("Consent Order") to remedy damages to the Big Wood River and resolve the NOV. Consent Order, at 2–3.

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On November 15, 2021, Hastings filed an *Action for Declaratory Judgment* in Ada County District Court seeking an order from the court declaring that the Department ran the applicable statute of limitations and could no longer pursue either an administrative or district court enforcement action with respect to the Consent Order, or in the alternative, an order from the court clarifying his restoration obligations. *Action for Declaratory J.*, at 11–12, *Hastings v. Department*, No. CV01-21-17825 (Ada Cnty. Dist. Ct. Idaho Nov. 15, 2021).

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On December 21, 2021, the Department filed an enforcement action related to the Consent Order, in the form of a counterclaim to Hastings' declaratory judgment action. *Def.'s Answer & Countercl.*, at 15, 18, *Hastings v. Department*, No. CV01-21-17825. On August 24, 2022, the district court concluded that the Department's counterclaim was timely.[1] *Mem. Decision & Order on Cross Mots. for Summ. J.*, at 18, *Hastings v. Department*, No. CV01-21-17825.

On July 16, 2024, the district court case was stayed to allow the Board time to issue a decision in this matter before taking up remaining issues, including Hastings' request for clarification. *See Order Staying Lawsuit*, *Hastings v. Department*, No. CV01-21-17825.

[1] On appeal, the Idaho Supreme Court affirmed the district court and held that the Department's enforcement action was timely. *Hastings v. Department*, 173 Idaho 630, 547 P.3d 1190, 1202 (2024).

On November 22, 2024, the Board issued a resolution appointing Roger S. Burdick, former Idaho Supreme Court Justice, to serve as the hearing officer in this matter.

On December 30, 2024, Hearing Officer Burdick ordered the parties to provide their unavailable times for a prehearing conference. *Order Setting Deadlines & Authorizing Email Service*, at 2. The parties complied with the order in a timely manner. On January 6, 2025, the parties were informed via email that a prehearing would be held on February 4, 2025, from 9–11 a.m., and that the Hearing Officer would issue formal notice closer to the date of prehearing. Given notice of the date and time of the prehearing was provided to the parties more than 14 days in advance, the Hearing Officer finds it necessary and appropriate to issue this formal notice of conference less than 14 days before the prehearing. *See* IDAPA 37.01.01.512.

**NOTICE OF PREHEARING CONFERENCE**

NOTICE IS HEREBY GIVEN that a prehearing conference in this matter will be held on **February 4, 2025, at 9 a.m. (MT)**, at the Department's State Office, located at 322 E. Front Street, 6th Floor, Conference Room 602B, Boise, Idaho. All parties must be present at the prehearing conference in person or by video conference. The parties shall come prepared to discuss issues for hearing, any proposed settlement, and any other matters that could aid in the fair and efficient resolution of this contested case.

To join the conference via computer or smartphone, please click the following Webex link and follow the prompts: https://idahogov.webex.com/idahogov/j.php?MTID=m90e7f53e1c9411835392ddc6c03a83fa.

To join the conference via telephone, please dial 1(415) 655-0001 (US Toll) and enter the following meeting access code when prompted: 2868 493 4309.

The conference will be held in accordance with the provisions of Chapter 38, Title 42, and Chapter 52, Title 67, Idaho Code, and the Board's Rules of Procedure, IDAPA 37.01.01. A copy of the Rules of Procedure may be obtained from the Department upon request or at https://adminrules.idaho.gov/rules/current/37/370101.pdf.

The prehearing conference will be conducted in a facility that meets the accessibility requirements of the Americans with Disabilities Act. If you require reasonable accommodation to attend, participate in, or understand the conference, please advise the Board no later than one (1) day before the conference, by 12 p.m. (MT). Inquiries for reasonable accommodations should be directed to Sarah Tschohl, Idaho Department of Water Resources, PO Box 83720, Boise, Idaho 83720-0098, telephone (208) 287-4815, or email sarah.tschohl@idwr.idaho.gov.

DATED this 29th day of January 2025.

ROGER S. BURDICK
Hearing Officer

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 29th day of January 2025, the above and foregoing, was served by the method indicated below, and addressed to the following:

| | |
|---|---|
| J. KAHLE BECKER<br>Attorney at Law<br>kahle@kahlebeckerlaw.com<br>*Attorney for Hastings and Embassy Auditoriums, Inc.* | ☒ Email |
| MEGHAN M. CARTER<br>Deputy Attorney General<br>meghan.carter@idwr.idaho.gov<br>*Attorney for the Idaho Department of Water Resources* | ☒ Email |

Sarah Tschohl
Paralegal

**BEFORE THE IDAHO WATER RESOURCE BOARD**

| | |
|---|---|
| IN THE MATTER OF APPLICATION FOR STREAM CHANNEL ALTERATION PERMIT NO. S37-20565 | **ORDER**<br><br>**NOTICE OF HEARING** |

## BACKGROUND

On September 11, 2017, the Idaho Department of Water Resources ("Department") issued a notice of violation ("NOV"), assigned Case No. E2017-1236, for violation of the Stream Protection Act, Title 42, Chapter 38, Idaho Code, addressed to:

JOHN HASTINGS JR.
EMBASSY AUDITORIUMS INC.
1200 WARM SPRINGS ROAD
KETCHUM IDAHO 83340

On January 26, 2018, pursuant to Idaho Code § 42-1701B, Mr. Hastings and the Department entered into a Consent Order and Agreement ("Consent Order") to remedy damages to the Big Wood River and resolve the NOV. Consent Order, at 2–3.

On March 15, 2019, Mr. Hastings and Embassy Auditoriums, Inc. ("Embassy") filed a *Joint Application for Permits* ("*Application*"), assigned Permit No. S37-20565 by the Department. The stated purpose of the *Application* was to obtain permits to complete a bank stabilization plan, which noted an intention to partially satisfy the Consent Order as a part of the plan. *See Application*, at 1, 4; *Application* attach. Restoration Plan, at 1. On May 17, 2019, in the form of a letter, the Department issued a conditional approval of the *Application* ("Permit"). Mr. Hastings and Embassy, through their attorney Mr. Bromley, filed a *Petition for Hearing* contesting the Permit on May 23, 2019, with the Idaho Water Resource Board ("Board").

On November 19, 2021, the Board, having acknowledged that the parties had reached an impasse during informal proceedings concerning the contested Permit, issued a resolution initiating formal administrative proceedings under the above caption.

On October 4, 2024, Attorney J. Kahle Becker, on behalf of Mr. Hastings, filed a brief concerning the issues and appropriate burden of proof for a hearing in this matter, as did the Department, through its counsel of record. On October 25, 2024, the Department filed a response brief. On January 17, 2025, Mr. Hastings also filed a response brief.

On February 4, 2025, Hearing Officer Burdick held a prehearing conference in this matter. Mr. Becker appeared on behalf of Mr. Hastings and Ms. Carter appeared for the Department. Concerns regarding party identification and representation in this contested case were expressed during the prehearing, so the Hearing Officer asked, and Mr. Becker and Ms. Carter agreed to file statements addressing the concerns within two weeks. Additionally, during the prehearing the Hearing Officer orally entered orders on the record and discussed discovery authorization, prehearing procedural requirements, and scheduling with the parties present. The

purpose of this order and notice is to (1) memorialize and clarify the oral orders issued during the February 4, 2025 prehearing conference, (2) authorize the parties to engage in discovery, (3) adopt the schedule below, and (4) provide proper notice of the hearing.

**ORDER**

IT IS HEREBY ORDERED that Embassy Auditoriums, Inc. is a party to this contested case.

IT IS FURTHER ORDERED that Attorney J. Kahle Becker and Deputy Attorney General Meghan Carter shall each file a statement concerning representation by **February 18, 2025**. Mr. Becker's statement must discuss: (1) who he represents in this matter, (2) the appropriate service contact information for Mr. Hastings in this matter, (3) the appropriate service contact information for Embassy Auditoriums, Inc. in this matter, and (4) who is authorized to make settlement decisions on behalf of Embassy Auditoriums, Inc. Ms. Carter's statement must discuss: (1) who she represents in this matter, (2) the role of the Board and the role of the Department in this matter, (3) who, from the Board and/or the Department, should the petitioners in this matter address discovery requests to and how should they be served, and (4) who is authorized to make settlement decisions in this matter on behalf of the Board and/or the Department.

IT IS FURTHER ORDERED that as of February 11, 2025, and pursuant to IDAPA 37.01.01.521, the parties are authorized to conduct and engage in the methods of discovery listed under IDAPA 37.01.01.520.01. Barring any conflicting discovery procedures or limitations set forth in the Board's Rules of Procedure (IDAPA 37.01.01) or an order of the presiding officer, discovery shall conform to Title V of the Idaho Rules of Civil Procedure.

IT IS FURTHER ORDERED that the following schedule and procedures are ADOPTED:

**Mar. 20, 2025** Deadline for the parties to file a list of expert witnesses they intend to rely upon at the hearing, including names, addresses, and updated curricula vitarum. However, a curricula vitarum is not required if the expert identified is an employee of the Department.

**Apr. 21, 2025** Deadline for the parties to exchange expert reports. Unless the expert identified is an employee of the Department, if a party intends to have an expert testify during the hearing, the expert needs to have authored a disclosed expert report.

Deadline for the parties to serve written discovery requests. If a party feels that additional time for written discovery is necessary, the party may move the Hearing Officer for an extension. Such a motion must explain the additional discovery sought and the reason the discovery could not be conducted prior to the deadline. Any response must be filed within 4 days after service of the motion. Replies are not authorized.

**May. 5, 2025** Deadline for the parties to exchange rebuttal expert reports, if any. If an updated curricula vitarum for the rebuttal expert witness was not previously disclosed, one shall be provided with their report.

**May 30, 2025** Deadline for the parties to complete all depositions.

**June 13, 2025** Deadline for the parties to file any stipulations of fact.

**July 7, 2025** Deadline for the parties to file dispositive motions, including motions for summary judgment. Any supporting documents or opening briefs must be filed concurrently with the dispositive motion.

**Aug. 1, 2025** Deadline for the parties to file a response to a dispositive motion.

**Aug. 15, 2025** Deadline for the movant to file a reply to a dispositive motion response.

**Sep. 1, 2025** Deadline for the parties to file an index of exhibits and a list of the names and addresses of all witnesses that they may call to testify at the hearing. A short summary of the scope of each witnesses' anticipated testimony shall be included and expert witnesses shall be identified as such. The parties shall use the following reserved exhibit numbers and reach out to the Hearing Officer and/or his assistant if additional numbers are needed:

| Exhibit Nos. | Assigned Party |
|---|---|
| 1–99 | John Hastings Jr. |
| 100–199 | Embassy Auditoriums, Inc. |
| 200–299 | Idaho Department of Water Resources |

**Sep. 8, 2025** Deadline for the parties to exchange and submit to the Board an electronic copy (via e-file email, USB thumb drive, or disc(s)) of their pre-marked exhibits. Each exhibit must be an independent file, and all file text must be machine readable. Exhibits shall be pre-marked in the bottom right corner of every page and must include the name of the party proposing the exhibit, the exhibit number, and a page number (each exhibit must start with page 1).

**Sep. 15, 2025** Just prior to the start of the hearing, the parties shall submit to the Board three physical copies of their pre-marked exhibits. Exhibits shall be organized in binders that are labeled with the party's name and include dividers that identify each exhibit by its number.

## NOTICE OF HEARING

NOTICE IS HEREBY GIVEN that Hearing Officer Burdick will hold a hearing in this matter on **September 15–16, 2025**. Each hearing day will begin at **9:00 a.m. (MT)**. The hearing will take place at the Department's State Office, located at 322 E. Front Street, 6th Floor,

Conference Rooms 602C–D, Boise, Idaho. All parties who wish to participate in the hearing and their witnesses shall be present in person.

The issue for hearing before the Hearing Officer is: Are conditions on the Permit consistent with the requirements set forth in the Consent Order? The burden of proof for all parties is a preponderance of evidence; the evidentiary burden is substantial evidence. In this contested case there is no need for the state to prove ownership of the stream beds.

The hearing shall proceed in the following manner:

1. The Department has the burden of presenting contested documents prepared by the Department.
2. Petitioners then have the burden of presenting evidence consistent with their original petition as to how its proposal is consistent with and fulfills the terms of the Consent Order and how the Permit is inconsistent with the Consent Order.
3. The Department may rebut that presentation as to why the Permit is consistent with the Consent Order.

The hearing will be held in accordance with the provisions of Chapter 38, Title 42, and Chapter 52, Title 67, Idaho Code, and the Board's Rules of Procedure, IDAPA 37.01.01. A copy of the Rules of Procedure may be obtained from the Department upon request or at https://adminrules.idaho.gov/rules/current/37/370101.pdf.

The hearing will be conducted in a facility that meets the accessibility requirements of the Americans with Disabilities Act. If you require reasonable accommodation to attend, participate in, or understand the hearing, please advise the Department no later than five (5) days before the hearing. Inquiries for reasonable accommodations should be directed to Sarah Tschohl, Idaho Department of Water Resources, PO Box 83720, Boise, Idaho 83720-0098, telephone (208) 287-4815, or email sarah.tschohl@idwr.idaho.gov.

DATED this 11th day of February 2025.

ROGER S. BURDICK
Hearing Officer

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 11th day of February 2025, the above and foregoing, was served by the method indicated below, and addressed to the following:

| | |
|---|---|
| J. KAHLE BECKER<br>Attorney at Law<br>kahle@kahlebeckerlaw.com | ☒ Email |
| MEGHAN M. CARTER<br>Deputy Attorney General<br>meghan.carter@idwr.idaho.gov | ☒ Email |

Sarah Tschohl
Paralegal

**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 Petitioner

RECEIVED
Feb 18, 2025
DEPARTMENT OF
WATER RESOURCES

**BEFORE THE WATER RESOURCES BOARD**
**OF THE STATE OF IDAHO**

| | |
|---|---|
| IN THE MATTER OF APPLICATION FOR STREAM CHANNEL ALTERATION PERMIT NO. S37-20565 | PETITIONER'S BRIEF RE: IDENTIFICATION OF PARTIES |

COMES NOW Petitioner, John Hastings by and through his attorney of record, J. Kahle Becker and, the Hearing Officer having requested briefing on the identification of the parties to these proceedings, submits his brief on the issues requested by the Hearing Officer as follows.

(1) Who Kahle Becker represents in this matter: John Hastings.

(2) The appropriate service contact information for Mr. Hastings in this matter: J. Kahle Becker – address provided in caption above.

(3) The appropriate service contact information for Embassy Auditoriums, Inc. in this matter: 527 S Burlingame Ave 1st FL Los Angeles, CA90049-4825.

(4) Who is authorized to make settlement decisions on behalf of Embassy

Auditoriums, Inc.: Embassy Auditoriums, Inc.[1]

February 18, 2025
By: _____/s/ J. Kahle Becker_____
J. KAHLE BECKER
LAW OFFICES OF J. KAHLE BECKER
Attorney for Petitioner

[1] Embassy Auditoriums Inc. was not a party to the Consent Order, which only refers to a single "Respondent."

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the _18th_ day of February, 2025, I caused to be served the foregoing Motion for Summary Judgment to the following persons by email:

Meghan Carter via email
Attorney for Defendant,
Idaho Department of Water Resources
meghan.carter@idwr.idaho.gov

_____/s/ J. Kahle Becker_____
J. KAHLE BECKER
Attorney for the Petitioner

RECEIVED
Feb 18, 2025
DEPARTMENT OF
WATER RESOURCES

**RAÚL R. LABRADOR**
ATTORNEY GENERAL

**SCOTT L. CAMPBELL**
Chief of Energy and Natural Resources Division

**MEGHAN M. CARTER, ISB No. 8863**
Deputy Attorney General
Idaho Department of Water Resources
PO Box 83720
Boise, Idaho 83720-0098
Telephone: (208) 287-4800
Facsimile: (208) 287-6700
meghan.carter@idwr.idaho.gov

*Attorneys for the Idaho Department of Water Resources*

**BEFORE THE IDAHO WATER RESOURCE BOARD**

| | |
|---|---|
| IN THE MATTER OF APPLICATION FOR STREAM CHANNEL ALTERATION PERMIT NO. S37-20565 | **STATEMENT CONCERNING REPRESENTATION** |

On February 4, 2025, Hearing Officer Burdick held a prehearing conference in this matter. There was confusion during the prehearing conference by both Mr. Hastings' counsel and the Hearing Officer surrounding the role of the Department of Water Resources ("Department") and the Idaho Water Resource Board ("Board"). The Hearing Office requested clarification in writing within two weeks.

On February 11, 2025, the Hearing Officer issued an *Order* and *Notice of Hearing*. In the *Order* the Hearing Officer requested a statement addressing the following:

> "(1) who [Ms. Carter] represents in this matter, (2) the role of the Board and the role of the Department in this matter, (3) who, from the Board and/or the Department, should the petitioners in this matter address discovery requests to and how should they be served, and (4) who is authorized to make settlement decisions in this matter on behalf of the Board and/or the Department."

*Order* at 2.

My responses are as follows:

1) I represent the Department, and only the Department in this matter.

2) Pursuant to Idaho Code § 42-3804 the Department is the Agency tasked with examining stream channel alteration applications for permit. Further, pursuant to Idaho Code § 42-3805, the Department makes a decision whether to approve "the application in whole or in part or upon

conditions, or rejecting the application." Therefore, in this matter the Department's role is to present the permit issued to Mr. Hastings and Embassy Auditoriums, Inc., explain its examination of the application for permit, and explain why the conditions were added to the permit.

Pursuant to Idaho Code § 42-3805, the Board is authorized to conduct the hearing in this matter. "Upon the conclusion of the hearing and completion of any investigation conducted by the director the [B]oard shall enter its findings in writing approving the decision of the director on the application and plans in whole or in part, or upon conditions, or rejecting the decision of the director on said application and plans for such proposed stream channel alteration." *Id*.

3) Petitioners should address any discovery upon the Department and serve it upon its counsel of record, Meghan Carter. The Board did not participate in the examination of the petitioners' application for permit, nor did it participate in the development of conditions on and issuance of the permit. As such, the Board is merely the arbiter in this matter.

4) The Director of the Department is currently the only person authorized to make settlement decisions in this matter. The Board is merely the arbiter in this matter and cannot enter into settlement.

DATED February 16, 2025

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL

MEGHAN M. CARTER
Deputy Attorney General

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on February 16, 2025, I caused to be served a true and correct copy of the *Statement Concerning Representation* via the method indicated below, upon the following:

| | |
|---|---|
| **J. KAHLE BECKER**<br>kahle@kahlebeckerlaw.com<br><br>*Attorney for Petitioner John Hastings* | ☐ U.S. Mail, postage prepaid<br>☐ Hand Delivery<br>☐ Overnight Mail<br>☒ Email |
| **IDAHO WATER RESOURCE BOARD**<br>file@idwr.idaho.gov<br><br>Roger S. Burdick<br>*Hearing Officer*<br>roburd47@gmail.com | ☐ U.S. Mail, postage prepaid<br>☐ Hand Delivery<br>☐ Overnight Mail<br>☒ Email |

MEGHAN M. CARTER
Deputy Attorney General
Idaho Department of Water Resources

**BEFORE THE IDAHO WATER RESOURCE BOARD**

| | |
|---|---|
| IN THE MATTER OF APPLICATION FOR STREAM CHANNEL ALTERATION PERMIT NO. S37-20565 | **NOTICE OF SCHEDULING CONFERENCE** |

## BACKGROUND

On April 17, 2025, via email, counsel for Mr. Hastings represented to Hearing Officer Burdick that the parties are currently engaged in meaningful settlement discussions and agree that a stay of the active scheduling order may help facilitate the resolution of this contested case. In response, the availability of counsel for a scheduling conference was requested and received.

## NOTICE

NOTICE IS HEREBY GIVEN that a scheduling conference in this matter will be held on **April 24, 2025, at 10 a.m. (MT)**, at the State Office of the Idaho Department of Water Resources, located at 322 E. Front Street, 6th Floor, Conference Room 648A, Boise, Idaho. The parties must be present at the conference in person or by video conference. The parties shall come prepared to discuss scheduling and any other matters that could aid in the fair and efficient resolution of this contested case.

To join the conference via computer or smartphone, please click the following Webex link and follow the prompts: https://idahogov.webex.com/idahogov/j.php?MTID=mc70777 4d8b9b110beed3a0aa8cd004b8.

To join the conference via telephone, please dial 1(415) 655-0001 (US Toll) and enter the following meeting access code when prompted: 2632 870 9295.

The conference will be held in accordance with the provisions of Chapter 38, Title 42, and Chapter 52, Title 67, Idaho Code, and the Board's Rules of Procedure, IDAPA 37.01.01. A copy of the Rules of Procedure may be obtained from the Department upon request or at https://adminrules.idaho.gov/rules/current/37/370101.pdf.

The scheduling conference will be conducted in a facility that meets the accessibility requirements of the Americans with Disabilities Act. If you require reasonable accommodation to attend, participate in, or understand the conference, please advise the Board no later than one (1) day before the conference, by 12 p.m. (MT). Inquiries for reasonable accommodations should be directed to Sarah Tschohl, Idaho Department of Water Resources, PO Box 83720, Boise, Idaho 83720-0098, telephone (208) 287-4815, or email sarah.tschohl@idwr.idaho.gov.

DATED this 18th day of April 2025.

ROGER S. BURDICK
Hearing Officer

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 18th day of April 2025, the above and foregoing, was served by the method indicated below, and addressed to the following:

| | |
|---|---|
| J. KAHLE BECKER<br>Attorney at Law<br>kahle@kahlebeckerlaw.com | ☒ Email |
| MEGHAN M. CARTER<br>Deputy Attorney General<br>meghan.carter@idwr.idaho.gov | ☒ Email |

Sarah Tschohl
Paralegal

**BEFORE THE IDAHO WATER RESOURCE BOARD**

| | |
|---|---|
| IN THE MATTER OF APPLICATION FOR STREAM CHANNEL ALTERATION PERMIT NO. S37-20565 | **NOTICE OF STATUS CONFERENCE**<br><br>**ORDER STAYING SCHEDULING ORDER** |

## BACKGROUND

On April 17, 2025, via email, counsel for Mr. Hastings represented to Hearing Officer Burdick that the parties were engaged in meaningful settlement discussions and agreed that a stay of the active scheduling order may help facilitate the resolution of this contested case. In response, a scheduling conference was set for April 24, 2025.

On April 24, 2025, Hearing Officer Burdick held a scheduling conference, with Mr. Becker appearing on behalf of Mr. Hastings and Ms. Carter appearing for the Department. During the conference the parties reported that they are currently engaged in meaningful settlement discussions and need additional time to reach an agreement. To allow the parties time to focus on developing and executing a settlement agreement that resolves this contested case without the need for a hearing, the Hearing Officer finds good cause exists to stay the current scheduling order and schedule a status conference for May 29, 2025.

## NOTICE

NOTICE IS HEREBY GIVEN that a status conference in this matter will be held on **May 29, 2025, at 1 p.m. (MT)**, at the State Office of the Idaho Department of Water Resources, located at 322 E. Front Street, 6th Floor, Conference Room 602B, Boise, Idaho. The parties must be present at the conference in person or by video conference. The parties shall come prepared to discuss the status of settlement, any need for a continued stay of the scheduling order, and any other matters that could aid in the fair and efficient resolution of this contested case.

To join the conference via computer or smartphone, please click the following Webex link and follow the prompts: https://idahogov.webex.com/idahogov/j.php?MTID=med8b04d417d5f65a2c1e45e91b51d0af.

To join the conference via telephone, please dial 1(415) 655-0001 (US Toll) and enter the following meeting access code when prompted: 2869 801 1648.

The conference will be held in accordance with the provisions of Chapter 38, Title 42, and Chapter 52, Title 67, Idaho Code, and the Board's Rules of Procedure, IDAPA 37.01.01. A copy of the Rules of Procedure may be obtained from the Department upon request or at https://adminrules.idaho.gov/rules/current/37/370101.pdf.

The status conference will be conducted in a facility that meets the accessibility requirements of the Americans with Disabilities Act. If you require reasonable accommodation

to attend, participate in, or understand the conference, please advise the Board no later than five (5) days before the conference. Inquiries for reasonable accommodations should be directed to Sarah Tschohl, Idaho Department of Water Resources, PO Box 83720, Boise, Idaho 83720-0098, telephone (208) 287-4815, or email sarah.tschohl@idwr.idaho.gov.

**ORDER**

IT IS HEREBY ORDERED that the scheduling order issued in this matter on February 11, 2025, is retroactively STAYED from April 17, 2025 until May 30, 2025.

DATED this 13th day of May 2025.

ROGER S. BURDICK
Hearing Officer

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 13th day of May 2025, the above and foregoing, was served by the method indicated below, and addressed to the following:

| | |
|---|---|
| J. KAHLE BECKER<br>Attorney at Law<br>kahle@kahlebeckerlaw.com | ☒ Email |
| MEGHAN M. CARTER<br>Deputy Attorney General<br>meghan.carter@idwr.idaho.gov | ☒ Email |

Sarah Tschohl
Paralegal

**BEFORE THE IDAHO WATER RESOURCE BOARD**

| | |
|---|---|
| IN THE MATTER OF APPLICATION FOR STREAM CHANNEL ALTERATION PERMIT NO. S37-20565 | **AMENDED SCHEDULING ORDER AND NOTICE OF HEARING** |

## BACKGROUND

On May 29, 2025, Hearing Officer Burdick held a status conference in this matter. Mr. Becker appeared on behalf of Mr. Hastings and Ms. Carter appeared for the Department. This order and notice memorialize the scheduling amendments discussed and put on the record during the status conference.

## AMENDED SCHEDULING ORDER

IT IS HEREBY ORDERED that the following AMENDED schedule and procedures are ADOPTED:

| | |
|---|---|
| **June 27, 2025** | Deadline for the parties to complete written discovery. |
| **July 28, 2025** | Deadline for the parties to exchange and submit to the Board an electronic copy (via email to the Hearing Officer and his assistant, USB thumb drive, or disc(s)) of their expert reports. Unless the expert identified is an employee of the Department, if a party intends to have an expert testify during the hearing, the expert needs to have authored a disclosed expert report. |
| **Aug. 11, 2025** | Deadline for the parties to exchange and submit to the Board an electronic copy (via email to the Hearing Officer and his assistant, USB thumb drive, or disc(s)) of their rebuttal expert reports, if any. If an updated curricula vitarum for the rebuttal expert witness was not previously disclosed, one shall be provided with their report. |
| **Sep. 12, 2025** | Deadline for the parties to complete all depositions. |
| **Sep. 29, 2025** | Deadline for the parties to file any stipulations of fact. |
| **Oct. 6, 2025** | Deadline for the parties to file dispositive motions, including motions for summary judgment. Any supporting documents or opening briefs must be filed concurrently with the dispositive motion. Any responses or replies must be filed in accordance with the timelines prescribed in IDAPA 37.01.01.220. |
| **Nov. 17, 2025** | Date reserved to hear oral argument on dispositive motions. If a dispositive motion is timely filed, a notice of hearing for the motion will be issued by the Hearing Officer without the need for a request. |

**Nov. 24, 2025** Deadline for the parties to file an index of exhibits and a list of the names and addresses of all witnesses that they may call to testify at the hearing. A short summary of the scope of each witnesses' anticipated testimony shall be included and expert witnesses shall be identified as such. The parties shall use the following reserved exhibit numbers and reach out to the Hearing Officer and/or his assistant if additional numbers are needed:

| Exhibit Nos. | Assigned Party |
|---|---|
| 1–99 | John Hastings Jr. |
| 100–199 | Idaho Department of Water Resources |

**Nov. 28, 2025** Deadline for the parties to exchange and submit to the Board an electronic copy (via email to the Hearing Officer and his assistant, USB thumb drive, or disc(s)) of their pre-marked exhibits. Each exhibit must be an independent file, and all file text must be machine readable. Exhibits shall be pre-marked in the bottom right corner of every page and must include the name of the party proposing the exhibit, the exhibit number, and a page number (each exhibit must start with page 1).

**Dec. 2, 2025** Just prior to the start of the hearing, the parties shall submit to the Board three physical copies of their pre-marked exhibits. Exhibits shall be organized in binders that are labeled with the party's name and include dividers that identify each exhibit by its number.

## AMENDED NOTICE OF HEARING

NOTICE IS HEREBY GIVEN that Hearing Officer Burdick will hold a hearing in this matter on **December 2–4, 2025**. Each hearing day will begin at **9:00 a.m. (MT)**. The hearing will take place at the Idaho Water Center, located at 322 E. Front Street, 2nd Floor, University of Idaho Room 250, Boise, Idaho. All parties who wish to participate in the hearing and their witnesses shall be present in person.

The issue for hearing before the Hearing Officer is: Are conditions on the Permit consistent with the requirements set forth in the Consent Order? The burden of proof for all parties is a preponderance of evidence; the evidentiary burden is substantial evidence. In this contested case there is no need for the state to prove ownership of the stream beds.

The hearing shall proceed in the following manner:

1. The Department has the burden of presenting contested documents prepared by the Department.
2. Petitioners then have the burden of presenting evidence consistent with their original petition as to how its proposal is consistent with and fulfills the terms of the Consent Order and how the Permit is inconsistent with the Consent Order.

3. The Department may rebut that presentation as to why the Permit is consistent with the Consent Order.

The hearing will be held in accordance with the provisions of Chapter 38, Title 42, and Chapter 52, Title 67, Idaho Code, and the Board's Rules of Procedure, IDAPA 37.01.01. A copy of the rules may be obtained at https://adminrules.idaho.gov/rules/current/37/370101.pdf.

The hearing will be conducted in a facility that meets the accessibility requirements of the Americans with Disabilities Act. If you require reasonable accommodation to attend, participate in, or understand the hearing, please advise the Board no later than five (5) days before the hearing. Inquiries for reasonable accommodations should be directed to Sarah Tschohl, Idaho Department of Water Resources, PO Box 83720, Boise, Idaho 83720-0098, telephone (208) 287-4815, or email sarah.tschohl@idwr.idaho.gov.

DATED this 5th day of June 2025.

ROGER S. BURDICK
Hearing Officer

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 5th day of June 2025, the above and foregoing, was served by the method indicated below, and addressed to the following:

| | |
|---|---|
| J. KAHLE BECKER<br>Attorney at Law<br>kahle@kahlebeckerlaw.com | ☒ Email |
| MEGHAN M. CARTER<br>Deputy Attorney General<br>meghan.carter@idwr.idaho.gov | ☒ Email |

Sarah Tschohl
Paralegal

RECEIVED
Jun 19, 2025
DEPARTMENT OF
WATER RESOURCES

**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 Petitioner

**BEFORE THE WATER RESOURCES BOARD**
**OF THE STATE OF IDAHO**

| | |
|---|---|
| IN THE MATTER OF APPLICATION FOR STREAM CHANNEL ALTERATION PERMIT NO. S37-20565 | PETITIONER'S MOTION TO COMPEL |

COMES NOW Petitioner, John Hastings by and through his attorney of record, J. Kahle Becker and, having served its *Second Set of Discovery to IDWR* and IDWR having refused to provide responsive information requested therein, pursuant to IDAPA 37.01.01.300 and 525, IRCP 37, and 26 submits his Motion to Compel as follows.

1) Petitioner served its *Second Set of Discovery to IDWR* on or about March 25, 2025. See Notice of Service.
2) IDWR asked for and was granted numerous extensions to respond to Petitioner's *Second Set of Discovery to IDWR*.
3) However, until it ultimately responded to those requests nearly 3 months later, on June 18, 2025, at no point did IDWR indicate that it would not be providing any responsive documents whatsoever to Request for Production No. 15 That Request

sought:

> **REQUEST FOR PRODUCTION NO. 15:** Please produce any and all documents related to or which refer in any way to the encroachments you refer to in your response to Interrogatory No. 13. (INTERROGATORY NO. 13: Please list each and every violation of the Stream Channel Protection Act, which you are aware of, for which no Notice of Violation has been issued. When providing your response, please indicate the reason a Notice of Violation was not issued for each and every violation you mention.) *See* IDWR's *Response to Petitioner's Second Set of Discovery Requests* submitted herewith.

4) IDWR provided a list of violations in response to Interrogatory No. 13 but IDWR refused to provide any documentation whatsoever regarding those same violations in response to Request No. 15.

5) Thereafter, I attempted to meet and confer with counsel for IDWR, however IDWR was intransigent and refused to produce a single responsive document. IDWR instead insisted that I seek an order from the Hearing Officer.

6) IRCP 26(b)(1)(A) allows for discovery which is reasonably calculated to lead to the discovery of evidence which may be admissible at the hearing in this matter. *See* also IDAPA 37.01.01.520.

7) Here, Petitioner seeks to make a record demonstrating IDWR is abusing its statutory authority to impose highly onerous conditions on Petitioner which are 1) not found in any administrative rule; and which are inconsistent with 2) applicable statutes, and 3) requirements imposed on similarly situated individuals.

8) Idaho Code 67-5279 sets out the scope of some issues which may be presented at the hearing. Specifically, subsection 3 does not allow an Agency Action to withstand judicial scrutiny if:

> (3) When the agency was required by the provisions of this chapter or by other provisions of law to issue an order, the court shall affirm the

agency action unless the court finds that the agency's findings, inferences, conclusions, or decisions are:
(a) In violation of constitutional or statutory provisions;
(b) In excess of the statutory authority of the agency;
(c) Made upon unlawful procedure;
(d) Not supported by substantial evidence on the record as a whole; or
(e) Arbitrary, capricious, or an abuse of discretion.

9) Without the ability to make a record demonstrating the treatment other similarly situated individuals received, the reviewing court would be deprived of evidence which could be used to weigh whether IDWR acted arbitrarily in its treatment of petitioner.

10) Likewise, I.C. 67-5279(5) restricts agency action and allows for the interpretation of administrative rules in a light favorable to that of the individual challenging an agency action.

> (5) When interpreting the provisions of any state law, this chapter, or any rule, as defined in section 67-5201, Idaho Code, the court shall not defer to an agency's interpretation of the law or rule and shall interpret its meaning and effect de novo. In an action brought by or against an agency, after applying all customary tools of interpretation, the court shall exercise any remaining doubt in favor of a reasonable interpretation that limits agency power and maximizes individual liberty.

11) In this case, there are no specific administrative rules which require someone, such as Petitioner, to perform highly onerous and very specific alterations of the stream channel to suit IDWR's apparent desires. There are likewise no rules which require someone, such as petitioner, to seek permission from a neighboring landowner who claims to own what appears to be a publicly owned river which the state refuses to clear title to. Nor is there any rule or statute which mandates someone, such as petitioner, to defend and indemnify a third party as a condition of performing stream channel restoration work the Department demands that

person perform.

12) Accordingly, Petitioner must be allowed to examine IDWR's treatment of other similarly situated individuals in order to develop a record which allows him to challenge IDWR's actions in excess of its statutory authority as well as to assert interpretations of any applicable administrative rules in such a way that those rules "limit[] agency power and maximize [] [Petitioner's] individual liberty."

WHEREFORE: Petitioner asks the Hearing Officer to issue an Order:

1) Compelling the Department to provide a complete response to Request for Production No. 15.
2) Revising the Scheduling Order as may be necessary to address delays arising from IDWR's failure to timely produce the information requested in Request No. 15.

June 19, 2025

By: /s/ J. Kahle Becker
J. KAHLE BECKER
LAW OFFICES OF J. KAHLE BECKER
Attorney for Petitioner

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the _19th_ day of June, 2025, I caused to be served the foregoing Motion to Compel to the following persons by email:

Meghan Carter
Attorney for Defendant,
Idaho Department of Water Resources
meghan.carter@idwr.idaho.gov

"IDWR File" file@idwr.idaho.gov

"Tschohl, Sarah" Sarah.Tschohl@idwr.idaho.gov

_____/s/ J. Kahle Becker_____
J. KAHLE BECKER
Attorney for the Petitioner

RECEIVED
Jun 19, 2025
DEPARTMENT OF WATER RESOURCES
*Received as an attachment with Petitioner's Motion to Compel

**RAÚL R. LABRADOR**
ATTORNEY GENERAL

**SCOTT L. CAMPBELL**
Chief of Energy and Natural Resources Division

**MEGHAN M. CARTER, ISB No. 8863**
Deputy Attorney General
Idaho Department of Water Resources
PO Box 83720
Boise, Idaho 83720-0098
Telephone: (208) 287-4800
Facsimile: (208) 287-6700
meghan.carter@idwr.idaho.gov

*Attorney for the Idaho Department of Water Resources*

**BEFORE THE IDAHO WATER RESOURCE BOARD**

| | |
|---|---|
| IN THE MATTER OF APPLICATION FOR STREAM CHANNEL ALTERATION PERMIT NO. S37-20565 | **RESPONSE TO PETITIONER'S SECOND SET OF DISCOVERY REQUESTS** |

The STATE OF IDAHO DEPARTMENT OF WATER RESOURCES, through its counsel of record, MEGHAN M. CARTER, Deputy Attorney General for the Idaho Department of Water Resources ("IDWR"), pursuant to IDAPA 37.01.01.520, I.R.C.P. Rule 26(b) and (f), Rule 33(b) and (e)(1), Rule 34(b) and (d)(1), and Rule 36(a) and (e)(1), responds to *Petitioner's Second Set of Discovery to IDWR* as follows:

**INTERROGATORIES**

INTERROGATORY NO. 12: Please list each and every encroachment below the ordinary high water mark of any stream, river, lake, or waterbody in Idaho which you contend you have jurisdiction to enforce the Stream Channel Protection Act, which you are aware of, for which a Stream Channel Alteration Permit is required, but for which no permit exists. When providing

your response, please indicate the reason a permit was not issued for each and every encroachment you mention.

Answer to Interrogatory No. 12: IDWR objects to this interrogatory as overly broad, unduly burdensome and not reasonably calculated to lead to discovery of admissible evidence. Without waiving the objection, IDWR does not have any regulatory authority over encroachments and therefore has no information to respond to this interrogatory.

INTERROGATORY NO. 13: Please list each and every violation of the Stream Channel Protection Act, which you are aware of, for which no Notice of Violation has been issued. When providing your response, please indicate the reason a Notice of Violation was not issued for each and every violation you mention.

Answer to Interrogatory No. 13: A list of instances where IDWR is currently investigating a stream channel violation or where the violation was resolved informally without issuing a notice of violation is attached to this Response.

**REQUESTS FOR PRODUCTION OF DOCUMENTS**

REQUEST FOR PRODUCTION NO. 14: Please produce any and all documents related to or which refer in any way to the unpermitted encroachments you refer to in your response to Interrogatory No. 12.

Response to Request No. 14: No such documents exist.

REQUEST FOR PRODUCTION NO. 15: Please produce any and all documents related to or which refer in any way to the encroachments you refer to in your response to Interrogatory No. 13.

Response to Request No. 15: IDWR objects to this request for production, it is a burdensome request and seek information that is irrelevant to the issues of this case and is not reasonably calculated to lead to the discovery of admissible evidence.

REQUEST FOR PRODUCTION NO. 16: Please produce any and all documents related to or which refer in any way to any allegations of: abuse of authority, arbitrary or capricious actions; which have been made against any person with responsibility to enforce the Stream Channel Alteration Act, including but not limited to Aaron Golart, by any individual or entity.

Response to Request No. 16: No such documents exist.

**REQUESTS FOR ADMISSION**

REQUEST FOR ADMISSION NO. 18: Please admit that you have engaged in ex parte communications with a Hearing Officer appointed in this matter.

Answer to Request for Admission No. 18: Admit that IDWR's attorney communicated with Hearing Officer Wood related to a procedural matter. This communication was not improper pursuant to Rule 414 of the Board's Rules of Procedure: "The presiding officer may communicate ex parte with a party concerning procedural matters (e.g., scheduling)." IDAPA 37.01.01.414. A copy of the communication is provided as part of this response.

REQUEST FOR ADMISSION NO. 19: Please admit that your attorney has engaged in ex parte communications with a Hearing Officer appointed in this matter.

Answer to Request for Admission No. 19: See Answer to Request for Admission No. 18.

REQUEST FOR ADMISSION NO. 20: Please admit that the State of Idaho commissioned Stevens Historical Research Associates to conduct an Idaho Waterways Navigability Study.

Answer to Request for Admission No. 20: IDWR does not have sufficient information to answer.

REQUEST FOR ADMISSION NO. 21: Please admit that the State of Idaho is aware that the Big Wood River was historically navigable at the time Idaho was granted statehood.

Answer to Request for Admission No. 21: IDWR does not have sufficient information to answer.

REQUEST FOR ADMISSION NO. 22: Please admit that the State of Idaho is aware that the Big Wood River was historically navigable at the time Idaho was granted statehood, yet the State of Idaho has ignored its Public Trust Obligations.

Answer to Request for Admission No. 22: IDWR objects as this request calls for a legal conclusion. Without waiving the objection, IDWR denies.

REQUEST FOR ADMISSION NO. 23: Please admit that the State of Idaho has breached its fiduciary duties under the Public Trust Doctrine by failing to clear title to the section of the Big Wood River adjacent to Petitioner's property at issue in this matter.

Answer to Request for Admission No. 23: IDWR objects as this request calls for a legal conclusion. Without waiving the objection, IDWR denies.

DATED June 17, 2025

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL

MEGHAN M. CARTER
Deputy Attorney General

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on June 17, 2025, I caused to be served a true and correct copy of the *Response to Petitioner's Second Set of Discovery Requests* via the method indicated below, upon the following:

| | |
|---|---|
| **J. KAHLE BECKER**<br>kahle@kahlebeckerlaw.com<br><br>*Attorney for Petitioner John Hastings* | ☐ U.S. Mail, postage prepaid<br>☐ Hand Delivery<br>☐ Overnight Mail<br>☒ Email |

MEGHAN M. CARTER
Deputy Attorney General
Idaho Department of Water Resources

Interrogatory No. 13

**Stream Channel Protection Act Violations Where a Notice of Violation was not Issued**

| Case Number | Case Name | Status |
|---|---|---|
| E1998-531 | Rietveld Pond | Resolved |
| E2014-483 | Marsh Cree - Mt. Oxford Ranch Company | Resolved |
| E2014-484 | Wasden, Kelly | Dismissed |
| E2014-485 | Ray Sauer Farms, Inc | Resolved |
| E2014-486 | Shaw Land and Livestock | Dismissed |
| E2014-489 | William Kelsey - Teton River Pond | Resolved |
| E2014-493 | Larry Hill - Fill SF Snake | Resolved |
| E2014-497 | Picabo Livestock, Inc. | Resolved |
| E2014-614 | Cedar Creek (Buck Creek) - Brown, Christainson | Dismissed |
| E2015-740 | Morgan Creek - Custer County R&B | Dismissed |
| E2015-777 | John Crossman Recreational Mining | Resolved |
| E2015-778 | William Burrage Recreational Mining | Resolved |
| E2015-779 | Edward Easley Recreational Mining | Resolved |
| E2015-926 | Sunrise Sky Park HOA | Resolved |
| E2016-1011 | Crow Creek Diversion | Resolved |
| E2016-935 | Snake River - Glenn Gaumitz | Resolved |
| E2016-940 | Deep Creek - Jared Simpson | Dismissed |
| E2016-945 | Bailey Creek - Nolan Crowther | Resolved |
| E2016-956 | Georgetown Creek - Trenton Morrell | Resolved |
| E2016-957 | Georgetown Creek - Deloy Kunz | Resolved |
| E2016-963 | Sheep Creek - Spencer Brown | Resolved |
| E2017-1149 | Henry's Fork - Richard Rigg Trust | Resolved |
| E2017-1153 | Grays lake Outlet - Jerry Vanorden | Dismissed |
| E2017-1222 | Garden Creek - Hidden Mountain Ranch | Dismissed |
| E2017-1228 | Mores Creek Excavation/ Dredging | Pending |
| E2017-1232 | Paris Creek - Jim Kelsey | Dismissed |
| E2017-1233 | Vance Broadhead - unnamed stream | Dismissed |
| E2017-1239 | Hiawatha Canal Co - Big Wood River - Channel Excavation | Dismissed |
| E2017-1241 | St Charles Creek - Conrad Michaelson | Resolved |
| E2017-1242 | Teton River - Carter, Craig & Galene | Dismissed |
| E2017-1243 | Fish Haven Creek - Organic Development | Dismissed |
| E2017-1244 | Pocatello Creek - Stoddard/Seibert | Dismissed |
| E2017-1245 | Snake River - Walters | Dismissed |
| E2017-1247 | Roberts, Shane - Stream Channel | Dismissed |
| E2017-1248 | Leavitt, Allen - Stream Channel | Dismissed |
| E2017-1249 | Cook, Dennis - Stream Channel | Dismissed |
| E2017-1250 | Ronald Purcell-Middle Fork Payette River | Resolved |
| E2017-1261 | Mike Murphy - Wolf Lodge Creek - Stream Alteration | Dismissed |

| Case Number | Case Name | Status |
|---|---|---|
| E2018-1281 | Peter Sturdivant - Debris Removal/Grading - Big Wood River | Resolved |
| E2018-1353 | Harrington Land, LLC._Hornet Creek | Under Investigation |
| E2019-1371 | Nicole E Carlson | Under Investigation |
| E2019-1372 | Morgan Monahan | Under Investigation |
| E2019-1373 | Debbie Taylor | Under Investigation |
| E2019-1475 | Logan River LLC - St. Charles Creek | Under Investigation |
| E2019-1551 | Mark Toone - Toone Land and Livestock - Willow Creek | Pending |
| E2019-1561 | James Fuhrman - Mason Creek | Under Investigation |
| E2020-1575 | Terrell Tingey-James Cannon-Dumping Concrete in Boise River | Dismissed |
| E2020-1602 | Island Park Hospitality - Henry's Fork | Under Investigation |
| E2020-1627 | Bret and Becky Purkett - Marsh Creek | Under Investigation |
| E2020-1643 | Ryan Smith - Fall River | Under Investigation |
| E2020-1652 | Dennis Freeman - Kootenai River | Under Investigation |
| E2021-1697 | Louthan-Moon Creek | Under Investigation |
| E2021-1724 | Nathan Walters - Big Lost River | Under Investigation |
| E2021-1734 | Morris, Wayne | Under Investigation |
| E2021-2741 | Geoffrion v Grover Trust | Under Investigation |
| E2021-2745 | Derek Pyle-Lacey Pyle-South Fork Pocatello Creek-Silver Sage Spring | Dismissed |
| E2021-2749 | Bruce Esplin - Georgetown Creek - stream channel alteration | Under Investigation |
| E2021-2752 | Kris and Marsha Bagley - Teton River Trash Dump | Under Investigation |
| E2021-2770 | STREAM CHANNEL VIOLATION FOR GARY SUPPIGER | Under Investigation |
| E2021-2771 | BUBLITZ STREAM CHANNEL ALTERATION PROJECT #S94-20174 | Under Investigation |
| E2022-2786 | SNOWPLOWING GRAVEL INTO MANLEY CREEK | Under Investigation |
| E2022-2790 | Jones Brothers Cattle Co - Edwards Creek | Under Investigation |
| E2022-2797 | Vida Properties - Veg. Clearing | Under Investigation |
| E2022-2809 | Sandra and Jim Gannon | Resolved |
| E2022-2810 | Linda Haddad | Resolved |
| E2022-2811 | Timothy Boelens | Under Investigation |
| E2022-2828 | Robert Zahller | Under Investigation |
| E2022-2850 | Ken and Donna Carbonaro | Resolved |
| E2022-2851 | Douglas Bradt - Georgetown Creek | Resolved |
| E2022-2853 | Wayne Vollmer - Weiser River | Resolved |
| E2022-2854 | Gagliano - SF CdA River | Pending |
| E2023-2865 | Ralph McKenzie | Under Investigation |
| E2023-2868 | Troy Helmandollar | Under Investigation |
| E2023-2929 | Tareq Azim_Little Salmon River | Under Investigation |

| Case Number | Case Name | Status |
|---|---|---|
| E2023-2935 | Jerry Bateman | Under Investigation |
| E2023-2943 | Keith Clow Vegetation Removal on Sand Hollow Creek and Payette River | Under Investigation |
| E2023-2956 | Brad Blackburn | Under Investigation |
| E2023-2957 | Ted Lindsley_American River | Under Investigation |
| E2023-2963 | Jerold Petty_Rainey Creek | Under Investigation |
| E2023-2968 | Michael Burdge - Boise River | Under Investigation |
| E2023-2969 | Robert Burnett - Riverbend Ranch | Under Investigation |
| E2024-2988 | Robert McCoy_Mink Creek_bank work | Under Investigation |
| E2024-3014 | Robert Dreyer | Under Investigation |
| E2024-3020 | Alan Trees - Dredgin on SF Payette R. | Under Investigation |
| E2024-4023 | David and Robin Palmer | Under Investigation |
| E2024-4026 | Neil Goeckner - Goose Creek | Under Investigation |
| E2024-4027 | Philip Cowart - Snake River | Under Investigation |
| E2024-4038 | Clinton Dille_Dock_Henry's Fork | Under Investigation |
| E2024-4045 | Jeff Cox - Payette River | Under Investigation |
| E2024-4046 | Russo Family Living Trust - No Name Creek | Under Investigation |
| E2024-4050 | Richard Barlow - NF Payette River | Under Investigation |
| E2024-4054 | Barry and Joanna Drogy - Boise River | Under Investigation |
| E2025-4056 | Pinehurst Resort/Keith Markley - Little Salmon River | Under Investigation |
| E2025-4060 | ITD_ACHD_Eckert Bridge Repair | Resolved |
| E2025-4063 | Jon Wagnild - Boise River | Under Investigation |

Request for Admission No. 18

**From:** Carter, Meghan
**To:** Hersley, Jean
**Cc:** Pete Wood; Baxter, Garrick
**Subject:** FW: Hastings SCAP S37-20565
**Date:** Monday, August 12, 2024 12:06:00 PM
**Attachments:** image001.png

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Jean,

Cynthia let us know you would be helping Pete out with at least the initial steps on this matter. Below is the exchange we have had with Mr. Hastings' attorney Kahle Becker. I will leave you, Pete, and Garrick to further hammer out the details.

Meghan

---

**From:** Pete Wood <petewoodlaw@gmail.com>
**Sent:** Friday, August 9, 2024 12:44 PM
**To:** J. Kahle Becker <kahle@kahlebeckerlaw.com>
**Cc:** Carter, Meghan <Meghan.Carter@idwr.idaho.gov>
**Subject:** Re: Hastings SCAP S37-20565

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---

Okay sounds good. I will set the pre hearing conference for September 5 at 2:00.

On Fri, Aug 9, 2024 at 9:30 AM J. Kahle Becker <kahle@kahlebeckerlaw.com> wrote:

> Thanks for the clarification. Thurs 9/5 – after 1:00 works for me. I'm currently slammed with some other matters and have a week of depositions in Challis the week before that date.
>
> J. Kahle Becker
> Eagles Center
> 223 N. 6th Street, # 325,
> Boise, Idaho 83702
> Phone: 208-345-8466
> Fax: (208) 906-8663
> kahle@kahlebeckerlaw.com
> http://www.kahlebeckerlaw.com
>
> ****CONFIDENTIALITY NOTICE: This email contains confidential information that is protected by the attorney-client and/or work product privilege, and that is exempt from disclosure under applicable law. It is intended only for the use of the individual(s) named as

recipients. If you are not the intended recipient of this email, please notify the sender, please do not deliver, distribute or copy this email, or disclose its contents, or take any action in reliance on the information it contains.

---

**From:** Pete Wood <petewoodlaw@gmail.com>
**Sent:** Thursday, August 8, 2024 11:40 AM
**To:** J. Kahle Becker <kahle@kahlebeckerlaw.com>
**Subject:** Re: Hastings SCAP S37-20565

Hello Megan and Kahle,
I apologize I should have been more clear. I used the term "hearing" when what I should have said was prehearing conference as contemplated under IDWR Procedural Rule 510:

510. (RESERVED) PURPOSES OF PREHEARING CONFERENCE. To initiate formal proceedings in a contested case pursuant to Rule 102, the agency will issue a Notice of Prehearing Conference, identifying the presiding officer for the case and setting the date and time for prehearing conference. The prehearing conference shall be convened for purposes of formulating or simplifying the issues, obtaining concessions of fact or identification of documents to avoid unnecessary proof, scheduling discovery (when discovery is allowed), arranging for the exchange of proposed exhibits or prepared testimony, limiting witnesses, discussing settlement offers or making settlement offers, scheduling hearings, establishing procedure at hearings, and addressing other matters that may expedite orderly conduct and disposition of the proceeding or its settlement.

Sorry for the confusion.

Cheers,
Pete

On Thu, Aug 8, 2024 at 10:06 AM J. Kahle Becker <kahle@kahlebeckerlaw.com> wrote:

> Are those dates for a scheduling conference? I ask because Mr. Wood mentioned a "hearing."
>
> J. Kahle Becker
> Eagles Center
> 223 N. 6th Street, # 325,
> Boise, Idaho 83702
> Phone: 208-345-8466

Fax: (208) 906-8663
kahle@kahlebeckerlaw.com
http://www.kahlebeckerlaw.com

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---

**From:** Carter, Meghan <Meghan.Carter@idwr.idaho.gov>
**Sent:** Wednesday, August 7, 2024 9:25 AM
**To:** Pete Wood <petewoodlaw@gmail.com>; J. Kahle Becker <kahle@kahlebeckerlaw.com>
**Subject:** RE: Hastings SCAP S37-20565

Currently IDWR and my schedule can accommodate the following:

- Tues 8/13 – any time except 12:30-2:30
- Thurs 8/15 – any time after 9:00
- Fri 8/16 – any time after 9:00
- Mon 8/19 – any time
- Tues 8/20 – any time
- Thurs 8/29 – any time
- Friday 8/30 – any time except 1:30-2:30
- Mon 9/2 – any time
- Tues 9/3 – any time before 2:00
- Wed 9/4 – any time
- Thurs 9/5 – after 1:00

Let me know if you need additional dates.

Meghan Carter | Deputy Attorney General
Water Resources Section | Energy & Natural Resources Division
Office of the Attorney General | State of Idaho

meghan.carter@idwr.idaho.gov | 208-287-4810

---

**From:** Pete Wood <petewoodlaw@gmail.com>
**Sent:** Wednesday, August 7, 2024 9:10 AM
**To:** J. Kahle Becker <kahle@kahlebeckerlaw.com>
**Cc:** Carter, Meghan <Meghan.Carter@idwr.idaho.gov>
**Subject:** Re: Hastings SCAP S37-20565

**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.**

---

Hi Megan and Kahle,

How does this sound? Megan, can you check the calendar for conference room availability and provide some options that also work for your schedule. After that, Kahle can advise which of those dates/ times work for him. Then I will select among those dates/ times and set a hearing. Will that work for you two or should we something different?

Cheers,
Pete

On Mon, Aug 5, 2024 at 11:05 AM J. Kahle Becker <kahle@kahlebeckerlaw.com> wrote:

> Great. Let me know when we can all get together for a scheduling conference.
>
> J. Kahle Becker
> Eagles Center

223 N. 6th Street, # 325,
Boise, Idaho 83702
Phone: 208-345-8466
Fax: (208) 906-8663
kahle@kahlebeckerlaw.com
http://www.kahlebeckerlaw.com

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---

**From:** Carter, Meghan <Meghan.Carter@idwr.idaho.gov>
**Sent:** Friday, August 2, 2024 3:15 PM
**To:** petewoodlaw@gmail.com <petewoodlaw@gmail.com>; J. Kahle Becker <kahle@kahlebeckerlaw.com>
**Subject:** Hastings SCAP S37-20565

Pete & Kahle,

Attached is the Board resolution appointing Pete as hearing officer in the Hastings Stream Channel Alteration Permit matter.

Meghan Carter | Deputy Attorney General
Water Resources Section | Energy & Natural Resources Division
Office of the Attorney General | State of Idaho
meghan.carter@idwr.idaho.gov | 208-287-4810

**From:** Carter, Meghan
**To:** petewoodlaw@gmail.com
**Cc:** Baxter, Garrick
**Subject:** Hearing Officer Support for Hastings
**Date:** Friday, August 2, 2024 3:22:00 PM
**Attachments:** image001.png

---

Pete,

Since I'm going to be appearing before you on the Hastings matter, if you have any immediate questions please reach out to Garrick. We are in the process of finding you administrative support since Sarah does not have the bandwidth for this one.

Meghan

Meghan Carter | Deputy Attorney General
Water Resources Section | Energy & Natural Resources Division
Office of the Attorney General | State of Idaho
meghan.carter@idwr.idaho.gov | 208-287-4810

RECEIVED
Jun 27, 2025
DEPARTMENT OF
WATER RESOURCES

**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 Petitioner

**BEFORE THE WATER RESOURCES BOARD**
**OF THE STATE OF IDAHO**

| | |
|---|---|
| IN THE MATTER OF APPLICATION FOR STREAM CHANNEL ALTERATION PERMIT NO. S37-20565 | PETITIONER'S MOTION FOR ISSUANCE OF SUBPOENA – THE COMMUNITY LIBRARY |

COMES NOW Petitioner, John Hastings by and through his attorney of record, J. Kahle Becker and, pursuant to IDAPA 37.01.01.523 and IRCP 30, 45, and 26 submits his Motion for Issuance of Subpoena- The Community Library as follows.

1) The permit at issue herein contains conditions which Petitioner objects to. With respect to the matters at issue in this motion, The objectionable conditions, proposed by IDWR, state:

> Prior to any construction authorized by this permit written approval to work on property belonging to others shall be obtained in writing and a copy of the approval provided to IDWR.
>
> 13. Permittee is responsible for all work done by any contractor or sub-contractor. Permittee shall ensure any contractor or sub-contractor who performs the work follows all the terms and conditions of this authorization.
>
> General Conditions
> 1. This permit does not constitute any of the following:

a) An easement or right-of-way to trespass or work upon property belonging to others;
b) Other approval that may be required by local, state, or Federal government, unless specifically stated in the special conditions above;

2) IRCP 26(b)(1)(A) allows for discovery which is reasonably calculated to lead to the discovery of evidence which may be admissible at the hearing in this matter. *See* also IDAPA 37.01.01.520.

3) Here, Petitioner seeks to make a record demonstrating IDWR is abusing its statutory authority to impose highly onerous conditions on Petitioner which are not found in any administrative rule and which are inconsistent with applicable statutes.

4) Idaho Code 67-5279 sets out the scope of some issues which may be presented at the hearing. Specifically, subsection 3 does not allow an Agency Action to withstand judicial scrutiny if:

> (3) When the agency was required by the provisions of this chapter or by other provisions of law to issue an order, the court shall affirm the agency action unless the court finds that the agency's findings, inferences, conclusions, or decisions are:
> (a) In violation of constitutional or statutory provisions;
> (b) In excess of the statutory authority of the agency;
> (c) Made upon unlawful procedure;
> (d) Not supported by substantial evidence on the record as a whole; or
> (e) Arbitrary, capricious, or an abuse of discretion.

5) Likewise, I.C. 67-5279(5) restricts agency action and allows for the interpretation of administrative rules in a light favorable to that of the individual challenging an agency action.

> (5) When interpreting the provisions of any state law, this chapter, or any rule, as defined in section 67-5201, Idaho Code, the court shall not defer to an agency's interpretation of the law or rule and shall interpret its meaning and effect de novo. In an action brought by or against an agency, after applying all customary tools of interpretation, the court shall exercise any remaining doubt in favor of a reasonable

interpretation that limits agency power and maximizes individual liberty.

6) In this case, there are no specific administrative rules which require someone, such as Petitioner, to seek permission from a neighboring landowner who claims to own what appears to be a publicly owned river which the state refuses to clear title to. Nor is there any rule or statute which mandates someone, such as petitioner, to defend and indemnify a third party as a condition of performing stream channel restoration work the Department demands that person perform.

7) Accordingly, Petitioner must be allowed to take the deposition of the Community Library, who claims to own the section of the Big Wood River adjacent to Petitioner's property where the restoration work contemplated int the Permit may be performed.

8) Petitioner must do so in order to develop a record which allows him to challenge IDWR's actions in excess of its statutory authority as well as to assert interpretations of any applicable administrative rules in such a way that those rules "limit[] agency power and maximize [] [Petitioner's] individual liberty."

WHEREFORE: Petitioner asks the Hearing Officer to issue the Subpoena Duces Tecum included herewith.

June 28, 2025

By: /s/ J. Kahle Becker
J. KAHLE BECKER
LAW OFFICES OF J. KAHLE BECKER
Attorney for Petitioner

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the _28th_ day of June, 2025, I caused to be served the foregoing Motion to Compel to the following persons by email:

Meghan Carter
Attorney for Defendant,
Idaho Department of Water Resources
meghan.carter@idwr.idaho.gov

"IDWR File" file@idwr.idaho.gov

"Tschohl, Sarah" Sarah.Tschohl@idwr.idaho.gov

Jenny Emery Davidson, Ph.D.
Executive Director
The Community Library
jdavidson@comlib.org

/s/ J. Kahle Becker
J. KAHLE BECKER
Attorney for the Petitioner

RECEIVED
Jun 27, 2025
DEPARTMENT OF
WATER RESOURCES

**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 Petitioner

**BEFORE THE WATER RESOURCES BOARD**
**OF THE STATE OF IDAHO**

| | |
|---|---|
| IN THE MATTER OF APPLICATION FOR<br><br>STREAM CHANNEL ALTERATION<br><br>PERMIT NO. S37-20565 | SUBPOENA DUCES TECUM –THE COMMUNITY LIBRARY ASSOCIATION, INC. |

The Community Library Association, Inc.
415 Spruce Avenue N
PO Box 2168, Ketchum, ID 83340
(208) 806-2620
jdavidson@comlib.org

YOU ARE HEREBY NOTIFIED That Petitioner, John Hastings will take your testimony, upon oral examination, pursuant to I.R.C.P. Rule 30 Thursday July 31, 2025, at the hour of 9:30 o'clock a.m., at the offices of Petitioner's Counsel 223 N. 6th St., Suite 325 in a shared conference room, Boise, Idaho 83702 before a Notary Public and Court Reporter for the State of Idaho, at which time and place you are notified and hereby commanded to appear pursuant to IRCP 45, IRCP 30, and IDAPA 37.01.01.523 and take such part in said examination as shall be deemed just and proper.

DEFINITIONS:

1. "You" or "your" means The Community Library Association, Inc.
2. "Document" means and includes any kind of written, typewritten or printed, recorded, or graphic matters, however produced or reproduced, of which you have any knowledge or information, whether in your possession or under your control or not, relating or pertaining in any way to the subject matter of this action. This definition includes, but is not limited to, any and all originals, all file copies, copies on cloud based storage, and all other copies, no matter how or by whom prepared, and all drafts prepared

in connection with such writings, whether used or not, of the following: audio and/or visual recordings, discs, papers, agreements, contracts, notices, memoranda, correspondence, letters, telegrams, telexes, cables, statements, books, invoices, purchase orders, reports, studies, treatises, articles, transcripts, minutes, records, telephone logs, accounting books, maps, surveys, deeds, easements, photographs, films, transcriptions and recordings, settlements, notes, summaries, schedules, drawings, sketches, acknowledgments, diaries, tapes, pictures, computer programs, or other graphic, symbolic, recorded or retaken materials of any nature whatsoever. Any document which contains any comments, notations, addition, insertion, or marking of any kind which is not part of another document is to be considered as a separate document.

**DOCUMENTS REQUESTED**

Petitioner requests you produce a person knowledgeable about your claim of ownership of a section of the Big Wood River (Blaine County Parcel RPK4N17012048B), conditions which may be imposed on Petitioner or its agent for stream channel restoration work IDWR is mandating Petitioner perform on or near property you claim to own, and produce the following documents at the deposition for inspection and copying by Petitioner and/or his counsel. Alternatively, in order to be as efficient as possible at your deposition, you may produce these documents 7 days prior to your deposition to Petitioner's counsel at the address provided on page one of this Subpoena.

1. Any documents related to or referencing your claim of ownership of Blaine County Parcel RPK4N17012048B.
2. Any documents related to or referencing Project Big Wood.
3. Any documents related to or referencing any stream restoration projects proposed or contemplated to be performed on Blaine County Parcel RPK4N17012048B from 2017 to present.
4. Any contracts or documents you may require Petitioner or his contractor to sign prior to commencement of work on Blaine County Parcel RPK4N17012048B.

This deposition shall be taken pursuant to Rule 30 of the Idaho Rules of Civil Procedure and IDAPA 37.01.01.523 for use at the hearing in this matter. Testimony will be recorded stenographically. You have the right to attend and cross-examine. You are further notified that if you fail to appear at the place and time specified above, that you may be held in contempt of Court and that the aggrieved party may recover from you the sum $100.00 and all damages which the party may sustain by your failure to appear at said hearing. If you require payment for your mileage to attend the deposition, please provide your home address so that a check can be prepared.

June 27, 2025

By: /s/ J. Kahle Becker
J. KAHLE BECKER
LAW OFFICES OF J. KAHLE BECKER
Attorney for Petitioner

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the _27th_ day of June, 2025, I caused to be served the foregoing Subpoena Duces Tecum – Ketchum Community Library to the following persons by email:

Meghan Carter
Attorney for Defendant,
Idaho Department of Water Resources
meghan.carter@idwr.idaho.gov

IDWR File file@idwr.idaho.gov

Tschohl, Sarah Sarah.Tschohl@idwr.idaho.gov

Jenny Emery Davidson, Ph.D.
Executive Director
The Community Library
jdavidson@comlib.org

_____/s/ J. Kahle Becker_____
J. KAHLE BECKER
Attorney for the Petitioner

RECEIVED
Jul 01, 2025
DEPARTMENT OF
WATER RESOURCES

**RAÚL R. LABRADOR**
ATTORNEY GENERAL

**SCOTT L. CAMPBELL**
Chief of Energy and Natural Resources Division

**MEGHAN M. CARTER, ISB No. 8863**
Deputy Attorney General
Idaho Department of Water Resources
PO Box 83720
Boise, Idaho 83720-0098
Telephone: (208) 287-4800
Facsimile: (208) 287-6700
meghan.carter@idwr.idaho.gov

*Attorney for the Idaho Department of Water Resources*

**BEFORE THE IDAHO WATER RESOURCE BOARD**

| | |
|---|---|
| IN THE MATTER OF APPLICATION FOR STREAM CHANNEL ALTERATION PERMIT NO. S37-20565 | **DEPARTMENT'S RESPONSE IN OPPOSITION TO PETITIONER'S MOTION TO COMPEL** |

## BACKGROUND

On June 5, 2025, Hearing Officer Burdick issued an Amended Scheduling Order and Notice of Hearing ("Order"). The Order identified the issue for hearing as: "Are conditions on the Permit consistent with the requirements set forth in the Consent Order?" Order, at 2. The Hearing Officer also set a scheduling deadline of June 27, 2025, for the parties to complete written discovery. *Id.* at 1.

On March 25, 2025, John Hastings Jr. ("Hastings") sent the Idaho Department of Water Resources ("Department") Petitioner's Second Set of Discovery to IDWR ("Request"). In the Request, Interrogatory No. 13 asked the Department to provide a list of instances where the Department investigated and informally resolved stream channel alteration violations without issuing a notice of violation. In addition, Request for Production No. 15 asked for all documents

related to or which refer to the violations identified in the Department's Response to Interrogatory No. 13.

Prior to the deadline to respond to the Request, Hastings and the Department agreed to stay proceedings as they attempted to come to a settlement. On May 30, 2025, the Hearing Officer reinstated litigation proceedings.

On June 10, 2025, the Department's counsel communicated with Hastings' counsel, requesting (1) to narrow the document production by time frame, location, or other criteria, and (2) to extend the response time allowing Department staff to compile the voluminous responsive materials, including archived files. *See* Carter Decl., Ex. 1. Hastings' counsel responded that he would only narrow his document request if the Department provided reasons why notice of violations were not issued for each violation. *Id.* Accordingly, the Department indicated that providing reasons for not issuing notices of violation would take just as long as producing all the documents because that requires locating, reviewing, and summarizing each of the 95 instances. *Id.*

On June 17, 2025, the Department responded to the Request. The Department objected to producing the documents associated with the instances where the Department investigated and informally resolved stream channel alteration violations without issuing a notice of violation.

On June 19, 2025, Hastings filed Petitioner's Motion to Compel ("Motion"), asking the Hearing Officer to issue an order (1) "compelling the Department to provide a complete response to Request for Production No. 15"; and (2) revising the scheduling order for the Department to respond to the request. Motion, at 4. Hastings did not file a memorandum in support of his Motion.

## ANALYSIS

The Department's Rules of Procedure ("Rules") (IDAPA 37.01.01) govern contested cases before the Department. Rule 520 indicates that the Idaho Rules of Civil Procedure ("IRCP") govern the scope and procedure of discovery requests. IDAPA 37.01.01.520.02. Rule 521 authorizes motions to compel discovery and permits the Hearing Officer to "limit the type and scope of discovery." IDAPA 37.01.01.521.

IRCP 26(b) addresses the scope and limits of discovery. Two portions of the rule are relevant in this instance, IRCP 26(b)(1)(A) and 26(b)(1)(C). IRCP 26(b)(1)(A) states, in pertinent part:

> Unless otherwise limited by court order, the scope of discovery is as follows: Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense . . . . For good cause, the court may order discovery of any matter relevant to the subject matter involved in the action. Relevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence.

IRCP(b)(1)(C) specifies that the Hearing Officer

> must limit the frequency or extent of discovery otherwise allowed by these rules if it determines that … the burden or expense of the proposed discovery outweighs its likely benefit, considering the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the action, and the importance of the discovery in resolving the issues.

The Hearing Officer should limit the scope of discovery and deny Hastings' Motion because Request for Production 15 is not reasonably calculated to lead to discovery of admissible evidence and the burden of the request outweighs its likely benefit.

### A. The request is not reasonably calculated to lead to admissible evidence.

The applicable standard when deciding to limit or compel discovery is whether the production of documents "would lead to the discovery of admissible evidence." *Oswald v.*

*Costco Wholesale Corp.*, 167 Idaho 540, 561, 473 P.3d 809, 830 (2020). In *Oswald*, after getting hit and pinned against another vehicle in a Costco parking lot, the plaintiffs sought ten years' worth of documents concerning all vehicular incidents at Costco warehouses. *Id.* at 546, 562, 473 P.3d at 815, 831. The Court affirmed the trial court's decision to strike the discovery request because it was not "*reasonably* calculated to lead to the discovery of admissible evidence." *Id.* at 562, 473 P.3d at 831 (emphasis in original).

The Court in *Oswald* reasoned that requesting reports on all vehicular incidents encompasses not only car-pedestrian accidents, but also car-on-car and car-on-shopping-cart accidents, in all Costco parking lots—including those located internationally. *Id.* As a result, the Court failed to see how the requested information could lead to relevant evidence under the cause of action. *Id.* The Court further reasoned that "seeking everything under the sun" without reasonable limitations in scope, and providing minimum justification for the overly broad and expansive definitions in the discovery request, failed to yield relevant evidence to the cause of action. *Id.* at 561–62, 473 P.3d at 830–31.

Here, like *Oswald*, Hastings is "seeking everything under the sun" without justification or reasonable limitations on the scope of this request. Request for Production 15 was made so that Hastings could "examine [the Department's] treatment of other similarly situated individuals in order to develop a record which allows him to challenge [the Department's] actions in excess of its statutory authority. . . ." Motion at 4. However, Hastings was issued a notice of violation, whereas the violations he seeks information on are those where a notice of violation was not issued. This means Hastings isn't similarly situated to the violations he wishes to investigate. Further, the issue to be resolved in this matter is whether the conditions on the permit comply

with the consent order, not how the Department has handled previous stream channel alteration violations.

Therefore, a response to Request for Production 15 is not reasonably calculated to lead to discovery of admissible evidence. Instead, Request for Production 15 is seeking information well beyond the scope of the hearing in an attempt to revisit the Consent Order. The Hearing Officer should deny the Motion.

**B. The burden of the request outweighs its likely benefit.**

The rules of civil procedure specify that the scope of discovery must be limited if "the burden or expense of the proposed discovery outweighs its likely benefit." IRCP 26(b)(1)(C). Here, the burden of requiring Department staff to review past violations will take months. The Department has identified 95 instances since 1998 where the Department is either investigating stream channel alteration violations or has resolved them informally without issuing a notice of violation. *See* Resp. Second Set of Disc., Interrog. 13. Many of the associated files may be stored off-site. Each file will have to be reviewed for any privileged material prior to any production. This effort will not only take attorney time but the time of multiple Department staff members.

Hastings indicated he may be willing to narrow the scope of his request if the Department can explain why notices of violation were not issued in prior matters. Carter Decl., Ex. 1. However, providing this information requires just as much, if not more effort than just producing the documents. Even if the scope of the request was narrowed, as discussed above, the request is seeking information well beyond the scope of the hearing. Making the burden of the request outweigh its likely benefit. Therefore, the Hearing officer should deny the Motion.

## CONCLUSION

The Department asks the Hearing Officer to deny the *Petitioner's Motion to Compel* because the request is overbroad, burdensome, and not reasonably related to the issue to be resolved in this matter. Alternatively, the Department requests that the Hearing Officer exercise discretion under Rule 521 to limit the scope of discovery in a manner consistent with IRCP 26(b).

DATED July 1, 2025.

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL

MEGHAN M. CARTER
Deputy Attorney General

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 1, 2025, I caused to be served a true and correct copy of the *Department's Response in Opposition of Petitioner's Motion to Compel* via the method indicated below, upon the following:

| | |
|---|---|
| **J. KAHLE BECKER**<br>Attorney at Law<br>223 N. 6th St., Suite 325<br>Boise, ID 83702<br>kahle@kahlebeckerlaw.com<br><br>*Attorney for Petitioner John Hastings* | ☐ U.S. Mail, postage prepaid<br>☐ Hand Delivery<br>☐ Overnight Mail<br>☒ Email |
| **IDAHO WATER RESOURCE BOARD**<br>file@idwr.idaho.gov<br><br>Roger S. Burdick<br>*Hearing Officer*<br>roburd47@gmail.com | ☐ U.S. Mail, postage prepaid<br>☐ Hand Delivery<br>☐ Overnight Mail<br>☒ Email |

MEGHAN M. CARTER
Deputy Attorney General
Idaho Department of Water Resources

RECEIVED
Jul 01, 2025
DEPARTMENT OF
WATER RESOURCES

**RAÚL R. LABRADOR**
ATTORNEY GENERAL

**SCOTT L. CAMPBELL**
Chief of Energy and Natural Resources Division

**MEGHAN M. CARTER, ISB No. 8863**
Deputy Attorney General
Idaho Department of Water Resources
PO Box 83720
Boise, Idaho 83720-0098
Telephone: (208) 287-4800
Facsimile: (208) 287-6700
meghan.carter@idwr.idaho.gov

*Attorney for the Idaho Department of Water Resources*

**BEFORE THE IDAHO WATER RESOURCE BOARD**

| | |
|---|---|
| IN THE MATTER OF APPLICATION FOR STREAM CHANNEL ALTERATION PERMIT NO. S37-20565 | **DECLARATION OF MEGHAN M. CARTER** |

I, Meghan M. Carter, certify and declare under penalty of perjury pursuant to the laws of the State of Idaho that the following is true and correct:

1. I am over the age of eighteen (18) years and competent to testify to the matters contained herein. I make this declaration pursuant to Idaho Code § 9-1406 and based on my own personal knowledge.

2. I am currently a deputy attorney general for the Office of the Attorney General representing the Idaho Department of Water Resources (Department). My work address is 322 E. Front Street, Boise, ID 83702-7371. I have served in this capacity since May 2013.

3. On June 10, 2025, the Department asked Mr. Hastings' counsel to narrow the scope of the requested records. A true and accurate copy of the email chain is attached to this Declaration as "**Exhibit 1**."

DATED July 1, 2025.

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL

MEGHAN M. CARTER
Deputy Attorney General

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 1, 2025, I caused to be served a true and correct copy of the *Declaration of Meghan M. Carter* via the method indicated below, upon the following:

| | |
|---|---|
| **J. KAHLE BECKER**<br>Attorney at Law<br>223 N. 6th St., Suite 325<br>Boise, ID 83702<br>kahle@kahlebeckerlaw.com<br><br>*Attorney for Petitioner John Hastings* | ☐ U.S. Mail, postage prepaid<br>☐ Hand Delivery<br>☐ Overnight Mail<br>☒ Email |
| **IDAHO WATER RESOURCE BOARD**<br>file@idwr.idaho.gov<br><br>Roger S. Burdick<br>*Hearing Officer*<br>roburd47@gmail.com | ☐ U.S. Mail, postage prepaid<br>☐ Hand Delivery<br>☐ Overnight Mail<br>☒ Email |

MEGHAN M. CARTER
Deputy Attorney General
Idaho Department of Water Resources

# Exhibit 1

**From:** J. Kahle Becker
**To:** Carter, Meghan
**Subject:** Re: Hastings - Meet & Confer Request for Production 14
**Date:** Monday, June 16, 2025 3:42:46 PM
**Attachments:** image001.png

**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.**

Meghan,

It sounds like a complete production is necessary then. What volume of records are we talking about? It seems like we are going to need to extend some discovery deadlines as well as the Department has been withholding its responses to our second set of discovery requests.

As you know, under IC 67-5279 a decision can only be made:

(3) When the agency was required by the provisions of this chapter or by other provisions of law to issue an order, the court shall affirm the agency action unless the court finds that the agency's findings, inferences, conclusions, or decisions are:
(a) In violation of constitutional or statutory provisions;
(b) In excess of the statutory authority of the agency;
(c) Made upon unlawful procedure;
(d) Not supported by substantial evidence on the record as a whole; or
(e) Arbitrary, capricious, or an abuse of discretion.

The legislature has now added an additional requirement under subsection (5)

(5) When interpreting the provisions of any state law, this chapter, or any rule, as defined in section 67-5201, Idaho Code, the court shall not defer to an agency's interpretation of the law or rule and shall interpret its meaning and effect de novo. In an action brought by or against an agency, after applying all customary tools of interpretation, the court shall exercise any remaining doubt in favor of a reasonable interpretation that limits agency power and maximizes individual liberty.

So, where it appears that my client is being singled out for disparate treatment, in light of what appears to be the Department's pattern of resolving issues informally with no penalty, I plan on creating our record of the Department's abusive treatment of my client in this matter. I intend to create a record to frame our arguments so as to limit agency power (as appears to be how IDWR interpreted its statutory authority for numerous other alleged violations) and in order to maximize my client's personal liberty.

**Exhibit 1**

J. Kahle Becker
Eagles Center
223 N. 6th Street, # 325,
Boise, Idaho 83702
Phone: 208-345-8466
Fax: (208) 906-8663
kahle@kahlebeckerlaw.com
http://www.kahlebeckerlaw.com

****CONFIDENTIALITY NOTICE: This email contains confidential information that is protected by the attorney-client and/or work product privilege, and that is exempt from disclosure under applicable law. It is intended only for the use of the individual(s) named as recipients. If you are not the intended recipient of this email, please notify the sender, please do not deliver, distribute or copy this email, or disclose its contents, or take any action in reliance on the information it contains.

---

**From:** Carter, Meghan <Meghan.Carter@idwr.idaho.gov>
**Sent:** Monday, June 16, 2025 3:28 PM
**To:** J. Kahle Becker <kahle@kahlebeckerlaw.com>
**Subject:** RE: Hastings - Meet & Confer Request for Production 14

Kahle,

The Department has looked into your request for further information as to why a notice of violation was not issued. To provide that detail would be as time consuming as retrieving the requested documents because the documents contain the requested information. The Department does not maintain summaries of these documents so staff would have to find, review, and summarize the documents. I can offer that the "resolved" status is related to informal resolution of some sort.

I don't see how this request relates to the issues for hearing laid out in the February 11, 2025 Scheduling Order. Whether a notice of violation should have been issued to Mr. Hastings is not at all related to the permit or the requirements in the consent order. Is there another way to narrow your request?

Meghan Carter | Deputy Attorney General
Water Resources Section | Energy & Natural Resources Division
Office of the Attorney General | State of Idaho
meghan.carter@idwr.idaho.gov | 208-287-4810

---

**From:** J. Kahle Becker <kahle@kahlebeckerlaw.com>

**Sent:** Wednesday, June 11, 2025 11:00 AM
**To:** Carter, Meghan <Meghan.Carter@idwr.idaho.gov>
**Subject:** Re: Hastings - Meet & Confer Request for Production 14

**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.**

---

Meghan,

Thank you for providing this list. It certainly seems like IDWR has a pattern of resolving stream channel alteration issues without issuing a NOV - which contrasts with the treatment my client experienced after doing exactly what a political subdivision of the state of Idaho asked him to do- during a declared flood emergency.

It looks like your case descriptions begin with one case in 1998 and then jump to 2014-2025 for the rest. In order for me to evaluate your request to narrow down Interrogatories No. 12 & 13, perhaps your client could answer the portions of each as to "the reason a permit/Notice of Violation was not issued for each and every encroachment you mention." Then I can consider narrowing the request.

If you need more time to respond, then we may eventually need to discuss that with the hearing officer so we don't get caught in a time crunch.

J. Kahle Becker
Eagles Center
223 N. 6th Street, # 325,
Boise, Idaho 83702
Phone: 208-345-8466
Fax: (208) 906-8663
kahle@kahlebeckerlaw.com
http://www.kahlebeckerlaw.com

****CONFIDENTIALITY NOTICE: This email contains confidential information that is protected by the attorney-client and/or work product privilege, and that is exempt from disclosure under applicable law. It is intended only for the use of the individual(s) named as recipients. If you are not the intended recipient of this email, please notify the sender, please do not deliver, distribute or copy this email, or disclose its contents, or take any action in reliance on the information it contains.

---

**From:** Carter, Meghan <Meghan.Carter@idwr.idaho.gov>
**Sent:** Tuesday, June 10, 2025 5:04 PM

**To:** J. Kahle Becker <kahle@kahlebeckerlaw.com>
**Subject:** Hastings - Meet & Confer Request for Production 14

Kahle,

Staff have identified 95 instances where IDWR is currently investigating a stream channel violation or where the violation was resolved informally without issuing a notice of violation. I have attached a list of those cases. IDWR can and will produce all documents related to these cases. However, the documents will be voluminous, and some cases will involve obtaining records from offsite records archives. Would you be able to narrow your request by time frame, location, or other criteria? In the alternative, would you be willing to provide IDWR extra time to gather the requested documents?

Meghan Carter | Deputy Attorney General
Water Resources Section | Energy & Natural Resources Division
Office of the Attorney General | State of Idaho
meghan.carter@idwr.idaho.gov | 208-287-4810

**BEFORE THE IDAHO WATER RESOURCE BOARD**

| | |
|---|---|
| IN THE MATTER OF APPLICATION FOR STREAM CHANNEL ALTERATION PERMIT NO. S37-20565 | **NOTICE OF MOTION HEARING** |

NOTICE IS HEREBY GIVEN that on **July 15, 2025, at 9 a.m. (MT)**, Hearing Officer Burdick will hear oral argument in this matter on *Petitioner's Motion to Compel* filed June 19, 2025, and *Petitioner's Motion for Issuance of Subpoena – The Community Library* filed June 27, 2025. The hearing will be held at the Department's State Office, located at 322 E. Front Street, 6th Floor, Conference Rooms 602C–D, Boise, Idaho. All parties who wish to participate in the hearing shall be present in person.

The hearing will be available for observation only via Webex. To join the hearing via computer or smartphone, please click the following Webex link and follow the prompts: https://idahogov.webex.com/idahogov/j.php?MTID=md6000e7c1d7422470459c8a0ac28cf27.

To join the hearing via telephone, please dial 1(415) 655-0001 (US Toll) and enter the following meeting access code when prompted: 2630 352 2042.

The hearing will be held in accordance with the provisions of Chapter 38, Title 42, and Chapter 52, Title 67, Idaho Code, and the Board's Rules of Procedure, IDAPA 37.01.01. A copy of the Rules of Procedure may be obtained from the Department upon request or at https://adminrules.idaho.gov/rules/current/37/370101.pdf.

The hearing will be conducted in a facility that meets the accessibility requirements of the Americans with Disabilities Act. If you require reasonable accommodation to attend, participate in, or understand the conference, please advise the Board no later than five (5) days before the hearing. Inquiries for reasonable accommodations should be directed to Sarah Tschohl, Idaho Department of Water Resources, PO Box 83720, Boise, Idaho 83720-0098, telephone (208) 287-4815, or email sarah.tschohl@idwr.idaho.gov.

DATED this 1st day of July 2025.

ROGER S. BURDICK
Hearing Officer

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 1st day of July 2025, the above and foregoing, was served by the method indicated below, and addressed to the following:

| | |
|---|---|
| J. KAHLE BECKER<br>Attorney at Law<br>kahle@kahlebeckerlaw.com | ☒ Email |
| MEGHAN M. CARTER<br>Deputy Attorney General<br>meghan.carter@idwr.idaho.gov | ☒ Email |

Sarah Tschohl
Paralegal

**BEFORE THE IDAHO WATER RESOURCE BOARD**

| IN THE MATTER OF APPLICATION FOR STREAM CHANNEL ALTERATION PERMIT NO. S37-20565 | **AMENDED NOTICE OF MOTION HEARING** |
|---|---|

NOTICE IS HEREBY GIVEN that on **August 14, 2025, at 11:30 a.m. (MT)**, Hearing Officer Burdick will hear oral argument in this matter on *Petitioner's Motion to Compel* filed June 19, 2025, and *Petitioner's Motion for Issuance of Subpoena – The Community Library* filed June 27, 2025. The hearing will be held at the Department's State Office, located at 322 E. Front Street, 6th Floor, Conference Rooms 602C–D, Boise, Idaho. Anyone who intends to participate in the hearing shall be present in person. However, counsel for The Community Library is granted an exception and may participate remotely using the Webex link provided for observation and included below.

The hearing will be available for observation only via Webex. To join the hearing via computer or smartphone, please click the following Webex link and follow the prompts: https://idahogov.webex.com/idahogov/j.php?MTID=md6000e7c1d7422470459c8a0ac28cf27.

To join the hearing via telephone, please dial 1(415) 655-0001 (US Toll) and enter the following meeting access code when prompted: 2630 352 2042.

The hearing will be held in accordance with the provisions of Chapter 38, Title 42, and Chapter 52, Title 67, Idaho Code, and the Board's Rules of Procedure, IDAPA 37.01.01. A copy of the Rules of Procedure may be obtained from the Department upon request or at https://adminrules.idaho.gov/rules/current/37/370101.pdf.

The hearing will be conducted in a facility that meets the accessibility requirements of the Americans with Disabilities Act. If you require reasonable accommodation to attend, participate in, or understand the conference, please advise the Board no later than five (5) days before the hearing. Inquiries for reasonable accommodations should be directed to Sarah Tschohl, Idaho Department of Water Resources, PO Box 83720, Boise, Idaho 83720-0098, telephone (208) 287-4815, or email sarah.tschohl@idwr.idaho.gov.

DATED this 30th day of July 2025.

ROGER S. BURDICK
Hearing Officer

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 30th day of July 2025, the above and foregoing, was served by the method indicated below, and addressed to the following:

| | |
|---|---|
| J. KAHLE BECKER<br>Attorney at Law<br>kahle@kahlebeckerlaw.com | ☒ Email |
| MEGHAN M. CARTER<br>Deputy Attorney General<br>meghan.carter@idwr.idaho.gov | ☒ Email |
| SAMUEL L. LINNET<br>Alturas Law Group, PLLC<br>sam@alturaslawgroup.com | ☒ Email |

Sarah Tschohl
Paralegal

**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 Petitioner

**BEFORE THE WATER RESOURCES BOARD**
**OF THE STATE OF IDAHO**

| | |
|---|---|
| IN THE MATTER OF APPLICATION FOR STREAM CHANNEL ALTERATION PERMIT NO. S37-20565 | SUPPLEMENT TO PETITIONER'S MOTION FOR ISSUANCE OF SUBPOENA – THE COMMUNITY LIBRARY |

COMES NOW Petitioner, John Hastings by and through his attorney of record, J. Kahle Becker and, pursuant to IDAPA 37.01.01.523 and IRCP 30, 45, and 26 and having submitted his Motion for Issuance of Subpoena- The Community Library supplements that Motion as follows. Attached hereto as Exhibit A are portions of a report of the annual budget for the Ketchum Community Library which I obtained from https://comlib.org/ and a letter from its Executive Director, Jenny Emory Davidson, PhD (the proposed deponent) to its membership.

July 30, 2025
By: /s/ J. Kahle Becker
J. KAHLE BECKER
LAW OFFICES OF J. KAHLE BECKER
Attorney for Petitioner

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the _30th_ day of July, 2025, I caused to be served the foregoing Motion to Compel to the following persons by email:

Meghan Carter
Attorney for Defendant,
Idaho Department of Water Resources
meghan.carter@idwr.idaho.gov

"IDWR File" file@idwr.idaho.gov

"Tschohl, Sarah" Sarah.Tschohl@idwr.idaho.gov

Samuel L. Linnet, Esq.
Alturas Law Group, PLLC
a: 111 N. 1st Avenue, Suite 2I,
P.O. Box 2975
Hailey, ID 83333
p: 208.788.6688
sam@alturaslawgroup.com
Attorney for The Community Library

/s/ J. Kahle Becker
J. KAHLE BECKER
Attorney for the Petitioner

# EXHIBIT A

THE COMMUNITY
# LIBRARY

The Community Library brings information, ideas, and individuals together to enhance the cultural life of the community. It is an independent, non-government library funded by private donations and revenue from the Gold Mine Thrift and Consign stores.

## Give & Support

**There are many ways to support the work of The Community Library Association:**

## Donate
## Shop
## Volunteer

www.comlib.org

Jenny interviews author Judy Blume in the Library's Lecture Hall in July.

## Dear Friends,

When I think of all the people who helped me become a reader – Mrs. Pack, Mrs. Reed, Judi, Mrs. Schreiner – I also think of Lizzy.

Her black eyes were not much bigger than the dots on the "i's" in the books that I read, and I could hold her in the cup of one hand while the other turned the pages. She was a honey-colored long-haired hamster; a birthday gift when I turned eight; the first pet I could call my own; a constant companion to my reading.

Lizzy was part of the cocoon that reading created for me. I would fold myself into my pillows, perch a book on my bent knees, hold Lizzy softly in my hands, and settle into the wonder of words. At night, when Lizzy was in her cage alongside my bed, she'd run and run and run on her wheel while I read and read and read. The whir of the wheel and the swish of the turning pages reminded me that I was not alone, even when the night was very dark.

Lizzy, of course, led a life beyond my reading. More than once, she absconded from her cage and we'd find her scurrying across the hallway or looking down at us from the top of the refrigerator. My imagination of her adventures was fueled by my reading of *The Borrowers* by Mary Norton and *The Mouse and the Motorcycle* by Beverly Cleary. I could vividly imagine Lizzy having an alternate life in the wall between my sisters' room and mine.

In sixth grade, Ms. Chapman taught us poetic forms, from limericks to acrostics. When Lizzy died that year, I wrote a haiku; it mattered that I could give some shape, even just seventeen syllables, to my sadness.

Words, I had learned, can create both a cocoon and an escape hatch; they can spin wild dreams and hold tender memories. They can be our companions, warm in our hands, whirring with possibilities.

We

Jenny

**Jenny Emery Davidson, Ph.D.**
Executive Director

## Idaho Library of the Year:
# The Community Library!

**On October 10, the Idaho Library Association awarded The Community Library the "Idaho Library of the Year" award for its work championing libraries around the state and celebrating the freedom to read!**

**114,161** Library visitors

**17,905** Library cardholders



000234

Eighteen women prepare to break ground for the Library in 1956.

Thirty-plus staff keep the vision going in 2024.

# Shade, Sustenance, and Shelter

**By Carter Hedberg**
Director of Philanthropy

I recently came across this Vietnamese proverb:

**"When eating fruit, remember the one who planted the tree."**

Your donation is much more than simply a financial contribution—it is the foundation for ongoing change. The 17 women who founded The Community Library as a privately-funded library nearly 70 years ago understood that their individual contributions would plant a tree for the future—just as your support does today. And just as trees provide shade, sustenance, and shelter for generations, your kindness and generosity will have a lasting impact on the many lives of those we serve.

I am grateful for your commitment to literacy, lifelong learning, and providing a safe, welcoming environment for all. Your generosity will continue to bear fruit for years to come...thank you for planting a tree!

## Income:

| | |
|---|---|
| Donations | $1,768,162 |
| Gold Mine Net Contribution | $926,285 |
| Endowment Contribution | $212,795 |
| Stewardship Fund Contribution | $124,897 |
| Library Services | $19,135 |
| Dedicated Tax Dollars | $0! |
| Total Income | $3,051,274 |
| Hemingway House Endowment Project | $1,860,000 |

## Expenses:

| | |
|---|---|
| Library Operations and Programs | $1,652,243 |
| Outreach and Development | $274,429 |
| General and Administrative | $1,124,602 |
| Total Expense | $3,051,274 |

Read the entire Dispatch and Annual Report online here >

THE COMMUNITY LIBRARY GOLD MINE

219,564 Gold Mine Thrift and Consign shoppers purchased 264,991 items to help support books, literacy, and programs at The Community Library

RECEIVED
Aug 07, 2025
DEPARTMENT OF
WATER RESOURCES

Samuel L. Linnet, ISBN 9788
**ALTURAS LAW GROUP, PLLC**
111 N. 1st Avenue, Suite 2I
P.O. Box 2975
Hailey, Idaho 83333
Tel: 208.788.6688
sam@alturaslawgroup.com
admin@alturaslawgroup.com

*Attorneys for The Community Library*

BEFORE THE WATER RESOURCES BOARD OF THE STATE OF IDAHO

| | |
|---|---|
| IN THE MATTER OF APPLICATION FOR STREAM CHANNEL ALTERATION PERMIT NO. S37-20565 | COMMUNITY LIBRARY'S OBJECTION TO PETITIONER'S MOTION FOR ISSUANCE OF SUBPOENA AND MOTION TO QUASH |

COMES NOW the Witness, The Community Library, by and through its attorney of record, Samuel L. Linnet of Alturas Law Group, PLLC, and respectfully requests this Court to hear its Objection to Petitioner's Motion for Issuance of Subpoena and Motion to Quash based on the irrelevant information sought in the subpoena and the undue burden in requiring the deposition to be taken outside of Blaine County, despite other options. This motion is made pursuant to IDAPA 37.01.01.220.02, 37.01.01.520, 37.01.01.521, 37.01.01.600 and I.R.C.P. 26, 30(b)(6), and 45.

## I. FACTUAL BACKGROUND.

1. On June 27, 2025, Petitioner John Hastings filed a Motion for Issuance of Subpoena directed to The Community Library (the "Motion").

2. The Motion was sent to The Community Library on June 27, 2025.

3. The Community Library retained Alturas Law Group on July 8, 2025, following an initial consultation.

4. Thereafter, Alturas Law Group contacted Petitioner's attorney and the Hearing Officer's Paralegal to inquire about objecting to the subpoena (the "Subpoena").

5. The Community Library objected to the subpoena in general, but also specifically objected to any requirement to travel outside of Blaine County to comply with the Subpoena.

6. On July 8, 2025, The Community Library requested that the deposition be conducted either remotely or locally in the Wood River Valley. Petitioner denied both requests.

For the reasons set forth herein, The Community Library requests that the Subpoena be quashed in whole and that The Community Library be protected from future subpoenas. Alternatively, Petitioner, who lives in Blaine County, should be required to take The Community Library's deposition in Blaine County or remotely.

## III. RULES.

IDAPA 37.01.01.520 ("Rule 520") incorporates the Idaho Rules of Civil Procedure (I.R.C.P.) as the governing authority on the scope of discovery, unless otherwise provided by statute, rule, order, or notice. I.R.C.P. Rule 26(b) limits discovery to information "that is relevant to any party's claim or defense." IDAPA 37.01.01.521 ("Rule 521") grants the Hearing Officer the power to limit the scope of

discovery, whereas IDAPA 37.01.01.523 ("Rule 523") permits a party to move to quash a subpoena and authorizes the Hearing Officer to do so. IDAPA 37.01.01.600 ("Rule 600") allows the Hearing Officer to exclude irrelevant evidence from the record. I.R.C.P. 30(b)(6) governs subpoenas to organizations, and requires that a subpoena: (i) describe with reasonable particularity the matters for examination and (ii) advise the organization that it must designate one or more individuals to testify on the organization's behalf.

## IV. ARGUMENT.

### A. The substance of the Subpoena does not conform to the requirements under I.R.C.P. 30(b)(6).

The Subpoena fails to comply with the requirements of I.R.C.P. 30(b)(6) because it (i) lacks a reasonably particular description of the matters for examination and (ii) fails to advise The Community Library of its obligation to designate a representative to testify on its behalf.

Petitioner, through the Subpoena, seeks documents without any temporal parameters. Rather, the Subpoena requests "any documents related to…" in all instances, without specifying a relevant time period. See Subpoena, 1-4. The Subpoena also requests documents that are related to third-parties, which are not part of Petitioner's application or petition before the Board. For example, Petitioner seeks "any documents related to or referencing Project Big Wood." See Subpoena, 2. Project Big Wood is not part of Petitioner's application. The Subpoena additionally includes documents concerning unrelated stream restoration projects that are

available through other means, and hypothetical documents that have not yet been drafted, and may never be drafted. See Subpoena, 3-4. The breadth and hypothetical nature of the document requests directly violate the particularity requirement of I.R.C.P. 30(b)(6).

As set forth above, the Subpoena is procedurally and substantively deficient because it does not comport with the requirements of I.R.C.P. 30(b)(6) and should be quashed on that basis.

B. The Subpoena seeks irrelevant information, immaterial to the application before the Hearing Officer.

Under I.R.C.P. 26(b), only information that is "relevant to the subject matter involved in the action" or "relevant to any party's claim or defense," is discoverable. The Subpoena seeks irrelevant and immaterial information that does not pertain to the application pending before the Hearing Officer.

First, the Subpoena seeks "any documents related to or referencing your claim of ownership of Blaine County Parcel RPK4N17012048B." See Subpoena, 1. The Community Library's ownership of such parcel is irrelevant to the Petitioner's action, which is not a quiet title or declaratory relief action, but rather relates to conditions of a permit applied for by Petitioner. In fact, the Hearing Officer explicitly states in his Notice of Hearing Order on February 11, 2025, "In this contested case there is *no need for the State to prove ownership* of the stream beds." [Emphasis added].

The Subpoena also requests "any documents related to or referencing Project Big Wood" and "any stream restoration projects proposed or contemplated…" See Subpoena, 2-3. Neither request is within the scope of the specific matter at hand. Both requests implicate third-parties that are not part of Petitioner's action and do not directly relate to the contested issue.

Idaho courts have consistently emphasized that while the scope of discovery is broad, it is not unlimited. In *Oswald v. Costco Wholesale Corp.*, 151 Idaho 494, 260 P.3d 315 (2020), the Idaho Supreme Court rejected a discovery request seeking nationwide incident reports, holding that the request was not reasonably calculated to lead to the discovery of admissible evidence. The Court found the scope to be overly broad in light of the case's factual issues and the availability of more narrowly tailored sources of information. A party cannot merely hope to uncover useful material; instead, discovery must be grounded in a concrete showing of relevance and necessity. See *Hastings v. Idaho Department of Water Resources*, 523 P.3d 38 (Idaho 2024) (the Idaho Supreme Court denied a Rule 56(d) motion seeking further discovery, reasoning that the request was speculative and amounted to a "fishing expedition").

Here, the subpoena served on The Community Library suffers from the same deficiencies previously condemned by Idaho courts - the subpoena is a fishing expedition. It seeks documents without clearly defined temporal or subject matter limitations and demands materials unrelated to the underlying claims. This sort of generalized inquiry does not meet the standard for relevance or necessity.

Under Rule 600, the Hearing Officer has the authority to exclude irrelevant evidence, and under Rules 521 and 523, the Hearing Officer has the authority to quash the Subpoena, as is respectfully requested by The Community Library.

C. The Subpoena is unduly burdensome because it requires The Community Library to travel outside of Blaine County for a deposition when less onerous options are available.

The Subpoena should also be quashed because it imposes an undue burden on The Community Library by requiring travel outside of Blaine County for a deposition, despite the availability of less burdensome alternatives, such as a remote appearance or a deposition held locally.

Idaho Rule of Civil Procedure 45 requires a party or attorney responsible for issuing and serving a subpoena to take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The rule further empowers courts to quash or modify subpoenas that fail to meet this obligation. See I.R.C.P. 45(d) (a court must quash or modify a subpoena that "subjects a person to undue burden"). Further, under I.R.C.P. 26(b)(1), discovery must be relevant and proportional to the needs of the case, taking into account the burden and expense relative to its likely benefit; I.R.C.P. 26(c)(1) authorizes protective orders to prevent "undue burden or expense."

In *Oswald v. Costco Wholesale Corp.*, the Idaho Supreme Court emphasized the principle of proportionality in discovery, holding that courts should weigh the

burden or expense of the requested discovery against its likely benefit. Here, the burden on The Community Library is substantial.

The Community Library is a non-party with limited administrative staff and financial resources and operates as a community-based nonprofit organization. Complying with the Subpoena would require it to designate a representative, prepare that individual for testimony, and travel outside of Blaine County with its attorney—all of which would pull personnel away from their day-to-day public service responsibilities and create significant disruption and expense. In contrast, the likely benefit of the requested deposition is minimal. As previously argued, the documents and testimony sought are not directly relevant to the core claims and defenses in this matter, but instead appear tangential at best. The Subpoena's focus on The Community Library seems less directed at discovering admissible evidence than at casting a wide net, a practice Idaho courts have repeatedly rejected as improper. See, e.g., *Hastings v. Idaho Dep't of Water Resources* (discovery that is speculative and untethered to specific factual issues constitutes a "fishing expedition" and may be denied).

Because the burden on The Community Library is substantial, and the information sought is of limited, if any, relevance, the Subpoena fails the balancing test required of discovery requests in Idaho. The requesting party has not shown that the likely benefit of requiring a non-party, community non-profit organization to divert its limited resources and travel out of the county outweighs the resulting hardship.

Accordingly, the Subpoena should be quashed or modified to require that the deposition occur either remotely or within Blaine County.

## IV. CONCLUSION.

For the reasons stated above, The Community Library respectfully requests that the Hearing Officer quash the Subpoena in its entirety. The Subpoena seeks irrelevant, overbroad, and speculative information that bears little to no connection to the contested issues in this matter. Additionally, it imposes an undue burden on a non-party, community nonprofit by requiring out-of-county travel for a deposition, despite the existence of readily available and less burdensome alternatives.

Under IDAPA Rules 521, 523, and 600, and I.R.C.P. 26, 30(b)(6), and 45, the Subpoena exceeds the proper scope of discovery, fails to comply with procedural requirements, and violates principles of proportionality and fairness. The Community Library has made good faith efforts to cooperate, including offering to sit for a deposition remotely or locally, but Petitioner has refused all reasonable accommodations. Had such accommodations been agreed upon, this objection would have been unnecessary.

Accordingly, The Community Library respectfully requests that the Hearing Officer:

- Quash the Subpoena in full;
- Alternatively, require that any deposition occur remotely or within Blaine County; and

- Grant any further relief deemed just and proper, including protection from similar, burdensome future subpoenas.

The Community Library respectfully requests the Hearing Officer to consider this motion and hear brief oral argument at the current scheduled August 14, 2025 hearing.

DATED August 7, 2025

**ALTURAS LAW GROUP, PLLC**

*/s/ Samuel L. Linnet*
Samuel L. Linnet
*Attorneys for The Community Library*

CERTIFICATE OF SERVICE

I hereby certify that on August 7, 2025, I served a true and correct filed copy of the within and foregoing document upon the parties named below in the matter noted:

| | |
|---|---|
| Served via email | Meghan Carter<br>Attorney for Defendant, IDWR<br>meghan.carter@idwr.idaho.gov |
| Served via email | J. Kahle Becker<br>Attorney for Petitioner John Hastings<br>kahle@kahlebeckerlaw.com |
| Served via email | Roger S. Burdick<br>Hearing Officer<br>roburd47@gmail.com<br>Sarah.Tschohl@idwr.idaho.gov |
| Served via email | IDAHO WATER RESOURCE BOARD<br>file@idwr.idaho.gov |

By /s/ Samuel L. Linnet
Alturas Law Group, PLLC

RECEIVED
Aug 20, 2025
DEPARTMENT OF
WATER RESOURCES

**J. KAHLE BECKER (ISB # 7408)**
**Attorney at Law**
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Attorney for Petitioner

**BEFORE THE WATER RESOURCES BOARD**
**OF THE STATE OF IDAHO**

| | |
|---|---|
| IN THE MATTER OF APPLICATION FOR STREAM CHANNEL ALTERATION PERMIT NO. S37-20565 | PETITIONER'S RESPONSE TO THE COMMUNITY LIBRARY'S MOTION TO QUASH SUBPOENA |

COMES NOW Petitioner, John Hastings by and through his attorney of record, J. Kahle Becker and, third party witness The Community Library having filed an Objection and Motion to Quash a Subpoena pursuant to IDAPA 37.01.01.523, and responds thereto as follows:

The Community Library objects to the issuance of the subpoena, for it to designate one or more representatives to sit for a deposition and produce certain documents, based on a misunderstanding of the purposes of this hearing as well as inaccurate and factually unsupported assertions.

First, the Community Library objects to the subpoena on the grounds that the subpoena does not "(i) provide a reasonably particular description of the matters for examination and (ii) fails to advise The Community Library of its obligation to designate

a representative to testify on its behalf." *Objection* at 3. Both of these assertions lack merit based on the plain language of the proposed Subpoena, which provides:

> Petitioner requests you **produce a person knowledgeable about your claim of ownership of a section of the Big Wood River (Blaine County Parcel RPK4N17012048B), conditions which may be imposed on Petitioner or its agent for stream channel restoration work IDWR is mandating Petitioner perform on or near property you claim to own**, and produce the following documents at the deposition for inspection and copying by Petitioner and/or his counsel. Alternatively, in order to be as efficient as possible at your deposition, you may produce these documents 7 days prior to your deposition to Petitioner's counsel at the address provided on page one of this Subpoena.
>
> 1. Any documents related to or referencing your claim of ownership of Blaine County Parcel RPK4N17012048B.
> 2. Any documents related to or referencing Project Big Wood.
> 3. Any documents related to or referencing any stream restoration projects proposed or contemplated to be performed on Blaine County Parcel RPK4N17012048B from 2017 to present.
> 4. Any contracts or documents you may require Petitioner or his contractor to sign prior to commencement of work on Blaine County Parcel RPK4N17012048B. (Emphasis added)

Idaho Rule of Civil Procedure 30(b)(6) provides:

> (6) Notice or subpoena directed at an organization. In its notice or subpoena, a party may name as the deponent a public or private corporation, a partnership, an association, a governmental agency, or other entity and must describe with **reasonable particularity** the matters for examination. The named organization must then designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on its behalf; and it may set out the matters on which each person designated will testify. A subpoena must advise a nonparty organization of its duty to make this designation. The persons designated must testify about information known or reasonably available to the organization. This paragraph (6) does not preclude a deposition by any other procedure allowed by these rules. (Emphasis added).

While there does not appear to be any Idaho cases defining the term "reasonable particularity" other courts discussing the analogous federal rule, have done so. Federal Courts apply the standard of "whether [a noticed topic] places the [deponent] upon reasonable notice of what is called for and what is not." Although the Tenth Circuit has

not specifically adopted one approach, it has noted what "reasonable particularity" requires in the context of Rule 34. What qualifies as reasonably particular depends at least in part on the circumstances of each case. A discovery request "should be sufficiently definite and limited in scope that it can be said to apprise a person of ordinary intelligence" of the request. *Innovasis, Inc. v. English*, 2024 U.S. Dist. LEXIS 134523, *8, 2024 WL 3569494. Likewise, a federal court in the 9th Circuit recently held:

> "To meet the 'reasonable particularity' standard, the 30(b)(6) notice, or related correspondence, must contain sufficient information to put the receiving party on notice of the areas of inquiry that will be explored in the deposition." *Luna*, 2022 U.S. Dist. LEXIS 201601, at *6-7 (citing *Alexander v. F.B.I.*, 186 F.R.D. 137, 139 (D.D.C. 1998); *Pulliam v. Continental Cas. Co.*, No. 02-370 (RWR), 2006 U.S. Dist. LEXIS 72302, at *14 (D.D.C. Oct. 4, 2006) ("[A] party must specifically state the subject of the testimony requested under Federal Rule 30(b)(6)."). "If the party seeking testimony fails to meet that burden, the responding party has no obligation to produce a witness." *Luna*, 2022 U.S. Dist. LEXIS 201601, at *6 (citations omitted).
>
> The persons designated must testify about information known or reasonably available to the entity. *Id.* "The corporation has a duty to educate its witnesses so they are prepared to fully answer the questions posed at the deposition." *Bowoto v. Chevron Texaco Corp.*, No. C 99-02506 SI, 2006 U.S. Dist. LEXIS 36040, at *4 (N.D. Cal. Feb. 7, 2006) (citing *In re Vitamins Antitrust Litig.*, 216 F.R.D. 168, 172 (D.D.C. 2003)). "Though an entity need not make 'extreme efforts to obtain all information possibly relevant to the' topics, '[[t]he deponent must prepare the designee to the extent matters are reasonably available, whether from documents, past employees, or other sources.'" *Hsingching Hsu v. Puma Biotechnology, Inc.*, No. 8:15-cv-00865-AG (SHK), 2018 U.S. Dist. LEXIS 103353, at *17 (C.D. Cal. Jun. 20, 2018) (citations omitted).
> *Hendricks v. Aetna Life Ins. Co*., 2024 U.S. Dist. LEXIS 206260, *30-31, 2024 WL 4720802.

The topics listed in the subpoena focus on the Community Library's claim of ownership of a section of the Big Wood River, which IDWR demands Petitioner perform stream channel restoration work on, following a Notice of Violation. *See* Personal Representative's Deed and Blaine County Parcel Viewer attached hereto as Exhibits A

and B. The request in the Subpoena for the Library to "produce a person knowledgeable about your claim of ownership of a section of the Big Wood River (Blaine County Parcel RPK4N17012048B), conditions which may be imposed on Petitioner or its agent for stream channel restoration work IDWR is mandating Petitioner perform on or near property you claim to own" meets the "reasonable particularity" requirement of IRCP 30(b)(6). Either the Library owns, claims to own, or doesn't own the section of the Big Wood at issue. The Answer to that question will guide further inquiry. Tellingly, the Library has not asked any specific questions about any area of inquiry to clear up any confusion it may have. Thus, the Library's motion must be viewed for what it is, a stunt by a key witness to avoid its deposition.

The permit at issue herein contains conditions which Petitioner objects to. With respect to the matters at issue in the instant motion, the objectionable conditions proposed by IDWR, are as follows:

> Prior to any construction authorized by this permit **written approval to work on property belonging to others <u>shall</u> be obtained in writing** and a copy of the approval provided to IDWR.
>
> 13. Permittee is responsible for all work done by any contractor or sub-contractor. Permittee shall ensure any contractor or sub-contractor who performs the work follows all the terms and conditions of this authorization.
>
> General Conditions
> 1. This permit does not constitute any of the following:
> **a) An easement or right-of-way to trespass or work upon property belonging to others;**
> b) Other approval that may be required by local, state, or Federal government, unless specifically stated in the special conditions above; (Emphasis added).

Assuming the Library asserts it owns a public river – the Big Wood, Petitioner would like to make a record of his efforts to obtain said "written approval to work on property belonging to others." To date, those requests have come with a demand that Petitioner

"hold harmless" the "owner" of this section of the Big Wood. *See* "Agreement" attached hereto as Exhibit C. Petitioner contends that forcing him to enter into what amounts to a blank check agreement with a party with a dubious claim to ownership, of a river the state itself knows to be public, is unreasonable. *See* relevant portions of *Idaho Waterways Navigability Study* conducted by Stevens Historical Research Associates for the Idaho Department of Lands, attached hereto as Exhibit D.[1] Likewise, forcing Petitioner to perform work without obtaining said permission places Petitioner in a position of needing to file a quiet title suit the State declines to undertake – regardless of its fiduciary duties to do so.

IRCP 26(b)(1)(A) allows for discovery which is reasonably calculated to lead to the discovery of evidence which may be admissible at the hearing in this matter. *See* also IDAPA 37.01.01.520.02. Here, Petitioner seeks to make a record demonstrating IDWR is abusing its statutory authority to impose highly onerous conditions on Petitioner which are not found in any administrative rule and which are inconsistent with applicable statutes and Petitioner's Constitutional rights.

The Library objects to the Subpoena because it allegedly seeks documents without any temporal parameters. Rather, the Library contends the "Subpoena requests 'any documents related to…' in all instances, without specifying a relevant time period." As an initial matter, the Library is simply incorrect that in "all instances" relevant time periods are not listed. Topic 3 for example requests the Library to produce "Any documents related to or referencing any stream restoration projects proposed or

[1] The equal footing doctrine grants legal title to the state in all lands below the natural high water mark of navigable waters as they existed at the date of admission into statehood. The public trust doctrine, on the other hand, does not grant title of such lands to the state but merely preserves inviolate the public's use of those lands. *Idaho Forest Indus. v. Hayden Lake Watershed Improvement Dist*., 135 Idaho 316, 318, 17 P.3d 260, 262, 2000 Ida. LEXIS 133, *4.

contemplated to be performed on Blaine County Parcel RPK4N17012048B ***from 2017 to present***." Emphasis added.

Beyond that temporal description, the relevant time periods are impossible to define for other requests, without seeing the documents the Library has in its possession. Tellingly, the Library has not provided any information about its recordkeeping which could assist the parties in refining or narrowing this request. The Library took its claim of ownership of this section of the Big Wood River, which originated with a claim asserted by the late Ernest Hemingway, at some point from a prior owner, The Nature Conservancy. *See* Exhibits A & C hereto.

Document Request Topic 1 seeks the basis for the Library's assertion that it owns a public river. That information may be contained in the documents and communications related to that transfer of ownership, whenever that happened to be. To the extent that claim of ownership has been discussed or analyzed by the Library leading up to or since that time, those documents should be produced as well. If obtaining these documents is highly burdensome, then it is incumbent upon the Library to demonstrate a factual basis by which Petitioner and the Hearing Officer can evaluate its contention.

> Thus, while it is not *per se* unreasonable for a party to object on the basis that a request is overly broad, burdensome, or seeks irrelevant information, the objecting party has an obligation to show specifically why responding to the request would create a burden or how the request is overly broad in relation to the claims and defenses presented in the litigation. *Patrick v. Teays Valley Trs., LLC*, 297 F.R.D. 248, 256, 2013 U.S. Dist. LEXIS 174022, *16, 2013 WL 6524656

Here, the Library provides no information whatsoever about it's filing system or resources which would allow the Hearing Officer to evaluate its concerns. Moreover, without these details, it is impossible for Petitioner or the Hearing Officer to consider a

narrower or less burdensome method for obtaining the responsive information from the Library.

With respect to document request Topic 2, "Project Big Wood" is an ambitious project that seeks to improve this section of the Big Wood River for public recreational purposes. It contains a proposal for work to be performed on Mr. Hastings' and the Library's real property along this section of the Big Wood River. *See* Exhibit E. While the Library objects that Project Big Wood is not part of Petitioner's application and it itself is not Project Big Wood, Petitioner only seeks, and the Library need only produce, responsive documents in its possession. If it has none, then the answer is simple and the Library should simply say so.

Petitioner would like to see what conditions the Library has requested or placed upon the proponents of Project Big Wood as a component of any restoration work to be performed on what the Library claims as its property. Document Request Topic 3 largely encapsulates this same request as is made in topic 2, but clarifies that said request is not limited to Project Big Wood, but rather any and all restoration projects on its property, and is therefore temporally limited to 2017 to present.

Document Request Topic 4 seeks to obtain information relevant to the proposed permit requirement that Petitioner obtain written approval to perform work on property belonging to others. If this permission will not be granted, then there is little point in IDWR issuing a permit for work which can not be performed. If the permission is granted but only with highly onerous conditions (like those in Exhibit C), the issue is what are the Rules and Statutes which require someone like Petitioner to become beholden to said conditions. Also, a review of any decision by this Hearing Officer by a

District Court will evaluate whether IDWR is being reasonable in compelling Petitioner to obligate himself to said conditions. Idaho Code 67-5279.

Petitioner must be able to provide a record of his efforts for the Hearing Officer and a reviewing Court to evaluate IDWR's reasonableness. These are not hypothetical questions as the Library asserts. This is due diligence and an effort to avoid revisiting these matters, in the event a permit is issued following this administrative hearing.

Finally, the Library asks that its deposition be conducted in Blaine County, despite the fact that all hearings in this matter have and will take place in Ada County. *See Amended Scheduling Order and Notice of Hearing*. The Hearing Officer is located in Ada County as are Petitioner's and IDWR's legal counsel. Contrary to The Library's assertions, Petitioner is not a resident of Blaine County, but he does own property there. In my experience, getting a court reporter to Blaine County comes with the heightened expense of travel costs from the Twin Falls area. The expense difference between Blaine County and Ada County is substantial.

The Library's position is also undercut by caselaw interpreting the analogous federal rules.

> The party noticing the deposition is generally entitled to choose the deposition's location, and here, Defendant noticed Plaintiff's deposition in New York. This presumption in favor of the noticing party may be rebutted by the deponent showing that considerations like cost, convenience, and litigation efficiency weigh against the designated location. *Rohan v. Simon Mgmt. Assocs., LLC*, 2025 U.S. Dist. LEXIS 54044, *5, 2025 LX 154456, 2025 WL 1047739

Here, the Library has failed to offer any factual support to rebut the presumption that the deposition must take place where Petitioner noticed it. The witness designation and preparation the Library laments can take place regardless of the location. The

Library provides no factual basis for its contention that simply traveling to Boise to sit for a deposition would impose a financial hardship upon it nor has it asserted any particular scheduling concerns. Indeed, Petitioner has attempted to work with the Library since May 2025 to select a date, prior to its long delayed decision to engage legal counsel. *See* Email attached as Exhibit F. The record also reflects the Library is a well funded non-profit with full time staff and an annual budget in excess of $1 Million. *See* Exhibit A to *Supplement to Petitioner's Motion for Issuance of Subpoena – The Community Library*. Furthermore, as stated in the Subpoena, Petitioner stands ready to pay the customary travel expenses set forth in the Idaho Rules of Civil Procedure. Yet, to date, no request for pre-payment or reimbursement have been made by the Library.

WHEREFORE: Petitioner asks the Hearing Officer to issue the Subpoena *Duces Tecum* as requested in *Petitioner's Motion for Issuance of Subpoena – The Community Library*.

August 20, 2025
By:_____/s/ J. Kahle Becker_____
J. KAHLE BECKER
LAW OFFICES OF J. KAHLE BECKER
Attorney for Petitioner

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 20th day of August, 2025, I caused to be served the foregoing PETITIONER'S RESPONSE TO THE COMMUNITY LIBRARY'S MOTION TO QUASH SUBPOENA to the following persons by email:

Meghan Carter
Attorney for Defendant,
Idaho Department of Water Resources
meghan.carter@idwr.idaho.gov

"IDWR File" file@idwr.idaho.gov

"Tschohl, Sarah" Sarah.Tschohl@idwr.idaho.gov

Samuel L. Linnet, ISBN 9788
ALTURAS LAW GROUP, PLLC
111 N. 1st Avenue, Suite 2I
P.O. Box 2975 Hailey, Idaho 83333
Tel: 208.788.6688
sam@alturaslawgroup.com

/s/ J. Kahle Becker
J. KAHLE BECKER
Attorney for the Petitioner

RECEIVED

Aug 20, 2025

DEPARTMENT OF
WATER RESOURCES

# EXHIBIT A

Order # 1.2019

FIRST AMERICAN TITLE CO.

290126

PERSONAL REPRESENTATIVE'S DEED

PURSUANT to the Last Will and Testament of Mary Hemingway, Alfred Rice, as the qualified Personal Representative of the Estate of Mary Hemingway, under Case No. 14211 of the Magistrate Division of the District Court of the Fifth Judicial District of the State of Idaho, in and for the County of Blaine, hereby conveys to THE NATURE CONSERVANCY of Post Office Box 64, Sun Valley, Idaho (88853), any and all interest the Estate of Mary Hemingway has or may have in the improved and unimproved real property particularly described in Exhibit "A" attached hereto.

EXECUTED This 5th day of October, 1987.

ALFRED RICE
Personal Representative of the
Estate of Mary Hemingway

STATE OF NEW YORK )
) ss.
County of New York )

On this 5th day of October, 1987, before me, the undersigned notary public in and for said state, personally appeared ALFRED RICE, known to me to be the person whose name is subscribed to the foregoing instrument, as Personal Representative of the Estate of Mary Hemingway, and acknowledged to me that he executed the same as such Personal Representative.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

Notary Public for New York
Residing at: 56 W. 70th St.
New York, NY 10023

ELIZABETH FIGHTEEN
Notary Public, State of New York
No. 4718467
Qualified in New York County
Commission Expires November 30, 1988

T15.19

PERSONAL REPRESENTATIVE'S DEED

EXHIBIT "A"

TOWNSHIP 4 NORTH, RANGE 17 EAST, B.M., BLAINE COUNTY, IDAHO.

SECTION 12: Two parcels of land lying within the SE1/4, more particularly described as follows:

PARCEL I

BEGINNING at a point on the North line of Lot 33 of SUN VALLEY SUBDIVISION, which point is N. 54° 05' 30" E., 3279.97 feet from the SW corner of Section 12; thence
S. 66° 17' 00" E., 205.10 feet to the NE corner of said Lot 33; thence
East approximately 540.00 feet to the center of the main channel of the Big Wood River; thence
in a Northwesterly direction following the center of the main channel of the Big Wood River approximately 700.00 feet; thence
West approximately 230.00 feet to a point which is due North of the NE corner of said Lot 33; thence
N. 88° 00' 00" W., 187.89 feet; thence
South 563.21 feet to the TRUE POINT OF BEGINNING.

PARCEL II

BEGINNING at a point which is N. 89° 30' 00" E., 3345.94 feet from the SW corner of Section 12, and which point is on the South line of said Section where said line intersects the North edge of Warm Springs Road; thence
N. 63° 41' 00" W., 40.47 feet along the North edge of Warm Springs Road; thence
Northwest approximately 788.50 feet along the high water mark of the Big Wood River to a NE corner of Lot 38 of SUN VALLEY SUBDIVISION; thence
N. 58° 56' 00" W., 135.30 feet to the other NE corner of Lot 38; thence
N. 15° 18' 00" W., 155.71 feet to the NE corner of Lot 37 of SUN VALLEY SUBDIVISION; thence
N. 06° 03' 00" W., 160.62 feet to the NE corner of Lot 36 of SUN VALLEY SUBDIVISION; thence
N. 04° 19' 00" E., 170.60 feet to the NE corner of Lot 35 of SUN VALLEY SUBDIVISION; thence
N. 07° 43' 00" W., 252.41 feet to the NE corner of Lot 34 of SUN VALLEY SUBDIVISION; thence
N. 32° 01' 00" W., 143.93 feet to an East corner of Lot 33 of SUN VALLEY SUBDIVISION; thence
N. 13° 01' 00" W., 301.40 feet to the NE corner of Lot 33 of SUN VALLEY SUBDIVISION; thence East approximately 540.00 feet to the center of the main channel of the Big Wood
River; thence
South approximately 1812.00 feet to the intersection of the main channel of the Big Wood River and the South line of Section 12; thence
S. 89° 30' 00" W., approximately 45.00 feet along the South line of Section 12 to the TRUE POINT OF BEGINNING.

TOGETHER WITH easements for ingress and egress being fifteen feet (15') in width across Lots 32 and and 33A and twenty-two feet (22') in width across Lot 33B as delineated on the official plat of Lot Line Shift within Lots 32 and 33 of SUN VALLEY SUBDIVISION, recorded as Instrument No. 246077, records of Blaine County, Idaho.

EXCEPTING THEREFROM THE FOLLOWING DESCRIBED PARCELS:

BEGINNING at a point N. 50° 48' 00" E., 52.94 feet from the SE corner of SUN VALLEY SUBDIVISION, according to the official plat on file in the office of the County Recorder of Blaine County, Idaho; thence
N. 50° 48' 00" E., 146.28 feet; thence
N. 27° 39' 00" E., 101.92 feet to the TRUE POINT OF BEGINNING; thence
N. 21° 46' 00" W., 349.35 feet to the Big Wood River; thence
Southeasterly along said Big Wood River approximately 510.50 feet; thence
N. 74° 30' 00" W., 56.20 feet to the TRUE POINT OF BEGINNING.

ALSO BEGINNING at a point N. 50° 48' 00" E., 52.94 feet from the Southeast corner of SUN VALLEY SUBDIVISION as filed; thence
N. 50° 48' 00" E., 146.28 feet along said subdivision; thence
N. 27° 59' 00" E., 101.92 feet along said Subdivision; thence
S. 74° 30' 00" E., 56.20 feet to the Big Wood River; thence
following said River approximately 278.00 feet southerly; thence
N. 63° 41' 00" W., 242.00 feet to the TRUE POINT OF BEGINNING.

# GRANT DEED

**FOR VALUE RECEIVED,** Craig H. Neilsen, an individual, Grantor, of 8620 Titleist Circle, City of Las Vegas, State of Nevada, does hereby grant, bargain, sell and convey unto CHN Properties, LLC, an Idaho limited liability company, Grantee, whose address is 550 Blue Lakes Boulevard North, Twin Falls, Idaho, 83301, the following real property in Blaine County, Idaho, to-wit:

See Exhibit "A" attached hereto

**TOGETHER** with their appurtenances. Grantor covenants and warrants that fee simple title, to the property, is conveyed to Grantee by this Deed, free from all encumbrances except those of record.

**IN WITNESS WHEREOF,** the Grantor, has caused his name to be hereunto subscribed this 26th day of December, 2002.

By: Craig H. Neilsen by JD Sparks
Craig H. Neilsen, by JD Sparks, Attorney-In-Fact

STATE OF IDAHO )
:ss
County of Twin Falls )

**Instrument # 476964**
HAILEY, BLAINE, IDAHO
2002-12-27 01:07:00 No. of Pages: 5
Recorded for : NEILSEN & COMPANY
MARSHA RIEMANN Fee: 15.00
Ex-Officio Recorder Deputy
Index to: GRANT DEED

On this 26th day of December, 2002, before me, a notary public in and for said State, personally appeared **JD Sparks**, known to me to be Attorney-In-Fact for Craig H. Neilsen, an individual, who executed this instrument on behalf of said individual, and acknowledged to me that such individual executed the same.

**IN WITNESS WHEREOF,** I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

TINA F. LUPER NOTARY PUBLIC STATE OF IDAHO

NOTARY PUBLIC FOR IDAHO
Residing at: Twin Falls, Idaho
My commission expires: 5-27-08

**Exhibit A**

A parcel of land located in a portion of Section 12, Township 4 North, Range 17 East, Boise Meridian, Blaine County, Idaho; lying East of the centerline of the Big Wood River shown on record of survey instrument # 300756 and being more particularly described as follows:

Commencing at the Southeast corner of said Section 12. Thence South 89°24'47" West 1823.75 feet along the South boundary of Section 12 to the center of the Big Wood River and being the REAL POINT OF BEGINNING.

Thence along the center of the Big Wood River as follows:

North 02°46'18" West 248.41 feet,
North 26°00'00" East 185.00 feet,
North 24°00'00" West 115.00 feet,
North 54°00'00" West 158.00 feet,
North 65°30'00" West 180.00 feet,
North 24°15'00" West 162.00 feet,
North 05°00'00" West 160.00 feet,
North 18°15'00" East 135.00 feet,
North 33°45'00" East 350.00 feet,
North 18°00'00" East 200.00 feet,
North 09°00'00" East 215.00 feet,
North 12°52'44" West 133.28 feet,
North 49°00'00" West 110.00 feet,
North 30°00'00" West 85.00 feet,
North 71°15'00" West 215.00 feet,
North 24°30'00" West 170.00 feet,
North 49°30'00" East 213.65 feet,

Thence leaving the centerline of the Big Wood River North 90°00'00" East 31.73 feet,

Thence South 17°19'16" West 33.57 feet,

Thence South 52°31'57" West 172.61 feet,

Thence South 29°30'41" East 182.70 feet.

Thence South 74°48'32" East 156.47 feet,

Thence South 37°59'26" East 347.67 feet,

Thence South 02°21'50" West 121.10 feet,

Thence South 22°15'19" West 374.93 feet,

Thence South 24°43'38" West 167.34 feet,

Thence South 45°45'13" West 214.98 feet,

Thence South 05°12'32" East 352.46 feet,

Thence South 63°34'14" East 188.72 feet,

Thence South 89°05'17" West 30.51 feet,

Thence South 62°37'54" East 191.43 feet,

Thence South 24°11'00" East 183.07 feet,

Thence South 45°00'00" West 49.50 feet,

Thence South 24°47'32" West 173.22 feet,

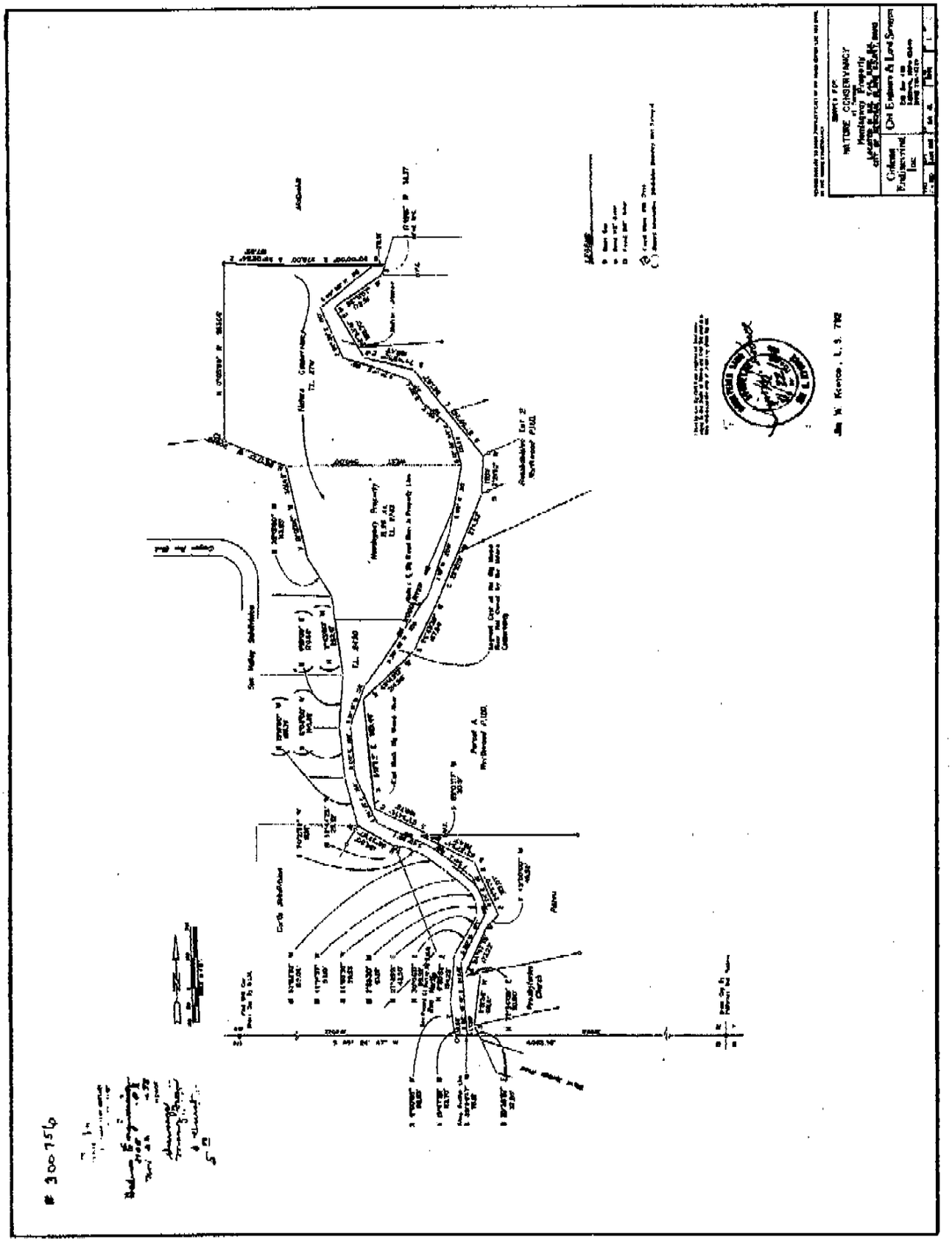
Thence North 78°34'08" East 50.00 feet,

Thence South 06°51'36" West 166.81 feet,

Thence South 25°35'02" East 37.95 feet to a point on the South boundary of Section 12.

Thence South 89°24'47" West 37.59 feet along the South boundary of Section 12 to the REAL POINT OF BEGINNING.

Containing approximately 2.48 acres.



# POWER OF ATTORNEY

I, Craig H. Neilsen, of Las Vegas, Nevada, constitute and appoint JD Sparks as my true and lawful attorney, for me and in my name, place and stead, to do and perform all acts which said attorney in her sole discretion shall deem necessary, expedient or desirable, binding me, as fully to all intents and purposes as I might or could do if personally present, for me and in my behalf, to:

> Enter into and execute all documents, agreements, contracts and instruments and perform all other acts necessary or incidental to the formation of CHN Properties, LLC ( an Idaho limited liability company) including the Articles of Organization and the Operating Agreement.

All persons dealing with said attorney may rely on a photostatic, electrostatic or other similarly produced copy hereof without requiring the production of the original instrument.

Craig H. Neilsen by [illegible] 12/22/02

Craig H. Neilsen / Date

On this 20th day of December, 2002, Craig H. Neilsen directed Connie Wilson, in his presence as well as our own, to sign the foregoing document as "Craig H. Neilsen". Upon viewing the signature as signed by Connie Wilson and in our presence, Craig H. Neilsen declared that he adopted it as his own signature.

Witness

Witness

STATE OF NEVADA )
) ss.
COUNTY OF CLARK )

I, Margene M. Otten, a Notary Public in and for said county and state, do hereby certify that Craig H. Neilsen personally appeared before me and is known or identified to me to be the person whose name is subscribed to the within instrument. Craig H. Neilsen, who being unable due to physical incapacity to sign his name or offer his mark, did direct Connie Wilson to sign the foregoing document as "Craig H. Neilsen". Craig H. Neilsen, after viewing his name as signed by Connie Wilson thereupon adopted it as his own by acknowledging to me his intention to so adopt as if he had personally executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal this 20th day of December, 2002.

Notary Public

Residing at Las Vegas, Nevada

My Commission Expires

July 23, 2006

RECEIVED

Aug 20, 2025

DEPARTMENT OF
WATER RESOURCES

# EXHIBIT B

# Blaine County GIS

## Parcel Information Map

This application will allow you to view parcel information for Blaine County. You can also query and print parcel information, and generate 300 ft. adjoiner lists.

Enter a Parcel Number, Owner, Address, or Legal Descript…

Parcels

Parcel Details

**Parcel Number:** RPK4N17012048B

**Address**: 400 E CANYON RUN BLVD

**Owner**: COMMUNITY LIBRARY ASSOC INC

**Legal Description**: KETCHUM
FR NW SE TL 6731
SEC 12, 4N 17E EXEMPT APP RECEIVED 2025

**Mailing Address**: JENNY EMERY DAVIDSON
EXECUTIVE DIRECTOR
PO BOX 2168 KETCHUM ID 83340-0000

**Total Acres**: 13.96

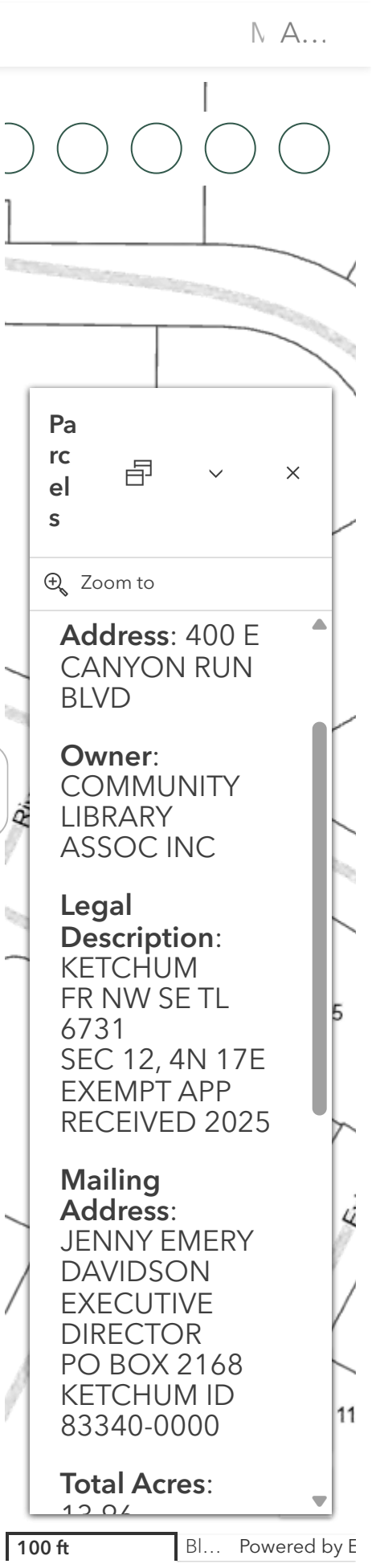
**Tax Code Area**: 003021

**GIS Sq Ft**: 607,282.64

## Additional Information

Assessor Information

Treasurer Information



RECEIVED

Aug 20, 2025

DEPARTMENT OF
WATER RESOURCES

# EXHIBIT C

# AGREEMENT

THIS AGREEMENT is made by and between **JOHN T. HASTINGS, JR.** and **EMBASSY AUDITORIUMS, INC.** (hereinafter collectively referred to as "Hastings"), and **THE NATURE CONSERVANCY OF IDAHO** (hereinafter referred to as "TNC").

WITNESSETH:

WHEREAS, Hastings has filed a joint application for permits with the U.S. Army Corps of Engineers, the Idaho Department of Water Resources, and the Idaho Department of Lands (the "Joint Application") seeking approval of certain stream bank stabilization activities on the Hastings' property adjacent to the Big Wood River in Ketchum, Idaho; and

WHEREAS, Hastings has also filed a required design review application for the same work with the City of Ketchum; and

WHEREAS, pursuant to Idaho Code § 58-104(9), the State Board of Land Commissioners of the State of Idaho possesses the power to regulate and control the use or disposition of lands in the bed of navigable streams to the natural or ordinary high water mark thereof; and

WHEREAS, a quitclaim deed recorded in Blaine County purports to have conveyed certain property to TNC which includes land below the ordinary high water mark of the Big Wood River, and upon which land the stream alteration work is proposed to be undertaken immediately adjacent to the Hastings' property; and

WHEREAS, the City of Ketchum has refused to process the application filed with the City of Ketchum for design review approval without the consent of TNC; and

WHEREAS, the parties hereto desire to allow for TNC's consent in order to allow such work to be accomplished in accordance with the terms and conditions hereof.

NOW, THEREFORE, for and consideration of the mutual covenants contained herein, which the parties agree is good and sufficient consideration, the parties agree as follows:

1. TNC hereby gives its consent for the work to be accomplished as provided in the Joint Application for permits and the design review application. Nothing herein shall be deemed to be construed as TNC's consent to do any additional work on property lying north of the Hastings' property. Hastings agrees to hold TNC harmless from any claim, cause of action, or loss alleged to have occurred or arose as a result of the activities to be undertaken pursuant to the terms of such applications.

2. The City of Ketchum and/or the U.S. Army Corps of Engineers, the Idaho Department of Water Resources, or the Idaho Department of Lands may rely upon this consent in processing the Hastings applications.

3. This Agreement contains the entire agreement of the parties. No promise, inducement, representation or agreement, other than as expressly set forth herein, has been made to or by the parties hereto. The parties warrant that they fully understand, comprehend and agree to the terms and conditions of the Agreement, that their respective attorneys have explained the Agreement to them, and have advised them to enter into it, and they enter into it voluntarily.

4. This Agreement shall be construed under, and interpreted in accordance with, the laws of the State of Idaho.

5. By execution of this Agreement, each person signing on behalf of an entity warrants that this Agreement is executed on behalf of a valid legal entity; that such entity has the full right and authority to undertake any action contemplated by this Agreement; that the execution of this Agreement by the signatory has been duly and properly authorized by the party on whose behalf said Agreement is executed in accordance with all applicable laws, regulations, agreements and procedures governing the authority of such person or entity to execute this Agreement on behalf of such party; and that the consent of all persons or entities whatsoever necessary to the due execution of this Agreement has been obtained.

6. This Agreement and the terms and conditions hereof shall bind and inure to the benefit of the parties' respective executors, administrators, heirs, predecessors, successors, assigns, employees, servants, principals, partners, partnerships, insurers, agents, representatives, attorneys, consultants and beneficiaries.

7. The parties agree to cooperate and execute such other and further instruments as may be deemed reasonably necessary to accomplish the purposes contained herein.

8. If a suit or action is instituted to enforce any of the terms of this Agreement, the prevailing party shall be entitled to recover all costs and attorney's fees from the non-prevailing party.

9. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. Facsimile signatures shall be deemed enforceable in the same manner as an original signature.

"HASTINGS"

Embassy Auditoriums, Inc.

Dated: _____

By: _____
Name: John T. Hastings, Jr.
Title: _____

Dated: _____

_____
Name: John T. Hastings, Jr.

"TNC"
The Nature Conservancy of Idaho

Dated: _____

By: _____
Name: _____
Title: _____

f:\lm\speagr\consent agrmt.hustings_TNC

RECEIVED

Aug 20, 2025

DEPARTMENT OF
WATER RESOURCES

# EXHIBIT D

# IDAHO WATERWAYS NAVIGABILITY STUDY

STEVENS HISTORICAL RESEARCH ASSOCIATES

# IDAHO WATERWAYS NAVIGABILITY STUDY

Prepared for Idaho Department of Lands Contract No. 18-403

by

STEVENS HISTORICAL RESEARCH ASSOCIATES
Amalia Baldwin, M.S.; HannaLore Hein, M.A.; Jennifer Stevens, PhD.; Dane Vanhoozer, M.A.

Completed August 20, 2018

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# Introduction

In Fall 2017, the Idaho Department of Lands hired SHRA to evaluate evidence for the navigability of 125 waterbodies in Idaho prior to July 3, 1890, the date of Idaho Statehood. SHRA did not evaluate the navigability of the Snake River or the Henry's Fork of the Snake River, listed on the original Request for Proposals for this project, due to a conflict of interest. SHRA did evaluate several waterbodies not on the original list at the request of the Department of Lands. SHRA pursued this investigation by dividing the state into 16 basins and conducting research, basin by basin, from north to south, and west to east. The basin approach allowed SHRA to gather research material on a regional basis and to understand the historic context of water systems in addition to the histories of individual waterbodies. SHRA began research in the Kootenai Basin, and proceeded south through the Spokane, Salmon, Weiser, Payette, and Boise Basins before moving west to east across the lower part of Idaho from the Owyhee Basin through the Bruneau, Salmon Falls Creek, Wood, Little Wood, Lost, Willow/Blackfoot/Portneuf, Henry's Fork/Teton, and Bear River Basins.

# Methodology

SHRA began the research in each basin by reviewing secondary source materials relevant to the area. These materials included regional, county, and local histories as well as studies of mining, logging, and transportation. Often these resources revealed information about historic waterbody names, former nearby local communities, and regional economic drivers. Using these sources as a jumping off point, SHRA then explored published fur trapper journals, historic newspapers, legal databases, and published government reports from relevant agencies such as the United States Geological Survey (USGS). SHRA accessed these materials through digital archives, databases, and readily accessible published materials.

SHRA also examined all General Land Office (GLO) original survey plats for all waterbodies under review. The American government dispatched GLO surveyors to inventory and divide land for private settlement following execution of the 1846 Oregon Treaty, which established the boundary between the United States and Great Britain at the 49$^{th}$ parallel. The government directed these surveyors to first examine lands that held mineral or agricultural promise, followed by remote and rougher lands. Uncompromising terrain often was left completely unexamined.

The survey process commenced once the GLO contracted with a surveyor and several assistants, often to survey several townships in a region. The survey team signed contracts which specified not only which townships they would evaluate, but also whether they were responsible for surveying exterior township lines, interior subdivision lines, or both. Moreover, contracts stipulated which set of GLO-issued instructions to follow while conducting the survey. Instructions provided details to surveyors on which types of waterbodies to meander among other specifications. To conduct the surveys, surveyors measured the landscape using chains. Each chain was 66 feet long and composed of 100 links. Each link was therefore just under eight inches long. Many of the GLO instructions required surveyors to meander rivers that were three chain widths (198 feet) or greater in width. When surveyors did not meander rivers they occasionally noted the width in chains or links.

If, based on the relevant GLO instructions, a surveyor determined he needed to meander a waterbody, he would survey the high water line of the body in the township describing its course and noting tributaries, depths, and other required details in his field notes. Following the survey, if a surveyor determined a waterbody was navigable, the surveyor would divide the banks of the waterbody into lots, reserving the bed of the waterbody to the state or territory, based on navigability law. (Navigability law declared that states own the beds and banks of navigable waterbodies).

By taking this GLO's charge into consideration, examining the plats of all waterbodies under review, and considering the instructions the surveyors operated under, SHRA assessed how the GLO and its surveyors perceived each body in this study. SHRA looked specifically to see whether the GLO had meandered the waterbodies as well as whether the resultant plats had reserved the lands adjacent to the waterbodies from public sale through the lotting process. Both of these steps indicated perceived navigability. GLO surveyors also often noted bridges, roads, and ferries on their survey plats.

Field notes of the surveys occasionally contained descriptions of waterbodies and SHRA skimmed many of these notes to obtain additional information on what the surveyors saw while marking and measuring survey lines. For brevity, when referring to plats the report uses "T" to stand for township and "R" to stand for range. Thus, Township 37 North, Range 1 West of the Boise Meridian is T37N R1W in the report.

SHRA recorded all relevant data in spreadsheets that contained separate tabs for each waterbody, organized for researchers to record evidence of log drives, watercraft, GLO observations, legal cases, roads/trails, and bridges/ferries. These spreadsheets became the tables in the report below, organized alphabetically by rivers, then lakes, within each basin.

## Analytical Approach

SHRA researchers considered the following questions while reviewing source material:

- Prior to and on the date of Idaho's admission to statehood, was the waterbody used as a highway for commerce? Specifically, did early residents use it to transport goods or to conduct log drives?
- Did Native Americans and/or early settlers use the waterbody for transportation or did they primarily use other means of transportation such as roads, trails, or railroads?
- Did the waterbody appear to present an obstacle to transportation such that settlers required bridges, ferries, or fording to cross it?
- Did GLO surveyors meander the waterbody, indicating that they were following agency-issued instructions related to navigable waters? Did they remark on the waterbody?
- When lands adjacent to the waterbody passed out of the public domain, was acreage along the banks excluded and/or reserved for the State of Idaho, or did the United States issue patents for lands under the water?
- Have the courts ever taken up or determined the navigability status of the river/lake?

SHRA approached this research with an eye to the fact that historical evidence may be contradictory. In order to assess and analyze such contradictions, SHRA tracked all evidence of log drives, watercraft use, or alternate modes of transportation that researchers discovered, rather than stopping at a single mention of one historic event. SHRA included ferries in the bridge section of the report when locals used the ferries to cross a river rather than to travel up and down it. If ferries traveled up and down a waterbody, SHRA listed them in the watercraft section. In many cases, the evidence for use of a waterbody was meager. Since many of the waterbodies in this study are located in remote and sparsely populated areas of the state, they do not appear in widely available historic documents. In these situations, the GLO plats and field notes were often the only sources of information available to evaluate historic navigability.

## Reporting

Once SHRA had reviewed all waterbodies in a basin using the methods described above, SHRA researchers summarized the evidence for navigability for each body. In the report below, each summary concludes with an underlined determination of the waterbody's historic navigability. It is important to note that these conclusions are preliminary and are based on the research described above; more comprehensive and targeted research at local, county, and state archives would likely result in additional information that could alter these assessments. SHRA does not intend for these conclusions to be definitive; they are based solely on the evidence uncovered through widely available records in a short period of time.

In the report below, SHRA has included the summaries and tables for each of the 124 waterbodies evaluated for this study. SHRA has also created a table summarizing the navigability findings of this study. At the end of the report, there is an index providing bibliographic details for SHRA's "NAV" source numbers. SHRA reviewed 2,109 documents for this study.

# Big Wood River

| Big Wood River | | | | |
|---|---|---|---|---|
| **Question** | **Details** | **Date** | **Source** | **Source Type** |
| **Were there log drives?** | There were three sawmills in the Wood River Valley in June 1881: one above Ketchum, one above Gimlet, and another in a gulch near Gimlet. A fourth was being erected south of Ketchum. It is unclear where the timber for these mills originated. | 1881 | NAV1976 | newspaper |
| | In November 1881 there were 10 railroad tie camps located along the Wood River. The ties were being stored along the banks of the Wood River to be floated down that river in spring 1882 for use on the railroad line between Hailey and Little Wood River. | 1881 | NAV1977 | newspaper |
| | The Oregon Short Line brought in railroad ties from the east for construction of the Wood River Branch line, but expected to use ties floated down the Wood River for the construction of the main line from Shoshone to Boise. | 1882 | NAV1982 | newspaper |
| | Logs for rail ties were floated down the Wood River in the spring and summer of 1882. The volume of logs clogged the river between Galena an d Baker Creek for weeks until the water level dropped and the logs made it to Bellevue. | 1882 | NAV1973, 93-94 | secondary literature |
| | There were railroad ties in the river in spring 1883. They got caught in a boom near the “old sawmill” between Hailey and Bullion. The railroad company also had a boom on the river. | 1883 | NAV1958 | newspaper |
| | Mr. Rowe constructed a sawmill at the mouth of Croy Gulch across the river from Hailey in 1883. Rowe had his first log drive in the river that fall (250,000 feet) and planned more log drives during the winter of 1883-84. Rowe had leased lands 25 miles upstream of Hailey to supply his drive. (NAV1956, NAV1957) Rowe floated logs marked with a cross (NAV1949) down the Big Wood River to his sawmill in 1884. (NAV1949, NAV1952, NAV1960, NAV1961, NAV1962, NAV1963) Rowe’s September 1884 drive of cord wood came from near Galena, 29 miles upstream of Hailey. (NAV1962) | 1883-1884 | NAV1949, NAV1952, NAV1956, NAV1957, NAV1960, NAV1961, NAV1962, NAV1963 | newspaper |
| | There were log drives on the Big Wood in the winter and early spring of 1884, but lumbermen paused the drives during the high runoff in May. | 1884 | NAV1955 | newspaper |

| Big Wood River | | | | |
|---|---|---|---|---|
| **Question** | **Details** | **Date** | **Source** | **Source Type** |
| | A deep snowpack during the winter of 1883-1884 allowed for frequent log drives on the Wood River the following spring thanks to heavy runoff. F.H. Rowe planned for four or five drives down the Big Wood during 1884. | 1884 | NAV1953 | newspaper |
| | There was a large log drive in the Big Wood near Hailey in September 1884. The drive had started in late July near Galena and carried 1.25 million feet of sawlogs, 100,000 feet of mining timber, 250,000 feet of small pine logs, and a variety of smaller timbers for lath, most of which were to be processed at the Hailey sawmill. Some of the logs would be let through the Hailey boom to travel further downriver to their destinations. The log drive also had more than 1,000 cords of pine and fir to be sold directly to the Hailey market. | 1884 | NAV1947 | newspaper |
| | There were watchmen at the Croy Gulch bridge in June 1884 to prevent logs from jamming against and destroying the bridge. | 1884 | NAV1948 | newspaper |
| | A storm in December 1887 insured enough water in the Wood River to supply logging and cord wood drives. | 1887 | NAV856 | newspaper |
| | Frank Gooding floated pole pines as far as 30 miles down the Big Wood to the Philadelphia Company, which converted the wood to charcoal for smelting. Gooding's use of the river happened prior to 1887. | 1887 | NAV1954 | newspaper |
| | A log drive of cord wood arrived in Hailey in August 1888. Half of it was to be removed from the river in Hailey and the rest was to travel downstream to Bellevue. | 1888 | NAV1964 | newspaper |
| | There was a log drive in the river near Ketchum in 1890. | 1890 | NAV1959 | newspaper |
| | A log drive from the upper Wood River to the Hailey sawmills was proposed in 1890. | 1890 | NAV854 | newspaper |
| | A log drive traveled a mile or two down the Wood River to the Bullion Street dam at Hailey in 1890. | 1890 | NAV1932 | newspaper |
| | A log drive down the Wood River began near Galena in May 1890. | 1890 | NAV1934 | newspaper |
| | There was a log boom in the river at Ketchum in 1894. The Union Pacific did not want logs released from this boom, fearing they would harm the railroad bridge. | 1894 | NAV1945 | newspaper |

| Big Wood River | | | | |
|---|---|---|---|---|
| **Question** | **Details** | **Date** | **Source** | **Source Type** |
| **Is there evidence of watercraft?** | A lumber camp used a raft to ferry lumbermen across the Big Wood in 1882. The newspaper report on this raft did not state whether the raft traveled down the river with the lumber. | 1882 | NAV1965 | newspaper |
| | A boat navigated a three-mile stretch of the Big Wood in 1897. It is not clear which stretch of the river this was, as the only details were that the boat navigated a canyon. | 1897 | NAV1946 | newspaper |
| | | | | |
| **Did the GLO surveyors meander the banks?** | With a few exceptions, the GLO surveyed townships containing the Big Wood River between 1877 and 1884. Surveyors were operating under 1864 and 1881 GLO instructions, both of which directed them to meander both banks of a navigable stream or the right bank only of a non-navigable stream that was an artery of communication. GLO surveyors did not meander the Big Wood River through any townships, indicating that they did not consider it to be navigable or an artery of communication. The GLO surveyors also did not meander the Big Wood in the two townships surveyed after 1884 (one in 1909 and one in 1922). At these later dates, GLO instructions directed surveyors to meander navigable streams and streams wider than three chain widths. Field notes from several surveys indicate that the Big Wood varied from between one and three chain widths (NAV1889, 65; NAV1888, 36; NAV1890, 51) though may have been five chain widths in a swamp. (NAV1890, 53) The GLO plats did not divide the banks into government lots, further evidence that the agency did not consider the river navigable. Based on field notes, surveyors appeared to find the river most suitable for power, manufacturing, and irrigation purposes, not transportation. (NAV1888, 51; NAV1890, 76; NAV1889, 70) Surveyor Baker described the Big Wood as a “large, fine stream” with “excellent facilities for irrigation” in 1884. (NAV1889, 70) Note: the river was not surveyed above T5N R17E. | 1877-1884; 1909; 1922 | NAV1887<br>NAV1886<br>NAV1885<br>NAV1883<br>NAV1882<br>NAV1890<br>NAV1881<br>NAV1880<br>NAV1879<br>NAV1878<br>NAV1877<br>NAV1876<br>NAV713<br>NAV712<br>NAV714<br>NAV715<br>NAV1889<br>NAV716<br>NAV717<br>NAV1874<br>NAV1888<br>NAV1875 | GLO plat |

| Big Wood River | | | | |
|---|---|---|---|---|
| **Question** | **Details** | **Date** | **Source** | **Source Type** |
| **Are there any court cases?** | In *Campion v. Simpson*, 104 Idaho 413 (1983) the primary question was whether the Big Wood River was navigable south of the Warm Springs Bridge in Ketchum. The court ruled yes, not only because of the evidence (logging, tubing, fishing, and boating) but also because of applicable law. (NAV1859, 9) | 1983 | NAV1859 | legal source |
| | | | | |
| **Are there railroads or roads paralleling the waterbody?** | Peter Skene Ogden described his journey along the Big Wood as being on a "road hilly but not Stony." (88) | 1825 | NAV1395, 87-88 | primary source |
| | In August 1834, naturalist John Kirk Townsend followed an Indian trail along the Big Wood River. | 1834 | NAV1967, 88-91 | primary source |
| | Ketchum was reportedly located at the junction of many Indian trails including trails that traveled north and south (which would have been along the Wood River.) | 1860s? | NAV1980 | newspaper |

| Big Wood River | | | | |
|---|---|---|---|---|
| **Question** | **Details** | **Date** | **Source** | **Source Type** |
| | The GLO plats did not show a continuous road along the banks of the Big Wood River because the surveys were completed at varied times. The GLO surveyed the upstream and downstream stretches of the river in the 1880s, while the middle sections of the river were surveyed in the 1870s. The 1880s plats showed the Bellevue Road along the right bank of the river along its lower reaches and picked the road up again in T2N R18E, where Bellevue was located. These plats also showed roads continuing north from that township along both banks to the headwaters. The 1870s plats, however, did not show any roads along the river, since the GLO surveyed these townships prior to settlement. | 1877-1922 | NAV1887<br>NAV1886<br>NAV1885<br>NAV1883<br>NAV1882<br>NAV1890<br>NAV1881<br>NAV1880<br>NAV1879<br>NAV1878<br>NAV1877<br>NAV1876<br>NAV713<br>NAV712<br>NAV714<br>NAV715<br>NAV1889<br>NAV716<br>NAV717<br>NAV1874<br>NAV1888<br>NAV1875 | GLO plat |
| | John Hailey's Utah, Idaho, and Oregon Stage Company served residents along the Wood River from around 1880 until the railroad arrived in 1883. (153-154) The Oregon Short Line reached Hailey in 1883 and Ketchum in 1884. Miners, who had originally shipped ore out by wagon, began shipping ore out by rail from Ketchum and Hailey. (154) However, daily stage service and wagons continued to serve Galena. | 1880 | NAV950, 153-154 | secondary literature |

| Big Wood River | | | | |
|---|---|---|---|---|
| **Question** | **Details** | **Date** | **Source** | **Source Type** |
| | The Wood River mining rush of 1880 brought about a new Blackfoot - Wood River stage and freight route. (162) | 1880 | NAV950, 162 | secondary literature |
| | The mail service went from Arco to Bellevue, then up the Wood River to Galena three times a week by 1881. That same year, there was a daily stage from Blackfoot to Hailey and possibly Galena and a stage run between Winnemucca, Boise, and Hailey. | 1881 | NAV1774, 29 | secondary literature |
| | In 1881 a toll road started at Gimlet and went up the Wood River. | 1881 | NAV1976 | newspaper |
| | Freighters hauled Galena's ore over a "primitive road" by 16-horse wagons to Ketchum in 1883. | 1883 | NAV1774, 73 | secondary literature |
| | The Union Pacific (Oregon Short Line) built a rail line up the Wood River. It reached Hailey in 1883 and Ketchum in 1884. | 1883-1884 | NAV1774, 56-58 | secondary literature |
| | The Hailey-Ketchum stageline carried passengers and freight between the two riverside towns in 1884. | 1884 | NAV1948 | newspaper |
| | Rail replaced freight wagons as the primary vehicle to transport ore out of the Wood River Valley. If the railroad had not begun cutbacks in the mid-1880s, the line may have gone as far as Galena. | mid-1880s | NAV1973, 92 | secondary literature |
| | There was a road, passable by teams and pack animals, between Ketchum and Galena in 1890. | 1890 | NAV1934 | newspaper |
| | | | | |
| **Are there bridges across the body?** | Pioneer George Goodhart crossed the Big Wood River on the emigrant wagon road in the 1860s. Goodhart did not describe the crossing, whether it was a bridge or a ford. He was traveling between Bradleys Pass (from the Little Wood) to Camas Prairie. (257) | 1860s | NAV1770, 257 | primary source |
| | The Emigrant Road crossed the Wood River six miles south of Bellevue. | 1860s | NAV1015, 28; NAV1974 | secondary literature |

| Big Wood River | | | | |
|---|---|---|---|---|
| **Question** | **Details** | **Date** | **Source** | **Source Type** |
| | GLO surveyors noted bridges across the Big Wood in sections T3N R18E, T4N R18E, and T4N R17E. Survey plats also showed roads crossing the river in T5S R16E, T6S R13E, T1N R18E, T2N R18E, and T5N R17E but did not describe if the crossing was by bridge, ford or ferry. Field notes did not provide further descriptions. | 1877-1922 | NAV1887<br>NAV1886<br>NAV1885<br>NAV1883<br>NAV1882<br>NAV1890<br>NAV1881<br>NAV1880<br>NAV1879<br>NAV1878<br>NAV1877<br>NAV1876<br>NAV713<br>NAV712<br>NAV714<br>NAV715<br>NAV1889<br>NAV716<br>NAV717<br>NAV1874<br>NAV1888<br>NAV1875 | GLO plat |
| | A bridge spanned the Wood River at Gimlet in 1881. | 1881 | NAV1976 | newspaper |
| | A new bridge and an old bridge crossed the Wood River at Hailey in 1883. | 1883 | NAV1958 | newspaper |
| | High water threatened the bridges at Croy Gulch and Deer Creek in spring 1884. | 1884 | NAV1955 | newspaper |
| | The Wood River Times mentioned three bridges across the Wood River in an 1884 article: one at Croy Gulch, one between Bellevue and Broadford, and one 10 miles below Bellevue. High water during that spring made the Broadford Bridge impassable and forced pedestrians to wade the approach to the Croy Gulch Bridge. | 1884 | NAV1948 | newspaper |

| Big Wood River | | | | |
|---|---|---|---|---|
| **Question** | **Details** | **Date** | **Source** | **Source Type** |
| | A railroad bridge spanned the Wood River at Gimlet in 1887. | 1887 | NAV852 | newspaper |
| | Heavy snow during the winter of 1889-1890 broke four bridges across the Wood River between Ketchum and Galena. Other bridges also needed maintenance following spring runoff. | 1890 | NAV854 | newspaper |
| | The Bullion Street Bridge crossed the Big Wood at Hailey. | 1890 | NAV1951 | newspaper |
| | A bridge crossed the Wood River "above Point of Rocks, between Gimlet and Ketchum" in 1890. | 1890 | NAV1934 | newspaper |
| | A wagon bridge spanned the Wood River a half mile north of the Toponis railroad station in 1896. The bridge had two spans. | 1896 | NAV1222, 165 | federal docs (published) |
| | | | | |
| **Other Notes** | | | | |
| | Alexander Ross called the Big Wood River "Riviere aux Malades" because 37 members of his party got sick after eating a beaver along this river. (276-277) | 1818? | NAV1387, 276-278 | primary source |
| | In September 1864 an emigrant noted that the Big Wood was 20 feet wide at the point where he camped, but had been very scattered and shallow where he had encountered it the day before. | 1864 | NAV1973, 43 | secondary literature |

| Big Wood River | | | | |
|---|---|---|---|---|
| **Question** | **Details** | **Date** | **Source** | **Source Type** |
| | GLO surveyor Allen Thompson labeled the river the "Malade" on his 1877 and 1879 surveys. His later survey in 1882 labeled the river the "Big Wood." All plats dated after 1882 also labeled the river Big Wood. | 1877-1922 | NAV1887<br>NAV1886<br>NAV1885<br>NAV1883<br>NAV1882<br>NAV1890<br>NAV1881<br>NAV1880<br>NAV1879<br>NAV1878<br>NAV1877<br>NAV1876<br>NAV713<br>NAV712<br>NAV714<br>NAV715<br>NAV1889<br>NAV716<br>NAV717<br>NAV1874<br>NAV1888<br>NAV1875 | GLO plat |
| | A visitor to the Big Wood in 1877 reported that the "river wasn't knee deep." | 1877 | NAV1943 | newspaper |
| | By 1889, the Big Wood was "sometimes called the Malade" below its confluence with the Little Wood, eight miles from the Snake. | 1889 | NAV1201, 83; NAV1551, 28-29 | federal docs (published) |

| Big Wood River | | | | |
|---|---|---|---|---|
| **Question** | **Details** | **Date** | **Source** | **Source Type** |
| | The USGS's 11th Annual Report stated that in June 1889 the Big Wood had a flow of 300 second-feet at Hailey but was almost dry at its confluence with the Little Wood River, eight miles above the Snake. There was little irrigation taking place on the river, meaning that most water was lost to the lava beds. | 1889 | NAV1201, 83 | federal docs (published) |
| | The Big Wood was flowing at 1500 cubic feet per second in May 1890. | 1890 | NAV1944 | newspaper |
| | Project managers initiated construction of the Magic Reservoir by placing an earthen dam at the confluence of the Big Wood and Malad rivers in 1907. Workers completed the project in 1910. The Magic Reservoir aided irrigation in the region. | 1907 | NAV1015, 117 | secondary literature |
| **Non-Navigable Section Notes** | | | | |
| | Alexander Ross took his party up the river to the divide between the Big Wood and the Salmon via horseback. (278) Ross did not mention watercraft. | 1818? | NAV1387, 276-278 | primary source |
| | Peter Skene Ogden described the R. Malade (Big Wood) as "altho' wide is not deep."(88) He traveled down the river on horseback. | 1825 | NAV1395, 87-88 | primary source |
| | The mining boom along the Wood River used freight wagons and eventually rail to haul ore out and supplies in. There was no mention of the river being used for transportation during this time period. | 1880s | NAV1774, 53-58 | secondary literature |
| | Lumbermen use an ox-cart and wagon to haul logs for a boom across the Wood River near Bellevue in 1882. | 1882 | NAV1950 | newspaper |
| | Logs for the sawmill at Hailey arrived by river drives and by wagon in 1884. | 1884 | NAV1955 | newspaper |
| | Freighters hauled the first shipment of ore out of the Wood River Valley from Hailey in 1881. The shipment of 22,000 pounds of silver and lead to the railroad at Blackfoot required six wagons. | 1881 | NAV1015, 8 | secondary literature |

RECEIVED

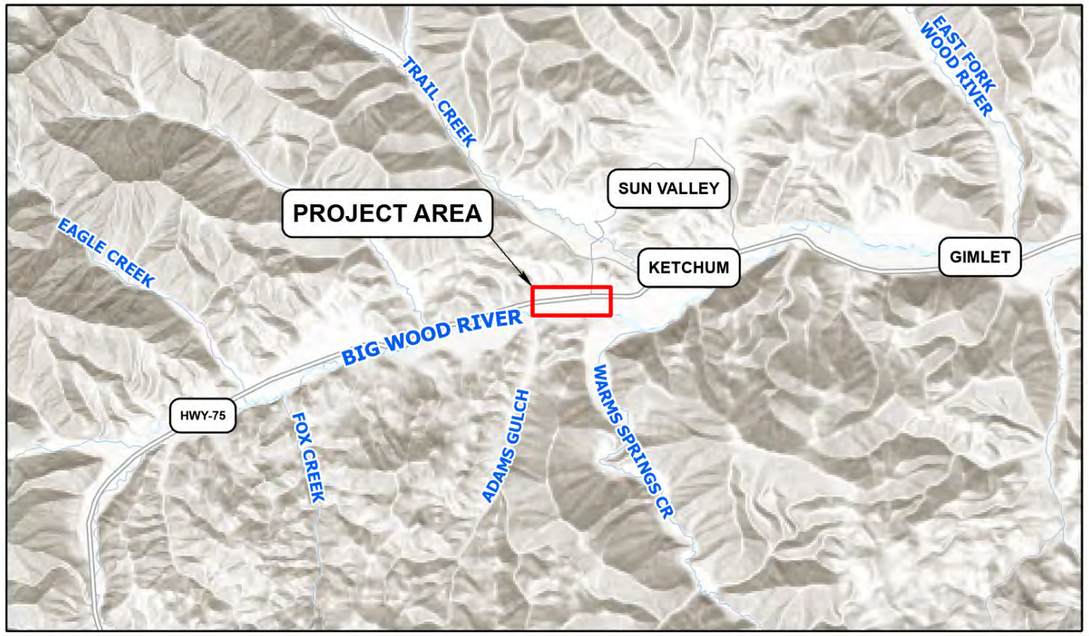
Aug 20, 2025

DEPARTMENT OF
WATER RESOURCES

# EXHIBIT E

# BIG WOOD RIVER - NORTHWOODS REACH

## CONCEPTUAL DESIGN PLANS




### SHEET LIST:

| SHEET NUMBER | SHEET NAME |
|---|---|
| 1 | COVER PAGE |
| 2 | BACKGROUND, GOALS, AND METHODS |
| 3 | SITE PLAN AND EXECUTIVE SUMMARY |
| 4 | PLAN VIEW - 1 |
| 5 | PLAN VIEW - 2 |
| 6 | PLAN VIEW - 3 |
| 7 | PLAN VIEW - 4 |
| 8 | WOOD DETAILS - 1 |
| 9 | WOOD DETAILS - 2 |
| 10 | WOOD DETAILS - 3 |
| 11 | PROPOSED HYDRAULIC CONDITIONS - 1 |
| 12 | PROPOSED HYDRAULIC CONDITIONS - 2 |
| 13 | PROPOSED HYDRAULIC CONDITIONS - 3 |
| 14 | PROPOSED HYDRAULIC CONDITIONS - 4 |

### PREPARED FOR:

**TROUT UNLIMITED HEMINGWAY CHAPTER**

TROUT UNLIMITED

### PREPARED BY:

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CLIENT: TROUT UNLIMITED
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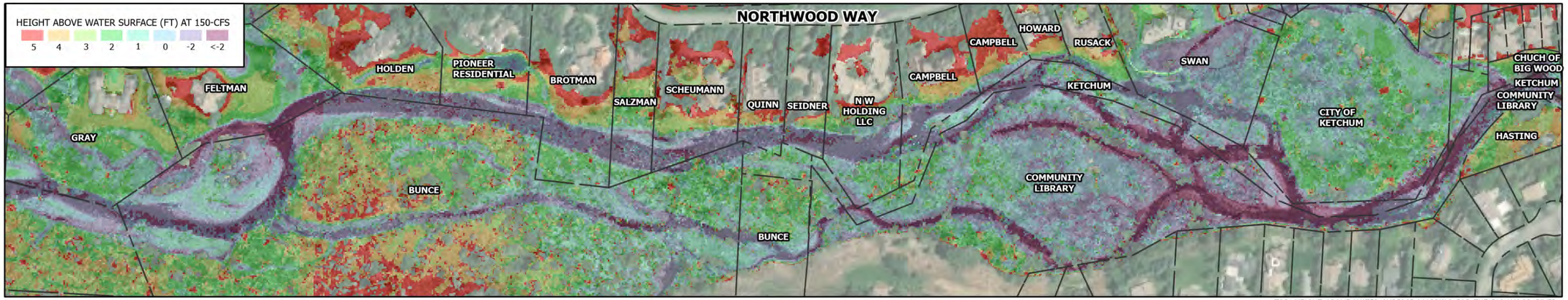
BIG WOOD RIVER - NORTHWOODS REACH
CONCEPT DESIGN
COVER PAGE




*TOP: HEIGHT ABOVE WATER SURFACE MAPPING FOR THE BIG WOOD RIVER - NORTHWOODS REACH. TAX LOTS AND OWNERSHIP SHOWN FOR REFERENCE.*

# PROJECT BACKGROUND

The 1.8-mile Northwoods Reach of the Big Wood River runs from Adams Gulch to Warm Springs through the northern portion of the City Ketchum.

The Big Wood River Atlas (Cardno and Ecosystem Sciences 2020) characterizes this reach (identified as Reach 5 in the Atlas) as containing high value floodplain in a highly developed area. The Atlas recommends actions to protect and maintain existing floodplain function and restoration priorities to expand floodplain utilization, including actions to restore natural channel process where historic channel occupation is observed. In particular, the Atlas identifies the western floodplain occupied in part by the Community Library as a unique and high priority opportunity to restore floodplain connectivity and stream channel processes in a reach that has been widely impacted by the presence of bank hardening along the eastern bank.

**Reach Project Potential**

The western floodplain through the upper sections of this reach are currently undeveloped and subject to some protection in the Northwood Natural Area. These areas serve a high value in floodplain function upstream of a highly developed zone. Efforts should be made to maintain and expand protected status, as well as restore channel processes in areas of prior channel occupation.

*Excerpt from Big Wood River Atlas for Reach 5 regarding floodplain reconnection in the Northwoods Reach (Cardno / Ecosystem Sciences 2020)*

Homes along the southeastern limits of the reach have experienced bank erosion associated with both historic tree removal and then channel migration experienced during the 2017 flood event. Channel changes in the reach resulted in bed aggradation, elevated surface water, and groundwater levels that are affecting riverside properties.

# PROJECT GOALS AND OBJECTIVES

The overall goal for the Northwoods Conceptual Design is to provide a reach-scale approach to activate the western floodplain with the intent of reducing flooding and hydraulic forces along the eastern streambank and reduce the need for non-deformable erosion and scour protection (ie. rock). Increasing streamflow in the western floodplain not only helps protect nearby property owners, but promotes natural river processes, off-channel habitat complexity and supports secondary objectives such as improved groundwater infiltration, stream temperature regulation, and provides fish cover from predation. Actions are intended to work together to restore natural channel process and meet project objectives.

**Reach-Scale and Site-Specific design objectives include the following:**

1. Increase connectivity to the western floodplain to reduce velocity and erosive forces in the main channel.
2. Promote physical habitat complexity and evolution of off-channel aquatic habitats throughout the project reach.
3. Increase shallow groundwater infiltration (aquifer recharge) through greater floodplain inundation and improved flood storage.
4. Reduce flood extents, stream velocities, and erosive forces adjacent to properties along the eastern streambank.
5. Relocate riprap at the Hasting property to expand hydraulic conveyance and reduce velocities along the western streambank upstream of Warm Springs Bridge. Add wood along river edge to improve local fish habitat.

The project provides a balanced cut-fill approach that reuses excavated materials and minimizes the need to haul and dispose of materials off-site.

# METHODS

The Northwoods Reach Conceptual Design builds upon the geomorphic assessment documented in the 2020 Big Wood Atlas to meet reach-scale goals and objectives in support of on-going river management and restoration strategies in the Big Wood watershed. The conceptual design supports this vision through a comprehensive review of opportunities and constraints identified within the reach. Recommended restoration actions are supported by development of a detailed terrain model, on-site field reconnaissance to confirm site conditions and assess constructability, and 2-Dimensional hydraulic modeling to evaluate the effectiveness and expected hydraulic response of proposed actions. Specific steps completed by ESA in support of the concept design include the following:

## TERRAIN DEVELOPMENT

In May 2021, ESA contracted with NS Consulting to collect orthophotogramic imagery via drone overflight and develop a digital surface model (DSM). The resolution of the survey is adequate for analyzing and depicting reach-scale hydraulic patterns, but site-scale features such as deep pools and elevations beneath dense tree canopy may not be fully captured by this process. Therefore, targeted ground-based topographic and bathymetric survey may be needed to advance the design.

## CHARACTERIZE EXISTING REACH HYDRAULICS

The DSM was used to develop a 2-Dimensional HEC-RAS Hydraulic Model of the project reach. The intent of the existing conditions model was to simulate a range of flows between summer low-flow and flood-flow conditions to identify primary and secondary overflow pathways. The variability and patterns of reach-scale and site-scale hydraulics is used as the basis of restoration actions and recommendations. Calibration of the hydraulic model was completed to simulate conditions observed during the drone flight. Using the date of the drone flight and the downstream USGS stream gage at Ketchum, it was determined the streamflow at the time of survey represented a low summer flow of approximately 150 cubic feet per second.

## FIELD RECONAISSANCE

Field reconnaissance was performed to ground-truth current conditions and support design recommendations to improve floodplain process and create habitat where opportunities were observed from an initial desktop evaluation of data. Field observations were made to document conditions such as sediment composition, flood indicators, bed and bank erosion, large wood presence, and overflow pathways.

## DESIGN ELEMENTS & PROJECTED RIVER RESPONSE

Restoration actions are identified to meet project objectives based on an evaluation of hydraulic modeling results and our field investigation. Actions include:

1. Engineered Log Jams (ELJs) to split flow into the primary side channel near the western valley wall;
2. Targeted grading to activate the western floodplain more frequently;
3. Floodplain Roughness Jams to maintain flow along the western valley:
4. Beaver dam analogs (BDAs) to retain water and sediment in off-channel floodplain and improve groundwater infiltration.
5. Biorevetment and berm to protect the Swam property from bank erosion and flooding;
6. Biorevetment and floodplain bench to improve habitat and reduce velocity at Hastings property.

To analyze the effectiveness of the design, restoration actions were built into the hydraulic model and results compared to the no-project alternative. These results are provided as part of this plan to demonstrate the projects potential to activate the western floodplain, support aquatic habitat objectives, and reduce the magnitude of hydraulic forces action upon the east streambank. The wood structures described in this concept design are intended to a have a lifespan of approximately +/- 50 years and support a long-term shift in river process that sustains benefits and restoration trajectory.

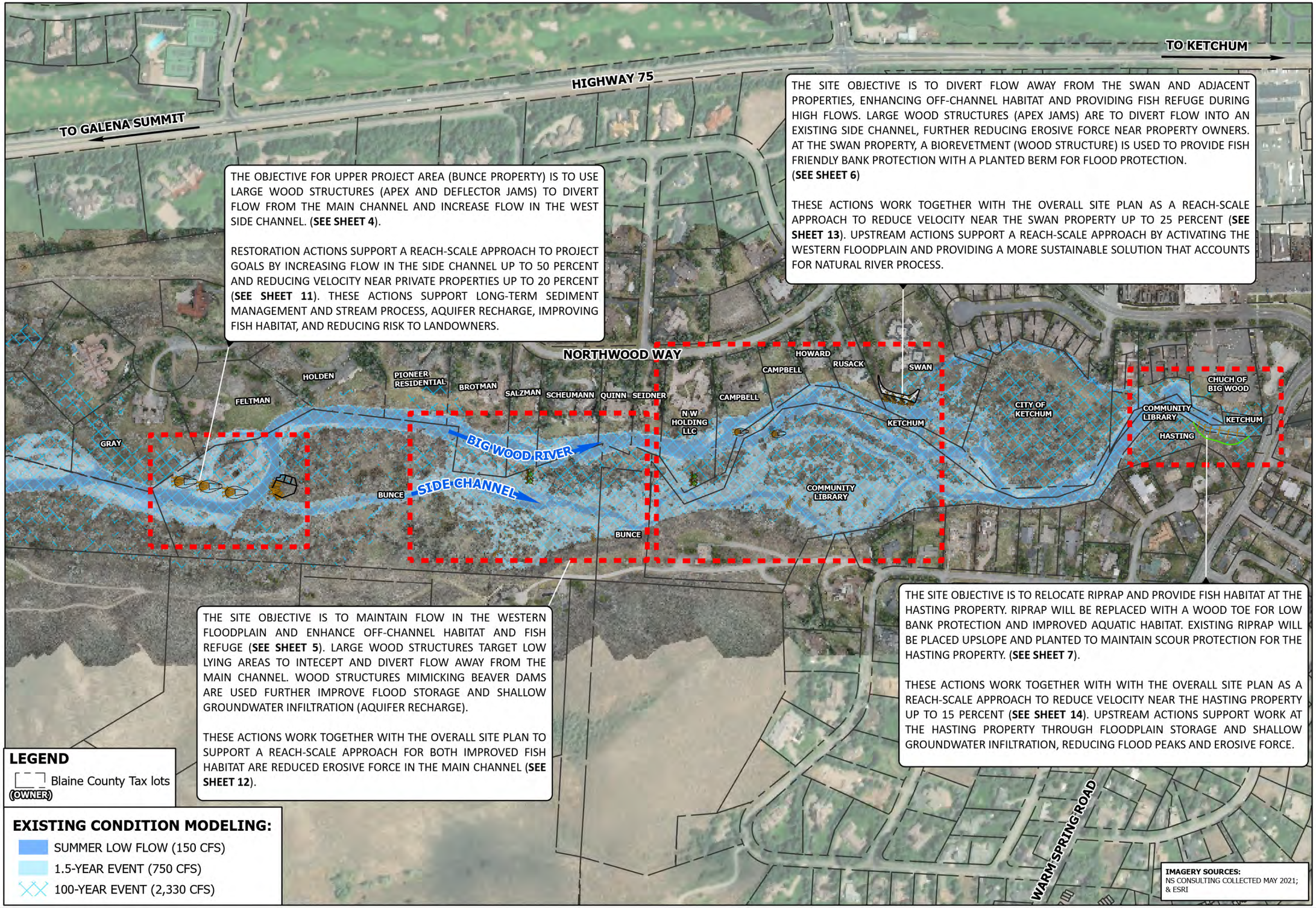
ESA
5309 SHILSHOLE AVE NW
SUITE 200
SEATTLE, WA 98107
OFFICE - 206.789.9658
WWW.ESASSOC.COM

TROUT UNLIMITED

N E S W

0 300 FT

BIG WOOD RIVER - NORTHWOODS REACH
CONCEPT DESIGN
BACKGROUND, GOALS, AND METHODS

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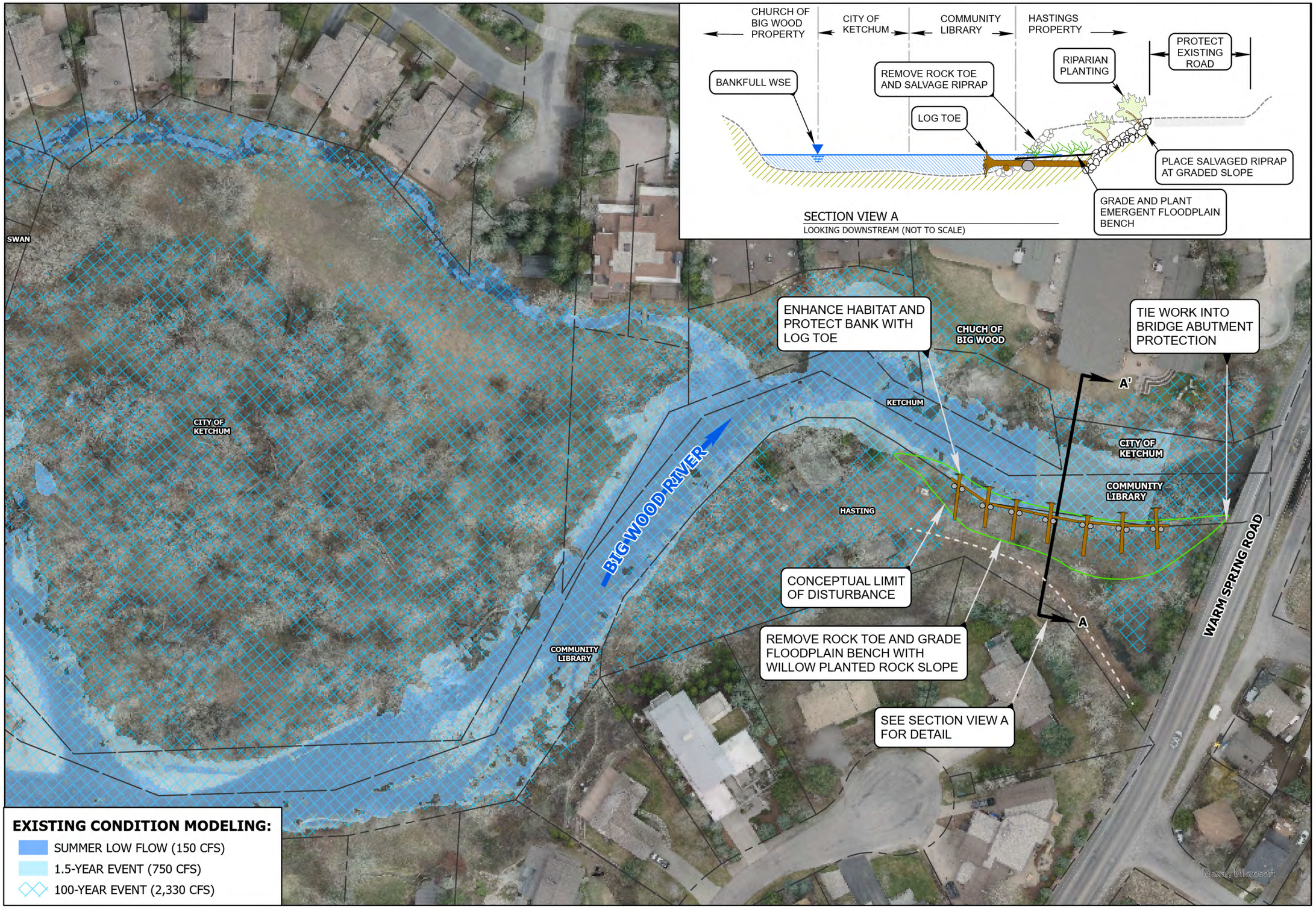
0 350 FT

BIG WOOD RIVER - NORTHWOODS REACH
CONCEPT DESIGN
SITE PLAN AND EXECUTIVE SUMMARY

SHEET
3 OF 14

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0 80 FT

BIG WOOD RIVER - NORTHWOODS REACH
CONCEPT DESIGN
PLAN VIEW - 4

SHEET
7 OF 14

RECEIVED

Aug 20, 2025

DEPARTMENT OF
WATER RESOURCES

# EXHIBIT F

Outlook

## Request for Date for Deposition

**From** J. Kahle Becker <kahle@kahlebeckerlaw.com>
**Date** Fri 5/30/2025 1:59 PM
**To** info@comlib.org <info@comlib.org>
**Cc** meghan.carter@idwr.idaho.gov <meghan.carter@idwr.idaho.gov>
**Bcc** [redacted]

Hello,

You may recall that we spoke about a year ago about a matter involving my client, John Hastings, and the Idaho Department of Water Resources. The dispute concerns a section of the Big Wood River which I understand the Library Association claims ownership of which is adjacent to the Hastings property. Since this matter is moving forward towards an evidentiary hearing, it is now necessary to take a deposition of a person knowledgeable about the Association's claim to this section of the Big Wood River. Please let me know who that would be and please propose some available dates in mid-June through early July. I expect the deposition to take about half a day. Thank you for your anticipated cooperation.

J. Kahle Becker
Eagles Center
223 N. 6th Street, # 325,
Boise, Idaho 83702
Phone: 208-345-8466
Fax: (208) 906-8663
kahle@kahlebeckerlaw.com
http://www.kahlebeckerlaw.com

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RECEIVED
Aug 27, 2025
DEPARTMENT OF
WATER RESOURCES

Samuel L. Linnet, ISBN 9788
**ALTURAS LAW GROUP, PLLC**
111 N. 1st Avenue, Suite 2I
P.O. Box 2975
Hailey, Idaho 83333
Tel: 208.788.6688
sam@alturaslawgroup.com
admin@alturaslawgroup.com

*Attorneys for The Community Library*

BEFORE THE WATER RESOURCES BOARD OF THE STATE OF IDAHO

| | |
|---|---|
| IN THE MATTER OF APPLICATION FOR STREAM CHANNEL ALTERATION PERMIT NO. S37-20565 | COMMUNITY LIBRARY'S REPLY IN SUPPORT OF OBJECTION TO PETITIONER'S MOTION FOR ISSUANCE OF SUBPOENA AND MOTION TO QUASH |

COMES NOW the Witness, The Community Library, by and through its attorney of record, Samuel L. Linnet of Alturas Law Group, PLLC, and respectfully requests this Court to its Reply in Support of Objection to Petitioner's Motion for Issuance of Subpoena and Motion to Quash (the "Reply"). This Reply is made pursuant to the Hearing Officer's verbal orders at the parties' August 14, 2025 hearing concerning this matter, IDAPA 37.01.01.220.02, 37.01.01.520, 37.01.01.521, 37.01.01.600 and I.R.C.P. 26, 30(b)(6), and 45.

## I. INTRODUCTION

Petitioner's Response seeks to recast a facially defective subpoena as a legitimate discovery device. It is not. The subpoena is procedurally deficient, substantively irrelevant, and disproportionately burdensome for a non-party

community nonprofit. Petitioner's arguments do not cure these defects. Instead, they confirm that the subpoena is a fishing expedition designed to manufacture leverage against a witness rather than gather evidence material to the permit proceeding.

The Community Library respectfully requests that the Hearing Officer quash the subpoena in its entirety, or at a minimum, narrowly limit its scope and require that any deposition occur remotely or within Blaine County.

## II. ARGUMENT

### A. The Subpoena Remains Deficient Under Rule 30(b)(6).

Petitioner argues that his subpoena "reasonably" describes the matters for testimony. But the plain language of I.R.C.P. 30(b)(6) requires more than generic references to "any documents related to ownership" or "any documents related to Project Big Wood." These topics are undefined in time, scope, or subject matter, and encompass third-party projects and speculative conditions.

Federal cases cited by Petitioner confirm that Rule 30(b)(6) demands precision: the subpoena must provide sufficient notice of inquiry topics so the organization can identify, prepare, and designate a representative. Here, the Library is left to guess at the scope of inquiry. This is precisely what Rule 30(b)(6) forbids.

### B. Petitioner Seeks Irrelevant Information Outside the Scope of This Proceeding.

The Community Library is the legal owner of Parcel RPKN4N17012048B (hereafter the "Community Library Parcel"). Petitioner has every right and the ability to

review public land records showing the ownership of the Community Library Parcel. However, The Community Library is not required to affirmatively defend its ownership of the Community Library Parcel when the ownership of the Community Library Parcel is not a material issue in this matter.

The Hearing Officer has already determined there is "no need for the State to prove ownership of the streambeds." Likewise, there is no need for The Community Library to confirm ownership of the Community Library Parcel, which is not in dispute in this matter. If Petitioner wants to challenge The Community Library's ownership of the Community Library Parcel, it needs to file a separate action – It is not material to this permit proceeding. Petitioner's attempt to litigate ownership disputes, or to insert a private contractual disagreement about a "hold harmless" demand that has no basis in fact and no relevance to this matter, improperly expands the scope of this administrative hearing.

Similarly, "Project Big Wood" and unrelated restoration efforts are not part of Petitioner's application. Petitioner admits he seeks these documents to "make a record" against IDWR's permitting authority. That is not a proper purpose for third-party discovery. Discovery must be tied to the claims and defenses in the case at bar—not future litigation Petitioner contemplates.

C. The Subpoena is a Fishing Expedition Barred by Idaho Law.

Idaho courts have consistently rejected discovery requests that are speculative or untethered to the actual issues. A "court can limit the extent of discovery if the burden or expense of the proposed discovery outweighs its likely

benefit, considering the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the action, and the importance of the discovery in resolving the issues[.]" Oswald v. Costco Wholesale Corp., 151 Idaho 494, 260 P.3d 315 (2020) (internal citations omitted) (affirming the issuance of a protective order where "Plaintiffs were seeking everything under the sun with no reasonable limitations on scope"). A party is also not entitled to conduct a fishing expedition for evidence that might somehow help a party's case in an unknown way. Hastings v. IDWR, 173 Idaho 704, 716, 547 P.3d 1190, 1202 (2024).

Here, Petitioner candidly acknowledges he seeks to explore whether IDWR has "abused its statutory authority" and to build a future record for judicial review. This is not case-specific discovery. It is the very type of fishing expedition the Idaho Supreme Court has prohibited.

D. Petitioner's Burden Arguments are Unsupported.

Petitioner contends the Library must provide granular detail about its filing system and budget to demonstrate burden. This flips the burden of proof. As a non-party, the Library is entitled to heightened protection from overbroad subpoenas. The duty lies with Petitioner to show proportionality—that the benefit of discovery outweighs the burden. He has not done so.

The Community Library is a nonprofit, community institution with limited staff and resources. There is no dispute that The Community Library would need to travel to Boise for this deposition seeking irrelevant information for a landowner and land owned in Boise. When The Community Library purchased property in

Blaine County, they did not agree to travel to Boise for a legal dispute that involves a neighbor's property also located in Blaine County. Petitioner purchased property in Blaine County, and now seeks information ostensibly located in Blaine County. It is his burden to obtain that information where it is located. Diverting personnel to respond to sprawling document requests and to travel out-of-county imposes concrete hardship on The Community Library. That hardship is amplified because the subpoena seeks irrelevant material.

E. Deposition Location Should Be Remote or in Blaine County.

Petitioner owns property in Blaine County, the Library is located in Blaine County, and this is where the underlying relevant parcels lie. Petitioner nonetheless insists the Library must travel to Ada County because counsel and the Hearing Officer are based there.

Rule 45 requires subpoenas to avoid undue burden. The Hearing Officer is not part of this deposition, and Petitioner's choice of an out-of-town attorney should not be a third-party witness's burden. Remote technology and local court reporters eliminate any claimed inconvenience. The balance of cost, convenience, and fairness weighs heavily in favor of conducting any deposition remotely or in Blaine County, not in Boise.

## IV. CONCLUSION.

The subpoena is procedurally defective, seeks irrelevant and speculative information, and imposes disproportionate burdens on a non-party community nonprofit. The Hearing Officer should:

- Quash the Subpoena in full;
- In the alternative, narrowly limit its scope to directly relevant matters, and require that any deposition occur remotely or in Blaine County; and
- Grant any further relief deemed just and proper, including protection from similar, burdensome future subpoenas.

DATED August 27, 2025

**ALTURAS LAW GROUP, PLLC**
*/s/ Samuel L. Linnet*
Samuel L. Linnet
*Attorneys for The Community Library*

CERTIFICATE OF SERVICE

I hereby certify that on August 27, 2025, I served a true and correct filed copy of the within and foregoing document upon the parties named below in the matter noted:

| | |
|---|---|
| Served via email | Meghan Carter<br>Attorney for Defendant, IDWR<br>meghan.carter@idwr.idaho.gov |
| Served via email | J. Kahle Becker<br>Attorney for Petitioner John Hastings<br>kahle@kahlebeckerlaw.com |
| Served via email | Roger S. Burdick<br>Hearing Officer<br>roburd47@gmail.com<br>Sarah.Tschohl@idwr.idaho.gov |
| Served via email | IDAHO WATER RESOURCE BOARD<br>file@idwr.idaho.gov |

By /s/ Samuel L. Linnet
Alturas Law Group, PLLC

**BEFORE THE IDAHO WATER RESOURCE BOARD**

| | |
|---|---|
| IN THE MATTER OF APPLICATION FOR STREAM CHANNEL ALTERATION PERMIT NO. S37-20565 | **ORDER DENYING MOTION TO COMPEL, QUASHING SUBPOENA DUCES TECUM EXECUTED JUNE 27, 2025, and GRANTING IN PART AND DENYING IN PART MOTION FOR ISSUANCE OF SUBPOENA** |

## BACKGROUND

On September 11, 2017, the Idaho Department of Water Resources ("Department" or "IDWR") issued a notice of violation ("NOV") to John Hastings Jr. ("Hastings") for violation of the Stream Protection Act, Title 42, Chapter 38, Idaho Code. On January 26, 2018, pursuant to Idaho Code § 42-1701B, Hastings and the Department entered into a *Consent Order and Agreement* ("*Consent Order*") to remedy damages to the Big Wood River and resolve the NOV. *Consent Order*, at 2–3.

Hastings maintains that the work on the stream channel that precipitated the issuance of the NOV began on July 25, 2017. *Id*. § 2, at 1. On July 31, 2017, the city of Ketchum issued an emergency permit for streambank alteration to Hastings, subject to "any additional conditions as required by the [Department] and the U.S. Army Corps of Engineers." *Id*. § 3, at 1. Hastings claims that work on the stream channel ceased on July 31, 2017. *Id*. § 4, at 1. On August 30, 2017, an *Emergency Permit Application to Alter a Stream Channel* was submitted to the Department on behalf of Hastings. Following submission of the emergency application, the NOV was issued, and the jointly executed *Consent Order* was subsequently effectuated.

On March 15, 2019, Hastings and Embassy Auditoriums, Inc. ("Embassy") filed a *Joint Application for Permits* ("*Application*"), assigned Permit No. S37-20565 by the Department. The stated purpose of the *Application* was to obtain permits to complete a bank stabilization plan, which noted an intention to partially satisfy the *Consent Order* as a part of the plan. *See Application*, at 1, 4; *Application* Attach. "Restoration Plan," at 1. On May 17, 2019, via letter, the Department issued a conditional approval of the *Application* ("Permit"). On May 23, 2019, Hastings and Embassy filed a *Petition for Hearing* with the Idaho Water Resource Board ("Board") contesting the Permit, alleging "[c]ertain requirements contained in [the Permit] are inconsistent with the Consent Order and the agreement that led to the filing of the Restoration Plan." *Pet. for Hr'g*, at 2.

During the September 5, 2024 prehearing conference held on this matter a deadline was set for the parties to file a notice of issues, addressing: 1) what are the issues for hearing, 2) who should bear the burden of proof, and 3) what is the proper standard of proof. *Not. of Results from Prehr'g Conf & Not. of Re-sched. Prehr'g Conf.*, at 1. Hastings and the Department filed a notice of issues on October 4, 2024. On October 25, 2024, the Department filed its response to Hastings' notice of issues. On January 17, 2025, Hastings filed his response to the Department's notice of issues.

Having reviewed all the filings, during the February 4, 2025 prehearing conference Hearing Officer Burdick identified for the record the issue and burden of proof for hearing, pursuant to IDAPA 37.01.01.510. On February 11, 2025, "to (1) memorialize and clarify the oral orders issued during the February 4, 2025 prehearing conference, (2) authorize the parties to engage in discovery, (3) adopt the schedule below, and (4) provide proper notice of the hearing," the Hearing Officer issued an *Order; Notice of Hearing*, pursuant to IDAPA 37.01.01.514. *Order; Not. of Hr'g*, at 2. The notice stated:

> The issue for hearing before the Hearing Officer is: Are conditions on the Permit consistent with the requirements set forth in the Consent Order? The burden of proof for all parties is a preponderance of evidence; the evidentiary burden is substantial evidence. In this contested case there is no need for the state to prove ownership of the stream beds.

*Id*. at 4. Additionally, discovery needs were discussed during the prehearing, and the following was ordered:

> that as of February 11, 2025, and pursuant to IDAPA 37.01.01.521, the parties are authorized to conduct and engage in the methods of discovery listed under IDAPA 37.01.01.520.01. Barring any conflicting discovery procedures or limitations set forth in the Board's Rules of Procedure (IDAPA 37.01.01) or an order of the presiding officer, discovery shall conform to Title V of the Idaho Rules of Civil Procedure.

*Id*. at 2.

On June 19, 2025, Hastings filed *Petitioner's Motion to Compel* with the Board. On June 27, 2025, Hastings also filed *Petitioner's Motion for Issuance of Subpoena – the Community Library*. On July 1, 2025, the *Department's Response in Opposition to Petitioner's Motion to Compel* ("*Department's Response*") and supporting declaration were filed. On July 30, 2025, Hastings filed a *Supplement to Petitioner's Motion for Issuance of Subpoena – the Community Library*. On August 7, 2025, counsel for the Community Library filed *Community Library's Objection to Petitioner's Motion for Issuance of Subpoena and Motion to Quash* ("*Library's Response*") with the Board. Oral argument on both of Hastings' discovery-based motions was set for August 14, 2025. *Am. Notice of Mot. Hr'g*.

A hearing on both motions was held before Hearing Officer Burdick on August 14, 2025. The parties, Hastings and the Department, appeared via their respective counsel of record; the Community Library, a nonparty represented by Samuel L. Linnet of Alturas Law Group, PLLC, also appeared. The Hearing Officer heard oral argument from Hastings and the Department on the motion to compel and then took the motion under advisement. He took up the motion for subpoena next; at that time, counsel for Hastings stated that he was unprepared to fully address the Community Library's objection and motion to quash. In an exercise of discretion, the Hearing officer allowed further written argument on the Community Library subpoena issue and placed deadlines on the record for said briefing. Those briefs have been received and the motion for subpoena is ripe for consideration.

## LEGAL STANDARD

The Board's Rules of Procedure govern proceedings in this contested case. IDAPA 37.01.01.000–.001, .050. The Board's Rules of Procedure allow a hearing officer discretion to resolve discovery disputes in contested cases. IDAPA 37.01.01.412 (authorizing hearing officers to hear and rule on motions and evidentiary issues, and schedule and compel discovery); IDAPA 37.01.01.521 (stating a hearing officer "may limit the type and scope of discovery"). A hearing officer properly exercises his or her discretion when he or she: (1) correctly perceives the issue as one of discretion; (2) acts within the boundaries of such discretion; (3) acts consistently with any legal standards applicable to the specific choices before him or her; and (4) reaches a decision by an exercise of reason. *See Lunneborg v. My Fun Life*, 163 Idaho 856, 863, 421 P.3d 187, 194 (2018) (citation omitted) (clarifying the Idaho Supreme Court's four-part standard of review for abuse of discretion by a trial court).

When analyzing disputes involving scope of discovery, the Board's Rules of Procedure direct hearing officers to Rule 26 of the Idaho Rules of Civil Procedure (I.R.C.P.). IDAPA 37.01.01.520.02 ("Unless otherwise provided . . . the scope of discovery is governed by the Idaho Rules of Civil Procedure (see [I.R.C.P.] 26)."). In relevant part, I.R.C.P. 26(b)(1)(A) states,

> [T]he scope of discovery is as follows: Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense . . . . For good cause, the court may order discovery of any matter relevant to the subject matter involved in the action. Relevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence.

Rule 26(b)(1)(C) further guides that a hearing officer:

> must limit the frequency or extent of discovery otherwise allowed by these rules if [he] determines that:
>
> . . . .
>
> (iii) the burden or expense of the proposed discovery outweighs its likely benefit, considering the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the action, and the importance of the discovery in resolving the issues.

## MOTION TO COMPEL

In his June 19, 2025 motion to compel, Hastings seeks an order from the Hearing Officer compelling the Department to answer his Request for Production No. 15, which reads:

> Please produce any and all documents related to or which refer in any way to the encroachments you refer to in your response to Interrogatory No. 13. (INTERROGATORY NO. 13: Please list each and every violation of the Stream Channel Protection Act, which you are aware of, for which no Notice of Violation

has been issued. When providing your response, please indicate the reason a Notice of Violation was not issued for each and every violation you mention.) *See* IDWR's *Response to Petitioner's Second Set of Discovery Requests* submitted herewith.

*Pet'r's Mot. to Compel* ¶ 3, at 2. In his motion, Hastings clarified that the request seeks to "make a record demonstrating IDWR is abusing its statutory authority to impose highly onerous conditions on Petitioner" and "make a record demonstrating the treatment other similarly situated individuals received" by the Department, related to alleged violations of statutes or administrative rules. *Id*. at 2–3. The Department objects to the request on the grounds of being "overbroad, burdensome, and not reasonably related to the issue to be resolved in this matter." *Department's Response*, at 6.

The Department "identified 95 instances since 1998 where the Department is either investigating stream channel alteration violations or has resolved them informally without issuing a notice of violation." *Id.* at 5; *see Carter Decl.* Ex. 1. In the process of answering Interrogatory No. 13, a list of the violations identified by the Department as being under investigation or resolved was created and produced to Hastings. *Pet'r's Mot. to Compel* ¶ 4, at 2; *see Resp. to Pet'r's 2d Set of Disc. Reqs.* Attach. "Interrog. No. 13" (filed by Hastings concurrently with his motion to compel). Therefore, Request for Production No. 15 seeks production of "any and all documents related to or which refer in any way to" each of the 95 instances listed out by the Department. Counsel for the Department informed Hastings' counsel that the records sought are not assembled, identifying them would be time-consuming, and production would be voluminous, and asked that the request either be narrowed or an extension of time be granted. *Department's Response*, at 2; *see Carter Decl.* Ex. 1. The parties were unable to reach an agreement, and the motion to compel was subsequently filed by Hastings. *See Pet'r's Mot. to Compel* ¶ 5, at 2; *Department's Response*, at 2.

The Hearing Officer perceives this discovery issue as one of discretion. The absence or existence of all the statutes, rules, or legal decisions needed to address the central issue identified for hearing in this contested case are readily available to Hastings. The list the Department produced shows there could be very few, if any, "similarly situated individuals" within the state. Unlike the facts of this case, a notice of violation was not issued for any of the instances on the Department's list. Every navigable stream is different, each reach of those streams is different, and stream channel alteration violations are different as to alleged damage, reasons for alteration, soils, yearly conditions of the streams, uses of the streams, etcetera. The issue delineated for this case is focused on a finite occurrence, not a systemic challenge. Therefore, evidence toward establishing the Department's universal treatment throughout the state, or lack thereof, when processing alleged stream channel alteration violations is not reasonably related to the central issue identified for hearing. Additionally, given the broad language used in Request for Production No. 15, the way the documents are currently stored, and the fact that the number of instances the Department listed approaches 100, the research hours required for the Department to comply with the request would likely be high. *See Carter Decl*. Ex. 1

The Hearing Officer declines to revise the scheduling order or issue an order compelling the Department to provide a complete response to Hastings' Request for Production No. 15. Hastings' request is denied in its entirety because statutes, rules, and decisions are already

available to him and responding to Request for Production No. 15 is unduly burdensome for the Department and not reasonably calculated to lead to the discovery of admissible evidence.

**MOTION FOR SUBPOENA AND MOTION TO QUASH SAME**

In his June 27, 2025 motion for subpoena, Hastings seeks an order from the Hearing Officer issuing his concurrently submitted *Subpoena Duces Tecum –The Community Library Association, Inc. Pet'r's Mot. for Issuance of Subpoena*, at 3. The subpoena places "The Community Library Association, Inc." on notice that Hastings intends to take its deposition, commanding an appearance for said deposition in Boise. *Subpoena Duces Tecum*, at 1. Further, the subpoena requests the production of:

> a person knowledgeable about your claim of ownership of a section of the Big Wood River (Blaine County Parcel RPK4N17012048B), conditions which may be imposed on Petitioner or its agent for stream channel restoration work IDWR is mandating Petitioner perform on or near property you claim to own, and produce the following documents . . . .
> 1. Any documents related to or referencing your claim of ownership of Blaine County Parcel RPK4N17012048B.
> 2. Any documents related to or referencing Project Big Wood.
> 3. Any documents related to or referencing any stream restoration projects proposed or contemplated to be performed on Blaine County Parcel RPK4N17012048B from 2017 to present.
> 4. Any contracts or documents you may require Petitioner or his contractor to sign prior to commencement of work on Blaine County Parcel RPK4N17012048B.

*Id*. at 2. The Community Library requests the Hearing Officer quash the subpoena in full or, in the alternative, "require that any deposition occur remotely or within Blaine County . . . ." *Library's Response*, at 8.

Setting aside concerns regarding scope, the Board's Rules of Procedure only grant the Hearing Officer the discretion to issue a subpoena in this case. *Contrast* IDAPA 37.01.01.523 ("The presiding officer may issue subpoenas upon a party's motion or upon its own initiative."), *with* I.R.C.P. 45(a)(3) (authorizing the clerk of the court and "[a]n attorney licensed in Idaho as officer of the court" to "issue and sign a subpoena"). The subpoena duces tecum for the Community Library, submitted by Hastings alongside his motion for subpoena, was executed and served by Hastings' counsel, *Subpoena Duces Tecum*, at 3–4, who is not authorized to execute or issue a subpoena in this matter, *see* IDAPA 37.01.01.523. In this instance, regardless of the motion for subpoena that was filed by Hastings, the Community Library's filing of a motion to quash clearly suggests that the executed and served subpoena appeared to be issued, at least to the subject nonparty. An executed subpoena should not have been filed in conjunction with a motion for subpoena. On the procedural grounds that counsel for Hastings lacks the authority to issue a subpoena in this case, the Hearing Officer will grant the Community Library's motion to quash the subpoena.

In the interest of judicial economy, the Hearing Officer will consider Hastings' motion for subpoena and review the submitted *Subpoena Duces Tecum –The Community Library Association, Inc*. as though it was a proposal. The Hearing Officer perceives this discovery issue as one of discretion. The scope of the subpoena touches on areas not germane to the issue at hand and must be limited.

The proposed subpoena includes a request for "[a]ny documents related to or referencing your claim of ownership of Blaine County Parcel RPK4N17012048B." *Subpoena Duces Tecum*, at 1. The relevance of inquiry about the ownership of Parcel RPK4N17012048B is connected to the following requirement included in the May 17, 2019 Permit:

> Prior to any construction authorized by this permit, written approval to work on property belonging to others shall be obtained in writing and a copy of the approval provided to IDWR.

Permit ¶ 3, at 4. As noted above, the Hearing Officer has already limited the hearing on this matter to a singular issue as well as stated there is no need to prove the State of Idaho is the owner of the streambank in question. *Order; Not. of Hr'g*, at 4.[1] And through briefing, the Community Library has admitted that: "The Community Library is the legal owner of Parcel RPKN4N17012048B." *Witness's Reply in Supp. of Obj. & Mot. to Quash*, at 2. It would be overly burdensome to prove a fact already in the public record and, in light of the Hearing Officer's prior clarifying statements, not reasonably calculated to lead to the discovery of admissible evidence. What is more, any other encumbrance on that parcel should be of public record and easily discovered without a deposition. However, Hastings may inquire about and request any documents in the possession of the Community Library, or its agents, related to or referencing potential impediments to accessing Blaine County Parcel RPK4N17012048B, in relation to the approval condition included on the May 17, 2019 Permit, quoted above.

The overarching context of this matter is a dispute involving remedying damage to a certain portion of the Big Wood River. "Project Big Wood" appears to include restoration plans for that same general portion of the Big Wood River:

> The Atlas recommends actions to protect and maintain existing floodplain function and restoration priorities to expand floodplain utilization, including actions to restore natural channel process where historic channel occupation is observed. In particular, the Atlas identifies the western floodplain occupied in part by the Community Library as a unique and high priority opportunity to restore floodplain connectivity and stream channel processes in a reach that has been widely impacted by the presence of bank hardening along the eastern bank.

[1] Referencing the equal footing doctrine and an Idaho Waterways Navigability Study, Hastings himself argues that the Big Wood River is public. *See Pet'r's Resp. to Community Library's Mot. to Quash Subpoena*, at 5, Ex. D, at 451 (the referenced study cites *Campion v. Simpson*, 104 Idaho 413 (1983), to assert the Big Wood River is navigable south of the Warm Springs Bridge in Ketchum).

*Pet'r's Resp. to Cmty. Library's Mot. to Quash Subpoena* Ex. E, at 2. It follows that information involving Project Big Wood may be relevant to the subject matter and resolution of this case, and that the Community Library may possess relevant information about the project. But as the *Library's Response* points out, "Any documents related to or referencing Project Big Wood" is overly broad. *Library's Response*, at 5. Hastings may inquire about and request any documents in the possession of the Community Library, or its agents, related to or referencing current plans for or the status of Project Big Wood, not obsolete proposals or discussions.

Along those same lines, any previous "stream restoration projects proposed or contemplated to be performed on Blaine County Parcel RPK4N17012048B" are irrelevant. Any work that Hastings may perform on Blaine County Parcel RPK4N17012048B as a result of this case would only involve the stream channel as it is found now. Previous changes would be irrelevant for discovery purposes. Hastings may inquire about and request any documents in the possession of the Community Library, or its agents, related to or referencing the current state of or active plans for the stream channel.

The request for information as to what forms of permission would be requested of Hastings by the Library Community is appropriate given the approval condition on the May 17, 2019 Permit. Hastings may inquire about any conditions and request any existing proposed contracts or documents that the Community Library may require Hastings or his contractor to sign prior to commencement of work on Blaine County Parcel RPK4N17012048B.

Given Hastings, the Community Library and its counsel, Parcel RPK4N17012048B, and the subject stream channel are all primarily located in Blaine County, the nonparty status of the Community Library, and the availability of remote deposition technology, Hastings' desire to hold an in-person deposition in Boise is greatly outweighed by the undue burden it would place upon the Community Library. *See Library's Response*, at 6–8, I.R.C.P. 26(b)(C)(iii); *see also* I.R.C.P. 45(d)(1). Unless Hastings and the Community Library agree otherwise, any deposition of the Community Library that Hastings takes in this matter should be conducted either remotely or in Blaine County.

The Hearing Officer will grant in part and deny in part Hastings' motion for subpoena. The Hearing Officer declines to issue the subpoena as requested. The proposed *Subpoena Duces Tecum –The Community Library Association, Inc.*, as written, would be overly burdensome for the Community Library to comply with and not reasonably calculated to lead to the discovery of admissible evidence. Hastings may only depose the Community Library consistent with the discussion in this order, and upon the approval and issuance of a subpoena by the Hearing Officer.

## ORDER

Based upon and consistent with the foregoing, IT IS HEREBY ORDERED that:

(1) *Petitioner's Motion to Compel* filed by Hastings on June 19, 2025, is DENIED.

(2) Hastings' *Subpoena Duces Tecum –The Community Library Association, Inc.*, executed June 27, 2025, is QUASHED IN ITS ENTIRETY.

(3) *Petitioner's Motion for Issuance of Subpoena – the Community Library* filed by Hastings on June 27, 2025, is GRANTED IN PART and DENIED IN PART. Hastings has until September 18, 2025, to submit a proposed subpoena for the Hearing Officer's consideration and issuance, being sure to also provide a courtesy copy to the Department and Community Library at the time of submission.

(4) Unless ordered otherwise, should a subpoena be timely requested and subsequently issued by the Hearing Officer, any deposition of the Community Library is to be completed on or before October 3, 2025. The Community Library shall designate and require the attendance of the appropriate person for any such deposition.

DATED this 11th day of September 2025.

ROGER S. BURDICK
Hearing Officer

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 11th day of September 2025, the above and foregoing, was served by the method indicated below, and addressed to the following:

| | |
|---|---|
| J. KAHLE BECKER<br>Attorney at Law<br>kahle@kahlebeckerlaw.com | ☒ Email |
| MEGHAN M. CARTER<br>Deputy Attorney General<br>meghan.carter@idwr.idaho.gov | ☒ Email |
| SAMUEL L. LINNET<br>Alturas Law Group, PLLC<br>sam@alturaslawgroup.com | ☒ Email |

Sarah Tschohl
Paralegal

RECEIVED
Sep 16, 2025
DEPARTMENT OF
WATER RESOURCES

**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 Petitioner

**BEFORE THE WATER RESOURCES BOARD**
**OF THE STATE OF IDAHO**

| | |
|---|---|
| IN THE MATTER OF APPLICATION FOR STREAM CHANNEL ALTERATION PERMIT NO. S37-20565 | PETITIONER'S MOTION FOR ISSUANCE OF REVISED SUBPOENA – THE COMMUNITY LIBRARY |

COMES NOW Petitioner, John Hastings by and through his attorney of record, J. Kahle Becker and, pursuant to IDAPA 37.01.01.523 and IRCP 30, 45, 26 and pursuant to the Hearing officer's Order dated September 11, 2025 submits his Motion for Issuance of Revised Subpoena- The Community Library as follows.

WHEREFORE: Petitioner asks the Hearing Officer to issue the Subpoena Duces Tecum included herewith.

September 16, 2025
By:_ _____/s/ J. Kahle Becker_____
J. KAHLE BECKER
LAW OFFICES OF J. KAHLE BECKER
Attorney for Petitioner

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the _16th_ day of September, 2025, I caused to be served the foregoing Motion to Issue Subpoena to the following persons by email:

Meghan Carter
Attorney for Defendant,
Idaho Department of Water Resources
meghan.carter@idwr.idaho.gov

"IDWR File" file@idwr.idaho.gov

"Tschohl, Sarah" Sarah.Tschohl@idwr.idaho.gov

Samuel L. Linnet, ISBN 9788
ALTURAS LAW GROUP, PLLC
111 N. 1st Avenue, Suite 2I
P.O. Box 2975 Hailey, Idaho 83333
Tel: 208.788.6688
sam@alturaslawgroup.com
Attorney for The Community Library

_____/s/ J. Kahle Becker_____
J. KAHLE BECKER
Attorney for the Petitioner

**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 Petitioner

**BEFORE THE WATER RESOURCES BOARD**
**OF THE STATE OF IDAHO**

| | |
|---|---|
| IN THE MATTER OF APPLICATION FOR<br><br>STREAM CHANNEL ALTERATION<br><br>PERMIT NO. S37-20565 | REVISED SUBPOENA DUCES TECUM –THE COMMUNITY LIBRARY ASSOCIATION, INC. |

The Community Library Association, Inc.
415 Spruce Avenue N
PO Box 2168, Ketchum, ID 83340
(208) 806-2620
jdavidson@comlib.org

YOU ARE HEREBY NOTIFIED That Petitioner, John Hastings will take your testimony, upon oral examination, pursuant to I.R.C.P. Rule 30 on September 25, 2025, at the hour of 1:00 o'clock p.m., at the offices of The Community Library Association, Inc. 415 Spruce Avenue N Ketchum, ID 83340 before a Notary Public and Court Reporter for the State of Idaho, at which time and place you are notified and hereby commanded to appear pursuant to IRCP 45, IRCP 30, and IDAPA 37.01.01.523 and take such part in said examination as shall be deemed just and proper.

DEFINITIONS:

1. "You" or "your" means The Community Library Association, Inc.

2. "Document" means and includes any kind of written, typewritten or printed, recorded, or graphic matters, however produced or reproduced, of which you have any knowledge or information, whether in your possession or under your control or not, relating or pertaining in any way to the subject matter of this action. This definition includes, but is not limited to, any and all originals, all file copies, copies on cloud based storage, and all other copies, no matter how or by whom prepared, and all drafts prepared in connection with such writings, whether used or not, of the following: audio and/or visual recordings, discs, papers, agreements, contracts, notices, memoranda,

correspondence, letters, telegrams, telexes, cables, statements, books, invoices, purchase orders, reports, studies, treatises, articles, transcripts, minutes, records, telephone logs, accounting books, maps, surveys, deeds, easements, photographs, films, transcriptions and recordings, settlements, notes, summaries, schedules, drawings, sketches, acknowledgments, diaries, tapes, pictures, computer programs, or other graphic, symbolic, recorded or retaken materials of any nature whatsoever. Any document which contains any comments, notations, addition, insertion, or marking of any kind which is not part of another document is to be considered as a separate document.

**DOCUMENTS REQUESTED**

Petitioner requests you produce a person knowledgeable about your claim of ownership of a section of the Big Wood River (Blaine County Parcel RPK4N17012048B) as that ownership claim relates to conditions which may be imposed on Petitioner or its agent for stream channel restoration work IDWR is mandating Petitioner perform on or near property you claim to own, and produce the following documents at the deposition for inspection and copying by Petitioner and/or his counsel. Alternatively, in order to be as efficient as possible at your deposition, you may produce these documents 7 days prior to your deposition to Petitioner's counsel at the address provided on page one of this Subpoena.

1. Any documents related to or referencing impediments to accessing Blaine County Parcel RPK4N17012048B for purposes of engaging in stream channel restoration work in relation to the May 17, 2019 Permit issued to petitioner.
2. Any documents related to or referencing plans for Project Big Wood. Plans which are obsolete need not be produced.
3. Any documents related to or referencing any stream restoration projects proposed or contemplated to be performed on Blaine County Parcel RPK4N17012048B from 2017 to present. Plans which are obsolete need not be produced.
4. Any contracts or documents you may require Petitioner or his contractor to sign prior to commencement of work on Blaine County Parcel RPK4N17012048B.

This deposition shall be taken pursuant to Rule 30 of the Idaho Rules of Civil Procedure and IDAPA 37.01.01.523 for use at the hearing in this matter. Testimony will be recorded stenographically. You have the right to attend and cross-examine. You are further notified that if you fail to appear at the place and time specified above, that you may be held in contempt of Court and that the aggrieved party may recover from you the sum $100.00 and all damages which the party may sustain by your failure to appear at said hearing. If you require payment for your mileage to attend the deposition, please provide your home address so that a check can be prepared.

September____ 2025

By:_______
RODGER BURDICK
Hearing Officer

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the __day of September, 2025, I caused to be served the foregoing Subpoena Duces Tecum – Ketchum Community Library to the following persons by email:

Meghan Carter
Attorney for Defendant,
Idaho Department of Water Resources
meghan.carter@idwr.idaho.gov

IDWR File file@idwr.idaho.gov

Tschohl, Sarah Sarah.Tschohl@idwr.idaho.gov

Samuel L. Linnet, ISBN 9788
ALTURAS LAW GROUP, PLLC
111 N. 1st Avenue, Suite 2I
P.O. Box 2975 Hailey, Idaho 83333
Tel: 208.788.6688
sam@alturaslawgroup.com

_____/s/ J. Kahle Becker_____
J. KAHLE BECKER
Attorney for the Petitioner

**BEFORE THE IDAHO WATER RESOURCE BOARD**

| | |
|---|---|
| IN THE MATTER OF APPLICATION FOR STREAM CHANNEL ALTERATION PERMIT NO. S37-20565 | **ORDER GRANTING MOTION FOR ISSUANCE OF REVISED SUBPOENA**<br><br>**ORDER SETTING DEADLINE TO COMPLETE GOLART DEPOSITION** |

On September 16, 2025, John Hastings filed *Petitioner's Motion for Issuance of Revised Subpoena – The Community Library* concurrently with a proposed subpoena. Hearing Officer Burdick finds that the proposed subpoena complies with the requirements of the September 11, 2025 *Order Denying Motion to Compel, Quashing Subpoena Duces Tecum Executed June 27, 2025, and Granting in Part and Denying in Part Motion for Issuance of Subpoena*. Therefore, consistent with his prior order, the Hearing Officer will grant Petitioner's motion and issue the revised subpoena. A copy of the issued *Revised Subpoena Duces Tecum – The Community Library* is attached to this order.

Additionally, via email on September 16, 2025, counsel for Hastings informed the Hearing Officer that the Department of Water Resources has agreed to a deposition of Aaron Golart, who is an employee of the Department, despite the passage of the September 12, 2025 deadline to complete all depositions.[1] *See Am. Sched. Order & Notice of Hr'g*, at 1. Upon information and belief, the parties have reached an agreement that the Department will make Aaron Golart available for deposition upon oral examination in this matter, for that reason and pursuant to IDAPA 37.01.01.521, the Hearing Officer will exercise his discretion to set a separate deadline for Hastings to complete said deposition.[2]

**ORDER**

Based upon and consistent with the foregoing, IT IS HEREBY ORDERED that:

(1) *Petitioner's Motion for Issuance of Revised Subpoena – The Community Library* filed September 16, 2025, is GRANTED.

(2) Any deposition of Aaron Golart in this matter is to be completed on or before October 3, 2025.

DATED this 17th day of September 2025.

ROGER S. BURDICK
Hearing Officer

[1] A separate deadline to complete any deposition of the Community Library was set within the Hearing Officer's September 11, 2025 order.

[2] Given the Department is party to this matter and has agreed to the deposition, requesting issuance of a subpoena is not necessary prior to deposing Aaron Golart—in accordance with IDAPA 37.01.01.525 and I.R.C.P. 30(b), providing a notice of taking deposition is required.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 17th day of September 2025, the above and foregoing, was served by the method indicated below, and addressed to the following:

| | |
|---|---|
| J. KAHLE BECKER<br>Attorney at Law<br>kahle@kahlebeckerlaw.com | ☒ Email |
| MEGHAN M. CARTER<br>Deputy Attorney General<br>meghan.carter@idwr.idaho.gov | ☒ Email |
| SAMUEL L. LINNET<br>Alturas Law Group, PLLC<br>sam@alturaslawgroup.com | ☒ Email |

Sarah Tschohl
Paralegal

**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 Petitioner

**BEFORE THE WATER RESOURCES BOARD**
**OF THE STATE OF IDAHO**

| | |
|---|---|
| IN THE MATTER OF APPLICATION FOR<br><br>STREAM CHANNEL ALTERATION<br><br>PERMIT NO. S37-20565 | REVISED SUBPOENA DUCES TECUM –THE COMMUNITY LIBRARY ASSOCIATION, INC. |

The Community Library Association, Inc.
415 Spruce Avenue N
PO Box 2168, Ketchum, ID 83340
(208) 806-2620
jdavidson@comlib.org

YOU ARE HEREBY NOTIFIED That Petitioner, John Hastings will take your testimony, upon oral examination, pursuant to I.R.C.P. Rule 30 on September 25, 2025, at the hour of 1:00 o'clock p.m., at the offices of The Community Library Association, Inc. 415 Spruce Avenue N Ketchum, ID 83340 before a Notary Public and Court Reporter for the State of Idaho, at which time and place you are notified and hereby commanded to appear pursuant to IRCP 45, IRCP 30, and IDAPA 37.01.01.523 and take such part in said examination as shall be deemed just and proper.

DEFINITIONS:

1. "You" or "your" means The Community Library Association, Inc.
2. "Document" means and includes any kind of written, typewritten or printed, recorded, or graphic matters, however produced or reproduced, of which you have any knowledge or information, whether in your possession or under your control or not, relating or pertaining in any way to the subject matter of this action. This definition includes, but is not limited to, any and all originals, all file copies, copies on cloud based storage, and all other copies, no matter how or by whom prepared, and all drafts prepared in connection with such writings, whether used or not, of the following: audio and/or visual recordings, discs, papers, agreements, contracts, notices, memoranda,

correspondence, letters, telegrams, telexes, cables, statements, books, invoices, purchase orders, reports, studies, treatises, articles, transcripts, minutes, records, telephone logs, accounting books, maps, surveys, deeds, easements, photographs, films, transcriptions and recordings, settlements, notes, summaries, schedules, drawings, sketches, acknowledgments, diaries, tapes, pictures, computer programs, or other graphic, symbolic, recorded or retaken materials of any nature whatsoever. Any document which contains any comments, notations, addition, insertion, or marking of any kind which is not part of another document is to be considered as a separate document.

**DOCUMENTS REQUESTED**

Petitioner requests you produce a person knowledgeable about your claim of ownership of a section of the Big Wood River (Blaine County Parcel RPK4N17012048B) as that ownership claim relates to conditions which may be imposed on Petitioner or its agent for stream channel restoration work IDWR is mandating Petitioner perform on or near property you claim to own, and produce the following documents at the deposition for inspection and copying by Petitioner and/or his counsel. Alternatively, in order to be as efficient as possible at your deposition, you may produce these documents 7 days prior to your deposition to Petitioner's counsel at the address provided on page one of this Subpoena.

1. Any documents related to or referencing impediments to accessing Blaine County Parcel RPK4N17012048B for purposes of engaging in stream channel restoration work in relation to the May 17, 2019 Permit issued to petitioner.
2. Any documents related to or referencing plans for Project Big Wood. Plans which are obsolete need not be produced.
3. Any documents related to or referencing any stream restoration projects proposed or contemplated to be performed on Blaine County Parcel RPK4N17012048B from 2017 to present. Plans which are obsolete need not be produced.
4. Any contracts or documents you may require Petitioner or his contractor to sign prior to commencement of work on Blaine County Parcel RPK4N17012048B.

This deposition shall be taken pursuant to Rule 30 of the Idaho Rules of Civil Procedure and IDAPA 37.01.01.523 for use at the hearing in this matter. Testimony will be recorded stenographically. You have the right to attend and cross-examine. You are further notified that if you fail to appear at the place and time specified above, that you may be held in contempt of Court and that the aggrieved party may recover from you the sum $100.00 and all damages which the party may sustain by your failure to appear at said hearing. If you require payment for your mileage to attend the deposition, please provide your home address so that a check can be prepared.

September 17 2025

By: _____
RODGER BURDICK
Hearing Officer

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the __day of September, 2025, I caused to be served the foregoing Subpoena Duces Tecum – Ketchum Community Library to the following persons by email:

Meghan Carter
Attorney for Defendant,
Idaho Department of Water Resources
meghan.carter@idwr.idaho.gov

IDWR File file@idwr.idaho.gov

Tschohl, Sarah Sarah.Tschohl@idwr.idaho.gov

Samuel L. Linnet, ISBN 9788
ALTURAS LAW GROUP, PLLC
111 N. 1st Avenue, Suite 2I
P.O. Box 2975 Hailey, Idaho 83333
Tel: 208.788.6688
sam@alturaslawgroup.com

_____/s/ J. Kahle Becker_____
J. KAHLE BECKER
Attorney for the Petitioner

RECEIVED
Oct 03, 2025
DEPARTMENT OF
WATER RESOURCES

**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 Petitioner

**BEFORE THE WATER RESOURCES BOARD**
**OF THE STATE OF IDAHO**

| | |
|---|---|
| IN THE MATTER OF APPLICATION FOR STREAM CHANNEL ALTERATION PERMIT NO. S37-20565 | STIPULATED MOTION TO AMEND DEADLINES FOR DISPOSITVE MOTION PRACTICE |

COMES NOW Petitioner, John Hastings by and through his attorney of record, J. Kahle Becker and the Department by and through its attorney of record, Meghan Carter, pursuant to IDAPA 37.01.01.220 and IDAPA 37.01.01.412 and pursuant to the Hearing officer's Order dated September 11, 2025 submits their Stipulated Motion to Amend Deadlines for Dispositive Motion Practice as follows.

Due to motion practice associated with discovery conducted herein and delays in hearing and deciding said motions, transcripts for depositions conducted in this matter will not be prepared in time for the deadline for filing of dispositive motions under the current scheduling order, October 6, 2025. Specifically, the deposition of the Community Library was conducted September 25, 2025 and the deposition of Aaron Golart/IDWR was conducted October 3, 2025. It is anticipated that said deposition transcripts will be

completed by October 14, 2025. Therefore, the parties jointly request that the following briefing schedule for dispositive motions be adopted in light of the November 17, 2025 hearing date for dispositive motions currently set in the Scheduling Order:

Motions due October 20

Responses due November 3

Replies due November 10

WHEREFORE: The Parties ask that the Hearing Officer issue a revised scheduling order adopting the stipulated briefing schedule mentioned herein

October 3, 2025
By:__/s/ J. Kahle Becker_____
J. KAHLE BECKER
LAW OFFICES OF J. KAHLE BECKER
Attorney for Petitioner

By:__/s/ Meghan Carter_____
Meghan Carter
Deputy Attorney General
Attorney for the Department of Water Resources

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the _3rd_ day of October, 2025, I caused to be served the foregoing Motion to Issue Subpoena to the following persons by email:

Meghan Carter
Attorney for Defendant,
Idaho Department of Water Resources
meghan.carter@idwr.idaho.gov

"IDWR File" file@idwr.idaho.gov

"Tschohl, Sarah" Sarah.Tschohl@idwr.idaho.gov

_____/s/ J. Kahle Becker_____
J. KAHLE BECKER
Attorney for the Petitioner

**BEFORE THE IDAHO WATER RESOURCE BOARD**

| | |
|---|---|
| IN THE MATTER OF APPLICATION FOR STREAM CHANNEL ALTERATION PERMIT NO. S37-20565 | **ORDER GRANTING STIPULATED MOTION AND AMENDING SCHEDULING ORDER** |

## BACKGROUND

On October 3, 2025, a *Stipulated Motion to Amend Deadlines for Dispositive Motion Practice* ("*Stipulated Motion*") was filed with the Board. In the *Stipulated Motion*, to allow time for preparation and receipt of deposition transcripts, John Hastings and the Department jointly request an extension of the dispositive motion deadlines currently set in this matter. *Stipulated Motion*, at 1–2. The parties did not request to reschedule the date reserved for oral argument on any dispositive motions. For good cause shown, the Hearing Officer will exercise his discretion to grant the *Stipulated Motion* and extend the dispositive motion deadlines as requested.

## ORDER

IT IS HEREBY ORDERED that the *Stipulated Motion to Amend Deadlines for Dispositive Motion Practice* is GRANTED.

IT IS FURTHER ORDERED that the deadlines for dispositive motion practice are AMENDED as follows:

| | |
|---|---|
| **Oct. 20, 2025** at 5 p.m. (MT) | Deadline for the parties to file dispositive motions, including motions for summary judgment. Any supporting documents or opening briefs must be filed concurrently with the dispositive motion. |
| **Nov. 3, 2025** at 5 p.m. (MT) | Deadline for the parties to file any responses to dispositive motions. |
| **Nov. 10, 2025** at 5 p.m. (MT) | Deadline for the parties to file any dispositive motion replies. |

DATED this 7th day of October 2025.

ROGER S. BURDICK
Hearing Officer

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 7th day of October 2025, the above and foregoing was served by the method indicated below, and addressed to the following:

| | |
|---|---|
| J. KAHLE BECKER<br>Attorney at Law<br>kahle@kahlebeckerlaw.com | ☒ Email |
| MEGHAN M. CARTER<br>Deputy Attorney General<br>meghan.carter@idwr.idaho.gov | ☒ Email |

Sarah Tschohl
Paralegal

RECEIVED
Oct 20, 2025
DEPARTMENT OF
WATER RESOURCES

**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 Petitioner

**BEFORE THE WATER RESOURCES BOARD**
**OF THE STATE OF IDAHO**

| | |
|---|---|
| IN THE MATTER OF APPLICATION FOR STREAM CHANNEL ALTERATION PERMIT NO. S37-20565 | PETITIONER'S MOTION FOR SUMMARY JUDGMENT |

COMES NOW Petitioner, John Hastings by and through his attorney of record, J. Kahle Becker and moves for Summary Judgment pursuant to IDAPA 37.01.01.220.03 and IRCP 56 as follows. This motion is supported by a Brief, a Declaration of Counsel, and a Declaration of Petitioner filed concurrently herewith, as well as the Record in this Administrative Hearing.

1) IDWR has acted in excess of its constitutional, statutory, and regulatory authority in imposing highly onerous permit conditions on Petitioner.
2) IDWR abused its discretion in issuing a Notice of Violation, mandating Petitioner enter into a Consent Order, and thereafter imposing highly onerous permit conditions upon him.
3) I.C. 67-5279(5) restricts agency action and allows for the interpretation of

administrative rules in a light favorable to that of the individual challenging an agency action. Interpretation of those Rules (or the lack thereof) in favor of Petitioner demonstrates Petitioner is in compliance with the terms of the Consent Order.

4) The terms of the Conservation Easement burdening this section of the Big Wood River now renders the Consent Order and Permit moot.

5) Idaho Code 42-3806 contains an explicit exception for permitting requirements when a water user, such as Petitioner, maintains or repairs a stream channel.

WHEREFORE: Petitioner asks the Hearing Officer to grant summary judgment in favor of Petitioner so as to relieve Petitioner or any obligation to complete the stream channel alteration work contemplated in the Consent Order or Permit at issue herein and order the Department to refund the entirety of the $10,000 penalty it imposed.

October 20, 2025
By: /s/ J. Kahle Becker
J. KAHLE BECKER
LAW OFFICES OF J. KAHLE BECKER
Attorney for Petitioner

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the _20th_ day of October, 2025, I caused to be served the foregoing Motion for Summary Judgment to the following persons by email:

Meghan Carter
Attorney for Defendant,
Idaho Department of Water Resources
meghan.carter@idwr.idaho.gov

"IDWR File" file@idwr.idaho.gov

"Tschohl, Sarah" Sarah.Tschohl@idwr.idaho.gov

_____/s/ J. Kahle Becker_____
J. KAHLE BECKER
Attorney for the Petitioner

RECEIVED
Oct 20, 2025
DEPARTMENT OF
WATER RESOURCES

**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 Petitioner

**BEFORE THE WATER RESOURCES BOARD**
**OF THE STATE OF IDAHO**

| | |
|---|---|
| IN THE MATTER OF APPLICATION FOR STREAM CHANNEL ALTERATION PERMIT NO. S37-20565 | PETITIONER'S BRIEF IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT |

COMES NOW Petitioner, John Hastings by and through his attorney of record, J. Kahle Becker and, having filed for Summary Judgment pursuant to IDAPA 37.01.01.220.03 and IRCP 56 and submits his Brief in Support of Motion for Summary Judgment as follows.

## INTRODUCTION

This case presents a unique set of facts where the State seeks to compel Petitioner to perform work in a section of the Big Wood River which the State does not have clear title to. *See* Exhibits A and B to *Petitioner's Response to The Community Library's Motion to Quash Subpoena*. Instead, the State seeks to compel Petitioner to perform stream channel alteration activities on land purportedly owned by a third party. The State does so despite its awareness that the Big Wood River was historically navigable at the time of statehood, based on research conducted by a study the State itself commissioned.

*See* Exhibit D to *Petitioner's Response to The Community Library's Motion to Quash Subpoena*.

The permit at issue herein contains conditions which Petitioner objects to. With respect to the matters at issue in the instant *Motion* arising from this cloud on the title to the Big Wood River, the objectionable conditions proposed by IDWR, are as follows:

> Prior to any construction authorized by this permit **written approval to work on property belonging to others <u>shall</u> be obtained in writing** and a copy of the approval provided to IDWR.
>
> 13. Permittee is responsible for all work done by any contractor or sub-contractor. Permittee shall ensure any contractor or sub-contractor who performs the work follows all the terms and conditions of this authorization.
>
> General Conditions
> 1. This permit does not constitute any of the following:
> **a) An easement or right-of-way to trespass or work upon property belonging to others;**
> b) Other approval that may be required by local, state, or Federal government, unless specifically stated in the special conditions above; (Emphasis added).

Here, The Community Library asserts that it is the owner of what would otherwise appear to be a publicly owned "state navigable" river. To make matters worse, at its September 25, 2025 deposition conducted herein, The Community Library revealed for the first time that it has entered into a conservation easement with the prior owner, The Nature Conservancy. *See* Exhibit A to *Declaration of Counsel in Support of Motion for Summary Judgment*. That conservation easement states:

> S. Water Courses, Wetlands and Groundwater. **Any** new manipulation, diversion, **or other alteration of natural water courses** or wetlands, any new practice that degrades or destabilizes their natural banks, any new pumping of groundwater, or any other new development of water resources **is prohibited**. (Emphasis added.)

The Community Library testified at its deposition conducted in this matter: 1) any permission it might grant to Petitioner to work in the bed of the Big Wood River would

first require compliance with the conservation easement; and 2) petitioner would be required to indemnify the Community Library. *See* Exhibit B to *Declaration of Counsel in Support of Motion for Summary Judgment*, Transcript of Deposition of The Community Library at pp. 23-24, 27, 31-33. This position is consistent with that taken by the Nature Conservancy when it "owned" this section of the Big Wood River. *See* Exhibit C to *Petitioner's Response to The Community Library's Motion to Quash Subpoena*.

Petitioner expressly declines the government's invitation to enter into an indemnification agreement with a third party with a dubious claim to a public river. *See Affidavit of John Hastings in Support of Motion for Summary Judgment* at ¶ 12.[1] Afterall, doing so would create an unreasonable cost of compliance, which amounts to a perpetual blank check liability. On the other hand, ignoring the demands of the "landowner" and the owner of the conservation easement places Petitioner at risk of further litigation and the draconian consequences which flow from the application of I.C. § 6-202 (treble damages and an award of attorney's fees).

To date, the Department has not specified any statutory or regulatory authority which stands for the proposition that the government can compel a citizen to enter into a blank check agreement with a third party, prior to performing streambank restoration. The reason being, no such authority exists. Instead, constitutional provisions and the practical reality of the situation now require the dismissal of these administrative proceedings with a finding that the State lacks the authority to compel Petitioner to

[1] Petitioner is also concerned that the permit requirements for the installation of barbs and root wads presents a danger to members of the community. *See Affidavit of John Hastings in Support of Motion for Summary Judgment* at ¶ 8 & 9 and compare to IDAPA 37.03.07.35.01.l (Are there public safety factors to consider?). This public safety factor, in addition to the generally high price of river front property in this area, renders the indemnification requirement an expensive proposition.

indemnify a third party, that the Permit has been mooted by the Conservation Easement, and other requirements in the permit are not grounded in statutory or administrative authority.

## LEGAL ARGUMENT

### 1. Where No Statutory Authorization Exists, the State cannot Compel Petitioner to Indemnify a Third Party as a Cost of Compliance with an Administrative Order.

Recent United States Supreme Court precedent guides the Hearing Officer's analysis of the Government's lack of authority to shift a massive cost of compliance with an Administrative Order to Petitioner. Here, no statute or administrative rule authorizes IDWR to compel petitioner to bear an unlimited cost of compliance by mandating that Petitioner agree to indemnify a third party.

The factual background and decision in *Loper Bright Enters. v. Raimondo*, 603 U.S. 369(2024) is instructive. The Magnuson–Stevens Fishery Conservation and Management Act was intended to provide for the management of marine fisheries in United States waters. One of the Act's provisions authorizes the National Marine Fisheries Service to require fishing vessels to "carry" federal monitors on board to enforce the agency's regulations, particularly to prevent overfishing.

The New England Council (NEC) is a regional business association that develops fishery management plans for fisheries off the North Atlantic coast. One such fishery is the herring fishery. Unlike in North Pacific and foreign fisheries, the Magnuson–Stevens Act (MSA) does not explicitly require Atlantic herring fisheries to pay the costs of federal monitors.

Starting in 2013, the NEC started to develop an amendment to the New England

fishery management plans that would give the council the power – though not explicitly given in the language of the MSA – to require the fishing industry to pay the costs of additional monitoring. The NEC submitted this amendment to the NMFS, which in 2020 published its final rule establishing a standardized process that would require industry-funded monitoring across New England fisheries. Industry challenged this rule as being in excess of the statutory authority given to NMFS. The Supreme Court held:

> In a case involving an agency, of course, the statute's meaning may well be that the agency is authorized to exercise a degree of discretion. Congress has often enacted such statutes. For example, some statutes "expressly delegate[ ]" to an agency the authority to give meaning to a particular statutory term. *Batterton* v. *Francis*, 432 U. S. 416, 425, 97 S. Ct. 2399, 53 L. Ed. 2d 448 (1977) (emphasis deleted). Others empower an agency to prescribe rules to "fill up the details" of a statutory scheme, *Wayman* v. *Southard*, 23 U.S. 1, 10 Wheat. 1, 43, 6 L. Ed. 253 (1825), or to regulate subject to the limits imposed by a term or phrase that "leaves agencies with flexibility," *Michigan* v. *EPA*, 576 U. S. 743, 752, 135 S. Ct. 2699, 192 L. Ed. 2d 674 (2015), such as "appropriate" or "reasonable."
>
> When the best reading of a statute is that it delegates discretionary authority to an agency, the role of the reviewing court under the APA is, as always, to independently interpret the statute and effectuate the will of Congress subject to constitutional limits. The court fulfills that role by recognizing constitutional delegations, "fix[ing] the boundaries of [the] delegated authority," H. Monaghan, *Marbury* and the Administrative State, 83 Colum. L. Rev. 1, 27 (1983), and ensuring the agency has engaged in "'reasoned decisionmaking'" within those boundaries, *Michigan*, 576 U. S., at 750, 135 S. Ct. 2699, 192 L. Ed. 2d 674 (quoting *Allentown Mack Sales & Service, Inc.* v. *NLRB*, 522 U. S. 359, 374, 118 S. Ct. 818, 139 L. Ed. 2d 797 (1998)); see also *Motor Vehicle Mfrs. Ass'n of United States, Inc.* v. *State Farm Mut. Auto. Ins. Co.*, 463 U. S. 29, 103 S. Ct. 2856, 77 L. Ed. 2d 443 (1983). By doing so, a court upholds the traditional conception of the judicial function that the APA adopts.
>
> *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 394-396, 144 S. Ct. 2244, 2263, 219 L. Ed. 2d 832, 855-856, 2024 U.S. LEXIS 2882, *37-38, 54 ELR 20097, 30 Fla. L. Weekly Fed. S 528, 2024 WL 3208360

The Supreme Court went on to overrule longstanding precedent, *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984), (courts must defer to the

authority of an administrative agency's interpretation of a statute whenever both the intent of Congress was ambiguous and the agency's interpretation is reasonable or permissible). The majority opinion in *Loper Bright* also found that the 1976 Magnuson–Stevens Fishery Conservation and Management Act did not authorize officials to create industry-funded monitoring requirements (estimated by the Plaintiffs therein to be approximately $700/day). Justice Gorsuch's concurrence noted that the only change in administrative law going forward is that federal courts should "resolve cases and controversies without any systemic bias in the government's favor."

Here, there is no statutory authority which allows IDWR to compel Petitioner to bear an unlimited cost of compliance. Nor is there an administrative Rule which seeks to interpret such a non-existent statute. Instead, we are faced with governmental overreach with is not grounded in any authority whatsoever.

**2. Idaho's Administrative Procedure Act Prohibits IDWR from Exceeding Its Statutory Authority.**

Idaho's Administrative Procedures Act grants executive agencies less discretion in interpretation of rules than its federal counterpart, which was at issue in *Loper Bright*. I.C. 67-5279(5) restricts agency action and allows for the interpretation of administrative rules in a light favorable to that of the individual challenging an agency action.

> (5) When interpreting the provisions of any state law, this chapter, or any rule, as defined in section 67-5201, Idaho Code, the court shall not defer to an agency's interpretation of the law or rule and shall interpret its meaning and effect de novo. In an action brought by or against an agency, after applying all customary tools of interpretation, the court shall exercise any remaining doubt in favor of a reasonable interpretation that limits agency power and maximizes individual liberty.

IDWR is unable to point to any explicit statutory authority which allows it to shift an

unlimited cost of compliance with an Order to Petitioner. Nor can IDWR point to a Rule interpreting discretionary authority in this non-existent statute. In light of the language of IDAPA 67-5279(5), IDWR's power must be limited in this regard. Moreover, Petitioner's personal liberty (to decline to enter into an open ended indemnity agreement with a third party) must be maximized. *See Affidavit of John Hastings in Support of Petitioner's Motion for Summary Judgment* at ¶ 11 & 12.

The same logic applies to IDWR's insistence that Petitioner perform extensive stream channel alteration work. Here the Department is requiring Petitioner not only prepare a vegetative monitoring plan and bioengineering treatments mentioned in the Consent Order but also conduct extensive work in the channel of the river itself. *See* Exhibit D to *Declaration of Counsel* (Ex. 6 to Golart Deposition - Consent Order at p. 2 items 1 a and b) and compare to the Permit (Ex. 9 to Golart Deposition at pp. 2-6).

At his deposition, Mr. Golart confirmed that the term "bioengineering treatments" is not defined in statute or rule. *See* I.C. 67-5279(3)(b) and Exhibit C to *Declaration of Counsel* at pp. 53-54. Likewise, Mr. Golart confirmed that there is no explicit authority in either statute or Rule which allows the Department to mandate that someone prepare a vegetative monitoring plan. *See* Exhibit C to *Declaration of Counsel* at pp. 55-57. Mr. Golart testified that the method of compliance with these requirements in the Consent Order is at the discretion of the landowner. *See* Exhibit C to *Declaration of Counsel* at pp. 52-53.

Mr. Golart confirmed that the authority he relied upon in preparing the Permit, with much more extensive requirements than those found in the Consent Order, is grounded in administrative rules and statutory authority. Id at pp. 57. Yet, beyond

getting a permit from Mr. Golart prior to commencing emergency construction, there appears to be no Rule or Statute which Mr. Hastings' emergency conduct violated in the first place.

For example, Mr. Golart confirmed that the bank armoring Petitioner placed can remain because it is authorized in and appears to comply with the pertinent administrative rules. *See* Exhibit C to *Declaration of Counsel* at pp. 61-66, 68-71, 92. Mr. Golart's acknowledgment of this fact is an admission that the Department acted arbitrarily and capriciously in issuing a Notice of Violation in the first place. I.C. 67-5279(3)(e) and *see* Exhibit C to *Declaration of Counsel* at pp. 45, 47-49. Afterall, Petitioner was simply acting under authority of a local administrative arm of the State in an emergency situation. *See* I.C. §§ 67-6523 and 46-1022 (allowing the regulation of floodplains by local governments) and Exhibit D to *Declaration of Counsel* (Ketchum Emergency Ordinance 1172 -Exhibit 2 to Deposition of Aaron Golart).[2] Mr. Golart testified that, pursuant to I.C. § 42-3808, he had the authority and discretion to waive any violation of the Stream Channel Alteration Act in such an emergency. *See* Exhibit C to *Declaration of Counsel* at pp. 102-103. Yet he declined to do so.

In this situation, absent authorization in statute or rule, I.C. 67-5279(5) restricts agency action and requires an interpretation which maximizes Petitioner's personal liberty. Here, the requirement in the Consent Order that Mr. Hastings perform bioengineering treatments and a planting plan have been met and the Consent Order has been complied with. With respect to the planting plan, *see* Exhibit C to *Declaration of*

[2] Photographs of Petitioner's private upland property and his trees actively eroding in the 2017 flood, taken July 25, 2017, immediately prior to the installation of the riprap, are shown in Exhibit D to *Declaration of Counsel* (Exhibit 3 to Golart Deposition). The photo at p. 4 of 7 thereof shows the large cottonwood trees at risk of having their roots undermined.

*Counsel* at pp. 41-43, 91, 97 (cottonwood trees have been planted, are still present, are a native species, and will naturally repopulate) and Exhibit D at Deposition Exhibit 13 (photos of planted cottonwood trees); compare to *Affidavit of John Hastings in Support of Petitioner's Motion for Summary Judgment* at ¶ 11. The Department's detailed requirements in the subject Permit, which it mandated Petitioner apply for, have no basis in rule or law. *See* I.C 67-5279(2)(b) and (3)(b). Therefore there is no legal basis to compel Petitioner to do anything further.

**3. The Constitutional Limits at Issue**

While there are no explicit prohibitions in Idaho's Constitution which restrain governmental authority to compel a citizen to enter into an open ended indemnification contract with a third party, several sections of Article I would appear to prohibit governmental compulsion of a citizen to enter into a contractual indemnification agreement against his will.

> Article 1 Section 1. Inalienable rights of man. All men are by nature free and equal, and have certain inalienable rights, among which are enjoying and defending life and liberty; acquiring, possessing and protecting property; pursuing happiness and securing safety.
>
> Article 1 Section 9. Freedom of speech. Every person may freely speak, write and publish on all subjects, being responsible for the abuse of that liberty.
>
> "No bill of attainder, ex post facto law, or law impairing the obligation of contracts shall ever be passed." Idaho Const. Art. I, § 16.

The Departments conduct in continuing to compel Petitioner to comply with the permit is therefore in excess of its Constitutional authority. *See* I.C. 67-5279(2)(a) and (3)(a)

**4. The Consent Order is Now Moot**

IDWR seeks to mandate Petitioner consent to a permit which states "Prior to any

construction authorized by this permit **written approval to work on property belonging to others shall be obtained in writing** and a copy of the approval provided to IDWR." That permission has now been expressly denied in the Conservation Easement which clouds the title to this section of the Big Wood River.

> S. Water Courses, Wetlands and Groundwater. **Any** new manipulation, diversion, **or other alteration of natural water courses** or wetlands, any new practice that degrades or destabilizes their natural banks, any new pumping of groundwater, or any other new development of water resources **is prohibited**. (Emphasis added.) *See* Exhibit 5 to Deposition of the Community Library at p. 29 attached to *Declaration of Counsel* as Exhibit A.

The terms of the Conservation Easement burdening this section of the Big Wood River now renders the Consent Order moot.

> A case becomes moot when the issues presented are no longer live or the parties lack a legally cognizable interest in the outcome. *See Rational Predator Mgt. v. Dept. of Agriculture,* 129 Idaho 670, 672, 931 P.2d 1188, 1190 (1997). A case is moot if it presents no justiciable controversy and a judicial determination will have no practical effect upon the outcome.
> *Goodson v. Nez Perce County*, 133 Idaho 851, 853, 993 P.2d 614, 616, 2000 Ida. LEXIS 3, *5-6, 139 Lab. Cas. (CCH) P58,813

> "Mootness applies when a favorable judicial decision would not result in any relief. This Court may only review cases in which a judicial determination will have a practical effect on the outcome." *Fenn v. Noah*, 142 Idaho 775, 779, 133 P.3d 1240, 1244 (2006) *Houpt v. Wells Fargo Bank, Nat'l Assoc*., 160 Idaho 181, 189, 370 P.3d 384, 392, 2016 Ida. LEXIS 70, *16-17

A determination from this Hearing Officer as to any particular permit condition will have no practical effect on the outcome of this situation because IDWR's preferred outcome can not and will not be performed while there is a cloud on the title of this section of the Big Wood River. It is the state's obligation to clear title, not Petitioner's.

In addition to being mooted, compliance with the Consent Order is now rendered

to be an impossibility.

> In *Haessly v. Safeco Title Insurance Co.*, 121 Idaho 463, 465, 825 P.2d 1119, 1121 (1992), the Idaho Supreme Court stated that the doctrine of impossibility "operates to excuse performance when the bargained-for performance is no longer in existence or is no longer capable of being performed due to the unforeseen, supervening act of a third party." To establish impossibility: "(1) a contingency must occur; (2) performance must be impossible, not just more difficult or more expensive; and (3) the nonoccurrence of the contingency must be a basic assumption of the agreement." *Id*.
>
> *Sutheimer v. Stoltenberg*, 127 Idaho 81, 85, 896 P.2d 989, 993, 1995 Ida. App. LEXIS 74, *11.

Lastly, the Consent Order is moot based on the conditions on the ground which Mr. Golart confirmed to be in compliance with any administrative rules regarding riprap and based on the plantings of cottonwood trees Petitioner performed.

**5. Idaho Code and Caselaw Specifically States No Permit is Required for the Work Which was Subject to the Notice of Violation or Which is Contemplated in the Permit**

Idaho Code contains an explicit exception for permitting requirements when a water user, such as Petitioner, maintains or repairs a stream channel.

> 42-3806. Existing rights unaffected — **Where permit not required**. This act shall not operate or be so construed as to impair, diminish, control or divest any existing or vested water rights acquired under the laws of the state of Idaho or the United States, nor to interfere with the diversion of water from streams under existing or vested water right or water right permit for irrigation, domestic, commercial or other uses as recognized and provided for by Idaho water laws.
>
> **No permit shall be required by the state or any agency or political subdivision thereof, from a <u>water user</u> or his agent to** clean, maintain, **construct in, <u>or repair</u> any stream channel**, diversion structure, canal, ditch, drain or lateral. No permit shall be required by the state or any agency or political subdivision thereof, from a water user or his agent to remove any obstruction from any stream channel, if such obstruction

> interferes with, or is likely to interfere with, the delivery of, or use of, water under any existing or vested water right, or water right permit.
>
> Nothing in this section shall be construed to affect the provisions of chapter 10, title 46, Idaho Code, or to exempt a water user or his agent from compliance with any applicable local flood plain ordinance adopted pursuant to section 46-1022, Idaho Code. (Emphasis added).

The Term "water user" is not defined in the definition section of Title 42 Chapter 38 – the Stream Channel Alteration Act. *See* I.C. 42-3802. Therefore, under the rules of statutory interpretation, the Hearing Officer should rely upon dictionary definitions of "water" and "user." "When engaging in statutory interpretation, this Court often begins with the dictionary definitions of disputed words or phrases contained in the statute." *State v. Marble*, 564 P.3d 715, 722, 2025 Ida. LEXIS 19, *13, 2025 LX 44477, 2025 WL 595409. Mr. Hastings *Affidavit* contains uncontradicted testimony that under the ordinary meaning of the term, he uses water and is therefore a "water user." Thus, to the extent any fill was placed below the ordinary high water mark of the Big Wood River - as it existed prior to the 2017 flood event, no permit was or is necessary for Mr. Hastings, a "water user," to engage in the bank armoring he performed. *See* definition of "Mean High Water Mark" I.C. 42-3802(h).

Mr. Golart was simply wrong in issuing a Notice of Violation in the first place when he assessed the location of the fill from a distance, based on its location with respect to the location of the ordinary high water mark of the Big Wood River after the 2017 flood event. *See* Transcript of Deposition of Aaron Golart at pp. 35-41, 51-52 and compare to *Aldape v. Akins*, 105 Idaho 254, 256, 668 P.2d 130, 132, 1983 Ida. App. LEXIS 238, *2, (An avulsive events leave property lines unchanged) as well as *Milbert v. Carl Carbon, Inc.*, 89 Idaho 471, 478, 406 P.2d 113, 117, 1965 Ida. LEXIS 389, *13 ("a

riparian owner of land abutting upon a stream, whether navigable or non-navigable, has the right to place such barriers as will prevent his land from being overflowed or damaged by the stream, and for the purpose of keeping the same within its natural channel.”). In short, this whole situation could have been avoided had Mr. Golart simply 1) followed though on the emergency permit the city of Ketchum issued, 2) looked at the riprap to confirm what he now admits to be a compliant structure and 3) determined the location of the ordinary high water mark as it existed prior to the 2017 flood event.

WHEREFORE: Petitioner asks the Hearing Officer to grant summary judgment in favor of Petitioner so as to relieve Petitioner or any obligation to complete the stream channel alteration work contemplated in the Consent Order or Permit at issue herein and order the Department to refund the entirety of the $10,000 penalty it imposed.

October 20, 2025
By: /s/ J. Kahle Becker
J. KAHLE BECKER
LAW OFFICES OF J. KAHLE BECKER
Attorney for Petitioner

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the _20th_ day of October, 2025, I caused to be served the foregoing Brief in Support of Motion for Summary Judgment to the following persons by email:

Meghan Carter
Attorney for Defendant,
Idaho Department of Water Resources
meghan.carter@idwr.idaho.gov

"IDWR File" file@idwr.idaho.gov

"Tschohl, Sarah" Sarah.Tschohl@idwr.idaho.gov

_____/s/ J. Kahle Becker_____
J. KAHLE BECKER
Attorney for the Petitioner

RECEIVED
Oct 20, 2025
DEPARTMENT OF
WATER RESOURCES

**J. KAHLE BECKER (ISB # 7408)**
**Attorney at Law**
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Attorney for Petitioner

**BEFORE THE WATER RESOURCES BOARD**
**OF THE STATE OF IDAHO**

| | |
|---|---|
| IN THE MATTER OF APPLICATION FOR STREAM CHANNEL ALTERATION PERMIT NO. S37-20565 | AFFIDAVIT OF JOHN HASTINGS IN SUPPORT OF PETITIONER'S MOTION FOR SUMMARY JUDGMENT |

COMES NOW Petitioner, John Hastings by and through his attorney of record, J. Kahle Becker and, having filed his Motion for Summary Judgment, submits his Affidavit in Support thereof as follows.

STATE OF IDAHO )
:ss
County of Blaine )

COMES NOW, John Hastings, Jr, being over the age of eighteen years and competent to make this Affidavit, after first being duly sworn, and upon his own personal knowledge, states as follows:

1. I have an ownership interest 1200 Warm Springs Rd., Ketchum, ID real property along the Big Wood River, upstream of its confluence with Warm Springs Creek. The subject property is immediately upstream of the Warm Springs Road bridge which crosses the Big Wood River.

2. During the flood event in the Summer of 2017, following a site visit on July 25, 2017, representatives of the City of Ketchum permitted me to install armoring to the streambank immediately upstream of the bridge for Warm Springs Road due to a risk created by the rapid erosion of the bank along my property. The city was concerned that trees which had fallen into the river from my upland property would obstruct the flow of the Big Wood River and cause damage to or failure of the Warm Springs Bridge. There was a risk that a large group of cottonwood trees would fall into the river as the bank had become unstable due to the large flood event of 2017.

3. Upon the verbal authorization given on July 25, 2017 as confirmed thereafter by issuance of a written permit from the City of Ketchum, and believing I had a valid permit from a 2014 proposal (Permit No. S37-20362), I installed bank armoring. This work was halted July 31, 2017 upon receipt of the written permit from the City of Ketchum. Due to the rapid erosion of my property, it appeared to me that the bank armoring was conducted above what would have been the ordinary high water mark of the Big Wood River - as it existed prior to the 2017 flood event.

4. I hired a professional contractor to install the armoring and relied upon his expertise. From my perspective, and as confirmed by Aaron Golart at his October 3, 2025 deposition taken in this matter, the bank armoring I had installed appears to comply with the specifications listed in IDAPA 37.03.07.057. I had also planted trees

on my property to help secure the bank to prevent the erosion of the bank along this portion of my upland property. Some of the trees which previously existed in this vicinity were swept into the Big Wood River during the rapid erosion which occurred during the 2017 flood event.

5. My project engineer, Brockway Engineering, promptly began the process of seeking state and federal permits prior to work commencing on the armoring project, as had been verbally authorized by the City of Ketchum.

6. My first interaction with Aaron Golart occurred in the summer of 2017 at 955 W. Warm Springs Rd. Ketchum, ID. Mr. Golart and Christine Hilt (Blaine County Floodplain Coordinator) visited 955 W. Warm Springs Rd. to observe a large plastic barrier a neighbor had placed across Warm Springs Creek. Unfortunately, the barrier directed the flow of Warm Springs Creek into the living room of a home my wife and I occupied. I expressed my displeasure to Mr. Golart and Mrs. Hilt regarding this structure, which Mrs. Hilt had authorized. I also expressed my displeasure to Mrs. Hilt for having missed 2 other appointments at another property. An intense heated conversation took place. Mr. Golart and Mrs. Hilt's route back to Ketchum following this appointment would have passed over the Warm Springs Bridge.

7. Following this interaction, on or about September 7, 2017 Mr. Golart observed the bank armoring my contractor had recently installed at 1200 Warm Springs Rd. Mr. Golart thereafter promptly issued a Notice of Violation to me dated September 11, 2017 and demanded that I promptly pay $10,000, the maximum fine authorized under Idaho Code 42-1701B(6)(a).

8. There is a swimming hole in the Big Wood River, which the public accesses from upland property just across the river from my property. On summer days I have observed as many as over 100 people per day swimming in this hole. When inexperienced swimmers, typically children, get swept downstream of the swimming hole, I have observed swimmers climb out of the river on my property and walk either back upstream or across the warm springs bridge. I have personally rescued children from my property who have been swept downstream from the swimming hole.

9. I have concerns that the barbs and specifically the root wads at the ends of the barbs which the Department is mandating I install will create a hazardous condition that could present a life safety hazard for the public who recreates in this area.

10. I am a Water User of the Big Wood River and have utilized the water of the Big Wood River on the subject property, including for irrigation purposes. I also have a permitted well on the property.

11. Leaving the bank armoring I placed as it currently stands and allowing the trees I planted to grow to maturity would maximize my personal liberty.

12. I decline to enter into any indemnification agreement with The Nature Conservancy or The Community Library as a condition of or prerequisite for conducting the work the Department desires I perform in Stream Channel Alteration Permit No. S37-20565. Doing so would place an unknown and unlimited financial liability upon me for any number of issues. The most concerning liability I am unwilling to assume responsibility for is the risk of death to swimmers which would be created were I to be forced to install barbs with root wads directly across from the swimming hole or anywhere above the Warm Springs Bridge.

12. I decline to enter into any indemnification agreement with The Nature Conservancy or The Community Library as a condition of or prerequisite for conducting the work the Department desires I perform in Stream Channel Alteration Permit No. S37-20565. Doing so would place an unknown and unlimited financial liability upon me for any number of issues. The most concerning liability I am unwilling to assume responsibility for is the risk of death to swimmers which would be created were I to be forced to install barbs with root wads directly across from the swimming hole or anywhere above the Warm Springs Bridge.

Further, your affiant sayeth naught.

DATED this 17 day of October 2025.

Petitioner, John Hastings

STATE OF IDAHO )
:ss
County of Blaine )

SUBSCRIBED and SWORN to before me this 17th day of October 2025.

DEBORAH HURN
Notary Public - State of Idaho
Commission Number 20243686
My Commission Expires Oct 8, 2030

Notary Public for the State of Idaho
Residing at:
My Commission Expires:

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 20th day of October, 2025, I caused to be served the foregoing Affidavit to the following persons by email:

Meghan Carter
Attorney for Defendant,
Idaho Department of Water Resources
meghan.carter@idwr.idaho.gov

"IDWR File" file@idwr.idaho.gov

"Tschohl, Sarah" Sarah.Tschohl@idwr.idaho.gov

/s/ J. Kahle Becker
J. KAHLE BECKER
Attorney for the Petitioner

RECEIVED
Oct 20, 2025
DEPARTMENT OF
WATER RESOURCES

**J. KAHLE BECKER (ISB # 7408)**
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**BEFORE THE WATER RESOURCES BOARD**
**OF THE STATE OF IDAHO**

| | |
|---|---|
| IN THE MATTER OF APPLICATION FOR STREAM CHANNEL ALTERATION PERMIT NO. S37-20565 | DECLARATION OF COUNSEL IN IN SUPPORT OF PETITIONER'S MOTION FOR SUMMARY JUDGMENT |

COME NOW, J. Kahle Becker, being over the age of 18 and competent to make this Declaration, pursuant to Rules 2.7 and 56(c) of the Idaho Rules of Civil Procedure, I.C. § 9-1406, IDAPA 37.01.01.220.02.a and upon his own personal knowledge and under penalty of perjury, states as follows:

1. That I am an attorney in good standing with the Idaho State Bar and counsel for the Petitioner, John Hastings, Jr. herein.

2. That I make this Declaration in Support of *Petitioner's Motion for Summary Judgment*.

3. Attached hereto as Exhibit A is a true and correct copy of a Gift Deed, recorded against the section of the Big Wood River at issue in this matter on or about May 11, 2017, which was marked as Exhibit 5 to the deposition of the Community

Library. The document includes a copy of a Reservation of Conservation Easement in favor of The Nature Conservancy as Exhibit B thereto. Additional terms of the Conservation Easement are found at Exhibit C to the Reservation of Conservation Easement.

4. Attached hereto as Exhibit B is a true and correct copy of pages from the transcript of the deposition of The Community Library, Testimony of Jennifer Emery Davidson, taken September 25, 2025 in discovery in this matter.

5. Attached hereto as Exhibit C is a true and correct copy of the transcript of the deposition of the Idaho Department of Water Resources, Testimony of Aaron Golart, taken October 3, 2025 in discovery in this matter.

6. Attached hereto as Exhibit D are a true and correct copies of Exhibits from the deposition of the Idaho Department of Water Resources, Testimony of Aaron Golart, taken October 3, 2025 in discovery in this matter.[1]

7. Following the deposition of Aaron Golart in an informal conversation with Mrs. Carter, Mr. Golart revealed that he was under some sort of confidentiality agreement with respect to a settlement of a serious violation of the Stream Channel Alteration Act along Panther Creek in *Idaho Department of Water Resources v. Laurent Comte, and Pantherc, LLC*, Lemhi County, Case No. CV30-23-0191 (concerning Notice of Violation E2023-2936). This revelation by Mr. Golart was concerning because it raises the prospect that those with financial resources or political connections are able to receive favorable treatment from the Department and/or the Office of the Attorney General,

[1] Exhibit 3 to the Deposition of Aaron Golart/IDWR contained attorney client privileged communications which were blacked out with a marker at the deposition prior to it being marked as an Exhibit. Out of an abundance of caution I completed the redaction of those communications utilizing the redaction function on Adobe Acrobat prior to including that exhibit as an attachment hereto.

which members of the public are precluded from seeing or understanding. This raises concerns about the denial of Petitioner's *Motion to Compel* which sought to review the Departments' records regarding violations of the Stream Channel Alteration Act which may have been resolved on terms favorable to certain individuals. This implicates the discretionary authority of the Department. See I.C. 67-5279. The Hearing Officer's denial of Petitioner's *Motion to Compel* prevents Petitioner from examining the Departments apparent abuse of its discretion. I am concerned that this type of conduct by Idaho's government entering into secret settlement agreements to resolve Notices of Violation of the Stream Channel Alteration Act creates a two-tiered system of justice in violation of the Equal Protection Clauses of the Idaho Constitution (Article 1 Section 2) and the Fourteenth Amendment of the US Constitution. Precluding Petitioner from viewing this type of information appears to be a denial of Petitioner's due process rights.

8. I declare under penalty of perjury pursuant to the law of the State of Idaho that the foregoing is true and correct to the best of my knowledge, information and belief.

October 20th, 2025

By: /s/ J. Kahle Becker
J. KAHLE BECKER
LAW OFFICES OF J. KAHLE BECKER
Attorney for Petitioner

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 20th day of October, 2025, I caused to be served the foregoing Declaration to the following persons by email:

Meghan Carter
Attorney for Defendant,
Idaho Department of Water Resources
meghan.carter@idwr.idaho.gov

"IDWR File" file@idwr.idaho.gov

"Tschohl, Sarah" Sarah.Tschohl@idwr.idaho.gov

/s/ J. Kahle Becker
J. KAHLE BECKER
Attorney for the Petitioner

# EXHIBIT A

**Instrument # 643460**
HAILEY, BLAINE, IDAHO
05-11-2017 11:43:46 AM No. of Pages: 30
Recorded for: BLAINE COUNTY TITLE
JOLYNN DRAGE Fee: $97.00
Ex-Officio Recorder Deputy: JB
Electronically Recorded by Simplifile

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

JOHN A. SEILLER
Attorney at Law, PLLC, ISB No. 4595
191 Fifth Street West, Third Floor
Post Office Box 6090
Ketchum, Idaho 83340
practice@sunvalleylaw.net
(208) 726-5962
FAX 726-5998

Please reserve space above for Recorder's use only.

# GIFT DEED
## Subject to Reservation of Conservation Easement

THIS GIFT DEED is made this 11th day of May, 2017, by and between THE NATURE CONSERVANCY, a District of Columbia non-profit corporation, 4245 North Fairfax Drive, Suite 100, Arlington, Virginia 22203 ("Grantor"), and THE COMMUNITY LIBRARY ASSOCIATION, INC., an Idaho non-profit corporation, with offices at 415 Spruce Ave., Ketchum, Idaho 83340 ("Grantee").

GRANTOR does hereby grant, give, convey, and warrant, as stated herein and subject to the matters below, to Grantee, its successors and assigns forever, all of the real property situate in Blaine County, Idaho, more particularly described on the attached Exhibit "A" to Gift Deed, together with all water rights, easements, rights of way, improvements, fixtures, tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining thereto (the "Property").

The Property has great historic significance as the former residence of literary author Ernest Hemingway and his wife Mary Hemingway, and is listed on the National Register of Historic Places. Grantee has a significant interest in preserving the Property, its history and legacy as part of its charitable mission. Grantee hereby accepts the Property subject to its continued historical preservation consistent with Mary Hemingway's request in her will for the "protection of the said Property as a wildlife preserve and nature reference library".

Grantor hereby reserves the Conservation Easement attached hereto as Exhibit "B", which is incorporated herein by this reference (the "Reservation").

This grant is further SUBJECT TO the following permitted encumbrances (the "Permitted Encumbrances"): all reservations, restrictions, encumbrances, easements, and claims of easements; any and all matters of record or that would be disclosed by a survey or physical inspection of the Property; taxes and assessments not yet payable; unpatented mining claims, reservations or exceptions in patents or in Acts authorizing the issuance thereof, and water rights,

EXHIBIT 9-15-17 5 J. Davidson

claims or title to water; any adverse claim to any portion of the Property which lies below the line of mean high water; and the Property's historical preservation described above.

Grantor conveys and Grantee accepts the Property in its present "as is" condition. Grantor expressly disclaims any warranties or representation as to (i) matters of title except as set forth in this Gift Deed, (ii) environmental matters relating to the Property, including without limitation the presence of Hazardous Materials, (iii) geological conditions, including subsidence, subsurface conditions, water table, underground water reservoirs, and earthquake faults, (iv) whether and to what extent the Property is affected by any stream, body of water, flood prone area, floodway, or flood plain, (v) drainage, (vi) soil conditions, including evidence of instability, past soil repairs, soil additions or conditions of soil, (vii) zoning or building entitlement to which the Property may be subject, (viii) the availability of utilities to the Property, (ix) the usages of adjoining Property, (x) access to the Property, (xi) plans and specifications, size, location, age, use, design, quality, description, suitability, operation, or physical characteristics of the Property, (xii) the condition or use of the Property or compliance of the Property with all past, present or future federal, state or local ordinances, rules, regulations or laws, (xiii) use of the Property for any particular purpose, (xiv) tax consequences, or (xv) any other matter or thing with respect to the Property.

TO HAVE AND TO HOLD the said Property with all appurtenances unto the said Grantee and its assigns forever. The said Grantor does hereby covenant to and with the said Grantee that it is the owner in fee simple of the Property, and that the Property is free from all encumbrances created by, through or under Grantor, SUBJECT TO the Reservation and Permitted Encumbrances.

Except as to the Reservation and Permitted Encumbrances, GRANTOR shall warrant and defend the Property from all other lawful claims created by, through, or under Grantor, but not otherwise.

FURTHER, GRANTOR quitclaims to Grantee all of Grantor's right, title, and interest in and to all personal property located on the Property as of the date of this Deed, to have and to hold it to Grantee and Grantee's heirs, successors, and assigns forever. Neither Grantor nor Grantor's heirs, successors, or assigns will have, claim, or demand any right or title to said personal property or any part of it. The Personal Property quitclaimed to Grantee is quitclaimed "AS IS, WHERE IS" and "WITH ALL FAULTS"; further, Grantor excludes all warranties and representations, express or implied, including, without limitation, any warranty of merchantability, fitness for a particular purpose or safety.

THE NATURE CONSERVANCY
A District of Columbia non-profit corporation

By: _____
Lou Lunte
Deputy State Director, Idaho Chapter

STATE OF IDAHO )
: s.s.
County of Blaine )

On the 11th day of May, 2017, before me, the undersigned Notary Public in and for said state, personally appeared Lou Lunte, known or identified to me to be the Deputy State Director of the Idaho Chapter of The Nature Conservancy, a District of Columbia non-profit corporation, and that the document was signed by him on behalf of said non-profit corporation and that the said non-profit corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this first above written.

_____
Notary Public for Idaho
Residing at Hailey, ID
My commission expires: 9/24/18

DARYL J. FAUTH
NOTARY
PUBLIC
STATE OF IDAHO

THE COMMUNITY LIBRARY ASSOCIATION, INC.,
an Idaho non-profit corporation

By: Jenny Emery Davidson
Jenny Emery Davidson
Executive Director

STATE OF IDAHO )
: s.s.
County of Blaine )

On the 11th day of May, 2017, before me, the undersigned Notary Public in and for said state, personally appeared Jenny Emery Davidson, known or identified to me to be the Executive Director of The Community Library Association, Inc., an Idaho non-profit corporation, and that the document was signed by her on behalf of said non-profit corporation and that the said non-profit corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this first above written.

DARYL J. FAUTH
NOTARY
PUBLIC
STATE OF IDAHO

Notary Public for Idaho
Residing at Hailey, ID
My commission expires: 9/24/18

## EXHIBIT A to GIFT DEED

### Legal Description of Property

A parcel of land located within Section 12, Township 4 North, Range 17 East, Boise Meridian, Blaine County, Idaho, more particularly described as follows:

Commencing at a brass cap marking the Southeast Corner of said Section 12; thence South 89°24'47" West, 1823.75 feet along the South boundary of said Section 12 to a point on the Centerline of the Big Wood River, which is the REAL POINT OF BEGINNING;

Thence continuing South 89°24'47" West, 37.60 feet along said South Boundary of Section 12 to the Westerly Bank of the Big Wood River;
Thence the following eleven courses and distances along the Easterly Boundary of the Hurtig property and the Westerly Bank of the Big Wood River:

North 15°47'28" West 23.70 feet;
North 6°00'09" West 82.63 feet;
North 4°50'58" East 154.22 feet;
North 30°06'17" East 99.92 feet;
North 27°45'21" East 42.30 feet;
North 2°58'30" West 43.14 feet;
North 26°53'52" West 35.55 feet;
North 49°14'57" West 99.10 feet;
North 53°52'32" West 102.06 feet;
North 70°21'32" West 51.14 feet;
North 88°44'23" West 25.32 feet to an iron pin marking the Northeasterly Boundary of the Curtis Subdivision;

Thence North 58°37'57" West 134.90 feet to the Southeast Corner of Lot 37, Sun Valley Subdivision;
Thence the following seven courses and distances along the Easterly and Northerly Boundary of said Sun Valley Subdivision:
North 15°18'00" West 155.71 feet;
North 6°03'00" West 160.82 feet;
North 4°19'00" East 170.60 feet;
North 7°43'00" West 252.41 feet;
North 32°01'00" West 143.93 feet;
North 13°01'00" West 301.46 feet;
North 66°17'21" West 205.10 feet to an iron pin marking the Southwest Corner of tax lot 2741;

Thence North 0°05'00" West 563.06 feet along the West Boundary of said tax lot 2741 to an iron pin;
Thence South 88°02'54" East 187.89 feet along the North Boundary of said tax lot 2741;
Thence South 90°00'00" East 275.00 feet along said North Boundary of said tax lot 2741 to the centerline of the Big Wood River;

Thence the following seventeen (17) courses and distances along the centerline of the Big Wood River:
South 49°30' West 215 feet;
South 24°30' East 170 feet;
South 71°15' East 215 feet;
South 30°00' East 85 feet;
South 49°00 East 110 feet;
South 12°52'44" East 133.28 feet;
South 09°00' West 215 feet;
South 18°00' West 200 feet;
south 33°45' West 350 feet;
South 18°15' West 135 feet;
South 5°00' East 160 feet;
South 24°15' East 162 feet;
South 65°30' East 180 feet;
South 54°00' East 158 feet;
South 24°00' East 115 feet;
South 26°00' West 185 feet;
South 2°46'18" East 248.41 feet to the POINT OF BEGINNING. (Tax Lot 6731)

**EXHIBIT B to GIFT DEED**

**Reservation of Conservation Easement**

(Begins on following page.)

When recorded, return to:
The Nature Conservancy
Legal Department
559 East South Temple
Salt Lake City, UT 84102

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**RESERVATION OF CONSERVATION EASEMENT**
Big Wood River (Community Library) ID
a/k/a Hemingway Preserve

THIS RESERVATION OF CONSERVATION EASEMENT (the "**Conservation Easement**") constitutes an integral part of the Gift Deed with Reservation of Conservation Easement to which it is attached (the "**Deed**"), by means of which THE NATURE CONSERVANCY, a District of Columbia nonprofit corporation and Internal Revenue Code section 501(c)(3) public charity, whose principal address is 4245 North Fairfax Drive, Suite 100, Arlington, Virginia 22203 ("**Holder**") is conveying the Property (defined below) to THE COMMUNITY LIBRARY ASSOCIATION, INC., an Idaho non-profit corporation and Internal Revenue Code section 501(c)(3) public charity with offices at 415 Spruce Ave Ketchum, Idaho 83340 ("**Landowner**").

The following exhibits are attached to and are incorporated into this Grant by this reference:

Exhibit A: Legal Description of the Property
Exhibit B: Property Map
Exhibit C: Property Uses

RECITALS

**A.** **PROPERTY**. By virtue of the Deed, Landowner owns real property in Blaine County, Idaho, consisting of approximately 13.96 acres. This Conservation Easement encumbers approximately 11.76 acres of the Deed property and is described in **Exhibit A** and shown for reference purposes on the Property Map attached as **Exhibit B**, together with all appurtenances thereto, including, without limitation, all minerals and mineral rights, if any (collectively, "**the Property**"). The area of land consisting of the 2.2 acres owned by Landowner but excluded from the legal description of the Property on Exhibit A does not contain ecological values that the Conservancy is obligated to protect and is not burdened by this Conservation Easement ("Excluded Area"). For the purposes of this Conservation Easement, the Property includes any and all water and water rights beneficially used or conditionally decreed for use on the land described in **Exhibit A**.

**B.** **MISSION**. The mission of The Nature Conservancy is to conserve the lands and waters on which all life depends. The Library's charitable mission is to bring information, ideas, and individuals together to enhance the cultural life of its community. It works to promote literacy, encourage community conversations, provide contemplative space, foster creativity, and deepen

a sense of place in central Idaho. The Library includes a regional history department, archive, and museum; cultural programming; and resources for lifelong learning.

C. **QUALIFIED ORGANIZATION**. Holder is a "qualified organization" as that term is defined in 26 USC 170(h)(3) and applicable regulations.

D. **AUTHORIZING STATUTE**. The state of Idaho has authorized the creation of conservation easements pursuant to the Idaho Uniform Conservation Easement Act, Idaho Code Sections 55-2101 to 55-2109, and Landowner and Holder wish to avail themselves of the provisions of that law without intending that the existence of this Conservation Easement be dependent on the continuing existence of such law.

**NOW, THEREFORE**, for and in consideration of the facts recited above and of the mutual covenants, terms, conditions and restrictions contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Holder hereby reserves a Conservation Easement in perpetuity over the Property of the nature and character as follows:

1. **PURPOSE**. The purpose of this Conservation Easement is to preserve and protect in perpetuity the Conservation Values (defined below) as well as the cultural values aligned with the Landowner's mission (the **Conservation Purpose**).

   The Property consists of "a relatively natural habitat for fish, wildlife, or plants, or similar ecosystem," as that phrase is used in 26 U.S.C. § 170(h)(4)(A)(ii) and applicable regulations. The Property is one of the largest undeveloped parcels in the Ketchum city limits and includes about a mile of mature cottonwood forest riverfront along the Big Wood River and habitat for elk, mule deer, red fox, beaver, bald eagle and numerous other wildlife.

   The attributes of the Property described in this Paragraph 1 and in the Report defined below are collectively referred to in this Conservation Easement as the **Conservation Values**.

2. **EASEMENT DOCUMENTATION REPORT**. The parties acknowledge that the following: (1) an Easement Documentation Report (the **Report**) has been prepared; (2) the Report has been approved in writing by Holder and Landowner; (3) and the Report is an integral part of this Conservation Easement and is incorporated herein by reference. A copy of the Report is on file with Landowner and Holder at their respective addresses for notices set forth below. Holder agrees to provide a copy of the Report to Landowner's successors in title upon written request. The parties agree that the Report contains an accurate representation of the historical features, natural resources and physical condition of the Property at the time of this conveyance, of the current and historical uses of the Property, and a more detailed description of the Conservation Values. In case of any conflict or inconsistency between the terms of the Conservation Easement and the Report, the terms of this Conservation Easement shall prevail. Any party may use the Report to enforce provisions of this Conservation Easement, but no party is limited solely to usage of the Report to show a change of conditions such that if a controversy arises the parties shall not

be foreclosed from utilizing any and all other relevant documents, surveys, or other evidence or information to assist in the resolution of the controversy.

3. **THE HOLDER'S RIGHTS**. To accomplish the Conservation Purpose, the following rights are granted to the Holder (and the Holder's agents and representatives) by this Conservation Easement:

3.1 Right to Enforce. The right to preserve and protect the Conservation Values of the Property and enforce the terms of this Conservation Easement.

3.2 Right of Entry. The right to enter the Property at reasonable times for the purposes of inspecting the Property to determine if there is compliance with the terms of this Conservation Easement.

The Holder agrees that entry will be done in a manner that will not interfere unreasonably with Landowner's permitted uses of the Property. The Holder also agrees to provide reasonable advance notice to Landowner prior to entering the Property, except in any case where immediate entry is reasonably necessary to prevent, terminate, or mitigate damage to, or the destruction of, the Conservation Values, or to prevent, terminate or mitigate a violation of the terms of this Conservation Easement.

The Holder's right of entry shall include the right to access the Property over roads owned by Landowner and any rights-of-way or other access ways now or hereafter available to Landowner for access to the Property.

3.3 Additional Actions. The Holder may, but shall not be obligated to, at its own expense, employ the use of herbicides or other biocides, or any other means to control noxious weeds if, as reasonably determined by the Holder, that Landowner's weed control measures have been ineffective in controlling such weeds; provided, however, that such use shall be with the consent of Landowner, which consent shall not be unreasonably withheld, conditioned, or delayed.

4. **PROPERTY USES.** Except as prohibited or otherwise limited by this Paragraph 4 and in the list of uses and practices attached as **Exhibit C**, Landowner reserves all rights accruing from its ownership of the Property, including the right to engage in, permit, or invite others to engage in all uses of the Property that are consistent with the Conservation Purposes and not expressly prohibited herein. The uses and practices set forth in **Exhibit C** are not intended to be an exhaustive recital of allowable uses and practices on the Property; however, any activity on or use of the Property that is inconsistent with the Conservation Purposes is prohibited. Furthermore, certain uses and practices described in **Exhibit C** are subject to specified conditions or to the requirement of and procedures for prior approval by the Holder and procedures for such prior approval are provided below.

5. **VIOLATION AND REMEDIES.**

5.1 Mediation. Notwithstanding any provision of this Conservation Easement to the contrary, in the event of an intractable dispute between Landowner and the Holder regarding any proposed use of or activity on the Property, either party may elect to compel non-binding mediation by written notice to the other party. Neither party shall proceed with the proposed use or activity pending resolution of the dispute. From the date of such written notice, all notice periods shall be stayed and/or tolled until mediation has concluded. Within ten (10) days of such written notice, the parties shall select a single impartial mediator experienced in conservation easements. If the parties are unable to agree on the selection of such mediator, then the parties shall, within thirty (30) days of the date of the initial mediation notice, jointly apply to the District Court of the Fifth Judicial District for Blaine County, Idaho, for the appointment of such mediator. Mediation shall then proceed in accordance with the following guidelines:

5.1.1 Purpose. The purpose of the mediation shall be to: (i) promote discussion between the parties; (ii) assist the parties to develop and exchange pertinent information concerning the issue in dispute; and (iii) assist the parties in developing proposals that will enable them to arrive at a mutually acceptable resolution of the dispute. The mediation is not intended to result in any express or de facto modification or amendment of the terms, conditions or restrictions of this Conservation Easement.

5.1.2 Participation. The mediator may meet with the parties and their counsel jointly or ex parte. The parties agree that they will participate in the mediation process in good faith and expeditiously.

5.1.3 Confidentiality. All information presented to the mediator shall be deemed confidential and shall be disclosed by the mediator only with the written consent of the parties or their respective counsel. The mediator shall not be subject to subpoena by any party. No statements made or documents prepared for the mediation sessions shall be disclosed in any subsequent proceeding, including in a court of law, or construed as an admission of a party.

5.1.4 Time. Neither party shall be obligated to continue the mediation process beyond a period of sixty (60) days from the date of the initial mediation notice or if the mediator concludes that there is no reasonable likelihood that continuing mediation will result in a mutually agreeable resolution of the dispute.

5.1.5 Costs. The costs of the mediator shall be borne equally by Landowner and the Holder; the parties shall each bear their own expenses of mediation, including attorneys' fees and costs.

5.1.6 Failure of Mediation. If mediation fails to resolve the dispute, either party may apply to the District Court of the Fifth Judicial District for Blaine County, Idaho, for appropriate legal or equitable relief.

5.2 Notice of Violation; Corrective Action. If Holder determines that a violation of the terms of this Conservation Easement has occurred or is threatened, Holder shall give written notice to Landowner of such violation and demand corrective action sufficient to (i) cure the violation and, where the violation involves injury to the Property resulting from any use or activity inconsistent with the Conservation Purpose, ii) restore the portion of the Property so injured to its condition before the violation occurred, or to a condition otherwise acceptable to Holder, in accordance with a plan approved by the Holder.

5.3 Injunctive Relief. If Landowner fails to cure the violation or threatened violation of this Conservation Easement, fails to comply with any affirmative obligation under this Conservation Easement, or fails to cause such other corrective action to be taken as requested by the Holder within forty-five (45) days after receipt of notice thereof from Holder or, under circumstances where the violation cannot reasonably be cured within the forty-five (45) day period, fails to make good faith efforts to initiate and pursue the requested corrective action within the forty-five (45) day period, Holder may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Conservation Easement, to enjoin the violation, *ex parte* as necessary, by temporary or permanent injunction, and to require the restoration of the Property to the condition that existed prior to any such injury or to a condition otherwise acceptable to Holder (regardless of whether the costs of restoration exceed the value of the Property).

5.4 Damages. Holder shall be entitled to recover damages for Landowner's violation of the terms of this Conservation Easement or Landowner's actions resulting in injury to any Conservation Values protected by this Conservation Easement, including, without limitation, damages for the loss of ecologic, scenic or aesthetic values.

5.5 Emergency Enforcement. If Holder, in its sole discretion, determines that circumstances require immediate action to prevent, terminate or mitigate significant damage to the Conservation Values of the Property, or to prevent, terminate or mitigate a violation of this Conservation Easement, the Holder may pursue its remedies under this section without prior notice to Landowner and/or without waiting for the period provided for cure to expire.

5.6 Scope of Relief. Holder's rights under this section apply equally in the event of either actual or threatened violations of the terms of this Conservation Easement. Landowner agrees that Holder's remedies at law for any violation of the terms of this Conservation Easement are inadequate and that Holder shall be entitled to the injunctive relief described above, both prohibitive and mandatory, in addition to such other relief to which Holder may be entitled, including without limitation: (i) specific

performance of the terms of this Conservation Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies; and (ii) the right to enter the Property to undertake any corrective action Holder may elect to complete. Holder's remedies described in this section shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

5.7 Costs of Enforcement. In any action, suit or other proceeding undertaken to enforce any right or obligation under this Conservation Easement, or to interpret any of the provisions of this Conservation Easement, if the court determines that Landowner has failed to comply with this Conservation Easement, Landowner shall reimburse Holder for any reasonable costs associated with enforcement, including Holder's staff time, costs of restoration, court costs, and reasonable attorneys' fees, in addition to any other payments ordered by such court. However, if Holder initiates litigation and the court determines that Landowner has complied with all the terms of this Conservation Easement, then Holder shall reimburse Landowner for any reasonable costs of defending such action, including Landowner's staff time, court costs, and reasonable attorneys' fees.

5.8 Forbearance. Forbearance by Holder to exercise its rights under this Conservation Easement in the event of any violation of any term of this Conservation Easement by Landowner shall not be deemed or construed to be a waiver by Holder of such term or of any subsequent breach of the same or any other term of this Conservation Easement or of any of Holder's rights under this Conservation Easement. No delay or omission by Holder in the exercise of any right or remedy upon any breach by Landowner shall impair such right or remedy or be construed as a waiver.

5.9 Waiver of Certain Defenses. Landowner hereby waives any defense of laches, estoppel or prescription with respect to any failure to act or any delay by Holder in enforcing any restriction or exercising any rights under this Conservation Easement.

5.10 Acts Beyond Landowner's Control. Nothing contained in this Conservation Easement shall be construed to entitle Holder to bring any action against Landowner for any injury to or change in the Property resulting from causes beyond Landowner's control, including, without limitation, fire, flood, storm, infestations, natural deterioration, earth movement, acts of third parties legally authorized to act by recorded instrument or other legally established rights, the wrongful acts of third parties other than Landowner's agents, employees, invitees or contractors, provided Landowner has taken reasonable steps to prevent such third parties from trespassing and from causing harm to the Property and has not consented to or participated in the acts of such third parties, or from any prudent action taken by Landowner under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes. Landowner shall notify Holder of any occurrence that would adversely affect or interfere with the Conservation Purpose, whether caused by Landowner's acts or omissions or by a third party or parties. In the event of violations of this Conservation Easement caused by the wrongful acts of a third party,

Landowner shall cooperate fully with Holder in enforcement of this Conservation Easement, including but not limited to: gathering facts and information relevant to the violation; assigning its right of action to the Holder; joining in any claim or legal action; and/or appointing the Holder as its attorney-in-fact for purposes of enforcement, all at the election of the Holder.

5.11 Enforcement Rights of Others. Nothing in this Conservation Easement is intended to create any right to enforce this Conservation Easement in any third party where no such right otherwise exists under this Conservation Easement or under law. Nothing contained herein shall affect any rights that the State where the Property is located may have to protect the public's interest in any matter pertaining to this Conservation Easement.

6. **COSTS AND LIABILITIES.** Landowner retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property, or the protection of Landowner, the public, or any third parties from risks relating to conditions on the Property. Landowner shall maintain adequate comprehensive general liability insurance coverage on the Property. Landowner shall keep the Property free of any liens arising out of any work performed for, materials furnished to, or obligations incurred by Landowner.

Landowner shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Property by competent authority (collectively "taxes"). The Holder may, at its discretion, pay any outstanding taxes or assessments and shall then be entitled to reimbursement by Landowner.

7. **ACCESS.** Nothing contained in this Conservation Easement shall give or grant to the public a right to enter upon or to use the Property or any portion thereof. Landowner will undertake all reasonable actions to prevent the unlawful entry and trespass by persons whose activities might diminish or impair the Conservation Values.

8. **TRANSFER OR ASSIGNMENT OF EASEMENT.** The parties recognize and agree that the benefits of this Conservation Easement are in gross and assignable. The Holder shall have the right to transfer or assign this Conservation Easement to an entity that: (a) satisfies the requirements of Section 170(h)(3) of the U.S. Internal Revenue Code (or successor provisions thereof) and is qualified to hold the Conservation Easement under applicable state law, and (b) as a condition of transfer, agrees to uphold the Conservation Purpose of this Conservation Easement, as required in Treasury Regulations Section 1.170A-14, as amended. If the Holder ever ceases to exist or no longer qualifies under Sec. 170(h) or applicable state law, a court with jurisdiction shall transfer this Conservation Easement to another qualified organization having similar purposes that agrees to assume the responsibility.

9. **TRANSFER OF PROPERTY.** Landowner shall not transfer, convey or grant either the fee simple title or possessory interest in the Property to a third party without the express written approval of the Holder which approval shall not be unreasonably withheld provided

any transferee is a charitable organization under Section 501(c)(3) of the Internal Revenue Code or a governmental entity whose purposes include preservation of natural areas. Landowner agrees that a reference to this Conservation Easement will be inserted by Landowner in any subsequent deed or other legal instrument by which Landowner divests either the fee simple title or possessory interest in the Property, including without limitation a leasehold or mortgage interest. Any successor in interest of Landowner, by acceptance of a deed or other document purporting to convey an interest in the Property, shall be deemed to have consented to, reaffirmed and agreed to be bound by all of the terms, covenants, restrictions and conditions of this Conservation Easement.

10. **PRESUMPTION AGAINST AMENDMENT**. It is the parties' presumption that this Conservation Easement will not be amended or modified. In the event of unforeseen circumstances or exceptional situations, the Holder may in its sole discretion consider an amendment or modification to this Conservation Easement, but in no event shall such amendment be made without compliance with the Holder's internal procedures and standards for such modification, and federal, state and local laws regarding the creation and amendment of conservation easements. No amendment shall be allowed that would adversely affect the qualifications of this Conservation Easement as a charitable gift (if applicable) or the status of the Holder under any applicable laws, including Section 170 (h) of the Internal Revenue Code or the laws of the State where the Property is located, or that would weaken the Conservation Easement in terms of protection of the Conservation Values or its perpetual duration. Any such amendment shall be signed by both parties, and shall be recorded in the official records of the county in which the Property is located.

11. **EASEMENT VALUATION, EXTINGUISHMENT, TERMINATION, EMINENT DOMAIN**.

11.1 Value of Easement and Proceeds. Landowner hereby agrees that at the time of the conveyance of this Conservation Easement, this Conservation Easement gives rise to a real property right, immediately vested in the Holder, with a fair market value that is at least equal to the proportionate value that this Conservation Easement, at that time, bears to the value of the Property as a whole at that time, which the parties have determined to be 30%.

Accordingly, if this Conservation Easement is extinguished, terminated, or taken by eminent domain as described below, the Holder on any sale, exchange or involuntary conversion of the Property shall be entitled to a portion of the proceeds at least equal to that proportionate value. The Holder's interest shall be valued at the greater of the following: (1) the proportionate value that the Conservation Easement at the time of the conveyance, bears to the value of the Property as a whole at that time, as described above; or (2) the proportionate value that this Conservation Easement at the time of termination, extinguishment or condemnation bears to the then value of the Property as a whole. The Holder shall use any proceeds received in conjunction with this provision and the following provisions in a manner consistent with the Conservation Purpose of this Conservation Easement.

11.2 Extinguishment or Termination. This Conservation Easement may be released, terminated or otherwise extinguished, whether in whole or in part, only if (1) a court with jurisdiction determines a subsequent unexpected change in conditions surrounding the Property makes impossible or impractical the continued use of the Property for the Conservation Purpose of this Conservation Easement, and (2) any conditions or limitations imposed by federal and state law are also complied with.

11.3 Eminent Domain. Whenever all or part of the Property is taken with authority to exercise eminent domain by public, corporate, or other authority so as to terminate or extinguish the restrictions imposed by or so as to make it impossible to fulfill the Conservation Purpose of this Conservation Easement, Landowner and the Holder shall join in appropriate actions and negotiations at the time of such taking to recover the full value of the taking and all incidental or direct damages resulting from the taking, which proceeds shall be divided in accordance with the value of Landowner's and the Holder's interests, as described above.

12. **CHANGED CONDITIONS.** In accepting this Conservation Easement, Landowner has considered the possibility that uses prohibited by the terms of this Conservation Easement may become more economically valuable than permitted uses, and that neighboring properties may in the future be put entirely to such prohibited uses. In addition, the unprofitability of conducting or implementing any or all of the uses permitted under the terms of this Conservation Easement shall not impair the validity of this Conservation Easement or be considered grounds for its termination or extinguishment. It is the intent of both Landowner and the Holder that any such economic changes shall not be deemed to be changed conditions or a change of circumstances justifying the judicial termination, extinguishment or amendment of this Conservation Easement.

13. **INTERPRETATION.** This Conservation Easement shall be interpreted under the laws of the state of Idaho, resolving any ambiguities and questions of the validity of specific provisions so as to give maximum effect to its Conservation Purpose. No remedy or election given by any provision in this Conservation Easement shall be deemed exclusive unless so indicated, but it shall, wherever possible, be cumulative with all other remedies at law or in equity. The parties acknowledge that each party has reviewed and revised this Conservation Easement and that no rule of construction that ambiguities are to be resolved against the drafting party shall be employed in the interpretation of this Conservation Easement. In the event of any conflict between the provisions of this Conservation Easement and the provisions of any use and zoning restrictions of the state or county in which the Property is located, or any other governmental entity with jurisdiction, the more restrictive provisions shall apply.

14. **INDEMNIFICATION.** Each party agrees to hold harmless, defend and indemnify the other party (and its officers, directors, members, partners and employees, as applicable) from any and all liabilities including, but not limited to, injury, losses, damages, judgments, costs, expenses and fees that the indemnified party may suffer or incur as a result of or arising out of the activities of the other party on the Property that cause injury to a person(s) or damage to property.

15. **TITLE.** Holder covenants, represents and warrants that through conveyance of the Deed, Landowner is the sole owner and is seized of the Property in fee simple; that the Property is free and clear of any and all encumbrances, except as approved in writing by Landowner; that there is no pending or threatened litigation in any way affecting, involving or relating to the Property; and that Holder has reserved the use of and rights to enjoy all of the benefits derived from and arising out of this Conservation Easement.

16. **NOTICES; APPROVAL REQUESTS.**

16.1 Any notices required by this Conservation Easement shall be in writing and shall be served by any of the following means: (i) by delivery in person, in which case notice shall be deemed given upon delivery (or refusal of delivery), (ii) by certified U.S. mail, return receipt requested, postage prepaid, in which case notice shall be deemed given upon the earlier of the date of first attempted delivery or the third day after deposit in the mail, or (iii) by reputable commercial courier service, charges prepaid, in which case notice shall be deemed given upon the earlier of the date of first attempted delivery or the third day after deposit with the courier service. All notices shall be sent to the following addresses, or such other address as either party may hereafter specify by written notice to the other:

If to the Holder:

The Nature Conservancy
Legal Department
559 East South Temple
SLC, UT 84102
Phone: (801) 531-0999
Fax: (801) 531-1003

With a copy to:

The Nature Conservancy
Idaho Field Office
Attn: Tess O'Sullivan
116 1st Ave. North
Hailey, ID 83333
Telephone: (208) 788-8988
Fax: (208) 788-9040
Emails: llunte@tnc.org
tess.osullivan@tnc.org

If to Landowner:

The Community Library
Jenny Emery Davidson, Executive Director
PO Box 2168
415 Spruce Ave
Ketchum, ID 83340
Phone: (208) 726-3493
Email: jdavidson@comlib.org

With a copy to:

John A. Seiller
Attorney at Law
P.O. Box 6090
191 Fifth Street West
Ketchum, ID 83340
Telephone: (208) 726-5962
Fax: (208) 726-5998
Email: practice@sunvalleylaw.net

16.2 Approval. When the Holder's consent or approval is required by the terms of this Conservation Easement prior to Landowner engaging in any activity, Landowner's request for approval shall be in writing and contain detailed information regarding the

proposed activity. Such a request shall be delivered to the Holder in accordance with this Section 16 no less than thirty (30) days prior to the anticipated start date of such activity. This section is only intended to request approval for activities which are expressly allowed in the Conservation Easement but are subject to the Holder's approval or consent.

17. **ENVIRONMENTAL LIABILITY.** Landowner is solely responsible, and Holder has no responsibility, for the operation of the Property or the monitoring of hazardous or other conditions thereon, while Landowner has owned the Property.

17.1 Except for such time that Holder owned the Property in fee simple and prior to that time, and to the extent enforceable under CERCLA, Landowner hereby promises to hold harmless and indemnify Holder and its directors, officers and employees against all litigation, claims, demands, penalties and damages, including reasonable attorneys' fees, arising from or connected with the release or threatened release of any Hazardous Materials on, at, beneath or from the Property, or arising from or connected with a violation of any Environmental Laws by Landowner. Landowner's indemnification obligation shall not be affected by any authorizations provided by Holder to Landowner with respect to the Property or any restoration activities carried out by the Holder at the Property; provided, however, that Holder shall be responsible for any Hazardous Materials contributed after the Conservation Easement Date to the Property by Holder, which Holder would not have the right to contribute under any circumstances.

17.2 **Environmental Laws** means any and all Federal, state, local, or municipal laws, rules, orders, regulations, statutes, ordinances, codes, guidelines, policies or requirements of any governmental authority regulating or imposing standards of liability or standards of conduct (including common law) concerning air, water, solid waste, hazardous materials, worker and community right-to-know, hazard communication, noise, radioactive material, resource protection, subdivision, inland wetlands and watercourses, health protection and similar environmental health, safety, building and land use as may now or at any time hereafter be in effect.

17.3 **Hazardous Materials** means any petroleum, petroleum products, fuel oil, waste oils, explosives, reactive materials, ignitable materials, corrosive materials, hazardous chemicals, hazardous wastes, hazardous substances, extremely hazardous substances, toxic substances, toxic chemicals, radioactive materials, infectious materials and any other element, compound, mixture, solution or substance which may pose a present or potential hazard to human health or the environment. The term "Hazardous Materials" shall also include related materials defined in the CERCLA (42 USC 9601 et seq.), and the Hazardous Materials Transportation Act (49 USC section 6901 et seq.), and in the regulations adopted and publications promulgated pursuant to them, or any other applicable federal, state, or local laws, ordinances, rules, or regulations now in effect or enacted after the Conservation Easement Date.

18. **COMPLIANCE WITH APPLICABLE LAWS**. Landowner shall comply with all statutes, laws, ordinances, rules, regulations, codes, orders, guidelines, or other restrictions, or requirements applicable to the Property. Nothing herein shall be construed to allow Landowner to engage in any activity which is restricted or prohibited by law, restrictions or other requirements applicable to the Property.

19. **SEVERABILITY.** If any provision of this Conservation Easement is found to be invalid, the remaining provisions shall not be altered thereby.

20. **BINDING ON SUCCESSORS.** Every provision of this Conservation Easement that applies to Landowner or the Holder shall also apply to their respective heirs, executors, administrators, assigns, and all other successors as their interest may appear. A person's or entity's obligation hereunder as Landowner and the successor owner of the Property shall be joint and several, and will cease only if and when such person or entity ceases to have any present, partial, contingent, collateral, or future interest in the Property. Responsibility of owners for breaches of this Conservation Easement that occur prior to transfer of title will survive such transfer, provided that the new owner shall also be responsible for bringing the Property into compliance.

21. **RE-RECORDING.** The Holder may re-record this instrument or any other appropriate notice or instrument required by marketable title acts or similar laws to ensure the perpetual enforceability of the Conservation Easement. For such purpose, Landowner agrees to execute any such instruments as reasonably necessary, upon the Holder's request.

22. **SUBSEQUENT LIENS ON PROPERTY.** No provision of this Conservation Easement should be construed as impairing the ability of Landowner to use this Property as collateral for subsequent borrowing, provided that any mortgage or lien arising from such a borrowing is subordinate to this Conservation Easement and does not violate the restrictions on subdivision of the Property.

23. **ACCEPTANCE & EFFECTIVE DATE**. As attested by the signature of its authorized representative, Holder hereby accepts without reservation the rights and responsibilities conveyed by this Conservation Easement. This Conservation Easement is to be effective the date recorded in the Land Records of Blaine County, Idaho.

24. **COUNTERPARTS.** The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by all parties; each counterpart shall be deemed an original instrument as against any party who has signed it.

25. **ENTIRE AGREEMENT**. This instrument sets forth the entire agreement of the parties with respect to the Conservation Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Conservation Easement, all of which are merged herein. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment that complies with the terms of this Conservation Easement.

26. **CAPTIONS, RECITALS AND EXHIBITS**. The captions herein have been inserted solely for convenience of reference, are not a part of this Conservation Easement, and shall have no effect upon its construction or interpretation. The Recitals set forth above and all Exhibits referred to in this Conservation Easement and the Easement Documentation Report are an integral part of this Conservation Easement and are incorporated herein by reference.

27. **GOVERNING LAW**. This Conservation Easement shall be interpreted in accordance with the laws of the State of Idaho regardless of rules regarding conflicts of laws that might require the application of the law of another jurisdiction.

28. **DISCLAIMER.** The Holder does not represent the interests of Landowner. The Holder has advised Landowner to have the document reviewed by Landowner's attorney, and Landowner has had ample opportunity to do so.

29. **SUBSEQUENT ACTIVITIES; NO REPRESENTATIONS OR WARRANTIES.** Permission to carry out any proposed use or activity will not constitute consent to any subsequent use or activity of the same or any different nature, unless explicitly included in said permission. Any language in this Conservation Easement that allows any proposed use or activity or designates a specific area of the Property where the use or activity is to be conducted, will not be deemed to constitute any representation or warranty by the Holder regarding the use or activity, including, without limitation, the fitness of the Property for the use or activity or the legality of the use or activity.

30. **MERGER.** The parties agree that the terms of this Conservation Easement shall survive any merger of the fee and conservation easement interests in the Property. Notwithstanding the remainder of this Paragraph, if the Conservancy re-acquires the Property at the same time it is the Holder of this Conservation Easement, it shall have the right to terminate the Conservation Interest and merge the title of the Conservation Interest back into its fee interest in the Property by notice recorded in the public records.

TO HAVE AND TO HOLD this Conservation Easement, together with all appurtenances and privileges belonging or in any way pertaining thereto, either in law or in equity, either in possession or expectancy, for the proper use and benefit of Holder forever.

IN WITNESS WHEREOF, the parties have executed this Conservation Easement as of the Agreement Date.

**THE HOLDER:**

THE NATURE CONSERVANCY
A District of Columbia non-profit corporation

By: _____
Lou Lunte
Deputy State Director, Idaho Chapter

STATE OF IDAHO )
: s.s.
County of Blaine )

On the 11th day of May, 2017, before me, the undersigned Notary Public in and for said state, personally appeared Lou Lunte, known or identified to me to be the Deputy State Director of the Idaho Chapter of The Nature Conservancy, a District of Columbia non-profit corporation, and that the document was signed by him on behalf of said non-profit corporation and that the said non-profit corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this first above written.

DARYL J. FAUST NOTARY PUBLIC STATE OF IDAHO

_____
Notary Public for Idaho
Residing at Hailey ID
My commission expires 9/24/18

ACCEPTED BY:

**LANDOWNER**:

THE COMMUNITY LIBRARY ASSOCIATION, INC.,
an Idaho non-profit corporation

By: Jenny Emery Davidson
Jenny Emery Davidson
Executive Director

STATE OF IDAHO )
: s.s.
County of Blaine )

On the 11th day of May, 2017, before me, the undersigned Notary Public in and for said state, personally appeared, known or identified to me to be the Executive Director of The Community Library Association, Inc., an Idaho non-profit corporation, and that the document was signed by her on behalf of said non-profit corporation and that the said non-profit corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this first above written.

DARYL J. FAUTH NOTARY PUBLIC STATE OF IDAHO

Notary Public for Idaho
Residing at Hailey ID
My commission expires: 9/24/18

**EXHIBIT A**
**To Reservation of Conservation Easement**
Big Wood River (Community Library) ID
a/k/a Hemingway Preserve

Legal Description of the Property

A parcel of land located within Section 12, Township 4 North, Range 17 East, Boise Meridian, Blaine County, Idaho, more particularly described as follows:

Commencing at a brass cap marking the Southeast Corner of said Section 12; thence South 89°24'47" West, 1823.75 feet along the South boundary of said Section 12 to a point on the Centerline of the Big Wood River, which is the REAL POINT OF BEGINNING;

Thence continuing South 89°24'47" West, 37.60 feet along said South Boundary of Section 12 to the Westerly Bank of the Big Wood River;
Thence the following eleven courses and distances along the Easterly Boundary of the Hurtig property and the Westerly Bank of the Big Wood River:
North 15°47'28" West 23.70 feet;
North 6°00'09" West 82.63 feet;
North 4°50'58" East 154.22 feet;
North 30°06'17" East 99.92 feet;
North 27°45'21" East 42.30 feet;
North 2°58'30" West 43.14 feet;
North 26°53'52" West 35.55 feet;
North 49°14'57" West 99.10 feet;
North 53°52'32" West 102.06 feet;
North 70°21'32" West 51.14 feet;
North 88°44'23" West 25.32 feet to an iron pin marking the Northeasterly Boundary of the Curtis Subdivision;

Thence North 58°37'57" West 134.90 feet to the Southeast Corner of Lot 37, Sun Valley Subdivision;
Thence the following seven courses and distances along the Easterly and Northerly Boundary of said Sun Valley Subdivision:
North 15°18'00" West 155.71 feet;
North 6°03'00" West 160.82 feet;
North 4°19'00" East 170.60 feet;
North 7°43'00" West 252.41 feet;
North 32°01'00" West 143.93 feet;
North 13°01'00" West 301.46 feet;
North 66°17'21" West 205.10 feet to an iron pin marking the Southwest Corner of tax lot 2741;

Thence North 0°05'00" West 563.06 feet along the West Boundary of said tax lot 2741 to an iron pin;
Thence South 88°02'54" East 187.89 feet along the North Boundary of said tax lot 2741;
Thence South 90°00'00" East 275.00 feet along said North Boundary of said tax lot 2741 to the centerline of the Big Wood River;
Thence the following seventeen (17) courses and distances along the centerline of the Big Wood River:
South 49°30' West 215 feet;
South 24°30' East 170 feet;
South 71°15' East 215 feet;
South 30°00' East 85 feet;
South 49°00 East 110 feet;
South 12°52'44" East 133.28 feet;
South 09°00' West 215 feet;
South 18°00' West 200 feet;
south 33°45' West 350 feet;
South 18°15' West 135 feet;
South 5°00' East 160 feet;
South 24°15' East 162 feet;
South 65°30' East 180 feet;
South 54°00' East 158 feet;
South 24°00' East 115 feet;
South 26°00' West 185 feet;
South 2°46'18" East 248.41 feet to the POINT OF BEGINNING. (Tax Lot 6731)

LESS AND EXCEPTING THE FOLLOWING DESCRIBED PARCEL:

A parcel of land lying within a portion of Section 12, Township 4 North, Range 17 East, Boise Meridian, Blaine County, Idaho; being more particularly described as follows:

Commencing at the Northwest Corner of Tax Lot 2741, marked by a 1/2" Rebar with No Cap, being the TRUE POINT OF BEGINNING;
Thence S 87°47'09" E, 134.28 Feet along the Northerly Boundary of Tax Lot 2741, to a 1/2" Rebar with No Cap;
Thence leaving said North Boundary, S 15°20'54" E, 121.49 Feet, to a 1/2" Rebar by PLS 7048;
Thence S 19°57'13" E, 81.93 Feet, to a 1/2" Rebar by PLS 7048;
Thence S 5°58'36" W, 61.07 Feet, to a 1/2" Rebar by PLS 7048;
Thence S 7°37'36" W, 143.88 Feet, to a 1/2" Rebar by PLS 7048;
Thence S 17°35'11" W, 86.60 Feet, to a 1/2" Rebar by PLS 7048;
Thence S 14°09'34" W, 131.64 Feet, to the Boundary Line common to Lot 32, Sun Valley Subdivision & said Tax Lot 2741, marked by a 1/2" Rebar by PLS 7048;
Thence along the Boundary Line common to Lot 32, Sun Valley Subdivision & said Tax Lot 2741,
N 66°08'18" W, 123.23 Feet, to a 1/2" Rebar by PLS 7048;

Thence leaving the Boundary Line common to Lot 32, Sun Valley Subdivision & said Tax Lot 2741,
N 0°13'36" E, 563.04 Feet along the Westerly Boundary of said Tax Lot 2741, to the TRUE POINT OF BEGINNING, containing 95,828 Sq. Ft. (2.20 Ac.), more or less.

**EXHIBIT B**
**To Reservation of Conservation Easement**
Big Wood River (Community Library) ID
a/k/a Hemingway Preserve

**Property Map**

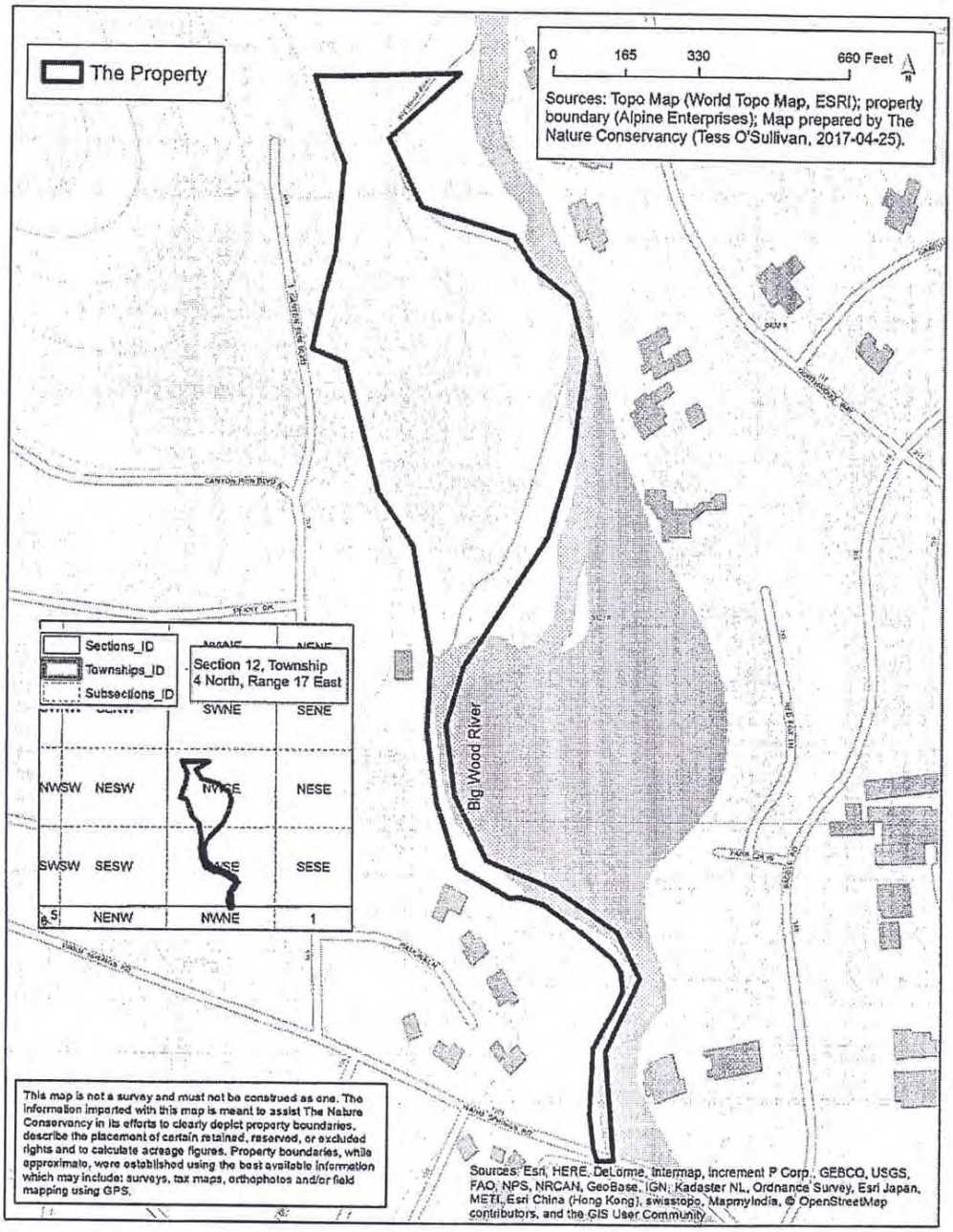

**EXHIBIT C**
**To Reservation of Conservation Easement**
Big Wood River (Community Library) ID
a/k/a Hemingway Preserve

**Uses of and Practices on the Property**

A. Construction of Buildings and Structures. Construction or placement of any Buildings or Structures is prohibited except as provided below in this paragraph. The term "Building" shall mean an enclosed space with walls and a roof that provides shelter or housing or provides working, office, parking, display or sales space and which includes, but is not limited to houses, barns, sheds, cabins, garages, temporary living quarters of any sort, and mobile homes. The term "Structure" shall mean a man-made improvement, such as, a picnic pavilion, unenclosed shed, sign (not including interpretive signs), billboard or other advertising material, utility tower, etc., that is not a Building, fence, road or trail improvement.

(1) Maintenance and/or repair of existing Structures as documented in the Report is permitted.

(2) Construction, maintenance, repair, remodeling, replacement and/or rebuilding of new Structures are permitted with: i) the prior written approval of the Holder, ii) if they support the nonprofit mission of the Landowner, and iii) are consistent with the Conservation Purposes.

B. Subdivision. The legal or de facto division, subdivision, or partitioning of the Property is prohibited. Just for clarification, the Landowner can subdivide the Property from the Excluded Area. Notwithstanding the fact that, as of the date of this Conservation Easement, the Property might be comprised of separate legal parcels, the terms and conditions of this Conservation Easement shall apply to the Property as a whole, and the Property shall not be sold, transferred, or otherwise conveyed except as a whole, intact, single piece of real estate; it being expressly agreed that neither the Landowner nor the Landowner's personal representative, heirs, successors, or assigns shall sell, transfer, or otherwise convey any portion of the Property that constitutes less than the entire Property. Notwithstanding the foregoing, the Landowner, with the prior written consent of the Holder, may: i) enter into boundary line agreements to resolve bona fide boundary disputes, and ii) convey to the City of Ketchum or similar entity the narrow river parcel of the Property that extends upriver from the approximate location of the Warm Springs Road bridge (and may include a portion of that road). Regardless of anything to the contrary in the foregoing, ownership of the Property may be held in the form of undivided interests as tenants in common, whether by choice or by operation of any applicable laws, but no owner of an undivided interest in the Property shall have the right of exclusive occupancy or exclusive use of any separate portion of the Property, or any right to have the Property partitioned in kind, whether pursuant to Idaho statute or otherwise.

C. Condominium Unit or Time Share Unit. Construction and use of any "condominium unit" or "time share unit", as those terms are defined under Idaho law is prohibited.

D. Common Interest Community. The creation of a "common interest community" as that term is defined under Idaho law is prohibited.

E. Commercial or Industrial Activities. Establishment of any commercial or industrial activity on the Property is prohibited.

F. NonProfit Mission Supporting Activities. Activities supporting the Landowner's nonprofit mission are permitted so long as they i) do not materially diminish or impair the Conservation Values of the Property and ii) consistent with other terms of this Conservation Easement.

G. Recreational Use. Non-commercial recreational uses such as hiking, fishing, bird watching, or other traditional non-motorized recreational activities are permitted provided that any such use does not materially diminish or impair the Conservation Values of the Property as determined by the Holder in its reasonable discretion.

H. Road and Trails. The construction, reconstruction, or replacement of any roads is prohibited, as there are currently no roads on the Property. The construction of trails and installation of interpretive signs is allowed as set forth in the remainder of this Paragraph H of **Exhibit C**. Landowner may maintain trails that exist on the Property as of the Effective Date to the same or similar level of improvement for each that exists as of the Effective Date. Landowner may construct and maintain new pedestrian trails on the Property, provided that: (i) such new trails are reasonably necessary for the uses permitted herein; (ii) if such trails include bridges, hardening or paving of their surface, significant excavation or removal of live trees then Landowner will have to obtain the Holder's approval, which approval will not be unreasonably withheld, conditioned, or delayed, for the construction of such new trails; and (iii) such new trails will comply with all terms and conditions of this Conservation Easement.

I. Motorized Vehicles. Motorized vehicles are prohibited on the Property except as reasonably necessary for property maintenance, in the case of an emergency, or as otherwise approved by Holder in its reasonable discretion.

J. Hazardous Materials. The dumping or other disposal of Hazardous Materials, as defined below, on the Property is prohibited. The storage of Hazardous Materials on the Property, other than in the normal course of residential use, is also prohibited. The term "Hazardous Materials" includes, without limitation, (a) material that is flammable, explosive, or radioactive; (b) petroleum products; and (c) hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials defined in the CERCLA (42 USC 9601 et seq.), and the Hazardous Materials Transportation Act (49 USC section 6901 et seq.), and in the regulations adopted and publications promulgated pursuant to them, or any other applicable federal, state, or local laws, ordinances, rules, or regulations now in effect or enacted after this date.

K. Trash. Dumping or other disposal on the Property of non-compostable refuse, wildlife-attracting materials, or any other material which could reasonably be considered debris is prohibited.

M. Fences. Maintenance, removal, repair, and, if destroyed, reconstruction of existing fencing, as documented in the Report, and the construction of new fences is permitted; provided that new or reconstructed fences shall not unduly restrict or exclude wildlife use of the Property.

N. Weed Control Chemicals. Application of biocides, herbicides, defoliants, chemical fertilizers, or other chemicals is prohibited except as follows:

(1) Application of herbicides, defoliants or other chemicals for the control of noxious weeds, as required by Idaho law, and for the control of other invasive exotic plant species is permitted; provided that herbicides, defoliants or other chemicals may be used only in those amounts and with a frequency of application that constitute the minimum necessary for control; shall be applied consistent with labeled instructions and all applicable governmental regulations.

O. Cutting or Conversion of Native Vegetation. Cutting, removing, or destruction of native vegetation or the conversion of native vegetation to exotic cover species or the introduction of non-native plant species or any type of cultivation is prohibited except as follows:

(1) Pursuant to the terms and conditions of a restoration or enhancement plan approved by the Holder.

(2) To protect persons or property from the hazards of falling trees or branches or wildfire.

P. Introduction/Release of Nonnative Animal Species. Introduction or release of nonnative animal species is prohibited.

Q. Changing the Topography of the Property. Changing the topography of the Property by placing on it any soil, dredging spoils, land fill, or other material, is prohibited except as reasonably necessary to conduct authorized construction and/or restoration or enhancement activities permitted by this Conservation Easement.

R. Habitat Restoration or Enhancement Activities. Subject to the Holder's prior written approval, Landowner may undertake activities and projects to restore, enhance or improve the quality of the wildlife habitat and ecological health of the Property.

S. Water Courses, Wetlands and Groundwater. Any new manipulation, diversion, or other alteration of natural water courses or wetlands, any new practice that degrades or destabilizes their natural banks, any new pumping of groundwater, or any other new development of water resources is prohibited.

T. Animal Trapping. Animal trapping is prohibited except: (i) when conducted as an official restoration or research effort by state, federal or non-governmental conservation

organizations and with prior written approval by the Holder; or (ii) for removal of non-native species.

Any trapping must be in compliance with state, federal and local laws. Any trapping methods employed must be selective for the target species, be administered as humanely as is possible, and be conducted only so long as needed to protect persons or private property from damage as indicated above.

# EXHIBIT B

BEFORE THE WATER RESOURCES BOARD

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR )
STREAM CHANNEL ALTERATION PERMIT )
NO. S37-20565 )
_____)

RULE 30 DEPOSITION OF

COMMUNITY LIBRARY ASSOCIATION, INC.,

TESTIMONY OF JENNIFER EMERY DAVIDSON

TAKEN SEPTEMBER 25, 2025

IN KETCHUM, IDAHO

REPORTED BY:

JAHNENE ADMIRE, CSR No. 760, RPR

Notary Public

THE DEPOSITION OF JENNIFER EMERY DAVIDSON was taken on behalf of the Petitioner in the conference room of Community Library Association, Inc., 415 Spruce Avenue North, Ketchum, Idaho, commencing at 1:28 p.m., MST, on September 25, 2025, before Jahnene Admire, Certified Shorthand Reporter and Notary Public within and for the State of Idaho, in the above-entitled matter.

APPEARANCES:

For Petitioner:

J. Kahle Becker, Attorney at Law
BY J. KAHLE BECKER
223 N. 6th Street, Suite 325
Boise, Idaho 83702
(208) 345-8466
kahle@kahlebeckerlaw.com

For Respondent (Present remotely):

Office of the Attorney General - Idaho Department of Water Resources
BY MEGHAN M. CARTER
SARA AJETI
P.O. Box 83720
Boise, Idaho 83720
(208) 287-4810
meghan.carter@idwr.idaho.gov



For Third-Party Witness Community Library Association, Inc.:

Alturas Law Group, PLLC
BY SAMUEL L. LINNET
111 N. 1st Avenue, Suite 21
Hailey, Idaho 83333
(208) 788-6688
sam@alturaslawgroup.com

ALSO PRESENT:
John Hastings
Andrea Hastings



I N D E X

TESTIMONY OF JENNIFER EMERY DAVIDSON PAGE
Examination by Mr. Becker 5

E X H I B I T S

NO. DESCRIPTION PAGE
Exhibit 1 Revised Subpoena Duces Tecum - The Community Library Association, Inc., 3 pages 20
Exhibit 2 Big Wood River - Northwoods Reach, Conceptual Design Plans, 10/13/2021, 14 pages 20
Exhibit 3 Agreement, between John T. Hastings, Jr., and Embassy Auditoriums, Inc., and The Nature Conservancy of Idaho, 3 pages 23
Exhibit 4 City of Ketchum, Planning & Building, Floodplain Management Overlay Application, 22 pages 25
Exhibit 5 Gift Deed, Instrument No. 643460, 5/11/2017, 30 pages 32
Exhibit 6 Public Notice, Notice of Floodplain Development Permit Application - Streambank Alteration, 7/1/2020, 2 pages 41



JENNIFER EMERY DAVIDSON,
first duly sworn to tell the truth relating to said cause, testified as follows:

EXAMINATION

QUESTIONS BY MR. BECKER:

Q. Can you please state your name for the record.
A. Jennifer Emery Davidson.
Q. And what's your title?
A. I'm the executive director of the Community Library.
Q. And how long have you held that position?
A. Just about 11 years.
Q. Have you ever had your deposition taken before?
A. No.
Q. Congratulations.

So as you can see, our court reporter, Jahnene, is taking down everything that is said. And so she won't be able to pick up things like head nods, "huh-uhs," "uh-huhs." And so please keep your responses to my questions verbal. Also, she -- it makes it very challenging if we're talking over one another. So if you can allow me to finish my question and then provide your response, that will help keep our record clean. Do you understand?

A. I do.
Q. And if there's something about a question that I ask you and you don't understand the question or you need me to clarify something, please don't hesitate to ask. Do you understand that?
A. I do.
Q. But if you answer a question, I'm going to presume you understood it and that your answer stands, and I can move forward with my next question.
A. Okay.
Q. Are you -- are you on any medications or had any personal events that would affect your ability to testify truthfully today?
A. No.
Q. Or your memory?
A. No.
Q. Okay. We're here today in the matter of a stream alteration permit administrative hearing. And we're here today because my understanding is the -- what's the name of your organization?
A. The Community Library.
Q. Okay. The Community Library has an ownership interest of some sort in a portion of the Big Wood River; is that correct?
A. Correct.



Q. Okay. And that -- that section that your organization claims ownership of encompasses a reach of river upstream of the Warm Springs bridge over the Big Wood River; correct?
A. Correct.
Q. Okay. Leading up to today's deposition, we had some motion practice and, ultimately, a subpoena was issued by our hearing officer. And I've got a copy of that. I just want to make sure you've had a chance to review that prior to today's deposition.
A. I have.
Q. Okay. And you've had the opportunity to consult with your legal counsel, sitting here with you today?
A. Yes, I have.
Q. My understanding is you conducted a search for some of the documents requested in there. And we'll get to the documents that you've produced to date. But can you walk me through the process you utilized to search for the documents that were requested in that subpoena?
A. I did searches through my email folders in Outlook and in SharePoint folders.
Q. Okay. Is there any sort of paper file for this property?
A. Is there a paper file for the property?



Q. The property that we're here about today. Is there -- you mentioned electronic searches. And I'm asking is there any sort of paper file.
A. Yes. There are paper files not pertaining to any of the requests, as I understood them.
Q. And help me understand. Were there documents that you had questions about and elected not to produce? And I don't want -- I don't want to invade the attorney-client privilege. But, I guess, help me understand when you say -- it seems like you're qualifying your response.
A. Well, I have paper files around like the legacy of Ernest Hemingway that relate to that property, that seem clearly out of the scope of anything of interest to you. So they do relate to that property, but I did not understand them to be in the scope, and some of those are in a paper form.
Q. Okay. So, essentially, how Ernest Hemingway did what he did early on that was in the chain of title to get to where we are today?
A. No. Really, about like the history, like regional history, like his time in Idaho and what was he doing at the time he owned the house. And we have a giant, you know, inventory of artifacts in the house. And so things that, in my mind, are related to that



property, but, again, seemed to be clearly out of the scope, as I understand it, of your requests.
Q. Okay. Can I have that back?
So you're here today as a representative of the Community Library. Do you understand that?
A. Yes.
Q. Okay. And so you are essentially the organization speaking to me here. You're the designated person by your entity?
A. Yes, I understand.
Q. And so you've been designated as the person who is knowledgeable about your claim of ownership for the section of river that we're here about today. And so are you the best person that I can talk to with respect to the library's claim of ownership here?
MR. LINNET: I'm going to object, Kahle, that the -- the issue of ownership of the property has nothing to do with the scope of this deposition.
MR. BECKER: Understood.
MR. LINNET: Okay.
MR. BECKER: I'm just trying to make sure I've got the accurate person, and I'm not going to be pointed to someone else.
MR. LINNET: Okay. Yeah.
THE WITNESS: I am the representative of the

referencing any stream restoration projects proposed or contemplated to be performed on Blaine County Parcel RPK4N17012048B from 2017 to present. Plans which are obsolete may not be produced."

Are you aware of any other stream restoration plans?

A. I am -- I am not aware of any active plans.

Q. For this reach of river that you claim an ownership in?

A. I am not aware of any active plans on property that the Community Library owns.

Q. Okay. And then the last item was, "Any contracts or documents you may require petitioner or his contractor to sign prior to commencement of work on that Blaine County Parcel."

And so you haven't produced anything. Is it fair to say you haven't -- your organization hasn't generated any sort of permission slips for --

A. We have not generated anything. It would depend on a specific proposal that was presented.

Q. Okay. So at the time a specific proposal was presented to do work on your property, at that point what would the steps be that you would undertake?

A. The property does have a conservation easement that is held by the Nature Conservancy. We would engage



the Nature Conservancy and understanding the parameters of the conservation easement; I would see that as the starting point.

Q. And so your nonprofit organization and another nonprofit organization, the Nature Conservancy, each have a property interest in this section of river that would need to be addressed in the process of performing river restoration work?

A. Correct.

MR. BECKER: Okay. Let's mark this as Deposition Exhibit No. 3.

(Exhibit 3 marked.)

MS. CARTER: I'm sorry. I'm not following. What exhibit are we looking at?

MR. BECKER: So, Meghan, most of what I'm dealing with is from the materials that were utilized in the subpoena objection process here. So I think if you have my response to Sam's motion, the exhibits to that, you'll be able to track along with what I've got here.

MS. CARTER: Okay. Thank you.

Q. (BY MR. BECKER) Ms. Emerson, I'm handing you what's been marked as Deposition Exhibit No. 3.

A. Did you mean Emery Davidson?

Q. Emery Davidson. Sorry. Smusht those two together. Sorry.



Have you ever seen that document before?

A. I don't recall.

Q. I'll represent to you that this was a proposal that the Nature Conservancy provided to my client at a time when my client attempted to do some other work on this section of the river.

And so what you're telling me today is that the Nature Conservancy still has some sort of ownership interest claim in this section of river due to a conservation easement?

A. Yes. Again, I don't have the map in front of me about the delineation, but the Nature Conservancy holds conservation easement over much of this property.

Q. And so is this the type of agreement that your organization would require prior to someone like my client moving forward with restoration work on this section of river?

MR. LINNET: Objection to form.

But you can answer.

THE WITNESS: I don't know, you know, without seeing a specific proposal for a project, without consulting with the Nature Conservancy about that project. And just seeing this document for the first time, I don't know.

Q. (BY MR. BECKER) Well, let's go ahead and talk



about the specific project here.

MR. BECKER: And we'll mark this as Deposition Exhibit No. 4.

(Exhibit 4 marked.)

Q. (BY MR. BECKER) I'm handing you what's been marked as Deposition Exhibit No. 4. And this is the floodplain management overlay application for the City of Ketchum for the permit that we're here about today. And so it's got both the State and local applications, so to speak, attached to it.

MS. CARTER: Sorry to interrupt, Kahle. Is that something that you have submitted in this?

MR. BECKER: It is now submitted.

MS. CARTER: Is it a map?

MR. BECKER: I mean, it's -- I think Aaron's got all of it. I mean, it's got the restoration plan from Brockway attached. And that's what I'm really referring to. But this particular document just had the Ketchum ordinance and requirements attached to it. So I thought it was sort of a one-stop shop.

MS. CARTER: Okay.

MR. LINNET: Kahle, can I get some clarification here before we go on? Is this -- what is this document?

Q. This is essentially the proposal for this

section of river that my client made. And so your client had said, well, I have to see what the proposal would be. I'm saying let's talk about the proposal.

MR. LINNET: Okay. So this would be the -- this is like the current proposal. Okay.

Q. (BY MR. BECKER) So if you look at this one, focuses on the pictures. Let's see. I think that will be the clearest indication of what we're here about today. So do you see the map that says "Site plan" at the bottom?

A. Is there a page number?

Q. Unfortunately, no. There you go, you're on it.

A. Okay.

Q. Okay. And do you see the -- the rock barbs there and the river's delineated? Do you see that in front of you?

A. Yes.

Q. So, one, the State is asking my client to put in some -- some structures here to deflect the current, so to speak. Is that type of work something that your organization would require a permission slip along the lines of what we're seeing from the TNC, the Nature Conservancy, here in Exhibit 3?

MR. LINNET: Objection to the form.



But you can answer.

THE WITNESS: I don't know because I'm just seeing this proposal. And, you know, if it falls within the scope of the conservation easement, then I don't think I can speak for the Nature Conservancy.

Q. (BY MR. BECKER) Understood. And we may have to take the Nature Conservancy's deposition to help understand their perspective on their ownership interest, which I've just learned about today.

But strictly speaking to your organization, this level of disturbance, is that -- is that something that my client can just go right ahead and do, or is that something that you're going to have input and conditions placed on?

A. Well, I --

MR. LINNET: Same objection.

You can answer.

THE WITNESS: To say could your client just go ahead and do it, I don't know what it is yet. I would need to review the whole proposal. I would consult with the Nature Conservancy and understand the terms of the conservation easement. And I expect that we would want indemnification. And it's difficult for me to say more than that without -- I don't know if this is the specific -- like, if you were submitting this proposal



now or --

Q. (BY MR. BECKER) The nature of this hearing has this -- the State required my client to apply for a permit and had some conditions and requirements, and the State has changed and modified that throughout the process. And we're here about what ultimately came out of the interactions with the State and a permit the State issued. So there's essentially a project that is permitted, and we're contesting some of the aspects of that.

And so that's broader than I think you probably need to know or understand, but I want you to understand why we're here today. And I've got a narrow focus of questions I want to address to you. But I guess I wanted you to see some of the things that the State has required my client to do here.

MR. LINNET: Kahle, can I just for my benefit, hopefully, clarify? So is that -- is this proposal and this packet in Exhibit 4, is that what was approved by IDWR?

MR. BECKER: I believe so.

MR. LINNET: Okay. Or something close to it?

MR. BECKER: Yes.

MR. LINNET: Okay. So then -- so that was approved, but then there were conditions attached with



the approved permit, and that's why we're obviously involved because one of those conditions is landowner approval?

MR. BECKER: Yeah.

MR. LINNET: Okay. Thank you for clarifying that for me.

Q. (BY MR. BECKER) So, yeah. Essentially, there's these bank armoring rock structures with a root wad attached to the end that the State would like my client to put in. And taking this issue as the State has framed it and allowed us to frame it, your position would be that this work that we're being ordered to perform would be on your property. And so --

A. I am not clear if it crosses property boundaries, if it's all on one entity's property. That's not immediately clear to me.

Q. Well, for the sake of argument my understanding is that you're claiming ownership of the Big Wood River in this section.

MR. LINNET: Object to form.

Q. (BY MR. BECKER) Do you think you only have ownership of one side of the river or top to the middle of the river or --

MR. LINNET: Same objection.

But you can answer.

THE WITNESS: I think part of what -- and I'm just, you know, looking at this and trying to understand this map. So what it's not clear to me is some of this on dry land, is the river -- moves. So I'm really just not sure about where the boundaries are. So I agree the Community Library owns property that goes down to Warm Springs bridge. How that property line intersects with these different masses that are displayed on this map, I don't feel prepared to speak to that.

Q. (BY MR. BECKER) Well, you're required to produce someone knowledgeable about the ownership. And so --

A. Well, can you show me where the property line is?

MR. LINNET: Hold on. Make sure you're answering questions that he asks.

I'm listening. We're -- I mean, we produced the person with the most knowledge about the Community Library's interest in the property, and who would have access to the documents that were requested, and other responses to the subpoena.

MR. BECKER: Well, again, my understanding, based on, again, my review of the documents, is that the ownership claim is for the land below the ordinary water mark of the Big Wood River.



MR. LINNET: I am going to object that this really -- this deposition should not be talking about the ownership claim of the parcel that the Community Library owns. That's not what -- what's at issue here. And the hearing officer's order clearly stated that discussion about who owns this parcel is not going to lead to admissible evidence.

Q. (BY MR. BECKER) Okay. Can my client perform this project without your permission?

A. It looks to me like some portion of this intersects with property that the Community Library owns. Therefore, the framework that I would operate under for making decisions about that would be working with the conservation easement that is held by the Nature Conservancy.

Q. So, again, permission would need to be obtained from the Nature Conservancy and your organization to do this project?

A. I believe so. I guess why I'm pausing is I don't know if the Nature Conservancy gives permission or not to the landowner, who holds the conservation easement, and then it would be the library that responds to this proposal, or if both entities respond to the proposal. But it would involve decisionmaking from both entities.



Q. Okay. Fair enough. I appreciate that clarification.

And one of the other requirements that the State is trying to make my client do is if you look at the right-hand side of that picture, there's a little notation says, "Remove gravel from channel to align thalweg for conveyance loss mitigation."

And, obviously, that's a little bit of river restoration jargon here. But, essentially, that's digging out some of the river here.

And so that type of process as well would have to go through the same consultation that we just discussed, permission?

A. Correct. If it falls within the boundary of the conservation easements, then we would be talking to the Nature Conservancy as part of our decisionmaking process.

Q. Okay. So let's turn to some of the documents you produced here today.

MR. BECKER: Let's mark this as Deposition Exhibit 5.

(Exhibit 5 marked.)

Q. (BY MR. BECKER) So this is a grant deed that appears to be from the Nature Conservancy to the Community Library Association. Do you recognize that



document?

A. I do.

Q. And this is what you -- one of the documents you produced for today's deposition; correct?

A. Correct.

Q. And if we turn to -- let's see -- page 15 of 23, is that your signature?

A. It is.

Q. Okay. So, essentially, your organization accepted a donation of this section of the Big Wood River from the Nature Conservancy May 11th, 2017?

A. Yes.

Q. And you signed on behalf of the Community Library Association accepting that donation?

A. Yes.

Q. And as part of this transaction, the Nature Conservancy, so the prior owner, predecessor in interest, reserved to itself a conservation easement?

A. Yes.

Q. And that conservation easement is attached as Exhibit C to this gift deed; correct?

A. Yes.

Q. I want to turn to page 22 of 23 on the reservation of conservation easement. And I'm looking at Condition S. Do you have that in front of you?

# EXHIBIT C

BEFORE THE WATER RESOURCES BOARD
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION )
)
FOR STREAM CHANNEL )
)
ALTERATION PERMIT NO. )
)
S37-20565 )
)

30(b)(6) DEPOSITION OF IDAHO DEPARTMENT OF WATER RESOURCES (AARON GOLART)

October 3, 2025

Boise, Idaho

Reported by:
Misti L. Alcalde, ID CSR #1137, CA CSR #13338

30(b)(6) DEPOSITION OF IDAHO DEPARTMENT OF WATER RESOURCES (AARON GOLART)

BE IT REMEMBERED that the 30(b)(6) deposition of IDAHO DEPARTMENT OF WATER RESOURCES (AARON GOLART) was taken by the Petitioner at the Department's State Office, located at 322 East Front Street, 6th Floor, Suite 648, Boise, Idaho, before Associated Reporting & Video, a Veritext company, Misti L. Alcalde, Court Reporter and Notary Public in and for the County of Ada, State of Idaho, on Friday, the 2nd day of October, 2025, commencing at the hour of 10:00 a.m. in the above-entitled matter.

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Also Present: John Hastings
Andrea Hastings



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PROCEEDINGS

AARON GOLART,
a witness having been first duly sworn to tell the truth, the whole truth, and nothing but the truth, was examined and testified as follows:

EXAMINATION

BY MR. BECKER:

Q. Please state your name for the record.
A. Aaron Golart.
Q. And what's your contact information?
A. Phone number is 208-287-4941.
Q. Is that your office number here?
A. Correct.
Q. What's your e-mail here? I'm not looking for personal information, by the way.
A. Great.
A-A-R-O-N, dot, G-O-L-A-R-T, at I-D-W-R, dot, I-D-A-H-O, dot, G-O-V.
Q. Have you ever had your deposition taken before?
A. I don't believe so. No.
Q. Congratulations.
A. Thank you.

Q. As you can see, our court reporter, Misti, is taking down everything that is said, and that will resolve in the preparation of a written transcript. So I'm going to go over a few ground rules to make sure we can keep our transcript as clear as possible.

While I'm talking, please allow me to finish what I'm saying whatever question I'm asking, and then begin your response so that we're not talking over one another.

Do you understand that?

A. I do.

Q. Also, Misti won't be able to pick up things like "uh-huh," "huh-uh," or head nods, so if you can keep your responses verbal, that will help keep our transcript clear.

Do you understand that?

A. I do.

Q. If you don't understand a question, please ask me to rephrase it or ask for clarification. But if you answer a question, I'm going to presume that you understood the question.

Is that fair?

A. It is.

Q. Okay.



And your attorney -- sounds like you have two attorneys here, Meghan Carter and Sara --

MS. AJETI: Ajeti.

MR. BECKER: Who will lodge objections?

MS. CARTER: I will.

Q. BY MR. BECKER: If Ms. Carter has an objection, please allow her to finish her objection. Her and I may have a conversation to discuss that objection, and then unless you are instructed not to answer by Ms. Carter, you can go ahead and answer the question that I posed. If you have forgotten the question because of the back and forth, Misti can reread the question to you at that time.

Do you understand that?

A. I do.

Q. Are you on any medications or had any personal events that would affect your memory or ability to tell the truth today?

A. No.

MR. BECKER: Let's mark this as Deposition Exhibit No. 1.

(Deposition Exhibit No. 1 marked.)

Q. BY MR. BECKER: Mr. Golart, you understand that we're here today as part of the



discovery process in connection with an administrative hearing before the Department.

Do you understand that?

A. I do.

Q. Okay.

So my understanding is that you've been produced by the Department as it's designated representative as the person who's most knowledgeable about the terms and conditions that the Department of Water Resources has placed in the water permit to my client Mr. Hastings; is that correct?

A. Correct.

Q. Would you also be the person most knowledgeable about the background of this permit and how we got to where we are today?

A. Yes.

Q. And the consent order?

A. To some extent, yes.

Q. Would there be someone more knowledgeable about the consent order?

A. Not more knowledgeable, but maybe equally.

Q. And I can't take their depositions, I don't believe. So as far as Department staff, you



are the main person?

MS. CARTER: Kahle, I'd also like to point out that your Notice of Deposition only specified the conditions the Department placed on the permit, not the consent order.

MR. BECKER: Uh-huh.

MS. CARTER: Okay.

Q. BY MR. BECKER: Did you bring any documents with you here today?

A. No.

Q. Okay.

So let's go back to 2017.

Can you tell me about the condition of the Big Wood River at spring runoff in 2017?

MS. CARTER: Again I'm going to object. This doesn't have anything to do with conditions of the permit.

MR. BECKER: I'm laying some background.

MS. CARTER: That's fine. Just -- objection.

MR. BECKER: Okay. Go ahead and answer.

THE WITNESS: It was a high runoff year.

Q. BY MR. BECKER: Okay.

I've heard some people describe it as a hundred year flood event. Is that a fair

characterization of the runoff in 2017 in the Big Wood and the drainage?
A. That sounds correct.
Q. Okay.
MR. BECKER: Let's mark this as Deposition Exhibit No. 2.
(Deposition Exhibit No. 2 marked.)
Q. BY MR. BECKER: In fact, the Big Wood was flowing high enough that the City of Ketchum declared an emergency; is that correct?
MS. CARTER: I object. This is not within his personal knowledge.
MR. BECKER: Well, we'll find out now, won't we?
THE WITNESS: I don't know.
Q. BY MR. BECKER: You don't know if in 2017 the City of Ketchum had declared an emergency with respect to the flooding and high runoff event in the Big Wood?
A. No.
Q. Okay.
I've handed you what's been marked Deposition Exhibit No. 2. That's Ketchum City Ordinance 1172, and it's dated April 3rd, 2017.
Do you see that in front of you?



A. Yes.
Q. Have you ever seen that before?
A. I don't recall.
Q. Okay.
Are you familiar with Idaho Code 67-6523?
A. No.
Q. Are you aware of any state emergency declarations for the Big Wood River in 2017?
A. I don't recall.
Q. Okay.
How about federal?
A. I don't recall.
Q. You're just simply aware that there was an extremely high water event during the 2017 runoff?
A. High runoff, correct.
Q. What was the Department dealing with in terms of situations created by the 2017 flood in the Big Wood River?
MS. CARTER: Again. Objection.
Continue to answer.
THE WITNESS: Can you repeat the question?
MR. BECKER: Let's reread the question, please.



(Court reporter reads from the record.)
MR. BECKER: We'll say the 2017 high runoff event.
THE WITNESS: Can you repeat the full question?
Q. BY MR. BECKER: Yeah.
During the 2017 flood, high runoff event, was the Department dealing with a lot of situations in the Big Wood River drainage?
A. Yes.
Q. Okay.
What type of situations were you encountering?
A. Permitting bank erosion primarily.
Q. On an emergency basis?
A. Yes.
Q. Okay.
And what was the Department's overall general approach to dealing with those types of emergency applications?
A. Receiving applications prior to work occurring, and then issuing a permit.
Q. Okay.
Did the Department receive emergency applications by way of things that had been



approved by the City?
MS. CARTER: Objection.
Continue, Aaron.
THE WITNESS: I don't recall.
MR. BECKER: Meghan, I'm handing you what will be marked as a deposition exhibit. You'll see that I'm blacking out some things at the top. That's because the only version I have of the below e-mail is the one that was forwarded on to my client by his attorney, and so there's not necessarily substantive discussion, but I just don't want any form of attorney-client communications getting into the record here.
Let's mark this as Deposition Exhibit No. 3.
(Deposition Exhibit No. 3 marked.)
Q. BY MR. BECKER: Okay.
Mr. Golart, I've handed you what's been marked Deposition Exhibit No. 3. This is an e-mail from -- let's see, Brittany Skelton at the City of Ketchum, and it references a verbal authorization for emergency stream bank stabilization that was verbally authorized in a site visit and then the attachment here is a permit.
Have you seen these before?

A. I believe so.
Q. Okay.
And how did you come about receiving those?
A. I don't recall.
And can I clarify?
Q. Yes.
A. I don't recall receiving the e-mail, but I think I recall the permit from the City of Ketchum.
Q. Okay.
So what do you recall about receiving the permit from the City of Ketchum?
A. Just receiving it and being aware that the City had issued an emergency permit. I don't recall whether it was before or after receiving our application.
Q. Okay.
Is this a process that you have been familiar with prior to this particular situation where a city emergency permit was issued and then subsequently there was state involvement?
A. I don't recall.
Q. So if we look at the second page of that document with respect to photograph 4, do you see



that -- sorry, the page back there (indicating).
Do you see where it discusses a meeting between Mike Elle and Brittany Skelton meeting with the property owner?
A. I do see it.
Q. Okay.
So essentially there was a meeting between the City of Ketchum under an emergency ordinance, and this narrative discusses how there was a concern about impacts on the Warm Springs Bridge if property continued to wash away. And so does this comport with your background of how we got to where we are today in terms of a City of Ketchum authorization to do some work based on an emergency situation?
A. Comport with my background?
Q. I mean, do you disagree with this narrative here that the City of Ketchum asked my client to perform emergency stream stabilization work?
A. No. I'm not familiar that the City of Ketchum requested your client to do work along the stream bank.
Q. Would you like to take some time to read through this narrative and let me know if you



disagree with anything that the City of Ketchum has put in this emergency permit?
MS. CARTER: Again, I object as to the relevance to the terms and conditions.
But continue on, Aaron.
MR. BECKER: Well, he's here both in terms of 30(b)(6) and his personal.
MS. CARTER: That is not what the Amended Notice says. That's not what it says. You noticed up a 30(b)(6).
MR. BECKER: It's both Aaron Golart and a person knowledgeable.
MS. CARTER: You have in here, "according to 30(b)(6), which is -- and then you asked for the knowledgeable about the terms and conditions of the permit.
MR. BECKER: Yep.
MS. CARTER: You did not specify that he was here in his personal capacity.
MR. BECKER: "Aaron Golart, IDWR, you are hereby notified" that we'll take your testimony.
MS. CARTER: Not -- that is not they way this reads, and when I specified with you if you were taking a 30(b)(6) deposition, this is what you sent.



MR. BECKER: Would you like to break this into two separate depositions? I don't understand what the objection is. Is Aaron Golart not able to testify in his own individual capacity here today?
MS. CARTER: He is. I'm just saying it was not properly noticed.
Anyway, Aaron, go ahead.
MR. BECKER: Okay.
THE WITNESS: Can you repeat the question?
MR. BECKER: Can you read the question.
(Court reporter reads from the record.)
THE WITNESS: Yes.
Q. BY MR. BECKER: Okay.
How did you first come to learn about the work that was done at the site that we're here about today, the 1200 Warm Springs?
A. As a result of receiving the application, I was up in the valley doing other inspections, and because I had received a joint application to implement some stream bank work, I stopped at the Warm Springs Bridge and conducted a site inspection from the bridge. It's easily accessible there from public right of way. And so I observed that the work had already occurred.
Q. Had you met Mr. Hastings prior to this

point?
A. I don't recall. We've only met twice, I believe; once on Warm Springs Creek and once at Chris Bromley's offices.
Q. Tell me about the meeting at Warm Springs Creek.
A. Well, we were inspecting his neighbor's emergency condition. I don't recall which month that was, and the -- Mr. Hastings and his wife --
I forgot your name.
MS. HASTINGS: Don't worry about it.
THE WITNESS: Okay.
-- came out to have a conversation with us.
Q. BY MR. BECKER: And so you referenced a neighbor's emergency situation. I've got a picture here.
MR. BECKER: Let's mark this as Deposition Exhibit 4.
(Deposition Exhibit No. 4 marked.)
Q. BY MR. BECKER: So you mentioned the neighbor's emergency situation. Do you recall a neighbor placing some sort of bladder or barrier to Warm Springs Creek?
MS. CARTER: I'm going to just again



reiterate my earlier objections.
Go ahead, Aaron.
THE WITNESS: Do you want to repeat that?
Q. BY MR. BECKER: Yeah.
Do you recall the neighbor that you mentioned that you were up visiting up on Warm Springs Creek that had done some emergency work, do you recall whether or not that was something along the lines of a bladder that directed the flow of Warm Springs Creek?
A. Yes.
Q. Okay.
Had you received a permit or any sort of application for that neighbor to put a bladder, barrier or bladder to Warm Springs Creek?
A. I don't recall.
Q. Okay.
So why were you up there looking at that particular situation?
A. I was called by other agencies to attend a meeting. And, frankly, I was not prepared to discuss this item today, so I haven't given it much thought. It's been how many years?
Q. But you recall you were up at Warm Springs Creek dealing with a property owner



adjacent to something that -- a residence where my client had resided?
A. I believe so. I believe that's how we first met. That was the impetus behind that question.
Q. And what was the interaction with Mr. Hastings?
A. I don't recall. I believe he was asking questions about why we were there.
Q. Was he upset that this -- the diversion that the neighbor had constructed impacted the residence that he was at?
MS. CARTER: Again, objection.
Continue, Aaron.
THE WITNESS: I don't recall.
Q. BY MR. BECKER: Okay.
So you don't know whether or not there was any sort of permit or emergency authorization for this neighbor to conduct what we see here in Exhibit 4 -- or construct what we see here in Exhibit 4?
A. Is it acceptable to say, "I believe so"?
Q. Yes.
A. I do believe they had a permit, but again, I was not prepared to discuss this project



here today.
Q. We got into a bit of a discovery dispute with a motion to compel where I'd asked for some old permits -- or notices of violation that had been issued, and they did not get followed through on.
Do you know if this would have been something that would have been in that --
MS. CARTER: Objection.
Don't answer that.
MR. BECKER: -- that I was precluded from obtaining?
MS. CARTER: That's well beyond the scope, and the hearing officer has limited that.
Aaron, don't answer that.
MR. BECKER: And I'm just making my record of the type of information I've been denied access to by the hearing officer's order. Since there's a possibility that this could go up on appeal, I just want to understand if this is the type of situation that would have been within that.
MS. CARTER: He said that a permit was issued. Then it wouldn't have been in that record.
MR. BECKER: Okay. Emergency permit.
Q. BY MR. BECKER: Why would you be up

there if this was something that had been permitted?
A. I don't recall the details of this project.
Q. Okay.
Was Mr. Hastings concerned that this "project," as you described it, caused water to be directed into the living room of his residence?
A. I don't recall.
Q. Okay.
Do you recall if Mr. Hastings was happy or upset during that meeting?
A. I would describe it as concerned.
Q. Do you recall what the concern was about?
A. Well, Warm Springs Creek was flooding, and his property is immediately adjacent to Warm Springs Creek, so I think he was concerned about flooding.
Q. Do you know if your visit to the 1200 Warm Springs address down in the Big Wood occurred after this meeting you're describing up at Warm Springs Creek?
A. I believe so.
Q. In fact, it was --



emergency -- declaration of emergency?
A. I don't recall.
Q. Okay.
Mr. Golart, you've got what's been marked as Deposition Exhibit No. 5 in front of you.
Have you seen that document before?
A. Yes.
Q. Okay.
Is that your signature on the second page?
A. It is.
Q. The last page is a photograph. Did you take that photograph?
A. Yes.
Q. Okay.
And was this photograph taken from the Warm Springs Bridge over the Big Wood?
A. I believe so.
Q. So the river is flowing towards where you took the photograph from; correct?
A. Correct.
Q. Okay.
And what were you trying to show in this photograph?
A. Just take a photograph of the stream



A. Months ago.
Q. You believe it was months after, not immediately after that interaction?
A. Again, it's hard to recall, but I think it was well after that.
MR. BECKER: We'll mark this as Deposition Exhibit No. 5.
(Deposition Exhibit No. 5 marked.)
Q. BY MR. BECKER: Do you recall who was with you whenever you went up to Warm Springs Creek and had the interaction with Mr. Hastings?
A. All the individuals?
Q. If you recall.
A. I don't.
Q. Would Christy Helk (phonetic) have been with you?
A. I believe so, yes.
Q. And who is she?
A. She was the floodplain administrator with the county at the time.
Q. Blaine County?
A. Correct.
Q. And that's where Ketchum is located?
A. Correct.
Q. Do you know if there was a county



bank that -- where the application was submitted to do some bank stabilization representing work that had already occurred.
Q. Can you tell me what Exhibit 5 is?
A. It's a Notice of Violation from the Department.
Q. Why did you decide to send this to Mr. Hastings?
MS. CARTER: I'm going to object. We're here about the conditions of the permit.
MR. BECKER: I understand.
MS. CARTER: Continue, Aaron.
THE WITNESS: Because work occurred without a permit authorization.
Q. BY MR. BECKER: A state permit?
A. Correct.
Q. But there was a city permit in place?
A. You have explained that.
Q. And you have that in front of you now. Would you like to look at it?
A. I've looked at it.
Q. Okay.
A. At this point I don't recall if I was aware of that or not, and I don't believe that it's even relevant to whether or not the Department

would issue an enforcement action on our permitting requirements.
Q. So the City of Ketchum is an arm of the State of Idaho acting pursuant to Idaho Code just as you are acting pursuant to Idaho Code. And there is a permit issued in an emergency to my client. You then decide to inspect the property and issue a Notice of Violation.
Is that a correct recitation of the history leading up to this?
A. It appears so.
Q. Okay.
Then once this Notice of Violation was issued, did Mr. Mr. Hastings cease work?
A. I don't recall.
Q. Do you know if the work that Mr. Hastings did resulted in protection of the Warm Springs Bridge?
A. I don't.
Q. Okay.
The Warm Springs Bridge is still standing here today; correct?
A. I believe so.
Q. It didn't wash out during the flood?
A. In 2017?



Q. Correct.
A. No.
Q. No, it did not wash out?
A. It did not.
Q. Okay.
And with respect to bridges, there is a concern that during a flood event trees could get caught underneath the bridge and start backing up?
A. Some bridges, yes.
Q. And if we look at the photograph on the -- that you took here, this September 7th, 2017, do you see that large cottonwood tree on the center left side?
A. Yes.
Q. If you look at -- let's go back to Exhibit -- I think it would be 4. I'm sorry, 3, Exhibit 3.
And if you go to the second page of that exhibit and look at paragraph 6, do you see how paragraph 6 discusses the proximity of the cluster of cottonwood trees to public infrastructure, the Warm Springs Bridge?
A. Yes.
Q. Okay.
Do you know if this is the cluster of



cottonwood trees that's being referred to in this emergency permit?
A. I don't.
Q. Okay.
Do you see any other cottonwood trees looking upstream that would be -- any other groups of cottonwood trees that could possibly be the explanation for an emergency permit condition that Ketchum has?
A. No.
MS. CARTER: Objection. He doesn't -- I mean, that's referencing something that we don't have a reference to. You're drawing conclusions between two very separate documents.
MR. BECKER: We'll certainly explore that in litigation as to whether the State has superseded what the city had done here.
Q. BY MR. BECKER: Let's look at Exhibit 3 here, and if we can look at some of the photographs that the City took.
Do you see it says page 3 of 7 is the first photograph on Exhibit 3?
A. Yes.
Q. Okay.
Did you ever have a site visit at the



1200 Warm Springs property -- or from the bridge, and observe conditions like this where the river bank is being eroded away from the flood?
A. I don't recall.
Q. Okay.
So you only conducted a site visit once some bank stabilization had occurred?
A. I believe so.
Q. Okay.
Do you see anything concerning taking place in these photographs that are attached to the City of Ketchum permit, Exhibit 3?
A. Concerning? No.
Q. Well, I mean, does it seem like the stream bank is eroding away from the flood?
A. Well, the flood has passed July 25th. I don't believe those were flood conditions.
Q. You see the trees in the river at this stage?
A. I do.
Q. And if we go to page 4 of 7, does that look like a stable river bank?
MS. CARTER: I'm going to object. This is beyond Aaron's personal --
MR. BECKER: You've designated him as an

expert.
MS. CARTER: This is beyond Aaron's personal knowledge related to this topic.
MR. BECKER: I'm just trying to explore the basis of his expert opinion, his knowledge of the permit.
MS. CARTER: This has nothing to do with the conditions on the permit.
MR. BECKER: I disagree, and I'm laying a foundation.
MS. CARTER: All right.
Continue, Aaron.
THE WITNESS: Can you repeat the question?
Q. BY MR. BECKER: Yeah.
I said, "Does this look like a stable river bank to you?" If we look at page 4 of 7 on Exhibit 3.
A. In some areas it looks stable and some areas it's eroding, and erosion is a natural process, so I don't know what you really mean by "stable."
Q. Well, for example, there is a tree across the river; correct?
A. Correct.
Q. Does this look to be stable? Something



that will withstand the next high water event?
A. That very well could withstand the next high water event, yes.
Q. Do you know what the term "thalweg" is?
A. I do.
Q. Okay.
What is it?
A. It's the deepest point of the channel.
Q. Does it also have the greatest velocity?
A. It can.
Q. Where would you characterize the thalweg of the Big Wood River on page 4 of 7 in Exhibit 3?
A. It appears to be running along the eroding stream bank.
Q. Okay.
And if we go to page 6 of 7, do you see the thalweg of the river in that picture?
A. I can see what appears to be a thalweg.
Q. Does it look like it's flowing right at this group of cottonwood trees?
A. It appears it is.
Q. And going back to page 5 of 7, do you see the cracks in the upland there?
A. I believe so, yeah.
Q. You mentioned that river erosion is a



natural process. There is actually two different versions of that that become relevant. There's accretion and avulsion.
Do you understand what these terms are?
A. I do.
Q. What's accretion in your mind?
A. It's when material accumulates in a channel.
Q. Slowly over time?
A. Sometimes, yeah.
Q. Okay.
And what's avulsion?
A. It's where the channel may migrate to a different location sometimes through uplands.
Q. Typically during a flood event?
A. Correct.
Q. What we see here in paragraph -- I'm sorry, picture -- on page 3 of 7 of Exhibit 3, does that look like an accretion process or an avulsion process?
A. Not sure that this would be enough information to make that determination. It, from the photo, doesn't appear to be either of those scenarios.
Q. Well, if we had trees that were growing,



we can assume that they were growing on the upland trees during -- above the water mark; right?
A. Not always. And would you like me --
Q. Absolutely. Provide an --
A. An eroding stream bank isn't necessarily an avulsion.
Q. Understood. If it's a slow erosion process, it could be an accretion event. But a rapidly eroding event would be avulsive; right?
A. No.
Q. Please clarify.
A. An avulsion is where the channel migrates outside of where it currently exists, and that did not occur here.
Q. Why do you say that?
A. Just based on this limited information, it doesn't appear to be the case or -- yeah, it just doesn't appear to be the case.
Q. So you don't think that trees getting the roots undermined and ending up in the river is the result of an avulsive flood event?
A. Not what I would consider one, no.
Q. Okay.
Well, how would you differentiate what occurred here from an avulsive flood event?

A. I believe I've already explained that, but where the channel migrates to a new location oftentimes going -- migrating through uplands and abandons -- I guess I didn't clarify that -- abandons the old location, so it would be complete channel migration into a new area.
Q. Okay.
So you're differentiating between accretion and avulsion because the channel here has simply expanded as opposed to completely migrating to uplands?
A. Correct.
Q. Okay.
MR. BECKER: Let's go back to Exhibit 6, I believe.
THE COURT REPORTER: 6 hasn't been marked yet.
MR. BECKER: Or 5, I'm sorry.
5 is the Notice of Violation.
Q. BY MR. BECKER: Okay.
So if we go to the first page of the Notice of Violation, starting with the second group of numbers, one, two, three. Item 1 says, "Cease and desist all unauthorized work below the mean high water mark at the subject land and within the



Big Wood River."
MS. CARTER: I'm going to object again. This has nothing to do with the terms of the permit.
Continue, Aaron.
Q. BY MR. BECKER: Okay.
How did you make a determination that any work whatsoever had been done below the ordinary -- below the mean high water mark of the Big Wood River at this site?
A. Based on the location of the rock that was placed.
Q. But did you do anything to determine whether that rock that was placed was placed on top of what had been upland above the ordinary high water mark prior to the flood event?
MS. CARTER: Again, objection.
THE WITNESS: Our rules define where the ordinary high water mark currently exists, and based on my observation and inspection, there had been rock placed.
Q. BY MR. BECKER: So you didn't know an historical analysis in terms of where the ordinary high water mark had been prior to the 2017 flood event prior to issuing this Notice of Violation?



A. No.
Q. No, you did not conduct any historical analysis?
A. On where the ordinary high water mark was prior to any sort of flood event?
Q. Correct.
A. No.
Q. No, you did not conduct any analysis?
I'm just -- is that correct that you did not conduct a historical analysis of where the ordinary high water mark had been prior to the 2017 flood?
A. No.
Q. Okay.
What had you done?
A. Prior to my site visit?
Q. Yeah.
A. Reviewed the application.
Q. Okay.
But there was no survey work, no delineation of the ordinary high water mark prior to the 2017 flood event?
A. By me?
Q. By anyone in the Department.
A. I can say that I did not do that at this



site location, no.
Q. Okay.
And you're not aware of anyone else having done that analysis?
A. No.
Q. No, you're not aware?
A. I'm not.
Q. Okay.
A. I guess I could clarify an item.
Q. Please do.
A. I don't believe this was the first permit that Mr. Hastings had received at this location, and so I may have done some sort of assessment related to that previous permit that was issued in review of prior applications, but in regard to this circumstance and what occurred in 2017, I conducted my inspection based on where the ordinary high water mark currently was located.
Q. And you're aware that Idaho law allows a landowner to conduct work on his own property to protect it from erosion or destruction from a flood event?
MS. CARTER: Objection. Aaron's not an attorney.
Go ahead.

THE WITNESS: I'm aware of Idaho law relating to Title 42, Chapter 38, regarding emergency processes. That's my familiarity.
Q. BY MR. BECKER: And that's the Department's code section?
A. Correct.
Q. Okay.
In a generic sense, if an individual does work on their own private property, that's something the Department doesn't have jurisdiction over; correct?
A. Can you define "generic sense"? I'm not sure --
Q. Well, you understand that the ordinary high water mark is essentially a property line that delineates state property from private upland property, again in the generic sense?
A. I understand that's the case on navigable rivers.
Q. Do you know if this, the Big Wood, is navigable at this site?
A. I'm aware that Idaho Department of Lands does not consider it navigable at this site.
Q. And that's only because they don't have a specific case from a court saying, "This is



navigable at this particular site;" correct?
A. I'm not aware how they make their determinations.
Q. Does that determination get passed on to you, or is that -- when I say "you," the Department, or is that -- does each department put its blinders on with respect to its own determinations as to navigability of a particular river?
A. There are differences between federal designations and state designations, and Idaho Department of Lands has a list that's available to the public that outlines the water bodies that they consider navigable, and that's what we utilize.
Q. Okay.
And that list is based on actual case decisions --
MS. CARTER: Objection.
Q. BY MR. BECKER: -- regarding a particular --
THE COURT REPORTER: I'm sorry, regarding a particular --
MR. BECKER: Body of water being navigable.
THE WITNESS: I'm not aware how they populate the list.



Q. BY MR. BECKER: Okay.
Do you consider that list binding on your Department?
A. Can you explain?
Q. Well, if a particular body of water is on the list as opposed to a particular body of water not being on the Department of Lands list of navigable waters, does that change anything in terms of how you do your job?
A. No.
Q. Back to my question about in a general sense the ordinary high water mark of a navigable river defining a property line, does that track with your understanding?
A. State navigable?
Q. Yes.
A. Yes.
Q. Okay.
So on a state navigable river, the ordinary high water mark defines the property line between the upland owner and then the state ownership of a navigable river?
A. That's my understanding.
Q. Okay.
So if a landowner is doing work on his



own private property, is that something the Department would or has jurisdiction to impose regulations or requirements upon a landowner?
A. If it's below the ordinary high water mark.
Q. But if it's above you wouldn't?
A. No.
Q. Back to Exhibit 5, we've discussed term one. Term two, you asked that Mr. Hastings prepare a stream bank bioengineering plan to restore the Big Wood River, and it says that it should include native trees and shrubs and forbs.
Do you see that?
A. Yes.
Q. Okay.
Is a cottonwood tree native?
A. It is.
Q. How do cottonwood trees spread and grow outward? I'm not talking about the trunk growing up, but are there root systems that go underground and eventually through shoots that grow under trees?
A. I believe so.
Q. So left to their own devices, a cottonwood tree would eventually seek out ground to

then grow up a new shoot and grow a new tree?
A. I'm not a botanist, so I can't comment on that.
Q. Well, you put a requirement in here. What did your -- what do you base this on, requiring Mr. Hastings to do native trees, shrubs, forbs?
A. Can you restate that?
Q. Yeah.
You said you're not a botanist, so I'm just trying to understand.
A. Yeah, I don't necessarily have, you know, a great grasp of the life history of cottonwood trees if that's what you're getting at.
Q. Understood.
You don't have a degree in botany. What is your degree in?
A. Ecology.
Q. Ecology.
Undergraduate?
A. Correct. I have a bachelor's of science from Idaho State.
Q. Okay.
Do you have any training beyond that?
A. I do. I had some upper graduate



education from Boise State and on-the-job training.
Q. Okay.
As part of your on-the-job training, do you have any training in botany?
A. Yes, some.
Q. Okay.
And cottonwood is a fairly common species throughout Southern Idaho at least?
A. They are.
Q. Okay.
And so a lot of your work would deal with rivers and streams along cottonwood ecosystems?
A. Correct.
Q. So in an effort to preserve existing cottonwoods, that's something that could be considered to be preserving the existing native natural vegetation along the stream bank?
A. Correct.
Q. Do you have any particular other shrubs or forbs that you were referring to here in this paragraph 2?
A. Native ones.
Q. Okay.
So we discussed cottonwood would be



native. Is there anything else in your mind you would want to see species-wise?
A. Well, I think the intent of this condition would be to leave that up to the property owner, but native shrubs could include willows and alders and any number of shrubs and trees. So it's a general statement to allow some flexibility to the landowner in what they'd like to include there. So that's why we use the term "native."
Q. Okay.
So if the landowner was content with cottonwoods, then you would be okay with that?
A. Generally speaking, yes.
Q. Item 3 says, "Pay a civil penalty in the amount of $10,000 on or before November 1st, 2017." My understanding is Mr. Hastings did pay that amount?
A. He did.
Q. And timely, and that's not an issue?
A. I believe so. No, it's not a concern for me.
Q. Did you issue any other fines in the Big Wood River drainage in 2017 for unauthorized stream channel alteration work?
A. I don't recall.



Q. Is $10,000 a high, medium, or low fine back in 2017?
A. I think it's the maximum allowed by statute in this case.
Q. Okay.
So you hit Mr. Hastings with the maximum statutory fine for performing stream bank stabilization that the City had asked him to do.
Is that what took place here?
A. Yes.
Q. Okay.
And then this letter goes on to say that a compliance conference must take place.
Did that take place?
A. I believe so.
Q. Okay.
Who attended that?
A. I don't recall.
Q. You listed -- below your signature on Exhibit 5, you listed a number of people that received a copy of this letter, one of which was Brittany Skelton.
Do you see that?
A. Yes.
Q. And so why did you include Brittany

Skelton?
A. We always include the local community and their floodplain administrator for items like this.
Q. Did Ms. Skelton reach out to you after receiving this Notice of Violation?
A. I don't recall.
Q. Did the Department of Environmental Quality reach out to you or have any involvement in this process that followed this Notice of Violation?
A. I don't recall.
Q. How about the Army Corps of Engineers?
A. I'm not going to recall any communication relating to that list.
Q. Okay.
What took place after this Notice of Violation was issued with respect to this project or this Notice of Violation?
A. Well, I believe we had a compliance conference, and Mr. Hastings paid the penalty. We negotiated a Consent to Order and Agreement. The parties signed that agreement, and then we went through the application process to eventually issue the permit that I think we're here to discuss



today.
Q. Okay.
MR. BECKER: Let's mark this as Deposition Exhibit No. 6.
(Deposition Exhibit No. 6 marked.)
Q. BY MR. BECKER: Mr. Golart, you've been handed what's been marked Deposition Exhibit No. 6, and you just mentioned a consent order in response to one of my earlier questions.
Is this the consent order you were referring to?
A. Appears to be.
Q. Generally, what is a consent order?
A. It's a contract between the Department and in this case landowner that was issued a Notice of Violation in an attempt to outline the items in which will be worked through to resolve the matter.
Q. Okay.
We discussed earlier that the City of Ketchum signed an emergency stream bank stabilization permit, and we had marked that as, I believe, Deposition Exhibit No. 3.
Is that the -- Deposition Exhibit No. 3, the emergency stream bank stabilization permit, is that the same permit that's mentioned here in



paragraph 3 of the consent order?
A. It appears to be.
Q. And then item 4 states that work ceased on July 31st, 2017.
Does that comport with your understanding?
A. If it's listed on the consent order agreement, that would be my understanding, yes.
Q. So the Notice of Violation that we had just talked about in Exhibit 5, that's dated September 11th, 2017.
Do you see that?
A. Yes.
Q. Okay.
And the photograph that you had taken that was mentioned in the September 11th, 2017, letter was taken September 7th, 2017.
Do you see that?
A. Yes.
Q. And item 5 in the consent order mentions that an emergency permit application was filed by Mr. Hastings on August 30th, 2017.
A. Correct.
Q. Okay.
So despite receiving an emergency



application -- despite the City of Ketchum having issued an emergency permit, the Department hit Mr. Hastings with the maximum fine.
MS. CARTER: Objection.
Q. BY MR. BECKER: Is that correct?
A. Correct.
Q. Okay.
Why did you decide to hit him with the maximum fine?
A. We always -- that's the standard where we start from with any of these, and then the consent to order or the compliance conference is where we can discuss any penalties or matters relating to items identified or outlined in the Notice of Violation. So that's standard practice.
Q. And I would be able to see if that's a true statement if I looked at some of these documents that I've been precluded from obtaining?
MS. CARTER: Objection. You had the opportunity to look for something other than these particular things. Those things are available online. This is inappropriate questioning.
MR. BECKER: Well, I asked specifically for documents where notices of violation were issued, but consent orders weren't entered into or the

Department otherwise didn't follow through. And so I'm being asked to take Mr. Golart's word for what his Department policy is and yet I have no ability to understand whether or not that's true or false.

MS. CARTER: Well, for one thing, Mr. Golart was here to talk about the conditions on the permit and not about the Department's policy regarding notice of violation which is a program that is much bigger than Aaron's department. If you wanted a staff member to talk about that, you should have listed it in the 30(b)(6), which you did not.

MR. BECKER: I'm here talking about what Mr. Golart just said that this was their standard policies and procedures, and I'm establishing my record that the hearing officer had denied our Motion to Compel, and I'm making my record that my client's due process rights have been abridged and --

MS. CARTER: This is not the place to make that record.

MR. BECKER: It is, because if and when this goes up on appeal, the arbitrary and capricious nature of the things we're here about certainly will be a concern.

MS. CARTER: And that may be, but this



deposition is not the place to make that record. We're not going to discuss anything in your Motion to Compel or the hearing officer's denying of that. That is beyond the scope.

MR. BECKER: I'm simply making my record and you are making your objections.

Q. BY MR. BECKER: Item 6 says the Department did not find any current record that authorized the alteration of the subject lands. This is back to the consent order. Item 6.

Do you see that?

A. Yes.

Q. Okay.

In actuality there was a record that authorized the alteration of the subject lands. There was a Ketchum permit; wasn't there?

A. That seems to be the case. Correct.

Q. Okay.

And then we see the item 7 on September 7th, 2017, the Department inspected the subject lands, and this would be going back to this picture we discussed where you took a picture of the Big Wood Bridge?

A. Correct.

Q. The next sentence in paragraph 7 of the



consent order says, "The Department determined that respondent caused rock fill below the ordinary high water mark of the Big Wood River."

Now that determination, that's fill below the ordinary high water mark as it existed at the time of the inspection, not a historical determination of where the ordinary high water mark was; correct?

A. Correct.

Q. So turning to the next page, item 10, it says a compliance conference was held on October 3rd, 2017.

Who attended that compliance conference?

A. I believe it was myself, Mr. Hastings and Cherie Palmer, Andrea Courtney, Candice McCue (phonetic), and that is what I'm recalling.

Q. Turning to the terms of agreement in order item 1, we already established Mr. Hastings paid the $10,000; correct?

A. Correct.

Q. And then Mr. Hastings was to submit a joint application for a permit. And then there was minimum standards that were sent for this permit; right? The Department didn't set out and say, Here's exactly what we want you to do; correct?



A. I believe that's correct. They are outlined right here in A and B.

Q. So that leaves discretion up to the landowner?

A. Correct.

Q. Okay.

What do you mean by "bioengineering treatments"?

A. Well, generally bioengineering treatments are -- it's considered a more natural, softer approach than just dumping rock along a stream bank. They will also replace lost riparian habitat and other items that can be lost when rock is done.

Q. Do you have a definition for bioengineering?

A. I don't.

Q. Okay.

Is that something that's found in any administrative rule?

A. For the State?

Q. Yes.

A. No, not currently.

Q. Okay.

And how about --

A. Well -- not IDWR.
Q. And would the same be true for statutes that apply to IDWR?
A. Correct.
Q. Okay.
So bioengineering is more a term of art?
A. No, it's a pretty common industry standard for the type of treatment that I just explained. NRCS has guidelines.
Q. And those aren't referenced in this consent record, are they?
A. They aren't.
Q. So moving on in that paragraph, 1A of the consent order, large woody material along the stream bank. Is that defined in administrative rule for the Department?
A. No.
Q. Okay.
And then there's a parenthesis, "(e.g., root wad engineered log jam and brush or tree revetment."
When you use the term "e.g.," what does that mean?
A. I think that's "for example."
Q. So these are examples but not a



requirement or an exhaustive list?
A. Correct.
Q. Okay.
B -- 1(b) in the consent order says that there should be a planting plan to help reestablish native riparian buffer between the Big Wood River and the upland parcel at the subject lands.
Are there requirements for planting plans in any administrative rules for the Department?
A. Yes.
Q. Okay.
I've got the administrative --
A. Well, I could rephrase that. Planting plan, maybe not, but there are requirements for plantings in our rules.
Q. Okay.
MR. BECKER: Let's mark this as Deposition Exhibit 7.
(Deposition Exhibit No. 7 marked.)
Q. BY MR. BECKER: Can you direct me to the rules that reference -- I'm sorry, let me back up.
Mr. Golart, you've been handed what's been marked Deposition Exhibit 7. That's IDAPA 37-0307, Stream Channel Alteration Rules for the



Idaho Department of Water Resources Compliance Bureau.
Do you recognize those rules?
A. I do.
Q. Okay.
Can you point me to the rules that you were referring to that discuss planting plans?
A. Again, planting requirements, and that would be the rules for barbs and drop structures. Page 20, Appendix F, is the diagram. And reference to that diagram would be 58 02 on page 11.
Q. Does that start on page 10 and move onto page 11 when you say 58 02?
A. Correct.
Q. 02 is sills. "A sill shall be constructed" -- am I reading that correctly?
A. "...in the same manner as a drop structure."
Correct.
Q. And that's your administrative rule upon which you rely for a requirement that Mr. Hastings come up with a planting plan?
A. No.
You asked if there were rules that require planting plans or plantings, and I answered



that question.
Q. And the rule you refer to is this 58 02?
A. Correct.
Q. Okay.
Are there any other rules that will require a planting plan?
A. Off the top of my head, I'm not aware.
Q. If you need more time to look through these rules, then go ahead.
A. No.
So the answer is no.
Q. Item 2 on Terms of Agreement and Order: "Respondent shall comply with the terms and conditions of any permit the Department issues subsequent to the dismissal of an acceptable application and restoration plan pursuant to order paragraph no. 1."
So the terms and conditions the Department would place in a permit, are those grounded in administrative rules or statute?
A. Yes.
Q. Okay.
Turn to go page 3 of 3.
Whose signature --
A. Which exhibit?

Q. Oh, I'm sorry. This is the consent order. So I believe this would be Exhibit --
MR. BECKER: Is it 6?
Q. BY MR. BECKER: So that -- we see Cherie Palmer's signature there?
A. Correct.
Q. Does she still work for the Department?
A. She does.
Q. Is she still water compliance bureau?
A. Correct. The Bureau name just recently changed to Resource Protection Bureau, but yes, she is still with the Department, and it is generally the same Bureau.
Q. And the consent, whose signature do we see there?
A. Mr. Hastings.
Q. Okay.
There's no signature for Embassy Auditorium, is there?
A. I don't know what that would entail, whether or not Mr. Hastings is authorized to sign for them or not.
Q. My question is just simply there is one signature here, John Hastings, the person?
A. Right.



Q. Okay.
And you had legal counsel present when this was executed?
A. Correct.
Q. Okay.
MR. BECKER: Let's mark this Deposition Exhibit No. 8.
(Deposition Exhibit No. 8 marked.)
Q. BY MR. BECKER: Mr. Golart, I've handed you what's been marked Deposition Exhibit No. 8. It's a letter dated October 31st, 2018 to you from McHugh Bromley.
Have you seen that document before?
A. I believe so.
Q. So this appears to be the first restoration plan that was submitted following the consent order. Would you agree?
I'm sorry, second.
A. Okay.
Q. Walk me through the process after this consent order was entered. What happened next?
A. Well, it was a long time ago, and I was -- I came prepared to discuss the conditions of the permit, but I can give you my recollection that we left the office after the consent order and the



agreement was signed, and Mr. Hastings tasked Chuck Brockway (phonetic) with coming up with a design to meet the terms of the consent order and agreement, which was one of, I believe, three submittals potentially. The first submittal was inadequate, didn't meet the terms of the consent order agreement.
Q. In what respect?
A. Well, I don't have those designs in front of me currently, but they were -- it lacked plantings, it lacked large wood, the barbs were oriented incorrectly that they were proposing. So it was strictly rock work with improper implementation.
Second round --
Q. Well, let's stop right there.
When you say, "rock work with improper implementation," are you basing that on your personal opinions or based on an administrative rule?
A. No. Administrative rule.
Q. And what rule would that be?
A. The rule for bank barbs.
Q. Okay.
And what rule is that?



A. Well, it's one for bank barbs.
Q. I see page 21 of Exhibit 7 is a barb detail.
A. Correct. So why don't we look at that. Page 21.
Q. It's Appendix G.
A. So if you notice, the bank barb is oriented in an upstream direction, and the angles are identified in our administrative rules. The proposal, as I recall, the bank barb was constructed straight perpendicular to flow, and if constructed in that manner, it would be problematic to say the least.
Q. Okay.
So --
A. And all of these items were described in a detailed response letter that we provided to your client and Mr. Brockway.
Q. Well, let's look at Appendix B. There's a discussion of riprap.
A. Right.
Q. So riprap isn't authorized under your administrative rules as well; right?
A. Correct.
Q. In fact, on page 15, there's some

discussion of riprap gradation.
Do you see that?
A. Yes.
Q. Okay.
Did you ever go out and determine whether or not the bank stabilization Mr. Hastings caused to be placed comported with the requirements found here in Appendix A?
A. I did. It would have been part of my inspection that was -- what, September 7th, I think.
Q. So simply from the Warm Springs Bridge, you never got on site and did any measurements?
A. No.
Q. No, you did not go on site?
A. Correct.
Q. You simply made observations from the bridge?
A. Correct.
Q. And based on that observation from the bridge, you made a determination that what had been done as of September 7th, 2017, did not comply with this Appendix A on page 15 of Exhibit 7?
A. That wasn't the primary purpose of my visit, but it does not appear that it meets those



requirements.
Q. And why not?
A. Well, it's not graded. It's simply -- what exhibit is that photo on? 3? 6?
MS. CARTER: It's not that one.
THE WITNESS: Well, primarily it doesn't appear to be well graded. It's not uniform.
Q. BY MR. BECKER: What do you mean by that?
A. They are all the same size.
Q. I see in Appendix A that there is a minimum size and maximum size. I don't see anywhere where it says an administrative rule requirement of a -- beyond a minimum and a maximum.
A. So page 15, Appendix A, Table 1A describes the gradation requirements.
Q. Where do you see the word "gradation"?
A. Riprap gradation using the W -- FWS method.
Q. Okay.
A. Page 15. Rule 71.
Q. Okay.
But how does that table contain a requirement in terms of a gradation that is not present in what Mr. Hastings did?



A. Pardon me?
Q. I guess when I think of gradation, I'd say you need this percentage of this, this percentage of this size, on and on and on, or it should be layered, you know, biggest on the bottom, smallest on the top. That, in my mind, is gradation.
A. Oh.
Q. And I'm trying to understand what this table is saying that is not tracking with that understanding of gradation.
A. No, the gradation is of the rock itself, meaning it needs to be well mixed so to speak. And so the gradation occurs within that riprap blanket. Not from bottom to top, but within the entire blanket.
Q. Okay.
A. And then Rule 57 is where that appendix would be referenced.
Q. Okay.
A. Rule 57 06, size and gradation of riprap.
Q. Okay.
So 5706 on Exhibit 7, did you make any determination that the stream bank stabilization



that Mr. Hastings had constructed did not comply with that rule?
A. No.
Again, that was not my primary purpose to be out there. It was actually to inspect the bank prior to work occurring.
Q. But work had already occurred?
A. Right.
Q. So the submission that you received, the first application for the permit, why did you feel that it did not comply with the gradation requirements that we just discussed in that rule?
A. Again, it appears from this photo that it's primarily all one size of rock. It's not really graded.
Q. I mean these aren't, like, manufactured cube rocks, are they?
A. I don't know where they came from.
Q. But, I mean, they're rocks. I mean, they are natural rocks of various shapes and sizes?
A. Yeah.
Q. But they are not pebbles or gravel; right?
A. They don't appear to be pebbles or gravel. You're right.

Q. Yeah, they're just rocks of various sizes placed on the stream bank to stabilize it. Correct?
A. Correct.
Q. So back to the first permit application, you rejected it because you felt the barbs weren't correct in terms of an angle.
Was there any other reason you rejected the first permit application?
A. I think there were several. And again, we responded with a pretty detailed response letter outlining the items that were inadequate or inefficient.
Q. But all my client had to do was comply with the consent order; right?
A. Correct.
Q. So my client then submits a second application following your critique of his first application?
A. I believe so.
Q. Okay.
And that's what we've got here, this Exhibit 8; right? This second letter -- or the second revised restoration plan, or would this be -- is it fair to characterize there was extensive



communications throughout this process?
A. Correct.
Q. Both by Mr. Hastings and Engineer Chuck Brockway's team, as well as legal counsel for Mr. Hastings?
A. Correct.
Q. What was wrong with this next plan that you received?
A. I don't recall. There's no -- this is just the cover letter here. There's no application or diagrams to reference. That would have been detailed in our second response letter.
Q. Okay.
Ultimately, a permit was submitted that satisfied your desires?
A. An application was submitted that met the terms of the consent order and agreement.
Q. And that resulted in this -- the issuance of a permit that we're here about today?
A. Correct.
Q. Okay.
And in that permit, you included some additional terms; right?
A. What do you mean by "terms"?
Q. Well, there were -- we have 13 terms and



conditions that were --
A. Special conditions?
Q. Yeah, special conditions.
A. Yes.
Q. Are those special conditions included in every permit the Department issues?
A. There are special conditions on practically every permit -- stream authorization permit that IDWR issues.
MR. BECKER: Let's mark this as Exhibit 9.
(Deposition Exhibit No. 9 marked.)
Q. BY MR. BECKER: Mr. Golart, you've been handed what's been marked Deposition Exhibit No. 9.
Have you seen that document before?
A. Yes.
Q. Who prepared this document?
A. Oh, I did.
Q. Okay.
So let's go to page 3 of 6 of Exhibit 9.
So it says, Conditions -- "Conditional Approval of Proposed Project Components." So right off the bat item 1, "Retention and completion of existing riprap." The Department is allowing the existing riprap to stay?
A. According to what's proposed in the



design that was approved.
Q. Okay.
And, in fact, the riprap could continue upstream and downstream for what started this whole process with your Notice of Violation?
A. Can you restate that?
Q. Well, item 2 says, "Continuation of riprap upstream and downstream."
A. Right.
So item 2 approves what was proposed in the application that was submitted in the designs.
Q. Right.
A. That's all item 2.
Q. Right.
So Item 1 and 2, essentially -- we'll read those -- say what you did with the riprap is approved. In fact, you can go upstream and downstream further with additional riprap?
A. I don't think that's an accurate representation.
Q. Why not?
A. Because that's not outlined in the application and design that was approved. There are additional components to that. So we are approving items that are outlined in the

attachment, the application and diagrams in items 1 through 6.
Q. Okay.
I'm just focused on 1 and 2 right now.
A. Sure. I mean, yeah.
Q. As a basic matter, my client is allowed it keep the riprap that was put in there; right?
A. According to the design plans that were approved.
Q. What's wrong with the existing riprap that was there as compared to now all the sudden it's allowed to stay with this permit?
A. Well, it's going to be planted, and there's going to be large wood incorporated.
Q. But we just talked about how riprap is allowed under your administrative rules.
A. Right.
Q. Okay.
And he was tagged with a Notice of Violation for putting in riprap?
A. Without a permit.
Q. Without a permit from the State, but he had one from the City.
A. Okay.
Q. And then this permit that the State is



just issuing says, "You can keep your riprap"?
A. Correct.
Q. "2: You can continue the riprap upstream and downstream"?
A. Correct.
Q. Okay.
And then there's items 3 through 6, which you also approve.
You talk about minimum standards down further on page 3 of this Exhibit 9. So the minimum standards are set forth in IDAPA 37-0307. And that's the code section that we have been talking about earlier in -- I believe that would have been Exhibit 7.
Correct?
A. Correct.
Q. Okay.
So that's what you're basing your authority on for the terms and conditions that are in this permit?
A. Rules and statute, correct.
Q. Okay.
And with respect to the rules, the rules that we just talked about in Exhibit 7?
A. Correct.



Q. Okay.
Let's turn to page 4 of 6.
THE COURT REPORTER: And when it's a good time if we can take a quick break.
MR. BECKER: Let's take a break now. We've been going for quite a while.
(Break taken from 11:41 a.m. to 12:36 p.m.)
Q. BY MR. BECKER: Whenever you were looking from the Warm Springs Bridge on September 7th and making your assessment as to whether or not to issue a Notice of Violation, did you pull the rocks in the riprap apart in any way?
A. No.
Q. Okay.
So all your observations were from the bridge?
A. Correct. I may have walked down on that -- it would have been the -- I believe the east side onto that gravel bar that's located across the way, but I don't recall if I did or didn't. But if I did access the channel, it would have been over there.
Q. So no actual physical touching or measuring took place at that time?
A. No.



Q. No, it did not take place?
A. It did not.
Q. Okay.
You mentioned walking up the east side there. Are you aware of a swimming hole that exists in this vicinity?
A. No.
Q. Okay.
So just upstream of the Hastings property and the Big Wood -- or, I'm sorry, the Warm Springs Bridge, there is a large rock.
Did you observe that?
A. No.
Q. Okay.
Have you heard of the fact that there is this large swimming hole just upstream of the Hastings property?
A. I don't think it was characterized that way. I think it was -- in the application process it was mentioned that swimming occurs in the area. I don't know in what regard.
Q. And local public interest is a concern whenever issuing permits of this nature; isn't it?
A. Recreation, correct.
Q. At the compliance meeting that took

place -- were there actually two compliance meetings before the consent order was signed?
A. I don't recall.
Q. Okay.
Did you ever tell Mr. Hastings to get a new engineer?
A. I don't recall.
Q. All right.
You've got Deposition Exhibit 9 in front of you, and I want to turn to page 4 of 6.
These -- we've got, let's see, essentially 13, 14 conditions here, special conditions. You see those; right?
A. Yes.
Q. Okay.
Are those mentioned anywhere in the consent order?
A. No, not specifically.
Q. I want to focus on condition 3.
"Prior to any construction authorized by this permit, written approval to work on property belonging to others shall be obtained in writing and a copy of the approval provided to IDWR."
Why do you include that condition?
A. That's a very common condition that's



included on permit approvals when the Department is aware of work potentially occurring on another property that the applicant doesn't own.
Q. So that's not a condition on every permit, it's simply when the Department is aware of a --
A. Correct.
Q. Okay.
And so in this particular situation, what ownership interest caused the Department to put this condition in here?
A. I believe it was the diagram that was provided in the application package that shared parcel layouts, which included an area that wasn't identified as Hastings or Embassy Auditoriums. It was off the parcel that we're discussing.
Q. So that would have been the community library's property interest?
A. It appears to be, yeah, based on the diagram that was provided in the application.
Q. Did you sit in to listen to the deposition of the community library that took place in this matter?
A. I did not.
Q. Okay.



MR. BECKER: We'll mark this as Deposition Exhibit 10.
(Deposition Exhibit No. 10 marked.)
Q. BY MR. BECKER: So this particular section of the Big Wood River, by way of a bit of background, you understand that Ernest Hemingway did some sort of deed that purported to give him some sort of ownership interest in this section of the river; correct?
A. I'm not aware in any great detail, but I've heard that stated.
Q. Moving forward from whatever Ernest Hemingway did, that interest that we've been talking about with that adjacent property owner, we've come to be aware through the deposition of the library, the community library, that there was a gift deed executed on the 11th of May 2017, and I've handed you that as Deposition Exhibit No. 10.
Have you seen that document before?
A. This document?
Q. Yeah.
A. No.
Q. Okay.
So this gift deed -- I don't expect you to read the legal and understand exactly what is



purportedly being gifted here. If you go to page 19 of 23 on Exhibit 10 --
A. Is it in the gift deed portion or the --
Q. Reservation of conservation easement.
A. Okay.
Q. So this is the outline of the property that is the subject of this gift deed, and I want to orient you to what I'm seeing here.
At the bottom, what looks like a street, Warm Springs Avenue, and the outlined portion is essentially the big channel of the Big Wood River.
Do you see that?
A. I do.
Q. Okay.
So essentially this gift deed and conservation easement reflects a transfer of a portion of the Big Wood River from the nature conservancy to the community library.
Do you see that?
A. I see the outline, yes.
Q. Okay.
And does that track with your understanding of --
A. I don't have that level of understanding.

Q. Okay.
You were just aware that there was an adjacent private property ownership interest that was reflected on the permit, and that's what gave rise to the need to put condition three in the permit?
A. Correct.
Q. So the Hastings property is down here in the lower left just upstream of the Warm Springs Bridge, and it is essentially the west bank. And then there's this ownership interest of the community library. Here, in addition to this claim of ownership of the Big Wood River, there's also a conservation easement placed on this section of the Big Wood River.
Has your Department done anything to clear title to this section of the river?
A. Not that I'm aware of.
Q. Okay.
I want to go to term S of the conservation easement. It's on page 22 of 23, reservation of conservation easement.
Do you see item S?
A. I do.
Q. Can you take a second and read through



that.
A. All right.
Q. Okay.
So this permit that we were talking about here in Exhibit 9 that requires Mr. Hastings to obtain written approval for work belonging to others, how is that to take place whenever item S specifically denies that type of access being allowed?
MS. CARTER: Objection. Calls for a legal conclusion.
THE WITNESS: I'm not able to answer that. I don't know.
Q. BY MR. BECKER: Isn't it the State's obligation to go forward and get this cleaned up so that my client isn't placed in a situation where he would have to trespass and violate a conservation easement?
A. I'm not aware that I can respond to that. I'm not --
Q. Okay.
MR. BECKER: Let's mark this as Exhibit 11.
(Deposition Exhibit No. 11 marked.)
Q. BY MR. BECKER: Mr. Golart, I've handed you what's been marked as Exhibit 11. It was



Exhibit D utilized in response to an objection that the community library filed for me to take its deposition, and it's a portion of an Idaho waterways navigability study conducted by Stevens Historical Research.
Have you seen this document before?
A. I have not.
Q. Did your Department play any role in commissioning this study?
A. I'm not aware of that.
MS. CARTER: Objection. That's beyond the scope of what he was asked to know about.
MR. BECKER: I just asked if he --
MS. CARTER: I --
MR. BECKER: I understand your objection.
Q. BY MR. BECKER: So it says it's prepared for the Idaho Department of Lands if you go to the second page of Exhibit 11.
A. Okay.
Q. And so it seems as though the State is putting on blinders between it's departments with respect to what's going on in the Big Wood River. Because you're telling me you played no role in having this study commissioned, you're not aware of it, and yet it appears to have been prepared for a



sister agency with jurisdiction of the beds and banks of the navigable rivers of the State of Idaho. Can you help me understand why one department would be aware of this study but another would not when it seems to be along the lines of what both departments' missions would entail?
A. I've just said that I'm unaware of whether the Department was aware, involved, in this study. There very well could be others that are aware of this. I'm just not.
Q. So you didn't review this study prior to inserting term three of the permit that's in Exhibit 9?
A. No.
Q. Are there any administrative rules which authorize a permit applicant to trespass on lands owned by another person?
A. No, not that I'm aware of.
Q. Okay.
Are there any statutes that govern the Department of Water Resource that you're aware of that allow a person to trespass on lands owned by another to conduct stream restoration work?
A. No.
Q. Okay.

One of --
MR. BECKER: Let's mark this as Exhibit 12.
(Deposition Exhibit No. 12 marked.)
Q. BY MR. BECKER: Handing you what's been marked Deposition Exhibit No. 12.
This is a proposal that the nature conservancy presented to Mr. Hastings to do work on the property that it claims an ownership interest in.
Have you ever seen this before?
A. I don't recall seeing this.
Q. Okay.
If we look at the first page, item 1, there is a term in there that says Mr. Hastings would have to "hold the nature conservancy harmless from any claim, cause of action, or loss alleged to have occurred as a result of the activities to be undertaken pursuant to the terms of such application."
Do you see that in Item 1?
A. I do.
Q. Okay.
Are you aware of any administrative rules which require a permit applicant to indemnify a third party?



A. I am not.
Q. Okay.
And that includes a third party that claims an ownership interest in land that stream channel restoration work is proposed to be conducted on. Are you aware of any rules that require an applicant to indemnify such a third party?
A. No.
Q. When I just took the library's deposition, they also indicated that they would require Mr. Hastings to indemnify them were Mr. Hastings to move forward with the stream channel restoration work that the Department is requiring that he perform. And so the answer that you just gave that there's no rule requiring that, that applies to both the holder of a conservation easement as well as a land owner; right? There is no rule that requires a permit applicant to defend and indemnify, hold harmless a third-party claiming an ownership interest in the section of river that the proposed river restoration activities would have to take place on?
MS. CARTER: Objection. Form.
MR. BECKER: Okay.



Q. BY MR. BECKER: Are there any rules that require indemnification of third parties that you're aware of?
A. Not that I'm aware of.
Q. Okay.
How about IDWR statutory authority? Is there any rules requiring indemnification of third parties?
A. Not that I'm aware of.
Q. As a result of learning about this cloud on the title in the form of both a gift deed and a conservation easement, has the State done anything since learning about that to try to clear title to this section of the river?
MS. CARTER: Objection. The State does not have to prove title according to the hearing officer. That is beyond the scope.
Q. BY MR. BECKER: I asked if since learning about that if anything has taken place.
THE WITNESS: Not that I'm aware of.
MR. BECKER: Okay.
Q. BY MR. BECKER: Have you been back to visit the site -- or when's the last time you were there to visit the site?
A. I don't recall, and I don't recall if



I've been back or not.
Q. Okay.
Essentially it seems as though there is a gravel bar that's out sort of in the middle of the river there, and that gravel bar is causing the current to be directed towards what would be the Hastings bank of the river. And it would seem a simple solution would simply be to have that gravel bar clawed out a little bit and redirect the flow of the river towards the sector.
Has the State evaluated doing anything like that?
A. The State's only evaluated doing something like that in regards to the application that was submitted proposing to do that.
Q. Okay.
But the State's own river seems to be what is directing the flow that the State is concerned about. And I'm asking, is the State doing anything about a problem that it appears the State-owned river seems to be causing?
MS. CARTER: Objection.
THE WITNESS: Not that I'm aware of, no.
Q. BY MR. BECKER: So essentially you're shifting all responsibility to my client?

MS. CARTER: Objection. Mischaracterizes what Aaron has been testifying about.
Q. BY MR. BECKER: Well, what responsibility is the State taking?
A. I'm not aware of any.
Q. Let's go down to conditions 10 and 11.
MS. CARTER: Are we back to the permit?
MR. BECKER: Yeah. Page 4 of 6.
Q. BY MR. BECKER: Is condition 10 -- can you point me to a rule that specifies those requirements?
A. No.
Q. So there is no rule that mandates that dormant, native, woody vegetation shall be planted within the stream bank stabilization treatment at intervals no greater than five feet spacing?
A. Not specifically. There is a rule that allows the Department to place special conditions on a permit.
Q. Generically?
A. No.
Q. Specific to woody vegetation?
A. Oh, no.
Q. No rule?
A. Specific to woody vegetation?



Q. Correct.
A. Only the rule I mentioned earlier.
Q. Of a generalized authorization to put permit conditions on the place?
A. And the rule we discussed earlier today about planting vegetation.
Q. Right.
And that just was a general planting. There wasn't any specifics in terms of an obligation to have them no greater than five feet apart?
A. No.
Q. How about any rules that require a permittee to segregate grasses, shrubs, and tree plantings to limit competition in nutrients or soil moisture? Are there any rules --
A. No.
Q. -- covering that topic?
A. No.
Q. Okay.
Item 12 says that the permittee shall submit an annual report to Aaron Golart for a minimum of three years with certain survival requirements.
Are there any administrative rules that



authorize that type of permit condition?
A. No.
Q. Are you aware of whether or not the City of Ketchum would have a subsequent permitting requirement over and above what the State is requiring here?
A. They may, specifically maybe floodplain related requirements.
Q. And so what's your understanding of how a City's jurisdiction would dovetail with what the State is requiring here?
A. By "dovetail," do you mean overlapping jurisdiction?
Q. Yes.
A. They may issue a similar permit to conduct work in the stream channel, but I'm not aware whether the city actually does that or not. But some communities do.
Q. Have you ever heard of "no net rise"?
A. I've heard the term, yeah.
Q. What does that mean to you?
A. Generally it refers to a no net rise in a base flood elevation.
Q. And who has jurisdiction to ensure there is no net rise?



A. The local community.
Q. Okay.
Not the State?
A. No.
Q. If left alone, would native vegetation eventually grow back in place in this location?
A. I don't know.
Q. Why's that?
A. It's -- I mean, what sort of duration are you talking about? Yes, it would eventually. At some point in time it probably would.
Q. Native vegetation tends to be the best adapted for the native habitat in which it would exist?
A. Actually weeds and undesirables would likely colonize that area before native vegetation because they out compete.
Q. I understand that.
And over time, then, the undesirable invasive species tend to have shallower root structures, and over time the native vegetation takes over?
A. No, that's not true.
MS. CARTER: I'm going to object.
Q. BY MR. BECKER: Have you made any

evaluation as we sit here today of what's currently coming in and growing there at this site?
A. Since I was there several years ago?
Q. Yeah, since the Notice of Violation was issued.
A. No.
Q. Okay.
So if native vegetation is taking over and starting to thrive, wouldn't that be establishing the goals of this permit?
A. No.
Q. Why not?
A. Because there are treatments associated with this permit that need to be implemented like adding wood, constructing the bank barbs, sloping the bank, planting vegetation that's native.
Q. I'm just talking about the -- let's just focus on the -- you have a requirement to plant native vegetation. There is also the opportunity for native vegetation to just recolonize on its own; agreed?
A. No. But --
Q. Why do you not agree?
A. Like I just explained, what would more likely occur is the invasive, nonnative species



will out compete the native species and colonize the area. I mean, that's typically what occurs with disturbed ground is weeds and whatnot will colonize those areas.
Q. But you haven't evaluated as to whether or not natives are colonizing or invasives are colonizing?
A. No, I have not.
Q. So my hypothetical, if native plants were recolonizing this area, wouldn't that achieve the objectives of the planting aspect of this plan?
A. If native vegetation naturally colonized the area according to the specifications on the permit, then possibly it would.
MR. BECKER: Let's go ahead and mark this as Deposition Exhibit 13.
(Deposition Exhibit No. 13 marked.)
Q. BY MR. BECKER: Mr. Golart, you've been handed Deposition Exhibit 13.
These are some photographs that were taken of the project for the permit application.
Have you ever seen those pictures before?
A. I think so.
Q. All right.



Let's go through these photographs. So the first photograph says, "Looking upstream from near large cottonwood tree."
Do you see that?
A. Yes.
Q. Okay.
Does it look like those rocks are uniform in size?
A. No.
Q. Look like there's a variety of sizes and shapes of rocks?
A. Yes.
Q. Okay.
How about the angle of the rocks, the slope of the rocks? Is there anything problematic about just the angle?
A. It seems like the scale on this photo is stretched longitudinally, so that's difficult to assess.
Q. This photo date -- do you see up at the top -- it says August 2nd, 2017?
A. Yes.
Q. So this would have been essentially right after this was placed?
A. Okay.



Q. Does that track with your timeline?
You came out on September 7th, 2017, and this photograph appears to be taken August 2nd, 2017.
A. Right. I believe one of the documents we reviewed today stated that work stopped sometime in July.
Correct?
Q. We can go back through and take a --
A. Probably the --
Q. Consent order, I believe, had something in there that --
A. Correct.
Q. -- said when --
A. Yes. To answer your question, it does.
Q. Yeah.
Item 4 of the consent order on July 31st, 2017: "Respondent states he ceased work on the subject lands."
And then we've got this photograph here in Exhibit 13 that's August 2nd. So three days later, two days later, that shows what was done.
Correct?
A. Uh-huh.
Q. So essentially this is the conditions as

they existed at the time you found that there was a violation.
A. It appears so.
Q. Okay.
The second picture is looking down at the large cottonwood tree. "Impinged by high velocity flow."
Do you see that?
A. I do.
Q. That's the cottonwood tree we've talked about a number of times here today. Does that refresh your recollection about whether you had seen that or whether there was a concern in the permitting process?
A. I was aware there was a concern about the cottonwood you're discussing right now.
Q. And are you aware the City of Ketchum has now come in and without my client's permission or consent cut that cottonwood tree out?
A. I became aware. I don't recall how, but...
Q. It's essentially a stump at this stage with shoots coming out of it, so it doesn't seem like they killed the tree, but it's not a full-sized tree anymore.



Does the removal of that tree by the City of Ketchum change anything from a permitting standpoint from your perspective?
A. No.
Q. It seemed as though a lot of concern had to do with protecting Warm Springs Bridge from being swept away or trees being lodged underneath it and causing flooding or further damage. But the removal of this tree doesn't change anything from your perspective in that regard?
MS. CARTER: Objection. Form.
THE WITNESS: No.
MR. BECKER: Okay.
Q. BY MR. BECKER: Let's go to the next page, the pictures here.
Okay. So this is looking downstream towards the bridge, the Warm Springs Bridge. It says, "High-velocity thalweg is evident."
Does that help -- this picture at the top, does that help you better see the gradient of the bank stabilization that was placed?
A. Better than the previous photo.
Q. Okay.
As far as the angle of this bank stabilization, is there anything that concerns you?



A. No.
Q. Okay.
In fact, that would comply with the administrative rules we talked about with respect to authorized bank stabilization?
A. I can't make that determination just from a photo.
Q. Well, you made a determination that there was a violation from standing on that bridge?
A. Because there was no permit issued, and there was work that occurred below the ordinary water mark.
Q. But you didn't do anything to evaluate where the ordinary high water mark was other than observe that there was water presently at that time flowing along where work had been conducted?
A. Is that a question?
Q. Yeah.
A. Okay. Yes. That was how I assessed the ordinary water mark.
Q. Okay.
Going to the bottom photograph there in Exhibit 13, it says, "Looking downstream showing riprap extent and top of bank."
Do you see that?



A. I do.
Q. Okay.
Do you see these trees that have been planted?
A. I see trees.
Q. And they are in the riprap; right?
A. They appear to be.
Q. Okay.
Can you tell what species they are?
A. I cannot.
Q. Would it surprise you if they were cottonwoods?
A. It wouldn't.
Q. Okay.
Is there anything in violation of the rules about where those cottonwoods have been planted?
A. No.
Q. Let's go to the next page of photographs. Looking at that final picture.
A. Can I add to my response?
Q. Yeah, sure.
A. So possibly -- I mean, if those plantings have occurred within the riprap that was installed without a permit and they are

incorporated within that treatment that occurred without a permit. So yes, if they're below the ordinary high water mark, they would be part of that violation.
Q. Planting native cottonwoods would be part of a violation?
A. Any alteration below the ordinary water mark is considered a violation without a permit.
Q. You mentioned -- well, what about where these trees are planted is below the ordinary high water mark, because it doesn't seem to me that the river is flowing at the trunk of that tree there?
A. It would have been where the ordinary high water mark occurred prior to this disturbance, which would have been to the right looking at this photo.
Q. Well, how do you make that assessment?
A. Based on the photos that you showed me previously about the eroding stream bank.
Q. But you made the assessment from the bridge --
A. Right.
Q. -- based on the water conditions --
A. I'm answering your question here today about whether this would be compliant, and this



fill is what we were discussing in the NOV. If those plantings are part of that fill that we're discussing in the NOV, then they are included in that violation. I don't know when they were planted. I don't know if they were planted, but I'm just trying to provide an explanation as to whether they would be part of the violation.
Q. Okay.
And then the last -- flip to the next page there. It's one more picture of how things existed back in August, early August of 2017.
Does anything you see here change any of your testimony you just gave?
A. No.
Q. Okay.
MR. BECKER: Can we just take a quick break? I'm getting close, I think. I just want to gather my thoughts and speak with my clients.
MS. CARTER: Yeah.
(Break taken from 1:21 p.m. to 1:34 p.m.)
(Deposition Exhibit No. 14 marked.)
Q. BY MR. BECKER: I'm going to hand you what's been marked as Deposition Exhibit 14. I'm going to direct your attention to item H there. And just take a look through that and I'll ask some



questions.
A. Okay.
Q. So I handed you a copy of Idaho Code 42-3802. It's the definition for the alteration of stream channels section of Idaho Code.
A. Uh-huh.
Q. Item H talks about the mean high watermark.
Do you see that?
A. I do.
Q. Is that a definition you're familiar with?
A. It is.
Q. So earlier we talked about you eye-balling the situation from the bridge on September 7th, 2017.
Right?
A. Correct.
Q. And you made a determination that your decision to issue a Notice of Violation was based on where you saw the water on that particular day.
Do you recall that discussion?
A. Yes.
Q. Okay.
This definition, however, seems to



contemplate an ordinary high watermark that's defined based on an vegetative test as opposed to where the water is on a given day after a flood event.
Would you agree?
A. Yes.
Q. Okay.
MR. BECKER: We'll mark this as Deposition Exhibit 15.
(Deposition Exhibit No. 15 marked.)
Q. BY MR. BECKER: I've handed you what's been marked Deposition Exhibit 15. It's a copy of Idaho Code 42-3806.
We just talked about the definition provision of the stream channel alteration act, 42-3802, and in the definition section, do you see the term "water user"?
A. In which section?
Q. 42-3802. Definitions.
A. All of them, or just H?
Q. Well, A through H. Do you see the term "water user" defined?
A. Defined? No.
Q. Okay.
So can we agree that water user is not

defined -- is not a defined term in the Stream Channel Alteration Act?
A. Correct.
Q. In fact, you have -- I saw you drinking some water earlier today.
A. I do that.
Q. And you were using water, weren't you?
A. I was.
MR. BECKER: Let's mark this Deposition Exhibit 16.
(Deposition Exhibit No. 16 marked.)
Q. BY MR. BECKER: Mr. Golart, I've handed you what's been marked Deposition Exhibit 16. It is a copy of Idaho Code -3808, "Emergencies -- waiver by director."
Do you have discretion to waive permitting requirements as an agent of the director, employee of the director?
MS. CARTER: This is beyond the scope of the conditions of the permit, and you're asking him in his official capacity which wasn't part of the deposition.
But go ahead, Aaron.
MR. BECKER: We're here about a permit.
MS. CARTER: I understand that.



Aaron, please answer.
THE WITNESS: My interpretation of what I've been assigned is yes, I do have that ability to waive the provisions of the act during an emergency.
Q. BY MR. BECKER: In an emergency?
A. Yeah.
Q. Okay.
And then I think this will be our final exhibit, Exhibit 17.
(Deposition Exhibit No. 17 marked.)
Q. BY MR. BECKER: Mr. Golart I've handed you what's been marked Deposition Exhibit 17. It is a copy of Idaho Code 46-1022.
Have you seen that code section before?
A. Not that I recall.
Q. Okay.
So this is somewhat outside of the Department's Stream Channel Alteration Act. It's State Disaster Preparedness Act.
The work that we're talking about here that caused you to issue the Notice of Violation, would that be within the floodplain of the Big Wood River?
A. I don't know that. Floodplain?



Q. Yeah.
A. From -- yes, it is.
Q. Okay.
MR. BECKER: I think that's it for my questions today.
MS. CARTER: I don't have anything.
(Deposition concluded at 1:42 p.m.)
(Signature requested.)



REPORTER'S CERTIFICATE

STATE OF IDAHO )
) ss.
COUNTY OF ADA )

I, MISTI L. ALCALDE, Certified Shorthand Reporter and Notary Public in and for the State of Idaho, do hereby certify:
That said proceeding was taken down by me in shorthand at the time and place therein named and thereafter reduced to typewriting under my direction, and that the foregoing transcript contains a full, true and verbatim record of said proceedings.
I further certify that I have no interest in the event of the action.
WITNESS my hand and seal this 17th day of October, 2025.

MISTI L. ALCALDE
RPR and Notary
Public in and for the
State of Idaho.

My Commission Expires: 7-7-27

Meghan Carter
meghan.carter@idwr.idaho.gov
October 17th, 2025
In The Matter Of The Application For: Stream Channel Alteration
10/3/2025, Aaron Golart (#7618525)
The above-referenced transcript is available for review.
Within the applicable timeframe, the witness should read the testimony to verify its accuracy. If there are any changes, the witness should note those with the reason, on the attached Errata Sheet.
The witness should sign the Acknowledgment of Deponent and Errata and return to the deposing attorney. Copies should be sent to all counsel, and to Veritext at (Calendar-Idaho@veritext.com).
Return completed errata within 30 days from receipt of testimony.
If the witness fails to do so within the time allotted, the transcript may be used as if signed.

Yours,
Veritext Legal Solutions



In The Matter Of The Application For: Stream Channel Alteration
Aaron Golart (#7618525)
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Aaron Golart Date



In The Matter Of The Application For: Stream Channel Alteration
Aaron Golart (#7618525)
ACKNOWLEDGEMENT OF DEPONENT
I, Aaron Golart, do hereby declare that I have read the foregoing transcript, I have made any corrections, additions, or changes I deemed necessary as noted above to be appended hereto, and that the same is a true, correct and complete transcript of the testimony given by me.

_____ _____
Aaron Golart Date
*If notary is required
SUBSCRIBED AND SWORN TO BEFORE ME THIS
_____ DAY OF _____, 20___.

_____
NOTARY PUBLIC

**[& - 37-0307]**


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Idaho Rules of Civil Procedure

Rule 30

(e) Review by the Witness; Changes.

(1) Unless waived by the deponent and the parties, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which (A) to review the transcript or recording; and (B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them. (2) Changes indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30 (f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period. (3) Witness Failure to Sign. (A) In General, If the deposition is not signed by the witness within the 30-day period, the officer must sign it and state on the record the fact of the waiver of signature, or of the illness or absence

of the witness or the fact of the refusal to sign the deposition together with any reason given for not signing.

(B) Use of Unsigned Deposition. The deposition may be used as if it were signed, unless pursuant to Rule 32 (d)(4) the court determines that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

DISCLAIMER: THE FOREGOING CIVIL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY. THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE STATE RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS

COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

Veritext Legal Solutions is committed to maintaining the confidentiality of client and witness information, in accordance with the regulations promulgated under the Health Insurance Portability and Accountability Act (HIPAA), as amended with respect to protected health information and the Gramm-Leach-Bliley Act, as amended, with respect to Personally Identifiable Information (PII). Physical transcripts and exhibits are managed under strict facility and personnel access controls. Electronic files of documents are stored in encrypted form and are transmitted in an encrypted

fashion to authenticated parties who are permitted to access the material. Our data is hosted in a Tier 4 SSAE 16 certified facility.

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# EXHIBIT D

**ORDINANCE NO. #1172**

**AN EMERGENCY ORDINANCE OF THE CITY OF KETCHUM, BLAINE COUNTY, IDAHO, FINDING AN IMMINENT PERIL TO THE PUBLIC HEALTH, SAFETY, OR WELFARE DUE TO ANTICIPATED FLOODING CAUSED BY WOOD RIVER VALLEY SNOWPACK BEING ONE HUNDRED AND EIGHT PERCENT (180%) ABOVE NORMAL AND THEREFORE AMENDING KETCHUM CITY CODE 17.88 TO PROVIDE FOR EMERGENCY PROCEDURES FOR RIPARIAN ALTERATION AND EMERGENCY CITY ACTIONS; PROVIDING A SAVINGS AND SEVERABILITY CLAUSE, AND PROVIDING AN EFFECTIVE DATE.**

WHEREAS, the City of Ketchum is authorized to adopted emergency ordinances pursuant to Idaho Code § 67-6523; and

WHEREAS, the City first adopted an ordinance regulating development in the floodplain in 1974 with the passage of Ord. 208;

WHEREAS, the City first distinguished between Floodplain and Floodway areas and established a streambank alteration permit in 1989 with the adoption of Ord. 525;

WHEREAS, the City participates in the Federal Emergency Management Agency (FEMA)'s National Flood Insurance Program (NFIP) in order to protect the health, safety, and welfare of its citizens and to ensure that flood insurance is available to them; and

WHEREAS, by participating in the NFIP the City's responsibilities include requiring permits for all development within the 100-year floodplain, ensuring all other permits required by local, State, and Federal laws are obtained, maintaining records of all development permits, and ensuring flood carrying capacity of altered or relocated watercourses is maintained; and

WHEREAS, the snowpack in the Wood River Valley is approximately one hundred and eight percent (180%) above normal; and

WHEREAS, as of March 24, 2017 the water discharge rate on the Big Wood River, as measured from the Ketchum gauge station, is 198 cubic feet per second (cfs) while the previous highest recorded on this date was 142 cfs and the mean discharge on this date is 55 cfs and the 198 cfs reading is 360% of normal discharge for this date; and

WHEREAS, as of March 22, 2017 flooding has already occurred in south Blaine County, with high water on roadways causing roadways to be closed for periods of time; and

WHEREAS, as flooding within the City of Ketchum is anticipated to occur and the City Council finds that the high likelihood of flooding constitutes an imminent peril to the public health, safety, and welfare; and

WHEREAS, the date of high water on the Big Wood River during the ten (10) highest water events recorded has occurred between May 21 to June 18; and

WHEREAS, the City desires to create processes with defined review criteria and standards in order to evaluate and permit emergency actions to protect the health, safety, and welfare to be carried out during flood events; and

WHEREAS, adoption of this ordinance is necessary to address the imminent perils identified above and it is to be done as an emergency ordinance effective for a period of up to one hundred eight-two days pursuant to Idaho Code § 67-6523;

**NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF KETCHUM**

**Section 1: AMENDMENTS TO CHAPTER 17.88 FLOODPLAIN MANAGEMENT OVERLAY ZONING DISTRICT.** That Title 17 of the Ketchum Municipal Code be amended to add a new Section III. Emergency Riparian Alteration to Chapter 17.88 Floodplain Management Overlay Zoning District as attached and incorporated as Exhibit A to this Ordinance.

**Section 2: AMENDMENTS TO CHAPTER 17.88 FLOODPLAIN MANAGEMENT OVERLAY ZONING DISTRICT.** That Title 17 of the Ketchum Municipal Code be amended to add a new Section IV. Emergency City Initiated Actions to Chapter 17.88 Floodplain Management Overlay Zoning District as attached and incorporated as Exhibit B to this Ordinance.

**Section 3. SAVINGS AND SEVERABILITY CLAUSE.** It is hereby declared to be the legislative intent that the provisions and parts of this Ordinance shall be severable. If any paragraph, part, section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid for any reason by a Court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance.

**Section 4: PUBLICATION.** This Ordinance, or a summary thereof in compliance with Section 50-901A, Idaho Code, substantially in the form annexed hereto as Exhibit C, shall be published once in the official newspaper of the City, and shall take effect immediately upon its passage, approval, and publication.

**Section 5. EFFECTIVE DATE.** This Ordinance shall be in full force and effect after its passage, approval and publication, according to law. Pursuant to Idaho Code § 67-6523 the restrictions established by this emergency ordinance will be effective for a period of not longer than one hundred eight-two (182) days.

PASSED BY the CITY COUNCIL and APPROVED by the MAYOR of Ketchum, Idaho, on this 3rd day of April, 2017.

APPROVED BY the Mayor of the City of Ketchum, Idaho, this 3rd day of April, 2017.

APPROVED:

Nina Jonas, Mayor

ATTEST:

Robin Crotty, Interim City Clerk

EXHIBIT A

## Article III. Emergency Riparian Alteration

**17.88.170: Title**
**17.88.180: Guidelines**
**17.88.190: Procedure**
**17.88.200: Application For Emergency Riparian Alteration**
**17.88.210: Action Upon Submittal Of Emergency Riparian Alteration Application**
**17.88.220: Site Inspection**
**17.88.230: Basis For Denial Of An Emergency Riparian Alteration Permit**
**17.88.240: Conditions Of Emergency Riparian Alteration Approval**
**17.88.250: Enforcement**

**17.88.170: TITLE:**
This article shall be known and may be cited as the EMERGENCY RIPAIAN ALTERATION ORDINANCE.

**17.88.180: GUIDELINES:**
Guidelines for determining if an emergency for purposes of this article is imminent are as follows:
A. The water equivalent measurements at Galena, Galena Summit, Dollar Hide and Lost Wood Divide as recorded by the national resource conservation service (NRCS) SNOTEL sites;
B. The forecast temperatures available from the national weather service;
C. The flow of the Big Wood River as measured at the Ketchum gauging station or Hailey gauging station and recorded by the United States geological survey (USGS) in Boise, Idaho;
D. Local site conditions, such as downed trees, debris build up, or trees in imminent danger of falling as determined by the administrator and advised by the City Arborist; and
E. Failure to submit an application under section 17.88.200 of this chapter far enough in advance of the desired start date for riparian alteration work shall not be considered an emergency.

**17.88.190: PROCEDURE:**
To obtain an emergency permit, an applicant must submit an application as described in section 17.88.200 of this chapter and receive written approval to perform the emergency work from the administrator. The administrator may consult a qualified engineer or professional regarding the proposed emergency work. A site inspection must be performed by the administrator before approval can be granted. Under no circumstances shall work commence without the approvals required herein.

**17.88.200: APPLICATION FOR EMERGENCY RIPARIAN ALTERATION:**
The applicant shall first complete and submit an emergency application provided by the city which shall include, but not be limited to, the following information:
A. Description of the emergency impact to public health, safety or welfare;
B. Name of proposed contractor or executor of work;
C. Description of proposed work;
D. Nonrefundable application fee in the amount as set by the city council; and
E. Where applicable, a waiver from the Idaho department of water resources as specified under Idaho Code section 42-3808, and the stream channel alteration rules of the Idaho water resource board.

**17.88.210: ACTION UPON SUBMITTAL OF EMERGENCY RIPARIAN ALTERATION APPLICATION:**
Upon submittal of the application, the applicant shall contact the administrator to arrange for a site inspection.

**17.88.220: SITE INSPECTION:**

Upon receipt and review of a completed application, a site inspection shall be performed by the administrator. Written findings of fact and conclusions of law granting or denying the application will be prepared for city records and the applicant upon the conclusion of the site inspection and within five (5) working days from the date of the decision.

**17.88.230: BASIS FOR DENIAL OF AN EMERGENCY RIPARIAN ALTERATION PERMIT:**

No permit shall be granted if the administrator determines that the proposed emergency work is contrary to the public health, safety or welfare or that it is contrary to adopted city policies regarding riparian areas and river systems.

**17.88.240: CONDITIONS OF EMERGENCY RIPARIAN ALTERATION APPROVAL:**

Conditions which may be required for the granting of a permit include, but are not limited to, the following:

A. The administrator may require the applicant to post financial security, and enter into an agreement with the city, to mitigate possible impacts of the proposed work.

B. The proposed action shall be conducted so as to minimize the impact on riparian vegetation and soil stability.

C. If an emergency permit is granted, the applicant shall apply for a waterways design review/stream alteration permit under article I of this chapter within six (6) months from the date of the issuance of the emergency permit.

D. If a waterways design review/stream alteration permit under article I of this chapter and all other applicable state and federal agency permits are granted, the applicant shall then complete restoration of the affected property to city and state standards by either March 31 of the year following the issuance of the emergency permit or by another date specified by approval authority.

E. Copies of the approved emergency permit shall be posted on site throughout the duration of the work.

**17.88.250: ENFORCEMENT:**

A. It is unlawful for any person, firm or corporation to:

1. Fail to obtain a permit before commencing emergency work.
2. Perform emergency work beyond that expressly allowed by the permit.
3. Provide false documentation in connection with the emergency work performed..

B. Any person, firm, or corporation violating any provision of this article shall, for each offense, be subject to the enforcement procedures established in chapter 17.156 of this title.

EXHIBIT B

## Article IV. Emergency City Initiated Actions

17.88.260: Title
17.88.270: Guidelines
17.88.280: Procedure
17.88.290: Application
17.88.300: Action Upon Submittal Of Emergency Application
17.88.310: Conditions Of Emergency Stream Bank Stabilization Approval

**17.88.260: TITLE:**
This article shall be known and may be cited as the EMERGENCY CITY INITIATED ACTIONS ORDINANCE.

**17.88.270: GUIDELINES:**
Guidelines for determining if an emergency for purposes of this article is imminent are as follows:
A. The water equivalent measurements at Galena, Galena Summit, Dollar Hide and Lost Wood Divide as recorded by the national resource conservation service (NRCS) SNOTEL sites;
B. The forecast temperatures available from the national weather service;
C. The flow of the Big Wood River as measured at the Ketchum gauging station or Hailey gauging station and recorded by the United States geological survey (USGS) in Boise, Idaho; and
D. Local site conditions determined by the city administrator or his or her designee to pose an imminent threat to the health, safety, and welfare of the public.

**17.88.280: PROCEDURE:**
Upon determination of an emergency, the city shall initiate actions necessary to protect public health, safety, and welfare and/or prevent or mitigate damage to public or private property or infrastructure. There is no application fee for a city-initiated application..

**17.88.290: APPLICATION:**
The city shall complete and submit emergency stream bank alteration and/or riparian alteration applications in order to document the work proposed to be undertaken. Applications shall include, but not be limited to, the following information:
A. Description of the existing site conditions, including description of the emergency impact to public health, safety or welfare;
B. Name of proposed contractor or executor of work;
C. Description of proposed work;
D. A waiver from the Idaho department of water resources as specified under Idaho Code section 42-3808, and the stream channel alteration rules of the Idaho water resource board.

**17.88.300: ACTION UPON SUBMITTAL OF EMERGENCY APPLICATION:**
The administrator shall approve the application. Written findings of fact and conclusions of law will be prepared for city records within five (5) working days from the date of the decision.

**17.88.310: CONDITIONS OF EMERGENCY APPLICATION APPROVAL:**
Conditions which may be required for the granting of a permit include, but are not limited to, the following:

A. The proposed emergency work shall be conducted so as to minimize the impact on riparian vegetation and soil stability.
B. Within six (6) months of the application being granted the city shall apply for a waterways design review/stream alteration permit under article I of this chapter.
C. If a waterways design review/stream alteration permit under article I of this chapter and all other applicable state and federal agency permits are granted, the city shall then complete restoration of the affected property to city and state standards by either March 31 of the year following the issuance of the emergency stream bank stabilization permit or by another date specified by the administrator or other governmental agency.
D. Copies of approved permits shall be posted on site throughout the duration of the work.

EXHIBIT C

**NOTICE AND PUBLISHED SUMMARY**
**PURSUANT TO I.C. § 50-901(A)]**

**CITY OF KETCHUM**
**ORDINANCE NO. 1172 (FLOODING EMERGENCIES PERMITS ORDINANCE)**

As enacted by the City Council, Ordinance 1172 is an emergency ordinance that adds two new sections to Ketchum Municipal Code 17.88 to address emergency flooding issues as follows:

- Article III provides a process for application by a private party for emergency riparian alterations, including guidelines for determining an emergency, procedure for an emergency permit and application fee, permit application requirements, action upon a permit application, site inspections, conditions for denial or approval of such permit, and enforcement for violations of such procedure and/or permits.
- Article IV provides a process for emergency city-initiated actions to stream banks and/or riparian areas so as to protect the public health, safety, and welfare. This process includes guidelines for determining an emergency, procedures, emergency application requirements, action upon an emergency application, and conditions for approval of such application.
- Providing a savings and severability clause.
- Providing for publication and an effective date, including as an emergency ordinance for an effective period of not longer than 182 days.

The full text of this ordinance is available for review at Ketchum City Hall during regular business hours.

City of Ketchum
Mayor and City Council
By Robin Crotty, City Clerk

# WHITE PETERSON

## ATTORNEYS AT LAW

WM. F. GIGRAY, III
MATTHEW A. JOHNSON
JAY J. KIIHA **
WILLIAM F. NICHOLS *
BRIAN T. O'BANNON *

WHITE, PETERSON, GIGRAY & NICHOLS, P.A.
CANYON PARK AT THE IDAHO CENTER
5700 E. FRANKLIN RD., SUITE 200
NAMPA, IDAHO 83687-7901
TEL (208) 466-9272
FAX (208) 466-4405
EMAIL: mjohnson@whitepeterson.com

PHILIP A. PETERSON
WILLIAM L. PUNKONEY

TERRENCE R. WHITE **
OF COUNSEL

* Also admitted in OR
** Also admitted in WA


April 13, 2017

Robin Crotty, City Clerk
City of Ketchum
PO Box 2315
Ketchum ID 83340

***Re: Summary Certification for Emergency Ordinance No. 1172***

**Attached:** Notice and Published Summary for Ordinance 1172

**Opinion:** As the City Attorney for the City of Ketchum, please consider this my statement and opinion that the enclosed summary is true and complete and provides adequate notice of the contents of said Ordinance to the public.

**Requested Action:** Please proceed to publish the enclosed Notice and Published Summary and file this statement with the original ordinance in the ordinance book of the City of Ketchum as required by Idaho Code § 50-901A (3).

Very truly yours,

Matthew A. Johnson
WHITE PETERSON

From: [redacted]
Sent: Monday, July 31, 2017 5:52 PM
To: [redacted]
Subject: 1200 Warm Springs Rd.-Emergency Riverbank Stabilization
Attachments: [redacted]

[redacted]

**From:** Brittany Skelton <BSkelton@ketchumidaho.org>

**Subject: Written approval - emergency streambank stabilization**

**Date:** July 31, 2017 at 7:08:50 PM EDT

**To:** "embassy34@icloud.com" <embassy34@icloud.com>

**Cc:** Mike Elle <melle@ketchumfire.org>

John,

Thank you for meeting with Chief Elle and I on site at your property last Tuesday. Attached is the written approval for the emergency streambank stabilization that was verbally authorized during the site visit. If you have any questions I'm happy to assist.

Regards,
Brittany

**CITY OF KETCHUM**

**ZONING CODE TITLE 17**

**EMERGENCY STREAM BANK STABILIZATION PERMIT**

**FINDINGS AND DECISION**

| | |
|---|---|
| **PROJECT:** | Hastings Emergency Streambank Stabilization |
| **PROJECT #:** | 17-085 |
| **OWNER:** | John T. Hastings, Jr. and Embassy Auditoriums INC |
| **REPRESENTATIVE:** | John T. Hastings, Jr. |
| **LOCATION:** | 1200 Warm Springs Road (Ketchum FR SWSE TL 8137 & TL 8138) |
| **ZONING:** | LR (Limited Residential) and Floodplain Management Overlay (FP) –Waterways Design Review, Floodplain, and Floodway subdistricts |
| **REQUEST:** | Emergency streambank alteration to stabilize bank due to erosion caused by the 2017 flood event |

1. The City of Ketchum is a municipal corporation organized under Article XII of the Idaho Constitution and the laws of the State of Idaho, Title 50, Idaho Code. Under Chapter 65, Title 67 of the Idaho Code, the City is required to pass certain ordinances regarding land use, including a zoning ordinance.

2. Pursuant to Zoning Code Title 17, Section 17.88.100, to obtain an emergency bank stabilization permit an applicant must submit an application as described in section 17.88.120 of this chapter. A site inspection must be performed by the planning and zoning administrator.

3. The planning and zoning administrator has authorized the City's senior planner to perform the duties necessary to review and grant approval of this application.

4. Mike Elle, Chief of Fire and EMS, and Brittany Skelton, Senior Planner, met with the property owner on site at the subject property, 1200 Warm Springs Road, to conduct a site visit on July 25, 2017. The property is on the west side of the river bank and directly adjacent and upstream of the Warm Springs Road Bridge that crosses the Big Wood River. There is a cluster of cottonwood trees located along the streambank at the southern property corner that the city has been monitoring from Warm Springs Bridge for several years, with heightened observation during the 2017 flood event due to the proximity of the trees to the bridge.

5. During the site visit staff and the property owner walked the southerly 300 linear feet of the property's stream bank. Staff observed approximately 200 linear feet of streambank that had eroded during the flood event, which occurred in May and June of 2017. There were several trees with root balls partially attached to the bank that had fallen horizontal and were suspended over or partially submerged in the river. In several locations large cracks in the soil of the river bank were visible, indicating weakened stability of the streambank. The property owner also pointed out an area behind the cluster of cottonwood trees where during a previous flood event a small channel had formed as several trees in the cluster began to separate from the bank. Three trees were removed at that time and the remaining trees in the cluster in the bank remained attached to the bank and the small channel behind the cluster did not become permanent.

6. Although the 2017 flood conditions have ended, due to site conditions and the proximity of the cluster of cottonwood trees to public infrastructure, the Warm Springs Road Bridge, staff verbally approved emergency stabilization of the streambank during the site visit. The applicant followed up by submitting an Emergency Streambank Alteration permit application the same day, July 25, 2017.

7. The applicant indicated he would work with qualified consultants and contractors to plan and execute the emergency streambank alteration work. The applicant was made aware that follow up permits would be required for permanent streambank alteration and that the Idaho Department of Water Resources and the Army Corps of Engineers also require emergency permits and permits to conduct permanent stabilization work.

8. Photo documentation from the July 25, 2017 site visit is attached.

9. The proposed project, Hastings Emergency Streambank Stabilization, is approved on this date, July 31, 2017 with the following conditions:

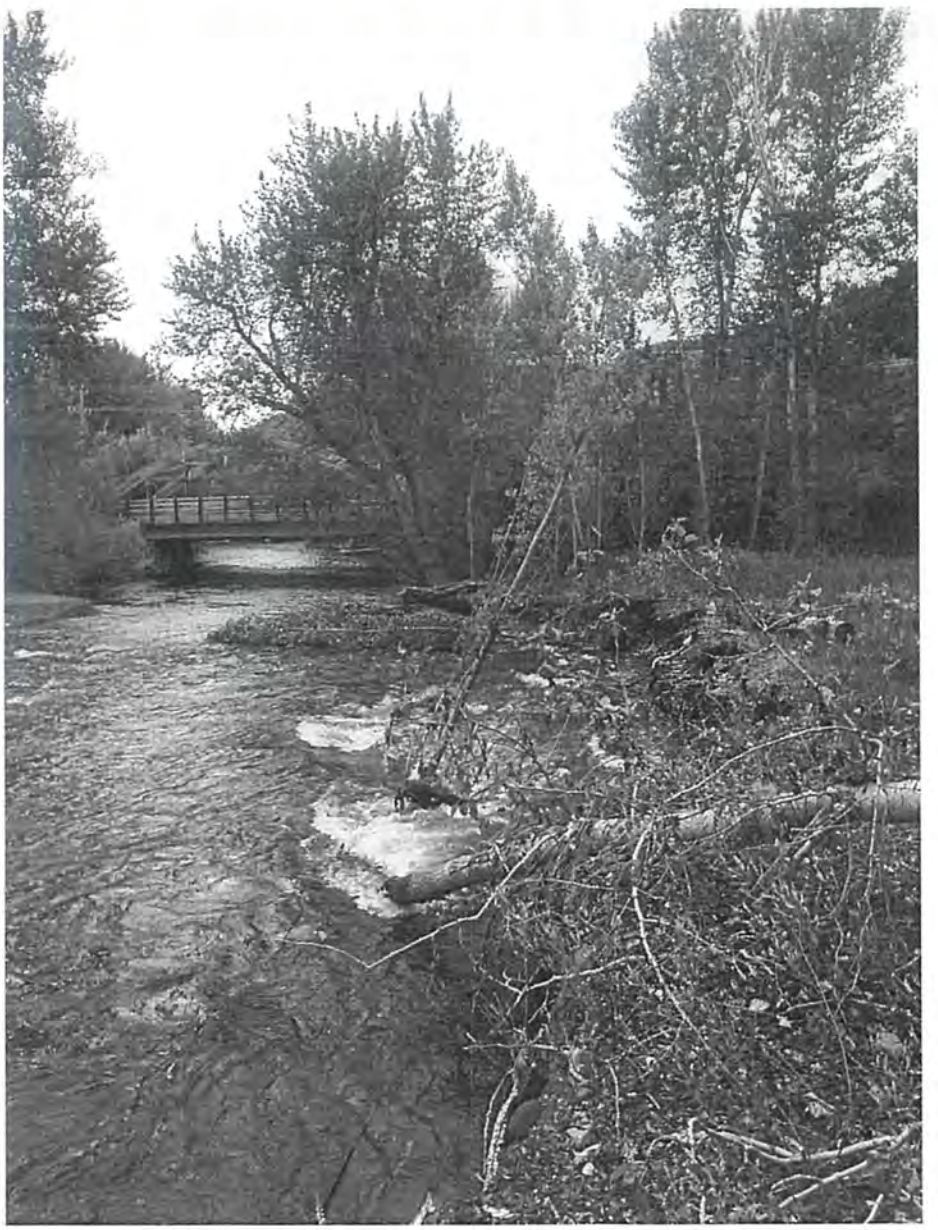
a. The scope of work shall be limited to emergency streambank stabilization necessary to stabilize the southerly portion of the streambank that staff and the property owner walked during the July 25, 2017 site visit. All work shall occur on the applicant's property 1200 Warm Springs Road.
b. The approval is subject to any additional conditions as required by the Idaho Department of Water Resources and the U.S. Army Corps of Engineers; where an outside agency's conditions or standards are more stringent than the city's, the outside agency's conditions or standards apply.
c. The applicant shall submit a complete Waterways Design Review/Stream Alteration application to the City of Ketchum by January 21, 2018; the application shall address all applicable floodplain development, waterways, and streambank alteration criteria.
d. If a City of Ketchum waterways design review/stream alteration permit subject to Chapter 17.88 and all other applicable state and federal agency permits are granted, the applicant shall then complete restoration of the affected property to city and state standards by either March 31 of the year following the issuance of the emergency permit or by another date specified by approval authority.
e. The applicant shall not mow, prune or cut vegetation in the riparian area without a permit from the City to ensure that the riparian area is allowed to naturalize. City Staff reserve the right to inspect annually the 25 foot riparian zone for preservation of riparian vegetation.
f. No use of restricted use chemicals or soil sterilants will be allowed within one hundred feet (100') of the mean high water mark on any property within the city limits at any time.
g. No use of pesticides, herbicides, or fertilizers will be allowed within twenty five feet (25') of the mean high water mark on any property within the city limits unless approved by the city arborist. All applications of herbicides and/or pesticides within one hundred feet (100') of the mean high water mark, but not within twenty five feet (25') of the mean high water mark, must be done by a licensed applicator and applied at the minimum application rates. Application times for herbicides and/or pesticides will be limited to two (2) times a year; once in the spring and once in the fall unless otherwise approved by the city arborist. The application of dormant oil sprays and insecticidal soap within the riparian zone may be used throughout the growing season as needed.
h. It shall be unlawful to dump, deposit or otherwise cause any trash, landscape debris or other material to be placed in any stream, channel, ditch, pond or basin that regularly or periodically carries or stores water.

**Decision:** Approved, subject to conditions above.

DATED this 31st day of July, 2017.

Brittany Skelton, CFM
Senior Planner

Site Visit Photos – July 25, 2017; photo source: staff



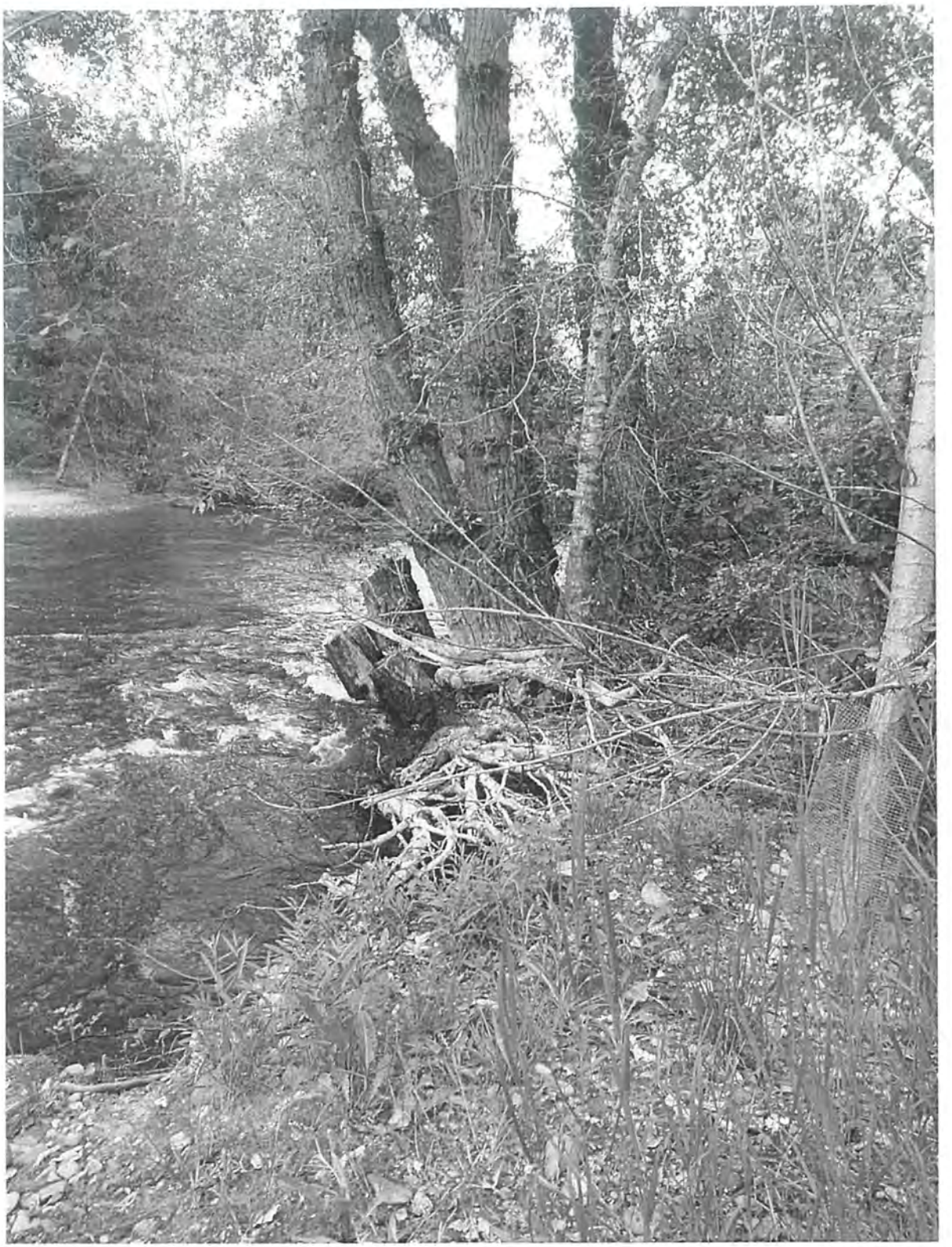


EXHIBIT
4

000472

State of Idaho
DEPARTMENT OF WATER RESOURCES
322 East Front Street • P.O. Box 83720 • Boise, Idaho 83720-0098
Phone: (208) 287-4800 • Fax: (208) 287-6700 • Website: www.idwr.idaho.gov

C.L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

September 11, 2017

JOHN HASTINGS JR.
EMBASSY AUDITORIUMS INC.
1200 WARM SPRINGS ROAD
KETCHUM IDAHO 83340

*CERTIFIED MAIL*

**NOTICE OF VIOLATION AND ORDER TO CEASE AND DESIST THE UNAUTHORIZED ALTERATION OF THE BIG WOOD RIVER**

Case No. E2017-1236

Dear Mr. Hastings:

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, this violation is associated with removal of riparian vegetation and the discharge of fill material below the mean high water mark of the Big Wood River. The unauthorized work occurred at a location within Section 12, Township 04 North, Range 17 East, Blaine 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. Cease and desist all unauthorized work below the mean high water mark at the subject land and within the Big Wood River.

2. On or before October 1, 2017, prepare and submit a streambank bioengineering plan to restore the Big Wood River, the plan must include measures for replanting the riparian area(s) with native trees/shrubs/forbs and measures to restore fish and wildlife habitat.

3. Pay a civil penalty in the amount of $10,000 on or before November 1, 2017.

You may submit any objections to the provisions of this NOV at a compliance conference. 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 a 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 these requirements may be cause for the Department to seek curtailment of the unauthorized activity and/or 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

Andrea Courtney, Deputy Attorney General, Boise
Greg Martinez, U.S. Army Corps of Engineers, Boise
Mike McDonald, Idaho Department of Fish and Game, Jerome
Balthasar Buhidar, Idaho Department of Environmental Quality, Twin Falls
Cherie Palmer, Water Compliance Bureau, Boise
Charles G. Brockway, Brockway Engineering, Twin Falls
Brittany Skelton, City of Ketchum

Enclosure - Site Photo and Map

Hastings/Embassy Auditoriums, Inc.(E2017-1236)
Write a description for your map.
Legend
Riprap Approx 200-feet
Broadway Blvd
Warm Springs Rd
Wood River Trail
Google Earth
100 ft

09/07/2017 15:24:32 • 11T QJ 11743 40501 • 43° 41'14 N, 114° 22'21 W • T 176° S / MILS 3123

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

CONSENT ORDER AND AGREEMENT

RECEIVED
JAN 26 2018
DEPARTMENT OF WATER RESOURCES

In the Matter of Notice of Violation ("NOV") No. E2017-1236 dated September 11, 2017, issued to John Hastings Jr. ("Respondent")

## BACKGROUND

1) Respondent owns land adjacent to the Big Wood River located within the SW¼SE¼ of Section 12, Township 04 North, Range 17 East in Blaine County, Idaho. Respondent's property is specifically known as 1200 Warm Springs Rd in Ketchum, Idaho.

2) Respondent states that on July 25, 2017, the city of Ketchum gave him verbal permission to commence stream channel stabilization work at the subject land. Respondent states that he began work on July 27, 2017.

3) On July 31, 2017, the city of Ketchum (city) signed an Emergency Stream Bank Stabilization Permit to authorize Respondent to stabilize 200 feet of the southerly portion of the streambank at 1200 Warm Springs Rd as Project #17-085 ("subject lands"). However, Condition 9b of Project #17-085 states that:

> The approval is subject to any additional conditions as required by the Idaho Department of Water Resources and the U.S. Army Corps of Engineers; where an outside agency's conditions or standards are more stringent than the city's, the outside agency's conditions or standards apply.

4) On July 31, 2107, Respondent states that he ceased work at the subject lands.

5) On August 30, 2017, Respondent's consultant submitted an Emergency Permit Application to Alter a Stream Channel ("emergency application") to the Idaho Department of Water Resources ("Department") on behalf of Respondent. The application included photographs with the emergency application showing stream channel alterations had taken place at the subject lands. The consultant also stated that they would be "submitting a Joint Application for Permits to formalize the emergency work that was done without IDWR approval…"

6) The Department did not find any current record that authorized the alteration at the subject lands.

7) On September 7, 2017, the Department inspected the subject lands. The Department determined that Respondent caused rock-fill below the ordinary high water mark of the Big Wood River. The Department thereby concluded that Respondent had altered the Big Wood River without the required stream alteration permit.

8) On September 11, 2017, the Department sent an NOV to Respondent for altering a stream channel without the required approval and permit from the Department.

9) On September 14, 2017, Respondent's counsel contacted the Department to request a compliance conference.

10) On October 3, 2017, the Department held a compliance conference concerning the NOV. Respondent confirmed that he altered the stream channel without a permit from the Department.

## APPLICABLE LAW

1) Idaho Code §§ 42-3801 and 42-3803a require that no alteration of any stream channel be made without approval of the Department. See also I.C. § 42-3802; IDAPA 37.03.07.010.

2) Idaho Code § 42-3809(2) allows the Department to initiate an administrative enforcement action for violation(s) of Idaho Code, Chapter 38, Title 42. The enforcement action must be in accordance with Idaho Code § 42-1701B.

3) Idaho Code § 42-1701B allows the Department to seek civil penalties and other redress pursuant to an NOV and to execute a consent order, formalizing an agreement between the Department and the alleged violator to remedy any damages and assure future compliance.

4) Idaho Code § 42-1701B(6) provides for civil penalties up to ten thousand dollars ($10,000) for violating provision(s) of the Stream Protection Act or administrative rules promulgated pursuant thereto.

## TERMS OF AGREEMENT AND ORDER

1) By February 15, 2018, Respondent shall pay a civil penalty in the amount of $10,000 and submit a Joint Application for Permit ("application") to the Department that proposes a plan to restore the streambank at the subject lands. The restoration plan must be designed to reduce further erosion and help restore more functional riverine conditions and include the following minimum requirements:
    a. bioengineering treatments to incorporate large woody material along the streambank (e.g. root wad engineered log jam and brush or tree revetment)
    b. a planting plan to help re-establish a native riparian buffer between the Big Wood River and the upland parcel at the subject lands.

2) Respondent shall comply with the terms and conditions of any permit the Department issues subsequent to the submittal of an acceptable application and restoration plan pursuant to Order paragraph no. 1.

3) Respondent shall contact the Department immediately after completing the restoration plan at the subject lands. The Department shall inspect the completed work within 14 days after notification of completion to determine if the work meets the criteria and conditions of the restoration plan.

4) The Department agrees to refund Respondent $7,500 of the civil penalty if the Respondent successfully completes the restoration plan by December 31, 2018, and meets the requirements of Order paragraphs 1-3. If there are circumstances beyond the control of Respondent, he will contact the Department by November 30, 2018, to request an extension of the deadline stated above.

5) Upon execution of this agreement, the Department's receipt of the agreed civil penalty described above, and full compliance with the terms contained herein , NOV no. E2017-1236 will be considered resolved.

Dated this 26th day of January, 2018

CHERIE PALMER
Water Compliance Bureau

**CONSENT**

Respondent accepts fully the terms and conditions of this Order. These terms shall become effective upon execution by the parties. Respondent waives any right to contest this Order and consents to the issue hereof.

Dated this 26TH day of JANUARY, 2018

JOHN HASTINGS JR.
Respondent-Land Owner

## IDAPA 37 – DEPARTMENT OF WATER RESOURCES

### Water Compliance Bureau

### 37.03.07 – Stream Channel Alteration Rules

**Who does this rule apply to**?
*General Public.*

**What is the purpose of this rule**?
*These rules govern the permitting of stream channel alterations that are of a common type, which do not propose alterations which will be a hazard to the stream channel and its environment. This chapter also establishes the collection of stream channel alteration statutory filing fees.*

**What is the legal authority for the agency to promulgate this rule**?
*This rule implements the following statutes passed by the Idaho Legislature:*

- Title 42, Chapter 38, et seq., Idaho Code – Alteration of Channels of Streams

**Who do I contact for more information on this rule**?

Idaho Department of Water Resources
322 East Front Street
P.O. Box 83720
Boise, ID 83720
Phone: (208) 287-4800
Email: mathew.weaver@idwr.idaho.gov
idwr.idaho.gov

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**000. LEGAL AUTHORITY (RULE 0).**
The purpose of these rules and minimum standards is to specify procedures for processing and considering applications for stream channel alterations under the provisions of Title 42, Chapter 38, Idaho Code. (3-18-22)

**001. TITLE AND SCOPE (RULE 1).**

**01. Title**. These rules are titled IDAPA 37.03.07, "Stream Channel Alteration Rules." (3-18-22)

**02. Scope**. The minimum standards are intended to enable the Director to process, in a short period of time, those applications which are of a common type and which do not propose alterations which will be a hazard to the stream channel and its environment. It is intended that these rules and minimum standards be administered in a reasonable manner, giving due consideration, to all factors affecting the stream and adjacent property. (3-18-22)

**002. -- 009. (RESERVED)**

**010. DEFINITIONS (RULE 10).**

**01. Alteration**. To obstruct, diminish, destroy, alter, modify, relocate or change the natural existing shape of the channel or to change the direction of flow of water of any stream channel within or below the mean high water mark. It includes removal of material from the stream channel and emplacement of material or structures in or across the stream channel where the material or structure has the potential to affect flow in the channel as determined by the director. (3-18-22)

**02. Applicant**. Any individual, partnership, company, corporation, municipality, county, state or federal agency, their agent, or other entity proposing to alter a stream channel or actually engaged in constructing a channel alteration, whether authorized or not. (3-18-22)

**03. Base Flood Elevation**. The Base Flood (BF) is referred to as the one hundred (100) year flood and is a measure of flood magnitude based on probability. The BF has a one percent chance of occurring or being exceeded in any given year, with the Base Flood Elevation (BFE) being the level of flooding reached during the BF or the one hundred (100) year flood event. (3-18-22)

**04. Board**. The Idaho Water Resource Board. (3-18-22)

**05. Continuously Flowing Water**. A sufficient flow of water that could provide for migration and movement of fish, and excludes those reaches of streams which, in their natural state, normally go dry at the location of the proposed alteration. IDWR will assume, subject to information to the contrary, that the USGS quadrangle maps accurately depict whether a stream reach is continuously flowing, at the location of the proposed alteration. Such exclusion does not apply to minor flood channels that are a part of a stream which is continuously flowing in the reach where the alteration is located. Also, such exclusion does not apply to streams which may be dry as a result of upstream diversion or storage of water. (3-18-22)

**06. Department**. The Idaho Department of Water Resources. (3-18-22)

**07. Drop Structures, Sills and Barbs**. Physical obstructions placed within a stream channel for the purpose of stabilizing the channel by decreasing stream gradient and velocity and by dissipating stream energy. (3-18-22)

**08. Director**. The Director of the Idaho Department of Water Resources. (3-18-22)

**09. Human Life Support System**. Any artificial or natural system that provides all or some of the items (such as oxygen, food, water, control of temperature, or disposition of carbon dioxide) necessary for maintaining human life or health. (3-18-22)

**10. Mean High Water Mark**. As defined in Idaho Code, § 42-3802(h), the mean high water mark is water level corresponding to the "natural or ordinary high water mark" and is the line which the water impresses on the soil by covering it for sufficient periods of time to deprive the soil of its terrestrial vegetation and destroy its value for commonly accepted agricultural purposes. (3-18-22)

**11. Non-Powered Equipment**. Equipment which is powered only by human strength. (3-18-22)

**12. Plans**. Maps, sketches, engineering drawings, photos, work descriptions and specifications sufficient to describe the extent, nature, and location of the proposed stream channel alteration and the proposed method of accomplishing the alteration. (3-18-22)

**13. Powered Equipment**. Equipment which is powered by means other than human strength such as a gasoline engine or electric motor. (3-18-22)

**14. Repair**. Any work needed or accomplished, to protect, maintain, or restore any water diversion structure and the associated stream channel upstream and downstream as necessary for the efficient operation of the water diversion structure. (3-18-22)

**15. Stream Channel**. A natural water course of perceptible extent with definite beds and banks which confines and conducts continuously flowing water. The channel referred to is that which exists at the present time, regardless of where the channel may have been located at any time in the past. For the purposes of these rules only, the beds of lakes and reservoir pool areas are not considered to be stream channels. (3-18-22)

**011. -- 024. (RESERVED)**

**025. EXEMPTIONS (RULE 25).**

**01. Work on Existing or Proposed Reservoir Projects**. Permits are not required under the provisions of Title 42, Chapter 38 for construction work on any existing or proposed reservoir project, including the dam, and such areas downstream as the Director may determine is reasonably necessary for construction and maintenance of the dam. (3-18-22)

**02. Snake and Clearwater Rivers**. Permits are not required for work within that portion of the Snake and Clearwater rivers from the state boundary upstream to the upper boundary of the Port of Lewiston Port District as it now exists or may exist in the future. (3-18-22)

**03. Cleaning, Maintenance, Construction or Repair Work**. No permit is required of a water user or his agent to clean, maintain, construct, or repair any diversion structure, canal, ditch, or lateral or to remove any obstruction from a stream channel which is interfering with the delivery of any water under a valid existing water right or water right permit. (3-18-22)

**04. Removal of Debris**. No permit is required for removal of debris from a stream channel provided that no equipment will be working in the channel and all material removed will be disposed of at some point outside the channel where it cannot again reenter the channel. (3-18-22)

**05. Mining Operations Using Non-Powered Equipment.** No permit is required for mining activities using non-powered equipment to move one-quarter (1/4) cubic yard per hour or less below the mean high water mark, except as otherwise described in Rule 61.05. (3-18-22)

**026. -- 029. (RESERVED)**

**030. APPLICATIONS (RULE 30).**

**01. Alteration of Stream Channels Permit Required**. No person shall engage in any activity which will alter a stream channel without first applying for a permit as provided by § 42-3803, Idaho Code. (3-18-22)

**02. Joint Application Permit Form**. The Department of Water Resources, Department of Lands, and the U.S. Army Corps of Engineers have developed a joint application for permit form which will suffice for the required permit application under the Stream Protection Act. An application should be filed at least sixty (60) days before the applicant proposes to start the construction and shall be upon the joint application form furnished by the Department. The application shall be accompanied by plans which clearly describe the nature and purpose of the proposed work. (3-18-22)

**03. Applicant Following Minimum Standards**. In those cases where the applicant intends to follow

the minimum standards (Rule 055), detailed plans may be eliminated by referring to the specific minimum standard; however, drawings necessary to adequately define the extent, purpose, and location of the work may be required. Plans shall include some reference to water surface elevations and stream boundaries to facilitate review. The application should show the mean high water mark on the plans; however, any water surface or water line reference available will be helpful as long as this reference is described. (Examples: present water surface, low water, high water.) (3-18-22)

**04. Submission of Copies**. The applicant shall submit one (1) copy of all necessary plans along with the application form. When drawings submitted are larger than eight and one half by eleven (8 1/2 x 11), the applicant shall provide the number of copies specified by the department. (3-18-22)

**031. -- 034. (RESERVED)**

**035. APPLICATION REVIEW (RULE 35).**

**01. Prior to Issuance of Permit**. The following items shall be among those considered by the Director prior to issuing a permit: (3-18-22)

**a.** What is the purpose of doing the work? (3-18-22)

**b.** What is the necessity and justification for the proposed alteration? (3-18-22)

**c.** Is the proposal a reasonable means of accomplishing the purpose? (3-18-22)

**d.** Will the alteration be a permanent solution? (3-18-22)

**e.** Will the alteration pass anticipated water flows without creating harmful flooding or erosion problems upstream or downstream? (3-18-22)

**f.** What effect will the alteration have on fish habitat? (3-18-22)

**g.** Will the materials used or the removal of ground cover create turbidity or other water quality problems? (3-18-22)

**h.** Will the alteration interfere with recreational use of the stream? (3-18-22)

**i.** Will the alteration detract from the aesthetic beauty of the area? (3-18-22)

**j.** What modification or alternative solutions are reasonably possible which would reduce the disturbance to the stream channel and its environment and/or better accomplish the desired goal of the proposed alteration? (3-18-22)

**k.** Is the alteration to be accomplished in accordance with the adopted minimum standards? (3-18-22)

**l.** Are there public safety factors to consider? (3-18-22)

**02. Proposed Alteration Which Does Not Follow Minimum Standards**. In those cases where a proposed alteration does not follow the minimum standards, a copy of the application will be sent for review to those state agencies requesting notification. The Director shall provide for review by the Department of Lands, copies of applications on navigable rivers. The Director will provide a copy of any other application requested by the Department of Lands and may request review by other state agencies regardless of whether or not the proposed alteration will comply with the minimum standards. (3-18-22)

**036. -- 039. (RESERVED)**

**040. APPROVAL (RULE 40).**

**01. Conformance to Application**. All work shall be done in accordance with the approved application, subject to any conditions specified by the department. (3-18-22)

**02. Permits Allowed Without Review**. A permit may be approved by the Director of the Department of Water Resources without review by other agencies in situations where the work is of a nature not uncommon to the particular area and where it is clear that the work will not seriously degrade the stream values except on navigable rivers which require review by the Department of Lands. All work approved in this manner shall be accomplished in accordance with the minimum standards. (3-18-22)

**03. Reinstatement of Expired Permit**. A permit which has expired may be reinstated by the Director after review by other agencies as determined by the Director. (3-18-22)

**041. -- 044. (RESERVED)**

**045. ENFORCEMENT OF ACT (RULE 45).**

**01. Written Orders Issued by Designated Employees of Department**. Employees of the Department designated by the Director may issue written orders directing an applicant to cease and desist, to ensure proper notice to applicants who are found to be altering a stream without a permit or not in compliance with the conditions of a permit. Such orders shall be in effect immediately upon issuance and will continue in force until a permit is issued or until the order is rescinded by the Director. (3-18-22)

**02. Failure to Comply with Stream Protection Act**. Failure to comply with any of the provisions of the Stream Protection Act (Chapter 38, Title 42, Idaho Code), may result in issuance of an Idaho uniform citation and/ or the cancellation of any permit by the Director without further notice and the pursuit in a court of competent jurisdiction, such civil or criminal remedies as may be appropriate and provided by law. The Director may allow reasonable time for an applicant to complete stabilization and restoration work. (3-18-22)

**046. -- 049. (RESERVED)**

**050. EMERGENCY WAIVER (RULE 50).**

**01. Waiver of Provisions of Stream Protection Act**. Section 42-3808, Idaho Code, provides for waiver of the provisions of the Stream Protection Act in emergency situations where immediate action must be taken to protect life or property including growing crops. The Director will not consider failure to submit an application for a stream channel alteration far enough ahead of the desired starting time of the construction work as an emergency situation. (3-18-22)

**02. Verbal Waivers**. A verbal waiver may be granted initially; however, all verbal requests for waivers shall be followed up by the applicant in writing within fifteen (15) days of any initial authorization to do work. If the applicant is unable to contact the Director to obtain an emergency waiver, he may proceed with emergency work; however, he must contact the Director as soon as possible thereafter. Proving that a bonafide emergency did actually exist will be the responsibility of the applicant. (3-18-22)

**03. Emergency Waiver**. Work authorized by an emergency waiver shall be limited to only that which is necessary to safeguard life or property, including growing crops, during the period of emergency. (3-18-22)

**04. Conformance to Conditions of Waiver**. The applicant shall adhere to all conditions set by the Director as part of a waiver. (3-18-22)

**05. Waivers Granted by Designated Employees**. The Director may delegate the authority to grant waivers to designated employees of the Department. Names and telephone numbers of such employees will be made available to any interested applicant upon request. (3-18-22)

**051. -- 054. (RESERVED)**

**055. MINIMUM STANDARDS (RULE 55).**

These standards are intended to cover the ordinary type of stream channel alteration and to prescribe minimum conditions for approval of such construction. Unless otherwise provided in a permit, these standards shall govern all stream channel alterations in this state. An applicant should not assume that because an application utilizes methods set forth in these standards it will automatically be approved. These minimum standards include the following items: (3-18-22)

**01. Construction Procedures.** (3-18-22)

**02. Dumped Rock Riprap.** (3-18-22)

**03. Drop Structures, Sills and Barbs.** (3-18-22)

**04. Culverts and Bridges.** (3-18-22)

**05. Removal of Sand and Gravel Deposits.** (3-18-22)

**06. Small Scale Mining with Suction Dredges, Powered Sluices, or Non-Powered Equipment.** (3-18-22)

**07. Piling.** (3-18-22)

**08. Pipe Crossings.** (3-18-22)

**09. Concrete Plank Boat Launch Ramps.** (3-18-22)

## 056. CONSTRUCTION PROCEDURES (RULE 56).

**01. Conformance to Procedures.** Construction shall be done in accordance with the following procedures unless specific approval of other procedures has been given by the Director. When an applicant desires to proceed in a manner different from the following, such procedures should be described on the application. (3-18-22)

**02. Operation of Construction Equipment.** No construction equipment shall be operated below the existing water surface without specific approval from the Director except as follows: Fording the stream at one (1) location only will be permitted unless otherwise specified; however, vehicles and equipment will not be permitted to push or pull material along the streambed below the existing water level. Work below the water which is essential for preparation of culvert bedding or approved footing installations shall be permitted to the extent that it does not create unnecessary turbidity or stream channel disturbance. Frequent fording will not be permitted in areas where extensive turbidity will be created. (3-18-22)

**03. Temporary Structures.** Any temporary crossings, bridge supports, cofferdams, or other structures that will be needed during the period of construction shall be designed to handle high flows that could be anticipated during the construction period. All structures shall be completely removed from the stream channel at the conclusion of construction and the area shall be restored to a natural appearance. (3-18-22)

**04. Minimizing Disturbance of Area.** Care shall be taken to cause only the minimum necessary disturbance to the natural appearance of the area. Streambank vegetation shall be protected except where its removal is absolutely necessary for completion of the work adjacent to the stream channel. (3-18-22)

**05. Disposal of Removed Materials.** Any vegetation, debris, or other material removed during construction shall be disposed of at some location out of the stream channel where it cannot reenter the channel during high stream flows. (3-18-22)

**06. New Cut of Fill Slopes.** All new cut or fill slopes that will not be protected with some form of riprap shall be seeded with grass and planted with native vegetation to prevent erosion. (3-18-22)

**07. Fill Material.** All fill material shall be placed and compacted in horizontal lifts. Areas to be filled shall be cleared of all vegetation, debris and other materials that would be objectionable in the fill. (3-18-22)

**08. Limitations on Construction Period**. The Director may limit the period of construction as needed to minimize conflicts with fish migration and spawning, recreation use, and other uses. (3-18-22)

## 057. DUMPED ROCK RIPRAP (RULE 57).

**01. Placement of Riprap**. Riprap shall be placed on a granular bedding material or a compact and stable embankment. (3-18-22)

**02. Sideslopes of Riprap**. Sideslopes of riprap shall not be steeper than 2:1 (2' horizontal to 1' vertical) except at ends of culverts and at bridge approaches where a 1 1/2:1 sideslope is standard. (3-18-22)

**03. Minimum Thickness of Riprap**. The minimum thickness of the riprap layer shall equal the dimension of the largest size riprap rock used or be eighteen (18) inches, whichever is greater. When riprap will be placed below high water level, the thickness of the layer shall be fifty percent (50%) greater than specified below. (3-18-22)

**04. Riprap Protection**. Riprap protection must extend at least one (1) foot above the anticipated high water surface elevation in the stream. (3-18-22)

**05. Rock Used for Riprap**. Rock for riprap shall consist of sound, dense, durable, angular rock fragments, resistant to weathering and free from large quantities of soil, shale, and organic matter. The length of a rock shall not be more than three (3) times its width or thickness. Rounded cobbles, boulders, and streambed gravels are not acceptable as dumped riprap. (3-18-22)

**06. Size and Gradation of Riprap**. Riprap size and gradation are commonly determined in terms of the weight of riprap rock. The average size of riprap rock shall be at least as large as the maximum size rock that the stream is capable of moving. The maximum size of riprap rock used shall be two (2) to five (5) times larger than the average size. (3-18-22)

**07. Methods Used for Determining Gradation of Riprap**. There are many methods used for determining the gradation of riprap rock. One of these many acceptable methods is shown in Table 1 below. Another acceptable method is the Far West States (FWS) method shown in APPENDIX A - Table 1A.

**Table 1 – GRADATION OF RIPRAP IN POUNDS**

| Max. Weight of Stone required (lbs) | Min. and Max. Range in weight of Stones (lbs) | Weight Range 75 percent of Stones (lbs) |
|---|---|---|
| 150 | 25 - 150 | 50 - 150 |
| 200 | 25 - 200 | 50 - 200 |
| 250 | 25 - 250 | 50 - 250 |
| 400 | 25 - 400 | 100 - 400 |
| 600 | 25 - 600 | 150 - 600 |
| 800 | 25 - 800 | 200 - 800 |
| 1000 | 50 - 1000 | 250 - 1000 |
| 1300 | 50 - 1300 | 325 - 1300 |
| 1600 | 50 - 1600 | 400 - 1600 |
| 2000 | 75 - 2000 | 600 - 2000 |
| 2700 | 100 - 2700 | 800 - 2700 |

(3-18-22)

**08. Use of Filter Material.** A blanket of granular filter material or filter fabric shall be placed between the riprap layer and the bank in all cases where the bank is composed of erodible material that may be washed out from between the riprap rock. Filter material shall consist of a layer of well-graded gravel and coarse sand at least six (6) inches thick. (3-18-22)

**09. Toe Protection.** Some suitable form of toe protection shall be provided for riprap located on erodible streambed material. (3-18-22)

**a.** Various acceptable methods of providing toe protection are shown in APPENDIX B, Figure 2 at the end of this chapter. (3-18-22)

**b.** In addition to the approved methods of providing toe protection as shown in APPENDIX B, any other reasonable method will be considered by the Director during review of a proposed project. (3-18-22)

**10. Extension of Riprap Area.** Riprap shall extend far enough upstream and downstream to reach stable areas, unless the riprap is protected against undermining at its ends by the method shown in APPENDIX C, Figure 3 at the end of this chapter. On extremely long riprap sections, it is recommended that similar cutoff sections be used at several intermediate points to reduce the hazard that would be created if failure of the riprap occurred at any one (1) location. (3-18-22)

**11. Finished Surface.** Placement shall result in a smooth, even finished surface. Compaction is not necessary. (3-18-22)

**12. Placement of Riprap.** The full course thickness of the riprap shall be placed in one (1) operation. Dumping riprap long distances down the bank or pushing it over the top of the bank with a dozer shall be avoided if possible. Material should be placed with a backhoe, loader, or dragline. Dumping material near its final position on the slope or dumping rock at the toe and bulldozing it up the slope is a very satisfactory method of placement, if approval is obtained for the use of equipment in the channel. (3-18-22)

**13. Design Procedure.** Design procedure using the Far West States (FWS) method. (3-18-22)

**a.** The FWS method uses a single equation to deal with variables for riprap. (3-18-22)

D75 = 3.5/CK WDS for Channel Banks

where: D75 = Size of the rock at seventy five percent (75%) is finer in gradation, in inches.

| | | |
|---|---|---|
| W | = | Specific weight of water, usually 62.4 lbs./cu.ft. |
| D | = | Depth of flow in stream, in feet in flood stage |
| S | = | Channel slope or gradient, in ft/ft. |
| C | = | A coefficient relating to curvature in the stream |
| K | = | A coefficient relating to steepness of bank slopes |

(3-18-22)

**b.** The coefficient, C, is based on the ratio of the radius of curvature of the stream, (CR), to the water surface width, (WSW), so it is necessary for the user to make field determination of these values. The coefficient varies from 0.6 for a curve ratio of 4 to 6, up to 1.0 for a straight channel. If the computed ratio for a particular project is less than 4, the designer should consider some modification less than 4.

| CR/WSW | C |
|---|---|
| 4 - 6 | 0.60 |
| 6 - 9 | 0.75 |
| 9 - 12 | 0.90 |
| Straight Channel | 1.00 |

(3-18-22)

**c.** The coefficient, K, ranges from 0.5 for a 1.5:1 sideslope to 0.87 for 3:1 sideslope. No values are given for steeper or flatter slopes. Slopes steeper than 1.5:1 are not recommended. If slopes flatter than 3:1 are desired, it would be conservative to use the K-value for 3:1 slopes.

| Bankslope | K |
|---|---|
| 1.5:1 | 0.50 |
| 1.75:1 | 0.63 |
| 2.0:1 | 0.72 |
| 2.5:1 | 0.80 |
| 3.0:1 | 0.87 |

(3-18-22)

## 058. DROP STRUCTURES, SILLS AND BARBS (RULE 58).

**01. Drop Structures.** A drop structure shall be constructed of rocks, boulders and/or logs placed within a stream channel to act as a low level dam. Placement of a drop structure perpendicular to stream flow will decrease the stream gradient, dissipate stream energy and decrease stream velocity through an increase in water surface elevation immediately above the structure. Drop structures shall comply with the following criteria: (3-18-22)

**a.** Maximum water surface differential across (upstream water surface elevation minus downstream water surface elevation) a drop structure shall not exceed two (2) feet. The department shall approve the final elevation of any structure. (3-18-22)

**b.** Rock drop structures shall be constructed of clean, sound, dense, durable, angular rock fragments, and/or boulders of size and gradation, such that the stream is incapable of moving the material during peak flows. Rocks shall be keyed into the stream banks to minimize the likelihood of bank erosion, (See APPENDIX D located at the end of this chapter). (3-18-22)

**c.** Log drop structures are acceptable in four (4) designs including the single log dam, the stacked log dam, the three (3) log dam, and the pyramid log dam. Log ends shall be keyed into both banks at least one-third (1/3) of the channel width or a distance sufficient to prevent end erosion. To prevent undercutting, the bottom log shall be embedded in the stream bed or hardware cloth, cobbles or boulders shall be placed along the upper edge. Minimum log size for a single log structure shall be determined by on-site conditions and shall be placed to maintain flow over the entire log to prevent decay. Each log drop structure must be accompanied by downstream scour protection, such as a rock apron (See APPENDIX E located at the end of this chapter. (3-18-22)

**d.** All drop structures shall be constructed to facilitate fish passage and centralized scour pool development. (3-18-22)

**02. Sills.** A sill shall be constructed of the same material and in the same manner as a drop structure.

The top of the sill may not exceed the elevation of the bottom of the channel. The purpose of a sill is to halt the upstream movement of a headcut, thus precluding the widening or deepening of the existing channel. (See APPENDIX F located at the end of this chapter). (3-18-22)

**03. Barb or Partial Drop Structure**. A barb or partial drop structure shall be constructed in the same manner and of the same material as a drop structure and placed into the stream channel to act as a low level dam and grade control structure. The barb will decrease stream gradient, dissipate stream energy and redirect stream flow. (3-18-22)

**a.** Barbs shall be constructed of clean, sound, dense, angular rock fragments, of size and gradation such that the stream is incapable of moving the material during peak flows. (3-18-22)

**b.** Barbs shall be constructed with a downstream angle of no less than one hundred (100) degrees and no greater than one hundred thirty-five (135) degrees unless otherwise specified. (3-18-22)

**c.** Barbs shall "extend" into the channel a distance of not more than twenty percent (20%) of the width of the channel unless otherwise specified by the Director. (3-18-22)

**d.** Barbs shall be keyed into the bank a distance equal to or greater than the width of the structure and down to bed level. Whenever moisture is encountered in the construction of the keyways, willow cuttings or clumps shall be placed before and during rock placement in such a manner that the base of the cutting is in permanent moisture and the top extends a minimum of six (6) inches above grade (see APPENDIX G located at the end of this chapter). (3-18-22)

## 059. CULVERTS AND BRIDGES (RULE 59).

**01. Culverts and Bridges**. Culverts and bridges shall be capable of carrying streamflows and shall not significantly alter conditions upstream or downstream by causing flooding, turbidity, or other problems. The appearance of such installations shall not detract from the natural surroundings of the area. (3-18-22)

**02. Location of Culverts and Bridges**. Culverts and bridges should be located so that a direct line of approach exists at both the entrance and exit. Abrupt bends at the entrance or exit shall not exist unless suitable erosion protection is provided. (3-18-22)

**03. Ideal Gradient**. The ideal gradient (bottom slope) is one which is steep enough to prevent silting but flat enough to prevent scouring due to high velocity flows. It is often advisable to make the gradient of a culvert coincide with the average streambed gradient. (3-18-22)

**a.** Where a culvert is installed on a slope steeper than twenty percent (20%), provisions to anchor the culvert in position will be required. Such provisions shall be included in the application and may involve the use of collars, headwall structures, etc. Smooth concrete pipe having no protruding bell joints or other irregularities shall have such anchoring provisions if the gradient exceeds ten percent (10%). (3-18-22)

**04. Size of Culvert or Bridge Opening**. The size of the culvert or bridge opening shall be such that it is capable of passing design flows without overtopping the streambank or causing flooding or other damage. (3-18-22)

**a.** Design flows shall be based upon the following minimum criteria:

| Drainage Area | Design Flow Frequency |
|---|---|
| Less than 50 sq. mi. | 25 Years |
| Over 50 sq. mi. or more | 50 years or greatest flow of record, whichever is more |

(3-18-22)

**b.** For culverts and bridges located on U.S. Forest Service or other federal lands, the sizing should comply with the Forest Practices Act as adopted by the federal agencies or the Department of Lands. (3-18-22)

**c.** For culverts or bridges located in a community qualifying for the national flood issuance program, the minimum size culvert shall accommodate the one hundred (100) year design flow frequency. (3-18-22)

**d.** If the culvert or bridge design is impractical for the site, the crossing may be designed with additional flow capacity outside the actual crossing structure, provided there is no increase in the Base Flood Elevation.
(NOTE: When flow data on a particular stream is unavailable, it is almost always safe to maintain the existing gradient and cross-section area present in the existing stream channel. Comparing the proposed crossing size with others upstream or downstream is also a valuable means of obtaining information regarding the size needed for a proposed crossing.) (3-18-22)

**e.** Minimum clearance shall be at least one (1) foot at all bridges. This may need to be increased substantially in the areas where ice passage or debris may be a problem. Minimum culvert sizes required for stream crossings: (3-18-22)

i. Eighteen (18) inch diameter for culverts up to seventy (70) feet long; (3-18-22)

ii. Twenty-four (24) inch diameter for all culverts over seventy (70) feet long. (3-18-22)

**f.** In streams where fish passage is of concern as determined by the director, an applicant shall comply with the following provisions and/or other approved criteria to ensure that passage will not be prevented by a proposed crossing. (3-18-22)

**g.** Minimum water depth shall be approximately eight (8) inches for salmon and steelhead and at least three (3) inches in all other cases. (3-18-22)

**h.** Maximum flow velocities for streams shall not exceed those shown in Figure 17 in APPENDIX H, located at the end of this chapter, for more than a forty-eight (48) hour period. The curve used will depend on the type of fish to be passed. (3-18-22)

**i.** Where it is not feasible to adjust the size or slope to obtain permissible velocities, the following precautions may be utilized to achieve the desired situation. (3-18-22)

**j.** Baffles downstream or inside the culvert may be utilized to increase depth and reduce velocity. Design criteria may be obtained from the Idaho Fish and Game Department. (3-18-22)

**k.** Where multiple openings for flow are provided, baffles or other measures used in one (1) opening only shall be adequate provided that the opening is designed to carry the main flow during low-flow periods. (3-18-22)

**05. Construction of Crossings**. When crossings are constructed in erodible material, upstream and downstream ends shall be protected from erosive damage through the use of such methods as dumped rock riprap, headwall structures, etc., and such protection shall extend below the erodible streambed and into the banks at least two (2) feet unless some other provisions are made to prevent undermining. (3-18-22)

**a.** Where fish passage must be provided, upstream drops at the entrance to a culvert will not be permitted and a maximum drop of one (1) foot will be permitted at the downstream end if an adequate jumping pool is maintained below the drop. (3-18-22)

**b.** Downstream control structures such as are shown in Figure 18 in APPENDIX I, located at the end of this chapter, can be used to reduce downstream erosion and improve fish passage. They may be constructed with gabions, pilings and rock drop structures. (3-18-22)

**06. Multiple Openings**. Where a multiple opening will consist of two (2) or more separate culvert

structures, they shall be spaced far enough apart to allow proper compaction of the fill between the individual structures. The minimum spacing in all situations shall be one (1) foot. In areas where fish passage must be provided, only one (1) opening shall be constructed to carry all low flows. Low flow baffles may be required to facilitate fish passage. (3-18-22)

**07. Areas to be Filled**. All areas to be filled shall be cleared of vegetation, topsoil, and other unsuitable material prior to placing fill. Material cleared from the site shall be disposed of above the high water line of the stream. Fill material shall be reasonably well-graded and compacted and shall not contain large quantities of silt, sand, organic matter, or debris. In locations where silty or sandy material must be utilized for fill material, it will be necessary to construct impervious sections both upstream and downstream to prevent the erodible sand or silt from being carried away (see Figure 19, APPENDIX J, located at the end of this chapter), Sideslopes for fills shall not exceed one and one half to one (1.5:1). Minimum cover over all culvert pipes and arches shall be one (1) foot. (3-18-22)

**08. Installation of Pipe and Arch Culvert**. All pipe and arch culverts shall be installed in accordance with manufacturer's recommendations. (3-18-22)

**a.** The culvert shall be designed so that headwaters will not rise above the top of the culvert entrance unless a headworks is provided. (3-18-22)

### 060. REMOVAL OF SAND AND GRAVEL DEPOSITS (RULE 60).

**01. Removal of Sand and Gravel**. This work consists of removal of sand and gravel deposits from within a stream channel. The following conditions shall be adhered to unless other methods have been specified in detail on the application and approved by the Director. (3-18-22)

**02. Removal Below Water Surface**. Sand and gravel must not be removed below the water surface existing at the time of the work. Where work involves clearing a new channel for flow, removal of material below water level will be permitted to allow this flow to occur; however, this must not be done until all other work in the new channel has been completed. (3-18-22)

**03. Buffer Zone**. A buffer zone of undisturbed streambed material at least five (5) feet in width or as otherwise specified by the Director shall be maintained between the work area and the existing stream. The applicant shall exercise reasonable precautions to ensure that turbidity is kept to a minimum and does not exceed state water quality standards. (3-18-22)

**04. Movement of Equipment**. Equipment may cross the existing stream in one (1) location only, but shall not push or pull material along the streambed while crossing the existing stream. (3-18-22)

**05. Disturbing Natural Appearance of Area**. Work must be done in a manner that will least disturb the natural appearance of the area. Sand and gravel shall be removed in a manner that will not leave unsightly pits or other completely unnatural features at the conclusion of the project. (3-18-22)

### 061. SMALL SCALE MINING WITH SUCTION DREDGES, POWERED SLUICES, OR NON-POWERED EQUIPMENT (RULE 61).

**01. Small Scale Mining Permit**. The Director may issue a permit for the operation of a powered suction dredge or power sluice, or certain qualified non-powered mining activities that follow minimum standards (Rule 61), within stream channels designated as open by the Department or Board. A powered suction dredge or power sluice shall only be operated in accordance with the conditions of the Small Scale Mining Permit. A power sluice and a high-banker are synonymous for the purposes of these rules. (3-18-22)

**02. Standards for Small Scale Mining Permits**. The following standards shall apply only to uses of suction dredges and power sluices below the mean high water mark with nozzle diameters of five (5) inches or less and powered equipment rated at fifteen (15) HP or less, or the use of non-powered sluice equipment moving more than one-quarter (1/4) cubic yard per hour. (3-18-22)

**03. Powered Equipment Prohibited Below High Water Mark**. There shall be no use of powered equipment below the mean high water mark except for the suction dredge, or power sluice and any human life support system necessary to operate the suction dredge or power sluice. (3-18-22)

**04. Protection of Streambanks**. The operation of a suction dredge or power sluice, or the use of non-powered equipment shall be carried out in a manner that prevents the undercutting of streambanks. (3-18-22)

**05. Permit Required for Certain Non-Powered Operations**. A Small Scale Mining Permit is required for non-powered mining activities when those activities include: (1) the use of non-powered equipment by more than five (5) people mining the same area; or (2) the use of non-powered equipment where the disturbed area at the mining location exceeds thirty three (33) percent of the width of the wetted stream channel. (3-18-22)

**06. Limitation of Mining Sites**. Only one (1) mining site per one hundred (100) linear feet of stream channel shall be worked at one (1) time unless waived by the Director. (3-18-22)

## 062. PILING (RULE 62).

**01. Standards for Pilings**. The following standards apply to a piling associated with a boat or swimming dock, a log boom, a breakwater, or bridge construction. (3-18-22)

**02. Replacement of Pilings**. In replacing a piling the old piling shall be completely removed from the channel, secured to the new piling or cut at stream bed level. (3-18-22)

**03. Condition of Pilings**. Chemicals or compounds used for protection of piles and lumber shall be thoroughly dried to prevent bleeding, weeping or dissolution before placing such piles and lumber over, in or near water. (3-18-22)

**04. Prohibited Materials**. The application of creosote, arsenicals or phentachlorophenol (Penta) to timber shall not occur in, or over water. (3-18-22)

## 063. PIPE CROSSINGS (RULE 63).

**01. Standards for Pipe Crossings**. The following standards apply to pipe crossings to be installed below the bed of a stream or river such as utility crossings of a gas line, sewer line, electrical line, communication line, water line or similar line. (3-18-22)

**02. Depth of Line**. The line shall be installed below the streambed to a depth which will prevent erosion and exposure of the line to free flowing water. In areas of high stream velocity where scouring may occur, the pipe shall be encased in concrete or covered with rock riprap to prevent the pipeline from becoming exposed. (3-18-22)

**03. Pipe Joints**. The joints shall be welded, glued, cemented or fastened together in a manner to provide a water tight connection. (3-18-22)

**04. Construction Methods**. Construction methods shall provide for eliminating or minimizing discharges of turbidity, sediment, organic matter or toxic chemicals. A settling basin or cofferdam may be required for this purpose. (3-18-22)

**05. Cofferdam**. If a cofferdam is used, it shall be completely removed from the stream channel upon completion of the project. (3-18-22)

**06. Revegetation of Disturbed Areas**. Areas disturbed as a result of the alteration shall be revegetated with plants and grasses native to these areas. (3-18-22)

## 064. CONCRETE PLANK BOAT LAUNCH RAMPS (RULE 64).

**01. Construction of Concrete Plank Boat Launch Ramps**. Concrete plank boat launch ramps, shall

be constructed with individual sections of precast, reinforced concrete planks linked together to provide a stable non-erosive water access (see Figure 20, APPENDIX K, located at the end of this chapter). (3-18-22)

**02. Construction of Concrete Planks.** Typical concrete plank size is twelve feet by fourteen inches by four inches (12' x 14" x 4"). All planks shall be constructed with Type II low alkali cement. All planks shall have a broom form finish, free of rock pockets and loose materials. Figures 21 and 22 shows a typical launch plank detail. (See APPENDIXES L and M). (3-18-22)

**03. Assembly of Planks.** The planks shall be assembled out of the water and slid into place on a constructed launch ramp where water velocities do not exceed two (2) feet per second. In waters exceeding (2) feet per second the ramp sections shall be linked together and fastened to pre-positioned stringers anchored into the launch ramp. (See Figure 23, APPENDIX N, located at the end of this chapter). (3-18-22)

**04. Water Depth.** The water depth above the lower end of the ramp section shall not be less than three (3) feet during low level or low flow periods. (See Figure 20, APPENDIX K, located at the end of this chapter). (3-18-22)

**05. Construction of Boat Ramp.** The boat launch ramp shall have a base constructed of sound, dense, durable, angular rock resistant to weathering and free from soil, shale and organic materials. Rounded cobbles, boulders and streambed material are not acceptable as base material in areas with stream flow velocities greater than two (2) fps. Base materials shall be covered with a layer of (three-fourths inches (3/4") min.) crushed rock with a minimum depth of two inches (2"). The ramp shall have a minimum and maximum slope of ten percent (10%) and fifteen percent (15%) respectively, and shall be constructed in a manner to avoid long incursions into the stream channel. All ramps and fill material shall be protected with rock riprap in accordance with Rule 057 when stream flow velocities exceed two (2) fps. (See Figure 24, APPENDIX O, located at the end of this chapter). (3-18-22)

**065. -- 069. (RESERVED)**

**070. HEARINGS ON DENIED, LIMITED, OR CONDITIONED PERMIT OR OTHER DECISIONS OF THE DIRECTOR (RULE 70).**
Any applicant who is granted a limited or conditioned permit, or who is denied a permit, may seek a hearing on said action of the Director by serving on the Director written notice and request for a hearing before the Board within fifteen (15) days of receipt of the Director's decision. Said hearing will be set, conducted, and notice given as set forth in the Rules promulgated by the Board under the provisions of Title 67, Chapter 52, Idaho Code. (3-18-22)

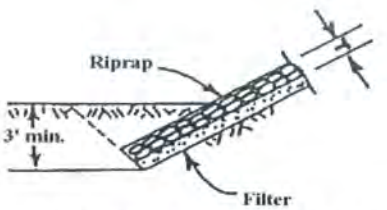
**071. -- 999. (RESERVED)**

**APPENDIX A**
**Table 1A**

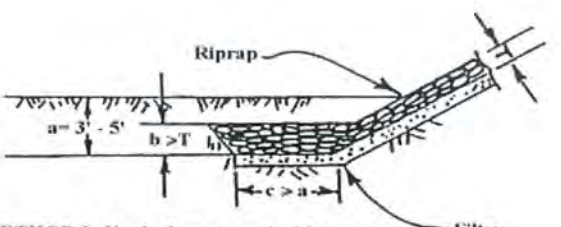
**Riprap Gradation Using FWS Method**

| % Finer by Weight (Lbs.) | Minimum Size (Lbs.) | Maximum Size (Lbs.) |
|---|---|---|
| $D_{100}$ | 1.33 X $D_{75}$ | 2.0 X $D_{75}$ |
| $D_{75}$ | 1.0 X $D_{75}$ | 1.67 X $D_{75}$ |
| $D_{50}$ | 0.67 X $D_{75}$ | 1.17 X $D_{75}$ |
| $D_{25}$ | 0.33 X $D_{75}$ | 0.77 X $D_{75}$ |
| $D_0$ | None | 0.33 X $D_{75}$ |

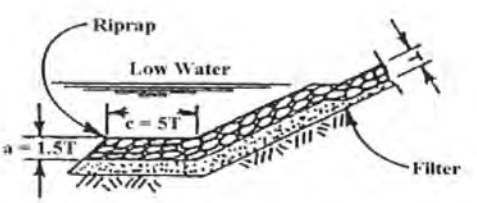
APPENDIX B




METHOD 1: This is most suited to areas where the toe is dry during construction.



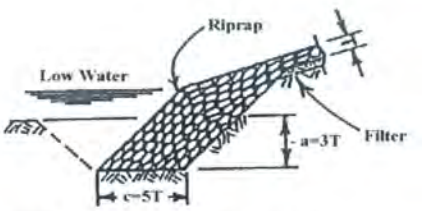

METHOD 2: Used when streambed is very wet or groundwater presesnt makes using Method 1 impractical.



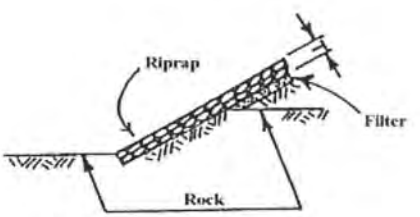

METHOD 3: Often used when toe is underwater during construction. Both Methods 2 and 3 utilize the idea that undermining will cause rock at toe blanket to settle into eroded area providing protection during scouring.

FIGURE 2. Acceptable toe protection

APPENDIX B (CONTINUED)



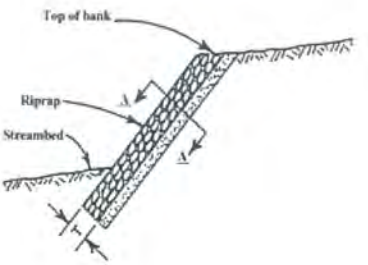

METHOD 4: Used underwater in areas with extremely bad streambed erosion conditions which make Method 3 unfeasible. This method may also be preferred where Mehtod 3 would destroy fish spawing beds.

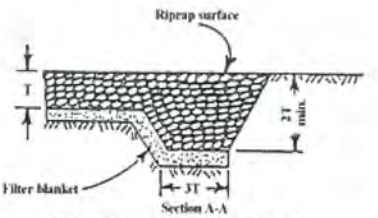



METHOD 5: When the streambed is non-erodible, no special provisions for toe protection are needed other than insuring that the riprap is well keyed to the rock.

FIGURE 2. Acceptable toe protection *continued*

## APPENDIX C

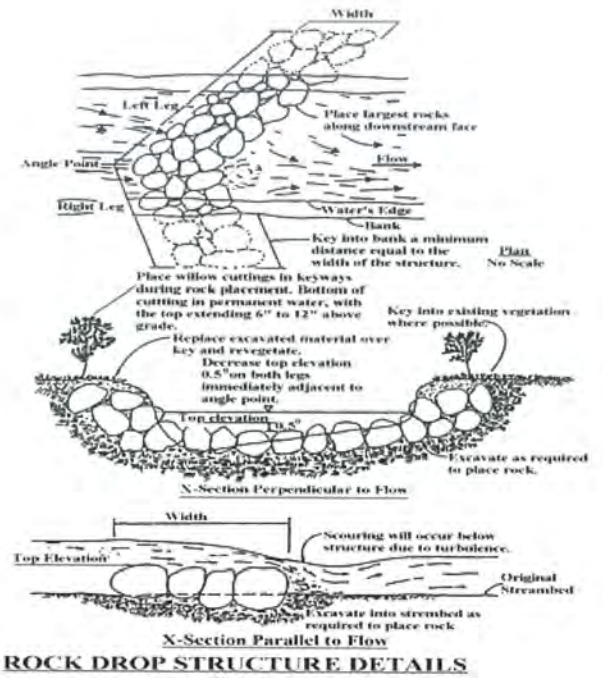



View shown above is cross section at end of riprap looking down along the sideslope toward streambed.

FIGURE 3. Protection against undermining

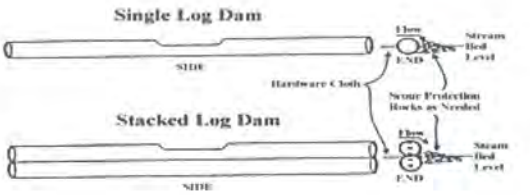
## APPENDIX D




**ROCK DROP STRUCTURE DETAILS**

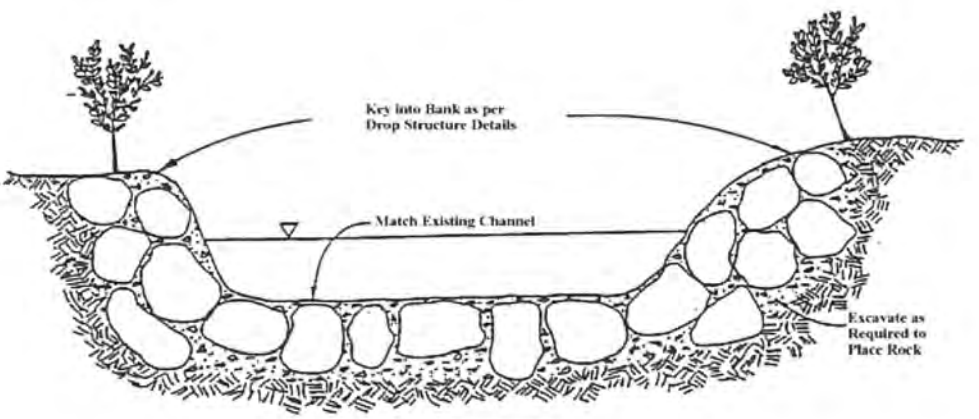
No Scale

## APPENDIX E




**LOG DROP STRUCTURE DETAILS**
No Scale

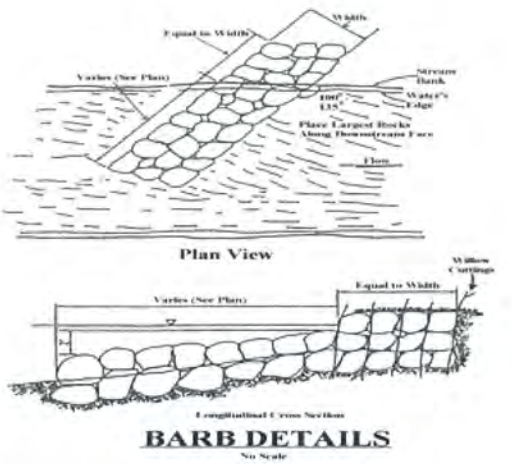
## APPENDIX F




X-Section Perpendicular to Flow

**SILL DETAILS**
No Scale

## APPENDIX G




**BARB DETAILS**

No Scale

## APPENDIX H

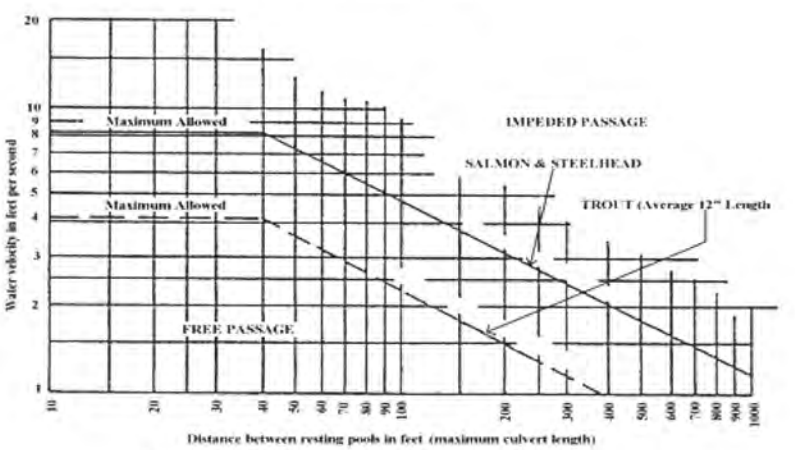
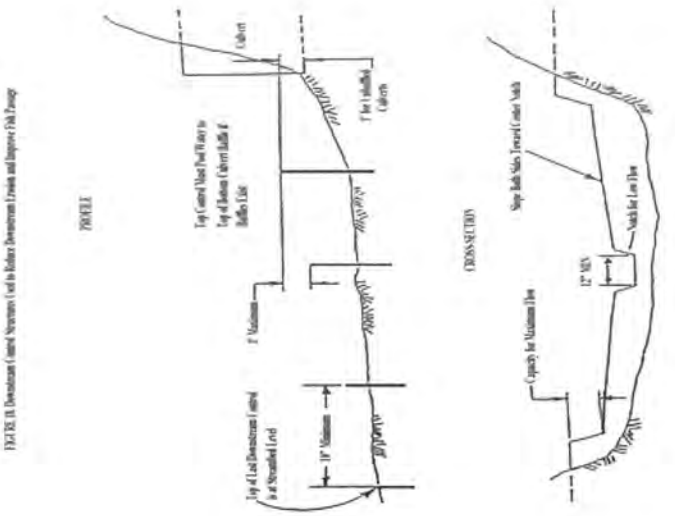



FIGURE 17. Swimming capability of migrating salmon and trout (Alaskan Curve)

## APPENDIX I



## APPENDIX J

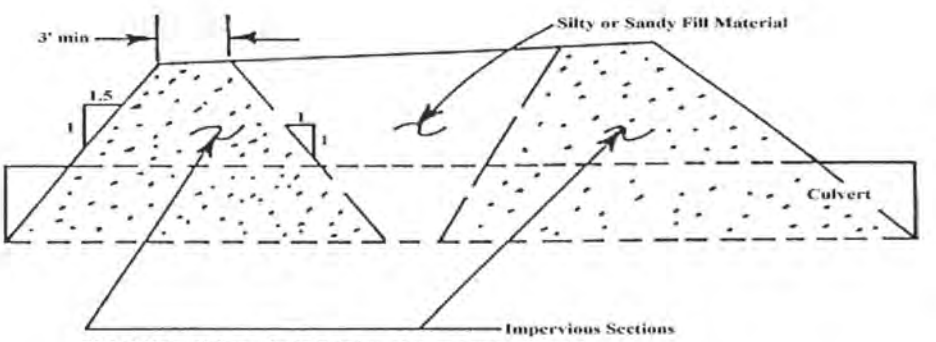
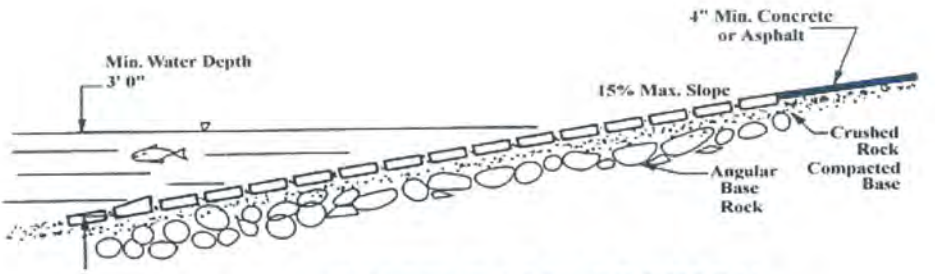



FIGURE 19. Culvert Backfill Using Silty or Sandy Material

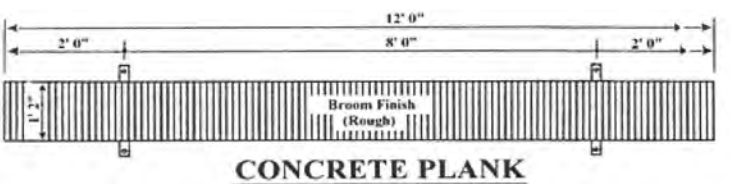
APPENDIX K




**LAUNCH RAMP SECTION**

No Scale
Figure 20

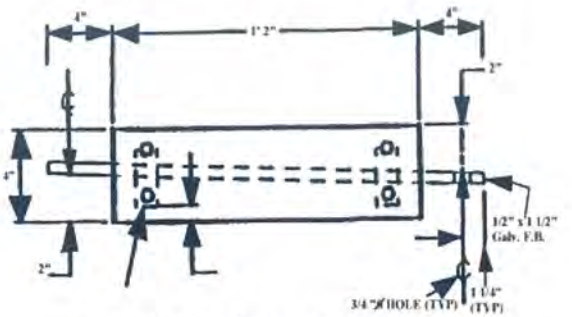
APPENDIX L




**CONCRETE PLANK**

No Scale
Figure 21

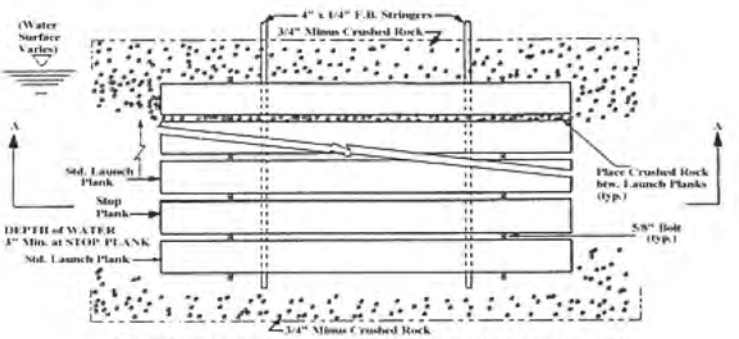
## APPENDIX M




CONCRETE LAUNCH PLANK DETAIL

No Scale
Figure 22

## APPENDIX N




Place crushed rock as shown. Position stringers under planks in order shown and secure with 5/8" bolts. Slide planks on stringers, adding planks as needed, to desired water depth. Stringers consist of 2 - 4" x 1/4" x 20' lng. stl. flat bar w/clevis pin hole one end. Pull flat bar stringers up grade from water when planks are positioned and bolted together, remove when last plank has been set in place.

CONCRETE LAUNCH-PLAN VIEW

Figure 23
No Scale

## APPENDIX O

CONCRETE LAUNCH - CROSS-SECTION

See Scale
Figure 24

State of Idaho
DEPARTMENT OF WATER RESOURCES
322 E Front Street, Suite 648 • PO Box 83720 • Boise ID 83720-0098
Phone: (208) 287-4800 • Fax: (208) 287-6700
Website: idwr.idaho.gov • Email: idwrinfo@idwr.idaho.gov

BRAD LITTLE
Governor

GARY SPACKMAN
Director

May 17, 2019

John Hastings, Jr.
P.O. Box 583
Ketchum, ID 83340

Embassy Auditoriums, Inc.
527 S. Burlingame Ave
Los Angeles, CA 90049-4825

RE: Conditional Approval of Joint Application for Permits (S37-20565) in the matter of Consent Order and Agreement and of Notice of Violation No. E2017-1236
Big Wood River – 1200 Warm Springs Road Restoration

Dear Mr. Hastings:

The Idaho Department of Water Resources (IDWR) has reviewed your above referenced Joint Application for Permit (Application) to alter the Big Wood River and has prepared this conditional approval, pursuant to Section 42-3805, Idaho Code. The conditions set forth below are intended to prevent degradation of water quality, minimize impacts to fish and wildlife habitat, and protect the long-term stability of the stream channel. You may consider this conditional approval letter a permit to construct your project as described below.

**Project Background**
On August 30, 2017, IDWR received from you an Emergency Permit Application to Alter a Stream Channel (Emergency Application) to construct one bank barb and riprap downstream of the barb approximately 75-feet to the Warm Springs Road bridge abutment. The Emergency Application stated that a follow-up Application would be submitted to formalize the emergency work that was completed in late July without IDWR approval. IDWR conducted a site inspection on September 7, 2017, and confirmed that the channel had been altered along the western streambank without a permit from IDWR.

IDWR issued a Notice of Violation and Order to Cease and Desist the Unauthorized Alteration of the Big Wood River (NOV) on September 11, 2017. On October 3, 2017, IDWR held a compliance conference regarding the NOV. On January 26, 2018, a Consent Order and Agreement was signed by you and IDWR outlining the terms of the agreement and order. A term of the COA required a streambank stabilization and restoration plan to be submitted.

IDWR received the Application (S37-20565) dated and received on March 15, 2019 and the final Restoration Plan and Bank Stabilization Project for 1200 Warm Springs Rd., Ketchum, Idaho (Final Plan) dated December 26, 2018. The Application and Final Plan resulting from the

NOV and subsequent COA required a restoration plan to be submitted. The Application and Final Plan fulfills this portion of the COA.

**Proposed Project Components**

The six (6) proposed project components include the following:

1. *Retention and completion of existing riprap.*

   Emergency riprap was placed along approximately 193 feet of streambank during 2017 runoff. The riprap in place appears to be smaller than 18-inch stone and should be further stabilized with vegetative plantings and buried toe protection that will include both riprap and longitudinal cottonwood toe logs.

2. *Continuation of riprap upstream and downstream.*

   It is proposed to extend the riprap 35 feet downstream to protect a large cottonwood tree and 84 feet upstream to the end of the eroded reach. These areas will also be protected using vegetative plantings and buried toe protection that will include both riprap and longitudinal cottonwood toe logs.

3. *Bank barbs*

   Four (4) barbs are proposed that are spaced approximately 50-feet apart, angled approximately 30 degrees upstream, and end 12-feet perpendicularly into flow from the OHWM. The barbs will each include an intact cottonwood log as a core, with a rootball protruding into the flow to provide additional roughness and habitat value. The barbs will be low-height features with the elevation at the bank equal to the OHWM. The barbs will be submerged during ordinary high water and mostly submerged during low flow.

4. *Cottonwood toe logs*

   The bioengineering treatment being proposed to provide streambank stability is to place longitudinal toe logs at the toe of the streambank and should increase the stability of the slope. The cottonwood logs will have an intact root ball to provide additional roughness.

5. *Removal of gravel within the channel*

   The removal of gravel is proposed to aid in shifting the thalweg to the center of the channel to help protect the west streambank. This is needed to meet the legal requirement imposed by FEMA and administered by the City of Ketchum. The depth of removal will range from zero to 1.5 feet and the total estimated volume is 197 cubic yards and 0.18 acres.

6. *Vegetation*

   All disturbed areas will be re-graded to remove equipment tracks and to restore the original grade. Vegetation of the streambank will include native riparian grasses, shrubs, and cottonwood seedlings. Native riparian grasses and wild flowers will be planted within an area approximately 15-feet wide measured landward of the OHWM. The estimated area of seeding is approximately 3,100 square feet. Topsoil will also be spread

within the riprap to allow the seeding to extend down the streambank close to the OHWM. Cottonwood seedlings will be planted along the top of the streambank at an irregular spacing of 20 to 40 feet. Woody riparian shrubs will be planted within the zone approximately 15-feet wide measured landward of the OHWM with a target coverage within this area of approximately 6 shrubs per 1000 square feet. Additional woody shrub plantings will be made at the toe of the protected bank between the cottonwood toe log and the riprap. These planting will be spaced approximately 5 feet apart. Keyways of the barbs will be planted with deep rooting native vegetation with the roots within permanent moisture.

**Conditional Approval of Proposed Project Components**

Consistent with the Stream Channel Alteration Rules, IDAPA 37.03.07 (Rules), approval of the proposed project components is provided as follows, subject to the below Minimum Standards, Special Conditions, and General Conditions:

1. Retention and completion of existing riprap (approved).
2. Continuation of riprap upstream and downstream (approved).
3. Bank barbs (approved).
4. Cottonwood toe logs (approved).
5. Removal of gravel within the channel (approved).
6. Vegetation (approved).

The project location is within Section 12, Township 04 North, Range 17 East, Boise Meridian, Blaine County, Idaho.

Failure to adhere to the conditions as set forth herein may result in an enforcement action pursuant to Section 42-3809, Idaho Code. This project is permitted subject to the following Minimum Standards, Special Conditions, and General Conditions.

**Minimum Standards**

These standards are established in the Administrative Rules of the Idaho Water Resources Board; Stream Channel Alteration Rules, IDAPA 37.03.07 and are enclosed with this permit: Rule 59 – Drop Structures, Sills and Barbs

**Special Conditions**

1. **All construction shall be completed in accordance with the descriptions and methods on the attached Application, Final Plan, and permit special conditions. This office must approve, in writing, any changes prior to construction.**

2. All construction activities shall be conducted in such a manner as to minimize turbidity and comply with Idaho water quality standards. Construction shall take place during low flow to minimize turbidity and protect water quality.

3. Prior to any construction authorized by this permit, written approval to work on property belonging to others shall be obtained in writing and a copy of the approval provided to IDWR.

4. No in-water construction shall occur between March 15 and July 15.

5. Excavated material from the channel (Project Component 5) shall be hauled to an upland location and disposed of properly outside of the floodplain.

6. The removal of gravel from within the channel (Project Component 5) shall occur using an excavator or similar equipment and work from a dry location. Heavy equipment shall not enter the active channel or live water.

7. Construction of streambank stabilization, including toe logs and bank barbs, shall be conducted from the top of the streambank. Heavy equipment shall not enter the channel below the OHWM to construct streambank stabilization treatment (Project Components 1, 2, 3, 4, and 6).

8. Silt fencing or other erosion and sediment control measures shall be installed between any area of earth disturbance and the water. Erosion and sediment control measures shall be installed according to the manufacturer's specifications, during construction, and must be maintained until construction is completed and the disturbed ground is revegetated and stable.

9. All fuel, oil, and other hazardous materials shall be stored and equipment refueled away from the stream channel to ensure that a spill will not enter the waterway. Equipment must be free of fuel and lubricant leaks. The operator shall have spill control materials available at all times during this project. These spill control materials shall include, but not be limited to, fuel and/or oil absorbent booms and absorbent pads. In the event of a release greater than 25 gallons of fuel or oil to the ground or to surface waters, the Idaho State EMS Communications Center, or StateComm, shall be contacted at 1-877-554-3367 or 208-846-7610.

10. Dormant native woody vegetation shall be planted within the streambank stabilization treatment (Project Components 1, 2, 4, 6) at intervals no greater than 5 feet spacing starting from the toe of slope and extending up slope along the top of bank.

11. Permittee shall segregate grasses, forbs, shrubs, and tree plantings to limit competition for nutrients and/or soil moisture, allowing each type of planting optimal success.

12. **Permittee shall submit an annual report to Aaron Golart, IDWR State Coordinator Stream Protection Program, by December 31 of each year for a minimum of 3 years following initial construction. The report shall describe completed measures, including vegetation planted, and shall address each of the Project Components. By the third report, permittee is required to document that at least 80% survival of each vegetation type is achieved in Project Component 6. If unable to do so, then permittee must submit an additional revegetation plan within three (3) months of the third report that will ensure at least 80% success. Additional annual reports are required until at least 80% survival is achieved. IDWR may seek an enforcement action if such survival rate is not achieved five (5) years from the expiration date of this permit.**

13. **Permittee is responsible for all work done by any contractor or sub-contractor. Permittee shall ensure any contractor or sub-contractor who performs the work follows all the terms and conditions of this authorization.**

14. **This permit shall expire March 15, 2020.**

**General Conditions**

1. This permit does not constitute any of the following:
   a) An easement or right-of-way to trespass or work upon property belonging to others;
   b) Other approval that may be required by local, state, or Federal governments, unless specifically stated in the special conditions above;
   c) Responsibility of IDWR for damage to any properties due to work done;
   d) Compliance with the Federal Flood Insurance Program, FEMA regulations, or approval of the local Planning and Zoning authority.

2. In accordance with Sections 55-2201 - 55-2212, Idaho Code, the permittee and/or contractors must contact Digline statewide phone number 1-800-342-1585 (Boise area 208-342-1585) not less than three working days prior to the start of any excavation for this project.

3. The permittee or operator must have a copy of this permit at the alteration site, available for inspection at all times.

4. IDWR may cancel or amend this permit at any time that it determines such action is necessary to minimize adverse impact on the stream channel.

**IDWR is permitting the proposal subject to the above conditions in this permit, and not the entire proposal as submitted. Failure to adhere to conditions as set forth herein can result in an enforcement action pursuant to Section 42-3809, Idaho Code.**

If you object to the decision issuing this permit with the above conditions, you have 15 days in which to notify this office in writing that you request a formal hearing on the matter. If an objection has not been received within 15 days, the decision will be final under the provisions of IDAPA 37.03.07.70 (Rule 70).

Please contact Aaron Golart 208-287-4941 or aaron.golart@idwr.idaho.gov if you have any questions regarding this matter.

Sincerely,

Aaron Golart
State Coordinator
Stream Protection Program

cc: Charles G. Brockway, Brockway Engineering, Twin Falls
Chris Bromley, McHugh Bromley, Boise
Keri York, Trout Unlimited, Hailey
Balthasar Buhidar, Idaho Department of Environmental Quality, Twin Falls
Brittaney Skelton, City of Ketchum
Meribeth Lomkin, Idaho Department of Lands, Jerome
Frank Edelmann, Idaho Department of Fish and Game, Jerome
Robert Brochu, US Army Corps of Engineers, Idaho Falls (NWW-2017-614-I01)

## 059. DROP STRUCTURES, SILLS AND BARBS (RULE 59).

**01. Drop Structures.** A drop structure shall be constructed of rocks, boulders and/or logs placed within a stream channel to act as a low level dam. Placement of a drop structure perpendicular to stream flow will decrease the stream gradient, dissipate stream energy and decrease stream velocity through an increase in water surface elevation immediately above the structure. Drop structures shall comply with the following criteria: (7-1-93)

**a.** Maximum water surface differential across (upstream water surface elevation minus downstream water surface elevation) a drop structure shall not exceed two (2) feet. The department shall approve the final elevation of any structure. (7-1-93)

**b.** Rock drop structures shall be constructed of clean, sound, dense, durable, angular rock fragments, and/or boulders of size and gradation, such that the stream is incapable of moving the material during peak flows. Rocks shall be keyed into the stream banks to minimize the likelihood of bank erosion, (See Figure 8 in APPENDIX H located at the end of this chapter). (7-1-93)

**c.** Log drop structures are acceptable in four (4) designs including the single log dam, the stacked log dam, the three (3) log dam, and the pyramid log dam. Log ends shall be keyed into both banks at least one-third (1/3) of the channel width or a distance sufficient to prevent end erosion. To prevent undercutting, the bottom log shall be imbedded in the stream bed or hardware cloth, cobbles or boulders shall be placed along the upper edge. Minimum log size for a single log structure shall be determined by on-site conditions and shall be placed to maintain flow over the entire log to prevent decay. Each log drop structure must be accompanied by downstream scour protection, such as a rock apron (See Figure 9 in APPENDIX I located at the end of this chapter. (7-1-93)

**d.** All drop structures shall be constructed to facilitate fish passage and centralized scour pool development. (7-1-93)

**02. Sills.** A sill shall be constructed of the same material and in the same manner as a drop structure. The top of the sill may not exceed the elevation of the bottom of the channel. The purpose of a sill is to halt the upstream movement of a headcut, thus precluding the widening or deepening of the existing channel. (See Figure 10 in APPENDIX J located at the end of this chapter). (7-1-93)

**03. Barb or Partial Drop Structure.** A barb or partial drop structure shall be constructed in the same manner and of the same material as a drop structure and placed into the stream channel to act as a low level dam and grade control structure. The barb will decrease stream gradient, dissipate stream energy and redirect stream flow. (7-1-93)

**a.** Barbs shall be constructed of clean, sound, dense, angular rock fragments, of size and gradation such that the stream is incapable of moving the material during peak flows. (7-1-93)

**b.** Barbs shall be constructed with a downstream angle of no less than one hundred (100) degrees and no greater than one hundred thirty-five (135) degrees unless otherwise specified. (7-1-93)

**c.** Barbs shall "extend" into the channel a distance of not more than twenty percent (20%) of the width of the channel unless otherwise specified by the Director. (7-1-93)

**d.** Barbs shall be keyed into the bank a distance equal to or greater than the width of the structure and down to bed level. Whenever moisture is encountered in the construction of the keyways, willow cuttings or clumps shall be placed before and during rock placement in such a manner that the base of the cutting is in permanent moisture and the top extends a minimum of six (6) inches above grade (see Figure 11 in APPENDIX K located at the end of this chapter). (7-1-93)

# JOINT APPLICATION FOR PERMITS

## U.S. ARMY CORPS OF ENGINEERS - IDAHO DEPARTMENT OF WATER RESOURCES - IDAHO DEPARTMENT OF LANDS

***Authorities:*** The Department of Army Corps of Engineers (Corps), Idaho Department of Water Resources (IDWR), and Idaho Department of Lands (IDL) established a joint process for activities impacting jurisdictional waterways that require review and/or approval of both the Corps and State of Idaho. Department of Army permits are required by Section 10 of the Rivers & Harbors Act of 1899 for any structure(s) or work in or affecting navigable waters of the United States and by Section 404 of the Clean Water Act for the discharge of dredged or fill materials into waters of the United States, including adjacent wetlands. State permits are required under the State of Idaho, Stream Protection Act (Title 42, Chapter 38, Idaho Code and Lake Protection Act (Section 58, Chapter 13 et seq., Idaho Code). In addition the information will be used to determine compliance with Section 401 of the Clean Water Act by the appropriate State, Tribal or Federal entity.

***Joint Application:*** Information provided on this application will be used in evaluating the proposed activities. Disclosure of requested information is voluntary. Failure to supply the requested information may delay processing and issuance of the appropriate permit or authorization. **Applicant will need to send a completed application, along with one (1) set of legible, black and white (8½"x11"), reproducible drawings that illustrate the location and character of the proposed project / activities to both the Corps and the State of Idaho.**

***See Instruction Guide*** for assistance with Application. Accurate submission of requested information can prevent delays in reviewing and permitting your application. Drawings including vicinity maps, plan-view and section-view drawings must be submitted on 8-1/2 x 11 papers.

**Do not start work until you have received all required permits from both the Corps and the State of Idaho**

| FOR AGENCY USE ONLY | | | |
|---|---|---|---|
| USACE NWW- | Date Received: | ☐ Incomplete Application Returned | Date Returned: |
| Idaho Department of Water Resources No. S37-20565 | Date Received: 3/15/2019 | ☐ Fee Received DATE: | Receipt No.: |
| Idaho Department of Lands No. | Date Received: | ☐ Fee Received DATE: | Receipt No.: |

**INCOMPLETE APPLICANTS MAY NOT BE PROCESSED**

| 1. CONTACT INFORMATION - APPLICANT Required: | | | 2. CONTACT INFORMATION - AGENT: | | |
|---|---|---|---|---|---|
| Name: John Hastings, Jr. and Embassy Auditoriums, Inc. | | | Name: Charles G. Brockway, P.E. | | |
| Company: P.O. Box 583, Ketchum ID 83340 (Hastings) | | | Company: Brockway Engineering, PLLC | | |
| Mailing Address: 527 S. Burlingame Ave, Los Angeles CA 90049-4825 (Embassy) | | | Mailing Address: 2016 North Washington St, Ste 4 | | |
| City: | State: | Zip Code: | City: Twin Falls | State: ID | Zip Code: 83301 |
| Phone Number *(include area code)*: | E-mail: | | Phone Number *(include area code)*: 208-736-8543 | E-mail: charles.g.brockway@brockwayeng | |

| 3. PROJECT NAME or TITLE: 1200 Warm Springs Restoration | | 4. PROJECT STREET ADDRESS: | | | |
|---|---|---|---|---|---|
| 5. PROJECT COUNTY: Blaine | 6. PROJECT CITY: Ketchum | 7. PROJECT ZIP CODE: 83340 | | | 8. NEAREST WATERWAY/WATERBODY: Big Wood River |
| 9. TAX PARCEL ID#: Tax Lot #8137 and Tax Lot #8138 | 10. LATITUDE: 43.68813 LONGITUDE: -114.37358 | 11a. 1/4: SW | 11b. 1/4: SE | 11c. SECTION: 12 | 11d. TOWNSHIP: 4N / 11e. RANGE: 17E |
| 12a. ESTIMATED START DATE: Sep 1, 2019 | 12b. ESTIMATED END DATE: Dec 31, 2019 | 13a. IS PROJECT LOCATED WITHIN ESTABLISHED TRIBAL RESERVATION BOUNDARIES? ☒ NO ☐ YES Tribe: | | | |
| 13b. IS PROJECT LOCATED IN LISTED ESA AREA? ☒ NO ☐ YES | | 13c. IS PROJECT LOCATED ON/NEAR HISTORICAL SITE? ☒ NO ☐ YES | | | |

14. DIRECTIONS TO PROJECT SITE: Include vicinity map with legible crossroads, street numbers, names, landmarks.

Highway 75 to Ketchum, west on Warm Springs Road, then cross bridge and go north on driveway.

15. PURPOSE and NEED: ☐ Commercial ☐ Industrial ☐ Public ☒ Private ☐ Other

Describe the reason or purpose of your project; include a brief description of the overall project. Continue to Block 16 to detail each work activity and overall project.

This project is a bank stabilization plan to address chronic instability of the west river bank which has caused substantial loss of property during the 2017 flood and in prior high water events.

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16. DETAILED DESCRIPTION OF EACH ACTIVITY WITHIN OVERALL PROJECT. Specifically indicate portions that take place within waters of the United States, including wetlands: Include dimensions; equipment, construction, methods; erosion, sediment and turbidity controls; hydrological changes; general stream/surface water flows, estimated winter/summer flows; borrow sources, disposal locations etc.

The project consists of two main parts: bank protection and gravel removal. Work will be performed in accordance with a plan approved by the Idaho Department of Water Resources entitled "Restoration Plan and Bank Stabilization Project for 1200 Warm Springs, Ketchum, Idaho" dated December 26, 2018 and attached hereto.

Emergency riprap was placed by a contractor during the 2017 event. This riprap will remain in place with additional riprap extending downstream approximately 35' to protect the cottonwood tree and upstream approximately 84' around the historic bridge abutment. The riprap will extend down the bank and be buried to provide toe protection. Longitudinal cottonwood toe logs will also be included with the toe protection.

Bank barbs will also be included for bank protection and to assist with moving the channel thalweg away from the bank. Four barbs spaced at 50 feet are proposed. The barbs will be angled approximately 30 degrees upstream and extend approximately 12 feet perpendicular from the bank.

See Attachment A for information on fill volumes above and below the ordinary high water for each of the above activities.

Vegetation will be included in the bank restoration. Bank areas will be restored with native riparian grasses and shrubs as well as cottonwood seedlings. Woody shrubs will also be planted at the toe of the bank and barb keyways.

Gravel removal will aid in shifting the thalweg towards the center of the channel and is also needed to meet the no rise requirement for the floodway. Approximately 197 CY of gravel removal is planned.

17. DESCRIBE ALTERNATIVES CONSIDERED to AVOID or MEASURES TAKEN to MINIMIZE and/ or COMPENSATE for IMPACTS to WATERS of the UNITED STATES, INCLUDING WETLANDS: See Instruction Guide for specific details.

This alternative is considered to cause the least impact while adequately protecting the property.

Construction will take place during low flows and a turbidity meter will be utilized during construction activities.

18. PROPOSED MITIGATION STATEMENT or PLAN: If you believe a mitigation plan is not needed, provide a statement and your reasoning why a mitigation plan is NOT required. Or, attach a copy of your proposed mitigation plan.

No mitigation plan is needed since the project will cause minimum impacts.

19. TYPE and QUANTITY of MATERIAL(S) to be discharged below the ordinary high water mark and/or wetlands:

| | |
|---|---|
| Dirt or Topsoil: | _____ cubic yards |
| Dredged Material: | _____ cubic yards |
| Clean Sand: | _____ cubic yards |
| Clay: | _____ cubic yards |
| Gravel, Rock, or Stone: | _____ cubic yards |
| Concrete: | _____ cubic yards |
| Other (describe): _____ | _____ cubic yards |
| Other (describe: _____ | _____ cubic yards |
| TOTAL: _____ | cubic yards |

20. TYPE and QUANTITY of impacts to waters of the United States, including wetlands:

| | | | |
|---|---|---|---|
| Filling: | 0.09 acres | 3,808 sq ft. | _____ cubic yards |
| Backfill & Bedding: | _____ acres | _____ sq ft. | _____ cubic yards |
| Land Clearing: | _____ acres | _____ sq ft. | _____ cubic yards |
| Dredging: | _____ acres | _____ sq ft. | _____ cubic yards |
| Flooding: | _____ acres | _____ sq ft. | _____ cubic yards |
| Excavation: | 0.18 acres | 7,638 sq ft | 197 cubic yards |
| Draining: | _____ acres | _____ sq ft. | _____ cubic yards |
| Other: _____ | _____ acres | _____ sq ft. | _____ cubic yards |
| TOTALS: | 0.27 acres | 11,446 sq ft. | 197 cubic yards |



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21. HAVE ANY WORK ACTIVITIES STARTED ON THIS PROJECT? ☐ NO ☒ YES If yes, describe ALL work that has occurred including dates.

Some riprap was placed as emergency bank protection during the 2017 flood event. This riprap will be retained and additional riprap will be placed during construction.

22. LIST ALL PREVIOUSLY ISSUED PERMIT AUTHORIZATIONS:

An emergency permit was issued by the City of Ketchum for riprap placement during the 2017 event.

23. ☐ YES, Alteration(s) are located on Public Trust Lands, Administered by Idaho Department of Lands

24. SIZE AND FLOW CAPACITY OF BRIDGE/CULVERT and DRAINAGE AREA SERVED: n/a Square Miles

25. IS PROJECT LOCATED IN A MAPPED FLOODWAY? ☐ NO ☒ YES If yes, contact the floodplain administrator in the local government jsrisdiction in which the project is located. A Floodplain Development permit and a No-rise Certification may be required.

26a. WATER QUALITY CERTIFICATION: Pursuant to the Clean Water Act, anyone who wishes to discharge dredge or fill material into the waters of the United States, either on private or public property, must obtain a Section 401 Water Quality Certification (WQC) from the appropriate water quality certifying government entity.
*See Instruction Guide for further clarification and all contact information.*

The following information is requested by IDEQ and/or EPA concerning the proposed impacts to water quality and anti-degradation:

☐ NO ☐ YES Is applicant willing to assume that the affected waterbody is high quality?
☐ NO ☐ YES Does applicant have water quality data relevant to determining whether the affected waterbody is high quality or not?
☐ NO ☐ YES Is the applicant willing to collect the data needed to determine whether the affected waterbody is high quality or not?

26b. BEST MANAGEMENT PRACTICTES (BMP's): List the Best Management Practices and describe these practices that you will use to minimize impacts on water quality and anti-degradation of water quality. All feasible alternatives should be considered - treatment or otherwise. Select an alternative which will minimize degrading water quality

Construction will take place during low water. Silt fence or straw wattles will be placed along disturbed banks as necessary.

Through the 401 Certification process, water quality certification will stipulate minimum management practices needed to prevent degradation.

27. LIST EACH IMPACT to stream, river, lake, reservoir, including shoreline: Attach site map with each impact location.

| Activity | Name of Water Body | Intermittent Perennial | Description of Impact and Dimensions | Impact Length Linear Feet |
|---|---|---|---|---|
| Riprap | Big Wood River | Perennial | | 260 |
| Bank Barbs | Big Wood River | Perennial | | 40 |
| Gravel Removal | Big Wood River | Perennial | | 250 |
| | | | | |
| | | | TOTAL STREAM IMPACTS (Linear Feet): | 550 |

28. LIST EACH WETLAND IMPACT include mechanized clearing, fill, excavation, flood, drainage, etc. Attach site map with each impact location.

| Activity | Wetland Type: Emergent, Forested, Scrub/Shrub | Distance to Water Body (linear ft) | Description of Impact Purpose: road crossing, compound, culvert, etc. | Impact Length (acres, square ft linear ft |
|---|---|---|---|---|
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | TOTAL WETLAND IMPACTS (Square Feet): | |



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29. ADJACENT PROPERTY OWNERS NOTIFICATION REQUIREM. Provide contact information of ALL adjacent property owners below.

| | |
|---|---|
| Name: | Name: |
| Mailing Address: | Mailing Address: |
| City: State: Zip Code: | City: State: Zip Code: |
| Phone Number (include area code): E-mail: | Phone Number (include area code): E-mail: |
| Name: | Name: |
| Mailing Address: | Mailing Address: |
| City: State: Zip Code: | City: State: Zip Code: |
| Phone Number (include area code): E-mail: | Phone Number (include area code): E mail |
| Name: | Name: |
| Mailing Address: | Mailing Address: |
| City: State: Zip Code: | City: State: Zip Code: |
| Phone Number (include area code): E-mail: | Phone Number (include area code): E-mail: |
| Name: | Name: |
| Mailing Address | Mailing Address: |
| City: State: Zip Code: | City: State: Zip Code: |
| Phone Number (include area code): E mail: | Phone Number (include area code): E mail: |

30. SIGNATURES: STATEMENT OF AUTHORIAZATION / CERTIFICATION OF AGENT / ACCESS

*Application is hereby made for permit, or permits, to authorize the work described in this application and all supporting documentation. I certify that the information in this application is complete and accurate. I further certify that I possess the authority to undertake the work described herein; or am acting as the duly authorized agent of the applicant (Block 2). I hereby grant the agencies to which this application is made, the right to access/come upon the above-described location(s) to inspect the proposed and completed work/activities.*

*Signature of Applicant:* _____ *Date:* _____

*Signature of Applicant:* _____ *Date:* _____

*Signature of Agent:* _____ *Date:* 3/15/2019

This application must be signed by the person who desires to undertake the proposed activity AND signed by a duly authorized agent (see Block 1, 2, 30). Further, 18 USC Section 1001 provides that: *"Whoever, in any manner within the jurisdiction of any department of the United States knowingly and willfully falsifies, conceals, or covers up any trick, scheme, or disguises a material fact or makes any false, fictitious, or fraudulent statements or representations or makes or uses any false writing or document knowing same to contain any false, fictitious or fraudulent statements or entry, shall be fined not more than $10,000 or imprisoned not more than five years or both".*



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**Attachment A**
**Fill Volume Tabulation**

Gross fill is total volume of fill below OHW and includes volume placed in excavation of existing bed and banks. Net fill is volume above existing contour.

| Activity | Gross fill below OHW ($yd^3$) | Net fill below OHW ($yd^3$) | Total fill material above and below OHW ($yd^3$) |
|---|---|---|---|
| Riprap | 295 | 148* | 424 |
| Bank barbs | 152 | 72 | 172 |
| TOTAL | 447 | 220 | 596 |

*Riprap will be placed as nearly as possible to original bank contour; however, to be very conservative the net fill was assumed to be 50% of the gross.

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**Attachment B**
**Adjacent Ownership Listing (corresponds to red outlined parcels on attached map)**

| Owner1 | Owner2 | Mail_Adrs1 | Mail_Adrs2 |
|---|---|---|---|
| TAYLOR MICHAEL A | TAYLOR RHONDA L TRUSTEE | 7650 SCENIC DR | YAKIMA WA 98908-0000 |
| WHITE DONALD R | WHITE SANDRA WARDE | 412 N KENTER AVE | LOS ANGELES CA 90049-0000 |
| VILLAS AT THE CROSSING | TOWNHOUSE OWNERS ASSN INC | PO BOX 254 | KETCHUM ID 83340-0000 |
| KETCHUM CITY OF | | PO BOX 2315 | KETCHUM ID 83340-0000 |
| LANGSTON CATHERINE | YOUELL GLEN B TRUSTEE | 16530 ROBINSON RD | SNOHOMISH WA 98296-0000 |
| COMMUNITY LIBRARY ASSOC INC* | | PO BOX 2168 | KETCHUM ID 83340-0000 |
| KETCHUM CITY OF | | BOX 2315 | KETCHUM ID 83340-0000 |

* From Blaine Co. assessor information, "ownership" of streambed may be question but notice provided as a courtesy.

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# Restoration Plan and Bank Stabilization Project for 1200 Warm Springs, Ketchum, Idaho

Brockway Engineering, PLLC
Revised December 26, 2018

## A. Overview

This report describes a plan for restoration of streambank and implementation of stabilization measures on a reach of the Big Wood River immediately upstream of Warm Springs Road in Ketchum, Idaho. The plan is intended to satisfy one component of the January 26, 2018 *Consent Order and Agreement* (Consent Order) between a landowner (landowner) and the Idaho Department of Water Resources (IDWR). Responsive to the consent order, the project engineer submitted a restoration plan, dated February 14, 2018, to IDWR. The February 14, 2018 plan was consistent with the Consent Order. That plan was revised on multiple occassions, prior to October 30, 2018, in order to satisfy items expressed by IDWR's representative. Letters, emails, and phone calls that led to revisions to the February 14, 2018 plan are summarized in the first paragraph to the October 30, 2018 plan. The October 30, 2018 plan has similarly been revised through correspondence with IDWR's representative. This plan represents the project engineer's understanding of those requirements.

The property is located in a reach of the Big Wood River that is used by the public for recreation, such as swimming and floating. Due to the property's location, public safety is of utmost concern. Because of public safety, the landowners continue to object to certain elements of the plan; particularly some of the requirements below the ordinary high water level, as well as in close proximity above that level that have been imposed. The elements of this plan reflect the requirements of IDWR after the landowner's concerns and objections were presented. In the interest of complying with the new IDWR requirements, protection of the property, and bringing this matter to a close, the plan is submitted.

In speaking with the IDWR representative about project construction and completion schedule, the IDWR representative stated that acceptable project construction should not be undertaken in the Big Wood River between March 15, 2019 and August 31, 2019 due to the likelihood that vegetation will not properly establish; therefore, landowner will construct the project between September 1, 2019 and December 31, 2019. The proposed completion date of all components of the project is December 31, 2019.

Notwithstanding the Consent Order, a bank stabilization plan is needed to address chronic instability of the west river bank which has caused substantial loss of property, both during the 2017 flood and in prior high water events. In addition, the Warm Springs Road bridge at the lower end of the reach, and Warm Springs Road itself, will be

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threatened if the reach is not stabilized. The land upon which the Warm Springs Road Bridge sits was gifted to the City of Ketchum by the landowners.

The subject reach begins at the upstream abutment of the Warm Springs Road bridge and extends upstream 325 feet. In this reach the river is generally well-defined and confined to its banks even during flood conditions. The water surface width ranges from 42 to 73 feet at ordinary high water conditions. Over time, the channel has developed a pronounced asymmetrical morphology, with the thalweg lying hard against the west bank with shallow flow occurring over gravel bars on the east. Near the lower end of the reach, the thalweg kicks sharply eastward so that the deepest part of the channel upstream of the bridge is on the east side. One reason for the sharp eastward deviation of the thalweg is a large cottonwood tree which has been severely undercut but is still rooted in the bank and acting as a jetty. Saving this cottonwood tree is a prime objective of the project.

One consequence of the channel asymmetry is that new high velocity flow impinges severely on the west bank. Based on the hydraulic modeling (see below), average channel velocities during the 100-year event are very high, ranging from 8.4 ft/s to 11.3 ft/s. Near-bank velocities would likely be 30 to 50% greater than the average channel velocities. During the flood of 2017, the high velocity caused undercutting and failure of the west bank, leading to a loss of land of up to 25 feet. The erosion threatened to cut under the large cottonwood tree, an occurrence which would certainly have threatened the Warm Springs Road bridge abutment. Riprap was placed along a 193-foot length of the west bank, which effectively halted the erosion. Some reclamation of bank was accomplished by this operation, but no bank not existing prior to the 2017 flood was reclaimed. This conclusion was made by reviewing pre-placement and post-placement photographs, as well as a comparison of the topographic survey performed in October 2017 with a prior survey performed in 2014. In some locations, less bank exists now than before the flood.

To assist with the project evaluation and design, a topographic survey by Benchmark Associates was completed. The survey included four cross-sections of the river, bank topography, and a delineation of the riprapped area.

## B. Proposed project

The high-velocity flow against the west bank continues to persist even after the 2017 flood event and placement of the riprap. Given the likelihood of recurrence of west bank instability, and the need to better align the flow to the Warm Springs Road bridge opening and Warm Springs Road, measures are needed to protect the bank and realign the channel thalweg using a combination of bank barbs and channel excavation. In addition to the proposed structural measures the disturbed riparian areas will be improved and vegetated as follows.



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**1. Retention and completion of existing riprap**

Emergency riprap was placed by a contractor during the 2017 high water event consistent with the verbal approval of the City of Ketchum pursuant to its emergency authority. A written emergency permit was issued by the City of Ketchum on July 31, 2017. Based on U. S. Corps of Engineers design procedures with an average channel velocity of 10 ft/s and the prevailing geometric characteristics of the channel, the minimum d30 size should be 18" with a size range from 5" to 32". The riprap in place appears to be mostly smaller than 18" stone, but the above design procedure applies to riprap without any other protection in place. With bank barbs as proposed, velocities against the riprap toe during a flood will be greatly reduced. For example, with only a moderate reduction in velocity to 8 ft/s, the minimum d30 size would be 11" with a size range from 4" to 27". It is concluded that the in-place riprap on the bank should not be removed and replaced, which would be more disturbing to the bank and the river than warranted according to the above analysis. It should be further stabilized with vegetative plantings as described below. Also, additional buried toe protection is warranted as shown on the drawings, which will include both riprap and longitudinal cottonwood toe logs. The bank toe is the most crucial area to protect to reduce the risk of the type of erosion seen in 2017.

**2. Continuation of riprap upstream and downstream**

Riprap placement was halted once the landowner was notified that additional permits were required. It is proposed to extend the riprap 35' downstream to protect the large cottonwood tree, while maintaining the historic beach, and 84' upstream to the upstream end of the eroded reach. This will include the bank around the historic wooden bridge abutment which has experienced erosion. It will also encompass the existing power pole which is extremely close to the water and at risk of failure if further erosion were to occur. The downstream portion will encompass the large cottonwood tree and remedy the severe undercut bank at that location.

**3. Bank barbs**

Four (4) barbs are proposed, spaced at 50 feet, angled at approximately 30° upstream, and extending 12 feet perpendicularly into the flow from the ordinary high water line. According to NRCS and Corps of Engineers guidelines, barbs are an effective method of reducing near-bank velocities, and provide habitat diversity by creating holding locations for aquatic species during high and low flows. These guidelines typically recommend incorporation of woody material in the barb. The barbs as proposed will contain an intact cottonwood log as a core, with a rootball protruding into the flow to provide additional roughness and habitat value; provided, however that the rootball must be well-shaped and relatively compact, without protruding snags or roots that may pose a hazard to the public who use this streatch of the Big Wood River for recreation. If necessary, the rootball will be manually shaped to achieve this goal of public safety. The barbs will be low-height features, with the elevation at the bank equal to the ordinary high water and a sloping top leading to an elevation at the end of 1.5 feet below ordinary high water. The barbs will



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thus be submerged during ordinary high water and mostly submerged during lower flow, creating a hydraulic jump downstream of the barb which will act to dissipate energy. The function of the barbs is multifold:

- Reduce the near-bank velocities, providing additional bank protection beyond the riprap alone.
- Create a pool-and-riffle regime to increase habitat value of this reach.
- Protect the large cottonwood tree at the downstream end of the project reach, which is of great value to the landowner and the local community.
- Protect the west bridge abutment.
- Encourage the thalweg to migrate away from the west bank and become better aligned with the bridge.

**4. Cottonwood toe logs**

Part of the Consent Order requires "large woody material along the streambank (e.g. root wad engineered log jam and brush or tree revetment." The recommended bioengineering treatment for this reach that could provide benefit in the form of increased bank stability is the installation of large cottonwood trees embedded longitudinally at the toe of the riprap. This treatment should increase the stability of the toe, which is the most crucial area. The cottonwood logs will have intact root balls; provided, however that the rootball must be well-shaped and relatively compact, without protruding snags or roots that may pose a hazard to the public who use this streatch of the Big Wood River for recreation. If necessary, the rootball will be manually shaped to achieve this goal of public safety.

**5. Removal of gravel within the channel**

This activity is needed for two reasons. First, it will aid in shifting the thalweg to the center of the channel, which is a major goal of the project to protect the west bank and to provide a straight alignment upstream of the bridge. Second, the removal of gravel is needed to meet the legal requirement to demonstrate no rise in the flood height, a requirement imposed by FEMA and administered by the City of Ketchum for any work within the floodway. See the discussion of the HEC-RAS modeling, below. The depth of removal will range from zero to 1.5 feet in accordance with the attached cross-sections. Total estimated volume of removal is 197 cubic yards, all of which will be transported to upland area for disposal. Total plan area of gravel removal is estimated to be 0.18 acres.

**6. Vegetation**

The riparian area was disturbed during the 2017 riprap placement, and further disturbance will occur when the barbs are placed. All disturbance will be re-graded to remove equipment tracks and restore the original grade. Vegetation of the bank area will include native riparian grass and shrub plantings, and plantings of cottonwood seedlings that are "elk friendly" to ensure wildlife that make their way through the property are not harmed.

a) Native riparian grasses and wild flowers will be planted within a zone approximately 15 feet wide measured landward from the ordinary high water line. Planting will occur by the hydroseed method. The estimated area of grass seeding is 3,100 square feet. Prior to seeding, topsoil will be placed and smoothed. Topsoil will also be spread within the riprap stone to allow the grass seeding to extend down the bank close to the ordinary high water level. This will allow grass to establish amongst the riprap stone, leading to a more appealing appearance in addition to increasing the stability of the riprap. The following seed mix is proposed, each species in equal proportions:

Slender Wheatgrass (*Elymus trachycaulus ssp.*)
Streambank Wheatgrass (*Agropyron riparium*)
Big Bluegrass (*Poa secunda ssp. ampla*)
Sandberg Bluegrass (*Poa secunda ssp. sandbergii*)

b) Cottonwood seedlings will be planted along the top of bank at an irregular spacing of 20 to 40 feet. Species will be Siouxland Cottonwood (*Populus deltoides*).

c) Woody riparian shrubs will be planted within a zone approximately 15 feet wide measured landward from the ordinary high water line. Target coverage within this area (based on mature canopy spread) will be approximately 6 shrubs per 1,000 $ft^2$, for a total of approximately 30 shrubs. Planting will be made in an irregular pattern to simulate natural growth. The following species are proposed, in approximately equal proportions:

Golden currant (*Ribes aureum)*
Woods rose (*Rosa woodsia)*
Black Hawthorne (*Crataegus douglasii*)

Proper establishment of the plantings in this zone will require irrigation. It is expected that the grass will require spray irrigation for two seasons, and thereafter will be sustained by natural precipitation. Tree plantings will be irrigated using a drip system in order to ensure long-term establishment. Some of the irrigation infrastructure is in place, but much washed out or was damaged in the 2017 flood. The irrigation system will be repaired and extended to accomplish the vegetation. Willows were not historically part of this environment, and will not be planted.

d) Woody shrub plantings will be made at the toe of the protected bank between the cottonwood toe log and the riprap. These plantings will be placed at a spacing of approximately 5 feet. This planting is required by the Consent Order even though few species can survive under water and thus the planting regime must be limited to those which are likeliest to survive. Survival cannot be guaranteed, and if the plantings fail, such failure shall not be imputed to the landowner. The following species will be planted at the following proportions:

Redosier dogwood (*Cornus sericea*) – 80%
Water birch (shrub) (*Betula occidentalis*) – 10%
Gray alder (shrub) (Alnus incana) – 10%

The low-growing redosier dogwood is favored, interspersed with the slightly taller water birch and gray alder. Native riparian grasses or sedges, which are favored by the NRCS, may also be placed in this zone at the discretion of the landowner. Willows were not historically part of this environment, and will not be planted.

e) Keyways of barbs will be planted with deep-rooting vegetation situated with roots in permanent moisture. Willows were not historically part of this environment. As a substitute, Redosier dogwood (Cornus sericea) will be used and will be planted as low as possible to increase the moisture contact of the roots.

## C. HEC-RAS Modeling

The proposed project will involve placement of protective structures within the channel of the river, and within the regulatory floodway as established by FEMA. Since encroachment into the floodway will occur, the hydraulic effect of the project must be evaluated and mitigated, if necessary, to ensure that no increase in flood elevation during the 100-year event will occur. This requirement was established by FEMA for the National Flood Insurance Program and is administered by local jurisdictions (the City of Ketchum, in this case).

The cross-sections surveyed in October 2017 were used as the baseline channel geometry. Channel and overbank roughness was set to 0.04 and 0.08, respectively, the same values used in FEMA's effective model. The downstream starting elevation was set equal to the computed 100-year elevation at that point in the FEMA model, or 5814.5 feet. The 100-year discharge 2,880 cfs is the value used by FEMA.

Two post-project models were developed: one with barb placement alone, and the second with barbs plus removal of gravel as mitigation. Barbs were placed at Sections 12, 12.5, and 13. Output from the model as well as channel cross-sections are attached, and a summary is provided in the table below. Zero increase in flood height is predicted to occur with the project.

| Cross Section | River Station (ft) | Existing Conditions (baseline) | | Barbs only | | Barbs + mitigation | |
|---|---|---|---|---|---|---|---|
| | | Water Surface Elev (ft) | Channel velocity (ft/s) | Water Surface Elev (ft) | Channel velocity (ft/s) | Water Surface Elev (ft) | Channel velocity (ft/s) |
| 13 | 1212 | 5816.64 | 8.69 | 5817.05 | 9.04 | 5816.56 | 9.04 |
| 12.5 | 1156.5 | 5816.19 | 8.97 | 5816.63 | 8.96 | 5816.01 | 9.36 |
| 12 | 1101 | 5814.99 | 11.27 | 5815.46 | 11.10 | 5814.88 | 11.16 |
| 11 | 1057 | 5814.68 | 9.28 | 5814.68 | 9.28 | 5814.68 | 9.28 |
| 10 | 1000 | 5814.50 | 8.39 | 5814.50 | 8.39 | 5814.50 | 8.39 |



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## Permit-Level Drawings for Proposed Project



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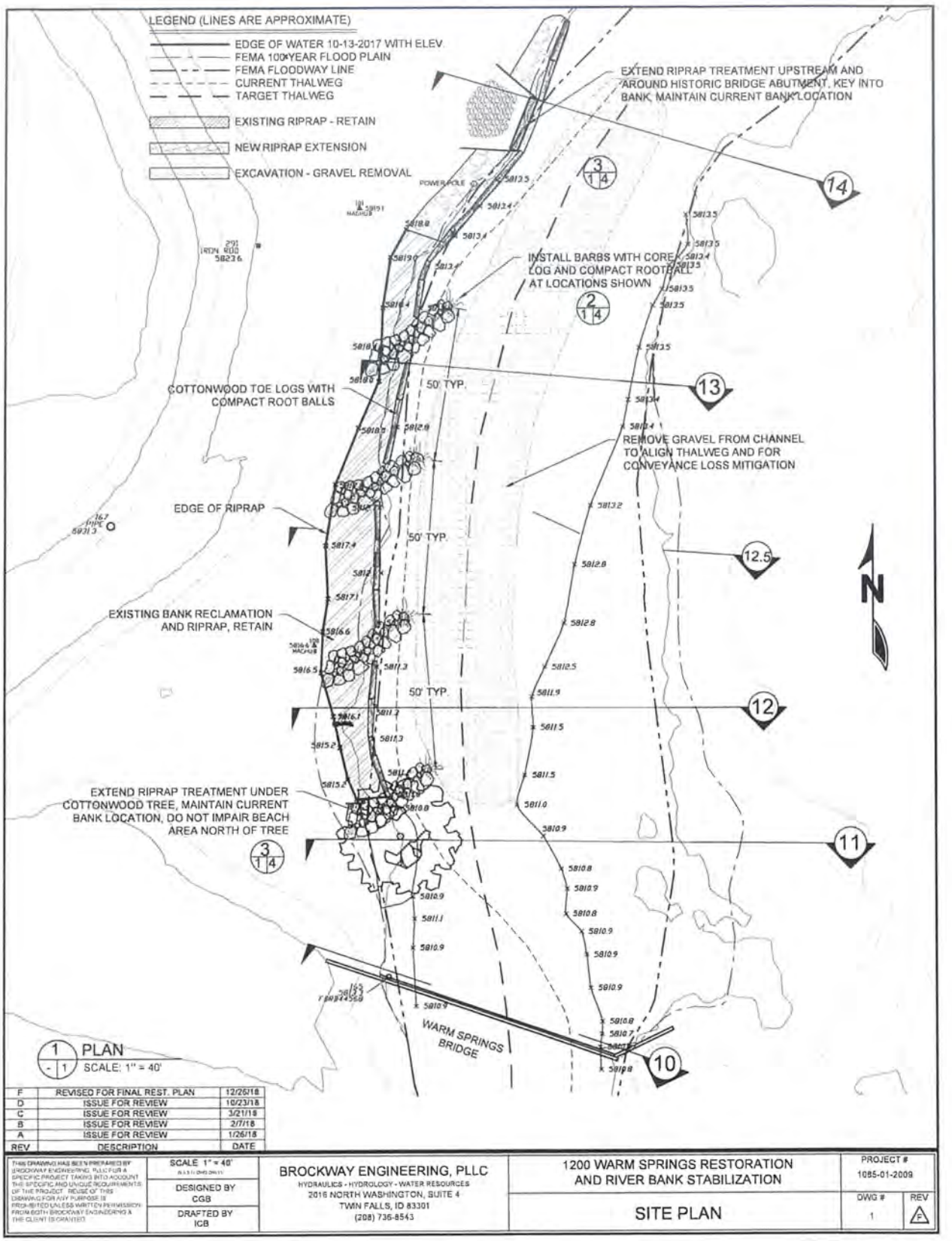


| REV | DESCRIPTION | DATE |
|---|---|---|
| F | REVISED FOR FINAL REST. PLAN | 12/26/18 |
| D | ISSUE FOR REVIEW | 10/23/18 |
| C | ISSUE FOR REVIEW | 3/21/18 |
| B | ISSUE FOR REVIEW | 2/7/18 |
| A | ISSUE FOR REVIEW | 1/26/18 |

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SCALE: 1" = 40'

DESIGNED BY: CGB

DRAFTED BY: ICB

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HYDRAULICS - HYDROLOGY - WATER RESOURCES
2016 NORTH WASHINGTON, SUITE 4
TWIN FALLS, ID 83301
(208) 736-8543

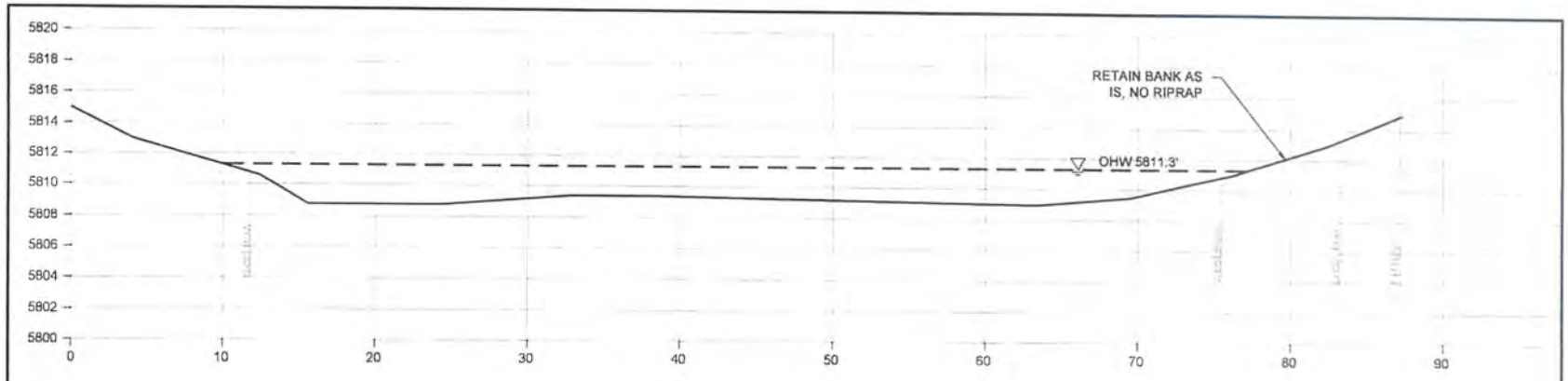
1200 WARM SPRINGS RESTORATION AND RIVER BANK STABILIZATION

SITE PLAN

PROJECT # 1085-01-2009

DWG # 1

REV F




10 SECTION
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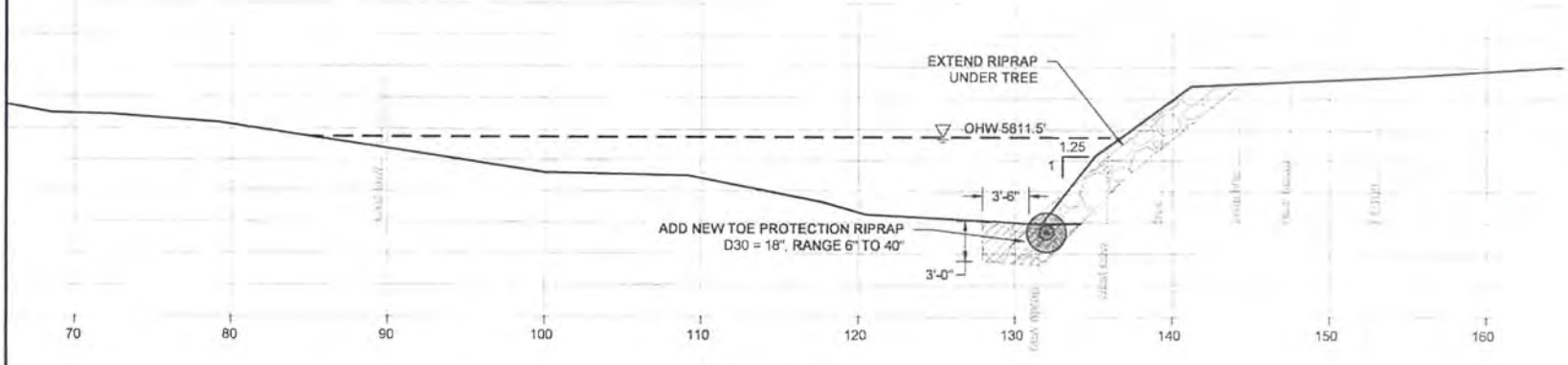


11 SECTION
SCALE: 1" = 10'

1" = 10' (SCALES FOR 8.5 X11 DWGS ONLY)

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DESIGNED BY: CGB
DRAFTED BY: ICB

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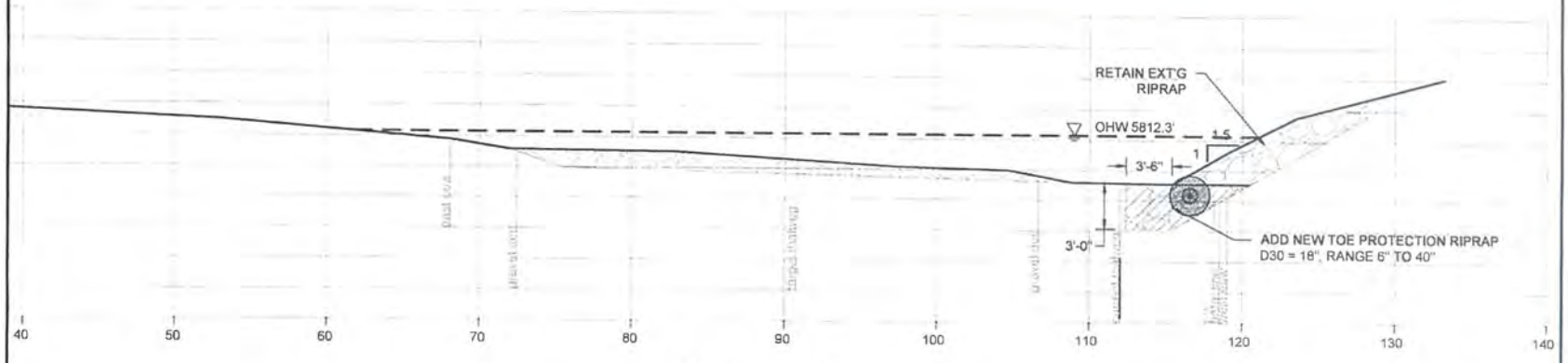
1200 WARM SPRINGS RESTORATION
AND RIVER BANK STABILIZATION

SECTIONS 1

PROJECT # 1085-01-2009
DWG # 2
REV F

SCANNED MAY 17 2019

000528




12 SECTION
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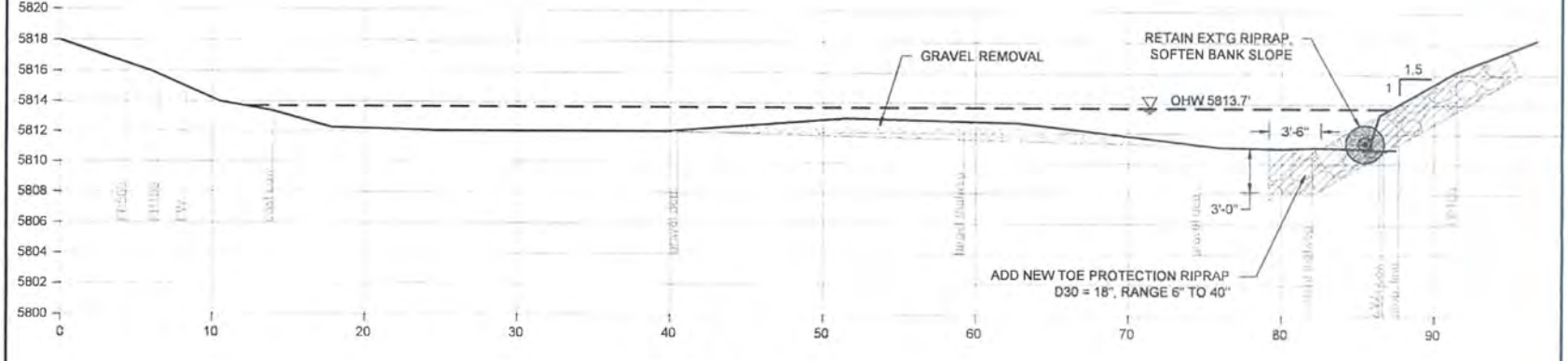


13 SECTION
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1" = 10' (SCALES FOR 8.5 X11 DWGS ONLY)

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1200 WARM SPRINGS RESTORATION AND RIVER BANK STABILIZATION

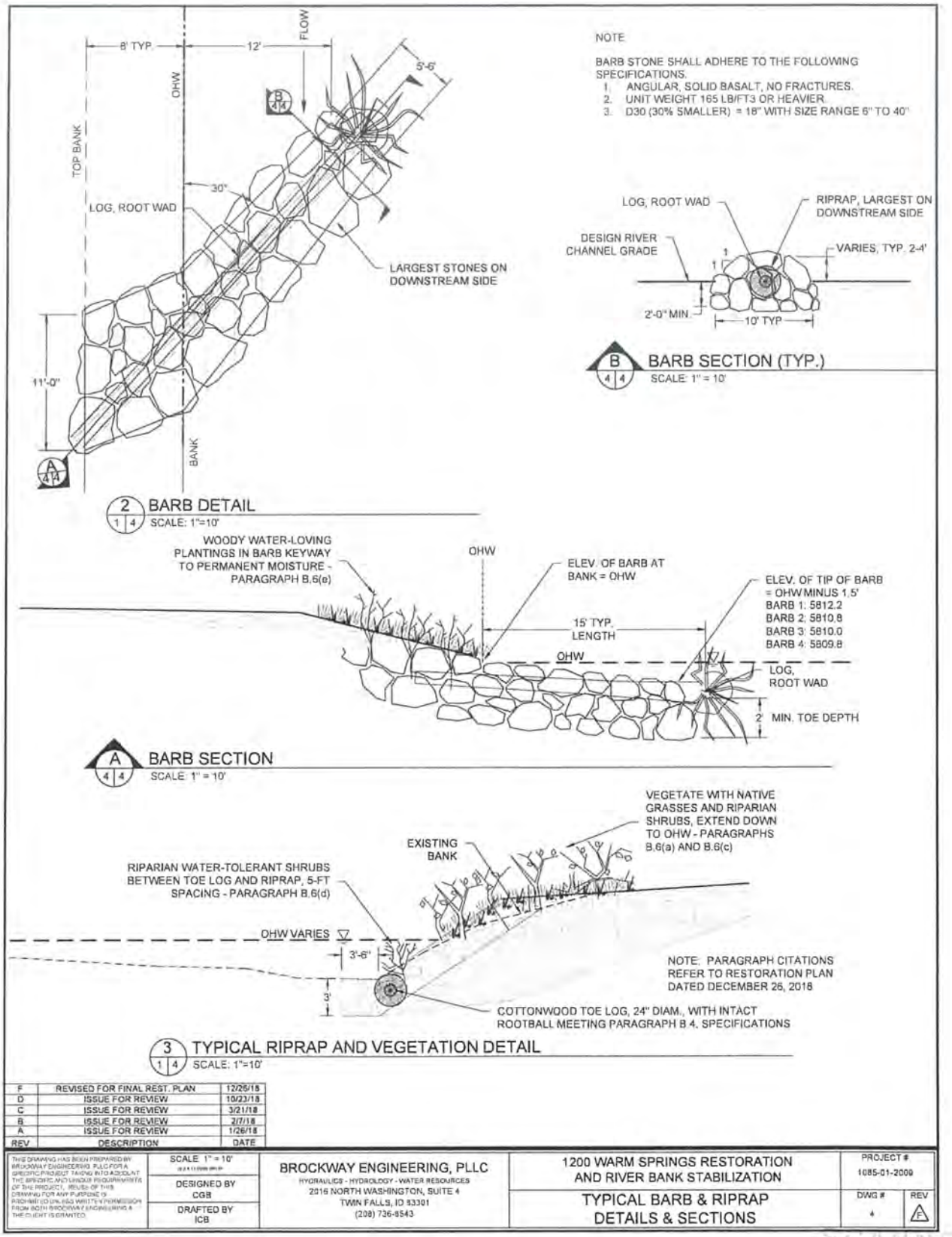
SECTIONS 2

PROJECT # 1085-01-2009

DWG # 3

REV F

000529

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SCALE 1" = 10'

DESIGNED BY CGB

DRAFTED BY ICB

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TWIN FALLS, ID 83301
(208) 736-8543

1200 WARM SPRINGS RESTORATION AND RIVER BANK STABILIZATION

TYPICAL BARB & RIPRAP DETAILS & SECTIONS

PROJECT # 1085-01-2009

DWG # 4

REV F

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## Photos of Project Reach



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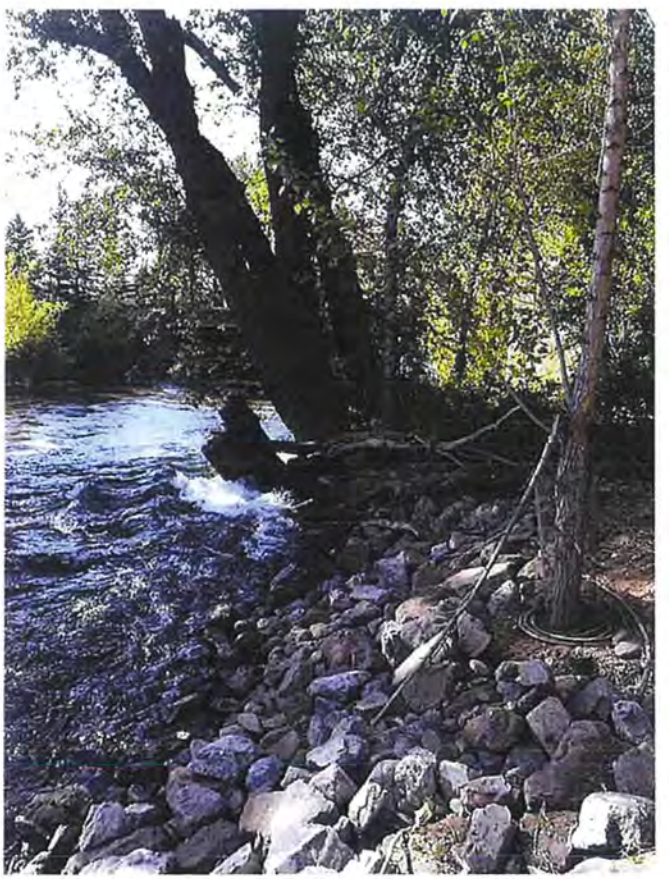
**1200 Warm Springs Restoration Plan – Photo Date August 2, 2017**
River Flow is 233 cfs, ordinary high water level is approximately 0.5 feet above the level on this date.

Looking upstream from near the large cottonwood tree.



Looking downstream at the large cottonwood tree impinged by high-velocity flow

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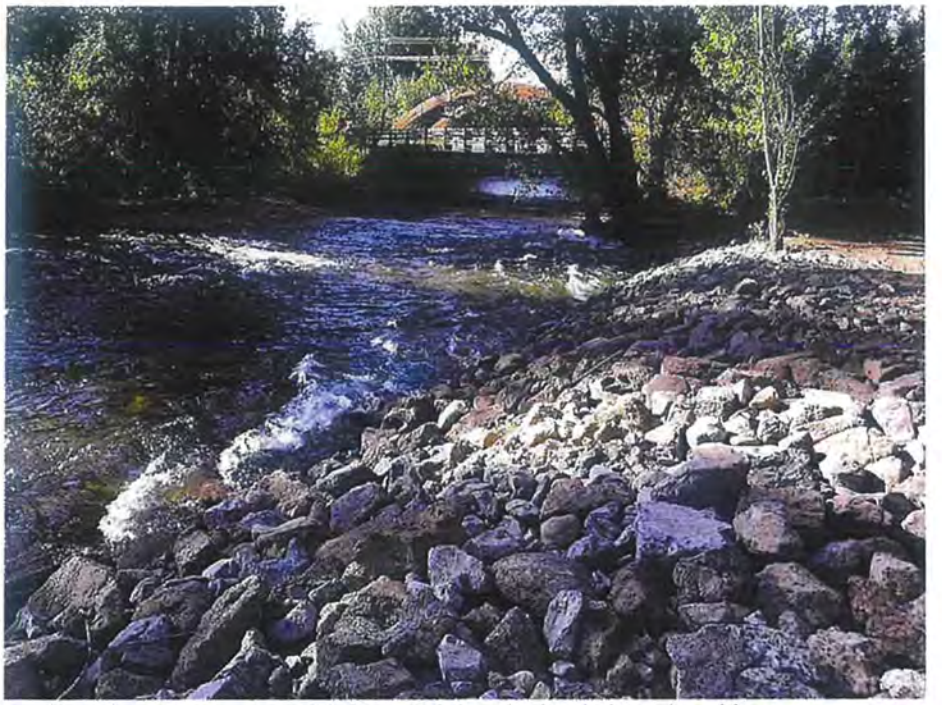

Looking downstream toward bridge. High-velocity thalweg is evident.

Looking downstream showing riprap extent and top of bank.

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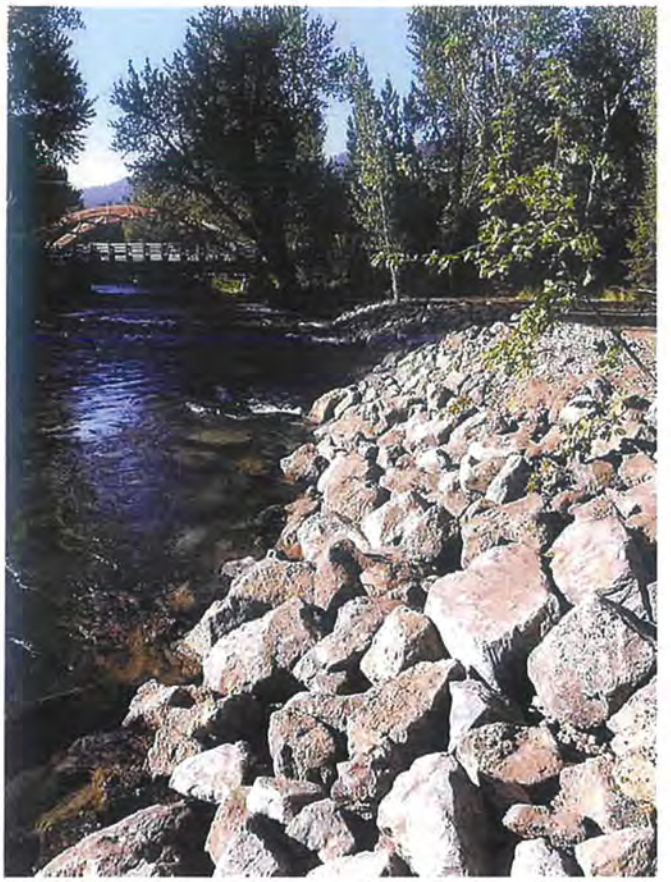

Looking downstream from near the upstream end of riprap.

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## HEC-RAS Model Output and Cross-Sections



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HEC-RAS River: Big Wood Reach: Ketchum Profile: PF 1

| Reach | River Sta | Profile | Plan | Q Total | Min Ch El | W.S. Elev | Crit W.S. | E.G. Elev | E.G. Slope | Vel Chnl | Flow Area | Top Width | Froude # Chl |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | (cfs) | (ft) | (ft) | (ft) | (ft) | (ft/ft) | (ft/s) | (sq ft) | (ft) | |
| Ketchum | 1212 | PF 1 | Existing | 2880.00 | 5811.00 | 5816.64 | | 5817.79 | 0.007606 | 8.69 | 351.96 | 88.43 | 0.72 |
| Ketchum | 1212 | PF 1 | Barbs | 2880.00 | 5811.70 | 5817.05 | | 5818.30 | 0.009502 | 9.04 | 335.67 | 90.75 | 0.79 |
| Ketchum | 1212 | PF 1 | Barbs+Mit | 2880.00 | 5811.30 | 5816.56 | | 5817.81 | 0.009183 | 9.04 | 333.59 | 87.99 | 0.78 |
| Ketchum | 1156.5* | PF 1 | Existing | 2880.00 | 5810.05 | 5816.19 | | 5817.37 | 0.007227 | 8.97 | 376.65 | 101.33 | 0.72 |
| Ketchum | 1156.5* | PF 1 | Barbs | 2880.00 | 5810.80 | 5816.63 | 5815.90 | 5817.79 | 0.008022 | 8.96 | 378.53 | 106.01 | 0.74 |
| Ketchum | 1156.5* | PF 1 | Barbs+Mit | 2880.00 | 5810.50 | 5816.01 | 5815.41 | 5817.30 | 0.008723 | 9.36 | 353.64 | 99.42 | 0.77 |
| Ketchum | 1101 | PF 1 | Existing | 2880.00 | 5809.10 | 5814.99 | 5814.99 | 5816.79 | 0.012428 | 11.27 | 323.18 | 105.21 | 0.93 |
| Ketchum | 1101 | PF 1 | Barbs | 2880.00 | 5810.10 | 5815.46 | 5815.46 | 5817.16 | 0.013873 | 11.10 | 333.33 | 112.03 | 0.96 |
| Ketchum | 1101 | PF 1 | Barbs+Mit | 2880.00 | 5809.50 | 5814.88 | 5814.88 | 5816.67 | 0.012780 | 11.16 | 317.32 | 104.04 | 0.93 |
| Ketchum | 1057 | PF 1 | Existing | 2880.00 | 5805.90 | 5814.68 | | 5815.95 | 0.005566 | 9.28 | 368.72 | 85.65 | 0.64 |
| Ketchum | 1057 | PF 1 | Barbs | 2880.00 | 5805.90 | 5814.68 | | 5815.95 | 0.005566 | 9.28 | 368.72 | 85.65 | 0.64 |
| Ketchum | 1057 | PF 1 | Barbs+Mit | 2880.00 | 5805.90 | 5814.68 | | 5815.95 | 0.005566 | 9.28 | 368.72 | 85.65 | 0.64 |
| Ketchum | 1000 | PF 1 | Existing | 2880.00 | 5808.80 | 5814.50 | 5813.28 | 5815.56 | 0.005727 | 8.39 | 375.26 | 85.05 | 0.65 |
| Ketchum | 1000 | PF 1 | Barbs | 2880.00 | 5808.80 | 5814.50 | 5813.28 | 5815.56 | 0.005727 | 8.39 | 375.26 | 85.05 | 0.65 |
| Ketchum | 1000 | PF 1 | Barbs+Mit | 2880.00 | 5808.80 | 5814.50 | 5813.28 | 5815.56 | 0.005727 | 8.39 | 375.26 | 85.05 | 0.65 |

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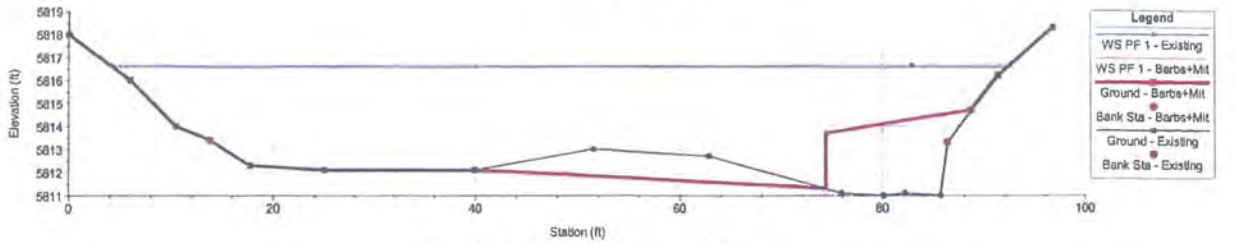
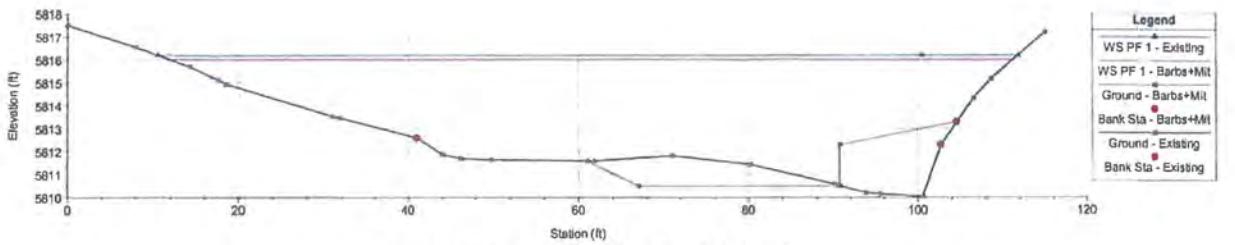
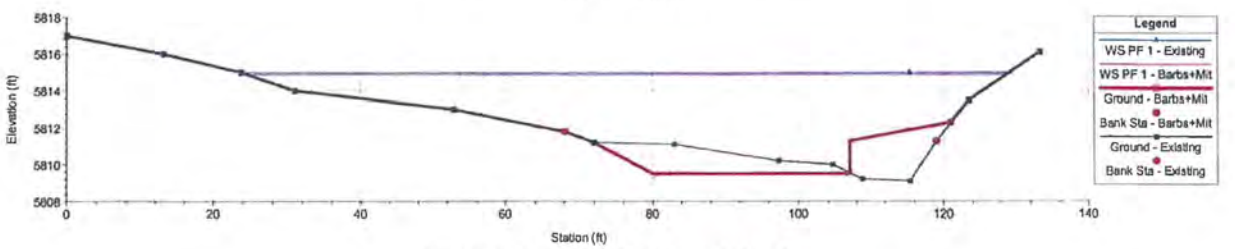
Hastings2018 Plan: 1) Existing 2) Barbs+Mit
RS = 1212 Section 13



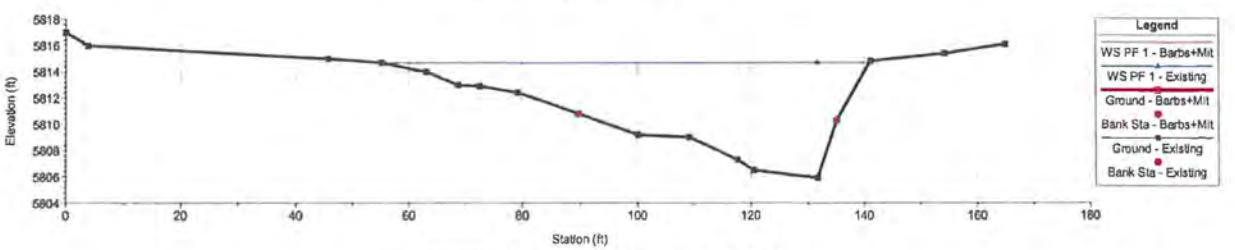

Hastings2018 Plan: 1) Existing 2) Barbs+Mit
RS = 1156.5* Section 12.5 Interpolated



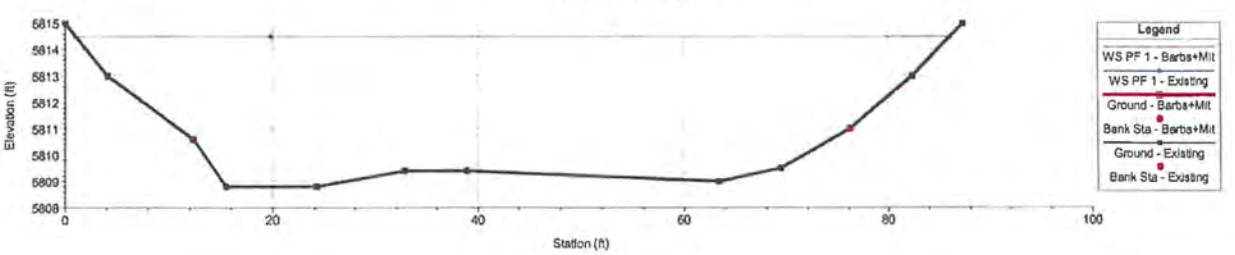

Hastings2018 Plan: 1) Existing 2) Barbs+Mit
RS = 1101 Section 12




Hastings2018 Plan: 1) Existing 2) Barbs+Mit
RS = 1057 Section 11




Hastings2018 Plan: 1) Existing 2) Barbs+Mit
RS = 1000 US of bridge



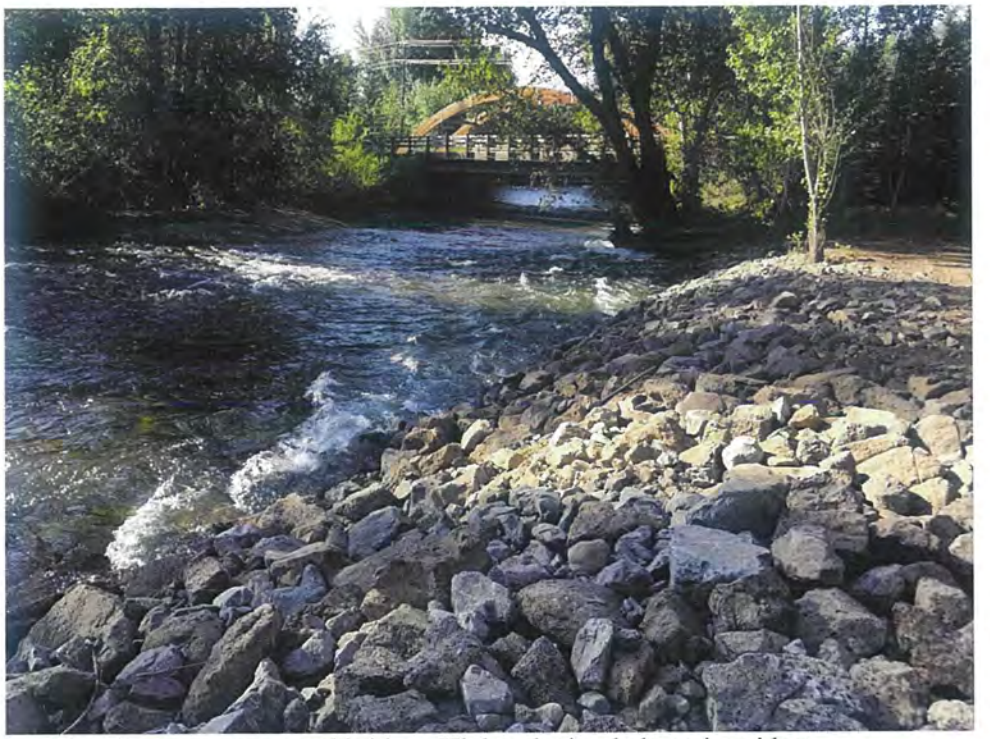

SCANNED
MAY 17 2019

## Photos of Project Reach

**1200 Warm Springs Restoration Plan – Photo Date August 2, 2017**
River Flow is 233 cfs, ordinary high water level is approximately 0.5 feet above the level on this date.

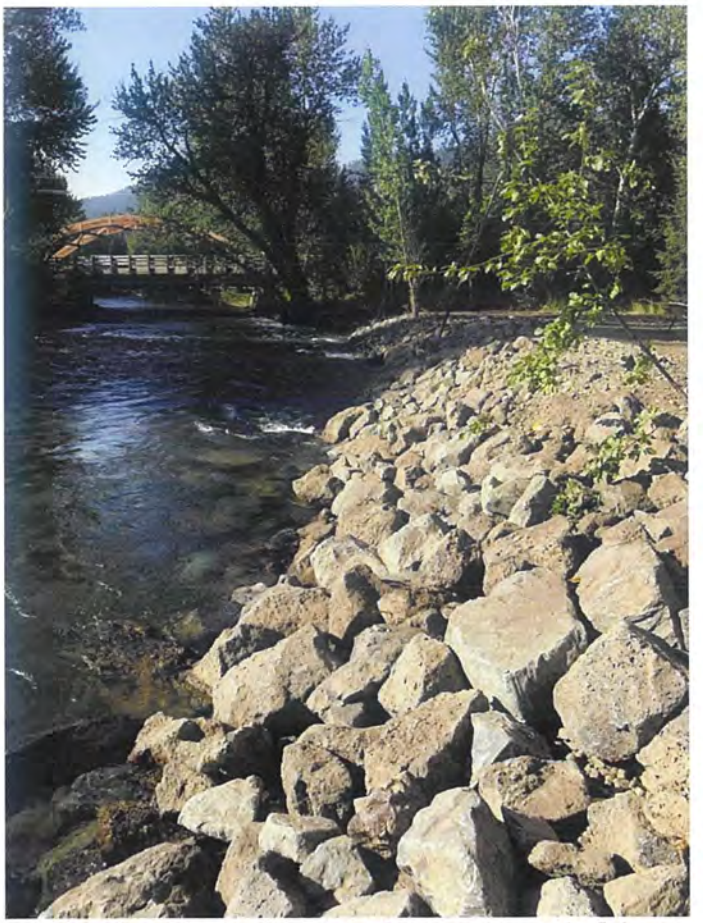
Looking upstream from near the large cottonwood tree.

Looking downstream at the large cottonwood tree impinged by high-velocity flow



Looking downstream toward bridge. High-velocity thalweg is evident.

Looking downstream showing riprap extent and top of bank.



Looking downstream from near the upstream end of riprap.

RECEIVED
Oct 20, 2025
DEPARTMENT OF
WATER RESOURCES

**RAÚL R. LABRADOR**
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*Attorneys for the Idaho Department of Water Resources*

**BEFORE THE IDAHO WATER RESOURCE BOARD**

| | |
|---|---|
| IN THE MATTER OF APPLICATION FOR STREAM CHANNEL ALTERATION PERMIT NO. S37-20565 | **DEPARTMENT'S MOTION FOR SUMMARY JUDGMENT** |

The Idaho Department of Water Resources, through its counsel of record, moves for summary judgment pursuant to IDAPA 37.01.01.220.03, Idaho Rules of Civil Procedure 56, and the Hearing Officer's *Amended Scheduling Order and Notice of Hearing* (June 5, 2025). This motion is supported by the contemporaneously filed *Memorandum in Support of Motion for Summary Judgment*.

DATED October 20, 2025.

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL

MEGHAN M. CARTER
Deputy Attorney General
Idaho Department of Water Resources

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on October 20, 2025, I served a true and correct copy of the above and foregoing via the method indicated below, upon the following:

| | |
|---|---|
| **J. KAHLE BECKER**<br>Attorney at Law<br>223 N. 6th St., Suite 325<br>Boise, ID 83702<br>kahle@kahlebeckerlaw.com<br><br>*Attorney for Petitioner John Hastings* | ☐ U.S. Mail, postage prepaid<br>☐ Hand Delivery<br>☐ Overnight Mail<br>☒ Email |
| **IDAHO WATER RESOURCE BOARD**<br>file@idwr.idaho.gov<br><br>Roger S. Burdick<br>*Hearing Officer*<br>roburd47@gmail.com | ☐ U.S. Mail, postage prepaid<br>☐ Hand Delivery<br>☐ Overnight Mail<br>☒ Email |

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Oct 20, 2025
DEPARTMENT OF
WATER RESOURCES

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**BEFORE THE IDAHO WATER RESOURCE BOARD**

| | |
|---|---|
| IN THE MATTER OF APPLICATION FOR STREAM CHANNEL ALTERATION PERMIT NO. S37-20565 | **DEPARTMENT'S MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT** |

The Idaho Department of Water Resources ("Department"), through its counsel of record, submits the following *Memorandum in Support of Motion for Summary Judgment* pursuant to Rule 220.03 of the Department's Rules of Procedure (IDAPA 37.01.01), I.R.C.P 56, and the Hearing Officer's *Amended Scheduling Order and Notice of Hearing* (June 5, 2025) ("*Scheduling Order*") against John Hastings Jr. ("Hastings").

## INTRODUCTION

The sole issue in this proceeding turns on a single question: "Are conditions on the Permit consistent with the requirements set forth in the Consent Order." *Scheduling Order*, at 2. Hastings and the Department entered into a *Consent Order and Agreement* ("*Consent Order*") to resolve Hastings' violation of the Alteration of Channels of Streams Act, Title 42, Chapter 38, Idaho Code ("Stream Protection Act"). The *Consent Order* outlined requirements for Hastings, namely that he submit a stream channel alteration application with approved restoration plan and comply with the

terms and conditions of any subsequent stream channel alteration permit. The *Consent Order* also listed minimum requirements for the restoration plan. The *Consent Order* did not specify what conditions the Department would or could put on the permit. Therefore, the permit conditions issued by the Department cannot be inconsistent with the plain language of the *Consent Order*.

**STATEMENT OF UNDISPUTED FACTS**

1. On September 11, 2017, the Department issued a *Notice of Violation and Order to Cease and Desist the Unauthorized Alteration of the Big Wood River* ("*Hastings NOV*") to Hastings and Embassy Auditoriums, Inc. pursuant to Idaho Code § 42-1701B. The Department notified Hastings that the removal of riparian vegetation and discharge of fill material below the mean high water mark of the Big Wood River was unauthorized. *Hastings NOV*, at 1.

2. On January 26, 2018, the Department and Hastings entered into the *Consent Order* with terms to resolve the *Hastings NOV*. *Consent Order*, at 3.

3. The first two terms of the *Consent Order* are relevant here:

> 1) By February 15, 2018, Respondent shall pay a civil penalty in the amount of $10,000 and submit a Joint Application for Permit ("application") to the Department that proposes a plan to restore the streambank at the subject lands. The restoration plan must be designed to reduce further erosion and help restore more functional riverine conditions and include the following minimum requirements:
>    a. bioengineering treatments to incorporate large woody material along the streambank (e.g. root wad engineered logjam and brush or tree revetment)
>    b. a planting plan to help re-establish a native riparian buffer between the Big Wood River and the upland parcel at the subject lands.
> 2) Respondent shall comply with the terms and conditions of any permit the Department issues subsequent to the submittal of an acceptable application and restoration plan pursuant to Order paragraph no. 1.

*Id.* at 2.

4. On March 15, 2019, the Department received Hastings' stream channel alteration *Joint Application for Permits* ("*Application*") with the December 26, 2018 *Revised Restoration Plan and Bank Stabilization Project for 1200 Warm Springs, Ketchum, Idaho ("Final Restoration Plan*") attached. *Application* at 1.

5. On May 17, 2019, the Department issued the *Conditional Approval of Joint Application for Permits (S37-20565) in the Matter of Consent Order and Agreement and of Notice of Violation No. E2017-1236 Big Wood River – 1200 Warm Springs Road Restoration* ("*Permit*") approving the *Application* with conditions. The *Permit* concluded that the *Application* and contemporaneously filed *Final Restoration Plan* satisfies that portion of the *Consent Order* that "required a streambank stabilization and restoration plan to be submitted." *Permit*, at 1–2.

6. The Department issued the *Permit* with special and general conditions. *Id.* at 3–5.

7. On May 23, 2019, Hastings filed a *Petition for Hearing* ("*Petition*") on the issued *Permit*, asserting that "[c]ertain requirements contained in the [*Permit*] are inconsistent with the Consent Order and the agreement that led to the filing of the Restoration Plan." *Petition*, at 2.

**STANDARD OF REVIEW**

A movant is entitled to summary judgment "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." I.R.C.P. 56(a). To support its factual assertions made in the motion, the movant must "cite particular materials in the record" or show that the cited materials "do not establish the . . . presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact[s]." *Vaughan v. Gateway Parks, LLC*, 573 P.3d 142, 144 (Idaho 2025) (quoting IRCP 56(c)(1)(B)).

For purposes of summary judgment, "[a] mere scintilla of evidence or only slight doubt as to the facts is not sufficient to create a genuine issue of material fact." *Milus v. Sun Valley Co.*, 571 P.3d 408, 413 (Idaho 2025) (quoting *Finholt v. Cresto*, 143 Idaho 894, 897, 155 P.3d 695, 698 (2007)). "All disputed facts are to be construed liberally in favor of the non-moving party, and all reasonable inferences that can be drawn from the record are to be drawn in favor of the non-moving party." *Id.* (quoting *Manning v. Micron Tech., Inc.*, 170 Idaho 8, 12, 506 P.3d 244, 248 (2022)). "If the evidence reveals no disputed issues of material fact, then only a question of law remains . . . ." *Id.* (quoting *Arambarri v. Armstrong*, 152 Idaho 734, 738, 274 P.3d 1249, 1253 (2012)).

**ARGUMENT**

The sole issue for hearing in this matter is: "Are conditions on the Permit consistent with the requirements set forth in the Consent Order?" *Scheduling Order*, at 2. This matter can be resolved on summary judgment because determining whether the conditions on the *Permit* are consistent with the requirements in the *Consent Order* is a matter of contractual interpretation, which is a question of law. *Phillips v. Gomez*, 162 Idaho 803, 807, 405 P.3d 588, 592 (2017).

Interpreting a contract begins with determining whether the document's language is ambiguous or not. *Id.* A document is ambiguous if "there are two different reasonable interpretations or the language is nonsensical." *Id.* (quoting *Potlatch Educ. Ass'n v. Potlatch Sch. Dist. No. 285*, 148 Idaho 630, 633, 226 P.3d 1277, 1280 (2010)). Here, the *Consent Order* is not ambiguous.[1] "In the absence of ambiguity, the document must be construed in its plain, ordinary and proper sense, according to the meaning derived from the plain wording of the instrument . . . ." *Id.* (quoting *Potlach*, *285*, 148 Idaho at 633, 226 P.3d at 1280).

[1] The *Consent Order* was considered by Idaho Supreme Court in *Hastings v. Idaho Dep't of Water Res*., 173 Idaho 704, 547 P.3d 1190 (2024). While the Court in *Hastings* was focused on a different term of the *Consent Order* than is at issue in this proceeding, the Court did not find the *Consent Order* to be ambiguous.

The first term in the *Consent Order* required Hastings to "submit a Joint Application for Permit ("application") to the Department that proposes a plan to restore the streambank. . . ." *Consent Order*, at 2. The restoration plan was required to be designed to include minimum requirements "to reduce further erosion and help restore more functional riverine conditions." *Id.* Those minimum requirements include (a) adding bioengineering treatments by incorporating large woody material, and (b) incorporating a planting plan to reestablish native riparian habitat. *Id.* This term provides requirements that Hastings had to meet, not limitations on the Department when processing Hastings' *Application*.

The second term in the *Consent Order* stated that Hastings "shall comply with the terms and conditions of any permit the Department issues subsequent to the submittal of an acceptable application and restoration plan pursuant to Order paragraph no. 1." *Id.* This language recognizes the regulatory framework that the Department must follow when processing applications for a stream channel alteration permit. The Department evaluates an application and its supporting materials based on the minimum standards set forth in the Stream Channel Alteration Rules, IDAPA 37.03.07.[2] After evaluating an application and its supporting materials, the Director shall issue a "decision approving the application in whole or in part or upon conditions, or rejecting the application." I.C. § 42-3805. Without knowing the specifics of the *Application*, the Department would not have known what terms and conditions would be necessary to include in an approved stream channel alteration permit. Instead, the *Consent Order* simply required that Hastings comply with the terms and conditions imposed by the Department in any issued stream channel alteration permit.

[2] At the time the *Permit* was issued, the Department relied on the then in-effect stream channel alteration rules from 1993. However, the most recent version is from 2022.

Hastings satisfied the portion of the *Consent Order* requiring him to submit an application for a stream channel alteration permit and an approvable restoration plan to the Department. *See Permit*, at 1–2. However, simply submitting an application did not guarantee that Hastings' *Application* would be approved without conditions. Accordingly, the Department evaluated the materials submitted by Hastings to decide whether to approve, deny, or conditionally approve the application for a stream channel alteration permit. Following its review of the *Application*, the Department approved the *Permit* subject to several special and general conditions.

The *Consent Order* outlined requirements that Hastings had to follow to resolve his violation of the Stream Protection Act: (1) submit an application for permit with an approvable restoration plan, and (2) comply with the terms and conditions of any permit the Department issues as a result of the application. The *Consent Order* did not specify which conditions would appear on the eventual permit. Accordingly, the Department is entitled to summary judgment as a matter of law, as the conditions on the *Permit* are consistent with the terms in the *Consent Order*.

## CONCLUSION

The Department asks the Hearing Officer to grant its *Motion for Summary Judgment* because the conditions on the issued stream channel alteration permit are consistent with the terms in the *Consent Order*.

DATED October 20, 2025.

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL

MEGHAN M. CARTER
Deputy Attorney General
Idaho Department of Water Resources

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on October 20, 2025, I served a true and correct copy of the above and foregoing via the method indicated below, upon the following:

| | |
|---|---|
| **J. KAHLE BECKER**<br>Attorney at Law<br>223 N. 6th St., Suite 325<br>Boise, ID 83702<br>kahle@kahlebeckerlaw.com<br><br>*Attorney for Petitioner John Hastings* | ☐ U.S. Mail, postage prepaid<br>☐ Hand Delivery<br>☐ Overnight Mail<br>☒ Email |
| **IDAHO WATER RESOURCE BOARD**<br>file@idwr.idaho.gov<br><br>Roger S. Burdick<br>*Hearing Officer*<br>roburd47@gmail.com | ☐ U.S. Mail, postage prepaid<br>☐ Hand Delivery<br>☐ Overnight Mail<br>☒ Email |

MEGHAN M. CARTER
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Idaho Department of Water Resources

RECEIVED
Oct 30, 2025
DEPARTMENT OF
WATER RESOURCES

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Attorney for Petitioner

**BEFORE THE WATER RESOURCES BOARD**
**OF THE STATE OF IDAHO**

| | |
|---|---|
| IN THE MATTER OF APPLICATION FOR STREAM CHANNEL ALTERATION PERMIT NO. S37-20565 | PETITIONER'S RESPONSE TO IDWR'S MOTION FOR SUMMARY JUDGMENT |

COMES NOW Petitioner, John Hastings by and through his attorney of record, J. Kahle Becker, IDWR having filed a Motion for Summary Judgment pursuant to IDAPA 37.01.01.220.03 and IRCP 56, and submits his Brief in Opposition thereto as follows.

## INTRODUCTION

IDWR seeks summary judgment based on its contention that it has faithfully applied the laws and administrative rules applicable to it in preparing the Permit at issue herein:

> The second term in the *Consent Order* stated that Hastings "shall comply with the terms and conditions of any permit the Department issues subsequent to the submittal of an acceptable application and restoration plan pursuant to Order paragraph no. 1." *Id.* **This language recognizes the regulatory framework that the Department must follow when processing applications for a stream channel alteration permit**. The Department evaluates an application and its supporting materials based on the minimum standards set forth in the Stream Channel Alteration Rules, IDAPA 37.03.07. *Department's Memorandum in Support of Motion for Summary Judgment at 5.*[1]

[1] This position is consistent with IDWR's testimony at its 30(b)(6) deposition in this matter. Exhibit C to *Declaration of Counsel in Support of Petitioner's Motion for Summary Judgment* at pp. 57.

To a large extent, the Department's *Motion for Summary Judgment* is a mirror image of Petitioner's *Motion for Summary Judgment*, which was filed simultaneously. Specifically, Petitioner contends the Department has placed onerous conditions in its Permit which are not based on any statutory or regulatory authority and which diverge from the terms of the Consent Order. The Department now admits in its briefing that the conditions it placed in the Permit must be 1) based on the terms of the Consent Order and 2) grounded in its statutory authority and regulations promulgated pursuant thereto. Thus the Hearing Officer is presented with simple questions, where in rule or statute does it say that Petitioner must agree to indemnify a third party or perform additional restoration activities on structures which already comply with administrative rules?

Notably, the Department's Motion does not cite to a single Rule which it claims supports its assertion that, by including onerous conditions in the Permit, it is merely requiring Petitioner to comply with minimum standards set forth in (unspecified) rules and laws. In practice, the Department appears to contend it has broad authority to impose its will upon Petitioner (identified as "Respondent" in the Consent Order) by mandating:

> 2) Respondent **shall comply with the terms and conditions of any permit** the Department issues subsequent to the submittal of an acceptable application and restoration plan pursuant to Order paragraph no. 1. *Consent Order*.

The Department's position, if taken to its logical conclusion, would mean that if the Department issued a permit which mandated Petitioner construct the Golden Gate Bridge to replace the Warm Springs Bridge, Petitioner would need to comply – despite the lack of any mention of a massive bridge construction project in the Consent Order. The Department's position injects an ambiguity into the Consent Order with respect to

what terms and conditions Petitioner must comply with. "Ambiguities in a contract of adhesion should be construed against the drafter." *Fannie Mae v. Hafer*, 158 Idaho 694, 702, 351 P.3d 622, 630 (2015) ; *Guzman v. Piercy*, 155 Idaho 928, 936, 318 P.3d 918, 926 (2014) ("The Court construes a stipulation against the drafter."). *Trumble v. Farm Bureau Mut. Ins. Co*., 166 Idaho 132, 142, 456 P.3d 201, 211, 2019 Ida. LEXIS 231, *16-17, 2019 U.S.P.Q.2D (BNA) 481508, 2019 WL 6870935. IDWR was undeniably the drafter of the Consent Order which it forced Petitioner to sign under threat of criminal prosecution. Furthermore, IDWR has now clarified this ambiguity by stating its position that conditions it seeks to impose on Petitioner must be grounded in statute or rule.

Here, the terms of the contract only contemplate 2 actions by Petitioner, the completion and reasonableness of which remain disputed material issues of fact (*See* IRCP 56(a)):

> The restoration plan must be designed to reduce further erosion and help restore more functional riverine conditions and include the following minimum requirements:
> a. bioengineering treatments to incorporate large woody material along the streambank (e.g. root wad engineered log jam and brush or tree revetment)
> b. a planting plan to help re-establish a native riparian buffer between the Big Wood River and the upland parcel at the subject lands. (Consent Order).

Petitioner contends he has complied with the plain language of the Consent Order, as well as applicable administrative rules and statutes, to the greatest extent he is able to do so, based on conditions as they presently exist on the ground and under applicable law. *Affidavit of John Hastings in Support of Petitioner's Motion for Summary Judgment* at ¶ 3 & 4. Therefore, Petitioner incorporates by reference his *Brief in Support of Motion*

*for Summary Judgment*[2] and the materials cited therein for purposes of responding to the Department's *Motion*.

At his deposition, Mr. Golart confirmed that the term "bioengineering treatments" is not defined in statute or rule. *See* Exhibit C to *Declaration of Counsel* at pp. 53-54 and compare to I.C. 67-5279(3)(b). Likewise, Mr. Golart confirmed that there is no explicit authority in either statute or Rule which allows the Department to mandate that someone prepare a vegetative monitoring plan. *See* Exhibit C to *Declaration of Counsel* at pp. 55-57. Mr. Golart testified that the method of compliance with these requirements in the Consent Order is at the discretion of the landowner. *See* Exhibit C to *Declaration of Counsel* at pp. 52-53.[3]

Mr. Golart confirmed that the bank armoring Petitioner placed can remain because it is authorized in and appears to comply with the pertinent administrative rules. *See* Exhibit C to *Declaration of Counsel* at pp. 61-66, 68-71, 92. Indeed, bank armoring is by definition "designed to reduce further erosion" as contemplated by the Consent Order.

In this situation, absent authorization in statute or rule, I.C. 67-5279(5) restricts

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[2] Counsel for Petitioner inadvertently omitted a citation in *his Brief in Support of Motion for Summary Judgment*. The summary of the factual background of *Loper Bright Enters. v. Raimondo*, 603 U.S. 369(2024) at pp. 4-5 of Petitioner's brief was modified and edited based on the case history found in the decision as well as that found on Wikipedia. https://en.wikipedia.org/wiki/Loper_Bright_Enterprises_v._Raimondo.

[3] At his deposition, Mr. Golart also clarified an ambiguity with respect to the work Petitioner performed, as allegedly being below the ordinary high water mark (Consent Order @ ¶ 7). Mr. Golart testified that his application of the term "Ordinary High Water Mark" was assessed based on the condition of the property after the 2017 avulsive event which rapidly swept away Petitioner's upland real property. *See* definition of "Mean High Water Mark" I.C. 42-3802(h), *See* Transcript of Deposition of Aaron Golart at pp. 35-41, 51-52 and compare to *Aldape v. Akins*, 105 Idaho 254, 256, 668 P.2d 130, 132, 1983 Ida. App. LEXIS 238, *2, (An avulsive event leaves property lines unchanged) as well as *Milbert v. Carl Carbon, Inc.*, 89 Idaho 471, 478, 406 P.2d 113, 117, 1965 Ida. LEXIS 389, *13 ("a riparian owner of land abutting upon a stream, whether navigable or non-navigable, has the right to place such barriers as will prevent his land from being overflowed or damaged by the stream, and for the purpose of keeping the same within its natural channel.").

agency action and requires an interpretation of the administrative action at issue in a manner which maximizes Petitioner's personal liberty. This is not only a matter of construction of administrative rules, in this situation it is also a statutory mandate to construe contractual ambiguities in favor of Petitioner's personal liberty and against IDWR.

Here, the requirement in the Consent Order that Mr. Hastings perform bioengineering treatments and a planting plan have been met and the Consent Order has been fully complied with. With respect to the planting plan, *see* Exhibit C to *Declaration of Counsel* at pp. 41-43, 91, 97 (cottonwood trees have been planted, are still present, are a native species, and will naturally repopulate) and Exhibit D at Deposition Exhibit 13 (photos of planted cottonwood trees); compare to *Affidavit of John Hastings in Support of Petitioner's Motion for Summary Judgment* at ¶ 11. The Department's detailed requirements in the subject Permit, which it mandated Petitioner apply (over and over again) for, have no basis in rule or law. *See* I.C 67-5279(2)(b) and (3)(b). Therefore there is no legal basis to compel Petitioner to do anything further.

WHEREFORE: Petitioner asks the Hearing Officer to Deny the Department's Motion for Summary Judgment. The Hearing Officer should instead grant summary judgment in favor of Petitioner so as to 1) confirm Petitioner's compliance with the terms of the Consent Order; 2)Relieve Petitioner or any obligation to complete any additional stream channel alteration work contemplated in the Permit at issue herein and 3)Order the Department to refund the entirety of the $10,000 penalty it imposed on Petitioner.

October 30, 2025
By:_ _____/s/ J. Kahle Becker_____
J. KAHLE BECKER, Attorney for Petitioner
Law Offices of J. Kahle Becker

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the _30th_ day of October, 2025, I caused to be served the foregoing Response to IDWR's Motion for Summary Judgment to the following persons by email:

Meghan Carter
Attorney for Defendant,
Idaho Department of Water Resources
meghan.carter@idwr.idaho.gov

"IDWR File" file@idwr.idaho.gov

"Tschohl, Sarah" Sarah.Tschohl@idwr.idaho.gov

_____/s/ J. Kahle Becker_____
J. KAHLE BECKER
Attorney for the Petitioner

RECEIVED
Nov 03, 2025
DEPARTMENT OF
WATER RESOURCES

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*Attorneys for the Idaho Department of Water Resources*

**BEFORE THE IDAHO WATER RESOURCE BOARD**

| | |
|---|---|
| IN THE MATTER OF APPLICATION FOR STREAM CHANNEL ALTERATION PERMIT NO. S37-20565 | **DEPARTMENT'S RESPONSE TO HASTINGS' MOTION FOR SUMMARY JUDGMENT** |

The Idaho Department of Water Resources ("Department"), through its counsel of record, submits the following *Response to Hastings' Motion for Summary Judgment* pursuant to Rule 220 of the Department's Rules of Procedure (IDAPA 37.01.01).

The sole issue in this proceeding is: "Are conditions on the Permit consistent with the requirements set forth in the Consent Order." *Amended Scheduling Order and Notice of Hearing*, at 2 (June 5, 2025) [hereinafter *Scheduling Order*]. Despite the Hearing Officer's concise and clear statement of the issue, Hastings barely addresses the issue for hearing in *Petitioner's Motion for Summary Judgment* ("*Hastings' Motion")*. Hastings "asks the Hearing Officer to grant summary judgment in favor of Petitioner so as to relieve Petitioner or [sic] any obligation to complete the stream channel alteration work contemplated in the Consent Order or Permit at issue herein and order the Department to refund the entirety of the $10,000 penalty it imposed." *Hastings' Motion*,

at 2. The requested relief is not in the purview of the Hearing Officer to grant and therefore *Hastings' Motion* should be denied.

## BACKGROUND

On September 11, 2017, the Department issued a *Notice of Violation and Order to Cease and Desist the Unauthorized Alteration of the Big Wood River* ("*Hastings NOV*") to Hastings and Embassy Auditoriums, Inc. *Hastings NOV*, at 1. On January 26, 2018, Hastings and the Department entered into a *Consent Order and Agreement* ("*Consent Order*") to resolve Hastings' violation of the Alteration of Channels of Streams Act, Title 42, Chapter 38, Idaho Code ("Stream Protection Act"). *Consent Order*, at 3. The *Consent Order* outlined requirements for Hastings, namely that he submit a stream channel alteration application with an approved restoration plan and comply with the terms and conditions of any subsequent stream channel alteration permit. *Id.* at 2. The *Consent Order* also listed minimum requirements for the restoration plan. *Id.*

On March 15, 2019, the Department received Hastings' stream channel alteration *Joint Application for Permits* ("*Application*") with the December 26, 2018 *Revised Restoration Plan and Bank Stabilization Project for 1200 Warm Springs, Ketchum, Idaho* attached. *Application*, at 1. On May 17, 2019, the Department issued the *Conditional Approval of Joint Application for Permits (S37-20565) in the Matter of Consent Order and Agreement and of Notice of Violation No. E2017-1236 Big Wood River – 1200 Warm Springs Road Restoration* ("*Permit*") approving the *Application* with conditions. On May 23, 2019, Hastings filed a *Petition for Hearing* ("*Petition*") on the issued *Permit*, asserting that "[c]ertain requirements contained in [the Permit] are inconsistent with the Consent Order and the agreement that led to the filing of the Restoration Plan." *Petition*, at 2.

The Department and Hastings spent some time trying to work through the conditions Hastings found objectionable in the *Permit*. Then on November 15, 2021, Hastings filed an action for declaratory judgment in Ada County District Court. *Hastings v. Idaho Dep't of Water Res.*, 173 Idaho 704, 708, 547 P.3d 1190, 1194 (2024). In that action, Hastings sought an order declaring that the Department was barred by the statute of limitations from enforcing the *Consent Order*. *Id*. at 709, 547 P.3d at 1195. The Department filed a counterclaim seeking to enforce the *Consent Order*. *Id*. The District Court bifurcated the case to first decide whether the statute of limitations had run. *Id*. On summary judgment, the District Court found in favor of the Department holding that the statute of limitations had not run when the Department filed its counterclaim. *Id*. at 710, 547 P.3d at 1196. The Idaho Supreme Court affirmed the District Court. *Id*. at 716, 547 P.3d at 1202. The District Court proceedings to decide the second issue, where the Department seeks enforcement of the *Consent Order,* are stayed pending the outcome of this Administrative Proceeding.

**ARGUMENT**

Hastings objects to two specific conditions on the *Permit*: (1) Special Condition 3 ("Prior to any construction authorized by this permit, written approval to work on property belonging to others shall be obtained in writing and a copy of the approval provided to IDWR."); and (2) General Condition 1.a ("This permit does not constitute any of the following: a) An easement or right-of-way to trespass or work upon property belonging to others…").[1] *Petitioner's Brief in Support of Motion for Summary Judgment*, at 2 (Oct. 20, 2025) [hereinafter *Hastings' Brief*]. Hastings asserts that these conditions are objectionable because the Community Library Association, Inc. ("Community Library") holds title to a portion of the area Hastings is required

[1] When specifying the conditions he objects to, Hastings also lists Special Condition 13. However, he never discusses that condition again, nor does he explain why it's objectionable. Therefore, the Department presumes its inclusion was in error. The Department reserves the right to provide arguments as to why Special Condition 13 is consistent with the Consent Order should the Department's presumption be in error.

to restore. *Id.* Further, because the Community Library would want to be indemnified as part of granting access to its property, Hastings views providing indemnification as "a perpetual blank check liability." *Id*. at 3.

Since Hastings finds those two conditions on the Permit objectionable, he asks the Hearing Officer to grant summary judgment in his favor by relieving him of any obligations under the *Consent Order* and mandating the Department return Hastings' civil penalty. *Hastings' Motion*, at 2. The relief Hastings seeks is related to the *Consent Order* and not the *Permit*. The *Consent Order* is a contract. In that contract, Hastings agreed to restore a section of the Big Wood River pursuant to an approved restoration plan and subsequent permit. *Consent Order*, at 2. Now, Hastings seeks to avoid completing his contractual obligation to restore the Big Wood River.

Whether Hastings must perform his contractual obligations set forth in the *Consent Order* is not the question before the Hearing Officer in this matter. The Hearing Officer has repeatedly stated that: "The issue for hearing before the Hearing Officer is: Are conditions on the Permit consistent with the requirements set forth in the Consent Order?" *Order; Notice of Hearing*, at 4 (Feb. 11, 2025); *Scheduling Order*, at 2; *Order Denying Motion to Compel, Quashing Subpoena Duces Tecum Executed June 27, 2025, and Granting in Part and Denying in Part Motion for Issuance of Subpoena*, at 2 (Sept. 11, 2025). The District Court proceeding, not this administrative proceeding, is the appropriate venue for Hastings to request relief from the requirements of the *Consent Order*.

While the Department believes this is not the venue to determine Hastings' obligations under the Consent Order, the Department will address Hastings' arguments in case the Hearing Officer sees otherwise.

The Department Acted Within Its Authorities

Hastings argues that "no statute or administrative rule authorizes [the Department] to compel petitioner to bear an unlimited cost of compliance by mandating that Petitioner agree to indemnify a third party." *Hastings' Brief*, at 4. In addition, Hastings argues that "continuing to compel Petitioner to comply with the permit is . . . in excess of [the Department's] Constitutional authority," and the Idaho Constitution "prohibit[s] governmental compulsion of a citizen to enter into a contractual indemnification agreement against his will." *Id*. at 9.

The Department was acting well within its authority when it entered into the *Consent Order* with Hastings. The Department issued the Notice of Violation pursuant to Idaho Code §§ 42-1701B and 42-3809(2). *Hastings NOV*, at 1. "If the recipient [of a notice of violation] and the director agree on a plan to remedy damage caused by the alleged violation and to assure future compliance, they may enter into a consent order formalizing their agreement." I.C. § 42-1701B(4). The Department and Hastings agreed on a plan to remedy the damage caused by Hastings' violation of the Stream Protection Act and memorialized that agreement in the *Consent Order*. Accordingly, the Department followed the statutory process.

Further, the Department does not have the authority to grant access to private property. This is why it includes language like Special Condition 3 and General Condition 1.a in its stream channel alteration permits. *See Dec. of Counsel in Support of Petitioner's Motion for Summary Judgment* ("*Counsel Declaration*"), Ex. C, 74:19-25–75:1-7 ("That's a very common condition that's included on permit approvals when the Department is aware of work potentially occurring on another property that the applicant doesn't own."). The Department's minimal efforts to ensure Hastings has permission to do the work he agreed to do is not in excess of its statutory authority.

Hastings Voluntarily Signed the *Consent Order*

Hastings asserts that the Department should not have issued a notice of violation since a permit was not required because the work Hastings did in the Big Wood River fits within a statutory exemption. *Hastings' Brief*, at 12–13. The time for Hastings to dispute the *Hastings NOV* was before the *Consent Order* was signed. Hastings was not required to sign the *Consent Order*, and the statute recognizes that choice: "If the parties cannot agree to a consent order . . . the director may commence and prosecute a civil enforcement action." I.C. § 42-1701B(4). Therefore, if Hastings did not believe he should have to restore the Big Wood River, he did not have to sign the *Consent Order*. But Hastings did sign the *Consent Order*.

Hastings Knew of the Third-Party Property Interest

Hastings does not want to enter into an indemnification agreement with the Community Library because he believes doing so would create an unreasonable cost of compliance. *Hastings' Brief*, at 3. Hastings knew a third party held title to the portion of the Big Wood River in question well before the Department issued the *Hastings NOV*. *See Counsel Declaration*, Ex. B, 24:3-6 ("I'll represent to you that this was a proposal that the Nature Conservancy provided to my client at a time when my client attempted to do some other work on this section of the river."). Prior to signing the *Consent Order*, Hastings was also aware that to gain permission to do the work he might have to provide indemnification. *See Petitioner's Response to the Community Library's Motion to Quash Subpoena*, at 4–5 (Aug. 20, 2025).

The law generally enforces the choices made in contracts "because, even though a particular agreement may prove to be improvident, contracts as a whole benefit society by contributing to the rational ordering of human affairs." *City of Boise v. Bench Sewer Dist.*, 116 Idaho 25, 30, 773 P.2d 642, 647 (1989). Despite knowing the potential extra effort and expense he

might have to expend to comply with the terms of the *Consent Order*, Hastings agreed to do the work. It was not until the Department issued the *Permit*, explicitly telling Hastings he has to follow the law, that Hastings objected.

Hastings Cannot Show it is Impossible to Comply with the Consent Order

Hastings claims that he cannot gain permission to do the restoration work because of the conservation easement held by The Nature Conservancy ("TNC"). *Hastings Brief*, at 10. To support this contention Hastings cites to one section of the conservation easement, which states: "Any new manipulation, diversion, or other alteration of natural water courses or wetlands, any new practice that degrades or destabilizes their natural banks, any new pumping of groundwater, or any other new development of water resources is prohibited." *Counsel Declaration*, Ex. A, *Reservation of Conservation Easement*, at 22, § S. Reading just one section of the conservation easement takes the document out of context. "In determining the intent of the parties, this Court must view the contract as a whole." *State v. Partee*, 165 Idaho 511, 514, 448 P.3d 316, 319 (2019) (quoting *Bakker v. Thunder Spring-Wareham, LLC*, 141 Idaho 185, 190, 108 P.3d 332, 337 (2005)).

The purpose of the conservation easement is to "preserve and protect in perpetuity" the "mature cottonwood forest riverfront along the Big Wood River and habitat for elk, mule deer, red fox, beaver, bald eagle and numerous other wildlife." *Counsel Declaration*, Ex. A, *Reservation of Conservation Easement*, at 2, § 1. The conservation easement further provides for restoration activities stating: "Subject to the Holder's prior written approval, Landowner may undertake activities and projects to restore, enhance or improve the quality of the wildlife habitat and ecological health of the Property." *Id*. at 22, § R.

"It is not sufficient to show that the performance simply became more difficult or more expensive than anticipated-it must have been made impossible." *State v. Chacon*, 146 Idaho 520,

523, 198 P.3d 749, 752 (Ct. App. 2008) (citing *Kessler v. Tortoise Dev*., Inc., 130 Idaho 105, 108, 937 P.2d 417, 420 (1997) and Haessly *v. Safeco Title Ins. Co.*, 121 Idaho 463, 465, 825 P.2d 1119, 1121 (1992)). Based on the purpose of the conservation easement and that restoration activities are allowed with the permission of TNC, it is entirely possible Hastings could obtain permission to do the restoration work required by the *Consent Order*. However, Hastings has never asked for that permission. *Counsel Declaration*, Ex B, at 24:20-24; 27:2-5 (affirming that the Community Library has never seen Hastings' *Revised Restoration Plan* before). Without asking for permission, Hastings cannot possibly know if it's impossible.

**CONCLUSION**

The relief Hastings seeks is not within the purview of the Hearing Officer to grant. Therefore, the Hearing Officer should deny Hastings' *Motion for Summary Judgment*.

DATED November 3, 2025.

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL

MEGHAN M. CARTER
Deputy Attorney General
Idaho Department of Water Resources

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on November 3, 2025, I served a true and correct copy of the above and foregoing via the method indicated below, upon the following:

| | |
|---|---|
| **J. KAHLE BECKER**<br>Attorney at Law<br>223 N. 6th St., Suite 325<br>Boise, ID 83702<br>kahle@kahlebeckerlaw.com<br><br>*Attorney for Petitioner John Hastings* | ☐ U.S. Mail, postage prepaid<br>☐ Hand Delivery<br>☐ Overnight Mail<br>☒ Email |
| **IDAHO WATER RESOURCE BOARD**<br>file@idwr.idaho.gov<br><br>Roger S. Burdick<br>*Hearing Officer*<br>roburd47@gmail.com | ☐ U.S. Mail, postage prepaid<br>☐ Hand Delivery<br>☐ Overnight Mail<br>☒ Email |

MEGHAN M. CARTER
Deputy Attorney General
Idaho Department of Water Resources

RECEIVED
Nov 10, 2025
DEPARTMENT OF
WATER RESOURCES

**RAÚL R. LABRADOR**
ATTORNEY GENERAL

**SCOTT L. CAMPBELL**
Chief of Energy and Natural Resources Division

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*Attorneys for the Idaho Department of Water Resources*

**BEFORE THE IDAHO WATER RESOURCE BOARD**

| | |
|---|---|
| IN THE MATTER OF APPLICATION FOR STREAM CHANNEL ALTERATION PERMIT NO. S37-20565 | **DEPARTMENT'S REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT** |

The Idaho Department of Water Resources ("Department"), through its counsel of record, submits the following *Reply in Support of Motion for Summary Judgment* pursuant to Rule 220 of the Department's Rules of Procedure (IDAPA 37.01.01).

It bears emphasizing that the sole issue in this proceeding is: "Are conditions on the Permit consistent with the requirements set forth in the Consent Order." *Amended Scheduling Order and Notice of Hearing*, at 2 (June 5, 2025). In *Petitioner's Response to IDWR's Motion for Summary Judgment* ("*Hastings' Response*"), Hastings continues to conflate the issue in this matter with the separate issue pending before the Ada County District Court, where the Department is seeking enforcement of the *Consent Order*. *Hastings v. Idaho Dep't of Water Res.*, 173 Idaho 704, 709, 547

P.3d 1190, 1195 (2024). The arguments presented in *Hastings' Response* do not address the issue in this proceeding and do not raise any disputed issues of fact. [1]

Hastings argues that the conditions placed on the *Permit* are onerous because they force Hastings to "agree to indemnify a third party [and] perform additional restoration activities on structures which already comply with administrative rules." *Hastings' Response*, at 2. First, the *Permit* conditions merely say that prior to doing the work contemplated in the *Permit*, Hastings must have permission to access all property involved in the restoration. Essentially, the Department is ensuring Hastings follows the law. If that permission comes with a request for indemnification, that does not mean the Department is forcing Hastings to indemnify a third party through the *Permit*. Absent the *Consent Order*, Hastings would be faced with a choice of providing the indemnification and doing the work or not providing the indemnification and not doing the work. Second, the *Permit* does not require Hastings to perform any restoration activities; instead, that is his contractual obligation in the *Consent Order*. It is the *Consent Order* that Hastings has an issue with, not the conditions on the *Permit*.

Hastings argues further that "the terms of the [Consent Order] only contemplate [two] actions by Petitioner, the completion and reasonableness of which remain disputed material issues of fact." *Hastings' Response*, at 3. Hastings then asserts that he has "complied with the plain language of the *Consent Order*." *Id*. To support this assertion, Hastings cites to the *Affidavit of John Hastings in Support of Petitioner's Motion for Summary Judgment* ("*Affidavit*") which discusses the alterations Hastings made to the Big Wood River that ultimately led to the Department issuing the *Notice of Violation*. *Id*. (citing *Affidavit* ¶¶ 3–4). There is no contorted

[1] Hastings asserts that the Department "forced Petitioner to sign [the *Consent Order*] under threat of criminal prosecution." *Hastings' Response*, at 2–3. This is simply not true and nothing in the record supports such an assertion. The Department does not have the authority to pursue criminal prosecution for violations of the Stream Protection Act.

interpretation of the *Consent Order* that would make Hastings' violation of the Stream Protection Act the contractually agreed to remedy of that violation. Further, whether Hastings has or must still comply with the *Consent Order* is not at issue in this proceeding. Therefore, Hastings has not shown that there is a dispute of material issues of fact.

Absent a showing of disputed issues of material fact, only a question of law remains. *Milus v. Sun Valley Co.*, 571 P.3d 408, 413 (Idaho 2025). The disputed conditions on the *Permit* merely require Hastings to follow the law. These conditions are consistent with the *Consent Order.* Therefore, the Hearing Officer should grant the Department's *Motion for Summary Judgment*.

DATED November 10, 2025.

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL

MEGHAN M. CARTER
Deputy Attorney General
Idaho Department of Water Resources

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on November 10, 2025, I served a true and correct copy of the above and foregoing via the method indicated below, upon the following:

| | |
|---|---|
| **J. KAHLE BECKER**<br>Attorney at Law<br>223 N. 6th St., Suite 325<br>Boise, ID 83702<br>kahle@kahlebeckerlaw.com<br><br>*Attorney for Petitioner John Hastings* | ☐ U.S. Mail, postage prepaid<br>☐ Hand Delivery<br>☐ Overnight Mail<br>☒ Email |
| **IDAHO WATER RESOURCE BOARD**<br>file@idwr.idaho.gov<br><br>Roger S. Burdick<br>*Hearing Officer*<br>roburd47@gmail.com | ☐ U.S. Mail, postage prepaid<br>☐ Hand Delivery<br>☐ Overnight Mail<br>☒ Email |

MEGHAN M. CARTER
Deputy Attorney General
Idaho Department of Water Resources

RECEIVED
Nov 10, 2025
DEPARTMENT OF
WATER RESOURCES

**J. KAHLE BECKER (ISB # 7408)**
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Attorney for Petitioner

**BEFORE THE WATER RESOURCES BOARD**
**OF THE STATE OF IDAHO**

| | |
|---|---|
| IN THE MATTER OF APPLICATION FOR STREAM CHANNEL ALTERATION PERMIT NO. S37-20565 | PETITIONER'S MOTION FOR SUMMARY JUDGMENT REPLY BRIEF |

COMES NOW Petitioner, John Hastings by and through his attorney of record, J. Kahle Becker, IDWR having filed a Motion for Summary Judgment pursuant to IDAPA 37.01.01.220.03 and IRCP 56, the Department having responded thereto, and submits his Reply thereto as follows.

## INTRODUCTION

On May 23, 2019, Petitioner filed a *Petition for Hearing* ("*Petition*"), on the *Permit* the Department compelled him to apply for, asserting that "[c]ertain requirements contained in [the Permit] are inconsistent with the Consent Order and the agreement that led to the filing of the Restoration Plan." *Petition*, at 2. Where the permit is inconsistent with the agreement of the parties and the Department has added onerous conditions which 1) render completion of the project impossible and 2) which are not based in any Rule or Statute, there can be no other outcome than a determination that no additional action is required of Petitioner. This is because the uncontradicted evidence establishes

that Petitioner's actions to date have complied with the lawful terms of the Consent Order, in that his actions have complied with the actual rules and statutes applicable. Tellingly, the Department has declined to submit a single piece of factual evidence in support of either its *Response to Petitioner's Motion for Summary Judgment* or in support of its own *Motion for Summary Judgment*.

> Pursuant to I.R.C.P. 56(e), once the moving party has presented evidence that there are no genuine issues of material fact, the burden shifts to the non-moving party to come forward with evidence to show that there is a genuine issue for trial. If the non-party does not so respond, summary judgment, if appropriate, shall be entered against that party. *See* I.R.C.P. 56(e). *Armstrong v. Farmers Ins. Co. of Idaho*, 147 Idaho 67, 72, 205 P.3d 1203, 1208, 2009 Ida. LEXIS 50, *14-15.

Likewise, the Department failed to articulate a single administrative rule which supports its position that it can compel Petitioner to do just about anything it wants simply by adding a term to a Permit it issued. Again, under *Armstrong*, this omission is fatal to the Department's position in seeking to compel Petitioner to perform any additional action.

> Appellants specifically declined to respond to the motion with any substantive argument, instead relying solely on their prior briefing that the court had already rejected. Appellants had the opportunity at that point to raise additional theories of coverage; they failed to do so at their own peril. Moreover, Appellants did not respond to the argument made by Respondent that Appellants' claims unrelated to coverage, namely unfair trade practices and constructive fraud, were disposed of when the court decided that the "household appliance" provision did not provide coverage for their claimed losses. They cannot now complain that the court's decision to grant summary judgment to Respondent was improper when they never attempted to respond to Respondent's arguments or raise new arguments to support their claims. Because Appellants failed to meet their burden under I.R.C.P. 56(e), we affirm the district court's decision to grant Respondent's Motion for Summary Judgment. *Armstrong v. Farmers Ins. Co. of Idaho*, 147 Idaho 67, 72, 205 P.3d 1203, 1208, 2009 Ida. LEXIS 50, *15-16

Therefore, pursuant to I.C 67-5279(5) and IRCP 56(e) all reasonable factual inferences as to Petitioner's compliance with any administrative rules applicable to the conduct contemplated in the Consent Order must be drawn in favor of Petitioner. Summary Judgment in favor of Petitioner is therefore appropriate.

**ARGUMENT**

The Department's concise Response declines to provide any argument whatsoever in opposition to Petitioner's citation to US Supreme Court precedent *Loper Bright Enters. v. Raimondo*, 603 U.S. 369(2024). As discussed in an unpublished Court of Appeals decision, *Barger v. State*, the Court gave fair warning that litigants who fail to respond to a Court's findings or arguments made by opposing parties do so at their own peril.

> Thus, a general attack on the findings and conclusions of the district court, without specific reference to evidentiary or legal errors, is insufficient to preserve an issue. *Bach v. Bagley*, 148 Idaho 784, 790, 229 P.3d 1146, 1152 (2010). We will not search the record on appeal for error. *Suits v. Idaho Bd. of Prof'l Discipline*, 138 Idaho 397, 400, 64 P.3d 323, 326 (2003). To the extent that an assignment of error is not argued and supported in compliance with the Idaho Appellate Rules, it is deemed to be waived. *Suitts v. Nix*, 141 Idaho 706, 708, 117 P.3d 120, 122 (2005). Moreover, a party waives an issue on appeal if either argument or authority is lacking. *Powell v. Sellers*, 130 Idaho 122, 128, 937 P.2d 434, 440 (Ct. App. 1997). *Barger v. State*, 2025 Ida. App. Unpub. LEXIS 51, *3, 2025 LX 85631, 2025 WL 457301.

Therefore, the Hearing Officer should adopt Petitioner's position on the controlling precedent of *Loper Bright Enters.* in its entirety.

The Department makes several inaccurate statements of fact and law which warrant a short response. The Department contends "When specifying the conditions he objects to, Hastings also lists Special Condition 13. However, he never discusses that condition again, nor does he explain why it's objectionable." *Department's Response to Hastings Motion for Summary Judgment* at 3 FN 1. Condition 13 provides:

> 13. Permittee is responsible for all work done by any contractor or sub-contractor. Permittee shall ensure any contractor or sub-contractor who performs the work follows all the terms and conditions of this authorization.

This Condition is objectionable for the same reasons Petitioner objected to Special Conditions 3 and 1.a. However, Special Condition 13, extends these unlawful conditions to not only Petitioner, but also to any third party who might be hired to perform the work the Department demands Petitioner perform. Thus, the Departments' position is Petitioner must agree to not one but two blank checks as any contractor would likely want indemnification due to the demands of the Community Library. Nowhere in statute or rule does it state Petitioner must bear an unlimited cost of compliance.

The Department asserts Petitioner knowingly entered into a Consent Order fully aware that a third party "held title" to the portion of the Big Wood River in question and that "to gain access he might have to provide indemnification." *Department's Response to Hastings Motion for Summary Judgment* at 6. As an initial matter, this is a rather convenient way for the State to thumb its nose at its fiduciary obligations to protect its title to submerged lands it owns. More importantly, the Department's premise fails based on the actual facts in the record. The Library Association acquired "title" and entered into a Conservation Easement for this section of the Big Wood River in May 2017. *See* Exhibit A to Declaration of Counsel in Support of Motion for Summary Judgment. This event was 3 years after the document a prior "landowner" (of a public river) asked Petitioner to execute regarding unrelated work. *See* "Agreement" attached as Exhibit C to *Petitioner's Response to The Community Library's Motion to Quash Subpoena*. The Department does not explain how Petitioner could have exercised clairvoyance as to requirements a new "landowner" might place upon its property back in 2014 when that

"landowner" did not acquire "title" until 2017. Furthermore, the Department fails to explain how Mr. Hastings could use extra sensory perception to know that the Department would 1) fail to clear title to a state owned river or 2) require him to agree to conditions and restoration activities which have no basis in law or rule.

Finally, the Department seeks to mislead the Hearing Officer with an inaccurate summation of the law surrounding contractual interpretation. The Department contends the general flavor of a contract controls over specific conditions. This position is undercut by Idaho Supreme Court precedent authored by the Hearing Officer himself. "In Idaho, 'it is well established that specific provisions in a contract control over general provisions where both relate to the same thing.'" *Caldwell Land and Cattle, LLC v. Johnson Thermal Sys*., 165 Idaho 787, 808, 452 P.3d 809, 830, 2019 Ida. LEXIS 204, *51, 2019 WL 6042476. Here, the specific contractual term in the Conservation Easement at issue precludes the exact type of work the Department is mandating Petitioner perform.

> S. Water Courses, Wetlands and Groundwater. **Any** new manipulation, diversion, **or other alteration of natural water courses** or wetlands, any new practice that degrades or destabilizes their natural banks, any new pumping of groundwater, or any other new development of water resources **is prohibited**. (Emphasis added.) *See* Exhibit 5 to Deposition of the Community Library at p. 29 attached to *Declaration of Counsel* as Exhibit A.

This provision ties the Library Association's hands and renders it impossible for them to grant permission for Petitioner to perform the work the Department demands he performs – with or without the additional objectionable requirement of indemnification. Should the Department object to this prohibition, it is incumbent on the State to challenge what appears to be a cloud on the title to its Public Trust lands, not Petitioner.

November 10, 2025
By:_____/s/ J. Kahle Becker_____
J. KAHLE BECKER, Attorney for Petitioner
Law Offices of J. Kahle Becker

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the _10th_ day of November, 2025, I caused to be served the foregoing Response to IDWR's Motion for Summary Judgment to the following persons by email:

Meghan Carter
Attorney for Defendant,
Idaho Department of Water Resources
meghan.carter@idwr.idaho.gov

"IDWR File" file@idwr.idaho.gov

"Tschohl, Sarah" Sarah.Tschohl@idwr.idaho.gov

_____/s/ J. Kahle Becker_____
J. KAHLE BECKER
Attorney for the Petitioner

**BEFORE THE IDAHO WATER RESOURCE BOARD**

| | |
|---|---|
| IN THE MATTER OF APPLICATION FOR STREAM CHANNEL ALTERATION PERMIT NO. S37-20565 | **NOTICE OF DISPOSITIVE MOTION HEARING** |

## BACKGROUND

On June 5, 2025, the Hearing Officer issued an *Amended Scheduling Order and Notice of Hearing*, which included November 17, 2025, as a reserved date for oral argument on any dispositive motions. *Am. Sched. Order & Not. of Hr'g*, at 1. On October 20, 2025, the Department of Water Resources filed *Department's Motion for Summary Judgment* and John Hastings filed *Petitioner's Motion for Summary Judgment*.

## NOTICE OF DISPOSITIVE MOTION HEARING

NOTICE IS HEREBY GIVEN that on **November 17, 2025, at 9 a.m. (MT)**, Hearing Officer Burdick will hear oral argument in this matter on the *Department's Motion for Summary Judgment* and *Petitioner's Motion for Summary Judgment*. The hearing will be held at the Department's State Office, located at 322 E. Front Street, 6th Floor, Conference Rooms 602C–D, Boise, Idaho. All parties who wish to participate in the hearing shall be present in person.

The hearing will be available for observation only via Webex. To join the hearing via computer or smartphone, please click the following Webex link and follow the prompts: https://idahogov.webex.com/idahogov/j.php?MTID=m4e06b5674fc2b6763ad92822c2e4c6c5.

To join the hearing via telephone, please dial 1(415) 655-0001 (US Toll) and enter the following meeting access code when prompted: 2867 732 3508.

The hearing will be held in accordance with the provisions of Chapter 38, Title 42, and Chapter 52, Title 67, Idaho Code, and the Board's Rules of Procedure, IDAPA 37.01.01. A copy of the Rules of Procedure may be obtained from the Department upon request or at https://adminrules.idaho.gov/rules/current/37/370101.pdf.

The hearing will be conducted in a facility that meets the accessibility requirements of the Americans with Disabilities Act. If you require reasonable accommodation to attend, participate in, or understand the conference, please advise the Board no later than two (2) days before the hearing. Inquiries for reasonable accommodations should be directed to Sarah Tschohl, Idaho Department of Water Resources, PO Box 83720, Boise, Idaho 83720-0098, telephone (208) 287-4815, or email sarah.tschohl@idwr.idaho.gov.

DATED this 10th day of November 2025.

ROGER S. BURDICK
Hearing Officer

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 10th day of November 2025, the above and foregoing, was served by the method indicated below, and addressed to the following:

| | |
|---|---|
| J. KAHLE BECKER<br>Attorney at Law<br>kahle@kahlebeckerlaw.com | ☒ Email |
| MEGHAN M. CARTER<br>Deputy Attorney General<br>meghan.carter@idwr.idaho.gov | ☒ Email |

Sarah Tschohl
Paralegal

**BEFORE THE IDAHO WATER RESOURCE BOARD**

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|---|---|
| IN THE MATTER OF APPLICATION FOR STREAM CHANNEL ALTERATION PERMIT NO. S37-20565 | **ORDER VACATING HEARING**<br><br>**NOTICE OF CONTINUED ORAL ARGUMENT ON DISPOSITIVE MOTIONS** |

## BACKGROUND

On November 17, 2025, Hearing Officer Burdick held oral argument on the *Department's Motion for Summary Judgment* and *Petitioner's Motion for Summary Judgment*. Due to a submission issue with the filing of the October 20, 2025 *Declaration of Counsel in Support of Petitioner's Motion for Summary Judgment* the Hearing Officer was unable to review the declaration in advance of oral argument. Having now reviewed the declaration, the Hearing Officer has additional questions for counsel for the parties. Given the possibility of early case resolution, in the interest of judicial economy the Hearing Officer will vacate the hearing on this matter scheduled for December 2–4, 2025, and instead continue oral argument on the dispositive motions.

## ORDER

IT IS HEREBY ORDERED that the hearing on this matter set for December 2–4, 2025, along with all remaining exhibit exchange and submission deadlines, is VACATED.

## NOTICE

NOTICE IS HEREBY GIVEN that on **December 2, 2025, at 12 p.m. (MT)**, Hearing Officer Burdick will hear continued oral argument in this matter on the *Department's Motion for Summary Judgment* and *Petitioner's Motion for Summary Judgment*. The continued motion hearing will be held at the Department's State Office, located at 322 E. Front Street, 6th Floor, Conference Rooms 602C–D, Boise, Idaho. All parties who wish to participate in the hearing shall be present in person.

The hearing will be available for observation only via Webex. To join the hearing via computer or smartphone, please click the following Webex link and follow the prompts: https://idahogov.webex.com/idahogov/j.php?MTID=m9ec53bfab384fdc19baf662d3b2d1d7f.

To join the hearing via telephone, please dial 1(415) 655-0001 (US Toll) and enter the following meeting access code when prompted: 2867 088 9060.

The continued motion hearing will be held in accordance with the provisions of Chapter 38, Title 42, and Chapter 52, Title 67, Idaho Code, and the Board's Rules of Procedure, IDAPA 37.01.01. A copy of the Rules of Procedure may be obtained from the Department upon request or at https://adminrules.idaho.gov/rules/current/37/370101.pdf.

The continued motion hearing will be conducted in a facility that meets the accessibility requirements of the Americans with Disabilities Act. If you require reasonable accommodation to attend, participate in, or understand the conference, please advise the Board no later than two (2) days before the hearing. Inquiries for reasonable accommodations should be directed to Sarah Tschohl, Idaho Department of Water Resources, PO Box 83720, Boise, Idaho 83720-0098, telephone (208) 287-4815, or email sarah.tschohl@idwr.idaho.gov.

DATED this 21st day of November 2025.

ROGER S. BURDICK
Hearing Officer

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 21st day of November 2025, the above and foregoing, was served by the method indicated below, and addressed to the following:

| | |
|---|---|
| J. KAHLE BECKER<br>Attorney at Law<br>kahle@kahlebeckerlaw.com | ☒ Email |
| MEGHAN M. CARTER<br>Deputy Attorney General<br>meghan.carter@idwr.idaho.gov | ☒ Email |

Sarah Tschohl
Paralegal

**BEFORE THE IDAHO WATER RESOURCE BOARD**

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| IN THE MATTER OF APPLICATION FOR STREAM CHANNEL ALTERATION PERMIT NO. S37-20565 | **PRELIMINARY ORDER** |

## BACKGROUND

On September 11, 2017, the Idaho Department of Water Resources ("Department" or "IDWR") issued a *Notice of Violation and Order to Cease and Desist the Unauthorized Alteration of the Big Wood River* ("NOV") to John Hastings Jr. ("Hastings") for violation of the Stream Protection Act, Title 42, Chapter 38, Idaho Code. In the NOV, the Department alleged "unauthorized work occurred at a location within Section 12, Township 04 North, Range 17 East, Blaine County, Idaho," commonly known as 1200 Warm Springs Rd. in Ketchum, Idaho. NOV at 1.

In 2017, the Big Wood River experienced high spring runoff. *Golart Dep*.[1] 11:8–12:3. Hastings avers that the 2017 high water event caused "substantial loss of property" at 1200 Warm Spring Rd., which abuts the Big Wood River, necessitating bank stabilization work. *Joint Application for Permits* at 1–2. Hastings maintains that the necessary bank stabilization work began on July 25, 2017, after the city of Ketchum gave him verbal authorization. *Consent Order and Agreement* ¶ 2, at 1. On July 31, 2017, the city of Ketchum issued an emergency permit for streambank alteration to Hastings, subject to "any additional conditions as required by the [Department] and the U.S. Army Corps of Engineers." *Id*. ¶ 3, at 1. Hastings claims that work on the stream channel ceased on July 31, 2017. *Id*. ¶ 4, at 1. On August 30, 2017, an *Emergency Permit Application to Alter a Stream Channel* was submitted to the Department on behalf of Hastings.

Following submission of the emergency application, the Department determined that Hastings "caused rock-fill below the ordinary high water mark of the Big Wood River. . . . without the required stream alternation permit," and issued the NOV. *Id*. ¶¶ 7, 8, at 1. On January 26, 2018, pursuant to Idaho Code § 42-1701B, Hastings and the Department entered into a *Consent Order and Agreement* ("*Consent Order*") to remedy damages to the Big Wood River and resolve the NOV. *Consent Order*, at 2–3. The *Consent Order* also required payment of a civil penalty in the amount of $10,000, which Hastings paid to the Department. *Id*. at 2; *Golart Dep*. 44:14–21.

On February 14, 2018, Brockway Engineering, PLLC submitted a restoration plan to the Department behalf of Hastings. On March 8, 2018, the Department sent a letter to counsel for Hastings detailing deficiencies in the submitted restoration plan. Counsel for Hastings subsequently filed a revised restoration plan with the Department on March 22, 2018, and a follow-up letter regarding the revised plan dated May 22, 2018. The Department formally responded to the revised plan via a letter dated October 11, 2018. On March 15, 2019, Hastings

[1] Attached as Exhibit C to the *Declaration of Counsel in Support of Petitioner's Motion for Summary Judgment*, filed October 20, 2025.

and Embassy Auditoriums, Inc. ("Embassy") filed a *Joint Application for Permits* ("*Application*"), assigned No. S37-20565 by the Department, identifying the project location as 1200 Warm Springs Rd., associated with Tax Parcel Nos. 8137 and 8138. *Application* at 1. The *Application* included a final revised restoration plan prepared by Brockway Engineering, PLLC, dated December 26, 2018. The stated purpose of the *Application* was to obtain permits to complete a bank stabilization plan, which noted an intention to partially satisfy the *Consent Order* as a part of the plan. *See id.* at 1, 4; *Id.* Attach. "Restoration Plan," at 1.

On May 17, 2019, via letter, the Department issued a conditional approval of the *Application* ("Permit") with special and general conditions. On May 23, 2019, Hastings and Embassy filed a *Petition for Hearing* with the Idaho Water Resource Board ("Board") contesting the Permit, alleging "[c]ertain requirements contained in [the Permit] are inconsistent with the Consent Order and the agreement that led to the filing of the Restoration Plan." *Pet. for Hr'g* at 2.

No further official action took place until November 15, 2021, when Hastings filed a declaratory judgment action in Ada County District Court against the Department, seeking an order declaring that the statute of limitations to pursue an enforcement action related to this matter had run, or in the alternative, seeking clarification concerning the restoration activities. *Hastings v. Idaho Dep't of Water Res.*, 173 Idaho 704, 708–09, 547 P.3d 1190, 1194–95 (2024).

On November 19, 2021, having acknowledged that the parties had reached an impasse during informal proceedings concerning the contested Permit, the Board issued a resolution initiating formal administrative proceedings under the above caption.

The parties agreed to bifurcate the district court proceedings to first address the issue of the applicable statute of limitations. *Id*. at 709, 547 P.3d at 1195. On the statute of limitations issue, the district court concluded that the Department initiated its enforcement action in a timely manner. Hastings appealed to the Idaho Supreme Court, which affirmed the district court's decision. *Id*. at 716, 547 P.3d at 1202.

With only the statute of limitations issue resolved, the district court issued an *Order Staying Lawsuit* "to permit the parties time to address administrative proceedings pending before the [Department]." *Order Staying Lawsuit* at 1, *Hastings v. Idaho Dep't of Water Res.*, No. CV01-21-17825 (Ada Cnty. Dist. Ct. Idaho July 16, 2024).

In the above-captioned matter, the Department and Hastings filed and fully briefed cross-motions for summary judgment. After two opportunities for oral argument by the parties, the matter is submitted for decision by this hearing officer.

## LEGAL STANDARD

The Board's Rules of Procedure, IDAPA 37.01.01, govern the pending motions in this contested case. Rule 220.03 authorizes motions for summary judgment, stating that "Rule 56(a), (c), (d), (e), and (f) of the Idaho Rules of Procedure, apply to such motions before the agency." IDAPA 37.01.01.220.03.

> Summary judgment is proper if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. When applying this standard, all facts and inferences from the record will be viewed in favor of the nonmoving party to determine whether the motion should be granted. If the evidence reveals no disputed issues of material fact, then only a question of law remains . . . .

*Radford v. Van Orden*, 571 P.3d 472, 476 (Idaho 2025) (citation modified).

"The fact that the parties have filed cross-motions for summary judgment does not change the applicable standard of review," and each motion must be evaluated on its own merits. *N. Henry's Lake Homeowners Ass'n, Inc. v. Norton*, 582 P.3d 36, 40 (Idaho 2026) (citation omitted).

## APPLICABLE LAW

Idaho Code § 42-3803(a) says "[n]o 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."

Chapter 38, Title 42, Idaho Code defines "alter" to mean "obstruct, diminish, destroy, alter, modify, relocate, or change the natural existing shape . . . of any stream channel within or below the mean high watermark thereof." I.C. § 42-3802(b). It goes on to define "Stream channel" as "a natural watercourse of perceptible extent, with definite bed or banks, which confines and conducts continuously flowing water." I.C. § 42-3802(d). Additionally, "'Mean high watermark' means a water level corresponding to the natural or ordinary high watermark and is the line which the water impresses on the soil covering it for sufficient periods of time to deprive the soil of its terrestrial vegetation and destroy its value for commonly accepted agricultural purposes." I.C. § 42-3802(h).

Idaho Code § 42-3803(c) says,

> The board may adopt, revise and rescind such rules and regulations and issue such general orders as may be necessary to effectuate the purposes and policy of this chapter within the limitations and standards set forth in this chapter. Rules, regulations and orders adopted or issued pursuant to this section may include, but are not limited to, minimum standards to govern projects or activities for which a permit or permits have been received under this chapter and regulations governing procedures for processing applications and issuing permits under this chapter.

Idaho Code § 42-3806 states in part,

> No permit shall be required by the state or any agency or political subdivision thereof, from a water user or his agent to clean, maintain, construct in, or repair any stream channel, diversion structure, canal, ditch, drain or lateral. No permit shall be required by the state or any agency or political subdivision thereof, from a water user or his agent to remove any obstruction from any stream channel, if such obstruction interferes with, or is likely to interfere with, the delivery of, or use of, water under any existing or vested water right, or water right permit.

Idaho Code § 42-3808 says,

> When emergency situations exist requiring immediate action to protect life or property including growing crops, the director may waive the provisions of this act upon request; providing, however that the extent of stream channel alteration shall be limited only to that amount of work deemed necessary by the director to safeguard life or property including growing crops during the period of emergency.

## ANALYSIS

### I. Hastings' motion for summary judgment is denied.

Hastings believes the Permit issued adds conditions that extend beyond and do not comply with the terms agreed to in the *Consent Order*. In addition to this argument, Hastings cites numerous other defenses and ultimately asks the Hearing Officer to relieve him of "any obligation to complete the stream channel alternation work contemplated in the Consent Order or Permit," even if they are found to be valid, and to require the Department refund the entirely of the $10,000 civil penalty it imposed. *Pet'r's Br. in Supp. of Mot. for Summ. J.* at 13. As detailed below, *Petitioner's Motion for Summary Judgment* relies upon mistaken interpretations of law and makes assertions of fact that are contradicted by the record, therefore, summary judgment in favor of Hastings cannot be granted. As previously stated on the record during oral argument, this Hearing Officer has no power or authority to return the $10,000 fine previously paid by Hastings. That request is denied.

As an initial aside, in support of his motion, Hastings implies that Department personnel are biased toward him. *See id*. at 8. There is no evidence to support such claims other than the amount of the statutory fine which is allowed pursuant to law and alleged heated words between himself and Department personnel in 2017. *See Hastings Aff.* at ¶¶ 6–7. These are not sufficient to show bias.

#### A. Hastings failed to establish that meeting the requirements of the Permit is impossible or that the State is unjustly burdening him with the cost of administrative compliance.

Hastings argues it is impossible for him to meet the requirements of the Permit because of a conservation agreement between the Nature Conservancy and the Community Library. *See*

*Pet'r's Br. in Supp. of Mot. for Summ. J.* at 2. That easement arises because of a gift deed transferring "real property" from The Nature Conservancy to the Community Library Association, Inc. *Id.* The easement and deed carry only the signatures of representatives of those two entities. *Decl. of Counsel in Supp. of Pet'r's Mot. for Summ. J.* Ex. A, at 3–4. The State of Idaho is not a party to either the deed or easement mentioned. Neither of those documents inhibit or vitiate the Department's ability to enforce laws or administrative rules on any stretch of the Big Wood River. That agreement is not binding on the State of Idaho as neither the State nor its agents signed or agreed to any terms.

Hastings also points to this agreement to support a defense of impossibility to perform because of "hold harmless" language that would be required of him to comply with the conservation easement; again, this agreement on its face does not support contract impossibility because that document is not binding on Hastings or the State. There is no evidence of what portions, if any, of the Community Library's streambeds or channels are affected by work pursuant to the Permit. There is no evidence of what is required of Hastings in "hold harmless" agreements to support a defense of impossibility. There is no evidence that obtaining written permission, if necessary, to work on their property is an impossibility other than Hastings' refusal to even try to get those permissions. Nothing in the record clearly points to any requirement of Hastings to indemnify the Nature Conservancy or Community Library. Impossibility of performances has not been shown. For the same reasons, Hastings' later argument regarding mootness of the *Consent Order*, due to the burden of the conservation easement, is equally unsupported and fails. *See Pet'r's Br. in Supp. of Mot. for Summ. J.* at 9–10.

Further, Hastings argues that the emergency streambank stabilization permit issued by the city of Ketchum, dated July 31, 2017, allowed the work to be completed. *Pet'r's Br. in Supp. of Mot. for Summ. J.* at 8. That document offers no defense for failure to also apply for a State emergency permit pursuant to Idaho Code § 42-3803. The Ketchum permit at paragraph 7 states:

> The applicant indicated he would work with qualified consultants and contractors to plan and execute the emergency streambank alteration work. The applicant was made aware that follow up permits would be required for permanent streambank alteration and that the Idaho Department of Water Resources and the Army Corps of Engineers also require emergency permits and permits to conduct permanent stabilization work.

*Golart Dep*. Ex. 3 ¶ 7.[2] Hastings had actual notice that further requirements were needed before he could start work. In summary, Hastings argues the State should have followed Ketchum's permit even though that permit specifically warns of the necessity for further state and federal permits. It is obvious that the State of Idaho, through the Department's Director, has final authority to permit stream channel alterations within the State. I.C. § 42-3803(a) ("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."); *see* I.C. § 42-3801 ("No alteration of any stream channel shall hereafter be made unless approval therefor has been given as provided in this act.").

[2] The emergency permit is attached as a part of Exhibit D to the *Declaration of Counsel in Support of Petitioner's Motion for Summary Judgment*, filed October 20, 2025.

Next, Hastings asserts there is no "authority to shift a massive cost of compliance with an Administrative Order to Petitioner," and cities *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), for that proposition. *Pet'r's Br. in Supp. of Mot. for Summ. J.* at 4–6. Hastings' argument that there is a monetary limit for restoration to be imposed on Petitioner is not supported by statute, rule or decision in Idaho. In fact, *Loper Bright* is irrelevant to the hearing officer's procedure. It is a case addressing a reviewing court's procedure and standards when reviewing the administrative agency's action. This hearing officer is not currently acting in the same capacity as a reviewing court. Also, *Loper Bright* does not address the amount of money a state may require a citizen to pay before that amount violates constitutional parameters.

*Loper Bright* overruled the federal doctrine adopted in *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984), where federal courts must defer to the authority of an administration agency's interpretation of a statute whenever the intent of Congress was ambiguous and the agency's interpretation was reasonable. That standard was never adopted in Idaho and has been further weakened in Idaho by adoption of Idaho Code § 67-5219(5).

**B. The record does not reflect that the Department has exceeded its statutory authority under Idaho's Administrative Procedure Act.**

Hastings goes on to argue that the Idaho Administrative Procedure Act prohibits the Department from exceeding statutory authority. *Pet'r's Br. in Supp. of Mot. for Summ. J.* at 6–9. This argument again depends upon a similar argument based upon *Loper Bright*, but brings it to a state level by citing to Idaho Code § 67-5279(5), which states:

> When interpreting the provisions of any state law, this chapter, or any rule, as defined in section 67-5201, Idaho Code, the court shall not defer to an agency's interpretation of the law or rule and shall interpret its meaning and effect de novo. In an action brought by or against an agency, after applying all customary tools of interpretation, the court shall exercise any remaining doubt in favor of a reasonable interpretation that limits agency power and maximizes individual liberty.

Again, this statute specifically refers to "the court", which in concert with the previous portions of Idaho Code § 67-5279, means a reviewing district or appellate court. The last sentence of this section also applies to a reviewing court and not the agency or its hearing officer. This code section does not apply to proceedings in an administrative hearing.

Hastings' argument seems to say, without a specific law for every action of an agency, either large or small, the agency cannot act. That has never been the law in Idaho or elsewhere. That argument goes against Hastings' own citation in *Loper Bright* that an agency is granted "flexibility" to act where reasonable or appropriate. *See Pet'r's Br. in Supp. of Mot. for Summ. J.* at 5. *Loper Bright* confirms that administrative agencies have discretion to give meaning to statutory terms when a statute empowers an agency "to prescribe rules to 'fill up the details' of a statutory scheme, or to regulate subject to the limits imposed by a term or phrase that 'leaves agencies with flexibility,' such as 'appropriate' or 'reasonable.'" *Loper Bright Enters.*, 603 U.S. at 394–95 (citation modified). Idaho Code § 42-3803(c) empowers the Board to prescribe such

rules, which the Board has done by promulgating IDAPA 37.03.07. By the enactment of Idaho Code § 42-3803, the State has given power and necessary flexibility to the Director and the Board to police and permit stream channel alterations. I.C. § 42-3803(a) ("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."); I.C. § 42-3803(c) ("The board may adopt, revise and rescind such rules and regulations and issue such general orders as may be necessary to effectuate the purposes and policy of this chapter within the limitations and standards set forth in this chapter.").

### C. Hastings' reliance on the Idaho Constitution as a defense is improper.

Pivoting to the Idaho constitution, Hastings relies on three articles to argue that the Idaho Constitution prohibits the Department from enforcing the Permit or *Consent Order*; all three cited articles fail to provide a proper defense. In support of his constitutional arguments, Hastings also cites Idaho Code § 67-5279(2)(a) and (3)(a), which again refer to the standard of reviewing courts when analyzing agency actions, not hearing level conduct.

Hastings first cites Article I, § 1, implying that the Department cannot compel him to indemnify a third party and comply with the Permit because "protecting property" is an inalienable right of Idaho's citizens. *Pet'r's Br. in Supp. of Mot. for Summ. J.* at 9. Once more, the Department is not compelling Hastings to indemnify a third party. Hastings is allowed to protect his property only through the due process of law. Idaho has recognized the importance of property owners to protect their property in times of emergency. Idaho Code § 42-3808 specifically addresses emergency stream channel alteration situations by allowing, not requiring, the Director to waive the provisions of the act to the extent necessary "to safeguard life or property," when requested.

Second, Hastings' Article I, § 9 reference relates to the assertion that the Nature Conservancy gift deed and accompanying easement declares ownership of a portion of the bed and banks of the Big Wood River. *See Pet'r's Br. in Supp. of Mot. for Summ. J.* at 9. Again, the plain language of those documents says no such thing. They specifically relate to the transfer of real property, not the bed and banks of the Big Wood River. The easement inhibits the conduct of the Community Library in the use of the property transferred to it by deed; it does not interfere with the State of Idaho's power to police and permit streambed alteration.

Third, Hastings' reliance on Article I, § 16 offers no protection in this case. *See id*. This section says, "no . . . law impairing the obligation of contracts shall ever be passed." The Department is not impairing any existing contract between Hastings and another entity. In fact, it is trying to enforce an agreement entered into between the Department and Hastings. As previously stated, there is no evidence of impossibility to perform the terms of the Permit.

### D. The *Consent Order* is not moot.

Hastings moves on to argue that the *Consent Order* is moot for three reasons. *Pet'r's Br. in Supp. of Mot. for Summ. J.* at 9–11. First, he revisits the terms of the aforementioned conservation easement, that argument has been addressed and disposed of above.

Second, he argues that the State must "clear title" to the streambed before any work must be done. *Id*. at 10. He argues there is no statutory authority to support the Department's actions because they have not proven the Big Wood River at the subject location is a navigable waterway and publicly owned. *Id.* at 2–4. The intent of the Legislature in Idaho Code § 42-3801 states in part, "the stream channels of the state and their environments be protected against alteration . . . ." There is no reference to navigable waterway criteria. Idaho Code § 49-3802(d) defines stream channel as "a natural watercourse of perceptible extent." There is no necessity to prove a stream is navigable for the Department to police stream channel or bank alterations made without proper permits. Again, Idaho Code § 42-3802 applies to "any stream channel" as defined in § 42-3802(d), and the Big Wood River falls within that definition. There is no differentiation between navigable or not. The Idaho Public Trust Doctrine is limited in Idaho Code § 58-1201 et seq. to allow the State "to dispose of beds of navigable waters." There is no evidence the State has disposed of the beds of the Big Wood River. It is a "stream channel" over which the State has power by permitting to monitor any alteration of same.

Third and finally, Hastings argues that the *Consent Order* is moot because the existing riprap is an administratively compliant structure. *Id*. at 11. Relying on Department staff, Hastings asserts that Mr. Golart agreed that the riprap he previously installed is compliant with administrative rules. *Id*. However, Hastings fails to support his assertion with a citation to Mr. Golart's deposition testimony, which is in the record. If anything, in his deposition, Mr. Golart states the opposite by explaining that "approval" is considered in the context of what is "outlined in the application and design that was approved" and that "[t]here are additional components to that." *Golart Dep.* 69:15–71:21. To date, Hastings has not shown that the *Consent Order* is moot or impossible to comply with.

**E. Hastings failed to successfully invoke a permitting exception found in Idaho Code or caselaw.**

Hastings next points to the term "water user" found in Idaho Code § 42-3806, and from there argues that he has the absolute right to stream alteration for the sake of maintaining or repairing a stream channel because "he uses water." *Pet'r's Br. in Supp. of Mot. for Summ. J.* at 11–12. "Statutory interpretation begins with the literal words of the statute, giving the language its plain, obvious and rational meanings." *Marshall v. Dep't of Transp.*, 137 Idaho 337, 340, 48 P.3d 666, 669 (Ct. App. 2002) (citing *Int'l Ass'n of Firefighters, Local No. 672 v. City of Boise City*, 136 Idaho 162, 169–70, 30 P.3d 940, 947–48 (2001)). Hastings' suggestion that "the Hearing Officer should rely upon dictionary definitions of 'water' and 'user'" is divorced from reason. *Pet'r's Br. in Supp. of Mot. for Summ. J.* at 12. Not only does he fail to provide dictionary definitions for "water," "user," or "water user," the remaining language in Idaho Code § 42-3806 makes certain that the intended "water users" in question are those who would engage in cleaning, maintenance, repairs, or obstruction removal for the sake of delivery or use of water in accordance with an "existing or vested water right or water right permit." The code section itself is entitled, "Existing Rights Unaffected — Where Permit Not Required." I.C. § 42-3806 (emphasis added). Any statutory interpretation of Idaho Code § 42-3806 must be grounded in the context of Idaho water laws and water rights.

Hastings has provided no evidence that his stream channel alterations were performed for the sake of using water in accordance with an existing water right or permit. In fact, to the contrary, Hastings' affidavit states that the work was performed to address bank instability and the City of Ketchum's concerns about possible future stream obstructions, there is no mention of any impact on Hastings' ability to lawfully use water. *Hastings Aff*. ¶ 2. Additionally, in his affidavit, Hastings notes his belief that a 2014 permit previously issued by the Department, assigned No. S37-20362, allowed him to perform the subject alterations. *Hastings Aff.* ¶ 3. That written permit is not a part of this record, and no additional detail is provided, so the Hearing Officer must infer in favor of the Department that it is not relevant to this matter.[3] Therefore, the stream channel alteration permitting exceptions outlined in § 42-3806 do not apply to Hastings' subject stream alteration actions.

Next, Hastings asserts that the Department's assessment of the location of the "ordinary high watermark" at the time it issued the NOV was improper, and "the whole situation could have been avoided" had its location been assessed based on its existence before the "2017 flood event." *Pet'r's Br. in Supp. of Mot. for Summ. J.* at 12–13. For this argument, Hastings first cites the deposition of Mr. Golart. *Id*. at 12. He cites to nine pages of Mr. Golart's deposition testimony without highlighting any particulars, simply indicating that they should be compared to *Aldape v. Akins*, 105 Idaho 254, 668 P.2d 130 (Ct. App. 1983) and *Milbert v. Carl Carbon, Inc.*, 89 Idaho 471, 406 P.2d 113, (1965). On summary judgment, "a party asserting that a fact cannot be or is genuinely disputed must support the assertion by: (A) citing to particular parts of materials in the record . . . ." I.R.C.P. 56(c)(1)–(1)(A). A vague reference to nine pages of testimony does not constitute sufficient support. Further, even if the Department's assessment was determined to be improper, at no point in his motion briefing or oral argument does Hastings argue or provide evidence that the mean high watermark was meaningfully altered by the 2017 high water event. If Hastings intended to establish that a permit pursuant to Idaho Code § 42-3806 was not required because he did not "alter" the stream channel by performing work "within or below the mean high watermark," *see* Idaho Code § 42-3802(b), he would first need to overcome his admission in the signed *Consent Order* "that he altered the stream channel without a permit from the Department," *Consent Order* ¶ 10, at 2 (emphasis added).

Hastings' citation to *Aldape v. Akins*, 105 Idaho 254, 668 P.2d 130 (Ct. App.1983), includes an explanatory parenthetical stating that "an avulsive event[] leave[s] property line[s] unchanged." *Id*. at 12. *Aldape* dealt with the issue of claim/issue preclusion and res judicata. The explanatory parenthetical Hastings offers is dicta. *See Aldape*, 105 Idaho at 256, 668 P.2d at 132 ("Because our decision rests upon the doctrine of res judicata, we need not reach other issues raised on appeal concerning the theory of accretion."). While dicta can be persuasive, Hastings fails to demonstrate how dicta concerning avulsion and land titles is relevant to the case at hand. In a footnote, *Aldape* explains that when avulsion creates "a sudden addition to land by the action of water," the original owner maintains title to that soil. *Aldape*, 105 Idaho at 256 n.1, 668 P.2d at 132 n.1. When asked during his deposition, Mr. Golart explained that "[a]n avulsion is where the channel migrates outside of where it currently exists, and that did not occur here."

[3] Given the 2014 permit is an official record of the Department, the Hearing Officer reviewed it to see if it should be officially noticed in this matter in accordance with Rule 602 of IDAPA 37.01.01. By its express terms, Permit No. S37-20362 expired on December 31, 2015, therefore, the Hearing Officer declines to delay this decision to officially notice the permit, as it has no bearing on this case.

*Golart Dep*. 33:12–14. In his affidavit, Hastings only states that the 2017 high water event caused "rapid erosion." *Hastings Aff*. ¶ 4. Nothing in the record establishes that the 2017 high water event involved avulsion at 1200 Warm Springs Rd. Likewise, nothing in *Aldape* is persuasive when it comes to the Department's determination of a mean high watermark.

Also, in support of his "ordinary high watermark" argument, Hastings cites *Milbert v. Carl Carbon, Inc.*, 89 Idaho 471, 406 P.2d 113, (1965). The issue in that case is again between two landowners and a cause of action for damages between them. *Milbert*, 89 Idaho at 473–74, 406 P.2d at 114. *Milbert* does not speak to statutory permitting requirements. A riparian landowner can have both: (1) a right to place barriers as will prevent his land from being overflowed, *id*. at 478, 406 P.2d at 117, and (2) a duty to make stream channel alterations only after complying with the statutory requirements for permitting of those alterations. Idaho Code § 42-3808 authorizes the Director to grant a permit waiver in the case of certain emergency situations, if requested. The record does not show that Hastings received such a waiver for his stream channel alteration actions or that he requested one before performing alterations. Hastings fails to demonstrate how *Milbert* applies to the Department's determination of a mean high watermark and *Milbert* offers no defense for his actions in this case.

## II. The Department's motion for summary judgement is granted.

The Department asks that the Hearing Officer award summary judgment in favor of the Department, concluding that "the conditions on the *Permit* are consistent with the terms in the *Consent Order*." *Dep't's Mem. in Supp. of Mot. for Summ. J.* at 6.

The Department argues that by agreeing to the *Consent Order*, Hastings has entered into a contract. Hastings does not deny that the *Consent Order* amounts to a contract. *See Pet'r's Resp. to IDWR's Mot. for Summ. J.* at 3 ("Here, the terms of the contract . . . ."). The contract terms at issue in this case read:

> 1) By February 15, 2018, Respondent shall pay a civil penalty in the amount of $10,000 and submit a Joint Application for Permit ("application") to the Department that proposes a plan to restore the streambank at the subject lands. The restoration plan must be designed to reduce further erosion and help restore more functional riverine conditions and include the following minimum requirements:
>
> a. bioengineering treatments to incorporate large woody material along the streambank ( e.g. root wad engineered logjam and brush or tree revetment)
>
> b. a planting plan to help re-establish a native riparian buffer between the Big Wood River and the upland parcel at the subject lands.
>
> 2) Respondent shall comply with the terms and conditions of any permit the Department issues subsequent to the submittal of an acceptable application and restoration plan pursuant to Order paragraph no. 1.

*Consent Order* at 2; *see Dep't's Mem. in Supp. of Mot. for Summ. J.* at 6; *Pet'r's Resp. to IDWR's Mot. for Summ. J.* at 2–3.

In his response to the Department's motion, Hastings asserts that the *Consent Order* contains ambiguity. *Pet'r's Resp. to IDWR's Mot. for Summ. J.* at 2–3.

> There are two types of ambiguity, patent and latent. *Knipe Land Co. v. Robertson*, 151 Idaho 449, 455, 259 P.3d 595, 601 (2011). A patent ambiguity is an ambiguity clear from the face of the instrument in question. *Id*. On the other hand, "[a] latent ambiguity exists where an instrument is clear on its face, but loses that clarity when applied to the facts as they exist." *Id*.

*Thurston Enters., Inc. v. Safeguard Bus. Sys., Inc.*, 164 Idaho 709, 717–18, 435 P.3d 489, 497–98 (2019). It is clear that the two contract terms in question contain no patent ambiguity, so the Hearing Officer must next consider latent ambiguity.

The first term of the *Consent Order* starts with a requirement to "submit a Joint Application for Permit" to restore the streambank. Given Hastings submitted the *Application*, which included an attached proposed restoration plan, there appears to be no latent ambiguity there. The second half of the first term speaks to "minimum requirements" that the restoration plan must include, which were to add "bioengineering treatments of large woody material" and "a planting plan to help re-establish a native riparian buffer." *Consent Order* at 2. The Department argues that per the plain language of the *Consent Order* Hastings' restoration plan had to meet those broad requirements, but that those minimums did not compel the State to permit, without condition, any restoration plan that could be interpreted as satisfying those minimum requirements. *Dep't's Mem. in Supp. of Mot. for Summ. J.* at 5 ("This term provides requirements that Hastings had to meet, not limitations on the Department when processing Hastings' *Application*."). The Hearing Officer finds the Department's argument compelling as the language of the *Consent Order* does not include any commitment by the Department to approve and permit a restoration plan as long as it includes said minimum requirements.

Further, in the second term, the *Consent Order* mentions that a subsequent permit related to the restoration plan may contain "terms and conditions" with which Hastings "shall comply." *Consent Order* at 2. The *Consent Order* specifically contextualizes any permit terms and conditions to be in relation to the *Application* and restoration plan. *See id*. ("pursuant to Order paragraph no. 1."). While the *Consent Order* does not provide detailed definitions of "bioengineering treatments" or "planting plan," the contract terms are clear that the Department will engage in a review of the acceptability of the proposed restoration plan and *Application*, that they can be denied, and that additional permitting terms and conditions may be required. The contract is not ambiguous and therefore the plain language of the contract governs analysis of same. *See Harris v. State ex rel. Kempthorne*, 147 Idaho 401, 405, 210 P.3d 86, 90 (2009) ("When the language in a contract is clear and unambiguous, its interpretation is a question of law and the language will be given its plain meaning.").

By issuing the Permit, the Department acknowledged that Hastings submitted an "acceptable" *Application* and restoration plan to the Department. There is no evidence in the record to establish that the contested Permit conditions are unrelated to the subject stream channel alteration and restoration plan that was included with the *Application*. Therefore, by the

plain language of the *Consent Order*, Hastings agreed to[4] and "shall comply with the terms and conditions" of the Permit.

## CONCLUSION

Hastings has failed to argue and show any legal defense to completion of the *Consent Order* or Permit, including impossibility, statutory or constitutional overreach, coercion, or statutory exemption.

The Department has followed the Idaho statutory requirements for filing a notice of violation, entered into good faith negotiations with Hastings for a permit to restore the streambank of the Big Wood River altered by Hastings, and entered a lawful permit to require the restoration. The Permit issued by the Department for the restoration of the stream channel alterations made by Hastings, inclusive of its conditions, is consistent with the *Consent Order*.

## ORDER

Based upon and consistent with the foregoing, IT IS HEREBY ORDERED that:

(1) *Petitioner's Motion for Summary Judgment* is DENIED.

(2) *Department's Motion for Summary Judgment* is GRANTED.

DATED this 19th day of February 2026.

ROGER S. BURDICK
Hearing Officer

[4] Hastings claims that the Department forced him to sign the *Consent Order* "under threat of criminal prosecution." *Pet'r's Resp. to IDWR's Mot. for Summ. J.* at 3. However, he cites to no factual support for this assertion, and he does not contest that the *Consent Order* bears his true signature.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 19th day of February 2026, the above and foregoing, was served by the method indicated below, and addressed to the following:

| | |
|---|---|
| J. KAHLE BECKER<br>Attorney at Law<br>kahle@kahlebeckerlaw.com | ☒ Email |
| SARA M. AJETI<br>Deputy Attorney General<br>sara.ajeti@idwr.idaho.gov | ☒ Email |

Sarah Tschohl
Paralegal

# EXPLANATORY INFORMATION TO ACCOMPANY A PRELIMINARY ORDER

The accompanying document is a "**Preliminary Order**" issued pursuant to Idaho Code § 67-5243 by the presiding officer appointed by the Idaho Water Resource Board ("Board") in this matter. **This preliminary order can and will become a final order without further action of the Board, unless a party petitions for reconsideration, petitions for review, or seeks judicial review as further described below:**

## PETITION FOR RECONSIDERATION

(*See* Idaho Code § 67-5243(3))

Any party may file a petition for reconsideration of this preliminary order with the presiding officer within fourteen (14) days of the service date of this order as shown on the certificate of service. **Note: the petition must be received by the presiding officer within this fourteen (14) day period.** The presiding officer will act on a petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law.

## PETITION FOR REVIEW (EXCEPTIONS)

(*See* Idaho Code § 67-5245)

Within fourteen (14) days after: (a) the service date of this preliminary order, (b) the service date of a denial of a petition for reconsideration of this preliminary order, or (c) the failure within twenty-one (21) days of the presiding officer to act on a petition for reconsideration of this preliminary order, any party may petition the Board in writing to review any part of this preliminary order by filing exceptions, and any supporting brief, with the Board. Any parties opposing the exceptions shall have fourteen (14) days from the service date of the exceptions to file a brief. If the Board determines that oral argument is to be heard, the Board will provide reasonable notice to the parties of the place, date, and hour for the argument.

The Board will issue a final order on exceptions within fifty-six (56) days of receipt of the written briefs or oral argument, whichever is later, unless extended for good cause. The Board may remand the matter for or hold an evidentiary hearing if further factual development of the record is necessary before issuing a final order.

## APPEAL TO DISTRICT COURT

(*See* Idaho Code §§ 67-5270 through 67-5279)

Within twenty-eight (28) days after: (a) the service date of this preliminary order, (b) the service date of a denial of a petition for reconsideration of this final order, or (c) the failure within twenty-one (21) days of the presiding officer to act on a petition for reconsideration of this final order, any party may file a petition for judicial review of this final order with a district court. The filing of an appeal to a district court does not in itself stay the effectiveness or enforcement of the order under appeal.

**CERTIFICATE OF SERVICE**

(*See* IDAPA 37.01.01.053, 37.01.01.202)

All documents filed with the Board in connection with a petition for reconsideration, petition for review, or a request for hearing of this preliminary order shall be served on all other parties to the proceedings in accordance with Rules of Procedure 53 and 202.

RECEIVED
Mar 05, 2026
DEPARTMENT OF
WATER RESOURCES

**J. KAHLE BECKER (ISB # 7408)**
**Attorney at Law**
223 N. 6th St., Suite 325
Boise, Idaho 83702
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Attorney for Petitioner

**BEFORE THE WATER RESOURCES BOARD**
**OF THE STATE OF IDAHO**

| | |
|---|---|
| IN THE MATTER OF APPLICATION FOR STREAM CHANNEL ALTERATION PERMIT NO. S37-20565 | PETITIONER'S MOTION FOR RECONSIDERATION |

COMES NOW Petitioner, John Hastings by and through his attorney of record, J. Kahle Becker, and pursuant to Idaho Code § 67-5243(3), seeks Reconsideration of the Hearing Officer's Preliminary Order issued herein on February 19, 2026 as follows. This Motion is supported by a Declaration of Counsel filed concurrently herewith and the record in this matter:

## INTRODUCTION

On May 23, 2019, Petitioner filed a *Petition for Hearing* ("*Petition*"), on the *Permit* the Department compelled him to apply for, asserting that "[c]ertain requirements contained in [the Permit] are inconsistent with the Consent Order and the agreement that led to the filing of the Restoration Plan." *Petition*, at 2. Where the permit is inconsistent with the agreement of the parties, the Department has declined to submit any evidence whatsoever supporting the imposition of onerous conditions it demands Petitioner construct, and where the onerous conditions the Department has added 1) go against the

local public interest 2) render completion of the project an uncapped financial liability for Petitioner, 3) disregard applicable statutes, and 4) which are not based in any Rule or Statute, there can be no other outcome than a determination that no additional action is required of Petitioner. For these reasons, Petitioner seeks reconsideration of the denial of its *Motion for Summary Judgment* as well as the granting of the Department's *Motion for Summary Judgment*.

1. **The Hearing Officer Did Not Adress the Local Public Interest in the Preliminary Order.**

IDAPA 37.03.07.35 provides in pertinent part:

> APPLICATION REVIEW (RULE 35). 01. Prior to Issuance of Permit. The following items shall be among those considered by the Director prior to issuing a permit:
>
> e. Will the alteration pass anticipated water flows without creating harmful flooding or erosion problems upstream or downstream?
>
> h. Will the alteration interfere with recreational use of the stream?
>
> l. Are there public safety factors to consider?

The Hearing Officer notes that the uncontroverted evidence established that the local governmental authority verbally authorized the emergency streambank stabilization work, which the Department now finds objectionable. *Preliminary Order* at 1. It is also undisputed that the situation giving rise to the streambank stabilization project arose due to the City of Ketchum's concern about protection of the Warm Springs Bridge immediately downstream of Petitioner's property. ¶ 1-3 *Affidavit of John Hastings in Support of Petitioner's Motion for Summary Judgment*. Here, the Department provided no evidence that its proposed stream bank restoration requirements served to protect the Warm Springs Bridge from erosion to a greater extent than that which currently exists on Petitioner's property, or at all for that matter. This severe risk to public health and safety alone warrants the denial of the Department's *Motion*.

The uncontroverted evidence also establishes that the streambank restoration work is directly across from a swimming hole in the Big Wood River where local community residents regularly recreate. ¶ 8-9 *Affidavit of John Hastings in Support of Petitioner's Motion for Summary Judgment*. *See also* pp. 42-45 of Deposition of The Community Library Association, Inc. Testimony of Jennifer Emery Davidson attached as Exhibit A to *Declaration of Counsel in Support of Motion to Reconsider*. Yet there is no indication either the Department or the Hearing Officer considered the safety risk posed by the restoration work the Department is compelling Petitioner to undertake. *See Golart Deposition* at p. 73. This is an abuse of discretion.

> The determination of what elements of the public interest are impacted, and what the public interest requires, is committed to the sound discretion of the Director. *Shokal v. Dunn*, 109 Idaho 330, 707 P.2d 441 (1985). It is apparent in this case that the Director considered the protection of the natural sculpin pool to be in the public's interest." *Hardy v. Higginson*, 123 Idaho 485, 491, 849 P.2d 946, 948, 1993 Ida. LEXIS 86, *16.

The Hearing Officer's decision to affirm the Department's mandate that Petitioner install child entrapping root wads directly across and downstream of a well-known and frequently used swimming hole in the River is a recipe for disaster. The fact that this issue was not considered by the Department or addressed in the *Preliminary Order* demonstrates this issue was not "considered" at all by the Hearing Officer – or the Department for that matter. Petitioner specifically declines to 1) create a death trap for children and/or 2) assume liability and/or indemnify the Community Library for creating this state mandated death trap.

The inclusion of root wads was a condition imposed by Mr. Golart and that is the only reason they are in the Permit, which the Department forced Petitioner to apply for. Under the present circumstances, it is best to leave well enough alone and let the river run

its course. "If a permittee finds the conditions to be unsatisfactory, the permittee should be allowed to withdraw the application for amendment and be left with what the permittee had before submitting the application to the IDWR." *Hardy v. Higginson*, 123 Idaho 485, 491, 849 P.2d 946, 948, 1993 Ida. LEXIS 86, *15. Mr. Hastings hereby makes that request and, if it will resolve this matter, will take things a step further by reiterating his request that the Department simply allow him to remove the bank armoring he placed to protect the Warm Springs Bridge. To date, the Department has refused this request, further demonstrating that this dispute is more about Departmental personality dynamics and an assertion of power than a genuine concern about the River.

Before the State compels Petitioner to construct any structure which creates a hazard to swimmers, the State should clear title to this section, of what appears to be a publicly owned river, and accept liability for the clear and present danger it appears to have given no thought about creating. Petitioner has no interest in being forced to place structures in the River which can and very well may kill a child. Should the Hearing Officer continue to insist that Petitioner install child entrapping root wads, the State should do so knowing that Petitioner accepts no responsibility for the clear and present danger the state desires to create. Furthermore, Petitioner declines the State's invitation to install them. Instead, Petitioner requests that the state accept full responsibility for construction of the hazard it desires to create on what appears to be a publicly owned river.

**2. The Department Provided No Factual Support for its Motion for Summary Judgment or the Terms and Conditions it Placed in the Permit.**

The Hearing Officer correctly noted:

> The Board's Rules of Procedure, IDAPA 37.01.01, govern the

> pending motions in this contested case. Rule 220.03 authorizes motions for summary judgment, stating that "Rule 56(a), (c), (d), (e), and (f) of the Idaho Rules of Procedure, apply to such motions before the agency." IDAPA 37.01.01.220.03.
>
> Summary judgment is proper if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. When applying this standard, all facts and inferences from the record will be viewed in favor of the nonmoving party to determine whether the motion should be granted. If the evidence reveals no disputed issues of material fact, then only a question of law remains . . . *Radford v. Van Orden*, 571 P.3d 472, 476 (Idaho 2025) (citation modified).
>
> "The fact that the parties have filed cross-motions for summary judgment does not change the applicable standard of review," and each motion must be evaluated on its own merits. *N. Henry's Lake Homeowners Ass'n, Inc. v. Norton*, 582 P.3d 36, 40 (Idaho 2026) (citation omitted).

The Hearing Officer appears to have thereafter disregarded this standard in granting the Departments' factually unsupported *Motion for Summary Judgment*. Beyond the Notice of Violation, Consent Order, and Permit, the Department declined to submit a single piece of factual evidence in support of either its *Response to Petitioner's Motion for Summary Judgment* or in support of its own *Motion for Summary Judgment*. Thus, beyond the *ipse dixit* authoritarian assertion that the state is always right, there is absolutely no evidence supporting the necessity of the Department's onerous and dangerous permit conditions.

In light of the applicable standard upon which the Department sought summary judgment, there appears to be no factual support for the relief granted in favor of the Department. Namely, there is no evidence as to why the Department added conditions, whether they actually provide a benefit to the river, what Rules those conditions are based upon, or how those conditions comply with the minimal requirements set forth in the Consent Order. The State has simply not met its burden of proof that summary

judgment is warranted.

> Pursuant to I.R.C.P. 56(e), once the moving party has presented evidence that there are no genuine issues of material fact, the burden shifts to the non-moving party to come forward with evidence to show that there is a genuine issue for trial. If the non-party does not so respond, summary judgment, if appropriate, shall be entered against that party. *See* I.R.C.P. 56(e). *Armstrong v. Farmers Ins. Co. of Idaho*, 147 Idaho 67, 72, 205 P.3d 1203, 1208, 2009 Ida. LEXIS 50, *14-15.

Here, Petitioner specifically provided evidence of his concerns for the local public interest and his compliance with the applicable administrative rules. The Department on the other hand failed to articulate a single administrative rule which supports its position that it can compel Petitioner to do just about anything it wants simply by adding a term to a Permit it issued, allegedly based on a Consent Order, which simply stated that a permit would be issued - based on the minimal requirements set forth in the Consent Order.

The Department's position demonstrates that an enforceable contract was never formed in the Consent Order.

> [A] writing is not a contract when its terms are "so vague, indefinite and uncertain that the intent of the parties cannot be ascertained . . . ." *Griffith v. Clear Lakes Trout Co.*, 143 Idaho 733, 737, 152 P.3d 604, 608 (2007). Furthermore, "[n]o enforceable contract comes into being when parties leave a material term for future negotiations, creating a mere agreement to agree." *Maroun v. Wyreless Systems, Inc.*, 141 Idaho 604, 614, 114 P.3d 974, 984 (2006) (quoting 17A Am. Jur. 2d *Contracts* § 181 (2004)), *abrogated on other grounds by Wandering Trails, LLC v. Big Bite Excavation, Inc.*, 156 Idaho 586, 329 P.3d 368 (2014). *Wallace v. Heath*, 168 Idaho 40, 46, 479 P.3d 155, 161, 2021 Ida. LEXIS 1, *11, 2021 WL 42428

Here, unbeknownst to Petitioner, the State left the much to be decided following the execution of the Consent Order – making it an agreement to (maybe) agree. Here, the parties only agreed to include 2 basic vague terms in a permit (bioengineering and a planting plan for native vegetation) referenced in the Consent Order. Petitioner asserts he

complied with these basic requirements and the Department has presented no evidence to the contrary. Again, under *Armstrong*, the Departments omission in providing any factual support to justify the imposition of onerous terms it included in the Permit, or in disputing quality of the work Petitioner performed to date, is fatal to the Department's position in seeking to compel Petitioner to perform any additional action.

> Appellants specifically declined to respond to the motion with any substantive argument, instead relying solely on their prior briefing that the court had already rejected. Appellants had the opportunity at that point to raise additional theories of coverage; they failed to do so at their own peril. Moreover, Appellants did not respond to the argument made by Respondent that Appellants' claims unrelated to coverage, namely unfair trade practices and constructive fraud, were disposed of when the court decided that the "household appliance" provision did not provide coverage for their claimed losses. They cannot now complain that the court's decision to grant summary judgment to Respondent was improper when they never attempted to respond to Respondent's arguments or raise new arguments to support their claims. Because Appellants failed to meet their burden under I.R.C.P. 56(e), we affirm the district court's decision to grant Respondent's Motion for Summary Judgment. *Armstrong v. Farmers Ins. Co. of Idaho*, 147 Idaho 67, 72, 205 P.3d 1203, 1208, 2009 Ida. LEXIS 50, *15-16.

Here the Hearing Officer specifically Ordered: "The burden of proof for all parties is a preponderance of evidence; the evidentiary burden is substantial evidence." February 11, 2025 *Order: Notice of Hearing* at p. 4. Yet the Hearing Officer granted summary judgment in favor of the Department – which submitted <u>no evidence whatsoever</u> justifying the onerous and outright dangerous conditions it imposed on Petitioner. Therefore, pursuant to I.C 67-5279(5) and IRCP 56(e) all reasonable factual inferences as to Petitioner's compliance with any administrative rules applicable to the conduct contemplated in the Consent Order, and with respect to the local public interest, must be drawn in favor of Petitioner. Summary Judgment in favor of Petitioner is therefore appropriate. The Hearing Officer erred in denying Petitioner's request while

simultaneously granting summary judgment in favor of the Department.

**3. The Hearing Officer's Reference to a Lack of Evidence on Certain Issues Arises from the Prior Decision of the Hearing Officer to Exclude Consideration of these Issues.**

The *Hearing Officer's Order: Notice of Hearing* dated February 11, 2025 provides:

> The issue for hearing before the Hearing Officer is:
> Are conditions on the Permit consistent with the requirements set forth in the Consent Order?
> In this contested case there is no need for the state to prove ownership of the stream beds. Id at 4.

The Hearing Officer specifically precluded both consideration of and discovery focused on several issues which now constitute grounds for the denial of Petitioner's *Motion for Summary Judgment*. Specifically, in response to a *Motion to Compel* filed by Petitioner and a *Motion to Quash Subpoena* filed by a third-party witness, the Hearing Officer limited the scope of discovery Petitioner sought to undertake. However, as discussed below, the Hearing Officer abused his discretion by making findings against Petitioner, purportedly based on the lack of the very evidence which the Hearing Officer precluded Petitioner from gathering and reviewing in the discovery process!

First, the Hearing Officer denied Petitioner the right to review the Department's files for evidence of bias. *See Order Denying Motion to Compel, Quashing Subpoena Duces Tecum Executed June 27, 2025, and Granting in Part and Denying in Part Motion for Issuance of Subpoena* at 3-5. Yet the Preliminary Order states:

> As an initial aside, in support of his motion, Hastings implies that Department personnel are **biased** toward him. *See id*. at 8. **There is no evidence** to support such claims other than the amount of the statutory fine which is allowed pursuant to law and alleged heated words between himself and Department personnel in 2017. *See Hastings Aff.* at ¶¶ 6–7. These are **not sufficient to show bias**. *Preliminary Order* at 4.

(Emphasis added).

Therefore, the Hearing Officer cannot base his denial of Summary Judgment on the alleged lack of the exact type of evidence of Departmental bias, which the Hearing Officer precluded Petitioner from discovery into.

The Preliminary Order includes several statements which demonstrate Petitioner was denied his right to conduct discovery upon a matter which served as the basis for the denial of Petitioner's *Motion for Summary Judgment* and granting the Department's *Motion*. For example, the Hearing Officer found:

1) Second, Hastings' Article I, § 9 reference relates to the assertion that the Nature Conservancy gift deed and accompanying easement declares ownership of a portion of the bed and banks of the Big Wood River. *See Pet'r's Br. in Supp. of Mot. for Summ. J.* at 9. Again, the plain language of those documents says no such thing. They specifically relate to the transfer of real property, not the bed and banks of the Big Wood River. The easement inhibits the conduct of the Community Library in the use of the property transferred to it by deed; it does not interfere with the State of Idaho's power to police and permit streambed alteration. *Preliminary Order* at 7.
2) "There is no evidence the State has disposed of the beds of the Big Wood River." *Preliminary Order* at 8.
3) "There is no evidence of what portions, if any, of the Community Library's streambeds or channels are affected by work pursuant to the Permit." *Preliminary Order* at 5.[1]

[1] This is not accurate. It is undisputed that the Community Library's alleged ownership interest includes land within the ordinary high water mark of the Big Wood River adjacent to Petitioner's real property

4) Further, even if the Department's assessment was determined to be improper, at no point in his motion briefing or oral argument does Hastings argue or provide evidence that the mean high watermark was meaningfully altered by the 2017 high water event. *Preliminary Order* at 9.[2]

The Hearing Officer improperly limited the scope of discovery and the matters at issue in this administrative hearing only to then use an alleged lack of evidence, which Petitioner was precluded from not only conducting discovery into but presenting in support of his *Motion*, as grounds to both Deny Petitioner's *Motion for Summary Judgment* and grant the Department's *Motion*. *See Order Denying Motion to Compel, Quashing Subpoena Duces Tecum Executed June 27, 2025, and Granting in Part and Denying in Part Motion for Issuance of Subpoena* at p. 6.

The net result was an affirmation of the *ipsie dixit* logic of "if its in the Department's Permit, it must be accurate because the Department is infallible." This presumption is specifically rejected in Idaho Code I.C 67-5279(5). Petitioner specifically requests the opportunity to submit evidence contradicting the Department's position on

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where IDWR is mandating Petitioner perform restoration activities. *See* legal description at p. 16 of 23 of Reservation of Conservation Easement and Gift Deed at p. 5 of 7 referencing the centerline of the Big Wood River and the Hutig property (Petitioner's mother and predecessor in interest) along the west bank of the Big Wood River, Attached as Exhibit A to *Declaration of Counsel in Support of Petitioner's Motion for Summary Judgment*. *See also* map depicting Big Wood River, Id at 19 of 23. *See also* Aerial Photograph (NAIP 2017 Imagery) depicting adjacent property owners found in IDWR Permit -Exhibit 9 to Golart Deposition and compare to site plan drawing showing extent of IDWR mandated restoration activities- Attached as Exhibit D to *Declaration of Counsel in Support of Petitioner's Motion for Summary Judgment*. *See also Order Denying Motion to Compel, Quashing Subpoena Duces Tecum Executed June 27, 2025, and Granting in Part and Denying in Part Motion for Issuance Of Subpoena* at Page 6 "As noted above, the Hearing Officer has already limited the hearing on this matter to a singular issue as well as stated there is no need to prove the State of Idaho is the owner of the streambank in question. *Order; Not. of Hr'g*, at 4.1 And through briefing, the Community Library has admitted that: "The Community Library is the legal owner of Parcel RPKN4N17012048B." *Witness's Reply in Supp. of Obj. & Mot. to Quash*, at 2."

[2] This is also inaccurate. *See* post bank armoring photographs in Exhibit 13 to Deposition of Aaron Golart Attached as Exhibit D to *Declaration of Counsel in Support of Petitioner's Motion for Summary Judgment* and compare to July 25, 2017 photographs taken shortly prior to installation of bank armoring shown in Exhibit 3 to Deposition of Aarong Golart. Several feet of privately owned upland riverbank washed away in an avulsive event creating a new ordinary high water mark on what was previously private property.

the location of the ordinary high water mark, and the alleged state ownership of the beds and banks of the Big Wood River, as it existed in 2017.

**4. The Hearing Officer Engaged in Statutory Interpretation Which Contradicts the Plain Language of that Statute.**

Idaho Code 42-3806 provides in pertinent part:

> 42-3806. EXISTING RIGHTS UNAFFECTED — WHERE PERMIT NOT REQUIRED. ….No permit shall be required by the state or any agency or political subdivision thereof, from a water user or his agent to clean, maintain, construct in, or repair any stream channel, diversion structure, canal, ditch, drain or lateral. No permit shall be required by the state or any agency or political subdivision thereof, from a water user or his agent to remove any obstruction from any stream channel, if such obstruction interferes with, or is likely to interfere with, the delivery of, or use of, water under any existing or vested water right, or water right permit……

The Hearing Officer takes issue with Petitioners reading of the plain language of Idaho Code 42-3806 and engages in selective statutory interpretation to deny Petitioner of of a statutory exemption available to him. The Preliminary Order stated:

> "Statutory interpretation begins with the literal words of the statute, giving the language its plain, obvious and rational meanings." *Marshall v. Dep't of Transp.*, 137 Idaho 337, 340, 48 P.3d 666, 669 (Ct. App. 2002) (citing *Int'l Ass'n of Firefighters, Local No. 672 v. City of Boise City*, 136 Idaho 162, 169–70, 30 P.3d 940, 947–48 (2001)). Hastings' suggestion that "the Hearing Officer should rely upon dictionary definitions of 'water' and 'user'" is divorced from reason. *Pet'r's Br. In Supp. Of Mot. For Summ. J.* at 12. Not only does he fail to provide dictionary definitions for "water," "user," or "water user," the remaining language in Idaho Code § 42-3806 makes certain that the intended "water users" in question are those who would engage in cleaning, maintenance, repairs, or obstruction removal for the sake of delivery or use of water in accordance with an "existing or vested water right or water right permit." The code section itself is entitled, "Existing Rights Unaffected — Where Permit Not Required." I.C. § 42-3806 (emphasis added). Any statutory interpretation of Idaho Code § 42-3806 must be grounded in the context of Idaho water laws and water rights. *Preliminary Order* at 8,

The complete rules of statutory interpretation involve a more nuanced and thorough

analysis than the Hearing Officer's short quote from *Marshall* would suggest. Idaho's Supreme Court stated:

> The objective of statutory interpretation is to give effect to legislative intent. Such intent should be derived from a reading of the whole act at issue. Statutory interpretation begins with the literal words **of the statute**, and this language should be given its plain, obvious, and rational meaning. If the statutory language is unambiguous, the clearly expressed intent of the legislative body must be given effect, and there is no occasion for a court to consider rules of statutory construction. This is because [t]he asserted purpose for enacting the legislation cannot modify its plain meaning. *Chandler's-Boise, LLC v. Idaho State Tax Comm'n*, 162 Idaho 447, 452, 398 P.3d 180, 185, 2017 Ida. LEXIS 213, *10, 2017 WL 2952442. (Emphasis added.)

First, the "whole act" is the Stream Channel Alteration Act, which begins with I.C. 42-3801 and ends with I.C. 42-3811. The Hearing Officer is incorrect that the entirety of Idaho's water law statutes must be considered. The "whole act" begins with the basic rule recognized by the Hearing Officer – "Idaho Code § 42-3803(a) says '[n]o 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.'" *Preliminary Order* at 3. There are several broad exemptions to this basic rule. The analysis of the "whole act" should have begun with an analysis which demonstrates the Act covers a range of topics from applications, to enforcement procedures, to emergencies (such as was the case here), work at commercially navigable ports, and the section at issue – exemptions for water users, such as Petitioner.

The Hearing Officer's exercise in a narrow view of statutory interpretation seeks to ignore a simple concise sentence in the statute, which covers a range of topics and exemptions from other provisions of the "whole act." The plain obvious and rational meaning of the literal words in I.C. 42-3806 appears to be designed to exempt certain

individuals from compliance with the Act as a whole. "No permit shall be required by the state or any agency or political subdivision thereof, from a water user or his agent to…construct in, or repair any stream channel…." While the statute contains other exemptions from the Act as a whole, the Hearing Officer only seeks to deny water users, such as Petitioner, of the exemption to repair a stream channel – without a permit, which is available to him.

The Hearing Officer does so by combining the predicate for one exemption (allowing water users to work in a channel with no other requirement than their status as a "water user") with circumstances giving rise to a second wholly separate exemption (i.e. removal of debris by a water user – who also holds a water right, which Petitioner also happens to hold, to restore delivery of water under a water right) in order to make a more restrictive Frankenstein Exemption. Where no debris needed to be removed from the stream channel, in the 100 year flood event giving rise to Petitioner's bank armoring, the Hearing Officer's reliance upon this second exemption works as a denial of the actual exemption applicable to the situation at hand – which only involved "maintenance" and "repair" of lands along the stream channel by a water user – Petitioner.

The Hearing Officer cobbles together separate exemptions to form a sentence which becomes more restrictive, such that it contradicts and eviscerates the plain language of one of the exemptions set forth in the statute itself. Here, the undisputed evidence establishes that Petitioner is both a water user and a water user with a vested water right. *Affidavit of John Hastings in Support of Petitioner's Motion for Summary Judgment* at ¶ 10. Under the scope of the hearing defined by the *Hearing Officer's Order: Notice of Hearing* dated February 11, 2025 and the plain language of I.C. 42-

3806, there was simply no need for Mr. Hastings to further elaborate on why he exercised this statutory exemption of "repair" and "maintenance" which is available to him and all "water users," where there was no obstruction to remove.

While the Hearing Officer takes issue with Petitioner's alleged failure to include dictionary definition of the terms "water" and "user" it would appear that the Legislature felt comfortable in allowing the common every day meaning of these basic terms to prevail. Tellingly, I.C. 42-3802 DEFINITIONS does not include definitions of these basic common words of everyday usage in the English language. To the extent necessary, Petitioner provides the following definitions:

> Water: a colorless, transparent, odorless liquid that forms the seas, lakes, rivers, and rain and is the basis of the fluids of living organisms.
>
> User: a person who uses or operates something, especially a computer or other machine. The continued use or enjoyment of a right.

So, when combined, Petitioner contends the definition of "Water User" would be a person who uses water. Here, it is undisputed that Petitioner uses the colorless transparent, odorless liquid that forms the Big Wood River. Petitioner does so on the subject property adjacent to the Big Wood River and he has a state recognized right to do so. The statute contains no requirement that the "water user" only utilize surface water. Therefore, the unqualified plain meaning of the exemption found in I.C. 42-3806 applies to Petitioner, allowing him to perform repair and maintenance work in the channel without a permit, and no further action was necessary to invoke this exemption. Summary Judgment in favor of Petitioner is therefore warranted.

**5. The Bank Armoring Petitioner Installed Complies with the Applicable Administrative Rules.**

The Hearing Officer contends Petitioner failed to support his assertion that the

bank armoring he installed complies with the applicable administrative rules.

> Third and finally, Hastings argues that the *Consent Order* is moot because the existing riprap is an administratively compliant structure. *Id*. at 11. Relying on Department staff, Hastings asserts that Mr. Golart agreed that the riprap he previously installed is compliant with administrative rules. *Id*. However, Hastings fails to support his assertion with a citation to Mr. Golart's deposition testimony, which is in the record. *Preliminary Order* at 8.

First, as stated above, the Department provided no evidence whatsoever that the riprap Petitioner installed does not comply with the applicable administrative rules, nor does it refute Mr. Hastings' contention that he has already done so.[3] *See* p. 2 ¶ 4 of *Affidavit of John Hastings in Support of Petitioner's Motion for Summary Judgment*. In order to draw the Hearing Officer's attention to the applicable pages and lines of Mr. Golart's testimony, Petitioner refers the Hearing Officer to the following lines from Mr. Golart's deposition transcript:

> A. Rule 57 06, size and gradation of riprap.
> Q. Okay. So 5706 on Exhibit 7, did you make any determination that the stream bank stabilization that Mr. Hastings had constructed did not comply with that rule?
> A. No.
> *Golart Dep.* P. 64.
> Q. As a basic matter, my client is allowed it keep the riprap that was put in there; right?
> A. According to the design plans that were approved.
> *Golart Dep.* P. 69.
> Q. But we just talked about how riprap is allowed under your administrative rules.
> A. Right.
> *Golart Dep.* P. 70
> Q. And then this permit that the State is just issuing says, "You can keep your riprap"?

[3] The Administrative Rules regarding the Stream Channel Alteration Act have undergone several amendments since this situation arose in 2017. In order to ensure all potentially applicable versions are in the record, Petitioner provides copies with his *Declaration of Counsel in Support of Motion for Reconsideration*. However, regardless of which version is selected by the Hearing Officer, the fact remains, the evidence establishes Petitioner complied with, and the Department confirmed he complied with, the requirements for rip rap/bank armoring set forth in each version, and the Department has provided no evidence that Petitioner has not done so.

A. Correct.
Q. "2: You can continue the riprap upstream and downstream"?
A. Correct.
*Golart Dep.* p. 70-71.[4]

So, while the Hearing Officer precluded Petitioner from demonstrating bias from the Department, in the end, this matter seems to have arisen due to an overly zealous Department personnel's exuberance for his purported gatekeeping power to require a permit for an emergency structure which already complied with the applicable rules. Yet we can now see that Departmental employee could have easily issued a retroactive permit which authorized exactly what Petitioner installed, according to the Department's own administrative rules. This case appears to be more about an exercise of justifying Mr. Golart's permitting authority, than a legitimate concern about the current condition of the Big Wood River at this location.

**6. Petitioner Requests a Waiver of The Permitting Requirements**

In light of the nature of the 2017 100 year flood event[5] in the Big Wood River Valley, and the direction by local authorities to construct the bank armoring which gave rise to the Notice of Violation, Petitioner hereby respectfully requests the Director waive the provisions of the Stream Channel Alteration Act under I.C. 42-3808 and put this matter to rest.

> 42-3808. EMERGENCIES — WAIVER BY DIRECTOR. When emergency situations exist requiring immediate action to protect life or property including growing crops, the director may waive the provisions of this act upon request; providing, however, that the extent of stream channel alteration shall be limited only to that amount of work deemed necessary by the director to safeguard life or property including growing crops during the period of emergency.

[4] Mr. Golart also confirmed Petitioner complied with the native revegetation requirements of the Consent Order. *See* Golart Dep, p. 96-97.
[5] p.9-10 Deposition of Aaron Golart attached as Exhibit C to *Declaration of Counsel in Support of Petitioner's Motion for Summary Judgment*

There is no temporal requirement in I.C. 42-3808 and the Department provided no evidence whatsoever that Petitioner exceeded what was necessary to safeguard a public bridge as well as Petitioner's private property during this 100 year flood event. Therefore, it would be an abuse of discretion for the Director to go against the wishes of the local authority which sought to protect the Warm Springs Bridge during a state and federally declared emergency. *See* Ketchum Emergency Ordinance 1172 (Exhibit 2 to Deposition of Aaron Golart) attached as Exhibit D to *Declaration of Counsel in Support of Petitioner's Motion for Summary Judgment*.

## CONCLUSION

Petitioner raised certain arguments at the administrative hearing stage in order to preserve them for a possible appeal. Since Idaho Code § 67-5279(5) and the recent US Supreme Court precedent set forth in *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024) present issues of first impression in Idaho, Petitioner proceeded to make his record before this administrative tribunal. However, regardless of whether the Hearing Officer correctly decided those novel issues, the other grounds set forth herein warrant reconsideration of the findings in the *Preliminary Order*. Petitioner asks the Hearing Officer to review his findings based on the arguments set forth herein. Thereafter, the Hearing Officer should either grant *Petitioner's Motion for Summary Judgment* and Deny the Department's *Motion* or alternatively, remand this matter for further proceedings.

March 5, 2026
By: /s/ J. Kahle Becker
J. KAHLE BECKER, Attorney for Petitioner
Law Offices of J. Kahle Becker

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the _5th_ day of March, 2026, I caused to be served the foregoing *Petitioner's Motion for Reconsideration* to the following persons by email:

SARA M. AJETI
Deputy Attorney General
sara.ajeti@idwr.idaho.gov
Attorney for Respondent
Idaho Department of Water Resources

"IDWR File" file@idwr.idaho.gov

"Tschohl, Sarah" Sarah.Tschohl@idwr.idaho.gov

_____/s/ J. Kahle Becker_____
J. KAHLE BECKER
Attorney for the Petitioner

RECEIVED
Mar 05, 2026
DEPARTMENT OF
WATER RESOURCES

**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 Petitioner

**BEFORE THE WATER RESOURCES BOARD**
**OF THE STATE OF IDAHO**

| | |
|---|---|
| IN THE MATTER OF APPLICATION FOR STREAM CHANNEL ALTERATION PERMIT NO. S37-20565 | DECLARATION OF COUNSEL IN IN SUPPORT OF PETITIONER'S MOTION FOR RECONSIDERATION |

COME NOW, J. Kahle Becker, being over the age of 18 and competent to make this Declaration, pursuant to Rules 2.7 and 56(c) of the Idaho Rules of Civil Procedure, I.C. § 9-1406, Idaho Code § 67-5243(3), IDAPA 37.01.01.220.02.a and upon his own personal knowledge and under penalty of perjury, states as follows:

1. That I am an attorney in good standing with the Idaho State Bar and counsel for the Petitioner, John Hastings, Jr. herein.

2. That I make this Declaration in Support of *Petitioner's Motion for Reconsideration*.

3. Attached hereto as Exhibit A is a true and correct copy of pages from the transcript of the deposition of The Community Library, Testimony of Jennifer Emery Davidson, taken September 25, 2025 in discovery in this matter.

4. Attached hereto as Exhibit B is a true and correct copy of pages from the October 1, 2025 Vol 25-10 Idaho Administrative Bulletin regarding a Notice of Rulemaking –Proposed Rule for the Idaho Department of Water Resources 37.03.07 – Stream Channel Alteration Rules Docket No. 37-0307-2501 (ZBR Chapter Rewrite)

5. Attached hereto as Exhibit C is a true and correct copy of December 3, 2025 – Vol. 25-12 Idaho Administrative Bulletin regarding a Notice of Rulemaking – Adoption of Pending Rule for the Idaho Department of Water Resources 37.03.07 – Stream Channel Alteration Rules Docket No. 37-0307-2501 (ZBR Chapter Rewrite).

6. Attached hereto as Exhibit D is a true and correct copy of the 2019 version of IDAPA 37 Title 03 Chapter 07 37.03.07 – Stream Channel Alteration Rules which I obtained from IDWR's web hosted archive.

7. Attached hereto as Exhibit E is a true and correct copy of the 2018 version of IDAPA 37 Title 03 Chapter 07 37.03.07 – Stream Channel Alteration Rules which I obtained from IDWR's web hosted archive.

8. I declare under penalty of perjury pursuant to the law of the State of Idaho that the foregoing is true and correct to the best of my knowledge, information and belief.

March 5th, 2026

By: _____/s/ J. Kahle Becker___
J. KAHLE BECKER
LAW OFFICES OF J. KAHLE BECKER
Attorney for Petitioner

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 5th day of March, 2026, I caused to be served the foregoing *Declaration of Counsel in Support of Petitioner's Motion for Reconsideration* to the following persons by email:

Sara Ajeti
Attorney for Defendant,
Idaho Department of Water Resources
"Ajeti, Sara" sara.ajeti@idwr.idaho.gov

"IDWR File" file@idwr.idaho.gov

"Tschohl, Sarah" Sarah.Tschohl@idwr.idaho.gov

"Roger Burdick" roburd47@gmail.com

_____/s/ J. Kahle Becker_____
J. KAHLE BECKER
Attorney for the Petitioner

# EXHIBIT A

BEFORE THE WATER RESOURCES BOARD

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR )
STREAM CHANNEL ALTERATION PERMIT )
NO. S37-20565 )
_____)

# RULE 30 DEPOSITION OF COMMUNITY LIBRARY ASSOCIATION, INC., TESTIMONY OF JENNIFER EMERY DAVIDSON

TAKEN SEPTEMBER 25, 2025

IN KETCHUM, IDAHO

REPORTED BY:

JAHNENE ADMIRE, CSR No. 760, RPR

Notary Public

marked as Deposition Exhibit 6. This is a notice the City of Ketchum put out in 2020 regarding some work on the Warm Springs bridge. I'm wondering if you engaged at all with the City of Ketchum regarding this project. There's a picture on the next page of what actually was proposed to be done.

A. Am I reading this correctly? This is extending down from Church of the Big Wood and the Ketchum Skate Park?

Q. Yeah. It seems to just be some riprap underneath the Warm Springs bridge.

A. I don't -- I don't recall this project.

Q. Okay. So if we can turn back on Exhibit 4, to that site plan we've been discussing. Do you see the four barbs that are coming out from my client's side of the river?

A. Yes.

Q. If we go a few pages back, there's a diagram that says "Typical barb and riprap details and sections." It's a zoomed-in drawing.

A. Is this on a page?

Q. Go back.

A. Deeper into the document.

Q. Deeper in the document. Correct.

A. Yes.



Q. So this is basically a zoomed-in view of what these barbs the State's requiring my client to install. Do you see how at the end there there's these root wads?

A. Is that this kind of spindly-looking thing at the end of what look like rocks?

Q. Yes.

A. Okay.

Q. And there's a sign or an arrow pointing --

A. Number two.

Q. -- to "Log, root wad."

A. Okay.

Q. So, basically, the State wants my client to put these root wads out into the current. And, earlier, we discussed that the area across from my client's property is the swimming hole near Church of the Big Wood.

Do you, as a claimed owner of the river, have concerns about people swimming and facing this entrapment danger downstream or immediately across from where kids swim throughout the summer?

MR. LINNET: Objection to form.

You can answer.

THE WITNESS: I don't know that I understand that it is an entrapment. Based on an initial look at this, I don't automatically have a concern.



Q. (BY MR. BECKER) I mean, is keeping the swimmers safe something that your organization's concerned about?

A. We do not maintain a public swimming hole.

Q. It just exists on your property you claim ownership of?

A. People may swim in the river.

Q. Okay. And this is a popular spot for swimming in the river?

MR. LINNET: Objection to form.

Q. (BY MR. BECKER) In the Ketchum vicinity?

A. Wait, I'm sorry. Was that a question?

Q. Yeah. This is --

A. Is this a --

Q. -- one of the popular spots where people go and swim and recreate in the river?

A. I have seen people swim in the river here.

Q. You don't do anything to monitor how many people access it there?

A. We do not.

Q. Would your organization accept liability for anything that happened or a child to be injured by one of these root wads?

MR. LINNET: Objection to form.

You can answer.



THE WITNESS: I don't know.

Q. (BY MR. BECKER) You mentioned indemnification earlier. That's why I was concerned here.

Would you think this would be my client's responsibility, then, if someone got injured by one of these things?

MR. LINNET: Object to form.

THE WITNESS: I don't know.

Q. (BY MR. BECKER) Do you have any concerns with the current condition of my client's side of the river?

A. I don't know if I know enough about your client's side of the river to speak to that.

Q. Okay. When -- how often -- or when's the last time you were in this vicinity of the river?

A. I have not walked in the channel of the river immediately -- what would that be -- north of the Big Wood -- of the Warm Springs bridge. I haven't done that.

Q. Okay. How about have you been down to the swimming hole?

A. I have not.

Q. Okay. So is it fair to say you're just not very familiar with my client's side of the river in this particular reach?

A. Correct.

# EXHIBIT B

# IDAHO ADMINISTRATIVE BULLETIN

## October 1, 2025 – Vol. 25-10

Office of the Governor
Division of Financial Management
Office of the Administrative Rules Coordinator

The Idaho Administrative Bulletin is published monthly by the Office of the Administrative Rules Coordinator, Division of Financial Management, Office of the Governor, pursuant to Title 67, Chapter 52, Idaho Code.

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# IDAPA 37 – IDAHO DEPARTMENT OF WATER RESOURCES

## 37.03.07 – STREAM CHANNEL ALTERATION RULES

## DOCKET NO. 37-0307-2501 (ZBR CHAPTER REWRITE)

## NOTICE OF RULEMAKING – PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 42-1805(8), Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 2025.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The Idaho Department of Water Resources (IDWR) initiated this rulemaking in compliance with Executive Order No. 2020-01, Zero-Based Regulation (ZBR) (EO 2020-01), issued by Governor Little on January 16, 2020. Pursuant to EO 2020-01, each rule chapter effective on June 30, 2020, must be reviewed by the promulgating agency over a five-year period. This review is being conducted according to a schedule established by the Division of Financial Management, Office of the Governor (DFM), posted at https://adminrules.idaho.gov/rulemaking_templates/ZBR%20Rule%20Review%205%20Year%20Schedule.pdf. This rule chapter was scheduled for review in 2025.

With this Notice, IDWR proposes a rewritten chapter of stream channel alteration rules. The rewritten chapter is approximately 24% shorter than the existing stream channel alteration rule chapter due to both internal agency analysis and external stakeholder negotiation, commentary, and editing. Changes to the rule come through a combination of (a) removal of obsolete (such as outdated and rarely utilized Minimum Standards), (b) removal of unnecessary provisions (such as rules duplicative with statutes), and (c) modifications to existing rules regulating improving its effectiveness (such as rules updates to Definitions and Minimum Standards).

The development of the proposed rule text through two publicly-released preliminary rule draft iterations may be viewed at: https://idwr.idaho.gov/legal-actions/rules/idwr-rulemaking-2025-2026/stream-channel-rules/. On the same website, IDWR also developed and published rulemaking support documents, which provide IDWR's recommendations on rulemaking, rulemaking analysis, and responses to substantive comments received through the negotiated rulemaking process.

After consideration of public comments received in response to this Proposed Rule, IDWR will present the final rule text to the Idaho Legislature in the early spring of 2026.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased:

Stream Channel Alteration permit fees are nominal ($20 per permit application), and are established by statute, Idaho Code § 42-221(M)(3). Rule modifications will not include new fees or changes to fees set by statute.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state General Fund greater than ten thousand dollars ($10,000) during the fiscal year resulting from this rulemaking: N/A.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the April 2, 2025 Idaho Administrative Bulletin, Vol. 25-4, page 43.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Erik Boe at Erik.Boe@idwr.idaho.gov, (208) 287-4800.

Anyone may submit written comments regarding this proposed rulemaking by mail to the address below or by email sent to rulesinfo@idwr.idaho.gov. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2025.

DATED this 29th day of August, 2025.

Erik Boe, Water Compliance Bureau Chief, Rules Regulation Officer
Idaho Department of Water Resources
322 E. Front Street
PO Box 83720 Boise, ID 83720-0098
Phone: (208) 287-4800

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 37-0307-2501**
**(ZBR Chapter Rewrite.)**

## 37.03.07 – STREAM CHANNEL ALTERATION RULES

**000. LEGAL AUTHORITY ~~(RULE 0)~~.**
~~The purpose of these rules and minimum standards is to specify procedures for processing and considering applications for stream channel alterations under the provisions of Title 42, Chapter 38~~Section 42-3803, Idaho Code.
~~(3-18-22)~~( )

**001. ~~TITLE AND~~ SCOPE ~~(RULE 1)~~.**

**~~01.~~ ~~Title~~.** ~~These rules are titled IDAPA 37.03.07, "Stream Channel Alteration Rules."~~ ~~(3-18-22)~~

**~~02.~~ ~~Scope~~.** ~~The minimum standards are~~This chapter is intended to enable the Director to expedite the processing~~, in a short period of time, those~~ of applications which are of a common type and which do not propose alterations which will be a hazard to the stream channel and its environment. ~~It is intended that these rules and minimum standards be administered in a reasonable manner, giving due consideration, to all factors affecting the stream and adjacent property.~~
~~(3-18-22)~~( )

**002. -- 009. (RESERVED)**

**010. DEFINITIONS ~~(RULE 10)~~.**

**01. Alteration**. To obstruct, diminish, destroy, alter, modify, relocate or change the natural existing shape of the channel or to change the direction of flow of water of any stream channel within or below the mean high water mark. It includes removal of material from the stream channel and emplacement of material or structures in or across the stream channel where the material or structure has the potential to affect flow in the channel as determined by the Director. (3-18-22)

**02. Applicant**. Any individual, partnership, company, corporation, municipality, county, state or federal agency, their agent, or other entity proposing to alter a stream channel or actually engaged in constructing a

channel alteration, whether authorized or not. (3-18-22)

**03. Base Flood Elevation**. ~~The Base Flood (BF) is referred to as the one hundred (100) year flood and is a measure of flood magnitude based on probability. The BF has a one percent chance of occurring or being exceeded in any given year, with the Base Flood Elevation (BFE) being the level of flooding reached during the BF or the one hundred (100) year flood event.~~ The elevation of the surface water resulting from a flood that has a one percent (1%) chance of equaling or exceeding that level in any given year. ~~(3-18-22)~~( )

~~**04. Board**. The Idaho Water Resource Board. (3-18-22)~~

**04. Bridge**. Any structure with a hydraulic opening width of ten (10) feet or greater measured normal to the channel. ( )

**05. Continuously Flowing Water**. A sufficient flow of water annually that could provide for ~~migration and movement of fish, and excludes those reaches of streams which, in their natural state, normally go dry at the location of the proposed alteration~~ fish habitat. ~~IDWR~~Idaho Department of Water Resources (Department) will assume, subject to information to the contrary, that the USGS quadrangle maps accurately depict whether a stream ~~reach~~ is continuously flowing~~, at the location of the proposed alteration. Such exclusion does not apply to minor flood~~ This definition includes high flow channels that ~~are a part of a stream which is continuously flowing in the reach where the alteration is located~~ may be dry at the location of the alteration but flow annually. ~~Also, such exclusion does not~~ This definition also appl~~y~~ies to streams which may be dry as a result of upstream diversion or storage of water. ~~(3-18-22)~~( )

~~**06. Department**. The Idaho Department of Water Resources. (3-18-22)~~

~~**07. Drop Structures, Sills and Barbs**. Physical obstructions placed within a stream channel for the purpose of stabilizing the channel by decreasing stream gradient and velocity and by dissipating stream energy. (3-18-22)~~

~~**08. Director**. The Director of the Idaho Department of Water Resources. (3-18-22)~~

**06. Culvert**. Any structure with a hydraulic opening width less than ten (10) feet measured normal to the channel. ( )

**07. Debris**. Any pieces of foreign material or dislodged plant material that affect flow in the channel. ( )

**08. Fish Habitat**. Any aquatic environment where fish live, feed, reproduce, and grow, including areas where fish spawn, rear, and migrate. ( )

**09. Human Life Support System**. Any artificial or natural system that provides all or some of the items (such as oxygen, food, water, control of temperature, or disposition of carbon dioxide) necessary for maintaining human life or health. (3-18-22)

~~**10. Mean High Water Mark**. As defined in Idaho Code, § 42-3802(h), the mean high water mark is water level corresponding to the "natural or ordinary high water mark" and is the line which the water impresses on the soil by covering it for sufficient periods of time to deprive the soil of its terrestrial vegetation and destroy its value for commonly accepted agricultural purposes. (3-18-22)~~

**1~~1~~0. Non-Powered Equipment**. Equipment which is powered only by human strength. (3-18-22)

~~**12. Plans**. Maps, sketches, engineering drawings, photos, work descriptions and specifications sufficient to describe the extent, nature, and location of the proposed stream channel alteration and the proposed method of accomplishing the alteration. (3-18-22)~~

**11. Permanent Structures**. Any alteration that is intended to be long lasting or cannot easily be removed or washed away (for example: placed rock riprap, bioengineering, drop structures, culverts, and bridges).

( )

**132.** **Powered Equipment**. Equipment which is powered by means other than human strength such as a gasoline engine or electric motor. (3-18-22)

**14.** **Repair**. Any work needed or accomplished, to protect, maintain, or restore any water diversion structure and the associated stream channel upstream and downstream as necessary for the efficient operation of the water diversion structure. (3-18-22)

**153.** **Stream Channel**. A natural water course of perceptible extent with definite beds and banks which confines and conducts continuously flowing water. The channel referred to is that which exists at the present time, regardless of where the channel may have been located at any time in the past. For the purposes of these rules only, the beds of lakes and reservoir pool areas are not considered to be stream channels. (3-18-22)( )

**011. -- 024. (RESERVED)**

**025. EXEMPTIONS (RULE 25).**

**01.** **Work on Existing or Proposed Reservoir Projects**. Permits are not required under the provisions of Title 42, Chapter 38 for construction work on any existing or proposed reservoir project, including the dam, and such areas downstream as the Director may determine is reasonably necessary for construction and maintenance of the dam. (3-18-22)

**02.** **Snake and Clearwater Rivers**. Permits are not required for work within that portion of the Snake and Clearwater rivers from the state boundary upstream to the upper boundary of the Port of Lewiston Port District as it now exists or may exist in the future. (3-18-22)

**031.** **Cleaning, Maintenance, Construction, or Repair Work**. No permit is required of a water user or his their agent to clean, maintain, construct, or repair any diversion structure, canal, ditch, or lateral or to remove any obstruction from a stream channel which is interfering with the delivery of any water under a valid existing water right or water right permit. (3-18-22)( )

**042.** **Removal of Debris**. No permit is required for removal of debris from a stream channel provided that no equipment will be working in the channel below the mean high water mark and all material removed will be disposed of at some point outside the channel where it cannot again reenter the channel. (3-18-22)( )

**053.** **Mining Operations Using Non-Powered Equipment.** No permit is required for mining activities using non-powered equipment to move one-quarter (1/4) cubic yard per hour or less below the mean high water mark, except as otherwise described in Rule Subsection 061.05. (3-18-22)( )

**026. -- 029. (RESERVED)**

**030. APPLICATIONS (RULE 30).**

**01.** **Alteration of Stream Channels Permit Required**. No person shall engage in any activity which will alter a stream channel without first applying for a permit as provided by § 42-3803, Idaho Code. (3-18-22)

**021.** **Joint Application Permit Form**. The Department of Water Resources, Idaho Department of Lands (IDL), and the U.S. Army Corps of Engineers have developed a joint application for permits form which will suffice for the required permit application under the Stream Protection Act (SPA). An application should be filed at least sixty (60) days before the applicant proposes to start the construction and shall be upon the joint application form furnished by the Department. The application shall be accompanied by plans which clearly describe the nature and purpose of the proposed work. (3-18-22)( )

**032.** **Applicant Following Minimum Standards**. In those cases where the applicant intends to follow the minimum standards (Rule 055), detailed plans may be eliminated by referring to the specific minimum standard; however, drawings necessary to adequately define the extent, purpose, and location of the work may be required.

Plans ~~shall~~ should include some reference to water surface elevations and stream boundaries to facilitate review. The application should show the mean high water mark on the plans; however, any water surface or water line reference available will be helpful as long as this reference is described. (Examples: present water surface, low water, high water.) ~~(3-18-22)~~( )

~~**04. Submission of Copies**. The applicant shall submit one (1) copy of all necessary plans along with the application form. When drawings submitted are larger than eight and one half by eleven (8 1/2 x 11), the applicant shall provide the number of copies specified by the department. (3-18-22)~~

**031. -- 034. (RESERVED)**

**035. APPLICATION REVIEW ~~(RULE 35)~~.**

**01. Prior to Issuance of Permit**. The following items shall be among those considered by the Director prior to issuing a permit: (3-18-22)

**a.** What is the purpose of doing the work? (3-18-22)

**b.** What is the necessity and justification for the proposed alteration? (3-18-22)

**c.** Is the proposal a reasonable means of accomplishing the purpose? (3-18-22)

**d.** Will the alteration be a permanent solution? (3-18-22)

**e.** Will the alteration pass anticipated water flows without creating harmful flooding or erosion problems upstream or downstream? (3-18-22)

**f.** What effect will the alteration have on fish habitat? (3-18-22)

**g.** Will the materials used or the removal of ground cover create turbidity or other water quality problems? (3-18-22)

**h.** Will the alteration interfere with recreational use of the stream? (3-18-22)

**i.** Will the alteration detract from the aesthetic beauty of the area? (3-18-22)

**j.** What modification or alternative solutions are reasonably possible which would reduce the disturbance to the stream channel and its environment and/or better accomplish the desired goal of the proposed alteration? (3-18-22)

**k.** Is the alteration to be accomplished in accordance with the adopted minimum standards? (3-18-22)

**l.** Are there public safety factors to consider? (3-18-22)

~~**02. Proposed Alteration Which Does Not Follow Minimum Standards**. In those cases where a proposed alteration does not follow the minimum standards, a copy of the application will be sent for review to those state agencies requesting notification. The Director shall provide for review by the Department of Lands, copies of applications on navigable rivers. The Director will provide a copy of any other application requested by the Department of Lands and may request review by other state agencies regardless of whether or not the proposed alteration will comply with the minimum standards. (3-18-22)~~

**036. -- 039. (RESERVED)**

**040. APPROVAL ~~(RULE 40)~~.**

~~**01. Conformance to Application**. All work shall be done in accordance with the approved application, subject to any conditions specified by the department. (3-18-22)~~

**021. Permits Allowed Without Review**. A permit may be approved by the Director ~~of the Department of Water Resources~~ without review by other agencies in situations where the work is of a nature not uncommon to the particular area and where it is clear that the work will not seriously degrade the stream values except on navigable rivers which require review by ~~the Department of Lands~~ IDL. All work approved in this manner ~~shall~~ should be accomplished in accordance with the minimum standards. ~~(3-18-22)~~( )

**022. Reinstatement of Expired Permit**. A permit which has expired may be reinstated by the Director after review by other agencies as determined by the Director. (3-18-22)

**041. -- 044. (RESERVED)**

**045. ENFORCEMENT OF ACT ~~(RULE 45)~~.**

~~**01. Written Orders Issued by Designated Employees of Department**. Employees of the Department designated by the Director may issue written orders directing an applicant to cease and desist, to ensure proper notice to applicants who are found to be altering a stream without a permit or not in compliance with the conditions of a permit. Such orders shall be in effect immediately upon issuance and will continue in force until a permit is issued or until the order is rescinded by the Director.~~ ~~(3-18-22)~~

~~**02. Failure to Comply with Stream Protection Act**. Failure to comply with any of the provisions of the Stream Protection Act (Chapter 38, Title 42, Idaho Code), may result in issuance of an Idaho uniform citation and/or the cancellation of any permit by the Director without further notice and the pursuit in a court of competent jurisdiction, such civil or criminal remedies as may be appropriate and provided by law.~~ The Director may issue written orders pursuant to Section 42-3809, Idaho Code, and the Director may allow reasonable time for an applicant to complete stabilization and restoration work. ~~(3-18-22)~~( )

**046. -- 049. (RESERVED)**

**050. EMERGENCY WAIVER ~~(RULE 50)~~.**

**01. Waiver of Provisions of S~~tream P~~rotection A~~ct~~**. Pursuant to Section 42-3808, Idaho Code, ~~provides for waiver of the~~ the Director may waive provisions of ~~the Stream Protection Act~~ that Section in certain emergency situations ~~where immediate action must be taken to protect life or property including growing crops. The Director will not consider failure to submit an~~; however, emergency situations do not include an applicant's failure to submit an application for a stream channel alteration far enough ahead of the desired starting time of the construction work as an emergency situation. ~~(3-18-22)~~( )

**02. Verbal Waivers**. ~~A~~ The Director may initially grant a verbal waiver ~~may be granted initially~~; however, ~~all verbal requests for waivers shall be followed up by~~ the applicant must follow up in writing within fifteen (15) days of any initial authorization to do work. If the applicant is unable to contact the Director to obtain an emergency waiver, they may proceed with emergency work; however, they must contact the Director as soon as possible thereafter ~~Proving that~~ and prove a bonafide emergency did actually exist ~~will be the responsibility of the applicant~~. ~~(3-18-22)~~( )

**03. Emergency Waiver**. Work authorized by an emergency waiver shall be limited to only that which is necessary to safeguard life or property, including growing crops, during the period of emergency. (3-18-22)

**04. Conformance to Conditions of Waiver**. The applicant shall adhere to all conditions set by the Director as part of a waiver. (3-18-22)

**05. Waivers Granted by Designated Employees**. The Director may delegate the authority to grant waivers to designated employees of the Department. ~~Names and telephone numbers of such employees will be made available to any interested applicant upon request.~~ ~~(3-18-22)~~( )

**051. -- 054. (RESERVED)**

**055. MINIMUM STANDARDS ~~(RULE 55)~~.**
These standards are intended to cover the ordinary type of stream channel alteration and to prescribe minimum conditions for approval of such construction. Unless otherwise provided in a permit, these standards shall govern all stream channel alterations in this state. An applicant should not assume that because an application utilizes methods set forth in these standards it will automatically be approved. These minimum standards include the ~~following~~ items provided in Sections 056 through 063.~~:~~ ~~(3-18-22)~~( )

~~**01. Construction Procedures.** (3-18-22)~~

~~**02. Dumped Rock Riprap.** (3-18-22)~~

~~**03. Drop Structures, Sills and Barbs.** (3-18-22)~~

~~**04. Culverts and Bridges.** (3-18-22)~~

~~**05. Removal of Sand and Gravel Deposits.** (3-18-22)~~

~~**06. Small Scale Mining with Suction Dredges, Powered Sluices, or Non-Powered Equipment.** (3-18-22)~~

~~**07. Piling.** (3-18-22)~~

~~**08. Pipe Crossings.** (3-18-22)~~

~~**09. Concrete Plank Boat Launch Ramps.** (3-18-22)~~

**056. CONSTRUCTION PROCEDURES ~~(RULE 56)~~.**

**01. Conformance to Procedures**. Construction shall ~~be done~~ occur in accordance with the following procedures unless ~~specific approval of~~ the Director approves other procedures ~~has been given by the Director~~. When an applicant desires to proceed in a manner different from the following, such procedures should be described on the application. ~~(3-18-22)~~( )

**02. Operation of Construction Equipment**. No construction equipment shall be operated below the ~~existing~~ mean high water ~~surface~~ mark without specific approval from the Director ~~except as follows: Fording the stream at one (1) location only will be permitted unless otherwise specified; however, vehicles and equipment will not be permitted to push or pull material along the streambed below the existing water level. Work below the water which is essential for preparation of culvert bedding or approved footing installations shall be permitted to the extent that it does not create unnecessary turbidity or stream channel disturbance. Frequent fording will not be permitted in areas where extensive turbidity will be created~~. ~~(3-18-22)~~( )

**03. Temporary Structures**. Any temporary crossings, bridge supports, cofferdams, or other structures that will be needed during the period of construction shall be designed to handle high flows that could be anticipated during the construction period. All temporary structures shall be completely removed from the stream channel at the conclusion of construction and the area ~~shall be~~ restored to ~~a natural appearance~~ its original general configuration including revegetation. ~~(3-18-22)~~( )

**04. Minimizing Disturbance of Area**. Care shall be taken to cause only the minimum necessary disturbance to the ~~natural appearance of the~~ area. Streambank vegetation shall be protected except where its removal is absolutely necessary for completion of the work adjacent to the stream channel. When the removal of vegetation is absolutely necessary, the site shall be reseeded and replanted with native vegetation. ~~(3-18-22)~~( )

**05. Construction Methods**. Construction shall occur using methods that eliminate or minimize discharge of turbidity, sediment, organic matter, or toxic chemicals. A settling basin or cofferdam may be required for this purpose. ( )

**0~~5~~6. Disposal of Removed Materials**. Any vegetation, debris, or other material removed during

construction shall be disposed of at some location out of the stream channel where it cannot reenter the channel during high stream flows. (3-18-22)

06~~7~~. **New Cut ~~of~~ or Fill Slopes**. All new cut or fill slopes ~~that will not be protected with some form of riprap~~ shall be ~~seeded with grass and~~ planted with native vegetation to prevent erosion. ~~(3-18-22)~~( )

~~07. Fill Material. All fill material shall be placed and compacted in horizontal lifts. Areas to be filled shall be cleared of all vegetation, debris and other materials that would be objectionable in the fill. (3-18-22)~~

**08. Limitations on Construction Period**. The Director may limit the period of construction as needed to minimize conflicts with fish ~~migration and spawning~~ habitat, recreation use, and other uses. ~~(3-18-22)~~( )

## 057. PERMANENT STRUCTURES.

**01. Accommodations and Prohibited Barriers**. All permanent structures shall be constructed to accommodate fish passage, considering water depth, water velocity, and not be a physical or velocity barrier. ( )

**02. Vertical Drops Requirements**. All permanent structures with vertical drops shall be constructed with heights which are passable by all species and age classes known to be present in the waterbody and shall not exceed one (1) foot. ( )

**03. Year-Round Water Depth Requirements**. Areas where water is present year-round, minimum water depth shall be approximately eight (8) inches for salmon and steelhead and at least three (3) inches in all other cases. ( )

## 05~~7~~8. ~~DUMPED~~PLACED ROCK RIPRAP ~~(RULE 57)~~.

**01. Placement of Riprap**. Riprap shall be placed on a granular bedding material or a compact and ~~stable~~ non-erodible embankment. ~~(3-18-22)~~( )

**02. Sideslopes of Riprap**. Sideslopes of riprap shall not be steeper than 2:1 (2' horizontal to 1' vertical) except at ends of culverts and at bridge approaches where a 1 1/2:1 sideslope is standard. (3-18-22)

**03. Minimum Thickness of Riprap**. The minimum thickness of the riprap layer ~~shall~~ should equal the dimension of the largest size riprap rock used or be eighteen (18) inches, whichever is greater. When riprap will be placed below the mean high water ~~level~~ mark, the thickness of the layer ~~shall~~ should be fifty percent (50%) greater than specified below. ~~(3-18-22)~~( )

~~04. Riprap Protection. Riprap protection must extend at least one (1) foot above the anticipated high water surface elevation in the stream. (3-18-22)~~

05~~4~~. **Rock Used for Riprap**. Rock for riprap shall consist of sound, dense, durable, and angular rock fragments, resistant to weathering and free ~~from large quantities~~ of concrete, soil, shale, and organic matter. The length of a rock ~~shall~~ should not be more than three (3) times its width or thickness. Rounded cobbles, boulders, and streambed gravels are not acceptable as ~~dumped~~ riprap. ~~(3-18-22)~~( )

06~~5~~. **Size and Gradation of Riprap**. Riprap size and gradation are commonly determined in terms of the weight of riprap rock. The average size of riprap rock shall be at least as large as the maximum size rock that the stream is capable of moving. The maximum size of riprap rock used shall be two (2) to five (5) times larger than the average size. (3-18-22)

07~~6~~. **Methods Used for Determining Gradation of Riprap**. There are many methods used for determining the gradation of riprap rock. ~~One of these many~~ Two (2) acceptable methods ~~is~~ are shown in ~~Table 1 below. Another acceptable method is the Far West States (FWS) method shown in~~ APPENDIX A ~~Table 1A~~.

| Table 1 – GRADATION OF RIPRAP IN POUNDS | | |
|---|---|---|
| Max. Weight of Stone required (lbs) | Min. and Max. Range in weight of Stones (lbs) | Weight Range 75 percent of Stones (lbs) |
| 150 | 25 - 150 | 50 - 150 |
| 200 | 25 - 200 | 50 - 200 |
| 250 | 25 - 250 | 50 - 250 |
| 400 | 25 - 400 | 100 - 400 |
| 600 | 25 - 600 | 150 - 600 |
| 800 | 25 - 800 | 200 - 800 |
| 1000 | 50 - 1000 | 250 - 1000 |
| 1300 | 50 - 1300 | 325 - 1300 |
| 1600 | 50 - 1600 | 400 - 1600 |
| 2000 | 75 - 2000 | 600 - 2000 |
| 2700 | 100 - 2700 | 800 - 2700 |

(3-18-22)( )

0~~8~~7. **Use of Filter Material**. A blanket of granular filter material or filter fabric shall be placed between the riprap layer and the bank in all cases where the bank is composed of erodible material that may be washed out from between the riprap rock. Filter material ~~shall~~ should consist of a layer of well-graded gravel and coarse sand at least six (6) inches thick. Filter fabric used for construction shall be non-woven natural fiber of jute, coir, sisal, or a similar product. The apparent opening length shall be adequate to allow vegetation to penetrate the fabric and spread laterally. (3-18-22)( )

**08. Native Vegetation Planting**. Dormant willow cuttings, willow bundles, willow clumps, or other native woody vegetation shall be planted within riprap and placed down to permanent soil moisture, similar to as depicted in APPENDIX B. Single cuttings shall be spaced no greater than at 2-foot intervals, and bundles or clumps shall be spaced no greater than at 5-foot intervals. ( )

**09. Toe Protection**. Some suitable form of toe protection shall be provided for riprap located on erodible streambed material. (3-18-22)

**a.** Various acceptable methods of providing toe protection are shown in APPENDIX ~~B~~C, Figure 2 at the end of this chapter. (3-18-22)( )

**b.** In addition to the approved methods of providing toe protection as shown in APPENDIX ~~B~~C, any other reasonable method will be considered by the Director during review of a proposed project. (3-18-22)( )

**10. Extension of Riprap Area**. Riprap ~~shall~~ should extend far enough upstream and downstream to reach stable areas, unless the riprap is protected against undermining at its ends by the method shown in APPENDIX ~~C~~D, Figure 3 ~~at the end of this chapter~~. On extremely long riprap sections, it is recommended that similar cutoff sections be used at several intermediate points to reduce the hazard that would be created if failure of the riprap occurred at any one (1) location. (3-18-22)( )

~~**11. Finished Surface**. Placement shall result in a smooth, even finished surface. Compaction is not necessary.~~ (3-18-22)

1~~2~~1. **Placement of Riprap**. ~~The full course thickness of the riprap shall be placed in one (1) operation.~~

~~Dumping riprap long distances down the bank or pushing it over the top of the bank with a dozer shall be avoided if possible.~~ Material ~~should~~ shall be placed with an excavator with a thumb, backhoe, loader, or ~~dragline~~ similar equipment. ~~Dumping material near its final position on the slope or dumping rock at the toe and bulldozing it up the slope is a very satisfactory method of placement, if approval is obtained for the use of equipment in the channel.~~

~~(3-18-22)~~( )

**1~~3~~2. Design Procedure**. Design procedure using the Far West States (FWS) method. (3-18-22)

**a.** The FWS method uses a single equation to deal with variables for riprap. (3-18-22)

D75 = 3.5/CK WDS for Channel Banks

where: D75 = Size of the rock at seventy five percent (75%) is finer in gradation, in inches.

| | | |
|---|---|---|
| W | = | Specific weight of water, usually 62.4 lbs./cu.ft. |
| D | = | Depth of flow in stream, in feet in flood stage |
| S | = | Channel slope or gradient, in ft/ft. |
| C | = | A coefficient relating to curvature in the stream |
| K | = | A coefficient relating to steepness of bank slopes |

(3-18-22)

**b.** The coefficient, C, is based on the ratio of the radius of curvature of the stream, (CR), to the water surface width, (WSW), so it is necessary for the user to make a field determination of these values. The coefficient varies from zero point six (0.6) for a curve ratio of four (4) to six (6), up to one point zero (1.0) for a straight channel. If the computed ratio for a particular project is less than four (4), the designer should consider some modification less than four (4).

| CR/WSW | C |
|---|---|
| 4 - 6 | 0.60 |
| 6 - 9 | 0.75 |
| 9 - 12 | 0.90 |
| Straight Channel | 1.00 |

~~(3-18-22)~~( )

**c.** The coefficient, K, ranges from zero point five (0.5) for a one point five to one (1.5:1) sideslope to zero point eighty-seven (0.87) for a three to one (3:1) sideslope. No values are given for steeper or flatter slopes. Slopes steeper than one point five to one (1.5:1) are not recommended. If slopes flatter than three to one (3:1) are desired, it would be conservative to use the K-value for three to one (3:1) slopes.

| Bankslope | K |
|---|---|
| 1.5:1 | 0.50 |
| 1.75:1 | 0.63 |
| 2.0:1 | 0.72 |
| 2.5:1 | 0.80 |
| 3.0:1 | 0.87 |

~~(3-18-22)~~( )

## 059. BIOENGINEERING.

**01. Construction Materials**. Materials used in bioengineering shall be natural and vegetation used shall be native and locally sourced. Materials should include, but not be limited to, earth, vegetation, rock, and wood, similar to as depicted in APPENDIX E. Exceptions for manufactured products include fiberschines, fiber logs, soil lifts, biodegradable erosion control fabrics, and geotextiles. ( )

**02. Vegetation**. Vegetation used in bioengineering may include native grasses, forbs, shrubs, and woody plants. ( )

**03. Toe Protection**. Some suitable form of toe protection shall be provided for projects located on erodible streambed material. ( )

**04. Endpoint Protection**. Finished projects shall include endpoint protection on the upstream and downstream sides of the project. Endpoint protection shall be robust enough to prevent streamflow from scouring and flowing behind the structure. ( )

## 0~~58~~60. DROP STRUCTURES, SILLS, AND BARBS ~~(RULE 58)~~.

**01. Drop Structures**. A drop structure shall be constructed of rocks, boulders, and/or logs placed within a stream channel to act as a low level dam. Placement of a drop structure perpendicular to stream flow will decrease the stream gradient, dissipate stream energy, and decrease stream velocity through an increase in water surface elevation immediately above the structure. Drop structures shall comply with the following criteria:(3-18-22)

**a.** Maximum water surface differential across (upstream water surface elevation minus downstream water surface elevation) a drop structure ~~shall~~ will not exceed two (2) feet. ~~The department shall approve the final elevation of any structure.~~ ~~(3-18-22)~~( )

**b.** Large wood and/ or ~~R~~rock drop structures ~~shall~~ will be constructed of large, woody material and/or clean, sound, dense, durable, angular rock fragments, and/or boulders of size and gradation, such that the stream is incapable of moving the material during peak flows. ~~Rocks shall~~ Materials used for construction will be keyed into the stream banks to minimize the likelihood of bank erosion~~.~~ (~~S~~see APPENDIX ~~D~~F ~~located at the end of this chapter~~). ~~(3-18-22)~~( )

~~**c.** Log drop structures are acceptable in four (4) designs including the single log dam, the stacked log dam, the three (3) log dam, and the pyramid log dam. Log ends shall be keyed into both banks at least one third (1/3) of the channel width or a distance sufficient to prevent end erosion. To prevent undercutting, the bottom log shall be embedded in the stream bed or hardware cloth, cobbles or boulders shall be placed along the upper edge. Minimum log size for a single log structure shall be determined by on-site conditions and shall be placed to maintain flow over the entire log to prevent decay. Each log drop structure must be accompanied by downstream scour protection, such as a rock apron (See APPENDIX E located at the end of this chapter.~~ ~~(3-18-22)~~

~~**d.** All drop structures shall be constructed to facilitate fish passage and centralized scour pool development.~~ ~~(3-18-22)~~

**c.** Design slopes for drop structures will not exceed more than four percent (4%) of the average slope of the project stream reach. Average slope will be observed over a minimum length upstream and downstream of the project reach, which is equal to the project reach length. ( )

**02. Sills**. A sill shall be constructed of the same material and in the same manner as a drop structure. The top of the sill may not exceed the elevation of the bottom of the channel~~. The purpose of a sill is to halt the upstream movement of a headcut, thus precluding the widening or deepening of the existing channel.~~ (~~S~~see APPENDIX ~~F~~G ~~located at the end of this chapter~~). ~~(3-18-22)~~( )

**03. Barb or Partial Drop Structure**. A barb or partial drop structure shall be constructed in the same

manner and of the same material as a drop structure and placed into the stream channel to act as a low level dam and grade control structure. The barb will decrease stream gradient, dissipate stream energy, and redirect stream flow. Barb or partial drop structures shall comply with the following criteria: ~~(3-18-22)~~( )

**a.** Barbs ~~shall~~ will be constructed of large, woody material and/or clean, sound, dense, angular rock ~~fragments,~~ of size and gradation such that the stream is incapable of moving the material during peak flows. ~~(3-18-22)~~( )

~~**b.** Barbs shall be constructed with a downstream angle of no less than one hundred (100) degrees and no greater than one hundred thirty-five (135) degrees unless otherwise specified. (3-18-22)~~

~~**c**~~**b.** Barbs ~~shall~~ will "extend" into the channel a distance of not more than twenty percent (20%) of the width of the channel unless otherwise specified by the Director. ~~(3-18-22)~~( )

~~**d**~~**c.** Barbs ~~shall~~ will be keyed into the bank a distance equal to or greater than the width of the structure and down to bed level. Whenever moisture is encountered in the construction of the keyways, willow cuttings or clumps ~~shall~~ will be placed before and during rock placement in such a manner that the base of the cutting is in permanent moisture and the top extends a minimum of six (6) inches above grade (see APPENDIX ~~G~~H ~~located at the end of this chapter~~). ~~(3-18-22)~~( )

## 0~~59~~61. CULVERTS AND BRIDGES ~~(RULE 59)~~.

**01. Culverts and Bridges**. Culverts and bridges shall be capable of carrying streamflows and shall not ~~significantly~~ alter conditions upstream or downstream ~~by~~ causing flooding, turbidity, or other problems. The appearance of such installations shall not detract from the natural surroundings of the area. ~~(3-18-22)~~( )

**02. Location of Culverts and Bridges**. Culverts and bridges should be located so that a direct line of approach exists at both the entrance and exit. Abrupt bends at the entrance or exit shall not exist unless suitable erosion protection is provided. (3-18-22)

**03. Ideal Gradient**. The ideal gradient (bottom slope) is one which is steep enough to prevent silting but flat enough to prevent scouring due to high velocity flows. It is often advisable to make the gradient of a culvert or stream channel under a bridge coincide with the average streambed gradient. ~~(3-18-22)~~( )

**a.** Where a culvert is installed on a slope steeper than twenty percent (20%), provisions to anchor the culvert in position will be required. Such provisions shall be included in the application and may involve the use of collars, headwall structures, etc. Smooth concrete pipe having no protruding bell joints or other irregularities shall have such anchoring provisions if the gradient exceeds ten percent (10%). (3-18-22)

**b.** Culverts and bridges shall be designed to pass the stream's natural sediment and debris load through the structure and shall be protected from scour at the entrance and exit. ( )

**04. Size of Culvert or Bridge Opening**. The size of the culvert or bridge opening shall be such that it is capable of passing design flows without overtopping the structure or streambank ~~or~~ and causing flooding or other damage. ~~(3-18-22)~~( )

~~**a.** Design flows shall be based upon the following minimum criteria:~~

| ~~Drainage Area~~ | ~~Design Flow Frequency~~ |
|---|---|
| ~~Less than 50 sq. mi.~~ | ~~25 Years~~ |
| ~~Over 50 sq. mi. or more~~ | ~~50 years or greatest flow of record, whichever is more~~ |

~~(3-18-22)~~

~~**b.** For culverts and bridges located on U.S. Forest Service or other federal lands, the sizing should~~

~~comply with the Forest Practices Act as adopted by the federal agencies or the Department of Lands.~~ ~~(3-18-22)~~

~~c.~~ ~~For culverts or bridges located in a community qualifying for the national flood issuance program, the minimum size culvert shall accommodate the one hundred (100) year design flow frequency.~~ ~~(3-18-22)~~

a. For all bridges with less than a 20-foot opening, one (1) foot of freeboard shall be provided for the 50-year flow, and the 100-year flow shall not contact the bridge's low chord. For all bridges with an opening 20-feet or greater, two (2) feet of freeboard shall be provided for the 50-year flow, and the 100-year flow shall not contact the bridge's low chord. The requirement that the 100-year flow shall not contact the bridge's low chord may need to be increased in areas where ice passage or design may be a problem. ( )

b. All culverts must be designed such that the 100-year flow can be passed without overtopping the culvert. Alternatively, pressure flow on the culvert is allowed provided engineering is submitted for the culvert design including details on fill material, compaction methods, embankment protection, and inlet/outlet protection. In this case, the following criteria must be met: ( )

i. Pressure flow culverts shall be designed so that the ratio of the headwater (HW) to diameter (D) during the 25-year flow is less than or equal to one point twenty-five 1.25 (HW/D≤1.25) and; ( )

ii. The 100-year flow can be passed through the culvert without overtopping the roadway. ( )

~~d~~c. If the culvert or bridge design is impractical for the site, the crossing may be designed with additional flow capacity outside the actual crossing structure, provided there is no increase in the Base Flood Elevation.
(NOTE: When flow data on a particular stream is unavailable, it is almost always safe to maintain the existing gradient and cross-section area present in the existing stream channel. Comparing the proposed crossing size with others upstream or downstream is also a valuable means of obtaining information regarding the size needed for a proposed crossing.) (3-18-22)

~~e~~d. ~~Minimum clearance shall be at least one (1) foot at all bridges. This may need to be increased substantially in the areas where ice passage or debris may be a problem.~~ Minimum culvert sizes required for stream crossings: ~~(3-18-22)~~( )

i. Eighteen (18) inch diameter for culverts up to seventy (70) feet long; (3-18-22)

ii. Twenty-four (24) inch diameter for all culverts over seventy (70) feet long. (3-18-22)

iii. For culverts and bridges located on federal or state lands, or private lands regulated under the Forest Protection Act (FPA), the sizing and other requirements should comply with the FPA as adopted by the federal agencies or IDL. ( )

~~f~~05. Fish Passage. In streams where fish passage is of concern as determined by the ~~d~~Director, an applicant shall comply with the following provisions and/or other approved criteria to ensure that passage will not be prevented by a proposed crossing. ~~(3-18-22)~~( )

~~g~~a. Minimum water depth shall be approximately eight (8) inches for salmon and steelhead and at least three (3) inches in all other cases. Water depth from a representative upstream riffle may be used in cases where the previous depth requirements cannot be met due to lack of sufficient water. ~~(3-18-22)~~( )

~~h~~b. Maximum flow velocities for streams shall not exceed those shown in Figure 17 in APPENDIX ~~H~~I, located at the end of this chapter, for more than a forty-eight (48) hour period. The curve used will depend on the type of fish to be passed. ~~(3-18-22)~~( )

~~i~~c. Where it is not feasible to adjust the size or slope to obtain permissible velocities, the following precautions may be utilized to achieve the desired situation~~.~~: ~~(3-18-22)~~( )

~~j~~i. Baffles downstream or inside the culvert may be utilized to increase depth and reduce velocity.

Design criteria may be obtained from the Idaho Department of Fish and Game ~~Department~~. ~~(3-18-22)~~( )

~~k~~ii. Where multiple openings for flow are provided, baffles or other measures used in one (1) opening only shall be adequate provided that the opening is designed to carry the main flow during low-flow periods. (3-18-22)

**d.** Where fish passage must be provided, upstream drops at the entrance to a culvert will not be permitted and a maximum drop of one (1) foot will be permitted at the downstream end if an adequate jumping pool is maintained below the drop. ( )

**e.** Downstream control structures such as are shown in Figure 18 in APPENDIX J can be used to reduce downstream erosion and improve fish passage. ( )

0~~5~~6. **Construction of Crossings**. When crossings are constructed in erodible material, upstream and downstream ends shall be protected from erosive damage through the use of such methods as ~~dumped~~ rock riprap, headwall structures, etc., and such protection shall extend below the erodible streambed and into the banks at least two (2) feet unless some other provisions are made to prevent undermining. ~~(3-18-22)~~( )

~~a. Where fish passage must be provided, upstream drops at the entrance to a culvert will not be permitted and a maximum drop of one (1) foot will be permitted at the downstream end if an adequate jumping pool is maintained below the drop.~~ ~~(3-18-22)~~

~~b. Downstream control structures such as are shown in Figure 18 in APPENDIX I, located at the end of this chapter, can be used to reduce downstream erosion and improve fish passage. They may be constructed with gabions, pilings and rock drop structures.~~ ~~(3-18-22)~~

0~~6~~7. **Multiple Openings**. Where a multiple opening will consist of two (2) or more separate culvert structures, they shall be spaced far enough apart to allow proper compaction of the fill between the individual structures. The minimum spacing in all situations shall be one (1) foot. ~~In areas where fish passage must be provided, only o~~One (1) opening shall be constructed to carry all low flows. ~~Low flow baffles may be required to facilitate fish passage.~~ ~~(3-18-22)~~( )

0~~7~~8. **Areas to be Filled**. All areas to be filled shall be cleared of vegetation, topsoil, and other unsuitable material prior to placing fill. Material cleared from the site shall be removed and disposed of ~~above the high water line of the stream~~ at a location outside the channel where it cannot reenter the channel. Fill material shall be reasonably well-graded and compacted and shall not contain large quantities of silt, sand, organic matter, or debris. In locations where silty or sandy material must be utilized for fill material, it will be necessary to construct impervious sections both upstream and downstream to prevent the erodible sand or silt from being carried away (see Figure 19, APPENDIX ~~J~~K~~, located at the end of this chapter~~)~~,~~. Sideslopes for fills shall not exceed one and one half to one (1.5:1). Minimum cover over all culvert pipes and arches shall be one (1) foot. ~~(3-18-22)~~( )

0~~8~~9. **Installation of Pipe and Arch Culvert**. All pipe and arch culverts shall be installed in accordance with manufacturer's recommendations. (3-18-22)

**a.** The culvert shall be designed so that headwaters will not rise above the top of the culvert entrance unless a ~~headworks~~ headwall is provided. ~~(3-18-22)~~( )

**0602. REMOVAL OF SAND AND GRAVEL DEPOSITS ~~(RULE 60)~~.**

**01. Removal of Sand and Gravel**. This work consists of removal of sand and gravel deposits from within a stream channel. The following conditions shall be adhered to unless other methods have been specified in detail on the application and approved by the Director. (3-18-22)

**02. Removal Below Water Surface**. Sand and gravel must not be removed below the water surface existing at the time of the work. ~~Where work involves clearing~~ When introducing flow to a new or restored channel ~~for flow~~, removal of material below water level will be permitted to allow this flow to occur; however, this must not be done until all other work in the new channel has been completed. ~~(3-18-22)~~( )

**03. Buffer Zone**. A buffer zone of undisturbed streambed material at least five (5) feet in width or as otherwise specified by the Director shall be maintained between the work area and the existing stream. The applicant shall exercise reasonable precautions to ensure that turbidity is kept to a minimum and does not exceed state water quality standards. (3-18-22)

~~**04. Movement of Equipment**. Equipment may cross the existing stream in one (1) location only, but shall not push or pull material along the streambed while crossing the existing stream. (3-18-22)~~

0~~5~~4**. Disturbing Natural Appearance of Area**. Work must be done in a manner that will least disturb the natural appearance of the area. Sand and gravel shall be removed in a manner that will not leave unsightly pits or other completely unnatural features at the conclusion of the project. (3-18-22)

**06~~1~~3. SMALL SCALE MINING WITH SUCTION DREDGES, POWERED SLUICES, OR NON-POWERED EQUIPMENT ~~(RULE 61)~~.**

**01. Small Scale Mining Permit**. The Director may issue a permit for the operation of a powered suction dredge or power sluice, or certain qualified non-powered mining activities that follow minimum standards ~~(Rule 61)~~, within stream channels designated as open by the Department or Board. A powered suction dredge or power sluice shall only be operated in accordance with the conditions of the Small Scale Mining Permit. A power sluice and a high-banker are synonymous for the purposes of these rules. ~~(3-18-22)~~( )

**02. Standards for Small Scale Mining Permits**. The following standards shall apply only to uses of suction dredges and power sluices below the mean high water mark with nozzle diameters of five (5) inches or less and powered equipment rated at fifteen (15) HP or less, or the use of non-powered sluice equipment moving more than one-quarter (1/4) cubic yard per hour. (3-18-22)

**03. Powered Equipment Prohibited Below High Water Mark**. There shall be no use of powered equipment below the mean high water mark except for the suction dredge, or power sluice and any human life support system necessary to operate the suction dredge or power sluice. (3-18-22)

**04. Protection of Streambanks**. The operation of a suction dredge or power sluice, or the use of non-powered equipment shall be carried out in a manner that prevents the undercutting of streambanks. (3-18-22)

**05. Permit Required for Certain Non-Powered Operations**. A Small Scale Mining Permit is required for non-powered mining activities when those activities include: (1) the use of non-powered equipment by more than five (5) people mining the same area; or (2) the use of non-powered equipment where the disturbed area at the mining location exceeds thirty three (33) percent of the width of the wetted stream channel. (3-18-22)

**06. Limitation of Mining Sites**. Only one (1) mining site per one hundred (100) linear feet of stream channel shall be worked at one (1) time unless waived by the Director. (3-18-22)

~~**062. PILING (RULE 62).**~~

~~**01. Standards for Pilings**. The following standards apply to a piling associated with a boat or swimming dock, a log boom, a breakwater, or bridge construction. (3-18-22)~~

~~**02. Replacement of Pilings**. In replacing a piling the old piling shall be completely removed from the channel, secured to the new piling or cut at stream bed level. (3-18-22)~~

~~**03. Condition of Pilings**. Chemicals or compounds used for protection of piles and lumber shall be thoroughly dried to prevent bleeding, weeping or dissolution before placing such piles and lumber over, in or near water. (3-18-22)~~

~~**04. Prohibited Materials**. The application of creosote, arsenicals or phentachlorophenol (Penta) to timber shall not occur in, or over water. (3-18-22)~~

**063. PIPE CROSSINGS (RULE 63).**

**01. Standards for Pipe Crossings**. The following standards apply to pipe crossings to be installed below the bed of a stream or river such as utility crossings of a gas line, sewer line, electrical line, communication line, water line or similar line. (3-18-22)

**02. Depth of Line**. The line shall be installed below the streambed to a depth which will prevent erosion and exposure of the line to free flowing water. In areas of high stream velocity where scouring may occur, the pipe shall be encased in concrete or covered with rock riprap to prevent the pipeline from becoming exposed. (3-18-22)

**03. Pipe Joints**. The joints shall be welded, glued, cemented or fastened together in a manner to provide a water tight connection. (3-18-22)

**04. Construction Methods**. Construction methods shall provide for eliminating or minimizing discharges of turbidity, sediment, organic matter or toxic chemicals. A settling basin or cofferdam may be required for this purpose. (3-18-22)

**05. Cofferdam**. If a cofferdam is used, it shall be completely removed from the stream channel upon completion of the project. (3-18-22)

**06. Revegetation of Disturbed Areas**. Areas disturbed as a result of the alteration shall be revegetated with plants and grasses native to these areas. (3-18-22)

**064. CONCRETE PLANK BOAT LAUNCH RAMPS (RULE 64).**

**01. Construction of Concrete Plank Boat Launch Ramps**. Concrete plank boat launch ramps, shall be constructed with individual sections of precast, reinforced concrete planks linked together to provide a stable non-erosive water access (see Figure 20, APPENDIX K, located at the end of this chapter). (3-18-22)

**02. Construction of Concrete Planks**. Typical concrete plank size is twelve feet by fourteen inches by four inches (12' x 14" x 4"). All planks shall be constructed with Type II low alkali cement. All planks shall have a broom form finish, free of rock pockets and loose materials. Figures 21 and 22 shows a typical launch plank detail. (See APPENDIXES L and M). (3-18-22)

**03. Assembly of Planks**. The planks shall be assembled out of the water and slid into place on a constructed launch ramp where water velocities do not exceed two (2) feet per second. In waters exceeding (2) feet per second the ramp sections shall be linked together and fastened to pre positioned stringers anchored into the launch ramp. (See Figure 23, APPENDIX N, located at the end of this chapter). (3-18-22)

**04. Water Depth**. The water depth above the lower end of the ramp section shall not be less than three (3) feet during low level or low flow periods. (See Figure 20, APPENDIX K, located at the end of this chapter). (3-18-22)

**05. Construction of Boat Ramp**. The boat launch ramp shall have a base constructed of sound, dense, durable, angular rock resistant to weathering and free from soil, shale and organic materials. Rounded cobbles, boulders and streambed material are not acceptable as base material in areas with stream flow velocities greater than two (2) fps. Base materials shall be covered with a layer of (three-fourths inches (3/4") min.) crushed rock with a minimum depth of two inches (2"). The ramp shall have a minimum and maximum slope of ten percent (10%) and fifteen percent (15%) respectively, and shall be constructed in a manner to avoid long incursions into the stream channel. All ramps and fill material shall be protected with rock riprap in accordance with Rule 057 when stream flow velocities exceed two (2) fps. (See Figure 24, APPENDIX O, located at the end of this chapter). (3-18-22)

**065. – 069. (RESERVED)**

**070. HEARINGS ON DENIED, LIMITED, OR CONDITIONED PERMIT OR OTHER DECISIONS OF THE DIRECTOR (RULE 70).**

~~Any applicant who is granted a limited or conditioned permit, or who is denied a permit, may seek a hearing on said action of the Director by serving on the Director written notice and request for a hearing before the Board within fifteen (15) days of receipt of the Director's decision. Said hearing will be set, conducted, and notice given as set forth in the Rules promulgated by the Board under the provisions of Title 67, Chapter 52, Idaho Code.~~ ~~(3-18-22)~~

**0~~71~~64. -- 999. (RESERVED)**

**APPENDIX A**
**~~Table 1A~~**

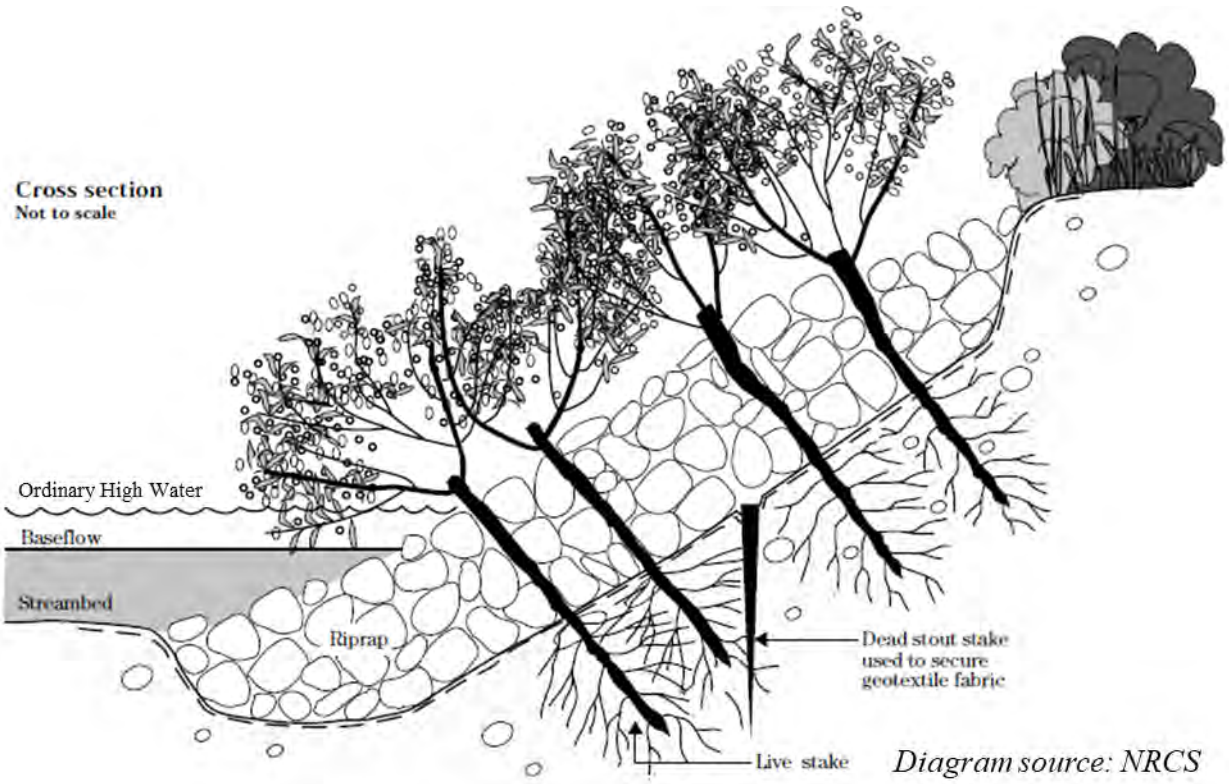
**Riprap Gradation Using FWS Method**

| % Finer by Weight (Lbs.) | Minimum Size (Lbs.) | Maximum Size (Lbs.) |
|---|---|---|
| $D_{100}$ | 1.33 X $D_{75}$ | 2.0 X $D_{75}$ |
| $D_{75}$ | 1.0 X $D_{75}$ | 1.67 X $D_{75}$ |
| $D_{50}$ | 0.67 X $D_{75}$ | 1.17 X $D_{75}$ |
| $D_{25}$ | 0.33 X $D_{75}$ | 0.77 X $D_{75}$ |
| $D_0$ | None | 0.33 X $D_{75}$ |

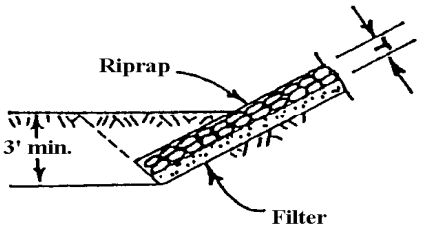
**Gradation of Riprap in Pounds**

| Max. Weight of Stone required (lbs) | Min. and Max. Range in weight of Stones (lbs) | Weight Range 75 percent of Stones (lbs) |
|---|---|---|
| 150 | 25 - 150 | 50 - 150 |
| 200 | 25 - 200 | 50 - 200 |
| 250 | 25 - 250 | 50 - 250 |
| 400 | 25 - 400 | 100 - 400 |
| 600 | 25 - 600 | 150 - 600 |
| 800 | 25 - 800 | 200 - 800 |
| 1000 | 50 - 1000 | 250 - 1000 |
| 1300 | 50 - 1300 | 325 - 1300 |
| 1600 | 50 - 1600 | 400 - 1600 |
| 2000 | 75 - 2000 | 600 - 2000 |
| 2700 | 100 - 2700 | 800 - 2700 |

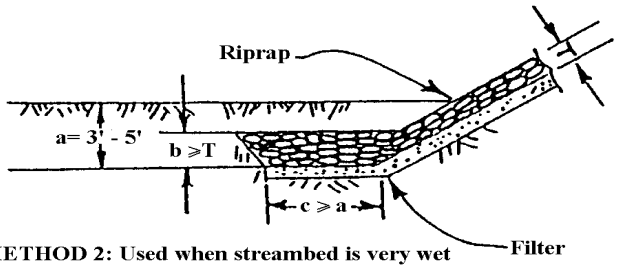
## APPENDIX B


Cross section
Not to scale
Ordinary High Water
Baseflow
Streambed
Riprap
Dead stout stake
used to secure
geotextile fabric
Live stake
Diagram source: NRCS

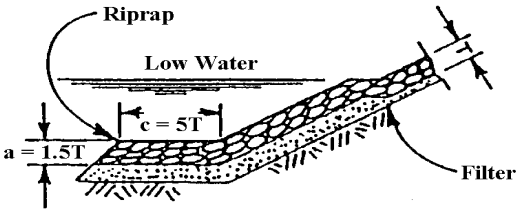
**APPENDIX ~~B~~C**




**METHOD 1: This is most suited to areas where the toe is dry during construction.**



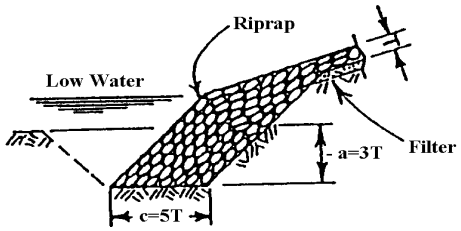

**METHOD 2: Used when streambed is very wet or groundwater presesnt makes using Method 1 impractical.**



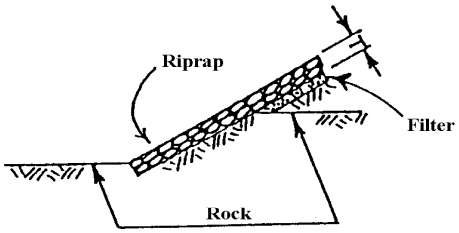

**METHOD 3: Often used when toe is underwater during construction. Both Methods 2 and 3 utilize the idea that undermining will cause rock at toe blanket to settle into eroded area providing protection during scouring.**

**FIGURE 2. Acceptable toe protection**

**APPENDIX ~~B~~C (CONTINUED)**



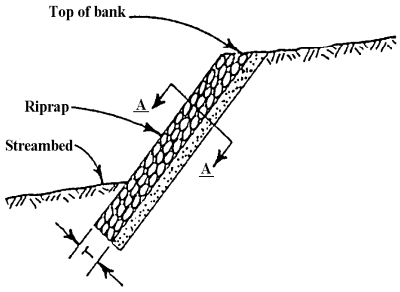

**METHOD 4: Used underwater in areas with extremely bad streambed erosion conditions which make Method 3 unfeasible. This method may also be preferred where Mehtod 3 would destroy fish spawing beds.**

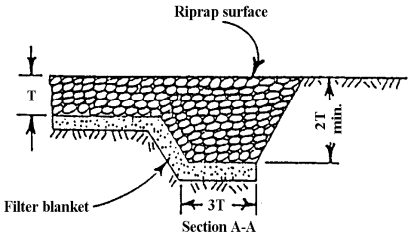



**METHOD 5: When the streambed is non-erodible, no special provisions for toe protection are needed other than insuring that the riprap is well keyed to the rock.**

**FIGURE 2. Acceptable toe protection** ***continued***

**APPENDIX ~~C~~D**

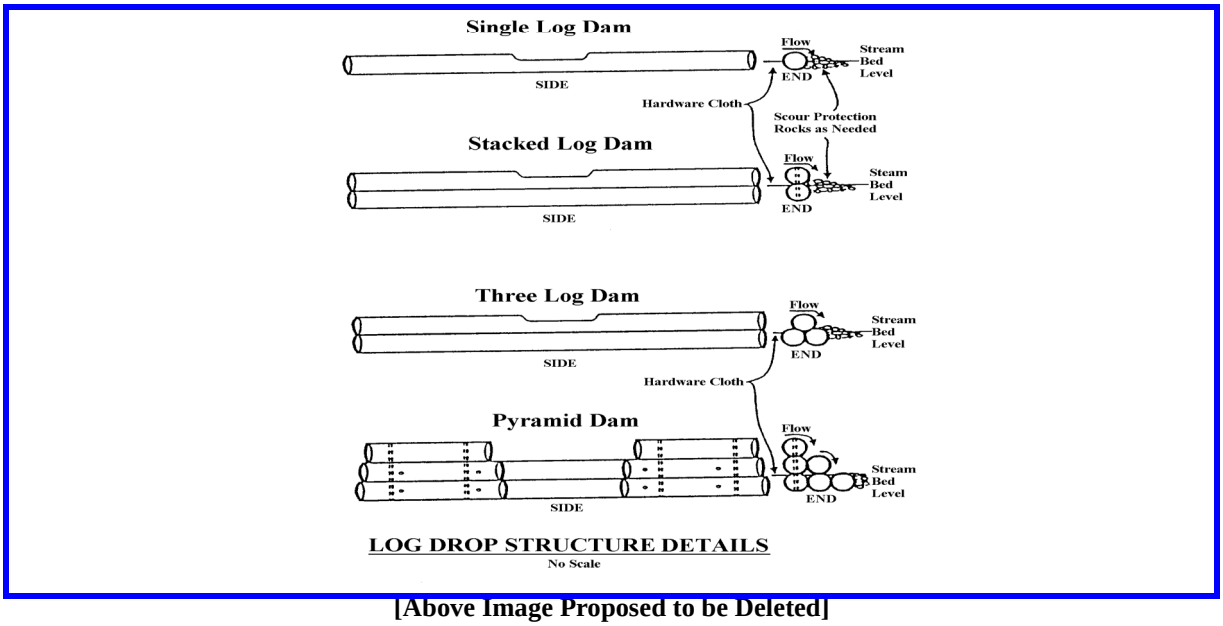



View shown above is cross section at end of riprap looking down along the sideslope toward streambed.

FIGURE 3. Protction against undermining

**APPENDIX E**

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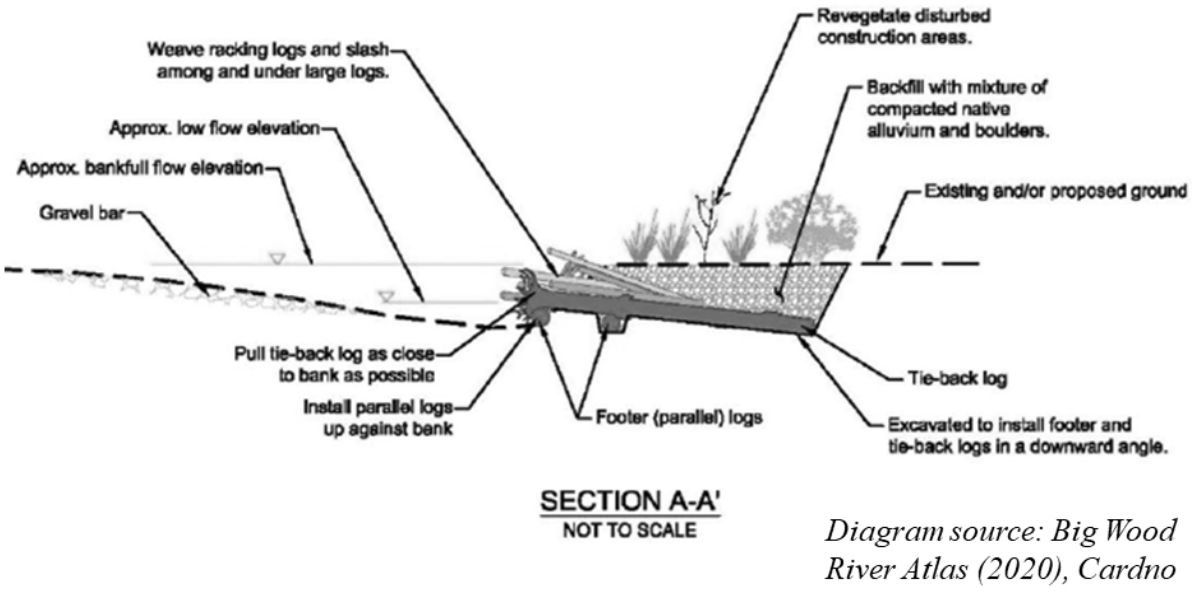



*Diagram source: Big Wood River Atlas (2020), Cardno*

**APPENDIX E (CONTINUED)**

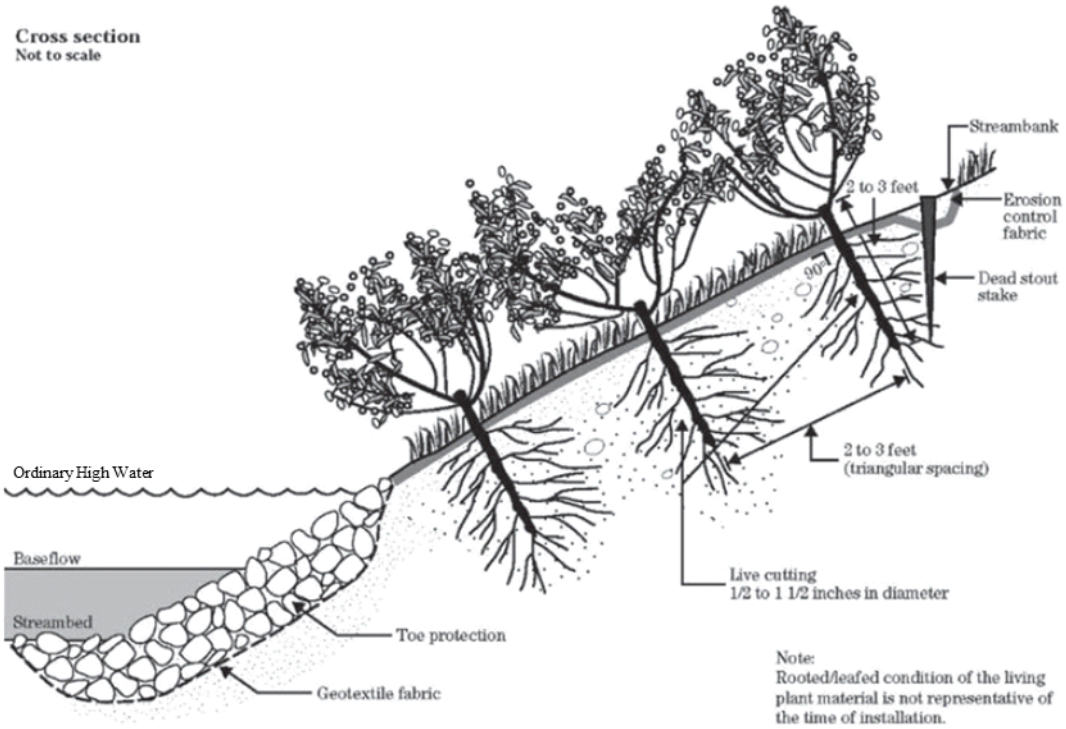



*Diagram source: NRCS*

**APPENDIX E (CONTINUED)**

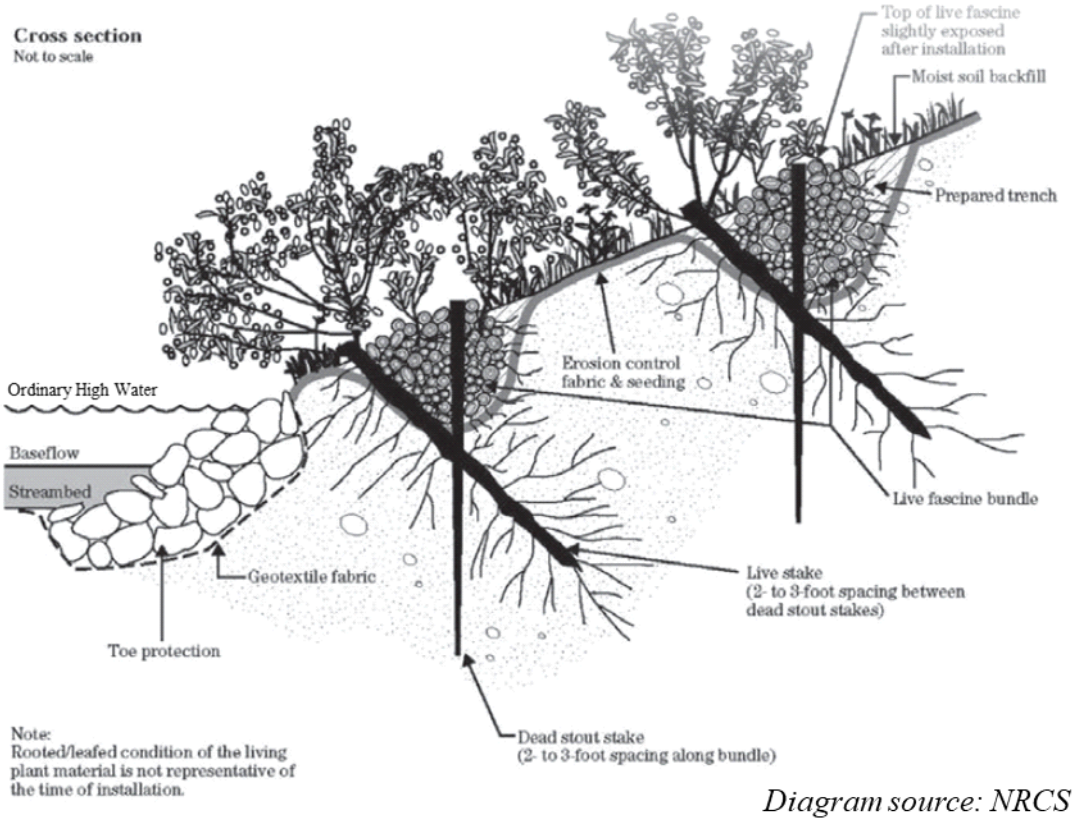
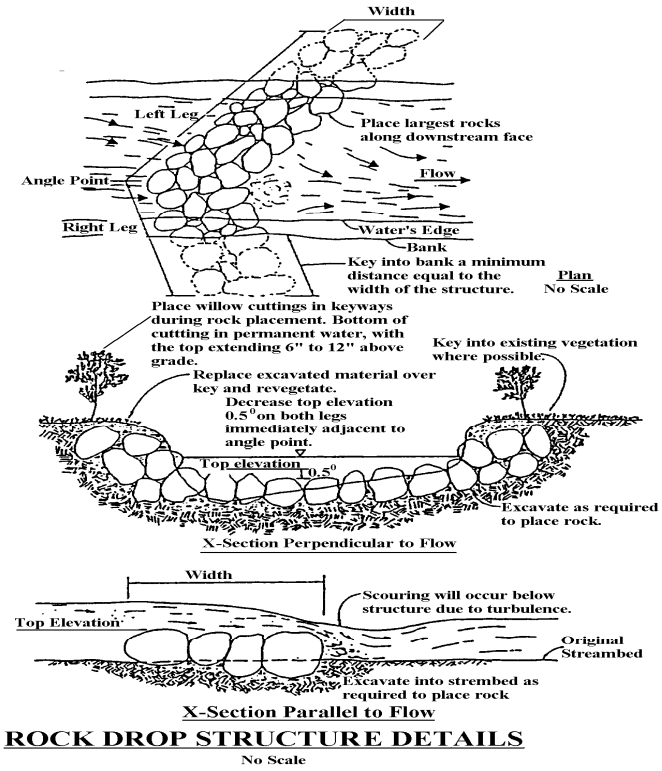



*Diagram source: NRCS*

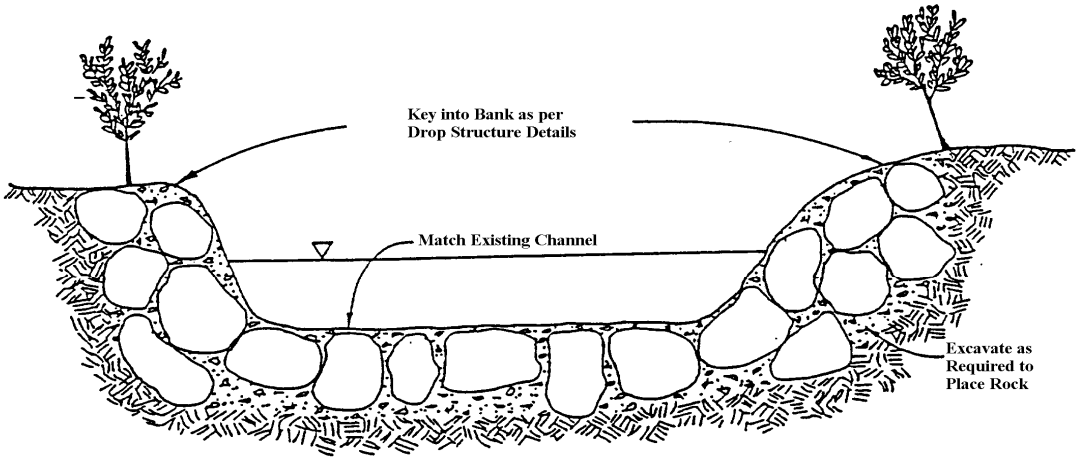
**APPENDIX ~~D~~F**




**ROCK DROP STRUCTURE DETAILS**

No Scale

**APPENDIX ~~F~~G**

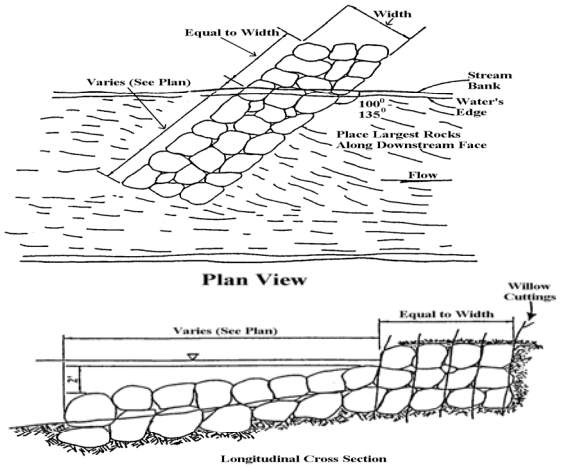



X-Section Perpendicular to Flow

**SILL DETAILS**

No Scale

**APPENDIX ~~G~~H**




**BARB DETAILS**

No Scale

## APPENDIX ~~H~~I

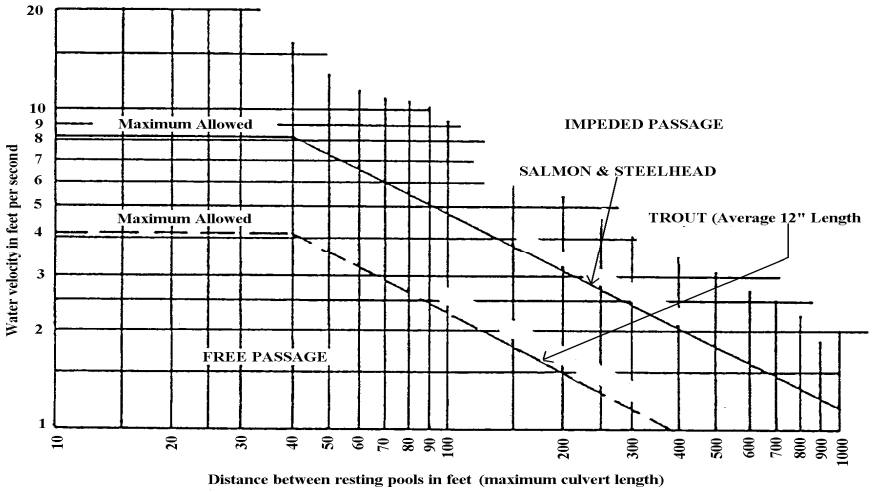
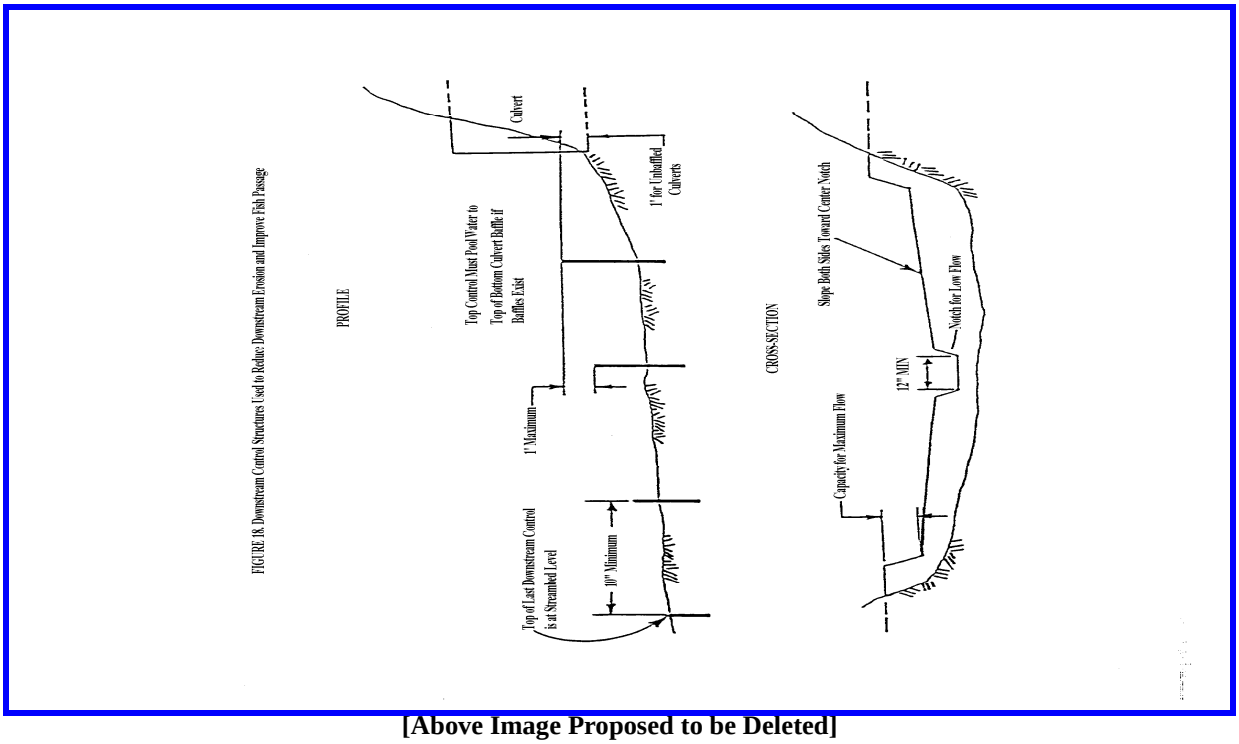



FIGURE 17. Swimming capability of migrating salmon and trout (Alaskan Curve)

~~APPENDIX I~~

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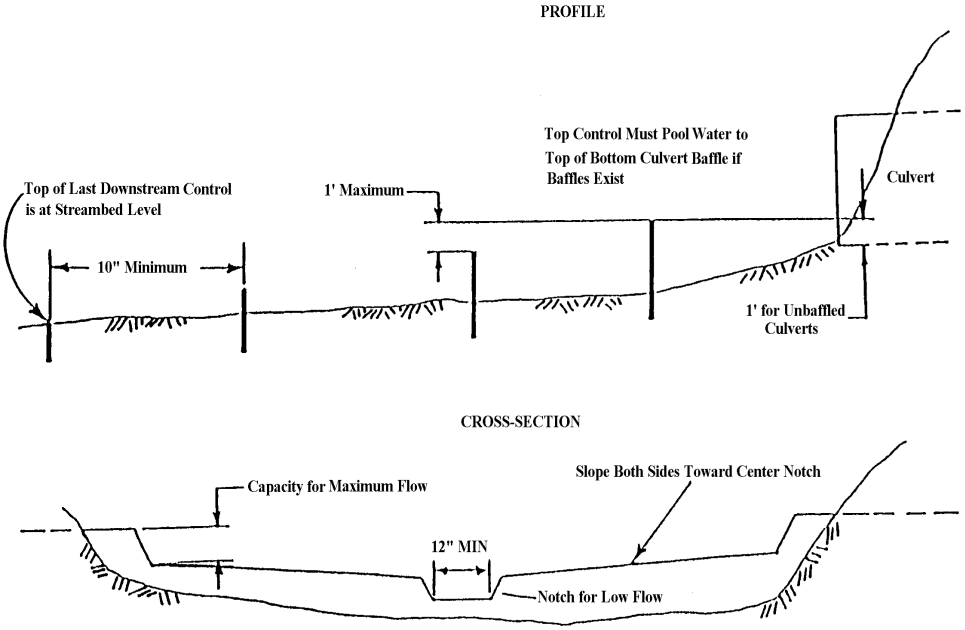
## APPENDIX ~~K~~J

FIGURE 18. Downstream Control Structures Used to Reduce Downstream Erosion and Improve Fish Passage



**APPENDIX ~~J~~K**

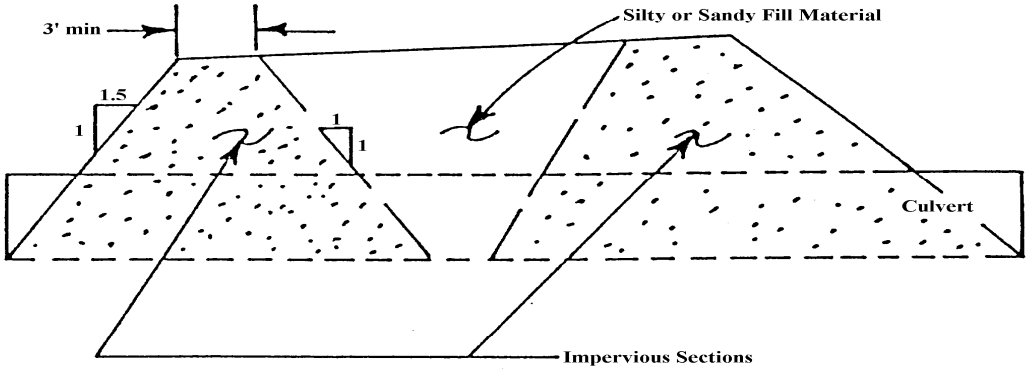
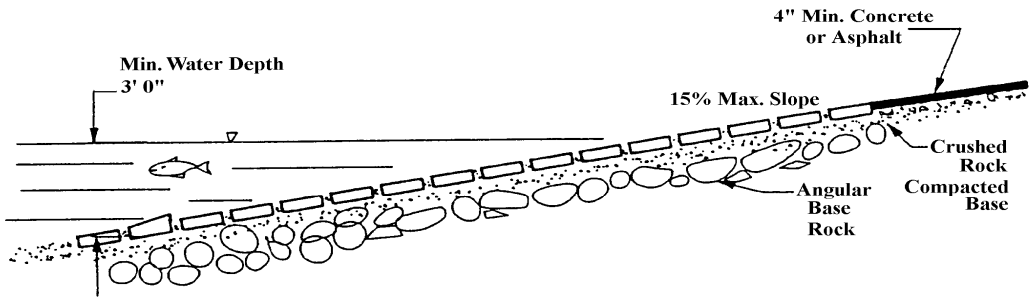



FIGURE 19. Culvert Backfill Using Silty or Sandy Material

~~**APPENDIX K**~~




**LAUNCH RAMP SECTION**

No Scale
Figure 20

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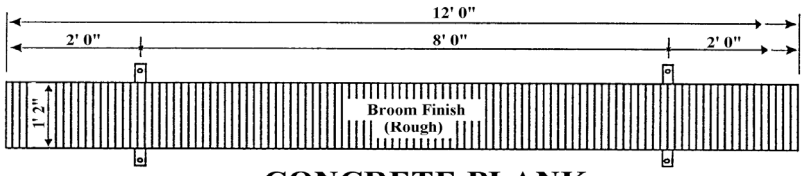
~~APPENDIX L~~




CONCRETE PLANK

No Scale
Figure 21

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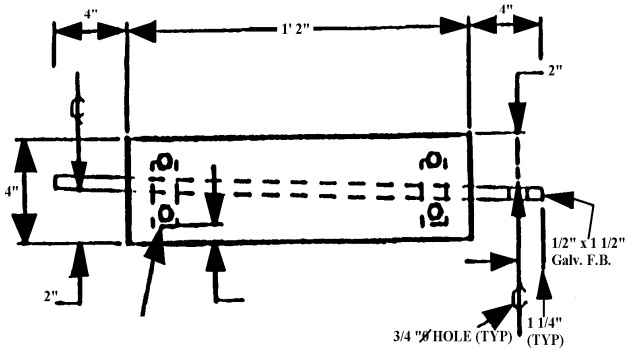
~~APPENDIX M~~




CONCRETE LAUNCH PLANK DETAIL

No Scale
Figure 22

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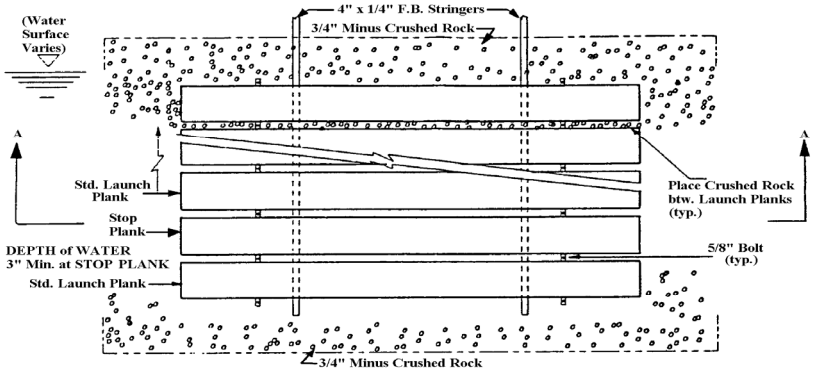
~~APPENDIX N~~




Place crushed rock as shown. Position stringers under planks in order shown and secure with 5/8" bolts. Slide planks on stringers, adding planks as needed, to desired water depth. Stringers consist of 2 - 4" x 1/4" x 20' lng. stl. flat bar w/clevis pin hole one end. Pull flat bar stringers up grade from water when planks are positioned and bolted together, remove when last plank has been set in place.

CONCRETE LAUNCH-PLAN VIEW
Figure 23
No Scale

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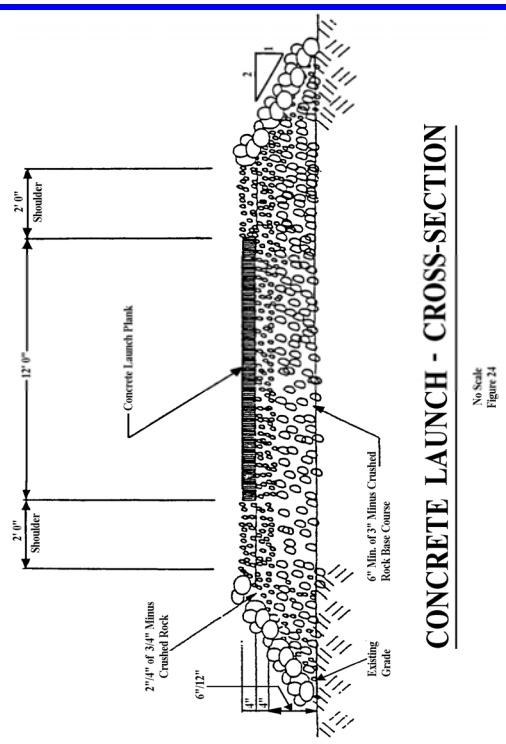
~~APPENDIX O~~




CONCRETE LAUNCH - CROSS-SECTION
No Scale
Figure 24

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# EXHIBIT C

# IDAHO ADMINISTRATIVE BULLETIN

## December 3, 2025 – Vol. 25-12

Office of the Governor
Division of Financial Management
Office of the Administrative Rules Coordinator

The Idaho Administrative Bulletin is published monthly by the Office of the Administrative Rules Coordinator, Division of Financial Management, Office of the Governor, pursuant to Title 67, Chapter 52, Idaho Code.

Brad Little, Governor
Lori Wolff, Administrator, Division of Financial Management
Lauren Smyser, Regulatory & Legislative Affairs Chief
Bradley A. Hunt, Administrative Rules Coordinator
Logan P. Medel, Administrative Rules Specialist

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# IDAPA 37 – IDAHO DEPARTMENT OF WATER RESOURCES

## 37.03.07 – STREAM CHANNEL ALTERATION RULES

## DOCKET NO. 37-0307-2501 (ZBR CHAPTER REWRITE)

## NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2026 Idaho State Legislature and must be approved by concurrent resolution of the Legislature to go into effect, in accordance with Section 67-5224(2)(c), Idaho Code. Should the pending rule be approved, it will become final and effective on July 1 following the Second Regular Session of the Sixty-eighth Idaho Legislature, unless the concurrent resolution states a different effective date.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 42-1805(8), Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

Adoption of the pending rule removes unnecessary language, removes outdated minimum standards, and adds current industry standards so that permitting can be expedited under minimum standards.

There are no changes to the pending rule, and it is being adopted as originally proposed. The complete text of the proposed rule was published in the October 1, 2025, Idaho Administrative Bulletin, Vol. 25-10, pages 390–421.

**FEE SUMMARY:** Pursuant to Section 67-5224(2)(d), Idaho Code, a pending fee rule shall not become final and effective unless affirmatively approved by concurrent resolution of the Legislature. The following is a description of the fee or charge imposed or increased in this rulemaking:

As authorized in Section 42-221(M), Idaho Code, the fee(s) in this rulemaking consist of a twenty-dollar ($20.00) fee for each stream channel alteration permit.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state General Fund greater than ten thousand dollars ($10,000) during the fiscal year: N/A.

**ASSISTANCE WITH TECHNICAL QUESTIONS:** For assistance on technical questions concerning the proposed rule, contact Erik Boe at Erik.Boe@idwr.idaho.gov, (208) 287-4800.

DATED this 7th day of November, 2025.

Erik Boe, Resource Protection Bureau Chief, Rules Review Officer
Idaho Department of Water Resources
322 E. Front Street
PO Box 83720
Boise, ID 83720-0098
Phone: (208) 287-4800

# EXHIBIT D

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# 37.03.07 – STREAM CHANNEL ALTERATION RULES

**000. LEGAL AUTHORITY (RULE 0).**
The purpose of these rules and minimum standards is to specify procedures for processing and considering applications for stream channel alterations under the provisions of Title 42, Chapter 38, Idaho Code. (7-1-93)

**001. TITLE AND SCOPE (RULE 1).**

**01. Title**. (7-1-93)

**02. Scope**. The minimum standards are intended to enable the Director to process, in a short period of time, those applications which are of a common type and which do not propose alterations which will be a hazard to the stream channel and its environment. It is intended that these rules and minimum standards be administered in a reasonable manner, giving due consideration, to all factors affecting the stream and adjacent property. (7-1-93)

**002. WRITTEN INTERPRETATION (RULE 2).**

**003. ADMINISTRATIVE APPEALS (RULE 3).**
Any owner who is aggrieved by a determination or order of the Director may request a hearing pursuant to the provisions of Section 42-1701A(3), Idaho Code, and the Department's adopted Rules of Procedure. (7-1-93)

**004. -- 009. (RESERVED)**

**010. DEFINITIONS (RULE 10).**

**01. Alteration**. To obstruct, diminish, destroy, alter, modify, relocate or change the natural existing shape of the channel or to change the direction of flow of water of any stream channel within or below the mean high water mark. It includes removal of material from the stream channel and emplacement of material or structures in or across the stream channel where the material or structure has the potential to affect flow in the channel as determined by the director. (7-1-93)

**02. Applicant**. Any individual, partnership, company, corporation, municipality, county, state or federal agency, their agent, or other entity proposing to alter a stream channel or actually engaged in constructing a channel alteration, whether authorized or not. (7-1-93)

**03. Board**. The Idaho Water Resource Board. (7-1-93)

**04. Continuously Flowing Water**. A sufficient flow of water that could provide for migration and movement of fish, and excludes those reaches of streams which, in their natural state, normally go dry at the location of the proposed alteration. IDWR will assume, subject to information to the contrary, that the USGS quadrangle maps accurately depict whether a stream reach is continuously flowing, at the location of the proposed alteration. Such exclusion does not apply to minor flood channels that are a part of a stream which is continuously flowing in the reach where the alteration is located. Also, such exclusion does not apply to streams which may be dry as a result of upstream diversion or storage of water. (7-1-93)

**05. Department**. The Idaho Department of Water Resources. (7-1-93)

**06. Drop Structures, Sills and Barbs**. Physical obstructions placed within a stream channel for the purpose of stabilizing the channel by decreasing stream gradient and velocity and by dissipating stream energy. (7-1-93)

**07. Director**. The Director of the Idaho Department of Water Resources. (7-1-93)

**08. Mean High Water Mark**. A water level corresponding to the "natural or ordinary high water



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mark" as defined in Section 58-104(9), Idaho Code, and is the line which the water impresses on the soil by covering it for sufficient periods of time to deprive the soil of its terrestrial vegetation and destroy its value for commonly accepted agricultural purposes. (7-1-93)

**09. Non-Powered Sluice Equipment**. Equipment which is powered only by human strength. (7-1-93)

**10. Plans**. Maps, sketches, engineering drawings, photos, work descriptions and specifications sufficient to describe the extent, nature, and location of the proposed stream channel alteration and the proposed method of accomplishing the alteration. (7-1-93)

**11. Repair**. Any work needed or accomplished, to protect, maintain, or restore any water diversion structure and the associated stream channel upstream and downstream as necessary for the efficient operation of the water diversion structure. (7-1-93)

**12. Stream Channel**. A natural water course of perceptible extent with definite beds and banks which confines and conducts continuously flowing water. The channel referred to is that which exists at the present time, regardless of where the channel may have been located at any time in the past. For the purposes of these rules only, the beds of lakes and reservoir pool areas are not considered to be stream channels. (7-1-93)

**13. Base Flood Elevation**. The Base Flood (BF) is referred to as the one hundred (100) year flood and is a measure of flood magnitude based on probability. The base flood has a one percent chance of occurring or being exceeded in any given year, with the Base Flood Elevation (BFE) being the level of flooding reached during the BF or the one hundred (100) year flood event. (7-1-93)

**011. -- 024. (RESERVED)**

**025. EXEMPTIONS (RULE 25).**

**01. Work on Existing or Proposed Reservoir Projects**. Permits are not required under the provisions of Title 42, Chapter 38 for construction work on any existing or proposed reservoir project, including the dam, and such areas downstream as the Director may determine is reasonably necessary for construction and maintenance of the dam. (7-1-93)

**02. Snake and Clearwater Rivers**. Permits are not required for work within that portion of the Snake and Clearwater rivers from the state boundary upstream to the upper boundary of the Port of Lewiston Port District as it now exists or may exist in the future. (7-1-93)

**03. Cleaning, Maintenance, Construction or Repair Work**. No permit is required of a water user or his agent to clean, maintain, construct, or repair any diversion structure, canal, ditch, or lateral or to remove any obstruction from a stream channel which is interfering with the delivery of any water under a valid existing water right or water right permit. (7-1-93)

**04. Removal of Debris**. No permit is required for removal of debris from a stream channel provided that no equipment will be working in the channel and all material removed will be disposed of at some point outside the channel where it cannot again reenter the channel. (7-1-93)

**026. -- 029. (RESERVED)**

**030. APPLICATIONS (RULE 30).**

**01. Joint Application Permit Form**. The Department of Water Resources, Department of Lands, and the U.S. Army Corps of Engineers have developed a joint application for permit form which will suffice for the required application under the Stream Protection Act. An application should be filed at least sixty (60) days before the applicant proposes to start the construction and shall be upon the joint application form furnished by the Department. The application shall be accompanied by plans which clearly describe the nature and purpose of the proposed work. (7-1-93)



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**02. Applicant Following Minimum Standards**. In those cases where the applicant intends to follow the minimum standards (Rule 055), detailed plans may be eliminated by referring to the specific minimum standard; however, drawings necessary to adequately define the extent, purpose, and location of the work will still be required. Plans shall include some reference to water surface elevations and stream boundaries to facilitate review. The application should show the mean high water mark on the plans; however, any water surface or water line reference available will be helpful as long as this reference is described. (Examples: present water surface, low water, high water.) (7-1-93)

**03. Submission of Copies**. The applicant shall submit one (1) copy of all necessary plans along with the application form. When drawings submitted are larger than eight and one half by eleven (8 1/2 x 11), the applicant shall provide the number of copies specified by the department. (7-1-93)

**04. Stream Channel Alteration Permit**. Any applicant proposing to operate a vacuum or suction dredge within or below the mean high water mark of a stream channel shall apply for and obtain a stream channel alteration permit. The vacuum or suction dredge shall only be operated in accordance with the conditions of the permit and with the applicable rules. (7-1-93)

**031. -- 034. (RESERVED)**

**035. APPLICATION REVIEW (RULE 35).**

**01. Prior to Issuance of Permit**. The following items shall be among those considered by the Director prior to issuing a permit: (7-1-93)

**a.** What is the purpose of doing the work? (7-1-93)

**b.** What is the necessity and justification for the proposed alteration? (7-1-93)

**c.** Is the proposal a reasonable means of accomplishing the purpose? (7-1-93)

**d.** Will the alteration be a permanent solution? (7-1-93)

**e.** Will the alteration pass anticipated water flows without creating harmful flooding or erosion problems upstream or downstream? (7-1-93)

**f.** What effect will the alteration have on fish habitat? (7-1-93)

**g.** Will the materials used or the removal of ground cover create turbidity or other water quality problems? (7-1-93)

**h.** Will the alteration interfere with recreational use of the stream? (7-1-93)

**i.** Will the alteration detract from the aesthetic beauty of the area? (7-1-93)

**j.** What modification or alternative solutions are reasonably possible which would reduce the disturbance to the stream channel and its environment and/or better accomplish the desired goal of the proposed alteration? (7-1-93)

**k.** Is the alteration to be accomplished in accordance with the adopted minimum standards? (7-1-93)

**l.** Are there public safety factors to consider? (7-1-93)

**02. Proposed Alteration Which Does Not Follow Minimum Standards**. In those cases where a proposed alteration does not follow the minimum standards, a copy of the application will be sent for review to those state agencies requesting notification. The Director shall provide for review by the Department of Lands, copies of applications on navigable rivers. The Director will provide a copy of any other application requested by the Department of Lands and may request review by other state agencies regardless of whether or not the proposed

alteration will comply with the minimum standards. (7-1-93)

**036. -- 039. (RESERVED)**

**040. APPROVAL (RULE 40).**

**01. Conformance to Application**. All work shall be done in accordance with the approved application, subject to any conditions specified by the department. (7-1-93)

**02. Permits Allowed Without Review**. A permit may be approved by the Director of the Department of Water Resources without review by other agencies in situations where the work is of a nature not uncommon to the particular area and where it is clear that the work will not seriously degrade the stream values except on navigable rivers which require review by the Department of Lands. All work approved in this manner shall be accomplished in accordance with the minimum standards. (7-1-93)

**03. Reinstatement of Expired Permit**. A permit which has expired may be reinstated by the Director after review by other agencies as determined by the Director. (7-1-93)

**041. -- 044. (RESERVED)**

**045. ENFORCEMENT OF ACT (RULE 45).**

**01. Written Orders Issued by Designated Employees of Department**. Employees of the Department designated by the Director may issue written orders directing an applicant to cease and desist, to ensure proper notice to applicants who are found to be altering a stream without a permit or not in compliance with the conditions of a permit. Such orders shall be in effect immediately upon issuance and will continue in force until a permit is issued or until the order is rescinded by the Director. (7-1-93)

**02. Failure to Comply with Stream Protection Act**. Failure to comply with any of the provisions of the Stream Protection Act (Chapter 38, Title 42, Idaho Code), may result in issuance of an Idaho uniform citation and/or the cancellation of any permit by the Director without further notice and the pursuit in a court of competent jurisdiction, such civil or criminal remedies as may be appropriate and provided by law. The Director may allow reasonable time for an applicant to complete stabilization and restoration work. (7-1-93)

**046. -- 049. (RESERVED)**

**050. EMERGENCY WAIVER (RULE 50).**

**01. Waiver of Provisions of Stream Protection Act**. Section 42-3808, Idaho Code, provides for waiver of the provisions of the Stream Protection Act in emergency situations where immediate action must be taken to protect life or property including growing crops. The Director will not consider failure to submit an application for a stream channel alteration far enough ahead of the desired starting time of the construction work as an emergency situation. (7-1-93)

**02. Verbal Waivers**. A verbal waiver may be granted initially; however, all verbal requests for waivers shall be followed up by the applicant in writing within fifteen (15) days of any initial authorization to do work. If the applicant is unable to contact the Director to obtain an emergency waiver, he may proceed with emergency work; however, he must contact the Director as soon as possible thereafter. Proving that a bonafide emergency did actually exist will be the responsibility of the applicant. (7-1-93)

**03. Emergency Waiver**. Work authorized by an emergency waiver shall be limited to only that which is necessary to safeguard life or property, including growing crops, during the period of emergency. (7-1-93)

**04. Conformance to Conditions of Waiver**. The applicant shall adhere to all conditions set by the Director as part of a waiver. (7-1-93)

**05. Waivers Granted by Designated Employees**. The Director may delegate the authority to grant

waivers to designated employees of the Department. Names and telephone numbers of such employees will be made available to any interested applicant upon request. (7-1-93)

**051. -- 054. (RESERVED)**

**055. MINIMUM STANDARDS (RULE 55).**

These standards are intended to cover the ordinary type of stream channel alteration and to prescribe minimum conditions for approval of such construction. Unless otherwise provided in a permit, these standards shall govern all stream channel alterations in this state. An applicant should not assume that because an application utilizes methods set forth in these standards it will automatically be approved. These minimum standards include the following items: (7-1-93)

**01. Construction Procedures**. (7-1-93)

**02. Dumped Rock Riprap**. (7-1-93)

**03. Gabions**. (7-1-93)

**04. Drop Structures, Sills and Barbs**. (7-1-93)

**05. Dikes and Levees**. (7-1-93)

**06. Jetties**. (7-1-93)

**07. Culverts and Bridges**. (7-1-93)

**08. Removal of Sand and Gravel Deposits**. (7-1-93)

**09. Suction Dredges and Non-Powered Sluice Equipment**. (7-1-93)

**10. Piling**. (7-1-93)

**11. Pipe Crossings**. (7-1-93)

**12. Concrete Plank Boat Launch Ramps**. (7-1-93)

**056. CONSTRUCTION PROCEDURES (RULE 56).**

**01. Conformance to Procedures**. Construction shall be done in accordance with the following procedures unless specific approval of other procedures has been given by the Director. When an applicant desires to proceed in a manner different from the following, such procedures should be described on the application. (7-1-93)

**02. Operation of Construction Equipment**. No construction equipment shall be operated below the existing water surface without specific approval from the Director except as follows: Fording the stream at one (1) location only will be permitted unless otherwise specified; however, vehicles and equipment will not be permitted to push or pull material along the streambed below the existing water level. Work below the water which is essential for preparation of culvert bedding or approved footing installations shall be permitted to the extent that it does not create unnecessary turbidity or stream channel disturbance. Frequent fording will not be permitted in areas where extensive turbidity will be created. (7-1-93)

**03. Temporary Structures**. Any temporary crossings, bridge supports, cofferdams, or other structures that will be needed during the period of construction shall be designed to handle high flows that could be anticipated during the construction period. All structures shall be completely removed from the stream channel at the conclusion of construction and the area shall be restored to a natural appearance. (7-1-93)

**04. Minimizing Disturbance of Area**. Care shall be taken to cause only the minimum necessary disturbance to the natural appearance of the area. Streambank vegetation shall be protected except where its removal



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is absolutely necessary for completion of the work adjacent to the stream channel. (7-1-93)

**05. Disposal of Removed Materials**. Any vegetation, debris, or other material removed during construction shall be disposed of at some location out of the stream channel where it cannot reenter the channel during high stream flows. (7-1-93)

**06. New Cut of Fill Slopes**. All new cut or fill slopes that will not be protected with some form of riprap shall be seeded with grass and planted with native vegetation to prevent erosion. (7-1-93)

**07. Fill Material**. All fill material shall be placed and compacted in horizontal lifts except as provided for in Rule Subsection 060.05 for uncompacted dike and levee construction. Areas to be filled shall be cleared of all vegetation, debris and other materials that would be objectionable in the fill. (7-1-93)

**08. Limitations on Construction Period**. The Director may limit the period of construction as needed to minimize conflicts with fish migration and spawning, recreation use, and other uses. (7-1-93)

**057. DUMPED ROCK RIPRAP (RULE 57).**

**01. Placement of Riprap**. Riprap shall be placed on a granular bedding material or a compact and stable embankment. (7-1-93)

**02. Sideslopes of Riprap**. Sideslopes of riprap shall not be steeper than 2:1 (2' horizontal to 1' vertical) except at ends of culverts and at bridge approaches where a 1 1/2:1 sideslope is standard. (7-1-93)

**03. Minimum Thickness of Riprap**. The minimum thickness of the riprap layer shall equal the dimension of the largest size riprap rock used or be eighteen (18) inches, whichever is greater. When riprap will be placed below high water level, the thickness of the layer shall be fifty percent (50%) greater than specified below. (7-1-93)

**04. Riprap Protection**. Riprap protection must extend at least one (1) foot above the anticipated high water surface elevation in the stream. (7-1-93)

**05. Rock Used for Riprap**. Rock for riprap shall consist of sound, dense, durable, angular rock fragments, resistant to weathering and free from large quantities of soil, shale, and organic matter. The length of a rock shall not be more than three (3) times its width or thickness. Rounded cobbles, boulders, and streambed gravels are not acceptable as dumped riprap. (7-1-93)

**06. Size and Gradation of Riprap**. Riprap size and gradation are commonly determined in terms of the weight of riprap rock. The average size of riprap rock shall be at least as large as the maximum size rock that the stream is capable of moving. The maximum size of riprap rock used shall be two (2) to five (5) times larger than the average size. (7-1-93)

**07. Methods Used for Determining Gradation of Riprap**. There are many methods used for determining the gradation of riprap rock. One of these many acceptable methods is shown in Table 1 below the Far West States (FWS) method shown in APPENDIX A - Table 1A at the end of this chapter.

| GRADATION OF RIPRAP IN POUNDS | | |
|---|---|---|
| **Max. Weight of Stone required (lbs)** | **Min. and Max. Range in weight of Stones (lbs)** | **Weight Range 75 percent of Stones (lbs)** |
| 150 | 25 - 150 | 50 - 150 |
| 200 | 25 - 200 | 50 - 200 |
| 250 | 25 - 250 | 50 - 250 |
| 400 | 25 - 400 | 100 - 400 |

| GRADATION OF RIPRAP IN POUNDS | | |
|---|---|---|
| Max. Weight of Stone required (lbs) | Min. and Max. Range in weight of Stones (lbs) | Weight Range 75 percent of Stones (lbs) |
| 600 | 25 - 600 | 150 - 600 |
| 800 | 25 - 800 | 200 - 800 |
| 1000 | 50 - 1000 | 250 - 1000 |
| 1300 | 50 - 1300 | 325 - 1300 |
| 1600 | 50 - 1600 | 400 - 1600 |
| 2000 | 75 - 2000 | 600 - 2000 |
| 2700 | 100 - 2700 | 800 - 2700 |

(7-1-93)

**08. Use of Filter Material**. A blanket of granular filter material or filter fabric shall be placed between the riprap layer and the bank in all cases where the bank is composed of erodible material that may be washed out from between the riprap rock. Filter material shall consist of a layer of well-graded gravel and coarse sand at least six (6) inches thick. (7-1-93)

**09. Toe Protection**. Some suitable form of toe protection shall be provided for riprap located on erodible streambed material. (7-1-93)

**a.** Various acceptable methods of providing toe protection are shown in APPENDIX B at the end of this chapter. (7-1-93)

**b.** In addition to the approved methods of providing toe protection as shown in APPENDIX B at the end of this chapter, any other reasonable method will be considered by the Director during review of a proposed project. (7-1-93)

**10. Extension of Riprap Area**. Riprap shall extend far enough upstream and downstream to reach stable areas, unless protected against undermining at ends by the method shown in APPENDIX C, Figure 3 at the end of this chapter. On extremely long riprap sections, it is recommended that similar cutoff sections be used at several intermediate points to reduce the hazard that would be created if failure of the riprap occurred at any one (1) location. (7-1-93)

**11. Finished Surface**. Placement shall result in a smooth, even finished surface. Compaction is not necessary. (7-1-93)

**12. Placement of Riprap**. The full course thickness of the riprap shall be placed in one (1) operation. Dumping riprap long distances down the bank or pushing it over the top of the bank with a dozer shall be avoided if possible. Material should be placed with a backhoe, loader, or dragline. Dumping material near its final position on the slope or dumping rock at the toe and bulldozing it up the slope is a very satisfactory method of placement, if approval is obtained for the use of equipment in the channel. (7-1-93)

**13. Design Procedure**. Design procedure using the Far West States (FWS) method. (7-1-93)

**a.** The FWS method uses a single equation to deal with variables for riprap. (7-1-93)

D75 = 3.5/CK WDS for Channel Banks

where: D75 = Size of the rock at seventy five percent (75%) is finer in gradation, in inches.

| | | |
|---|---|---|
| W | = | Specific weight of water, usually 62.4 lbs./cu.ft. |
| D | = | Depth of flow in stream, in feet in flood stage |
| S | = | Channel slope or gradient, in ft/ft. |
| C | = | A coefficient relating to curvature in the stream |
| K | = | A coefficient relating to steepness of bank slopes |

(7-1-93)

**b.** The coefficient, C, is based on the ratio of the radius of curvature of the stream, (CR), to the water surface width, (WSW), so it is necessary for the user to make field determination of these values. The coefficient varies from 0.6 for a curve ratio of 4 to 6, up to 1.0 for a straight channel. If the computed ratio for a particular project is less than 4, the designer should consider some modification less than 4.

| CR/WSW | C |
|---|---|
| 4 - 6 | 0.60 |
| 6 - 9 | 0.75 |
| 9 - 12 | 0.90 |
| Straight Channel | 1.00 |

(7-1-93)

**c.** The coefficient, K, ranges from 0.5 for a 1.5:1 sideslope to 0.87 for 3:1 sideslope. No values are given for steeper or flatter slopes. Slopes steeper than 1.5:1 are not recommended. If slopes flatter than 3:1 are desired, it would be conservative to use the K-value for 3:1 slopes.

| Bankslope | K |
|---|---|
| 1.5:1 | 0.50 |
| 1.75:1 | 0.63 |
| 2.0:1 | 0.72 |
| 2.5:1 | 0.80 |
| 3.0:1 | 0.87 |

(7-1-93)

Table 1A in APPENDIX A, located at the end of this chapter.

## 058. GABIONS (RULE 58).

**01. Wire Enclosed Gabion Riprap**. This protection consists of filling wire "cages" with available rock and securing individual cages together to form a stable slope protection. Aesthetics can be improved by arranging the individual gabions in a manner that will allow planting of vegetation. (7-1-93)

**02. Placement of Gabions**. Gabions shall be placed on a well-compacted and stable embankment. (7-1-93)

**03. Toe Protection**. In general, toe protection shall consist of protection equivalent to at least one (1) of the following: (7-1-93)

**a.** Extend gabions, on slope, at least three (3) feet below streambed or to non-erodible material. (7-1-93)

**b.** Extend gabions out from toe along streambed of an erodible channel a horizontal distance of at least five (5) times the thickness of the gabion mattress. (7-1-93)

**04. Mattress or Retaining Wall Gabion Placements**. Gabions may be placed to form either a mattress or a retaining wall as shown in Figures 4 and 5 in APPENDIXES D and E, located at the end of this chapter. Minimum thickness of mattress shall be twelve (12) inches unless otherwise approved by the Director. (7-1-93)

**a.** Gabion retaining walls shall be constructed in accordance with the illustrated criteria as shown in Figure 5 in APPENDIX E, (located at the end of this chapter), and shall have a minimum horizontal thickness of three (3) feet. Fill above gabion retaining walls shall not exceed a slope of one and one half to one (1 1/2:1). Retaining walls shall not exceed a height of ten (10) feet above streambed unless the Director has approved detailed design plans for the project. (7-1-93)

**b.** The wall shall be founded on a stable non-erodible base unless a mattress is provided to prevent undermining as shown in Figure 6 in APPENDIX F, located at the end of this chapter. (7-1-93)

**05. Single Unit Construction**. Gabions are to be of single unit construction -- the base, ends, and sides to be woven into a single unit. (7-1-93)

**a.** Wire. Wire mesh shall be heavily galvanized steel woven wire no smaller than twelve (12) gage. Mesh size shall be coordinated with rock gradation as specified in Rule Subsection 058.06. All ties, hog rings, lacing and other wire used shall be nine (9) gage galvanized wire unless otherwise approved. (7-1-93)

**b.** Size of Gabion. No individual compartment within a gabion shall have a length, width, or height exceeding four (4) feet except that gabion mattress sections one (1) foot or less in thickness may have a horizontal length up to six (6) feet. (7-1-93)

**c.** Seams. Gabion baskets shall have corners tied or laced together at least every four (4) inches along edges. (7-1-93)

**d.** Ties Between Gabion Baskets. At least two (2) ties shall be made between gabions for every square foot of contact area. (7-1-93)

**06. Rock Used for Gabion Fill**. Rock used for gabion fill shall be sound, dense, durable rock which is free from earth and organic matter. The maximum size of the rock shall not exceed the gabion thickness and seventy percent (70%) of the rock by weight must exceed, in least dimension, the mesh opening in the wire. (7-1-93)

**07. Filter Blanket**. A filter blanket of well-graded gravel and coarse sand at least six (6) inches thick, or suitable filter fabric, shall be placed between the bank and the gabions in cases where the bank is composed of fine erodible material. For filter design using the FWS method, see USDA, Soil Conservation Service, Idaho Technical Note No. 6 or equivalent design criteria. (7-1-93)

**08. Riprap Protection**. Riprap protection shall extend at least one (1) foot above the anticipated high water surface elevation in the stream; however, it is not required that protection be extended above the elevation of the top of the bank. (7-1-93)

**09. Locating Ends of Gabion**. Whenever it is necessary to locate the ends of gabion protection in areas that may be subject to erosive damage, minimum cutoffs shall be provided to prevent undermining as shown in Figure 7 in APPENDIX G. Views shown are cross-sections at end of gabion section looking down along the sideslope of the channel. (7-1-93)

## 059. DROP STRUCTURES, SILLS AND BARBS (RULE 59).

**01. Drop Structures**. A drop structure shall be constructed of rocks, boulders and/or logs placed within a stream channel to act as a low level dam. Placement of a drop structure perpendicular to stream flow will decrease the stream gradient, dissipate stream energy and decrease stream velocity through an increase in water surface elevation immediately above the structure. Drop structures shall comply with the following criteria: (7-1-93)

**a.** Maximum water surface differential across (upstream water surface elevation minus downstream water surface elevation) a drop structure shall not exceed two (2) feet. The department shall approve the final elevation of any structure. (7-1-93)

**b.** Rock drop structures shall be constructed of clean, sound, dense, durable, angular rock fragments, and/or boulders of size and gradation, such that the stream is incapable of moving the material during peak flows. Rocks shall be keyed into the stream banks to minimize the likelihood of bank erosion, (See Figure 8 in APPENDIX H located at the end of this chapter). (7-1-93)

**c.** Log drop structures are acceptable in four (4) designs including the single log dam, the stacked log dam, the three (3) log dam, and the pyramid log dam. Log ends shall be keyed into both banks at least one-third (1/3) of the channel width or a distance sufficient to prevent end erosion. To prevent undercutting, the bottom log shall be imbedded in the stream bed or hardware cloth, cobbles or boulders shall be placed along the upper edge. Minimum log size for a single log structure shall be determined by on-site conditions and shall be placed to maintain flow over the entire log to prevent decay. Each log drop structure must be accompanied by downstream scour protection, such as a rock apron (See Figure 9 in APPENDIX I located at the end of this chapter. (7-1-93)

**d.** All drop structures shall be constructed to facilitate fish passage and centralized scour pool development. (7-1-93)

**02. Sills**. A sill shall be constructed of the same material and in the same manner as a drop structure. The top of the sill may not exceed the elevation of the bottom of the channel. The purpose of a sill is to halt the upstream movement of a headcut, thus precluding the widening or deepening of the existing channel. (See Figure 10 in APPENDIX J located at the end of this chapter). (7-1-93)

**03. Barb or Partial Drop Structure**. A barb or partial drop structure shall be constructed in the same manner and of the same material as a drop structure and placed into the stream channel to act as a low level dam and grade control structure. The barb will decrease stream gradient, dissipate stream energy and redirect stream flow. (7-1-93)

**a.** Barbs shall be constructed of clean, sound, dense, angular rock fragments, of size and gradation such that the stream is incapable of moving the material during peak flows. (7-1-93)

**b.** Barbs shall be constructed with a downstream angle of no less than one hundred (100) degrees and no greater than one hundred thirty-five (135) degrees unless otherwise specified. (7-1-93)

**c.** Barbs shall "extend" into the channel a distance of not more than twenty percent (20%) of the width of the channel unless otherwise specified by the Director. (7-1-93)

**d.** Barbs shall be keyed into the bank a distance equal to or greater than the width of the structure and down to bed level. Whenever moisture is encountered in the construction of the keyways, willow cuttings or clumps shall be placed before and during rock placement in such a manner that the base of the cutting is in permanent moisture and the top extends a minimum of six (6) inches above grade (see Figure 11 in APPENDIX K located at the end of this chapter). (7-1-93)

## 060. DIKES AND LEVEES (RULE 60).

**01. Standards for Dikes**. The following standards apply to dikes with heights from ground level to water surface elevation no greater than twelve (12) feet. Approval of higher dikes will be based on evaluation of a detailed design for the particular proposal. Permits for such structures are needed only when all or part of the structure is located below the mean high water mark (see Figure 12 in APPENDIX L located at the end of this chapter). (7-1-93)

**02. Location of Dikes**. Dikes shall be located in the best possible foundation material available and shall not obstruct the natural flow of or raise the water surface in the channel. (7-1-93)

**03. Figure 13**. Figure 13 in APPENDIX L, located at the end of this chapter, shows the most desirable location for a dike, because such an alignment results in minimum erosion and maintenance for the dike and the least possible disturbance to the stream; however, each applicant must decide what alignment is most suited to solve a particular problem. (7-1-93)

**04. Dike or Levee Foundation Areas**. Dike or levee foundation areas shall be clear of all trees, brush, stumps, logs, roots, boulders and other undesirable material which would interfere with scarifying the area. (7-1-93)

**a.** Organic soils shall be removed except where fill used for the levee will primarily consist of organic material. (7-1-93)

**b.** Unsuitable material at old channel crossings shall be removed and banks of the old channel shall be no steeper than one to one (1:1) before fill is placed. (7-1-93)

**05. Pervious Foundation**. When the foundation is pervious enough that piping may occur, a core trench shall be constructed down to an impervious layer or to some reasonable depth if impervious material is not present. Construction of the core trench shall comply with the following criteria: (7-1-93)

**a.** The core trench shall be located approximately along the centerline of the dike. (7-1-93)

**b.** When impervious material is not encountered in the core trench, drains shall be provided on the land side of the trench (use a graded sand-gravel filter blanket) with the minimum trench depth as follows to ensure stability:

| Design Water Surface Above Ground Level | Minimum Core Trench Depth Below Ground Level |
|---|---|
| 0 - 6' | 3' |
| 6 - 12' | 6' |

(7-1-93)

**c.** The width of the bottom of the core trench shall be adequate to allow movement of construction equipment to place and compact material. Sideslopes of the trench shall not be steeper than one to one (1:1). (7-1-93)

**d.** Core trench backfill shall consist of the most impervious material available and shall be well compacted. (7-1-93)

**06. Existing Drains**. All existing drains entering the channel shall be maintained by installing conduits through dikes. Conduits shall be installed on firm foundations and backfill material shall be thoroughly compacted in lifts.) (7-1-93)

**07. Minimum Design Water Level Surface**. The minimum design water surface elevation that shall be provided for is as follows: The dike shall provide at least two (2) feet of freeboard above the design water surface.

| Drainage Area | Design Flow Frequency |
|---|---|
| Less than 50 sq. mil. | 25 years |
| 50 sq. mi. or more | 50 years or greatest flow of record, whichever is more |

(7-1-93)



PROPOSED

**08. Height of Dike or Levee**. The height of a dike or levee shall be increased during construction enough to ensure the required freeboard after settlement. Minimum height increases are as follows:

| Fill Material | Minimum Height Increase |
|---|---|
| Normal compacted fill | 5% |
| Uncompacted Dragline construction | 20% |
| Near-saturated organic matter | 40% |

(7-1-93)

**09. Compacted Mineral Soil**. Compacted mineral soil having a high specific gravity and capable of achieving low permeability is the most desirable fill material and may be utilized on all dikes or levees. (7-1-93)

**a.** Organic fill material shall not be used on levees having a design water surface more than six (6) feet above land surface, unless specific approval from the Director is obtained. (7-1-93)

**b.** Silty or sand material shall not be used for fill unless provisions are specified on the application and/or plans which will adequately protect this material from erosion. (7-1-93)

**10. Cross-Section of Dike or Levee**. The cross-section of a dike or levee shall conform to the minimum criteria shown in Rule 061.01, Table 2 and Figure 14 in APPENDIX L, located at the end of this chapter. In those instances where the location of a dike or the nature of the fill material is such that erosion of the fill is likely, some suitable form of slope protection such as riprap or grass shall be provided. (See the appropriate riprap specification for standards required. Embankments constructed of silty or sandy materials shall receive particular attention with regard to slope protection.) (7-1-93)

## 061. JETTIES (RULE 61).

**01. Use of Jetties**. Use of jetties shall not be permitted on curves having less than a two hundred (200) foot radius unless hydraulic analysis can be provided to show that they will achieve the desired results.

| MINIMUM CRITERIA FOR DIKE OR LEVEE CROSS-SECTION | | |
|---|---|---|
| **Height to Design Water Surface** | **Minimum Top Width** | **Steepest Allowable Sideslope** |
| Compacted mineral fill: | | |
| 0 - 6' | 6' | 1 1/2:1 |
| over 6' - 12' | 8' | 2:1 |
| Silty, sandy, or organic fill: | | |
| 0 - 6' | 8' | 2:1 |
| Dumped, uncompacted fill: | | |
| 0 - 6' | 6' | 2:1 |
| over 6' - 12' | 8' | 2 1/2:1 (or 3:1 on stream side and 2:1 on land side) |
| When road on top: (turnaround areas also needed) | 10' | |

| MINIMUM CRITERIA FOR DIKE OR LEVEE CROSS-SECTION | | |
|---|---|---|
| **Height to Design Water Surface** | **Minimum Top Width** | **Steepest Allowable Sideslope** |
| When fill unstable during rapid drawdown or severe wave action anticipated) | 3:1 on stream side | |
| Permeable soil of low plasticity used | 3:1 | |

(7-1-93)

**a.** Jetties shall not extend into the stream from the bank more than twenty percent (20%) of the channel width unless it can be demonstrated that undesirable effects will not be created. (7-1-93)

**b.** Jetties shall be spaced close enough together to provide continuous protection along the streambank unless other provisions for protection between the jetties are provided. Section Subsection 061.01, Table 2, shows one (1) method of locating jetties. (7-1-93)

**02. Height of Jetty**. The height shall be at least equal to the design streamflow depth unless the jetty is specifically designed for fish shelter or streambank toe protection only. (See details in Figure 16 in APPENDIX M, located at the end of this chapter.) (7-1-93)

**a.** Jetties shall always be protected from erosion at their contact with the bank and streambed by extending the fill and/or riprap down to non-erodible material or beyond the maximum anticipated scour depth. The minimum scour depth considered shall be two (2) feet. (7-1-93)

**b.** Minimum top width for a jetty shall be three (3) feet unless otherwise specified by the Director. (7-1-93)

**c.** The steepest allowable sideslopes for a jetty shall be as follows unless otherwise specified by the Director.

| Type of Jetty | Maximum Sideslope |
|---|---|
| Full flow height | 1 1/2:1 |
| Low partial flow height | 2:1 |

(7-1-93)

**d.** Jetties shall be protected from erosive damage either by placing rock riprap or other protective cover at areas subject to erosion or by constructing the jetty using a material resistant to erosion. (7-1-93)

**e.** Full flow height jetties shall be protected from erosive damage on the upstream side and end. (7-1-93)

**f.** Low jetties that will be subject to flow over the entire structure shall be protected from erosive damage on all exposed surfaces. (7-1-93)

**03. Pervious or Impervious Fills**. Jetties may be constructed as either pervious or impervious fills. (7-1-93)

**a.** Construction of a pervious jetty will require the use of fill material such as well-graded angular rock which will not be eroded or otherwise weakened by allowing seepage to flow through it. Rock filled wire gabions are also suitable for construction of pervious jetties where angular rock of adequate size is not available. (7-1-93)

**b.** Impervious fill shall be placed in horizontal lifts and thoroughly compacted. Fill consisting primarily of silty material shall not be used. This type of construction requires the use of rock riprap or other suitable protection in areas subject to erosive action. (7-1-93)

**062. CULVERTS AND BRIDGES (RULE 62).**

**01. Culverts and Bridges**. Culverts and bridges shall be capable of carrying streamflows and shall not significantly alter conditions upstream or downstream by causing flooding, turbidity, or other problems. The appearance of such installations shall not detract from the natural surroundings of the area. (7-1-93)

**02. Location of Culverts and Bridges**. Culverts and bridges should be located so that a direct line of approach exists at both the entrance and exit. Abrupt bends at the entrance or exit shall not exist unless suitable erosion protection is provided. (7-1-93)

**03. Ideal Gradient**. The ideal gradient (bottom slope) is one which is steep enough to prevent silting but flat enough to prevent scouring due to high velocity flows. It is often advisable to make the gradient of a culvert coincide with the average streambed gradient. (7-1-93)

**a.** Where a culvert is installed on a slope steeper than twenty percent (20%), provisions to anchor the culvert in position will be required. Such provisions shall be included in the application and may involve the use of collars, headwall structures, etc. Smooth concrete pipe having no protruding bell joints or other irregularities shall have such anchoring provisions if the gradient exceeds ten percent (10%). (7-1-93)

**04. Size of Culvert or Bridge Opening**. The size of the culvert or bridge opening shall be such that it is capable of passing design flows without overtopping the streambank or causing flooding or other damage. (7-1-93)

**a.** Design flows shall be based upon the following minimum criteria:

| Drainage Area | Design Flow Frequency |
|---|---|
| Less than 50 sq. mi. | 25 Years |
| Over 50 sq. mi. or more | 50 years or greatest flow of record, whichever is more |

(7-1-93)

**b.** For culverts and bridges located on U.S. Forest Service or other federal lands, the sizing should comply with the Forest Practices Act as adopted by the federal agencies or the Department of Lands. (7-1-93)

**c.** For culverts or bridges located in a community qualifying for the national flood issuance program, the minimum size culvert shall accommodate the one hundred (100) year design flow frequency. (7-1-93)

**d.** If the culvert or bridge design is impractical for the site, the crossing may be designed with additional flow capacity outside the actual crossing structure, provided there is no increase in the Base Flood Elevation.
(NOTE: When flow data on a particular stream is unavailable, it is almost always safe to maintain the existing gradient and cross-section area present in the existing stream channel. Comparing the proposed crossing size with others upstream or downstream is also a valuable means of obtaining information regarding the size needed for a proposed crossing.) (7-1-93)

**e.** Minimum clearance shall be at least one (1) foot at all bridges. This may need to be increased substantially in the areas where ice passage or debris may be a problem. Minimum culvert sizes required for stream crossings: (7-1-93)

i. Eighteen (18) inch diameter for culverts up to seventy (70) feet long; (7-1-93)

ii. Twenty-four (24) inch diameter for all culverts over seventy (70) feet long. (7-1-93)

**f.** In streams where fish passage is of concern as determined by the director, an applicant shall comply with the following provisions and/or other approved criteria to ensure that passage will not be prevented by a proposed crossing. (7-1-93)

**g.** Minimum water depth shall be approximately eight (8) inches for salmon and steelhead and at least three (3) inches in all other cases. (7-1-93)

**h.** Maximum flow velocities for streams shall not exceed those shown in Figure 17 in APPENDIX N, located at the end of this chapter, for more than a forty-eight (48) hour period. The curve used will depend on the type of fish to be passed. (7-1-93)

**i.** Where it is not feasible to adjust the size or slope to obtain permissible velocities, the following precautions may be utilized to achieve the desired situation. (7-1-93)

**j.** Baffles downstream or inside the culvert may be utilized to increase depth and reduce velocity. Design criteria may be obtained from the Idaho Fish and Game Department. (7-1-93)

**k.** Where multiple openings for flow are provided, baffles or other measures used in one (1) opening only shall be adequate provided that the opening is designed to carry the main flow during low-flow periods. (7-1-93)

**05. Construction of Crossings**. When crossings are constructed in erodible material, upstream and downstream ends shall be protected from erosive damage through the use of such methods as dumped rock riprap, headwall structures, etc., and such protection shall extend below the erodible streambed and into the banks at least two (2) feet unless some other provisions are made to prevent undermining. (7-1-93)

**a.** Where fish passage must be provided, upstream drops at the entrance to a culvert will not be permitted and a maximum drop of one (1) foot will be permitted at the downstream end if an adequate jumping pool is maintained below the drop. (7-1-93)

**b.** Downstream control structures such as are shown in Figure 18 in APPENDIX O, located at the end of this chapter, can be used to reduce downstream erosion and improve fish passage. They may be constructed with gabions, pilings and rock drop structures. (7-1-93)

**06. Multiple Openings**. Where a multiple opening will consist of two (2) or more separate culvert structures, they shall be spaced far enough apart to allow proper compaction of the fill between the individual structures. The minimum spacing in all situations shall be one (1) foot. In areas where fish passage must be provided, only one (1) opening shall be constructed to carry all low flows. Low flow baffles may be required to facilitate fish passage. (7-1-93)

**07. Areas to be Filled**. All areas to be filled shall be cleared of vegetation, topsoil, and other unsuitable material prior to placing fill. Material cleared from the site shall be disposed of above the high water line of the stream. Fill material shall be reasonably well-graded and compacted and shall not contain large quantities of silt, sand, organic matter, or debris. In locations where silty or sandy material must be utilized for fill material, it will be necessary to construct impervious sections both upstream and downstream to prevent the erodible sand or silt from being carried away (see Figure 19, APPENDIX P, located at the end of this chapter), Sideslopes for fills shall not exceed one and one half to one (1.5:1). Minimum cover over all culvert pipes and arches shall be one (1) foot. (7-1-93)

**08. Installation of Pipe and Arch Culvert**. All pipe and arch culverts shall be installed in accordance with manufacturer's recommendations. (7-1-93)

**a.** The culvert shall be designed so that headwaters will not rise above the top of the culvert entrance unless a headworks is provided. (7-1-93)

## 063. REMOVAL OF SAND AND GRAVEL DEPOSITS (RULE 63).

**01. Removal of Sand and Gravel**. This work consists of removal of sand and gravel deposits from within a stream channel. The following conditions shall be adhered to unless other methods have been specified in detail on the application and approved by the Director. (7-1-93)

**02. Removal Below Water Surface**. Sand and gravel must not be removed below the water surface existing at the time of the work. Where work involves clearing a new channel for flow, removal of material below water level will be permitted to allow this flow to occur; however, this must not be done until all other work in the new channel has been completed. (7-1-93)

**03. Buffer Zone**. A buffer zone of undisturbed streambed material at least five (5) feet in width or as otherwise specified by the Director shall be maintained between the work area and the existing stream. The applicant shall exercise reasonable precautions to ensure that turbidity is kept to a minimum and does not exceed state water quality standards. (7-1-93)

**04. Movement of Equipment**. Equipment may cross the existing stream in one (1) location only, but shall not push or pull material along the streambed while crossing the existing stream. (7-1-93)

**05. Disturbing Natural Appearance of Area**. Work must be done in a manner that will least disturb the natural appearance of the area. Sand and gravel shall be removed in a manner that will not leave unsightly pits or other completely unnatural features at the conclusion of the project. (7-1-93)

## 064. SUCTION DREDGES AND NON-POWERED SLUICE EQUIPMENT (RULE 64).

**01. Standards for Suction Dredges**. The following standards shall apply only to uses of suction dredges with nozzle diameter of five (5) inches or less and rated at fifteen (15) HP or less and non-powered sluice equipment moving more than one-quarter (1/4) cubic yard per hour. (7-1-93)

**02. Operating Permit**. A permit for the operation of a suction dredge may authorize the use of the dredge within a drainage basin or a large portion of a drainage basin except as otherwise determined by the Director. (7-1-93)

**03. Mechanized Equipment Prohibited Below High Water Mark**. There shall be no use of mechanized equipment below the mean high water mark except for the dredge itself, and any life support system necessary to operate the dredge. (7-1-93)

**04. Operation of Dredge**. The operation of the dredge shall be done in a manner so as to prevent the undercutting of streambanks. (7-1-93)

**05. Permit Required for Non-Powered Operation -- More Than Five People**. A permit shall be required for any non-powered operation in which more than five (5) people are working the same area. (7-1-93)

**06. Permit Required for Non-Powered Operation -- More Than Thirty-Three Percent of Stream Width**. A permit shall be required for any non-powered operation if the disturbed area exceeds thirty-three percent (33%) of the stream width at the mining location. (7-1-93)

**07. Limitation of Mining Sites**. Only one (1) mining site per one hundred (100) linear feet of stream channel shall be worked at one (1) time unless waived by the Director. (7-1-93)

## 065. PILING (RULE 65).

**01. Standards for Pilings**. The following standards apply to a piling associated with a boat or swimming dock, a log boom, a breakwater, or bridge construction. (7-1-93)

**02. Replacement of Pilings**. In replacing a piling the old piling shall be completely removed from the channel, secured to the new piling or cut at stream bed level. (7-1-93)



PROOF

**03. Condition of Pilings**. Chemicals or compounds used for protection of piles and lumber shall be thoroughly dried to prevent bleeding, weeping or dissolution before placing such piles and lumber over, in or near water. (7-1-93)

**04. Prohibited Materials**. The application of creosote, arsenicals or phentachlorophenol (Penta) to timber shall not occur in, or over water. (7-1-93)

**066. PIPE CROSSINGS (RULE 66).**

**01. Standards for Pipe Crossings**. The following standards apply to pipe crossings to be installed below the bed of a stream or river such as utility crossings of a gas line, sewer line, electrical line, communication line, water line or similar line. (7-1-93)

**02. Depth of Line**. The line shall be installed below the streambed to a depth which will prevent erosion and exposure of the line to free flowing water. In areas of high stream velocity where scouring may occur, the pipe shall be encased in concrete or covered with rock riprap to prevent the pipeline from becoming exposed. (7-1-93)

**03. Pipe Joints**. The joints shall be welded, glued, cemented or fastened together in a manner to provide a water tight connection. (7-1-93)

**04. Construction Methods**. Construction methods shall provide for eliminating or minimizing discharges of turbidity, sediment, organic matter or toxic chemicals. A settling basin or cofferdam may be required for this purpose. (7-1-93)

**05. Cofferdam**. If a cofferdam is used, it shall be completely removed from the stream channel upon completion of the project. (7-1-93)

**06. Revegetation of Disturbed Areas**. Areas disturbed as a result of the alteration shall be revegetated with plants and grasses native to these areas. (7-1-93)

**067. CONCRETE PLANK BOAT LAUNCH RAMPS (RULE 67).**

**01. Construction of Concrete Plank Boat Launch Ramps**. Concrete plank boat launch ramps, shall be constructed with individual sections of precast, reinforced concrete planks linked together to provide a stable non-erosive water access. Typical plank size is twelve feet by fourteen inches by four inches (12' x 14" x 4"). (See Figure 20, APPENDIX Q, located at the end of this chapter). (7-1-93)

**02. Construction of Planks**. All planks shall be constructed with Type II low alkali cement. (7-1-93)

**03. Concrete Planks**. All concrete planks shall have a smooth form finish, free of rock pockets and loose materials. Figure 22 shows a typical launch plank detail. (See Figures 21 and 22 in APPENDIXES R and S). (7-1-93)

**04. Assembly of Planks**. The planks shall be assembled out of the water and slid into place on a constructed launch ramp where water velocities do not exceed two (2) feet per second. In waters exceeding (2) feet per second the ramp sections shall be linked together and fastened to pre-positioned stringers anchored into the launch ramp. (See Figure 23, APPENDIX T, located at the end of this chapter). (7-1-93)

**05. Water Depth**. The water depth above the lower end of the ramp section shall not be less than three (3) feet during low level or low flow periods. (See Figure 20, APPENDIX Q, located at the end of this chapter). (7-1-93)

**06. Construction of Boat Ramp**. The boat launch ramp shall have a base constructed of sound, dense, durable, angular rock resistant to weathering and free from soil, shale and organic materials. Rounded cobbles, boulders and streambed material are not acceptable as base material in areas with stream flow velocities greater than two (2) fps. Base materials shall be covered with a layer of (three-fourths inches (3/4") min.) crushed rock with a

minimum depth of two inches (2"). The ramp shall have a minimum and maximum slope of ten percent (10%) and fifteen percent (15%) respectively, and shall be constructed in a manner to avoid long incursions into the stream channel. All ramps and fill material shall be protected with rock riprap in accordance with Rule 057 when stream flow velocities exceed two (2) fps. (See Figure 24, APPENDIX U, located at the end of this chapter). (7-1-93)

**068. -- 069. (RESERVED)**

**070. HEARINGS ON DENIED, LIMITED, OR CONDITIONED PERMIT OR OTHER DECISIONS OF THE DIRECTOR (RULE 70).**

Any applicant who is granted a limited or conditioned permit, or who is denied a permit, may seek a hearing on said action of the Director by serving on the Director written notice and request for a hearing before the Board within fifteen (15) days of receipt of the Director's decision. Said hearing will be set, conducted, and notice given as set forth in the Rules promulgated by the Board under the provisions of Title 67, Chapter 52, Idaho Code. (7-1-93)

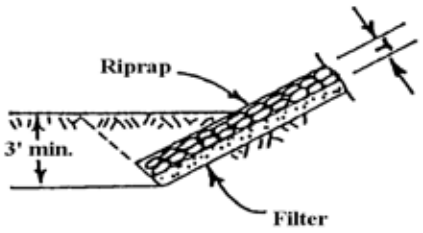
**071. -- 999. (RESERVED)**

**APPENDIX A**
**Table 1A**

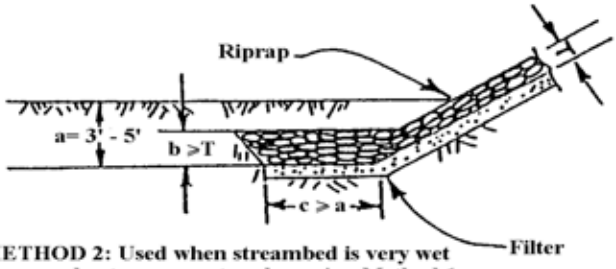
**Riprap Gradation Using FWS Method**

| % Finer by Weight (Lbs.) | Minimum Size (Lbs.) | Maximum Size (Lbs.) |
|---|---|---|
| $D_{100}$ | 1.33 X $D_{75}$ | 2.0 X $D_{75}$ |
| $D_{75}$ | 1.0 X $D_{75}$ | 1.67 X $D_{75}$ |
| $D_{50}$ | 0.67 X $D_{75}$ | 1.17 X $D_{75}$ |
| $D_{25}$ | 0.33 X $D_{75}$ | 0.77 X $D_{75}$ |
| $D_{0}$ | None | 0.33 X $D_{75}$ |

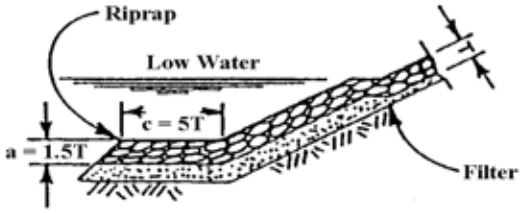
**APPENDIX B**




**METHOD 1: This is most suited to areas where the toe is dry during construction.**



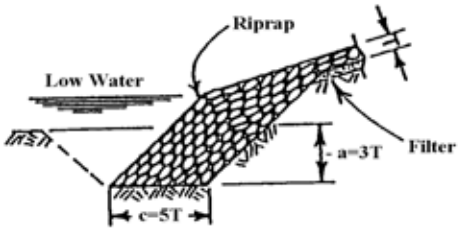

**METHOD 2: Used when streambed is very wet or groundwater presesnt makes using Method 1 impractical.**



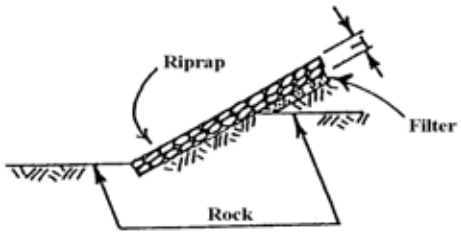

**METHOD 3: Often used when toe is underwater during construction. Both Methods 2 and 3 utilize the idea that undermining will cause rock at toe blanket to settle into eroded area providing protection during scouring.**

**FIGURE 2. Acceptable toe protection**

**APPENDIX B (CONTINUED)**



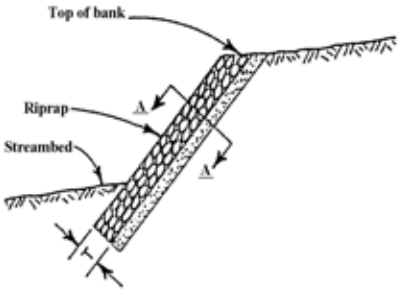

**METHOD 4: Used underwater in areas with extremely bad streambed erosion conditions which make Method 3 unfeasible. This method may also be preferred where Mehtod 3 would destroy fish spawing beds.**

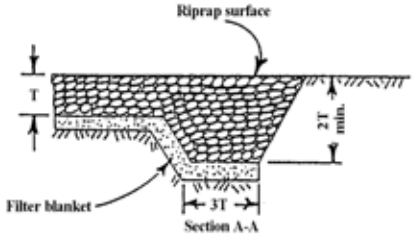



**METHOD 5: When the streambed is non-erodible, no special provisions for toe protection are needed other than insuring that the riprap is well keyed to the rock.**

**FIGURE 2. Acceptable toe protection** ***continued***

**APPENDIX C**



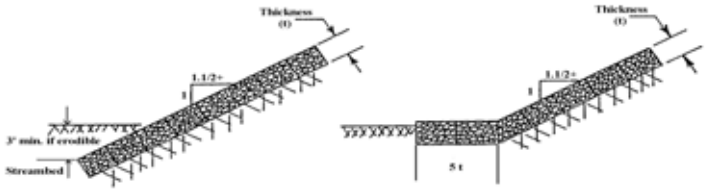




View shown above is cross section at end of riprap looking down along the sideslope toward streambed.

FIGURE 3. Protction against undermining

**APPENDIX D**

FIGURE 4. Mattress Construction



## APPENDIX E

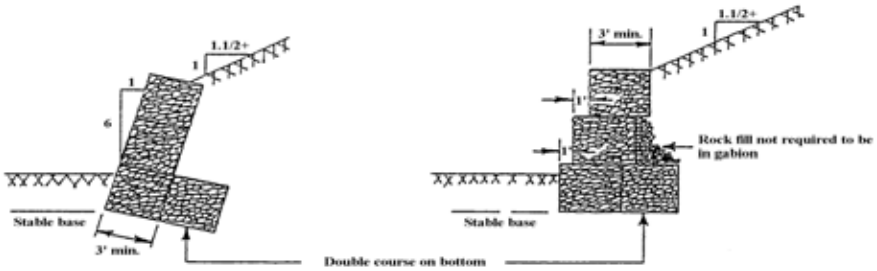



FIGURE 5. Retaining wall construction

## APPENDIX F

FIGURE 6. Placement of mattress toe protection

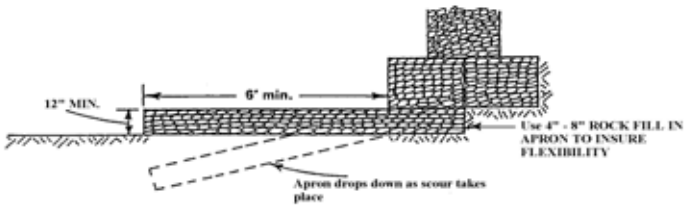



FIGURE 6. Placement of mattress toe protection

## APPENDIX G

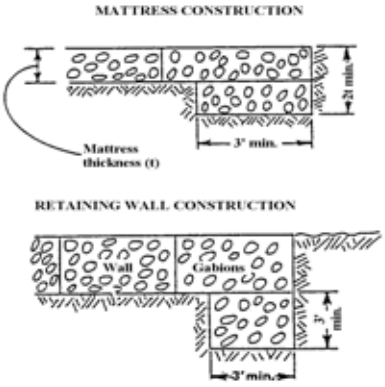



FIGURE 7. Minimum cutoffs - views shown are cross-sections at end of gabion section looking down along the sideslope of the channel

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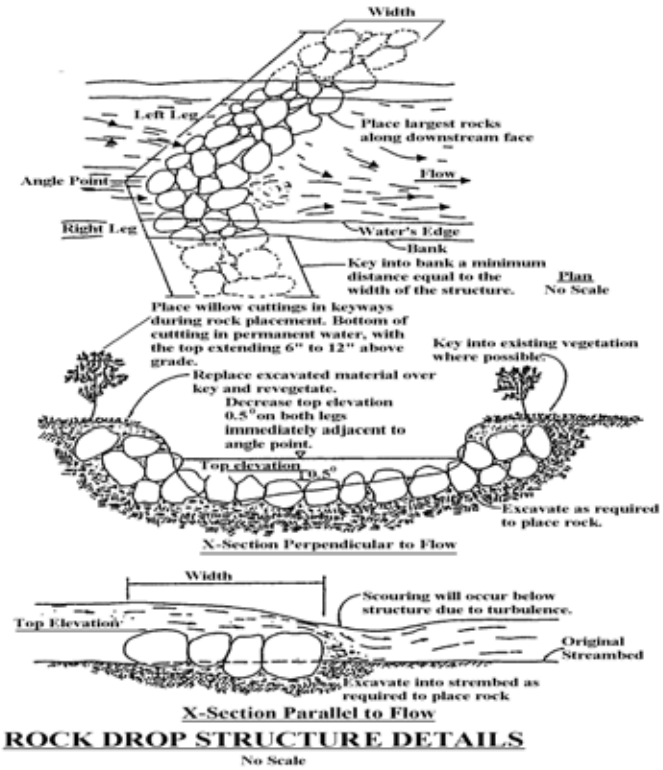

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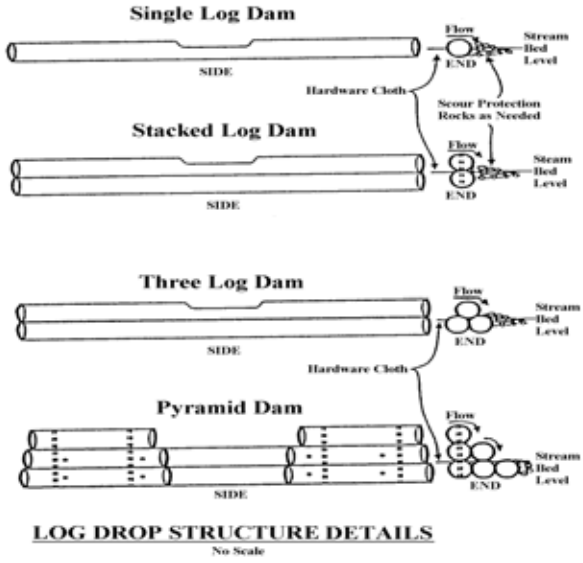


**LOG DROP STRUCTURE DETAILS**

No Scale

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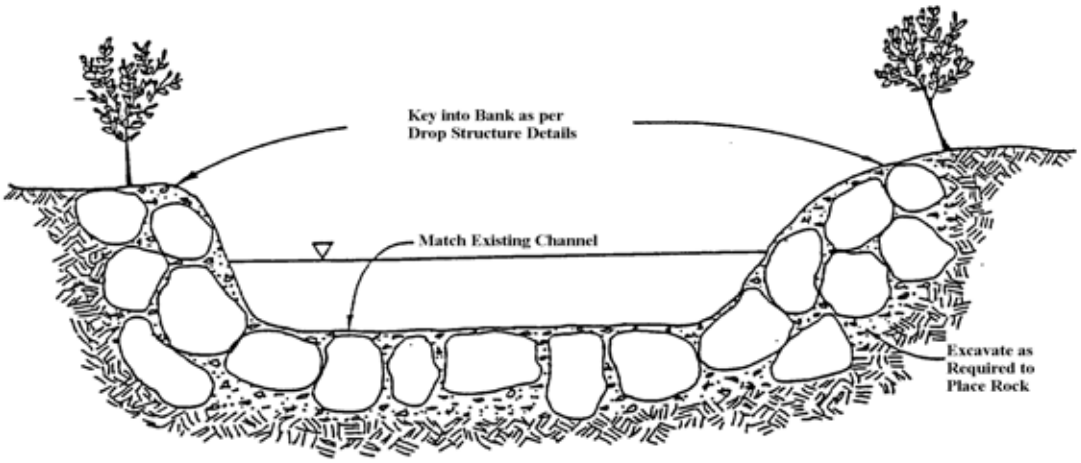


X-Section Perpendicular to Flow

**SILL DETAILS**

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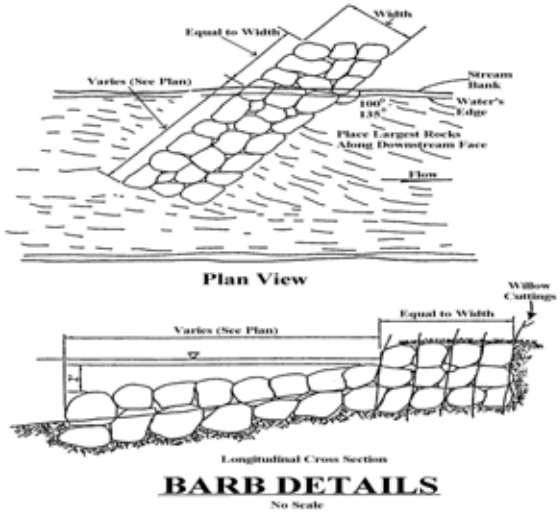


**BARB DETAILS**

No Scale

**STREAM CHANNEL ALTERATIONS**

| Minimum Criteria for Dike or Levee Cross-Section | | |
|---|---|---|
| **Height to Design Water Surface** | **Minimum Top Width** | **Steepest Allowable Sideslope** |
| Compacted mineral fill:<br>0 - 6<br>over 6' - 12' | <br>6'<br>8' | <br>1 1/2:1<br>2:1 |
| Silty, sandy, or organic fill:<br>0 - 6' | <br>8' | <br>2:1 |
| Dumped, uncompacted fill:<br>0 - 6'<br>over 6' - 12' | <br>6'<br>8' | <br>2:1<br>2 1/2:1 (or3:1 on stream side and 2:1 on land side) |
| When road on top:<br>(turnaround areas also needed) | <br>10' | |
| When fill unstable during rapid drawdown or severe wave action anticipated: | | <br>3:1 on stream side |
| Permeable soil of low plasticity used | | 3:1 |

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## APPENDIX L

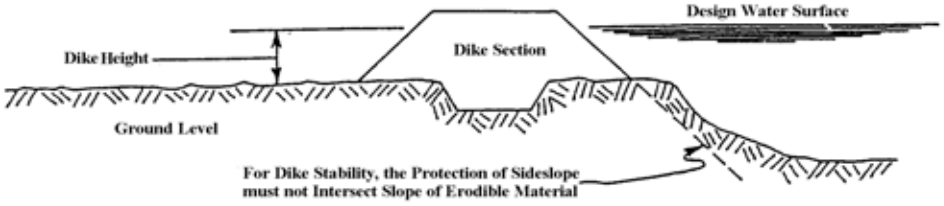



FIGURE 12. Dike Cross-Section

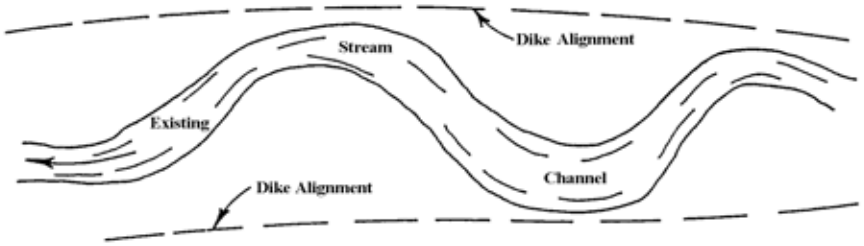



FIGURE 13. Desirable Dike Location

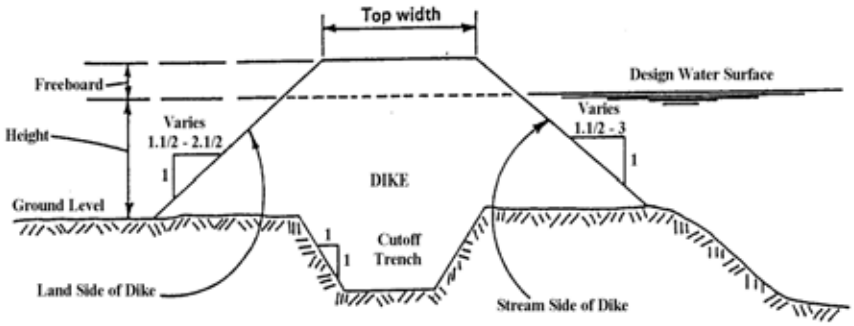
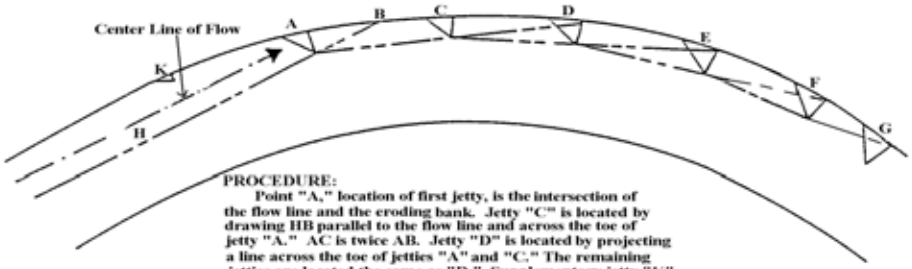



FIGURE 14. Minimum Criteria for Dike or Levee Cross-Section

**APPENDIX M**

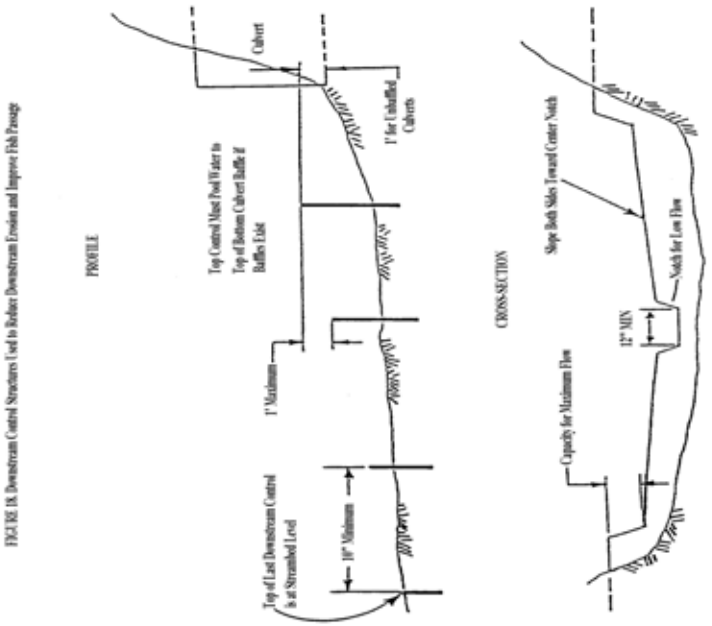
FIGURE 15. Method of Locating Jetties




**PROCEDURE:**

Point "A," location of first jetty, is the intersection of the flow line and the eroding bank. Jetty "C" is located by drawing HB parallel to the flow line and across the toe of jetty "A." AC is twice AB. Jetty "D" is located by projecting a line across the toe of jetties "A" and "C." The remaining jetties are located the same as "D." Supplementary jetty "K" located AC distance upstream from "A."

Source: U.S. Department of Agriculture Soil Conservation Service



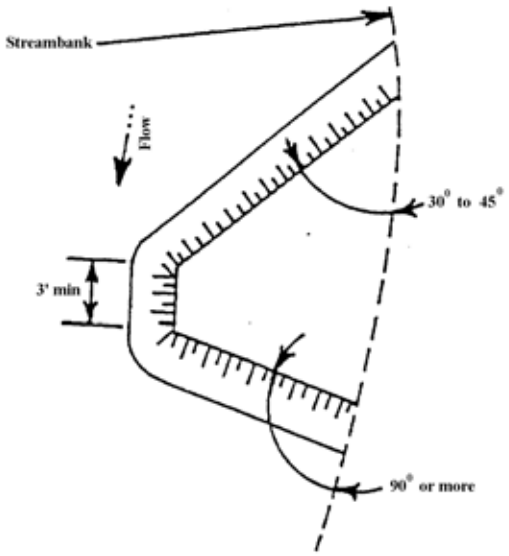



FIGURE 16. Jetty Height in Relation to Streamflow Depth

## APPENDIX N

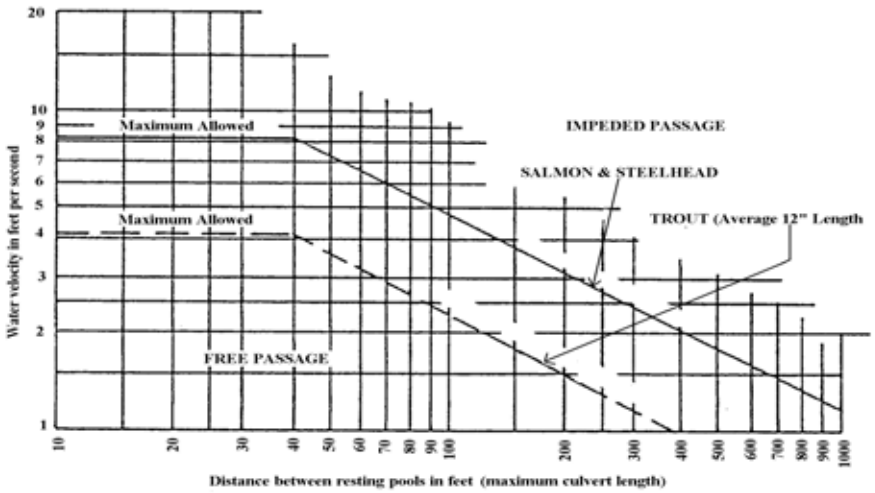
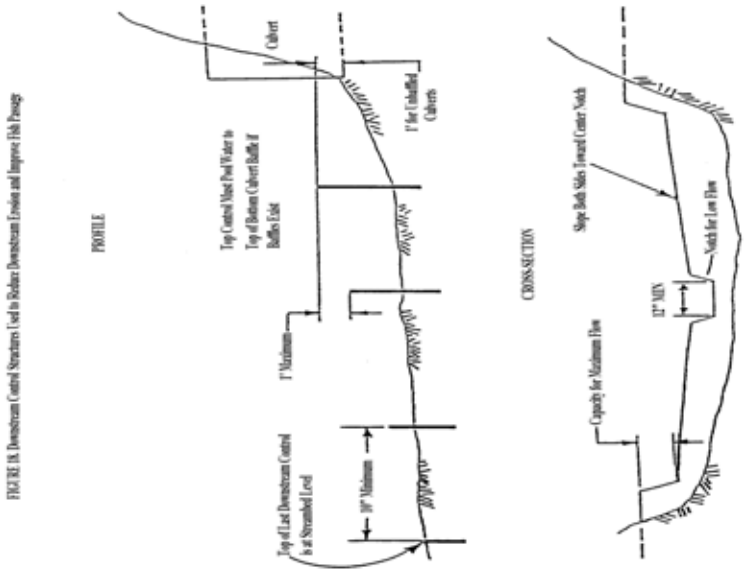



FIGURE 17. Swimming capability of migrating salmon and trout (Alaskan Curve)

**APPENDIX O**

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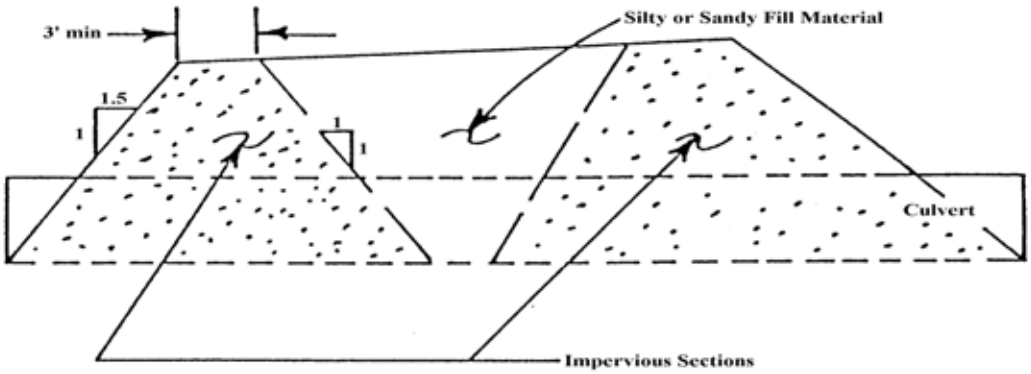
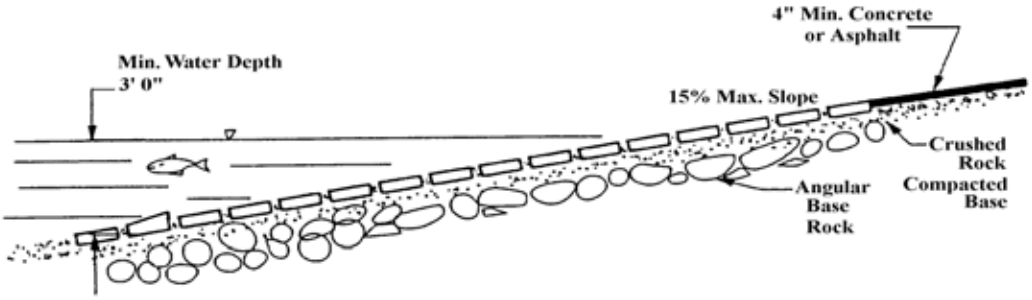



**FIGURE 19. Culvert Backfill Using Silty or Sandy Material**

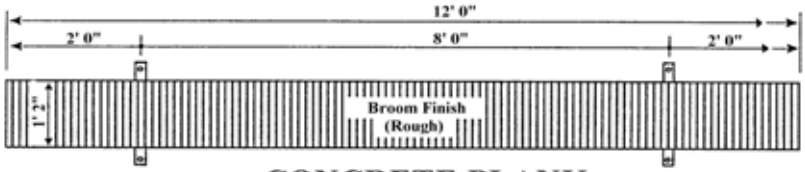
**APPENDIX Q**




**LAUNCH RAMP SECTION**

No Scale
Figure 20

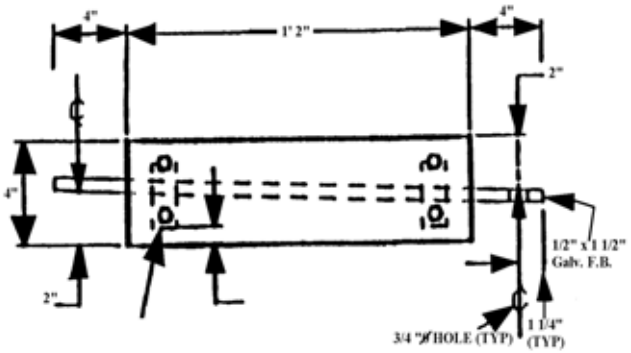
**APPENDIX R**




**CONCRETE PLANK**

No Scale
Figure 21

**APPENDIX S**




CONCRETE LAUNCH PLANK DETAIL

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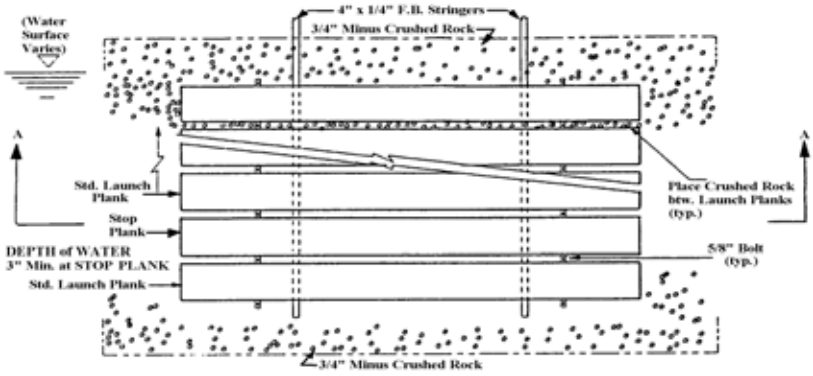
Figure 22

**APPENDIX T**

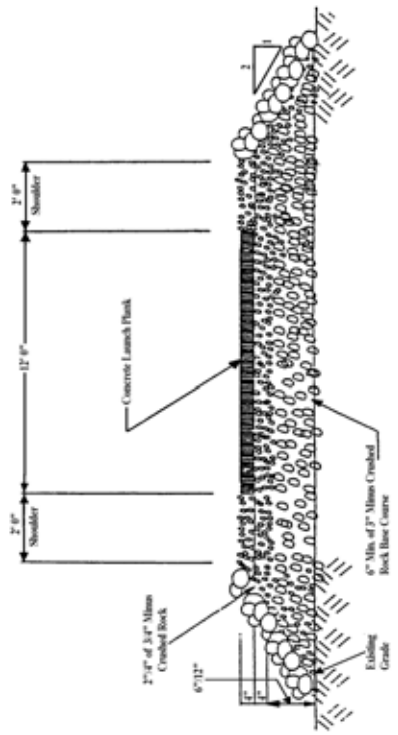



Place crushed rock as shown. Position stringers under planks in order shown and secure with 5/8" bolts. Slide planks on stringers, adding planks as needed, to desired water depth. Stringers consist of 2 - 4" x 1/4" x 20' lng. stl. flat bar w/clevis pin hole one end. Pull flat bar stringers up grade from water when planks are positioned and bolted together, remove when last plank has been set in place.

CONCRETE LAUNCH-PLAN VIEW

Figure 23
No Scale

**APPENDIX U**




CONCRETE LAUNCH - CROSS-SECTION

No Scale
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# 37.03.07 – STREAM CHANNEL ALTERATION RULES

**000. LEGAL AUTHORITY (RULE 0).**
The purpose of these rules and minimum standards is to specify procedures for processing and considering applications for stream channel alterations under the provisions of Title 42, Chapter 38, Idaho Code. (7-1-93)

**001. TITLE AND SCOPE (RULE 1).**

**01. Title**. (7-1-93)

**02. Scope**. The minimum standards are intended to enable the Director to process, in a short period of time, those applications which are of a common type and which do not propose alterations which will be a hazard to the stream channel and its environment. It is intended that these rules and minimum standards be administered in a reasonable manner, giving due consideration, to all factors affecting the stream and adjacent property. (7-1-93)

**002. WRITTEN INTERPRETATION (RULE 2).**

**003. ADMINISTRATIVE APPEALS (RULE 3).**
Any owner who is aggrieved by a determination or order of the Director may request a hearing pursuant to the provisions of Section 42-1701A(3), Idaho Code, and the Department's adopted Rules of Procedure. (7-1-93)

**004. -- 009. (RESERVED)**

**010. DEFINITIONS (RULE 10).**

**01. Alteration**. To obstruct, diminish, destroy, alter, modify, relocate or change the natural existing shape of the channel or to change the direction of flow of water of any stream channel within or below the mean high water mark. It includes removal of material from the stream channel and emplacement of material or structures in or across the stream channel where the material or structure has the potential to affect flow in the channel as determined by the director. (7-1-93)

**02. Applicant**. Any individual, partnership, company, corporation, municipality, county, state or federal agency, their agent, or other entity proposing to alter a stream channel or actually engaged in constructing a channel alteration, whether authorized or not. (7-1-93)

**03. Board**. The Idaho Water Resource Board. (7-1-93)

**04. Continuously Flowing Water**. A sufficient flow of water that could provide for migration and movement of fish, and excludes those reaches of streams which, in their natural state, normally go dry at the location of the proposed alteration. IDWR will assume, subject to information to the contrary, that the USGS quadrangle maps accurately depict whether a stream reach is continuously flowing, at the location of the proposed alteration. Such exclusion does not apply to minor flood channels that are a part of a stream which is continuously flowing in the reach where the alteration is located. Also, such exclusion does not apply to streams which may be dry as a result of upstream diversion or storage of water. (7-1-93)

**05. Department**. The Idaho Department of Water Resources. (7-1-93)

**06. Drop Structures, Sills and Barbs**. Physical obstructions placed within a stream channel for the purpose of stabilizing the channel by decreasing stream gradient and velocity and by dissipating stream energy. (7-1-93)

**07. Director**. The Director of the Idaho Department of Water Resources. (7-1-93)

**08. Mean High Water Mark**. A water level corresponding to the "natural or ordinary high water



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mark" as defined in Section 58-104(9), Idaho Code, and is the line which the water impresses on the soil by covering it for sufficient periods of time to deprive the soil of its terrestrial vegetation and destroy its value for commonly accepted agricultural purposes. (7-1-93)

**09. Non-Powered Sluice Equipment**. Equipment which is powered only by human strength. (7-1-93)

**10. Plans**. Maps, sketches, engineering drawings, photos, work descriptions and specifications sufficient to describe the extent, nature, and location of the proposed stream channel alteration and the proposed method of accomplishing the alteration. (7-1-93)

**11. Repair**. Any work needed or accomplished, to protect, maintain, or restore any water diversion structure and the associated stream channel upstream and downstream as necessary for the efficient operation of the water diversion structure. (7-1-93)

**12. Stream Channel**. A natural water course of perceptible extent with definite beds and banks which confines and conducts continuously flowing water. The channel referred to is that which exists at the present time, regardless of where the channel may have been located at any time in the past. For the purposes of these rules only, the beds of lakes and reservoir pool areas are not considered to be stream channels. (7-1-93)

**13. Base Flood Elevation**. The Base Flood (BF) is referred to as the one hundred (100) year flood and is a measure of flood magnitude based on probability. The base flood has a one percent chance of occurring or being exceeded in any given year, with the Base Flood Elevation (BFE) being the level of flooding reached during the BF or the one hundred (100) year flood event. (7-1-93)

**011. -- 024. (RESERVED)**

**025. EXEMPTIONS (RULE 25).**

**01. Work on Existing or Proposed Reservoir Projects**. Permits are not required under the provisions of Title 42, Chapter 38 for construction work on any existing or proposed reservoir project, including the dam, and such areas downstream as the Director may determine is reasonably necessary for construction and maintenance of the dam. (7-1-93)

**02. Snake and Clearwater Rivers**. Permits are not required for work within that portion of the Snake and Clearwater rivers from the state boundary upstream to the upper boundary of the Port of Lewiston Port District as it now exists or may exist in the future. (7-1-93)

**03. Cleaning, Maintenance, Construction or Repair Work**. No permit is required of a water user or his agent to clean, maintain, construct, or repair any diversion structure, canal, ditch, or lateral or to remove any obstruction from a stream channel which is interfering with the delivery of any water under a valid existing water right or water right permit. (7-1-93)

**04. Removal of Debris**. No permit is required for removal of debris from a stream channel provided that no equipment will be working in the channel and all material removed will be disposed of at some point outside the channel where it cannot again reenter the channel. (7-1-93)

**026. -- 029. (RESERVED)**

**030. APPLICATIONS (RULE 30).**

**01. Joint Application Permit Form**. The Department of Water Resources, Department of Lands, and the U.S. Army Corps of Engineers have developed a joint application for permit form which will suffice for the required application under the Stream Protection Act. An application should be filed at least sixty (60) days before the applicant proposes to start the construction and shall be upon the joint application form furnished by the Department. The application shall be accompanied by plans which clearly describe the nature and purpose of the proposed work. (7-1-93)



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**02. Applicant Following Minimum Standards**. In those cases where the applicant intends to follow the minimum standards (Rule 055), detailed plans may be eliminated by referring to the specific minimum standard; however, drawings necessary to adequately define the extent, purpose, and location of the work will still be required. Plans shall include some reference to water surface elevations and stream boundaries to facilitate review. The application should show the mean high water mark on the plans; however, any water surface or water line reference available will be helpful as long as this reference is described. (Examples: present water surface, low water, high water.) (7-1-93)

**03. Submission of Copies**. The applicant shall submit one (1) copy of all necessary plans along with the application form. When drawings submitted are larger than eight and one half by eleven (8 1/2 x 11), the applicant shall provide the number of copies specified by the department. (7-1-93)

**04. Stream Channel Alteration Permit**. Any applicant proposing to operate a vacuum or suction dredge within or below the mean high water mark of a stream channel shall apply for and obtain a stream channel alteration permit. The vacuum or suction dredge shall only be operated in accordance with the conditions of the permit and with the applicable rules. (7-1-93)

**031. -- 034. (RESERVED)**

**035. APPLICATION REVIEW (RULE 35).**

**01. Prior to Issuance of Permit**. The following items shall be among those considered by the Director prior to issuing a permit: (7-1-93)

**a.** What is the purpose of doing the work? (7-1-93)

**b.** What is the necessity and justification for the proposed alteration? (7-1-93)

**c.** Is the proposal a reasonable means of accomplishing the purpose? (7-1-93)

**d.** Will the alteration be a permanent solution? (7-1-93)

**e.** Will the alteration pass anticipated water flows without creating harmful flooding or erosion problems upstream or downstream? (7-1-93)

**f.** What effect will the alteration have on fish habitat? (7-1-93)

**g.** Will the materials used or the removal of ground cover create turbidity or other water quality problems? (7-1-93)

**h.** Will the alteration interfere with recreational use of the stream? (7-1-93)

**i.** Will the alteration detract from the aesthetic beauty of the area? (7-1-93)

**j.** What modification or alternative solutions are reasonably possible which would reduce the disturbance to the stream channel and its environment and/or better accomplish the desired goal of the proposed alteration? (7-1-93)

**k.** Is the alteration to be accomplished in accordance with the adopted minimum standards? (7-1-93)

**l.** Are there public safety factors to consider? (7-1-93)

**02. Proposed Alteration Which Does Not Follow Minimum Standards**. In those cases where a proposed alteration does not follow the minimum standards, a copy of the application will be sent for review to those state agencies requesting notification. The Director shall provide for review by the Department of Lands, copies of applications on navigable rivers. The Director will provide a copy of any other application requested by the Department of Lands and may request review by other state agencies regardless of whether or not the proposed

alteration will comply with the minimum standards. (7-1-93)

**036. -- 039. (RESERVED)**

**040. APPROVAL (RULE 40).**

**01. Conformance to Application**. All work shall be done in accordance with the approved application, subject to any conditions specified by the department. (7-1-93)

**02. Permits Allowed Without Review**. A permit may be approved by the Director of the Department of Water Resources without review by other agencies in situations where the work is of a nature not uncommon to the particular area and where it is clear that the work will not seriously degrade the stream values except on navigable rivers which require review by the Department of Lands. All work approved in this manner shall be accomplished in accordance with the minimum standards. (7-1-93)

**03. Reinstatement of Expired Permit**. A permit which has expired may be reinstated by the Director after review by other agencies as determined by the Director. (7-1-93)

**041. -- 044. (RESERVED)**

**045. ENFORCEMENT OF ACT (RULE 45).**

**01. Written Orders Issued by Designated Employees of Department**. Employees of the Department designated by the Director may issue written orders directing an applicant to cease and desist, to ensure proper notice to applicants who are found to be altering a stream without a permit or not in compliance with the conditions of a permit. Such orders shall be in effect immediately upon issuance and will continue in force until a permit is issued or until the order is rescinded by the Director. (7-1-93)

**02. Failure to Comply with Stream Protection Act**. Failure to comply with any of the provisions of the Stream Protection Act (Chapter 38, Title 42, Idaho Code), may result in issuance of an Idaho uniform citation and/ or the cancellation of any permit by the Director without further notice and the pursuit in a court of competent jurisdiction, such civil or criminal remedies as may be appropriate and provided by law. The Director may allow reasonable time for an applicant to complete stabilization and restoration work. (7-1-93)

**046. -- 049. (RESERVED)**

**050. EMERGENCY WAIVER (RULE 50).**

**01. Waiver of Provisions of Stream Protection Act**. Section 42-3808, Idaho Code, provides for waiver of the provisions of the Stream Protection Act in emergency situations where immediate action must be taken to protect life or property including growing crops. The Director will not consider failure to submit an application for a stream channel alteration far enough ahead of the desired starting time of the construction work as an emergency situation. (7-1-93)

**02. Verbal Waivers**. A verbal waiver may be granted initially; however, all verbal requests for waivers shall be followed up by the applicant in writing within fifteen (15) days of any initial authorization to do work. If the applicant is unable to contact the Director to obtain an emergency waiver, he may proceed with emergency work; however, he must contact the Director as soon as possible thereafter. Proving that a bonafide emergency did actually exist will be the responsibility of the applicant. (7-1-93)

**03. Emergency Waiver**. Work authorized by an emergency waiver shall be limited to only that which is necessary to safeguard life or property, including growing crops, during the period of emergency. (7-1-93)

**04. Conformance to Conditions of Waiver**. The applicant shall adhere to all conditions set by the Director as part of a waiver. (7-1-93)

**05. Waivers Granted by Designated Employees**. The Director may delegate the authority to grant

waivers to designated employees of the Department. Names and telephone numbers of such employees will be made available to any interested applicant upon request. (7-1-93)

**051. -- 054. (RESERVED)**

**055. MINIMUM STANDARDS (RULE 55).**

These standards are intended to cover the ordinary type of stream channel alteration and to prescribe minimum conditions for approval of such construction. Unless otherwise provided in a permit, these standards shall govern all stream channel alterations in this state. An applicant should not assume that because an application utilizes methods set forth in these standards it will automatically be approved. These minimum standards include the following items: (7-1-93)

**01. Construction Procedures**. (7-1-93)

**02. Dumped Rock Riprap**. (7-1-93)

**03. Gabions**. (7-1-93)

**04. Drop Structures, Sills and Barbs**. (7-1-93)

**05. Dikes and Levees**. (7-1-93)

**06. Jetties**. (7-1-93)

**07. Culverts and Bridges**. (7-1-93)

**08. Removal of Sand and Gravel Deposits**. (7-1-93)

**09. Suction Dredges and Non-Powered Sluice Equipment**. (7-1-93)

**10. Piling**. (7-1-93)

**11. Pipe Crossings**. (7-1-93)

**12. Concrete Plank Boat Launch Ramps**. (7-1-93)

**056. CONSTRUCTION PROCEDURES (RULE 56).**

**01. Conformance to Procedures**. Construction shall be done in accordance with the following procedures unless specific approval of other procedures has been given by the Director. When an applicant desires to proceed in a manner different from the following, such procedures should be described on the application. (7-1-93)

**02. Operation of Construction Equipment**. No construction equipment shall be operated below the existing water surface without specific approval from the Director except as follows: Fording the stream at one (1) location only will be permitted unless otherwise specified; however, vehicles and equipment will not be permitted to push or pull material along the streambed below the existing water level. Work below the water which is essential for preparation of culvert bedding or approved footing installations shall be permitted to the extent that it does not create unnecessary turbidity or stream channel disturbance. Frequent fording will not be permitted in areas where extensive turbidity will be created. (7-1-93)

**03. Temporary Structures**. Any temporary crossings, bridge supports, cofferdams, or other structures that will be needed during the period of construction shall be designed to handle high flows that could be anticipated during the construction period. All structures shall be completely removed from the stream channel at the conclusion of construction and the area shall be restored to a natural appearance. (7-1-93)

**04. Minimizing Disturbance of Area**. Care shall be taken to cause only the minimum necessary disturbance to the natural appearance of the area. Streambank vegetation shall be protected except where its removal



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is absolutely necessary for completion of the work adjacent to the stream channel. (7-1-93)

**05. Disposal of Removed Materials**. Any vegetation, debris, or other material removed during construction shall be disposed of at some location out of the stream channel where it cannot reenter the channel during high stream flows. (7-1-93)

**06. New Cut of Fill Slopes**. All new cut or fill slopes that will not be protected with some form of riprap shall be seeded with grass and planted with native vegetation to prevent erosion. (7-1-93)

**07. Fill Material**. All fill material shall be placed and compacted in horizontal lifts except as provided for in Rule Subsection 060.05 for uncompacted dike and levee construction. Areas to be filled shall be cleared of all vegetation, debris and other materials that would be objectionable in the fill. (7-1-93)

**08. Limitations on Construction Period**. The Director may limit the period of construction as needed to minimize conflicts with fish migration and spawning, recreation use, and other uses. (7-1-93)

**057. DUMPED ROCK RIPRAP (RULE 57).**

**01. Placement of Riprap**. Riprap shall be placed on a granular bedding material or a compact and stable embankment. (7-1-93)

**02. Sideslopes of Riprap**. Sideslopes of riprap shall not be steeper than 2:1 (2' horizontal to 1' vertical) except at ends of culverts and at bridge approaches where a 1 1/2:1 sideslope is standard. (7-1-93)

**03. Minimum Thickness of Riprap**. The minimum thickness of the riprap layer shall equal the dimension of the largest size riprap rock used or be eighteen (18) inches, whichever is greater. When riprap will be placed below high water level, the thickness of the layer shall be fifty percent (50%) greater than specified below. (7-1-93)

**04. Riprap Protection**. Riprap protection must extend at least one (1) foot above the anticipated high water surface elevation in the stream. (7-1-93)

**05. Rock Used for Riprap**. Rock for riprap shall consist of sound, dense, durable, angular rock fragments, resistant to weathering and free from large quantities of soil, shale, and organic matter. The length of a rock shall not be more than three (3) times its width or thickness. Rounded cobbles, boulders, and streambed gravels are not acceptable as dumped riprap. (7-1-93)

**06. Size and Gradation of Riprap**. Riprap size and gradation are commonly determined in terms of the weight of riprap rock. The average size of riprap rock shall be at least as large as the maximum size rock that the stream is capable of moving. The maximum size of riprap rock used shall be two (2) to five (5) times larger than the average size. (7-1-93)

**07. Methods Used for Determining Gradation of Riprap**. There are many methods used for determining the gradation of riprap rock. One of these many acceptable methods is shown in Table 1 below the Far West States (FWS) method shown in APPENDIX A - Table 1A at the end of this chapter.

| GRADATION OF RIPRAP IN POUNDS | | |
|---|---|---|
| **Max. Weight of Stone required (lbs)** | **Min. and Max. Range in weight of Stones (lbs)** | **Weight Range 75 percent of Stones (lbs)** |
| 150 | 25 - 150 | 50 - 150 |
| 200 | 25 - 200 | 50 - 200 |
| 250 | 25 - 250 | 50 - 250 |
| 400 | 25 - 400 | 100 - 400 |

| GRADATION OF RIPRAP IN POUNDS | | |
|---|---|---|
| Max. Weight of Stone required (lbs) | Min. and Max. Range in weight of Stones (lbs) | Weight Range 75 percent of Stones (lbs) |
| 600 | 25 - 600 | 150 - 600 |
| 800 | 25 - 800 | 200 - 800 |
| 1000 | 50 - 1000 | 250 - 1000 |
| 1300 | 50 - 1300 | 325 - 1300 |
| 1600 | 50 - 1600 | 400 - 1600 |
| 2000 | 75 - 2000 | 600 - 2000 |
| 2700 | 100 - 2700 | 800 - 2700 |

(7-1-93)

**08. Use of Filter Material**. A blanket of granular filter material or filter fabric shall be placed between the riprap layer and the bank in all cases where the bank is composed of erodible material that may be washed out from between the riprap rock. Filter material shall consist of a layer of well-graded gravel and coarse sand at least six (6) inches thick. (7-1-93)

**09. Toe Protection**. Some suitable form of toe protection shall be provided for riprap located on erodible streambed material. (7-1-93)

**a.** Various acceptable methods of providing toe protection are shown in APPENDIX B at the end of this chapter. (7-1-93)

**b.** In addition to the approved methods of providing toe protection as shown in APPENDIX B at the end of this chapter, any other reasonable method will be considered by the Director during review of a proposed project. (7-1-93)

**10. Extension of Riprap Area**. Riprap shall extend far enough upstream and downstream to reach stable areas, unless protected against undermining at ends by the method shown in APPENDIX C, Figure 3 at the end of this chapter. On extremely long riprap sections, it is recommended that similar cutoff sections be used at several intermediate points to reduce the hazard that would be created if failure of the riprap occurred at any one (1) location. (7-1-93)

**11. Finished Surface**. Placement shall result in a smooth, even finished surface. Compaction is not necessary. (7-1-93)

**12. Placement of Riprap**. The full course thickness of the riprap shall be placed in one (1) operation. Dumping riprap long distances down the bank or pushing it over the top of the bank with a dozer shall be avoided if possible. Material should be placed with a backhoe, loader, or dragline. Dumping material near its final position on the slope or dumping rock at the toe and bulldozing it up the slope is a very satisfactory method of placement, if approval is obtained for the use of equipment in the channel. (7-1-93)

**13. Design Procedure**. Design procedure using the Far West States (FWS) method. (7-1-93)

**a.** The FWS method uses a single equation to deal with variables for riprap. (7-1-93)

D75 = 3.5/CK WDS for Channel Banks

where: D75 = Size of the rock at seventy five percent (75%) is finer in gradation, in inches.

| | | |
|---|---|---|
| W | = | Specific weight of water, usually 62.4 lbs./cu.ft. |
| D | = | Depth of flow in stream, in feet in flood stage |
| S | = | Channel slope or gradient, in ft/ft. |
| C | = | A coefficient relating to curvature in the stream |
| K | = | A coefficient relating to steepness of bank slopes |

(7-1-93)

**b.** The coefficient, C, is based on the ratio of the radius of curvature of the stream, (CR), to the water surface width, (WSW), so it is necessary for the user to make field determination of these values. The coefficient varies from 0.6 for a curve ratio of 4 to 6, up to 1.0 for a straight channel. If the computed ratio for a particular project is less than 4, the designer should consider some modification less than 4.

| CR/WSW | C |
|---|---|
| 4 - 6 | 0.60 |
| 6 - 9 | 0.75 |
| 9 - 12 | 0.90 |
| Straight Channel | 1.00 |

(7-1-93)

**c.** The coefficient, K, ranges from 0.5 for a 1.5:1 sideslope to 0.87 for 3:1 sideslope. No values are given for steeper or flatter slopes. Slopes steeper than 1.5:1 are not recommended. If slopes flatter than 3:1 are desired, it would be conservative to use the K-value for 3:1 slopes.

| Bankslope | K |
|---|---|
| 1.5:1 | 0.50 |
| 1.75:1 | 0.63 |
| 2.0:1 | 0.72 |
| 2.5:1 | 0.80 |
| 3.0:1 | 0.87 |

(7-1-93)

Table 1A in APPENDIX A, located at the end of this chapter.

## 058. GABIONS (RULE 58).

**01. Wire Enclosed Gabion Riprap**. This protection consists of filling wire "cages" with available rock and securing individual cages together to form a stable slope protection. Aesthetics can be improved by arranging the individual gabions in a manner that will allow planting of vegetation. (7-1-93)

**02. Placement of Gabions**. Gabions shall be placed on a well-compacted and stable embankment. (7-1-93)

**03. Toe Protection**. In general, toe protection shall consist of protection equivalent to at least one (1) of the following: (7-1-93)

**a.** Extend gabions, on slope, at least three (3) feet below streambed or to non-erodible material. (7-1-93)

**b.** Extend gabions out from toe along streambed of an erodible channel a horizontal distance of at least five (5) times the thickness of the gabion mattress. (7-1-93)

**04. Mattress or Retaining Wall Gabion Placements**. Gabions may be placed to form either a mattress or a retaining wall as shown in Figures 4 and 5 in APPENDIXES D and E, located at the end of this chapter. Minimum thickness of mattress shall be twelve (12) inches unless otherwise approved by the Director. (7-1-93)

**a.** Gabion retaining walls shall be constructed in accordance with the illustrated criteria as shown in Figure 5 in APPENDIX E, (located at the end of this chapter), and shall have a minimum horizontal thickness of three (3) feet. Fill above gabion retaining walls shall not exceed a slope of one and one half to one (1 1/2:1). Retaining walls shall not exceed a height of ten (10) feet above streambed unless the Director has approved detailed design plans for the project. (7-1-93)

**b.** The wall shall be founded on a stable non-erodible base unless a mattress is provided to prevent undermining as shown in Figure 6 in APPENDIX F, located at the end of this chapter. (7-1-93)

**05. Single Unit Construction**. Gabions are to be of single unit construction -- the base, ends, and sides to be woven into a single unit. (7-1-93)

**a.** Wire. Wire mesh shall be heavily galvanized steel woven wire no smaller than twelve (12) gage. Mesh size shall be coordinated with rock gradation as specified in Rule Subsection 058.06. All ties, hog rings, lacing and other wire used shall be nine (9) gage galvanized wire unless otherwise approved. (7-1-93)

**b.** Size of Gabion. No individual compartment within a gabion shall have a length, width, or height exceeding four (4) feet except that gabion mattress sections one (1) foot or less in thickness may have a horizontal length up to six (6) feet. (7-1-93)

**c.** Seams. Gabion baskets shall have corners tied or laced together at least every four (4) inches along edges. (7-1-93)

**d.** Ties Between Gabion Baskets. At least two (2) ties shall be made between gabions for every square foot of contact area. (7-1-93)

**06. Rock Used for Gabion Fill**. Rock used for gabion fill shall be sound, dense, durable rock which is free from earth and organic matter. The maximum size of the rock shall not exceed the gabion thickness and seventy percent (70%) of the rock by weight must exceed, in least dimension, the mesh opening in the wire. (7-1-93)

**07. Filter Blanket**. A filter blanket of well-graded gravel and coarse sand at least six (6) inches thick, or suitable filter fabric, shall be placed between the bank and the gabions in cases where the bank is composed of fine erodible material. For filter design using the FWS method, see USDA, Soil Conservation Service, Idaho Technical Note No. 6 or equivalent design criteria. (7-1-93)

**08. Riprap Protection**. Riprap protection shall extend at least one (1) foot above the anticipated high water surface elevation in the stream; however, it is not required that protection be extended above the elevation of the top of the bank. (7-1-93)

**09. Locating Ends of Gabion**. Whenever it is necessary to locate the ends of gabion protection in areas that may be subject to erosive damage, minimum cutoffs shall be provided to prevent undermining as shown in Figure 7 in APPENDIX G. Views shown are cross-sections at end of gabion section looking down along the sideslope of the channel. (7-1-93)

## 059. DROP STRUCTURES, SILLS AND BARBS (RULE 59).

**01. Drop Structures**. A drop structure shall be constructed of rocks, boulders and/or logs placed within a stream channel to act as a low level dam. Placement of a drop structure perpendicular to stream flow will decrease the stream gradient, dissipate stream energy and decrease stream velocity through an increase in water surface elevation immediately above the structure. Drop structures shall comply with the following criteria: (7-1-93)

**a.** Maximum water surface differential across (upstream water surface elevation minus downstream water surface elevation) a drop structure shall not exceed two (2) feet. The department shall approve the final elevation of any structure. (7-1-93)

**b.** Rock drop structures shall be constructed of clean, sound, dense, durable, angular rock fragments, and/or boulders of size and gradation, such that the stream is incapable of moving the material during peak flows. Rocks shall be keyed into the stream banks to minimize the likelihood of bank erosion, (See Figure 8 in APPENDIX H located at the end of this chapter). (7-1-93)

**c.** Log drop structures are acceptable in four (4) designs including the single log dam, the stacked log dam, the three (3) log dam, and the pyramid log dam. Log ends shall be keyed into both banks at least one-third (1/3) of the channel width or a distance sufficient to prevent end erosion. To prevent undercutting, the bottom log shall be imbedded in the stream bed or hardware cloth, cobbles or boulders shall be placed along the upper edge. Minimum log size for a single log structure shall be determined by on-site conditions and shall be placed to maintain flow over the entire log to prevent decay. Each log drop structure must be accompanied by downstream scour protection, such as a rock apron (See Figure 9 in APPENDIX I located at the end of this chapter. (7-1-93)

**d.** All drop structures shall be constructed to facilitate fish passage and centralized scour pool development. (7-1-93)

**02. Sills**. A sill shall be constructed of the same material and in the same manner as a drop structure. The top of the sill may not exceed the elevation of the bottom of the channel. The purpose of a sill is to halt the upstream movement of a headcut, thus precluding the widening or deepening of the existing channel. (See Figure 10 in APPENDIX J located at the end of this chapter). (7-1-93)

**03. Barb or Partial Drop Structure**. A barb or partial drop structure shall be constructed in the same manner and of the same material as a drop structure and placed into the stream channel to act as a low level dam and grade control structure. The barb will decrease stream gradient, dissipate stream energy and redirect stream flow. (7-1-93)

**a.** Barbs shall be constructed of clean, sound, dense, angular rock fragments, of size and gradation such that the stream is incapable of moving the material during peak flows. (7-1-93)

**b.** Barbs shall be constructed with a downstream angle of no less than one hundred (100) degrees and no greater than one hundred thirty-five (135) degrees unless otherwise specified. (7-1-93)

**c.** Barbs shall "extend" into the channel a distance of not more than twenty percent (20%) of the width of the channel unless otherwise specified by the Director. (7-1-93)

**d.** Barbs shall be keyed into the bank a distance equal to or greater than the width of the structure and down to bed level. Whenever moisture is encountered in the construction of the keyways, willow cuttings or clumps shall be placed before and during rock placement in such a manner that the base of the cutting is in permanent moisture and the top extends a minimum of six (6) inches above grade (see Figure 11 in APPENDIX K located at the end of this chapter). (7-1-93)

## 060. DIKES AND LEVEES (RULE 60).

**01. Standards for Dikes**. The following standards apply to dikes with heights from ground level to water surface elevation no greater than twelve (12) feet. Approval of higher dikes will be based on evaluation of a detailed design for the particular proposal. Permits for such structures are needed only when all or part of the structure is located below the mean high water mark (see Figure 12 in APPENDIX L located at the end of this chapter). (7-1-93)

**02. Location of Dikes**. Dikes shall be located in the best possible foundation material available and shall not obstruct the natural flow of or raise the water surface in the channel. (7-1-93)

**03. Figure 13**. Figure 13 in APPENDIX L, located at the end of this chapter, shows the most desirable location for a dike, because such an alignment results in minimum erosion and maintenance for the dike and the least possible disturbance to the stream; however, each applicant must decide what alignment is most suited to solve a particular problem. (7-1-93)

**04. Dike or Levee Foundation Areas**. Dike or levee foundation areas shall be clear of all trees, brush, stumps, logs, roots, boulders and other undesirable material which would interfere with scarifying the area. (7-1-93)

**a.** Organic soils shall be removed except where fill used for the levee will primarily consist of organic material. (7-1-93)

**b.** Unsuitable material at old channel crossings shall be removed and banks of the old channel shall be no steeper than one to one (1:1) before fill is placed. (7-1-93)

**05. Pervious Foundation**. When the foundation is pervious enough that piping may occur, a core trench shall be constructed down to an impervious layer or to some reasonable depth if impervious material is not present. Construction of the core trench shall comply with the following criteria: (7-1-93)

**a.** The core trench shall be located approximately along the centerline of the dike. (7-1-93)

**b.** When impervious material is not encountered in the core trench, drains shall be provided on the land side of the trench (use a graded sand-gravel filter blanket) with the minimum trench depth as follows to ensure stability:

| Design Water Surface Above Ground Level | Minimum Core Trench Depth Below Ground Level |
|---|---|
| 0 - 6' | 3' |
| 6 - 12' | 6' |

(7-1-93)

**c.** The width of the bottom of the core trench shall be adequate to allow movement of construction equipment to place and compact material. Sideslopes of the trench shall not be steeper than one to one (1:1). (7-1-93)

**d.** Core trench backfill shall consist of the most impervious material available and shall be well compacted. (7-1-93)

**06. Existing Drains**. All existing drains entering the channel shall be maintained by installing conduits through dikes. Conduits shall be installed on firm foundations and backfill material shall be thoroughly compacted in lifts.) (7-1-93)

**07. Minimum Design Water Level Surface**. The minimum design water surface elevation that shall be provided for is as follows: The dike shall provide at least two (2) feet of freeboard above the design water surface.

| Drainage Area | Design Flow Frequency |
|---|---|
| Less than 50 sq. mil. | 25 years |
| 50 sq. mi. or more | 50 years or greatest flow of record, whichever is more |

(7-1-93)



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**08. Height of Dike or Levee**. The height of a dike or levee shall be increased during construction enough to ensure the required freeboard after settlement. Minimum height increases are as follows:

| Fill Material | Minimum Height Increase |
|---|---|
| Normal compacted fill | 5% |
| Uncompacted Dragline construction | 20% |
| Near-saturated organic matter | 40% |

(7-1-93)

**09. Compacted Mineral Soil**. Compacted mineral soil having a high specific gravity and capable of achieving low permeability is the most desirable fill material and may be utilized on all dikes or levees. (7-1-93)

**a.** Organic fill material shall not be used on levees having a design water surface more than six (6) feet above land surface, unless specific approval from the Director is obtained. (7-1-93)

**b.** Silty or sand material shall not be used for fill unless provisions are specified on the application and/or plans which will adequately protect this material from erosion. (7-1-93)

**10. Cross-Section of Dike or Levee**. The cross-section of a dike or levee shall conform to the minimum criteria shown in Rule 061.01, Table 2 and Figure 14 in APPENDIX L, located at the end of this chapter. In those instances where the location of a dike or the nature of the fill material is such that erosion of the fill is likely, some suitable form of slope protection such as riprap or grass shall be provided. (See the appropriate riprap specification for standards required. Embankments constructed of silty or sandy materials shall receive particular attention with regard to slope protection.) (7-1-93)

## 061. JETTIES (RULE 61).

**01. Use of Jetties**. Use of jetties shall not be permitted on curves having less than a two hundred (200) foot radius unless hydraulic analysis can be provided to show that they will achieve the desired results.

| MINIMUM CRITERIA FOR DIKE OR LEVEE CROSS-SECTION | | |
|---|---|---|
| **Height to Design Water Surface** | **Minimum Top Width** | **Steepest Allowable Sideslope** |
| Compacted mineral fill: | | |
| 0 - 6' | 6' | 1 1/2:1 |
| over 6' - 12' | 8' | 2:1 |
| Silty, sandy, or organic fill: | | |
| 0 - 6' | 8' | 2:1 |
| Dumped, uncompacted fill: | | |
| 0 - 6' | 6' | 2:1 |
| over 6' - 12' | 8' | 2 1/2:1 (or 3:1 on stream side and 2:1 on land side) |
| When road on top: (turnaround areas also needed) | 10' | |

| MINIMUM CRITERIA FOR DIKE OR LEVEE CROSS-SECTION | | |
|---|---|---|
| **Height to Design Water Surface** | **Minimum Top Width** | **Steepest Allowable Sideslope** |
| When fill unstable during rapid drawdown or severe wave action anticipated) | 3:1 on stream side | |
| Permeable soil of low plasticity used | 3:1 | |

(7-1-93)

**a.** Jetties shall not extend into the stream from the bank more than twenty percent (20%) of the channel width unless it can be demonstrated that undesirable effects will not be created. (7-1-93)

**b.** Jetties shall be spaced close enough together to provide continuous protection along the streambank unless other provisions for protection between the jetties are provided. Section Subsection 061.01, Table 2, shows one (1) method of locating jetties. (7-1-93)

**02. Height of Jetty**. The height shall be at least equal to the design streamflow depth unless the jetty is specifically designed for fish shelter or streambank toe protection only. (See details in Figure 16 in APPENDIX M, located at the end of this chapter.) (7-1-93)

**a.** Jetties shall always be protected from erosion at their contact with the bank and streambed by extending the fill and/or riprap down to non-erodible material or beyond the maximum anticipated scour depth. The minimum scour depth considered shall be two (2) feet. (7-1-93)

**b.** Minimum top width for a jetty shall be three (3) feet unless otherwise specified by the Director. (7-1-93)

**c.** The steepest allowable sideslopes for a jetty shall be as follows unless otherwise specified by the Director.

| Type of Jetty | Maximum Sideslope |
|---|---|
| Full flow height | 1 1/2:1 |
| Low partial flow height | 2:1 |

(7-1-93)

**d.** Jetties shall be protected from erosive damage either by placing rock riprap or other protective cover at areas subject to erosion or by constructing the jetty using a material resistant to erosion. (7-1-93)

**e.** Full flow height jetties shall be protected from erosive damage on the upstream side and end. (7-1-93)

**f.** Low jetties that will be subject to flow over the entire structure shall be protected from erosive damage on all exposed surfaces. (7-1-93)

**03. Pervious or Impervious Fills**. Jetties may be constructed as either pervious or impervious fills. (7-1-93)

**a.** Construction of a pervious jetty will require the use of fill material such as well-graded angular rock which will not be eroded or otherwise weakened by allowing seepage to flow through it. Rock filled wire gabions are also suitable for construction of pervious jetties where angular rock of adequate size is not available. (7-1-93)

**b.** Impervious fill shall be placed in horizontal lifts and thoroughly compacted. Fill consisting primarily of silty material shall not be used. This type of construction requires the use of rock riprap or other suitable protection in areas subject to erosive action. (7-1-93)

**062. CULVERTS AND BRIDGES (RULE 62).**

**01. Culverts and Bridges**. Culverts and bridges shall be capable of carrying streamflows and shall not significantly alter conditions upstream or downstream by causing flooding, turbidity, or other problems. The appearance of such installations shall not detract from the natural surroundings of the area. (7-1-93)

**02. Location of Culverts and Bridges**. Culverts and bridges should be located so that a direct line of approach exists at both the entrance and exit. Abrupt bends at the entrance or exit shall not exist unless suitable erosion protection is provided. (7-1-93)

**03. Ideal Gradient**. The ideal gradient (bottom slope) is one which is steep enough to prevent silting but flat enough to prevent scouring due to high velocity flows. It is often advisable to make the gradient of a culvert coincide with the average streambed gradient. (7-1-93)

**a.** Where a culvert is installed on a slope steeper than twenty percent (20%), provisions to anchor the culvert in position will be required. Such provisions shall be included in the application and may involve the use of collars, headwall structures, etc. Smooth concrete pipe having no protruding bell joints or other irregularities shall have such anchoring provisions if the gradient exceeds ten percent (10%). (7-1-93)

**04. Size of Culvert or Bridge Opening**. The size of the culvert or bridge opening shall be such that it is capable of passing design flows without overtopping the streambank or causing flooding or other damage. (7-1-93)

**a.** Design flows shall be based upon the following minimum criteria:

| Drainage Area | Design Flow Frequency |
|---|---|
| Less than 50 sq. mi. | 25 Years |
| Over 50 sq. mi. or more | 50 years or greatest flow of record, whichever is more |

(7-1-93)

**b.** For culverts and bridges located on U.S. Forest Service or other federal lands, the sizing should comply with the Forest Practices Act as adopted by the federal agencies or the Department of Lands. (7-1-93)

**c.** For culverts or bridges located in a community qualifying for the national flood issuance program, the minimum size culvert shall accommodate the one hundred (100) year design flow frequency. (7-1-93)

**d.** If the culvert or bridge design is impractical for the site, the crossing may be designed with additional flow capacity outside the actual crossing structure, provided there is no increase in the Base Flood Elevation.
(NOTE: When flow data on a particular stream is unavailable, it is almost always safe to maintain the existing gradient and cross-section area present in the existing stream channel. Comparing the proposed crossing size with others upstream or downstream is also a valuable means of obtaining information regarding the size needed for a proposed crossing.) (7-1-93)

**e.** Minimum clearance shall be at least one (1) foot at all bridges. This may need to be increased substantially in the areas where ice passage or debris may be a problem. Minimum culvert sizes required for stream crossings: (7-1-93)

i. Eighteen (18) inch diameter for culverts up to seventy (70) feet long; (7-1-93)

ii. Twenty-four (24) inch diameter for all culverts over seventy (70) feet long. (7-1-93)



PROPOSED

**f.** In streams where fish passage is of concern as determined by the director, an applicant shall comply with the following provisions and/or other approved criteria to ensure that passage will not be prevented by a proposed crossing. (7-1-93)

**g.** Minimum water depth shall be approximately eight (8) inches for salmon and steelhead and at least three (3) inches in all other cases. (7-1-93)

**h.** Maximum flow velocities for streams shall not exceed those shown in Figure 17 in APPENDIX N, located at the end of this chapter, for more than a forty-eight (48) hour period. The curve used will depend on the type of fish to be passed. (7-1-93)

**i.** Where it is not feasible to adjust the size or slope to obtain permissible velocities, the following precautions may be utilized to achieve the desired situation. (7-1-93)

**j.** Baffles downstream or inside the culvert may be utilized to increase depth and reduce velocity. Design criteria may be obtained from the Idaho Fish and Game Department. (7-1-93)

**k.** Where multiple openings for flow are provided, baffles or other measures used in one (1) opening only shall be adequate provided that the opening is designed to carry the main flow during low-flow periods. (7-1-93)

**05. Construction of Crossings**. When crossings are constructed in erodible material, upstream and downstream ends shall be protected from erosive damage through the use of such methods as dumped rock riprap, headwall structures, etc., and such protection shall extend below the erodible streambed and into the banks at least two (2) feet unless some other provisions are made to prevent undermining. (7-1-93)

**a.** Where fish passage must be provided, upstream drops at the entrance to a culvert will not be permitted and a maximum drop of one (1) foot will be permitted at the downstream end if an adequate jumping pool is maintained below the drop. (7-1-93)

**b.** Downstream control structures such as are shown in Figure 18 in APPENDIX O, located at the end of this chapter, can be used to reduce downstream erosion and improve fish passage. They may be constructed with gabions, pilings and rock drop structures. (7-1-93)

**06. Multiple Openings**. Where a multiple opening will consist of two (2) or more separate culvert structures, they shall be spaced far enough apart to allow proper compaction of the fill between the individual structures. The minimum spacing in all situations shall be one (1) foot. In areas where fish passage must be provided, only one (1) opening shall be constructed to carry all low flows. Low flow baffles may be required to facilitate fish passage. (7-1-93)

**07. Areas to be Filled**. All areas to be filled shall be cleared of vegetation, topsoil, and other unsuitable material prior to placing fill. Material cleared from the site shall be disposed of above the high water line of the stream. Fill material shall be reasonably well-graded and compacted and shall not contain large quantities of silt, sand, organic matter, or debris. In locations where silty or sandy material must be utilized for fill material, it will be necessary to construct impervious sections both upstream and downstream to prevent the erodible sand or silt from being carried away (see Figure 19, APPENDIX P, located at the end of this chapter), Sideslopes for fills shall not exceed one and one half to one (1.5:1). Minimum cover over all culvert pipes and arches shall be one (1) foot. (7-1-93)

**08. Installation of Pipe and Arch Culvert**. All pipe and arch culverts shall be installed in accordance with manufacturer's recommendations. (7-1-93)

**a.** The culvert shall be designed so that headwaters will not rise above the top of the culvert entrance unless a headworks is provided. (7-1-93)

## 063. REMOVAL OF SAND AND GRAVEL DEPOSITS (RULE 63).

**01. Removal of Sand and Gravel**. This work consists of removal of sand and gravel deposits from within a stream channel. The following conditions shall be adhered to unless other methods have been specified in detail on the application and approved by the Director. (7-1-93)

**02. Removal Below Water Surface**. Sand and gravel must not be removed below the water surface existing at the time of the work. Where work involves clearing a new channel for flow, removal of material below water level will be permitted to allow this flow to occur; however, this must not be done until all other work in the new channel has been completed. (7-1-93)

**03. Buffer Zone**. A buffer zone of undisturbed streambed material at least five (5) feet in width or as otherwise specified by the Director shall be maintained between the work area and the existing stream. The applicant shall exercise reasonable precautions to ensure that turbidity is kept to a minimum and does not exceed state water quality standards. (7-1-93)

**04. Movement of Equipment**. Equipment may cross the existing stream in one (1) location only, but shall not push or pull material along the streambed while crossing the existing stream. (7-1-93)

**05. Disturbing Natural Appearance of Area**. Work must be done in a manner that will least disturb the natural appearance of the area. Sand and gravel shall be removed in a manner that will not leave unsightly pits or other completely unnatural features at the conclusion of the project. (7-1-93)

### 064. SUCTION DREDGES AND NON-POWERED SLUICE EQUIPMENT (RULE 64).

**01. Standards for Suction Dredges**. The following standards shall apply only to uses of suction dredges with nozzle diameter of five (5) inches or less and rated at fifteen (15) HP or less and non-powered sluice equipment moving more than one-quarter (1/4) cubic yard per hour. (7-1-93)

**02. Operating Permit**. A permit for the operation of a suction dredge may authorize the use of the dredge within a drainage basin or a large portion of a drainage basin except as otherwise determined by the Director. (7-1-93)

**03. Mechanized Equipment Prohibited Below High Water Mark**. There shall be no use of mechanized equipment below the mean high water mark except for the dredge itself, and any life support system necessary to operate the dredge. (7-1-93)

**04. Operation of Dredge**. The operation of the dredge shall be done in a manner so as to prevent the undercutting of streambanks. (7-1-93)

**05. Permit Required for Non-Powered Operation -- More Than Five People**. A permit shall be required for any non-powered operation in which more than five (5) people are working the same area. (7-1-93)

**06. Permit Required for Non-Powered Operation -- More Than Thirty-Three Percent of Stream Width**. A permit shall be required for any non-powered operation if the disturbed area exceeds thirty-three percent (33%) of the stream width at the mining location. (7-1-93)

**07. Limitation of Mining Sites**. Only one (1) mining site per one hundred (100) linear feet of stream channel shall be worked at one (1) time unless waived by the Director. (7-1-93)

### 065. PILING (RULE 65).

**01. Standards for Pilings**. The following standards apply to a piling associated with a boat or swimming dock, a log boom, a breakwater, or bridge construction. (7-1-93)

**02. Replacement of Pilings**. In replacing a piling the old piling shall be completely removed from the channel, secured to the new piling or cut at stream bed level. (7-1-93)

**03. Condition of Pilings**. Chemicals or compounds used for protection of piles and lumber shall be thoroughly dried to prevent bleeding, weeping or dissolution before placing such piles and lumber over, in or near water. (7-1-93)

**04. Prohibited Materials**. The application of creosote, arsenicals or phentachlorophenol (Penta) to timber shall not occur in, or over water. (7-1-93)

**066. PIPE CROSSINGS (RULE 66).**

**01. Standards for Pipe Crossings**. The following standards apply to pipe crossings to be installed below the bed of a stream or river such as utility crossings of a gas line, sewer line, electrical line, communication line, water line or similar line. (7-1-93)

**02. Depth of Line**. The line shall be installed below the streambed to a depth which will prevent erosion and exposure of the line to free flowing water. In areas of high stream velocity where scouring may occur, the pipe shall be encased in concrete or covered with rock riprap to prevent the pipeline from becoming exposed. (7-1-93)

**03. Pipe Joints**. The joints shall be welded, glued, cemented or fastened together in a manner to provide a water tight connection. (7-1-93)

**04. Construction Methods**. Construction methods shall provide for eliminating or minimizing discharges of turbidity, sediment, organic matter or toxic chemicals. A settling basin or cofferdam may be required for this purpose. (7-1-93)

**05. Cofferdam**. If a cofferdam is used, it shall be completely removed from the stream channel upon completion of the project. (7-1-93)

**06. Revegetation of Disturbed Areas**. Areas disturbed as a result of the alteration shall be revegetated with plants and grasses native to these areas. (7-1-93)

**067. CONCRETE PLANK BOAT LAUNCH RAMPS (RULE 67).**

**01. Construction of Concrete Plank Boat Launch Ramps**. Concrete plank boat launch ramps, shall be constructed with individual sections of precast, reinforced concrete planks linked together to provide a stable non-erosive water access. Typical plank size is twelve feet by fourteen inches by four inches (12' x 14" x 4"). (See Figure 20, APPENDIX Q, located at the end of this chapter). (7-1-93)

**02. Construction of Planks**. All planks shall be constructed with Type II low alkali cement. (7-1-93)

**03. Concrete Planks**. All concrete planks shall have a smooth form finish, free of rock pockets and loose materials. Figure 22 shows a typical launch plank detail. (See Figures 21 and 22 in APPENDIXES R and S). (7-1-93)

**04. Assembly of Planks**. The planks shall be assembled out of the water and slid into place on a constructed launch ramp where water velocities do not exceed two (2) feet per second. In waters exceeding (2) feet per second the ramp sections shall be linked together and fastened to pre-positioned stringers anchored into the launch ramp. (See Figure 23, APPENDIX T, located at the end of this chapter). (7-1-93)

**05. Water Depth**. The water depth above the lower end of the ramp section shall not be less than three (3) feet during low level or low flow periods. (See Figure 20, APPENDIX Q, located at the end of this chapter). (7-1-93)

**06. Construction of Boat Ramp**. The boat launch ramp shall have a base constructed of sound, dense, durable, angular rock resistant to weathering and free from soil, shale and organic materials. Rounded cobbles, boulders and streambed material are not acceptable as base material in areas with stream flow velocities greater than two (2) fps. Base materials shall be covered with a layer of (three-fourths inches (3/4") min.) crushed rock with a

minimum depth of two inches (2"). The ramp shall have a minimum and maximum slope of ten percent (10%) and fifteen percent (15%) respectively, and shall be constructed in a manner to avoid long incursions into the stream channel. All ramps and fill material shall be protected with rock riprap in accordance with Rule 057 when stream flow velocities exceed two (2) fps. (See Figure 24, APPENDIX U, located at the end of this chapter). (7-1-93)

**068. -- 069. (RESERVED)**

**070. HEARINGS ON DENIED, LIMITED, OR CONDITIONED PERMIT OR OTHER DECISIONS OF THE DIRECTOR (RULE 70).**

Any applicant who is granted a limited or conditioned permit, or who is denied a permit, may seek a hearing on said action of the Director by serving on the Director written notice and request for a hearing before the Board within fifteen (15) days of receipt of the Director's decision. Said hearing will be set, conducted, and notice given as set forth in the Rules promulgated by the Board under the provisions of Title 67, Chapter 52, Idaho Code. (7-1-93)

**071. -- 999. (RESERVED)**

**APPENDIX A**
**Table 1A**

**Riprap Gradation Using FWS Method**

| % Finer by Weight (Lbs.) | Minimum Size (Lbs.) | Maximum Size (Lbs.) |
|---|---|---|
| $D_{100}$ | 1.33 X $D_{75}$ | 2.0 X $D_{75}$ |
| $D_{75}$ | 1.0 X $D_{75}$ | 1.67 X $D_{75}$ |
| $D_{50}$ | 0.67 X $D_{75}$ | 1.17 X $D_{75}$ |
| $D_{25}$ | 0.33 X $D_{75}$ | 0.77 X $D_{75}$ |
| $D_{0}$ | None | 0.33 X $D_{75}$ |



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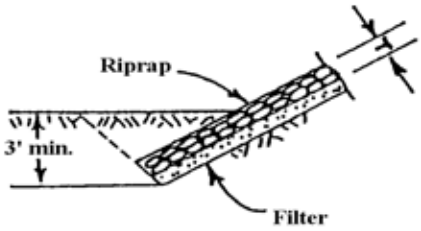
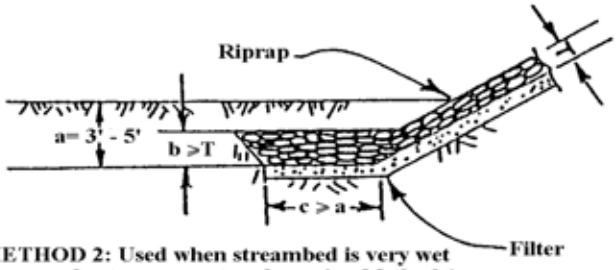
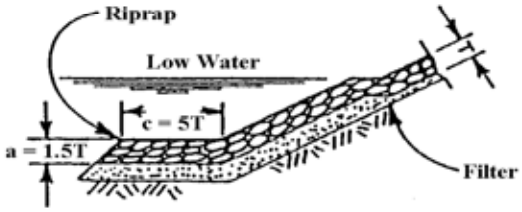
**APPENDIX B**




**METHOD 1: This is most suited to areas where the toe is dry during construction.**



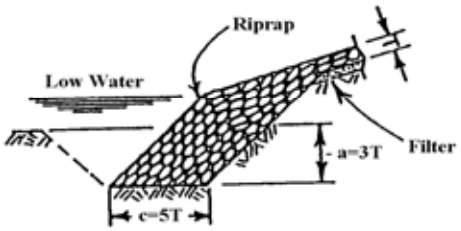

**METHOD 2: Used when streambed is very wet or groundwater presesnt makes using Method 1 impractical.**



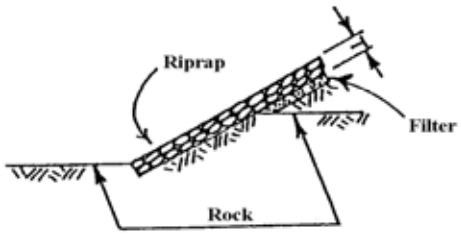

**METHOD 3: Often used when toe is underwater during construction. Both Methods 2 and 3 utilize the idea that undermining will cause rock at toe blanket to settle into eroded area providing protection during scouring.**

**FIGURE 2. Acceptable toe protection**

**APPENDIX B (CONTINUED)**



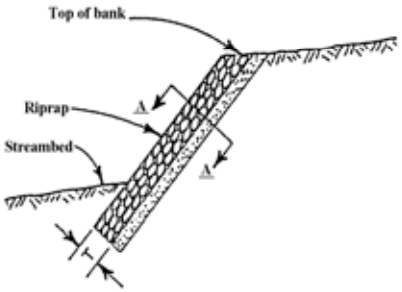

**METHOD 4: Used underwater in areas with extremely bad streambed erosion conditions which make Method 3 unfeasible. This method may also be preferred where Mehtod 3 would destroy fish spawing beds.**

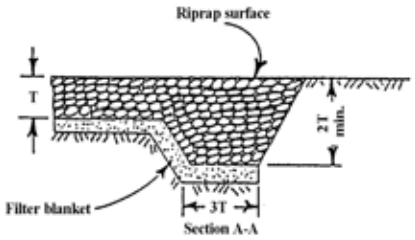



**METHOD 5: When the streambed is non-erodible, no special provisions for toe protection are needed other than insuring that the riprap is well keyed to the rock.**

**FIGURE 2. Acceptable toe protection** ***continued***

**APPENDIX C**



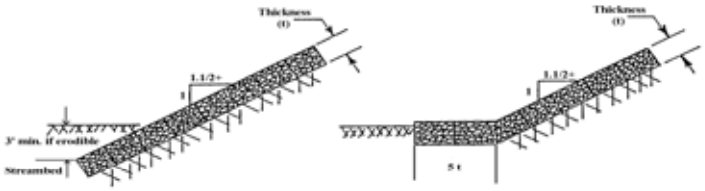




View shown above is cross section at end of riprap looking down along the sideslope toward streambed.

FIGURE 3. Protction against undermining

**APPENDIX D**

FIGURE 4. Mattress Construction



## APPENDIX E

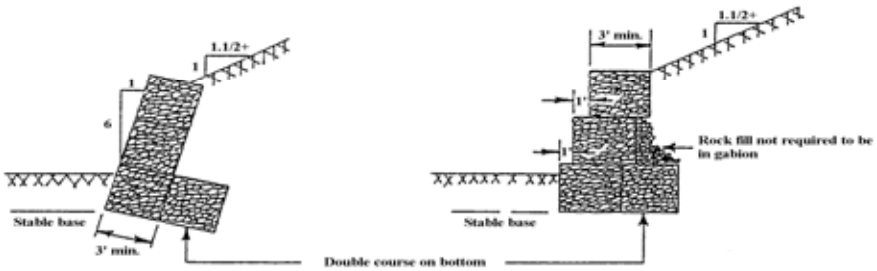



FIGURE 5. Retaining wall construction

## APPENDIX F

FIGURE 6. Placement of mattress toe protection

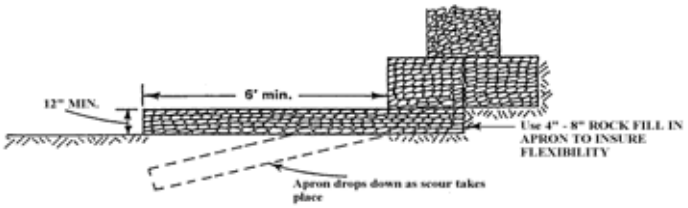



FIGURE 6. Placement of mattress toe protection

## APPENDIX G

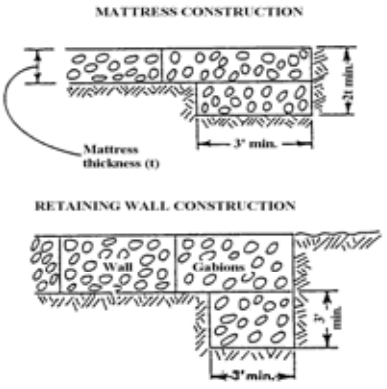
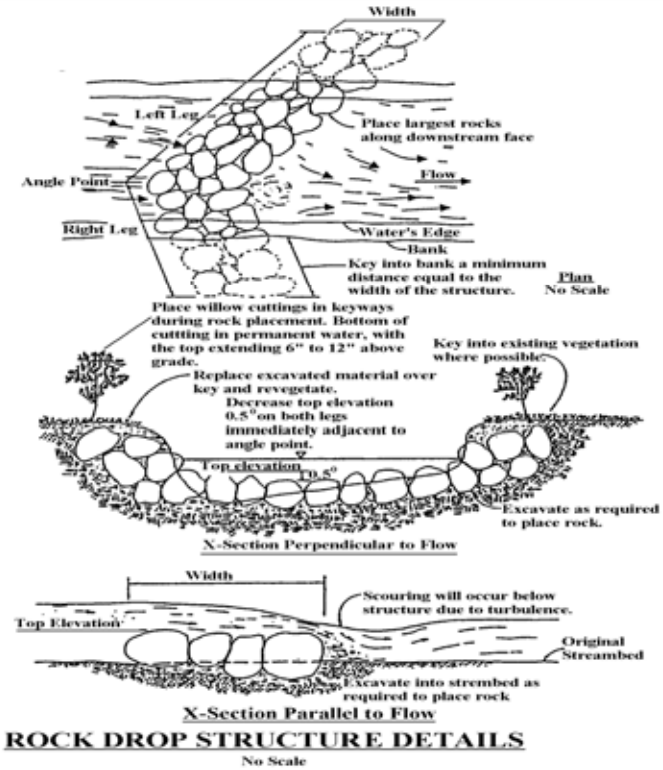
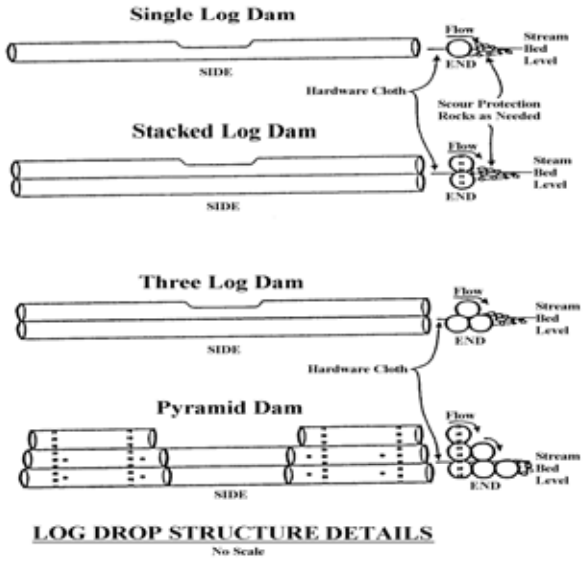



FIGURE 7. Minimum cutoffs - views shown are cross-sections at end of gabion section looking down along the sideslope of the channel

## APPENDIX H



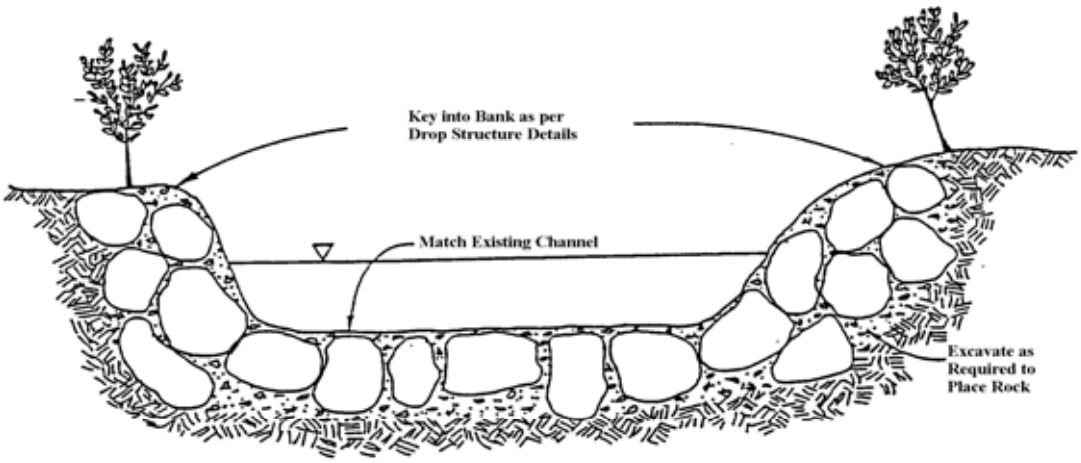
**APPENDIX I**




**LOG DROP STRUCTURE DETAILS**

No Scale

**APPENDIX J**

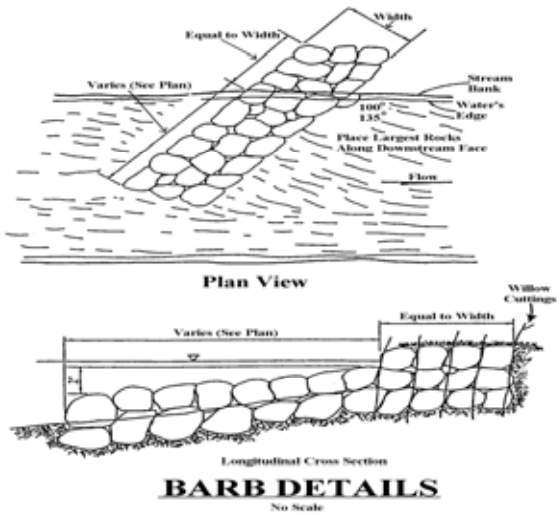



X-Section Perpendicular to Flow

**SILL DETAILS**

No Scale

**APPENDIX K**




**BARB DETAILS**

No Scale

**STREAM CHANNEL ALTERATIONS**

| Minimum Criteria for Dike or Levee Cross-Section | | |
|---|---|---|
| **Height to Design Water Surface** | **Minimum Top Width** | **Steepest Allowable Sideslope** |
| Compacted mineral fill:<br>0 - 6<br>over 6' - 12' | <br>6'<br>8' | <br>1 1/2:1<br>2:1 |
| Silty, sandy, or organic fill:<br>0 - 6' | <br>8' | <br>2:1 |
| Dumped, uncompacted fill:<br>0 - 6'<br>over 6' - 12' | <br>6'<br>8' | <br>2:1<br>2 1/2:1 (or3:1 on stream side and 2:1 on land side) |
| When road on top: (turnaround areas also needed) | 10' | |
| When fill unstable during rapid drawdown or severe wave action anticipated: | | 3:1 on stream side |
| Permeable soil of low plasticity used | | 3:1 |

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## APPENDIX L

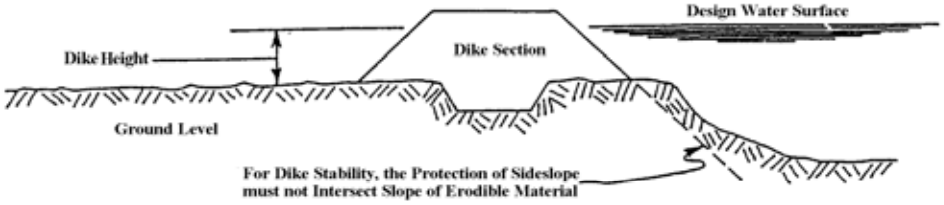



FIGURE 12. Dike Cross-Section

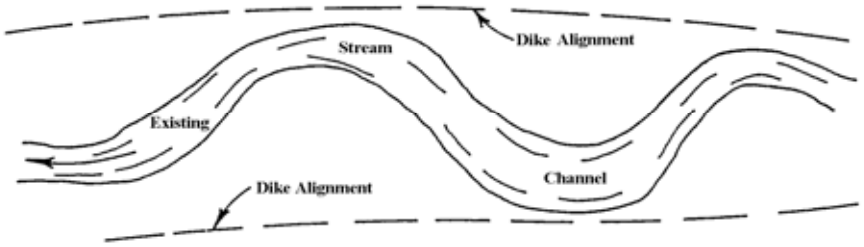



FIGURE 13. Desirable Dike Location

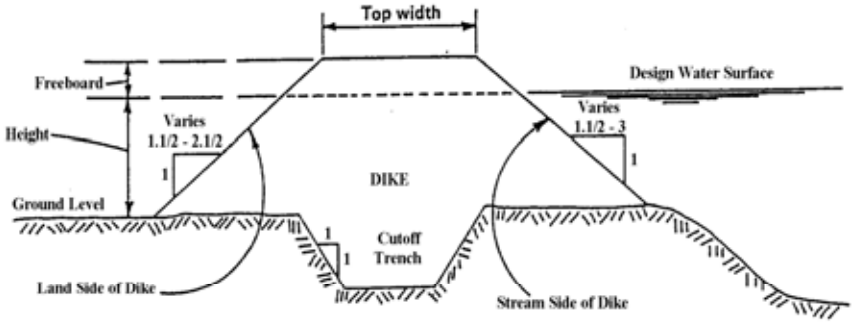
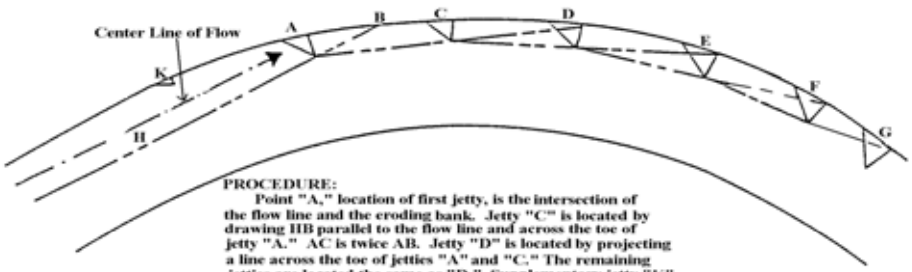



FIGURE 14. Minimum Criteria for Dike or Levee Cross-Section

**APPENDIX M**

FIGURE 15. Method of Locating Jetties




**PROCEDURE:**
Point "A," location of first jetty, is the intersection of the flow line and the eroding bank. Jetty "C" is located by drawing HB parallel to the flow line and across the toe of jetty "A." AC is twice AB. Jetty "D" is located by projecting a line across the toe of jetties "A" and "C." The remaining jetties are located the same as "D." Supplementary jetty "K" located AC distance upstream from "A."

**Source: U.S. Department of Agriculture Soil Conservation Service**

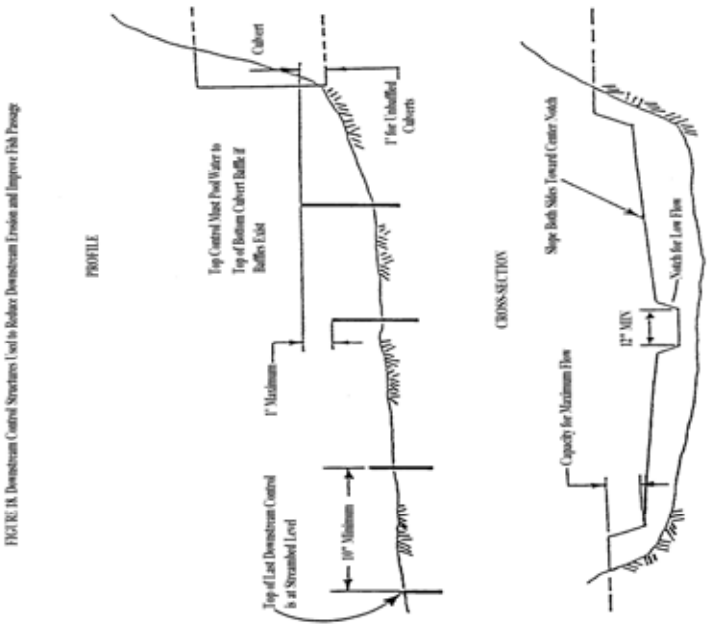



FIGURE 16. Downstream Control Structures Used to Reduce Downstream Erosion and Improve Fish Passage

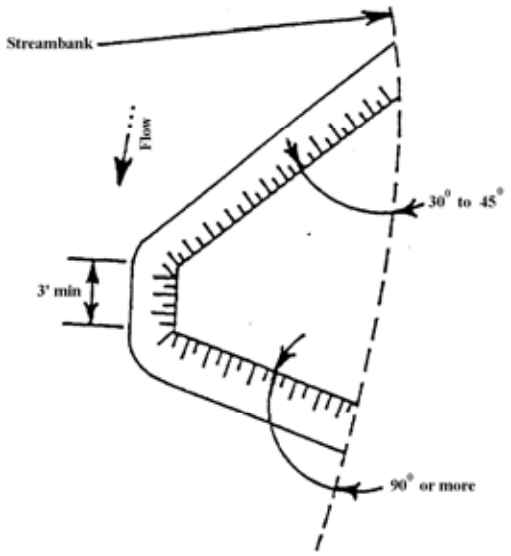



FIGURE 16. Jetty Height in Relation to Streamflow Depth

## APPENDIX N

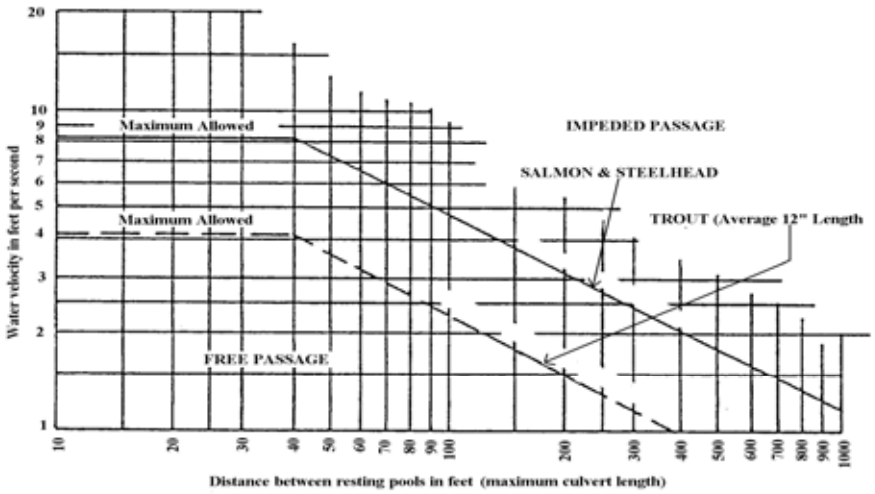
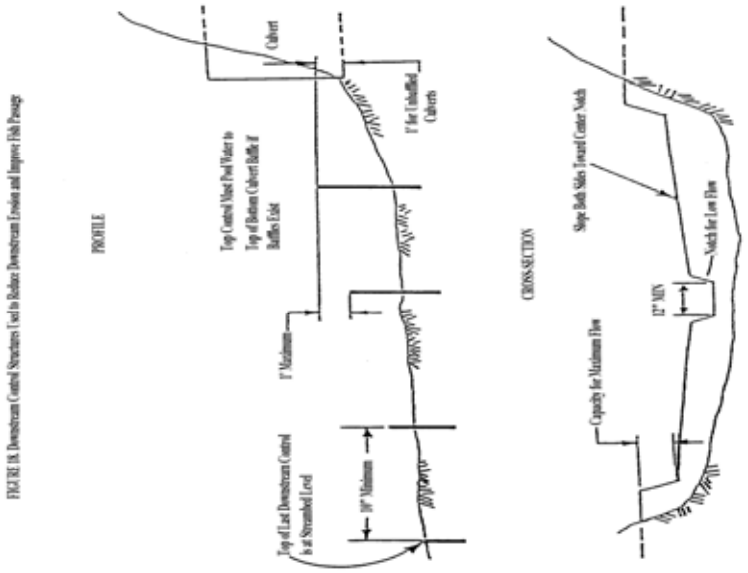



FIGURE 17. Swimming capability of migrating salmon and trout (Alaskan Curve)

**APPENDIX O**




**APPENDIX P**

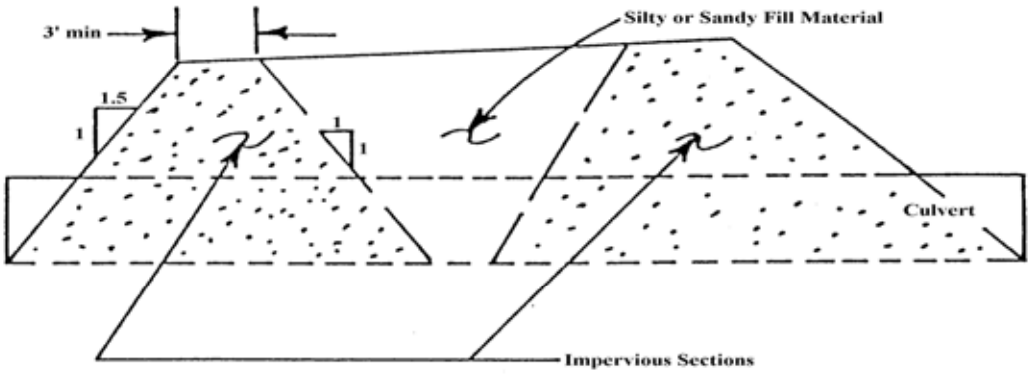
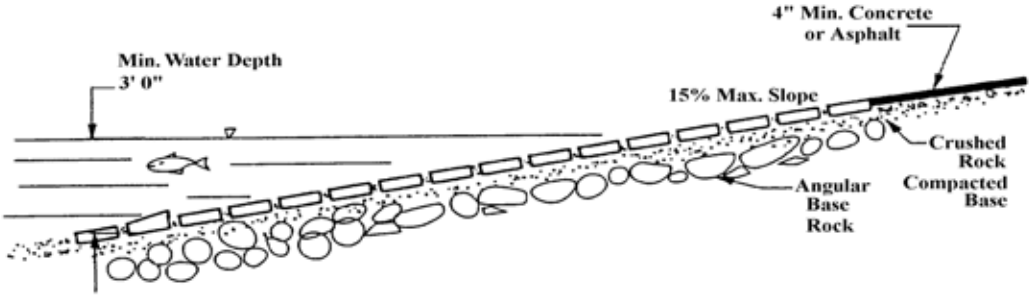



**FIGURE 19. Culvert Backfill Using Silty or Sandy Material**

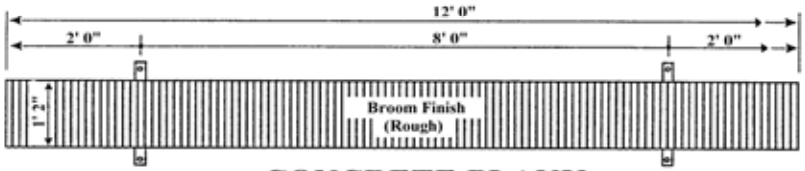
**APPENDIX Q**




**LAUNCH RAMP SECTION**

No Scale
Figure 20

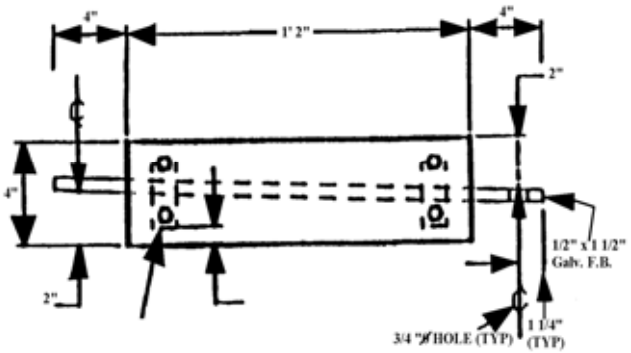
**APPENDIX R**




**CONCRETE PLANK**

No Scale
Figure 21

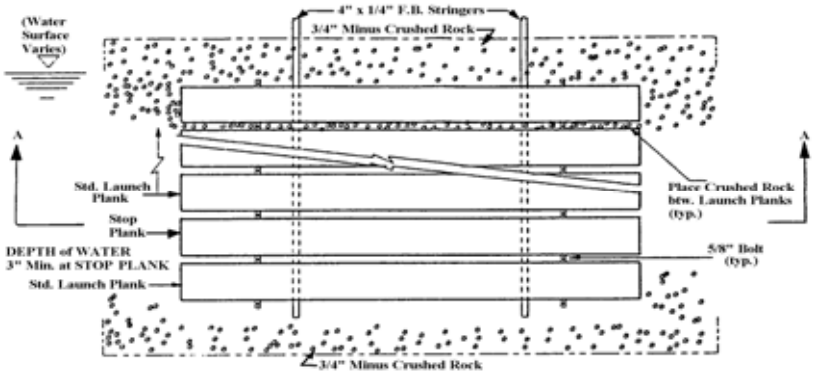
**APPENDIX S**




**CONCRETE LAUNCH PLANK DETAIL**

No Scale
Figure 22

**APPENDIX T**

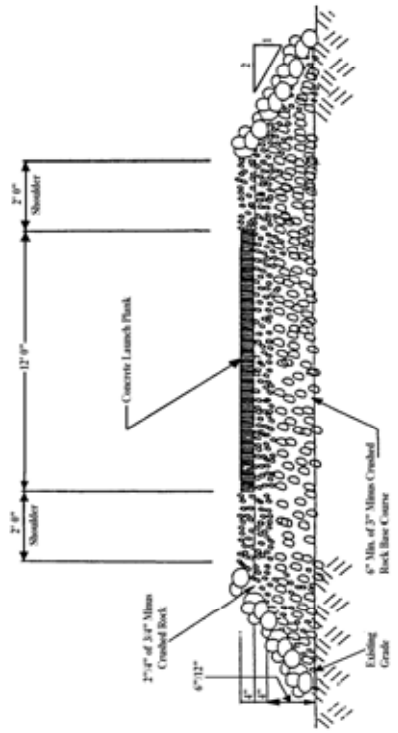



Place crushed rock as shown. Position stringers under planks in order shown and secure with 5/8" bolts. Slide planks on stringers, adding planks as needed, to desired water depth. Stringers consist of 2 - 4" x 1/4" x 20' lng. stl. flat bar w/clevis pin hole one end. Pull flat bar stringers up grade from water when planks are positioned and bolted together, remove when last plank has been set in place.

**CONCRETE LAUNCH-PLAN VIEW**

Figure 23
No Scale

**APPENDIX U**




CONCRETE LAUNCH - CROSS-SECTION

No Scale
Figure 24

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**BEFORE THE IDAHO WATER RESOURCE BOARD**

| IN THE MATTER OF APPLICATION FOR STREAM CHANNEL ALTERATION PERMIT NO. S37-20565 | **ORDER DENYING PETITIONER'S MOTION FOR RECONSIDERATION** |
|---|---|

## BACKGROUND

A *Preliminary Order* was issued on John Hastings Jr.'s ("Hastings") and the Department of Water Resources' ("Department") cross-motions for summary judgment on February 19, 2026. The Hearing Officer denied Hastings' request for summary judgment and granted the Department's. *Prelim. Order* at 12. Hastings filed *Petitioner's Motion for Reconsideration* ("*Motion*") along with a *Declaration of Counsel in Support of Petitioner's Motion for Reconsideration* with the Idaho Water Resource Board ("Board") on March 5, 2026. Hastings' *Motion* is summarized as follows:

1) The *Preliminary Order* failed to address the local public interest pursuant to Rule 35 of the Stream Channel Alteration Rules, IDAPA 37.03.07.[1] *Motion* at 2–4.
2) The Department provided no factual support for its motion for summary judgement or the terms and conditions included on the Permit it issued. *Id*. at 4–8.
3) The prior discovery rulings by the Hearing Officer precluded showing bias, spite or interest on behalf of Mr. Golart or the Department. *Id*. at 8–11.
4) The Hearing Officer improperly engaged in statutory interpretation. *Id*. at 11–14.
5) Bank armoring previously installed complies with applicable administrative rules. *Id*. at 14–16.
6) Hastings requests an administrative waiver for emergencies. *Id*. at 16–17.

The factual and procedural background found in the *Preliminary Order* is incorporated by reference into this order for purposes of addressing Hastings' *Motion*.

## ANALYSIS

### I. Public Interest

In his *Motion*, Hastings first argues that the Hearing Officer did not address the public interest considerations listed in Stream Channel Alteration Rule 35 within the *Preliminary Order*. *Motion* at 2. Rule 35 does provide a list of items that "shall be among those considered by the Director prior to issuing a permit . . . ." IDAPA 37.03.07.035.01 (emphasis added). As outlined in the *Preliminary Order*, the Permit, which was issued as a conditional approval of Hastings' *Application*, was issued by the Department on May 17, 2019. Idaho Code 42-3805 allows a stream channel alteration applicant to request a hearing in front of the Board concerning the Director's decision on a stream channel alteration application. Hastings filed such a request for

[1] The version of IDAPA 37.03.07.035 in effect currently remains identical to the version in effect during May 2019, when both the Permit was issued and Hastings filed his petition for hearing.

hearing on May 23, 2019. This Hearing Officer was appointed by the Board to oversee said proceedings. The issues at hand and facts of this case are not limited to those involving a simple disagreement regarding the extent to which the Director did or did not consider the local public interest before issuing the Permit.

The incorporated background section of the *Preliminary Order* details the procedural history, which includes the signing of a contractual *Consent Order* between Hastings and the Department and back and forth with the Department that resulted in multiple stream channel restoration plan versions submitted on behalf of Hastings. In the *Preliminary Order*, not only did the Hearing Officer address Hastings' concerns on summary judgment regarding the local public interest considerations, but the Department's request for summary judgment was ultimately granted because "Hastings agreed to and 'shall comply with the terms and conditions' of the Permit." *Prelim. Order* at 12. For this reason, on summary judgment the Hearing Officer did not need to include findings related to the Director's Rule 35 considerations.

Hastings relies on facts involving the City of Ketchum to argue that the Department did not consider the public interest associated with the protection needed of the Warm Springs Bridge. *Motion* at 2. The Hearing Officer's analysis within the *Preliminary Order* remains unchanged and is incorporated by reference as it relates to why the City's stabilization concerns and alteration approvals have little bearing on this case. *See Prelim. Order* at 3, 9.

Further, in Hastings' *Motion* he brings out the "swimming hole" danger if root wads and other plant matter are placed on his side of the stream. *Motion* at 3–4. Hastings argues that the Department should be required to produce evidence that the permit conditions will not harm these swimmers and to clear title to the subject section of the stream bank. *Id*. Alternatively, Hastings wants the Hearing Officer to order the Department to allow him to remove the armoring he installed or for the Department and the State of Idaho to indemnify him if any harm comes to a swimmer on the portion of the streambank at issue. *Id*. at 4. Again, Hastings is arguing that some hypothetical Big Wood River swimmer getting injured by swimming into any root wads he is required to install to satisfy the *Consent Order* and Permit is grounds to vitiate the Permit. It is conjecture and certainly not the burden of the Department to prove this negative. There is no evidence to support this conjecture. Also, the Hearing Officer already addressed Hastings' arguments concerning clearing title to the beds and banks of the river and said analysis remains unchanged and is incorporated by reference. *Prelim. Order* at 8. Additionally, the subject alteration took place in 2017, removing the armoring that was installed would itself require additional work and not simply be akin to pressing an "undo button."

Hastings points to deposition testimony of Jennifer Davidson, from the Community Library Association, Inc., to support the assertion of the existence of a community swimming hole adjacent to the location of the subject stream channel alteration. *Motion* at 3. In the deposition cited by Hastings, she testified: "We do not maintain a public swimming hole" *Davidson Dep.* [2] 44:4. She acknowledged, "People may swim in the river." *Id.* at 44:7. Lastly, when asked if she had concerns about people swimming and facing entrapment danger immediately across from the library, she answered, "I don't automatically have a concern." *Id.* at

[2] Attached as Exhibit A to the *Declaration of Counsel in Support of Petitioner's Motion for Reconsideration*, filed March 5, 2026.

43:17–25. Not only is Hastings' presentation of additional evidence on reconsideration untimely, but it directly contradicts his own assertion of facts.

Hastings' final public interest argument is based upon *Hardy v. Higginson*, 123 Idaho 485, 849 P.2d 946 (1993). The case is cited for the proposition that if a permittee finds conditions unsatisfactory, the permittee may withdraw the application for amendment and be left with what the permittee had before submitting the application to the Department. *Motion* at 4; *see id.* at 491, 849 P.2d at 952. First, the factual and legal underpinnings of *Hardy* do not apply to this case. Hardy was requesting a change of point of diversion and increased flow to an existing water right. The Department agreed to the amendments to the existing water right but added other conditions to the change. The Idaho Supreme Court merely said Hardy could withdraw the request for those changes without changing any conditions of the existing water right. *Hardy*, 123 Idaho at 491, 849 P.2d at 952. Hastings is requesting an original alteration permit as part of an agreement with the Department to remedy a NOV, not changes to an existing alteration permit. Withdrawal of the permit application in question here would leave an unresolved NOV and leave him in violation of the terms of the *Consent Order*. *See Consent Order* at 2. Stream alteration permits and water right permits are supported by independent statutory and administrative bodies of law—each independent of the other. *Hardy* has no application to Hastings' original stream channel restoration permit.

## II. Factual Support for the Department's Motion for Summary Judgment

The second main argument presented in Hastings' *Motion* is that the Department had to bring forth evidence to support the Permit, and the imposition of the conditions included in it, and failed to do so. *Motion* at 7.

Beginning with the legal standard, the Board's Rules of Procedure, IDAPA 37.01.01, govern pending motions in this contested case. Rule 220.03 authorizes motions for summary judgment, stating that "Rule 56(a), (c), (d), (e), and (f) of the Idaho Rules of Procedure, apply to such motions before the agency." IDAPA 37.01.01.220.03.

> Summary judgment is proper if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. When applying this standard, all facts and inferences from the record will be viewed in favor of the nonmoving party to determine whether the motion should be granted. If the evidence reveals no disputed issues of material fact, then only a question of law remains . . . .

*Radford v. Van Orden*, 571 P.3d 472, 476 (Idaho 2025) (citation modified).

> [O]nce the moving party has presented evidence that there are no genuine issues of material fact, the burden shifts to the non-moving party to come forward with evidence to show that there is a genuine issue for trial. If the non-party does not so respond, summary judgment, if appropriate, shall be entered against that party.

*Armstrong v. Farmers Ins. Co. of Idaho*, 147 Idaho 67, 72, 205 P.3d 1203, 1208 (2009) (citing I.R.C.P. 56(e)).

The Department has relied upon the plain language of the NOV, *Consent Order*, and Permit to argue that Hastings has entered into a contract. The Department's reliance on these documents was sufficient evidence for the burden to shift to Hastings to come forward with evidence to show a genuine issue for trial existed.

To this end, Hastings first argues he provided evidence of his concerns for the local public interest and his compliance with the applicable administrative rules. *Motion* at 5–6.As previously discussed, the doctrine of local public interest is not implicated here. Additionally, Hastings' compliance with administrative rules does not absolve him from complying with the conditions imposed in the Permit. These arguments do not show a genuine issue for trial that defeats the Department's argument that a valid contract was formed between the Department and Hastings.

Next, Hastings argues the *Consent Order* failed to create an enforceable contract because it amounted to "an agreement to (maybe) agree." *Id.* at 6. This argument fails because the *Consent Order* was not vague nor ambiguous, and by signing, Hastings agreed to comply with the terms and conditions of the Permit. Setting minimum requirements in the *Consent Order* and tying those requirements to conditions that relate to the proposed restoration plan and *Application* does not create an ambiguity that would render the contract void. Hastings fails to show relevant evidence that disputes the plain language of the *Consent Order* created a valid contract.

Finally, Hastings argues his compliance with all applicable administrative rules has satisfied his performance under the basic requirements of the *Consent Order*. *See id*. at 6–7. Hastings' argument that he has complied with the applicable administrative rules fails to reach the Department's argument that a valid contract was formed and that pursuant to said contract Hastings is required to comply with the conditions set therein. As such, this argument fails to show there is a genuine issue for trial.

The Department's reliance upon the plain language of the NOV, *Consent Order*, and Permit were sufficient to meet its evidentiary burden on summary judgment. Hastings has not met his burden in proving there was a genuine issue.

## III. Prior Discovery Rulings

As his third issue for reconsideration, Hastings faults the Hearing Officer for Hastings' lack of proof in certain areas which he asserts led to the denial of his summary judgment motion. *Motion* at 10. For the reasons detailed below, the Hearing Officer did not unreasonably limit discovery in this matter.

Hastings begins this argument by quoting the Hearing Officer's formulation of the issues for hearing. *Id*. at 8. In the *Petition for Hearing* that resulted in the initiation of this contested case, Hastings objected to "certain requirements" of the Permit asserting that they "are inconsistent with the Consent Order and the agreement that led to the filing of the Restoration Plan." *Pet. for Hr'g* at 2. Hastings had that burden of proof and presentation of proof as to those inconsistencies. In the February 11, 2025 order memorializing the February 4, 2025 prehearing,

the Hearing Officer merely parroted Hastings' original request and the issue he identified for hearing.

Next, Hastings alleges that the Hearing Officer's discovery decisions precluded him from proving bias on the part of the Department. *Id*. In this matter, on September 11, 2025, the Hearing Officer issued a decision on various discovery issues—*Order Denying Motion to Compel, Quashing Subpoena Duces Tecum Executed June 27, 2025, and Granting in Part and Denying in Part Motion for Issuance of Subpoena* ("*Order on Discovery*"). The Hearing Officer incorporates that decision here but will highlight certain findings in that decision that speak to Hastings' discovery-based argument on reconsideration.

The Hearing Officer did restrict discovery of the Department's files for all 95 instances since 1998 of stream channel alteration violation investigations that were either resolved informally or without a notice of violation. *Order on Discovery* at 4–5. Via interrogatory answer, the Department identified those 95 instances, but Hastings requested "'any and all documents related to or which refer in any way to' each." *Id*. at 4. The Department objected to that request as too time-consuming and too voluminous. The Department asked Hastings to narrow the request but that was denied, and Hastings filed a motion to compel. *Id*. Addressing the motion to compel, the Hearing Officer found as follows:

> The Hearing Officer perceives this discovery issue as one of discretion. The absence or existence of all the statutes, rules, or legal decisions needed to address the central issue identified for hearing in this contested case are readily available to Hastings. The list the Department produced shows there could be very few, if any, "similarly situated individuals" within the state. Unlike the facts of this case, a notice of violation was not issued for any of the instances on the Department's list. Every navigable stream is different, each reach of those streams is different, and stream channel alteration violations are different as to alleged damage, reasons for alteration, soils, yearly conditions of the streams, uses of the streams, etcetera. The issue delineated for this case is focused on a finite occurrence, not a systemic challenge. Therefore, evidence toward establishing the Department's universal treatment throughout the state, or lack thereof, when processing alleged stream channel alteration violations is not reasonably related to the central issue identified for hearing. Additionally, given the broad language used in Request for Production No.15, the way the documents are currently stored, and the fact that the number of instances the Department listed approaches 100, the research hours required for the Department to comply with the request would likely be high. *See Carter Decl.* Ex. 1.

*Id*. In conclusion, the Hearing Officer ruled the statutes, rules, and decisions applicable are available to anyone and responding to the request would be unduly burdensome and not reasonably calculated to lead to discovery of evidence. *Id*. at 4–5.

Finally, Hastings argues that several statements in the *Preliminary Order* demonstrate that he "was denied his right to conduct discovery upon a matter" which resulted in the denial of his dispositive motion and the granting of the Department's. *Motion* at 9–10. Hastings provides four quotes from the *Preliminary Order* as evidence.

The first example discusses the plain language of the Nature Conservancy gift deed and accompanying easement. *Id*. at 9. Those documents are in evidence, having been included as Exhibit A to the declaration Hastings concurrently filed in support of his motion for summary judgment. It is not clear what critical discovery was precluded as it relates to a discussion regarding the plain language of documents in the record that were provided by Hastings.

The second example provides: "There is no evidence the State has disposed of the beds of the Big Wood River." *Motion* at 9 (citation omitted). Via statute or otherwise, the Department has not been granted authority to dispose of the beds of the Big Wood River. As a part of the February 11, 2025 order, the Hearing Officer authorized the parties to conduct discovery in this matter, therefore, Hastings' ability to conduct discovery related to the State's potential disposal of its riverbeds was not limited by the Hearing Officer.[3]

The third example consists of the following quote: "There is no evidence of what portions, if any, of the Community Library's streambeds or channels are affected by work pursuant to the Permit." *Motion* at 9 (citation omitted). This example is also accompanied by an explanatory footnote that asserts that said statement from the *Preliminary Order* is inaccurate. *Id*. at 9–10 n.1. At the request of Hastings, the Hearing Officer issued a subpoena to The Community Library Association, Inc. in this matter. As a result, Hastings took the deposition of Jennifer Davidson and selectively offered her deposition testimony into the record. The deposition testimony of Ms. Davidson that was provided includes that after being provided a copy, by counsel for Hastings, of "essentially the proposal for this section of river that my client made" which included a site plan map, *Davidson Deposition* 25:22–26:10, Ms. Davidson was questioned regarding the plan and her answers included:

- "To say could your client just go ahead and do it, I don't know what it is yet. I would need to review the whole proposal." *Davidson Dep.* 27:18–20.
- "I am not clear if it crosses property boundaries, if it's all on one entity's property. That's not immediately clear to me." *Id*. at 29:14–16.
- "So I agree the Community Library owns property that goes down to Warm Springs bridge. How that property line intersects with these different masses that are displayed on this map, I don't feel prepared to speak to that." *Id*. at 30:5–9.
- "It looks to me like some portion of this intersects with property that the Community Library owns." *Id*. at 31:10–12.

The record makes it clear that the Community Library has made no determination when it comes to what portion of their streambeds or channels would be affected by work pursuant to the Permit. Given discovery concerning the topic was clearly conducted, it does not appear that the Hearing Officer precluded said discovery.

[3] Further, in a footnote to his *Motion*, Hastings includes, "As noted above, the Hearing Officer has already limited the hearing on this matter to a singular issue as well as stated there is no need to prove the State of Idaho is the owner of the streambank in question." *Motion* at 10 n.1. That is inaccurate. In the February 11, 2025 order the Hearing Officer wrote "there is no need for the state to prove ownership of the stream beds." *Order; Not. of Hr'g*, at 4.

The fourth and final example concerns evidence related to any alteration to the mean high watermark by the 2017 high water event. *Motion* at 10. Again, Hastings included an explanatory footnote, this time asserting that evidence of a meaningful change to the high watermark was presented. *Id*. at 10 n.2. Within the footnote, Hastings claims that two photographs were included as exhibits to Mr. Golart's deposition testimony. However, prior to the footnote, Hastings did not make any arguments directing the Hearing Officer to consider the potential meaning of the photographs or their connection to each other. Additionally, in his *Motion*, Hastings fails to mention the significance of the remainder of the *Preliminary Order* paragraph from which the fourth example was pulled. The paragraph specifically mentions the insufficiently of vague citations to block evidence and that, regardless:

> If Hastings intended to establish that a permit pursuant to Idaho Code § 42-3806 was not required because he did not "alter" the stream channel by performing work "within or below the mean high watermark," *see* Idaho Code § 42-3802(b), he would first need to overcome his admission in the signed *Consent Order* "that he altered the stream channel without a permit from the Department," *Consent Order* ¶ 10, at 2 (emphasis added).

*Prelim. Order* at 9. The Hearing Officer did not preclude discovery related to the mean high watermark, moreover, it is not likely that discovery related to the high watermark would have altered the summary judgment outcome in this case.

## IV. Interpretation of Statutes

In the fourth section of his *Motion*, Hastings alleges the Hearing Officer engaged in improper statutory interpretation that resulted in an incorrect determination concerning the applicability of a permit exemption provided within Idaho Code § 42-3806. *See Motion* at 11–14. Within his *Motion*, Hastings puts forth arguments as to how the Hearing Officer interpreted § 42-3806 to the facts of this case. As noted in the *Preliminary Order*, Hastings has stated that he made the alterations to address bank instability and because of concerns the City of Ketchem had related to potential future stream obstructions. *Prelim. Order* at 9. The *Application* filed by Hastings for a stream channel alteration permit lists nothing about preserving a water right. The Hearing Officer addressed the §42-3806 exemption argument in the *Preliminary Order,* and his analysis remains unchanged and is incorporated by reference as it relates to why the exemptions provided in Idaho Code § 42-3806 do not apply to the subject stream channel alteration. *See Prelim. Order* at 8–9. Again, a full reading of that specific waiver provision provides that it does not apply to Hastings in this case. Certainly, under these circumstances, it does not allow the stream channel work that was done to be exempt from permitting for the sake of protecting his permitted well. *See Hastings' Aff.* ¶ 10. Hastings' broad interpretation of water user would mean there is no need for the entire stream alteration code sections because anyone who uses water would be exempt from needing an alteration permit as long as the alteration is "to clean, maintain, construct in, or repair any stream channel . . . ." I.C. § 42-3806.

## V. Compliance with Administrative Rules

As his fifth argument, Hastings argues that existing riprap installed in July 2017 is compliant with administrative rules based upon the deposition testimony of Aaron Golart. *Motion* at 15–16. Mr. Golart's testimony on this issue starts on page 69 and continues to page 71; these pages are attached as Exhibit A to this decision. From the partial transcript cited by Hastings you would think the installed riprap is the end all to the Permit. In fact, Hastings previously argued that this testimony renders the Permit moot. *See Prelim. Order* at 8. As can be seen from this colloquy, the riprap was to be "continued upstream and downstream" and "[w]ell, it's going to be planted, and there's going to be large wood incorporated." *Golart Dep.* 70:13–14. From the deposition testimony cited by Hastings he concludes that "the Hearing Officer precluded Petitioner from demonstrating bias from the Department, in the end, this matter seems to have arisen due to an overly zealous Department personnel's exuberance for his purported gatekeeping power to require a permit for an emergency structure which already complied with the applicable rules." *Motion* at 16. The Hearing Officer does not believe this proves bias nor overzealousness, only a reiteration of present conditions. Certainly, by the time the permit was issued there was no emergency. As pointed out by Mr. Golart, the riprap was installed without a permit of any sort from the State. *Golart Dep.* 96:8–12.

## VI. Determination of an Emergency

Lastly, Hastings requests a waiver of the permitting requirements based upon an emergency under Idaho Code § 42-3808. *Motion* at 16. Hastings argues there is no temporal requirement for this code section. *Id*. at 17. He is correct. However, the unpermitted work took place in July 2017. Now, 3164 days or so ago, this hardly fits the description of an "emergency." Additionally, in accordance with the plain language of Idaho Code § 42-3808, in emergency situations, only the Director has the authority to waive stream channel alteration permit requirements. For those reasons, the Hearing Officer denies Hastings' waiver request.

Additionally, Hastings claims the Department should have gone along with the wishes of the local authority—the City of Ketchum—and argues that it was an abuse of the Director's discretion to not follow Ketchum's lead. *Id*. Again, as can be seen in the *Consent Order*, Ketchum's permit specifically warned Hastings that further state and federal action was needed:

> The approval is subject to any additional conditions as required by the Idaho Department of Water Resources and the U.S. Army Corps of Engineers; where an outside agency's conditions or standards are more stringent than the city's, the outside agency's conditions or standards apply.

*Consent Order* ¶ 3, at 1. The Department followed the statutes and rules and has no duty to acquiesce to a Ketchum city permit.

**ORDER**

Having reviewed the Hearing Officer's *Preliminary Order* and *Petitioners' Motion for Reconsideration* and supporting declaration, IT IS HEREBY ORDERED that *Petitioners' Motion for Reconsideration* is DENIED.

DATED this 26th day of March 2026.

ROGER S. BURDICK
Hearing Officer

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 26th day of March 2026, the above and foregoing, was served by the method indicated below, and addressed to the following:

| | |
|---|---|
| J. KAHLE BECKER<br>Attorney at Law<br>kahle@kahlebeckerlaw.com | ☒ Email |
| SARA M. AJETI<br>Deputy Attorney General<br>sara.ajeti@idwr.idaho.gov | ☒ Email |

Sarah Tschohl
Paralegal

Q. Yeah, they're just rocks of various sizes placed on the stream bank to stabilize it. Correct?
A. Correct.
Q. So back to the first permit application, you rejected it because you felt the barbs weren't correct in terms of an angle.
Was there any other reason you rejected the first permit application?
A. I think there were several. And again, we responded with a pretty detailed response letter outlining the items that were inadequate or inefficient.
Q. But all my client had to do was comply with the consent order; right?
A. Correct.
Q. So my client then submits a second application following your critique of his first application?
A. I believe so.
Q. Okay.
And that's what we've got here, this Exhibit 8; right? This second letter -- or the second revised restoration plan, or would this be -- is it fair to characterize there was extensive



communications throughout this process?
A. Correct.
Q. Both by Mr. Hastings and Engineer Chuck Brockway's team, as well as legal counsel for Mr. Hastings?
A. Correct.
Q. What was wrong with this next plan that you received?
A. I don't recall. There's no -- this is just the cover letter here. There's no application or diagrams to reference. That would have been detailed in our second response letter.
Q. Okay.
Ultimately, a permit was submitted that satisfied your desires?
A. An application was submitted that met the terms of the consent order and agreement.
Q. And that resulted in this -- the issuance of a permit that we're here about today?
A. Correct.
Q. Okay.
And in that permit, you included some additional terms; right?
A. What do you mean by "terms"?
Q. Well, there were -- we have 13 terms and



conditions that were --
A. Special conditions?
Q. Yeah, special conditions.
A. Yes.
Q. Are those special conditions included in every permit the Department issues?
A. There are special conditions on practically every permit -- stream authorization permit that IDWR issues.
MR. BECKER: Let's mark this as Exhibit 9.
(Deposition Exhibit No. 9 marked.)
Q. BY MR. BECKER: Mr. Golart, you've been handed what's been marked Deposition Exhibit No. 9.
Have you seen that document before?
A. Yes.
Q. Who prepared this document?
A. Oh, I did.
Q. Okay.
So let's go to page 3 of 6 of Exhibit 9.
So it says, Conditions -- "Conditional Approval of Proposed Project Components." So right off the bat item 1, "Retention and completion of existing riprap." The Department is allowing the existing riprap to stay?
A. According to what's proposed in the



design that was approved.
Q. Okay.
And, in fact, the riprap could continue upstream and downstream for what started this whole process with your Notice of Violation?
A. Can you restate that?
Q. Well, item 2 says, "Continuation of riprap upstream and downstream."
A. Right.
So item 2 approves what was proposed in the application that was submitted in the designs.
Q. Right.
A. That's all item 2.
Q. Right.
So Item 1 and 2, essentially -- we'll read those -- say what you did with the riprap is approved. In fact, you can go upstream and downstream further with additional riprap?
A. I don't think that's an accurate representation.
Q. Why not?
A. Because that's not outlined in the application and design that was approved. There are additional components to that. So we are approving items that are outlined in the







**EXHIBIT A**

attachment, the application and diagrams in items 1 through 6.
Q. Okay.
I'm just focused on 1 and 2 right now.
A. Sure. I mean, yeah.
Q. As a basic matter, my client is allowed it keep the riprap that was put in there; right?
A. According to the design plans that were approved.
Q. What's wrong with the existing riprap that was there as compared to now all the sudden it's allowed to stay with this permit?
A. Well, it's going to be planted, and there's going to be large wood incorporated.
Q. But we just talked about how riprap is allowed under your administrative rules.
A. Right.
Q. Okay.
And he was tagged with a Notice of Violation for putting in riprap?
A. Without a permit.
Q. Without a permit from the State, but he had one from the City.
A. Okay.
Q. And then this permit that the State is



just issuing says, "You can keep your riprap"?
A. Correct.
Q. "2: You can continue the riprap upstream and downstream"?
A. Correct.
Q. Okay.
And then there's items 3 through 6, which you also approve.
You talk about minimum standards down further on page 3 of this Exhibit 9. So the minimum standards are set forth in IDAPA 37-0307. And that's the code section that we have been talking about earlier in -- I believe that would have been Exhibit 7.
Correct?
A. Correct.
Q. Okay.
So that's what you're basing your authority on for the terms and conditions that are in this permit?
A. Rules and statute, correct.
Q. Okay.
And with respect to the rules, the rules that we just talked about in Exhibit 7?
A. Correct.



Q. Okay.
Let's turn to page 4 of 6.
THE COURT REPORTER: And when it's a good time if we can take a quick break.
MR. BECKER: Let's take a break now. We've been going for quite a while.
(Break taken from 11:41 a.m. to 12:36 p.m.)
Q. BY MR. BECKER: Whenever you were looking from the Warm Springs Bridge on September 7th and making your assessment as to whether or not to issue a Notice of Violation, did you pull the rocks in the riprap apart in any way?
A. No.
Q. Okay.
So all your observations were from the bridge?
A. Correct. I may have walked down on that -- it would have been the -- I believe the east side onto that gravel bar that's located across the way, but I don't recall if I did or didn't. But if I did access the channel, it would have been over there.
Q. So no actual physical touching or measuring took place at that time?
A. No.



Q. No, it did not take place?
A. It did not.
Q. Okay.
You mentioned walking up the east side there. Are you aware of a swimming hole that exists in this vicinity?
A. No.
Q. Okay.
So just upstream of the Hastings property and the Big Wood -- or, I'm sorry, the Warm Springs Bridge, there is a large rock.
Did you observe that?
A. No.
Q. Okay.
Have you heard of the fact that there is this large swimming hole just upstream of the Hastings property?
A. I don't think it was characterized that way. I think it was -- in the application process it was mentioned that swimming occurs in the area. I don't know in what regard.
Q. And local public interest is a concern whenever issuing permits of this nature; isn't it?
A. Recreation, correct.
Q. At the compliance meeting that took

# EXPLANATORY INFORMATION TO ACCOMPANY AN ORDER DENYING PETITION FOR RECONSIDERATION

The accompanying order is an **Order Denying Petition for Reconsideration** of the "preliminary order" issued previously in this proceeding by the presiding officer pursuant to section 67-5243, Idaho Code.

## EXCEPTIONS AND BRIEFS

(*See* IDAPA 37.01.01.730)

Within fourteen (14) days after the service date of this denial of petition for reconsideration of the preliminary order, any party may in writing file exceptions to any part of the preliminary order and file a brief in support of the party's position on any issue in the proceeding with the Director. Otherwise, the preliminary order will become a final order of the agency.

If any party files an exception and/or brief, opposing parties shall have fourteen (14) days to respond to the exception and/or brief. Written briefs in support of or taking exceptions to the preliminary order shall be filed with the Director. The Director retains the right to review the preliminary order on his own motion.

## ORAL ARGUMENT

(*See* Idaho Code § 67-5245)

If the Director grants a petition to review the preliminary order, the Director shall allow all parties an opportunity to file briefs in support of or taking exceptions to the preliminary order and may schedule oral argument in the matter before issuing a final order. If oral arguments are to be heard, the Director will within a reasonable time period notify each party of the place, date and hour for the argument of the case. Unless the Director orders otherwise, all oral arguments will be heard in Boise, Idaho.

## CERTIFICATE OF SERVICE

(*See* IDAPA 37.01.01.053, 37.01.01.202)

All exceptions, briefs, requests for oral argument and any other matters filed with the Director in connection with the preliminary order shall be served on all other parties to the proceedings in accordance with Rules of Procedure 53 and 202.

## FINAL ORDER

(*See* Idaho Code § 67-5245–46; Idaho Code § 67-5273; IDAPA 37.01.01.740)

The Director will issue a final order within fifty-six (56) days of receipt of the written briefs, oral argument or response to briefs, whichever is later, unless waived by the parties or for good cause shown. The Director may remand the matter for further evidentiary hearings if

further factual development of the record is necessary before issuing a final order. The Department will serve a copy of the final order on all parties of record.

Section 67-5246(5), Idaho Code, provides as follows:

> Unless a different date is stated in a final order, the order is effective fourteen (14) days after its service date if a party has not filed a petition for reconsideration. If a party has filed a petition for reconsideration with the agency head, the final order becomes effective when:
>
> (a) The petition for reconsideration is disposed of; or
> (b) The petition is deemed denied because the agency head did not dispose of the petition within twenty-one (21) days.

## APPEAL OF FINAL ORDER TO DISTRICT COURT

(*See* IDAPA 37.01.01.730)

Pursuant to sections 67-5270 and 67-5272, Idaho Code, any party aggrieved by this final order or orders previously issued in this case may file a petition for judicial review of this final order and all previously issued orders in this case to district court by filing a petition in the district court. A petition for judicial review must be filed within twenty-eight (28) days of this preliminary order becoming final. *See* Idaho Code § 67-5273. The filing of a petition for judicial review does not stay the effectiveness or enforcement of the order under review.

# EXPLANATORY INFORMATION TO ACCOMPANY AN ORDER DENYING PETITION FOR RECONSIDERATION

The accompanying order is an **Order Denying Petition for Reconsideration** of the "preliminary order" issued previously in this proceeding by the presiding officer pursuant to section 67-5243, Idaho Code.

## EXCEPTIONS AND BRIEFS

(*See* IDAPA *37.01.01.730*)

Within fourteen (14) days after the service date of this denial of petition for reconsideration of the preliminary order, any party may in writing file exceptions to any part of the preliminary order and file a brief in support of the party's position on any issue in the proceeding with the Idaho Water Resource Board ("Board"). Otherwise, the preliminary order will become a final order.

If any party files an exception and/or brief, opposing parties shall have fourteen (14) days to respond to the exception and/or brief. Written briefs in support of or taking exceptions to the preliminary order shall be filed with the Board. The Board retains the right to review the preliminary order on its own motion.

## ORAL ARGUMENT ON EXCEPTIONS

(*See Idaho Code § 67-5245*)

If the Board grants a petition to review the preliminary order, the Board shall allow all parties an opportunity to file briefs in support of or taking exceptions to the preliminary order and may schedule oral argument in the matter before issuing a final order. If oral arguments are to be heard, the Board will within a reasonable time period notify each party of the place, date and hour for the argument of the case. Unless the Board orders otherwise, all oral arguments will be heard in Boise, Idaho.

## CERTIFICATE OF SERVICE

(*See* IDAPA 37.01.01.053, 37.01.01.202)

All exceptions, briefs, requests for oral argument and any other matters filed with the Board in connection with the preliminary order shall be served on all other parties to the proceedings in accordance with Rules of Procedure 53 and 202.

## FINAL ORDER

(*See Idaho Code § 67-5245–46*; *Idaho Code § 67-5273*; IDAPA 37.01.01.740)

If exceptions are filed, the Board will issue a final order within fifty-six (56) days of

receipt of the written briefs, oral argument or response to briefs, whichever is later, unless waived by the parties or for good cause shown. The Board may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order. The Board will serve a copy of the final order on all parties of record.

## APPEAL OF FINAL ORDER TO DISTRICT COURT

(*See* IDAPA 37.01.01.730)

Pursuant to sections 67-5270 and 67-5272, Idaho Code, any party aggrieved by this order or orders previously issued in this case may file a petition for judicial review of this order and all previously issued orders in this case to district court by filing a petition in the district court. A petition for judicial review must be filed within twenty-eight (28) days of this preliminary order becoming final. See Section 67-5273, Idaho Code. The filing of a petition for judicial review does not stay the effectiveness or enforcement of the order under review.

RECEIVED
Apr 09, 2026
DEPARTMENT OF
WATER RESOURCES

**J. KAHLE BECKER (ISB # 7408)**
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Attorney for Petitioner

**BEFORE THE WATER RESOURCES BOARD**
**OF THE STATE OF IDAHO**

| | |
|---|---|
| IN THE MATTER OF APPLICATION FOR STREAM CHANNEL ALTERATION PERMIT NO. S37-20565 | PETITIONER'S EXCEPTIONS TO HEARING OFFICER'S ORDERS |

COMES NOW Petitioner, John Hastings by and through his attorney of record, J. Kahle Becker, and pursuant to IDAPA *37.01.01.730*, files his list of Exceptions of the Hearing Officer's *Order Denying Petitioner's Motion for Reconsideration* issued herein on March 26, 2026 as follows. This petition is in response to both the original *Preliminary Order* and the March 26, 2026 *Order*. This Petition is supported by the record in this matter.

## INTRODUCTION

This dispute began when Petitioner John Hastings received emergency approval from the City of Ketchum to install bank armoring during the 2017 flood event which was declared a local, state, and federal emergency. https://ioem.idaho.gov/wp-content/uploads/sites/57/2017/05/FLOODING-MAY-ID-04-LEVEL-1-STATE-DECLARATION.pdf and https://www.mtexpress.com/news/blaine_county/trump-signs-disaster-declaration-for-county/article_eca08bca-8d0a-11e7-9dd9-3b8965bbb412.html.

Petitioner installed the armoring following direction from the City of Ketchum in order to protect the Warm Springs Bridge, which is just downstream of his property. Unfortunately, IDWR's staff became upset that Petitioner had not applied for a permit prior to engaging in work – during this emergency. Petitioner immediately ceased construction upon notice from IDWR yet a Notice of Violation and a Consent Order followed thereafter. Petitioner promptly paid a $10,00 fine. However, the situation was not resolved as easily as the Department asserted it would be when it induced Petitioner to enter into the Consent Order. The Department continued to add more and more onerous conditions to the permit, despite its later admission that the bank armoring Petitioner had installed complied with the applicable administrative rules. The Department also conceded that it had not made a determination as to whether the bank armoring was placed on what was once Petitioner's upland property, after the river swept away several feet of Petitioner's land in the flood.

On May 23, 2019, Petitioner filed a *Petition for Hearing* ("*Petition*"), on the *Permit* the Department compelled him to apply for, asserting that "[c]ertain requirements contained in [the Permit] are inconsistent with the Consent Order and the agreement that led to the filing of the Restoration Plan." *Petition*, at 2. Where the permit is inconsistent with the agreement of the parties, the Department has declined to submit any evidence whatsoever supporting the imposition of onerous conditions it demands Petitioner construct, and where the onerous conditions the Department has added 1) go against the local public interest 2) render completion of the project an uncapped financial liability for Petitioner, 3) disregard applicable statutes, and 4) which are not based in any Rule or Statute; continuing to belabor this matter with further proceedings is simply not in

anyone's interest. For these reasons, Petitioner seeks the assistance of the Director and the Water Resources Board to put this matter to rest once and for all.

## STANDARD OF REVIEW

In this Hearing, the Idaho Water Resources Board utilized a third party Hearing Officer, Rodger Burdick to conduct the hearing. On February 19, 2026 the Hearing Officer issued a *Preliminary Order*. Petitioner timely sought reconsideration of that *Preliminary Order* by Motion filed on March 5, 2026 pursuant to I.C. 67-5243 which provides:

> ORDERS NOT ISSUED BY AGENCY HEAD. (1) If the presiding officer is not the agency head, the presiding officer shall issue either:
>
> (a) A recommended order, which becomes a final order only after review by the agency head in accordance with section 67-5244, Idaho Code; or
>
> (b) A preliminary order, which becomes a final order unless reviewed in accordance with section 67-5245, Idaho Code.
>
> (2) The order shall state whether it is a preliminary order or a recommended order.
>
> (3) Unless otherwise provided by statute or rule, any party may file a motion for reconsideration of a recommended order or a preliminary order within fourteen (14) days of the service date of that order. The presiding officer shall render a written order disposing of the petition. The petition is deemed denied if the presiding officer does not dispose of it within twenty-one (21) days after the filing of the petition.

The Hearing Officer issued his *Order Denying Petitioner's Motion for Reconsideration* on March 26, 2026. This brief of Exceptions it to both of those Orders is filed pursuant to I.C. 67-5245, which provides:

> 67-5245. REVIEW OF PRELIMINARY ORDERS. (1) A preliminary order shall include:
>
> (a) A statement that the order will become a final order without further notice; and
>
> (b) The actions necessary to obtain administrative review of the preliminary order.[1]

[1] Unfortunately the Order Denying Petitioner's Motion for Reconsideration contained no such list. The list

(2) The agency head, upon his own motion, may or, upon motion by any party, shall review a preliminary order, except to the extent that:

(a) Another statute precludes or limits agency review of the preliminary order; or

(b) The agency head has delegated his authority to review preliminary orders to one (1) or more persons.

(3) A petition for review of a preliminary order must be filed with the agency head, or with any person designated for this purpose by rule of the agency, within fourteen (14) days after the service date of the preliminary order unless a different time is required by other provisions of law. If the agency head on his own motion decides to review a preliminary order, the agency head shall give written notice within fourteen (14) days after the issuance of the preliminary order unless a different time is required by other provisions of law. The fourteen (14) day period for filing of notice is tolled by the filing of a petition for reconsideration under section 67-5243(3), Idaho Code.

(4) The basis for review must be stated on the petition. If the agency head on his own motion gives notice of his intent to review a preliminary order, the agency head shall identify the issues he intends to review.

(5) The agency head shall allow all parties to request review of the preliminary order, to present briefs on the issues, and may allow all parties to participate in oral argument.

(6) The agency head shall:

(a) Issue a final order in writing, within fifty-six (56) days of the receipt of the final briefs or oral argument, whichever is later, unless the period is waived or extended with the written consent of all parties, or for good cause shown;

(b) Remand the matter for additional hearings; or

(c) Hold additional hearings.

(7) The head of the agency or his designee for the review of preliminary orders shall exercise all of the decision-making power that he would have had if the agency head had presided over the hearing.

The *Preliminary Order* is a preliminary order as defined in IDAPA 37.01.01.730.01 because it was "issued by a person other than agency head . . . ," which will become a final order of the agency "unless reviewed by the agency head (or the agency's head's designee) pursuant to Section 67-5245, Idaho Code." The Hearing Officer is a person other than the agency head, and therefore, because it is a preliminary

---

which was provided referred to the procedure for review by the Director, not the Board. Instead, the list was provided by counsel for the Hearing Officer on March 27, 2026.

order, it is subject to an appeal to the agency head, or in this case the Water Resources Board. Petitioner elected to file a petition for reconsideration with the Hearing Officer, which is permitted pursuant to Rule 730.02.b.

This Exceptions Petition must be filed with the Department and the Board within fourteen days (14) after the service date of a denial of a petition for reconsideration (Idaho Code § 67-5245(3) and IDAPA 37.01.01.730.), which, in this case, is conservatively, 5:00 p.m. on April 9, 2026.

Idaho Code § 67-5245(7) provides that the Director is not bound by the fact-finding and analysis of the Hearing Officer in the Preliminary Order. The Director "shall exercise all of the decision-making power that he would have had if the agency head had presided over the hearing." In other words, the Director's review is essentially a *de novo* review. "The term 'de novo' generally means a new hearing or a hearing for the second time, contemplating an entire trial in the same manner in which the matter was heard and a review of previous hearing. On such a hearing the court hears the matter as a court of original and not appellate jurisdiction." *Knight v. Department of Ins., State of Idaho*, 119 Idaho 591, 593, 808 P.2d 1336,1338 (Idaho App. 1991) (quoting *Beker Industries, Inc. v. Georgetown Irrigation District*, 101 Idaho 187, 190, 610 P.2d 546, 549 (1980)).

Therefore, the filing of exceptions, the Hearing Officer's *Preliminary Order* and *Order Denying Petitioner's Motion for Reconsideration* are not reviewed under an abuse of discretion standard. The Director and in this case, the Water Resources Board, may therefore step into the shoes of the Hearing Officer and make factual findings and legal conclusions as though they were the hearing officer in the first place. The Director or the Board may further "schedule oral argument in the matter before issuing a final order[,]"

and may also "remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order." Rule 730.01.e.

The Board/Director may re-open the hearing for the limited purpose of taking evidence on the matters addressed in this list of Exceptions (local public interest) pursuant to Rule 59(a)(3) of the Idaho Rules of Civil Procedure. *See* IDAPA 37.01.01 (certain Idaho Rules of Civil Procedure apply to procedures of the Idaho Department of Water Resources). Opposing parties have fourteen (14) days to respond to any party's list of exceptions. Rule 730.01.d.

**EXCEPTIONS TO HEARING OFFICER'S ORDERS**

Petitioner incorporates by reference his *Petitioner's Brief in Support of Motion for Summary Judgment*, Petitioner's *Motion for Reconsideration*, and the Declarations in Support thereof as though stated in full. IDAPA 37.03.07.35 provides in pertinent part:

> APPLICATION REVIEW (RULE 35). 01. Prior to Issuance of Permit. The following items shall be among those considered by the Director prior to issuing a permit:
>
> e. Will the alteration pass anticipated water flows without creating harmful flooding or erosion problems upstream or downstream?
>
> h. Will the alteration interfere with recreational use of the stream?
>
> l. Are there public safety factors to consider?

The Hearing Officer reached an erroneous conclusion as to the presence of a well-known local swimming spot just upstream and across the river from Petitioner's property. In this situation, the title to the river has a cloud on it due to a deed the late Ernest Hemingway placed on it. The Big Wood River adjacent to Petitioner's land is now "owned" by the Library Association, Inc., with a conservation easement in favor of the Nature Conservancy. That conservation easement prohibits stream channel alteration, and the Library Association is demanding Petitioner agree to indemnify it before

performing the work the Department demand petitioner perform.

During discovery in this matter, Petitioner took the deposition of the executive director of the Library, Jenny Emory Davidson. The Hearing Officer took a Mrs. Davidson's testimony (that she was not intimately familiar with this swimming hole) to reach an erroneous factual finding that no such hole even existed. *Order Denying Petitioner's Motion for Reconsideration* at 2-3. This is not only erroneous, it whitewashes the actual facts and sets the State up to order the construction of a dangerous hazard to local swimmers – including children. *See Affidavit of John Hastings in Support of Petitioner's Motion for Summary Judgment at* ¶ 8-9.

This swimming hole is known as the Big Rock, (aka Church Rock) and is listed on a local travel website as a top swimming hole. https://visitsunvalley.com/searching-for-sun-valley/finding-water-in-a-desert-a-guide-to-sun-valleys-swimming-spots/. The local newspaper, the Mountain Express, has an article on its website which describes the swimming hole as follows:

> In Ketchum there's Big Rock, accessed on a path between the Church of the Big Wood and the Guy Coles Skatepark. This big hunk of granite at river's edge can be hard to climb bare-footed, and there isn't much of a beach, but some people practice jumps into about 8 feet of water. https://www.mtexpress.com/wood_river_journal/special_sections/where-to-cool-off-in-the-wood-river-valley/article_30b63c00-2391-11ef-82b9-1384bbae0271.html

A local Sun Valley hotel booking website directs travelers to the swimming hole by stating:

> Believe it or not, there are more outdoor enthusiasts visiting Sun Valley in summer than in winter. This fun fact explains why it's no surprise folks have found access to swimming holes up and down the valley. Before we talk about the magical lakes north of town, let's start in Ketchum and work our way south.

> There is river access all along the Big Wood River. Let's talk about a few of the most popular. If in the mood for a quick dip in Ketchum, Church Rock is the answer. This hidden gem is just north of where Warm Springs Road crosses the Big Wood River and tucked behind Guy Coles Skate Park and Presbyterian of the Bigwood Church. It's a local's favorite to beat the heat. There are rocks to jump off. There are wading pools. Skaters and scooters go back and forth from the river to the skate park all day long. And, it's not uncommon for the locals to head to Church Rock during their lunch. You never know who you'll meet. YUP – It's fantastic for kids of all ages. https://www.booksunvalley.com/guide-to-sun-valley/things-to-do/summer-activities/swimming/.

Ordering Petitioner to place root wads which extend out into the current of the Big Wood River directly across and a few feet downstream from this well known and well used local swimming hole is a recipe for disaster. Here, the Department admits it made no assessment of the hazard it demanded Petitioner install.

Additionally, the Hearing Officer concluded that he lacked the authority to issue a waiver pursuant to I.C. 42-3808 which provides:

> 42-3808. EMERGENCIES — WAIVER BY DIRECTOR. When emergency situations exist requiring immediate action to protect life or property including growing crops, the director may waive the provisions of this act upon request; providing, however, that the extent of stream channel alteration shall be limited only to that amount of work deemed necessary by the director to safeguard life or property including growing crops during the period of emergency.

The Hearing Officer concluded that the statutory language indicated that such a waiver must come from the Director himself. *Order Denying Petitioner's Motion for Reconsideration* at 8. Accordingly, that request is hereby made to the Director himself. In light of the nature of the 2017 100 year flood event[2] in the Big Wood River Valley, and the direction by local authorities to construct the bank armoring which gave rise to the Notice of Violation, along with the Department's acknowledgement that (but for

[2] p.9-10 Deposition of Aaron Golart attached as Exhibit C to *Declaration of Counsel in Support of Petitioner's Motion for Summary Judgment*

Petitioner's lack of a pre-construction application for a Stream Channel Alteration Permit during an emergency) the bank armoring Petitioner installed complies with the Department's own administrative rules, Petitioner hereby respectfully requests the Director waive the provisions of the Stream Channel Alteration Act under I.C. 42-3808 and put this matter to rest.

**CONCLUSION**

For the above reasons, the Board should re-open the hearing for the limited purpose of taking evidence on the matters addressed in this list of exceptions (local public interest) pursuant to Rule 59(a)(3) of the Idaho Rules of Civil Procedure. In the alternative, Petitioner hereby requests that the Board & Director reconsider of portions of the *Preliminary Order* as set forth herein and the incorporated briefing, reverse the Hearing Officer, and/or issue a waiver pursuant to I.C. 42-3808 in order to put this matter to rest.

April 9th , 2026
By:_____/s/ J. Kahle Becker_____
J. KAHLE BECKER, Attorney for Petitioner
Law Offices of J. Kahle Becker

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the _9th_ day of April, 2026, I caused to be served the foregoing *Petitioner's Exceptions to Hearing Officer's Orders* to the following persons by the method indicated below:

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Attorney for Respondent
Idaho Department of Water Resources

"IDWR File" file@idwr.idaho.gov

"Tschohl, Sarah" Sarah.Tschohl@idwr.idaho.gov

Mathew Weaver,
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Jeff Raybould
Chairman Idaho Water Resources Board
Jeff.Raybould@idwr.idaho.gov

_____/s/ J. Kahle Becker_____
J. KAHLE BECKER
Attorney for the Petitioner

RECEIVED
Apr 23, 2026
DEPARTMENT OF
WATER RESOURCES

**RAÚL R. LABRADOR**
ATTORNEY GENERAL

**Joy M. Vega**
Chief of Energy and Natural Resources Division

**SARA M. AJETI, ISB No. 12374**
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*Attorneys for the Idaho Department of Water Resources*

**BEFORE THE IDAHO WATER RESOURCE BOARD**

| | |
|---|---|
| IN THE MATTER OF APPLICATION FOR STREAM CHANNEL ALTERATION PERMIT NO. S37-20565 | **DEPARTMENT'S RESPONSE TO PETITIONER'S EXCEPTIONS TO HEARING OFFICER'S ORDERS** |

The Idaho Department of Water Resources ("Department"), through its counsel of record, submits this brief in response to *Petitioner's Exceptions to Hearing Officer's Orders* ("*Exceptions*") pursuant to Rule 730.02.d of the Department's Rules of Procedure ("Rules"), IDAPA 37.01.01. The Department supports Hearing Officer Burdick's *Preliminary Order* and *Order Denying Petitioner's Motion for Reconsideration* ("*Order Denying Reconsideration*") (collectively, "*Hearing Officer's Orders*"). For the reasons set forth below, the Department respectfully requests that the Idaho Water Resource Board ("Board") issue a final order affirming the *Hearing Officer's Orders*.

## INTRODUCTION

John Hastings Jr. ("Hastings") and the Department entered into a *Consent Order* to resolve Hastings' violation of the Alteration of Channels of Streams Act, Title 42, Chapter 38, Idaho Code ("Stream Protection Act"). The *Consent Order* required Hastings to submit an

application for a stream channel alteration permit with an approved restoration plan and comply with the terms and conditions of any subsequently issued permit. *Consent Order*, at 2. The *Consent Order* also listed minimum requirements for the restoration plan and did not specify what conditions the Department would or could put on the permit. *See id.*

Following Hastings submission of an acceptable restoration plan, the Department approved Stream Channel Alteration Permit S37-20565 ("Permit"). Hastings disagreed with the conditions on the Permit and requested a hearing with the Board. *Pet. for Hr'g*, at 1–2 (May 23, 2019). The issue to be resolved at hearing was whether the conditions of the Permit were consistent with the *Consent Order*. *Order; Notice of Hr'g*, at 4 (Feb. 11, 2025).

On October 20, 2025, the Department and Hastings each filed and briefed motions for summary judgment. The Hearing Officer provided two opportunities for oral argument to the Department and Hastings.

The Hearing Officer granted the Department's motion for summary judgment, holding that the plain language of the *Consent Order* was not ambiguous and that Hastings agreed to comply with the conditions on any subsequently issued Permit. *Prelim. Order*, at 11–12. Hastings sought reconsideration of the *Preliminary Order*. *Pet'r's Mot. for Recons.*, at 1 (Mar. 5, 2026). The Hearing Officer denied reconsideration and affirmed the *Preliminary Order*, holding that the Department's reliance on the plain language of the *Consent Order* and Permit shifted the burden to Hastings to show a genuine issue for hearing, which Hastings failed to meet. *Order Denying Reconsideration*, at 4. Hastings now files *Exceptions* asking for another hearing to take additional evidence. *Exceptions*, at 9. Again, on *Exceptions*, Hastings has not met his burden of demonstrating a genuine issue of material fact. The Board should deny Hastings *Exceptions* and affirm the *Hearing Officer's Orders* because the Hearing Officer correctly held that "[t]he Permit

issued by the Department for the restoration of the stream channel alterations made by Hastings, inclusive of its conditions, is consistent with the *Consent Order*." *Prelim. Order*, at 12.

## ARGUMENT

### I. An additional hearing is not needed for the Board to issue a final order affirming the *Hearing Officer's Orders*.

The Idaho Administrative Procedure Act ("APA") governs petitions for review of a preliminary order. I.C. § 67-5245; *see also* IDAPA 37.01.01.002.08 (referring to petitions for review as exceptions). Pursuant to the APA, the Board must take one of three actions on exceptions: (1) issue a final written order; (2) remand for additional hearings; or (3) hold another hearing itself. I.C. § 67-5245(6); *see also* IDAPA 37.01.01.730.02.e (mirroring this same framework). The use of the disjunctive "or" confirms that the Board has discretion in selecting one of the alternatives. Accordingly, the Board satisfies its statutory obligation by issuing a final order and is not required to remand or conduct further hearings—particularly where no factual disputes remain as is the case here.[1]

Another hearing is not necessary because the Department satisfied its burden on summary judgment by showing that Hastings entered into a binding agreement based on the unambiguous terms of the *Consent Order* and the Permit. *Order Denying Reconsideration*, at 4. Summary judgment is appropriate where "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." I.R.C.P. 56(a). Once "the moving party has demonstrated the absence of a question of material fact, the burden shifts to the nonmoving party to demonstrate an issue of material fact" by producing admissible evidence establishing such a

[1] Hastings argues that the Board may reopen the hearing under Rule 59 of the Idaho Rules of Civil Procedure ("I.R.C.P."). *Exceptions*, at 6. However, the Department's Rules expressly provide that the I.R.C.P. "do not apply to contested cases before the agency" unless specifically incorporated. IDAPA 37.01.0.051. While certain I.R.C.P. provisions are incorporated for limited purposes under the Department's Rules, I.R.C.P. 59 is not. *See*, *e.g.*, IDAPA 37.01.01.220.03 (incorporating I.R.C.P. 56(a), (c)–(f) into the Department's Rules).

dispute. *Eagle Springs Homeowners Ass'n, Inc. v. Rodina*, 165 Idaho 862, 868, 454 P.3d 504, 510 (2019) (quoting *Johnson v. Wal-Mart Stores, Inc.*, 164 Idaho 53, 56, 423 P.3d 1005, 1008 (2016)). In other words, if the Department properly demonstrated that there is no issue of material fact, the burden shifted to Hastings to demonstrate an issue of material fact. Hastings failed to meet this burden as shown below.

Hastings requested a hearing to determine whether the terms of the Permit were inconsistent with the *Consent Order*. *Pet. for Hr'g*, at 2. The Hearing Officer correctly concluded that the Permit, "inclusive of its conditions, is consistent with the *Consent Order*." *Prelim. Order*, at 12. The plain language of the *Consent Order* required Hastings to apply for a stream channel alteration permit with a restoration plan to restore the streambank and reduce further erosion. *Consent Order*, at 2. The *Consent Order* specified minimum requirements to be included in the submitted restoration plan, including the use of bioengineering treatments with large woody material and a native riparian habitat planting plan. *Id.* It also required Hastings to "comply with the terms and conditions of any permit" issued after submission of an acceptable application and restoration plan. *Id.* Because the Department could not have known the details of the restoration plan at the time the *Consent Order* was executed, it could not predetermine the conditions of a future issued permit. In agreeing to the *Consent Order*, Hastings agreed to be bound by the subsequently issued Permit conditions.

The Hearing Officer ultimately found that "[t]here is no evidence in the record to establish that the contested Permit conditions are unrelated to the subject stream channel alteration and restoration plan that was included with the *Application*." *Prelim. Order*, at 11. The Hearing Officer further explained that "the contract terms are clear that the Department will engage in a review of the acceptability of the proposed restoration plan and *Application*, that they

can be denied, and that additional permitting terms and conditions may be required." *Id.* Accordingly, Hastings failed to demonstrate a genuine issue of material fact on summary judgment before the Hearing Officer, and his request for another hearing now would amount to nothing more than a second bite at the apple as he still has not met this burden.

## II. Hastings *Exceptions* are limited, unsupported, and do not justify further proceedings.

When a party files exceptions, "[t]he basis for review must be stated on the petition." I.C. § 67-5245(4). Hastings *Exceptions* are limited and focus primarily on two issues: (1) alleged "local public interest" concerns under the Stream Channel Alteration Rules ("Alteration Rules"), IDAPA 37.03.07; and (2) the emergency waiver provision of the Stream Protection Act. Neither of which applies nor alters the outcome of this case.

### A. The Department appropriately considered public safety when issuing the Permit, and the asserted "local public interest" factor has no basis in the stream channel alteration statutes and rules.

When evaluating an application for a stream channel alteration permit, the Director shall consider several factors related to the impacts of a proposed alteration, including:

> e. Will the alteration pass anticipated water flows without creating harmful flooding or erosion problems upstream or downstream? . . .
> h. Will the alteration interfere with recreational use of the stream? . . .
> l. Are there public safety factors to consider?

IDAPA 37.03.07.035.01. These factors guide how the Department reviews applications, and they do not require express findings in the permit itself. These factors are not a catch-all local public interest factor. Hastings improperly conflates these permit factors when arguing the Permit does not consider the local public interest of the swimming hole. *Exceptions*, at 6.

Regardless, the Department took these factors into consideration when it issued the Permit. For instance, Department staff confirmed that recreation is considered when evaluating

permits after being asked about the local public interest.[2] *See* IDAPA 37.03.07.035.01.h. In addition, the restoration plan acknowledges the Department's communication with the plan engineer about the swimming hole and public safety concerns but still submits the plan to "bring[] this matter to a close." *Permit*, at 16.[3] Moreover, the restoration plan itself proposed the placement of toe logs "at the toe of the riprap" with "well-shaped and relatively compact" rootballs that do not have "protruding snags or roots that may pose a hazard to the public" using this stretch of the river for recreation. *Permit*, at 19. Accordingly, the Department considered recreation and public safety factors when issuing the Permit, and Hastings cannot now disavow the very plan he proposed and agreed to as part of his application.

**B. The emergency waiver argument is untimely and legally inapplicable.**

Hastings' reliance on the emergency waiver statute is similarly misplaced. *Exceptions*, at 8–9. The emergency waiver statute states:

> *When emergency situations exist requiring immediate action* to protect life or property including growing crops, the director may waive the provisions of this act upon request; providing, however, that the extent of stream channel alteration shall be limited only to that amount of work deemed necessary by the director to safeguard life or property including growing crops during the period of emergency.

I.C. § 42-3808 (emphasis added). The plain language of the statute applies to emergency conditions that require an "immediate action." *Id.*

Hastings' actions occurred in 2017—nearly a decade ago. The statute does not contemplate retroactive application of an emergency waiver. It applies to an immediate action upon an emergency situation. Despite not only being an untimely request, the Board also lacks

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[2] During Department employee, Aaron Golart's, deposition, counsel for Hastings asked: "And local public interest is a concern whenever issuing permits of this nature; isn't it?" Mr. Golart answered "Recreation, correct." *Order Denying Reconsideration*, Ex. A, at 12 (quoting *Golart Depo.*, at 73:22–24).

[3] Citations to the Permit refer to the PDF page number as the restoration plan is attached to the Permit.

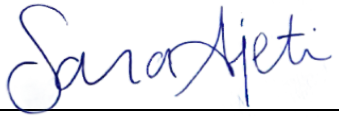
authority to grant such a waiver. Accordingly, Hastings is not entitled to an emergency waiver now.

## CONCLUSION

The Department respectfully asks the Board to issue a final order affirming the *Hearing Officer's Orders* without opening up the matter for additional hearings because Hastings is not entitled to get a second bite at the apple for failing to demonstrate a genuine issue of material fact on summary judgment.

DATED April 23, 2026.

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL



SARA M. AJETI
Deputy Attorney General
Idaho Department of Water Resources

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on April 23, 2026, I served a true and correct copy of the above and foregoing via the method indicated below, upon the following:

| | |
|---|---|
| **J. KAHLE BECKER**<br>Attorney at Law<br>223 N. 6th St., Suite 325<br>Boise, ID 83702<br>kahle@kahlebeckerlaw.com<br><br>*Attorney for Petitioner John Hastings* | ☐ U.S. Mail, postage prepaid<br>☐ Hand Delivery<br>☐ Overnight Mail<br>☒ Email |
| **IDAHO WATER RESOURCE BOARD**<br>file@idwr.idaho.gov<br><br>cc: Jeff Raybould<br>Chairman, Idaho Water Resource Board<br>jeff.raybould@idwr.idaho.gov | ☐ U.S. Mail, postage prepaid<br>☐ Hand Delivery<br>☐ Overnight Mail<br>☒ Email |

Sara Ajeti

SARA M. AJETI
Deputy Attorney General
Idaho Department of Water Resources

**BEFORE THE IDAHO WATER RESOURCE BOARD**

| | |
|---|---|
| IN THE MATTER OF APPLICATION FOR STREAM CHANNEL ALTERATION PERMIT NO. S37-20565 | **ORDER ON EXCEPTIONS; FINAL ORDER** |

## BACKGROUND

On September 11, 2017, the Idaho Department of Water Resources ("Department") issued a *Notice of Violation and Order to Cease and Desist the Unauthorized Alteration of the Big Wood River* ("NOV") to John Hastings Jr. ("Hastings") for the violation of the Stream Protection Act, Title 42, Chapter 38, Idaho Code.

On January 26, 2018, pursuant to Idaho Code § 42-1701B, Hastings and the Department entered into a *Consent Order and Agreement* ("Consent Order") to resolve the NOV whereby Hastings paid a civil penalty and agreed to remedy the damages to the Big Wood River.

On May 17, 2019, the Department issued a conditional approval of Hastings' Application for Permit ("Permit"), assigned No. S37-20565, with special and general conditions.

On May 23, 2019, Hastings filed a *Petition for Hearing* with the Idaho Water Resource Board ("Board") contesting the permit, alleging "[c]ertain requirement contained in [the Permit] are inconsistent with the Consent Order and the agreement that led to the filing of the Restoration Plan." *Pet. For Hr'g* at 2.

On November 19, 2021, the Board issued a resolution initiating formal administrative proceedings in this matter, and Roger Burdick was assigned as Hearing Officer.

On February 19, 2026, the Hearing Officer issued a *Preliminary Order* in the matter. The *Preliminary Order* denied Hastings *Motion for Summary Judgment* and granted the Department's *Motion for Summary Judgment*.

On March 5, 2026, Hastings filed *Petitioner's Motion for Reconsideration* with the Hearing Officer.

On March 26, 2026, the Hearing Officer issued an *Order Denying Petitioner's Motion for Reconsideration*.

On April 9, 2026, Hastings filed *Petitioner's Exceptions to Hearing Officer's Orders* with the Board ("*Exceptions*").

On April 23, 2026, the Department filed *Department's Response to Petitioner's Exceptions to Hearing Officer's Orders* ("*Response*").

## ANALYSIS

Having reviewed and evaluated the record in this matter, the Hearing Officer's orders dated February 19, 2026, and March 26, 2026, the *Exceptions*, and *Response*, the Board has determined the *Exceptions* should be denied, and the Hearing Officer's orders should be affirmed.

## ORDER

**IT IS HEREBY ORDERED** *Petitioner's Exceptions to Hearing Officer's Orders* is DENIED and the *Preliminary Order* and *Order Denying Petitioner's Motion for Reconsideration* are AFFIRMED.

DATED this 21st day of May 2026.

JEFF RAYBOULD, Chairman
Idaho Water Resource Board

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 21, 2026, I served a true and correct copy of the above and foregoing via the method indicated below, upon the following:

| | |
|---|---|
| **J. KAHLE BECKER**<br>Attorney at Law<br>223 N. 6th St., Suite 325<br>Boise, ID 83702<br>kahle@kahlebeckerlaw.com<br><br>*Attorney for Petitioner John Hastings* | ☐ U.S. Mail, postage prepaid<br>☐ Hand Delivery<br>☐ Overnight Mail<br>☒ Email |
| **SARA M. AJETI**<br>sara.ajeti@idwr.idaho.gov<br>Deputy Attorney General<br>Idaho Department of Water Resources<br>PO Box 83720<br>Boise, ID 83720-0098 | ☐ U.S. Mail, postage prepaid<br>☐ Hand Delivery<br>☐ Overnight Mail<br>☒ Email |

Milin J. Ream
Administrative Assistant
Idaho Water Resource Board

RECEIVED
MAR 22 2018
DEPARTMENT OF
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March 22, 2018

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*Hand Delivered and by Electronic Mail*

**Re: Terms of Notice of Violation E2017-1236; Restoration Plan and Bank Stabilization Project Deficiencies**

Dear Andrea:

On March 8, 2018, I received a letter ("Letter") from Aaron Golart, Water Compliance Bureau, regarding the February 14, 2018 *Restoration Plan and Bank Stabilization Project for 1200 Warm Springs, Ketchum, Idaho* ("Restoration Plan"), prepared by Dr. Charles G. Brockway on behalf of the owner of 1200 Warm Springs Road. The Restoration Plan was filed with the Idaho Department of Water Resources ("IDWR") in response to the January 26, 2018 *Consent Order and Agreement, In the Matter of Notice of Violation ("NOV") No. E2017-1236 dated September 11, 2017* ("Consent Order").

In the Letter, Mr. Golart took exception with the Restoration Plan in three respects. First, Mr. Golart stated the Restoration Plan "proposes minimal exposed large woody material at intermittent locations throughout the project. The COA states that large woody material be placed 'along the streambank.' To meet the terms of this requirement within the COA, large woody material needs to be placed parallel or in line with the entire length of the affected streambank."

Second, Mr. Golart stated the Restoration Plan "proposes construction of four bank barbs with root wads intact at an elevation equal to the ordinary high water mark ('OHW'). Those bank barbs constructed with the surface elevation at OHW would function similar to jetties rather than actual bank barbs. To function correctly, bank barbs need to be constructed at an elevation that allows them to be overtopped at all flow levels resulting in the deflection of erosive flows."

Third, Mr. Golart stated the Restoration Plan "recommends planting a monoculture of different grass species as ground cover which may not provide adequate stability of the streambank during high flow events. Planting should include native shrubs and forbs in addition to the different

grass species to create a diverse community of understory plant types that have an increased chance of stabilizing the streambank."

Filed contemporaneously herewith is a *Revised Restoration Plan and Bank Stabilization Project for 1200 Warm Springs, Ketchum Idaho* ("Revised Restoration Plan"), prepared by Dr. Brockway, which is responsive to the Letter's concerns. As to the first point, Dr. Brockway has proposed the addition of "longitudinal cottonwood toe logs. The bank toe is the most crucial area to protect to reduce the risk of the type of erosion seen in 2017." *Revised Restoration Plan* at 2; *see also id.* at 3 (additional discussion concerning the cottonwood toe logs). As to the second point, Dr. Brockway has proposed lowering the elevation of the bank barbs. *Id.* at 3. As to the third point, Dr. Brockway has proposed additional plant materials. *Id.* at 4-5. The Revised Restoration Plan is responsive to the Letter and consistent with the Consent Order.

Prior to submitting the Revised Restoration Plan, and in order to better understand the Letter and how to gain compliance, Dr. Brockway had a phone conversation with Mr. Golart. During the March 20, 2018 phone call, Mr. Golart insisted that in order to comply with the Consent Order's requirement to use "large woody material," *Consent Order* at 2, ¶ 1a, any restoration plan must include "tree revetment." For the following reasons, Dr. Brockway does not recommend, and the owner of 1200 Warm Springs will never agree to the use of tree revetment.

First, the plain language of the Consent Order does not require tree revetment. The Consent Order states as follows:

> 1) By February 15, 2018, Respondent shall pay a civil penalty in the amount of $10,000 and submit a Joint Application for Permit ("application") that proposes a plan to restore the streambank at the subject lands. The restoration plan must be designed to reduce further erosion and help restore more functional riverine conditions and include the following minimum requirements:
>    a. biocngineering treatments to incorporate large woody material along the streambank (e.g. root wad engineered log jam and brush or tree revetment)

*Consent Order* at 2 (emphasis added).

While tree revetment is certainly mentioned in the Consent Order, it is provided as an example of a type of "large woody material" that could be used to meet the requirements of the paragraph. According to Black's Law Dictionary (6th Ed.), "e.g." is defined as: "An abbreviation of *exempli gratia*. For the sake of an example." Emphasis added. When listed in the parenthetical as an example, "tree revetment" cannot be construed as mandatory.

According to page 17 of the United States Army Corps of Engineers *Streambank and Shoreline Protection Manual* ("Manual"), "Tree Revetment" is "Not appropriate near bridges or other structures where there is high potential for downstream damage if the revetment dislodges during flood events."[1] Emphasis added. *See also Revised Restoration Plan* at 3 ("An engineered

[1] Included herewith for your reference is page 17 of the Manual.

logjam would be a poor choice at this location . . . these treatments are . . . not recommended in areas near bridges or population where dislodging of a portion of the revetment could pose a safety risk.") (emphasis added). As you are aware from our prior compliance conference meetings, and as seen in many of the pictures I previously submitted, 1200 Warm Springs is directly upstream of the bridge that crosses the Big Wood River in Ketchum ("Warm Springs Bridge"). For your convenience, here is a photograph, previously provided, that was taken from the bank of 1200 Warm Springs, looking downstream at the Warm Springs Bridge:

During the flood events of 2017, large cottonwood trees were eroded from the bank of 1200 Warm Springs and washed downstream. The City of Ketchum was so concerned that the erosion of the bank could threaten the Warm Springs Bridge that it authorized the owner of 1200 Warm Springs to riprap the bank. It is this riprap in the face of the 2017 flooding that helped prevent damage to the Warm Springs Bridge. The necessary work then resulted in IDWR issuing the September 11, 2017 *Notice of Violation* ("NOV"). The NOV is the reason for the Consent Order and Dr. Brockway's Restoration Plan and Revised Restoration Plan.

As Mr. Golart may be unaware, the Big Wood River directly in front of 1200 Warm Springs is the site of a well-known swimming hole that is used by the public.[2] On the opposite side of the bank is Ketchum's Presbyterian Church. As flows in the Big Wood River go down, and as summer temperatures go up, the public begins using this location of the Big Wood River for recreation. On the water ward side of the Church is a beach. The owner of 1200 Warm Springs has owned the property for many years, and has seen the public, which includes many, many children, use the swimming hole, and float the River. Typically, it is understood the public accesses the swimming hole from the Church. Below are two photographs, provided to me by Dr. Brockway, taken from different angles, showing an installed "tree revetment":

[2] *See e.g.* https://visitsunvalley.com/searchingforsunvalley/finding-water-desert-guide-to-sun-valleys-swimming-spots (discussing swimming at "Church Rock").

*Photographs from the National Resource Conservation Service*

These pictures illustrate what the west bank of the Big Wood River would look like if tree revetment is ordered by IDWR. As a popular stretch of the River for recreation, it is very easy to see how tree revetment could create a public hazard. While tree revetment may serve a proper role in some stretches of a river, the use of such materials at 1200 Warm Springs would create a safety hazard to swimmers and floaters.

In conclusion, the Revised Restoration Plan meets the requirements of the Consent Order. The owner of 1200 Warm Springs looks forward to IDWR's prompt approval, so that work may begin.

Sincerely,

CHRIS M. BROMLEY

Encl.

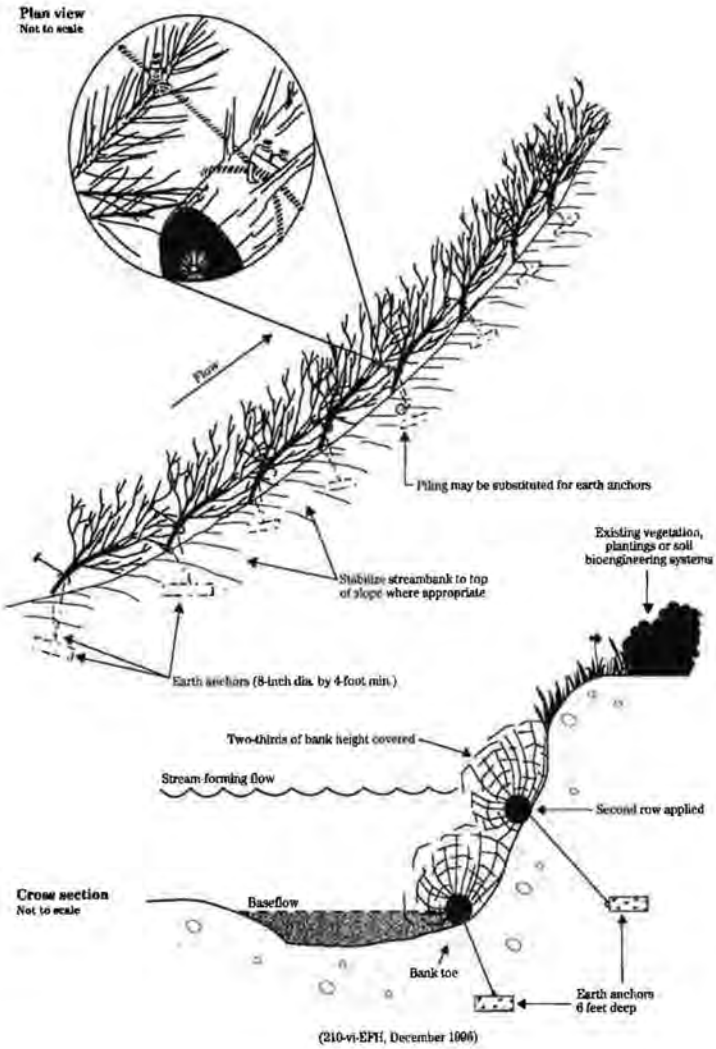
c.c. Tim Luke, IDWR (electronic mail)
Aaron Golart, IDWR (electronic mail)

**Tree Revetment** - A tree revetment is constructed from whole trees (except rootwads) that are usually cable together and anchored by earth anchors, which are buried in the bank (fig. 11).

*Applications and effectiveness*

- Uses inexpensive, readily available materials to form semi-permanent protection.
- Captures sediment and enhances conditions for colonization of native species.
- Has self-repairing abilities following damage after flood events if used in combination with soil bioengineering techniques.
- Not appropriate near bridges or other structures where there is high potential for downstream damage if the revetment dislodges during flood events.
- Has a limited life and needs to be replaced periodically, depending on climate and duration of tree species used.
- May be damaged in streams where heavy ice flows occur.
- Requires periodic maintenance to replace damaged or deteriorating trees.

Fig. 11




(210-vi-EFH, December 1996)



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State of Idaho
DEPARTMENT OF WATER RESOURCES
322 East Front Street • P.O. Box 83720 • Boise, Idaho 83720 0098
Phone: (208) 287-4800 • Fax: (208) 287-6700 • Website: www.idwr.idaho.gov

C.L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

March 8, 2018

JOHN HASTINGS, JR.
c/o CHRIS BROMLEY
380 S 4th ST STE 103
BOISE ID 83702

Re: Terms of Notice of Violation E2017-1236; Restoration Plan and Bank Stabilization Project Deficiencies

Dear Mr. Hastings:

The Idaho Department of Water Resources ("IDWR") acknowledges receipt of both the civil penalty and a Restoration Plan and Bank Stabilization Project (dated February 14, 2018) ("plan") as outlined in the signed Consent Order and Agreement ("COA").

The next requirement of the COA is to acquire IDWR approval of the plan. Note that the plan must be designed in accordance with the terms outlined in the COA.

IDWR has reviewed the plan and determined it falls short of the terms of the COA. Please see the following comments regarding each of the sections in Item B of the plan titled Proposed Project:

**Section 1: Retention of existing riprap, Section 2: Continuation of riprap upstream and downstream**
The plan proposes to retain the unpermitted riprap placed in 2017, extend riprap approximately 84-linear feet upstream and 35-linear feet downstream, and place woody material 12 feet perpendicularly into flow to be completely incased in rock with only the root wad exposed. The plan proposes minimal exposed large woody material at intermittent locations throughout the project. The COA states that large woody material be placed "along the streambank." To meet the terms of this requirement within the COA, large woody material needs to be placed parallel or in line with the entire length of the affected streambank. This treatment should help to restore the streambank to a more natural state and more functional riverine condition.

**Section 3: Bank Barbs**
The plan proposes construction of four bank barbs with root wads intact at an elevation equal to ordinary high water ("OHW"). Those bank barbs constructed with the surface elevation at OHW would function similar to jetties rather than actual bank barbs. To function correctly, bank barbs need to be constructed at an elevation that allows them to be overtopped at all flow levels resulting in the deflection of erosive flows. Prior to flows exceeding OHW, the proposed bank barbs would impede water from overtopping the surface resulting in a back eddy on the upstream side of each structure. The plan's proposed design would be detrimental to the restoration and stabilization

SCANNED
MAY 31 2019

efforts and result in erosive flows being fixed along the affected streambank, until flows exceed OHW. An approved plan must be designed to decrease erosion and help restore riverine conditions.

**Section 4: Removal of gravel within the channel**
IDWR does not endorse nor dispute this portion of the plan.

**Section 5: Revegetation**
Though the revegetation portion of the plan is generally acceptable, the plan recommends planting a monoculture of different grass species as ground cover which may not provide adequate stability of the streambank during high flow events. Planting should include native shrubs and forbs in addition to the different grass species to create a diverse community of understory plant types that have an increased chance of stabilizing the streambank.

In summary, the plan does not meet the requirements of the COA in the following ways:

- Further erosion could occur given the proposed streambank treatment;
- Proposed stabilization treatment, significantly more rock riprap and improper bank barbs, will not restore the streambank and provide more functional riverine conditions; and
- Proposed bioengineering treatments incorporating large woody material fall well short of "along the streambank."

Please submit an amended plan that fully satisfies the requirements outlined in the COA within 14 days for IDWR's review and approval. If the amended plan does not meet the requirements of the COA, IDWR may explore alternatives for achieving the streambank restoration. If you have any question, you may contact me at (208) 287-4941.

Respectfully,

Aaron Golart
Water Compliance Bureau

cc: BROCKWAY ENGINEERING PLLC

McHUGH BROMLEY
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May 22, 2018

Andrea L. Courtney
Deputy Attorney General
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P.O. Box 83720
Boise, ID 83720-0098
andrea.courtney@idwr.idaho.gov

**Re: Revised Restoration Plan and Bank Stabilization Project**

Dear Andrea:

On February 14, 2018, a *Restoration Plan and Bank Stabilization Project for 1200 Warm Springs, Ketchum, Idaho* ("Restoration Plan"), prepared by Dr. Charles G. Brockway, was filed with the Idaho Department of Water Resources ("IDWR"), in response to and compliant with the January 26, 2018 *Consent Order and Agreement, In the Matter of Notice of Violation ("NOV") No. E2017-1236 dated September 11, 2017* ("Consent Order"). On March 8, 2018, I received a letter ("Letter") from Aaron Golart, Water Compliance Bureau, regarding three exceptions he took with the Restoration Plan, summarized as follows: (1) the Restoration Plan proposes minimal exposed large woody material at intermittent locations throughout the project; (2) the bank barbs proposed in the Restoration Plan need to be constructed at an elevation that allows them to be overtopped at all flow levels resulting in the deflection of erosive flows; and (3) the plantings proposed in the Restoration Plan should include native shrubs and forbs in addition to the different grass species to create a diverse community of understory plant types that have an increased chance of stabilizing the stream bank.

On March 22, 2018, I filed a letter, together with a revised Restoration Plan ("Revised Restoration Plan") prepared by Dr. Brockway. As to the first point, Dr. Brockway proposed the addition of "longitudinal cottonwood toe logs. The bank toe is the most crucial area to protect to reduce the risk of the type of erosion seen in 2017." *Revised Restoration Plan* at 2; *see also id.* at 3 (additional discussion concerning the cottonwood toe logs). As to the second point, Dr. Brockway proposed lowering the elevation of the bank barbs. *Id.* at 3. As to the third point, Dr. Brockway proposed additional plant materials. *Id.* at 4-5. The Revised Restoration Plan was responsive to the three issues identified in the Letter and consistent with the Consent Order, as was the original Restoration Plan.

Prior to stamping the Revised Restoration Plan as complete, Dr. Brockway spoke with Mr. Golart on the phone regarding the Letter. During that phone call, Mr. Golart expressed his opinion that in order to comply with the Consent Order's requirement to use "large woody material," *Consent Order* at 2, ¶ 1a, any restoration plan must include "tree revetment." As I previously documented in my March 22, 2018 letter, Dr. Brockway, as a registered engineer, does not recommend, and the owner of 1200 Warm Springs will never agree to the use of tree revetment. A primary reason for never agreeing to tree revetment is this section of the Big Wood River is a well-known swimming hole used by the public. There are as many as one hundred swimmers or more on hot summer days, with the current pushing swimmers toward the bank of 1200 Warm Springs. The owner of 1200 Warm Springs will never agree to create a hazard.

A few weeks ago, Mr. Golart left a voicemail for me regarding the Revised Restoration Plan. Because I understood the concerns to be technical in nature, I asked Dr. Brockway to speak with Mr. Golart directly. Dr. Brockway has since spoken with Mr. Golart, informing me that Mr. Golart would like to see three additions to the Revised Restoration Plan, summarized as follows: (1) addition of miscellaneous woody debris amongst the riprap; (2) placement of willow bundles under the existing riprap; and (3) addition of root balls to the cottonwood toe logs. These are all new requirements since the Consent Order, the Restoration Plan, the Letter, and the Revised Restoration Plan.

As to the first point, Dr. Brockway advised me that the addition of miscellaneous woody debris serves no engineering purpose, will not affect the structural integrity of the riprap, and will not endanger the public if properly placed. Mr. Golart told Dr. Brockway that the debris could be scattered so that it would not stick out, thus not posing a hazard to the public who use this section of the Big Wood River for swimming. With this understanding, and not although required by the Consent Order, the owner of 1200 Warm Springs will agree to place miscellaneous woody material amongst the riprap of various sizes, shapes, and quality of its choosing. If the woody material washes away in a high flow event, the owner of 1200 Warm Springs is under no obligation to replace the same.

As to the second point, Dr. Brockway advised me the United States Army Corps of Engineers does not require placement of willow bundles under riprap, and there is no scientific literature supporting a benefit of this treatment. Willows are not required in the Consent Order. Moreover, Dr. Brockway told me he understands IDWR is not requiring this treatment in current stream bank projects on the Big Wood, examples of which I can provide you if you are interested. As you will see on pages 5-6 to the Revised Restoration Plan, plantings have already been incorporated, including woody, riparian shrubs. Lastly, and importantly, the owner of 1200 Warm Springs told me this reach of stream bank did not have willows prior to the flooding event of 2017. Placement of willows in this bank would therefore create an environment that did not exist. For these reasons, the owner of 1200 Warm Springs will not agree to dig up the existing riprap for placement of willow bundles.

As to the third point, Dr. Brockway already once revised the Restoration Plan to address Mr. Golart's concern as to root balls. The barbs, with attached root balls, are addressed on page 3 of the Revised Restoration Plan. Mr. Golart already discussed the cottonwood toe logs with Dr.

Brockway, with no mention that the toe logs contain root balls. This new requirement begins to look like an attempt at something similar to tree revetment, which Dr. Brockway does not recommend, and the owner of 1200 Warm Springs will never agree to. Again, this section of the Big Wood River is a popular swimming hole in the summer. The addition of root balls to the cottonwood toe logs will pose a hazard to the public by the addition of "strainers" to catch swimmers, from which they could drown. The owner of 1200 Warm Springs will never agree to this addition.

To be clear, the owner of 1200 Warm Springs has serious concern that no plan will ever be approvable by Mr. Golart. Each time a plan has been submitted, Mr. Golart has come back with more and different requirements. Even by agreeing to the addition of placement of miscellaneous woody debris amongst the riprap, which the Consent Order does not require, the owner of 1200 Warm Springs foresees Mr. Golart taking exception with the size, type, and placement of the material, resulting in a never ending cycle of disapproval. The Revised Restoration Plan, as amended by this letter, meets the terms of the Consent Order – as did the original Restoration Plan – and should be approved by IDWR so that the owner of 1200 Warm Springs can get to work on the stream bank. If there are any additional requirements imposed by Mr. Golart, the owner of 1200 Warm Springs has instructed me to take exception with the Director.

Sincerely,

CHRIS M. BROMLEY

c.c. Tim Luke, IDWR (electronic mail)
Aaron Golart, IDWR (electronic mail)

RECEIVED
MAR 22 2018
DEPARTMENT OF
WATER RESOURCES

# Restoration Plan and Bank Stabilization Project for 1200 Warm Springs, Ketchum, Idaho

Brockway Engineering, PLLC
Revised March 21, 2018

## A. Overview

This report describes a plan for restoration of streambank and implementation of stabilization measures on a reach of the Big Wood River immediately upstream of Warm Springs Road in Ketchum, Idaho. The plan is intended to satisfy one component of a consent agreement between the landowner and the Idaho Department of Water Resources (IDWR). The original restoration plan dated February 14, 2018 has been revised to address concerns expressed in a letter from IDWR dated March 8, 2018. Notwithstanding the consent agreement, a bank stabilization plan is needed to address chronic instability of the west river bank which has caused substantial loss of property, both during the 2017 flood and in prior high water events. In addition, a public road bridge at the lower end of the reach may be threatened if the reach is not stabilized.

The subject reach begins at the upstream abutment of the Warm Springs Road bridge and extends upstream 325 feet. In this reach the river is generally well-defined and confined to its banks even during flood conditions. The water surface width ranges from 42 to 73 feet at ordinary high water conditions. Over time, the channel has developed a pronounced asymmetrical morphology, with the thalweg lying hard against the west bank with shallow flow occurring over gravel bars on the east. Near the lower end of the reach, the thalweg kicks sharply eastward so that the deepest part of the channel upstream of the bridge is on the east side. One reason for the sharp eastward deviation of the thalweg is a large cottonwood tree which has been severely undercut but is still rooted in the bank and acting as a jetty. Saving this cottonwood tree is a prime objective of the project.

One consequence of the channel asymmetry is that high velocity flow impinges severely on the west bank. Based on the hydraulic modeling (see below), average channel velocities during the 100-year event are very high, ranging from 8.4 ft/s to 11.3 ft/s. Near-bank velocities would likely be 30 to 50% greater than the average channel velocities. During the flood of 2017, the high velocity caused undercutting and failure of the west bank, leading to a loss of land of up to 25 feet. The erosion threatened to cut behind the large cottonwood tree, an occurrence which would certainly have threatened the bridge abutment. Riprap was placed along a 193-foot length of the west bank, which effectively halted the erosion. Some reclamation of bank was accomplished by this operation, but no bank not existing prior to the 2017 flood was reclaimed. This conclusion was made by reviewing pre-placement and post-placement photographs, as

well as a comparison of the topographic survey performed in October 2017 with a prior survey performed in 2014. In some locations, less bank exists now than before the flood.

To assist with the project evaluation and design, a topographic survey by Benchmark Associates was completed. The survey included four cross-sections of the river, bank topography, and a delineation of the riprapped area.

## B. Proposed project

The high-velocity flow against the west bank continues to persist even after the 2017 flood event and placement of the riprap. Given the likelihood of recurrence of west bank instability, and the need to better align the flow to the Warm Springs bridge opening, measures are needed to protect the bank and realign the channel thalweg using a combination of bank barbs and channel excavation. In addition to the proposed structural measures the disturbed riparian areas will be restored and revegetated. Project components are described below.

### 1. Retention and completion of existing riprap

Riprap placed during the 2017 high water event was not engineered. Based on U. S. Corps of Engineers design procedures with an average channel velocity of 10 ft/s and the prevailing geometric characteristics of the channel, the minimum d30 size should be 18" with a size range from 5" to 32". The riprap in place appears to be mostly smaller than 18" stone, but the above design procedure applies to riprap without any other protection in place. With bank barbs as proposed, velocities against the riprap toe during a flood will be greatly reduced. For example, with only a moderate reduction in velocity to 8 ft/s, the minimum d30 size would be 11" with a size range from 4" to 27". It is concluded that the in-place riprap on the bank should not be removed and replaced, which would be more disturbing to the bank and the river than warranted according to the above analysis. It should be further stabilized with vegetative plantings as described below. Also, additional buried toe protection is warranted as shown on the drawings, which will include both riprap and longitudinal cottonwood toe logs. The bank toe is the most crucial area to protect to reduce the risk of the type of erosion seen in 2017.

### 2. Continuation of riprap upstream and downstream

Riprap placement was halted once the landowner was notified that additional permits were required. It is proposed to extend the riprap 35' downstream to encompass the large cottonwood tree and 84 upstream to the upstream end of the eroded reach. This will include the bank around the historic wooden bridge abutment which has experienced erosion. It will also encompass the existing power pole which is extremely close to the bank and at risk of failure if further erosion were to occur. The downstream portion will encompass the large cottonwood tree and remedy the severe undercut bank at that location.

### 3. Bank barbs

Four (4) barbs are proposed, spaced at 50 feet, angled at approximately 30° upstream, and extending 12 feet perpendicularly into the flow from the ordinary high water line. According to NRCS and Corps of Engineers guidelines, barbs are an effective method of reducing near-bank velocities, and provide habitat diversity by creating holding locations for aquatic species during high and low flows. These guidelines typically recommend incorporation of woody material in the barb. The barbs as proposed will contain an intact cottonwood log as a core, with a rootball protruding into the flow to provide additional roughness and habitat value. The barbs will be low-height features, with the elevation at the bank equal to the ordinary high water and a sloping top leading to an elevation at the end of 1.5 feet below ordinary high water. The barbs will thus be submerged during ordinary high water and mostly submerged during lower flow, creating a hydraulic jump downstream of the barb which will act to dissipate energy. The function of the barbs is multifold:

- Reduce the near-bank velocities, providing additional bank protection beyond the riprap alone.
- Create a pool-and-riffle regime to increase habitat value of this reach.
- Protect the large cottonwood tree at the downstream end of the project reach, which is of great value to the landowner and the local community.
- Protect the west bridge abutment.
- Encourage the thalweg to migrate away from the west bank and become better aligned with the bridge.

### 4. Cottonwood toe logs

Part of the consent order requires "large woody material along the streambank (e.g. root wad engineered log jam and brush or tree revetment." An engineered logjam would be a poor choice at this location; it is unclear where such a log jam might be located that would not pose a safety hazard to swimmers or result in progressive accumulation of further debris which would be detrimental to the objectives of the plan. A brush or tree revetment is also a poor choice for this location. In addition to being aesthetically out of place, these treatments are not intended to be permanent solutions, and are not recommended in areas near bridges or population where dislodging of a portion of the revetment could pose a safety risk. Also, placement of a tree revetment over existing riprap is not a standard procedure for these types of treatments and would be difficult to do given the anchoring required.

The recommended bioengineering treatment for this reach that could provide benefit in the form of increased bank stability is the installation of large cottonwood trees embedded longitudinally at the toe of the riprap. This treatment should increase the stability of the toe, which is the most crucial area.

**5. Removal of gravel within the channel**

This activity is needed for two reasons. First, it will aid in shifting the thalweg to the center of the channel, which is a major goal of the project to protect the west bank and to provide a straight alignment upstream of the bridge. Second, the removal of gravel is needed to meet the legal requirement to demonstrate no rise in the flood height, a requirement imposed by FEMA and administered by the City of Ketchum for any work within the floodway. See the discussion of the HEC-RAS modeling, below. The depth of removal will range from zero to 1.5 feet in accordance with the attached cross-sections. Total estimated volume of removal is 197 cubic yards, all of which will be transported to upland area for disposal. Total plan area of gravel removal is estimated to be 0.18 acres.

**6. Revegetation**

The riparian area was disturbed during the 2017 riprap placement, and further disturbance will occur when the barbs are placed. All disturbance will be re-graded to remove equipment tracks and restore the original grade. Revegetation of the bank area will include both native riparian grass plantings, and plantings of cottonwood seedlings.

a) Riparian grasses will be planted by the hydroseed method using the following mix. The estimated area of grass seeding is 3,100 square feet. Prior to seeding, topsoil will be placed and smoothed. Topsoil will also be spread on the riprap to allow the grass seeding to extend down the bank close to the ordinary high water level. This will allow grass to establish amongst the riprap stone, leading to a more appealing appearance in addition to increasing the stability of the riprap. Species to be planted include

| | |
|---|---|
| 30% | Slender Wheatgrass (*Elymus trachycaulus ssp.*) |
| 25% | Streambank Wheatgrass (*Agropyron riparium*) |
| 20% | Idaho Fescue (*Festuca idahoensis*) |
| 10% | Big Bluegrass (*Poa secunda ssp. ampla*) |
| 10% | Sandberg Bluegrass (*Poa secunda ssp. sandbergii*) |
| 5% | Great Basin Wildrye (*Elymus cinereus*) |

b) Cottonwood seedlings will be planted along the top of bank at an irregular spacing of 20 to 40 feet. Species will be Siouxland Cottonwood (*Populus deltoides*). Trees will be planted by a competent local landscape contractor using industry-standard planting techniques.

c) Woody riparian shrubs will be planted in a zone 15 feet wide measured from the top of the bank. Target coverage within this area (based on mature canopy spread) will be 15% and planting will be made in an irregular pattern to simulate nature growth. Species to be planted include:

Chokecherry (*Prunus virginiana)*
Golden currant (*Ribes aureum)*

Common snowberry (*Symphoricarpos albus)*
Woods rose (*Rosa woodsia)*

Proper establishment of the plantings will require irrigation. It is expected that the grass will require spray irrigation for two seasons, and thereafter will be sustained by natural precipitation. Tree plantings will be irrigated using a drip system in order to ensure long-term establishment. Some of the irrigation infrastructure is in place, but much washed out or was damaged in the 2017 flood. The irrigation system will be repaired and extended to accomplish the revegetation.

## C. HEC-RAS Modeling

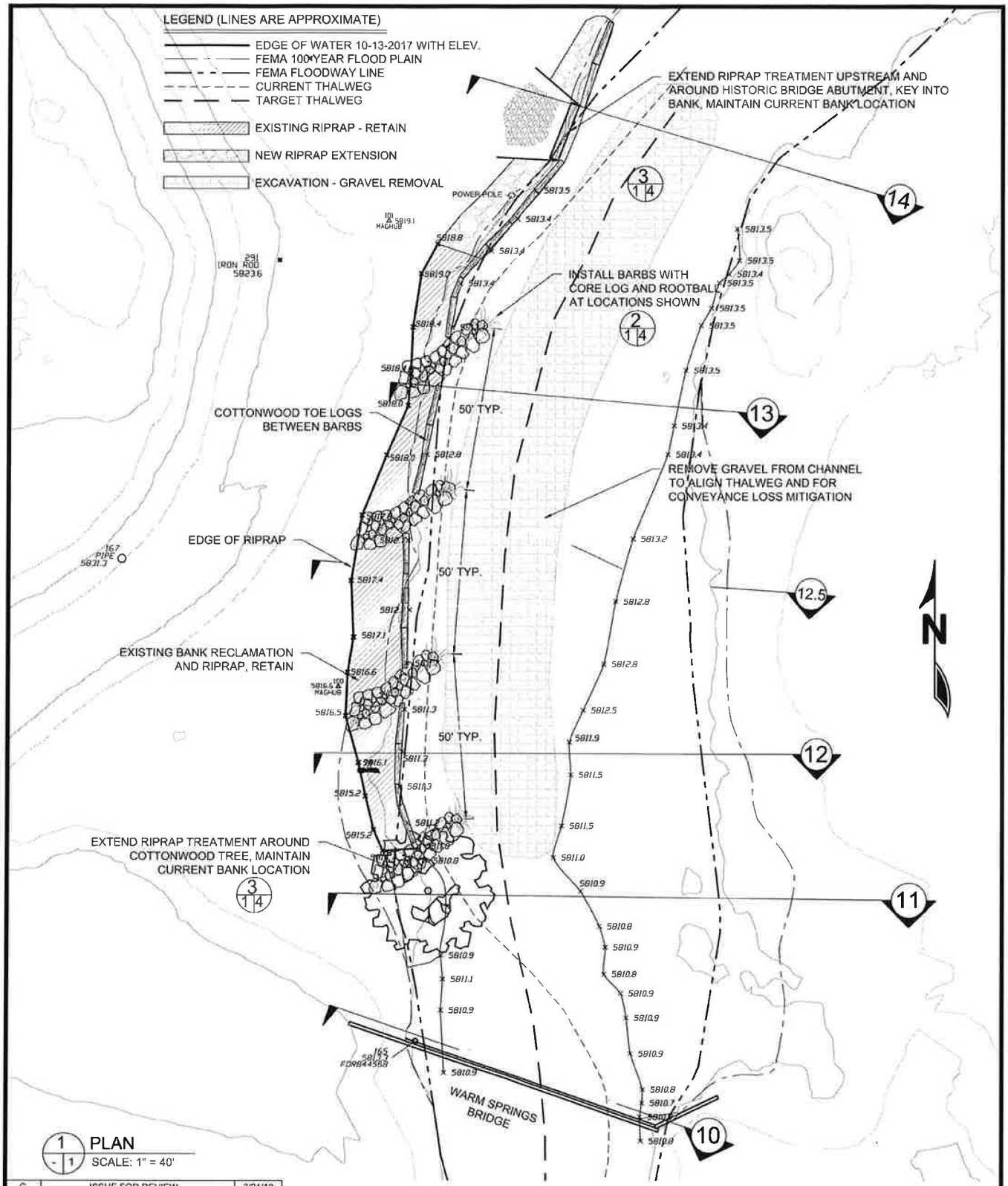
The proposed project will involve placement of protective structures within the channel of the river, and within the regulatory floodway as established by FEMA. Since encroachment into the floodway will occur, the hydraulic effect of the project must be evaluated and mitigated, if necessary, to ensure that no increase in flood elevation during the 100-year event will occur. This requirement was established by FEMA for the National Flood Insurance Program and is administered by local jurisdictions (the City of Ketchum, in this case).

The cross-sections surveyed in October 2017 were used as the baseline channel geometry. Channel and overbank roughness was set to 0.04 and 0.08, respectively, the same values used in FEMA's effective model. The downstream starting elevation was set equal to the computed 100-year elevation at that point in the FEMA model, or 5814.5 feet. The 100-year discharge 2,880 cfs is the value used by FEMA.

Two post-project models were developed: one with barb placement alone, and the second with barbs plus removal of gravel as mitigation. Barbs were placed at Sections 12, 12.5, and 13. Output from the model as well as channel cross-sections are attached, and a summary is provided in the table below. Zero increase in flood height is predicted to occur with the project.

| Cross Section | River Station (ft) | Existing Conditions (baseline) | | Barbs only | | Barbs + mitigation | |
|---|---|---|---|---|---|---|---|
| | | Water Surface Elev (ft) | Channel velocity (ft/s) | Water Surface Elev (ft) | Channel velocity (ft/s) | Water Surface Elev (ft) | Channel velocity (ft/s) |
| 13 | 1212 | 5816.64 | 8.69 | 5817.05 | 9.04 | 5816.56 | 9.04 |
| 12.5 | 1156.5 | 5816.19 | 8.97 | 5816.63 | 8.96 | 5816.01 | 9.36 |
| 12 | 1101 | 5814.99 | 11.27 | 5815.46 | 11.10 | 5814.88 | 11.16 |
| 11 | 1057 | 5814.68 | 9.28 | 5814.68 | 9.28 | 5814.68 | 9.28 |
| 10 | 1000 | 5814.50 | 8.39 | 5814.50 | 8.39 | 5814.50 | 8.39 |

## Permit-Level Drawings for Proposed Project




1-1 PLAN
SCALE: 1" = 40'

| REV | DESCRIPTION | DATE |
|---|---|---|
| C | ISSUE FOR REVIEW | 3/21/18 |
| B | ISSUE FOR REVIEW | 2/7/18 |
| A | ISSUE FOR REVIEW | 1/26/18 |

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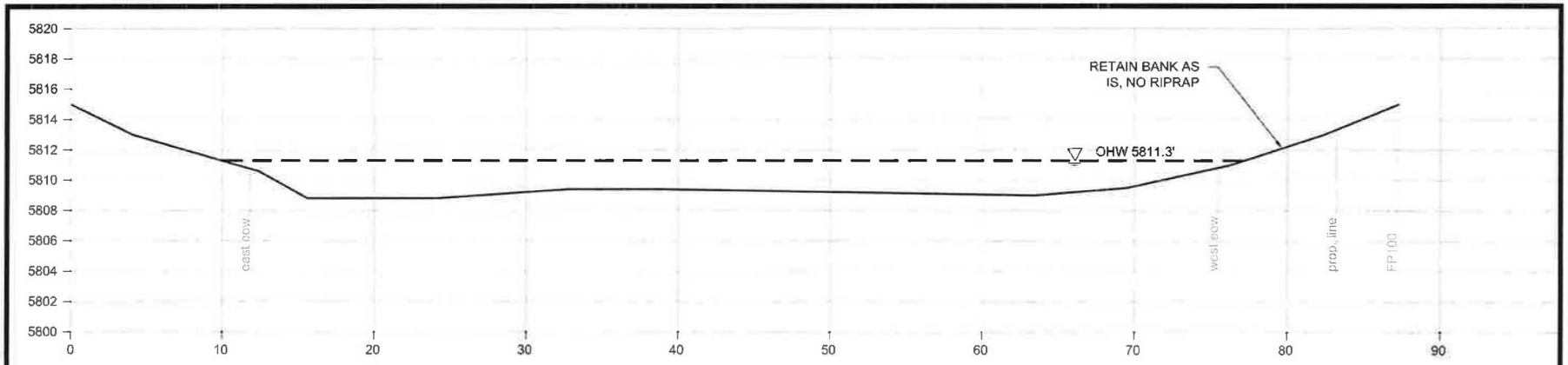
2016 NORTH WASHINGTON, SUITE 4
TWIN FALLS, ID 83301
(208) 736-8543

1200 WARM SPRINGS RESTORATION AND RIVER BANK STABILIZATION

SITE PLAN

PROJECT # 1085-01-2009
DWG # 1
REV C




10 SECTION
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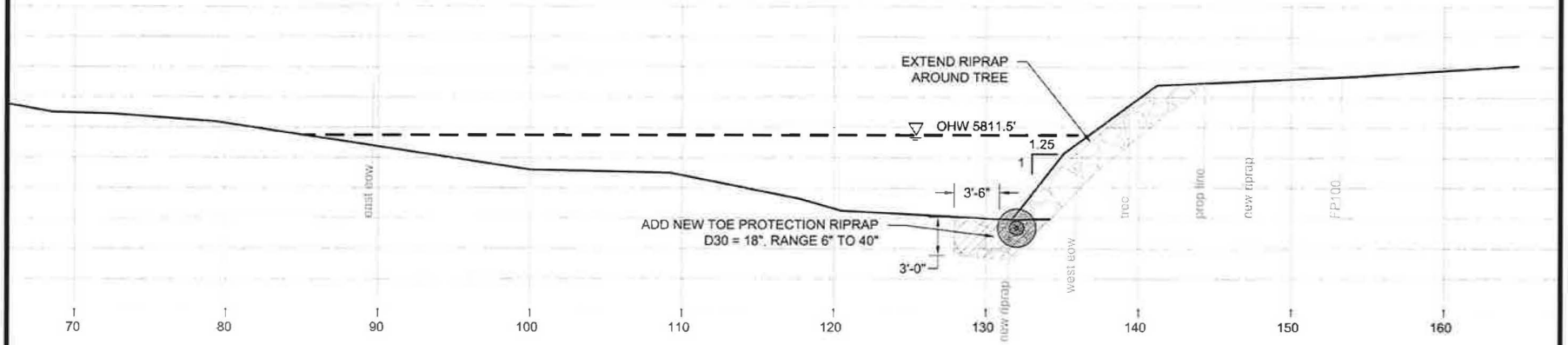


11 SECTION
SCALE: 1" = 10'

1" = 10' (SCALES FOR 8.5 X11 DWGS ONLY)

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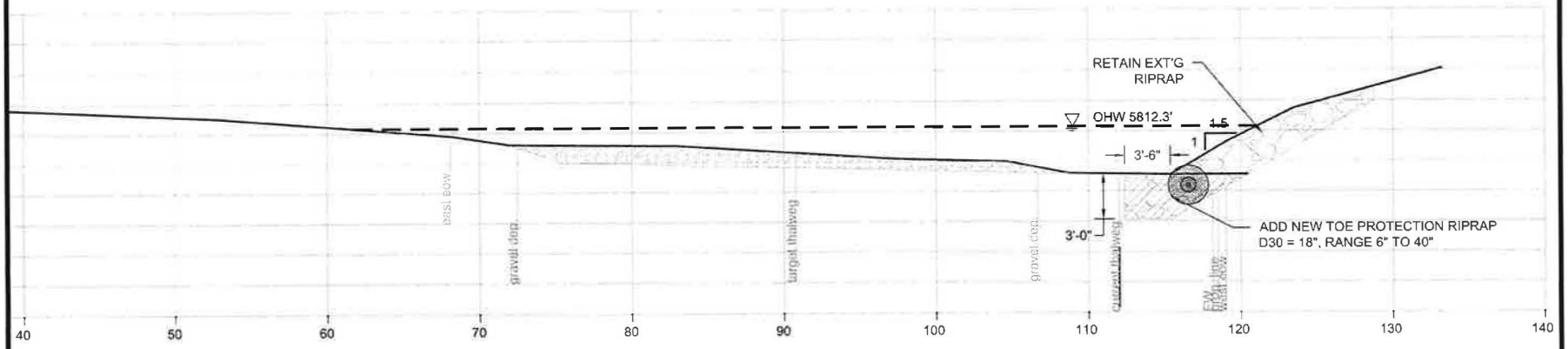
1200 WARM SPRINGS RESTORATION
AND RIVER BANK STABILIZATION

SECTIONS 1

PROJECT # 1085-01-2009
DWG # 2
REV C




12 SECTION
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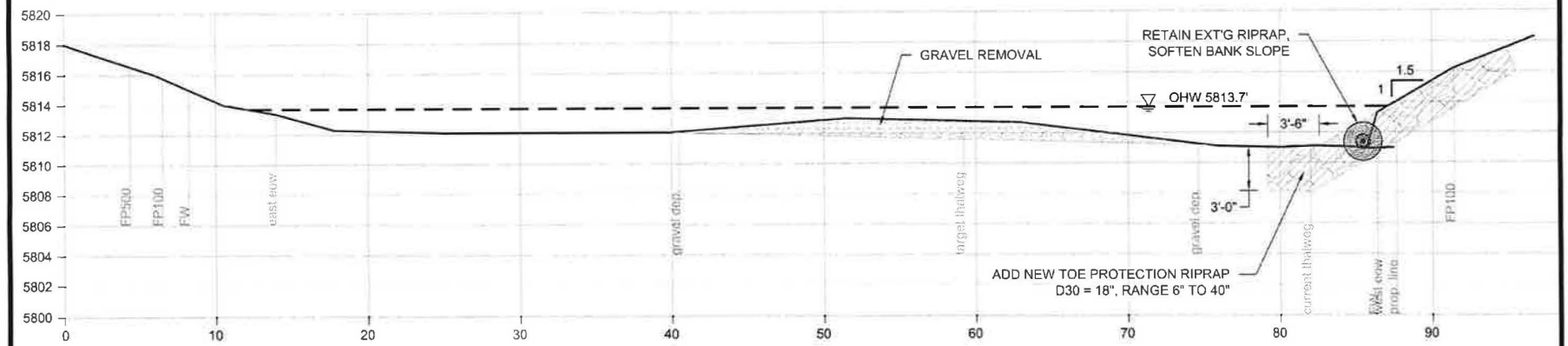


13 SECTION
SCALE: 1" = 10'

1" = 10' (SCALES FOR 8.5 X11 DWGS ONLY)

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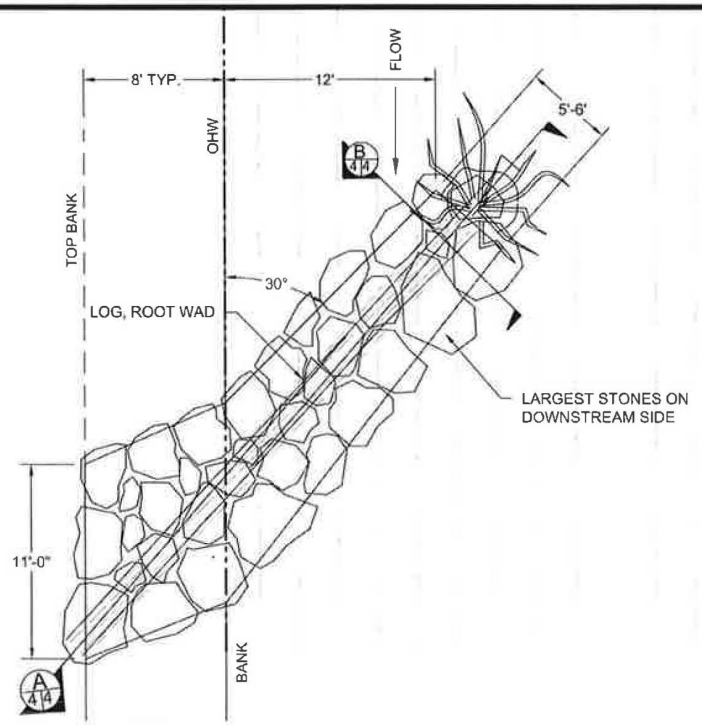
1200 WARM SPRINGS RESTORATION AND RIVER BANK STABILIZATION

SECTIONS 2

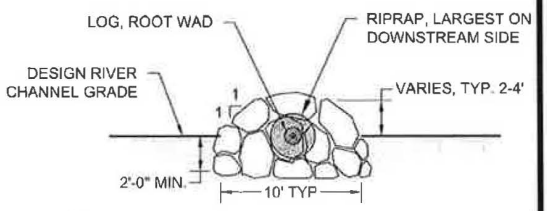
PROJECT # 1085-01-2009
DWG # 3
REV C



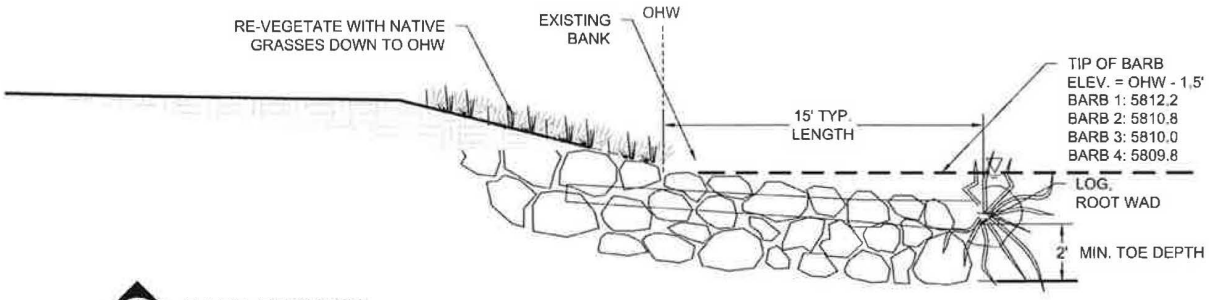

2 | 1 4 BARB DETAIL
SCALE: 1"=10'

NOTE:

BARB STONE SHALL ADHERE TO THE FOLLOWING SPECIFICATIONS:
1. ANGULAR, SOLID BASALT, NO FRACTURES.
2. UNIT WEIGHT 165 LB/FT3 OR HEAVIER.
3. D30 (30% SMALLER) = 18" WITH SIZE RANGE 6" TO 40"




B | 4 4 BARB SECTION (TYP.)
SCALE: 1" = 10'




A | 4 4 BARB SECTION
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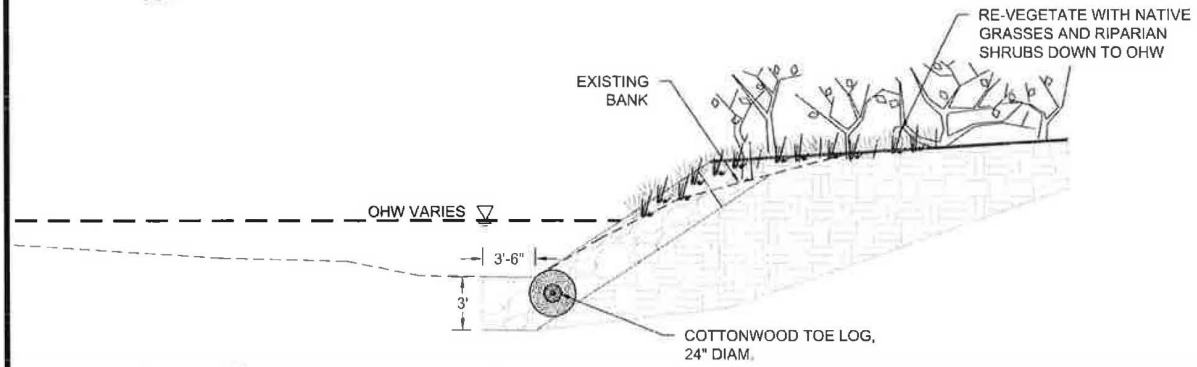



3 | 1 4 TYPICAL RIPRAP DETAIL
SCALE: 1"=10'

| REV | DESCRIPTION | DATE |
|---|---|---|
| C | ISSUE FOR REVIEW | 3/21/18 |
| B | ISSUE FOR REVIEW | 2/7/18 |
| A | ISSUE FOR REVIEW | 1/26/18 |

THIS DRAWING HAS BEEN PREPARED BY BROCKWAY ENGINEERING, PLLC FOR A SPECIFIC PROJECT TAKING INTO ACCOUNT THE SPECIFIC AND UNIQUE REQUIREMENTS OF THE PROJECT. REUSE OF THIS DRAWING FOR ANY PURPOSE IS PROHIBITED UNLESS WRITTEN PERMISSION FROM BOTH BROCKWAY ENGINEERING & THE CLIENT IS GRANTED

SCALE 1" = 10'
DESIGNED BY CGB
DRAFTED BY ICB

BROCKWAY ENGINEERING, PLLC
HYDRAULICS - HYDROLOGY - WATER RESOURCES
2016 NORTH WASHINGTON, SUITE 4
TWIN FALLS, ID 83301
(208) 736-8543

1200 WARM SPRINGS RESTORATION AND RIVER BANK STABILIZATION

TYPICAL BARB & RIPRAP DETAILS & SECTIONS

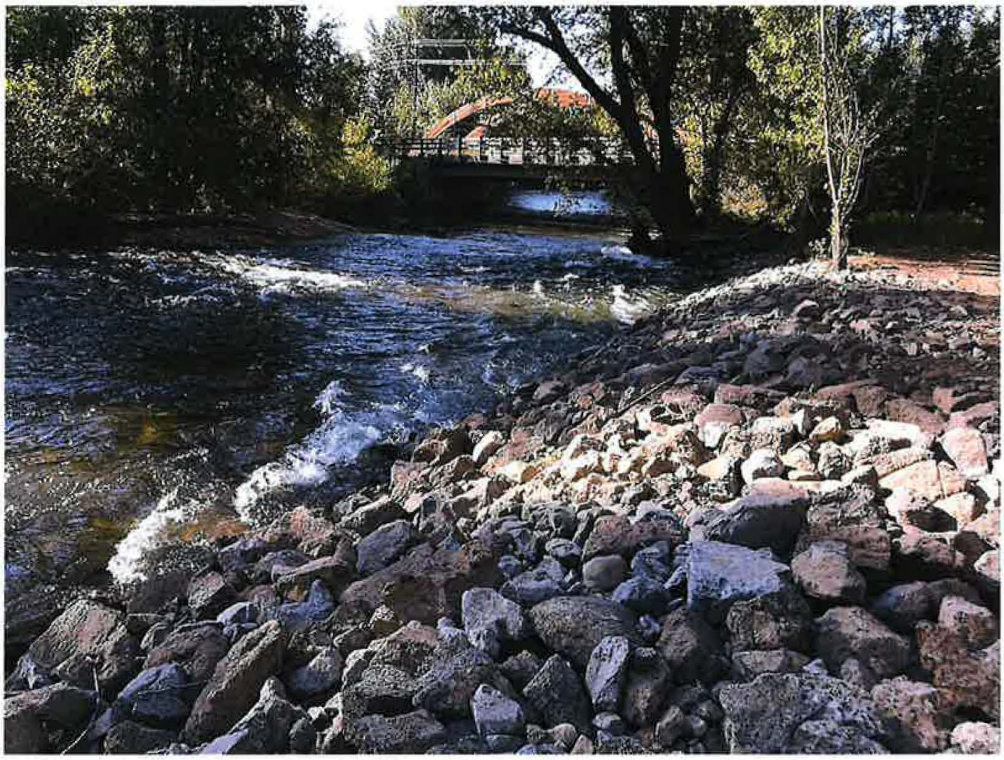
PROJECT # 1085-01-2009
DWG # 4
REV C

## Photos of Project Reach

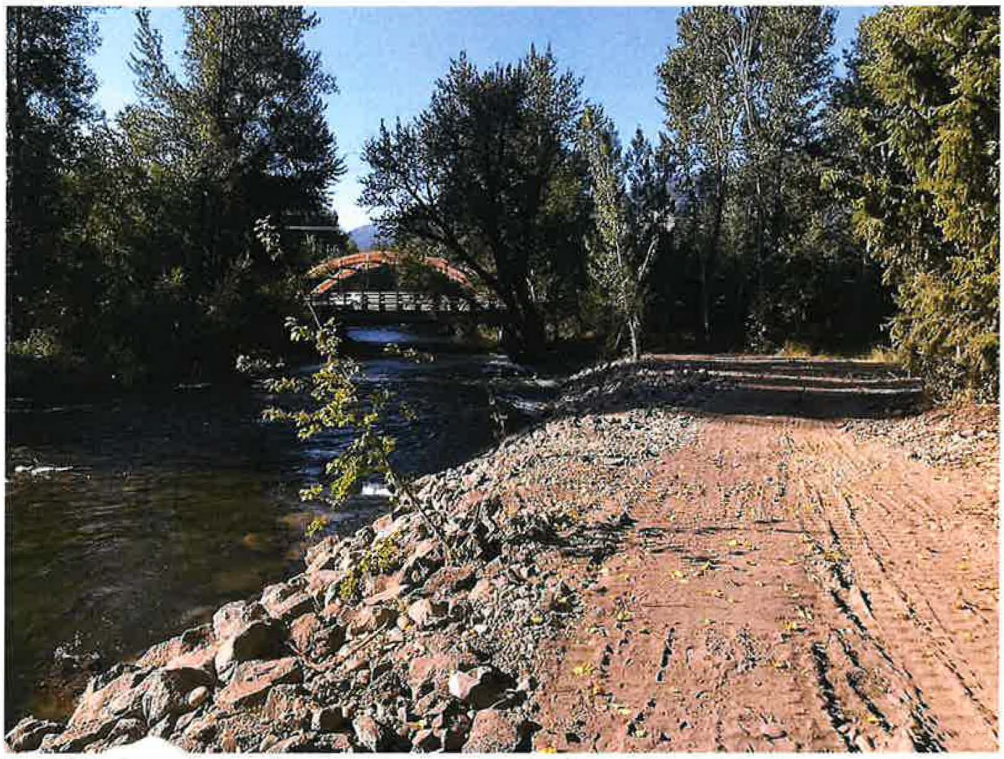
**1200 Warm Springs Restoration Plan – Photo Date August 2, 2017**
River Flow is 233 cfs, ordinary high water level is approximately 0.5 feet above the level on this date.

Looking upstream from near the large cottonwood tree.

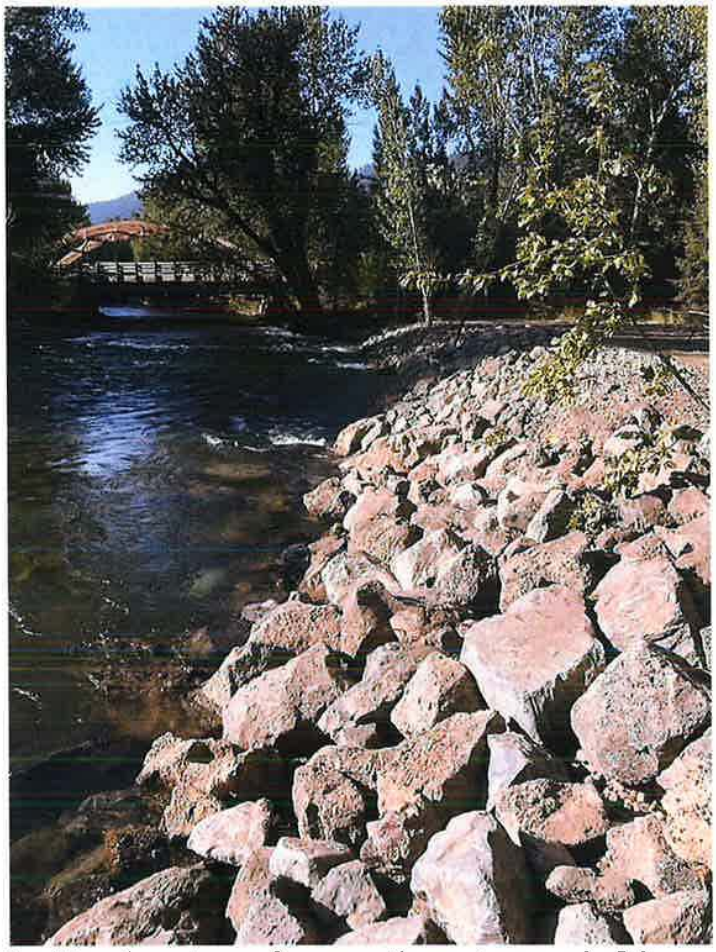
Looking downstream at the large cottonwood tree impinged by high-velocity flow



Looking downstream toward bridge. High-velocity thalweg is evident.



Looking downstream showing riprap extent and top of bank.



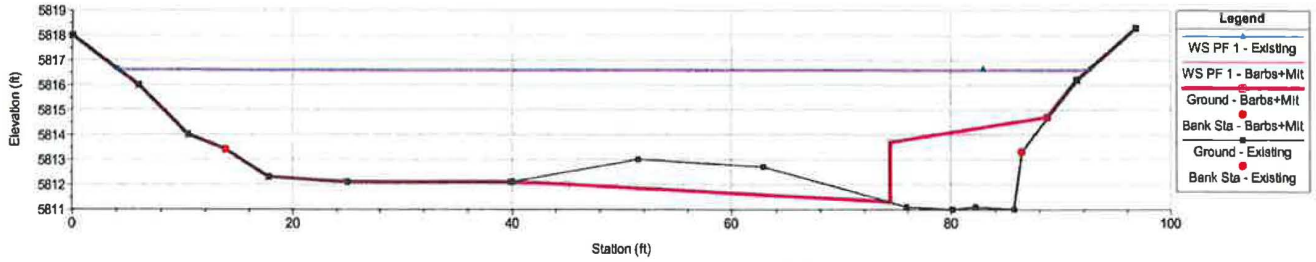
Looking downstream from near the upstream end of riprap.

## HEC-RAS Model Output and Cross-Sections

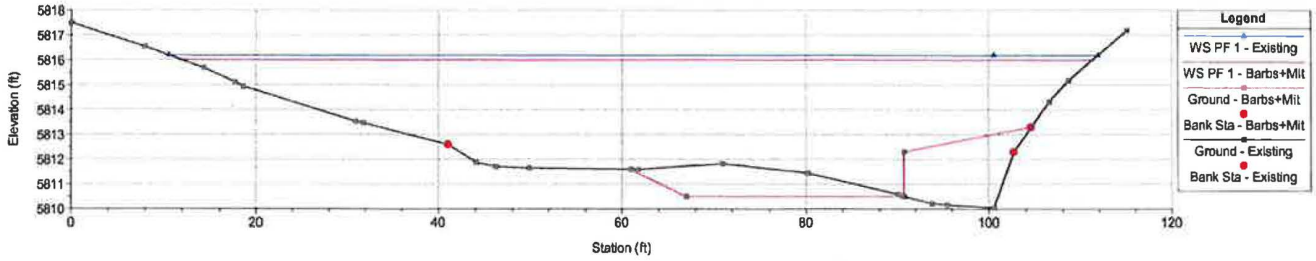
HEC-RAS River: Big Wood Reach: Ketchum Profile: PF 1

| Reach | River Sta | Profile | Plan | Q Total | Min Ch El | W.S. Elev | Crit W.S. | E.G. Elev | E.G. Slope | Vel Chnl | Flow Area | Top Width | Froude # Chl |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | (cfs) | (ft) | (ft) | (ft) | (ft) | (ft/ft) | (ft/s) | (sq ft) | (ft) | |
| Ketchum | 1212 | PF 1 | Existing | 2880.00 | 5811.00 | 5816.64 | | 5817.79 | 0.007696 | 8.69 | 351.98 | 88.43 | 0.72 |
| Ketchum | 1212 | PF 1 | Barbs | 2880.00 | 5811.70 | 5817.05 | | 5818.30 | 0.009502 | 9.04 | 335.67 | 90.75 | 0.79 |
| Ketchum | 1212 | PF 1 | Barbs+Mit | 2880.00 | 5811.30 | 5816.56 | | 5817.81 | 0.009183 | 9.04 | 333.59 | 87.99 | 0.78 |
| Ketchum | 1156.5* | PF 1 | Existing | 2880.00 | 5810.05 | 5816.19 | | 5817.37 | 0.007227 | 8.97 | 376.65 | 101.33 | 0.72 |
| Ketchum | 1156.5* | PF 1 | Barbs | 2880.00 | 5810.80 | 5816.63 | 5815.90 | 5817.79 | 0.008022 | 8.96 | 378.53 | 106.01 | 0.74 |
| Ketchum | 1156.5* | PF 1 | Barbs+Mit | 2880.00 | 5810.50 | 5816.01 | 5815.41 | 5817.30 | 0.008723 | 9.36 | 353.64 | 99.42 | 0.77 |
| Ketchum | 1101 | PF 1 | Existing | 2880.00 | 5809.10 | 5814.99 | 5814.99 | 5816.79 | 0.012428 | 11.27 | 323.18 | 105.21 | 0.93 |
| Ketchum | 1101 | PF 1 | Barbs | 2880.00 | 5810.10 | 5815.46 | 5815.46 | 5817.16 | 0.013873 | 11.10 | 333.33 | 112.03 | 0.96 |
| Ketchum | 1101 | PF 1 | Barbs+Mit | 2880.00 | 5809.50 | 5814.88 | 5814.88 | 5816.67 | 0.012780 | 11.16 | 317.32 | 104.04 | 0.93 |
| Ketchum | 1057 | PF 1 | Existing | 2880.00 | 5805.90 | 5814.68 | | 5815.95 | 0.005566 | 9.28 | 368.72 | 85.65 | 0.64 |
| Ketchum | 1057 | PF 1 | Barbs | 2880.00 | 5805.90 | 5814.68 | | 5815.95 | 0.005566 | 9.28 | 368.72 | 85.65 | 0.64 |
| Ketchum | 1057 | PF 1 | Barbs+Mit | 2880.00 | 5805.90 | 5814.68 | | 5815.95 | 0.005566 | 9.28 | 368.72 | 85.65 | 0.64 |
| Ketchum | 1000 | PF 1 | Existing | 2880.00 | 5808.80 | 5814.50 | 5813.28 | 5815.56 | 0.005727 | 8.39 | 375.26 | 85.05 | 0.65 |
| Ketchum | 1000 | PF 1 | Barbs | 2880.00 | 5808.80 | 5814.50 | 5813.28 | 5815.56 | 0.005727 | 8.39 | 375.26 | 85.05 | 0.65 |
| Ketchum | 1000 | PF 1 | Barbs+Mit | 2880.00 | 5808.80 | 5814.50 | 5813.28 | 5815.56 | 0.005727 | 8.39 | 375.26 | 85.05 | 0.65 |

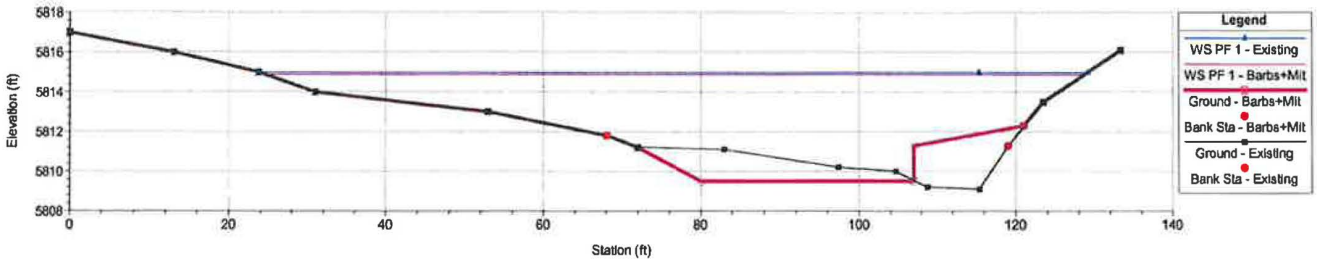
Hastings2018 Plan: 1) Existing 2) Barbs+Mit
RS = 1212 Section 13



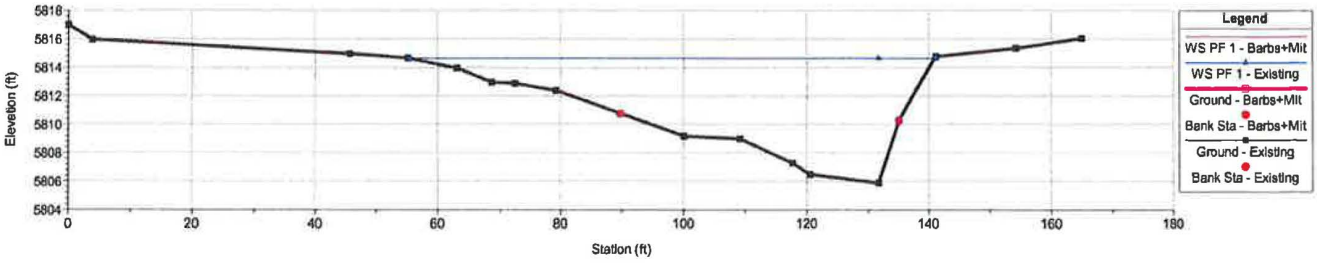

Hastings2018 Plan: 1) Existing 2) Barbs+Mit
RS = 1156.5* Section 12.5 Interpolated



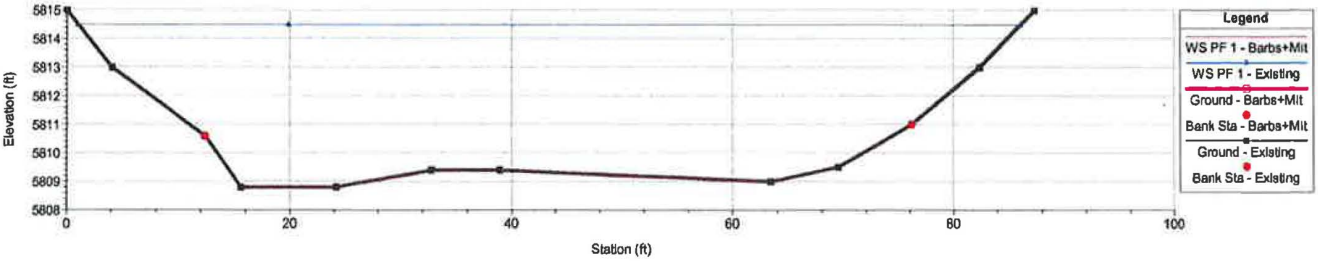

Hastings2018 Plan: 1) Existing 2) Barbs+Mit
RS = 1101 Section 12




Hastings2018 Plan: 1) Existing 2) Barbs+Mit
RS = 1057 Section 11




Hastings2018 Plan: 1) Existing 2) Barbs+Mit
RS = 1000 US of bridge



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ATTORNEY GENERAL

**JOY M. VEGA**
Chief of Energy and Natural Resources Division

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rowdy.keller@ag.idaho.gov

*Attorneys for Respondents*

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF**

**THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE**

| | |
|---|---|
| JOHN HASTINGS, JR.,<br>Petitioner,<br>vs.<br>IDAHO DEPARTMENT OF WATER RESOURCES, a Political Subdivision of the STATE OF IDAHO; MATHEW WEAVER, Director, and the IDAHO WATER RESOURCE BOARD; JEFF RAYBOULD, Chairman,<br>Respondents. | Case No. CV07-26-00378<br>**NOTICE OF LODGING THE AGENCY RECORD AND TRANSCRIPT WITH THE AGENCY** |

TO: THE DISTRICT COURT AND THE PARTIES OF RECORD

In accordance with I.R.C.P. 84(j), YOU ARE HEREBY NOTIFIED that the agency record and transcript, having been prepared pursuant to Idaho Code § 67-5249 and I.R.C.P. 84(f), (g), and (i), are lodged with the Idaho Water Resource Board for the purpose of settlement.

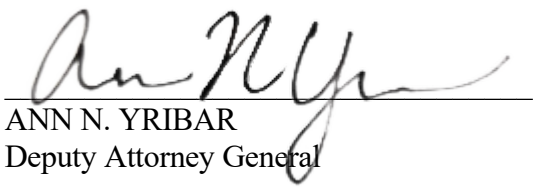
A copy of the agency record and transcript filed with the Board have been uploaded to the Idaho Department of Water Resources' website. The parties may visit

https://idwr.idaho.gov/court-action/cv07-26-00378/ and follow their browser's document download procedure to obtain a copy of the agency record and transcript after clicking on the PDFs titled "Agency Record on Appeal" and "Agency Transcript on Appeal."

The parties have fourteen (14) days from the date of this notice to file any objections to the record or transcript. The agency's decision on any objection timely filed along with all evidence, exhibits, and written presentations on the objection shall be determined by the agency within fourteen (14) days and included in the record. If no objections are filed within that time, the record and transcript shall be deemed settled. Subsequently, the agency will lodge the settled record and transcript with the District Court pursuant to I.R.C.P. 84(k), the Court's June 18, 2026 *Procedural Order*, and the Court's July 1, 2026 *Order Granting Extension*.

DATED this 16th day of July 2026.

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL

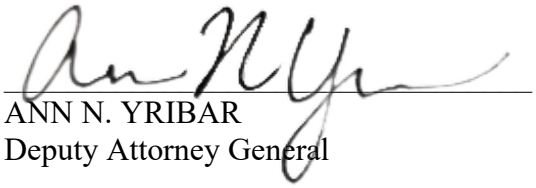


ANN N. YRIBAR
Deputy Attorney General

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 16th day of July 2026, I caused to be served a true and correct copy of the foregoing *Notice of Lodging the Agency Record and Transcript With the Agency*, via iCourt E-File and Serve, upon the following:

J. KAHLE BECKER
Attorney at Law
kahle@kahlebeckerlaw.com



ANN N. YRIBAR
Deputy Attorney General

**RAÚL R. LABRADOR**
ATTORNEY GENERAL

**JOY M. VEGA**
Chief of Energy and Natural Resources Division

**ANN N. YRIBAR, ISB No. 8406**
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*Attorneys for Respondents*

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF**

**THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE**

| | |
|---|---|
| JOHN HASTINGS, JR.,<br>Petitioner,<br>vs.<br>IDAHO DEPARTMENT OF WATER RESOURCES, a Political Subdivision of the STATE OF IDAHO; MATHEW WEAVER, Director, and the IDAHO WATER RESOURCE BOARD; JEFF RAYBOULD, Chairman,<br>Respondents. | Case No. CV07-26-00378<br>**NOTICE OF LODGING THE SETTLED AGENCY RECORD AND TRANSCRIPT WITH THE DISTRICT COURT** |

TO: THE DISTRICT COURT AND THE PARTIES OF RECORD

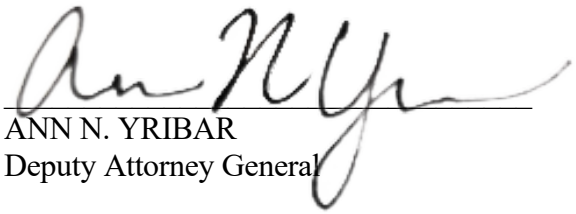
On July 16, 2026, the Idaho Water Resource Board ("Board") served its *Notice of Lodging the Agency Record and Transcript with the Agency* ("*Notice*") in this matter pursuant to I.R.C.P. 84(j)(1). The *Notice* gave the parties fourteen (14) days from the date of the *Notice* to file any objections to the record or transcript. No objections to the record or transcript were filed. The agency record and transcript, having been prepared in accordance with Idaho Code § 67-

5249 and I.R.C.P. 84(f), (g), and (i), are now deemed settled pursuant to I.R.C.P. 84(j)(3).

The Board hereby gives notice that it has filed the *Settled Agency Record on Appeal* and *Settled Agency Transcript on Appeal* with the District Court through iCourt, pursuant to I.R.C.P. 84(k), the Court's June 18, 2026 *Procedural Order*, and the Court's July 1, 2026 *Order Granting Extension*. The settled record and transcript have also been served upon the parties through iCourt.

DATED this 12th day of August 2026.

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL

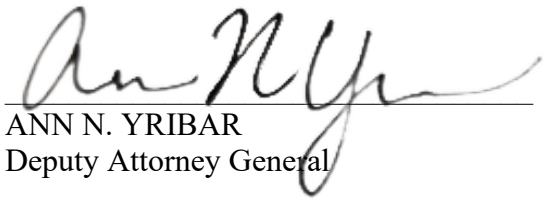


ANN N. YRIBAR
Deputy Attorney General

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 12th day of August 2026, I caused to be served a true and correct copy of the foregoing *Notice of Lodging the Settled Agency Record and Transcript with the District Court*, via iCourt E-File and Serve, upon the following:

J. KAHLE BECKER
Attorney at Law
kahle@kahlebeckerlaw.com



ANN N. YRIBAR
Deputy Attorney General