

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

IN THE MATTER OF APPLICATION     )   **PRELIMINARY ORDER**  
FOR PERMIT 63-32499 IN THE NAME )   **GRANTING PETITIONS TO INTERVENE**  
OF MAYFIELD TOWNSITE LLC         )  
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**FINDINGS OF FACT**

1.       On July 28, 2006, Mayfield Townsite LLC (applicant) filed Application for Permit No. 63-32499 with Idaho Department of Water Resources (IDWR). The application proposes ground water municipal beneficial use.

2.       Notice of the application was published on June 4 and 11, 2008. Protests with appropriate filing fees were due on or before June 23, 2008.

3.       Timely protests were received by IDWR from Daniel S VanGrouw and G3, LLC on June 23, 2008.

4.       On September 24, 2008, IDWR received a Petition to Intervene from John McCallum/Ark Properties LLC. On October 3, 2008, the applicant submitted a response which stated no opposition to the petition.

5.       On October 17, 2008, IDWR received a Petition to Intervene from Pacific West Land LLC. On October 23, 2008, IDWR received arguments from the applicant in opposition to Pacific West Land LLC's petition for intervention. On November 07, 2008, Pacific West Land LLC answered the applicant's opposition to their petition.

**CONCLUSIONS OF LAW**

**APPLICABLE LEGAL PRINCIPLES**

**1. IDAPA 37.01.01.350 (Rule 350) *Order Granting Intervention Necessary* states:**

*Persons not applicants or claimants or appellants, petitioners, complainants, protestants or respondents to proceeding who claim a direct and substantial interest in the proceeding may petition for an order from the presiding officer granting intervention to become a party, if a formal hearing is required by statute to be held in the proceeding.*

**2. IDAPA 37.01.01. 351 & 352 (Rules 351, 352) Form and Contents of Petitions to Intervene; Timely Filing of Petitions to Intervene** in part states:

*The petition must set forth the name and address of the potential intervenor and must state the direct and substantial interest of potential intervenor in the proceeding. Petitions to intervene must be filed at least fourteen (14) days before the date set for formal hearing, or by the date of the prehearing conference, whichever is earlier, unless a different time is provided by order or notice. The presiding officer may deny or conditionally grant petitions to intervene that are not timely filed for failure to state good cause for untimely filing, to prevent disruption, prejudice to existing parties or undue broadening of the issues, or for other reasons.*

**3. IDAPA 37.01.01 353 (Rule 353) Granting Petitions to Intervene** states:

*If a timely-filed petition to intervene shows direct and substantial interest in any part of the subject matter of a proceeding and does not unduly broaden the issues, the presiding officer will grant intervention, subject to reasonable conditions, unless the applicant's interest is adequately represented by existing parties. If it appears that an intervenor has no direct or substantial interest in the proceeding, the presiding officer may dismiss the intervenor from the proceeding.*

**APPLICATION OF LEGAL PRINCIPLES**

**1. Reference to Finding of Facts #4- John McCallum/Ark Properties LLC Petition to Intervene.**

The receipt of John McCallum/ARK Properties LLC petition to intervene was received timely as no dates have been set for a pre-hearing conference or hearing. Therefore, the petition filing is considered timely by IDAPA 37.01.01 Rule 352. As the current property owner and contract holder with the applicant, the intervenor has a direct and substantial interest in the proceeding. This argument does not promote disruption, prejudice to parties, or broaden the issues. Rules of Procedure IDAPA 37.01.01 Rules 350, 351, 352, & 353 intervention criteria are met.

**2. Reference to Finding of Facts #5- Pacific West Land LLC Petition to Intervene.**

As no prehearing conference or hearing dates have been set, the petition to intervene is considered timely pursuant to IDAPA 37.01.01 Rule 352. The petition argues concerns that follow statutory approval criteria described in Idaho Code (IC) 42-203A(5). Arguments made under these criteria do not promote disruption, prejudice to parties, or broaden the issues. A further review of the protests reveals that several of the petition concerns are not represented by the protestants. As an area land owner, Pacific West Land LLC does have a direct and substantial interest in the proceeding. The applicant's objections failed to show the petition is deficient in meeting the rule requirements. The petition meets the criteria set under Rules of Procedure IDAPA 37.01.01 Rules 350, 351, 352, & 353.

# ORDER

**IT IS HEREBY ORDERED THAT:**

Petitions to Intervene received from John McCallum/Ark Properties LLC and Pacific West Land LLC are **GRANTED**. The parties will participate as **interveners** in the proceedings of Application for Permit No. 63-32499 in the name of Mayfield Townsite LLC.

Dated this 20<sup>th</sup> day of November, 2008



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John Westra, Manager  
Western Region

## CERTIFICATE OF MAILING

I hereby certify that on this 20<sup>th</sup> day of November, 2008, I mailed a true and correct copy, postage prepaid, of these documents to those on the attached list.



Denise Buffington  
Administrative Assistant

### **Documents Sent**

*-Order Granting Intervention*

Robert A Maynard, Atty  
Perkins Coie LLP  
251 E Front St, Suite 400  
PO Box 737  
Boise ID 83701-0737

Scott King  
SPF Water Engineering LLC  
300 E Mallard Dr Suite 350  
Boise ID 83706

Daniel S Van Grouw  
c/o Dana Hofstetter Atty  
Hofstetter Law Office LLC  
608 W Franklin St  
Boise ID 83702

G3, LLC  
Todd Haynes  
310 S Garden St  
Boise ID 83705

Pacific West Land LLC  
c/o Givens Pursley LLP  
Attn: Jeffrey C Fereday & Michael P Lawrence, Attys  
601 W Bannock  
PO Box 2720  
Boise ID 83701-2720

John McCallum/Ark Properties LLC  
c/o Moore Smith Buxton and Turcke Chartered  
Attn: Bruce Smith, Atty  
950 W Bannock Suite 520  
Boise ID 83702

**EXPLANATORY INFORMATION  
TO ACCOMPANY A  
PRELIMINARY ORDER**

The accompanying order or approved document is a "**Preliminary Order**" issued by the department pursuant to section 67-5243, Idaho Code. It can and will become a final order without further action of the Department of Water Resources (department) unless a party petitions for reconsideration, files an exception and brief, or requests a hearing as further described below:

**PETITION FOR RECONSIDERATION**

Any party may file a petition for reconsideration of a preliminary order with the department within fourteen (14) days of the service date of this order. 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 67-5243(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 with the Director. Otherwise, this preliminary order will become a final order of the agency.

**REQUEST FOR HEARING**

Unless a right to a hearing before the department or the Idaho Water Resource Board (Board) is otherwise provided by statute, any person aggrieved by any final decision, determination, order or action of the Director of the department and who has not previously been afforded an opportunity for a hearing on the matter may request a hearing pursuant to section 42-1701A(3), Idaho Code. A written petition contesting the action of the Director and requesting a hearing shall be filed within fifteen (15) days after receipt of the denial or conditional approval.

**ORAL ARGUMENT**

If the Director grants a petition to review the preliminary order, the Director shall allow all parties an opportunity to file briefs in support of or taking exceptions to the preliminary order and may schedule oral argument in the matter before issuing a final order. If oral arguments are to be heard, the Director will within a reasonable time period notify each party of the place, date and hour for the argument of the case. Unless the Director orders otherwise, all oral arguments will be heard in Boise, Idaho.

## **CERTIFICATE OF SERVICE**

All exceptions, briefs, requests for oral argument and any other matters filed with the Director in connection with the preliminary order shall be served on all other parties to the proceedings in accordance with IDAPA Rules 37.01.01302 and 37.01.01303 (Rules of Procedure 302 and 303).

## **FINAL ORDER**

The Director will issue a final order within fifty-six (56) days of receipt of the written briefs, oral argument or response to briefs, whichever is later, unless waived by the parties or for good cause shown. The Director may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order. The department will serve a copy of the final order on all parties of record.

Section 67-5246(5), Idaho Code, provides as follows:

Unless a different date is stated in a final order, the order is effective fourteen (14) days after its issuance if a party has not filed a petition for reconsideration. If a party has filed a petition for reconsideration with the agency head, the final order becomes effective when:

- (a) the petition for reconsideration is disposed of; or
- (b) the petition is deemed denied because the agency head did not dispose of the petition within twenty-one (21) days.

## **APPEAL OF FINAL ORDER TO DISTRICT COURT**

Pursuant to sections 67-5270 and 67-5272, Idaho Code, if this preliminary order becomes final, any party aggrieved by the final order or orders previously issued in this case may appeal the final order and all previously issued orders in this case to district court by filing a petition in the district court of the county in which:

- i. A hearing was held,
- ii. The final agency action was taken,
- iii. The party seeking review of the order resides, or
- iv. The real property or personal property that was the subject of the agency action is located.

The appeal must be filed within twenty-eight (28) days of this preliminary order becoming final. See section 67-5273, Idaho Code. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal.