

RECEIVED

SEP 01 2015

Department of Water Resources
Eastern Region

Robert L. Harris, Esq. (ISB #7018)
rharris@holdenlegal.com
HOLDEN, KIDWELL, HAHN & CRAPO,
P.L.L.C.
P.O. Box 50130
1000 Riverwalk Drive, Suite 200
Idaho Falls, ID 83405
Telephone: (208) 523-0620
Facsimile: (208) 523-9518

*Attorneys for Nedra C. Torgesen and Brian
Torgesen*

**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

**PROTESTANTS' OPPOSITION TO
APPLICANT'S MOTION TO AUGMENT
THE RECORD AND APPLICANT'S
PETITION FOR RECONSIDERATION**

Nedra C. Torgesen and Brian Torgesen, (hereinafter the "Protestants"), by and through their attorneys of record, Holden, Kidwell, Hahn & Crapo, P.L.L.C., hereby submit *Protestants' Opposition to Applicant's Motion to Augment the Record and Applicant's Petition for Reconsideration*. This brief is submitted in opposition to *Applicant's Motion to Augment the Record* (the "Motion") with the *Affidavit of Mike Veile* (the "Veile Affidavit" or "Veile Aff.") filed with the hearing officer on August 18, 2015. The Motion and Veile Affidavit were submitted in support of *Applicant's Petition for Reconsideration* (the "Petition") also filed on August 18, 2015. All of these documents were submitted in response to the Hearing Officer's *Preliminary Order Approving Transfer* issued on August 4, 2015.

Because the Applicant's¹ *Motion* and *Petition* are intertwined, Protestants will respond to both in this brief.

¹ The applicant, P4 Productions, LLC, will be referred to in this brief as the "Applicant" or "Monsanto."

I. ARGUMENT.

- A. The Department's procedural rules found at IDAPA 37.01.01 do not automatically allow for the consideration of new evidence submitted through a motion for reconsideration. The determination of whether such evidence should be considered is vested in the discretion of the Hearing Officer.**

After a full day of hearing testimony held on May 21, 2015 that went to approximately 7:00 p.m., and the submission of numerous exhibits and expert documents from both the Applicant the Protestants, the Hearing Officer closed the record in the above-entitled matter. Nevertheless, through its *Motion*, Monsanto attempts to submit “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 . . .” *Motion* at 1.

The Applicant asserts that “[e]vidence 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” and further that “[n]othing in the Rules prohibits the Department from receiving and considering the Affidavit.” *Motion* at 2. As we understand the argument, it is that the *Veile Affidavit* should be considered because the rules do not prohibit consideration of such evidence. Monsanto cites Rule 650.02 in support of this argument.

However, the opposite is also true—the Department's procedural rules do not expressly allow a Hearing Officer to consider such evidence. The rules do describe what documents received by the Hearing Officer become part of the administrative record under Rule 650.02, and it does include “briefs [and] memoranda,” but no rule or statute mandates that the Hearing Officer must consider its substance. For example, in a civil proceeding, a court may grant a motion to strike an affidavit for evidentiary reasons. The stricken affidavit is part of the record on appeal, but that does not give the reviewing court the ability to consider the stricken affidavit's evidence and use it in its decision. It is part of the record in the event the decision to strike the affidavit is challenged on appeal. Thus, Rule 650.02 only describes what documents should be included in a record on appeal, and does not mandate that the Hearing Officer consider the substantive material contained within it.

Rather than a mandate from a rule or statute, the determination of whether the Hearing Officer should consider the additional evidence is left to the sound discretion of the Hearing Officer. For example, in a prior administrative case, then-Interim Director Gary Spackman

issued an order augmenting the administrative record to allow for consideration of relevant IDWR water data after an administrative appeal from a decision issued by the same Hearing Officer involved in this matter. *Order to Augment the Record*, In the Matter of Application for Permit No. 15-7347 in the Name of Lawrence V. (Vic) Riches, June 25, 2012, available at http://www.idwr.idaho.gov/files/legal/orders/20120625_Riches_Order_to_Augment_Record_15-7347.pdf. In another contested case, Director Spackman withdrew an order based upon the applicant's ability to use BLM land for grazing after a final order granting permit applications was issued 13½ years after the hearing was held in the year 2000. Evidence was submitted demonstrating that the applicant was not authorized to graze on BLM land since 2007. Given the findings of fact which were premised on the ability of the applicant to graze on public land which was supported by the evidence given in 2000 at the hearing, the fact that the grazing permit was no longer held by the applicant warranted augmentation of the record and the final order was withdrawn. *Order Granting Petition for Reconsideration, Withdrawing Final Order, and Augmenting the Record*, In the Matter of Application for Permit Nos. 55-07440 et. al, November 26, 2013, available at http://www.idwr.idaho.gov/files/legal/orders/20131126_Order_Granteeing_Pet_for_Recon-Withdrawal_of_Final_Order-Augmenting_the_Record_55-07440_et_al.pdf

In short, the Hearing Officer is not permitted under the rules to consider the *Veile Affidavit*, but may exercise his discretion as to whether he should or should not consider it as evidence. With the proper legal standard described for how the Hearing Officer should view the proposed additional evidence, as set forth in the next two sections, the Hearing Officer should exercise his discretion by denying the *Motion* and refusing to consider the additional evidence contained in the *Veile Affidavit*.

- B. The Hearing Officer should exercise his discretion and deny the *Motion* so that the *Veile Affidavit* is not part of the evidence considered in this matter as it pertains to the North Wells.**

Protestants perceive the main motivation for submitting the *Veile Affidavit* is to introduce evidence to support inclusion of the North Wells in the transfer approval. The Hearing Officer made the following finding of fact regarding inclusion of the North Wells:

18. Application for Transfer 79037 proposes to add authorized points of diversion in the SWSE and SESE of Section 19, T08S, R42E (hereinafter "North Wells"), located approximately one mile north of the current plant site. These points of diversion are proposed for unanticipated, but possible future needs. Veile Testimony. Monsanto has no imminent plans to construct the North Wells. Smith Testimony. Monsanto does not have "a project in sight that identifies the need for those wells right now." Veile Testimony.

Preliminary Order at 4. Based on this finding of fact, the Hearing Officer made the following conclusions of law relative to the North Wells:

36. In this case, Monsanto proposes adding two possible points of diversion (the North Wells) to its water rights for an expansion which may or may not occur at some point in the future. Mr. Smith and Mr. Veile testified that Monsanto has no current plans to construct the North Wells.

37. Monsanto acknowledges that, prior to diverting water from the North Wells, it must provide a mitigation plan to address impacts to Soda Creek and the local aquifer resulting from pumping the North Wells. The Department would publish notice of any proposed mitigation plan, which means the plan could be protested. In other words, adding the North Wells as authorized points of diversion at this time does not eliminate any future processing time or diminish any future risk of protest.

38. Monsanto did not provide any persuasive arguments for adding the North Wells as authorized points of diversion when Monsanto has no present intent to develop the wells. It is not in the local public interest to add points of diversion to water rights when the water user has no present intent to use or develop the added points of diversion. The North Wells should be excluded from Transfer Approval 79037.

Preliminary Order at 11.

Protestants believe the Hearing Officer was correct in excluding the North Wells as authorized points of diversion for Monsanto's water rights. The North Wells were a significant concern for the Protestants because of their location near the headwaters of Soda Creek and because no details were provided prior to the hearing as to what the wells would be used for. Protestants' counsel did not understand how wells could be authorized under a transfer, but pursuant to stipulation, the mitigation plan for use of such wells would be approved at a later date. Rather than focus on this issue at the hearing, Protestants' counsel instead learned from the Applicant's witnesses that the wells would not be constructed within six years, or perhaps not ever. The six-year time period was important because one of IDWR's forms, which was introduced and accepted into evidence at the hearing as Protestants' Exhibit 108, only allows for one five-year extension of time to complete a transfer. It was and is the Protestants' belief that a new point of diversion must be constructed within this six-year time period.

While Protestants do not have the benefit of a hearing transcript or recording to review, their recollection of responses to questions about the North Wells are consistent with what the Hearing Officer based his decision on in his *Preliminary Order*. Hearing witnesses Smith and Veile both testified unequivocally that there were no imminent plans for construction of the North Wells, and would not likely be drilled in the foreseeable future. No documents evidencing plans to construct the North Wells, cost estimates, concept drawings, etc., were submitted as exhibits at the hearing. Overall, the main focus of Mr. Smith, Mr. Veile, and Mr. Banton was on the importance of the South Wells and the critical purposes they would serve to bolster water supply and provide environmental benefits because the water would be treated for selenium ground water pollution migrating towards Soda Springs. Protestants recommend that the Hearing Officer listen again to their responses to questions to verify the Protestants' recollection.

Protestants recognize that a water right holder may need flexibility with where it can divert its water supplies and how it may divert them. However, that flexibility is not without limits. In this case, much can change between now and the time when Monsanto decides to drill the North Wells, and including an open-ended approval of wells that may not be drilled for decades deprives other water users of the ability to raise concerns for the proposed water use, including what the water may be used for. Accordingly, we are in agreement with the Hearing Officer that it is not in the local public interest to include additional authorized points of diversion when the water user has no present intent to use or develop the wells. The Applicant can always submit a transfer application in the future once details are known and can be explained in a contested case.

Additionally, the *Veile Affidavit* appears to contradict the live testimony from Mr. Veile that there were no present plans to drill the North Wells. The *Veile Affidavit* just now submitted describes that the North Wells are being considered as a replacement well site, but the testimony from Mr. Veile and Mr. Smith at the hearing was that there were no present plans to drill the wells even though the hearing was held after the pump failure occurred. If the North Wells were truly being considered as replacement well sites, Mr. Veile and Mr. Smith did not offer testimony in support of this position, and in fact, testified precisely the opposite. Accordingly, the *Veile Affidavit* proposes to offer substantive and contradictory evidence into the record.

The Applicant argues that "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.” *Motion* at 3 (underlining added). However, the *Preliminary Order* was not based on a “mistaken belief,” rather, it was based upon evidence through testimony of Monsanto’s own witnesses. The substantive nature and contradictory nature of the *Veile Affidavit* should cause the Hearing Officer to exercise extreme caution if he wants to now consider it after-the-fact.

The only precedent of which Protestants are aware for augmenting the record with substantive information was discussed briefly above when Director Spackman allowed objective water data already in the possession of IDWR to be considered in an administrative appeal, and when an affidavit was submitted by Fred Price to inform the Director that an applicant no longer had authorization to graze BLM ground beginning in 2007 after a decision was issued in 2013 based on evidence from a hearing held in 2000. The *Veile Affidavit* does not contain objective data already in the possession of the Department, nor does it provide evidence similar to Fred Price’s affidavit necessary to determine whether a permit applicant even has authority to beneficially use water allowed under the permit. Stated another way, the *Veile Affidavit* contains substantive and contested evidence, not objective and uncontested evidence.

In the context of an administrative appeal to a district court, Idaho Code § 67-5276 is the statute that controls the taking of additional evidence in connection with appeals under the Idaho Administrative Procedures Act. The principles contained in this code section likewise apply in this contested case, and should be considered by the Hearing Officer in exercising his discretion. Section 67-5276 reads as follows:

67-5276. Additional Evidence. – (1) If, before the date set for hearing, application is made to the court for leave to present additional evidence and it is shown to the satisfaction of the court that the additional evidence is material, relates to the validity of the agency action, and that:

(a) there were good reasons for failure to present it in the proceeding before the agency, the court may remand the matter to the agency with directions that the agency receive additional evidence and conduct additional fact-finding.

(b) there were alleged irregularities in procedure before the agency, the court may take proof on the matter.

(2) The agency may modify its action by reason of the additional evidence and shall file any modifications, new findings, or decisions with the reviewing court.

Idaho Code § 67-5276.

Interpreting this provision, the Idaho Supreme Court has held that augmentation may be allowed provided the moving party shows: 1) the additional evidence is material, relates to the validity of the agency action; and 2) there were good reasons for failure to present it in the proceeding before the agency; or 3) there were alleged irregularities in procedure before the agency. *Folks v. Moscow School District No. 281*, 129 Idaho 833, 933, P.2d 642 (1997). The decision of the trial court in admitting new evidence will not be overturned absent an abuse of discretion. *Bower v. Bingham County*, 140 Idaho 512, 96 P.3d 613 (2004).

These very principles were recently considered in district court proceedings before Judge Wildman on an appeal filed by IGWA of the Director's decision in the Rangen delivery call. On June 17, 2014, IGWA filed a motion to augment the record before Judge Wildman with an affidavit from their hydrogeologist, Charles Brendecke. Rangen opposed the motion and described the substantive evidence contained in the affidavit as evidence "to support its position that the trim line used by IDWR in evaluating Rangen's call will enable a single water user like Rangen to 'command' the aquifer through the curtailment of hundreds of thousands of acres." *Rangen, Inc.'s Response In Opposition to Motion to Augment Record* at 2, Gooding County Case No. CV-2014-1338, June 27, 2014, available at http://www.idwr.idaho.gov/files/legal/CV-2014-1338/CV-2014-1338_20140626_IDWR's_Response_in_Opp_of_Mtn_to_Augument.pdf.

The Department also opposed the motion. *Response in Opposition to Motion to Augment Record*, Twin Falls County Case No. CV-2014-1338, June 25, 2014, available at http://www.idwr.idaho.gov/files/legal/CV-2014-1338/CV-2014-1338_20140626_IDWR's_Response_in_Opp_of_Mtn_to_Augument.pdf. The Department argued that the Brendecke Affidavit sought to introduce evidence that was not material to the Rangen matter, was speculative, was not supported by good reasons for its failure to present the evidence at the hearing, and would result in unjustified delay. *Id.* These same concerns are present with the *Veile Affidavit*.

First, it is immaterial whether or not the North Well sites are now being considered as possible replacement sites—any number of other sites could also be considered. What is material is whether there exists any present intent to use or develop the North Wells, and both Mr. Veile and Mr. Smith testified there was not. The *Veile Affidavit* contains no documents evidencing plans to construct the North Wells, nor are there any cost estimates, concept

drawings, etc. Thus, whether the North Well sites are being considered is immaterial to whether it would be in the local public interest to include these wells as authorized points of diversion.

Second, without definitive plans, cost estimates, drawings, etc., it is speculative to assume that the North Well sites will be developed at all.

Third, the Applicant has not presented any good reasons for its failure to present this evidence at the hearing. As an initial matter, there have been no alleged irregularities in procedure before the agency, so that should not be an issue. As for other possible reasons for failure to present evidence, in the IGWA appeal before Judge Wildman, IGWA asserted that the “magnitude of the curtailment risk from other pending delivery calls could not be evaluated until after the Rangen Curtailment Order was issued.” *Id.* at 6. In response, the Department argued that while the Great Rift trim concept was new, “the concept of potential scope of curtailment related to pending delivery calls is not[]” and “IGWA’s failure to anticipate the scope of potential curtailment in pending delivery calls is not justification to allow it to submit new evidence into the record to support a legal argument it wishes to make on appeal in this proceeding.” *Id.*

Similarly, it is not unique for a well owner to have a pump fail. In fact, it is common, and fortunately for Monsanto, its facility was only down for one full day. Importantly, however, the failure was a mechanical failure, not a failure of the well. We fail to see how evidence of a pump failure that was repaired is evidence of Monsanto’s intent to drill the North Wells. Indeed, this argument highlights why the *Veile Affidavit* does more than simply clarify something in the record. It attempts to change it because the testimony from Mr. Veile, Mr. Smith, and others was that the North Well site was not being considered as a replacement or additional well site as a result of the pump failure. This is the major reason why the *Motion* should be denied.

Finally, introduction of the *Veile Affidavit* will result in an unjustified delay in these proceedings. If it is accepted, a court, or in this case the Hearing Officer, must open the matter for additional record development and allow for a hearing. See *Wohrle v. Kootenai Cnty.*, 147 Idaho 267, 272, 207 P.3d 998, 1003 (2009) (The district court “is required to remand the matter to the agency with direction that the agency receive additional evidence and conduct additional factfinding.”). Indeed, in both cases where Director Spackman granted a motion to augment in an administrative hearing, he specifically ordered that a party could request a hearing on the new evidence. See *Order to Augment the Record* at 2, In the Matter of Application for Permit No.

15-7347 in the Name of Lawrence V. (Vic) Riches, June 25, 2012, *available at* http://www.idwr.idaho.gov/files/legal/orders/20120625_Riches_Order_to_Augment_Record_15-7347.pdf (“Any party desiring an additional hearing shall request a hearing in writing with the Director of IDWR on or before July 23, 2012.”); *Order Granting Petition for Reconsideration, Withdrawing Final Order, and Augmenting the Record* at 2, In the Matter of Application for Permit nos. 55-07440 et. al, November 26, 2013, *available at* http://www.idwr.idaho.gov/files/legal/orders/20131126_Order_Granteeing_Pet_for_Recon-Withdrawal_of_Final_Order-Augmenting_the_Record_55-07440_et_al.pdf (“Any written response or request for hearing regarding the augmented evidence must be submitted to the Director on or before December 20, 2013.”).

If the Hearing Officer grants the *Motion*, through the filing of this brief, the Protestants hereby request a hearing on the submission of new evidence where we presume Mr. Veile will be present to be cross-examined. Because the *Veile Affidavit* contains no documents evidencing plans to construct the North Wells, nor are there any cost estimates, concept drawings, etc., Monsanto should not be allowed to delay this proceeding further and reopen the record when there is no documentation supporting Monsanto’s plans to drill the North Wells, but only a sworn statement which is contradictory to the testimony already offered at the hearing by Mr. Veile.

In the Rangen matter, Judge Wildman ultimately denied the motion to augment the record with the Brendecke Affidavit. *Order Denying Motion to Augment Record*, June 30, 2014, Twin Falls County Case No. CV-2014-1338, *available at* http://www.idwr.idaho.gov/files/legal/CV-2014-1338/CV-2014-1338_20140630_Order_Denying_Mtn_to_Augment_Record.pdf. Similarly, the Hearing Officer should exercise his discretion and deny the *Motion* in this matter.²

² It appears that motions to augment are meant primarily to include evidence that was inadvertently left out of the record on appeal, either through clerk error or error from the parties identifying for the clerk which items should be included on the record on appeal. It should not be used as a vehicle to introduce new evidence or contradictory evidence that would reopen the record. See, e.g., *IGWA'S Uncontested Motion to Augment the Record*, SWC Call, August 31, 2011, *available at* <http://www.idwr.idaho.gov/News/WaterCalls/Surface%20Coalition%20Call/2011/08Aug/20110831%20IGWA's%20Uncontested%20Motion%20to%20Augment%20the%20Record.pdf> (seeking to have Exhibit 4200 included in the record after discovering that it was not part of the record on appeal even though it was introduced into evidence in the administrative hearing); see also *SWC Motion to Augment Record*, July 29, 2011, *available at* <http://www.idwr.idaho.gov/News/WaterCalls/Surface%20Coalition%20Call/2011/07Jul/20110729%20SWC's%20Motion%20to%20Augment%20Record.pdf> (seeking to have incorporated pages from a prior decision relied upon in the memorandum decision included in the record on appeal).

- C. The Hearing Officer should exercise his discretion and deny the *Motion* so that the *Veile Affidavit* is not part of the evidence considered in this matter as it pertains to the Quarry Well.**

The *Veile Affidavit* does not state anything in relation to the Quarry Well, yet the *Motion* requests that the *Veile Affidavit* should be used as a basis to reconsider the Hearing Officer's determination of the following:

12. Water right 11-2144 describes two points of diversion in the SENW of Section 25. However, only one well is currently used to supply water at the quarry site. *Veile Testimony*. The Quarry Well is not connected to the Plant Wells. *Smith Testimony*. Monsanto does not have any plan to interconnect the Quarry Well and the Plant Wells.

...

40. Monsanto also proposes to combine the quarry water right (11-2144) with the plant water rights (11-2102, 11-2107A, 11-2107B and 11-2141). Monsanto employees testified that the Quarry Well and the Plant Wells are not interconnected at this time and there is no plan to connect the wells in the immediate future.

41. As stated above, the local public interest demands that a water right reflect the actual make-up of a diversion and delivery system. It is not in the local public interest to combine water rights on systems that are not currently interconnected and will not be in the future.

Preliminary Order at 3, 11-12. The *Veile Affidavit* does not mention the Quarry Well, and does not attempt to alter the testimony given at the hearing that it is not connected to the other wells and would not be in the future. As such, it is immaterial to the issue before the Hearing Officer as analyzed in light of the principles set forth in the preceding section, and suffers from the same problems it has in relation to the North Wells (speculation, etc.). As such, in relation to the Hearing Officer's decision not include the Quarry Well as part of an interconnected system, the *Motion* should be denied.

- D. The Petition should be denied.**

Monsanto has requested reconsideration of (1) Findings of Fact 17, 18, and 30; (2) Evaluation of Criteria/Analysis paragraphs 4, 5, 6, 14, 22, 30, 36, 38, and 41; and (3) Conclusion of Law 1, 2, 3, 4, 6, and 7. Some of these are based on the *Motion* and its attempt to introduce the *Veile Affidavit* that should not be considered, which we will reiterate below on the relevant items.

Finding of Fact 17. This finding of fact relates to a 1.8 cfs limitation placed on the South Wells by the Hearing Officer. The limitation was based on testimony from Monsanto witnesses, and is therefore supported by evidence in the record. Additionally, this limitation appears to have been included to protect against injury concerns raised by the Protestants and to protect other senior water right holders. It therefore appears to be based on substantial evidence in the record and should not be changed.

Finding of Fact 18. This finding of fact relates to the North Wells, and has already been addressed above.

Finding of Fact 30. Even with the additional explanation from Monsanto, this finding of fact is accurate. It reads that pumping could deplete Soda Creek “by as much as 0.57 cfs.” There is no reason to change it.

Analysis Paragraphs 4 and 5. The Protestants believe these analysis paragraphs are precisely correct, and are based upon rebuttal evidence submitted by Tom Wood upon his evaluation of the Golder Report as being deficient in several respects, most notably with its assumptions and its failure to incorporate fault boundaries into the model. The Petition appears to downplay the problems with the assumptions used in the Golder Report by stating “[a]ll models use assumptions,” *Petition* at 4. Monsanto further asserts that the model should be accepted because it was peer-reviewed, and that while questioning those assumptions are appropriate, it “should not be used to ignore the model results.” *Id.* at 5. We agree that all models use assumptions, but that does not mean that the values included in a model should be ignored or that all values ascribed by the Applicant must be taken at face value. If that were the standard, then models would have no value or meaning. While there are assumptions with the ESPA model, for example, those assumptions are based upon sound logic and collected and

supportable data. Most of the Golder assumptions were either incorrect or inconsistent with on-the-ground data as outlined by Dr. Wood in his letter introduced as an exhibit at the hearing. Given Golder's and Monsanto's long history in the Soda Springs area and their vast amount of information they have been collecting for decades (Mr. Banton testified that he has worked on these matters since the late 1970s and even discovered the Subsidiary Fault), the modeling should have been more precise with more precise assumptions. For example, the well distance from the South Wells to Soda Creek was incorrect (3,000 feet as opposed to 5,500 feet described in the Golder Report), but is something that could easily be verified with GIS. These problems support a conclusion that the Golder depletion analysis is of limited value because it was based on poor assumptions. As such, these analysis paragraphs should not be amended upon reconsideration.

Analysis Paragraphs 6 and 14. Based upon paragraphs 4 and 5, paragraph 6 is an appropriate conclusion to reach.

Analysis Paragraphs 22 and 30. Based on the findings of fact and the application as submitted, this analysis paragraph appears to be correct and should not be amended upon reconsideration.

Analysis Paragraphs 36-38. See discussion of North Wells above. These paragraphs should not be amended.

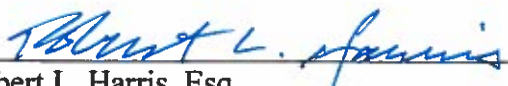
Analysis Paragraph 41. See discussion of Quarry Well above. This paragraph should not be amended.

Because all of the foregoing paragraphs should remain unchanged, the resulting Conclusions of Law (1, 2, 3, 4, 6, and 7) should also remain unchanged.

II. CONCLUSION.

For the reasons set forth above, the Hearing Officer should exercise his discretion and deny the *Motion*. In addition, the *Petition* should be denied.

Dated this 1st day of September, 2015.


Robert L. Harris, Esq.
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the following described pleading or document on the parties listed below by hand delivery, email, mail, or by facsimile, with the correct postage thereon, on this 1st day of September, 2015.

DOCUMENT SERVED: PROTESTANTS' OPPOSITION TO APPLICANT'S MOTION TO AUGMENT THE RECORD AND APPLICANT'S PETITION FOR RECONSIDERATION

ORIGINAL TO: James Cefalo
Idaho Department of Water Resources
900 North Skyline Drive, Suite A
Idaho Falls, ID 83402-1718

ATTORNEYS AND/OR INDIVIDUALS SERVED:

Randall C. Budge	() First Class Mail
Racine, Olson, Nye, Budge & Bailey, Chartered	() Hand Delivery
P.O. Box 1391	() Facsimile
Pocatello, ID 83204-1392	() Overnight Mail
Fax: (208) 232-6109	(☒) Email
Email: rcb@racinelaw.net	

P4 Production, LLC	(☒) First Class Mail
P.O. Box 816	() Hand Delivery
Soda Springs, ID 83276	() Facsimile
	() Overnight Mail
	() Email

City of Soda Springs
Allen Skinner
Mitch Hart
Clyde Nelson
9 W. 200 S.
Soda Springs, ID 83276
Email: askinner@silverstar.com
Email: mjhart57@silverstar.com
Email: clydenlsn43gmail.com

☒ First Class Mail
☐ Hand Delivery
☐ Facsimile
☐ Overnight Mail
☐ Email

Jerry R. Rigby
Rigby, Andrus & Rigby Law, PLLC
25 North Second East
Rexburg, ID 83440
Fax: (208) 356-0768
Email: jrigby@rex-law.com

☐ First Class Mail
☐ Hand Delivery
☐ Facsimile
☐ Overnight Mail
☒ Email

Jon Lau
P.O. Box 337
Soda Springs, ID 83276
Email: jlau@q.com

☒ First Class Mail
☐ Hand Delivery
☐ Facsimile
☐ Overnight Mail
☐ Email

Pat Lozier
1657 Reed Lane
Soda Springs, ID 83276

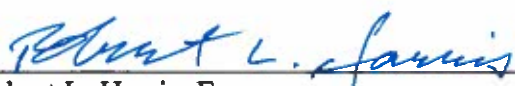
☒ First Class Mail
☐ Hand Delivery
☐ Facsimile
☐ Overnight Mail
☐ Email

Nedra C. Torgesen
P.O. Box 45
Soda Springs, ID 83276

☒ First Class Mail
☐ Hand Delivery
☐ Facsimile
☐ Overnight Mail
☐ Email

Brian Torgesen
President of Soda Creek 11B
260 River Drive
Soda Springs, ID 83276

☒ First Class Mail
☐ Hand Delivery
☐ Facsimile
☐ Overnight Mail
☐ Email


Robert L. Harris, Esq.
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.

G:\WPDATA\URLH\18174-000 Torgesen, Nedra\Augment Opp.docx