

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

IN THE MATTER OF PERMITS	)	PRELIMINARY ORDER
FOR THE DIVERSION AND USE	)	ESTABLISHING DUE
OF SURFACE WATER AND GROUND	)	DATES FOR PROOF OF
WATER IN THE SALMON RIVER	)	BENEFICIAL USE
AND CLEARWATER RIVER BASINS	)	

FINDINGS OF FACT

1. On October 26, 1999, the Director of the Idaho Department of Water Resources ("Director" or "Department") issued a *Moratorium Order* ("Wilderness Order") enjoining further processing and development of permits for the diversion and use of surface and ground water in and tributary to the Selway-Bitterroot Wilderness Area, the Gospel-Hump Wilderness Area, and the Frank Church River of No Return Wilderness Area.

2. The Wilderness Order required all holders of permits to appropriate water whose permits describe points of diversion within or upstream from the wilderness areas to cease development authorized by the permits. Some permit holders submitted proof of beneficial use for the beneficial use completed as of the date of the Wilderness Order. Other permit holders ceased development, and the original requirement for filing beneficial use was stayed until the Director amended or rescinded the Wilderness Order to allow additional development.

3. On November 9, 2005, the Director issued an *Order Rescinding Salmon – Clearwater Basin Moratorium and Wilderness Area Moratorium* (hereafter referred to as "Order Rescinding Moratoriums"). The Order Rescinding Moratoriums stated:

... [P]ermit holders who were prohibited from completing beneficial use of water authorized under existing permits by the *Moratorium Order* issued on October 26, 1999, are granted additional time for completing the beneficial use authorized. For each permit, the additional time granted for completing development shall be equal to the number of days from the date the Wilderness Order was issued to the date proof of beneficial use was originally due for the permit. The Department shall issue an order subsequent to this order allowing additional time for completion of beneficial use for each permit.

4. The following is a list of permits that remained undeveloped or partially undeveloped during the Wilderness Moratorium:

Owner(s)	WR Number	Owner(s)	WR Number
CHURCH OF JESUS CHRIST OF THE LATTER DAY SAINTS	74-07391	REYNOLDS, JACQUELINE L; REYNOLDS, RAYMOND C	74-07376
CUTLER, HELEN A	72-07571	ROSCELLEY, MICKY	72-07547
DANNER, KHEMA R; SIEMERS, STEPHEN L	72-07556	SHUMATE, LESLIE MAY	75-07654
EVERETT P ENZENAUER FAMILY TRUST	72-07565	STARK, BRENDA; STARK, MARK	72-07560
FOSTER, RICHARD E	74-07383	STEELHEAD BEND MUTUAL WATER CO	75-07639
GREENWELL, DON A; GREENWELL, MAUDE LOU	72-07567	THOMPSON CREEK MINING CO	72-07551
HICKS, ANN C; HICKS, MARK; NORTON, ROBERT L; NORTON, SUSAN P	72-07550	THOMPSON CREEK MINING CO	72-07573
KNIGHT, WILLIAM A	72-07555	TIERNEY, ELIZABETH C; TIERNEY, THOMAS T	71-07169
MARVIN, NADINE; MC CLAIN, CHARLES A ; MC CLAIN, DIANA	75-07609	TOLMAN, ELIZABETH C; TOLMAN, J REX	75-07641
NORTHWEST FARM CREDIT SERVICES FLCA; STARK, BRENDA; STARK, MARK	72-07543	US DEPT OF INTERIOR	74-07373
NORTHWEST FARM CREDIT SERVICES FLCA; STARK, BRENDA; STARK, MARK	72-07554	WALKER, JAMES D; WALKER, SHIRLEY	75-07669
PROBST, ALLAN; PROBST, KARLA	74-07389	WHITWORTH, KAREN	72-07569

CONCLUSIONS OF LAW

1. Idaho Code § 42-1805(7) grants the Director the authority to "suspend further action on permits" to appropriate water. The word "suspend" implies that, should conditions change, further action on the permits may continue.

2. When further development of the beneficial use proposed by a permit is reauthorized following a moratorium period when development has been prohibited, a new proof of beneficial use date must be established.

3. The Department must establish a new proof of beneficial use date for the permits whose development of beneficial use was suspended during the Wilderness Moratorium. The calculations for new dates for filing of proof of beneficial use are contained in Attachment A affixed to this order.

ORDER

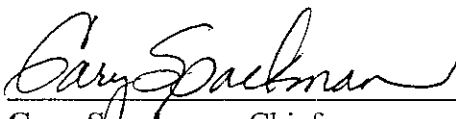
IT IS HEREBY ORDERED that the new proof due dates for the permits whose development was suspended during the Wilderness Moratorium are as follows:

Owner(s)	WR Number	New Proof Due Date	Owner(s)	WR Number	New Proof Due Date
CHURCH OF JESUS CHRIST OF THE LATTER DAY SAINTS	74-07391	9/1/2010	REYNOLDS, JACQUELINE L; REYNOLDS, RAYMOND C	74-07376	11/1/2008
CUTLER, HELEN A	72-07571	7/1/2010	ROSKELLEY, MICKY	72-07547	2/1/2006
DANNER, KHEMA R; SIEMERS, STEPHEN L	72-07556	4/1/2007	SHUMATE, LESLIE MAY	75-07654	11/1/2008
EVERETT P ENZENAUER FAMILY TRUST	72-07565	2/1/2010	STARK, BRENDA; STARK, MARK	72-07560	10/1/2009
FOSTER, RICHARD E	74-07383	9/1/2009	STEELHEAD BEND MUTUAL WATER CO	75-07639	8/1/2006
GREENWELL, DON A; GREENWELL, MAUDE LOU	72-07567	4/1/2010	THOMPSON CREEK MINING CO	72-07551	11/1/2009
HICKS, ANN C; HICKS, MARK; NORTON, ROBERT L; NORTON, SUSAN P	72-07550	11/1/2008	THOMPSON CREEK MINING CO	72-07573	10/1/2006
KNIGHT, WILLIAM A	72-07555	2/1/2007	TIERNEY, ELIZABETH C; TIERNEY, THOMAS T	71-07169	7/1/2007
MARVIN, NADINE; MC CLAIN, CHARLES A; MC CLAIN, DIANA	75-07609	2/1/2009	TOLMAN, ELIZABETH C; TOLMAN, J REX	75-07641	11/1/2007
NORTHWEST FARM CREDIT SERVICES FLCA; STARK, BRENDA; STARK, MARK	72-07543	5/1/2007	US DEPT OF INTERIOR	74-07373	7/1/2006
NORTHWEST FARM CREDIT SERVICES FLCA; STARK, BRENDA; STARK, MARK	72-07554	4/1/2009	WALKER, JAMES D; WALKER, SHIRLEY	75-07669	10/1/2010
PROBST, ALLAN; PROBST, KARLA	74-07389	8/1/2006	WHITWORTH, KAREN	72-07569	7/1/2006

IT IS FURTHER ORDERED that, for each permit, the permit holder must file a proof of beneficial use or a request for extension of time to file proof of beneficial use with the Department on or before the proof of beneficial use date for each permit set forth above. Notice of the requirement to file proof of beneficial use shall be sent to the permit holder 60-days prior to the due date as described in Chapter 2, Title 42, Idaho Code.

IT IS FURTHER ORDERED that each permit holder has the right to challenge the proof of beneficial use date for his/her permit by following the procedures described in the document titled "Statement of Available Procedures and Applicable Time Limits" attached to this order. Any individual challenge to one of the proof due dates will be considered a subcase that will be separated from the main preliminary order. Uncontested proof due dates will become final at the expiration of the times for filing challenges to the preliminary order.

Dated this 21st day of November, 2005.


 Gary Spackman, Chief
 Water Allocation Bureau

ATTACHMENT A
TO THE PRELIMINARY ORDER ESTABLISHING DUE DATES FOR PROOF OF BENEFICIAL USE

WR Number	Old Proof Due Date	Date of Moratorium Order	No. of Days to be Added	Date of Order Rescinding Moratorium	Calculated Proof Due Date	New Proof Due Month	New Proof Due Year	Rounded Proof Due Date
71-07169	6/1/2001	10/26/1999	584	11/9/2005	6/16/2007	7	2007	7/1/2007
72-07543	4/1/2001	10/26/1999	523	11/9/2005	4/16/2007	5	2007	5/1/2007
72-07547	1/1/2000	10/26/1999	67	11/9/2005	1/15/2006	2	2006	2/1/2006
72-07550	10/1/2002	10/26/1999	1071	11/9/2005	10/15/2008	11	2008	11/1/2008
72-07551	10/1/2003	10/26/1999	1436	11/9/2005	10/15/2009	11	2009	11/1/2009
72-07554	3/1/2003	10/26/1999	1222	11/9/2005	3/15/2009	4	2009	4/1/2009
72-07555	1/1/2001	10/26/1999	433	11/9/2005	1/16/2007	2	2007	2/1/2007
72-07556	3/1/2001	10/26/1999	492	11/9/2005	3/16/2007	4	2007	4/1/2007
72-07560	9/1/2003	10/26/1999	1406	11/9/2005	9/15/2009	10	2009	10/1/2009
72-07565	1/1/2004	10/26/1999	1528	11/9/2005	1/15/2010	2	2010	2/1/2010
72-07567	3/1/2004	10/26/1999	1588	11/9/2005	3/16/2010	4	2010	4/1/2010
72-07569	6/1/2000	10/26/1999	219	11/9/2005	6/16/2006	7	2006	7/1/2006
72-07571	6/1/2004	10/26/1999	1680	11/9/2005	6/16/2010	7	2010	7/1/2010
72-07573	9/1/2000	10/26/1999	311	11/9/2005	9/16/2006	10	2006	10/1/2006
74-07373	6/1/2000	10/26/1999	219	11/9/2005	6/16/2006	7	2006	7/1/2006
74-07376	10/1/2002	10/26/1999	1071	11/9/2005	10/15/2008	11	2008	11/1/2008
74-07383	8/1/2003	10/26/1999	1375	11/9/2005	8/15/2009	9	2009	9/1/2009
74-07389	7/1/2000	10/26/1999	249	11/9/2005	7/16/2006	8	2006	8/1/2006
74-07391	8/1/2004	10/26/1999	1741	11/9/2005	8/16/2010	9	2010	9/1/2010
75-07609	1/1/2003	10/26/1999	1163	11/9/2005	1/15/2009	2	2009	2/1/2009
75-07639	7/1/2000	10/26/1999	249	11/9/2005	7/16/2006	8	2006	8/1/2006
75-07641	10/1/2001	10/26/1999	706	11/9/2005	10/16/2007	11	2007	11/1/2007
75-07654	10/1/2002	10/26/1999	1071	11/9/2005	10/15/2008	11	2008	11/1/2008
75-07669	9/1/2004	10/26/1999	1772	11/9/2005	9/16/2010	10	2010	10/1/2010

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21st day of November, 2005, a true and correct copy of the above and foregoing documents described below were served on the following by placing a copy of the same in the United States mail, postage prepaid and properly addressed to the following:

Document(s) Served: Preliminary Order Establishing Due Dates for Proof of Beneficial Use; Statement of Available Procedures and Applicable Time Limits, when a hearing was not held; Order Rescinding Salmon – Clearwater Basin Moratorium and Wilderness Moratorium; and Explanatory Information to Accompany a Final Order.

See attached list of waterusers.


Deborah J. Gibson
Administrative Assistant

PERMIT HOLDERS ... THE SALMON RIVER & CLEAR ... WATER RIVER BASINS

THOMAS T TIERNEY
2412 MESA DR
NEWPORT BEACH CA 92660

ELIZABETH C TIERNEY
2832 DOW AVE
TUSTIN CA 92680

MARK STARK
BRENDA STARK
HC 63 BOX 1778
CHALLIS ID 83226

NORTHWEST FARM CREDIT
SERVICES FLCA
2225 W BROADWAY #A
IDAHO FALLS ID 83402

MICKY ROSKELLEY
HC 67 BOX 2051
CHALLIS ID 83226

ROBERT L NORTON or SUSAN P
NORTON C/O MARK HICKS
STE 2402 NEW WORLD TOWER
100 N BISCAYNE BLVD
MIAMI FL 33132-2513

MARK HICKS or ANN C HICKS
STE 2402 NEW WORLD TOWER
100 N BISCAYNE BLVD
MIAMI FL 33132-2513

THOMPSON CREEK MINING CO
PO BOX 62
CLAYTON ID 83227

NORTHWEST FARM CREDIT
SERVICES FLCA
2225 W BROADWAY #A
IDAHO FALLS ID 83402

MARK STARK
BRENDA STARK
HC 63 BOX 1778
CHALLIS ID 83226

WILLIAM A KNIGHT
HC 67 BOX 725
CLAYTON ID 83227

STEPHEN L SIEMERS
KHEMA R DANNER
PO BOX 196
STANLEY ID 83278-0196

MARK STARK
BRENDA STARK
HC 63 BOX 1778
CHALLIS ID 83226

EVERETT P ENZENAUER FAMILY
TRUST
PO BOX 1776
HEALDSBURG CA 95448-1776

MAUDE LOU GREENWELL
DON A GREENWELL
PO BOX 236
PAUL ID 83347-0236

KAREN WHITWORTH
HC 63 BOX 1645
CHALLIS ID 83226

HELEN A CUTLER
PO BOX 209
CHALLIS ID 83226

SCOTT L CAMPBELL
MOFFATT THOMAS
PO BOX 829
BOISE ID 83701-0829

THOMPSON CREEK MINING CO
PO BOX 62
CLAYTON ID 83227

US DEPT OF INTERIOR
BUREAU OF LAND MANAGEMENT
SALMON DISTRICT
1206 S CHALLIS ST
SALMON ID 83467

RAYMOND C REYNOLDS
JACQUELINE L REYNOLDS
426 HWY 28
SALMON ID 83467

RICHARD E FOSTER
PO BOX 55
LEADORE ID 83464

ALLAN PROBST
KARLA PROBST
1813 LEMHI RD
SALMON ID 83467

CHURCH OF JESUS CHRIST OF
THE LATTER DAY SAINTS
C/O SCOTT NIELSON AIA
PO BOX 2212
IDAHO FALLS ID 83403

CHARLES A MC CLAIN
NADINE MARVIN
DIANA MC CLAIN
PO BOX 465
SALMON ID 83467-0465

STEELHEAD BEND MUTUAL
WATER CO
130 N AGATE DR
SALMON ID 83467-5168

J REX TOLMAN
ELIZABETH C TOLMAN
41 CORBETT LN
SALMON ID 83467

LESLIE MAY SHUMATE
139 LAKE CREEK RD
SALMON ID 83467

JAMES D WALKER
SHIRLEY WALKER
16 HOT SPRINGS RANCH RD
CARMEN ID 83462-4510

Statement of Available Procedures and Applicable Time Limits

RESPONDING TO PRELIMINARY ORDERS ISSUED BY THE IDAHO DEPARTMENT OF WATER RESOURCES (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 issuance 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.