



State of Idaho

**DEPARTMENT OF WATER RESOURCES**

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April 24, 2009

C. L. "BUTCH" OTTER  
Governor

DAVID R. TUTHILL, JR.  
Director

JOHN B KUGLER  
2913 GALLEON CT NE  
TACOMA WA 98422

Re: In the Matter of Permit no. 35-8359

Dear Interested Parties:

The Department of Water Resources has issued the enclosed **Order Denying Petition for Reconsideration** pursuant to section 67-5243, Idaho Code, regarding the above-referenced matter. **This order can and will become a final order without further action of the Department unless a party petitions for reconsideration or files an exception and/or brief as described in the enclosed information sheet.**

Sincerely,

A handwritten signature in black ink that reads "Deborah J. Gibson". The signature is written in a cursive, flowing style.

Deborah J. Gibson  
Administrative Assistant I  
Water Allocation Bureau

Enclosures

SCANNED  
APR 30 2009

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## **EXPLANATORY INFORMATION**

The accompanying order is an **Order Denying Petition for Reconsideration** of the "preliminary order" issued previously in this proceeding by the department pursuant to section 67-5243, Idaho Code.

### **EXCEPTIONS AND BRIEFS**

Within fourteen (14) days after the service date of this denial of petition for reconsideration of the preliminary order, any party may in writing file exceptions to any part of the preliminary order and file a brief 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.

If any party appeals or takes exceptions to the preliminary order, opposing parties shall have fourteen (14) days to respond to any party's appeal. Written briefs in support of or taking exceptions to the preliminary order shall be filed with the Director. The Director retains the right to review the preliminary order on his own motion.

### **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 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.