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BEFORE THE UNITED STATES DISTRICT COURT

ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

CANDACE STUART-STEPHENS AND
JERROD STUART,

Priest River, Idaho,

Respondents.

Docket No.: CWA-10-2024-0024

**RESPONDENTS' ANSWER TO
COMPLAINT**

Respondents Candace Stuart-Stephens and Jerrod Stuart (collectively "Respondents"), by and through their counsel of record, Parsons Behle & Latimer, hereby answer and allege as follows:

I. STATUTORY AUTHORITY

1.1 Paragraph 1.1 of the Complaint is a recitation of statutory authority and lacks any allegations directed at Respondents; therefore, no response is required. To the extent Respondents must respond, Respondents lack knowledge and information sufficient to admit or deny the allegations contained in Paragraph 1.1 of the Complaint and, therefore, deny the same.

1.2 Paragraph 1.2 of the Complaint is a recitation of statutory authority to which no response is required. To the extent Respondents must respond, Respondents admit only that

Complainant United States Environmental Protection Agency (“EPA” or “Complainant”) proposes the assessment of a civil penalty against Respondents for their alleged violations of the Clean Water Act. Respondents specifically deny Paragraph 1.2 insofar as it alleges that Respondents violated the Clean Water Act. Respondents lack knowledge and information sufficient to admit or deny the remaining allegations contained in Paragraph 1.2 of the Complaint and, therefore, deny the same.

1.3 Paragraph 1.3 of the Complaint is a recitation of statutory authority and lacks any allegations directed at Respondents; therefore, no response is required. To the extent Respondents must respond, Respondents lack knowledge and information sufficient to admit or deny the allegations contained in Paragraph 1.3 of the Complaint and, therefore, deny the same.

II. STATUTORY AND REGULATORY BACKGROUND

2.1 Paragraph 2.1 of the Complaint is a recitation of statutory authority and lacks any allegations directed at Respondents; therefore, no response is required. To the extent Respondents must respond, Respondents lack knowledge and information sufficient to admit or deny the allegations contained in Paragraph 2.1 of the Complaint and, therefore, deny the same.

2.2 Paragraph 2.2 of the Complaint is a recitation of statutory authority and lacks any allegations directed at Respondents; therefore, no response is required. To the extent Respondents must respond, Respondents lack knowledge and information sufficient to admit or deny the allegations contained in Paragraph 2.2 of the Complaint and, therefore, deny the same.

2.3 Paragraph 2.3 of the Complaint is a recitation of statutory authority and lacks any allegations directed at Respondents; therefore, no response is required. To the extent Respondents must respond, Respondents lack knowledge and information sufficient to admit or deny the allegations contained in Paragraph 2.3 of the Complaint and, therefore, deny the same.

2.4 Paragraph 2.4 of the Complaint is a recitation of statutory authority and lacks any allegations directed at Respondents; therefore, no response is required. To the extent Respondents must respond, Respondents lack knowledge and information sufficient to admit or deny the allegations contained in Paragraph 2.4 of the Complaint and, therefore, deny the same.

2.5 Paragraph 2.5 of the Complaint is a recitation of statutory authority and lacks any allegations directed at Respondents; therefore, no response is required. To the extent Respondents must respond, Respondents lack knowledge and information sufficient to admit or deny the allegations contained in Paragraph 2.5 of the Complaint and, therefore, deny the same.

2.6 Paragraph 2.6 of the Complaint is a recitation of statutory authority and lacks any allegations directed at Respondents; therefore, no response is required. To the extent Respondents must respond, Respondents lack knowledge and information sufficient to admit or deny the allegations contained in Paragraph 2.6 of the Complaint and, therefore, deny the same.

2.7 Paragraph 2.7 of the Complaint is a recitation of statutory authority and lacks any allegations directed at Respondents; therefore, no response is required. To the extent Respondents must respond, Respondents lack knowledge and information sufficient to admit or deny the allegations contained in Paragraph 2.7 of the Complaint and, therefore, deny the same.

2.8 Paragraph 2.8 of the Complaint is a recitation of statutory authority and lacks any allegations directed at Respondents; therefore, no response is required. To the extent Respondents must respond, Respondents lack knowledge and information sufficient to admit or deny the allegations contained in Paragraph 2.8 of the Complaint and, therefore, deny the same.

2.9 Paragraph 2.9 of the Complaint is a recitation of statutory authority and lacks any allegations directed at Respondents; therefore, no response is required. To the extent

Respondents must respond, Respondents lack knowledge and information sufficient to admit or deny the allegations contained in Paragraph 2.9 of the Complaint and, therefore, deny the same.

2.10 Paragraph 2.10 of the Complaint is a recitation of statutory authority and lacks any allegations directed at Respondents; therefore, no response is required. To the extent Respondents must respond, Respondents lack knowledge and information sufficient to admit or deny the allegations contained in Paragraph 2.10 of the Complaint and, therefore, deny the same.

2.11 Paragraph 2.11 of the Complaint is a recitation of statutory authority and lacks any allegations directed at Respondents; therefore, no response is required. To the extent Respondents must respond, Respondents lack knowledge and information sufficient to admit or deny the allegations contained in Paragraph 2.11 of the Complaint and, therefore, deny the same.

III. ALLEGATIONS

3.1 Paragraph 3.1 of the Complaint states a legal conclusion to which no response is required. To the extent Respondents must respond, Respondents admit only that they are individuals. Respondents lack knowledge and information sufficient to admit or deny the remaining allegations contained in Paragraph 3.1 of the Complaint and, therefore, deny the same.

3.2 To the extent that Paragraph 3.2 alleges that all of the work activities described therein involved a “discharge” of a pollutant to navigable waters within the meaning of the Clean Water Act, Respondents hereby deny the same. Respondents admit the remainder of Paragraph 3.2.

3.3 Paragraph 3.3 of the Complaint states a legal conclusion to which no response is required. To the extent Respondents must respond, Respondents admit only that the Priest River is connected to the Pend Oreille River downstream of the Albeni Falls Dam. Respondents lack knowledge and information sufficient to admit or deny the remaining allegations contained in Paragraph 3.3 of the Complaint and, therefore, deny the same.

3.4 Paragraph 3.4 of the Complaint states a legal conclusion to which no response is required. To the extent Respondents must respond, Respondents deny the allegations contained in Paragraph 3.4 of the Complaint.

3.5 Respondents admit only that Candace Stuart-Stephens spoke with the Corps by phone on or about March 2022 about the proposed project. Respondents deny the remaining allegations contained in Paragraph 3.5 of the Complaint.

3.6 Respondents admit only that Respondents submitted a JARPA on May 30, 2022, to the Idaho Department of Lands and the U.S. Army Corps of Engineers for a dock on the Priest River which proposed the discharge of fifty linear feet of ten-inch riprap rock and a fifty-foot by seven-foot dock with five eight-foot long steel pilings and that Respondents submitted a separate JARPA for two bridges. Respondents affirmatively allege that the two bridges proposed in the JARPA were meant to be constructed, and ultimately were constructed, in waters that lack a relatively permanent, standing, or continuously flowing connection to the Priest River or any other traditional navigable water. On that basis, Respondents specifically deny that the two bridges referenced in the separate JARPA encroached below the ordinary high water mark of the Priest River. Respondents deny the remaining allegations contained in Paragraph 3.6 of the Complaint.

3.7 Deny.

3.8 In response to Paragraph 3.8 of the Complaint, Respondents admit only that IDL inspected the Site and that, to Respondents' knowledge, IDL made the findings and conclusions stated in Paragraph 3.8. Respondents specifically deny the allegations contained in Paragraph 3.8 insofar as they present IDL's findings and conclusions as true and correct assertions of fact. Respondents deny the remaining allegations contained in Paragraph 3.8 of the Complaint.

3.9 In response to Paragraph 3.9 of the Complaint, Respondents admit only that they received a Cease and Desist letter and Stop Work Order from IDL and that the Cease and Desist letter and Stop Work Order speak for themselves. Respondents specifically deny the allegations contained in Paragraph 3.9 insofar as they present the findings and conclusions in the Cease and Desist letter and Stop Work Order as true and correct assertions of fact. Respondents deny the remaining allegations contained in Paragraph 3.9 of the Complaint.

3.10 Respondents lack knowledge and information sufficient to admit or deny the allegations contained in Paragraph 3.10 of the Complaint and, therefore, deny the same.

3.11 In response to Paragraph 3.11 of the Complaint, Respondents admit only that they received a Notice of Non-Compliance from IDL and that the Notice speaks for itself. Respondents specifically deny the allegations contained in Paragraph 3.11 insofar as they present the findings and conclusions in the Notice as true and correct assertions of fact. Respondents deny the remaining allegations contained in Paragraph 3.11 of the Complaint.

3.12 In response to Paragraph 3.12 of the Complaint, Respondents admit only that they received a Notice of Violation from the Corps and that the Notice speaks for itself. Respondents specifically deny the allegations contained in Paragraph 3.12 insofar as they present the findings and conclusions in the Notice as true and correct assertions of fact. Respondents deny the remaining allegations contained in Paragraph 3.12 of the Complaint.

3.13 In response to Paragraph 3.13 of the Complaint, Respondents admit only that they submitted a written statement in response to the Corps' NOV, that the quoted text contained in Paragraph 3.13 are contained in the written statement, and that the written statement speaks for itself. Respondents specifically deny Paragraph 3.13 insofar as it seeks Respondents' admission

that the work performed by Respondents on the two bridges violated the Clean Water Act. Respondents deny the remaining allegations contained in Paragraph 3.13 of the Complaint.

3.14 In response to Paragraph 3.14 of the Complaint, Respondents admit only that IDL conducted an inspection of the Site on August 26, 2022, and, to Respondents' knowledge, IDL made the findings and conclusions stated in Paragraph 3.14. Respondents specifically deny the allegations contained in Paragraph 3.14 insofar as they present IDL's findings and conclusions as true and correct assertions of fact. Respondents deny the remaining allegations contained in Paragraph 3.14 of the Complaint.

3.15 Paragraph 3.15 of the Complaint lacks allegations against Respondents and, therefore, no response is required. To the extent Respondents must respond, Respondents lack knowledge and information sufficient to admit or deny the allegations contained in Paragraph 3.15 of the Complaint and, therefore, deny the same.

3.16 Paragraph 3.16 of the Complaint lacks allegations against Respondents and, therefore, no response is required. To the extent Respondents must respond, Respondents lack knowledge and information sufficient to admit or deny the allegations contained in Paragraph 3.16 of the Complaint and, therefore, deny the same.

3.17 In response to Paragraph 3.17 of the Complaint, Respondents admit only that EPA conducted an inspection of the Site on October 21, 2022, and, to Respondents' knowledge, EPA made the findings and conclusions stated in Paragraph 3.17. Respondents specifically deny the allegations contained in Paragraph 3.17 insofar as they present EPA's findings and conclusions as true and correct assertions of fact. Respondents deny the remaining allegations contained in Paragraph 3.17 of the Complaint.

3.18 In response to Paragraph 3.18 of the Complaint, Respondents lack knowledge and information sufficient to admit or deny the allegations contained therein and, therefore, deny the same.

3.19 Paragraph 3.19 of the Complaint states a legal conclusion to which no response is required. To the extent Respondents must respond, Respondents deny the allegations contained in Paragraph 3.19 of the Complaint.

3.20 Paragraph 3.20 of the Complaint states a legal conclusion to which no response is required. To the extent Respondents must respond, Respondents deny the allegations contained in Paragraph 3.20 of the Complaint.

3.21 Paragraph 3.21 of the Complaint states a legal conclusion to which no response is required. To the extent Respondents must respond, deny the allegations contained in Paragraph 3.21 of the Complaint.

3.22 Paragraph 3.22 of the Complaint states a legal conclusion to which no response is required. To the extent Respondents must respond, Respondents deny the allegations contained in Paragraph 3.22 of the Complaint.

IV. PROPOSED PENALTY

4.1 Paragraph 4.1 of the Complaint states a legal conclusion to which no response is required. To the extent Respondents must respond, Respondents deny the allegations contained in Paragraph 4.1 of the Complaint.

4.2 Paragraph 4.2 of the Complaint states a legal conclusion to which no response is required. To the extent Respondents must respond, Respondents deny the allegations contained in Paragraph 4.2 of the Complaint.

4.3 Paragraph 4.3 of the Complaint states a legal conclusion to which no response is required. To the extent Respondents must respond, Respondents deny the allegations contained in Paragraph 4.3 of the Complaint.

4.4 Paragraph 4.4 of the Complaint states a legal conclusion to which no response is required. To the extent Respondents must respond, Respondents deny the allegations contained in Paragraph 4.4 of the Complaint.

4.5 Paragraph 4.5 of the Complaint states a legal conclusion to which no response is required. To the extent Respondents must respond, Respondents deny the allegations contained in Paragraph 4.5 of the Complaint.

4.6 Paragraph 4.6 of the Complaint states a legal conclusion to which no response is required. To the extent Respondents must respond, Respondents deny the allegations contained in Paragraph 4.6 of the Complaint.

4.7 In response to Paragraph 4.7 of the Complaint, Respondents admit only that they received a Warning Notice and that the Warning Notice speaks for itself. Respondents specifically deny the allegations contained in Paragraph 4.7 insofar as they present the findings and conclusions in the Warning Notice as true and correct assertions of fact. Respondents deny the remaining allegations contained in Paragraph 4.7 of the Complaint.

4.8 Paragraph 4.8 of the Complaint states a legal conclusion to which no response is required. To the extent Respondents must respond, Respondents deny the allegations contained in Paragraph 4.8 of the Complaint.

4.9 Paragraph 4.9 of the Complaint states a legal conclusion to which no response is required. To the extent Respondents must respond, Respondents deny the allegations contained in Paragraph 4.9 of the Complaint.

4.10 Paragraph 4.10 of the Complaint states a legal conclusion to which no response is required. To the extent Respondents must respond, Respondents deny the allegations contained in Paragraph 4.10 of the Complaint.

4.11 Paragraph 4.11 of the Complaint states a legal conclusion to which no response is required. To the extent Respondents must respond, Respondents admit only that they have not committed any CWA violations. Respondents deny the remaining allegations contained in Paragraph 4.11 of the Complaint.

4.12 Paragraph 4.12 of the Complaint states a legal conclusion to which no response is required. To the extent Respondents must respond, Respondents deny the allegations contained in Paragraph 4.12 of the Complaint.

4.13 Paragraph 4.13 of the Complaint states a legal conclusion to which no response is required. To the extent Respondents must respond, Respondents deny the allegations contained in Paragraph 4.13 of the Complaint.

4.14 Paragraph 4.14 of the Complaint states a legal conclusion to which no response is required. To the extent Respondents must respond, Respondents deny the allegations contained in Paragraph 4.14 of the Complaint.

4.15 Paragraph 4.15 of the Complaint states a legal conclusion to which no response is required. To the extent Respondents must respond, Respondents deny the allegations contained in Paragraph 4.15 of the Complaint.

V. OPPORTUNITY TO REQUEST A HEARING

5.1 Paragraph 5.1 of the Complaint is a recital of Respondents' rights and/or obligations in the above-captioned proceedings and lacks any allegations against Respondents. Therefore, no response is required.

5.2 Paragraph 5.2 of the Complaint is a recital of Respondents' rights and/or obligations in the above-captioned proceedings and lacks any allegations against Respondents. Therefore, no response is required.

5.3 Paragraph 5.3 of the Complaint is a recital of Respondents' rights and/or obligations in the above-captioned proceedings and lacks any allegations against Respondents. Therefore, no response is required.

5.4 Paragraph 5.4 of the Complaint is a recital of Respondents' rights and/or obligations in the above-captioned proceedings and lacks any allegations against Respondents. Therefore, no response is required.

5.5 Paragraph 5.5 of the Complaint is a recital of Respondents' rights and/or obligations in the above-captioned proceedings and lacks any allegations against Respondents. Therefore, no response is required.

VI. FAILURE TO FILE AN ANSWER

6.1 Paragraph 6.1 of the Complaint is a recital of Respondents' rights and/or obligations in the above-captioned proceedings and lacks any allegations against Respondents. Therefore, no response is required.

6.2 Paragraph 6.2 of the Complaint is a recital of Respondents' rights and/or obligations in the above-captioned proceedings and lacks any allegations against Respondents. Therefore, no response is required.

6.3 Paragraph 6.3 of the Complaint is a recital of Respondents' rights and/or obligations in the above-captioned proceedings and lacks any allegations against Respondents. Therefore, no response is required.

VII. INFORMAL SETTLEMENT CONFERENCE

7.1 Paragraph 7.1 of the Complaint is a recital of Respondents’ rights and/or obligations in the above-captioned proceedings and lacks any allegations against Respondents. Therefore, no response is required.

7.2 Paragraph 7.2 of the Complaint is a recital of Respondents’ rights and/or obligations in the above-captioned proceedings and lacks any allegations against Respondents. Therefore, no response is required.

7.3 Paragraph 7.3 of the Complaint is a recital of Respondents’ rights and/or obligations in the above-captioned proceedings and lacks any allegations against Respondents. Therefore, no response is required.

VIII. RESERVATIONS

8.1 Paragraph 8.1 of the Complaint is a recital of Complainant’s reservation of rights. Therefore, no response is required.

IX. AFFIRMATIVE DEFENSES

FIRST DEFENSE

9.1 Complainant EPA lacks jurisdiction over Respondents because some or all of Respondents’ alleged activities did not involve the discharge of pollutants, dredge or fill material from point sources.

SECOND DEFENSE

9.2 Complainant EPA lacks jurisdiction over Respondents because some or all of the alleged point source discharges alleged in the Complaint did not result in a discharge to navigable waters or Waters of the United States within the meaning of the Clean Water Act.

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THIRD DEFENSE

9.3 The allegations asserted by Complainant have not resulted in violations of the Clean Water Act.

FOURTH DEFENSE

9.4 At all times alleged in the Complaint, Respondents acted with good faith, with justification, and pursuant to authority.

FIFTH DEFENSE

9.5 The Complaint fails to state a claim upon which relief can be granted against Respondents.

SIXTH DEFENSE

9.6 The Complaint is barred in whole or in part by the doctrines of waiver, estoppel, and/or laches.

SEVENTH DEFENSE

9.7 The proposed penalty is excessive, inappropriate, and unwarranted, and Complainant has not provided adequate explanation as to how the penalty was calculated.

EIGHTH DEFENSE

9.8 Complainant's allegations are barred by the applicable statute of limitations.

NINTH DEFENSE

9.9 Complainant's allegations are not supported by substantial evidence and are speculative.

TENTH DEFENSE

9.10 Complainant's penalty assessment constitutes an abuse of discretion.

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X. RESERVATION OF RIGHT TO AMEND ANSWER AND ADD AFFIRMATIVE DEFENSES

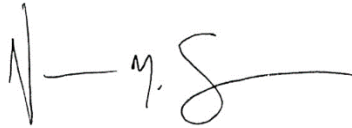
10.1 Respondents reserve the right to amend this Answer and to add further affirmative defenses, including those which may become apparent through discovery and development of this case.

XI. REQUEST FOR HEARING

11.1 Respondents hereby request an administrative hearing on the issues raised by the Complaint and this Answer.

DATED this 29th day of March, 2024.

PARSONS BEHLE & LATIMER

A handwritten signature in black ink, appearing to read "N-M. S.", written over a horizontal line.

Norman M. Semanko
Garrett M. Kitamura
Attorneys for Respondents

CERTIFICATE OF SERVICE

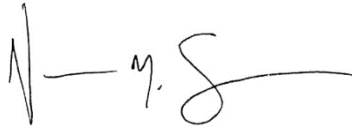
The undersigned certifies that the original **Respondents' Answer to Complaint** in the above-captioned action was delivered via email to:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 10
R10_RHC@epa.gov

Further the undersigned certifies that a true and correct copy of the original **Respondents' Answer to Complaint** was served on Respondents Candace Stuart-Stephens and Jerrod Stuart via email to:

Edward J. Kowalski, Director
Patrick B. Johnson, Assistant Regional Counsel
U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION 10
Alaska Operations Office
222 W. 7th Avenue, No. 19
Anchorage, Alaska 99513
Johnson.Patrick@epa.gov

DATED this 29th day of March, 2024.



Norman M. Semanko
Garrett M. Kitamura