

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

<b>IN THE MATTER OF PERMIT</b>	)	
<b>NO. 61-12090 (NEVID LLC);</b>	)	
<b>PERMIT NO. 61-12096 (NEVID LLC)</b>	)	<b>PRELIMINARY ORDER</b>
<b>PERMIT NO. 63-32225</b>	)	<b>ON MOTIONS</b>
<b>(INTERMOUNTAIN SEWER AND</b>	)	
<b>WATER); NO. 63-32499 (MAYFIELD</b>	)	
<b>TOWNSITE LLC); and PERMIT NO.</b>	)	
<b>63-35473 (MAYFIELD RANCH LLC)</b>	)	
	)	

**PROCEDURAL HISTORY**

On September 12, 2023, the Idaho Department of Water Resources (“Department”) received *Motion to Deny Any Additional Requests for Extension of Time or in the Alternative to Provide Actual Notice and an Opportunity to be Heard to Challenge the Same Before They are Approved* (“Motion”) filed by Juniper Station Farm LLC (“Juniper”). Juniper served a copy of the Motion on representatives of Nevid LLC (“Nevid”), Intermountain Sewer and Water (“Intermountain”), Mayfield Townsite LLC (“Mayfield”), and Mayfield Ranch LLC (“Mayfield Ranch”). On September 26, 2023, the Department received timely responses in opposition to the *Motion* from Nevid and Mayfield, Intermountain, and Mayfield Ranch (collectively “Respondents”). Juniper filed a timely reply to the responses (“*Motion Reply*”) on October 3, 2023.

Juniper has filed an application for transfer and an application to appropriate water within an area of limited water supply, referred to as the “I-84 Corridor”, within which the Department is processing applications in chronological order as water becomes available.<sup>1</sup> The most likely way water may become available is if existing permits lapse or are licensed for a lesser quantity than permitted. Juniper must await licensing of the existing permits, as well as processing of earlier in time applications (and, perhaps, licensing of permits that issue therefrom) before the Department will process Juniper’s applications. Juniper asks the Department to preemptively deny future requests for extension of time to file proof of beneficial use for the five existing above-captioned permits in the area (“Subject Permits”). In the alternative, Juniper asks that the Department provide notice and an opportunity to challenge future requests for extension of time to file proof of beneficial use for the Subject Permits prior to any decision. Respondents separately own the Subject Permits in the area that would be affected if the *Motion* were granted. Respondents each oppose the *Motion*.

**FINDINGS OF FACT**

1. On February 16, 2007, the Department issued permit to appropriate water no. 63-32225 to Intermountain to divert up to 10 cubic feet per second (“cfs”) and 1,815 acre-feet (“af”) of ground water for municipal purposes with a priority date of September

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<sup>1</sup> Juniper’s application for transfer was protested and the protest resolution requires the application to be processed in chronological order with other applications for permit and transfer in the area.

16, 2005. Proof of beneficial use was due on or before February 1, 2012. The Department since approved requests for extension of time to file proof of beneficial use for permit 63-32225 as follows:

- February 6, 2012 - five additional years, proof due February 1, 2017
- January 25, 2016 - five additional years, proof due February 1, 2021
- January 26, 2021 - 584 additional days, proof due September 8, 2022
- July 21, 2022 - three additional years, proof due April 14, 2025

2. On November 24, 2009, the Department issued permit to appropriate water 61-12090 to Nevid to divert up to 1.82 cfs and 345 af of ground water for municipal purposes, and an additional 2.20 cfs of ground water for fire protection purposes with a priority date of September 28, 2006. Proof of beneficial use was due on or before October 1, 2014. On September 25, 2014, the Department approved a request for a ten-year extension of time to file proof of beneficial use, resulting in a proof due date of October 1, 2024.

3. On November 4, 2013, the Director issued *Final Order Regarding Water Sufficiency* (“*Final Order*”). In the *Final Order*, the Director determined the available ground water supply is sufficient to approve up to 7,440 af of consumptive use, equivalent to 10.3 cfs of continuous diversion. *Final Order*, at 13.

4. The *Final Order* ordered that, “processing shall continue for Mayfield application for permit no. 63-32499, Shekinah application for transfer 78356, and Nevid application for permit no. 61-12096. Other applications shall be held until processing is complete for these three applications.” *Id.* at 14.

5. On November 30, 2015, the Department issued permit to appropriate water 61-12096 to Nevid to divert up to 14.91 cfs and 2,028 af of ground water for municipal purposes,<sup>2</sup> with a priority date of April 3, 2007. Proof of beneficial use was due on or before December 1, 2020. On January 17, 2021, the Department approved a five-year extension of time to file proof of beneficial use, resulting in a proof due date of December 1, 2025.

6. On January 13, 2016, the Department issued permit to appropriate water 63-32499 to Mayfield to divert up to 10.0 cfs and 4,320 af of ground water for municipal purposes, with a priority date of July 28, 2006. Proof of beneficial use was due on or before January 1, 2021. On January 17, 2021, the Department approved a five-year extension of time to file proof of beneficial use, resulting in a proof due date of January 1, 2026.

7. On August 11, 2023, the Department processed a notice of change in water right ownership to reflect Mayfield’s conveyance of a portion of permit 63-32499 to Mayfield Ranch. The ownership change resulted in permit 63-35473 for Mayfield Ranch that authorizes up to 3.48 cfs and 1,503.4 af of ground water for municipal

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<sup>2</sup> Permit 61-12096 also authorizes an additional 5.57 cfs of ground water for fire protection purposes but is conditioned to limit diversion of water for fire protection purposes only when necessary to fight or repel an existing fire.

purposes, and a corresponding reduction in permit 63-32499. Both permits bear a proof of beneficial use due date of January 1, 2026.

8. On January 21, 2016, the Department approved application for transfer 78356 that authorized consumptive use of up to 1,092 af of ground water within the I-84 Corridor. This approval, along with approval of 63-12096 and 63-32499, totals the available 7,440 af of available ground water supply determined in the *Final Order*.

9. Conclusion of Law 13 in the *Final Order* is as follows:

Following completion of processing of the three Mayfield, Shekinah and Nevid applications and following their development, the remaining applications should be evaluated to determine what additional water might be available for appropriation. Subsequent applications will be processed in the chronological order of receipt.

*Final Order*, at 14. The Department has relied upon this statement to establish a “processing queue” for the remaining applications and subsequently filed applications in the I-84 Corridor.

10. None of the Subject Permits propose municipal use for Reasonably Anticipated Future Needs (“RAFN”).

## RELEVANT STATUTES

Idaho Code § 42-204:

(3) The provisions of this subsection shall not apply to permits held by municipal providers for reasonably anticipated future needs. For all other permits, the department shall require that actual construction work and application of the water to full beneficial use shall be complete within a period of five (5) years from the date of such approval, but may limit permit development to a shorter period than requested in the application, and the permit shall set forth the date when beneficial application of the water to be diverted by such works shall be made. Sixty (60) days before the date set for the completion of the appropriation of water under any permit, the department shall forward a notice to the permit holder by certified mail at the permit holder’s address of record of the date for such completion, which said notice shall advise the permit holder of the necessity of submitting a statement of completion showing proof of beneficial use or a request for an extension of time on or before said date. The department may approve a timely request for an extension of time in the following circumstances:

(a) In cases where the permit holder is prevented from proceeding with construction, work, or application of water to full beneficial use by the permit holder’s failure to obtain necessary consent or final approval or rejection from the federal government because of the pendency of an application for right-of-way or other matter within the jurisdiction of the United States, by state, county, city or other local government permitting or administrative action or process related to the permit holder’s land or water development, or by litigation related to the permit holder’s land or

water development, the department of water resources, upon proper showing of the existence of any such condition, and being convinced that said permit holder is proceeding diligently and in good faith, shall extend the time so that the amount of time lost by such delays shall be added to the time given in the original permit, or in any subsequent grant of extension pursuant to paragraph (b), (c), (d), or (f) of this subsection, for each and every action required.

...

(d) The time for completion of works and application of the water to full beneficial use: (i) under any permit authorizing the diversion of two (2) or more cubic feet per second of water or the development or cultivation of one hundred (100) or more acres of land or (ii) under any permit that, when combined with another permit, authorizes the diversion of two (2) or more cubic feet per second of water or the development or cultivation of one hundred (100) or more acres of land, provided the permits have a common or combined diversion and distribution system, are owned by the same permit holder, and are approved within five (5) years of each other may be extended by the director of the department of water resources upon application by the permit holder for an additional period up to ten (10) years beyond the initial development deadline contained in the permit, or beyond a grant of extension pursuant to the provisions of paragraph (a) of this subsection, provided the permit holder establishes that the permit holder has exercised reasonable diligence and that good cause exists for the requested extension.

...

(f) In all other situations not governed by these provisions, the department may grant one (1) extension of time, not exceeding five (5) years beyond the date originally set for completion of works and application of the water to full beneficial use, or beyond any grant of extension pursuant to the provisions of paragraph (a) of this subsection, upon request for extension received on or before the date set for completion, provided good cause appears therefor.

(5) Any permit holder aggrieved by the decision of the department of water resources regarding its request for extension may request a hearing before the director in accordance with section 42-1701A(3), Idaho Code, for the purpose of contesting the decision and may seek judicial review pursuant to section 42-1701A(4), Idaho Code, of any final decision of the director following the hearing.

...

(7) The provisions of this section as it becomes effective on July 1, 2021, shall apply to all existing permits pending before the department of water resources on July 1, 2021. Permits pending before the department on July 1, 2021, are

entitled to the maximum qualifying extension available pursuant to the provisions of this section regardless of whether the permittee received a prior extension under subsection (3)(f) of this section.

Idaho Code § 42-1701A:

(3) Unless the right to a hearing before the director or the water resource board is otherwise provided by statute, any person aggrieved by any action of the director, including any decision, determination, order or other action, including action upon any application for a permit, license, certificate, approval, registration, or similar form of permission required by law to be issued by the director, 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. The director shall give such notice of the petition as is necessary to provide other affected persons an opportunity to participate in the proceeding. The hearing shall be held and conducted in accordance with the provisions of subsections (1) and (2) of this section. Judicial review of any final order of the director issued following the hearing shall be had pursuant to subsection (4) of this section.

## ANALYSIS

### I. Request for Blanket Denial

Juniper asks the Department to “deny any additional requests for extension of time by the [Respondents]” for the Subject Permits in the I-84 Corridor. *Motion*, at 1. Juniper asserts that previous extensions of time the Department has granted, and any future extensions it might grant, “prejudices Juniper’s ability to move up the Department’s processing queue.” *Id.* at 3. Juniper argues that the processing queue and the existing permits have “locked up” the limited water supply in the I-84 Corridor because the Respondents have not put the water to beneficial use, while others, such as Juniper, are ready and willing to do so, but cannot. *Id.* at 7. Juniper asserts that accepting additional requests for extension of time for the Subject Permits will violate Idaho Code § 42-204(3) because extensions beyond 10-15 years will “turn the non-RAFN Permits into RAFN Permits, despite not being applied for as such.” *Id.* at 9. Juniper further claimed that granting additional extensions of time would “violate the development period for non-RAFN municipal permits.” *Motion Reply*, at 4.

Juniper cites the *RAFN Municipal Water Right Handbook*<sup>3</sup> (“Handbook”) that states “the maximum development period for a beneficial use associated with a non-RAFN water right is five years, which can be extended an additional five to ten years for a total of ten to fifteen years.” *Handbook*, at 9. Juniper suggests that statement supports Juniper’s claim that longer development periods are not possible for non-RAFN municipal permits. The

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<sup>3</sup> See the Department’s Administrative Memorandum, *Recommendations for the Processing of Reasonably Anticipated Future Needs (RAFN) Municipal Water Rights at the Time of Application, Licensing, and Transfer*, RAFN Municipal Water Right Handbook (Amended October 2021).

*Handbook* is a Department guidance document and does not carry the force and effect of law. In this case, the statement in the *Handbook* fails to recognize situations that would result in longer development periods.

Idaho Code § 42-204(3)(a)–(f) lists circumstances for which the Department may approve a timely request for extension of time to file proof of beneficial use for a permit. These circumstances do not apply to permits held for municipal purposes for RAFN. None of the Subject Permits are held for RAFN. Several of the circumstances listed in Section 42-204(3) specify a maximum number of years for an extension. Extensions approved based on such circumstances generally result in a maximum development period of up to 10 years beyond an initial five-year development period for permits such as the Subject Permits. However, this is not the maximum time that may be available. Longer development periods can result from extensions for a permit based on circumstances in Section 42-204(3) that do not have specific limitations on the number or duration of extensions of time. Nothing in Section 42-204(3) suggests that a permit for non-RAFN municipal purposes is absolutely limited to a certain development period, or that it becomes a permit for RAFN, if it qualifies for and receives some reasoned number of years of extension of time to submit proof of beneficial use. The *Motion* cannot be granted based on the assertion that additional requests for extension of time for the Subject Permits will violate Section 42-204(3).

The *Motion* should be denied because granting a blanket denial of future requests for extension would violate Idaho Code § 42-204(3)(a). Section 42-204(3)(a) allows a permit holder to request an extension of time provided that certain conditions are met. The Department may approve a request for an extension of time if: (1) the permit holder could not obtain the necessary approval by applicable federal, state, county, city, or other local permitting authority which prevented the construction, work, or application of water to full beneficial use on the permit holder's land or water development; or (2) the permit holder could not construct, work, or apply water to full beneficial use because of litigation surrounding the permit holder's land or water development. I.C. § 42-204(3)(a). The Department must evaluate any such request on a case-by-case basis, looking at the facts presented with the request, to determine whether the permit holder has made a “proper showing of the existence of any such condition, and [the Department] being convinced that said permit holder is proceeding diligently and in good faith, shall extend the time” to the extent time was lost due to the delay. *Id.* If the Department finds that the permit holder was delayed, but proceeding in good faith, it *must* extend the time to file proof. *Id.* The Department will not have the facts to make this evaluation until a request for extension of time is filed, so it cannot issue a blanket denial in advance.

Similarly, the circumstances described in subsections (d) and (f) require the Department to evaluate whether good cause exists to grant the request.<sup>4</sup> Although extensions available under subsections (d) and (f) are limited to a specific number of years, extensions available under subsection (a) have no such limitation and are granted in addition to any extension granted under subsections (d) or (f). Moreover, Section 42-204(7) entitles permit holders “to the maximum qualifying extension available pursuant to the provisions of this section regardless of whether the permittee received a prior extension under subsection

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<sup>4</sup> Note that subsections (b), (c), and (e) are specific to permits of certain sizes and uses, or to specific permit holders, and are not applicable to the Subject Permits.

(3)(f)." If the Department receives a request for an extension of time and the permit holder proves that it made a good faith effort, based on the factual circumstances, that it was delayed in proving beneficial use, the Department may grant an extension of time without a specific number of years limitation.<sup>5</sup> I.C. § 42-204(3)(a). The Subject Permits have each been granted one or more extensions of time, so it may be that additional extensions of time under one or more of the circumstances is not available to one or more of the Subject Permits, but each request for extension of time must be evaluated on a case-by-case basis. The Department has discretion in most cases whether to approve a request, but in all cases the Department is required to evaluate whether the request meets the criteria in Section 42-204(3). The Department cannot evaluate a request that has not yet been filed. Juniper's *Motion* for a blanket future denial should be denied.

## **II. Alternative – Provide Notice and Opportunity to Participate in Future Requests**

As an alternative to a blanket denial of future requests for extension of time to file proof of beneficial use for the Subject Permits, Juniper asks that the Department provide Juniper with actual notice of any future requests and provide an opportunity to be heard to challenge any such requests before they are approved. *Motion*, at 9.

Section 42-204(3) only requires that a 60-day notice be given to the *permit holder* that advises the permit holder of its requirement to show proof of beneficial use or file an extension of time on or before the proof of beneficial use date. Nothing in Idaho Code § 42-204 suggests that the Department needs to provide public notice or an opportunity for public participation when it receives a request for extension of time.

Idaho Code § 42-1701A(3) is generally an avenue in which an aggrieved person can request a hearing before the Director based on an action taken by the Director. It states:

[A]ny person aggrieved by any action of the director, including any decision, determination, order or other action, including action upon any application for permit, . . . approval, . . . or similar form of permission required by law to be issued by the director, 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."

Pursuant to Idaho Code § 42-1701A(3), Juniper may request a hearing before the Director to contest the Director's approval of a request for extension of time so long as Juniper files a petition for hearing "stating the grounds for contesting the action" within fifteen days of written or actual notice of an approval of extension of time. However, Juniper is asking to participate in the process before the Director receives an extension of time request for the Subject Permits and before the Director approves or denies any future request for extension of time for any of the Subject Permits.

The Department declines to designate a forum and an opportunity for a hearing in advance of future requests for extension of time. In addition, there is no statutory requirement for the Department to provide notice to Juniper whenever it receives a request for extension of time. However, the Department agrees to provide Juniper a courtesy copy of any decision on such

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<sup>5</sup> The Department will conduct a good faith analysis to ensure that the extension for time request is not made for speculative purposes.

requests. Such notice will ensure Juniper can take timely action pursuant to Idaho Code § 42-1701A(3). Juniper's *Motion* in the alternative for the Department to provide a forum for notice and an opportunity to be heard should be denied because Juniper already has an avenue to request a hearing pursuant to Idaho Code § 42-1701A(3) once the Department issues a decision on a request for extension of time.

## CONCLUSIONS OF LAW

1. Holders of the Subject Permits are entitled to request extensions of time pursuant to Idaho Code § 42-204(3), and the Department must evaluate such requests pursuant to the statutory requirements.
2. The Department cannot evaluate requests for extension of time in advance of receiving them, so the *Motion* should be denied.
3. Nothing in Idaho Code § 42-204(3) suggests that the Department needs to provide public notice or an opportunity for public participation when it receives a request for extension of time.
4. Juniper has the opportunity to request a hearing pursuant to Idaho Code § 42-1701A(3) once the Department issues a decision on a request for extension of time so long as Juniper complies with the statutory requirements. The Department agrees to notify Juniper of future decisions on requests for extension of time for the Subject Permits.

## ORDER

Based on the foregoing, IT IS HEREBY ORDERED that Juniper's *Motion to Deny Any Additional Requests for Extension of Time or in the Alternative to Provide Actual Notice and an Opportunity to be Heard to Challenge the Same Before They are Approved* is DENIED.

It is further HEREBY ORDERED that the Department shall provide Juniper a courtesy copy of any decision issued in response to a request for extension of time filed for permit 61-12090, 61-12096, 63-32225, 63-32499, or 63-35473.

IT IS FURTHER ORDERED that as of October 11, 2024, and pursuant to IDAPA 37.01.01.053.02-03, the Department and parties are authorized to serve documents by email as an alternative to service by mail or personal service. The emails included in the certificate of service below are to be used for official service, unless a notice instructing otherwise is filed with the Department and properly served on the parties.

Dated this 11<sup>th</sup> day of October 2024



Nick Miller  
Manager, IDWR Western Region

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11<sup>th</sup> day of October, 2024, I served a true and correct copy of the foregoing document on the following by the method(s) indicated below:

CHRIS M. BROMLEY CANDICE M. MCHUGH MCHUGH BROMLEY PLLC 380 S 4TH ST STE 103 BOISE ID 83702-7687 208.287.0991 <u><a href="mailto:cbromley@mchughbromley.com">cbromley@mchughbromley.com</a></u> <u><a href="mailto:cmchugh@mchughbromley.com">cmchugh@mchughbromley.com</a></u> <i>Attorney for Juniper Station Farms LLC</i> <i>Petitioner</i>	<input type="checkbox"/> U.S. Mail, Certified, postage prepaid <input type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Overnight Mail <input checked="" type="checkbox"/> Email
NORMAN M. SEMANKO GARRETT M. KITAMURA PARSONS BEHLE & LATIMER 800 W MAIN ST STE 1300 BOISE ID 83702 208.562.4900 <u><a href="mailto:nsemanko@parsonsbehle.com">nsemanko@parsonsbehle.com</a></u> <u><a href="mailto:gkitamura@parsonsbehle.com">gkitamura@parsonsbehle.com</a></u> <u><a href="mailto:ecf@parsonsbehle.com">ecf@parsonsbehle.com</a></u> <i>Attorneys for Mayfield Townsite LLC and Nevid LLC</i> <i>Respondents</i>	<input type="checkbox"/> U.S. Mail, Certified, postage prepaid <input type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Overnight Mail <input checked="" type="checkbox"/> Email
MICHAEL P. LAWRENCE GIVENS PURSLEY LLP 601 W BANNOCK ST PO BOX 2720 BOISE, ID 83701-2720 208.388.1294 <u><a href="mailto:mpl@givenspursley.com">mpl@givenspursley.com</a></u> <i>Attorney for Mayfield Ranch LLC</i> <i>Respondent</i>	<input type="checkbox"/> U.S. Mail, Certified, postage prepaid <input type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Overnight Mail <input checked="" type="checkbox"/> Email
S. BRYCE FARRIS SAWTOOTH LAW OFFICES PLLC 1101 W RIVER ST STE 110 BOISE ID 83702-7067 208.629.7447 <u><a href="mailto:bryce@sawtoothlaw.com">bryce@sawtoothlaw.com</a></u> <i>Attorney for Intermountain Sewer and Water Corp.</i> <i>Respondent</i>	<input type="checkbox"/> U.S. Mail, Certified, postage prepaid <input type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Overnight Mail <input checked="" type="checkbox"/> Email



Nick Miller  
 Manager, IDWR Western Region

## CERTIFICATE OF SERVICE

IN THE MATTER OF PERMIT NOS. 61-12090, 61-12096, 63-32225, 63-32499, AND 63-35473

## **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.