

EASTERN SUPERVISORY AREA
Idaho Falls Office
3563 Ririe Highway
Idaho Falls, ID 83401
Phone (208) 525-7167
Fax (208) 525-7011
pbrown@idl.idaho.gov



STATE BOARD OF LAND COMMISSIONERS
C. L. "Butch" Otter, Governor
Lawrence E. Denney, Secretary of State
Lawrence G. Wasden, Attorney General
Brandon Woolf, State Controller
Sherri Ybarra, Sup't of Public Instruction

RECEIVED COPY
SEP 25 2017

Department of Water Resources
Eastern Region

September 21, 2017

Mr. Adam Nebeker
1750 Kershaw
Ogden, UT 84401

SUBJECT: Notice of Resolution, Permit Revocation, and Easement Forfeiture
Encroachment permit No. L-11-S-152
Easement No. 5693

Dear Mr. Nebeker:

This letter serves to provide notice that you have adequately addressed the noncompliances identified in the Notice of Noncompliance, Proposed Permit Revocation, and Easement Forfeiture dated March 23, 2016.

On May 16, 2016, at our meeting, you confirmed that you had removed the flexible pipe portion of your water intake system. Then on March 12, 2017, IDL received your photos showing that you had removed the remaining pipe and pump from the state owned bed of Bear Lake. Thank you for your cooperation to resolve this matter in a timely manner.

Now that you have removed the encroachment, there is no longer a need for Encroachment Permit No. L-11-S-152, and that permit is hereby revoked. Also, please note, that in accordance with IDL's Notice of Noncompliance issued on May 23, 2016, Easement No. 5693 has been terminated.

Should you wish to place an encroachment in, on or above the beds of Bear Lake in the future, you may apply for a new encroachment permit. If you have any questions regarding this matter feel free to contact me or Gary Billman at (208) 525-7167.

Sincerely,

Patrick A. Brown
Area Manager

cc: Idaho Department of Water Resources
Idaho Department of Parks and Recreation
Office of the Attorney General

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May 31, 2016

RECEIVED
JUN 03 2016

CERTIFIED MAIL

Mr. Adam Nebeker
1750 Kershaw
Ogden, UT 84401

Department of Water Resources
Eastern Region

SUBJECT: Notice of Noncompliance, Proposed Permit Revocation, and Easement Forfeiture
Encroachment permit No. L-11-S-152
Easement No. 5693

Dear Mr. Nebeker:

Thank you for meeting with me and Gary Billman on May 16. Also attending our meeting was your attorney, T. J. Budge, and, by conference call from our Boise Office, Eric Wilson, Andrew Smyth, Angela Kaufman, and Morgan Minton.

As we discussed at our meeting, there is really no way to modify the encroachment permit (L-11-S-152) issued to your father in 1993 and the only viable path forward is for you to submit a completely new encroachment permit application and application for easement.

You indicated at our meeting that you had already removed the flexible pipe portion of your water intake system to a location above the high water elevation of 5,923.65 feet – this relieves the Department's main concern, that of public safety, as we enter the 2016 recreational season on Bear Lake. You also indicated that the only portion of your system remaining in place below the high water elevation was approximately 900 feet of buried pipeline that is mostly above the predicted high water level of the lake this year.

The basis for revoking Encroachment Permit L-11-S-152 and the forfeiture of Easement 5693 have not changed from those laid out in my March 23, 2016 letter. The new deadline for removal of all portions of your water intake system remaining below the high water elevation is **June 30, 2016**.

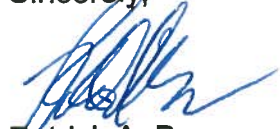
As we discussed, the Department will entertain an application for a Land Use Permit to authorize the use of the remaining buried portion of your water intake system in 2016. Please submit a written request for a Land Use Permit no later than June 17, 2016 that includes drawings showing the location of the remaining buried portion of your system. If a Land Use Permit is issued it will include a new deadline for removal of all remaining portions of your system it authorizes.

"Trusted Stewards of Idaho's Resources, From Main Street to Mountaintop"

Adam Nebeker
May 31, 2016
Page 2

If you have any questions regarding this matter feel free to contact me or Gary Billman at 208-525-7167.

Sincerely,



Patrick A. Brown
Area Manager

cc: IDWR
IDPR
Bureau
Legal

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RECEIVED

MAR 24 2016

Department of Water Resources
Eastern Region

CERTIFIED MAIL

7013 3020 0000 6609 8148

March 23, 2016

Mr. Adam Nebeker
1750 Kershaw
Ogden, UT 84401

SUBJECT: Notice of Noncompliance, Proposed Permit Revocation, and Easement Forfeiture
Encroachment permit No. L-11-S-152
Easement No. 5693

Dear Mr. Nebeker:

This notice is being sent pursuant to IDAPA 20.03.04.080.02 and is in response to the email and letter you sent in behalf of your mother, Mrs. Conrad H. Nebeker, on March 14, 2016. After reviewing the proposed corrective actions and the permit and easement associated with the water intake line issued to your father, IDL has determined that the proposals will not bring the pipeline into compliance with applicable laws, rules, and the terms of the existing Encroachment Permit (No. L-11-S-152) ("Permit") and easement (No. 5693). This letter serves to provide notice that:

1. As set forth in more detail below, the water intake line is in noncompliance with the encroachment permit, is a documented safety hazard, and must be removed.
2. Due to the noncompliance and the stated refusal to comply with the terms of encroachment permit number L-11-S-152, issued to Mr. Conrad H. Nebeker on November 24, 1993, the Idaho Department of Lands (IDL) is proposing to revoke encroachment permit L-11-S-152.
3. Easement number 5693 issued to Mr. Conrad H. Nebeker on December 8, 1993, is forfeited.

Proposed Permit Revocation

The water intake line was not constructed as authorized and required by the Permit. Encroachment Permit L-11-S-152 granted permission to "excavate 1,600' long trench and install and bury a one-foot diameter water intake line," as described and requested in the permit application. The Permit also contained several conditions or requirements that have not been followed:

- Term 2 of the permit provides in applicable part, "[c]onstruction will follow details and specifications shown on the approved drawings and data provided by the applicant."
- Term 10 provides that "[t]he permittee shall maintain the structure or work authorized herein in a good and safe condition and in accordance with the plans and drawings attached hereto."
- Term 11 provides that "[t]his permit is contingent upon keeping the associated easement current and in good standing."

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- Term 16 provides that, “[a]ll construction shall be completed in accordance with descriptions and methods provided unless otherwise specified. Any changes shall be approved in writing by the department prior to construction.”

During the course of the inspection conducted on August 13, 2015, Mr. Gary Billman, IDL Senior Resource Specialist, observed that the water intake line was floating at the surface of the water and not buried as authorized and required by the Permit. IDL has not approved this floating water intake line at this location, and it is contrary to the Permit. In addition, a floating water line at this location poses a clear threat to navigation and public safety. Attached is a copy of the Boating Accident Report filed on or about August 10, 2015, with the Idaho Department of Parks and Recreation and Bear Lake County Sheriff, which details the damage to a boat that struck, the water line.

In your letter, you stated, “[h]aving researched what it may take to comply with the original 1992 permit, it is prohibitively expensive and technically difficult given the constant flux and shallow nature of the North end of Bear Lake.” Given this statement, and the noncompliances identified above, this letter serves to provide notice that, in accordance with IDAPA 20.03.04.080.02, IDL is proposing to revoke encroachment permit L-11-S-152 effective May 1, 2016. The waterline and all associated structures must be removed from below the Ordinary High Water Mark of Bear Lake as soon as practical, but no later than **May 1, 2016**.

Due to the nature and seriousness of the noncompliance and the hazard presented by the floating water line, if the line and associated structures are not removed by May 1, 2016, IDL will seek immediate injunctive relief to remove the water line and associated structures pursuant to Idaho Code § 58-1308(1) and IDAPA 200.03.04.05. IDL will also initiate a formal administrative action to revoke the Permit under IDAPA 20.03.04.080.07. In addition, IDL may also pursue civil penalties pursuant to Idaho Code § 58-1308(1) and (2).

To avoid revocation, you may:

1. Request an informal settlement meeting with IDL. Such request must be made in writing and received by the close of business on May 1, 2016. In response, IDL will hold an informal meeting pursuant to IDAPA 20.03.04.080.03.
2. Request a formal administrative hearing. Such request must be made in writing and received by the close of business on May 1, 2016. If a request is timely made, IDL will hold an administrative contested case hearing subject to the provisions of Title 67, Chapter 52, Idaho Code pursuant to IDAPA 20.03.04.080.07.a.

Failure to request an informal settlement meeting or a formal administrative hearing will result in the revocation of the encroachment permit. If the permit is revoked, you will be able to apply for another encroachment permit by submitting an application, which would be processed in accordance with Title 58, Chapter 13, Idaho Code, and IDAPA 20.03.04.000 *et seq.*

Easement Forfeiture/Termination

Under Easement 5693, the State of Idaho granted an easement to Conrad Nebeker “for the purpose of constructing using and maintaining a buried water pipeline...” The easement further provides that , “[i]f the waterline for which such easement has been granted is not completed within five (5) years after the date of issuance of this easement the Grantor shall have the right to declare such easement

forfeited." In addition, IDAPA 20.03.09.060.01 states, "The provisions of Section 58-603, Idaho Code relating to rights-of-way apply to all easements over state-owned submerged and formerly submerged lands." Idaho Code § 58-603 states in applicable part, "...if the tracks or works upon such lands for which such right of way has been granted are not completed within five (5) years after such right of way has been granted, the state land board shall have the right to declare such rights of way forfeited." Since the water intake line was not buried within the five years of the issuance of the easement, notice is hereby provided that Easement No. 5693 is forfeited.

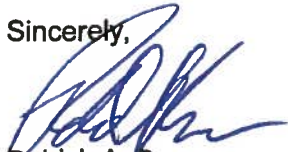
Moreover, the easement provides that

[i]t is understood and agreed that the waterline is to be constructed and maintained in such a manner that will not obstruct or hinder or affect navigation, recreation, or other authorized and customary use of Bear Lake. The State Board of Land Commissioners reserves the right to terminate this easement for failure to construct and maintain the waterline as herein provided, upon thirty (30) days written notice to the Grantee.

The waterline has not been constructed and maintained in accordance with the easement. In addition, the waterline constitutes an obstruction or hindrance to navigation and recreation. Therefore, you are hereby given notice that the easement will be terminated effective thirty (30) days from the date of this letter.

If you have any questions regarding this matter feel free to contact me or Gary Billman at 208-525-7167.

Sincerely,



Patrick A. Brown
Area Manager

Enclosure: Boating Accident Report

cc: IDWR
IDPR
Legal

Aug. 10. 2015 2:43PM

Bear Lake Co. Sheriff

No. 7887 P.



IDAHO DEPARTMENT OF PARKS AND RECREATION
PO BOX 83720
BOISE ID 83720-0085
208-334-4199



The operator of any vessel involved in a collision, accident or other casualty resulting in death, injury or property damage in excess of \$500 must file a Boating Accident Report (67-7027, Idaho Code). Reports in cases of death, incapacitating injury or disappearance must be submitted within 48 hours. Reports in other cases must be submitted within 10 days. All reports shall be submitted to the sheriff of the county in which the accident occurred, and a copy shall be readily transmitted by the sheriff to the State Boating Enforcement Coordinator, Idaho Department of Parks and Recreation.

COMPLETE ALL BLOCKS (Indicate Those Not Applicable by "NA")							
ACCIDENT DATA							
Date of Accident 8-9-2015		Time 3:50 AM		Name of Body of Water BEAR LAKE		Location (Give location precisely) INDIAN CREEK / N.E. SHORELINE	
No of Vessels Involved ONE		Nearest City or Town		County		State ID Zip Code	
Weather (check if applicable) ☒ Clear ☐ Rain ☐ Cloudy ☐ Snow ☐ Fog ☐ Hazy		Water Conditions ☒ Calm (Waves less than 6") ☐ Choppy (Waves 6" to 2') ☐ Rough (Waves 2' to 6') ☐ Very Rough (Greater than 6') ☐ Strong Current		Temperature (estimate) Air 85 °F. Water 68.7 °F.		Wind ☒ None ☐ Light (0-6 mph) ☐ Moderate (7-14 mph) ☐ Strong (15-25 mph) ☐ Storm (Over 25 mph)	
						Visibility CLEAR ☒ Day ☐ Night ☐ Good ☐ Good ☐ Fair ☐ Fair ☐ Poor ☐ Poor	
Name of Operator TOM TEMMERMAN				Operator Address City HOLIDAY State UT Zip 84117			
Operator Telephone No. (801) 277 0784		Date of Birth (Mo., Day, Yr.) 03-03-56		Operator's Experience ☐ None ☐ Under 100 Hours ☒ Over 100 Hours		Instruction in Boating Safety ☐ State Course ☐ US Power Squadron ☐ USCG Auxiliary ☐ American Red Cross ☒ None	
☒ Male ☐ Female		Insurance Co. TRUST CO.					
Name of Owner TOM TEMMERMAN				Owner Address City HOLIDAY State UT Zip 84117			
Owner Telephone No. (801) 277 0784		No. of People on Board SIX		No. of People Being Towed TWO		Rented Boat ☐ Yes ☒ No	
BOAT NO. 1 (This Vessel)							
Boat Registration or Documentation No. UT 0146 DG		State UT		Hull Identification No. 6LF 01151076		Boat Name None	
Boat Manufacturer GULFSTREAM		Length 19'		Model OPEN		Year Built 1976	
Type of Boat ☒ Open Motorboat ☐ Cabin Motorboat ☐ Auxiliary Sail ☐ Sail (Only) ☐ Rowboat ☐ Canoe/Kayak ☐ Personal Watercraft ☐ Pontoon Boat ☐ Houseboat ☐ Other (Specify)		Hull Material ☐ Wood ☐ Aluminum ☐ Steel ☒ Fiberglass ☐ Rubber/Vinyl/Canvas ☐ Rigid Hull Inflatable ☐ Other (Specify)		Engine ☐ Outboard ☐ Inboard ☒ Inboard-Sterndrive (VO) ☐ Airboat		Propulsion ☒ Propeller ☐ Water Jet ☐ Air Thrust ☐ Manual ☐ Sail	
						Personal Flotation Devices (PFDs) Was the boat adequately equipped with Coast Guard approved PFDs? (Life Jackets) ☒ Yes ☐ No Were PFDs accessible? ☒ Yes ☐ No	
				Fuel ☒ Gasoline ☐ Diesel ☐ Electric		No. of Engines ONE Total Horsepower 190	
						Fire Extinguishers On Board? ☒ Yes ☐ No Used? ☐ Yes ☒ No	
Operation at Time of Accident (check all applicable) ☒ Cruising ☐ Changing Direction ☐ Changing Speed ☐ Drifting ☒ Towing ☐ Being Towed ☐ Rowing/Paddling ☐ Sailing ☐ Launching ☐ Docking/Undocking ☐ At Anchor ☐ Tied to dock/Moored ☐ Other (Specify)		Activity at Time of Accident (check any if applicable) ☐ Fishing ☐ Fishing Tournament ☐ Hunting ☐ Swimming/Diving ☐ Making Repairs ☒ Waterskiing/Tubing ☐ Racing ☐ Whitewater Sports ☐ Fueling ☐ Starting Engine ☐ Non-Recreational ☐ Other (Specify)		Type of Accident (check all applicable) ☐ Grounding ☐ Capsizing ☐ Flooding/Swamping ☐ Sinking ☐ Fire or Explosion (Fuel) ☐ Fire or Explosion (Other) ☐ Skier Mishap ☐ Collision With Vessel ☒ Collision With Fixed Object ☐ Falls Overboard ☐ Falls In Boat ☐ Struck by Boat ☐ Struck by Motor/Propeller ☒ Struck Submerged Object ☐ Hit and Run ☐ Other (Specify)		What Contributed to Accident? (check all applicable) ☐ Weather ☐ Excessive Speed ☐ Improper Lookout ☐ Restricted Vision ☐ Overloading ☐ Improper Loading ☐ Hazardous Waters ☐ Alcohol Use ☐ Drug Use ☐ Hull Failure ☐ Machinery Failure ☐ Equipment Failure ☐ Operator Inexperience ☐ Operator Inattention ☐ Congested Waters ☐ Passenger/Skier Behavior ☒ Other (Specify)	
Estimated Speed						UN MAILED MANMADE	

DECEASED (If More Than 2 Victims, Attach Additional Forms)			
Name of Victim No. 1		Address of Victim	
		City State Zip	
Date of Birth		Death Caused By	
☐ Male	☐ Female	☐ Drowning ☐ Other (Specify) ☐ Disappearance	
Name of Victim No. 2		Address of Victim	
		City State Zip	
Date of Birth		Death Caused By	
☐ Male	☐ Female	☐ Drowning ☐ Other (Specify) ☐ Disappearance	
INJURED (If More Than 2 Injuries, Attach Additional Forms)			
Name of Victim No. 1		Address of Victim	
		City State Zip	
Date of Birth		Describe Injury	
Medical Treatment Beyond First Aid?			
☐ Yes ☐ No			
Admitted to Hospital?			
☐ Yes ☐ No			
Was PFD Worn?		As A Result of Accident?	
☐ Yes ☐ No		☐ Yes ☐ No	
Prior to Accident?		Was It Inflatable?	
☐ Yes ☐ No		☐ Yes ☐ No	
Name of Victim No. 2		Address of Victim	
		City State Zip	
Date of Birth		Describe Injury	
Medical Treatment Beyond First Aid?			
☐ Yes ☐ No			
Admitted to Hospital?			
☐ Yes ☐ No			
Was PFD Worn?		As A Result of Accident?	
☐ Yes ☐ No		☐ Yes ☐ No	
Prior to Accident?		Was It Inflatable?	
☐ Yes ☐ No		☐ Yes ☐ No	
BOAT No. 2 (If More Than 2 Vessels, Attach Additional Identifying Information)			
Name of Operator		Operator Address	
		City State Zip	
Operator Telephone No.		Boat Registration or Documentation No.	
()		State	
Name of Owner		Owner Address	
Owner Telephone No. ()		City State Zip	
PROPERTY DAMAGE			
Estimated Amount			
This boat and contents: \$ 2,000.00 ~~MINIMUM~~ Other boat(s) and contents: \$ Other property: \$			
Describe Property Damage			
WITNESSES NOT ON THIS VESSEL			
Name	Address		Telephone No.
	City State Zip		()
Name	Address		Telephone No.
	City State Zip		()
PERSON COMPLETING REPORT			
Name	Address		Telephone No.
RYAN LARSEN	City 700 HWY 36 OVED State ID Zip 83254		(208) 339 9518
Signature	Qualification		Date Submitted
	☐ Operator ☐ Owner ☒ Other (Specify) MARINE BOAT		8/10/15
ACCIDENT DESCRIPTION			
DESCRIBE WHAT HAPPENED. (Sequence of events. Include failure of equipment. Include a diagram if needed. Continue on additional sheets if necessary. Include any information regarding the involvement of alcohol and/or drugs in causing or contributing to the accident. Include any descriptive information about the use of PFDs.) BOAT WAS NORTH BOUND WITH SHORELINE ON STARBOARD SIDE. OPERATOR SAW AN ORANGE LIFE JACKET FLOATING ON THE WATER, THOUGHT IT WAS LOST OFF ANOTHER VESSEL. CONTINUED NORTH & STRUCK AN UNMARKED FLOATING SUMP LINE. OPERATOR REPEATEDLY HEARING A LOUD BELL, & LOST THE OUTDRIVE. PIPE WAS MARKED BY 3. LIFE JACKET (PFD) TIED TO THE END OF THE LINE. PICTURES INCLUDED.			
FOR IDPR USE ONLY			
Causes Based On (Check One)			
☐ This report ☐ Investigation ☐ Investigation and this report ☐ Other (Specify)			
Name of Reviewing Officer		Date Received	
		☐ Recreational ☐ Non-Reportable ☐ Commercial	

