

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

IN THE MATTER OF APPLICATION)	
FOR PERMIT NO 45-14081 IN THE)	PRELIMINARY ORDER APPROVING
NAME OF RAYMOND HOHOSH AND)	APPLICATION FOR PERMIT
SONIA HOHOSH)	
_____)	

PARTIES

On September 13, 2007, Raymond Hohosh (“Hohosh”) and/or Sonia Hohosh, applied to the Idaho Department of Water Resources (“IDWR or Department”) for permit to appropriate 0.04 cubic feet per second (“cfs”) from a spring, in the SE1/4NE1/4NE1/4 of Section 31, Township 12S, Range 25E, B.M., to be used year around for domestic purposes in the NE1/4NE1/4 of Section 31, Township 12S, Range 25E, B.M.

Notice of the application was published in the South Idaho Express, Burley, Idaho on November 15 and 22, 2007. IDWR received timely protests to the application from:

- Six S Ranch (“Six S”)
- David Bell (“Bell”)
- Jim D Kempton (“Kempton”)
- Earl Lavell Warthen (“Warthen”).

CASE SUMMARY

Hohosh owns a tract of land in the area known locally as Howell Canyon and obtained an approved subdivision plat for Howell Canyon Estates Subdivision at Pomerelle (“the subdivision”) containing eleven, 5 acre residential lots. The subdivision is located in the E1/2SE1/4NE1/4 of Section 31 and the SW1/4NW1/4 of Section 32, Township 12S, Range 25E, B.M. In 2007, Hohosh hired Brockway Engineering of Twin Falls, Idaho to conduct a study on providing drainage for the subdivision. A report on the outcome of this study titled *Howell Canyon Estates Subdivision Drainage Study Report* was published in October 2007. A photo in the report taken September 2007 shows the general topography and vegetation where the subdivision is located and the presence of an excavated road winding through the subdivision for access to the eleven lots.

On September 13, 2007, Hohosh filed with the Department application for permit 45-14081 seeking to appropriate 0.04 cfs from a spring tributary to sinks, located in the SE1/4NE1/4NE1/4 Section 31, Township 12S, Range 25E, B.M., to be used year around for domestic purposes in the NE1/4NE1/4 of Section 31, Township 12S, Range 25E, B.M. The application describes the diverting works as: “spring developed using perforated plastic pipe to holding tank pumped to home and a second holding tank.” On October 17, 2007, Department

staff conducted an onsite inspection. Pictures taken during the inspection show a small stream of water flowing from a horizontal pipe extending out of an embankment. The pipe was identified as the point of diversion (“pod”) for the Hohosh application. In a memorandum to the file, the agent conducting the inspection stated she tracked the water from the pipe as it flowed down hill and confirmed the water sank before reaching the access road about 500 ft down hill from the pipe. GPS data collected during the onsite inspection revealed the legal descriptions for the pod and place of use (“pou”) on the application were in error. On November 5, 2007, Hohosh amended the application correcting the legal description for the pod to the NE1/4SE1/4NE1/4 of Section 31, Township 12S, Range 25E, B.M. and also changing the legal description for the pou to the SE1/4NE1/4 of Section 31, Township 12S, Range 25E, B.M.

The protestants allege issuing the permit will jeopardize or cause injury to already existing water rights on Howell Creek. David Bell also asserts because of the proximity of the spring to Howell Creek it is either directly or indirectly tributary to Howell Creek. He points out a previous Department preliminary order for water right no. 45-7745 concluded after the beginning of the irrigation season the water supply is not always sufficient to satisfy existing demands.

On November 5, 2008, IDWR conducted a hearing at the US Forest Service Minidoka Ranger Station Building, in Burley Idaho. Hohosh, Bell and Warthen were present and appeared pro se. Mark Skaggs and Pat McCammon attended on behalf of Six S. William A. Parsons, attorney at law, represented Six S.. Kempton attended. William A. Parsons also represented Kempton. The following witnesses testified at the hearing:

- Applicant Hohosh
- Brian Higgs (“Higgs”) of Water Well Consultants for the protestants
- Protestant Kempton
- Protestant Bell
- Protestant Warthen

At the hearing, the hearing officer admitted the following items into evidence:

Applicant’s exhibit	Description
A	A report titled <i>Howell Canyon Estates Subdivision Drainage Study Report</i> prepared by Brockway Engineering

Protestant’s exhibits	Description
1	Brian Higgs resume
2	Photo – snow melt run off on road bed
3	Photo – snow melt run off on road bed
4	Photo – spring area adjacent to Howell Creek
5	Photo – spring area adjacent to Howell Creek
6	Photo – spring area adjacent to Howell Creek

Protestant's exhibits	Description
7	Photo – sediment loading from snow melt
8	Photo – sediment loading from snow melt
9	Photo – sloughing of road bed
10	Set of photos, 1 - 24
11	Weedop letter
12	Howell Canyon Estates Subdivision Plat
13	Listing of water rights from Howell Creek
14	A paper titled <i>Soil moisture states, lateral flow, and stream flow generation in semi-arid, snowmelt-driven catchment</i> written by McNamara JP, Chandler D, Seyfried M, Achet S. 2004
15	Fact sheet no.37 titled <i>Infiltration and Overland Flow</i> published by U.S.D.A.
16	Fact sheet no.38 titled <i>Streamflow</i> published by U.S.D.A.
1-B	Photo – flow from pipe
2-B	Photo – stream from pipe flowing down hill
3-B	Photo – stream running down road
4-B	Photo – erosion in road from stream
5-B	Photo - erosion in road from stream
6-B	Photo – overland flow after stream leaves road
7-B	Photo – overland flow from stream
8-B	Photo – sub-water in test hole
9-B	Photo – sub-water in test hole

Following the presentation of testimony, the hearing officer left the record open for 21 days, allowing Hohosh 14 days to submit evidence of sufficient financial standing to complete construction of the project and 7 days for protestants to submit a response. On November 19, 2008, the Department received documents from Hohosh addressing his financial capability to finish construction of the project including: 1) The cost estimate from Weedop Excavation of \$7730 for installation of two tanks, pump and pipeline. 2) A letter from Arthur D. Peterson, CPA, stating Hohosh has the financial liquidity and ability to pay the costs of improvements listed on the Weedop estimate. No response was received from the protestants. On November 26, 2008, the record was closed.

JURISDICTION AND AUTHORITIES

Idaho Code § 42-202 states in pertinent part:

For the purpose of regulating the use of the public waters and of establishing by direct means the priority right to such use, any person, association or corporation hereafter intending to acquire the right to the beneficial use of the waters of any natural streams, springs or seepage waters, lakes or ground water, or other public waters in the state of Idaho, shall, before commencing of the construction, enlargement or extension of the ditch, canal, well, or other distributing works, or performing any work in connection with said construction or proposed appropriation or the diversion of any waters into a natural channel, make an application to the department of water resources for a permit to make such appropriation.

Idaho Code § 42-203A 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 therefore, or may partially approve and grant a permit for a smaller quantity of water than applied for, or may grant a permit upon conditions.

The Department's Water Appropriation Rules "are applicable to appropriations from all sources of unappropriated public water in the State of Idaho under the authority of Chapter 2, Title 42, Idaho Code." (IDAPA 37.03.08.001.b)

Rule 40.01.b of the Water Appropriation Rules states:

Protested applications, whether for unappropriated water or trust water, will be processed using the following steps:

- i. Advertisement and protest period;
- ii. Hearing and/or conference;
- iii. Department review of applications, hearing record and additional information including department field review if determined to be necessary by the director.
- iv. Proposed decision (unless waived by the parties);
- v. Briefing or oral argument in accordance with the department's adopted

- vi. Rules of Procedure.
- vii. Director's decision accepting or modifying the proposed decision.

Rule 40.04.c of the Water Appropriation Rules states: "The applicant has the ultimate burden of persuasion for the criteria of Section 42-203A"

Rule 45.01.c.i of the Department's Water Appropriation Rules (IDAPA 37.03.08.045.01.c.i) states that the application will be found to have been made in good faith if 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.

ISSUES PRESENTED

1. Kempton, Bell, Warthen, and Six S assert the spring is tributary to Howell Creek which is fully appropriated since curtailment of decreed rights occurs every year.
2. Kempton and Six S allege the area where the subdivision is located has similar hydrologic and geologic characteristic as the semi-arid, snowmelt-driven catchment described by McNamara and consequently there are times of the year when the spring is tributary to Howell Creek via lateral subsurface flows and to alter or diminish these lateral subsurface flows reduces the quantity of water reaching Howell Creek thereby causing injury to the existing water rights.

FINDINGS OF FACT

1. On September 13, 2007, Hohosh file application for permit no. 45-14081 proposing diversion of 0.04 cubic feet per second ("cfs") from a spring, tributary to sinks, to be used year round for domestic purposes. Prior to publishing notice of the application, Hohosh changed the location of the pod and pou to the SE1/4NE1/4NE1/4 and NE1/4NE1/4 of Section 31 Township 12S, Range 25E, B.M., respectively.
2. Prior to filing permit application 45-14081, Hohosh hired Brent Weedop ("Weedop") to excavate an access road through the subdivision. Protestant's exhibit 11 is an undated written statement signed by Weedop stating a seep was encountered about 400 feet from the beginning of the access road and at the time the water from the seep was flowing about 100 feet down the hill before sinking. Weedop writes he excavated down below the seep and backfilled the excavation with drain field rock covering a 4 inch diameter sewer drain pipe which is connected to twenty foot long pipe extending through road bed and emerging from the road fill on the down hill side. The end of this pipe is pictured in protestant's exhibit 1-B, and is the point of diversion on application for permit no. 45-14081.

3. Hohosh testified his intent is to use water from the pipe for domestic purposes including use in his home and irrigation around his home. The location of his home and the pipe as identified on protestant's exhibit 12 is Lot 1 of the subdivision.

4. Hohosh testified the plan for the delivery system is to have water from the pipe flow into a 1250 gallon storage tank then pump water from this tank to a second 350 gallon holding tank at the home. Overflow from the 1250 gallon tank will return to the natural drainage.

5. The Introduction portion of applicant's exhibit A states the proposed site for the subdivision is located on very steep terrain with 20 to 50 percent slope with soils most likely composed of Conneridge very stony loam. "The site has historically drained into the subsurface with shallow sheet flow into Howell Canyon Creek. No open flow channels are apparent downhill from the proposed subdivision."

6. In the fall of 2007, Six S hired Higgs, a certified professional geologist and owner of Water Well Consultants, to investigate the Hohosh application. Higgs testified the hydrology and geology of the area where the spring and the Hohosh home are located corresponds closely to the semi-arid, snowmelt-driven catchment described in the report ("McNamara") marked protestants exhibit 14.

7. McNamara states that, in a semi-arid, snow-melt driven catchment, the annual hydrologic cycle consists of two primary periods, a period of wetting, when ground water contributes directly to surface stream flows and a period of drying when ground water does not contribute to surface water flows. Between each primary period there is a period of transition. In the fall, the transition from drying to wetting starts with the infiltration of precipitation and some snowmelt elevating the rate of soil moisture accumulation to exceed evaporation and evapotranspiration ("ET"). During this transition, throughout the winter the soil moisture is maintained. In the spring, the wetting period reaches its zenith when the infiltration of snowmelt and precipitation saturate the soil as evidenced by the over land flow of water or runoff. As the soil becomes saturated, the condition of hydraulic connectivity occurs resulting in down slope subsurface flows. Both the runoff and the down slope subsurface flows contribute to increased stream flows at the bottom of the drainage. As spring turns to summer, the runoff subsides though there is still sufficient soil moisture to maintain hydraulic connectivity and continued down slope subsurface flows. At this time, stream flows are declining marking a transition from wetting to drying. As summer progresses, the transition into the drying period is complete when evaporation and ET deplete the soil moisture until hydraulic connectivity is lost and down slope subsurface flows cease causing further decline in stream flows. The drying period continues until fall when there is a transition into the wetting period and the cycle starts over again.

8. In September 2007, which would be during the drying period, Hohosh testified he measured the flow of water from the pipe using a bucket and stop watch. He concluded the flow of water was between 3 and 4 gallons per minute.

9. In March 2008, Higgs conducted an on-site investigation and photographed seeps/springs adjacent to Howell Creek immediately below the proposed site for the subdivision, see protestant's exhibits 4, 5 and 6. Other photographs, taken by Higgs during this site visit and

marked protestants exhibit 7 and 8, show overland flow of snow melt below the access road on the Hohosh property. These hydrologic conditions are characteristic of the wetting cycle.

10. Protestant's exhibit 1-B thru 9-B is a sequence of photos from the pipe and going down the slope to a pit that appears to have been excavated with a back hoe. Bell testified he took these photos on May 18, 2008. The photos reveal there is enough water discharging from the pipe to flow over land onto the access road, down the road and then leaving the road to again flow over land and sink. Photo 9-B shows standing water in a pit. The location of this pit is marked by an X and labeled 9-B on protestant's exhibit 12. Bell testified there was no over land flow of water reaching the pit at the time the photo was taken indicating the standing water is the result of down slope subsurface flow reaching the pit. These conditions indicate the wetting cycle is beginning to subside.

11. Photos 10 thru 22 of protestant's exhibit 10 are random photos of the same areas as illustrated in Finding of Fact no.10. Kempton testified he took these photos on June 10, 2008. These photos show the flow of water from the pipe has declined since May 18, 2008 but is still sufficient to flow over land and reach the access road. Photo 10 shows standing water in the same pit pictured in protestant's exhibit 9-B. The water level in the pit has dropped indicating down slope subsurface flow is still reaching the pit but declining and is evidence the drying period has started. These conditions indicate the transition from the wetting cycle into the drying cycle.

12. Discharge from the pipe appears to be the result of capturing down slope subsurface flow in the drain system constructed by Weedop and then directing it into the pipe which discharges on the down slope side of the access road. The fluctuations in the quantity of water flowing from the pipe between September 2007 and June 2008 are characteristic of the flow regime reported on by McNamara in the semi-arid, snow-melt catchment.

13. Records for the Department list thirty six decreed irrigation water rights with a source of Howell Creek. These rights have priority dates ranging from April 1, 1875 to April 12, 1892 and have a combined total diversion rate of 42.02 cfs. The use of water from Howell Creek is subject to control by the watermaster of State Water District No. 45F.

14. Bell testified, that in years of average run off, his water right with a March 1, 1881 priority is delivered long enough for one irrigation before being cut. Protestants exhibit 13 shows this right is cut when the flow in Howell Creek drops below 28.48 cfs.

15. Kempton testified, that in years of average run off, his water right with an October 13, 1878 priority is cut in June to mid July. Protestants exhibit 13 shows this right is cut when the flow of Howell Creek drops below 18.48 cfs.

16. The flow regime of Howell Creek is another indicator of its similarity to the semi-arid snow-melt catchment study by McNamara and suggests a relatively short response time for the down slope subsurface flows to reach Howell Creek.

ANAYLYSIS

Hohosh testified the domestic use on application for permit 45-14081 is to provide water for use in his home and some irrigation around the home. These uses are consistent with domestic use as identified in Idaho Code § 42-111, which defines domestic as water for in house use and can also include the irrigation of up to half an acre of lawn and garden in conjunction with the home provided in combination the uses do not exceed 13,000 gallons per day. When evaluating an application for permit as required by Idaho Code § 42-203A that identifies surface water as the source for a domestic use in a drainage that at certain times of the year is fully appropriated, the department distinguishes between in house use, considered to be non-consumptive, and the half acre of irrigation, considered to be consumptive, subject to administration based the prior appropriation doctrine.

Howell Creek is administered by the watermaster of Water District 45F. The priority dates for decreed irrigation rights on Howell Creek range from 1875 to 1892. During the irrigation season Howell Creek is considered fully appropriated. In 2007 the Department did issue permit 45-7745 to the USFS for diverting water from springs and unnamed streams tributary to Howell Creek to provide for snow making at Pomerelle Ski Area, during the non-irrigation season. To obtain approval of this permit the USFS provided a plan to mitigate for the consumptive use portion of the permit.

The protestants in this matter contend the spring is tributary to Howell Creek. Historically, the Department would identify a spring as tributary when there is sufficient over land flow for water from the source to reach a stream before sinking. The protestants did not argue the spring was tributary to Howell Creek in the traditional sense, but, citing the work done by McNamara on a semi-arid, snow-melt catchment in the foothills north of Boise with similar geologic and hydrologic characteristics to this area of the Howell Creek drainage, they contend the spring contributes to the down slope subsurface flows that provide for reach gains in Howell Creek starting in the early spring and into the summer and therefore should be considered tributary to Howell Creek. When new research provides a better understanding of the hydrology in the a drainage and in this case on the direct contribution of down slope subsurface flows to Howell Creek the Department must acknowledge this research and apply it in the evaluation of an application under Idaho Code § 42-203A.

Based on the hydrologic and geologic similarity between the area around the spring and the area described by McNamara, the Department finds there are periods of the year when the source of water for the spring and the spring itself are a part of the down slope subsurface flows which contribute to the flows in Howell Creek from early spring into summer. During much of this period Howell Creek is fully appropriated.

The applicant bears the ultimate burden of proof regarding all the factors set forth in Idaho Code § 42-203A. Other than his personal observation, Hohosh failed to provide any evidence to counter the protestant's case that there are times during the irrigation season when the spring, via down slope subsurface flow, is tributary to Howell Creek. Nor did Hohosh provide a proposal for mitigation of the consumptive use as a result of the proposed irrigation around his home.

The in-house component of Hohosh's proposed domestic use is non-consumptive. Because non-consumptive uses will not deplete the supply of water available to satisfy senior

water right holders, non-consumptive water uses usually are not curtailed in times of shortage. The non-consumptive use of in-house domestic should be allowed.

CONCLUSIONS OF LAW

Reduction of the quantity of water under existing rights

1. The proposed diversion of water for irrigation around the residence will reduce the quantity of water available under existing water rights.
2. The proposed diversion of water for in house use will not reduce the quantity of water available under existing water rights.

Sufficiency of the water supply for the proposed use

3. The proposed source of water is sufficient to provide the volume of water necessary for in house use.

Good faith, delay, and speculation

4. The application was filed in good faith.

Financial resources

5. The applicant owns the point of diversion and place of use and has sufficient financial resources to complete the project proposed by the application.

Local public interest

6. The water use proposed in the application is in the local public interest

Conservation of water resources

7. To be consistent with the conservation of water resources in Idaho, the diversion rate for in house use from the spring should be limited to 0.02 cfs.

Potential adverse affects on the local economy

8. The proposed appropriation of water will not harm the economy of the watershed or local area where the water will be diverted and used.

Overall

9. The Department should approve the application with conditions as provided in Idaho Code § 42-203A.

ORDER

IT IS FURTHER HEREBY ORDERED that application for permit no. 45-14081 is **APPROVED** and a permit is **GRANTED** for the diversion of 0.02 cfs for domestic purposes subject to the following conditions:

1. Proof of application of water to beneficial use shall be submitted on or before April 1, 2010.
2. Subject to all prior water rights.
3. Domestic use is for 0.02 cfs in 1 home and does not include lawn, garden, landscape or other types of irrigation.
4. The delivery system for the domestic use may include two vaults with maximum storage capacity of 1250 gallons and 350 gallons. Overflow from either vault must be piped back to the natural drainage.
5. Place of use is within Lot 1, Howell Canyon Estates Subdivision at Pomerelle.
6. 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. 45F.

Dated this 24 of April, 2009.



ERNEST CARLSEN
Hearing Officer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24th day of April, 2009, a true and correct copy of the foregoing documents described below was served on the following as noted:

Document(s) Served: Preliminary Order
Explanatory Information to Accompany a Preliminary Order when a hearing was held.

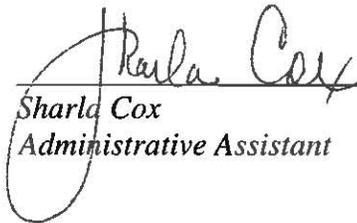
EARL LAVELL WARTHEN (X) U.S. Mail, Postage Prepaid
1047 SO HWY 77
ALBION ID 83311

DAVID BELL (X) U.S. Mail, Postage Prepaid
924 S 1325 E
ALBION ID 83311

PARSONS SMITH & STONE LLP (X) U.S. Mail, Postage Prepaid
PO BOX 910
BURLEY ID 83318

JIMMY D KEMPTON (X) U.S. Mail, Postage Prepaid
1158 E 1000 S
ALBION ID 83311

RAYMOND HOHOSH (X) U.S. Mail, Postage Prepaid
SONIA HOHOSH
103 25TH ST
OGDEN UT 84401



Sharla Cox
Administrative Assistant

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.