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**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**

**MOTION FOR STAY AND  
SUSPENSION OF BRIEFING  
SCHEDULE**

The Idaho Department of Water Resources (“IDWR”) moves this Court, pursuant to I.R.C.P. 84(m) and (o), to issue a stay and suspend the briefing schedule in this case until a currently pending administrative proceeding before IDWR is concluded and the ownership status of permit to appropriate water no. 35-8359 is resolved.

## BACKGROUND

Petitioner John B. Kugler (“Kugler”) filed his *Petition for Judicial Review* (“Petition”) on February 3, 2015. The Petition involves permit to appropriate water no. 35-8359 (“Permit”). *Petition* at 1-2; R., 73-74. IDWR previously issued an order prohibiting any further development of the Permit. *Final Order Suspending Action and Prohibiting Development* (“Final Order”) (July 18, 2011) at 10; R., 10. The Final Order was affirmed by this Court on appeal. *Memorandum Decision and Order of Petition for Judicial Review*, Case No. CV 2011-15672 (4<sup>th</sup> Jud. Dist. Ct. 2012) at 18; R., 29. The Final Order contained a condition requiring IDWR authorization of any assignment of ownership of the permit. *Final Order* at 10; R. 10.

On June 15, 2015, IDWR received an *Assignment of Permit* (“Assignment”) from Kugler. The Assignment transferred ownership of the Permit from Kugler and his wife Diane Kugler to Lance D. Funk (“Funk”). Exhibit A, *Affidavit of Meghan Carter in Support of Motion for Stay and Suspension of Briefing Schedule* (“Affidavit of Meghan Carter”) (July 10, 2015). The Assignment provides: “I, John B. Kugler, Diane K. Kugler hereby assign to Lance Funk... all my right, title, and interest in and to Permit No(s): 35-8359 to appropriate the public waters of the State of Idaho.” *Id.* The Assignment was signed by both John Kugler and Diane Kugler and was notarized. *Id.*

Since Kugler needed IDWR authorization to assign the Permit, on June 26, 2015, IDWR issued an order approving the assignment of the permit. *Preliminary Order Approving Assignment of Permit* (“Preliminary Order”). Exhibit B, *Affidavit of Meghan Carter*. It appears however that Kugler now seeks to reassess the assignment. In response to the Preliminary Order, on July 6, 2015, Kugler filed a *Motion to Reconsider*. Exhibit C, *Affidavit of Meghan Carter*. In the *Motion to Reconsider* Kugler suggests he may want to “reconsider” the assignment and seeks

a hearing on the matter. IDWR granted Kugler's request for a hearing and the hearing is scheduled for August 5, 2015. Exhibit D, *Affidavit of Meghan Carter*.

### ARGUMENT

I.R.C.P. 84(m) states "the reviewing court may order, a stay upon appropriate terms." Whether to grant a stay of proceedings pending the resolution of related proceedings in another forum is a matter vested in the sound discretion of the court. *See Cont'l Cas. Co. v. Brady*, 127 Idaho 830, 834 (1995).

The current briefing schedule, in this case, calls for IDWR to file its Respondent's Brief by July 14, 2015. Reply briefing is due August 4<sup>th</sup> with the hearing on August 6<sup>th</sup>. The Assignment proceeding before IDWR will not be resolved prior to the running of the judicial review deadlines.

It is critical that ownership of the permit be clarified before moving forward in this matter. A real party in interest is required to maintain an action. I.R.C.P. 17 (a). A real party in interest is "the person who will be entitled to the benefits of the action if successful, one who is actually and substantially interested in the subject matter." *Carrington v Crandall*, 63 Idaho 651, 658 (1942). If Mr. Kugler no longer owns the permit, he no longer has legal standing to pursue the appeal as he is not the real party in interest. Standing to pursue the appeal would rest with the new owner, Lance Funk.

Establishing ownership is also important because IDWR plans to seek attorney fees in this matter. Therefore it is crucial to know whether Kugler or Funk is pursuing this judicial review action. The Department is concerned that if the Court ultimately grants IDWR's request for attorney fees, Kugler will claim that he assigned the permit to Funk and Funk must pay the attorney fees. To prevent ownership from becoming an issue, the cloud over the title of the

Permit that Kugler has created must be resolved. Title directly affects potential rights and obligations of Funk and the potential ability of IDWR to recoup its attorney fees. Because of this, IDWR asks the Court to stay this case and suspend the briefing schedule until the ownership issue is resolved through the administrative matter pending before IDWR.

DATED this 10<sup>th</sup> day of July 2015.

LAWRENCE G. WASDEN  
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Idaho Department of Water Resources

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 10<sup>th</sup> 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:*

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Meghan Carter  
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