BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION	)	
TO ALTER A STREAM CHANNEL	)	
NO. S79-20016 IN THE NAME OF	)	**FINAL CONTESTED**
DEER CREEK, LLC	)	**CASE ORDER**
	)	

The Director of the Idaho Department of Water Resources ("IDWR") reviewed the above referenced application for a permit to alter the channel of the Salmon River, reviewed the official file and held a pre-hearing conference on April 8, 2009. The Director reviewed the pleadings filed by the party opposing the Final Order issued September 22, 2008 and the response pleadings filed by the Applicant. At the pre-hearing conference the parties orally agreed and stipulated that no contested case hearing was needed as there was no additional evidence to introduce and that the record was appropriate to submit to the Director for a decision.

After considering the information described above, the Director finds, concludes, and orders as follows:

FINDINGS OF FACT

1. The proposed floating dock is secured by cable anchors located both above and below the ordinary high water marks.

2. Installation and removal of the proposed dock will not result in significant disturbance of the streambed if: (1) The dock is installed or removed when the Salmon River is free of debris, and (2) Motorized, mechanical equipment used for installation and removal is driven by wheels or tracks, and the wheels or tracks do not spin or dig into the streambed below the water surface.

3. The proposed portable dock will not impede boating traffic on the Salmon River.

4. The proposed portable boat dock will not harm or impede passage of fish in the Salmon River.

5. Although the floating dock will be located over and on state property, the dock will not restrict use of nearby public beaches.

6. Comments were received from recreational users of the Salmon River, some objecting to the floating dock as aesthetic distractions and some advocating for installation of the floating dock as inconsequential to the aesthetic values of the area.

7. The Director held a public hearing on August 14, 2008 to solicit testimony from the public before issuing a decision. The Director found that any actual alteration of the stream channel would not significantly change or affect the aesthetic values of the area. The public hearing was not a contested case hearing as described by Idaho Code § 42-3805 and Idaho Code § 42-1701A.

8. The Director issued a Final Order dated September 22, 2008 approving the application to alter a stream channel no. S79-20016 subject to conditions.

9. Idaho Rivers United (IRU) filed a *Protest and Petition for Contested Case Hearing* on October 9, 2008 objecting to the Director's Final Order.

10. The Applicant, Deer Creek LLC, responded by filing a Motion to Dismiss, or in the Alternative, Motion for Summary Judgment on October 23, 2008. Deer Creek LLC filed a brief in support of its motion on January 21, 2009.

11. The Director held a pre-hearing conference on April 8, 2009 during which the parties orally agreed and stipulated that no hearing was needed as there was no additional evidence to introduce and that the record as it stands was appropriate to submit to the Director for a decision.

CONCLUSIONS OF LAW

1. Idaho Code § 42-3804 states that "the director" of IDWR shall "determine the likely effect of the proposed stream channel alteration upon the fish and wildlife habitat, aquatic life, recreation, aesthetic beauty, and water quality values of the stream."

2. Idaho Code § 42-3802(b) defines the word "alter."

> "Alter" means to obstruct, diminish, destroy, alter, modify, relocate, or change the natural existing shape or direction of water flow of any stream channel within or below the mean high watermark thereof.

3. In this case, the disturbance to the bed and banks is only caused by the installation and removal of the boat dock, the placement of the portable anchors on the bed of the river, and any obstruction to the flow of the Salmon River caused by the proposed portable boat dock.

4. No new or additional evidence was presented by either party to the Director since the Final Order was issued on September 22, 2008.

5. The presence of a floating object on top of the water is not an "alteration" of the stream channel unless it obstructs, diminishes, destroys, alters, modifies, relocates, or changes the "natural existing shape or direction of water flow" of the Salmon River channel "within or below the mean high watermark . . .." The presence of the proposed floating dock will not alter the stream channel as described above.

6. The small stream channel alterations caused by the proposed boat dock will have no significant effect upon fish and wildlife habitat, aquatic life, recreation, aesthetic beauty, and water qualify values of the stream.

ORDER

IT IS HEREBY ORDERED that application to alter a stream channel no. S79-20016 is **Approved**, subject to the following conditions:

This is a permit to anchor two 29' by 6'6" floating components that form a "tee" shaped dock with portable precast concrete anchors below the ordinary high water mark of the Salmon River, within Section 27, Township 31 North, Range 03 West, Lewis County, Idaho. This permit strictly prohibits any alteration or modification to the approved design.

Failure to adhere to the conditions as set forth herein can result in legal action as provided for in section 42-3809, Idaho Code. The project is subject to the following Minimum Standards, Special, and General Conditions.

MINIMUM STANDARDS:

(These standards are established in the Administrative Rules of the Idaho Water Resource Board, Stream Channel Alteration Rules, IDAPA 37 Title 03 Chapter 07 dated July 1, 1993, and are enclosed with this permit.)

Rule 56 - Construction Procedures

SPECIAL CONDITIONS:

[1] All construction shall be completed in accordance with the descriptions & methods on the application.

[2] This permit does not constitute a concurrent permit from Idaho Department of Lands. If required, the permit holder must seek and obtain independent approval from the Idaho Department of Lands.

[3] Structures shall be removed from the stream channel during winter and spring seasons (December 21 through June 21). Structures shall also be removed from the stream channel during high flows or during debris flow events (ice, wood, etc.) within designated season of use.

If structure is damaged or breaks free during a high flow or debris flow event, this permit shall immediately be voided and structure may not be reinstalled.

[4] Permitted floating dock is for the use of the residents of property owner and guests and shall not be used to support any commercial enterprise.

[5] Permittee is responsible for all work done by any contractor and shall ensure any contractor who performs the work is informed of and follows all the terms and conditions of this authorization.

[6] Applicant must use care to minimize disturbance of bank when installing and removing dock.

[7] Motorized, mechanical equipment used for installation and removal must be driven by wheels or tracks, and the wheels or track shall not spin or dig into the streambed below the water surface.

[8] This permit shall expire December 31, 2014.

GENERAL CONDITIONS:

1. This permit does not constitute any of the following:
a. An easement or right-of-way to trespass or work upon property belonging to others.
b. Other approval that may be required by State or Federal Government, unless specifically stated in the special conditions above.
c. Responsibility of the Department of Water Resources for damage to adjacent properties due to work done.
d. Compliance with the Federal Flood Insurance Program, FEMA regulations or approval of the local Planning and Zoning authority.

2. The permit holder or operator must have a copy of this permit at the alteration site, available for inspection at all times.

3. The Department of Water Resources may cancel this permit at any time that it determines such action is necessary to minimize adverse impact on the stream channel.

Conditions and construction procedures approved under this permit may not coincide with the proposal as submitted. Failure to adhere to conditions as set forth herein can result in legal action as provided for in Section 42-3809, Idaho Code.

Dated this 28th day of May, 2009.

David R. Tuthill, Jr.
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29th day of May, 2009, a true and correct copy of the above and foregoing documents described below were served on the following by placing a copy of the same in the United States mail, postage prepaid and properly addressed to the following:

Document(s) Served: Final Contested Case Order

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