

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

IN THE MATTER OF APPLICATIONS TO)
APPROPRIATE WATER NO. 35-8359)
IN THE NAME OF THE JOHN B. KUGLER)
and DIANE K. KUGLER)
_____)

**REQUEST FOR
STAFF MEMORANDUM**

To: Rick Raymondi, Chief
Technical Services Bureau

Sean Vincent, Manager
Hydrology Section

Jeff Peppersack, Chief
Water Allocation Bureau

Shelley Keen, Manager
Water Rights Section

The following is a request for staff memorandum pursuant to Rule 602 of the Idaho Department of Water Resources' ("Department") Rules of Procedure (IDAPA 37.01.01.602).

Rule 600 of the Department's Rules of Procedure authorizes the hearing officer to use the Department's "experience, technical competence and specialized knowledge" in the evaluation of evidence.

Rule 602 of the Department's Rules of Procedure allows a hearing officer to take notice of technical or scientific facts within the Department's specialized knowledge, including agency staff memoranda and data.

On March 23, 2009, IDWR issued a *Preliminary Order Suspending Action and Prohibiting Development* ("Order Suspending Action") for permit to appropriate water no. 35-8359 in the name of John Kugler ("Kugler"). Permit no. 35-8359 describes a point of ground water diversion located in the trust water area. Findings in the Order Suspending Action state:

24. After approval of permit no 35-8359, several water users holding water rights authorizing diversion of water from the Snake River, tributary springs, and ground water in the ESPA filed petitions for delivery call. Some of these petitions for

delivery call seeking curtailment of pumping by junior priority water rights have resulted in curtailment orders, mitigation plans to compensate for depletions caused by pumping, and protracted legal proceedings before the Department and the Courts. Decisions in these contested cases have determined that ground water diversions will cause depletions to sources of water supplying water to existing water rights and that these depletions will cause injury to the existing water rights.

25. The Department issued many permits for appropriation of trust water during the late 1990's, the same period of time that permit no. 35-8359 was approved. These permits and subsequent licenses issued contained a 20 year term similar to the term of years for permit no. 35-8359 quoted above. The condition allowed the Department to review whether there is sufficient trust water to allow continued recognition of the water right and, if so, whether continued use of the trust water is in the public interest. The 20 year term will be expiring for many of these rights within the next five years. The Department will review these water rights to determine whether there is trust water for continued use of the water and whether it is in the public interest to recognize these water rights for additional terms of years.

Kugler filed exceptions to the Order Suspending Action. The exceptions asserted that there was no evidence in the record to support a determination that the development would significantly affect senior priority water rights, and also asserted that Order Suspending Action did not take into account mitigating circumstances.

On August 23, 2010, the director issued an *Order Granting Augmentation Hearing*. The *Order Granting Augmentation Hearing* granted the opportunity to present evidence regarding the following issues: (1) How the proposed development would affect senior priority water rights; and (2) Mitigating circumstances for allowance of continued development of the permit. The order also stated that “[e]xpert 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.”

THEREFORE the director requests that Department staff review data and information in possession of IDWR, and prepare staff memoranda regarding the above-captioned matter, which could include, without limitation:

1. Information about the number of active trust water rights (permits and licenses) issued by the Department for a term of years.
2. Data regarding the flow of the Snake River at the Murphy Gage from 1980 to the present.

3. Using the flow rate and irrigated acreage proposed by application no. 35-8359 at the spatial locations for the point of diversion and place of use, and inputting the application information into the Eastern Snake Plain Aquifer Model Version 1.1 ("ESPAM"), simulate the depletionary effects of Kugler's proposed pumping and water use on reaches of the Snake River modeled by ESPAM.

Any such staff memoranda shall be submitted to the hearing officer on or before March 31, 2011, and also served upon the parties to this matter. The Department will require attendance of staff participating in writing staff memoranda for examination at any hearing set in this matter pursuant to IDAPA 37.01.01.201 and 602.

Dated this 15th day of February, 2011.



Gary Spackman
Interim Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of February, 2011, a true and correct copy of the document described below was served on the following by placing a copy of the same in the United States mail, postage prepaid and properly addressed to the following:

Document(s) Served: REQUEST FOR STAFF MEMORANDUM

John Kugler
Diane Kugler
2913 Galleon Court NE
Tacoma, Washington 98422

Jerry Rigby
Rigby, Andrus, & Rigby Chartered
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Deborah J. Gibson
Administrative Assistant
Water Management Division