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DANIEL E. WHERRY, Of Counsel

April 1, 2014

Kathy Robinson
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219

RE: In the Matter of Dr. Daniel J. McGowan; Docket No. CWA-07-2014-0060

Dear Ms. Robinson:

Enclosed for filing please find an original and a copy of an Answer and Request for Hearing. Upon receipt, please file-stamp the copy and return to me in the self-addressed, enclosed envelope. Thank you.

Very truly yours,

Stephen D. Mossman
sdm@mattsonricketts.com

SDM/cdw

Enclosures

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS 66219

IN THE MATTER OF	)	**Docket No. CWA-07-2014-0060**
	)	
DR. DANIEL J. McGOWAN,	)	
	)	**ANSWER AND REQUEST**
Respondent	)	**FOR HEARING**
	)	
Proceedings under Section 309(g) of the Clean Water Act, 33 U.S.C. § 1319(g)	)	

Respondent Dr. Daniel J. McGowan ("McGowan"), in answer to the United States Environmental Protection Agency ("EPA") Complaint and Notice of Opportunity for Hearing ("Complaint") admits, denies and alleges as follows:

1. Paragraph 1 of the Complaint is a statement of law to which no admittance or denial is necessary.

2. Paragraph 2 of the Complaint is a statement to which no admittance or denial is necessary.

3. Paragraph 3 of the Complaint is a statement of law to which no admittance or denial is necessary.

4. McGowan admits Paragraph 4 of the Complaint.

5. Paragraph 5 of the Complaint is a statement of law to which no admittance or denial is necessary.

6. Paragraph 6 of the Complaint is a statement of law to which no admittance or denial is necessary.

7. Paragraph 7 of the Complaint is a statement of law to which no admittance or denial is necessary.

8. Paragraph 8 of the Complaint is a statement of law to which no admittance or denial is necessary.

9. Paragraph 9 of the Complaint is a statement of law to which no admittance or denial is necessary.

10. Paragraph 10 of the Complaint is a statement of law to which no admittance or denial is necessary.

11. Paragraph 11 of the Complaint is a statement of law to which no admittance or denial is necessary.

12. McGowan admits Paragraph 12 of the Complaint.

13. McGowan admits Paragraph 13 of the Complaint.

14. McGowan denies Paragraph 14 of the Complaint.

15. McGowan admits the portion of Paragraph 15 of the Complaint that the Corps' Omaha District issued a Cease and Desist Order but denies that the Cease and Desist Order had any legal basis.

16. McGowan denies Paragraph 16 of the Complaint.

17. McGowan denies Paragraph 17 of the Complaint.

18. McGowan denies Paragraph 18 of the Complaint.

19. McGowan lacks sufficient information to either admit or deny Paragraph 19 of the Complaint and all its subparts and therefore denies.

20. McGowan denies Paragraph 20 of the Complaint.

21. McGowan denies Paragraph 21 of the Complaint.

22. McGowan denies Paragraph 22 of the Complaint.

23. McGowan denies Paragraph 23 of the Complaint.

24. McGowan denies Paragraph 24 of the Complaint.

25. McGowan denies Paragraph 25 of the Complaint.

26. McGowan denies Paragraph 26 of the Complaint.

27. Paragraph 27 of the Complaint is a statement to which no admittance or denial is necessary.

28. McGowan denies Paragraph 28 of the Complaint.

29. Paragraph 29 of the Complaint is a statement of law to which no admittance or denial is necessary.

30. McGowan denies Paragraph 30 of the Complaint.

31. McGowan denies Paragraph 31 of the Complaint.

32. McGowan denies Paragraph 32 of the Complaint.

33. Paragraph 33 of the Complaint is a statement to which no admittance or denial is necessary.

34. McGowan denies Paragraph 34 of the Complaint.

35. Pursuant to Paragraph 35 of the Complaint, McGowan requests a hearing on the Complaint.

36. Paragraph 36 of the Complaint is a statement to which no admittance or denial is necessary.

37. Paragraph 37 of the Complaint is a statement to which no admittance or denial is necessary.

38. Paragraph 38 of the Complaint is a statement to which no admittance or denial is necessary.

39. Paragraph 39 of the Complaint is a statement to which no admittance or denial is necessary.

40. Paragraph 40 of the Complaint is a statement to which no admittance or denial is necessary.

41. Paragraph 41 of the Complaint is a statement to which no admittance or denial is necessary.

42. Paragraph 42 of the Complaint is a statement to which no admittance or denial is necessary.

43. Paragraph 43 of the Complaint is a statement to which no admittance or denial is necessary.

44. Paragraph 44 of the Complaint is a statement to which no admittance or denial is necessary.

AFFIRMATIVE DEFENSES

For his Affirmative Defenses, McGowan affirmatively allege as follows:

1. McGowan affirmatively alleges that the McGowan dam structure is not a "point source" as the term is defined in Section 502(14) of the CWA, 33 U.S.C. 1362 (14).

2. McGowan affirmatively alleges that the sediment behind the McGowan dam structure is not a "pollutant" as the term is defined in Section 502(6) of the CWA, 33 U.S.C. 1362 (6).

3. McGowan affirmatively alleges that his actions did not cause a "discharge of fill material" as the term is defined in 40 C.F.R. § 232.2.

4. McGowan affirmatively alleges that the release of sediment behind the McGowan dam structure was necessary and prudent to avoid the potential loss of the structure.

5. McGowan affirmatively alleges that the proposed penalty in the sum of One Hundred Seventy-seven Thousand Five Hundred Dollars ($177,500.00) is unreasonable and unwarranted under the facts to be proven at the hearing in this matter.

REQUEST FOR HEARING

McGowan requests a hearing on the Complaint.

DR. DANIEL J. McGOWAN, Respondent

By His Attorneys,

MATTSON, RICKETTS, DAVIES,
STEWART & CALKINS
134 South 13th Street, Suite 1200
Lincoln, NE 68508
Telephone No.: (402) 475-8433
Facsimile No.: (402) 475-0105
E-mail: sdm@mattsonricketts.com

By: _____
Stephen D. Mossman, #19859
One of Said Attorneys

CERTIFICATE OF FILING

The undersigned hereby certifies that a true and correct copy of the foregoing was served via email and U.S. Mail on the 1st day of April, 2014, for filing on the following:

Kathy Robinson
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219

_____
Attorney of Record

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was served via email on the 1st day of April, 2014 on the following named party or its attorney:

Chris Muehlberger
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219

Attorney of Record