IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF WASHINGTON

ECKHARDT FAMILY LLLP, an Idaho Limited Partnership, Petitioner, vs. IDAHO DEPARTMENT OF WATER RESOURCES, Respondent.	**Case No. CV-44-20-38**
IN THE MATTER OF APPLICATIONS FOR PERMIT 67-15292 THROUGH 67-15297 IN THE NAME OF ECKHARDT FAMILY LLLP	

PETITIONER'S REPLY BRIEF

On appeal of final agency action by the Idaho Department of Water Resources

Norman M. Semanko, ISB #4761
PARSONS BEHLE & LATIMER
800 West Main Street, Suite 1300
Boise, Idaho 83702
Telephone: 208.562.4900
Facsimile: 208.562.4901
NSemanko@parsonsbehle.com
Attorneys for Petitioner

Candice McHugh
Chris Bromley
McHugh Bromley PLLC
380 South 4th Street, Suite 103
Boise, ID 83702
Attorneys for Intervenor-Respondent

Garrick Baxter
Deputy Attorney General
Water Resources Section
322 East Front Street
PO Box 83720
Boise, ID 83720
Attorneys for Respondent Idaho Department of Water Resources

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Regulations

Petitioner Eckhardt Family LLLP ("Eckhardt" or "Petitioner"), by and through its counsel Norman M. Semanko and Aaron M. Worthen of Parsons Behle & Latimer, hereby files its Reply to *Petitioner's Opening Brief* ("Opening Br.") filed April 23, 2020, to *Double C & J Land Co., Inc.'s Response Brief* filed May 21, 2020 ("Double C&J Br."), and to *Brief for Respondent IDWR* filed May 21, 2020 ("IDWR Br."), in support of Eckhardt's *Petition for Judicial Review of Agency Action* filed January 17, 2020.

ARGUMENT

As previously argued, Eckhardt is entitled to have the Amended Final Order vacated, because both of the requirements under Idaho Code Section 67-5279 are met in this case. The first requirement is met because the *Order on Reconsideration; Amended Final Order for Permit Nos. 67-15292 through 67-15297* ("Amended Final Order") by the Director ("Director") of the Idaho Department of Water Resources ("IDWR" or "Department") (1) is not supported by substantial evidence, (2) is arbitrary and capricious, and (3) violates the Due Process Clause of the United States Constitution and the Idaho Constitution. The existence of any one of these maladies is sufficient to satisfy the first requirement. Idaho Code § 67-5279(3). The responsive briefs fail to disprove any of the three deficiencies. And they have certainly not disproved all three.

The second requirement is also met because the Amended Final Order violates Eckhardt's substantive rights—including his right to a reasonably fair decision-making process and his right to pursue the appropriation of unappropriated water through his applications for water rights ("Applications"). The responsive briefs do not meaningfully dispute that the second requirement is met. Instead, they merely indicate that if the first requirement is not met, neither is the second.

Additionally, Intervenor-Respondent Double C&J Land Co., Inc.'s ("Double C&J") argument that Eckhardt's appeal should be dismissed on alternative grounds (specifically that

Eckhardt's expert disclosure did not state the expert would testify regarding whether other water rights would be injured) is unavailing. The Hearing Officer correctly overruled Double C&J's objection to the expert's testimony at the evidentiary hearing, and Double C&J fails to engage with or even recognize that decision.

Finally, Double C&J is not entitled to attorney fees pursuant to Idaho Code § 12-121, as the Idaho Supreme Court has stated on numerous occasions that the statute does not apply to judicial review of administrative decisions.

A. The Amended Final Order Is Not Supported by Substantial Evidence.

Although both Double C&J and the Department suggest that the Amended Final Order is supported by substantial evidence, neither of them meaningfully respond to Eckhardt's primary contention; namely, that if Double C&J would cease its unlawful use of Jenkins Creek water, none of Double C&J's existing water rights on Jenkins Creek could possibly be injured by Eckhardt's proposed water rights. (Opening Br. at 10–11). In fact, rather than contesting Eckhardt's argument, Double C&J attempts to convince the Court that Eckhardt simply did not make a substantial evidence argument on this matter. Double C&J Br. at 15 ("New to the arguments presented in Section A of Eckhardt's Opening Brief is his allegation that Double C&J is illegally storing water in Monroe Reservoir."). Instead, in response to Eckhardt's substantial evidence argument, Double C&J simply asserts that it has senior water rights and that its down-stream reservoir does not fill up every year and some cattle have died. Double C&J Br. 10–12.

The Department likewise skirts the issue, asserting that "Shaw's Expert Report contains the only evidence in the record that the stockponds would not cause injury to Hoff's stockwater right." IDWR Br. at 22. Based only on that report, the Department argues that Eckhardt's claim fails because there is insufficient data regarding (1) the nature of spring runoff flows in the

drainage, (2) the evaporation and seepage from the storage pond, and (3) the measurement of streamflow during the non-irrigation season. IDWR Br. at 21–22.1

But the uncontroverted evidence in the record demonstrates that Double C&J's water rights could not possibly be injured by Eckhardt's proposed water use in its Applications. Double C&J's President John D. Hoff ("Hoff") admitted that Double C&J's unauthorized diversion during the non-irrigation season consists of up to 260 acre-feet of water every year (and fills the Monroe Creek Reservoir every year). R. 387, 389 (Amended Final Order at 6, 8). If that Jenkins Creek water was allowed to flow downstream, rather than being unlawfully diverted by Double C&J, it would easily satisfy all of Double C&J's water rights—including the .03 cfs/13,000 gallon per day/1.4 acre-feet per year stock water right2 that the Director determined might be injured—even if Eckhardt's Applications (totaling less than 5 acre-feet per year) were approved.

It is axiomatic that if, on an annual volume basis, Double C&J is illegally using an amount of water from Jenkins Creek that is roughly 185-times greater than its stock water right – and 52-times greater than Eckhardt's proposed water rights – then cutting off that unlawful use would negate any injury Eckhardt's proposed water rights could possibly impose on Double C&J's senior water rights. This is especially true where Eckhardt's proposed water rights seek to divert water only during the non-irrigation season—the exact same time period as Double C&J's unlawful

---

[1] The Department also makes much of the fact that Eckhardt framed the Director's conclusion as being that certain of Hoff's water rights might be injured, rather than framing the Director's "ultimate conclusion" that "Eckhardt failed to meet its burden to meet its burden of proof to show that Hoff's water rights will not be injured." IDWR Resp. at 19. This distinction is merely semantic in nature. As Eckhardt has provided conclusive record evidence that Double C&J's water rights will not be injured (and there is no contradicting record evidence), the Director's conclusion is not supported by substantial evidence—regardless of how that conclusion is framed.

[2] *See* R. 386 (Amended Final Order at 5); Exhibit 308 (water decree for Water Right No. 67-14251, which includes Double C&J's stock water right).

diversion. Transcript of Hearing May 23, 2019 before Hearing Officer James Cefalo ("Hearing Transcript") 230:13–231:16. The Director acknowledged this truism when he determined that Double C&J's storage water rights would not be injured by Eckhardt's proposed water permits on that basis. R. 389 (Amended Final Order at 8). And there is no evidence regarding Double C&J's remaining (and much smaller) water rights that would exempt them from the same conclusion. In other words, if Double C&J's water rights are being injured, it is by Double C&J's own expansive unlawful diversions from Jenkins Creek, not Eckhardt's significantly smaller proposed use. The Director cannot reasonably reach this conclusion as it applies to Double C&J's storage rights and then fail to apply the same reasoning to Double C&J's stock water right during the same period of use.

Double C&J and the Department also suggest that injury to Double C&J's water rights is unavoidable because there is no way to administer the Eckhardt's proposed water rights in light of the belief that Eckhardt would not comply with any restrictions imposed. See IDWR Br. 24-26, 31. But even if Eckhardt had failed to comply with Department orders in the past as the opposing parties suggest, which is not the case, Eckhardt has represented that it would comply with any order. Hearing Transcript 156:21–157:6. And rather than preemptively punishing Eckhardt for a violation that has not yet occurred—and almost certainly never will occur—the Department should grant Eckhardt's Applications and then revoke the water rights only if Eckhardt disobeys the Department's orders. That is the purpose of imposing such conditions on water right permits.

B. The Amended Final Order Is Arbitrary and Capricious.

The Amended Final Order is arbitrary and capricious in two ways. First, it acknowledged Double C&J's unlawful diversion of copious amounts of Jenkins Creek water when analyzing whether Double C&J's storage water rights were injured, but inexplicably failed to address the issue when analyzing whether Double C&J's much smaller stock water right might also be injured

by Eckhardt's Applications. Opening Br. at 13–14. Neither Double C&J nor the Department point to anything in the Amended Final Order that provides any explanation for this internally inconsistent analysis. That alone renders the Department's decision arbitrary and capricious.

The Department simply declared that "[w]ithout measurements of the streamflow of Jenkins Creek or the evaporation and seepage from the ponds, it is *impossible* for the Director to determine the full impact of the unlawful diversions on Jenkins Creek." IDWR Br. 32 (emphasis added). Double C&J asserts that "[a]ny questions relating to Monroe Reservoir are irrelevant to this proceeding" and that, in any event, the Director recognized the issue and nevertheless found injury. Double C&J Br. at 15. Neither argument has any weight.

The problem with both arguments is that they fail to engage with the fact that the Director relied on Double C&J's annual unauthorized use of up to 260 acre-feet of Jenkins Creek water to fill the Monroe Reservoir when he found that Double C&J's storage water rights will not be injured. R. 389 (Amended Final Order at 8). In so ruling, the Director demonstrated it was not impossible to appreciate the data. After all, it is abundantly clear that Eckhardt seeks only to use a small fraction of the water Double C&J has been unlawfully using, and during the same time period. In any event, the Director never articulated that he could not rely on the unlawful Monroe Reservoir water when analyzing the injury to Double C&J's non-storage water rights—much less that it would be impossible to do so due to some perceived lack of data. So the Department's post hoc (and implausible) explanation of the Director's decision does nothing to demonstrate that the Director "reached a decision by exercising reason." *Wohrle v. Kootenai Cnty.*, 147 Idaho 267, 271, 207 P.3d 998, 1002 (2009).

The Director's decision that Double C&J's storage water rights would not be injured also demonstrates that Double C&J"s use of Jenkins Creek water to fill Monroe Reservoir was entirely

relevant to Eckhardt's Applications. Indeed Double C&J cannot unlawfully store and use 260 acre-feet of water each year and then complain that its water rights will be injured by someone else asking to use less than 5 acre-feet of water from the same creek system during the same time period. And although the Director found that Double C&J's stock water rights may be injured by approving the Applications, he did not address the Jenkins Creek water illegally stored in Monroe Reservoir when doing so – despite recognizing that Eckhardt had raised the issue. R. 392–394 (Amended Final Order at 11–13). It is still anyone's guess why the Director failed to do so. That is precisely what makes his decision arbitrary and capricious.

The Amended Final Order is also arbitrary and capricious because the Director determined that it was unlikely that Eckhardt could access the ponds in time to prevent injury to Double C&J's water rights, despite Eckhardt's uncontroverted representation that it would ensure that it fulfilled any condition set by the Department. *See* Opening Br. at 14–15.

In response, the Department declares that the Amended Final Order is not arbitrary in light of the testimony from water experts that Eckhardt's ponds are inaccessible in the beginning of March. IDWR Br. at 33. Double C&J, on the other hand, fails to meaningfully address the topic at all—asserting only that the Director's decision was reasoned, based on "the water supply in the Jenkins Creek drainage, the lack of any measurements taken by Mr. Shaw, the actions of Eckhardt, and the very real fact that Double C&J has had calves die for lack of water." Double C&J Br. at 14–15.

However, as discussed above, Eckhardt has represented that it would make sure to access the ponds on the shut-off date to stop diverting water to them. Hearing Transcript 156:21–157:6. Just because water experts determined that they would not brave the snow to inspect the ponds does not at all indicate that Eckhardt will not be able to do so. And if the snow is so bad that no

one can access the ponds, then waiting until the ponds are accessible to divert water away from the ponds would not injure Double C&J's water rights, as there would necessarily be a surplus of water in Jenkins Creek until the snow was all gone – a point that was made clear to the Director, to no avail. R. 395 (Amended Final Order at 14). In short, this is an administration issue, not a water appropriation issue and denying the Applications on this basis was arbitrary and capricious.

C. The Amended Final Order Deprived Eckhardt of Its Due Process Rights.

The Amended Final Order also deprived Eckhardt of its due process rights, as it had no meaningful notice or meaningful opportunity to be heard regarding potential injuries to Double C&J's water rights during the non-irrigation season. Opening Br. at 14–16.

In their responses, Double C&J and the Department argue that Eckhardt had the burden of proof to demonstrate that none of Double C&J's water rights would be injured at any time, not just during the irrigation season. *See* Double C&J Br. at 16–17; IDWR Br. at 33. The Department further asserts that it was Eckhardt that prevented itself from a meaningful hearing, by changing the proposed shut off deadline and thereby causing "the Department . . . to continually amend its responses to the Applications." IDWR Br. 34–35. Finally, Double C&J argues that even if Eckhardt did not have meaningful hearing and notice, the due process clause is not implicated because Eckhardt was not deprived of any property interest. Double C&J Br. at 16. Each argument fails.

Contrary to the opposing parties' critique, Eckhardt did, in fact, provide evidence regarding the lack of injury to Double C&J's water rights at the evidentiary hearing—spanning both the irrigation season and the non-irrigation season. Hearing Transcript 55:16–56:4; 270:1–271:11; *see generally* Hearing Transcript pp. 55–95. And that evidence was the entire world of the evidence and argument regarding the non-irrigation season during the administrative process, until Double C&J raised the issue in its response to Eckhardt's Exceptions—a document to which Eckhardt had

no right to reply. *Response* at 4; *see Rules of Procedure of the Department*, IDAPA 37.01.01, Rule 730.02.c (providing opportunity to respond to an appeal/exceptions, but no reply opportunity). Thus, Eckhardt did not have any opportunity to address the issue in any meaningful capacity.

In fact, the last word from the Department to which Eckhardt had a meaningful opportunity to respond was the Hearing Officer's resounding declaration that "[i]mplementing a March 1 shut-off date for the proposed ponds *would alleviate **all** injury concerns*." R. 310 (*Order Granting Petitions for Reconsideration, in Part,* August 8, 2019 at 3 (emphasis added)). This statement can be viewed only as an invitation from the Department to officially ask for a March 1 shut-off date. And Eckhardt had no reason to engage with an argument that, contrary to the Hearing Officer's clear conclusion, there might nevertheless be some never-before-asserted non-irrigation-season injury to Double C&J's water rights.

But, without notice, the Department shifted course based solely on Double C&J's last-minute argument to which Eckhardt never had an opportunity to respond. R. 391 n.6 (Amended Final Order at 10 n.6). That is a clear violation of due process rights. *See Sanders Orchard v. Gem Cty. ex rel. Bd. of Cty. Comm'rs*, 137 Idaho 695, 702, 52 P.3d 840, 847 (2002) (declaring that due process requires "notice that the [agency] may base its decision upon the issue"); *see also* (stating that due process "requires that a person involved in the judicial [or administrative] process be given meaningful notice and a meaningful opportunity to be heard" *State v. Doe*, 147 Idaho 542,544, 211 P.3d 787, 789 (Ct. App. 2009) (citing *Fuentes v. Shevin*, 407 U.S. 67 (1972)).

Finally, although Double C&J is correct that the Applications are not vested water rights, that does not negate the fact that Eckhardt has a property interest in the Applications themselves. "[W]hether a property interest exists can be determined only by an examination of the particular statute or ordinance in question." *Maresh v. State, Dep't of Health & Welfare ex rel. Caballero*,

132 Idaho 221, 226, 970 P.2d 14, 19 (1998). This determination focuses on determining the existence of a liberty or property interest depends on the "construction of the relevant statutes," and the "nature of the interest at stake." *Id.*

An application for a water right filed pursuant to Idaho Code Section 42-202 carries with it the right of appropriating previously unappropriated water if the application satisfies the required criteria in Idaho Code Section 42-203A. Significantly, such an application also carries a priority date for such appropriation—which stays with the resulting water right if the application is approved. If an application is inappropriately denied without due process, the applicant will unjustly lose the priority date and may never be able to appropriate the proposed water—as another applicant may swoop in and apply for (and be granted) the right to use the same water in the interim, even though the original application should have been granted.[3] *In re Idaho Dep't of Water Res. Amended Final Order Creating Water Dist. No. 170*, 148 Idaho 200, 213, 220 P.3d 318, 331 (2009) (noting that concern of depriving a party of its water rights without due process is that such deprivation would "subordinate those rights to other water rights held under a subsequent date of appropriation."). Given the sensitive and significant nature of this interest, there is no doubt that the Applications (and their accompanying priority date) constitute a property interest – an interest that Eckhardt has been denied by IDWR without due process.

[3] In fact, this is precisely what Double C&J is hoping happens in this case. Double C&J has filed an application to appropriate water from Jenkins Creek to fill the Monroe Reservoir on a year-round basis. *See Application for Permit No. 67-15333* at www.idwr.idaho.gov. Apparently, Double C&J believes that there are hundreds of acre-feet of water available in the Jenkins Creek drainage for that purpose, but that there is not even 5 acre-feet available for Eckhardt's ponds. If Eckhardt's Applications are denied, Double C&J's application will obtain a senior priority date over any future applications Eckhardt may file if the Applications are unjustly denied.

D. The Amended Final Order Prejudices Eckhardt's Substantial Rights.

The Amended Final Order prejudices at least two of Eckhardt's substantial rights: its right to a reasonably fair decision-making process and its right to pursue the appropriation of unappropriated water through its Applications. Specifically, by erroneously denying Eckhardt's Applications, the Department prejudiced Eckhardt's substantial right to seek and ultimately use some of the unappropriated water in Jenkins Creek and tributary unnamed streams. *See N. Snake Ground Water Dist. v. Idaho Dep't of Water Res.*, 160 Idaho 518, 529, 376 P.3d 722, 733 (2016) (noting that "[t]he district court concluded that the Director's final order prejudiced the Districts' substantial rights relating to the ability to pursue the appropriation of unappropriated water and in their application for permit," but ultimately ruling that any argument against the district court's conclusion was waived).

Neither of the responsive briefs dispute that a wrongful decision from the Director would prejudice Eckhardt's substantial rights under Sections 42-202 and 42-203A or under the Due Process Clause. Instead, they merely reargue the belief that the Amended Final Order was not wrongful. As to Eckhardt's due process rights, both the Department and Double C&J simply rely on the arguments they made in responding to Section C of Eckhardt's Opening Brief. *See* Double C&J Br. 17; IDWR Br. at 36–37. These arguments miss the mark.

As to the right to pursue the appropriation of unappropriated water, the Department argues that the Amended Final Order did not prejudice Eckhardt's substantial rights because "[a]n applicant has no right to approval of an application for permit that does not meet the criteria of Idaho Code § 42-203A." IDWR Br. 37. The Department then launches into a rehash of why it believes the Director's decision that Eckhardt failed to satisfy its burden to show no injury was correct. IDWR Br. 38. Double C&J likewise merely contends that "[b]ecause the Applications will injure Double C&J, no substantial right of Eckhardt has been prejudiced." Double C&J Br. at 17.

Accordingly, both the Department and Double C&J have conceded that if the Amended Final Decision was wrongfully decided, the decision prejudiced Eckhardt's substantial rights. And because the Amended Final Order was wrongfully decided (for the reasons discussed above), Eckhardt's substantial rights were also prejudiced under Idaho Code Section 67-5279.

E. The Amended Final Order Cannot Be Upheld on the Alternative Grounds Advanced by Double C&J.

Double C&J argues that the Court could affirm the Amended Final Order on the alternative grounds that Shaw, who provided much of Eckhardt's evidence in support of the Applications, "was allowed to testify to opinions not contained in his expert report over the repeated objection of counsel." Double C&J Br. at 18. While Double C&J acknowledges that it repeatedly objected to the Hearing Officer on this issue, Double C&J curiously fails to confront the Hearing Officer's reasoning in overruling Double C&J's objection. In fact, Double C&J does not even acknowledge that the Hearing Officer made an explicit ruling on the matter. That is fatal to Double C&J's argument. After all, the Court may only "reverse a hearing officer's decision on the admissibility [of evidence] when there has been an abuse of discretion." *Chisholm v. Idaho Dep't of Water Res.*, 142 Idaho 159, 163, 125 P.3d 515, 519 (2005). And Double C&J has made no effort to demonstrate how the Hearing Officer's decision was an abuse of discretion.

In any event, the Hearing Officer did not abuse his discretion. Double C&J objected to Shaw's testimony regarding injury to Double C&J's water rights, contesting that Shaw's disclosure did not explicitly state that he would testify to *injury*. But Double C&J admits that Shaw's disclosure stated that he would testify "to the fact that there is *unappropriated water* in the Jenkin Creek basin available for appropriation." Double C&J Br. at 18 (emphasis added). And an opinion on whether unappropriated water is available necessarily encompasses whether water could be taken from the Creek without consuming appropriated water (i.e., without injuring an existing

water right)—such as the water appropriated to Double C&J through its water rights. Eckhardt's counsel made just this point at the hearing, noting that Shaw's expert report—which was provided at the time of the disclosure— talks about when water is available and unappropriated water is available, and . . . the crux of the issue here is when is unappropriated water available that could be captured and, therefore, not cause injury." *See* Hearing Transcript 50:3–7. The Hearing Officer agreed: "I find that availability of water supply and injury to other water rights are pretty tightly married together, and it would be very difficult to proceed with Mr. Shaw's testimony trying to parse those two topics." Hearing Transcript 51:20–24. This ruling was not an abuse of discretion, as the opinion provided at the hearing was, in fact, intertwined with the opinion disclosed in Shaw's declaration and report. *Compare* Ex. 11 *with* Hearing Transcript 46-101. Thus, the Court cannot affirm the Department's ruling on Double C&J's proposed alternative grounds.

F. Double C&J Is Not Entitled to an Award of Attorney Fees.

In its response brief, Double C&J asserts that "it is entitled to an award of its reasonable costs and attorneys' fees pursuant to I.C. § 12-121, I.R.C.P. 54, I.A.R. 40, and I.A.R. 41," because Eckhardt's case was pursued "frivolously, unreasonably or without foundation." Double C&J Br. at 20. Ironically, Double C&J's argument is itself frivolous, unreasonable, and without foundation, as it flies in the face of the litany of Idaho Supreme Court cases that declare Section 12-121 inapplicable for a judicial review of an administrative decision. *See, e.g.*, *Laughy v. Idaho Dep't of Transp.*, 149 Idaho 867, 877, 243 P.3d 1055, 1065 (2010) ("A petition for judicial review is not a civil action, so fees are not available under § 12-121." (internal citation omitted)); *Neighbors For Responsible Growth v. Kootenai Cty.*, 147 Idaho 173, 177 n.1, 207 P.3d 149, 153 (2009) (noting it is "error to award attorney fees pursuant to I.C. § 12-121 in connection with a petition for judicial review."); *Nw. Pipeline Corp. v. State, Dep't of Employment*, 129 Idaho 548, 551, 928 P.2d 898, 901 (1996) (ruling Section 12-121 inapplicable because "[a]ppeals from administrative

rulings are not 'civil actions' for purposes of I.C. § 12-121."); *Johnson v. Idaho Cent. Credit Union*, 127 Idaho 867, 871, 908 P.2d 560, 564 (1995) (same); *Lowery v. Board of County Comm'rs for Ada County*, 117 Idaho 1079, 1082, 793 P.2d 1251, 1254 (1990) (same). Based on this clear direction from the Idaho Supreme Court, Double C&J's request for attorney fees pursuant to Section 12-121 must be denied as a matter of law. In addition, Eckhardt's appeal is anything but frivolous.

CONCLUSION

For the reasons articulated above and in Eckhardt's opening brief, the Amended Final Order lacks substantial evidence, is arbitrary and capricious, violates Eckhardt's due process rights, and prejudices Eckhardt's substantial rights. The Court should accordingly vacate the Order and remand the matter to the Department for further proceedings.

DATED THIS 10th day of June, 2020.

PARSONS BEHLE & LATIMER

By */s/ Norman M. Semanko*
Norman M. Semanko
Aaron M. Worthen
Attorneys for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of June, 2020, I served a true and correct copy of the foregoing document on the parties listed below by their designated method of service.

Garrick L. Baxter
Jennifer R. Wendel
Deputy Attorneys General
322 East Front Street
PO Box 83720
Boise, ID 83720
Garrick.baxter@idwr.idaho.gov

☒ U.S. First Class Mail, Postage Prepaid
☐ U.S. Certified Mail, Postage Prepaid
☐ Federal Express
☐ Hand Delivery
☒ Electronic Mail/ECF Filing/iCourt

Candice M. McHugh
Chris M. Bromley
McHugh Bromley PLLC
380 South 4th Street, Suite 103
Boise, ID 83702
cmchugh@mchughbromley.com
cbromley@mchughbromley.com

☒ U.S. First Class Mail, Postage Prepaid
☐ U.S. Certified Mail, Postage Prepaid
☐ Federal Express
☐ Hand Delivery
☒ Electronic Mail/ECF Filing/iCourt

/s/ Norman M. Semanko
Norman M. Semanko