

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

IN THE MATTER OF PERMIT	)	
NO. 22-7649 IN THE NAME OF	)	PRELIMINARY ORDER
<u>RIVERSIDE FARMS</u>	)	REINSTATING PERMIT

This matter having come before the Idaho Department of Water Resources ("Department") as a result of a request to reinstate a lapsed permit, the Department finds, concludes and orders as follows:

FINDINGS OF FACT

1. On April 6, 1989, Riverside Farms ("Riverside") filed Application for Permit No. 22-7649 with the Department, seeking a permit to divert 3.04 cfs from ground water for the irrigation of 282 acres.
2. Application 22-7649 stated that existing ground water right 22-7035 was also appurtenant to the proposed place of use. In 1989, ground water right 22-7035 authorized the diversion of 2.60 cfs and the irrigation of 282 acres (0.0092 cfs/acre).
3. Application 22-7649 stated: "This application is for supplemental water to bring cfs up to 0.02 cfs/acre." The 2.60 cfs authorized under water right 22-7035 in addition to the 3.04 cfs proposed in Application 22-7649 would bring the total water supply on the property to 5.64 cfs for the irrigation of 282 acres (0.02 cfs/acre).
4. Application 22-7649 proposed two ground water points of diversion. One point of diversion was an existing well ("Jergensen Well") located in the NESW, Sec. 13, T07N, R41E. The other well was a new well to be developed in the NENW, Sec. 13, T07N, R41E. The proposed new well was never completed.
5. On May 1, 1990, the Department issued Permit 22-7649, authorizing the diversion of 3.04 cfs and the irrigation of the same 282 acres described in water right 22-7035. Permit 22-7649 required the permit holder to file proof of beneficial use on or before May 1, 1992.
6. On March 10, 1992, Riverside filed a Request for Extension of Time to provide proof of beneficial use, which included the following statement: "This permit was for additional water. We have changed the irrigation system from hand lines to pivots last fall hoping the improved efficiency would save drilling another well. Would like an extension to see if this is the case."
7. The Department approved Riverside's Request for Extension of Time on May 1, 1992, extending the proof due date to May 1, 1995.

8. On February 28, 1995, the Department notified Riverside that proof of beneficial use was due by May 1, 1995. Riverside did not file proof of beneficial use by the May 1, 1995 deadline. On May 8, 1995, the Department notified Riverside that Permit 22-7649 had lapsed.

9. The Department conducted a beneficial use field exam for water right 22-7035 in 1979. The examiner observed that the Jergensen Well was equipped with a 350 horsepower pump motor. *See also* Affidavit of Judd K. Crapo (confirming the original installation a 350 hp pump at the Jergensen Well). The examiner measured a diversion rate of 2.60 cfs from the Jergensen Well. The Department issued a license for water right 22-7035 on April 14, 1981, authorizing a diversion rate of 2.60 cfs and the irrigation of 282 acres.

10. In 1977, the Department issued Permit 22-7207 in the name of E. Lyle Hansen, authorizing the diversion of 6.33 cfs from ground water and the irrigation of 316.5 acres. The proposed ground water point of diversion (commonly referred to as the "Hansen Well") was to be drilled in the SWSE, Sec. 13, T07N, R41E.

11. The Department conducted a beneficial use field exam for water right 22-7207 in 1979. The examiner observed that the Hansen Well was equipped with a 450 horsepower Westinghouse pump and a 100 horsepower Westinghouse booster pump motor. The 100 horsepower booster pump was not in operation when the field exam was conducted. The examiner measured a diversion rate of 4.10 cfs (with the booster pump off).

12. The Department issued a license for water right 22-7207 on April 30, 1981. Water right 22-7207 bore a priority date of February 9, 1977 and authorized the diversion of 4.10 cfs and the irrigation of 313 acres.

13. Irene Hansen ("Hansen") filed a claim for water right 22-7207 in the Snake River Basin Adjudication ("SRBA") on March 15, 1989. Riverside filed a claim for a portion of water right 22-7207 in the SRBA on March 17, 1989. Hansen's claim was assigned number 22-7207A. Riverside's claim was assigned number 22-7207B. Riverside's claim (22-7207B) described a single point of diversion, the Hansen Well, and 157 irrigated acres.

14. On August 25, 2005, the Department completed a field exam for SRBA claims 22-7035 and 22-7207B. The examiner discovered that Riverside had combined water rights 22-7035 and 22-7207B into a single irrigation system. The examiner reported that two wells (the Jergensen Well and the Hansen Well) were used to irrigate all of the lands described under water right 22-7035 and 22-7207B: The exam report included the following statement: "Wells 1 & 2 interconnected or used on POU prior to 1987."

15. The Jergensen Well and Hansen Well were interconnected and used for irrigation in a combined system prior to May 1, 1995, the date proof of beneficial use was due for Permit 22-7649. Affidavit of Judd K. Crapo at 5-6.

16. The SRBA Court issued partial decrees for water rights 22-7035 and 22-7207B on March 1, 2012. The partial decrees both described two points of diversion, the Jergensen Well and the Hansen Well, and included the following elements:

Water Right No.	Priority Date	Rate (cfs)	Volume (af)	Acre Limit	Total Acres
22-7035	6/1/1970	2.60	987	282	433
22-7207B	2/9/1977	2.05	549.5	157	433
	Combined:	4.65	1536.5	433	433

17. In 1989, the Department issued Permit 22-7489 in the name of E. Lyle Hansen authorizing the diversion of 3.50 cfs and the irrigation of 175 acres. The proposed point of diversion was the Hansen Well, which had originally been developed under water right 22-7207.

18. On August 13, 2001, the Department conducted a beneficial use field exam for Permit 22-7489. The examiner observed that the Hansen Well was equipped with a 450 horsepower Westinghouse pump motor and a 200 horsepower GE booster pump motor. The examiner reported an average diversion rate from the Hansen Well of 5.14 cfs. The measurement was conducted with the booster pump off.

19. The examiner determined that an additional 77 irrigated acres were developed under Permit 22-7489. The examiner also determined that, if the booster were operating, the Hansen Well could easily produce the 1.54 cfs associated with the developed acres.

20. On June 24, 2013, the Department issued a license for water right 22-7489, authorizing a diversion rate of 1.54 cfs and the irrigation of 77 acres.

21. Riverside replaced the 100 hp booster pump at the Hansen Well with a 200 hp booster pump in the spring of 1995. Affidavit of Judd K. Crapo at 6, 10. The authorized irrigation season of use for the water rights diverted from the Hansen Well begins on April 1. However, according to power records available to the Department for 1995, the Hansen Pump was not first used in 1995 until June, after the proof of beneficial use due date for Permit 22-7649 had passed.

22. On April 10, 2017, Riverside filed Proof of Beneficial Use for lapsed Permit 22-7649, a Request to Reinstate a Permit Lapsed more than Sixty Days with the appropriate filing fee, and a Beneficial Use Field Report completed by certified field examiner Randall Johnson.

23. Johnson completed his initial exam on May 11, 2016. He evaluated the entire combined irrigation system for Riverside. Johnson observed a 350 horsepower pump motor installed at the Jergensen Well. He also observed a 450 horsepower Westinghouse pump motor and a 200 horsepower GE booster pump motor installed at the Hansen Well.

24. Johnson measured a flow rate from the Jergensen Well of 4.02 cfs. He measured a flow rate from the Hansen Well (with the booster pump off) of 5.08 cfs. "The booster pump was not operated because of the potential [e]ffect on measurement accuracy due to turbulence

from this pump being introduced close to the measurement location.” Johnson Beneficial Use Field Report at 3.

25. Johnson’s measurement at the Hansen Well (5.08 cfs) is very close to the measurement performed in 2001 during the field exam for Permit 22-7489 (5.14 cfs). Both measurements were conducted with the booster pump off.

26. Using a standard equation to calculate discharge from a well¹, and assuming 70% efficiency and no friction loss, it is possible to estimate the diversion rate from the Hansen Well if the well were equipped with a 100 hp booster pump or a 200 hp booster pump. The discharge pressure was estimated to be 50 psi. The pumping level was adjusted until the discharge rate for the scenario with no booster pump matched the diversion rate measured in 2001. This same pumping level was used to estimate the two booster pump scenarios.

	Scenario 1 No Booster Pump	Scenario 2 100 hp Booster Pump	Scenario 3 200 hp Booster Pump
Pump hp	450	450	450
Booster hp	0	100	200
Pumping Level (ft)	424	424	424
Discharge Pressure (psi)	50	50	50
Discharge Rate (cfs)	5.14	6.28	7.42

27. On July 10, 2017, Johnson completed another measurement of the Hansen Well, this time with the 200 hp booster pump in operation. He measured a flow rate from the Hansen Well of 7.37 cfs. Johnson’s measurement is consistent with the theoretical yield calculations.

28. Based on well yield equations, the Hansen Well could theoretically produce 6.28 cfs if it were still equipped with a 100 hp booster pump. The Jergensen Well and Hansen well could produce a combined rate of 10.30 cfs if the Hansen Well were still equipped with a 100 hp booster pump.

29. The existing water rights currently associated with the Hansen and Jergensen Wells authorize the diversion of 8.24 cfs (22-7035 = 2.60 cfs, 22-7207B = 2.05 cfs, 22-7207A = 2.05 cfs, and 22-7489 = 1.54 cfs). There is 2.06 cfs of system capacity, which would represent the beneficial use occurring under Permit 22-7649 during the authorized development period for the permit.

¹ Discharge = $\frac{8.8 \times \text{efficiency} \times \text{hp}}{\text{pumping level} + (2.31 \times \text{psi}) + \text{friction loss}}$.

RELEVANT LEGAL PROVISIONS

Idaho Code § 42-218a(2) states:

In connection with a proof of beneficial use statement submitted more than sixty (60) days after such notice of lapsing, the director shall require all of the following items to be submitted to the department:

(a) A report prepared by a certified water right examiner as the result of an examination to clearly confirm and establish the extent of the beneficial use of water established in connection with the permit during the time authorized by the permit and any extensions of time previously approved. The report shall be on the form or forms specified by the director and shall provide the information specified in section 42-217, Idaho Code, for confirming beneficial use and such other information as may be required by the director.

(b) A statement of reasonable cause for filing a late proof of beneficial use.

(c) A reinstatement fee of two hundred fifty dollars (\$250).

Upon finding that beneficial use had occurred during the authorized period and upon a showing of reasonable cause for filing a late proof of beneficial use, the director may reinstate the permit with the priority date advanced to the day that proof of beneficial use was received.

ANALYSIS

The evidence available to the Department at this time establishes that the Jergensen Well and Hansen Well were interconnected prior to May 1, 1995 and were used to irrigate the 282 acres described under Permit 22-7649. Therefore, both wells should be considered when determining whether any beneficial use was accomplished under Permit 22-7649 during the authorized development period.

The evidence available to the Department indicates that the Hansen Well was equipped with a 100 hp booster pump during the development period. Even though the 200 hp booster pump may have been installed in the spring of 1995, prior to the proof of beneficial use due date for Permit 22-7649, power records available to the Department confirm that the Hansen Well was not used in 1995 until June. Therefore, the extent of beneficial use occurring under Permit 22-7649 must be determined based on a 100 hp booster pump at the Hansen Well.

There are no direct measurements for the Hansen Well with the 100 hp booster pump in operation. Therefore, the Department must use theoretical calculations to estimate the capacity of the Hansen Well with the 100 hp booster pump in operation. Actual measurements, without a

booster pump and with a 200 hp booster pump, were used to establish some of the unknown variables in the theoretical capacity equation. Based on the theoretical calculations, the Hansen Well could theoretically produce 6.28 cfs if it were equipped with an operating 100 hp booster pump.

In total, the Hansen Well and Jergensen Well could produce 10.30 cfs if the Hansen Well were equipped with a 100 hp booster pump (consistent with how the system existed prior to 1995). There is 2.06 cfs of system capacity which is not covered by existing water rights. This system capacity has existed since 1992 and supports the reinstatement of Permit 22-7649.

CONCLUSIONS OF LAW

Riverside has satisfied the requirements of Idaho Code § 42-218a(2). Riverside filed proof of beneficial use with a statement of reasonable cause for the late filing and included the appropriate \$250 filing fee. Riverside also provided a beneficial use field report prepared by a certified water right examiner. This report, in combination with the affidavits provided by Riverside, confirm that beneficial use of water occurred under Permit 22-7649 during the authorized development period for the permit. Therefore, Permit 22-7649 should be reinstated with an authorized diversion rate of 2.06 cfs and the priority date advanced to the date the appropriate documents were filed (April 10, 2017).

ORDER

IT IS HEREBY ORDERED that Permit No. 22-7649 is **REINSTATED** with and authorized diversion rate of 2.06 cfs and the priority date advanced to April 10, 2017.

Dated this 26th day of March, 2019.



James Cefalo

Water Resources Program Manager

CERTIFICATE OF MAILING

I hereby certify that on the 26th day of March 2019, I mailed a true and correct copy of the foregoing PRELIMINARY ORDER REINSTATING PERMIT, with the United States Postal Service, postage prepaid and properly addressed to the person(s) listed below:

Robert Harris
Holden Kidwell Hahn & Crapo PLLC
1000 Riverwalk Drive
PO Box 50130
Idaho Falls, ID 83405

Riverside Farms
726 N 2100 E
St. Anthony, ID 83445



Sharla Cox
Administrative Assistant

State of Idaho
Department of Water Resources

Permit To Appropriate Water

NO. 22-07649

Proposed Priority: April 6, 1989 Maximum Diversion Rate: 3.04 CFS
This is to certify, that RIVERSIDE FARMS

C/O RICHARD CRAPO
RT. 2 BOX 155
ST. ANTHONY, ID 83445

has applied for a permit to appropriate water from: GROUNDWATER
and a permit is APPROVED for development of water as follows:

BENEFICIAL USE	PERIOD OF USE	RATE OF DIVERSION
IRRIGATION	04/01 to 11/01	3.04 CFS

LOCATION OF POINT(S) OF DIVERSION:

NENW Sec. 13, Township 07N, Range 41E
NESW Sec. 13, Township 07N, Range 41E
FREMONT County

PLACE OF USE: IRRIGATION

TWN	RGE	SEC	ACRES	ACRES	ACRES	ACRES	TOTAL
07N	41E	13	NENW 38	NWNW 38	SWNW 39		
			SESW 39	NESW 39	NWSW 40		233
		14	NENE 38	NWNE 11			49

Total number of acres irrigated: 282

CONDITIONS/REMARKS:

1. Proof of construction of works and application of water to beneficial use shall be submitted on or before May 1, 1992.
2. Subject to all prior water rights.
3. Permit holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code.
4. The right to the use of water acquired under this permit shall not give rise to any right or claim against the holder of a senior right based upon the theories of forfeiture, abandonment, adverse possession, waiver, equitable estoppel, estoppel by laches or customary preference.
5. The Director retains jurisdiction of the permit and any license subsequently issued to incorporate the use into a water district, require streamflow augmentation or other action needed to protect prior surface water and groundwater rights.
6. Permit holder shall commence the excavation or construction of diverting works within one year of the date this permit is issued and shall proceed diligently until the project is complete.
7. Prior to the diversion of water under this permit a flow measurement port or other device as specified by the Department shall be installed to provide for the installation of measuring equipment and the determination of the rate of diversion by the Department.

PAGE 2

State of Idaho
Department of Water Resources

Permit To Appropriate Water

NO. 22-07649

CONDITIONS/REMARKS:

8. The rate of diversion of water for irrigation under this permit and all other water rights on the same land shall not exceed 0.02 cubic feet per second for each acre of land.

This permit is issued pursuant to the provisions of Section 42-204, Idaho Code.
Witness the seal and signature of the Director, affixed at Boise, this

1st day of May, 1990


R. Keith Higginson, Director

3/26/2019

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	RIVERSIDE FARMS 1908 E 500 N ST ANTHONY, ID 83445

Status: Active

Tributary

Volume

2.060 CFS

2.060 CFS

Sec. 13, Twp 07N, Rge 41E, FREMONT County

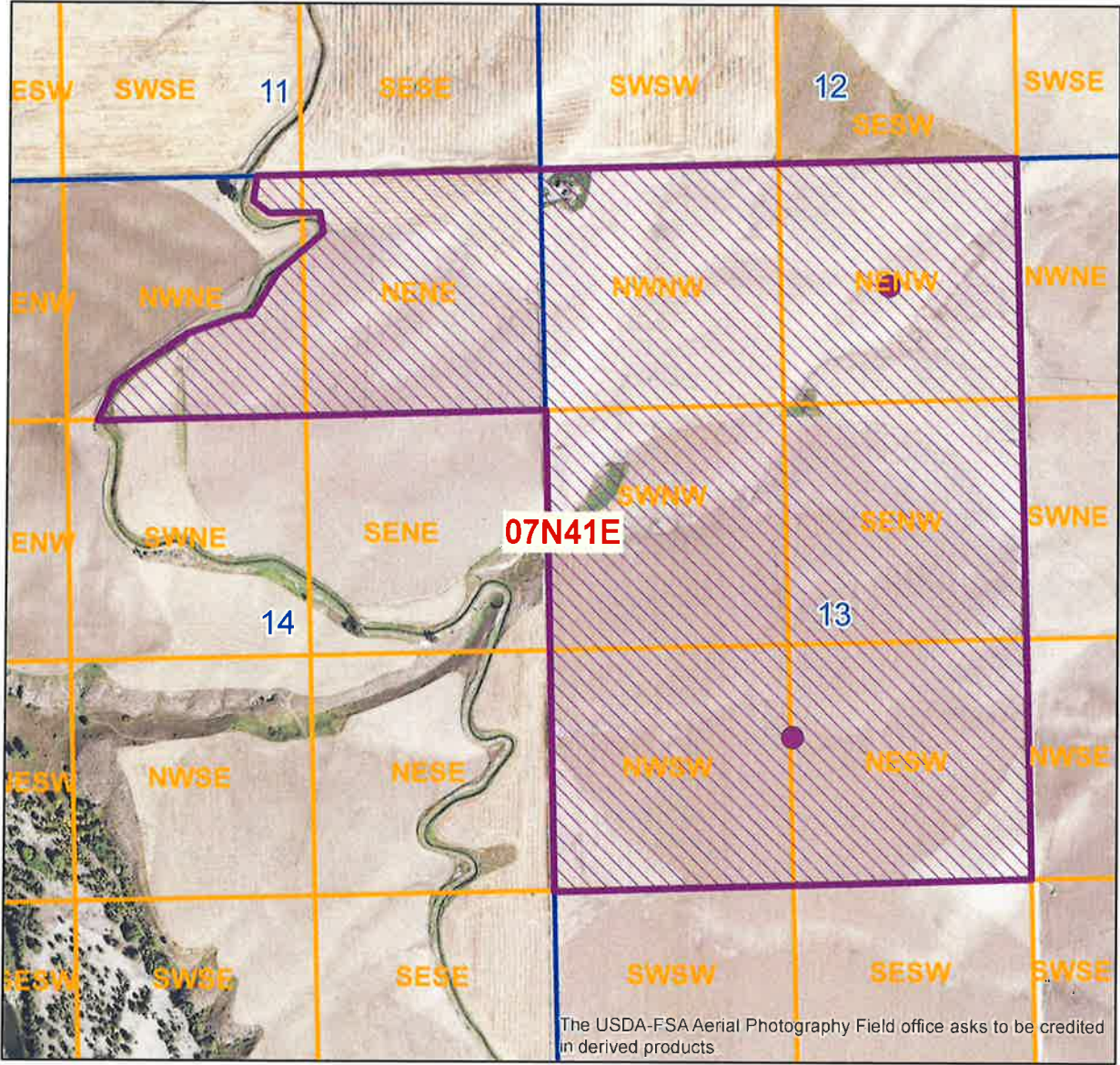
IRRIGATION within FREMONT County

			NE				NW				SW				SE				
Twp	Rng	Sec	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	Totals
07N	41E	13					38.0	38.0	39.0	39.0	39.0	40.0							233.0
07N	41E	14	38.0	11.0															49.0

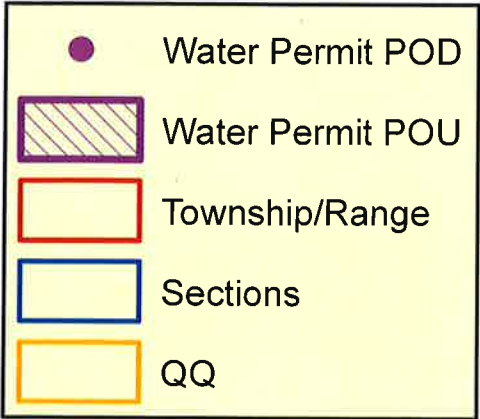
POU Total Acres: 282.0

		Conditions of Approval
1.	046	Right holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code.
2.	048	The use of water under this right shall not give rise to any claim against the holder of a senior water right based upon the theories of forfeiture, abandonment, adverse possession, waiver, equitable estoppel, estoppel by laches or customary preference.
3.	049	The Director retains jurisdiction of the right to incorporate the use into a water district, require streamflow augmentation or other action needed to protect prior surface water and groundwater rights.
4.	026	Permit holder shall commence the excavation or construction of diverting works within one year of the date this permit is issued and shall proceed diligently until the project is complete.
5.	01G	Prior to the diversion of water under this right a flow measurement port or other device as specified by the Department shall be installed to provide for the installation of measuring equipment and the determination of the rate of diversion by the Department.
6.	03A	The rate of diversion of water for irrigation under this right and all other water rights on the same land shall not exceed 0.02 cubic feet per second for each acre of land.

Reinstated Permit 22-7649



2013 Aerial Photo



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.