

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR)
PERMIT NO. 63-32499 IN THE NAME OF)
MAYFIELD TOWNSITE LLC)
_____)

**PRELIMINARY ORDER
GRANTING MOTION TO VACATE**

This matter having come before the Department of Water Resources (Department) as a motion to vacate scheduled hearing.

FINDINGS OF FACT

1. On July 7, 2006, Mayfield Townsite LLC filed with the Department Application for Permit No. 63-32499 to appropriate 10. cfs of water for municipal beneficial use. Public notice of the application yielded protests from Daniel S Vangrouw and G3 LLC. Intervention was granted to Pacific West Land LLC and Ark Properties LLC, John McCallum.

2. A formal hearing was scheduled for 9:00AM, Thursday November 5th and Friday November 6th, 2009 at the Idaho Department of Water Resources State Office, Boise Idaho. Notices of the hearing were sent to parties on May 13, 2009.

3. On July 17, 2009, the Department received a *Notice of Substitution of Counsel*. The law firm of Moore Smith Buxton & Turcke Chartered will now be the counsel for applicant Mayfield Townsite, LLC.

4. On July 17, 2009, the Department received a *Motion to Vacate* the hearing date from Attorney Bruce Smith of Moore Smith Buxton & Turcke Chartered new counsel for Mayfield Townsite LLC. The motion requested addition time for review and hearing preparation by substituted (new) counsel.

CONCLUSIONS OF LAW

1. The Department's Water Appropriation Rule 40 (IDAPA 37.03.08.040.01.d) provides in part as follows:

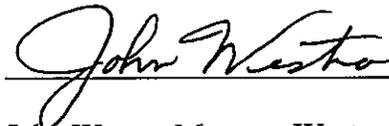
An applicant may request in writing that commencement of processing of his or her application be delayed for a period not to exceed one (1) year or that processing be interrupted for a period not to exceed six (6) months. The director at his discretion may approve the request unless he determines that others will be injured by the delay or that the applicant seeks the delay for the purpose of speculation, or that the public interest of the people of Idaho will not be served by the delay.....

1. The motion was filed in a timely manner. Vacating the hearing date will not injure other parties, and the applicant is not seeking a delay for speculation purposes. The *Motion to Vacate* the hearing date should be granted.

ORDER

IT IS HEREBY ORDERED that the Motion to Vacate the hearing date of November 5 & 6 2009 for contested Application for Permit No. 63-32499 is **GRANTED**. Upon the appointment of a hearing officer, parties and the hearing officer will schedule a new hearing date.

Dated this 3rd day of August, 2009



John Westra, Manager Western Region.

CERTIFICATE OF SERVICE

I hereby certify that on August 3, 2009 I mailed a true and correct copy, postage prepaid, of the foregoing **PRELIMINARY ORDER TO VACATE** to the person (s) listed below:

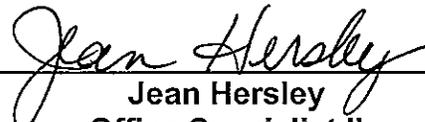
Daniel S VanGrouw
Attn: Dana Hofstetter, Atty
Hofstetter Law Office
608 W Franklin St
Boise ID 83702

SPF Water Engineering LLC
Attn: Scott King
300 E Mallard Dr Ste 350
Boise ID 83706

G3 LLC
Attn: Greg Haynes
2136 E Lewandowski Ln
Boise ID 83716

Pacific West Land LLC
Attn: Jeffrey C Fereday & Michael P Lawrence
Given Pursley LLP
PO Box 2720
Boise ID 83701

Ark Properties, John McCallum
Mayfield Townsite LLC
Attn: Bruce Smith
Moore Smith Buxton & Turcke Chtd
950 W Bannock Ste 520
Boise ID 83702



Jean Hersley
Office Specialist II

**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.