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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 TO LIFT STAY AND
REINSTATE BRIEFING SCHEDULE
AND MEMORANDUM IN SUPPORT**

The Idaho Department of Water Resources (“IDWR”) moves this Court, pursuant to I.R.C.P. 84(m) and (o), to lift the stay and reinstate the briefing schedule in this case since the 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.

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). 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 contained a condition requiring IDWR authorization of any assignment of ownership of the permit. *Final Order* at 10; R., 10. 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*. 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 asked for a hearing on the matter. IDWR granted Kugler’s request for a hearing and the hearing was scheduled for August 5, 2015. Exhibit D, *Affidavit of Meghan Carter*.

The Assignment and hearing before IDWR put into question who actually owned the permit and therefore put into question whether Kugler or Mr. Funk was a real party in interest in the case. Since it was crucial to know who owned the Permit, IDWR asked the Court to stay the case until the proceeding before IDWR was resolved. *Motion for Stay and Suspension of Briefing Schedule* (July 10, 2015). On July 13, 2015, the Court granted IDWR’s motion staying

the matter pending further notice from the Court or “motion from the parties requesting the stay be lifted.” *Order Granting Motion for Stay and Suspension of Briefing Schedule* at 2.

Prior to the scheduled IDWR hearing, Mr. Funk reassigned the Permit to Kugler and his wife and requested the hearing be vacated. Exhibit A, *Affidavit of Meghan Carter in Support of Motion to Lift Stay and Reinstate Briefing Schedule* (Second Affidavit of Meghan Carter) (August 5, 2015). Mr. Kugler also informed IDWR he wanted to vacate the hearing and proceed with the matter before this Court. Exhibit B, *Second Affidavit of Meghan Carter*. In response to Mr. Funk and Kugler’s communications, IDWR vacated the hearing. Exhibit C, *Second Affidavit of Meghan Carter*. IDWR has processed the reassignment to Kugler and considers the ownership matter resolved.

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, therefore it is at the discretion of the court to lift a stay of proceeding. *See Cont’l Cas. Co. v. Brady*, 127 Idaho 830, 834 (1995).

Now that the Permit is again in Kugler’s name, the question of who owns the Permit has been resolved before IDWR. It is now clear that Kugler is a real party in interest as required by I.R.C.P. 17 (a) and IDWR sees no further reason to delay resolution of this matter before the Court. Therefore, IDWR asks the Court to lift the stay in this matter and reinstate the briefing schedule.

IDWR with Kugler’s concurrence proposes the following briefing schedule:

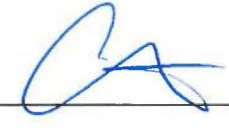

- IDWR’s Response Brief due September 4, 2015,
- Kugler’s Reply Brief due September 25, 2015, and

- Oral Argument on October 22, 2015.

DATED this 6th day of August 2015.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th day of August 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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