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Attorneys for Respondent

**IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF POWER**

JOHN B. KUGLER,

Petitioner,

vs.

THE STATE OF IDAHO DEPARTMENT OF
WATER RESOURCES,

Respondent.

Case No. CV-2015-031

**AFFIDAVIT OF MEGHAN CARTER IN
SUPPORT OF MOTION FOR STAY
AND SUSPENSION OF BRIEFING
SCHEDULE**

MEGHAN CARTER, being first duly sworn, deposes and states:

1. I am an attorney representing the Idaho Department of Water Resources (“IDWR”). I am over the age of eighteen and the facts I state below are based on my personal knowledge.

**AFFIDAVIT OF MEGHAN CARTER IN SUPPORT OF MOTION FOR STAY AND
SUSPENSION OF BRIEFING SCHEDULE – Page 1**

2. On June 15, 2015, IDWR received an *Assignment of Permit* transferring ownership of permit 35-8359 from John B. Kugler ("Kugler") to Lance D. Funk. A copy of the assignment is attached as Exhibit A.
3. On June 26, 2015, IDWR issued a *Preliminary Order Approving Assignment of Permit*. A copy of the order is attached as Exhibit B.
4. On July 6, 2015, Kugler filed a *Motion to Reconsider*. A copy of the motion is attached as Exhibit C.
5. On July 8, 2015, IDWR issued *Order Granting Petition for Hearing; Notice of Hearing*. A copy of the order is attached as Exhibit D.

DATED this 10th day of July 2015.

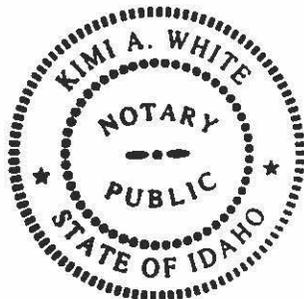
LAWRENCE G. WASDEN
Attorney General

CLIVE J. STRONG
Deputy Attorney General
CHIEF, NATURAL RESOURCES DIVISION



GARRICK L. BAXTER
MEGHAN CARTER
Deputy Attorneys General
Idaho Department of Water Resources

SUBSCRIBED AND SWORN To before me this 10th day of July 2015.





NOTARY PUBLIC FOR IDAHO
Residing at Boise, Idaho
Commission Expires: 04/01/16

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th day of July 2015, I caused a true and correct copy of the foregoing document to be filed with the Court and served on the following parties by the indicated methods:

Original to:
DISTRICT COURT
253 3RD AVE NORTH
PO BOX 2707
TWIN FALLS ID 83303-2707
Facsimile: (208) 736-2121

- U.S. Mail, Postage Prepaid
- Hand Delivery
- Facsimile
- E-mail

JOHN B KUGLER
2913 GALLEON CT NE
TACOMA WA 98422
FAX: (253)568-6529

- U.S. Mail, Postage Prepaid
- Hand Delivery
- Facsimile
- E-mail

Courtesy Copy to:
ROBERT L HARRIS
PO BOX 50130
IDAHO FALLS ID 83405
rharris@holdenlegal.com

- U.S. Mail, Postage Prepaid
- Hand Delivery
- Facsimile
- E-mail



Meghan Carter
Deputy Attorney General

Exhibit A

DEU

\$25 fee per permit

Received by Mr

Receipt amt. \$ 25

Receipt no. C108403

Date 6-15-15

RECEIVED

JUN 15 2015

DEPARTMENT OF WATER RESOURCES

STATE OF IDAHO DEPARTMENT OF WATER RESOURCES

ASSIGNMENT OF PERMIT

To change the ownership of a permit

I, John B. Kingler, Diner/KK water hereby assign to Lance D. Funk of Lance D. Funk 3853 East Rd, American Falls, ID 83211 (208) 226,5551

All my right, title, and interest in and to Permit No(s): 35-8359 to appropriate the public waters of the State of Idaho.

OR (for partial assignments)

The following described portion of my right, title, and interest in and to Permit Number(s):

_____ to appropriate the public waters of the State of Idaho.

Describe in detail the portion of the permit assigned, listing the number of acres in each 40 acre subdivision, point of diversion location, and amount of the water in cubic feet per second.

Does the new permit holder own the property at the:

Point of diversion? Yes No
Place of use? Yes No

If no, describe the arrangement enabling the new owner to access the point of diversion and/or the place of use:

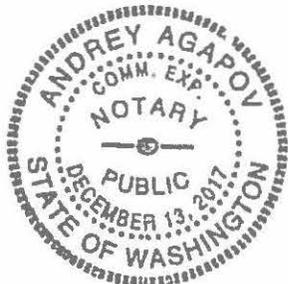
Dated this 12 day of June, 2015.

John B. Kingler Permit holder Title (if applicable)
Aimee A. Stinger Permit holder Title (if applicable)

State of ~~Idaho~~ Washington)
County of King)ss

On this 12th day of June, 2015, personally appeared before me the signer(s) of the above instrument, who duly acknowledged to me that he/she/they executed the same.

SEAL



Notary Public

My commission expires: 12/13/17

Exhibit B

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

IN THE MATTER OF PERMIT TO
APPROPRIATE WATER NO. 35-8359
IN THE NAME OF JOHN B. KUGLER
& DIANE K. KUGLER

**PRELIMINARY ORDER APPROVING
ASSIGNMENT OF PERMIT**

This matter having come before the Idaho Department of Water Resources ("Department") as an assignment of permit, the Department finds, concludes, and orders as follows:

FINDINGS OF FACT

1. October 4, 1984, John B. Kugler and his wife Diane K. Kugler ("Kuglers") filed application to appropriate water no. 35-8359 with the Department.
2. On July 27, 1990, the Department approved permit to appropriate water no. 35-8359 ("Permit").
3. On November 9, 1994, the Department issued an *Order for Temporary Stay of Development and Notice of Formal Proceedings* temporarily stopping further development on Kuglers' Permit.
4. On December 6, 2007, the Department issued an *Order Continuing Indefinite Stay in Development Period* ("Continuing Order"). The *Continuing Order* granted an indefinite stay in the development period for the Permit. The indefinite stay contained three conditions. The pertinent condition states "[t]he permit holder is not authorized to assign ownership of the permit to another party without prior approval of the Department." *Continuing Order* at 3.
5. On June 15, 2015 the Department received an Assignment of Permit form ("Assignment"). The Assignment transferred ownership of the Permit from Kuglers to Lance D. Funk ("Funk").

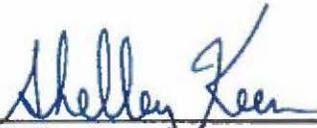
CONCLUSIONS OF LAW

1. Pursuant to the *Continuing Order*, Department approval is needed for the Assignment from Kuglers to Funk.
2. The Department should approve the Assignment.

ORDER

IT IS HEREBY ORDERED that the Assignment of Permit No. 35-8359 from John B. Kugler and Diana K. Kugler to Lance D. Funk is **APPROVED**.

Dated this 26th day of June, 2015.



Shelley Keen
Water Rights Section Manager

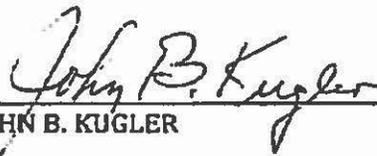
Exhibit C

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

**IN THE MATTER OF PERMIT TO)
APPROPRIATE WATER NO. 35-08359) MOTION TO
IN THE NAME OF JOHN B. KUGLER) RECONSIDER
_____)**

TO: THE DEPARTMENT OF WATER RESOURCES, 322 E. Front St. Boise, ID.

COMES NOW the undersigned owner of Water Permit No. 35=08359 and moves the department to reconsider and reverse of that which the undersigned was orally advised, i.e. that the department has transferred ownership of the above numbered permit to Lance Funk, on the grounds and for the reason that the undersigned was misinformed as to the procedure for the processing of a transfer request. The undersigned was informed by the department's general counsel that after the application would be filed there would be a hearing for the approval of a transfer request. The application was filed in order to set a hearing date giving the undersigned and his wife time to consider or reconsider whether or not to proceed with a transfer to Mr. Funk and his wife. The transfer without allowing this additional time was inappropriate and not according to the information provided and should thus be reversed at this time.



JOHN B. KUGLER

Exhibit D

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

IN THE MATTER OF PERMIT TO
APPROPRIATE WATER NO. 35-8359
IN THE NAME OF JOHN B. KUGLER &
DIANE K. KUGLER

**ORDER GRANTING PETITION FOR
HEARING; NOTICE OF HEARING**

On June 15, 2015, the Idaho Department of Water Resources (“Department”) received an Assignment of Permit (“Assignment”) for Permit No. 35-8359 (“Permit”). The Assignment transferred ownership of the Permit from John B. Kugler and his wife Diane K. Kugler to Lance D. Funk (“Funk”).

The Department’s *Final Order Suspending Action and Prohibiting Development*, issued July 18, 2011, required Kuglers to obtain permission to assign the Permit. Accordingly, the Department issued a *Preliminary Order Approving Assignment of Permit* on June 26, 2015.

In response to the Preliminary Order, on July 6, 2015, John B. Kugler (“Kugler”) filed a *Motion to Reconsider*, seeking a hearing on the matter. The *Motion to Reconsider* calls into question the ownership of the Permit.

The Department is treating the *Motion to Reconsider* as a petition for hearing (“Petition”) under Idaho Code § 42-1701A(3). Idaho Code § 42-1701A(3) provides in relevant part that:

[A]ny person aggrieved by any action of the director, including any decision, determination, order or other action, . . . and who has not previously been afforded an opportunity for a hearing on the matter shall be entitled to a hearing before the director to contest the action.

Because Kugler has not previously been afforded an opportunity for a hearing in this matter, IDWR will grant Kugler’s petition for hearing.

ORDER

IT IS HEREBY ORDERED that Kugler’s petition for hearing is **granted**.

NOTICE OF HEARING

The Department hereby provides notice that a hearing on Kugler's Petition is set for **August 5th, beginning at 9:00 a.m.**, at the Department's State Office, located at 322 E. Front Street, 6th Floor Conference Rooms, Boise, Idaho. The presiding officer at the hearing will be Shelley Keen.

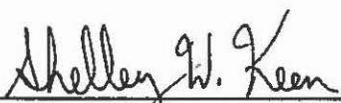
If you plan to offer exhibits for the record at the hearing, note that Rule 606 of the Department's Rules of Procedure requires that a copy be provided to each party and to the presiding officer, whose mailing address is P.O. Box 83720, Boise, Idaho 83720-0098.

The hearing will be held in accordance with provisions of Chapters 2 and 17, Title 42 and Chapter 52, Title 67, Idaho Code, and the adopted Rules of Procedure of the Department, IDAPA 37.01.01. A copy of the Rules of Procedure may be obtained from the Department upon request.

The hearing will be conducted in a facility which meets the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations in order to attend, participate in or understand the conference, please contact Jean Hersley at (208) 287-4942, no later than five (5) days prior to the hearing.

During the course of the hearing, all parties appearing in this matter will have the opportunity to present information, examine witnesses, and provide argument on issues related to Kugler's Petition.

Dated this 8th day of July, 2015.



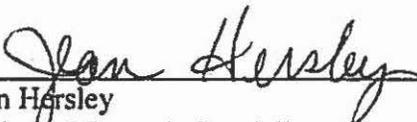
Shelley Keen
Water Rights Section Manager

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9th day of July, 2015, a true and correct copy of the foregoing document was served by U.S. mail, postage prepaid to the following:

John B. Kugler
Diane K. Kugler
2913 Galleon Court NE
Tacoma, WA 98422

Robert L. Harris
PO Box 50130
Idaho Falls, ID 83405



Jean Hersley
Technical Records Specialist