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District Court - SRBA
Fifth Judicial District
In Re: Administrative Appeals
County of Twin Falls - State of Idaho
MAR 28 2012
By _____ Clerk
Deputy Clerk

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

JOHN B. KUGLER Petitioner, vs. THE IDAHO DEPARTMENT OF WATER RESOURCES and GARY SPACKMAN in his 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. KUGLER & DIANE K. KUGLER	Case No. CV-2011-1567 AFFIDAVIT ON A MOTION FOR LEAVE TO SUBMIT ADDITIONAL EVIDENCE

STATE OF WASHINGTON)
) ss
County of King)

John B. Kugler, being first duly sworn, states that he is the petitioner in the above matter and has personal knowledge of the facts set forth herein which are true and correct as to the best of appellant's knowledge and belief.

Your appellant respectfully requests leave of Court to submit additional evidence for the record in this matter by way of the oral testimony of your appellant and possibly that of appellant's son, Michael Kugler, if necessary. The testimony,

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including cross-examination and potential rebuttal, should require less than one hour of the Court's and counsel's time.

The evidence proposed to be presented, and for which leave of the Court is requested, relates to three conversation's with representatives of the Idaho Department of Water Resources. Two of the conversations were with Gary Spackman. One was when, as acting director, he met with my son and I in his office in the latter part of September, 2009. In setting up that meeting I had also spoken briefly with Mrs. Gibson. The second occurred immediately subsequent to the conclusion of the hearing he scheduled and held, as interim director, on June 14, 2011. The first conversation was with the individual identified as, if I recall correctly, the administrative receptionist who was either Mrs. Gibson or her predecessor in July of 1986. That conversation related to my notification to the department for the need and my intent to enroll the little farm into the federal CRP program. The first conversation with Mr. Spackman related to my inquiry as to the status of my appeal to the director and why I had not received any information from the department with respect to it's progress.. The second conversation with Mr. Spackman relates to my inquiry of Mr. Spackman as to whether or not it was necessary for me to apply for a well drilling permit in order to complete my appeal that I intended to file.

As Mr. Spackman stated at the outset of the hearing he wanted to use the undersigned as a test case. It is the contention of your petitioner that Mr. Spackman created or allowed irregularities and delays in the processing of the application for an enlargement of time in which to complete the appropriation permit. It also is petitioner's contention that the conduct and the lack of conduct was grievous, harmful and lacked due process. The conversations are relevant and necessary for the record in order to clear up a couple of contentions made by counsel in the brief submitted on behalf of the respondents. Some matters that your petitioner considered a non issue have now become issues that became apparent to your affiant in the further reading and study of the respondent's brief while preparing for oral argument before the Court. Appellant did not present this question earlier as appellant was trying to digest and more fully understand the law from all of the

cases utilized by opposing counsel in justifying and supporting the respondent's position in this matter. The conversations were and are not a part of the record and can only become a part of the record if oral evidence is permitted to be presented at the Court appellate hearing. Appellant believed and relied on the statements made by the department employees and are material to the relief sought by your appellant in this proceeding. This evidence is offered in support of appellant's argument that there are irregularities in the proceeding and also that, with respect to one specific issue, Mr. Spackman created the failure relied upon by counsel to support the respondent's legal position in this matter.

John B. Kugler

JOHN B. KUGLER

NOTARIZATION

On this 28th day of March, 2012, before me a Notary Public for the State of Washington, personally appeared John B. Kugler who, being first duly sworn, subscribed to the foregoing.

Cheryl D. Hoeft

NOTARY PUBLIC FOR WASHINGTON

Residing at Federal Way, WA

My Commission Expires 11/1/12

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