SPOKANE RIVERKEEPER®

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September 22, 2025

RE: OAH Case No. 25-320-07

Dear Hearing Officer and Idaho Department of Lands:

On behalf of Spokane Riverkeeper, I submit the following written comments on the permit application for Atlas/River's Edge (Permit #L95S6163A). Spokane Riverkeeper is a non-profit advocacy organization dedicated to protecting and restoring the health of the Spokane River watershed. We appreciate the opportunity to provide comments and urge the Idaho Department of Lands (IDL) to deny these permits.

We do not oppose boating itself. Spokane Riverkeeper supports responsible, well-managed recreational use of the Spokane River. However, the proposed addition of boat slips represents a significant expansion that is inconsistent with the river's current capacity and threatens public trust values. In a waterway with narrow channels and a legacy of heavy metals contamination, the increased boat traffic—particularly from high-wake vessels—poses a concrete risk of sediment disturbance, erosion, and downstream contamination.

Legal Background

Under the Idaho Lake Protection Act, encroachments on navigable waters are regulated to protect public trust values, including navigation, fish and wildlife habitat, recreation, aesthetic beauty, and water quality (Idaho Code §§ 58-1301, 58-1306; IDAPA 20.03.04). Idaho Courts have consistently affirmed that dock permits are not guaranteed to littoral owners and may be denied where public interests or environmental values would be compromised.

In *Dupont v. Idaho Department of Lands*,[1] the Court recognized IDL's authority to decline dock applications altogether, underscoring that littoral ownership does not guarantee an encroachment permit.

In *Brett v. Eleventh Street Dockowners Association*,[2] the Court upheld IDL's consideration of neighboring uses and public interests when evaluating marina and dock permits. The Court further reaffirmed IDL's obligation to weigh all of the evidence in their determination, including

[1] 134 Idaho 618 (2000)
[2] 141 Idaho 517 (2005)

environmental, navigational, recreational and other impacts associated with a proposed encroachment.[3]

Most recently, IDL has demonstrated its willingness to deny encroachment permits where public uses and lake values would be harmed. In 2022, the Department rejected a proposed dock near City Beach because of its interference with public recreation, swimmer safety, and the character of the shoreline, even though the applicant would have benefitted from private navigational access.[4] Similarly, controversy over proposed community docks in the Rockford Bay area has raised concerns about carrying capacity, cumulative impacts, and shoreline character, all of which are proper grounds for denial under the Act.[5]

Together, these statutes, rules, and cases establish that the Department of Lands is not only authorized, but obligated, to deny encroachment applications where credible evidence shows harm to other designated uses of the river. The burden rests on applicants to demonstrate compatibility with these public trust values; where they fail to do so, denial is the only action consistent with the law and Idaho Supreme Court precedent.

Idaho law requires IDL to affirmatively evaluate permit applications against all statutory standards and produce a well reasoned decision[6], regardless of whether another agency has provided comment. Permitting is not a passive process. It is an affirmative approval process where the applicant bears the burden of demonstrating compliance with applicable statutes, rules, and standards, and where the permitting authority must make findings supported by evidence.

Accordingly, the applicant's assertion during the public hearing that silence by other agencies amounts to an indication of "no concern" is incorrect. Silence is not evidence, nor does it substitute for the Department's independent obligation to review potential impacts to fish and wildlife, water quality, or other statutory criteria. Even in the absence of comments from agencies such as Idaho Fish & Game, DEQ, or local highway districts, IDL must evaluate those issues under its statutory mandate before granting an encroachment permit.

The only circumstance in which "silence" carries legal significance for an encroachment is where the Board of Land Commissioners fails to act within the statutory timeframe for certain encroachment applications, in which case approval is deemed granted by operation of law. That

[3] *Id.* at 523
[4] https://cdapress.com/news/2022/apr/26/idl-sinks-dock-plan/
[5] https://www.spokesman.com/stories/2014/mar/11/lake-coeur-dalene-dock-proposal-raises-questions/
[6] 141 Idaho at 523

provision is purely procedural. It does not reflect any substantive conclusion about environmental, wildlife, or engineering impacts, and it does not excuse IDL from its duty to fully evaluate those impacts when acting on an application.

Because IDL has this statutory obligation to evaluate all impacts, independently of whether outside agencies commented, and because silence is not a legally sufficient response or finding, the agency should explicitly analyze, document, and make findings on each relevant impact area. Some of the impacts that IDL must consider include, but are not limited to:

- Effects on fish and wildlife habitat (including littoral or aquatic rights), migration corridors, spawning grounds, endangered or sensitive species
- Impacts to water quality (sedimentation, pollutant runoff, turbidity), hydrology, erosion
- Effects on navigation, recreation, and public access
- Cumulative effects (how this encroachment interacts with other past, present, or reasonably foreseeable projects)

The Spokane River's contamination legacy

The Spokane River is a vital social and cultural asset for the entire region. The river supports a variety of uses including diverse recreation, fisheries, and wildlife habitat. It also carries a legacy of heavy metals contamination—arsenic, cadmium, lead, and zinc, originating from mining in the Coeur d'Alene Basin. While much of this contamination settled at the bottom of Lake Coeur d'Alene, fine metal-laden particles continue to flow downstream into the Spokane River.

These metals accumulate in sediments along the riverbed, shorelines, and even in high-water marks above summer levels. The primary source of dissolved metals remains the upper Coeur d'Alene Basin (US EPA 2015). The Spokane River in this section is on the EPA's 303(d) impaired waters list for lead and zinc, meaning it already fails to meet water quality standards required under the Clean Water Act to protect human health and aquatic life. Idaho's Department of Environmental Quality has recognized this impairment since 1994.

The Spokane River Metals Total Maximum Daily Load (TMDL)[7] relies on these metals staying settled and undisturbed in the sediments. Disturbance of contaminated sediments undermines this strategy and risks violating water quality protections.

[7] Spokane River Metals TMDL: Lead and Zinc, Idaho Department of Environmental Quality (2022) https://www2.deq.idaho.gov/admin/LEIA/api/document/download/16540

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How increased boat traffic worsens contamination

Increased boat traffic—especially from large wake boats—disturbs contaminated sediments, releasing lead, arsenic, cadmium, and zinc into the water. Once re-suspended, these toxic metals travel downstream, threatening fish, wildlife, and the health of downstream communities that rely on the river for drinking water, as a cultural resources, for fishing, and for recreation. This single effect alone risks undoing decades of water quality progress and conflicts with state and federal Clean Water Act obligations.

Studies on similar waterways show that wake boats can resuspend sediments in waters as deep as 26 feet, and can significantly increase the size of waves reaching the shoreline.[8] Wake boats in surf mode are particularly egregious, and can make waves that are about twice as tall as waves from ski boats at the same distance from shore. Because wave energy increases faster than height, those waves actually carry about four times more energy. To get a wake boat's surf-mode wave down to the same size and energy as a ski boat's wave at 100 feet, you'd have to be more than 500 feet from shore. This matches what other studies have found.

On the Spokane River, these large, high-energy waves have little space to dissipate before hitting the shore. This concentrated energy accelerates shoreline erosion, washing away soil and vegetation that stabilize the banks and protect habitat. In such confined channels, waves can also rebound off opposite banks, amplifying their destructive power. In the Spokane River, where both the shoreline and riverbed are contaminated with heavy metals from historic mining, this erosion and disturbance carry additional risks.

Erosion of these soils to surface waters is an ongoing source of metals-contaminated sediment to surface water (Stratus 2000). Downstream beach sites are at risk of continued contamination from the resuspension of sediment caused by wake boats. In 2022 and 2018 monitoring, Washington's Department of Ecology found ongoing metals deposition and increased concentrations of arsenic, lead, cadmium, and zinc at downstream recreational sites, with the

[8] Riesgraf, Andrew; Marr, Jeffrey; Herb, William; Lueker, Matthew; Kozarek, Jessica. A Field Study of Recreational Powerboat Hydrodynamics and their Impacts on the Water Column and Lakebed. (2025). Retrieved from the University Digital Conservancy, https://hdl.handle.net/11299/274184; Terra Vigilis Environmental Services Group. (2022). Water quality and wave impact study: phase 2 report. https://www.safewakes.org/_files/ugd/2936a3_e64f2cd98fcb49c9b060fa11a959fbd0.pdf; Terra Vigilis Environmental Services Group. (2024). Lake Waramaug Shallow Water Environment Wave Impact Study, Final Report.

highest amounts found near the Washington-Idaho border[9]. This contamination is likely from upstream sources, including increased erosion and stir from wake boat traffic in the upper river.

Impacts to Safety, Recreation, and Habitat

The proposed expansion of marina boat slips on the Spokane River threatens to exacerbate water quality degradation, shoreline erosion, public safety risks, and the loss of diverse recreational opportunities. The re-suspension of contaminated sediments has the potential to impact designated uses on the entire upper river. It not only degrades water quality locally but also impacts downstream users and ecosystems as contaminants are carried further along the river. These pollutants threaten aquatic life and pose ongoing risks to human health, including those who rely on the river for drinking water, fishing, and recreation.

Aquatic Health Impacts: pursuant to the Clean Water Act, water quality must be maintained to protect the most sensitive beneficial use and in this case aquatic life is the most sensitive use. Metals are toxic to aquatic life, and extremely low levels of some metals can adversely affect some fish species, as well as their food sources. A study conducted by Vinodhini and Narayanan, focused on the effects heavy metals have on aquatic life, more specifically on the effects of heavy metal bioaccumulation in fish[10]. The study indicated, increased exposure to heavy metals causes serious and fatal health effects in fish. Ultimately, heavy metals cause a plethora of problems to the river ecosystem due to the bioaccumulation of heavy metals in organisms. Not only would heavy metals affect fish, but the whole ecosystem including humans would be negatively affected.

Drinking Water Risks: The river is a major contributor to the Spokane Valley-Rathdrum Prairie Aquifer that is a sole source of potable water for hundreds of thousands of people. Increased releases of metals from sediments in the River could have untold impacts on aquifer groundwater quality. Proper management of these sediments to prevent increased releases of metals is necessary to control for the potential for metals contamination of the aquifer and ensure protection of the downstream in the River by preventing the release of hazardous substances into surface waters This is an important issue for the downstream stakeholders.

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[9] Spokane River Shoreline Metals Sites Periodic Review, WDOE (2022) https://apps.ecology.wa.gov/cleanupsearch/document/116415

[10] Vinodhini, R., Narayanan, M. Bioaccumulation of heavy metals in organs of fresh water fish Cyprinus carpio (Common carp). Int. J. Environ. Sci. Technol. 5, 179–182 (2008). https://doi.org/10.1007/BF03326011

Recreational Impacts: Increased turbidity and contamination also diminish the quality of recreational experiences downstream, affecting swimmers, anglers, and paddlers who seek clean, safe water. The growth of wake boat traffic also threatens to displace non-motorized recreation. High wakes create hazardous conditions for swimmers, paddlers, anglers, and others seeking quiet, low-impact river use, effectively eliminating some forms of traditional river enjoyment. This growing motorized use directly conflicts with the Spokane River's designated uses protected under the Clean Water Act, which include recreation and the protection of aquatic life. When the river becomes unsafe or inaccessible for these uses due to excessive wake boat activity and congestion, it fails to meet water quality standards and designated use protections intended to preserve the river's ecological and recreational values.

Additionally, expanding marina facilities tends to increase no-wake zones to protect shorelines, which compresses motorized boat traffic into smaller river sections. Greater traffic volume:

- Increases potential for collision risks between motorized and non-motorized craft;
- Compresses boaters into narrower travel lanes, raising the likelihood of shoreline contact;
- Creates hazardous conditions for swimmers, paddlers, and anglers; and
- Heightens potential for accidents in congested areas such as bends and narrow stretches.

Increased congestion also amplifies environmental harm: more boats in confined areas create more wakes in less space, resulting in higher erosion rates and more sediment disturbance per shoreline mile. In this way, unchecked boat traffic undermines the progress made toward meeting water quality standards and compromises the health and enjoyment of the river for all communities along its course.

Recreational Carrying Capacity Study Needed

The proposed expansion of facilities on the Spokane River would increase boat traffic, accelerate shoreline erosion, increase metals re-suspension, and undermine decades of work to restore water quality. Given the contamination legacy, the river's narrow channel, and its legal protections, Idaho Department of Lands should pause any new permits until a thorough, science-based study is conducted, specifically to evaluate the cumulative impacts of wake boats and increased motorized traffic on the upper Spokane River's ecology, water quality, and recreational uses.

This study must determine the river's maximum carrying capacity and evaluate the cumulative impacts of existing and proposed boat traffic. Research on similar river systems[11] has

[11] Ecoscape Environmental Consultants Ltd. & Larratt Aquatic Consulting Ltd., Lake Windermere Recreational Impact and Sediment Quality Assessment (2024)

demonstrated the importance of understanding how increased recreational use affects water quality, safety, and habitat health. The study should address critical issues including:

- Water quality impacts from increased boat activity, including downstream impacts
- Shoreline erosion and habitat disruption
- Public safety and navigation hazards
- Impacts on recreational uses and overall river health

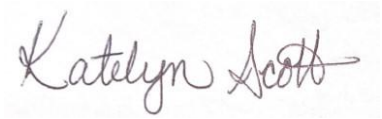
Only with a clear understanding of these effects can informed decisions be made that protect this vital resource for current users and future generations.

The proposed boat slips at River's Edge could harm water quality, accelerate erosion, disturb contaminated sediments, and threaten aquatic life, recreation, and public safety along the Spokane River. These potential impacts are well-documented, yet the permit application provides no evidence that these risks can be avoided or mitigated, and has failed to address these potential impacts. Under the Idaho Lake Protection Act and controlling case law, IDL is required to protect public trust values—including water quality, habitat, and safe recreational use—and may deny or condition encroachments where credible evidence shows likely harm. Because this application fails to demonstrate compatibility with these statutory protections and poses clear threats to downstream users and ecosystems, denial is not only justified, it is legally required.

At a minimum, we believe that this and all pending encroachment applications on the Spokane River should be conditioned on the completion of a comprehensive, science-based carrying capacity study to evaluate cumulative impacts on water quality, shoreline stability, aquatic habitat, and recreational uses. Only with this information can IDL make informed decisions consistent with its statutory duty to protect public trust values.

Thank you for your consideration.

Respectfully submitted,



Katelyn Scott, Esq.,
Water Protector

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https://www.lakeambassadors.ca/lwawp/wp-content/uploads/2024/08/Lake-Windermere-Recreational-Carrying-Capacity-Study-Public-Release-Version.pdf