

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

IN THE MATTER OF CREATING)
WATER DISTRICT 29-G, BIRCH)
CREEK AND TRIBUTARIES)
_____)

PRELIMINARY ORDER

WHEREAS, the rights to the use of the waters of Birch Creek and its tributaries (Birch Creek) tributary to Marsh Creek have been determined by decree of the Third Judicial District of Idaho Territory on October 10, 1878 in the case of Thomas Daniels, et al. vs William Woodland, et al., and by decree of the Fifth Judicial District of the state of Idaho on June 9, 1904, in the case of Henry Wakley, et al. vs George Wakley, et al; and,

WHEREAS, the Department of Water Resources (Department) has the duty to supervise the distribution of Idaho's public waters, as provided for in Section 42-602, Idaho Code; and further has been charged with the responsibility for creation of water districts under Section 42-204, Idaho Code; and,

WHEREAS, the department has received a written petition from waterusers on Birch Creek stating there is a necessity for the proper distribution of the waters of Birch Creek; and,

WHEREAS, the department has conducted a hearing in connection with the creation of a water district on Birch Creek and determined that there is a need for the proper distribution of the waters of Birch Creek;

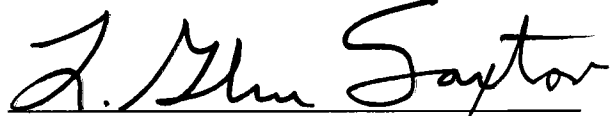
ORDER

IT IS, THEREFORE, ORDERED that Water District 29-G, Birch Creek and tributaries be and the same is hereby created for the distribution of the water of Birch Creek and tributaries upstream from the confluence of Birch Creek with Marsh Creek in NW1/4SW1/4 Section 30, T11S, R37E, B.M., subject to the following conditions and limitations:

1. The Director retains jurisdiction of the creation of the water district and in the future may combine the water district with Water District 29-H, Marsh Creek and tributaries or with Water District 29, Portneuf River and tributaries if determined by the Director to be appropriate for the administration of the water rights decreed in the Snake River Basin Adjudication.

2. This order is effective immediately and remains effective until modified or rescinded by order of the Director.

Dated this 10th day of November, 1998.



L. GLEN SAXTON, P.E.
Chief, Water Allocation Bureau

**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.

CERTIFICATE OF MAILING

I hereby certify that on the **10th** day of **November, 1998**, I mailed a true and correct copy, postage prepaid, of the foregoing **PRELIMINARY ORDER** to the person(s) listed below:

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Dennis Phillips
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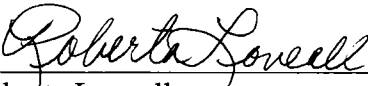
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