

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION	)	ORDER DENYING PETITIONS FOR
FOR TRANSFER NO. 82640 IN THE	)	RECONSIDERATION, WITHDRAWING
NAME OF CLINTON K. ASTON	)	PRELIMINARY ORDER, AND GRANTING
	)	REQUEST FOR ADDITIONAL HEARING

On August 15, 2018, Clinton K. Aston ("Aston") filed Application for Transfer No. 82640 ("Application 82640") with the Idaho Department of Water Resources ("Department"). Protests were filed by J & F King Farm Inc. ("King Farm"), Shelly & William Spradlin ("Spradlins"), Bob White ("White"), Kevin L. Olson ("Olson"), and Jay Norman Fannesbeck ("Fannesbeck"). The Department conducted an administrative hearing for the contested case on February 26 and 27, 2019, in Preston, Idaho. Olson and White withdrew their protests during the hearing.

The hearing officer issued a *Preliminary Order Approving Transfer* ("Preliminary Order") on April 1, 2019. Pursuant to Rule 730.02.a of the Department's Rules of Procedure (IDAPA 37.01.01), "[a]ny party may file a petition for reconsideration of [a] preliminary order with the hearing officer issuing the order within fourteen (14) days of the service date of [the] order."

On April 15, 2019, Spradlins filed a document ("Spradlin Petition") asking the hearing officer to reconsider the *Preliminary Order*. Also on April 15, 2019, Fannesbeck filed a *Petition for Reconsideration* ("Fannesbeck Petition"). Also on April 15, 2019, Aston filed a *Petition for Reconsideration* ("Aston Petition"). All three of these petitions were timely filed with the hearing officer.

In correspondence to the parties on April 12, 2019, the hearing officer authorized the parties to serve petitions for reconsideration by email. The *Fannesbeck Petition* was not properly served on the other parties. Fannesbeck did not email his petition to the other parties until after the April 15th deadline. On April 23, 2019, Aston filed a *Motion to Dismiss Fannesbeck Petition for Reconsideration*. Fannesbeck filed a timely *Response to Motion* on May 6, 2019.

Rule 302 of the Department's Rules of Procedure (IDAPA 37.01.01) requires petitions to be served on all parties to a contested case. Rule 304 (IDAPA 37.01.01) states that defective pleadings may be returned or dismissed. In this case, the hearing officer notified the parties of the service requirement prior to the April 15th deadline specifically to avoid deficiencies in service. The *Fannesbeck Petition* was not properly served on the other parties. Therefore, the *Fannesbeck Petition* should be dismissed. Even if the *Fannesbeck Petition* were properly served, the arguments raised in the petition would not warrant any change to the *Preliminary Order*. The arguments raised by Fannesbeck are summarized and addressed in this order.

ARGUMENTS IN SPRADLIN PETITION

Spradlins object to Finding of Fact No. 46, which states:

Spradlins purchased their property in 1995. Testimony of Shelly Spradlin. They have two active wells on their property: a domestic well and an irrigation well. Id. Water diverted from the domestic well must be filtered multiple times to remove sand particles from the water. Id. Spradlins had to filter water diverted from their domestic well even before Aston purchased his property in 2004. Id.

According to Spradlins, “there was only one filter associated with [the Spradlin domestic] well prior to Aston’s purchase [2004], now there are 4-5.” *Spradlin Petition* at 2. Finding of Fact No. 46 is consistent with the evidence presented by the Spradlins. Currently, water diverted from the domestic well must be filtered multiple times to remove sand particles from the water. Further, the Spradlins had to filter water diverted from the domestic well prior to 2004. Finding of Fact No. 46 does not attempt to differentiate between the number of filters connected to the system prior to or after 2004. Therefore, no change is warranted.

Spradlins object to Finding of Fact No. 47, which states:

Spradlins have not had any issues diverting the quantity of water needed for domestic use from their domestic well. Id. The primary issue with water from the domestic well is the amount of sand in the water. Id.

Shelly Spradlin asserts that she testified that she did not have a garden last year (2018), that the domestic well has run dry at times, and that the Spradlins ran a line from their irrigation well to the domestic well to provide culinary water when the domestic well went dry. *Spradlin Petition* at 2. Mrs. Spradlin did not testify that her domestic well has ever gone dry or that the Spradlins were forced to run a pipeline from their home to the irrigation well when the domestic well went dry. Mrs. Spradlin did testify that she was not able to have a garden in 2018. However, it was not clear from her testimony whether the decision not to garden was due to a lack of water in the domestic well, too much sand in the diversion system, or for some other reason unrelated to water supply. Mrs. Spradlin testified: “I have noticed that on the days that [the Aston Well is] running, I have to make more trips out to flush out all of my filter systems, otherwise my garden goes without water.” This testimony suggests Mrs. Spradlin’s ability to water her garden is a function of water quality rather than quantity. Mrs. Spradlin offered the following testimony about water quantity:

R Harris (attorney for Aston): You’ve talked a lot about the filter, that it was filtering things, and then you said “chunks.” What specifically is it filtering? Is it sand?

S Spradlin: Rocks, sand, clay, little gravel particles that would plug my sprinklers.

R Harris: When those things are not present, because . . . you've just cleaned the filter, have you ever had an issue with the amount of water that's provided through the filter?

S Spradlin: I wouldn't say that I would notice if there was a reduction in the water, just because it was a 2-inch pipe going to my garden.

R Harris: So, as far as water supply, once the filter was clean you would have adequate water?

S Spradlin: To do what I needed.

Finding of Fact No. 47 is consistent with the testimony offered by Shelly Spradlin at hearing. Therefore, no change is warranted.

Facts Excluded from Preliminary Order

Spradlins raise a concern that certain statements from the hearing were not mentioned in the *Preliminary Order*. "I feel there are many facts [that] have been left out." *Spradlin Petition* at 3. Spradlins raise additional arguments about topics that were not even mentioned in the *Preliminary Order* (errors in the Clearwater Geosciences Report, the number of culverts under a dirt road, horse riding near the Aston property).

Idaho Code § 67-5248 describes the elements that must be included in an order issued by an administrative agency determining the legal rights or interests of one or more parties. It states, in pertinent part:

- (1) An order must be in writing and shall include:
 - (a) A reasoned statement in support of the decision. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts of record supporting the findings.
 - (b) A statement of the available procedures and applicable time limits for seeking reconsideration or other administrative relief.
- (2) Findings of fact must be based exclusively on the evidence in the record of the contested case and on matters officially noticed in that proceeding.

Rule 712 of the Department's Rules of Procedure (IDAPA 37.01.01) includes the same requirements as those listed in Idaho Code § 67-5248.

An order issued by an administrative agency does not need to include every fact contained in the administrative record for the case. It only needs to include facts in support of the decision. It would be unreasonable to expect an order deciding a contested case to include every statement made by every witness or every paragraph from every exhibit. Spradlins incorrectly assume that if a statement made during hearing was not included in the *Preliminary*

Order it was not considered by the hearing officer. The hearing officer considered all of the evidence in the administrative record. The *Preliminary Order* contains only the facts relied on by the hearing officer to reach a decision in this contested case.

Examination of Witnesses

Spradlins assert that the hearing officer “allowed Aston’s attorney to harass & badger our witnesses . . . [t]o the point where a few of them were intimidated to testify.” *Spradlin Petition* at 3. Further, the hearing officer allowed time to be “wasted on cross-examining [Spradlins’] witnesses with matters that had nothing to do with the case.” *Id.* According to Spradlins, Aston’s attorney was allowed to ask extra questions on “matters that had absolutely no involvement in the case” and that the cross examination of Spradlins’ witnesses amounted to a “blatant waste of time.” *Id.* at 4.

In addition to each offering a statement on their own behalf, Spradlins called one witness, Wayne Bingham, to testify at the hearing. Mr. Bingham was the only witness identified by the Spradlins in their pre-hearing disclosures. Therefore, every witness identified by Spradlins prior to the hearing testified at hearing. During the cross-examination of William Spradlin, Shelly Spradlin and Wayne Bingham, Spradlins did not raise a single objection that Aston’s attorney was harassing or badgering the witness. Spradlins did not raise a single objection that any of questions from Aston’s attorney were irrelevant or beyond the scope of the hearing. If Spradlins objected to any of the questions posed by Aston’s attorney, the time to raise such objections was during the hearing, when the questions were presented.

Enforcement of Water Right Limits

Spradlins ask “who is going to make sure that Aston stays honest & irrigates only the 6 acres he was approved for?” and “how can Aston be monitored to honestly pump what he is supposed to & not more as he is [sic] already been pumping more than he is allowed.” *Spradlin Petition* at 1. Spradlins “would like some assurances that [Aston] can not continue to over pump and use more than is allowed.” *Id.* at 4.

In Idaho, diversions are generally monitored through water districts or water measurement districts. The Director of the Department has the authority to create water districts and water measurement districts. See Idaho Code §§ 42-604 and 42-705. A water district can only be created in an area where the subject water rights have been adjudicated. Idaho Code § 42-604. Because ground water rights in the Weston Creek drainage have never been adjudicated, the Department cannot create a water district for ground water rights in the Weston Creek drainage at this time. The Department could, however, create a water measurement district as described in Idaho Code, Title 42, Chapter 7.

If a water measurement district were created for ground water rights in the Weston Creek drainage, the water users in the district would elect a hydrographer to measure all of the diversions within the district. Idaho Code § 42-707. The expenses of the water measurement district, including the salary for the district hydrographer, would be paid by all of the water

users in the district. Idaho Code § 42-711. The water users in the district would also likely be required to install department-approved measuring devices. Idaho Code § 42-701.

Other Arguments

The *Spradlin Petition* includes a number of additional arguments and allegations. None of these warrant a change to the *Preliminary Order*.

ARGUMENTS IN FONNESBECK PETITION

Removal of Authorized Rate from Well #1

Fonnesbeck argues that water right 13-2209 (Permit G-28818) was actually developed with two points of diversion (Well #1 and the Aston Well), each producing roughly 3.00 cfs. Fonnesbeck argues that “[r]emoving 0.62 cfs from Water Right 13-2209 is wrong and injurious to those who have the bonafide rights to the well attached to this license.” *Fonnesbeck Petition* at 1.

Fonnesbeck’s characterization of the *Preliminary Order* is incorrect. The *Preliminary Order* did not “remove” 0.62 cfs from water right 13-2209. Instead, it split the water right to match the deeds provided to the Department. Based on the evidence presented at hearing, Aston has demonstrated ownership of an 87-acre portion of water right 13-2209. 0.62 cfs represents the proportionate share of the authorized diversion rate for water right 13-2209 associated with the 87 acres.

Fonnesbeck’s arguments related to multiple wells does not warrant any change to the *Preliminary Order*. Even if water right 13-2209 was developed using two ground water wells, the license was still limited to 2.87 cfs and 403 irrigated acres. Aston demonstrated ownership of 87 acres under the license and is therefore the owner of an 87/403 portion of the water right. This equates to 0.62 cfs of the authorized diversion rate.

Ownership of Water Right 13-2209

During the hearing, Fonnesbeck attempted to establish the existence of a verbal exchange of water rights (including water right 13-2209) occurring sometime in the mid-1960s. The hearing officer did not recognize the verbal exchange of water rights as a valid transaction, noting that Idaho’s statute of frauds (Idaho Code § 9-503) requires conveyances of real property (including water rights) to be in writing, signed the person conveying the property. *Preliminary Order* at 11-13.

Fonnesbeck now argues that the purported verbal exchange of water rights was a legitimate conveyance based on a theory of part performance of a real estate agreement. Fonnesbeck cites a 2016 Idaho Supreme Court case, *Hoke v. NeYada*, in support of his argument. *Fonnesbeck Petition* at 2.

“Under the doctrine of part performance, when an agreement to convey real property fails to meet the requirements of the Statute of Frauds, the agreement may nevertheless be specifically enforced when the purchaser has partly performed the agreement.” *Hoke v. NeYada, Inc.*, 161 Idaho 450, 453, 387 P.3d 118, 121 (2016); *see also* Idaho Code § 9-504 (“The preceding section [§ 9-503] must not be construed to . . . abridge the power of any court to compel the specific performance of an agreement, in case of part performance thereof.”). “What constitutes part performance must depend upon the particular facts of each case and the sufficiency of particular acts is matter of law.” *Bear Island Water Association, Inc. v. Brown*, 125 Idaho 717, 722, 874 P.2d 528, 533 (1994) (citations omitted).

In this case, Fannesbeck asserts that Lee Schvaneveldt and Norman and Myron Fannesbeck entered into a verbal agreement where Schvaneveldt conveyed his ownership interest in Well #1 and his portion of water right 13-2209 (G-28818) to Norman and Myron Fannesbeck in exchange for Fannesbecks’ ownership interest in the Aston Well and Fannesbecks’ portion of Permit G-29935. If the verbal agreement occurred, it did not take place until after March 1963, when the Idaho Code was changed to require an application for permit to be filed prior to developing a new ground water irrigation right. *See* Ex. 323 at 4 (Myron Fannesbeck asserts that a verbal exchange of water rights took place in 1966). After March 1963, it was no longer possible to develop a ground water irrigation right through only beneficial use.

Permits G-28818 and G-29935 had overlapping places of use. Permit G-28818, as amended, described 132 irrigated acres in the NE ¼ of Section 8, T16S, R38E. Permit G-29935 described 110 irrigated acres in the NWNE, SWNE and SENE of Section 8, T16S, R38E. The Lee Schvaneveldt property was covered by Permits G-28818 and G-29935. These two permits, in combination, represented a single irrigation beneficial use on the Lee Schvaneveldt property.

If Lee Schvaneveldt conveyed his portion of water right 13-2209 (G-28818), including the 87 authorized irrigated acres associated with his property, to Myron and Norman Fannesbeck, he would have been required to dry up 87 acres on his farm to prevent an enlargement of use under his water rights. The 87 irrigated acres on the Lee Schvaneveldt property were not dried up, and continued to be irrigated. If there was an exchange of water rights, Norman and Myron Fannesbeck might have conveyed a portion of their water rights, and the authorization to irrigate at least 87 acres, to Lee Schvaneveldt. The exchange of water rights, however, could not have resulted in the development of or irrigation of any additional acres by Lee Schvaneveldt and the Fannesbecks.

There is evidence supporting part performance of the verbal exchange of ownership interests in the two wells. Fannesbecks and the Bingham family have had exclusive control of Well #1 since the mid-1960s. Exclusive control means payment of annual pumping costs, maintenance costs, and exclusive use of water from the well. Lee Schvaneveldt or his successors in interest, have had exclusive control of the Aston Well since the mid-1960s.

There is no evidence supporting part performance of the verbal exchange of water rights. Lee Schvaneveldt never attempted to change the ownership records for Permit G-29935 (prior to its cancellation) to have Fannesbecks’ names and property removed from the permit. The Fannesbecks did not object when the license for water right 13-2209 (G-28818) included the Lee

Schvaneveldt property. Neither Myron Fannesbeck nor Norman Fannesbeck ever attempted to change the place of use for water right 13-2209 from the Schvaneveldt property to their own property. Fannesbecks never sought to have Lee Schvaneveldt's name removed from the ownership records for water right 13-2209. Similarly, Fannesbeck, who now owns property once owned by Norman and Myron Fannesbeck, has never proposed to move water right 13-2209 to his property, even though Fannesbeck has been involved in contested cases about water right 13-2209 since at least 2003. Further, on June 30, 2005, Fannesbeck and El Ray Balls filed claim 13-7661 pursuant to Idaho Code § 42-248, describing irrigation use on the Fannesbeck property out of the Aston Well. By filing this claim, Fannesbeck seeks to record a beneficial use water right diverted from the Aston Well for irrigation use on the Fannesbeck property, the same right he now argues was conveyed off of the Fannesbeck property through the purported verbal exchange of water rights.

The doctrine of part performance is based on specific actions taken by parties which are consistent with the existence of an agreement. In this case, there has been mostly inaction by the parties to the alleged verbal exchange of water rights. None of the parties to the alleged verbal agreement have taken any action to update their water rights to reflect the alleged agreement. In the absence of specific, meaningful actions by the parties to the alleged verbal agreement, the doctrine of part performance does not apply. The *Preliminary Order* is consistent with the evidence available to the Department at this time.

ARGUMENTS IN ASTON PETITION

Partial Forfeiture of 36 Irrigated Acres in the NWNW of Section 9

Aston claims he was surprised that the issue of partial forfeiture was raised by the hearing officer in the *Preliminary Order*. *Aston Petition* at 5. “[T]he protestants never alleged any . . . partial forfeiture of Aston’s water rights by non-use.” *Id.* Even though Aston acknowledges that the NWNW of Section 9 has not been irrigated since the early 1960s, “Aston was not expecting forfeiture findings and conclusions.” *Id.* at 5, 12.

Aston’s claim of surprise by the forfeiture analysis is not plausible. Based on the evidence presented at hearing, it is highly unlikely that the 36 acres in the NWNW of Section 9 have been irrigated since the 1960s. It should not have come as a surprise that the hearing officer would evaluate partial forfeiture for acres that were last irrigated more than 50 years ago. Further, Aston offered testimonial evidence that the acres in question have been in a crop set-aside program in recent years, presumably as a defense to forfeiture.

The hearing officer determined that the record contains clear and convincing evidence that 36 acres in the NWNW of Section 9, T16S, R38E were not irrigated between 1976 and 1985. Aston does not dispute this determination, but argues that the hearing officer is also required to establish, through clear and convincing evidence, that there are no exceptions or defenses to forfeiture, “even if specific defenses to forfeiture were not argued or asserted at the hearing.” *Aston Petition* at 8. Aston contends that the hearing officer failed to consider many of the defenses to forfeiture set forth in Idaho Code § 42-223. *Id.*

The Idaho Supreme Court has confirmed the Department's jurisdiction to evaluate forfeiture as part of its review of a transfer application:

[T]he director of the Department of Water Resources has jurisdiction to determine the question of abandonment and forfeiture and such is required as a preliminary step to performance of his statutory duty in determining whether or not the proposed transfer would injure other water rights. . . . The director is statutorily required to examine all evidence of whether the proposed transfer will injure other water rights or constitute an enlargement of the original right, and evidence which demonstrates that the right sought to be transferred has been abandoned or forfeited, is probative as to whether that transfer would injure other water rights.

Jenkins v. State, Dep't of Water Resources, 103 Idaho 384, 387, 647 P.2d 1256, 1259 (1982). "The party asserting that a water right has been forfeited by nonuse for a period of five years has the burden of proving the forfeiture by clear and convincing evidence." *Sagewillow, Inc. v. Idaho Dep't of Water Resources*, 138 Idaho 831, 842, 70 P.3d 669, 680 (2003) (citations omitted). "Although the owner of the water right has the burden of raising defenses to statutory forfeiture, the burden of persuasion remains on the party claiming that the water right was forfeited, and that party must disprove the defense." The record must include evidence supporting any defense to forfeiture raised by the owner of the water right. *Jenkins*, 103 Idaho at 389, 647 P.2d at 1261 (noting that the record was "devoid of any evidence to indicate that any of the established defenses [to forfeiture] would be applicable even if argued").

The *Preliminary Order* addressed two defenses to forfeiture. The hearing officer found that the statutory defense to forfeiture described in Idaho Code § 42-223(1) did not apply because the acres in question were only enrolled in a crop set-aside program in recent years. The hearing officer also found that the common law doctrine of resumption of use did not apply to the 36 acres in question because irrigation has not resumed on those acres.

The *Aston Petition* raises an additional defense to forfeiture under Idaho Code § 42-223(6), which states:

No portion of any water right shall be lost or forfeited for nonuse if the nonuse results from circumstances over which the water right owner has no control. Whether the water right owner has control over nonuse of water shall be determined on a case-by-case basis.

According to *Aston*, the non-use occurring on the 36 acres in the NWNW of Section 9 between 1976 and 1985 were due to circumstances beyond the control of Sidney and Charlotte Schvaneveldt, the owners of the land during that time period. *Aston* argues that health problems and financial concerns made it impossible for Sidney and Charlotte Schvaneveldt to irrigate the 36 acres during their ownership of the property.

The evidence in the record about the economic status and health status of Sidney and Charlotte Schvaneveldt is sparse. Although Olson testified that Sidney Schvaneveldt had health problems (heart problems) beginning in the early 1970s, Olson also testified that Sidney's son

Trevor was managing the farm operations in the 1990s. It is not clear when Trevor took over management of the day-to-day activities on the farm or if Trevor was physically unable to irrigate the acres in question. Although Olson testified that Sidney and Charlotte Schvaneveldt had financial problems in the mid-1990s (which resulted in the sale of 36 acres in the NWNW of Section 9 to Jeffrie and Kaye Beckstead), it is not clear whether these same financial difficulties existed prior to the mid-1990s.

The administrative record does not currently include evidence supporting the additional defense to forfeiture raised by Aston. Therefore, the *Aston Petition*, proposing to revise the *Preliminary Order*, should be denied. The *Aston Petition* states: “In the event the Hearing Officer does not grant this *Petition for Reconsideration*, in the alternative, Aston requests to reopen the hearing for the limited purpose of taking evidence on the matters addressed in this *Petition . . .*” *Aston Petition* at 1.

The evidence about the non-irrigation of the NWNW of Section 9, T16S, R38E was primarily presented through testimony at hearing. The small amount of evidence related to the health and financial status of Sidney and Charlotte Schvaneveldt was primarily presented through testimony at hearing. None of the parties have had an opportunity to prepare for and fully address the defense to forfeiture raised in the *Aston Petition*. All parties should be given an opportunity to present evidence about the non-use occurring under water rights 13-4120 and 13-2209 and evidence to support or refute any defenses to partial forfeiture raised by Aston. The hearing officer should withdraw the *Preliminary Order* and conduct an additional hearing focused on forfeiture and defenses to forfeiture.

Irrigation on Shaun Schvaneveldt Property

Aston asserts that the four acres, associated with the Shaun Schvaneveldt property, have not been irrigated due to the health and economic circumstances of Sidney and Charlotte Schvaneveldt. The non-irrigation of the Shaun Schvaneveldt property occurred between 1999 and 2018, after Sidney and Charlotte Schvaneveldt sold the property to Shaun. Therefore, the health and financial status of Sidney and Charlotte Schvaneveldt has no bearing on the non-irrigation of the four acres in question. Because an additional hearing will be held to address questions of forfeiture and defenses to forfeiture, as described above, the parties should also be allowed to offer evidence related to the non-irrigation of the Shaun Schvaneveldt property.

Acres in Section 5

The *Preliminary Order* denied Aston’s proposal to change the place of use for sixteen acres under water right 13-4120 in Section 5, T16S, R38E. “Aston has not sufficiently addressed questions regarding the historical use or the overlap with surface water rights for a 16-acre portion of water right 13-4120.” *Preliminary Order* at 20. The hearing officer suggested that the unresolved questions would have to be addressed in some future proceeding. Because the administrative record will be reopened for the limited purposes described above, the unresolved questions pertaining to the acres in Section 5 can be addressed within this proceeding. Allowing additional evidence in this contested case about the acres in Section 5 will promote administrative efficiency and will lead to greater certainty for the parties involved in this contested case.

ORDER

IT IS HEREBY ORDERED that the *Fonnesbeck Petition* is DISMISSED.

IT IS FURTHER ORDERED that the *Spradlin Petition* and *Aston Petition* are DENIED.

IT IS FURTHER ORDERED that the *Preliminary Order* is WITHDRAWN. The Transfer Approval issued in conjunction with the *Preliminary Order* is also WITHDRAWN.

IT IS FURTHER ORDERED that Aston's request for an additional hearing is GRANTED. The Department shall conduct an additional hearing for the limited purpose of accepting evidence addressing the following questions:

1. Have any of the acres in the NWNW of Section 9 been irrigated since 1964?
2. Are there defenses to forfeiture for any period of non-irrigation, from 1964 to the present day, for the acres in the NWNW of Section 9?
3. Have the four acres associated with the Shaun Schvaneveldt property been irrigated since 1999?
4. Are there defenses to forfeiture for any period of non-irrigation, from 1999 to the present day, for the Shaun Schvaneveldt property?
5. Are there surface water rights associated with the sixteen acres described in water right 13-4120 in Section 5, T16S, R38E?
6. Have any of the sixteen acres in Section 5, as described in water right 13-4120, been irrigated with ground water or surface water since 1964?
7. Are there defenses to forfeiture for any period of non-irrigation, from 1964 to the present day, for the acres in Section 5?

Dated this 6th day of May 2019.


James Cefalo
Water Resource Program Manager

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 16th day of May 2019, true and correct copies of the documents described below were served by placing a copy of the same with the United States Postal Service, postage prepaid and properly addressed, to the following:

Document Served: Order Denying Petitions for Reconsideration, Withdrawing Preliminary Order, and Granting Request for Additional Hearing

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