BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATIONS FOR PERMIT 77-14377 AND 77-14379 AND APPLICATION FOR TRANSFER 85399 IN THE NAME OF PERPETUA RESOURCES IDAHO, INC.	)))))	**PRELIMINARY ORDER APPROVING APPLICATIONS**

BACKGROUND

On October 8, 2021, Perpetua Resources Idaho, Inc. ("Perpetua") filed Applications for Permit 77-14377 and 77-14379, and Application for Transfer 85399 with the Idaho Department of Water Resources ("Department"). Nez Perce Tribe ("NP Tribe"), Save the South Fork Salmon, Inc. ("SSFS"), and Idaho Conservation League ("ICL") filed separate protests against all three applications.

Pursuant to Rule 555 of the Department's Rules of Procedure (IDAPA 37.01.01), the Department consolidated Applications 77-14377, 77-14379 and 85399 with Application for Permit 77-14378, Applications for Transfer 85396, 85397, 85398, and Application for Exchange 85538 for hearing. The Department conducted an administrative hearing for these consolidated cases on December 11-15, 2023, in Boise. Perpetua was represented by attorneys Elijah Watkins and Wade Foster, NP Tribe was represented by attorneys Michael Lopez and Amanda Rogerson, and SSFS and ICL were represented by attorney Julia Thrower.

Exhibits 1a through 1h, 4, 5, 22, 23 (limited to pages 1-40 and 60-65), 25b, 26 (limited to pages 1-36 and 80-185), 27a, 29, 34, 46, 47, 58, 59, 60, 61, 63, 64 and 68 offered by Perpetua; Exhibits 201, 206, 238, 259, 260, 261 and 262 offered by NP Tribe; Exhibit 318 offered by SSFS; and Exhibits 72 and 219A designated by the hearing officer through official notice were admitted into the record. Exhibits 18, 52 and 71 offered by Perpetua; and Exhibits 246, 277, 281 and 283 offered by NP Tribe were excluded from the record.

Perpetua called Alan Haslam, Terry Scanlan, Dan Stanaway, Gene Bosley, Doug Durbin, Paul Leonard, and Rob Richardson; ICL called John Robison; SSFS called Fred Coriell; and NP Tribe called Wes Keller, Betsy Semmens, Kendra Kaiser, and Ryan Kinzer as witnesses. Ted McManus, Kyle Smith, Rich Wensel, Dan Ostermiller, Zak Sears, Gary Brown, Michael Gibson, and Nick Kunath testified as public witnesses. Consistent with Rule 651 of the Department's Rules of Procedure (IDAPA 37.01.01), after the hearing the parties used a private company, K & K Reporting, to prepare a transcript of the hearing.

The hearing officer allowed the parties to file post-hearing briefs. On January 31, 2024, Perpetua filed *Perpetua Resources Idaho, Inc.'s Post Hearing Brief* ("Perpetua Brief") and NP Tribe, SSFS and ICL filed *Protestants' Joint Post-Hearing Brief* ("Protestants' Brief").

After carefully considering the evidence in the administrative record and the arguments made by the parties, the hearing officer finds, concludes, and orders as follows:

FINDINGS OF FACT

1. Perpetua proposes to develop a mining project, known as the Stibnite Gold Project ("SGP"), in Valley County. Ex. 22 at 10.[1] Perpetua proposes to extract gold, silver, and antimony at the SGP. *Id.*

2. The project site includes private land owned by Perpetua and land that is held by the USFS. Ex. 22 at 16. Perpetua is currently seeking an approved plan of operations from the USFS. Ex. 22.

3. In Application 77-14377, Perpetua proposes to divert 0.20 cubic feet per second ("cfs") from ground water for domestic use by employees at the SGP. Ex. 1f.

4. In Application 85399, Perpetua proposes to add points of diversion to and change the point of diversion and place of use for water right 77-7141. Ex. 1b. Water right 77-7141 bears a priority date of June 9, 1981, and authorizes the diversion of 0.20 cfs and 11.4 acre-feet per year from ground water for domestic use. *Id.* at 7.

5. Perpetua proposes to divert water rights 77-14377 and 77-7141 for domestic use at a worker housing facility to be constructed at the SGP, which will serve approximately 500 employees at one time.[2] Ex. 22 at 32. The domestic water use at the worker housing facility will be limited to in-house uses and will not include irrigation. Ex. 1f at 2.

6. The estimated water demand at the housing complex will be 50 gallons per day per person. Ex. 1f at 2; Ex. 26 at 85. Assuming the SGP is fully staffed for an entire year, this equates to an annual diversion volume of 9.13 million gallons or 28.0 acre-feet of water.

7. In combination, water rights 77-14377 and 77-7141 will divert up to 0.20 cfs from ground water for domestic use. Ex. 26 at 83; Scanlan Test., Tr. at 175.

8. The existing point of diversion for water right 77-7141 is in the NWSW of Section 11, T18N, R09E. Ex. 1b at 7.

9. Applications 77-14377 and 85399 propose to divert ground water from three wells in the SWSE of Section 13, T18N, R09E and one well in the NENE of Section 24, T18N, R09E. Ex. 1f at 3; Ex. 1b at 9.

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[1] All references to page numbers in this order indicate the page of the exhibit pdf not necessarily the page number shown on the document.

[2] Applications 77-14377 and 85399, filed on October 8, 2021, described domestic use at the SGP worker housing facility for 750 potential employees. On October 15, 2021, Perpetua filed a Modified Plan of Restoration and Operations with the USFS, which, among other things, refined the estimated employee count. Ex. 22 at 32 (the worker housing facility "would accommodate approximately 500 people"). Alan Haslam, Vice President of Permitting for Perpetua, testified that the SGP will have 500-600 employees during peak demand. Haslam Test, Tr. at 51. Because of shift work, the 600 employees won't necessarily be on site at the same time. *Id.*

10. The four proposed points of diversion are located approximately two miles southeast of the existing point of diversion for water right 77-7141, upstream of the existing point of diversion in the drainage basin. Ex. 1b at 7-9; Ex. 1g at 14.

11. The four proposed points of diversion (wells) are located within 1,500 feet of the East Fork of the South Fork Salmon River ("EFSFSR"). Ex. 1f at 3; Ex. 1b at 9.

12. In Application 77-14379, Perpetua proposes to divert 0.06 cfs from ground water for domestic use at a truck shop and ore processing facilities at the SGP. Ex. 1h at 2. Perpetua proposes to divert water from an existing well in the SWSW of Section 11, T18N, R09E. *Id.* at 1. The existing well is located less than 500 feet from the EFSFSR. *Id.* at 3.

13. In its analysis of the effects of ground water diversions on surface water streams, Perpetua assumed that ground water diversions have a one-to-one impact on surface water streams within the boundaries of the SGP. Ex. 206 at 14. In other words, diverting 0.26 cfs of ground water would reduce streamflow in the EFSFSR by 0.26 cfs.

14. The domestic water systems (diversion works and pipelines) at the SGP will be isolated from the industrial water systems. Ex. 26 at 88, 172. Ground water diverted for domestic use will not be comingled with industrial water. *Id.*

15. The domestic uses at the truck shop, industrial buildings, and worker housing facility will include water for bathrooms, kitchens, showers, and laundry and will be minimally consumptive. Ex. 1f at 2; Ex. 1h at 2; Ex. 26 at 82; Scanlan Test., Tr. at 129.

16. The waste water treatment facility for domestic waste water (referred to as the sanitary waste water treatment plant in the exhibits) will be located immediately west of the worker housing complex. Ex. 22 at 34 (map showing location of treatment facility). Waste water generated from the domestic uses at the truck shop and ore processing facilities under water right 77-14379 will be conveyed or transported to the waste water treatment facility. Ex. 26 at 88.

17. "A package plant consisting of a membrane bioreactor or equivalent system will treat the [domestic waste] water to meet applicable discharge requirements." Ex. 26 at 172. "The discharge volume will be relatively constant seasonally, but will vary between construction, operations, and reclamation and closure and post closure depending upon the number of employees working onsite in each phase." *Id.*

18. Treated waste water from domestic uses will be discharged into the EFSFSR at a site less than one-quarter mile from the worker housing facility. Ex. 26 at 86, 94, 172 (report describing waste water system and map showing discharge site near worker housing facility). "The treated discharge will comprise a very small fraction of the ambient streamflow [in the EFSFSR]." *Id.* at 125.

19. Perpetua is actively pursuing other permits required by state and federal agencies. Bosley Test., Tr. at 389-390; *see also* Ex. 26 at 17-19 (summarizing the permits required to construct and operate the SGP). Perpetua has applied for an Idaho Pollutant Discharge Elimination System ("IPDES") discharge permit from the Idaho Department of Environmental Quality ("IDEQ") for the discharge of treated domestic waste water into the EFSFSR. Bosley Test., Tr. at 389-390.

20. Stream flow records for the EFSFSR show a consistent flow in the river near the proposed worker housing facility. Ex. 25b at 126 (depicting the location of USGS Stream Gage #13310800 approximately 1.5 miles downstream of the proposed worker housing facility); *Id.* at 133 (average monthly streamflow exceeds 2.0 cfs at USGS Stream Gage #13310800 during the low flow period of the year); *see also* Ex. 260 (showing consistent flow at USGS Stream Gage #13311000, which is also located downstream of the proposed worker housing facility, during the low flow period of the year).

21. The initial cost of the SGP is $1.265 billion. Ex. 59 at 1. Perpetua is a publicly traded company with a strong shareholder base and will use a combination of financing options to fund the initial construction and operation of the SGP. *Id.* In addition to traditional funding sources, Perpetua has been awarded grants from the U.S. Department of Defense to offset some of the cost of environmental and engineering studies. Ex. 59 at 67.

RELEVANT STATUTES

Idaho Code § 42-203A(5) sets forth the criteria used to evaluate applications for permit and states, in pertinent part:

> In all applications whether protested or not protested, where the proposed use is such: (a) that it will reduce the quantity of water under existing water rights, or (b) that the water supply itself is insufficient for the purpose for which it is sought to be appropriated, or (c) where it appears to the satisfaction of the director that such application is not made in good faith, is made for delay or speculative purposes, or (d) that the applicant has not sufficient financial resources with which to complete the work involved therein, or (e) that it will conflict with the local public interest as defined in section 42-202B, Idaho Code, or (f) that it is contrary to conservation of water resources within the state of Idaho, or (g) that it will adversely affect the local economy of the watershed or local area within which the source of water for the proposed use originates, in the case where the place of use is outside of the watershed or local area where the source of water originates; the director of the department of water resources may reject such application and refuse issuance of a permit therefor, or may partially approve and grant a permit for a smaller quantity of water than applied for, or may grant a permit upon conditions.

Idaho Code § 42-222(1) sets forth the criteria used to evaluate changes to water rights (applications for transfer) and states, in pertinent part:

> The director of the department of water resources shall examine all the evidence and available information and shall approve the change in whole, or in part, or upon conditions, provided no other water rights are injured thereby, the change does not constitute an enlargement in use of the original right, the change is consistent with the conservation of water resources within the state of Idaho and is in the local public interest as defined in section 42-202B, Idaho Code, the change will not adversely affect the local economy of the watershed or local area within which the source of water for the proposed use originates, in the case where the place of use is outside of the watershed or local area where the source of water originates, and the new use is a beneficial use, which in the case of a municipal provider shall be satisfied if the water right is necessary to serve reasonably anticipated future needs as provided in this chapter.

Idaho Code § 42-202B sets forth the definition for "local public interest":

> "Local public interest" is defined as the interests that the people in the area directly affected by a proposed water use have in the effects of such use on the public water resource.

ANALYSIS

The criteria used to evaluate applications for permit are somewhat different than those used to evaluate applications for transfer. The criteria used to evaluate applications for permit are set forth in Idaho Code § 42-203A(5) and the Department's Water Appropriation Rules (IDAPA 37.03.08). The criteria used to evaluate applications for transfer are set forth in Idaho Code § 42-222(1). Therefore, this order contains one section evaluating Applications 77-14377 and 77-14379 and a separate section evaluating Application 85399.

I. Evaluation of Applications 77-14377 and 77-14379

Reduction to Existing Water Rights

Rule 45.01.a of the Department's Water Appropriation Rules (IDAPA 37.03.08) sets forth the criteria used for determining whether a proposed use of water will reduce the quantity of water under an existing water right:

> A proposed use will be determined to reduce the quantity of water under an existing water right (i.e., injure another water right) if:
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> > i. The amount of water available under an existing water right will be reduced below the amount recorded by permit, license, decree or valid claim or the historical amount beneficially used by the water right holder under such recorded rights, whichever is less.

ii. The holder of an existing water right will be forced to an unreasonable effort or expense to divert his existing water right. Protection of existing groundwater rights are subject to reasonable pumping level provisions of Section 42-226, Idaho Code; or

iii. The quality of the water available to the holder of an existing water right is made unusable for the purposes of the existing user's right, and the water cannot be restored to usable quality without unreasonable effort or expense.

iv. An application that would otherwise be denied because of injury to another water right may be approved upon conditions which will mitigate losses of water to the holder of an existing water right, as determined by the Director.

IDAPA 37.03.08.045.01.a.

The water use proposed in Applications 77-14377 and 77-14379, in-house domestic use, is mostly non-consumptive. Just because a water right is non-consumptive, however, does not mean that it cannot reduce the quantity of water under existing water rights. The Department must still evaluate the proposed water use to determine if any existing water rights will be affected by the proposed diversion.

The water use proposed in Applications 77-14377, 77-14379, and 85399 will not reduce the quantity of water under existing water rights or injure existing water rights. Stream gages for the EFSFSR, downstream of the proposed diversions, show a consistent flow of water throughout the year. Once the domestic water system is operational, water will be returned to EFSFSR at a location near the proposed ground water points of diversion for the worker housing facility. Ground water diversions and discharge of treated domestic water will occur nearly simultaneously. Therefore, any impact to the EFSFSR caused by ground water diversions under water rights 77-14377, 77-14379, or 77-7141 will be immediately offset by discharge of treated domestic waste water.

The Idaho Water Resource Board holds water right 77-14190, which establishes a minimum stream flow for the EFSFSR. Water right 77-14190 includes the following condition: "This water right shall be subordinated to all future DCMI [domestic, commercial, municipal, and industrial] uses." Therefore, Applications 77-14377 and 77-14379 cannot injure water right 77-14190.

Perpetua's proposed discharge of domestic waste water into the EFSFSR is regulated by IDEQ and requires an IPDES permit. Therefore, the effluent must be treated and meet the water quality specifications of IDEQ. The discharge of treated domestic waste water into the EFSFSR will not reduce the quality of water for downstream water rights.

Sufficiency of Water Supply

Rule 45.01.b of the Department's Water Appropriation Rules sets forth the criteria for determining whether the water supply is sufficient for a proposed project: "The water supply will be determined to be insufficient for the proposed use if water is not available for an adequate time interval in quantities sufficient to make the project economically feasible . . . ." IDAPA 37.03.08.45.01.b.

The total quantity of water sought by Applications 77-14377 and 77-14379 is relatively small. Between the two applications, Perpetua seeks to divert 0.26 cfs (117 gallons per minute) from ground water for domestic use. This quantity would be diverted from up to five wells. Therefore, each well would only need to produce approximately 25 gallons per minute. Existing water right 77-7141, which was previously developed at the SGP site, confirms that domestic wells at the site can produce at least 25 gallons per minute. Therefore, the water supply for domestic uses would be available for an adequate time interval and in sufficient quantities to make the project economically feasible.

Lack of Good Faith / Speculation

Rule 45.01.c of the Department's Water Appropriation Rules sets forth the criteria for determining whether an application is filed in good faith and not for delay or speculative purposes. "The applicant shall have legal access to the property necessary to construct and operate the proposed project, has the authority to exercise eminent domain authority to obtain such access, or in the instance of a project diverting water from or conveying water across land in state or federal ownership, has filed all applications for a right-of-way." IDAPA 37.03.08.45.01.c.i. An applicant must also demonstrate that it is "in the process of obtaining other permits needed to construct and operate the project" and that there are no obvious legal impediments to prevent successful completion of the project. IDAPA 37.03.08.45.01.c.ii-iii.

The proposed points of diversion for Application 77-14377 and proposed places of use for Applications 77-14377 and 77-14379 include property that is held by the USFS. Perpetua is actively seeking an approved plan of operations from the USFS to construct and operate the SGP. The documents submitted by Perpetua to the USFS include the facilities and domestic water uses described in Applications 77-14377 and 77-14379. Perpetua has also applied for a discharge permit from IDEQ for the proposed discharge of domestic waste water. Perpetua has demonstrated that the applications were filed in good faith and not for delay or speculative purposes.

Sufficient Financial Resources

Rule 45.01.d of the Department's Water Appropriation Rules sets forth the criteria for determining whether an applicant has sufficient financial resources to complete a project. "An applicant will be found to have sufficient financial resources upon a showing that it is reasonably probable that funding is or will be available for project construction or upon a financial commitment letter acceptable to the Director." IDAPA 37.03.08.45.01.d.ii. Perpetua has

demonstrated that it is reasonably probable that funding is or will be available for project construction.

Local Public Interest

The local public interest analysis under Idaho Code § 42-203A(5)(e) is meant to be separate and distinct from the injury analysis under Idaho Code § 42-203A(5)(a). Local public interest is defined as "the interests that the people in the area directly affected by a proposed water use have in the effects of such use on the public water resource." Idaho Code § 42-202B(3).

Diverting water for domestic purposes and housing facilities, office buildings, and industrial buildings is a common water use in Idaho. It is in the local public interest to preserve and protect the water quality of Idaho streams. IDEQ has adopted rules and regulations governing the treatment of domestic and municipal waste water. If Perpetua obtains an IPDES permit for the domestic waste water discharge and complies with the requirements of the IPDES permit, the discharge of domestic waste water will not impact the water quality of the EFSFSR. The permit approvals should include a condition requiring Perpetua to obtain all necessary water quality permits from IDEQ. If this condition is included on the permit approvals, Perpetua has demonstrated that the water uses proposed in Applications 77-14377 and 77-14379 are in the local public interest.

Conservation of Water Resources

Perpetua proposes to use a membrane bioreactor or an equivalent system rather than open lagoons to treat the domestic waste water generated at the SGP. This will minimize evaporative losses associated with water treatment. Perpetua has demonstrated that the water use proposed in Applications 77-14377 and 77-14379 is consistent with the conservation of water resources within the state of Idaho.

II. Evaluation of Application 85399

Injury to Existing Water Rights

Water right 77-7141 already authorizes the diversion of ground water for domestic use within the EFSFSR watershed. Application 85399 proposes to move the authorized point of diversion upstream in the watershed. The proposed points of diversion are located approximately two miles upstream of the existing point of diversion. Depending on the hydrology of a specific watershed, moving a point of diversion upstream in a watershed has the potential to dewater the stream. In this case, however, the proposed change in point of diversion will have no impact on the EFSFSR because the waste water generated by the proposed domestic use will be discharged into the EFSFSR at a location near the proposed points of diversion. Any depletion to the EFSFSR caused by pumping ground water for domestic use will be simultaneously offset by the injection of treated domestic waste water. Further, the only water right point of diversion on the EFSFSR between the existing and proposed points of diversion for water right 77-7141 is the existing point of diversion for water right 77-7122, which is held by

Perpetua. Perpetua has demonstrated that the changes proposed in Application 85399 will not injure existing water rights.

Enlargement in Use

Application 85399 will not result in an enlargement in the use of water right 77-7141. Water right 77-7141 already authorizes the diversion of ground water for domestic use. The water right will continue to be used for domestic use. Further, the right is volume-limited based on a beneficial use exam conducted at the time the right was licensed. The existing volume limit of water right 77-7141 (11.4 acre-feet per year) will be retained and carried forward on the transfer approval.

Local Public Interest

The evaluation of local public interest for Application 85399 is identical to the evaluation for Applications 77-14377 and 77-14379. The transfer approval should include a condition requiring Perpetua to obtain all necessary water quality permits from IDEQ. If this condition is included on the transfer approval, Perpetua has demonstrated that the proposed changes to water right 77-7141 are in the local public interest.

Conservation of Water Resources

The evaluation of conservation of water resources for Application 85399 is identical to the evaluation for Applications 77-14377 and 77-14379. Perpetua has demonstrated that the changes described in Application 85399 are consistent with the conservation of water resources within the state of Idaho.

III. Arguments from the Protestants

The protests filed against Applications 77-14377, 77-14379, and 85399 were identical to the protests filed against Perpetua's applications for industrial uses. The protests did not raise separate issues specific to Applications 77-14377, 77-14379, or 85399. Outside of an overview of Perpetua's water right applications in its background summary of the contested cases, the Protestants' Brief contains no references to Applications 77-14377, 77-14379, or 85399, culinary water, domestic water rights, domestic water use, or domestic waste water treatment.

CONCLUSIONS OF LAW

Perpetua has demonstrated that Applications 77-14377 and 77-14379 will not reduce the quantity of water under existing water rights, that the ground water supply is sufficient to satisfy the proposed domestic uses, that the applications were made in good faith and not for speculative purposes, that it has sufficient financial resources to complete the proposed project, and that the proposed uses are consistent with the conservation of water resources within the state of Idaho and are in the local public interest. Perpetua has also demonstrated that the changes proposed in Application 85399 will not injure other water rights, will not enlarge the use of water right 77-7141, are consistent with the conservation of water resources within the state of Idaho, and are in

the local public interest. Therefore, Applications 77-14377, 77-14379, and 85399 should be approved.

ORDER

IT IS HEREBY ORDERED that Applications 77-14377, 77-14379, and 85399 filed in the name of Perpetua are APPROVED subject to the conditions set forth in the approval documents issued in conjunction with this order.

Dated this 10th day of April 2024.

James Cefalo
Hearing Officer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th day of April 2024, true and correct copies of the documents described below were served by placing a copy of the same with the United States Postal Service, certified mail with return receipt requested, postage prepaid and properly addressed to the following:

Documents: Preliminary Order Approving Applications
Permit 77-14377
Permit 77-14379
Transfer Approval 85399

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EXPLANATORY INFORMATION TO ACCOMPANY A PRELIMINARY ORDER

(To be used in connection with actions when a hearing was held)

The accompanying order is a **Preliminary Order** issued by the Idaho Department of Water Resources (Department) pursuant to section 67-5243, Idaho Code. **It can and will become a final order without further action of the Department unless a party petitions for reconsideration or files an exception and brief as further described below:**

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a preliminary order with the hearing officer within fourteen (14) days of the service date of the order as shown on the certificate of service. **Note: the petition must be received by the Department within this fourteen (14) day period.** The hearing officer 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 to the Director. Otherwise, this preliminary order will become a final order of the agency.

If any party appeals or takes exceptions to this preliminary order, opposing parties shall have fourteen (14) days to respond to any party's appeal. 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, request 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 Department 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.