

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

IN THE MATTER OF BASIN 37
ADMINISTRATIVE PROCEEDING

Docket No. AA-WRA-2021-001

**FINAL ORDER APPROVING
AMENDMENT TO MITIGATION
PLAN**

BACKGROUND

On May 4, 2021, the Director of the Idaho Department of Water Resources (“Department”) issued a *Notice of Administrative Proceeding, Pre-Hearing Conference, and Hearing* (“Notice”). The *Notice* stated that a drought is predicted for the 2021 irrigation season, and the water supply in Silver Creek and its tributaries may be inadequate to meet the needs of surface water users. *Id.* at 1. The *Notice* stated the Director was initiating an administrative proceeding, pursuant to Idaho Code § 42-237a.g. and IDAPA 37.01.01.104, to determine whether water is available to fill the ground water rights within the Wood River Valley south of Bellevue. *Id.*

A hearing was held starting on June 7, 2021, and ending on June 12, 2021. On June 28, 2021, the Director issued a *Final Order* curtailing ground water rights within the area known as the Bellevue Triangle, starting July 1, 2021. The Director instructed the watermaster for Water District 37 to curtail the ground water rights listed in Exhibit A to the *Final Order* unless notified by the Department that this order of curtailment has been modified or rescinded.

Prior to the issuance of the *Final Order*, on June 24, 2021, South Valley Ground Water District (“South Valley”) and Galena Ground Water District (“Galena”) filed *South Valley Ground Water District and Galena Ground Water District’s Proposed Mitigation Plan* (“Mitigation Plan”).

After the Director issued the *Final Order*, on June 28, 2021, South Valley and Galena filed *South Valley Ground Water District’s and Galena Ground Water District’s Petition to Stay Curtailment/Request for Expedited Decision/Request for Hearing on Proposed Mitigation Plan* (“Petition”).¹ In response, on June 29, 2021, the Director issued *Final Order Denying Petition to Stay Curtailment/Granting Request for Expedited Decision/ Granting Request for Hearing* granting the hearing request. On July 1, 2021, the Director issued a *Notice of Hearing* setting the hearing on the *Mitigation Plan* for July 6-8, 2021.

¹ South Valley and Galena emailed the Director a copy of the *Petition* and mailed the official filing on June 28, 2021. The official filing was received by the Department on July 2, 2021.

On the morning of July 6, prior to commencing the hearing on the Mitigation Plan, the parties requested time to conduct settlement discussions instead of proceeding with the hearing. Those discussions proved fruitful and that same day, South Valley and Galena submitted three applications for temporary transfer and one water supply bank rental application.

On July 7, 2021, South Valley, Galena, Big Wood & Little Wood Water Users Association, Big Wood Canal Company, and Lawrence Schoen entered into an agreement², referred to herein as the *Term Sheet Agreement*, whereby ground water users agreed to undertake certain actions to mitigate for injury to senior surface water rights that divert water from Silver Creek and the Little Wood River. The *Term Sheet Agreement* has four principal components: (1) maintaining the delivery of 23 cfs flow to Station 10 on the Little Wood; (2) acquisition of 2,500 AF of storage water rights for delivery through the Milner-Gooding Canal; (3) a reduction in the irrigation season; and (4) a commitment by groundwater users to work with surface water users to develop and submit to IDWR a ground water management plan by December 1, 2021.

On July 7, 2021, South Valley and Galena also submitted the agreement to the Department as *South Valley Ground Water District and Galena Groundwater District's Revised and Amended Proposed Mitigation Plan* ("Amended Mitigation Plan").³ The *Amended Mitigation Plan* explains that the three applications for temporary transfer and the one water supply bank rental application submitted on July 6 are necessary to implement the agreement. *Amended Mitigation Plan* at 2-3.

On July 8, 2021, the Director issued a *Final Order Approving Mitigation Plan and Staying Curtailment* ("Order Approving Mitigation").

On or about August 12, 2021, the parties to the *Term Sheet Agreement* amended item 2.c. of the *Term Sheet Agreement* to allow additional exceptions to the irrigation season reduction for specific ground water rights used to irrigate landscape nursery stock, and specific ground water rights used for commercial and industrial purposes. See *Amended Term Sheet Agreement* attached herein as Exhibit B.

DISCUSSION

The parties to the *Term Sheet Agreement*, including South Valley and Galena, agree to amend item 2.c. of the *Term Sheet Agreement*. The Director finds that the *Amended Term Sheet*

² The agreement is titled Big Wood and Little Wood Water Users Association ("BWLWWUA"), Big Wood Canal Company ("BWCC"), South Valley Ground Water District ("SVGWD"), and Galena Ground Water District ("GGWD") – Final 2021 Term Sheet. A copy is attached as Exhibit A.

³ In the *Amended Mitigation Plan*, South Valley and Galena gave their interpretation of the *Term Sheet Agreement*. *Amended Mitigation Plan* at 1-5. Some parties have voiced concern that the ground water districts' narrative does not give a full description of the *Term Sheet Agreement*. The Director wants to make it clear that by issuing his *Order Approving Mitigation Plan*, the Director did not approve or adopt the ground water districts' narrative describing the *Term Sheet Agreement*. The *Term Sheet Agreement* speaks for itself.

Agreement is approvable. Therefore, pursuant to the Director's discretionary authority in this matter, the Director should approve the amendment.

ORDER

Based on the foregoing, IT IS HEREBY ORDERED that the amendment to the Mitigation Plan, documented by the *Amended Term Sheet Agreement*, is APPROVED.

IT IS FURTHER ORDERED that if the terms of the *Term Sheet Agreement*, as amended by the *Amended Term Sheet Agreement*, are not met, the Watermaster for Water District 37 shall curtail the ground water users as provided in the agreement.

DATED this 15th day of August 2021.



GARY SPACKMAN
Director

CERTIFICATE OF SERVICE


I HEREBY CERTIFY that, on this 16th day of July, 2021, the above and foregoing FINAL ORDER APPROVING AMENDMENT TO MITIGATION PLAN was served by the method indicated below, and address to the following:

James R. Laski Heather E. O'Leary Lawson Laski Clark, PLLC 675 Sun Valley Rd., Ste. A P.O. Box 3310 Ketchum, ID 83340 jrl@lawsonlaski.com heo@lawsonlaski.com efiling@lawsonlaski.com	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email
Matthew A. Johnson Brian T. O'Bannon White, Peterson, Gigray & Nichols, P.A. 5700 East Franklin Road, Suite 200 Nampa, Idaho 83687-7901 mjohnson@whitepeterson.com bobannon@whitepeterson.com	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email
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Robert L. Harris Holden, Kidwell, Hahn & Crapo, P.L.L.C. P.O. Box 50130 1000 Riverwalk Drive, Suite 200 Idaho Falls, ID 83405 rharris@holdenlegal.com	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email

Rusty Kramer, Secretary PO Box 507 Fairfield, ID 83327 waterdistrict37b@outlook.com	<input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/>	U.S. Mail, postage prepaid Hand Delivery Overnight Mail Facsimile Email
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Paul Bennett 114 Calypso Lane Bellevue, ID 83313 info@swiftsureranch.org	<input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/>	U.S. Mail, postage prepaid Hand Delivery Overnight Mail Facsimile Email
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John K. Simpson Barker Rosholt & Simpson LLP 1010 Jefferson St., Ste. 102 P.O. Box 2139 Boise Idaho 83701-2139 jks@idahowaters.com	<input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/>	U.S. Mail, postage prepaid Hand Delivery Overnight Mail Facsimile Email

Lawrence Schoen Napuisunaih 18351 U.S. Highway 20 Bellevue, ID 83313 lschoen@naramail.net	<input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/>	U.S. Mail, postage prepaid Hand Delivery Overnight Mail Facsimile Email
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Southern Comfort Homeowner's Association P.O. Box 2739 Ketchum, ID 83340	<input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	U.S. Mail, postage prepaid Hand Delivery Overnight Mail Facsimile Email
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Norman M. Semanko Parsons Behle & Latimer 800 West Main Street, Ste 1300 Boise, ID 83702 NSemanko@parsonsbehle.com	<input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/>	U.S. Mail, postage prepaid Hand Delivery Overnight Mail Facsimile Email

Sarah A. Klahn Somach Simmons & Dunn 2033 11th St., Suite 5 Boulder, CO 80302 sklahn@somachlaw.com	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email
Randall C. Budge Thomas J. Budge Racine Olson, PLLP 201 E. Center St. P.O. Box 1391 Pocatello, Idaho 83204 randy@racineolson.com tj@racineolson.com	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email
Michael C. Creamer Michael P. Lawrence Charlie S. Baser Givens Pursley LLP 601 W. Bannock St. P.O. Box 2720 Boise, Idaho 83701-2720 mpl@givenspursley.com mcc@givenspursley.com csb@givenspursley.com	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email
GARY D. SLETTE ROBERTSON & SLETTE PLLC PO Box 1906 Twin Falls, Idaho 83303 gslette@rsidaholaw.com	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email



Megan Jenkins
Administrative Assistant

Exhibit A

BIG WOOD AND LITTLE WOOD WATER USERS ASSOCIATION ("BWLWWUA"), BIG WOOD CANAL COMPANY ("BWCC")¹, SOUTH VALLEY GROUND WATER DISTRICT ("SVGWD"), AND GALENA GROUND WATER DISTRICT ("GGWD")² – FINAL 2021 TERM SHEET

1. Objectives

- a. Mitigate for material injury to senior surface water rights that divert water from Silver Creek and the Little Wood River reaches between "Silver Creek at Sportsman's Access NR Picabo ID" and the confluences of the Little Wood and Big Wood rivers;
- b. Provide safe harbor to Groundwater Users on the Bellevue Triangle that divert groundwater within the Basin 37 Administrative Proceeding curtailment boundary;
- c. Minimize economic impact to water users and the economy arising from water supply shortages; and
- d. Develop and submit an approved Ground Water Management Plan for the Big Wood Ground Water Management Area ("BWGWMA").

2. 2021 Irrigation Season Mitigation Practices

- a. Delivery of Natural Flow Water as Measured at Station 10: Through September 1, 2021, the Groundwater Users shall ensure a minimum of 23 cfs of flow at Station 10 to support senior surface water right diversions from the Little Wood River above the Milner-Gooding Canal (flows below 20 cfs will enact full curtailment, after a 48-hour "cure" period, total cure period during the 2021 Irrigation Season not to exceed 144 hours).
 - i. This could consist of pumped groundwater, some amount of water generated from flexibly-applied self-curtailment and incidental reach gains.
 - ii. "Monsoon" Exception: Picabo Livestock ("PL") will not divert its 1883 surface water rights, unless (1) 23 cfs of flow at Station 10 is occurring without any SVGWD pumping to sustain the 23 cfs; and (2) PL's 1883 surface water rights are in priority.
- b. Fixed Storage Water Delivery: For delivery to Surface Water Users diverting from the Little Wood River below the Milner-Gooding Canal, the Groundwater Users will take the following actions:
 - i. Reimburse the full cost of 1,000 acre-feet of storage water already acquired by the senior Surface Water Users during the 2021 irrigation season; and
 - ii. Acquire an additional 1,500 acre-feet of storage water, for 2,500 acre-fee total, and deliver it to senior Surface Water Users upon request. The Groundwater Users are responsible for acquiring storage water and wheeling contracts to deliver the water via the Milner-Gooding Canal.
- c. Irrigation Season Reduction: Groundwater Users agree to end groundwater diversions on August 15, 2021. An exception is allowed for the use of groundwater to irrigate seed potatoes within the curtailment area to the extent that surface water rights for the acreages are not available.

3. Long Term Ground Water Management Plan

- a. Ground Water Management Plan: the Groundwater Users agree to work through the BWGWMA Advisory Committee and in coordination with senior Surface Water Users to develop and submit to the

¹ The BWLWWUA and the BWCC, along with Lawrence Schoen are collectively referred to as the "Surface Water Users."

² The SVGWD and the GGWD are collectively referred to as the "Groundwater Users."

Director of IDWR a Ground Water Management Plan ("Plan"). The Plan shall be submitted to the Director by December 1, 2021.

- b. Resumption of Basin 37 Proceeding: If a Plan is not submitted, or a Plan is submitted that is unacceptable to the Director, per the Director's July 3 letter³, he will resume the Basin 37 proceedings to determine what actions he should take to ensure that groundwater diversions within the "Wood River Basin" don't negatively affect surface water use.
4. 2021 Safe Harbor – Consistent with Section 2 of this agreement, the Groundwater Users will not be subject to curtailment by the Water District, as long as the provisions of this Term Sheet are met. Consistent with I.C. § 42-5244B, individual groundwater users not in compliance with an approved mitigation plan may be subject to curtailment.

³ Letter from Director Gary Spackman to Brad Little Governor of Idaho and Scott Bedke Speaker of the House dated July 3, 2021, with the subject line "Curtailment of Ground Water Rights in the Bellevue Triangle."

SETTLEMENT DOCUMENT SUBJECT TO L.R.E. 403

As of July 7, 2021,

Jerry Rigby, Big Wood and Little Wood Water Users Association



Kent Fletcher, Big Wood Canal Company

Lawrence Schoen

Kristy Molyneux, South Valley Ground Water District

Pat McMahon, Galena Ground Water District

As of July 7, 2021,

Jerry Rigby, Big Wood and Little Wood Water Users Association

Kent Fletcher, Big Wood Canal Company

Lawrence Schoen

A handwritten signature in black ink, appearing to be 'Lawrence Schoen', is written over a horizontal line. The signature is stylized with a large, sweeping 'L' and a long, horizontal stroke extending to the right.

Kristy Molyneux, South Valley Ground Water District

Pat McMahon, Galena Ground Water District

SETTLEMENT DOCUMENT SUBJECT TO I.R.E. 408

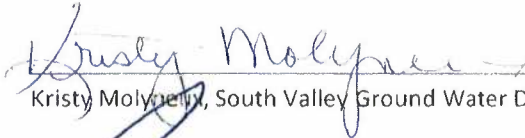
As of July 7, 2021,

A handwritten signature in blue ink, appearing to read "Jerry Rigby", written over a horizontal line.

Jerry Rigby, Big Wood and Little Wood Water Users Association

Kent Fletcher, Big Wood Canal Company

Lawrence Schoen

A handwritten signature in blue ink, appearing to read "Kristy Molyneux", written over a horizontal line.

Kristy Molyneux, South Valley Ground Water District

A handwritten signature in blue ink, appearing to read "Pat McMahon", written over a horizontal line.

Pat McMahon, Galena Ground Water District

Exhibit B

AMENDMENT TO BIG WOOD AND LITTLE WOOD WATER USERS ASSOCIATION ("BWLWWUA"), BIG WOOD CANAL COMPANY ("BWCC"), SOUTH VALLEY GROUND WATER DISTRICT ("SVGWD"), AND GALENA GROUND WATER DISTRICT ("GGWD")-FINAL 2021 TERM SHEET & MITIGATION PLAN

WHEREAS, BWLWWUA, BWCC, SVGWD, GGWD entered into a FINAL 2021 TERM SHEET on July 7, 2021, and;

WHEREAS, SVGWD AND GGWD submitted a Mitigation Plan to IDWR reflecting the conditions of the FINAL 2021 TERM SHEET on July 7, 2021; and

WHEREAS, on July 8, 2021 the Director of the Department of Water Resources issued a FINAL ORDER APPROVING MITIGATION PLAN AND STAYING CURTAILMENT; and

WHEREAS, the Parties to the FINAL 2021 TERM SHEET wish to amend the FINAL 2021 TERM SHEET to include additional conditions of water use after August 15, 2021; and

NOW THEREFORE the Parties hereby agree to amend Section 2.c of the FINAL 2021 TERM SHEET to provide for specific additional use of water after August 15, 2021, to agree to amend SVGWD and GGWD's MITIGATION PLAN to incorporate that additional water use, and to jointly seek the Director's approval of this amendment to the FINAL 2021 TERM SHEET and MITIGATION PLAN by amending Section 2.c to read as follows:

Irrigation Season Reduction: the Groundwater Users agree to end groundwater diversions on August 15, 2021. An exception is allowed for the use of groundwater to irrigate seed potatoes within the curtailment area to the extent that surface water rights for the acreages are not available. Additional exceptions are allowed for:

1. "irrigation" groundwater rights identified in Attachment A of this Amendment that are used to irrigate nursery stock. These irrigation groundwater rights may be used in accordance with the authorized season of use described in the rights, and shall be limited to a maximum combined total use of ten (10) acre-feet between August 15 and the end of the irrigation season described on the water rights; and
2. "commercial" or "industrial" groundwater rights identified in Attachment A of this Amendment. These rights may be used in accordance with the authorized season of use and annual volumes described in the rights.

Dated: August 12, 2021

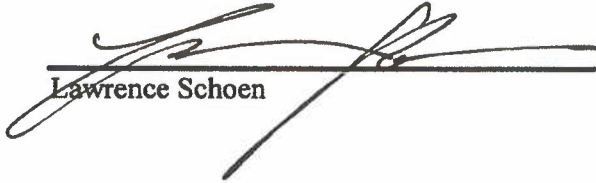
 for

Jerry Rigby, Big Wood and Little Wood Water Users Association



Kent Fletcher, Big Wood Canal Company

August 12, 2021



Lawrence Schoen

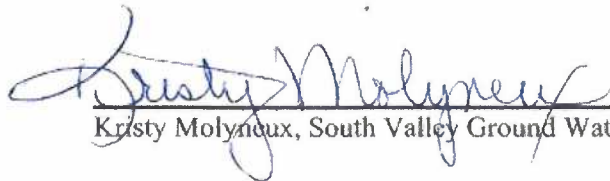
08/13/2021

Kristy Molyneux, South Valley Ground Water District

Pat McMahon, Galena Ground Water District

Kent Fletcher, Big Wood Canal Company

Lawrence Schoen



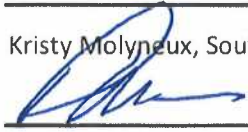
A handwritten signature in blue ink, reading "Kristy Molyneux", is written over a horizontal line. The signature is fluid and cursive.

Kristy Molyneux, South Valley Ground Water District

Pat McMahon, Galena Ground Water District

Lawrence Schoen

Kristy Molyneux, South Valley Ground Water District



Pat McMahon, Galena Ground Water District

ATTACHMENT A

Owner	Water Right Number	Uses	Div Rate (cfs)	Ann Volume (AF)	Season of Use
187 SLUDER DR LLC	37-8451	COMMERCIAL	0.08	3.9	1/1 - 12/31
GOVE, JAY	37-7064D	IRRIGATION	0.36	63	5/1 - 10/31
NACHTMAN, FRANK; NACHTMAN, JANET	37-20704	COMMERCIAL STORAGE, DOMESTIC, FIRE PROTECTION, FIRE PROTECTION STORAGE, DIVERSION TO STORAGE	0.07	3.2	1/1 - 12/31
SLUDER, C D; SLUDER, M JOAN	37-8214	COMMERCIAL	0.81	88	1/1 - 12/31
SLUDER, C D; SLUDER, M JOAN	37-8213	COMMERCIAL	0.09	0.9	1/1 - 12/31
WALKER SAND & GRAVEL LTD CO	37-22380	INDUSTRIAL, DOMESTIC	3.61	See Note*	1/1 - 12/31
WALKER SAND & GRAVEL LTD CO	37-20834	INDUSTRIAL	3.47	528.6	1/1 - 12/31
WALKER SAND & GRAVEL LTD CO	37-8532	INDUSTRIAL	1.43	219.7	1/1 - 12/31
WALKER SAND & GRAVEL LTD CO	37-8136	INDUSTRIAL	0.97	241.2	1/1 - 12/31
WALTERS READY MIX INC	37-23202	INDUSTRIAL	0.02	2	1/1 - 12/31
WALTERS, CHARLENE B; WALTERS, DAVID	37-23100	INDUSTRIAL	0.92	4.1	1/1 - 12/31
WEBB, DOUG	37-8412	COMMERCIAL, DOMESTIC	0.11	40.7	1/1 - 12/31
WEBB, DOUG	37-8411	COMMERCIAL	0.18	66.2	1/1 - 12/31
WEBB LANDSCAPE INC	37-22328	IRRIGATION	0.12	21	4/15 - 10/15

*Note: Walker Sand & Gravel rights 37-22380, 37-20834, 37-8532 and 37-8136 are limited to a total annual maximum diversion volume of 990 acre-feet for industrial use, and 8 acre-feet for domestic use (998 acre-feet for all uses).

EXPLANATORY INFORMATION TO ACCOMPANY A FINAL ORDER

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

(Required by Rule of Procedure 740.02)

The accompanying order is a "Final Order" issued by the department pursuant to section 67-5246, Idaho Code.

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a final order within fourteen (14) days of the service date of this order as shown on the certificate of service. **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 67-5246(4), Idaho Code.

REQUEST FOR HEARING

Unless the right to a hearing before the director or the water resource board is otherwise provided by statute, any person who is aggrieved by the action of the director, and who has not previously been afforded an opportunity for a hearing on the matter shall be entitled to a hearing before the director to contest the action. The person shall file with the director, within fifteen (15) days after receipt of written notice of the action issued by the director, or receipt of actual notice, a written petition stating the grounds for contesting the action by the director and requesting a hearing. See section 42-1701A(3), Idaho Code. **Note: The request must be received by the Department within this fifteen (15) day period.**

APPEAL OF FINAL ORDER TO DISTRICT COURT

Pursuant to sections 67-5270 and 67-5272, Idaho Code, any party aggrieved by a final order or orders previously issued in a matter before the department may appeal the final order and all previously issued orders in the matter 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: a) the service date of the final order, b) the service date of an order denying petition for reconsideration, or c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration, whichever is later. See section 67-5273, Idaho Code. The filing of an appeal to district court does not in itself stay the effectiveness or enforcement of the order under appeal.