

**OHLER BEAN & TINKEY**

Nathan S. Ohler, ISB # 8502

[nathan@ohlerbean.com](mailto:nathan@ohlerbean.com)

1809 E. Sherman Avenue, Suite 101

Coeur d'Alene, ID 83814

Telephone: (208) 444-8686

*Attorneys for Applicant*

**BEFORE THE IDAHO DEPARTMENT OF LANDS**

Application for Permit to Install a Community  
Dock, Encroachment L95S6181,

The Estates at Waterstone HOA, Inc.,  
Jason Garvey (Agent),

Applicant.

AGENCY Case No. PH-2025-NAV-  
22-006

OAH Case No. 25-320-08

**APPLICANT'S POST-HEARING  
CLOSING STATEMENT**

COMES NOW the Applicant, The Estates at Waterstone HOA, Inc., Jason Garvey (Agent), by and through its counsel, Nathan Ohler of Ohler Bean & Tinkey, and submits the following closing statement.<sup>1</sup>

**I. Background re: Application and Objection**

***1. Application No. L95S6181***

On August 19, 2025, the Estates at Waterstone HOA, Inc. ("Applicant") submitted Application No. L95S6181 (the "Application") for an encroachment permit to install one eleven (11) double-slip community dock, with twenty-two (22) slips, on the north side of the Spokane

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<sup>1</sup> IDL provided notice of no objection to the submission of written closings on November 14, 2025.

River, near the former Greensferry bridge. IDL-1 (submittal cover sheet); IDL-2 and WS-1 (Application).<sup>2</sup> The Application was duly published with notice provided to the adjacent littoral owners, 9427 E Marine Dr. LLC and IAAR, LLC (IDL-4), and to numerous state and local agencies and entities with a vested interest in the standards enumerated in Idaho's Lake Protection Act (I.C. § 58-1301, et. seq) ("LPA") (IDL-5). No state or local agency or entity objected to the Application. Neither adjacent littoral owner objected to the Application. IAAR, LLC submitted a letter commending Applicant's re-plat of the project to reduce its density and efforts to "minimize the footprint of [it's] community dock to address the concerns of IAAR as the upriver [east] property owner." IDL-26.

## ***2. Concerned Citizens***

By letter dated August 15, 2025, the Concerned Citizens, LLC (aka Concerned Citizens Protecting the Spokane River, fna Concerned Citizens Against Additional 100 Boat Slips Added to Templins Resort on Spokane River Inc.) ("Concerned Citizens") formally requested a public hearing on the Application.<sup>3</sup> IDL-7. The Concerned Citizens are habitual objectors to any new boat slips along the Spokane River. They recently opposed the application of 414 PF Hospitality LLC concerning Red Lion Templin's Hotel on the River, who sought to enlarge their commercial marina from 168 slips to 205 slips near the Post Falls Dam / Q'Emlin Boat Launch. (See Agency Case No. PH-2024-NAV-22-004; OAH Case No. 24-320-09.) More recently they opposed

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<sup>2</sup> IDL and Applicant's exhibits are denoted by prefix "IDL" and "WS", respectively.

<sup>3</sup> The Idaho Secretary of State contains no record of an entity named "Concerned Citizens, LLC". The entity "Concerned Citizens against additional 100 boat slips added to Templins Resort on Spokane River Inc." filed articles of incorporation with the Secretary of State on January 20, 2025 and changed its name to "Concerned Citizens Protecting the Spokane River Inc." on September 5, 2025. See also footnote 1 to IDL's Prehearing Statement, filed September 12, 2025.

River's Edge Apartments, LLC's application for a 74-slip community dock approximately 1.5 miles west of the Blackwell Island Boat Launch (Agency Case No. PH-2025-NAV-22-005; OAH Case No. 25-320-07). The gestalt of the Concerned Citizens and their standard-bearers, Scott and Sheri Scofield (newcomers to Idaho), is run-of-the-mill NIMBYism - they have *their* boat on the river and wish to preserve the status quo.

The Concerned Citizens recycle their plea for a moratorium on *new* encroachments as to Applicant's comparatively smaller 22-slip community dock. They did not dispute Applicant's compliance with IDL's applicable minimum standards in their Prehearing Statement or through their presentation of evidence.

***3. October 6<sup>th</sup> hearing; October 7<sup>th</sup> Site Inspection; October 30<sup>th</sup> Hearing.***

***a. October 6<sup>th</sup> hearing.***

The Public Hearing was initially scheduled for October 6, 2025. On that date IDL discovered that the second public notice of the time/date/location of the Public Hearing was not published. Neither Applicant nor Concerned Citizens objected to this inadvertence. Out of an abundance of caution and by stipulation of the parties, the Hearing Officer held the Public Hearing to accommodate public testimony for those in attendance and continued the presentation of evidence and additional public comment to October 30<sup>th</sup> 2025. This provided *two* opportunities to comment publicly on the Application and extended the period for the public and state and local agencies to comment beyond the times imposed by I.C. § 58-1306(b).

The Hearing Officer issued her oral decision denying Concerned Citizens' petition to intervene, while continuing to allow them to participate in the proceedings as if they had party status, then accepted public comment. Approximately a dozen individuals spoke at the October 6<sup>th</sup> hearing, including members of the Concerned Citizens. Comments from those opposed to

the Application ranged from accusations that the governing agencies were in cahoots with the Applicant to calls for a constructive moratorium on the development of any additional boat slips on the river. Political opinions were expressed as to the carry-capacity of the river and how to educate boaters, particularly those operating wake boats, to name a few. Several commentators voiced concerns without speaking directly in opposition to the project. Ty Ullman testified to cruising the river 80 times in 2025, including in the area of the project site, to point out that the project site is located along one of the widest sections of the river where the natural line of boat traffic is far removed from the proposed community dock, and outside of the several “choke” points existing along the river.

Notice of the continued Public Hearing on October 30, 2025 at 3 PST via Zoom was provided on the record at the October 6<sup>th</sup> hearing and by publication. IDL-24 and IDL-25. The Hearing Officer also provided notice on the record of the October 7<sup>th</sup> Site Inspection.

*b. October 7<sup>th</sup> Site Inspection*

The Hearing Officer conducted a site inspection of the Applicant’s property on October 7, 2025. In attendance were Rob Elder, principal realtor for Applicant’s project; Casey Mason, project manager for Applicant’s project; Nathan Ohler, counsel for Applicant; Hearing Officer Hayes; and Kayleen Richter, counsel for IDL. Representatives of the Concerned Citizens and their counsel were invited to attend the site inspection but declined to do so. Messrs. Elder and Mason provided sworn testimony during the site inspection.

The inspection occurred via boat that departed and returned to the Greensferry Public Boat Launch, 11253 W. Riverview Dr., Post Falls, ID 83854 located just west of the former Greensferry Bridge. Mr. Elder testified as the former chair of the Greensferry overpass committee to the longstanding push to rebuild the Greensferry Bridge, which would result in a

300' no wake zone near the vicinity of Applicant's project. Mr. Elder testified that the river is dam-controlled and at the time of the site visit, the water level was down 2-3' from the summer pool level and would go down another 4-5 feet', and he pointed out breakwater design and shoreline features for the attendees to appreciate and understand the varying water level of the river throughout the year, including at the project site. The site inspection also allowed the Hearing Officer to view the encroachments shown on Ex. WS-3A, including the similarly-sized community dock held by Shore Pines HOA, located two lots east (upriver) from Applicant's proposed dock, and the commercial pier located to the west (downriver).

The boat was "parked" at the approximate location of Applicant's proposed community dock to perceive the layout of the river from the proposed as-built location. From that location, Mr. Mason use a rangefinder to measure a point on the vegetation line of Applicant's property (a proxy of the ordinary high water mark) at approximately 36 yards (118') away. This positioning served to confirm Mr. Elder's testimony as to the natural contour of the river at project site, lying in a shallow cove along the outer-bend of the river, beyond the natural path of boater traffic, and underscore the fact that in such area boat traffic naturally gravitates toward the inside (south) shore of the river opposite the project site. To further illustrate such point, Mr. Elder piloted the boat upriver (to the east) of the project site where it is narrower and contains features and improvements that naturally funnel boat traffic to the inside (south) aspect of the river. Viewing this upriver (east) aspect of the river served to contrast the location of the proposed dock, where the river widens significantly as it eddies out at its widest point just west of Greensferry Road. In short, Mr. Elder's testimony and waterward tour augmented the pictures in WS-3 and WS-3A to corroborate how the project site is uniquely well-situated to accommodate a community dock to avoid boat traffic.

*c. October 30<sup>th</sup> Hearing*

During the October 30<sup>th</sup> Public Hearing, the parties and the Concerned Citizens, with party status, were afforded the opportunity to call and question witnesses. IDL and Applicant's exhibits were admitted without objection.

IDL presented Mr. Mike Ahmer, IDL's Resource Supervisor, Navigable Waters, to testify under oath that the per his review of the Application and discussions with Applicant, the proposed community dock met the LPA and related IDAPA minimum standards.

Applicant presented the testimony of Messrs. Tomlinson, Garvey, and Whipple. Mr. Tomlinson testified as president of the Estates at Waterstone HOA, Inc. and manager of Spokane River Northshore, LLC. The Estates at Waterstone HOA, Inc. owns Tract A and the rights of wharfage to Lots 9-12, as shown on the Plat recorded as Instrument No. 3007089000, Book "M" of Plats, Pages "31-31C", records of Kootenai County, Idaho (the "Plat"). See Exhibits WS-1 and WS-4. Upon acquiring the project site, Mr. Tomlinson solicited input from the president of Shore Pines HOA and other neighbors on how to best develop the property in accord to the neighborhood aesthetic. To the delight of the neighborhood, he re-platted the project to reduce its density, while maintaining a community dock that would provide boat slips to individuals who generally do not have direct access to the water. Not a single neighbor or any state, local, or federal agency objected to the proposed community dock. He further testified that lot owners will be required to take a boater safety course as a condition to use their boat slips.

Mr. Garvey prepared the Application and designed the community dock under the review of the project engineer, Todd Whipple. His experience working with IDL on behalf of dock applicants is extensive. He used the Kootenai County Assessor's mapping tool for measure points on the Application, consistent with IDL's practice, has knowledge of the minimum

standards for such application, and received no notice from IDL that the Application was deficient. He provided IDL everything that they requested to process the Application.

Mr. Garvey designed the dock with fixed pilings and decking as close to the shoreline as feasible for boats to navigate in and out of the slips. The location of the dock relative to Applicant's 436.36 feet of shoreline was designed at the widest aspect of the shoreline at a shallow bay at least 130' and 25' from the adjacent littoral owners to the east and west, respectively. See also Ex. IDL-2, at pp. 5 and 6. The dock includes a breakwater design to diffuse water flow and prevent erosion that might occur in the absence of such improvement. See also Ex. WS-2A.

Mr. Whipple is the project engineer and as such familiar with the project site, dock design, and the line of navigability. He took into account the totality of the contours and configuration of the river and existing encroachments to conclude that the proposed dock does not encroach into the line of navigability, as demonstrated in Ex. WS-3A. He further testified that the dock was designed to enter the shoreline where the river was 755', at the widest location of Applicant's shoreline, and that the width of the river at the location of the east and west adjacent littoral owners was 676' and 749', respectively. He confirmed Applicant's shoreline totaled 426.36'.<sup>4</sup>

Concerned Citizens called Mr. Scoffield, Ms. Scoffield, and Dr. Teich to testify. Their testimony did not challenge Applicant's compliance with IDL's IDAPA standards. None of them presented empirical evidence relevant to the factors set forth in the LPA. None of them

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<sup>4</sup> The Plat was admitted without object via several exhibits, including IDL-2 (pp. 7-10), IDL-8, WS-1 (pp. 7-10), and WS-4 (attached to Spokane River Northshore, LLC's warranty deed granting Tract A to The Estates at Waterstone Homeowners' Association, Inc., and also attached to the four separate warranty deeds for the riparian right of wharfage from the same grantor to the same grantee re Lots 9-12). The calls contained within the Plat are difficult to read on an 8.5 x 11" sheet of paper. Mr. Whipple reviewed the Plat to confirm Applicant's 426.36' of shoreline for Tract A and Lots 9-12 as described within L1 to L6 of the line table of the Plat.

testified to personal knowledge of the proposed community dock in relation to the LPA factors. None of them were proffered as experts.

Following the close of testimony, approximately eight individuals provided public comment. Those comments largely fell in line with Concerned Citizens' testimony by reciting anecdotal boating stories without identifying the location of the river where such events occurred, how such anecdotes related to Applicant's project site or community dock design, or how the LPA factors applied to the substance of the Application. (The one caveat being Ms. Wood, who owns property on the opposite side of the river from the project site – i.e., the inside of the river near the natural line of boat traffic – and expressed concern of boats near her swimming area.) Ms. Scofield typified the opposition's generic grievances in testifying that she was "swamped" while kayaking along an unspecified stretch of the river by a boat that may have been driven by one of her fellow members. In short, the testimony presented in opposition to those who oppose any new boat slips on the Spokane River is not relevant to the standards that are due consideration under the LPA.

## **II. Legal standard**

The LPA governs encroachments upon Idaho's navigable waters. The Lake Coeur d'Alene/Spokane River complex is a navigable body of water. I.C. § 58-1302(a); see also IDL's Prehearing Statement, filed September 12, 2025 (citing *Washington Water Power Co. v. FERC*, 775 F.2d 305, 326 (D.C. Cir. 1985)). I.C. §§ 58-1302(k) and 1306(a) set forth the materials that must be furnished in support of the community dock application. Pursuant to the LPA, the Idaho Department of Lands' enacted its Rules for the Regulation of Beds, Waters, and Airspace Over Navigable Lakes in the State of Idaho (IDAPA 20.03.04) to implement the requirements of the LPA. IDAPA 20.03.04 prescribes the minimum standards required for a community dock

encroachment permit. Those standards in the context of the Application are addressed under Part III, below.

Waterfront property owners possess certain littoral rights, including the “right to build wharves and piers in aid of navigation.” *Newton v. MJK/BJK, LLC*, 167 Idaho 236, 243, 469 P.3d 23, 30 (2020) (internal citation omitted). The exercise of such right is generally restricted only where it infringes on the rights of an adjacent littoral owner. As set forth in *Lovitt v. Robideaux*, 139 Idaho 322, 78 P.3d 389 (2003):

Generally, the board should approve a permit application unless the proposed encroachment infringes, or may infringe, upon the littoral rights of an adjacent property owner. I.C. § 58-1305(a). The initial determination of possible infringement is made based on the plans the applicant provides. I.C. § 58-1305(b). Littoral rights, for purposes of issuing dock permits, refer to the right of owners of land next to the navigable waters of a lake to maintain their adjacency to the lake and make use of their right by building or using navigational encroachments. I.C. § 58-1302(f).

*Lovitt*, 139 Idaho, at 326. As discussed herein, the Application satisfies all legal standards for Applicant to exercise its littoral right to a community dock.

### **III. Analysis**

Preliminarily, the LPA protects *private* rights only insofar as they affect the *littoral rights* of a property owner. *Newton*, 167 Idaho, at 245-46. The Concerned Citizens and persons who spoke in opposition to the Application do not possess any littoral rights affected by the proposed community dock. As addressed herein, Applicant has satisfied all standards set forth in the LPA and IDAPA 20.03.04, and the adjacent property owners with littoral rights relevant to the Application either approve or do not object to the proposed community dock. As such, the objection rests exclusively upon the State’s consideration of the public factors enumerate in I.C. § 58-1301. As discussed below, neither IDL nor any of the agencies or entities with a vested

interest in such factors raised any concern or sought to impose any conditions on the Application. And throughout the lengthy Public Hearing, no testimony or evidence was presented to show that the proposed community dock interferes with the public interest relative to the LPA factors.

***1. Applicant meets and exceeds the minimum standards under the LPA and promulgated in IDAPA 20.03.04.***

The Estates at Waterstone HOA, Inc. is the fee simple owner of Tract A with the riparian right of wharfage to Lots 9-12, all described within the Plat. WS-1 and WS-4. Pursuant to the Plat and the declarations, the owners of Lots 1-22 of the Plat will have the right to use the 22 slips that are appurtenant to Tract A. WS-1, WS-4, and IDL-23. The Applicant's proposed encroachment meets the definition of "community dock" under IDAPA 20.03.04.010.11.

Applicant's 426.36' of shoreline allowed it to permit a surface decking area of 2,984.52'. IDAPA 20.03.04.015.02.c. Applicant designed its community dock to include 2,893.5' of surface decking, the square footage allowed for a shoreline of 413.36'. WS-1, p. 5. No part of the community dock exceeds 10' in width. WS-1, p. 5.

IDAPA 20.03.04.015.02.d allows applicants to exclude from the surface decking calculation the breakwater design components incorporated into the dock structure, indicating the added-value provided by such design feature. Applicant designed its breakwater to mitigate erosion *without* increase to its surface decking area. WS-2A.

Pursuant to IDAPA 20.03.04.015.13.d, the proposed community dock is designed at a near right angle from the appurtenant shoreline. WS-1, p. 6 and WS-3A.

When measured against a line drawn between the adjacent upriver (east) and downriver (west) neighboring encroachments, the proposed community dock extends *slightly* beyond such line. WS-1, p. 6. As demonstrated by Exhibit WS-3A, when the line of navigability is measured

in context of *all* the surrounding “existing legally permitted encroachments” (IDAPA 20.03.04.010.20) – i.e., to include the community dock upstream and the commercial pier downstream – existing within the outer contour of the river, together with shallow bay in which the proposed dock will be situated, it does not encroach into the line of navigability. This position was corroborated via the water-side site inspection and the testimony of T. Whipple. This issue is largely academic, however. Mr. Garvey testified without challenge that the community dock was designed as close to the shoreline as feasible for its designed purpose – to moor boats. In other words, the design allows the slips “to extend to a length that will provide access to a water depth that will afford sufficient draft for water craft . . .”. IDAPA 20.03.04.015.13.d. Further, the community dock was designed to be situated within the shallow cove of Applicant’s shoreline, where the width of river and distance from the natural line of boat travel is greatest.

The community dock is designed at least 25’ from the littoral neighbor to the west and at least 130’ from the littoral property owner to the east, thus avoiding the presumed adverse effect under IDAPA 20.03.04.015.13.d. WS-1, p. 6. The adjacent littoral owners were provided notice of the Application. The adjacent littoral owner to the east commended Applicant by submitting a letter of non-objection to the proposed community dock. IDL-26. The adjacent littoral owner to the west did not object to the Application.

Based on his review of the Application and discussions with the Applicant, Mr. Ahmer testified that the minimum IDAPA standards were satisfied. IDAPA 20.03.04.020 identifies the contents to include in an application to show compliance with the operative provisions IDAPA relevant to community docks, which are set forth in IDAPA 20.03.04.010 - .11 (defining community dock) and .20 (defining line of navigability); IDAPA 20.03.04.015 - .02 (re: encroachment standards) and .13 (re: general encroachment standards). The testimony of

Messrs. Tomlinson, Garvey, and Whipple corroborated Mr. Ahmer's testimony. No evidence was presented during the Public Hearing to show that Applicant's community dock will or may infringe upon the littoral rights of an adjacent property owner. As such, Applicant has established a clear navigational and economic benefit for the encroachment permit.

To pile on, Applicant's community dock will provide water access to property owners who generally do not have direct access to the water (i.e., 22 owners) versus the ownership that would otherwise inure to a half-dozen or so single family homes with individual docks. As a condition to use the slips, the owners will be required to undertake boater safety education, which is not required of those who access the river via one of the several public boat launches or by moorage at one of the several marinas. The dock is configured at the widest aspect of the river along Applicant's shoreline to promote a longer stretch of natural shoreline than would exist with single family docks. Applicant worked to protect the interest of its adjacent littoral neighbor both by reducing the density of its project site and increasing the setback between the common littoral boundary. A breakwater design will diffuse and mitigate erosion without adding the dock footprint. In short, Applicant exceeded the standards required to exercise its "right to build wharves and piers in aid of navigation." *Newton v. MJK/BJK, LLC*, 167 Idaho 236, 243, 469 P.3d 23, 30 (2020).

***2. The record is devoid of any evidence to show the existence of countervailing LPA factors, let alone that weigh against the navigational or economic necessity of the community dock***

The statute requires that IDL *may* furnish copies of the application and accompanying materials to "other state agencies having an interest in the lake to determine the opinion of such agencies to as to the *likely effect* of the proposed encroachment upon adjacent property and lake value factors of navigation, fish and wildlife habitat, aquatic life, recreation, aesthetic beauty or

water quality.” See I.C. § 58-1302(b) (emphasis added). IDL applied the spirit of this statute liberally and without limitation. On July 14, 2025, it served notice of the Application upon numerous state, local and other entities, including the following:

- Idaho Department of Fish and Game
- Idaho Department of Environmental Quality
- Idaho Department of Water Resources
- Idaho Department of Transportation
- US Army Corps of Engineers-CDA
- Kootenai County Parks, Recreation/Waterways
- Kootenai County Marine Division (Kootenai County Sheriff)
- Kootenai County Building & Planning & Zoning
- Kootenai Environmental Alliance
- Panhandle Health District 1 – Kootenai County
- Coeur d’Alene Tribe,
- Idaho Conservation League, and
- The adjacent littoral owners.

See IDL-5. The organic legislation or mission statement of those agencies and entities reflect the public interest expressed through the LPA factors. Providing notice to those agencies thus allowed the stakeholders with the most knowledge and relevant expertise as to each qualitative factor enumerated under the LPA to comment on the Application relative to the same, such as by objecting to an aspect of the Application or by conditional use or modification of the community dock to balance and weigh Applicant’s littoral rights with the public’s interest expressed through the LPA factors. None of the agencies or entities voiced opposition or even imposed a condition to approval of the Application. This is unsurprising.

These agencies are staffed by elected officials directly responsive to the voters or appointed by elected officials directly responsive to the voters. One might expect Idaho’s constituents to push elected officials to impose more conservative speed limits on the river or outright prohibit the oft-loathed wake boat. Yet one would not expect Idaho voters to rally behind

the operative privatization of the river by pushing their Legislatures to amend Idaho law to eliminate public boat launches, public marinas, or new docks to shut off public access to the river for the exclusive benefit of existing waterfront homeowners. The Concerned Citizens cannot short-circuit the Legislative process by asking IDL to effectively impose a moratorium through encroachment permit denials in furtherance of their self-serving interest.

#### **IV. CONCLUSION**

Based upon the reasons and authorities set forth above, Applicant respectfully requests approval of Application No. L95S6181.

DATED: November 14, 2025. OHLER BEAN & TINKEY

*/s/ Nathan S. Ohler - DRAFT*

By \_\_\_\_\_  
Nathan S. Ohler, Of the Firm  
Attorneys for Applicant  
The Estates at Waterstone HOA, Inc.,  
Jason Garvey (Agent)

## CERTIFICATE OF SERVICE

I hereby certify that on November 14, 2025, I served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Leslie M. Hayes  
Office of Administrative Hearings  
P.O. Box 83720  
Boise, ID 83720-0104  
(208) 605-4300  
*Hearing Officer*

☐ US Mail  
☐ Overnight Mail  
☐ Hand Delivered  
☒ Email: [Leslie.hayes@oah.idaho.gov](mailto:Leslie.hayes@oah.idaho.gov)

The Estates at Waterstone HOA, Inc.  
Jason Garvey, Agent  
1386 Northwest Blvd  
Coeur d'Alene, ID 83814  
(208) 916-3647  
*Agent for Applicant*

☐ US Mail  
☐ Overnight Mail  
☐ Hand Delivered  
☒ Email: [jason@wesslen.com](mailto:jason@wesslen.com);  
[caseym@legacylw.com](mailto:caseym@legacylw.com)

Concerned Citizens Protecting the Spokane  
River Inc.  
11927 W. Span Way Rd  
Post Falls, ID 83854  
(208) 964-4037  
*Objector*

☐ US Mail  
☐ Overnight Mail  
☐ Hand Delivered  
☒ Email: [sherichic91@gmail.com](mailto:sherichic91@gmail.com)

Peter J. Smith IV  
Fennemore  
418 East Lakeside Ave., #224  
Coeur d'Alene, ID 83814  
(208) 956-0145  
*Counsel for Objector Concerned Citizens*

☐ US Mail  
☐ Overnight Mail  
☐ Hand Delivered  
☒ Email: [peter.smith@fennemorelaw.com](mailto:peter.smith@fennemorelaw.com)

Idaho Department of Lands  
John Richards, General Counsel  
Kayleen Richter, Counsel  
300 N. 6<sup>th</sup> Street, Ste. 103  
Boise, ID 83702  
(208) 334-0200  
*Counsel for IDL*

☐ US Mail  
☐ Overnight Mail  
☐ Hand Delivered  
☒ Email: [jrichards@idl.idaho.gov](mailto:jrichards@idl.idaho.gov);  
[krichter@idl.idaho.gov](mailto:krichter@idl.idaho.gov)

Marde Mensinger  
*Program Manager for Navigable Waters*

☐ US Mail  
☐ Overnight Mail  
☐ Hand Delivered  
☒ Email:

Kourtney Romine  
Rachel King  
Kayla Dawson  
*Service Contacts for IDL*

[mmensinger@idl.idaho.gov](mailto:mmensinger@idl.idaho.gov)

☐ US Mail  
☐ Overnight Mail  
☐ Hand Delivered  
☒ Email: [kromine@idl.idaho.gov](mailto:kromine@idl.idaho.gov);  
[rking@idl.idaho.gov](mailto:rking@idl.idaho.gov);  
[kdawson@idl.idaho.gov](mailto:kdawson@idl.idaho.gov)

OAH  
General Government Division  
P.O. Box 83720  
Boise, ID 83720-0104  
(208) 605-4300

☐ US Mail  
☐ Overnight Mail  
☐ Hand Delivered  
☒ Email: [filings@oah.idaho.gov](mailto:filings@oah.idaho.gov)

*/s/ Nathan Ohler*

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Nathan Ohler