

**BEFORE THE DEPARTMENT OF WATER RESOURCES**

**FOR THE STATE OF IDAHO**

IN THE MATTER OF APPLICATION ) FOR TRANSFER NO. 78356 <sup>1</sup> (SHEKINAH ) INDUSTRIES); APPLICATION FOR ) TRANSFER NO. 78355 <sup>2</sup> (ORCHARD ) RANCH); APPLICATION FOR PERMIT ) NO. 63-32499 (MAYFIELD TOWNSITE); ) APPLICATION FOR PERMIT NO. ) 61-12095 (NEVID-CORDER); ) APPLICATION FOR PERMIT NO. ) 61-12096 (NEVID); APPLICATION FOR ) PERMIT NO. 63-32703 (ORCHARD ) RANCH); APPLICATION FOR PERMIT ) NO. 61-12256 (INTERMOUNTAIN ) SEWER AND WATER); APPLICATION ) FOR PERMIT NO. 63-33344 (ARK ) PROPERTIES-MAYFIELD TOWNSITE) ) _____ )	<b>ORDER GRANTING PETITION FOR CLARIFICATION, DENYING PETITION FOR RECONSIDERATION</b>
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On November 4, 2013, the Director (“Director”) of the Idaho Department of Water Resources (“Department”) issued his *Final Order Regarding Water Sufficiency* (“Final Order”) in the above captioned matter.

On November 18, 2013, Shekinah Industries, Inc. and D. Michael Preston (collectively “Shekinah”) filed with the Department a *Petition for Clarification, or in the Alternative, Petition for Reconsideration* (“Petition”). In its Petition, Shekinah requests that the Director clarify or reconsider the Final Order, specifically Findings of Fact nos. 15 and 16, and Conclusions of Law no. 12. Shekinah argues that these sections “suggests that the water rights Shekinah proposes to transfer might be limited to a diversion volume of no more than 1,107 AF (3 AFA per acre) instead of the 1,476 AFA (4 AFA per acre) authorized by the SRBA decrees.” *Petition* at 3. The Director grants Shekinah’s request for clarification and responds as follows:

**ANALYSIS**

The source of Shekinah’s concern is the Final Order’s discussion of Mayfield Townsite, LLC’s (“Mayfield”), Nevid, LLC’s (“Nevid”) and Shekinah’s annual consumptive water requirements as estimated by Dr. Christen Petrich and then used by the Director in the Final

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<sup>1</sup> Transfer no. 78356 was renumbered from Transfer no. 73811.

<sup>2</sup> Transfer no. 78355 was renumbered from Transfer no. 73834.

Order. *See* Findings of Fact 15 and 16. A close review of the numbers shows that they are estimates of each entity's annual consumptive volumes and are not estimated annual diversion volumes as suggested by Shekinah. The volume identified for Shekinah is 1,107 AF, which is consistent with a volume calculated using the Department's *consumptive* standard for irrigation (3.0 AF/acre) in that area. The Department's standard *diversion* volume for irrigation in that area is 4.0 AF/acre. The fact that these numbers are actually annual consumptive volumes is further evidenced in the exhibit from which the numbers are taken. In the comment section of the chart, it provides what are clearly estimated consumptive rates for each diversion. *Mayfield/Nevid Exhibit 5*. For example, the comment section of the chart for Mayfield provides "0.54 AF/unit."

The purpose of the volume calculations undertaken by Dr. Petrich was not to limit the annual diversion volumes for each entity, but instead to provide an estimate of each entity's annual consumptive impact on the water supply so the Director could determine the sufficiency of the available water supply. This exercise did not purport to limit Shekinah's annual diversion volume and the Director does not interpret it as doing so. Close inspection of the numbers used in the Finding of Fact 15 and 16, and the underlying exhibit from which the numbers were taken support this conclusion.

### ORDER

Based upon and consistent with the foregoing, IT IS HEREBY ORDERED that the Shekinah's petition for clarification is GRANTED. Findings of Fact nos. 15 and 16, and Conclusions of Law no. 12 do not limit Shekinah's annual diversion volume.

IT IS FURTHER ORDERED that Shekinah's petition for reconsideration is DENIED. No change to the Final Order is necessary because Findings of Fact nos. 15 and 16, and Conclusions of Law no. 12 do not limit Shekinah's annual diversion volume.

Dated this 6<sup>th</sup> day of December, 2013.

  
GARY SPACKMAN  
Director

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 6<sup>th</sup> day of December, 2013, a true and correct copy of the document described below was served by placing the same in the United States mail, postage prepaid and properly addressed to the following:

Document(s) Served: ORDER GRANTING PETITION FOR CLARIFICATION,  
DENYING PETITION FOR RECONSIDERATION

MICHAEL PRESTON  
SHEKINAH INDUSTRIES INC  
420 BITTERROOT DR  
BOISE ID 83709

SPF WATER ENGINEERING  
300 E MALLARD DR STE 350  
BOISE ID 83706

MICHAEL CREAMER  
GIVENS PURSLEY LLP  
PO BOX 2720  
BOISE ID 83701-2720

TONYA D BOLSHAW  
PO BOX 16022  
BOISE ID 83715

DANA QUINNEY  
SCOTT QUINNEY  
160 S PRONGHORN  
BOISE ID 83716

ERICK POWELL  
BROCKWAY ENGINEERING  
2016 N WASHINGTON ST STE 4  
TWIN FALLS ID 83301

NORMAN M SEMANKO  
ATTORNEY AT LAW  
PO BOX 1256  
BOISE ID 83701-1256

JOHN K SIMPSON  
BARKER ROSHOLT & SIMPSON LLP  
PO BOX 2139  
BOISE ID 83701-2139

TIM CONRADS  
75 S PRONGHORN RD  
BOISE ID 83716

BRUCE SMITH  
MOORE SMITH  
950 W BANNOCK STE 520  
BOISE ID 83702

CLEVELAND CORDER LLC  
622 ZOE LN  
GARDEN CITY ID 83714

MARY FRISCH  
155 S PRONGHORN DR  
BOISE ID 83716

BROWN FARMS LLC  
ATTN CLIFFORD BROWN ESQ  
HOLZER EDWARDS & HARRISON  
1516 W HAYS ST  
BOISE ID 83702

JAMES C TUCKER  
IDAHO POWER COMPANY  
PO BOX 70  
BOISE ID 83707

DARLA BATEMAN  
404 E INDIAN CREEK RD  
BOISE ID 83716

ROBERT MAYNARD  
ERIKA MALMAN  
PERKINS COIE LLP  
PO BOX 737  
BOISE ID 83701-0737

WENDY TIPPETTS  
999 N SLATER CREEK  
MAYFIELD ID 83716

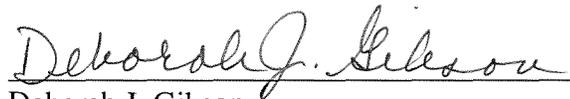
LORI ATKINS  
602 E MIKE'S PL  
BOISE ID 83716

DARWIN ROY  
147 E INDIAN CRK RD  
MAYFIELD ID 83716

JOHN WESTRA  
IDWR WESTERN REGION  
2735 AIRPORT WAY  
BOISE ID 83705-5082

ED VAN GROUW  
5089 S DEBONAIR LN  
MERIDIAN ID 83642

WAYNE SHEPHERD  
DIRECTOR OF PUBLIC WORKS  
CITY OF MOUNTAIN HOME  
PO BOX 10  
MOUNTAIN HOME ID 83647

A handwritten signature in cursive script, reading "Deborah J. Gibson", written over a horizontal line.

Deborah J. Gibson  
Assistant for the Director

## **EXPLANATORY INFORMATION TO ACCOMPANY AN ORDER DENYING PETITION FOR RECONSIDERATION**

**(To be used in connection with actions when a hearing was held)**

The accompanying order is an **Order Denying Petition for Reconsideration** of the "final order" or "amended final order" issued previously in this proceeding by the Idaho Department of Water Resources ("department") pursuant to section 67-5246, Idaho Code.

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.