

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,)	RESPONDENT DR. DANIEL J.
)	MCGOWAN'S OBJECTIONS TO
Respondent)	COMPLAINANT'S EVIDENCE IN
)	SUPPORT OF ITS MOTION FOR
)	ACCELERATED DECISION AS TO
Proceedings under Section 309(g) of the)	LIABILITY AND MOTION TO
Clean Water Act, 33 U.S.C. § 1319(g))	STRIKE

INTRODUCTION

On April 17, 2015, the Complainant submitted its Memorandum and Points of Authority in Support of its Motion for Accelerated Decision as to Liability and Motion to Strike. As portions of Complainant's evidence are not relevant to any issue now before the Hearing Officer, constitute hearsay, lack sufficient foundation, or are otherwise inadmissible, the Respondent Dr. Daniel J. McGowan makes the following objections pursuant to Fed. R. Civ. P. 56(c):

Declaration of Andrew Glidden (Attachment 2)

Paragraph 5 – The first sentence contains a statement of Barry Harthoorn which is inadmissible hearsay. *See* Fed. R. Civ. P. 56(c)(4); Fed. R. Evid. 802.

Paragraph 9 – This paragraph contains assumptions made by the Declarant. Declarant lacks personal knowledge and therefore foundation for Paragraph 9. *See* Fed. R. Civ. P. 56(c)(4); Fed. R. Evid. 602.

Paragraph 10 – This paragraph contains an expert opinion. Declarant is not a water resources engineer or otherwise qualified to state such an expert opinion. Additionally, the

Declarant has stated no basis or foundation for his calculation and opinion that 130,000 cubic yards of sediment was discharged from the dam. Further, there is no time period stated, and thus lacks relevance. *See* Fed. R. Civ. P. 56(c)(4); Fed. R. Evid. 402, 602, 701 and 702.

Paragraph 12 – This paragraph refers to photographs of two anglers. These photographs lack foundation, and have no relevance to the issue of liability. *See* Fed. R. Civ. P. 56(c)(4); Fed. R. Evid. 402 and 602.

Paragraph 14 – This paragraph refers to a stream survey of Plum Creek without any description of the methods or purpose of the survey. As such this paragraph lacks foundation and relevance. *See* Fed. R. Civ. P. 56(c)(4); Fed. R. Evid. 402 and 602.

Declaration of Barry Harthoorn (Attachment 3)

The paragraphs of this affidavit are not numbered making objections difficult to reference to. To reduce confusion and aid the hearing officer, Respondent will refer to the paragraphs as if they were numbered, 1 through 11.

Paragraph 6 – The second sentence makes reference to a Game and Parks survey of which the Declarant has no first-hand knowledge. Accordingly, the Declarant lacks foundation. Moreover, references to this report constitute inadmissible hearsay. *See* Fed. R. Civ. P. 56(c)(4); Fed. R. Evid. 602 and 802.

Paragraph 8 – This paragraph makes references to numerous photographs that show people either swimming or standing near Plum Creek. These photographs appear to be nearly 10 years old and have no relevance to the issue of liability. *See* Fed. R. Civ. P. 56(c)(4); Fed. R. Evid. 402.

Declaration of Mike Murphy (Attachment 4)

Paragraph 3 – This paragraph has no relevance to this issue of liability. *See* Fed. R. Civ. P. 56(c)(4); Fed. R. Evid. 402.

Paragraph 5 – This paragraph contains statements and references to statements of Will Williams. These statements are inadmissible hearsay and accordingly the paragraph is inadmissible in its entirety. *See* Fed. R. Civ. P. 56(c)(4); Fed. R. Evid. 802.

DATED this 18th day of May, 2015.

DR. DANIEL J. MCGOWAN, Respondent

By His Attorneys,

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CERTIFICATE OF FILING

The undersigned certifies that the original Objections to Complainant's Evidence in Support of its Motion for Accelerated Decision as to Liability and Motion to Strike was served via the OALJ E-filing system to Sybil Anderson, the Office of Administrative Law Judges Hearing Clerk and a true and correct copy was served via email to Chris Muehlberger, Assistant Regional Counsel at muehlberger.christopher@epa.gov on the 18th day of May, 2015.



Attorney of Record