

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

IN THE MATTER OF APPLICATION FOR) TRANSFER NO. 81155 IN THE NAME OF) <u>CITY OF POCATELLO</u>)	ORDER DENYING PETITION FOR RECONSIDERATION
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On August 8, 2017, the Hearing Officer for the Idaho Department of Water Resources ("Department") issued a *Preliminary Order Dismissing Protest and Approving Transfer* ("Preliminary Order") in this contested case. On August 22, 2017, Spartan Portneuf LLC ("Spartan") filed a timely *Petition for Reconsideration of Preliminary Order Dismissing Protest and Approving Transfer* ("Petition").

In its Petition, Spartan argues the Hearing Officer incorrectly accepted a theme advanced by the City of Pocatello ("Pocatello") that Application 81155 only proposes to change the location of Well 39. According to Spartan, the Hearing Officer ignored Pocatello's other proposal to remove points of diversion from its water rights. Spartan's arguments are unfounded. The Preliminary Order specifically recognizes that Application 81155 proposes to remove two points of diversion from water rights 29-2274, 29-2338 and 29-7375 and the Preliminary Order includes multiple paragraphs analyzing the removal of the points of diversion. Preliminary Order, pages 2 (§ 4) and 5. The Hearing Officer determined that Spartan's protest was defective because it did not link the alleged injury occurring at Well 44 to any of the changes proposed in Application 81155, including the proposal to remove two points of diversion from the subject water rights.

Spartan also argues the Hearing Officer improperly precluded evidence from the administrative record and did not examine all of the evidence and available information in approving the transfer. Petition, pages 1 and 3. Parties to a contested case may file petitions for reconsideration or appeals related to the contents of the administrative record or the sufficiency of the Department's review under Idaho Code § 42-222(1). Upon dismissal of its protest, Spartan is no longer a party to this contested case and is therefore precluded from challenging the approval of Application 81155. Thus, the Hearing Officer need not address Spartan's arguments about the contents of the administrative record or the sufficiency of the Department's review of Application 81155 under the criteria set forth in Idaho Code § 42-222(1).

ORDER

IT IS HEREBY ORDERED that the Petition filed by Spartan is DENIED.

Dated this 5th day of September, 2017.



James Cefalo
Hearing Officer

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of September 2017, I mailed a true and correct copy of the foregoing ORDER DENYING PETITION FOR RECONSIDERATION, with the United States Postal Service, postage prepaid and properly addressed to the person(s) listed below:

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Sharla Cox
Administrative Assistant

EXPLANATORY INFORMATION TO ACCOMPANY AN ORDER DENYING PETITION FOR RECONSIDERATION

The accompanying order is an **Order Denying Petition for Reconsideration** of the "preliminary order" issued previously in this proceeding by the department pursuant to section 67-5243, Idaho Code.

EXCEPTIONS AND BRIEFS

Within fourteen (14) days after the service date of this denial of petition for reconsideration of the preliminary order, any party may in writing file exceptions to any part of the preliminary order and file a brief in support of the party's position on any issue in the proceeding with the Director. Otherwise, the preliminary order will become a final order of the agency.

If any party files an exception and/or brief, opposing parties shall have fourteen (14) days to respond to the exception and/or brief. Written briefs in support of or taking exceptions to the preliminary order shall be filed with the Director. The Director retains the right to review the preliminary order on his own motion.

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 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.