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Department of Water Resources
Eastern Region

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION
FOR TRANSFER NO. 79037 IN THE
NAME OF P4 PRODUCTION, LLC

**APPLICANT'S MOTION TO
AUGMENT THE RECORD**

Applicant P4 Production, LLC ("Monsanto"), through counsel, hereby petitions the Idaho Department of Water Resources ("Department") to augment the record to include the Affidavit of Mike Veile (the "Affidavit"), filed herewith.

BACKGROUND

Monsanto filed an Application for Transfer no. 79037 (the "Application") on December 30, 2013.¹ The Department issued a *Preliminary Order Approving Transfer* on August 4, 2015 (the "Preliminary Order"). The Order imposes several conditions on the Application pertaining to the use of the South Wells and also denied the proposed transfer with respect to the North Wells and Quarry well. Along with this motion, Monsanto has filed a Motion for Reconsideration of the Preliminary Order (the "Motion for Reconsideration"). The Affidavit of Mike Veile supports the Motion for Consideration by providing new evidence not known or presented at the hearing that is relevant to the need of the approval of the North Wells and Quarry well as requested in the transfer application.

¹ Ex. 1.

DISCUSSION

The Rules of Procedure of the Idaho Department of Water Resources (the “Rules”) permit the Affidavit to be included in the agency record, and, as part of the agency record, the affidavit can be considered when deciding the Motion for Reconsideration.

Under the Rules, the Department must “base its decision in a contested case on the official record for the case.”² The record includes, among other things, “[a]ll evidence received or considered” and “[a]ll briefs, memoranda, proposed orders of the parties or of the presiding officers, statements of position, statements of support, and exceptions filed by parties or persons not parties.”³ Evidence submitted in support of a motion for reconsideration, if received and considered, becomes part of the record and appropriate evidence upon which to base a decision.⁴

Nothing in the Rules prohibits the Department from receiving and considering the Affidavit. In fact, the Rules explicitly favor any evidence, such as the Affidavit, that will help achieve a just result: “The rules in this chapter will be liberally construed to secure just, speedy and economical determination of all issues presented to the agency.”⁵ Here, it is just for the Hearing Officer to decide the Motion to Reconsider based on a full understanding of the practical realities at Monsanto’s operations as they currently exist—specifically the condition of the wells and the likely need to upgrade the existing well and add new wells in the near future. The Department should receive and consider the Affidavit of Mike Veile, which explains these circumstances and provides new and relevant evidence not known or presented when Mr. Veile testified at the hearing on May 21, 2015.

² IDAPA 37.01.01.650(1).

³ IDAPA 37.01.01.650(2)(d), (f)

⁴ In this sense, Monsanto does not believe this Motion to Augment the Record is necessary; nonetheless, it submits it out of an abundance of caution.

⁵ IDAPA 37.01.01.052.

Yet, even assuming the Rules prohibit additional, post-hearing evidence (which Monsanto does not believe is the case), the Rules state that “the agency may . . . deviat[e] from the[] rules when it finds that compliance with them is impracticable, unnecessary or *not in the public interest*.”⁶ Here, the Department’s Order was based largely on the mistaken belief that Monsanto had no intent or need to use the North Wells or Quarry Well to meet future operational needs. It is not in the public interest to disallow the Affidavit, which explains that the North Wells and Quarry Well provide needed backup and flexibility to meet future operational needs, particularly given the age of the wells as underscored by the recent failure. Monsanto is an integral part of the local economy, and the public has an interest in its continued success through reliance on the water available under its existing rights in a practical and flexible manner, particularly given the fact that the proposed tranfers to combine all wells cause no injury to other water rights.

CONCLUSION

Based on the foregoing, Monsanto respectfully asks that the Department augment the record to include the Affidavit of Mike Veile. It is just that the Department receives and consider this affidavit in deciding the Motion for Reconsideration.

RESPECTFULLY SUBMITTED this 18th day of August, 2015.

RACINE, OLSON, NYE, BUDGE &
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By: Randall C. Budge
RANDALL C. BUDGE

⁶ *Id.* (emphasis added).

CERTIFICATE OF SERVICE

I certify that on this the 18th day of August, 2015, the foregoing document was served on the following persons in the manner indicated.



Signature of person mailing form

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