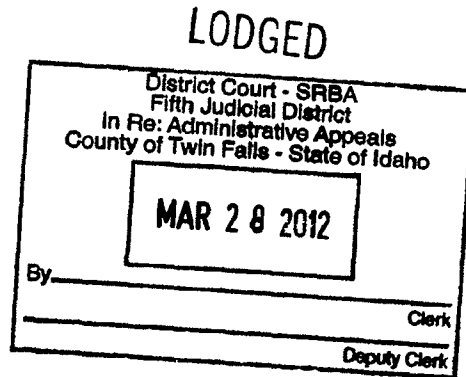


John B. Kugler
2913 Galleon Ct. NE
Tacoma, WA 98422
Tel. (253) 568-6529

Pro Se



**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

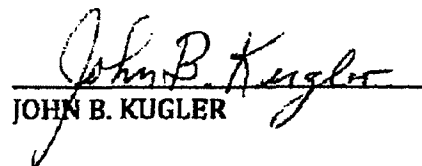
JOHN B. KUGLER)	Case No. CV-2011-1567
)	
Petitioner,)	
vs.)	MEMORANDUM ON
)	
THE IDAHO DEPARTMENT OF WATER)	MOTION FOR LEAVE
RESOURCES and GARY SPACKMAN in his)	
official capacity as Interim Director of the)	TO SUBMIT ADDITIONAL
Idaho Department of Water Resources,)	
)	EVIDENCE
Respondents.)	
_____)	
)	
IN THE MATTER OF PERMIT TO)	
APPROPRIATE WATER NO. 35-8359 IN)	
THE NAME OF JOHN B. KUGLER & DIANE)	
K. KUGLER)	
_____)	

As this Court is aware appellant has, in this proceeding, challenged the decision of the Idaho Department of Water Resources to refuse to issue your petitioner a well drilling permit by entering it's Order determining that appellant may not continue the improvement of farm lands for which a permit to appropriate water was issued to petitioner and his wife in November of 1984. In reviewing the respondent's brief earlier this month, in preparation for oral argument at the hearing that was gratefully rescheduled, your petitioner noted that a couple of the affirmative matters relied upon by respondents were thought not to be involved. One matter had been specifically discussed and determined that it would not be an

issue when inquiry was made of Mr. Spackman by your petitioner. The other questioned the record as being other than represented by petitioner. Your petitioner had communicated to and received responses from the respondent's on these matters that are not a part of the written record as none could appear in the transcript. The right to submit a request for the supplementation of the record is recognized by the legislature in Section 67-5276, Idaho Rules of Civil Procedure. That statute was acknowledged by our Supreme Court in Crown Point Development, Inc. an Idaho Corporation v. City Of Sun Valley, wherein it acknowledged the statutory authority and discussed the purpose and need for supplementation in some cases. This situation is one in which this authority is most applicable as it involves a direct refutation of one of the substantive claims of the respondents in support of the rendered decision. There can certainly be no prejudice to the respondent's by allowing augmentation in this regard. The respondents could also introduce evidence on the same subject if they were so inclined.

It is petitioner's position in this proceeding that his due process rights have been violated by the department and that testimony concerning those rights is also required as it resulted from irregularities that are not apparent in the record. Due process rights are substantial rights (Eddins v. City of Lewiston, 150 Idaho 30, 244P3d 174) and required evidence to explain a violation of those rights should be allowed. Additionally, as the Court can note from the record, this dispute has even passed by the additional time sought by your petitioner in which to complete a sprinkler system and develop the lands to their best use. As our Supreme Court states in American Falls Reservoir District No. 2 v. Idaho Department Of Water Resources, 143 Idaho 862, 154 P. 3d 433, "there must be a timely resolution to disputes relating to water as set forth in the Idaho Constitution." The supplemental testimony may establish an abuse of discretion by the department that also constitutes an irregularity not apparent on the record. These issues need to be clarified for the Court and leave is respectfully requested.

Dated this 28th day of March, 2012


JOHN B. KUGLER