

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE**

JOHN HASTINGS, JR.,
Petitioner,

vs.

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,
Respondents.

Case No. CV07-26-00378

SETTLED AGENCY TRANSCRIPT ON APPEAL

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

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BEFORE THE WATER RESOURCES BOARD
OF THE STATE OF IDAHO

IN THE MATTER OF THE)
APPLICATION FOR:)
STREAM CHANNEL ALTERATION)
PERMIT NO. S37-20565)

VERBATIM REPORT OF PROCEEDINGS
BEFORE THE HONORABLE
HEARING OFFICER ROGER BURDICK

FEBRUARY 4, 2025

Transcribed from recording by:
Cheryl J. Hammer, Registered Professional Reporter
Idaho CCR 1206; New Mexico CCR 640; Oregon CCR 21-0013
Utah CCR 126919357-7801; Washington CCR 2512

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(BEGINNING OF TRANSCRIPTION)

(Proceedings begin.)

HEARING OFFICER: My name is Roger Burdick, and I will be the hearing officer in this matter, Hastings and (indecipherable) versus the department. It is Case Number -- I think it's 2501 or 2401.

FEMALE VOICE: (Inaudible.)

HEARING OFFICER: It's concerning the alteration permit S37-20565.

And I'd like to have the attorneys who are present to identify themselves, please, starting with the department.

MS. CARTER: Meghan Carter for the department, Your Honor. And with me, I have Sarah Ajeti.

HEARING OFFICER: Also, an attorney for the department?

MS. CARTER: Yes.

HEARING OFFICER: Very good. You have speak up for people to know who you are. All right.

And, sir, your name?

MR. BECKER: Kahle Becker for the

1 petitioner.

2 HEARING OFFICER: Very good. We are
3 here for the prehearing. There have been, in broad
4 stroke, numerous procedural issues prior to today's
5 hearing culminating in a Idaho Supreme Court case
6 based on the issue of statute of limitations pursuant
7 to the statute in this matter. In that regard, this
8 matter was then remanded back to the department.

9 The original hearing officer was
10 disqualified pursuant to the motion on behalf of
11 petitioner, and as a result the board and subsequently
12 the department wanted me to hear this matter.

13 There have been a couple of filings
14 concerning the burdens of proof as well as the burden
15 of evidence in this matter. I have reviewed all of
16 them, including the ones from 20-, I think, '24 even
17 or even before.

18 And I'm going to enter an order
19 consistent with my review of those documents, and then
20 we will continue to set hearing dates as well as
21 discovery, if any is needed, and then depositions,
22 dispositive motions, and then a subsequent hearing.

23 Basically, and I'll follow this up
24 with a formal order, as a result of Stream Alteration
25 in 2017, the department issued a notice violation on

1 September 11, 2017. This resulted in a consent order
2 and agreement in January 26, 2018.

3 The petitioners and IDWR tried to come
4 to an agreement as to the conditions of a permit. As
5 evidenced by Mr. Bromley's letters of March 22, 2018
6 and May 22, 2018, no agreement was issued or never was
7 reached by the parties.

8 On March 15th, Hastings and
9 (indecipherable) filed an application for permits, and
10 March 15, 2019 permits pursuant to the consent order,
11 conditional permit was issued May 17, 2019. Hastings
12 and (indecipherable) filed a petition on May 23, 2019,
13 quoting, requesting a hearing to contest the
14 requirements of the letter. The letter is the
15 conditional permit by the department personnel.

16 The reason was because certain
17 requirements in the letter are inconsistent with the
18 consent order and agreement that led to the filing of
19 the restitution plan.

20 The issues are framed by their filing
21 for this hearing -- by the petitioner's filing for
22 this hearing are, are conditions on the permit
23 consistent with the requirements set forth in the
24 consent order and to see auditorium file jointly for
25 the permit in question.

1 Then joined in objection to the terms
2 of the permit being inconsistent with the consent
3 order. (Indecipherable) auditorium by its joint
4 filings of this position is a party to this hearing.

5 The procedure for the hearing will be
6 petitioners have the burden of presenting evidence
7 consistent with their original petition as to how its
8 proposal is consistent with and fulfills the terms of
9 the consent order and how the permit is inconsistent
10 with the consent order. IDWR may rebut that
11 presumption as to why the permit is consistent with
12 the consent order.

13 This is a matter of interpretation of
14 written documents. It is not a takings case by a
15 governmental entity. Therefore clear and convincing
16 evidence as to the interpretation of the consent order
17 and the proposals of petitioners is not appropriate.

18 As a result of Stream Alteration -- as
19 a result, all burdens of proof by both parties is by a
20 preponderance of the evidence. The evidentiary burden
21 is by substantial evidence. There is no need for the
22 state to prove ownership of the stream beds. As Idaho
23 code 42-38-01 administrative rules enacted as a
24 result.

25 And additionally, the fact that the

1 parties agreed in the consent order and that IDWR had
2 rights to enforce that consent order and issued
3 conditional permit on the stream as -- on the stream
4 be issued in proposals by IDWR and petitioners by
5 their letters and conduct show knowledge and
6 acquiescence of the stream known and agreed to by the
7 parties.

8 The department's report -- the
9 department depending on Bennett versus Department of
10 Transportation does not apply. It's that hearings
11 procedure as was indicated by Mr. Becker. Its
12 interpretation's based upon a specific statutory
13 scheme for administrative suspensions of driver's
14 licenses.

15 That will be the order and the
16 procedure for the hearing. And I'll follow this up
17 with a formal hearing -- a formal order. And as such,
18 I'd like to hear from counsel as concerns a time
19 period for this hearing.

20 Do you feel, Mr. Becker, that there is
21 significant discovery to be added in this regard?

22 MR. BECKER: Yes, Your Honor.

23 HEARING OFFICER: And do you have
24 areas of discovery you would like to inquire? I know
25 in the Idaho Supreme Court case, those areas of

1 inquiry where assumed to be deemed irrelevant, it
2 seemed like, but..

3 MR. BECKER: I'm not sure if any of
4 the issues that would be at issue here (inaudible)
5 discovery in district court case.

6 HEARING OFFICER: Okay.

7 MR. BECKER: I mean, discovery,
8 (indecipherable). But that is separate from the
9 (inaudible).

10 HEARING OFFICER: Very good. That's
11 fine. But how would you like to proceed in that
12 regard concerning discovery, sir?

13 MR. BECKER: Typical schedule and
14 order for written discovery followed by some time
15 (indecipherable).

16 HEARING OFFICER: What time is a great
17 time for you or a reasonable time for you?

18 MR. BECKER: We can get started on
19 written discovery right after this hearing, I would
20 think.

21 HEARING OFFICER: Okay.

22 MR. BECKER: We think we need to get
23 into the summer for expert witness issues.

24 HEARING OFFICER: Sure.

25 MR. BECKER: (Indecipherable)

1 beneficial for the parties (inaudible).

2 I would note that my client resides in
3 California and was under an evacuation notice from the
4 fires that are down there. His house did not burn,
5 but I guess you have to get some sort of clearance
6 from the city to be able to go back in your house
7 because of all the toxic chemicals that have been
8 released from these fires. They couldn't get back in
9 their house.

10 So anyway, that's where things are for
11 my clients. But, yeah. So, I mean, I think we'd be
12 looking at fall for your (inaudible).

13 HEARING OFFICER: On behalf of the
14 department, what's your ideas concerning discovery?
15 Any objection to a site visit?

16 MS. CARTER: The department has no
17 objections to that.

18 HEARING OFFICER: Okay. Any objection
19 to written or depositions?

20 MS. CARTER: I mean, I will say that I
21 don't necessarily see the need for that, but no
22 objection. We want to make sure that Mr. Hastings has
23 a fair hearing.

24 HEARING OFFICER: Okay. As a result,
25 let's do this. Written discovery in 30 days by both

1 parties.

2 Is that reasonable for you, sir?

3 MR. BECKER: Served within 30 days?

4 HEARING OFFICER: Yeah.

5 MS. CARTER: Didn't you need
6 interrogatories, request for admissions, and also a
7 request for production of documents, or just a couple
8 of those? (Indecipherable.)

9 HEARING OFFICER: Okay. And then
10 depositions. Probably two months for those, 60 days
11 after written.

12 MR. BECKER: I mean, it all depends on
13 when I get it.

14 HEARING OFFICER: Right. Well, that's
15 true.

16 MR. BECKER: So that's -- I suspect --
17 so what's that put us, 30 days? I have a trial in
18 March in and then I go leave from that and go straight
19 to a vacation in the Bahamas. And so in the middle of
20 my --

21 HEARING OFFICER: To take care of your
22 bank accounts or what?

23 MR. BECKER: No. To take care of my
24 children that are on spring break.

25 HEARING OFFICER: Okay. Good. Good.

1 MR. BECKER: But, so that's -- so if I
2 get the discovery out, I'd probably be getting the
3 answers back in the middle of March.

4 HEARING OFFICER: April, May?

5 MR. BECKER: (Indecipherable.)

6 HEARING OFFICER: By the end of May?

7 MR. BECKER: I think it's for witness
8 stuff. (Indecipherable.)

9 HEARING OFFICER: Okay. Any problem
10 in that regard, madam?

11 MS. CARTER: The only thing that would
12 be of concern is I have a -- July, I have a trial July
13 16th, just -- and then --

14 HEARING OFFICER: How many days?

15 MS. CARTER: Just a one-day trial.

16 HEARING OFFICER: Oh, okay.

17 MS. CARTER: And then I have a 12-day
18 trial in August.

19 MR. BECKER: Wow. (Indecipherable.)

20 MS. CARTER: That's construction
21 litigation.

22 HEARING OFFICER: Oh. From the
23 department?

24 MS. CARTER: It's related to the
25 board's (indecipherable).

1 HEARING OFFICER: Oh, okay. I
2 understand.

3 MS. CARTER: Yeah. Didn't get it on
4 that calendar. I think I have it on this one. So
5 just as long as we -- I'm not the primary attorney on
6 that one, but it is August 4th through the 22nd.

7 HEARING OFFICER: Okay.

8 MR. BECKER: That Alaska cruise
9 through the middle of July. So... That's why I'm in
10 private practice.

11 HEARING OFFICER: Yeah. That's right.
12 I don't blame you. I don't blame you.

13 Here's what I'm going to do. I'm
14 going to send down a proposed scheduling order, kind
15 of consistent with what we've just talked about. I'll
16 review the notes and try to come up with something
17 reasonable.

18 I really do think that we would try to
19 get this thing completed. I mean, it did start in
20 2017 and it doesn't seem as if, based on briefing by
21 Mr. Becker, that Mr. Hastings wants anything other
22 than final resolution by third parties. So we'll just
23 try and get a trial as soon as possible, consistent
24 with reasonable scheduling.

25 I guess, is there need for even to

1 talk about mediation?

2 MR. BECKER: You know, I'm not sure
3 what -- I feel like we've bent over backwards for the
4 department, from the point of saying, go do it. Send
5 us the bill.

6 HEARING OFFICER: All right.

7 MR. BECKER: They do.
8 (Indecipherable) work. They did work up and down the
9 big wood for water rights issues. I forget.
10 (Indecipherable.) So my client just feels that it's
11 just (indecipherable).

12 HEARING OFFICER: Okay. So probably a
13 very little chance of mediation? I don't want to put
14 people in a box. As things change, let me know. I'm
15 not going to order anything unless the people want it.

16 I'm firmly against judges and/or
17 hearing officers who say mediation is -- you're going
18 to go to mediation. That's like telling a kid to take
19 cough syrup.

20 MR. BECKER: We'd be open for it if
21 the department (inaudible).

22 HEARING OFFICER: Well, I'll let them
23 work on that. I'm not going to enter into any
24 mediation in that regard. I would indicate that it
25 has been a long time, and it'll be even longer if this

1 goes to the district court and in addition to the
2 supreme court. So there may be some corners to cut in
3 terms of getting something done as opposed to nothing.

4 I'll send you out of a scheduling
5 order consistent with the comments made today.

6 Do you have anything further, Mr.
7 Becker?

8 MR. BECKER: You don't have a
9 scheduling issues to have a trial (indecipherable).

10 HEARING OFFICER: Okay. Is that a
11 criminal matter, or...?

12 MR. BECKER: No. I represent a land
13 trust that has a conservation easement.

14 HEARING OFFICER: Oh.

15 MR. BECKER: And actually said --
16 there's a picture included here.

17 HEARING OFFICER: Yeah. That's a
18 stream bed.

19 MR. BECKER: Yeah. A guy was just
20 going to build a bridge across the Salmon River with
21 no permits or anything. We've been sending things to
22 the department saying, hey, what's going on? They
23 won't do anything. So my client feels that this is
24 just what the prosecution of him were the government
25 told him to do something. He did it. And here, the

1 government has full knowledge that the guy's
2 (indecipherable) at the Salmon River.

3 It seems this will be explored in
4 discovery and perhaps in additional proceedings
5 against (indecipherable).

6 HEARING OFFICER: All right. Well, I
7 don't know if the Salmon River, there may be different
8 issues in that regard, but we'll see if it's relevant
9 or not.

10 Anything further?

11 MS. CARTER: One thing I would like to
12 make sure and clarify is that there is a distinct
13 difference between the department and the Water
14 Resource Board. It's been kind of confused with some
15 of the filings.

16 HEARING OFFICER: Okay.

17 MS. CARTER: While the Water Resource
18 Board may be within the department, it has its own
19 purview, its own budget, it has its own projects and
20 operates fairly independently from the department.

21 HEARING OFFICER: It may be their own
22 employer?

23 MS. CARTER: In terms of this, no.

24 HEARING OFFICER: Are your interests
25 consistent between IDWR and the board?

1 MS. CARTER: Well, the board in this
2 instance is the one that's having the hearing.

3 HEARING OFFICER: Correct.

4 MS. CARTER: And the department is the
5 one that issued the permit.

6 HEARING OFFICER: Okay.

7 MS. CARTER: So I just wanted to make
8 sure that everybody understood that there is a
9 distinct difference, especially with Mr. Becker
10 talking about --

11 HEARING OFFICER: The Salmon River?

12 MS. CARTER: Well, no. Like, it was
13 the board that has the issue with the freeze lake
14 data, and it's not the department. And there are
15 different funding issues related to that as well as
16 programmatic and statutory authorizations.

17 So I just want to make sure that that
18 is clear.

19 HEARING OFFICER: I appreciate that,
20 and we will try to make sure that that is continued.
21 Should we have a different heading for the case?

22 MS. CARTER: It should be Before the
23 Idaho Water Resource Board, not the department.

24 HEARING OFFICER: Okay.

25 MR. BECKER: And that is a fairly

1 substantial substitution of party.

2 HEARING OFFICER: Right.

3 MR. BECKER: And also, my concern is
4 it seems like people are wearing different hats at
5 different times. So it --

6 MS. CARTER: It -- it's --

7 MR. BECKER: -- just seems like
8 there's a lot of commingling of duties, and I think
9 this is important because there are -- were this
10 matter to go up on appeal, being that we have a state
11 district court case with one party.

12 MS. CARTER: So the Water Resource
13 Board is not a party. The Water Resource Board is the
14 entity that is hearing the matter.

15 HEARING OFFICER: All right. This is
16 what I'm going to do. I want from the -- from you a
17 statement as to who you represent and who is in charge
18 of making the final decisions so that Mr. Hastings and
19 (indecipherable) can contact them if they need to try
20 to settle this case. Number one.

21 Number two, whether or not there needs
22 to be separate counsel for the two entities. And if
23 you'd have that to me within two weeks. Is that
24 consistent?

25 MS. CARTER: Yes, that's --

1 HEARING OFFICER: Very good. Now we
2 know where we're going in that regard. It's just
3 information.

4 MR. BECKER: That's fine, Your Honor.
5 My -- my concern is then for discovery, who I'm
6 sending it to.

7 HEARING OFFICER: Yeah. That's a good
8 idea. Would you also indicate in that as to parties
9 to be deposed, parties to be served with discovery,
10 please?

11 MS. CARTER: Absolutely, Your Honor.

12 FEMALE VOICE: Just to clarify, that I
13 did want to note for the record that filings since you
14 joined the case have been under the board's heading.
15 So that's what's been on --

16 HEARING OFFICER: Of course.

17 FEMALE VOICE: That's what's been on
18 our witnesses and orders. And then additionally, I
19 might have missed this. Did you guys state how many
20 days you need for the hearing? Did I miss that?

21 MR. BECKER: I think that will be
22 dependent on some discovery.

23 HEARING OFFICER: On discovery.

24 MS. CARTER: Okay.

25 MR. BECKER: I don't see this being a

1 (indecipherable).

2 HEARING OFFICER: I'm going to
3 schedule it for two days.

4 MS. CARTER: Yeah.

5 HEARING OFFICER: Anything further?

6 MS. CARTER: No, Your Honor.

7 HEARING OFFICER: Mr. Becker?

8 MR. BECKER: Nothing that I can think
9 of at this time.

10 HEARING OFFICER: Very well. I
11 appreciate everyone's attendance. Welcome new lawyer
12 to the practice. And I will await the -- I'll send
13 out that scheduling and I will await your statement of
14 parties. And we're in recess. Thank you.

15 (Proceedings concluded.)

16 (END OF TRANSCRIPTION)

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TRANSCRIPTION CERTIFICATE

I, CHERYL J. HAMMER, the undersigned
Registered Professional Reporter, do hereby certify:

That the foregoing transcript was
transcribed under my direction; that the transcript is
true and accurate to the best of my knowledge and
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event of the cause.

WITNESS MY HAND this 1st day of July 2026.



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[11 - bed]

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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.

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BEFORE THE WATER RESOURCES BOARD
OF THE STATE OF IDAHO

IN THE MATTER OF THE)
APPLICATION FOR:)
STREAM CHANNEL ALTERATION)
PERMIT NO. S37-20565)

VERBATIM REPORT OF PROCEEDINGS
BEFORE THE HONORABLE
HEARING OFFICER ROGER BURDICK

APRIL 24, 2025

Transcribed from recording by:
Cheryl J. Hammer, Registered Professional Reporter
Idaho CCR 1206; New Mexico CCR 640; Oregon CCR 21-0013
Utah CCR 126919357-7801; Washington CCR 2512

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3 (BEGINNING OF TRANSCRIPTION)

4 (Proceedings begin.)

5 HEARING OFFICER: I have before me
6 Becker and Meghan --

7 MS. CARTER: Carter.

8 HEARING OFFICER: -- Carter. Okay.
9 That's right. That's a new -- the old name?

10 MS. CARTER: Same name.

11 HEARING OFFICER: Okay. Getting that
12 guy (inaudible), aren't you?

13 MS. CARTER: I have a professional
14 name. I've got publications. People know who I am.
15 I'm not changing my name.

16 HEARING OFFICER: Okay.

17 MR. BECKER: My wife, her doctor name
18 is (inaudible.)

19 HEARING OFFICER: All right. Good.
20 The parties came -- Kahle came to me and said, hey, I
21 think we could use some time to mediate this to try to
22 come to some remuneration experts. Get it done that
23 way.

24 Why don't you lay it out for me what
25 you think -- where you think we're at, and then I'll

1 have Meghan do it also, please.

2 MR. BECKER: So kind of from the
3 outset here we said, hey, there's a problem here due
4 to the ownership issue. It's like what you've heard
5 (indecipherable) some way. And, yeah, that's creating
6 problems with my client being parties if
7 (indecipherable) dealing with the City of Ketchum.
8 (Inaudible.)

9 (All inaudible.)

10 MR. BECKER: Phase one is
11 essentially...

12 (All inaudible.)

13 MR. BECKER: Phase one is essentially
14 for the procurement. So that procurement (inaudible)
15 looks like is...

16 HEARING OFFICER: Tell me about, have
17 you seen the MOU?

18 MR. BECKER: I have seen an MOU.

19 HEARING OFFICER: A draft?

20 MR. BECKER: A draft (indecipherable).
21 (All inaudible.)

22 MR. BECKER: (Indecipherable.)

23 HEARING OFFICER: The scope of the
24 work is going to be the issue. That's been forever.
25 MOU. What's the feedback you're getting?

1 MS. CARTER: I -- I think that I'm
2 just waiting to hear back on the (inaudible)
3 negotiation stage.

4 HEARING OFFICER: What's a timeframe
5 that's reasonable? Two weeks?

6 MR. BECKER: I mean, I don't know.
7 (Inaudible) the contract.

8 (All inaudible.)

9 HEARING OFFICER: The MOU will -- the
10 MOU will have the scope of work, will it not?

11 MR. BECKER: No. Not -- (inaudible).

12 MS. CARTER: So the procurement
13 process will -- we'll have to get an owner's advisor
14 instruction manager type person to see things to do
15 that. Then the department will have to (inaudible).

16 So we'll have the scope of work set
17 forth for owner's advisor and then how that developed
18 and (inaudible.)

19 HEARING OFFICER: Usually you have a
20 group of people that have done this, have the
21 expertise. You have that the whole world or is it
22 four or five men or women and to do that scope of
23 work?

24 MR. BECKER: Brockway.

25 MS. CARTER: Yeah. We --

1 MR. BECKER: We hired Brockway and we
2 haven't talked to him in...

3 (All inaudible.)

4 HEARING OFFICER: But Brockway -- the
5 Brockway plan you guys didn't like.

6 MS. CARTER: No. No. No. The plan
7 is fine.

8 HEARING OFFICER: Okay.

9 MS. CARTER: We would probably just
10 say, here's the plan. Go for it.

11 HEARING OFFICER: Okay. All right.

12 MS. CARTER: So...

13 HEARING OFFICER: But we have to have
14 some parameters here so that we can make some
15 progress. So the MOU is going to be fairly easy.

16 MR. BECKER: Yeah.

17 HEARING OFFICER: Two weeks? A week?

18 MS. CARTER: Yeah.

19 HEARING OFFICER: So two weeks we have
20 an MOU. Then what's the next step? What's reasonable
21 in that regard?

22 MS. CARTER: So I think the -- the big
23 question is how much uncertainty adverse (inaudible)
24 is comfortable with regarding costs.

25 (All inaudible.)

1 MS. CARTER: Substantive discussion
2 next. So if we can get the details of (inaudible).
3 Two weeks, we probably (inaudible). The department's
4 going to have to (inaudible) full things, a minimum of
5 six (inaudible).

6 HEARING OFFICER: All right. Well,
7 like, (indecipherable) and all the rest of the big
8 cases you get, everybody wants to settle, but nobody
9 is (inaudible). How realistic is that?

10 (All inaudible.)

11 MR. BECKER: (Inaudible.)

12 MS. CARTER: Well, yeah, but the state
13 has no interest in gouging.

14 HEARING OFFICER: This is one of them.
15 What I would (inaudible). Why is the City of Ketchum
16 a problem here? Because it is the state's riverbed
17 and it's the state's water.

18 MS. CARTER: I -- I honestly haven't
19 looked into that in any great (inaudible). So that
20 would be one of the things that we could do, navigate
21 and getting all the --

22 HEARING OFFICER: Then they're going
23 to sue us (inaudible). Then we're two years down the
24 road (inaudible).

25 MR. BECKER: (Indecipherable). Poke

1 the Ketchum in the eye on state land stuff saying --
2 when they tried to impose there's voting restriction
3 on -- on the endowment land, the state's --

4 HEARING OFFICER: (Inaudible) out of
5 here, I would think.

6 (All inaudible.)

7 MR. BECKER: They have every -- their
8 regulations are not going to indemnify (inaudible).

9 (All inaudible.)

10 MR. BECKER: Ketchum then has
11 (inaudible) how we deal with and also (inaudible).

12 (All inaudible.)

13 MR. BECKER: Ketchum, we think,
14 Ketchum (indecipherable). And there's a tree, a major
15 tree that was on my clients property that was really
16 (inaudible).

17 HEARING OFFICER: Everybody thinks
18 it's cottonwood.

19 MR. BECKER: You know, it was secured
20 in a river bank in place. Anyway, yeah, there's
21 jurisdiction, but (indecipherable).

22 HEARING OFFICER: Or it does not play
23 well with that. Any further input? I mean, I can --
24 here's what I'm going to do. I'm going to keep this
25 matter for (inaudible).

1 MR. BECKER: I have a trial in
2 (inaudible).

3 (All inaudible.)

4 HEARING OFFICER: I continue this to
5 the end of May. (Inaudible.) See what progress we
6 have made.

7 MR. BECKER: Right now, I have
8 outstanding discovery.

9 HEARING OFFICER: (Indecipherable.)

10 MR. BECKER: No. I think my latest
11 discovery is what prompted the (indecipherable) to
12 talk to her client to (indecipherable).

13 (All indecipherable.)

14 MR. BECKER: I want to litigate the
15 ownership of the banks of the river. I have each
16 study is being conducted that shows (indecipherable)
17 the state's eyes.

18 (All inaudible.)

19 HEARING OFFICER: All right. I'm
20 going to continue. I'm going to set another status
21 conference at the end of May. I really do want to try
22 to make progress rather than this thing get bogged
23 down like it has been.

24 How about May 30th, Kahle?

25 MS. CARTER: (Indecipherable.)

1 HEARING OFFICER: That would be a
2 Friday.

3 MS. CARTER: Oh, that's why.

4 HEARING OFFICER: Will you be
5 traveling back or something?

6 MALE VOICE: Thursday the 29th an
7 option?

8 HEARING OFFICER: Sure, for me. I
9 don't know about Meghan.

10 MS. CARTER: Yeah. I just have some
11 thing at 10:00. I'm available otherwise.

12 HEARING OFFICER: Okay. What about
13 1:00? Would that be all right?

14 MS. CARTER: Yeah.

15 MR. BECKER: (Indecipherable.)

16 HEARING OFFICER: Okay. We'll reset
17 this for status conference. You can do it by Zoom or
18 here, whichever is the best for either of you. We
19 will do it 1:00 on the 29th. Now we're making
20 progress.

21 Anything else that I can help?

22 (All inaudible.)

23 MR. BECKER: No. No. No.

24 (All inaudible.)

25 HEARING OFFICER: (Indecipherable.)

1 MR. BECKER: No. I just see that when
2 you update (indecipherable) things change.
3 (Indecipherable.)

4 HEARING OFFICER: I want them to just
5 leave me alone.

6 MR. BECKER: Yeah.

7 MS. CARTER: We all do.

8 HEARING OFFICER: All right. At this
9 time we're off record. I thank both of you.

10 (Proceedings concluded.)

11 (END OF TRANSCRIPTION)

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TRANSCRIPTION CERTIFICATE

I, CHERYL J. HAMMER, the undersigned
Registered Professional Reporter, do hereby certify:

That the foregoing transcript was
transcribed under my direction; that the transcript is
true and accurate to the best of my knowledge and
ability to hear the audio; that I am not a relative or
employee of any attorney or counsel employed by the
parties hereto; nor am I financially interested in the
event of the cause.

WITNESS MY HAND this 1st day of July 2026.



CHERYL J. HAMMER, RPR

Certified Court Reporter

Washington CCR No. 2512

New Mexico CCR No. 640

Oregon CCR No. 21-0013

Utah CCR 126919357-7801

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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.

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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.

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BEFORE THE WATER RESOURCES BOARD
OF THE STATE OF IDAHO

IN THE MATTER OF THE)
APPLICATION FOR:)
STREAM CHANNEL ALTERATION)
PERMIT NO. S37-20565)

VERBATIM REPORT OF PROCEEDINGS
BEFORE THE HONORABLE
HEARING OFFICER ROGER BURDICK

MAY 29, 2025

Transcribed from recording by:
Cheryl J. Hammer, Registered Professional Reporter
Idaho CCR 1206; New Mexico CCR 640; Oregon CCR 21-0013
Utah CCR 126919357-7801; Washington CCR 2512

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(BEGINNING OF TRANSCRIPTION)

(Proceedings begin.)

HEARING OFFICER: We're on record in Stream Alteration. IDWR. Hastings versus IDWR. IDWR versus Hastings. Do you know the case number? That's fine. Good enough.

We have had a very -- as diplomats say, very frank discussion of the issues off the record informally. Any comment made by either party will not be used in any way by any other party.

It was not a formal mediation or negotiation, but we had a frank discussion of the issues. And as a result, we are going to issue a new calendaring for this case. June 27th, written discovery is due. June -- July 28th, everyone -- both parties must exchange expert reports.

August 11th will be rebuttal reports. Must be into the hearing officer September 12th. Depositions to be held by that date.

September 29th, stipulation of facts, if any, from the parties. October 6th, dispositive motions to be filed. November 17th, dispositive motion hearing. December 2nd through 4th, a trial

1 date.

2 Any objection in that regard from
3 NAWR?

4 MS. CARTER: No, sir.

5 HEARING OFFICER: On behalf of Mr.
6 Hastings?

7 MR. BECKER: You said dispositive
8 motion hearing date was?

9 HEARING OFFICER: November 17th.

10 MR. BECKER: (Indecipherable.)

11 HEARING OFFICER: Anything? Any
12 objection, sir?

13 MR. BECKER: Not at this time, again,
14 pending my client's availability for trial, which I
15 don't anticipate any issues, but...

16 HEARING OFFICER: Okay. Will do.

17 MR. BECKER: (Indecipherable.)

18 HEARING OFFICER: Will do.

19 Hearing nothing further, the court
20 will enter a written order. And we are adjourned.
21 The hearing is. We're adjourned.

22 (Proceedings concluded.)

23 (END OF TRANSCRIPTION)

24

25

TRANSCRIPTION CERTIFICATE

I, CHERYL J. HAMMER, the undersigned
Registered Professional Reporter, do hereby certify:

That the foregoing transcript was
transcribed under my direction; that the transcript is
true and accurate to the best of my knowledge and
ability to hear the audio; that I am not a relative or
employee of any attorney or counsel employed by the
parties hereto; nor am I financially interested in the
event of the cause.

WITNESS MY HAND this 1st day of July 2026.



CHERYL J. HAMMER, RPR
Certified Court Reporter
Washington CCR No. 2512
New Mexico CCR No. 640
Oregon CCR No. 21-0013
Utah CCR 126919357-7801
Cheryl.Hammer.CourtReporter@Frontier.com

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Idaho Rules of Civil
Procedure

Rule
30

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BEFORE THE WATER RESOURCES BOARD
OF THE STATE OF IDAHO

IN THE MATTER OF THE)
APPLICATION FOR:)
STREAM CHANNEL ALTERATION)
PERMIT NO. S37-20565)

VERBATIM REPORT OF PROCEEDINGS
BEFORE THE HONORABLE
HEARING OFFICER ROGER BURDICK

AUGUST 14, 2025

Transcribed from recording by:
Cheryl J. Hammer, Registered Professional Reporter
Idaho CCR 1206; New Mexico CCR 640; Oregon CCR 21-0013
Utah CCR 126919357-7801; Washington CCR 2512

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(BEGINNING OF TRANSCRIPTION)

(Proceedings begin.)

HEARING OFFICER: There we go.

STAFF: You might want to also turn on the microphone so that they can hear you online.

HEARING OFFICER: Over to Friday. We're on record in the matter of Application of Stream Channel Alteration Permit Number S37-20565.

I'm Roger Burdick, the appointed hearing officer in this matter, and I'll have the lawyers introduce themselves, starting with the department.

MS. CARTER: Meghan Carter, deputy attorney general for Department of Water Resources.

HEARING OFFICER: And behind you?

MS. CARTER: Behind me, just observing, is Garrett Hensley. He's a soon-to-be attorney for --

HEARING OFFICER: Very good.

MS. CARTER: -- the AG's office.

HEARING OFFICER: Sir?

MR. BECKER: Kahle Becker for petitioner John Hastings.

1 HEARING OFFICER: For whom, sir? I
2 didn't hear it.

3 MR. BECKER: Petitioner John Hastings.

4 HEARING OFFICER: Very good. And on
5 remote, we have whom?

6 MR. LINNET: Sam Linnet, Your Honor.
7 I represent the community library. And Jenny Davidson
8 is in my office and logged into the meeting as well on
9 behalf of --

10 HEARING OFFICER: As an attorney?

11 MR. LINNET: Nope. As executive
12 director for the community library.

13 HEARING OFFICER: All right. And I
14 see a Mr. Mike Wade. Mr. Wade?

15 MR. WADE: Yes.

16 HEARING OFFICER: What's your
17 connection?

18 MR. WADE: I'm a board member, chair
19 of the board of the community library.

20 HEARING OFFICER: Very good. Thank
21 you, sir.

22 Any objection to any participants?

23 Hearing none, we'll proceed.

24 How I intend to go through today's
25 proceeding is as follows. We will hear the

1 petitioner's motion to compel first. Then we will
2 hear the petitioners -- and then the response of the
3 state, obviously. Then we will hear the response --
4 or then we will hear the motion for subpoena of the
5 community library corporation and/or personnel and
6 then hear from them.

7 Anything further than before we get
8 started? On behalf of the state?

9 MS. CARTER: Nothing further.

10 HEARING OFFICER: Mr. Becker?

11 MR. BECKER: I have nothing further at
12 this time.

13 HEARING OFFICER: On behalf of the
14 community library, anything, Mr. Linnet?

15 MR. LINNET: No. No. We're good.
16 Thank you.

17 HEARING OFFICER: Very good. At this
18 point, I will hear Mr. Becker concerning the
19 petitioner's motion to compel, response from the
20 state, and then Mr. Becker's rebuttal in that regard.
21 And then I may ask some clarifying questions.

22 And you may proceed, Mr. Becker.

23 MR. BECKER: Your Honor, I think this
24 is a pretty straightforward issue. It's been briefed.
25 I assume you've read the brief at this point.

1 Essentially, we're asking for the
2 department's historical records on how other similarly
3 situated individuals were treated. The department has
4 just completely refused to produce any records
5 whatsoever. It seems based on a relevance and we
6 heard in some objection.

7 Normally in these types of situations,
8 I see a party produce the records as they're kept in
9 the ordinary course of business and I'm allowed to go
10 through them and make copies of what I would like.
11 After all, this is a state agency subject to the public
12 records request.

13 So I'm not sure what the recalcitrance
14 is in prohibiting me for inspecting these records for
15 my client in connection with this matter.

16 I've set forth the reasons that we
17 believe this type of information may -- may assist Mr.
18 Hastings in the presentation of his evidence in the
19 case here. So I don't -- I don't find that the burden
20 is really much of anything on the department here.
21 That the risk, it's really a minimal -- minimal effort
22 on their part. Hey, here's a room full of boxes. Go
23 look through them. And that's what I'd like to do.

24 And they charge me for copies, and
25 that's fine as well. If they're electronic, I can

1 make copies and have them Bates numbered and they can
2 -- they can go through that. And if there's a fight
3 over anything that I've actually gotten and Bates
4 numbered, we can have that fight afterwards.

5 But I don't see what the harm is in me
6 taking a look at boxes of documents.

7 HEARING OFFICER: Okay. On behalf of
8 the state.

9 MS. CARTER: Your Honor, these are not
10 records that are easily accessible for the department.
11 Any of the older ones will be saved off site, and the
12 department will have to track them down.

13 There are also electronic records that
14 are not easily produced. They have to go through and
15 search through things. It will take a considerable
16 amount of time. Even if the department is subject to
17 the public records act, that's not this particular
18 situation.

19 Further. Mr. Becker mentioned that he
20 wants to see how other similar -- similarly situated
21 individuals were treated. However, he's asked for
22 those that were never issued a notice of violation.
23 Therefore, they wouldn't have a consent order.

24 I don't see how that's at all relevant
25 to this particular matter, especially since the --

1 you, the hearing officer, have limited the purpose of
2 the hearing to whether or not the conditions on the
3 permit are related to the consent order.

4 So, yeah, it's not reasonably
5 calculated to lead to admissible evidence, it's not
6 related to the topic of the hearing, and it does
7 create a significant burden on the department to
8 answer this request.

9 HEARING OFFICER: Response, sir?

10 MR. BECKER: Your Honor, I think let's
11 go back to how this all began. My client was in the
12 midst of a flood emergency declaration, state, local,
13 and national, and the -- the local permit was issued.
14 And that provision in the local permit stated that the
15 state typically waives the permitting requirements in
16 the event of an emergency.

17 My client went forward, and we contend
18 due to really a malicious prosecution by Aaron Golart,
19 my client was singled out when landowners up and down
20 the river were allowed to do the -- the bank
21 protection during the course of a flood.

22 And here, my client was requested to
23 do this emergency work because there's a bridge
24 immediately downstream of his property that trees were
25 in the process of falling into. And so I think that

1 for whatever reason my client has been singled out
2 here.

3 And whether or not someone was issued
4 a consent order or not is really irrelevant. If
5 people are treated differently based on their
6 political views or connections or things like that or
7 based on Mr. Golart's whims on any particular day, I
8 don't -- I don't see how precluding me from simply
9 looking at these documents to see -- to see if that
10 type of treatment is taking place with state
11 enforcement procedures harms the state.

12 They were able to generate a list of
13 these files. It's not like they don't know what these
14 files are. They've given me a list of -- I don't know
15 -- 30 or 40 cases. And so I'm not sure I see what the
16 -- the burden is here.

17 It seems like it would be my burden if
18 there's -- if they're in boxes or files or something
19 like that. I'd just need the state to point me where
20 to go.

21 You know, again, the issues that are
22 for the hearing officer are based on the review of the
23 permit and whether the agency action was reasonable
24 under the circumstances here, and I need to be able to
25 develop a record to show the unreasonableness of the

1 agency's actions here.

2 And also with this new subsection 5, I
3 want to make sure that I develop a record that my
4 client's personal liberty is maximized and that agency
5 power is minimized. And so how can we have that
6 evaluation if there's a maximize/minimize? Well, then
7 it would seem that you'd need to know what the
8 bookends of that should be.

9 And that's where I'm wanting to look
10 at how -- how other individuals are treated in this
11 type of situation.

12 HEARING OFFICER: Anything further on
13 the state?

14 MS. CARTER: Yes. The consent order
15 and agreement was entered into, and it appears that
16 Mr. Becker would like to challenge the issuance and
17 whether or not that was necessary, but that's not at
18 issue here. It is merely the application for permit
19 and the conditions on the permit.

20 What Mr. Becker is asking for goes
21 well beyond the scope of that. And it is not just a
22 matter of pointing him to where the records are.

23 While the department has a database
24 with lists of things and whatnot, they would have to
25 go through and track down where all of those records

1 are, assemble them, and provide them to Mr. Becker.
2 In addition, we would have to review for privilege.

3 So it is a great burden for the
4 department at this time to do that.

5 HEARING OFFICER: Okay. The matter's
6 under advisement, and I will get you a decision as
7 soon as possible.

8 Anything further from either party in
9 this regard?

10 MS. CARTER: No.

11 HEARING OFFICER: Hearing none. The
12 motion for a subpoena of the -- to depose the director
13 of the community library is the next issue. And you
14 may proceed Mr. Becker.

15 MR. BECKER: Yes. Your Honor, again,
16 this is brief, and I assume the court has -- hearing
17 officer has reviewed that.

18 Here, we've got a situation -- one,
19 this motion was unopposed at the time it was filed.
20 Mr. Linnet has -- I don't believe he's entered his
21 appearance at this stage, yet he filed a motion to
22 quash, and that motion to quash is not noticed for a
23 hearing today.

24 So I guess, preliminarily, is there
25 any objection whatsoever that is properly noticed,

1 because in my view, the hearing officer should issue
2 this subpoena because there's no -- no opposition
3 whatsoever that's before the -- the hearing officer as
4 we sit here today.

5 So as a matter procedural
6 clarification, I'd like to know if --

7 HEARING OFFICER: Very good.

8 MR. BECKER: -- (indecipherable) now
9 actually for a response to what's been filed.

10 HEARING OFFICER: Well, here's --
11 here's my response. We can either say there's no been
12 -- there's not been an appearance. As such, you win.
13 He then refiles, and we have another hearing.

14 MR. BECKER: Yeah.

15 HEARING OFFICER: And as a result, I'd
16 like to get it done today one way or the other in that
17 regard.

18 Secondly, I think you have been, as
19 well as the state has been, given notice of all of the
20 appearances or objections by Mr. Linnet, and as such,
21 I can't see a lot of problems with going forward today
22 other than formal procedure, which I think in an
23 administrative hearing, we -- it's a little looser
24 than a district court.

25 So in my discretion, I believe the

1 parties know what the issues are. I believe the
2 parties can argue the matter and make some headway
3 after I make a decision.

4 MR. BECKER: Well, for example --

5 HEARING OFFICER: Unless, unless you
6 would like to have a continuance for a formal
7 appearance and a further hearing in this matter.

8 MR. BECKER: I think that would be
9 appropriate, because right now Mr. Linnet has made
10 certain statements without providing factual
11 justification for those statements, specifically with
12 respect to the location of the hearing -- or of the
13 deposition. And to the extent I need to rebut those
14 unverified statements, I think I have the opportunity
15 -- should have the opportunity to do so.

16 I believe his motion was filed late
17 Thursday, and -- and so, one, I've been busy with work
18 and was out over the weekend, but I have not had the
19 full opportunity to respond to that motion.

20 So if the court is inclined to
21 consider anything stated -- if the hearing officer's
22 inclined to consider anything stated in Mr. Linnet's
23 motion, then yes, I'd like the opportunity to respond.

24 HEARING OFFICER: Okay. Mr. Linnet,
25 you've heard the argument. Do you have any comments,

1 sir?

2 MR. LINNET: Yes, Your Honor.
3 Apologies. How do you like to be referred to in these
4 hearing settings?

5 HEARING OFFICER: Hearing officer.

6 MR. LINNET: Hearing officer.
7 Perfect. Thank you.

8 HEARING OFFICER: Just don't call me
9 what my kids call me.

10 MR. LINNET: I will try very hard not
11 to do that or to trig -- or to guess at anything.

12 We'd like you to deal with this now.
13 The community library's a nonparty. The subpoena
14 filed on behalf of Mr. Hastings is seeking irrelevant,
15 overly broad information.

16 I mean, it's procedurally defective
17 because it doesn't strictly comply with 30(b)(6)
18 requirements to designate a party representative. I'm
19 not really worried about that, and I would guess that
20 you are not as well.

21 Since the community library has
22 retained counsel, we have a designee. I'm more
23 concerned with the substance of the subpoena. Except
24 for one of the requests, there are no time limits.
25 The information that it seeks is about an unrelated

1 parcel to the property that subject to this petition
2 and it's seeking a lot of just irrelevant, overly
3 broad information.

4 That seems to me more to be a fishing
5 expedition for issues that may or may not come up in
6 other litigation or other matters that have either not
7 been filed or not before you today.

8 I think, you know, counsel for the
9 state and Mr. Hastings and I have -- we've emailed
10 back and forth and tried to resolve this without your
11 participation. We offered to and we have attended a
12 deposition remotely, but that was rejected.

13 At this point in time, we're asking
14 for you to completely entirely quash the subpoena. If
15 you're not comfortable with that, then we would ask in
16 the alternative that it be modified so that myself and
17 my client can stay here in Blaine County and not burn
18 a day of staff time and legal fees going to a
19 deposition that has nothing to do with the issues in
20 front of the -- the board right now.

21 And if there are any questions for --
22 for you, I'm happy to answer them. But we'd like to
23 resolve this today and be done with it.

24 HEARING OFFICER: At this point in
25 time, I'm going to rule the following. Mr. Becker,

1 you have objected to any hearing. It's obvious that
2 you have a backlog of work. You've just indicated
3 that. So I don't wish to continue this matter because
4 it would be probably another month before that
5 happens.

6 I am going to order, however, the
7 following. Within five days from today oral -- or any
8 oral argument you would have given to this tribunal or
9 this proceeding must be presented by written document,
10 brief, or argument, and five days after that, you will
11 -- you will then respond in that regard.

12 And I will give you -- Mr. Linnet, you
13 will then respond in written form. And then, Mr.
14 Becker, you will have two days to rebut that response.

15 At that point in time, the matter will
16 be under advisement. These time periods do not
17 include any intervening weekends. So you can figure
18 that out in -- in your work. But at least that gets
19 us going forward and I think gives everyone the due
20 process appropriate on this matter.

21 Any objection in that regard, Mr.
22 Linnet?

23 MR. LINNET: No. That that sounds
24 reasonable. Thank you very much.

25 HEARING OFFICER: Any objection, Mr.

1 Becker?

2 MR. BECKER: Just mapping up the days
3 here. So it looks like my response is due on the
4 19th, which would be next Tuesday.

5 HEARING OFFICER: Okay. In other
6 words, your argument in support of the subpoena?

7 MR. BECKER: Well, I've submitted an
8 argument in support of a subpoena. He has now
9 submitted a separate motion to quash.

10 HEARING OFFICER: Okay.

11 MR. BECKER: So that's --

12 HEARING OFFICER: Well, what I'm
13 saying is any argument that might have been given
14 today, you give me in written -- written form, is all.

15 MR. BECKER: That's fine.

16 HEARING OFFICER: And that -- I
17 understand both of you have proceeded in that regard,
18 but if you're going to have argument, give that to me
19 in five days.

20 MR. BECKER: Right. So that's 8/19 is
21 when my --

22 HEARING OFFICER: Very good.

23 MR. BECKER: -- essentially response
24 to his motion is due. And then his --

25 HEARING OFFICER: Wait. Hold on.

1 MS. CARTER: Point of clarification.
2 He did say no weekends. So the day that I'm getting
3 his 8/21.

4 MR. BECKER: I already counted
5 weekends. You were saying, like, weekends don't give
6 any extra days, but...

7 HEARING OFFICER: No. No.

8 MS. CARTER: Oh.

9 HEARING OFFICER: I'm giving you
10 weekends.

11 MR. BECKER: Okay. So then I'm
12 essentially -- so here we are, today's the 14th. So
13 15th. Yeah, so the 21st is when -- when mine's due.

14 HEARING OFFICER: Very well.

15 MR. BECKER: Okay.

16 HEARING OFFICER: Mr. Linnet?

17 MR. LINNET: And mine would be due on
18 the 28th. Is that accurate? 7th?

19 HEARING OFFICER: The 28th or 27th?

20 MS. CARTER: 28th is what I'm getting
21 for five business days --

22 HEARING OFFICER: Very good.

23 MS. CARTER: -- following the 21st.

24 HEARING OFFICER: And two more days
25 after that.

1 MR. BECKER: So I'm due. That
2 actually puts us at Labor Day. I believe.

3 HEARING OFFICER: I thought you were
4 going to say that puts us in labor and I was going to
5 say, what?

6 MR. BECKER: That doesn't come
7 (inaudible). So that's essentially Tuesday after
8 Labor Day would be september (inaudible).

9 HEARING OFFICER: Any objection in
10 that regard, Mr. Linnet?

11 MR. LINNET: No. That works. Thank
12 you.

13 HEARING OFFICER: Very good. Then I
14 will give a written response with a decision in that
15 regard as soon as possible.

16 Any other matters then, Mr. Becker?

17 MR. BECKER: The only thing would be
18 if the -- if the hearing officer issues an order, I
19 would hope that it would just say, Hey, Sam, Kahle,
20 and Meghan, nuck this within this timeframe so you can
21 arrange a date, because I don't want to say, here's --
22 I mean, the date I have in my subpoena is long come
23 and gone.

24 HEARING OFFICER: Oh, sure.

25 MR. BECKER: So that's my only thing.

1 HEARING OFFICER: I understand. Put
2 some parameters on any, just any decision.

3 MR. BECKER: Yeah.

4 HEARING OFFICER: All right. Anything
5 further, Mr. Linnet?

6 MR. LINNET: No. Thank you.

7 HEARING OFFICER: On behalf of the
8 state?

9 MS. CARTER: Nothing further. Thank
10 you.

11 HEARING OFFICER: Very good. I'll get
12 back to you folks posthaste. Thank you.

13 MR. LINNET: Thank you, Hearing
14 Officer. Thank you for allowing us to attend
15 remotely. Thank you, Counsel.

16 HEARING OFFICER: That's fine.

17 (Proceedings concluded.)

18 (END OF TRANSCRIPTION)

19

20

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TRANSCRIPTION CERTIFICATE

I, CHERYL J. HAMMER, the undersigned
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ability to hear the audio; that I am not a relative or
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WITNESS MY HAND this 1st day of July 2026.



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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.

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BEFORE THE WATER RESOURCES BOARD
OF THE STATE OF IDAHO

IN THE MATTER OF THE)
APPLICATION FOR:)
STREAM CHANNEL ALTERATION)
PERMIT NO. S37-20565)

VERBATIM REPORT OF PROCEEDINGS
BEFORE THE HONORABLE
HEARING OFFICER ROGER BURDICK

NOVEMBER 17, 2025

Transcribed from recording by:
Cheryl J. Hammer, Registered Professional Reporter
Idaho CCR 1206; New Mexico CCR 640; Oregon CCR 21-0013
Utah CCR 126919357-7801; Washington CCR 2512

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(BEGINNING OF TRANSCRIPTION)

(Proceedings begin.)

HEARING OFFICER: At this time we're on the record in 37-2565, Hastings v. IDAWR.

The matter is before the hearing officer for argument on cross-motions for summary judgment. I'm Roger Burdick. I'll be the hearing officer in this matter. And I'd like parties to identify themselves, starting with the state.

MS. CARTER: Meghan Carter, deputy attorney general for the state. And I have with me Sarah Ajeti, also a deputy attorney general.

HEARING OFFICER: Very well.

MR BECKER: Kahle Becker for petitioner John Hastings.

HEARING OFFICER: And you, sir.

MR. HENSLEY: Garrett Hensley, deputy attorney general with the department. Just watching today.

HEARING OFFICER: Very good.

MR. HENSLEY: Thank you, sir.

HEARING OFFICER: You don't have anything better to do?

1 MR. HENSLEY: This is a good learning
2 opportunity.

3 HEARING OFFICER: Very good. Well,
4 you haven't seen it yet.

5 MR. HENSLEY: And a supreme court
6 justice and, you know, a lot of experience in the
7 room.

8 HEARING OFFICER: So I think
9 procedurally, we will go as follows. Excuse me.

10 I'd like to hear from the state on
11 their motion, and then Mr. Becker on response as well
12 as his motion. Then response and rebuttal, and then
13 we're back.

14 Are there any preliminary matters?

15 MS. CARTER: I don't have any.

16 MR. BECKER: No.

17 HEARING OFFICER: Very well. You may
18 proceed, madam.

19 MS. CARTER: So in this matter, the
20 sole issue before the hearing officer is whether the
21 terms of the permit are consistent with the consent
22 order and agreement. This is --

23 HEARING OFFICER: You say agreement.
24 But the permit itself -- the permit itself had been
25 agreed to by the parties that signed prior to the

1 consent order?

2 MS. CARTER: No. The permit --

3 HEARING OFFICER: Do I have that
4 backwards?

5 MS. CARTER: The consent order came
6 first --

7 HEARING OFFICER: That's right.

8 MS. CARTER: -- and then the permit.

9 HEARING OFFICER: Very good. Thank
10 you.

11 MS. CARTER: This -- there's no
12 dispute of material facts. Therefore, this is a
13 question of law. So it's appropriate for summary
14 judgment.

15 The consent order itself is not
16 ambiguous nor does Mr. Hastings argue that it is. And
17 the terms that Mr. Hastings is concerned with are the
18 ones related to access to property of a third party.

19 Now the consent order has to be broad.
20 It was broad because the details of what the permit
21 would be was not addressed during that negotiation,
22 and it -- it says that Mr. Hastings is going -- would
23 submit an application for a permit that proposes a
24 plan to restore the stream bank, and the plan must be
25 designed to reduce further erosion and help restore

1 more functional riverine conditions and include
2 minimum requirements, bioengineering treatments, and
3 then a planting plan.

4 And then, he shall comply with the
5 terms and conditions of any permit the department
6 issues. The terms on the permit that are in
7 contention are pretty standard, as Mr. Golart
8 testified and is in the record in his deposition, and
9 it's not something that could have necessarily been
10 put in the consent order prior to knowing what the
11 details of the restoration plan were.

12 HEARING OFFICER: Is that deposition
13 transcribed?

14 MS. CARTER: Yes, it is.

15 HEARING OFFICER: And is it in the
16 record or does any party wish to move it into the
17 record?

18 MS. CARTER: It was submitted with Mr.
19 Becker's declaration of counsel.

20 MR. BECKER: The entirety of it.

21 MS. CARTER: The entirety of it was.

22 HEARING OFFICER: I missed that, and
23 I'm sorry. Anything further?

24 MS. CARTER: Just -- nope. That's
25 kind of the summary.

1 HEARING OFFICER: Okay. Let me ask a
2 few clarifying questions. In going through the
3 motions -- not -- going through the motions filed with
4 the court, it seems pretty plain that there is a
5 riprap or some portion of work that was done, that was
6 done by Mr. Hastings' contractor, which was up to
7 standards of the department.

8 What areas that Mr. Hastings has done
9 have been placed pursuant to the consent order other
10 than that?

11 MS. CARTER: Well, Your Honor, that --
12 that -- the riprap was the cause of the notice of
13 violation.

14 HEARING OFFICER: Right.

15 MS. CARTER: It was not placed
16 pursuant to the consent order.

17 HEARING OFFICER: I understand that.
18 No. But didn't Golart testify that it -- the riprap
19 was up to standards of the department?

20 MS. CARTER: No. The riprap may be up
21 to standards, but there's also more to the restoration
22 plan.

23 HEARING OFFICER: Yes.

24 MS. CARTER: So that is --

25 HEARING OFFICER: Plantings, et

1 cetera, et cetera that I've read about.

2 MS. CARTER: Yes.

3 HEARING OFFICER: Right. Okay. Has
4 anything else been done?

5 MS. CARTER: No.

6 HEARING OFFICER: Very good. Thank
7 you.

8 Mr. Becker, response and your motion,
9 sir.

10 MR. BECKER: Yes. To a large extent,
11 my response is essentially my motion. I think the
12 crux of this concerns the requirement in the consent
13 order that Ms. (indecipherable) and Ms. Carter focused
14 on here. It says that my client -- respondent shall
15 comply. Respondent in the consent order is now
16 petitioner.

17 So respondent shall comply with the
18 terms and conditions of any permit the department
19 issues subsequent to the submittal of an appropriate
20 application and restoration plan pursuant to order
21 paragraph number 1.

22 In this situation, Mr. Golart hijacked
23 the permit process. My client was essentially
24 Sisyphus pushing a rock up a hill, over and over again
25 submitting applications that Mr. Golart nitpicked

1 apart.

2 Despite the very minimal requirements
3 in the consent order, he started adding all kind of
4 terms, all kind of permits, all while the threat was
5 there that my client could be civilly and criminally
6 prosecuted for violation of a consent order.

7 So the contention that my client has
8 applied for this work must be construed with the
9 understanding that he's doing so essentially at the
10 point of a gun. And so when Mr. Golart or Ms. Carter
11 says, yes, the riprap that started this whole thing
12 actually complied with state rules and regulations, I
13 think that's extremely offensive that we're here
14 because of a structure that was placed at a time when
15 the flood was eroding away the property and the City
16 of Ketchum asked my client, hey, this tree's about to
17 fall and block this bridge. Go do this stuff.

18 And he did it. And then he went to
19 the state, and as soon as he found out the state had
20 any concern, he immediately stopped and thought this
21 would be a simple process. Instead, he's been dragged
22 through the mud for years.

23 The crux of the issue is my client
24 shall comply with the terms of any permit Mr. Golart
25 decides. Well, all sides agree that he can only

1 impose terms in that permit that are grounded in state
2 law and state rule that is derived from that law and
3 interpretation of that law.

4 To date, I've yet to hear what law,
5 what rule. Mr. Golart is deciding to put my client
6 through the ringer on all of these terms and
7 conditions and thousands and thousands of dollars that
8 he's making my client expend to comply with his wishes
9 that aren't found in any rule or statute.

10 Under their interpretation, to take it
11 to the logical extreme, they could say, build the
12 Golden Gate Bridge, build a dam, build anything,
13 because Mr. Golart decides to put that term in a
14 permit.

15 And so an interpretation of the
16 consent order has to be grounded in rules and
17 statutes, and there are no rules and statutes that
18 allow the state to continue to drag my client round
19 and round and round to Mr. Golart's individual wishes.
20 That's what this is about, Mr. Golart's individual
21 wishes that aren't found in rules or statute.

22 And so I've provided a fair amount of
23 briefing on the rules and statutes. I provided -- I
24 hope that the hearing officer is able to read the
25 sections of Mr. Golart's testimony that are included

1 in the entirety of the deposition, and afterwards,
2 let's confirm and make sure, because it was a large
3 file and so things were submitted separately.

4 But the entirety of the deposition was
5 placed in the record. But at the end of the day, what
6 this comes down to is my client is being forced to put
7 in structures in an area of the river directly across
8 and slightly downstream from the main swimming hole
9 for the city of Ketchum.

10 Mr. Golart would like my client to
11 stick these large trees out into the river with root
12 balls that just seem like something that a small child
13 is going to get swept into and caught up in. And for
14 the privilege of doing that, he also has to sign off
15 to defend -- defend, indemnify, hold harmless this
16 party that claims to own a section of this publicly
17 owned river that (inaudible) is aware of.

18 HEARING OFFICER: Could I inquire in
19 that regard? You're talking about the conservation
20 easement. Is that correct?

21 MR. BECKER: Yeah. Well, the
22 ownership plus conservation easement. There's two
23 different private parties that claim interest in a
24 public river.

25 HEARING OFFICER: Right. You've got

1 -- you've got the Nature Conservancy and the library,
2 correct?

3 MR. BECKER: Yes.

4 HEARING OFFICER: All right. And as
5 such, Mr. Hastings previously had done work in that
6 area?

7 MR. BECKER: He had sought to.

8 HEARING OFFICER: Right.

9 MR. BECKER: And never did.

10 HEARING OFFICER: Was that with the
11 2014 permit or this permit?

12 MR. BECKER: 2014.

13 HEARING OFFICER: Okay. And then
14 during the -- why is it then is the conservancy and
15 library document even an issue unless Mr. Golart went
16 on that property and made stream bank changes? Did
17 he?

18 MR. BECKER: Mr. Golart?

19 HEARING OFFICER: Or Mr. Hastings.
20 I'm sorry, sir.

21 MR. BECKER: Well, my client's --

22 HEARING OFFICER: No. No.

23 MR. BECKER: -- being forced to.

24 HEARING OFFICER: No, no. No, no.
25 I'm asking, did he go on that property and make

1 changes?

2 MR. BECKER: That gave rise to the
3 situation --

4 HEARING OFFICER: []Yeah.

5 MR. BECKER: -- we're here about
6 today?

7 HEARING OFFICER: Yeah.

8 MR. BECKER: I don't believe so. Mr.
9 Golart testified that when he tagged my client with a
10 maximum fine allowable by law, that his assessment of
11 where the ordinary high watermark was, was made from
12 the Warm Springs Bridge looking downstream.

13 We have submitted pictures in the
14 record that shows exactly how far the river had swept
15 into my client's property.

16 HEARING OFFICER: Right.

17 MR. BECKER: We believe this is an
18 avulsive event. And so my client placed riprap on
19 what would have been his upland property, which now,
20 yes, the river was touching. So it was the new --

21 HEARING OFFICER: The --

22 MR. BECKER: -- ordinary high
23 watermark.

24 HEARING OFFICER: The issue is this.
25 Why is the -- why is that easement even an issue if he

1 never went into that portion of the river?

2 MR. BECKER: Because the work that
3 he's being required to do requires that. My client's
4 being required because of a no net rise certification
5 that --

6 HEARING OFFICER: Right.

7 MR. BECKER: Okay. So when you put
8 structures in a river that Mr. Golart's requiring,
9 which are these toe logs and bars and things like
10 that, that's putting water in a bathtub that raises
11 the bathtub up.

12 So that requires excavation elsewhere
13 to move the -- essentially, the river over to the left
14 is, I think, the goal of what Mr. Golart to some
15 extent is trying to do, in addition to just, I guess,
16 make this a trout habitat or something.

17 But because of that, it's extensive
18 work in the middle of the river that would be state
19 owned if the state actually stepped up and asserted
20 its public trust obligations here.

21 HEARING OFFICER: There could be no --
22 there can be no doubt, that how can an easement
23 transfer the state's constitutional and statutory
24 ownership of the stream bed to the high watermark? It
25 doesn't.

1 So why is conservancy even an issue?

2 MR. BECKER: They have a cloud on the
3 title of the state refuses to clear. At both --
4 there's two clouds. The library owns this section of
5 river, and the nature conservancy has a conservation
6 easement that restricts what the owner of the river
7 can do.

8 Now I understand at some point a river
9 becomes nonnavigable if you move upstream. The
10 state's own study that the state commissioned shows
11 that at this particular section, it was historically
12 navigable. In fact there's a historic smelter.

13 HEARING OFFICER: Yeah.
14 (Indecipherable) in the record.

15 MR. BECKER: Yeah. I mean, there's a
16 smelter in this area. I mean, it was historically
17 navigable at the time of statehood. I'm not sure why
18 the state hasn't done anything about it, but my client
19 finds himself at the crux of that in action.

20 HEARING OFFICER: All right.

21 MR. BECKER: So I think we've got
22 multiple things going on here that my state -- my
23 client's being compelled to do things that aren't
24 found in the state statute and the net --

25 HEARING OFFICER: So is it your

1 argument that every planting has to be in some sort of
2 administrative rule as opposed to some reasonable
3 interpretation of the rule and then rehabilitation
4 that is needed?

5 MR. BECKER: So number one, the
6 planting, there's cottonwoods that have planted and
7 naturally regenerated along this section of river.

8 HEARING OFFICER: So we have this
9 thing's been going on since 2015.

10 MR. BECKER: Right.

11 HEARING OFFICER: 2017.

12 MR. BECKER: Right. So when we look
13 at the consent order, and the interpretation of the
14 consent order in my view has to be construed to
15 maximize my client's personal liberty, we have woody
16 material along the stream bank, trees of woody
17 material.

18 So there's trees. They've grown.
19 That, to me, complies with that aspect.

20 HEARING OFFICER: Okay.

21 MR. BECKER: Did you have a second
22 aspect to that question?

23 HEARING OFFICER: No, sir. Thank you.

24 MR. BECKER: So the rule. I still
25 don't know what rule or what law gets us to the

1 planting plan that goes on for five years. Mr. Golart
2 wants to come on my client's --

3 HEARING OFFICER: (Indecipherable)
4 reports for five years.

5 MR. BECKER: Right. And if he doesn't
6 like the reports, then he can (inaudible) on the
7 property.

8 HEARING OFFICER: We had -- that's
9 impossible to know, obviously.

10 MR. BECKER: And that's the state.
11 For if they believe that they have the right to come
12 on Mr. Hastings' property for the next five years if
13 they don't like whatever planting reports they
14 receive.

15 Because, again, there's no rule. Mr.
16 Golart couldn't point to a single rule that authorized
17 this. So with no rule, I don't see how the agency can
18 pile on requirements.

19 HEARING OFFICER: I understand. Okay.
20 So I've touched on the conservancy. I've --
21 do you have anything further, Mr. Becker? I've read
22 your briefs, your declaration, the exhibits to the
23 declaration. Obviously, I'm going to read Mr.
24 Golart's deposition. I didn't have a chance to see it
25 before today.

1 Anything further?

2 MR. BECKER: Well, Your Honor, I
3 think, touching back on the motion to compel, to the
4 extent that the hearing officer feels that there's any
5 factual issues in dispute and for our position that
6 the state is acting arbitrarily and capriciously and
7 prosecuting my client for a structure that Ms. Carter
8 just admitted on the record complied with the rules at
9 the time it was constructed, I find it very odd that
10 my client was precluded from conducting discovery into
11 how the state handled other similar matters.

12 And as I pointed out, there was
13 another much more egregious matter where an individual
14 moved the entirety of Panther Creek outside of its
15 historic channel, and yet that was resolved with a
16 secret agreement that none of us are allowed to see?

17 I mean, that just strikes me as
18 corrupt government, and where we've got a statute that
19 says we have to look at whether my client's
20 constitutional rights were violated by the state's
21 actions and whether the state's acting arbitrarily and
22 capriciously.

23 Precluding a litigant, the matters of
24 the public, from seeing how the state addresses
25 egregious violations? I think that that's -- that's

1 really problematic from a public trust in government,
2 and I don't think the state's actions in keeping
3 Stream Channel Alteration settlements secret?

4 I mean, this isn't top secret military
5 information or something like that. This is a stream
6 channel. Public navigable waterways. And the public
7 is precluded from seeing that.

8 I think that that is extremely
9 troubling, and I believe that my client's rights to
10 discovery have been violated here by precluding my
11 client from seeing those types of agreements.

12 I understand -- I understand --

13 HEARING OFFICER: I think I made
14 myself clear in terms of the order, or tried to make
15 myself clear. So I understand your objection. It's
16 noted. And anything further?

17 MR. BECKER: Well, my point, Your
18 Honor, you made your ruling. Since that ruling, we
19 then had the discovery of this secret settlement that
20 Panther Creek --

21 HEARING OFFICER: I think
22 (indecipherable).

23 MR. BECKER: What's that?

24 HEARING OFFICER: I think I've already
25 heard about Panther Creek in one of your oral

1 presentations here.

2 MR. BECKER: You hadn't heard that it
3 was settled on a secret basis.

4 HEARING OFFICER: Okay. On a
5 confidential?

6 MR. BECKER: Confidential basis, which
7 I wasn't aware that the state was able to do something
8 like that.

9 HEARING OFFICER: Understood.
10 Understood. Anything further, sir?

11 MR. BECKER: One more concluding here.
12 I'd like to talk about what -- we have a hearing
13 coming up here in two weeks, and what that looks like.

14 HEARING OFFICER: Right. Madam?

15 MS. CARTER: I would like to address
16 one thing to start out with. The Panther Creek matter
17 is currently before district court. It has not been
18 settled. The confidentiality agreement was a
19 agreement with the United States to preserve attorney
20 client privilege for prosecutorial purposes.

21 So no, there was no secret agreement
22 resolving that issue.

23 HEARING OFFICER: Very well.

24 MS. CARTER: And then back to the
25 other arguments. I'm very confused as to what it is

1 that Mr. Hastings actually has an issue with. The
2 briefing talked about the various conditions on the
3 permit that related to access and landowner
4 permission. It didn't say anything about how
5 egregious he thinks the planting plan is. So my
6 briefing addresses the conditions on the permit.

7 One thing to point out, even if
8 cottonwoods have started to grow, the consent order
9 states, bioengineering in -- treatments to include
10 large woody material, for example, root wad engineered
11 log jam and brush or tree revetment. That doesn't
12 necessarily mean he gets to let cottonwoods grow. He
13 has to do something positive with that.

14 And, you know, Mr. Golart's issues
15 with this, Mr. Becker keeps bringing that up. But he
16 hasn't shown anything where Mr. Golart has any
17 randomness associated with this. I don't know where
18 that keeps coming.

19 And additionally, there was never any
20 threat. The department doesn't have the authority to
21 criminally prosecute Mr. Hastings, and I don't know
22 why that keeps being brought up.

23 This is indeed grounded in state law.
24 We have this consent order that he agreed to. He was
25 represented by counsel. I don't understand why we're

1 arguing about the applicability of the consent order,
2 because that is not at issue here today.

3 One other thing. Even if the permit
4 did not require Mr. Hastings to submit a written
5 approval to work on the property of a third party --
6 and that could be removed if you think that's
7 inconsistent. That's under your purview.

8 One, Mr. Hastings is still going to
9 have to follow the law regarding private property, and
10 two, you know, the remedy for this is not to excuse
11 his performance under the consent order.

12 And that is all I have.

13 HEARING OFFICER: Very well. Anything
14 further, Mr. Becker?

15 MR. BECKER: Well, I believe that
16 there is a criminal enforcement provision in the
17 Stream Channel Alteration Act. I thought I saw
18 something along those in my research there.

19 HEARING OFFICER: Well, in district
20 court there may be contempt issues that could lead to
21 incarceration.

22 MR. BECKER: Anyway, I'm sure I had
23 seen a criminal provision in some statute that was at
24 issue in these.

25 With regard to the planting plan, that

1 was discussed in Mr. Golart's deposition, it was
2 discussed in my briefing, because the two -- the two
3 matters at issue were the bioengineering and the
4 planting plan. And just because there's examples
5 provided, it doesn't say, shall include this, or,
6 this. It said examples. The root wads. The crux of
7 the obligation is from the named terms, which are
8 bioengineering treatments that incorporate large woody
9 material.

10 Well, a tree is large woody material
11 along the stream bank. So there are trees along the
12 stream bank and replanting to help reestablish native
13 riparian (indecipherable), and Mr. Golart confirmed
14 that those are cottonwoods and they comply.

15 And so to evaluate the reasonableness
16 of what was done, I appreciate Ms. Carter's
17 clarification as to the parties to this gag order as
18 Mr. Golart termed it, but, you know, it's hard to
19 evaluate the reasonableness without being able to view
20 what occurred in other situations. We're being given
21 a small subset of what the department considers
22 reasonable.

23 Under the rules and laws that have
24 been pointed out to us at this point, still find no
25 authority for what the department is requiring my

1 client to do. Further find no authority that it's
2 able to force my client to sign a blank check with
3 third parties.

4 HEARING OFFICER: You -- as I remember
5 in the documents, you have hired an engineer -- or Mr.
6 Hastings hired an engineer -- excuse me -- to submit a
7 report. Subsequently submitted two reports.

8 Where in those reports does it talk
9 about having to get into the area covered by the
10 alleged clouded title?

11 MR. BECKER: So Brockway engineer was
12 hired --

13 HEARING OFFICER: Right.

14 MR. BECKER: -- long ago to prepare
15 these plans again.

16 HEARING OFFICER: Right.

17 MR. BECKER: Mr. Golart is the one who
18 directed these plans and put more and more stringent
19 requirements not found in statutes.

20 HEARING OFFICER: He did put in a new
21 report. I understand that.

22 MR. BECKER: Yeah.

23 HEARING OFFICER: And I understand
24 your argument. Where in those reports does it
25 indicate that the work has to be done in the area

1 covered by this conservancy document, library, et
2 cetera?

3 MR. BECKER: I don't think he gets
4 into the ownership issues in his report, but there's a
5 requirement. One of the issues was getting a
6 excavator into the middle of the river to scour out
7 this bar. There's a gravel bar that's essentially --

8 HEARING OFFICER: Right. I saw it the
9 pictures.

10 MR. BECKER: -- (indecipherable) the
11 thalweg of the river into what would be the western
12 side of the bank, which is along my client's property.

13 And so that gravel bar is, say, on the
14 center eastern side of the river.

15 HEARING OFFICER: Okay.

16 MR. BECKER: That removal would be by
17 law to the nature conservancy.

18 HEARING OFFICER: Does it say that in
19 the Brockway report?

20 MR. BECKER: I don't think he had a
21 survey in there. No.

22 HEARING OFFICER: Okay. All right.

23 MR. BECKER: But yeah, that's the --
24 the library's ownership claim, I believe, is
25 documented in a map that is included in there. And so

1 I would submit that it's --

2 HEARING OFFICER: So you're saying
3 that the library has claimed ownership to this stream
4 bed?

5 MR. BECKER: Bank to bank. So they
6 claim ordinary high watermark to ordinary high
7 watermark. And --

8 HEARING OFFICER: Is that for trespass
9 purposes or actual ownership?

10 MR. BECKER: Ownership.

11 HEARING OFFICER: Right?

12 MR. BECKER: They claim ownership.

13 HEARING OFFICER: Well, I know when I
14 go fishing, I've got to get somebody's ownership to
15 get to the high watermark. But other than that?

16 MR. BECKER: Right. They're claiming
17 they own the river, bank to bank.

18 HEARING OFFICER: What document says
19 that?

20 MR. BECKER: We have the Ernest
21 Hemingway deed was in there, and then the deed
22 transfer from the nature conservancy to the library.
23 And then I would argue that the fact that we've got a
24 conservation easement that specifically talks about
25 not doing work in the river is further --

1 HEARING OFFICER: That easement is
2 between whom?

3 MR. BECKER: The nature conservancy
4 and the library.

5 HEARING OFFICER: And the state was
6 never a party to same?

7 MR. BECKER: Right.

8 HEARING OFFICER: Correct. Very good.
9 Thank you, sir. Anything further?

10 MS. CARTER: No, Your Honor.

11 HEARING OFFICER: Mr. Becker?

12 MR. BECKER: I'm just looking for this
13 statute here.

14 HEARING OFFICER: 5917 sub 5?

15 MR. BECKER: No. Sorry. No, nothing
16 further, Your Honor.

17 HEARING OFFICER: Well, take your
18 time, if you need it. I don't mind.

19 MR. BECKER: So Idaho code 42-16_05.
20 Terminal penalties.

21 MS. CARTER: 16-05?

22 MR. BECKER: Yes.

23 MS. CARTER: That, I believe, is not
24 related.

25 MR. BECKER: Irrigation, drainage,

1 water or commission.

2 MS. CARTER: That is not related to
3 this.

4 HEARING OFFICER: Not applicable is --

5 MS. CARTER: No.

6 HEARING OFFICER: -- your argument?

7 And that was what, sir? 49?

8 MR. BECKER: 42-16-05. And again,
9 that was just a quick little search. If it was with
10 the consent order provision. Anyway.

11 HEARING OFFICER: Very good.

12 MS. CARTER: Yeah. 16-05 is related.
13 Chapter 16 is related to artesian wells. So not
14 applicable in this.

15 HEARING OFFICER: Anything further by
16 any party?

17 MR. BECKER: I don't believe so, Your
18 Honor.

19 HEARING OFFICER: Well, I appreciate
20 the arguments and I'll take them under advisement.

21 We're off record in this matter. You
22 wish to talk concerning scheduling?

23 (Break in recording.)

24 COURT STAFF: This is being recording.

25 HEARING OFFICER: We need to go back

1 on record. We have talked briefly concerning some
2 scheduling changes or some flexibility in scheduling
3 order previously entered. We have talked about the
4 market and the market. The main one is based upon the
5 marking of exhibits, based upon the fact that both
6 parties have basically indicated to me that a large --
7 a significantly large portion of any evidence is
8 already in the record and that the parties know what
9 that -- those documents are and what they contain.

10 That we will have a flexible schedule
11 concerning the marking of exhibits. The numbers
12 previously assigned will remain the same. This
13 flexibility will largely depend on my getting out or
14 getting close to some sort of resolution in this
15 matter.

16 Is that appropriate, Mr. Becker?

17 MR. BECKER: My understanding is that
18 I don't need to submit marked exhibits by this Friday.

19 HEARING OFFICER: No.

20 MS. CARTER: To be clear, I thought
21 that the marked exhibits were due on the 28th and the
22 witness and exhibit list was next Monday.

23 MR. BECKER: I probably have it in my
24 calendar as this Friday because I'll be --

25 HEARING OFFICER: Gone. I get it.

1 MR. BECKER: -- on Face Mountain next
2 week. So anyway, mine we're due this Friday because
3 I'll be gone. So...

4 HEARING OFFICER: All right. We'll
5 keep then with the 28th and that will give you more --
6 more free time.

7 MR. BECKER: Well, I won't be out -- I
8 won't be back in Idaho. The 28th is -- sorry -- next
9 Friday. I thought I got back and we basically headed
10 straight into this hearing. The 28th is Friday, and I
11 will be flying back.

12 HEARING OFFICER: Okay.

13 MR. BECKER: So...

14 HEARING OFFICER: We won't have to
15 have them by this Friday. Let's put it that way.

16 MR. BECKER: Okay.

17 HEARING OFFICER: All right. I'll try
18 to make life easy for you. How am I doing?

19 MR. BECKER: If I have to come back
20 and mark a bunch of exhibits...

21 HEARING OFFICER: You're not going to
22 have to. Don't worry.

23 MR. BECKER: Okay. Thank you.

24 HEARING OFFICER: Anything else?
25 Meghan?

1 MS. CARTER: No.

2 HEARING OFFICER: All right. We're
3 off record again.

4 (Proceedings concluded.)

5 (END OF TRANSCRIPTION)

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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.

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BEFORE THE WATER RESOURCES BOARD
OF THE STATE OF IDAHO

IN THE MATTER OF THE)
APPLICATION FOR:)
STREAM CHANNEL ALTERATION)
PERMIT NO. S37-20565)

VERBATIM REPORT OF PROCEEDINGS
BEFORE THE HONORABLE
HEARING OFFICER ROGER BURDICK

DECEMBER 2, 2025

Transcribed from recording by:
Cheryl J. Hammer, Registered Professional Reporter
Idaho CCR 1206; New Mexico CCR 640; Oregon CCR 21-0013
Utah CCR 126919357-7801; Washington CCR 2512

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(BEGINNING OF TRANSCRIPTION)

(Proceedings begin.)

HEARING OFFICER: This time we're on record in the matter of application for Stream Channel Alter -- Alteration, Permit Number S3726 -- 20565.

Previously, we had oral argument on cross-motions for summary judgment. Because of a printing issue with IDWR and the petitioner, I did not get all of the documents that had been previously filed. I now have received them. I have read those, and I felt that we needed a few more clarifying questions.

In addition, I'm going to enter a partial -- some partial comments for both parties' direction or their education as we go forward.

So at this point in time, I'm going to ask -- both parties are here represented by their attorneys of record, and as such, I will ask the state, what rules apply in this matter?

The rules that existed in 2017, which were amended in June of 2019, or the 2019 rules?

MS. CARTER: Your Honor, I believe that the 2019 rules would govern what was put in the

1 permit. And so therefore those are the ones that are
2 applicable.

3 HEARING OFFICER: I thought the permit
4 was in fact in 2018?

5 MS. CARTER: Was it in 2018? It might
6 be 2018. But the rules that were in effect at that
7 time, which I think --

8 HEARING OFFICER: All right. That --
9 that clears it up.

10 MS. CARTER: Yeah.

11 HEARING OFFICER: And the rules that
12 you had -- that you attached to your declaration are
13 in fact the 2019 rules. Any objection to using those
14 rules that were in effect at the time of the consent
15 order and permit?

16 MR. BECKER: Well, Your Honor, one,
17 the -- I believe the permit would have been issued in
18 2019, because the objection took place in May of 2019,
19 was it not?

20 HEARING OFFICER: All right. I don't
21 --

22 MR. BECKER: Meghan just said
23 something about 2018. I want to make sure that --
24 there was a submission period, 2017. It had to be in
25 by 2018. The back and forth of going --

1 HEARING OFFICER: Back and forth was
2 --

3 MR. BECKER: -- and then 2019.

4 MS. CARTER: The permit was indeed
5 issued May 2019.

6 HEARING OFFICER: Okay. The problem
7 is that your expert as well as Mr. Gollart[phonetic],
8 throughout that process of examining the alleged alter
9 -- alteration, the work by your expert with both
10 reform or both plans, all took place under rules that
11 existed in 2017, 2018. They were then amended 20 --
12 or June of 2019. So...

13 MS. CARTER: That is -- that is
14 correct. So then it would be the ones that were in
15 effect prior to.

16 HEARING OFFICER: All right.
17 Objection in that regard, sir?

18 MR. BECKER: Well, Your Honor, I've
19 asked repeatedly throughout this case discovery, you
20 name it, what rules apply.

21 HEARING OFFICER: Well, I think we
22 just figured it.

23 MR. BECKER: Well, I mean, here we are
24 at what was supposed to be the hearing of this matter,
25 after summary judgment, after discovery should have

1 been responded to and supplemented, and I got no
2 answer.

3 HEARING OFFICER: Well, you --
4 addended your addendum in your declaration, add
5 certain rules, administrative rules, which are nothing
6 more than the administrative rule passed by the
7 legislature, proposed by the department, passed by the
8 legislature and printed.

9 I would imagine that there are the
10 very same rules that existed during the time period of
11 your expert's analysis as well as any other period.

12 MR. BECKER: You know, all I can do is
13 go off with the department has on its website.

14 HEARING OFFICER: All right.

15 MR. BECKER: And so, again --

16 HEARING OFFICER: Well, at that point
17 in time, it will indicate that -- at the top of those
18 rules, that they were -- they were put together in
19 June of 20 -- 2019. So it's on the website.

20 MS. CARTER: Well --

21 MR. BECKER: It could, but...

22 MS. CARTER: -- it's not the
23 department's website that you would need to refer to
24 to get archived rules. That's on the Department of
25 Administration's website that's available to

1 everybody.

2 HEARING OFFICER: Yeah. Here's the
3 issue is going to be settled as of now. I'm taking
4 the rules as amended on June 2019. I'm using the
5 rules that existed before that time period during the
6 time period of 2017, 2018, the June of 2019. Those
7 will be the rules that I will use in this matter.

8 Now as concerns the state's argument,
9 the state argues that this is a contract
10 interpretation. What is the contract that you're
11 talking about? Is it the consent order or the permit?
12 Or both?

13 MS. CARTER: Well, they're both. But
14 given that the issue with -- that we are here is
15 whether or not the terms in the permit are in
16 accordance with the conditions -- or the conditions on
17 the permit are in accordance with the terms in the
18 consent order. It's really a matter of interpreting
19 what the consent order called for.

20 HEARING OFFICER: The consent order
21 does not have any of the art -- any of the -- any of
22 the illustrations or references to the administrative
23 rules or the minimum standards that are listed in the
24 administrative rules.

25 MS. CARTER: No, it doesn't, because

1 it says that they must apply for a Stream Channel
2 Alteration permit that has all of those built into the
3 process. Instead, it says, at minimum, your
4 application needs to include these things. It doesn't
5 specify that there won't be other conditions that come
6 with that.

7 HEARING OFFICER: Then how can that be
8 a final contract?

9 MS. CARTER: I mean, it's one of those
10 things that you should be aware of the regulatory
11 framework that you're, you know, agreeing to
12 participate in.

13 In addition, Mr. Hastings had already
14 applied for and received a Stream Channel Alteration
15 permit prior to that. He was aware of what was in --

16 HEARING OFFICER: In 2014?

17 MS. CARTER: Yes.

18 HEARING OFFICER: Right. Very good.

19 All right. Mr. Becker, as concerns
20 your client, he indicates that he -- he said that he
21 did this work because of the runoff in 2017, and then
22 went to the City of Ketchum. Or Ketchum came out and
23 they chatted and there's a document that the city
24 issued.

25 And in his affidavit he states he's

1 working on a water right.

2 MR. BECKER: I believe that says that.
3 I said I think he's a water user.

4 HEARING OFFICER: Right.

5 MR. BECKER: As a well permit.

6 HEARING OFFICER: Okay. So it's a
7 well permit?

8 MR. BECKER: I believe that's what it
9 said in his affidavit.

10 HEARING OFFICER: Okay. I may have
11 missed the well permit.

12 Okay. So having reviewed -- and I'm
13 also going to take judicial notice of the file, the
14 March 22, 2018 letter by McHugh and Bromley as well as
15 the May 22, 2018 -- it's March 22 of 2018 and May 22
16 of 2018. Those two letters will become part of the
17 record in the court's analysis -- or the hearing
18 officer's analysis. I'm sorry. I need to --

19 MR. BECKER: Your honor, before we
20 cherry-pick things out of the record here, my -- I
21 guess I'd like to know if things are being left out of
22 what the court -- what the hearing officer is deciding
23 to include in the record.

24 HEARING OFFICER: You think I'm
25 leaving anything out?

1 MR. BECKER: No. I don't know. I
2 don't know.

3 HEARING OFFICER: Look at your
4 declaration. I've read every page of it. What do you
5 mean?

6 MR. BECKER: Well, you just said
7 you're picking two particular --

8 HEARING OFFICER: I'd have the right
9 to take judicial notice of the -- of the files of the
10 department.

11 MR. BECKER: Understood.

12 HEARING OFFICER: Then what?

13 MR. BECKER: Why not the -- it seems
14 like there could be a problem created if there's
15 certain things taken, but other things not taken.

16 HEARING OFFICER: What are you talking
17 about?

18 MR. BECKER: Well, I'm not sure. You
19 just rattled off two letters. I don't have them at,
20 you know, immediate memory draw. So I don't know
21 what's in there. And I don't know if there's a
22 reference --

23 HEARING OFFICER: Well, then you can
24 object at this point.

25 MR. BECKER: Okay.

1 HEARING OFFICER: Very good.

2 MR. BECKER: My only concern is if
3 there's --

4 HEARING OFFICER: I'm not going to
5 show them to you because I have my notes in there.
6 They're your client's comments to the department.

7 MR. BECKER: So was that an invitation
8 to come look?

9 HEARING OFFICER: No, it's not. You
10 can find them in the file.

11 MR. BECKER: In what file?

12 HEARING OFFICER: I'm not going to do
13 your work for you, sir.

14 All right. Here's the next thing
15 that's going to happen in this case. The issues that
16 I've decided are as follows. The holding of Loper
17 Bright is inapplicable as it is a case of a reviewing
18 court's power to review administrative rulings, not
19 the procedure for the hearing officer or the parties
20 in this trial issue.

21 Idaho has never adopted the Chevron
22 doctrine. And as a result, Loper has little to do in
23 Idaho. The closest issue -- legal issue is Simplot
24 versus the tax commission, but the Idaho code has been
25 modified pursuant to Idaho code 67-5_279(5), which

1 also talks about the power of the court to review the
2 agency action. It has no applicability at the trial
3 level.

4 In addition, I have a serious
5 question, and will not rule one way or the other about
6 the constitutionality of the last sentence of that
7 section, which seems to indicate that a court in
8 analyzing an administrative decision would favor one
9 party over another. However, 67-5_279 has no
10 applicability to the hearing officer's level.

11 The State of Idaho is the owner of
12 this section of the stream bed, as was indicated in
13 the study filed by the petitioner as an exhibit in the
14 declaration for discovery.

15 The conservation easement is an
16 agreement for private parties' conduct. The
17 petitioners and state are not signatories of that
18 document. It is not binding on the state or the
19 petitioner. Petitioner must only get permission to
20 work on other's property. The department is not
21 ordering him to hold anyone harmless.

22 There's no evidence the work necessary
23 for this permit even encompasses that land. I asked
24 that specific question in the last hearing.

25 Petitioner argues about the

1 impossibility of performance, but that has not been
2 shown. Nothing has been shown as concerns whether or
3 not that has actually taken place. What the parties
4 -- if they are entering into a hold harmless
5 agreement, what would be the scope of it. Is it --
6 there's just no evidence of impossibility as argued in
7 the brief by petitioner.

8 Ketchum's permission to do stream bed
9 alteration is no defense to the alteration without a
10 state permit. Exhibit 3 of the declaration of counsel
11 dated July 31, '17 is of no evidentiary value because
12 of the blackouts in that regard. There's no --
13 there's no foundation to even admit that. Will not
14 use that as a evidentiary document.

15 Also the 7.31-17 stabilization permit
16 entered by, and legally entered, I agree with that, by
17 the City of Ketchum, at paragraph 7 specifically gave
18 notice that the necessity of emergency permits for any
19 work on this stream bed and any permanent
20 stabilization work would have to include the State of
21 Idaho and the federal government.

22 It is no defense to the petitioner's
23 unlawful conduct in not getting an emergency
24 authorization pursuant to Idaho code 42-3008.

25 This hearing officer has no power or

1 authority to return the \$10,000 fine previously paid
2 by the petitioner. That request is denied. That may
3 in fact be an issue for a district court, but I have
4 no authority to do so.

5 There is -- although Idaho code
6 42-38_10 has been given to the court -- given to the
7 hearing officer by Mr. Becker, there has been no
8 threatened criminal prosecution. There has been no
9 prosecution entered by any authority, i.e. that would
10 be the prosecutor of Blaine County. They have not
11 appeared. So there is no criminal law analysis that's
12 necessary for these proceedings.

13 Idaho Code 49-32 or 3806 does not
14 apply. The petitioner's argument has always been
15 alteration was because of flood conditions to the bank
16 of his property. There's no evidence nor conduct that
17 it was to maintain, construct, or repair a water
18 conveyance. It's been indicated today he had a well
19 permit. There's been no evidence in that regard as to
20 damage to his well as a result of the erosion, et
21 cetera, or his conduct.

22 Therefore -- additionally, the
23 petitioner talks of a reliance in his affidavit on a
24 2014 permit issued by the State of Idaho. That permit
25 has no relevancy to this proceeding and if he -- in

1 fact he did rely upon it, it is to his disadvantage in
2 that regard. It has no relevancy to this proceeding.

3 Those are the issues which I have
4 decided. As I go forward and produce a final order in
5 this matter, I'm also going to indicate that I am not
6 going to allow any further filings nor evidence to be
7 given to the hearing officer at this point in time
8 while I look at and decide the cross-motions for
9 summary judgment.

10 Now in going through this matter, I
11 would strongly encourage the parties -- and obviously
12 I've been in this business for an awful long time,
13 which may mean nothing or something. I don't know
14 which, but I will guarantee you that -- I would
15 strongly encourage the parties to enter into good
16 faith mediation in this case.

17 Petitioner has a plan by Dr. Brockway
18 with some small modifications may do the job. I don't
19 know. I'm not saying it is or isn't. Obviously, the
20 petitioner can continue to incur attorney's fees and
21 other costs or expert fees if we go to trial in this
22 matter.

23 Obviously, if we do, it will go to the
24 district court and the supreme court and maybe back
25 here again ad nauseam. The department's interest in

1 this Stream rehabilitation, which hasn't taken place
2 in eight, going on nine years, is just that. But
3 maybe some of Stream Rehabilitation is better than
4 none that has taken place in the last eight or nine
5 years.

6 I'm reminded of the movie Cool Hand
7 Luke, wherein the ongoing problem was a failure to
8 communicate, which ended up in a disaster for Luke as
9 well as for his main protagonist in the matter. So I
10 would suggest someone with a technical background
11 could in fact mediate this matter for the parties and
12 come to some final decision.

13 Now I'm going to take a minute of
14 private privilege in this matter. One of the -- I'm a
15 hunter. So is Mr. Becker. And I don't know about
16 Meghan or Meghan or Sarah, but if you've ever hunted
17 sage grouse, you know that there's a place called a
18 leak. And it's where people go -- or where sage
19 grouse go and they puff up and they stick out their
20 chests and they wander around raising a bunch of dust
21 in a mating ritual.

22 And I'm reminded that this in fact may
23 be a prairie chicken dance here. We have two very
24 strong willed individuals who are raising a lot of
25 dust, when in fact the stream is not getting

1 rehabilitated.

2 There may have been some natural
3 growth, et cetera, as you indicated, Mr. Becker, but
4 certainly no formal rehabilitation. And while we
5 fluff up our feathers and raise a bunch of dust, the
6 river has stayed the same.

7 So again, and I'm not trying to force
8 anyone, but having been in a million different cases
9 and different subject matters, it seems to me this
10 case needs to be mediated. As a district judge, I
11 never ordered mediation. That was not my place as a
12 district judge.

13 And the supreme court, when I was on
14 it, had a mediation -- automatic mediation for a few
15 years, but nothing got done. So it would depend on
16 the parties' interests, long term or short term, to
17 try to mediate this matter. I really believe that
18 would be the best outcome rather than many more years
19 of litigation.

20 That will be a partial order in this
21 matter. I'm not going to accept any further motions
22 or evidence in this case. I will continue to work on
23 this matter with the clarifying questions, and as a
24 result, this matter is in recess.

25 Thank you.

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(Proceedings concluded.)
(END OF TRANSCRIPTION)

TRANSCRIPTION CERTIFICATE

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1
2 I, CHERYL J. HAMMER, the undersigned
3 Registered Professional Reporter, do hereby certify:

4 That the foregoing transcript was
5 transcribed under my direction; that the transcript is
6 true and accurate to the best of my knowledge and
7 ability to hear the audio; that I am not a relative or
8 employee of any attorney or counsel employed by the
9 parties hereto; nor am I financially interested in the
10 event of the cause.

11
12 WITNESS MY HAND this 1st day of July 2026.
13
14
15

16 
17

18 CHERYL J. HAMMER, RPR
19 Certified Court Reporter
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[10 - attorneys]

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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.

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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.

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