

BEFORE THE DEPARTMENT OF WATER RESOURCES

IN AND FOR THE STATE OF IDAHO

IN THE MATTER OF APPLICATION)
FOR TRANSFER NO. 78352)
IN THE NAME OF SOUTH VIEW)
DAIRY)
_____)

**FINAL ORDER
APPROVING TRANSFER**

On February 16, 2006, Big Sky Farms Ltd. Partnership (“Big Sky”) filed an application to appropriate water with the Idaho Department of Water Resources (“IDWR” or “Department”). IDWR published notice of the application for transfer. Lee Halper, Dean T. and Eden Dimond, Harold Dimond, Dennis Dimond, Cyrus Bullers, Richard Bullers, Brenda Herrmann, James Stewart, Rita Ayers, James L. & Brenda Wyatt, and Blaine Miller protested the application for transfer. On July 14, 2006, Big Sky amended this application for transfer.

On July 26, 2007, IDWR conducted a hearing for the contested case created by protests filed against the application for transfer. Rob Williams, Attorney at Law, appeared on behalf of Big Sky. Lee Halper, Dean Dimond, Harold Dimond and Dennis Dimond appeared representing themselves. Cyrus Bullers, Richard Bullers, Brenda Herrmann, James Stewart, Rita Ayers, James L. & Brenda Wyatt, and Blaine Miller did not appear at the hearing. Elizabeth Sugdens appeared as a public witness.

On November 1, 2007, the Jerome County Board of County Commissioners (“Jerome County”) issued a written decision denying an application for permit for a livestock confinement operation, also known as a concentrated animal feeding operation (“CAFO”).

Prior to deciding the water right transfer contested case, on November 19, 2007, the hearing officer, Gary Spackman, now the director of IDWR (hereafter referred to as “the director”), issued an Order Augmenting the Record with the decision by Jerome County. Multiple documents were filed with IDWR by the parties to the water right transfer contested case following issuance of the Order Augmenting the Record. In particular, Big Sky moved to further augment the record with additional information. IDWR did not act on Big Sky’s motion to augment.

During November 2007, Big Sky filed a Petition for Judicial Review with the District Court of the State of Idaho in the Fifth Judicial District seeking judicial review of the decision by Jerome County denying the CAFO permit.

On February 1, 2008, IDWR received a Notice of Change of Ownership assigning ownership of the water rights that are the subject of this application for transfer from Big Sky to South View Dairy.

In May 2008, Dean and Eden Dimond moved to dismiss Big Sky's application for transfer because of the change of ownership from Big Sky to South View Dairy. IDWR did not act on Dimonds' motion to dismiss.

The district court remanded the CAFO application case to Jerome County for further proceedings. Jerome County reconsidered Big Sky's application, and, on September 23, 2008, Jerome County approved the Big Sky application.

On October 21, 2008, objectors ("the objectors") to the Big Sky application to Jerome County (some of whom are protestants to this contested case) sought judicial review of the county's decision approving the CAFO permit by appealing the decision to district court.

On April 24, 2009, Dean and Eden Dimond filed another motion to dismiss, arguing that the pending transfer application is not in the "public best interest," and again arguing that the change of ownership of the water rights from Big Sky to South View Dairy is cause for the director to deny the transfer. IDWR did not address the motion to dismiss.

On August 5, 2010, the district court affirmed the decision by Jerome County approving the CAFO permit.

The objectors appealed the district court's decision to the Idaho Supreme Court. On July 6, 2012, the Idaho Supreme Court affirmed Jerome County's approval of a CAFO permit.

The protracted appeals of the Jerome County CAFO application are complete. The original November 1, 2007 decision denying the CAFO permit would have presented a substantial impediment to further consideration of the Big Sky application for transfer. The subsequent judicial appeals, remand to Jerome County, and ultimate affirmation of Jerome County's approval of the CAFO approval removes the impediment caused by the initial Jerome County decision. This water right matter is now ripe for consideration.

As a result, the motion to further augment the record, with subsequent court documents, will be approved by this order and will be expanded to include all judicial and Jerome County decisions related to the CAFO application.

Furthermore, the several motions filed by Dean and Eden Dimond will be denied by this order. There was no prejudice to Dimonds of delaying action on the application for transfer during the pendency of the appeals of the Jerome County decision.

On November 20, 2012, the director conducted a status conference to discuss the following: (1) whether the application for transfer filed by Big Sky Farms is valid because of the conveyance of the underlying water rights to South View Dairy; (2) whether the number of animals and associated water use presented in the Big Sky application and in the hearing

evidence are accurate; (3) whether a nutrient management plan filed by Big Sky Farms with the Idaho Dept. of Agriculture is still valid for Big Sky Farms/South View Dairy; (4) whether an additional evidentiary hearing is necessary; and (5) any other issues raised by the parties.

At the status conference, the director determined: (1) because of an underlying ownership conveyance of the place of use, Big Sky Farms must assign the application for transfer to South View Dairy; (2) the number of animals and associated water used presented in the Big Sky application and in the hearing evidence is accurate; (3) the parties may submit briefs on the issue of whether a nutrient management plan filed by Big Sky Farms is still valid for Big Sky Farms/South View Dairy; (4) an additional evidentiary hearing is not necessary; and (5) the parties may submit briefs on others issues that were the subject of the previous hearing conducted in July 2007.

Big Sky Farms executed an assignment of transfer to South View Dairy. On November 23, 2012, South View Dairy submitted the assignment of transfer document to the Department. The Department accepted the assignment of transfer, and created a new reference number for the application for transfer. The new reference number is transfer no. 78352.

The parties submitted briefs to the director. Based on the evidence presented at the July 2007 hearing and additional evidence augmenting the record, the director finds, concludes, and orders as follows:

FINDINGS OF FACT

Application for transfer no. 72435 proposes the construction of a confined animal feeding operation (“CAFO”) for the rearing of holstein heifers. South View Dairy proposes to rear female calves to maturity, inseminate the heifers, and, when the pregnant heifer is approximately two years old, ship the animal to a dairy milking facility. Big Sky proposes to house approximately 13,488 head of cattle from the ages of newborn calves until the cows are approximately 23 to 24 months old.

Jerome County approved a cattle operation at the proposed location for 8,000 animal units. Jerome County defines an animal unit as one animal weighing 1,000 lbs. If calves or young heifers are reared at a facility, the weights of two or more animals may be combined to comprise a single animal unit of 1,000 pounds.

The present description of the water rights sought to be transferred are as follows:

Water Right no. 36-2373

Source:	Groundwater	
Purpose of Use:	Irrigation	
Flow Rate:	3.22 cfs	
Season of Use:	3/15 to 11/15	
Point of Diversion:	T 8 S, R18 E, Section 36	SENESE

				<u>Acres</u>
Place of Use:	T 8 S, R19 E	Section 31	Lot 2 (SWNW)	12
			SENW	10
			NESW	27
			Lot 3 (NWSW)	21
	T 8 S, R18 E	Section 36	NENE	16
			NWNE	34
			SWNE	40
			SENE	36
			SE	<u>160</u>
Total Acres Irrigated				356 acres

Water Right no. 36-15056

Source: Ground water
 Purpose of Use: Stockwater Flow: 0.12 cfs
 Domestic Flow: 0.06 cfs
 Total flow: 0.12 cfs
 Season of Use: Year-round
 Point of Diversion: T 9 S, R18 E, Section 1 SESESE
 Place of Use: T 9 S, R18 E Section 1 SESE

Water Right no. 36-15057

Source: Ground water
 Purpose of Use: Stockwater Flow: 0.23 cfs
 Domestic Flow: 0.04 cfs
 Total flow: 0.23 cfs
 Season of Use: Year-round
 Point of Diversion: T 8 S, R18 E, Section 36 SESESE
 Place of Use: T 8 S, R18 E Section 36 SESE

The application for transfer proposes to change a portion of water right 36-2373 (identified in the application for transfer as water right 36-16964), water right 36-15056, and water right no. 36-15057. The application proposes to identify the following points of diversion for all of the water rights:

Source: Ground Water
Points of Diversion: T 8 S, R 18 E Section 36 SWNESE

Existing well, motor, pump, mainline to common water system (irrigation/back-up stock)

SENESE

Existing well, motor, pump, mainline to common water system (north domestic well)

SESESE

New well to be drilled, motor, pump to be installed, mainline to common water system (main stock well)

T 9 S, R 18 E Section 1 NESESE

New well to be drilled, motor, pump to be installed, mainline to common water system (main stock well)

SWSESE

Existing well, motor, pump, mainline to common water system (south domestic/stock well)

Portion of Water Right no. 36-2374 (36-16964)

Diversion Rates:	Commercial	0.32 cfs	11.2 acre-feet annually
	Stockwater	<u>0.32 cfs</u>	<u>216.9 acre-feet annually</u>
	Total	0.32 cfs	228.1 acre-feet annually

Place of Use: Commercial & Stockwater	T8S R18E	Section 36	SESE
	T9S R18E	Section 1	Lot 1 (NENE), SENE, NESE, SESE
	T9S R19E	Section 6	Lot 4 (NWNW), Lot 5 (SWNW), Lot 6 (NWSW)

Water Right no. 36-15056

Diversion Rates:	Stockwater	0.12 cfs	5.1 acre-feet annually
	Domestic	<u>0.06 cfs</u>	<u>2.4 acre-feet annually</u>
	Total	0.12 cfs	7.5 acre-feet annually

Place of Use: Stockwater	T8S R18E	Section 36	SESE
	T9S R18E	Section 1	Lot 1 (NENE), SENE, NESE, SESE
	T9S R19E	Section 6	Lot 4 (NWNW),

Lot 5 (SWNW),
Lot 6 (NWSW)

Domestic T9S R18E Section 1 SESE

Water Right no. 36-15057

Diversion Rates:	Stockwater	0.23 cfs	9.0 acre-feet annually
	Domestic	<u>0.04 cfs</u>	<u>1.2 acre-feet annually</u>
	Total	0.23 cfs	10.2 acre-feet annually

Place of Use:

Stockwater	T8S R18E	Section 36	SESE
	T9S R18E	Section 1	Lot 1 (NENE), SENE, NESE, SESE
	T9S R19E	Section 6	Lot 4 (NWNW), Lot 5 (SWNW), Lot 6 (NWSW)
Domestic	T8S R18E	Section 36	NESE

Applicant’s exhibit 8 is a computation document that determines the water demand for the 13,488 cattle proposed for the feeding facility. Computations and assumptions in the exhibit conclude a per animal daily water demand of 13 gallons per day.

Applicant’s exhibit 8 concludes there is a need for 178.8 acre-feet of water to be supplied to the proposed CAFO.

The application for transfer proposes to idle approximately 87.7 acres from present irrigation. The place of use from which the acreage will be retired was analyzed to determine a past cropping pattern. Sugar beets were historically grown on the property resulting in an historical consumptive use per acre of 2.6 acre-feet per acre. Despite the determination in Applicant’s exhibit 8 that 178.8 acre feet must be supplied to the proposed CAFO, prior to the computations in Applicant’s exhibit 8, the applicant had determined that 228.1 acre-feet of consumptive use must be dedicated through the transfer process. A volume of 228.1 acre-feet apportioned at a rate of 2.6 acre-feet per acre results in a requirement that 87.7 acres be retired.

With the existing stockwater and domestic rights added to the retired irrigation consumptive volume of 228.1 acre-feet, a total of 240 acre-feet is being dedicated for the CAFO operation.

Applicant's exhibit 6 is a computation of simulated drawdowns of water levels in other wells using the Theis equation. Three Theis simulations were computed. The first page of Exhibit 6 is the first simulation. The first simulation models a diversion of 0.72 cfs for an irrigation season of 245 days. A flow rate of 0.72 cfs is greater than the total flow rate sought to be recognized by the application for transfer.

Page 2 of Exhibit 6 is another simulation pumping at a constant flow rate that is derived by dividing the 226 acre feet into an instantaneous flow rate over the course of an entire year. The computed flow rate is 0.312 cfs.

Page 3 of Exhibit 6 is a simulation that also inputs a flow rate of 0.312 (constant year round flow rate over the entire year), but the simulation was computed for a period of 20 years instead of one year.

The following is a table that summarizes the impacts to the protestants' wells. The distances from a South Dairy well to the protestants' wells were measured on the maps contained in Applicant's Exhibits nos. 5 and 13. Because there are several South View Dairy wells identified in the application for transfer, the distances were scaled from each protestant's point of diversion to the nearest South View Dairy well.

Protestant	Distance from pumping well	Drawdown* for 0.72 cfs pumping for 245 days (feet)	Drawdown* for 0.312 cfs pumping for one year (feet)	Drawdown* for 0.0312 cfs pumping for ten years (feet)
Rita Ayers	2,500 feet	0.5 feet	0.25 feet	0.45 feet
Cyrus Bullers	Three miles	0-0.10 feet	Insignificant	0-0.10 feet
Richard Bullers	Two miles	0-0.10 feet	Insignificant	0-0.10 feet
Dean & Eden Dimond	1,100 feet	0.75 feet	0.40 feet	0.60 feet
Dennis Dimond	2,100 feet	0.5 feet	0.25 feet	0.45 feet
Harold Dimond	Twenty-eight miles	Insignificant	Insignificant	Insignificant
Lee Halper	Sixteen miles	Insignificant	Insignificant	Insignificant
Brenda Herrmann	2,500 feet	0.5 feet	0.25 feet	0.45 feet
Blaine Miller	Five miles	Insignificant	Insignificant	Insignificant
James Stewart	2,100 feet	0.5 feet	0.25 feet	0.45 feet
James & Brenda Wyatt	4,600 feet	0.25 feet	0.15 feet	0.35 feet

* Drawdowns estimated from the drawdown graphs in Applicant's Exhibit 6

The drawdowns in the above table are for continuous diversion of the flow rates listed. Because the diversion of water will be discontinuous, the Theis simulation overestimates the drawdowns.

A drawdown of less than a foot will not detrimentally impair the protestants' diversion of water from their wells.

Because a new well is being constructed for the CAFO operation, Big Sky was required to determine and simulate changes to spring reaches of the Snake River resulting from moving the point of diversion. Exhibit 7 is a simulation of reach gains or losses resulting from full implementation of the transfer. The simulations are calculated by the transfer tool, a simplified spreadsheet version of the Eastern Snake Plain Aquifer Model, Version 1.1. Depletions and accretions were simulated for six distinct spring reaches below Miler Dam: Devil's Washbowl to Buhl; Buhl to Thousand Springs; Thousand Springs; Thousand Springs to Malad River; Malad River; and Malad River to Bancroft. The transfer tool predicted a gain to the Devil's Washbowl to Buhl spring reach. The model also predicted a loss to each of the other five spring reaches. The simulated loss was less the 0.1 acre-foot per trimester in each of the five reaches. More importantly, assuming a 0.1 acre-foot per trimester depletion for each reach, the percentage of the change in impact to the total impact of the transfer in each reach is 0.10 acre-foot per trimester divided by 81.9 acre-feet per trimester, resulting in a change percentage in the reaches of 1.2%. The impacts of the proposed change on spring reaches are insignificant.

Big Sky prepared a nutrient management plan and submitted the plan to the Idaho State Department of Agriculture. Big Sky did not submit a copy of the nutrient management plan to IDWR as evidence. Applicant's exhibit 14 is a copy of a letter from the Idaho State Department of Agriculture approving the nutrient management plan. The letter approves the nutrient management plan, and expressly recognizes the larger operation of the proposed CAFO will satisfy Idaho water quality standards.

Once approved, a nutrient management plan for a confined animal feeding operation is linked to the facility and is not affected by an ownership change. Changes to ownership do not affect the nutrient management plan. Changes in CAFO operations may require amendments to the nutrient management plan.

If properly regulated, the application for transfer does not propose an increase in the flow rate, the volume, or the consumptive use under the water rights being proposed for transfer.

Big Sky proposes a use of water that is consistent with local uses of water in the area.

Big Sky will employ methods of use and distribution of water that will conserve water.

CONCLUSIONS OF LAW

1. Idaho Code § 42-222 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. The director may consider consumptive use, as defined in section 42-202B, Idaho Code, as a factor in determining whether a proposed change would constitute an enlargement in use of the original water right. The director shall not approve a change in the nature of use from agricultural use where such change would significantly affect the agricultural base of the local area.

2. The applicant bears the burden of proof for all of the factors listed in Idaho Code § 42-222.

3. Approval of application for transfer no. 78352 will not injure other water rights because:

a. Drawdowns in the protestants' wells caused by pumping from the proposed points of diversion are insignificant.

b. Changes to flows in spring reaches discharging to the Snake River caused by the application will be insignificant.

4. Approval of transfer no. 78352 will not result in an enlargement of use.

5. The use of water proposed by transfer no. 78352 is in the local public interest. A CAFO waste management plan was approved by the Idaho Department of Agriculture. Through delegation of authority by the Idaho Department of Environmental Quality, the Idaho Department of Agriculture has primary authority to determine whether the operation of the CAFO will satisfy water quality standards. In addition, Jerome County approved a condition use permit for the CAFO operation. Jerome County has primary authority to determine whether a CAFO proposal is consistent with local public interest values expressed in its land planning ordinances.

6. The use of water proposed by transfer no. 78352 is consistent with the conservation of water resources within the state of Idaho.

7. The proposed use is a beneficial use of water.

8. Application for transfer no. 78352 does not propose an out-of-basin transfer of water, and possible adverse effects of the transfer are not considered.

ORDER

IT IS HEREBY ORDERED that all motions to dismiss, filed by Dean and Eden Dimond, are DENIED.

IT IS FURTHER ORDERED that the pending motion to augment the record, originally filed by Big Sky, is GRANTED. The record shall be augmented with all CAFO decisions issued by Jerome County and Idaho court decisions related to the Jerome County CAFO decisions.

IT IS FURTHER ORDERED that application for transfer no. 78352, in the name of South View Dairy, is APPROVED, subject to the following conditions:

Rights 36-15056 & 36-15057:

The quantity of water diverted under this right shall not exceed 13,000 gallons per day.

Rights 36-15056 and 36-15057 when combined shall not exceed an annual maximum diversion volume of 9.0 af for stockwater use and a total annual maximum diversion volume of 12.6 af.

Rights 36-15056, 36-15057 and 36-16964 (Changed split):

Rights 36-15056, 36-15057 and 36-16964 when combined shall not exceed a total annual maximum diversion volume of 240.7 af.

Use of water under this right will be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No. 130.

Prior to diversion and use of water under Transfer approval 78352, the right holder shall install and maintain acceptable measuring device(s) at the authorized point(s) of diversion, in accordance with Department specifications.

Upon specific notification of the Department, the right holder shall install and maintain data loggers to record water usage information at the authorized point(s) of diversion in accordance with Department specifications.

Right holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code and applicable Well Construction Rules of the Department.

Prior to the diversion and use of water under this approval, the right holder shall comply with applicable county zoning and use ordinances.

Prior to the diversion and use of water under this approval, the right holder shall comply with applicable water quality permitting requirements administered by the Department of Environmental Quality or the Department of Agriculture.

The right holder shall accomplish the change authorized by this transfer within five years of the date of this approval.

Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.

Rights 36-2373 (Unchanged split retains original number), **36-16964** (Changed split), **36-15056** and **36-15057**:

Pursuant to Section 42-1412(6), Idaho Code, this water right is subject to such general provisions necessary for the definition of the rights or for the efficient administration of water rights as may be determined by the Snake River Basin Adjudication court at a point in time no later than the entry of the final unified decree.

Right 36-15056:

Domestic use is for 2 homes.

Water Right 36-15057:

Domestic use is for 1 home.

Right 36-16964 (Changed split):

Commercial use is for dust abatement at a feedlot facility.

Dated this 30th day of May, 2013.



Gary Spackman
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30th day of May, 2013, a true and correct copy of the document(s) described below were served by placing the same in the United States mail, postage prepaid and properly addressed to the following:

Document(s) Served: Final Order, and Explanatory Information to Accompany a Final Order.

ROBERT E WILLIAMS
FREDERICKSEN WILLIAMS &
MESERVY
PO BOX 168
JEROME ID 83338

DEAN DIMOND
EDEN DIMOND
1454 HWY 25
JEROME ID 83338

HAROLD S DIMOND
3059 S 1800 E
WENDELL ID 83355

RICHARD BULLERS
1482 HUNT RD
JEROME ID 83338

CYRUS BULLERS
1545 HWY 25
JEROME ID 83338

JAMES STEWART
292 S 1250 E
JEROME ID 83338

BRENDA HERRMANN
274 S 1250 E
JEROME ID 83338

DENNIS H DIMOND
1424 HWY 25
JEROME ID 83338

BLAINE MILLER
366 S 1700 E
JEROME ID 83338

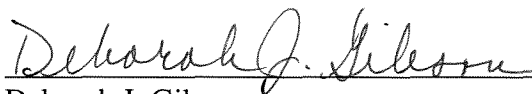
JAMES L WYATT
BRENDA WYATT
376 S 1100 E
JEROME ID 83338

RITA A AYERS
267 S 1250 E
JEROME ID 83338

LEE HALPER
331 S 230 W
JEROME ID 83338

C E BROCKWAY PE
BROCKWAY ENGINEERING
2016 NORTH WASHINGTON ST STE 4
TWIN FALLS ID 83301

GARY FUNDERBERG
255 BLUE LAKES BLVD NORTH
PMB 617
TWIN FALLS ID 83301



Deborah J. Gibson
Administrative Assistant for the Director

EXPLANATORY INFORMATION TO ACCOMPANY A FINAL ORDER

(Required by Rule of Procedure 740.02)

The accompanying order is a "**Final Order**" issued by the department pursuant to section 67-5246 or 67-5247, Idaho Code.

Section 67-5246 provides as follows:

- (1) If the presiding officer is the agency head, the presiding officer shall issue a final order.
- (2) If the presiding officer issued a recommended order, the agency head shall issue a final order following review of that recommended order.
- (3) If the presiding officer issued a preliminary order, that order becomes a final order unless it is reviewed as required in section 67-5245, Idaho Code. If the preliminary order is reviewed, the agency head shall issue a final order.
- (4) Unless otherwise provided by statute or rule, any party may file a petition for reconsideration of any order issued by the agency head within fourteen (14) days of the service date of that order. The agency head shall issue a written order disposing of the petition. The petition is deemed denied if the agency head does not dispose of it within twenty-one (21) days after the filing of the petition.
- (5) 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.
- (6) A party may not be required to comply with a final order unless the party has been served with or has actual knowledge of the order. If the order is mailed to the last known address of a party, the service is deemed to be sufficient.
- (7) A non-party shall not be required to comply with a final order unless the agency has made the order available for public inspection or the nonparty has actual knowledge of the order.
- (8) The provisions of this section do not preclude an agency from taking immediate

action to protect the public interest in accordance with the provisions of section 67-5247, 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.

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: a) of 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.