

1 David A. Bricklin, ISB No. 8565  
 bricklin@bnd-law.com  
 2 Bryan Telegin, WSBA No. 46686  
 telegin@bnd-law.com  
 3 Zachary K. Griefen, WSBA No. 48608  
 griefen@bnd-law.com  
 4 Bricklin & Newman, LLP  
 5 1424 Fourth Avenue, Suite 500  
 Seattle, WA 98154  
 6 Telephone: (206) 264-8600  
 7 Facsimile: (206) 264-9300  
 Attorneys for Plaintiffs

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 10 IN THE UNITED STATES DISTRICT COURT  
 11 FOR THE DISTRICT OF IDAHO  
 CENTRAL DIVISION

12 SNAKE RIVER WATERKEEPER,

13  
 14 Plaintiff,

NO. 3:20-cv-00398-CWD

15 v.

CONSENT DECREE

16 IDAHO DEPARTMENT OF  
 CORRECTION; JOSH TEWALT, its  
 17 Director; JEFF ZMUDA, its Deputy  
 Director; CHAD PAGE, its Chief of  
 18 Prisons; and DR. DAVID MCCLUSKY;  
 19 DODDS HAYDEN, and DR. KAREN  
 NEILL, its Board Members,

20  
 21 Defendants.

22 WHEREAS, Plaintiff Snake River Waterkeeper (“Waterkeeper”) is a regional, nonprofit  
 environmental organization;

23  
 24 WHEREAS, the Idaho Department of Correction is an agency of the State of Idaho and owns  
 and operates the Northern Idaho Correctional Institution located at 236 Radar Road in Cottonwood,  
 25 Idaho (the “Facility”);

26

1 WHEREAS, National Pollutant Discharge Elimination System (“NPDES”) Permit No.  
2 ID0025887 (the “Permit”) authorizes the Facility to discharge pollutants to waters of the United States  
and sets out terms and conditions with which the Facility must comply;

3 WHEREAS, Waterkeeper filed this action on August 13, 2020, against Defendants Idaho  
4 Department of Correction and its individually named officers and board members (collectively,  
“IDOC”), alleging violations of the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 et seq.,  
5 (the “Clean Water Act”) and seeking declaratory and injunctive relief, civil penalties, and attorneys’  
6 fees and costs;

7 WHEREAS, Waterkeeper has alleged that the Facility discharges pollutants into an unnamed  
creek and downstream receiving waters including Lawyer Creek, the Clearwater River, and the Snake  
8 River in excess and/or violation of the terms and conditions set forth in the Permit;

9 WHEREAS, Waterkeeper has also alleged that IDOC has failed to comply with the monitoring  
and reporting requirements set forth in the Permit;

10 WHEREAS, Waterkeeper has specifically alleged in its amended complaint (the “Complaint”)  
and in a letter dated March 9, 2020, sent to IDOC and others (the “Notice Letter”), that IDOC has  
11 violated and continues to violate Section 505 of the Federal Clean Water Act (“CWA” or “Act”), 33  
12 U.S.C. § 1365(a);

13 WHEREAS, Waterkeeper and IDOC (collectively, “the Parties” or individually “Party”) agree  
14 that resolution of this matter without further litigation is in the best interest of the Parties and the  
15 public, and that entry of this Decree is the most appropriate means of resolving this action;

16 WHEREAS, in full and final settlement of the matters alleged in the Complaint, IDOC has  
17 agreed to make certain payments to Waterkeeper, fund a supplemental environmental project, and  
18 implement certain measures described below, that are intended to prevent the discharge of pollutants  
in excess of discharges allowed under the Permit.

19 NOW, THEREFORE, without the trial of any issue of fact or law, without the admission by  
IDOC of any of the facts or violations alleged in the Complaint, upon consent of the Parties, and upon  
20 consideration of the mutual promises contained herein,

21 IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

22 **I. JURISDICTION AND VENUE**

23 1. Jurisdiction over this action is conferred by 28 U.S.C. § 1331 (federal question) and  
24 33 U.S.C. § 1365(a) (Clean Water Act jurisdiction). An actual, justiciable controversy exists between  
25 Plaintiff and Defendant. The requested relief is proper under 28 U.S.C. § 2201, 28 U.S.C. § 2202 and  
26 33 U.S.C. § 1365(a).



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9. During the term of this Decree, Defendant shall copy Waterkeeper on all documents related to Clean Water Act compliance regarding the Facility submitted to the EPA or the Idaho Department of Environmental Quality (including lab reports). Such documents shall be provided to Waterkeeper within ten days of being sent to the agencies.

**IV. SUPPLEMENTAL ENVIRONMENTAL PROJECT**

10. Within ninety days of the Effective Date, Defendant shall make a Supplemental Environmental Project (“SEP”) payment totaling twenty thousand dollars (\$20,000) to the Nez Perce Tribe’s Water Resources Division for the environmental protection and restoration of, or other environmental benefit to, the Snake River Watershed, more specifically to fund water quality assessment and restoration projects within the Lawyer Creek Watershed along the unnamed tributary to Lawyer Creek into which the Facility discharges. Defendant shall notify Waterkeeper in writing when the SEP payment is made and provide a copy of the check.

11. None of the SEP payment shall be disbursed to Waterkeeper.

**V. LITIGATION FEES AND COSTS**

12. Within sixty days of entry of the consent decree, IDOC shall pay twenty-five thousand dollars (\$25,000) to Waterkeeper’s counsel, Bricklin & Newman, LLP for Waterkeeper’s reasonable attorney fees and litigation costs in this matter. This payment shall serve as a full and complete satisfaction of Waterkeeper’s claim for attorneys’ fees and costs incurred in this matter. The litigation fees and costs payment shall be made by a check payable to Bricklin & Newman, LLP, sent to the following address:

Bricklin & Newman, LLP  
c/o Peggy Cahill  
1265 Xenia Street  
Bellingham, WA 98229

**VI. EFFECT OF DECREE**

13. The Complaint is dismissed with prejudice. Waterkeeper covenants not to sue and releases and discharges IDOC (and its subsidiaries, officers, directors, shareholders, representatives, assigns, agents, consultants, employees, officers, and attorneys, including those who have held positions in the past) from any and all claims, causes of action, or liability under Section 505 of the Clean Water Act, 33 U.S.C. § 1365, for damages, penalties, fines, injunctive relief, past and future attorney’s fees, past and future costs, or any other claim or relief (i) relating to, resulting from or alleging noncompliance with the Clean Water Act at the Facility occurring prior to the date the Court enters this Decree and for any violations that were alleged, or could have been alleged, in the Complaint. Waterkeeper further covenants not to file a new lawsuit against IDOC during the 18-month term of this Decree, except for the purpose of enforcing the terms of this Decree. Notwithstanding

1 anything to the contrary contained herein, Waterkeeper retains all rights necessary to enforce the terms  
2 of this Decree, including by the filing of a lawsuit.

3 14. IDOC covenants not to sue and releases and discharges Waterkeeper (and its  
4 subsidiaries, officers, directors, trustees, representatives, assigns, agents, consultants, employees,  
5 officers, and attorneys, including those who have held positions in the past) from any and all claims,  
6 liability, demands, penalties, costs, and causes of action of every nature which concern or are  
7 connected with Waterkeeper's investigation of and actions regarding IDOC.

8 15. Neither this Decree, nor terms thereof, nor performance of the terms thereunder by  
9 IDOC shall constitute or be construed as an admission or acknowledgment by IDOC of the factual or  
10 legal assertions contained in this Decree or in the Complaint or in the Notice Letter, and IDOC retains  
11 the right to controvert in any subsequent proceedings, other than proceedings for the purpose of  
12 enforcing this Decree, the validity of the facts or determinations contained in this Decree or the  
13 Complaint or the Notice Letter. Neither this Decree, nor terms thereof, nor performance of the terms  
14 thereunder, shall constitute or be construed as an admission or acknowledgment by IDOC of any  
15 liability, or an admission of violation of any law, by IDOC or by its officers, directors, employees,  
16 agents, successors, or assigns.

17 16. Waterkeeper does not, by consent to the Decree, warrant or aver in any manner that  
18 IDOC's compliance with this Decree will constitute or result in compliance with federal or state law  
19 or regulation. Nothing in this Decree shall be construed to affect or limit in any way the obligation of  
20 IDOC to comply with all federal, state, and local laws and regulations governing any activity required  
21 by this Decree.

## 22 VII. REVIEW AND TERM OF DECREE

23 17. The Parties recognize that, pursuant to 33 U.S.C. § 1365(c)(3), this Consent Decree  
24 cannot be entered until forty-five (45) days after the receipt of a copy of the proposed Consent Decree  
25 by the United States Attorney General and the EPA. Therefore, after the signing of this Decree by the  
26 Parties, the Parties shall jointly inform the Court of the Decree, and Waterkeeper shall serve copies of  
this Decree upon the EPA Administrator, the Regional EPA Administrator, and the Attorney General  
for review, as required by 40 C.F.R. § 135.5.

21 18. Upon the expiration of the forty-five-day review period provided by 33 U.S.C. §  
22 1365(c)(3), the Parties will jointly move the Court for entry of this Decree. This Decree shall take  
23 effect on the date it is entered by this Court (the "Effective Date") and the respective obligations and  
24 rights of the Parties hereunder shall terminate upon the following: (1) both (a) eighteen (18) months  
25 have passed from the Effective Date; and (b) completion of all payment obligations set forth in this  
26 Decree; or (2) the mutual agreement of the Parties. If for any reason the Court should decline to  
approve this Decree in the form presented, the Parties agree to continue negotiations in good faith in  
an attempt to cure any objection raised by the Court to entry of this Decree.

## VIII. MODIFICATION AND ENFORCEMENT OF DECREE

1           19. This Decree may be modified only upon written consent of the Parties and the  
2 approval of the Court.

3           20. This Court shall retain jurisdiction over this matter and allow this action to be  
4 reopened for the purpose of enabling the Parties to this Decree to apply to the Court for any further  
5 order that may be necessary to construe, carry out, enforce compliance and/or resolve any dispute  
6 regarding the terms or conditions of this Decree. If the Court does not agree to retain jurisdiction over  
7 this matter, then this Consent Decree will remain in full force and effect between the Parties, and any  
8 Party may institute a new action in the United States District Court for the District of Idaho concerning  
9 their respective rights and obligations under this Decree.

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**IX. MISCELLANEOUS PROVISIONS**

21. Entire Agreement. This Decree constitutes the entire agreement among the Parties concerning the subject matter hereof and supersedes all previous correspondence, communications, agreements and understandings, whether oral or written, among the Parties.

22. Notices. Any notice, demand, copies of documents and other communications required to be made under the provisions of this Decree (collectively, "Notices") by any Party hereto shall be effective only if in writing and either (a) emailed, (b) personally served, (c) mailed by United States registered or certified mail, return receipt requested, postage prepaid, or (d) sent by a nationally recognized courier service (i.e., Federal Express) for next-day delivery, to be confirmed in writing by such courier. Notices shall be directed to the Parties at their respective addresses set forth below. Notices given in the foregoing manner shall be deemed given when (a) sent via email, (b) actually received or refused by the party to whom sent if delivered by courier, or (c) if mailed, on the day of actual delivery as shown by the addressee's registered or certified mail receipt or at the expiration of three (3) business days after the date of mailing, whichever first occurs.

Notices for Plaintiff shall be sent to:

F.S. "Buck" Ryan  
Executive Director  
Snake River Waterkeeper  
2123 North 16th St.  
Boise, ID 83702  
buck@snakeriverwaterkeeper.org

With a copy to:

Zachary Griefen  
Bryan Telegin  
Bricklin & Newman, LLP  
1424 Fourth Avenue, Suite 500  
Seattle, WA 98101  
griefen@bnd-law.com

1 telegin@bnd-law.com

2 Notices for Defendant shall be sent to:

3 Josh Tewalt, Director  
4 Idaho Department of Correction  
5 1299 N. Orchard Street, Suite 110  
6 Boise, Idaho 83706  
7 jtewalt@idoc.idaho.gov  
8 cc: Ross Castleton, Deputy Chief of Prisons  
9 rcastlet@idoc.idaho.gov

10 With a copy to:

11 Office of the Attorney General  
12 Idaho Department of Correction  
13 1299 N. Orchard Street  
14 Boise, Idaho 83706  
15 oklaas@idoc.idaho.gov  
16 krschind@idoc.idaho.gov

17 Each Party shall promptly notify the other Party of any change in the above-listed contact  
18 information by using the procedures set forth in this paragraph.

19 23. Authorization. Each person signing this Decree represents and warrants that s/he has  
20 been duly authorized to enter into this Decree by the Party on whose behalf it is indicated that the  
21 person is signing.

22 24. Successors and Assigns. This Decree shall be binding upon and inure to the benefit  
23 of the Parties and their respective representatives, heirs, executors, administrators, successors, officers,  
24 directors, agents, attorneys, employees and permitted assigns.

25 25. Interpretation. The provisions contained herein shall not be construed in favor of or  
26 against any Party because that party or its counsel drafted this Decree, but shall be construed as if all  
Parties prepared this Decree, and any rules of construction to the contrary are hereby specifically  
waived. The terms of this Decree were negotiated at arm's length by the Parties hereto.

27 26. Headings. The section and paragraph headings contained in this Decree are for  
reference purposes only and shall not affect in any way the meaning or interpretation of this Decree.

28 27. Counterparts. Facsimile, electronic and scanned signatures shall be deemed to be  
originals for all purposes. Copies of the original Agreement, whether transmitted by facsimile or other  
means, shall be effective. This Agreement may be signed in counterparts.



Snake River Waterkeeper

*[Handwritten signature]*

10/19/2021

By: \_\_\_\_\_  
F.S. "Buck" Ryan  
Snake River Waterkeeper  
2123 N. 16th St.  
Boise, ID 83702

Date: \_\_\_\_\_

Idaho Department of Correction

*[Handwritten signature]*

Date: 10/19/2021

By: \_\_\_\_\_  
Josh Tewalt, Director  
1299 N. Orchard Street, Suite 110  
Boise, Idaho 83706

ENTERED and DATED this 3<sup>rd</sup> day of November, 2021.



DATED: November 03, 2021

*[Handwritten signature]*  
B. Lynn Winmill  
U.S. District Court Judge