

BEFORE THE IDAHO DEPARTMENT OF LANDS

In the Matter of Encroachment Permit
Application No. L-95-S-6181,

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

Applicant.

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

OAH Case No. 25-320-08

FINAL ORDER

Applicant The Estates at Waterstone HOA, Inc. (“Applicant”) submitted a Joint Application for Permits (“Application”) to Idaho Department of Lands (“IDL”) on July 11, 2025, to permit a 22-slip community dock system on the Spokane River. IDL held a public hearing on October 6, 2025 and October 30, 2025, conducted by the Office of Administrative Hearings (“OAH”). Deputy Chief Administrative Law Judge Leslie Hayes (“ALJ Hayes”) presided over the hearing. On December 8, 2025, ALJ Hayes issued a Findings of Fact, Conclusions of Law, and Recommended Order (“Recommended Order”) which contains the following sections: Notice Requirement, Exhibits, Petition to Intervene, Findings of Fact, and Conclusions of Law.

As Director of IDL, my responsibility is to render a Final Order pursuant to Idaho Code § 58-1306(c) and IDAPA 20.03.04.030.07, on behalf of the State Board of Land Commissioners (“Board”) based on the record reviewed in the context of my personal expertise gained through education, training, and experience. I relied on, and examined the entire record for this matter, including the Recommended Order. For the reasons set forth below, the Application is **APPROVED**.

I adopt ALJ Hayes’s ruling on the petition to intervene as my ruling. Unless stated otherwise, the Findings of Fact and Conclusions of Law in this Order are substantially adopted from the Recommended Order.

FINDINGS OF FACT

1. On July 11, 2025, Applicant, through agent Jason Garvey, submitted a complete

Joint Application for Permit No. L-95-S-6181 to build a 22-slip community dock system (“Community Dock”). IDL-1, pp. 1-19.

2. The proposed Community Dock is intended for 22 resident owners of the Waterstone subdivision, and boater education would be required in order to rent a slip. Recording, Oct. 30, 2025, at 29:52-30:09.

3. The Community Dock would be owned by The Estates at Waterstone HOA, Inc., and maintained by the HOA for the individual owners. IDL-23. The Declaration of Covenants, Conditions, and Restrictions provide rules and management of the Community Dock for the owners. *Id.*

4. The proposed Community Dock consists of 11 double slips with a breakwater, for a total of 2,893.5 square feet. WS-01, p. 005; Recording, Oct. 30, 2025, at 42:16-42:42.

5. No portion of the Community Dock exceeds 10’ in width. IDL-2, p. 5.

6. The Community Dock would be located at least 25’ from the adjacent parcel to the west and at least 130’ from the adjacent parcel to the east. *Id.*

7. The dock is designed to enter the shoreline where the river is 755 feet across—the widest location of Applicant’s shoreline. To the east of the proposed dock the river is 676 feet across and to the west, 749 feet across. Recording, Oct. 30, 2025, at 48:31-49:10.

8. The Community Dock may extend into the Spokane River toward the line of navigability, which was not identified in this record. IDL-2, p. 16.

9. The dock design includes a breakwater to diffuse water flow and prevent erosion that might occur in the absence of such a device. Recording, Oct. 30, 2025, at 36:55-37:22; WS-02A.

10. The Applicant owns the riparian parcel, more particularly described as “Tract A, Estates at Waterstone according to the Plat recorded as Instrument no. 3007089000 in Book M of Plats, Pages 31-31C, records of Kootenai County, Idaho.” IDL-2, pp. 7, 9, 14.

11. The Estates at Waterstone consists of a 22-lot subdivision that borders the riparian parcel, and is subject to the recorded Declaration of Covenants, Conditions, and Restrictions providing owners with the right to construct docks on the river. IDL-23.

12. The riparian parcel has 426.36’ of shoreline. IDL-2, p. 17; WS-01, p. 009; WS-04, p. 005; Recording, Oct. 30, 2025, at 143:26-1:43:43.

13. On July 14, 2025, IDL mailed a Notice of Application for Encroachment to

interested agencies, including IDFG, IDEQ, IDWR, IDOT, USACE, Kootenai County Parks, Kootenai County Marine Division, Kootenai County Building & Planning & Zoning, Kootenai Environmental Alliance, Panhandle Health District 1, Coeur d'Alene Tribe, and Idaho Conservation League. IDL-5.

14. On July 14, 2025, IDL sent a similar notice to 9427 E. Marine Dr., LLC and Iaar, LLC as adjacent neighbors. IDL-4.

15. No agency submitted comments and no neighbor objected to the Application. Iaar, LLC submitted a letter in support of the Community Dock through their agent, John Magnuson. IDL-26.

16. IDL published a Legal Notice of Application in the Coeur d'Alene Press which ran on July 17 and July 24, 2025. IDL-3.

17. On August 15, 2025, IDL received an objection and request for public hearing from Concerned Citizens, LLC objecting to the Application on the grounds that the Spokane River is "overcrowded" and "dangerous" due to boaters and tourists who "don't know the rules of the river" and "narrow, shallow channels and an extremely high volume of boat traffic." IDL-7.

18. IDL referred the matter to OAH to conduct a public hearing in accordance with I.C. § 58-1306. ALJ Hayes was appointed as Hearing Officer. IDL-1, 9.

19. On September 5, 2025, Concerned Citizens Against Additional 100 Boat Slips Added to Templins Resort on Spokane River, Inc. ("Concerned Citizens") filed a Petition to Intervene "to ensure its ability to seek judicial review if necessary." Dkt. 19, p. 2. The Petition included declarations from 22 members.

20. Applicant objected to the Petition to Intervene on the basis that Concerned Citizens failed to show a direct and substantial interest in the outcome. Dkt. 27.

21. ALJ Hayes denied Concerned Citizens' petition to intervene as they did not show a direct and substantial interest that was not already adequately represented, and that preservation of an appellate right is not a direct and substantial interest. Recommended Order, pp. 3-10.

22. On September 13, 2025, Applicant submitted a pre-hearing statement and exhibits WS-1 – 4, including 2-A, 3-A, and 4-A through E. IDL submitted a pre-hearing statement and exhibits IDL-1 - 23. These exhibits were admitted without objection. Recording, Oct. 30, 2025, at 4:30-4:55.

23. Concerned Citizens submitted a pre-hearing statement and exhibits INT-1 - 6. Applicant objected based on foundation and relevance. At the hearing on October 30, 2025, ALJ Hayes ruled that foundation and relevance were established for exhibits INT-2 through 5. Exhibits INT-1 and 6 were excluded from consideration. Recording, Oct. 30, 2025, at 1:41:38-1:42:13.

24. IDL held a public hearing on October 6, 2025, at 4:00 p.m. at the Best Western Plus, 506 W. Appleway Ave., Coeur d'Alene, ID 83614. The hearing was recorded, and made available to the public on IDL's website (<https://www.idl.idaho.gov/lakes-rivers/administrative-hearings/>). Dkt. 47.

25. IDL Counsel Kayleen Richter appeared on behalf of IDL, and attorney Nathan Ohler of Ohler Bean & Tinkey appeared for Applicant. Peter J. Smith appeared for Concerned Citizens. Also in attendance were IDL staff members and members of the general public. A Zoom link was provided to individuals who could not attend in person.

26. At the hearing, it was discovered that the notice requirement was not met, as only one notice instead of two was published. After conferring with counsel, Applicant waived the statutory deadline and the hearing was continued and rescheduled to October 30, 2025, via Zoom.

27. IDL received 53 written public comments¹ opposing the Application—about half of which were from members of Concerned Citizens—and 1 comment in support (IDL-26). The comments urge denial based generally on river congestion, boat traffic, noise, and erosion. IDL-11 – 15, 28 – 30, Dkt. 50, 55.

28. Some comments appear to be directed toward other projects, including Templin's Resort and River's Edge. IDL-11, 12. Some comments are directed specifically toward these projects and permit number L-95-S-6163A. IDL-11, p. 6, 9, 11, 21, 24, 30, 33; IDL-12, p. 3. Some comments state this Community Dock will bring 74 new slips or 223 new boats with other proposed encroachments. IDL-11, p. 5, 6, 15, 20; IDL-12, p. 10.

29. Some comments urge consideration of opinions that are not part of this record. IDL-12, p. 7, IDL-11, p. 28, IDL-12, p. 21,

30. Concerned Citizens provided four "Photos of Shoreline." INT-2 – 5. It is not clear from the record where the photos were taken or what they depict.

¹ This number accounts for, and excludes duplicate comments and multiple comments from individuals.

31. Concerned Citizens provided declarations from 22 individuals² comprising of riverfront owners along various parts of the river. Each declaration contains the following identical non-specific concerns:

- a. The project will increase boat traffic and congestion on this section of the Spokane River.
- b. Increased congestion will reduce safety for all users, including myself and my family.
- c. The project will interfere with my ability to use and enjoy the Spokane River.
- d. The project will increase risks of collision or injury to non-motorized users.
- e. Noise, wakes, and congestion will diminish the recreational value of this section of the river.

IDL-22. It is not clear what “this section” of the river means in each declaration or how the Community Dock will reduce safety or increase the risk of collision or injury to each individual declarant. Although the declarations assert the river is congested with boat traffic, every declarant admits to boating on the river, and most admit to boating in addition to waterskiing/wakeboarding/wakesurfing, or tubing on the river, or all of the above. *Id.*

32. Others raised speculative, non-specific concerns related to shoreline erosion, dock repairs, possible increases in taxes or homeowner association fees, safety, and boat traffic. *Id.* None state how the Community Dock will erode their shoreline, destroy their dock, increase their HOA fees, or decrease their safety. Several comments suggested a study to determine the maximum capacity of the river³.

CONCLUSIONS OF LAW

The Idaho Legislature enacted the Lake Protection Act (“LPA”), Title 58, Chapter 13, Idaho Code, in 1974 stating that:

The legislature of the state of Idaho hereby declares that the public health, interest, safety and welfare requires that all encroachments upon, in or above the beds of waters of navigable lakes of the state be regulated in order that the protection of property, navigation, fish and wildlife habitat, aquatic life, recreation, aesthetic beauty and water quality *be given due consideration and weighted against the navigational or economic necessity or justification for, or benefit to be derived from the proposed*

² Several members appear to be from the same household.

³ The testimony consists of mostly anecdotal descriptions of the various experiences of the people who testified or submitted written statements. Although a clear assumption was made by most of the public that the 22 boats being moored in the proposed community dock would be new to the river’s congestion, no actual evidence to support this assumption was presented.

encroachment. No encroachment on, in or above the beds or waters of any navigable lake in the state shall hereafter be made unless approval therefor has been given as provided in this act.

I.C. § 58-1301 (emphasis added).

The LPA mandates that IDL weigh the economic benefits and detriments of a proposed navigational encroachment, along with environmental, navigational, recreational, and other impacts that may be associated. IDL, based on its experience and expertise, is in the best position to weigh the competing interests involved. *Brett v. Eleventh St. Dockowner's Ass'n, Inc.*, 141 Idaho 517, 523, 112 P.3d 805, 811 (2005). Encroachments in aid of navigation “include[] docks, piers, floats, pilings, breakwaters, boat ramps, channels or basins, and other such aids to the navigability of the lake, on, in or above the beds or waters of a navigable lake.” I.C. § 58-1302(h).

The State Board of Land Commissioners (“Board”) is authorized to “regulate and control the use or disposition of lands in the beds of navigable lakes, rivers and streams, to the natural or ordinary high water mark thereof, so as to provide for their commercial, navigational, recreational or other public use. . .” I.C. § 58-104(9)(a).

The LPA provides that the Board “shall regulate, control and may permit encroachments in aid of navigation or not in aid of navigation on, in or above the beds of waters of navigable lakes.” I.C. § 58-1303. IDL is granted power to exercise the Board’s rights, powers and duties under the LPA. I.C. § 58-119(1); *Newton v. MJK/BJK, LLC*, 167 Idaho 236, 242 (2020).

Through its statutory authority, the Board promulgated the Rules for the Regulation of Beds, Waters and Airspace Over Navigable Lakes in the State of Idaho (“LPA Rules”), which provide “minimum standards to govern projects or activities for which a permit or permits have been received” under the LPA. I.C. § 58-1304; IDAPA 20.03.04.

The Spokane River is a navigable waterway “within Idaho from Couer [sic] d’ Alene [sic] Lake for eight miles to Post Falls, Idaho, five miles east of the Washington-Idaho boundary[.]” *Washington Water Power Co. v. F.E.R.C.*, 775 F.2d 305, 326 (D.C. Cir. 1985) (emphasis removed). IDL’s authority in this matter is limited to encroachments “on, in or above the beds or waters” of the Spokane River. I.C. § 58-1301; *see also Byrd v. Idaho State Bd. of Land Comm’rs*, 169 Idaho 922, 929 (2022).

The Application meets the Requirements of Idaho Code § 58-1306(a) and LPA Rules.

Applications for construction of community navigational encroachments shall be

submitted upon approved forms and “accompanied by plans of the proposed encroachment containing information required by section 58-1302(k), Idaho Code, and such other information as the board may by rule require in conformance with the intent and purpose of this chapter.” I.C. § 58-1306(a). Applications must be submitted or approved by the riparian or littoral owner. *Id.* Plans shall include:

- Lakebed profile in relationship to the proposed encroachment and show the summer and winter water levels.
- Copy of most recent survey or county plat showing the full extent of the applicant’s lot and the adjacent riparian lots.
- Proof of current ownership or control of riparian property or riparian rights.
- A general vicinity map.
- Scaled air photos or maps showing the lengths of adjacent docks as an indication of the line of navigability, distances to adjacent encroachments, and the location and orientation of the proposed encroachment in the lake.
- Total square footage of proposed docks and other structures, excluding pilings, that cover the lake surface.
- Names and current mailing addresses of adjacent riparian owners.

IDAPA 20.03.04.020.07.a. The Application meets the requirements of I.C. § 58-1306(a), 58-1302(k), and IDAPA 20.03.04.020.07.a.

The Application meets the standards required for a community dock.

The LPA Rules provide the following definition of a Community Dock:

A structure that provides moorage for more than two (2) adjacent littoral owners, or other littoral owners possessing a littoral common area with littoral rights, including, but not limited to, homeowner’s associations.

IDAPA 20.03.04.010.11.

The LPA Rules provide the following standards for Community Docks:

- b. No part of the structure waterward of the natural or ordinary high water mark or artificial high water mark may exceed ten (10) feet in width . . .
- c. A community dock may not have less than fifty (50) feet combined shoreline frontage. Moorage facilities will be limited in size as a function of the length of shoreline dedicated to the community dock. The surface decking area of the community dock is limited to the product of the length of shoreline multiplied by seven (7) square feet per lineal foot or a minimum of seven hundred (700) square feet. However, the Department, at its discretion, may limit the ultimate size when evaluating the proposal and public trust values.

IDAPA 20.03.04.015.02.b, c. 21. A community dock is a commercial navigational encroachment. IDAPA 20.03.04.015.02.a.

In this case, the Community Dock meets the definition. First, it is a navigational encroachment that will provide moorage for 22 other riparian owners who possess a riparian common area with riparian rights through the HOA. Riparian rights, for the purposes of issuing lake encroachment permits, refer to the right of owners or lessees of land adjacent to navigable waters “to maintain their adjacency to the lake and to make use of their rights” as riparian owners by building or using “aids to navigation. *Brett v. Eleventh St. Dockowner's Ass'n, Inc.*, 141 Idaho 517, 521, 112 P.3d 805, 809 (2005); I.C. § 58-1302(f).

The Estates at Waterstone HOA, Inc. possesses a riparian common area consisting of 426 feet of river shoreline. The Estates at Waterstone is a 22 lot subdivision controlled by CCRs. IDL-23. The Community Dock will not provide moorage to the public—it is an aid to navigation and benefits the owners of the Estates at Waterstone, who have the right to access the public waterway at all points.

The riparian parcel contains approximately 426’ of shoreline frontage. The proposed Community Dock would be 2,893.5 square feet which is below the maximum of 2,984.52 square feet, and meets the 7:1 square footage to shoreline ratio. The proposed Community Dock does not exceed 10’ in width and will not be within 25’ of each adjacent riparian parcel. The proposed Community Dock meets the definition and standards required by the LPA and LPA Rules.

The Line of Navigability.

The LPA Rules contemplate that community docks may extend beyond the line of navigability, if one is established, and the Director may designate a line of navigability for the purpose of effective administration of these rules. IDAPA 20.03.04.015.13.d. When determining riparian lines and lines of navigability, the Idaho Supreme Court has held “[i]t is realized that due to the numerous variations of the shore line formations, such as a convex or a concave, or otherwise irregular shore line of a lake or other large body of water, no one rule or formula could be invoked to determine the riparian boundaries which would apply in all cases. *Driesbach v. Lynch*, 71 Idaho 501, 508, 234 P.2d 446, 450 (1951).

[T]here seems to be no hard and fast rule or rules which are without modification to meet peculiar facts and circumstances; the controlling thought in every case is to treat each case in an equitable manner so that, so far as it is possible, all property owners

on such a body of water have access to the water; the courts in all cases have striven to see that each shore line owner shall have his proportionate share of the deep water frontage and all of the rules which have been adopted and applied throughout the years by the courts in relation to this problem have had that end in view; the courts have not hesitated to point out that these rules often require modification under the peculiar circumstances of the case in order to secure equal justice, and that where such is the case the courts do not hesitate to invoke a modification to attain such objective.

Id. Here, the record does not identify an established line of navigability. Counsel for Applicant notes that the Community Dock is shorter than other existing encroachments, enters the widest aspect of the river, is downriver from an existing community dock of similar size, and is “tucked in” to a shallow cove. App. Pre-hearing Statement, p. 2. The width of the river in that area is approximately 750 feet. Recording, Oct. 30, 2025, at 48:54. Mr. Garvey testified that the dock was engineered to allow moorage and not interfere with boat traffic. App. Closing Statement, p. 10, 11; Oct. 30, 2025, Recording at 35:58, 48:21, 49:52. Mr. Tomlinson testified that he did not believe it impacted the Line of Navigability. *Id.* at 50:40.

The length of the Community Dock into the river will provide access to a water depth that will afford sufficient draft for watercraft and provide ample room for the public to navigate the waterway. No one objected to the length into the Spokane River. The placement of the dock was a reasonable effort to balance out the interests of the Applicant and the navigating and recreating public. This is a practical solution for providing additional moorage and access to navigation. *See Brett*, 141 Idaho at 523-24, 112 P.3d at 811-12.

The proposed Community Dock will provide a clear benefit and navigational justification.

The LPA requires IDL to balance several factors when evaluating an application for a proposed navigational encroachment:

It is the express policy of the State of Idaho that the public health, interest, safety and welfare requires that all encroachments upon, in or above the beds or waters of navigable lakes of the state be regulated in order that the protection of property, navigation, fish and wildlife habitat, aquatic life, recreation, aesthetic beauty and water quality be given due consideration and weighed against the navigational or economic necessity or justification for, or benefit to be derived from the proposed encroachment.

Brett, 141 Idaho at 523, 112 P.3d at 811 (citing IDAPA 20.03.04.011.01 and I.C. § 58–1301). While the LPA contemplates that IDL will weigh the economic benefits and detriment of a proposed navigational encroachment, it is not the only factor. IDL, based on its experience and

expertise, is in the best position to weigh the competing interests involved in determining whether to approve additional encroachments. *Id.*

Navigation.

The Community Dock will allow the owners within the subdivision to enjoy the benefits that all shoreline residents value. All owners will be required to take and pass a boater safety course. This will increase access to the waterways and to recreation for all homeowners in the Waterstone Community. There is no evidence that the Community Dock will pose a detriment to navigation.

Fish and wildlife habitat and aquatic life.

There is no evidence in the record that the Community Dock will pose a detriment to fish and wildlife habitat or aquatic life. Although invited to do so, IDFG did not submit comment.

Recreation.

There is no evidence that the Community Dock will pose a detriment to the public's use of the Spokane River for recreation. The Community Dock will provide the residents of Waterstone with greater access to recreation.

Although most of the comments in opposition generalize that the Community Dock will present a detriment to their own recreation, no evidence was presented that showed how it would impact it specifically. Most commenters stated that they use various aspects of the river for some form of recreation, including wildlife viewing, boating, fishing, towing, and waterskiing. Most of the comments oppose additional boaters accessing the river, which is several miles long. No one presented testimony that the Community Dock would prevent such recreation. Instead, the evidence shows the Community Dock project will actually increase opportunities for recreation to the residents at Waterstone.

Aesthetic Beauty

There is no evidence or testimony in the record that the Community Dock would be detrimental to the aesthetic beauty of the river.

Water Quality

Some commenters submitted concerns about sediments in the riverbed that can be stirred up by boat traffic. Although no one disputes that the riverbed may contain sediments, no evidence shows how the Community Dock would directly affect the water quality in the river.

Spokane Riverkeeper submitted comments regarding the Spokane River's contamination legacy, urging IDL to deny this and future permits. IDL-13, pp. 11-15. Riverkeeper provided factual information about how increased boat traffic can worsen contamination, citing to recent studies conducted in similar waters. *Id.* at 12. "In the Spokane River, where both the shoreline and riverbed are contaminated with heavy metals from historic mining, this erosion and disturbance carry additional risks." *Id.* The concern was mirrored through one public commenter. Recording, Oct. 30, 2025, at 1:51:28-1:59:38.

While it is generally not disputed that the navigable waterways in the area suffer from historical metals-contaminated sediment, IDL has no jurisdiction over the Clean Water Act or other environmental laws. The Legislature has declared Lake Coeur d'Alene as devoted to health and recreational use:

The lands belonging to the state of Idaho between the ordinary high and low water mark at said lakes as well as all other lands of the state adjacent to said lakes that are not held in trust for the beneficiaries of the endowed institutions are hereby declared to be devoted to a public use in connection with the preservation of said lakes in their present condition as a health resort and recreation place for the inhabitants of the state and said public use is hereby declared to be a more necessary use than the use of said lands as a storage reservoir for irrigation or power purposes.

I.C. § 67-4305 Priest, Pend Oreille, and Coeur d' Alene Lakes – Lands devoted to health and recreational use. Without enforcement authority over environmental regulations, and without comment from the Department of Environmental Quality, these comments alone cannot be a basis to deny the Application.

Safety.

Some testimony raised concerns that the Community Dock will decrease safety on the Spokane River. The record provides no statistics of accidents or safety violations. Some offered opinions that the Spokane River was unsafe based on the number of boats and individuals failing to observe safe boating tactics.

The Applicant will require slip owners to take boater safety courses and provide proof that they have passed the course prior to acquiring the slip. Recording, Oct. 30, 2025, at 29:52-30:09.

IDL has no jurisdiction over enforcing boater safety or unsafe boating practices. Other than generalized comments, there is no evidence in the record that the proposed Community Dock will impact safety on the Spokane River. Most of the safety concerns are speculative and suggest that safety is correlative to the number of boaters on the river. However, since any member of the

public can access the waterway from any public access point, the number of slips on the Spokane River does not dictate boat volume and boat traffic. Nor is there evidence that the number of boats directly correlate to safe boater operation.

There is no evidence in the record that the Community Dock will present a detriment to safety. Given that the slip owners will each be required to take and pass a boater safety education course, this will likely increase the amount of boaters on the river who are acquainted with and know the laws and regulations about boater safety.

Congestion and Protection of Property.

The crux of comments and testimony in opposition to the Application directly and indirectly point to congestion on the Spokane River as the biggest concern overall. Several commenters call for a “carrying capacity” study or an outright moratorium on encroachments, even though most commenters admit to owning encroachments and boats themselves. The concerns about “too many boats” are founded on the premise that 22 more slips on the Community Dock = 22 new boats on the river, which is open to the public at all times.

The Spokane River is a navigable river as defined in I.C. § 36-1601(a): “Any stream which, in its natural state, during normal high water, will float cut timber having a diameter in excess of six (6) inches . . . or is capable of being navigated by oar or motor propelled small craft for pleasure or commercial purposes is navigable.” I.C. § 36-1601(a).

The Idaho Legislature has declared that all navigable rivers are “open to *public use as a public highway for travel and passage*, up or downstream, for business or pleasure, and to exercise the incidents of navigation--boating, swimming, fishing, hunting and all recreational purposes.” I.C. § 36-1601(b) (emphasis added).

The Spokane River is open to public use as a public highway and the public right to access the navigable waters as public highways is well-settled.

IDL is a regulatory agency that may only act within the bounds of the statutory authority to which it is granted, and not outside. IDL and the Board must regulate encroachments in the beds of navigable lakes, rivers and streams . . . *so as to provide for their commercial, navigational, recreational or other public use . . .*” I.C. § 58-104(9)(a) (emphasis added).

The Public Trust Doctrine mandates that while the state owns the title to the lands under the navigable waters of the state, that title is “held in trust for the people of the state, that they may enjoy the navigation of the waters, carry on commerce over them, and have liberty of fishing

therein, freed from the obstruction or interference of private parties.” *Illinois Central R.R. Co. v. Illinois*, 146 U.S. 387, 452, 13 S.Ct. 110 (1892). The public trust doctrine at all times forms the outer boundaries of permissible government action with respect to public trust resources. *Kootenai Env't All., Inc. v. Panhandle Yacht Club, Inc.*, 105 Idaho 622, 632, 671 P.2d 1085, 1095 (1983).

Upon admission of the state of Idaho into the union, the title to the beds of navigable waters became state property, and subject to its jurisdiction and disposal under the equal footing doctrine. According to the United States supreme court's decision in *Shively v. Bowlby*, the state has the right to dispose of the beds of navigable waters, “in such manner as [it.] might deem proper . . . subject only to the **paramount right of navigation and commerce.**”

I.C. § 58-1201 (emphasis added).

The title to the shore and lands under tide water is regarded as incidental to the sovereignty of the state, and held in trust for the public purposes of navigation and fishery. Lands under tide waters are incapable of cultivation or improvement. They are of great value to the public for the purposes of commerce, navigation, and fishery. Their improvement by individuals, when permitted, is incidental or subordinate to the public use and right. Therefore, the title and the control of them are vested in the sovereign, for the benefit of the whole people.

Shively v. Bowlby, 152 U.S. 1, 57, 14 S. Ct. 548, 569, 38 L. Ed. 331 (1894). “The navigable waters and the soils under them **shall be and remain public highways**; and, being chiefly valuable for the public purposes of commerce, navigation, and fishery, and for the improvements necessary to secure and promote those purposes, shall not be granted away.” *Id.* at 49-50 (emphasis added); *See also, Callahan v. Price*, 26 Idaho 745, 146 P. 732, 735 (1915) (The Salmon River is a navigable stream, and is therefore a public highway belonging to the state, and may be used and disposed of subject only to the rights of the public in such waters . . . no disposition shall interfere with the right to use the navigable lakes, rivers, or streams as public highways over which every citizen has a natural right to carry commerce, whether by ships, boats, or the floating of logs or lumber, having due consideration and reasonable care for the rights of individuals, as well as the public, in the common use of such public highways.); *Ritter v. Standal*, 98 Idaho 446, 450, 566 P.2d 769, 773 (1977) (Riparian owners upon navigable waters have a right to unobstructed access to the navigable waters along the entire length of their waterfront and may enjoin persons obstructing their waterfront.); *S. Idaho Fish & Game Ass'n v. Picabo Livestock, Inc.*, 96 Idaho 360, 363, 528 P.2d 1295, 1298 (1974) (*quoting People v. Mack*, 19 Cal.App. 3d 1040, 97, Cal.Rptr.448 (1971)) (The public's right to use Silver Creek extended not only to fishing but also boating, swimming,

hunting and all recreational purposes . . . ***Members of the public have the right to navigate and to exercise the incidents of navigation in a lawful manner at any point below high water mark of the waters of this state which are capable of being navigated by oar or motor propelled small craft.*** It hardly needs citation of authorities that the rule is that a navigable stream may be used by the public for boating, swimming, fishing, hunting and all recreational purposes) (emphasis added).

It is without question that the Spokane River is navigable and the public has the absolute right of access to use the public highway for navigation and recreation. Regarding reasonable use, this question was addressed by the Supreme Court over 100 years ago:

The question of the reasonable use of a navigable stream, and to what extent the same may be obstructed by persons in exercising such reasonable use, is very fully discussed . . . The general doctrine to be deduced from the authorities we have collated in reference to the use of navigable rivers or public streams as public highways is that each person has an equal right to their reasonable use. What constitutes reasonable use depends upon the circumstances of each particular case; and no positive rule of law can be laid down to define and regulate such use, with entire precision, so various are the subjects and occasions for it, and so diversified the relations of parties therein interested . . . Every person has an undoubted right to use a public highway, whether upon the land or water, for all legitimate purposes of travel and transportation . . .

Cameron Lumber Co. v. Stack-Gibbs Lumber Co., 26 Idaho 626, 144 P. 1114, 1121 (1914).

Every member of the public, riparian owner or not, has the right to free and reasonable use of the navigable streams of this state, including the Spokane River. No person is guaranteed perpetually peaceful or perfect use according to his or her own definition of what that may be. Only “free and reasonable use” is contemplated.

Although many complain about sharing the river and long for the days of unfettered and uncrowded summer weekends, that is not the nature of our navigable waterways. Navigable rivers are designated as public highways, congested though they may be, they are highways nonetheless. Similarly, IDL has no jurisdiction over boating safety, legacy contamination, no-wake zones, towing regulations, or speed limits. IDL cannot act outside of the boundaries of its statutory authority and declines any invitation to do so.

IDL has no authority to restrict the public from accessing the water and doing so would violate its statutory duties. IDL has no authority to issue a moratorium on encroachment permit applications, or order a “carrying capacity” study. IDL has no standard that dictates how much

traffic a navigational river can support, and there is no standard that limits the number of slips on a community dock outside of the existing square footage to shoreline length ratio. IDL has no jurisdiction over boating safety, historical mining contamination, no-wake zones, towing regulations, boater education, or speed limits.

Kootenai County is the authority charged with regulating the operation of vessels and swimming on public waters within the county, including the Spokane River. Kootenai County regulations provide basic boating rules including speed limits, no wake zones, restricted entry zones, noise control, towing restrictions, and all other methods of operating boats in the water—all of which were echoed as concerns surrounding this Application.

IDL is required to evaluate all applications and balance the riparian rights of the owner, the right of the public to recreate and navigate on navigable rivers, and balance the benefits that would be derived from the proposed encroachment and weigh them against unknown detrimental effects.

This Application meets all standards for a community dock, and there is no evidence in the record demonstrating such an imbalance of detriments and benefits that would justify denial. No evidence was presented to show the community dock will prevent any member of the public from navigating the river, or impact another's reasonable use. Although the concerns raised by the comments and testimony about congestion are understandable, IDL's ability to consider and remedy such concerns is constrained by IDL's limited authority. Without evidence of a detriment, the navigational, economic, and recreational benefits of this Community Dock weigh in favor of granting the Application.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, IT IS HEREBY ORDERED that the Encroachment Permit Application L-95-S-6181 is **APPROVED**.

This is a final order of the agency. Pursuant to Idaho Code § 58-1306(c) and IDAPA 20.03.04.030.09, the Applicant or any aggrieved party who appeared at the hearing has a right to have the proceedings and Final Order reviewed by the district court in the county where the encroachment is proposed by filing a notice of appeal within thirty (30) days from the date of this Final Order. The filing of a petition for judicial review does not itself stay the effectiveness or enforcement of this Final Order under appeal pursuant to Idaho Code § 67-5274.

IT IS SO ORDERED.

DATED this 12th day of December, 2025.

IDAHO DEPARTMENT OF LANDS

A handwritten signature in blue ink, appearing to read "Dustin T. Miller", is written over a horizontal line.

DUSTIN T. MILLER

Director

CERTIFICATE OF MAILING

I hereby certify that on this 17th day of December, 2025, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

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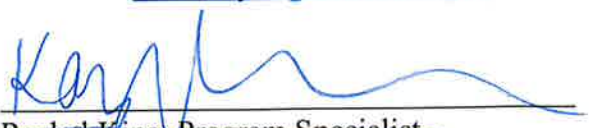
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~~Rachel King, Program Specialist~~
Kayla Dawson, legal assistant