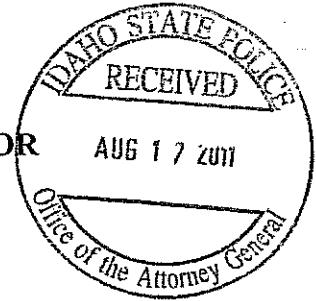


A CONTESTED MATTER BEFORE THE DIRECTOR  
OF THE IDAHO STATE POLICE



IN THE MATTER OF THE  
APPLICATION OF  
NEVILLE AND NEVILLE, LTD FOR  
A LIQUOR LICENSE

Case No. 10ABC001

**FINDINGS OF FACT, CONCLUSIONS  
OF LAW AND PRELIMINARY  
ORDER**

INTRODUCTION

This is a contested case proceeding before the Director of the Idaho State Police pursuant to Idaho Code Title 23, the rules governing Alcohol Beverage Control adopted by the Idaho State Police ("ABC") found at IDAPA 11.05.01 et seq. and the Idaho Administrative Act, Title 67 Chapter 52, Idaho Code. The matter came on for hearing on June 2, 2011 before the undersigned hearing officer at the offices of the Idaho State Police. Neville and Neville, Ltd, an Idaho Corporation, ("Applicant" or "Neville") was represented by T. Heath Clark of Spink-Butler of Boise, Idaho. ABC was represented by Jenny Grunke, Deputy Attorney General. During the course of the hearing, testimony was received by ABC witnesses Jaimy Adams and Lieutenant Robert Clements. Witnesses testifying on behalf of Applicant were Andrea Maricich and Kathleen Neville. Documentary evidence identified as Exhibits 1 thru 7 were admitted. Following the hearing, the parties filed post-hearing argument and closing briefs. The matter is now fully submitted and ready for entry of Findings of Fact, Conclusions of Law and Preliminary Order. Based upon the record in this contested case proceeding, the undersigned Hearing Officer respectfully enters the following Findings of Fact, Conclusions of Law and Preliminary Order.

## ISSUE

Whether ABC should approve Applicant, Neville and Neville, Ltd., ("Neville") for a newly issued incorporated city alcohol beverage license to sell liquor by the drink, beer and wine.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Neville submitted an application for an incorporated city liquor license and was placed on the Boise City priority list on December 30, 1993.
2. Neville is a corporation that, as of February 2, 2011, consists of Kathleen Neville as president and only stockholder.
3. In August of 2009, a Notice of availability of a liquor license was sent by certified mail, to Neville<sup>1</sup>, 501 Main Street, Boise, Idaho, the address on file with Alcohol Beverage Control.
4. Also in August of 2009, a return receipt for certified mail was received by the Alcohol Beverage Control. The new occupants at 501 Main Street evidently signed the receipt to receive official mail not addressed to them. The offer letter was not returned to ABC as undeliverable, therefore, another attempt at locating Neville was not made,
5. In September of 2009 Neville was removed from the priority list for failure to complete the application process within the prescribed time. ABC did so because the certified letter had been signed for, but no application from Neville was received.
6. On September 2, 2009, Alcohol Beverage Control returned Neville's fee of \$375.00.
7. At the time Applicant's name came up on the priority list for issuance of a new liquor license, the corporation had been administratively dissolved. The

Administrative Dissolution occurred June 12, 2006. The corporation was reinstated by the filing of the appropriate Reinstatement Annual Report Form, signed by Kathleen Neville on February 1, 2010. (See Exhibit 2 p.145) At the time the applications were filed with ABC, Neville and Neville, Ltd. was a corporation in good standing with the Idaho Secretary of State's office.

8. According to the testimony, Kathleen Neville first learned that her corporation's name had come up on the priority liquor license list via an unsolicited letter "from some attorney" seeking to represent her in dealing with ABC. She declined the offer, but Andrea Maricich did make enquiries with ABC as to the status of the license, and Kathleen Neville pursued the matter with ABC. Counsel was retained, and after a period of time ABC restored Applicant's place on the priority list through informal Agency action.

9. On January 3, 2011, ABC received a timely Liquor License Application from Neville, dba, Salt Tears Coffee House & Noshery. Included in that application was the following:

- a) Liquor License Application.
- b) Additional Information — Question 5.
- c) Additional Information — Question 6.
- d) Independent Contractor Agreement, including:
  - 1) Exhibit A, a Sublease Agreement (By and between Green Chutes Cooperative, LLC and Neville and Neville, Ltd. dated December 21, 2010).
    - i) Exhibit A attached to Sublease Agreement a plan or description showing the premises and shopping center.
    - ii) Exhibit B attached to Sublease Agreement: Shopping Center Lease (by and between Collister Shopping Center, LLC and Green Chutes Cooperative, LLC, dated October 1, 2010).

- e) Collister Shopping Center Lease including:
  - 1) Exhibit A: Plan or description showing the premises and shopping center.
  - 2) Exhibit B: Shopping Center Rules and Regulations.
  - 3) Green Chutes Collister Shopping Center Bidding.
  - 4) Exhibit D: Sample Form of Tenant Estoppel Certificate.
  - 5) Exhibit F: Landlord's Notice of Lease Term Dates.
  - 6) Exhibit G: Guaranty of Lease.
  - 7) Exhibit H: Other Terms & Conditions.
- f) Additional Information — Question 8 (Premises Diagram/Floor Plan).
- g) Equipment Schedule.
- h) Additional information — Copies of Menu.
- i) Additional information — Copies of Articles of Incorporation and Bylaws (Neville and Neville, Ltd.)

The application was for license to sell retail liquor by the glass, beer and wine.

10. On January 5, 2011, ABC returned the application to Neville on the basis that:

At this time, you have not met the requirements of submitting a completed application as detailed in the November 10, 2010 letter from Nichole Harvey. The deadline provided in said letter, February 14, 2011, is still the deadline to submit a completed application where you can show that you are be [sic] bona fide business owner engaged in the sale or dispensing of liquor by the drink, beer and/or wine by the bottle and/or glass.

11. After the initial denial, Applicant's attorneys met with Lt. Clements and Ms. Grunke to discuss the denial and a second Application. Lt. Clements testified that the discussion focused upon ABC's denial on grounds that the application did not affirmatively show that the Applicant was the bona fide owner of the business. Ms. Neville testified that ABC provided to her counsel copies of

two prior administrative decisions to give guidance on what would be required. Ms. Grunke in her papers filed in this proceeding has represented that the two cases provided were Agency decisions in *Idaho State Police, Alcohol Beverage Control v. Zen Bento* and *Last Chance, Inc., vs Idaho State Police, Alcohol Beverage Control*.

12. On February 4, 2011, ABC received the second application from Neville that included:

- a) Liquor License Application.
- b) Additional Information — Question 5.
- c) Additional Information — Question 6.
- d) Commercial Lease.
- e) Revolving Loan Security Agreement.
- f) Employment Agreement between Neville and Andrea Maricich.
- g) Sublease Agreement (by and between Green Chutes Cooperative, LLC and Neville and Neville, Ltd. dated December 21, 2010).
  - 1) Exhibit A attached to Sublease Agreement a plan or description showing the premises and shopping center.
  - 2) Exhibit B attached to Sublease Agreement: Shopping Center Lease (by and between Collister Shopping Center, LLC and Green Chutes Cooperative, LLC, dated October 1, 2010).
- h) Collister Shopping Center Lease including:
  - 1) Exhibit A: Plan or description showing the premises and shopping center.
  - 2) Exhibit B: Shopping Center Rules and Regulations.
  - 3) Green Chutes Collister Shopping Center Bidding.
  - 4) Exhibit D: Sample Form of Tenant Estoppel Certificate.

- 5) Exhibit F: Landlord's Notice of Lease Term Dates.
  - 6) Exhibit G: Guaranty of Lease.
  - 7) Exhibit H: Other Terms & Conditions.
- 
- i) Equipment Schedule
  - j) Copies of Menu
  - k) Copies of Articles of Incorporation and Bylaws (Neville and Neville, Ltd.)
  - l) Premises Diagram/Floor Plan

This second application was likewise for the sale of liquor by the glass, beer and wine.

13. On February 15, 2011, ABC staff members entered Salt Tears Coffee House & Noshery to investigate the business operations and view the premises. On that date they noticed the posted sales tax seller's permit was issued to Salt Tears, LLC, number 003746784. (Hr. Tr. p.44, l.16 – p.45, l.5). This is the same Seller's Permit Number shown on both applications. When they asked the cashier who the owner of the establishment was, even though Kathleen Neville was present and visible in the restaurant at that moment, the cashier responded that the owner was "Andrea" and she pointed to Andrea Maricich.

14. On February 25, 2011, ABC made an inquiry to the Idaho State Tax Commission as to who applied for and was issued the Seller's Permit at Salt Tears Coffee House & Noshery and was informed that it was Andrea Maricich.

15. In further investigation as to the operation of business, Mr. Adams investigated records of the Idaho Industrial Commission to determine who was on file with that agency as the employer for the business and which entity carried workers compensation insurance covering the business employees. Mr. Adams testified that this investigation into the Industrial Commission records indicated that for the business Salt Tears Coffee House & Noshery the employer was Salt

Tears, LLC which provided workers compensation insurance through Truck Insurance Exchange. Admitted as Exhibit 5, p.169 was a copy of the Idaho Industrial Commission records as of the date of February 25, 2011 showing Salt Tears, LLC as the employer providing workers compensation insurance for the business.

16. To further investigate the second application, ABC staff conducted what was described as “internet searches” for any information available on the internet regarding the business enterprise known as Salt Tears Coffee House & Noshery and regarding who might be the bona fide owner of such business. Admitted into evidence as a portion of Exhibit 4 were a series of press articles reporting on the opening and the operation of the Salt Tears Coffee House & Noshery business. The first press article printed on IdahoStatesman.com September 3, 2010 indicated that Andrea Maricich and her husband were preparing a new restaurant venture for Boise and that Ms. Maricich would be the hands on proprietor. The second press account was published on the IdahoStatesman.com dated Wednesday, January 12, 2011 indicating that ex-Milky Way owners (Maricich) were to open Salt Tears Coffee House & Noshery. The press account stated that Salt Tears Coffee House & Noshery was to be the first eatery launched by the Mariciches since the closing of their Milky Way restaurant in downtown Boise in 2008. The article quotes Ms. Maricich in saying Salt Tears planned to acquire a liquor license and that Maricich invited the reporter to “have a glass of wine or a cocktail” at the restaurant. The third press account was also published by IdahoStatesman.com by date of February 10, 2011 and likewise reported that Salt Tears Coffee House & Noshery was owned by Andrea and Mitchell Maricich, who previously owned the Milky Way. The reporter quoted Ms. Maricich regarding the new restaurant business. Another internet article, was published by Boise Weekly on January 20, 2011 and reported on the business operations at Salt Tears Coffee House & Noshery. The article indicates that the Mariciches were back on the Boise restaurant scene in their just opened

Salt Tears Coffee House & Noshery. The article cites the reader to the Mariciches' Facebook page which explained their plan for the restaurant and contains a quote directly attributable to the Mariciches' Facebook page which indicated that: "Yes, we will have a liquor license". The foregoing press accounts are in the record as Exhibit 4, pages 171 thru 183. An article appearing as Exhibit 4, pages 185 and 186 and with a legible copy entered into this record at the time of hearing as the last two pages of Exhibit 4, was dated March 25, 2011. This article likewise was published by the IdahoStatesman.com. The article speaks of the opening of Salt Tears Coffee House & Noshery and identifies Andrea Maricich as the Manager-Partner. This March 25, 2011 was not considered by ABC prior to denying the second application, but was admitted over objection during the course of the hearing. None of the press accounts considered by ABC prior to its denial of March 8, 2011, based upon interviews with Ms. Maricich, even so much as mention Neville and Neville, Ltd. or Kathleen Neville as having anything to do with, much less own, Salt Tears Coffee House & Noshery business.

In her testimony at the hearing, Ms. Maricich confirmed that the newspaper articles were in fact based upon conversations between her and the reporters. In attempting to explain why the reporters had come directly to her for information, she indicated they were pushing the business and claiming ownership to get some business flowing. She attempted to assert that she and her husband were the "face people" and were trying to build the business on their prior reputations in the Boise restaurant market. Ms. Maricich in answer to counsel's question on direct examination indicated that she did not represent to the reporters that she and/or her husband were the actual owners of the business. (Hr.Tr. p.157, 11.1-18)

17. By letter dated March 8, 2011, ABC denied Applicant's second application for the new incorporated city liquor license for the City of Boise. The denial was based on the ABC's



determination that the application information did not show that the Applicant was the bona fide business owner of the business.

18. By pleading dated March 14, 2011, Applicant filed an appeal of the agency denial dated March 8, 2011 which resulted in this contested case proceeding and eventual hearing in this matter held June 2, 2011.

19. While this contested case proceeding was pending, and prior to the hearing on June 2, 2011, Salt Tears, LLC filed with ABC its beer and wine license application dated April 21, 2011. This beer and wine application and all supporting papers were admitted into evidence as Exhibit 7. In this application, Salt Tears, LLC, dba Salt Tears Coffee House & Noshery, with business premises located at 4714 West State Street, Boise, Idaho 83703, applied for a beer and wine license. In the application, as with all applications to ABC, there is an under oath affirmation that the applicant identified therein, and the individual signing on behalf of the applicant, swears or affirms under oath that the applicant is the bona fide owner of the business which is applying for the license and will be engaged in the sale or dispensing of beer and wine by the glass or bottle. The testimony at hearing from Ms. Neville indicated that between the denial of March 8, 2011 and the Salt Tears, LLC application dated April 21, 2011, that her respective leases and financing arrangements with Salt Tears as reflected in applications 1 and 2 had been terminated and rescinded. Ms. Neville testified that this was due to economic considerations and primarily her wish to be relieved from liability regarding future lease payments, business loan payments and so forth. She testified that the termination of these business relationships was accomplished via various legal agreements that her lawyers had prepared. No such documents were offered by Applicant during the course of the hearing. Ms. Neville further testified that, should the final agency decision in this contested case proceeding result in approval of her second application, that she would then somehow be "reinstated" under

the various prior agreements and somehow also become reinstated as the owner of the Salt Tears Coffee House & Noshery business.

20. Included among the documents filed in support of Salt Tears, LLC April 21, 2011 application for a beer and wine license is a copy of the shopping center lease between Collister Shopping Center, LLC, an Idaho Limited Liability Company (Landlord) and Green Chutes Cooperative, LLC, an Idaho Limited Liability Company (Tenant). Also included is a sublease agreement dated April 21, 2011 between Green Chutes Cooperative, LLC as tenant and Salt Tears, LLC as subtenant. This sublease agreement sublets a portion of the Green Chutes Cooperative space within the Collister Shopping Center to Salt Tears, LLC. The term of the sublease is for a defined period of 4 years and 7 months. The sublease contains no provision for termination of the sublease in the event the final decision of the agency in this matter is to approve Neville and Neville, Ltd.'s application for liquor license. The express terms of the sublease (Exhibit 7, pp. 240-241) belie the testimony of Ms. Neville that she is somehow to be restored as subtenant under the prior sublease agreement submitted as part of application number 2.

21. Following review of the application by Salt Tears, LLC for a beer and wine license for the business Salt Tears Coffee House & Noshery, ABC issued License Number 11802 effective May 1, 2011 thru April 30, 2012.

22. As a contested case under the Idaho Administrative Procedure Act, the final agency action in this proceeding is to be based on the facts that exist and the record made as of the date of hearing. As of the date of hearing the bona fide business owner of Salt Tears Coffee House & Noshery was indisputably Salt Tears, LLC. Nowhere within the papers admitted as part of Exhibit 7 is there any indication that Salt Tears, LLC ownership of the business is conditional or contingent upon any final action by ABC in this proceeding. As noted, the sublease by its

express terms is for a definite period of 4 years and 7 months. Likewise the affirmation contained in the record as Exhibit 7, p.196 does not purport in any way to limit or condition Salt Tears, LLC ownership of the business. The legal effect of Salt Tears, LLC application for beer and wine license and ABC's issuance of such license effective May 11, 2011 is to preclude, as a matter of law, agency approval of the application at issue in this proceeding.

23. Idaho Code Title 23, Chapter 9 governs retail sale of liquor by the drink. Idaho Code §23-910(5) provides that no license for retail sale of liquor by the drink shall be issued to a person who does not hold a retail beer license issued under the laws of the State of Idaho. A person is defined at Idaho Code §23-902 to include business entities including a corporation. The documents admitted within Exhibit 7 clearly demonstrate that as of the date of hearing Salt Tears, LLC is the bona fide owner of the business known as Salt Tears Coffee House & Noshery. Neville and Neville, Ltd., an Idaho Corporation, has no ownership interest in Salt Tears, LLC or in the business operated under the Salt Tears Coffee House & Noshery name. As such, the agency is precluded from issuing a license for sale of liquor by the drink to Neville and Neville, Ltd., the Applicant in this proceeding. The Director has no discretion to issue the requested license to Neville and Neville, Ltd. based upon the record and evidence.

24. In light of the legislative mandate precluding issuance of the requested license to Neville and Neville, Ltd., the agency decision entered on March 8, 2011 denying the second application (Exhibit 3) has been rendered moot by virtue of the Salt Tears, LLC beer and wine license application dated April 21, 2011. This conclusion of law is entered under the express language and prohibition set forth at Idaho Code §23-910(5). In the event the Hearing Officer or the agency is mistaken in entering this legal conclusion, it is prudent and reasonable for the Hearing Officer to consider the facts and circumstances as they existed on March 8, 2011, the date of denial of the second application.

25. As noted in the above set forth findings, the agency concluded that applicant Neville and Neville, Ltd. failed to demonstrate that it was the bona fide owner of the business known as Salt Tears Coffee House & Noshery. The requirement that the applicant shall affirmatively show that it is the bona fide owner of the business arises from Idaho Code §23-1010(2)(a). As an agency, ABC has not adopted a rule to define or attempt to clarify the phrase “bona fide owner of the business”. We are then left with the language of the statute and the legislative directive that any words or phrases used in the act which are defined therein are to be given their ordinary and commonly understood and acceptable meanings. IC §§23-902(17) and 23-1001(I).

Black’s law dictionary defines “bona fide” as:

In or with good faith; honestly, openly, and sincerely; without deceit or fraud. Truly; actually; without simulation of pretense. Innocently; in the attitude of trust and confidence; without notice of fraud, etc. Real, actual, genuine and not feigned.

Black’s Law Dictionary (West 6<sup>th</sup> Ed. 1999).

Applying this definition to the various uses in the Act, one can identify that the term “bona fide” means genuine, real, or true. For example, a genuine or real golf course would not be a miniature golf course. The same applies to the Act’s reference to “owner of the business”, the applicant must be the real or genuine owner of the business that will be selling the beer under the license.

26. The record in this matter demonstrates that Neville and Neville, Ltd. was not able to affirmatively know that it was the bona fide owner of the business in this case. The State of Idaho Tax Commission’s Sales Tax Permit Number was issued to Salt Tears, LLC. Ms. Neville’s testimony and counsel’s letter to the State Tax Commission addressing Neville’s Federal Taxpayer ID Number has no bearing upon the Tax Commission Seller’s Permit Number issue. The testimony of Mr. Adams confirmed that the Federal Taxpayer ID Number is entirely separate

and distinct from the State of Idaho Tax Commission Seller's Permit Number. No explanation was provided at any time to explain or rebut the testimony of Mr. Adams that the Seller's Sales Tax Permit Number for the business was issued to Salt Tears, LLC. As noted above, the identical Tax Commission Seller's ID Number appeared on application 1 and 2 from Neville and on the Salt Tears, LLC application admitted into evidence as Exhibit 7. This issue in and of itself is sufficient for ABC to conclude that applicant was not the bona fide owner of the business. But there is more. As noted above, workers compensation insurance for the business was obtained only by and through Salt Tears, LLC as shown on the books and records of the Idaho Industrial Commission. Again, no evidence was presented to explain or rebut the fact that workers compensation insurance on the business and employees was obtained by Salt Tears, LLC. No evidence was adduced showing that Neville and Neville, Ltd. obtained at any time workers compensation insurance on any employees, if indeed it had any employees. There is also the matter of Ms. Maricich's several interviews with reporters regarding ownership and the business operations. It is true that such press accounts are considered hearsay under the Idaho Rules of Evidence and probably would not be admissible in a civil court proceeding. However, under the Idaho Administrative Procedures Act, the Idaho Rules of Evidence are not applicable. The evidentiary standard in administrative proceedings under the Idaho Administrative Procedures Act permits hearsay evidence if it is the kind and type generally relied upon by prudent people in the conduct of their affairs. Idaho Code §67-5251(1). Although these statements are not attributable per se to Neville and Neville, Ltd. or to Kathleen Neville as its President, the testimony in this case is that Ms. Maricich and Ms. Neville worked closely together in the business and were close friends as well. The agency was very appropriately concerned regarding the multiple representations by Ms. Maricich to the press that she was the owner and operator of the business. Although these statements in and of themselves would not be necessarily

conclusive or determinative of the issue, such statements when combined with the Tax Commission Seller's Permit Number, workers compensation insurance, and inability of a business employee to correctly identify the purported owner, all demonstrate that the agency acted correctly and within its discretion in denying the second application. The Hearing Officer so finds and concludes.

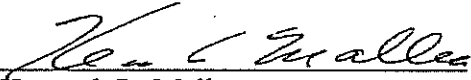
27. Based upon the record, the applicant's request for issuance of a license to sell liquor by the glass, beer and wine, should be, and is denied.

28. The agency has requested an award of attorney's fees under Idaho Code §12-117. This statute provides that in an administrative proceeding, the state agency shall award the prevailing party reasonable attorney's fees and other reasonable expenses if it finds that the non-prevailing party acted without a reasonable basis in fact or law. Although the applicant did not ultimately prevail in this case at least insofar as this preliminary order is concerned, the Hearing Officer finds that this proceeding was not taken by Neville and Neville, Ltd. without a reasonable basis in fact or law. The record demonstrates that applicant, through counsel, met with Lieutenant Clements and Ms. Grunke in an effort to understand the agency's bona fide owners requirement and to cast documents in a light to demonstrate such bona fide ownership. Ultimately the facts did not line up with the documents submitted in applicant's second submission, but the Hearing Officer cannot find or conclude that Neville and Neville, Ltd. proceeded without a reasonable basis in fact or law. Finally, the application for beer and wine license admitted as Exhibit 7 was submitted by a different legal entity, i.e. Salt Tears, LLC, an Idaho Limited Liability Company, which, although proving ultimately fatal to Neville and Neville, Ltd.'s application, the Salt Tears, LLC application was not filed by Neville and Neville, Ltd. and should not be held against that corporation in considering an award of attorney's fees and costs under Idaho Code §12-117.

**PRELIMINARY ORDER**

The Application by Neville and Neville, Ltd. for license to sell liquor by the glass, beer and wine is **DENIED**.

Respectfully submitted this 16<sup>th</sup> day of August, 2011.

  
Kenneth L. Mallea  
Hearing Officer

## REVIEW OF PRELIMINARY ORDER

Pursuant to Idaho Code § 67-5243 this decision is a **PRELIMINARY ORDER**. It can and will become final without further action of the agency unless either party petitions for reconsideration before the hearing officer issuing this Preliminary Order or appeals to the Director of the Idaho State Police. Either party may file a motion for reconsideration of this Preliminary Order with the hearing officer issuing this Order within fourteen (14) days of the service date of this Order. The hearing officer issuing this Order will dispose of the petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. *See* I.C. § 67-5243(3).

Within fourteen (14) days after (a) the service date of this Preliminary Order, (b) the service date of the 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 appeal or take exceptions to any part of the Preliminary Order and file briefs in support of the party's position on any issue in the proceeding to the agency head (or designee of the agency head). Otherwise, this Preliminary Order will become a final order of the agency.

If any party appeals or takes exceptions to this Preliminary Order, opposing parties shall have twenty-one (21) days to respond to any party's appeal within the agency. Written briefs in support of or taking exceptions to the Preliminary Order shall be filed with the agency head (or designee). The agency head (or designee) may review the Preliminary Order on its own motion.

If the agency head (or designee) grants a petition to review the Preliminary Order, the agency head (or designee) 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.

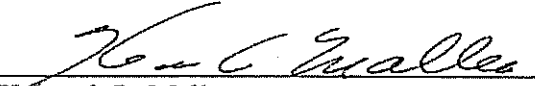


The agency head (or designee) will issue a final order within fifty-six (56) days of receipt of the written briefs or oral argument, whichever is later, unless waived by the parties or for good cause shown. The agency head (or designee) may remand the matter for further evidentiary hearings if further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

Pursuant to Idaho Code §§ 67-5270 and 67-5272, 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 operates its principal place of business in Idaho, or the real property or personal property that was the subject of the agency action is located.

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

IT IS SO ORDERED: August 16, 2011.

  
Kenneth L. Mallea  
Hearing Officer

CERTIFICATE OF SERVICE

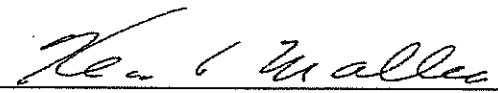
I HEREBY CERTIFY that on the 16<sup>th</sup> day of August, 2011, a true and correct copy of the within and foregoing document was served upon:

Michael T. Spink  
251 E. Front Street, Suite 200  
Boise, ID 83702

Jenny C. Grunke  
Deputy Attorney General  
Idaho State Police  
700 S. Stratford Drive, Suite 115  
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Colonel G. Jerry Russell  
Director, Idaho State Police  
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by U.S. mail  
 by hand delivery  
 by facsimile  
 by overnight mail

  
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Kenneth L. Mallea