

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

IN THE MATTER OF PERMIT NO. 35-8359)	ORDER GRANTING
IN THE NAME OF JOHN B. KUGLER and)	AUGMENTATION
DIANE K. KUGLER)	HEARING
_____)	

On December 6, 2007, the Idaho Department of Water Resources (“Department”) issued an *Order Continuing Indefinite Stay in Development*. John B. Kugler (“Kugler”) timely filed a petition for reconsideration and a request for a hearing.

On January 21, 2008, the Department conducted a hearing. Kugler appeared and testified on his behalf. Following the hearing, the Department issued a *Preliminary Order Suspending Action and Prohibiting Development*.

On April 6, 2009, the Department received a petition for reconsideration from the permit holder. On April 24, 2009, the Department denied the petition for reconsideration.

On May 7, 2009, Kugler filed exceptions to the preliminary order. In the exceptions, Kugler raised four specific issues:

1. Lack of evidence in the record that the development would significantly affect senior priority water rights;
2. The decision did not address the request for extension of time to complete proofs;
3. The Department’s proposed action constitutes a takings claim under the U.S. Constitution and the Idaho Constitution; and

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4. The Department made no determination of finding about the mitigating circumstances that might allow the permit to pursue the development.

The Director has considered the record presented at the hearing, the findings of fact contained in the preliminary order and the exceptions filed by Kugler. Based on this review, the Director finds that there was no presentation or opportunity for presentation at the hearing of evidence regarding the effect or injury on senior priority water rights that might be caused by development of the beneficial use proposed by Kugler. The Director also determines Kugler should be granted the opportunity to present evidence about mitigating circumstances that might allow the permit to pursue the development.

As a result of these deficiencies, the Director grants a limited hearing to augment the existing record. The issues considered shall be limited to exceptions one (1) and four (4) as recited above. Expert witnesses for the Department will present evidence at the hearing regarding the impact of diverting water at the points of diversion proposed by Kugler on the reaches of the Snake River both above and below Milner Dam. Kugler shall have an opportunity to present any evidence on the subjects following presentation of Department testimony.

ORDER

IT IS HEREBY ORDERED that Kugler's exceptions shall be addressed as part of an augmentation hearing held by the Director. The issues to be addressed at the augmentation hearing are:

1. How the proposed development would affect senior priority water rights.
2. Mitigating circumstances for allowance of continued development of the permit.

IT IS FURTHER ORDERED that Kugler shall provide to the Department within 28 days of the date of this order, unavailable dates for a hearing in October or November of 2010.

If Kugler fails to provide unavailable dates as requested, the Department will schedule the hearing.

DATED this 23rd day of August, 2010.

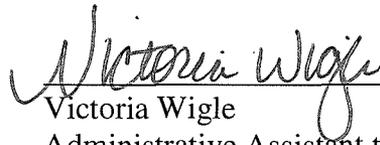


Gary Spackman
Interim Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23rd day of August, 2010, the above and foregoing document was served by placing a copy of the same in the United States mail, postage prepaid and properly addressed to the following:

JOHN KUGLER
DIANE KUGLER
2913 GALLEON CT NE
TACOMA WA 98422



Victoria Wigle
Administrative Assistant to the Director
Idaho Department of Water Resources