

**In The Matter Of:**

*Re: Application for Encroachment L95S6163A, River's Edg*

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*Evidentiary Hearing*

*September 16, 2025*

*Agency PH-2025-NAV-22-005 / OAH 25-320-07*

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*Coeur d Alene ID 83814*

*info@mmcourt.com*

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2  
3 In the Matter of the Application )  
4 for Encroachment L95S6163A,     ) AGENCY Case No.  
5 a Community Dock,                 ) PH-2025-NAV-22-005  
6   ) OAH Case  
7   ) No. 25-320-07  
  
River's Edge Apartments, LLC,     )  
Lanzce Douglass,                  )  
  
Applicant.                         )

10  
11 EVIDENTIARY HEARING  
12 AT COEUR D'ALENE, IDAHO  
13 SEPTEMBER 16, 2025, 4:07 P.M.

16 HEARING OFFICER: LESLIE M. HAYES

19 REPORTED BY:  
20 VALERIE J. LEGG, CSR  
Notary Public

# 1 APPEARANCES

## 2 PRESENT:

3	Mike Ahmer - Department of Lands
4	Bryan Nickels - Administrative Law Judge
5	Robert Norris - Sheriff
6	Robert Kasun
7	Hope Harbaugh
8	Jaimie Minor
9	Allen Minor
10	Stephen Behlmer
11	Dave Magbee
12	Gina Magbee
13	Erica Sheppard
14	Janine Wilson
15	Iggy Valdovinas (phonetic)
16	Diana Sullivan
17	Jessica Ingram
18	Marde Mensinger
19	Sue Loughlin
20	Dan Loughlin
21	Terri Kavra
22	Mick Kavra
23	LeAnn Mull
24	Jeanne Cochran
25	Jason Lucas

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1    A P P E A R A N C E S

3 FOR APPLICANT:

4 WINSTON & CASHATT, LAWYERS, PS  
5 BY: ELIZABETH A. TELLESSEN, ESQ.  
250 Northwest Boulevard  
Suite 206  
6 Coeur d'Alene, Idaho 83814  
208.667.2103

8 FOR IDAHO DEPARTMENT OF LANDS:

9 BY: KAYLEEN RICHTER, ESQ.  
10 BY: JOHN RICHARDS, ESQ.  
11 300 North 6th Street  
Suite 103  
Boise, Idaho 83702  
208.334.0200

FOR COEUR D'ALENE LAND COMPANY:

13 BY: JOHN F. MAGNUSON, ESQ.  
14 1250 Northwood Center Court  
Suite A  
15 Coeur d'Alene, Idaho 83816  
208.667.0500

17 FOR POTENTIAL INTERVENOR CONCERNED CITIZENS:

18 FENNEMORE CRAIG, PC  
19 BY: PETER J. SMITH, IV, ESQ.  
20 BY: NATHAN SARGENT, ESQ.  
21 418 East Lakeside Avenue  
Suite 224  
Coeur d'Alene, Idaho 83814  
208.956.0145

- 1 Pam Stangland
- 2 Skip Atlert (phonetic)
- 3 Gary Maddock
- 4 Michele Maddock
- 5 Linda Hardcastle
- 6 Doug Hardcastle
- 7 Ron Erickson
- 8 Dick Linton
- 9 Mary Lee Linton
- 10 Don Robson
- 11 Kathy Robson
- 12 Elissia York (phonetic)
- 13 Joseph Derie
- 14 Lanzce Douglass
- 15 Ryan Miller
- 16 Bob Tomlinson
- 17 Sheri Scofield
- 18 Scott Scofield
- 19 Rob Elder
- 20 Stephen Prince (phonetic)
- 21 Jim Erbes
- 22 Barb Erbes
- 23 Bob Mull
- 24 Catherine Bedford
- 25 Brian Jorgensen

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2	Brandon Richardson	2	Tony Barone
3	Bob McDavid (phonetic)	3	Jill Barone
4	Mary York	4	Ted Turrentine
5	Theresa York (phonetic)	5	Bethany Derrough
6	Tom Hoag	6	Lee Derrough
7	Marsha Hoag	7	
8	Rachel King	8	
9	Byron Wagner	9	
10	Barb Wagner	10	
11	Mike Phillips	11	<b>PRESENT VIA ZOOM:</b>
12	Cheri Hollenback	12	Cindy Hitchens
13	Karen Melton	13	Todd Whipple
14	Dich Teich	14	Tyler Warner - Department of Lands
15	Susan Stiger	15	Addison Douglas
16	Robert Stiger	16	Amidy Fuson - Department of Lands
17	Kathleen Gary	17	Darla Douglass
18	Terri Shields	18	Brian's iPhone
19	Vicki Gannon	19	
20	Vic Parrish	20	
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<p style="text-align: right;">Page 9</p> <p>1 September 16, 2025, Coeur d'Alene, Idaho, 4:07 p.m.  2 * * *</p> <p>3 <b>HEARING OFFICER HAYES:</b> This is a matter before  4 the Idaho Department of Lands in the matter of the  5 application for encroachment L95S6163A, a community  6 dock, River's Edge Apartments, LLC, Lanzce Douglass as  7 applicant. Agency Case No. PH-2025-NAV-22-005. Officer  8 of Administrative Hearings Case No. 25-320-07.</p> <p>9 I have a few introductions to make. My name is  10 Leslie Hayes. I am the deputy chief administrative law  11 judge for the State of Idaho and the assigned hearing  12 officer in this matter.</p> <p>13 Also here with me today is Chief Administrative  14 Law Judge Bryan Nickels. He is here purely in an  15 administrative capacity. We have found in these large  16 public hearings that it aids the hearing officer to have  17 someone marking who is signed up to publicly testify and  18 keeping track of who has testified for purposes of me  19 being able to stay focused on the proceedings.</p> <p>20 Our code of conduct requires decisional  21 independence of the assigned ALJ. And what that means  22 is that Mr. Nickels, while present here today for  23 purposes of administration and quality control and  24 monitoring, he will not participate in any of the  25 decisions that are being made in this matter. Those are</p>	<p style="text-align: right;">Page 11</p> <p>1 All testimony and evidence, including public testimony,  2 is governed by Idaho Code 67-5251 and the Idaho Rule of  3 Administrative Procedure 475 through 479. I have the  4 discretion to limit testimony when it is irrelevant or  5 unduly repetitious.</p> <p>6 I will briefly go over the order of proceedings  7 today. The Idaho Department of Lands will go first with  8 their presentation of evidence to the extent they have  9 any. There was an indication that they were relying on  10 their prehearing statement and did not intend to present  11 additional evidence.</p> <p>12 I will then turn the floor over to the applicant  13 to present their evidence on the application.</p> <p>14 The Coeur d'Alene Land Company will then go next  15 and then concerned citizens.</p> <p>16 I have granted both Coeur d'Alene Land Company  17 and concerned citizens the ability to participate as if  18 they were parties in these proceedings because I have  19 not yet ruled on their intervenor status. I did let  20 both of them know that I would rule prior to the start  21 of these proceedings, so that will come after these  22 introductory comments.</p> <p>23 And then Kootenai County Sheriff's Office will  24 be given an opportunity to present their objection.  25 They may also just rely on their written objections as</p>
<p style="text-align: right;">Page 10</p> <p>1 solely mine alone.</p> <p>2 I'm also going to introduce IDL representation.  3 They are presented here today by Kayleen Richter and  4 John Richards.</p> <p>5 The applicant is represented by Elizabeth  6 Tellessen. The intervenors, potential intervenors -- or  7 wait. I granted that motion. The Intervenor  8 Boardwalk, LLC, is also represented by Ms. Tellessen.</p> <p>9 The potential intervenor of Coeur d'Alene Land  10 Company is represented by John Magnuson.</p> <p>11 And the potential Intervenor of Concerned  12 Citizens is represented by Peter Smith and Nate Sargent.</p> <p>13 Objector Kootenai County Sheriff's Office is  14 represented by Sheriff Norris.</p> <p>15 Sheriff Norris are you in the crowd? Welcome.</p> <p>16 These proceedings are governed by the Idaho  17 Rules of Administrative Procedure, which can be found at  18 62.01.01, and Standards of Lake Protection Act, an IDAPA  19 20.03.04, which are the rules for the regulation of  20 beds, water, and airspace over the navigable lakes of  21 the State of Idaho.</p> <p>22 Pursuant to Rule 207 of the Idaho Rules of  23 Administrative Procedures, public witnesses do not have  24 the same rights as parties. They do not have the right  25 to examine witness or otherwise participate as parties.</p>	<p style="text-align: right;">Page 12</p> <p>1 it stands in the record here today.</p> <p>2 When public testimony begins, I want public  3 testifiers to understand that I control these  4 proceedings pursuant to 20.03.04.010.29 including  5 maintaining order, decorum, and common courtesy. I will  6 not tolerate disruptive behavior or behavior that will  7 impact a clean record.</p> <p>8 As you will see, to my right, we have a court  9 reporter who is attempting to take down the testimony in  10 these proceedings. Cheers, jeers, boos, hisses or  11 outcries disrupt that record, and I will ask you not to  12 engage in that type of behavior.</p> <p>13 I may put time limits on public testimony based  14 on the number of people who have requested to testify  15 and where we are at the evening. We only have this room  16 until 8:00 p.m. This does not mean that I don't care  17 about what you have to say or don't want to hear what  18 you have to say. I have heard the concerns and read the  19 written comments submitted to date and I have already  20 decided that this record will remain open for additional  21 written comment until September 30.</p> <p>22 The comments I have concerns are concerns about  23 erosion of the shoreline, safety of the waterway,  24 overcrowding of the Spokane River, and then the repair  25 cost, tax increases, and potential HOA fees to offset</p>

<p style="text-align: right;">Page 13</p> <p>1 the damage caused by overcrowding.  2 When you are called to testify you will be  3 placed under oath. If your comments replicate prior  4 comments, I ask that you choose not to testify in  5 repetition so that individuals with new information have  6 an opportunity to provide that here today. I may put  7 time limits on how long you have to testify. You will  8 be called up to this podium to testify to the room.  9 Any material, for those of you online listening,  10 that is presented in the room and not available online  11 with either be found on IDL's website currently or can  12 be found at a later date.  13 Now, I have a few preliminary matters to  14 address, including the pending motions for intervention,  15 but first I want to ask, Ms. Tellessen, have you had a  16 chance to review the River's Edge proposed exhibits?  17 <b>MS. TELLESSEN:</b> Yes, Hearing Officer, I have.  18 Thank you.  19 <b>HEARING OFFICER HAYES:</b> And I misspoke. Not  20 River's Edge proposed exhibits, concerned citizens  21 proposed exhibits.  22 <b>MS. TELLESSEN:</b> I have also reviewed those.  23 Thank you.  24 <b>HEARING OFFICER HAYES:</b> And do you stipulate to  25 their admission?</p>	<p style="text-align: right;">Page 15</p> <p>1 ability to participate as if they were parties  2 regardless of my decision pursuant to Newton versus  3 MJK/BJK, LLC, 167 Idaho 236.  4 In my mind this boils down to an issue of due  5 process, which requires a finding that there's a  6 protected park property interest. The Lake Protection  7 Act grants to littoral owners, quote, The right of  8 access to the water and, subject to the state  9 regulations, the right to build wharves and piers in aid  10 of navigation.  11 The concerned citizen declarations that I  12 reviewed included about 35 waterfront owners and 15  13 non-waterfront owners whose primary complaint related to  14 recreational access in various degrees, and then  15 additional complaints related to erosion repairs,  16 increase in taxes, increase in homeowners fees --  17 homeowners association fees, sorry, safety of the river,  18 and one relating to barge operation.  19 The Lake Protection Act does not create a right  20 to prevent any of those harms, similar to Newton where a  21 particular view is not protected for a littoral owner.  22 However, even if those rights were protected by the Lake  23 Protection Act, the question of what process is due with  24 recreation being a lake value factor when public  25 participation is sufficient without the necessity of</p>
<p style="text-align: right;">Page 14</p> <p>1 <b>MS. TELLESSEN:</b> To the extent that relevance  2 remains at issue, we'll stipulate to their admittance.  3 We rely on you to use your judgement to the relevancy to  4 these proceedings.  5 <b>HEARING OFFICER HAYES:</b> Thank you.  6 That was the only outstanding exhibits that have  7 not yet been admitted for the audience's sake.  8 I will issue the caveat, Mr. Smith, you saw  9 correspondence with my office with difficulty accessing  10 the videos. I have not yet had a chance to review  11 those, but my understanding is they have been provided  12 in a format where I can now review them and will review  13 them following the conclusion of the hearing.  14 Now, as to the motions to intervene. I have had  15 some time to think about those proposed interventions.  16 I am going to take up concerned citizens proposed  17 intervention first.  18 Our rules require for intervention that the  19 party -- or the potential party shows a direct and  20 substantial interest and that their interests are not  21 adequately represented by the parties in the proceeding.  22 I have already determined that concerned citizens  23 proposed intervention does not unduly broaden the  24 issues, and does not unduly delay or prejudice the  25 original parties, which is why I granted them the</p>	<p style="text-align: right;">Page 16</p> <p>1 intervention.  2 There were a handful of concerned citizen  3 declarations -- I want to say about three -- that stated  4 that boat traffic impacts their use of their dock at  5 times and that those individuals may have a direct and  6 substantial interest. But the question in my mind is  7 whether that carries the entire organization to the  8 direct and substantial interest.  9 So I do find that there is a lack of direct and  10 substantial interest, but even if there was, I find that  11 concerned citizens concerns are adequately represented  12 by the Idaho Department of Lands. Although IDL has  13 taken a neutral position, it is required to consider the  14 impacts on the lake value factors pursuant to 58-1301,  15 58-1306 sub (b) and sub (d), and IDAPA 20.03.04.012 and  16 .01. And those lake value factors are the protection of  17 property, the protection of navigation, fish and  18 wildlife habitat, aquatic life, recreation, and  19 aesthetic beauty and water quality.  20 They are required to weigh that against the  21 navigational or economic necessity or justification for  22 the encroachment. And while IDL states they are  23 neutral, it cannot advocate its role as trustee of  24 navigable waterways in favor of private parties. And  25 that's from Kootenai Environmental Alliance, Inc. versus</p>

<p style="text-align: right;">Page 17</p> <p>1 Panhandle Yacht Club, 105 Idaho 622, quoting Illinois 2 Central Railroad Company versus Illinois 146, U.S. 387, 3 dating 1892. 4 This was recently reaffirmed in the director's 5 final order in the matter of the application for 6 expansion of existing commercial facilities, Rivelle, 7 LLC, dba, Stancraft Company as applicant. Agency Case 8 No. PH-2024-NAV-22-02. Office of Administrative 9 Hearings Case No. 24-320-06, where the directors said, 10 quote, Through the public hearing process, IDL receives 11 input on the lake value factors from agencies and the 12 public. This input on the lake value factors and any 13 detriment thereto is carefully weighed against the 14 economics of navigational necessity, justification or 15 benefit, public or private, of such proposed 16 encroachment, citing Idaho Code 58.1306 sub (d). 17 So with that I am denying concerned citizens 18 motion to intervene. I will incorporate that denial in 19 my written order, Mr. Smith. 20 As to Coeur d'Alene Land Company motion to 21 intervene, I will be granting that motion. Because 22 Coeur d'Alene Land Company owns property directly 23 adjacent to the proposed project and because the 24 proposed project seeks to extend beyond the line of 25 navigability, I do see a 6-foot boat traffic lane and</p>	<p style="text-align: right;">Page 19</p> <p>1 the State be regulated in order that the protection of 2 property, navigation, fish and wildlife habitat, aquatic 3 life, recreation, aesthetic beauty, and water quality be 4 given due consideration in the weight against the 5 navigation or economic necessity or justification for or 6 the benefit to be derived from the proposed 7 encroachment. No encroachment on, in, or above the beds 8 of waters of any navigable lake in the state shall 9 hereafter be legal unless approval therefore has been 10 give as provided in this action. 11 I'm going to explain what that means. 12 As the instrumentality of the land board, IDL 13 has the duty, authority, and discretion to regulate, 14 control, and permit encroachments within the limits of 15 the LPA and the LPA rules. But differently, IDL only 16 has the authority to regulate and control what it is 17 authorized to. 18 When an encroachment permit application is 19 contested, the LPA requires IDL to hold a public hearing 20 on the application such that each person or agency 21 appearing at the hearing may give testimony in support 22 of or in opposition to the proposed encroachment. A 23 public hearing under the LPA is a limited opportunity 24 for the public to provide testimony for the record. 25 IDL consider the entirety of the record,</p>
<p style="text-align: right;">Page 18</p> <p>1 150-foot buffer on either side of that. I also see a 2 potential impact on their littoral rights, so 3 Coeur d'Alene Land Company has been granted intervenor 4 status. 5 And with that I will turn it over to IDL for 6 their presentation of evidence, if there is any. 7 Ms. Richter? 8 <b>MS. RICHTER:</b> Do you want me to come up there or 9 stay here? 10 <b>HEARING OFFICER HAYES:</b> Come up here. 11 <b>MS. RICHTER:</b> All right. Can you hear me? 12 Hello everybody. I'm Kayleen Richter. I'm the 13 attorney for the Idaho Department of Lands. Idaho 14 Department of Lands would just like to present a brief 15 statement for you all. Some of this overlaps a little 16 bit with what the hearing officer just explained in her 17 rulings on those motions to intervene, but I just wanted 18 to provide some additional clarification for you all on 19 this proceeding. 20 In 1974 the Idaho legislature enacted the Lake 21 Protection Act, or LPA. In the LPA the Idaho 22 legislature proclaimed: The legislature of the state of 23 Idaho hereby declares that the public health interest, 24 safety, and welfare requires that all encroachment upon, 25 in, or above the beds or waters of navigable lakes of</p>	<p style="text-align: right;">Page 20</p> <p>1 including both public and agency testimony, when IDL 2 gives due consideration to the potential detriment on 3 the lake value factors, which IDL weighs against the 4 navigational or economic necessity or justification for 5 or benefit to be derived from the proposed encroachment. 6 To summarize and paraphrase, when IDL processes 7 and evaluates an encroachment permit application, the 8 LPA requires IDL to determine: 9 One, whether the proposed encroachment satisfies 10 the applicable minimum standards describe in the LPA 11 rules. 12 And, two, whether the proposed encroachment 13 potential detrimental effects on the lake value factors 14 outweigh potential benefits. 15 IDL conducts this two-step evaluation by 16 separating the role of agency staff in this proceeding 17 before OAH from the role of the ultimate decision-maker, 18 the IDL director. Meaning, as subject matter experts, 19 IDL staff receive and process an application, evaluate 20 its compliance with the technical requirements in the 21 LPA, in the LPA rules, and may note any deficiencies for 22 the record. 23 In contrast it is the IDL director, not IDL 24 staff, who ultimately weighs potential benefits and 25 detriments of the proposed encroachment after</p>

<p style="text-align: right;">Page 21</p> <p>1 considering the entire record, which may include IDL's 2 staff technical summary, any public or agency comment, 3 and the hearing officer's recommended order. 4 IDL is neither in favor of or in opposition to 5 any applications or encroachment permits. IDL's role at 6 this stage of the proceedings is to assist in conveying 7 facts and to remain neutral on the weight of those facts 8 until the entire record can be considered. 9 The applicant, not IDL, has the burden to prove 10 it has met all the requirements and that the relevant 11 factors weigh in it favor such that it should receive a 12 permit. 13 The director's ultimate decision on the 14 application is based on its independent evaluation of 15 the record. To make this decision the director is 16 advised by a separate attorney from the IDL legal 17 department than the two of us here tonight. 18 Both the director and the IDL attorney who 19 advises the director have been and will be screened off 20 from these proceedings until the record is complete, 21 closed, and the hearing officer has issued her 22 recommended order for the director to review. This is 23 done to ensure the director's decision is based on his 24 own review of the whole picture. 25 As you're aware, the proposed encroachment for</p>	<p style="text-align: right;">Page 23</p> <p>1 Considering the time constraints of one of the 2 witnesses here to speak on behalf of the City of 3 Coeur d'Alene, we would like to invite Hilary Patterson 4 up first to present her testimony on behalf of the 5 adjacent land owner and the City of Coeur d'Alene. 6 HILARY PATTERSON, 7 having been first duly sworn to tell the truth, the 8 whole truth, and nothing but the truth, relating to said 9 cause says: 10 <b>MS. PATTERSON:</b> Good afternoon. I am 11 Hilary Patterson. I am Coeur d'Alene's community 12 planning director, and I am here to provide testimony on 13 behalf of the City of Coeur d'Alene. 14 The City of Coeur d'Alene is the adjacent 15 littoral owner. The City owns shoreline, public park 16 and trail system within the Atlas Waterfront project to 17 the east of the subject property. 18 Lanzce Douglass owns approximately 26 acres of 19 land, comprised of five parcels, within the City, south 20 of West Seltice Way, north of the Spokane River, and 21 southwest of the intersection of North Atlas Road and 22 West Seltice Way. 23 <b>HEARING OFFICER HAYES:</b> Ms. Patterson, because 24 you're reading, would you slow down for our court 25 reporter.</p>
<p style="text-align: right;">Page 22</p> <p>1 consideration in this proceeding is a community dock for 2 the residence of a waterfront apartment complex located 3 on the Spokane River. The application contains one 4 component, a 74-slip community dock system comprised of 5 five separate docks, Docks A through E on the 6 application. The applicant is not proposing any other 7 encroachments through this application. 8 IDL has received a letter from the Kootenai 9 County Sheriff's office and numerous email and letter 10 comments from the public regarding this application. 11 Those written comments speak for themselves and should 12 be given the weight the hearing officer and the IDL 13 director deem appropriate. 14 Given the information provided in the 15 application and in the record at this time, IDL notes 16 additional information may be needed from the applicant 17 for IDL to determine compliance with encroachment 18 standards regarding the lineal feet of water frontage; 19 however, it appears that the application satisfies the 20 rest of the minimum standards within the IDL's authority 21 to regulate. 22 Thank you very much. 23 <b>HEARING OFFICER HAYES:</b> Ms. Tellessen, the floor 24 is yours. 25 <b>MS. TELLESSEN:</b> Thank you, Hearing Officer.</p>	<p style="text-align: right;">Page 24</p> <p>1 <b>MS. PATTERSON:</b> Sure. Yes. 2 Mr. Douglass has been approved for a zone 3 change, a special use permit to increase density, and a 4 planned unit development that allows for the River's 5 Edge Apartment project comprised of up to 680 dwelling 6 units, as multiuse trail with river access for the 7 public, and anticipated boat slips for residents of the 8 apartments. 9 The River's Edge Apartments project was approved 10 by the planning and zoning commission and the city 11 council recognizing the partnership for public benefit, 12 including such amenities as a multiuse trail with 13 seating areas and multiple public access points along 14 the Spokane River, funding of a traffic mitigation plan, 15 and agreeing to lease 29 of the units at 100 percent 16 Kootenai County's Area Median Income providers. 17 The original project concept included a mix of 18 apartments and 28 single-family residential lots along 19 the shoreline with docks, limited public access to the 20 Spokane River, and a trail that would have been located 21 away from the Spokane River for the full length of the 22 project. 23 Through project approval and a development 24 agreement, Mr. Douglass has agreed to develop and 25 install a multiuse trail, no less than 16 feet wide,</p>

<p style="text-align: right;">Page 25</p> <p>1 constructed to City standards that runs adjacent to the 2 Spokane River and is open to the public and accessible 3 by the public at the west and east ends of the property. 4 The path will connect with the trail through the Atlas 5 Waterfront neighborhood to the east and to the trail 6 through the Mill River neighborhood to the west. One of 7 the four public beaches within the project will be ADA 8 compliant. 9 The Coeur d'Alene Municipal Code allows for 10 docks to be requested as part of a planned unit 11 development project as a departure from the Shoreline 12 Ordinance. 13 The development agreement between the owner and 14 City indicates that if docks are constructed, access to 15 the docks, including a standpipe system acceptable to 16 the fire department, is required and that any dock 17 permits must be reviewed and approved by the Idaho 18 Department of Lands. 19 The City of Coeur d'Alene supports public access 20 to the beneficial recreational opportunities in and on 21 the Spokane River. 22 And I have hard copy I can provide to you all. 23 Thank you. 24 <b>HEARING OFFICER HAYES:</b> I'd like to enter this 25 as an exhibit.</p>	<p style="text-align: right;">Page 27</p> <p>1 of the public? 2 <b>MS. PATTERSON:</b> The challenge doesn't meet the 3 commercial marina standards for the City, but there is 4 nothing restricting that from happening. 5 <b>MR. MAGNUSON:</b> Right. So it doesn't meet the 6 commercial standards? 7 <b>MS PATTERSON:</b> Correct. 8 <b>MR. MAGNUSON:</b> Thank you. 9 <b>MR. SMITH:</b> Ms. Patterson, we met. Peter Smith. 10 Has the City analyzed or does it have an opinion 11 on the navigational necessity of this marina? Does it 12 have an opinion on that? 13 <b>MS. PATTERSON:</b> The City has not weighed in on 14 that. 15 <b>MR. SMITH:</b> Has the City weighed in on the 16 justification for this proposed community dock? 17 <b>MS. PATTERSON:</b> The City has not weighed in on 18 the justification, just considers its littoral right and 19 they made a request through the Department of Lands. 20 <b>MR. SMITH:</b> And has the City taken a position on 21 the safety of the river and the increased boat traffic 22 on the river in any way? 23 <b>MS. PATTERSON:</b> The City has not. 24 <b>MR. SMITH:</b> So the City has no opinion on those 25 factors?</p>
<p style="text-align: right;">Page 26</p> <p>1 Is there any objection from the Department of 2 Lands? 3 IDL stipulates. 4 Mr. Magnuson? 5 <b>MR. MAGNUSON:</b> No. 6 <b>HEARING OFFICER HAYES:</b> Okay. This will be 7 admitted as River's Edge Exhibit 18. 8 IDL, did you have any questions for that 9 witness? 10 <b>MS. RICHTER:</b> No. 11 <b>HEARING OFFICER HAYES:</b> Mr. Magnuson? 12 <b>MR. MAGNUSON:</b> Just a couple. 13 <b>HEARING OFFICER HAYES:</b> And then, Mr. Smith, 14 same question? 15 <b>MR. SMITH:</b> I will. 16 <b>MR. MAGNUSON:</b> Ms. Patterson, are you aware of 17 any requirement in the PUD that applies to this property 18 that requires that these boat slips, if constructed, be 19 actually rented to the occupants of the apartments? 20 <b>MS. PATTERSON:</b> There is nothing in the City's 21 approval. That was presumed, but that is not a 22 condition of approval by the City. 23 <b>MR. MAGNUSON:</b> And, likewise, these slips, 24 there's nothing in the City's approval that would limit 25 the applicant's ability to lease the slips to any member</p>	<p style="text-align: right;">Page 28</p> <p>1 <b>MS. PATTERSON:</b> The City has not officially 2 weighed in on those factors. 3 <b>MR. SMITH:</b> Thank you. 4 <b>HEARING OFFICER HAYES:</b> Ms. Tellessen, any 5 further redirect? 6 Thank you. You may be excused. 7 <b>MS. TELLESSEN:</b> Thank you. 8 Thank you. Ms. Hearing Officer, IDL, for your 9 work and efforts and the public for showing such 10 interest in this application. 11 We are here today asking for a community dock, 12 which definitionally, under the Lake Protection Act, is 13 for the use of the littoral owners of those with 14 littoral rights in the upland property. 15 At this point that property is owned by three 16 entities: River's Edge Apartments, which is the 17 applicant that was named on the application. Since that 18 time, affiliated entities, Boardwalk and Docks and 19 Residences on Spokane, have gained ownership interests 20 in the land that supports the apartment project and have 21 entered leases for shared use of those littoral rights 22 to ensue that there is no question for the intent to 23 have this dock available for the use of the apartment 24 complex. 25 Each of those parties has been granted</p>



<p style="text-align: right;">Page 29</p> <p>1 intervenor status. IDL has acknowledged that they are  2 eligible to make application, and that there is no  3 established procedure for an assignment of that  4 application less there be a permit issued and an  5 assignment required under the IDAPA.  6 There are four parcels of property. There is  7 one parcel that shows as two tax parcels -- for those of  8 you trying to follow along on the maps -- because it's  9 split by a section line, but there are four parcels.  10 There's one shoreline parcel which will be developed  11 with additional multifamily units, as well as the public  12 access points, the trail, the beach access points, a  13 seawall, and the docks that are being discussed here  14 today.  15 As I will discuss, and most of the witnesses  16 that will talk on behalf of the applicant today, this  17 application does, in fact, meet both the technical  18 requirements as well as the lake value factors that are  19 pertinent to approval of this application.  20 The shoreline lineal frontage that has been used  21 in the application is based on a common practice to use  22 GIS measurement to establish the shoreline footage and  23 base the size of the docks under the statute in --  24 consistent with that measurement.  25 There -- our surveyor will discuss with you the</p>	<p style="text-align: right;">Page 31</p> <p>1 is governed in the Idaho Safe Boating Act, which is  2 within the justification of, not IDL, but Idaho State  3 Parks and Recreation. Idaho State Parks and Recreation  4 has notably not commented on this application.  5 So you'll hear a fair amount tonight about  6 littoral ownership and littoral rights, and those are  7 the rights of every Idahoan who owns property abutting a  8 navigable shoreline to be able to access that shoreline.  9 The IDAPA as well as the Lake Protection Act control the  10 process for evaluating these applications and  11 establishing the standards that have to be met.  12 There's been discussion about the, I think,  13 veracity of our client's position and interest in  14 renting these docks to the members of the apartment --  15 or the tenants of the apartment complex. There is no  16 basis to question or to discredit that testimony.  17 This is going to be at least 650 to 680 units,  18 residences. Even some of the objectors own math  19 indicates that about 10 percent of Idahoans own a boat.  20 That leaves us with approximately 65 boat owners that  21 may, most likely, be interested in leasing these  22 tenants, leaving very few available for additional water  23 recreation availability, whether those be kayaks, paddle  24 boards, other small vessels.  25 So speaking first to the technical requirement.</p>
<p style="text-align: right;">Page 30</p> <p>1 difference between a dimensional line in a deed  2 description and the shoreline lineal footage, which is  3 based on the ordinary high-water mark.  4 We will hear from the project owner, as well as  5 our civil engineer who aided in the evaluation of this  6 366-foot corridor that you see in the application that  7 was requested by IDL.  8 We also have Captain Joe Derie available to us  9 to speak to the question of navigation, a retired Coast  10 Guard officer with probably the longest CV I've seen in  11 my career.  12 As was mentioned by IDL, the applicant does bear  13 the burden of establishing satisfaction of the  14 conditions for this community dock in these proceedings.  15 That burden is to show that more likely than not we have  16 met those factors, and those being the technical  17 requirements as well as the lake value factors weighed  18 against the question of navigational justification for  19 benefits and economic justification and benefits.  20 While there is a great deal of information in  21 the record, both from the public -- which we thank you  22 for your interest -- as well as the sheriff's office  23 regarding the safety of the lake, the Idaho Lake  24 Protection Act does not protect or control the safety of  25 the lake, particularly as it relates to boating. That</p>	<p style="text-align: right;">Page 32</p> <p>1 There shall be no more than 7 square feet of dock space  2 per lineal footage of frontage. The applicant in this  3 case and the assistance -- with the assistance of R&amp;R  4 Northwest prepared that application using the common  5 method of GIS to evaluate the length of the shoreline.  6 That evaluation indicated a shoreline length of  7 1,581 linear feet. The survey boundary based on the  8 ordinary high-water mark is actually 1,591 feet, and the  9 width -- or the square footage of the dock of 11,064  10 feet, which is less than would be the max under either  11 of those measurement. So the square footage of the dock  12 is within the guidelines.  13 There has been an additional requirement  14 requested by IDL considering the width of the river at  15 this location. And what IDL has requested is for an  16 indication showing that there will be a corridor  17 unobstructed to the width of 366 feet. And we'll  18 discuss a little bit more in detail on our understanding  19 of that requirement from IDL.  20 In light of that evaluation, the dock design was  21 revised and the docks were shortened to accommodate and  22 ensure that there was no encroachment into that corridor  23 that IDL has requested.  24 As we will discuss, again with some of our  25 witnesses, Captain Joe Derie, principally a dock is by</p>

<p style="text-align: right;">Page 33</p> <p>1 its nature an aid to navigation. It is an encroachment  2 and is permitted to be an encroachment into the  3 navigable channel, and IDL permits that which is why  4 we're here today so IDL can evaluate the extent of that  5 encroachment and the availability of space for safe  6 navigation.  7 We have met those standards, and we will  8 establish today that there is no evidence to the  9 contrary that these docks will somehow create an  10 impediment to navigation or make boating the Spokane  11 River any less safe.  12 As provided in the IDAPA the permission to have  13 a community dock is inherent in the legislation unless  14 IDL finds that the conditions of a specific site warrant  15 a reduction. There isn't a specific call-out that says  16 now you cannot have one. It's a matter of designing it  17 consistent with the conditions that are present in the  18 river.  19 As many of you know, I believe our residents  20 along the river know, that there is a statutory no wake  21 zone from the end of docks. There is required both in  22 the state regulations as well as Kootenai County code  23 limitations on boater safety as it relates to distance  24 to other boats, speed of travel, and no wake zones.  25 None of those items are bases on which the dock itself</p>	<p style="text-align: right;">Page 35</p> <p>1 These agencies are deemed to be experts in their  2 subject area, and to the extent there is a reason to  3 comment on an application, these agencies do, in fact,  4 comment. The absence of the comment is an indication  5 that there is no evidence that there is a detriment to  6 the lake factors over which these agencies have  7 jurisdiction.  8 As the hearing officer already noted, the Lake  9 Protection Act is intended to protect the littoral  10 rights of adjacent land owners. That has commonly  11 been -- commonly been deemed to include those  12 immediately adjacent along the shoreline. To the  13 hearing officer's inclusion of CDA Land Company, who is  14 a land owner across the river beyond the littoral lines  15 of this project, that has been extended. To that end,  16 IDL, in its evaluation again of the 366-foot corridor,  17 has included an evaluation of the equity to ensure that  18 the southern shoreline is able to have docks in the  19 future, which that property, as many of you know, is  20 being marketed for sale with the benefit of having docks  21 along its shoreline as is the right of every littoral  22 owner in the state of Idaho.  23 We talk a lot about navigation, particularly as  24 it relates to the safety of the river. I will remind  25 each of you, I'm sure it doesn't bear much reminding,</p>
<p style="text-align: right;">Page 34</p> <p>1 is judged.  2 We'll hear some of the economics of this project  3 which vary from the lease payments that will be made to  4 IDL for the benefit of the public and the use of the  5 public area. There will be increase in property taxes  6 to the project to the extent income is generated, and  7 those will go to both Kootenai County as well as City of  8 Coeur d'Alene.  9 There will be economic savings to those tenants  10 who are able to now have their boat where they live  11 instead of shuttling it to and fro on weekends.  12 There will be economic benefits, of course, to  13 the land owner.  14 Each of you enjoy the benefit that our shoreline  15 residents of the property value associated with having  16 shoreline property, so I trust that that needs no  17 further explanation.  18 We will be talking about the lake value factors.  19 Many of those lake value factors are within the purview  20 of specific agencies within the state of Idaho. The  21 only agency that has spoke with respect to this  22 particular application is the Kootenai County Sheriff.  23 DEQ has not offered any comment. Idaho Parks and Rec  24 has not offered any comment. Idaho Fish and Game has  25 not offered any comment.</p>	<p style="text-align: right;">Page 36</p> <p>1 that navigation is not only for pleasure motor boats or  2 commercial motor boats. Navigation can include all  3 sorts of motorized and non-motorized vessels, and it is  4 to each of those that have the benefit of not only this  5 dock usage as tenants may share in a variety of  6 recreational opportunities, including fishing, kayaking,  7 paddle boarding, much like many of you do. There isn't  8 a predisposition to ensure that each of these slips is  9 rented to somebody with a boat.  10 There will be discussions about the difference  11 between a navigational encroachment and a hazard. This  12 dock has been deem -- has been coined a hazard by some  13 with no actual basis, considering it hasn't yet been  14 built, and considering it will be built and readily  15 apparent along the river.  16 Again going back to the Idaho Boat Safety Act,  17 again, the state of Idaho doesn't want people off the  18 river or off its lakes. The Idaho Boat Safety Act says  19 very plainly its intent is to foster the greater  20 development, use, and enjoyment of the waters of this  21 state by everybody, not just folks lucky enough to be  22 able to afford a single-family residence on the Spokane  23 River.  24 These tenants are folks that might not ever have  25 the benefit of having direct access to a dock on the</p>

<p style="text-align: right;">Page 37</p> <p>1 Spokane River. But in this instance they will be 2 granted that, and that makes this project very unique 3 and fills a gap in the otherwise available resources for 4 recreation on the river and on the lake. 5 We also consider recreation. I know, having 6 read through the comments, the recreation that gets the 7 most attention are the wake boats and surf boats that 8 are creating sizable wakes throughout the river, 9 throughout the lake. I think many of the commenters are 10 concerned that that recreation -- recreating has taken 11 over. 12 IDL will hear from some of our witnesses that, 13 and probably many of you know, the safest place and most 14 enjoyable place to recreate on the river is near the 15 shore and by docks for those who aren't under motor, and 16 this will offer additional and more protected space for 17 not only those sorts activity, but also swimming and 18 shore enjoyment. 19 As was mentioned by Ms. Patterson and will be 20 further discussed, the prior renditions of this design 21 did have a greater visual impact on the shoreline. 22 Certainly maybe of you are familiar with the dock, after 23 dock, after dock, after dock that goes up and down the 24 river at each single-family residence that you pass. 25 These are five docks. They are larger, but</p>	<p style="text-align: right;">Page 39</p> <p>1 request consistent with the littoral owners rights to 2 seek and have permitted a community dock in the state of 3 Idaho. 4 Our first witness will be Lanzce Douglass, 5 representative of River's Edge Apartments, Boardwalk, 6 and Docks and Residences on the Spokane. 7 Lanzce. 8 LANZCE DOUGLASS, 9 having been first duly sworn to tell the truth, the 10 whole truth, and nothing but the truth, relating to said 11 cause says: 12 <b>MR. DOUGLASS:</b> Hello. My name is 13 Lanzce Douglass. I'm proponent of the project. 14 A little bit of history on it. I purchased the 15 property in 2014 from Washington Trust Bank. The 16 property was used as a saw mill prior to that for many, 17 many decades. 18 Over the last ten years we've worked with the 19 City to come up with a plan that worked for all parties 20 and are currently approved for the roughly 680 units of 21 apartments, which will have a trail going along the 22 waterfront, four beach access points, a seawall along 23 our edge, and hopefully the docks. All the permits have 24 either been applied for or obtained for the project 25 except for the docks at this time.</p>
<p style="text-align: right;">Page 38</p> <p>1 there will be four designated swimming areas and lake 2 access points that don't exist in between individual 3 homes. This offers additional visual break and 4 aesthetic break to the shoreline that wouldn't otherwise 5 exist but for this community dock proposal. 6 We certainly hear the many, many objections to 7 the nature of the lake as it presently exists, but that 8 exists with or without this dock. I think many of you 9 know that at your core and have been asking for elected 10 officials, have been asking the sheriff, to do something 11 more about the traffic on the river. Largely we support 12 that. There isn't anyone in this room that thinks the 13 river should become less safe, but I think you will hear 14 from our witnesses and the testimony today that these 15 docks are not going to make the river less safe. These 16 docks are not going to change the habits of boaters as 17 they travel up and down this river. These docks are 18 going to provide additional opportunities to people of 19 the state of Idaho that otherwise might not be able to 20 access the river. 21 So we will ask the hearing officer and IDL in 22 its further review of this record to conclude the lake 23 value factors are not being damaged or impeded by this 24 proposal, that the navigational opportunities and 25 economics that arise from it more than justify the</p>	<p style="text-align: right;">Page 40</p> <p>1 Originally the project was approved for 28 2 single-family homes. Each residence would have had a 3 dock up to 700 square feet. The total dock area for the 4 site would have been 19,600 feet or roughly 8,000 feet 5 more than we're asking for today. 6 There's been a little bit of innuendo about who 7 the docks will serve. It will be for residents only of 8 the apartment complex. They will not be for the general 9 public. They will not be a commercial marina. As I 10 said, it'll be for residents of the project. 11 All boater or rent slip lessees will be required 12 to take a boater safety class and provide proof of 13 passing it before we rent them a slip. 14 A lot of the points I have to go over have 15 already been covered by Hilary and Elizabeth so I'm 16 skipping them for brevity. 17 There's been a little bit of talk about the 18 littoral ownership of the property. Be it a community 19 dock, I believe you have to have three parcels and three 20 owners, which we have. The land or parcels that don't 21 front river have leases across the frontage of the 22 others to cross into the water. 23 The benefits of the project would be that IDL 24 receives lease payments every year. 25 As Elizabeth's mentioned, we have increased</p>

<p style="text-align: right;">Page 41</p> <p>1 property taxes in Kootenai County and the City  2 Coeur d'Alene. Cost savings is tenants not having to  3 constantly launch and pick up their boats at the nearby  4 marina, new boat registrations.  5 And the project will actually help mitigate the  6 damage done by boats that go through what's called the  7 no fly zone, which is a frontage. This will be  8 accomplished by installing a seawall along our  9 waterfront and the installation of the docks.  10 At our initial meeting with IDL this spring, we  11 were told of the 366-foot open water requirement down  12 the middle of the river, which was a new requirement. I  13 think we were the first one that it was imposed upon.  14 We diagrammed that as best we could. We surveyed the  15 south side of the river bank in this location. We  16 submitted our application.  17 We were informed by IDL that we were missing a  18 couple measurements. We went back out, fixed the  19 application, added the measurements on, resubmitted the  20 application to IDL, who accepted it, and brought us  21 where we're at today.  22 So that's the brief summary of what we've got.  23 <b>HEARING OFFICER HAYES:</b> Ms. Tellesen, since he  24 skipped over some of the points, the floor is still  25 yours for any clarifying testimony you would like for</p>	<p style="text-align: right;">Page 43</p> <p>1 Q. And have you heard any other evidence or  2 testimony relating to the factors of water quality?  3 <b>A. No.</b>  4 Q. What about regarding fish and wildlife  5 detriments?  6 <b>A. No comments.</b>  7 Q. And about aesthetics?  8 <b>A. None.</b>  9 Q. And you're placing a seawall along the shoreline  10 of your property, correct?  11 <b>A. Yes.</b>  12 Q. And is the purpose of that to avoid any further  13 erosion?  14 <b>A. Yes.</b>  15 Q. And there will certainly be economic benefits to  16 your projects in conjunction with this dock?  17 <b>A. That is correct.</b>  18 Q. And have you heard or seen any basis for that is  19 not allowed?  20 <b>A. No.</b>  21 <b>MS. TELLESSEN:</b> Thank you. I may have  22 follow-up.  23 <b>HEARING OFFICER HAYES:</b> IDL?  24 <b>MS. RICHTER:</b> No.  25 <b>HEARING OFFICER HAYES:</b> IDL doesn't have any</p>
<p style="text-align: right;">Page 42</p> <p>1 this witness.  2 <b>DIRECT EXAMINATION</b>  3 <b>BY MS. TELLESSEN:</b>  4 Q. Yes. Thank you, Mr. Douglass.  5 Now, you have reviewed the video recording of  6 the special meeting held by the Kootenai County Board of  7 County Commissioners, correct?  8 <b>A. Yes.</b>  9 Q. And you heard the discussion at that meeting  10 essentially seeking to come up with a reason to deny  11 this application?  12 <b>A. Yes. That was the stated purpose of the meeting</b>  13 <b>by some of the participants.</b>  14 Q. And did you find any of their speculation or  15 supposition about your docks to be accurate?  16 <b>A. No. They even brought up the fact that it was</b>  17 <b>arbitrary to deny them.</b>  18 Q. And have you, in your review, found any basis  19 where this -- your proposed docks will be a detriment to  20 any other private property owner adjacent or otherwise?  21 <b>A. No.</b>  22 Q. And have you heard or seen any evidence  23 regarding a detriment to the navigational quality of the  24 river other than from the sheriff?  25 <b>A. No.</b></p>	<p style="text-align: right;">Page 44</p> <p>1 questions for this witness.  2 Mr. Magnuson?  3 <b>MR. MAGNUSON:</b> I do.  4 <b>HEARING OFFICER HAYES:</b> Okay. Ms. Tellesen,  5 will you share the microphone.  6 <b>CROSS-EXAMINATION</b>  7 <b>BY MR. MAGNUSON</b>  8 Q. Mr. Douglass, my name is John Magnuson. I  9 represent Coeur d'Alene Land Company. I have a few  10 questions for you, if I could.  11 You indicated that, well, originally you  12 submitted this application on behalf of River's Edge  13 Apartments, LLC, correct?  14 <b>A. Yes, I did.</b>  15 Q. And that entity at the time owned the waterfront  16 parcel and the three upland parcels that are actually  17 four tax parcels?  18 <b>A. Correct.</b>  19 Q. And then you executed a couple of leases, I  20 believe, on August 21, correct?  21 <b>A. Sounds correct.</b>  22 Q. And then just as an overview, kind of  23 contextual, the leases leased one-third -- is it  24 one-third or one-quarter of littoral rights of the  25 waterfront parcel to the upland parcels.</p>

<p style="text-align: right;">Page 45</p> <p>1 <b>A. I don't --</b></p> <p>2 <b>MS. TELLESEN:</b> For the record, the documents</p> <p>3 being referenced are part of the record. They speak for</p> <p>4 themselves. They're being presently mischaracterized.</p> <p>5 You can answer to the extent you know.</p> <p>6 <b>MR. MAGNUSON:</b> I would object as someone trying</p> <p>7 to coach the witness or answer on the witness's behalf.</p> <p>8 <b>HEARING OFFICER HAYES:</b> Understood.</p> <p>9 The documents are part of the record and can be</p> <p>10 referenced for ease. To the extent this witness knows,</p> <p>11 he can answer your questions.</p> <p>12 <b>MR. MAGNUSON:</b> I'll clarify.</p> <p>13 <b>BY MR. MAGNUSON:</b></p> <p>14 Q. Mr. Douglass, on August 21 you signed a series</p> <p>15 of leases to change the nature of your application from</p> <p>16 what it was when it was initially submitted.</p> <p>17 <b>A. No, that's not correct.</b></p> <p>18 Q. Well, you now have different applicants today</p> <p>19 than when you originally submitted the application,</p> <p>20 correct?</p> <p>21 <b>A. Correct.</b></p> <p>22 Q. And now you have the upland parcels. Let's call</p> <p>23 them the apartment parcels. They have leases for a</p> <p>24 right to use the waterfront parcel.</p> <p>25 <b>A. I believe that that's a correct statement, but</b></p>	<p style="text-align: right;">Page 47</p> <p>1 Mr. Douglass, on behalf of both the lessor and the</p> <p>2 lessee under these leases?</p> <p>3 <b>A. I did not say that.</b></p> <p>4 Q. So you do have the authority to make the</p> <p>5 decisions on behalf of the lessors and the lessees.</p> <p>6 <b>A. I didn't say that either.</b></p> <p>7 Q. If you don't, who does?</p> <p>8 <b>A. I'd have to -- I think that's a legal question</b></p> <p>9 <b>to refer to my attorney.</b></p> <p>10 Q. The leases, would you disagree that the leases</p> <p>11 can be terminated with the mutual consent of the both</p> <p>12 the lessor and the lessee?</p> <p>13 <b>A. Again, I think the leases speak for themselves.</b></p> <p>14 <b>I'd have to read them and see that.</b></p> <p>15 Q. Would you have an objection if the Department of</p> <p>16 Lands conditioned the issuance of your permit upon a</p> <p>17 condition in the permit to be recorded that the only</p> <p>18 people who can rent those slips would be the renters in</p> <p>19 your apartment or someone who built a house on the</p> <p>20 waterfront parcel?</p> <p>21 <b>A. No. That's our intent.</b></p> <p>22 Q. So you wouldn't object if that was made a</p> <p>23 condition?</p> <p>24 <b>A. Correct.</b></p> <p>25 Q. And there was an indication that you put in a</p>
<p style="text-align: right;">Page 46</p> <p>1 <b>I'd have to read the actual lease.</b></p> <p>2 Q. So the leases allow the upland parcels, which</p> <p>3 have the blowing of the apartments on them, to use the</p> <p>4 docks on the waterfront parcel?</p> <p>5 <b>A. The upland parcels have the apartments on them</b></p> <p>6 <b>now, but we're in the process of adding the apartments</b></p> <p>7 <b>on the waterfront parcel and the westerly parcel.</b></p> <p>8 Q. Sure. And you indicated that.</p> <p>9 The leases aren't recorded, are they?</p> <p>10 <b>A. I don't believe so. I'm not aware that they</b></p> <p>11 <b>have to be recorded.</b></p> <p>12 Q. And the leases, are you aware that -- they're,</p> <p>13 of course -- you signed -- you didn't sign on both</p> <p>14 sides, but both entities are entities that have</p> <p>15 identical ownership, both the lessor and the lessee?</p> <p>16 <b>A. That's not true.</b></p> <p>17 Q. Okay. Who are the -- who are the owners of the</p> <p>18 lessee?</p> <p>19 <b>A. If I'm -- which parcel are you referring to?</b></p> <p>20 Q. How about -- how about the River's Edge</p> <p>21 Apartments, LLC.</p> <p>22 <b>A. The owner of that is Douglass Properties, LLC,</b></p> <p>23 <b>is the only member.</b></p> <p>24 Q. Okay. And are you saying that ultimately you</p> <p>25 don't have the authority to make determinations, you,</p>	<p style="text-align: right;">Page 48</p> <p>1 seawall.</p> <p>2 What year did you do that?</p> <p>3 <b>A. I said we have the permit for a seawall. I</b></p> <p>4 <b>didn't say we have put it in already.</b></p> <p>5 Q. You bought the property in 2015?</p> <p>6 <b>A. '14, I said.</b></p> <p>7 Q. So between 2014 what happened to cause you to</p> <p>8 want to put in a seawall? Erosion?</p> <p>9 <b>A. Well, we've been working with the City of</b></p> <p>10 <b>Coeur d'Alene for over ten years to get a trail put on</b></p> <p>11 <b>the water. And to have the trail put on the water, in</b></p> <p>12 <b>the first 40 feet, which is what the agreement was with</b></p> <p>13 <b>the City, I needed to have a wall to hold the dirt up,</b></p> <p>14 <b>to hold the trail.</b></p> <p>15 Q. Have you noticed any greater degree of erosion</p> <p>16 on the property since you acquired it in 2014 as a</p> <p>17 result of boat traffic?</p> <p>18 <b>A. Can't say that I have.</b></p> <p>19 Q. Is it part and parcel of one of the purposes of</p> <p>20 the seawall to prohibit the further erosion caused by</p> <p>21 increased boat activity?</p> <p>22 <b>A. I think the No. 1 reason for the seawall is to</b></p> <p>23 <b>hold the trail up.</b></p> <p>24 Q. And it has the added benefit of preventing</p> <p>25 further erosion based on boat traffic?</p>

<p style="text-align: right;">Page 49</p> <p>1     <b>A. The seawall is not in the water, actually. It's</b>  2     <b>above the waterline, so I don't know if it's going to</b>  3     <b>prevent erosion or not. It's not intended to be in the</b>  4     <b>water.</b>  5     Q. It's not in the water today but maybe tomorrow?  6     <b>A. What?</b>  7     <b>MR. MAGNUSON:</b> I don't have any further  8     questions.  9     Should I give this to Mr. Smith?  10    <b>HEARING OFFICER HAYES:</b> If he has questions.  11    <b>CROSS-EXAMINATION</b>  12    <b>BY MR. SMITH:</b>  13    Q. Mr. Douglass, my name is Peter Smith. I  14    represent the parties -- a party called Concerned  15    Citizens, which you heard earlier was moving to  16    intervene but wasn't allowed to do so, but I'm allowed  17    ask some questions.  18    You mentioned in your testimony that there's a  19    navigational necessity for these docks. And I looked  20    through all the exhibits that you submitted and I'm  21    wondering what evidence you have in support of the  22    navigational necessity of these docks.  23    <b>A. I don't believe I said that in my testimony here</b>  24    <b>today.</b>  25    Q. Is there a navigational necessity for these</p>	<p style="text-align: right;">Page 51</p> <p>1     Q. Do you have any evidence of the navigational  2     benefit of these docks?  3     <b>A. Not at this time.</b>  4     Q. How about the economic benefit, other than what  5     you're already stated, which you don't know what the  6     exact amount would be, do you?  7     <b>A. Well, I just answered the economic question,</b>  8     <b>didn't I?</b>  9     Q. I asked about the economic necessity. I'm  10    asking about the economic benefit now.  11    What about the economic benefit do those docks  12    render, other than you being able to lease them out?  13    <b>A. I think I answered that question already. The</b>  14    <b>increased property taxes to the City of Coeur d'Alene,</b>  15    <b>Kootenai County, increased revenue to IDL. I think that</b>  16    <b>would all be economic benefit.</b>  17    Q. Would you agree with me that -- well, let me ask  18    it this way, have you been out on the river on a boat?  19    <b>A. Yes.</b>  20    Q. When was the last time you did so?  21    <b>A. Last month.</b>  22    Q. How many boats did you see out on the river when  23    you were out there?  24    <b>A. Vary few.</b>  25    Q. When boats are on the river and there is heavy</p>
<p style="text-align: right;">Page 50</p> <p>1     docks?  2     <b>A. I think my attorney represented that.</b>  3     Q. And do you believe -- do you agree with your  4     attorney that there's a navigational necessity?  5     <b>A. I agree.</b>  6     Q. And what evidence do you have that supports  7     there's a navigational necessity for these docks?  8     <b>A. I don't have that.</b>  9     Q. What about the economic necessity of these  10    docks? Do you have any evidence to support there's an  11    economic necessity of these docks?  12    <b>A. There's always an economic necessity for most</b>  13    <b>things. IDL would get purely payments for the rent.</b>  14    <b>The City of Coeur d'Alene would get increased property</b>  15    <b>taxes. Kootenai County gets increased property taxes.</b>  16    <b>We get increased rent on our property.</b>  17    Q. Is there any evidence in the record that shows  18    what the amounts of the money you're talking about are?  19    <b>A. Not in the record at this time.</b>  20    Q. Do you have any analysis of what the impact  21    would be of increasing boat traffic on the river to the  22    extent that perhaps a no wake zone would be implemented  23    on the river? Do you know what the economic impact of  24    that would be?  25    <b>A. No, I don't.</b></p>	<p style="text-align: right;">Page 52</p> <p>1     traffic -- let me ask you this: What day were you out  2     on the river?  3     <b>A. Tuesday, I believe.</b>  4     Q. Tuesday. Have you been out on a weekend?  5     <b>A. No.</b>  6     Q. Would you agree that increased boat traffic on  7     the river does create more wakes that hit the shoreline?  8     <b>A. Could.</b>  9     Q. And you agree that could affect the aquatic  10    life, the fish, the turbidity of the river when boats  11    are going up and down the river?  12    <b>A. I wouldn't agree to that as I'm not an expert in</b>  13    <b>that field.</b>  14    Q. And that's good.  15    Do you have any experts that will testify to the  16    turbidity that's caused by increased boat traffic to a  17    narrow stretch of river like the Spokane River?  18    <b>A. I think DEQ would answer that question if</b>  19    <b>they --</b>  20    Q. I didn't ask that. I asked do you have any  21    evidence related to that.  22    <b>A. I do not.</b>  23    Q. Do you have any evidence regarding water quality  24    and how it would be affected by adding 70-plus boats to  25    the river?</p>

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1     **A. No.**

2     Q. Do you have a response to the sheriff's concern

3     regarding safety of the river?

4     **A. That's an interesting one. At the meeting that**

5     **was held in July on YouTube, that we were not invited to**

6     **attend, the sheriff said there's been fewer accidents on**

7     **the river this year than previous years. It's been**

8     **going down year over year due to the fact that they had**

9     **increased water boater safety training and three**

10    **deputies on the river. Although, this year he only had**

11    **one. But as of July, he had fewer accidents than he had**

12    **previously.**

13    Q. Would you agree that adding more boats to the

14    river could potentially lead to more boating accidents?

15    **A. May or may not.**

16    Q. Do you have any rebuttal to the numerous public

17    witnesses who use the river on a daily basis, live next

18    to the river, see the number of boats on it when they

19    say, we're about ready to get overrun here?

20    **A. What was your question?**

21    Q. Do you have any evidence to rebut what those

22    witnesses are saying?

23    **A. (No audible response.)**

24    Q. Have you done any studies on the river on boat

25    traffic, on the number of boats on different days of the

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1     week?

2     **A. I don't think that the state, county, or I have**

3     **done any studies on the capacity of that river.**

4     Q. So the best evidence that would be to support

5     the capacity of the river would be the folks that

6     actually live on the river and use it, wouldn't it?

7     **A. No. The best would be to do a study on it.**

8     Q. The best evidence that exists today?

9     **A. That would be personal opinion.**

10    Q. Would it?

11    **A. Meaning --**

12    Q. People making observations and telling what they

13    see on a daily basis on the river is a personal opinion?

14    **A. Personal opinion, personal observation.**

15    Q. Which there is no other evidence to rebut what

16    the citizens may testify to regarding the use of the

17    river if it's overcrowded; is that right? You don't

18    have any evidence to rebut?

19    **A. No.**

20    Q. Back to the sheriff's statement. He said that

21    as the boat traffic increases, the river may become a no

22    wake zone.

23    Do you have any evidence to support or rebut the

24    statement by the sheriff to that point?

25    **A. I think part of the river is a no wake zone,**

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1     **basically to the east of us, as it is. I think the**

2     **sheriff has the authority to make it a no wake zone if**

3     **he deems necessary.**

4     Q. My question was that the sheriff is concerned

5     the entire river may have to be made into a no wake zone

6     to keep it safe. I wonder if you have any evidence to

7     rebut what the sheriff is saying?

8     **A. No.**

9     **MR. SMITH:** No further questions.

10    **HEARING OFFICER HAYES:** I just had one question

11    for you.

12    We have someone on the Zoom call, a

13    Darla Douglass. Is she considered a part applicant with

14    you?

15    **THE WITNESS:** No.

16    **HEARING OFFICER HAYES:** Okay. That's just for

17    court reporter's benefit. Thank you.

18    **MS. TELLESSEN:** Ms. Hearing Officer, we didn't

19    cover in any of our prehearing conference how you would

20    like to deal with the objections regarding

21    cross-examination. I trust you are equipped to evaluate

22    the evidence as is proper, but I do want to make a clean

23    record.

24    **HEARING OFFICER HAYES:** You are free to make

25    objections. Since we're sharing microphones, just

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1     simply stand as you did next to your witness and use the

2     same microphone.

3     **MS. TELLESSEN:** Okay.

4     **REDIRECT EXAMINATION**

5     **BY MS. TELLESSEN:**

6     Q. Mr. Douglass, are you an expert in marine

7     safety?

8     **A. No.**

9     Q. Are you an expert in navigation?

10    **A. No.**

11    Q. Are you an expert in erosion or water quality?

12    **A. No.**

13    Q. Have you been asked to testify about any of

14    those items, other than the questions that were asked of

15    you on cross?

16    **A. No.**

17    Q. Thank you.

18    **MS. TELLESSEN:** Ms. Richardson of R&R Northwest,

19    please.

20    **CINDY RICHARDSON,**

21    having been first duly sworn to tell the truth, the

22    whole truth, and nothing but the truth, relating to said

23    cause says:

24    **DIRECT EXAMINATION**

25    **BY MS. TELLESSEN:**

<p style="text-align: right;">Page 57</p> <p>1 Q. Ms. Richardson, would you please describe your 2 background and experience in dock design. 3 A. I work at R&amp;R Northwest, for about the last 4 eight years. I, on a day-to-day basis, help design 5 docks for the customers. I provide estimates as well as 6 the permitting. 7 Q. And have you designed community docks in the 8 past? 9 A. Yes. Designed many and we work with a few 10 dozen. 11 Q. And have you designed public docks? 12 A. We have aided in that, yes. Other public, 13 commercial, residential, you name it. 14 Q. Okay. Thank you. 15 And have you aided in having docks permitted on 16 the Spokane River? 17 A. Yes. Primarily residential. There are others 18 that are commercial that we have done as well. 19 Q. And in that experience have you ever seen or 20 heard IDL seek additional information regarding the 21 width of the river at the location of a particular dock? 22 A. No. Regarding the corridor, that was new. 23 Q. Okay. And you prepared the application that was 24 submitted to IDL, correct? 25 A. I did.</p>	<p style="text-align: right;">Page 59</p> <p>1 we have several who do have boats -- have the 2 opportunity to go have dinner with their wife in their 3 apartment, and then go out to the dock and go out and 4 fish. You know, it's not really heard of. I think it's 5 a great benefit. 6 Q. Thank you. 7 And are you familiar with the term encroachment 8 in aid of navigation? 9 A. Not necessarily that term. Those terms 10 separately, yes. 11 Q. Okay. And do you understand a dock to be an aid 12 of navigation? 13 A. Yes. 14 Q. When the 366-foot corridor was introduced by IDL 15 for the application, did you have to do any adjustments 16 to the docks? 17 A. We did. So we started the process back in 18 January of this last year, starting with the design 19 phase, trying to identify what the purpose was, what 20 they will be used for. There were all -- all the 21 factors, you know, the public beaches and ADA access and 22 those things that were taken into account, and we had 23 settled on a design. And then I believe at that point 24 created our preliminary supporting information for the 25 permit.</p>
<p style="text-align: right;">Page 58</p> <p>1 Q. And how did you go about measuring the linear 2 footage of shoreline? 3 A. My typical process is to identify the parcel on 4 the Kootenai County GIS system. I will then navigate to 5 pdf maps, plat maps, those type of the things. In the 6 absence of feet or frontage, I will import the pdf in my 7 CAD system and scale it, the model, to a known 8 measurement or known measurements, and then go about 9 measuring it on the CAD program. 10 Q. And has that method been accepted by IDL in 11 other applications? 12 A. Yes. I believe it's not just me who does that. 13 Q. And did they accept that measurement for this 14 application? 15 A. Yes. 16 Q. And you were informed in making this application 17 that the users of the dock would be the tenants of 18 apartment complex? 19 A. Yes, I was. 20 Q. Have you encountered other docks at apartment 21 complexes in your experience? 22 A. Not a one. And I -- I have to say it's really 23 nice to see. As a small business owner, we have a group 24 of individuals who would be likely tenants. It is 25 really incredible to me that those people -- you know,</p>	<p style="text-align: right;">Page 60</p> <p>1 After that time I received a map from 2 engineering, a scaled drawing showing the corridor and 3 an area that would be where the docks were not to 4 encroachment upon the 150-foot buffer on the north side 5 of the river, so we did scale the docks to meet that 6 buffer and stay out of it. 7 Q. And had you ever had to do that before for any 8 other application? 9 A. No. Line of navigability, yes. We've had a 10 dock that -- and, you know, it's common in bays. It's 11 common in, you know, shorelines that take a big veering 12 inward or otherwise that, you know, the line of 13 navigability might be 50 feet for the other two docks 14 close by, but your dock, because you're sitting at a 15 different location, might, you know, only get you out 16 there what feels like 30 feet. And we've, you know, 17 encountered that many times with the Idaho Department of 18 Lands in which they may say, well, you can go to 19 35 feet, you know, that type of thing. 20 Q. And as the applicant designee and the submitter 21 of the application, were you provided any information 22 regarding the special meeting of the Kootenai County 23 Board of County Commissioners? 24 A. I was not. I happened to read through all of 25 public comment that was forwarded to me from Idaho</p>



<p style="text-align: right;">Page 61</p> <p>1 <b>Department of Lands and read in there that there had</b>  2 <b>been a meeting. So that was the first I had heard of</b>  3 <b>it.</b>  4 <b>MS. TELLESEN:</b> Okay. All right. That is all I  5 have.  6 <b>HEARING OFFICER HAYES:</b> Is this witness here to  7 testify as to what the shoreline length is, because I  8 know there were various numbers?  9 Okay. So this is not this witness. Thank you.  10 Ms. Richter, do have questions of this witness?  11 No questions from the Department of Lands.  12 Mr. Magnuson?  13 <b>MR. MAGNUSON:</b> Thank you.  14 <b>CROSS-EXAMINATION</b>  15 <b>BY MR. MAGNUSON:</b>  16 Q. Ms. Richardson, I have given you a document  17 that's already been admitted by stipulation. It's  18 CDA-3.  19 Before I ask you a couple of questions about  20 that, you had mentioned your experience with the concept  21 of the line of navigability?  22 Sorry. You're going to have to answer yes or  23 no. The nods don't work.  24 <b>MS. TELLESEN:</b> I'll object to extent that it's  25 beyond the scope of her testimony.</p>	<p style="text-align: right;">Page 63</p> <p>1 Q. And you filled out all the boxes, you put in the  2 information to the best of your ability, you put on your  3 diagram, you indicated who the applicant was, and all  4 other pertinent information requested?  5 <b>A. Correct.</b>  6 Q. And the applicant on the application you  7 submitted was River's Edge Apartments, LLC, correct?  8 <b>A. Correct.</b>  9 Q. And tonight we've heard a couple of other terms  10 about two other entities.  11 Were you here for that testimony?  12 <b>A. Yes.</b>  13 Q. Okay. Did you submit an application for either  14 of those entities?  15 <b>A. No. And when I -- the application was submitted</b>  16 <b>to Idaho Department of Lands, it was not questioned as</b>  17 <b>to the littoral ownership.</b>  18 Q. Well, there weren't more than two littoral  19 owners claimed at the time, were there?  20 <b>A. No, it was not questioned.</b>  21 Q. No, but I mean your application only identified  22 one littoral owner?  23 <b>A. That is true.</b>  24 Q. And now you understand that the application  25 tonight designates more than two littoral owners?</p>
<p style="text-align: right;">Page 62</p> <p>1 You can answer if you know.  2 <b>MS. RICHARDSON:</b> I forgot the question.  3 <b>BY MR. MAGNUSON:</b>  4 Q. You had testified about your experience with the  5 term the line of navigability?  6 <b>A. Yes.</b>  7 Q. And how many encroachment permit applications do  8 you think you have prepared over the years?  9 <b>A. I don't know that answer. It's many.</b>  10 Q. Best estimate, 50? 100? 500?  11 <b>A. More than 50, less than 300.</b>  12 Q. And how many of them have been -- what  13 percentage, if you can, have been community docks?  14 <b>A. I don't know that percentage either. In many</b>  15 <b>cases we don't do the permitting for the community dock.</b>  16 <b>In some cases they have their own, you know, president</b>  17 <b>of the club who does that, and we've worked on them. We</b>  18 <b>don't also prepare them.</b>  19 Q. So in this application, did you actually prepare  20 the application for the --  21 <b>A. I did.</b>  22 Q. For the --  23 <b>A. Yes, I did.</b>  24 Q. You prepared it for the applicant, correct?  25 <b>A. With -- yes.</b></p>	<p style="text-align: right;">Page 64</p> <p>1 <b>A. I do.</b>  2 Q. But that wasn't on the application you  3 completed?  4 <b>A. No.</b>  5 Q. Nor was it on the application that, to your  6 knowledge, was published?  7 <b>A. No.</b>  8 Q. Now, back to the line of navigability and  9 Exhibit CDA-3, you use that term -- when you used that  10 term in your testimony earlier, how would you define it?  11 <b>MS. TELLESEN:</b> I would object to the extent of  12 relevance and within the scope of your testimony.  13 If you can answer, you may.  14 <b>HEARING OFFICER HAYES:</b> I would just ask,  15 Mr. Magnuson, that you lay a little bit more foundation,  16 starting with, does she know what the line of  17 navigability is.  18 <b>MR. MAGNUSON:</b> Well, Madam Hearing Officer,  19 that's what I'm trying to do because I asked her a  20 question if she did, in fact, use that phrase.  21 <b>HEARING OFFICER HAYES:</b> And I heard her use that  22 phrase, but let's back it up a couple of steps and just  23 ask her as plainly as, does she know what the line of  24 navigability is.  25 <b>BY MR. MAGNUSON:</b></p>

<p style="text-align: right;">Page 65</p> <p>1 Q. Well, how about this, if I may, when you used 2 the term line of navigability in questioning from the 3 applicant's counsel, what do you intend the word to 4 mean?</p> <p>5 <b>A. The natural boating lane, so to speak, a</b> 6 <b>distance from shore that follows the docks from Point A</b> 7 <b>to Point B.</b></p> <p>8 Q. Okay. And the Idaho Administrative Regulations 9 define it, a line of navigability, quote, A line located 10 at such distance water or the below water mark 11 established by the length of existing legally permitted 12 encroachments, water depths, and by other relevant 13 criteria, end quote.</p> <p>14 Is that consistent with your understanding?</p> <p>15 <b>MS. TELLESEN:</b> I will object to the extent and 16 scope of your testimony.</p> <p>17 You can answer if you know.</p> <p>18 <b>MS. RICHARDSON:</b> I would say there are 19 differences between a community dock system and a 20 residential dock. That is what is next to this 21 property. And all of the residential docks you see on 22 your image are in a line.</p> <p>23 The community docks, one of the purposes of a 24 community dock is to have more condensed dock space to 25 allow for visual appeal for people to be able to see the</p>	<p style="text-align: right;">Page 67</p> <p>1 believe there is dispute that these proposed docks seek 2 to exceed or appear to exceed what the line of 3 navigability would be, if it had previously been 4 established.</p> <p>5 I just want to clarify that point with the 6 Department of Lands. Is that correct, Ms. Richter?</p> <p>7 <b>MS. RICHTER:</b> Are you asking whether it's 8 correct if the Department considers the dock to exceed 9 the line of the navigability?</p> <p>10 <b>HEARING OFFICER HAYES:</b> Correct, that it's not a 11 fact that's in dispute in these proceedings.</p> <p>12 <b>MS. RICHTER:</b> That's correct. It is in the 13 IDL's encroachment standards, that the line of 14 navigability is not considered when it comes to 15 community docks, which is an IDL's for hearing 16 submitted.</p> <p>17 Thank you.</p> <p>18 <b>HEARING OFFICER HAYES:</b> And then, Ms. Tellesen, 19 are you taking a position here today that your client's 20 proposed community docks are within the line of 21 navigability?</p> <p>22 <b>MS. TELLESEN:</b> No, Hearing Officer. We have 23 stipulated and recognize that these docks go beyond what 24 may be the line of the navigability, recognizing that 25 IDL has not exercised its statutory duty to identify a</p>
<p style="text-align: right;">Page 66</p> <p>1 shoreline. It's not littered with docks. Those docks 2 usually require more distance out into the lake. Most 3 of the community docks that we work on are much further 4 out into the lake than the residential docks next door.</p> <p>5 BY MR. MAGNUSON</p> <p>6 Q. So Exhibit CDA-3 you see the existing docks that 7 are down river adjacent to the applicant's property.</p> <p>8 Do you see those?</p> <p>9 <b>A. Yes, the residential docks.</b></p> <p>10 Q. Right. And those docks are indicated as 11 extending into the Spokane River 50 feet?</p> <p>12 <b>A. Approximately 50 feet, yes.</b></p> <p>13 Q. Does that, in your opinion, serve as any basis 14 for the establishment of a line of navigability?</p> <p>15 <b>MS. TELLESEN:</b> I'll object to the extent it's 16 well beyond the scope of her testimony and calls for a 17 legal conclusion.</p> <p>18 If you are able to answer, you may.</p> <p>19 <b>HEARING OFFICER HAYES:</b> Mr. Magnuson, my 20 understanding of the line of navigability is that is a 21 statutory duty that's charged to the Board of Land 22 Commissioners to determine, and I don't necessarily 23 think it's appropriate for this witness to establish 24 what that line is.</p> <p>25 But also from my review of the record, I don't</p>	<p style="text-align: right;">Page 68</p> <p>1 line of navigability in this area.</p> <p>2 <b>HEARING OFFICER HAYES:</b> So with that, I don't 3 mean to cut you off with your questioning, but we are 4 starting to get crunched up on what I perceive as a time 5 constraint that would limit public testimony, so I'd 6 like you to keep it to the relevant points and the facts 7 that are actually in dispute in these proceeding.</p> <p>8 <b>MR. MAGNUSON:</b> Okay. For the record I would 9 like to note that I did raise an objection as to line 10 the navigability in the objection I filed. I'm just 11 preserving my objection. I'm not arguing with you. I 12 preserve the objection.</p> <p>13 I believe that was a misstatement intentionally 14 by counsel for IDL. The line of navigability does 15 pertain to community docks. You don't throw it out with 16 the baby in the bath water. You analyze it differently. 17 But I just want this witness to demonstrate what her 18 knowledge is and I will move on.</p> <p>19 <b>HEARING OFFICER HAYES:</b> Okay. So noted your 20 objection. I believe there's a citation in IDL's 21 materials about the line of navigability and community 22 docks, but again it's not a fact in dispute.</p> <p>23 <b>BY MR. MAGNUSON:</b></p> <p>24 Q. Last question then, the docks next door's 25 50 feet out into the river, correct?</p>

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1 Is that correct?

2 **A. I believe so.**

3 Q. I'm sorry. I don't mean to be rude. You have

4 to answer because uh-huhs and uh-uhs and head shakes

5 don't look very good on paper.

6 And the dock that the applicant seeks to put in

7 next door to the 50-foot docks is 154 feet into the

8 river?

9 **A. That is correct.**

10 **MR. MAGNUSON:** Okay. I don't have any

11 questions.

12 Mr. Smith.

13 **MR. SMITH:** May I question the witness?

14 **HEARING OFFICER HAYES:** Yes, but similar

15 warning, that we're starting to get a little bit

16 crunched up on time based on the evidence that I know

17 that each of you wants to present here today, so I'm

18 going to ask that you keep it brief and to the point.

19 **MR. SMITH:** You mentioned that corridor that

20 Idaho Public Lands wanted was new; is that correct?

21 **MS. RICHARDSON:** True.

22 **MR. SMITH:** Do you know why they were asking for

23 the corridor to be defined?

24 **MS. RICHARDSON:** No.

25 **MR. SMITH:** No further questions.

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1 **MS. TELLESSEN:** All right. Just one quick

2 follow-up.

3 **REDIRECT EXAMINATION**

4 **BY MR. TELLESSEN:**

5 Q. You were shown Exhibit CDA-3. Have you ever

6 seen that document before?

7 **A. No.**

8 Q. So you didn't prepare it?

9 **A. I did not.**

10 Q. It's not part of the application?

11 **A. No.**

12 Q. Do you know where it came from?

13 **A. Mr. Magnuson.**

14 Q. Thank you.

15 Ms. TELLESSEN: Mr. Andrade, please.

16 **RYAN ANDRADE,**

17 having been first duly sworn to tell the truth, the

18 whole truth, and nothing but the truth, relating to said

19 cause and says:

20 **DIRECT EXAMINATION**

21 **BY MS. TELLESSEN:**

22 Q. Mr. Andrade, for the record would you describe

23 your vocation and credentials, please.

24 **A. Ryan Andrade, I'm a professional civil engineer**

25 **for Whipple Consulting Engineers.**

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1 **I'm a professional civil engineer, licensed in**

2 **the state of Washington, Idaho, and Montana for Whipple**

3 **Consulting Engineers.**

4 Q. All right.

5 And you have performed civil engineering

6 services for the River's Edge Apartments project,

7 correct?

8 **A. Correct.**

9 Q. And with respect to the dock application, what

10 work did you do?

11 **A. I was asked to make the exhibit that shows the**

12 **366-foot corridor in the river as its relation to the**

13 **docks.**

14 Q. Okay. And you were present at the meeting when

15 IDL requested that information, correct?

16 **A. Correct.**

17 Q. And what was requested at that time?

18 **A. What was requested was a depiction of a 366-foot**

19 **corridor, which is made above -- which I think has been**

20 **mentioned previously, as 66 foot, I'll call it drive**

21 **aisle, unobstructed for boat traffic, with a 150-foot**

22 **buffer north and south of said drive aisle.**

23 Q. And did IDL explain to you its reasoning for the

24 request?

25 **A. For the widths of zones or the whole corridor**

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1 **itself?**

2 Q. Let's start with the individual widths.

3 **A. I don't know the justification for the widths.**

4 Q. And for the corridor itself?

5 **A. The corridor itself, to my knowledge, was a**

6 **result of a meeting IDL had with some of their other**

7 **agency partners in discussion of safety along the river,**

8 **to allow docks to be built on both sides, and right --**

9 **the littoral rights, but to also maintain safety through**

10 **the river.**

11 Q. Okay. And in -- what instruction did IDL give

12 you in seeking this information, how to prepare it, or

13 did they give you any direction?

14 **A. It was limited direction. The direction was to**

15 **use the littoral lines of applicant's property, and that**

16 **is an extension souther -- southerly on its west and**

17 **east property lines, till it hits the southern boundary**

18 **or the opposite -- the opposite parcel on the other side**

19 **of the river, and then -- so that was it. I was to**

20 **stay -- I was to put the 366-foot corridor within those**

21 **two boundary points, or those two boundary lines.**

22 And so I placed the 366 feet centered on the

23 midpoint between those two points. And the reason for

24 that is because IDL wanted to maintain an equitable

25 right for both the southern parcel owned by

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<p>1 <b>Coeur d'Alene Land Company and Mr. Douglass' property.</b></p> <p>2 Q. That was your understanding of the instruction?</p> <p>3 <b>A. Correct.</b></p> <p>4 Q. And they didn't provide any additional</p> <p>5 instruction in writing to you?</p> <p>6 <b>A. They provided only additional instruction in the</b></p> <p>7 <b>fact as to revision, which was -- so when we -- I think</b></p> <p>8 <b>Ms. Richardson touched on this -- that when we -- when</b></p> <p>9 <b>it was submitted -- when she submitted it originally, we</b></p> <p>10 <b>had -- as the littoral lines come down on the west and</b></p> <p>11 <b>east side they hit two points, and we go straight -- we</b></p> <p>12 <b>denoted the southern shoreline at a straight line.</b></p> <p>13 <b>And so the only revision IDL requested --</b></p> <p>14 <b>actually, two revisions. The only two revisions they</b></p> <p>15 <b>requested was that that southern shoreline be more</b></p> <p>16 <b>accurately depicted as it jogs in and out of the river,</b></p> <p>17 <b>which makes sense, and to label dimensioning from the</b></p> <p>18 <b>southern edge of our -- each dock to the southern</b></p> <p>19 <b>shoreline for clarity purposes.</b></p> <p>20 Q. And once you completed those tasks, did you</p> <p>21 receive any other comments or questions from IDL?</p> <p>22 <b>A. None.</b></p> <p>23 Q. Did they request any revisions to the dock</p> <p>24 design, to your knowledge?</p> <p>25 <b>A. No.</b></p>	<p>1 Ms. Tellessen. This is not your witness to testify to</p> <p>2 the length of the shoreline?</p> <p>3 <b>MS. TELLESSEN:</b> No.</p> <p>4 <b>HEARING OFFICER HAYES:</b> Okay. Thank you.</p> <p>5 Mr. Magnuson -- or sorry. Department of Lands?</p> <p>6 No questions from the Department of Lands.</p> <p>7 Mr. Magnuson?</p> <p>8 No questions from Coeur d'Alene Land Holdings.</p> <p>9 No questions from concerned citizens.</p> <p>10 <b>MS. TELLESSEN:</b> Mr. Lockman, please.</p> <p>11 <b>WAYNE LOCKMAN,</b></p> <p>12 having been first duly sworn to tell the truth, the</p> <p>13 whole truth, and nothing but the truth, relating to said</p> <p>14 cause and says:</p> <p>15 <b>BY MS. TELLESSEN:</b></p> <p>16 Q. All right.</p> <p>17 Mr. Lockman, please describe your credentials.</p> <p>18 <b>A. I'm a licensed -- I'm a licensed surveyor in</b></p> <p>19 <b>Washington, Idaho, and Montana. Been surveying for</b></p> <p>20 <b>20-plus years.</b></p> <p>21 Q. All right.</p> <p>22 And can you describe generally the method for</p> <p>23 describing shoreline properties.</p> <p>24 <b>A. On larger pieces the inward parcels are defined</b></p> <p>25 <b>by bearing and distance, usually set with monuments</b></p>
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<p>1 Q. Okay. Did IDL request a hydrographic survey of</p> <p>2 the river?</p> <p>3 <b>A. No.</b></p> <p>4 Q. You also aided in the preparation of an exhibit</p> <p>5 that's been marked REA-15.</p> <p>6 Are you familiar with that exhibit?</p> <p>7 <b>A. I'd have to see the exhibit.</b></p> <p>8 <b>Yes.</b></p> <p>9 Q. And this is an exhibit depicting approximate</p> <p>10 river widths in the area of the project application?</p> <p>11 <b>A. Correct.</b></p> <p>12 Q. And you prepared this exhibit?</p> <p>13 <b>A. Correct.</b></p> <p>14 Q. Using what information?</p> <p>15 <b>A. Using the Kootenai County Earth GIS online</b></p> <p>16 <b>program.</b></p> <p>17 Q. Yes. So these have not been surveyed?</p> <p>18 <b>A. No.</b></p> <p>19 Q. Are they offered for any purpose other than to</p> <p>20 indicate an approximate width of the river at the points</p> <p>21 there shown?</p> <p>22 <b>A. None.</b></p> <p>23 <b>MS. TELLESSEN:</b> Okay. That's all I have for</p> <p>24 now.</p> <p>25 <b>HEARING OFFICER HAYES:</b> Same question,</p>	<p>1 <b>whether artificial or natural. And then along the</b></p> <p>2 <b>shoreline a rough depiction is created, and then one</b></p> <p>3 <b>call line from west, east, north, south, however it goes</b></p> <p>4 <b>across there, will be given for computational purposes,</b></p> <p>5 <b>what we call closing, to make sure that we meet state</b></p> <p>6 <b>standards, state and federal standards for doing our</b></p> <p>7 <b>surveys.</b></p> <p>8 Q. Thank you.</p> <p>9 And you conducted surveys of the shoreline</p> <p>10 property that's part of this application, correct?</p> <p>11 <b>A. Correct.</b></p> <p>12 Q. And did you review any particular information in</p> <p>13 your preparation of those surveys?</p> <p>14 <b>A. I looked at the Kootenai County GIS mapping. I</b></p> <p>15 <b>looked at record -- records of surveys, deeds, old topo</b></p> <p>16 <b>maps, anything that, basically, I can get my hands on.</b></p> <p>17 Q. All right.</p> <p>18 And this aids you how?</p> <p>19 <b>A. It shows that I'm following in compliance with</b></p> <p>20 <b>what everyone has found, what other professional land</b></p> <p>21 <b>surveyors have found and/or set.</b></p> <p>22 <b>There was a old railroad going through there</b></p> <p>23 <b>that had been taken care of, boundary line adjusted out</b></p> <p>24 <b>before I got there -- got involved in this project.</b></p> <p>25 <b>And then lastly, tying the ordinary high-water</b></p>

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1 **mark gives a better representation of the actual**  
2 **frontage, linear footage of the frontage.**  
3 Q. Okay. So when we are talking about the legal  
4 description in the bearing that goes -- I might not be  
5 using bearing as the correct term -- the dimension kind  
6 of in the direction of the shoreline as 1,579.8 feet,  
7 that's a straight line, correct?  
8 **A. Correct. That's a straight line from the west**  
9 **to the east side of the property.**  
10 Q. Is it intended to depict the contours of the  
11 shoreline itself?  
12 **A. No, not at all. It's just mathematical.**  
13 Q. Okay. Have you since surveyed the shoreline?  
14 **A. Yes.**  
15 Q. When was that done?  
16 **A. It was done, I believe, December 2023.**  
17 Q. Okay. And you've reviewed that work in  
18 preparation of this testimony?  
19 **A. Correct.**  
20 Q. And what is the surveyed distance of the  
21 shoreline?  
22 **A. The current distance -- I have it written on**  
23 **here somewhere -- is 1,591.4.**  
24 Q. 1,591 feet point 4?  
25 **A. Yes.**

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1 Q. Okay. And you've been told or reviewed the  
2 application that's been submitted in this matter?  
3 **A. I have actually not seen that application.**  
4 Q. Okay. And you heard, at least testimony today,  
5 regarding the application containing an approximate  
6 footage of 1,581 feet?  
7 **A. Yes.**  
8 Q. Okay. Is the GIS mapping tool more accurate  
9 than your survey, or is your survey more accurate?  
10 **A. My survey is more accurate.**  
11 Q. Okay. So the true -- is it safe to say that the  
12 true shoreline frontage of this property is  
13 1,591.4 feet?  
14 **A. Yes.**  
15 Q. Do you have any reason to doubt that it's  
16 something different?  
17 **A. No.**  
18 Q. Okay. Thank you.  
19 You're also a water enthusiast and recreator,  
20 correct?  
21 **A. I bought kayaks to fish with my son and spend**  
22 **time with my wife.**  
23 Q. And you used your kayak to survey the southern  
24 boundary that's been discussed today?  
25 **A. Yes.**

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1 Q. All right.  
2 And in your kayak experience -- where is your  
3 preferred place to enjoy kayaking?  
4 **A. My preferred place is where the fish are.**  
5 **Unfortunately, I'm don't always get to do that. The**  
6 **safest, I would say, is usually along the shore by**  
7 **docks, whether it's the larger or the smaller docks,**  
8 **especially -- I'll say across the river in this**  
9 **particular case there's a broken dock, and that is where**  
10 **everybody would slow down as they saw things protruding**  
11 **out.**  
12 Q. And that makes you feel safer in your kayak as a  
13 non-motorized recreator?  
14 **A. Yes, definitely.**  
15 Q. And in your conduct of the survey of the  
16 southern shoreline, is that an exact depiction?  
17 **A. No, that's not. The foliage and density of the**  
18 **southern shoreline would have taken way too long. We'd**  
19 **still be probably out there surveying today. So I used**  
20 **the kayak to get as close as I could, knowing that I**  
21 **would have some distance within the river, and take my**  
22 **measurements that way, versus getting right up onto the**  
23 **shore or trying to walk across the property.**  
24 Q. Okay. So given the depiction that's in the  
25 record of that southern shoreline, the ordinary

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1 high-water mark is further away than what the depiction  
2 shows?  
3 **A. Correct. I stayed more inside the water.**  
4 Q. Okay.  
5 **MS. TELLESSEN:** Thank you. I don't have any  
6 other questions. I may have follow-up.  
7 **HEARING OFFICER HAYES:** Can you clarify for me,  
8 Ms. Tellessen, what exhibit he's referencing in getting  
9 to the 1,591? Is it 16?  
10 **MS. TELLESSEN:** It's REA-17 for the record.  
11 **HEARING OFFICER HAYES:** Thank you.  
12 Department of Lands, any questions for this  
13 witness?  
14 No questions from Department the Lands.  
15 Mr. Magnuson?  
16 No questions from Coeur d'Alene Land Company.  
17 Mr. Smith?  
18 No questions from concerned citizens.  
19 **MS. TELLESSEN:** Thank you. Captain Derie.  
20 **JOSEPH A. DERIE, II,**  
21 **having been first duly sworn to tell the truth, the**  
22 **whole truth, and nothing but the truth, relating to said**  
23 **cause says:**  
24 **By MS. TELLESSEN:**  
25 Q. Captain Derie, thank you. And you've been

<p style="text-align: right;">Page 81</p> <p>1 identified as an expert in these proceedings; is that</p> <p>2 correct?</p> <p>3 <b>A. Yes.</b></p> <p>4 Q. All right.</p> <p>5 And your curriculum vitae is marked as REA-13,</p> <p>6 correct?</p> <p>7 <b>A. I understand it is.</b></p> <p>8 Q. And you've provided that to us?</p> <p>9 <b>A. Yes.</b></p> <p>10 Q. And is it a fair reflection of your experience,</p> <p>11 credentials, and other testimony you've given in your</p> <p>12 career as a consultant and professional career as a</p> <p>13 captain and a retired United States Coast Guard officer,</p> <p>14 correct?</p> <p>15 <b>A. It is.</b></p> <p>16 Q. And would you describe your experience in your</p> <p>17 own words that helps provide credibility to your</p> <p>18 opinions in rendering the opinions you have to give in</p> <p>19 this case?</p> <p>20 <b>A. Yeah. I'm a retired Coast Guard officer and a</b></p> <p>21 <b>licensed officer in the Merchant Marine.</b></p> <p>22 <b>I have a master's license which entitles me to</b></p> <p>23 <b>drive a ship.</b></p> <p>24 <b>I'm currently self-employed as a marine</b></p> <p>25 <b>surveyor. A marine surveyor inspects vessels for a</b></p>	<p style="text-align: right;">Page 83</p> <p>1 <b>A. Yeah, they have to follow the same rules. The</b></p> <p>2 <b>same rules of the road, which is how you're supposed to</b></p> <p>3 <b>drive your boat. The give-way and stand-on vessel and</b></p> <p>4 <b>how you're supposed to light your vessel at various</b></p> <p>5 <b>times and sound signals.</b></p> <p>6 Q. And you've been on numerous and countless water</p> <p>7 bodies. Are the habits of boat operators largely the</p> <p>8 same from place to place?</p> <p>9 <b>A. Yeah, pretty much. You go one place, people are</b></p> <p>10 <b>going to act pretty much the same all over. There may</b></p> <p>11 <b>be some local differences but not a whole lot.</b></p> <p>12 Q. And in preparation of your testimony did you</p> <p>13 find any hydrographic surveys of the river in this</p> <p>14 location?</p> <p>15 <b>A. No. I did look at NOAA. National Oceanic --</b></p> <p>16 <b>Oceanic and Atmospheric Administration does charts,</b></p> <p>17 <b>hydrographic surveys for federal bodies of water. There</b></p> <p>18 <b>is none for the Spokane River, and I have found no other</b></p> <p>19 <b>body that has done those type of surveys.</b></p> <p>20 Q. So in preparation for your testimony you have</p> <p>21 reviewed the application, correct?</p> <p>22 <b>A. I have.</b></p> <p>23 Q. You've made a site visit?</p> <p>24 <b>A. I have.</b></p> <p>25 Q. And you've reviewed the sheriff's memo and</p>
<p style="text-align: right;">Page 82</p> <p>1 <b>living.</b></p> <p>2 <b>I also do marine accident investigation and</b></p> <p>3 <b>reconstruction for all kinds of marine-related</b></p> <p>4 <b>accidents.</b></p> <p>5 <b>I've been admitted as an expert in federal and</b></p> <p>6 <b>state courts.</b></p> <p>7 <b>And I consult on marine safety. A lot of my</b></p> <p>8 <b>work is marine safety and I consult on that.</b></p> <p>9 <b>And I've written peer-reviewed articles on</b></p> <p>10 <b>various articles -- items of marine safety.</b></p> <p>11 <b>As a civil engineer I designed and constructed</b></p> <p>12 <b>and maintained waterfront structures and marinas for the</b></p> <p>13 <b>Coast Guard and after I retired from the Coast Guard.</b></p> <p>14 Q. Is it fair to say that you have been on</p> <p>15 countless waterways across the United States?</p> <p>16 <b>A. It is.</b></p> <p>17 Q. Have you been on rivers narrower than the</p> <p>18 Spokane River?</p> <p>19 <b>A. Oh, yeah.</b></p> <p>20 Q. Have you been on rivers that are more congested</p> <p>21 than the Spokane River?</p> <p>22 <b>A. Yeah.</b></p> <p>23 Q. And from place to place are federally navigable</p> <p>24 waters governed largely by the same rules and</p> <p>25 expectations for safety?</p>	<p style="text-align: right;">Page 84</p> <p>1 objections?</p> <p>2 <b>A. I have.</b></p> <p>3 Q. And you've reviewed the public objections</p> <p>4 regarding safety?</p> <p>5 <b>A. I have.</b></p> <p>6 Q. And you've reviewed the Idaho Lake Protection</p> <p>7 Act?</p> <p>8 <b>A. I have.</b></p> <p>9 Q. And you've reviewed the Idaho Safe Boating Act?</p> <p>10 <b>A. Yes.</b></p> <p>11 Q. And the regulations relating to the Lake</p> <p>12 Protection Act, Idaho Administrative rules 20.03, -.04?</p> <p>13 <b>A. I have.</b></p> <p>14 Q. And you have reviewed the videos that were taken</p> <p>15 and have been offered by the citizens group?</p> <p>16 <b>A. I have.</b></p> <p>17 Q. And have you reviewed Kootenai County Code</p> <p>18 regarding vessel operations?</p> <p>19 <b>A. I have.</b></p> <p>20 <b>And for the record, I do have an Idaho safe</b></p> <p>21 <b>boater operator's card.</b></p> <p>22 Q. All right.</p> <p>23 And did you get that in preparation for this</p> <p>24 testimony or prior to?</p> <p>25 <b>A. No, I've had it prior to. I've done some work</b></p>

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1 in Idaho over the years, and I didn't need to get a new  
2 one.  
3 Q. So in your preparation you've reviewed the  
4 definition for an encroachment in aid of navigation.  
5 Did you understand that definition as provided  
6 in the Idaho aid --  
7 A. Yeah. That's similar to other -- other  
8 definitions I've seen over the years.  
9 Q. And how would you describe a dock vis-a-vis  
10 navigation? It is an aid to navigation?  
11 A. Sure, it's an aid because you can see where it's  
12 at, you can it, you know, well, I'm here on the river.  
13 It helps you navigate, decide where you're at.  
14 Q. All right.  
15 And you've personally authored an article  
16 Hazards to Navigation and Obstructions on Navigable  
17 Waters.  
18 Do you have an opinion on the difference between  
19 an encroachment or a hazard -- and a hazard?  
20 A. Well, an encroachment sticks out into the water.  
21 The question here, is it safe, a safe encroachment? Is  
22 there going to be a problem? Is it going to interfere  
23 with navigation? Which is why we have to get permits  
24 and people approval, of course.  
25 Q. And have you reviewed the designs for these

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1 proposed docks?  
2 A. I have.  
3 Q. And have you reviewed the river at the location  
4 they're proposed?  
5 A. I have.  
6 Q. Do you have any reason to believe these docks  
7 will present a navigational hazard?  
8 A. No, not at all.  
9 Q. And why is that?  
10 A. Well, it's far enough out of the way where  
11 people will be boating that they're not going to bother  
12 people going up and down the river. I don't see how --  
13 I don't see how they would do that. Plus, they're going  
14 to be readily visible, so it's not like -- the  
15 difference between a hazard is something you can't see  
16 under the water. And this is from the Code of Federal  
17 Regulations, an obstruction is something in the water  
18 you can see and have to go around.  
19 Q. And so these obstructions or encroachments, do  
20 you have any reason to believe that they could become a  
21 hazard?  
22 A. No, I don't see how that would happen, unless  
23 they broke loose in a storm and floated away.  
24 Q. So in your view and time spent on the river,  
25 what was your observation of the river at the location

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1 of these docks?  
2 A. Oh, it was plenty wide enough for all kinds of  
3 navigation, going up and down. The design are all off  
4 to the side of the river where probably nobody floats  
5 anyway, other than a kayaker or somebody that wants to  
6 do a little fishing out of the way. I saw no problem  
7 with where they're at.  
8 Q. Vis-a-vis navigation or safety?  
9 A. Vis-a-vis navigation or safety.  
10 Q. And you've reviewed the sheriff's comments that  
11 have been placed in the record?  
12 A. I have.  
13 Q. And his statement that these docks will increase  
14 the injury and/or death to users and impact all  
15 recreators on the Spokane River, do you agree with that  
16 statement?  
17 A. I respectfully disagree. I would like to point  
18 out as a Coast Guard officer, retired Coast Guard  
19 officer, I'm also a retired federal law enforcement  
20 officer, and I respectfully disagree with the sheriff.  
21 Q. Why is that?  
22 A. He's -- he's shown us no studies, no reports,  
23 you know, the accident statistics aren't there to prove  
24 that is going to be a problem. In fact, he's even  
25 lessened his patrols on the river, so I don't see why

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1 adding these -- these marina there is going to impact  
2 that, as he said it, with all due respect of course.  
3 Q. Of course. Of course.  
4 The sheriff also has included in his comments:  
5 The additional boat docks will force boaters closer to  
6 the central of the river. This will result in this area  
7 being reduced to only allow one vessel to pass to avoid  
8 collision.  
9 Do you agree with that statement?  
10 A. No. Yeah, I respectfully disagree again. And  
11 if you look at the (inaudible) I saw, that's a much  
12 narrower section of the river that what we're talking  
13 about here and they're passing without any problem going  
14 up and down the river.  
15 Q. And in the videos that you observed, did you  
16 observe any concerns of safety, recognizing that's down  
17 river from the project?  
18 A. No. I saw some jet skiers that weren't behaving  
19 properly, but they're going do that anywhere. Not all  
20 jet skiers do that, but I did see people do that.  
21 But other than the normal, the boaters,  
22 recreational boaters I saw going up and down the river,  
23 I didn't see any problem there.  
24 Q. And did you find in your review and preparation  
25 for your testimony any established code or standard for

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1 the width of the river, particularly as it relates to  
2 the request for a 366-foot corridor?  
3 **A. That's the first thing that I questioned. I**  
4 **wonder what the basis for that is. I have seen no**  
5 **standards, technical reports, or studies that would**  
6 **support something like that.**  
7 Q. Assuming for sake of argument that that section  
8 of the river will remain unobstructed, is your opinion  
9 that there is plenty of room for navigation at the speed  
10 limit set presently by the sheriff?  
11 **A. That's right.**  
12 Q. And did you find that sheriff's comments  
13 customary -- comments to this application customary in  
14 the field of marine law enforcement?  
15 **A. Well, obviously he wants boating safety and**  
16 **that's what it's all about, but I didn't -- I didn't**  
17 **feel the comments, as I said earlier, were supported by**  
18 **technical reports, congestion, traffic study, accident**  
19 **statistics, or anything that would support his comments.**  
20 Q. And those are the sorts of statistics and facts  
21 and evidence you would rely on in drawing your  
22 conclusion with regard to navigational safety?  
23 **A. That's correct. And my visit to water, in my**  
24 **experience being on different waters.**  
25 Q. Okay. And do you have experience in aiding, if

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1 not preparing, the sorts of traffic settings that might  
2 aid a conclusion in this case?  
3 **A. Sure, yeah. I've participated and I've helped**  
4 **develop the proposal, request for proposal for different**  
5 **types of studies. I helped prepare the request for**  
6 **proposal for studies of that sort.**  
7 Q. So in your preparation for your opinions in this  
8 case, including your time spent observing the river, did  
9 you identify any cause for concern or safety that would  
10 arise from these docks in peculiar?  
11 **A. None.**  
12 Q. And will these docks, in your opinion, change  
13 the boating habits of people on the Spokane River?  
14 **A. No, I don't see how they would.**  
15 Q. And in your opinion, presuming that some of  
16 those boater habits are to not follow the standards,  
17 codes, and regulations that apply to boater safety, if  
18 those sorts of boaters are boating in the area of these  
19 proposed docks, do you expect there to be an increased  
20 cause or likely injury of death?  
21 **A. Would you repeat that again, please.**  
22 Q. Assuming that the boater habits are to not  
23 follow the established speed limits, regulations,  
24 distances for travel, do you expect that there would be  
25 increased likelihood of injury or death from these docks

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1 being placed in the river?  
2 **A. No.**  
3 **MS. TELLESSEN:** All right. The other attorneys  
4 may have questions as might IDL.  
5 **HEARING OFFICER HAYES:** Ms. Tellessen, are you  
6 proffering this testifier as an expert?  
7 **MS. TELLESSEN:** Yes.  
8 **HEARING OFFICER HAYES:** Any objection IDL?  
9 No objection from IDL.  
10 Mr. Magnuson?  
11 No objection subject to any cross-examination  
12 that Coeur d'Alene Land Company has.  
13 And Mr. Smith?  
14 So Mr. Smith is objecting on the basis of  
15 foundation. I am going to ask for briefing on that  
16 pursuant to Rule 485, and I'll go over the deadlines of  
17 when that will be due at the close of these proceedings.  
18 Ms. Tellessen, you will be given an opportunity  
19 to respond to that briefing.  
20 **MS. RICHTER:** I do have a question, just a quick  
21 one for you for clarification.  
22 Kayleen Richter for the Department of Lands.  
23 Looking at your CV at REA-13, Ms. Tellessen  
24 mentioned that had you authored an article titled  
25 Hazards to Navigation and Obstructions on Navigable

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1 Waters; is that correct?  
2 **MR. DERIE:** That's correct.  
3 **MS. RICHTER:** Okay. And the two that I see here  
4 are -- one is in the SAMS Pacific Region News letter  
5 from June 2011, and the other is from the NAMS Global  
6 eNews, June 2011. Is that what you were referring to?  
7 **MR. DERIE:** Those are the two articles, yes.  
8 **MS. RICHTER:** Okay. Thank you very much.  
9 No further questions.  
10 **HEARING OFFICER HAYES:** Ms. Richter, I was in  
11 the wrong spot. Can you point me what you were  
12 referencing in REA-13? What page what that on?  
13 **MS. RICHTER:** Page 17.  
14 **HEARING OFFICER HAYES:** Page 17.  
15 And can you restate the names of the articles  
16 for me.  
17 **MS. RICHTER:** Ready?  
18 I see two articles about one, two, three, four,  
19 five, six -- seven from the top, Hazards to Navigation  
20 and Obstructions on Navigable Waters.  
21 **HEARING OFFICER HAYES:** Thank you.  
22 Mr. Magnuson.  
23 **MR. MAGNUSON:** Thank you.  
24 **CROSS-EXAMINATION**  
25 **BY MR. MAGNUSON:**



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1 Q. Captain Derie, I have a few questions, if I may.  
 2 When were you engaged to render your expert  
 3 opinion in this proceeding?  
 4 **A. I'd have to consult my records, but I believe it**  
 5 **was early August of this year.**  
 6 Q. Last month?  
 7 **A. Last month. Yes, sir.**  
 8 Q. And whom were you hired by?  
 9 **A. I was hired by Winston and Catchlet (sic).**  
 10 Q. Winston and what?  
 11 **A. Winston and Catchlet.**  
 12 Q. Okay. You currently live in Portland?  
 13 **A. That's correct.**  
 14 Q. And you -- you began -- you got your BS at  
 15 Virginia Military Institute?  
 16 **A. That's correct.**  
 17 Q. And then you got a master's at Boston  
 18 University?  
 19 **A. That's correct.**  
 20 Q. And then you got a Ph.D. at Huntsville?  
 21 **A. It's a doctor of science in research and**  
 22 **engineering management at the Southeastern Institute of**  
 23 **Technology in Huntsville, Alabama.**  
 24 Q. Have you ever lived in Idaho?  
 25 **A. No.**

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1 Q. You went to the site, you testified.  
 2 What day was that?  
 3 **A. 25th of August.**  
 4 Q. Do you know what day of the week that was?  
 5 **A. Tuesday.**  
 6 Q. Tuesday.  
 7 Is that the only time that you've been to the  
 8 site?  
 9 **A. It is.**  
 10 Q. Is that the only time you ever been on the  
 11 Spokane River between the Cedar's Restaurant and the  
 12 Avista now, formally Washington and Water Power Dam?  
 13 **A. It is.**  
 14 Q. So the opinion you've offered today is based  
 15 upon going on the Spokane River on one day, Tuesday,  
 16 August 25, and that's your personal knowledge of the  
 17 site and the river?  
 18 **A. Well, based on my experience and training on**  
 19 **other waterways throughout the country.**  
 20 Q. Sure. In Alabama, in Massachusetts, and in  
 21 Virginia and Oregon?  
 22 **A. Oh, there's been a lot more waterways, a lot**  
 23 **more states than that.**  
 24 Q. But not Idaho?  
 25 **A. But not -- well, I have worked on cases on this**

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1 **Snake River in Idaho.**  
 2 Q. You're being compensated to be here today?  
 3 **A. I'm being compensated for my time, sir.**  
 4 Q. Sure. And you were being compensated for coming  
 5 up with the opinion you offered?  
 6 **A. I'm compensated for my time, sir, not my**  
 7 **opinion.**  
 8 Q. Right. Okay. You're compensated for your time.  
 9 How much have you charged before you got here  
 10 today?  
 11 **A. I haven't done a rundown. I typically only bill**  
 12 **twice. I bill for my retainer and then at the**  
 13 **conclusion of the case I send a final invoice and I have**  
 14 **not run out my time yet.**  
 15 Q. What's your hourly rate?  
 16 **A. For compensation, research, travel, that sort of**  
 17 **thing, \$275 an hour. For hearings like this and court**  
 18 **appearances, it's \$550 an hour, minimum four hours.**  
 19 Q. So \$550 an hour for you to sit in the chair  
 20 tonight and offer your opinion?  
 21 **A. That's for my time, sir, not for my opinion.**  
 22 **MR. MAGNUSON:** I don't have any other questions.  
 23 **MR. SMITH:** I believe Mr. Magnuson covered all  
 24 the questions I would ask.  
 25 **MR. NORRIS:** Excuse me, your Honor, do I have an

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1 opportunity?  
 2 **HEARING OFFICER HAYES:** Are you Sheriff Norris?  
 3 **MR. NORRIS:** I am Sheriff Norris.  
 4 **HEARING OFFICER HAYES:** Do you have time  
 5 constraints here today?  
 6 **MR. NORRIS:** No.  
 7 **HEARING OFFICER HAYES:** I was going to do  
 8 Coeur d'Alene Land Company next and then --  
 9 **MR. NORRIS:** I feel like I should be able to  
 10 defend myself.  
 11 **HEARING OFFICER HAYES:** -- concerned citizens.  
 12 Okay. I'll let you ask him a few questions since he did  
 13 bring in your objection letter.  
 14 **BY MR. NORRIS:**  
 15 Q. All right.  
 16 Sir, did you contact our supervisor of the 18  
 17 lakes and 60 miles of shoreline that we have here in  
 18 Kootenai County?  
 19 **A. No, sir. I read your letter.**  
 20 Q. Why wouldn't you do that?  
 21 **A. I had your letter.**  
 22 Q. But why wouldn't you contact our supervisor who  
 23 manages all of these waterways?  
 24 **A. You should have put all your comments in that**  
 25 **letter and I was -- and my -- and typically everything's**

<p style="text-align: right;">Page 97</p> <p>1 in the letter. If I have questions, I'll go, but I did 2 have any questions. 3 Q. So I have another question. You said you have a 4 pretty extensive resume. Can you tell us one of the 5 problem-solving efforts that you made that you 6 personally were involved in on a waterways problem? 7 A. Well -- 8 MS. TELLESSEN: I will object to the vagueness 9 of the question. 10 If you are able to answer, you may. 11 THE WITNESS: Yeah, I've had been involved in 12 the Coast Guard with said buoys, and then I had the case 13 after I retired on setting buoys on Lake Powell, and a 14 problem with the marine accident that happened there. 15 Had problems with -- obviously, when I was in civilian 16 life after I retired, we were going to put in a marina. 17 I had a problem with -- did some work in Utah -- had a 18 case in Utah where I did some work and some vessels were 19 injured because of a storm. And part of the problem was 20 a poorly placed marina. I would not have placed a 21 marina there. 22 So in other ways, when you do marine accident 23 investigation and reconstruction of the water, one of 24 the things you want to look at, are the buoys placed 25 properly? Are encroachments improperly placed? What's</p>	<p style="text-align: right;">Page 99</p> <p>1 MS. TELLESSEN: Yes. Thank you. 2 REDIRECT EXAMINATION 3 BY MS. TELLESSEN: 4 Q. Captain Derie, two of the good sheriff's 5 questions. In your experience is safe navigation 6 consistent from waterway to waterway? 7 A. Yes. 8 Q. And that safety is ensured by following 9 established standards, correct? 10 A. Yes. Guidance, standards, rules of the road. 11 Q. And did you find any particular standard in your 12 review in your preparation that is not being followed by 13 this application? 14 A. No. I found none. 15 MS. TELLESSEN: Okay. Thank you. 16 HEARING OFFICER HAYES: All right. 17 I have just clarified with Ms. TellesSEN that 18 that is the last witness for applicant's presentation of 19 evidence. At this time we've been going a little bit 20 more than two hours, so before we move to Coeur d'Alene 21 Land Company and concerned citizens and the sheriff's 22 remarks, I'm going to give our court reporter a short 23 break off the record. 24 And I ask that we keep it to five minutes and I 25 ask that you remain in the room unless you desire a</p>
<p style="text-align: right;">Page 98</p> <p>1 going on in the waterway? 2 Q. So I hear a lot about buoys. But I mean a 3 problem that residents who live on waterways have and 4 then you came in, you personally came in and assessed 5 the issue and made a recommendation on that particular 6 issue? 7 A. Yeah, I consulted on a couple cases like that 8 over the years. Ones -- 9 Q. I'm not saying consulted. I'm asking you what 10 you did. 11 A. Oh, I'm a consultant. 12 Q. Okay. 13 MR. NORRIS: All right. 14 You know, I recreate on these waterways and on 15 the Spokane River about 50 times a summer. And for 16 somebody to come in one day and to refute some of these 17 things, I just find it to be disingenuous. So thank 18 you. 19 And I have some comments regarding the 20 misinformation from the applicant's initial opening 21 statements also. 22 HEARING OFFICER HAYES: Thank you, Sheriff. You 23 will be given an opportunity here shortly. 24 Ms. TellesSEN, any further questions for this 25 witness?</p>	<p style="text-align: right;">Page 100</p> <p>1 comfort break, such as a bathroom, water, or fresh air, 2 so that we can keep these proceeding going and get 3 everybody's public testimony that desires to provide it 4 here today. 5 So with that, we'll be in recess. 6 (A recess was taken.) 7 HEARING OFFICER HAYES: All right. 8 We are back on the record. And at this point in 9 time we are to Coeur d'Alene Land Holdings Company's 10 testimony. 11 JOHN F. MAGNUSON, 12 having been first duly sworn to tell the truth, the 13 whole truth, and nothing but the truth, relating to said 14 cause says: 15 Mr. Magnuson: All right. The night is long, 16 and I'll try not to make it too much longer. 17 My name is John Magnuson. I'm here on behalf of 18 Coeur d'Alene Land Company. I wear a lot of hats, so I 19 have to clarify which hat I'm wearing tonight. 20 HEARING OFFICER HAYES: I should have asked 21 before I swore you in, are you here providing a 22 statement on behalf of Coeur d'Alene Land Company or are 23 you testifying as a witness? 24 MR. MAGNUSON: I'm testifying as a witness, as 25 Coeur d'Alene Land Company's witness.</p>

<p style="text-align: right;">Page 101</p> <p>1       <b>HEARING OFFICER HAYES:</b> Thank You.</p> <p>2       <b>MR. MAGNUSON:</b> I happen to also be a lawyer,</p> <p>3       which is why I wear a lot of hats. I also happen to be</p> <p>4       a 24-year member of the board of directors of the</p> <p>5       Coeur d'Alene Lakefront Property Owners Association.</p> <p>6       Although, I'm here tonight in my personal capacity and</p> <p>7       on behalf of Coeur d'Alene Land Company. A company</p> <p>8       founded by my father 60 years ago which I'm vice</p> <p>9       president, which is the company that owns about</p> <p>10      280 acres across the river from the applicant's</p> <p>11      property, with about 4,000 feet of undeveloped</p> <p>12      waterfront.</p> <p>13      I'm also here in the fact that I've dealt with</p> <p>14      the Department of Lands as a private attorney in</p> <p>15      Coeur d'Alene for approximately 34 years. I have a</p> <p>16      great deal of respect for most of the Department of</p> <p>17      Lands, particularly Mr. Amher.</p> <p>18      I have processed, on behalf of clients, I do not</p> <p>19      know how many hundreds of encroachment funded</p> <p>20      applications, but hundreds and probably dozens of</p> <p>21      community dock applications.</p> <p>22      I am conversant with the rules, and I have</p> <p>23      pursued relief under those rules to the Idaho Supreme</p> <p>24      Court, I have lost count, on Lake Protective Act issues,</p> <p>25      but probably seven or eight.</p>	<p style="text-align: right;">Page 103</p> <p>1           That having been said, the primary objection to</p> <p>2       the reconstituted application is that it's a community</p> <p>3       dock.</p> <p>4           Does Mr. Douglass have the requisite number of</p> <p>5       feet of riverfront? Yes, he does.</p> <p>6           Does the 7 square feet comport with the rules?</p> <p>7       Yes, it does.</p> <p>8           Does he set the encroachment back the requisite</p> <p>9       number of feet? Yes, he has.</p> <p>10          My concern and the basis for the objection to</p> <p>11      the reconstituted application is that there was no</p> <p>12      protection, no assurance that those slips would be</p> <p>13      rented by the members of the community, which would be</p> <p>14      the renters of the apartments, which is why I asked</p> <p>15      Mr. Douglass tonight, and I think he was candid with me,</p> <p>16      and he said he would not have an objection if the</p> <p>17      Department of Lands conditioned the issuance of the</p> <p>18      permit, if they found it to be merited and in the</p> <p>19      compliance of the rules, on a condition that those slips</p> <p>20      could not be rented to anyone other than an apartment</p> <p>21      renter or someone who buys a house that he subsequently</p> <p>22      developed.</p> <p>23          I say that because that's what the rules would</p> <p>24      apply, in my opinion, but for the fact we have the issue</p> <p>25      of the line of navigability and the public trust issues.</p>
<p style="text-align: right;">Page 102</p> <p>1           The company filed its objection to this</p> <p>2       application on August 1, I believe. The sheriff was the</p> <p>3       other one who objected that day. The objection I filed</p> <p>4       was primarily because -- not exclusively but primarily</p> <p>5       because, and our position is, the application did not</p> <p>6       comply with the rules. The application was submitted on</p> <p>7       behalf of one property owner, not three other littoral</p> <p>8       or riparian owners, nor was there anything in the nature</p> <p>9       of a homeowners association.</p> <p>10          We filed our objection on time. We requested</p> <p>11      hearing. We also objected that the encroachment</p> <p>12      extended beyond the line of navigability. That</p> <p>13      application was published and everybody proceeded</p> <p>14      accordingly.</p> <p>15          And then after my objection, the day before</p> <p>16      people could intervene in this proceeding, the applicant</p> <p>17      changed the complexion of the application and leased two</p> <p>18      properties to try -- in my opinion, try to resuscitate</p> <p>19      the application.</p> <p>20          No new notice was published. We believe that's</p> <p>21      in violation of the rule. I recognize that the hearing</p> <p>22      officer has disagreed with that contention. And we</p> <p>23      state that today to preserve unequivocally for the</p> <p>24      record that we believe we're not properly here tonight,</p> <p>25      and this proceeding is not comporting with due process.</p>	<p style="text-align: right;">Page 104</p> <p>1       The public trust issues are something that will be</p> <p>2       addressed by the concerned citizens tonight.</p> <p>3           I also raise an objection, the line the</p> <p>4       navigability. I understand the hearing officer has</p> <p>5       ruled against me. However, the rule does say that a</p> <p>6       navigational encroachment extending beyond the line of</p> <p>7       navigability must -- and including a community dock --</p> <p>8       can only do so with the permission of the director or a</p> <p>9       permit issued. That's why we contend that a dock in</p> <p>10      this location -- not that Mr. Douglass can't have docks.</p> <p>11      Not that Mr. Douglass doesn't have riparian rights. He</p> <p>12      does and he can. But the question is, when you put</p> <p>13      docks next to 50-foot docks on a narrow width of the</p> <p>14      river with the issues to which the sheriff is going to</p> <p>15      testify, it's a problem. It's not just a matter of</p> <p>16      10 feet. It's a matter of 100 feet.</p> <p>17          And so we object on those bases, but if there is</p> <p>18      a provision in the permit that allows the dock -- if it</p> <p>19      complies, that's somebody else's decision, that it has</p> <p>20      to be used by those parties. Otherwise, somebody</p> <p>21      cancels a lease because it's unrecorded, and they're the</p> <p>22      landlord and tenant and the lease goes away, and you</p> <p>23      rent the slips to any Tom, Dick, or Harry in the public</p> <p>24      and then you have a public marina, and when you have</p> <p>25      public marina, you have to have certain requirements</p>

<p style="text-align: right;">Page 105</p> <p>1 met. You have to have parking. You have to have all 2 sorts of other differential things. It's not a 3 community dock. If this is a community dock and that 4 provision is put in, that's different. 5 Lastly, there's been some intimation about the 6 great American capitalist system, and that somehow on 7 behalf of the company I'm attempting to feather a nest 8 because we own property across the river and the 9 property is listed. The property is listed to try to 10 determine the value because at this point in time we are 11 in discussions to make that a public park. That would 12 be the goal if that could be achieved and that's 13 underway, but I'm -- no promises, but that would be the 14 goal. 15 So that's all I got. 16 <b>HEARING OFFICER HAYES:</b> Ms. Richter, any 17 questions for Mr. Magnuson? 18 MS. Richter: No. 19 <b>HEARING OFFICER HAYES:</b> Mr. Smith? 20 <b>MR. SMITH:</b> No. 21 <b>HEARING OFFICER HAYES:</b> Ms. Tellessen? 22 <b>CROSS-EXAMINATION</b> 23 <b>BY MS. TELLESSEN:</b> 24 Q. Mr. Magnuson, thank you. 25 For the clarity of the record, did you have</p>	<p style="text-align: right;">Page 107</p> <p>1 a position, you may do snaps or you may do hand waves, 2 but I can't have clapping. It disrupts the court 3 reporter. 4 <b>MR. MAGNUSON:</b> Your question one more time, 5 Ms. Tellessen. 6 <b>BY MS. TELLESSEN:</b> 7 Q. Have you reviewed the videos that had been 8 submitted on behalf of the citizens? 9 <b>A. I reviewed some of them. There were quite a</b> 10 <b>few, and so I can't tell you that -- no, I didn't review</b> 11 <b>them all.</b> 12 Q. And did you take into account of the dates and 13 times that those videos were presented? 14 <b>A. No.</b> 15 Q. Did you take any account of the fact that they 16 were all on the weekend? 17 <b>A. I did not take account of that. I live here.</b> 18 <b>I --</b> 19 Q. But you didn't look at those for that point? 20 <b>A. Frankly, I don't need to look at a video to know</b> 21 <b>what goes on in the Spokane River. I've lived here my</b> 22 <b>entire life.</b> 23 Q. Yes, you've covered that. 24 <b>A. Yeah.</b> 25 Q. Thank you. For brevity purposes, we'll move on.</p>
<p style="text-align: right;">Page 106</p> <p>1 marine safety training? 2 <b>A. I've driven a boat on Lake Coeur d'Alene and the</b> 3 <b>Spokane River since the age of 10. I date myself now,</b> 4 <b>that's 54 years.</b> 5 <b>Do I have safety training? No. Could I teach</b> 6 <b>safety training lessons? Yes.</b> 7 Q. And yourself claiming as a safety expert on the 8 Spokane River? 9 <b>A. Proudly without reservation.</b> 10 Q. Thank you. 11 And only people that have driven on the Spokane 12 River could proclaim that? 13 <b>A. Only people who've driven on the Spokane River</b> 14 <b>know what issues the Spokane River presents. You can go</b> 15 <b>out on Lake Coeur d'Alene. You could go to Mica Bay.</b> 16 <b>You could go to Swede Bay. You could go to Windy Bay.</b> 17 <b>It doesn't look like a Sunday or a Saturday afternoon or</b> 18 <b>Friday at about noon for that matter on the Spokane</b> 19 <b>River, which looks kind of like the interstate in LA</b> 20 <b>these days.</b> 21 Q. And you've reviewed the videos that have been 22 submitted by the citizens? 23 <b>HEARING OFFICER HAYES:</b> I'm going to remind the 24 audience. This is the part where it gets really hard to 25 contain your excitement. If you need to show support of</p>	<p style="text-align: right;">Page 108</p> <p>1 The dock that's being proposed, do you have any 2 experience with that particular dock, other than what 3 you've seen on a piece of paper? 4 <b>A. With that dock or docks?</b> 5 Q. That dock, the dock that's at issue. 6 <b>A. Well, it hasn't been built, so I can't have any</b> 7 <b>experience with it.</b> 8 Q. Are you a dock builder? 9 <b>A. I -- I own two marinas, so I'm kind of</b> 10 <b>conversant with docks.</b> 11 Q. Are you dock builder? 12 <b>A. I'm not a dock builder because I've seen how</b> 13 <b>hard they work, and I would like to try to do something</b> 14 <b>else with my time.</b> 15 Q. Thank you for your expansion. 16 Are you dock designer? 17 <b>A. I have.</b> 18 Q. You have designed docks? 19 <b>A. Yes, I have.</b> 20 Q. Okay. Did you design these docks? 21 <b>A. The docks of the applicant?</b> 22 Q. Yes. 23 <b>A. No, because they're not built and I haven't seen</b> 24 <b>them.</b> 25 Q. Never mind.</p>

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<p>1 <b>A. Why would he hire me to design the dock, for</b>  2 <b>God's sake.</b>  3 Q. I'm trying to get the scope of the opinions that  4 you are prepared and are testifying to. That is -- you  5 know these rules. Don't act surprised. Just trying to  6 understand what you're here to testify about, as you  7 know.  8 Do you have a property interest in any of the  9 property that is subject to this application?  10 <b>A. Mr. Douglass' property?</b>  11 Q. Yes.  12 <b>A. No.</b>  13 Q. Do you have any interest, liberty, property, or  14 otherwise in who owns that property?  15 <b>A. No.</b>  16 Q. Do you have any interest in what they do with  17 that property?  18 <b>A. I don't have any concern or interest what they</b>  19 <b>do with the property as long as it's compliant with the</b>  20 <b>same rules that have applied to me for 30 years.</b>  21 Q. And you've rendered your statements on that  22 already?  23 <b>A. I have.</b>  24 <b>MS. TELLESEN:</b> Okay. Thank you.  25 <b>HEARING OFFICER HAYES:</b> And I should have asked</p>	<p>1 here today. And I also am very unhappy that concerned  2 citizens were excluded as intervenors, as we followed  3 all of the rules that we weren't able to do last time  4 because we didn't have an attorney, and we were not  5 advised by the IDL of the process, and so, therefore,  6 this time we did make the process, and we are still  7 being excluded even though we are citizens of Idaho.  8 So I just have to say there's a lot of money  9 floated around here for land, water leases, dock  10 rentals, all the stuff, and it's very disappointing.  11 So I would also like to make a little point as  12 far as the River's Edge Apartments. As far as I know,  13 apartments are transitional housing, and so when  14 people -- people live in apartments at times, and  15 sometimes it's because they have a short time that they  16 need to fill in, but it's also because they can't afford  17 a house in -- in Kootenai County that has tripled in  18 prices. So I'm wondering how they plan to make sure  19 that the high portion of their apartment renters are  20 able to afford their boat docks and the boats?  21 But anyway. That was -- that's an aside.  22 But good evening. I'm here today not as a  23 politician or a developer or an attorney but as a  24 concerned citizens -- a concerned citizen and I help  25 concerned citizens. I'm a parent. And I'm a steward of</p>
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<p>1 this before I turned you over to Ms. Tellessen.  2 Mr. Magnuson, are you proffering yourself as an  3 expert in these proceeding?  4 <b>MR. MAGNUSON:</b> I could, but I won't.  5 <b>HEARING OFFICER HAYES:</b> Okay. Any further  6 witnesses?  7 <b>MR. MAGNUSON:</b> No.  8 <b>HEARING OFFICER HAYES:</b> Mr. Smith?  9 <b>MR. SMITH:</b> I assume you're asking me to call  10 witnesses?  11 I think my opening statement we made by numerous  12 citizen that are here to testify here tonight. The  13 first witness I'm going to call is Sheri Scofield.  14 <b>SHERI SCOFIELD,</b>  15 having been first duly sworn to tell the truth, the  16 whole truth, and nothing but the truth, relating to said  17 cause and says:  18 <b>HEARING OFFICER HAYES:</b> Would you state your  19 name and spell your last name for the record.  20 <b>MS. SCOFIELD:</b> My name is Sheri Scofield, and my  21 last name is spelled S-C-O-F-I-E-L-D.  22 Good evening.  23 I'm going to have to do a few little remarks  24 that weren't in my speech because I was trying to be  25 nice, but I feel like there's a lot of favors going on</p>	<p>1 our shared resource, the Spokane River.  2 The Spokane River is at a turning point. And if  3 you ask any Kootenai County resident that has lived here  4 more than five years they will tell you that the Spokane  5 River is a mess. It's dangerous and it needs some  6 regulation and some care.  7 So that turning point that -- we experienced the  8 turning point this summer when our family was almost  9 in -- although my husband's a speed (inaudible) that  10 one, we witnessed a near miss accident, and it was very  11 disturbing, and this is before we add the 225 boats that  12 we're getting to be rubber stamped.  13 We're going to get 225 boats. We worked on the  14 Templin's development for 127 boats. This development  15 has 74. And next October 6 we have a hearing for  16 another 24 boats, so that makes 225 additional boat  17 slips or boat docks.  18 Now, we already -- we already have 900,  19 approximately, boats and boat slips on the entire  20 expanse of the Spokane River. 900. So if we add 225  21 more to that we will have 1,125 docks and boat slips  22 with easy access to the river on an 8 mile river.  23 That's a lot of boats and that's getting ready for a lot  24 of traffic and a lot of damage.  25 So you're going to hear a lot of real life</p>

<p style="text-align: right;">Page 113</p> <p>1 experiences tonight, and that would be increased 2 traffic, decreased safety, increased erosion, and 3 decreased wildlife. 4 I would like to say as far as increased traffic, 5 more boats, more congestion, more risk. I don't live 6 upriver, but I witnessed it for myself when we gathered 7 for a meeting and the boats, wave runners, and 8 surfers were -- surfers that surf boaters -- were 9 practically tumbling over each other in this narrow 10 section of the river. I tell you that it gave me such a 11 deep angst of concern watching and hoping that the worst 12 wasn't going to happen right there while I was 13 witnessing it. And then to see the just gigantic waves 14 just pouring and hitting all the shorelines was pretty 15 amazing, because I actually live in a no wake zone. 16 So, No. 2, the decreased safety. This is 17 especially for swimmers, paddle boarders, canoers, 18 fishermen, small boats, and all these individuals are 19 not protected by the large profit margins we're hearing 20 about today. 21 The increased erosion, you'll hear about 22 uprooted trees. I had a witness, that I thought was 23 coming, because he had to pull out quite a few trees 24 that have fallen into the river. 25 And so there's decreased wildlife. Long-term</p>	<p style="text-align: right;">Page 115</p> <p>1 Spokane River. 2 The public trust doctrine and the IDL rules 3 exist to protect our natural resources. But we don't 4 feel that the IDL is actually applying the IDAPA lake 5 protection and the public trust doctrine in our benefit, 6 to protect the beauty, the navigation, the recreation. 7 It's only about who can make money on the river. And 8 they didn't have a lot of questions for the applicant 9 either, which was a little bit of a bummer. 10 So this river is ours. It's the citizens and it 11 is us, the normal people, who own this river. We are 12 not the super rich with special privileges. We are not 13 out-of-state developers looking to flip lake front 14 property into short-term summer cash. We are families 15 who live here year round. We care deeply about this 16 river, not because it makes money, but because it makes 17 memories. We make memories for our family on this river 18 when we can do it safely, and it gives life to the 19 ecosystem in the river. We don't want the 20 overdevelopment to be so great that the entire river 21 becomes a no wake zone. It will take hours to get from 22 the lake to the dam. 23 So the citizens ask, is the river going to be a 24 playground for the rich and famous? Are permits going 25 to be issued for unchecked development?</p>
<p style="text-align: right;">Page 114</p> <p>1 resident tell me they no longer see otters and beavers, 2 yeah, like they used to. And when -- and when was the 3 last time that we did a survey on the fish or a survey 4 in general on the traffic, because we expect there's a 5 decline in the fish too. 6 This is damage to the river itself and to the 7 very ecosystem that sustains it all. Maybe you've heard 8 about the tragedy of the commons. When a shared 9 resource is left unprotected and everyone takes from it 10 for private gain and sucks everything out of it, that 11 resource is eventually destroyed. And that will 12 hopefully not be our river. 13 So the question becomes, are we willing to let 14 the exploitation of our river continue? 225 additional 15 boats will only compound these consequences. The line 16 has to be drawn at some point. 17 What can be done and who will protect the future 18 of our river? The IDL has that power. They should put 19 an indefinite pause on all for-profit applications for 20 permits. They should conduct a study of maximum 21 carrying capacity, such as the one Canada did. They 22 should honestly assess environmental impacts and 23 cumulative damage to the river with the aid of experts 24 who have been attempting to give input, and, finally, 25 institute common sense rule changes that protect our</p>	<p style="text-align: right;">Page 116</p> <p>1 This river is not for sale. We have a duty, all 2 of us, to preserve this river for the next generation, 3 not just with words, but with action, with courage, with 4 vision, and with restraint. Please do the right thing. 5 Stop the approvals, pause the permits, and protect the 6 Spokane River. 7 Thank you. 8 <b>HEARING OFFICER HAYES:</b> Department of Lands any 9 questions for this witness? 10 <b>CROSS-EXAMINATION</b> 11 <b>BY MS. RICHTER:</b> 12 Q. Hi Sheri, Kayleen Richter from the Department of 13 Lands. 14 Just a quick question for you. You mentioned a 15 study on the river by Canada. Can you give me some more 16 information about that? Do you have a name or an 17 explanation for what that is? 18 <b>A. I do at my house.</b> 19 Q. I just wasn't sure. 20 <b>A. I was given the report.</b> 21 <b>I do at my house. I don't have it with me</b> 22 <b>today.</b> 23 Q. That's okay. 24 Do you remember if it is one of the pieces 25 included in some of the public comments? I remember</p>

<p style="text-align: right;">Page 117</p> <p>1 there were some that had some literature.</p> <p>2 <b>A. Well, there's been a lot of things in the public</b></p> <p>3 <b>comments. There's been news reports that other states</b></p> <p>4 <b>are doing. I think Wiscon- -- Minnesota and Michigan</b></p> <p>5 <b>are just completely overhauling all their water</b></p> <p>6 <b>guidelines and everything. There's been news things,</b></p> <p>7 <b>news things showing the damage to water, so I'm not sure</b></p> <p>8 <b>what was in all of comments.</b></p> <p>9 Q. That's okay. Thank you. I just wanted to know</p> <p>10 if you remembered.</p> <p>11 <b>HEARING OFFICER HAYES:</b> Mr. Smith, will you</p> <p>12 supplement the record following the close of these</p> <p>13 proceedings with that information?</p> <p>14 <b>MR. SMITH:</b> I will.</p> <p>15 <b>HEARING OFFICER HAYES:</b> Thank you.</p> <p>16 Ms. Magnuson, any questions for this witness?</p> <p>17 <b>MR. MAGNUSON:</b> No.</p> <p>18 <b>HEARING OFFICER HAYES:</b> Thank you.</p> <p>19 <b>CROSS-EXAMINATION</b></p> <p>20 <b>BY MS. TELLESSEN:</b></p> <p>21 Q. Ms. Scofield, thank you.</p> <p>22 In your testimony you keep repeating the number</p> <p>23 225 boats, what's that based on?</p> <p>24 <b>A. Oh, I must have skipped that part. Sorry.</b></p> <p>25 <b>It's 127 additional boats at the Templin's</b></p>	<p style="text-align: right;">Page 119</p> <p>1 And I'm here today to speak in opposition of</p> <p>2 the -- to the addition of the 74 boat slips on an</p> <p>3 already overburdened, overcrowded river. And Sheri and</p> <p>4 I, along with -- we've amassed probably about a 400- to</p> <p>5 450-person, at least, mailing -- or email list keeping</p> <p>6 them apprised of mainly the Hospitality StanCraft</p> <p>7 because we're not done with that one yet, just so you</p> <p>8 all know. We're going to the Idaho Supreme Court with</p> <p>9 that one, so we're not done. And so we've been working</p> <p>10 on, for about a year now, and will we win, we don't</p> <p>11 know, but we do know this, we are standing for what is</p> <p>12 right.</p> <p>13 The Spokane River has become unsafe for all</p> <p>14 water recreators, even those of us who have spent years</p> <p>15 navigating on it. It is narrow. It is shallow. It is</p> <p>16 short, and now it's overwhelmed.</p> <p>17 And I would like to kind of make a statement on</p> <p>18 kayaking, fishing. That's the last thing I'd want to be</p> <p>19 as close to a dock when the river is busy, so if you</p> <p>20 want to kayak you're probably going to have to do it at</p> <p>21 6:00 or 7:00 o'clock in the morning.</p> <p>22 My wife and I have got a 16-foot kayak. We came</p> <p>23 up on a Sunday, and we nearly toppled it over. We went</p> <p>24 up to the Baptist church camp up there, and we nearly</p> <p>25 tipped over a number of times while we were on that.</p>
<p style="text-align: right;">Page 118</p> <p>1 <b>Stancraft owned for Hospitality, 74 boat slips with</b></p> <p>2 <b>River's Edge, and 24 boat slips with Waterstone --</b></p> <p>3 <b>that's the hearing on October 6 -- so that's 225.</b></p> <p>4 Q. And you understand the application presently</p> <p>5 before the hearing examiner for this hearing is only the</p> <p>6 74 slip boats, correct?</p> <p>7 <b>A. Yes, I do know.</b></p> <p>8 Q. Okay. Thank you.</p> <p>9 <b>A. But it will still be a huge impact on the river.</b></p> <p>10 <b>So we have to add it altogether. We can't keep them</b></p> <p>11 <b>separate because all of them will impact our river.</b></p> <p>12 Q. And then is your opinion that the 900 slips that</p> <p>13 are already on the river do not have an impact?</p> <p>14 <b>A. No, they do. They do.</b></p> <p>15 <b>MS. TELLESSEN:</b> All right. Thank you.</p> <p>16 <b>HEARING OFFICER HAYES:</b> Thank you.</p> <p>17 Mr. Smith.</p> <p>18 <b>MR. SMITH:</b> Scott Scofield.</p> <p>19 <b>HEARING OFFICER HAYES:</b> Scott Scofield.</p> <p>20 <b>SCOTT SCOFIELD,</b></p> <p>21 having been first duly sworn to tell the truth, the</p> <p>22 whole truth, and nothing but the truth, relating to said</p> <p>23 cause says:</p> <p>24 <b>MR. SCOFIELD:</b> Okay. So you just met my wife.</p> <p>25 Now it's my turn.</p>	<p style="text-align: right;">Page 120</p> <p>1 We walked that community and we've knocked</p> <p>2 over -- on over 225 doors and all but two residents</p> <p>3 opposed anything that we were talking about as the</p> <p>4 trouble on the river. And one of them I found out was,</p> <p>5 hmm, he's a wood boat owner. Where does that go?</p> <p>6 StanCraft. Hmm.</p> <p>7 And actually, one of the houses that we stopped</p> <p>8 to and visited was a parks and rec employee, and he</p> <p>9 decided not to participate in our interview with him to</p> <p>10 see where he stood. And it kind of just shows the</p> <p>11 inability to an agency to get involved in this</p> <p>12 permitting process.</p> <p>13 So just to kind of personalize a little bit. We</p> <p>14 just, on the Labor Day, we had a close call on the river</p> <p>15 with family and friends. It was a near miss. We were</p> <p>16 in a section of the river that was incredibly narrow,</p> <p>17 and there was -- I couldn't see it, but our passengers</p> <p>18 that were with us -- because I was trying to concentrate</p> <p>19 to make sure that the boat that was coming at me at a</p> <p>20 high rate of speed, was coming directly at us, I was</p> <p>21 going to make sure we didn't have a head-to-head</p> <p>22 collision. And I already had to break the 150 rule that</p> <p>23 we have that we're supposed to be off the dock, so I had</p> <p>24 to -- and I was only going 15 miles an hour, and I had</p> <p>25 get very close to that dock, probably about 25 feet from</p>

<p style="text-align: right;">Page 121</p> <p>1 that dock, and this boat kept coming to us, and I'm 2 honking. I'm waving. 3 But the problem was, is there was about a total 4 of -- with our boat included, there was six boats in 5 this particular section, and -- and so it was a very 6 tight, very difficult way in a place to navigate, and 7 that was -- that was a very scary issue for us. 8 About the docks, I just kind of wonder with the 9 docks that are going in place, what if the kids want to 10 swim off the end of the docks that they're going to be? 11 Is there -- is there a private swimming area for these 12 kids, for people to swim? And if so, how is it going to 13 be allocated, and where is that going to go, and is that 14 going to further impede into the navigable -- navigable 15 waterway? I'd like to know that. 16 A private -- here's something else that we need 17 to think about as well. Some of our friends actually 18 rented as pontoon boat from Hagadone. And in their 19 contract -- and we actually called the Saturday before 20 this hearing to verify what this contract stated. But 21 in their contract it is verified that if you rent a boat 22 from Hagadone, you are not allowed to go on the Spokane 23 River. They've got them GPS'd. 24 So we asked -- we knew what the answers were 25 because our friend told us, but we kind of just played</p>	<p style="text-align: right;">Page 123</p> <p>1 got some weight. You can talk to the IDL and get 2 something accomplished. 3 A recent commissioners, county commissioners 4 meeting that many of you got the video of it, so we have 5 our county commissioners there, we had a representative 6 from the IDL talking about basically this project. I 7 think it was this project. There was something about 8 it. But the commissioners are now starting to say, when 9 is enough enough. 10 And the representative from the IDL kind of 11 seemed to agree, if you watch the video he kind of 12 seemed to degree -- agree and said, you know, there 13 needs to be a study to see if we have maximum capacity, 14 if we're at maximum capacity. But then, wouldn't you 15 know it. The all too familiar question, who's going to 16 pay for it? 17 Well, if IDL is collecting all this money from 18 everybody that been using it and everything, I think 19 they can pony up the money to pay for it, the study. It 20 can't be that expensive. Why don't you hire the 21 consultant here that could probably come in here and 22 hang out with us and see what our rivers are like and do 23 it. 24 So I just want to ask this: What's -- what's 25 the cost of a human life? Safety comes at a price, but</p>
<p style="text-align: right;">Page 122</p> <p>1 dumb like we were going to rent the boat ourselves. And 2 the first point was, well, we don't want the props to 3 get destroyed. 4 And the second one, unprovoked, not a leading 5 question like an attorney would do, but safety was the 6 other issue. So that should tell us something of how 7 dangerous our river potentially is going to be or can 8 be. 9 So during our process with the 414 Hospitality 10 and StanCraft project, the permitting went through with 11 IDL, a lot of letters were sent in. I find it very 12 interesting that our Post Falls mayor kind of basically 13 signed off on the deal and gave approval to it, and my 14 wife rallied the troops on nine hours notice, got 35 15 people to a city council meeting. You ever see 35 16 people at a city council meeting? No. 17 Well, he got wind of it, that my wife was coming 18 with a posse to talk about this issue and shut it down 19 but allowed Sheri to speak. And so during that 20 testimony in that time the mayor had to agree that, you 21 know, when I was a kid, I used to swim across this 22 river, but now I would dare not go across that river. 23 So why -- why is there not something -- and he tried to 24 tell us it he has no jurisdiction over it. Well, you 25 can say something to the IDL. You got some power. You</p>	<p style="text-align: right;">Page 124</p> <p>1 the price of inaction is far greater. 2 Sheriff Norris has objected to this expansion. 3 He's going to testify, and I just really hope that our 4 sheriff will continue to speak up about any more marina 5 expansions for the simple reason that has been stated 6 that -- and we know before a fact because we've had some 7 public meetings over our river over the last few 8 years -- that just not enough adequate resources to 9 patrol the river. 10 And I can tell you that's a true statement. We 11 spent almost every day during the Labor Day weekend out 12 on the water, and I saw not one boat, one sheriff. Now, 13 I hope I'm wrong, but we put a lot of hours over that 14 Labor Day weekend because we had a lot of visitors out 15 of town, and they even made comments, wow, is it always 16 like this? I mean, I knocked my bimini -- a few of the 17 screws came out of the bimini because I had to navigate 18 the surf boat waves at an angle, but I had nowhere else 19 to go, so I had to kind of cut into it. But I told 20 them, I said, yeah, this is our Post Falls river. This 21 is our 8 mile river that, by the way, as five 300-foot 22 choke points on it. So more boats, more congestion is 23 going to lead to issues. 24 So here we are. We've got public officials 25 raising flags but nothing is being done. We have</p>



<p style="text-align: right;">Page 125</p> <p>1 agencies remaining silent. In that 414 Hospitality 2 StanCraft fight that we have, nobody made a comment. 3 Nobody. Core of engineers, water, none of them. Why? 4 Why not? Why not take a look at what's going on on this 5 river? 6 You can't have a guy come in here that spends 7 one day, on a Tuesday, and use him as a verified 8 witness, that doesn't live on this river, to know what 9 the heck is going on and how we want our grandkids and 10 our children to be able to navigate this thing here 11 safely, so we don't have to go to another waterway to 12 recreate. I thought this was supposed to be for the 13 community. No, it's not for the community. 14 Is there a fear of lawsuits, if you go to try is 15 sue an agency that's not the investigating it? Is there 16 a fear of opposition? Or is it just the public voice is 17 simply being ignored. 18 Let me ask directly. Is this a public waterway, 19 or is this -- or has it become a private one for the 20 benefit of a few? I'm beginning to feel like it's the 21 latter. 22 This project that we're here tonight on might 23 meet all the technical specifications to get the dang 24 thing approved, but does it -- does it meet what the 25 community wants? If we are we the people, for the</p>	<p style="text-align: right;">Page 127</p> <p>1 ROBERT B. NORRIS, 2 having been first duly sworn to tell the truth, the 3 whole truth, and nothing but the truth, relating to said 4 cause says: 5 <b>HEARING OFFICER HAYES:</b> And, Sheriff Norris, 6 will you clarify, in what capacity are you testifying, 7 on behalf of the sheriff's office in your official 8 capacity or personal capacity as a resident? 9 <b>MR. NORRIS:</b> As the sheriff of this county in 10 which these people have entrusted me to be their elected 11 sheriff. 12 <b>HEARING OFFICER HAYES:</b> Thank you. 13 <b>MR. NORRIS:</b> So I would like a point of 14 clarification that the applicant attorney made reference 15 to the Idaho Department of Parks and Waterways has no 16 comment on this project. My experience has been here in 17 Kootenai County, they don't offer a comment on these -- 18 these applications. They defer to local law 19 enforcement. 20 Number 2, there's only one individual that is 21 responsible for safety on the water, and that's the 22 sheriff of the county. It's not a -- it's not any other 23 entity or any other individual. The sheriff on the 24 water is responsible for safety. 25 But I don't want you to take it from me. We</p>
<p style="text-align: right;">Page 126</p> <p>1 people, by the people, you need to be listening, 2 agencies. You need to be listening to the public. We 3 got all these people here taking their time because they 4 take this matter seriously, not so we can put money in 5 our pockets. 6 Because this is public, and I believe it, then 7 you need to listen to the public, and the public is 8 saying a resounding no. We are not anti-boating. We 9 are not anti-business. We are pro-safety, 10 pro-community. And let's face it, as Trump would say, 11 pro-common sense. Please listen to the people who live 12 here, who love this river, who are fighting to protect 13 it, not just for themselves but the generations to come. 14 Thank you. 15 <b>HEARING OFFICER HAYES:</b> Thank you. 16 Mr. Smith? 17 <b>MR. SMITH:</b> I would propose that we go out of 18 order and allow the sheriff to testify. I know we have 19 this room until 8:00 p.m. And I think there's time for 20 people to come up here and testify. 21 <b>HEARING OFFICER HAYES:</b> Thank you. 22 Sheriff Norris -- or, Ms. Tellessen, did you 23 have questions for Mr. Scofield. 24 <b>MS. TELLESSEN:</b> No. 25 (Continued on following page.)</p>	<p style="text-align: right;">Page 128</p> <p>1 have a -- my supervisor that I work with is a merchant 2 mariner master captain by the Coast Guard, and he is 3 here, and he would like to make a statement. 4 Ryan Miller, come on up. 5 <b>HEARING OFFICER HAYES:</b> Thank you for that. 6 Sheriff Norris, is that the conclusion of your 7 comments? 8 <b>MR. NORRIS:</b> Correct. 9 <b>HEARING OFFICER HAYES:</b> Okay. Sergeant Miller. 10 <b>MR. NORRIS:</b> He came in on his day off, that's 11 why he... 12 RYAN MILLER, 13 having been first duly sworn to tell the truth, the 14 whole truth, and nothing but the truth, relating to said 15 cause says: 16 <b>HEARING OFFICER HAYES:</b> Okay. And same 17 question, your sheriff seems to have given you the 18 authority to testify on behalf of the Sheriff's Office 19 of Kootenai County, but could you clarify, is that the 20 capacity you're testifying in today? 21 <b>MR. MILLER:</b> It's a little bit of both. That. 22 I'm also a boater on the waterways of Kootenai County. 23 In a personal capacity, I've owned a boat here 24 for about eight years, and I boat on the waterways of 25 the entire county; actually, the entire region</p>

<p style="text-align: right;">Page 129</p> <p>1 consistently.</p> <p>2 I also own a personal business. It's a</p> <p>3 commercial captain's services. So we do training. I'm</p> <p>4 a national safe -- excuse me -- national safe boating</p> <p>5 counsel instructor. We teach how to operate vessels in</p> <p>6 a safe manner. We also provide boat captains for</p> <p>7 charters, and we also do boat delivery, so we're on the</p> <p>8 water quite a bit. That's the business that I own, and</p> <p>9 again, as a personal boater as well.</p> <p>10 I've been a marine law enforcement instructor</p> <p>11 for about ten years in Idaho. I'm also a -- the current</p> <p>12 supervisor for the sheriff's marine division. This is</p> <p>13 my fifth year. At the end of this year I'll be rotating</p> <p>14 back to the patrol side and another supervisor will come</p> <p>15 in for about a four- or five-year rotation as well. So</p> <p>16 I do oversee all the marine operations for the sheriff's</p> <p>17 office.</p> <p>18 I -- part of that, as well, I'm also responsible</p> <p>19 for the dive team. I've been a diver, a master diver</p> <p>20 for about 15 years and have performed a lot of</p> <p>21 recoveries on these waterways as a result of various</p> <p>22 reasons, but a big portion of it is, you know, boating</p> <p>23 fatalities, boating incidents.</p> <p>24 I'm also responsible for the Kootenai County</p> <p>25 search and -- or -- yeah, search and rescue, but also</p>	<p style="text-align: right;">Page 131</p> <p>1 Saturday I was on the water in an official capacity for</p> <p>2 the sheriff's office and myself, I stopped a handful of</p> <p>3 vessels within just the hour that I was on the Spokane</p> <p>4 River.</p> <p>5 Because I was all over. I was down at Harrison.</p> <p>6 I was in the Rockford Bay area. I was all over the</p> <p>7 lake. We're at the end of the season, so I only had one</p> <p>8 other marine team that available for the entire region.</p> <p>9 We had boat crash on Hayden Lake so my other team got</p> <p>10 sent over there.</p> <p>11 So I was by myself on a boat with no one else</p> <p>12 and I made almost a dozen stops for safety violations.</p> <p>13 And a lot of those are people that were operating too</p> <p>14 close to other vessels, too close to the shoreline, too</p> <p>15 close to docks. They just didn't know the rules.</p> <p>16 I actually had a vessel that I stopped that had</p> <p>17 two children, two little girls that were sitting on the</p> <p>18 bow of the vessel while was underway. If those girls go</p> <p>19 over the front of the bow, they end up where the prop</p> <p>20 is. I had a couple other vessels that I stopped for</p> <p>21 various safety violations.</p> <p>22 Again, the big point here is, you're only going</p> <p>23 to know that if you're out on the water and you're</p> <p>24 seeing that. It's not a matter of how many crashes, how</p> <p>25 many incidents have we had, because one thing that we</p>
<p style="text-align: right;">Page 130</p> <p>1 the sonar team. And again, we're out there for a</p> <p>2 recovery base of operations.</p> <p>3 Some of the things that you've heard here today,</p> <p>4 specifically from some of the people, some of the</p> <p>5 experts -- again, also, I could probably be called an</p> <p>6 expert if my CV was to be published, but I'm not here in</p> <p>7 that capacity. I'm not calling myself an expert.</p> <p>8 There's a lot of studies that could be done, and</p> <p>9 studies should be done, and that's something that I have</p> <p>10 said. I have spoken about that for the past five years.</p> <p>11 Studies probably should be done. A line should probably</p> <p>12 be drawn in the sand to how many boaters, how many</p> <p>13 vessels, how docks should be on the waterways. I have</p> <p>14 not done those surveys.</p> <p>15 What I can speak to is the marine deputies that</p> <p>16 are out there, what they're reporting back to me, what</p> <p>17 I'm seeing on a daily basis.</p> <p>18 I was out on the water a Saturday, not on a</p> <p>19 Tuesday. That's one of the days that I don't have</p> <p>20 marine deputies on the water and there's a reason for</p> <p>21 that. Are people still boating? Yes. Is it our peak</p> <p>22 time? No, it is not.</p> <p>23 A Saturday, Sunday, especially around the 4th of</p> <p>24 July time frame. You know, once you get into August, it</p> <p>25 definitely does to taper off. Although, this past</p>	<p style="text-align: right;">Page 132</p> <p>1 have to always keep in mind is that they are reported</p> <p>2 violations. Not everyone -- or excuse me, reported</p> <p>3 accidents or crashes. Not everyone reports their</p> <p>4 crashes. Not everyone reports their accidents.</p> <p>5 In order for it to be a reported -- reportable</p> <p>6 crash, it has to be over \$1,500 in damage, which is</p> <p>7 pretty much a scratch on a boat, and it's also any type</p> <p>8 of injury. If someone is surfing behind a vessel and</p> <p>9 they are skiing and they get injured, that is a boat</p> <p>10 crash per the U.S. Coast Guard, but we don't have those</p> <p>11 reported to us all the time.</p> <p>12 One of things I always like to say too, again</p> <p>13 this isn't anything that you can do a survey or a study</p> <p>14 on, but we are more lucky than we are good. In the past</p> <p>15 several years we have not had a significant number of</p> <p>16 reported boat crashes or boat incidents on the Spokane</p> <p>17 River or on Lake Coeur d'Alene. But in the previous</p> <p>18 years -- again, I've been a diver for 15 years, and we</p> <p>19 had have some really, really high peak times.</p> <p>20 We're in a lull right now, and I do not believe</p> <p>21 that that is going to stay around. I don't have any</p> <p>22 data to support that. That is just my opinion for the</p> <p>23 amount of time that I've been here.</p> <p>24 And just to clarify, I've been at the sheriff's</p> <p>25 office for 18 years. I've been five years in this the</p>

1 section. Ten years as a marine law enforcement  
2 instructor for the state. But I also grew up in  
3 Palm Beach, Florida, on the intracoastal waterways, the  
4 Atlantic Ocean, canals. I may have even boated in a  
5 pool once. So I have had a lot of boating experience.  
6 And the amount of congestion that we have on certain  
7 peak times on the Spokane River is absolutely dangerous.

8 **HEARING OFFICER HAYES:** Thank you.  
9 Department of Lands questions?

10 **CROSS-EXAMINATION**

11 **BY MS. RICHTER:**

12 Q. Thank you.  
13 Sergeant Miller is it?

14 A. Yes.

15 Q. Thank you.  
16 Have you heard the testimony here today  
17 mentioning a 366-foot corridor on the Spokane River?

18 A. Yes. The first time I heard that was in that  
19 special meeting with the commissioners.

20 Q. Okay. So do you know where that figure came  
21 from?

22 A. I believe from IDL.

23 Q. Okay. Okay.

24 A. If I may continue on that. I had my own issues  
25 with that number, and one of the things that I brought

1 up about that number specifically, it doesn't take into  
2 account the other obstructions that you could have in  
3 the waterway.

4 So that 366 feet that came up, I believe it was  
5 150 feet from the -- well, not from the shoreline, but  
6 from a dock or from any other structure as the state  
7 code says. It has to be 150 feet away. And the 50 foot  
8 portion of that -- actually, I'm going to stop that  
9 because I think Mike wants to speak to it. I believe  
10 that's where it came from.

11 I'll let you speak. Is that accurate?

12 Q. Just, if you just want to --

13 A. Okay.

14 Q. -- talk about your memory.

15 A. All right.

16 My specific -- the specific part that I had an  
17 issue with of it was the other obstructions. So we  
18 could have -- we have wildlife that comes in our  
19 waterways sometimes, right. We have docks, kayaks,  
20 paddle boards, all these other things. It doesn't take  
21 into consideration for all these other obstructions that  
22 are in the waterway.

23 So again, that would be in a perfect world with  
24 a clear river with nothing else especially -- or  
25 specifically in that Atlas Mill area that we're

1 discussing. There are a lot of old pilings. Some above  
2 the waterway. Some below the waterway. And again, that  
3 doesn't take into consideration those pilings or other  
4 obstacles.

5 Q. Okay. So just so I'm clear, is your concern  
6 that the corridor is not wide enough to allow for  
7 navigation or --

8 A. It could be in a perfect situation or the  
9 perfect scenario, but I don't believe that that river --  
10 that you find that.

11 Q. Okay. Thank you.

12 I might have some more.

13 **HEARING OFFICER HAYES:** When we're done with the  
14 testimony, we can turn it back over to you, or,  
15 Ms. Richter, you can submit a supplemental declaration  
16 because I'm guessing that we will run out of time on  
17 these proceedings.

18 Mr. Smith, any questions for the sheriff?

19 **CROSS-EXAMINATION**

20 **BY MR. SMITH:**

21 Q. Sergeant Miller, just a very simple question.  
22 Will adding more boats to the Spokane River make it  
23 safer?

24 A. It will not.

25 Q. And adding more boats it make it more unsafe; is

1 that correct?

2 A. I believe it can, yes.

3 Q. And in your experience in going on the river  
4 multiple times, you are concerned about the safety for  
5 boaters on a daily basis and during peak times when  
6 there are too many boats on the river?

7 A. Absolutely. I believe a big portion of that is  
8 the amount of recreational activities that we are  
9 currently allowing on the river. Our Coeur d'Alene  
10 River, which is the southern part of this lake, of Lake  
11 Coeur d'Alene, does not allow towing on it. The Spokane  
12 River currently does.

13 For the past five years I've been a proponent to  
14 start looking at that from a county ordinance  
15 standpoint, since the state will not look at it, is that  
16 maybe start restricting towing operations on that river  
17 because of the amount of boats that we currently have on  
18 there.

19 **MR. SMITH:** Thank you. No further questions.

20 **CROSS-EXAMINATION**

21 **BY MS. TELLESEN:**

22 Q. Thank you, Sergeant Miller, for your time and  
23 for your service and certainly your dedication of the  
24 safety of the traveling public on the Spokane River.

25 Have you asked for IDL to fund a study for the

<p style="text-align: right;">Page 137</p> <p>1 Spokane River?</p> <p>2 <b>A. I have not.</b></p> <p>3 Q. Have you asked Kootenai County to fund a study</p> <p>4 for the Spokane River?</p> <p>5 <b>A. I have not.</b></p> <p>6 Q. Okay. And those folks that you stopped, you're</p> <p>7 speaking of I think it was this last Saturday?</p> <p>8 <b>A. Yes.</b></p> <p>9 Q. Were those stops of people who live on the</p> <p>10 Spokane River?</p> <p>11 <b>A. I did not check that information. I'm not sure.</b></p> <p>12 Q. And in your experience, do folks that live</p> <p>13 on the river often use it during peak times, or do they</p> <p>14 tend to stay away?</p> <p>15 <b>A. It seems to be a mix. It depends on what time</b></p> <p>16 <b>of year you're talking about as well.</b></p> <p>17 Q. Okay. And the incidents that you respond to are</p> <p>18 typically boat-on-boat incidents?</p> <p>19 <b>A. Various different types. We have criminal</b></p> <p>20 <b>activities as well that happen. So it could be a</b></p> <p>21 <b>homicide. It could be a suicidal type of incident. But</b></p> <p>22 <b>yes, we do have quite a few over -- over the years we've</b></p> <p>23 <b>had quite a few boating incidents. We have actually had</b></p> <p>24 <b>a couple planes that collided into each other.</b></p> <p>25 Q. Never a dull moment.</p>	<p style="text-align: right;">Page 139</p> <p>1 Q. And do any of his opinions strike you as</p> <p>2 inconsistent when you consider the standards that apply</p> <p>3 to navigational safety across all navigable waterways?</p> <p>4 <b>A. Yeah. Specifically each body of water is going</b></p> <p>5 <b>to be unique in its own right. I also have boated</b></p> <p>6 <b>across different countries, different oceans, lakes,</b></p> <p>7 <b>rivers, canals, maybe even a pool. I have boated in a</b></p> <p>8 <b>lot of different situations. And currents, we do have</b></p> <p>9 <b>currents. We have different wind considerations. We</b></p> <p>10 <b>have -- depending on how much snow, how much water that</b></p> <p>11 <b>we have going through, the way that the dam is opened</b></p> <p>12 <b>up, so it absolutely does change for sure.</b></p> <p>13 <b>The amount of logging that we've had on the</b></p> <p>14 <b>rivers here. That's changes -- that's pretty unique.</b></p> <p>15 <b>Not saying it's unique in its own, that there isn't</b></p> <p>16 <b>another body of waterway that's similar to that, but it</b></p> <p>17 <b>is pretty unique.</b></p> <p>18 <b>I mean, we were pulling out deadheads this</b></p> <p>19 <b>weekend, which is large logs. They are all over the</b></p> <p>20 <b>rivers, so those present a lot more hazards too and it</b></p> <p>21 <b>makes it a little bit more unique since this entire spot</b></p> <p>22 <b>that we're talking about specifically was logging</b></p> <p>23 <b>operations for many years.</b></p> <p>24 Q. But your opinion, I think in response to some of</p> <p>25 the questions that have been asked, is the number of</p>
<p style="text-align: right;">Page 138</p> <p>1 <b>A. There is not.</b></p> <p>2 Q. And do you have an opinion on whether the docks</p> <p>3 are safe or unsafe that are put on the river?</p> <p>4 <b>A. It depends. There are some docks that are</b></p> <p>5 <b>constructed correctly. There are some docks that are</b></p> <p>6 <b>older that are not. They can add -- or become hazards</b></p> <p>7 <b>in some situations.</b></p> <p>8 Q. And have you reviewed the design of these docks</p> <p>9 that are being proposed?</p> <p>10 <b>A. I have.</b></p> <p>11 Q. And do you have an opinion on whether they</p> <p>12 become safe or unsafe by looking at the design?</p> <p>13 <b>A. I don't. I'm definitely not an engineer, so I</b></p> <p>14 <b>do not.</b></p> <p>15 Q. And your, I guess, kind of view of this 366-foot</p> <p>16 corridor is it doesn't take into account many variables</p> <p>17 that exist on the Spokane River?</p> <p>18 <b>A. Absolutely.</b></p> <p>19 Q. Is there any manner of safety precaution that</p> <p>20 would take any account every variable in your opinion?</p> <p>21 <b>A. No, not one that I've come up with or that I</b></p> <p>22 <b>have heard proposed yet.</b></p> <p>23 Q. And were you here for Mr. -- Captain Derie's</p> <p>24 testimony?</p> <p>25 <b>A. Yes.</b></p>	<p style="text-align: right;">Page 140</p> <p>1 boats is the safety issue that you're concerned with?</p> <p>2 <b>A. It can be at times, definitely. I mean, there</b></p> <p>3 <b>are some more narrower parts of the river, that everyone</b></p> <p>4 <b>in this room probably knows about, that you can't pass</b></p> <p>5 <b>safely by. Especially if one is doing a water-type</b></p> <p>6 <b>activity, you can't safely pass by.</b></p> <p>7 <b>Because we're one of six states in the country</b></p> <p>8 <b>that do not -- that does not mandate boater education,</b></p> <p>9 <b>we have what lot of people that come from other areas</b></p> <p>10 <b>and even that live here that don't feel that they have</b></p> <p>11 <b>to get the education. So they don't know want to do,</b></p> <p>12 <b>you know, when they're coming across a vessel that's</b></p> <p>13 <b>stopped in the middle of the river and they're supposed</b></p> <p>14 <b>to come off a plane and bring it down to a safe</b></p> <p>15 <b>operating speed. They don't do that because they don't</b></p> <p>16 <b>know that they're supposed to do that or they don't feel</b></p> <p>17 <b>that they should have to do that. So we do have a lot</b></p> <p>18 <b>of those situations and issues as well.</b></p> <p>19 Q. You were here for Mr. Douglass' testimony</p> <p>20 earlier this evening?</p> <p>21 <b>A. Yes.</b></p> <p>22 Q. And his commitment to ensure that everybody who</p> <p>23 docks at the community dock would have to prove that</p> <p>24 they took a boater safety course?</p> <p>25 <b>A. It could help. It could help. It's not going</b></p>

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1 to help all the other people that are boating on the  
2 waterways that don't, so it definitely would help. I  
3 mean, any way that we can incentivize education is big.  
4 As of right now I don't think anyone is willing to  
5 mandate it in this state, but by having those boaters be  
6 safer, that could definitely help.

7 Q. And to your knowledge is there any expectation  
8 or obligation of this land owner and this dock to ensure  
9 the safety of other boaters not using this facility?

10 A. No in this state, no.

11 Q. Okay. Thank you.

12 HEARING OFFICER HAYES: Thank you.

13 Mr. Magnuson, I didn't ask if you had any  
14 questions?

15 MR. MAGNUSON: No.

16 HEARING OFFICER HAYES: Thank you.

17 Mr. Smith.

18 MR. SMITH: Doug Parker.

19 HEARING OFFICER HAYES: Calling Doug Parker.

20 DOUG PARKER,  
21 having been first duly sworn to tell the truth, the  
22 whole truth, and nothing but the truth, relating to said  
23 cause says:

24 MR. PARKER: My name is Doug Parker.

25 Is Sergeant Miller still in the room?

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1 Sergeant Miller?

2 HEARING OFFICER HAYES: I think he might have  
3 escaped when he had his chance.

4 MR. PARKER: Can you catch him by any chance?

5 Good evening. I appreciate the opportunity to  
6 talk to you.

7 My name is Doug Parker, and maybe I'm not the  
8 oldest guy in here, but I'm close. And my interest in  
9 being here is not this particular project. It's the  
10 total number of slips that we're adding to this river.

11 And I'm going to stop because Sergeant Miller  
12 made it back, and he said a couple things that I thought  
13 were real important to the people gathered here, if you  
14 don't mind.

15 You mentioned Palm Beach and boating and being  
16 down in that area near the coastal waterway. Well, for  
17 18 years I've been at Hilton Head and I boat down  
18 here -- you got to be familiar -- the ditch,  
19 intracoastal waterway. So there's been a lot of talk  
20 about no wake zones. Oh, boy, that would be the end  
21 all. That would ruin everything.

22 Let me ask you, Sergeant, down around Palm Beach  
23 and where there's many more boats than we have here,  
24 would it be possible to go for extended mileage and no  
25 wake, idle only?

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1 MR. MILLER: No.

2 HEARING OFFICER HAYES: So, Mr. Parker, you have  
3 an attorney in these proceedings, and he was free to ask  
4 the Sergeant these questions if he had them.

5 MR. PARKER: Oh, I'm sorry.

6 HEARING OFFICER HAYES: That's fine. I  
7 understand.

8 You can chat with him after the hearing about  
9 these issues if you wish.

10 MR. PARKER: I'll jump on it. Okay. Thank you.

11 So anyway, I'm with John Magnuson by one year.

12 1970 I started running down that river, maybe shooting  
13 ducks. That makes it 55. He said 54. Things were a  
14 little different then.

15 And in the meantime I boated -- I grew up on the  
16 Great Lakes. I boated in Alaska. I kept a boat in  
17 Cabo San Lucas. I run all up and down along the East  
18 Coast. Took a lot of Coast Guard classes. I quit when  
19 it got to celestial because I wasn't smart enough.

20 So here's one of my questions: We hear the  
21 phrase carrying capacity of the river. Carrying  
22 capacity, it's referring to the number of boats that can  
23 safely monkey around on that river. Well, what -- I'm  
24 not sure I know what that is.

25 Now, I'm thinking back about Senator Byrd,

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1 51 years in the senate. They asked him, they were  
2 trying to come up with a definition for pornography. He  
3 said, I'll tell you this. He said, I don't know how to  
4 write it, but you will know it when you see it.

5 Well, that's what carrying capacity is and we're  
6 there. I don't know how you write it, but I live on the  
7 river and I'll tell you, it's an unpleasant place to be  
8 on the weekend.

9 I've got, probably, say, I've got six great  
10 grandchildren from 18 months to 36 months, and I've got  
11 this old clunker pontoon, and I have a heck of a time  
12 getting down the river with those little guys because  
13 they -- it isn't just the wakeboarders. It's anybody  
14 that's running around with the snout of the boat up,  
15 looking over the windshield. You've either got to go  
16 faster or slower, and you'll burn a lot less of that  
17 \$8-an-gallon fuel if you level that boat out. If you  
18 get down to an idle, you'll go just as fast but you  
19 won't make a wake. And if you're operating a boat under  
20 those crowded conditions, for gosh sakes, you got to  
21 look behind you a bunch of times because there's as much  
22 going on behind you as there is in front of you.  
23 They're raising all kind of havoc.

24 One thing that hasn't been mentioned, I live by  
25 Q'emiln. I live by a little island on the river on the

<p style="text-align: right;">Page 145</p> <p>1 water. How are we going to handle the deal at Q'emiln 2 when the Spokane, the out-of-state boaters come over and 3 launch there and some of the wakeboard boats launch 4 there? They got the tanks. How do you handle the 5 invasive species that are coming in there? 6 We already got some at Fernan and Hayden. They 7 got the problem, Spirit, and I think Twin. Well, we 8 don't know where those boats have been. But they can 9 come in legally across the state line, launch at Q'emiln 10 and off they go. Now, we don't know what's in those 11 tanks, but that's true for all the boats. We need to 12 have a way to register. You can't go to Priest Lake 13 from here and get up there in Priest Lake country. You 14 got to have an inspection every time you go through 15 there. But we allow all kinds of boats to come in there 16 without the inspection. I don't think that's a good 17 deal. 18 The other thing that's kind of funny is that, 19 you know, when you buy an airplane that doesn't make you 20 a pilot. Just doesn't work that way. You can spend a 21 quarter of million dollars for a boat, but that doesn't 22 make you a mariner. We need some training. We need 23 some stuff. 24 And you got to get up there, not on a Tuesday. 25 I've been running up and there like John for 55 years.</p>	<p style="text-align: right;">Page 147</p> <p>1 <b>THE WITNESS:</b> Sorry. 2 <b>HEARING OFFICER HAYES:</b> That's fine. 3 <b>MR. PARKER:</b> I'm not an attorney. Thank you for 4 your attention. You better do something about this 5 river, folks. 6 <b>HEARING OFFICER HAYES:</b> Mr. Smith, are you 7 calling any additional witness or are we to go to public 8 testimony? 9 <b>MR. SMITH:</b> I have one more. 10 <b>HEARING OFFICER HAYES:</b> Okay. Any cross for 11 Mr. Parker? 12 <b>MR. SMITH:</b> Vic Parrish. 13 <b>HEARING OFFICER HAYES:</b> Vic Parrish. 14 And for our folks that -- while we're waiting 15 for Mr. Parrish to make his way up here -- that are 16 signed up to testify, I am going to be limiting the 17 testimony for one to two minutes so that you can start 18 to mentally prepare your comments and shortening them 19 up. 20 <b>VIC PARRISH,</b> 21 having been first duly sworn to tell the truth, the 22 whole truth, and nothing but the truth, relating to said 23 cause says: 24 <b>HEARING OFFICER HAYES:</b> And will you spell your 25 last name for the record.</p>
<p style="text-align: right;">Page 146</p> <p>1 And I'll tell you, there are times on the weekend it 2 isn't a safe place to be. 3 But anyway, with that I want to leave you with 4 two truisms in the marine world. And I know our expert 5 witness is going to back me up and I think Sergeant 6 Miller will too. Here are two things that is very 7 important, no matter what happens. 8 Wake, that's no correlation to hull speed. 9 Wake, that's no correlation to hull speed. A sailboat 10 with a big keel can slip along at 8 knots, never a 11 ripple. The wrong boat at 6 knots puts out a 24-inch 12 wake. He's plowing and he's using a lot of fuel and 13 he's making a wake. 14 The other thing is, I'm going to simplify a 15 statement. You're responsible for your wake. You're 16 responsible for your wake. Fresh water or salt, moving 17 or still, you're responsible for your wake. 18 Am I correct, sir? 19 <b>MR. DERIE:</b> Well, if you're still, you're not 20 creating a wake. 21 <b>MR. PARKER:</b> Thank you. I appreciate your 22 attention on getting the hook. 23 <b>HEARING OFFICER HAYES:</b> I suggest that you have 24 an attorney who had an opportunity to ask those 25 questions when that witness was testifying.</p>	<p style="text-align: right;">Page 148</p> <p>1 <b>MR. PARRISH:</b> My last name is Parrish, 2 P-A-R-R-I-S-H, and my first name is Vic. I'm a retired 3 naval officer, 22 years in the service. I'm also a 4 licensed professional chemical engineer with a license 5 in Idaho, which I've held for over 50 years. 6 My wife, Tracy and I, have lived on Lake 7 Coeur d'Alene or the Spokane River since 2003. We moved 8 over to the Spokane River in 2019. 9 Part of my experience is I was a chief nuclear 10 officer and chief executive officer over at (inaudible) 11 utility, and I also had a hydroplane, so I'm very 12 familiar with environmental concerns. 13 I'm also very meticulous with what we do, and we 14 have a weather camera -- and that's really what I'm 15 going to talk about -- that monitors the river because 16 the software we use is capable of picking up ducks 17 swimming on the water. So if a water craft goes by my 18 house -- which is directly across from Harbor Island 19 where the river is about 600 feet bank to bank -- it 20 records a video that lasts about 60 seconds. 21 Right now on my computer at home I have about 32 22 different bytes of files that have accumulated since the 23 first of January. That's about 3,600 videos. And I 24 have not looked through all of them, but sometimes when 25 I'm out on the deck and I see something happen, I go</p>

<p style="text-align: right;">Page 149</p> <p>1 back to look at the video. And I made some of them 2 available to the folks here, I think, that may have 3 viewed them.</p> <p>4 And I just want to summarize some of things that 5 we've seen. The heavy traffic times are Friday, 6 Saturday, and Sunday during boating season, from May 7 through August and early September. There have been 8 occasions where we have seen 100 boats pass between 9 Harbor Island and our house in one day. We have seen as 10 many as 20 boats in one video frame, in a 60-second 11 video on that river. Sometimes three wake boats at one 12 time passing.</p> <p>13 We have seen unsafe boat operations. Just one 14 example I'll give you is we saw a wake boat with tow 15 coming down the river. There was a canoe in the middle 16 of the river. He turned towards Harbor Island, the 17 shallowest point of the river at that point. There was 18 a speedboat that was overtaking that wakeboard. He 19 chose to go towards Harbor Island to avoid the canoe, 20 and they almost collided, almost ran over a dock on 21 Harbor Island, and then luckily they missed, and the 22 canoer was almost capsized by the wake that came off the 23 boats.</p> <p>24 So you cannot ignore the fact that increasing 25 the number of boats that have access to the river are</p>	<p style="text-align: right;">Page 151</p> <p>1 that you said you haven't looked at all of the footage, 2 but the videos that were provided, are those examples of 3 what you would consider high traffic?</p> <p>4 <b>A. Actually, no. Some of them are pretty low</b> 5 <b>traffic. Mainly I think some of the ones that I</b> 6 <b>provided was wakeboarders that were very close to river,</b> 7 <b>less than 50 feet off of the other shore on Harbor</b> 8 <b>Island.</b></p> <p>9 <b>In fact, in one instance, there was a</b> 10 <b>wakeboarder that passed within about 50 feet of an</b> 11 <b>occupied dock, and it actually caused the people to yell</b> 12 <b>at the boater. And he turned around, picked his tow,</b> 13 <b>got back into -- you know, turned back around and</b> 14 <b>actually came back up by the same dock and put them in a</b> 15 <b>wash again, so that was the one that I think that was</b> 16 <b>(inaudible). I think it was a lady and child on it</b> 17 <b>so...</b></p> <p>18 Q. I shake my head at what seems like just genuine 19 rudeness, but beyond that --</p> <p>20 <b>A. Right.</b></p> <p>21 Q. -- do any of the examples that you provided in 22 your mind showcase what you -- what you would consider 23 high traffic past your dock, or are they just random --</p> <p>24 <b>A. No, I think there is more videos that are in</b> 25 <b>my -- I haven't looked at them all. There's no way I've</b></p>
<p style="text-align: right;">Page 150</p> <p>1 going to travel the river. If you make that assumption, 2 you making a horrible mistake.</p> <p>3 We can stand on our dock during any day when 4 there's no traffic and we can enjoy ourselves. But when 5 boat traffic starts, we don't even go down there. It's 6 too rough and too dangerous. We've lost furniture off 7 our dock that's been washed off by boat wakes.</p> <p>8 So to make any other conclusions that increasing 9 the number of boats that are capable of getting on the 10 river and they won't go on the river is absolutely 11 absurd and should be discounted immediately if that's 12 the case.</p> <p>13 So I stand here in opposition to the permit, 14 mainly because it will increase traffic on the river, 15 make it more unsafe, and increase the probability that 16 someone is going to get hurt.</p> <p>17 Thank you.</p> <p>18 <b>HEARING OFFICER HAYES:</b> Thank you. 19 Any questions for this witness?</p> <p>20 <b>CROSS-EXAMINATION</b> 21 <b>BY MS. TELLESSEN:</b> 22 Q. Mr. Parrish, thank you, also, for your service 23 dedicated to this country in a number of capacities it 24 sounds like. 25 The videos that you have provided, I understand</p>	<p style="text-align: right;">Page 152</p> <p>1 <b>gone through 32 bytes of files, but I can tell you there</b> 2 <b>are occasions where you can count, like I said just now,</b> 3 <b>20 boats in one frame from the video camera in a</b> 4 <b>60-second video. It would be wake boats, pontoon boats,</b> 5 <b>canoes, kayaks.</b></p> <p>6 Q. Fair. In the videos that we saw it did seem 7 like some of them were kind of fast-forward. So when 8 you say a 60-second frame, are you talking one full just 9 regular minutes not sped up, or are you talking sped up?</p> <p>10 <b>A. I think one of them that I sent in was actually</b> 11 <b>a compilation where I actually put videos that ran all</b> 12 <b>day, and I think I actually said that on the video.</b> 13 <b>When the camera triggers, it would take roughly 60 --</b> 14 <b>roughly 60 seconds or until the motion stopped.</b></p> <p>15 Q. And for clarification your property is a bit 16 downstream closer to Post Falls --</p> <p>17 <b>A. We are past way down. We are just across from</b> 18 <b>Harbor Island. We're about halfway from the Blackwell</b> 19 <b>Slough to the Post Falls Dam.</b></p> <p>20 Q. Okay. But you're not an adjacent owner to this 21 project?</p> <p>22 <b>A. Pardon?</b></p> <p>23 Q. You aren't -- your property isn't adjacent to 24 this project?</p> <p>25 <b>A. No. I'm speaking frankly to the number of folks</b></p>

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<p>1 that the -- access for boats to the river.</p> <p>2 <b>HEARING OFFICER HAYES:</b> Access for boats to the</p> <p>3 river.</p> <p>4 <b>MR. PARRISH:</b> Thank you.</p> <p>5 <b>HEARING OFFICER HAYES:</b> Any questions for this</p> <p>6 witness?</p> <p>7 And that was your last witness, Mr. Smith?</p> <p>8 <b>MR. SMITH:</b> It was.</p> <p>9 <b>HEARING OFFICER HAYES:</b> Ms. Tellessen, any</p> <p>10 further redirect or can we move on to public comment?</p> <p>11 <b>MS. TELLESSEN:</b> I think, considering the time,</p> <p>12 Hearing Officer, we'll reserve for rebuttal.</p> <p>13 <b>HEARING OFFICER HAYES:</b> Thanks.</p> <p>14 I will give each party -- the plan at this point</p> <p>15 is to do closing briefing, and I will make those remarks</p> <p>16 at the end.</p> <p>17 Does that suffice on your rebuttal testimony,</p> <p>18 Ms. Tellessen, or do you want to provide rebuttal</p> <p>19 following public comment? We only have 33 minutes.</p> <p>20 <b>MS. TELLESSEN:</b> Recognizing the intent to</p> <p>21 provide clarity, would additional rebuttal declarations</p> <p>22 be permitted?</p> <p>23 <b>HEARING OFFICER HAYES:</b> Any objection to that</p> <p>24 process, Mr. Magnuson?</p> <p>25 <b>MR. MAGNUSON:</b> I'll object to that process.</p>	<p>1 J-O-R-G-E-N-S-E-N.</p> <p>2 I actually just have two comments directed to</p> <p>3 the IDL. About 25 years ago I applied for a dock on</p> <p>4 Ponderosa Avenue. I own three lots on Ponderosa Avenue.</p> <p>5 The dock I applied for was about 200 square feet over</p> <p>6 what a single dock could be at that time. And the IDL</p> <p>7 sent back a no, redesign the dock, go within the square</p> <p>8 footage. I was allowed to have one dock for my three</p> <p>9 lots. Please keep that in consideration when you</p> <p>10 address all this. Secondary lots don't need -- they</p> <p>11 aren't on the waterfront. They don't need to be</p> <p>12 excessive docks provided for that reason.</p> <p>13 The second issue that I have is I believe about</p> <p>14 20 years back the Idaho Department of Lands was working</p> <p>15 with Idaho Parks and Recreation when they built</p> <p>16 Blackwell Island boat launch facility. And at that time</p> <p>17 there was discussion about closing the boat launch ramp</p> <p>18 at Q'emiln if there would be enough -- enough slots</p> <p>19 provided in the Blackwell Island deal to occupy more and</p> <p>20 more boats. Obviously, Q'emiln isn't shut down yet. It</p> <p>21 would be a great way to take the pressure off the river.</p> <p>22 That's all I have to say.</p> <p>23 <b>HEARING OFFICER HAYES:</b> Thank you.</p> <p>24 Stephen Behlmer.</p> <p>25 (Continued on following page.)</p>
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<p>1 <b>MR. SMITH:</b> I'll object to that process as well.</p> <p>2 <b>HEARING OFFICER HAYES:</b> And, Ms. Richter, any</p> <p>3 objection to that process?</p> <p>4 <b>MS. RICHTER:</b> No objection.</p> <p>5 <b>HEARING OFFICER HAYES:</b> Okay. I'm going to</p> <p>6 think on that and I will have a response for you by the</p> <p>7 time I close out here tonight.</p> <p>8 Okay. I'm going to call you up in groups of</p> <p>9 five, so when you hear your name, start lining up. No</p> <p>10 particular order. Ones who get here first to the stage</p> <p>11 is first to testify.</p> <p>12 Hilary Patterson, Ryan Andrade, Catherine</p> <p>13 Bedford, Brian and Judy Jorgensen. Katelyn Scott, and</p> <p>14 Timothy Farrell.</p> <p>15 Again, I'm going to ask that you keep your</p> <p>16 comments to two minutes. I'm going to be running a</p> <p>17 timer for my own purposes.</p> <p>18 <b>BRIAN JORGENSEN,</b></p> <p>19 having been first duly sworn to tell the truth, the</p> <p>20 whole truth, and nothing but the truth, relating to said</p> <p>21 cause says:</p> <p>22 <b>HEARING OFFICER HAYES:</b> All right. Will you</p> <p>23 state your name and spell your last name for the record,</p> <p>24 please.</p> <p>25 <b>MR. JORGENSEN:</b> Brian Jorgensen,</p>	<p>1 <b>CATHERINE BEDFORD,</b></p> <p>2 having been first duly sworn to tell the truth, the</p> <p>3 whole truth, and nothing but the truth, relating to said</p> <p>4 cause says:</p> <p>5 <b>HEARING OFFICER HAYES:</b> Please state your name</p> <p>6 and it spell your last name for the record.</p> <p>7 <b>MS. BEDFORD:</b> Catherine Bedford. Last name is</p> <p>8 B-E-D-F-O-R-D.</p> <p>9 I'm here today to testify about the safety</p> <p>10 issue. I live in the Riverfront House in Coeur d'Alene,</p> <p>11 which above Le Peep and Terraza restaurant. I've lived</p> <p>12 there for about 11 years. This is one of Douglass'</p> <p>13 properties, and they have an agreement with the city</p> <p>14 that they provided a boardwalk for public access. We</p> <p>15 also have two docks in front of our building.</p> <p>16 I live there. I cannot use these docks. I</p> <p>17 cannot park a boat there. I can't swim off of them. I</p> <p>18 can't fish off of them. I can't do anything off of</p> <p>19 these docks. They are solely for the purpose of the</p> <p>20 boats to come in and out to access the restaurants below</p> <p>21 me.</p> <p>22 Those restaurants are really busy. The traffic</p> <p>23 is horrendous. The river width is 316 feet. There's</p> <p>24 traffic that goes back and forth all the time on this</p> <p>25 river. I have video. I have witnessed so many things</p>



<p style="text-align: right;">Page 157</p> <p>1 happen.</p> <p>2 And the biggest problem that I see, that I've</p> <p>3 witnessed -- and I called the sheriff's department.</p> <p>4 I've called the police department. I've called the</p> <p>5 parks and recreation -- is that we had people that come</p> <p>6 in. They park in the parking lots, they come down, they</p> <p>7 use these docks as their personal recreation facility.</p> <p>8 They set up their little picnic areas, their chairs.</p> <p>9 They swim off of the docks. There's boats coming in and</p> <p>10 out. Kids are jumping off the dock. They're almost</p> <p>11 getting run over by boats. The wakes from the boat are</p> <p>12 so severe that these kids that are swimming without life</p> <p>13 jackets on can be bashed up against the docks or swept</p> <p>14 under the docks.</p> <p>15 I watch it every single year. I've tried to</p> <p>16 call. I've tried to have something done about it.</p> <p>17 Nobody knows who has jurisdiction. It's not the city.</p> <p>18 It's not the parks and recreation. It's not the</p> <p>19 sheriff. It's not the police. I get the run around and</p> <p>20 run around and run around in circles. Nobody can do</p> <p>21 anything.</p> <p>22 And I've talked to officer -- or Sergeant Miller</p> <p>23 several times. He knows who I am. I know the sheriff.</p> <p>24 I've talked about it to them. There's no municipal</p> <p>25 code; although, it is in the boating laws handbook that</p>	<p style="text-align: right;">Page 159</p> <p>1 STEPHEN BEHLMER,</p> <p>2 having been first duly sworn to tell the truth, the</p> <p>3 whole truth, and nothing but the truth, relating to said</p> <p>4 cause says:</p> <p>5 <b>HEARING OFFICER HAYES:</b> Please state name and</p> <p>6 spell your last name for the record.</p> <p>7 <b>MR. BEHLMER:</b> My name is Stephen Behlmer,</p> <p>8 spelled B-E-H-L-M-E-R. That's bravo, echo, helo, lima,</p> <p>9 Mike, echo, Romeo.</p> <p>10 I have had a home on the Spokane River with my</p> <p>11 wife for over 20 years now, and during that period of</p> <p>12 time I'm seeing a tremendous change in the safety and</p> <p>13 the traffic on the river, as well as the ability of</p> <p>14 boaters to properly pilot a boat. All these things are</p> <p>15 detrimental to the -- to the boaters who are careful and</p> <p>16 care about the river.</p> <p>17 My point will be prudent use and protection of</p> <p>18 the Spokane River.</p> <p>19 First of all, I would ask -- my first point is:</p> <p>20 Do the people along the river feel that there is</p> <p>21 adequate enforcement of ability to enforce the rules</p> <p>22 along the river?</p> <p>23 Second, has there been an environmental impact</p> <p>24 statement done or environmental impact evaluation done</p> <p>25 regarding the river?</p>
<p style="text-align: right;">Page 158</p> <p>1 you cannot go more than idle speed within 100 feet of</p> <p>2 the dock. These boats are going back and forth.</p> <p>3 The other thing I want to -- and that's just the</p> <p>4 congestion on the river. More docks, more boats is not</p> <p>5 a good thing, and the public being able to access them.</p> <p>6 The other thing that is a problem is the noise</p> <p>7 pollution. The noise pollution from all these boats</p> <p>8 that people don't recognize. It's not just the boat</p> <p>9 engines. It's the people that come down the river with</p> <p>10 their stereos and the music blasting at maximum decibel,</p> <p>11 that I can hear inside my unit on the third floor, with</p> <p>12 the windows closed.</p> <p>13 I can't go out on the balcony because of the</p> <p>14 restaurant noise, and I can't use -- enjoy the inside of</p> <p>15 my house because of the noise from the music. You can</p> <p>16 hear their music from when they come down the river all</p> <p>17 the way down till they go around the point. And it's</p> <p>18 very -- it's annoying.</p> <p>19 So anyway, that's just things that -- I think it</p> <p>20 effects our quality of life for those us who live up the</p> <p>21 river or those who (inaudible).</p> <p>22 <b>HEARING OFFICER HAYES:</b> Thank you.</p> <p>23 Dick Teich and Susan Stiger.</p> <p>24 (Continued on following page.)</p> <p>25</p>	<p style="text-align: right;">Page 160</p> <p>1 Mining activities have taken place for eons in</p> <p>2 the mountains that feed the lake and the river, and</p> <p>3 there are, right now, limits -- recommendations of</p> <p>4 limits on how many fish a person can eat from the river,</p> <p>5 including pregnant women who are advised not to eat fish</p> <p>6 from the river at all because of heavy metal</p> <p>7 contamination.</p> <p>8 I believe that, in addition, we are stewards of</p> <p>9 the river and that everybody downstream is going to</p> <p>10 suffer or benefit from what we do here tonight and</p> <p>11 ongoing. There's historical impact of development on</p> <p>12 the river, and there are historical sites which should</p> <p>13 be evaluated prior to any further development.</p> <p>14 Nighttime water skiing and wakeboarding we've</p> <p>15 witnessed several times in front of our home. Safety</p> <p>16 and noise are significant issues here. We're afraid</p> <p>17 we're going to see something horrible happen in front of</p> <p>18 our house with kids jumping down and boats going so fast</p> <p>19 and plowing so the boats can't really see where they're</p> <p>20 going, especially for little kids in the water.</p> <p>21 Does ownership of a boat slip constitute</p> <p>22 property ownership? Is this real property? In other</p> <p>23 words, are there laws that should be enforced regarding</p> <p>24 real property?</p> <p>25 Finally, can the current developers of property</p>

<p style="text-align: right;">Page 161</p> <p>1 protect historical property owners, such as ourselves,  2 from increased liability that will likely result from  3 water quality degradation and safety issues?  4 Thank you.  5 <b>HEARING OFFICER HAYES:</b> Thank you.  6 Tonya Glinski and Jack Glinski. Ed Kent and  7 Susan Kent.  8 <b>RICHARD TEICH,</b>  9 having been first duly sworn to tell the truth, the  10 whole truth, and nothing but the truth, relating to said  11 cause says:  12 <b>HEARING OFFICER HAYES:</b> Please state your name  13 and spell your last name for the record.  14 <b>THE WITNESS:</b> My name is Richard T-E-I-C-H.  15 Good evening. I've been a part of the Spokane  16 River for about four decades. My family's connection  17 with the river began in 1980 when we purchased a small  18 recreational lot, which is now across from the sheriff's  19 boathouse on the north side of the river.  20 Back then the river was a different place. It  21 was quieter. It was calmer, with far less traffic. In  22 fact, at least half the river very often was filled with  23 logs, and the old LP Mill was west of the bridge, and  24 that was the industry at that time at that part of the  25 country and at that part of the river.</p>	<p style="text-align: right;">Page 163</p> <p>1 got bigger, the wakes got higher, and the safety risks  2 multiplied and continue to multiply. Currently parts of  3 river are literally combat zones, especially on  4 weekends.  5 My daughter no longer feels safe in taking her  6 children up the river any time from Friday morning to  7 Sunday evening. Let me repeat that. My grandkids  8 cannot enjoy the river, that has been a part of our  9 family for 45 years, simply not safe anymore.  10 The viability of the Spokane River is in  11 jeopardy. Consequently I'm opposed to the additional  12 74 slips on the river as requested by River's Edge  13 Apartments to the DEL.  14 Thank you.  15 <b>HEARING OFFICER HAYES:</b> Thank you.  16 <b>TONYA GLINSKI,</b>  17 having been first duly sworn to tell the truth, the  18 whole truth, and nothing but the truth, relating to said  19 cause says:  20 <b>HEARING OFFICER HAYES:</b> Please state your name  21 and spell your last name for the record.  22 <b>MS. GLINSKI:</b> My name is Tonya Glinski,  23 G-L-I-N-S-K-I.  24 I'm a lifetime resident of North Idaho and proud  25 to say so. 20 year resident of the Spokane River. I</p>
<p style="text-align: right;">Page 162</p> <p>1 The Greenview condos were just breaking ground.  2 Templin's Hotel and Marina wouldn't be completed until  3 1986 with 186 boat slips. And the no wake zone had yet  4 to be established and my children could water ski from  5 our dock. The water teamed with small mouth bass,  6 birch, and bullheads. That was the river we knew and  7 loved, the river that belonged to families, to  8 fishermen, and to quiet recreation.  9 The mill closed in 1995 but the logs remained  10 for some time. Not as industrial infrastructure  11 anymore, but as part of the character of the river.  12 Everyone enjoyed, even the guests at the hotel wanted to  13 sit and look at the logs. By 19- -- by 2010 the logs  14 were gone and in their place came development, condos  15 west of the bridge, and the marina of 140 slips.  16 In 2017 we built our present home giving us a  17 full view of the river all summer. What we witnessed  18 was striking. Boat traffic had increased exponentially.  19 The no wake zone, once a safety feature, became a party  20 spot, music blaring, people drinking, and,  21 unfortunately, frequent disregard for safety rules.  22 Then came 2021. Covid. Covid changed  23 everything. What we witnessed -- what we witnessed was  24 an overwhelming flood of new users, many escaping  25 stricter restrictions in neighboring states. The boats</p>	<p style="text-align: right;">Page 164</p> <p>1 acknowledge that change is inevitable. It's going to  2 happen and it is happening, but what we've seen happen  3 on the river is crazy.  4 The additional of the three permits that have  5 been requested will do nothing but increase the danger  6 on the river, danger to the river, our home, our  7 shorelines, our wildlife. Our kids are not safe out  8 there. We are boaters. We are jet skiers. I'm not  9 coming at this from an entitled point of view. I'm  10 coming at this from a safety point of view. We have to  11 take a good long look to what we're rubber-stamping and  12 what we're saying yes to in our community and on our  13 river, and I strongly oppose this permit.  14 Thank you.  15 <b>HEARING OFFICER HAYES:</b> Thank you.  16 Liz Durrow. And that is all the names that I  17 have highlighted, but I have a tendency, at this point  18 in the evening, to sometimes overlook, gloss over some  19 yeses. So if you desire to testify and I did not call  20 your name yet, please join the line.  21 <b>JACK GLINSKI,</b>  22 having been first duly sworn to tell the truth, the  23 whole truth, and nothing but the truth, relating to said  24 cause says:  25 <b>HEARING OFFICER HAYES:</b> Please state your name</p>

<p style="text-align: right;">Page 165</p> <p>1 and spell your last name for the record.</p> <p>2 <b>MR. GLINSKI:</b> Jack, it's actually John, Glinski,</p> <p>3 G-L-I-N-S-K-I.</p> <p>4 I've been on the river for over 40 years, moved</p> <p>5 in in '83. But the river is a unique place. You can</p> <p>6 have two boats out there, three boats out there. If one</p> <p>7 has a -- they're pulling three kids on the tube and</p> <p>8 making a circle, they're going to take up almost the</p> <p>9 whole damn river right there. It's not like being on a</p> <p>10 lake, you know, where can you loop way out and come</p> <p>11 around a corner. And I tell people I come around -- or</p> <p>12 you'd be coming up on a corner and I'll have four boats</p> <p>13 coming around the corner on me, and I'll just turn my</p> <p>14 key off. Let them go.</p> <p>15 But anyway the river is very unique, and the</p> <p>16 more boats you put out of there, you know, they're</p> <p>17 just -- it's just tougher to get around the corners.</p> <p>18 You can call it 350 feet or something, but when you've</p> <p>19 got the type of boats, also, that are running right now,</p> <p>20 with the horsepower and the -- just -- just the</p> <p>21 things -- you know, the size of them. You know, 20</p> <p>22 years ago a 26-foot boat was huge. Now we're looking</p> <p>23 the 40-footers, you know, out there. Huge. So that's</p> <p>24 one thing.</p> <p>25 The other thing is, you know, when you start</p>	<p style="text-align: right;">Page 167</p> <p>1 happening with boats, boat wakes, water quality on the</p> <p>2 Spokane River. And we live just about two-thirds of the</p> <p>3 way down the river on one of the widest parts.</p> <p>4 Based on the data I've taken and I -- my husband</p> <p>5 will tell you, I probably take 1,000 samples every year,</p> <p>6 so this is a study of love. The river is currently at a</p> <p>7 tipping point and multiple -- facing multiple threats.</p> <p>8 Safety is the big one. Invasive species.</p> <p>9 Another one you haven't thought about, maybe, is</p> <p>10 that every time you increase no wake zones on the river,</p> <p>11 that further concentrates boating activities on other</p> <p>12 sections of the river making them even more unsafe.</p> <p>13 We talked about the sheriff's letter. I've read</p> <p>14 it and fully support what's in the sheriff's letter</p> <p>15 based on all our experience and data.</p> <p>16 So what have I seen? In the past five years the</p> <p>17 total number of boats on our stretch of the river has</p> <p>18 gone up by a factor of three. We frequently see more</p> <p>19 than 130 boats an hour, not just on weekends anymore,</p> <p>20 because of Covid. The number the large boats and surf</p> <p>21 boats have gone up by a factor of five, so more docks</p> <p>22 will likely lead to more boats on the river.</p> <p>23 You heard about carrying capacity. I've read</p> <p>24 every -- 100s of research papers and studies about boats</p> <p>25 and boat wakes. One of those is the study that was</p>
<p style="text-align: right;">Page 166</p> <p>1 changing the rules a little bit -- and it's not changing</p> <p>2 the rules so much. But they bought Templin's place down</p> <p>3 there with so many boat slips. So be it. And then</p> <p>4 somebody just has the idea, hey, let's throw another 75</p> <p>5 out there or something. Well, everybody wants that.</p> <p>6 Every business on the river wants that, you know.</p> <p>7 And then let's change the rules. Let's put</p> <p>8 some -- let's put some apartments up. Hey, we'll give</p> <p>9 them all boat slips, as many as we can too. You know,</p> <p>10 you just start changing the rules also.</p> <p>11 And I think I'll just leave it at that. One,</p> <p>12 two. Thank you.</p> <p>13 <b>HEARING OFFICER HAYES:</b> Thank you.</p> <p>14 <b>SUSAN STIGER,</b></p> <p>15 having been first duly sworn to tell the truth, the</p> <p>16 whole truth, and nothing but the truth, relating to said</p> <p>17 cause says:</p> <p>18 <b>HEARING OFFICER HAYES:</b> Please state your name</p> <p>19 and spell your last name for the record.</p> <p>20 <b>MS. STIGER:</b> My name is Susan Stiger,</p> <p>21 S-T-I-G-E-R, and I have three minutes of comments. I'll</p> <p>22 do my best to make them two.</p> <p>23 My husband and I have lived on the husband for</p> <p>24 30 years. For the last six years I have been studying</p> <p>25 for the University of Idaho, taking data on what's</p>	<p style="text-align: right;">Page 168</p> <p>1 referenced, and I'll provide that separately.</p> <p>2 But I ran through their guidelines on carrying</p> <p>3 capacity for the Spokane River using the actual data of</p> <p>4 the river. What you conclude is that the river is</p> <p>5 already at high risk and unsuitable for power boating</p> <p>6 without restrictions. So when you add more docks, you</p> <p>7 add more boats, you add -- concentrate more boats in</p> <p>8 certain sections of the river. It becomes insane. And</p> <p>9 that's a quote from the sheriff's office marine patrols.</p> <p>10 My other concern, and I've taken a lot of</p> <p>11 samples, is the boat wakes throw up sediments on the</p> <p>12 river. Spokane River sediment contain the same heavy</p> <p>13 metals and other contaminants that exist in the lake.</p> <p>14 And based on the data, that I've taken and had reviewed</p> <p>15 by both the U of I and the Department of Environmental</p> <p>16 Quality, lead in sediment samples are contaminated at</p> <p>17 levels that are considered at risk, highly contaminated</p> <p>18 in the Spokane River.</p> <p>19 When a surf boat goes by and stirs up those</p> <p>20 sediments, or other boats, they can lead to lead levels</p> <p>21 that are ten times higher than the lead levels of the</p> <p>22 lake, at levels that are of concern to human and aquatic</p> <p>23 health. So that narrow part of the river that these</p> <p>24 docks are in with that walkway and those waves crashing</p> <p>25 over, consider that some of those waves may include high</p>

<p style="text-align: right;">Page 169</p> <p>1 levels of lead. That's a concern.</p> <p>2 And we talk about studies. I have actually</p> <p>3 asked the County and sought specifically that they</p> <p>4 suspend activities and approvals for further expansion</p> <p>5 like this until the University of Idaho and others can</p> <p>6 actually conduct good studies on water quality, on</p> <p>7 carrying capacity of the lake.</p> <p>8 Unfortunately, it sounds like the Department of</p> <p>9 Lands makes piecemeal by piecemeal decisions without</p> <p>10 looking at the cumulative impacts. I would request that</p> <p>11 the Department of Lands start looking at the cumulative</p> <p>12 impacts of every single additional dock that's added,</p> <p>13 because it's not being addressed right now.</p> <p>14 The -- there was reference to littoral rights.</p> <p>15 You've heard this before. We can no longer --</p> <p>16 <b>HEARING OFFICER HAYES:</b> Ms. Stiger, you are</p> <p>17 twice over the time limits. I'll give you one</p> <p>18 concluding comment.</p> <p>19 <b>MS. STIGER:</b> Okay. One concluding comment.</p> <p>20 Seawall, for those of us living on the river for years,</p> <p>21 we've tried to build seawalls. Been told by the</p> <p>22 Department of Lands they're not allowed and all of</p> <p>23 sudden they are. And oh, by the way, one of the big</p> <p>24 issues with seawalls is they reflect all those boat</p> <p>25 wakes back into the river to further cause issues. I</p>	<p style="text-align: right;">Page 171</p> <p>1 traveling at different speeds. Right through the middle</p> <p>2 as they were all passing, a large wood boat with about</p> <p>3 12 people on board, playing their music full tilt,</p> <p>4 passed right through the middle of all of them, and they</p> <p>5 were looking at my side of the river, and on the other</p> <p>6 side of the river were three children on paddle boards</p> <p>7 that were washed on the wake up against the dock. It</p> <p>8 was -- it was within 10 feet of becoming a catastrophe.</p> <p>9 I am very much opposed to the consideration of</p> <p>10 additional docks and moorage on the river until this</p> <p>11 organization has had the opportunity to establish rules</p> <p>12 and regulations that dictate how the river is to be</p> <p>13 operated and what people need to be required to use in</p> <p>14 order to use the waterways. It's a beautiful place and</p> <p>15 we want to keep it that way, and we want it to be known</p> <p>16 as a wonderful, beautiful place.</p> <p>17 Thank you.</p> <p>18 <b>HEARING OFFICER HAYES:</b> Thank you. I appreciate</p> <p>19 that.</p> <p>20 ED KENT,</p> <p>21 having been first duly sworn to tell the truth, the</p> <p>22 whole truth, and nothing but the truth, relating to said</p> <p>23 cause says:</p> <p>24 <b>HEARING OFFICER HAYES:</b> Have you state your name</p> <p>25 ask spell your last name for the record.</p>
<p style="text-align: right;">Page 170</p> <p>1 think the Department of Lands needs to reconsider</p> <p>2 approving a seawall.</p> <p>3 Thank you.</p> <p>4 TIMOTHY FARRELL,</p> <p>5 having been first duly sworn to tell the truth, the</p> <p>6 whole truth, and nothing but the truth, relating to said</p> <p>7 cause says:</p> <p>8 <b>HEARING OFFICER HAYES:</b> Please state your name</p> <p>9 and spell your last name for the record.</p> <p>10 <b>MR. FARRELL:</b> My name is Timothy Farrell. Last</p> <p>11 name is spelled F-A-R-R-E-L-L.</p> <p>12 <b>HEARING OFFICER HAYES:</b> Please keep your</p> <p>13 comments to two minutes. We're six minutes before we</p> <p>14 have to leave here and two more in line.</p> <p>15 <b>MR. FARRELL:</b> I live on Harbor Island on the</p> <p>16 opposite side of the river from the previous speaker.</p> <p>17 My biggest concern is that the Spokane River is going to</p> <p>18 become notorious as a -- as a location that's going to</p> <p>19 be advertised as, that's the place those kids were</p> <p>20 killed.</p> <p>21 I have experienced, just in the last two weeks,</p> <p>22 a situation where a total of five boats were meeting at</p> <p>23 the same place in front of my house. And the biggest</p> <p>24 problem was, they were all going -- two were going one</p> <p>25 way. Three were going the other way, that they were all</p>	<p style="text-align: right;">Page 172</p> <p>1 <b>MR. KENT:</b> Ed Kent, K-E-N-T.</p> <p>2 I'm going to be very specific to the River's</p> <p>3 Edge application. So we have been traveling this part</p> <p>4 of the river for the last seven years and just even --</p> <p>5 just three weeks ago we were going back from</p> <p>6 Coeur d'Alene Lake and following somebody that was</p> <p>7 towing a person in a wake boat. And anybody following a</p> <p>8 wake boat, you know you have to stay in the channel;</p> <p>9 otherwise, you got these 3-, 4-foot waves that are going</p> <p>10 to push you around.</p> <p>11 And so we tried to stay behind the person that</p> <p>12 was being towed. And, of course, we're 100 feet away.</p> <p>13 My wife is getting worried that I'm not going to stop in</p> <p>14 time. It's just a narrow channel. And then you've got</p> <p>15 another boat coming your direction. Fortunately we had</p> <p>16 only one that we were following, and I'm thinking, when</p> <p>17 you've got two wake boats coming opposite directions,</p> <p>18 you go wherever the wake takes you, and it's just a very</p> <p>19 dangerous situation if you don't have the experience</p> <p>20 with that.</p> <p>21 I really would like to have somebody get on it</p> <p>22 and understand what an excessive wake is. Okay? If you</p> <p>23 can define an excessive wake, I'd like to have you do it</p> <p>24 because our sheriff -- we've got those rules in</p> <p>25 existence, but they can't define it.</p>

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1 As far as the linear footage of this property,  
2 1,591 feet. The City codes allows a boat dock every  
3 60 feet as a minimum. That would be 26 boat docks, not  
4 74. So you would have 26 instead of 74 boat docks for  
5 that lineal foot, if you follow the community and each  
6 lot had their own boat slip.

7 As far as -- you're going to have over 650-plus  
8 feet -- people using this river in that very specific  
9 area. They're going to have stand-up paddle boards.  
10 They're going to have kayaks. They're going to be  
11 swimming along the way. And as Sergeant Miller had  
12 mentioned, there are many, many different obstacles that  
13 you have to manage, including pylons, the people,  
14 et cetera, and just add those wake boats going each  
15 direction, it's -- it's something you have to manage.

16 I also have an objection where renters will be  
17 gaining littoral rights that affect the property's value  
18 of homeowners all the way up and down the property by  
19 just diluting the -- diluting the river stretch.

20 Now, you've got another application coming  
21 forward where you've got somebody that buys 10 acres and  
22 all of a sudden they have 50 people or 50 separate  
23 renters, and all of a sudden upstream they have littoral  
24 rights that impact everybody else along the river. What  
25 does that do to our property values? What does that do

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1 to money?

2 And if we do require boat safety for all of  
3 people that are leasing these properties, what do we do  
4 with the people that are renting it out for Airbnb? Are  
5 you going to restrict that? I doubt it. Those people  
6 that have Airbnb -- we have people coming all the time  
7 next to us. We live right on the river last seven  
8 years, and they -- the Airbnb people, they do whatever  
9 they want to do.

10 But I also, as far as safety -- I want to talk  
11 about incremental marginalization. So every time -- so  
12 the state of Idaho has a 200-foot no wake along all the  
13 bay areas of the lakes across the state except for the  
14 Spokane River. It's got 150 foot, so you made an  
15 exception for the river. Rivers generally don't have  
16 wakes, don't have waves. They just usually flow.

17 **HEARING OFFICER HAYES:** Mr. Kent, you're twice  
18 over your allotted time. One concluding remark.

19 **MR. KENT:** All right. Yeah, thank you.

20 So, you know, I want to say is, you know, that  
21 all of the time that we make these exceptions to the  
22 limits makes this margin of safety even less and less  
23 and less, and so when we -- we don't enforce no  
24 excessive wake zones, when we basically don't have any  
25 limits as far as where people go. I think we have to

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1 consider the fact that -- I'm a novice. I'm like  
2 probably every other person. I've been boating since  
3 14 years old, but I don't have enough experience to  
4 navigate the Spokane River with the number of boats and  
5 the wakes, the displacement that is out there.

6 I advocate that Kootenai County look at limiting  
7 the displacement of boats. We've got 40-foot boats,  
8 that even on a 5 foot -- or 5 miles per hour put out  
9 incredible wakes. So wake boats, there's no limit on  
10 wake size. So they scare you and push you around and  
11 so, you know, we have to consider the fact that probably  
12 90 percent of the people out there are novices and  
13 consider that. We're not experts with a Ph.D. that can  
14 navigate all this -- all this business.

15 So thank you.

16 **HEARING OFFICER HAYES:** Thank you.

17 Then our final public testifier and then we'll  
18 address some housekeeping matters.

19 **JASON LUCAS,**  
20 having been first duly sworn to tell the truth, the  
21 whole truth, and nothing but the truth, relating to said  
22 cause says:

23 **HEARING OFFICER HAYES:** Please state your name  
24 and spell your last name for the record.

25 **MR. LUCAS:** My name is Jason Lucas. Last name

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1 L-U-C-A-S. I want to thank you for your service and  
2 your time and your attention.

3 I'm not really here to oppose this development.  
4 I want to send a message to the IDL and to our agencies  
5 here. I think what's missing, we are in a process right  
6 now of extreme growth, as we know, and innovation. You  
7 can't stop that. I'd like to go back to 1978, but here  
8 we are.

9 Yeah, we've got problems on the water. First  
10 thing that happens when you get in a boat is you can  
11 die. Tell your kids that. First thing. Second thing  
12 that can happen is someone else can die. It's very,  
13 very dangerous, and if you're lucky you get to have fun  
14 while you're captaining a boat.

15 But what I think we're missing here is  
16 innovation in leadership. And I say this with respect.  
17 I have a very dear friend that works at the IDL. I know  
18 a lot of stuff about the IDL. God bless you all for  
19 your service, but we need to be innovative now in our  
20 leadership.

21 And what's missing, one of the representatives  
22 at the YouTube meeting recently said to the other  
23 agencies, we need you, Parks and Rec, Sheriff's office,  
24 et cetera, to give us feedback because we're the IDL.  
25 We need your feedback because you're the specialists.

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1 And then for the Parks and Rec to not give an answer on  
2 something, I don't think that that's appropriate.

3 And so when I say innovation in leadership, I  
4 think the IDL, or whoever the lead agency is, needs to  
5 make a decision to go get the answer, not wait and not  
6 let nothing happen. We need to fill in the blanks  
7 ourselves and lead.

8 And regarding all these studies that people are  
9 asking about. Yeah, we should do it. And I hate to  
10 slow down an innovative project, but maybe it should be  
11 on pause until we get those answers. But who should pay  
12 for the studies? I think that the state should pay for  
13 the studies if the state is holding people back from  
14 getting permits. Go get the studies done. Figure it  
15 out. Be innovative. Change. Create new initiatives  
16 within your agency to solve these problems for us.  
17 You're protecting us. We just need a higher level of  
18 leadership. I say that with respect, by the way.

19 I've enjoyed watching all of you today and  
20 listening to everyone talk. Thank you for letting me  
21 come up here and talk. Have a good night.

22 **HEARING OFFICER HAYES:** All right.

23 So that concludes the public testimony in these  
24 proceedings. Before I decide how we're going to proceed  
25 on rebuttal testimony, now that we're over time,

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1 **keep them on a trailer to put them on the water, so**  
2 **those are not adding to the traffic. Those are boats**  
3 **that are already there.**

4 **Yes, there will probably be some new boats. We**  
5 **don't know how people. But, you know, boaters come and**  
6 **go. People move, get rid of their boats for whatever**  
7 **reason. So the assumption that we're going to have 74**  
8 **new boats on the river because of these slips is**  
9 **absolutely wrong.**

10 Q. I don't have anything else for you. Thank you.

11 Do you have something else you want to talk  
12 about?

13 **A. If I might.**

14 **You had the comment about the wall that's being**  
15 **built on the property. It's been called a seawall.**  
16 **It's not a seawall. And I'm a professional civil**  
17 **engineer in several states and I've built walls. It's a**  
18 **retaining wall. It's not touching the water. Brian**  
19 **will tell you it's not designed to be in the water. The**  
20 **footings are completely different. So the testimony**  
21 **about that getting wet and doing all that, it might**  
22 **during storms, but it's not designed to be part of the**  
23 **river.**

24 **MS. TELLESEN:** Okay. Thank you.

25 **HEARING OFFICER HAYES:** Anything further?

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1 Ms. Tellesen, would your rebuttal witnesses be  
2 available to join us on the on-site inspection tomorrow?

3 **MS. TELLESEN:** No, not all of them, but I  
4 think --

5 **HEARING OFFICER HAYES:** Can you keep it to five  
6 minute or less?

7 You're still under oath.

8 **REDIRECT-EXAMINATION**

9 **BY MS. TELLESEN:**

10 Q. Captain Derie, you have patiently sat through  
11 the testimony both of the sheriff's department sergeant,  
12 as well as the sheriff himself, as well as the public  
13 testimony.

14 Have you heard anything regarding those opinions  
15 and information that would change your opinions in this  
16 matter?

17 **A. No.**

18 Q. Do you want -- do you have anything to add based  
19 on what you've heard?

20 **A. The assumption appears to be that we're going to**  
21 **put in 74 boat slips and there's going to be**  
22 **automatically 74 new boats on the river, and there's**  
23 **been nothing to justify that.**

24 **As Lanzce pointed out, this is going to give a**  
25 **chance for people that have boats parked elsewhere or**

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1 **MS. TELLESEN:** No.

2 **HEARING OFFICER HAYES:** Thank you. With that we  
3 will -- sorry, I should have asked.

4 Any further recross?

5 IDL has declined. Mr. Smith has declined, and  
6 Mr. Magnuson has a couple of questions.

7 **RE-CROSS-EXAMINATION**

8 **BY MR. MAGNUSON:**

9 Q. Captain, you testified that you believe that  
10 it's not reasonable to presume the 74 slips won't have  
11 74 boats in them?

12 **A. No, sir. I said 74 new boats.**

13 Q. So some of these people who are renting  
14 apartments already have boats and have them somewhere  
15 else on the Spokane River? That's what you're saying?

16 **A. Yeah, or on trailers. And Lanzce mentioned that**  
17 **when he spoke to that.**

18 Q. What is the basis for that other than pure  
19 speculation?

20 **A. Well, it's pure speculation there will be 74 new**  
21 **boats, sir. You have shown me no statistics, no study**  
22 **for anything that says these are all new boats. There's**  
23 **nothing to say that.**

24 Q. And you've shown me no studies or any data to  
25 support we won't have 74 new boats, so I guess we're

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1 both speculating, right?

2 **A. Well, I know a lot about boating and about --**

3 **Q.** Sure you do. 550 bucks an hour. The last two

4 hours you sat here patiently. That was another 1,100

5 bucks, wasn't it?

6 **A. It was.**

7 **MS. TELLESEN:** Thank you, Mr. Derie.

8 **HEARING OFFICER HAYES:** Thank you.

9 That closes our testimony here today. I am

10 going to ask for expert briefing from Mr. Smith and a

11 response from Ms. Tellessen.

12 Is two weeks sufficient for you?

13 Okay. So two weeks for our expert briefing.

14 Is seven days sufficient for you to respond to

15 that? I'm thinking five pages, more or less, for both

16 of you.

17 **MR. SMITH:** Page limit of five? Two weeks?

18 **HEARING OFFICER HAYES:** Yeah, I'm not going to

19 hold you to five, but that's, in my mind, all you need

20 to say.

21 **MR. SMITH:** Without my certificate of service,

22 that will be fine.

23 **HEARING OFFICER HAYES:** Thank you.

24 With that we are closing the record when we

25 close public testimony on September 30. I am going to

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1 ask for closing briefing, a deadline of October 3. I

2 realize that's a tight turnaround, but most of the

3 closing briefing can be prepared between now and then.

4 October 3 was chosen so if there is any response to any

5 additional public comment received on the 30th, that

6 there's an opportunity to respond to that.

7 My order is then due 30 days from the close of

8 the record, which is September 30 -- sorry. The

9 director's final order is due 30 days from the close of

10 the record, which is going to be October 30. My

11 recommended order will be due before that, which is

12 going to be about 2 1/2 to 3 weeks from September 30.

13 My order is a recommended order. The final order does

14 come from the director of the Department of Lands in

15 these proceedings.

16 Tomorrow we will be conducting an on-site

17 inspection at the time to be determined by the parties.

18 No further public testimony or witness testimony will be

19 taken at that time; although, it will be an opportunity

20 for Mr. Douglass, under oath, to explain the project to

21 us as it stands, and, Ms. Tellessen, to the extent that

22 you have engineers that are also going to be providing

23 that information as well.

24 Cross-examination communication will be

25 permitted by either party as will questions by the

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1 parties. The structure will be a lot less formal. It

2 will be more in question-and-answer format, not the

3 direct examination, cross-examination, et cetera.

4 And with that we are concluded here this

5 evening. Thank you all for your participation and your

6 patience.

7 (The proceedings concluded at 8:12 p.m.)

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1 **REPORTER'S CERTIFICATE**

2 **I, Valerie J. Legg, Certified Shorthand**

3 **Reporter, do hereby declare:**

4 **That the foregoing proceedings were taken**

5 **before me at the time and place therein set forth, at**

6 **which time any witnesses were placed under oath;**

7 **That the testimony and all objections made were**

8 **recorded stenographically by me and were thereafter**

9 **transcribed by me or under my direction;**

10 **That the foregoing is a true and correct record**

11 **of all testimony given, to the best of my ability;**



12 **That I am not a relative or employee of any**

13 **attorney or of any of the parties, nor am I financially**

14 **interested in the action.**

15 **IN WITNESS WHEREOF, I have hereunto set my hand**

16 **and seal September 26, 2025.**

17  

18 **VALERIE J. LEGG, ID SRL-968**

19 **Notary Public**

20 **816 Sherman Avenue, Suite 7**

21 **Coeur d'Alene, ID 83814**

22 **My Commission Expires April 25, 2028**

	102:14	46:6;52:24;53:13;	<b>afford (3)</b>	71:21,22
<b>\$</b>	<b>account (7)</b>	88:1;135:22,25;	36:22;111:16,20	<b>Alabama (2)</b>
	59:22;107:12,15,17;	142:10;179:2	<b>afraid (1)</b>	93:23;94:20
<b>\$1,500 (1)</b>	134:2;138:16,20	<b>Addison (1)</b>	160:16	<b>Alaska (1)</b>
132:6	<b>accumulated (1)</b>	7:15	<b>afternoon (2)</b>	143:16
<b>\$275 (1)</b>	148:22	<b>addition (2)</b>	23:10;106:17	<b>ALJ (1)</b>
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