

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

JOHN B. KUGLER)	Case No. CV 2011-15672
)	
Petitioner,)	ORDER GRANTING MOTION
)	FOR A CONTINUANCE FOR
vs.)	LIMITED PURPOSE OF
)	ACCOMODATING TRAVEL
)	
THE IDAHO DEPARTMENT OF WATER)	ORDER VACATING AND
RESOURCES and GARY SPACKMAN in his)	RESETTING HEARING
official capacity as Interim Director of the)	
Idaho Department of Water Resources,)	
)	
Respondents.)	
_____)	
)	
IN THE MATTER OF PERMIT TO)	
APPROPRIATE WATER NO. 35-8359 IN)	
THE NAME OF JOHN B. & DIANE K.)	
KUGLER)	
_____)	

Oral argument on the *Petition for Judicial Review* filed in the above-captioned matter is presently set for March 23, 2012 at 1:30 p.m. (Mountain Time). On March 21, 2012, Petitioner filed a *Motion for Continuance* and a *Motion for an Expedited Hearing*, along with a supporting *Affidavit*, requesting that this Court vacate the March 23, 2012 hearing and reset the hearing in April 2012. The Petitioner, who resides in Tacoma WA, wishes to be personally present at the hearing and asserts that forecasted weather conditions are such that they are likely to hinder or prohibit his ability to travel to Twin Falls, Idaho. Secondly, Petitioner indicates that he may move the Court to introduce additional evidence not contained in the record, and indicates that he would like more time to develop that evidence. Last, Petitioner represents in his *Affidavit* that he

has been in contact with counsel for the Respondent and that there is no opposition to his *Motions*.

The Court in its discretion will vacate and reset the March 23, 2012 hearing for the limited purpose of allowing the Petitioner additional time to make travel arrangements. **The Court notes however that any future requests by Petitioner for a continuance related to travel will not be granted.** Although the hearing will be reset to accommodate the Petitioner with respect to travel, it is not being reset to allow Petitioner additional time to request leave from this Court to submit additional evidence. Idaho Code § 67-5276(1) provides that a party may petition the Court for leave to present additional evidence “before the date set for hearing.” In this case then, in the event the presently scheduled hearing date is not vacated and reset as requested, Petitioner would be required to petition this Court for leave to submit additional evidence on or before March 22, 2012. The agency record was lodged with this Court on October 31, 2011. As a result, Petitioner has already been afforded ample time to make such a petition to this Court. The Court is not willing to vacate and reset the hearing to allow Petitioner additional time above and beyond that permitted by Idaho Code § 67-5276 to seek leave to submit additional evidence. That said, the Court will provide Petitioner until March 28, 2012 at 5:00 p.m. (Mountain Time) to file a petition for leave to present additional evidence pursuant to Idaho Code § 67-5276, should he so choose, to account for the mailing and service of this *Order*.

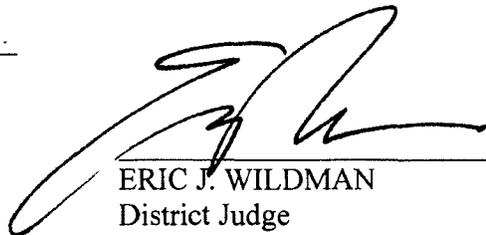
Therefore, for good cause shown and based on the representations set forth in Petitioner’s *Affidavit* that opposing counsel does not object to the requested continuance;

THE FOLLOWING ARE HEREBY ORDERED:

1. The oral argument date set for March 23, 2012 **is hereby vacated.**
2. Provided, however, that the original deadline in which to petition this Court for leave to present additional evidence pursuant to Idaho Code § 67-5276 shall not be extended, except to account for the mailing of this Order. Any application pursuant to Idaho Code § 67-5276 for leave to present additional evidence must be filed with the Court no later than **March 28, 2012** at 5:00 p.m. (Mountain Time).
3. Oral argument on the *Petition for Judicial Review* will be reset to be heard on **April 23, 2012, at 1:30 p.m.** (Mountain Time) at the Snake River Basin Adjudication District Court, 253 3rd Avenue North, Twin Falls, Idaho. Telephone participation will be available by dialing 1-215-446-0193 and entering 406128# when prompted. Video teleconferencing (“VTC”)

will also be available by appearing at the Idaho Department of Water Resources, Idaho Water Center, 322 E. Front St., Conference Rm. B, Boise, Idaho. Parties should refer to the *Procedural Order* regarding protocol for telephone and VTC participation. The form and order of argument shall be governed by I.A.R. 37.

DATED: March 24, 2012.


ERIC J. WILDMAN
District Judge

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER GRANTING MOTION FOR A CONTINUANCE FOR LIMITED PURPOSE OF TRAVEL / ORDER VACATING AND RESETTING HEARING was mailed on March 21, 2012, with sufficient first-class postage to the following:

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