

JOHN B. KUGLER
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Pro Se

District Court - SRBA Fifth Judicial District In Re: Administrative Appeals County of Twin Falls - State of Idaho	
JUN - 8 2015	
By _____	Clerk
_____	Deputy Clerk

**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/Appellant,**)
vs.)
)
) **THE STATE OF IDAHO DEPARTMENT**)
OF WATER RESOURCES,)
)
) **Respondent.**)
_____)

Case No. CV-2015-031

**MEMORANDUM ON
APPEAL**

In 1984 petitioner/appellant was issued a water permit in respect to 317 acres of farm ground situate in Power Co., Idaho. Shortly thereafter the farm acreage became a part of the Federal CRP program as it was dry farmed with wheat of which there was a surplus in the nation. The CRP program for this acreage ended in 2009. Prior to it's expiration date your appellant notified the respondent of the prospective termination. No application for a well drilling permit was ever requested until your appellant's application resulting this proceeding. As requested by the respondent, appellant will explain his thoughts regarding the issues on appeal.


As the Court is well aware the Supreme Court determined in Tobey v. Bridgewood, 22 Idaho 566, 127 P. 178 that a constitutional right to apply water to a parcel of land was permitted and that such was an inchoate right. As noted in Hardy v. Higginson, 123 Idaho 485 the courts have consistently held that by securing a permit is only the securing of an inchoate right which will ripen into a complete property right only by compliance with the statutory steps and is not a property right

until that is completed. It is your appellant's contention that the procedural steps set forth in Section 67-5246 of the Idaho Code could not begin until the present application was commenced. Accordingly, the basis recited by the respondent for the denial of a hearing is without foundation.

This Court should remand the matter to the Respondent for a hearing on your appellant's first request for a drilling permit. As noted by the Supreme Court in A & B Irrigation District v. Department of Water Resources, 154 Idaho 652, 301 P. 3d 1270, all hearings required by law are to be held before the director of water resources as provided in I.C. Section 67-5246.

Your appellant would also suggest that a second reason exists to remand the matter for a hearing. Your appellant believes that the water department would agree that it has "tolled" the operation of a drilling permit except on conditions set forth therein. A tolling can be lifted for a determination as to whether or not the present conditions as water resources determined continue to exist and that cannot be contested or considered by water resources without remanding this proceeding to the Department.

Respectfully submitted this 8th day of June, 2015.



JOHN B. KUGLER

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served on the respondent by mailing the same to the Idaho Department of Water Resources, Attn. Garrick Baxter, P.O. Box 83720, Boise, ID this 8th day of June, 2015.



JOHN B. KUGLER