BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT NOS. 65-13912, 65-13913 AND 65-13986 IN THE NAME OF CAROL LYNN MACGREGOR	)))))	**RECOMMENDED DECISION AND ORDER**

STANDARD FOR DECISION

This matter comes before the Idaho Department of Water Resources ("IDWR") on three applications filed by Dr. Carol MacGregor ("Dr. MacGregor" or "Applicant") to appropriate ground water in the Payette River drainage. Water right applications are processed under Idaho Code § 42-203A, which provides, in part, that:

> (5) Such hearing shall be conducted in accordance with the provisions of section 42-1701A(1) and (2), Idaho Code. The director of the department of water resources shall find and determine from the evidence presented to what use or uses the water sought to be appropriated can be and are intended to be applied. 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 therefor, or may partially approve and grant a permit for a smaller quantity of water than applied for, or may grant a permit upon conditions. Provided however, that minimum stream flow water rights may not be established under the local public interest criterion, and may only be established pursuant to chapter 15, title 42, Idaho Code. The provisions of this section shall apply to any boundary stream between this and any other state in all cases where the water sought to be appropriated has its source largely within the state, irrespective of the location of any proposed power generating plant.

A water right applicant bears the burden of proof for the factors IDWR must consider under Section 42-203A, Idaho Code. Cantlin v. Carter, 88 Idaho 179, 187 (1964); Shokal v. Dunn, 109 Idaho 330, 339 (1985). IDWR has adopted rules setting forth the criteria for evaluating the factors. IDAPA 37.03.08.045.

IDWR, having examined the application and the written record, and having heard the testimony of the parties, makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

I. Course of Proceedings.

1. Dr. Carol MacGregor filed three applications for permit that are the subject of this proceeding: 65-13912, 65-13913, and 65-13986 (together the "Applications").

2. Dr. MacGregor filed Application for Permit No. 65-13912 on August 2, 1999. This application seeks to appropriate water as follows:

Source:	Belvidere Hot Springs
Point of Diversion:	NE¼ SE¼ NE¼, Sec. 13, T13N, R3E, B.M., Valley County.
Use:	Heating and Commercial
Quantity:	0.50 c.f.s.
Period of Use:	1/1 to 12/31
Place of Use:	SE¼ NE¼ and the NE¼ SE¼, Sec. 13, T13N, R3E, B.M., Valley County Idaho. SW¼ NW¼ (Lot 2) and the SE¼ NW¼ and the

NE¼ SW¼ and the NW¼ SW¼ (Lot 3), Sec. 18, T13N, R4E, B.M, Valley County, Idaho.

3. Dr. MacGregor filed Application for Permit No. 65-13913 on August 2, 1999. This application seeks to appropriate water as follows:

Source:	Groundwater
Point of Diversion:	SE¼ NE ¼, Sec. 13, T13N, R3E, B.M. Valley County, Idaho.
Use:	Heating and Commercial
Quantity:	2.0 c.f.s.
Period of Use:	1/1 to 12/31
Place of Use:	SE¼ NE¼ and the NE¼ SE¼, Sec. 13, T13N, R3E, B.M., Valley County Idaho. SW¼ NW¼ (Lot 2) and the SE¼ NW¼ and the NE¼ SW¼ and the NW¼ SW¼ (Lot 3), Sec. 18, T13N, R4E, B.M, Valley County, Idaho.

The "remarks" section of the Application further provides that "two low-temperature geothermal wells and one cold water well are currently anticipated."

4. Notice of Application Nos. 65-13912 and 65-13913 was published in The Long Valley Advocate, a weekly newspaper, on or about December 14 and 22, 1999. Duane and Darwin Pancheri (the "Pancheris") timely protested Application Nos. 65-13912 and 65-13913, with the stated basis being "Protecting our Senior Water Rights."

5. Dr. MacGregor filed Application for Permit No. 65-13986 on October 25, 2000. This application seeks to appropriate water as follows:

Source:	Groundwater
Point of Diversion:	NE¼ SE¼, Sec. 13, T13N, R3E, B.M., Valley County, Idaho.
Use:	Irrigation of 132 acres.
Quantity:	2.0 c.f.s.
Season of Use:	4/15 to 10/31
Place of Use:	SE¼ NE¼ and the NE¼ SW¼, Sec. 13, T13N, R3E, B.M., Valley County, Idaho. SW¼ NW¼ (Lot 2) and the SE¼ NW¼ and the NE¼ SW¼ and the NW¼ SW¼ (Lot 3), Sec. 18, T13N, R4E, B.M., Valley County, Idaho.

This application further provides:

> This water right will be supplemental to 65-1979. The application contemplates sharing one cold water well in the SENE Sec 13 with pending application for Permit No. 65-13913. Diversion rate in combination with 65-13913 will not exceed 2.00 c.f.s. This application also proposed using spent low-temperature geothermal fluids diverted under 65-13913 for irrigation, provided that the heat value is utilized prior to irrigation.

Notice of Application No. 65-13986 was published in The Long Valley Advocate, a weekly newspaper, on or about December 6 and 13, 2000. The Pancheris timely protested Application No. 65-13986 on the basis that the application, if approved, could cause injury to their existing water rights.[1]

6. An initial prehearing conference for Application Nos. 65-13912 and 65-13913 was scheduled for February 10, 2000. The conference was not held because Dr. MacGregor did not appear. In response to a *Notice of Failure to Appear at Prehearing Conference*, dated February 11, 2000, Dr. MacGregor noted in a letter received by IDWR on February 14, 2000:

> I foresee no problems for these neighbors because I fully understand their right to receive their water right. On the other hand, I hope that they understand that I must ascertain the potential to develop the water right for which I bought my property, and for which *(sic)* have applied. I need to know that potential before I hire experts to draw up the plans that I envision.

A second prehearing conference regarding Application Nos. 65-13912 and 65-13913 was held on June 20, 2000. Following this prehearing conference a hearing was scheduled for November 14 and 15, 2000.

7. On November 3, 2000 IDWR issued an *Order Interrupting Processing of Application Suspending Hearing* as a result of a *Motion to Suspend Hearing* Dr. MacGregor filed

[1] In their *[PROPOSED] FINDING OF FACT AND CONCLUSIONS OF LAW*, at 40, the Pancheris indicate that Application for Permit No. 65-13986 should be granted so long as, among other things, the wells where ground water is withdrawn under this right are more than one quarter of a mile from Belvidere Hot Springs. Because one of Dr. MacGregor's proposed points of diversion under this Application is closer than one quarter of a mile to Belvidere Hot Springs, the Pancheris' concession did not fully resolve this protest.

on October 19, 2000. Processing of Application Nos. 65-13912 and 65-13913 was stayed until May 1, 2001, to allow for the parties to conduct discovery.

8. On January 3, 2001, IDWR issued an *Order Authorizing Discovery* and on January 25, 2001, an *Amended Order Authorizing Discovery*. The parties were authorized to engage in discovery for a period of one year, or until two weeks prior to the scheduled hearing, whichever was earlier. On June 6, 2001, IDWR issued a *Second Amended Order Authorizing Discovery* that again extended the discovery for a period of one year, or until two weeks prior to the scheduled hearing, and recognized an agreement between the parties for monitoring and inspection of the Belvidere Hot Springs area.

9. For approximately the next 3½ years little formal action was taken by IDWR. In January 2003, Dr. MacGregor submitted a proposal to IDWR to construct a geothermal test well at Belvidere Springs. Information was submitted by both Dr. MacGregor and the Pancheris in support of, and in opposition to, the geothermal test well proposal. Exs. 40, 122-124. On November 12, 2003, IDWR denied the geothermal test well proposal, stating:

> <u>The Department will not consider approval of a drilling permit at the proposed location until the following has occurred:</u>
>
> > Application for permit #65-13913 is approved, and a drilling permit can be considered
> >
> > **OR**
> >
> > An agreement to compensate for possible damages is executed by the applicant and protestant.

Ex. 200 (emphasis in original). No evidence was submitted indicating that a hearing was requested by Dr. MacGregor on that test well denial. The language of the denial, however,

suggests that an issue to be determined when considering the Applications is whether drilling a low-temperature geothermal wells or wells is likely to harm the Pancheris.[2]

10. On November 11, 2004, Dr. MacGregor filed a *Motion and Request for Hearing*.

11. On November 24, 2004, Peter Anderson was appointed Hearing Officer regarding Application Nos. 65-13912 and 65-13913. A prehearing conference on those applications was held on January 3, 2005.

12. After this conference, a *Scheduling Order* issued on January 7, 2005, that established a time period for submission of any IDWR staff memorandum (February 11, 2005), provided for the exchange of information (February 18, 2005), provided for the exchange of witness and exhibit lists (April 8, 2005) and set tentative hearing dates (April 21 & 22, 2005).

13. On January 10, 2005, Peter Anderson was appointed Hearing Officer regarding Application No. 65-13986. With the agreement of the parties proceedings on Application Nos. 65-13912 and 65-13913 and Application No. 65-13986 were consolidated on January 14, 2005. Also on January 14, 2005, the Hearing Officer invited IDWR staff to file by February 11, 2005, a staff memorandum providing: (1) an analysis by IDWR staff of whether the Applications should be granted and, if so, any proposed conditions; (2) a listing of applicable IDWR memoranda; (3) an analysis of the availability of water at the proposed point of diversion, or analysis of any studies related to the availability of ground water at the proposed point of diversion; and (4) a GIS map showing the proposed place of use and point of diversion. A staff memorandum from John Westra, Western Region Manager for IDWR, was submitted on February 1, 2005. Ex. 200.

[2] This suggestion was borne out by the presentations of the parties at the hearing, which focused in large part on the risks of drilling low temperature geothermal wells near the Belvidere Hot Springs

14. On April 22-23 and May 5-6, 2005, IDWR conducted a hearing on the Applications. Dr. MacGregor was present, represented by Julie K. Fischer and John R. Kormanik. The Pancheris were present, represented by Scott L. Campbell and Angela Schaer Kaufmann.

15. At the conclusion of the hearing the parties were given until May 16, 2005, to submit briefing regarding whether the Hearing Officer could recommend that Dr. MacGregor be allowed to drill and test a geothermal test well before a final decision is reached, and until June 3, 2005, to submit final briefing. Both Dr. MacGregor and the Pancheris filed extensive briefing and proposed findings and conclusions. This matter was fully submitted to IDWR on June 3, 2005.

II. Evidence Considered.

16. Exhibits offered by Dr. MacGregor and admitted as part of the record are as follows:

Exhibit 2: Notice of Protest to Application No. 65-13912, filed in the name of Duane and Darwin Pancheri.

Exhibit 6: Notice of Protest to Application for Permit No. 65-13986;

Exhibit 7: Application for Permit No. 65-13978;

Exhibit 8: Notice of Protest to Application for Permit No. 65-13978;

Exhibit 9: Partial Decree for Water Right No. 65-01973;

Exhibit 10: Partial Decree for Water Right No. 65-01972;

Exhibit 11: Idaho Department of Water Resources file for Water Right No. 65-12891. Specifically includes:

- Water Right License No. 65-12891;
- Application for Amendment (For Licensing Purposes);

- Assignment of Permit;
- Permit for Water Right No. 65-12891;
- Application for Permit No. 65-12891;
- Topographic map showing the point of diversion and place of use;
- Photocopy of public notice of application for permit;
- Affidavit of publication;
- Inter-Department Memo dated September 15, 1998;
- Handwritten notes re: new address for Darwin and Joan Pancheri;
- Correspondence from Steve Lester to Darwin Pancheri dated August 17, 1998;
- Correspondence from Sharla Curtis to Duane and Darwin Pancheri dated January 12, 1992;
- Correspondence from Sharla Curtis to Duane and Darwin Pancheri dated October 15, 1991;
- License Review checklist;
- Conversation Memorandum dated August 7, 1991, by Jan Shurte detailing conversation with Duane Pancheri;
- Idaho Department of Water Resources Staff Analysis Sheet for Beneficial Use Report;
- Beneficial Use Field Report;
- Conversation Memorandum dated October 19, 1988;
- Proof of Beneficial Use Analysis Sheet;
- Proof of Beneficial Use;
- Permit Approval Notice;
- Idaho Department of Water Resources Appropriation Application Analysis Sheet;

- Correspondence from "The Advocate" regarding publication;
- Conversation Memorandum dated May 15, 1989; and
- Conversation Memorandum dated October 19, 1988.

Exhibit 12: Idaho Department of Water Resources file for Application for Permit No. 65-13332. Specifically includes:

- Permit No. 65-13332;
- Application for Permit No. 65-13332 (including map);
- Affidavit of Publication;
- Inter-Department Memo dated September 15, 1998;
- Handwritten Notes dated September 8, 1998, re: Darwin and Joan Pancheri;
- Correspondence from Steve Lester to Darwin Pancheri dated August 27, 1998;
- Correspondence from Nina Shields to Darwin and Joan Pancheri dated October 29, 1991;
- Proof of Beneficial Use;
- Analysis Sheet for Proof of Beneficial Use;
- Permit Approval Notice;
- Application for Permit Review sheet;
- Appropriation Application Analysis Sheet;
- Conversation Memorandum dated July 1, 1991;
- Beneficial Use Field Report; and
- Conversation Memorandum dated October 18, 1988.

Exhibit 13: Idaho Department of Water Resources File for Permit No. 65-13458. Specifically includes:

- Water Right Permit No. 65-13458;
- Application for Permit;

- Comment dated June 22, 1993, Re: Overlap;
- Map;
- Inter-Department Memo dated September 15, 1998;
- Handwritten note;
- Handwritten note re: Darwin and Joan Pancheri mailing address;
- August 17, 1998 correspondence from Steve Lester to Darwin Pancheri re: Licensing;
- Proof of Beneficial Use;
- Beneficial Use Field Report;
- Maps;
- Well Inspection Form;
- Analysis Sheet for Proof of Beneficial Use;
- Proof Acknowledgement Letter dated September 9, 1996;
- Proof Due Notice dated July 31, 1996;
- Permit Approval Notice dated October 19, 1993;
- Application for Permit State Office Review;
- Water Right Profile Report;
- Appropriation Application Analysis Sheet;
- Affidavit of Publication; and
- Application for Permit.

Exhibit 16: Warranty Deed from Tom Nicholson to Carol Lynn MacGregor.

Exhibit 17A: Photographs, as follows:

1. Belvidere Hot Springs and Darwin Pancheri home.
2. Belvidere Hot Springs looking northeast.
3. Belvidere Hot Springs looking east.

4. Belvidere Hot Springs looking west.

5. Outflow from Belvidere Hot Springs looking east.

6. Hottest pool in Belvidere Hot Springs looking northeast.

7. Belvidere Hot Springs looking northeast.

8. Temporary fence east of Belvidere Hot Springs.

9. Unused ditch south of Belvidere Hot Springs.

10. Moore's Creek.

11. Moore's Creek.

12. Moore's Creek.

13. Moore's Creek.

14. Moore's Creek.

15. Duane Pancheri structure.

16. Duane Pancheri water drain.

17. Duane Pancheri flow meter.

Exhibit 18: Location Map of MacGregor Property.

Exhibit 19: Drawing of MacGregor Project.

Exhibit 20: Correspondence from Terry M. Scanlan to Carol Lynn MacGregor dated June 6, 2000, re: Drilling Cost Estimate for Geothermal Exploration Well.

Exhibit 21: Financial Assurance Document.

Exhibit 22: Agreement for Specifications and Locations for Flow Meters.

Exhibit 24: Letter from Sheri Chapman to Scott Campbell dated May 20, 2003.

Exhibit 25: Letter from Sheri Chapman to Scott Campbell dated October 1, 2003.

Exhibit 30: Administrator's Memorandum dated September 8, 1980, re: Rate of Flow for Heating Use.

Exhibit 33: Geologica Report dated February 14, 2005.

Exhibit 34A: Illustrative Exhibit drawn by Jill Haizlip.

Exhibit 34B: Illustrative Exhibit drawn by Jill Haizlip.

Exhibit 37: Correspondence from Terry M. Scanlan to Julie Klein Fischer re: Monitoring Update – Belvidere Hot Springs.

Exhibit 38: Correspondence from Terry M. Scanlan to Jo Beeman dated July 1, 1999, Re: MacGregor – Belvidere and Raspberry Ranches.

Exhibit 40: Correspondence from Terry M. Scanlan to Rob Whitney dated September 2, 2003, re: MacGregor Test Well Proposal.

Exhibit 42: Illustrative Exhibit drawn by Terry Scanlan.

Exhibit 43: St. Marie, et al., *Examination and Evaluation of Geothermal Sites in the State of Idaho with Emphasis Given to Potential for Electrical Generation or Direct Use*, Idaho Water Resources Research Institute, September 2002.

Exhibit 45: Correspondence from John Westra to Josephine Beeman and Scott L. Campbell dated November 12, 2003.

17. Exhibits offered by the Pancheris and admitted as part of the record are as follows:

Exhibit 101: Merle W. Wells, *Heat from the Earth's Surface: Early Development of Western Geothermal Resources*, reprinted from *Journal of the West*, Vol. X, Number 1.

Exhibit 102: Arthur A. Hart, "Idaho Yesterdays: Indians Used Warm Springs," *The Idaho Statesman*, at 12.

Exhibit 103: N.S. Nokkentved, "Report: Water Pumping Reduces Bruneau Hot Springs," *The Times-News*.

Exhibit 104: Charles Berenbock, *Effects of Well Discharges on Hydraulic Heads in a Spring Discharges from the Geothermal Aquifer System in the Bruneau Area, Owhyee County, Southwestern Idaho*. USGS Water-Resources Investigations Report 93-4001, Boise, Idaho.

Exhibit 105: Will L. Burnham and Spencer H. Wood, *Field Guide: Boise Geothermal System, Idaho*, 38th Annual Meeting, Rocky Mountain Section, The Geological Society of America.

Exhibit 106: Kenneth W. Neely, *Production, Temperature and Water Level Data for the Four Heating Systems in the Boise Front Low Temperature Geothermal Resource Area, 1977-1997*, Idaho Department of Water Resources Planning and Policy Division, Technical Services Bureau, Ground Water Monitoring Section, Open File Report.

Exhibit 107: Kenneth W. Neely, *Production History for the State of Idaho Capitol Mall Geothermal System 1983-1994*, Idaho Department of Water Resources.

Exhibit 109: Christian R. Petrich, *Investigation of Hydrogeologic Conditions and Ground Water Flow in the Boise Front Geothermal Aquifer (Executive Summary)*, Idaho Water Resources Research Institute, Research Report IWRRI 2003-07.

Exhibit 110: Well log notes from Clements well.

Exhibit 111: Notes from Larry Hellnake Well No. GEO-1, Well No. 2, and Spring, Roystone Hot Springs.

Exhibit 112: Lithologic log and temperature gradient, Well No. GEO-1, Roystone Hot Springs.

Exhibit 113: Ground Temperature Contours, Roystone Hot Springs.

Exhibit 114: Ken Neely, *Semi-Annual Review of the Monitoring Data for the Boise Front Geothermal System*, January – June 2003, Idaho Department of Water Resources.

Exhibit 115: *Geothermal Resources of Utah – An Overview*, Geo-Heat Center Quarterly Bulletin, Vol. 25, No. 4, at 2.

Exhibit 116: *Crystal Hot Springs – Salt Lake County*, Geo-Heat Center Quarterly Bulletin, Vol. 25, No. 4, at 26.

Exhibit 125: Photograph of Duane Pancheri's shop interior.

Exhibit 126: Photograph of back of Duane Pancheri's shop.

Exhibit 127: Photograph of back of Duane Pancheri's shop.

Exhibit 128: Photograph of back of Duane Pancheri's swimming pool.

Exhibit 129: Photograph of back of Duane Pancheri's home and guest house.

Exhibit 130: Photograph of back of Duane Pancheri's yard.

Exhibit 131: Photograph of back of Duane Pancheri's home and guest house.

Exhibit 132: Photograph of back of Duane Pancheri's yard.

Exhibit 133: Photograph of lane to Duane Pancheri's homes looking west.

Exhibit 134: Photograph of Duane Pancheri's shop.

Exhibit 135: Photograph of Duane Pancheri's laborer's house.

Exhibit 137: Photograph of Duane Pancheri's laborer's house.

Exhibit 138: Photograph of discharge from Duane Pancheri's pool into creek.

Exhibit 143: Photograph of Darwin Pancheri's shop.

Exhibit 144: Photograph of Darwin Pancheri's home and shop.

Exhibit 145: Photograph of Darwin Pancheri's pump sump and flow meter.

Exhibit 146: Photograph of Darwin Pancheri's pump sump.

Exhibit 147: Photograph of Belvidere Hot Springs on the Pancheris' Property.

Exhibit 148: Photograph of Darwin Pancheri's pump sump.

Exhibit 149: Photograph of sprinkler and Belvidere Hot Springs.

Exhibit 150: Photograph of laying hot water lines under Darwin Pancheri's shop.

Exhibit 151: Photograph of discharge from Darwin Pancheri's pump sump.

Exhibit 153: Photograph of overflow discharge from Duane Pancheri's laborer's house.

Exhibit 154: Photograph of discharge into Duane Pancheri's pool.

Exhibit 155: Photograph of Belvidere Hot Springs.

Exhibit 157: Photograph of Belvidere Hot Springs flowing east.

Exhibit 160: Photograph of Belvidere Hot Springs discharge area near weir site.

Exhibit 162: Photograph of the Pancheris' and MacGregor's Property near Belvidere Hot Springs.

18. IDWR, on its own initiative, admitted the following exhibits:

Exhibit 200: IDWR Staff Memorandum dated January 27, 2005.

Exhibit 201: Applications for Extensions of Time to Avoid Forfeiture for Water Rights Nos. 65-1972 and 65-1973.

19. Dr. MacGregor called the following witnesses:

Duane Pancheri,

Darwin Pancheri,

Carol Lynn MacGregor,

Terry Scanlan, and

Jill Haizlip.

20. The Pancheris called the following witnesses:

Duane Pancheri,

Darwin Pancheri, and

Sherl Chapman.

21. John Westra, Western Region Manager of the Idaho Department of Water Resources, also testified at the hearing. He was called by the Hearing Officer to testify regarding the Staff Memorandum.

22. All parties were afforded a reasonable opportunity to cross-examine the opposing side's witnesses and IDWR staff.

III. Applicant and Intended Water Use Under Application Nos. 65-13912, 65-13913 and 65-13986.

23. Dr. MacGregor is a professional historian, investor and rancher. She owns approximately 1,100 acres of real property in Valley County, Idaho. That property, known as Raspberry Ranch, is an operational cattle ranch managed by Dr. MacGregor. Although Dr. MacGregor owns a home in Boise, Idaho, Raspberry Ranch is her permanent home. Part of Raspberry Ranch was owned by Dr. MacGregor's father when she was growing up, and is now

owned by her. The portion of the ranch that includes the points of diversion and places of use under the Applications was acquired by Dr. MacGregor by warranty deed on January 15, 1998.

A. Hot Water Spa.

24. The SE¼NE¼, Sec. 13, T13N, R3E, B.M., Valley County, Idaho contains a hot spring complex known as Belvidere Hot Springs. Dr. MacGregor testified that since she purchased this portion of Raspberry Ranch she has had the goal of developing a hot water spa using water from Belvidere Hot Springs and new low temperature geothermal wells. Development of the hot water spa is Dr. MacGregor's reason for submitting the Application Nos. 65-13912 and 65-13913.

25. Dr. MacGregor testified that the hot water spa on her property would include a lodge, hot baths and private "casitas". Exhibit 19, which was prepared by architect Chad Slichter depicts the general concept of the project. The spa would be built in three phases. The first phase consists of a 2,000 (two thousand) square foot lodge with massage facilities and landscaping (bushes and trees). It would include a driveway and one parking area, and a large hot water soaking pool. The exact size of the large pool was not provided. Approximately 30 acres of land would be fenced off. Dr. MacGregor testified that her husband would help her with the excavation. There would be no overnight guest accommodations in the first phase. The second phase of the project would include a swimming pool, several individual soaking tubs, two or three "casitas," and an additional wing to the original lodge, with more therapy rooms, showers, linen rooms, and cleaning supply spaces. After phase two, there would be approximately five bathrooms and shower rooms, and each casita will have a bathroom with a

shower. The third phase would include another wing on the lodge, as well as up to ten more "casitas," for a total of twelve.

26. The 0.50 cfs of water to be used under Application for Permit No. 65-13912 would be collected directly from Belvidere Hot Springs. An infiltration gallery located across Belvidere Hot Springs running east to west, of unspecified size and elevation would be constructed to collect water from the hot springs and the water would be routed to a pump sump. Water would then be conveyed in pipes of indeterminate size to the hot water spa, where it would be used for heating and commercial purposes. The need for this amount of water was not established by Dr. MacGregor, although Terry Scanlan testified that this amount may be sufficient to operate a hot water spa of unspecified size. Dr. MacGregor did not present a cost estimate for the infiltration gallery, pumps, piping or other facilities she plans to install if Application for Permit No. 65-13912 is approved. It is not clear from the record whether Permit No. 65-13912 would be necessary if Permit No. 65-13913 is granted.

27. The 2.0 cfs of water used under Application for Permit No. 65-13913 would be collected from three wells. Two, redundant, low-temperature geothermal wells would likely be drilled: one 200 feet to the south of Belvidere Hot Springs and one 450 feet southeast of the spring vents. The conceptual plan and written description for one such well, initially drilled as a test well, are contained in Exhibit 40. The cold-water well would be located southeast of Belvidere Hot Springs. The depth and configurations of these wells can only be determined after actual exploration of the ground water underlying the proposed points of diversion.

28. The hot and cold ground water would be conveyed in pipes of indeterminate size to the hot water spa, where it would be used for heating and mixed for commercial purposes such

as bathing. The amount of cold ground water withdrawn would depend upon the temperature of the geothermal water. The theoretical basis for requesting this quantity of water was not established by Dr. MacGregor. Dr. MacGregor presented an estimate for the cost of drilling one geothermal well. That cost of the geothermal well was estimated at $17,645.00. Dr. MacGregor presented no evidence regarding the cost of the cold water well she plans to drill if Application for Permit No. 65-13913 is approved.

29. The size of the facility Dr. MacGregor is able to construct is directly dependent upon the amount, location and temperature of geothermal water she is able to obtain under Application Nos. 65-13912 and 65-13913. It makes little sense to design the exact size and location of an infiltration gallery, pump sump, pumps, piping, the best mix of hot and cold water sources, the size of the hot water spa, and the precise use of spent hot water when the availability of hot water has not been precisely determined. Because of the uncertainty regarding the amount of geothermal water that will be available for the hot water spa[3], Dr. MacGregor has not proceeded to develop detailed plans for her project or apply for all necessary permits and other governmental approvals.

30. As a result, as of the hearing dates, Dr. MacGregor had talked only briefly with a builder and does not have blueprints or a specific architectural design. Dr. MacGregor presented no testimony or evidence from any builder, architect, contractor, subcontractor, landscaper, or professional, other than Terry Scanlan, providing estimates for the construction of any part of her spa project. Dr. MacGregor has had only informal discussions with one Valley County Commissioner regarding her project, and has not begun the local permitting process.

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[3]*See* Findings of Fact No. 43

Dr. MacGregor has dug monitoring holes with standpipes in one of her pastures for purposes of determining the location and size of her septic field. She testified that she will install the number of septic tanks required by Mr. Latham with the Valley County Health District. Her property is zoned agricultural and will need to be re-zoned in order for her to build her spa.

B. Irrigation Project.

31. Application for Permit No. 65-13986 received very little attention during the hearing. Dr. MacGregor's reasons for filing this application are unclear. Although there is some indication in the record that the proposed place of use is currently dry pasture, there is also evidence in the record that the same area is currently covered by Water Right No. 65-01979. *See* Ex. 38, Fig. 2 and Application for Permit No. 65-13986, Remarks ("This water right will be supplemental to 65-01979"). No evidence was provided regarding the use of Water Right No. 65-01979 and how the water use under Application for Permit No. 65-13986 relates to it. It may be that this application is intended to simply allow re-use of any ground water diverted pursuant to Application for Permit No. 65-13913:

> The application contemplates sharing one cold water well in the SENE Sec 13 with pending application for permit 65-13913. Diversion rate in combination with 65-13913 will not exceed 2.0 cfs. This application also proposes using spent low-temperature geothermal fluids diverted under 65-13913 for irrigation, provided that the heat value is utilized prior to irrigation.

Application for Permit No. 65-13913, Remarks. If so, the configuration of this water right permit is dependent upon the configuration of proposed Permit No. 65-13913.

32. Under Application for Permit No. 65-13986 Dr. MacGregor proposes to divert 2.0 cfs of ground water for the irrigation of 132 acres of pasture. This quantity is within the restrictions of Idaho Code § 42-202(6). No annual volume of use was quantified in the Application. Dr. MacGregor intends to use two wells to divert this water. One well would be

located approximately 2000 feet south of Belvidere Hot Springs and the other well would also be that used by proposed Permit No. 65-13913.

C. Evaluation.

33. Dr. MacGregor did not provide sufficient details of the proposed design, construction and operation of the hot water spa and irrigation project to allow the water resource impact of the Applications to be evaluated. The primary reason for this failure is her inability to drill and test a geothermal well to determine how much geothermal water she can obtain from the proposed wells and the temperature of that water.

IV. Project Financing.

34. Dr. MacGregor testified that she thinks the first phase of her spa project will cost $300,000. She stated that includes the lodge, excavation, fencing, landscaping, and permits. Dr. MacGregor estimates that the first and second phases of her project will cost $700,000, with the third phase bringing the total cost (for all three phases) to $3,000,000.

35. Dr. MacGregor testified at length about her assets. She testified she owns the 1,100 acre Raspberry Ranch in Long Valley, without debt. In addition, she owns a ranch in Emmett Idaho, and a home in Boise – all free of liens. Those properties, if mortgaged, could generate monies far in excess of the total cost to develop all phases of her spa project. Dr. MacGregor further testified about her income from teaching at Boise State University; publications; participating in a lecture tour; ranching; and private investments. Her uncontradicted testimony was that, if needed, she could access cash sufficient to finance full development of her spa and related water rights, at an estimated cost of three million dollars. Melina Sander, Senior Vice President and Financial Advisor with Morgan Stanley, provided a written statement that Dr. MacGregor has "the ability to cover in excess of $700,000 to fund any

development she desires." This is sufficient to cover the estimated cost of the first two phases of the hot water spa project. Dr. MacGregor also testified that she could complete the entire hot water spa project within five years.

36. Dr. MacGregor presented no evidence regarding the construction or cost of the southernmost cold water well she plans to drill if Application for Permit No. 65-13986 is approved. Dr. MacGregor presented no evidence regarding the cost of pipelines or other structures necessary to transport water from any of the points of diversion proposed under Applications for Permit Nos. 65-13986 to the proposed places of use. Dr. MacGregor did not testify or submit evidence regarding her ability to complete this irrigation water right.

V. Water Supply and Impact On Water Quantity Under Existing Water Rights.

37. The spring development and ground water wells contemplated by the Applications will withdraw water from the Payette River Drainage, which is designated hydrologic basin 65 in IDWR records.

A. Belvidere Hot Springs.

38. Belvidere Hot Springs are located in the NE¼ SE¼ NE¼, Sec. 13, T.13 N., R. 3 E, B.M, Valley County, Idaho. The Springs discharge from multiple vents in an area of approximately one acre. Based upon monitoring conducted by both Dr. MacGregor and the Pancheris, total instantaneous discharge from Belvidere Hot Springs is approximately 150 gpm, which translates to an annual discharge of 241 acre-feet. The temperature of the discharged ground water ranged from 104 degrees F. to 121 degrees F.

39. Dr. MacGregor currently owns two water rights using water from Belvidere Hot Springs that were decreed in the Snake River Basin Adjudication. Water right no. 65-01973 is described as follows:

Priority Date:	May 1, 1901
Source:	Spring
Point of Diversion:	SE¼ NE¼, Sec. 13, T13N, R3E, Valley Co., Idaho.
Use:	Domestic.
Quantity:	0.01 c.f.s., 13,000 gallons per day, 1.20 acre feet per year.
Season of Use:	1/1 to 12/31
Place of Use:	SE¼ NE¼, Sec. 13, T13N, R3E, Valley Co., Idaho.

Water right no. 65-01972 is described as follows:

Priority Date:	May 1, 1901
Source:	Spring
Point of Diversion:	SE¼ NE¼, Sec. 13, T13N, R3E, Valley Co., Idaho.
Use:	Domestic.
Quantity:	0.04 c.f.s., 13,000 gallons per day, 1.20 acre feet per year.
Season of Use:	1/1 to 12/31
Place of Use:	SE¼ NE¼, Sec. 13, T13N, R3E, Valley Co., Idaho.

These two rights historically were used at hot bathes built directly in the Belvidere Hot Springs, but are currently unused and subject to extensions of time to avoid forfeiture pursuant to Idaho Code § 42-222(2). Ex. 201. No evidence was submitted by Dr. MacGregor regarding how or if she intends to use these water rights in the proposed hot water spa.

40. The Pancheris have developed two water uses out of Belvidere Hot Springs. Water Right No. 65-12891 is licensed to Duane and Darwin Pancheri and is described as follows:

Priority Date:	October 19, 1988.
Source of Water:	Spring.
Point(s) of Diversion:	NE¼, SE¼, NE¼ and SE¼, NE¼, NE¼, Sec. 13, T13N, R3E, B.M., Valley County, Idaho.
Use(s):	Heating 0.40 c.f.s, 47.7 AFA Domestic 0.04 c.f.s, 3.6 AFA.
Total Quantity:	0.44 cfs, 51.3 AFA.
Period of Use:	January 1 – December 31.
Place of Use:	SE¼ SW¼ and NW¼ SE¼ and SW¼ SE¼, Sec. 18, T13N, R4E, B.M., Valley County Idaho.

The hot water used under this water right is collected in a buried infiltration gallery which is approximately 40 to 50 feet long and situated 25 to 50 feet north of the hot spring vents located on

Dr. MacGregor's property. The water then flows by gravity approximately 5100 feet, where it is used to heat three homes, a shop and a swimming pool. Water flows through this system year round at an average rate of approximately 75 gpm (0.167 cfs, 121 afa). The infiltration gallery lies above Dr. MacGregor's property in elevation. Water Right Permit No. 65-13332 issued to Darwin and Joan Pancheri with a proposed water use as follows:

Priority Date:	July 2, 1993.
Source of Water:	Spring.
Point(s) of Diversion:	NE¼, SE¼, NE¼ and SE¼, NE¼, NE¼, Sec. 13, T13N, R3E, B.M., Valley County, Idaho.
Use(s):	Heating.
Total Quantity:	0.10 cfs.
Period of Use:	January 1 – December 31.
Place of Use:	NE¼, NE¼ Sec. 13, T13N, R3E, B.M., Valley County, Idaho.

This permitted water use also withdraws from the buried infiltration gallery, from which it flows into a pump sump. From the pump sump the water is pumped, using a ¾ hp pump, 600-800 feet to heat a home and a shop. Water flows through this system generally from mid-October to mid-May at an average rate of approximately 12.8 gpm (0.03 cfs).

41. Subtracting the water diverted by the Pancheris from Belvidere Hot Springs, approximately 87.8 gpm (75 gpm plus 12.8 gpm), from the measured flow--150 gpm--reveals that there is a maximum of approximately 62.2 gpm (0.13 cfs/100 afa) available for diversion on a continuous basis. Further evidence of Dr. MacGregor's plans and their precise impact on the Belvidere Hot Springs would be needed to determine the quantity of the excess water that could be diverted on an instantaneous basis without impacting the Pancheris' water uses. Although Mr. Scanlan testified that any impact on the Pancheris' water rights could be mitigated simply by ceasing the diversion to the hot water spa, if this impact is continuous the hot water spa could not be developed using Belvidere Hot Springs water.

B. Low Temperature Geothermal Aquifer.

42. The precise geologic structure underlying Belvidere Hot Springs and the availability of geothermal water in addition to that discharged from the Springs is unknown. The best general description of the geology of Belvidere Hot Springs is contained in a 1976 investigation report by Monte D. Wilson, James K. Applegate, Sherl L. Chapman and Paul R. Donaldson entitled "Geothermal Investigation of the Cascade, Idaho Area." Ex. 40 (Attachment B). This report, authored in part by the Pancheris' expert, was also cited by, used, and referred to by the experts for Dr. MacGregor. The following general conclusions regarding this area in 1976 were reached in Wilson et al., and continue to be generally accurate:

> 1. Water supplies in the valley are sufficient for all uses now being made. The river and stream system provides adequate water for irrigation of all agricultural land.
>
> 2. The major non-thermal aquifer is the valley fill and alluvium, and it is adequate to supply water for nearly all wells on the valley floor and future ground water development.
>
> 3. The valley fill aquifer contains a large number of artesian zones, most of which are untapped and are capable of supplying fair yields to wells.
>
> 4. The hydrologic parameters, such as the storage coefficient and transmissivity, have not been calculated because of a lack of adequate pumping well data.
>
> 5. Water quality in the cold water system is considered to be poor for domestic purposes because of the high iron and manganese content. Other constituents, however, are within acceptable limits.
>
> 6. Known thermal water occurrences in the valley are related to the geologic structure. Locations of existing hot springs are directly controlled by the presence of fault and fracture patterns.
>
> 7. Both the granitic rocks and valley fill offer potential as reservoirs for thermal water. A significant untapped thermal aquifer may exist at depth in the valley fill.

> 8. Quality of the present geothermal resource is good. Samples analyzed show that hot water issuing from springs and wells in the area can be utilized for nearly all uses, including irrigation of crops.
>
> 9. Recharge to both the non-thermal and thermal systems is probably meteoric in origin. Chemical differences in the water are the result of the longer time of travel and heat in the thermal reservoir.

Ex. 40 (Attachment B at 41-42).

43. Although Terry Scanlan testified that in his opinion there was sufficient ground water to develop the hot water spa, the only way to determine the amount and temperature of the geothermal ground water available for development by Dr. MacGregor is to drill and test an exploratory geothermal well. This was the stated conclusion of both of Dr. MacGregor's experts, Terry Scanlan and Jill Haizlip. The necessity for drilling and testing was also demonstrated by the testimony of the Pancheris' expert witness, Sherl Chapman. He described several test wells he had drilled in the general area of Belvidere Hot Springs that did not locate geothermal water. Two wells were drilled north of Belvidere Hot Springs and four to the south (between Belvidere Hot Springs and Cabarton Hot Springs), and none obtained warm water, much less geothermal water. The two northerly wells were located approximately one mile from Belvidere Hot Springs. One of the southerly wells was located three quarters of a mile to one mile from Belvidere Hot Springs, while the others were located within one mile of Cabarton Hot Springs (which is itself 2 1/2 to 3 miles from Belvidere Hot Springs). Although the wells drilled by Mr. Chapman were not drilled in as close a proximity to a hot springs or to the same depth as the wells proposed by Dr. MacGregor, Mr. Chapman's experience highlights the possibility that Dr. MacGregor will not locate geothermal water when drilling her wells. Drilling and testing is the only way to answer the question whether there is geothermal ground water near Belvidere Hot

Springs in sufficient quantity and quality to support Dr. MacGregor's proposed use, and is a method used by all of the experts who testified at the hearing.

44. Even if Dr. MacGregor does locate geothermal water, pumping the geothermal ground water may reduce the quantity of geothermal water flowing to Belvidere Hot Springs. Mr. Chapman testified regarding instances in Idaho of the drilling and pumping of geothermal wells adversely impacting nearby geothermal springs. In all of these instances, however, when pumping ceased the flow to the affected springs was restored. It is notable that in at least one instance, the impact described by Mr. Chapman occurred when a test well was drilled and pumped under his direction. In that case, when the pumping ceased, the impacted spring recovered within 24 hours. Although Mr. Scanlan testified that any such impact on the Pancheris' water rights by ground water pumping could be mitigated simply by ceasing the pumping, if this impact is continuous the hot water spa could not be developed using geothermal ground water. Drilling and pumping a geothermal test well will provide the best information regarding the quantity of water potentially available to Dr. MacGregor, without significant risk to the Pancheris' hot water supply.

C. <u>Cold Water Aquifer</u>.

45. Although productive cold water wells have been developed in the general area of Dr. MacGregor's proposed point of diversion under Application for Permit Nos. 65-13913 and 65-13986, no wells were shown to have produced quantities anywhere near the 2.0 cfs requested in those two applications. Although Mr. Scanlan testified that he believed the aquifer would be sufficient, no basis for this opinion, other than the general characteristics of the area, was provided. No theoretical analysis was presented to show the impact of the withdrawal of this

quantity of ground water on other ground water rights in the area and no test well with pump testing, or any other testing, was requested, approved or carried out.

VI. Local Public Interest.

46. Dr. MacGregor's proposed water use under the Applications is not well defined. The configuration of the diversion systems, distributions systems and actual water use under each of the individual applications appears to be dependent on the amount of water diverted under the other applications.[4] This amount, and the subsequent design and development decisions, can only be made after a well or wells have been drilled and pump-tested to determine the properties of the aquifers underlying Dr. MacGregor's property. Drilling and testing is the best method for determining the water available to the Applications, and a method accepted by both the Applicant's and the Protestants' experts. There are no unusual or exceptional facts about the hydrologic characteristics of the area around Belvidere Hot Springs and the underlying aquifers that changes the applicability of drilling and testing exploration to this aquifer.

47. When Dr. MacGregor applied to IDWR to drill the test well Mr. Chapman raised the following concerns:

> Additionally, drilling in and of itself is an invasive, violent procedure. If drilling is allowed to penetrate the "plumbing system" of the springs in the granitic rocks it could collapse some of the fractures that are providing water to the surface, provide a cross connection to other fractures that are presently dry and divert the water in the subsurface away from the surface discharge, or modify the entire vent system due to the drill activity. Additionally, if caving zones are found in the granitic rocks and the driller need to provide drilling mud to hold the hole open or put casing in the hole, fractures presently providing water to the surface discharge could be cut off or filled by drilling mud permanently.

[4] For instance, there may be no need to drill a well under Application for Permit No. 65-13986, if sufficient "spent" low temperature geothermal water is available from the wells drilled under Application for Permit No. 65-13913. Similarly, the amount of water removed from Belvidere Hot Springs pursuant to Application for Permit No. 65-13912 may depend upon the quantity and temperature of the water developed pursuant to Application for Permit No. 65-13913.

Ex. 24. Although Mr. Chapman's concerns are a possibility, they are of very low probability. During the hearing Mr. Chapman, with his years of experience, cited no circumstances where the actions he described in Ex. 24 had ever occurred. Neither of Dr. MacGregor's experts, Ms. Haizlip and Mr. Scanlan, in their years of experience working with geothermal aquifers, knew of consequences similar to those described by Mr. Chapman. With no unique circumstances existing at Belvidere Hot Springs to heighten the risk, if IDWR were to determine that drilling and testing could not occur because of the concerns voiced by Dr. Chapman, virtually no geothermal exploration near hot spring vents where other water uses are located could occur in Idaho. This result would be contrary to both the work experience and advice of the experts in this matter, and the recommendations of many other experts. *See* Ex. 33, Ex. 40 (Attachment B at 42), Ex. 105 at 29-30, Ex. 109 at 8. Such a result would also be contrary to the Pancheris' own experience. Darwin Pancheri testified to having drilled a well within 135 – 140 feet of the hot springs to a depth of 99 feet (water right no. 65-13458). That well was intended to produce hot water for heating. *See* Ex. 13 (Idaho Department of Water Resources Well Inspection Form at 2). The Pancheris themselves drilled in closer proximity to Belvidere Hot Springs than Dr. MacGregor intends to drill, in the hopes of finding hot water and with no apparent concern for damaging the geothermal aquifer structure.

CONCLUSIONS OF LAW

Based upon the Findings of Fact, IDWR makes the following Conclusions of Law:

I. Assessment of the Proposed Uses.

1. When considering a water right application Idaho Code § 42-203A(5) provides, in part, that:

> The director of the department of water resources shall find and determine from the evidence presented to what use or uses the water sought to be appropriated can be and are intended to be applied.

The Idaho Supreme Court has expanded on this, stating:

> In all cases the plans should be sufficient to generally apprise the public of the efficacy of the proposed use in the planned facility, and of its potential impact.

Shokal v. Dunn, 109 Idaho 330, 340 (1985).

2. In the present case Dr. MacGregor has not submitted plans sufficient to generally apprise the public of the efficacy of the proposed use and of its potential impact. This failure, in large part, results from Dr. MacGregor's inability to drill and test the aquifer near Belvidere Hot Springs. Dr. MacGregor cannot be expected to design a project, which is completely dependent upon the amount and quality of the geothermal water available to her, when she is not allowed to determine that amount and quality. IDWR did not allow Dr. MacGregor to make this determination, largely as a result of concerns raised by the Pancheris and rejected in Finding of Fact No. 47. By not allowing Dr. MacGregor to drill and test a geothermal test well, IDWR effectively made it impossible for Dr. MacGregor to satisfy her burden of proof in this matter.

3. This matter should be remanded to Dr. MacGregor to conduct further tests and studies to determine the availability of both geothermal and cold water at her proposed points of diversion pursuant to the Director's authority under Idaho Code § 42-1805. It is in the public interest to allow this testing to go forward without granting the Applications pursuant to IDAPA 37.03.09.045.01.d.

4. Water supplies are variable. A party applying for a permit is not required to show that the proposed use will never interfere with an existing water use. Occasional impacts on senior water rights are resolved by the application of the priority system. Constant unavoidable

impacts, however, will prevent the issuance of a permit and/or subsequent license. IDWR determines whether there is a reasonable probability that the applicant will find sufficient water to complete the proposed water use without continuously interfering with senior water rights.

5. Upon completion of that testing an additional hearing should be held pursuant to IDAPA 37.01.01.720.02.c. in which Dr. MacGregor would submit plans detailing: 1) the precise quantity of water she intends to appropriate, the basis for that quantity, and the source; 2) the quantities to be withdrawn at each proposed point of diversion and the plans for construction of each point of diversion; 3) Dr. MacGregor's use of any overlapping or existing water rights in conjunction with the Applications; 4) actual and theoretical results from pump testing to demonstrate the impact, if any, on existing rights; and 5) Dr. MacGregor's plans for disposing of waste water from her proposed project and the impact of such disposal on the directly affected public water resource in the area.

RECOMMENDED ORDER

Based upon these Findings of Fact and Conclusions of Law the Applications are REMANDED to the Applicant, Dr. Carol MacGregor, for further investigation as described in Conclusion of Law Nos. 1-5. A further hearing shall be held in this matter to consider the results of such investigation.

PROCEDURAL RIGHTS

This is the Recommended Decision and Order of the Hearing Officer. It will not become final without action of the Director of the Idaho Department of Water Resources. Any party may file a petition for reconsideration of this recommended order with the Hearing Officer within fourteen (14) days of the service date of this order. The Hearing Officer will dispose of any

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.

Within fourteen (14) days after (a) the service date of this recommended order, (b) the service date of a denial of a petition for reconsideration from this recommended order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this recommended order, any party may in writing support or take exceptions to any part of this recommended order and file briefs in support of the party's position with the Director or Director's designee on any issue in the proceeding. If no party files exceptions to the recommended order with the Director or Director's designee, the Director or Director's designee will issue a final order within fifty-six (56) days after:

i. The last day a timely petition for reconsideration could have been filed with the hearing officer;

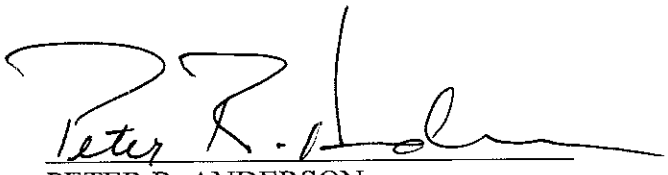
ii. The service date of a denial of a petition for reconsideration by the hearing officer; or

iii. The failure within twenty-one (21) days to grant or deny a petition for reconsideration by the hearing officer.

Written briefs in support of or taking exceptions to this recommended order shall be filed with the Director or Director's designee. Opposing parties shall have fourteen (14) days to respond. The Director or Director's designee may schedule oral argument in the matter before issuing a final order. The Director or Director's designee will issue a final order within fifty-six (56) days of receipt of the written briefs or oral argument, whichever is later, unless waived by the parties or for good cause shown. The agency may remand the matter for further evidentiary

hearings if further factual development of the record is necessary before issuing a final order.

DATED this 19th day of August 2005.



PETER R. ANDERSON
Hearing Officer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 22nd day of August 2005, I mailed a true and correct copy of the foregoing **RECOMMENDED DECISION AND ORDER** on the following persons listed below by U.S. mail, postage prepaid and addressed as follows:

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