

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

**IN THE MATTER OF TEMPORARY)
CHANGE APPLICATION)
TC-34-199 IN THE NAME OF)
MARK TELFORD)**

**PRELIMINARY ORDER
DENYING APPLICATION**

On July 26, 2021, Mark Telford ("Telford") filed Temporary Change Application TC-34-199 ("Application TC-34-199") with the Idaho Department of Water Resources ("Department"), proposing to change the point of diversion and place of use for a 24-acre portion of ten ground water irrigation rights¹ ("TL Rights"). The proposed point of diversion is an existing ground water well. The proposed place of use is located in Section 3, T04N, R26E and is covered by water rights 34-50D and 34-52B.

Water right 34-50D bears a priority date of June 1, 1884 and authorizes the diversion of 1.28 cfs from the Big Lost River for the irrigation of 64 acres. Water right 34-52B bears a priority date of May 15, 1885 and authorizes the diversion of 2.34 cfs from the Big Lost River for the irrigation of 95 acres. Water rights 34-50D and 34-52B, in combination, are limited to the irrigation of 95 acres.

Telford provided the following information on Application TC-34-199:

Question: Describe the proposed change(s) and explain the reason(s) they are needed:

Telford Response: Because of the drought, Applicant's surface water rights are not available. This application will move portions of ground water rights owned by Telford Lands, LLC to the proposed place of use.

Question: Describe the effect on the land now irrigated if the change is approved pursuant to this application:

Telford Response: It will not be irrigated with the water rights that are subject to this Application.²

The 24-acre portion of the TL Rights proposed to be changed through Application TC-34-199 are currently described under a Water Supply Bank ("WSB") rental agreement. On December 13, 2016, Telford Lands LLC filed an application to rent water from the WSB with the Idaho Water Resource Board ("IWRB"). Telford Lands LLC proposed to rent 276.7 acres of the TL Rights for irrigation use in Sections 15 and 16, T03N, R26E. The WSB rental application included the following statements from Telford Lands LLC:

¹ 34-2330B, 34-7077, 34-7080B, 34-7092, 34-7121A, 34-7121B, 34-7179, 34-12376, 34-13840 and 34-13842.

² Telford's attorney, Luke Marchant, confirmed through email correspondence that the current authorized place of use for the 24 acres to be changed will continue to be irrigated.

Water will be used to supplement the current water rights used on the "Isom Farm" which authorize the irrigation of 1980 acres. No new acres will be irrigated under this rental.

Water rights already appurtenant to the [proposed] place of use (WR Nos. 34-2459, 34-2460, 34-2461, 34-2462, 34-10925, 34-7037, and 34-7138). Existing rights at [proposed] POU not enough, and shrink losses in canals are why H2O is required.

On May 5, 2017, IWRB approved WSB Rental Agreement No. 143, which changed the place of use for a 276.7-acre portion of the TL Rights. The 276.7-acre portion of the TL rights rented through the WSB was used to cover existing irrigated acres under water rights 34-2401A, 34-4015, 34-2459, 34-2460, 34-2461, 34-2462, 34-10925, 34-7037, and 34-7138 ("Isom Rights").

Rental Agreement No. 143 extends to December 31, 2021. During the time period that Rental Agreement No. 143 is in effect, the 276.7 acres of the TL rights are combined with a 276.7-acre portion of the Isom Rights to irrigate 276.7 acres. Application TC-34-199 proposes to separate 24 acres of the rented TL Rights from the Isom Rights. The 24-acre portion of the TL Rights to be changed would be used to irrigate acres in Section 3, T04N, R26E. Telford Lands, LLC would continue to irrigate the existing 276.7 acres with the Isom Rights.

Idaho Code § 42-222A(6) states: "Temporary changes may not be approved to provide water for new projects or to allow expansion of the use of water under existing water rights." Currently, the water rights described in Rental Agreement No. 143 in combination with a 276.7-acre portion of the Isom Rights are used to irrigate 276.7 acres in Sections 15 and 16, T03N, R26E. If Application TC-34-199 were approved, these rights would be used to irrigate an additional 24 acres in Section 3, T04N, R26E. This constitutes an expansion of the use of water under existing water rights and cannot be approved. Therefore Application TC-34-199 should be denied.

ORDER

IT IS HEREBY ORDERED that Temporary Change Application TC-34-199 is DENIED.

Dated this 3rd day of August 2021.



James Cefalo
Regional Manager

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3rd day of August 2021, true and correct copies of the documents described below were served by placing a copy of the same with the United States Postal Service, certified with return receipt requested, postage prepaid and properly addressed, to the following:

Document Served: Preliminary Order Denying Application

LUKE MARCHANT
HOLDEN KIDWELL HAHN & CRAPO
PO BOX 50130
IDAHO FALLS ID 83405-0130

MARK TELFORD
PO BOX 511
ARCO, ID 83213

Courtesy copy sent by regular mail to:

LUCAS YOCKEY
WATER DISTRICT 34
211 E CUSTER RD, STE B
MACKAY, ID 83251



Christina Henman
Administrative Assistant

RECEIVED

JUL 26 2021

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCESDepartment of Water Resources
Eastern RegionTC-34-199
TEMPORARY CHANGE APPLICATION(To change point of diversion, place of use, or purpose of use of a water right upon
declaration of a drought emergency in accordance with Section 42-222A, Idaho Code.)Name of Applicant Mark Telford Phone _____
Mailing Address PO Box 511, Arco, ID 83213 Email _____

A. PURPOSE OF TRANSFER

- 1.
- ☒
- Change point of diversion
- ☐
- Add diversion point(s)
- ☒
- Change place of use
-
- ☐
- Change purpose of use
- ☐
- Other

2. Describe the proposed change(s) and explain the reason(s) they are needed. _____
-
- Because of the drought, Applicant's surface water rights are not available. This application will move portions of
-
- ground water rights owned by Telford Lands, LLC to the proposed place of use.

B. DESCRIPTION OF RIGHT(S) OR PORTION THEREOF, AFTER THE REQUESTED CHANGE

- 1.
- Right Number
- Priority
- Amount
- Nature of Use
- Period of Use
-
- (cfs/ac-ft)

SEE ATTACHED SPREADSHEET

2. Total amount of water being transferred
- 0.42
- cubic feet per second and/or _____ acre-feet per annum.
-
3. Source of water
- Ground water
- tributary to _____
-
4. Point(s) of diversion:

TwP	Rge	Sec	Govt Lot	1/4	1/4	1/4	County	Source	Local name or tag number
04n	26e	04	2		NW	NE	Butte	Ground water	

5. Lands irrigated or place of use:

TwP	Rge	Sec	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Acre Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
04N	26E	03						9.5			9.4	5.1							24

Total Acres 24

Right Number	Priority	Amount	Nature of Use	Period of Use
34-2330B	June 1, 1977	0.02	Irrigation	04/01-10/31
34-7077	Sept. 5, 1974	0.09	Irrigation	04/01-11/01
34-7080B	Sept. 23, 1974	0.06	Irrigation	04/01-11/01
34-7092	Jan. 14, 1975	0.14	Irrigation	04/15-10/15
34-7121A	Jan. 9, 1976	0.01	Irrigation	04/15-10/15
34-7121B	Jan. 9, 1976	0.04	Irrigation	04/01-11/01
34-7179	Apr. 6, 1982	0.03	Irrigation	04/01-11/01
34-12376	June 1, 1977	0.01	Irrigation	04/01-10/31
34-13840	Apr. 6, 1982	0.01	Irrigation	04/01-10/31
34-13842	Dec. 17, 1975	0.01	Irrigation	04/01-11/01

6. General Information:

- a. Who owns the water right to be changed? Telford Lands, LLC
- b. Describe the arrangement allowing use of the right. Telford Lands has signed a consent agreement allowing the Applicant to use the water rights.
- c. Describe the affect on the land now irrigated if the change is approved pursuant to this application:
It will not be irrigated with the water rights that are subject to this Application.
- d. Has the water right sought to be transferred been used this year? ☐ Yes ☒ No If yes, explain. _____
- e. Absent the changes, how would the right be used for the remainder of the year? The water would be used at the current authorized place of use.
- f. Describe other water rights used for the same purpose. _____
- g. Remarks: _____

I hereby assume all risk in accordance with Section 42-222A, Idaho Code, and assert that no one will be injured by such change and that the change does not constitute an enlargement in use of the original right. The information contained in this application is true to the best of my knowledge. I understand that any willful misrepresentations made in this application may result in voiding its approval.

Robert Marchant
Signature of Applicant

July 23, 2021
Date

FOR DEPARTMENT USE ONLY

Received by CAH Date 7/26/21 \$50 fee received by CAH Receipt No. E047215
Recommend: ☐ approve ☐ deny Watermaster recommendation _____

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Temporary Change Application No. _____, and said application is hereby _____, subject to the following limitations and conditions:

Temporary Change Expiration Date _____

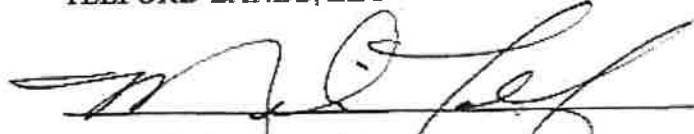
Signed this _____ day of _____,

For the Director

CONSENT TO WATER RIGHTS TEMPORARY TRANSFER

I, the undersigned am familiar with the Temporary Change Application which is being submitted to the Idaho Department of Water Resources which involves Water Right Nos. 34-2330B, 34-7077, 34-7080B, 34-7092, 34-7121A, 34-7121B, 34-7179, 34-12376, 34-13840, and 34-13842. I consent to the transfer of these water rights as requested in the Temporary Change Application.

TELFORD LANDS, LLC

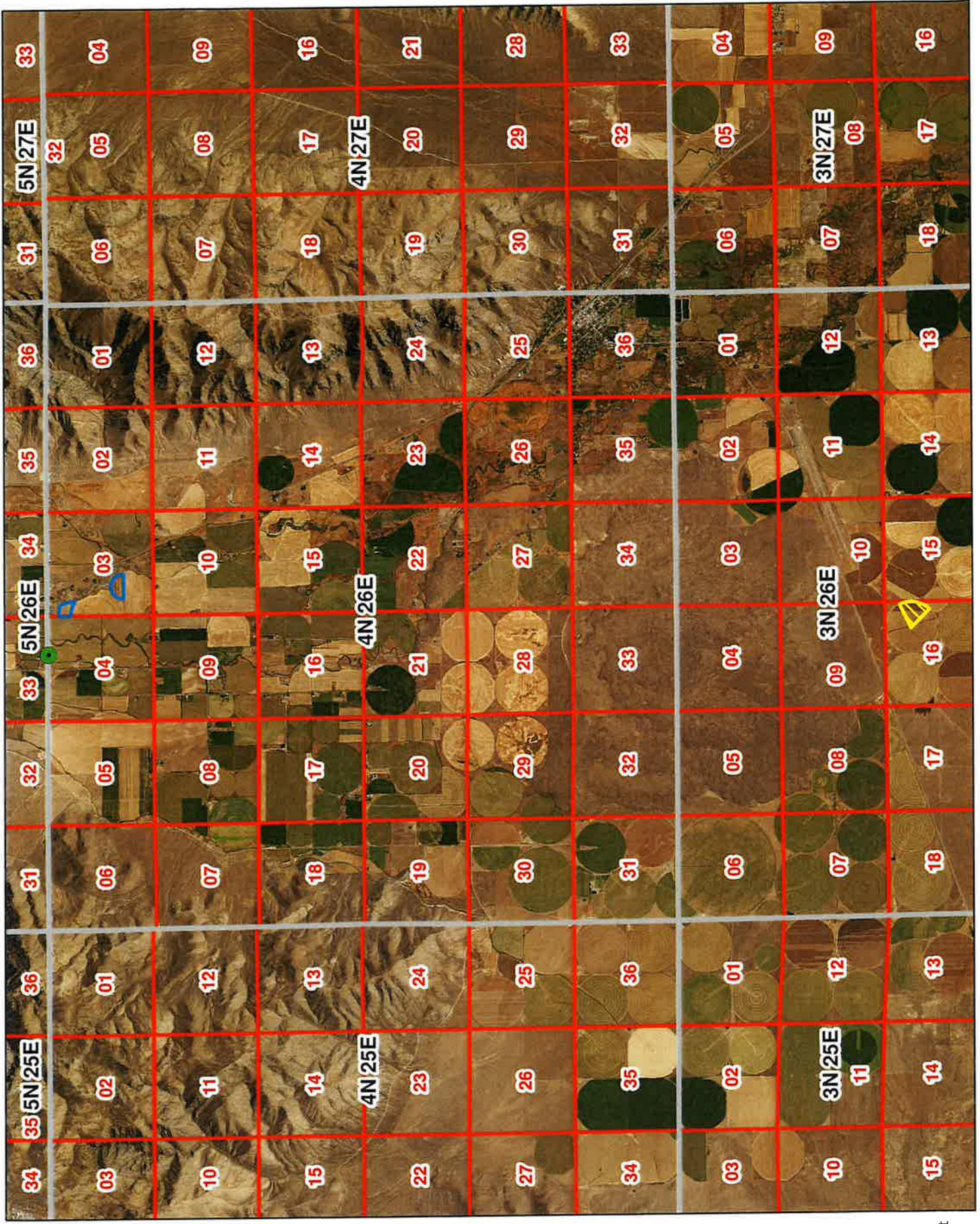


By: Mike Telford

Its: Managing member.

Date: 6-25-21

MARK TELFORD TEMP. TRANSFER



2019 NAIP Photo



Prepared by:
Luke H. Marchant
07/23/2021

Cash Farm Rental Agreement

This lease agreement is between JoDee Ramsey and Mark Telford

This lease is entered into this April 1, 2017

between JoDee Ramsey landlord, and Mark Telford, renter.

The location of the farm is:

3293 W 3000 N
Moore, ID 83215

The term of this lease shall be 5 crop years, April 1, 2017 to December 1, 2022.

The terms of this lease are cash rent for all farm ground. Approximate acres: 89 acres. This lease includes Big Lost River Irrigation District Storage water rights pertinent to this farm and all decree rights

Payments of \$ 4,450 (\$ 50 per acre) on year one of the lease,
\$ 7,120 (\$ 80 per acre) on each subsequent year; to be made in 2 equal payments: April 1 and Nov 1 of each year.

Renter reserves the Right of First Refusal of a sale of the above mentioned farm ground until lease expires. If ground is sold and Right of First Refusal option is not exercised by the renter, the terms of this lease still apply under the new ownership. This lease is binding upon all successors, heirs, etc.

This lease may be terminated before the full five years if both the landlord and renter agree upon the termination in writing.

The renter shall pay all power costs incurred.

The landlord is to obtain permits necessary to irrigate the above stated farm.

JoDee Ramsey will pay for mainline and wire to the pivot pad.

Renter will provide a pivot at his own expense. At the end of the lease the pivot will still be the property of Mark Telford. JoDee Ramsey can purchase the pivot at fair market value at the end of the lease, otherwise Mark Telford will take the pivot off the ground at the termination of this lease.

Miscellaneous Provisions:

Livestock grazing is allowed

Lessee can participate in government programs

The renter shall make adequate efforts to control weeds

The renter has plans to rotate crops at his discretion and apply herbicides, pesticides, and fertilizer to ground at label rates. Aerial application is allowed.

All normal wear and repairs on the pivot will be the responsibility of the renter.

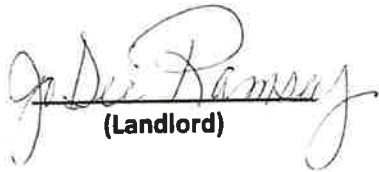
All repairs to mainlines and pumps will be the responsibility of the landlord.

Landlord will be responsible to pay Irrigation District Dues and other water fees.

All damage caused by renter is the responsibility of the renter

Renter is provided access to the above stated farm ground to produce and harvest high quality crops. This may include access through corners, edges of field, etc.

The parties have signed this lease agreement on the date first above written,


(Landlord)


(Renter)

Cefalo, James

From: Luke Marchant <lmarchant@holdenlegal.com>
Sent: Friday, July 23, 2021 7:07 PM
To: Cefalo, James
Cc: Holliday, Michael; 'watermaster34@atcnet.net'
Subject: FW: Preliminary Order Rescinding Temporary Change and Cease and Desist Order

All,

Upon receiving the email below, I called and spoke with James regarding what appears to be a misunderstanding regarding the Temporary Change Application that was previously approved. I will be out of the office next week, but I have prepared a revised application to clarify the original intent. My partner Rob Harris will drop this revised application off on Monday morning. To be clear, no ground will be dried up. The water that is being moved was authorized for irrigation at its current place of use through an approved Water Supply Bank lease/rental. That WSB approval was for 276.7 acres. For the entirety of this irrigation season, Telford Lands has pumped less than 4 cfs of the total 5.26 authorized WSB water. It is important to note that the WSB water was placed on top of other water rights. Thus, while we are moving the approved WSB water, the underlying water rights are still in place and still authorize irrigation of the ground. Because Telford Lands has pumped less than 4 cfs of the WSB water, there is over 1.3 cfs of unused water that can be moved. A portion of this water was moved to Jared Telford's ground. This is the ground for which I am submitting a revised application. I am also submitting a new application for Mark Telford to move the remainder of this unused WSB water to a portion of his ground.

As always, if you have any questions, do not hesitate to contact me.



Luke H. Marchant

Holden, Kidwell, Hahn & Crapo, P.L.L.C.
1000 Riverwalk Drive, Suite 200
P.O. Box 50130
Idaho Falls, Idaho 83405
Phone: (208) 523-0620
Fax: (208) 523-9518
Email: lmarchant@holdenlegal.com

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From: Henman, Christina <Christina.Henman@idwr.idaho.gov>
Sent: Friday, July 23, 2021 4:46 PM
To: Luke Marchant <lmarchant@holdenlegal.com>
Cc: watermaster34@atcnet.net; Whitney, Rob <Rob.Whitney@idwr.idaho.gov>
Subject: Preliminary Order Rescinding Temporary Change and Cease and Desist Order

Hello,

Please see attached document regarding temporary change TC-34-196 in the name of Jared & Jenna Telford. Hard copies have been sent via certified postal mail.

Holliday, Michael

From: Lucas Yockey <watermaster34@atcnet.net>
Sent: Monday, August 2, 2021 12:53 PM
To: Holliday, Michael
Subject: RE: WM comments for Telford

Thanks Michael,

WM comments are faxed. The BLRID does not oppose either Telford temp apps.

Lucas Yockey

From: [Holliday, Michael](#)
Sent: Monday, August 2, 2021 11:09 AM
To: watermaster34@atcnet.net
Cc: [General Manager](#)
Subject: WM comments for Telford

Lucas,

Left you a voice mail, but thought I would also cover my bases with an email. We want to get the Mark Telford and Jared Telford temp change apps wrapped up today. Please get your comments to me as soon as you can. Thanks.

Michael Holliday
Water Rights Supervisor
Phone: 208-525-7161
Fax: 208-525-7177

12/99

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

RECOMMENDATION OF WATERMASTER

Application No: TC-34-199

Applicant's Name: MARK TELFORD

Watermaster's Recommendation:

- a) ☐ I do not oppose approval of this application.
- b) ☐ I do not oppose approval of this application if it is conditioned as follows: _____

- c) ☐ I oppose approval of this application for the following reasons: _____

- d) LY Additional Comment: I dont have the appropriate information to approve OR oppose this application

Dated this 2 day of August, 2021.

Water District No: 34


Watermaster's Signature

Use reverse side of page if you need more space.

EXPLANATORY INFORMATION TO ACCOMPANY A PRELIMINARY ORDER

(To be used in connection with actions when a hearing was **not** held)

(Required by Rule of Procedure 730.02)

The accompanying order or approved document is a "Preliminary Order" issued by the department pursuant to section 67-5243, Idaho Code. **It can and will become a final order without further action of the Department of Water Resources ("department") unless a party petitions for reconsideration, files an exception and brief, or requests a hearing as further described below:**

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a preliminary order with the department within fourteen (14) days of the service date of this order. **Note: the petition must be received by the department within this fourteen (14) day period.** The department will act on a petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See Section 67-5243(3) Idaho Code.

EXCEPTIONS AND BRIEFS

Within fourteen (14) days after: (a) the service date of a preliminary order, (b) the service date of a denial of a petition for reconsideration from this preliminary order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this preliminary order, any party may in writing support or take exceptions to any part of a preliminary order and may file briefs in support of the party's position on any issue in the proceeding with the Director. Otherwise, this preliminary order will become a final order of the agency.

REQUEST FOR HEARING

Unless a right to a hearing before the Department or the Water Resource Board is otherwise provided by statute, any person aggrieved by any final decision, determination, order or action of the Director of the Department and who has not previously been afforded an opportunity for a hearing on the matter may request a hearing pursuant to section 42-1701A(3), Idaho Code. A written petition contesting the action of the Director and requesting a hearing shall be filed within fifteen (15) days after receipt of the denial or conditional approval.

ORAL ARGUMENT

If the Director grants a petition to review the preliminary order, the Director shall allow all parties an opportunity to file briefs in support of or taking exceptions to the preliminary order and may schedule oral argument in the matter before issuing a final order. If oral arguments are to be heard, the Director will within a reasonable time period notify each party of the place, date and hour for the argument of the case. Unless the Director orders otherwise, all oral arguments will be heard in Boise, Idaho.

CERTIFICATE OF SERVICE

All exceptions, briefs, requests for oral argument and any other matters filed with the Director in connection with the preliminary order shall be served on all other parties to the proceedings in accordance with IDAPA Rules 37.01.01302 and 37.01.01303 (Rules of Procedure 302 and 303).

FINAL ORDER

The Director will issue a final order within fifty-six (56) days of receipt of the written briefs, oral argument or response to briefs, whichever is later, unless waived by the parties or for good cause shown. The Director may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order. The department will serve a copy of the final order on all parties of record.

Section 67-5246(5), Idaho Code, provides as follows:

Unless a different date is stated in a final order, the order is effective fourteen (14) days after its service date if a party has not filed a petition for reconsideration. If a party has filed a petition for reconsideration with the agency head, the final order becomes effective when:

- (a) The petition for reconsideration is disposed of; or
- (b) The petition is deemed denied because the agency head did not dispose of the petition within twenty-one (21) days.

APPEAL OF FINAL ORDER TO DISTRICT COURT

Pursuant to sections 67-5270 and 67-5272, Idaho Code, if this preliminary order becomes final, any party aggrieved by the final order or orders previously issued in this case may appeal the final order and all previously issued orders in this case to district court by filing a petition in the district court of the county in which:

- i. A hearing was held,
- ii. The final agency action was taken,
- iii. The party seeking review of the order resides, or
- iv. The real property or personal property that was the subject of the agency action is located.

The appeal must be filed within twenty-eight (28) days of this preliminary order becoming final. See section 67-5273, Idaho Code. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal.