State of Idaho
DEPARTMENT OF WATER RESOURCES
322 East Front Street • P.O. Box 83720 • Boise, Idaho 83720-0098
Phone: (208) 287-4800 • Fax: (208) 287-6700 • Web Site: www.idwr.idaho.gov

C. L. "BUTCH" OTTER
Governor

DAVID R. TUTHILL, JR.
Director

JUNE 23, 2009

RE: PRELIMINARY ORDER CREATING WATER DISTRICT NO. 29-D, LOWER PORTNEUF RIVER AREA, AND COMBINING WATER DISTRICTS 29-C, 29-F, AND 29-U WITH WATER DISTRICT 29-D; AND TEMPORARILY EXPANDING WATER DISTRICT NO. 29 TO INCLUDE UPPER ROCK CREEK AND INDIAN CREEK

Dear Water Right Holder:

Enclosed please find a copy of the Preliminary Order regarding the above referenced matters. This order creates a new water district, Water District No. 29-D, for administration of surface water rights from the Lower Portneuf River and tributaries between the confluence of Harkness Creek and the Portneuf River near McCammon, Idaho, downstream to the Fort Hall Reservation, excluding Pocatello Creek and tributaries and Marsh Creek and tributaries. The order also combines three existing water districts with the new water district. The three districts that are combined with the new Water District No. 29-D include Water District 29-C (Mink Creek), Water District 29-F (Rapid Creek) and Water District 29-U (Jackson Creek). The order also temporarily expands Water District No. 29 (Upper Portneuf River) for the remaining 2009 irrigation season only by adding Upper Rock Creek and Indian Creek.

Also enclosed is an informational sheet that explains options for responding to preliminary orders. Please note that any party subject to the order may file a petition for reconsideration within fourteen (14) days of the service date of the order, which is the date of this letter. The Idaho Department of Water Resources (Department or IDWR) will act upon petitions within twenty-one (21) days of their receipt.

The Department recognizes that combining several existing water districts with the new district is not consistent with some of the testimony that was provided at the hearing concerning the proposed actions. We take the individual testimonies seriously and are sensitive to the concerns expressed at the hearing. We believe that combining several non-active existing districts with the new district provides the size and scope necessary to satisfy the objectives contained in Idaho Code Chapter 6, Title 42 governing the creation and operation of water districts.

The new water district will become operational in 2010 upon holding a water district meeting to elect a watermaster, select an advisory committee and adopt a budget for operation of the district. The Department will send separate notice to announce the date, time and place for the first annual meeting of the new water district. The meeting will likely be scheduled in March of 2010. The Department will organize a steering committee of representative water users within the new water district to assist with preparation for the annual meeting. One or more steering

committee meetings will be held this coming fall and/or winter to address water district operation details, including watermaster duties, water district budget and annual meeting resolutions. The election of a watermaster and adoption of a budget will be subject to approval by the water users during the first annual meeting.

Participation in the steering committee is open to all holders of water rights within the new water district. However, representation from the various sources and tributaries must be balanced. If you are interested in participating in the steering committee, please contact Tim Luke of IDWR prior to August 15, 2009, by phone at (208)287-4959, or by email at tim.luke@idwr.idaho.gov .

Finally, the Department acknowledges receiving some comments and questions during the hearing and post-hearing process regarding the Marsh Creek drainage. Although a water district was created at one time for Marsh Creek and certain tributaries, the district has been inactive for many years. The Department wishes to notify recipients of this order that it will take steps later this year to make the district active and operational as early as the 2010 irrigation season.

Please contact this office or the IDWR regional office in Idaho Falls if you have any questions concerning the attached order or related matters.

Sincerely,

Tim Luke

Tim Luke
Water Distribution Section
Idaho Department of Water Resources

Enclosures: *Preliminary Order*
Responding to Preliminary Orders issued by IDWR

Cc: Ernie Carlsen and Lyle Swank, IDWR Eastern Regional Office
Gary Spackman, IDWR Hearing Officer and Water Management Administrator

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF EXPANDING WATER DISTRICT NO. 29, PORTNEUF RIVER AND TRIBUTARIES,	)	
AND;	)	**PRELIMINARY ORDER**
IN THE MATTER OF CREATING A WATER DISTRICT FOR THE LOWER PORTNEUF RIVER AND TRIBUTARIES, AND COMBINING WATER DISTRICTS 29-C, 29-F AND 29-U WITH THE NEW DISTRICT	)	

The Director of the Idaho Department of Water Resources ("Director" or "Department") is required by Idaho statutes to divide the state into water districts for the purpose of performing the essential governmental function of distributing water among appropriators under the laws of the State of Idaho. Idaho Code § 42-604 provides authority for the Director to create, revise the boundaries of, or abolish a water district or combine two (2) or more water districts by entry of an order. The requirement to create or revise the boundaries of water districts applies to those streams, or other water sources, for which the priorities of appropriation have been adjudicated by court decree.

PROCEDURAL HISTORY

On February 19, 2009, the Director signed a notice proposing to revise the boundaries of Water District No. 29 (Portneuf River) pursuant to the provisions of Idaho Code § 42-604. Specifically, the notice proposed expanding the boundaries of Water District No. 29 to include all water rights from the Portneuf River and tributary sources between the confluence of Harkness Creek and the Portneuf River near McCammon, Idaho, downstream to the confluence of the Portneuf River and Marsh Creek near Inkom, Idaho. The Department further proposed revising the boundaries of Water District No. 29 to include Indian Creek, which either sinks or is tributary to the Portneuf River near Inkom, Idaho.

On February 19, 2009, the Director sent notice of the proposed action by regular U. S. Mail to each holder of a water right within the expansion area described above. The notice described the area of expansion, the reasons for the proposed expansion, and the time and place for a hearing to be held on March 2, 2009, concerning the proposed expansion of the water district.

The notice explained that the water district expansion was proposed in response to requests by water users over the past several years owning water rights from Indian Creek, Upper Rock Creek, and several other streams tributary to the Portneuf River in the vicinity between McCammon and Inkom. The notice further explained that extending Water District No. 29 to include these additional water sources is required to properly administer the water uses and water rights from these sources.

Due to a clerical error by the Department, the February 19, 2009 notice regarding the proposed expansion of Water District 29 was not mailed to holders of water rights in the water district as required by Idaho Code § 42-604. The Department did not realize this clerical error until a few days before the scheduled hearing date.

On March 2, 2009, the hearing officer conducted the hearing at the Lava Community Building in Lava Hot Springs, Idaho. The hearing officer initiated the hearing proceeding by giving a presentation and answering questions addressing the reasons for revising the boundaries of Water District No. 29. Approximately 23 people attended the hearing.

Nine (9) individuals made oral statements for the record at the hearing. Seven (7) of the nine individuals who testified own water rights and use water from either the Portneuf River or tributaries within the proposed expansion area. Those seven users testified in support of being included in a water district and having some type of regulation through a watermaster.

Two (2) representatives from the Water District No. 29 advisory committee, Ellis Gilbert and Randy Morris, testified that they did not support expansion of Water District 29 as proposed by the Department because they felt that their watermaster's time was limited, and because many of the rights within the expansion area are small and would qualify as minimum assessments that may not adequately cover the added expenses needed for regulation of water rights in the area. Mr. Gilbert further testified that he understood the concerns of some of the users in the expansion area regarding the need for watermaster regulation, but he felt that the users in that area may be better served by forming a "sub-district" in which the users could hire or elect their own watermaster. Mr. Gilbert also stated that his testimony represented the consensus of the advisory committee members and users in Water District No. 29 who had discussed the expansion issue at the annual water district meeting prior to the hearing.

During both the pre-hearing discussion and the official hearing on March 2, 2009, the hearing officer explained that the Department had failed to provide adequate notice of the hearing to the right holders within Water District No. 29. The hearing officer stated that this oversight would require the Department to continue the hearing by sending notice of a second scheduled hearing to all affected right holders, including owners of water rights both in Water District No. 29 and the proposed expansion area. The second hearing and hearing notice would provide proper notification of the hearing and an opportunity to comment on the Department's proposed action to all affected water right holders in accordance with Idaho Code § 42-604.

On April 27, 2009, the Director signed a second notice of public hearing proposing to expand the boundaries of Water District No. 29 pursuant to the provisions of Idaho Code § 42-604. This notice was sent by regular U. S. Mail to each holder of a water right within the proposed expansion area as well as affected right holders within Water District No. 29.

In addition, on April 27, 2009, the director signed a notice of public hearing alternatively proposing to create a new water district for the Portneuf River and its tributaries from the mouth of Harkness Creek near McCammon to the boundary of the Fort Hall Reservation, including the consolidation of several existing, inactive water districts with the new proposed district. This proposed district includes the expansion area between McCammon and Inkom that the Department originally proposed to be included in Water District No. 29. This notice was sent by regular U.S. Mail to each holder of a water right within the proposed new water district.

On May 12, 2009, the Department conducted hearings for both (1) the proposal to enlarge Water District 29, resumed from the initial hearing on March 2, 2009, and (2) the alternative proposal to create a new water district that would include the enlargement area. The hearings were conducted at the City of Pocatello Council Chambers in Pocatello, Idaho. Approximately 26 people attended the hearings. The hearing officer and a Department representative gave a brief presentation and answered questions regarding reasons for both revising the boundaries of Water District No. 29 and also for creating a new water district.

Only one (1) individual provided oral testimony for the record about enlargement of the Water District No. 29. Mr. Randy Lewis, of McCammon, Idaho, and a water user on the Lewis Goodenough Ditch, a diversion from the Portneuf River near McCammon within Water District 29, testified in opposition to the Department's proposed expansion of the district. Specifically, Mr. Lewis stated that he believed the current Water District No. 29 watermaster's commitments to the existing district would not provide additional time for him to administer water rights in the proposed expansion area.

Several witnesses testified about the creation of a new water district. Users holding water rights authorizing diversions from Rapid Creek testified that they recognized the need for administration but thought that water rights could be regulated through the existing inactive water district. Other water users on the stream also recognized the need for regulation but felt that the proposed water district was too large, was an imposition of big government, and that the large district might compromise their ability to locally govern themselves.

FINDINGS OF FACT

1. Administration of water rights in Water District No. 29 has historically been limited to the Portneuf River and tributaries upstream of McCammon, Idaho, including Harkness Creek.

2. Certain owners of water rights from Indian Creek, Upper Rock Creek and several other streams tributary to the Portneuf River in the vicinity between McCammon and Inkom have petitioned the Department for assistance in regulation of diversions and the delivery of their rights over the past several years.

3. Many diversions from the Portneuf River and its tributaries between the mouth of Harkness Creek and the boundary of the Fort Hall Reservation are unmeasured and unregulated.

4. Water districts previously created between Harkness Creek and the Fort Hall Reservation include Water District No. 29-F (Rapid Creek), Water District No. 29-C (Mink Creek), and Water District No. 29-U (Bill Jackson Creek). These districts have either not conducted annual meetings or not elected watermasters, and have not regulated water diversions for water rights within the districts for many years.

5. These smaller water districts have not demonstrated that water rights can be properly regulated within these water districts as required by law.

6. Water District No. 29-A (Pocatello Creek) annually conducts its annual meeting and elects a watermaster to regulate diversions from Pocatello Creek. Pocatello Creek is tributary to the Portneuf River within the reach of the Portneuf River proposed for a new water district.

7. The available water supply in all or some of the streams tributary to the Portneuf River and within the proposed Water District 29 expansion area may not be adequate to consistently satisfy some senior priority water rights.

8. The administration of surface water rights within the area from the mouth of Harkness Creek to the Fort Hall Reservation, including the proposed Water District No. 29 expansion area, is necessary for the protection of prior water rights.

9. Surface water rights in the proposed new water district area are not subject to administration through a water district by a watermaster, or have not been administered by a watermaster because existing districts have not actively elected a watermaster, and no watermaster has regulated the water rights. Surface water rights in the proposed Water District No. 29 expansion area are not subject to administration through a water district by a watermaster.

10. The Department has dedicated some staff resources and time addressing water right delivery calls and disputes over the past several years on two tributary streams within the proposed expansion area, Indian Creek and Upper Rock Creek. In 2008, one or more water users on Upper Rock Creek contacted both the Department and the Bannock County Sherriff's office on several occasions to seek delivery of their water rights. Department staff accompanied a deputy sheriff on one of these occasions. Based on several visits to these two creeks over the past few years, Department staff concluded that regulation of water rights by a watermaster is necessary and should not be delayed.

11. Administration of water rights on Indian Creek and Upper Rock Creek can be properly and efficiently provided in 2009 by including those sources in Water District No. 29. Given the testimony from advisory committee members and others from Water District No. 29 in opposition of expanding the district to include that area described in Finding 3, the Director should include Indian Creek and Upper Rock Creek and their tributaries in Water District No. 29 during the 2009 irrigation season only. Compensation of the Water District No. 29 watermaster to administer rights on these creeks may be established by the Director pursuant to this Order because the expanded area was not part of the water district when the district established a budget at its 2009 meeting.

12. Following the end of the 2009 irrigation season, administration of water rights in the Portneuf River and tributaries downstream from approximately McCammon, Idaho, can best be accomplished by a separate water district that encompasses the Portneuf River Basin downstream from McCammon, Idaho.

CONCLUSIONS OF LAW

1. Idaho law declares all surface water, when in natural channels or springs or lakes, and all ground water within the State of Idaho to be the property of the state, whose duty it is to supervise the appropriation and allotment of the water to those diverting the same for beneficial use. *See* Idaho Code §§ 42-101, 42-103, and 42-226.

2. The Director, acting on behalf of the State of Idaho, has the statutory authority to control the appropriation and use of all surface and ground waters within the state in accordance with, but not limited to, Idaho Code §§ 42-101, 42-103, 42-202(1), 42-220, 42-226, 42-237a.g., 42-351, and 42-602 et seq.

3. The Director has responsibility for direction and control over the distribution of water in accordance with the prior appropriation doctrine as established by Idaho law within water districts to be accomplished through watermasters supervised by the Director, and subject to removal by the Director, as provided in chapter 6, title 42, Idaho Code.

4. Idaho Code § 42-604 authorizes the Director to form water districts as necessary to properly administer uses of water from public streams, or other independent sources of water supply, for which a court having jurisdiction thereof has adjudicated the priorities of appropriation. The Director may also revise the boundaries of a water district, abolish a water district, or combine two (2) or more water districts, by entry of an order, if such action is required in order to properly administer the users of the water resource.

5. Idaho Code § 42-605(8) provides that the Director may fix the compensation of a watermaster if such compensation has not been set in the normal manner established by Idaho Code § 42-605.

6. All of the surface water rights claimed in the Snake River Basin Adjudication (SRBA) and within the Department's Administrative Basin 29, Portneuf River and tributaries, have been partially decreed or reported in the SRBA[1].

7. Most of the oral testimony presented to the Department from individual holders of water rights located within the proposed expansion area generally supported revision of the Water District 29 boundaries to include the expansion area. However, testimony from members of the Water District No. 29 advisory committee and other water users within Water District No. 29 opposed the proposed expansion.

8. The hearing officer concludes that immediate administration of water rights on Indian Creek and Upper Rock Creek and their tributaries, pursuant to chapter 6, title 42, Idaho Code, is necessary for the protection of prior water rights, as well as to minimize the threat of injury to any person or property. This decision should order that Indian Creek and Upper Rock Creek, and their tributaries, be added to Water District 29 for the 2009 irrigation season only.

9. Compensation of the Water District No. 29 watermaster to administer rights on Indian and Upper Rock Creeks may be established by the Director pursuant to this Order since the expanded area was not part of the water district when the district adopted a budget at the 2009 water users meeting. Watermaster compensation for any administration on these creeks should be borne by the users on these creeks and should not affect the 2009 Water District 29 budget.

10. Testimony at the hearing generally recognized the need for better measurement and administration of water rights in the area of the proposed new water district. The testimony generally supported the continued organization of smaller water districts in Rapid Creek and Mink Creek in their present form, and smaller organizations for the other existing water users.

11. A water district is a quasi-governmental entity that is locally controlled. The Department oversees its operation to insure compliance with Idaho Code and to insure that water rights are being delivered by the watermaster according to the prior appropriation doctrine. Most decisions within the water district, including the budget, assessments, election of the watermaster, and the watermaster's salary are determined by the water users within the district.

12. While the Department must be sensitive to water users' desires for local organization and control, the water district must be of sufficient size and scope to promote the hiring of an objective watermaster and to provide for the orderly delivery of water rights throughout the basin. Consequently, the organization of a new water district for the lower Portneuf River and its tributaries as proposed will provide the size and scope necessary to satisfy the objectives contained in Idaho Code Chapter 6, Title 42 governing the creation and operation of water districts.

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[1] Department records show two water right late claims from surface water sources in Basin 29 have been filed with the SRBA District Court but have not been reported by the Department.

13. The Director should create a separate water district to administer water rights identifying points of diversion from the Portneuf River and tributaries between McCammon and Inkom, including Indian Creek and Upper Rock Creek. The new water district should include the Rapid Creek, Bill Jackson Creek, and Mink Creek basins where smaller water districts were created but have been inactive.

ORDER

IT IS HEREBY ORDERED that, for the period beginning on the date of this order until September 30, 2009:

1. The Department modifies the boundaries of Water District No. 29, effective only for the period from the date of this order through September 30, 2009, to include all water rights from Indian Creek, which sinks or is tributary to the Portneuf River, and any source tributary to Indian Creek.

2. The Department further modifies the boundaries of Water District No. 29, effective only for the period from the date of this order through September 30, 2009, to include all water rights from Upper Rock Creek, which is tributary to the Portneuf River, and any source tributary to Upper Rock Creek.

3. Modification of the Water District No. 29 boundaries to include the Indian and Upper Rock Creek drainages pursuant to this order will be of no further effect as of October 1, 2009. On October 1, 2009, the boundaries of Water District No. 29 will be limited to the Portneuf River and tributaries upstream from the confluence of the Portneuf River and Harkness Creek, including Harkness Creek and tributaries.

4. The watermaster for Water District No. 29 shall respond to any calls for delivery of water from holders of water rights within the Indian Creek and Upper Rock Creek drainages from the date of this order through September 30, 2009.

5. The Water District No. 29 watermaster shall be compensated directly by the water users within the Indian Creek and Upper Rock Creek drainages when responding to delivery requests from these sources during the 2009 irrigation season. Compensation shall be provided as follows:

   a. Any water right holder who initiates a request to the watermaster for delivery of their right(s) shall be subject to an initial assessment of seventy-five dollars ($75). In issuing such assessment, the watermaster must make a physical investigation of the right holder's diversion(s) to confirm that the right holder is not receiving water pursuant to their right and that such right holder has a need for water and can put the water to the beneficial use(s) authorized under the calling right(s).

   b. In responding to an initial call, the watermaster is authorized to inspect all other junior priority water right diversions on the same sources or tributary sources and regulate such diversions to satisfy, if possible, the senior water right(s) that is the subject

of the call. Payment of the initial $75 assessment is contingent on the watermaster's physical visit and inspection of the diversions on the creek, and any regulation of diversions if necessary.

c. Any repeat delivery call by a water user for the same water right(s) as the initial call that results in an additional visit by the watermaster shall be subject to a twenty-five dollar ($25) assessment by the watermaster. Other water users on the creek shall be subject to a $25 assessment per diversion by the watermaster during these subsequent visits if their diversions are required to be regulated.

d. Assessments collected by the watermaster or Water District No. 29 for delivery of water on Indian Creek or Upper Rock Creek shall be used to provide additional compensation to the watermaster, in and above his normal compensation as determined by the 2009 Water District No. 29 adopted budget, less any administrative or overhead expenses provided by the district in either collection of the assessments or providing the watermaster service and any related equipment.

e. Any disputes regarding assessments by the Water District No. 29 watermaster may be referred to the Department for resolution.

IT IS FURTHER ORDERED that:

1. Water District 29-D, Lower Portneuf River and tributaries, shall be created effective October 1, 2009. The new water district, shown in the map appended hereto as Attachment A, shall include all surface water rights diverted from the Portneuf River and its tributaries within the following described boundary:

The Portneuf River and tributary sources between the confluence of Harkness Creek and the Portneuf River near McCammon, Idaho, downstream to the Fort Hall Reservation boundary near Chubbuck, Idaho, including Indian Creek near Inkom, Idaho, excluding Marsh Creek and its tributaries, excluding Pocatello Creek and its tributaries, and excluding the Fort Hall Reservation and water sources within the Reservation that are administered by the Shoshone-Bannock Tribes pursuant to the "1990 Fort Hall Indian Water Rights Agreement".

2. Water District No. 29-F (Rapid Creek) is combined with Water District No. 29-D.

3. Water District No. 29-C (Mink Creek) is combined with Water District No. 29-D.

4. Water District No. 29-U (Jackson Creek) is combined with Water District No. 29-D.

5. Prior to the end of the 2009 calendar year, the Department will conduct organizational meetings to help the water district prepare for its annual meeting. These meetings could include a discussion about the appointment of deputy watermasters in sub-basins where a water district previously existed.

6. The water right holders in Water District No. 29 shall meet in March of 2010 at a date, time and place to be announced by the Director to conduct its annual meeting, establish a budget, elect a watermaster, and conduct the other business of a water district. In future years, the annual meeting shall be held as provided in Idaho Code § 42-605.

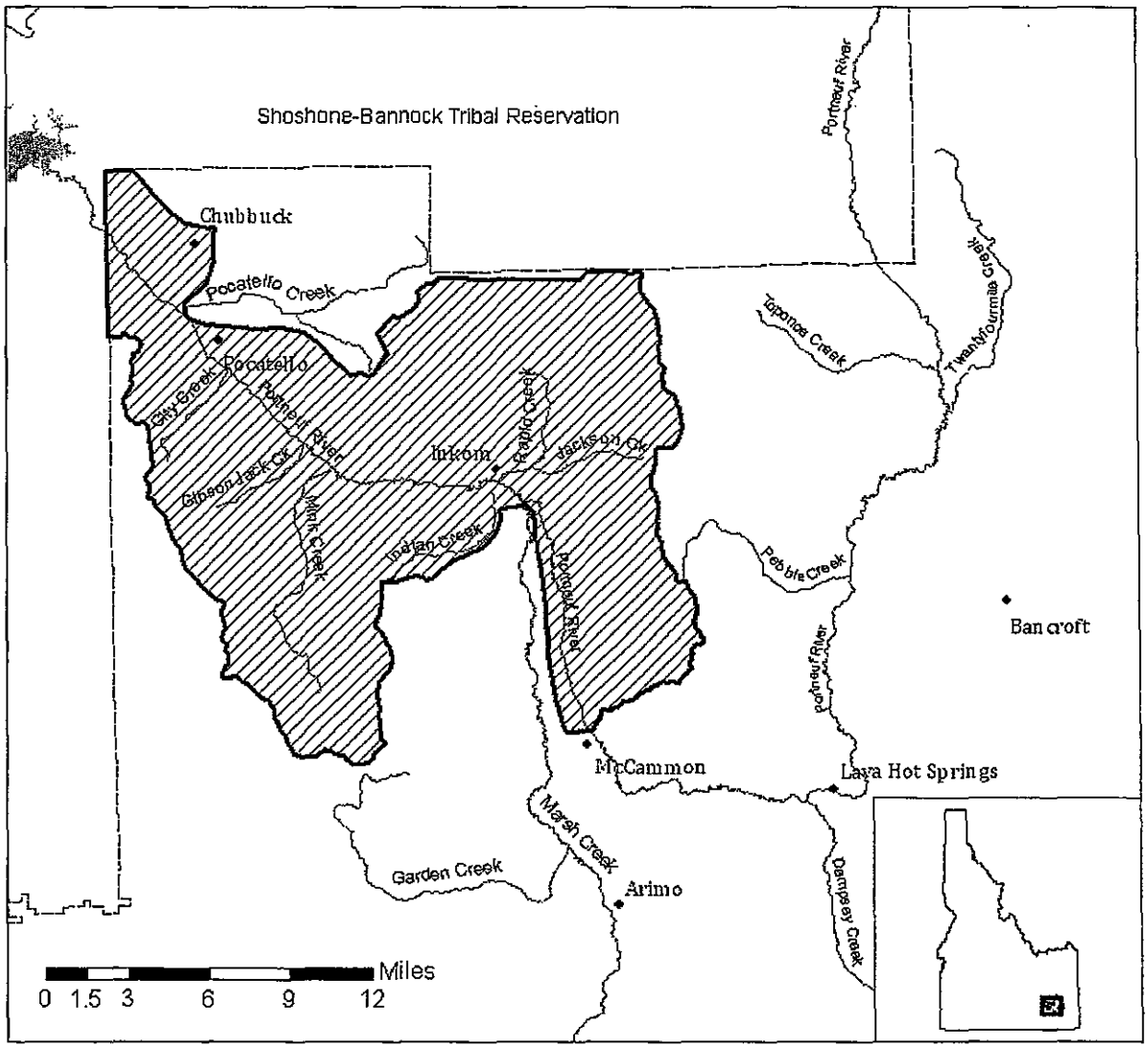
DATED this 22nd day of June, 2009.

Gary Spackman
Hearing Officer

Attachment A

Water District 29-D

Lower Portneuf River and Tributaries



Legend

- Cities
- Rivers
- Water District 29-D
- Shoshone-Bannock Tribal Reservation

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23 day of June, 2009, the above and foregoing document was served on each individual or entity on the service list for this matter on file at the Idaho Department of Water Resources, 322 East Front Street, Boise, Idaho, and posted on the Department's website: www.idwr.idaho.gov. Each individual or entity on the service list was served by placing a copy of the above and foregoing document in the United States mail, postage prepaid and properly addressed.

Christine Roberts

Christine Roberts
Office Records Specialist
Idaho Department of Water Resources

Statement of Available Procedures and Applicable Time Limits

RESPONDING TO PRELIMINARY ORDERS ISSUED BY THE IDAHO DEPARTMENT OF WATER RESOURCES

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 within fourteen (14) days after service 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 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.