

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

**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.)	AFFIDAVIT AND
)	
THE IDAHO DEPARTMENT OF WATER)	MEMORANDUM ON
RESOURCES and GARY SPACKMAN in his)	
official capacity as Interim Director of the)	MOTIONS FOR A
Idaho Department of Water Resources,)	
)	CONTINUANCE AND AN
Respondents.)	EXPEDITED HEARING
_____)	
)	
IN THE MATTER OF PERMIT TO)	
APPROPRIATE WATER NO. 35-8359 IN)	
THE NAME OF JOHN B. KUGLER & DIANE)	
K. KUGLER)	
_____)	
STATE OF WASHINGTON)	
)	ss
County of King)	

John B. Kugler, being first duly sworn, states that he is the petitioner in the above matter and has personal knowledge of the facts set forth herein which are true and correct as to the best of appellant's knowledge and belief.

Your appellant had been planning to drive to Twin Falls, Idaho on Thursday, March 22, 2012 for the purpose of personally appearing before the Court to present argument in support of your appellant's position in this proceeding. Your appellant had and has additional business in Idaho which requires your appellant's presence and efforts in both Twin Falls, Idaho related to a company situate in Twin Falls and

as related to both personal and real property situate in both Blackfoot and Pocatello. In an attempt to accomplish all tasks in a single drive to Idaho your appellant did not arrange for commercial transportation. Weather predictions for the proposed trip were favorable until the evening of March 17th at which time the storm forecast was changed to reflect that a larger storm than previously projected was coming to northwest Washington at a delayed date and one which (a heavy snow storm according to one forecaster of 10 to 16 inches and according to another of 12 to 20 inches of snow) would cause hazardous driving in both the cascade and the blue mountain ranges. Your affiant is still desirous of making a personal appearance before the Court in this matter and can only do so if the Court will grant affiant's request for a continuance.

Your affiant was able to speak with counsel for the respondents this morning and she has informed your affiant that there is no objection to your affiant's request for a continuance. Counsel for the respondents also requested that I inform the Court that she does not have the 27th of April available and your affiant would request both Good Friday and the Monday following Easter be not considered by the Court as possible hearing dates in April. Affiant believes that those would be the only projected conflicts that the Court might consider if your appellant's request is granted.

Your affiant has one other reason to ask for a continuance and that is while thinking and preparing for coming argument, including a rereading of respondent's brief, your appellant discovered a couple of potential issues that appellant had overlooked and on which some factual matter is not included in the record. Your appellant has advised and briefly discussed the general nature of a request that appellant is researching to present to the Court involving the taking of limited additional evidence at the time of trial. Appellant believes that this evidence is required to clarify the basic issue between the parties and will assist the Court in more fully understanding the respective positions of each of the parties.


JOHN B. KUGLER

NOTARIZATION

On this 20th day of March, 2012, before me a Notary Public for the State of Washington, personally appeared John B. Kugler who, being first duly sworn, subscribed to the foregoing two page affidavit.



Jeri-Lynn Clark
NOTARY PUBLIC FOR WASHINGTON
Residing at Fed Way, WA
My Commission Expires 4/20/13

MEMORANDUM

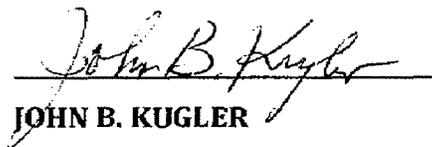
Your appellant would first apologize to the Court and counsel for his additional problem in this matter. Your appellant is greatly appreciative for the consideration given by counsel for the respondents who has also agreed to discuss with appellant the matters that appellant is considering in respect to a proposed request pursuant to Idaho Code Section 67-5276. Your appellant was considering to making a propose offer of proof and that may be avoidable if the Court grants appellant's request for the continuance.

Appellant's request is made, in effect, with Idaho Rules of Procedure, Rule 1, in mind knowing that delays are not always acceptable. At the same time this rule provides that the interests of justice are also to be liberally considered by the Court and counsel. Appellant promises to the Court and counsel that no further request, other than serious injury or death, will be made of the Court and counsel and that appellant will not consider other needs or interests in Idaho in respect to the Court's resetting of oral argument in this proceeding. By virtue of the shortness in time prior to March 23, 2012 appellant requests an expedited hearing by telephone if additional information or explanation is needed by the Court or counsel.

John B. Kugler
JOHN B. KUGLER

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Appellant's Motion For A Continuance, Appellant's Motion For An Expedited Hearing and Appellant's and Appellant's Affidavit And Memorandum On Motions For Continuance And For Expedited Hearing were served on Respondents by faxing the same to Andrea L. Courtney at Fax No. (208) 287-6700 this 20th day of March, 2012.


JOHN B. KUGLER

SCANNED
MAR 29 2012