

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

IN THE MATTER OF RELINQUISHMENT)	
OF WATER PERMIT NO. 37-21352)	PRELIMINARY ORDER RESCINDING
IN THE NAME OF SCI PROPERTIES LLC)	MITIGATION REQUIREMENT AND
_____)	AUTHORIZING RESUMPTION OF IRRIGATION

This matter having come before the Department of Water Resources ("Department") as a result of relinquishment of water permit 37-21352, the Department finds, concludes, and orders:

FINDINGS OF FACT

1. On June 9, 2005, the Department approved Application for Permit No. 37-21352 submitted in the name of SCI Properites LLC ("right holder"). The permit authorized development of a pond for Fish Habitat Storage, Recreation Storage and Wildlife Storage. The pond would intercept ground water and store 27.6 acre feet.
2. The permit approval included the following condition:

To mitigate for the depletion of water resulting from the use of water under this right and to prevent injury to senior water right holders, the right holder shall cease diverting and using water as authorized by the following water rights for the purposes and amounts specified below. Moreover, the official record for the following water rights will be changed to show that diversion and use of water is not authorized because the rights, or portions thereof, are being dedicated to mitigation purposes.

<i>Right No.</i>	<i>Use Changed to Mitigation</i>	<i>Mitigation Rate (cfs)</i>	<i>Mitigation Volume (AF)</i>	<i>Mitigation Acres</i>
37-215G	Irrigation	0.07	7.36	3.3
37-1096A	Irrigation	0.03	7.36	3.3
37-1097	Irrigation	0.05	7.36	3.3
37-7770	Irrigation	0.05	7.36	3.3

The land that will no longer be irrigated under these rights is located within the SWSE, Section 26, Twp.01S, Rge. 20E, B.M.

3. Pursuant to the permit approval the records of the rights listed above were modified and portions of these rights were associated with mitigation use. Note that subsequent ownership splits of the above referenced rights and partial decrees of these rights resulted in these mitigation uses being associated in the current valid records as shown below:

37-215G became 37-22583
37-1096A became 37-22584
37-1097 became 37-22585
37-7770 became 37-22586

4. On August 15, 2011, the right holder through his attorney James Speck filed a relinquishment form for permit 37-21352 with the Department formally relinquishing the permit. Additionally the right holder requested that mitigation use currently recorded with rights 37-

22583, 37-22584, 37-22585 and 37-22586 be eliminated and 3.3 acres of irrigation used for mitigation be resumed and the records corrected to acknowledge this resumption of irrigation use.

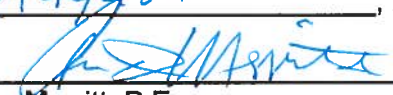
CONCLUSIONS OF LAW

1. The right holder having shown sufficient cause that mitigation is no longer necessary the Department should issue a Preliminary Order modifying the records of rights 37-22583, 37-22584, 37-22585 and 37-22586 removing mitigation and acknowledging resumption of irrigation of 3.3 acres associated with the mitigation.
2. Protection from forfeiture pursuant to Section 42-223(10) for nonuse associated with relinquished permit 37-21352 will not apply to any future nonuse of water under rights.

ORDER

IT IS THEREFORE HEREBY ORDERED that the mitigation use added to the records of rights 37-22583, 37-22584, 37-22585 and 37-22586 is removed and the equivalent irrigation use on 3.3 acres is authorized for resumption.

Dated this 29th day of August, 2011.



Allen Merritt, P.E.
Southern Region Manager

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.