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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.	Case No. CV-2011-1567 AFFIDAVIT AND OFFER OF PROOF
IN THE MATTER OF PERMIT TO APPROPRIATE WATER NO. 35-8359 IN THE NAME OF JOHN B. KUGLER & DIANE K. KUGLER	

STATE OF WASHINGTON)
) ss
County of King)

John B. Kugler, being first duly sworn, states that he is the petitioner, now appellant 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.

Subsequent to the filing this appeal and the receipt of a notice that the transcript had been received by the District Court your affiant contacted IDWR counsel to ascertain why appellant had not received a transcript from the Idaho Department of Water Resources. Appellant was advised that the transcript had

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been sent and that it was a disc that had been mailed to appellant. Your appellant then advised counsel that a typed transcript that appellant had paid for was needed as appellant did not have the capability of using a disc. IDWR counsel then responded that it was only the District Court that received a printed copy and that it was the policy of IDWR to utilize a disc for parties. Counsel also advised that it was impossible to provide a printed copy of the transcript to which your appellant asked as to whether a copy of the index could be made in order to permit appellant an ability to construct a transcript. The index was provided however the transcript record contains a considerable number of items that were not a part of appellant's records. The record reflects, without explanation, several considerably large time delays in the processing of appellant's enlargement of time request in which to complete the water permit application. Appellant had no control over the passage of time in the administration process which has now exceeded that which had been granted in order to complete the installation of an irrigation system that had been granted to appellant by IRWR in November of 1984.

Over the years appellant spoke often with Deborah Gibson as time and situations created a need for inquiries or responses. Most of these were by telephone or if I happened to be passing through Boise on my way to check on my farmland or to conduct other business in Twin Falls or Pocatello as well as to visit with my two brother living in eastern Idaho. Only on one occasion of communication, as I recall in September of 2008, did I stop by the IDWR offices and speak with another person as Mrs. Gibson was not in that day. This person advised that her computer was not working and that she could not give me status information or provide me with the necessary forms I was seeking as she did know where they were kept. Later I was able to commute with Mrs. Gibson on the matter. On one occasion when I spoke with Mrs. Gibson, in 2004 or 2005 as I now best recall, she advised me that I was the only water right applicant in the position in which I find myself and that I was doing the right things in continuing my desire to place an irrigation system on my farmland. She also advised me that there were four or five others who were pursuing water right applications and I asked her to

provide me with copies of their applications and she did that. As she advised me I determined that my situation is unique from that of other applicants.

To fill the gaps that are apparent in the record and to clarify, in part, the issues in this proceeding appellant would make the following offer of proof, to-wit:

OFFER OF PROOF

Appellant will testify that in July of 1984 appellant notified IDWR that as a result of the failure of one well driller and the actions and failure of a second well driller it became economically necessary to put the farmland into the federal CRP program. Appellant also will testify that appellant inquired as to whether or not this would affect the water permit received from the department and that appellant was advised that it would not be a problem. Appellant was also advised that if time became a factor appellant could apply for and receive an extension of time as well as that notice of such would be sent by the department.

Appellant will also testify that in September of 2009 appellant had scheduled an appointment with Mr. Spackman. Appellant appeared at the scheduled time accompanied by his son, Michael. Each can and will testify that on entry and immediately after a greeting Mr. Spackman stated " I think I know why you are here. I think it's because of this " at which time Mr. Spackman handed to appellant the original Petition For Reconsideration dated April 3, 2009. At that point in time he then stated " somehow it fell through the cracks." Thereafter there was a general discussion and the gist of which Mr. Spackman concluded that he did not know whether he, as interim director, would process the request or whether he would wait for a new director to be appointed. He advised that if he determined not to proceed that the first thing given to the new director would be my Request for Reconsideration. He then stated that I would be notified of his decision. No such decision was ever issued or received. As time passed I made two or three inquiries of the department as to what was transpiring only to be informed that no director had been selected. Later I learned that Mr. Spackman had been appointed as acting director so I contacted IDWR to see if something might be done with my request and

received and I then received a notice that a hearing would be scheduled in October or November. That did not happen.

Appellant will, as to the third conversation, that subsequent to the termination of the hearing, the packing up of equipment by the reporter and the departure of one or two others appellant requested a moment of Mr. Spackman's time which was given. Your affiant then inquired of Mr. Spackman as to whether or not an application for a well drilling permit should be filed in order to complete the record for the purpose of the appeal that both he and I wanted. He stated that it was absolutely not required. Thereafter he said " not only is a well drilling permit not required it would never be given to you and it would be a waste of your money." I thanked him for that information, said my good bye and left the hearing area.

JOHN B. KUGLER

NOTARIZATION

On this 20th day of April, 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 affidavit and offer of proof..

KENNEDY TRAN
COMM. EXP.
NOTARY
PUBLIC
NOVEMBER 16, 2014
STATE OF WASHINGTON

NOTARY PUBLIC FOR WASHINGTON

Residing at Renton, WA

My Commission Expires 11/16/2014

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