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BEFORE THE IDAHO DEPARTMENT OF LANDS

In the Matter of the Application for
Encroachment L95S6163A, a
Community Dock,

River's Edge Apartments, LLC,
Lanzce Douglass,

Applicant.

AGENCY Case No. PH-2025-NAV-22-005

OAH Case No. 25-320-07

**APPLICANT AND INTERVENORS'
RESPONSE TO CONCERNED CITIZEN'S
OBJECTION TO EXPERT TESTIMONY**

Applicants River's Edge Apartments, LLC and Lanzce Douglass, along with Boardwalk and Docks LLC, and Residences on the Spokane LLC, Intervenor (collectively "River's Edge") request the Hearing Officer admit Captain Joseph Derie's expert testimony based on his specialized knowledge of and experience evaluating navigational safety. IRAP 485. Capt. Derie, with decades of experience in navigation, is a credible witness whose testimony aids in understanding the navigational issues raised in this matter, and the objection made by Concerned Citizens Against Additional Boat Slips ("Citizens") creates no basis for his exclusion.

First, Citizens was not admitted as a party to these proceedings and is thus without standing to object to or challenge Capt. Derie's testimony. IRAP 482. Second, the specific objection made at best goes to the weight of the testimony, and not its admissibility.

The Sheriff as well as the comments of Citizens and the public have all alleged that the proposed community docks will be a hazard to navigation because of the river's width at this location. Capt. Derie, based on his specialized knowledge and experience in navigation on bodies of water of all sizes, opined that the river at the subject location is of sufficient width and depth to allow for safe navigation, even assuming the boating habits and numbers of boats that were described in the record and at the hearing.

Capt. Derie opined that the community dock would not be a hazard to navigation considering the definition of what is a hazard found in 33 CFR 64.06¹ and his prior experience evaluating navigational hazards and obstructions.

Finally, Capt. Derie opined that the proper methodology for evaluating whether the river has reached its capacity is a formal study. Capt. Derie testified regarding his experience of establishing the scope of such studies. On this point the evidence and his testimony are aligned; there has not been a study of the Spokane River to evaluate its capacity.

Citizens' objections are based on the erroneous conclusion that firsthand observations at very specific times is the "methodology" for evaluating the safety of navigation on the river. But this is not an adopted or recognized methodology, as even Sargent Miller acknowledged that a formal study is the method for evaluating the capacity of the river under current usage. Regardless, the applicant's burden is not to prove the navigational attributes of the entire river, it is to establish that the proposed encroachment is

¹ Hazard to navigation means an obstruction, usually sunken, that presents sufficient danger to navigation so as to require expeditious, affirmative action such as marking, removal, or redefinition of a designated waterway to provide for navigational safety.

consistent with the standards and policies set out in the LPA, about which Capt. Derie's opinion properly assists.

Moreover, the Citizens' objection does not directly challenge Capt. Derie's methodology, only the timing and similarity of conditions of his observations, which would go to weight of the opinion, not admissibility. See Sabo v. Fiskars Brands, Inc. 2014 WL 4365319 (D. Idaho 2014) (interpreting similar FRE 702, and rejecting an objection to expert testimony based on lack of foundation or speculation; when a party questions an expert's use of a specific methodology or the validity of opinions, it is a question of weight and credibility, not admissibility).

In this regard, Capt. Derie's testimony is relevant to the impact the community docks will have on navigation at this location, is reliable and based on a proper methodology--application of his extensive navigational experience to the subject site and the record in this matter. Accordingly, River's Edge requests the Hearing Officer to deny Citizens' objection and admit Capt. Derie's testimony.

DATED this 25th day of September, 2025.


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CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of September, 2025, I caused to be served a true and correct copy of the foregoing by the following method to:

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