

**EXPLANATORY INFORMATION
TO ACCOMPANY A
PRELIMINARY ORDER**

(Required by Rule of Procedure 730.02)

The accompanying order 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 unless a party petitions for reconsideration within fourteen (14) days after issuance 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 this order. 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 twenty-one (21) 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.

If any party appeals or takes exceptions to a preliminary order, opposing parties shall have twenty-one (21) 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, 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 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.

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

**IN THE MATTER OF PETITION OF)
MCCAMMON DITCH COMPANY FOR) NOTICE OF HEARING
ADMINISTRATION OF WATER)
WITHIN WATER DISTRICT 29)**

On February 14, 1995, McCammon Ditch Company (McCammon) filed a Petition for Enforcement of Decree and Order with the Idaho Department of Water Resources (IDWR). The petition states that an order requiring installation and maintenance of headgates, controlling works and measuring devices, was issued by the Director on October 5, 1990, and alleges water users diverting water from the Portneuf River and its tributaries have not complied with the order, and that IDWR has failed to enforce the order. The petition specifically alleges: (1) Portneuf Marsh Valley Canal Co. (PMV) has failed to develop a stage-storage relationship as required by the October 5, 1990 order; (2) Portneuf Irrigating Company (PIC) and PMV have failed to install adequate measuring devices to properly regulate the division of the PIC and PMV water; and (3) PMV has expanded its storage and irrigation rights, and the expanded storage and irrigation rights have and are being improperly delivered without loss down the Portneuf River channel.

IDWR held prehearing a conference on May 2, 1996, regarding the petition. The issues were not resolved. A hearing was scheduled for July 2, 1998, but it was canceled.

IDWR will conduct a hearing regarding the petition beginning at 9:00 a.m. on October 20, 1998, and continuing on October 21, 1998, if necessary. The hearing will be conducted at the Old Depot, 802 Front Street, McCammon, Idaho 83250. The hearing officer will be Gary Spackman.

The conference will be conducted in a facility which meets the accessibility requirements of the Americans With Disabilities Act. If you require special accommodations in order to attend, participate in or understand the conference, please advise IDWR prior to the conference.

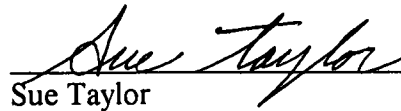
DATED this 22nd day of September, 1998.



GARY SPACKMAN

CERTIFICATE OF MAILING

I do hereby certify, that on this 22nd day of September, 1998, I mailed a true and correct copy, postage prepaid of the foregoing NOTICE OF HEARING to those on the attached Water District 29 mailing list:



Sue Taylor
Senior Secretary

**IDAHO DEPARTMENT OF
WATER RESOURCES
WATER DISTRICT 29 MAILING**

ALLAN, JEFF
1259 E MERRILL EXT
MCCAMMON ID 83250

ALLEY, IRIS

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MC CAMMON ID 83250

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CHRISTENSEN, ALLAN

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CHRISTIENSEN, ELLIS

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DAVIDS, FLORENCE

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DEMPSEY IRRIGATION
COMPANY
C/O EARL H. SMITH
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FISHCREEK IRRIGATION
C/O WALLACE WHITEHEAD
LAVA HOT SPRINGS ID 83246

FRANK, NORMAN
835 WEST 100 S
BLACKFOOT ID 83221

GILBERT, ERVIN
PORTNEUF MARSH VALLEY
CANAL CO
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MC CAMMON ID 83250

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3462 N 2500 E
TWIN FALLS ID 83301

KEY BANK
C/O DICK SWAGER
PO BOX 2757
BOISE ID 83701

KING CREEK GRAZING
C/O STEVE HEBDON
BANCROFT ID 83217

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KOESTER FARMS INC
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C/O TRISH AVERY BOX182
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C/O BYRON ALLEN
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PERKINS, WAYNE
BANCROFT ID 83217

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C/O DELORES SMITH

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BANCROFT ID 83217

ROBERTS, WALLACE

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ROWSELL, CALVIN

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SMITH, DEAN

KELLY ROAD

BANCROFT ID 83217

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LAVA HOT SPRINGS ID 83246

SMITH, DELMO

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DOWNEY ID 83234

THUNDER MOUNTAIN GOLF
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C/O WILDER HATCH

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VILLAGE OF MCCAMMON

MC CAMMON ID 83250

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WILSON, JESSE

WISSA, MAHER

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POCATELLO ID 83201

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