VIA CERTIFIED/RETURN RECEIPT REQUESTED AND E-MAIL

Idaho Department of Lands
Attn: Dustin Miller, Director
300 N. Sixth Street, Suite 103
P.O. Box 83720
Boise, ID 83720-0050

Idaho Department of Lands
Attn: Eric Wilson
Resource Protection and Assistance Bureau Chief
300 N. Sixth Street, Suite 103
P.O. Box 83720
Boise, ID 83720-0050

Re: North Idaho Maritime/State of Idaho Lease No. B220168

Dear Director Miller and Mr. Wilson:

John Condon, North Idaho Maritime and I are in receipt of Mr. Wilson’s October 6, 2021 letter regarding State of Idaho Lease B220168.


After sending the request for reconsideration on behalf of North Idaho Maritime, I followed up with IDL staff on August 9, August 10, and September 3. All of those outreaches were in an
effort to meet with IDL staff to directly discuss the issues I had raised on behalf of North Idaho Maritime. Regrettably, I did not hear back from IDL in response to those efforts.

The October 6, 2021 letter states that the “request for reconsideration is denied.” Unfortunately, the letter then sets forth several uncorrected errors of fact and law. These errors include the following.

First, the letter at Section 1, Paragraph 3, states that “platforms” on “existing piling in Cougar Bay” were not needed for the prior log storage uses “and were added by NIM.” This is untrue. These platforms have been in place since at least the 1970s. NIM had nothing to do with the construction.

Second, pages 32-41 of the attachments to the October 6 letter show material outside of the area used by NIM. NIM has had nothing to do with these items and it would appear to NIM that they are materials abandoned by Murphy Marine.

Third, several of the photographs are an apparent effort to portray “junk” or “debris” when that is not in fact the case. For example, page 6 shows “tires in the lake.” In actuality, that is a breakwater removed for Kootenai County Waterways at their request. It is not like other breakwaters that have been on the lake for decades, including the former breakwater at the North Shore which preceded the Coeur d’Alene Resort. The photograph at page 8 shows “metal debris” which is in actuality a boat lift attached to a dock. Pages 25-27 show a “frame of a dock with no decking.” This is the Shore Pines community dock which was being constructed by North Idaho Maritime. The Shore Pines dock is a permitted encroachment on the Spokane River in an area of high boater traffic which has only been exacerbated by the proliferation of unregulated wake boats. To work this structure on the Spokane River in the proximity of wave generating recreational boats, presents a safety hazard to the employees of North Idaho Maritime. With no disrespect, North Idaho didn’t permit this encroachment. And the encroachment needs to be repaired due to the constant wave action. Repair cannot safely be done so at the Shore Pines’ location on the Spokane River.

Fourth, Section 2 of the letter discusses moorage of vessels. North Idaho Maritime, as its name implies, has vessels which include tugs and barges. These vessels are used on navigable waters. North Idaho is unaware of any regulation that prohibits a vessel from navigating an inland navigable lake or waterway or limiting where the vessel can or can’t access.

Fifth, the October 6 letter states: “Murphy’s use of Cougar Bay is unrelated to the offered lease.” We respectfully disagree. Murphy may have a lease that allows for dock storage, but Murphy is allowed to also perform construction related activities, as a competitor to North Idaho Maritime, in Cougar Bay itself. This represents an example of disparate treatment. IDL may state that Murphy is doing repair work under an encroachment permit as opposed to a submerged lands lease. However, an encroachment permit may only authorize activity to the line of navigability.
Under the guise of an encroachment permit, Murphy is being allowed to perform dock construction activities beyond the line of navigability and that should also require a submerged lands lease if constituents are to be treated equally. That is why the method and manner by which IDL has treated Murphy is in fact relevant. Murphy is being allowed to perform activities to compete with North Idaho Maritime and with the imprimatur of approval from IDL under the auspices of an encroachment permit that extends beyond the line of navigability.

Sixth, the October 6 letter states, in part, "If the year-round construction activity [of North Idaho Maritime] is de minimus, then that activity can be shifted to the new Wolf Lodge Bay location." This is not accurate. In Case No. PH-2020-PUB-22-002, Director Miller issued a Final Order restricting the activities that North Idaho Maritime could undertake at its littoral property in Wolf Lodge Bay. These restrictions included the following:

- No winter dock storage.
- No dock construction or work activities during low water so as to limit potential impacts on fish spawning sites and bald eagles.
- No dock construction or work activities are allowed during periods of low water to prevent scouring.
- The pier, dock, and summer work area must be cleaned and free of debris by October 1 of each year.

To suggest that North Idaho Maritime can simply relocate dock building activities from a work area similar to Murphy's, in Cougar Bay, to North Idaho Maritime's Wolf Lodge site, is simply not accurate.

Lastly, and more in the nature of a philosophical observation, we disagree with your conclusion that something markedly different is being done in Cougar Bay today than has been done for the better part of a century. Cougar Bay is a flooded hayfield, which was formerly the Graham/Healy dairy farm at the turn of the last century. When Washington Water Power's dam became operational in 1906, the hayfield was flooded throughout the summer by relatively shallow lake levels. Given its proximity to lumber mills then operating on the Spokane River, Cougar Bay was effectively covered in total, for commercial use, as a "log pen." In fact, for the better part of the last century, Cougar Bay was largely occupied for a commercial use for log storage. No one complained. That was the way things were done and people recognized as much.

Then the people changed. New people who weren't Idahoans moved here. Then they complained that the lake they were looking at had a log pen in it. This is analogous to the person who moves next door to a factory and then complains about noise and odor. I marvel at the aerial
photograph attached at page 2 to the October 6 letter. To conclude that the two identified areas (NIM and Murphy) are analogous to the intensified uses of Cougar Bay when it was a log pen is not a fair characterization. If anything, the uses have been minimized and decreased. It is inequitable and unfair to take North Idaho Maritime, a one hundred year business in North Idaho, and treat them differently than Murphy, effectively casting them aside with no place to effectively do their business. This is particularly true when we have several thousand encroachments on the lake permitted by IDL that need to be repaired and maintained somewhere. One can't reasonably expect that North Idaho Maritime or any other marine business undertake that repair work in dangerous conditions where many of the encroachments are located.

North Idaho Maritime’s activities in Cougar Bay have never interfered with the public’s use of the same. In fact, public use of Cougar Bay has historically been limited to boats because of the shallowness of the Bay, the numerous pilings remaining from a century of log storage, and the protected nature of the same. In fact, we are unaware of any complaint by any member of the public that any access or any use of Cougar Bay has been impeded by North Idaho Maritime. In all candor, the activities of North Idaho Maritime have promoted a protected and safe haven for waterfowl and area fishermen.

We request the opportunity to seek relief from the Director’s decision, as reflected in the October 6, 2021 letter and enclosed proposed lease, from the State of Idaho Board of Land Commissioners. We also state that we are willing to meet with IDL staff prior to any such hearing before the Land Board in order to reach agreement on the correction of facts misstated in the October 6 letter. I previously made three requests for such a meeting. I understand that those requests may have been denied because IDL felt that it would need legal counsel present if I was there. I don’t need to attend. Mr. Condon and North Idaho Maritime can meet directly with IDL staff to try to reach consensus on the correction of at least some of the errors perpetuated in the October 6 letter.

Please let us know when we can be heard by the land board and when Mr. Condon can meet with IDL staff if you so desire.

Sincerely,

[Signature]

John B. Magnuson

JFM/js
cc: North Idaho Maritime

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