State of Idaho
DEPARTMENT OF WATER RESOURCES
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C. L. "BUTCH" OTTER
Governor
DAVID R. TUTHILL, JR.
Director

DECEMBER 11, 2008

TO: WATER DISTRICT NO. 170 WATER RIGHT HOLDER

RE: FINAL ORDER CREATING SUB-DISTRICT NO. 71

Dear Water Right Holder:

Enclosed please find a copy of the Final Order Creating Sub-district No. 71. This order creates a sub-district within Water District No. 170 for the purpose of administering water rights in Administrative Basin No. 71, the Stanley area. Also enclosed is an informational sheet that explains options for responding to final orders. Please note that any party subject to the order may file a petition for reconsideration within fourteen (14) days of the service date of the order, which is the date of this letter. The Department will act upon petitions within twenty-one (21) days of their receipt.

A sub-district is an organizational structure within Water District No. 170 that provides for users within that sub-district to select and fund a local watermaster to administer water rights in the sub-district. Although the sub-district remains a part of Water District No. 170, the users within the sub-district control how the water district operates in their area. This is beneficial to the users as it provides a measure of local control, and it is beneficial to the water district as a whole in that it provides for consistent and effective administration of water rights through local expertise, while preserving the benefits of the larger water district.

Under this order, water rights administered by Water District No. 170 with points of diversion within Administrative Basin No. 71 remain under the authority of the Water District No. 170 Watermaster, but a local watermaster selected by the users will perform the day-to-day activities. Water users in Basin 71 will meet annually to set a budget, select a local watermaster, and adopt any resolutions necessary to govern operation of the sub-district. This is similar to the existing situation with Challis and Garden Creeks, and Morgan Creek; these areas were formerly water districts, but now operate as sub-districts within Water District No. 170.

Details of the sub-district operation, such as the compensation and specific duties of the local watermaster, and the date of the first annual meeting, will be formulated during one or more meetings of a steering committee in early 2009 and will be subject to approval by the water users during the first annual meeting. As many of the water right holders do not return to Stanley until late spring, and in order to provide time for the steering committee to complete its work, the first annual meeting is anticipated to be held in late March or April, 2009. Notice of the meeting place, date, and time will be sent to affected water right holders at least 21 days prior to the meeting.

Participation in the steering committee is open to all holders of water rights administered by the sub-district. If you are interested in participating in the steering committee, please contact Nick Miller of IDWR prior to January 1, 2009. Mr. Miller can be reached by phone at (208)287-4956, or by email at Nick.Miller@IDWR.Idaho.gov.

Please contact this office, the IDWR regional office in Twin Falls, or the Salmon Field Office in Salmon if you have any questions concerning this matter.

Sincerely,

David R. Tuthill, Jr.
Director, Idaho Department of Water Resources

Enclosures

Cc: Bob Foster, Salmon Field Office
IDWR Southern Region

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF THE PROPOSED CREATION OF AN ADMINISTRATIVE BASIN 71 SUB-DISTRICT WITHIN WATER DISTRICT NO. 170	))))	**FINAL ORDER CREATING SUB-DISTRICT NO. 71**

On April 6, 2006, the Director of the Idaho Department of Water Resources ("Department" or "Director") issued *Amended Final Order Creating Water District No. 170* (a copy of the order is posted on the Department's website: http://www.idwr.idaho.gov/water/districts/UpperSalmon.htm).

That order established Water District No. 170 to include all surface water and ground water rights in the Idaho Department of Water Resources Administrative Basins 71 and 72, other than de minimis domestic and stockwater rights as defined under Idaho Code § 42-111 and 42-1401A(11). That order assimilated existing water districts into Water District No. 170, but provided that they would continue to function largely independently as sub-districts of Water District No. 170. Furthermore, the order contemplated additional sub-districts would be created within Water District No. 170 as needed.

On August 22, 2008, Department staff held a public meeting to discuss whether users in Basin 71 would benefit from organizing as a sub-district within Water District No. 170. The majority of those attending the meeting were water right holders in Basin 71. Those users expressed the opinion that the Director should move forward with formally creating the sub-district in Basin 71.

On November 3, 2008, the Director conducted a public hearing in Stanley, ID regarding creation of a sub-district in Basin 71. This Final Order creates a Basin 71 sub-district within Water District No. 170.

FINDINGS OF FACT

1. On April 6, 2006, the Director of the Idaho Department of Water Resources issued *Amended Final Order Creating Water District No. 170.*

2. The Order created Water District No. 170 to include all surface water and ground water rights in the Idaho Department of Water Resources Administrative Basins 71 and 72, other than de minimis domestic and stockwater rights as defined under Idaho Code § 42-111 and 42-1401A(11).

3. The Order states that the watermaster for Water District No. 170 shall perform the following duties in accordance with guidelines, direction, and supervision provided by the Director: (1) Measure, record, and report the diversions under water rights; (2) Enforce the water rights in priority; (3) Curtail unauthorized or excessive diversions as necessary (i.e., any

diversion without a water right or in excess of the elements or conditions of a water right); and (4) Consult with and coordinate the work activities of deputy watermasters, including the elected and appointed watermasters for sub-districts within Water District No. 170.

4. Idaho Code § 42-605(3) provides that watermasters may be authorized to employ assistants as deemed necessary by the water users and that such assistants, upon appointment by the Director, shall be responsible for distribution of water within the water district.

5. Conclusion of Law no. 31(d) of the order creating Water District No. 170 authorizes the watermaster to appoint assistants or deputy watermasters as deemed necessary by the water users and that these assistants may be watermasters elected by sub-districts.

6. Water District No. 170 encompasses a large (>2,400 square miles) geographic area and administers water rights from more than 100 different sources of water. The variety in climate, economics, and terrain within Water District No. 170 results in varying regional needs and local interests within Water District No. 170 that are best served through local control.

7. The geography, climate, water use, and irrigation season are largely consistent within Basin 71 and are distinct from other areas of Water District No. 170.

8. Many of the water users within Basin 71 reside elsewhere much of the year. This places a burden on these users to attend the Water District No. 170 Annual Meetings that are typically held in January. A sub-district in Basin 71 could hold its annual meeting later in the spring, facilitating participation by these users.

9. On October 10, 2008, the Director signed a notice proposing to establish a sub-water district within Water District No. 170 to include water rights within IDWR Water Resources Administrative Basin 71. The Director sent the notice of the proposed action by regular U. S. Mail to each holder of a water right within the boundaries of Water District No. 170. The notice described the sub-water district proposed to be established, the reasons therefore, and the time and place for a hearing to be held on November 3, 2008, concerning establishment of the proposed water district. The notice also provided a time period within which written comments on the proposed action would be accepted.

10. In addition, the Director caused notice of the proposed action establishing the water district to be published once a week for two (2) weeks in the Idaho Mountain Express, a newspaper having general circulation within the area of the proposed water district. The notice was published in that newspaper on October 15 and 22, 2008.

11. The notice mailed to water right holders proposed that the sub-district would include all water rights administered by Water District No. 170 with points of diversion located within the boundaries of Basin 71. This includes water rights from all surface and groundwater sources within Basin 71, and for all beneficial uses, except water rights used solely for domestic and/or stock water purposes as defined by Idaho Code § 42-111 and 42-1401A(11).

12. The Director's notice also described that the proposed sub-district will remain a part of Water District No. 170, but will operate similar to an independent water district and will fund one or more seasonal or full-time deputy watermasters who will serve as deputy watermasters under the watermaster for Water District No. 170.

13. The Director's notice further described that the proposed sub-district would adopt its own budget for purposes of measuring, recording, reporting, and regulating diversions within the sub-district. The notice described that the sub-district would meet annually to adopt a budget and conduct other business necessary to operate the sub-district, such as adopting resolutions and selecting a deputy watermaster.

14. The Director's notice described also that a sub-district that adequately measures, records, reports, and controls diversions should not be subject to future assessments to fund the Water District No. 170 watermaster for purposes of measuring, recording, reporting, and regulating surface water diversions within that sub-district. However, the sub-district may be subject to future assessments for costs associated with oversight of the sub-district. Oversight costs may include, but may not be limited to, technical assistance, enforcement assistance, training of deputy watermasters, collection and quality control review of diversion data, periodic field checks of diversions, periodic or miscellaneous field calibration measurements of measuring devices, review of annual sub-district and budget reports, coordinating distribution of water to the Wild and Scenic River minimum instream flow water rights for the Salmon River as necessary, and general coordination with federal, state, and local agencies regarding water district operations, water use, and water right administration issues.

15. On November 3, 2008, at approximately 1:00 p.m. at the Stanley Community Center in Stanley, Idaho, the Director conducted a hearing concerning the proposed creation of the sub-district. Approximately 15 people attended the hearing.

16. Prior to commencing the hearing, the Director described the hearing procedure and asked for introductions from the meeting attendees.

17. The Director initiated the hearing with an introduction and a brief description of the purpose of the hearing. This was followed by an approximately 10-minute presentation by Nick Miller, an employee of IDWR and the Watermaster for Water District No. 170. Mr. Miller's presentation provided background information on Water District No. 170 and a general description of the proposed subdistrict.

18. Persons attending the hearing were provided opportunity to make oral statements for the record. In addition, the Director held the record open through November 21, 2008, for the submittal of written comments.

19. Four (4) individuals made oral statements for the record at the hearing. Two (2) people who did not testify at the hearing on November 3, 2008, submitted a joint written statement to the Department on or before the deadline of November 21, 2008.

20. The oral testimony and written comments submitted to the Department generally supported creation of the proposed sub-district. Much of the testimony supported the concept that local control, especially with regard to expenses, is desirable.

CONCLUSIONS OF LAW

1. Based upon the order creating Water District No. 170, the statutory authorities provided by Idaho law, and the record in this proceeding, the Director should create a sub-water district to administer those ground water and surface water rights administered by Water District No. 170 with points of diversion within Basin 71, as shown on the map appended hereto as

Attachment A. Creation of the sub-district will provide Basin 71 users with local control and will facilitate consistent and efficient administration within Water District No. 170.

2. A Basin 71 sub-district within Water District No. 170 that is under the authority of the Water District No. 170, but sets and collects its own budget and selects a local watermaster will best serve the needs of the users in that basin, and will allow the Water District No. 170 to provide consistent and effective administration of water rights throughout Water District No. 170.

3. The Director concludes that the sub-district should be formed on a permanent basis and be used to administer the affected water rights in accordance with the prior appropriation doctrine as established by Idaho law.

4. The Director also concludes that the sub-district created by this order is an organizational feature within Water District No. 170 to support a local watermaster that will, on behalf of, and under the supervision of the Water District No. 170 Watermaster, perform the following duties within Basin 71:

a. Administer and enforce water rights in priority;
b. Measure and report the diversions under water rights;
c. Curtail illegal diversions (i.e., any diversion without a water right or in excess of the elements or conditions of a water right);
d. Curtail out-of-priority diversions determined by the Director to be causing injury to senior priority water rights if not covered by a stipulated agreement or a mitigation plan approved by the Director.

5. The Director further concludes the following with respect to the sub-district created by this order:

a. The water users will hold an annual meeting each spring prior to the start of the irrigation season on May 1 to adopt a budget, set the local watermaster's compensation, select a local watermaster, and adopt resolutions as necessary to govern operation of the sub-district.
b. The local watermaster, with approval from the Director, will be appointed as a deputy watermaster of Water District No. 170. The deputy watermaster shall work pursuant to instructions of the Water District No. 170 Watermaster.
c. Water rights within the sub-district shall not be subject to assessments from Water District No. 170 unless the Director determines that the sub-district is not providing for adequate distribution of water and the watermaster of Water District No. 170 is required to directly expend time or resources to deliver, measure, report, and/or regulate water in the sub-district.
d. Operational features of the sub-district will be formulated by a steering committee during meetings to be held in early 2009 and will be subject to approval by the users at the first annual meeting. The steering committee should be composed of water right holders within Basin 71 and should consult with the Water District No. 170 Watermaster and IDWR representatives as operational features of the sub-district are developed.

ORDER

IT IS HEREBY ORDERED that:

1. The Stanley Area Sub-district, designated as Sub-district No. 71, is created to include all water rights administered by Water District No. 170 with points of diversion located within the area depicted on the map appended hereto as Attachment A and incorporated herein by reference. This includes water rights from all surface and groundwater sources within Basin 71 for all beneficial uses, except water rights used solely for domestic and/or stock water purposes as defined by Idaho Code § 42-111 and 42-1401A(11).

2. The sub-district shall meet annually at a time and place to be determined and noticed by the Director for purposes of: (1) selecting a sub-district watermaster; (2) selecting an advisory committee, if desired; and (3) setting a budget and corresponding assessments to be collected for operating the sub-district. For 2009, water right holders within the sub-district shall meet in March or April, 2009.

3. If the sub-district becomes inactive, water rights in the sub-district shall be administered directly by the watermaster of Water District No. 170 and the water users shall be responsible for their pro-rata share of the Water District No. 170 budget. While the sub-district is active, water rights within the sub-district shall not be subject to assessments from Water District No. 170 unless the Director determines that the sub-district is not providing for adequate distribution of water and the watermaster of Water District No. 170 is required to directly expend time or resources to deliver, measure, report, and/or regulate water in the sub-district.

4. The Director also concludes that the sub-district created by this order is an organizational feature within Water District No. 170 to support a deputy watermaster that will, on behalf of, and under the supervision of the Water District No. 170 Watermaster, perform the following duties within Basin 71:

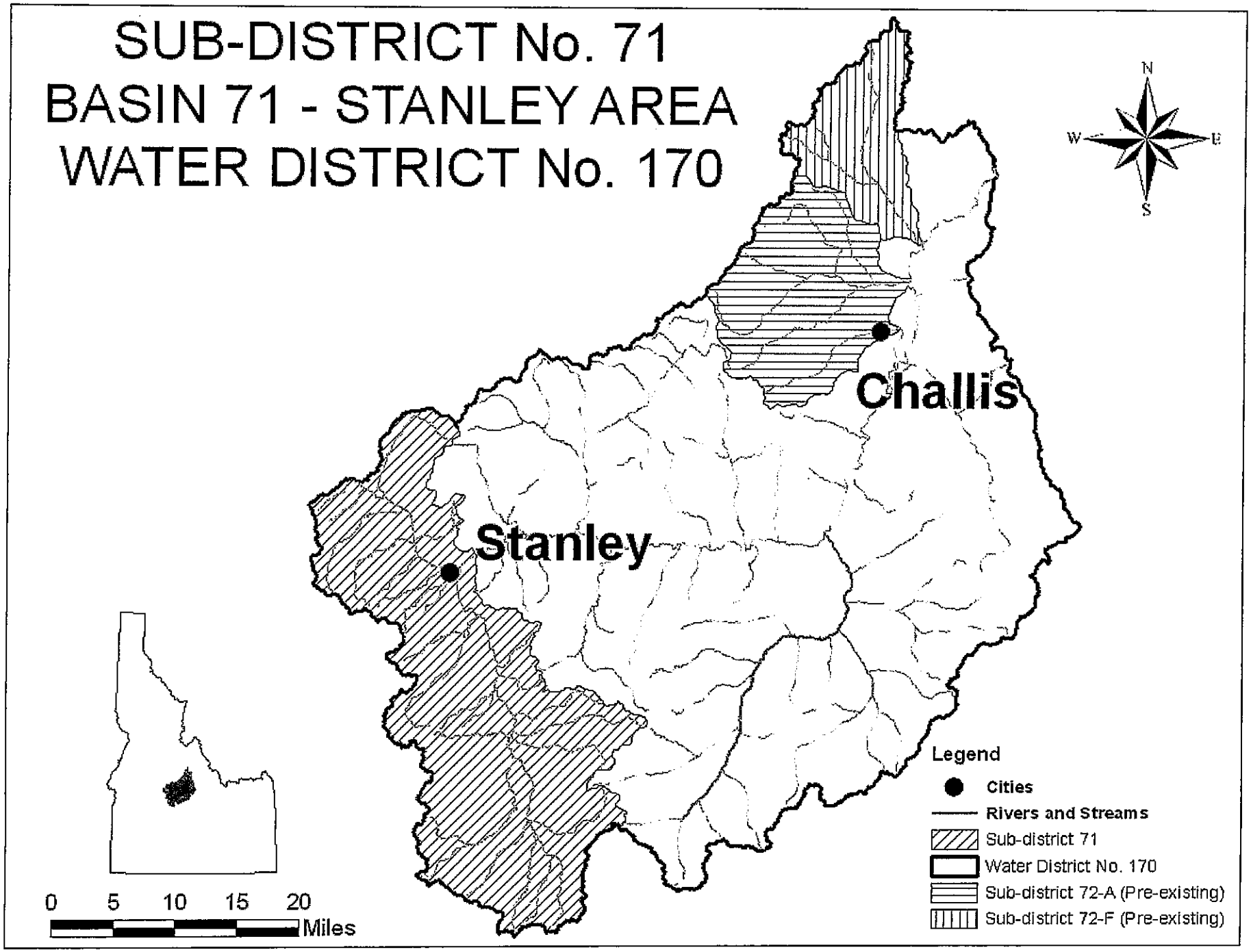
a. Administer and enforce water rights in priority;
b. Measure and report the diversions under water rights;
c. Curtail illegal diversions (i.e., any diversion without a water right or in excess of the elements or conditions of a water right);
d. Curtail out-of-priority diversions determined by the Director to be causing injury to senior priority water rights if not covered by a stipulated agreement or a mitigation plan approved by the Director.

DATED this 11th day of December, 2008.

David R Tuthill Jr

DAVID R. TUTHILL, JR
DIRECTOR

ATTACHMENT A



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 12 day of December, 2008, the above and foregoing document was served on each individual or entity on the service list for this matter on file at the Idaho Department of Water Resources, 322 East Front Street, Boise, Idaho, and posted on the Department's website: www.idwr.idaho.gov. Each individual or entity on the service list was served by placing a copy of the above and foregoing document in the United States mail, postage prepaid and properly addressed.

Christine Roberts

Christine Roberts
Office Records Specialist
Idaho Department of Water Resources

EXPLANATORY INFORMATION
TO ACCOMPANY A
FINAL ORDER

(Required by Rule of Procedure 740.02)

The accompanying order is a "**Final Order**" issued by the department pursuant to section 67-5246 or 67-5247, Idaho Code.

Section 67-5246 provides as follows:

(1) If the presiding officer is the agency head, the presiding officer shall issue a final order.

(2) If the presiding officer issued a recommended order, the agency head shall issue a final order following review of that recommended order.

(3) If the presiding officer issued a preliminary order, that order becomes a final order unless it is reviewed as required in section 67-5245, Idaho Code. If the preliminary order is reviewed, the agency head shall issue a final order.

(4) Unless otherwise provided by statute or rule, any party may file a petition for reconsideration of any order issued by the agency head within fourteen (14) days of the issuance of that order. The agency head shall issue a written order disposing of the petition. The petition is deemed denied if the agency head does not dispose of it within twenty-one (21) days after the filing of the petition.

(5) 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.

(6) A party may not be required to comply with a final order unless the party has been served with or has actual knowledge of the order. If the order is mailed to the last known address of a party, the service is deemed to be sufficient.

(7) A non-party shall not be required to comply with a final order unless the agency has made the order available for public inspection or the nonparty has actual knowledge of the order.

(8) The provisions of this section do not preclude an agency from taking immediate action to protect the public interest in accordance with the provisions of section 67-5247, Idaho Code.

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a final order within fourteen (14) days of the service date of this order as shown on the certificate of service. **Note: the petition must be received by the Department within this fourteen (14) day period.** 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(4) Idaho Code.

APPEAL OF FINAL ORDER TO DISTRICT COURT

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) 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.